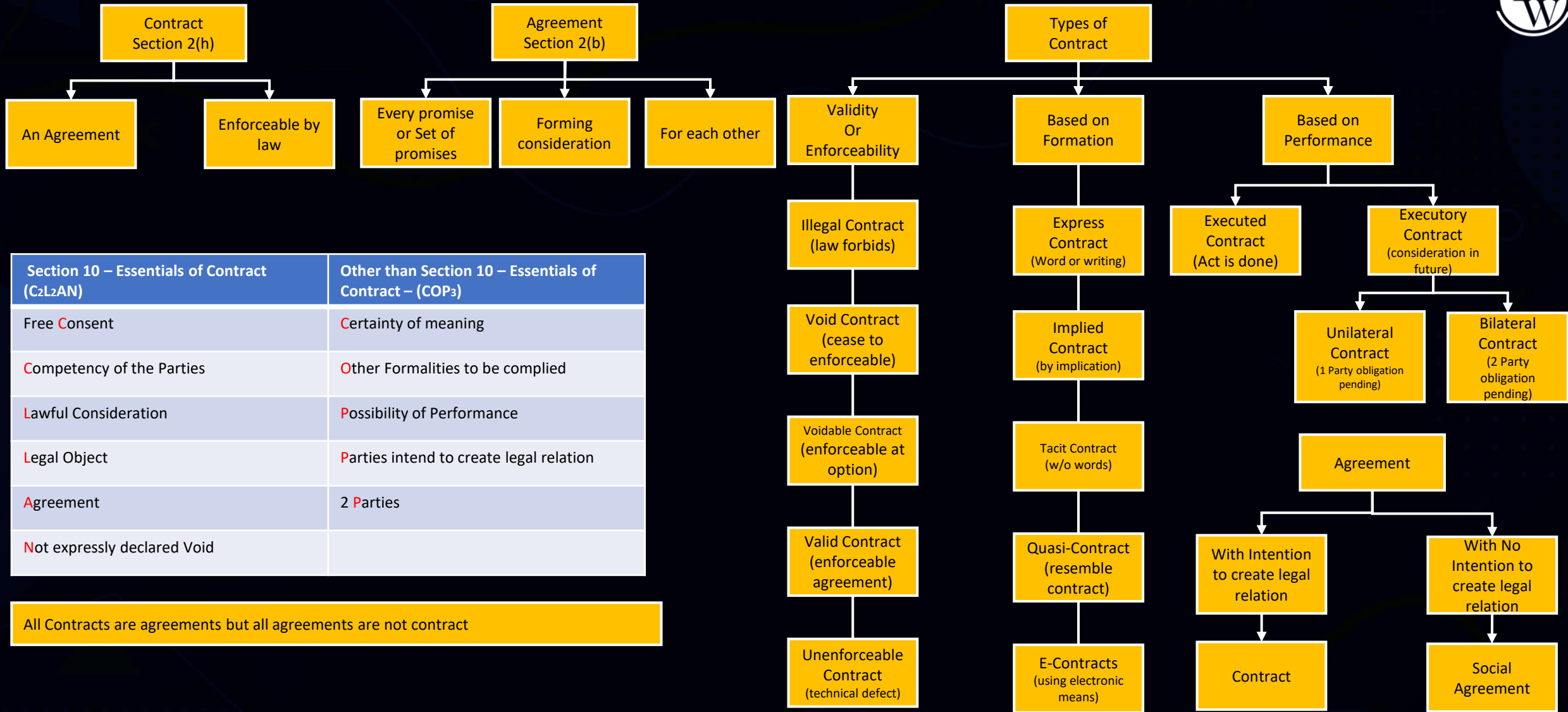




SANJEEVNI BOOTI FOR REVISION

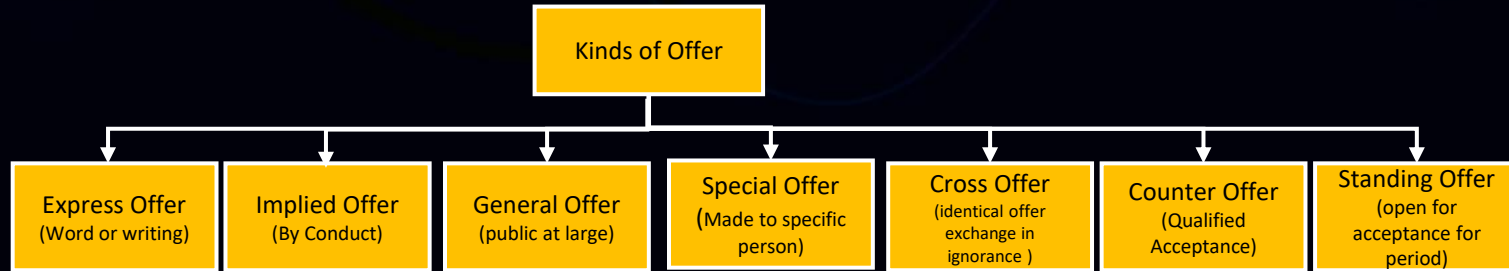
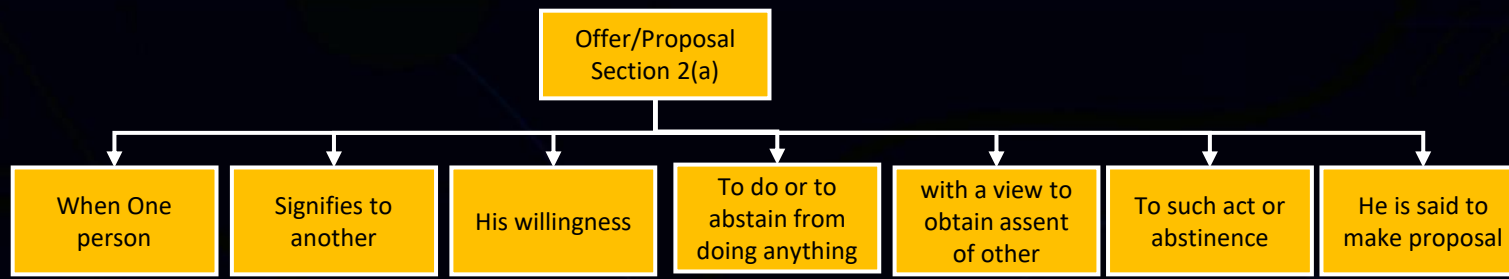


UNIT – 1



Section 10 – Essentials of Contract (C2L2AN)	Other than Section 10 – Essentials of Contract – (COP3)
Free Consent	Certainty of meaning
Competency of the Parties	Other Formalities to be complied
Lawful Consideration	Possibility of Performance
Legal Object	Parties intend to create legal relation
Agreement	2 Parties
Not expressly declared Void	

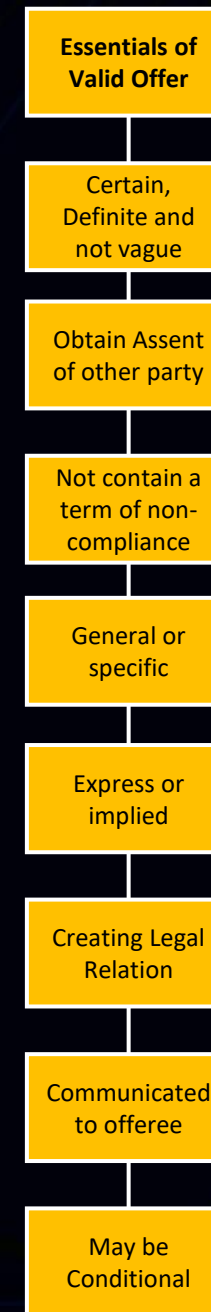
All Contracts are agreements but all agreements are not contract



Examples of Invitation to Offer :-	Offer is different from :-
Invitation by company to public for subscribing its shares	Statement of Intention
Display of Goods for sale in shop	Statement of Price
Advertisement of Auction Sales	Statement of Announcement
Price Quotation in reply to query of price Menu card/price tags etc.	Invitation to Offer

Communication of offer is complete when it comes to the knowledge of the person to whom it is made

Advertisements are Invitation to offer except it is announced in the form of reward. Then it is considered as General Offer.



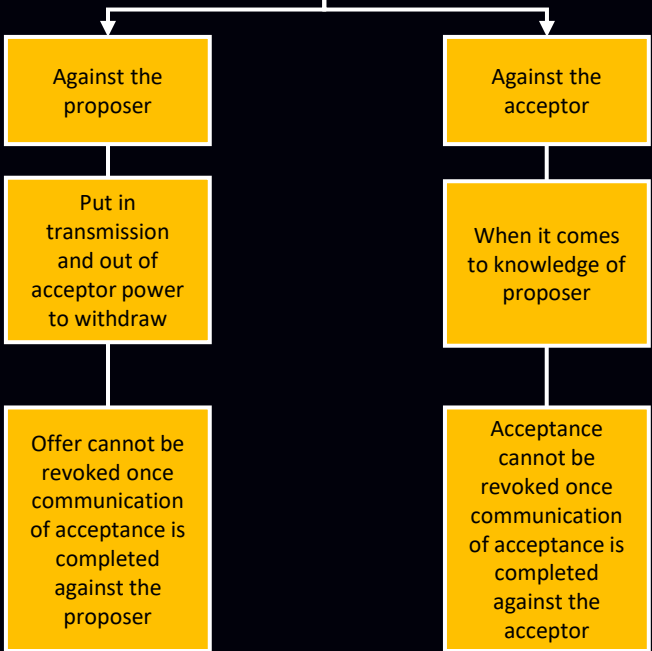
Acceptance
Section 2(b)



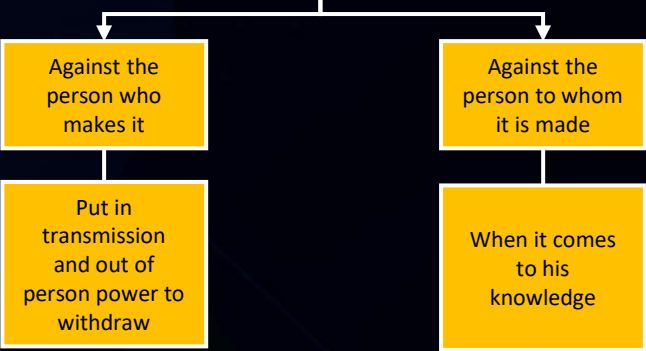
Modes of Acceptance



Communication of Acceptance is completed



Communication of revocation is completed

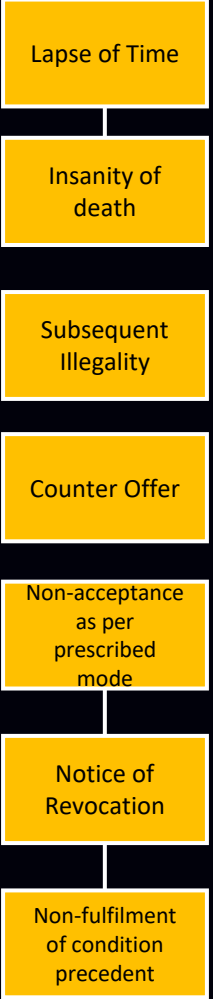


Silence does not amount to acceptance except for the any previous conduct

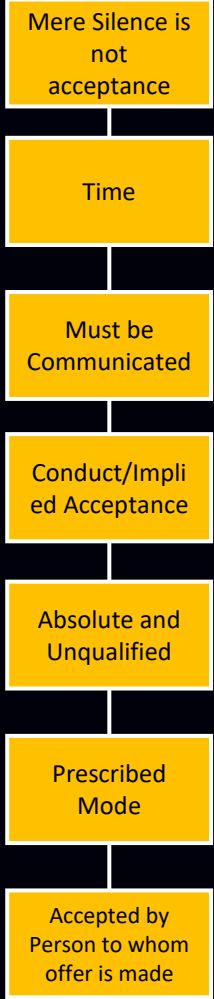
Promise



Modes of Revocation of Offer (L1zON3)

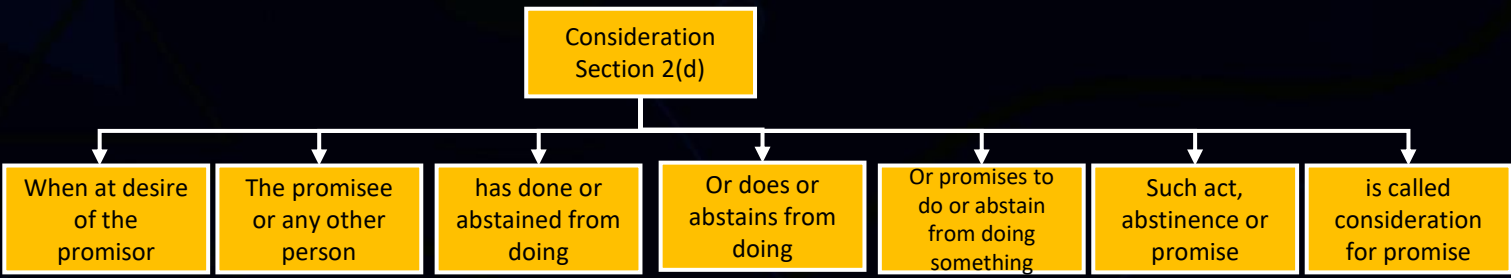


Rules regarding Valid Acceptance (MT-CzAP2)

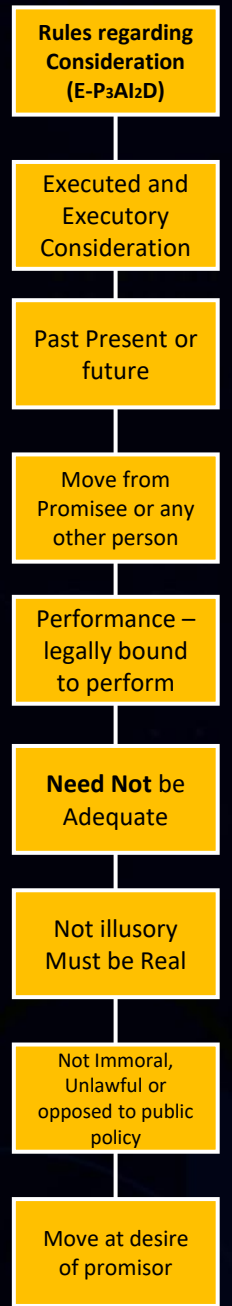
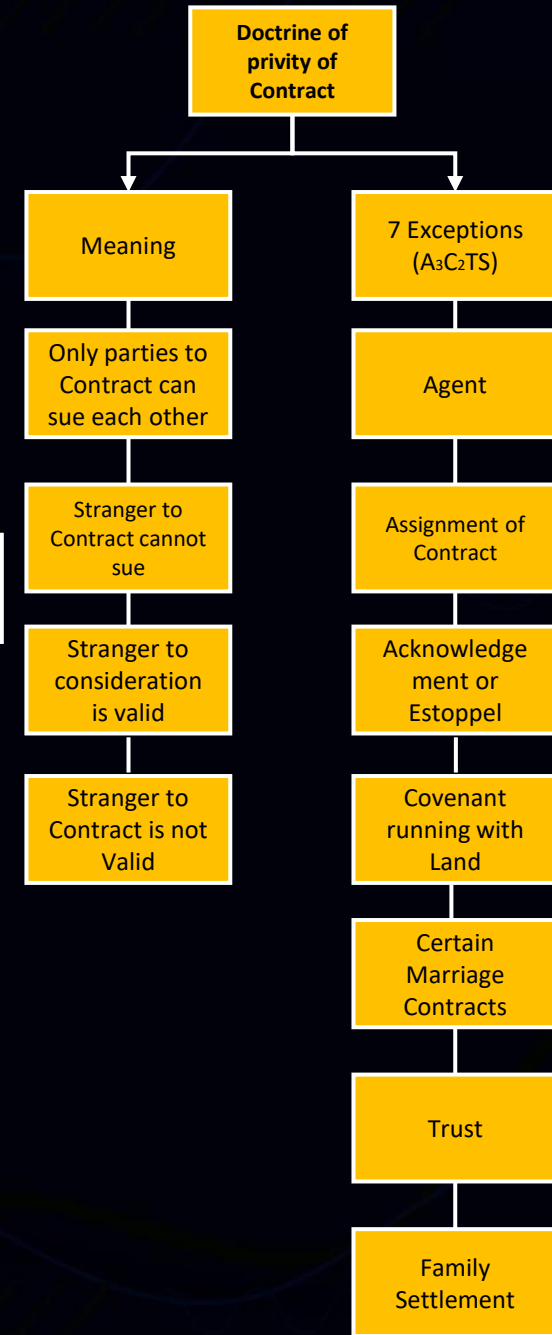
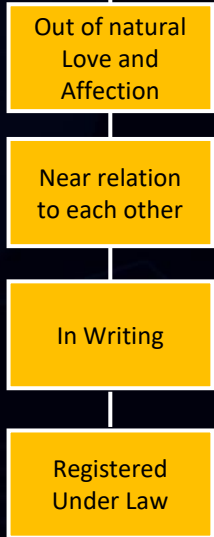
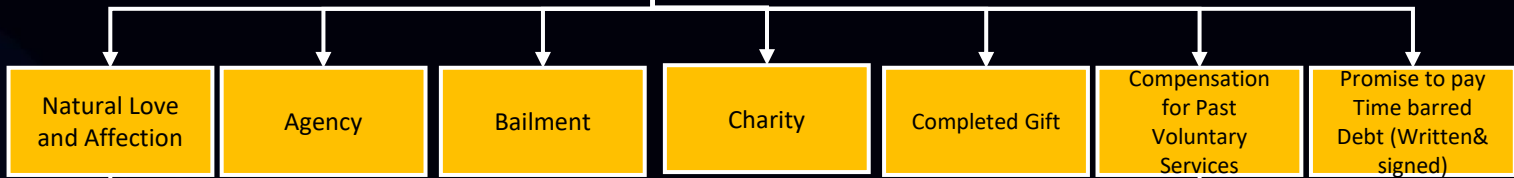




UNIT – 2



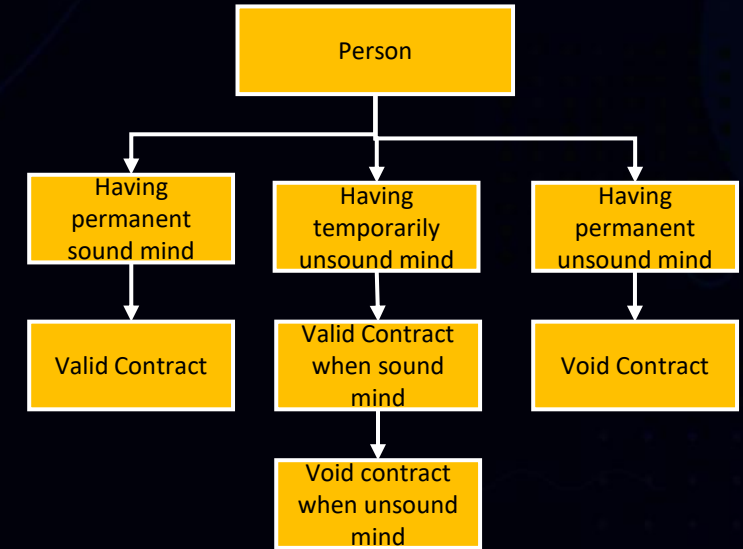
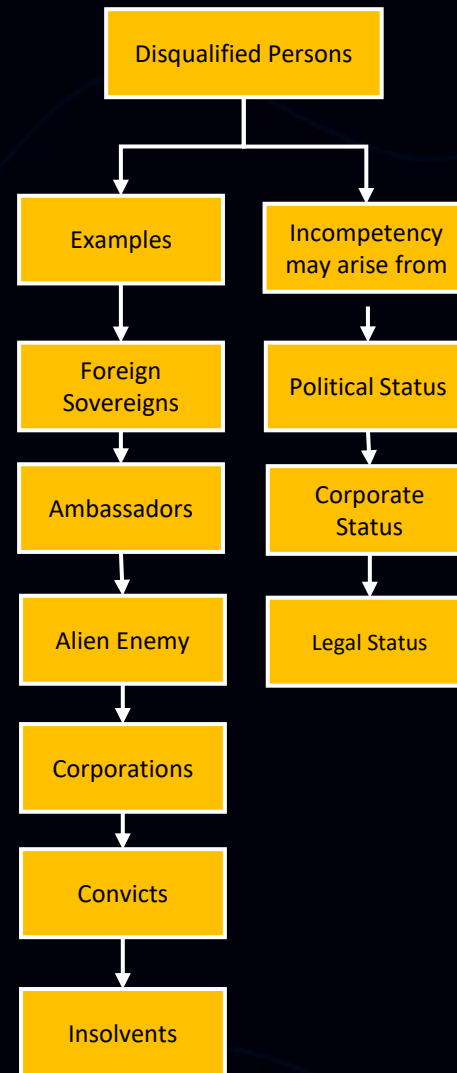
Exception to No Consideration No Contract Rule (Natural ABC₃D)



UNIT – 3

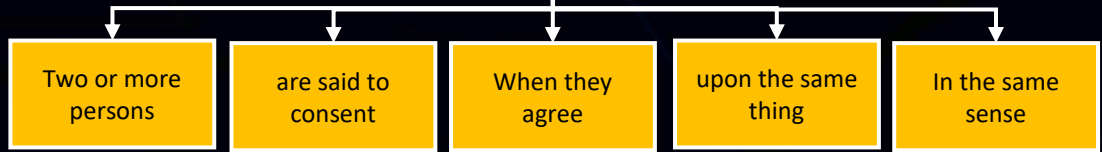


Minor – Age of majority is regulated by Indian Majority Act, 1875	Every person domiciled in India who not completed as 18 years of age will be termed as minor
Contract with Minor is Void ab initio	Guardian can enter into contract for benefit of minor
No ratification after attaining majority	Minor is not liable for specific performance
Minor can be beneficiary or take benefit out of contract	Minor cannot become a partner in partnership
Promissory note can be made in favour of Minor	Minor can be admitted to benefits of partnership with consent of all partners
Minor is liable for torts (civil wrong)	Minor cannot be declared insolvent
For Necessaries, Minor's estate is liable but he is not personally liable	Minor can become agent but not liable to principal
Minor cannot bind guardian or parent	Adult will be liable in case of joint promise by Minor and adult
Minor cannot become shareholder of the Company. However through legal guardian can become shareholder of fully paid shares by transfer or transmission.	Surety (adult) of minor is directly liable to third party
Company will remove name of minor from member register if he mistakenly becomes a member	Minor can always plead minority even when earlier he falsely represent himself as major





Consent means

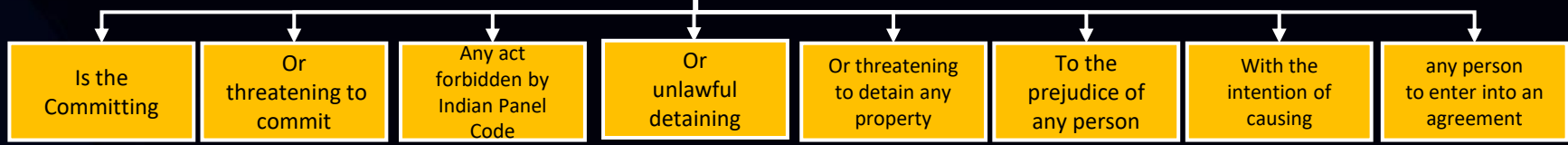


Section 14
Free Consent when not caused by

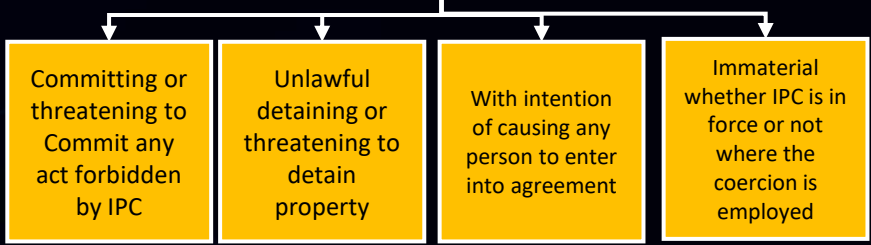


In case of Coercion, fraud, misrepresentation, or undue influence, the contract is voidable

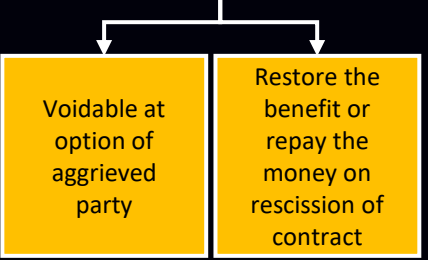
Coercion
Section 15



Essentials of Coercion

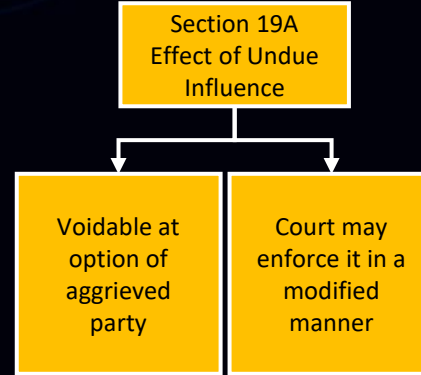
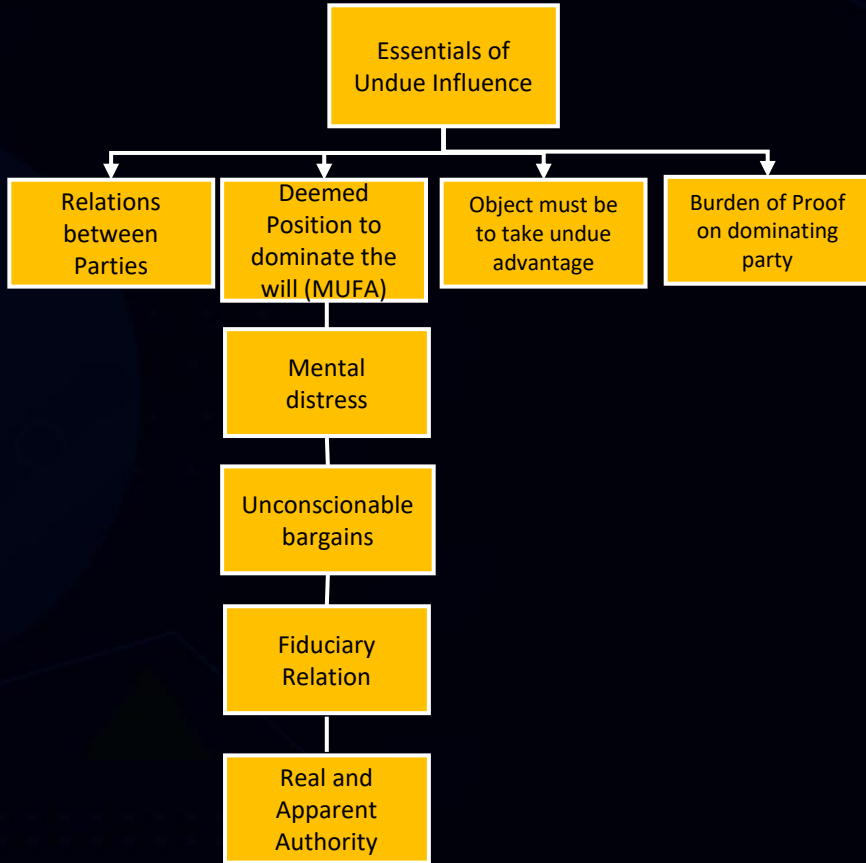
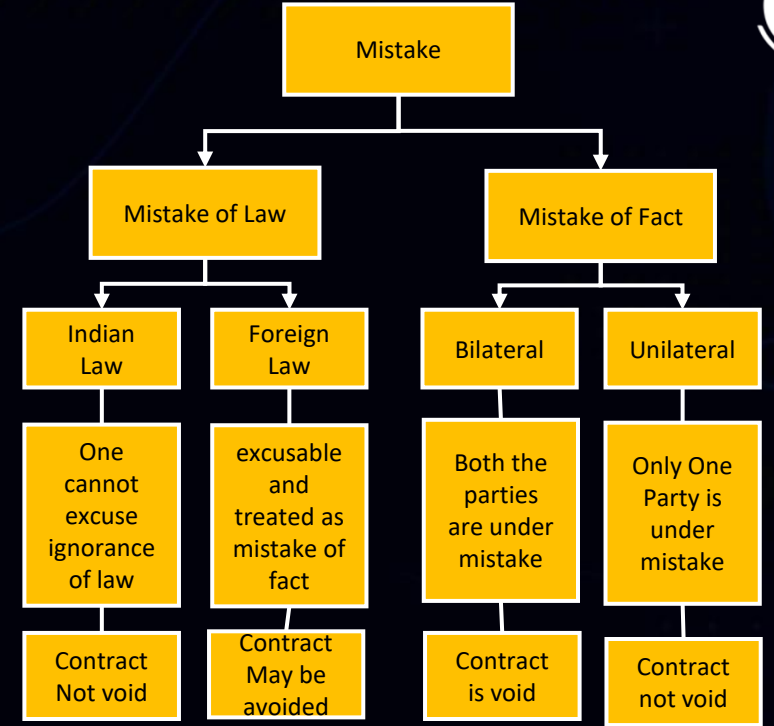
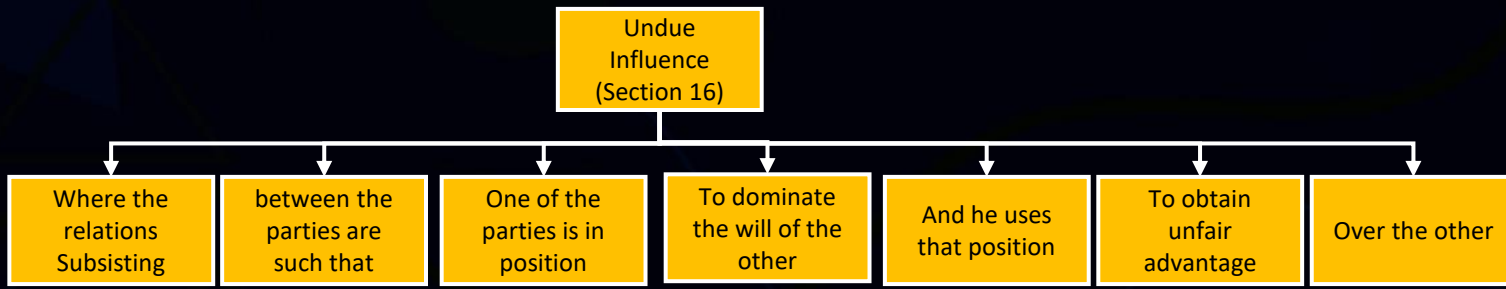


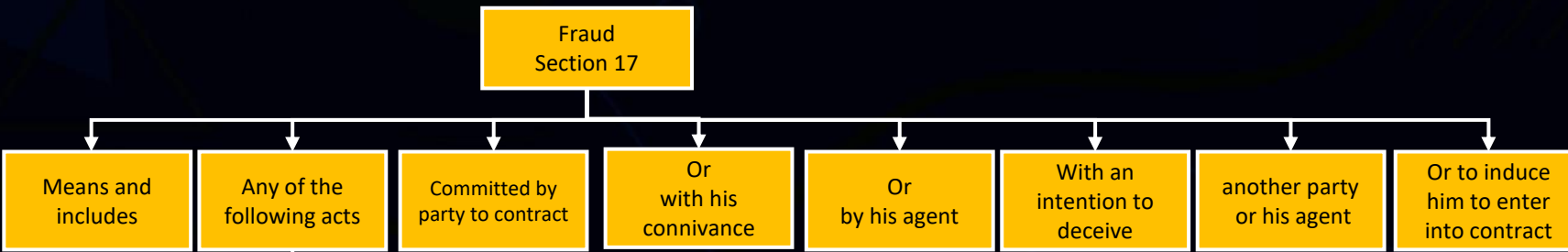
Effect of Coercion



List of Voidable Contracts

1.	Where consent is not Free due to <ul style="list-style-type: none"> a) Coercion b) Fraud c) Misrepresentation d) Undue influence
2.	Party preventing event on which the contract is to take effect (Sec 53)
3.	Effect of failure to perform at fixed time, in which time is essential (Section 55)





Stating Facts which is not true by One who does not believe it to be true

Active concealment of fact by one having knowledge or belief of the fact

Promise made without intention of performing it

Any other act fitted to deceive

Any Act/omission which law declares fraudulent

Mere Silence is not Fraud Except

Duty of Person to speak (RELIANCE KA FAMILY SIM)

Fiduciary Relationship

Family Settlement Contracts

Share Allotment Contracts

Insurance Contracts

Marriage Contracts

Silence=Speech

Essential Elements of fraud

Representation must

Be false

Related to fact

Made before conclusion of contract

Made With intention to induce the other party

Made with knowledge of its falsity

Made without belief in its truth

Other party must

Have been induced to act upon representation /assertion

have relied upon the representation and must have been deceived

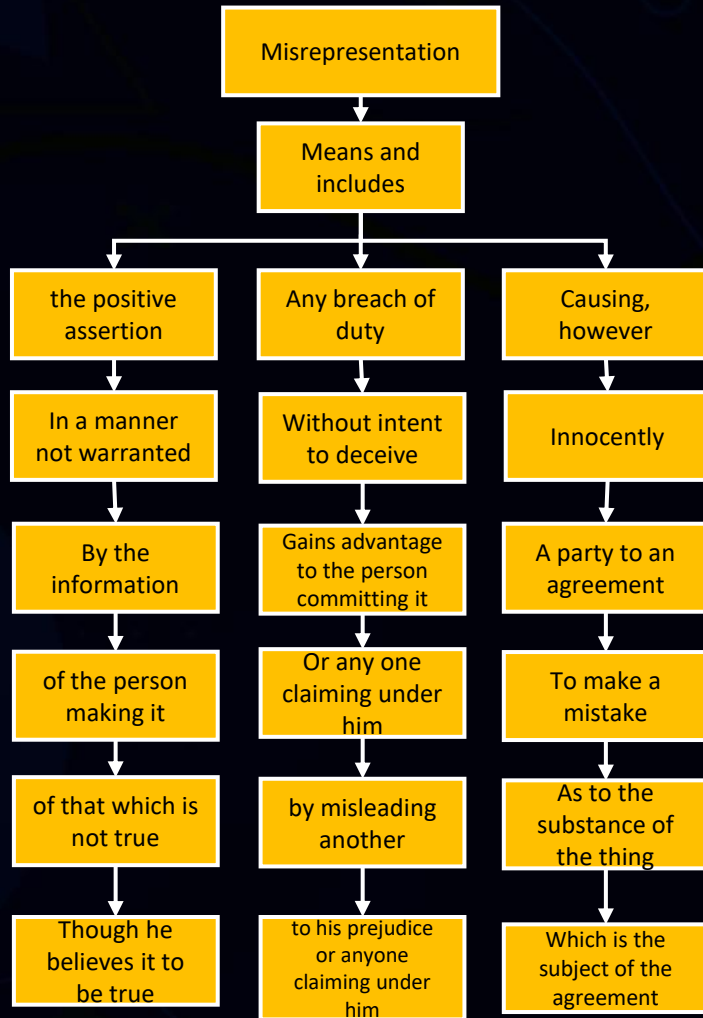
have consequently suffered a loss by acting on representation

Effect of Fraud

Voidable at option of party defrauded

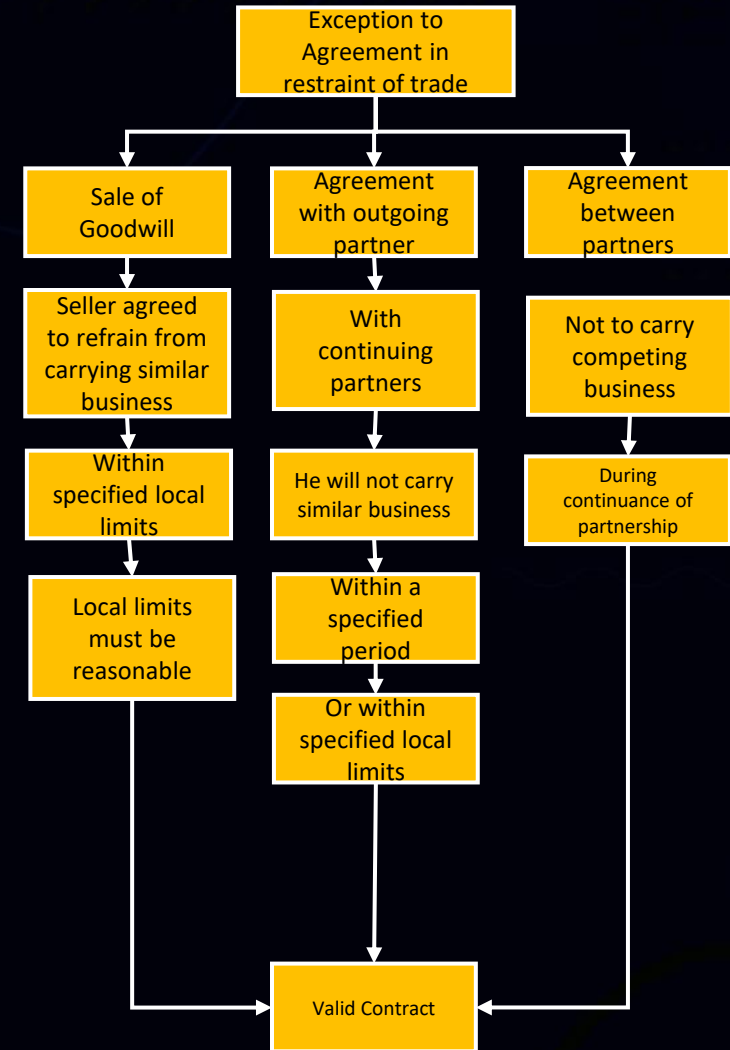
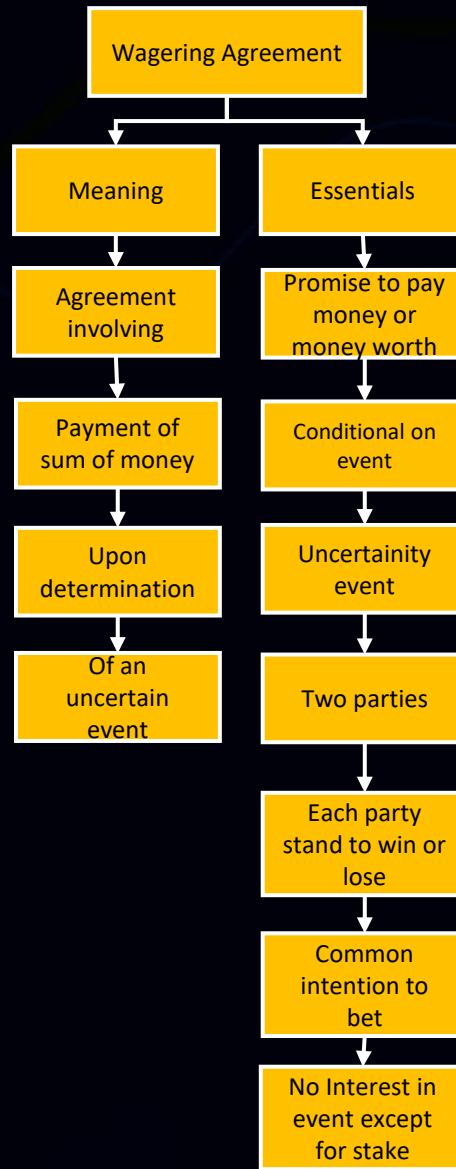
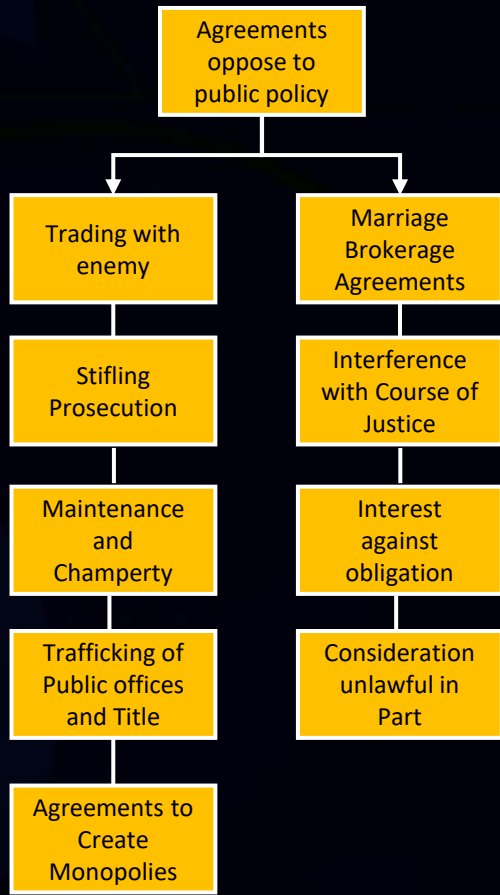
-Can rescind the contract And -Sue for damages

Insist to put in a position if representation made been true



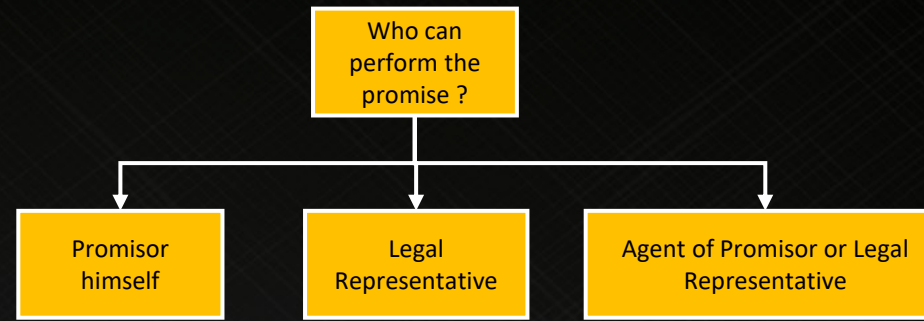
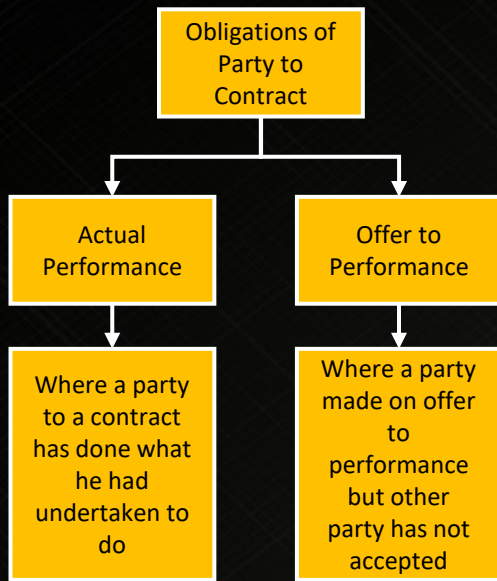
List of Agreements where consideration or object is unlawful	
1.	Forbidden by Law
2.	Defeat the provisions of Law
3.	Fraudulent
4.	Involves injury to the person or property of another
5.	Court regards it as immoral
6.	Opposed to Public Policy (9 cases)

List of Void Agreements			
1.	Made by incompetent parties (Section 11)	6.	Agreement in restraint of marriage (Section 26)
2.	Agreements made under Bilateral mistake of fact (Section 20)	7.	Agreements in restraint of trade (Section 27)
3.	Agreements the consideration or object of which is unlawful (Section 23)	8.	Agreement in restraint of legal proceedings (Section 28)
4.	Agreement the consideration or object of which is unlawful in parts (Section 24)	9.	Agreement the meaning of which is uncertain (Section 29)
5.	Agreements made without consideration (Section 25)	10.	Agreements to do impossible Acts (Section 56)
		11.	Wagering Agreement





