

Types of contract / essentials of a valid contract

Void – not enforceable by law
Voidable: enforceable at the option of one of the parties but not at the option of other or others
Illegal: void as well as punishable by law
Unenforceable: substance is good but has some technical defects.
Express: by words oral or written
Implied: other than by words
Tacit: by actions
Quasi: by law
Unilateral: one sided contract
Bilateral: both are yet to perform
Executed: both the parties have performed.

1. Two parties
2. Offer and acceptance
3. Intention to create a legal relationship
4. Consideration
5. Capacity to contract
6. Free consent
7. Lawful object
8. Agreement expressly declared void
9. Certainty and possibility of performance
10. Legal formalities

In case the agreement is void the collateral is valid.

In case the agreement is illegal the collateral is tainted with illegality and hence void

Types of offer

General– to the public
Special– to a definite person or group
Cross–identical offers in ignorance
Counter– modification of the original offer
Standing or Open– open for acceptance over a period of time

Rules of acceptance

1. Must be unconditional
2. Must be communicated
3. Cannot be presumed from silence
4. Must be in the specified mode
5. Must be within the specified or reasonable time
6. May be by conduct

Rules of offer

1. Must be clear, definite and not vague
2. May be express or implied
3. Must be communicated
4. Cannot be accepted in ignorance
5. May be conditional
6. Must not contain a term non-compliance of which would amount to acceptance
7. An invitation to offer is not an offer

Rules for consideration

1. Must move at the desire of the Promisor
2. May move from the Promisee or any other person
3. Maybe Executed or Executory
4. May be past, present or future
5. Need not be adequate
6. Must be something which a promisor is not already bound to do
7. Must not be unlawful, illegal or against public policy

Locha to privity of contract

- Only the parties to the contract can sue and be sued
1. Trust or beneficiary
 2. Family or marriage settlement
 3. Assignment
 4. Estoppel or acknowledgment of liability
 5. Covenants running with the land

Locha to no consideration no contract

1. Natural love and affection
 - a) out of love and affection
 - b) parties stand in a relation
 - c) Contract is Written and registered
2. Time barred debt
3. Compensation for past voluntary service
 - a) Services rendered voluntarily
 - b) Services already rendered
 - c) Promisor is in existence
 - d) Promisor promises to compensate.
4. Agency
5. Completed gifts
6. Charities and donations
7. Bailment

Rules regarding Minor's agreement

9. Agreement with a minor is void but a minor can be a beneficiary.
10. Minor can always plead minority but if his intention was to cheat he need to compensate the other party.
11. Minor cannot ratify his acts after attaining majority.
12. Any contract by the guardian of a minor if it is beneficial for the minor it is valid.
13. A minor is never personally liable for the necessaries supplied to him, the liability is against his property.
14. A minor cannot be a partner in a firm but he can be a beneficiary.
15. Minor can be an agent but not a principal.

1. No specific performance of a minor's agreement.
2. Minor cannot be declared an insolvent.
3. The rule of estoppel does not apply on a minor.
4. Minor shall be liable for torts except for breach of contract.
5. A minor may be a joint promisor and except him all others will be liable.
6. Minor cannot be a shareholder except by way of transfer or transmission where the deed is signed by the guardian and the shares are fully paid up.
7. If a person gives surety on behalf of the minor the surety will be personally liable.
8. The parent of a minor shall be liable for his acts only when he acts as an agent for the parent.

Coercion, undue influence, fraud and misrepresentation

Coercion:

Threatening to commit a crime.
 Unlawful detaining or threatening to detain the property of another.
 Physical force.
 Can be by or on a third party.

Undue influence

Relationship where person with dominating position exerts pressure to contract.
 On terms which are unreasonable.
 Mental or moral force.
 Only on the parties.

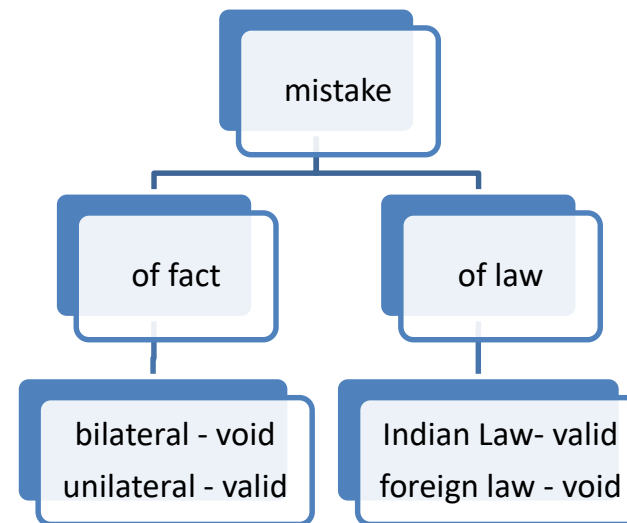
Fraud

Suggestion of a fact which is not true and the person believes it not to be true.
 Active concealment of fact.
 Promise without an intention to perform.
 Any act to deceive.
Silence is not fraud except in case of:
 Locha to silence is not fraud:
 When it is the duty of the person to speak; and
 Silence equals to speech

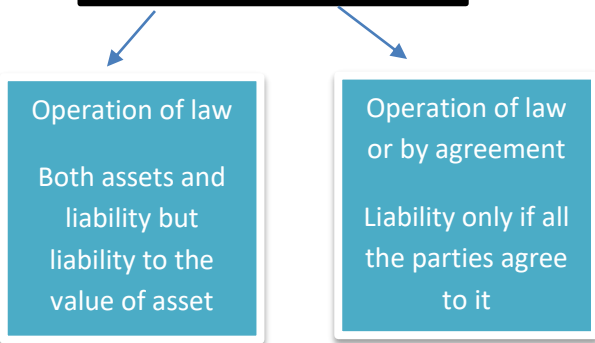
Misrepresentation

Assertion of the fact which is not true though he believes it to be true. Breach of duty without an intention to deceive gains an advantage over other by misguiding Causing innocently a party to make a mistake

