Unit : 1

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# Indian Contract Act 1872

Agreement + Legal enforceability = Contract

Every promise / set of promises forming consideration for each other

↓

Offer + Acceptance

→ ESSENTIALS OF VALID CONTRACT

↑ PC² entered into (Legal)² Contract & FAINTed .

1] Possibility of Performance

Eg: Treasure by magic → impossible ∴ not enforceable

2] Certainity of Meaning
[certain not vague]

Eg: Land lease for indefinite years .

3] Capacity of Parties
[major, sound mind, not disqualified]

unsound → lunatic, drunken, idiot, influence of intoxicant

disqualified → alien enemy, convict, foreign sovereign

4] Legal Consideration
[Quid Pro Quo, Misa v/s Currie]

Eg: A —goods→ B ←₹5000—

5] Legal object

not lawful →
- prohibited by law
- defeats provisions of law
- fraudulent
- involves injury to person
- court regards immoral
- opposed to public policy

6] Free Consent
[same thing same sense : Consensus-ad-idem]

not free if →
- Coercion
- Undue Influence
- Fraud
- Misrepresentation
- Mistake

7] Fulfillment of Formalities
writing + registered

Eg. i² → insurance
→ immovable property

8] Agreement

9] Intention to create legal obligation
[Social / Domestic not enforceable]

Case Law: Balfour v/s Balfour .
Eg: Invite for dinner .

10] Not expressely declared as Void

Eg: Agreements in Restraint →
- Trade
- Marriage
- Legal proceedings

11] Two parties .

Case Law: State of Gujarat v/s

11] Two parties.

Case Law : State of Gujarat V/s Ramanlal S. Co.

→ **TYPES OF CONTRACT**

## Validity / Enforceability

- **Valid** — contains all essential elements
- **Void** — A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable
  Eg: Death, Fire in factory
- **Voidable** — Agreement enforceable by Law at the option of one/more parties but not at the option of other/others
  Eg: Coercion
- **Illegal** — Law forbids
- **Unenforceable** — good in substance but technical defect
  Eg: Absence in writing
  Eg: Barred by limitation

## Formation

- **Express** — Words or in writing
- **Implied** — ✓ Comes into existence by implication → law / action
  ✓ otherwise than in words
  Eg: Coolie in uniform
- **Tacit** — Tacit = silence inferred by conduct of parties.
- **Quasi**
  - Not actual contract but resembles contract
  - created by law under certain circumstances
  - law creates → rights / obligations
  - No ← intention, offer, acceptance
  Eg: Finder of lost goods
  Money paid by mistake
- **E-contracts** — Parties create networks via EDI
  Also known
  ↳ EDI contracts
  ↳ mouse click
  ↳ Cyber

## Performance

- **Executed** — Consideration → act (done/executed) / forebearence (brought on record)
- **Executory** — Consideration → reciprocal promise → obligation
  (yet to be performed)
  - Unilateral
  - Bilateral

→ **PROPOSAL / OFFER** = Willingness + View of obtaining Assent.

"When one person signifies to another his willingness to do / abstain from doing anything → with a view to obtain assent of that other to such act or abstinence"

**TYPES OF OFFER**

**General**
- Public @large & anyone can accept
- Case Laws: Carlil v/s Carbolic, Lalman Shukla v/s Gauri Dutt

**Special / Specific**
- Can be accepted only by specific person
- Case: Boulton vs Jones

**Cross**
- 1, 2 → identical → in ignorance of each other's offer
- No binding contract ∵ Only offer no acceptance

**Counter**
- Qualified Acceptance
- Amounts to rejection of original offer.

**Standing / Continuing / Open**
- Eg: Tenders

→ **ESSENTIALS OF VALID OFFER**

C⁴A SENDS an offer

| | |
|---|---|
| 1. Capable of creating legal relations | Social invitations do not create LR |
| 2. Certain, definite, not Vague | Eg: 100 quintals of oil. which oil? |
| 3. Communicated<br>Case Law: Lalman Shukla v/s Gauri Dutt | Acceptance of offer → in ignorance of offer is not acceptance |
| 4. Conditional | May contain T & C's.<br>Eg: Payment by RTGS/-<br>view → obtaining assent |
| 5. Assent | |
| 6. Specific / General<br>7. Express / Implied | Eg: Boy cleaning car on Signal |
| 8. Non compliance term | Eg: No reply in a week → assumed acceptance |
| 9. Different from invitation to offer / prospectus / advertisement | Eg: Advertisement of sale of goods by auction, Menu card in restaurant, Red Herring Prospectus |
| 10. Statement of Price is not an offer.<br>Case: Harvey v/s Facie. | Hint: 2 Q's<br>Will you sell Bumper House Pen<br>Telegram Lowest cash price. |

→ **ACCEPTANCE**

"Person to whom proposal is made signifies his assent thereto, proposal is said to be accepted.
Proposal when accepted becomes a promise"

Sir William Anson :- Acceptance is to offer what a lighted match is to train of gun powder

## → ESSENTIALS FOR VALID ACCEPTANCE

A C C e P$^2$ T S .

1] Absolute & unqualified (expressed in usual + reasonable manner)
Eg I will purchase your car provided you purchase my motor car .
Case Law : Neale V/s Merret

2] Communicated .
[in perceptible form .
conditional acceptance is no acceptance → i.e Counter proposal
offeree to have knowledge]
case Law : Brogden V/s Metropolitan Railway .

3] By Conduct / Implied
Performance of conditions
Other than verbal / written
Eg : Tradesman received an order
case Carlil V/s Carbolic Smoke Ball Co .

4] ○ to whom offer is made
Person
[Specific offer to be accepted only by that person] .
Case : Boulton V/s Jones .

5] Prescribe Mode .
If proposer does not insist on proposal to be accepted in manner prescribed
↓
the proposer is assumed to be consented .

6] Time .
[If not specified → Reasonable time] .

7] Silence is not acceptance unless offeree in previous conduct indicated that silence is acceptance .
Case : Felthouse V/s Bindley .
Eg : Magazine subscription .

## → COMMUNICATION OF OFFER & ACCEPTANCE

Communication is Complete

**OFFER**

when it comes to the knowledge of the person to whom it is made i.e offeree .

**ACCEPTANCE**

**Against Proposer**

When it is put in course of transmission to be out of power of acceptor

**Against Acceptor**

when it comes to the knowledge of proposer / offeror

## → Communication of special conditions

Conveyed tacitly also acceptance given tacitly .

Communication of special conditions

Conveyed tacitly also acceptance given tacitly.
Eg: Conditions printed behind Air tickets or displayed on notice board at Airlines office.

↓

Passenger presumed to have read it

Cases :- Mukul Datta V/S Indian Airlines
:- Lily White V/S Manuswamy.

Standard forms of contract :- Reasonable Notice of Special conditions
Case Law :- Rajpur Transport Co. V/S Ghanshyam.

→ **REVOCATION OF OFFER & ACCEPTANCE**

$N^3$ L C D S.

N → Notice
→ Non fulfillment of conditions precedent
→ Non acceptance according to prescribed mode

L → Lapse of Time
C → Counter offer
D → Death of / Insanity.
S → Subsequent illegality.

Unit : 2

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# CONSIDERATION → ©

Quid Pro Quo [something in return]

Misa v/s Currie :-

A valuable © in the sense of law may consist of either in right, interest, profit, benefit accruing to one party or forbearance, detriment, loss, responsibility given or undertaken by the other (i.e promisee)

Indian contract Act :

When at the desire of the promisor
↓
Promisee or any other person
- → has done / abstained from doing
- → does / abstains from doing
- → promises to do / abstain from doing

↓

Such an act, abstinence or promise is called consideration for the promise

## → LEGAL RULES FOR CONSIDERATION

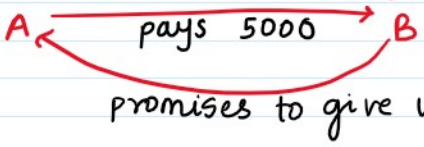
1] Must move at the desire of Promisor

Case Law: Durga Prasad v/s Baldeo
Act done at the desire of 3rd party is not ©

2] May move from promisee / any other person.

Stranger to consid$^n$ but not stranger to contract.

Case Law :- Chinnayya v/s Ramayya




3] Executed / Executory ©.

Executed → performance of act
Executory → promise.

4] © may be Past / Present / Future

Eg: A performs services at B's desire. After a week B promises to compensate

Past © → must move at previous request
Past © may be motive but not real ©
For services given in past at desire of promisor → subsequent promise is regarded as admission that past © was not gratuitous

5] © need not be adequate.

[Something in return ≠ (need not) Something given]

Eg X gives his 6 L worth house for 1L

Need not be of equal value but should be of some value.
Inadequate © → not a conclusive proof of no free consent; but if party alleges no free consent it can be used as one of the evidence.

6] Performance of what one is legally bound to perform.

[© need not be performance of existing duty]

Eg: Promise to pay money to witness is void
Eg: Client to pay lawyer in event of success after latter was engaged.
If promises to do more than legally bound is good ©

7] Real not Illusionary

existing entity.

7] Real not Illusionary (Eg: Treasure by magic)

8] Must not be unlawful, immoral, opposed to public policy.

- Success after lacker was enquired if promises to do more than legally bound is good ©

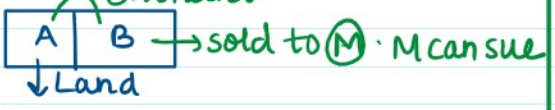
## → SUIT BY A 3rd PARTY TO A CONTRACT

Doctrine of **Privity to Contract** → i.e Only parties to contract can sue. Stranger cannot sue.

EXCEPTIONS:

Family Marriage $A^3$ C T

1) Family settlement [Terms reduced in writing] → Members of family who were not the part of settlement.
2) Marriage Contracts/settlement → Person for whose benefit provision made
3) Assignment → Assignee
4) Acknowledgement / Estoppel → 3rd party to whom promisor has acknowledged.
5) Agent → Principal
6) Covenant → Successor of seller




7) Trust → Beneficiary can sue

Parties: Settler → Trustee

## → AGREEMENTS WITHOUT ©

**No Consid^n No Contract**

7 Exceptions $A^2$ B $C^3$ D

1] Affection & Natural Love → Made out of natural love
- Near relationship in parties
- In writing
- Registered under Law

eg Husband → wife (gift)

2] Agency

3] Bailment → delivery of goods from one to another that are returned on accomplishment of purpose.

4] Compensation for past Voluntary services
- Services rendered voluntarily
- Rendered to promisor
- Promisor in existence when services rendered
- Promisor → to compensate (intended) Promisee

eg: P finds R's wallet ; R promises to give ₹10k to P

5] Completed gift eg: Donor & Donee

6] Charity [Radarnath V/s Gorie Mohammad]

7] Debt [Promise to pay Time Barred Debt] → Writing + Signed

Unit 3 .
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# OTHER ESSENTIALS OF A CONTRACT

**CAPACITY TO CONTRACT** → major (18+), sound mind, not disqualified

## LAWS FOR MINOR / POSITION OF MINOR

### STAR PLUS

1] Shareholder (only through guardian)
2] by mistake he becomes; Co can rescind the contract + remove name from register

2] Tort (civil Wrong) → Minor liable

3] Agent [Can be but not liable to Principal] .

4] Ratification
[No Ratification on attaining majority · Mortgage during minority is void] Eg: Promisory Note

5] Partnership [For benefits/-]

6] Liability for necessaries .
✓ Claim for necessaries enforceable
✓ No Personal liability but property liable
✓ 2 conditions < supply of necessaries / no sufficient supply
✓ Utility rather than Ornament
Eg: Education, funeral expenses

7] Surety for minor
↓
Contract enforceable as there is direct contract between surety & 3rd party

### MtV

8] Minority
minor can always plead minority
✓ Rule of Estoppel not applied
Eg: Fake Aadhar card for loan

9] Void-ab-initio
Case:
Mohori Bibi V/S Dharmo Das Ghose

### $C^2N^2B^2$

10) Contract by Guardian
Cannot bind for purchase of immovable property
Can sell immovable prop. of minor → after court's permission

11] Joint contracts .
Adult will be liable completely .

