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Foundation → Intermediate → Final CA ↗

CA FOUNDATION
LAW
BOOK 1

Head Office

Shraddha, 4th Floor, Old Nagardas Road,
Near Chinai College, Andheri (E), Mumbai - 400 069.

022 - 2683 66 66

/officialjksc jkshahclasses.com

INDEX

01 Message to Students..... 01
ABOUT THE BOOK..... 01
Importance of writing practice..... 03
How to study effectively for the exam?..... 03
Types of questions asked in exam & how to answer them?..... 05

02 Chapter-wise marks distribution of Previous Exams | 06

03 Chapter 1: The Indian Contract Act, 1872 | 07-83

04 Chapter 2: The Sale Of Goods Act, 1930 | 84-128

05 Chapter 3: The Indian Partnership Act, 1932 | 129-166

06 Chapter 4: The Limited Liability Partnership Act, 2008 | 167-189

07 Chapter 5: The Companies Act, 2013 | 190-224

MESSAGE TO STUDENTS

ABOUT THE BOOK

As you are aware, Business Law is a very vast subject and there are several books where different topics are covered.

At JKSC, our efforts are focused on simplifying the study process for our students, and giving them a comprehensive set of books that will help them prepare for the CA Foundation Business Law examination.

This book has been compiled to help students of CA Foundation prepare for their Business Law paper. To make studying the subject easier, the study material of this subject has been organized into two exhaustive volumes, ensuring students will not have to refer to any other books while preparing for the subject.

VOLUME I: BUSINESS LAW: Theory

This volume covers the theory notes and explanations of all chapters that have to be studied for the Business Law paper

Contents of the book

- Chapter wise distribution of marks of previous examinations from May 2018 onwards (1st attempt of CA Foundation).
- Comprehensive explanation of all concepts and topics to be covered based on the ICAI study material. (ICAI theory is fully covered here)
- Chapter summary at the end of each chapter, highlighting the key points in the topic.
- List of Case Laws, Legal terms, and Latin terms at the end of each chapter – provided for quick reference during study.

How to use this book

In the lecture, the faculty will follow this book during concept and topic explanation. Hence, it is mandatory for students to bring this book to class with them during the relevant lectures.

Also, this book is to be thoroughly read and revised at home for preparing the subject.

VOLUME II: BUSINESS LAW: Workbook

This volume is a workbook that has been compiled to assess your knowledge and understanding of the subject. The book has several Questions & Answers for you to attempt and assess your performance.

Contents of the book

- Questions & Answers of all chapters taken from all ICAI materials (ICAI Study Material, ICAI Revision Test Papers, ICAI Mock Test Papers)
- Additional questions at the end of each chapter for self practice and their respective answers
- Past exam papers (from May'18 onwards) and suggested answers as given by ICAI.

Note: The book does not cover May'21 & Nov'21 Question Papers and ICAI Suggested Answer, Nov' 2021 & May 2022 ICAI Revision Test Papers and Mock Test Papers, as these materials are issued by the ICAI subsequent to the printing of this book. Students are advised to download such materials from the ICAI website www.icai.org as and when it becomes available.

How to use this book

Once the explanation is complete in class, the faculty will discuss the chapter based questions at length in class.

Students will be solving the question in the class and the faculty will also provide detailed inputs on how the questions must be answered as per the ICAI guidelines.

Once the chapter has been thoroughly discussed in class, students are expected to attempt the Question paper provided at the end of each chapter, as part of their self study.

Entire practice of these Question sets must be in writing. In the self-practice section, space has been provided in the book itself to make it convenient for the students to attempt the questions. By writing down the answers in this section, the students will have a ready reckoner at a later stage when they are studying the chapter for finals.

The answers for this section are provided at the end of the book to enable students to self evaluate. For a fair assessment, kindly check the answers only after writing your answers to those questions.

IMPORTANCE OF WRITING PRACTICE

You will hear your JKSC teachers repeat this regularly in the class, yet we must make this point here:

If you wish to score your best marks in this subject, you will have to invest time and effort in writing practice.

READING THE NOTES OR THE BOOKS TEN TIMES OVER IS NOT A REPLACEMENT FOR WRITING PRACTICE.

Let us explain: The law subject, when discussed and taught in class, is easy to understand and students enjoy the subject quite a bit. This gives them the false confidence that they will find the subject easy to prepare for the exam – all they have to do is read and they will remember everything.

The fact is each topic in this subject is vast and has to be attempted with certain parameters. The information that you have about the topic must fit a predefined framework to help the examiner realize that you know your subject well. You cannot merely string together whatever facts you can remember while writing, in some random order.

This knowledge and understanding of how the answers are to be presented, what ICAI is expecting of you from this paper, and how much of the topic you actually know can only come when you PHYSICALLY WRITE the practice papers. Additional questions under self study at the end of every chapter are given to help you assess yourself.

HOW TO STUDY EFFECTIVELY FOR THE EXAM?

- Once the chapter has been completed from Volume I and the faculty has discussed the Q&A in Volume II, it is time for you to study the theory, go through the notes and start attempting the question papers in writing.
- Do not make pointers or charts or short forms of the notes. These have already been provided in the book and the summary of the chapter is already provided at the end of every chapter. Practicing a chapter like this will not help you answer the questions in the final exam. Make sure you write the answers in the descriptive format just like you are expected to write in the finals. This will help you understand what you

are forgetting, how to organize your content and help you manage your time, while attempting the paper.

➢ How to learn the Legal & Latin Terms

- These terms are well highlighted in the content of the chapters and a list of such terms used in a given chapter is printed at the end of each chapter for your reference.
- Students are advised to write the page number where the term appears in the chapter alongside this quick reference list.
- This will make it easy to check the context of the technical term during revisions.

TYPES OF QUESTIONS ASKED IN EXAM & HOW TO ANSWER THEM?

- The questions in the exam can either be of theoretical or practical nature. While there are multiple ways / approaches in which both types of questions can be answered, the following approach is considered ideal:
  - For theory questions: Students must write the answer in point format to make it easy for the examiner to rapidly scan the answer.
  - For practical / case study questions: It is recommended that students write these answers in 3 paragraph formats. The flow of content in these answers should be as follows:
    - 1st paragraph: Write the relevant law and case law (if any)
    - 2nd paragraph: Write the situation in the question and how it is related to the legal provision.
    - 3rd paragraph: Write the final conclusion.
- Presenting your answers in these formats enables the examiner to understand how much you know and your clarity of thought, at a glance. A comprehensive answer that is well structured and presented can only be written in the final paper if you have practiced the same - in writing, regularly during your study time.
- What is expected in your answers
  1) Concept explanation of the topic with all relevant content
  2) You must quote Case Laws in the exam, use Legal and Latin Terms – this is imperative for scoring good marks.
- Students must note that endlessly repeating one point in different words is not going to help them get the desired marks. Only thorough preparation perfected by writing practice and self evaluation will help students in achieving the scores they want.

In conclusion, these books have everything you need to prepare for the CA Foundation Business Law paper. You do not need anything further in terms of reference material or additional paper samples. We hope you will make the best use of this carefully compiled study material and achieve success in your endeavours.

We wish you a very happy study time.
BEST OF LUCK!
JKSC

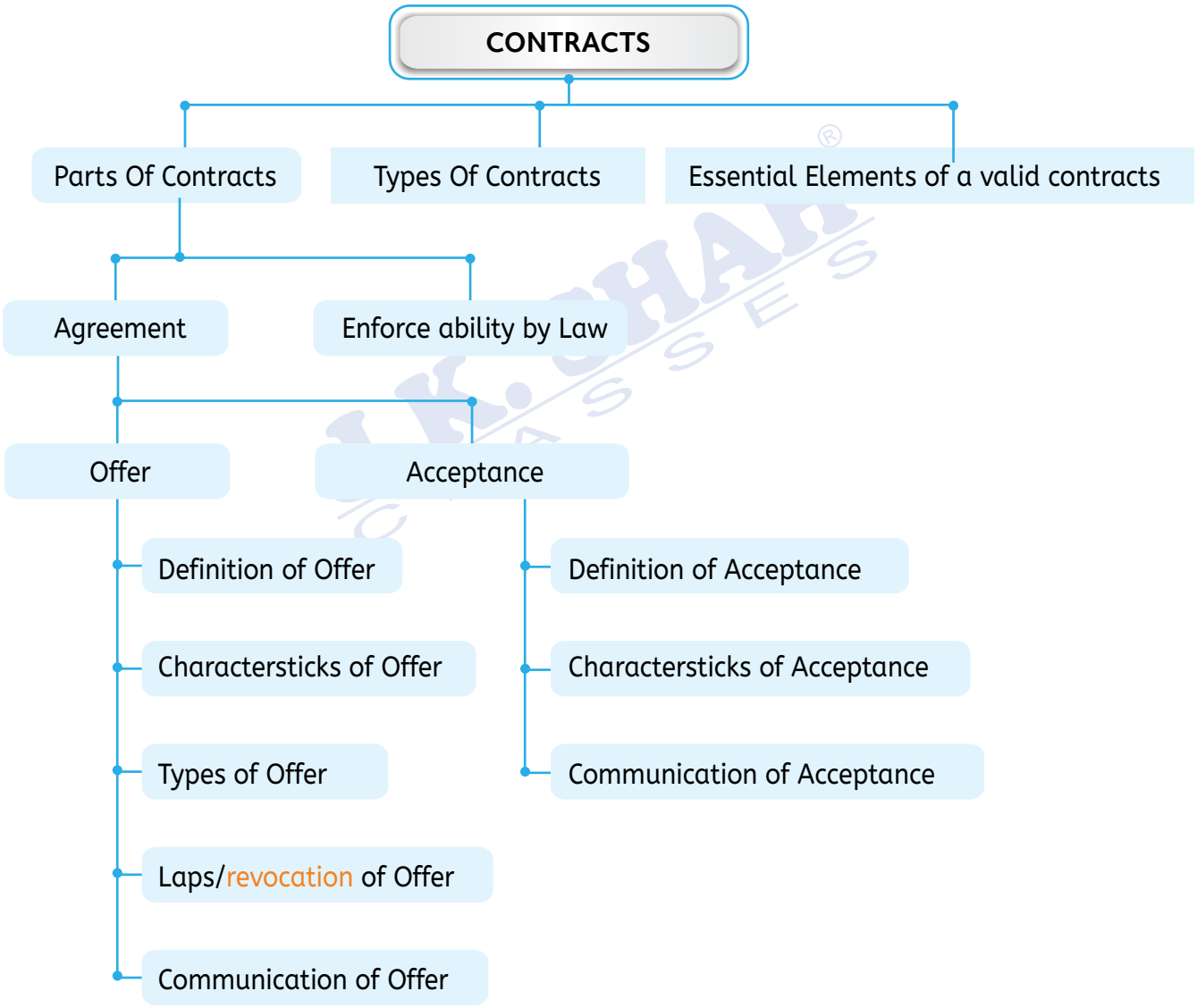
Chapter-wise marks distribution of previous Examination

Chp No.	Chapter Name	May'18	Nov'18	May'19	Nov'19	Nov'20	Jan'21
1.	The Indian Contract Act,1872						
	Unit 1: Nature of Contract		8				13
	Unit 2: Consideration	5	3	4	7		5
	Unit 3: Other essential elements of valid Contract	9		12	5	11	4
	Unit 4: Performance of Contract	4			6		
	Unit 5: Breach of Contract	6	4	6		6	
	Unit 6: Contingent & Quasi Contracts		7		4	5	
		24	22	22	22	22	22
2.	The Sale of Goods Act, 1930						
	Unit 1: Formation of Contract of Sale	4	4				
	Unit 2: Conditions & Warranties		6	10	6	4	6
	Unit 3: Transfer of Ownership & Delivery of Goods	6	6	6	4	12	6
	Unit 4: Unpaid seller	6			6		4
		16	16	16	16	16	16
3.	Indian partnership Act, 1932						
	Unit 1: General Nature of Partnership	4				6	8
	Unit 2: Relations of Partners	6	14	14	14	12	10
	Unit 3: Registration of Firm & Dissolution of Firm	6	4	4	4		
		16	18	18	18	18	18
4.	The Limited Liability Partnership Act, 2008	5	5	5	5	5	5
5.	The Companies Act, 2013	13	13	13	13	13	13

1. THE INDIAN CONTRACT ACT, 1872

UNIT 1: NATURE OF CONTRACTS

This is one of the oldest in the Indian law, passed by the legislature of pre-independence India and received its assent on **25th April, 1872.** But this Act was introduced on **1st September, 1872.**



DEFINITION OF CONTRACT :

The term 'contract' is defined in Section 2 (h) of Indian Contract Act, as under: "An agreement enforceable by law is a contract".

Contract = An Agreement + Enforceability by law

DEFINITION OF AGREEMENT:

The term 'agreement' is defined in Section 2 (e) of the Indian Contract Act, as under: "Every promise and every set of promises forming the consideration for each other is an agreement."

Agreement = Offer + Acceptance.

Section 2 (b) Promise –

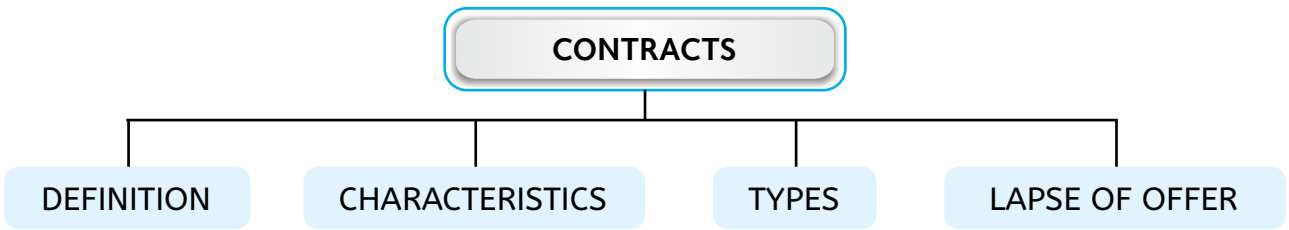
That an agreement is the result of the proposal made by one party to the other party and that other party gives his acceptance thereto of course for mutual consideration.

All Contracts are agreements but all agreements are not contracts.

Basis of	Agreement	Contract
Meaning	Every promise and every set of promises, forming the consideration for each other. Offer + Acceptance	Agreement enforceable by law. Agreement + Legal enforceability
Scope	It's a wider term including both legal and social agreement.	It is used in a narrow sense with the specification that contract is only legally enforceable agreement.
Legal obligation	It may not create legal obligation. An agreement does not always grant rights to the parties	Necessarily creates a legal obligation. A contract always grants certain rights to every party.
Nature	All agreements are not contracts.	All contracts are agreements.

Example:

DEFINITION OF PROPOSAL/OFFER:



DEFINITION:

The term proposal/offer has been defined in Section 2 (a) as under:

"When one person signifies to another his willingness to do or to abstain (not to do) from doing anything, with a view to obtaining the assent of that another to such act or abstinence, he is said to make a proposal"

Analysis of the above definition

1. The person making the proposal or offer is called the 'promisor' or 'offeror': The person to whom the offer is made is called the 'offeree' and the person accepting the offer is called the 'promisee' or 'acceptor'.
2. For a valid offer, the party making it must express his willingness 'to do' or 'not to do' something:
   Mere expression of willingness does not constitute an offer.
   Example: Where 'A' tells 'B' that he desires to marry by the end of 2017, it does not constitute an offer of marriage by 'A' to 'B'. Therefore, to constitute a valid offer expression of willingness must be made to obtain the assent (acceptance) of the other. Thus, if in the above example, 'A' further adds, 'Will you marry me', it will constitute an offer.
3. An offer can be positive as well as negative: Thus "doing" is a positive act and "not doing", or "abstinence" is a negative act; nonetheless both these acts have the same effect in the eyes of law.
   Example: A offers to sell his car to B for ₹3 lacs is an act of doing. So in this case, A is making an offer to B. On the other hand, when A ask B after his car meets with an accident with B's scooter not to go to Court and he will pay the repair charges to B for the damage to B's scooter; it is an act of not doing or abstinence.
4. The willingness must be expressed with a view to obtain the assent of the other party to whom the offer is made.

CHARACTERISTICS:

1. Offer must be capable of creating legal relationship:

Case law: In Balfour v. Balfour, a husband promised to pay maintenance allowance every month to his wife. When he failed to perform this promise, she brought an action to enforce it. As it is an agreement of domestic nature, it was held that it does not contemplate to create any legal obligation.

2. The terms of the offer must be definite and certain:

The terms of the offer must be definite, unambiguous and certain and not vague.

3. Offer must be different from invitation to offer.

An offer should be distinguished from an invitation to offer.

- An offer is definite and capable of converting an intention into a contract. Whereas an invitation to an offer is only a circulation of an offer, it is an attempt to induce offers and precedes a definite offer.

- An invitation to offer is an act before making an offer. Acceptance of an invitation to an offer does not result in the contract and only an offer emerges in the process of negotiation.
- When a person advertises that he has stock of books to sell or houses to let, there is no offer to be bound by any contract. Such advertisements are offers to negotiate-offers to receive offers.
- In order to ascertain whether a particular statement amounts to an 'offer' or an 'invitation to offer', the test would be intention with which such statement is made. Does the person who made the statement intend to be bound by it as soon as it is accepted by the other or he intends to do some further act, before he becomes bound by it. In the former case, it amounts to an offer and in the latter case, it is an invitation to offer.

  Example: The price list of goods does not constitute an offer for sale of certain goods on the listed prices. It is an invitation to offer.
- Following are instances of invitation to offer to buy or sell:
  (i) An invitation by a company to the public to subscribe for its shares.
  (ii) Display of goods for sale in shop windows.
  (iii) Advertising auction sales and
  (iv) Quotation of prices sent in reply to a query regarding price.

Difference between offer & Invitation to offer

Offer	Invitation to Offer
(i) Person expresses his willingness to be bound by the terms of the offer if other party accepts.	(i) Person is inviting other people to make an offer
(ii) Offers leads to acceptance Example – application form filled up by students for taking admission in college	(ii) Invitation to offers leads to offer Example – Issue of prospectus by college

Case law: *Harvey vs. Facie [1893]*

In this case, Privy Council succinctly explained the distinction between an offer and an invitation to offer. In the given case, the plaintiffs through a telegram asked the defendants two questions namely,

(i) Will you sell us Bumper Hall Pen? and
(ii) Telegraph lowest cash price.

The defendants replied through telegram that the "lowest price for Bumper Hall Pen is £ 900". The plaintiffs sent another telegram stating "we agree to buy Bumper Hall Pen at £ 900". However, the defendants refused to sell the property at the price.

The plaintiffs sued the defendants contending that they had made an offer to sell the

property at £ 900 and therefore they are bound by the offer.

However, the Privy Council did not agree with the plaintiffs on the ground that while plaintiffs had asked two questions, the defendant replied only to the second question by quoting the price but did not answer the first question but reserved their answer with regard to their willingness to sell. Thus, they made no offer at all.

Their Lordships held that the mere statement of the lowest price at which the vendor would sell contained no implied contract to sell to the person who had enquired about the price.

Case law: *Mac Pherson vs Appanna* [1951]: Where the owner of the property had said that he would not accept less than £ 6000/- for it. This statement did not indicate any offer but indicated only an invitation to offer.

4. Offer should be communicated.

Unless an offer is properly communicated, there can be no acceptance of it.

Case law: *Lalman Shukla vs Gauri Dutt*, Gauri announced a reward for anyone who found his nephew. Lalman found the nephew in ignorance of reward. Held that, he is not entitled to reward as a person cannot accept an offer if he is unaware of its existence.

5. Offer can be express or implied.

An offer which is expressed by words, written or spoken, is called an express offer. The offer which is expressed by conduct is called an implied offer.

6. Offer can be conditional.

Such conditional offer should be accepted along with the condition.

7. Offer should not contain a term non-compliance of which would directly lead to acceptance.

Example:

TYPES OF OFFER:

(1) General offer: It is an offer made to public in general. Anybody knowing about the offer can accept such offer. No written acceptance is compulsory. Any person coming

forward, acting accordingly can accept the offer.

Case law: In *Carlill v/s Carbolic & Smoke Balls Co.,* a sole proprietary concern manufacturing a medicine which was a carbolic ball whose smoke could cure influenza issued an advertisement for sale of this medicine. The advertisement also included a reward of £100 to any person who contracted influenza, after using the medicine. Mrs. Carlill bought these smoke balls and used them as directed but contracted influenza. It was held that Mrs.Carlill was entitled to a reward of £100 as she had fulfilled the condition for acceptance as the advertisement did not require any communication of compliance of the condition, it was not necessary to communicate the same.

(2) Specific/Special offer: When offer is made to a definite person/ definite group of persons, it is known as special specific offer. Such offers can be accepted by that specified person only.

(3) Cross offer: When two parties exchange identical offer in ignorance at the time of each other's offer. The offers are called cross offers. There is no binding contract in such case as one's offer cannot be constituted as acceptance by other.
Example:

(4) Counter offer: When the offeree, offers to qualified acceptance to the offer, subject to modification and variation in terms of original offer he is said to have made a counter offer. A counter offer does not amount to acceptance of original offer.
Example:

(5) Standing, open or continuing offer: An offer is allowed to remain open for acceptance over a period of time is known as a standing, open or continuing offer.

LAPSE OF OFFER/REVOCATION OF OFFER:

An offer should be accepted before it lapses (i.e. comes to an end). An offer may come to an end in any of the following ways stated in Section 6 of the Indian Contract Act:

1. By communication of notice of revocation by offeror:
An offer may come to an end by communication of notice of revocation by the offeror. An offeror can revoke his offer at any time before he becomes bound by it.

2. By lapse of time:
Where time is fixed for the acceptance of the offer, and it is not accepted within the fixed time, the offer comes to an end automatically on the expiry of fixed time. Where no time for acceptance is prescribed, the offer has to be accepted within reasonable time. The term 'reasonable time' will depend upon the facts and circumstances of each case.

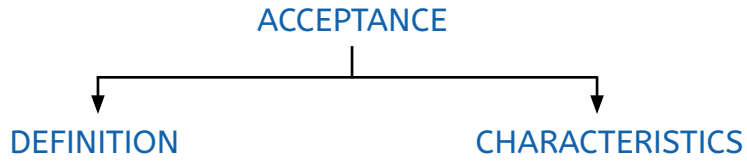
3. By failure to accept condition in conditional offer:
Where, the offer requires that some condition must be fulfilled before the acceptance of the offer, the offer lapses, if it is accepted without fulfilling the condition.

4. By the death or insanity of the offeror/offeree:
Where, the offeror dies or becomes insane, the offer comes to an end if the fact of his death or insanity comes to the knowledge of the acceptor before he makes his acceptance. But if the offer is accepted in ignorance of the fact of death or insanity of the offeror, the acceptance is valid. This will result in a valid contract, and legal representatives, of the deceased offeror shall be bound by the contract. On the death of offeree before acceptance, the offer also comes to an end by operation of law.

5. By counter-offer by the offeree:
Where, a counter-offer is made by the offeree, then the original offer automatically comes to an end, as the counter-offer amounts to rejections of the original offer.

6. By rejection of offer by the offeree:
Where, the offeree rejects the offer, the offer comes to an end. Once the offeree rejects the offer, he cannot revive the offer by subsequently attempting to accept it. The rejection of offer may be express or implied.

DEFINITION OF ACCEPTANCE:



DEFINITION: The term acceptance has been defined in Section 2(b) as under: "When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise".

Analysis of the above definition

1. When the person to whom proposal is made - for example if A offers to sell his car to B for ₹200000. Here, proposal is made to B.

2. The person to whom proposal is made i.e. B in the above example and if B signifies his assent on that proposal. In other words if B grants his consent on A's proposal, then we can say that B has signified his consent on the proposal made by A.

3. When B has signified his consent on that proposal, we can say that the proposal has been accepted.

4. Accepted proposal becomes promise.

RELATIONSHIP BETWEEN OFFER AND ACCEPTANCE:

According to Sir William Anson "Acceptance is to offer what a lighted match is to a train of gun powder".

1. The effect of this observation is that what acceptance triggers cannot be recalled or undone. But there is a choice to the person who had the train to remove it before the match is applied. It means that the offer can be withdrawn just before it is accepted.

2. Acceptance converts the offer into a promise and then it is too late to revoke it. This means as soon as the train of gun powder is lighted it would explode. Train of Gun powder [offer] in itself cannot move, but it is the lighted match [the acceptance] which causes the gun powder to explode.

3. The significance of this is an offer in itself cannot create any legal relationship but it is the acceptance by the offeree which creates a legal relationship.

4. Once an offer is accepted it becomes a promise and cannot be withdrawn or revoked. An offer remains an offer so long as it is not accepted but becomes a contract as soon as it is accepted.

CHARACTERISTICS OF ACCEPTANCE:

1. The acceptance must be communicated:

The acceptance is, completed only when it has been communicated to the offerer. Until the acceptance is communicated, it does not create any legal relations.

Case law: *Brogden vs. Metropolitan Railway Co. (1877)*

Facts: B a supplier, sent a draft agreement relating to the supply of coal to the manager of railway Co. namely, Metropolitian railway for his acceptance. The manager wrote

the word "Approved" on the same and put the draft agreement in the drawer of the table intending to send it to the company's solicitors for a formal contract to be drawn up. By an over sight the draft agreement remained in drawer. Held, that there was no contract as the manager had not communicated his acceptance to the supplier, B.

2. The acceptance must be communicated by a person who has the authority to accept.

Case law: *Boulton vs. Jones (1857)*

Facts: Mr.Brocklehurst sold his business to Boulton. Mr.Brocklehurst owed money to Jones. So, Jones who was Broklehurst's creditor, placed an order with Brocklehurst for the supply of certain goods as he intended to set off his debt against Brocklehurst. But Boulton supplied the goods even though the order was not in his name and asked for money from Jones . Jones refused to pay Boulton for the goods because by entering into the contract with Blocklehurst, he intended to set off his debt against Brocklehurst. Held, as the offer was not made to Boulton, therefore, there was no contract between Boulton and Jones.

In case of a general offer, it can be accepted by any person who has the knowledge of the offer. [Carlill vs.Carbolic Smoke Ball Co. (1893)]

3. The acceptance must be absolute and unqualified:

As a conditional acceptance is counter offer.

Case law: *a) Neale vs. Merret [1930]*

M offered to sell his land to N for £280. N replied intending to accept the offer but enclosed a cheque for £ 80 only. He promised to pay the balance of £ 200 by monthly instalments of £ 50 each. It was held that N could not enforce his acceptance because it was not an unqualified one.

Case law: *b) Union of India v. Bahulal (1968)*

A offers to sell his house to B for ₹1,00,000/-. B replied that, "I can pay ₹80,000 for it. The offer of 'A' is rejected by 'B' as the acceptance is not unqualified. B however changes his mind and is prepared to pay ₹1,00,000/-. This is also treated as counter offer and it is upto A whether to accept it or not.

4. Acceptance must be within a specific/reasonable time:

The acceptance must be made while the offer is still in force, i.e. before the offer lapses. If any time-limit is prescribed in the offer, it should be accepted within the prescribed time-limit. However, if not time is prescribed, it must be accepted within "a reasonable time".

5. Acceptance can be express or implied.

Case law: *Lilly White vs. Mannuswamy (1970)*

P delivered some clothes to drycleaner for which she received a laundry receipt containing a condition that in case of loss, customer would be entitled to claim 15% of the market price of value of the article, P lost her new saree. The terms were unreasonable and P was entitled to recover full value of the saree from the drycleaner. But, the court held that the respective documents have been accepted without a protest and hence amounted to implied acceptance. So she is entitled to recover only 15%

6. Mere silence does not amount to acceptance

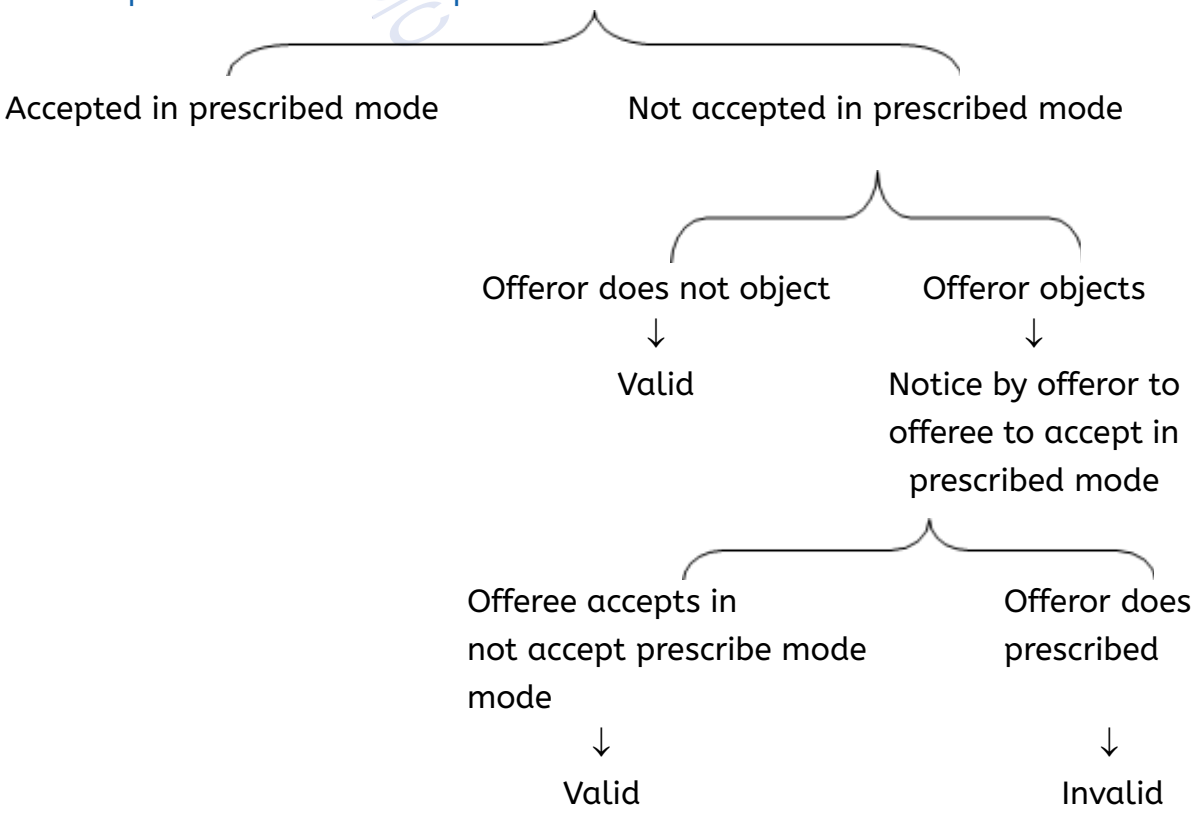
Case law: *Felthouse vs. Bindley (1862)*

Facts: F (Uncle) offered to buy his nephew's horse for £30 saying "If I don't hear anything about it I shall consider the horse mine at £30." The nephew did not reply to F at all. He told his auctioneer, B to keep the particular horse out of sale of his farm stock as he intended to reserve it for his uncle. By mistake the auctioneer sold the horse. F sued him for conversion of his property. Held, F could not succeed as his nephew had not communicated the acceptance to him.

7. Acceptance by conduct/Implied Acceptance:

Acceptance can be expressed in words or even implied by conduct.

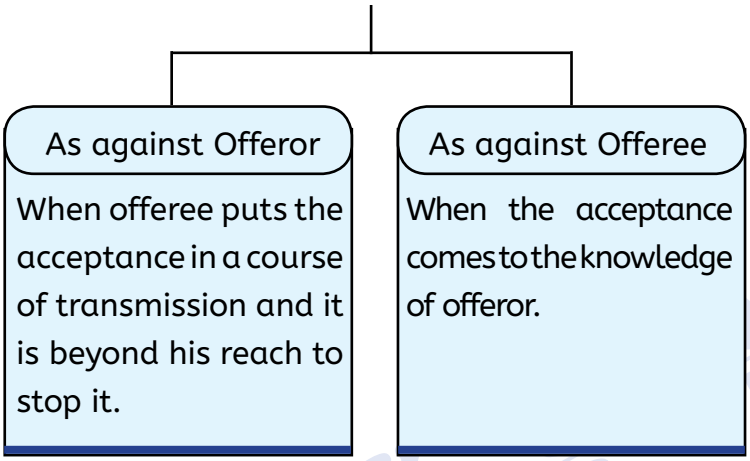
8. Acceptance should be via prescribed mode of communication.



COMMUNICATION OF OFFER AND ACCEPTANCE AND REVOCATION OF OFFER AND ACCEPTANCE:

1. Communication of offer is complete when it comes to the knowledge of offeree.
   - Thus it can be summed up that when a proposal is made by post, its communication will be complete when the letter containing the proposal reaches the person to whom it is made.
   - Mere receiving of the letter is not sufficient, he must receive or read the message contained in the letter.

2. Communication of acceptance is complete



- Modes of acceptance. Section 3 of the Act prescribes in general terms two modes of communication namely,
  (a) By any act and
  (b) By omission, intending thereby, to communicate to the other or which has the effect of communicating it to the other.

  a) Communication by act would include any expression of words whether written or oral. Written words will include letters, telegrams, faxes, emails and even advertisements. Oral words will include telephone messages.
  Again communication would include any conduct intended to communicate like positive acts or signs so that the other person understands what the person 'acting ' or 'making signs' means to say or convey.

Case law: *Central Bank Yeotmal vs Vyankatesh(1949)*
A mere mental unilateral assent in one's own mind would not amount to communication. Where a decision is taken by a bank to sell land to 'A' remained uncommunicated to 'A', it was held that there was no communication and hence no contract.
Communication of acceptance by conduct: For instance, delivery of goods at a price by a seller to a willing buyer will be understood as a communication by conduct to convey acceptance.

b) Communication of acceptance by 'omission' to do something. Such omission is conveyed by a or by forbearance on the part of one person to convey his willingness or assent. However silence would not be treated as communication by 'omission'.
Example: A offers Rs. 50000 to B if he does not go to New Delhi. B does not go to New Delhi. Here omission of doing an act amounts to acceptance.

c) Communication of special conditions: Sometimes there are situations where there are contracts with special conditions. These special conditions are conveyed tacitly and the acceptance of these conditions are also conveyed by the offeree again tacitly or without him even realizing it.
Example: Where a passenger undertakes a travel, the conditions of travel are printed at the back of the tickets, sometimes these special conditions are brought to the notice of the passenger, sometimes not. In any event, the passenger is treated as having accepted the special condition the moment he bought his ticket.

Case law: *Mukul Datta vs. Indian Airlines [1962]*
When someone travels from one place to another by air, it could be seen that special conditions are printed at the back of the air ticket in small letters [in a non-computerized train ticket even these are not printed] Sometimes these conditions are found to have been displayed at the notice board of the Airlines office, which passengers may not have cared to read. The question here is whether these conditions can be considered to have been communicated to the passengers of the Airlines and can the passengers be treated as having accepted the conditions. Where the plaintiff had travelled from Delhi to Kolkata by air and the ticket bore conditions in fine print. But such terms and condition should be reasonable.

3. Revocation of offer is valid before offeree puts the acceptance in course of transmission and it is out of his reach to stop it.

4. Revocation of acceptance is valid before acceptance comes to the knowledge of offeror.
   - Contract through post- As acceptance, in English law, cannot be revoked, so that once the letter of acceptance is properly posted the contract is concluded. In Indian law, the acceptor or can revoke his acceptance any time before the letter of acceptance reaches the offeror, if the revocation telegram arrives before or at the same time with the letter of acceptance, the revocation is absolute.
   - Contract over Telephone- A contract can be made over telephone. The rules regarding offer and acceptance as well as their communication by telephone or telex are the same as for the contract made by the mutual meeting of the parties. The contract is formed as soon as the offer is accepted but the offeree must make it sure that his acceptance is received by the offeror, otherwise there

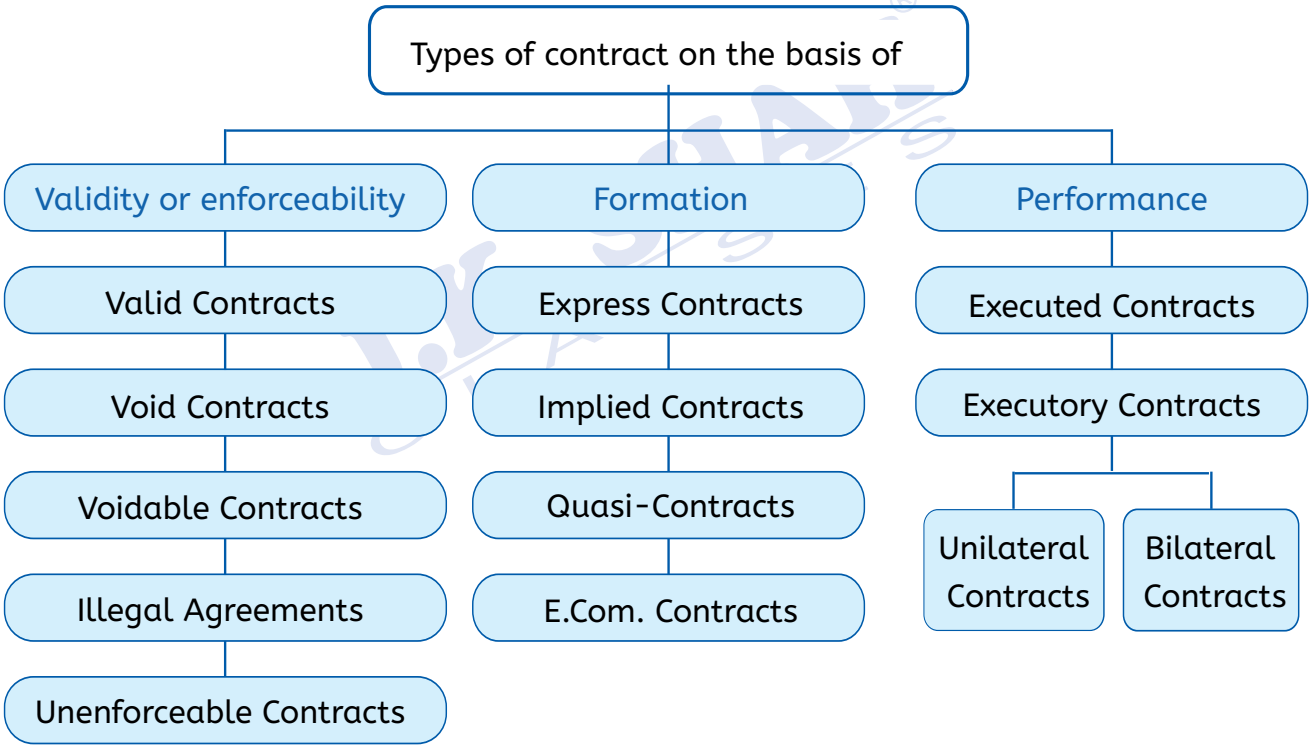
will be no contract, as communication of acceptance is not complete. If telephone unexpectedly goes dead during conversation, the acceptor must confirm again that the words of acceptance were duly heard by the offeror.

Example:

A offered, by a letter, to sell his car to B for Rs. 4,00,000. The letter was posted on 1st Jan which reached B on 4th Jan. B accepted the offer and posted his letter of acceptance on 6th Jan. Here, A became bound by the offer on 6th Jan. In this case, the offer could be revoked by A at any time before 6th Jan.

B accepted the offer and posted his letter of acceptance on 6th Jan which reached A on 9th Jan. Here, B becomes, bound by his acceptance on 9th Jan. In this case, the acceptance could be revoked at any time before 9th Jan.

TYPES OF CONTRACTS



I. On the basis of the validity

1. Valid Contract: An agreement which is binding and enforceable is a valid contract. It contains all the essential elements of a valid contract.

2. Void Contract: Section 2 (j) states as follows: "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable". Thus a void contract is one which cannot be enforced by a court of law.

   Example: Mr. X agrees to write a book with a publisher. After few days, X dies in an accident. Here the contract becomes void due to the impossibility of performance of the contract.

Void Agreement: Agreement which is not enforceable by law from the beginning.

3. Voidable Contract: As per Section 2(i), "an agreement which is enforceable by law at the option of one or more the parties but not at the option of the other or others is a voidable contract".

   Example: A contract brought about as a result of Coercion, Undue influence, Fraud or misrepresentation would be voidable at the option of the person whose consent was caused by any one of these factors.

S. No.	Basis	Void Contract	Voidable Contract
1	Meaning	A Contract ceases to be enforceable by law becomes void when it ceases to be enforceable.	An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.
2	Cause	A contract becomes void due to change in law or change in circumstances beyond the	A contract becomes a voidable contract if the consent of a party was not free.
3	Performance of contract	A void contract cannot be performed.	If the aggrieved party does not, within reasonable time, exercise his right to avoid the contract, any party can sue the other for claiming
4	Rights	A void contract does not grant any right to any party.	The party whose consent was not free has the right to rescind the

4. Illegal Agreement: It is an agreement which the law forbids to be made. The court will not enforce such a agreement but also not enforce connected contracts. All illegal agreements are void but all void agreements or contracts are not necessarily illegal.

Basis of difference	Void agreement	Illegal agreement
Scope	A void agreement is not necessarily illegal.	An illegal agreement is always void.
Nature	Not forbidden under law.	Are forbidden under law.
Punishment	Parties are not liable for any punishment under the law.	Parties to illegal agreements are liable for punishment.

Collateral Agreement	It's not necessary that agreements collateral to void agreements may also be void. It may be valid also.	Agreements collateral to illegal agreements are always void.

5. Unenforceable contract: W here a contract is good in substance but because of some technical defect i.e., absence in writing, barred by, imitation etc., one or both the parties cannot sue upon it, it is described as an unenforceable contract.

II. On the basis of the formation of contract

6. Express Contracts: A contract would be an express contract if the terms are expressed by words or in writing. Section 9 of the Act provides that if a proposal or acceptance of any promise is made in words the promise is said to be express.
Example: A tells B on telephone that he offers to sell his house for ₹ 2 lacs and B in reply informs A that he accepts the offer, this is an express contract.

7. Implied Contracts: Implied contracts in contrast come into existence by implication. Most often the implication is by law and or by action.
Example: Where a coolie in uniform picks up the luggage of A to be carried out of the railway station without being asked by A and A allows him to do so, it is an implied contract and A must pay for the services of the coolie detailed by him.

8. Tacit contract: A contract is said to be tacit when it has to be inferred from the conduct of the parties.
Example: Obtaining cash through automatic teller machine, sale by fall of hammer at an auction sale.

9. Quasi-Contract: A quasi-contract is not an actual contract but it resembles a contract. It is created by law under certain circumstances. The law creates and enforces legal rights and obligations when no real contract exists. Such obligations are known as quasi-contracts. In other words, it is a contract in which there is no intention on part of either party to make a contract but law imposes a contract upon the parties.
Example: Obligation of finder of lost goods to return them to the true owner or liability of person to whom money is paid under mistake to repay it back cannot be said to arise out of a contract even in its remotest sense, as there is neither offer and acceptance nor consent. These are said to be quasi-contracts.

10. E-Contracts: When a contract is entered into by two or more parties using electronics means, such as e-mails is known as e-commerce contracts. In electronic commerce, different parties/persons create networks which are linked to other networks through ED1 - Electronic Data Inter change. This helps in doing business transactions using

electronic mode. These are known as EDI contracts or Cyber contracts or mouse click contracts.

III. On the basis of the performance of the contract

11. Executed contract: If the consideration for the promise in a contract (i.e., any act or forbearance) is given or executed, such type of contract is called contract with executed consideration.
    Example: When a grocer sells a sugar on cash payment it is an executed contract because both the parties have done what they were to do under the contract.

12. Executory contract: It is so called because the reciprocal promises or obligation which serves as consideration is to be performed in future.
    Example: Where G agrees to take the tuition of H, a pre-engineering student, from the next month and H in consideration promises to pay G ₹ 1,000 per month, the contract is executory because it is yet to be carried out.

13. Unilateral contract: A unilateral contract is a one - sided contract in which only one party has to perform his promise.

14. Bilateral contract: W here the obligation or promise in a contract is outstanding on the part of both the parties; it is known as bilateral contract.

ESSENTIAL ELEMENTS OF A VALID CONTRACT

Essentials of a valid contract

As given by Section 10 of Indian Contract Act, 1872	Not given by Section 10 but are also considered essential
1. Agreements	1. Two parties
2. Free Consent	2. Intention to create legal relationship
3. Competency of the parties	3. Fulfillment of legal formalities
4. Lawful consideration	4. Certainty of meaning
5. legal object	5. Possibility of performance
6. Not expressly declared to be void	

In terms of Section 10 of the Act, "all agreements are contracts if they are made by the free consent of the parties competent to contract, for lawful consideration and with a lawful object and are not ecpressly declared to be void".

Since section 10 is not complete and exhaustive, so there are certain others sections which also contains requirements for an agreement to be enforceable. Thus, in order to create a valid contract, the following elements should be presents.

1. Two Parties: One cannot contract with himself. A contract involves at least two parties- one party making the offer and the other party accepting it. A contract may be made by natural persons and by other persons having legal existence e.g. companies, universities etc. It is necessary to remember that identity of the parties be ascertainable.

   Example: To constitute a contract of sale, there must be two parties- seller and buyer. The seller and buyer must be two different persons, because a person cannot buy his own goods.

   Case law: In *State of Gujarat vs. Ramanlal S & Co.* when on dissolution of a partnership, the assets of the firm were divided among the partners, the sales tax officer wanted to tax this transaction. It was held that it was not a sale. The partners being joint owner of those assets cannot be both buyer and seller.

2. There must be legal obligation: An agreement must create legal obligations i.e., an obligation enforceable by law. If the parties do not intend to create legal obligation, there is no contract between them. An obligation which gives rise to a moral or social obligation only is not a contract e.g., an invitation to a friend for dinner creates a mere social obligation.

3. Other Formalities to be complied with in certain cases: In case of certain contracts, the contracts must be in writing, e.g. Contract of Insurance is not valid except as a written contract. Further, in case of certain contracts, registration of contract under the laws which is in force at the time, is essential for it to be valid, e.g. in the case of immovable property.

4. There must be an offer and its acceptance: In an agreement there must be an offer by one party and its acceptance by the other. The offer when accepted becomes agreement.

5. There must be mutual consent of the parties: The parties to an agreement must have the mutual consent i.e., they must agree upon the same thing and in the same sense. This means that there must be consensus-ad-idem (i.e., meeting of minds).

6. There must be free consent of the parties: If the consent of the parties is not free, then no valid contract comes into existence. The consent is not free when it is obtained by coercion, undue influence, fraud, misrepresentation of facts and mutual mistake of fact.

7. The parties must be competent to contract: It means that the parties must be capable of entering into a contract. The minor or persons of unsound mind are not competent to contact. If the parties are not competent to contract, then no valid contract comes

into existence.

8. The agreement must be supported by lawful consideration: The lawful consideration is that which is neither fraudulent, forbidden by law, immoral nor opposed to public policy etc. If the consideration is not lawful, then no valid contract comes into existence.

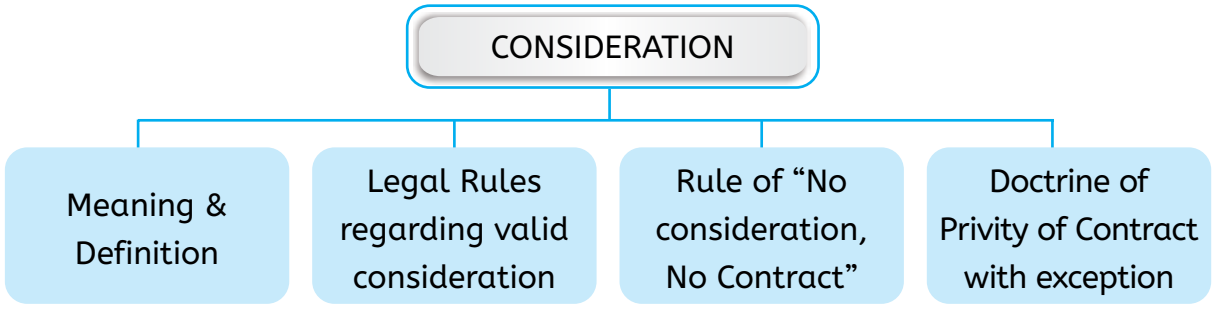
9. The object of the agreement must be lawful: A lawful object is that which is neither fraudulent, forbidden by law, immoral, nor opposed to public policy etc.

10. The agreement must not be declared to be void: If certain agreement is expressly declared to be void by the law of the country, then such agreement if entered into, shall not be enforceable by Courts of Law.

11. The agreement must be certain: The meaning of the agreement must be certain. In other words, an agreement whose meaning is not certain, is not valid.

12. The performance must not be impossible: The performance of an agreement must be possible. An agreement to do an impossible act is not valid.

UNIT 2: CONSIDERATION



INTRODUCTION:

The term 'consideration' may be defined as the price of the promise. This term is used in the sense of quid pro quo (i.e., something in return). This 'something' which a party gets in return is the consideration.

DEFINITION:

The term 'consideration' is defined in section 2 (d) of the Indian Contract Act, as under: "When at the desire of the promisor, the promisee or any other person did or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing something, such act or abstinence is called a consideration for the promise".

CHARACTERISTICS OF CONSIDERATION:

1. The consideration must move (i.e., must be done or promised to be done) at the desire of the promisor :

   An act or abstinence, which forms consideration for the promise, must be done or promised to be done according to the desire of the promisor

   Case law: In Durga Prasad v. Baldeo, Baldeo (defendant) promised to pay to Durga Prasad (plaintiff) a certain commission on articles which would be sold through their agency in a market. Market was constructed by DP at the desire of the C (Collector), and not at the desire of the Baldeo. Baldeo was not bound to pay as it was without consideration and hence void.

2. It may move from the promisee or any other person :

   Consideration may move from promisee or if the promisor has no objection from any other person.

   Case law: In Chinnayya v/s Ramayya, an old lady made a gift of her property to her daughter with a direction to pay a certain sum of money to the maternal uncle by way of annuity. On the same day, the daughter executed writing in favour of the brother agreeing to pay annuity. The daughter did not, however, pay the annuity and the uncle sued to recover it. It was held that there was sufficient consideration for the uncle to recover the money from the daughter.

3. Consideration can be past, present or future:
It can be executed or executory. But in England, past consideration is no consideration.

4. Consideration need not be adequate:
Consideration need not to be of any particular value. It need not be approximately of equal value with the promise for which it is exchanged but it must be something which the law would regard as having some value. It can be below market value.

5. It must be real and not illusory:
The consideration to be valid must. be 'real' and 'valuable' and must not be 'imaginary'.

6. It must not be illegal, immoral, or opposed to public policy:
The consideration given for an agreement must be a lawful one. Where the consideration to a contract is illegal, immoral or against public policy, the courts do not allow an action on such contract.

7. Consideration can be executed or executory.
Example: A pays ₹ 5,000 to B and B promises to deliver to him a certain quantity of wheat within a month. In this case A pays the amount, whereas B merely makes a promise. Therefore, the consideration paid by A is executed, whereas the consideration promised by B is executory.

8. It can be negative or positive.

9. Consideration for an act which a person a legally bound to perform is not a valid consideration.
Example: A promised to pay Rs. 5000 to B (a Police Officer) for investigating a crime, which B was already bound to investigate by law. Here A's promise to pay the amount is without valid consideration as B is already under a legal obligation to investigate the crime.

DOCTRINE OF PRIVITY OF CONTRACTS

Since a contract is a private relationship between parties who make it, the rights and obligations under such a contract are strictly confined to them. This is known as the doctrine of "privity of contract". It is a general rule of law that a person who is not a party to the contract cannot sue.

The rule is "Stranger to contract cannot sue. But a stranger to a consideration can sue". Exception to Rule" A stranger to a contract cannot sue":
Under the Indian Law, the following are the exceptions to the rule that a stranger to a

contract cannot sue.

(1) Beneficiaries in the case of trust:

An agreement to create a trust can be enforced by the beneficiary, though he was not a party to the contract between the settlor and the trustees.

Example:

(2) Written family settlements:

In the case of family settlement, if the terms of settlement are reduced in writing, members of the family who were not a party to the settlement can also enforce their claim.

Example:

(3) In the case of certain marriage contracts/arrangements: A provision may be made for the benefit of a person, he may file the suit though he is not a party to the agreement.

Example: Mr. X's wife deserted him for ill-treating her. Mr. X promised his wife's father Mr. Puri that he will treat her properly or else pay her monthly allowance. But she was again ill-treated by her husband. Held, she has all right to sue Mr. X against the contract made between Mr. X and Mr. Puri even though she was stranger to contract.

(4) Assignment of contract:

Where there is an assignment of a contract, the assignee can enforce the contract for various benefits that would accrue to him on account of the assignment.

Example:

(5) Acknowledgement of Debts:

In case of part performance of a contractual obligations or where there is acknowledgment of liability on account of estoppel, a third party can sue for benefits. W here for example 'A' gives ₹ 25000/- to 'B' to be given to 'C' and 'B' informs 'C' that B is holding it on behalf of C, but subsequently refuses to pay 'C' then 'C' can sue and enforce his claim.

(6) Covenants with land:

Where a piece of land which is sold to buyer with certain covenants relating to land and the buyer is kept on notice of the covenants with certain duties, there the successors to the seller can enforce these covenants.

Example:

(7) Contracts made by the agent:

The principal can enforce the contracts entered by his agent where the agent has acted within the scope of his authority and in the name of the principal.

Example:

NO CONSIDERATION, NO CONTRACT

Every agreement must be supported by a consideration and agreement without consideration is void.

To this general rule there are certain exceptions which are mentioned in Section 25 of the Indian Contract Act.

(1) Out of Natural Love and Affection:

Where an agreement is expressed in writing and registered under law for the time being in force for the registration of documents and is made on account of natural love and affection between the parties standing in a near relation to each other is

enforceable even if there is no consideration. Nearness of relationship, however, does not necessarily imply love and affection.

Example:

(2) Compensation paid for past voluntary services:

A promise to compensate wholly or in part for past voluntary services rendered by someone to promisor does not require consideration for being enforced. In order that a promise to pay for the past voluntary services is binding, the following essential factors must exist:

(i) The services should have been rendered voluntarily.

(ii) The services must have been rendered for the promisor.

(iii) The promisor must be in existence at the time when services were rendered.

(iv) The promisor must have intended to compensate the promisee.

Example:

(3) Promise to pay debts barred by limitation:

Where there is a promise in writing to pay a debt, which was barred by limitation, is valid without consideration.

Example:

(4) Creation of Agency:

No consideration is necessary to create an agency

Example:

(5) In case of completed gifts, no consideration is necessary.

(6) Bailment:

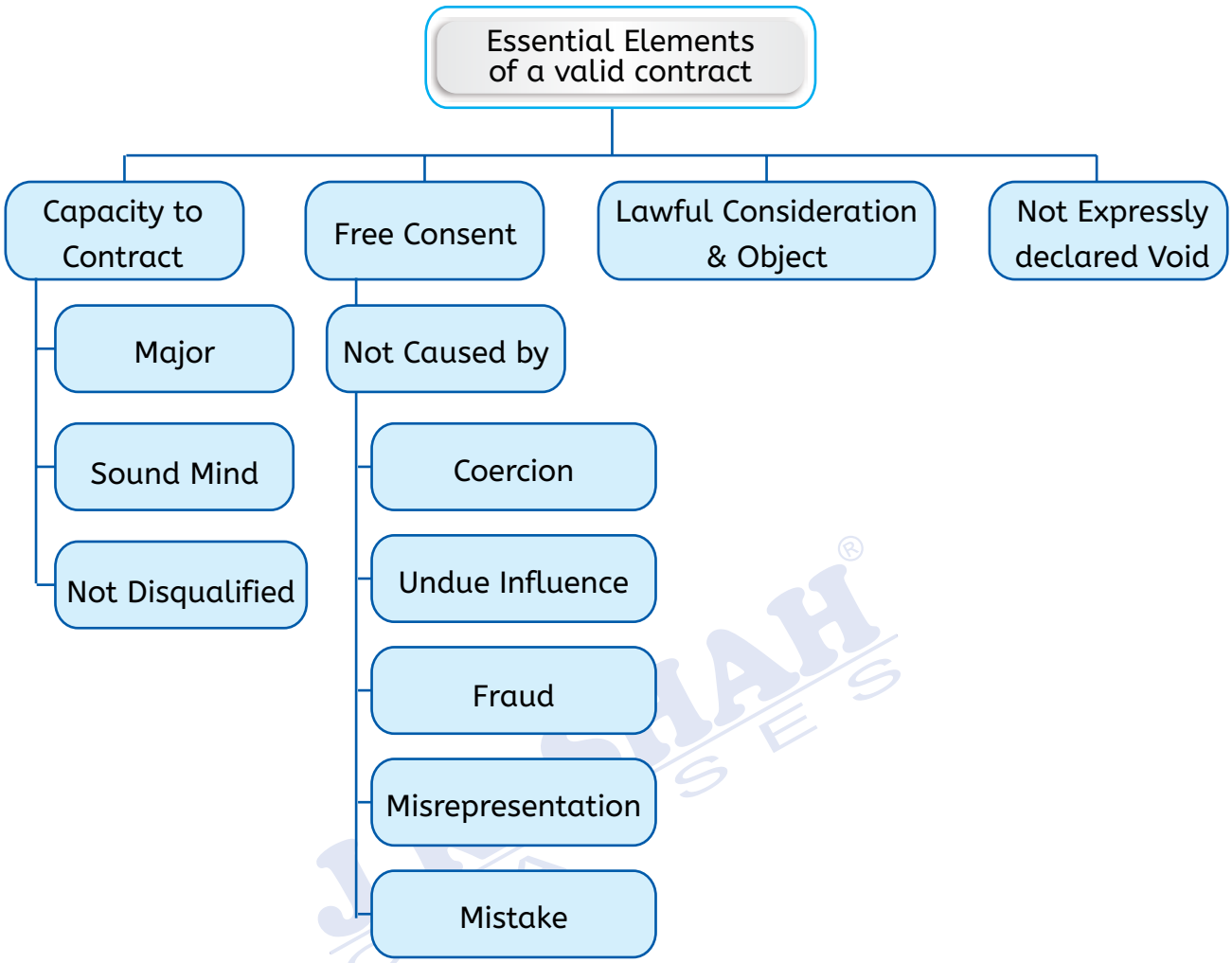
Bailment is a contract where goods are delivered for a particular purpose and once the purpose is served, goods are to be returned back. There are 2 parties; bailor and bailee.

Bailment can be gratuitous. i.e. without consideration.

Example:

(7) Charity

UNIT 3: OTHER ESSENTIAL ELEMENTS OF A VALID CONTRACT



CAPACITY OF PARTIES

Meaning	Capacity refers to the competence of the parties to make a contract. It is one of the essential elements to form a valid contract.
Who is competent to contract (Section 11)	"Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject".
Analysis of Section 11	This section deals with personal capacity of three types of individuals only. Every person is competent to contract who- (A) has attained the age of majority, (B) is of sound mind and (C) is not disqualified from contracting by any law.

(A) Minor	1. Every person in India shall attain the age of majority on the completion of 18 years of age 2. A agreement made with or by a minor is void ab-initio: A minor is not competent to contract and any agreement with or by a minor is void from the very beginning.. 3. Minor can be a beneficiary or can take benefit out of a contract: Though a minor is not competent to contract, he can be a beneficiary. Thus, a promissory note duly executed in favour of a minor (i.e minor is going to receive money) is valid. 4. Contract by guardian - how far enforceable: Though a minor's agreement is void, his guardian can enter into a valid contract on minor's behalf. Where the guardian makes a contract for the minor, which is for the benefit of the minor, there will be valid contract. But all contracts made by guardian on behalf of a minor are not valid. For instance, the guardian of a minor has no power to bind the minor by a contact for the purchase of immovable Property. But a contract entered into by a certified guardian (appointed by the Court) of a minor, with the sanction of the court for the sale of the minor's property, may be enforced by either party to the contract. 5. Minor cannot bind his parents/guardians for his personal contracts. 6. A minor can always plead minority: A minor can always plead minority and is not stopped to do so even where he has taken any loan or entered into any contract by falsely representing that he was major. 7. No ratification after attaining majority: A minor cannot ratify the agreement on attaining majority, as the original agreement is void-ab-initio and a void-ab-initio agreement can never be ratified. 8. Liability for necessaries: If any necessaries of life are supplied to minor, then the person supplying the necessaries can claim it back from the property of minor. A claim for necessaries supplied to a minor is enforceable by law. But a minor is not personally liable for any amount but only his property is liable. To render minor's estate liable for necessaries two conditions must be satisfied.

	(i) The contract must be for the goods reasonably necessary for his support in life. (ii) The minor must not have already a sufficient supply of these necessaries. Necessaries mean those things that are essentially needed by a minor. They cannot include luxuries or costly or unnecessary articles. 9. No insolvency: A minor cannot be declared insolvent as he is incapable of contracting debts and dues are payable from the personal properties of minor and he is not personally liable. 10. Partnership: A minor being incompetent to contract cannot be a partner in a partnership firm, but under Section 30 of the Indian Partnership Act, he can be admitted to the benefits of partnership. 11. Minor can be an agent: A minor can act as an agent. But he will not be liable to his principal for his acts. 12. Joint contract by minor and adult: In such a case, the adult will be liable on the contract and not the minor. 13. Minor as Shareholder: A minor, being incompetent to contract cannot be a shareholder of the company. If by mistake he becomes a member, the company can rescind the transaction and remove his name from register. But, a minor may, acting though his lawful guardian become a shareholder by transfer or transmission of fully paid shares to him. 14. Liability for torts: A tort is a civil wrong. A minor is liable for tort. Example: A boy aged 16 yrs cannot disrespect national flag. Case law: of *Mohori Bibi vs. Dharmo Das Ghose (1903)*, "A, a minor borrowed ₹20,000 from B and as a security for the same executed a mortgage in his favour. He became a major a few months later and filed a suit for the declaration that the mortgage executed by him during his minority was void and should be cancelled. It was held that a mortgage by a minor was void and B was not entitled to repayment of money.
(B) Person of unsound mind	As per Section 12, a person is of unsound mind if he is not capable of understanding the terms of contract and form a rational judgement as to its effect.

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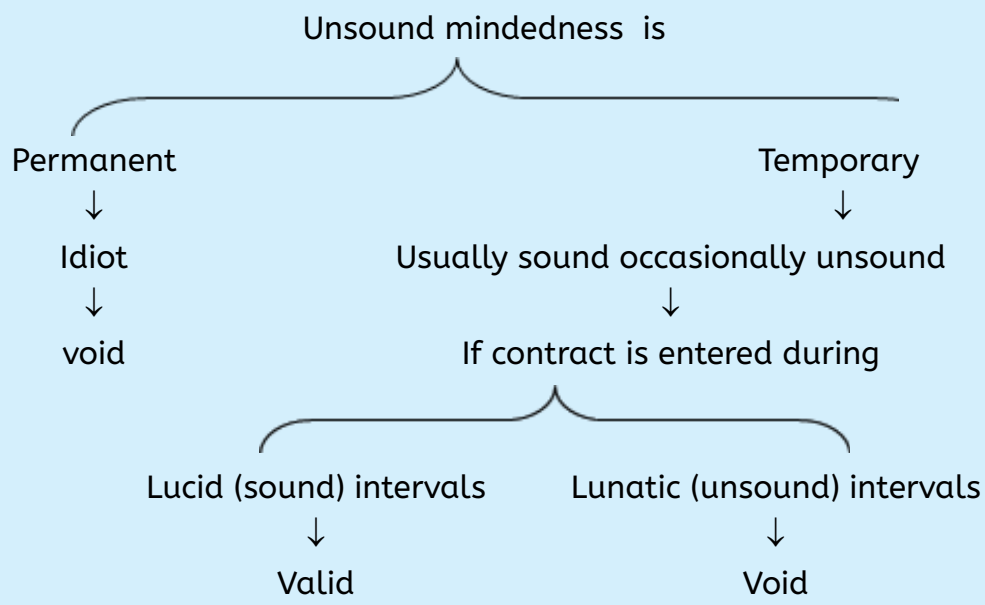
<td> 
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<td>(C) Persons disqualified by law</td>
<td>The following persons, who are disqualified by the law to which they are subject, are not competent to enter into a contract.
1. Alien enemies:
An ‘alien’ is a person who is a foreigner to the land. He may be either an ‘alien friend’ or an ‘alien enemy.’ If the country of the alien is at peace with the country of his stay, he is an alien friend. And if a war is declared between the two countries, he is termed as an alien enemy.
2. Insolvents:
When a person is declared as an insolvent, his property shall vest with the Receiver or ‘Official Assignee’. However, this disqualification of an insolvent is removed ‘when the court passes an order of discharge i.e when he is declared as solvent again.
3. Convicts:
A convict cannot enter into a contract while he is undergoing imprisonment. But when he is pardoned or the punishment gets over, he becomes capable of entering into a contract. Thus, the incapacity is only during the period of punishment.
4. Corporation and a company:
The contractual capacity of the corporation is expressly defined by the Special Act under which it is created. Whereas, the contractual capacity of a company, registered under the Companies Act 2013, is regulated by the terms of its ‘Memorandum of Association’ and the provisions of the Companies Act. If a company enters into a contract which is outside its object clause given in Memorandum of Association, it is void-ab-initio.</td>
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	5. Foreign sovereigns, diplomatic staff, and accredited representatives of foreign states: Such persons can enter into valid contracts and can enforce them in Indian courts. However, a suit cannot be filed against them, in the Indian courts, without the prior sanction of the central government.

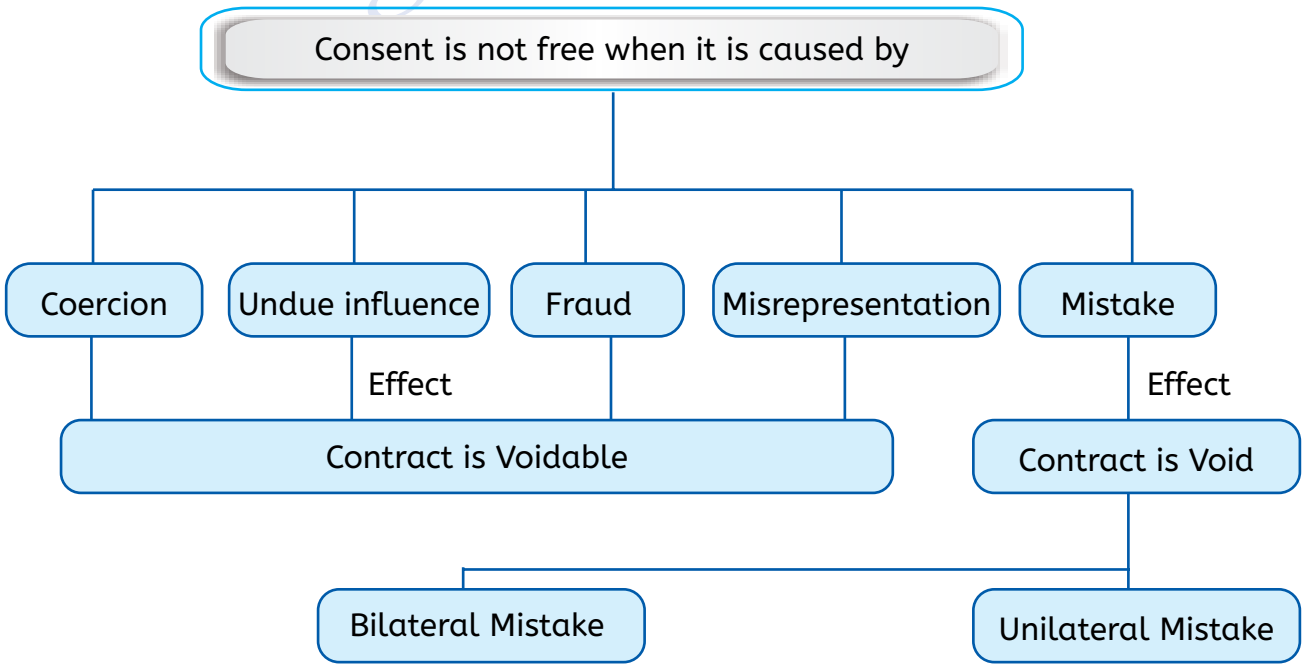
FREE CONSENT

The term 'consent' is defined in Section 13 of the Indian Contract Act, as under "Two or more persons are said to consent when they agree upon the same thing in the same sense. " It is also known as consensus-ad-idem (i.e. meetings of the minds). For the creation of contract, there must be consensus-ad-idem.

The term 'free consent' may be defined as the consent which is obtained by the free will of the parties, and neither party was forced or induced to give his consent. It is defined in Section 14 of the Indian Contract Act, as under:

Consent is said to be free when it is not caused by:

1. Coercion, as defined in Section 15, or
2. Undue influence, as defined in Section 16, or
3. Fraud, as defined in Section 17, or
4. Misrepresentation, as defined in Section 18, or
5. Mistake, subject to the provisions of Sections 20, 21 and 22.



COERCION (Section 15)	➢ "Coercion is committing or threatening to commit, any act forbidden by the Indian Penal Code or unlawfully detaining or threatening to detain any property, to the prejudice of any person whatever with the intention of causing any person to enter into an agreements. ➢ Physical force is involved. ➢ Since no relationship is required for coercion, it can be exercised by 3rd party on 3rd party ➢ Suicide also amounts to coercion. ➢ Effects of coercion: (i) Contract induced by coercion is voidable at the option of the party whose consent was so obtained i.e aggrieved party (Section 19). In other words, either aggrieved party can rescind the contract or affirm the contract. (ii) If such voidable contract is rescinded by the aggrieved party, then if any benefit is derived should be returned back to the person from whom it was received. (iii) A person to whom money has been paid or anything delivered under coercion must repay or return it. ➢ Example:
UNDUE INFLUENCE (Section 16)	➢ 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 of the other ➢ Analysis of Section 16 (1) Relation between the parties: A person can be influenced by the other when a near relation between the two exists. (2) Position to dominate the will: Relation between the parties exist in such a manner that one of them is in a position to dominate the will of the other. A person is deemed to be in such position in the following circumstances:

(a) Real and apparent authority: Where a person holds a real authority over the other as in the case of master and servant, doctor and patient and etc.

(b) Fiduciary relationship: Where relation of trust and confidence exists between the parties to a contract. Such type of relationship exists between father and son, solicitor and client, husband and wife, creditor and debtor, etc.

(c) Mental distress: An undue influence can be used against a person to get his consent on a contract where the mental capacity of the person is temporarily or permanently affected by the reason of mental or bodily distress, illness or of old age.

(d) Unconscionable bargains: Where one of the parties to a contract is in a position to dominate the will of the other and the contract is apparently unconscionable i.e., unfair, it is presumed by law that consent must have been obtained by undue influence. Unconscionable bargains are witnessed mostly in money-lending transactions and in gifts.

Case law: *Kirpa Ram vs. Sami-Ud-din Ad. Khan (1903*

A youth of 18 years of age, spend thrift and a drunkard, borrowed ₹ 90,000 on a bond bearing compound interest at 2% per mensem (p.m.). It was held by the court that the transaction is unconscionable, the rate of interest charged being so exorbitant

(3) The object must be to take undue advantage: Where the person is in a position to influence the will of the other in getting consent, must have the object to take advantage of the other.

- Mental force is involved
- Can be exercised between same parties only as relationship is required.
- The effect of undue influence is that it makes the contract voidable at the option of the party whose consent is obtained by undue influence, i.e., such party can put an end to the contract if he so chooses (Section 19)
- Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit there under, upon such terms and conditions as to the Court may seem just.

Example: A, a money lender advances ₹1,00,000 to B, an agriculturist, and by undue influence induces B to execute a bond for ₹2,00,000 with interest at 6 percent per month. The court may set aside the bond, ordering B to repay ₹1,00,000 with such interest as may seem just.

DIFFERENCE BETWEEN COERCION AND UNDUE INFLUENCE

Coercion	Undue Influence
1. The consent is given under the threat of an offence forbidden by Indian Penal Code or detaining or threatening to detain property unlawfully.	1. The consent is given by a person who is so situated in relation to another that the other position to dominate his will.
2. It is not necessary that some sort of relationship must exist between parties.	2. In case of undue influence, there is bound to be some sort of relationship.
3. Coercion need not proceed from parties to the contract.	3. Undue influence is always exercised between parties to the agreement.
4. Coercion is mainly of physical nature.	4. Undue nature. influence
5. Acts are forbidden by Indian Penal Code	5. Acts are not forbidden by Indian Penal Code

FRAUD (Section 17)	➢ The term 'fraud' may be defined as an intentional, deliberate or willful misstatement of facts, which are material for the formation of a contract. ➢ Fraud means and includes any of the following acts committed by a party to a contract with intent to deceive another party thereto or to induce him to enter into the contract : 1. The active concealment of a fact by one having knowledge or belief of the fact; 2. A promise made without any intention of performing it; 3. Any other act fitted to deceive(cheat); 4. Any such act or omission as the law specially declares to be fraudulent. 5. Person making the statement does not believe it as true ➢ Example: A, intending to cheat B, falsely represented that five tonnes of ice was manufactured daily in his factory. And thereby, induced B to buy the factor. In fact, the production was 3.5 tonnes per day. The contract is voidable at the option of B, as his consent is obtained by fraud.

➢ Mere silence does not amount to fraud.

If the defect in the goods is visible, then it is not the duty o seller to disclose such defect. Let the purchaser beware is the rule applicable to contracts. There is no duty to speak in such cases and silence does not amount to fraud. There is no duty to disclose facts which are within the knowledge of both the parties.

Silence is fraud:

1. Duty of person to speak: Where the circumstances of the case are such that it is the duty of the person observing silence to speak. For example, in contracts of uberrimae fidei (contracts of utmost good faith).

   Following contracts come within this category:

   a) Fiduciary Relationship: Here, the person in whom confidence is reposed is under a duty to act with utmost good faith and make full disclosure of all material facts concerning the agreement, known to him.

      Example: A broker was asked to buy shares for client. He sold his own shares without disclosing this fact. The client was entitled to avoid the contract or affirm it with a right to claim secret profit made by broker on the transaction since the relationship between the broker and the client was relationship of utmost good faith.

   b) Contracts of Insurance: In contracts of marine, fire and life insurance, there is an implied condition that full disclosure of material facts shall be made, otherwise the contract can be avoided.

      Example: In life Insurance contract, the person who takes such insurance has to disclose if he smokes cigarette or drinks alcohol.

   c) Contracts of marriage: Every material fact must be disclosed by the parties to a contract of marriage.

      Example: If the grooms or brides have some health issues, that is to be disclosed.

   d) Contracts of family settlement: These contracts also require full disclosure of material facts within the knowledge of the parties.

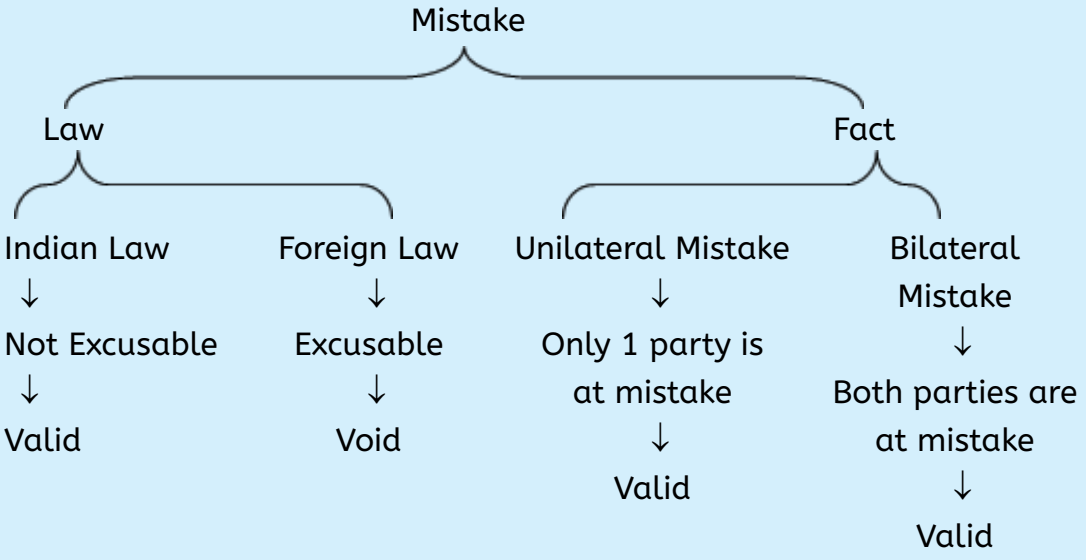
   e) Share Allotment contracts: Persons issuing 'Prospectus' at the time of public issue of shares/debentures by a joint stock company have to disclose all material facts within their knowledge.

2. Where the silence itself is equivalent to speech: For example, A says to B "If you do not deny it, I shall assume that the horse is sound." A says nothing. His silence amounts to speech.

	➢ Effect of Fraud upon validity of a contract: When the consent to an agreement in caused by the fraud, the contract is voidable at option of the party defrauded and he has the following remedies: 1. He can rescind the contract within a reasonable time. 2. He can sue for damages.
MISREPRESENTATION (Section 18)	➢ The term 'misrepresentation' may be defined as an innocent misstatement of facts which are material for the contract. In other words, misrepresentation is a false representation which is made innocently (i.e., without any intention to deceive the other party), ➢ A 'representation: means a statement of facts made by one party to the other with a view to induce the other party to enter into the contract. ➢ There is no intention to cheat, hence it is not forbidden by Indian Penal Code ➢ Person making the statement does believes it as true ➢ The effect of misrepresentation is that it makes the contract voidable at the option of the party whose consent was obtained by misrepresentation i.e., such party may put an end to the contract if he so chooses. Aggrieved party cannot claim damages (Section 19) ➢ Example: A, by misrepresentation, lead B erroneously to believe that five hundred T.V. sets were manufactured per month in his factory. Upon this representation, B bought the factory. The actual production was found to be only four hundred sets per month. Here, B's consent is caused by misrepresentation, and thus, the contract is voidable at his option.

Distinction between fraud and misrepresentation

Basis of difference	Fraud	Misrepresentation
Intention	To deceive the other party by hiding the truth.	There is no such intention to deceive the other party.
Knowledge of truth	The person making the suggestion believes that the statement as untrue.	The person making the statement believes it to be true, although it is not true.
Rescission of the contract and claim for damages	The injured party can rescind the contract and claim damages.	The injured party is entitled to repudiate the contract or sure for restitution but cannot claim the damages.
Means to discover the truth	The party using the fraudulent act cannot secure or protect himself by saying that the injured party had means to discover the truth.	Party can always plead that the injured party had the means to discover the truth.

EFFECT OF COERCION, UNDUE INFLUENCE, FRAUD, MISREPRESENTATION (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.
MISTAKE (Section 20 to 22)	 (a) Mistake of Law: A mistake of law does not render a contract void as one can't take excuse of ignorance of the law of his own country. Since the mistake of Indian law cannot be given as an excuse, the contract must be performed after rectifying the mistake, hence the contract is valid. A mistake of foreign law is excusable and is treated like a mistake of fact. Contract may be avoided on such mistake. (b) Mistake of Fact: W here the contracting parties misunderstood each other and are at cross purposes, there is a bilateral or mutual mistake. W here both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void. For example, A offers to sell his Ambassador Car to B, who believes that A has only Fiat Car agrees to buy the car. Here the two parties are thinking about different subject matter so that there is no real consent and the agreement is void. Where only one of the parties to a contract is under a mistake, i.e. unilateral mistake, the contract will not become void. A mistake on the part of one party only not caused or actively assisted by the act of the other party, cannot invalidate an agreement. ❖ If the bilateral mistake is regarding price of goods then the contract is valid

UNLAWFUL OBJECT AND UNLAWFUL CONSIDERATION Section 23&24

1. Agreement forbidden by law: Acts forbidden by law means acts that are punishable under any Statute or Rules or Regulations made under any Statute.
   Example: A orders B to cut trees without permission of Municipality. Such agreement is void.

2. Agreement defeating the provisions of law or defeating any rule for the time being in force.
   Example: As per Payment of Bonus Act, minimum bonus to be paid to employees is 8.33 % of the salary. But A contracts with his employee B to pay him bonus of 5 % of salary. This agreement is defeating law and hence void.

3. Where object or consideration is unlawful because it involves or causing injury to a person or loss of property.
   Example: An agreement to print a book in violation of another's copyright is void, as the object is to cause injury to the property of another. It is also void as the object of the agreement is forbidden by the law relating to copyright.

4. Where consideration is immoral.
   Example: A landlord cannot recover the rent of a house knowingly let to prostitute who carries on her business there. Here, the object being immoral, the agreement to pay rent is void.

5. Where object is fraudulent.
   Example: A, B, C agree to do fraud with public and the profits will be shared equally. This agreement is void.

6. An agreement which is against the general public, is said to be an agreement opposed to public policy.
   a) Trading with an enemy:
      Trading with an enemy is regarded as opposed to public policy. Thus, an agreement made with an alien enemy is unlawful on the ground of public policy, and is void.
   b) Trafficking in public offices :
      The agreements which affect the normal working of government offices are void as they are opposed to public policy e.g., appointment decisions in consideration of money are void. Similarly, the agreement for the procurement of a public recognition such as Param Veer Chakra or any other title, for monetary or other consideration, is void.

c) Interference with course of law and justice:

Any agreement with the object of inducing a judicial officer or administrative officer of the state to act corruptly or not impartially is void.

d) Stifling prosecution:

Any agreement to stifle or prevent illegally any prosecution is void as it would amount to abuse of justice.

Example:

e) Maintenance and Champerty:

Maintenance is promotion of litigation in which the litigant has no interest. Champerty is bargain whereby one party agrees to assist the other in recovering property with a view to sharing the profit of litigation.

Example:

f) Marriage brokerage contracts:

An agreement to procure the marriage of a person in consideration of a sum of money is called a 'marriage brokerage contract'. Such agreements being opposed to public policy are void.

g) Interest against obligation:

The following is example of agreement that are void as they tend to create an interest against obligation. The object of such agreements is opposed to public policy. A, who is the manager of a firm, agrees to pass a contract to X if X pay to A 20000 privately; the agreement is void.

h) Agreement for the creation of monopolies:

Agreements having for their object the establishment of monopolies are opposed to public policy and therefore void.

AGREEMENTS EXPRESSLY DECLARED AS VOID

1. Agreement in restraint of marriage (Section 26):

Every agreement in restraint of marriage of any person other than a minor is void. So if a person, being a major, agrees for good consideration not to marry, the promise is not binding.

Exceptions:

(1) Minors

(2) Restraint for particular reasonable period is valid.

2. Agreement in restraint of trade (Section 27):

Any agreement through which a person is restrained from exercising a lawful profession, trade or business of any kind is to that extent void. The object of this law is to protect trade. The restraint, even if it is partial, will make the agreement void.

However there are certain exceptions:

(i) Where a person sells his business along with the goodwill to another person, agrees not to carry on same line of business in certain reasonable local limits, such an agreement is valid.

(ii) An agreement through which an outgoing partner will not carry on the business of the firm for a reasonable time will be valid, though it is in restraint of trade.

(iii) An agreement of service through which an employee commits not to compete with his employer is not in restraint of trade. Example: 'B' is a Doctor and he employs 'A' a junior Doctor as his assistant. 'A' agrees not to practice as Doctor during the period of his employment with 'B' as a Doctor independently. Such an agreement will be valid.

(iv) Trade Combinations are valid as long as they are not creating monopoly: An agreement between manufacturer and a wholesale merchant that the entire production during a period will be sold by the manufacturer to the wholesale merchant is not in restraint of trade. An agreement among sellers not to sell a particular product below a particular price is not an agreement in restraint of trade.

3. Agreement in restraint of legal proceedings (Section 28):

An agreement in restraint of legal proceedings resulting in restriction of one's right to enforce legal rights is void. Similarly any agreement which abridges the usual period for commencing the legal proceedings is also void.

In simple words, any agreement which restricts right to sue or waives right to sue or limits the time of justice is void.

However there are certain exceptions:

(i) A contract by which the parties agree that any dispute between them in respect of any subject shall be referred to arbitration and that only the amount awarded

in such arbitration shall be recoverable is a valid contract. Arbitration means settlement outside the court.

(ii) Contracts specifying the courts.

4. Agreement the meaning of which is uncertain (Section 29):

Where the meaning of the terms of an agreement is uncertain or if it is not capable of being understood with certainty, then the agreement is void.

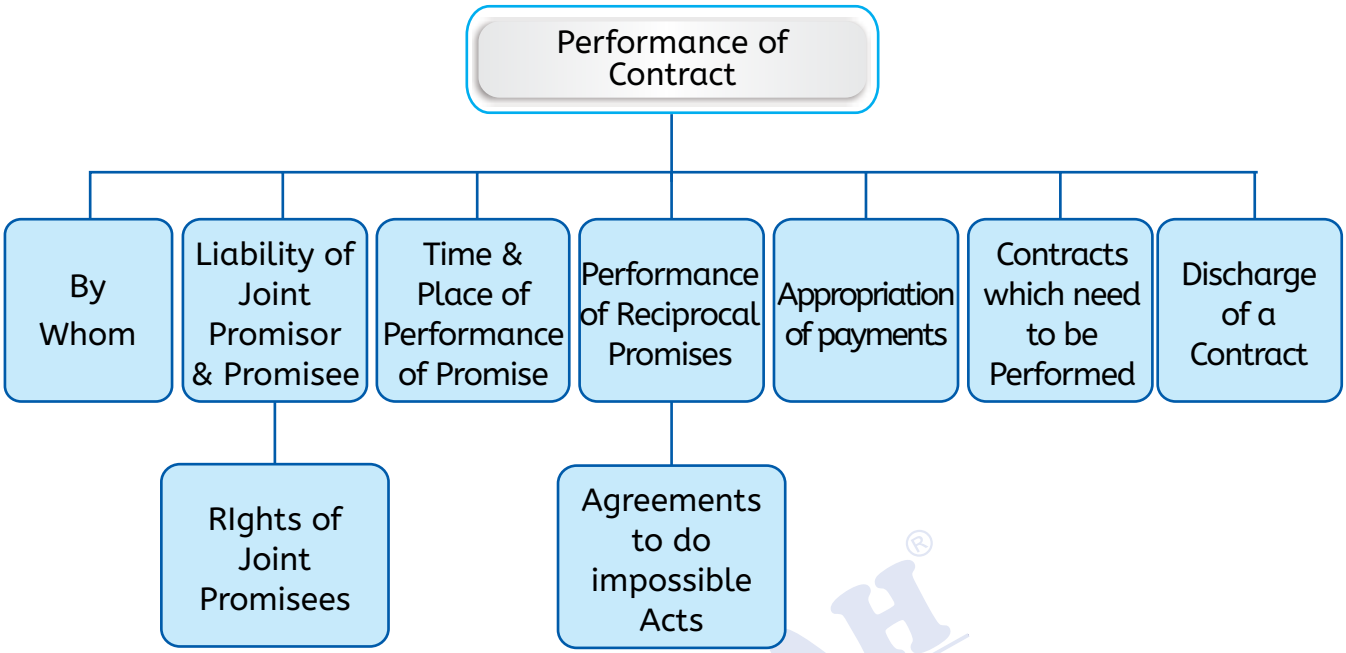
Example: A agreed to sell his radio to B for Rs. 500 or Rs. 800. The agreement is void as there is no certainty about the price. It is not clear whether the price is Rs. 500 or Rs. 800.

5. Wagering Agreements (Section 30):

Meaning	It is an agreement involving payment of a sum of money upon the determination of an uncertain event. The essence of a wager is that each side should stand to win or lose, depending on the way an uncertain event takes place.
Example	A agrees to pay ₹ 50,000 to B if it rains, and B promises to pay a like amount to A if it does not rain, the agreement will be by way of wager.
Are wagering agreements Valid or Void?	The wagering agreements are void. But collateral to wagering are valid. Illegal agreements are void and collateral to illegal are also void.
Essentials of a Wager	1. There must be a promise to pay money or money's worth. 2. Promise must be conditional on an event happening or not happening. 3. There must be uncertainty of event. 4. There must be two parties, each party must stand to win or lose. 5. There must be common intention to bet at the timing of making such agreement. 6. Parties should have no interest in the event except for stake.
Lottery transactions	A lottery is a game of chance and not of skill or knowledge. Where the prime motive of participant is gambling, the transaction amounts to a wager. Even if the lottery is sanctioned by the Government of India it is a wagering transaction.
Crossword Puzzles and Competitions	➢ Crossword puzzles in which prizes depend upon the correspondence of the competitor's solution with a previously prepared solution kept with the editor of a newspaper is a lottery and therefore, a wagering transaction.

	➢ Crossword puzzles, picture competitions and athletic competitions where prizes are awarded on the basis of skill and intelligence are the games of skill and hence such competitions are valid. According to the Prize Competition Act, 1955 prize competitions in games of skill are not wagers provided the prize money does not exceed ₹ 1,000. Case law: *State of Bombay vs. R.M.D. Chamarbangwala (1957)* Facts: A crossword puzzle was given in magazine. Above mentioned clause was stated in the magazine. A solved his crossword puzzle and his solution corresponded with previously prepared solution kept with the editor. Held, this was a game of chance and therefore a lottery (wagering transaction).
Speculative transactions	➢ An agreement or a share market transaction where the parties intend to settle the difference between the contract price and the market price of certain goods or shares on a specified day is a gambling and hence void. ➢ In these transactions in which delivery of goods or shares is intended to be given or taken, do not amount to wagers.
Horse Race Transactions	A horse race competition where prize payable to the bet winner is less than ₹500 is a wager.
Chit Fund	Chit fund does not come within the scope of wagering. In case of a chit fund, a certain number of persons decide to contribute a fixed sum for a specified period and at the end of a month, the amount so contributed is paid to the lucky winner of the lucky draw.
Contract of Insurance	A contract of insurance is a type of contingent contract and is valid under law and these contracts are different from wagering agreements. Contingent Contracts are covered in Unit 6. Distinction between Contract of Insurance and Wagering Agreement - covered in Unit 6
Promissory note given out of a wagering	A promissory note given out of a wagering contract is not enforceable by way of a suit. It is void.

UNIT 4: PERFORMANCE OF CONTRACT



INTRODUCTION :

After the formation of a valid contract, the next step is the fulfillment of the object that the parties had agreed to do. For the fulfillment of the object, the parties become liable to perform their respective obligations. When the parties perform their respective obligations, the object is fulfilled and the liability of the parties comes to an end. After the performance, the contract is said to be discharged. Thus, 'performance' is one of the various modes of discharge of the contract.

OBLIGATIONS OF PARTIES TO CONTRACTS-(Section 37)	➢ 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 the Contract Act or of any other law. ➢ The contract must be performed by the Promisor. In case of his death, then his Legal Representative. ➢ But if the contract involves personal skills, if the promisor dies then the contract becomes void and legal representative cannot perform. ➢ Example 1: A promises to deliver goods to B on a certain day on payment of ₹1,00,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay ₹1, 00,000 to A's representatives.

	Example 2: A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B because it involves use of personal skill. It is a contract of personal nature. ➢ It is the primary duty of each party to a contract to either perform or offer to perform his promise. Performance may be actual or offer to perform. ➢ Actual Performance: Where a party to a contract has done what he had undertaken to do or either of the parties have fulfilled their obligations under the contract within the time and in the manner prescribed. Example: X borrows ₹5,00,000 from Y with a promise to be paid after 1 month. X repays the amount on the due date. This is actual performance. ➢ Offer to perform or attempted performance or tender of performance: It may happen sometimes, when the performance becomes due, the promisor offers to perform his obligation but the promisee refuses to accept the performance. Example: P promises to deliver certain goods to R. P takes the goods to the appointed place during business hours but R refuses to take the delivery of goods. This is an attempted performance as P the promisor has done what he was required to do under the contract.
BY WHOM A CONTRACT MAY BE PERFORMED (SECTION 37,40, 41 AND 42)	CONTRACT WILL BE PERFORMED BY: 1. Promisor himself: If there is something in the contract to show that it was the intention of the parties that the promise should be performed by the promisor himself, such promise must be performed by the promisor (Section 40). This means contracts which involve the exercise of personal skill or diligence, or which are founded on personal confidence between the parties must be performed by the promisor himself 2. Agent: W here personal consideration is not the foundation of a contract, the promisor or his representative may employ a competent person to perform it.(Section 40) 3. Representatives: A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death of the promisor. As regards any other contract the legal representatives of the decreased promisor are bound to perform it unless a contrary intention appears from the contract (Section 37). But their liability under a contract is limited to the value of the property they inherit from the deceased.

	4. Third persons: W hen a promisee accepts performance of the promise from a third person, afterwards he cannot enforce it against the promisor. That is performance by a stranger, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorized nor ratified the act of the third party. (Section 41) 5. Joint promisors: When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons must jointly fulfill the promise. If any of them dies, his legal representatives must, jointly with the surviving promisors, fulfill the promise. If all of them die, the legal representatives of all of them must fulfill the promise jointly (Section 42). Example: 'A', 'B' and 'C' jointly promised to pay ₹6,00,000 to 'D'. Here 'A', 'B' and 'C' must jointly perform the promise. If 'A' dies before performance, then his legal representatives must jointly with 'B' and 'C' perform the promise, and so on. And if all the three (i.e. 'A', 'B' and 'C') die before performance, and then the legal representatives of all must jointly perform the promise.
DISTINCTION BETWEEN SUCCESSION AND ASSIGNMENT	➢ Succession: When the benefits of a contract are succeeded by a process of law, both the burden and the benefit would sometimes devolve on the legal heir. For example 'B' is the son of 'A'. Upon A's death 'B' will inherit all the assets and liabilities of 'A' [These assets and liabilities are also referred to as debts and estates] Thus 'B' will be liable to all the debts of 'A', but if the liabilities inherited are more than the value of the estate [assets] inherited it will be possible to pay only to the extent of assets inherited. ➢ Assignment: Assignment is voluntary transfer of right. Unlike succession, the assignor can assign only the assets to the assignee and not the liabilities.
EFFECT OF REFUSAL TO ACCEPT OFFER OF PERFORMANCE (REQUIREMENTSOF A VALID PERFORMANCE) (Section 38)	➢ Where a promisor has made an offer of performance to the promisee, and the performance has not been accepted, then the promisor is not responsible for non performance. ➢ The attempted performance to be valid must fulfill the following conditions: (1) It must be unconditional: The performance must be in accordance with the terms of the contract

	(2) Performance must be at a proper time and place: What is proper place and time normally depends on facts and circumstances of the case. Performance must be within reasonable time. (3) Performance must give reasonable opportunity for inspection : If the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of inspecting the performance.
EFFECT OF A REFUSAL OF PARTY TO PERFORM PROMISE (Section 39)	➢ When a party to a contract has refused to perform or disabled himself from performing his promise in its entirety, the following two rights accrue to the aggrieved party namely: (i) To terminate the contract; OR (ii) Continue the contract. The aggrieved party can also claim damages. ➢ Example : A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B agrees to pay her Rs. 100 for each night's performance. On the sixth night, A willfully absents herself from the theatre. B is at liberty to put an end to the contract.
LIABILITY OF JOINT PROMISOR (Section 42 to 44)	Where two or more persons enter into a joint agreement with one or more person, the promise is known as a joint promise. Example: A, B, and C jointly borrowed a sum of Rs.15000 from X, and jointly promised to repay the amount. It is a joint promise. 1. The joint promisors or their representatives must jointly perform the promise (Section 42): The joint promisors must jointly fulfill the promise during their joint life time. And if anyone of them dies, his legal representatives must jointly with the surviving promisors fulfill the promise. On the death of all the promisors, the representatives of all of them must jointly fulfill the promise 2. The promisee may compel anyone of the joint promisors to perform the promise (Section 43): Example: A, B and C are under a joint promise to pay D ₹3,00,000. C is unable to pay anything A is compelled to pay the whole. A is entitled to receive ₹1,50,000 from B.

	3. The promisee may release one of the joint promisors (Section 44): Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors, neither does it free the joint promisors so released from responsibility to the other joint promisor or promisors. Example: 'A', 'B' and 'C' jointly promised to pay ₹9,00,000 to 'D'. 'D' released 'A' from liability. In this case, the release of 'A' does not discharge 'B' and 'C' from their liability. They remain liable to pay the entire amount of ₹9,00,000 to 'D'. And though 'A' is not liable to pay to 'D', but he remains liable to pay to 'B' and 'C' i.e. he is liable to make the contribution to the other joint promisors.
RIGHTS OF JOINT PROMISEES (Section 45)	1. There may be joint promisees also i.e., one person may make a promise to more than one person jointly. 2. The joint promisees have the joint right to ask for the performance of the promise. 3. Where one person has made a joint promise to, more than one person, then all the promisees must jointly claim performance so long as all are alive. 4. If anyone of them dies, his legal representatives must jointly with the surviving promisees claims the performance. On the death of all the joint promisees, the legal representatives of all of them must jointly claim the performance. Example: A and B jointly lent Rs. 10,000 to C. And C promised A and B jointly to repay them that amount on a specified day. Here, A and B must jointly claim the performance. If A dies before performance, the right to claim performance rests with A's representative jointly with B. And if both A and B die, the rights to claim performance rests with the representatives of both of them.
TIME AND PLACE FOR PERFORMANCE (Section 46 to 50)	1. Where the day for performance is not specified in the contract, and the promisor himself has to perform the promise without being asked (i.e., without any demand) by the promisee the promise must be performed within a reasonable time [Section 46].

	2. Where the time for performance is not specified in the contract, and the promisor himself has to perform the promise without being asked (i.e., without any demand) by the promisee, promise may be performed at any time during the usual hours of business on the specified day. But the promise should be performed at the place where it was required to be performed [Section 47]. 3. Where the day for the performance is specified in the contract and the promisor has to perform it only on being asked (i.e., on demand) by the promisee, then the promisee must first apply to the promisor (i.e., make a demand on the promisor) for the performance of the promise Promisee's duty to specify day, time, place for performance [Section 48]. 4. Where the place for performance is not specified in the contract, and the promisor himself has to perform the promise without being asked by the promisee, then the promisor, must first apply to the promisee to appoint a reasonable place for the performance of the promise. And thereafter, he should perform the premise at the place appointed by the promisee [Section 49]. 5. Where the manner and time for performance is prescribed by the promisee himself, the promise should be performed in the manner and at the time prescribed by the promisee [Section 50].
PERFORMANCE OF RECIPROCAL PROMISE (Section 51 to 54, 57, 58)	➢ Definition of a Reciprocal Promise [Section 2(f)] "Promises which form the consideration or part of consideration for each other are called reciprocal promises." Thus, when a contract consists of exchange of promises, the promises are called reciprocal promises. Example: A and B promised to marry each other. These are reciprocal promises. In this case, A's promise is the consideration for B's promise. And B's promise is the consideration for A's promise. ➢ Kinds of Reciprocal Promises and their Performance Following are the rules relating to the performance of different kinds of reciprocal promises: 1. Mutual and concurrent: These are the promises which are to be performed simultaneously i.e., at the same time. In such promises,

the promisor is not bound to perform his promise, unless the promisee is ready and willing to perform his own promise [Section 51].

Example: and B contract that A shall deliver the goods to B to be paid for by B on delivery. A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery.

2. Conditional and dependent:

These are the promises where the performance of the promise by one party depends on the prior performance of the promise by the other party. In such promises if the party who is bound to perform his promise first, fails to perform it, then he cannot claim performance from the other party. Moreover, the defaulting party becomes liable to pay the compensation to the other party for the loss suffered by the other on account of the non- performing of the contract [Section 54].

Example: A hires B's ship to take in and convey, from Kolkata to the Mauritius, goods to be provided by A, B receiving certain money for its transfer. A does not provide any cargo for the ship. A cannot claim the performance of B's promise, and must make compensation to B for the loss which B sustains by the non-performance of the contract.

3. Mutual and independent:

These are the promises where each party must perform his promise independently without waiting for the other party to perform his promise, or without waiting whether or not the other party is willing to perform his promise. In such promises, if either party fails to perform his promise, the other party may proceed against him for the damages.

➢ Order of performance of reciprocal promises (Section 52):

The order of performance may be indicated expressly in the contract or it might be implied as per the nature of the transaction.

Example: A and B contract that A shall give loan to B and B promises to give security for the payment of the price. A's promise to give loan need not be performed, until the security is given by , for the nature of the transaction requires that A should have the security from B before he delivers his stock.

- Liability of party preventing event on which the contract is to take effect (Section 53):

  When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented ; and he is entitled to compensation from the other party for any loss he may sustain in consequence of the non- performance of the contract.

  Example: A and B contract that B shall execute some work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B; and if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non performance.

- Reciprocal promise to do certain things that are legal, and also some other things that are illegal (Section 57)

  Where persons reciprocally promise, first to do certain things which are legal and secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a valid contract, but the second is a void agreement.

  Example: A and B agree that A will sell a house to B for 500,000 and also that if B uses it as gambling house, he will pay a further sum of ₹ 750,000. The first set of reciprocal promises, i.e. to sell the house and to pay ₹ 500,000 for it, constitutes a valid contract. But the object of the second, being unlawful, is void.

- 'Alternative promise' one branch being illegal (Section 58)

  The law on this point is contained in Section 58 which says that "In the case of the alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced".

  But if the things are inseparable then the entire agreement is void.

  Example: A and B agree that A shall pay B 1,00,000, for which B shall afterwards deliver to A either rice or smuggled drugs. This is a valid contract to deliver rice, and a void agreement as to the drugs.

IMPOSSIBILITY OF PERFORMANCE
(Section 56)

(1) Impossibility existing at the time of contract: Even at the time of entering into the agreement, it may be impossible to perform certain contracts at the beginning or inception itself. The impossibility of performance may be known or may not be known to the parties

(i) If the impossibility is known to the parties: A agreed with B to discover a treasure by magic. And B agreed to pay Rs. 500 to A for this act. This agreement is void

(ii) If unknown to the parties: Even where both the promisor and the promisee are ignorant of the impossibility the contract is void.

Example:

(iii) If known only to the promisor: Where the promisor alone knows it is impossible to perform or even if he does not know but he should have known about the impossibility with reasonable diligence, the promisee is entitled to claim compensation for the loss suffered because of failure of the promisor to perform.

Example:

(2) Supervening impossibility: When performance of a promise becomes impossible on account of subsequent developments of events or changes in circumstances, which are beyond the contemplation of parties, the contract becomes void. The idea of "supervening impossibility" is referred to as 'Doctrine of frustration' in English law. It is also called the post-contractual impossibility.

(2) Supervening impossibility can arise due to a variety of circumstances as stated below.

(i) Accidental destruction of the subject matter of the contract :

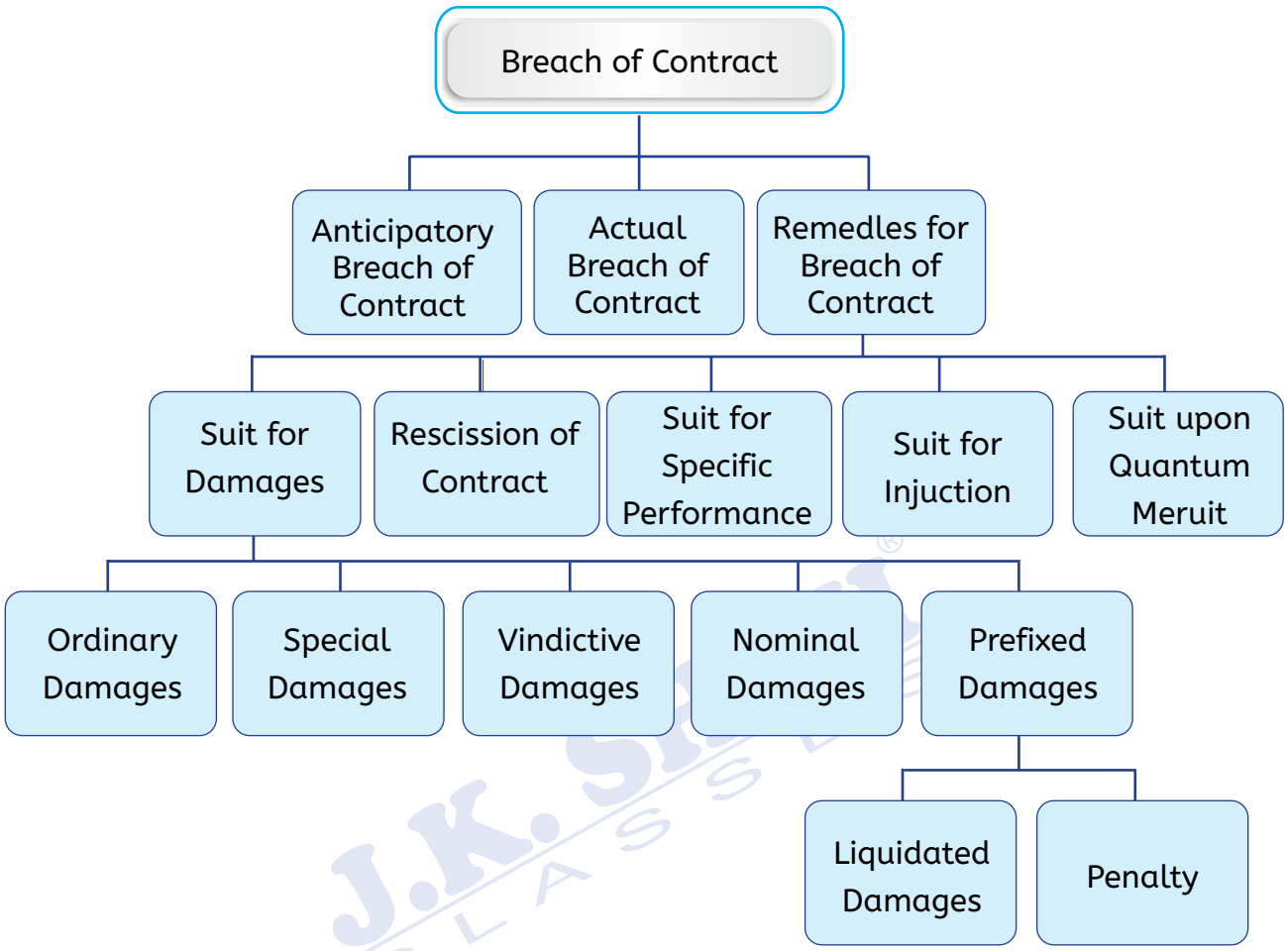
	Example: (ii) Non-existence or no -occurrence of a particular state of things: Example: (iii) Incapacity to perform a contract of personal services: In case of contract of personal service, disability or incapacity to perform, caused by an Act of God e.g. illness, constitutes lawful excuse for non- performance of the contract. For example: A, a circus motor cyclist, contracted with B, the owner of a circus, to perform particular action on his motor cycle. -Before the performance, A died. In this case, the contract is discharged. (iv) Change in law: Performance of a contract may also become impossible due to change in law subsequently. The law passed subsequently may prohibit the act which may form part as basis of contract. Here the parties are discharged from their obligations. For example 'A' and 'B' may agree to start a business for sale of lottery and contribute capital for the business. If the business of sale of lottery ticket is banned by a subsequent law, parties need not keep up their legal obligations. (v) Outbreak of war: Outbreak of war will affect the enforceability of contracts in prohibiting or restraining transaction with alien enemy.
APPROPRIATION OF PAYMENTS (Section 59 to 61)	Sometimes, a debtor owes several debts to the same creditor and makes payment which is not enough to discharge all the debts. In such cases, the payment is appropriated (i.e., adjusted against the debts) as per Sections 59 to 61 of the Indian Contract Act. These sections contain the rules as to against which debt the payment is to be appropriated, and' may be discussed as under:

	1. Where the debtor has stated that the payment made by him should be adjusted against a particular debt, the creditor must do so if he accepts the payment (Section 59). And if there is no express, intimation by the debtor, the law will gather his intention from the circumstances regarding the payment, e.g., if the amount paid by the debtor is the exact amount of one of the debts, it must be used to discharge that particular debt. 2. Where the debtor makes payment without any indication about the appropriation of the payment, the creditor may adjust the payment according to his discretion. The creditor would like to adjust the payment against a debt which is not likely to be recovered. However, the creditor may also adjust the payment against the debts which are time barred (Section 60). 3. Where the debtor does not expressly intimate anything about the appropriation of the payment and the creditor also fails to make any appropriation, the law prefers to wipe out the earlier debt in order of time irrespective of the fact that some of them are time barred (Section 61)., And if there are several debts of the same date, the payment shall be adjusted against each debt proportionately.
CONTRACTS, WHICH NEED NOT BE PERFORMED -WITH THE CONSENT OF BOTH THE PARTIES (Section 62, 63,66)	1. Novation : The term 'novation' means the substitution of existing contract for a new contract. In other words, when the parties to a contract agree to substitute the existing contract by a new contract, it is known as novation. The novation must be with the mutual consent of all the parties (Section 62). For example, A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted. 2. Rescission: The term 'rescission' means the cancellation of the contract. A contract may be rescinded by mutual agreement between the parties at any time before it is discharged by performance or in some other way (Section 62) Communication of rescission (Section 66): You have noticed that a contract voidable at the option of one of the parties can be rescinded; but rescission must be communicated to the other party in the same manner as a proposal is communicated

	under Section 4 of the Contract Act. Similarly, a rescission may be revoked in the same manner as a proposal is revoked. 3. Alteration: The term 'alteration' means change in one or more terms of the contract. The alteration is valid when it is made with the consent of all the parties. And the valid alteration discharges the original contract, and the parties become bound by the new contract (i.e., contract with altered terms).It is important to note here that in case of a written contract, the material alteration by one party without the consent of the other, also discharges the contract (Section 62). 4. Remission : The term 'remission' means the acceptance of lesser fulfillment of the terms of the promise, e.g., acceptance of a less sum of money where more is due. In other words, the remission is the lesser fulfillment of the promise made. The remission is the valid discharge of the whole of the liability under the contract (Section 63). For example, A owed Rs. 5,000 to B. A paid Rs. 2,000 to B, and B accepted it in full satisfaction. In this case, A is, discharged from his liability of Rs. 5,000.
RESTORATION OF BENEFIT UNDER A VOID CONTRACT (Section 64 & 65)	Quantum Meruit (as much as is earned): If any work is done, get paid for it and if any benefit is received then pay for it. 1. Any benefit received under voidable contract which is subsequently avoided is to be returned back (Section 64) Example: An insurance company may rescind a policy on the ground that material fact has not been disclosed. When it does so, the premium collected by it in respect of the policy reduced by the amount of expenses incurred by it in this connection must be repaid to the policy holder. 2. Any benefit received under void contract is to be returned back (Section 65) Example: A pays B ₹ 1,00,000, in consideration of B's promising to sell his horse. Horse was already dead at the time of the promise. The agreement is void, but B must repay A ₹ 1,00,000.

EFFECTS OF NEGLECT OF PROMISEE (Section 67)	If any promisee neglects or refuses to afford the promisor facilities for the performance of a promise, the promisor is excused from the performance of his promise. Example: A contracts with B to repair B's house. B neglects or refuses to appoint 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.

UNIT 5: BREACH OF CONTRACT



Introduction

In case of a valid contract, the parties are bound to perform their respective obligations. If any party fails to perform his obligations, there occurs a breach of the contract. The 'breach of contract' means the failure of a party to perform him obligations.

The party who fails to perform his obligations, is said to have committed a breach of contract. And a breach of a contract discharges the aggrieved party from performing his obligations. The breach of contract is of the following two types:

1. Anticipatory Breach 2. Actual Breach

1. Anticipatory Breach of Contract

It occurs when, prior to the due date of performance, the promisor absolutely refuses or disables himself from the performance of his obligations. In other words, it is a declaration by one party of his intention not to perform his obligations under the contract. Thus, the anticipatory breach is' the premature destruction of the contract, i.e., the repudiation of the contract before due date of performance.

Example:

A contracted to supply to B 100 pieces of denims on 15th December 2006. But before the due date of performance (i.e., 15th December, 2006), A informed B that he is not going to supply the denims at all. On A's refusal to supply the goods, the anticipatory breach of the contract occurs. And B may put an end to the contract.

The anticipatory breach may take place either by express refusal to perform the contract, or by some act of the promisor which makes the performance impossible.

In case of an anticipatory breach of the contract, the aggrieved party may exercise either of the following two options:

(i) He may treat the contract as discharged and bring an immediate action for damages.

(ii) He may treat the contract as operative and wait till the time of performance arrives.

2. Actual Breach of Contract

It occurs when, on the due date of performance or during the performance, a party fails to perform his obligations. Thus, the actual breach of contract may be discussed under the following two heads.

i. Actual breach of contract on the due date of performance:

Sometimes, on the due date of performance, one party fails to perform his obligations. In such cases, the other party is discharged from the performance of his obligations, and can hold the guilty party liable for the breach of contract.

Example:

A agreed to sell his car to B on 1st June. But on 1st June, A refused to sell the car to B. On A's refusal to sell the car, there occurred a breach of the contract. And B can hold A liable for the breach of contract.

ii. Actual breach of contract during its performance:

Sometimes, one party performs his obligations under the contract but the other party fails or refuses to perform his obligations. It is an actual breach of contract during its performance. And sometimes, one party, no doubt, performs his obligations but not strictly according to the contract. It is also an actual breach of contract. This type of breach of contract occurs when the party, performing the contract, commits a breach of the essential conditions to contract.

Example:

A contracted to sell 1000 goods to B to be delivered on 15th March. On the due date of delivery, A delivered the only 700 goods to B. In this case, the breach of contract is committed during the performance of the contract as A has not performed the contract according to its terms. And thus, B is not bound to take delivery of the goods and pay for them.

DAMAGES FOR BREACH OF CONTRACT (Section 73)

The term 'damages' may be defined as the monetary compensation payable by the defaulting party to the aggrieved party for the loss suffered by him. On the breach of the contract, the aggrieved party may file a suit for damages against the party who is guilty of the breach of the contract. And the guilty party is liable to pay damages to the aggrieved party.

Kinds of Damages

Following are the different kinds of damages:

1. Actual/Ordinary/ Usual damages:

   These are the damages which are payable for the loss arising naturally and directly, in the usual course, from the breach of contract. In other words, the ordinary damages are due to natural and probable consequence of the breach of the contract.

   Example: A agrees to sell to B bags of rice at ₹5,000 per bag, delivery to be given after two months. On the date of delivery, the price of rice goes up to ₹ 5,500 per bag. A refuses to deliver the bags to B. B can claim from A, ₹ 500 as ordinary damages arising directly from the breach.

2. Liquidated/ Pre-fixed damages:

   Sometimes, the amount of compensation fixed for the breach of the contract is fair and genuine pre-estimate of the probable damages. Such an amount is known as liquidated damages.

   Example:

3. Special damages:

   These are the damages which are payable for the loss arising due to some special or unusual circumstances. In other words, the special damages are not due to the natural and probable consequences of the breach of the contract.

   The special damages are recoverable only if the parties knew about them and agree at the time of contract.

   Hadley vs. Baxendale

   The crankshaft of H's flour mill had broken. He gives it to B, a common carrier who promised to deliver it to the foundry in 2 days where the new shaft was to be made. The mill stopped working, B delayed the delivery of the crankshaft so the mill remained idle for another 5 days. H received the repaired crankshaft 7 days later than he would have otherwise received. Consequently, H sued B for damages not only for the delay in the delivering the broken part but also for loss of profits suffered by the mill for not having been worked. The court held that H was entitled only to ordinary damages and

B was not liable for the loss of profits because the only information given by H to B was that the article to be carried was the broken shaft of a mill and it was not made known to them that the delay would result in loss of profits.

4. Exemplary/ vindictive/ punitive damages:

The exemplary damages are claim with the intention of punishing the party in default. As a general rule, the exemplary damaged are not awarded for the breach of contract as they are punitive in nature. However, in following two cases, the court may award exemplary damages:

(i) Where there is a breach of a promise to marry: In such cases, the damages will include compensation for loss to the feelings and reputation of the aggrieved party.

(ii) Where a banker wrongfully dishonors customer s cheque, e.g., dishonor of customer's cheque when the banker has sufficient funds to the credit of the customer. In such cases, the damages are awarded taking into consideration the loss to the prestige and goodwill of the customer. The general rule, in this connection is, the smaller the amount of cheque the greater is the insult, and thus greater the amount of damages.

5. Nominal damages:

These are the damages which are very small in amount. Such damages are awarded simply to establish the right of the party to claim damages for the breach of contract even though the party has suffered no loss. Such damages are for nominal amounts like ten rupees or even ten paise.

Example:

6. Damages for deterioration caused by delay:

Compensation can be recovered even without notice for damages or 'deterioration' caused to goods on account of delay by carriers amounting to breach of contract. Here the word "deterioration" means not only physical damages but also loss of opportunity.

7. Remote or indirect damages:

These are the damages which are payable for the loss arising due to some remote or indirect causes. Generally, the remote damages are not recoverable.

LIQUIDATED DAMAGES AND PENALTY (Section 74)

Sometimes, at the time of the formation of the contract, the parties fix the amount of compensation that will be payable in case of breach of the contract. The amount so specified may be (a) liquidated damages, or (b) penalty.

1. Liquidated damages:
   Sometimes, the amount of compensation fixed for the breach of the contract is fair and genuine pre-estimate of the probable damages. Such an amount is known as liquidated damages.
2. Penalty:
   Sometimes, the amount of compensation fixed for the breach of the contract is not fair and genuine pre-estimate of the probable damages, but is disproportionate to the damages which may result in case of the breach of the contract. Such an amount is known as penalty.

Liquidated damages	Penalty
1. Imposed by way of compensation	1. Imposed by way of punishment
2. It is an assessed amount of loss based on actual.	2. It is not based on actual. It is imposed to prevent parties from committing the breach.
3. It is normally a reasonable amount as it is an estimated amount.	3. If the sum payable is large as to be in excess of the probable damage on breach

- The sum so named determines only the maximum liability. And the courts cannot allow damages beyond that limit, i.e., the courts cannot increase the amount of damages beyond the amount specified in the contract itself.
- In terms of Section 74, courts are empowered to reduce the sum payable on breach whether it is 'penalty' or "liquidated damages" provided the sum appears to be unreasonably high.

PARTY RIGHTFULLY RESCINDING CONTRACT, ENTITLED TO COMPENSATION (Section 75)

A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through non-fulfilment of the contract.

Example: A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her ₹ 100 for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

ADDITIONAL REMEDIES AVAILABLE IN CASE OF BREACH OF CONTRACT:

Apart from claiming damages, following remedies are available in case of breach of contract:-

1. Suit for Quantum Meruit: Where one person has rendered service to another in circumstances which indicate an understanding between them that it is to be paid for although no particular remuneration has been fixed, the law will infer a promise to pay.

   Quantum Meruit i.e. as much as the party doing the service has deserved. It covers a case where the party injured by the breach had at time of breach done part but not all of the work which he is bound to do under the contract and seeks to be compensated for the value of the work done. For the application of this doctrine, two conditions must be fulfilled:

   (1) It is only available if the original contract has been discharged.
   (2) The claim must be brought by a party not in default.

   The object of allowing a claim on quantum meruit is to recompensate the party or person for value of work which he has done.

   Damages are compensatory in nature while quantum merit is restitutory. It is but reasonable compensation awarded on implication of a contract to remunerate. Where a person orders only 12 bottles of a whiskey from a wine merchant but also receives 2 bottles of brandy, and the purchaser accepts them, the purchaser must pay a reasonable price for the brandy.

   The claim for quantum meruit arises in the following cases:

   (a) When an agreement is discovered to be void or when a contract becomes void.
   (b) When something is done without any intention to do so gratuitously.
   (c) Where there is an express or implied contract to render services but there is no agreement as to remuneration.
   (d) When one party abandons or refuses to perform the contract.
   (e) Where a contract is divisible and the party not in default has enjoyed the benefit of part performance.
   (f) When an indivisible contract for a lump sum is completely performed but badly the person who has performed the contract can claim the lump sum, but the other party can make a deduction for bad work.

   Example; X wrongfully revoked Y's (his agent) authority before Y could complete his duties. Held, Y could recover, as a quantum meruit, for the work he had done and the expenses he had incurred in the course of his duties as an agent.

   Example: A agrees to deliver 100 bales of cottons to B at a price of ₹1000 per bale.

The cotton bales were to be delivered in two instalments of 50 each. A delivered the first instalment but failed to supply the second. B must pay for 50 bags.

2. Rescission of contract: When a contract is broken by one party, the other party may treat the contract as rescinded. In such a case the other party is discharged from performing his part of promise and is entitled to claim compensation for any loss that he might have suffered.

3. Suit for Specific Performance:

The term 'specific performance' may be defined as the actual carrying out the respective obligation by both the parties. Sometimes,

(i) the damages are not an adequate remedy for breach of the contract or
(ii) the damages cannot be estimated or
(iii) the subject matter of contract is unique in nature.

In such cases, the party aggrieved by the breach may bring an action for specific performance of the contract. And the court may direct the defaulting party to carry out his obligations according to the terms of the contract.

It may be noted that the specific performance of the contract cannot be claimed as a matter of right. The courts are always at discretion to grant the relief by specific performance. The courts may, at their discretion, order specific performance of contracts.

However, in following cases the specific performance cannot be ordered by court:

(i) If the performance involves personal skills
(ii) If the performance is continuous in nature

Example:

4. Suit for Injunction:

The term 'injunction' may be defined as an order of the courts restraining a person from doing something which he promised not to do. In this case also, the courts are at discretion to issue an injunction order. It is, usually, issued in cases where the compensation in terms of money is not an adequate relief.

Sometimes, a party to a contract does something which he had promised not to do. In such cases, the aggrieved party may file a suit for injunction. And the courts may at their discretion, issue an order restraining such person from doing what he promised not to do.

Example: N, a film star, agreed to act exclusively for a particular producer, for one

year. During the year she contracted to act for some other producer. Held, she could be restrained by an injunction.

DISCHARGE OF CONTRACT

A contract may be discharged either by an act of the parties or by an operation of law in the different base set out below:

1. Discharge by performance: It takes place when the parties to the contract fulfil their obligations arising under the contract within the time and in the manner prescribed. Discharge by performance may be-
   (1) Actual performance; or
   (2) Attempted performance.

   Actual performance is said to have taken place, when each of the parties has done what he had agreed to do under the agreement. When the promisor offers to perform his obligation, but the promisee refuses to accept the performance, it amounts to attempted performance or tender.

   Example: A contracts to sell his car to B on the agreed price. As soon as the car is delivered to B and B pays the agreed price for it, the contract comes to an end by performance.

2. Discharge by mutual agreement: Section 62 of the Indian Contract Act provides if the parties to a contract agree to substitute a new contract for it, or to rescind or remit or alter it; the original contract need not be performed. The principles of Novation, Rescission, Alteration and Remission are already discussed.

3. Discharge by impossibility of performance: The impossibility may exist from the very start. In that case, it would be impossibility ab initio. Alternatively, it may supervene. Supervening impossibility may take place owing to:
   (a) an unforeseen change in law;
   (b) the destruction of the subject-matter essential to that performance;
   (c) the non-existence or non-occurrence of particular state of things, which was naturally contemplated for performing the contract, as a result of some personal incapacity like dangerous malady;
   (d) the declaration of a war (Section 56).

   Example: A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

4. Discharge by lapse of time: A contract should be performed within a specified period as prescribed by the Limitation Act, 1963. If it is not performed and if no action is taken by the promisee within the specified period of limitation, he is deprived of remedy at law.

Example: If a creditor does not file a suit against the buyer for recovery of the price within three years, the debt becomes time-barred and hence irrecoverable.

5. Discharge by operation of law: A contract may be discharged by operation of law which includes by death of the promisor, by insolvency etc.

6. Discharge by breach of contract: Breach of contract may be actual breach of contract or anticipatory breach of contract. If one party defaults in performing his part of the contract on the due date, he is said to have committed breach thereof. When on the other hand, a person repudiates a contract before the stipulated time for its performance has arrived, he is deemed to have committed anticipatory breach. If one of the parties to a contract breaks the promise the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract.

7. Promisee may waive or remit performance of promise: Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance or may accept instead of it any satisfaction which he thinks fit. In other words, a contract may be discharged by remission. (Section 63)
Example: A owes B ₹ 5,00,000. C pays to B ₹1,00,000 and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.

8. Effects 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)

9. Merger of rights: Sometimes, the inferior rights and the superior rights coincide and meet in one and the same person. In such cases, the inferior rights merge into the superior rights. On merger, the inferior rights vanish and are not required to be enforced.
Example: A took a land on lease from B. Subsequently, A purchases that very land. Now, A becomes the owner of the land and the ownership rights being superior to rights of a lessee, the earlier contract of lease stands terminated.

UNIT 6: CONTINGENT AND QUASI CONTRACTS

CONTINGENT CONTRACTS (Section 31 to 36)

DEFINITION

Definition of a Contingent Contract

The term 'contingent contract', in simple words, may be defined as a conditional contract. This term, in legal words, is defined in Section 31 of the Indian Contract Act, as under: contract, does or does not happen."

Example: A contracts to pay Rs.10,000 to B if his (B's) house is burnt. This is a contingent contract as its performance is dependent upon an uncertain event (i.e., burning of B's house).

ESSENTIALS OF A CONTINGENT CONTRACT

Following are the essential elements of a valid contingent contract :

1. There must be a valid contract:
   A contract to do or not to do something must be legally valid, i.e., it must fulfil the basic requirements of a valid contract.

2. The performance of the contract must be conditional:
   The performance of a contingent contract must depend upon the happening or non-happening of some future event.

3. The event must be uncertain:
   The future event, upon which the performance of a contract depends, must be an uncertain event. If the event is certain, i.e. the event is bound to happen, and then the contract is not a contingent contract.

4. The uncertain event must be collateral to the contract:
   The uncertain event, upon which the performance of the contract is dependent, must not form a part of the consideration of the contract. In other words, the event must be independent or ancillary to the contract.

RULES REGARDING ENFORCEMENT OF CONTINGENT CONTRACTS

The rules regarding the enforcement of contingent contracts are contained in Sections 32 to 36 of the Indian Contract Act, which may be discussed under the following heads:

1. Contingent Contracts Dependent on the 'Happening' of Future Uncertain Event
   A contingent contract dependent on the 'happening' of a future uncertain event can be enforced only when that uncertain event has happened [Section 32].
   Example:
   A offered to sell his horse to B for Rs. 4,000. Subsequently, A entered into a contract

with C to sell the same horse to him for Rs. 3,500 if B refused to buy it. The contract between A and C is contingent and can be enforced by law only when B refuses to buy the horse from A.

However, if the event becomes impossible then such contract becomes void, and thus cannot be enforced by law.

2. Contingent Contracts Dependent on the 'Non-Happening' of Future Uncertain Event

A contingent contract dependent on the 'non-happening' of future uncertain event can be enforced only when the happening of that event becomes impossible as then that event cannot happen [Section 33].

Example:

A agreed to pay B Rs. 500 if a certain ship did not return. The ship was sunk. It is a contingent contract and can be enforced by law when the ship sinks. Because when the ship sinks, the event becomes impossible as the ship can never return.

3. Contingent Contracts dependent on future conduct of a living person (Section 34).

A contingent contract dependent on the future conduct of living person is valid if person acts accordingly otherwise it becomes void.

Case law: In *Frost V. Knight*, K promised to marry Miss.F on the death of his father. While the father was still alive, he married another woman. It was held that it had become impossible that he should marry the Miss.F and she was entitled to sue him for the breach of the contract.

4. Contingent Contracts Dependent on the Happening or Non- Happening of Specified Uncertain Event within Fixed Time

A contingent contract dependent on the 'happening' of a specified uncertain event within fixed time can be enforced if that event happens within the fixed time [Section 35].

Example:

A agreed to pay Rs. 1,000 to B if a certain ship returned within a year. It is a contingent contract and can be enforced by law if the ship returns within a year.

In this case also, if the event does not happen within the fixed time or if it becomes impossible before the expiry of the fixed time, then such contracts become void and cannot be enforced by law

5. Contingent Contracts Dependent on Impossible Events

A contingent contract dependent on the happening of impossible event is void and cannot be enforced by law [Section 36].

Example: A agreed to pay Rs. 500 to B if he proved that two straight lines can intersect. This is a void agreement as two straight lines can never' enclose a space.

DISTINCTION BETWEEN WAGERING AGREEMENT AND CONTINGENT CONTRACT

Wagering Agreement	Contingent Contract
1. Meaning: A wagering agreement is a promise to give money or money's worth upon the determination or ascertainment of an uncertain event.	1. Meaning: A contingent contract is a contract to do or not to do something if some event, collateral to such contract does or does not happen.
2. Reciprocal promises: A wagering agreement consists of reciprocal promises	2. Reciprocal promises: A contingent contract may not contain reciprocal promises.
3. Uncertain event: The uncertain event is the main event.	3. Uncertain event: The uncertain event is the collateral event.
4. All wagering agreements are contingent.	4. All contingent contracts are not wagering.
5. A wagering agreement is void	5. A contingent contract is valid.
6. A wagering agreement is a game of chance.	6. A contingent contract is not a game of chance.

	Basis	Contracts of Insurance	Wagering Agreement
1.	Meaning	It is a contract to idemnify the loss.	It is a promise to pay money or money's worth on the happening or non happening of uncertain event.
2.	Consideration	The crux of insurance contract is the mutual consideration (premium and compensation amount).	There is no consideration between the two parties. There is just gambling for money.
3.	Insurable Interest	Insured party has insurable interest in the life or property saught to be insured.	There is no property in case of wagering agreement. There is betting on other's life and properties.
4.	Contract of Indemnity	Except life insurance, the contract of insurance indemnifies the insured person against loss.	Loser has to pay the fixed amount on the happening of uncertain event.
5.	Enforceability	It is valid and enforceable.	It is void and unenforceable agreement.
6.	Premium	Calculation of premium is based on scientific and actuarial calculation of risks.	No such logical calculation are required in case of wagering agreement.
7.	Public Welfare	They are beneficial to the society.	They have been regarded as against the public welfare.

QUASI CONTRACTS (Section 68 to 72)

DEFINITION

- A valid contract must contain certain essential elements, such as offer and acceptance, capacity to contract, consideration and free consent. But sometimes the law implies a promise imposing obligations on one party and conferring right in favour of the other even when there is no offer, no acceptance, no genuine consent, lawful consideration, etc. and in fact neither agreement nor promise. Such cases are not contracts in the strict sense, but the Court recognises them as relations resembling those of contracts and enforces them as if they were contracts. Hence the term Quasi –contracts (i.e. resembling a contract).

- Even in the absence of a contract, certain social relationships give rise to certain specific obligations to be performed by certain persons. These are known as quasi contracts as they create same obligations as in the case of regular contract.

- Quasi contracts are based on principles of equity, justice and good conscience.

- A quasi or constructive contract rests upon the maxims, "No man must grow rich out of another person's loss".

- It is based on the principle of "Prevention of unjust enrichment at the expense of other".

- Example: T, a tradesman, leaves goods at C's house by mistake. C treats the goods as his own. C is bound to pay for the goods.

SALIENT FEATURES OF QUASI CONTRACTS:

a) In the first place, such a right is always a right to money and generally, though not always, to a fixed sum of money.
b) Secondly, it does not arise from any agreement of the parties concerned, but is imposed by the law; and
c) Thirdly, it is a right which is available not against the entire world, but against a particular person or persons only, so that in this respect it resembles a contractual right.

CIRCUMSTANCES (OR CASES) OF QUASI CONTRACTS

Following are the circumstances in which the quasi contractual obligations arise. These are contained in Sections 68 to 72 of the Indian Contract Act :

1. Supply of necessaries to persons who are incompetent to contract (Section 68)
2. Payment by an interested person (Section 69)
3. Non-gratuitous acts (Section 70)
4. Finder of goods (Section 71)
5. Payment of money or deliver of goods by mistake or under coercion (Section 72)

1. Supply of Necessaries to Persons Incompetent to Contract:

Sometimes, a person supplies the necessaries to a person who is not competent to contract (i.e., minor, persons of unsound mind such as lunatics, etc.), or to another person to whom the incompetent person is bound to support. In such cases, the person supplying the necessaries is entitled to recover the cost of necessaries from the property of such incompetent person even if there is no valid contract between them.

Example:

A supplied necessaries of life to B, a minor, in this case, A is entitled to claim back from B's property.

2. Payment by a Person Having Some Interest in Payment:

Sometimes, a person makes the payment which is the legal duty of another person. In such cases, the person who has made the payment can recover such money from the person who is legally bound to pay.

Following conditions must be satisfied for the recovery of payment by an interested person:

(a) The person making the payment must have some interest in paying the amount.
(b) The person making the payment must not be bound by law to pay the amount.
(c) The other person from whom the money is to be recovered must be legally bound to pay the money.

Example:

A held land in Bengal on a lease granted by B, a Zamindar. The revenue payable by B fell in arrears. As such, his land was advertised for sale by the government. Under the Revenue Law, the consequences of such sale was the cancellation of A's lease. In order to prevent the consequent annulment of his lease, A paid to the government the amount due from B. In this case, A is entitled to recover the amount from B. And B is bound to pay the same to A.

3. Non-Gratuitous Acts:

The 'non-gratuitous- acts' means the acts which are not done free. A person, who does some non-gratuitous acts for another, is entitled to recover compensation for such acts if the other person enjoys the benefits of such acts.

Following conditions must be satisfied for recovery of compensation for non-

gratuitous act:

(a) The person must lawfully do something for another person or deliver something to him.

(b) The person doing some act or delivering something must not intend to act gratuitously.

(c) The other person must voluntarily accept the acts or goods and he must have enjoyed their benefits.

Example:

A, a tradesman, gave certain goods to B to store at B's warehouse by paying rent. B sold A's goods to C for ₹ 100,000 without A's permission. A can claim 100,000 from B.

Case law: *Shyam Lal vs. State of U.P.*

Shyamlal, a government servant was compulsorily retired by the government due to his misconduct in job. He filed a petition and obtained a stay order against the order of government. He was reinstated and was paid salary but was given no work and in the mean time government went on appeal. The appeal was decided in favour of the government and Shyamlal was directed to return the salary paid to him during the period of reinstatement.

4. Finder of Goods:

Sometimes, a person finds certain goods, belonging to some other person. In such cases, the goods not become the property of the finder.

The law imposes certain obligations on the finder of goods. Under the law, the responsibility of finder of goods is the same as that of a bailee.

A 'bailee' is a person to whom the goods have been delivered for some specific purpose upon a condition that on the fulfillment of the purpose, the goods shall be returned to the actual owner.

Thus, it becomes the duty of the finder to keep the goods with care and take some steps to trace the true owner and return the goods to him. He is bound to take as much care of the goods as a man of ordinary prudence would take for his own goods under the similar circumstances.

He also gets some rights in respect of the goods in certain circumstances, when the true owner cannot be found, he can sell the goods which are of perishing nature.

Case law: *Hollins vs. Howler L. R. & H. L.*, 'H' picked up a diamond on the floor of 'F's shop and handed over the same to 'F' to keep till the owner was found. In spite of the best efforts, the true owner could not be traced. After the lapse of some weeks, 'H' tendered the lawful expenses to 'F' incurred by him and requested to return the diamond to him. 'F' refused to do so. Held, 'F' must return the diamond to 'H' as he was entitled to retain the goods found against everybody

except the true owner.

Example: 'P' a customer in 'D's shop puts down a brooch worn on her coat and forgets to pick it up and one of 'D's assistants finds it and puts it in a drawer over the weekend. On Monday, it was discovered to be missing. 'D' was held to be liable in the absence of ordinary care which a prudent man would have taken.

5. Payment of Money or Delivery of Goods by Mistake or Under Coercion Sometimes, a certain amount of money is paid or something is delivered to a person by mistake or under coercion. In such cases, the person receiving the money or goods must repay or return the same to the person who has paid or delivered by a mistake or under coercion.

   Example:

   A and B jointly owed Rs. 1000 to C. A alone paid the amount to C. And B not knowing this fact, also paid Rs.1000 to C. In this case, C is bound to repay the amount to B who has paid it by mistake.

Difference between quasi contracts and contracts

Basis of Distinction	Quasi - Contracts	Contracts
Essential for the valid contract	The essentials for the formation of a valid contract are absent	Present
Obligation	Imposed by law	Created by the consent of the parties

SUMMARY

UNIT 1: NATURE OF CONTRACTS

INTRODUCTION

- ✓ It received its assent on 25th April, 1872 and was introduced on 1st September, 1872.
- ✓ It is applicable to whole of India except Jammu and Kashmir.
- ✓ Contract = Agreement + Enforceable by law
- ✓ Agreement = Offer + Acceptance
- ✓ Therefore, all contracts are agreements BUT all agreements are NOT contracts

OFFER [Section 2(a)]

- DEFINITION
- CHARACTERISTICS
- TYPES
- LAPSE OF OFFER

ACCEPTANCE [Section 2(b)]

- DEFINITION
- CHARACTERISTICS

COMMUNICATION OF OFFER & ACCEPTANCE AND REVOCATION OF OFFER & ACCEPTANCE

TYPES OF CONTRACTS

TYPES OF CONTRACT S AS PER ENGLISH LAW

ESSENTIAL ELEMENTS OF A VALID CONTRACT [Section 10]

UNIT 2: CONSIDERATION

- Definition [Section 2(d)]
- Characteristics
- Doctrine of Privity of Contract
- No Consideration- No Contract [Section 25]

UNIT 3: OTHER ESSENTIAL ELEMENTS OF A VALID CONTRACT [Section 11-30]

CAPACITY OF PARTIES [Section 11&12]

1. Minor
2. Person of unsound mind
3. Persons disqualified by law

CONSENSUS-AD- IDEM [Section 13]

FREE CONSENT [Section 14]

Consent is said to be free if it is not induced by:

1. Coercion [Section 15],
2. Undue influence [Section 16],
3. Fraud [Section 17],
4. Misrepresentation [Section 18],
5. Mistake [Section 20-22]

UNLAWFUL OBJECT & UNLAWFUL CONSIDERATION [Section 23&24]

AGREEMENTS EXPRESSLY DECLARED AS VOID [Section 26-30]

- ✓ Agreement in restraint of marriage is void [Section 26]
- ✓ Agreement in restraint of trade is void [Section 27]
- ✓ Agreement in restraint of legal proceedings [Section 28]
- ✓ Agreement the meaning of which is uncertain is void [Section 29]
- ✓ wagering agreements [Section 30]

UNIT 4: PERFORMANCE OF CONTRACT [Section 37-67]

CONTRACT WILL BE PERFORMED BY [Section 37,40,41]:

1. Promisor himself
2. Legal Representative
   However, if the contract involves personal skills and if the promisor dies, the contract becomes void.
3. Agent
4. Third persons, if promise permits

REQUISITES OF A VALID PERFORMANCE [Section 38]

EFFECT OF REFUSAL OF A PARTY TO PERFORM [Section 39]

- DISTINCTION BETWEEN SUCCESSION AND ASSIGNMENT
- LIABILITY OF JOINT PROMISORS [Section 42-44]
- RIGHTS OF JOINT PROMISEES [Section 45]
- TIME AND PLACE FOR PERFORMANCE [Section 46-50]
- RECIPROCAL PROMISES [Section 51- 54, 57,58]
- EFFECTS OF FAILURE TO PERFORM AT A TIME FIXED IN A CONTRACT IN WHICH TIME IS ESSENTIAL [Section 55]
- IMPOSSIBILITY OF PERFORMANCE [Section 56]
- APPROPRIATION OF PAYMENTS [Section 59-61]
- CONTRACTS WHICH NEED NOT BE PERFORMED-Novation, Alteration, Rescission, Remission & Communication of Rescission [Section 62,63,66]
- QUANTUM MERUIT [Section 64,65]
- EFFECTS OF NEGLECT OF PROMISEE [Section 67]

UNIT 5: BREACH OF CONTRACT [Section 73 to 75]

- BREACH OF CONTRACT
  - Anticipatory Breach
  - Actual Breach

- DAMAGES FOR BREACH OF CONTRACT [Section 73]
  1) Ordinary/ Usual damages
  2) Liquidated damages
  3) Special damages
  4) Exemplary/ Vindictive/ Punitive damages
  5) Nominal damages
  6) Damages for deterioration caused by delay
  7) Remote or indirect damages.

- LIQUIDATED DAMAGES AND PENALTY [Section 74]

PARTY RIGHTFULLY RESCINDING CONTRACT, ENTITLED TO COMPENSATION [Section 75]

DISCHARGE OF CONTRACT [Section 74]

ADDITIONAL REMEDIES AVAILABLE IN CASE OF BREACH OF CONTRACT

UNIT 6: CONTINGENT AND QUASI CONTRACTS [Section 31 to 36, 68 to 72]

CONTINGENT CONTRACTS [Section 31 to 36]

Meaning [Section 31]

Rules of enforcement of Contingent contract

1. Contingent Contracts Dependent on the 'Happening' of Future Uncertain Event [Section 32]
2. Contingent Contracts Dependent on the 'Non-Happening' of Future Uncertain Event [Section 33]
3. Contingent Contracts Dependent on future conduct of a living person [Section 34].
4. Contingent Contracts Dependent on the Happening or Non-Happening of Specified Uncertain Event Within Fixed Time [Section 35]
5. Contingent Contracts Dependent on Impossible Event is void [Section 36]

Essentials of contingent contract

1. There must be a valid contract.
2. The performance of the contract must be conditional
3. The event must be uncertain
4. The uncertain event must be collateral to the contract

QUASI CONTRACTS [Section 68 to 72]

1. Supply of necessaries to persons who are incompetent to contract [Section 68]
2. Payment by a Person Having Some Interest in Payment Conditions [Section 69]
3. Claim for any benefit received under a non-gratuitous act [Section 70]
4. Finder of goods [Section 71]
5. Payment of Money or Delivery of Goods by Mistake or Under Coercion [Section 72]

LIST OF CASE LAWS

SR. NO	NAME OF CASE LAW	PAGE NO. (This column is to be filled by students)
1.	Balfour v. Balfour	
2.	Harvey vs. Facie	
3.	Mac Pherson vs Appanna	
4.	Lalman Shukla vs Gauri Dutt	
5.	Carlill vs Carbolic & Smoke Balls Co.	
6.	Brogden vs.Metropolitan Railway Co.	
7.	Neale vs. Merret	
8.	Union of India v. Bahulal	
9.	Boulton vs. Jones	
10.	Lilly White vs. Mannuswamy	
11.	Felthouse vs. Bindley	
12.	Central Bank Yeotmal vs. Vyankatesh	
13.	Mukul Datta vs. Indian Airlines	
14.	State of Gujarat vs. Ramanlal S & Co.	
15.	Durga Prasad v. Baldeo	
16.	Chinnayya v/s Ramayya	
17.	Mohori Bibi vs. Dharmo Das Ghose (1903)	
18.	State of Bombay vs. R.M.D. Chamarbangwala	
19.	Hadley vs. Baxendale	
20.	Frost V. Knight	
21.	Shyam Lal vs. State of U.P.	
22.	Hollins vs. Howler L. R. & H. L.	

LIST OF LATIN TERMS

SR. NO.	LATIN TERM	MEANING	PG NO. (To be filled by students)
1.	Consensus-ad-idem	Meeting of minds	
2.	Quid pro quo	Something in return	
3.	Void ab initio	Void from the beginning	
4.	Uberrimae fidei	contracts of utmost good faith	
5.	Quantum Meruit	as much as is earned	

LIST OF LEGAL TERMS

SR. NO.	LEGAL WORD	MEANING	PG NO. (To be filled by students)
1.	Legislature	Law	
2.	Assent	Acceptance/Approval	
3.	Signify	Communicates	
4.	Abstinence	Not doing something	
5.	Unambiguous	Clear	
6.	Privy Council	A privy council is a body that advises the head of state of a nation, typically, but not always, in the context of a monarchic government. In simple words, here it means Court of UK.	
7.	Succinctly	In a brief and clearly expressed manner	
8.	Plaintiff	A person who files the case	
9.	Defendant	A person against whom, the case is filed	
10.	Lordships	In UK, it is a respectful form of reference or address to a judge	
11.	Conduct	Action/behavior	
12.	Non-Compliance	Non-fulfillment	
13.	Revocation	Cancellation/Withdrawal	
14.	Inferred	Concluded	
15.	Illusory	Imaginary	
16..	Petition	A written request made	
17.	Covenants	A clause/ condition in a contract drawn up by deed.	
18.	Rendered	Given	
19.	Debts barred by limitation	Time-barred debt is money a consumer borrowed and didn't repay but which is no longer legally collectable because a certain number of years have passed.	

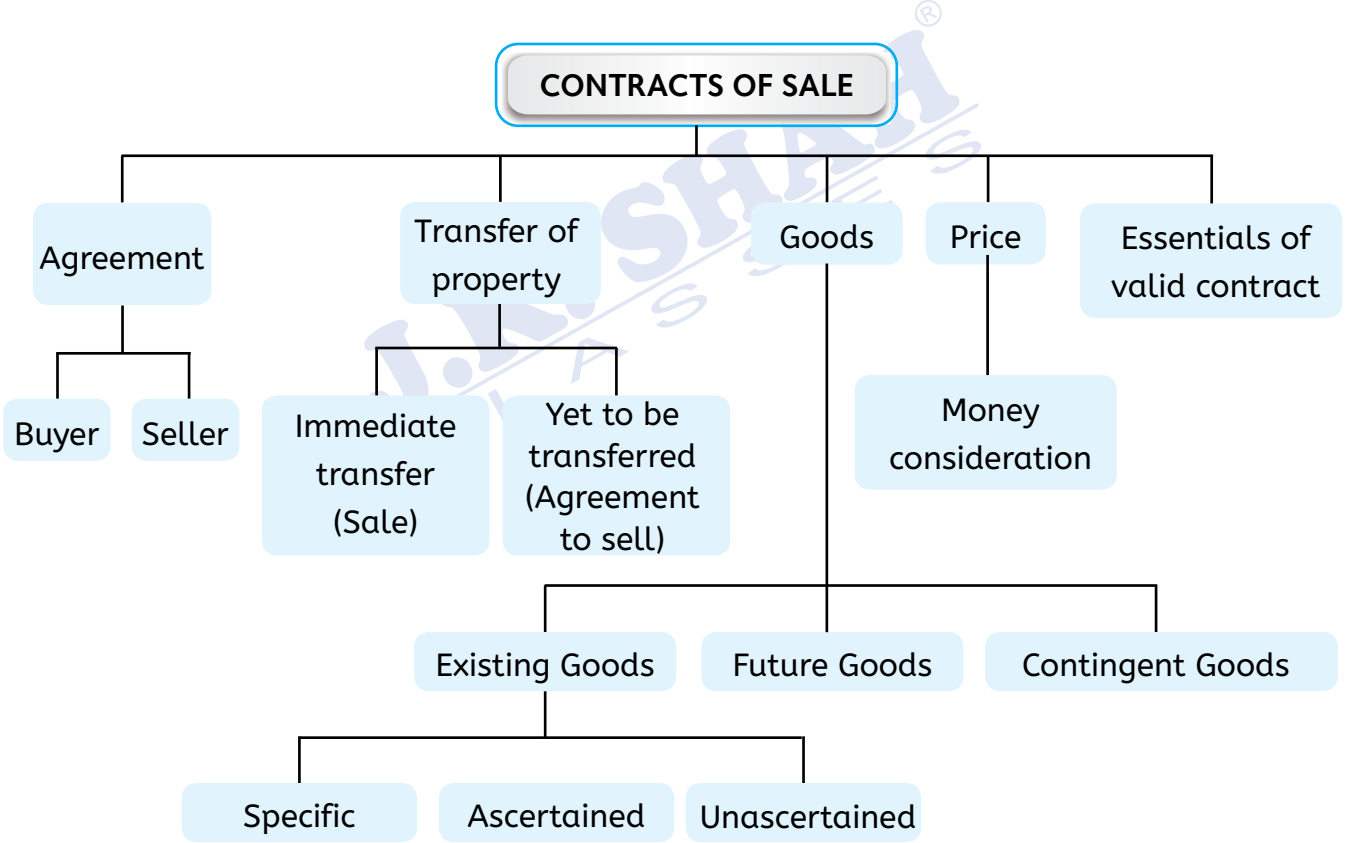
20.	Competent	Capable & qualified	
21.	Ratification	Approval	
22.	Prejudice	Preconceived opinion that is not based on reason or actual experience	
23.	Aggrieved	Suffering	
24.	Rescind	Cancel	
25.	Affirm	Continue	
26.	Deemed	Assumed	
27.	Active Concealment	Hiding deliberately	
28.	Erroneously	By mistake	
29.	Trafficking	Deal or trade in something illegal	
30.	Procurement	The action of obtaining or procuring something	
31.	Arbitration	Settlement outside the court	
32.	Restitution	Payment for some harm or wrong that somebody has suffered	

2. THE SALE OF GOODS ACT, 1930

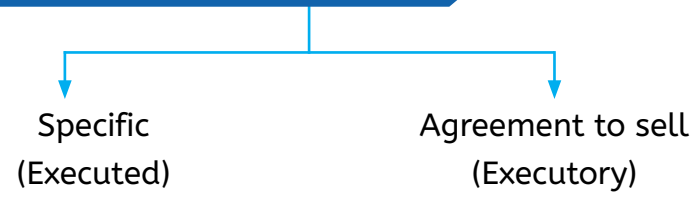
UNIT 1: FORMATION OF CONTRACT OF SALE

INTRODUCTION :

- ❖ It came into force on the 1st of July, 1930.
- ❖ It is applicable to whole of India
- ❖ The Law relating to this statute was contained in the Chapter VII of the Indian Contract Act, 1872.
- ❖ Where the Sale of Goods Act is silent on any point, the general principles of the law of contract apply.



CONTRACT OF SALE



➢ The term 'contract of sale' is defined in Section 4(1) of the Sale of Goods Act, as under : "A contract of sale of goods is a contract whereby the seller transfers or agrees to

transfer the property in the goods to the buyer for a price. "

- A contract of sale may be absolute or conditional. [Section 4(2)]

- Sale: In Sale, the property in goods is transferred from seller to the buyer immediately. The term sale is defined in the Section 4(3) of the Sale of Goods Act, 1930 as – "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."

- Agreement to Sell: In an agreement to sell, the ownership of the goods is not transferred immediately.
  It is intending to transfer at a future date upon the completion of certain conditions thereon. The term is defined in Section 4(3) of the Sale of Goods Act, 1930, as – "where 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."
  Thus, whether a contract of sale of goods is an absolute sale or an agreement to sell, depends on the fact whether it contemplates immediate transfer from the seller to the buyer or the transfer is to take place at a future date.

- When agreement to sell becomes sale: 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.

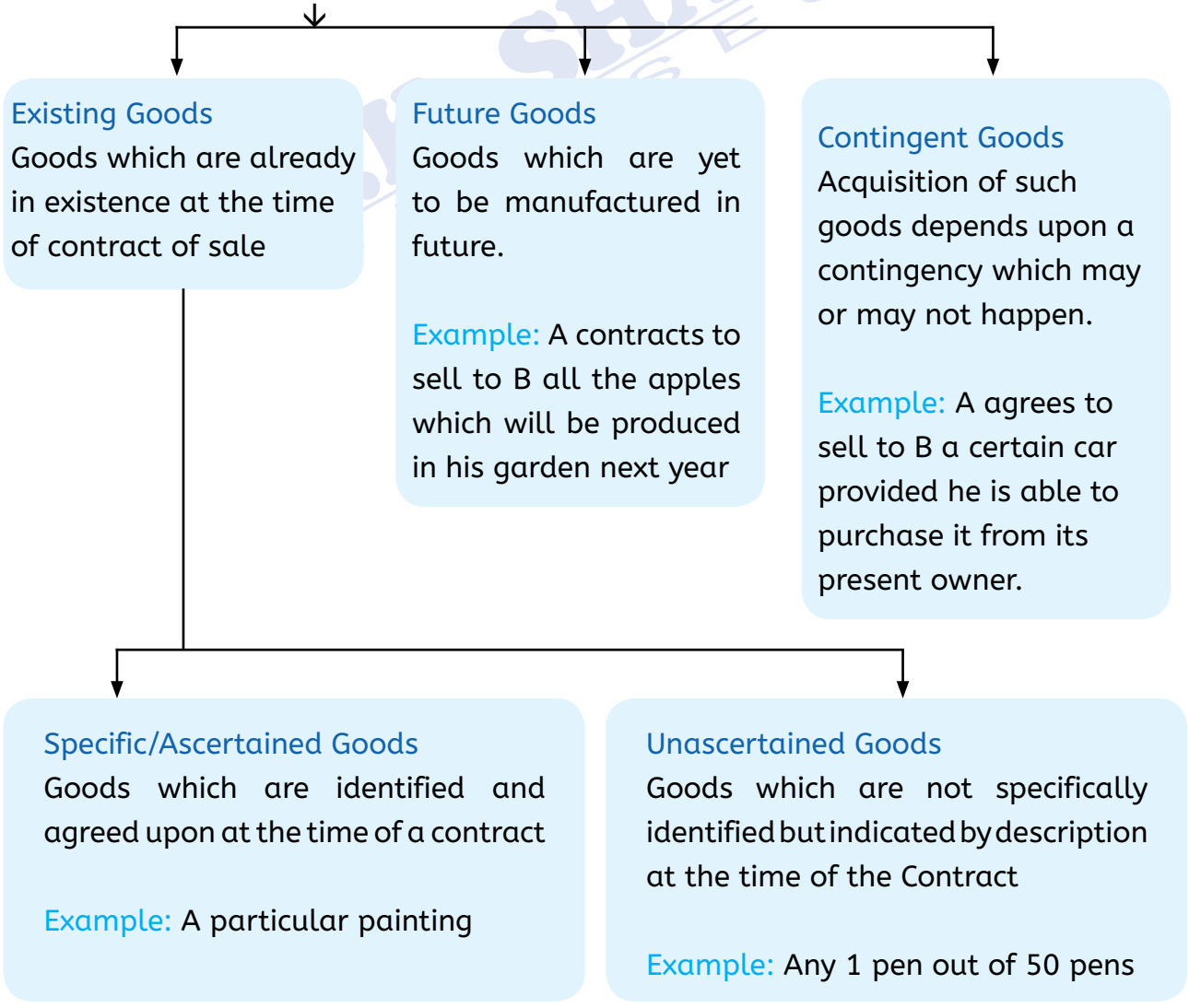
DEFINITIONS

1) Buyer [Section 2(1)]:
   "Buyer means a person who buys or agrees to buy goods."

2) Seller [Section 2(13)]:
   "Seller means person who sells or agrees to sell goods."

3) Goods [Section 2(7)]:
   "Goods" means every kind of movable property
   other than actionable claims and money; and
   includes stocks and shares,
   growing crops, grass and things attached to or forming part of the land which are agreed to the severed before sale or under the contract of sale.
   - An actionable claim is a claim to any debt. For example: a money debt, book debts, etc.
   - Money here means legal tender of money, i.e. the recognised circulation in the country; but not old rare coins.

- Things attached to the earth are not movables, but trees, growing crops which can be easily severed from the earth before sale. Fruits, vegetables and flowers which can be separated from the trees, are included in 'goods'.
- Livestock i.e. cows, buffaloes, cats etc are 'goods'.
- Patents, copyrights, goodwill, trade-marks, are all considered goods which can be the subject matter of a contract.
- A ship has also been considered to come within the definition of the word "goods". Similarly water, gas and electricity are included in the definition, though some writers doubt if they can be classified among "goods".
- As per English law, "shares and stock" are not treated as "goods".
- Even the Fixed Deposit Receipts (FDR) are considered as goods under the Sales of Goods Act.
- To conclude, everything movable is goods, except the following:-
  1. Money
  2. Actionable Claims
  3. Immovable assets
  4. Services
- Classification of Goods:



1) EXISTING GOODS are such goods as are in existence at the time of the contract of sale, i.e., those owned or possessed by the seller at the time of contract of sale (Section 6).

The existing goods may be of following kinds:

a. Specific goods means goods identified and agreed upon at the time a contract of sale is made [Section 2(14)].

Example: Any specified and finally decided goods like a Samsung Galaxy S7 Edge, Whirlpool washing machine of 7 kg etc.

b. Ascertained Goods are those goods which are identified in accordance with the agreement after the contract of sale is made. This term is not defined in the Act but in actual practice the term 'ascertained goods' is used in the same sense as 'specific goods.' When from a lot orout of large quantity of unascertained goods, the number or quantity contracted for is identified, suchidentified goods are called ascertained goods.

Example: A wholesaler of cotton has 100 bales in his godown. He agrees to sell 50 bales and these baleswere selected and set aside. On selection the goods becomes ascertained.

c. Unascertained goods are the goods which are not specifically identified or ascertained at the time of making of the contract. They are indicated or defined only by description.

Example: If A agrees to sell to B one packet of salt out of the lot of one hundred packets lying in his shop, it is a sale of unascertained goods because it is not known which packet is to be delivered. As soonas a particular packet is separated from the lot, it becomes ascertained or specific goods.

2) FUTURE GOODS means goods to be manufactured or produced or acquired by the seller after making the contract of sale [Section 2 (6)].

A contract for the sale of future goods is always an agreement to sell. It is never actual sale because a man cannot transfer what is not in existence.

Example: P agrees to sell to Q all the milk that his cow may yield during the coming year. This is a contract for the sale of future goods.

3) CONTINGENT GOODS: The acquisition of which by the seller depends upon an uncertain contingency (uncertain event) are called 'contingent goods' [Section 6(2)].

Contingent goods also operate as 'an agreement to sell' and not a 'sale' as far as the question of passing of property to the buyer is concerned. In other words, like the future goods, in the case of contingent goods also, the property does not pass

to the buyer at the time of making the contract.

Example: A agrees to sell to B a Picasso painting provided he is able to purchase it from its present owner. This is a contract for the sale of contingent goods.

4) Delivery[Section 2(2)]:

"Delivery' means voluntary transfer of possession from one person to another" [Sec. 2 (2)].Therefore, in case of theft, there is no delivery, though there is a transfer of possession.

Actual delivery
When the goods are actually physically delivered to the buyer.

Symbolic delivery
When there is a delivery of a thing in token of a transfer of something else

Example: Handing over car keys, handing over documents of title

Constructive delivery:
When it is affected without any change in the custody or actual possession.

Example: Where a warehouseman holding the goods of A agrees to hold them on behalf of B, at A's request.

Goods are said to be in a deliverable state when they are in such a condition that the buyer would, under the contract, be bound to take delivery of them [Section 2(3)]. For example, when A contracts to sell timber and make bundles thereof, the goods will be in a deliverable state after A has put the goods in such a condition

5) Documents showing Title to Goods/ Documents of Title to Goods[Section 2 (4)]

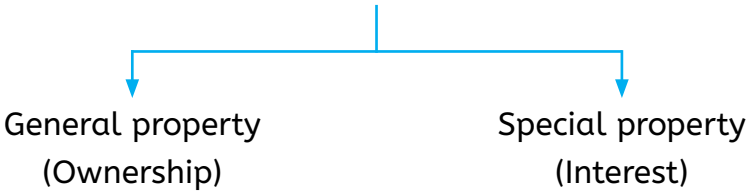
It is a document which shows the ownership of goods.
If a person wants to transfer his ownership to other person, he cannot do it by endorsement or delivery, he has to follow procedure for transferring ownership
It includes share certificate, RC book of car, etc

It is a document which is used as proof of the possession or control of goods.
If a person wants to transfer his ownership to other person, he can simply do it by endorsement or delivery.
It includes a Bill of lading, Dock-warrant, Warehouse keeper's Certificate, Wharfinger Certificate, Railway Receipt

6) Price [Section 2 (10)]:

- ✓ "Price' means the money consideration for a sale of goods."
- ✓ No sale can take place without a price.
- ✓ Therefore,
  - a. Exchange of goods for goods will not be considered as sale
  - b. Gift of goods will not be considered as sale
  - c. Exchange of goods for goods along with price will be considered as sale

7) Property[Section 2 (11)]:



But in Sale Of Goods Act, 'property' means the general property in goods and not merely a special property

Example: A who owns the goods pledges them to B, then A has the general property in the goods, while B has a special property or interest in them.

8) Mercantile Agent[Section 2 (9)]:

"Mercantile Agent' means an agent having in the customary course of business as such agent, authority either to sell goods, or to consign goods for the purpose of sale, or, to buy goods, or to raise money on the security of goods." [Section 2(9)].

If a person is not carrying on business as such agent, he would not fall under this definition.

Example: Auctioneer, brokers, etc

9) Insolvent [Section 2(8)]: A person is said to be insolvent when he ceases to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not.

10) Quality of goods includes their state or condition. [Section 2(12)]

ESSENTIAL ELEMENTS OF A VALID CONTRACT OF SALE

Following are the essential elements of a valid contract of sale:

1. All the requirements of a valid contract must be fulfilled:

   A contract of sale must fulfil all the requirements of a valid contract, e.g., free consent, consideration, competency of the parties, lawful object and consideration. If any of the essential elements of a valid contract is missing then the contract of sale will not be valid.

2. There must be two parties to the contract of sale:

   There must be two parties, one seller and the other buyer. The reason for the same is

that in a contract of sale, the ownership of the goods has to pass from one person to another.

3. There must be some goods as a subject-matter:
   The 'goods' as defined in Section 2 (7) of the Sale of Goods Act.
4. The property in the goods must be transferred to the buyer:
   The term 'property' in the goods means the ownership of the goods. In every contract of sale, the ownership of the goods must be transferred by the seller to the buyer, or there should be an agreement by the seller to transfer the ownership to the buyer. The term 'property' here means the general property, i.e., all ownership rights of the goods, and not merely a special property, i.e., limited rights such as right of a Pawnee.
5. There must be some price for the goods:
   The goods must be sold for some price. The term 'price' is defined in Section 2 (10)
6. A contract of sale can be absolute or conditional [Section 4(2)].

DISTINGUISH BETWEEN

1. SALE AND AGREEMENT TO SELL

SALE	AGREEMENT TO SELL
1. Transfer of property: the property in goods passes from the seller to the buyer immediately	1. Transfer of property: In agreement to sell, the ownership of the property will pass from the seller to the buyer at some future time or on fulfilment of some conditions.
2. Nature of contract: A sale is an executed contract	2. Nature of contract: An agreement to sell is an executory contract
3. Consequences of Breach by buyer : In a sale, if the buyer fails to pay for the goods, the seller can: i. Sue him for recovery of price ii. Claim damages	3. Consequences of Breach by buyer : In an agreement to sell, the seller can only sue for damages for breach of contract
4. Consequences of Breach by seller : In a sale, if the seller defaults, i.e. commits a breach, the buyer can: 1. Claim goods from third party 2. Sue for damages	4. Consequences of Breach by seller: In the case of an agreement to sell, if the seller commits a breach, the buyer can only claim damages.
5. Transfer of risk: In a sale, if the goods are destroyed, the loss falls on the buyer even though they are in the possession of the seller.	5. Transfer of risk: In an agreement to sell, if the goods are destroyed, the loss falls on the seller, even though they are in the possession of the buyer.

6. Subsequent destruction: A subsequent loss or destruction of the goods is the liability of the buyer.	6. Subsequent destruction: Such loss or destruction is the liability of the seller.
7. Nature of rights: Creates Jus in rem	7. Nature of rights: Creates Jus in personam

2. SALE AND HIRE- PURCHASE

Contract of sale resembles with contracts of hire purchase very closely, and indeed the real object of a contract of hire purchase is the sale of the goods ultimately.

Hire purchase agreements are governed by the Hire-purchase Act, 1972. Term "hire-purchase agreement" means an agreement under which goods are let on hire and under which the hirer has an option to purchase them in accordance with the terms of the agreement and includes an agreement under which–

a) Possession of goods is delivered by the owner thereof to a person on condition that such person pays the agreed amount in periodical instalments, and

b) The property in the goods is to pass to such person on the payment of the last of such instalments and

c) Such person has a right to terminate the agreement at any time before the property so passes;

The main points of distinction between the 'sale' and 'hire-purchase' are as follows:

SALE	HIRE-PURCHASE
1. Property in the goods is transferred to the buyer immediately at the time of Contract.	1. The property in goods passes to the hirer upon payment of the last instalment.
2. The position of the buyer is that of an Owner of the goods.	2. The position of the hirer is that of a bailee till he pays the last instalment.
3. The buyer cannot terminate the contract and is bound to pay the price of the goods.	3. The hirer may, if he so likes, terminate the contract by returning the goods to its owner without any liability to pay the remaining instalments.
4. The seller takes the risk of any loss resulting from the insolvency of the buyer.	4. The owner takes no such risk, for if the hirer fails to pay an instalment the owner has right to take back the goods.
5. The buyer can resell the goods.	5. The hirer cannot resell the goodstill the last instalment.
6. Tax is levied at the time of the contract.	6. Tax is not leviable until it eventually converts into a sale.

3. SALE AND BAILMENT

A 'bailment' is the delivery of goods for some specific purpose under a contract on the condition that the same goods are to be returned to the bailor or are to be disposed of according to the directions of the bailor.

SALE	BAILMENT
1. The property in goods is transferred from the seller to the buyer.	1. There is only transfer of possession of goods from the bailor to the bailee for any of the reasons like safe custody, carriage, etc.
2. The return of goods in contract of sale is not possible.	2. The bailee must return the goods to the bailor on the accomplishment of the purpose for which the bailment was made.
3. The consideration is the price in terms of money.	3. The consideration may be gratuitous or non-gratuitous.

BARTER AND EXCHANGE

Barter:

Where goods are transferred for goods, the transaction is one of a 'barter' and not sale, i.e. wheat is given in exchange of rice.

Exchange:

Where money is exchanged for money, the transaction is one of 'exchange' and not sale, i.e. 100 rupee note is exchanged for 2 notes of Rs. 50.

SALE AND CONTRACT FOR WORK AND LABOUR

A contract of sale of goods is one in which some goods are sold or are to be sold for a price. But where no goods are sold, and there is only the doing some work of labour, then the contract is only of work and labour and not of sale of goods.

Example: Where gold is supplied to a goldsmith for preparing an ornament.

FORMATION AND MODES OF A CONTRACT OF SALE

A contract of sale is made by an offer to buy or sell by one person, and the acceptance of such offer by another person. And it may be made in anyone of the following modes [Section 5 (1)]:

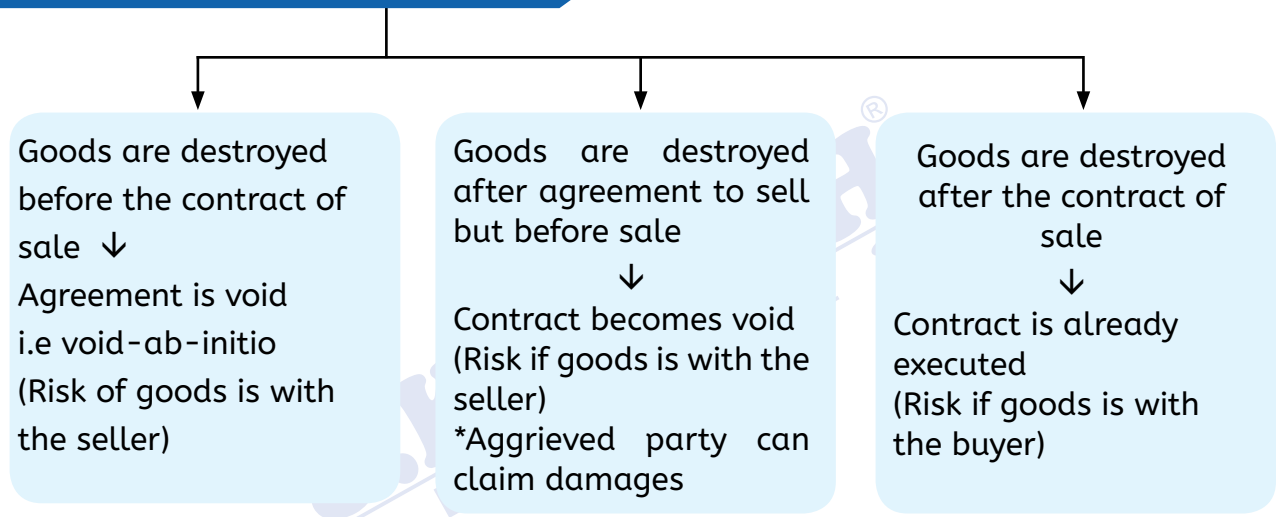
1. There may be immediate delivery of goods, but the price to be paid at some future date.
2. There may be immediate payment of price, but the delivery to be made at some future date.
3. There may be immediate payment of price and the immediate delivery of goods.
4. The price and delivery of the goods may be postponed.

5. The price and delivery of the goods may be agreed to be made in instalments.
   - ✓ It may be noted that no particular form is necessary for the making of a contract of sale.
   - ✓ It may be in any form, e.g., a contract of sale may be made

   (a) In writing, or
   (b) By words of mouth, or
   (c) Partly in writing and partly by words of mouth, or
   (d) May be implied from the conduct of the parties.

   However, if any particular mode is prescribed by any law, then the contract of sale must be made in that particular mode [Section 5 (2)].

EFFECT OF DESTRUCTION OF GOODS



➢ Existing or future goods (section 6):

a) The goods which form the subject of a contract of sale may be either existing goods or future goods.
b) There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

➢ Goods perishing before making of contract (Section 7):

Where there is a contract for the sale of specific goods, the contract is void-ab-initio if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description contract.

Example: A agrees to sell B 50 bags of wheat stored in the A's godown. Due to water logging, all the goods stored in the godown were destroyed. At the time of agreement, neither parties were aware of the fact. The contract is void-ab-initio.

➢ Goods perishing before sale but after agreement to sell (Section 8): Where there is an agreement to sell specific goods, and subsequently the goods without any fault on

the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the contract becomes void\

- Goods perishing after contract of sale: The contract is already executed

PRICE AND MODES OF FIXING THE PRICE

The price means the money consideration for the sale of goods. Price may be fixed in any of the following modes provided in Section 9:

1. The fixation of price by the contract of sale [Section 9 (1)]:
   The price may be expressly fixed the contract of sale. The parties may fix any price they like.
2. The fixation of price in a manner provided in the contract of sale [Section 9 (1)]:
   The contract of sale may provide for some manner in which 'price is to, be fixed. In such cases, the price may be fixed in a manner provided in the contract.
3. The fixation of price by course of dealings [Section 9 (1)]:
   Sometimes, the customs or usage of trade provides certain principles for the determination of the price. In such cases, the price may be determined from the course of dealings between the parties.
4. The fixation of a reasonable price [Section 9 (2)]:
   Sometimes, none of the above principles is applicable. In such cases, the buyer shall pay to the seller a reasonable price. The term 'reasonable' price is a question of fact which depends on the circumstances of each particular case.
5. The fixation of price by third party [Section 10]:
   - ✓ The parties may agree to sell and buy goods on the terms that the price shall be fixed by the valuation of a third party.
   - ✓ However, if such third party fails to make the valuation, the contract becomes void. But if the buyer has received the goods and has appropriated them, he becomes bound to pay reasonable price to the seller.
   - ✓ Sometime, the third party is influenced or prevented by the buyer or the seller from fixing the price. In such cases, the innocent party may recover damages from the defaulting party.

   Example:
   A agreed to sell his 100 bags of rice to B at a price to be fixed by C. But C failed to fix the price. In this case, the agreement becomes void on C's failure to fix the price.

STIPULATION AS TO TIME (Section 11)

- Stipulations as to time for payment of price:
  As regard time for the payment of price, it is not deemed to be of the essential of a contract of sale unless the contract specifies that it is essential. Price for goods may be fixed by the contract or may be agreed to be fixed later on in a specific manner.

- Stipulations as to time of delivery of goods:
  Stipulations as to time of delivery are usually the essence of the contract unless the contract specifies that it is not essential. But delivery of goods must be made without delay.

UNIT 2: CONDITIONS AND WARRANTIES

INTRODUCTION :

In every contract of sale of goods there are certain stipulations made with reference to goods which are the subject-matter thereof. Such stipulations differ in character and importance. The clause divides stipulations into conditions and warranties.

Condition [Section 12]:

"A condition is a stipulation essential to the main purpose of the contract,that breach of which gives a right to treat the contract as repudiated."

Warranty [Section 12]:

"A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not a right to reject the goods and treat the contract as repudiated".

CONDITION	WARRANTY
1. A condition is essential to the main purpose of the contract.	1. It is only collateral to the main purpose of the contract.
2. In case of breach of condition, aggrieved party can: a) Rescind the contract, return the goods and claim refund. b) Claim damages	2. In case of breach of warranty, aggrieved party can only claim damages.
3. A breach of condition may be treated as a breach of warranty	3. A breach of warranty cannot be treated as a breach of condition.
4. Example:	4. Example:

WHEN A CONDITION CAN BE TREATED AS A WARRANTY [Section 13]:

1. **Voluntary waiver of condition:**

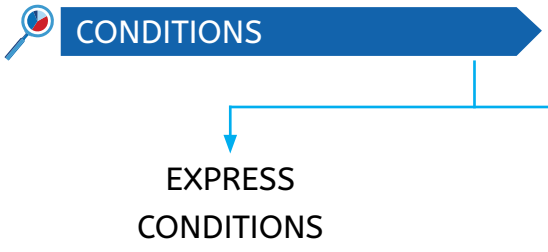
Where a contract of sale is subject to any condition to be fulfilled by the seller, the

buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.

2. Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract
Example: A agrees to supply B 10 bags of first quality sugar @ ₹625 per bag but supplies only second quality sugar, the price of which is ₹600 per bag. There is a breach of condition and the buyer can reject the goods. But if the buyer so elects, he may treat it as a breach of warranty, accept the second quality sugar and claim damages @ ₹25 per bag.

3. Compulsory waiver of a condition:
Where a contract of a sale is not severable and the buyer has accepted the goods or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a terms of the contract, express or implied, to that effect.
Example: B agrees to buy from A 20 bales of cotton by sample. The cotton is delivered to B who makes payment of its price. B upon examination of cotton finds them not equal to sample but uses 2 bales and sells 3. At this point he cannot rescind the contract and recover the price. But A is bound to compensate for the loss caused to B by breach of warranty.

4. Impossibility:
Nothing in this section shall affect the case of any condition or warranty, fulfilment of which is excused by reason of impossibility or otherwise.



Express conditions: Express conditions are those, which are agreed upon between the parties at the time of contract and are expressly provided in the contract.

Implied Conditions:
- ✓ It is a condition, which the law implies into the contract of sale. The law presumes that the parties have incorporated it into their contract.
- ✓ The implied conditions are read into every contract of sale unless they are expressly

excluded by the parties.

✓ In case of conflict between the express and implied conditions, the express term shall prevail and the implied terms shall not be considered.

✓ Following are the implied conditions which are contained in the Sale of Goods Act :

1. Conditions as to title [Section 14]:
   - ❖ According to this condition, it is presumed that the seller has a valid title to the goods, i.e., he has the right to sell the goods. If later on, the buyer comes to know that the seller had no valid right to sell the goods, then he may reject the goods and claim the refund of the price, if already paid.
   - ❖ This implied condition may be analysed as under:
     (i) In case of sale, the implied condition is that the seller has the right to sell the goods, and
     (ii) In case of an agreement to sell, the implied condition is that the seller will have the right to sell the goods at the time when the ownership is to pass from the seller to the buyer.
   - ❖ Example:

2. Condition as to description [Section 15]:
   - ❖ Sometimes, the goods are sold by description. In such cases, the implied condition is that the goods shall correspond with the description.
   - ❖ The term 'correspondence with description' means that the goods purchased by the buyer must be the same which were described by the seller.
   - ❖ If subsequently, it is discovered that the goods do not correspond with the description, the buyer may reject the goods and claim the refund of the price, if already paid.
   - ❖ Example:

3. Condition as to sample [Section 17]:
   - ❖ In case of sale of goods by showing the sample to the buyer, there are following three implied conditions,
     (i) That the goods delivered shall correspond with the quality of the sample
     (ii) That the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
     (iii) That the goods shall be free from latent defects (i.e., the defects which are not discoverable on reasonable examination of sample)

4. Condition as to sample as well as description [Section 15]:
   - ❖ Sometimes, the seller shows sample of the goods to the buyer and also gives him their description. In such cases, the implied condition is that the goods shall correspond with both, the sample as well as description.

5. Condition as to quality or fitness for buyer's purpose [Section 16(1)]:
   - ❖ Ordinarily, there is no implied condition that the goods shall be fit for the particular purpose of the buyer.
   - ❖ Seller is not responsible:
     (i) To know the particular purpose of buyer.
     (ii) If buyer chooses the goods negligently.
   - ❖ However in following exceptions, there is an implied condition that the goods shall be fit for the buyer's specific purpose.
     In following cases seller is responsible to the buyer:
     (i) If the buyer makes his purpose clear to the seller.
     (ii) If the buyer buys the goods 'relying upon his skill and judgment'.
   - ❖ Example:

6. Condition as to merchantability [Section 16(2)]:
   The expression "merchantable quality", though not defined, but it means goods of such quality and in such a condition a man of ordinary prudence would accept them as goods of that description.
   However, it has been interpreted by the courts, and basically it means the two things, namely:

If goods are purchased for:

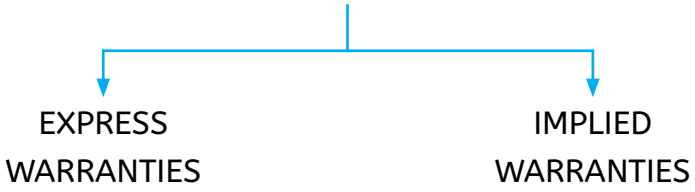
Self Use	Resale
Then they should be reasonably fit for the purpose for which they are generally used. Example:	Then they should be immediately re-saleable in the market under their description. Example:

7. Condition as to wholesomeness:

This condition is a part of the condition as to merchantability. It is applicable in cases of eatables, i.e., foodstuffs and other goods which are used for human consumption. As per this condition, goods sold must be fit for human consumption.

Example:

WARRANTIES :



Implied Warranties:

- ✓ It is a warranty, which the law implies into the contract of sale. The law presumes that the parties have incorporated it into their contract.
- ✓ The implied warranties are read into every contract of sale unless they are expressly excluded by the parties.
- ✓ In case of conflict between the express and implied warranties, the express term shall prevail and the implied terms shall not be considered.
- ✓ Following are the implied warranties which are contained in the Sale of Goods Act :

1. Warranty as to undisturbed possession [Section 14(b)]:
   - ❖ Where the buyer has obtained the possession of the goods, he has a right to enjoy them in a way he likes, i.e., no one should interfere with the quiet enjoyment of the buyer.
   - ❖ If buyer's right of possession and enjoyment is disturbed by anyone, then the buyer can recover damages from the seller.
   - ❖ Example:

2. Warranty as to free from encumbrance [Section 14(c)]:
   - ❖ In every contract of sale there is an implied warranty that the goods sold shall be free from any charge.
   - ❖ If the possession of the buyer is disturbed due to such charge in favour of third party, he can claim damages from the seller.
   - ❖ Example:

3. Disclosure of dangerous nature of goods:
   - ❖ There is another implied warranty on the part of the seller that in case the goods are inherently dangerous or they are likely to be dangerous to the buyer and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger.
   - ❖ If there is breach of this warranty, the seller will be liable in damages.

4. Warranties quality or fitness by usage of trade [Section 16(3)]:
   - ❖ Like implied conditions, implied warranties are also attached by custom or usage of trade. This is so because the parties enter into an agreement subject to the known customs or usages of trade.

THE DOCTRINE OF CAVEAT EMPTOR(BUYER BEWARE) [SECTION 16]:

- ❖ 'Caveat Emptor' is a Latin expression which means "let the buyer beware".
- ❖ The Doctrine states generally seller is not responsible for bad goods.
- ❖ This Doctrine takes the side of the seller.
- ❖ As per the rule, seller is not responsible in following cases:-
  - (i) To know the particular purpose of buyer.
  - (ii) If buyer chooses the goods negligently
  - (iii) If the goods are defective and the defect is patent (i.e. defect which can be discovered by mere inspection)
- ❖ When the goods are purchased under some brand name:
  If the buyer relying on the brand name, purchases the goods and unfortunately the goods turn out to be defective, then the buyer is responsible.

- ❖ Exceptions: The exceptions to the doctrine of Caveat Emptor; which are mentioned below (i.e. in the following seller is responsible) :
  1. Where the buyer specifies the particular purpose for which the goods are required to the seller.

Where the article can be used for only one particular purpose, the buyer need not tell the seller the purpose for which he required the goods. But where the article can be used for a number of purposes, the buyer should tell the seller the purpose for which he requires the goods, if he wants to make the seller responsible.

Case law: In *Priest vs. Last*, P, a draper, purchased a hot water bottle from a retail chemist; P asked the chemist if it would stand boiling water. The Chemist told him that the bottle was meant to hold hot water. The bottle burst when water was poured into it and injured his wife. It was held that the chemist shall be liable to pay damages to P, as he knew that the bottle was purchased for the purpose of being used as a hot water bottle.

Case law: In *Bombay Burma Trading Corporation Ltd. vs. Aga Muhammad,* timber was purchased for the express purpose of using it as railways sleepers and when it was found to be unfit for the purpose, the Court held that the contract could be avoided.

2. Where buyer relies on the seller's skill or judgment.
3. Where there is contract of sale by sample, the rule of caveat emptor will not apply if the goods do not correspond with sample
4. Where goods are bought by description, the goods shall correspond with the description.
5. If the goods are bought both by sample as well as by description this rule will not apply if goods do not correspond with both sample and description.
6. There is an implied condition that the goods shall be of merchantable quality
7. When the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply.

UNIT 3: TRANSFER OF OWNERSHIP AND DELIVERY OF GOODS

TRANSFER OF PROPERTY: (Section 18 to 30)	DELIVERY OF GOODS: (Section 31 to 41)	ACCEPTANCE OF GOODS (Section 42 to 44)
1. Meaning 2. Rules	1. Meaning 2. Rules	

TRANSFER OF PROPERTY (OWNERSHIP) (Section 18 to 30):

A. Meaning:

- The term 'property in the goods' may be defined as the legal ownership of the goods.
- Transfer of Ownership means transfer of Risk, Rights and Returns pertaining to the goods.
- The term 'property in the goods' must be distinguished from the term 'possession of the goods'. The term 'property in the goods' means the ownership' of the goods, whereas the term 'possession of goods' simply means the custody or physical control over the goods.

B. Rules:

1) Property of Specific or ascertained goods passes when intended to pass (Section 19):

Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred

2) Specific goods in a deliverable state (Section 20): Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.

Example: X goes into a shop and buys a television and asks the shopkeeper for its home delivery. The shopkeeper agrees to do it. The television immediately becomes the property of X.

3) Where the specific goods are to be put in a deliverable state by the seller (Section 21): The ownership is transferred as soon as the seller has put the goods in a deliverable state and the buyer comes to know about the act of the seller.

Example: Peter buys a laptop from an electronics store and asks for a home delivery. The shopkeeper agrees to it. However, the laptop does not have a Windows operating system installed. The shopkeeper promises to install it and call Peter before making the delivery. In this case, the property transfers to Peter only after the shopkeeper has installed the OS making the laptop ready for delivery, and intimated the buyer about it.

4) Where the specific goods in a deliverable state are to be weighed or measured by the seller (Section 22): Where the specific goods in a deliverable state are to be weighed or measured by the seller to ascertain the price, the ownership is transferred to the buyer as soon as the seller has done the act of ascertaining the price and the buyer comes to know about this act of the seller.
Example:

5) Transfer of ownership in case of sale of unascertained goods:
The unascertained goods are the goods which are not specifically identified at the time of making the contract of sale.
In case of sale of unascertained goods, the ownership is transferred to the buyer on the fulfilment of the following conditions:

(i) Goods should be ascertained (Section 18):
Where there is a contract for the sale of unascertained goods, property in the goods is transferred tothe buyer only after the goods are ascertained.
Ascertainment of goods is a process by which the goods to be delivered under the contract are identified and set apart. It is a unilateral act of the seller alone to identify and set apart the goods.

(ii) Appropriation of goods (Section 23):
Appropriation of goods involves selection of goods with the intention of using them in performance of the contract and with the mutual consent of the seller and the buyer.
It is a bilateral act of the seller and the buyer to identify and set apart the goods.
The essentials are:

a) There is a contract for the sale of unascertained or future goods.
b) The goods should conform to the description and quality stated in the contract.
c) The goods must be in a deliverable state.
d) The goods must be unconditionally appropriated tothe contract either by

delivery to the buyer or his agent or the carrier.

e) The appropriation must be made by:

(i) The seller with the assent of the buyer; or

(ii) The buyer with the assent of the seller.

f) The assent may be express or implied.

g) The assent may be given either before or after appropriation.

Example:

6) Goods sent on approval or "on sale or return" (Section 24)

- The ownership of goods is with seller and the possession of goods is with buyer
- The buyer has an option to return the goods.
- The ownership is transferred to the buyer in any of the following three ways:

1) When the buyer accepts the goods:
The acceptance by the buyer may be express or implied.

2) When the buyer adopts the transaction:
The buyer may adopt the goods by doing some act which shows that he has accepted the goods e.g., where he further sells or pledges the goods.
Example: 'A' delivered some jewellery to 'B' on sale or return basis. 'B' pledged the jewellery with 'C'. It was held that the ownership of the jewellery had been transferred to 'B' as he had adopted the transaction by pledging the jewellery with 'C'. In this case, 'A' has no right against 'C'. He can only recover the price of the jewellery from 'B'.

3) Where the buyer fails to return the goods within fixed or reasonable time

- Sale for cash only or Return

It may be noted that where the goods have been delivered by a person on "sale or return" on the terms that the goods were to remain the property of the seller till they are paid for, the property therein does not pass to the buyer until the terms are complied with, i.e., cash is paid for.
Example: 'A' delivered his jewellery to 'B' on sale for cash only or return basis. It was expressly provided in the contract that the jewellery shall remain 'A's property until the price is paid. Before the payment of the price, 'B' pledged the jewellery with 'C'. It was held that at the time of pledge, the ownership was

not transferred to'B'. Thus, the pledge was not valid and 'A' could recover the jewellery from 'C'.

7) Reservation of right of disposal (Section 25)

- The seller may like to retain the ownership of the goods until some later date, e.g., until the price is paid or some conditions are fulfilled. The seller may do so by reserving his right of disposal.
- Where the seller has reserved his right of disposal, the ownership of the goods is not transferred to the buyer even if the goods are delivered to the buyer or some carrier for the purpose of transmission to the buyer. The ownership is transferred to the buyer only when the conditions imposed by the seller are fulfilled
- In the following two circumstances the seller is presumed to have reserved the right of disposal :
  1. By taking the documents showing title in his own name or his agent's name
  2. By sending the bill of exchange for the price, to the buyer, along with the documents of title
- Example:

8) Transfer of risk (Section 26)

- The risk and the ownership of the goods go together.
- In other words, the goods are at the risk of the party who has the ownership of the goods. This means that in case of loss of the goods, the loss shall be borne by the party who has the ownership of the goods at the time of loss.
- Exceptions:

  In these exceptional circumstances, the goods may be at the risk of one party and their ownership may be with the other:

  1. Agreement between the parties:

     The terms of agreement between the parties may provide as to when the ownership shall be transferred and who shall suffer the loss.
  2. Goods are at the risk of the party in default:

     Sometimes, the delivery of the goods is delayed due to the fault of either seller or buyer. In such cases, the goods shall be at the risk of the party in default though their ownership is with the other party.

3. Trade customs:

The risk and the ownership may also be separated by the trade customs e.g., the trade custom may provide that the goods shall be at the risk of the buyer whether or not the ownership has been transferred to him.

9) Transfer of title by non-owners (Section 27 to 30)

- "Nemo dat quod non-habet": This means that 'no one can transfer a better title than he himself has'. Thus, the buyer cannot get a better title than that of the seller. If the seller's own title is defective, the buyer's title will also be defective. If the seller is not the owner of goods, then the buyer also will not become the owner i.e. the title of the buyer shall be the same as that of the seller.
- Example:

- If this rule is strictly followed, then the innocent buyers may be put to loss in many cases. Therefore, to protect the innocent buyers, a number of exceptions have been provided to this rule.

Exceptions:

In the following exceptional circumstances a non-owner can transfer a valid title to a bonafide buyer:

1. Sale by a mercantile agent (Section 27)

Sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer in the following circumstances; namely;

(a) If he was in possession of the goods or documents with the consent of the owner;

(b) If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and

(c) If the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell.

2. Sale by a joint owner (Section 28): When the joint owner is in the sole possession of the goods, and he sells them to a person who buys in a good faith, the buyer gets a valid title to the goods.

Example:

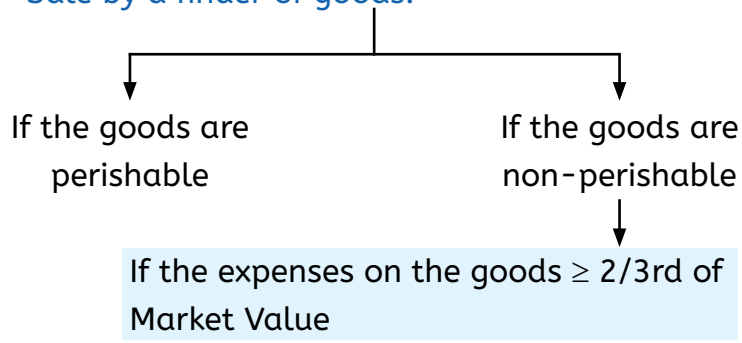
3. Sale by estoppel: When the owner of goods, by his conduct or by statement, wilfully leads the buyer to believe that the seller has the authority to sell, then he is estopped (i.e., prevented) from denying the seller's authority to sell
   Example:

4. Sale by unpaid seller: To be done in Unit 4

5. Sale by a seller in possession of goods after their sale [Section 30(1)]: If the seller continues to have the possession of the goods even after their sale and if he resells the same goods to a new buyer then in such cases, the second buyer gets a valid title to the goods if he buys them in a good faith.
   Example:

6. Sale by a buyer in possession of goods before the ownership is transferred. [Section 30(2)]: If the buyer obtains the possession of the goods which he has bought or agreed to buy from the seller and the seller still has some lien or other rights over the goods. If the buyer resells the same goods to a new person. In such cases, the second buyer gets a valid title free.
   Example:

7. Sale by a finder of goods:



8. Sale by a person in possession under a voidable contract (Section 29):The buyer gets a valid title only if the following conditions are satisfied:-
   a. A person must obtain the possession of the goods by coercion, undue influence, fraud or misrepresentation.
   b. The seller must have obtained the possession of the goods under a voidable contract and not under a void contract.
   c. The contract must not have been rescinded (i.e., put to an end) at the time of sale
   d. The buyer must act in a good faith.

   Example:

9. Sale Under the Provision of Other Acts :
   a. Sale by an Official Receiver or Liquidator of the Company will give a valid title to the purchaser.
   b. Sale by a pawnee/pledgee under default of pawnor in repayment of debt will give valid title to the purchaser.

➢ In case of hire-purchase, hirer cannot pass a good title even to a bonafide buyer.

Example: P, the hirer of vehicle under a hire purchase agreement, sells them to Q. Q, though a bona fide purchaser does not acquire the ownership in the vehicle.

DELIVERY OF GOODS (SECTION 31 TO 41)

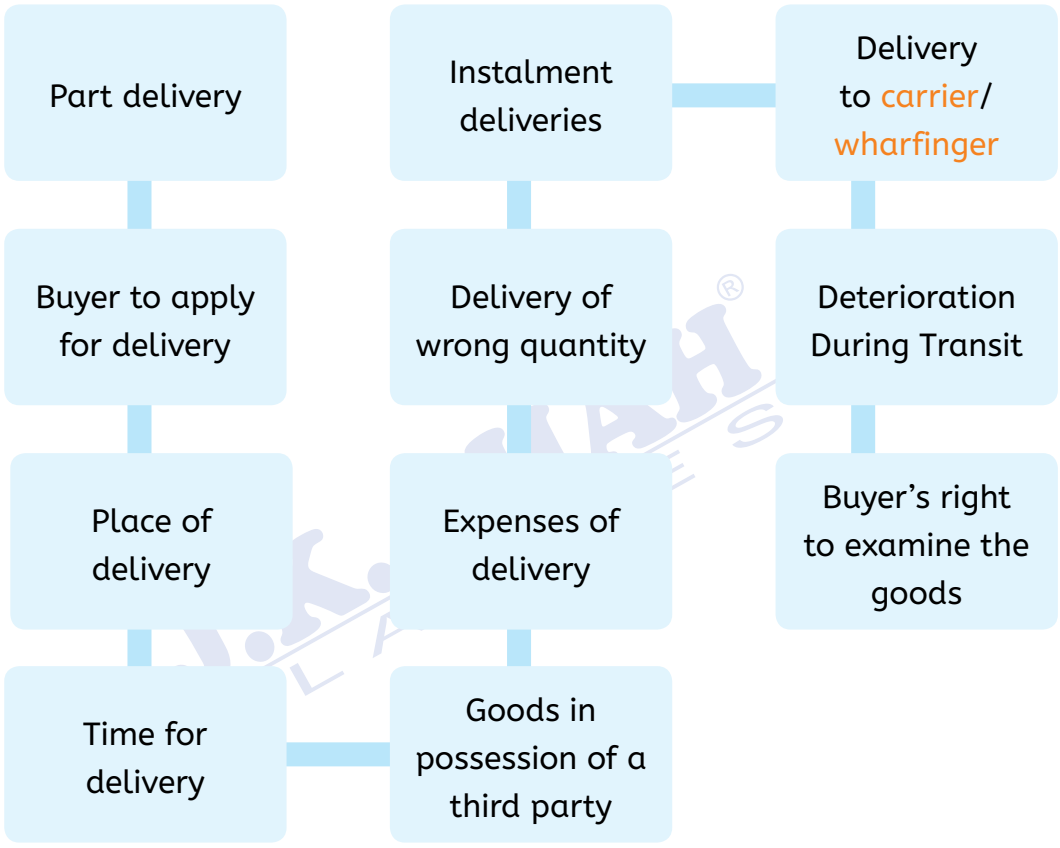
A. Meaning:

- "Delivery" means a voluntary transfer of possession from one person to another"[Section 2(2)].
- Delivery of goods may be actual, symbolic or constructive
- Duties of seller and buyer (Section 31): It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

- Payment and delivery are concurrent conditions (Section 32): Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

B. Rules:

The Sale of good Act, 1930 prescribes the following rules of delivery of goods



1. Buyer in position to access the goods (Section 33):

The delivery of the goods may be made in any of the modes, but it must have the effect of putting the goods in the possession of the buyer or his agent.

2. Demand for delivery of goods (Section 35):

It is seller's duty to put the goods in deliverable state and inform the buyer regarding same. It is buyer's duty to make a demand for the delivery of the goods.

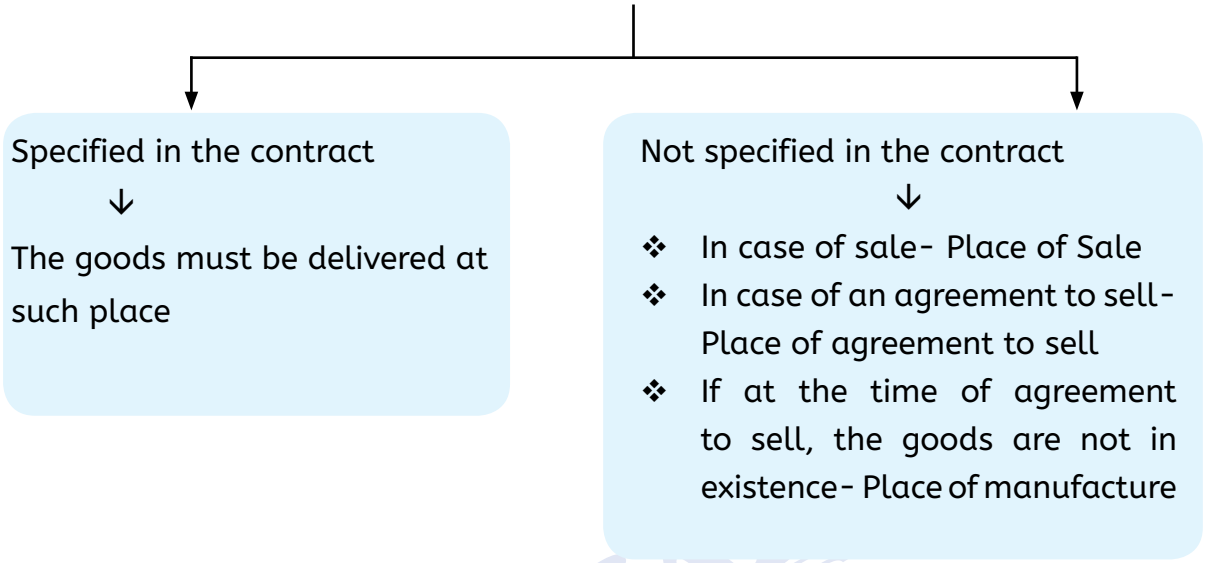
3. Goods in the possession of a third person [Section 36(3)]:

Sometimes, at the time of sale, the goods are in the possession of a third person. In such cases, the effective delivery takes place when such person acknowledges to (i.e., inform) the buyer, that he holds the goods on his (buyer's) behalf.

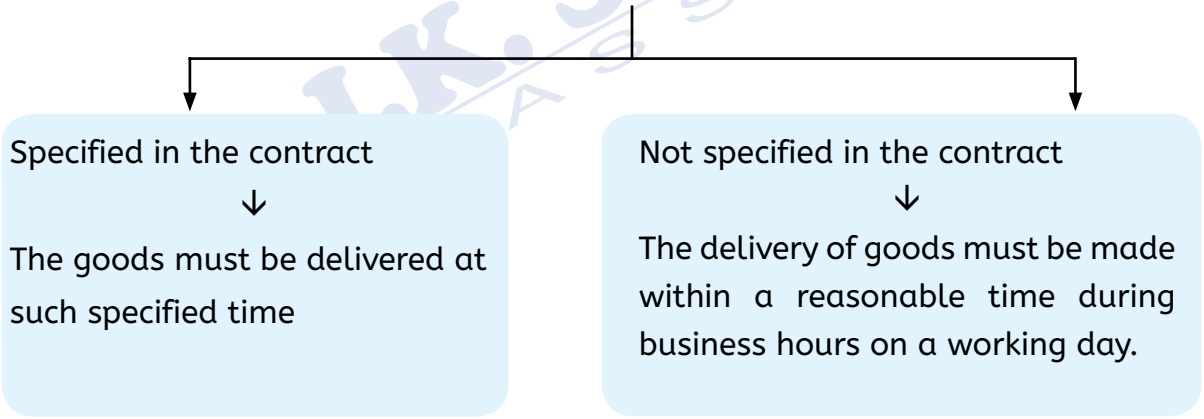
4. Delivery to a carrier or wharfinger [Section 39(1)]:

Where the sold goods are delivered to a carrier/wharfinger for the purpose of transmission to the buyer or safe custody, the delivery of goods to the carrier/ wharfinger is treated as a delivery to the buyer

5. Place for the delivery of goods [Section 36(1)]:



6. Time for the delivery of goods [Section 36(2)]:



7. Time for demand or tender of delivery [Section 36(4)]:
The demand of delivery by the buyer must be made within reasonable time during business hours and on a working day.

8. Expenses for the delivery of goods [Section 36(5)]:
The expenses of putting the goods into a deliverable state are borne by the seller. And the expenses of receiving the goods are borne by the buyer. However, the seller and the buyer may also agree otherwise

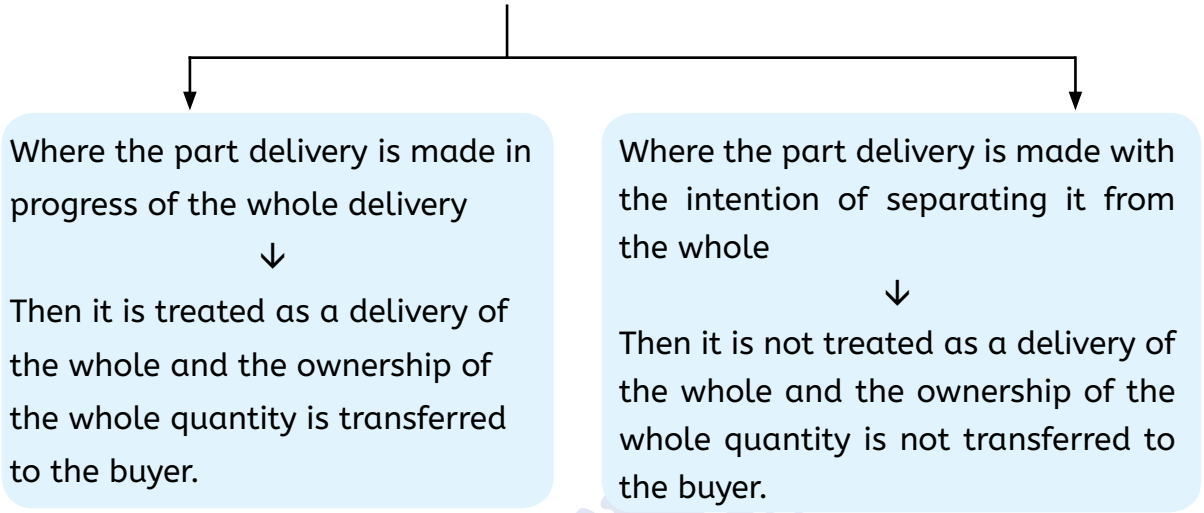
9. Deterioration of goods during transit [Section 40}:
The buyer shall bear the loss of deterioration of goods which is incidental i.e.

natural in transit unless otherwise agreed.

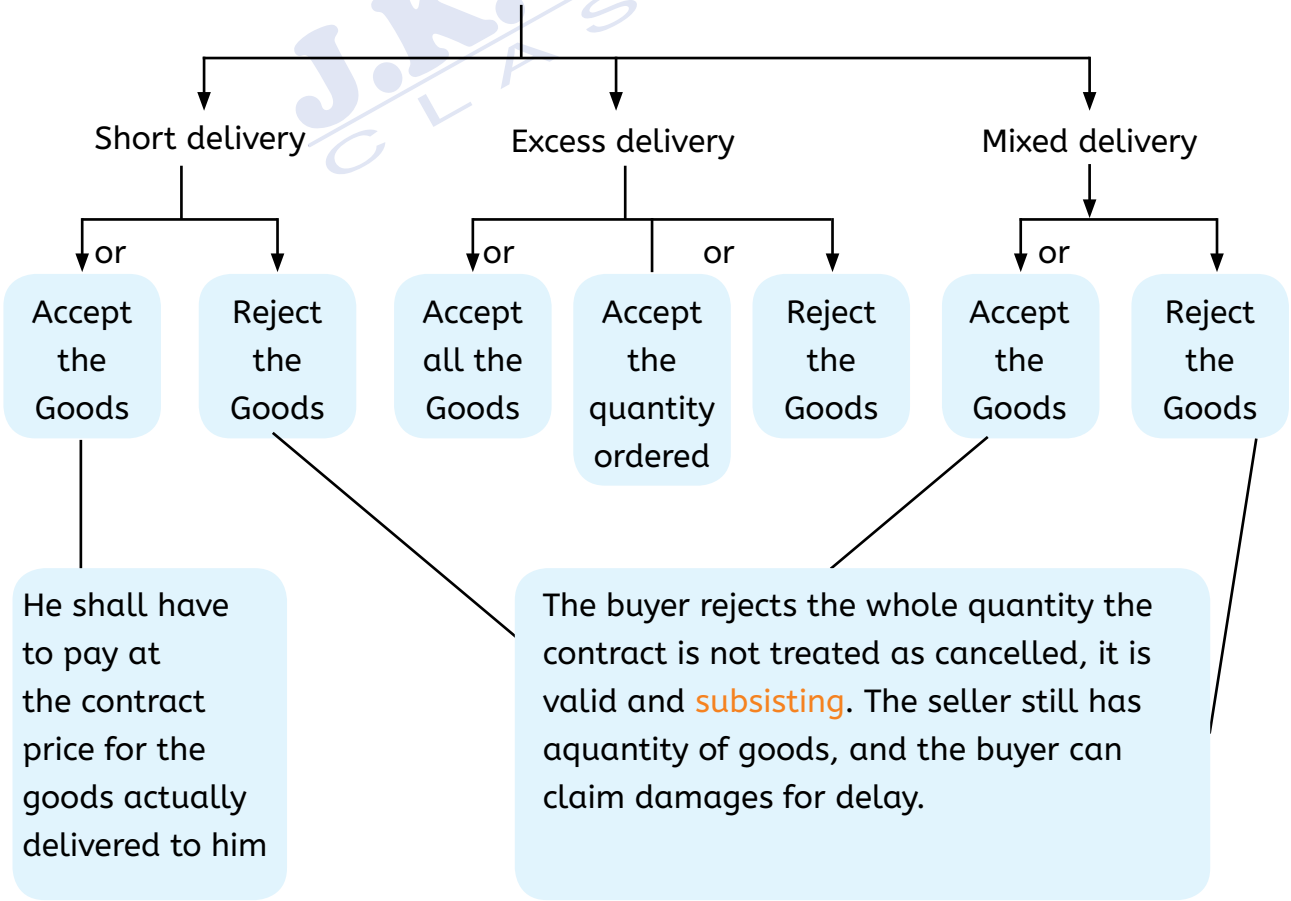
10. Delivery of goods by instalments [Section 38]:

As a rule, the delivery of goods by instalments is not considered as a good delivery and the buyer is not bound to accept the goods delivered to him by instalments, unless otherwise agreed.

11. Part delivery of goods [Section 34]:



12. Delivery of wrong quantity [Section 37]:



- Where the seller delivers to the buyer a quality of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate.
- Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate.
- Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject, or may reject the whole.

13. Buyer's right to examine the goods: Where goods are delivered to the buyer, who has not previously examined them, he is entitled to a reasonable opportunity of examining them in order to ascertain whether they are in conformity with the contract. Unless otherwise agreed, the seller is bound, on request, to afford the buyer a reasonable opportunity of examining the goods. (Section 41)

ACCEPTANCE OF DELIVERY OF GOODS

- Rule related to Acceptance of Delivery of Goods (Section 42):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.

- Buyer not bound to return rejected goods (Section 43): Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

- Liability of buyer for neglecting or refusing delivery of goods (Section 44): When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods.

UNIT 4 : UNPAID SELLER

MEANING OF UNPAID SELLER [SECTION 45(1)]:

A seller will be called 'unpaid' if the following conditions are fulfilled:

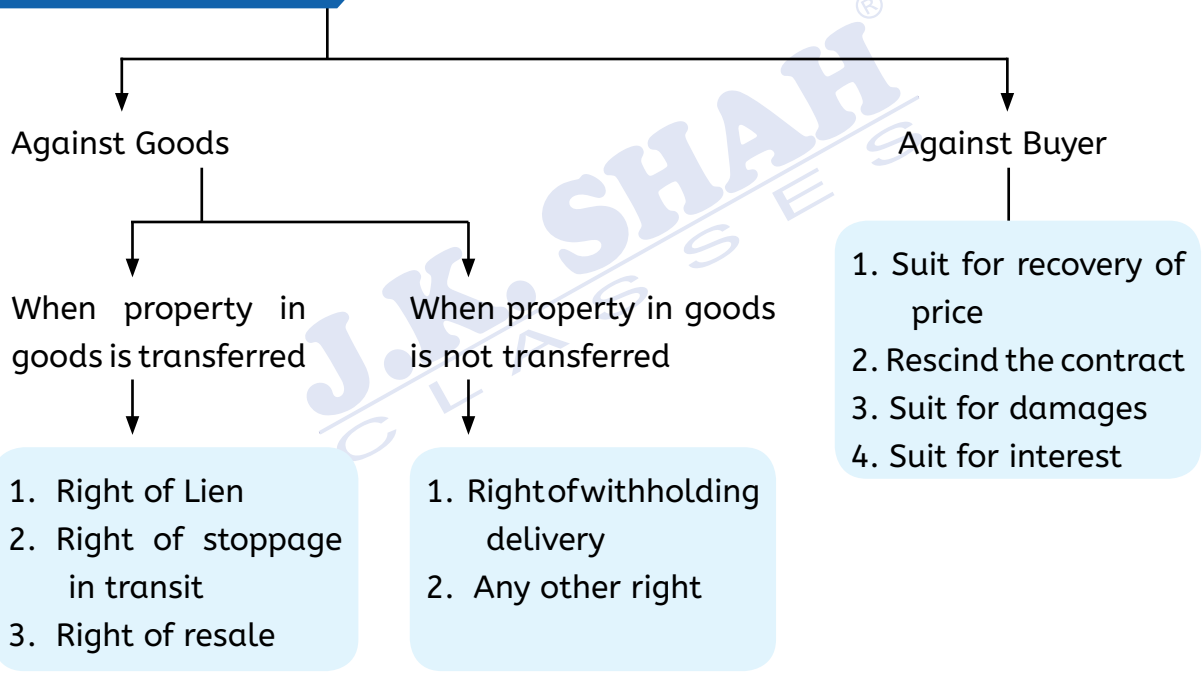
(1) The whole or part of the price has not been paid or tendered and that the seller has immediate right of action for the price.

Example: X sold certain goods to Y for 50,000. Y paid 40,000 but fails to pay the balance. X is an unpaid seller.

(2) A bill of exchange or other negotiable instrument has been received but the same has been dishonoured.

Example: P sold some goods to R for 60,000 and received a cheque for a full price. On presentment, the cheque was dishonoured by the bank. P is an unpaid seller.

RIGHTS OF UNPAID SELLER [SECTION 46]



(A) Rights against the Goods:

1. Where the ownership of the goods has transferred to the buyer:

In this case, the unpaid seller has the following rights:

(a) Right of Lien [section 47 to 49]

- The right of lien is the right to retain possession of the goods.
- This right can be exercised only when the possession of goods is with the seller.
- The unpaid seller of goods can retain his possession of goods until payment of the price in following cases[Section 47]:
  a) Where the goods are not sold on credit.

b) Where the goods have been sold on credit, but the term of credit has expired
c) Where the buyer becomes insolvent.

- The unpaid seller can retain the goods only for the payment of the price of the goods: He cannot retain the goods for any other charges, e.g., maintenance, charges for storage of goods during the exercise of lien etc.
- Part delivery (Section 48): Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder
- The right of lien is indivisible in nature.
- Termination of Lien (Section 49):
  a) By delivery of goods to the carrier/ buyer
  b) By Estoppel i.e., where the seller by his conduct makes third parties believe that he has waived his right of lien.
  c) By waiver of the lien
  d) By payment of price by the buyer
- The unpaid seller of the goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree (order from court) for the price of the goods.
- Example:

(b) Right of stoppage in transit [Section 50 to 52]

- Meaning of right of stoppage in transit [Section 50]: The right of stoppage in transit means the right of stopping the goods while they are in transit, to regain the possession and to retain them till the full price is paid.
- When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this right of asking the carrier to return the goods back, or not to deliver the goods to the buyer.
- This right is the extension of the right of lien because it entitles the seller to regain possession even when the seller has parted with the possession of the goods.
- Therefore, the right of stoppage in transit is exercised only when the following conditions are fulfilled:
  (a) The seller must be unpaid.
  (b) He must have parted with the possession of goods.
  (c) The goods are in transit.
  (d) The buyer has become insolvent.

➢ Duration of transit [Section 51]: The goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee.

➢ When does the transit come to an end?

The right of stoppage in transit is lost when transit comes to an end. Transit comes to an end in the following cases:

1) When the buyer or other bailee obtains delivery.
2) Buyer obtains delivery before the arrival of goods at destination.
3) Where the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods assoon as the goods are loaded on the ship, unless the seller has reserved the right of disposal of the goods.
4) If the carrier wrongfully refuses to deliver the goods to the buyer.
5) Where goods are delivered to the carrier hired by the buyer, the transit comes to an end.
6) Where the part delivery of the goods has been made to the buyer, there the transit will come to an end for the remaining goods which are yet in the course of transmission.
7) Where the goods are delivered to a ship chartered by the buyer, the transit comes to an end.

➢ How stoppage in transit is effected (Section 52)

1) The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal.

   If the notice is sent to the principal then the notice is deemed to have reached when such principal communicates it to his servant or agent.
2) When notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, he shall re-deliver the goods to, or according to the directions of, the seller. The expenses of such re-delivery shall be borne by the seller.

➢ Distinction between Right of Lien and Right of Stoppage in transit

Right of Lien	Right of stoppage in transit
1. The essence of a right of lien is to retain possession	1. The essence of stoppage in transit is to regain possession
2. Seller should be in possession of goods under lien	2. In stoppage in transit, (i) seller should have parted with

	the possession (ii) possession should be with a carrier, & (iii) buyer has not acquired the possession.
3. Right of lien can be exercised even when the buyer is not insolvent.	3. Right of stoppage in transit can be exercised only when buyer becomes insolvent
4. Right of lien precedes right of stoppage in transit.	4. Right of stoppage in transit begins when the right of lien ends

➢ Example:

(c) Right of Resale [Section 54]

The unpaid seller has the direct right to resell the goods in the following circumstances:

1. Where the goods are of perishable nature
2. Where the unpaid seller has expressly reserved his right of resale.

In any other case, the unpaid seller has the right to resell the goods by following the procedure:

1. Unpaid seller should give a notice to the buyer of his intention to resell the goods (+) Additional time for payment
2. If the buyer does not pay the price within a reasonable time, the seller may resell the goods
   - ❖ If the notice of resale is given then in case of loss on resale, it can be recovered and in case of profit on resale, it can be retained.
   - ❖ However the notice of resale is not given, the seller cannot recover the loss suffered on resale. Moreover, if there is any profit on resale he must return it to the original buyer

- Sale by unpaid seller: Where on unpaid seller who had exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title to the goods as against the original buyer (It is an exception to the rule of "Nemo dat quod non-habet')

2. Where the ownership of the goods has not been transferred to the buyer:

(a) Right of Withholding Delivery

When the ownership of the goods sold is not transferred to the buyer, if the buyer fails to pay the price, the unpaid seller may refuse to deliver the goods to the buyer. Such right is known as right of withholding the delivery of the goods.

(b) Any other right

Since ownership and possession of goods is with the seller, seller can use, gift, resell the goods without giving any notice, etc.

- Sale by unpaid seller: Where an unpaid seller who had exercised his right of withholding delivery, resells the goods, the buyer acquires a good title to the goods as against the original buyer (It is an exception to the rule of "Nemo dat quod non-habet')

(B) Rights against the Buyer [Section 55, 56, 60,61]

1. Suit for recovery of price [Section 55]

Where the buyer takes the ownership as well as possession of goods and the buyer fails to pay the price of the goods, the seller can file a suit against the buyer for recovery of the price.

2. Suit for damages [Section 56]

Where the seller is ready and willing to deliver the goods to the buyer, but the buyer wrongfully neglects or refuses to accept the goods and pay for them, then the seller may bring a legal action against the buyer for the recovery of damages suffered due to non-acceptance of the goods.

3. Repudiation (cancellation) of contract before due date [Section 60]: Where the buyer repudiates the contract before the date of delivery, the seller may treat the contract as rescinded and sue damages for the breach. This is known as the 'rule of anticipatory breach contract'.

4. Suit for interest [Section 61]

Where there is specific agreement between the seller and the buyer as to interest

on the price of the goods from the date on which payment becomes due, the seller may recover interest from the buyer.

In the absence of a contract the Court may award interest to the seller in a suit by himat such rate as it thinks fit on the amount of the price from the date of the tender of the goods or fromthe date on which the price was payable.

EFFECTS OF SUB-SALE OR PLEDGE BY BUYER [Section 53]

- The right of lien or stoppage in transit is not affected by the buyer selling or pledging the goods unless the seller has assented to it.

- Exceptions:

(a) When the seller has assented to the sale, mortgage or other disposition of the goods made by the buyer.

(b) When a document showing title to goods has been transferred to the buyer and the buyer transfers the documents to a person who has bought goods in good faith and for value.

- Example:

Case law: In *Mount D. F. Ltd. vs Jay & Jay (Provisions) Co. Ltd*

A entered into a contract to sell cartons in possession of a wharfinger to B and agreed with B that the price will be paid to A from the sale proceeds recovered from his customers. Now B sold goods to C and C duly paid to B. But anyhow B failed to make the payment to A. A wanted to exercise his right of lien and ordered the wharfinger not to make delivery to C. Held that the seller had assented to the resale of the goods by the buyer to the sub-buyers. As a result A's right to lien is defeated

RIGHTS OF PARTIES IN BREACH OF CONTRACT

Rights of Seller against Buyer[Section 55, 56, 60, 61]

↓

1) Suit for recovery of price
2) Suit for damages
3) Repudiation (cancellation) of contract before due date
4) Suit for interest
   (Already explained above)

Rights of Buyer against Seller (Section 57 to 60)

1) Damages for non-delivery
2) Suit for specific performance
3) Suit for breach of warranty
4) Repudiation (cancellation) of contract before due date
5) Suit for interest
6) Suit for interest

Rights of Buyer against Seller (Section 57 to 60)

1) **Damages for non-delivery [Section 57]:** Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

2) **Suit for specific performance (Section 58):** Where the seller commits of breach of the contract of sale, the buyer can appeal to the court for specific performance. The court can order for specific performance only when the goods are ascertained or specific.
   Example: 'A' agreed to sell a rare painting of Mughal period to 'B'. But on the due date of delivery, 'A'refused to sell the same. In this case, 'B' may file a suit against 'A' for obtaining an order from the Court to compel 'A' to perform the contract (i.e. to deliver the painting to 'B' at the agreed price).

3) **Suit for breach of warranty (section 59):** