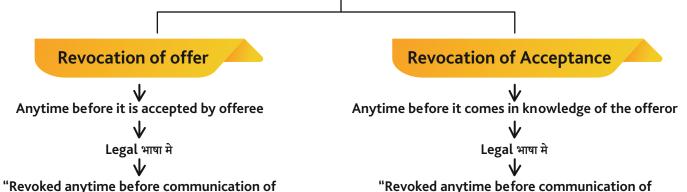
UNIT 1





Jones] Contract subject to Acceptance modification over period of time **ESSENTIAL OF VALID OFFER** Legal Relation Not contain term non-compliance of Legal relation must be created which would amount to acceptance Certain, Definite, Not Vague Specific / General No contractual relationship if made to public at large / specified person indefinite / vague Communicated to offeree Express / Implied offer can be in words or by conduct Must be communicated [Lalman Shukla v. Gauri Dutt] Assent Invitation to offer Terms proposed for negotiation must be obtained Act precedent to offer Can be converted into offer Conditional Cab be subject to T&C

LEGAL RULES - VALID ACCEPTANCE Given by person to whom offer is made General offer: Accepted by anyone If mentioned: within specified time Special offer: Accepted by specific person If not: within reasonable time Absolute & unqualified [Neale vs Merret] Mere Silence Not Acceptance [Felthouse v.Bindley] Must be communicated Conditional acceptance ≠ Acceptance. [Brogden v. Metropolitan Railway Co.] By Conduct / Implied Acceptance Modes other than verbal / written Prescribed Mode If mode prescribed Acceptance in that mode **Communication of offer** Communication of Accepteance [Sec 4] [Sec 4] $\mathbf{\Psi}$ Complete Complete When comes to knowledge of offeree Against the offeror Against the offeree When comes to knowledge When put in course of transmission by the offeree of the offeror **Revocation of Acceptance & offer** [Sec 5]

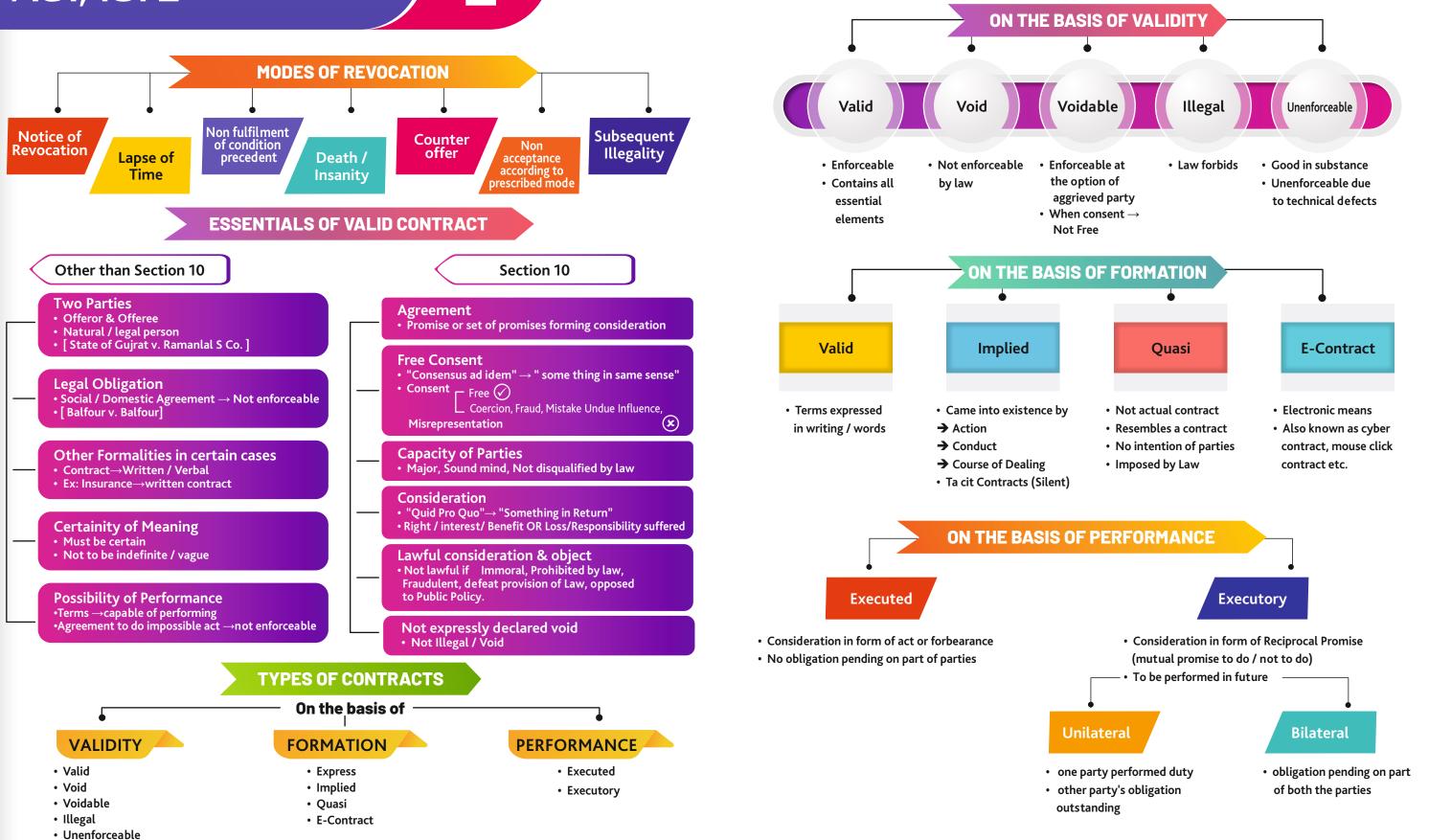


Acceptance is complete as against the offeror"

"Revoked anytime before communication of Acceptance is complete as against the offeree"

UNIT 1





UNIT



SUIT BY THIRD PARTY TO CONTRACT

Type of Contract	Contract	3rd party	
	1st party	2nd party	
→Trust	Settler	Trustee	Beneficiary
→Family Settlement	Family member	Family member	Family member not included in Contract
→Marriage Contract	Family member	Family member	Female member
→Assignment	First party	Assignor	Assignee
→Estoppel by Acknowledgement of Liability	Giver	Receiver	Beneficiary
→Covenant Running with Land	Seller	Buyer	Successor of seller
→Agent	First party	Agent	Principal

Validity of Agreement without Consideration

General Rule : Agreement without consideration \rightarrow Void But \rightarrow certain exceptions

Natural Love & Affection Sec 25 (1)

- Near relationship
- In writing
- Registered under Law

Compensation for past voluntary services Sec 25 (2)

- Services rendered voluntarily for Promisor
- Promisor intended to compensate

Time Barred Debt

- Sec 25 (3)
- Promise in writing
- · Signed by person or his agent to pay time Barred Debt

Agency

• Sec 185: No consideration necessary to create agency

Completed Gift

Do not Apply

"No Consideration – No Contract"

Bailment

Sec 148

Sec 25 (1)

 No consideration required to effect contract of "Gratuitous Bailment" (Free मे)

Charity

Sec 148

- Promisee takes Liability
- On promise of person to contribute to Charity
- [Kadarnath v. Gorie Mohammad]

CONSIDERATION

Section 2 (d)

- · When at the desire of Promisor
- Promisee or any other person
- Has done or abstained (Past), does or abstain (Present), Promises to do or abstain (Future)

Such act / abstinence / Promise → Consideration

Legal Rules → **Consideration**

At the desire of Promisor

- If at desire of 3rd party \rightarrow Not a consideration
- [Durga Prasad v. Baldeo]

From Promisee or any other person

- Stranger to consideration √
- Stranger to contract x
- [Chinnaiya v. Ramaiyya]
- Consideration
- Executed → consists in performance
- Executory → consists in promise