12] No Insolvency
∵ Incapable of contracting debts · Only property liable not he .

13] No Specific Performance
∵ Contract void ∴ no specific performance .

14] Binding Parents/Guardian
Cannot bind not even for necessities · will bind only when acting like agent !

15] Beneficiary .
Other party bound to minor for benefits .
Minor can sue
Minor admitted for benefits of partnership

— **PERSON OF SOUND MIND** → Capable of understanding + Forming rational judgement .

- ○ → usually unsound
  ↑ → ocassionally sound
  ↓
  make contract when sound
  Eg: Lunatic, Drunkard .

- ○ usually sound
  ↑ ocassionally unsound
  ↓
  cannot make contract when unsound .

→ **DISQUALIFIED** due to → political status / corporate status / legal status .
Egs :- Foreign Soverigns, Alien enemy Corporations, Convicts, Insolvents .

→ **FREE CONSENT**
↓ 2 or more persons are said to consent when they

## FREE CONSENT

↓ 2 or more persons are said to consent when they Agree upon same thing in same sense.

When parties make fundamental error or ambiguity as to :

- T & C's
- Nature of transaction
- person dealt with
- subject matter of contract

→ No consent.

Def :- Consent is Free when not caused by.

- Coercion
- Undue Influence
- Fraud
- Misrepresentation
- Mistake → Void.

(Coercion, Undue Influence, Fraud, Misrepresentation → Voidable contract)

## COERCION

Def : Coercion is

- Committing or Threatening to commit → Any Act → Forbidden by IPC
- Unlawful detaining or threatening to detain → Any property → to the prejudice of any person

with an intention of causing that person to enter into an agreement.

# Need not proceed from a party to contract / subject of coercion need not be other contracting party → can be 3rd party also

# Immaterial whether IPC in force at place where coercion employed

Effects of Coercion → Voidable + Restore benefit.
Eg: Husband release deed under threat of suicide.

## UNDUE INFLUENCE

Def : Contract said to be induced by UI where relations subsisting between the parties are such that one of the parties is in position to dominate the will of other & he uses the position to obtain unfair advantage on other

Essential ingredients for UI :.

1) Relation between parties
2) Position - (Deemed) to dominate will
   - → Real Apparent Authority Eg: Father & Son; Master & Servant
   - → Fiduiciary relationship Eg: Debtor, Creditor; Doctor & Patient
   - → Mental Distress Eg: Old unwell illiterate
   - → Unconscionable Bargains Eg: Unfair money lending trans
3) Object to take undue advantage.
4) Burden of Proof :- person in dominant position

→ Power to set aside by court · either absolutely & if party received any benefit → then subject to t & c's

⟹ FRAUD

received any benefit → then subject to t & c's

## FRAUD

Def:- Means & Includes any of following acts committed by Party to contract / with his connivance / agent with an intent to deceive another party / agent or induce him to enter into contract:

1) Suggestion of fact → which is not true → by one who does not beleive it to be true
2) Active concealment of a fact → by one having knowledge / belief of fact
3) Promise made without intention of performing it
4) Any other act fitted to deceive
5) Any such act / omission as law declares to be fraudulent.

→ Essential elements of Fraud:

Representation (R):
1. There must be (R) & it must be False
2. Must relate to fact
3. Made before conclusion of contract
4) Made with knowledge of its falsity

Other Party:
1. Induced to act upon representation
2. Relied on Representation & deceived
3. Sufferred Loss.

→ Effects of fraud on contract

Rescind within reasonable time + Sue for damages + Specific performance (to put in a position in which he would have been had the repres. been true).

→ Mere silence is ≠ Fraud (Caveat ↓ emptor) 2 exceptions
- Duty of person to speak
- Silence = Speech

→ Silence is Fraud :-

Duty of Person to speak

FM (Contracts)$^3$.

1. Fiduciary Relationship — Eg: Secret profits by broker out of client's shares.
2. Marriage contracts.
3. CONTRACT OF
   - Insurance
   - Family Settlement
   - Share Allotment

   } Full disclosures of all 'MATERIAL FACTS'
4.
5.

→ MISREPRESENTATION

Statement of a fact which is false → is misrepn if maker believes it to be true

Breach of duty by a person without any intention to deceive →

where a party causes other party to make a mistake with regards to

is misrep^n if maker believes it to be true but not justified by info^n he possess.

to deceive ↓ which brings advantage to him

make a mistake with regards to subject matter.

Effect :- Voidable + Specific Performance

→ **MISTAKE** i.e → innocent / erroneous belif → leads other party to misunderstand others.

**Mistake Of Law**

- Indian Law (not an excuse).
- Foreign Law (Treated mistake of fact)

**Mistake of Fact**

- Bilateral Mistake of Subject Matter: Existence, Quality, Quantity, Price, Identity, Title.
- Unilateral Mistake.
  - ↓ Not Void
  - 2 Exceptions :- (i.e Void in these 2 cases) Identity of person contracted with; Nature of Contract.

## → LEGALITY OF OBJECT & CONSIDERATION

| | |
|---|---|
| 1. Forbidden by Law | i.e punishable under statue / Prohibited by regulations or orders |
| 2. Defeats provisions of law<br>Eg: Agreement → debtor not to plead limitation<br>Eg: Son given in adoption for allowance defeats Hindu Law | i.e defeating the intention with which law has expressed. |
| 3. Fradulent | Eg: Sold goods for smuggling. |
| 4. Causing Injury to Person/ Property. | Eg: Printing book in violation of copyright<br>Eg: Repay debt by manual labour (Slavery) |
| 5. Immoral | Eg: Advancing money to obtain divorce. |
| 6. Opposed to Public Policy. | Freedom of contract is restricted for good of community. |

## → Agreements opposed to Public Policy

SC TI²M TAM

| | |
|---|---|
| 1. Stifling Prosecution<br>↓<br>Compromise of public offence is illegal | Agreement to present proceedings already instituted → from running normal course using force. One should not make 'Trade of Felony'<br>For Compoundable offences allowed. |
| 2. consid^n unlawful in Part | Single consid^n → for multiple objects or any |

2. consid^n unlawful in Part ↓ legal part can be severed → bad part rejected good part retained.

Single consid^n → for multiple objects or any part of one of several consid^n for single object is unlawful → agreement void.
eg 1 salary for 2 jobs.

3. Trading with enemy.

without licence → void

4. Interference with course of justice

Inducing judicial officer to act partially/corruptly
eg: Paying witness for absconding himself from trial

5. Interest against Obligation

eg: Agreement by agent compensation from another without principal's consent

6. Maintenance & Champerty
↓ person maintains suit in which he has no interest
↓ assist in litigation in exchange of portion of proceeds

It is valid unless :- it is
1) unreasonable so as to be unjust
2) Made with malicious motive like that of gambling in litigation / oppressing other party by encouraging unrighteous suits.

7. Traffic relating to Public offices
↓
Interferes with person best qualified for service.

eg: Money paid to public servant to induce him to retire so that other person may secure appointment.
eg: Agreement to secure Padma Vibhushan

8] Agreements tending to create monopolies

eg: XYZ Co & ABC Co only manufacturers of Oxygen cylinder contract to sell at ↑rate.

9] Marriage brokerage agreements

eg: Paying money to a person hired to procure wife
Exception: Marriage Bureau.

## ⇒ VOID AGREEMENTS :-

1) **Restraint of Marriage:**

2) **Restraint of Trade:**
a) Restrained from excercising lawful → profession, trade, business } void.
b) Exceptions :-
Sale of goodwill, Outgoing partner, Agreement between partners, Employee bond
not to carry similar business for specified time & specified local limits → [to be reasonable]

3] **Restraint of Legal Proceedings**
Party is restricted from enforcing his rights through court (court jane nahi dena)
2 Exceptions :- Dispute to be referred to in arbitration
:- Any question between parties to be referred to arbitration

2. Exceptions :- Dispute to be referred to in arbitration
:- Any question between parties to be referred to arbitration

4] Agreement the meaning of which is uncertain
Oil wala example

5] Wagering Agreement :-
Payment of money upon determination of uncertain event
Eg A $\xrightarrow[\text{if it rains}]{5000}$ B & vice versa

↳ Essentials of Wager
a) Promise to pay money/money's worth
b) conditional on event happening/non happening
c) Uncertainity of event
d) 2 parties each must stand to win/lose
e) common intention to bet
f] No interest in event except for stake

TRANSACTIONS

**Similar to Wager & Void**

1] Lottery Transactions
[even if sanctioned by Govt]

2] Crossword Puzzles & Competitions
Prize if competitor's solution & previously prepared solution match.
Exception :- If prize ≤ 1000

3] Speculative Transactions
Parties settle the Difference in Contract price − Market price

4) Horse Race Transactions
If bet winner is paid < ₹500 it is a wager.

**Resembling Wager but not Void**

1] Chit Fund
No. of members contribute fixed sum of money for specified period amt is paid to winner of lucky draw

2] Commercial transactions / Share mkt transaction
In which delivery is intended to be given/taken

3] Games of skill / Athletic competition

4] Contract of Insurance.
↓
Contingent Contract.

Unit 4 .

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# PERFORMANCE OF CONTRACT

Parties of Contract must

**Perform**

Actual Performance

[has done what he had undertaken to do] .

**Offer to Perform**

Attempted Performance

[When performance becomes due, Promisor offers to perform but Promisee rejects] .

Attempted Performance = Performance

4 Conditions

- It is unconditional
- At proper time & place
- under such circumstances that person to whom it is made has reasonable opportunity of ascertaining that person to whom it is made is Able & willing .
- If offer to deliver anything then promisee has reasonable opp . to ascertain Things offered = Things promisee was bound to deliver

→ **BY WHOM A CONTRACT MAY BE PERFORMED**

- **Promisor himself** [Personal Skill / deligence or founded on personal confidence] .
- **Agent**
- **Legal Representatives** [Liability ltd upto the value of property inherited]
- **3rd Persons** [If accepted from 3rd party cannot enforce again against Promisor] .
- **Joint Promisors** [All should jointly perform & on their O← their LR's ] .

→ **SUCCESSION** V/S **ASSIGNMENT**

Both benefits & burden are succeeded

Eg Son succeeds to the estate of his father after O←

Only benefits can be assigned not liabilities

Eg: Debtor cannot relieve himself of his liability to creditor by assigning to someone else his Obligation.

→ EFFECT OF A REFUSAL OF PARTY TO PERFORM PROMISE WHOLLY:

2 Rights accrue

- **Terminate the Contract**
- Indicate by < words / conduct that he is **interested in continuance**

If promisee decides to continue then not entitled to put an end to the contract on that ground subsequently .

If promisee decides to continue then not entitled to put an end to the contract on that ground subsequently.

Damages can be claimed.

→ **LIABILITY OF JOINT PROMISOR & PROMISEE.**

When 2/more persons have made the promise, all such persons are jointly liable.
After death of any of them → his LR jointly with survivors
After death of all → LR's of all jointly liable

If Promisors do not perform their obligations voluntarily then:-
1) Promisee may compel one or more of the promisors to perform.
2) Each Promisor can compel contribution from others.
3) Sharing of loss by default in contribution by remaining promisors in equal shares.
4) Effect of release of one joint promisor: by promisee does not release him from responsibility to other joint promisors

→ **TIME & PLACE FOR PERFORMANCE OF PROMISE RULES:**

| Sec | Cases where | Rules for Performance |
|---|---|---|
| 46 | Time not Specified | within Reasonable time (facts & circumstances) |
| 47 | Time specified but promise to be performed without promisee's application | to be performed during usual hours of business and place where promise ought to be performed. |
| 48 | Application for perform on certain day to be at proper time & place | Duty of Promisee to apply for proper place during usual hours of business. |
| 49 | Place for performance; where no application to be made & no place fixed for performance | Duty of Promisor to apply a reasonable place. for performance |
| 50 | Manner of Performance @ time prescribed | In the manner & at the time prescribed by promisee. |

→ **PERFORMANCE OF RECIPROCAL PROMISE**

(51) Promisor not bound to perform unless reciprocal promisee ready & willing to perform.
i) Reciprocal promises to be performed simultaneously.
ii) Such promises constitute concurrent conditions
iii) Performance of one promise → conditional upon performance of other
Eg: Cash Transaction

(iii) Performance of the promise → conditional upon performance of other
Eg: Cash Transaction

(52) Order of Performance.