UNIT – 4

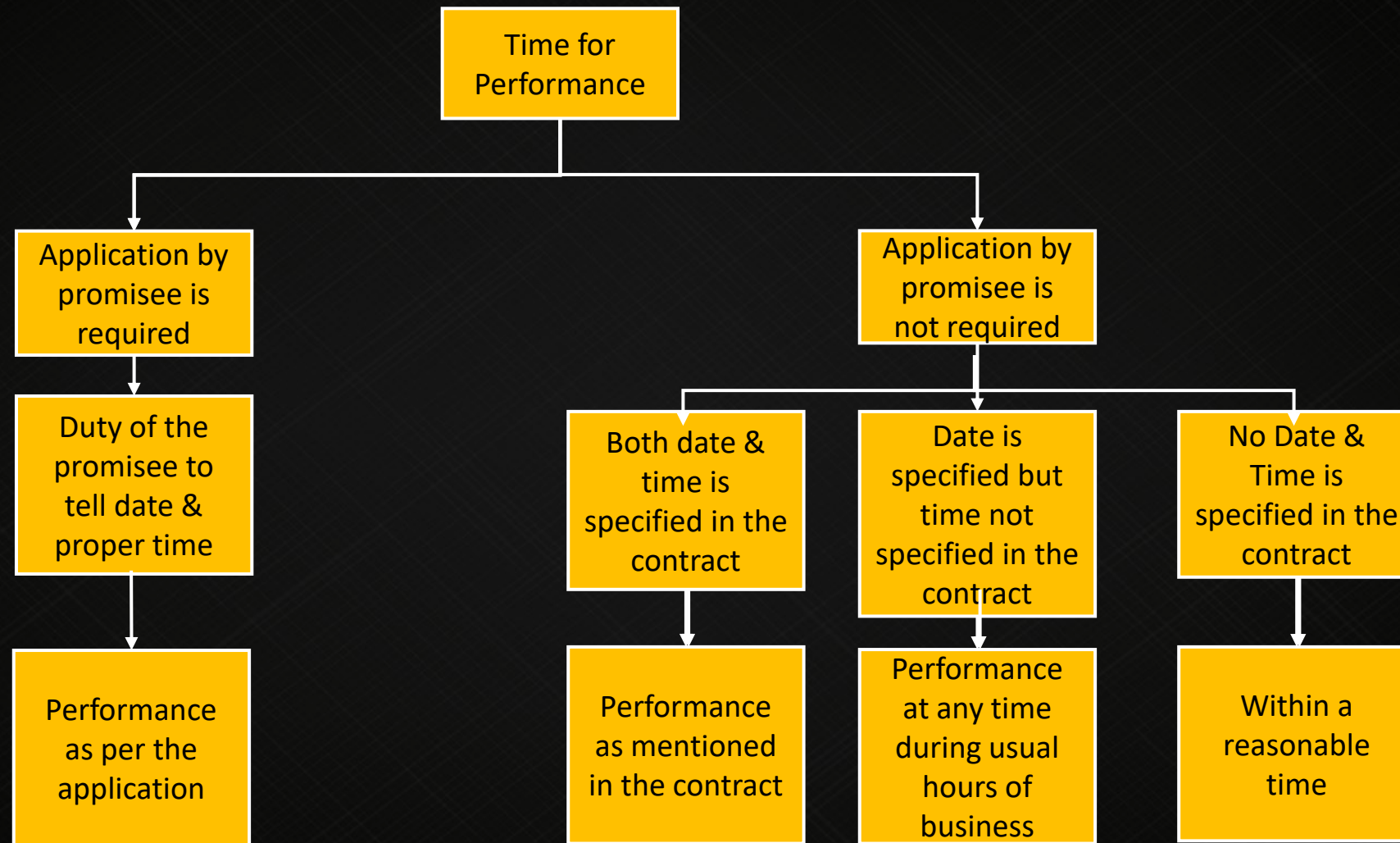


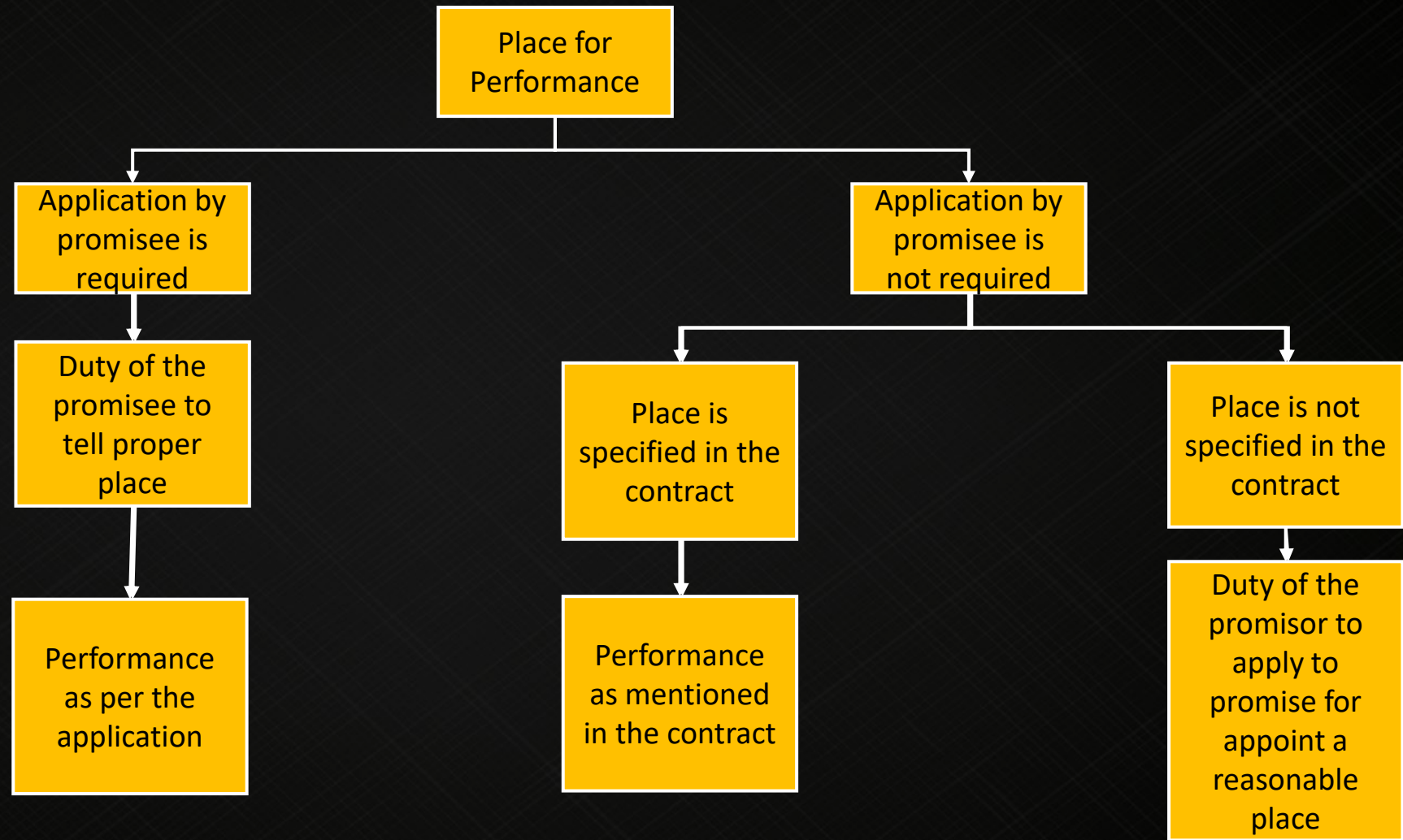
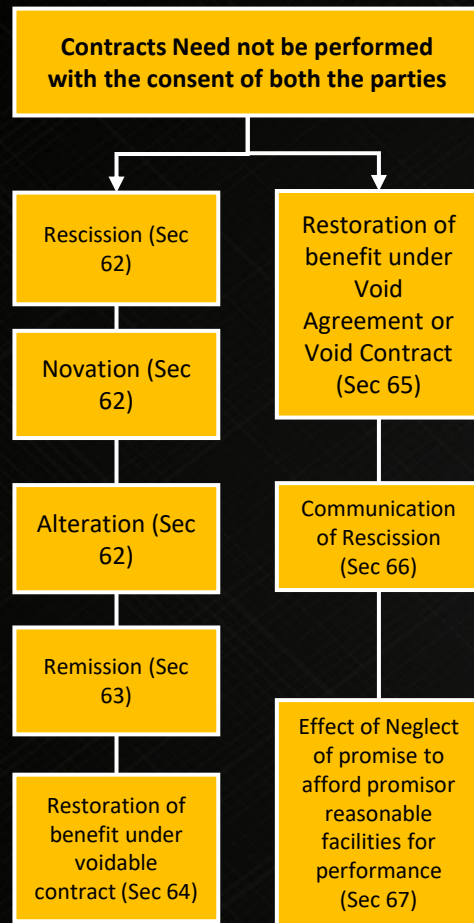
In case contract involves personal skills, then it can be performed by joint promisor only

If promisee accepts whole or part of promise from third party then it cannot claim the same from promisor

Succession	Assignment
Succeeded by law	Voluntarily
Both Burden and benefits get devolve on legal heir	Only benefits can get assigned to assignee and not the liabilities thereunder
Ex :- A son becomes owner of estate of his father after his death	Ex :- Creditors assigns the benefit of a promise, he thereby entitles the assignee to realise the debt from the debtor
Liability of son is limited to the extent of the property inherited by him	In case of personal consideration, benefit cannot be assigned.

Time for Performance of the Contract (Sec 46 to 50)





Joint Promisors

Devolution of Join Liabilities	Devolution of Joint Rights
When two or more persons have made a joint promise, then all such persons during lives, must jointly perform the promise	When a person has made a promise to two or more persons jointly, then unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and after the death of the last survivor, with the representatives of all jointly
After the death of any of joint promisor, then legal representative jointly with the survivors must fulfil the promise	
In case of death of all the joint promisors, then legal representative of all joint promisors jointly must fulfil the promise	
Promise may any one or more of joint promisors to perform the whole of promise	
If one of the joint promisors is made to perform the whole contract, then Joint Promisor may compel other joint promisors to compel equally	
A release of one of such joint promisors by the promisee does not discharge the other joint promisors neither it does free the joint promisor from responsibility to the other joint promisors	
In case of default in contribution by the joint promisor(s), remaining joint promisors must bear the loss arising from such default in equal shares	

Sequence for Appropriation of Payments

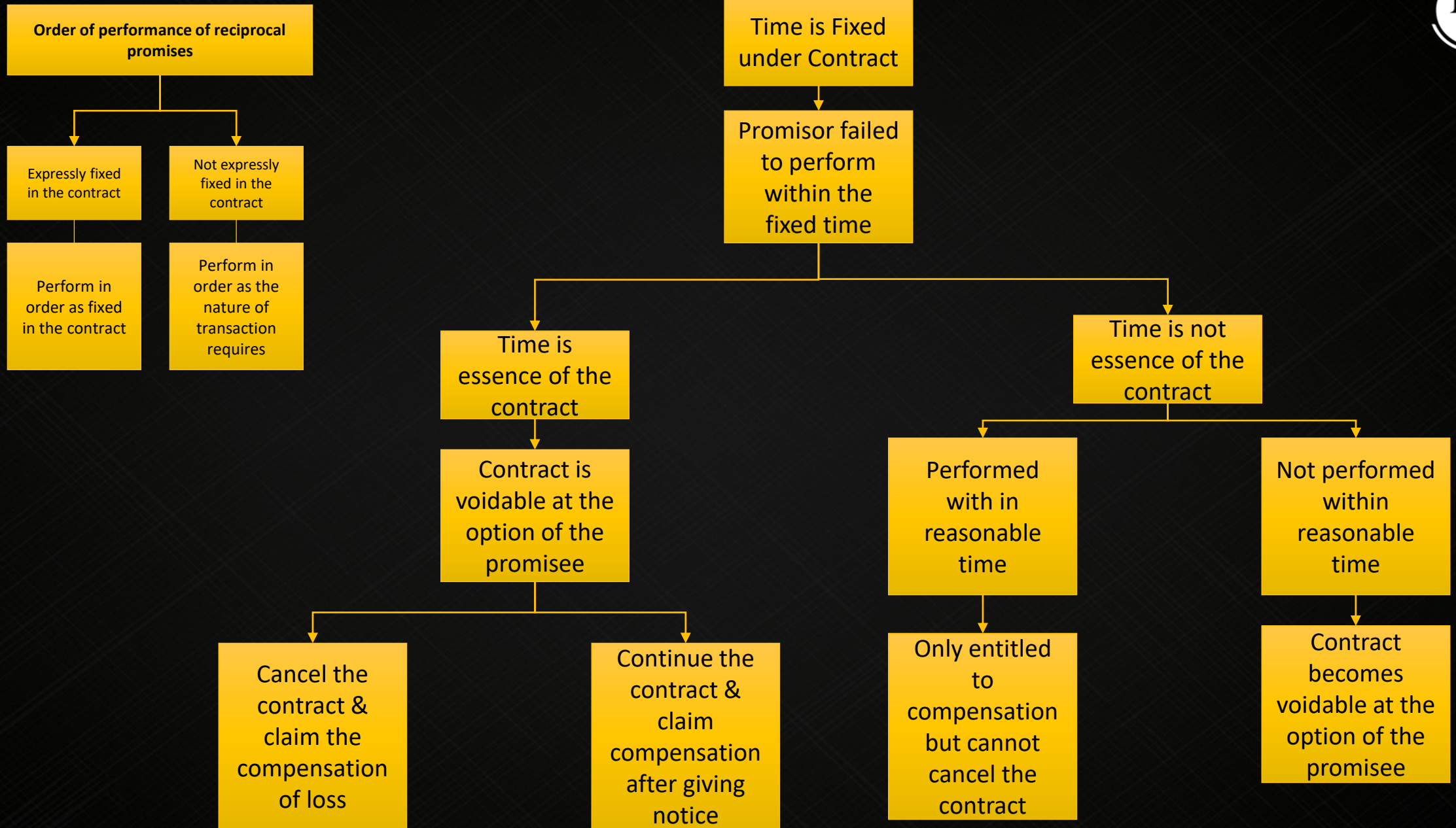
Section 59 :- Debtor expressly or impliedly intimated against which debt to be applied against particular Debt

Section 60 :- If debtor does not intimate expressly or impliedly, then Creditor may apply as per his wish against any debt sue & payable including time barred debt but excluding disputed debts

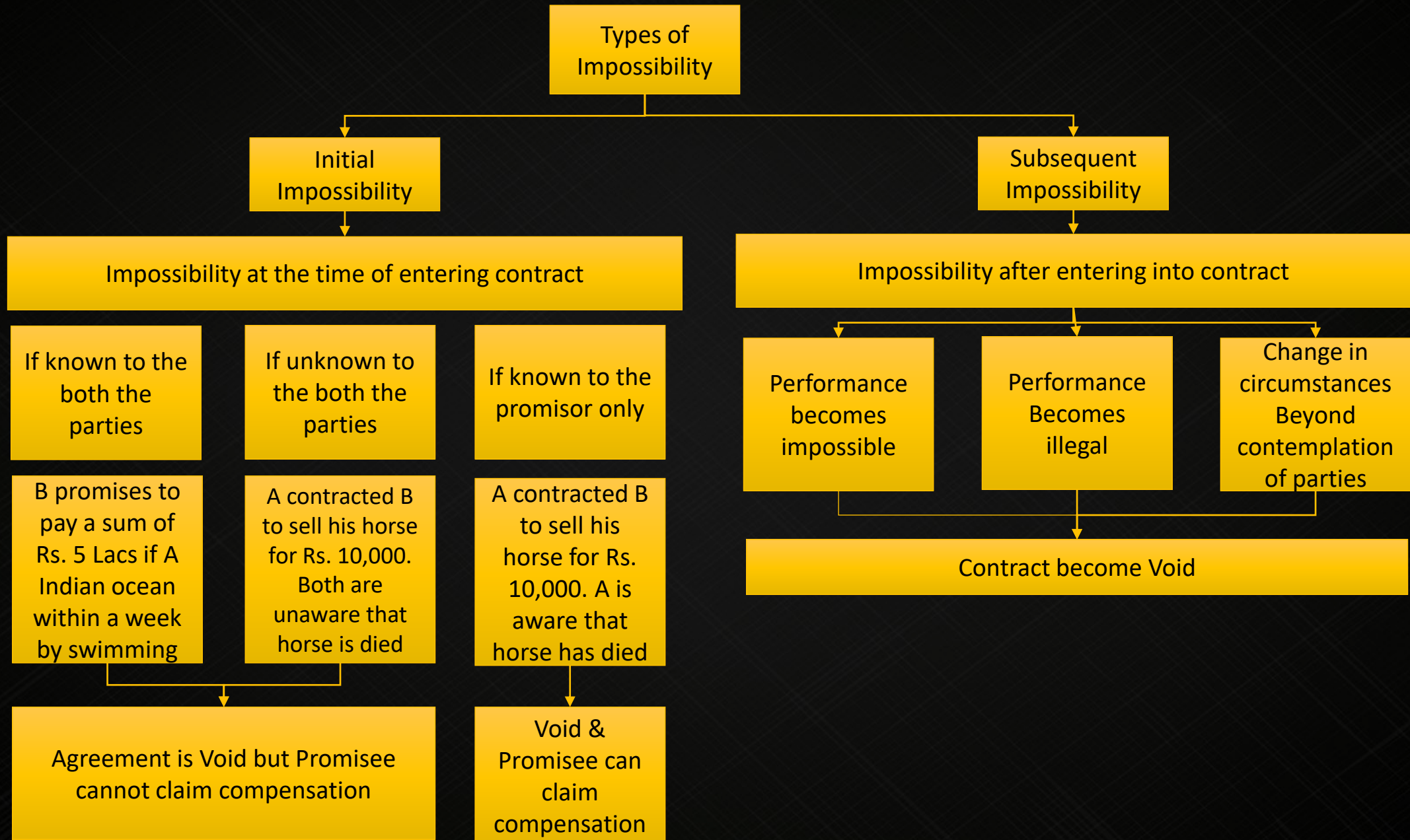
Section 61 :- Neither Debtor nor Creditor appropriated, then as per law ,apply payment in order of time of debts including time barred debts. If the debt are of same date then then apply proportionately

9 Ways to Discharge a Contract

- | | | | |
|---------------------------------|--------------------------|---|---|
| 1. By Performance | 4. By Lapse of time | 7. Promisee may waive or remit performance of promise | 9. Effect of neglect of promisee to afford promisor reasonable facilities for performance |
| 2. By Mutual Agreement | 5. By operation of Law | 8. Merger of Rights | |
| 3. By Impossibility of Contract | 6. By Breach of Contract | | |

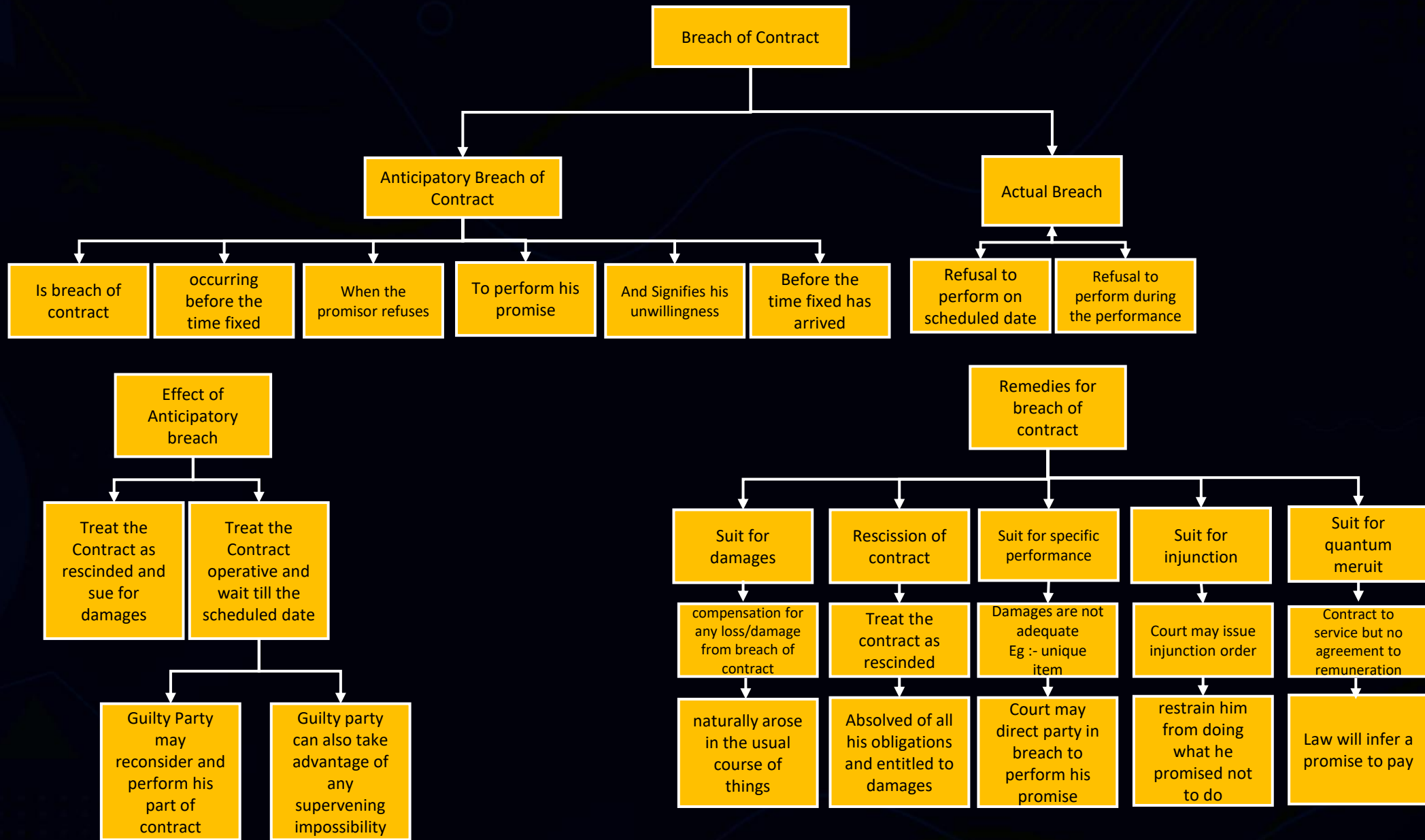


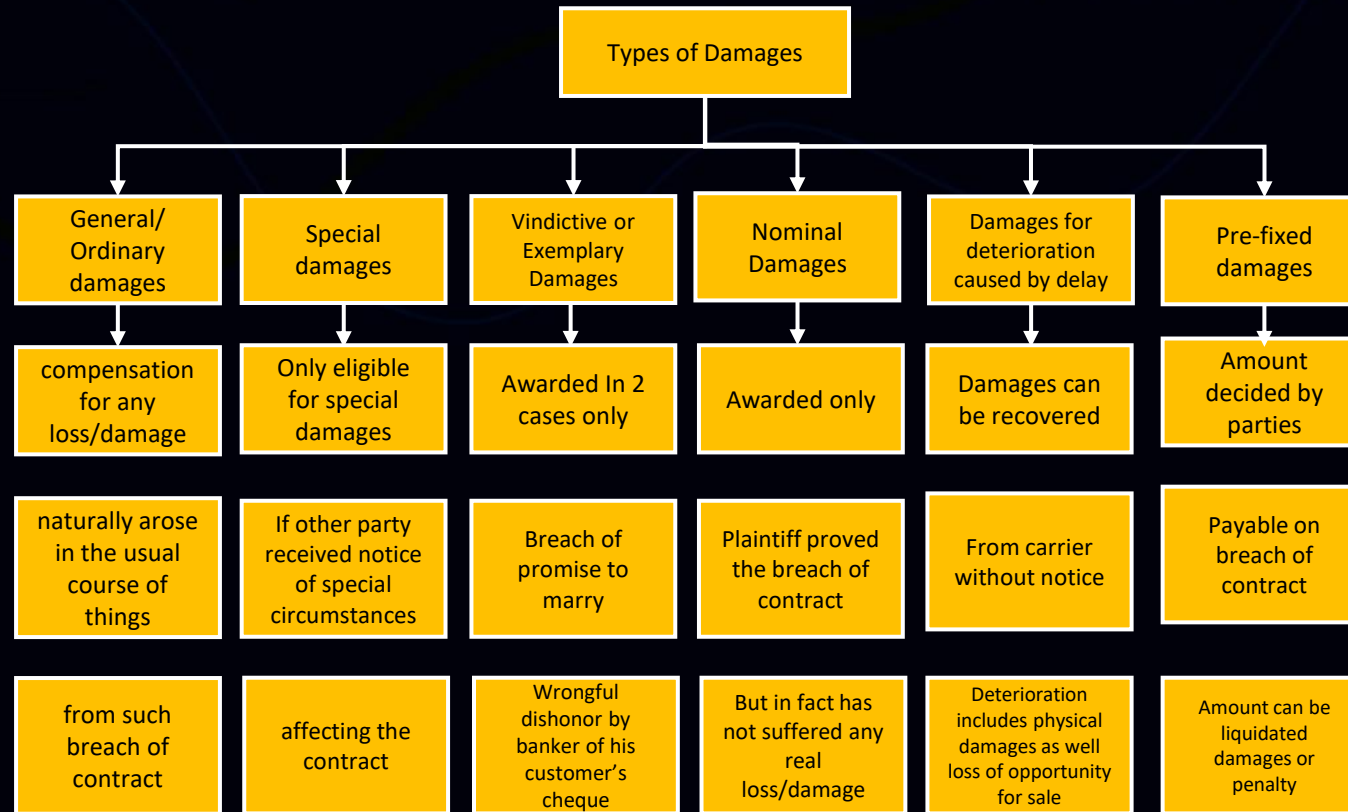
Agreement to do Impossible Act is Void (Section 56)