Consideration

Past / Present / Future

Need not be Adequate

- **Bad Bargain**
- · Something in return need not be equal to something given
- If consent free → cannot be void, just because consideration is inadequate

Must not be performance of what one is legally bound to perform

- Example: Paying ₹ 10,000 to police officer to investigate crime \rightarrow Not a valid consideration
- Consideration
- · Real (Something, to which law attaches value)
- · Not Illusory (not physically / legally impossible)

Must not be unlawful / Immoral / opposed to Public policy

Doctrine of Privity of Contract

- Private relation exists between the parties.
- "Stranger to contract cannot sue"

- Only party to contract can sue.
- EXCEPTIONS→Suit by third party to contract

UNIT



Insolvent

Mistake

(Sec 20, 21, 22)

VOID



Section 11 Major Capacity to Contract Sound Mind

Not disqualified by Law

Contract → void-ab-initio (Mohari Bibi v. Dharmo Das Ghose)

No Ratification after attaining majority

Void agreement can never be ratified

Beneficiary

• Minor→not competent to contract →Can take benefit out of contract

Can always plead minority

- Rule of Estoppel cannot be applied
- Even when falsely represented majorty

Liability for Necessaries Sec 68

- No personal liability, only his property liable
- 2 conditions
- Goods reasonably necessary -• Not have sufficient supply

Contract by Guardian

- •Within competence
- •On minor's behalf →for benefit of minor

Shareholder

- Only in case of →Transfer / Transmission, minor can
- be shareholder
- -• ·of fully paid up shares - through lawful Guardian

No Specific Performance

 Void agreement→therefore no specific performance

No Insolvency

- · Debt & dues payable from personal property
- · Never held personally liable

Partnership Sec 30

ullet Cannot be partner o can be admitted to benefits

• But not liable to principal for his acts

Cannot bind Parent / Guardian

 Parents liability →when child act as an agent for them

Joint Contract

- Minor + Adult → Adult Liable
- [Sain Das v. Ram Chand]

Surety

- Contract of Guarantee
- Debtor is minor surety (Adult) is liable to third party

Torts

• Civil wrong (ex: Defamation etc) • Liable for torts . Not liable for breach of contract

PERSON OF SOUND MIND SEC 12

LAW

RELATING

TO MINOR'S

AGREEMENT

usually unsound mind occassionally sound mind

usually sound mind occassionally unsound mind

· Make contract, when of sound mind

· Not make contract, when of unsound mind

UNDUE INFLUENCE **COERCION**

VOIDABLE

Alien Enemy

Committing / threatening to commit any Act (Forbidden by IPC)

Undue Influence

(Sec 16)

- Unlawful detaining / threatening to detain any
- Intention: to cause person to make agreement
- Effect: 1 Contract voidable Effect: 2 Benefit received to be restored
- Proceed from party to contract ¬
- Subject must be other contracting party

Foreign Sovereign

Coercion

(Sec 15)

Not Not → Necessary

Convicts

• Near Relation between 2 parties

One of them is position to dominate

Misrepresentation

(Sec 18)

- Person Deemed to be in position to dominate:-
- 1. Real & Apparent Authority (Father Son)
- 2. Fiduciary Relationship (Trust) (Husband Wife)
- 3. Mental Distress (Doctor Patient)
- 4. Unconscionable Bargain (Unreasonable)
- Effect: 1 Contract voidable Effect: 2 May be set aside by court

FRAUD

NOT DISQUALIFIED BY LAW

Persons disqualified

FREE CONSENT

Consent is Free, when not caused by

Fraud

(Sec 17)

Commission of Following act:-

- 1. Fact suggested→ knows, not true
- 2. Active concealment of fact
- 3. Promise made without intention of performing
- 4. Other act filled to deceive
- 5. Any act declared by Law \rightarrow as Fraud

Effect:-

- 1. Contract voidable
- 2. Sue for damages

Committed by:-

- 1. Party to contract, with his connivance
- 2. Agent of party to contract

Intention:-

- 1. To deceive
- 2. To indue to enter into contract
- 1. Rescind→ within reasonable time
- 2. Insist performance

OR

UNIT 3





(Caveat Emptor : Let the buyer beware)

Exception: i.e.

Silence = Fraud

Duty of person keeping silence to speak

Fiduciary relationship, Insurance Contracts,
Marriage contracts, Family Settlement, Share Allotment

Where Silence=Speech

Contract not voidable if party had means of discovering Truth.

MISRPRESENTATION

- Representation of fact which is not true but beleives to be true
- Made without intention to deceive
- Causing other person to make mistake of subject matter
- Effect: 1 Repudiate Contract
 - 2 Sue for Restitution
 - 3 Cannot Claim Damages

MISTAKE

- Two parties thing about different subject matter
- Lead contract towards 'voidness'
- Mistake of Law
 - Foreign Law: Excusable
 Own Law: Not excusable
- Mistake of Fact
 - Unilateral→Not void
 - lue Bilateral o void

CONTRACT NOT VOIDABLE

Silence amounting to Fraud

Fraud / Misrepresentation

Enters into contract in ignorance of Fraud

- Had means to discover truth
- Did not cause consent of party

LEGALITY OF OBJECT & CONSIDERATION

Sec 23: Consideration is said to be unlawful

Forbidden by Law

Act punishable under any statute or prohibited

Defeat provisions of Law

Intention of Parties → to defeat provision →
 Court will not enforce it

Fraudulent

As per section 17

Consideration defeats any Rule for the time being in force in India

Consideration involves injury

• Harm to person or property of another

Consideration Immoral

Consideration opposed to Public Policy

•

Agreements opposed to Public Policy

Trading with enemy

 Agreement with person from country, at war with India → VOID

Stifling Prosecution

- Agreement to drop proceeding in consideration of amount \rightarrow VOID
- Abuse of Justice
- Exception :- Consideration for compoundable offence

Maintenance & Champerty

Agreement Valid except: 1 Unreasonable
 2 Motive: Malicious

Interest against obligation

• Do something against his duty

Traffic relating to public offices

Interferes appointment of best qualified person → VOID

Agreement to create monopolies

Marriage Brokerage Agreement

- Void
- Marriage Bureau → only provides information,
 Thus, not covered under this

Interference with course of Justice

• Agreement with Judicial officer to act partially / corruptly \rightarrow VOID

Consideration Unlawful in part

- 1 or more objects→Part of single consideration
- Single object → Part of several consideration

Unlawful → VOID

VOID AGREEMENTS

By Incompetent Parties

In restraint of Trade

(except Sale of

oodwill & Partnership)

Bilateral Mistake

Restraint of Legal proceeding (except Arbitration) Meaning uncertain

Agreement of service

Wagering Agreement

Agreement

without consideration

ering To do

In restraint of marriage

Impossible Acts

(except Minor)

WAGERING AGREEMENT

Consideration /

object unlawful

- Promise to pay money / money's worth
- No interest in event

Transaction similar to wager

Lottery

Game of chance

Crossword Puzzle & competitions

Speculative Transaction

Settlement of difference between Contract price & market price

Horse Race Transaction

Conditional on uncertain event
 Win or lose

Transaction resembling wager But not void

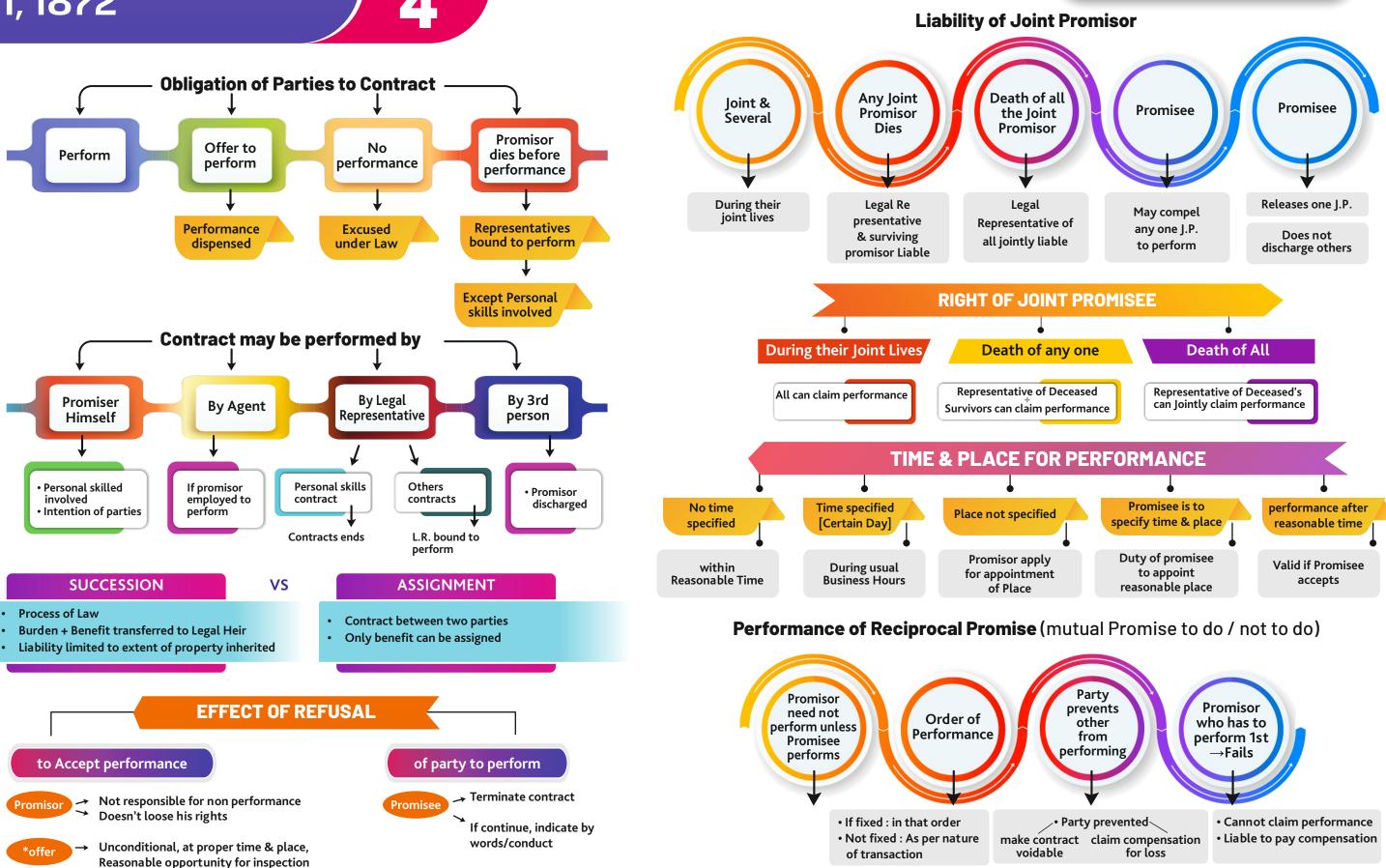
Chit Fund Share

Market Transaction

- Delivery of goods / shares → Not wager Game of Skills / Athletic Competition Contract of Insurance
- Type of Contingent Contract \rightarrow Valid











EFFECT OF FAILURE TO PERFORM AT TIME FIXED

When Time is essential

 Voidable at option of Promisee

When Time is not essential

- Not voidable
- Promisee can claim compensation for loss

IMPOSSIBILTY

INITIAL **IMPOSSIBILITY**

- Impossibility existing at time of
- · Fact of Impossibility
- 1. If known to parties → Void Agreement
- 2. If unknown to parties→Contract Void
- 3. Known to Promisor only→Promisee can claim compensation

SUBSEQUENT IMPOSSIBILITY

- Becomes impossible after entering into contract
- Also known as supervening impossibility or Doctrine of Frustration
- Parties discharge from further performance
- Contract it becomes void.

RECIPROCAL PROMISE Certain things Illegal Legal Valid Void



APPROPRIATION OF PAYMENTS NOT INDICATED NEITHER PARTY INDICATED BY DEBTOR **APPROPRIATES** BY DEBTOR Creditor applies at his discretion · Applied in order of time Adjust as per express intimation • To any lawful debt actually due implied circumstances Even time barred debt can be adjusted

CONTRACTS WHICH NEED NOT BE PERFORMED

Alteration

- Substitute New Contract for old
- Old Contract discharged Terms can be altered not contracting parties

Novation

Substitution of New

Contract for old

Rescission

- Cancellation of Contract
- No new Contract

Acceptance of lesser fulfilment of terms

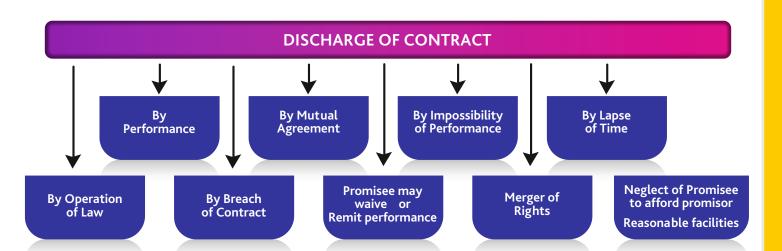
Remission





Effect of Neglect of Promisee

- Promisee → Not provided reasonable facilities for performance
- Promisor → excused by such neglect / refusal



UNIT



Breach FAILURE OF PARTY TO PERFORM HIS/ HER OBLIGATION UNDER CONTRACT

ANTICIPATORY

- Breach occuring before time fixed for performance has arrived
- Express / Implied breach
- Effect —
- 1. Rescind & Sue for Damages immediately.
- 2. Not rescind & wait for performance
- Promisor may get benefit of supervening Impossibility

ACTUAL

- Breach occurs —
- 1. when performance due
- 2. during the performance
- Other party obtains Right of Action against defaulting party.

REMEDIES FOR BREACH OF CONTRACT

Suit for Damages

Rescission of Contract **Suit for Specific** Performance

Suit for Injunction Suit upon Quantum Meruit

SUIT FOR DAMAGES

ORDINARY

- Compensation for damages naturally arose during usual course of events.
- No Compensation for Remote / Indirect Loss

SPECIAL

 Arises on previous notice of special circumstances affecting contract

VINDICTIVE / EXEMPLARY

- · Breach of Promise to marry
- Wrongful dishonour of cheque by Bank

NOMINAL

- No real damage suffered
- Establishes Right to decree

DETERIORATION CAUSED BY DELAY

Damages recovered even without Notice

PRE – FIXED DAMAGES

 Sum to be paid for breach → mentioned in contract

LIQUIDATED DAMAGESV/SPENALTY

- Reasonable Compensation
- **Genuine Pre estimate**
- Not exceeding sum mentioned
- **Exorbitant amount**
- Create terror
- Sum payable in excess of Damage

PERFORMANCE

- Contract broken
- Other party may rescind contract

OF CONTRACT

RECISSION

 Can claim compensation

SUIT FOR SPECIFIC

- Damages are not adequate remedy
- Court may direct to carry out promise as per terms of Contract

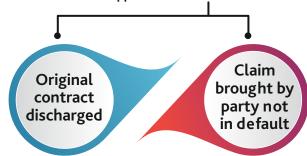
SUIT FOR INJUNCTION

- Party negates terms of contract
- **Court** → **restrains** from doing, what he promised not to do.

QUANTUM MERUIT

- · As much as the party has deserved
- Recompensate for value of work done, where no remuneration fixed

2 Condition for application of Doctrine



Claim of Quantum Meruit in following cases —

Something done with No intention to do gratuitously

Void Agreement Contract becomes void

One party refuses to perform

Contract Divisible

Contract **Indivisable**

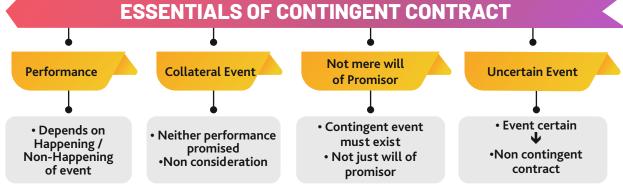
Pay for part performance enjoyed

- Performed badly but completely
- Deduction for bad work

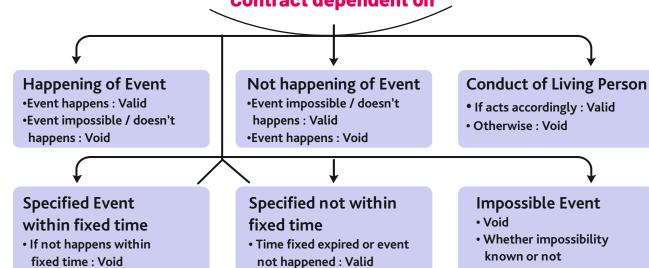
UNIT 6



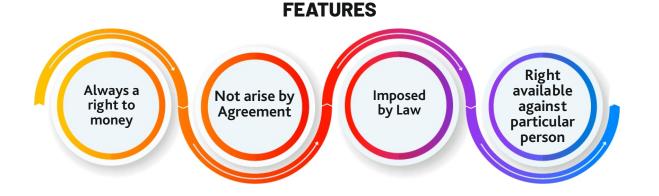




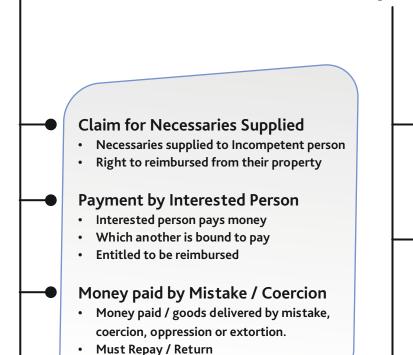
RULES RELATING TO ENFORCEMENT [Sec 32 – 36] Contract dependent on



OUASI CONTRACTS Based on Not an actual Resembles a Also known Law imposes Contract Contract as Constructive obligations Principle of **Equity, Justice** on parties Contracts & good conscience



CASES DEEMED AS QUASI CONTRACTS



Obligation of person enjoying Non Gratuitous Act

- Lawfully does something
- · No intention to act gratuitously
- Person enjoying benefit → Bound to pay

Responsibility of finder of goods

- Take care of property
- No right to appropriate goods
- · Restore goods if owner found
- Responsibility same as Bailee

THE SALE OF **GOODS ACT, 1930**





Symbolic

Delivery of things in token

of transfer of something

Token Agreement

When time elapses

Condition is fulfilled

to sale become sale

FORMATION OF THE CONTRACT OF SALE

Scope of the act

- Only movable Property
- General provision of Contract Act also applicable
- **Expression of Indian Contract Act**
- Custom & Usage

- **Buyer & Seller Goods**
 - All movable property other than money & actionable claim
- - Voluntary transfer of Possession from one person to another
- Document of title
 - Proof of the possession or control of GoodsOR
 - Is for authorising or purporting to authorise either by endorsement or delivery
- Document showing title
 - Share certificate is document showing title
- Property (Special vs General)
 - · Ownership or General property
- **Insolvent**—Ceases to pay his debts in ordinary course
- **Price** —Money Consideration for Sale of Goods
- **Quality** State or Condition

CONTRACT OF SALE HOW MADE (Section 5)

Section 5(1)

- Offer to buy or sale Goods at Price
- Acceptance of offer
- Immediate delivery of Goods

Immediate Payment

Both

- · Delivery or Payment or both in Installment
- Delivery or Payment or both shall be postponed

Section 5(2)

- In writing
- By word of mouth
- Partly in writing & partly by word of mouth
- Implied from conduct of parties

Contract may be made

GOODS

Existing

Goods are in existence at the time of Contract of Sale

Future

Goods to be manufacture produced Or acquired after **Contract of Sale**

Contingent

acquisition depends upon contingency

Specific Identified and agreed upon at the time of Contract of Sale.

Ascertained Identified after Contract of Sale.

Unascertained Not specifically identified or agreed upon at the time of Contract of Sale.

DELIVERY

Actual

Goods are physically delivered to buyer

Contract of Sale

Sale

Agreement to sale

Constructive

Effected without change in custody or physical possession

Sale vs Agreement to Sale

- 1. Transfer of property
- 2. Nature of contract
- 3. Remedies for breach
- 4. Liabilities of parties
- 5. Burden of risk
- 6. Nature of right
- 7. Right of resale
- 8. In case of insolvency of seller
- 9. In case of insolvency of buyer

Sale VS Hire Purchase

- 1. Time of passing of property
- 2. Position of party
- 3. Termination of contract
- 4. Burden of risk of insolvency of buyer
- 5. Transfer of title
- 6. Resale

Sale VS Bailment

- 1. Transfer of property
- 2. Return of Goods
- Sales and contract for
- 3. Consideration
- **Work and Labour**
- subject matter of contract of sale

Section 6

Existing Or Future Goods

Section 7

Goods Perishing before making contract

Section 7

Goods Perishing before sale but after agreement to sale

PERISHING OF FUTURE GOODS

Section 9 & 10

Ascertainment of Price

by Contract OR Fixed in a manner agreed OR By the course of dealing between **Parties**

Agreement to sale at **Valuation by Third Party**

1. Third Party does not OR cannot make such valuation.

Contract will be avoided

2. Third Party is prevented by buyer OR seller. Party in fault will file suit.

THE SALE OF **GOODS ACT, 1930**

CONDITIONS AND WARRANTIES

CONDITIONS

Essential to main Purpose of Contract

Repudiation

WARRANTIES

Collateral to main Purpose of Contract

claim for damaged

CONDITIONS AND WARRANTIES Express Terms Condition **Expressly Provides** Section 14 Section 13 **Implied** 17Express & When condition Implied 1 Difference is to be treated Condition & as warranties **Implied** Warranties **Not Expressly** provided

- Meaning
- Right in case of Breach
- Conversion of Stipulation

Voluntary

- 1. Waive Performance of Contract
- 2. Elect to Treat Condition as **Warranty Compulsory**
- 1. Non severability of Contract
- 2. Fulfillment of Condition execused by law Stipulation

Implied Condition

- 1. Condition as to title
- 2. Sale by sample
- 3. Condition as to quality or fitness
- 4. Condition as to whole some noss
- 5. Condition as to Description
- 6. Sale by Sample as well as description
- 7. Condition as to merchantability
- 8. Implied Warranty
- (1) Warranty as to undisturbed possession
- (2) Warranty as to non existence of circumference
- (3) Discloser of dangerous nature of goods Warranty as to quality OR fitness by usage of trade

CAVEAT Emptor

Exceptions —

- 1. Fitness as to quality OR use
- 2. Goods Purchased under patent or brand name
- 3. Goods sold by description
- 4. Goods of merchandise quality

- 5. Sale by sample
- 6. Goods by sample as well as description
- 7. Trade usage
- 8. Sellers actively cancels the defects

VIDHYODAY VIDHYA KA UDAY

TRANSFER OF OWNERSHIP AND DELIVERY OF GOODS TRANSFER OF PROPERTY **Depends On Identification of goods Intention of Parties** Reservation of Specific and Unascertained Goods sent Right of disposal Goods ascertained on approval Goods Risk prima facie passes with ownership unless otherwise agree risk Prima facie passes with ownership **Exception** delivery delayed due Delivery delayed to fault of buyer due to fault of seller Duty of Seller as a bailee TRANSFER OF TITLE BY NON OWNER Sale by buyer Sale by an Sale under Sale by Person Person in **Effects of** of the Joint **Provision of** who has already Estopple **Possession** Other Act owner sold goods but Property n of Voidable continues the Contract Possession (SEC-34-41) RULES REGARDING DELIVERY OF GOODS 6. Delivery of wrong quantity 11. Buyer right to examine the goods Buyer to apply for delivery **Expenses of delivery** 12. Installment delivery Goods in possession of third party 13. Delivery in wrong quantity

1. Part delivery

Sale by

Mercantile

agent

- Place of delivery
- 4. Time of delivery
- Installment delivery
- 9. Delivery to carrier
- 10. Determination during transit

DELIVERY

Actual delivery

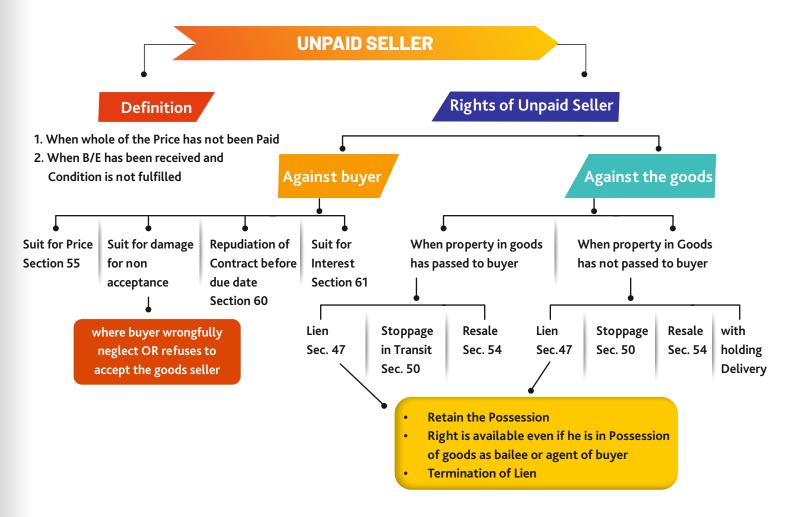
Symbolic delivery

Constructive delivery

THE SALE OF GOODS ACT, 1930







OTHER PROVISIONS (Section 64) (Section 64A) **Inclusion of increased Auction Sale** OR (Mode of selling Property by inviting decreased taxes in Contract of Sale bids publicly and Property is sold to higher bidder) 1. Effect of taxes will be added in Price and reduction in taxes will be deducted from price 2. Effect of Provision will be excluded if there is contract to contrary Where Goods Completion Right to bid may Where Sale is **Reserve Price Pretended** of the Contract be reserved not notified by bidding are sold in Lots Minimum Separate of Sale Seller can the seller **Starting Price** Contract will on fall of also bid Not lawful for Lot Separate be voidable seller to bid hammer Contract for himself REPUDIATED BY EITHER PARTY Other Party Treat the Contract as Other Party may rescind the Contract and Claim damages Subsisting and wait till the date of delivery

REMEDIES OF BUYER AGAINST SELLER

Damage for non delivery Section 57	Suit for Specific Performance Section 58	Suit for breach of warranty Section 59	Suit for anticipatory breach Section 60	Suit for Interest
Seller wrongfully refuses to deliver the goods	 Contract for sale of specific/ ascertained Goods Provision of specific Relief act Damage is not adequate remedy If goods are of special nature 	buyer can not reject the goods due to Breach of Warranty		recover interest when Interest is recoverable as per any Law

OR unique

Right of Stoppage in Transit Difference between Effects of sub sale **Duration of** How When does • Buyer becomes insolvent Transit Stoppage in Transit Right of Lien and OR Transit is Right of Stoppage in comes to Seller pasted with Possession Pledge by buyer effected Transit an End • Seller can Resume Possession Right of lien & Right of lien & stoppage will stoppage will be not be affected affected **RIGHT OF RESALE BY SELLER** No Need to inform buyer when — Need to inform buyer other goods—

goods are of Perishable nature

STOPPAGE IN TRANSIT

(if notice is given to buyer)

Resale Price > Contract Price

difference will be retained

Resale Price < Contract Price

difference will be Recovered

(if notice is not given to buyer)

Resale Price > Contract Price

difference cannot be retained

Resale Price < Contract Price

difference cannot be Recovered

THE INDIAN PARTNERSHIP ACT, 1932





WITH REGARD TO EXTENT OF BUSINESS

Partnership

Relation between Partners

Firm

Partners who have entered into Partnership are collectively called Firm

Name under which their business is carried on Firm Name

Association of 2 **More Persons**

Firm and minor

cannot be Partner

Agreement

 Must be the result of an agreement

 Limit 50 May be oral or written

> May be express or implied

Business

includes Trade

occupation and

Profession motive

(acquisition of Gain)

Sharing of Profit

Carried on by all Any of them acting for all

is essential Sharing of loss

Sharing of profit

is not essential

well agent He can bind other Partner

by his act (agent)

• Each partner is principal as

· He is bound by the acts of other partner (Prinicipal)

TEST OF PARTNER SHIP

Agreement

Relation of Partnership arises from contract not from status

Sharing of Profit

Sharing of Profit is Prima facie evidence not conclusive evidence

Mutual Agency

• Existence mutual agency is cardinal principal's law

UNIT

• Each Partner carrying on business is Principal as well as agent

TYPE OF PARTNERS

Active or Ostensible **Partner**

Who become Partner by agreement

Who actively participate in the conduct of business

Sleeping Partner or Dormant Partner

Who is Partner by agreement

who does not actively take part in the conduct of business

Nominal Partner

- Lends his name
- Without having any real interest
- Not entitled to share any profit
- Does not take part in conduct of business
- Liable to third party

Partner in Profit Only

- Entitled to Share Profit only
- Not liable for losses
- Liable to third party for All acts of profit only

Incoming Partner— admitted with the consent of All Partners not liable for acts done before admission.

Outgoing Partner - • who leaves the firm • Liable for All acts till Public notice is given

Partner by holding out only — Partner by estopple

When a Person represent himself

OR

Knowingly permits himself to be represented himself as Partner in a firm

he is Liable like a Partner in a firm

VARIOUS KINDS OF PARTNERSHIP

WITH REGARD TO DURATION

Partnership for Partnership at Will **Fixed Period**

Not fixed period agreed upon & No provision as to determination of Partnership

Partner is for fixed term Continued after Expiry of term

Can be dissolved any time by giving notice in Writing

Contract for duration of Partnership

General Partnership

Partnership constituted with respect to business in General

Particular Partnership

- Particular adventure or undertaking
- Liability extends to Particular venture or undertaking

PARTNERSHIP DEED

A document in writing containing various terms and conditions as to the relationship of Partner to each other is called Partnership deed.

CLAUSES

SPECIFIC POINTS

- Admission & retirement of Partner
- Settlement of A/c on Dissolution
- **Explusion of Partners**

GENERAL POINTS

- · Name of Partners & Firm
- Place of Business & Date
- Nature of Business & Duration
- Capital
- IOD, IOC & Interest on Loan
- Salary & Commission
- PSR

Partnership | VS HUF

- Legal status
- Agency Distribution
- of profit
- Extent of liability
- Property

Club

- Transfer of Shares
- Management • Registration
 - Winding up No. of membership
 - Duration of Existence

Partnership |

- Definition
- relationship
- · Intrest in **Property**
- Dissolution

Partnership HUF

- Mode of creation
- Death of member
- Management Authority to bind
 - Liability Calling for accounts
 - on clauses **Governing Law**
 - Minors capacity
 - Continuity
 - Number of members
 - Share in business

Partnership Co ownership

Partnership VS **Association**

THE INDIAN PARTNERSHIP ACT, 1932

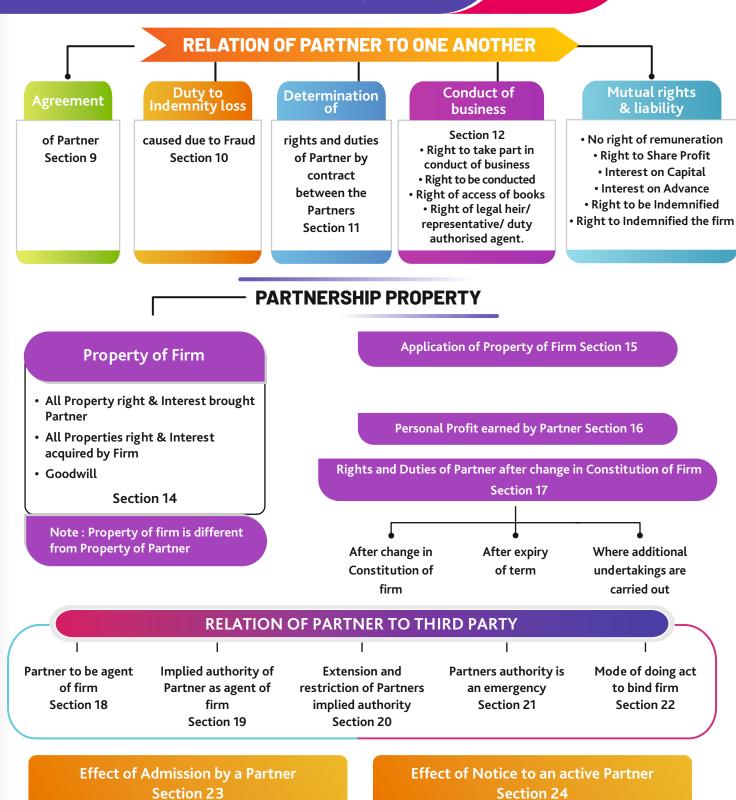
UNIT

Notice to Partner operates as a notice to firm

Exception — fraud on the firm by

OR with the consent of Partner





LIABILITY TO THIRD PARTY Liability of firm for Liability of the firm Liability of a misappropriation by Partner for acts wrongful act of **Partner** a Partner of the firm Section 27 Section 26 Section 25 **RIGHT OF A TRANSFREE OF A PARTNERS INTEREST(Section 29) During Continuance** On dissolution of firm / retirement of of Partnership transferring partner is entitled. Receive share of Asset of firm Transferee is entitled Transferee is not entitled to receive Share of Profit 1. Interfere the conduct of business Accounts from date of dissolution only (cannot challenge 2. Require an Account 3. Inspect books of firm the Account) MINOR ADMITTED TO THE BENEFIT OF PARTNERSHIP (Section 30) Right Liability after attaining before attaining majority majority when he elects to become Partner become Partner **LEGAL CONSEQUENCES OF PARTNER COMING IN & GOING OUT** Introduction of A Partner Insolvency of A Partner Retirement of A Partner Expulsion of A Partner Section 31 Section 32 Section 33

RIGHTS OF OUTGOING PARTNERS To carry on To share subsequent competing business profit in certain cases Section 36 **Section 37**

REVOCATION OF CONTINUING GUARANTEE BY CHANGE IN CONSTITUTION OF FIRM Section 38

An admission or representation made by Partner

concerning the affairs of the firm is evidence against

the firm if made in ordinary course of business

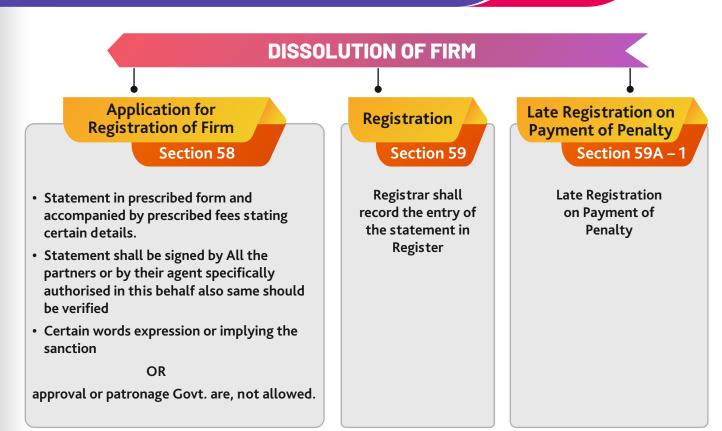
elects not to

Section 34

THE INDIAN PARTNERSHIP ACT, 1932

UNIT 3





DISSOLUTION OF FIRM

Without the Court Order (Section 40 to 43)

- 1. Mutual Agreement (Section 40)
- 2. Compulsory Dissolution (Section 41)
- 3. On happening of certain event by notice (Section 42)
- 4. By Notice (Partnership at Will) (Section 43)

By Order of Court (Section 44)

- 1. Insanity
- 2. Misconduct
- 3. Permanent Capacity
- 4. Persistent breach of Agreement
- 5. Transfer of Interest
- 6. Continuous Loss
- 7. Just and Equitable Ground

Liabilities for Acts of Partner done after dissolution

Section 45

Section 46

Right of Partner to have business wound up

Section 47

RIGHT AND LIABILITIES OF PARTNERS AFTER DISSOLUTION

Continuing authority of Partner for the purpose of winding up

Section 48

Mode of settlement of Partnership Account

Section 49

Payment of firm debt and of separate debts

Consequence of Non-Registration (Section 69) Continuation Wending up Order of Court Scope Final Closure of books

CONSEQUENCE OF NON-REGISTRATION

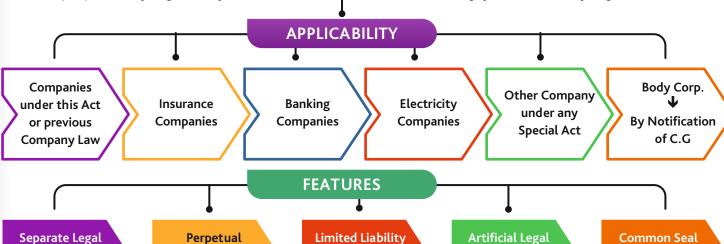
of Business

THE COMPANIES **ACT, 2013**



THE COMPANIES ACT, 2013

Sec(20): Company Incorporated under this act or under any previous company law.



 Company can open Bank A/c, Raise loan. Sell. Purchase Property etc.

Entity

 Asset contributed by SH, is asset of company. [Macaura V. Northern Assurance Company Ltd

Succession

- Created by Law Wound up by Law
- · Not affected by Death/Insolvency of members

- - · Limited by Guarantee **Unlimited Company**

- Limited by Shares
- · Created by Law Act through **Human Agency**

Person

- · Official sign of Company
 - Not Mandatory

CORPORATE VEIL THEORY

- · Members Sheilded from liability connected to Company's Action
- · Company identified separately from its members [Salomon V. Salomon & Co. Ltd.]

LIFTING OF CORPORATE VEIL

- Courts ignore company & concerns directly with its members
- Disregarding corporate entity & paying regard to realities behind the legal facade.

CASES WHERE COMPANY LAW DISREGARD CONCPT OF "SEPERATE LEGAL ENTITY]

- **Determine Character of Company** Daimler Co. Ltd V. Continental Tyre & Rubber Co
- → To Protect Revenue / Tax **Dinshaw Maneckjee Petit**
- To Avoid Legal Obligation Workmen of Associates Rubber Industry V. Associates Rubber Ind. Ltd.
- Formation of Subsidiary to act as agents Merchandise Transport Ltd. V. British **Transport Commission**
- Company formed for Fraud/ Improper Conduct Gilford Motor Company Ltd. V. Horne

CLASSES OF COMPANIES

On the basis of Liability

Limited by Shares

 Liability limited to nominal value of shares held

Limited by Guarantee

- · Liable to extent of amount guaranteed in MOA.
- At the time of Liquidation

Unlimited Company

- Liability unlimited
- · Contribute in event of winding up

ON THE BASIS OF MEMBERS

ONE PERSON COMPANY Sec 2(62)

- · Company which has only one case of death of member will become member.
- · Member / Nominee shall be :-
- 1. Natural Person
- 2. Indian Citizen
- 3. Resident in Indian (Min 120 Days stayed in previous F.Y.)
- Cannot be converted into Sec. 8 Co.

PRIVATE COMPANY Sec 2(68)

- Share Capital : No limit
- Restricts by its Articles :-
- 1. Transfer of Shares is restricted
- 2. Public offer is prohibited
- 3. Max. member: 200 (except OPC) Present & past employees excluded from Counting of 200 Joint Shareholder to be counted as one
- Min. Director: 2; Min. Member: 2

PUBLIC COMPANY Sec 2(62)

- Co. which is not a private company
- · Articles do not have restricting clauses Members Min: 7
- Subsidiary of Public Co. → Deemed to be Public Co.

Max: No limit

SMALL COMPANY Sec 2(85)

AND

- · Company other than Public Co.
- Paid up Capital ☐ Min: 7 Max: No limit
- Turnover

Limit: Not exceed 20 crore Higher Amt: not more than 100 cr

ON THE BASIS OF ACCESS TO CAPITAL

LISTED COMPANY

- SEC 2 (52)
- · Company which has any of its securities listed on any recognised Stock Exchange
- If SEBI prescribes: Co. not t be considered as **Listed Company**

UNLISTED COMPANY

Company other than listed company

THE COMPANIES ACT, 2013

VIDHYODAY VIDHYA KA UDAY

ON THE BASIS OF CONTROL

HOLDING COMPANY

- Sec 2 (46)
- A company of whose other companies are subsidiary or Associate companies

ASSOCIATE COMPANY

- Sec 2 (6)
- A company in which other company has "Significant Influence" (Atleast 20% of total voting
- power / control)Includes Joint venture but not a Subsidiary Co.

SUBSIDIARY COMPANY

- Sec 2 (87)
- A company in which Holding Co.:-
- 1. Controls composition of B.O.D.

OR

2. Controls more than half of total voting Power

on its own or together with its subsidiary

 Deemed to be Subsidiary Co. : - If control is of another Subsidiary Co. of the Holding Co.

OTHER COMPANIES

Government Company

- Sec 2 (45)
- Company in which atleast 51% of paid up Share Capital held by:-
 - 1. CG
 - 2. SG
 - 3. CG + SG

Dormant Company

- Company formed for future project or to hold IPR / Asset
- No Significant Accounting Trans.
- Inactive Company :-
- 1. Not carrying business
- 2. Not Significant Accounting Tr.
- 3. Not field financial statement/ Annual Return

During last 2 F.Y.

Foreign Company

- Sec 2 (42)
- Company incorporated outside India
- Has place of business in India
- Through itself or agent, physically or electronically.

Section 8 Company

- To promote Art, Science, Commerce, Sports, Religion, Environment etc.
- Profit utilized for promotion of objects
- Dividend distribution prohibited
- Need not use word 'Limited' or 'Private Limited'

Nidhi

Company

Company incorporated

to Cultivate habit of

savings amongst its

Public Financial Institution

Sec 406 (1)

members

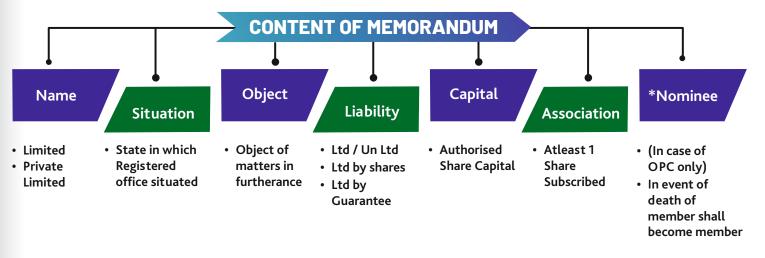
- LIC
- UTI
- IDFC Ltd.
- Notified by CG in consultation with RBI
- Established under Central State Act
- Atleast 51% paid up capital held by CG / SG / CG +SG

INCORPORATION OF COMPANIES Filing of Documents Allotment Registration Maintenance with ROC of CIN by ROC of Document MOA & AOA • Issue Certificate Allotment of Till Liquidation of Incorporation Corporate At the registered **Declaration of Professional** Identification (COI) office **Declaration by Subscriber &** Number by ROC Directors shall: 1. Not convicted of offence 2. Not found guilty of Fraud/ **Effect of Registration** Misfeasance → during last 5 yrs. 3. All documents Correct, 1. Subscribers will become member of company Complete & True 2. Company Address for correspondence **Details of Subscribers &** Directors **Body Corporate Business** Sue & be Sued Acquire, Hold Own Name in its Own Name & Sell property PENALTY FOR FALSE DISCLOSURE Company Not been Incorporated Company has been Incorporated Person furnishing false information • Promoter / First Directors / Person making Declaration Liable for Fraud u/s 447 • Liable for Fraud u/s 447 TRIBUNAL IF SATISFIED Pass order for change Member's Liability Removal of Name from Order for Other orders in MOA / AOA unlimited **Register of Companies** winding up **CLASSIFICATION OF CAPITAL** Called-up **Nominal** Issued **Subscribed** Paid-up Max. amount of capital Part of Nominal Part of Capital Part of Capital Total amount authorised in MOA Capital, offered for Subscribed by its called for paid on shares · Also known Authorised subscription members issued payment or Registered Capital KINDS OF CAPITAL **Equity Share Capital Preference Share Capital** Share Capital which is not Preference Share Capital • Part of Issued Share Capital which carries preferential right to :-1. Payment of Dividend 2. Repayment at winding up

THE COMPANIES ACT, 2013

VIDHYODAY VIDHYA KA UDAY

- Charted document, defines scope of powers of Company
- Contains object for which company is formed, Beyond which actions cannot go.
- Sec 399: Memorandum is public document, person contracting with company presumed to have knowledge of it
- Any contract beyond the power of memorandum ULTRA VIRES & VOID
- Form of MOA: Table A, B, C, D, E
- Memorandum: Printed, Paragraphed, Numbered, Signed in presence of 1 witness, Description of Subscribers.
- MOA must comply with provisions of Companies Act, 2013.



MEMORANDUM OF ASSOCIATION

- Rules & Regulations framed to manage Internal affairs.
- Forms of Articles: Table F,G, H, I & J
- Model Articles: May adopt all or any regulations
- Entrenchment Provision:
- 1. Amendment, if more restrictive provisions are inserted
- 2. At the time of Incorporation or by Amendment (Special Resolution)

BASIS	MOA \	//S AOA
Objectives	Defines & delimits the objectives of Company	Rules & Regulation for management of Company
Relationship	Company and outside world	Company and its members
Alteration	Only under certain circumstances with permission of RD/ NCLT	By passing Special Resolution
Ultra Vires	Acts done beyond MOA – void and ultravires, cannot be ratified	Acts beyond AOA, Ratified by Special Resolution of Shareholder

DOCTRINE OF ULTRA VIRES

- · Act done in excess of legal powers
- Acts done beyond the power of Director and Company →void & not binding on Company
- · Company can neither sue nor can it sue on it
- MOA public document (open for inspection)
- Person dealing with Company cannot enforce against Company, if ultra vires.
- Acts ultra vires the Director →SH can ratify
- Acts ultra vires the Articles → Articles altered
- Acts ultra vires the Company →VOID, SH cannot ratify
- [Ashbury Railway Carriage & Iron Company Ltd V. Riche]



DOCTRINE OF CONSTRUCTIVE NOTICE

- · "Right of Inspection to all."
- Any person can inspect by electronic means, make record or get copies.
- Duty of person dealing with company:
- 1. To inspect documents
- 2. Ensure, Contract is in conformity with provisions.
- Person reads the document or not → Presumed to have knowledge of contents.
- If Contracts, beyond power of Company ightarrow Cannot acquire any rights against Company



DOCTRINE OF INDOOR MANAGEMENT

- Exception to doctrine of Constructive Notice
- · Outsiders not deemed to have notice of internal affairs of Company.
- Popularly known as Turquand Rule [Royal British Bank V. Turquand]
- Indoor management is internal problem of Company, Outsiders not deemed to have knowledge of internal Affairs of Company.

EXCEPTIONS TO DOCTRINE OF INDOOR MANAGEMENT

1 Actual Constructive Knowledge of Irregularity

- [Howard V. Patent Ivory Manufacturing Co.]
- Omitting to do something that is necessary.
- Cannot be protected under Doctrine of Indoor Management

2 Suspicion of Irregularity

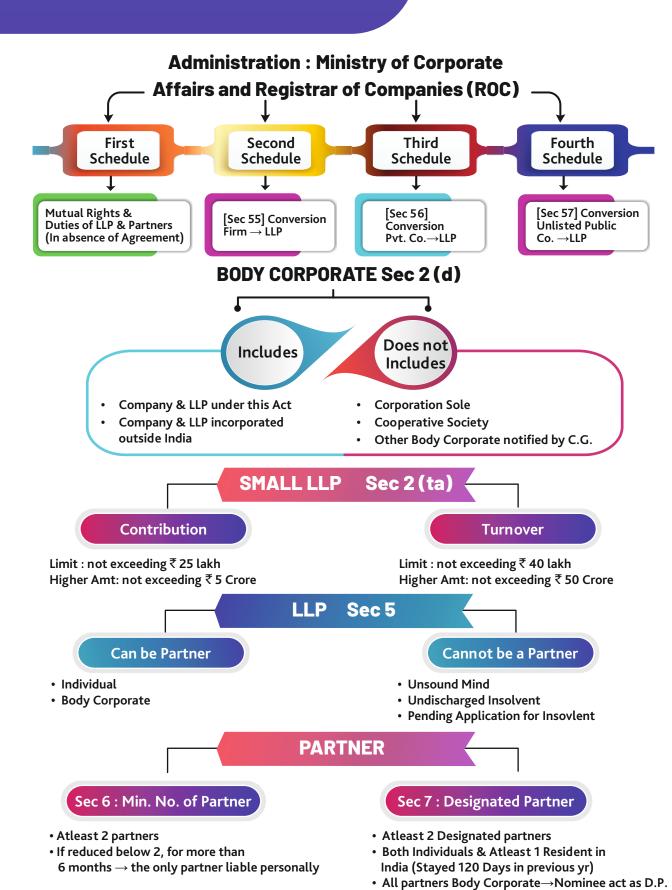
- [Anand Biharilal V. Dinshaw & Co.]
- Person dealing with Company suspicious about circumstances
- Still doesn't enquire, then cannot rely on Doctrine of Indoor Management

3 Forgery

- [Ruben V. Great Fingall Consolidated
- Doctrine of Indoor Management not applicable on Forgery.
- Forgery is considered Null & Void

LLP ACT, 2008





CHARACTERISTICS OF LLP Business for Artificial Corporate Legal Entity Liability **Profit only** Legal person **Perpetual** Mutual LLP Common Agreement **Succession** Agency Seal **ADVANTAGES OF LLP** Flexible Operates on basis of Capital Easy to form Flexibility in Limited Structure Agreement Easy to Liabilities **Procedural** Dissolve of all Partners Requirements **INCORPORATION OF LLP**

Name

- Must have last words LLP
- Not Undesirable, Identical, too nearly resembles
- Name Reserved for 3 months

Incorporation **Document**

- 2 or more Subscribers
- Prescribed form & fees to ROC
- Statement by **Professional & Subscriber**
- Name & Address of LLP, Designated Partners.
- Object & Address of LLP

Registration

- ROC within 14 days
- 1. Register document
- 2. Issue Certificate Certificate is conclusive evidence

Registered Office

- For Notices & Communication
- Changes to be intimated to ROC

Effect of Registration

- LLP capable of :-
- 1. Sue & being sued
- 2. Sell / Purchase **Property**
- 3. May have common seal
- * CG → Order for change of Name → to be change within 3 months, If not changed → CG → Allot new name

PARTNERS & THEIR RELATIONS

Relationship

- Sec 23
- As per LLP Agreement
- If not, as per First Schedule

Cessation

- Sec 24
- As per Agreement
- If not, 30 Days written Notice to partners
- Death / Insolvency

Entitled to receive

- 1. Capital Contribution
- 2. Share in Profits

Changes

- Sec 25
- Partner w/I
- (15 Days) LLP w/I ROC LLP (30 Days)
- If LLP not files with $ROC \rightarrow person himself$ gives notice to ROC

Agent

- Sec 26
- Agent of LLP
- Not of other partners

LLP ACT, 2008

within 6 months from end of each F.Y.



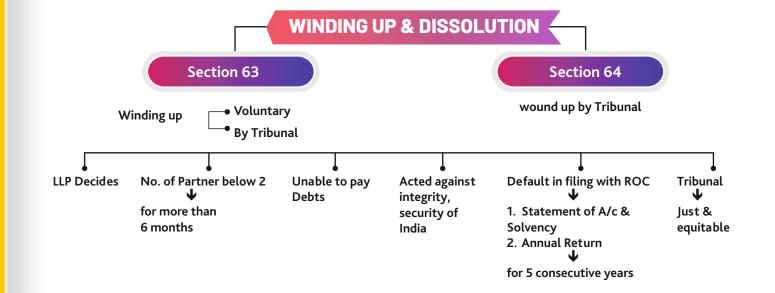
LIABILITY OF LLP & PARTNER

LLP Liability **Holding Out Whistle Blowing** Partner's Liability Fraud Sec 28 Sec 29 Sec 30 Sec 27 • Sec 31 • Partner, employee • LLP not liable if: Partners not Represents himself If intention to provides useful personally liable defraud 1. Partner had no Permits to be information for except:- Unlimited liability authority represented as conviction of LLP or 1. own wrongful act or partner of LLP & Partners 2. Person dealing knows omission its partners the fact Liable for credit If act without receive on such Knowledge of LLP, • LLP liable if: court may reduce, only partner liable representation 1. Within authority waive penalty 2. in ordinary course of **Business** · Liabilities met out of Property of LLP

Accounting & Auditing Books of Account & Annual Return Other Records etc. Standards Sec 35 • Sec 34 Sec 34a Annual Return within 60 Days of For each year closure of F.Y. CG with consultation with NFRA Cash / Accrual Basis, Double entry prescribes:system Maintain at Registered office 1. Standards of Accounting Statement of Account & Solvency

2. Standards of Auditing

FINANCIAL DISCLOSURES



SPECIAL COURT

Establishment

- Sec 67A
- For speedy Trial of offences
- Until special court designated,
 Courts u/s 435 of
 Companies Act,
 2013 → deemed to be special court.

Procedure & Powers

- Sec 67B
- Offences u/s 67A triable only by special courts
- Special court may try another offence
- May proceed with summary trial

Appeal & Revision

- Sec 67C
- High Court may exercise powers conferred by CrPC.