If expressely fixed
→ then in that order
Eg: Credit Transaction

Not Expressely fixed
→ as per nature of transaction
Eg: In loan contract: 1st mortgage then loan disbursement.

(53) Liability of party preventing event on which the contract is to take effect:-
Contract has reciprocal promise & one party prevents other
↓
Contract becomes voidable at the option of party so prevented & entitled to compensation for loss.
Eg: Plumber.

(54) Effect of default → as to that promise which should be first performed → in contract consisting reciprocal promises.
✓ It applies for promises that are reciprocal & dependent.
If promisor who had to perform 1st fails to perform he cannot claim performance of other's promise & liable for compensation.

(55) Time factor in a contract

Time is essence of contract
✓ Contract becomes voidable at option of promisee
✓ If performance beyond time is accepted by Promisee - Compensation cannot be claimed
↓ unless
Notice for compensation given at the time of acceptance

Time is not the essence
Contract does not become voidable @ the option of promisee.
✓ Promisee entitled to claim compensation for loss occassioned for non performance

(56) Agreement to do Impossible Act → (Void)

Initial Impossibility.

Know to parties
↓
Void-a-initio

unknown to parties
↓
Void (mutual mistake)

known to promisor alone.
Void but
Promisor → compensate → Promisee

Supervening Impossibility.

due to occurence of unexpected event / change of circumstances beyond control of parties
Eg: Change in law, War-like conditions,

Performance of contract is quite possible when made
↓
some event renders it impossible

Also known as Post contractual Impossibility
↓
It makes the contract void.

Eg A → B (marriage contract), Before marriage A became mad ∴ Contract void.

(57) Reciprocal promise to do certain things that are legal & some other things that are illegal.

1st set of legal things → Valid
2nd is Void.

Eg: → normal purpose ₹ 5L
→ gambling ₹ 7·5L

(58) Alternate promise → one branch illegal.

Only legal branch can be enforced

A —IL→ (B) shall deliver either < rice / opium.

→ APPORTIONMENT OF PAYMENTS

Situation: Debtor owes several debts → same creditor & payment not sufficient to discharge all debts ∴

Sec 59
Already indicated
↳ Expressely
↳ Implying circumstances that payment to be applied for a particular debt

Sec 60
↓ Not indicated by debtor then
↓
Creditor's discretion

Sec 61
Where neither party appropriates Discharge in 'Order of Time'
↓
If debts of equal standing apply proportionately

→ CONTRACTS NEED NOT BE PERFORMED WITH CONSENT OF BOTH THE PARTIES :-

I] Novation :- New contract for old. Old contract is discharged. Parties of contract may change. Only by mutual agreement.

Eg A owes IL B
A, B, C agree C will pay B

II] Rescission Parties resind the contract it need not be performed old cancelled, new does not come in existence. Novation also involves rescission

III] Alteration Terms of contract are altered between the same parties. Old contract is discharged & substituted by new. Parties of contract remain same.

→ DISCHARGE OF A CONTRACT

P M Bole MITRON

1] Performance [Actual & Attempted]
2] Mutual Agreement [Novation / Rescission / Alteration]
3] Breach [Actual & Anticipatory]
4] Merger of Rights [Inferior to Superior] [Lease to Ownership].
5] Impossibility of Performance Eg: Change of law, destruction of subject, War
6] Time Lapse [Eg: Case by creditor in 3yrs].
7] Remit. / Wavier by Promisee [Eg A accepts IL in satisfaction of ₹5L debt]

6] Time Lapse [Eg: Case by creditor in 3yrs] .

7] Remit / Wavier by Promisee [Eg A accepts 1L in satisfaction of ₹5L debt]

8] Operation of Law Eg Ot, Insolvency .

9] Neglect by promisee to afford facilities to Promisor Eg: Plumber

# Unit 5

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## BREACH OF CONTRACT & ITS REMEDIES

Failure of a party to perform his/her obligations under contract

### Actual Breach

Refusal to perform promise on scheduled date

- At the time when performance is due
- During the performance

### Anticipatory Breach

Occurs before time fixed for contract is arrived

- Expressely — eg: Due date 1 Aug, notice of breach 1st July.
- Implied — eg: Sold Horse before the date of performance to someone else.

### EFFECT OF ANTICIPATORY BREACH

Promisee has option

- Treat the contract rescinded on the date of breach + Sue for (non performance, damages) — No need to wait for due date of performance
- Not to treat the contract as rescinded & treat it still operative; wait for time of performance & then hold other party responsible for non performance.
  - But if he keeps the contract alive for benefits of other party + his own then guilty party can
    - still perform his part of contract on reconsideration
    - can take advantage of supervening impossibility which may have the effect of discharging the contract.

## REMEDIES AVAILABLE :-

### I] SUIT FOR DAMAGES

Sec 73 : Rules for determination of amount of damages.

- Naturally arose in usual course of business
- Parties knew while entering into contract
- compensation not for remote / indirect loss.

TYPES OF DAMAGES →

- **General Damaages / Ordinary** (Sec 73) ?
  Case Law: Hadley V/S Baxendale
- **Special Damages**
  Notice of special circumstances required
- **Vindictive / Exemplary**
  Breach of → promise to marry as causes injury to feelings
  → wrongful dishonour by banker of customer cheque causes loss of credit & reputation to a trader.
- **Nominal damages**
  Name Sake. Where promisee suffered no real damage. just to establish right to decree. It may be Rupee / 10 paisa
- **Damages for deteriation caused by delay**

just to establish right to decree. It may be rupee / 10 paisa

→ **Damages for deterioration caused by delay**
Can be recovered from carrier even without notice

→ **Prefixed Damages** (decided at the time of formation of contract)

Liquidated Damages (reasonable estimate) ✓ — Penalty (Arbitarily fixed) ✗

Can be claimed not exceeding amount fixed in contract.

## II RESCISSION OF CONTRACT

When contract broken by one party → other can treat it rescinded & is absolved of all his obligations + entitled to compensation

## III QUANTUM MERUIT (QM)

As much as party providing the services deserves.
When a party has done even a part of contract he shall be compensated for part work.
2 conditions → contract should be discharged
→ Party not in fault should bring the claim.

→ QM is restitutory in nature unlike damages are compensatory

Claim can be brought in following cases:

1) When contract becomes void
2) Services were not given gratituously
3) No Remuneration was fixed
4) Party abondons / refuses to perform
5) Contract - divisible & party not in fault enjoyed benefits of part performance
6) Indivisible Contract performed badly → [Lumpsum — Deduction for bad work]

Eg:- Agency revoked wrongfully.

## IV SUIT FOR SPECIFIC PERFORMANCE

If damages not sufficient court may order specific performance.

## V SUIT FOR INJUNCTION

When a party negates the terms of contract → Court may send 'Injunction orders to restrain' him. Eg: Film star acting for other producer

→ **PENALTY V/S LIQUIDATED DAMAGES** :-

| Penalty | Liquidated Damages |
|---|---|
| 1. Sum very large & excessive Far from probable damages | 1) Genuine estimate of probable Damages. |
| 2. **Essence** :- To create terrorem | 2) To compensate for real damages |
| 3. Unreasonable, Extravagant & Exhorbitant. | 3) Reasonable |
| 4. Arbitarily fixed without calculations | 4) Proper calculated estimation of losses. |
| 5. Clause is disregarded | 5) Clause is effective & recoverable |

Unit : 6

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# CONTINGENT & QUASI CONTRACTS

## I] CONTINGENT CONTRACT

Def: A contract to do or not to do something, if some event collateral to such contract does or does not happen

Eg: Contracts of Insurance / Indemnity.

Def: Collateral Event :-
An event which is niether
- performance directly promised as part of contract
- nor whole of consideration for promise

→ Essentials of Contingent Contract

1] Performance depends upon happening / non happening of some event
2] Event is collateral to the contract
3] The contingent event should not be 'mere will of promisor'
4] Event must be uncertain.

→ RULES FOR ENFORCEMENT OF CONTINGENT CONTRACT

### Rule 32

Enforcement of a contract contingent on event happening

Enforceable on :- event happening

Void on :- Happening of event becomes impossible

Eg $A \xrightarrow[IL]{} B$ if ⛵ returns.

⛵ returns enforceable

### Rule 33

Enforcement of event contingent upon event not happening

→ happening of event becomes impossible

→ event happens.

$A \xrightarrow[IL]{} B$ if ⛵ does not return

⛵ sinks enforceable

**Sec 34** Contract would cease to be enforceable contingent upon (♀ living person) → if that person does something to make the event/conduct impossible.

Contract is void. Eg: $A \xrightarrow[IL]{} B$ if (B) marries (C) but (C) marries (D)

here (C) has rendered event of marrying (B) impossible

**Sec 35**

Case 1
Contingent upon event happening within fixed time

Void :- If such event does not happen before expiration of fixed time
+
If event becomes impossible before fixed time

Case 2
Contingent upon event not happening with fixed time.

Valid if SAME.

If event becomes impossible before fixed time



Eg: A → B if  return with 3 months

Case 1 does
Case 2 does not

**Sec 36**

Contingent on impossible event

Void if : Parties knew / did not know about the impossibility

Eg A → B → in sun rises from west

→ ⟷ intersect

## QUASI CONTRACTS

1. Not a contract but like a contract ; as Court recognizes it.
2. Created by Law. Law imposes rights + obligations
3. No essential elements of a contract like NO ↙ offer, ↘ acceptance, ↓ consent, consid°
4. Social relationships give rise to social obligations
5. Based on principles of ⟷ equity, justice, good conscience.
6. Maxim → No man should grow rich out of other person's loss.
   Eg: Goods left back by mistake, Money paid by mistake.
7. Also known as 'quasi contractual obligations'
8. Features:
   1] Always a Right of money / Liquidated some of money.
   2] Does not arise from agreement but created by law
   3] Right not available 'against the world' but 'against a person'/-

### CIRCUMSTANCES OF DEEMED QUASI CONTRACTS:

1] Claim for necessaries provided to a person → incapable of contracting
Eg: To lunatic / minor necessaries that were suitable to his actual requirement.

2] Payment by an interested person:
Person is interested in payment of ₹ → which another is bound by law to pay. is entitled to be reimbursed by other.
Eg: A the lease holder to pay property tax bound to be paid by owner

3] Obligation of person enjoying benefits of non gratuitous act.
Plaintiff to prove
1) He had done the act or had delivered the thing lawfully.
2] That he did not do so gratitously
3] Other person enjoyed the benefit.
Case law:- Shyamal v/s State of U.P [Govt servant was compulsorily retired + paid salary but no work]

4] Responsibility of finder of lost goods
Finder to take responsibility like a Bailee.
1) Take proper care of property as man of ordinary prudence
2] No Right to appropriate the
3] Return goods if owner is found.

finder to take responsibility like a bailee.

1) Take proper care of property as man of ordinary prudence would do

2] No Right to appropriate the goods.

3] Return goods if owner is found.

Case Law :- Hollins v/s Howler [H picked & handed diamond to F]

5] Money paid by mistake / under coercion.

eg: Extra taxes paid to municipal authorities can be recovered.

