

CA FOUNDATION LAW MARATHON INDIAN REGULATORY FRAMEWORK

✂ WHAT IS LAW?

Set of obligations and duties imposed by the government for securing welfare and providing justice to society.

✂ SOURCES OF LAW

The main sources of law in India are:

- the Constitution;
- the statutes or laws made by Parliament and State Assemblies;
- precedents or the Judicial Decisions of various Court; and
- in some cases, established Customs and Usages.

Constitution which is the basis and source for all laws. The Parliament and Legislative assemblies of various states make laws in parliament or in their state assemblies as the case may be. So, Parliament is the ultimate law-making body. The laws passed by parliament may apply throughout all or a portion of India, whereas the laws passed by state legislatures apply only within the borders of the states concerned.

The Constitution also provides for and protects certain Fundamental rights of citizens. It also lays down Fundamental duties and the powers & duties of Governments, both Central and State. The laws in India are interconnected with each other forming a **hybrid legal system**.

✂ CENTRAL, STATE AND JOINT LIST

- **Central list** contains matters over which only Central Government has the power to make laws. *For example, Income Tax.*
- **State list** contains matters over which only State Government has the power to make laws. *For example, Public order.*
- **Joint/concurrent list** includes matters over which both Central and State government have the power to make laws.

✂ THE PROCESS OF MAKING A LAW

- When a Law is passed in the Parliament it is called a **bill**.
- After discussion and debate, the law is passed in **Lok Sabha**.
- Thereafter, it has to be passed in **Rajya Sabha**.
- It then has to obtain the assent of the **President of India**.
- Finally, the law will be notified by the government in the publication called **Official Gazette of India**.
- The Law will become applicable from the date mentioned in the notification as the effective date.
- Once it is notified and effective, it is called an **Act of Parliament**.

✂ TYPES OF LAWS IN THE INDIAN LEGAL SYSTEM

➤ CRIMINAL LAW

- Laws pertaining to violations of the rule of law or public wrongs and punishment of the same. Criminal Law is governed under the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973 (Crpc).
- The Indian Penal Code, 1860, defines the crime, its nature and punishment, whereas,
- The Criminal Procedure Code, 1973, defines exhaustive procedure for executing the punishments of the crimes.

➤ CIVIL LAW

- Matters of disputes between individuals or organisations are dealt with under Civil Law. **Civil law primarily focuses on dispute resolution rather than punishment.**
- **Example:** Code of Civil Procedure. Civil law can be further classified into Law of Contract, Family Law, Property Law and Law of Tort.

➤ COMMON LAW

- A judicial precedent or a case law is common law.
- The doctrine of *Stare Decisis* is the principle supporting common law.
- Latin phrase that means “to stand by that which is decided.”

➤ PRINCIPLES OF NATURAL JUSTICE

- *Nemo iudex in causa sua* (Literally meaning “No one should be made a judge in his own cause, and it’s a Rule against Prejudice),
- *audi alteram partem* (Literally meaning “hear the other party or give the other party a fair hearing), and
- reasoned decision are the rules of Natural Justice.

✘ ENFORCING THE LAW

- The Government of India exercises its executive authority through a number of Government Ministries or Departments of State.
- Most major Ministries are headed by a Cabinet Minister, who sits in the Union Council of Ministers, and is typically supported by a team of junior ministers called the Ministers of State.
- *For example*, the Income Tax Act is implemented and enforced by the Ministry of Finance through the Central Board for Direct Taxes coming under the Department of Revenue and is administered by the officers of the Indian Revenue Service.

➤ VARIOUS MINISTRIES UNDER OTHER REGULATOR BODIES UNDER GOVERNMENT OF INDIA

I. MINISTRY OF FINANCE (MOF)

- **Concerned with** Economy of India, serving as the Treasury of India (*Vitta Mantralaya*).
- **Areas covered:** Taxation, financial legislation, financial institutions, capital markets, centre and state finances, and the Union Budget.

One of the important functions: presentation of the Union Budget.

• CONSTITUTION

- Apex controlling authority of four Central Civil Services, namely:
 - Indian Revenue Service
 - Indian Audit and Accounts Service
 - Indian Economic Service and
 - Indian Civil Accounts Service
- Controls Indian Cost and Management Accounts Service.

• DEPARTMENTS UNDER MOF

- Department of Economic Affairs
- Department of Expenditure
- Department of Revenue
- Department of Financial services
- Department of Investment and Public Asset Management
- Department of Public Enterprises

• WHO PRESENTED THE MAXIMUM NUMBER OF UNION BUDGETS AS FINANCE MINISTER?

- Shri Morarji Desai: between 1962 and 1969 :10 Union Budgets.
- Shri P Chidambaram at 9, followed by Shri. Pranab Mukherjee at 8.
- Shri Yashwant Sinha and Dr. Manmohan Singh have presented 8 and 6 budgets respectively.

II. MINISTRY OF CORPORATE AFFAIRS (MCA)

- **CONCERNED WITH** Administration of the Companies Act 2013, the Companies Act 1956, the Limited Liability Partnership Act, 2008, & the Insolvency and Bankruptcy Code, 2016.
- **RESPONSIBLE FOR** Regulation of Indian enterprises in the industrial and services sector.

- Mostly run by civil servants of the ICLS cadre.
- Officers are elected through the **Civil Services Examination** conducted by Union Public Service Commission.
- The highest post, **Director General of Corporate Affairs (DGCoA)**, is fixed at Apex Scale for the ICLS.

III. MINISTRY OF HOME AFFAIRS (MOHA)

- **BASIC INFORMATION**

- MOHA is a ministry of the Government of India.
- As an interior ministry of India, it is mainly responsible for the **maintenance of internal security and domestic policy**.
- The Home Ministry is headed by **Union Minister of Home Affairs**.

- **DEPARTMENTS UNDER MOHA**

- Department of Border Management
- Department of Internal Security
- Department of Jammu, Kashmir and Ladakh Affairs
- Department of Home
- Department of Official Language
- Department of States

- **DEPARTMENT OF OFFICIAL LANGUAGE**

- Central Translation Bureau
- Central Hindi Training Institute
- Directorate of Census Operations

IV. MINISTRY OF LAW AND JUSTICE

- **BASIC INFORMATION:** It deals with the –

- Management of the **legal affairs**, through the **Legislative Department**, advising the various Ministries of the Central Government;
- **Legislative activities** through the **Department of Legal Affairs**, drafting of principal legislation;
- **Administration of justice** in India through the **Department of Justice**.

- **DEPARTMENTS OF MINISTRY OF LAW & JUSTICE**

- Department of Legal Affairs
- Legislative Department
- Department of Justice

V. SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

- Regulatory body for securities and commodity market in India under the ownership of **Ministry of Finance within the Government of India**.
- Established on 12 April, 1988 as an **executive body** and statutory powers given on 30th January, 1992 through the SEBI Act, 1992.

VI. RESERVE BANK OF INDIA (RBI)

- India's Central Bank and regulatory body responsible for regulation of the Indian banking system.
- Under the ownership of **Ministry of Finance, Government of India**.
- Responsible for the **control, issue and maintaining** supply of the Indian rupee.
- Manages the country's main payment systems and works to promote its economic development.
- **Bharatiya Reserve Bank Note Mudran (BRBNM)** is a specialised division of RBI through which it prints and mints Indian currency notes (INR) in currency printing presses located in **Nashik (Western India)** and **Dewas (Central India)**.
- RBI established the **National Payments Corporation of India** to regulate the payment and settlement systems in India.

- **Deposit Insurance and Credit Guarantee Corporation** was established for the purpose of providing insurance of deposits and guaranteeing of credit facilities to all Indian banks.

VII. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI)

- IBBI is the regulator for overseeing insolvency proceedings and entities like Insolvency Professional Agencies (IPA), Insolvency Professionals (IP) and Information Utilities (IU) in India.
- Established on 1 October 2016, and given statutory powers through the Insolvency and Bankruptcy Code, which was passed by Lok Sabha on 5th May, 2016.
- Covers **Individuals, Companies, Limited Liability, Partnerships and Partnership firms**. The new code will speed up the resolution process for stressed assets in the country.
- To simplify the process of insolvency and bankruptcy proceedings.
- Handles cases using two tribunals like NCLT (National Company Law Tribunal) and Debt Recovery Tribunal.

✎ STRUCTURE OF THE INDIAN JUDICIAL SYSTEM

➤ FUNCTIONS OF JUDICIARY SYSTEM

- Regulation of the interpretation of the Acts and Codes,
- Dispute Resolution,
- Promotion of fairness among the citizens of the land.

➤ THE HIERARCHY OF COURTS:

- The Supreme Court is at the top, followed by the High Courts and District Courts.
- High Court decisions are binding in the respective state but are only persuasive in other states.
- Decisions of the Supreme Court are binding on all High Courts under Article 141 of the Indian Constitution. **In fact, a Supreme Court decision is the final word on the matter.**

➤ SUPREME COURT

- The Supreme Court is the **apex body** of the judiciary.
- It was established on **26th January, 1950**.
- The **Chief Justice of India** is the highest authority appointed under Article 126.
- The principal bench of the Supreme Court consists of **seven members** including the Chief Justice of India.
- Presently, **the number has increased to 34** including the Chief Justice of India due to the rise in the number of cases and workload.
- Individual can seek relief in the Supreme Court by filling **writ petition under Article 32**.

➤ HIGH COURT

- The highest court of appeal in each state and union territory.
- **Article 214** of The Indian Constitution states that there must be a High Court in each state.
- The High Court has appellate, original jurisdiction and Supervisory jurisdiction. However, **Article 227 of the Indian Constitution limits a High Court's supervisory power**.
- In India, there are **twenty-five High Courts**, one for each state and union territory. **Six states share a single High Court**.
- Remedies against violation of fundamental rights of individual in High Court by filling a **writ under Article 226**.

➤ DISTRICT COURT

- The courts of district judge deal with civil law matters.
- The courts of sessions deals with criminal matters.
- Under pecuniary jurisdiction, a civil judge can try suits valuing not more than Rupees two crore.

➤ METROPOLITAN COURTS

- Established in metropolitan cities in consultation with the High Court where the population is ten lakh or more.
- Chief Metropolitan Magistrate has powers as Chief Judicial Magistrate and Metropolitan Magistrate has powers as the Court of a Magistrate of the first class.

THE INDIAN CONTRACT ACT, 1872

UNIT 1: NATURE OF CONTRACTS

✘ AGREEMENT, PROMISE & CONTRACT

- **Agreement** = Offer and Acceptance.
Meaning: Every promise and every set of promises forming consideration for each other.
- **Promise** = A proposal when accepted becomes a promise.
- **Contract** = Agreement which are enforceability by law.
Enforceability by law = Consideration, Free consent, Parties competent to contract, Lawful consideration and object, Legal possibility of performance, Not specifically declared to be void.

✘ TYPES OF CONTRACTS

- **BASED ON VALIDITY/ENFORCEABILITY:**
 - **Valid contracts:** Contracts enforceable by law.
 - **Void contracts:** Contracts not enforceable by law. No legal remedy or damages available.
 - **Voidable contracts:** Contracts which is enforceable at the option of one party thereto but not at the option of other or others.
 - **Illegal contracts:**
 - Forbidden by law.
 - They are void.
 - Agreements collateral to illegal contracts are also void.
 - **Unenforceable contract:** Contract not enforceable due to technical defects.
- **BASED ON FORMATION:**
 - **Express contracts:** Contracts made by words (Spoken/Written).
 - **Implied contracts:** Contracts made through the action or conduct of parties.
Tacit contracts: Inferred by acts of the parties (kind of implied contracts).
Examples are ATM, vending machines.
 - **Quasi contracts:** Contracts made by an obligation of law. It is not an actual contract, but resembles a contract.
 - **E-contracts:** Contracts made through electronic means. These are known as EDI contracts, cyber contracts or mouse click contracts.
- **BASED ON PERFORMANCE:**
 - **Executed contracts:** Consideration for the contract has been given by both parties.
 - **Executory contracts:** Obligation for the contract is to be performed in future.
 - **Unilateral contracts:** One of the parties performs the obligation and other party's obligation is pending.
 - **Bilateral contracts:** Obligation is outstanding on the part of both parties (reciprocal promises).

✘ PROPOSAL/OFFER

- **MEANING:** According to **Section 2(a)** of The Indian Contract Act, 1872, "when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a **Proposal/Offer**".
- **ESSENTIALS:**
 - Mere expression of willingness does not constitute an offer.
 - The **person making the proposal** or offer is called the '**promisor**' or '**offeror**'.
 - The person to whom the offer is made is called the '**offeree**' and the **person accepting** the offer is called the '**promisee**' or '**acceptor**'.

➤ **TYPES OF OFFERS:**

- **General Offer** – Offer made to the public at large and anyone can accept it. (*Carlill vs Carbolic Smoke Ball Co.*)
- **Specific Offer** – Offer made to a specific person/specific community and can be accepted by the identified person. (*Boulton vs Jones*)
- **Cross Offer** – Two parties exchange identical offers in ignorance each other's offers.
- **Counter Offer** – Offer made in place of the original offer with different terms & conditions. It is rejection of original offer and also called as **Conditional acceptance**.
- **Standing/Continuing/Open Offer** – Offer open for acceptance for a fixed period of time. For example, Tender for supply of goods.

➤ **RULES OF OFFER:**

- Capable of creating legal relations (no social agreements).
- Offer must be certain, definite and not vague (Person does not know what to accept - Offer is void).
- Offer shall be properly communicated to the offeree. (*Lalman Shukla vs Gauri Dutt*)
- Special terms are present in an offer – Brought to the knowledge of another party.
- Non-compliance of any term of an offer amounting to acceptance – Not a valid offer.
- Offer can be conditional.
- Offer is Different from a mere statement of intention, an invitation to offer, a mere communication of information, Casual Equity, A prospectus and Advertisement.
 - Offer must be distinguished from an answer to a question. (*Harvey vs Facie*)
 - Goods sold through auction is Invitation to offer.

✂ **DIFFERENCE BETWEEN OFFER AND INVITATION TO OFFER**

Basis	Offer	Invitation to Offer
Meaning	Specific and definite proposal to enter into a contract. This is final expression of willingness.	A request for an offer and it is an initial expression of willingness.
Intention	Made with the intention of creating legal relations as soon as the other party accepts.	Made for the purpose of obtaining information or proposals/ further negotiations.
Freedom	Can be accepted or rejected.	Cannot be accepted, only used as a basis for creating an offer.
Legal relation	Creates legal obligations if accepted.	Does not create any legal obligations.
Revocation	Can be revoked before acceptance.	Cannot be revoked.
Sequence	Offer can not be precedent to invitation to offer.	Invitation to offer precedes offer.

✂ **ACCEPTANCE**

- **MEANING:** When the person to whom the offer is made signifies his assent, the offer is said to be accepted. **Acceptance to an offer is what a lighted match stick is to a train of gunpowder.**

➤ **RULES OF ACCEPTANCE:**

- Acceptance can only be given by the person to whom the offer is made.
- It must be absolute, unqualified and expressed in a reasonable/proposed manner.
- Acceptance must be communicated reasonably. (*Brogden Vs Metropolitan Railway Co.*)
- Mode of acceptance is specified – Must be accepted in the mode specified.
- Acceptance must be given in a specified/reasonable time.
- Silence will not amount to acceptance.
- Some conditions of the offer are performed – Offer deemed to be accepted. (general offer)
- Offer shall be accepted by the person who has the authority to accept.

✘ COMMUNICATION OF OFFER & ACCEPTANCE

- **COMMUNICATION OF OFFER** is completed when it comes to the knowledge of the person to whom it is made.

(As per ICAI module – offer comes to the knowledge when it is read by the offeree)

➤ COMMUNICATION OF ACCEPTANCE:

- **Against Offeror:** In the course of transmission, so that it is out of control of the acceptor.
- **Against Acceptor:** Letter of acceptance is received by the offeror.

✘ COMMUNICATION OF REVOCATION OF OFFER & ACCEPTANCE:

➤ COMMUNICATION OF REVOCATION OF OFFER:

- **Against Offeror:** When offeror posts the letter.
- **Against Offeree:** When offeree receives the letter.

➤ COMMUNICATION OF REVOCATION OF ACCEPTANCE:

- **Against Acceptor:** When the letter is posted to the offeror.
- **Against Offeror:** When the letter is received by the offeror.

✘ TIME OF REVOCATION:

- **OFFER:** Before acceptance is completed as against the offeror, *i.e.*, before acceptance letter is posted.
- **ACCEPTANCE:** Before acceptance is completed as against the acceptor, *i.e.*, before acceptance letter reaches offeror.

✘ LAPSE OF OFFER

- Notice of revocation to the other party before acceptance.
- Expiry of time fixed for acceptance or expiry of reasonable time.
- Failure by acceptor to fulfil the condition precedent to offer.
- Death or insanity of the person making the offer (if it comes to the knowledge of offeree before acceptance).
- By a counter-offer as it leads to rejection of original offer.
- Acceptance is not in a prescribed manner – the offer gets lapsed.
- Due to any change in the law offer becomes illegal or incapable of performance.

UNIT 2: CONSIDERATION

✘ CONSIDERATION

- **MEANING:** As per the Indian Contract Act, 1872, **Section 2(d)**, consideration means: When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing something, such an act or abstinence or promise is called a **consideration** for the promise”.

➤ LEGAL RULES OF CONSIDERATION:

- Consideration must move at the desire of the promisor. (*Durga Prasad vs. Baldeo*)
- Consideration may move from the promisee or any other person. (*Chinnaya vs. Ramayya*)
- May be executed or executory
- Consideration may be past, present or future.
- Consideration need not be adequate.
- Performing an act to which a person is legally bounded – Not considered as consideration.
- Consideration must be real and not illusory (it has some value).
- Consideration must not be unlawful, immoral or opposed to public policy.

✘ DOCTRINE OF PRIVACY OF CONTRACT

- **MEANING:** Stranger to a contract cannot sue the parties to the contract.
- **EXCEPTIONS to 'Privacy of Contract': (Only a beneficiary can sue the contracting parties)**

- A person in whose favour a charge or interest in the property has been created. (*Khwaja Muhammad Khan vs. Hussaini Begum*)
- **Family settlements:** Members of the family not a party to the settlement can sue for their benefits.
- **Marriage contracts:** Provision made for the benefit of a person; such a person can file a suit.
- **Any condition or covenant or duty attached with land purchased:** Owner of the land is bound by such conditions or duties even though he is not a party to the original agreement containing those conditions or covenants.
- **In case of a person acknowledging someone else's liabilities as his agent:** The other party can enforce the contract (estoppels by acknowledgement of liability).

