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<b>CA Foundation Business Laws June 24 – Marathon   Writing Practice   Test</b>
<b>Started from 1<sup>st</sup> May 2024</b>
<b>Complete Details: <a href="https://youtu.be/amnLs9ZguLo?si=YmUVnHcSubOqHeiN">https://youtu.be/amnLs9ZguLo?si=YmUVnHcSubOqHeiN</a></b>

<b>Schedule &amp; Details of Marathon – <i>Free Live Stream on YouTube</i></b>			
<b>Date</b>	<b>Time</b>	<b>Lecture</b>	<b>YouTube Link</b>
1 <sup>st</sup> May 2024	04: 00 PM	The Indian Contract Act, 1872 (Unit 1 to 3)	<a href="https://youtube.com/live/3MlFfu91Yjs?feature=share">https://youtube.com/live/3MlFfu91Yjs?feature=share</a>
2 <sup>nd</sup> May 2024	04: 00 PM	The Indian Contract Act, 1872 (Unit 4 to 6)	<a href="https://youtube.com/live/rRrjcxmnZwU?feature=share">https://youtube.com/live/rRrjcxmnZwU?feature=share</a>
3 <sup>rd</sup> May 2024	04: 00 PM	The Indian Contract Act, 1872 (Unit 7 to 9)	<a href="https://youtube.com/live/usY6ysQNHK8?feature=share">https://youtube.com/live/usY6ysQNHK8?feature=share</a>
4 <sup>th</sup> May 2024	04: 00 PM	The Sale of Goods Act, 1930	<a href="https://youtube.com/live/zuRe8kwuRFs?feature=share">https://youtube.com/live/zuRe8kwuRFs?feature=share</a>
5 <sup>th</sup> May 2024	04: 00 PM	The Indian Partnership Act, 1932	<a href="https://youtube.com/live/6Kh1pYymTFY?feature=share">https://youtube.com/live/6Kh1pYymTFY?feature=share</a>
6 <sup>th</sup> May 2024	04: 00 PM	The Companies Act, 2013 and LLP Act, 2008	<a href="https://youtube.com/live/ga_U8l7g5fs?feature=share">https://youtube.com/live/ga_U8l7g5fs?feature=share</a>
7 <sup>th</sup> May 2024	04: 00 PM	The Negotiable Instruments Act, 1881 and Indian Regulatory Framework	<a href="https://youtube.com/live/O3Zpm5xy2vc?feature=share">https://youtube.com/live/O3Zpm5xy2vc?feature=share</a>



How I can get the notes to be used in marathon?

Ans: Please fill this google form to get the notes: <https://forms.gle/kzebBFLaYVZ5ZC8k9>

## Schedule & Details of Writing Practice – Paid Batch

Date	Time	Lecture	Platform
8 <sup>th</sup> May 2024	05: 00 PM	The Indian Contract Act, 1872	ACT Private Application:
9 <sup>th</sup> May 2024	05: 00 PM	The Sale of Goods Act, 1930	
10 <sup>th</sup> May 2024	05: 00 PM	The Indian Partnership Act, 1932	
11 <sup>th</sup> May 2024	05: 00 PM	The Companies Act, 2013	
12 <sup>th</sup> May 2024	05: 00 PM	The Negotiable Instruments Act, 1881	

### Special Feature of this batch:

1. Student will get writing practice manual with all new questions which is not available in institute repository.
2. 20 hours batch (Approx).
3. Two full tests of 100 marks.
4. Live discussion video of above test.

### Fees?

Ans:

Rs. 699

Link for enrolment: <https://www.arjunchhabratutorial.com/product/NFQS1685785484>

**Writing Practice Batch Review :** <https://youtu.be/PD-iRYcsilk?si=2m6kR6v7qLGJLydb>

## Schedule of Test

Test 1	11 <sup>th</sup> June 2024	02:00 PM to 05:00 PM
Test 2	14 <sup>th</sup> June 2024	02:00 PM to 05:00 PM

## Arjun Chhabra Tutorial's Gallery

1. FULL VLOG | CA INTER MAY 24 BATCH CONCLUSION DAY | CELEBRATION | DINNER | MOVIE | WITH STUDENTS: [https://youtu.be/47BxbHL\\_qc0?si=Impo7hsjuOcZERBY](https://youtu.be/47BxbHL_qc0?si=Impo7hsjuOcZERBY)
2. FULL VLOG | WET & JOY WATER PARK | ARJUN CHHABRA TUTORIAL | CA INTER MAY 2024: [https://youtu.be/l45jh\\_hHVvY?si=Anyrn3AYFQX-igvT](https://youtu.be/l45jh_hHVvY?si=Anyrn3AYFQX-igvT)

## CA Foundation Business Laws June 24

### Revision Notes

## The Indian Contract Act, 1872

### Unit 1: Nature of Contracts

#### Basics of Contract

<b>Contract</b>	An Agreement + Enforceable by Law [Sec.2(h)]
<b>Agreement</b>	Offer (or Proposal) + Acceptance of Offer (or proposal) Note: 1. A proposal when accepted becomes a promise. [Sec.2(b)] 2. Every promise and every set of promise forming consideration for each other is an agreement. [Sec.2(e)]
<b>Enforceability</b>	An agreement is said to be enforceable by law if it creates some legal obligation.
<b>Usual Presumption</b>	In Social or Domestic Agreements - That the parties do not intend to create legal relations.  In Commercial or Business Agreements - That the parties intend to create legal relations.

#### Types of Contracts

Type of Contract	Meaning
<b>1. On the Basis of Creation</b>	
<b>(a) Express Contract</b>	One which is made by words spoken or written
<b>(b) Implied Contract</b>	One which is made otherwise than by words spoken or written.
<b>(c) Tacit Contract</b>	One which is inferred from the conduct of parties or circumstances of the case

<b>2. On the Basis of Execution</b>	
<b>(a) Executed Contract</b>	Where both the parties to the contract have performed their respective obligations.
<b>(b) Executory Contract</b>	Where both the parties to the contract have still to perform their respective obligations.
<b>(c) Partly Executed, Partly Executory</b>	Where one of the parties to the contract has performed his obligation and the other party has still to perform his obligation.
<b>(d) Unilateral Contract</b>	One in which only one party has to perform his Promise or obligation to do forebear.
<b>(e) Bilateral Contract</b>	One in which both parties have to perform their respective obligations.
<b>3. On the Basis of Enforceability</b>	
<b>(a) Valid Contract</b>	Which satisfies all the conditions prescribed by law.
<b>(b) Void Contract [Sec.2(j)]</b>	A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable. A contract which was valid when entered into but which subsequently becomes void due to impossibility of performance due to change of law or any other reason.
<b>(c) Void Agreement [Sec.2(g)]</b>	An agreement not enforceable by law Note: Collateral Agreements do not become void.
<b>(d) Voidable Contract [Sec.2(i)]</b>	An agreement which is enforceable by law at the option of one or more of the parties but not at the option of the other or others.
<b>(e) Illegal Agreement</b>	One the object or consideration of which is unlawful. Note: Collateral Agreements also become void.
<b>(f) Unenforceable Contract</b>	A contract which is actually valid but cannot be enforced because of some technical defect. Such contract can be enforced if the technical defect is removed.

<b>Sec. 10</b>	“All agreements are contracts if they are made by the <b>free consent</b> of the <b>parties competent</b> to contract, for a <b>lawful consideration</b> and with a <b>lawful object</b> and are <b>not</b> hereby expressly declared to be void.”
<b>Essential Elements of a Valid Contract</b>  <b>Arjun Chhabra</b> <b>(CS LLB LLM)</b> <b>Law Maven</b>	<ol style="list-style-type: none"> <li>1. Proper Offer and its Proper Acceptance</li> <li>2. Intention to create legal relationship</li> <li>3. Free Consent</li> <li>4. Capacity to Contract</li> <li>5. Lawful Consideration</li> <li>6. Lawful Object</li> <li>7. Agreement not expressly declared void</li> <li>8. Certainty of Meaning</li> <li>9. Possibility of Performance</li> <li>10. Legal Formalities</li> </ol>

<b>Offer [Sec.2(a)]</b>
<ol style="list-style-type: none"> <li><b>1. Proposal/ Offer:</b> Signifying to another willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence.</li> <li><b>2. Rules</b> <ol style="list-style-type: none"> <li>(a) Creation of legal relationship.</li> <li>(b) Certain, definite and not vague. It should not contain a term the non compliance of which would amount acceptance.</li> <li>(c) If agreement contains a basis for ascertaining a valid term, agreement is not void on its being vague.</li> <li>(d) Offer can be express or implied, specific or general.</li> <li>(e) Communication of offer is a must.</li> <li>(f) Offer should be made to obtain the consent of the offeree.</li> <li>(g) Offer may be conditional or non-conditional.</li> </ol> </li> <li><b>3. Specific Offer:</b> Made to specific person or group of persons. It can be accepted only by the person to whom the offer is made.</li> <li><b>4. General Offer:</b> Made to the public at large. Not necessary for offeree to be known to the offeror. A stranger by complying with conditions of offer is deemed to have accepted the offer. [Section 8]</li> <li><b>5. Invitation to offer:</b> Proposal of certain terms on which the person is willing to negotiate and invites the other party to make an offer on those terms.</li> <li><b>6. Invitation to offer =</b> Expression of initial intention. Offer = Expression of final willingness.</li> </ol>

7. **Cross Offer:** Two persons making identical offers to each other, in ignorance of each other's offer. One cannot be offer and other cannot be acceptance. No concluded contract.
8. **Counter Offer** - Original offer is cancelled. Acceptance has to be given to the counter offer.

## ACCEPTANCE [Sec.2(b)]

1. **Meaning of Acceptance:** Consent to the offer. When the person to whom proposal is made signifies his assent thereto, the proposal is said to be accepted.
2. **Rules:**
  - (a) Acceptance should come from an offer,
  - (b) It can be made only by the offeree,
  - (c) Should be made before the lapse of the offer,
  - (d) Performance of conditions of offer = acceptance,
  - (e) Acceptance should be for the exact terms of the offer. Any variation becomes counter offer,
  - (f) Acceptance should be communicated,
  - (g) Silence ≠ Acceptance. Exception - Offeree by his previous conduct has indicated that silence amounts to his acceptance,
  - (h) Acceptance shall be as per prescribed mode, and
  - (i) Acceptance to be made within the specified time.
3. **William Anson's saying:** Acceptance is to a proposal what a lighted match-stick is to a train of gun-powder.
4. **Special terms and conditions must be communicated in some reasonable manner.** There should be reasonable notice of such conditions on the face of the document, else acceptor is not bound.
5. **Contracts over the phone:** Duty of the acceptor to ensure/confirm that his message is duly received by the offeror.

<b>Communication of Offer and Acceptance [Sec 4]</b>	
<b>Communication of Offer</b>	The communication of offer is complete <b>when it comes to the knowledge of the person to whom it is made.</b>
<b>(i) Communication of Acceptance as against the proposer Complete....</b>	In case of acceptance made by post, the proposer becomes bound by the acceptance as soon as the properly addressed and stamped letter of acceptance is duly posted even if such letter of acceptance is lost or delayed in post.
<b>(ii) Communication of Acceptance as against the acceptor Complete....</b>	In case of acceptance made by post, the acceptor becomes bound by the acceptance <b>only when the letter of acceptance is actually received by proposer.</b>

<b>Revocation of Offer and Acceptance [Sec 5]</b>	
<b>Meaning of Revocation</b>	The term 'revocation' means 'taking back' or 'withdrawal'.
<b>Time Limit within which Offer can be Revoked</b>	An offer can be revoked at any time before the letter of acceptance is duly posted by the acceptor.
<b>Time Limit within which Acceptance can be Revoked</b>	An acceptance can be revoked at any time before the letter of acceptance is actually received by the proposer.
<b>No Revocation in Case of Contract over Telephone or Telex or fax</b>	In case of contracts over telephone or telex or fax, the question of revocation does not arise because there is instantaneous communication of the offer and its acceptance (i.e. the offer is made and accepted at the same time).
<b>When communication of revocation complete?</b>	Person revoking (offeror/ acceptor) - when it is put into course of transmission. Person receiving the letter of revocation (either offeror/ acceptor) - When he receives such letter of revocation.
<b>Lapse of offer – [Section 6]</b>	(a) Revocation of offer, (b) Rejection of offer, (c) Acceptance not made within a stipulated time or reasonable time, (d) Non fulfillment of conditions by the acceptor, (e) Death or insanity of offeror or offeree before acceptance, (f) Acceptance not in prescribed mode, (g) Cross and counter offers, and (h) Change in law or circumstances

## The Indian Contract Act, 1872

### Unit 1: Nature of Contracts - Sections Recap

1. Short title. Extent. Commencement. Saving.
2. Interpretation-clause
3. Communication, acceptance and revocation of proposals.
4. Communication when complete.
5. Revocation of proposals and acceptances.
6. Revocation how made.
7. Acceptance must be absolute.
8. Acceptance by performing conditions, or receiving consideration.
9. Promises, express and implied.
10. What agreements are contracts.

#### Sec. 2:

- (a) Proposal/ Offer
- (b) Promise
- (c) Promisor and Promisee
- (d) Consideration
- (e) Agreement
- (f) Reciprocal Promises
- (g) Void Agreement
- (h) Contract
- (i) Voidable Contract
- (j) Void Contract

## The Indian Contract Act, 1872

### Unit 2: Consideration

**1. Meaning & Definition:** Consideration = something in return. [Section 2(d)]

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 abstain from doing, something.  
Such act/ abstinence/ promise = consideration.  
No consideration = No contract.

**2. Rules**

1. Consideration must move at the desire of the Promisor.
2. Consideration may come from promisee or any other person
3. It is not necessary that person providing consideration should be benefitted
4. Consideration may be an act & may be an abstinence
5. Consideration may be past, present or future.
6. Consideration must be real and not illusory. Not valid if - physically impossible, legally not permissible, uncertain.
7. Consideration must be more than legal or contractual obligation
8. It must be legal.
9. Consideration can be inadequate.
10. Consideration must not be unlawful, immoral, oppose to public policy.

**3. Exceptions to "no consideration no contract" – [Section 25]**

(a) Written and registered agreements arising out of love and affection between parties standing in near relation, [Section 25(1)]

(b) Past Voluntary service, [Section 25(2)]

Promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor.

(c) Promise to pay a time barred debt, [Section 25(3)]

A promise to pay time barred debt is valid and enforceable if such promise is in writing & Signed by the promisor or his authorised agent.

(d) Completed gifts, [Explanation 1 Section 25]

(e) Gratuitous Bailment, [Section 148]

(f) Contract of agency, [Section 185] and



(g) Charity - If a person promises to contribute to charity and on this faith, the promisee undertakes a liability to the extent not exceeding the promised subscription, the contract shall be valid. [**Kedarnath v. Gorie Mohammad**] [**Abdul Aziz V. Masum Ali**]

**4. Doctrine of Privity of Contract:** Only those persons, who are parties to a contract, can sue and be sued upon the contract. Third party to a contract cannot sue upon it, even though the contract may be for his benefit.

**5. Exceptions to Doctrine of Privity of Contract:**

(a) Trust- Beneficiary may enforce the right even though he was not party to the contract.

(b) Marriage settlement, partition and other family arrangements,

- If terms of contract in writing - Member of family who was not a party to contract can enforce the same.

(c) Acknowledgement of liability,

(d) Assignment of a contract,

(e) Contracts entered into through an Agent, and

(f) Covenants running with land - The person who purchases land with, notice that the owner of land is bound by certain duties affecting the land, the covenant affecting the land may be enforced by the successor of the seller.

## CSLLB LLM CHHABRA The Indian Contract Act, 1872

### Unit 2: Consideration - Sections Recap

1. Consideration-**Section 2(d)**
2. Written and registered agreements arising out of love and affection between parties standing in near relation, [**Section 25(1)**]
3. Past Voluntary service, [**Section 25(2)**]
4. Promise to pay a time barred debt, [**Section 25(3)**]
5. Completed gifts, [**Explanation 1 Section 25**]
6. Gratuitous Bailment, [**Section 148**]
7. Contract of agency, [**Section 185**]
8. Charity [**Kedarnath v. Gorie Mohammad**] [**Abdul Aziz V. Masum Ali**]

## The Indian Contract Act, 1872

### Unit 3: Other Essential Elements of a Contract

#### CAPACITY TO CONTRACT [Sec 11]

1. **Persons competent:** Person attained the age of majority, Person of sound mind and Person not disqualified by law.
2. **Position of minor**
  - (a) Agreement is void ab initio
  - (b) Acts cannot be ratified on attaining majority
  - (c) No refunds of benefit received
  - (d) Not liable even in case of fraudulent representation of age.
  - (e) Cannot be a partner - except for benefits
  - (f) Partners or Guardian not liable for breach of contract by minor
  - (g) Cannot ask for specific performance of contract.
  - (h) Cannot be adjudged insolvent.
  - (i) Minor is not liable in contract
  - (j) Minor's property is liable for necessities
3. **Necessaries**
  - (a) Essentials to run a life.
  - (b) Necessaries include services.
  - (c) Minor is not personally liable.
4. **Sound and unsound mind:** Generally unsound - Occasionally sound: can enter into a Contract when he is of Sound Mind. Generally Sound - Occasionally Unsound: cannot make a contract when he is of Unsound Mind. [Section 12]

#### FREE CONSENT [Sec 15 to 22]

##### **Coercion [Section 15]**

1. "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code or the unlawful detaining, or threatening to detain, any property, of any person with the intention of causing any person to enter into an agreement.
2. Whether IPC is in force or not it is immaterial.
3. Both threat to person and goods
4. Threat to commit suicide = coercion.
5. Consequences - Voidable at the option of the party whose consent was so obtained. Repay the money or thing obtained under coercion.

### Undue influence [Section 16]

1. A contract is said to be induced by “undue influence” where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.
2. 2 points to remember - (i) position to dominate; (ii) use of such position to obtain an unfair advantage over the other.
3. Consequence - Voidable contract; Contract may be set aside absolutely or upon satisfaction of the conditions. [Section 19A]
4. No Presumption - Husband and Wife, Landlord and Tenant, Creditor and Debtor.

### Fraud [Section 17]

1. False representation made to deceive the other person.
2. Effects - Right to rescind, Right to insist on performance, right to claim damages.
3. Silence is not equal to fraud. [Explanation to Section 17]
4. Exception - duty to speak and silence = speech.
  - (a) Fiduciary relationship
  - (b) Marriage contract
  - (c) Share allotment contract
  - (d) Insurance contract
  - (e) Family settlement

### Misrepresentation [Section 18]

1. Positive false statement made without any basis for info
2. a breach of duty which brings advantage to person committing it
3. inducement of mistake about subject matter
4. Consequence - contract is voidable, insistence on performance. NO right for damages.

### Voidability of agreements without free consent [Section 19]

When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to a contract whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

**Exception.** —If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

**Explanation.** —A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

**Mistake**

1. Mistake of Fact
  - (a) Unilateral - cannot avoid contract. **[Section 22]**
  - (b) Bilateral – Void **[Section 20]**
2. Mistake of law - Law of land - will not affect validity of contract. Foreign Law - Treated as mistake of fact = void. **[Section 21]**

## **VOID AGREEMENTS / CONTRACTS [Sec 23 to 30]**

- 1. Consideration or object is unlawful [Section 23]**
  - (a) Contract is forbidden by law.
  - (b) Contract if permitted will defeat the purpose of law.
  - (c) Fraudulent
  - (d) Involves or implies injury to the person or property of another.
  - (e) Court regards it as immoral or opposed to public policy.
- 2. Partially illegal: [Section 24]**
  - (a) If illegal part cannot be severed from legal part - Total contract is void.
  - (b) If it is possible to sever illegal from legal - Enforce legal part only.
- 3. Unlawful and illegal agreements**
  - (a) Unlawful agreements - Collateral agreements are not affected.
  - (b) Illegal agreements - Collateral agreements are tainted with illegality.
- 4. Agreements without consideration [Section 25]**
- 5. Agreements in restraint of marriage [Section 26]**
- 6. Agreements in restraint of trade is void [Section 27]**

**Exceptions** - Agreement with buyer of goodwill, trade combinations (without monopoly), service agreements with employees, agreements under Partnership Act, 1932.

  - i. Where restraint is to refrain from carrying on a similar business.
  - ii. The restraint should be within the specified local limits
  - iii. The restriction should be reasonable (i.e reasonable local limits & for reasonable time)
- 7. In restraint of legal proceedings:** Agreement restricting enforcement of rights and Agreement which curtail the period of limitation. **[Section 28]**

Exceptions - Restricting jurisdiction, disputes arising in the contract to be referred to arbitration.

**8. Uncertain agreements:** Agreements, the meaning of which is not certain or not capable of being made certain is void. [Section 29]

**9. Wagering Agreement [Section 30]**

- (a) Promise to pay money or money's worth by one person to another on the happening or non-happening of a future uncertain event.
- (b) Essentials - Uncertain event, mutual chances of gain or loss, neither party to have control over event, no other interest in the event, and money or money's worth.
- (c) Effects - Contract is void. No action for recovery. No suit for breach.
- (d) Not wagering agreements –
  - (i) sale and purchase of shares, stock and goods,
  - (ii) Prize competitions not exceeding ₹ 1000,
  - (iii) Horse race contributions for ₹ 500 or more,
  - (iv) Contracts of Insurance.

**10. Agreements opposed to public policy: [Section 23]**

- (a) Trading with enemy,
- (b) Committing a Crime,
- (c) Interference with course of justice,
- (d) Stifling Prosecution,
- (e) Champerty and maintenance,
- (f) Marriage brokerage,
- (g) Sale of public offices and titles,
- (h) Creation of monopolies,
- (i) Creation of interest opposed to public policy

## The Indian Contract Act, 1872

### Unit 3: Other Essential Elements of a Contract - Sections Recap

13. "Consent" defined.
14. "Free consent" defined.
15. "Coercion" defined.
16. "Undue influence" defined.
17. "Fraud" defined.
18. "Misrepresentation" defined.
19. Voidability of agreements without free consent.
- 19A. Power to set aside contract induced by undue influence.
20. Agreement void where both parties are under mistake as to matter of fact.
21. Effect of mistakes as to law.
22. Contract caused by mistake of one party as to matter of fact.
23. What considerations and objects are lawful, and what not.
24. Agreement void, if considerations and objects unlawful in part.
25. Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law.
26. Agreement in restraint of marriage, void.
27. Agreement in restraint of trade, void.
28. Agreements in restraint of legal proceeding void.
- Saving of contract to refer to arbitration dispute that may arise.
29. Agreements void for uncertainty.
30. Agreements by way of wager, void.
- Exception in favour of certain prizes for horse-racing.

## The Indian Contract Act, 1872

### Unit 4: Performance of Contract

**1. Obligation of parties to contracts** —The parties to a contract must **either perform, or offer to perform**, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract. **[Section 37]**

**2. Effect of refusal to accept offer of performance**—Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

**[Section 38]**

**3. Offer to perform: 5 Conditions –**

(a) Unconditional,

(b) Made to the Promisee or one of the joint promisees or his authorised agent,

(c) Made at the proper place, time and form,

(d) Promisee should have reasonable opportunity to ascertain that Promisor is able and willing to do the whole of his promise, and

(e) In case of delivery of goods, the Promisee should be given reasonable opportunity of inspecting those goods.

**Example:** A contracts to deliver to B at his warehouse, on the 1st March, 1873, 100 bales of cotton of a particular quality. In order to make an offer of a performance with the effect stated in this section, A must bring the cotton to B's warehouse, on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

**4. Effect of refusal of party to perform promise wholly** —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 (Expressed), by words or conduct, his consent in its continuance. But promisee may claim damages in both the cases. **[Section 39]**

**5. Who can demand performance?** Only Promisee. Exceptions- same as doctrine of Privity to contract. On the death of Promisee - representatives can demand performance.

**6. Who can perform?** Only by promisor considering nature of case, personal skill or personal confidence. **[Section 40]**

**7. Effect of accepting performance from third person**—When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. [Section 41]

**8. Performance by Joint Promisors:**

- a. Joint lives - all of them, (ii) death of one promisor - Representative + others, (iii) death of last survivor - representative of all promisors. [Section 42]
- b. Any one of joint promisors may be compelled to perform. [Section 43]
- c. Liability - joint and several.
- d. Default by 1 promisor - others to share the loss equally. [Section 43]
- e. Release of 1 joint promisor does not release others. Released promisor liable to other promisors. [Section 44]

**9. Joint Promisees: [Section 45]**

(a) (i) Joint lives - all of them, (ii) death of one promisor - representative + others, (iii) death of last survivor - representative of all promisors.

(b) Right - Joint Only.

**10. Time and Place: [Section 46 – 50]**

Case	Rule
1. Where the time for performance is not specified in a contract and the promisor has undertaken to perform without application by the promisee.	The contract must be performed within a reasonable time. The question 'What is reasonable time' is a question of fact [Section 46].
2. Where the time for performance is specified in a contract and the promisor has undertaken to perform it without application by the promisee.	The promisor must perform his promise on that particular day during the usual business hours and at a place where the promise ought to be performed [Section 47].
3. Where the time for performance is specified in a contract and the promisor has not undertaken to perform it without application by the promisee.	The promisee must apply for performance at a proper place and within usual business hours [Section 48].
4. Where the place for performance is not specified in a contract and the promise is to be performed without application by the promisee.	The promisor must apply to the promisee to appoint a reasonable place for the performance and to; perform the promise at such place [Section 49].
5. Where the promisee prescribes the manner or time for performance.	The promise must be performed in the manner and at the time prescribed by the promisee [Section 50].



<b>11. Reciprocal promises:</b>	
<b>Situation</b>	<b>Principle / Provision of Law</b>
<p><b>Sec. 51:</b></p> <ul style="list-style-type: none"> <li>• Contract consists of Reciprocal Promises, and</li> <li>• Such Reciprocal Promises are to be simultaneously performed. .</li> </ul>	<p>Promisor need not perform his part of promise unless Promisee is ready and willing to perform his Reciprocal Promise.</p>
<p><b>Sec. 52:</b></p> <p>If Contract expressly provides for the order of performance of Reciprocal Promises.</p>	<p>Promises shall be performed only in the order mentioned and not otherwise.</p>
<p><b>Sec. 52:</b> If Contract does not provide for the order of performance.</p>	<p>Promises shall be performed in such order which the nature of transactions require.</p>
<p><b>Sec. 53:</b></p> <ul style="list-style-type: none"> <li>• Contract contains Reciprocal Promises, and</li> <li>• One party to the Contract prevents the other from performing his Promise.</li> </ul>	<ul style="list-style-type: none"> <li>• Contract becomes voidable at the option of the party so prevented, <b>and</b></li> <li>• Such prevented party is entitled to compensation from the party preventing, for any loss sustained by him as a result of non-performance of Contract.</li> </ul>
<p><b>Sec. 54:</b></p> <ul style="list-style-type: none"> <li>• Contract contains Reciprocal promises and one of them -</li> </ul> <p>(a) Cannot be performed, or</p> <p>(b) Its performance cannot be claimed till the other promise is performed,</p> <ul style="list-style-type: none"> <li>• Promisor of the promise, which is to be performed first, so that the other may be performed, fails to perform his part.</li> </ul>	<ul style="list-style-type: none"> <li>• Promisor, who is at fault, cannot claim performance of the reciprocal promise.</li> <li>• Such defaulting Promisor shall compensate the other party to the Contract for any loss suffered by him as a result of his nonperformance.</li> </ul>
<p><b>Sec. 57:</b> Contract contains Reciprocal Promises, and -</p> <ul style="list-style-type: none"> <li>• Certain promises therein are legal,</li> </ul>	<ul style="list-style-type: none"> <li>• Set of promises to do legal things is valid (i.e. a contract)</li> <li>• Set of promises to do illegal things is void (i.e. a Void Agreement).</li> </ul>

- Under specified situations, certain other promises are illegal.

## 12. Time as essence of contract: [Section 55]

- (a) Performance of promise is to be made within the specified time period
- (b) Upon default, the party can rescind the Contract and claim damages
- (c) When time is essence - At the option of the Promisee, the contract, or so much of contract as has NOT been performed, becomes voidable.
- (d) Compensation: Cannot be claimed if promisee accepts delayed performance. When notice was given, compensation can be claimed.
- (e) When time is not essence - Not voidable. Promisee entitled for compensation.

## 13. Impossibility

**(a) Agreement Void [Sec. 56]:** An Agreement to do an act impossible in itself is void ab-initio. Whether the fact of impossibility was known to the parties or not is immaterial.

**(b) Contract becomes Void [Sec. 56]:** When the Contract was capable of performance at the time of making it, but subsequently due to some event beyond the control of the Promisor, performance becomes impossible or unlawful, the Contract becomes Void i.e. subsequently rendered void.

**(c) Obligation of person who has received advantage under void agreement, or contract that becomes void.** —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.

**[Restoration of benefit – Section 65]**

**14. Alternative promise, one branch being illegal.** —In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced. **[Section 58]**

## 15. Appropriation of Payment

(a) When a debtor owes several distinct debts to a Creditor and makes a payment insufficient to satisfy the whole indebtedness, a question arises: To which debt should the payment be appropriated? 3 rules -

- Debtor intimates the order (Express intimation or implied from circumstances) - Creditor must do so. **[Section 59]**

- No intimation from the debtor - at the discretion of Creditor. **[Section 60]**

- No intimation from debtor and Creditor fails to appropriate - Discharge the debts in order of time. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably. **[Section 61]**

Debtor owes ₹10,000 (Jan 1, 2021), ₹5,000 (Jun 1, 2021), ₹15,000 (Jan 1, 2022), and ₹20,000 (Jan 1, 2022). A ₹20,000 payment on Jun 1, 2023, with no specified allocation, is applied first to the oldest debts: ₹10,000 (Jan 2021) and ₹5,000 (Jun 2021), leaving ₹5,000. The remaining

₹5,000 is split proportionally between the equal standing debts of ₹15,000 and ₹20,000, resulting in payments of approximately ₹2,142.86 and ₹2,857.14 respectively

(b) Creditors can apply the payment against Time Barred Debt.

#### **16. Discharge Of Contract**

1. By performance
2. By lapse of time
3. By operation of law - death, insolvency, merger, unauthorized alteration of terms and vesting of rights.
4. By mutual agreement – Novation (**Section 62**) (substitution), Rescission (**Section 62**) (termination), Alteration (**Section 62**) (change in terms), Remission (**Section 63**) (accepting lesser fulfillment of promise) and Waiver (**Section 63**) (relinquishment of right)
5. Impossibility of performance - initial impossibility (void ab initio), subsequent impossibility - void.
6. Actual Breach and Anticipatory Breach.

**17. Consequences of rescission of voidable contract.** —When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received. [**Section 64**]

**Example:**

Parties: A (Seller) and B (Buyer)

Contract: A agrees to sell a car to B for ₹500,000.

Condition: B can rescind the contract if the car is not in the promised condition.

Event: B discovers significant issues with the car and rescinds the contract.

Consequences: A no longer needs to deliver the car, and A must return the ₹500,000 to B.

**18. Mode of communicating or revoking rescission of voidable contract.** —The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal. [**Section 66**]

**19. Effect of neglect of promisee to afford promisor reasonable facilities for performance.** —If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby. [**Section 67**]

**Example:** A contracts with B to repair B's house. B neglects or refuses to point out to A the places in which his house requires repair. A is excused for the non-performance of the contract if it is caused by such neglect or refusal.

<b>Succession</b>	<b>Assignment</b>
<p>When the benefits to a Contract are succeeded to by process of law, then both burden and benefits attaching to the Contract, may sometimes devolve on the legal heir.</p> <p><b>Example:</b> where a son succeeds to the estate of his father after his death, he will be liable to pay the debts and liabilities of his father owed during his time. But, if the debts owned by his father exceed the value of the estate inherited by the son, then he would not be called upon to pay the excess. The liability of the son will be limited to the extent of the property inherited by him.</p>	<p>If a Creditor assigns the benefits of a promise, he thereby entitles the Assignee to realize the debts from the Debtor.</p> <p>In case of assignment, the <b>benefit</b> of a Contract can only be assigned but <b>not the liabilities</b> thereunder. This is because when the liability is assigned, a third party gets involved therein.</p> <p>Where the benefit is coupled with a liability or when a personal consideration has entered into the making of the Contract, then the benefit cannot be assigned.</p>

## The Indian Contract Act, 1872

### Unit 4: Performance of Contract Sections Recap

- 37. Obligation of parties to contracts.
- 38. Effect of refusal to accept offer of performance.
- 39. Effect of refusal of party to perform promise wholly.
- 40. Person by whom promise is to be performed.
- 41. Effect of accepting performance from third person.
- 42. Devolution of joint liabilities.
- 43. Any one of joint promisors may be compelled to perform.  
Each promisor may compel contribution.
- Sharing of loss by default in contribution.
- 44. Effect of release of one joint promisor.
- 45. Devolution of joint rights.

46. Time for performance of promise, when no application is to be made and no time is specified.
47. Time and place for performance of promise, where time is specified and no application to be made.
48. Application for performance on certain day to be at proper time and place.
49. Place for performance of promise, where no application to be made and no place fixed for performance.
50. Performance in manner or at time prescribed or sanctioned by promisee.
51. Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.
52. Order of performance of reciprocal promises.
53. Liability of party preventing event on which the contract is to take effect.
54. Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises.
55. Effect of failure to perform at fixed time, in contract in which time is essential.  
Effect of such failure when time is not essential.  
Effect of acceptance of performance at time other than that agreed upon.
56. Agreement to do impossible act.  
Contract to do an act afterwards becoming impossible or unlawful.  
Compensation for loss through non-performance of act known to be impossible or unlawful.
57. Reciprocal promise to do things legal, and also other things illegal.
58. Alternative promise, one branch being illegal.
59. Application of payment where debt to be discharged is indicated.
60. Application of payment where debt to be discharged is not indicated.
61. Application of payment where neither party appropriates.
62. Effect of novation, rescission, and alteration of contract.
63. Promisee may dispense with or remit performance of promise.
64. Consequences of rescission of voidable contract.
65. Obligation of person who has received advantage under void agreement, or contract that becomes void.
66. Mode of communicating or revoking rescission of voidable contract.
67. Effect of neglect of promisee to afford promisor reasonable facilities for performance.