# SOGA U1

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## FORMATION OF CONTRACT OF SALE

B ⟵ PRICE (monetary consid^n) ⟵ S

B ⟶ GOODS ⟶ S

**BUYER**
Person who
buys or Agrees to buy

Every kind of Movable Property Other than Actionable claim & Money
& includes: stocks & shares
growing crops & grass
things attached to or forming part of land that are agreed to be severed before/ under the contract of sale.

**SELLER**
Person who
sells or agrees to sell

### → TYPES OF GOODS

#### Existing Goods
In existence & owned & possessed at the time of sale

1) **Specific Goods**
Identified & agreed upon at the time of sale
Eg: Samsung Galaxy S7
Voltas AC 2.0 litres

2] **Ascertained Goods**
✓ Identified after Contract of Sale
✓ Not defined judicially interpreted
✓ When from a lot of / large qty of unascertained goods → Qty contracted for is identified it is ascertained goods

✓ Before ascertainment it is a contract for sale of unascertained goods
Eg 100 bales of cotton: 50 set aside

3] **Unascertained Goods**
✓ Not identified/ ascertained
✓ Indicated / defined ⟶ by description/sample.
Eg A decides to sell 1 pack of salt out of 100 p

#### Future Goods
✓ Yet to be → manufactured / produced / acquired after the contract of sale.
✓ Always an 'Agreement to Sell'
↓
Because a man cannot sell what is not in existence
Eg: To sell all the milk cow will yeild
Eg To sell all oranges tree will produce.

#### Contingent Goods
✓ Acquisition by (S) depends upon uncertain contingency.
✓ Always Agreement to Sale
✓ Property will pass to (B) in future
Eg A agrees to sell painting → B
if he is able to purchase from previous owner

### → DELIVERY AND ITS TYPES
Voluntary transfer of POSSESSION from one person to another.
It means doing anything which has the effect of putting the goods in possession of buyer.

**Actual Delivery**
Physically delivered

**Constructive**
✓ Effected without any

**Symbolic**
Delivery of a thing / token

**Actual Delivery**
Physically delivered

**Constructive**
- ✓ effected without any change in custody / actual possession
- ✓ Delivery by Acknowledgement
  eg warehouse holding goods of A agrees to hold for B.

**Symbolic**
Delivery of a thing / token of transfer of something else
- eg: Document of title before delivery of goods
- eg: key of warehouse containing goods.

→ **DOCUMENT OF TITLE OF GOODS** includes: bdw² rmw o²

| b | d | w² | | r | m | w | o² |
|---|---|---|---|---|---|---|---|
| Bill of lading | Dock warrant | Warehouse keeper's certificate | Wharfinger's certificate | railway receipt | multimodal transport doc | warrant | order for delivery / other doc |

used in ordinary course of biz as proof of
✓ possession ✓ control of goods ✓ authorizing ✓ purporting to authorize
either by endorsement or by delivery the possessor of document to transfer / receive the goods thereby represented.

→ **MERCANTILE AGENT**
Agent in customary course of biz has authority to
- sell goods
- consign for sale
- buy goods
- raise ₹ on security of goods

→ **PROPERTY** → means General property in SOGA

| General Property | Special Property |
|---|---|
| Transfer of ownership | Transfer of Possession |

# General prop. in a thing may be in one person & special prop. in another
# General prop in a thing may be transferred subject to special prop. continuing to remain with another person.

**Sale v/s Agreement to Sale** · I² LR³ N² T

| Basis | Sale | Agreement to Sale |
|---|---|---|
| 1. Insolvency of (S) | The OA will ✗ takeover the goods ✓ recover the price | The OA ✓ acquire control on goods ✗ recover price |
| 2. Insolvency of (B) | OA ✓ control over goods | OA ✗ control over goods |
| 3. Liability of Parties for subsequent loss | (B) ↑ responsible | (S) ↑ responsible |
| 4. Remedies for Breach | (S) ↑ can sue (B) ↑ for price as ownership tfd | (S) ↑ can claim damages/- |
| 5. Risk | Risk follows ownership → (B) ↑ | (S) ↑ |
| 6. Rights of Resale by Seller | ✗ | ✓ |

| | | | |
|---|---|---|---|
| 6. | Rights of Resale by Seller | ✗ | ✓ |
| 7. | Nature of Rights | ƒus in Rem ✓ | ƒus in Personam |
| 8. | Nature of Contract | Executed | Executory |
| 9. | Transfer of Property | Immediately | Future Date |

→ **ELEMENTS TO CO-EXIST FOR A CONTRACT OF SALE:**

1. 2 Parties (B) & (S)
2. Subject matter of Contract → GOODS ← existing / future / contingent
3. ₹ in money not kind. or Partly in ₹ & Partly kind.
4. (S) —Transfer of property→ (B) & O + A
5. Absolute / Conditional contract
6. All other essential elements of valid contract must be present.

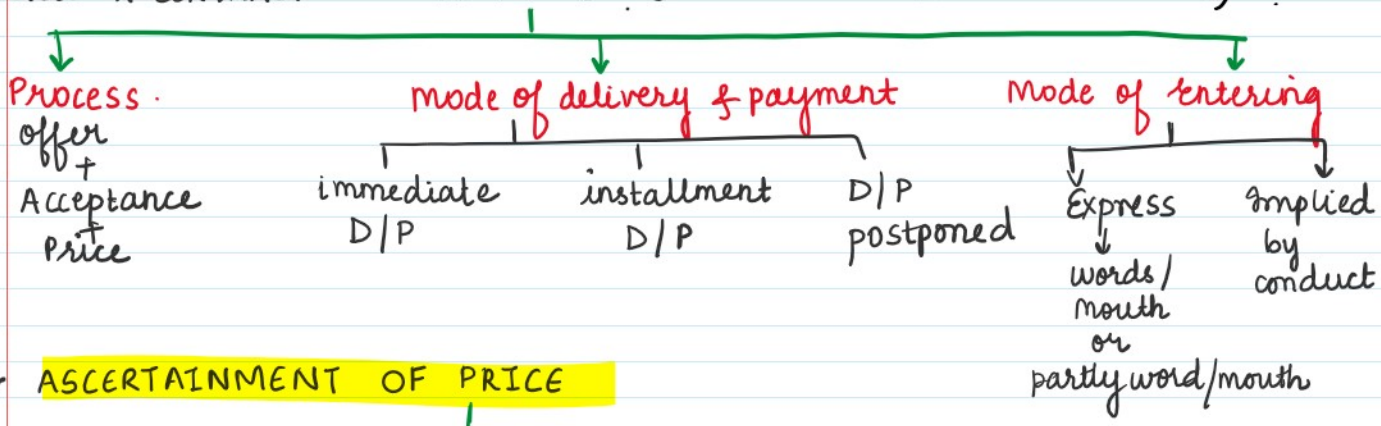
→ **Sale v/s Hirepurchase** ✦ $T^3\ R^2\ P$.

| Basis | Sale | Hire-Purchase |
|---|---|---|
| 1. Time of passing property | Immediately | On payment of last installment. |
| 2. Termination of cont. | (B) cannot terminate + ↑ Bound to pay ₹ | Can terminate by returning goods & no liability to pay remaining installments |
| 3. Transfer of title | (B) can pass a good title ↑ to bonafide purchaser | Hirer cannot |
| 4. Risk of Insolvency of (B) | (S)'s Risk ↑ | Vendor takes no risk as he can take back goods |
| 5. Resale by (B) | ✓ | ✗ (until payment of last installment) |
| 6. Position of party | (B) → Owner ↑ | Hirer → Bailee. |

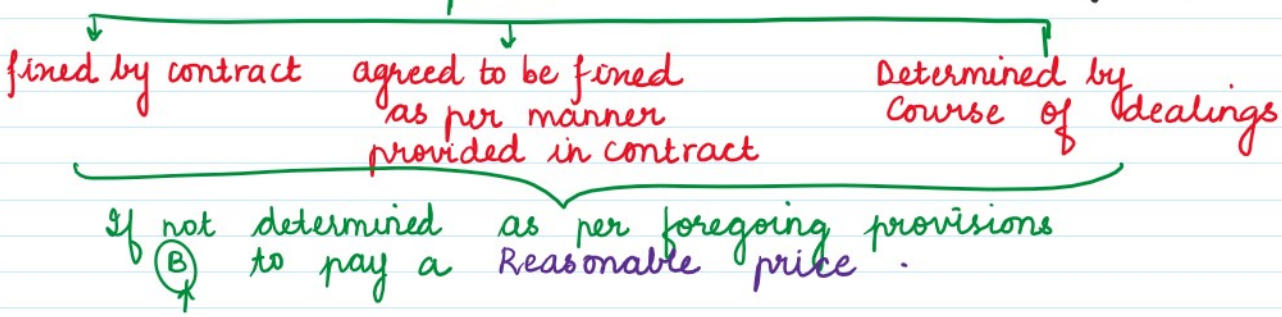
→ **Sale v/s Bailment**

| Basis | Sale | Bailment |
|---|---|---|
| 1. Transfer of Property | Tf. from (S) ↑ to (B) ↑ | Only tf. of possession from bailor to Bailee for safe custody/delivery |
| 2. Return of goods | Not possible | Must return on accomplisment of purpose. |
| 3. Consideration | Monetary Consid^n ₹ | Consid^n may be gratitous or non gratitous. |

→ HOW A CONTRACT OF SALE MADE? (PROCESS FOR CONDUCT OF SALE)




→ ASCERTAINMENT OF PRICE




→ AGREEMENT TO SELL AT VALUATION :-

1] If agreement to sell on terms that price to be fixed by 3rd party & 3rd party either does not / cannot make the valuation Agreement will be void

2] 3rd party is prevented by default of either party from fixing price
↓
Party at fault will be liable for damages.

3] (B) who has received + appropriated the goods → to be reasonable price.

SOGA U2

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# CONDITIONS & WARRANTIES

(S) makes numerous REPRESENTATIONS → Nature, Quality, Fitness for (B) purpose, to induce the (B)

- Relevant (Having legal effects)
  - A representation which forms a part of contract of sale & are relevant are known as STIPULATIONS.
    - More significant — CONDITION
      - Def: It is a stipulation i.e the essence of the contract of sale
      - the breach of which gives rise to RIGHT TO REPUDIATE the contract
    - Less significant — WARRANTY
      - Def: It is a stipulation i.e collateral to the main purpose of contract
      - breach of which gives rise to CLAIM FOR DAMAGES and not a right to reject goods/repudiate the contract
- Not relevant
  - ∴ No Legal effects

Condition may be treated as warranty

Warranty cannot be treated as condition

→ CONDITION MAY BE TREATED AS WARRANTY (Waiver)

- Voluntary
  - ✓ Waives performance
  - ✓ Elects to treat C as W
- Compulsory
  - ✓ Non Severability + (B) accepts part
  - ✓ Fullfillment of conditions excused by law.

→ EXPRESS & IMPLIED CONDITIONS

- Decided at the time of contract
- Presumed by Law to be present

## IMPLIED CONDITIONS:

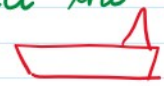
1. Condition as to title :-
   - Sale — has right to sell
   - Agreement to Sale → will have right to sell @ the time when property to pass.

   If (S)'s title turns out to be defective → (B) to return goods to the true owner + recover price from (S)

2. Sale by Description :-
   1) Goods correspond description.
   2) Principle :- If you contract to sell peas you cannot compel (B) to take beans
   3) (B) not bound to accept & pay for goods ≠ description
   4) Need to determine → Description was ESSENTIAL for identifying the goods where (B) agreed to purchase
      - If yes → (B) can reject the goods as it is breach of condition

↓ If yes

(B) can reject the goods as it is breach of condition

2 Egs :- Wastel Silk ≠  copper fastened vessel

5] Deemed Description

- Class / kind of goods specified → Eg: Egyptian Cotton, Gabra Sugar
- Characteristics / Dimensions specified → Sale of specific dimension Eg: Cotton, Jute.
- Place of Orgin → Eg Kashmir apples, Eg: Fertilizers of Iran.
- Mode of Packing → Combo packs

3] Sale by Sample

(1) Bulk = Sample
(2) (B) to have reasonable opportunity of ascertaining that B=S.
(3) Goods should be free from any defects which are not apparent on reasonable examination

If apparent from examination → then (B) cannot reject.