✘ VALIDITY OF AN AGREEMENT WITHOUT CONSIDERATION:

- Agreements made out of Natural Love & Affection:
Parties standing in near relation,
which are in writing and
registered under the law
(Near relation means blood relation or Husband wife.).
Love and affection only (No quarrels)
- **Compensation for past voluntary services:** A promise to compensate wholly or in part, a person who has already voluntarily done something for the promisor is enforceable.
 - The service should have been rendered voluntarily.
 - The services must have been rendered for the promisor.
 - The promisor must be in existence at the time when services were rendered.
 - The promisor must have intended to compensate the promisee.
- **Promise to pay time-barred debts** – Promise is valid if in writing & signed by the promisor.
- **Agency**
- **Completed gifts** – Anything gifted shall not require consideration.
- **Gratuitous bailment**
- **Charity:** Promisee undertakes liability – Promisor is liable.

UNIT 3: OTHER ESSENTIALS OF A CONTRACT

- **Competent to contract**
- **Free consent**
- **Lawful object and consideration**
- **Not declared void**

✘ COMPETENCY TO CONTRACT

- **Person competent to contract:** Person who is major (≥ 18 years) and is of sound mind and not disqualified by law.
- **Person disqualified by law:** Alien enemy, Convicts, Foreign diplomats, Company working beyond its object clause.
- **Minor's agreement:**
 - An agreement with a minor is *void-ab-initio*.
 - A minor's agreement cannot be ratified even after the attainment of his majority.
 - Minor can always plead his minority in defence.
 - But in case minor misrepresents himself as major, court may order restitution of property/money obtained by minor under a contract. (*Khan gul vs lakha Singh*)
 - The contract with the minor for necessities is valid, and the minor's property is liable .(not personally liable)
 - A minor is liable for necessities: supplied to him or to any person who is dependent on him.
 - A minor cannot be declared insolvent.

- A minor cannot be admitted as a partner in a partnership firm (can be admitted only for benefits with the consent of all partners).
- A minor can act as an agent but will not be liable to his principal.
- A minor's guardian can enter into a valid contract on the minor's behalf.
- A minor cannot bind his parent or guardian in any contract unless he is acting as agent of their parent/guardian.
- Contract of guarantee – Minor cannot be a surety or creditor.
- A minor cannot be a shareholder in a company but his guardian can hold shares transferred or transmitted by others.
- Though a minor is not competent to contract. There is nothing that prevents him from making the other party bound to the minor.(he can sue others)
- A promissory note executed in favour of a minor is valid because he can be a beneficiary, whereas a promissory note executed by the minor is altogether void.

✂ PERSON OF SOUND MIND:

- As per the provision of the Indian Contract Act, 1872, a person is of sound mind if, at the time when he makes the contract, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.
- Person usually of unsound mind but occasionally of sound mind – Can enter into contract when of sound mind.
- Person usually of sound mind but occasionally of unsound mind – Cannot enter into contract when of unsound mind.

✂ FREE CONSENT

- **MEANING:** When two or more persons agree upon the same thing in the same sense (*consensus-ad-idem*).
- **ELEMENTS disqualifying Free Consent is not free when it is:** Coercion, Undue influence, Fraud, Misrepresentation, Mistake.

• **COERCION:**

Meaning

- Committing or threatening to commit any act forbidden by the Indian Penal Code.
- Unlawful detaining or threatening to detain any property;
- any other act fitted to deceive;
- to cause any person to enter into an agreement.

Effect

- A contract induced by coercion is Voidable at the option of the person whose consent was so obtained.
- Any person receiving benefit by coercion – Restore such benefit.
- It is not necessary that where coercion is employed, IPC is applicable.
- For the application of coercion, coercion may be employed by the outsider to an outsider or by an outsider to any party of the contract.
- What is necessary is that the party making a contract must be induced by coercion.
- **UNDUE INFLUENCE:** One of the parties in a position to dominate the will of the other party in order to obtain an unfair advantage over the other party.
 - One of the parties holds real or apparent authority, or stands in a fiduciary relationship, or contract with a person having low mental capacity or physically challenged or old illiterate person.
 - The dominating party has taken an unfair advantage over the weaker party. However, if the contract is made in the ordinary course of business, it cannot be said to have been induced by undue influence.
 - When consent to a contract is caused by undue influence, the contract is voidable at the option of the party whose consent was so obtained.

- Any such contract may be set aside either absolutely or if the party who was entitled to avoid it has received any benefit may return the benefits received.
- Unconscionable transactions and contract with person whose mental or physical capacity is affected by illness or age
- Intention must be to obtain unfair advantage.
- **FRAUD:** Fraud means and includes any of the following acts committed by a party to a contract:
 - The suggestion, as to a fact, which is not true by one who does not believe it to be true.
 - The active concealment (hiding) of a fact by one having knowledge or belief of the fact.
 - A promise made without any intention of performing it.
 - Any other act fitted to deceive.
 - Any such act or omission as to law specifically declared to be fraudulent.
 - The act must be committed with the intention to cause harm (deceive).
 - Contract induced by fraud is voidable: Party can rescind the contract & sue for damages.
 - **Mere silence is not a fraud:** No duty to disclose facts that are within the knowledge of both parties.
 - When silence is a fraud:
 - Duty of person to speak – Parties in Fiduciary Relationship/ Insurance/ Marriage/ Family settlements/ Share allotment.
 - Silence is equivalent to speech.
- **MISREPRESENTATION:** A person suggests something which is not true, but he believes it to be true.
 - Any untrue fact believed to be true by all the parties to contract.
 - Misrepresentation is made with no intention to deceive.
 - Any person who is misled can avoid the contract (cannot claim damages).
- **MISTAKE:** An innocent or incorrect belief which misleads both parties to the contract. Mistake may be either mistake of law or mistake of facts.
 - **Mistake of Facts:** These are of two types:
 - Unilateral mistake** – When one party to contract is under a mistake (valid contract except when mistake of identity of a person is there).
 - Bilateral mistake** – When both the parties to contract are under a mistake (void-absence of *consensus ad idem*).
 - **Mistake of Law:** Further classified as:
 - Mistake of Indian Law:** A person cannot be allowed to get any relief on the ground that it had done a particular act in ignorance of law.
 - Mistake of Foreign law** can be treated as a mistake of fact and agreement in such a case is void.

✂ UNLAWFUL OBJECT & CONSIDERATION

- Consideration or object of agreement is forbidden by any law.
- Consideration or object defeats the provision of any law.
- Fraudulent object. (If the two parties to the contract agree to enter into a contract that results in fraud with the third party, then such contract is *void*).
- Consideration or object defeats any rule for the time being in force in India.
- Consideration or object involves any injury to any person or property of another person.
- Consideration or object is immoral/opposing the moral values of society.
- Consideration is against public policies or interest of public:
 - Trading with an alien enemy.
 - stifling prosecution.
 - Sharing of financial proceeds from the success of a lawsuit (champerty).
 - **Sale of public offices:**
 - It can be by way of appointing a person in a government office or by way of manipulating the files of deserving candidates to securing national awards.
 - Agreement for the creation of monopolies.

- Restraint of personal liberty (Agreement unnecessarily restricting the individual is void being as it is against public policy).
- **Creation of interest which is opposed to duty:** If the person by an agreement agrees to do something which is against his duties, then such contracts will be *void-ab-initio*.
- Agreements involving the procurement of a person for marriage (marriage brokerage contracts).
- Agreements restricting parental rights.
- Agreements in restraint of trade (Agreements related to restricting any person from doing business or trade).
 - **Exceptions to agreements in restraint of trade:**
 - **SALE OF GOODWILL:** A person sold his business goodwill to another, then he shall not carry such business unless otherwise agreed.
 - **EXCEPTIONS UNDER THE INDIAN PARTNERSHIP ACT, 1932:**
 - Agreement between partners to not carry any other business than that of the firm.
 - Agreement between the outgoing partner and continuing partners.
 - Agreement to carry any other business than that of the firm after the dissolution.
 - Agreement between the buyer of goodwill and the partners.
 - **AGREEMENT BETWEEN EMPLOYER & EMPLOYEE:** Employee binds himself to not to compete with the employer during the term of employment.

✂ AGREEMENTS EXPRESSLY DECLARED VOID

- Agreements with incompetent people
- Agreements with an unlawful object or consideration
- Agreements made under a mutual mistake of material fact
- Agreements made without consideration
- Agreements in restraint of marriage, trade, legal proceedings, etc.

✂ WAGERING AGREEMENTS

- **MEANING:** Agreement to pay money or money's worth upon determination of an uncertain event.
 - Agreements by way of wager are *void* (in Maharashtra and Gujarat-illegal).
 - The event is uncertain, which means that either the event has not yet taken place or if the event has happened, the parties are unaware of the result.
 - Neither party should have control over the event.
 - Each side stands to win or to lose.
 - Neither party should have a legitimate interest in the occurrence or non-occurrence of the event other than the sum or stake.
 - The only material difference between the void and illegal agreement relates to their effect upon the collateral transaction. A collateral transaction is one that is attached to the main transaction.

UNIT 4: PERFORMANCE OF THE CONTRACT

✂ PERFORMANCE OF THE CONTRACT:

- **MEANING:** Fulfilling the obligations to the contract.
- **TYPES:** Performance of contract may be actual or attempted.
 - **Actual Performance:** Actual performance is said to have taken place when each of the parties had done what he has agreed to do.
 - **Attempted Performance:** When the promisor offers to perform his obligations and the promisee refuses to accept the performance, it amounts to attempted performance or tender (unconditional, at the proper time and place, communicated to the proper person, and it is for the whole contract).

✘ BY WHOM CONTRACT MAY BE PERFORMED:

- **By promisor himself:** Expressly mentioned in contract or Any skills required to perform a contract, Promisor has to perform the contract himself.
- **By Representatives:** In the case of death of the promisor, his representative may perform the contract.
- **By third Person:** Promisee accepts performance from a third person and Not enforceable to perform by the promisor.
- **By Agent:** The promisor may employ a competent person to perform the contract.
- **By Joint promisors:** All such persons must jointly fulfil the promise.
 - If anyone dies, his legal representative, along with surviving promisors.
 - If all joint promisors die, their legal representative must jointly fulfil the promise (devolution of joint liabilities).

✘ JOINT PROMISORS & PROMISEE

➤ LIABILITY OF JOINT PROMISORS

- Joint promisors are jointly & severally liable.
- A creditor can claim the amount from any of the joint promisors.
- Any joint promisor paying the whole amount can claim from other joint promisors.
- Release of any one joint promisor from his liability does not discharge the other joint promisors.
- In case of insolvency of any of the joint promisors or if any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

➤ RIGHT OF JOINT PROMISEE (devolution of joint rights)

When a person has made a promise to two or more persons jointly, then performance of the promise can be claimed:

- Jointly by them during their life time.
- In case of the death of any one of the Joint Promisee, the survivor along with the legal representative.
- In case of death of the last survivor, by all the representatives jointly.

✘ EFFECT OF REFUSAL TO ACCEPT THE OFFER OF PERFORMANCE

- The promisor is not responsible for the non-performance of the promise.
- Such an offer must fulfil certain conditions:
 - Unconditional;
 - Made at proper time & place;
 - Promisee have a reasonable opportunity of seeing the thing which is offered in the promise.

✘ EFFECT OF REFUSAL OF THE PARTY TO PERFORM PROMISE

When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

✘ TIME & PLACE FOR PERFORMANCE OF THE PROMISE

- **No time fixed:** Reasonable time decided by circumstances or norms of trade.
- **No place is fixed:** Duty of promisor to ask the place of delivery or to fix a reasonable place.
- **Time is fixed & performance to be made by promisee:** Duty of promisee to inform usual hours & place to perform.
- **Time is fixed & performance not to be made by promisee:** Promisor can perform his obligations during usual business hours.

- **Promisee specified time, place & hours:** Promisor must perform as per the instructions of the promisee.

✎ PERFORMANCE OF RECIPROCAL PROMISES:

- A contract of an act and a promise or it may consist of two promises on being the consideration for others.
- A reciprocal promise can be performed simultaneously by both parties.
- If an order of performance is fixed, reciprocal promise to be performed in that order.
- The order of performance is not indicated expressly. Then, the contract shall be performed in the order in which the nature of the transaction required.
- If one party prevents another to perform the promise, another party may end the contract (contract becomes voidable).
- If a promise contains legal & illegal part, the legal part is valid contract & illegal part is void agreement.

✎ APPROPRIATION OF PAYMENTS

Order of appropriation:

- Appropriation by the debtor to discharge some particular debt.
- Appropriation by the creditor to discharge any lawful debt at his discretion (even for debt barred by the law of limitation of the suit).
- When neither party makes any appropriation – Debts shall be discharged in order of time. (chronological order).
- When circumstances which imply that the payments to be applied to the discharge of some payment of accepted must be applied accordingly (*i.e.*, amount of cheque is same as that of a particular debt).

✎ CONTRACTS THAT NEED NOT BE PERFORMED

- **Novation:** Parties substitute a new contract in place of an old, then old contract is not performed (parties may or may not change).
- **Rescission:** When a contract is cancelled or rescinded by parties to the contract, the contract is not performed.
- **Alteration:** When a contract is altered, the original contract is discharged & is not performed (parties remain same).
- **Waiver or Remission:** Promisee can remit or dispense contract wholly or partly or may extend the time for such performance made to him or may accept instead of its any satisfaction which he thinks fit.
- **Restoration of benefits under voidable contracts:** When a person at whose option a contract is voidable, rescinds it, shall, restore benefit received, so far as may be, to the person from whom it was received.
- **Void agreements or void contracts:** When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it. **Security deposit not to be restored.**

✎ EFFECT OF FAILURE TO PERFORM THE CONTRACT ON TIME

- **Time is an essential factor:** Contract not performed in fixed time – Voidable at the option of the promisee (can not claim compensation if performance is accepted).
- **Time is not an essential factor:** Contract does not becomes voidable but promisee can claim compensation for any loss occasioned to him by such failure.

✎ DISCHARGE OF A CONTRACT

- **Discharge by the performance:** Parties fulfill their obligations within the time & in a specified manner. Discharge by performance may be:

- Actual performance; or
- Attempted performance.
- **Discharge by mutual agreement:** Novation/Rescission/Alteration/Remission (explained earlier).
- **Discharge by the impossibility of performance.** (explained further)
- **Discharge by lapse of time:** When a contract is not performed within a period as specified and prescribed by law of limitation, the parties are discharged from contract.
- **Discharge by operation of law:** Due to death/insolvency of promisor/promisee.
- **Discharge by breach of contract:** If any of the party defaults in performing the contract. (actual or anticipatory breach). One of the parties to a contract breaks the promise. The party injured has not only a right of action for damages, but he is entitled to take the contract as rescinded, and he is also discharged from performing his part.
- **Waiver/Remittance of performance:** Promisee may remit or dispense with wholly or in part, the performance of promise or extend time or may accept instead of it any satisfaction as he thinks fit.
- **Neglect of promisee to afford reasonable facility for performance:** The promisor is excused by such neglect or refusal.
- **Merger of rights:** When inferior rights and superior rights coincide, inferior rights merge into superior. Promisor is discharged from performance of inferior rights.

✎ IMPOSSIBILITY OF PERFORMANCE

- Impossibility existing at the time of contract or initial impossibility – Contract cannot be formed whether any or both the parties are aware or not.
- However, if one of the party is aware of impossibility, other party can claim damages for the loss caused due to non-performance.
- Subsequent or supervening impossibility:
 - Destruction of subject matter after the formation of the contract without any fault of the parties to the contract, the contract is discharged.
 - Non-occurrence of things necessary for contract after its formation or if there is a change in the state of things that formed the basis of the contract, the contract becomes void.
 - Any party to the contract becomes incapable of performing the contract.
 - Impossible to perform the contract due to any change in the law by the Government.
 - Performance of the contract becomes impossible due to any economic changes.

UNIT 5: BREACH OF CONTRACT AND ITS REMEDIES

✎ BREACH OF CONTRACT

- **Anticipatory breach of contract:** When the promisor refuses his promise and signifies his unwillingness to perform the contracts before the time for performance, it is called the *anticipatory breach of contract*.
- **Actual breach of contract:** When one of the parties refuses to perform the contract on the due date.
 - Breach at the time of performance due.
 - Breach during the performance of the contract.
 - The party who is injured by the breach of a contract may bring an action for damages.
 - Which naturally arose in the usual course of things such as breach, or
 - Which the parties knew when they made the contract to be likely to result from the breach of it.
 - Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

✎ REMEDIES FOR BREACH OF CONTRACT:

DAMAGES AND OTHER REMEDIES

- **SUIT FOR DAMAGES (TYPES OF DAMAGES)**

- **Ordinary damages:** Naturally arise in the normal course of things.
- **Special damages:** These are awarded in certain special circumstances affecting the contract which and are not recoverable unless circumstances brought to the knowledge of the defendant.
Also the possibility of the special loss must be in the knowledge of the parties when the contract was made in order to claim special damages.
- **Vindictive or exemplary damages:** Given in two circumstances:
Breach of promise to marry and Wrongful dishonour of customer's cheque by the banker.
 - They are awarded to punish the defendant so as to prevent the defendant from committing this again.
 - The amount of damages in case of wrongful dishonour of his cheque may be quite heavy depending upon the loss of credit and reputation.
- **Nominal damages:** When a party suffered has proved a breach of contract but he has not suffered real damages, he can file suit just to establish the right to decree. The amount may be rupee or so, a very nominal amount of damages.
- **Damages for deterioration caused by delay:** In case any deterioration is caused to goods due to delay then damages can be recovered from the carrier. Deterioration implies physical damage to the goods as well as loss of special opportunity for sale.
- **Pre-fixed Damages: Penalty & Liquidated damages:**
 - **Liquidated damages:** Sum fixed in the contract represent a genuine estimated loss to the party by future breach of contract.
 - **Penalty:** Sum fixed in the contract does not represent any genuine loss but force the other party to complete the contract in a fixed time.
 - **Exception:** Where any person gives any bond to the Central or State Government on the breach of the condition of any such instrument, he shall be liable to pay the whole sum mentioned therein.

- **OTHER REMEDIES**

- **Rescission of contract:** Contract broken by one party; another party may rescind the contract & is entitled to compensation for any damages.
- **Suit upon 'Quantum Meruit':** *Quantum meruit* literally means "as much as earned" or according to the quantity of work done. (*explained later*)
- **Suit for specific performance:** The party suffered may ask for the completion of the contract where damages may not be the remedy.
- **Suit for injunction:** When party does something which he has promised not to do. The court may issue an order of injunction and restrains that party from doing what he promised not to do.

✦ QUANTUM MERUIT

Meaning: As much as earned.

- Person has begun the work and before he could complete it, the other party terminates the contract or makes it impossible to perform. The person can claim the amount for work done.
- When the work is done and accepted but subsequently turns out to be void. The person who performed the work is entitled to the amount for work done.
- A person does some act or delivers something intending to receive payment for it.
- When a contract is divisible and party not in default has enjoyed the benefit of part performance.
- When a person performs a complete contract, but in a bad way, the suffered party is entitled to claim damages.

UNIT 6: CONTINGENT AND QUASI CONTRACTS

✦ CONTINGENT CONTRACTS

- **Meaning:** A contingent contract is a contract to do or not to do something if some event collateral, to such contract does or does not happen.

- **Features:** The performance is dependent on the happening or non-happening of some uncertain event and performance cannot be demanded unless the collateral events happen or do not happen. Such a contract has to be distinguished from a proposal.