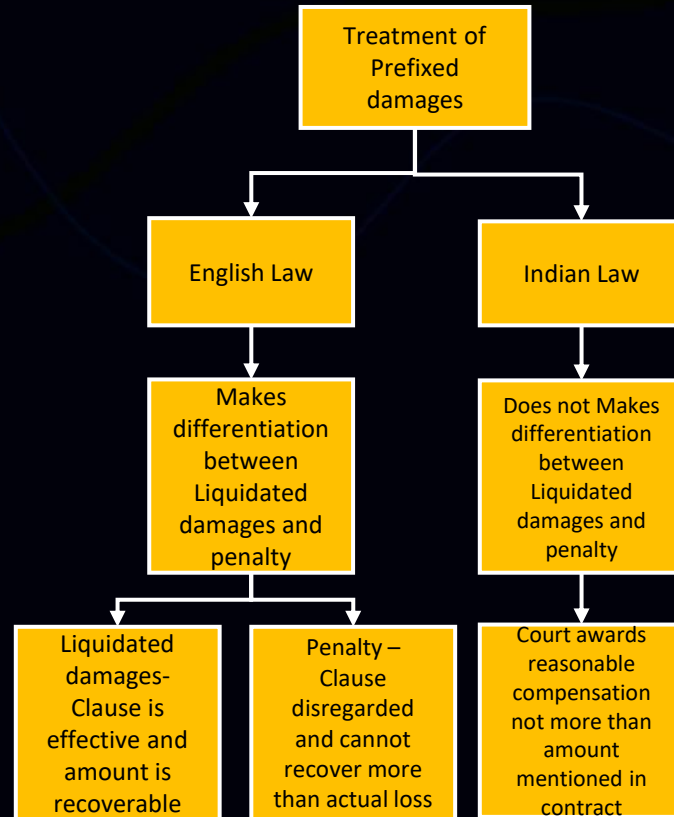
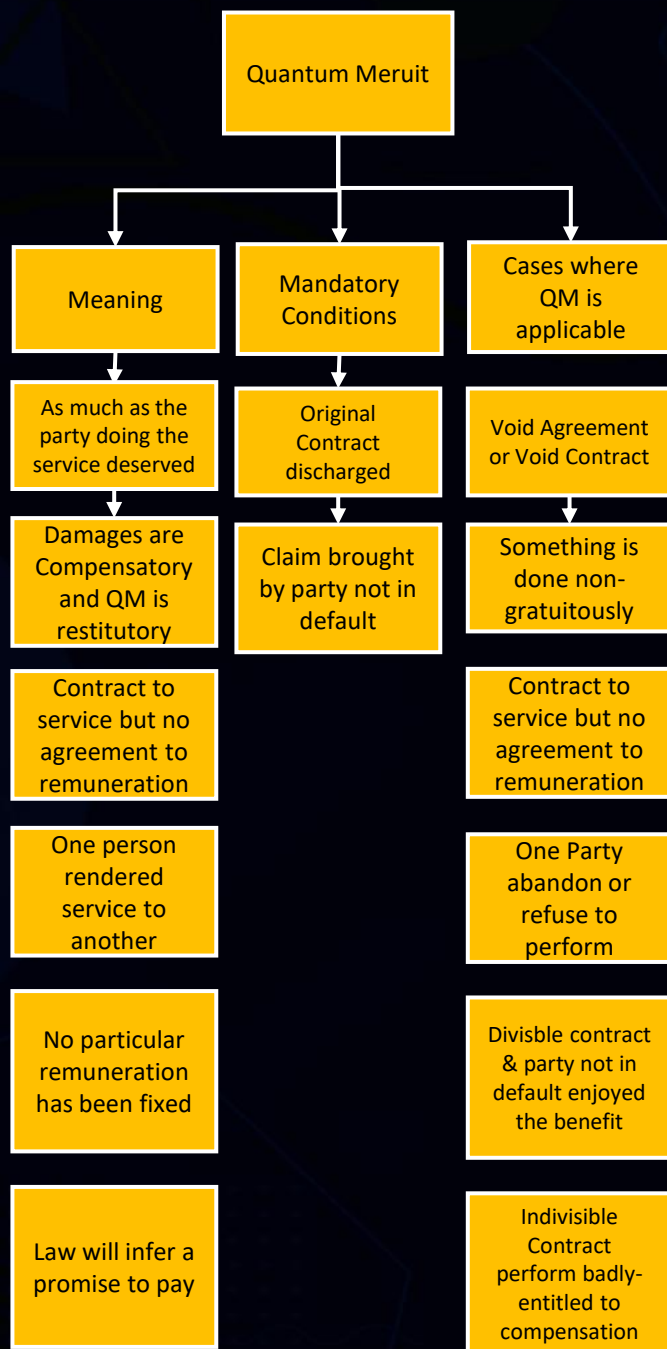


UNIT – 5





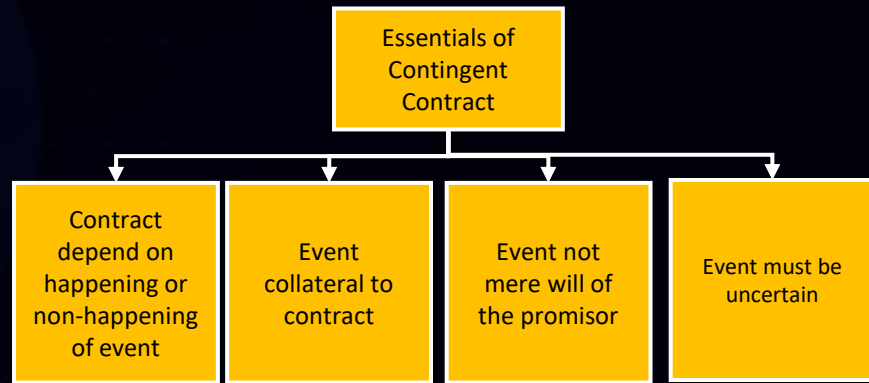
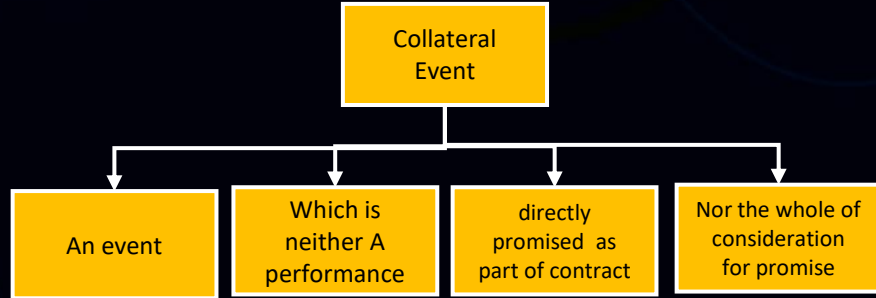
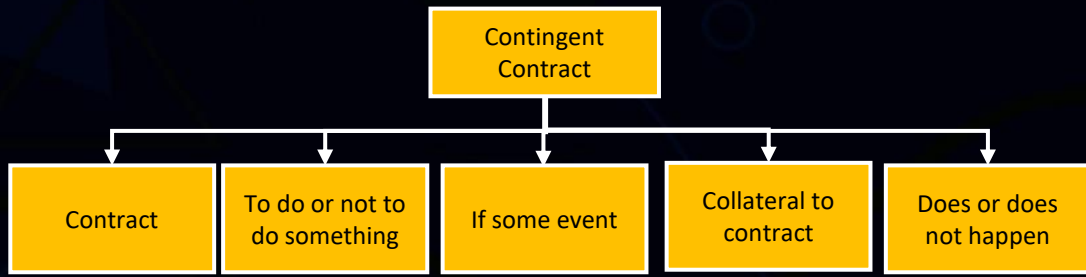
Note :- No compensation is payable for any remote or indirect loss



Pre-Fixed Damage	
Liquidated Damages	Penalty
Reasonable estimate of likely loss in case of breach	An amount arbitrarily fixed as the damages payable
Sum payable is approx. to the probable damage	Sum payable is so large as to be far in excess of probable damages
Liquidated damages is a genuine pre-estimate of the damage	Penalty is amount stipulated as terrorem of the offending party

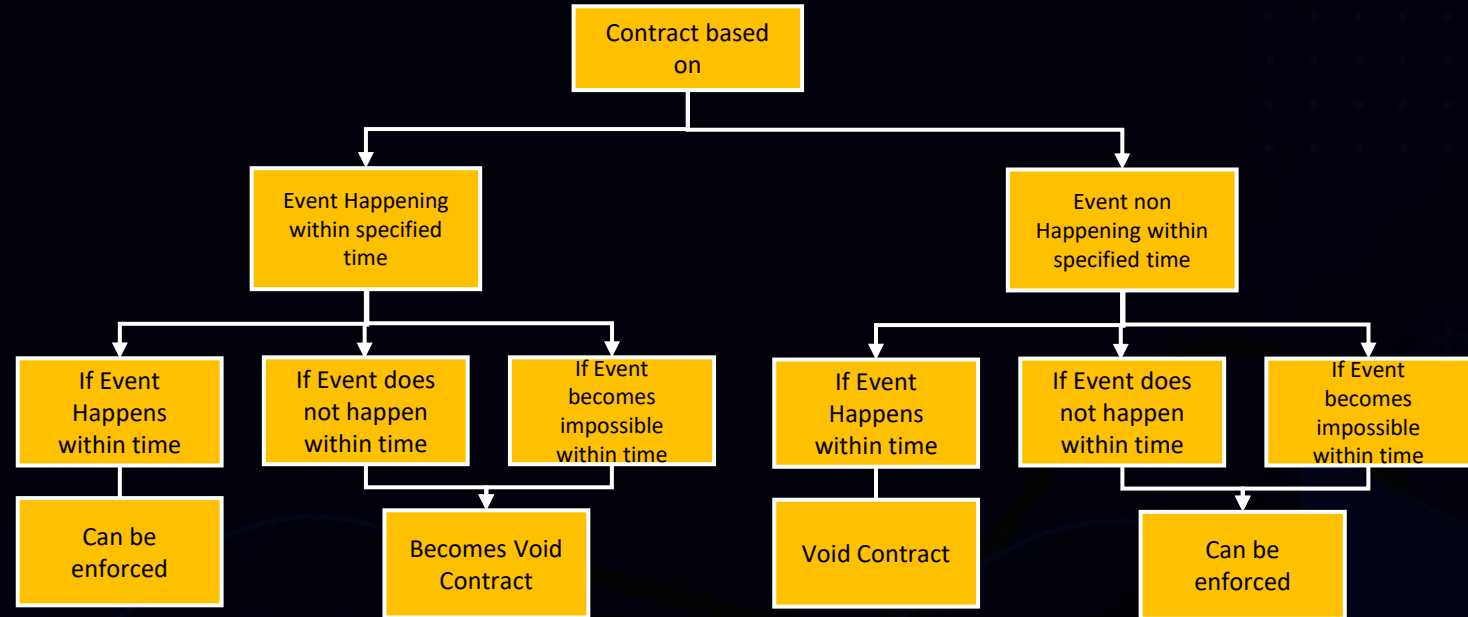
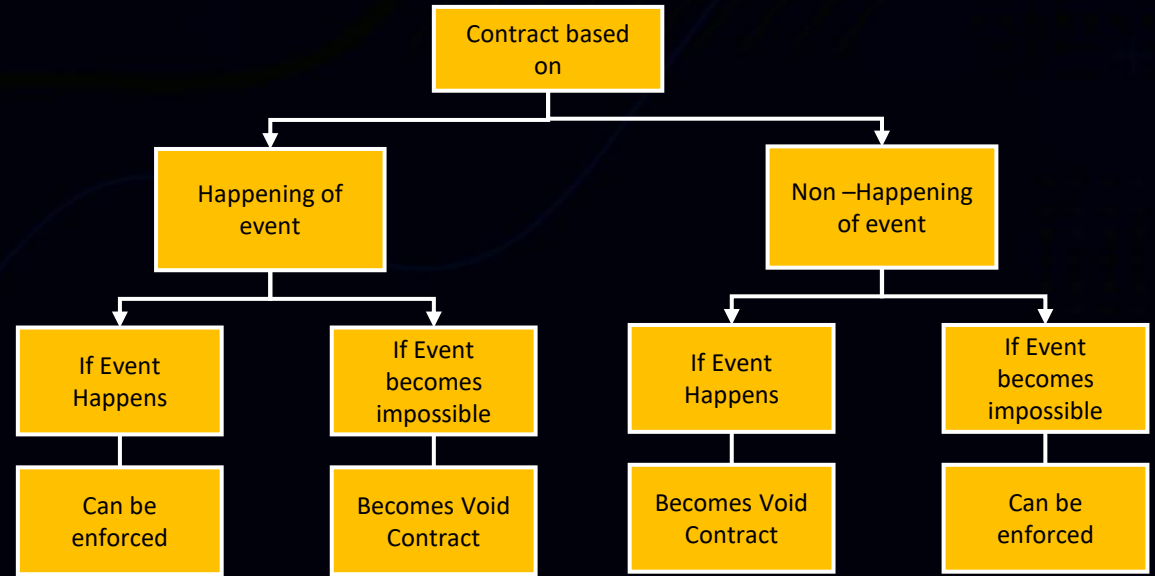


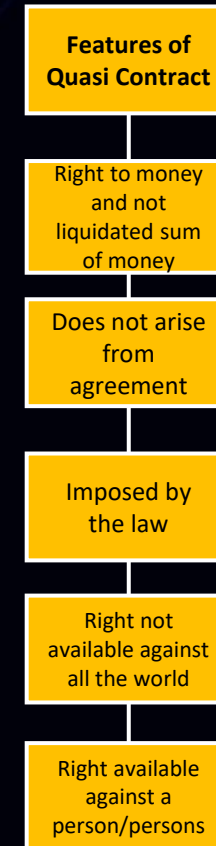
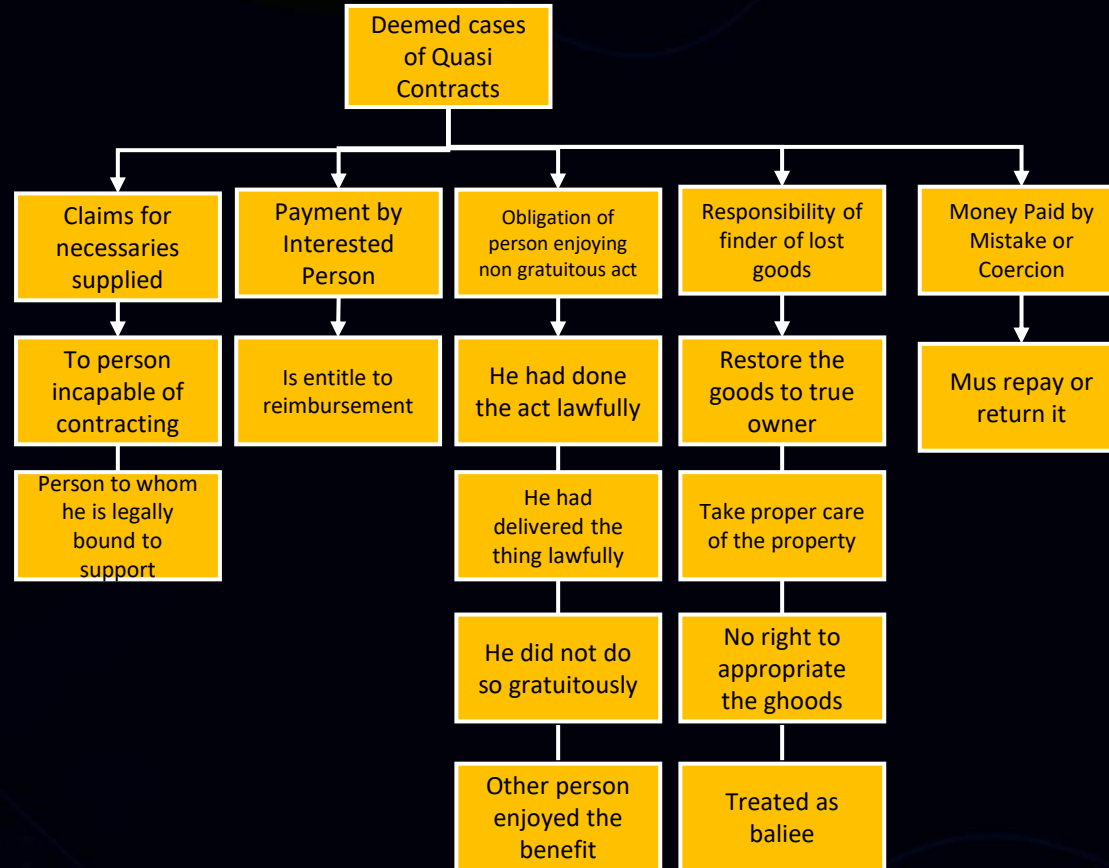
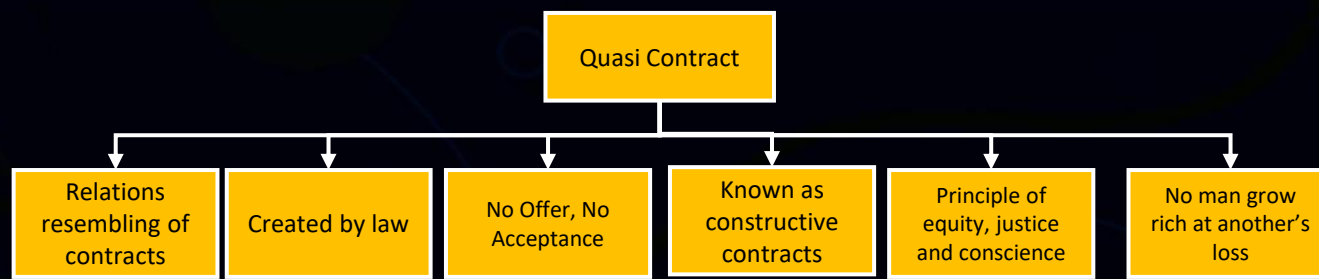
UNIT – 6



Contracts contingent on happening of an impossible event is void

Contingent Contract based on happening of conduct of living person is unenforceable if living person does something to to make event impossible





THE SALE OF GOODS ACT, 1930



Mr. A
(Seller)



Mr. A will transfer **ownership** of goods



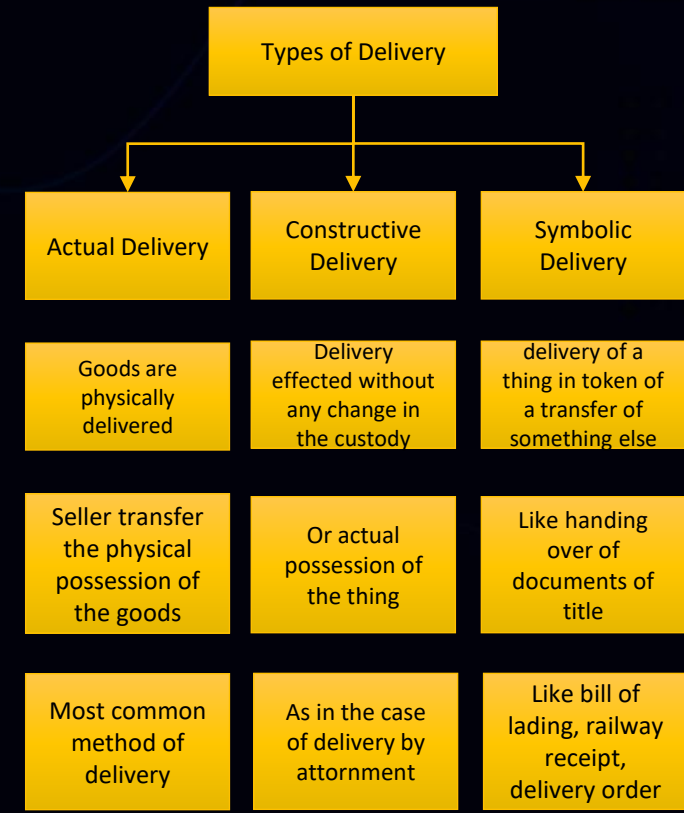
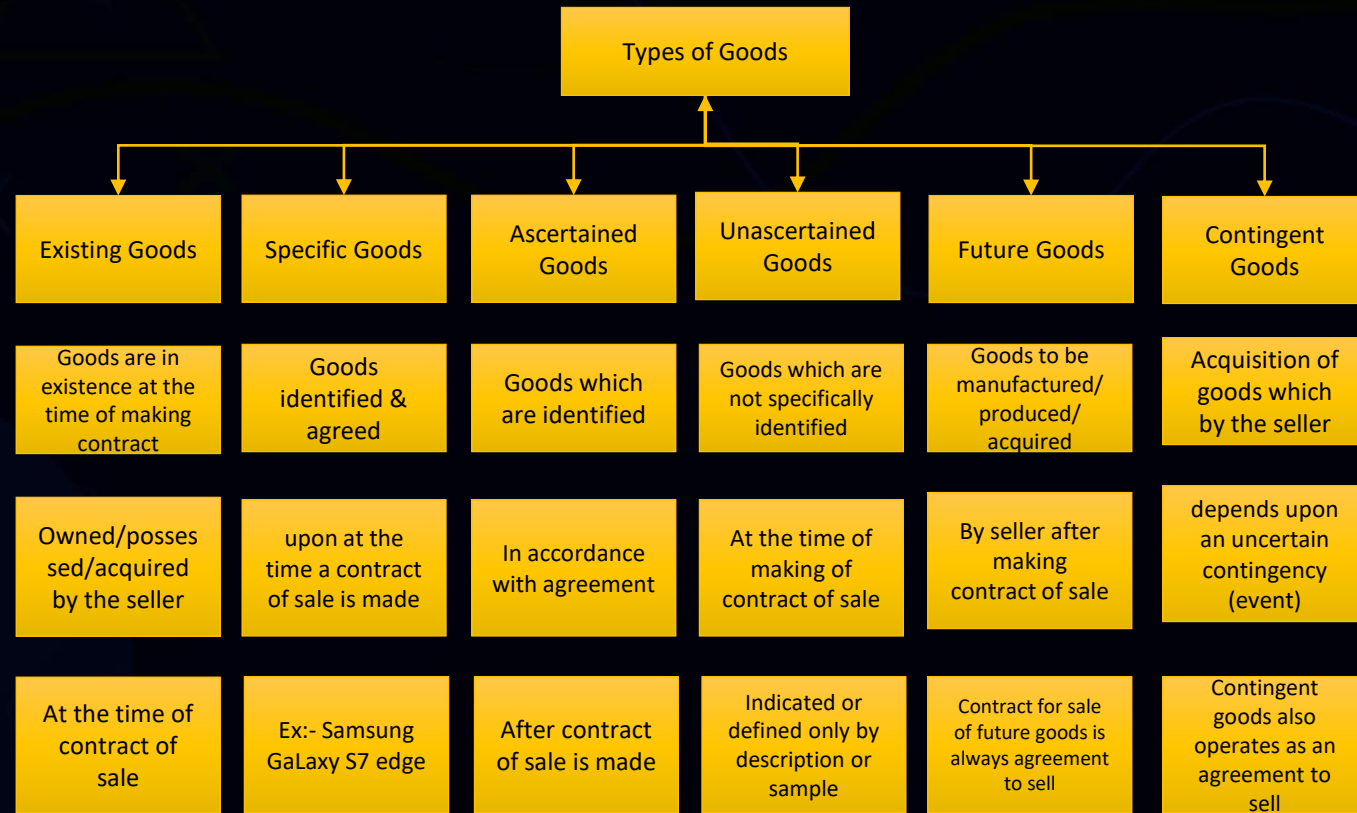
Mr. B
(Buyer)