<b>The Indian Contract Act, 1872</b>	
<b>Unit 5: Breach of Contract and its Remedies</b>	
<b>Meaning</b>	A breach of contract occurs if any party refuses or fails to perform his part of the contract or promise.
<b>Modes</b>	A breach of contract may arise in two ways: (a) anticipatory breach and (b) actual breach.
<b>Anticipatory Breach of Contract</b>	
<b>Meaning</b>	Anticipatory breach occurs when the party declares his intention of not performing the contract before the performance is due.
<b>Modes</b>	A party may declare his intention of not performing the contract in the following two ways:  a. When a party to a contract has refused to perform his promise. b. When a party to a contract has disabled himself from performing his promise in its entirety.
<b>Two Options</b>	a. He can rescind the contract and claim damages for breach of contract without waiting until the due date for performance, or b. He may treat the contract as operative and wait till the due date for performance and claim damages if the promise still remains unperformed.
<b>Consequences of Treating Contract as Operative</b>	a. The promisor may perform his promise on or before the due date of performance and the promisee will be bound to accept the performance. b. The promisor may take advantage of the discharge by supervening impossibility arising between the date of breach and the due date of the performance and in such a case, the promisee shall lose his right to sue for damages.
<b>Actual Breach of Contract</b>	
<b>Two Ways of Actual Breach of Contract</b>	Actual breach of contract may take place in any of the following two ways:  a. Actual Breach on due Date of Performance b. Actual Breach during the Course of Performance
<b>Remedies for Breach of Contract</b>	
<b>Meaning of Remedy</b>	A remedy is the course of action available to an aggrieved party (i.e. the party not at default) for the enforcement of a right under a contract.
<b>Remedies for Breach of Contract</b>	<b>1. Rescission of Contract [Section 39]</b> Rescission means a right not to perform obligation.
	<b>2. Suit for Damages</b>
	(a) Such damages which naturally arose in the usual course of things from such breach. This relates to ordinary damages arising in the usual course of things. <b>[Section 73]</b>

	(b) Such damages which the parties knew, when they made the contract, to be likely to result from the breach. This relates to special damages.
	(c) The aforesaid compensation is not to be given for any remote or indirect loss or damage sustained by reason of the breach, and
	<b>3. Suit for Specific Performance i.e.</b> demanding the court's direction to the defaulting party to carry out the promise according to the terms of the contract.
	<b>4. Suit for Injunction i.e.</b> demanding court's stay order. Injunction means an order of the court which prohibits a person to do a particular act.
	<b>5. Suit for Quantum Meruit</b> Quantum Meruit means as much as is earned. Right to Quantum Meruit means a right to claim the compensation for the work already done.
<b>Types of Damages</b>	
<b>Ordinary Damages</b>	<ol style="list-style-type: none"> <li>The aggrieved party must suffer by breach of contract, and</li> <li>The damages must be proximate (i.e. direct) consequence of the breach of contract and not the indirect consequence.</li> </ol>
<b>Special Damages</b>	Aggrieved party may claim the special damages if the special circumstances resulting in a special loss are communicated to the promisor.
<b>Exemplary or Punitive or Vindictive Damages</b> Arjun Chhabra (CS LLB LLM) Law Maven	<p>Exemplary damages are those which are in the nature of punishment. The court may award these damages in case of:</p> <ol style="list-style-type: none"> <li>A breach of promise to marry, where damages shall be calculated on the basis of mental injury sustained by the aggrieved party.</li> <li>Wrongful dishonour of a cheque by a banker.</li> </ol>
<b>Nominal Damages</b>	Where there is only a technical violation of a legal right but the aggrieved party has not in fact suffered any loss because of breach of contract, (say, one rupee)
<b>Damages for Inconvenience and Discomfort suffered</b>	If a party has suffered physical inconvenience and discomfort due to breach of contract, that party can recover the damages for such inconvenience and discomfort.
<b>Liquidated Damages and Penalty</b>	
<b>Liquidated Damages</b>	The specified sum payable by the party responsible for breach which represents a fair and genuine pre estimate of the damages likely to result due to breach is called liquidated damages.
<b>Penalty</b>	The specified sum payable by the party responsible for breach which is disproportionate to the damages likely to result due to breach.
<b>Position in India</b>	In India, there is no distinction between penalty and liquidated damages. The Courts in India allow only reasonable compensation not exceeding the specified sum <b>[Section 74]</b>
<b>Party rightfully rescinding contract, entitled to compensation.</b> —A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the	

non-fulfilment of the contract. **[Section 75]**

## The Indian Contract Act, 1872

### Unit 5: Breach of Contract and its Remedies Sections

#### Recap

- 73. Compensation for loss or damage caused by breach of contract.  
Compensation for failure to discharge obligation resembling those created by contract.
- 74. Compensation for breach of contract where penalty stipulated for.
- 75. Party rightfully rescinding contract, entitled to compensation.

CS LLM ARJUN CHHABRA



<b>The Indian Contract Act, 1872</b>	
<b>Unit 6: Contingent and Quasi Contracts</b>	
<p><b>1. Contingent Contract:</b> Contract to do or not to do something if some event, collateral to such contract, does or does not happen. <b>[Sec 31]</b></p> <p><b>2. Essentials –</b></p> <ol style="list-style-type: none"> <li>1. Happening or non-happening of event,</li> <li>2. Collateral event and</li> </ol> <p><b>3. Uncertain event.</b></p>	
<b>Contingency</b>	<b>Enforcement</b>
<p>Happening of an Uncertain Future Event <b>[Sec.32]</b></p>	<ul style="list-style-type: none"> <li>• <b>Cannot</b> be enforced by law unless and until such an event has happened.</li> <li>• Where the event becomes impossible, such contracts become <b>void</b>.</li> </ul>
<p>Non-Happening of an Uncertain Future Event <b>[Sec.33]</b></p>	<p><b>Can</b> be enforced when the happening of that event becomes impossible, and not before.</p>
<p>Happening of a Specified Uncertain Event within a fixed time <b>[Sec.35]</b></p>	<p>Becomes <b>void</b> if -</p> <ul style="list-style-type: none"> <li>• at the expiry of time fixed, such event has <b>not happened</b>, or</li> <li>• before the time fixed, such event becomes <b>impossible</b>.</li> </ul>
<p>Non-happening of a Specified Uncertain Event within a fixed time <b>[Sec.35]</b></p>	<p>Can be <b>enforced</b> by law -</p> <ul style="list-style-type: none"> <li>• when time fixed has expired and such event has <b>not happened</b>, or</li> <li>• before expiry of the time fixed, it becomes certain that such event will <b>not happen</b>.</li> </ul>
<p>Behaviour of a person at an unspecified time of future <b>[Sec.34]</b></p>	<p>Event shall be considered to become <b>impossible</b> when such person does anything, which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.</p>
<p>Impossible Event <b>[Sec.36]</b></p>	<p><b>Void</b>, irrespective of whether or not the parties know of the impossibility of the event, at the time of entering into the agreement.</p>

## QUASI-CONTRACTS [Sec 68 to 72]

### Quasi contracts

- Not a contract at all. Obligation created by law due to absence of agreement.
- "Money or money equivalent received by one person - not belonging to him - and to be restored under justice and fairness.
- Doctrine of unjust enrichment
- **Applicability –**
  - Claim for necessaries supplied to person incapable of contracting **[Section 68]**
  - Payment by interested party, **[Section 69]**
  - Person enjoying benefits under non gratuitous act, **[Section 70]**
  - Responsibility of finder of goods, and **[Section 71]**
  - Obligation of a person to whom money is paid by mistake or under coercion. **[Section 72]**

## The Indian Contract Act, 1872

### Unit 6: Contingent and Quasi Contracts Sections Recap

#### Contingent Contract

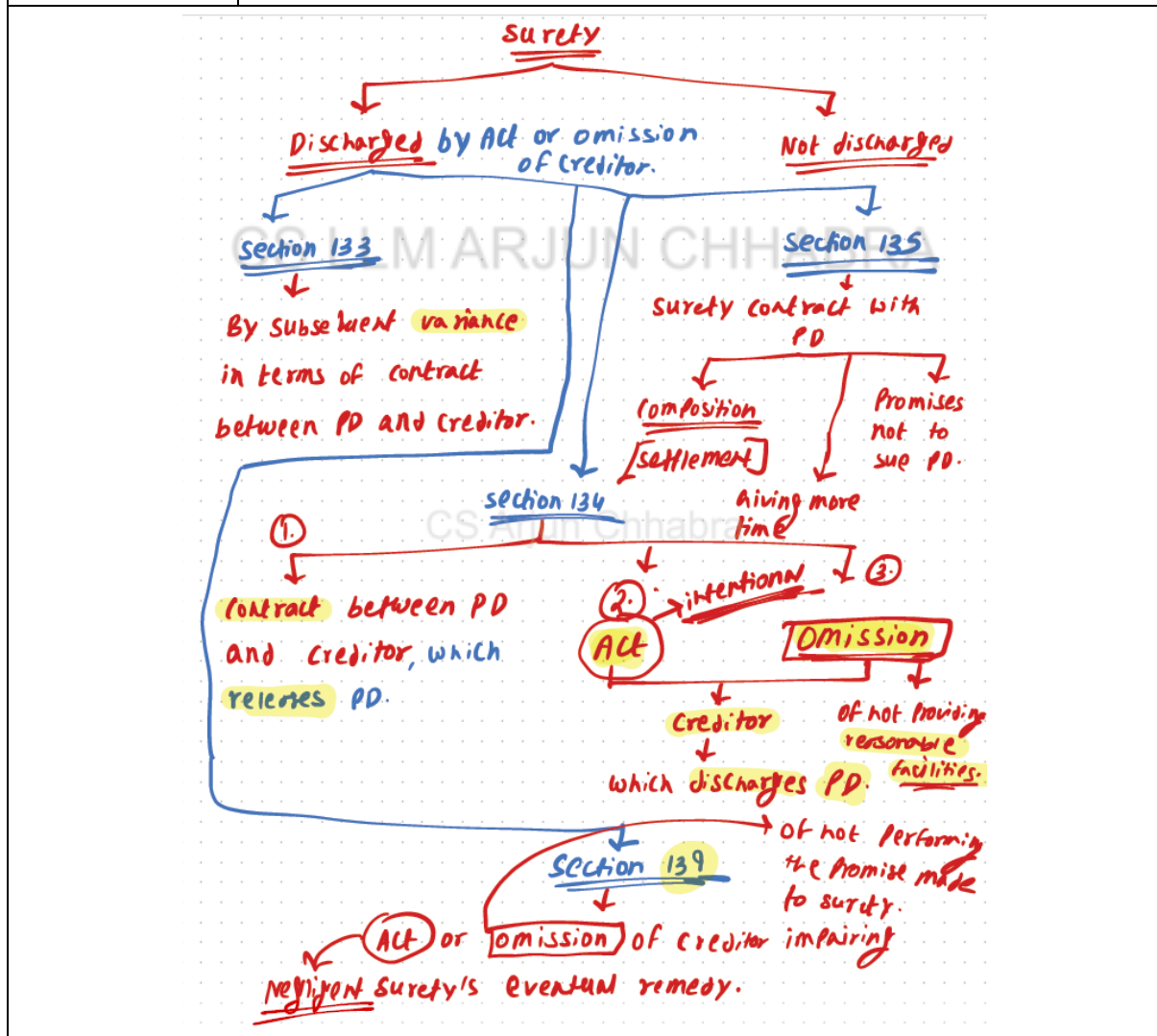
31. "Contingent contract" defined.
32. Enforcement of contracts contingent on an event happening.
33. Enforcement of contracts contingent on an event not happening.
34. When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person.
35. When contracts become void which are contingent on happening of specified event within fixed time.  
When contracts may be enforced, which are contingent on specified event not happening within fixed time.
36. Agreement contingent on impossible events void.

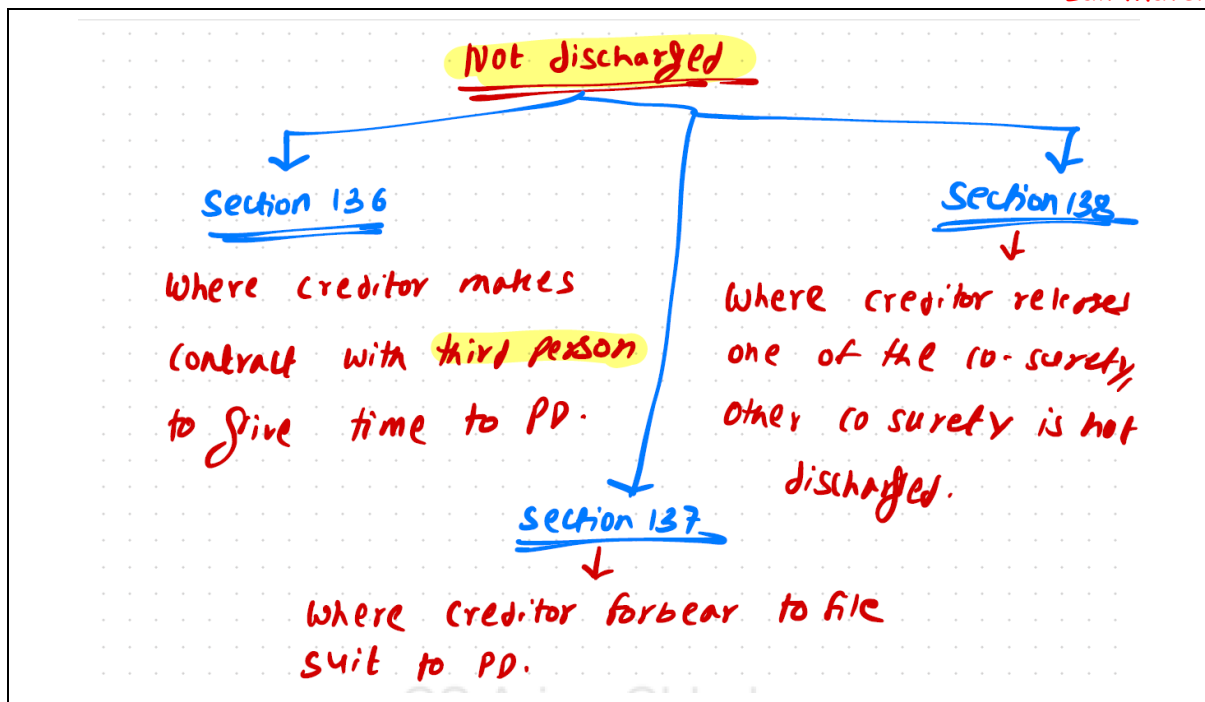
#### Quasi Contract

68. Claim for necessaries supplied to person incapable of contracting, or on his account.
69. Reimbursement of person paying money due by another, in payment of which he is interested.
70. Obligation of person enjoying benefit of non-gratuitous act.
71. Responsibility of finder of goods.
72. Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.

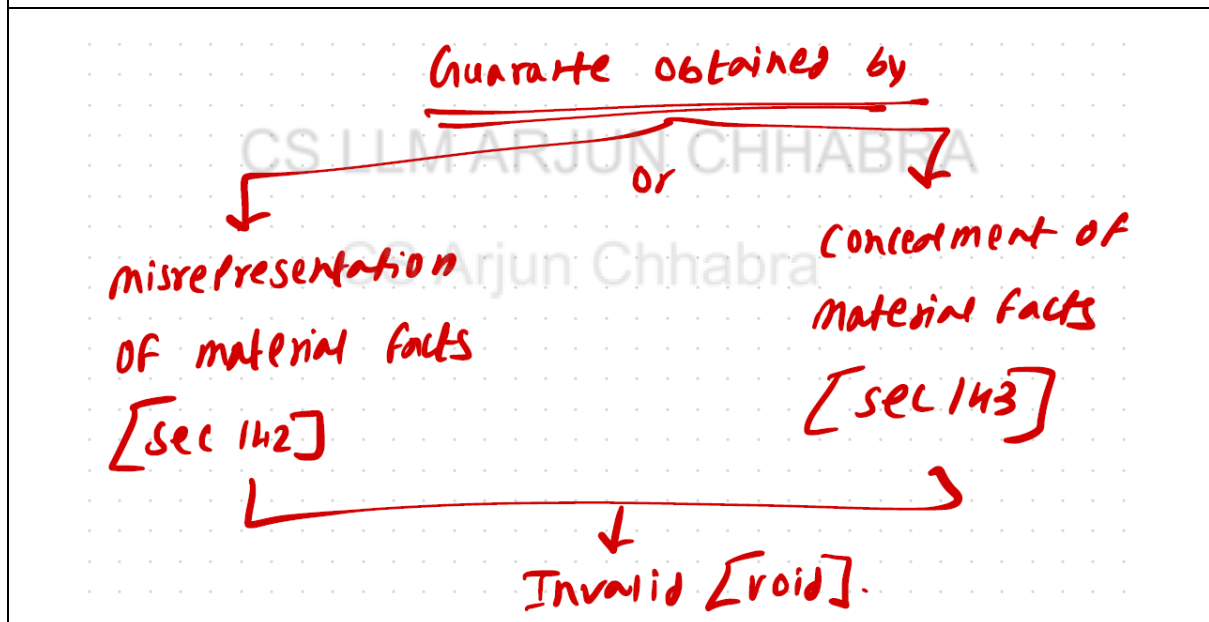
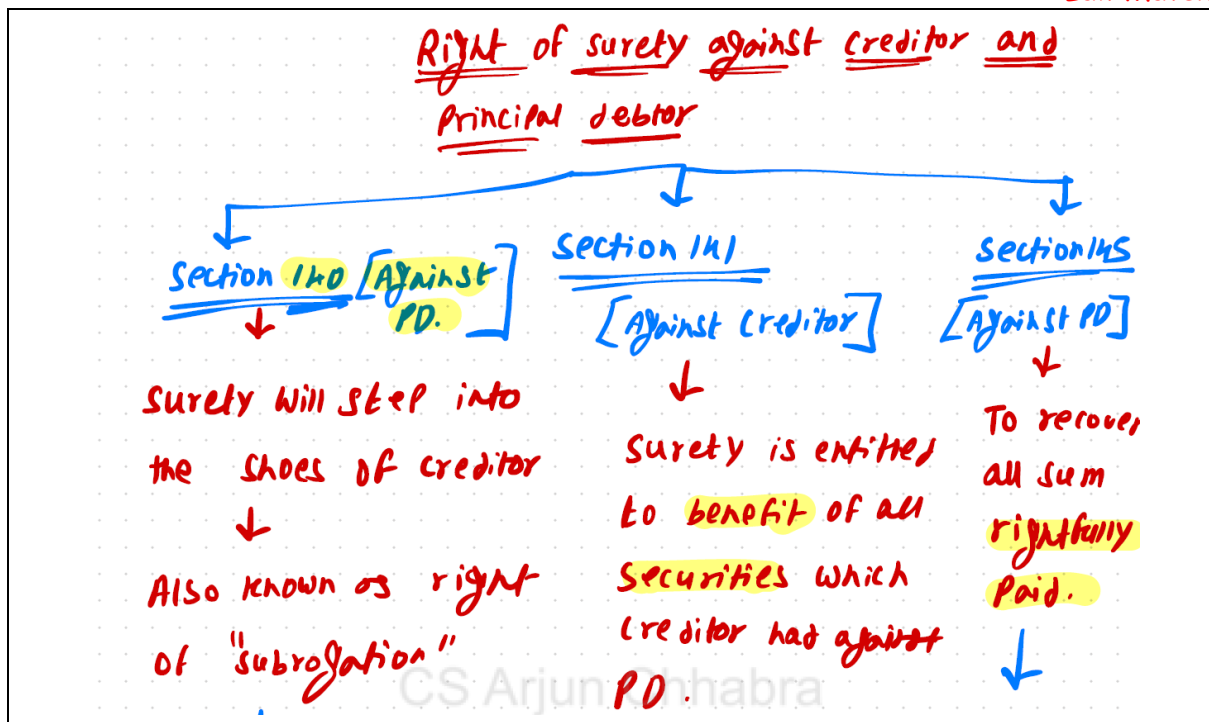
<b>The Indian Contract Act, 1872</b>	
<b>Unit 7: Contract of Indemnity and Guarantee</b>	
<b>Indemnity [Sec 124]</b>	A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a “contract of indemnity”.
<b>Parties</b>	<b>Indemnifier</b> is the person who promises to compensate for the loss. <b>Indemnity Holder or Indemnified</b> is the person to whom this promise is made or whose loss is to be made good.
<b>Essential Features</b>	(a) Express or Implied; (b) Valid Contract; (c) Loss to the Promisee is essential
<b>Rights of Indemnity Holder [Sec 125]</b>	(a) All <b>damages</b> which he may be compelled to pay in any suit; (b) All <b>costs</b> of suit which he has paid in bringing or defending the suit; (c) All <b>sums</b> which he may have paid under the terms of any compromise
<b>Guarantee [Sec 126]</b> Arjun Chhabra (CS LLB LLM) Law Maven	Guarantee is a contract to perform the promise or discharge the liability of a third person, in case of his default. Liability of Principal Debtor is <b>primary</b> . Liability of Surety is <b>secondary</b> , i.e. it arises only on default of Principal Debtor.
<b>Parties to guarantee</b>	Three parties, viz. – <b>Surety:</b> Person who gives guarantee, <b>Principal Debtor:</b> Person for whom guarantee is given, and <b>Creditor:</b> Person to whom the guarantee is given.
<b>Consideration for guarantee [Sec 127]</b>	Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.
<b>Surety’s liability [Sec 128]</b>	The liability of the surety is co- extensive with that of the principal debtor, unless it is otherwise provided by the contract.
<b>Continuing guarantee [Sec 129]</b>	A guarantee which extends to a series of transactions, is called a “continuing guarantee.”
<b>Revocation of continuing guarantee [Sec 130]</b>	A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

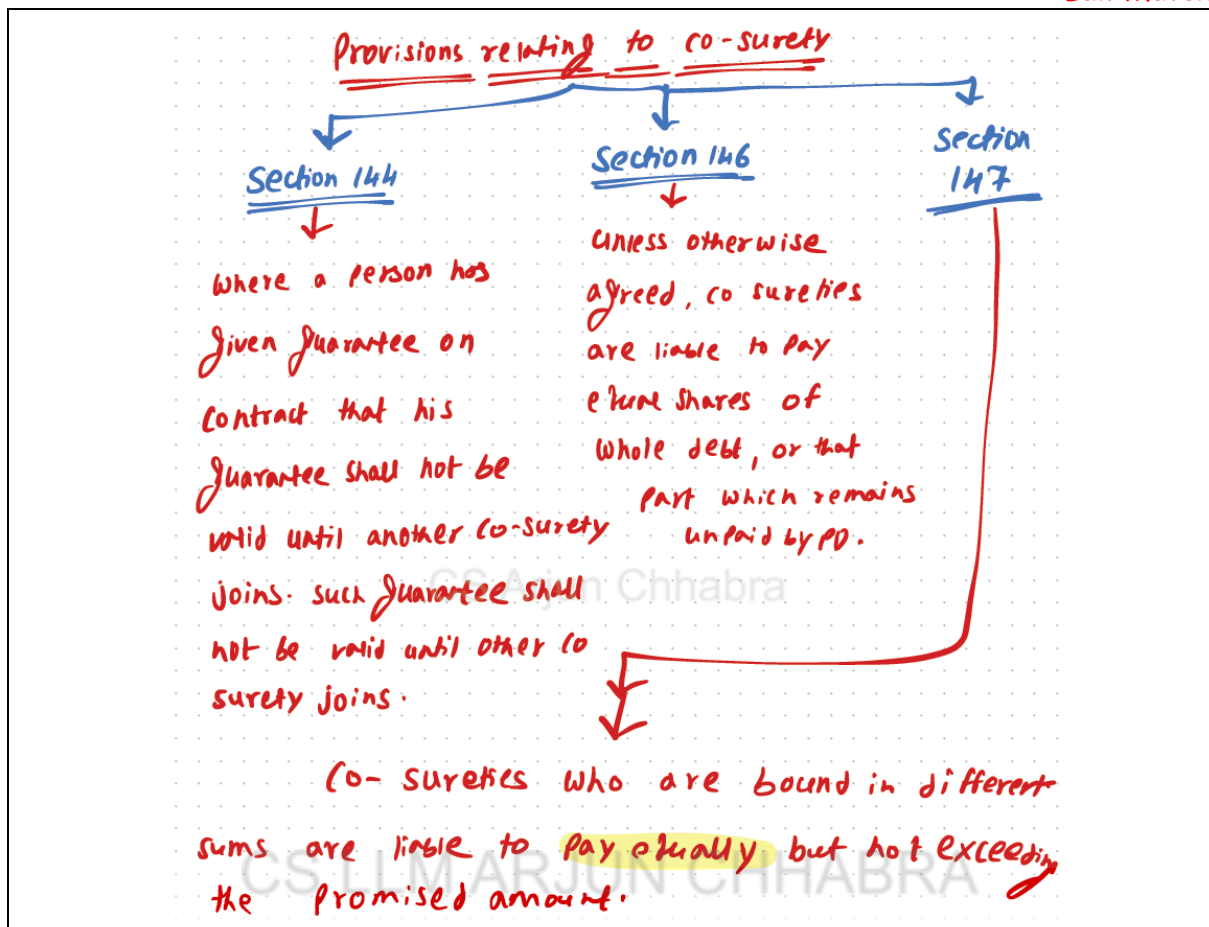
<p><b>Revocation of continuing guarantee by surety's death [Sec 131]</b></p>	<p>The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.</p>
<p><b>Liability of two persons, primarily liable, not affected by arrangement between them that one shall be surety on other's default [Sec 132]</b></p>	<p>Where 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 third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.</p>





<p><b>Rights of surety on payment or performance [Sec 140]</b></p>	<p>Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.</p>
<p><b>Surety's right to benefit of creditor's securities [Sec 141]</b></p>	<p>A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.</p>
<p><b>Implied promise to indemnify surety [Sec 145]</b></p>	<p>In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety, and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but, no sums which he has paid wrongfully.</p>





Liability of co-sureties Bound in different sums

A, B and C → sureties for D

A  
↓  
Max 1 Lakh
B  
↓  
Max 2 Lakh
C  
↓  
Max 4 Lakh

D's Default Amount	Liability of sureties		
	A	B	C
3 Lakhs	1 Lakh	1 Lakh	1 Lakh
4 Lakhs	1 Lakh	1.5 Lakh	1.5 Lakh
6 Lakhs	1 Lakh	2 Lakh	3 Lakh
7 Lakhs	1 Lakh	2 Lakh	4 Lakh

## The Indian Contract Act, 1872

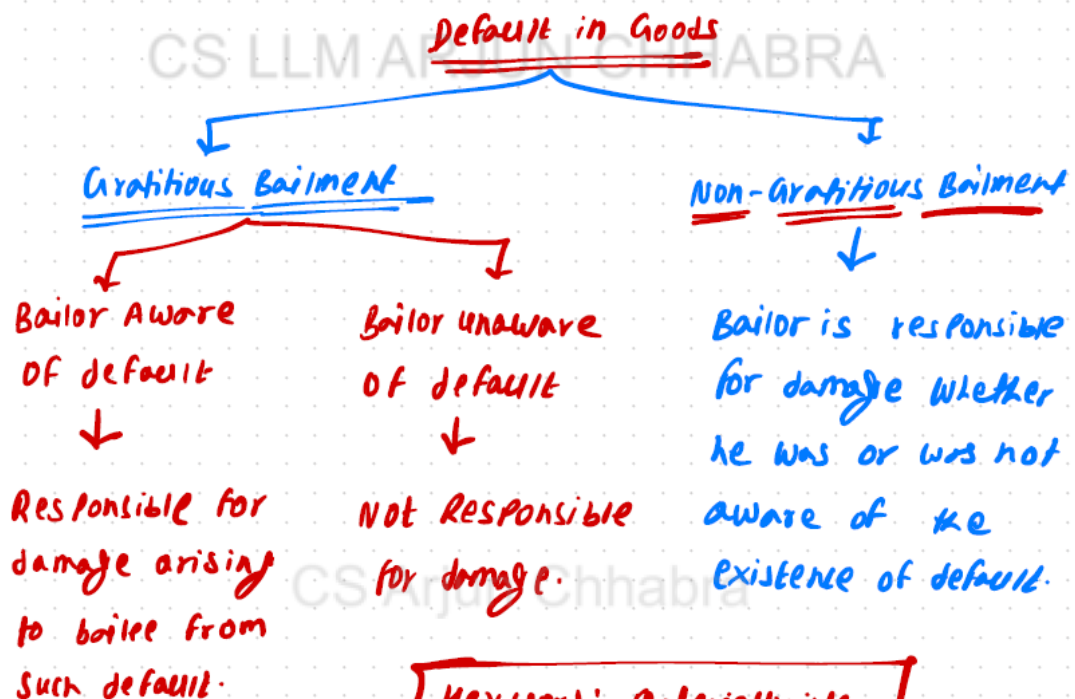
### Unit 7: Contract of Indemnity and Guarantee Sections Recap

124. "Contract of indemnity" defined.
125. Rights of indemnity-holder when sued.
126. "Contract of guarantee", "surety", "principal debtor" and "creditor".
127. Consideration for guarantee.
128. Surety's liability.
129. "Continuing guarantee".
130. Revocation of continuing guarantee.
131. Revocation of continuing guarantee by surety's death.
132. Liability of two persons, primarily liable, not affected by arrangement between them that one shall be surety on other's default.
133. Discharge of surety by variance in terms of contract.
134. Discharge of surety by release or discharge of principal debtor.
135. Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.
136. Surety not discharged when agreement made with third person to give time to principal debtor.
137. Creditor's forbearance to sue does not discharge surety.
138. Release of one co-surety does not discharge others.
139. Discharge of surety of creditor's act or omission impairing surety's eventual remedy.
140. Rights of surety on payment or performance.
141. Surety's right to benefit of creditor's securities.
142. Guarantee obtained by misrepresentation invalid.
143. Guarantee obtained by concealment invalid.
144. Guarantee on contract that creditor shall not act on it until co-surety joins.
145. Implied promise to indemnify surety.
146. Co-sureties liable to contribute equally.
147. Liability of co-sureties bound in different sums.

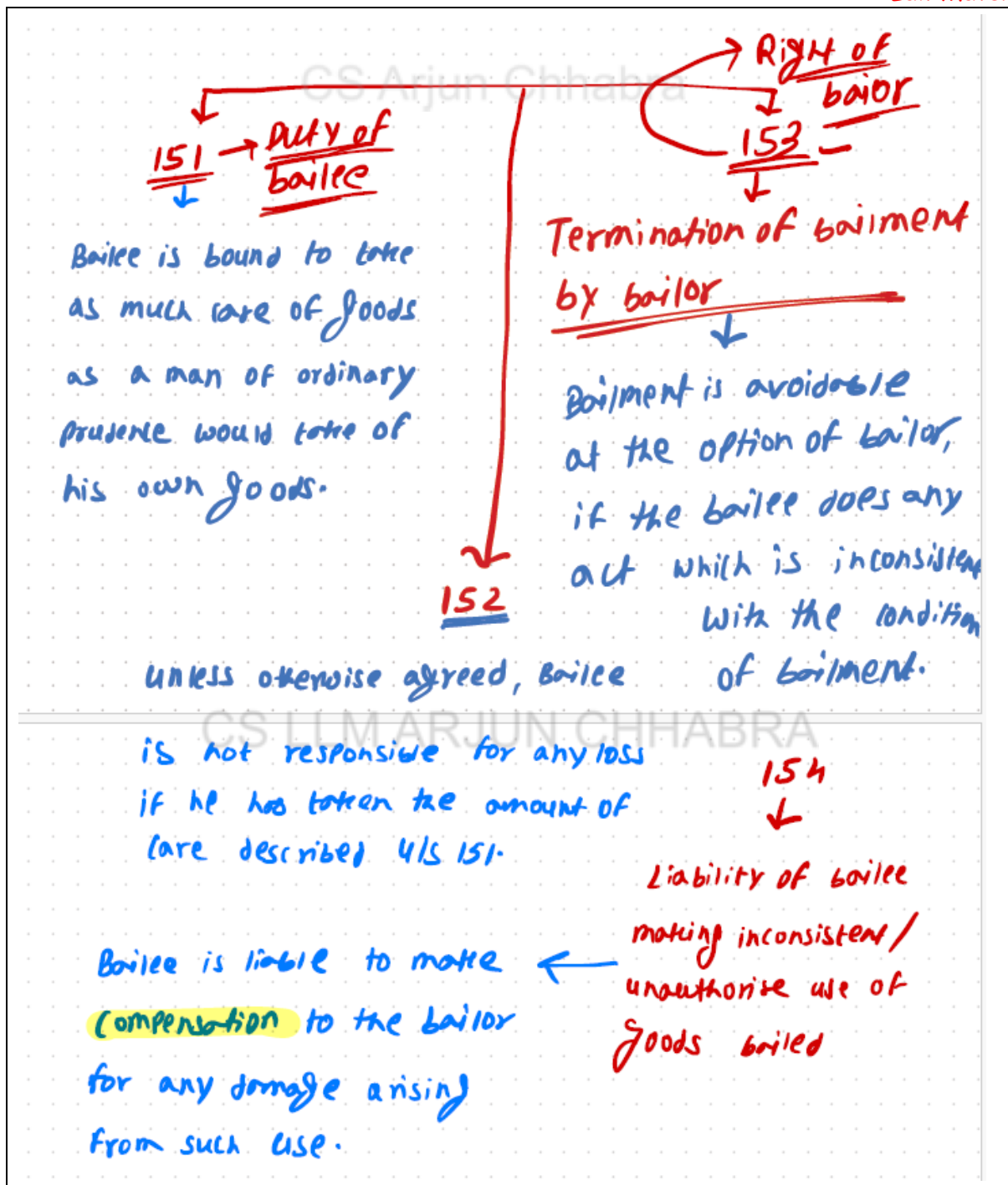


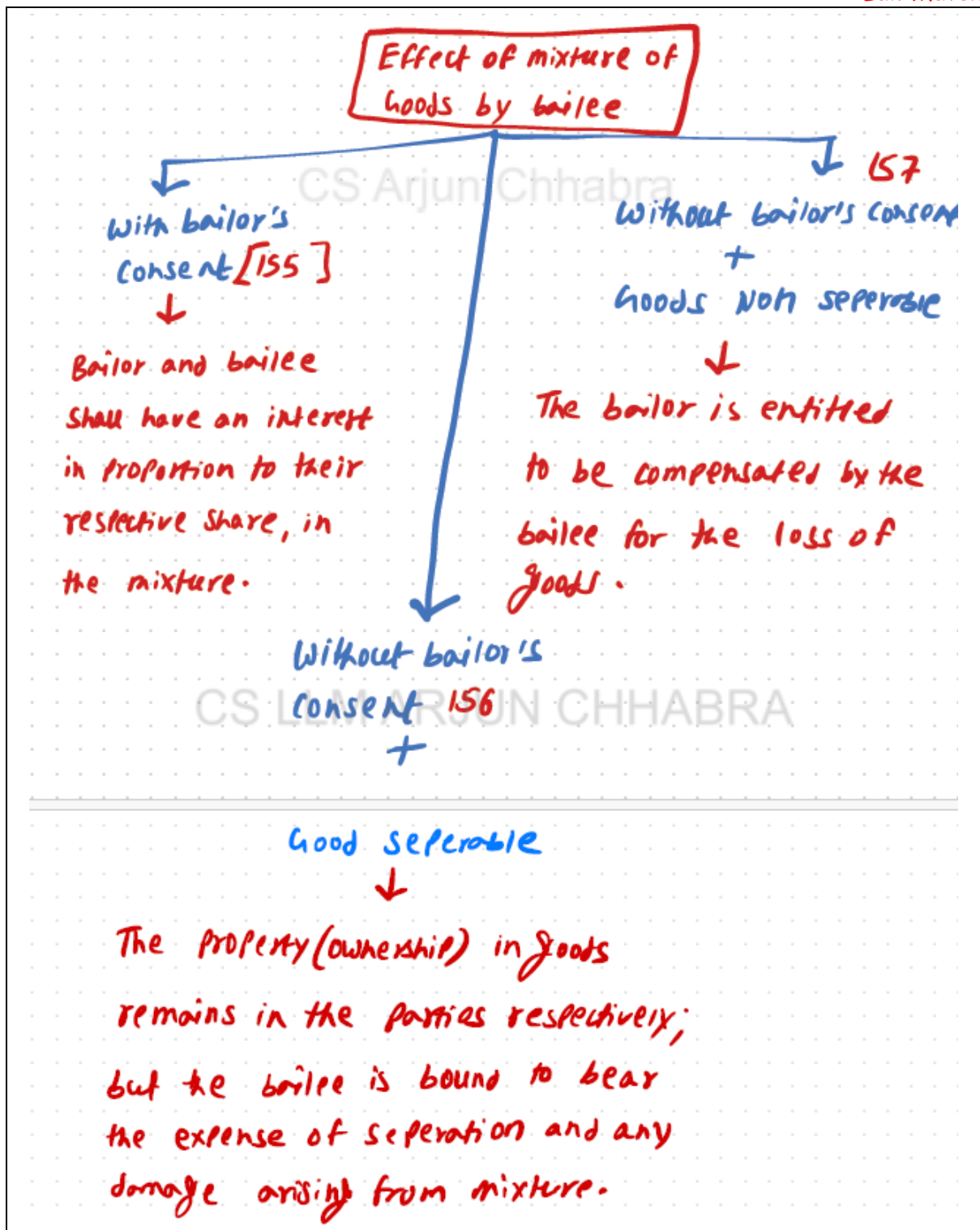
The Indian Contract Act, 1872	
Unit 8: Bailment and Pledge	
<b>"Bailment ""bailor" and "bailee" [Sec 148]</b>	A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.  The person delivering the goods is called the "bailor". The person to whom they are delivered is called, the "bailee".
<b>Essentials</b>	(a) Valid Contract; (b) Delivery of the goods; (c) Possession; (d) Modes of Delivery; (e) Purpose; (f) Consideration
<b>Delivery to bailee how made [Sec 149]</b>	The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.