✘ ENFORCEMENT OF CONTINGENT CONTRACT:

- Enforcement on the happening of an event (enforced only when such an event happens).
- Enforcement on non-happening of an event (Enforced when the event becomes impossible).
- Enforcement on the happening of an event within fixed time (enforced only when such an event happens within a fixed time period).
- Enforcement on non-happening of an event within fixed time (Enforced if the event becomes impossible within a fixed time).
- Contract deemed impossible due to future actions of a living person–Contract not enforceable.
- Contingent contract on impossible events – Always void.

✘ QUASI-CONTRACTS

- **Meaning:** Based on the principle of equity, justice and good conscience. Quasi-contracts intend to prevent unjust enrichment, *i.e.*, enrichment (benefit) of one person at the cost of another.

➤ Features:

- Right is always a right to money and generally, though not always, to a **liquidated sum of money**;
- Does not arise from any agreement but is **imposed by the law**; and
- Thirdly, it is a right which is available not against all the world, but **against a particular person or persons only**.

➤ TYPES OF QUASI-CONTRACTS:

- **Claim for necessities supplied to persons incapable of contracting:** In case of necessities supplied to person who is a minor or lunatic, or to anyone whom incompetent person is legally bound to support, supplier is entitled to recover the price from the property of the incompetent person. Necessaries must be suitable to his condition in life.
- **Payment by an interested person:** In case payment is made by person is interested in making payment which defendant is under a legal obligation to pay, person making the payment is entitled to get reimbursed.
- **Liability to pay for non-gratuitous acts:** A person lawfully does an act or delivers something, not intending to do so gratuitously, also other person enjoys benefit, then later is bound to make compensation.
- **Responsibility of finder of lost goods:** To take proper care of the property as a man of ordinary prudence would take no right to appropriate the goods and to restore the goods if the owner is found.
- **Money paid by mistake or under coercion:** Person to whom money has been paid or anything delivered by mistake or under coercion must repay or return it.

UNIT 7: CONTRACT OF INDEMNITY AND GUARANTEE

✘ CONTRACT OF INDEMNITY

“A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person.”

➤ PARTIES:

- The party who promises to indemnify/ save the other party from loss- “*indemnifier*”.
- The party who is promised to be saved against the loss- “*indemnified*” or “*indemnity holder*”.

➤ MODE OF CONTRACT OF INDEMNITY

- A contract of indemnity like any other contract may be **expressed or implied**.

- A contract of Fire Insurance or Marine Insurance is always a contract of indemnity. But there is **no contract of indemnity in case of contract of Life Insurance.**

➤ RIGHTS OF INDEMNITY-HOLDER WHEN SUED

The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor/indemnifier—

- all **damages** which he may be compelled to pay in any suit;
- all **costs** which he may have been compelled to pay in bringing/ defending the suit; and
- all **sums** which he may have paid under the terms of any **compromise** of suit.

➤ WHEN DOES THE LIABILITY OF INDEMNIFIER COMMENCES

- The liability of an indemnifier commences as soon as the liability of the indemnity-holder becomes **absolute and certain.**

✎ CONTRACT OF GUARANTEE

A contract of guarantee is a contract to perform the promise made or discharge the liability, of a third person in case of his default.

➤ PARTIES IN THE CONTRACT OF GUARANTEE

- **Surety:** Person who gives the guarantee.
- **Principal debtor:** Person in respect of whose default the guarantee is given.
- **Creditor:** Person to whom the guarantee is given.
- A contract of guarantee is a **tripartite agreement** between principal debtor, creditor and surety. There are, in effect three contracts:
 - A principal contract between the **principal debtor and the creditor.**
 - A secondary contract between the **creditor and the surety.**
 - An implied contract between the **surety and the principal debtor** whereby principal debtor is under an obligation to indemnify the surety; if the surety is made to pay or perform.

➤ ESSENTIAL FEATURES OF A GUARANTEE

- **Purpose:** To secure the payment of a recoverable debt.
- **Consideration:** Contract should be supported by a consideration. However, there is **no need of direct consideration between surety & creditor.**
- **Existence of a liability:** There must be an existing liability or a promise whose performance is guaranteed.
- **No misrepresentation or concealment:** Any guarantee which has been obtained by the means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, or by keeping silence as to material facts, is invalid.
- **Writing not necessary:** A guarantee may be either oral or written.
- **Joining of the other co-sureties:** The guarantee by a surety is not valid if a condition is imposed by a surety that some other person must also join as a co-surety, but such other person does not join as a co-surety.

✎ TYPES OF GUARANTEES

- **Specific Guarantee:** A guarantee which extends to a single debt or specific transaction is called a **specific guarantee.**
- **Continuing Guarantee:** A guarantee which extends to a series of transaction is called a **continuing guarantee.**

✧ DISTINCTION BETWEEN A CONTRACT OF INDEMNITY AND A CONTRACT OF GUARANTEE

<i>Point of distinction</i>	<i>Contract of Indemnity</i>	<i>Contract of Guarantee</i>
Number of party/parties to the contract	There are only two parties namely the <i>indemnifier</i> [promisor] and the <i>indemnified</i> [promisee].	There are three parties : creditor, principal debtor and surety.
Nature of liability	The liability of the indemnifier is primary and unconditional.	The liability of the surety is secondary and conditional as the primary liability is that of the principal debtor.
Time of liability	The liability of the indemnifier arises only on the happening of a contingency.	The liability arises only on the non-performance of an existing promise or non-payment of an existing debt.
Time to Act	The indemnifier need not act at the request of indemnity holder.	The surety acts at the request of principal debtor.
Right to sue third party	Indemnifier cannot sue a third party for loss in his own name as there is no privity of contract. Such a right would arise only if there is an assignment in his favour.	Surety can proceed against principal debtor in his own right because he gets all the right of a creditor after discharging the debts.
Purpose	Reimbursement of loss.	For the security of the creditor.
Competency to contract	All parties must be competent to contract.	In the case of a contract of guarantee, where a minor is a principal debtor, the contract is still valid.

✧ NATURE AND EXTENT OF SURETY'S LIABILITY

- The liability of the surety is **co-extensive with that of the principal debtor** unless it is otherwise provided by the contract.
- Liability of surety is of **secondary nature** as he is liable only on default of principal debtor.
- Where a debtor cannot be held liable on account of any **defect in the document**, the liability of the surety also ceases.
- A creditor may choose to proceed against a surety first, unless there is an agreement to the contrary.

✧ LIABILITY OF TWO PERSONS, PRIMARILY LIABLE, NOT AFFECTED BY ARRANGEMENT BETWEEN THEM THAT ONE SHALL BE SURETY ON OTHER'S DEFAULT

Two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the liability of each of such two persons to the third person under the first contract will **not be affected by the existence of the second contract**.

✧ DISCHARGE OF A SURETY

➤ MODES OF DISCHARGE:

- I. By revocation of the contract of guarantee.
- II. By the conduct of the creditor, or
- III. By the invalidation of the contract of guarantee

I. By revocation of the Contract of Guarantee

- **Revocation of continuing guarantee by Notice:** The continuing guarantee may at any time be revoked by the surety as to **future transactions** by notice to the creditors.

- **Revocation of continuing guarantee by surety's death:** In the absence of any contract to the contrary, the **death of surety operates as a revocation** of a continuing guarantee as to the future transactions taking place after the death of surety.
- **By novation:** The surety under original contract is discharged **if a fresh contract is entered** into either between the same parties or between the other parties.

II. By the conduct of the Creditor

- **By variance in terms of contract:** Where there is any variance in the terms of contract between the principal debtor and creditor **without surety's consent**, surety will be discharged in respect of all subsequent transactions.
- **By release or discharge of principal debtor:** Creditor enters into a **fresh/ new contract** with principal debtor, or **does any act or omission**, the legal consequence of which is the discharge of the principal debtor, surety is discharged.
- **Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor:** Creditor makes a **composition with, or promises to give time to, or promises not to sue**, the principal debtor, discharges the surety, unless the surety assents to such contract.
- **Discharge of surety by creditor's act or omission impairing surety's eventual remedy:** The creditors act or omission **deprives the surety of the benefit** of this remedy, the surety is discharged.

III. By the invalidation of the contract of guarantee

- **Guarantee obtained by misrepresentation:** Guarantee obtained by means of **misrepresentation made by the creditor, or with his knowledge** and assent, concerning a material part of the transaction, is invalid.
- **Guarantee obtained by concealment invalid:** Any guarantee obtained by means of **keeping silence** as to material circumstances is invalid.
- **Guarantee on contract that creditor shall not act on it until co-surety joins-**Where a person gives a guarantee upon a contract that the creditor shall not act upon it **until another person has joined in it as co-surety**, the guarantee is not valid if that other person does not join.

➤ CASES WHERE SURETY NOT DISCHARGED

- **Surety not discharged** when agreement made with third person to give time to principal debtor.
- **Mere forbearance** on the part of the creditor to sue the principal debtor or to enforce any other remedy against him.

✎ RIGHTS OF A SURETY

The surety enjoys the following rights against the creditor:

- I. Rights against the creditor,
- II. Rights against the principal debtor,
- III. Rights against co-sureties.

I. Right against the Creditor

- **Surety's right to benefit of creditor's securities:** A surety is entitled to the **benefit of every security** which the creditor has against the principal debtor.
- **Right to set off:** If the creditor sues the surety, for payment of principal debtor's liability, the surety may have the **benefit of the set-off**, if any, that the principal debtor had against the creditor.
- **Right to share reduction:** The surety has right to claim **proportionate reduction** in his liability if the principal debtor becomes insolvent.

II. Right against the principal debtor

- **Rights of subrogation:** Upon payment or performance of all that surety is liable for, he is invested with all the rights which the creditor had against the principal debtor.
- **Implied promise to indemnify surety:** In every contract of guarantee there is an **implied promise by the principal debtor** to indemnify the surety.

III. Rights against co-sureties

- **Co-sureties liable to contribute equally:** Unless otherwise agreed, each **surety is liable to contribute equally** for discharge of whole debt or part of the debt remains unpaid by debtor.
- **Liability of co-sureties bound in different sums:** Co-sureties who are bound in different sums are liable to **pay equally as far as the limits of their respective obligations permit.**

UNIT 8: BAILMENT AND PLEDGE

✎ WHAT IS BAILMENT?

➤ MEANING

Bailment is the delivery of goods by one person to another for some purpose, upon a contract, that the goods shall, **when the purpose is accomplished**, be returned or otherwise disposed of according to the directions of the person delivering them.

➤ PARTIES TO BAILMENT

- **Bailor:** The person delivering the goods.
- **Bailee:** The person to whom the goods are delivered.

➤ ESSENTIAL ELEMENTS

The essential elements of a contract of bailment are:

- **Contract:** The Contract of bailment may be express or implied.
- **Delivery of goods:** It involves delivery of goods from one person to another.
- **Purpose:** The goods are delivered for some purpose. The purpose may be express or Implied.
- **Possession:** In bailment, possession of goods changes.
- **Return of Goods:** Bailee is obliged to return the goods physically to the bailor.

➤ TYPES OF BAILMENT

- **On the basis of benefit, bailment can be classified into three types:**
 - For the exclusive benefit of bailor.
 - For the exclusive benefit of bailee.
 - For mutual benefit of bailor and bailee.
- **On the basis of reward, bailment can be classified into two types:**
 - Gratuitous Bailment.
 - Non-Gratuitous Bailment.

✎ DUTIES OF A BAILOR

➤ BAILOR'S DUTY TO DISCLOSE FAULTS IN GOODS BAILED:

- **In case of gratuitous bailment:** The bailor is **bound to disclose** to the bailee faults in the goods bailed, of which the bailor is aware.
- **In case of non-gratuitous bailment:** If the goods are bailed for hire, the bailor is responsible for such damage, **whether he was or was not aware** of the existence of such faults in the goods bailed.

➤ DUTY TO PAY NECESSARY EXPENSES:

- **In case of Gratuitous bailment:** the bailor shall repay to the bailee the **necessary expenses and extraordinary expenses** incurred by him.
- **In case of non-gratuitous bailment:** The bailor is liable to pay the **extraordinary expenses** incurred by the bailee.

➤ DUTY TO INDEMNIFY THE BAILEE FOR PREMATURE TERMINATION:

Bailor must compensate the bailee for loss caused by **premature termination** of gratuitous bailment.

➤ **BAILOR'S RESPONSIBILITY TO BAILEE:**

- Duty to indemnify for the loss caused to bailee due to **defective title** of the bailor.
- **Duty to receive back** the goods when the bailee returns them.

✘ **DUTIES OF A BAILEE**

➤ **TAKE REASONABLE CARE OF THE GOODS**

Bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take care of his own goods.

➤ **NOT TO MAKE INCONSISTENT USE OF GOODS**

If the bailee makes unauthorized use of the goods, he is liable to compensate the bailor for any loss or destruction of goods.

➤ **NOT TO MIX THE GOODS**

- **Goods mixed with the consent of the bailor:** Both the parties shall have an interest in proportion to their respective shares in the mixture thus produced.
- **Goods without the consent of the bailor:**
 - **Goods are separable:** The property in the goods remains in the parties respectively; but the bailee is bound to **bear the expense of separation or division** and any damage arising from the mixture.
 - **Goods are not separable:** The bailor is entitled to be **compensated by the bailee** for loss of the goods.

➤ **RETURN THE GOODS**

Bailee should return the goods bailed without demand, as soon as the time for which they were bailed, has expired, or the purpose for which they were bailed has been accomplished.

➤ **RETURN AN ACCRETION FROM THE GOODS**

The bailee is bound to deliver to the bailor, or according to his directions, **any increase or profit** which may have accrued from the goods bailed.

➤ **NOT TO SETUP ADVERSE TITLE**

Bailee must hold the goods on behalf of and for the bailor. He **cannot deny the title** of the bailor.

✘ **RIGHTS OF A BAILOR**

- **Right to terminate the bailment:** A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.
- **Right to demand back the goods:** When the goods are lent gratuitously, the bailor can demand back the goods at any time even before the expiry of the time fixed or the achievement of the object.
- **Right to file a suit against a wrong doer:** (explained further)
- **Right to sue the bailee:** The bailor has a right to sue the bailee for enforcing all the liabilities and duties of him.
- **Right to compensation:** If any damage is caused to the goods bailed because of the unauthorized use of the goods or unauthorized mixing of the goods, the bailor has a right to claim compensation for the same.

✘ **RIGHTS OF A BAILEE**

- The bailee has a **right to deliver them** to anyone of the joint owners unless there was a contract to the contrary.
- Bailee is **entitled to be indemnified** by the bailor for any loss arising to him by reasons that the bailor was not entitled to make the bailment or to receive back the goods or to give directions in respect to them.
- A bailee is **entitled to receive compensation** from the bailor for any loss caused to him due to the failure of the bailor to disclose any faults in the goods known to him. If the bailment is for

hire, the bailor will be liable to compensate even though he was not aware of the existence of such faults.

- In case of gratuitous bailment, the bailor shall **repay to the bailee the necessary expenses** incurred by him and any extraordinary expenses incurred by him for the purpose of the bailment.
 - If the goods bailed are claimed by the person other than the bailor, the **bailee may apply to the court** to stop its delivery and to decide the title to the goods
 - **Right of particular lien** for payment of services (explain further).
 - **Right of general lien** (explain further)
- ✘ **RIGHTS OF BAILOR AND BAILEE AGAINST ANY WRONG DOER (THIRD PARTY)**
- **SUIT BY BAILOR & BAILEE AGAINST WRONG DOERS:**
If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee may bring a suit against a third person for such deprivation or injury.
 - **APPORTIONMENT OF RELIEF OR COMPENSATION OBTAINED BY SUCH SUITS:**
Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

✘ **TERMINATION OF BAILMENT**

- **On expiry of stipulated period:** If the goods were given for a stipulated period, the contract of bailment shall terminate after the expiry of such period.
- **On fulfillment of the purpose:** If the goods were delivered for a specific purpose, a bailment shall terminate on the fulfillment of that purpose.
- **By Notice:** Where the bailee acts in a manner inconsistent with the terms of the bailment, the bailor can terminate the contract of bailment by giving a notice. A gratuitous bailment can be terminated by the bailor at any time by giving a notice to the bailee.
- **By death:** A gratuitous bailment terminates upon the death of either the bailor or the bailee.
- **Destruction of the subject matter:** A bailment is terminated if the subject matter of the bailment is destroyed.

✘ **FINDER OF LOST GOODS**

- **Right of finder of lost goods- may sue for specific reward offered:**
However, the finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him in finding the owner and preserving the goods found. But he has a right to retain the goods against the owner until he receives such compensation.
- **When finder of thing commonly on sale may sell it**
 - When the thing is in danger of perishing or of losing the greater part of its value, or
 - When the lawful charges of the finder in respect of the thing found amount to 2/3rd of its value.

✘ **TYPES OF LIEN**

➤ **PARTICULAR LIEN**

Where the bailee has, rendered any service in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods **until he receives due remuneration** for the services he has rendered in respect of them.

➤ **GENERAL LIEN**

Bankers, factors, wharfingers, attorneys of a High Court and policy brokers may, in the absence of a contract to the contrary, retain, as **a security for a general balance** of account any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to the effect.

✦ DIFFERENCE BETWEEN BAILEE'S GENERAL AND PARTICULAR LIEN

<i>General lien</i>	<i>Particular lien</i>
Section 171 of the Indian Contract Act, 1872 confers on Bailee the right of General Lien.	Section 170 of the Indian Contract Act, 1872 confers on the Bailee, the right of particular lien.
General lien alludes to the right to keep possession of goods belonging to other against general balance of account.	Particular lien implies a right of the bailee to retain specific goods bailed for non-payment of amount.
A general lien is not automatic but is recognized through on agreement. It is exercised by the bailee only by name.	It is automatic.
It can be exercised against goods even without involvement of labor or skill.	It comes into play only when some labor or skill is involved has been expended on the goods, resulting in an increase in value of goods.
Only such persons as are specified under section 171, e.g., Bankers, factors, wharfingers, policy brokers etc. are entitled to general lien.	Bailee, finder of goods, pledgee, unpaid seller, agent, partner etc. are entitled to particular lien.

✦ PLEDGE

➤ DEFINITIONS

"Pledge", "pawnor" and "pawnee" defined [**Section 172**]: The bailment of goods as security for payment of a debt or performance of a promise is called "**pledge**". The bailor is in this case called the "*pawnor*". The bailee is called the "*pawnee*".

➤ ESSENTIALS OF CONTRACT OF PLEDGE

- There shall be a bailment for security against payment or performance of the promise.
- The subject matter of pledge is goods.
- Goods pledged for shall be in existence.
- There shall be the delivery of goods from pledger to pledge.

➤ RIGHTS OF A PAWNEE/ PLEDGEE

- **Right to retain the pledged goods:** The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest, of the debt, and all necessary expenses incurred by him.
- **Right to retention of subsequent debts:** A right to retain goods for subsequent debts can be exercised only when it has been provided for in a contract to this effect.
- **Pawnee's right to extraordinary expenses incurred:** The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.
- **Pawnee's right where pawnor makes default: In case of default by Pawnor:**
 - the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or
 - he may sell the thing pledged on giving the pawnor reasonable notice of the sale.