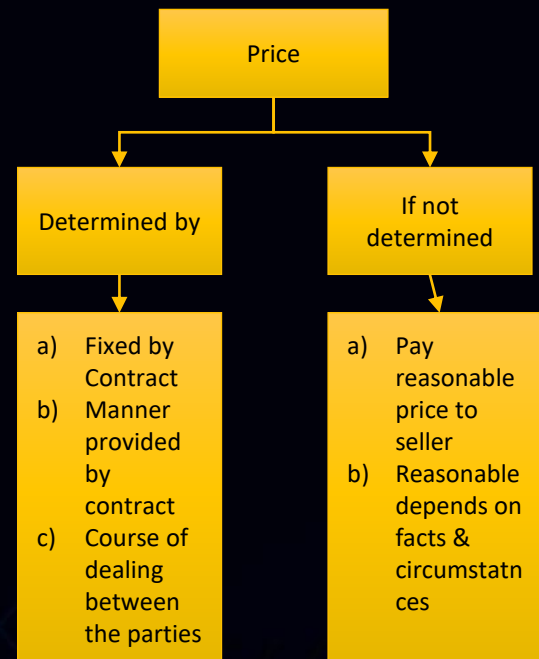
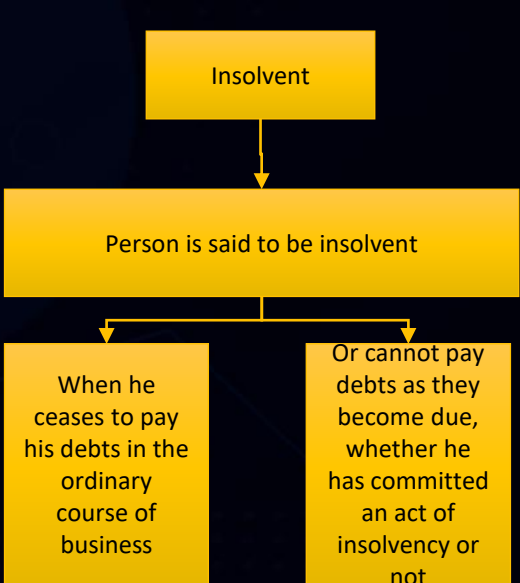
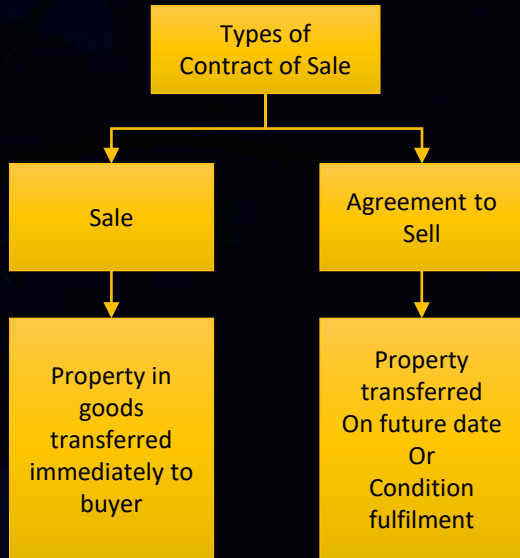
Mr. B will pay **price**



UNIT – 1







Essential elements of Contract of Sale

1. Minimum 2 parties (Buyer and seller)

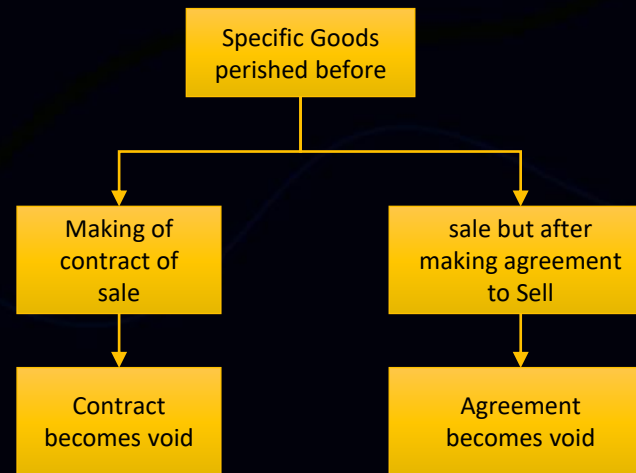
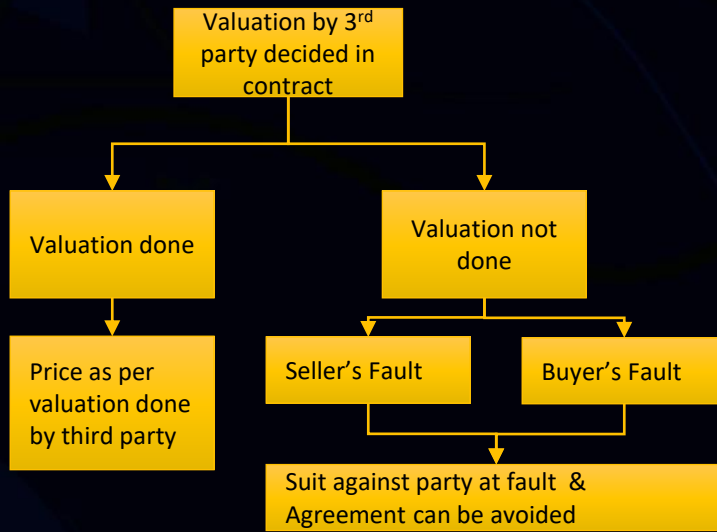
2. Subject Matter of Contract – Goods (Movable property)

3. Price – Wholly in Money or Partly in Money and Partly in kind

4. Transfer of property (ownership) of Goods – Immediately or future

5. May be Absolute or Conditional

6. All other essentials of a valid contract (Covered under ICA, 1872)



OWNERSHIP JISKI RISK USKA

PROPERTY JISKI RISK USKA

Risk passes with the property

Exception to risk follows ownership :-

If delivery has been delayed by the fault of the seller or the buyer, the goods shall be at the risk of the party in default, as regards loss which might not have arisen but for the default.

Various Mode of Contract of Sale :-

1. Immediate Delivery & Immediate Payment

2. Immediate Delivery & payment in future

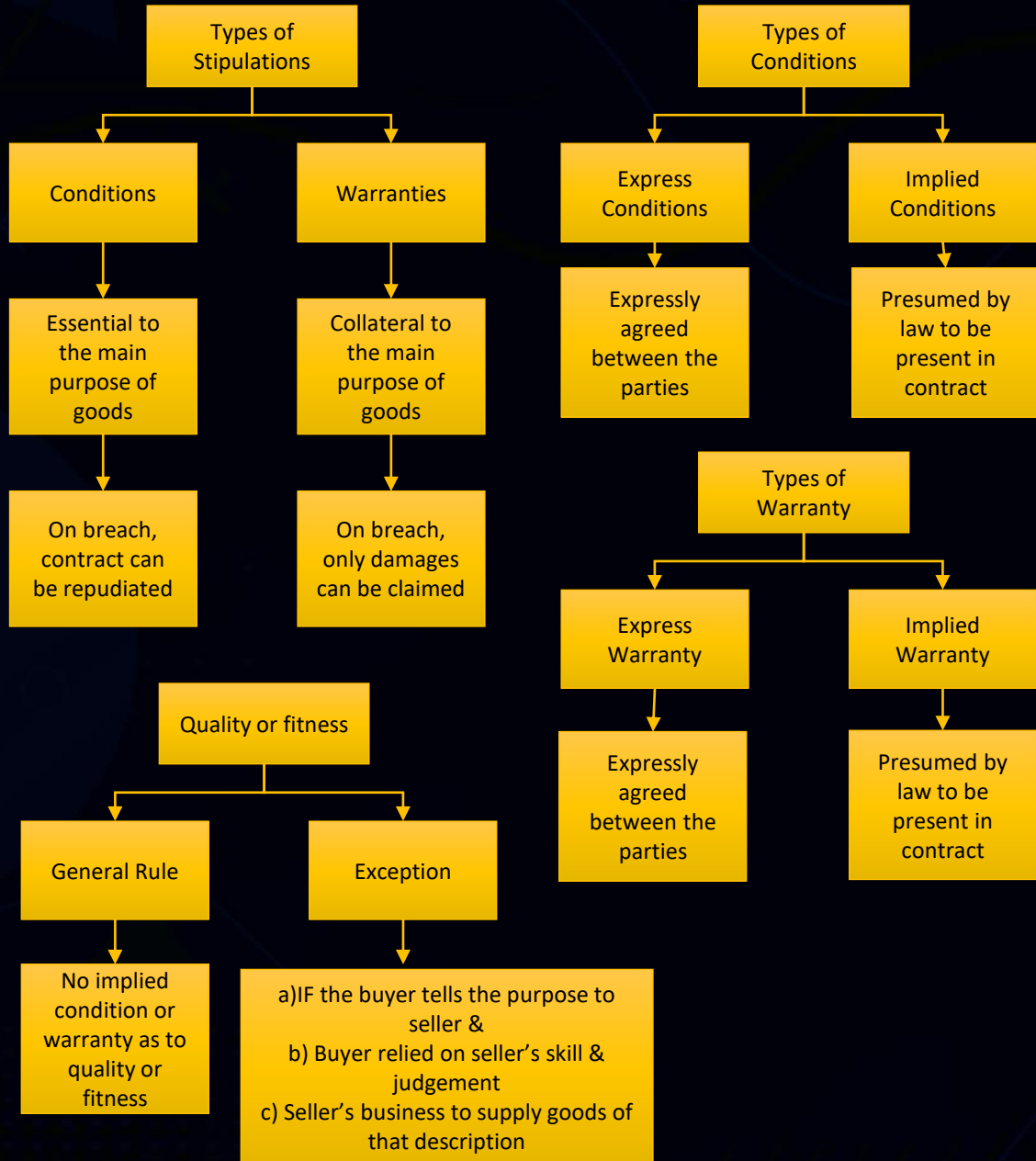
3. Immediate payment & delivery in future

4. Payment & Delivery both in future

5. Delivery/payment / both in instalments



UNIT – 2



4 Cases where Condition can be treated as Warranty

Buyer altogether waives the performance of the condition

Buyer elects to treat the breach of the conditions, as one of a warranty

Contract is non-severable and the buyer has accepted either the whole goods or part of it

Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.

7 Implied Conditions

Condition as to title

Sale by sample

Condition as to quality or fitness

Condition as to wholesomeness

Condition as to description

Sale by sample as well as by description

Condition as to merchantability

4 Implied Warranties

Warranty as to undisturbed possession

warranty as to quality or fitness by usage of trade

Warranty as to non- existence of encumbrances

disclosure of dangerous nature of goods

Exceptions to Caveat Emptor/ Duties of Seller

Goods Sold by Description

Sale by sample

Fitness as to quality or use except brand or patent name

Goods by sample as well as description

Trade usage

Seller actively conceal defect or guilty of fraud

Condition as to merchantability

Goods of Merchantable quality

Caveat Emptor/Duties of Buyer

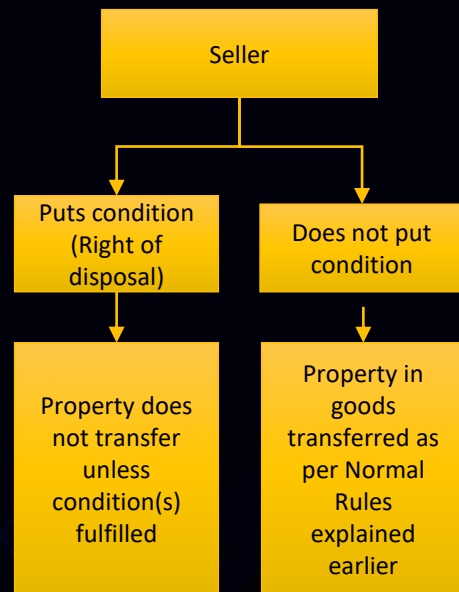
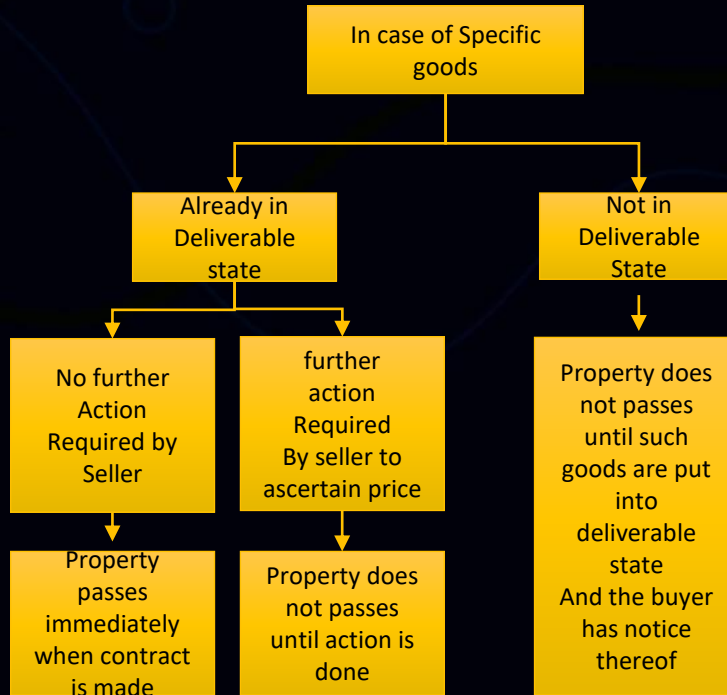
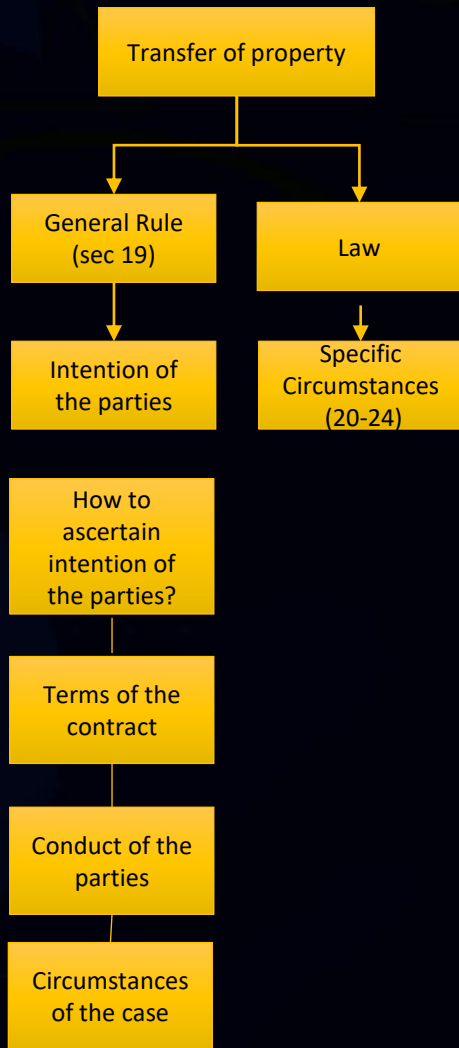
Let the Buyer beware

Seller is not bound to disclose the defects in the goods

Buyer cannot hold seller responsible for his bad selection of goods

Rule is laid down in section 16

UNIT – 3



Essentials of Appropriation of goods (Section 23(1))

1. Sale of Unascertained or future goods

2. Goods should conform to the description & quality stated in the contract

3. Goods must be in a deliverable state

4. Goods must be unconditionally appropriated

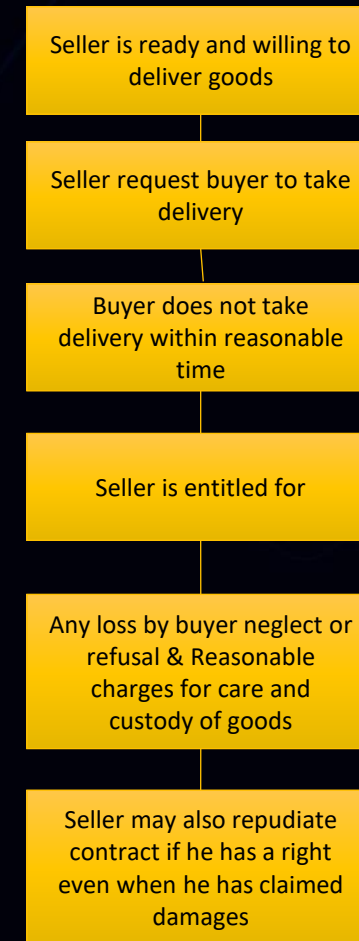
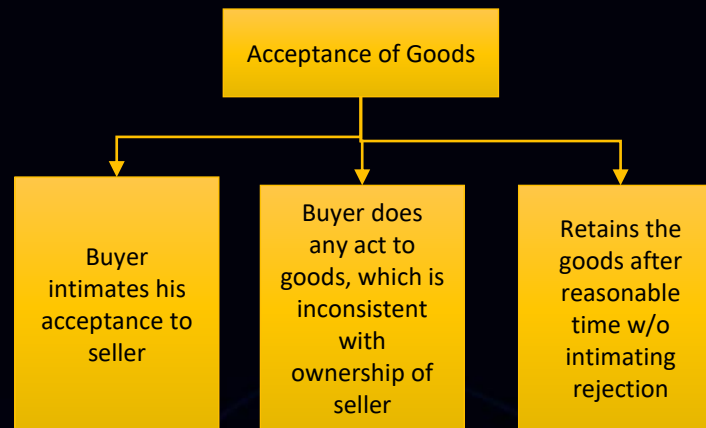
5. Assent may be express or implied

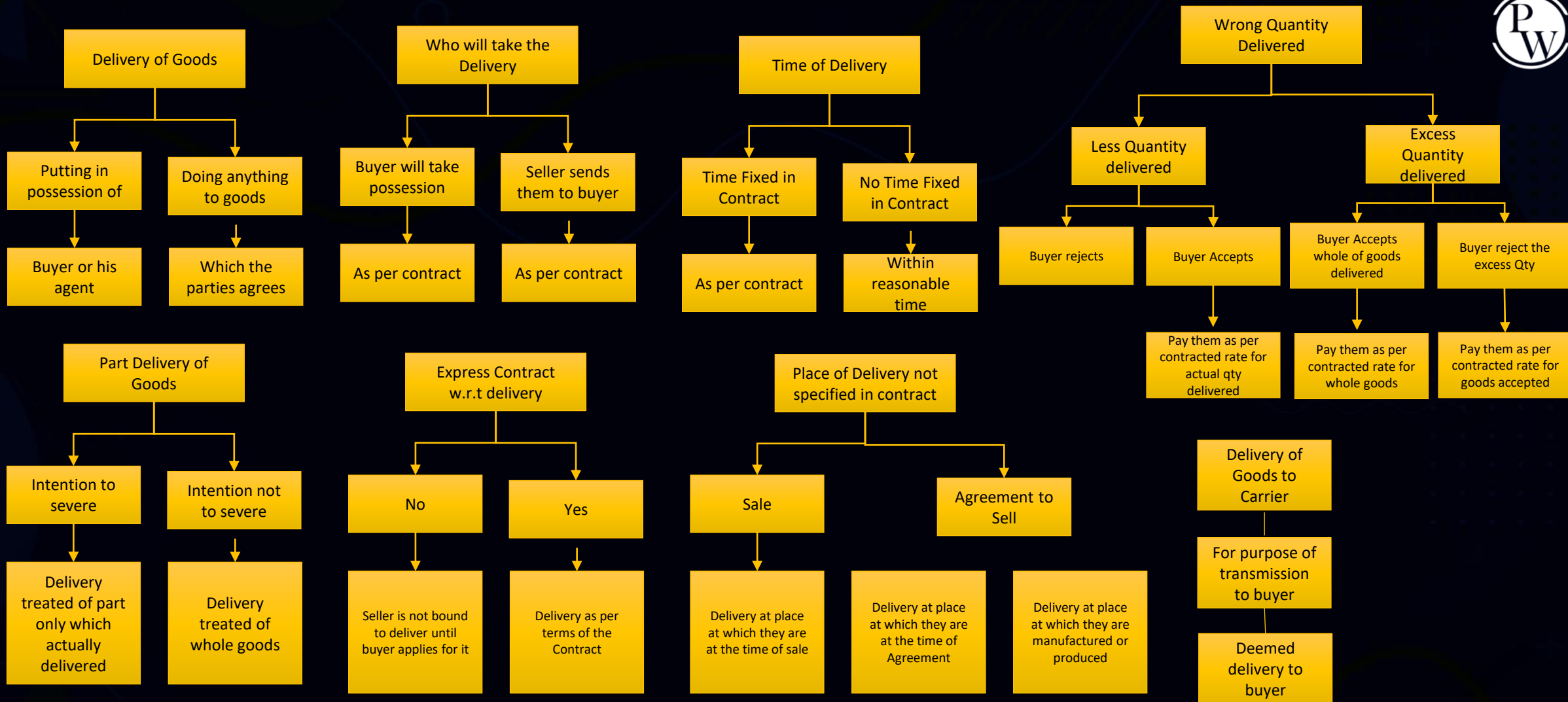
6. Assent may be given either before or after appropriation.

7. Appropriation must be made by :-
 a) Buyer with the assent of seller or
 b) Seller with the assent of buyer



Sale for cash only or Return :- where the goods have been delivered by a person on “sale or return” on the terms that the goods were to remain the property of the seller till they are paid for, the property therein does not pass to the buyer until the terms are complied with, i.e., cash is paid for.





Note :- Expenses of and incidental to putting goods into deliverable state must be borne by seller in absence of contract to contrary

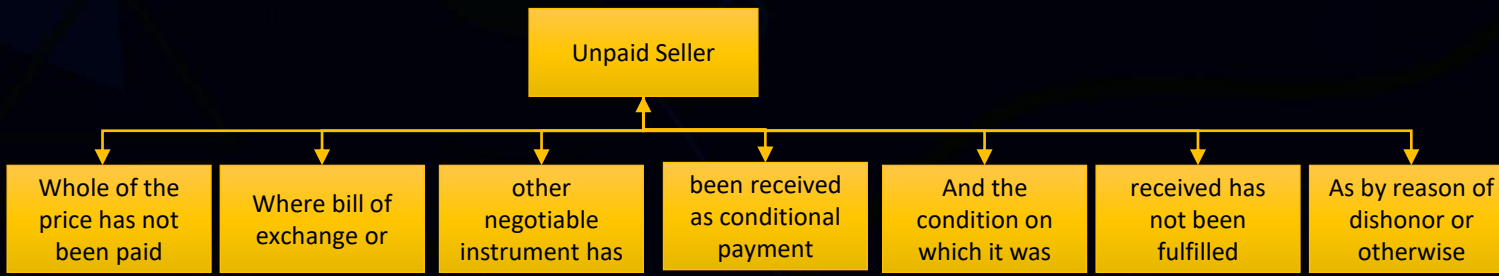
Note :- Buyer must have a reasonable opportunity to examine the goods on delivery if not previously examined

Exceptions to Nemo Dat Quod non habet

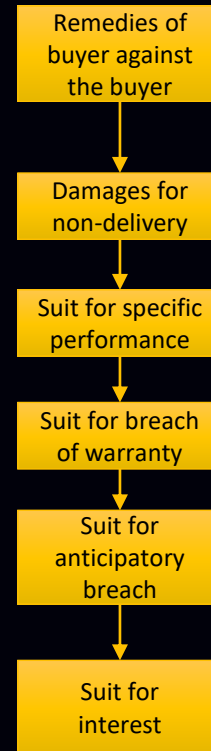
Sale by Mercantile Agent	Sale by One of the Joint Owners	Sale in case of voidable contract	Sale by person who has already sold the goods	Sale by buyer obtaining possession before property is transferred to buyer	Sale by unpaid seller exercising right of lien or stoppage in transit	Sale under the provisions of other act	Effect of Estoppel
Agent has Possession of Goods/document with consent of owner	One joint owner has sole possession of goods	Buyer acquire a good title to the goods sold by seller	Sale by person who has already sold the goods but continues with the possession	Sale by buyer obtaining possession before property is transferred to buyer	Sale by unpaid seller who had exercised his right of lien or stoppage in transit	Sale by official receiver/ Liquidator of company will give valid title	Where the owner is estopped by the conduct from denying the seller's authority
Sale made by agent in ordinary course of business as agent	Possession is with the consent of other joint owners	Who obtained possession of goods under voidable contract	Of goods or documents of title, he may sell them to third person	He may sell, pledge or otherwise dispose of the goods to a third person	who resells the goods to other person	Purchase of goods from a finder of goods under certain circumstances	The transferee will get a good title against the true owner
Buyer acted in good faith, no notice of fact that seller has not authority to sell	Buyer acted in good faith, no notice of fact that seller has not authority to sell	Contract has not been rescinded until the time of the seller	Buyer acted in good faith, without notice of previous sale	Buyer acted in good faith, without notice of lien or other right that	Buyer acquires a valid title against the original buyer	A Sale by Pawnee can convey a good title to the buyer	Proof that true owner has actively suffered /held out other person as owner