If one party uses fraud or misrepresentation but the other party if he would have used his diligence would have come to know the facts, the contract is VALID.
 If one party uses fraud or misrepresentation but the other party if he would have used his diligence would have come to know the facts, the contract is VALID. If one party uses fraud or misrepresentation but the other party was not in fact misled by it the contract is VALID



Succession and Assignment



Effect of refusal to perform

If one party is ready and willing to perform but the other refuses to accept, the aggrieved party has no obligation to perform but has a right to claim the damages

Time and place of performance

- No time specified– reasonable time
- Day specified but no time– during the business hours
- No place– duty of the Promisor to ask the Promisee to fix a reasonable place
- Performance on a particular day but Promisor will not perform unless asked by the Promisee– duty of the Promisor to ask the Promisee to fix a reasonable place

Appropriation of payment



Restitution

Restore the benefits received under a void contract or under a voidable contract on its becoming void.

Reciprocal promises

Reciprocal promises means dependant promises i.e., performance of one depends on the performance of the other.

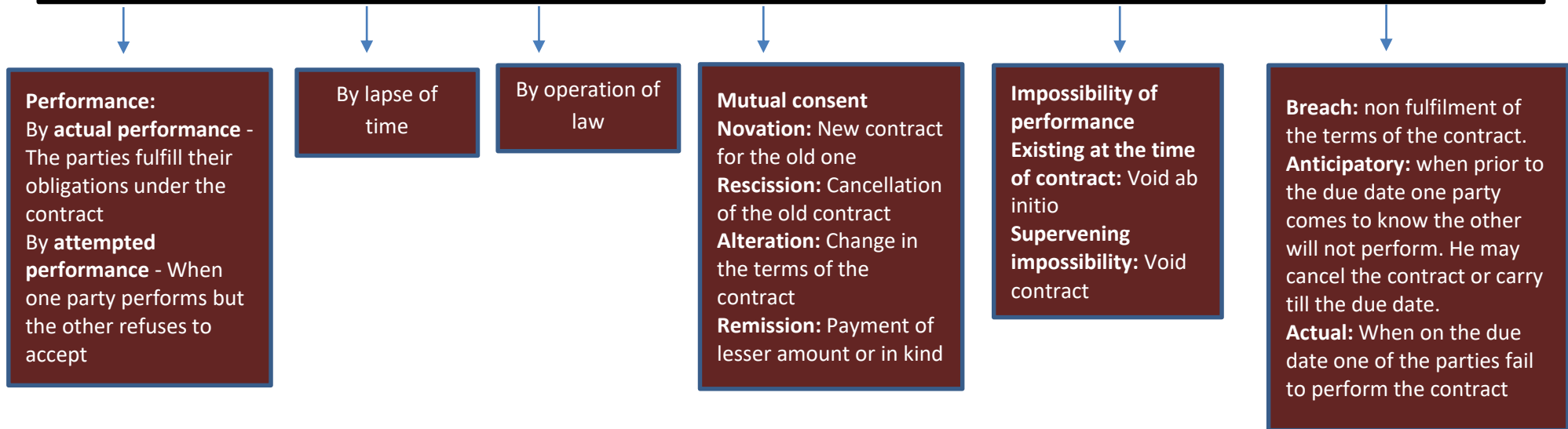
It may be fixed by implication or by an agreement

In case of reciprocal promises if one party prevents the other from performing the party prevented is under no obligation to perform but has a right to claim damages

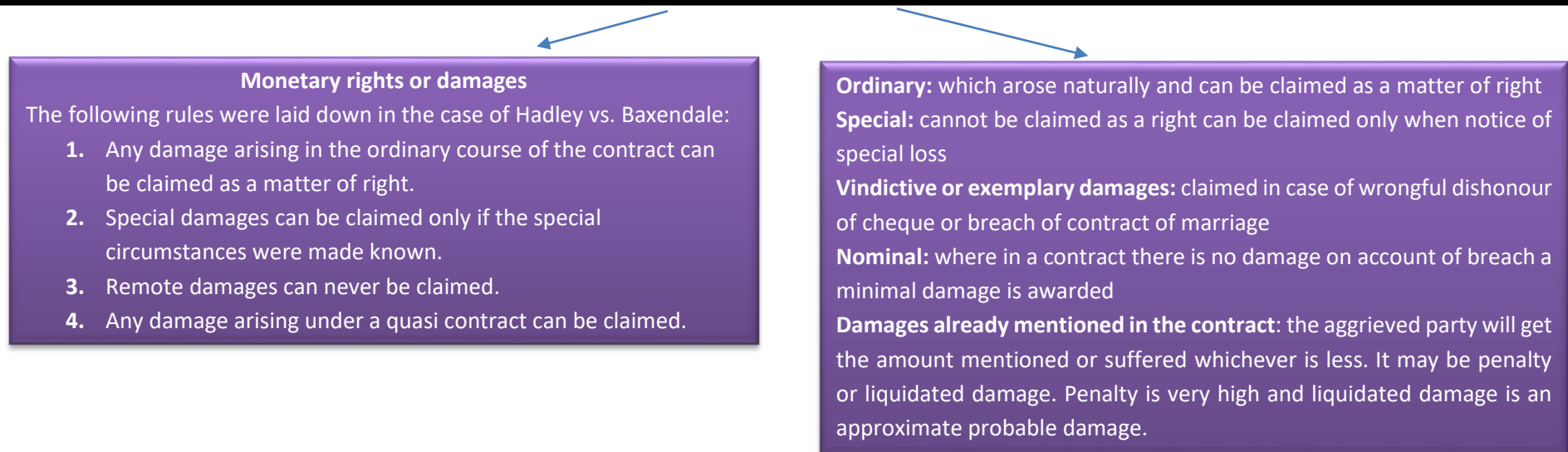
Appropriation of payment

- Debtor will specify and if the creditor accepts the payment must set off that debt only.
- If the payment is made on account generally, the creditor may set off any debt.
- If nothing is specified the first debt in order of time and if more than one debt then in their proportion.