➤ DUTIES OF THE PAWNEE

- Take **reasonable care** of the pledged goods.
- **Not to make unauthorized use** of pledged goods.
- **Return the goods** when the debt has been repaid or the promise has been performed.
- **Not to mix his own goods** with goods pledged.
- **Not to do any act which is inconsistent** with the terms of the pledge.
- **Return accretion** to the goods, *if any.*

➤ RIGHTS OF A PAWNOR

Where the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time **before the actual sale of them;** but he must, in that case, pay, in addition, any expenses which have arisen from his default.

➤ DUTIES OF A PAWNOR

- **Pay the debt** or perform the promise as the case may be.
- **Compensate the pawnee** for any extraordinary expenses incurred by him for preserving the goods pawned.
- To **disclose all the faults** which may put the pawnee under extraordinary risks.
- If loss occurs to the pawnee due to defect in pawnor's title to the goods, the pawnor must **indemnify the pawnee**.
- If the pawnee sells the good due to default by the pawnor, the pawnor must **pay the deficit**.

✕ PLEDGE BY NON-OWNERS

➤ PLEDGE BY MERCANTILE AGENT

- The person pledging the goods must be a mercantile agent;
- Mercantile agent **must be in possession** either of the goods or the documents of title to goods;
- Such possession must be with the consent of the owner. If possession has been obtained dishonestly or by a trick, **a valid pledge cannot be effected**;
- Pledge must have been made by the **mercantile agent**, when acting in the ordinary course of business of a mercantile agent;
- The pledgee must act in **good faith**;
- The pledgee should have **no notice of the pledger's defect of title**. If the pledgee knows that the pledger has a defective title, the pledge will not be valid.

➤ PLEDGE BY PERSON IN POSSESSION UNDER VOIDABLE CONTRACT

Where Goods are obtained by pawnor under a **voidable contract** but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

➤ PLEDGE WHERE PAWNOR HAS ONLY A LIMITED INTEREST

Where a person pledges goods in which he has only a limited interest *i.e.*, **pawnor is not the absolute owner of goods**, the pledge is valid to the extent of that interest.

➤ PLEDGE BY A CO-OWNER IN POSSESSION

Where the goods are left in the possession of one of the **co-owners**. Such a co-owner may make a valid pledge of the goods in his possession.

➤ PLEDGE BY SELLER OR BUYER IN POSSESSION

A seller, in whose possession, the goods have been left after sale or a buyer who with the consent of the seller, obtains possession of the goods, before sale, can make a valid pledge, provided the pawnee acts in good faith and he has **no knowledge of the defect in title of the pawnor**.

✕ DISTINCTION BETWEEN BAILMENT AND PLEDGE

Basis of Distinction	Bailment	Pledge
Meaning	Transfer of goods by one person to another for some specific purpose is known as bailment.	Transfer of goods from one person to another as security for repayment of debt is known as the pledge.
Parties	The person delivering the goods under a contract of bailment is called as "Bailor" . The person to whom the goods are delivered under a contract of bailment is called as "Bailee" .	The person who delivers the good as security is called the "Pawnor" . The person to whom the goods are delivered as security is called the "pawnee" .
Purpose	Bailment may be made for any purpose (as specified in the contract of bailment, eg: for safe custody, for repairs, for	Pledge is made for the purpose of delivering the goods as security for payment of a debt, or performance of a promise.

	processing of goods).	
Consideration	The bailment may be made for consideration or without consideration.	Pledge is always made for a consideration.
Right to sell the goods	The bailee has no right to sell the goods even if the charges of bailment are not paid to him. The bailee's rights are limited to suing the bailor for his dues or to exercise lien on the goods bailed.	The pawnee has right to sell the goods if the pawnor fails to redeem the goods.
Right to use of goods	Bailee can use the goods only for a purpose specified in the contract of bailment and not otherwise.	Pledgee or Pawnee cannot use the goods pledged.

UNIT 9: AGENCY

✦ CONTRACT OF AGENCY

- **MEANING:** The Rule of Agency is based on the maxim "*Qui facit per alium, facit per se*" i.e., he who acts through an agent is himself acting.
- **AGENT** means a person who is employed to do any act for another or to represent another in dealing with third person.
- **PRINCIPAL** means person for whom such act is done or who is so represented.
- **TEST OF AGENCY**
 - Whether the person has the capacity to bind the principal and make him answerable to the third party.
 - Whether he can establish privity of contract between the principal and third parties.

✦ APPOINTMENT AND AUTHORITY OF AGENTS

- **WHO MAY EMPLOY AN AGENT**
Any person who has attained majority and who is of sound mind, may employ an agent.
- **WHO MAY BE AN AGENT**
Any person may become an agent i.e., even a minor or a person of unsound mind may become an agent.
- **NO CONSIDERATION IS NECESSARY TO CREATE AN AGENCY.**

✦ CREATION OF AGENCY:

The Authority may be Express or Implied

- **EXPRESS AUTHORITY:** An authority is said to be express when it is given by words, spoken or written.
- **IMPLIED AUTHORITY**
 - **MEANING:** An authority is said to be implied when it is to be inferred from the circumstances of the case, conduct of the parties and things spoken or written, or in the ordinary course of dealing, may be accounted from the circumstances of the case.
 - **TYPES OF IMPLIED AGENCY**
 - **Agency by Estoppel:** An agency by estoppel may be created when following essentials are fulfilled:
 - The principal must have made a **representation**;
 - The representation may be **express or implied**;
 - The representation must state that the agent has **an authority to do certain act** although really he has no authority;
 - The principal must have **induced the third person** by such representation; and

- The third person must have **believed the representation and made the contract** on the belief of such representation.
- **Necessity:** An agency of necessity arises due to **some emergent circumstances**.
- **Agency by operation of law:** When law treats one person as an agent of another.
- **Ratification:** "Ratification" means **approving a previous act or transaction**. Ratification may be express or implied by the conduct of the person on whose behalf the act was done.

✕ ESSENTIALS OF A VALID RATIFICATION

- **Ratification may be expressed or Implied:** Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.
- **Knowledge requisite for valid ratification:** No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.
- **Whole transaction must be ratified.** A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction. There can be ratification or rejection in entirety.
- **Ratification of unauthorized act cannot injure third person.** When the interest of third parties is affected, the principle of ratification does not apply.
- **Ratification within reasonable time.** Ratification must be made within a reasonable period of time.
- **Communication of Ratification.** Ratification must be communicated to the other party.
- **Act to be ratified must be valid.** Act to be ratified should not be void or illegal.

✕ EXTENT OF AGENT'S AUTHORITY

➤ AGENT'S AUTHORITY IN NORMAL CIRCUMSTANCES

- An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act.
- An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course, of conducting such business.

➤ AGENT'S AUTHORITY IN AN EMERGENCY

To constitute a valid agency in an emergency, following conditions must be satisfied:

- Agent should **not be in a position to communicate** with his principal within the time available.
- Actual and definite **commercial necessity** to act promptly.
- Agent acted **bona fide** and for the benefit of the principal.
- The most **reasonable and practicable course** adopted under the circumstances, and
- The agent must have been in **possession of the goods** belonging to his principal and which are the subject of contract.

✕ SUB-AGENTS

- **MEANING.** Sub agent is a person employed by, and acting under the control of, the original agent in the business of agency. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally (delegates non potest delegare), unless by the ordinary custom of trade a sub-agent may, or from the nature of the agency, a sub-agent must, be employed.
- **AN AGENT CAN APPOINT SUB-AGENT IF:**
 - **the terms of appointment** originally contemplated it.
 - **customs of the trade** provide for appointment of sub agents (in both cases sub agent will be treated as agent of principal).
 - **unforeseen emergency** arise making it necessary for him to delegate the authority that was given to him by the principal.
- **REPRESENTATION OF PRINCIPAL BY SUB-AGENT PROPERLY APPOINTED**
 - The **principal is liable to third person** for the acts of sub-agent.
 - The **agent is responsible to the principal** for the acts of the sub-agent.
 - The **sub-agent is responsible for his acts to the agent, but not to the principal**, except in case of fraud or willful wrong.

➤ **AGENT'S RESPONSIBILITY FOR SUB-AGENT APPOINTED WITHOUT AUTHORITY**

- the agent is responsible for his acts **both to the principal and to third persons;**
- **principal is responsible for acts of sub agent;**
- **the sub agent is not responsible to the principal at all.** He is answerable only to the agent.

✕ **SUBSTITUTED AGENT**

➤ **RELATION BETWEEN PRINCIPAL AND PERSON DULY APPOINTED BY AGENT TO ACT IN BUSINESS OF AGENCY**

- Substituted Agent is a person appointed by the agent **to act for the principal**, in the business of agency, with the knowledge and consent of the principal. Substituted agents are not sub agents. They are agents of the principal.

➤ **AGENT'S DUTY IN NAMING SUCH PERSON**

- In selecting such agent for his principal, an agent is bound to exercise **the same amount of discretion** as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

✕ **DIFFERENCE BETWEEN A SUB-AGENT AND A SUBSTITUTED AGENT**

S. No.	Sub-Agent	Substituted Agent
1.	A sub-agent does his work under the control and directions of agent.	A substituted agent works under the instructions of the principal.
2.	The agent not only appoints a sub-agent but also delegates to him a part of his own duties.	The agent does not delegate any part of his task to a substituted agent.
3.	There is no privity of contract between the principal and the sub-agent.	Privity of contract is established between a principal and a substituted agent.
4.	The sub-agent is responsible to the agent alone and is not generally responsible to the principal.	A substituted agent is responsible to the principal and not to the original agent who appointed him.
5.	The agent is responsible to the principal for the acts of the sub-agent.	The agent is not responsible to the principal for the acts of the substituted agent.

✕ **DUTIES AND OBLIGATIONS OF AN AGENT**

- **Duty to follow instructions or customs:** An agent is bound to conduct the business of his principal according to the **direction given by the principal**, or, in the absence of any such directions, according to the prevailing customs.
- **Duty of reasonable care and skill:** The agent is always bound to act with **reasonable diligence**, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or misconduct.
- **Duty to render proper accounts:** An agent is bound to **render proper accounts** to his principal on demand.
- **Agent's duty to communicate with principal:** In cases of difficulty, Agent should use all **reasonable diligence** in communicating with his principal, and in seeking to obtain his instructions.
- **Duty not to deal in his own Account:** If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal the principal may repudiate the transaction. Further, the principal is entitled to claim from the agent **any benefit which may have resulted** to him from the transaction.
- **Duty not to make secret profits:** It is the duty of an agent **not to make any secret profit** in the business of agency.
- **Duty not to delegate:** An agent cannot lawfully employ to perform acts which he has **expressly or impliedly undertaken to perform personally**, unless by the ordinary custom of trade a sub-agent may, or, from the nature of agency, a sub-agent, must be employed.

- **Agent's duty to pay sums received for principal:** Subject to such deductions, the agent is bound to pay to his principal **all sums received on his account.**
- **Confidential Information:** Duty **not to use any confidential information** received in the course of agency against the principal.

✦ RIGHTS OF AN AGENT

- **THE AGENT CAN RETAIN, OUT OF ANY SUMS RECEIVED ON ACCOUNT OF THE PRINCIPAL IN THE BUSINESS OF THE AGENCY FOR THE FOLLOWING PAYMENTS:**
 - all moneys due to himself in respect of advances made
 - in respect of expenses properly incurred by him in conducting such business
 - such remuneration as may be payable to him for acting as agent.
- **RIGHT TO REMUNERATION**
 - The agent in the normal course is entitled for remuneration as per the contract.
- **AGENT'S LIEN ON PRINCIPAL'S PROPERTY**
 - An agent is entitled to retain the goods, papers and other property, whether movable or immovable, of the principal received by him, until the amount due to himself has been paid.
 - **The agent's right to lien is lost in the following cases:**
 - When the possession of the **property is lost.**
 - When the agent **waives his right.** Waiver may arise out of agreement express or implied.
 - The agent's lien is **subject to a contract to the contrary.**
- **RIGHT TO INDEMNITY**
 - **Right of indemnification for lawful acts:** The principal is **bound to indemnify** the agent against all consequences of lawful acts done in exercise of his authority.
 - **Right of indemnification against acts done in good faith:** Where the agent acts in good faith on the instruction of principal, agent is entitled for indemnification of any loss or damage from the principal.
 - **Non-liability of employer of agent to do a criminal act:** Where one person employs another to do an act which is criminal, the employer is not liable to the agent.
 - **Right to compensation for injury caused by principal's neglect:** The principal must compensate his agent in respect of injury caused to such agent due to principal's neglect or want of skill.

✦ PRINCIPAL'S LIABILITY TO THIRD PARTIES

- **Principal's liability for the Acts of the Agent:** Principal is liable for the acts of agents which are within the scope of his authority.
- **Principal's liability when agent exceeds authority:** When an agent does more than he is authorised to do and:
 - The act done under authority and beyond authority **can be separated** from the part which is beyond his authority, then the act done within his authority is binding as between him and his principal. If the act is not separable then the principal is not bound to recognize the transaction.
 - When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations, if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.
- **Consequences of notice given to agent:** Notice given to agent shall have the same legal consequence as if it had been given to or obtained by the principal.
- **Principal's liability for agent's fraud, misrepresentation or torts** have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made, or committed, by the principals.

✦ PERSONAL LIABILITY OF AGENT TO THIRD PARTIES

Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.

EXCEPTIONS: In the following exceptional cases, the agent is presumed to have agreed to be personally bound when:

- Where the contract is made by an agent for the sale or purchase of goods for a **merchant resident abroad/foreign principal**.
- When the **agent does not disclose the name of the principal**.
- Where the **principal, though disclosed, cannot be sued**, *for example*, when an agent who contracts for a minor.
- If the **agent pretends but is not an actual agent**, and the principal does not rectify the act but disowns it, the pretended agent will be himself liable.
- When **the agent exceeds his authority**, misleads the third person in believing that the agent he has the requisite authority in doing the act, then the agent can be made liable personally for the breach of warranty of authority.

✕ RIGHTS OF THIRD PARTIES

➤ RIGHTS OF PARTIES TO A CONTRACT MADE BY UNDISCLOSED AGENT

- If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, **his principal may require the performance of the contract**; but the other contracting party has, as against the principal, the same right as he would have had as against the agent if the agent had been the principal.
- If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfill the contract.

➤ PERFORMANCE OF CONTRACT WITH AGENT SUPPOSED TO BE PRINCIPAL

- Where one man makes a contract with another being unknown that the other is an agent, the principal, can obtain the performance on such contract subject to the rights and obligations subsisting between the agent and the other party to the contract.

➤ OPTION TO THIRD PERSON- SUE THE AGENT OR THE PRINCIPAL

- In cases where the agent is personally liable, a person dealing with him may hold **either him or his principal, or both of them, liable**.
- When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

✕ REVOCATION OF AUTHORITY

➤ MODES OF TERMINATION

• Revocation

- Revocation of agency may be **expressed or implied** in the conduct of the principal.
- Principal may **revoke the authority** given to his agent at any time before the authority has been exercised so as to bind the principal.
- If there is **premature revocation of agency without sufficient cause**, the principal must compensate the agent, for such revocation.
- When the principal, having justification to do so, revokes the authority, **he must give reasonable notice** of such revocation to the agent.

• Renunciation by agent

- An agent may renounce the business of agency.
- If the agency is for a fixed period, the **agent would have to compensate the principal** for any premature renunciation without sufficient cause.
- Secondly, a **reasonable notice of renunciation** is necessary.

• Completion of business

- An agency is **automatically and by operation of law** terminated when its business is completed.

• Death or insanity

- An agency is determined automatically on **the death or insanity of the principal or the agent**. Winding up of a company or dissolution of partnership has the same effect.
 - **Principal's insolvency**
 - An agency ends on the principal being **adjudicated insolvent**.
 - **On expiry of time**
 - An agency comes to an automatic end on **expiry of its term**.
- **WHEN THE AGENCY IS IRREVOCABLE?**
- When the **agent is personally interested in the subject matter** of agency the agency becomes irrevocable.
- **EFFECTS OF TERMINATION**
- **When termination of agent's authority takes effect as to agent, and as to third persons**
 - The termination of the authority of an agent, as regards the agent, take effect only when the **fact of termination it becomes known to him**, or, so far as regards third persons, when it becomes known to them.
 - **Agent's duty on termination of agency by principal's death or insanity**
 - When an agency is terminated by the **principal dying or becoming of unsound mind**, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.
 - **Termination of sub-agent's authority**
 - **The termination of the authority of an agent** causes the termination of the authority of all sub-agents appointed by him.



THE SALE OF GOODS ACT, 1930

UNIT 1: FORMATION OF THE CONTRACT OF SALE

DEFINITIONS

- **BUYER:** A person who buys or agrees to buy goods.
- **SELLER:** A person who sells or agrees to sell goods.
- GOODS:** Movable property excluding actionable claims and money and include stock & shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.
It includes Fixed Deposit Receipts, intangibles like goodwill and patent. gas, steam, water, electricity.

CONTRACT OF SALE:

- **Sale:** Property to be transferred immediately.
- **Agreement of sale:** Property to be transferred on a future date or on fulfillment of certain conditions.

ESSENTIAL ELEMENTS:

- There must be atleast *two* parties (Bilateral Contracts).
- The subject matter of the contract must be goods.
- A price in money should be paid or promised.
- A transfer of property in goods from seller to the buyer must take place.
- It must be absolute or conditional.
- All other essentials of a valid contract must be present.

TYPES OF GOODS: Existing Goods, Future Goods and Contingent Goods.

- **Existing Goods:** Goods exist at the time of contract of sale.
 - **Specific goods:** Goods identified at the time of contract of sale.
 - **Unascertained goods:** Goods not identified at the time of contract of sale.
 - **Ascertained goods:** Goods identified after the contract of sale is made.
- **Future Goods:** Goods manufactured/produced/acquired after the contract of sale is entered into.
 - Future goods are always an agreement of sale.
 - Such goods do not exist with the seller at the time of the contract of sale.
- **Contingent Goods:** Acquisition of goods by seller depending upon an uncertain event.

DELIVERY: Voluntary transfer of possession of goods from one person to another.

FORMS OF DELIVERY:

- **Actual delivery:** Physical delivery of goods to the buyer.
- **Constructive delivery:** Delivery of goods without a change in possession or custody of good. When a person in possession of the goods belonging to the seller acknowledges to the buyer that he holds the goods on the buyer's behalf. It is also known as delivery by acknowledgement/attornment.
- **Symbolic delivery:** Where the buyer has a specific means of obtaining possession of goods like the bill of lading or railway receipt or delivery orders or the key of aware house containing the goods is handed over to the buyer.

DOCUMENT OF TITLE TO GOODS:

Includes the bill of lading, dock warrant, warehouse keeper's certificate, wharfinger's certificate, railway receipt, multimodal transport document, warrant or order for the delivery of goods and any other document used in the ordinary course of business as the proof of the possession or control of goods or is for authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transferor receive goods there by presented.