Sec 150 → Bailor's duty to disclose faults in goods bailed



Keyword:- Materially interfere  
Expose bailee extraordinary risk.





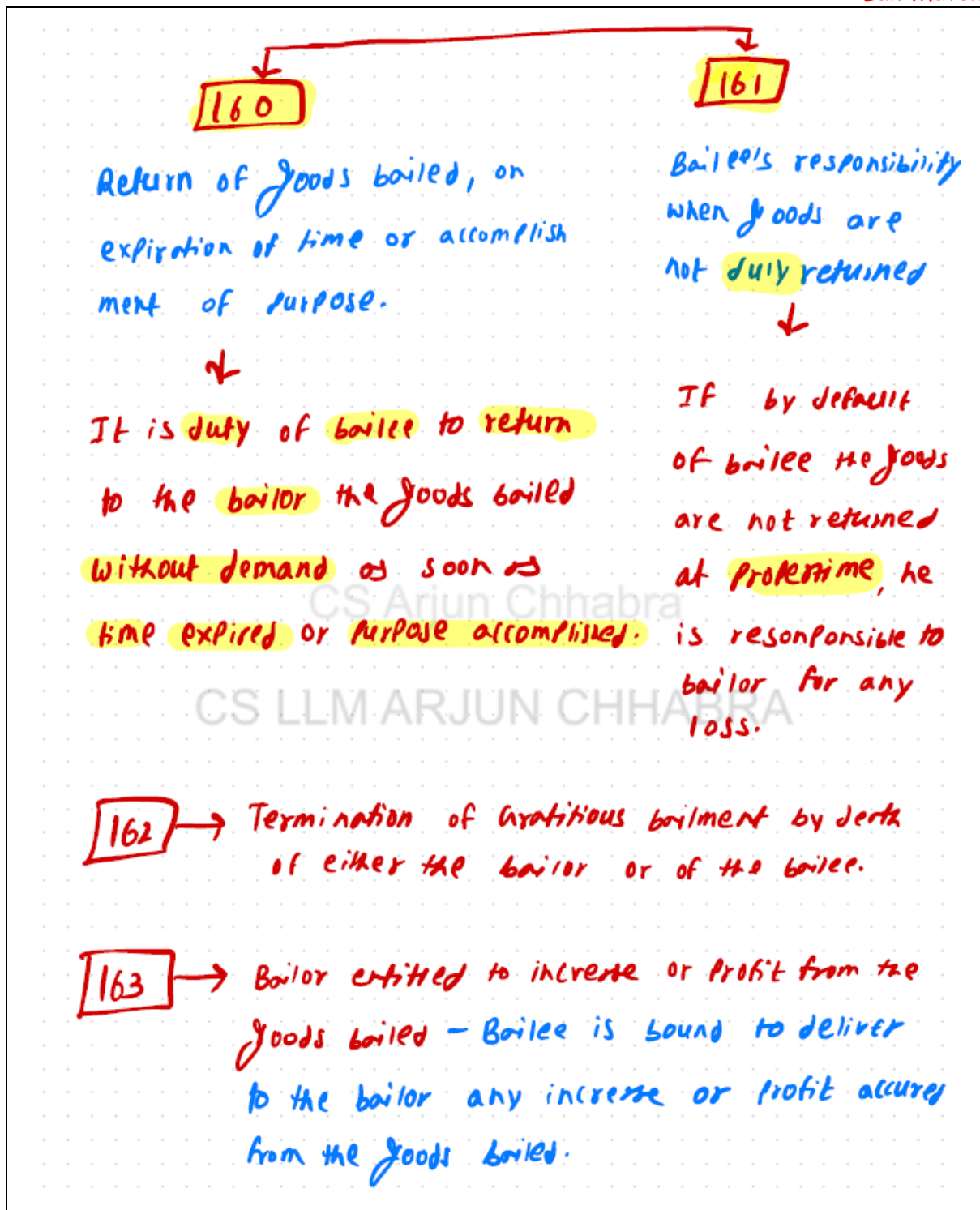
### 158 Repayment, by bailor, of necessary expenses

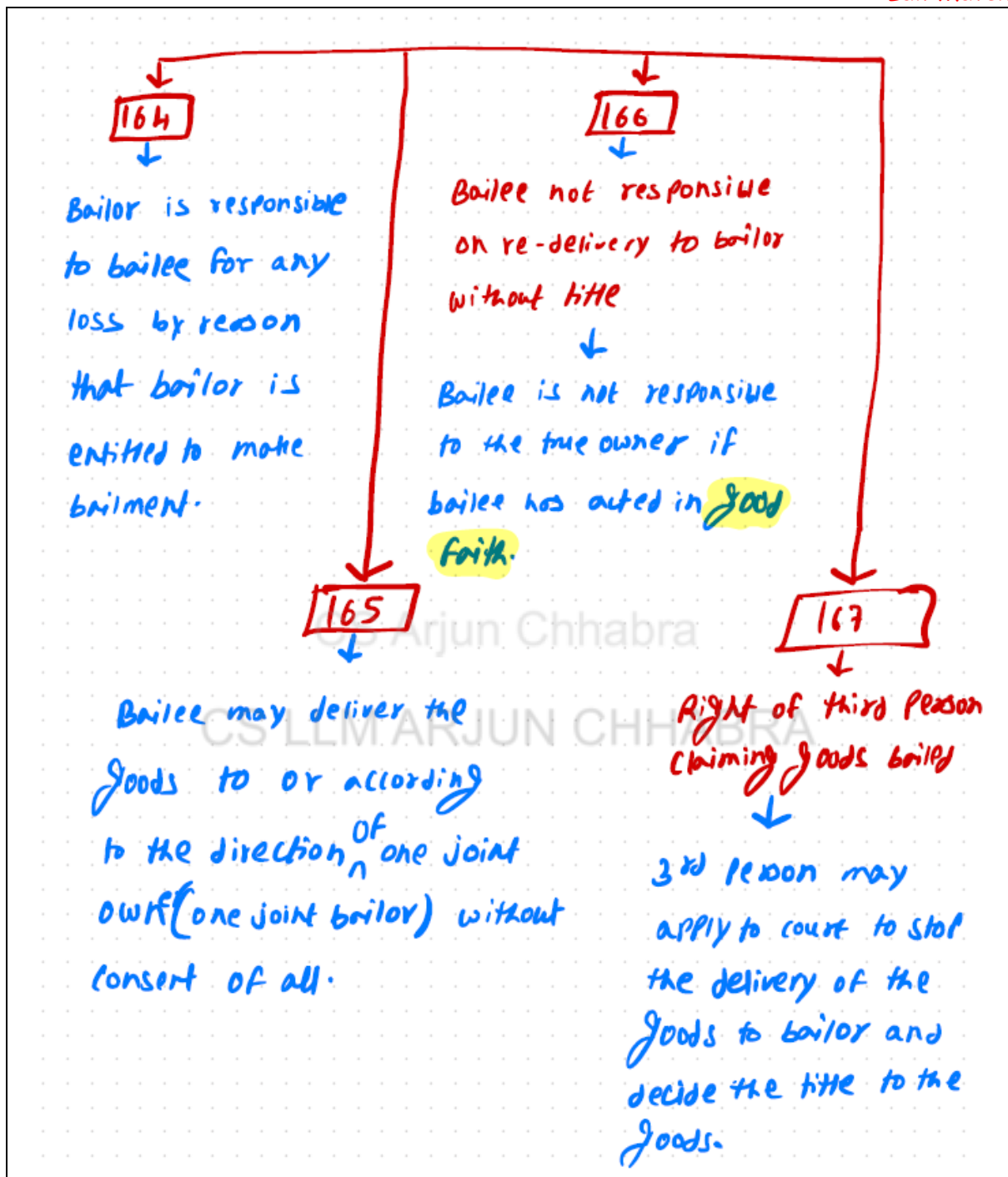
Where goods are bailed gratuitously, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of bailment.

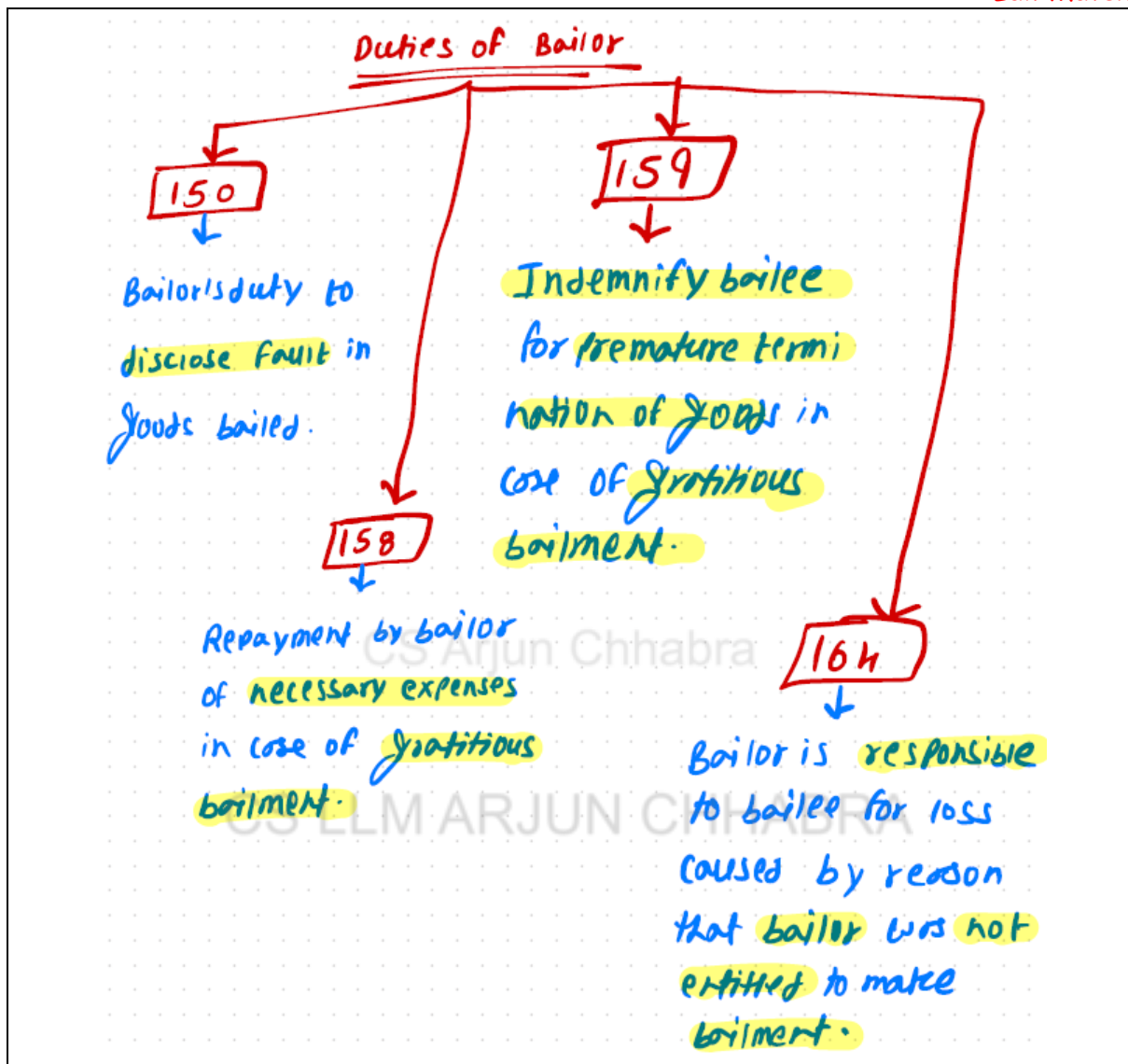
### 159 Restoration of goods lent gratuitously

When goods are lent gratuitously, lender may at anytime require its return even though the goods are lent for specified time or purpose.

However, if any loss or damage is caused to bailee beyond the benefit received from such bailment, bailor shall indemnify the borrower for the amount of loss exceeding the benefit received.









## Rights of bailor

153 ✓

Termination of bailment by bailee's act inconsistent with conditions of bailment

→ Bailor is entitled to rec compensation from bailee for any damage arising by inconsistent/unauthorised use of goods

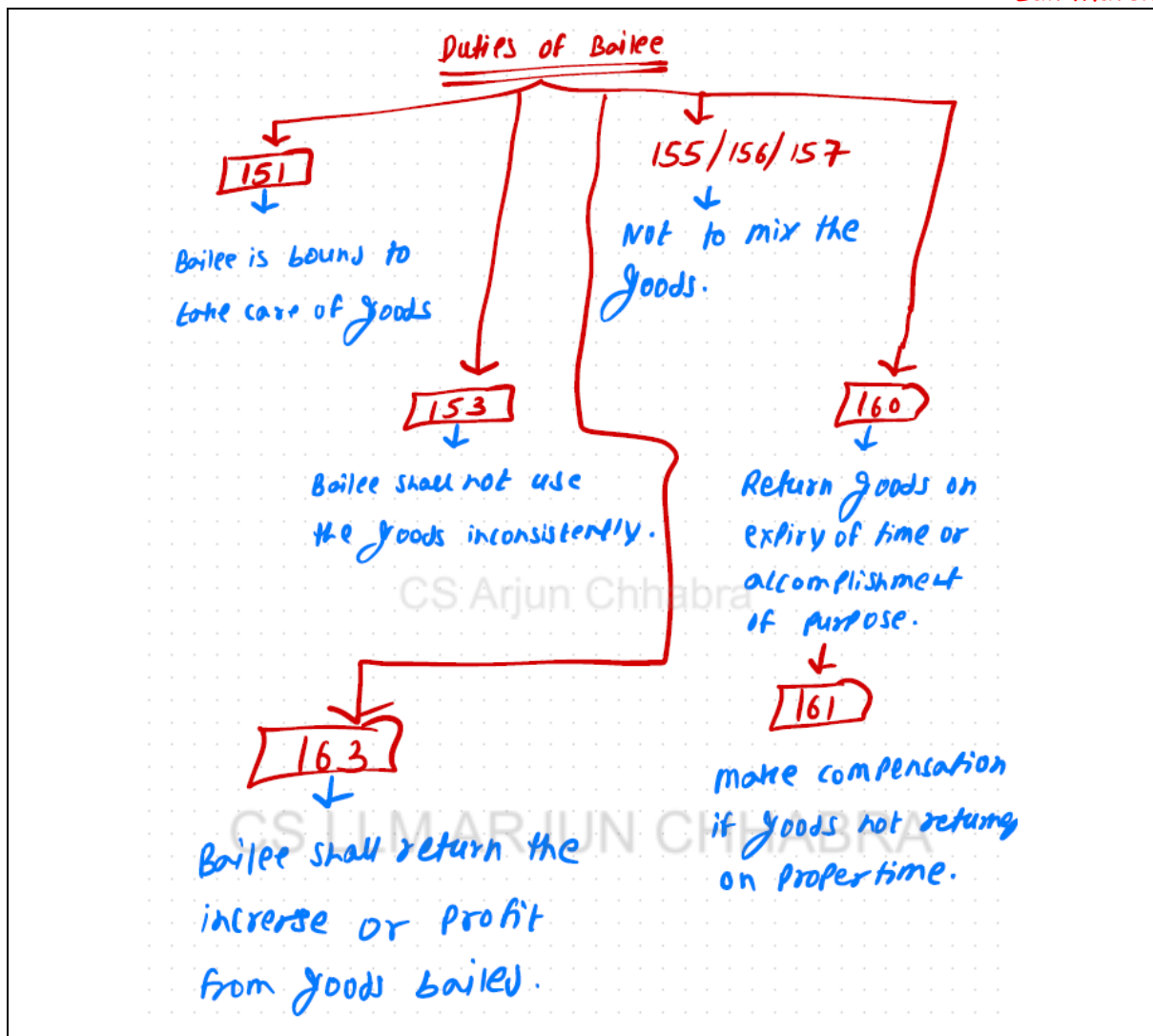
[Section 154] ✓

→ Bailor may file suit to recover compensation as mentioned above.

159 ✓

163 → Right of bailor to rec increase or profit from goods bailed.





<p><u>Right of bailee</u></p>	
<p><b>Termination of Bailment</b></p>	<p>(a) Expiry of specified period, (b) Accomplishment of specified purpose, (c) Bailee's act inconsistent with condition, (d) Destruction of subject matter, (e) Gratuitous Bailment (terminated any time)</p>
<p><b>Right of finder of goods, may sue for specific reward offered [Sec 168]</b></p>	<p>The finder of goods has</p> <ul style="list-style-type: none"> <li>• no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and</li> <li>• to find out the owner;</li> <li>• but he may retain the goods against the owner until he receives such compensation; and,</li> <li>• where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.</li> </ul>
<p><b>When finder of thing commonly on sale may sell it [Sec 169]</b></p>	<p>When a thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—</p> <p>(1) when the thing is in danger of perishing or of losing the greater part of its value, or,</p> <p>(2) when the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value.</p>

<b>Lien</b>	<p><b>Particular Lien:</b> Bailee is entitled to retain only such goods on which he has worked <b>[Sec 170]</b></p> <p><b>General Lien:</b> right to retain any property, which belongs to other party in respect of any payment due <b>[Sec 171]</b></p>
<b>Pledge [Sec 172]</b>	<p>Pledge is a Bailment of Goods as Security for payment of a Debt or performance of a Promise</p> <p>Pawnor - Bailor of such goods.</p> <p>Pawnee - Bailee of such goods</p>
<b>Essentials of Pledge</b>	(a) Delivery of goods, (b) Security, (c) Only goods can be pledged
<b>Rights of Pawnee [Sec 173 174 175 176]</b>	(a) Retain the goods, (b) Retainer for subsequent advances, (c) Reimbursement of Expenses, (d) Rights in case of default by Pawnor (Suit / Retention and Sale of goods).
<b>Rights of a Pawnor [Sec 177]</b>	(a) To get back goods, (b) To redeem goods before sale, (c) Right to Notice of Sale.
<b>Pledge by non-Owners [Sec 178 178A 179]</b>	(a) Pledge by Mercantile Agent, (b) Pledge by person in possession under voidable Contract, (c) Pledge where Pawnor has limited interest - Valid only to limited extent
<b>Suit by bailor or bailee against wrong-doer [Sec 180]</b>	If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against third person for such deprivation or injury.
<b>Apportionment of relief or compensation obtained by such suits [Section 181]</b>	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.

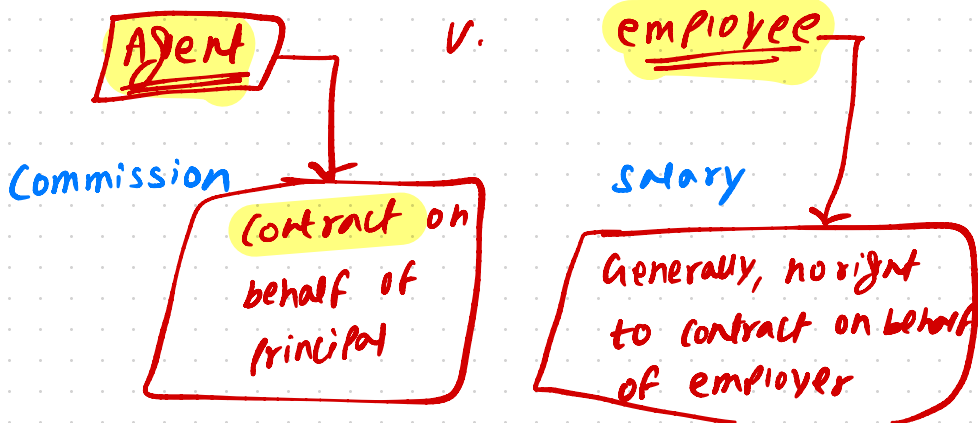
## The Indian Contract Act, 1872

### Unit 8: Bailment and Pledge Sections Recap

148. "Bailment", "bailor" and "bailee" defined.
149. Delivery to bailee how made.
150. Bailor's duty to disclose faults in goods bailed.
151. Care to be taken by bailee.
152. Bailee when not liable for loss, etc., of thing bailed.
153. Termination of bailment by bailee's act inconsistent with conditions.
154. Liability of bailee making unauthorized use of goods bailed.
155. Effect of mixture, with bailor's consent, of his goods with bailee's.
156. Effect of mixture, without bailor's consent, when the goods can be separated.
157. Effect of mixture, without bailor's consent, when the goods cannot be separated.
158. Repayment, by bailor, of necessary expenses.
159. Restoration of goods lent gratuitously.
160. Return of goods bailed on expiration of time or accomplishment of purpose.
161. Bailee's responsibility when goods are not duly returned.
162. Termination of gratuitous bailment by death.
163. Bailor entitled to increase or profit from goods bailed.
164. Bailor's responsibility to bailee.
165. Bailment by several joint owners.
166. Bailee not responsible on re-delivery to bailor without title.
167. Right of third person claiming goods bailed.
168. Right of finder of goods.  
May sue for specific reward offered.
169. When finder of thing commonly on sale may sell it.
170. Bailee's particular lien.
171. General lien of bankers, factors, wharfingers, attorneys and policy-brokers.
172. "Pledge", "Pawnor" and "Pawnee" defined.
173. Pawnee's right of retainer.
174. Pawnee not to retain for debt or promise other than that for which goods pledged.  
Presumption in case of subsequent advances.
175. Pawnee's right as to extraordinary expenses incurred.
176. Pawnee's right where pawnor makes default.
177. Defaulting pawnor's right to redeem.
178. Pledge by mercantile agent.
- 178A. Pledge by person in possession under voidable contract.
179. Pledge where pawnor has only a limited interest.
180. Suit by bailor or bailee against wrong-doer.
181. Apportionment of relief or compensation obtained by such suits.

# Agency [182 - 238]

## Principal - Agent - relation



An "agent" is a person employed to do any act for another or to represent another in dealing with third persons.

The person for whom such act is done or who is so represented is called Principal.

Who may employ agent?

Principal

17/AB

Appoint agent

Lovish

18yrs

Section 11

minor incompetent to enter into a agreement

Principal

Lovish  
18yrs

Appoint Agent

AB  
17yrs

Agent??

Mr. Oberoi  
Owner  
Tenant  
agreement

CS Arjun Chhabra

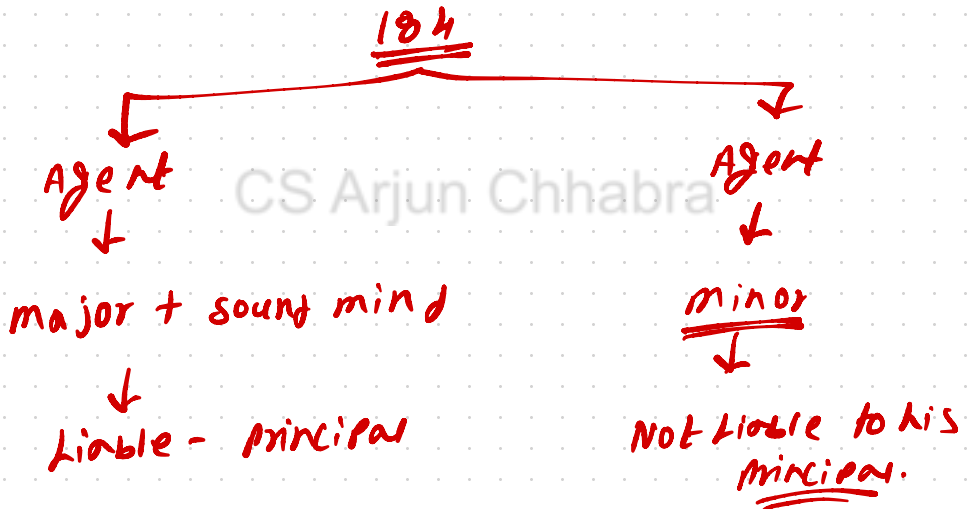
Sec 133 Who may employ Agent/who may be Principal?

Any person who is of the age of majority according to the law to which he is subject and

who is of sound mind, may employ an agent.

184 → Principal and third person k bich m ko: bhi person agent ban sakta hai.

Lekin aisa person jo ki na toh major and na toh sound mind wo person agent nahi banege - jisse wo apne principal ko liable hoga.



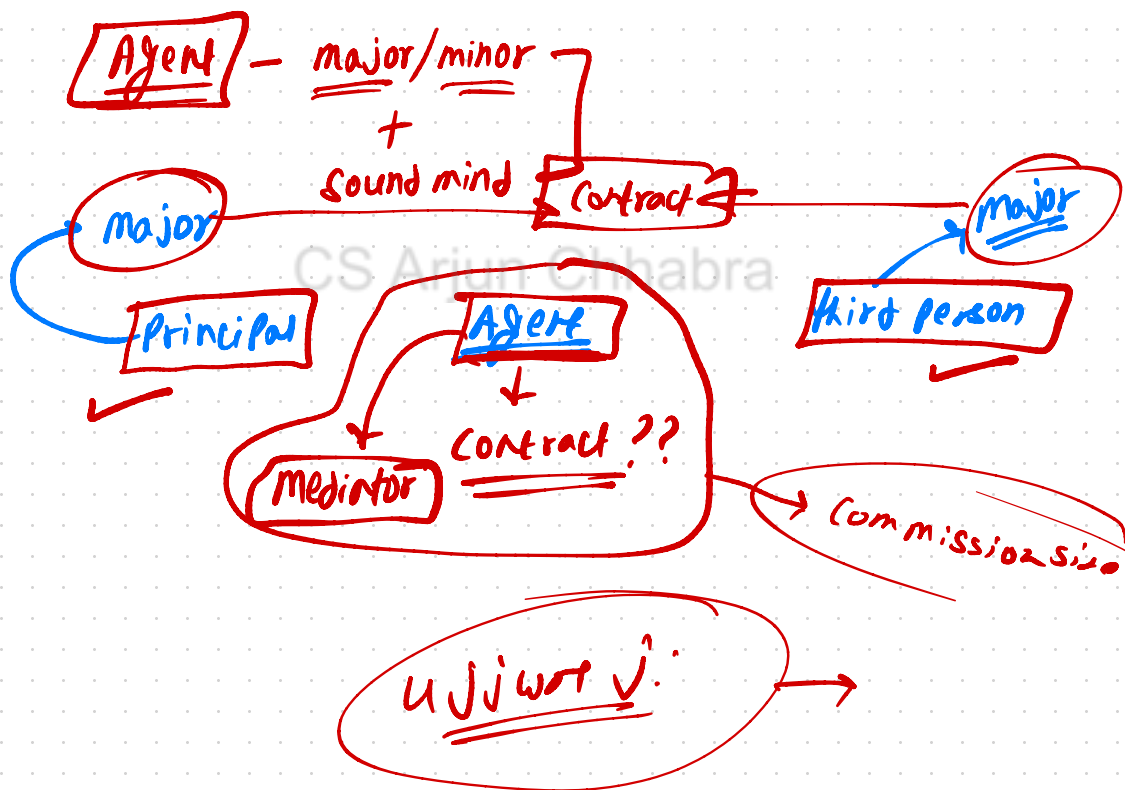
Mr. Oberoi - ₹ 500000  
                  ₹ 400000

AB → ₹ 500000  
          ₹ 400000

Any person may become an agent between principal and third person and shall be responsible to principal for his acts. However, a person who

is minor may become an agent but shall not be liable to principal for his acts.

Principal - major  
+  
sound mind } → mandatory



182. Definitions

185. consideration ?

183. Principal ?

184. Agent ?



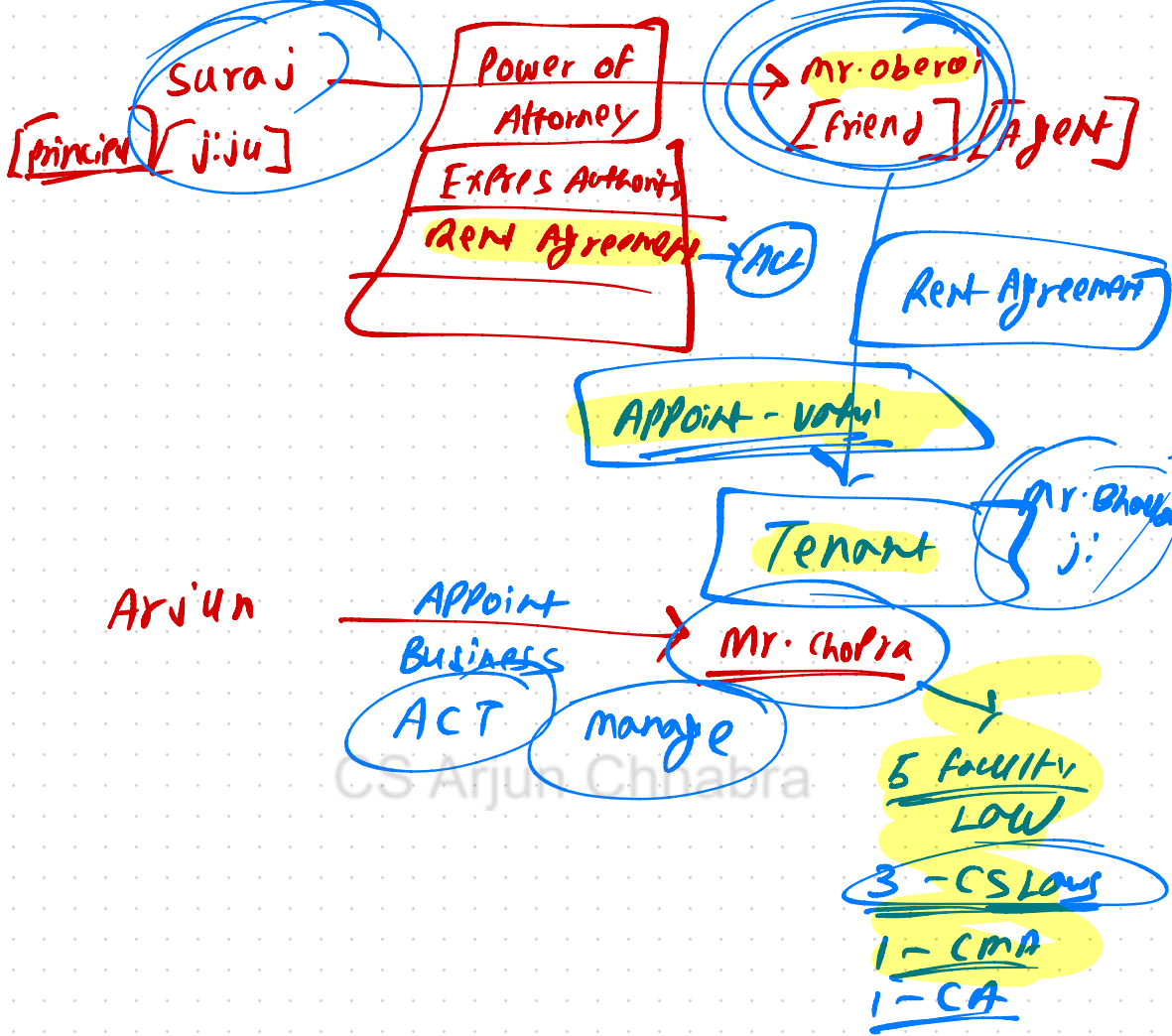
186:- Agent's Authority may be expressed or implied.

187:- Definition of express and implied authority

→ RENT Agreement related

An authority is said to be express when it is given by word spoken or written [power of attorney]

An authority is said to be implied when it is to be inferred [understood] from the circumstances of the case or the ordinary course of dealing.