2 Egs: Sale of wheat by Sample → 2 packs → small qty + Large qty.
Sale of shoes of French army → contained paper

(4) Condition as to Sample + Description

(5) Condition as to Quality & Fitness of Goods :

1) No implied condition as to quality & fitness of goods.
2) There is implied condition on part of (S) regarding (B)'s fitness only if 3 conditions satisfied.

- The (B) had made known the 'purpose of purchase' to (S)
- (B) relied on (S)'s skill & judgment
- (S) ordinarily deals in those types of goods.

* No implied condition if sold under a trade mark / brand name.

2 Egs :- False teeth not fitting in mouth
:- Merrit Sewing Machine

General Rule :- Duty of (B) to examine goods before buying (Caveat Emptor)

(6) Condition as to Merchantibility

Implied :- Goods brought by description should be of merchantible quality.

2 conditions :- 1) Goods sold by description
2) Seller ordinarily deals in those types of goods.

No implied condition → If (B) examined goods & defects could be revealed easily by ordinary examination

Meaning of Merchantibility :-
Goods of such a quality or in condition → that a man of ordinary prudence would accept them as goods of that description

Meaning of Merchantability :-
Goods of such a quality or in condition → that a man of ordinary prudence would accept them as goods of that description
Does not imply any legal right / title to sell

Egs :- Person orders motor horns → scratched
: Black velvet cloth with ants.

⑦ **Condition as to Wholesomeness**
In case of eatables / provisions → implied condition that goods shall be wholesome. Eg: Milk with typhoid germs

⇒ **IMPLIED WARRANTIES**

Warranty as to

| Undisturbed Possession | Non Existence of encumbrances | Quality / Fitness as per usage of trade | Disclosure of dangerous nature of goods |
|---|---|---|---|
| Eg: Purchased 2nd hand typewriter that happened to be stolen | Eg :- S sells car which was given as security by y for loan | Eg: Shares purchased from broker expected to be free from bad deliveries | Eg: Lid of disinfectant powder to be opened with care |

⇒ **CAVEAT EMPTOR :**

1. When (S) sell goods in open mkt → (B) responsible for his selection
2. (S) not responsible / liable → If goods turn defective
→ bad selection of (B)
→ disclose unflattering truths
3. If (B) relies on own skill & judgement (B) responsible
4. 3 Exceptions → ie (S) responsible if
   - (B) specified 'POP'
   - relied on skill & judgement
   - (S) ordinarily deals

Eg: Sick Pigs

⑤ Exceptions to Caveat Emptor :-

$S^2$ T D  F²M  Patent

S → Sale by Sample
S → Sale by Sample & Description
T → Trade Usage
D → Description

F → Fitness as to quality & usage [Preist v/s Last]
F → Fraud by (S) / Concealment
M → Merchantable Quality

Patent → Purchased by Patent / Brand name.

SOGA-3

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# TRANSFER OF OWNERSHIP & DELIVERY OF GOODS

Passing of Property (Ownership) depends upon:

(2) Basic Factors

**Identification of Goods**

Unascertained goods

1st Ascertain

∵ Property can be transferred only of → Ascertained
— Specific

**Intention of Parties**

The moment when property is transferred depends upon INTENSION of parties

↓ determined by

Terms of contracts | Conduct of Parties | Circumstances of case

→ RULES FOR DETERMINING → Transfer of Property in (4) cases

Specific & Ascertained Goods | Unascertained goods | Sale on Approval | Reserve ROD

## I] SPECIFIC & ASCERTAINED GOODS

**In deliverable State**

↓

Property passes when contract is made

Eg: Buys Washing Machine for home delivery

**To be put in deliverable state**

↓

Property passes when goods are put in deliverable State + (B) is given notice

Eg:  → Software

**In deliverable State but price to be ascertained**

Passes when (S) ascertains the price by weighing / measuring / testing + informs buyer

Eg: Carpet to be laid stolen

## II] UNASCERTAINED GOODS

1) In case of sale of unascertained goods by description property passes when goods are in deliverable state + unconditionally appropriated

by the (S) with the assent of (B) — express / implied — given before / after appropriation

&

by the (B) with the assent of (S)

2] Delivery to carrier for transmission

(S) delivers goods → (B) carrier / Bailee } For transmission to buyer

Eg Does not Reserve his Right of Disposal (R-ROD) goods are deemed to be unconditionally appropriated

-g does not reserve his right of disposal (R-ROD), goods are deemed to be unconditionally appropriated

Eg: Book couriered risk of (B) if lost.

## III SALE OF GOODS ON APPROVAL / 'SALE OR RETURN'

Property Passes When →
- When (B) signifies his approval / acceptance
- Retains goods without giving notice of rejection
- Does something to goods which is equivalent to sale
  Eg: Pledge further / Sold further

## IV RESERVATION OF RIGHT OF DISPOSAL [R-ROD]

Sub sec (1) a) Contract for Sale of specific goods or goods subsequently appropriated to contract

(S) may by terms of contract R-ROD until certain conditions are fullfilled

b) In this case delivery of goods to B / Carrier / Bailee does not pass the property in goods till conditions fullfilled.

Subsec 2: When goods are shipped / delivered to ⓪ railway / admin for carriage

shipped → by Bill of Lading

railway / admin → Railway receipt

Then (S) is prima facie deemed to R-ROD

Subsec 3: when (S) draws on (B) for price & transmits to (B) Bill of Exchange together with BOL & RR

then (B) bound to return BOL/RR if he does not honour BOE

→ If (B) wrongfully retains BOL/RR property in goods does not pass to him

## ⇒ RISK PASSES WITH OWNERSHIP

General Rule :- Goods remain at (S)'s risk until property passes to (B) Once property ↑fd then (B)'s ↑ risk whether delivery is made/not ↑

2 Exceptions

- Delivery Delayed → Risk of party @ fault
- Duties & liabilities of S + B as BAILEE remain unaffected.

Eg: Auction Sale :- Hammer fell on goods when struck for 3rd time

# Parties by agreement may agree to contrary.

## → TRANSFER OF TITLE

General Rule :- Seller cannot transfer to (B) a better title then he himself has.

Latin Maxim :- "Nemo Dat Quod non Habet"
which means one cannot give what he has not got.

Exceptions :- A E i $O^4$ $U^2$ [i.e 3rd party gets good title]

Exceptions :- A E i O⁴ U² [i.e 3rd party gets good title]

1] Agent
Conditions → In possession of goods & documents with consent of owner
ii) Sale is made by him while acting in ordinary course of biz
iii) (B) acted in good faith

2] Estoppel's Effect :-
✓ Owner is estopped by conduct from denying (S)'s authority to sell
✓ True owner should have actively held out other person as true owner / person authorized to sell.

Eg A told B in presence of C that C is owner of horse . . .

3] One of joint Owners.

4] Owner in possession under voidable contract
→ where (S) obtained possession under voidable contract (UI C F M)
& contract was not rescinded until the time of sale.

5] One who had already sold goods but continues to have possession thereof:
Eg: seller sells packet of rice already sold to another (B) @ ↑ price.

6] Obtaining possession by (B) before property is vested in him
→ Here (B) obtains possession with the consent of (S) & sells / pledges further
Except: Goods obtained under Hire purchase.

7) Sale by Unpaid Seller :-
who had exercised Right of Lien & stoppage in Transit.

8) Sale under Other Provisions :-
- Official Receiver
- Finder of Lost goods
- Pawnee.

## → PERFORMANCE OF CONTRACT OF SALE

1] Duties of (S) & (B)
- (S): ready & willing to sell & deliver
- (B): ready & willing to accept & pay.

2] Delivery :- Voluntary Transfer of Possession.
3] Effect of Part Delivery :-
- In progress of whole = Delivery of whole (i.e also remainder)
- With intention of severing it from whole ≠ Delivery of remainder.

4] Buyer to apply for delivery.

5] Place of delivery

4] Buyer to apply for delivery.

5] Place of delivery
- Depends upon facts or
- Place where goods are at the time of agreement or place where they are manufactured

6) ↕
- Time for delivery :- If not fixed with reasonable time
- Time for tender of delivery :- At reasonable hrs (biz hrs).

7) Good in possession of 3rd party:
when 3rd party acknowledges to (B) that he holds goods on his behalf → delivery is done

8) Expenses for delivery → (S) / as per contract.

10) Delivery of wrong quantity
- ↳ less quantity goods delivered
- ↳ large " " "
- ↳ mixed goods not contracted delivered

} (B) has right to reject whole/extra part but if he accepts extra part he should pay for it.

11) Instalment Delivery:
(B) not bound to accept UNLESS agreed upon.

12) Delivery to Carrier = Delivery to (B)

13) Deterioration during transit → Risk of (B) unless otherwise agreed.

19) (B)'s right to examine → Only delivery (B) has right to examine

→ RULES FOR ACCEPTANCE OF DELIVERY:

1)
- Intimates (S)
- Deemed
  - Retains after Lapse of time
  - does an act which is inconsistent with ownership of (S)

2) (B) not bound to return the rejected goods if he had the right of rejecting.

SOGA U4
19 November 2023 21:14




# UNPAID SELLER

**Def:**

**CASH** — Where whole of the price is not been
- Paid or tendered where (S) had immediate right of payment

**CREDIT** — where bill of exchange or other negotiable instrument has been received as a conditional payment, the condition on which it is received has not been fullfilled due to the reason of dishonour or otherwise.

## → UNPAID SELLER'S RIGHTS

### Against goods

Property in goods passed to (B)
- ✓ Lien
- ✓ Stoppage in Transit
- ✓ Resale

Property in goods not passed to (B)
- ✓ Withholding Delivery
- ✓ Lien
- ✓ Stoppage in Transit
- ✓ Resale

### Against the buyer
- ✓ Suit for Price
- ✓ Suit for Damages
- ✓ Suit for Interest

## → RIGHT OF LIEN

**I Intro:-** Unpaid (S) goods → ROL on goods → for ₹ while he is in possession of goods → until payment / tender of price for goods.

2. It is a right to retain possession & refusal to deliver.
3. Also known as 'Possessory lien'.

**II Excercise of ROL**

Cash Sale i.e sold without stipulation of credit

Sold on credit but credit period expired

(B) insolvent

✓ (S) may excercise ROL even when in possession as [Bailee / Agent] of (B)

**III Part Delivery**

When Part delivery done → ROL on remainder of goods

unless such part delivery is made under such circumstances as to show an agreement to waive the lien.

**III Termination of ROL**

(S) delivers goods (carrier / bailee) transmission to (B) w/o R-ROD

(B) or his agent lawfully obtains possession

(S) waives ROL

Estoppel — (S)'s conduct leads 3rd party to believe that lien does not exist.

Exception: (S) does not loose his ROL only because he has obtained a decree of price for goods.

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1 he has obtained a decree of price for goods.

## RIGHT OF STOPPAGE IN TRANSIT

1. **Intro:** To stop the goods while in transit & to regain possession
R-SIT is in extension to ROL

**conditions to be fulfilled:-**

- (S) is unpaid
- Parted with possession of goods
- Goods in Transit
- (B) is insolvent
- Right is subject to provisions of act

→ **Duration of Transit**

Deemed in Transit ← Goods delivered → carrier / Bailee for transmission to (B)

until (B)/Agent takes delivery from carrier/bailee

→ **When does transit come to an end**

1] When (B)/bailee obtains delivery
2] (B) obtains delivery before arrival of goods @ appointed destination
3] When carrier/bailee → acknowledges to (B)/Agent → that he hold the goods as soon as goods loaded on ship → unless (S) has R-ROD
4] carrier wrongfully refuses to deliver goods to (B)
5] Goods delivered to → carrier hired by (B)
6] where goods delivered to [ship] chartered by (B) if in possession as agent of (B)
7] where Part delivery has been made SIT on remainder unless agreement to give up possession of whole.