UNIT – 4



Unpaid seller includes any person who is in the position of seller



Auction Rules

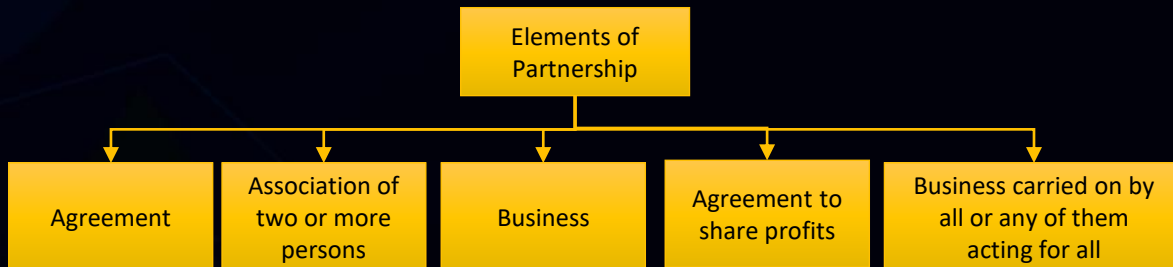
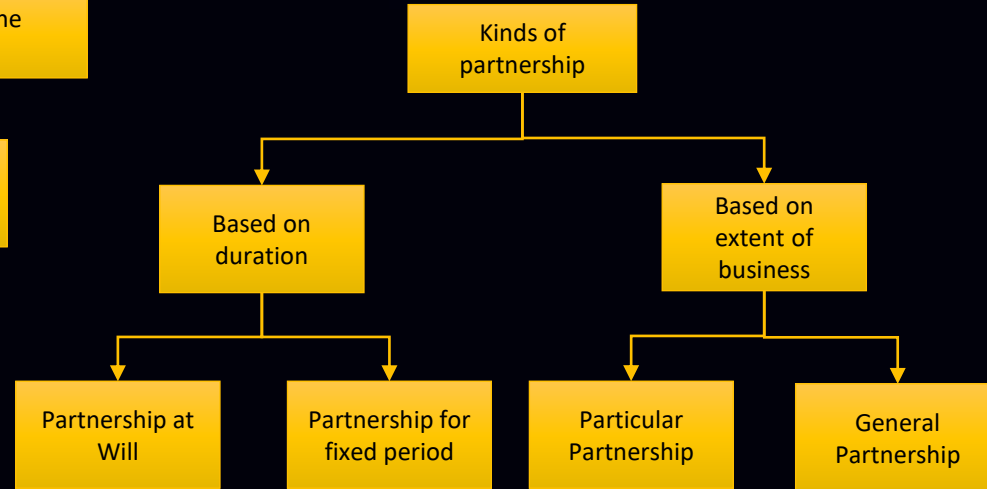
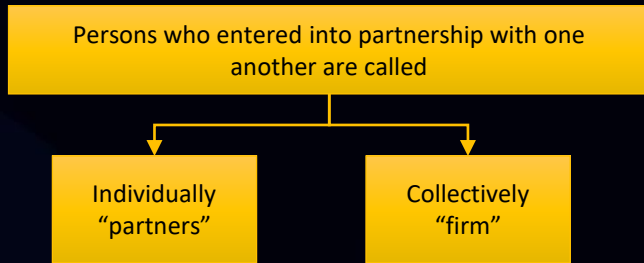
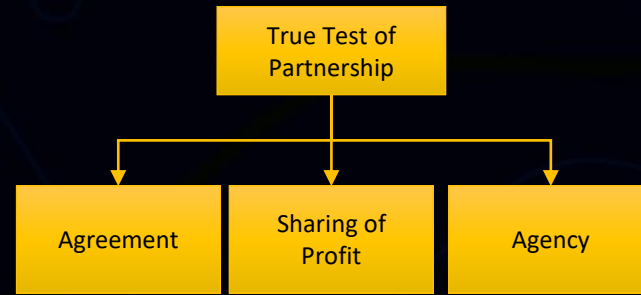
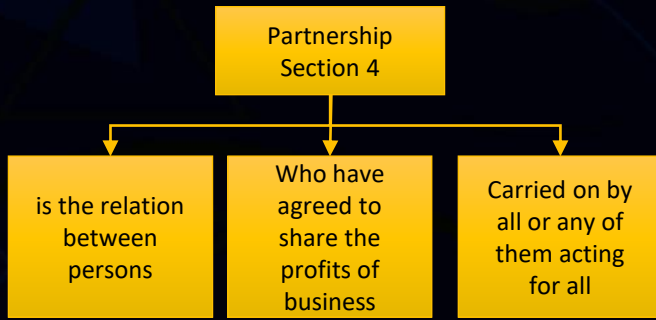
1. Separate contract of sale for each lot
2. Contract completed on fall of hammer
3. Right to bid may be reserved expressly
4. Fraud if right to bid not notified
5. Reserved or upset price may be notified
6. Sale voidable if seller use pretending bidding

When tax on goods (like excise/custom/GST) increase or decrease after entering into contract of sale but before performance, then buyer would have to pay the revised price considering the revised tax rates. The effect of above provision can be excluded by an agreement to contrary



THE INDIAN PARTNERSHIP ACT, 1932

UNIT – 1



- Content of Partnership Deed / Agreement**
- Name of the Partnership Firm
 - Name of all the partners
 - Nature of business of firm
 - Principal place & other place of business of firm
 - Date of Commencement of partnership
 - Duration of Partnership Firm
 - Capital Contribution of each partner
 - Profit sharing ratio
 - Provision for admission, retirement, expulsion
 - Rate of interest on Capital, drawings & Loan etc.
 - Salaries or Commission payable to partners

Types of Partner

Active or Ostensible	Sleeping or Dormant	Nominal Partner	Incoming Partner	Outgoing Partner	Partner by Holding Out	Partner in profits only
Actively participates in conduct of partnership	Does not take Actively part in conduct of partnership	Not a Partner by Agreement	New person admitted into partnership	Person who leaves the firm	Holds himself as partner or allows others to do it	Entitled to profits only
Must Give public Notice on retirement	Not require to give public notice on retirement	Lends his name and liable to third party for all acts of the firm	Not liable for acts done prior to admission by other partners	Requires public notice on retirement	Liable to anyone who acts on faith of representation	Not liable in case of losses

Note :- Nominal Partner and Partner by holding out/estoppel is not entitled to share in profits

Based on extent of business

Particular Partnership	General Partnership
Partnership in particular adventure or undertaking	Partnership constituted for business in general
Dissolved on completion of the adventure or undertaking	A general partnership is different from a particular partnership.

Based on duration

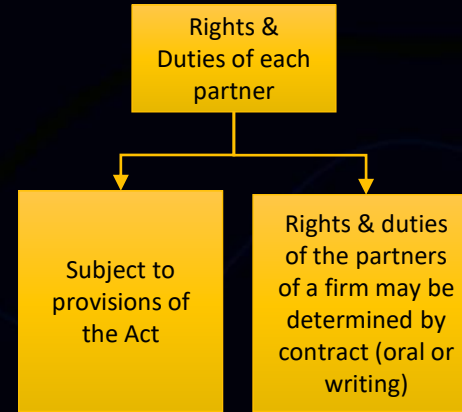
Partnership at will	Partnership for fixed period
Two Conditions are satisfied :- 1. No fixed period has been agreed &	Provision is made by contract for the duration
2. No provision made as to determination of the partnership	Partnership comes to end after expiry of duration.
Dissolved by any partner by giving notice in writing to all other partners of his intention to dissolve the same	If fixed partnership is continued after the expiry of such term then treated as partnership at will



UNIT – 2

4 General Duties of Partner (Section 9):-

- Bound to carry business to the greatest common advantage
- Just & faithful to each other
- To render true accounts to other partners or their legal representative
- To render full information of all things affecting firm to other partners or their legal representative



What is Partnership property?

all property, rights and interests which Partners contributed to common business



all the property, rights and interest acquired or purchased by or for the firm



Goodwill of the business

Subject to contract, partnership property shall be used by partners exclusively for the purpose of the business of firm only

What is property of partner?
Property which exclusively belong to the partner only

Mutual Rights & Liabilities :- Subject to Contract,

Partner is not entitled to any remuneration for taking part in conduct of business of firm except in case of customs

Both Profit & Losses to be shared equally amongst partners

where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits;

partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six percent per annum

firm shall indemnify a partner in respect of payments made and liabilities incurred by him

Conduct of Business :- Subject to Contract,

Every partner has a right to take part in the conduct of the business

Every partner is bound to attend diligently to his duties in the conduct of the business

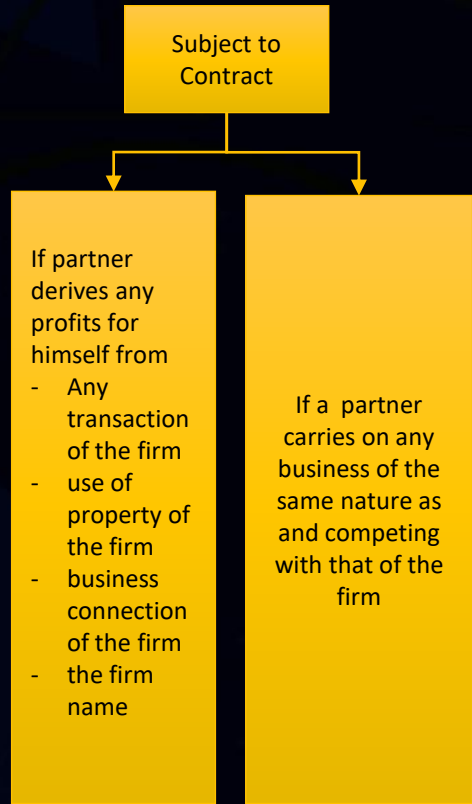
Every partner has right to express his opinion on business matters

Ordinary matters are decided by majority of partners

Change in nature of firm business require consent of all partners

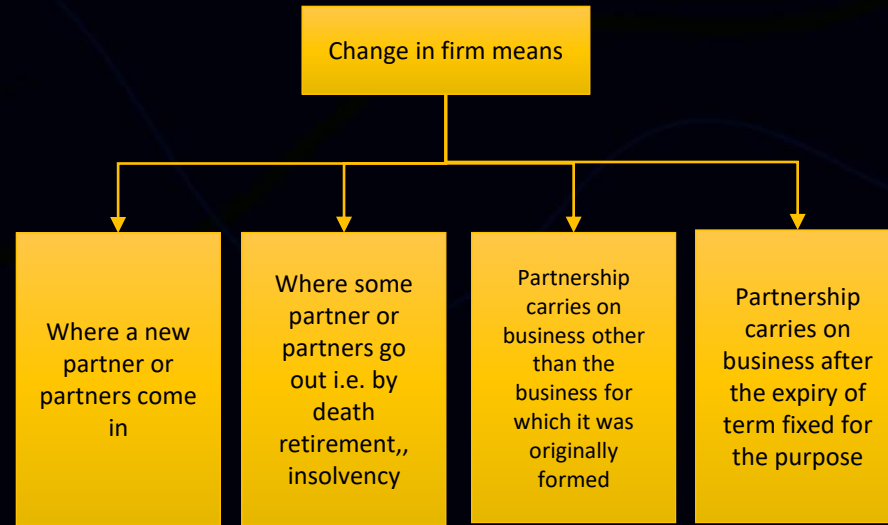
Every partner & his duly authorized agent has right to have access to / inspect / take copy of books of firm

In event of death, partner's legal representative has right to have access to / inspect / take copy of books of firm

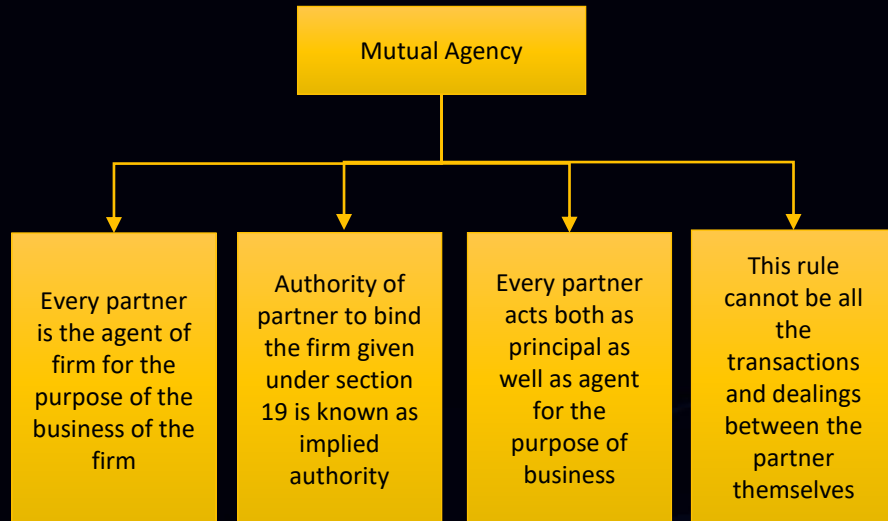


He shall account for that profit & pay it to firm

In case of emergency, partner has the authority to perform all the acts to protect the firm from losses as would be done by person of ordinary prudence whether such act falls under his implied authority or not



As per section 17, subject to contract, rights & duties of partner remain same as far as possible after there is any change in the firm



8 Acts which are not in implied authority of partners

Submit a dispute relating to business of firm to arbitration

Open a bank account on behalf of firm in his own name

Compromise or relinquish any firm's claim or its portion

Withdraw a suit or proceedings filed on behalf of firm

Admit any liability in a suit or proceedings against the firm

Acquire any immovable property on behalf of firm

Transfer immovable property belonging to the firm

Enter into partnership on behalf of firm

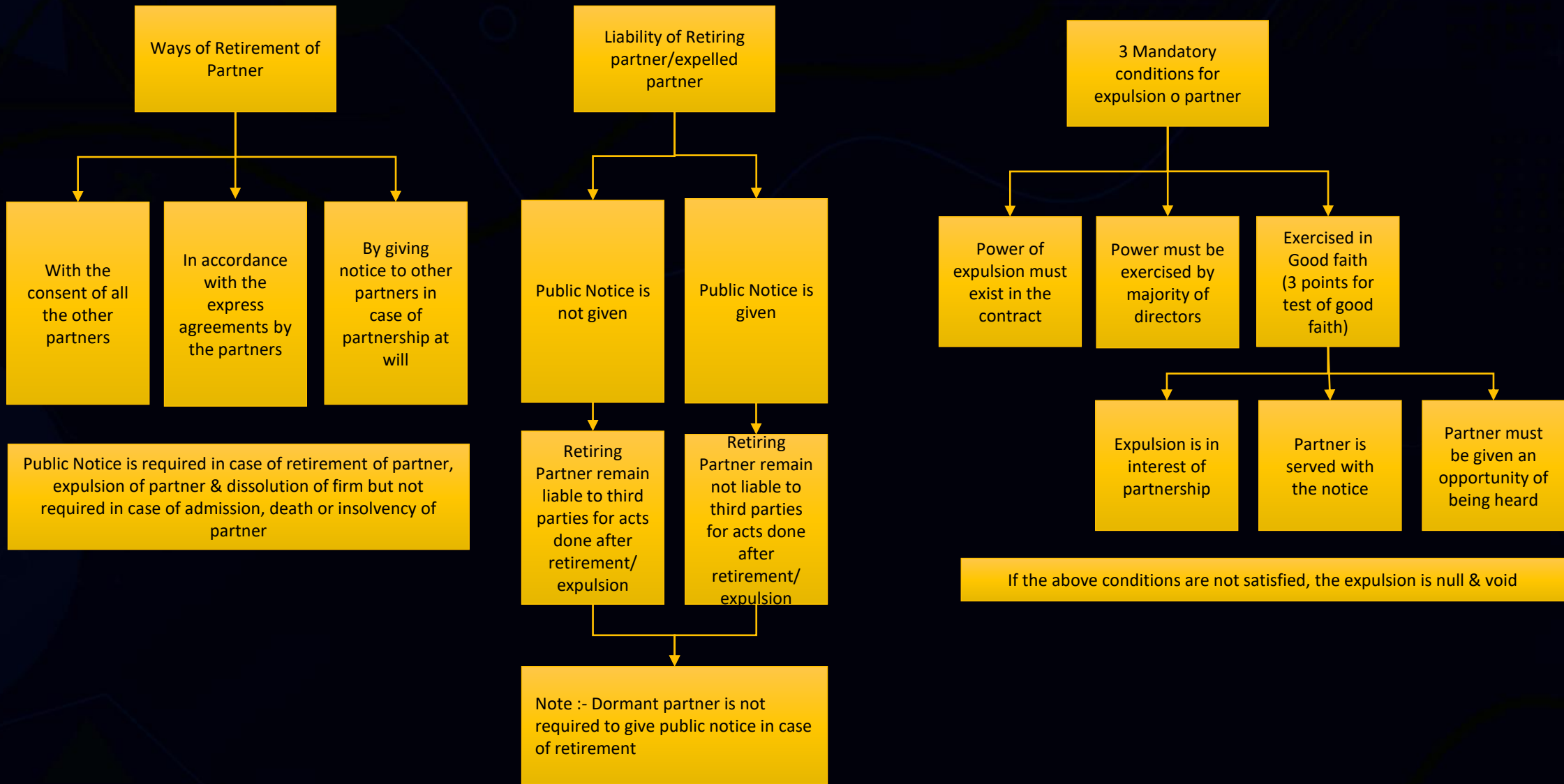
Implied authority can be extended or restricted by a contract between the partners
 But restriction on implied authority is only effective against a third party if
 a) Third party knows about such restriction; or
 b) Third party does know that he is dealing with a partner of firm



Minor cannot become a partner in firm but can be admitted as beneficiary in the firm with the consent of all the existing partner

Within 6 months on attaining majority or obtaining knowledge that he is a beneficiary in firm, whichever date is later, such person require to give public notice that whether he has elected to become partner or not. If he fails to give notice within 6 months, then treated as partner of firm on expiry of said 6 months

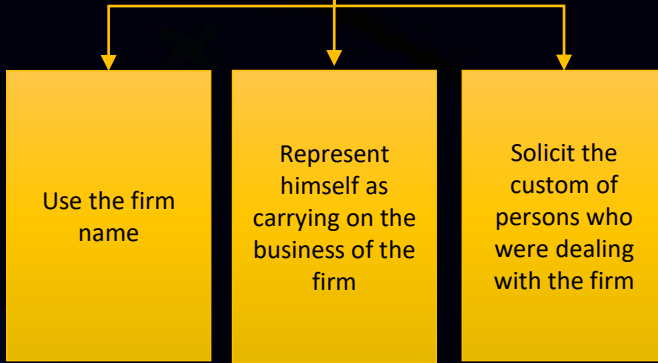




LIABILITY OF ESTATE OF DECEASED PARTNER :-

Where under a contract between the partners, the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.

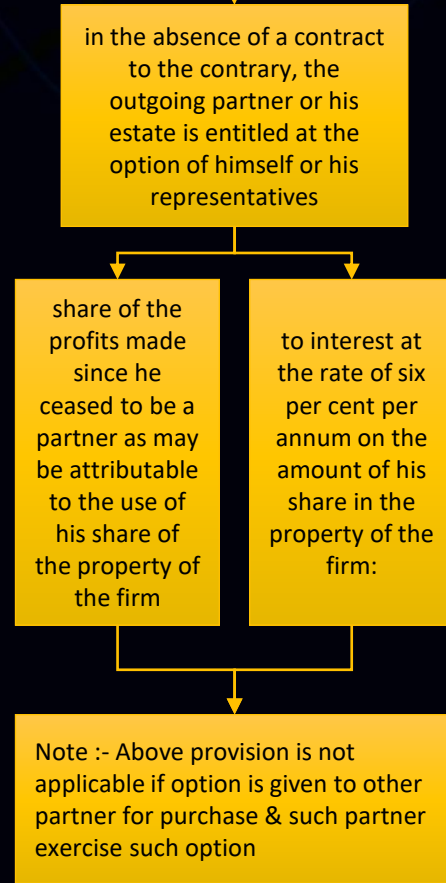
Outgoing partner can carry competing business ,
But, Subject to contract, cannot



Outgoing partner may make an agreement with his partner that he will not be carrying competing business and such agreement will be valid if restrictions imposed are reasonable

As per section 38, continuing guarantee given to a firm or to third party in respect of the transaction of a firm is, in the absence of an agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.

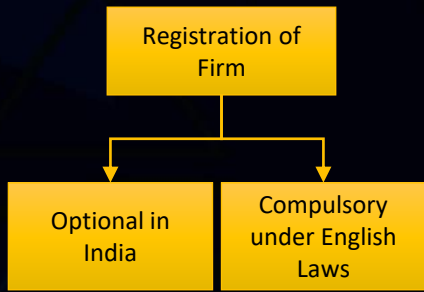
Right of outgoing partner/representative of deceased partner if a/cs are not settled



Effect of Insolvency of a partner

1. No public notice is required in case any partner become insolvent
2. He will be ceased to be a partner from the very date on which the order of adjudication is made.
3. The insolvent partner cannot be continued as a partner.
4. The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.
5. The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication,
6. Ordinarily but not invariably, the insolvency of a partner result in dissolution of a firm; but the partners are competent to agree among themselves that the adjudication of a partner as an insolvent will not give rise to dissolution of the firm

UNIT – 3



Steps for Registration of Firm (Section 58 & 59)

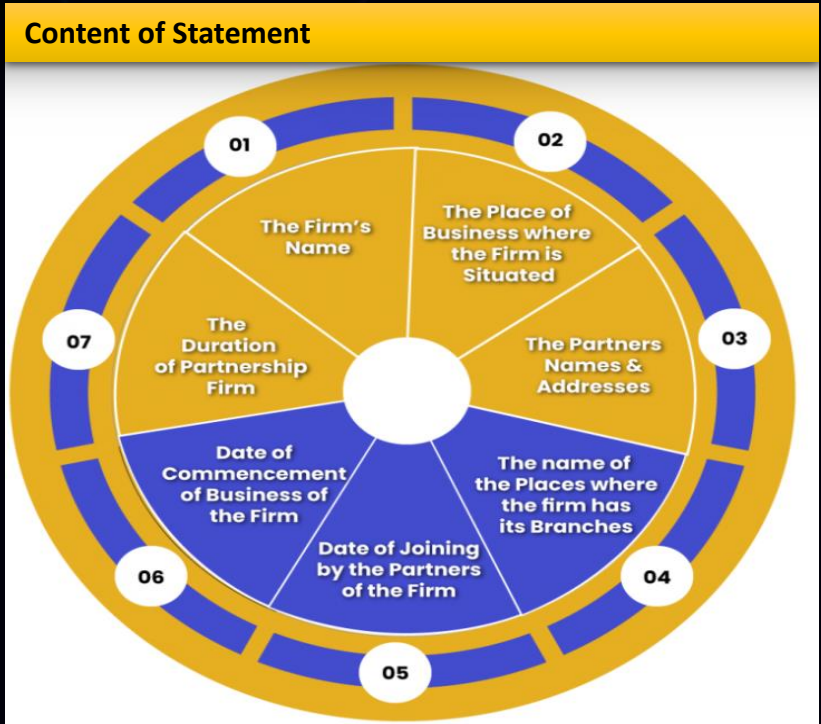
- Files statement with RoF in the prescribed form with prescribed Fees
- RoF of the area in which any place of business is situated
- Statement need to be signed by all the partners

- RoF issues Certificate of Registration after
- Satisfying all the provisions are being complied with
 - Recording an entry in the register of firms

Effective Date of Registration :-

Registration is deemed to be completed as soon as an application in the prescribed form with the prescribed fee and necessary details concerning the particulars of partnership is delivered to the Registrar