➤ **MERCANTILE AGENT**

➤ It means an agent who, in the customary course of business, has, as such agent, the authority to sell goods or to consign goods for the purpose of sale or to buy goods or to raise money on the security of the goods.

➤ **PROPERTY:**

- Property means ownership or general property.
- Property in the goods means ownership rights of goods.

➤ **INSOLVENT:** When a person is unable to pay his debts in the ordinary course of business.

➤ **PRICE:** Money consideration for the sale of goods (may be partly in goods and partly in cash but can not be in goods completely).

➤ **QUALITY OF GOODS:** State or condition of goods.

✘ **CONTRACT FOR WORK & LABOUR**

Contract of doing or rendering of some work of labour. It is a contract for performing some work and not for transferring the property in goods.

✘ **MAKING OF THE CONTRACT OF SALE**

- Contract of sale made by an offer to buy or sell of goods for a price & acceptance of such offer; or
- Immediate delivery of goods; or
- Immediate payment of price but the delivery of goods on a future date; or
- Immediate delivery of goods & payment of the price; or
- Delivery or payment or both are to be made in instalments; or
- Delivery or payment or both are to be made at same future date.

✘ **THE SUBJECT MATTER OF THE CONTRACT OF SALE:**

- Contract of sale is void if goods perish before the making of the contract.
- Goods are perishing before the sale, but after the making of the agreement, the contract of sale is void.
- If the future goods are specific, the destruction of such goods will amount to supervening impossibility, and the contract shall become void.

✘ **ASCERTAINMENT OF PRICE (SECTION 9 & 10):**

➤ **ASCERTAINMENT OF PRICE (SECTION 9)**

- Price may be fixed by the contract; or
- Price fixed in a manner provided by the contract; or
- Price determined by the course of dealings between the parties.
- If price is not determined as per above provisions, the buyer shall pay the seller a reasonable price.

➤ **AGREEMENT TO SELL AT VALUATION (SECTION 10)**

- Where there is an agreement to sell goods and price is to be fixed by the valuation of the third party and such third party fails to do valuation, the agreement is void.
- Provided that if the goods or any part thereof have been delivered to and appropriated by the buyer, he shall pay a reasonable price, thereforeof.
- Where such a third party is prevented by the fault of the seller or buyer, the party not at fault may claim damages.

Note: Unless a different intention appears from the terms of the contract, a stipulation as to the time of the payment is not deemed to be of the essence of a contract of sale.

UNIT 2: CONDITIONS AND WARRANTIES

✦ CONDITIONS & WARRANTIES:

- **Conditions:** Stipulation essential to the main purpose of the contract. The aggrieved party can repudiate the contract or claim damages, or both in the case of breach of condition.
- **Warranties:** Stipulation collateral to the main purpose of the contract. The aggrieved party can claim damages in the case of breach of warranty. Breach on condition may be treated as breach of warranty but not *vice-versa*.

✦ IMPLIED CONDITIONS:

Following conditions are implied in a contract of sale of goods unless the circumstances of the contract show a different intention.

- **Condition as to title:** Implied condition that the seller has the right to sell goods:
 - in the case of a sale, he has a right to sell the goods
 - in the case of an agreement to sell, he will have the right to sell the goods at the time when the property is to pass.
- **Sale by description:** Goods shall correspond with the description, if goods tendered do not correspond with the description, it would be a breach of condition entitling the buyer to reject the goods.
- **Sale by sample:** Bulk shall correspond with the sample in quality and reasonable opportunity to the buyer for comparing the bulk with sample and the goods shall be free from any defect rendering them unmerchantable, which would not be apparent on a reasonable examination of the sample.
- **Sale by sample as well as by description:** Bulk shall correspond with the sample & description.
- **Condition as to quality or fitness:** Buyer made known to the seller the purpose of his purchase, buyer relied on seller's skills & judgments, seller deals in specific goods. This implied condition will not apply if the goods have been sold under a trademark or a patent name.
- **Condition as to merchantability:** Goods sold by the seller for a specific purpose and seller deals in product of that description and goods sold shall be of usable/saleable quality.
- If the buyer has examined the goods, there shall be no implied condition as regards defect which such examination ought to have revealed.
- **Condition as to wholesomeness:** Seller sold food & eatables, then food & eatables must be wholesome (fit for consumption).

✦ IMPLIED WARRANTIES:

- **Warranty as to undisturbed possession:** Implied warranty that the buyer shall have and enjoy quiet possession of the goods. If Possession of the buyer is disturbed, buyer can sue the seller for damages.
- **Warranty as to non-existence of encumbrances:** Goods shall be free from any charge or encumbrance in favour of any third party not disclosed by the seller at the time of contract.
- **Warranty as to quality or fitness by the usage of trade:** Implied warranty for quality or fitness for a particular purpose attached by the usage of trade.
- **Disclosure of the dangerous nature of goods:** Goods are dangerous in nature and buyer is unaware about the danger, seller must inform the buyer of probable danger.

✦ WHEN CONDITION TO BE TREATED AS WARRANTY:

- When the buyer waives the performance of a condition, the other party may waive a stipulation.
- When the buyer treats the breach of condition as a breach of warranty by the buyer, the buyer can claim damages only.
- Where a contract is non-severable & buyer has accepted either whole goods or any part thereof.
- Where fulfilment of any condition or warranty is excused by impossibility or law. (no claim can be made by any party).

✘ CAVEAT EMPTOR:

➤ MEANING:

- 'Let the buyer beware'.
- Buyer to properly check the goods before buying from the seller.
- If goods turned out to be defective, the buyer cannot hold the seller liable.
- The seller is in no way responsible for the bad selection of the buyer.

➤ EXCEPTIONS TO THE CAVEAT EMPTOR:

- Buyer specifies the purpose of purchase, buyer relied on seller's skills & judgement and seller deal in those specific goods.
- Goods purchased under a brand name or patent.
- Goods sold by description shall correspond with the description.
- Goods sold by description shall be of merchantable quality.
- Goods sold by sample & description.
- Implied warranty for quality or fitness for a particular purpose and attached by the usage of trade.
- Seller make misrepresentation or fraud or actively conceals a defect which could not be discovered by the buyer on reasonable examination, then the rule of Caveat Emptor will not apply.

UNIT 3: TRANSFER OF OWNERSHIP & DELIVERY OF GOODS

✘ PASSING OF PROPERTY

➤ Passing of property in case of ascertained or specific goods: (Passing of property: passing of ownership)

- Goods are in a deliverable state pass to the buyer at the time of contract of sale.
- If the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.
- Until the seller ascertain the price of the goods of deliverable state, goods don't pass to the buyer.
- Risk in the goods sold is that of the buyer and not of the seller, though the goods may still be in the seller's possession.

➤ Passing of property in case of unascertained goods:

- No property of the goods is transferred to the buyer unless the goods are ascertained.
- When the unascertained goods by description are put in a deliverable state & appropriated to contract by buyer or seller, such goods become ascertained.
- When the seller delivers goods to the buyer or a carrier or bailee for transmission and does not reserve the right of disposal. The seller is not liable for any loss.

➤ Goods sent on approval or "on sale or return":

Goods delivered to the buyer on approval or "on sale or return", the property passes to the buyer if:

- Buyer signifies his approval or acceptance to the seller; or
- Buyer retains the goods without giving any approval or acceptance; or
- The buyer does any act equivalent to accepting the goods. (sale/pledge etc.)

Sale for Cash only or return: Goods were to remain the property of the seller till they are paid for.

➤ Reservation of right of disposal: In a contract of sale of specific goods, the seller may reserve the right of disposal by the terms of contract or appropriation until certain conditions have been fulfilled. ***Certain circumstances under which right to disposal may be reserved:***

- If goods are delivered to a railway administration for carriage & goods are deliverable to the order of the seller or his agent *i.e.*, The bill of lading is rendered in the name of the seller or his representative.

- The seller sends Bill of exchange together with the bill of lading, the buyer must return the bill of lading in non-acceptance of the bill drawn to him by the seller, if retain wrongfully, ownership does not pass to buyer.

✎ **RISK PRIMA FACIE PASSES WITH THE PROPERTY:**

- The goods remain at the seller's risk until the property in goods is transferred to the buyer.
- The owner of goods must bear the loss or damage of goods.
- If delivery delayed because of the fault of either buyer or seller, the goods are at the risk of the party at fault.

✎ **TRANSFER OF TITLE:**

- When goods are sold by a person who is not the owner of goods, the buyer gets no good title to the goods.
- "***Nemo dat quod non habet***": No one can give what he has not got.
- **Exceptions to "Transfer of title"**
 - **Sale by a mercantile agent:** Possession of the goods or documents with the Consent of the owner, sale in the ordinary course of business, buyer had acted in good faith.
 - **Sale by one of the joint owners** by the permission of other co-owners, buyer acted in good faith and has no notice about not having authority to sell.
 - The buyer shall get the good title to the goods possessed by the seller under a **voidable contract**.
 - **If the seller sold the goods already sold but continues in possession** & the third person buys those goods in good faith, the third person gets the good title.
 - **Sale by buyer obtaining possession of goods before the property in goods has been transferred.**
 - The buyer shall get the good title to goods if bought from a person who represented himself as a seller in front of the true owner & true owner did not deny his authority to sell. (**effect of estoppel**)
 - **Sale by an unpaid seller** who had exercised his right of lien or stoppage in transit.
 - **Sale under other Acts:**
 - Sale by an Official receiver or liquidator of the company;
 - purchase of goods from a finder of goods;
 - sale by pawnee.

✎ **PERFORMANCE OF THE CONTRACT OF SALE**

- It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them in accordance with the terms of the contract of sale.
- Delivery of goods and payment of the price are concurrent conditions.
- **RULES REGARDING THE DELIVERY OF GOODS:**
 - **Delivery:** Delivery of goods sold may be made by doing anything which the parties agree.
 - **Effect of part delivery:** A delivery of part of goods, for the purpose of passing the property treated as a delivery of the whole except where the intention is contrary.
 - **Buyer to apply for the delivery:** Unless otherwise expressed, the seller of goods is not bound to deliver them until the buyer applies for the delivery.
 - **Place of delivery:** In absence of any contract, goods to be delivered at the place at which they are at the time of the agreement to sell or, at the place at which they are manufactured or produced (future goods).
 - **Time of delivery:** Where no time is fixed; the seller is bound to send them within a reasonable time.
 - **Goods in possession of a third party:** Goods are in possession of a third person, no delivery unless and until such third person acknowledges to the buyer (constructive delivery).
 - **Time for tender of delivery:** Demand or tender of delivery shall be made at a reasonable hour.
 - **Expenses for delivery:** The expenses of and incidental to putting the goods into a

deliverable state must be borne by the seller in the absence of a contract to the contrary.

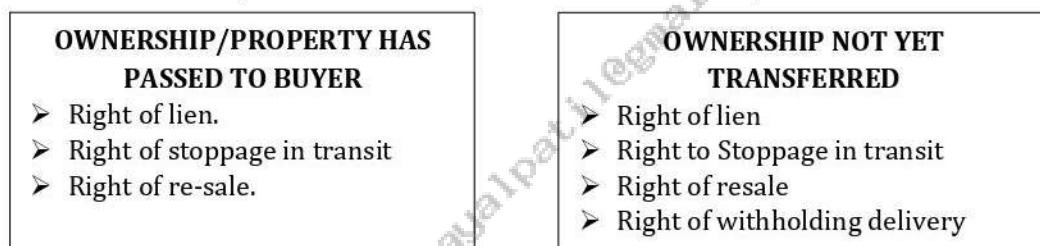
- **Delivery of wrong quantity:**
 - Where the seller delivers less quantity, the buyer may reject them, but if accepts shall pay for them at the contract rate.
 - Where the seller delivers larger quantity, the buyer may accept the goods included in the contract & reject the rest, or he may reject the whole. If accepts whole, pay for extra also.
 - Where the seller delivers goods mixed with different goods the buyer may accept according to with the contract and reject or may reject the whole.
- **Instalment deliveries:** Unless otherwise agreed, the buyer is not bound to accept delivery in instalments.
- **Delivery to the carrier:** Subject to the terms of the contract, the delivery of the goods is *prima facie* deemed to be delivery to the buyer.
- **Deterioration during transit:** Delivered at distant place, the liability for deterioration fall on the buyer.
- **Buyer's right to examine the goods:** If buyer has not previously examined goods, he is entitled to a reasonable opportunity of examining them. Unless otherwise agreed, the seller is bound, to afford the buyer a reasonable opportunity of examining the goods.
- **Buyer not bound to return rejected goods** but it is sufficient if he intimates to the seller that he refuses to accept them.
- **Liability of buyer for neglecting or refusing delivery of goods:** Seller is ready and willing to deliver the goods and requests buyer for delivery and buyer does not take delivery of goods and liable to the seller for any loss occasioned and also for a reasonable charge for the care and custody of goods.

UNIT 4: UNPAID SELLER

UNPAID SELLER:

- The whole price has not been paid or tendered, and the seller had an immediate right of action for the price;
- when a bill of exchange or other negotiable instrument has been received as the conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

RIGHTS OF UNPAID SELLER AGAINST THE GOODS:



THE UNPAID SELLER HAS THE FOLLOWING RIGHTS AGAINST THE GOODS:

I. SELLER'S LIEN:

- **Right of lien:** To retain possession of goods.
- **Retain of possession** of goods in the following cases:
 - Goods sold for stipulation other than credit.
 - Goods sold on credit terms & credit terms had expired.
 - The buyer becomes insolvent and term of credit has not expired.
- The unpaid seller can exercise a lien if he is in possession of goods (whether as bailee or agent).
- **Termination of lien:**

- Goods are delivered for transmission without reserving the right of disposal.
- The buyer obtains lawful possession of the goods.
- The seller waived the right of lien.
- By estoppel: *i.e.*, An act which specifies that the seller has no lien on goods.

II. Right of Stoppage in Transit:

- **Conditions:** when the buyer of goods becomes insolvent, the unpaid seller who has parted possession of the goods has the right to stopping them in transit; that is to say, he may resume or regain possession of the goods as long as they are in the course of transit and may retain them until paid or tendered price of the goods.
- **Duration of Transit:**
 - From the time of delivery to a carrier or other bailee until the buyer or his agent on that behalf takes delivery of them from such carrier or other bailees.
 - Goods rejected by the buyer, carrier or other bailees continue in possession, transit is not deemed to be an end.
 - When goods are delivered to a ship chartered by the buyer, transit ends.
 - Where part delivery of the goods has been made to the buyer or his agent on that behalf, the remainder of the goods may be stopped in transit unless otherwise agreed.
- **Effect of Sub-Sale or Pledge by the Buyer:**
 - Right of stoppage or right of lien is not affected by selling or pledging of goods by the buyer.
 - In the case of pledge, the seller may get the right of lien & stoppage in transit on goods left after satisfying the claim of the pledgee.
 - **Exceptions:** The right of lien & right of stoppage cannot be adopted if:-
 - The seller has given his assent; or
 - Document of the title has been transferred to the buyer who transfers it to the third party for consideration and in good faith.
- **RIGHT OF RE-SALE:**
 - **Perishable goods:** No notice is required to be given to the buyer.
 - **Non-perishable goods:** Give notice of intention to resale and wait for a reasonable time.
 - If the amount not received then the seller can resale the goods.
 - If resale value < contract value, the seller can claim damages.
 - If resale value > contract value, the seller can keep the surplus profits.
 - If notice is required to be given, but seller fails to do so, now seller can not recover loss from buyer, but has to share profits.
 - **New buyer's title:** It remains valid even if the seller does not provide notice of resale to the previous buyer.
 - No requirement to give notice to the buyer if **Right to resale is reserved**.
 - **Withholding the delivery of goods:** Where the property in goods has not passed to the buyer. The unpaid seller has a right to withhold delivery of goods. Also called quasi-lien.

✂ RIGHTS OF UNPAID SELLER AGAINST THE BUYER:

- Property in the goods has passed to the buyer or payment is to be made at a certain day irrespective of delivery, and the buyer wrongfully neglects or refuses to pay for the goods the seller may sue him for the price of the goods.
- Buyer wrongfully neglects or refuses to accept, the seller may sue him for damages for non-acceptance.
- Buyer repudiates the contract before the date of delivery, the seller may treat the contract as rescinded and sue for damages for the breach (anticipatory breach).
- If specific agreement : seller may recover interest (if no specific agreement, interest to be charged from date of notification to buyer).
- **BREACH OF CONTRACT BY THE SELLER:**
 - Seller fails to deliver the goods in time or manner prescribed.
 - Seller repudiates the contract.
 - Seller delivers non-conforming goods and buyer rejects & revokes acceptance.

➤ **RIGHTS OF BUYER AGAINST THE SELLER:**

- Claim for damages for non-delivery of goods.
- Claim for specific performance when damages would not be an adequate remedy.
- Claim for damages in case of breach of warranty.
- Buyer can sue the seller if the seller cancels the contract before the due date.
- Buyer can sue the seller for damages along with interest specified or to recover the money paid in the contract;
- or, the court may award interest as it thinks fit along with refund of price already paid

✂ **AUCTION SALE**

- Selling property by inviting bids publicly, where property is sold to the highest bidder.
- Seller may refuse to sell goods even to highest bidder.
- **LEGAL RULES OF AUCTION SALE:**
 - **Where goods are sold in lots:** Each lot is deemed to be subject of a separate contract of sale.
 - **Completion of the contract of sale:** The auctioneer announces completion of the sale by fall of the hammer.
 - **Right to bid may be reserved:** Right to bid may be reserved expressly or on behalf of the seller.
 - **Where the seller does not notify the sale:** Seller shall not bid himself or to employ a person to bid on his behalf. (unlawful)
 - **Reserved price:** The sale may be notified to be subject to a reserved price. Auctioneer can refuse to sell goods at price lower than reserved price.
 - **Pretended bidding:** If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.



THE INDIAN PARTNERSHIP ACT, 1932

UNIT 1: GENERAL NATURE OF PARTNERSHIP

✦ PARTNERSHIP

➤ MEANING

- Relation between partners.
- Agreed to share profits.
- Carried on by all or any of them, acting for all.

➤ FEATURES

- **Agreement:** A partnership is formed through an agreement between two or more persons.
- **Business Purpose:** Partnership is established to carry on a lawful business.
- **Sharing of Profits:** Partners agree to share the profits generated from the partnership's business.
- **Mutual Agency:** Each partner acts as an agent for the partnership and other partners.
- **Joint Ownership:** Partners collectively own and contribute capital to the partnership.
- **Unlimited Liability:** Partners have unlimited liability for the partnership's debts & obligations.
- **Relationship of Trust:** Partners must act in good faith and disclose relevant information.
- **No Separate Legal Entity:** Partnership and partners are considered as one; partnership does not have a separate legal existence.

✦ TRUE TEST OF PARTNERSHIP (MUTUAL AGENCY):

- It is the Cardinal principle of Partnership law.
- Each partner doing business is an agent and principal of other partners.
- He is an agent and binds other partners by his acts.
- He is a principal and bound by the actions of other partners.
- It is the conclusive evidence of a partnership.

✦ SHARING OF PROFITS:

- Mere sharing of profits is not the true test of partnership.
- It is *prima facie* evidence of a partnership.
- There may be cases where a person receives a share of the profits but this does not make him partner:
 - by a lender of money to persons engaged or about to engage in any business,
 - by a servant or agent as remuneration,
 - by a widow or child of a deceased partner, as annuity, or
 - by a previous owner or part owner of the business, as consideration for the sale of the goodwill or share thereof, does not of itself make the receiver a partner with the persons carrying on the business.

SANTIRANJAN DAS GUPTA VS. DASYRAN MURZAMULL (SUPREME COURT)

Factors concluding that there is no partnership between the parties:

- Parties have not retained any record of terms and conditions of partnership.
- No accounts maintained by firm of its own, which would be open to inspection by both parties.
- No account of the partnership was opened with any bank.
- No written intimation was conveyed to the Deputy Director of Procurement.

✦ NATURE OF PARTNERSHIP AGREEMENT:

- **Voluntary:** free consent.

- **Contractual:**
 - **Express** – Oral or written.
 - **Implied** – Consistent course of action is followed.
- ✦ **PARTNERS AND PARTNERSHIP**
 - **MAXIMUM NUMBER OF PARTNERS:** 50 (otherwise illegal association as per Companies Act, 2013).
 - **KIND OF PARTNERSHIP:**
 - I. With regard to duration = Partnership at will and Partnership for a fixed period.
 - II. With regard to the extent of business = Particular Partnership and General Partnership.
 - I. **With regard to Duration**
 - **Partnership at will:**
 - No fixed period has been agreed upon for the duration of the partnership, and
 - There is no provision made as to the determination of the partnership.
 - Any partner can dissolve the partnership by giving notice in writing to all other partners.
 - **Partnership for a fixed period:**
 - Such partnership comes to an end after the expiry of a fixed period.
 - If continued after the expiry of the fixed period then it is treated as a partnership at will.
 - **With regard to the Extent of business.**
 - **Particular partnership:**
 - The partnership exists for a specific business adventure.
 - The liability of partners is limited to that task only.
 - **General partnership:**
 - Partnership for the continuous state of affairs; or
 - Partnership for business in general.
 - **PARTNERSHIP DEED**
 - Always in written form. An oral partnership agreement is not a partnership deed.
 - Contains various terms & conditions as to the relationship of the partners to each other.
 - The partnership comprises of immovable property – Writing, stamped & registered under Registration Act.
 - No immovable property: Writing & Stamped according to the provisions of Stamp Act, 1899.
 - **CONTENT OF PARTNERSHIP DEED:**
 - Name of the partnership firm.
 - Name of all the partners.
 - Nature & place of the business of the firm.
 - Date of commencement of partnership.
 - Duration of the partnership firm.
 - Capital contribution of each partner.
 - Profit-sharing ratio of the partners.
 - Admission & retirement of a partner.
 - Provisions for rates of interest on capital, drawings & loans.
 - Provisions for settlement of accounts in case of dissolution of the firm.
 - Provisions for salaries or commissions payable to the partners.
 - Provisions for the expulsion of a partner in case of breach of duty or fraud.
 - **TYPES OF PARTNERS:**
 - **Active or actual or ostensible partner:**
 - Become a partner by agreement.
 - Actively participates in business operations.
 - On retirement, required to give public notice to avoid future liabilities.
 - **Sleeping or dormant partner:**
 - Becomes partner by agreement.
 - Does not actively participate in business operations.

- Share profits & losses.
- Public notice not required on retirement.
- **Nominal partner:**
 - Provide his/her name to the firm.
 - No real interest in the firm.
 - Does not share profits & losses & does not participate in business operations.
 - Liable to third parties for all acts of firm.
- **Partner in profits only:**
 - Share profits but do not bear losses.
 - Liable to third parties for all acts of the firm.
- **Partner by holding out:**
 - Also called partner by estoppel.
 - A third party misunderstood a particular person as a partner.
 - Such a partner is not entitled to share profits & losses of the firm.
 - Liable to third parties to whom such representation has been made.
- **Incoming partner** = New partner admitted to a firm.
- **Outgoing partner:**
 - A partner who leaves the firm or takes retirement from the firm.
 - Remains liable to third parties for all acts until the public notice of retirement is given.
 - Publish of notice in a government recognised newspaper & at least in one vernacular newspaper or an official gazette.
- **Sub-partner:**
 - When a partner agrees to share profits with a third person. That third person is sub-partner.
 - Sub-partner is not liable towards the third party.

✎ RIGHTS OF A PARTNER:

- Right to take part in the conduct & management of the business.
- Every partner shall have the right to express his opinion before the matter is decided-Right to be consulted.
- Right to free access of all records, books & accounts of the business and to inspect and take out of copy thereof. The right must, however, be exercised *bona fide*.
- In the event of death of partner his legal representative / legal heir/ authorized agent shall have right of access and inspect and copy books of accounts.
- Right to get interest on advances at a rate agreed otherwise at 6% per annum.
- Right to share profits equally unless specific ratio agreed upon.

✎ RIGHT TO GET COMPENSATED BY THE FIRM FOR ALL:

- Expenses incurred in the course of business.
- Expenses incurred in doing such act, in an emergency, for the purposes of protecting the firm from loss, as would be done by a person of ordinary prudence under similar circumstances.

UNIT 2: RELATIONS OF PARTNERS

✎ DUTIES OF PARTNERS:

- Bound to carry on the business of the firm to the greatest common advantage.
- Bound to maintain true & fair accounts of the partnership firm.
- Bound to be just & faithful to other partners.
- The firm can claim any unauthorized profits earned by a partner.
- Partners must not make secret profits: Where a partner derives any profit for himself from any transaction of the firm or from the use of the property or business connection of the firm or firm name, he must account for that profit and pay it to the firm.
- Every partner is bound to act within the scope of his actual authority.
- Every partner shall indemnify the firm for any loss caused to it by his wilful neglect in the conduct of business of the firm.

✘ **PROPERTY OF A PARTNER:**

- Where the property belongs to a person, it does not become a property of the partnership merely because it is used for the business of the partnership, unless transferred through agreement.
- The property which is deemed as belonging to the firm, in the absence of any agreement between the partners showing contrary intention, is comprised of the following items:
 - All property, rights and interests brought as contribution (capital);
 - All the property, rights and interest acquired or purchases by or for the firm, or for the purposes and in the course of the business of the firm; and
 - Goodwill of the business.

✘ **GOODWILL:**

- Goodwill may be defined as the value of the reputation of a business house in respect of profits expected in future over and above the normal level of profits earned by same class of business.
- Goodwill of a business is subject to a contract between the partners, to be regarded as 'property' of the firm.

✘ **RELATION OF PARTNERS TO THIRD PARTIES**

- A partner is the agent of the firm for the purposes of the business of the firm.
- However, one partner can make other partners liable towards the third parties only if he acts within the scope of his express or implied authority.

✘ **Authority of a partner** = Capacity of a partner to bind the firm by his acts.

- Express authority.
- Implied/Ostensible/Apparent authority.

➤ **Express authority** = Given by words, whether spoken or written.

➤ **Implied/Ostensible/Apparent authority** = Provided by the act

Implies authority shall be subject to the following conditions:

- Partner's act shall relate to the normal business of the firm.
- Act shall be done in the usual way.
- Act shall be done in the name of the firm.
- Implied authority includes: Selling firm's goods, purchasing goods for the firm, accepting any payment of debts due to firm, engaging & discharging employees.

✘ **Authority of partners in a trading firm:**

Partners have the following additional powers

- Borrow money on the firm's credit.
- Pledge firm's goods for that purpose.
- To accept, make & issue the negotiable instrument in the firm's name.

➤ **Partner's authority in an emergency**

Partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.

➤ **Cases having no implied authority of partner:**

- Submit a dispute related to the business of the firm in arbitration.
- Opening of the bank account on behalf of the firm in his name.
- Compromise or relinquish any claim or portion of a claim by the firm.
- Acquire immovable property in the name of the firm.

- Transfer of immovable property belonging to the firm.
- Enter into partnership on behalf of the firm.
- Withdraw of a suit filed by the firm.
- Admit any liability in a suit against the firm.

✘ **LIABILITIES OF AN INCOMING PARTNER:**

- No person can be admitted as a partner into a firm without the consent of all the existing partners.
- An incoming partner shall be liable for debts from the date of admission.
- An incoming partner is not liable for debts incurred before he joined the firm.
- Incoming partner may assume liabilities for past debts by agreement between creditors & existing partners of the firm.

✘ **LIABILITIES OF AN OUTGOING PARTNER:**

- A partner is said to retire when he ceases to be a member of the firm without dissolution.
- A partner may retire with the consent of all the other partners/according to agreement/by giving notice in writing to all the other partners in writing (partnership at will).
- An outgoing partner is liable for debts contracted while he was a partner.
- Outgoing partner may discharge himself from any debts by agreement between creditors & existing partners of the firm.

✘ **EFFECT OF ADMISSIONS/STATEMENTS/REPRESENTATION MADE BY PARTNER:** An admission or representation made by a partner concerning the affairs of the firm is treated as statement made by firm and is binding on firm except where partner's authority is limited and other party knows the restriction.

✘ **EFFECT OF NOTICE TO A PARTNER:** The notice to a partner, who habitually acts in the business of the firm, operates as notice to the firm, except in the case of a fraud on the firm.

✘ **LIABILITY TO THIRD PARTIES**

- **Liability of a partner for acts of the firm.** Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.
- **Liability of firm for wrongful acts of partner** done in ordinary course and within authority-firm will be liable.
- **Liability of firm for misapplication by partner:** Partner receives money while acting in authority or money come into the custody of the firm and it is misapplied by partner, firm will be liable to third party.

✘ **RIGHTS OF TRANSFEREE OF PARTNER'S INTEREST:**

- A share in a partnership is transferable like any other property
- Assignee of a partner's interest by sale, mortgage or otherwise cannot enjoy the same rights and privileges as the original partner.
- Transferee can not interfere in conduct of business, cannot inspect accounts and only entitled to receive the share of the profits but he cannot challenge the accounts.
- On dissolution or on the retirement of the transferring partner, he is entitled to receive share of assets and account as from date of dissolution.

✘ **MINOR AS PARTNER:**

- According to the Indian Contract Act, an agreement by a minor is void *ab-initio* as against him but he can derive benefit under it.
- However, a minor can at most be admitted to the benefits of a partnership with the consent of all the partners (not personally liable).

✧ MINORS ADMITTED TO THE BENEFITS OF THE PARTNERSHIP FIRM:

➤ RIGHTS OF A MINOR:

- Right to his agreed share of profits of the firm.
- Entitled to inspect the accounts of the partnership firm and can get a copy of those accounts.
- Can sue the partners for accounts or for the payment of his share.
- Minor cannot be declared insolvent, but if the firm is declared insolvent his share in the firm vests in the Official Receiver or Assignee.
- On attaining the majority, he may elect to become or not to become a partner in the firm within six months of attaining the majority.
 - If elect to become the partner then he is entitled to the share as he was getting when he was a minor.
 - He does not elect to become the partner = Not liable for the acts of the firm after the date on which the public notice has been issued.

➤ LIABILITIES OF A MINOR:

- **Liability of a minor** is restricted to the extent of his share in the profits and property of the firm.
- Not personally liable for debts incurred during his minority.
- He cannot be declared insolvent.
 - If the firm is declared insolvent then Minor's share in the firm secured by the Official Receiver or the Assignee.
- **After attaining the majority:** He elects to become the partner, liable to the third parties for acts of the firm done since his admission in the partnership.
 - If he does not elect to become the partner; not liable to the third parties after the date of the issue of the public notice.
- Entitled to sue partners of the firm for his share in profits & property of the firm.
- Notice to the Registrar by minor of becoming or not becoming the partner.
- If no issue of the public notice or notice to the Registrar by the minor = Minor is deemed as the partner in the firm.

✧ EXPULSION OF A PARTNER: Expulsion is valid under following conditions (otherwise null and void):

- the power existed in a contract;
- the power exercised by a majority of partners; and
- exercised in good faith.

TEST OF GOOD FAITH:

- The expulsion must be in the interest of the partnership.
- The partner to be expelled is served with a notice.
- He is given an opportunity of being heard.

UNIT 3: REGISTRATION AND DISSOLUTION OF A FIRM

✧ INSOLVENCY OF A PARTNER:

- He cannot continue as a partner.
- He will be ceased to be a partner from the very date on which the order of adjudication is made.
- Estate of the insolvent partner not liable for the acts of the firm done after the date of order of adjudication.
- The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication.
- Generally, insolvency leads to dissolution of firm but if partners are competent, they can continue.

✘ **DEATH OF PARTNER:**

- Generally, insolvency leads to dissolution of firm but if partners are competent, they can continue (except where partnership consist of 2 partners only).
- His estate is liable only for liabilities undertaken during his life time.
- No public notice required.

✘ **RIGHTS OF OUTGOING PARTNER TO CARRY ON COMPETING BUSINESS:**

- Outgoing partner may carry and advertise competing business, but subject to contract to the contrary, he may not, use the firm name & represent himself as carrying on the business of the firm or solicit the persons related to firm.
- Outgoing Partner may enter into agreement with his partners that he will not carry on any business similar within a specified period or within specified local limits but restriction should be reasonable, otherwise invalid.

✘ **RIGHT OF A OUTGOING PARTNER IN CERTAIN CASES TO SHARE SUBSEQUENT PROFITS (SECTION 37)**

- Member ceases to be a partner (death, retirement, insolvency, etc) and firm is carried on without settlement of accounts, then, in the absence of a contract to the contrary;
- he or his legal representative can claim proportionate share of the profits (*i.e.*, to claim profits in capital ratio);
- Or interest at the rate of six per cent per annum, *whichever is beneficial*.

✘ **CONTINUING GUARANTEE GIVEN TO A FIRM OR TO THIRD PARTY:** revoked from the date of change in the constitution.

✘ **RIGHT OF DECEASED PARTNER IN CASE ACCOUNTS ARE NOT SETTLED (SECTION 37):**

In the case of death of a partner, until the deceased partner's capital account is settled, the executor of the deceased partner is entitled to:

- Interest at 6% p.a.; or
- Profits in the capital ratio of partners, *whichever is higher*.

✘ **EFFECT OF NOTICE TO ACTING PARTNER**

Notice to the partner of the firm, who usually acts in the business of the firm for any matters related to affairs of the firm, operates as the notice to the firm, except in the case of fraud.

✘ **REGISTRATION OF A PARTNERSHIP FIRM:**

- Registration is optional.
- A firm can be registered during continuation also.
- Registration must be effected before the suit is instituted otherwise the court shall not entertain the suit.
- For the **firm's registration**, apply to Registrar with prescribed fees & documents, stating:
 - Firm's name.
 - Place of business of the firm.
 - Name of other places where the firm carries on business.
 - Date when each partner joined the firm.
 - Full & permanent address of partners.
 - Duration of the firm.
- The firm's name shall not contain words like Crown, Emperor, Empress, Empire, Imperial, King, Royal, etc.
- Registration is effective from the date when all prescribed documents and prescribed fees are delivered to the Registrar.
- There is no penalty for the non-registration of a firm in India.

✘ CONSEQUENCES OF NON-REGISTRATION OF A FIRM:

- No suit in a civil court by the firm or other co-partners against the third party.
- An aggrieved partner cannot bring legal action against other partners or the firm.
- If a suit is filed against the firm and the claim value is more than ₹100, the firm or partners cannot set off.

✘ EXCEPTIONS TO THE CONSEQUENCES OF NON-REGISTRATION OF THE FIRM:

- Right of third parties to sue the firm or any other party.
- **Right of partners to sue:**
 - For the dissolution of the firm, or
 - For the settlement of accounts of the dissolved firm, or
 - For the realisation of the property of the dissolved firm.
- Power of an official assignee or receiver of the court to release property of the insolvent partner & to bring an action.
- Right to set-off claim of value less than ₹100.

✘ DISSOLUTION OF THE FIRM: Dissolution of the firm between all partners of a firm.

➤ MODES OF DISSOLUTION OF THE FIRM:

- I. Dissolution of a firm not by order of the court.
- II. Dissolution of a firm by order of the court.

I. DISSOLUTION OF A FIRM NOT BY ORDER OF THE COURT:

- **Dissolution by Agreement:** Mutual agreement among partners to dissolve the firm.
- **Expiry of Fixed Term:** Firm dissolves upon the completion of a fixed term or specific project.
- **Completion of Venture:** Firm dissolves after achieving the purpose.
- **Notice of Dissolution:** Dissolution occurs when partners serve a notice as per the partnership agreement.
- **Death or Insolvency:** Death or insolvency of a partner leads to dissolution, unless the agreement states otherwise.
- **Mutual Consent:** Unanimous agreement among partners to dissolve the firm.
- **Illegality or Impossibility:** Firm dissolves when it becomes illegal or impossible to continue business operations.

II. DISSOLUTION OF THE FIRM BY ORDER OF THE COURT:

- When the partner becomes of unsound mind.
- Permanent incapacity of the partner to perform his duties.
- Any misconduct of partner affecting the business of the firm.
- Impossible to carry on the business due to frequent breaches of the partnership agreement.
- Impossible to carry on the business due to loss.
- If a partner has transferred his whole interest in the firm without the consent of other partners.
- Any other just & equitable ground which the court may deem to fit for dissolution. (Deadlock in the management/Where the partners are not in talking terms between them/Loss of substratum/Gambling by a partner on a stock exchange.)

➤ CONSEQUENCES OF DISSOLUTION:

- Partners shall be liable for acts of the firm till the notice of dissolution (except estate of deceased partner/insolvent partner/dormant partner).

- Notice may be given by firm or partner to the Registrar of Firms, in case of registered firms, in the local Official Gazette and in at least one vernacular newspaper circulating in the district where the firm's principal place of business is situated.
- Right of partners to have business wound up after dissolution surplus from the settlement of the firm's liabilities to be distributed among the partners.
- **Partnership assets realized along with deficiency contribution (if any) by partners shall be used for:**
 - Payment of expenses related to dissolution.
 - External liabilities (excluding partner's loan).
 - Partner's loan.
 - Balance in the Partner's Capital.
 - Surplus to be distributed among the partners.
 - If the amount is insufficient to discharge external liabilities, then solvent partners shall bring the amount to discharge of the firm's liabilities.
- Any personal profits earned after the dissolution but before the partnership completely wound up shall be accounted as the firm's profits.
- If goodwill of the firm is sold after dissolution, existing partners cannot continue business unless:
 - Agreement of sale of goodwill provides for something else, or
 - Any of the existing partners have purchased the goodwill.



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THE LIMITED LIABILITY PARTNERSHIP (LLP) ACT, 2008

✦ LIMITED LIABILITY PARTNERSHIP

➤ MEANING

- Hybrid between a company & partnership.
- Has elements of corporate structure & partnership firm.
- Alternative Corporate Business Vehicle.
- Has benefits of a company & Partnership firm.