→ **How stoppage of Transit effected:-**

- By taking actual delivery
- Notice to carrier / Bailee
  - (P) in actual possession
  - Principal → in such time & circumstances when he can by exercise of reasonable diligence communicate to servant/agent

* **Expenses of redelivery** → (S)

Exceptions where (S) ROL & RSIT is defeated/Effect of Subsale/Pledge.

- where (S) assented to by (B) ← sale / mortgage / or other disposition
- when doc of title tfd to (B) & (B) tfs the doc to a person who bought goods in good faith

| | ROL | V/S | R-SIT |
|---|---|---|---|
| 1. | Right to Retain | | Right to Regain |
| 2. | In possession of goods | | Parted with possession & (B) not acquired possession |
| 3. | Even when (B) not insolvent | | Only when (B) insolvent |
| 4. | End of ROL → starting point of | | R-SIT begins where ROL ends |

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| | |
|---|---|
| 3. Even when (B) not insolvent | 3. Only when (B) insolvent |
| 4. End of ROL → starting point of R-SIT | 4. R-SIT begins where ROL ends |

→ **RIGHT OF RESALE**

| | |
|---|---|
| 1. Goods of Perishable Nature | No Notice to (B) required |
| 2. where Notice given to (B) for intention of Resale | Recover difference [Contract price - Resale Price]<br>Retain Profits [If resale price ↑] |
| where no Notice given | cannot recover loss suffered on resale<br>Must return the profits to (B) |
| 3) where Unpaid (S) who had exercised ROL & R-SIT resells | The subsequent (B) acquires good title even though notice notice not given to original B |
| 4) A resale by (S) where right of resale is expressely reserved in contract | No Notice required Can < claim damages / retain profits |

**RIGHTS AGAINST BUYER**

1. **Suit for Price**
   Where property in goods have been passed to (B) & for < cash sale / credit sale
   (B) has not paid ; (S) sue → (B)
   # ↑ even if property not passed but price (advance) was payable stills seller can sue.
2. **Suit for Damages** Refer Sec 73 of ICA 1872 → naturally arose / parties knew & not remote
3. **Suit for Interest**
   - Specific agreement of interest → Recover interest from date when interest became due
   - No specific agreement → Charge interest from the day as he may notify to (B)

   # If no contract → COURT may award interest @ rate as it thinks fit.

→ **Breach of Contract by Seller**

- Fails to deliver goods @ time & manner prescribed
- Repudiates contract
- Delivery of non conforming goods & (B) rejects & revokes acceptance

→ **Remedies for B against Seller :**

1. **Damages for non delivery**
   (A) → 100 pair of shoes @1050 → (B) wanted to resell @ ₹1100/pair which A knew → (C)
   B can recover ₹50/pair from A
2. **Suit for specific performance :** (B) can appeal to court.
   Conditions
   1. Only for sale of specific/ ascertained goods

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a. Suit for specific performance: (B) can appeal to court

Conditions
1. Only for sale of specific/ ascertained goods
2. Power of Court → subject to Specific Relief Act 1963
3. Where damages not adequate.
4. If goods of specific nature / unique eg: mughal period painting

3. Suit for breach of warranty
cannot reject but claim damages.
i) set up against (S) for diminution/extinction of price
ii) Sue for damages

4. Repudiation of contract before due date
(Effect of Antilipatory breach content)

5. Suit for Interest :-
In absence of contract court may award interest for refund of price from the date on which payment was made.

⇒ AUCTION SALE :-
Sale by inviting bids publically & sold to highest bidder
Legal Rules :-

| | |
|---|---|
| 1. Where goods are sold in lots | Each Lot → Separate contract of sale |
| 2. Completion of contract of sale | By fall of hammer / any customary manner until announcement made → Bidder may retract |
| 3. Right to bid may be reserved | Can be reserved only expressely wherein (S) or person on his behalf can bid at auction |
| 4. When sale not notified by seller | Not lawfully for (S) to bid himself/employ any person to bid if auctioneer knowingly accepts any bid from such (S) → It will be considered fraudulent by (B) |
| 5. Reserved Price | May be notified to be subject to < reserve price / upset |
| 6. Pretended Bidding | If (S) makes use of pretended bidding → sale VOIDABLE @ option of (B) |

# Inclusion of ↑/↓ Taxes in contract of Sale.
eg: GST / Excise
Buyer to pay ↑ price is taxes ↑ & derive benefit of reduction if taxes ↓
Effect can be excluded by agreement to contrary.

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# GENERAL NATURE OF PARTNERSHIP




Def:-

**Partnership:**
Relation between persons who have → Agreed to share Profits → of Business → carried on by all or any of them acting for all

**Partners & Firm:**
Persons who enter into partnership are individually called partners and collectively called 'a firm'

**Firm Name:**
Name under which their business is carried on

## → ELEMENTS OF PARTNERSHIP

| | |
|---|---|
| 1. Association of Persons | 1) Only persons recognized by law; Firm not recognized<br>2) Minor → ✗ partner but admitted for benefits<br>3) Max → 50 partners as per Co's Act. |
| 2. Agreement | 1) There must be an agreement & entered by all P's<br>2) Voluntary Contractual in nature<br>3) Express/Implied & oral/written |
| 3. Business | 1) It must exist & motive acquisition of gains<br>2) Includes Trade/Occupation/Profession<br>3) NPO cannot be Partnership |
| 4. Agreement to (SOP) | **SOP**<br>1. Essential feature<br>2. One partner cannot be entitled to whole of profits<br>3. If not decided → equally<br><br>**SOL**<br>Not essential feature<br>2. One/more persons can agree to share all losses<br>3. If not decided :- PSR |
| 5. Business carried on by all/any of them acting for all i.e Mutual Agency (MA) | 1) Cardinal principle 2) Act of one = Act of all if in course of business<br>3) (P) → Principal (he is bound by acts of other P's)<br>↑ → Agent (biz. he binds other P's)<br>4) It is the true test of partnership<br>Case: KD Kamat & Co:<br>Fact that exclusive power & control by agreement → vested in one partner; Eg:- Only that partner can → Operate bank A/c's<br>→ borrow on behalf of the firm<br>is not destructive to theory of partnership provided SOP & MA concept exists |

## → TRUE TEST OF PARTNERSHIP → Agreement → SOP → MA

1. **Agreement** :-
   1) created by agreement not by status (like HUF)
   2) Members of HUF/Burmese husband & wife doing biz together → not partners

2) **Sharing of profits** :-
   1) Coowners :- sharing of profits/gross returns arising from a property by persons holding < joint / common interest in it
   **are not partners**
   2] Receipt by a person of → SOP of biz / → payments contingent upon earning of profits / → payments varrying with profits




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2] Receipt by a person of → SOP of biz
→ payments contingent upon earning of profits
→ payments varrying with profits
↓
does not by itself make him him a partner.

3] ∴ Receipt by → Money lenders for business → repayment
→ Servants / agents → remuneration
→ widow / child of deceased → as annuity
→ previous owner → consid^n for sale of goodwill
} does not make him a partner

4] SOP → ✓ essential element ✓ prima facie evidence ✗ conclusive evidence
5] It is a strong test but Relation → exists or not
↓
depends upon whole contract between parties

6] Where there Express Agreement (SOP+MA)
↓
there is no difficulty in determining. But if no express agreement test becomes difficult → then Refer Sec 6 i.e Real Relation to be checked also

cumulative effect of :- → written / verbal agreement
→ real intention
→ conduct of parties
→ surrounding circumstances need to be checked.

3) Mutual Agency → (same as above)

→ Case: Santiranjan Das Gupta V/S Dasyran Murzamull (SC)
No Partnership as :-

- Parties have not retained any records of T & C's of partnership
- biz maintained no A/C's of its own which would be open to inspection
- No account of partnership was opened with any bank
- No written intimation was conveyed to Deputy Director of newly created partnership.

→ Difference between Partnership & Company.
◆ We PLAN D² METRo

| Basis | Partnership | V/S | Company |
|---|---|---|---|
| 1. Winding up | • Agreement | | NCLT/ROC |
| 2. Property | • joint estate of partners | | • Belongs to Co & not shareholder |
| 3. Legal status | • No Separate Legal Status ✓ | | • Separate Legal Status ✗ |
| 4 Agency | | | |
| 5 No of membership | • Max 50 Co's Act | | • Pvt : Max 200 Min 2; Public : N.L; 7 |
| 6. Distribution of Profits | • SOP → compulsory | | • Dividend → not compulsory |
| 7 Duration of existence | • ends on D← of P / Insolvency | | • Perpetual succession |
| 8. Management | • By Partners | | • ✗ shareholders ✓ BOD |
| 9. Extent of Liability | • unlimited | | 3 Types: ltd by shares; ltd by guarantee; unltd |
| 10 Transfer of shares | • ✗ except by consent | | • ✓ (easily if quoted on RSE / of public co) |
| 11. Registeration | • Not Compulsory | | • Mandatory |

# Partnership V/S Club ◆ RID²

| Basis | Partnership | Club |
|---|---|---|

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## # Partnership V/S Club ◆ RID²

| Basis | Partnership | Club |
|---|---|---|
| 1. Relationship | Persons forming are called partners & are agents for others. | Persons forming are called members & are not agents of other members |
| 2. Interest in property | P's have | Members dont have |
| 3. Definition | (as above) | Club is AOP formed with object not for earning profits but → promoting beneficial purpose such as improvement of health / providing recreation |
| 4. Dissolution | Change in partners affects its existence | Perpetual Succession. |

## # Partnership V/S HUF
M³C²D SLANG

| Basis | Partnership | V/S | HUF |
|---|---|---|---|
| 1. Mode of creation | • Agreement | | • Status (by birth) |
| 2. Management | • All Partners | | • Karta → the governing member |
| 3. Minor's capacity | • X partner → benefits/- | | • member by birth |
| 4. Calling for A/c's | • (P) can sue | | • Member cannot ask |
| 5. Continuity | • dissolve → 0⇐ / Insolvency | | • till it is divided not affected by 0⇐ |
| 6. Death of member | • leads to dissolution | | • X dissolution |
| 7. Share in business | • defined via agreement | | • No definite share; It is fluctuating enlarged by 0⇐ diminished by birth |
| 8. Liability | • Unltd | | • Karta – Unlimited Coparner → Ld upto his share |
| 9. Authority to bind | • Partner | | • Karta |
| 10. No. of Members | • 50 | | • unlimited |
| 11. Governing Law | • Indian Partnership Act 1932 | | • Hindu Law |

## Partnership V/S Coownership ◆ FaINT

| Basis | Partnership | Co-ownership |
|---|---|---|
| 1. Formation | Agreement | Agreement / Operation of Law Eg. Inheritance |
| 2. Implied Agency | ✓ | X |
| 3. Nature of Interest | Community of Interest Profits & losses to be shared | X sharing P&L |
| 4. Transfer of Interest | X (only by consent) | ✓ (no consent required) |

## → Partnership V/S Association

| Basis | Partnership | Association |
|---|---|---|
| 1. Meaning | Def | AOP evolves out of social cause where there is no necessarily motive to earn profits. Members of charitable soc. religious |

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| | | |
|---|---|---|
| 1. Meaning | Agreement between persons to carry on business and share profits | where there is no necessarily motive to earn profits. |
| 2. Example | Partnership to run biz for profits by X, Y, Z | Members of charitable soc, religious association, Trade protection asso. |