Discharge of contract



Remedies for breach (Monetary rights)



Remedies for breach (other rights)

Rescission: If one party does not perform the other may sue for canceling the contract

Quantum meruit: As much as is earned or merited

Specific performance: where the goods have no substitute or damages are not an adequate relief.

Injunction: where there is a negative term and one of the party breaches the negative term

Where a party rightfully cancels the contract he shall also have a further right to claim damages

Contingent contract

A contract to do or not to do something on the happening or non-happening of a future uncertain event.

Essentials:

4. The event must be an uncertain event
5. The event must be a collateral event i.e., should not form a part of the reciprocal promises
6. It can never depend on the will of the promisor

Rules of enforceability:

6. **Happening of an event:** Is valid when the event happens and void when the event does not happen
7. **Non-happening:** Is valid when the event does not happen and becomes void when the event happens or does not become impossible
8. **Third party:** Is valid if the third party acts as per the contract
9. **Impossible events:** Is void ab initio

Quasi contract

There is no contract between the parties, the contract is created by the imposition of law.

Essentials:

1. The right is against a sum of money
2. It does not arise out of a contract between the parties
3. It's a right against a particular person and not the world at large

Types:

1. Goods delivered by mistake or under coercion
2. Necessaries supplied to a minor or lunatic's family
3. Payment made for a third party
4. Work done non gratuitously
5. Finder of the goods

Contract of indemnity

One party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person.

The person making the promise is called the indemnifier and the party to whom the promise is made is called the indemnified or indemnity holder.

Rights of indemnity holder:

1. Damages which he may be compelled to pay in any suit.
2. Costs which he may be compelled to pay in any suit
3. All sums he had to pay under the terms of compromise of any such suit

Extent of surety's liability:

1. Co-extensive with the liability of the principal debtor
2. Liability arises as soon as principal debtor makes a default
3. If debtor cannot be held liable to due default in documents the surety will also not be liable

Types of guarantee:

Specific: for a specific transaction and cannot be revoked

Continuing: moves over a series of transaction and can be revoked wrt future transaction.

Rights of surety:

Against the principal debtor:

1. **Right of subrogation:** steps into the shoes of the creditor
2. **Right of indemnification:** right to recover the money back from the principal debtor

Against the creditor: Right to security: entitled to every security whether he knows about it or not. If creditor loses the security or parts with it the surety is discharged to the extent of the value of security

Against co-sureties: the right to recover their share

Contract of guarantee

a contract to

- perform the promise made or
- discharge the liability .

parties: A contract of guarantee is a three party contract

- The person who gives the guarantee is called the surety.
- The person in respect of whose default the guarantee is given is the principal debtor.
- The person to whom the guarantee is given is the creditor.

Essentials:

1. Three parties
2. Consideration to principal creditor is sufficient consideration for the surety
3. Existence of liability

Discharge of surety

1. By notice, death or novation
2. Any variation in the terms of the contract discharges the surety from the date of variation
3. Release or discharge of principal debtor
4. When the creditor makes a composition with the principal debtor or the creditor promises to give time or the creditor agrees not to sue the debtor and the surety is not informed.

But if he agrees with a third party not to sue the debtor the surety is not discharged.

Forbearance on the part of the creditor to sue the principal debtor will not discharge the surety

5. Where creditor impairs the right of the surety
6. Where guarantee is obtained by concealment of material facts

Contract of Bailment

Possession of the goods are transferred for a specific purpose and once the purpose is attained the goods have to be returned back or disposed off in the manner warranted.

The person who delivers is bailor and the person to whom the goods are given is the bailee.

Features:

1. Contract may be express or implied
2. There must be some goods
3. The goods must be delivered. Delivery may be actual, symbolic or constructive.
4. Bailee must return the same goods or the same goods in altered form.
5. Transfer must be not of mere custody but of possession

Types of bailment:

Gratuitous – for the benefit of the bailor or for the benefit of the bailee

Non gratuitous – for the benefit of both the parties

Duties of bailor:

1. Disclose faults in the goods
2. Repay necessary expenses
3. Give back loss suffered due to defective title
4. Receive the goods
5. Indemnify loss due to premature termination of gratuitous bailment

Duties of bailee:

1. Take reasonable care of the goods
2. Not to make unauthorised use of the goods
3. Not to mix goods with his own goods
4. Not to set up an adverse title over the goods
5. Return any accretion to the goods
6. Return the goods

Rights of bailor:

1. Enforcement of rights
2. Loss for unauthorised use of goods
3. Cancel the contract
4. Compensation from wrong doer

Rights of bailee:

1. Delivery to one of the several joint bailors
2. **Delivery of goods to bailor without title**
3. **Right to apply to court to stop delivery**
4. **Right of action against third party**
5. **Right of lien**

Particular lien: bailee exercises lien for the charges of services rendered by him.

General lien: a lien exercised over the general account of balance.

Responsibility of finder of the goods:

Rights:

1. Right of lien
2. Right to sue for reward
3. Right of sale

Obligation:

1. Take reasonable care of the goods
2. Not to mix the goods with his own
3. Not to use the goods for his personal purpose
4. Try to find the owner

Termination of contract of bailment:

1. Time over
2. Purpose accomplished
3. Bailee makes inconsistent use of goods
4. Subject matter destroyed
5. Gratuitous bailment can be terminated at any time.

Contract of pledge

Bailment of goods as a security for payment of debt or for performance of contract. The person who gives the goods is the **pawnor** and the person to whom the goods are given is the **pawnee**.

Rights of pawnee:

1. Right of retainer
2. Right of retainer for subsequent advances
3. Right to extraordinary expenses
4. Right when pawnor makes a default

Rights of pawnor:

Right to redeem

Duties of pawnor:

1. Take reasonable care of the goods
2. Not to make unauthorised use of the goods
3. Return the goods
4. Not to mix the goods with his own goods
5. Not to do any act inconsistent with pledge
6. Return accretion to the goods

Duties of pawnee:

1. Liable to pay the debt
2. Compensate the pawnee for extraordinary expenses
3. Disclose all faults of the goods
4. If loss due to defect in pawnor's title indemnify the pawnee
5. If pawnee seels the goods to pay the deficit

Pledge by non-owners:

1. Pledge by mercantile agent
 - a) Acting in ordinary course
 - b) Possession with consent of owner
2. Pledge by person in possession under a voidable contract – person has possession under a voidable contract and before contract is cancelled pledges the goods
3. Pledge where pawnor has limited interest – pledge is valid upto his share
4. Pledge by a co-owner – one of the co-owner has possession with the consent of the others and pledges them
5. Pledge by a seller or buyer in possession – where a seller after having sold the goods continues to be in possession of them or a buyer has possession of the goods before sale and pledges them.

Contract of agency

Agent is a person

- Employed to do any act for another; or
- Represent another

in dealings with third person.

The person for whom the work is done or who is represented is known as the **Principal**.

Essentials:

1. Agreement and not a contract
2. Consideration is not essential

A minor or a person of an unsound mind can be an agent but not the principal. If the agent is a minor the principal cannot hold the minor liable for any act done him as an agent.

Personal liability of an agent:

1. contract expressly provides that the agent shall be personally liable
2. principal resides outside India.
3. agent is acting for an undisclosed principal.
4. Principal is a person who cannot be sued in the court.
5. agent signs the contract in his own name.
6. acts for a principal who is not in existence.
7. agent acts outside his authority.
8. authority is coupled with interest.
9. Principal is a minor or has no capacity to contract
10. pretended agent if the principal does not ratify the acts.

Creation of agency:

Express: authority given by the principal to his agent

Implied:

By estoppel: principal represents another person as an agent even though he is not and such person does not deny it or a person represents himself as an agent even though he is not.

By holding out: there was a principal and agent relationship in the past.

Agency by necessity: agent exceeds his authority or a person is entrusted with the property of another and to preserve or protect the property he does an act which is outside his authority

Agency by operation of law: in case of partnership

Wife as an agent: wife is an agent for necessaries. Necessaries depends on the status of the person.

Agency by ratification: where a person acts on behalf of another without his knowledge or agent exceeds his authority.

Termination of agency:

1. By an agreement between the principal and agent.
2. Revocation of authority by the principal by giving a notice.
3. Revocation by agent by giving a notice.
4. When the agent is appointed for a particular object and the object is attained.
5. When the agent is appointed for a fixed time and the time is over,
6. Death or insanity of the principal or agent.
7. Insolvency of the principal
8. If contract is made for a specified subject matter and the subject matter is destroyed.
9. Principal becoming an alien enemy.
10. Where the principal or agent is a company and the company is dissolved.

Sale of Goods Act

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

Goods

Goods means any moveable goods other than money and actionable claims (any unsecured debt which can be forced in the court of law). It includes stocks and shares, growing crops, grass and things attached to or forming a part of the land, which are agreed to be severed/ detached from the land before sale or under the contract of sale. Stocks and shares are also regarded as goods, though a ship is not.

Existing: in possession of seller at the time of contract

Future: not in the possession of the seller but will be procured or produced or manufactured by him after the contract is made.

Contingent: goods the acquisition of which by the buyer depends upon a contingency

Specific: identified and agreed upon at the time of contract

Ascertained: identified and agreed upon subsequent to the formation of the contract

Unascertained: neither identified nor agreed but a mere description is given

Price

Monetary consideration for the goods.

Maybe fixed:

1. By agreement
2. By mutual dealings
3. By third party or valuer

If the price is to be fixed by a third party and the third party refuses to fix the price the contract shall become void. Where price is not fixed in any of the following manner the buyer shall pay to the seller a reasonable price for the goods.

Delivery

Voluntary transfer of possession of good

Actual: physical possession of the goods are transferred

Symbolic: means of obtaining the possession are given

Constructive: delivery without any physical delivery. Also known as delivery by acknowledgment or attornment.

Destruction of subject matter

Before agreement – the agreement is void ab initio

After agreement before sale:
Specific: void ab initio
Unascertained: valid

Condition and warranty

Conditions are stipulations which are essential for the main purpose of the contract. A breach of condition gives the buyer a right to cancel the contract

1. **Condition as tot title:** implied that seller has a right to sell or will have a right to sell
2. **Sale by sample:**
 - a) bulk must correspond to sample,
 - b) buyer must be given an opportunity to examine the goods
 - c) no latent defect making them unmerchantable
3. **Sale by description:** bulk must correspond to description. Description of packing is also a part of sale by description.
4. **Quality and fitness for specific purpose of buyer:**
 - a) Buyer specifies the reason of purchase
 - b) Depends upon seller's skill and judgment
 - c) Seller deals in those goods
5. **Custom or usage of trade**
6. **Merchantability:** goods should be saleable or useable. Personal ailment does not make the goods unmerchantable. Defective packing also makes the goods unmerchantable.
7. **Wholesomeness:** in case of eatables they should be in a consumable state

Warranties are stipulations which run collateral to the main purpose of the contract

A breach of warranty gives the buyer a right to claim damages but no right to cancel the contract.

1. **Warranty as to undisturbed possession:** condition as title treated as a breach of warranty
2. **Warranty as to freedom from encumbrances:** when the seller sells the goods on which a third party has a charge and owing to this charge the buyer suffers damages.
3. **Warranty as to disclosure of dangerous nature of the goods:** when the seller sells goods to the buyer which are dangerous and fails to inform the buyer about it the buyer can claim the damages that he has suffered.
4. **Quality and fitness by usage of trade:** breach of condition treated as a breach of warranty

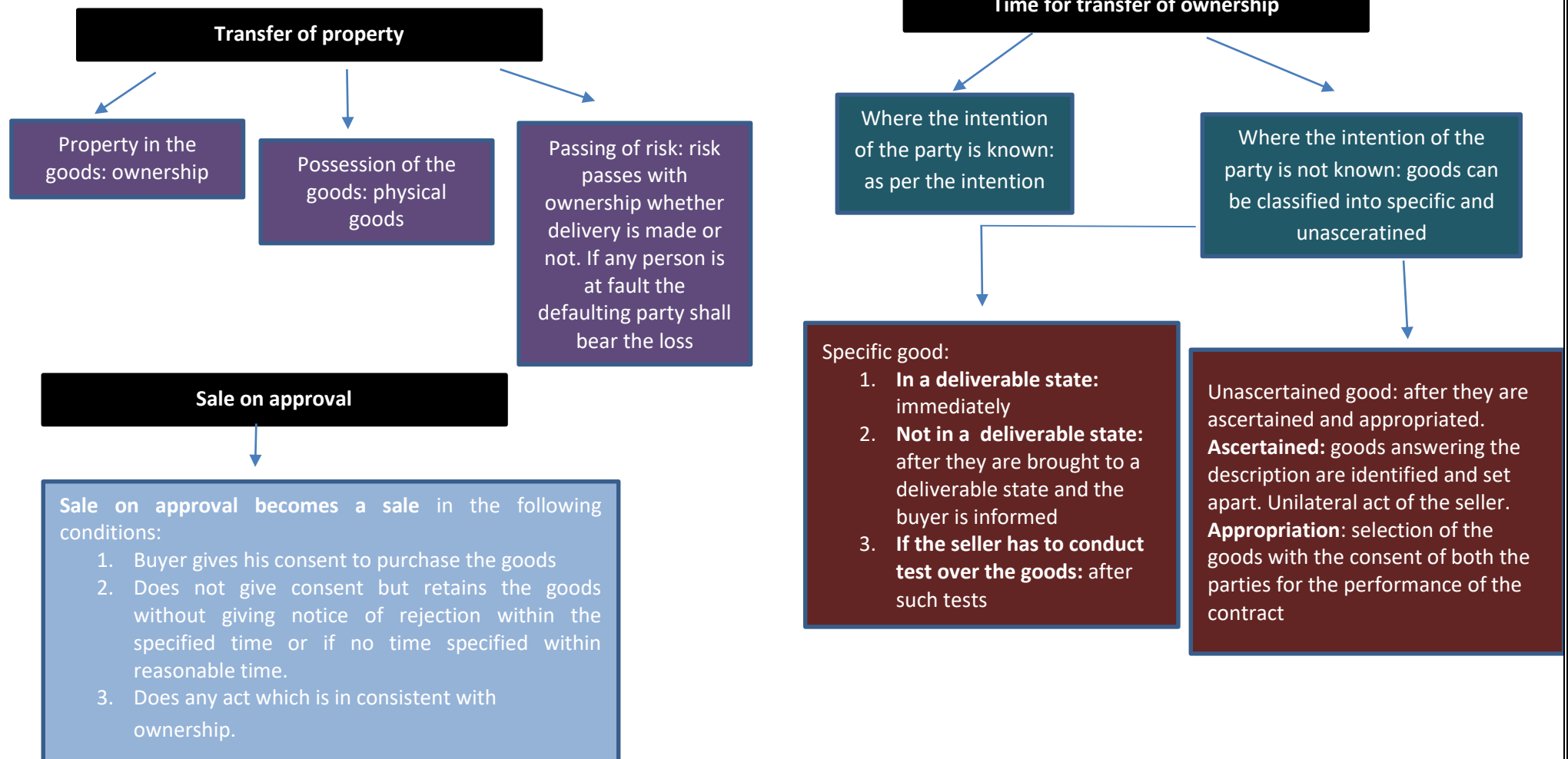
Caveat Emptor

Let the buyer beware.

The rule of caveat emptor does not apply in the following cases:

- under trade name
- By sample
- By description
- the goods are un merchantable
- the goods are not wholesome
- the goods are not fit for the buyers specific purpose

Sale of Goods Act



Nemo dat quod non habet

No one can give what he has not got

Locha

sale by a mercantile agent:

- a) Acting in ordinary course
- b) Possession with the consent of owner
- c) Sells to bonafide purchaser.

Sale by one of the joint owners:

- a) One of the joint owner has possession of the goods with the consent of owner
- b) Sells to bonafide purchaser

Sale by person in possession under a voidable contract:

- a) Possession under a voidable contract
- b) Sells to bonafide purchase

Sale by estoppel: owner lets the buyer believe that the seller has a right to sell the goods

Sale by a person in possession after sale: person has the possession of the goods or document of title after selling the goods and resells them the sale is valid.

Sale by a person before sale: A person has the possession of the goods and not the ownership sells them to a bonafide purchaser sale is valid

Sale by an unpaid seller: An unpaid seller after exercising his rights of lien and stoppage may resell the goods

Sale under other Acts:

- a) Pawnee or pledgee of goods
- b) Finder of the goods
- c) Sale by official assignee or liquidator

Rules of delivery

1. Delivery of goods is made by doing anything which parties agree shall be treated as delivery .
2. Delivery of part shall be deemed to delivery of the whole of the goods. Intention to sever shall not be deemed to delivery of whole.
3. Duty of buyer to apply for delivery
4. No specific contract, goods must be delivered at the place at which they were at the time of sale in case of sale and the place they were at the time of agreement to sell in case of an agreement to sell.
5. The delivery must be made within a reasonable time.
6. If goods in possession of third party delivery will take place only when the third party acknowledges that he is holding the goods on behalf of the buyer.
7. Demand or tender for delivery shall be made at a reasonable hour.
8. The expenses of putting the goods into a deliverable state must be borne by the seller.
9. If the seller delivers goods less than contracted for the buyer may reject or accept, if he accepts he will pay for the lesser quantity.
10. If the seller delivers goods more than contracted for the buyer may reject or accept the whole or accept the relevant and reject the rest. If he accepts the whole he shall for the total goods at the contract rate
11. If seller delivers goods mixed with goods of different description buyer may accept the goods which are in accordance and reject the rest or reject the whole
12. Buyer is not bound to accept installment delivery unless otherwise agreed.
13. Delivery of goods to the carrier is deemed to be a delivery of the goods to the buyer.
14. Deterioration of goods which are incidental to the course of transit and the goods are sent to distant place shall be borne by the buyer even if the seller agrees to bear it.
15. If the goods were not previously examined by the buyer he shall have a right to examine them before accepting the delivery