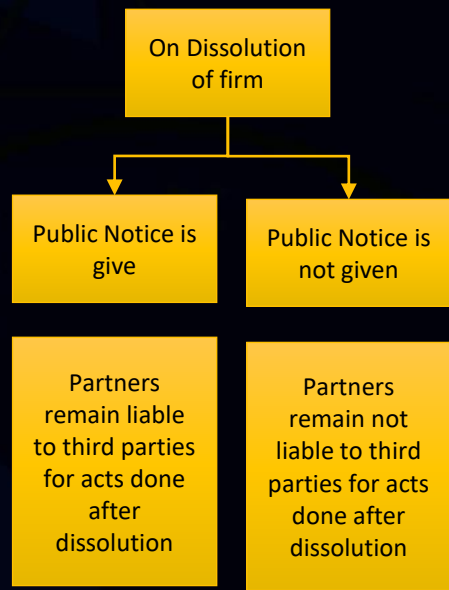
Registered Firm shall use the bracket & word (Registered) immediately after is name



Firm name shall not contain following words:-

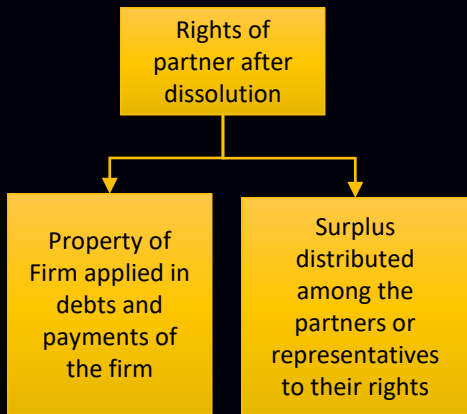
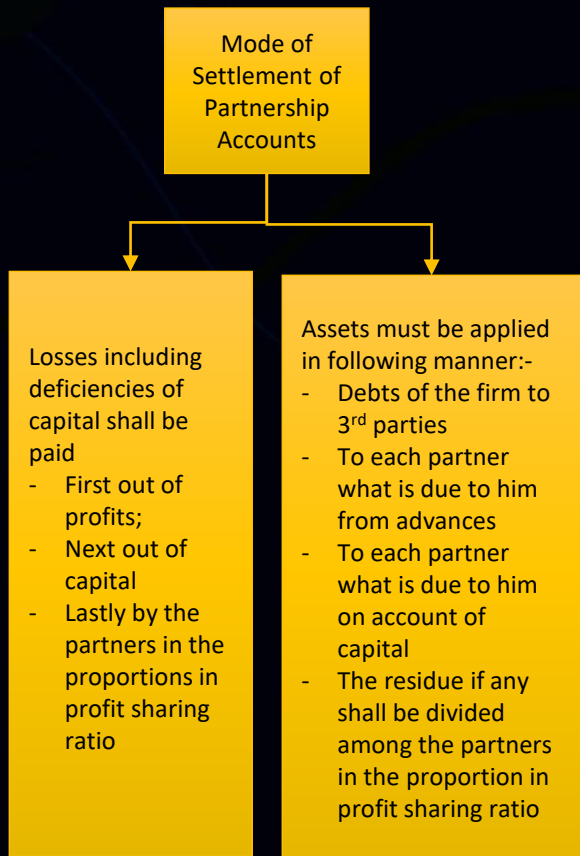
- Crown
- Emperor
- Empire
- Imperial
- King
- Queen
- Royal
- Govt linked

State Govt can give approval to use firm name linked with govt. by order in writing

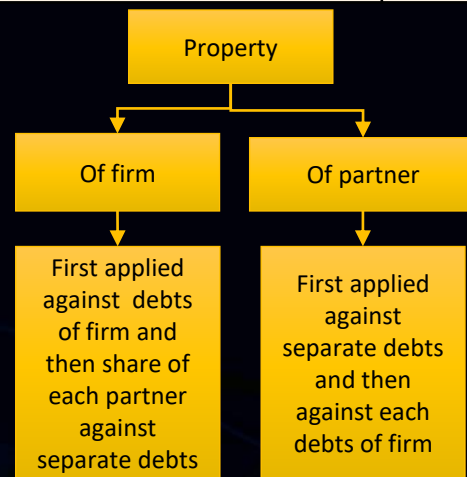


Note :- Insolvent Partner, Property of deceased partner and dormant partner are not liable to third party even if no public notice is given

Note :- After dissolution, each partner has the authority which is necessary to wind up the affairs of the firm



Consequences of Non-Registration (Section 69)	Exceptions :- Non – Registration of firm does not, however the following rights
1. No suit in civil court by firm or other co-partners against third party	1. Right of third parties to sue the firm or any partner
2. No relief to firm or partner for set-off of claim	2. right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm.
3. Aggrieved partner cannot partner legal action against firm or other partners	3. The power of an Official Assignees, Receiver of Court to release the property of the insolvent partner and to bring an action
4. Third party can sue both registered or unregistered firm	4. The right to sue or claim a set-off if the value of suit does not exceed Rs. 100 in value
	5. The right to suit and proceeding instituted by legal representatives or heirs of the deceased partner of a firm for account s of the firm or to realise the property of the firm



Modes of Dissolution of Firm

Without Court Intervention

Dissolution by Agreement (Section 40)

Dissolution by notice (in partnership at will)
(Section 43)

Compulsory dissolution of firm (Section 41)

Dissolution on happening of certain contingencies (Section 42)

1. After expiry of fixed term of partnership
2. Completion of adventure/undertaking
3. Death of a partner
4. Adjudication of partner as insolvent

With Court Intervention (Section 44)

Insanity / Unsound Mind

Permanent Incapacity

Persistent Breach of agreement

Transfer of Interest

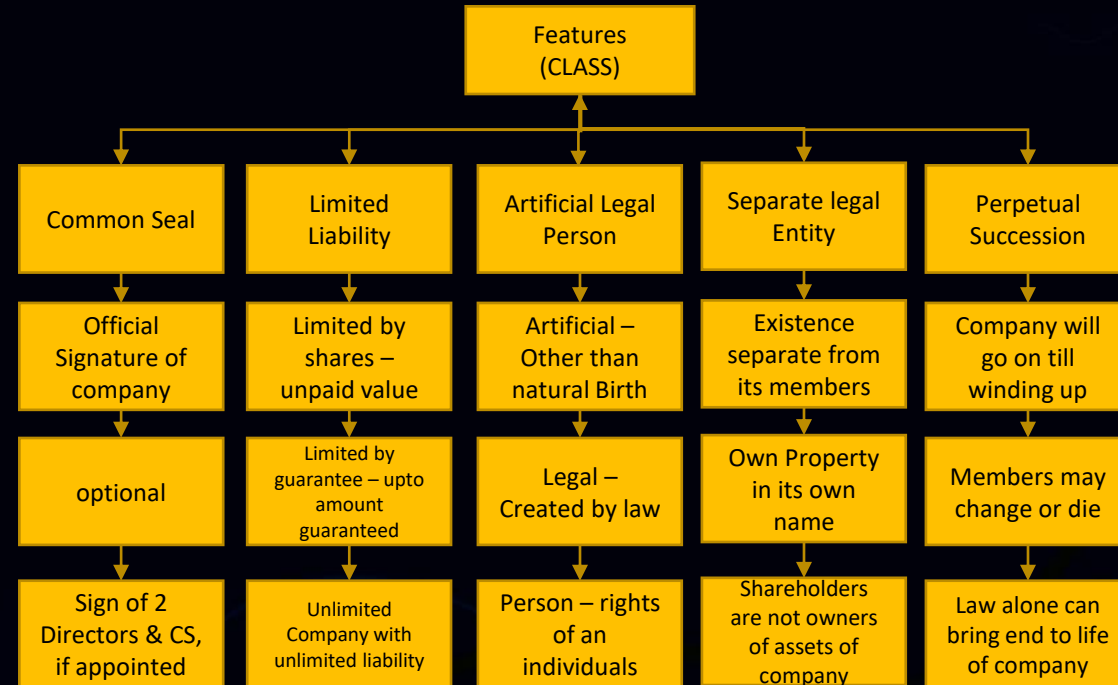
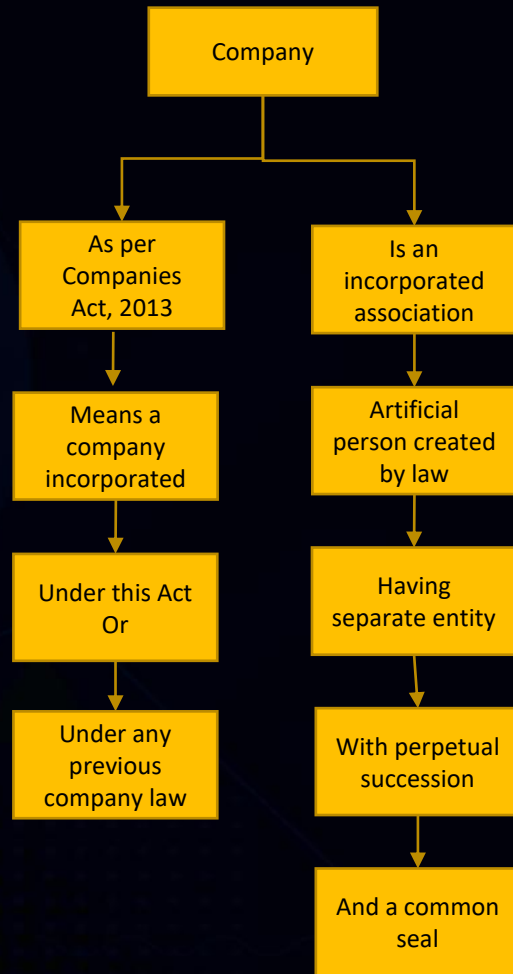
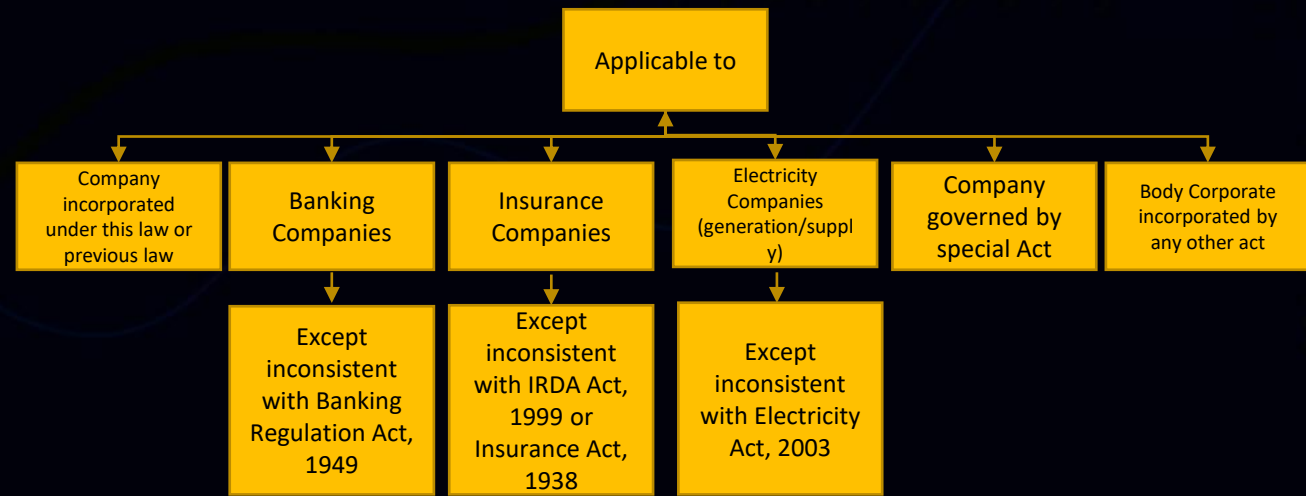
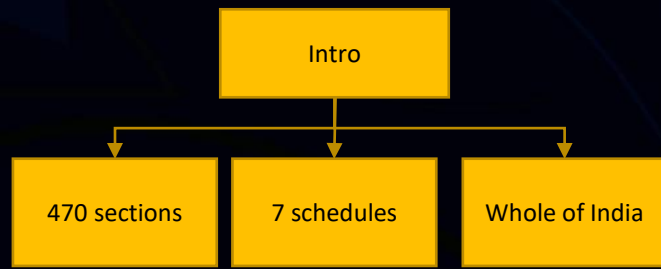
Continuous Losses / Perpetual Losses

Just & equitable grounds

1. Deadlock in Management
2. Partners are not in talking terms
3. Loss of substratum
4. Gambling by partner on a stock exchange



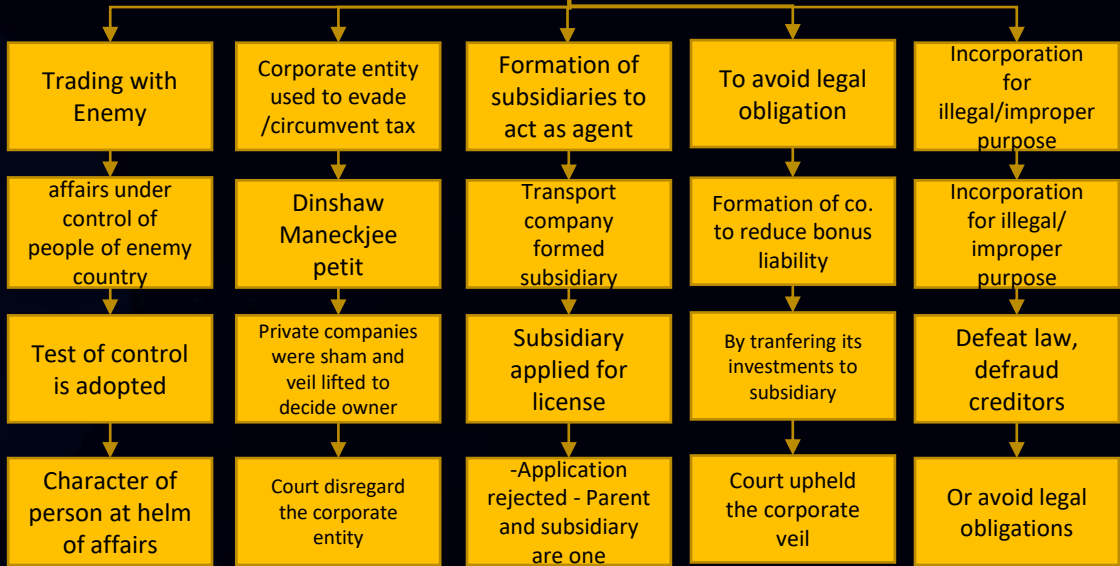
THE COMPANIES ACT, 2013



Corporate Veil



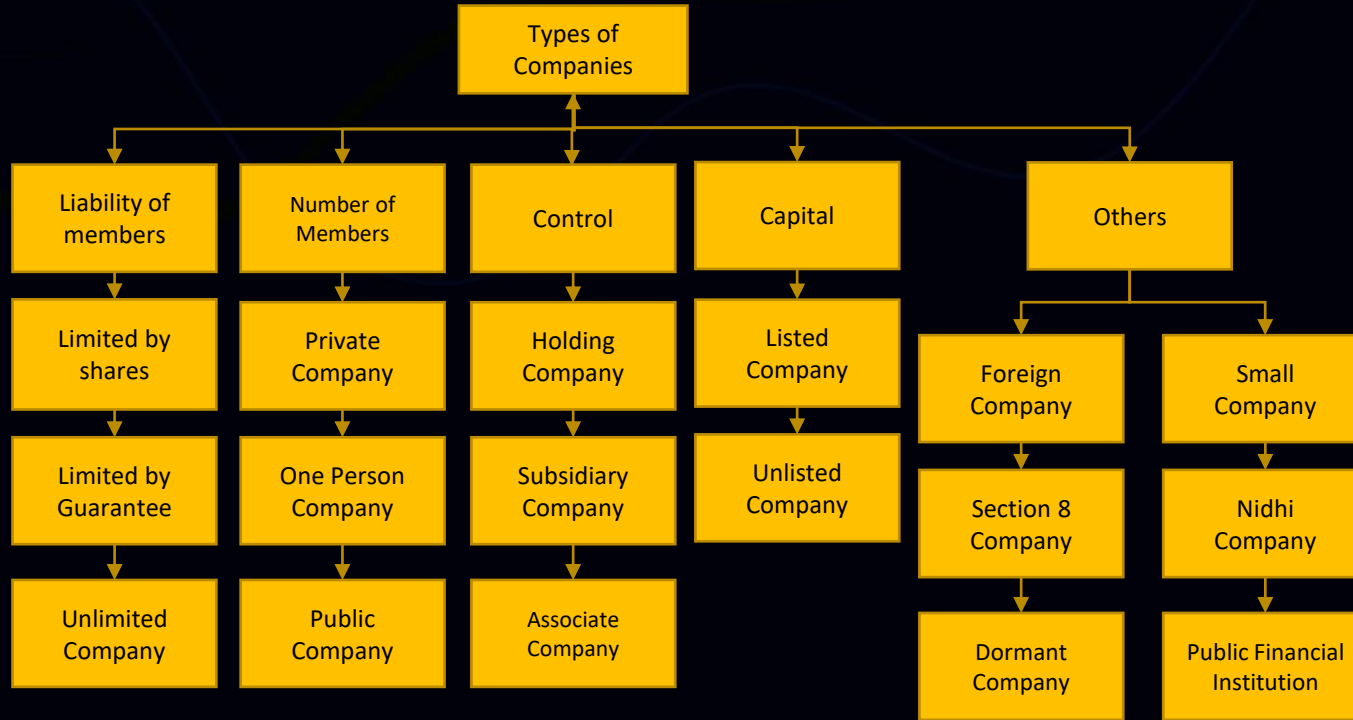
Lifting of Corporate Veil

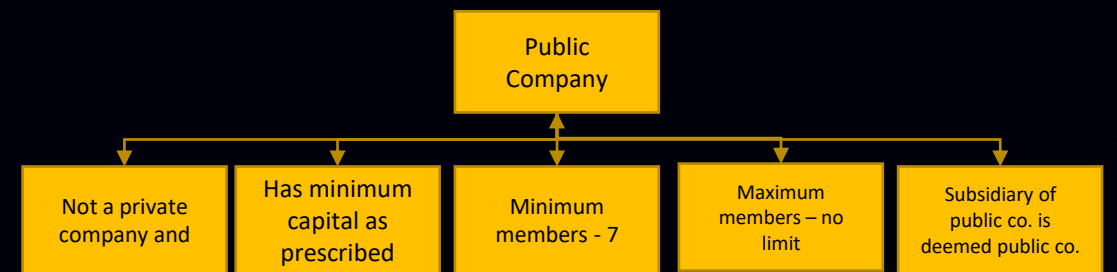
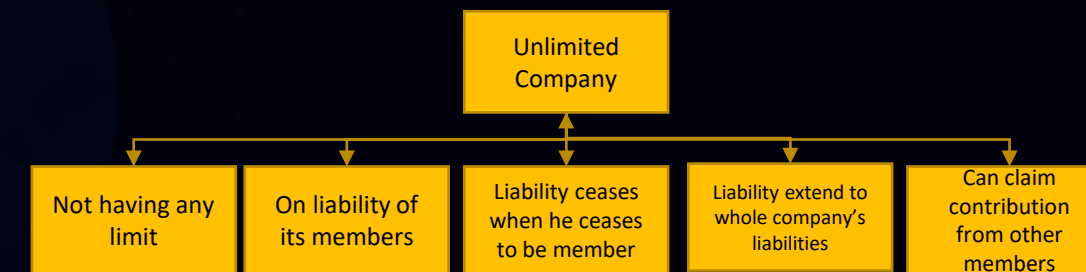
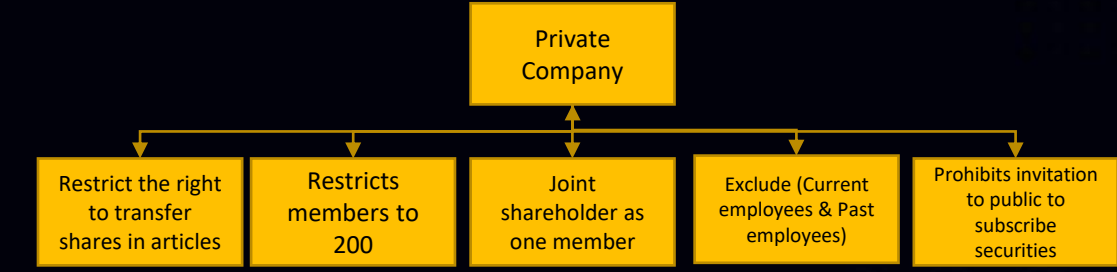
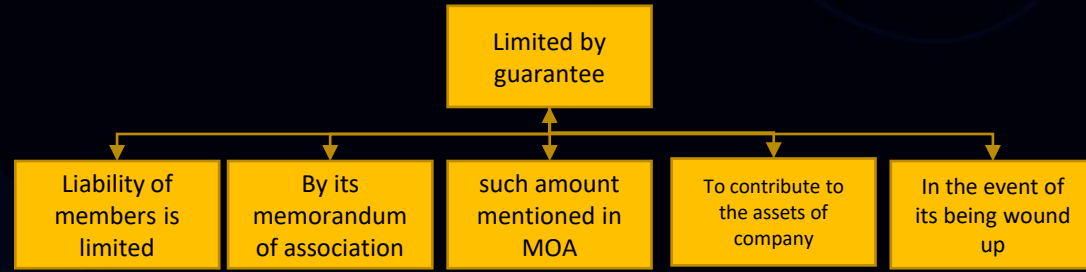
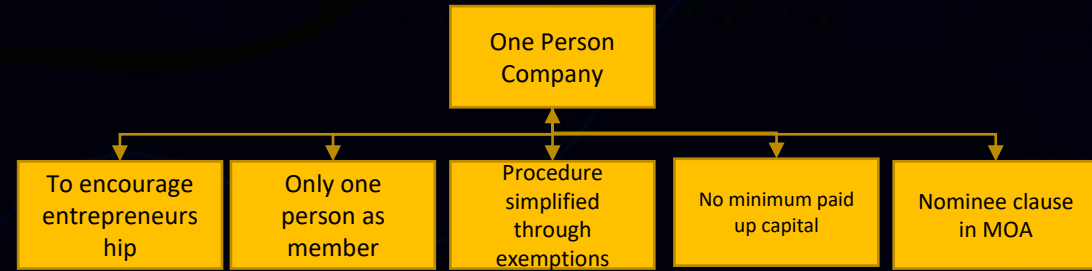
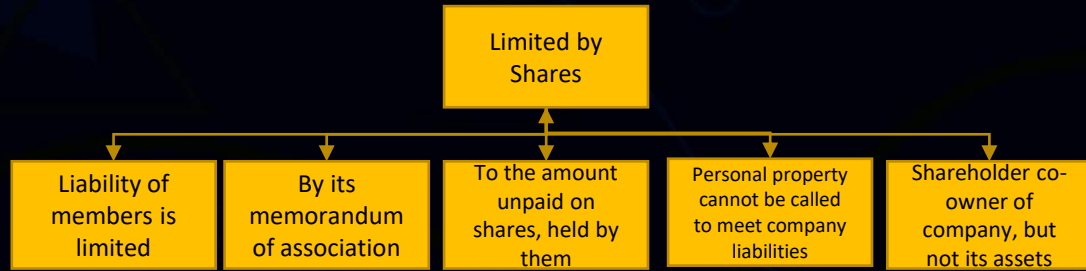


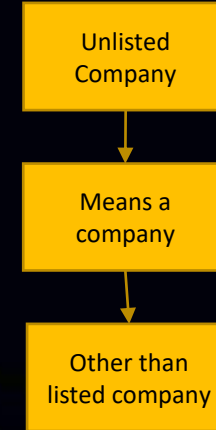
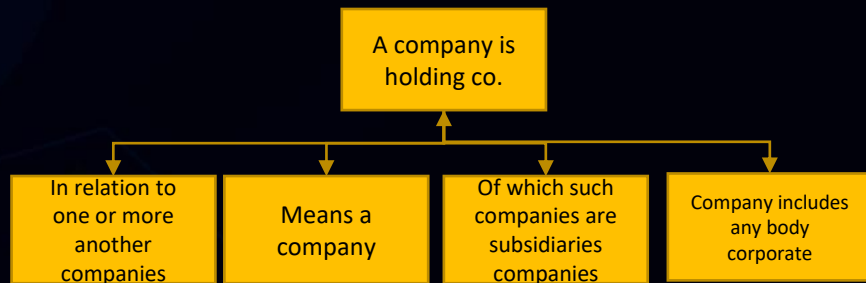
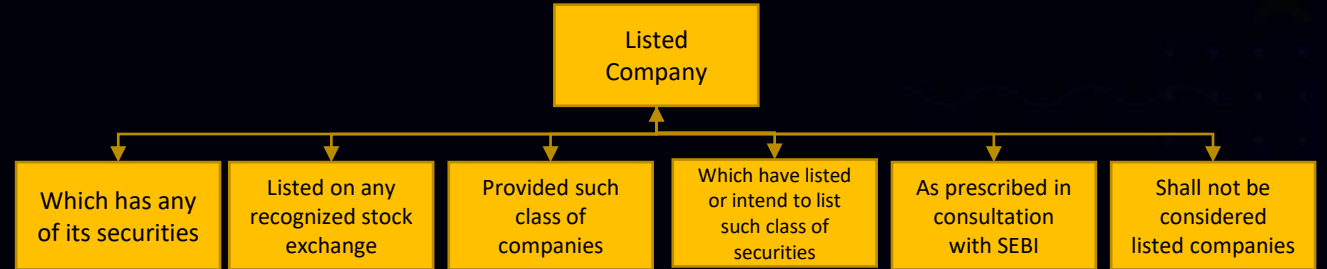
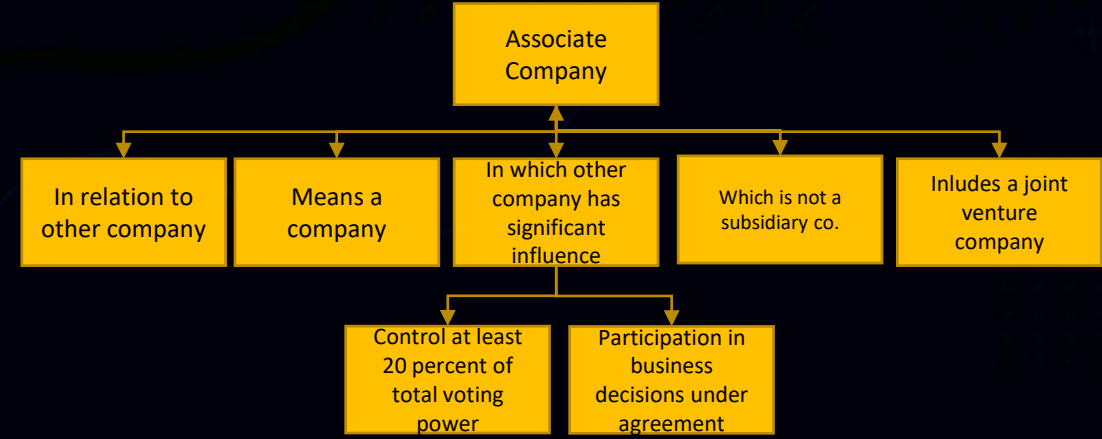
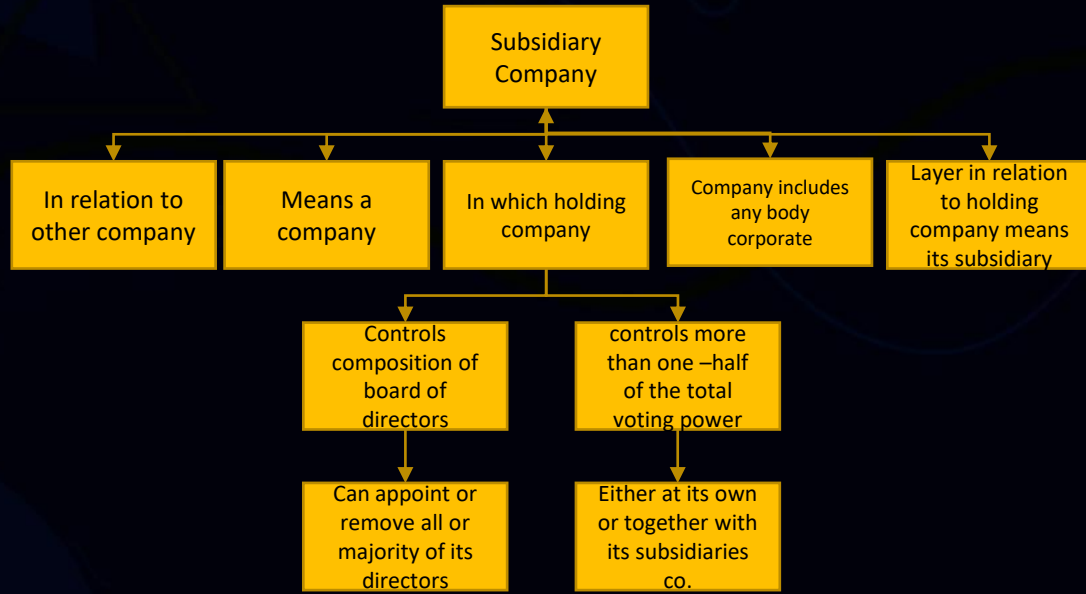
In **Salomon vs. Salomon & Co. Ltd.** the House of Lords laid down that a company is a person distinct and separate from its members. In this case one Salomon incorporated a company named "Salomon & Co. Ltd.", with seven subscribers consisting of himself, his wife, four sons and one daughter. This company took over the personal business assets of Salomon for £ 38,782 and in turn, Salomon took 20,000 shares of £ 1 each, debentures worth £ 10,000 of the company with charge on the company's assets and the balance in cash. His wife, daughter and four sons took up one £ 1 share each. Subsequently, the company went into liquidation due to general trade depression. The unsecured creditors to the tune of £ 7,000 contended that Salomon could not be treated as a secured creditor of the company, in respect of the debentures held by him, as he was the managing director of one-man company, which was not different from Salomon and the cloak of the company was a mere sham and fraud.

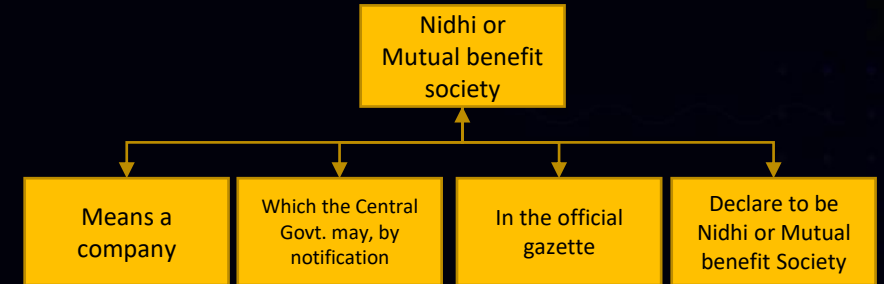
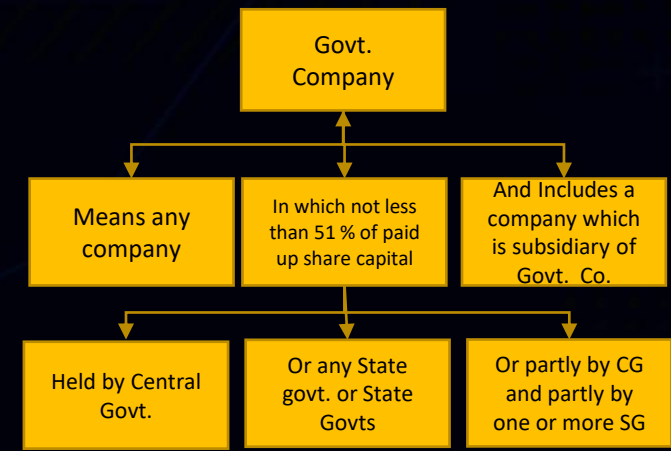
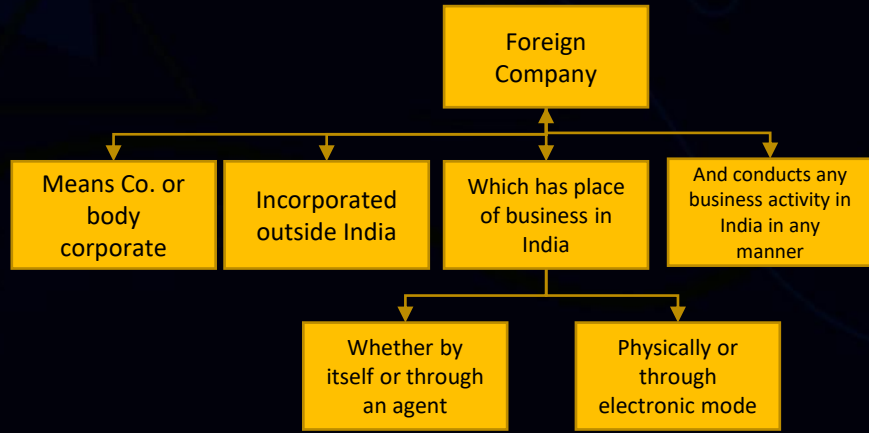
It was held by Lord Mac Naughten:

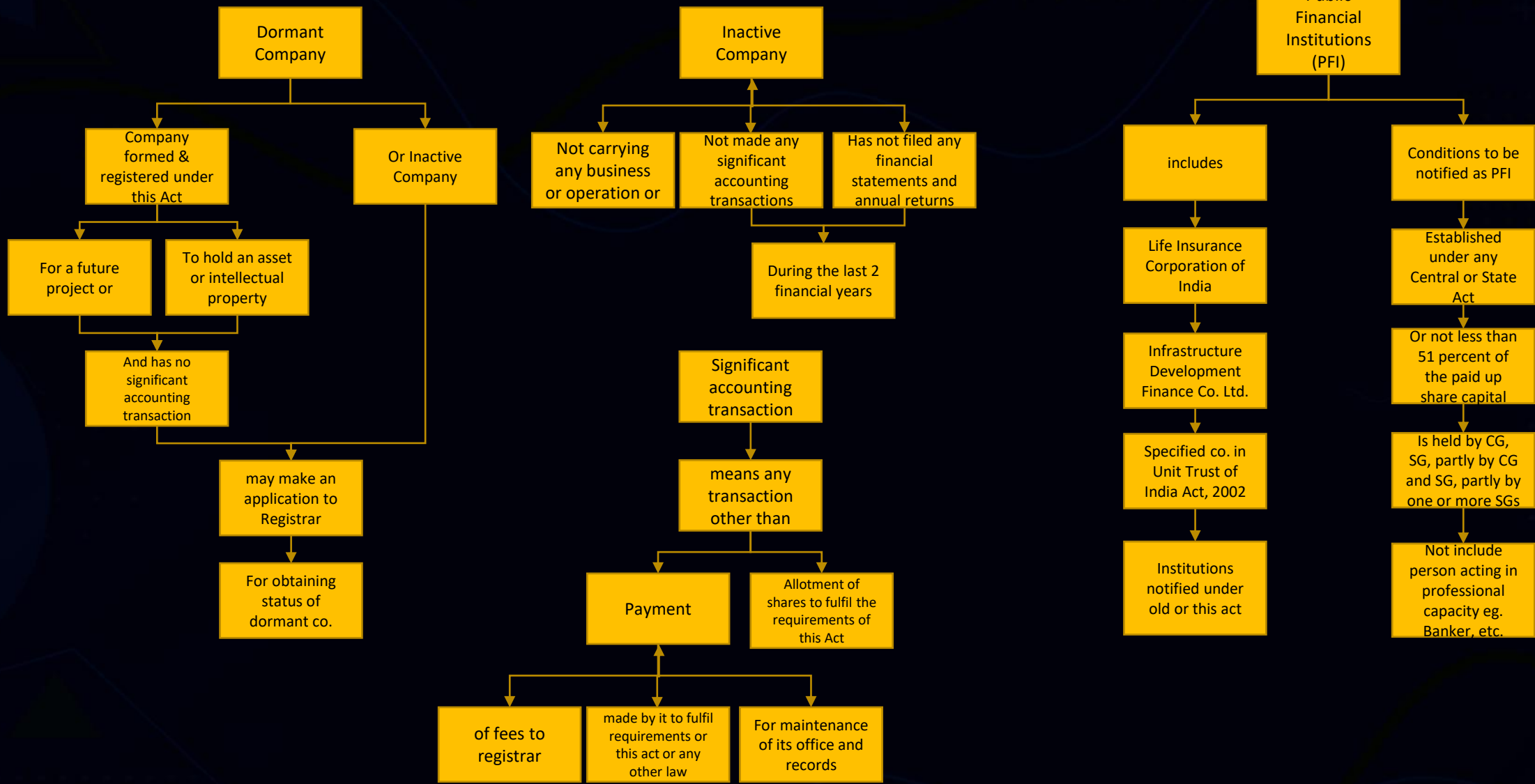
"The Company is at law a different person altogether from the subscribers to the memorandum, and though it may be that after incorporation the business is precisely the same as it was before and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustees for them. Nor are the subscribers, as members, liable, in any shape or form, except to the extent and in the manner provided by the Act."

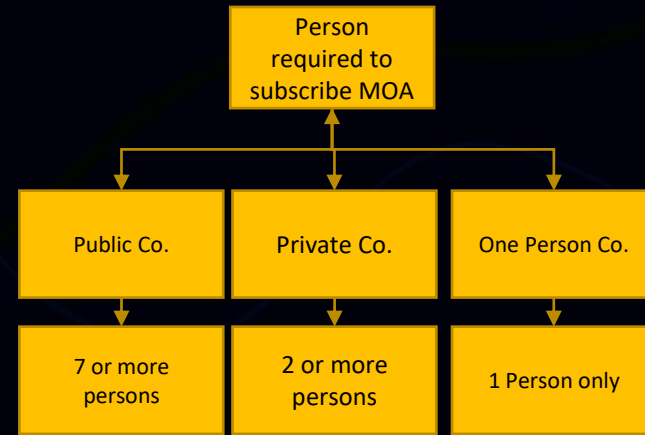
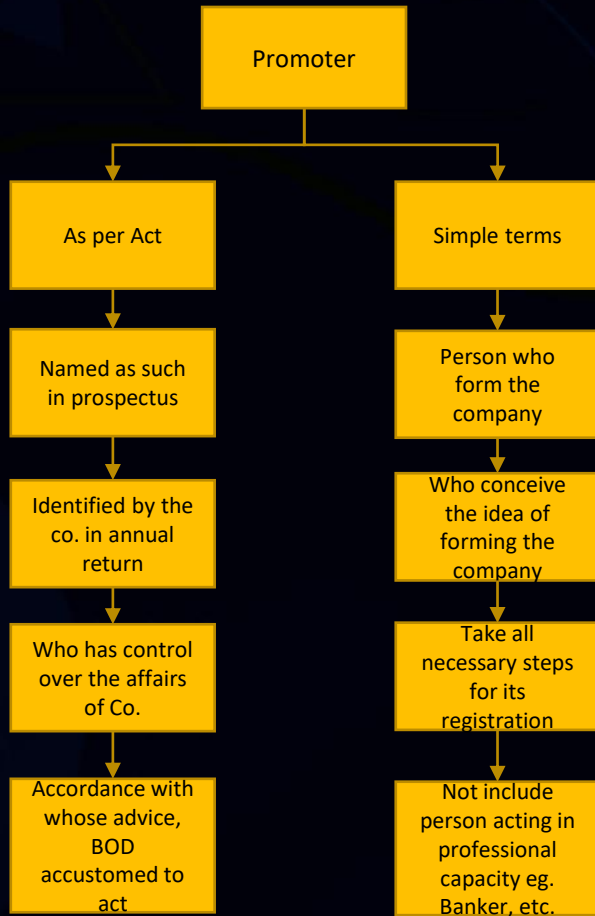












Section 7 – INCORPORATION OF COMPANY



SPICE = Simplified Proforma for Incorporating a Company Electronically



Promoter

Files SPICE form With additional documents



ROC



CORPORATE IDENTIFICATION NUMBER



RoC issues Certificate of Incorporation

LIST OF ADDITIONAL DOCUMENTS



- 1) MoA and AoA duly signed by subscribers to the MOA
- 2) Declaration that requirement for registration mentioned in the Act and rules are complied
- 3) Declaration that not convict/ not filed guilty for fraud
- 4) Correspondence address till registered office is established
- 5) Specified particulars of every subscriber to the memorandum
- 6) Specified particulars of First Director mentioned in articles
- 7) Interest of the first directors in other companies or firms

EFFECT OF REGISTRATION



- 1) From date of incorporation, Company is separate from Subscriber to MoA (Separate legal entity)
- 2) A company purchase 100 percent shares of other company but still they are different
- 3) Central Govt owns 100 percent shares of all the company but still it is not an agent of Govt
- 4) Any money payable by members to company will be considered as debt due to company



Where a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants

- 1) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
- 2) direct that liability of the members shall be unlimited
- 3) Declaration that not convict/ not filed guilty for fraud
- 4) direct removal of the name of the company from the register of companies;
- 5) pass an order for the winding up of the company
- 6) pass such other orders as Tribunal may deem fit:

Before passing order, Tribunal

- 1) Give the company shall be given a reasonable opportunity of being heard in the matter &
- 2) shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

CONTENT OF MOA – Compulsory Clauses



- 1) Name Clause – Name of the Company Private Co/. – Private Limited, Public Co. – Limited
- 2) Registered Office Clause – Only name of state in which registered office is situated
- 3) Object Clause – Main object and incidental objects thereto
- 4) Liability Clause – Limited by shares/guarantee/ unlimited Liability
- 5) Capital Clause – Only applicable for company limited by shares
- 6) Association Clause – Every subscriber must take atleast 1 share
- 7) Nominee clause (applicable to OPC) – In death of subscriber who will become member

MOA IS CHARTER OF THE COMPANY



- 1) Contains the object of the Company
- 2) Identifies the possible scope of its operations
- 3) MoA is a public document
- 4) Deemed Assumption – Everyone dealing with Co. has knowledge about the content of MoA
- 5) Format of MoA is given for each type of company

FORMAT	Applicable for
Table A	Limited by shares
Table B	Limited by guarantee and not having share capital
Table C	Limited by guarantee and having a share capital
Table D	Unlimited Company
Table E	Unlimited Company having share capital

Content of AOA



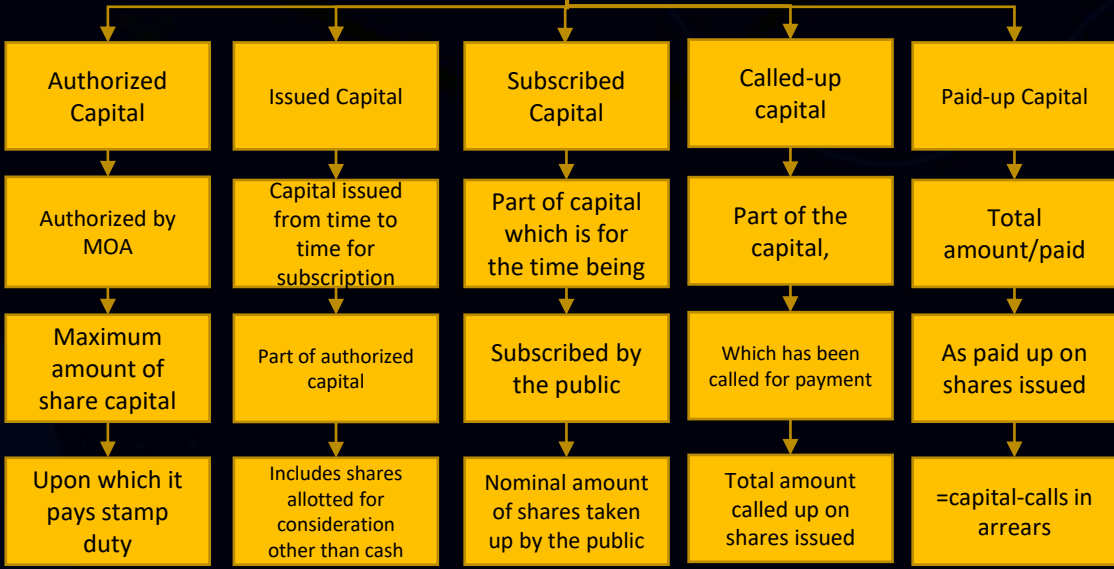
- 1) Contains Regulations –contain the regulations for management of the Company
- 2) Other Matters – Contains Matters as are prescribe under the Rules
- 3) Contains provision for Entrenchment
- 4) Manner of Inclusion of Entrenchment
- 5) Notice to Registrar of the entrenchment Provision
- 6) Forms of Articles :- Table F,G,H,I & J in Schedule I
- 7) A company may adopt all or any of the regulations contained in the model articles.
- 8) In case of any company, which is registered after the commencement of this Act, in so far as the registered articles of such company do not exclude or modify the regulations contained in the model articles applicable to such company, those regulations shall, so far as applicable, be the regulations of that company in the same manner and to the extent as if they were contained in the duly registered articles of the company.

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

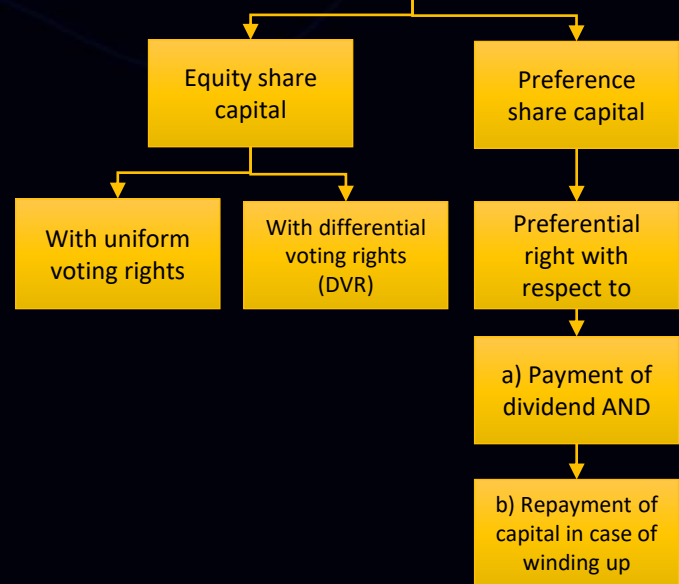
Manner of inclusion of the entrenchment provision: The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

Notice to the registrar of the entrenchment provision: Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

Types of Capital



Types of share capital





FACTS of the Royal British Bank vs. Turquand

Mr. Turquand was the official manager (liquidator) of the insolvent Cameron's Coalbrook Steam, Coal and Swansea and Loughor Railway Company. It was incorporated under the Joint Stock Companies Act, 1844. The company had given a bond for £ 2,000 to the Royal British Bank, which secured the company's drawings on its current account. The bond was under the company's seal, signed by two directors and the secretary. When the company was sued, it alleged that under its registered deed of settlement (the articles of association), directors only had power to borrow up to an amount authorized by a company resolution. A resolution had been passed but not specifying how much the directors could borrow.

Held, it was decided that the bond was valid, so the Royal British Bank could enforce the terms. He said the bank was deemed to be aware that the directors could borrow only up to the amount resolutions allowed. Articles of association were registered with Companies House, so there was constructive notice. But the bank could not be deemed to know which ordinary resolutions passed, because these were not registrable. The bond was valid because there was no requirement to look into the company's internal workings. This is the indoor management rule, that the company's indoor affairs are the company's problem.