## → KINDS OF PARTNERSHIPS :

**Partnership @ will**
- ↳ no fixed period agreed upon duration
- ↳ no provision made as to determination of partnership

Dissolution :- Notice

**Partnership for fixed period**
- ↳ Provision created for determination of Partnership
- ↳ created for fixed period of time

→ On expiration of time

**Particular Partnership**

organized for any particular adventure or undertaking

↓ On completion of undertaking

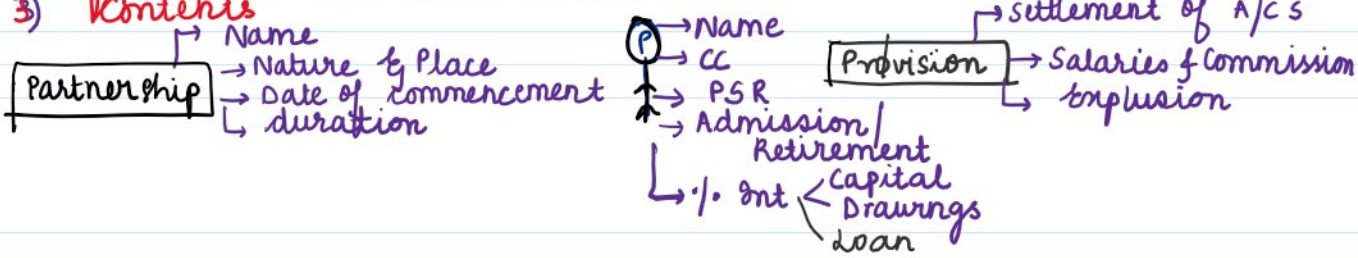
**General Partnership**

↳ constituted for business in general

↓ Notice

## → PARTNERSHIP DEED

1) In writing / verbally ; Desirable in writing to avoid disputes
2) Document in writing → containing T & C's as to relationship of partners to each other
3) Contents




## ⇒ Types of Partners

**1. Active / Actual / Ostenible Partners**
a) Becomes (P) by agreement
b) Actively participates in conduct
c) ✓ Public Notice on retirement

**2] Sleeping / Dormant (P)**
a) Partner by agreement
b) Does not take part in conduct of biz.
c) X Public Notice
d) ✓ SOP ✓ Liable to 3rd parties

**3] Nominal Partner**
1) A person who lends his name to firm without real interest
2) X SOP X CC ✓ liable to 3rd Parties

**4) Partner in profits only**
✓ SOP X SOL ✓ Liable to 3rd parties

**5) Incoming partner**
(P) admitted in already existing firm with consent of existing P's
X liable for acts done before admission

**6) Outgoing (P)**
A (P) who leaves the firm in which rest of (P)s continue
✓ liable for all acts to 3rd party until public notice given

**7] Partner by holding Out :- / Estoppel**
1. A man holds himself out as a (P) / allows others to do

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## 1] Partner by holding out - / Estopper

1. A man holds himself out as a (P) / allows others to do
   ↓
   he is then stopped from denying the character he has assumed & upon faith of which Cr may have presumed to have acted

2. Not required to prove that done with fradulent intention

3. Eg :- X, Y are partners ; X introduced 'A the manager' as partner to Z
   A remained silent, Z believing A as (P) gave 100 TV sets on credit
   Z did not get his amount & sued X & A
   Here X, Y & A the manager all are liable

4. Former (P) who retired without giving public notice
   ↑ ↓
   If the 3rd party gives credit to firm on assumption that former (P) is still a (P) then the former (P) will be liable .
   ↑ ↑

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# RELATIONS OF PARTNERS

## Sec 9: General Duties of a Partner

- Bound to carry biz of firm for Greatest common advantage
- Act in just & faithful manner
- Render True & Full A/cs to Other (P)'s + LR's

## Sec 10 Duty to Indemnify for Loss caused by Fraud.

- (P) committing Fraud must make good the loss sustained by firm & ₹ so bought to be divided btw (P)'s
- Act of a (P) imputable on firm due to principle of MA which is fraud on his co-partners entitles them to throw the whole of consequences on (P) doing fraud.

## Sec 11 Determination of Rights & Duties of partners by contract between the Partners.

Determined by **contract** → Express / Implied (course of dealings)

- Varied by **CONSENT** of all P's
  - Express
  - Implied

Agreements in Restraint of Trade: (Exception)
Notwithstanding Sec 27 of ICA partner shall not carry out biz similar to the firm

## Sec 12 :- Conduct of Business :-

1. General Rule :- Every (P) has a right to take part in conduct of business of firm. Mgmt powers are coextensive.
   If (P) is deprived of this rights → Courts will interfere (Suit for dissolution / for A/c's)
   If by partnership agreement powers are limited or a term that mgmt of P's will remain with one / more (P)'s in exclusion to others the Courts will not interfere unless
   - something is done illegally
   - Breach of Trust is reposed in (P)'s.
2. Every (P) bound to attend their duties diligently
3. Right to be consulted:
   In case of Difference of Opinion
   - For Ordinary Matters
     - ✓ Decision: By majority
     - ✓ Every (P) has a right to express his opinion
     - ✓ Majority to act in good faith by consulting every (P)
   - For significant matters
     - Decision: Unanimous consent
     - Eg: Change in nature of biz
4) Right to access BOA
   Every (P) < Active / Sleeping has right
   In case of < Legal Heir / LR

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Every (P) < Active / Sleeping has right

In case of < Legal Heir / LR / Authorized Agent has right to

✓ Access ✓ Inspect ✓ Take Copies of BOA .

## Sec 13 : Mutual Rights & Liabilities

1. Right to Remuneration
General Rule :- Not entitled to remu. but → If Express Agreement → as mentioned / If no agreement → if customary to receive

2. Right to SDP
1. General Rule :- (P)'s are entitled to share Profits & Losses equally.
2. If PSR mentioned in agreement then accordingly otherwise equally
3. Parties alleging unequal shares will have burden of proving.
4. PS.R ≠ C.C

3. Interest on Capital :- Following elements to exist
1) Express Agreement 2) Practice of Particular Partnership 3) Trade Custom 4) Statutory Provision

4. Interest in Advance :
1. (P) lends ₹ over & above capital → Int @ 6% → does not cease on dissolution

5] Right to be indemnified :
Firm should indemnify the (P) for all payments & liab. incurred
- in ordinary conduct of biz
- in an emergency situation → to protect Firm from losses that a man of ordinary prudence would do in his own case under similar circumstances.

6] Right/Duty to Indemnify the Firm.
(P) to indemnify Firm → for loss caused → for his wilful neglect.

## → Sec 14 Partnership Property → (P.P)

1. Also known as
1) partnership prop 2) partnership assets 3) joint stock 4) common stock 5) joint Estate.
2. PP denotes → property / Rights / Interest
3) PP comprises of → PRI → as CC / purchased/acquired / Goodwill of biz
4. Whether a Property is PP → Check Real Intention of parties.
5. Fact that property is used for biz of firm → does not make it P.P unless intented to by P's.
6. Personal prop of (P) converted into → P.P via agreement.
7. Goodwill → Def : 1) value of reputation of a biz in respect of profits expected in future over & above normal levels of profit earned

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(7) Goodwill → 1) Value of reputation of a biz in respect of profits expected in future over & above normal levels of profit earned by undertaking of same class / biz

Def:

2) when Partnership dissolved every (P) will have a right to sell G/w of biz for benefit of all P's.

8. G/w sold → separately / along with other property.

9. Any (P) on sale of G/w make agreement with (B) that such (P) will not carry out biz similar to that of the firm with specified period / local limits.

notwithstanding Sec 27 of ICA 1872.

Valid if restrictions imposed reasonable.

## Sec 15: Application of P.P.

held & used exclusively for the purpose of biz.

1. All (P)'s have community interest in P.P.
2. No Proprietory (personal) int.
3. (P) Right of SOP + to chk that all PP is used only for Partnership purpose

## Sec 16: Personal Profits earned by Partners.

If any (P) earns profit from

- Biz transactions
- Use of property of firm
- Use of biz connection with firm
- Use of firm name

- By carring out any biz similar to that of firm i.e competing

He shall A/c for + Pay Profits to the firm

2 Eg: ABCD → refining sugar → A sold own sugar to firm @ profits.

## Sec 17: Rights & Duties of (P) after CHANGE in firm

Admission / Retirement / Change in nature / Continuation of Partnership after expiry of term

Subject to contract:

| Changes | Rights & Duties |
|---|---|
| 1. After a change in firm | Remain same as they were before change |
| 2. After expiry of term | Same as before expiry to be inconsistent with partnership @ will. |
| 3. Where additional undertakings are carried out | Same as they were during original undertaking |

## → RELATION OF PARTNERS TO 3rd Parties

## Sec 18: Partner to be agent of firm

1) Def: Partnership

2) A (P) acts as agent. i.e Act of (P) = Act of Firm

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## Sec 18 : Partner to be agent of firm

1) Def : Partnership
2) A (P) acts as agent . i.e Act of (P) = Act of Firm
3) ○ → ↑ Principal → When acting in his own interest for common concern
   ↑→ Agent — when acting on behalf of others .

4) Partner V/s Agent

| Community Interest in | No Interest in any . |
|---|---|
| a) Property b) Business c) Liabilities | |

5] Rule → Not Applicable for dealings between P's .
→ Applicable for acts done by (P) for biz purpose

## Sec 19 Implied Authority of P

1. An act done by (P) ↑ in usual course of biz carried on by Firm binds the firm. This authority is known as Implied Authority

2. In absence of usage of Trade the implied authority of (P) ↑ does not empower him to :
   a) Submit a dispute → relating to biz → to arbitration .
   b) Open [Bank A/c] on behalf of the firm → in his own name .
   c) Compromise / Relinquish any claim by firm
   d) Enter into partnership on behalf of firm
   e) Suit ↗ Withdraw a suit / proceeding filed on behalf of firm
   f) ↘ Admit any liability in a suit against firm .
   g) Immovable Property ↗ Acquire ↘ Transfer .

## Sec 22 : Mode of Binding the firm :-

In order to bind the firm . ↗ Act → Done ↘ Instrument → Executed

By a (P) ↑ must be done & executed in ↗ Firm Name ↘ Manner expressing / implying intention to bind the firm

Restrictions for implied authority i.e for binding the firm .
1) Act must be related usual biz of firm
2) Act must be within his scope of authority .
3) Act must be done in firm name .

Eg: Firm of Solicitors borrows money / executed P. Notes ; not in ordinary course . It is ordinary course for Bankers .

Eg: Partnership of General Commercial Nature can

- Pledge / sell ↓ p. p
- Buy goods on behalf of Partnership
- Borrow Money / Contract debt
- Make / Sign / draw / endorse / tfr ✓ BOE, cheques .

## Sec 20 : Extention & Restriction of Partner's Authority

1. The implied authority of a (P) ↑ can be ↗ Extended ↘ Restricted by CONTRACT

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1. The implied authority of a (P) can be → Extended / restricted by CONTRACT

2. Notwithstanding the above restrictions if a (P) acts within his implied authority

Firm ↓ liable towards 3rd Party i.e will bind the firm

↓ UNLESS

3rd Party knows the restriction OR 3rd Party does not believe (P) to be a (P) of firm




**Sec 21: Partners authority in an emergency:**

♀ has authority in emergency situation → to do all acts to protect the firm from losses → that a man of ordinary prudence would do in his own case under similar circumstances to protect from losses.

**Sec 23: Effect of Admissions by a (P)**

1) Any admission / representation made by a (P) → concerning affairs of the firm → can be used as evidence against firm if done in ordinary course of biz.

2] If (P)'s authority restricted & other party knows about the restriction then → representation can't be used as evidence

3] Evidence affected → only when tendered by 3rd parties
→ not have same effect in case of disputes btw P's
eg x & y partners dealing in spare parts; x made rep^n to A which turned to be false; x & y liable.

**Sec 24: Effect of Notice to Acting Partner**

1) Notice to Acting (P) = Notice to Firm

↓ (3 conditions)

Notice to be actual not constructive | Related to affairs of the firm | given to active (P) & not sleeping (P)

2) Notice not effective: If given by a (P) who is involved in fraud or with whose consent fraud committed on firm

**Sec 25:- Liability of a (P) for acts of the firm**

every (P) liable → jointly / severally for acts of the firm while he is a (P)

Act of firm means → Any Act / Ommission by ♀ / Agent which gives rise to right enforceable by / on against firm.

Eg: Infringement of Trademark done while in partnership.

**Sec 26: Liability of a firm for wrongful acts of a (P)**

1) Firm liable for any loss / injury caused to 3rd party for wrongful acts done by ♀ → in ordinary course of biz / with authority of partners.

2) Fact that method employed by (P) was unauthorized / wrongful

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↳ with authority of partners

2) Fact that method employed by (P) was unauthorized / wrongful does not affect the question ↑

3) All partners in a firm → liable for loss/injury to 3rd party

↓ Negligent act in ordinary course of biz

eg: Coal mine.

Sec 27: Liability of firm in case of misapplication by (P) ↑

1 (P) ← Receives ₹ property ← 3rd Party

↓ in his apparent authority & misapplies

2. Firm ← receives ₹/prop from 3rd Party

↓ in ordinary course & misapplied by (P) ↑ while in custody of firm

FIRM LIABLE TO MAKE GOOD THE LOSS.

Exception :- If receipt by (P) not in apparent authority his receipt cannot be regarded as receipt by firm (∵ all partners not liable) unless money received comes into their possession / under their control

**Sec 28: Partner by Estoppel (Discussed in U1)**

**Sec 29: Rights of Transferee of a Partner's Interest**

1) Share in partnership transferable like any other property
2) Partnership is based on mutual confidence
∴ Trf of share by a (P) ↑ does not give transferee same rights & privilege.

Rights of Transferee / Assignee.

During continuance
- ✓ Right to SOP
- ✓ No Right to
  - ↳ interfere in conduct of biz
  - ↳ Acquire A/c's
  - ↳ Inspect BOA

# Bound to accept A/c's made by (P)'s & cannot challenge it

On Dissolution / Retirement of Transferee (P) ↑
- ✓ Right to SOA
- ✓ On dissolution he can call for A/c's for ascertaining his share after dissolution

**Sec 30: Minor admitted for benefits of Partnership**

∵ Minor cannot be bound by contract he cannot become a (P) ↑ but can be admitted to benefits of (P) by consent of all the partners ∴ he can be given valid share in partnership

Rights & liabilities of minor

Rights.
1. Has right to agreed SOP
2. Access & Inspect BOA

Liabilities

Before majority
1) Liability only upto extent of SOP & SOA

After Majority.
If a minor after attaining majority

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1. Has right to agreed SOP
2. Access & Inspect BOA
3. Can sue for < BOA / SOP on severing his connection with firm
4. After attaining majority within 6m he has a right to become a partner

**Before Majority**

1) Liability only upto extent of SOP & SOA
2) i.e minor not personally liable for debts of firm
3. Minor cannot be declared as insolvent but if firm becomes insolvent his share will lie with O.A

**After Majority**

If a minor after attaining majority in 6m elects to be a (P) he will be liable from date when he is admitted as (P)

If he elects not to be a (P) he is not liable

A minor in (6m) to give public Notice of whether he elects / not elects.

↓ from

Attaining majority — Obtaining Knowledge of being admitted for benefits of Partnership.

# If he elects not to be a (P) → Personally liable to 3rd parties & his SOP & SOA remain same as was while he was minor

# If he elects not to be a (P) → his rights & lia continues to be same as a minor upto ↑ date of Public Notice
Share not liable for acts of firm → after Public Notice.

He can sue partners for SOA.

## Legal Consequences of a (P) coming in & Going out

**Sec 31: Introduction of a (P)**

Subject to provisions of the sec 30 [minor] & Contract btw partners

1) No partner to be introduced without consent of all.
2) A partner who became (P) in the firm → does not become liable for any act done before he became a (P)

# Rights & liabilities of new partner:-

1. lia. commences from the date → when he is admitted
   ↓ UNLESS
   he agrees to be liable for obligations incurred by firm prior to date.
2. When new (P) agrees to assume liability creditor may agree to accept new firm as a Debtor & discharge old (P)
3. Creditor's consent is necessary → Novation of Contract
4. Mere Agreement between P's ≠ Novation
5. If its mere agreement it does not give creditors any right against incoming partner.

**Sec 32 Retirement of a (P)**

1) Consent of all P's | Express Agreement | If Partnership @ will then by notice

2) (P) said to retire when he ceases to be a member of firm without bringing an end to subsisting relation between other memb[ers] or [firm] & 3rd party

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2) (P) said to retire when he ceases to be a member of firm without bringing an end to subsisting relation between other members or btw firm & 3rd party

3] Does not cover the case of withdrawal of (P) by dissolving the firm which should properly be referred as dissolution
Case: Vishnu Chandra V/S Chandrika Prasad

# liabilities of Outgoing Partner
→ a Retiring ♀ continues to be liable until Public Notice ↓ unless 3rd party does not believe (P) to be (P)

## Sec 33: Expulsion of (P)

1] Power of Expulsion
- Must have existed in contract +
- Exercised by majority of partners +
- Exercised in good faith →
  - must be in interest of partnership
  - Person expelled served Notice
  - Person given OOBH

2] If (P) otherwise expelled it is null + void

3] Expulsion of (P) ≠ Dissolution of Firm.

## Sec 34 Insolvency of a (P)

1. The insolvent (P) cannot be continued as a (P)
2. Ceased to be (P) → very date on which order of adjudication is made
3. The estate of insolvent (P) is not liable → for acts of firm after date of adjudication of firm
4. Firm → not liable for acts of insolvent (P) after adjudication
5. Insolvency of P → leads to dissolution → P's may agree to contrary.

## Sec 35: Liability of Estate of Deceased (P)

1. Death of P = dissolution (if only 2 P's)
2. O← P not liable for obligations after O← if No Public Notice nor his estate liable.

## Sec 36: Rights of Outgoing (P) to carry out competing business

A outgoing partner may carry competing biz + advertise but he may NOT:-
1] Use firm name
2) Represent himself as carrying on biz of firm
3) Solicit customers who were dealing with firm while a P

Agreement in restraint of Trade: Exception

## Sec 37: Rights of Outgoing (P) in certain cases to share subsequent profits

(P) < dies / ceased to be (P) & surving (P)'s continue biz without final settlement of A/C's between them & outgoing P

Outgoing (P) or LR has option
- for SOP since he ceased → attributable to use of his share
- Or Int @ 6% p.a on amt of his share

The existing (P)'s may purchase share of deceased (P) but if does not comply terms → he shall A/C for under foregoing provisions

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but if does not comply terms → he[b] shall A/c for under foregoing provisions

**Sec 38: Revocation of Continuing Guarantee by change in firm**

↓

eg: Death / Retirement of P




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# REGISTERATION & DISSOLUTION OF FIRM




## → Application for Registeration

↓ can be effected at any time by sending { post / Delivery to Registrar } a **Stmt** in prescribed form + fees stating

**Firm** → Name, Place of biz / other places, Duration

→ Name & full address, date of joining

2. **Stmt** to be signed by all P's
3. Firm name should not contain words → King, Queen, Crown, Empire, Imperial, Emperor, Empress or words implying sanction of Govt except where SG assent.
4. Registeration → optional
5. After Registrar satisfied entry in Register of Firms
6. Subsequent alterations in name, place, constitution → inform Registrar
7. On Registeration → **Certificate**
8. Deemed Reg. complete when stmt filed → recording of entry formality
9. Late Reg. Penalty :- ₹100/year / part thereof

## → Consequences of Non Registeration : Disabilities

1. No Suit in a civil court by firm / other co partners against 3rd party
   1. For filling suit → firm to be registed
      → persons suing are shown in Register of firms
2. No Relif to Partners for set off of claims :-
   Except : upto ₹100.
3. Aggrieved partner cannot bring → legal action against other (P) / Firm
   Except : Can sue for dissolution for A/c's + SOA
4. 3rd Party can sue.

**Exceptions**

- 3rd party can sue
- Sue for dissolution for settlement of A/c's + SOA
- power of OA/Receiver to release property of insolvent (P)
- Setoff claim upto ₹100

## → Dissolution of Firm v/s Dissolution of Partnership.

Dissolution of Firm [discontinuation of legal relationship between ALL the partners]

Dissolution of Partnership. One or more (P) retire / die / insolvent relation btw that (P) & others is dissolved. Others may continue

COWS

| Basis | DOF | DOP |
|---|---|---|
| 1. Continuation of biz | X | Will continue. Involves reconstitution |
| 2. Closure of Books | ✓ | X |




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| | | | |
|---|---|---|---|
| 1. | Continuation of biz | ^ | will continue ; involves reconstitution |
| 2. | Closure of Books | ✓ | X |
| 3. | Order of court | Court may order | X |
| 4. | Winding Up | ✓ + Realization of A & L | X Revaluation of A & L |
| 5. | Scope | Necessarily involves DOP | may/may not involve DOF |

→ **Modes of Dissolution** ↗ Voluntary ↘ Order of Court

**Voluntary Dissolution:-**

1. Dissolution by Agreement
2. compulsory Dissolution → (happening of event which makes it unlawful) More than one undertaking illegality of one → not lead to dissolution.
3. Dissolution on happening of contingencies
   ① Firm constituted for fixed term : on expiry of term.
   ② carry more than one adventure → completion
   ③ ↓ of P ④ adjudication of (P) → insolvent.
4. Dissolution by Notice of Partnership @ will
   * In case date not mentioned in notice from date of communication

→ **Dissolution by Courts** : $I^2MP^3$ Ground

1. I → Insanity / unsound mind :- (Temporary sickness not a ground)
2. I → Transfer of Interest : (P) tfd whole of his interest in firm to 3rd Party or sold to court for recovery of land revenue due by (P)
3. M → Misconduct :- (Not neceessary misconduct should relate to biz Adverse effects to be checked. Nature of biz will decide act is misconduct or not).
4. P → Permanent Incapacity (physical disability / illness)
5. P → Persistent Breach of agreement (embezzlement, keeping erroneous A/c's, Holding more cash than allowed, Refusal to show A/c's)
5. P → Perpetual Losses
6. G → Just & Equitable Grounds (Deadlock in mgmt, (P)'s not in talking terms. Gambling by (P) in stock Ex)

→ **Consequences of Dissolution**

1. **Liability for acts of P's done after dissolution** :-
   1) Liable until Public Notice given of dissolution
   2) 4 Exceptions → ↓ P
      - adjudicated as insolvent
      - retires
      - not know by person dealing with firm as (P)

→ **Rights of (P) to have business wound up**.

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↳ not know by person dealing with firm as (P)

→ **Rights of (P) to have business wound up.**

1) (P) entitled to have property of firm sold & applied in payment of debts + liabilities + have surplus distributed amongst P's

→ **Continuing authority of P's for purpose of winding up.**

After dissolution → mutual rights & obligations continue → purpose necessary for winding up of firm/– & complete transactions begun but unfinished

→ **Settlement of Partnership A/c's**

Rules → subject to agreement btw P's are :-

1) Losses + Deficiences of Capital
- ✓ Paid 1st out of Profits
- ✓ Next out of Capital
- ✓ Lastly if necessary by P's individually in P.S.R

Assets + any sums contributed by (P) to make up deficiences must be applied as
- ✓ In paying debts of firm/3rd Party
- ✓ Loan from (P) (from Capital)
- ✓ CC of (P) ↑ (on account of Capital)
- ✓ Residue in (P)'s → P.S.R




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