Sale of Goods Act

Unpaid seller

Unpaid seller is one who has not received the whole price of the goods in any of the following cases:

1. No credit period
2. Credit period expired
3. Payment was made by a negotiable instrument which has been dishonoured
4. Buyer becomes insolvent

Rights of unpaid seller over the goods

1. Rights of lien: if after selling the goods seller has the possession and becomes unpaid can retain the goods with himself. Lien comes to an end in case of:

- Goods sent to carrier
- Buyer tenders the payment
- Buyer or agent lawfully acquire the goods
- Estoppel or waiver

2. Rights of stoppage in transit: seller has dispatched the goods to carrier and becomes unpaid due to buyers insolvency can stop the goods from being delivered. Right comes to an end when the goods reach the buyer.

3. Right to resell: may resell after giving a notice to the buyer and wait for a reasonable period of time.

Rights of unpaid seller against the buyer

Rights against the buyer:

1. Right to sue for price
2. Right to sue for interest
3. Right to sue for damages for non acceptance of goods
4. Right to sue for breach of contract.

Auction sale

1. Is an invitation to offer.
2. Sale is complete on the fall of the hammer.
3. Where the goods are put up for sale in lots, each lot is deemed to be a separate contract of sale.
4. Bidder may retract his bid before the fall of the hammer.
5. Seller or his agent may bid at the auction if he has reserved the rights to bid.
6. If he bids without reserving rights the sale is voidable.
7. If the seller appoints more than one bidder for pretended bidding the sale is voidable.
8. The sale may be subject to a reserve or upset price.
9. An agreement between two or more bidders not to bid against each other i.e. knockout agreements is against public policy and hence void.

Rights of buyer against the seller

Damages for non delivery of goods:

if the seller wrongfully refuses or neglects to deliver the goods.

Sue for specific performance:

In case of ascertained or specific goods the buyer can sue the seller for specific performance if the goods have no substitute.

Sue for damages:

1. When there is a breach of warranty; or
2. Breach of condition treated as a breach of warranty

Sue for price:

1. When there is a breach of condition
2. Money paid in advance and the contract is not performed then a refund of the advance money

Partnership Act

Partnership is an agreement between two or more persons to share the profits of the business carried by all or any one or more acting for all

Essentials of partnership

1. **Agreement:** partnership cannot arise out of status there should be an agreement. Min 2 and max 50
2. **Sharing of profit:** does not necessarily mean sharing of losses. Agreed ratio or equally. Loss agreed ratio or in PSR.
3. **Business:** any trade, profession or occupation which is recurring in nature
4. **Carried by all or anyone or more acting for all:** the active partner is the agent as well as the principal for the purpose of the business and by his acts he binds the whole firm. So partnership is an extension of the law of agency

Active

Capital, business, profit, known, notice and liable

True test of partnership

To determine the existence of partnership it must be proved:

1. There was an agreement
2. The agreement was to share profits
3. The business was carried by all or any one or more acting for all

Sharing of profits is the prima facie evidence of partnership the true test is mutual agency

Sleeping

Capital, profit and liable

Nominal

Known, liable and notice

Partners in profits only

they share only the profits and not the losses they are liable to the outsiders for the acts of the firm

Types of partnership

Partnership for a fixed period: formed for a specified period. Once period over firm is dissolved but if partners want they may continue.

Particular partnership: formed for a specified purpose. Once the purpose is over the firm is dissolved but if partners want they may continue.

Partnership at will: no time specified to determine the partnership. Any partner may give a written notice and retire from the firm or dissolve the firm.

When a partnership for a fixed period or particular partnership converts into a partnership at will the rights and liabilities will remain the same consistent with partnership at will

Sub partner

When a partner agrees to share a part of his profit with another. He will have no right or liability against the firm they are restricted to the partners share

Partner by estoppel or holding out

when a partner of a firm represents another person as a partner to a third party and such person does not deny it or
when an outsider represents himself as a partner. Such person's liability shall be severe

Partnership Act

Minor as a partner

A minor cannot become a partner of the firm he can be admitted to the benefits of the firm.

Rights:

1. Get his share
2. Check, inspect and copy the accounts of the firm
3. Can sue the other partners for his share provided he severs all his connections with the firm

Liability: no personal liability only against his share.

Within 6 months from the day he attains majority or the day he comes to know he was a beneficiary whichever is later he must give a notice of whether he wants to become a partner or not. If he fails to give notice he automatically becomes the partner.

When he becomes a partner he is liable from the day he was admitted to the benefits of the firm.

Personal profits earned by a partner

From any transaction of the firm or using the name or assets of the firm or from any personal business competing with that of the firm. He will have to share the profit with the other partners.

If the agreement specifies that a partner cannot carry any personal business but a partner carries on a business not competing with that of the firm he will have to give damages to the other partners.

Notice to an active partner

Notice to an active partner is deemed to be a notice to the firm. However the notice must be actual and not constructive

Implied authority of a partner

Right of a partner to act in the name of the firm and to bind the firm by his acts.

The act binds the firm when it is done in the ordinary course of business.

If it is not done in the ordinary course but the other partners ratify it the firm is liable

Acts beyond implied authority

1. submit a dispute relating to the business of the firm to arbitration,
2. open a banking account on behalf of the firm in his own name,
3. compromise or relinquish any claim or portion of a claim by the firm,
4. withdraw a suit or proceeding filed on behalf of the firm,
5. admit any liability in a suit or proceeding against the firm,
6. acquire immovable property on behalf of the firm,
7. transfer immovable property belonging to the firm,
8. enter into partnership on behalf of the firm.

Extension or Restriction of Implied Authority of a Partner

The implied authority of a partner can either be extended or restricted by express agreement.

An outsider dealing with the firm shall be bound by such restrictions if he has knowledge about such restrictions.

Liability to third party

Contractual liability: For the acts of the firm the partners remain liable even after its dissolution.

Liability for torts: if a partner acting in the ordinary course of the business and with the consent of the other partners commits a tort the firm is liable

Liability for misappropriation of cash: if an outsider pays cash to the firm and a partner misapplies it or an outsider pays cash to a partner on behalf of the firm and the partner misapplies it the firm will be liable

Dissolution of partnership

Admission: with consent of all or express agreement
The new partners shall be liable from the day he joins the firm.
The mere fact he agrees to be liable from a prior date does not give the third party any right to sue him

Retirement: Retire with consent of all or express agreement or by notice in case of partnership at will. The retiring partner shall be liable for the acts of the firm before his retirement. He shall get his share of profit, subsequent share if his accounts are not settled and he can carry a similar kind of business if there is no agreement to the contrary

Insolvency: The day the court declares a partner as an insolvent he ceases to be a partner of the firm

Death: the legal heirs do not become a partner they become only if all the partners agree to it.
The estate of the deceased partner shall be liable for the acts of the firm before his death.

Expulsion: consent of majority, express agreement and in good faith. It is in good faith if the expulsion is in the interest of partnership, the partner to be expelled is given a notice and an opportunity of being heard

Transfer of shares: can take place by way of sale, pledge or mortgage with the consent of all or by express agreement. The transferee will get his share of profit but cannot take part in business or check the books of accounts. On dissolution get his share and to determine it shall be given a statement of affairs as on that day. Liability of transferee same as transferor.

Registration of firm and liability for non-registration

“Registration of partnership is optional but desirable”
Disability of an unregistered firm:

- It cannot sue a third party but a third party can sue the firm.
- It cannot claim a set off of more than Rs. 100.
- The partners cannot sue each other but they can sue each other for the dissolution of the firm.

suit by a partnership firm

If a partnership firm wants to sue a third party the

- i. firm should be registered and
- ii. partners suing should be named as partners of

Partnership Act

Dissolution of firm

Without the order of the court:

1. by agreement
2. happening of certain contingencies
3. by notice in case of partnership at will

With the order of the court:

1. Permanent incapacity of a partner.
2. Perpetual losses.
3. Consistent breach of contract .
4. Illegal association
5. Misconduct of a partner.
6. Business illegal.
7. Except one all partners are dead or insolvent.

Settlement of account

Order of payment:

- outside liability
- Partners advance
- Partners capital
- Surplus (if any) distributed amongst the partner in PSR

If the assets of the firm is not sufficient to pay the debts of the firm the partners shall contribute to the deficit in their profit sharing ratio. If a partner has both personal and partnership debts his personal assets shall be used first to pay his personal debts and then his partnership debts.

Liability of partner

Partners remain liable till public notice is not given. Every partner and the legal heirs of the deceased partner shall have a right to settle the accounts.

Limited Liability Partnership Act

Partner

individual or body corporate
individual shall not be capable of becoming a partner of a LLP, if—

- a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
- b) he is an undischarged insolvent; or
- c) he has applied to be adjudicated as an insolvent and his application is pending.

Small LLP

- contribution not exceed 25 lakh and
- turnover as per statement of accounts and solvency for the immediately PFY does not exceed 40 lakh

minimum and maximum partner

minimum 2
maximum unlimited

body corporate

means a company and includes—

- i. an LLP registered under this Act;
 - ii. an LLP incorporated outside India; and
 - iii. a company incorporated outside India,
- but does not include—
- i. a corporation sole;
 - ii. a co-operative society
 - iii. any other body corporate (not being a company or LLP), notified by CG

personal liability of partner

if

- number of partners is reduced below 2 and
 - LLP carries its business for more than 6 months with the reduced number
- then the partner who had knowledge of the reduction shall be personally liable for the obligations of the LLP during that period

designated partner

atleast 2 individuals of which one should be resident of India.
ROI: stayed in India for not less than 120 days during the financial year.
Incorporation document shall state the name of the DP
he must give his prior consent
particulars to be filed with Registrar within 30 days of appointment.
must hold DPIN

name of LLP

name should end with LLP
apply for reservation of name and name shall be available for 3 months
name should not be undesirable or identical to the name of any company, LLP or registered trademark.
if name is identical the company or LLP or proprietor of registered trademark (within 3 years of incorporation or registration) make an application to CG who shall order change of name. the LLP shall within 3 months of order change name.
if default the CG shall allot a new name and the Registrar will record the name

registered office

every LLP shall have registered office.
all documents shall be sent to the registered office
document will be sent by registered post under a certificate of posting
LLP may change its registered office and file notice with Registrar.
change is effective only on such filing

Companies Act

As per section 2(20) Company means a company incorporated under this Act or under any previous company law.

Characteristics of company

1. voluntary association
2. separate legal entity
3. perpetual succession
4. limited liability
5. capacity to sue and be sued
6. separate property
7. separate management
8. common seal

OPC

1. natural person, Indian citizen whether resident or otherwise can be member or nominee
2. nominee's name in the memorandum
3. written consent from nominee to be filed with Registrar
4. the nominee may withdraw or member may change the nomination
5. a person can be a member and nominee of only one OPC
6. if he becomes a member of more than one OPC within 180 days he must fulfil the requirement of the Act.
7. minor cannot be a nominee or member
8. cannot register or convert to section 8 company
9. cannot operate as NBFC

limited by share, guarantee and unlimited liability

limited by shares: liability of the members of a company is limited by its memorandum of association to the amount (if any) unpaid on the shares held by them

limited by guarantee: liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up.

unlimited liability: not having any limit on the liability of its members

Government and Foreign

Government: not less than 51% of the PUC is held by the CG or SG or partly by both. where company has issued differential rights share PUC shall be read as total voting power.

foreign: incorporated outside India and having a place of business in India direct or through an agent, physical or online and carries on any other business activity

private and public

private: has a minimum paid up capital as may be prescribed and by its articles:

- i. restricts transferability of shares
- ii. limits the number to 200
 - a) joint holders are counted as single members
 - b) employees and ex employees who acquired shares while in employment shall be excluded
- iii. prohibits issue of securities to public

public: which is not a private company subsidiary of a public company shall be deemed to be a public company

holding and subsidiary

holding: holding of another if the other is its subsidiary

subsidiary: if the holding

- i. controls the composition of BOD
- ii. holds more than half of the TVP on its own or together with one or more of its subsidiaries

should not go beyond layers specified

small

which is not a public company and

- i. PUC does not exceed 4 crore and
- ii. turnover as per PL of the immediately PFY does not exceed 40 crore

associate

if one company has significant influence over the other, the other is associate significant influence is at least 20% of TVP or business decisions

Companies Act

dormant and inactive company

company formed for a future project or to hold an asset or intellectual property and has no significant accounting transaction.

Significant accounting transaction

means any transaction other than

- i. payment of fees by a company to the Registrar;
- ii. payments made by it to fulfil the requirements of this Act or any other law;
- iii. allotment of shares to fulfil the requirements of this Act; and
- iv. payments for maintenance of its office and records.

Inactive company means –

- i. not been carrying on any business or operation; or
- ii. not made any significant accounting transaction during the last 2 financial years; or
- iii. has not filed financial statements and annual returns during the last 2 financial years.

shares

means a share in the share capital of a company and includes stock. A share thus represents such proportion of the interest of the shareholders as the amount paid up thereon bears to the total capital payable to the company.

doctrine of ultra vires

beyond the legal power and authority of the company.

If an act is ultra vires the company it does not create any legal relationship.

consequences:

1. contract is void ab initio
2. the parties cannot sue each other
3. even the whole body of shareholders cannot ratify it
4. the directors are personally liable

Ashbury Railway Co. V Richie

doctrine of constructive notice

u/s 399 when a document is filed with the Registrar it becomes a public document and every person dealing with the company is deemed to have knowledge about it

doctrine of indoor management

an outsider is entitled to assume that all the detailed formalities for doing that act have been observed.

Royal British Bank V Turquand

the rule shall not apply in the following cases:

1. knowledge of irregularity
2. negligence
3. forgery
4. acts outside the authority
5. no knowledge of MOA and AOA

Entrenchment clause

The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

types of shares

Equity share capital means all share capital which is not preference share capital.

Preference share capital means shares which get preferential rights as to

- dividend
- repayment in winding up

Negotiable Instrument Act

As per section 13 "negotiable instrument" means a promissory note, bill of exchange or cheque payable either to order or to bearer.

features of negotiable instrument

1. freely transferrable
2. transferee gets a better title than the transferor if he gets it before maturity, in good faith and for consideration (HDC)
3. the HDC can sue upon the instrument in his own name

cheque

is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

crossing: direction to the banker not to pay over the counter

general: not to pay over the counter pay it only through a banker

special: not to pay over the counter pay it only through the specified banker.

restrictive: not to pay over the counter first credit his account and then pay.

promissory note

instrument in writing (not being a bank note or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

person making is maker and the person for whom it is made is payee.

essentials:

1. writing
2. signed by the maker
3. promise to pay
4. promise to pay a certain sum of money
5. promise to pay money only
6. unconditional promise to pay
7. parties must be certain
8. bank or currency note is not a promissory note

negotiation

means transferring instrument so as to make the transferee the holder thereof.

Negotiation may take place by:

- a. By delivery
- b. By endorsement and delivery

bill of exchange

an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

person who makes is the drawer, person who is directed to pay is drawee and the person to whom it is payable is payee.

essentials:

1. writing
2. signed by the maker
3. promise to pay
4. promise to pay a certain sum of money
5. promise to pay money only
6. unconditional promise to pay
7. parties must be certain

endorsement

means writing something on the instrument or on a separate sheet of paper called the "allonge" attached to the instrument. who signs the instrument is called the indorser and to whom the instrument is indorsed is called the indorsee.

essentials:

1. on the instrument or separate sheet of paper
2. must be signed by the endorser
3. must be completed by delivery

types of instrument

order and bearer:

bearer:

- expressed to be so payable
- last or only indorsement on the instrument is in blank.

order:

- i. payable to the order of a specified person or
- ii. when it is payable to a specified person or his order or,
- iii. when it is payable to a specified person without the addition of the words "or his order"

inland and foreign:

inland:

- drawn or made in India and
- made payable in or drawn upon any person resident in India

foreign: not so drawn, made or payable shall be deemed to be a foreign instrument.

bill in sets

- foreign bills are drawn in sets
- Each part is dispatched separately
- bills are drawn in different parts.
- Each part is numbered and contains a provision that it shall continue payable only so long as the others remain unpaid.
- drawer should sign and deliver all the parts but the acceptance is to be conveyed only on one of the parts.
- In case a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

ambiguous and inchoate bills:

ambiguous bill: ambiguous bill means an instrument which can be construed either as a promissory note or as bill of exchange.

inchoate instrument: incomplete instrument authority to the holder to complete the instrument for an amount specified therein and not exceeding the amount covered by the stamp.

accommodation bill:

bill drawn and accepted not for a genuine trade transaction but only to provide financial help to some party.

the person who accommodates is accommodating party and party for whom accommodation is done is the accommodated party

1. it can be endorsed after maturity.
2. the accommodating party shall be liable to every subsequent holder.
3. if the accommodated party pays on the bill on due date he cannot recover from the accommodating party

time and demand bill

time bill: payable after a fixed time

- i. After a fixed period,
- ii. After sight, or
- iii. On a specified day,
- iv. On the happening of an event.

demand bill: bill payable at sight or on demand is termed as a demand bill

dishonour of cheque

imprisonment for a term up to two years or with a fine twice the amount of the cheque or both.

the liability shall arise:

1. it is for discharge of liability
2. the cheque is presented within validity period
3. payee makes a demand within 30 days of notice of dishonor
4. drawer fails to pay within 15 days of demand