## Sec 188 Extent of Agent's authority

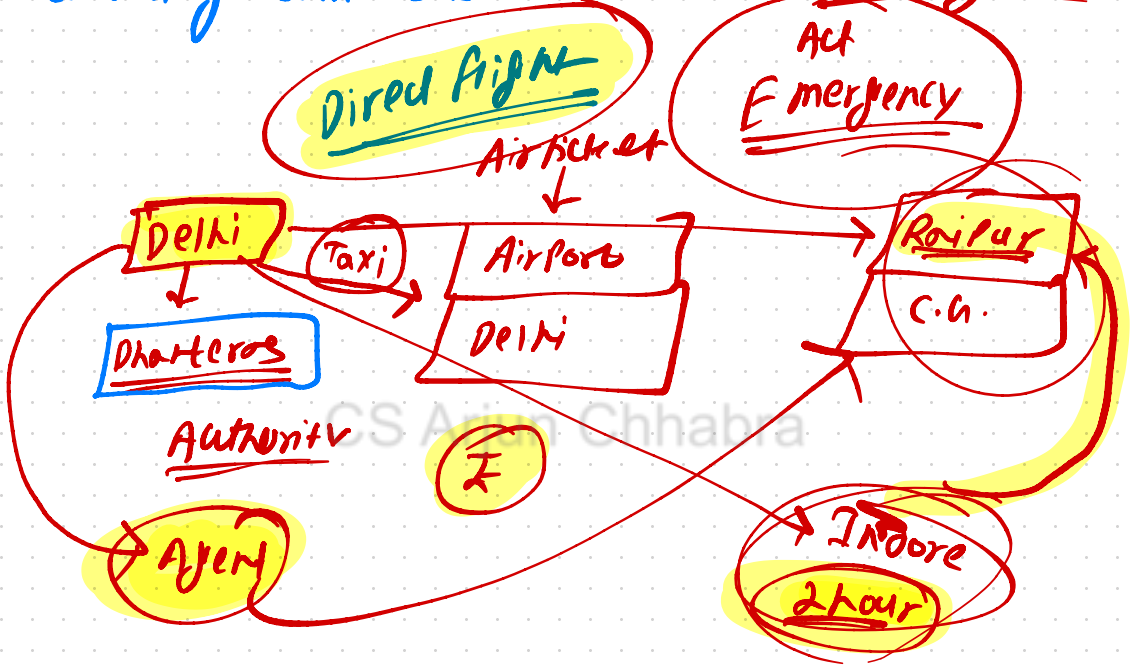
An agent, having an authority to do an act [Rent agreement], has authority to do every lawful thing which is necessary in order to do such act.

↳ Advocate to draft Rent Agreements

An agent having an authority to carry on business, has authority to do every lawful thing

↓  
[ACT RUN] necessary for the purpose of

conducting such business. → Appointing faculty



189 → Agent's authority in an emergency.

An agent has authority, in an emergency, to do

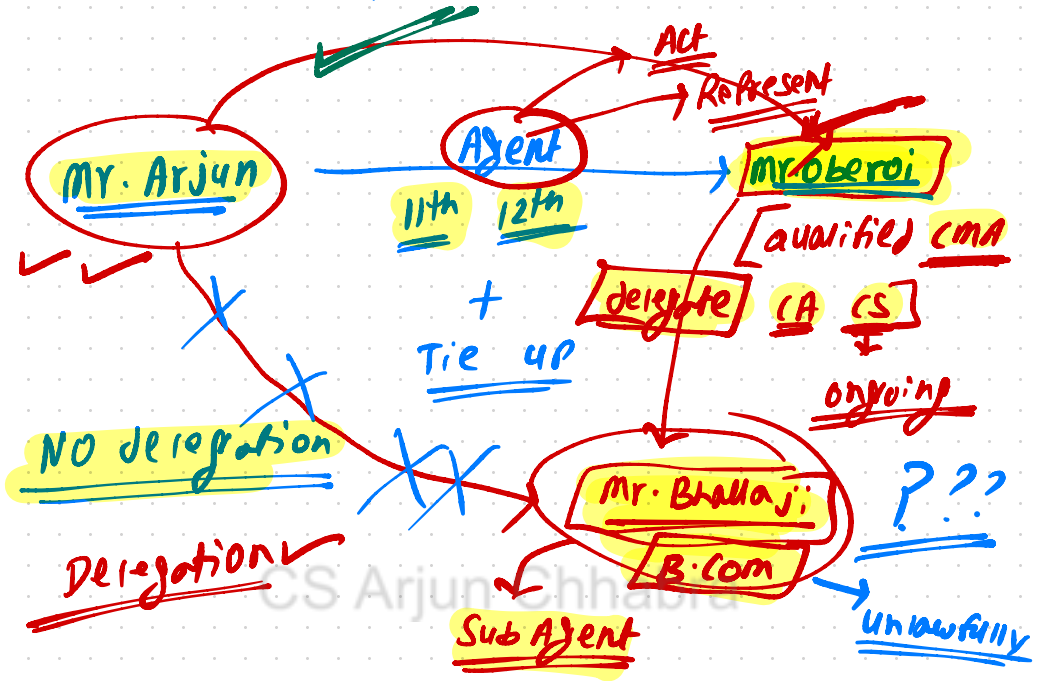
all such acts for the purpose of protecting

↳ To book via flight instead of direct flight.

his principal from loss as would be done

↳ [Diwali loss]

by a person of ordinary prudence (sensible person) in his own case, under similar circumstances.



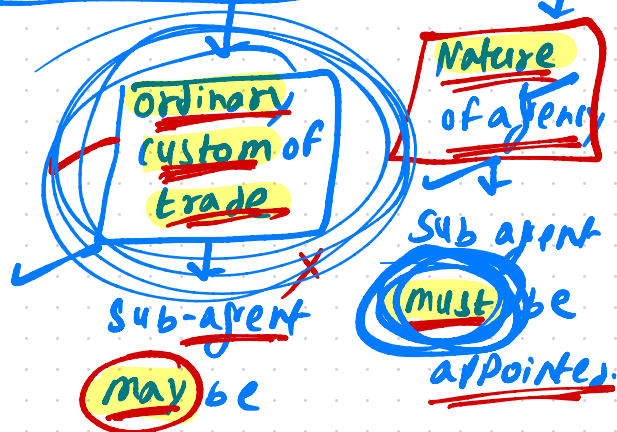
190

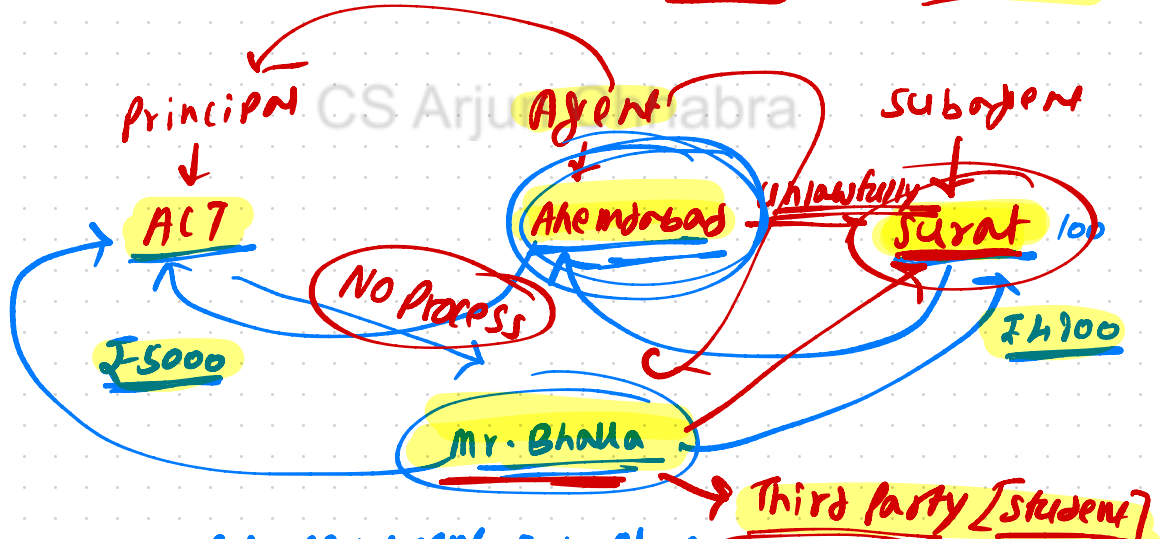
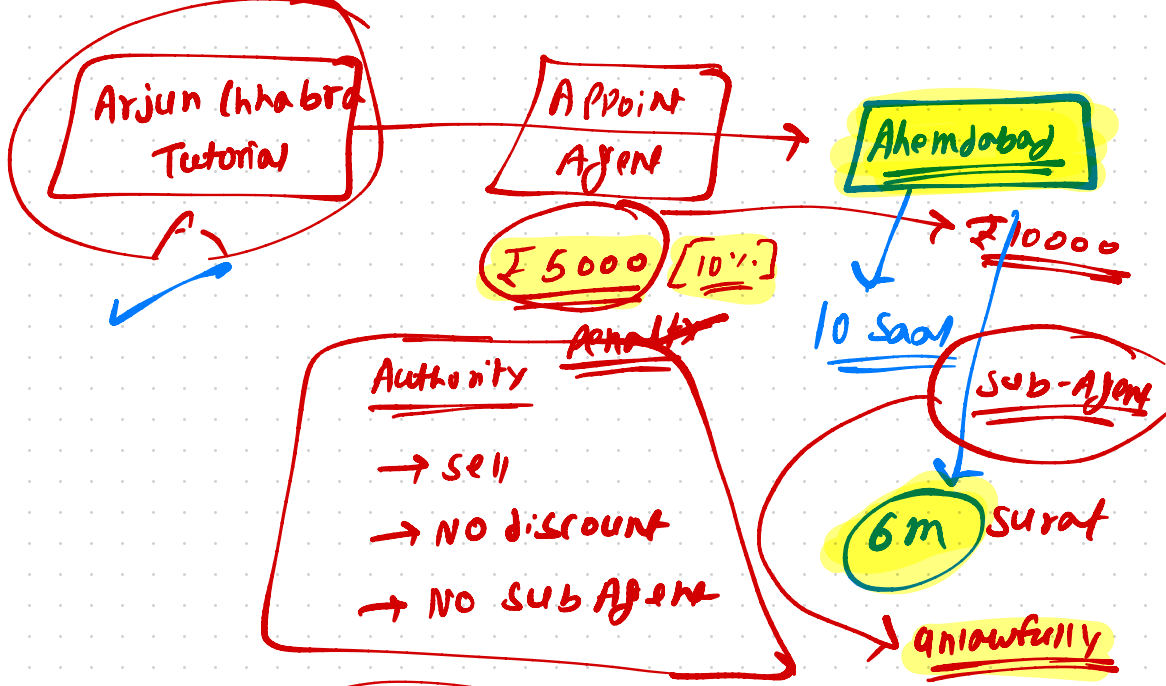
Prima facie → Agent cannot appoint sub-agent.

Exceptions

When it is expressly agreed between principal and agent. X

↓  
Sub-agent can be





Unlawful appointment sub-Agent → Third party [student]

Principal not liable to third party [Mr. Bhalla]

Agent is responsible to both Principal and third party.

+  
Auctioneer [Co-Agent]

+  
Broker [Co-Agent]

Basis of difference.

Sub-Agent

Substituted Agent

Control and direction

Act in control and direction of Agent

Act in control and direction of Principal

Privity of Contract.

Between Agent and Sub-Agent.

Between Principal and substituted agent.

And

Not between Principal and subagent.

Delegation of duties

Agent not only appoints sub-Agent but also delegates his own duty to sub-Agent.

Agent only names substituted agent and does not delegate his own duties.

Responsibility

Sub-Agent is responsible

Agent is not

to agent alone and  
generally, not liable  
principal.

responsible for  
acts of substituted  
agent. substituted  
agent is liable to  
principal for his  
acts.

### Appointment

sub-agent may be  
appointed unlawfully

substituted can never  
be appointed  
unlawfully.

190 → sub agent?

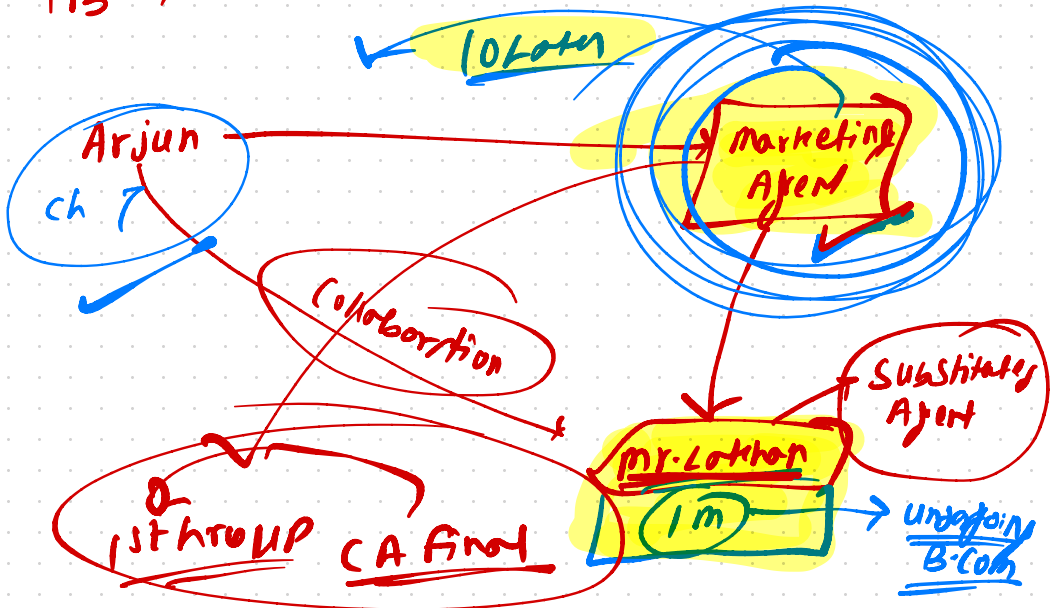
191 → definition

192 → LF

193 → UNLF

194 - Substituted Agent

Agent v. SA



# Implied Ratification of Authority

Authority

₹5000 X 10

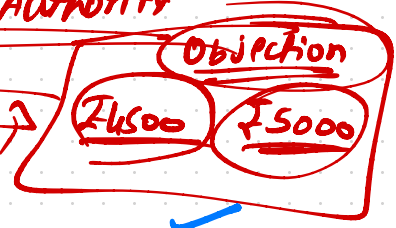
= ₹50000

→ Interest

20%

↓  
Interest

→ Implied Ratify



## Ratification

196  
↓

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197  
↓

Right of person as to acts  
done for him without his

Ratification may  
express or implied.

authority → Effect of ratification

↓  
[Subsequent Approval]

Act by one for another  
without his knowledge and  
authority.





# Other essentials of a valid ratification

Sec 198

No valid ratification can be made by a person whose knowledge of fact is materially defective.

sec 199

Ratification of unauthorised act shall be of whole transaction.

Sec 200

Ratification of unauthorised act cannot injure third person.

Ratification

①

causing damage to third person

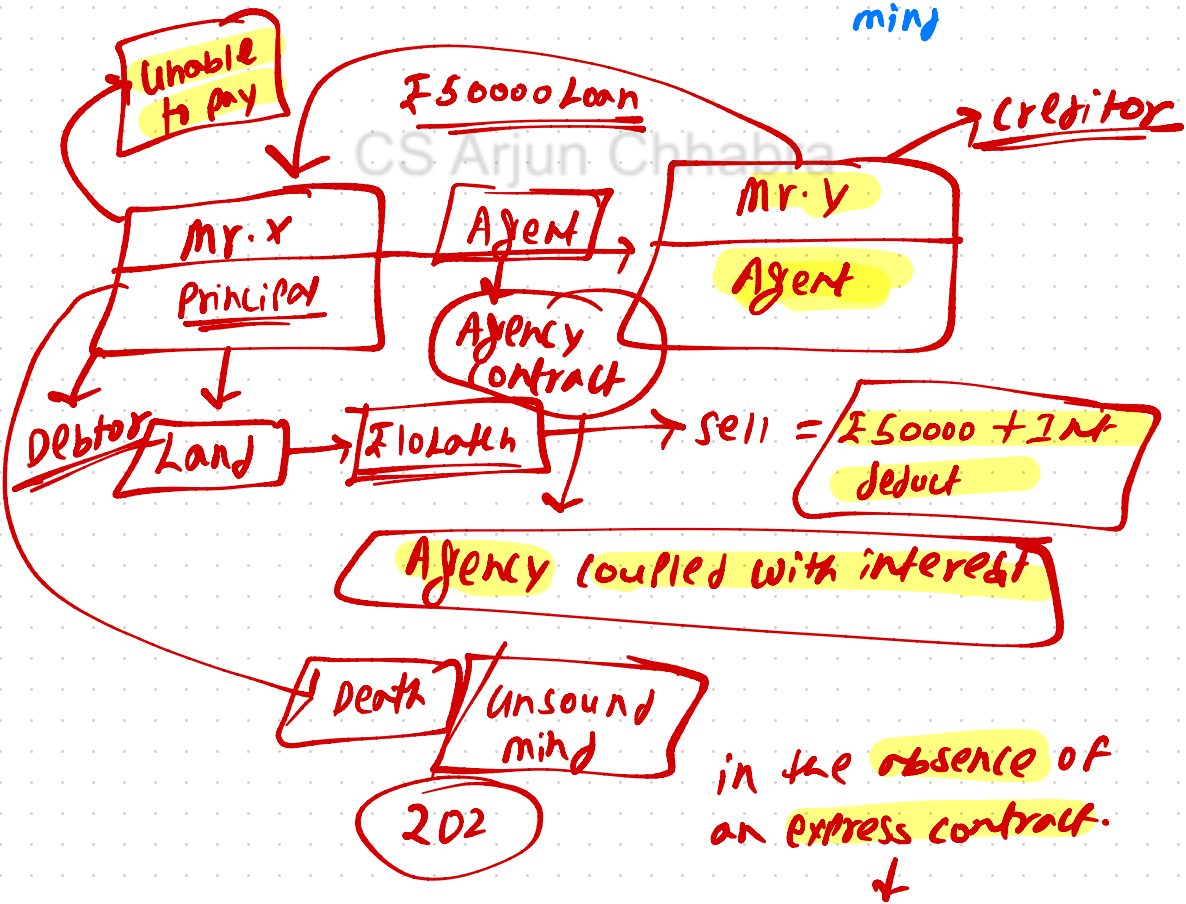
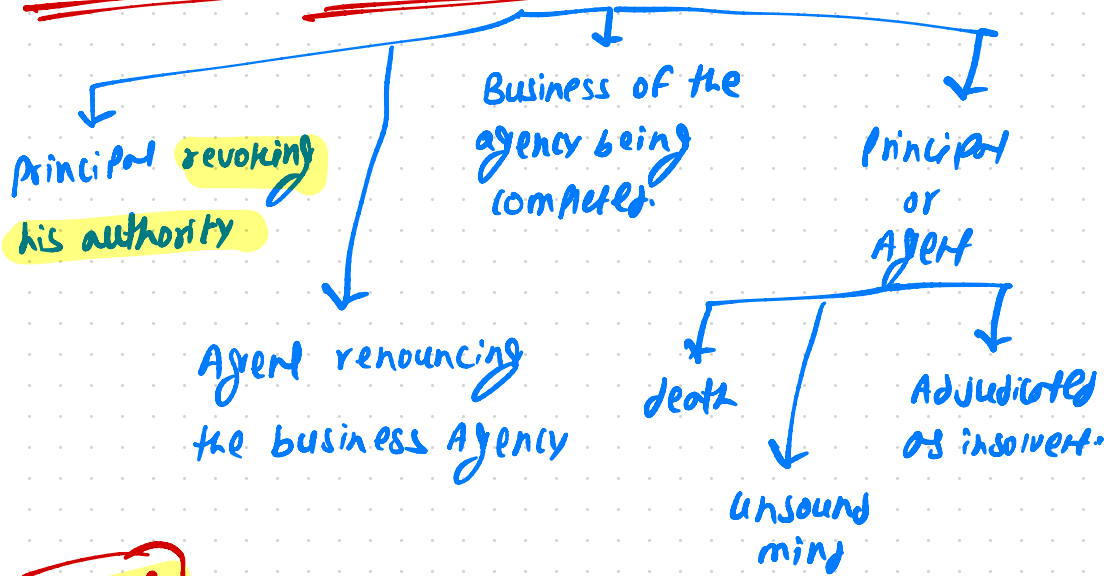
or

②

Terminating any right of third person

Cannot be made.

# Sec 201 - Termination of Agency



## 4 SUBJECT

### Revocation of Authority

202



unless otherwise agreed, where agent has himself an interest in the property of the subject matter of agency, the agency cannot be terminated to prejudice [harm] of such interest.

203



The principal may revoke the authority at any time before authority has been exercised to bind the principal.

204

The principal cannot revoke the authority after the authority has been partly/materially exercised by the

agent for the purpose of agency.

Compensation for revocation/renunciation/Notice of revocation and damages.

205

↓  
NO time fixed for agency.

Principal compensate

↓  
for previous revocation

Agent compensate

↓  
for previous renunciation

↓  
Without sufficient cause.

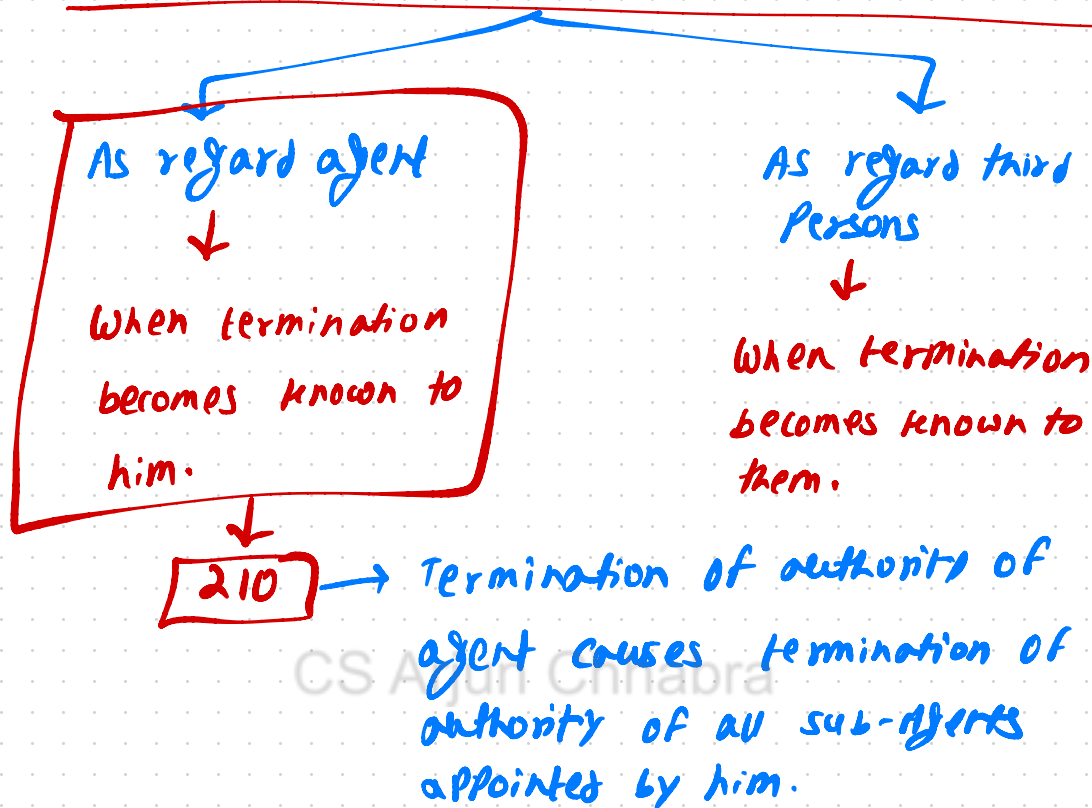
206

↓  
Reasonable notice must be given for such revocation and renunciation. Otherwise damages must be given.

207

↓  
Revocation and renunciation may be expressed or implied.

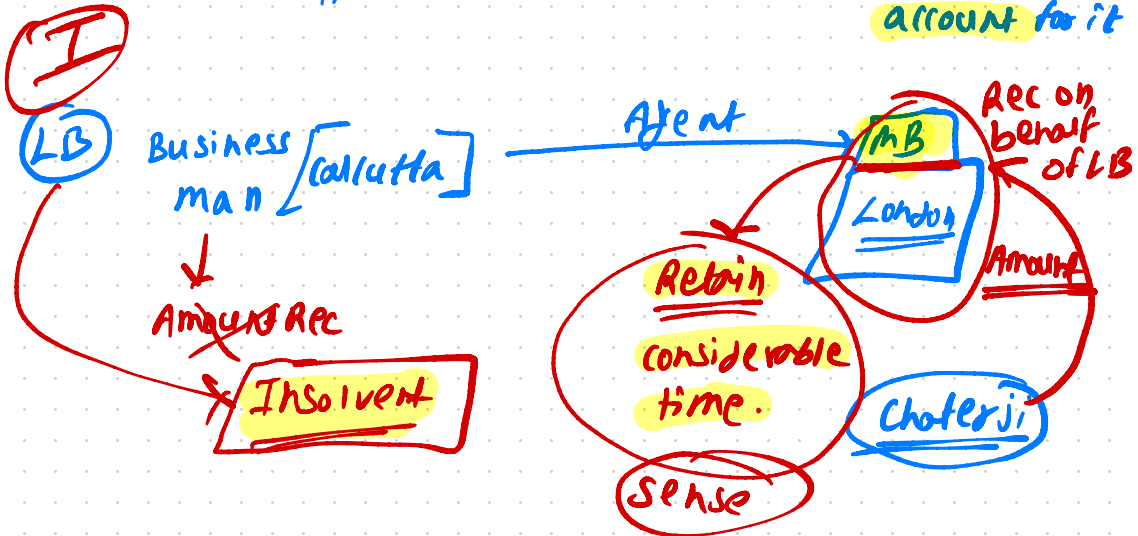
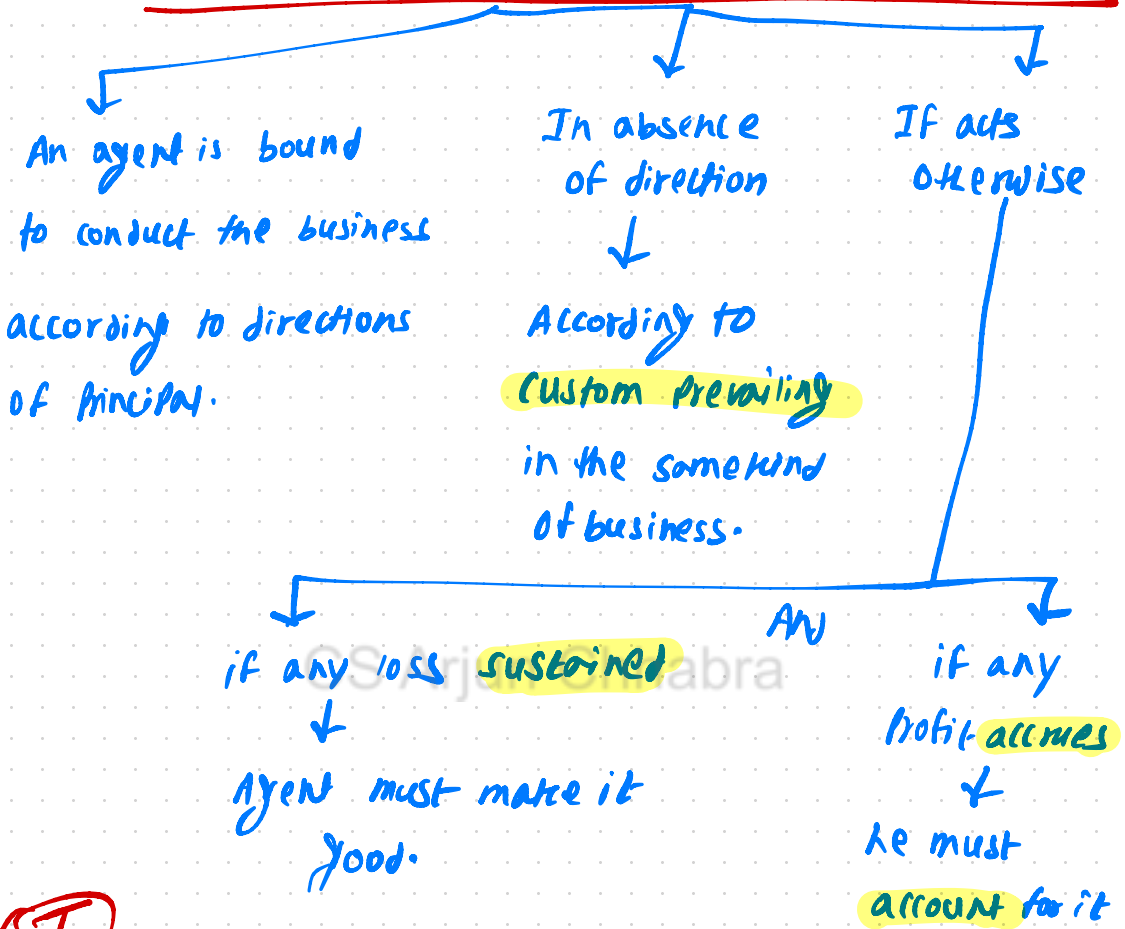
## 208 When termination of Agent's authority takes effect



## 209 Agent's duty on termination of agency by Principal's death or insanity.

Agent is **bound** to take on behalf of the representative of his late principal, all **reasonable steps** for the **protection** and **preservation** of the **interest** entrusted

# Section 211 Agent's duty in conducting principal's business



Section 212 → An agent is bound to conduct the business with as much skill which generally requires by person in similar business.

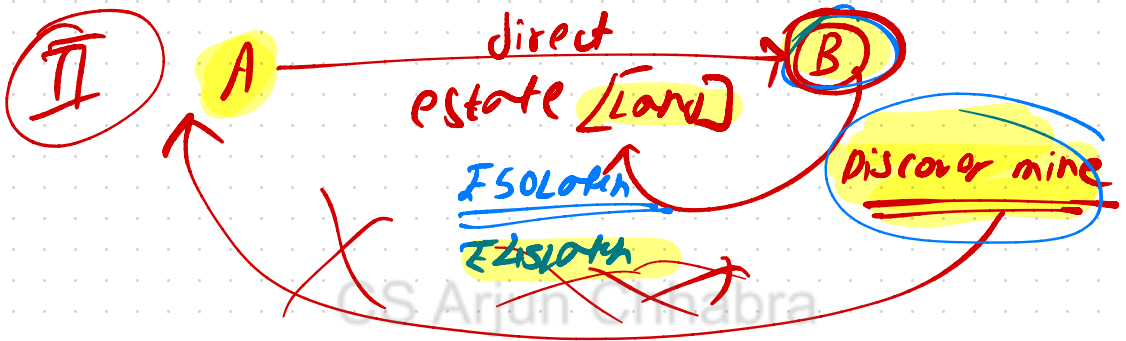
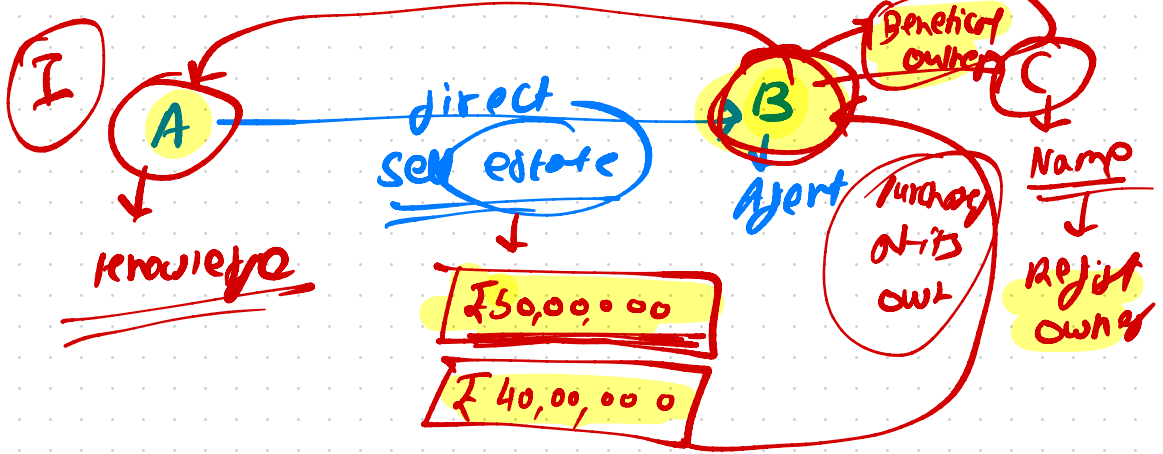
The agent is always bound to act with reasonable diligence and to make compensation to principal in respect of any loss because of his own neglect or misconduct.

However, agent is not liable for any indirect loss.

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Slab	1	—	10% <sup>1.50</sup> ✓ 5%
	2	—	5%
	3	—	3%
	4	—	⋮
	5	—	⋮
	6	—	⋮





Section 215 - Right of principal when agent deals, on his own account, in business of agency without principal's consent.

If agent deals without obtaining the consent of principal and

maintaining him with all material circumstances

[with letting him know]

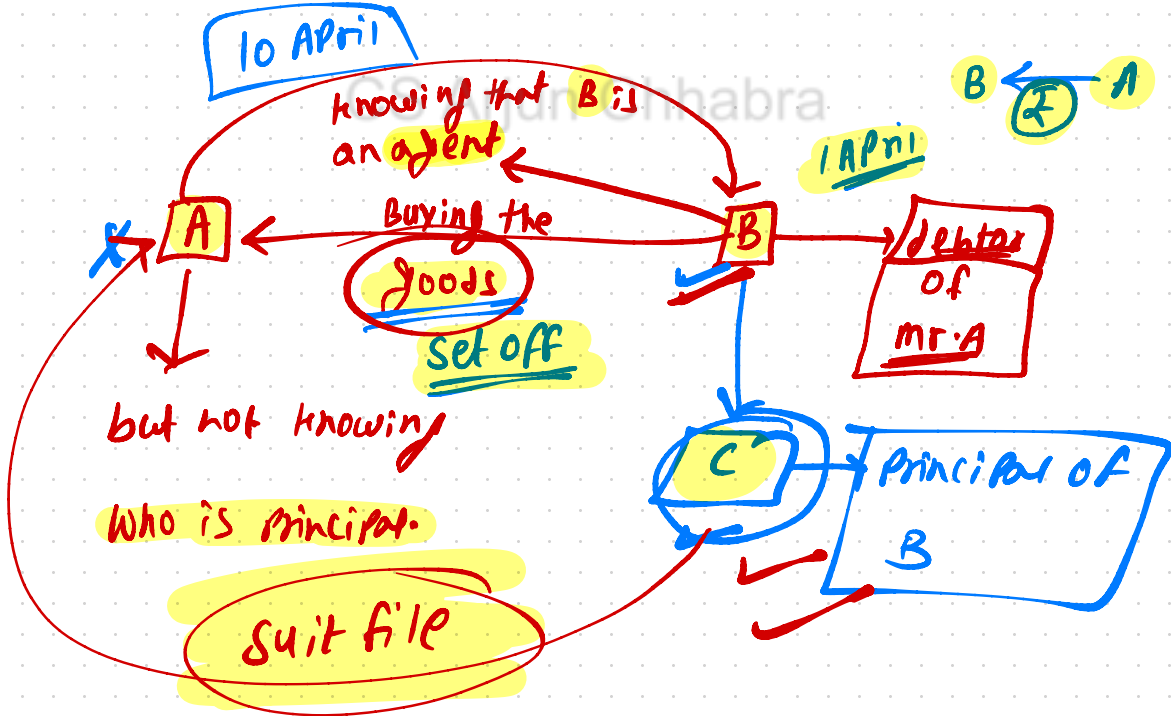


The principal may repudiate [refuse/cancel] the transaction, if the case shows

that my material fact has been dishonestly concealed

or

that dealing of agent is disadvantageous to him.

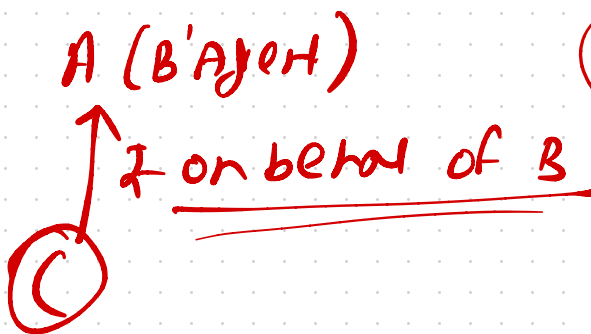


Sec 226 - Enforcement and consequences of agent's contracts.

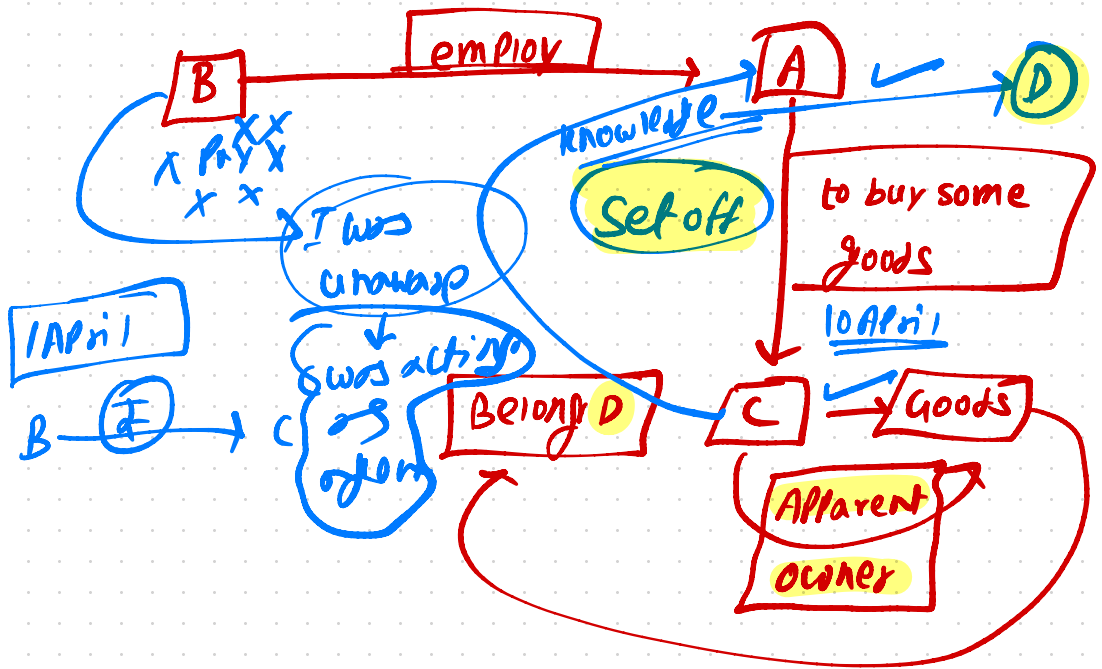
contract entered into through an agent and obligation arising from act done by an agent,

may be enforced in the same manner and will have same legal consequences as if the contract is entered by principal himself.

In simple words, act done by agent is an act done by principal.



B recd the payment



## Sec 229 consequences of notice given to Agent

Any notice given to or information obtained by the agent during course of agency.

Such notice or information shall be deemed to be received by principal from third party.

In simple words, notice to agent is notice to principal.

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



Unless otherwise agreed, an agent cannot personally enforce contract entered into by him on behalf of principal, nor he is personally bound by them.



Exceptions - Where agent is personally liable.

①.

When the contract is made by agent for sale or purchase of goods for a merchant abroad.

②.

Where agent does not disclose the name of principal.

③.

Where principal though disclosed, cannot be sue.

④.

Sec 235 - Where a person is acting as pretended agent. He is liable to make compensation to the other for any loss or damage.

Sec 231 - Rights of parties to a contract made

↓  
Club

by agent not disclosed

↓  
Agent of blacklisted person

If an agent makes a contract with a person who neither knows, nor has the reason to suspect, that he is an agent.

However, if such person would have known that he is an agent of such principal with whom he would not have entered into contract. In such a case, such person may refuse to perform the contract.

232

Where one <sup>man</sup> makes a contract with another without knowing that the other is an agent.

Such former man may perform the contract subject to right and obligation subsisted between former man and the other.

233 → Right of person dealing with agent personally liable.

a person dealing with agent may file suit either on agent or his principal or both.

234 → consequences → Read only

Sec 236 → A person who is acting an agent of another. But in fact he is not an agent, such person cannot demand performance from another.

Section 237 → If principal by his act or his conduct induced 3rd person to believe that agent's unauthorised act were authorised. In such a case the principal shall be liable to 3rd party.

Section - 238 → If agents makes misrepresentation while entering into a contract within his authority to third party. such contract is voidable at the option of third party.

Simple Words, MR made by an agent is MR made by principal.



Principal's right to claim benefit from his agent.  
216 → If an agent without knowledge of his principal makes any benefit from the transaction of agency.

In such a case, the principal is entitled to claim such benefit from agent.

217 → Agent's right to retain the sum recd on principal's account.

Agent may retain the sum recd on principal's account until he receive all money and remuneration due to himself from principal.

218 → Subject to above deduction agent is bound to pay his principal all sum recd on his account.

219 → Similar to sec 217 and 221 Goods  
↓  
lien

money

## Remuneration of Agent

When becomes due? [219]



Not due to agent until  
the completion of his work.

Not entitled  
to remuneration

[220] ↓

If agent is guilty  
of misconduct in the  
business of agency.

Agent's duty to Principal = Section 211 to 221

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## Principal's duty to Agent

223



Indemnify  
against the  
consequences  
of acts done  
in good faith.

[222]



Indemnify  
against consequences  
of lawful acts.

225



Compensation  
to agent for  
injury caused  
by principal's  
neglect.

224

## The Indian Contract Act, 1872

### Unit 9: Agency Sections Recap

182. "Agent" and "principal" defined.
183. Who may employ agent.
184. Who may be an agent.
185. Consideration not necessary.
186. Agent's authority may be expressed or implied.
187. Definitions of express and implied authority.
188. Extent of agent's authority.
189. Agent's authority in an emergency. 190. When agent cannot delegate.
191. "Sub-agent" defined.
192. Representation of principal by sub-agent properly appointed.  
Agent's responsibility for sub-agent.  
Sub-agent's responsibility.
193. Agent's responsibility for sub-agent appointed without authority.
194. Relation between principal and person duly appointed by agent to act in business of agency.
195. Agent's duty in naming such person.
196. Right of person as to acts done for him without his authority.  
Effect of ratification.
197. Ratification may be expressed or implied.
198. Knowledge requisite for valid ratification.
199. Effect of ratifying unauthorized act forming part of a transaction.
200. Ratification of unauthorized act cannot injure third person.
201. Termination of agency.
202. Termination of agency, where agent has an interest in subject-matter.
203. When principal may revoke agent's authority.
204. Revocation where authority has been partly exercised.
205. Compensation for revocation by principal, or renunciation by agent.
206. Notice of revocation or renunciation.
207. Revocation and renunciation may be expressed or implied.
208. When termination of agent's authority takes effect as to agent, and as to third persons.
209. Agent's duty on termination of agency by principal's death or insanity.
210. Termination of sub-agent's authority. 211. Agent's duty in conducting principal's business.
212. Skill and diligence required from agent.
213. Agent's accounts.
214. Agent's duty to communicate with principal.
215. Right of principal when agent deals, on his own account, in business of agency without principal's consent.
216. Principal's right to benefit gained by agent dealing on his own account in business of agency.
217. Agent's right of retainer out of sums received on principal's account.
218. Agent's duty to pay sums received for principal.
219. When agent's remuneration becomes due.

- 220. Agent not entitled to remuneration for business misconducted.
- 221. Agent's lien on principal's property.
- 222. Agent to be indemnified against consequences of lawful acts.
- 223. Agent to be indemnified against consequences of acts done in good faith.
- 224. Non-liability of employer of agent to do a criminal act.
- 225. Compensation to agent for injury caused by principal's neglect.
- 226. Enforcement and consequences of agent's contracts.
- 227. Principal how far bound, when agent exceeds authority.
- 228. Principal not bound when excess of agent's authority is not separable.
- 229. Consequences of notice given to agent.
- 230. Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.  
Presumption of contract to contrary.
- 231. Rights of parties to a contract made by agent not disclosed.
- 232. Performance of contract with agent supposed to be principal.
- 233. Right of person dealing with agent personally liable.
- 234. Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.
- 235. Liability of pretended agent.
- 236. Person falsely contracting as agent not entitled to performance.
- 237. Liability of principal inducing belief that agent's unauthorized acts were authorized.
- 238. Effect, on agreement, of misrepresentation or fraud by agent.

## The Sale of Goods Act, 1930

### Unit 1: Formation of the Contract of Sale

#### 1. Important Terms: [Sec 2]

- (a) **Buyer:** Person who buys or agrees to buy goods. [Sec 2(1)]
- (b) **Seller:** Person who sells or agrees to sell goods. [Sec 2(13)]
- (c) **Goods means:** Every kind of movable property. Excludes - Actionable Claims and Money (but not old rare coins). Includes - Stock and Shares, Growing Crops, Grass & things agreed to be severed under contract of sale. [Sec 2(7)]
- (d) **Existing goods:** Goods that are in existence at the time of contract of sale, i.e. owned or possessed by the Seller. [Sec 6]
- (e) **Future goods:** Goods to be manufactured or produced or acquired by the seller after making the contract of sale. [Sec 2(6)]
- (f) **Specific Goods:** Goods identified and agreed upon, at the time the contract of sale. [Sec 2(14)]
- (g) **Delivery means** voluntary transfer of possession by one person to another. Delivery may be of three kinds - [Sec 2(2)]
- Actual Delivery: When the goods are physically delivered to the Buyer.
  - Constructive Delivery: When it is effected without any change in the custody or actual possession of the thing, as in the case of delivery by attornment (acknowledgement)
  - Symbolic Delivery: When there is a delivery of a thing in token of a transfer of something else, i.e. delivery of goods in transit may be made by handing over documents of title to goods, e.g. Bill of Lading or Railway Receipt or Delivery Orders, or when key of a warehouse containing the goods is handed over to buyer.
- (h) **Document of Title to goods:**
- It includes 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 proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document, to transfer or receive goods thereby represented by it.
  - There is a difference between a 'document showing title' and 'document of title'. A Share Certificate is a 'document' showing title, but not a document of title. It merely shows that the person named in the Share Certificate is entitled to the share represented by it, but it does not allow that person to transfer the Share mentioned therein by mere endorsement on the back of the certificate and the delivery of the certificate.
- (i) **Price:** means the money consideration for a sale of goods; [Sec 2(10)]
- (j) **Property:** It means the general property (right of ownership in goods) and not merely a special property. [Sec 2(11)]

2. **Contract of Sale:** A contract of sale of goods is a contract whereby the Seller transfers or agrees to transfer the property in goods to the Buyer, for a price. There may be a contract of sale between one part-owner and another. **[Sec 4 (1)]**
3. **Essentials of Contract of Sale:** (a) There must be atleast two parties, (b) The subject matter of the contract must necessarily be goods, (c) A price in money (not in kind) should be paid or promised, (d) A transfer of property in goods from Seller to the Buyer must take place, (e) A contract of sale must be absolute or conditional, and (f) All other essential elements of a valid contract must be present in the contract of sale.
4. **Sale and an Agreement to Sell: [Sec 4 (3)]**
  - (a) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a Sale.
  - (b) Where under a contract of sale the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an Agreement to Sell.
5. An agreement to, sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred. **[Sec 4 (4)]**
6. **Delivery/ Payment in a Contract of Sale: [Sec 5]**
  - (a) There may be immediate delivery of the goods, or
  - (b) There may be immediate payment of price, but it may be agreed that the delivery is to be made at some future date, or
  - (c) There may be immediate delivery of the goods and an immediate payment of price, or
  - (d) It may be agreed that the delivery or payment or both are to be made in instalments, or
  - (e) It may be agreed that the delivery or payment or both are to be made at some future date.
7. **Subject matter of Contract of Sale** - The subject matter of contract **must always be goods**. The goods may be existing or future goods. When the Seller purports by his contract of sale to effect a sale of future goods, the contract will operate only as an Agreement to Sell the goods, and not as Sale.
8. **Destruction of subject matter of Contract: [Sec 7 & 8]**
  - (a) Goods not existing at the time of contract: If at the time a contract of sale is entered into, the subject-matter of a contract being specific goods, which without the knowledge of the Seller have been destroyed or so damaged as not to answer to the description in the contract, then the contract is void ab initio.
  - (b) Goods perishing after the contract is made: Where there is an agreement to sell specific goods and the goods, subsequently without any fault of the Seller or the Buyer perish or suffer such damages as not to answer to the description in the agreement before the risk passes to the Buyer, the agreement becomes void.
9. **Ascertainment of Price:** Price is the monetary consideration for sale of goods. The Price may be - (a) fixed by the contract, (b) agreed to be fixed in a manner provided by the contract, e.g. Valuer, or (c) determined by the course of dealings between the parties. **[Sec 9]**

**10. Price fixed by third party: [Sec 10]**

- (a) When Third party does not or cannot make such valuation - Agreement will be void.
- (b) When Third party is prevented by the default of the either of the parties - Party at default will be liable for damages.
- (c) **Example:** P is having two bikes. He agrees to sell both of the bikes to S at a price to be fixed by the Q. He gives delivery of one bike immediately. Q refuses to fix the price. As such P ask S to return the bike already delivered while S claims for the delivery of the second bike too. In the given instance, buyer § shall pay reasonable price to P for the bike already taken. As regards the Second bike, the contract can be avoided as the third party Q refuses to fix the price.

**11. Hire Purchase** is a contract in which the owner of Goods allows their use by another person called hire purchaser. The owner of Goods gets hire charges in instalments upon an agreement that the Hire Purchaser will become the owner after payment of last instalment. Thus, it is a bailment with an option to buy.

Hire Purchaser is only a bailee of Goods taken on hire purchase until the payment of stipulated number of instalments.

Hire Purchaser has an option to terminate the contract at any stage. He cannot be forced to pay the instalments and take the Goods.

Under a Hire Purchase contract, the third party would not get a good title, since the hirer had no title to the Goods

## The Sale of Goods Act, 1930

### Unit 1: Formation of the Contract of Sale - Sections Recap

1. Short title, extent and commencement.
2. Definitions.
3. Application of provisions of Act 9 of 1872.
4. Sale and agreement to sell.
5. Contract of sale how made.
6. Existing or future goods.
7. Goods perishing before making of contract.
8. Goods perishing before sale but after agreement to sell.
9. Ascertainment of price.
10. Agreement to sell at valuation.

<b>The Sale of Goods Act, 1930</b>	
<b>Unit 2: Conditions &amp; Warranties</b>	
<b>1. Conditions and Warranties: [Sec 12]</b>	
Condition	Warranty
A Condition is a stipulation essential to the main purpose of the contract.	A Condition is a stipulation collateral to the main purpose of the contract.
The aggrieved party can repudiate the contract or claim damages or both in case of breach.	The aggrieved party can only claim damages in case of breach.
Breach of Condition may be treated as Breach of Warranty.	Breach of Warranty cannot be treated as Breach of Condition.
<p><b>2. When Condition may be treated as Warranty? [Sec 13]</b></p> <ol style="list-style-type: none"> <li>a. Buyer waives the performance of the condition.</li> <li>b. Buyer elects to treat the breach of condition as breach of warranty.</li> <li>c. Contract is non-severable, and the Buyer has accepted either the whole goods or any part thereof.</li> <li>d. Fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise.</li> </ol> <p><b>3. Implied Conditions:</b></p> <p>(a) Condition as to Title - Seller must be the true owner or have right to sell, <b>[Sec 14]</b></p> <p>(b) Sale by description - Goods should correspond with the description, <b>[Sec 15]</b></p> <p>(c) Sale by sample - Bulk shall correspond with the sample in quality, <b>[Sec 17]</b></p> <p>(d) Sale by sample as well as description - Bulk shall correspond both with sample and description, <b>[Sec 15]</b></p> <p>X bought from Y foreign refined rapeseed oil which was warranted to be equal to sample. The oil supplied was equal to the sample. The sample was actually a mixture of rapeseed oil and hemp oil. X was entitled to reject the goods because the goods supplied did not correspond with the description.</p> <p>(e) Condition as to quality and fitness –</p> <ul style="list-style-type: none"> <li>• Condition applies only if Buyer had made known to the Seller the purpose of his purchase</li> <li>• relied upon the skill and judgement of the Seller, and</li> <li>• Seller's business is to sell Goods of such description.</li> </ul> <p>(f) Implied conditions as to merchantability <b>[Sec 16(2)]</b></p> <p><b>Meaning of merchantability:</b> Merchantability means goods shall be of such quality and condition that a man of ordinary prudence would accept them as good of that description.</p>	



**Example:** Generally, best before use of bread is 3 days from the date of manufacture. If seller is selling the bread which is 10 days old from the date of manufacture, it means that the bread is not merchantable (not saleable).

**Conditions for claiming implied condition as to merchantability:**

1. Goods must be bought by description.
2. Seller deals in description of that goods.
3. Goods must be free from any latent or hidden defects.

**Proviso to section 16(2):** There shall be no implied condition as regards defects where buyer could have discovered the defects if he has reasonably examined the goods. Which means buyer could have implied condition as to merchantability only if the defects are latent or hidden which could not be discovered by reasonable examination of goods.

**Example: Thornett & Fehs v. Beers & Sons**

X purchased glue from Y. The glue was packed in barrel & and every facility was given to X for its examination but X did not examine the contents. X could not reject the goods by saying that they are not merchantable because opportunity of examining the goods was given to X but he did not examine.

(g) Condition as to wholesomeness — In case of eatables and provisions, the goods shall be wholesome. **[Sec 16]**

**4. Implied Warranties: [Section 14 & 16]**

(a) Warranty as to undisturbed possession - Buyer shall have and enjoy quiet possession of the goods,

(b) Warranty as to non-existence of encumbrances - Goods shall be free from any charge in favour of any third party,

(c) Disclosure of dangerous nature of goods - Seller must warn the Buyer of the probable danger when goods are inherently dangerous, and

(d) Warranty as to quality or fitness by usage or trade - Implied Warranty as to quality and fitness for a particular purpose may be annexed by the usage of trade.

**Example:** X sold certain drugs by auction to Y. In case of sale by auction, there was a trade custom to declare any sea damage in the goods. But the goods were sold without such declaration. Such goods were found to be sea damaged. It was held Y could reject the goods and claim the refund of the price because the sale without such declaration meant that the goods were free from any sea damage.

**5. Caveat Emptor = Let the Buyer beware:**

**a. Meaning:** The Seller is not bound to disclose the defects in the goods which he is selling. It is the duty of the buyer to satisfy himself before buying the goods that it will serve the purpose for which they are being bought.

**b. Exceptions to the Rule:**

(i) Purpose is made known to the Seller,

(ii) Goods purchased under its Patent or Brand name,

- (iii) Goods sold by description,
- (iv) Goods bought by sample,
- (v) Implied warranty or condition as to quality or fitness annexed by the usage of trade, and
- (vi) Seller sells the goods by making some misrepresentation or fraud.

## The Sale of Goods Act, 1930

### Unit 2: Conditions & Warranties - Sections Recap

11. Stipulations as to time.
12. Condition and warranty.
13. When condition to be treated as warranty.
14. Implied undertaking as to title, etc.
15. Sale by description.
16. Implied conditions as to quality or fitness.
17. Sale by sample.

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The Sale of Goods Act, 1930	
Unit 3: Transfer of Ownership and Delivery of Goods	
<p><b>1.</b> Meaning of "Passing of Property": It implies passing of ownership. If the property has passed to the Buyer, the 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.</p> <p><b>2.</b> Rules for "Passing of Property":</p> <p>(i) Property will be transferred only when the goods are ascertained [Sec 18], and</p> <p>(ii) For Specific and Ascertained goods, property passes to the Buyer at the time when parties intend it to pass. [Sec 19]</p> <p><b>3.</b> Passing of Property for different types of goods:</p>	
Situation	Passing of Property
<p><b>Specific Goods</b></p>	<ul style="list-style-type: none"> <li>• Deliverable State - At the time when Contract is made, [Sec 20]</li> <li>• Non-deliverable state - After completion of process to make it deliverable and buyer has notice thereof [Sec 21]</li> <li>• Deliverable state, but price not ascertained - The Goods are specified, but the Seller has to weigh, measure, test or do some other act or thing with reference to the Goods for the purpose of ascertaining the price. Property passes only after the Seller has weighed, measured, tested or does some other action or thing to ascertain the price and the Buyer has notice thereof. [Sec 22]</li> </ul>
<p><b>Unascertained Goods</b></p> <p>Arjun Chhabra (CS LLB LLM) Law Maven</p>	<p>When goods are ascertained and unconditionally appropriated.</p> <p>1. <b>Appropriation:</b> For property to pass u/s 23, the following conditions must be satisfied -</p> <p>(a) Goods of the description mentioned in the contract must be <b>produced or obtained</b>.</p> <p>(b) They must be in a <b>deliverable state</b>, i.e., the Goods are in such state that the Buyer would, under the contract, be bound to take delivery of them.</p> <p>(c) They must be <b>unconditionally appropriated</b> to the contract. <b>Unconditional appropriation</b> is where, in pursuance of the contract, Seller - <b>(i)</b> delivers the Goods to Buyer or to a carrier or other bailee for their transmission to Buyer and <b>(ii)</b> does not reserve the right of disposal. [Sec. 23(2)]</p> <p>(d) The assent of the parties may be given expressly or impliedly and can be given either before or after the appropriation.</p> <p>(e) <b>Example:</b> A having a quantity of sugar in bulk, more than sufficient to fill 20 bags, contracts to sell to B 20 bags of it. After the contract A fills 20 bags with the sugar, gives notice to B that the bags are ready and requires him to take them away. B says he will take them as soon as he</p>

	can. By this appropriation by A, and assent by B property in the sugar passes to B.
Goods sent on approval	<ul style="list-style-type: none"> <li>• On approval by the buyer, or</li> <li>• When the buyer does an act adopting the transactions, or</li> <li>• Does not signify his approval beyond a reasonable time. <b>[Sec 24]</b></li> </ul>
<p><b>4. Reservation of Right to Disposal: [Sec 25]</b></p> <p>a. In a contract of sale of specific goods, the Seller may reserve the right to dispose the goods until certain conditions are fulfilled.</p> <p>b. In such case, even if delivery has been made to the Buyer, or Carrier or Bailee for the purpose of transmitting the same to the Buyer, the property therein will not pass to the Buyer, till the condition imposed by the Seller has been fulfilled.</p> <p><b>5. Passing of Risk: [Sec 26]</b></p> <p>a. Unless otherwise agreed, the goods remain at the Seller's risk until the property therein is transferred to the buyer.</p> <p>b. But when the property in goods is transferred to the Buyer, the goods are at the Buyer's risk, whether delivery has been made or not.</p> <p>c. Exceptions: The following are the exceptions to the general rule that risk passes with property -</p> <p>a. Delayed delivery: through the fault of either Buyer or Seller, Goods are at the risk of the party in fault.</p> <p>b. Agreement between parties: The parties may by special agreement stipulate that 'risk' will pass sometime after or before passing of property.</p> <p>c. Usage of Trade: In some cases trade customs may put the ownership and risk separately in two parties.</p> <p>d. Bailee's Duties: Nothing contained in Sec. 26 shall affect the duties or liabilities of either the Seller or Buyer as a bailee of Goods of the other party.</p> <p><b>6. Sale by Non-owner:</b></p> <p>a. "Nemo dat quod non habet" - it means that no one can give what he has not got. If the Seller is not the owner of goods, then the Buyer also will not become the owner.</p> <p>b. Exceptions to the Rule:</p> <p>(i) Sale by Mercantile Agent, <b>[Proviso to section 27]</b></p> <p>(ii) Sale by one of the Joint Owners, <b>[Sec 28]</b></p> <p>(iii) Sale by a person in possession under a voidable contract, <b>[Sec 29]</b></p> <p>(iv) Sale by one who has already sold the goods but continues possession thereof, <b>[Sec 30) (1)]</b></p> <p>(v) Sale by Buyer obtaining possession before the property in goods has vested in him, <b>[Sec 30) (2)]</b></p>	

- (vi) Effect of Estoppel,
- (vii) Sale by an Unpaid Seller, and
- (viii) Sale by Official Assignee.

**7. Rules regarding Delivery of Goods: [Sec 31 – 43]**

- a. Effect of part delivery - Unless otherwise intended, part delivery = whole delivery,
- b. Buyer to apply for delivery, unless otherwise agreed,
- c. Place of delivery - Unless otherwise agreed, Place of sale/ place of agreement to sell/ place of manufacture,
- d. Time of delivery - fixed time or within reasonable time,
- e. Goods in possession of a third party - No delivery unless the third party acknowledges to the buyer that he holds the goods on his behalf,
- f. Time for tender of delivery - to be made at a reasonable hour,
- g. Expenses for delivery - unless otherwise agreed, borne by the seller,
- h. Delivery of wrong quantity - (i) lesser quantity - buyer may accept/ reject, (ii) excess quantity - accept or reject, (iii) Mixed with other goods - accept relevant goods and reject rest or reject the whole, [Note: this does not cover mixing of inferior variety of goods]
- i. Installment delivery - unless agreed, buyer is not bound to accept,
- j. Delivery to carrier - subject to terms of contract, deemed to be delivered to buyer,
- k. Deterioration during transit - liability shall fall on the buyer, and
- l. Buyer has the right to examine the goods.

**8. Acceptance of delivery:** Acceptance is deemed to take place when the Buyer -

- a. Intimates to the Seller that he had accepted the goods, or
- b. Does any act to the goods, which is inconsistent with the ownership of the Seller, or
- c. Retains the goods after the lapse of a reasonable time, without intimating to the Seller that he has rejected them.

**9. Liability of the Buyer for refusal of delivery of Goods [Sec. 44]:** The Buyer is liable to the Seller -

- (a) for any loss occasioned by his neglect or refusal to take delivery, and
- (b) for a reasonable charge for the care and custody of the Goods

**10. When liable?**

The liability of the Buyer arises when -

- (a) the Seller is ready and willing to deliver the Goods and requests the Buyer to take delivery, and
- (b) the Buyer does not within a reasonable time after such request, take delivery of the

Goods.

- 11. Right to repudiate:** However, where the neglect or refusal of buyer to take delivery amounts to a repudiation of the contract, the rights of the seller are not affected by Sec. 44.

## The Sale of Goods Act, 1930

### Unit 3: Transfer of Ownership and Delivery of Goods - Sections Recap

18. Goods must be ascertained.
19. Property passes when intended to pass.
20. Specific goods in a deliverable state.
21. Specific goods to be put into a deliverable state.
22. Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price.
23. Sale of unascertained goods and appropriation.  
Delivery to carrier.
24. Goods sent on approval or "on sale or return".
25. Reservation of right of disposal.
26. Risk prima facie passes with property.
27. Sale by person not the owner.
28. Sale by one of joint owners.
29. Sale by person in possession under voidable contract.
30. Seller or buyer in possession after sale.
31. Duties of seller and buyer.
32. Payment and delivery are concurrent conditions.
33. Delivery.
34. Effect of part delivery.
35. Buyer to apply for delivery.
36. Rules as to delivery.
37. Delivery of wrong quantity.
38. Instalment deliveries.
39. Delivery to carrier or wharfinger.
40. Risk where goods are delivered at distant place.
41. Buyer's right of examining the goods.
42. Acceptance.
43. Buyer not bound to return rejected goods.
44. Liability of buyer for neglecting or refusing delivery of goods.

## The Sale of Goods Act, 1930

### Unit 4: Unpaid Seller

- 1. Meaning [Sec 45]:** Seller is deemed to be an Unpaid Seller when –
  - (a) whole of the price has not been paid or tendered, and Seller had an immediate right of action for the price, or
  - (b) Dishonour of a Bill of Exchange or Negotiable Instrument.
- 2. Rights of Unpaid Seller [Sec 46]:**
  - (a) Rights against Goods:**
    - **Right of Lien [Sec 47] -** Exercise of Right: For recovery of price, when he is in possession of goods. Conditions –
      - (i) Goods are sold without any stipulation of credit, or
      - (ii) goods are sold on credit, but the term has expired, or
      - (iii) buyer becomes insolvent.**Right is lost when [Sec 49] -**
      - (i) Seller delivers the goods to Carrier for transmitting to the buyer without reserving the right of disposal of the goods,
      - (ii) Buyer or his agent lawfully obtains possession,
      - (iii) Seller has waived the right of lien, or
      - (iv) by estoppel,
      - (v) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods.
    - **Right of stoppage in transit [Sec 50]:** Exercise of Right: Unpaid Seller has parted with the goods and buyer has become insolvent.  
Conditions –
      - (i) Seller must be unpaid,
      - (ii) he must have parted with the goods,
      - (iii) goods are in transit,
      - (iv) buyer has become insolvent.

## Section 51 - Duration of Transit

(1) Goods are deemed to be in course of transit



When they are delivered to a carrier  
to transmit it to buyer.

Transit end → When buyer or agent  
takes delivery of them.

(2) What if buyer or his agent obtains delivery  
before their arrival at appointed destination??

Ans:- Transit end.

(3) What if carrier or other bailee acknowledges  
buyer or his agent about delivery and continues  
possession?

Ans:- Transit end even if further destination  
indicated by the buyer.

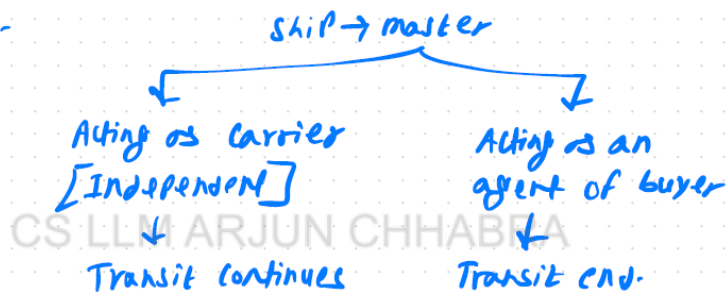


(4) What if goods are rejected by the buyer

ANS: Transit continues even if seller refuses to receive them back.

(5) What if goods delivered to a ship chartered by buyer?

ANS:-



(6) What if carrier or other bailee wrongfully refuses to deliver goods

ANS: Transit end.

Section 52 - How stoppage in transit effected

(1) ↓ (2)

(a) By taking actual possession of the goods  
or

(b) By Giving Notice of his claim to carrier or other bailee in whose possession goods are

→ to the person in actual possession  
or  
to his principal

(a) carrier or other bailee shall redeliver the goods

(b) Expenses of re-delivery shall be borne by seller.

- **Right of Re-sale [Sec 54]:** Conditions:

(i) Goods are of perishable nature (buyer need not be informed), or

(ii) he gives notice to the buyer about the re-sale and buyer does not make the payment within reasonable time.

(iii) Subsequent buyer acquires good title against original buyer notwithstanding that no notice of the re-sale has been given to the original buyer.

(iv) A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale: In such cases, the seller may resell the goods on buyer's default. It may be noted that in such cases, the seller is not required to give notice of resale. He is entitled to recover damages from the original buyer even if no notice of resale is given.

**(b) Rights against Buyer [Sec 55]:**

(i) Suit for Price,

(ii) Suit for damages for non-acceptance,

(iii) Repudiation of contract before due date, and

(iv) Suit for Interest.

**3. Effect of Sub-sale or Pledge by the Buyer [Sec 53]:** Unpaid Seller's right is not affected, except –

(i) when he has assented to the sale made by the Buyer, or

(ii) Document of Title to goods has been transferred to the Buyer and he in turn has transferred it to the subsequent Buyer.

**Question:**

Mr. Jayanth sells and consigns certain Goods to Mr. Srikanth for cash and sends the Railway Receipt to him. Mr. Srikanth becomes insolvent and while the Goods are in transit, he assigns the Railway Receipt to Mr. Naveen, who does not know that Mr. Srikanth is insolvent. Mr. Jayanth being an Unpaid Seller wants to exercise his rights. Advise whether Mr. Jayanth can exercise the right of stoppage of Goods in transit.

Would your answer be different if Mr. Naveen was aware of Mr. Srikanth 's insolvency before the assignment of the Railway Receipt in favour of Mr. Naveen?

**Answer:**

1. Mr. Jayanth cannot exercise the right of stoppage of Goods in transit, because the Goods are being taken by Mr. Naveen in good faith and for consideration.
2. Yes. Mr. Jayanth in this case can exercise his right of stoppage of goods in transit, as Mr. Naveen has not acted in good faith.

**4. Rights of Parties in case of Breach of Contract:**

**(a) Buyer's Right against the Seller [Sec 56]:**

(i) Suit for non-delivery,

(ii) Suit for specific performance, **[Sec 58]**

(iii) Suit for damages for breach of warranty, and

(iv) Suit for recovery of Price.

**(b) Seller's Right against the Buyer [Sec 57]:**

(i) Suit for Price, and

(ii) Damages for non-acceptance.

**5. Auction Sale [Sec 64]:**

- (a) It is a mode of selling property by inviting bids publicly and the property is sold to the highest bidder.
- (b) An Auctioneer is only an Agent of the Seller.
- (c) Sale is complete when the Auctioneer announces its completion by the fall of hammer.
- (d) Right to bid may be reserved expressly by or on behalf of the Seller.
- (e) If the Seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the Buyer.
- (f) **Example:** P sold a car by auction. It was knocked down to Q who was only allowed to take it away on giving a cheque for the price and signing an agreement that ownership should not pass until the cheque was cleared. In the meanwhile till the cheque was cleared, Q sold the car to R. It was held that the property was passed on the fall of the hammer and therefore R had a good title to the car. Both sale and sub sale are valid in favour of Q and R respectively.

Sec 64A Treatment of Tax differences

Increase  
↓

The amount of such tax or increase of tax shall be added to the contract price by the seller and he is entitled to sue for and recover the same

Decrease  
↓

The amount of deducted tax or no tax shall be deducted from the contract price by the buyer and he shall not be liable to pay or sue for such deduction.

## The Sale of Goods Act, 1930

### Unit 4: Unpaid Seller - Sections Recap

45. "Unpaid seller" defined.
46. Unpaid seller's rights.
47. Seller's lien.
48. Part delivery.
49. Termination of lien.
50. Right of stoppage in transit.
51. Duration of transit.
52. How stoppage in transit is effected.
53. Effect of sub-sale or pledge by buyer.
54. Sale not generally rescinded by lien or stoppage in transit.
55. Suit for price.
56. Damages for non-acceptance.
57. Damages for non-delivery.
58. Specific performance.
59. Remedy for breach of warranty.
60. Repudiation of contract before due date.
61. Interest by way of damages and special damages.
63. Reasonable time a question of fact.
64. Auction sale.
- 64A. In contracts of sale, amount of increased or decreased taxes to be added or deducted.

## The Indian Partnership Act, 1932

### Unit 1: General Nature of Partnership

1. Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. **[Sec 4]**
2. Persons competent to be Partners - (a) Persons competent to enter into a Valid Contract can become Partners, (b) A Minor cannot be a Partner, (c) Company can be a Partner, (d) Partnership between Indian Nationals and Alien Friends is possible, and (e) Two Partnership Firms cannot enter into Partnership.
3. Relation of Partnership arises from an agreement and not from status.
4. Essentials of Partnership
  - (a) Association of persons
  - (b) Agreement: Partnership originates from an Agreement.
  - (c) Carrying on business: Business includes trade, occupation and profession. Association created for charitable, religious and social purposes are not Partnership.
  - (d) Sharing the profits of the business: Sharing cannot be conclusive proof. It is only an evidence.
  - (e) Mutual agency among Partners - Test of Partnership. Capacity of a Partner to bind other Partners by his acts done in Firm's name and be bound by the acts of the other Partners.
5. Cases where the Partnership Relation does not exist:
  1. Joint Owners of some property sharing profit or gross returns arising from the property **[Sec 6]**
  2. Person sharing the profits but not having mutual agency. **[Sec 6]**  
For example:
    - (a) a lender of the firm (who has lent money) who receives a share of profits;
    - (b) a widow or child of a deceased partner who receives a share of profits(annuity);
    - (c) a servant or an agent who receives a share of profits as part of his remuneration; and
    - (d) a person who receives a share of profits in consideration of sale of business or goodwill of the business.
  3. Members of a Hindu Undivided Family carrying on family business. **[Sec 5]**
  4. Burmese Buddhist husband and wife carrying on a business. **[Sec 5]**

### Types of Partners

Actual	He takes an active part in the conduct of the business.
Sleeping	He does not take an active part in the conduct of the business.
Nominal Partner	He lends his name to the firm without having any real interest in the firm. He neither contributes to the capital nor shares the profits or takes part in the conduct of the business of the firm.
Partner in Profits Only	He shares the profits only and not the losses.
Incoming partners	A person who is admitted as a partner into an already existing firm with the consent of all the existing partners is called as "incoming partner". Such a partner is no liable for any act of the firm done before his admission as a partner.

Outgoing partner	A partner who leaves a firm in which the rest of the partners continue to carry on business is called a retiring or outgoing partner. Such a partner remains liable to third parties for all acts of the firm until public notice is given of his retirement.
Partner by Holding Out [Sec 28]	(1) Anyone who by <ul style="list-style-type: none"> <li>• words spoken or</li> <li>• written or</li> <li>• by conduct</li> <li>• represent himself, or</li> <li>• knowingly permits himself</li> <li>• to be represented, to be a partner in a firm,</li> <li>• is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm.</li> </ul>
Arjun Chhabra (CS LLB LLM) Law Maven	(2) Where after partner's death <ul style="list-style-type: none"> <li>• the business continued in the old firm-name,</li> <li>• the continued use of that name or of the deceased partner's name</li> <li>• as a part thereof</li> <li>• shall not of itself make his legal representative or his estate liable</li> <li>• for any act of the firm done after his death.</li> </ul>
Arjun Chhabra (CS LLB LLM) Law Maven	The rule given in Section 28 is also applicable to a former partner who has retired from the firm without giving proper public notice of his retirement. In such cases a person who, even subsequent to the retirement, give credit to the firm on the belief that he was a partner, will be entitled to hold him liable.
<b>Section 35 LIABILITY OF ESTATE OF DECEASED PARTNER:</b>	
Where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.	
<b>Types of Partnership</b>	
Partnership at Will [Sec 7]	<b>Meaning:</b> When there is no provision in partnership agreement for duration of the partnership, the partnership is called 'Partnership at Will!  <b>Dissolution:</b> A partnership at will may be dissolved by any partner by giving a notice in writing to all other partners of his intention to dissolve the firm.
Particular Partnership [Sec 8]	<b>Meaning:</b> When a partnership is formed for a specific venture, the partnership is called a 'Particular Partnership'.  <b>Dissolution:</b> Particular partnership comes to an end on the completion of the venture.
Partnership for a fixed period	Where a provision is made by a contract for the duration of the partnership, the partnership is called 'partnership for a fixed period'.  It is a partnership created for a particular period of time. Such a partnership comes to an end on the expiry of the fixed period.

## The Indian Partnership Act, 1932

### Unit 1: General Nature of Partnership – Section Recap

- 4 Definition of "Partnership", "Partner"
- 5 Partnership not created by status.
- 6 Mode of determining existence of partnership.
- 7 Partnership-At-Will.
- 8 Particular Partnership.
- 28 Holding out

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## The Indian Partnership Act, 1932

### Unit 2: Relations of Partners

#### Reconstitution of a Firm

<p style="text-align: center;"><b>Modes of Reconstitution</b></p> <p style="text-align: center;">Arjun Chhabra (CS LLB LLM) Law Maven</p>	<p>The various ways in which a firm is reconstituted are:</p> <ol style="list-style-type: none"> <li>1. Introduction of a Partner</li> <li>2. Retirement of a Partner</li> <li>3. Expulsion of a Partner</li> <li>4. Insolvency of a Partner</li> <li>5. Death of a Partner</li> <li>6. Transfer of a Partner's interest</li> </ol>
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Point of discussion	Incoming Partner [Sec 31]	Retiring partner [Sec 32]	Insolvency [Sec 34]	Death [Sec 35]
Liability of Partner for Firm's Acts done before	Not liable unless he assumes by tripartite agreement	Liable unless he is discharged by tripartite agreement	Liable	Liable
For Firm's Acts done after	Liable	He continues to be liable to third party (other than one who deals with the firm without knowing that he was a partner) until public notice of his retirement is given either by himself or any of the other partners. This liability of a retiring partner is based on the principle of holding out.	Not liable after date of order	Not liable after date of death
Is Public Notice required?	No	Yes	No	No
Is Firm dissolved?	No	No	Unless otherwise agreed, Yes	Unless otherwise agreed, Yes



<p><b>Expulsion of a Partner [Sec 33]</b></p> <p>Arjun Chhabra (CS LLB LLM) Law Maven</p>	<p>A partner may be expelled if the following four conditions are satisfied:</p> <p>(a) The <b>power of expulsion</b> must have existed in the contract between Partners.</p> <p>(b) Such power has been exercised by a <b>majority of the Partners</b>.</p> <p>(c) Such power has been exercised in <b>good faith</b>.</p> <ul style="list-style-type: none"> <li>• Such expulsion is done to <b>protect the interests</b> of Partnership and of the Firm not used as vengeance against a Partner.</li> <li>• The Partner who is to be expelled had been <b>served with a Notice</b></li> <li>• Such Partner has given an <b>opportunity of being heard</b>.</li> </ul> <p><b>Note:</b> The rights and liabilities of an expelled partner are the same as those of a retired partner.</p>
<p><b>Transfer of Interest [Sec 29]</b></p>	<p>A partner may transfer his interest in the firm by sale, mortgage or charge fully or partially. The rights of such a transferee are as follows:</p>
<p>(a) During the continuance of the partnership</p>	<p>He is entitled to receive:</p> <p>(a) the share of the profits of the transferring partner and</p> <p>(b) the account of profits agreed to by the partners.</p> <p>He is not entitled:</p> <p>(a) to interfere with the conduct of the business</p> <p>(b) to require accounts;</p> <p>(c) to inspect the books of the firm.</p>
<p>(b) On the dissolution of firm or on the retirement of the transferring partner</p>	<p>He is entitled to receive:</p> <p>(a) the share of the assets of the transferring partner and</p> <p>(b) an account as from the date of the dissolution for the purpose of ascertaining the share.</p>
<p><b>Revocation of Continuing Guarantee from Date of Change [Sec 38]</b></p>	<p>Unless otherwise agreed by the partners, a continuing guarantee (i.e., a guarantee which extends to a series of transactions) given to a firm or to a third party in respect of the transaction of a firm is revoked as to the future transactions from the date of any change in the constitution of the firm.</p>
<p><b>Rights and Duties of Partners [Sec 17]</b></p>	<p>The rights and duties of the partners of the reconstituted firm shall be the same as they were before the change in the firm. Section 17 provides for the following three types of changes in the firm:</p> <p>(a) Where there is a change in the Constitution of the firm.</p> <p>(b) Where the firm continues after the expiry of the term of the firm.</p> <p>(c) Where the firm carries on an additional\undertaking.</p>

Authority of a Partner	
Partner's Authority	The authority of a partner means the capacity of a partner to bind the firm by his act.
Mode of Authority	Authority of a partner may be express or implied.
Express Authority	The authority conferred on a partner by mutual agreement is called 'express authority'.
Implied Authority	The authority conferred on a partner by the provisions of Section 19 of the Indian Partnership Act is called 'implied authority'!
Conditions for Implied Authority	<p>Reading together <b>Sections 19(1) and 22</b>. Implied authority covers those acts of partners which fulfill the following three conditions:</p> <ol style="list-style-type: none"> <li>1. The act must relate to the normal business of the firm;</li> <li>2. The act must have been done in the usual way of carrying on the business of the firm;</li> </ol> <p>(It may be noted that the question as to what is usual and what is unusual in a business depends on the nature of business and the usage of trade, e.g. taking loan is considered as usual activity in case of a trading concern but unusual activity in case of a professional concern of solicitors.)</p> <ol style="list-style-type: none"> <li>3. The act must be done in the firm's name or in any other manner expressing or implying an intention to bind the firm.</li> </ol>
Acts outside implied authority of partner <b>Sections 19(2)</b>	<p>In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to do the following eight acts namely—</p> <ol style="list-style-type: none"> <li>1. To submit a dispute to arbitration relating to the business of the firm;</li> <li>2. To open a Bank Account on behalf of the firm in partner's own name;</li> <li>3. To compromise or relinquish any claim or portion of the claim by the firm;</li> <li>4. To withdraw a suit or proceedings filed on behalf of the firm;</li> <li>5. To admit any liability in a suit or proceedings against the firm;</li> <li>6. To acquire immovable property on behalf of the firm;</li> <li>7. To transfer immovable property belonging to the firm; and</li> <li>8. To enter into partnership on behalf of the firm.</li> </ol> <p><b>Note:</b> A partner can do any of the above-mentioned acts only if he is expressly authorised to do that act or the usage or custom of the trade permits him to do that act.</p>
Restrictions Imposed by Mutual Agreement <b>[Sections 20]</b>	All partners of a firm by mutual agreement may extend or restrict the scope of implied authority of any partner. But a third party is not bound by any such restriction unless it has the knowledge of such restriction. In other words, the firm is liable to third party if the third party has no knowledge of the restrictions.

<b>Partner's Authority in an Emergency [Sections 21]</b>	A 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.
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<b>Position of Minor in a firm [Section 30]</b>		
<b>How can be admitted?</b>	With the consent of all the partners for the time being, a minor may be admitted to the benefits of partnership.	
<b>Rights and Liabilities of a Minor Partner before attaining Majority</b>	<b>Rights</b>	<b>Liabilities</b>
	1. He has a right to share the profits and property of the firm in accordance with the agreement.	1. He is liable only to the extent of his share in the profits and the property of the firm. He is not personally liable to third parties.
Arjun Chhabra (CS LLB LLM) Law Maven	2. He has a right to have access to, and inspect and copy, any of the accounts of the firm. But he does not enjoy such rights in respect of books other than account books.	2. He cannot be declared insolvent on declaration of firm's insolvency, his share vests in the Official Receiver or Official Assignee.
	3. He has a right to file a suit for his share of profits or the property of the firm when he is not given his due share of profits. However, he can exercise this right only when he decides to sever his connections with the firm.	
<b>Minor's Duty to give Public Notice</b>	Within 6 months of date of his attaining majority or date of his obtaining knowledge that he had been admitted to the benefits of firm, whichever is later, the minor partner has to exercise his option whether or not to become a partner by giving a public notice within the said 6 months.	
<b>Effect of Minor's failure to give public notice</b>	If he fails to give a public notice, he is deemed to have become a partner in the firm on the expiry of the said six months.	
	<b>When he elects to become a partner</b>	<b>When he elects not to become a partner</b>
	1. He becomes personally liable to third parties for all acts of the firm since he was admitted to the benefits of partnership.	1. His rights and liabilities continue to be those of minor up to the date of giving public notice.
	2. His share in the property and profits of the firm remains the same as he was entitled as a minor.	2. His share is not liable for any acts of the firm done after the date of the public notice.

		3. He is entitled to sue the partners for his share of the property and profits in the firm.
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<b>Liability to third parties [Sec. 25-27]</b>	
<b>LIABILITY OF A PARTNER FOR ACTS OF THE FIRM [Section 25]</b>	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.
<b>LIABILITY OF THE FIRM FOR WRONGFUL ACTS OF A PARTNER [Section 26]</b>	Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.
<b>LIABILITY OF FIRM FOR MISAPPLICATION BY PARTNERS [Section 27]</b>	Where - (a) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or  (b) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

<b>Rights of outgoing partner [Sec 36-37]</b>	
<b>Right to carry on competing business [Section 36]</b>	<b>Right to share subsequent profits [Section 37]</b>
Every outgoing partner has a right to carry on a competing business and to advertise such business. But, he cannot (i) use the firm's name, (ii) represent the firm, or (iii) solicit the firm's custom.	Every outgoing partner or the estate of any partner who ceased to be a partner has the right to claim either a share in the subsequent profits of the firm or interest @ 6% p.a. on his share in the firm's property till the accounts are finally settled.
He may sometimes agree with his Partners that on his cessation, he will not carry on a business similar to that of Firm within – (a) a specified period or (b) specified local limits and,  notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, such agreement shall be valid if the restrictions imposed are reasonable.	Even the representatives of a deceased Partner can claim share in subsequent profits.

<b>Other Small Topics</b>	
<p>Notice to Partner operates as Notice to Firm <b>[Section 24]</b></p>	<p>Any notice to a partner operates as a notice to the firm if the following three conditions are fulfilled:</p> <ol style="list-style-type: none"> <li>1. Such notice must relate to the affairs of the firm;</li> <li>2. Such notice must be given to a working partner and not to a sleeping partner.</li> <li>3. There must not be any fraud committed by the partners and the third party against the firm.</li> </ol>
<p>Personal profits earned by partners <b>[Section 16]</b> Arjun Chhabra (CS LLB LLM) Law Maven</p>	<p>Subject to the contract between the partners, -</p> <p>(a) if a partner derives any profits for himself from</p> <ul style="list-style-type: none"> <li>➤ any transaction of the firm, or</li> <li>➤ from the use of the property or</li> <li>➤ business connection of the firm or the firm-name,</li> </ul> <p>he shall account for that profit and pay it to the firm;</p> <p>(b) if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.</p>
<p>Goodwill <b>[Section 14]</b> Arjun Chhabra (CS LLB LLM) Law Maven</p>	<p>The term "Goodwill" has not been defined under the Indian Partnership Act, 1932. Section 14 of the Act lays down that goodwill of a business is to be regarded as a property of the firm.</p> <p>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 undertaking belonging to the same class of business.</p>
<p>General Duties of Partners <b>[Section 9]</b></p>	<p>Partners are bound</p> <ul style="list-style-type: none"> <li>• to carry on the business of the firm to greatest common advantage,</li> <li>• to be just and faithful to each other, and</li> <li>• to render true accounts and full information of all things affecting the firm to any partner, his heir or legal representative.</li> </ul>
<p>Duty To Indemnify for Loss Caused by Fraud <b>[Section 10]</b></p>	<p>Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.</p>
<p>Determination Of Rights And Duties Of Partners By Contract Between The Partners <b>[Section 11]</b></p>	<p>(1) Subject to the provisions of this Act, the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be express or may be implied by a course of dealing. Such contract may be varied by consent of all the partners, and such consent may be express or may be implied by a course of dealing.</p>

<p style="text-align: center;"><b>Mutual Right And Liabilities</b> <b>[Section 13]</b></p>	<p>Subject to contract between the partners -</p> <ul style="list-style-type: none"> <li>(a) a partner is not entitled to receive remuneration for taking part in the conduct of the business;</li> <li>(b) the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm;</li> <li>(c) where a partner is entitled to interest on the capital subscribed by him, such interest shall be payable only out of profits;</li> <li>(d) a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six per cent. per annum;</li> <li>(e) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him             <ul style="list-style-type: none"> <li>(i) in the ordinary and proper conduct of the business; and</li> <li>(ii) in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances; and</li> </ul> </li> <li>(f) a partner shall indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm.</li> </ul>
<p style="text-align: center;"><b>The Conduct Of The Business</b> <b>[Section 12]</b></p> <p style="text-align: center;">Arjun Chhabra (CS LLB LLM) Law Maven</p>	<p>Subject to contract between the partners -</p> <ul style="list-style-type: none"> <li>(a) every partner has a right to take part in the conduct of the business;</li> <li>(b) every partner is bound to attend diligently to his duties in the conduct of the business;</li> <li>(c) any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners;</li> <li>(d) every partner has a right to have access to and to inspect and copy any of the books of the firm;</li> <li>(e) in the event of the death of a partner, his heirs or legal representatives or their duly authorised agents shall have a right of access to and to inspect and copy any of the books of the firm.</li> </ul>

<p>The Property Of The Firm</p> <p><b>[Section 14]</b></p>	<p>includes also the goodwill of the business.</p>
<p>Application Of The Property Of The Firm</p> <p><b>[Section 15]</b></p>	<p>Subject to the contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business.</p>
<p>Partner To Be Agent Of The Firm</p> <p><b>[Section 18]</b></p>	<p>Subject to the provisions of this Act, a partner is the agent of the firm for the purposes of the business of the firm.</p>

<b>The Indian Partnership Act, 1932</b>
<b>Unit 2: Relations of Partners – Sections Recap</b>
<p>9 General duties of partners.</p> <p>10 Duty to indemnify for loss caused by fraud.</p> <p>11 Determination of rights and duties of partners by contract.</p> <p>12 The conduct of the business.</p> <p>13 Mutual right and liabilities.</p> <p>14 The property of the firm.</p> <p>15 Application of the property of the firm.</p> <p>16 Personal profits earned by partners.</p> <p>17 Rights and duties of partners after a change in the firm.</p> <p>18 Partner to be agent of the firm.</p> <p>19 Implied authority of partner as agent of the firm.</p> <p>20 Extension and restriction of partner's implied authority.</p> <p>21 Partner's authority in an emergency.</p> <p>22 Mode of doing act to bind firm.</p> <p>23 Effect of admission by a partner.</p> <p>24 Effect of notice to acting partner.</p> <p>25 Liability of a partner for acts of the firm.</p> <p>26 Liability of the firm for wrongful acts of a partner.</p> <p>27 Liability of firm for misapplication by partners.</p> <p>28 Holding out.</p> <p>29 Rights of transferee of a partner's interest.</p> <p>30 Minors admitted to the benefits of partnership.</p> <p>31 Introduction of a partner.</p> <p>32 Retirement of a partner.</p> <p>33 Expulsion of a partner.</p> <p>34 Insolvency of a partner.</p> <p>35 Liability of estate of deceased partner.</p>

- 36 Right of outgoing partner to carry on competing business.
- 37 Right of outgoing partner in certain cases to share subsequent profits.
- 38 Revocation of continuing guarantee by change in firm.

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## The Indian Partnership Act, 1932

### Unit 3: Registration and Dissolution of a Firm

<b>Registration of a firm</b>	
<b>Optional [Sec 69]</b>	It is not compulsory.
<b>Time of Registration [Sec 58]</b>	It can be effected at the time of its formation or at any time thereafter.
<b>Effective Date [Sec 59]</b>	Registration becomes effective from the date of filing of the duly signed and verified statement along with the prescribed form and not from the date of issue of certificate of registration since the act of the Registrar in recording an entry of the statement in the Register of Firms is only a clerical act.
<b>Effects of Non-registration of a Firm [Sec 69]</b>	<ol style="list-style-type: none"> <li>1. A partner cannot file a suit against the firm or the other partners to enforce a right arising from contract</li> <li>2. The firm cannot file a suit against third party to enforce any right arising from contract.</li> <li>3. A firm has no right to claim set off in excess of Rs. 100.</li> </ol>
<b>Rights not affected by Non-registration</b>  Arjun Chhabra (CS LLB LLM) Law Maven	<ol style="list-style-type: none"> <li>1. Right of a third party to file a suit against the unregistered firm or partners thereof.</li> <li>2. Right of a partner to sue               <ol style="list-style-type: none"> <li>(a) for the dissolution of the firm</li> <li>(b) for the accounts of a dissolved firm, or</li> <li>(c) for claiming share of the assets of a dissolved firm</li> </ol> </li> <li>3. Power of an Official Assignee or Receiver or Court to realise the property of an insolvent partner.</li> <li>4. Right to file a suit or claim of set-off if the value of suit does not exceed Rs. 100.</li> <li>5. The right to suit and proceeding instituted by legal representatives or heirs of the deceased partner of a firm for accounts of the firm or to realise the property of the firm.</li> </ol>

<b>Dissolution of Firm</b>		
<b>Meaning of Dissolution</b>	The term dissolution' stands for discontinuation. Under the Indian Partnership Act, 1932, the dissolution may be either of Partnership or of a firm.	
<b>Meaning of Dissolution of Partnership</b>	Dissolution of partnership refers to the change in the existing relations of the partners. The firm continues its business after being reconstituted.	
<b>Modes of Dissolution of Partnership</b>	<ol style="list-style-type: none"> <li>1. Admission of a new partner</li> <li>2. Retirement of a partner</li> <li>3. Death of a partner</li> <li>4. Change in profit sharing ratio</li> </ol>	
<b>Meaning of Dissolution of Firm [Sec 39]</b>	It means dissolution of partnership between all the partners of a firm.	
<b>Modes of Dissolution of Firm</b>	<b>Without Court's Order</b>	<b>By Court's order</b>
	<ol style="list-style-type: none"> <li>1. By Mutual Agreement <b>[Sec 40]</b></li> <li>2. Compulsory Dissolution <b>[Sec 41]</b> <ol style="list-style-type: none"> <li>(a) If all or all but one partner are declared insolvent</li> <li>(b) If some event takes place which makes it unlawful for firm's business to be carried on</li> </ol> </li> <li>3. On happening of certain contingencies - Unless otherwise agreed by partners. <b>[Sec 42]</b> <ol style="list-style-type: none"> <li>(a) On Expiry of fixed term</li> <li>(b) On Completion of venture</li> <li>(c) On Death of a partner</li> <li>(d) On Insolvency of a partner</li> </ol> </li> <li>4. By Notice in writing to all in case of partnership at will <b>[Sec 43]</b></li> </ol>	<p style="text-align: center;">On the following grounds: <b>[Sec 44]</b></p> <ol style="list-style-type: none"> <li>1. Insanity of active partner on petition by any other partner or next friend of insane partner</li> <li>2. Permanent incapacity of Active Partner on a suit by any other partner</li> <li>3. Misconduct on a suit by any other partner</li> <li>4. Wilfully or Persistent Breach of Agreement on a suit by any other partner</li> <li>5. Transfer of whole Interest to a third party</li> <li>6. Perpetual Losses</li> <li>7. Any other just and equitable ground</li> </ol>

Section 45 - Liability for acts of partners done after dissolution.

Subsection 1

Notwithstanding the dissolution of a firm, the partners continue to be liable to third parties for any act done by any of them after the dissolution of the firm, until the public notice is given of the dissolution.

Proviso :- The estate of  
→ partner who dies [sec 35]  
or  
→ partner adjudicated as [sec 34]  
insolvent  
or  
→ partner who not having been known to the person (3rd person) dealing

with the firm to be a partner,  
retires from the firm [sec 32]

is not liable under this section for acts done after the date he ceases to be a partner.

Section 46 : Right of partners to have business  
wound up after dissolution.

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- On the dissolution of a firm
- every partner or his representative
- entitled,
- as against all the other partners or their representatives
- to have property of the firm applied
- in payment of debts and liabilities of the firm

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- and to have the surplus distributed among the partners or their representative.

Section 47: Continuing authority of partners for  
purposes of winding up.

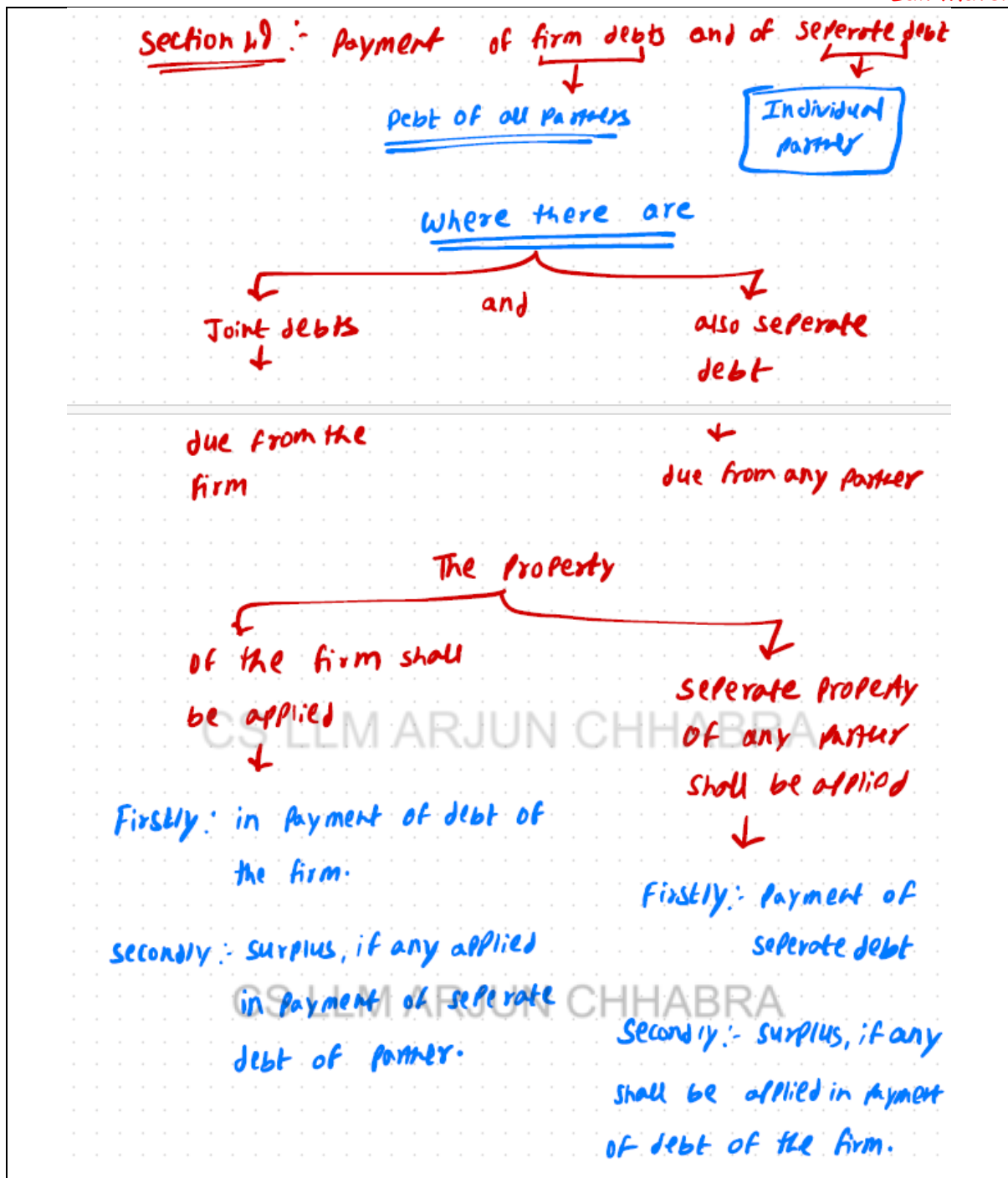
- After a dissolution of a firm
- the authority of each partner
- to bind the firm
- shall continue notwithstanding the dissolution
- for the purpose of winding up of the firm.

Settlement of partnership accounts (Section 48)

In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:

- (i) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.
- (ii) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:
  - (a) in paying the debts of the firm to third parties;
  - (b) in paying to each partner rateably what is due to him from capital;
  - (c) in paying to each partner rateably what is due to him on account of capital; and
  - (d) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

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The Indian Partnership Act, 1932
Unit 3: Registration and Dissolution of a Firm – Sections Recap
<p>39 Dissolution of a firm.</p> <p>40 Dissolution by agreement.</p> <p>41 Compulsory dissolution.</p> <p>42 Dissolution on the happening of certain contingencies.</p> <p>43 Dissolution by notice of partnership at will.</p>

44 Dissolution by the Court.

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46 Right of partners to have business wound up after dissolution.

47 Continuing authority of partners for purposes of winding up.

48 Mode of settlement of accounts between partners.

49 Payment of firm's debts and of separate debts.

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## The Companies Act, 2013

### Applicability

Whether companies Act, 2013 is applicable in the following entities.?

1. HDFC bank limited (Incorporated under the Companies Act, 1956)
2. HDFC life insurance company limited (Incorporated under the Companies Act, 1956)
3. National Thermal Power Corporation Limited (Electricity Company incorporated under the Companies Act, 1956)
4. Reliance Industries Limited incorporated in year 1973
5. Tata Steel Limited incorporated in year 1907
6. Infosys Limited incorporated in year 1981

**Answer:**

Applicability of the Companies Act, 2013:

1. The provisions of the Act shall apply to-
  - Companies incorporated under this Act or under any previous company law.
  - Insurance companies (except where the provisions of the said Act are inconsistent with the provisions of the Insurance Act, 1938 or the IRDA Act, 1999)
  - Banking companies (except where the provisions of the said Act are inconsistent with the provisions of the Banking Regulation Act, 1949)
  - Companies engaged in the generation or supply of electricity (except where the provisions of the above Act are inconsistent with the provisions of the Electricity Act, 2003)
  - Any other company governed by any special Act for the time being in force.
  - Such body corporate which are incorporated by any Act for time being in force, and as the Central Government may by notification specify in this behalf.
2. As per section 2 (20) Company means a company incorporated under this Act (The Companies Act, 2013) or under any previous company law.
3. In the light of the above provision and facts of the instant case, Companies Act, 2013 is applicable in
  1. HDFC bank limited (Incorporated under the Companies Act, 1956)
  2. HDFC life insurance company limited (Incorporated under the Companies Act, 1956)
  3. National Thermal Power Corporation Limited (Electricity Company incorporated under the Companies Act, 1956)



except where the provisions of the Companies Act, 2013 are inconsistent with the provisions of the Insurance Act, Banking Regulation Act & Electricity Act.

4. Further, Reliance Industries Limited incorporated in year 1973, Tata Steel Limited incorporated in year 1907, Infosys Limited incorporated in year 1981. Such companies are incorporated under Companies Act, 1956 (previous company law) are also included in the definition of company as given above in section 2 (20) for being treated as a Company. Therefore, Companies Act, 2013 is applicable to such companies as well.
5. In simple words, Companies Act, 2013 is applicable to all the companies asked in the instant case but the only difference is in the case of insurance, banking & electricity company, the said Act is applicable except in so far the provisions of the said Act is inconsistent with the provisions of the Insurance Act, Banking Regulation Act & Electricity Act.

### Features of a company

1. Artificial Person,
2. Separate Legal Entity,
3. Perpetual Succession,
4. Separate Property,
5. Common Seal (if any),
6. Capacity to Sue,
7. Transferability of Shares,
8. Management,
9. Limited Liability

### Corporate Veil Theory

**Principle:** Company is distinctly separate from its members. Where there is a dishonest and fraudulent intention to utilise the facility of incorporation the law can remove the Corporate Veil and identify the persons behind the Company Fraud, hold such persons personally liable.

### Lifting of Corporate Veil

1. For determination of the character of the company [Daimler Co. Ltd. v. Continental Tyre and Rubber Co. Ltd]
2. For prevention of fraud or improper conduct [Gilford Motor Co. vs. Horne]
3. For the protection of revenue [Dinshaw Maneckjee Petit]
4. When company is formed to act as an agent of its members [Merchandise Transport Limited vs. British Transport Commission (1982)]
5. When company is formed to avoid the welfare laws [Workmen of Associated Rubber Industry Ltd., v. Associated Rubber Industry Ltd]

<b>Types of Companies</b>
<b>Based on number of members</b>
<p><b>Private Company: [Sec. 2(68)]</b></p> <p>(a) Minimum Paid-Up Capital – as may be prescribed</p> <p>(b) Restriction in AOA: Right to transfer its shares / number of members to 200 (excluding present and past employee members)</p> <p>(c) Prohibition in AOA: Invitation to public for subscription of Securities of the Company</p>
<p><b>Public Company: [Sec. 2(71)]</b></p> <p>(a) Not a private company (Not subject to restrictions / prohibitions)</p> <p>(b) Minimum Paid-Up Capital – as may be prescribed</p> <p>(c) It includes a Private Company which is a subsidiary of a Public Company.</p>
<p><b>One Person Company [Sec. 2(62)]</b></p> <p>One Person Company means a company which has only one person as a member.</p> <p><u>Essentials:</u></p> <p>(a) Formed by one person subscribing his name to MOA</p> <p>(b) One person shall appoint a nominee</p> <p>(c) Qualification for Member / Nominee: Natural Person, Indian Citizen, whether resident in India or otherwise, Not a Minor.</p> <p>(d) One Person = One OPC / Nominee in 1 OPC</p> <p>(e) Nominee becomes member, pursuant to death or incapacity, intimation to ROC in INC -4, and also compliance with the above limit shall be made within 180 days.</p> <p>(f) Company cannot be incorporated or converted into a company under section 8 of the Act.</p> <p>(g) Company cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporate.</p>
<b>Based on Liability</b>
<p><b>Limited by Share</b> - Liable only for the amount unpaid on Shares   Unpaid amount may be called at the time of winding up or going concern. <b>[Sec. 2(22)]</b></p> <p><b>Limited by Guarantee</b> - Liability only for amount undertaken in MOA   Such guaranteed amount can be called by liquidator at the time of winding up only. <b>[Sec. 2(21)]</b></p> <p><b>Unlimited Company</b> - Liability extends to the entire debt of the Company, in the ratio of their interest in the Company.   Such amount may be called by liquidator at the time of winding up only. Creditors cannot claim directly from members. <b>[Sec. 2(92)]</b></p>
<b>Based on Control</b>
<p><b>Holding Company:</b> Deemed to be the Holding Company if other Company is its Subsidiary <b>[Sec. 2(46)]</b></p> <p><b>Subsidiary Company [Sec. 2(87)]:</b> Deemed to be subsidiary (S) of Holding (H) –</p> <p>(a) H Controls the composition of Board of Directors of S,</p>

(b) H exercises or controls more than half of the Total Voting Power (together with all its subsidiary),

(c) Subsidiary's Subsidiary (SS) (deemed to be subsidiary of Holding)

**Associate Company:** Company in which, other Company has significant influence i.e. control of at least 20% of Total Voting Power or of business decision under an agreement. [Sec. 2(6)]

### Based on Listing

**Listed Company:** Company, Any of its securities listed in a Recognized Stock Exchange. [Sec. 2(52)]

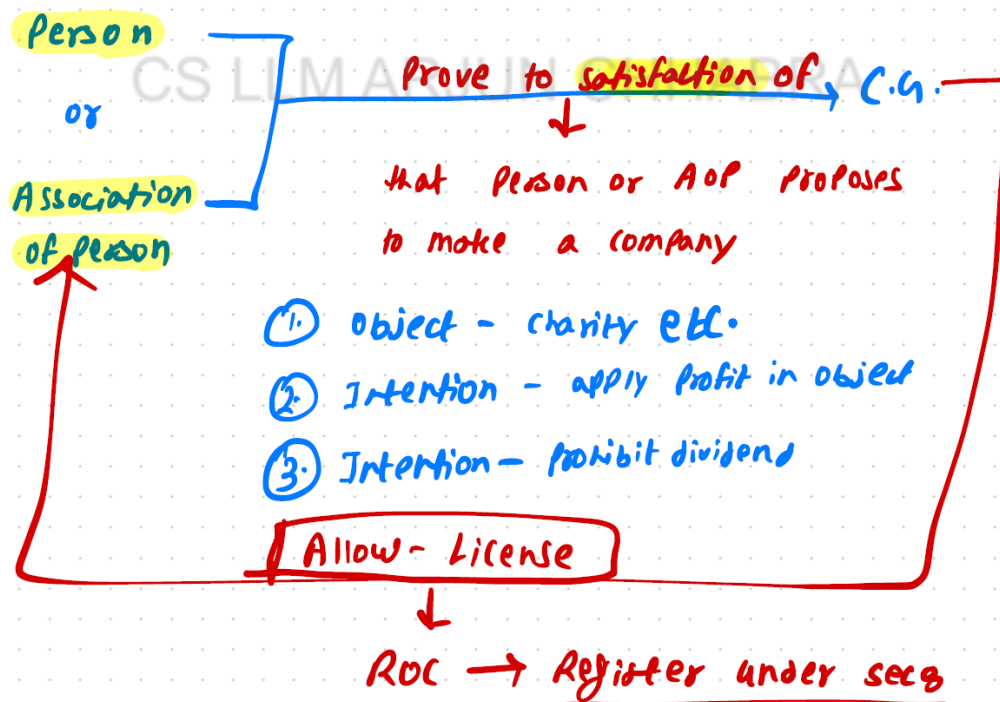
**Unlisted Company:** Company which is not listed is unlisted company

### Other companies

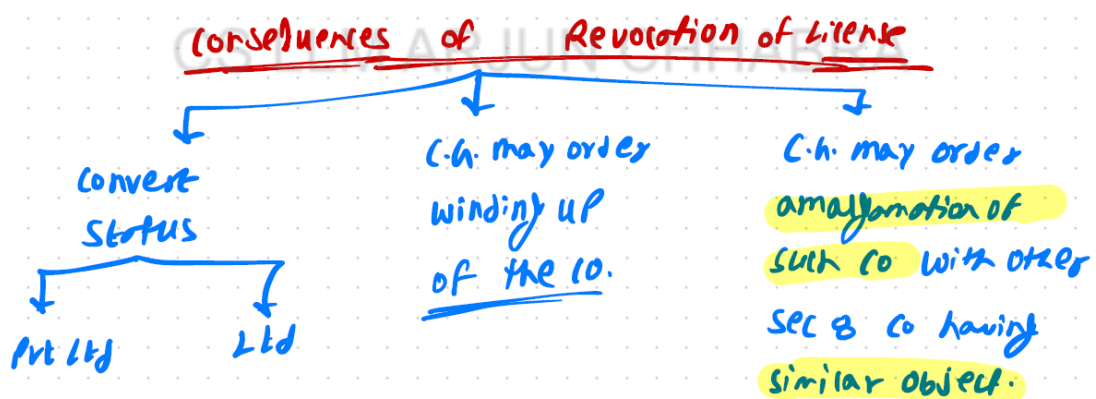
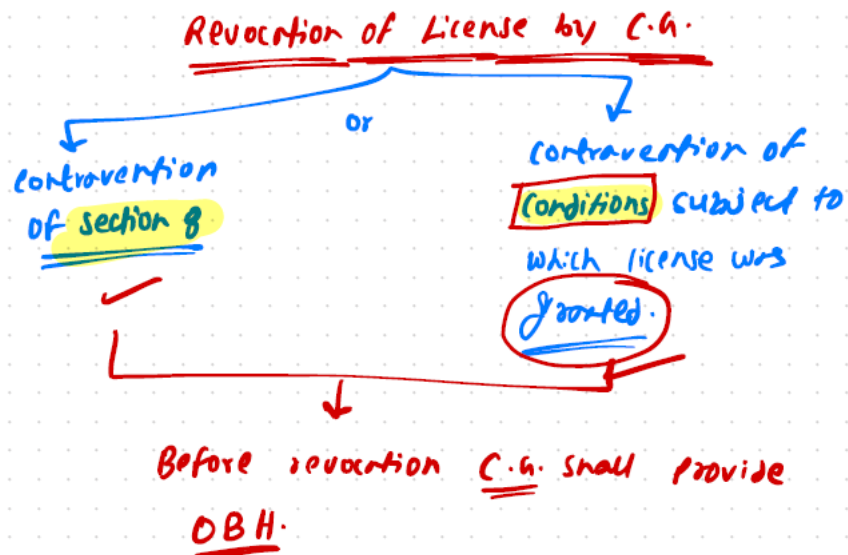
**Foreign Company:** Company or body corporate incorporated outside India having place of business in India has having business activity in India. [Sec. 2(42)]

**Government Company:** Any Company in which not less than 51% of the paid-up share capital held by CG or SG or partly by CG and partly by SG. It includes Subsidiary of Government Company. [Sec. 2(45)]

### Section 8 Company:



Sub-section 3 - A firm may become a member of  
a company registered under section 8.



**Small Company: [Sec. 2(85)]**

- (a) Company other than Public Company
- (b) Paid-up share Capital does not exceed 4 Crore  
and
- (c) Turnover as per its last P&L does not exceed 40 Crore
- (d) Not applicable for company which is a holding, subsidiary, NPO, governed under special Act.

**Dormant / Inactive Companies [Sec 455]:**

- (a) Dormant Companies are those which are formed and registered under this Act for a future project or to hold an Asset or Intellectual Property with no significant accounting transaction.
- (b) Such a Company or an Inactive Company may make an application to the Registrar in the prescribed manner for obtaining the status of a Dormant Company.

**Inactive Company** means a Company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last 2 Financial Years, or has not filed Financial Statements and Annual Returns during the last 2 Financial Years.

**Significant Accounting Transaction** means any transaction other than -

- (a) payment of fees by a company to the Registrar,
- (b) payments made by it to fulfil the requirements of this Act or any other law,
- (c) allotment of shares to fulfil the requirements of this Act, and
- (d) payments for maintenance of its office and records.

**Public Financial Institution: The following are PFI's:** LIC; IDFC; UTI; institution notified by CG in consultation with RBI.

Any Other institution can be notified by CG after consulting RBI, if any of the following conditions are satisfied –

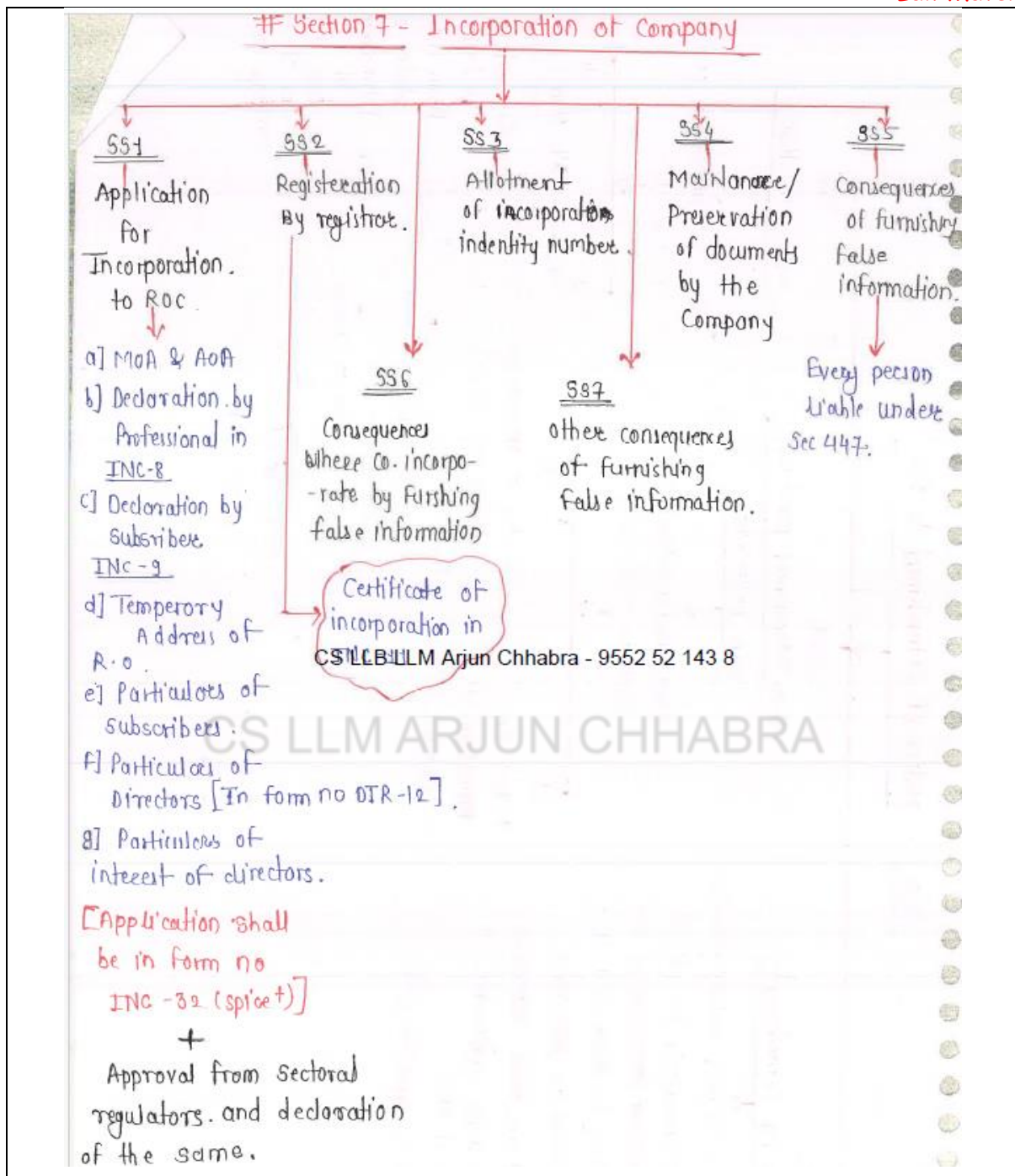
- (a) Established under Central or State Act or
- (b) not less than 51% of paid up capital is held or controlled by CG or SG or partly by CG and partly by SG.

### Incorporation of company

**PROMOTERS:** The Companies Act, 2013 defines the term "Promoter" under **section 2(69)** which means a person—

- (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
- (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- (c) in accordance with whose advice, directions, or instructions the Board of Directors of the company is accustomed to act.

**Note:** It should, however, be noted that persons acting only in a professional capacity e.g., the solicitor, banker, accountant etc. are not regarded as promoters. Arjun Chhabra (CS LLB LLM) Law Maven





### 555 - Consequences of furnishing false information

Every person who furnishes any false or incorrect information, suppresses any material information shall be liable u/s 447.

### 556 - Consequences where company incorporated whereby furnishing false information

If it is proved that a company was incorporated by furnishing false or incorrect information, or by suppressing any material fact or by any fraudulent activity then the following shall be held liable u/s 447.

- (a) Every promoter;
- (b) Every person named in the article as first director; &
- (c) Every person who made a declaration that the requirements of the act and rules were complied with.

### 555 Other consequences of furnishing false information / order of tribunal where company got incorporated by furnishing false information

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The tribunal may, on being satisfied that the situation so warrants -

- (a) Pass such orders, as it may think fit, for the regulation of the management of the company; or
- (b) Direct that the liability of the members shall be unlimited;
- (c) Direct removal of the name of the co. from register of company; or
- (d) Pass an order for winding up of the company.
- (e) Pass such other orders as it may deem fit.

Before passing any order -

- (a) The co. shall be given a reasonable opportunity of being heard;
- (b) The tribunal shall take into consideration -
  - The transactions entered into by the company,
  - Including the obligation, if any contracted or payment of any liability.

Section 9 – Effect of registration	
1. Date of incorporation	Date mentioned in the certificate of incorporation shall be the date of incorporation of the company.
2. Body corporate	From the date mentioned in the certificate of incorporation, the subscribers to memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate.
3. Name	The name, as mentioned in the memorandum, shall be the name of the company.
4. Capacity to function	7. Power to acquire property
5. Perpetual succession	8. Power to contract
6. Common seal	9. Capacity to sue and be sued
Section 10 - Effect Of Memorandum And Articles	
<p>Sub-section 1 to Section 10 aims to impart contractual force to the Memorandum and Articles. It provides, when the memorandum and articles got registered; it shall bind the</p> <p>a. Members to the company; b. Company to the members; c. Members to the members;</p> <p>To observe all the provisions of the memorandum and of the articles, as signatory thereof.</p> <p>Further sub-section 2 to section 10 provides, all monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.</p>	

## CS LLM ARJUN CHHABRA

Classification Of Share Capital Under The Companies Act	
1.	<b>Authorised Capital:</b> An Authorised Capital refers to that capital which is authorised by the Memorandum of Association to be the maximum amount of share capital of the company. This is the maximum limit of the company which it is authorised to raise and beyond which the company cannot raise unless the capital clause in the Memorandum is changed.[Sec 2(8)]
2.	<b>Issued Capital:</b> An Issued Capital refers to the nominal value of that part of authorised capital, which the company issues from time to time for subscription [Sec 2(50)].
3.	<b>Subscribed Capital:</b> Subscribed Capital refers to the capital which has been subscribed by the members of a company [Sec 2(86)].
4.	<b>Called- up Capital:</b> “Called-up capital” means such part of the Capital, which has been called for payment; [Sec 2(15)].
5.	<b>Paid-up Capital:</b> Total amount paid or credited as paid up on shares issued. It is equal to called up capital less calls in arrears. [Sec 2(64)].

Shares And Share Capital	
1.	Section 2(84) of the Companies Act, 2013 defines a share as “a share in the share capital of a company, and includes stock except where a distinction between stock and share is expressed or implied”.
2.	The shares are the <b>movable properties transferable</b> in the manner provided by the articles of the company.



3. A share is the **smallest unit** into which the capital of the company is divided.
4. A share is not a sum of money but is an **interest measured by a sum of money** and made up of various rights contained in the contract.
5. Stock is an aggregate of fully paid shares which have been legally consolidated which is transferable in fraction also.
6. The company can issue **equity shares with voting rights**, or
7. The company can issue **equity shares with differential rights as to voting, dividend etc.**
8. An equity share is a share which is not a preference share. In other words, it is a share which does not carry two preferential rights (viz., right to receive dividend and right to receive repayment of capital) attached to a preference share.
9. A preference share is one which carries the following two preferential rights:
  - (a) a right to receive dividend at a stipulated rate or of a fixed amount before any dividend is paid on equity shares; and
  - (b) a right to receive repayment of capital on winding up of the company, before the capital of equity shareholders is returned.

### MEMORANDUM & ARTICLE OF ASSOCIATION [Sec 4 & 5]

1. **Meaning:** MOA of a Company is its charter and defines the limitations of the powers of a Company.
2. **Contents of MOA:** (a) Name Clause, (b) Situation Clause, (c) Object Clause (Main objects / incidental & ancillary objects / other objects), (d) Liability Clause, (e) Capital Clause, (f) Association Clause
3. **AOA Meaning:** AOA is bye laws of the Company which lays down the rules and regulation for internal management.
4. **General of contents AOA:** (a) Regulations for management, (b) Such matters as may be prescribed, (c) Additional matters if considered necessary for its management
5. **Entrenchment provisions in AOA**
  - (a) AOA may contain provisions for entrenchment, to the effect that specified provisions of the AOA may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.
  - (b) It shall be made either on formation of company or amendment in AOA by all members in case of Private Company and passing SR in case of Public Company.
  - (c) Intimate ROC. Form MGT 14 within 30 days in case of existing Company.

### Doctrines

#### Doctrine of ultra vires

- (a) The term 'ultra vires' means **beyond one's power** or authority.
- (b) Acts ultra vires The Companies Act/Memorandum shall be **void** and **cannot be ratified** even by an unanimous resolution of all the shareholders. [Ashbury Railway Carriage & Iron Co. v. Riche]

- (c) Acts ultra vires the Articles of Association/Powers of Directors but within the powers of the company shall not be altogether void and can be rectified and made valid by altering its Articles by a special resolution at its general meeting with retrospective effect.
- (d) For acts which are ultravires the company/Memorandum, neither the company can sue others nor be sued by others.
- (e) A members can bring injunction against the company to restrain it from doing ultravires acts.

### Doctrine of Constructive Notice

Since the Memorandum and Articles of Association on their registration with the Registrar become public documents and are available for public inspection in the Registrar's office on payment of prescribed fee, every person dealing with the company is presumed to have the knowledge of the contents of these documents and also to have understood them according to their proper meaning. This type of presumed knowledge of these documents is termed as 'Constructive Notice of Memorandum and Articles of Association.

### Doctrine of indoor management

The doctrine of indoor management is an exception to the doctrine of constructive notice. This doctrine protects the outsiders against the company by entitling them to assume that the provision of the Articles of Association have been duly complied with by the company in its internal working. This doctrine is based on the principles of justice and public convenience. [Royal British Bank v. Turquand]

Exceptions to the Doctrine of Indoor Management does not apply in the following cases:

- (a) If A person dealing with the company has Knowledge of Irregularity.
- (b) A person dealing with the company has Suspicion of Irregularity.
- (c) Where Forgery is involved [Doctrine of indoor management applies to procedural irregularities and not illegalities (i.e. forgery). [Rubben v. Great Fingal Consolidated, (1906)]

<b>The Companies Act, 2013</b>	
<b>Sections Recap</b>	
<p>1. Short title, extent, commencement and application.</p> <p>2. Definitions.</p> <ul style="list-style-type: none"> <li>• Private company [Sec. 2(68)]</li> <li>• Public company [Sec. 2(71)]</li> <li>• One Person Company [Sec. 2(62)]</li> <li>• Small Company [Sec. 2(85)]</li> <li>• Company limited by guarantee [Sec. 2(21)]</li> <li>• Company limited by shares [Sec. 2(22)]</li> <li>• ‘Unlimited company’ [Sec. 2(92)].</li> <li>• Holding company [Sec. 2(46)]</li> <li>• Subsidiary company [Sec. 2(87)]</li> <li>• Associate company [Sec. 2(6)]</li> <li>• Listed company [Sec. 2(52)]</li> <li>• Unlisted company</li> <li>• Foreign company [Sec. 2(42)]</li> <li>• Government company [Sec. 2(45)]</li> <li>• PFI [Sec. 2(72)]</li> <li>• Promoter [Sec. 2(69)]</li> <li>• Share [Sec. 2(84)]</li> </ul> <p>3. Formation of company.</p> <p>4. Memorandum.</p> <p>5. Articles.</p> <p>7. Incorporation of company.</p> <p>8. Formation of companies with charitable objects, etc.</p> <p>9. Effect of registration.</p> <p>10. Effect of memorandum and articles.</p> <p>43. Kinds of share capital</p> <p>44. Movable property</p> <p>45. Shares shall be numbered</p> <p>406 Nidhi company</p> <p>455. Dormant company</p>	<p>Doctrines</p> <p>Share capital</p> <p>Certain case laws:</p> <p><b><u>Lifting of Corporate Veil</u></b></p> <ol style="list-style-type: none"> <li>1. Daimler Co. Ltd. v. Continental Tyre and Rubber Co. Ltd</li> <li>2. Gilford Motor Co. vs. Horne</li> <li>3. Dinshaw Maneckjee Petit</li> <li>4. Merchandise Transport Limited vs. British Transport Commission (1982)</li> <li>5. Workmen of Associated Rubber Industry Ltd., v. Associated Rubber Industry Ltd]</li> </ol> <p><b><u>Doctrine of ultra vires</u></b></p> <p>[Ashbury Railway Carriage &amp; Iron Co. v. Riche]</p> <p><b><u>Doctrine of indoor management</u></b></p> <p>[Royal British Bank v. Turquand]</p> <p>[Rubben v. Great Fingal Consolidated, (1906)]</p> <p>Arjun Chhabra (CS LLB LLM) Law Maven</p>

## The Limited Liability Partnership Act, 2008

**Section 2 (1) (n)** "limited liability partnership" means a partnership formed and registered under this Act

**Section 3. Limited liability partnership to be body corporate**

**Section 4. Non-applicability of the Indian Partnership Act, 1932**

**Section 5. Partners:**

Any **individual or body corporate** may be a partner in a limited liability partnership:

Provided that an individual shall not be capable of becoming a partner of a limited liability partnership, if—

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

**Section 2(1)(d) "body corporate"**

means a **company as defined in clause (20) of section 2** of the Companies Act, 2013 and includes—

- (i) LLP registered under this Act;
  - (ii) LLP incorporated outside India; and
  - (iii) a company incorporated outside India,
- but does not include—
- (i) a corporation sole;
  - (ii) a co-operative society registered under any law for the time being in force; and
  - (iii) any other body corporate (not being a company as defined in clause (20) of section 2 of the Companies Act, 2013 or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf;

**Section 2(1) (ta)**

"Small limited liability partnership" means a limited liability partnership—

- (i) the **contribution** of which, does not exceed twenty-five lakh rupees; **and**
- (ii) the **turnover** of which, **as per the Statement of Accounts and Solvency** for the immediately preceding financial year, does not exceed forty lakh rupees **or**
- (iii) which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed.

**Section 6. Minimum number of partners. —**

(1) Every limited liability partnership shall have **at least two partners**.

(2) If at any time the number of partners of a limited liability partnership is reduced below two and the limited liability partnership carries on business for more than six months while the number is so reduced, the person, who is the only partner of the limited liability partnership during the time that it so carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the limited liability partnership incurred during that period.

**Section 7. Designated partners. —**

(1) Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India:

**Resident in India:** Person who has stayed in India for a period of not less than one hundred and twenty days during the financial year.

Provided that in case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners.

(2) if the incorporation document

(a) specifies who are to be designated partners, such persons shall be designated partners on incorporation; or

(b) states that each of the partners from time to time of limited liability partnership is to be designated partner, every partner shall be a designated partner;

(3) An individual shall not become a designated partner in any limited liability partnership unless he has given his prior consent to act as such to the limited liability partnership in such form and manner as may be prescribed.

(4) Every limited liability partnership shall file with the Registrar the particulars of every individual who has given his consent to act as designated partner in such form and manner as may be prescribed within thirty days of his appointment.

(5) An individual eligible to be a designated partner shall satisfy such conditions and requirements as may be prescribed.

(6) Every designated partner of a limited liability partnership shall obtain a Designated Partners Identification Number (DPIN) from the Central Government and the provisions of sections 153 to 159 (both inclusive) of the Companies Act, 2013 shall apply mutatis mutandis for the said purpose.

**Section 11 Incorporation document. —**

(1) For a limited liability partnership to be incorporated, —

(a) two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;

(b) the incorporation document shall be filed with the Registrar of the State in which the registered office of the limited liability partnership is to be situated; and

(c) there shall be filed along with the incorporation document, a **statement** in the prescribed form, made by either

- an advocate, or
- a Company Secretary or
- a Chartered Accountant or
- a Cost Accountant,

who is engaged in the formation of the limited liability partnership and by anyone who subscribed his name to the incorporation document,

- that all the requirements of this Act and the rules made thereunder have been complied with, in respect of incorporation and matters precedent and incidental thereto.

(2) The incorporation document shall—

- (a) be in a form as may be prescribed;
- (b) state the **name of the limited liability partnership**;
- (c) state the **proposed business** of the limited liability partnership;
- (d) state the **address of the registered office** of the limited liability partnership;
- (e) state the **name and address of each of the persons** who are to be partners of the limited liability partnership on incorporation;
- (f) state the **name and address of the persons who are to be designated partners** of the limited liability partnership on incorporation;
- (g) contain such other information concerning the proposed limited liability partnership as may be prescribed.

(3) If a person makes a **statement** under clause (c) of sub-section (1) which he— (a) knows to be **false**; or (b) does not believe to be true, shall be

- punishable with imprisonment for a term which may extend to two years **and**
- with **fine min: 10k Max: 5Lakh**.

**Section 12. Incorporation by registration. —**

(1) Once requirement of section 11 have been complied with, the **Registrar** shall retain the incorporation document, he shall, **within a period of fourteen days—**

- (a) register the incorporation document; and
- (b) give a certificate that the limited liability partnership is incorporated by the name specified therein.

(2) The Registrar may accept the statement delivered under clause (c) of sub-section (1) of section 11 as **sufficient evidence** that the requirement imposed by clause (a) of that sub-section has been complied with.

(3) The certificate issued under clause (b) of sub-section (1) shall be signed by the Registrar and authenticated by his official seal.

(4) The certificate shall be **conclusive evidence** that the limited liability partnership is incorporated by the name specified therein.

**Section 13. Registered office of limited liability partnership and change therein. —**

(1) Every limited liability partnership shall have a **registered office to which all communications and notices may be addressed** and where they shall be received.

(2) A **document may be served on a limited liability partnership or a partner or designated partner thereof** by sending it

- by post under a certificate of posting or
- by registered post or
- by any other manner, as may be prescribed,

at the registered office and any other address specifically declared by the limited liability partnership for the purpose in such form and manner as may be prescribed.

(3) A limited liability partnership **may change the place of its registered office and file the notice of such change with the Registrar** in such form and manner and subject to such conditions as may be prescribed and any **such change shall take effect only upon such filing**.

(4) Default of this section,

- the limited liability partnership and
- its every partner shall be liable to a penalty of
  - Rs.500/day during which the default continues, Max: Rs.50,000 for the limited liability partnership and its every partner.

**Section 14. Effect of registration. —**

On registration, a limited liability partnership shall, by its name, be capable of—

(a) suing and being sued;

(b) acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;

(c) having a common seal, if it decides to have one; and

(d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

**Section 15. Name. —**

(1) Every limited liability partnership shall have either the words

- "limited liability partnership" or
- the acronym "LLP" as the last words of its name.

(2) No limited liability partnership shall be registered by a name which, in the opinion of the Central Government is—

(a) undesirable; or

(b) identical or too nearly resembles to that of any

- other limited liability partnership or
- a company or
- a registered trade mark of any other person under the Trade Marks Act, 1999.

**Section 16. Reservation of name. —**

(1) A person may apply to the Registrar for the reservation of a name set out in the application as—

(a) the name of a proposed LLP; or

(b) the name to which a LLP proposes to change its name.

(2) Upon receipt of an application under sub-section (1) and on payment of the prescribed fee, the Registrar may, if he is satisfied, that the name to be reserved is not one which may be rejected on any ground referred to in sub-section (2) of section 15, **reserve the name for a period of three months from the date of intimation by the Registrar.**

**Section 17. Rectification of name of limited liability partnership. —**

(1) Notwithstanding anything contained in sections 15 and 16, if through inadvertence or otherwise, a limited liability partnership, on its first registration or on its registration by a new name, is registered by a name which is identical with or too nearly resembles to—

(a) that of any other limited liability partnership or a company; or

(b) a registered trade mark of a proprietor under the Trade Marks Act, 1999, as is likely to be mistaken for it,

then on an application of such limited liability partnership or proprietor referred to in clauses (a) and (b) respectively or a company,

**the Central Government may direct that such limited liability partnership to change its name or new name within a period of three months from the date of issue of such direction:**

**Provided that an application of the proprietor of the registered trade marks shall be maintainable within a period of three years from the date of incorporation or registration or change of name of the limited liability partnership under this Act.**



(2) Where a limited liability partnership changes its name or obtains a new name under sub-section (1), it shall within a period of fifteen days from the date of such change, give notice of the change to Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and within thirty days of such change in the certificate of incorporation, such limited liability partnership shall change its name in the limited liability partnership agreement.

(3) If the limited liability partnership is in default in complying with any direction given under sub-section (1), the Central Government shall

- allot a new name to the limited liability partnership in such manner as may be prescribed and
- the Registrar shall enter the new name in the register of limited liability partnerships in place of the old name and
- issue a fresh certificate of incorporation with new name,
- which the limited liability partnership shall use thereafter:

Provided that nothing contained in this sub-section shall prevent a limited liability partnership from subsequently changing its name in accordance with the provisions of section 16.

CHARACTERISTIC OF LLP		Advantages of LLP form
<ol style="list-style-type: none"> <li>1. Body Corporate</li> <li>2. LLP Agreement</li> <li>3. Management of business</li> <li>4. Compromise or Arrangement</li> <li>5. Perpetual Succession</li> <li>6. Artificial Legal person</li> <li>7. Minimum and maximum number of partners</li> <li>8. Conversion into LLP</li> </ol>	<ol style="list-style-type: none"> <li>9. Separate legal entity</li> <li>10. Common Seal</li> <li>11. Business for profit only</li> <li>12. E-filing of documents</li> <li>13. Mutual Agency</li> <li>14. Limited liability</li> <li>15. Investigation</li> <li>16. Foreign LLPs - Section 2(1)(m) foreign limited liability partnership "as a limited liability partnership formed, incorporated, or registered outside India which established as place of business within India". Foreign LLP can become a partner in an Indian LLP.</li> </ol>	<ul style="list-style-type: none"> <li>• is organized and operates on the basis of an agreement.</li> <li>• provides flexibility without imposing detailed legal and procedural requirements.</li> <li>• Easy to form</li> <li>• All partners enjoy limited liability</li> <li>• Flexible capital structure</li> <li>• Easy to dissolve</li> </ul>

Basis of Distinction	Partnership Firm	LLP
1. Regulating Law	'The Indian Partnership Act, 1932'	The Limited Liability Partnership Act, 2008'
2. Body Corporate	not	It is
3. Separate Legal Entity	no separate legal entity.	has separate legal entity.
4. Perpetual Succession	does not enjoy	Enjoys
5. Liability of Partners	unlimited.	limited, to the extent their contribution
6. Registration	optional.	compulsory.
7. Creation	by agreement.	by Law.
8. Designated Partners	need not have	at least 2
9. Digital Signature	no requirement	At least one Designated Partner must have
10. Liability of Partners for Legal Compliance	All Partners are liable	Only Designated Partners are liable
11. Name of Entity	any name.	Its Name to contain 'Limited Liability Partnership' or 'LLP' is suffix.
12. Mutual Agency	Partners are agents of the firm and other partners.	Partners act as agents of LLPA. and not of other partners.
13. Admission of Minor	can be admitted to the benefits	Minor can not be admitted.
14. Can Foreign National become partner?	cannot become	can become a Partner
15. Number of Members	Minimum 2 and Maximum 10 for Banking business & 20 for non- Banking business.	Minimum 2 but their is no limit on maximum number of partners.
16. Annual Filing with Registrar	No Return	1. Annual Statement of Accounts 2. Statement of Solvency

		3. Annual Return required to be filed with Registrar of LLP every year.
<b>Basis of Distinction</b>	<b>Company</b>	<b>LLP</b>
<b>Regulated by</b>	'The Companies Act, 2013'	'The Limited Liability Partnership Act, 2008'
<b>Members/Partners</b>	The persons who invest the money in the shares are known as members of the company.	The persons who contribute to LLP are known as partners of the LLP.
<b>Motive of Formation</b>	Profit or Service motive.	only for Profit motive.
<b>Internal governance structure</b>	Regulated by Companies Act, 2013	LLP Agreement
<b>Number of Members</b>	Private Company: Minimum 2 members & maximum 200 members. One person Company 1 member.  Public Company: Minimum 7 members but their is no limit on maximum number of members.	Minimum 2 but their is no limit on maximum number of partners.
<b>Filing of Annual Statement of Solvency</b>	not required.	Required
<b>Name</b>	Name of the public company to contain the word "limited" and Pvt. Co. to contain the word "Private limited" as suffix.	Name of the LLP to contain the word "Limited Liability partnership" or "LLP" as suffix.
<b>Management</b>  Arjun Chhabra (CS LLB LLM) Law Maven	The affairs of the company are managed by board of directors elected by the shareholders.	The business of the LLP is managed by the partners including the designated partners authorized in the agreement.
<b>Liability members/partners of</b>	Liability of a member is limited to the amount unpaid on the shares held by them.	Liability of a partners is limited to the extent of agreed contribution except in case of willful fraud.
<b>Minimum number of directors/designated partners</b>	Pvt. Co. - 2 directors  Public co. - 3 directors	Minimum partners. 2 designated

## The Limited Liability Partnership Act, 2008

### Sections Recap

2. Definitions.

- Body Corporate [(Section 2(1)(d)]
- Foreign LLP [section 2(1)(m)]
- Small Limited Liability Partnership [Section 2(1)(ta)]

3. Limited liability partnership to be body corporate.

4. Non-applicability of the Indian Partnership Act, 1932.

5. Partners.

6. Minimum number of partners.

7. Designated partners.

8. Liabilities of designated partners.

11. Incorporation document.

12. Incorporation by registration.

13. Registered office of limited liability partnership and change therein.

14. Effect of registration.

15. Name.

16. Reservation of name.

17. Rectification of name of limited liability partnership.

CS LLM ARJUN CHHABRA

<b>The Negotiable Instruments Act, 1881</b>	
Negotiable Instruments [Sec 13]	A Negotiable Instrument (N/I) means a Promissory Note (P/N), Bill of Exchange (B/E) or Cheque payable either to order or to bearer.
Order Instruments [Explanation (i) to Sec 13]	Payable to particular person and does not prohibit further transfer (i.e. it is transferrable by indorsement and delivery)
Bearer Instruments [Explanation (ii) to Sec 13]	Expressed to be payable as bearer or the only last endorsement is endorsement in blank.
Promissory Note [Sec 4]	An instrument in writing (not being a Bank Note or a Currency Note) containing an unconditional undertaking signed by the Maker to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument. (No PN can be made payable to bearer on demand u/s 31 of RBI Act)
Essentials of PN	<ul style="list-style-type: none"> <li>• Writing</li> <li>• Promise to pay</li> <li>• Unconditional promise</li> <li>• Signed by the Maker</li> </ul> <ul style="list-style-type: none"> <li>• Payee to be a certain person</li> <li>• Certain sum of money</li> <li>• Payment of Money only</li> <li>• Duly stamped and dated</li> </ul>
Bill of exchange [Sec 5]	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. (No BE can be made payable to bearer on demand u/s 31 of RBI Act)
Essentials of BE	<ul style="list-style-type: none"> <li>• Writing</li> <li>• Order to pay which is unconditional</li> </ul> <ul style="list-style-type: none"> <li>• Money only which is certain</li> <li>• Signed and stamped</li> </ul>
Cheque [Sec 6]	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 and a cheque in the electronic form.
Essential Characteristics of a cheque	<ul style="list-style-type: none"> <li>• All the essential characteristics of a bill of exchange.</li> <li>• Must be drawn on a specified banker.</li> <li>• It must be payable on demand.</li> </ul>
Drawee in case of need [Sec 7]	Person whose name appears in B/E who should be resorted to in case of need. A bill will Dishonour only when such drawee in case of need refused to make payment.

Inland Instruments [Sec 11]	Drawn or made in India + [made payable in India or drawn upon a person resident in India]
Foreign Instruments [Sec 12]	Not an Inland Instrument
Liability of maker/ drawer of foreign bill [Sec 134]	In the absence of a contract to the country, the liability of the maker or drawer of a foreign promissory note or bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.
Inchoate Stamped Instruments [Sec 20]	An instrument that is incomplete in certain respects
Consequences of Inchoate Stamped Instruments	<b>Rule 1</b> -Maker authorizes the Holder to complete the NI and gives the authority to fill up any amount < Stamp Value <b>Rules 2</b> - Person signing shall be liable to HDC (Holder in Due Course) for full Stamp Value and whereas for a holder only to the extent of Transaction Value.
Holder [Sec 8]	Person entitled to possession thereof in his own name and entitled to recover amount due from the parties thereto.
Holder in due course (HDC) [Sec 9]	A Holder in due course is a person who becomes the possessor of the instrument - (a) for consideration, (b) before maturity, and (c) in Good faith
Super Question with super conceptual clarity of Inchoate Stamped Instruments	'A' signs, as maker, a blank stamped paper and gives it to 'B', and authorizes him to fill it as note for Rs. 500. 'B' fraudulently fills it up as note for Rs. 2,000, and endorsed to 'C' (B's brother) as gift who received it in good faith. Decide, with reasons whether 'C' is entitled to recover the amount and if so, up to what extent?
Answer:	As per <b>Section 20</b> of the Negotiable Instrument Act, <b>1881</b> , where one person signs and delivers to another a paper stamped in blank or incomplete, he thereby prima facie authorize the holder to complete the negotiable instrument. If no amount is specified, he has authority to fill amount not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument to any holder in due course for such amount.

	<p><b>Example:</b> If stamp paper was sufficient to cover amount of Rs. 10,000 and the amount was left blank while signing, the holder can fill the amount of Rs. 10,000. Such holder (who filled in the blanks) cannot recover amount more than what was intended to be paid to him. However, holder in due course can recover the whole amount from any previous party, including the drawer.</p> <p><b>Example:</b> Mayank signs his name on a blank but stamped instrument and gives it to Pratik with authority to fill up as promissory note for Rs. 3,500. However, Pratik fill the amount as Rs. 5,000. The stamp is sufficient to cover Rs. 5,000. Pratik then hands it over Sagar for 15,000 for value. Sagar has no knowledge of the fraud. In such case, Mayank is liable to Sagar for Rs. 5,000 but to Pratik for Rs. 3,500.</p> <p>However, he is liable to holder (who is not holder in due course) only for the amount actually payable to him. A holder who is not holder in due course is not entitled to recover full amount as shown in the instrument.</p> <p>Therefore, Mr. c is entitled to recover Rs.500 from Mr. A since:</p> <ol style="list-style-type: none"> <li>1. Mr. c received such instrument as gift.</li> <li>2. Which means Mr. c is holder and not in holder in due course.</li> <li>3. Because to become holder in due course Mr. c must receive such instrument for consideration or value [ Section 9]</li> </ol>
<p style="text-align: center;">Ambiguous Instruments [Sec 17]</p>	<p>B/E or P/N which can be construed either as a B/E or as a P/N.</p>
<p style="text-align: center;">Negotiation [Sec 14]</p>	<p>When a NI is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.</p>
<p style="text-align: center;">Methods of Negotiation</p>	<p><b>Bearer Instrument:</b> By mere delivery <b>[Sec 47]</b></p> <p><b>Order Instrument:</b> By endorsement and delivery. <b>[Sec 48]</b></p> <p>(Person endorsed but dies before delivery, legal rep cannot make negotiation) <b>[Sec 57]</b></p>
<p style="text-align: center;">Rules as to delivery [Sec 46]</p>	<p>R1 - Only upon delivery instrument takes the character of NI</p> <p>R2 - Upon endorsement property and rights transferred to Indorsee only upon delivery</p> <p>R3 - Delivery has to be voluntary and not under compulsion</p> <p>R4 - Delivery can be actual or constructive or conditional</p> <p>Constructive delivery takes place when the instrument is delivered to the agent, clerk or servant of the indorsee on his behalf or when the indorser, after indorsement, holds the instrument as an agent of the indorsee.</p>

	R5 - If delivery is conditional indorsement is not permissible until happening of event (Except HDC who takes it without notice of condition)
<p style="text-align: center;">Dishonour of Cheque offence u/s 138</p> <p style="text-align: center;">Arjun Chhabra (CS LLB LLM) Law Maven</p>	<ol style="list-style-type: none"> <li>1. Cheque issued by Drawer to clear the liability</li> <li>2. Presented within 3 months or validity period, whichever is earlier.</li> <li>3. Returned due to insufficiency of funds</li> <li>4. Payee serves notice of dishonour within 30 days</li> <li>5. Drawer fails to make the payment with 15 days from the date of receipt of notice</li> <li>6. Drawer deemed to have committed a offence liable for (a) fine - twice the amount of cheque; (b) Imprisonment for 2 years; (c) Both</li> <li>7. Payee after the expiry of 15 days can file a suit within 1 month</li> </ol>
<p style="text-align: center;">Presumption In Favor Of Holder [Section 139]</p>	<p>When a cheque is dishonoured, it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, or any debt or other liability.</p> <p>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 effect of this presumption is to place the evidential burden on the accused.</p>
<p style="text-align: center;">DEFENCE WHICH MAY NOT BE ALLOWED IN ANY PROSECUTION UNDER SECTION 138 [SECTION 140]</p>	<p>CS LLM ARJUN CHHABRA</p> <p>It shall not be a defence in a prosecution of an offence under section 138 that the drawer 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.</p>
<b>The Negotiable Instruments Act, 1881</b>	
<b>Sections Recap</b>	
<ol style="list-style-type: none"> <li>4. "Promissory note."</li> <li>5. "Bill of exchange."</li> <li>6. "Cheque."</li> <li>7. "Drawee in case of need."</li> <li>8. "Holder."</li> <li>9. "Holder in due course."</li> <li>10. "Payment in due course."</li> <li>11. Inland instrument.</li> <li>12. Foreign instrument.</li> <li>13. "Negotiable instrument."</li> <li>14. Negotiation.</li> <li>17. Ambiguous instruments.</li> </ol>	<ol style="list-style-type: none"> <li>20. Inchoate stamped instruments.</li> <li>46. Delivery.</li> <li>47. Negotiation by delivery.</li> <li>48. Negotiation by indorsement.</li> <li>57. Legal representative cannot by delivery only negotiate instrument indorsed by deceased</li> <li>117. Rules as to compensation</li> <li>138. Dishonour of cheque for insufficiency, etc., of funds in the account.</li> <li>139. Presumption in favour of holder.</li> <li>140. Defence which may not be allowed in any prosecution under section 138.</li> </ol>



## Presentment of promissory note for sight [Section 62]

The provision you're referring to, Section 62 of the Negotiable Instruments Act, deals with the presentment of a promissory note that is payable at a certain period after sight:

1. **Nature of the Promissory Note: A promissory note payable at a certain period after sight** is a note where the payment is due a specified time after the note is presented (or 'sighted') to the maker.
2. **Requirement of Presentment for Sight:** According to Section 62, when dealing with such a promissory note, it **must be presented to the maker for sight within a reasonable time after it is made**. This presentation must occur during the maker's **business hours on a business day**.
3. **Who Should Present the Note:** The note should be presented for sight **by a person entitled to demand payment**. This typically means the holder of the promissory note or someone acting on their behalf.
4. **Reasonable Time:** The concept of reasonable time is crucial here. What constitutes a reasonable time depends on the circumstances of each case, including the nature of the note and the parties involved.
5. **Consequences of Default in Presentment:** If the promissory note is not presented for sight within a reasonable time as per the provisions of Section 62, then **no party to the note is liable on it to the person making the default in presentment**.

**Example:** Suppose Johnny issues a **promissory note payable 60 days after sight to Sarah**. Sarah receives the note on **January 1, 2024**. To comply with Section 62, Sarah must present this note to John (the maker) for sight within a reasonable time after receiving it.

Let's say **Sarah presents the note to John for sight on March 1, 2024**. In this case, the presentation might be considered late if the circumstances suggest that it should have been done earlier. If John can show that the delay in presentment caused him harm (for example, by affecting his financial planning), he might argue that he is no longer liable on the note due to the default in presentment.

Therefore, it's essential to understand and comply with the requirements of Section 62 to ensure the enforceability of promissory notes payable after sight. Presenting such a note in a timely manner is crucial to maintain the obligations of the parties involved and avoid potential disputes over liability.

## Drawee's time for deliberation [Section 63]

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 [Section 64]

Section 64 of the Negotiable Instruments Act deals with the requirement of presentment for payment of promissory notes, bills of exchange, and cheques.:

1. **Presentment for Payment:**
  - According to Section 64, these negotiable instruments (promissory notes, bills of exchange, and cheques) **must be presented** for payment to the respective parties liable for payment:

- **Promissory note** to the maker (the **person who promised to pay**).
- **Bill of exchange** to the acceptor (the **person who accepted the bill**).
- **Cheque** to the drawee (the **bank on which the cheque is drawn**).

2. **Effect of Non-Presentation:**

- If these instruments are not presented for payment as required by the Act, the **other parties (besides the one to whom the presentment should have been made) are not liable to the holder of the instrument**.

3. **Presentation via Registered Post:**

- Presentation for payment can be made **through the post office by means of a registered letter if authorized by agreement or usage**. This method provides a way to fulfill the presentment requirement **without direct physical delivery**.

4. **Exception for Promissory Notes Payable on Demand:**

- If a **promissory note is payable on demand and does not specify a particular place of payment, no presentment is necessary to charge the maker**. The holder can demand payment immediately without presenting the note.

**Example:** Suppose John issues a promissory note payable to Sarah on demand. The note does not specify a particular place of payment. In this case:

- **Scenario:**
  - Sarah, as the holder of the promissory note, wishes to collect payment from John.
  - Sarah can demand payment from John immediately without the need to formally present the note to him.

**Hours for presentment (Section 65)**

Presentment for payment must be made during the usual hours of business, and, if at a banker's within banking hours.

**Presentment for payment of instrument payable after date or sight (Section 66)**

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.

**Maturity Date:**

- The maturity date of the instrument is calculated based on the specified period **after the date** of the instrument (e.g., 30 days **after the date of the promissory note**) or **after the sight** of the instrument (e.g., 60 days **after the acceptance of the bill of exchange**).
- **Scenario:**
  - John issues a promissory note to Sarah on January 1, 2024, payable 60 days after the date.

- The promissory note matures on March 1, 2024 (60 days after January 1, 2024).
- **Presentment for Payment:**
  - On March 4, 2024, Sarah, as the holder of the promissory note, presents the note to John (the maker) for payment.
  - Sarah is fulfilling the requirement of Section 66 by presenting the note for payment on its maturity date.
- **Result:**
  - John, as the maker of the promissory note, is obligated to make the payment to Sarah upon proper presentment of the note at maturity.
  - If Sarah fails to present the note for payment on its maturity date, she may lose the right to hold John liable for the payment.

### **Presentment for payment of promissory note payable by instalments (Section 67)**

A promissory note payable by instalments **must be presented for payment on the third day after the date fixed for payment of each instalment**; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

### **Presentment for payment of instrument payable at specified place and not elsewhere (Section 68)**

A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

#### **Scenario:**

- John issues a **cheque** to Sarah on January 1, 2024, drawn on ABC Bank and **payable at ABC Bank branch located at 123 Main Street, City A.**

#### **Presentment for Payment:**

- To charge John (the drawer of the cheque) and ABC Bank (the drawee bank) with liability for payment, Sarah, as the holder of the cheque, **must present the cheque for payment specifically at the ABC Bank branch located at 123 Main Street, City A.**
- Sarah **cannot present the cheque for payment at any other location** to hold John and ABC Bank liable.

#### **Result:**

- If Sarah presents the cheque for payment at the specified ABC Bank branch location on the cheque, and the **cheque is dishonored** (not paid due to insufficient funds, etc.), **she can take appropriate legal action against John and ABC Bank based on the dishonor of the cheque.**

### **Instrument payable at specified place (Section 69)**

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.

<b>Presentment where no exclusive place specified (Section 70)</b>
A promissory note or bill of exchange, not made payable as mentioned in sections 68 and 69, <b>must be presented for payment at the place of business (if any) or at the usual residence</b> , of the maker, drawee or acceptor thereof, as the case may be.
<b>Presentment when maker, etc., has no known place of business or residence (Section 71)</b>
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 <b>presentment may be made to him in person wherever he can be found</b> .
<b>Presentment of cheque to charge drawer (Section 72)</b>
A cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.
<b>Presentment of cheque to charge any other person (Section 73)</b>
A cheque must, in order to charge any person except the drawer, <b>be presented within a reasonable time after delivery thereof by such person</b> .
<b>Presentment of instrument payable on demand (Section 74)</b>
A negotiable instrument payable on demand must be presented for payment <b>within a reasonable time</b> after it is received by the holder.
<b>Presentment by or to agent, representative of deceased, or assignee of insolvent (Section 75)</b>
Presentment for acceptance or payment may be made to the duly authorised agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.
<b>Excuse for delay in presentment for acceptance or payment (Section 75A)</b>
Delay in presentment for acceptance or payment is excused if the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of the delay ceases to operate, presentment must be made within a reasonable time.
<b>When presentment unnecessary (Section 76)</b>
Section 76 of the Negotiable Instruments Act outlines situations where presentment for payment is deemed unnecessary, and the instrument is considered dishonored at the due date for presentment.  <b>(a) Situations where Presentment is Unnecessary:</b> 1. <b>Intentional Prevention of Presentment:</b> <ul style="list-style-type: none"><li>If the maker, drawee, or acceptor intentionally prevents the presentment of the instrument.</li></ul>

- Example: John, the maker of a promissory note, is aware of the due date for payment but deliberately avoids being available or accessible to the holder for presenting the note for payment.

**2. Closure of Place of Business:**

- If the instrument is payable at the maker's, drawee's, or acceptor's place of business, and they close the place on a business day during usual business hours.
- Example: Sarah's bill of exchange is payable at ABC Company's office, but when Sarah attempts to present the bill for payment during business hours, she finds the office closed intentionally.

**3. Absence at Specified Place:**

- If the instrument is payable at a specified place other than the maker's, drawee's, or acceptor's place of business, and neither they nor any authorized person attends at such place during usual business hours.
- Example: A cheque is payable at a specific bank branch, but when the payee goes to the branch during business hours, no authorized person is available to make payment.

**4. Inability to Locate the Maker/Drawer/Acceptor:**

- If the instrument is not payable at any specified place, and the maker, drawee, or acceptor cannot be found after due search.
- Example: The payee tries to locate the drawer of a cheque for payment but cannot find the drawer after reasonable efforts.

**(b) Engaged to Pay Despite Non-Presentment:**

- If any party to the instrument has engaged to pay the amount due regardless of non-presentment.
- Example: The maker of a promissory note explicitly agrees to pay the amount due on the note even if the note is not presented for payment at the due date.

**(c) Waiver or Part Payment After Maturity:**

- If, after maturity, a party with knowledge that the instrument has not been presented, makes a part payment on account of the amount due, promises to pay the amount due, or waives the right to take advantage of any default in presentment.
- Example: The acceptor of a bill of exchange, after the due date for presentment, acknowledges the amount due and makes a partial payment towards the bill, indicating a willingness to settle the remaining amount.

**(d) Drawer Not Suffering Damage:**

- If the drawer (issuer) of the instrument would not suffer any damage from the lack of presentment.
- Example: The drawer issues a cheque knowing that it will not be presented for payment promptly due to an understanding with the payee, and the drawer is not negatively affected by the delay in presentment.

## Liability of banker for negligently dealing with bill presented for payment (Section 77)

When a bill of exchange, accepted payable at a specified bank, has been duly presented there 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.

### 1. Presentation for Payment at Specified Bank:

- Section 77 specifically applies when a bill of exchange is accepted payable at a specified bank. This means that the drawee (the bank) is identified in the bill as the place where payment should be made.

### 2. Duty of the Banker:

- When a bill of exchange is duly presented for payment at the specified bank and the bank dishonors the bill (refuses to pay), the banker has a duty to handle the bill with reasonable care and diligence.

### 3. Negligent or Improper Handling:

- If the banker negligently or improperly keeps, deals with, or delivers back the bill of exchange in a manner that causes loss to the holder (the person presenting the bill for payment), the banker becomes liable to compensate the holder for such loss.

**Scenario:** Sarah holds a bill of exchange drawn by John, accepted by XYZ Bank, and payable at XYZ Bank on a specified date.

### Presentation and Dishonour:

- On the due date, Sarah presents the bill of exchange to XYZ Bank for payment as specified in the bill.

### Banker's Negligent Handling:

- The bank clerk at XYZ Bank mishandles the bill by misplacing it or delaying the processing without valid reasons.

### Resulting Loss to the Holder:

- Due to the bank's negligence, Sarah is unable to receive the payment on time, resulting in financial loss (such as missing out on other business opportunities, incurring additional costs, or facing legal consequences).

## Rules for Compensation (Section 117)

The compensation payable in case of dishonour of promissory note, bill of exchange or cheque, by any party liable to the holder or any endorsee, shall be determined by the following rules:

### (a) Amount Due to the Holder:

- The holder of the dishonoured instrument is entitled to receive the principal amount due on the instrument, along with any expenses properly incurred in presenting, noting, and protesting the instrument.

- **Example:** Sarah presents a bill of exchange to John for payment, but John fails to pay. Sarah is entitled to claim the principal amount of the bill plus the expenses she incurred in presenting, noting, and protesting the bill.

**(b) Current Rate of Exchange:**

- If the person liable resides at a place different from where the instrument was payable, the holder is entitled to receive the payment at the current rate of exchange between the two places.
- **Example:** If a bill of exchange drawn in one country is payable in another country, the holder is entitled to receive the payment converted at the prevailing exchange rate between the two countries.

**(c) Compensation for Endorser:**

- An endorser who pays the amount due on the instrument upon dishonour is entitled to be reimbursed the amount paid, along with **interest at 18% per annum** from the date of payment until the amount is recovered, plus all expenses caused by the dishonour and payment.
- **Example:** If Sarah endorses a cheque and the drawer fails to honour it, Sarah pays the amount of the cheque and is entitled to reimbursement of the principal amount, interest, and related expenses.

**(d) Current Rate of Exchange for Endorser:**

- Similar to (b), if the person charged (the liable party) and the endorser reside at different places, the endorser is entitled to receive reimbursement converted at the current rate of exchange between their respective places of residence.
- **Example:** If an endorser residing in one country pays on behalf of the drawer (residing in another country) upon dishonour, the endorser is entitled to reimbursement converted at the prevailing exchange rate between the two countries.

**(e) Drawing a Bill for Compensation:**

- The party entitled to compensation may draw a bill upon the party liable to compensate, payable at sight or on demand, for the amount due, along with all related expenses. If this bill is dishonoured, the party dishonouring the bill becomes liable for compensation.
- **Example:** Sarah, entitled to compensation from John for a dishonoured bill, draws a bill upon John for the amount due. If John fails to honour this drawn bill, he becomes liable for compensation in the same manner as the original dishonoured bill.

**Notary:** The Central Government, for the whole or any part of India, and any State Government, for the whole or any part of the State, may appoint as notaries **any legal practitioners** or other persons who possess such qualifications as may be prescribed.

**Functions of Notary Public in India:**

1. Witnessing Signatures
2. Administering Oaths and Affirmations
3. Certifying Copies
4. Noting and Protest for Negotiable Instruments

# INDIAN REGULATORY FRAMEWORK

## WHAT IS LAW?

Law is

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

India's legal framework reflects the social, political, economic, and cultural aspects of our vast and diversified country.

### Examples

#### Civil Laws:

**1. Indian Contract Act, 1872:**

- Governs contracts and agreements between parties, ensuring enforcement of legal obligations.

**2. Indian Succession Act, 1925:**

- Deals with matters related to inheritance, succession, and wills.

**3. Specific Relief Act, 1963:**

- Provides remedies for breach of civil obligations, such as specific performance of contracts.

#### Criminal Laws:

**1. Indian Penal Code (IPC):**

- Defines crimes and prescribes punishments for offenses against the state and society.

**2. Code of Criminal Procedure (CrPC):**

- Specifies procedures for investigation, trial, and punishment of criminal offenses.

**3. Protection of Children from Sexual Offences (POCSO) Act, 2012:**

- Provides for protection of children against sexual abuse and exploitation.

#### Corporate and Commercial Laws:

**1. Companies Act, 2013:**

- Regulates the incorporation, functioning, and governance of companies in India.

**2. Foreign Exchange Management Act (FEMA), 1999:**

- Regulates foreign exchange transactions and cross-border investments.

#### Labor and Employment Laws:

**1. Factories Act, 1948:**

- Regulates the working conditions in factories, ensuring safety and welfare of workers.

**2. Employees' Provident Funds and Miscellaneous Provisions Act, 1952:**

- Provides for the establishment of provident funds and pension schemes for employees.

**3. Minimum Wages Act, 1948:**

- Ensures payment of minimum wages to workers in various industries.



**Environmental Laws:**

**1. Environment Protection Act, 1986:**

- Provides for the protection and improvement of the environment, prevention of hazards, and conservation of natural resources.

**2. Wildlife Protection Act, 1972:**

- Protects wildlife and their habitats, regulates wildlife trade, and establishes protected areas.

**3. Air (Prevention and Control of Pollution) Act, 1981:**

- Controls and mitigates air pollution, establishes standards for emissions from industries and vehicles.

**Family Laws:**

**1. Hindu Marriage Act, 1955:**

- Governs marriage and divorce among Hindus, providing for conditions and procedures.

**2. Muslim Personal Law (Shariat) Application Act, 1937:**

- Applies Muslim personal law to matters of marriage, divorce, inheritance, and other personal affairs among Muslims.

**3. Dissolution of Muslim Marriages Act, 1939:**

- Provides for grounds and procedures for dissolution of Muslim marriages.

**Constitutional Laws:**

**1. Constitution of India:**

- Supreme law of the land, establishes the structure of government, fundamental rights, and directive principles of state policy.

**2. Right to Information (RTI) Act, 2005:**

- Ensures transparency and accountability in government functioning by providing access to information held by public authorities.

**Consumer Protection Laws:**

**1. Consumer Protection Act, 2019:**

- Provides for protection of consumer rights and redressal of consumer grievances.

**2. Food Safety and Standards Act, 2006:**

- Regulates food safety standards, hygiene practices, and food labeling in India.

**Cyber Laws:**

**Information Technology Act, 2000:**

- Regulates electronic commerce, digital signatures, cybercrime, and data protection.

## 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 Courts and
- in some cases, established Customs and Usages.

You must be aware that India is a **parliamentary democracy**. We have a **constitution** which is the **basis and source for all laws**. We elect our representatives to the parliament as well as to the legislative assemblies of various States.

These representatives of the people 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 of India, 1950 is the foremost law that deals with the framework within which our democratic system works, and our laws are made for the people, by the people. The **Constitution also provides for and protects certain Fundamental rights of citizens**.

The people who wrote the Constitution decided to **divide the law-making power between the Central Government and the various State Governments**.

So, the Indian Constitution has three lists Viz.,

- Central List,
- State List and
- Joint List.

Depending on the list in which it figures a matter would become the subject for Central law or a State law.

For example, **Income Tax is a Central subject**. So, throughout India we have only one law for Income Tax which is implemented by the Central Government through the Ministry of Finance.

**We also have matters for which both Central as well as State Governments can pass laws. Levy of stamp duty is such an example.** Both Central Government and State Government have laws governing Levy of stamp duty.

#### **List I—Union List**

**43.** Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations, but not including co-operative societies.

**46.** Bills of exchange, cheques, promissory notes and other like instruments.

**47.** Insurance.

#### **List II—State List**

**49.** Taxes on lands and buildings.

**53.** Taxes on the consumption or sale of electricity.

**59.** Tolls.

**63.** Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

#### **List III—Concurrent List**

1. Criminal law

7. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.

20A. Population control and family planning.

### THE PROCESS OF MAKING A LAW

- When a law is proposed in 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 the 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	Civil Law	Common Law	Principles of Natural Justice
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**Criminal law** is concerned with 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 punishments
- whereas the Criminal Procedure Code, 1973, **defines exhaustive procedure** for executing the punishments of the crimes.
- **Murder, rape, theft, fraud, cheating and assault are some examples of criminal offences under the law.**

### Civil Law

Matters of **disputes between**

- **individuals or organisations** are dealt with under Civil Law.
- Civil courts enforce the violation of certain rights and obligations through the institution of a civil suit.
- **Civil law primarily focuses on dispute resolution rather than punishment.**
- The act of process and the administration of civil law are governed by the **Code of Civil Procedure, 1908 (CPC)**.
- Civil law can be **further classified into Law of Contract, Family Law, Property Law, and Law of Tort.**
- Some examples of civil offences are **breach of contract, non-delivery of goods, non-payment of dues to lender or seller defamation, breach of contract, and disputes between landlord and tenant.**

### Common Law

- A judicial precedent or a case law is common law.
- A judgment delivered by the Supreme Court will be binding upon the courts within the territory of India under Article 141 of the Indian Constitution.
- The doctrine of Stare Decisis is the principle supporting common law.

- It is a Latin phrase that means "to stand by that which is decided."
- The doctrine of Stare Decisis reinforces the obligation of courts to follow the same principle or judgement established by previous decisions while ruling a case where the facts are similar or "on all four legs" with the earlier decision.

#### **Examples of Stare Decisis in Action:**

##### **1. Landmark Judgments:**

- The Supreme Court of India sets important precedents through landmark judgments that establish legal principles.
- For example, in the case of **Maneka Gandhi v. Union of India (1978)**, the **Supreme Court interpreted Article 21 of the Constitution expansively to include the right to travel abroad as a fundamental right.**

##### **2. Lower Court Adherence:**

- Lower courts are bound by decisions of higher courts and are expected to apply similar reasoning and principles in deciding cases.
- If a High Court has ruled on a particular issue, subordinate courts within its jurisdiction are required to follow that ruling unless there are exceptional circumstances.

#### **Application of Stare Decisis in Indian Courts:**

- **Article 141 of the Indian Constitution:**
  - Article 141 mandates that the law declared by the Supreme Court is binding on all courts within India.
  - This provision reinforces the doctrine of Stare Decisis and underscores the importance of judicial precedent in shaping Indian jurisprudence.

#### **Principles of Natural Justice Natural justice**

- Often known as Jus Natural deals with certain fundamental principles of justice going beyond written law.
- **Nemo judex 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.
- **A judgement can override or alter a common law, but it cannot override or change the statute.**

#### **Principles of Natural Justice Explained:**

##### **1. Nemo Judex in Causa Sua (Rule Against Bias):**

- This principle means **"No one should be a judge in their own cause."**
- It ensures that a decision-maker is impartial and free from bias or conflict of interest.
- The rule prohibits situations where the decision-maker has a personal interest in the outcome of the case.
- **Example: If a judge has a financial interest in a company involved in a lawsuit, they should recuse themselves from hearing that case to avoid bias or perceived bias.**

##### **2. Audi Alteram Partem (Right to Fair Hearing):**

- This principle means "hear the other side" or "let the other side be heard."
- It requires that all parties involved in a dispute must have the opportunity to present their case and respond to the case presented against them.

- **Example: Before taking disciplinary action against an employee, an employer must provide the employee with a chance to explain their side of the story and respond to the allegations.**

### ENFORCING THE LAW

- After a **law is passed** in parliament **it has to be enforced**.
- Somebody should monitor whether the law is being followed.
- This is the **job of the executive**.
- Depending on whether a law is a Central law or a State law the Central or State Government will be the enforcing authority.
- For this purpose government functions are distributed to various ministries.
- Some of the **popular Ministries are the Ministry of Finance, the Ministry of Corporate Affairs, the Ministry of Home Affairs, the Ministry of Law and Justice and so on**.
- These Ministries are headed by a minister and run by officers of the Indian administrative and other services.
- The Government of India exercises its executive authority through a number of Government Ministries or Departments of State.
- A **Ministry is composed** of employed officials, known as **civil servants**, and is **politically accountable through a minister**.
- 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**. We will see some of the major Ministries and the laws which are enforced by them.

### STRUCTURE OF THE INDIAN JUDICIAL SYSTEM

When there is a dispute between

- citizens or
- between citizens and the Government,
- these disputes are resolved by the judiciary.

The functions of judiciary system of India are:

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

In the hierarchy of courts,

- the Supreme Court is at the top,
- followed by the High Courts and
- District Courts.
- Decisions of a High Court 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.**
- An individual can seek relief in the Supreme Court by filing a writ petition under Article 32.

### Types of Writs under Article 32:

- **Habeas Corpus:** Protects against unlawful detention or imprisonment.
- **Mandamus:** Directs a public official or body to perform a duty that they are legally obligated to perform.
- **Prohibition:** Prohibits a lower court or tribunal from exceeding its jurisdiction.
- **Certiorari:** Orders the quashing of an order or decision of a lower court or tribunal.
- **Quo Warranto:** Challenges the appointment or authority of a person holding a public office.

### Example for Filing a Writ Petition under Article 32:

1. **Violation of Right to Life and Personal Liberty:**
  - If a person is illegally detained by authorities without lawful justification, they can file a writ of habeas corpus under Article 32.
  - **Example:** A person's family member is arrested without proper legal process, and they file a writ petition seeking the release of the detained individual.
2. **Failure of Public Authorities to Act:**
  - If a government official fails to perform a duty imposed by law, such as providing essential services or protecting citizens' rights, a writ of mandamus can be sought under Article 32.
  - **Example:** A citizen files a writ petition requesting the Supreme Court to direct local authorities to clean up polluted water bodies in their area.
3. **Jurisdictional Excess by Lower Courts or Tribunals:**
  - If a lower court or tribunal exceeds its authority or acts in violation of principles of natural justice, a writ of certiorari or prohibition can be filed under Article 32.
  - **Example:** A litigant challenges a lower court's decision that was made without jurisdiction or in violation of legal procedures.

## High Court

- The **highest court of appeal in each state and union territory** is the High Court.
- **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, and one for each state and union territory.
- **Six states share a single High Court.**
- An individual can seek remedies against violation of fundamental rights in High Court by filing a writ under Article 226.
- Which is the oldest High Court in India?

- The oldest high court in the country is the Calcutta High Court, established on 2nd July, 1862.

### District Court

- District Court Below the High Courts are the District Courts.
- The Courts of District Judge deal with Civil law matters i.e. contractual disputes and claims for damages etc.,
- The Courts of Sessions deals with Criminal matters.
- **Under pecuniary jurisdiction, a civil judge can try suits valuing not more than Rupees two crore.**
- Jurisdiction means the power to control. Courts get territorial Jurisdiction based on the areas covered by them.
- Cases are decided based on the local limits within which the parties reside or the property under dispute is situated.

### Metropolitan courts

- Metropolitan courts are 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.