➤ SMALL LLP:

- Contribution does not exceed **twenty-five lakh rupees** or such higher amount, not exceeding five crore rupees, as may be prescribed; and
- The Turnover as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed **forty lakh rupees** or such higher amount, not exceeding fifty crore rupees, as may be prescribed
- The small LLP should also meet any **other prescribed criteria and conditions**

➤ FEATURES OF LLP:

- **Body corporate:** Separate legal entity and assets & liabilities belong to LLP (Indian Company, Companies incorporated outside India, LLP registered in India, LLP incorporated outside India).
- **Perpetual succession:** Created & destroyed by law. In other words death or insanity of partners does not affect its continuity.
- **Mutual agency:** Partners of LLP are agents of LLP only.
- **Formation of agreement:** Agreement decides mutual rights & duties of partners.
- **Common seal:** Common seal is not mandatory. But if common seal is there, it must be kept under the custody of responsible official and must be affixed in the presence of *at least two* designated partners of LLP.
- **Limited liability:** Liability of partners limited to their agreed contribution.
- **Management of business:** Partners shall manage business but only designated partners liable for legal compliances.
- **Number of partners:** Minimum 2 designated partners (one shall be the resident of India) & maximum no limit.

➤ SPECIAL POINTS:

- LLP cannot be formed for charitable or non-economic purposes.
- Central Government has the power to order an investigation by the appointment of a competent authority.
- Merger, amalgamation & conversion of LLP shall be as per the provisions of the LLP Act, 2008.
- Foreign LLP is incorporated outside India, which established a place of business in India.
- Foreign LLP can become a partner in an Indian LLP.
- Document filing by LLP: Documents must be uploaded in a computer-readable electronic form on website www.mca.gov.in. Also they must be authenticated by a partner or designated partner of LLP by use of the digital signature.
- Any individual or body corporate may be a partner in a LLP.
- However, an individual shall not be capable if:
 - He has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
 - he is an undischarged insolvent; or
 - he has applied to be adjudicated as an insolvent and his application is pending.

➤ ADVANTAGES OF LLP:

- **Easy to form:** Less legal compliances as against the formation of a company.
- **Limited liability:** The partners' liability is limited to their agreed contribution, protecting personal assets from business debts and liabilities.

- **Agreement among partners:** Partners have the freedom to define the management structure & roles within the LLP, allowing for more flexibility in decision-making & operations.
- **Easy to dissolve:** Few legal compliances as against the liquidation process of a company.
- **INCORPORATION OF LLP:**
 - Appointment of designated partners.
 - Name availability. (E-form1)
 - Filing of incorporation document. (E-form2)
 - Drafting of LLP agreement.
 - Filing of E-Form - 1, 2 & 3.
 - Issue of Certificate of Incorporation by Registrar of LLP.
- **APPOINTMENT OF DESIGNATED PARTNERS:**
 - **Meaning:** Responsible for legal compliances.
 - Minimum 2 designated partners (atleast one shall be the resident of India *i.e.*, 120 days in India in financial year).
 - The person appointed as a designated partner shall hold a DPIN (Designated Partner Identification Number).
 - All partners are body corporates or one or more partners are individuals and body corporates, at least two individuals, (nominees of such body corporate): designated partners.
- **NAME**
 - **NAME AVAILABILITY:**
 - Checking of available names (upto six choices can be indicated).
 - An applicant has to be filed E-Form-1 for ascertaining availability & reservation of name of LLP business with prescribed fees.
 - Name must not be identical with or too nearly resembles to any other LLP or a company; or registered trade mark of a proprietor.
 - Name will get reserved for 3 months.
 - **CHANGE OF NAME OF LLP (SECTION 17):**
 - LLP is registered by a name or changes its name which is identical with or too nearly resembles to: any other LLP or a company; or registered trade mark of a proprietor,
 - Then on an application of such LLP/Proprietor/Company, the Central Government may direct to change its name or new name within 3 months.
 - Proprietor of the registered trademark can make application within a period of 3 years from the date of incorporation of such LLP or change of name of such LLP.
 - If the LLP changes its name, within 15 days give notice of the change to Registrar along with the order of the Central Government.
 - The Registrar shall make necessary changes within 30 days of change LLP shall change name in agreement.
 - Limited liability partnership defaults in complying with any direction given by the Central Government. Central Government shall allot a new name then the Registrar shall enter such allotted new name and issue a fresh certificate of incorporation.
 - LLP may change its name afterwards.
- ✍ **DRAFTING OF LLP AGREEMENT: Contents**
 - Name of LLP;
 - Name & address of partners & designated partners;
 - Form of contribution & interest on contribution;
 - Profit-sharing ratio;
 - Remuneration of partners;
 - Rights & duties of partners;
 - Proposed business;
 - Rules for governing LLP;
 - Details of registered office.

✍ FILING OF E-FORM - 2 & 3

- **E-Form-2:** Name of LLP to be incorporated, Partners'/Designated Partners' details (Incorporation document), Consent letter of partners/designated partners, Statement by CA/CS/CMA/Advocate and subscriber (any one).
- **E-Form-3:** Details of LLP agreement shall be filed within 30 days of incorporation.

✍ REGISTRAR OF LLP ISSUE THE CERTIFICATE OF INCORPORATION

Registrar of LLP to issue a Certificate of Incorporation along with LLPIN (Limited Liability Partnership Identification Number) after completion & verification of all legal formalities (within 14 days).

✍ IF A PERSON MAKES A STATEMENT ALONG WITH THE INCORPORATION DOCUMENT KNOWS TO BE FALSE, OR DOES NOT BELIEVE TO BE TRUE, THEN SUCH PERSON SHALL BE PUNISHABLE WITH:

- Imprisonment for a term which may extend to 2 years, and
- A fine, which shall not be *less than* ₹10,000 but which may extend to ₹5 Lakhs.

✍ ELIGIBILITY TO BE A PARTNER IN LLP

Persons whose names are subscribed on the incorporation document shall be the partners of the LLP.

✍ REGISTERED OFFICE OF LLP:

- Every LLP shall have a registered office to which all communications & notices shall be addressed and received on a LLP/its partner/designated partner by registered post or in any other manner at the registered office of the LLP.
- A LLP may change the place of its registered office by filing the notice of such change with the Registrar.
- If any default is made in complying with the requirements of this section - LLP & its every partner shall be liable to:
 - a penalty of ₹500 for each day during which the default continues,
 - subject to a maximum of ₹50,000.

✍ EFFECT OF REGISTRATION (SECTION 14):

LLP become capable of :

- Suing or being sued.
- Doing such other acts as bodies corporate may lawfully do.
- Acquiring/Owning/ Holding/Developing/Disposing of property (movable/immovable & tangible/intangible).
- Deciding to have a common seal.

• DISTINCTION BETWEEN LLP AND PARTNERSHIP FIRM

	Basis	LLP	Partnership firm
1.	Regulating Act	The Limited Liability Partnership Act, 2008.	The Indian Partnership Act, 1932.
2.	Body Corporate	It is a body corporate.	It is not a body corporate.
3.	Separate legal entity	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.
4.	Creation	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
5.	Registration	Registration is mandatory. LLP can sue & be sued in its own name.	Registration is voluntary. Only the registered partnership firm can sue the third parties.
6.	Perpetual succession	The death, insanity, retirement or insolvency of the partner(s) does	The death, insanity, retirement or insolvency of the partner(s)

		not affect its existence of LLP. Partners may join or leave but its existence continues forever.	may affect its existence. It has no perpetual succession.
7.	Name	Name of the LLP to contain the word Limited Liability Partnership (LLP) as suffix.	No guidelines. The partners can have any name as per their choice.
8.	Liability	Liability of each partner is limited to the extent to agreed contribution except in case of willful fraud.	Liability of each partner is unlimited. It can be extended upto the personal assets of the partners.
9.	Mutual agency	Each partner can bind the LLP by his own acts but not the other partners.	Each partner can bind the firm as well as other partners by his own acts.
10.	Designated partners	At least two designated partners and atleast one of them shall be resident in India.	There is no provision for such partners under the Partnership Act, 1932.
11.	Common seal	It may have its common seal as its official signatures.	There is no such concept in partnership.
12.	Legal compliances	Only designated partners are responsible for all the compliances and penalties under this Act.	All partners are responsible for all the compliances and penalties under the Act.
13.	Annual filing of documents	LLP is required to file: (i) Annual statement of accounts (ii) Statement of solvency (iii) Annual return with the registration of LLP every year.	Partnership firm is not required to file any annual document with the registrar of firms.
14.	Foreign partnership	Foreign nationals can become a partner in a LLP.	Foreign nationals cannot become a partner in a partnership firm.
15.	Minor as partner	Minor cannot be admitted to the benefits of LLP.	Minor can be admitted to the benefits of the partnership with the prior consent of the existing partners.

• **DISTINCTION BETWEEN LLP AND LIMITED LIABILITY COMPANYY**

No.	Basis	LLP	Limited Liability Company
1.	Regulating Act	The LLP Act, 2008.	The Companies Act, 2013.
2.	Members/Partners	The persons who contribute to LLP are known as partners of the LLP.	The persons who invest the money in the shares are known as members of the company.
3.	Internal Governance Structure	The internal governance structure of a LLP is governed by contract agreement between the partners.	The internal governance structure of a company is regulated by statute (<i>i.e.</i> , Companies Act, 2013).
4.	Name	Name of the LLP to contain the word "Limited Liability partnership" or "LLP" as suffix.	Name of the public company to contain the word "limited" & Pvt. Co. to contain the word "Private limited" as suffix.
5.	No. of Members or Partners	Minimum - 2 partners Maximum - No such	Private company: Minimum - 2 members

		limit on the partners in the Act. The partners of the LLP can be Individuals or body corporate through the nominees.	Maximum – 200 members Public company: Minimum – 7 members Maximum – No such limit on the members. Members can be organizations, trusts, another business form or individuals.
6.	Liability of members/partners	Liability of a partners is limited to the extent of agreed contribution except in case of willful fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.
7.	Management	The business of the company is managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected by the shareholders.
8.	Minimum number of directors/designated partners	Minimum 2 designated partners.	Private Company: 2 directors Public Company: 3 directors



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THE COMPANIES ACT, 2013

✎ **COMPANY:** A company incorporated under this Act or any previous company law.

➤ **Definition:** “A company is an incorporated association, which is an artificial person created by law, having a separate entity, with a perpetual succession and a common seal.”

➤ **APPLICABILITY:**

- Companies incorporated under this Act or any previous company law.
- Insurance companies (*Exception:* Insurance Act, 1938 & IRDA Act, 1999).
- Banking companies (*Exception:* Banking Regulations Act, 1949).
- Electricity companies (*Exception:* Electricity Act, 2003).
- A body corporate governed by any special act.

➤ **FEATURES OF A COMPANY**

• **Separate Legal Entity:**

- The existence of the company is distinct from that of its members.
- A company can own property, bank account, raise loans, incur liabilities & enter into contracts.
- Members contracting with the company shall be treated as outsiders.
- Company becomes the owner of its capital and assets. The shareholders are not the private or joint owners of the company's property.
- A member does not have an insurable interest in the company [**Leading case law: Macaura vs Northern Assurance Co. Limited**].

• **Perpetual Succession:**

- A company's continuity or existence is not affected by the death or insolvency of members.
- Since a company is created by law, the law can only end the life of a company.

• **Limited Liability:**

- The debts of the company do not become the debts of the shareholders.
- The liability of members is limited to the extent of the nominal value of shares held by them. (limited by shares)
- Limited by Guarantee = Members liable only to the extent of the amount guaranteed by them (at the time of winding up).

• **Artificial Legal Person:**

- A company is created by the process of law, not by natural birth. Hence it is a legal or judicial in nature.
- A company acts through a human agency *via* directors.
- The directors cannot control the affairs of the company.
- Directors are the company's agents but not the agent of the members of the company.
- Directors can use the common seal of the company to authenticate the company's formal acts.

• **Common Seal:**

- Official signature of company & symbol of incorporation.
- Having a common seal is optional as per the Companies (Amendment) Act, 2015.
- If no common seal, Authorization by two directors or a director & a company secretary, *if any*.

✎ **CORPORATE VEIL**

- A company is identified separately from its members.
- If the company incurs any debts or broke any law, members shall not be held liable.
- The members are protected from the acts of the company.
- **Leading case law: Salomon vs Salomon Co. Ltd.**
- **LIFTING OF CORPORATE VEIL:**

- Looking behind the company as a legal person, disregarding the corporate identity.
- The courts ignore the company and direct their concern towards the members or managers of the company.
- **Situations where corporate veil will be lifted:**
 - To determine the character of the company *i.e.*, to find out whether co-enemy or friend. (Daimler Co. Ltd. vs Continental Tyre & Rubber Co).
 - To protect revenue/tax. (Dinshaw Maneckjee Petit).
 - Where sole purpose for the formation of the company was to avoid a legal obligation. (The Workmen Employed in Associated Rubber Industries Limited, Bhavnagar vs The Associated Rubber Industries Ltd., Bhavnagar).
 - Formation of subsidiaries to act as agent/s (Merchandise Transport Limited vs British Transport Commission).
 - Where device of incorporation is used for some illegal or improper purpose (Gilford Motor Co. vs Horne).

✕ TYPES OF COMPANIES

- **COMPANY LIMITED BY SHARES:** Liability of members is limited to the amount unpaid on the shares held by them and can be called anytime.
- **COMPANY LIMITED BY GUARANTEE:** Liability of members is limited to the amount undertaken by them according to the memorandum. Guaranteed amount is paid at the time of liquidation.
- **UNLIMITED COMPANY:** No limit on the liability of members of the company. Members liable only at the time of winding-up of the company.
- **ONE PERSON COMPANY (OPC):**
 - Only one person as a member.
 - Name of the nominee must be mentioned in Memorandum of Association. Prior written consent of the nominee is mandatory (may withdraw consent).
 - Eligibility of Member/Nominee: He must be natural person and Citizen of India, whether resident or not.
 - A person cannot be a member or nominee in more than one OPC.
 - No Minor be a Member/Nominee.
 - Cannot carry out non-banking activities.
 - It can be converted into any type of company except **Section 8**.
 - **Contravention:** OPC/Any officer of the company – Maximum fine of ₹10,000 and further fine of a maximum of ₹1,000/day after the first (For continuing default).
 - Member may change name of nominee.
- **PRIVATE COMPANY:**
 - No minimum paid-up capital requirement.
 - Minimum members = 2
 - Maximum members = 200 (excluding employees & former employees holding shares).
 - Right to transfer of shares restricted.
 - Invitation to the public for securities of the company not allowed.
 - Small company is also a private company.
 - OPC can only be formed as a private company.
- **SMALL COMPANY:**
 - Paid-up Share Capital = Maximum ₹4 crores or such higher limit as may be prescribed maximum 10 crores.
 - Turnover = Maximum ₹40 Crores or such higher limit as may be prescribed maximum 100 crores.
 - Should not be **Section 8** company and Holding/Subsidiary company.
- **PUBLIC COMPANY:**
 - Not a private company.
 - No minimum paid-up capital requirement.
 - Subsidiary of a public company is deemed to be a public company.

- Shares are freely transferable.
- Minimum members = 7 & Maximum members = No limit.
- **HOLDING & SUBSIDIARY COMPANY:**
 - A subsidiary company is a company in which a holding company:
 - controls the composition of Board of Directors (*i.e.*, Power to appoint or remove majority Board of Director); or
 - controls more than 50% of the total voting power, either on its own or together with one or more of its subsidiaries.
- **ASSOCIATE COMPANY:** Having significant influence of another company:
 - Significant influence means:
 - Control of at least 20% of the total voting power in another company, or
 - Control or participation in business decisions under an agreement.
 - The shares held by a company in another company in a 'fiduciary capacity'- not to be counted.
- **LISTED COMPANY:**
 - Company's securities are listed on a recognised stock exchange.
 - Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.
- **UNLISTED COMPANY:** A company other than a listed company.
- **GOVERNMENT COMPANY:**
 - A company in which not less than 51% of the paid-up share capital is held by:
 - the Central Government; or
 - the State Government or Governments; or
 - partly by the Central Government & State Government or State Governments.
 - Subsidiary of government company: deemed government company.
- **FOREIGN COMPANY:**

Any company or body corporate incorporated outside India, Which has a place of business in India in any manner & conducts any business activity in India in any manner.
- **SECTION 8 COMPANY:**
 - Not-for-profit company.
 - Promotes objects like Commerce/Science/Art/Education/Religion/Sports/Charity/Environment Protection, etc.
 - Profits to be Applied in objects' promotion only and no dividend distribution is allowed.
 - Power of Central Government to issue the license.
 - Privileges of a limited company.
 - Need not use the word Pvt. Ltd./Ltd. in its name.
 - A partnership firm can be a member.
 - Minimum number of directors does not apply.
 - Notice of general meeting of 14 clear days.
 - Central Government may revoke the license on contravention of any provision (after giving notice).
 - Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register.
 - Amalgamation only with a **Section 8** company having similar objects.
 - Nomination & Remuneration Committee and Shareholders' Relationship Committee not required.
 - **Fine in case of default:**
 - On company: Ten lakh to One crore and
 - Director and every officer in default: Twenty-five thousand to Twenty-five lakh.
- **DORMANT COMPANY (INCLUDES AN INACTIVE COMPANY):**
 - Formed for a future project/to hold an asset or intellectual property.
 - Has no significant accounting transactions.

- May make an application to the Registrar for obtaining the status of a dormant company.
- **Inactive company:** No business operations/No significant accounting transactions/No filing of financial statements & annual returns during the last two financial years.
- **Transactions not specified as Significant Accounting Transactions:**
 - Payment of fees to the Registrar;
 - payment to fulfil the requirements of this Act or another law;
 - allotment of shares;
 - payment for maintenance of office & its records.

✎ PROMOTER

- Person named in the prospectus/identified by the company in the annual return; or
- Have control over the affairs of the company directly or indirectly as a shareholder or director; or
- On whose advise the Board of Directors of the company are accustomed to act.

✎ INCORPORATION OF THE COMPANY

➤ FILING OF DOCUMENTS & INFORMATION WITH THE REGISTRAR:

- Memorandum of Association & Article of Association – Signed by all subscribers.
- Declaration regarding compliance of incorporation requirement – By person involved in formation (CA/CS/CMA/Advocate) and person named in the articles as Director/Manager/Secretary.
- An affidavit from subscribers & directors:
 - Not convicted in the Companies Act, 2013.
 - No fraud under the Companies Act, 2013 in the last 5 years.
 - Information filed are accurate and best to the knowledge.
- Address for communication until the registered office is established.
- Personal details of subscribers: Name, Address, Nationality & Proof of Identity.
- First directors' interest in other firms and consent letter from interested firms.

- **Issue of Certificate of Incorporation:** Issuance of Certificate of Incorporation by the Registrar after verifying & registering all the documents & information provided by the persons involved in incorporation.

- **Allotment of Corporate Identity Number (CIN):** From the date of receiving the certificate of incorporation, the Registrar shall provide the company with a corporate identity number.

- **Maintenance of copies of all documents & information:** The company shall maintain & preserve copies of all documents & information at its registered office until its dissolution.

➤ SPECIAL POINTS:

- If any person knowingly furnishes any false information or suppresses any material facts at the time of incorporation from the Registrar, such person shall be liable under **Section 447**.
- If a company gets incorporated by furnishing any false information or suppressing any material fact, the promoters, the first directors & the persons making the declaration shall be liable under **Section 447**.

- **Order of the Tribunal:** If a company gets incorporated by furnishing any false information or suppressing any material fact, the Tribunal may order for:

- Name removal; or
- Winding-up; or
- Unlimited liability; or
- Change of MOA/AOA; or
- Other orders.

- **Simplified Proforma for Incorporating Company Electronically (SPICE):** Process of filing of forms through electronic mode.

✎ TYPES OF CAPITAL

- **Authorized Capital:** Maximum capital of the company mentioned in the memorandum.
- **Issued Capital:** Capital issued by the company for the subscription.
- **Subscribe Capital:** Capital subscribe by the public who become members of the company.
- **Paid-up Capital:** Total amount paid on shares issued.

✧ SHARES

- **MEANING:** Share in the share capital of the company and includes stock. They are movable property bearing distinctive number.
 - **TYPES OF SHARE CAPITAL**
 - I. Equity Share Capital
 - II. Preference Share Capital
- I. Equity Share Capital**
- All Share Capital, except Preference Share Capital.
 - With voting rights.
 - With differential rights as to dividend & voting.
- II. Preference Share Capital:** Carry preferential rights concerning: Payment of dividend and repayment of capital in case of winding-up along with preferential right in surplus left after repayment of the entire capital.

✧ MEMORANDUM OF ASSOCIATION (MOA)

- Base document for the formation of company.
- Public document.
- Constitution or Charter of the company.
- Memorandum is drawn up according to Tables A, B, C, D & E in Schedule I of this Act.
- **Signing:** At least 7 persons (For public company), at least 2 persons (For private company) & 1 in OPC in the presence of at least one witness along with details of signatories & witness (Name, Address, Occupation, etc.).
- A minor cannot be a signatory : A guardian subscribing on behalf of a minor is deemed to have subscribed in a personal capacity.
- **Clauses in Memorandum:** Name Clause, Registered Office Clause, Object Clause, Liability Clause, Capital Clause and Association Clause.
 - **Name Clause:**
 - Name of the company with the word “Limited” or “Private Limited”.
 - Section 8 Company includes words forum, foundation, association, trust, chambers, etc.
 - Name of the Government Companies – “Limited” & for One Person Company – “OPC” below its name.
 - **Registered Office Clause:** State in which the registered office of the company is situated.
 - **Object Clause:** Objects for which the company gets incorporated & other necessary matters.
 - **Liability Clause:** Liability of members (Limited by shares/guarantee/unlimited liability).
 - **Capital Clause:** Amount of Authorized Capital along with no. of shares with the subscribers.
 - **Association Clause:** Names of subscribers holding shares of the company (along with number of shares held).

✧ ARTICLES OF ASSOCIATION

- Rules & regulations for managing the internal affairs of the company.
- Bye-laws of the company.
- An auditor must study the articles while doing the auditing of a company.
- Contains a provision for entrenchment (to protect something).
- Articles are drawn up according to Tables F, G, H, I & J in Schedule I of this Act.
- Provisions for entrenchment in Articles of Association:
 - Entrenchment shall be made either on the formation of the company; or
 - by an amendment in articles agreed by all the members of a private company or special resolution in a public company.
 - Registrar shall be informed through a notice by the company of provision for entrenchment.

✧ DOCTRINE OF ULTRA-VIRES

- *Ultra-Vires* means Beyond powers.

- Acts done by the company beyond its object clause are *ultra-vires*.
- Neither the company nor the person dealing with the company can sue each other on an *ultra-vires* transaction.
- Memorandum is a public document & it is deemed that the person knows about the powers of the company.
- An *ultra-vires* act cannot be ratified even by unanimous consent of the shareholders.
- Leading case law: **Ashbury Railway Carriage and Iron Company Limited Vs. Riche.**

✘ DOCTRINE OF CONSTRUCTIVE NOTICE

- Since a memorandum is a public document, it is implied that the person knows about the powers of the company.
- A person is presumed to have knowledge of the memorandum & articles of the company.
- A person has no right under a contract against the company on an ultra vires transaction.

✘ DOCTRINE OF INDOOR MANAGEMENT

- An exception to the doctrine of constructive notice.
- Internal problems of the company are the company's problems.
- Outsiders are deemed to know that all the detailed formalities for authorizing the transaction have been done by the company.
- Leading case law: **The Royal British Bank Vs. Turquand.**
- It is also called the Turquand rule.
- Exceptions to the doctrine of indoor management:
 - **Actual or constructive knowledge of irregularity:** The dealing with the company while having knowledge of the irregularity within the company.
 - **Suspicion of irregularity:** Duty of the outsider to make the necessary inquiry about the transaction. (**Anand Bihari Lal v. Dinshaw & Co.**)
 - **Forgery:** Forgery is regarded as a nullity & completely illegal. (**Ruben v. Great Fingall Consolidated.**)

THE NEGOTIABLE INSTRUMENTS ACT, 1881

✦ NEGOTIABLE INSTRUMENT

➤ MEANING

An instrument that is freely transferable from one person to another by mere delivery or by endorsement and by delivery.

➤ TYPES OF NEGOTIABLE INSTRUMENTS

- Promissory Notes
- Bills of Exchange
- Cheque

➤ 'PAYABLE TO ORDER' OR 'PAYABLE TO BEARER'

- **Payable to Order:** It is expressed to be payable to a **specified person** and does not contain the words prohibiting its transfer (*i.e.*, transferable by endorsement and delivery).
- **Payable to Bearer:** It is expressed to be payable, but it is **not specified to whom it is payable**.

➤ ESSENTIAL CHARACTERISTICS OF NEGOTIABLE INSTRUMENTS:

- It shall be in **writing**.
- It shall be **signed**.
- It is **freely transferable** from one person to another.
- Holder's title is **free from defects**.
- It can be transferred **any number of times** until its satisfaction.
- Every negotiable instrument must contain **an unconditional order or promise to pay money**. The promise or order to pay must consist of **money only**.
- The sum payable, the time of the payment, and the payee must be **certain**.
- The instrument should be **delivered**. A mere drawing of the instrument does not create a liability.

✦ PROMISSORY NOTE

➤ MEANING

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

➤ PARTIES TO THE PROMISSORY NOTE:

- **Maker:** The person who makes the promise to pay is called a maker. He is the debtor and must sign the instrument.
- **Payee:** Payee is the person to whom the amount on the note is payable.

➤ ESSENTIAL CHARACTERISTICS OF A PROMISSORY NOTE:

- In **writing**.
- **Express promise** to pay.
- The promise to pay should be **definite and unconditional**.
- A promissory note must be **signed** by the maker.
- A promise to pay **money only**.
- A promise to pay a **certain sum** of money.
- The maker and payee must be **certain, definite and different persons**. A promissory note cannot be made payable to the bearer.
- A promissory note must be **properly stamped**.

Note: As per **Section 31** of the RBI Act, 1934, only the Reserve Bank or the Central Government can make or issue a promissory note 'payable to bearer'.

✍️ **BILLS OF EXCHANGE**

- **MEANING:** An instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to or to the order of a certain person or to the bearer of the instrument.
- **PARTIES TO THE BILL OF EXCHANGE:**
 - **Drawer:** The maker of a bill of exchange.
 - **Drawee:** The person directed by the drawer to pay is called the drawee.
 - **Payee:** The person named in the instrument to whom or to whose order the money is, by the instrument, directed to be paid.
- **ESSENTIAL CHARACTERISTICS OF A BILL OF EXCHANGE:**
 - It must be in **writing**.
 - It must contain an **express order** to pay.
 - The order to pay must be **definite and unconditional**.
 - The drawer must **sign** the instrument.
 - Drawer, drawee and payee must be **certain**.
 - The **sum must be certain**.
 - The order must be to pay **money** only.
 - It must be **stamped**.

✍️ **DIFFERENCE BETWEEN PROMISSORY NOTE AND BILL OF EXCHANGE**

Basis	Promissory Note	Bill of Exchange
Definition	"A Promissory Note" is an instrument in writing (not being a banknote or a currency note) containing an unconditional undertaking signed by the maker to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.	"A bill of exchange" is an instrument in writing containing an unconditional order , signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument.
Nature of instrument	On a promissory note, there is a promise to pay money .	In a bill of exchange, there is an order for making payment .
Parties	On a promissory note, there are only 2 parties , namely, the maker and the payee.	In a bill of exchange, there are 3 parties which are the drawer, the drawee, and the payee.
Acceptance	A promissory note does not require any acceptance , as it is signed by the person who is liable to pay.	A bill of exchange need acceptance from the drawee.
Payable to bearer	A promissory note cannot be made payable to the bearer .	On the other hand, a bill of exchange can be drawn payable to the bearer . However, it cannot be payable to the bearer on demand.

✍️ **CHEQUE [SECTION 6]**

- **MEANING:**
 - A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on-demand, and it includes the electronic image of a truncated cheque in the electronic form.
 - **Cheque in the electronic form:** It means a cheque drawn in electronic form by using any computer resource, and signed in a secure system with a digital signature (with/without biometric signature) and asymmetric crypto system or electronic signature, as the case may be;
 - "A truncated cheque" means a cheque which is truncated during a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

➤ **PAYABLE ON-DEMAND:**

It should be payable whenever the holder chooses to present it to the drawee (the banker).

Note: The word “Banker” includes any person **acting as a banker and any post office saving bank.**

➤ **PARTIES TO CHEQUE:**

- **Drawer:** The person who draws a cheque.
- **Drawee:** The specific bank on whom the cheque is drawn.
- **Payee:** The person named in the cheque (*i.e.*, the person in whose favour the cheque is issued), to whom or to whose order the money is paid, is called the *payee*.
- **Drawee in case of need:** When in the bill or in any endorsement thereon, the name of any person is given in addition to the drawee to be resorted to in the case of need, such a person is called a “drawee in case of need”.

➤ **ESSENTIAL CHARACTERISTICS OF A CHEQUE:**

- A cheque shall fulfil:
 - **all the essential characteristics of a bill of exchange;**
 - must be drawn on a **specified banker;**
 - it must be payable **on demand.**
- The last two features distinguish a cheque from a bill. **Thus, all cheques are bills, while all bills are not cheques.**

✕ **CLASSIFICATION OF NEGOTIABLE INSTRUMENTS**

➤ **“BEARER INSTRUMENT” AND “ORDER INSTRUMENT”:**

- **Bearer Instrument:** It is an instrument where the name of the payee is blank or where the name of the payee is specified with the words **“or bearer”** or where the **last endorsement is blank.** Such an instrument can be negotiated by mere delivery.
- **Order Instrument:** It is an instrument that is **payable to a person or payable to a person or his order or payable to the order of a person or where the last endorsement is in full;** such an instrument can be negotiated by the endorsement and delivery.

➤ **INLAND INSTRUMENT:**

A promissory note, bill of exchange or cheque drawn or made in India and made payable in or drawn upon **any person resident in India** shall be deemed to be an inland instrument.

➤ **FOREIGN INSTRUMENT:**

- Any such instrument **not so drawn, made or made payable (as that of Inland Instrument)** shall be deemed to be a foreign instrument.
- **Liability of maker/drawer of a foreign bill:** The liability of the maker or drawer of a foreign promissory note or bill of exchange or cheque is **regulated by the law of the place where he made the instrument** and the respective liabilities of the acceptor and endorser by the law of the place where the instrument is made payable.

➤ **INCHOATE INSTRUMENT:**

- The drawer/maker/acceptor/endorser of a negotiable instrument may sign and deliver the instrument to another person in his capacity **leaving the instrument either wholly blank or having written on it the word incomplete.** Such an instrument is called an **inchoate instrument.**
- The **person so signing shall be liable upon such instrument,** in the capacity in which he signed the same, to any holder in due course for such amount.
- No person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid there under.

➤ **AMBIGUOUS INSTRUMENT:**

Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thence forward treated accordingly.

✘ NEGOTIATION OF NEGOTIABLE INSTRUMENTS

➤ NEGOTIATION:

When a negotiable instrument is **transferred to any person** with a view to constituting the person holder thereof, the instrument is deemed to have been negotiated.

➤ MODES OF NEGOTIATION:

- A promissory note or bill of exchange, or cheque **payable to the bearer is negotiable by the delivery thereof.**
- A promissory note or bill of exchange or cheque **payable to order is negotiable by the holder by endorsement and delivery thereof.**

➤ NEGOTIATION BY DELIVERY:

- A promissory note, bill of exchange or cheque payable **to the bearer is negotiable by delivery thereof.**

➤ NEGOTIATION BY ENDORSEMENT:

Subject to the provisions of **Section 58**, a promissory note, bill of exchange or cheque payable to order is negotiable by the holder by endorsement and delivery thereof.

➤ IMPORTANCE OF DELIVERY IN NEGOTIATION

- The delivery of an instrument is essential whether the instrument is payable to the bearer or in order for affecting the negotiation.
- The delivery must be **voluntary, the delivery can be actual or constructive.**
- Actual delivery takes place when the instrument changes hand physically.
- Constructive delivery takes place **when the instrument is delivered to the agent, clerk or servant of the endorsee** on this behalf or when the endorser, after the endorsement, holds the instrument as an agent of the endorsee.
- If a person makes the endorsement of an instrument, **the endorser dies before delivery**, the legal representatives of the deceased person **cannot negotiate the same by mere delivery thereof.**

✘ DISHONOUR OF CHEQUES

➤ DISHONOUR OF CHEQUES FOR INSUFFICIENCY OF FUNDS IN THE ACCOUNTS

Where any cheque is drawn by a person on an account maintained by him and is returned by the bank unpaid, either because of:

- the **amount of money is insufficient** to honour the cheque, or
- that **it exceeds the amount arranged to be paid** from that account such person shall be deemed to have committed an offence and shall be punished with:
- imprisonment for a term which may extend to **2 years**, or
- with a fine which may extend to **twice the amount of the cheque**, or with both.

➤ NON-APPLICABILITY OF THIS SECTION:

This section shall not apply unless following conditions are satisfied:

- The cheque has been presented to the bank within a **period of 3 months** from the date on which it is drawn or within the period of its validity, *whichever is earlier.*
- The payee or the holder in the due course of the cheque, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque **within 30 days of the receipt of information** by him from the bank regarding the return of the cheque as unpaid.
- The drawer of such cheque fails to make the payment of the said amount of money to the payee or to the holder in due course of the cheque **within 15 days of the receipt of the said notice.**

NOTE: A cheque that is given as a gift or donation would not be covered under this section.

➤ THE PRESUMPTION IN FAVOUR OF HOLDER

- When a cheque is dishonoured, it shall be presumed that the holder of the cheque received the cheque of the nature as referred to in **Section 138** for the discharge, **in whole or in part, of any debt or any other liability.**

- Presumption prescribed here is a “**rebuttable presumption**” as the provisions clearly provides that the person issuing the cheque is at liberty to prove to the contrary.
- The drawer **cannot give an excuse** in his defence that he had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.

✦ PRESENTMENT OF INSTRUMENTS

➤ PRESENTMENT FOR ACCEPTANCE

- A bill of exchange payable after sight must be presented to the drawee thereof for acceptance **within a reasonable time** after it is drawn, and in business hours on a business day.
- In default of such presentment, **no party thereto is liable** thereon to the person making such default.
- If the **drawee cannot, after reasonable search, be found**, the bill is dishonoured.
- If the bill is directed to the drawee at a particular place, **it must be presented at that place**, and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

➤ PRESENTMENT OF PROMISSORY NOTE FOR SIGHT

- A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight **within a reasonable time after it is made** and in business hours on a business day.
- In default of such presentment, no party thereto is liable thereon to the person making such default.

➤ DRAWEE'S TIME FOR DELIBERATION

The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, **allow the drawee 48 hours (exclusive of public holidays)** to consider whether he will accept it.

➤ PRESENTMENT FOR PAYMENT

- Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided.
- In default of such presentment, the other parties thereto are not liable thereon to such holder.
- Where an electronic image of a truncated cheque is presented for payment, **the drawee bank can demand any further information regarding the truncated cheque**
- Truncated cheque so demanded by the drawee bank shall be retained by it, if the payment is made accordingly.

➤ OTHER RULES RELATED TO PRESENTMENT

- Presentment for payment must be made during **the usual hours of business**, and, if at a banker's within banking hours.
- A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, **must be presented for payment at maturity**.
- A promissory note payable by instalments must be presented for payment on **the third day after the date fixed for payment of each instalment**.
- A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place **must be presented for payment at that place**.
- A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, **be presented for payment at that place**.
- A promissory note or bill of exchange must be presented for payment **at the place of business (if any) or at the usual residence**, of the maker, drawee or acceptor thereof, as the case may be where no place has been specified.
- If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person **wherever he can be found**.

- A cheque must, in order to charge the drawer, be presented **at the bank upon which it is drawn.**
 - A cheque must, in order to charge any person except the drawer, be presented **within a reasonable time after delivery thereof by such person.**
 - Subject to the provisions of **Section 31**, a negotiable instrument payable on demand must be presented for payment **within a reasonable time after it is received by the holder.**
 - Presentment for acceptance or payment may be made to the **duly authorised agent of the drawee, maker or acceptor.**
 - Delay in presentment for acceptance or payment is excused **if the delay is caused by circumstances beyond the control of the holder.**
- **WHEN PRESENTMENT UNNECESSARY**
- Maker, drawee or acceptor intentionally prevents the presentment of the instrument, or
 - Instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or
 - If the instrument being payable at some other specified place, neither he nor any person authorised to pay it attends at such place during the usual business hours, or
 - If the instrument not being payable at any specified place, liable party not found after due search.
 - Liable party has engaged to pay notwithstanding non-presentment;
 - As against any party if, after maturity, with knowledge that the instrument has not been presented—
 - he makes a **part payment** on account of the amount due on the instrument, or
 - promises to **pay the amount due thereon** in whole or in part, or
 - otherwise **waives his right to take advantage** of any default in presentment for payment;
 - If the drawer **could not suffer damage** from the want of such presentment.

Note: When a bill of exchange, accepted payable has been duly presented to the bank for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

➤ **RULES AS TO COMPENSATION**

- The holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in **presenting, noting and protesting it;**
- when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to **receive such sum at the current rate of exchange** between the two places;
- an endorser who, being liable, has paid the amount due on the same is entitled to the amount so paid **with interest at 18% per annum** from the date of payment until tender or realisation thereof, together with all expenses caused by the dishonour and payment;
- when the person charged and such endorser reside at different places, the endorser is entitled to receive such sum **at the current rate of exchange between the two places;**
- the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, **for the amount due to him, together with all expenses properly incurred by him.**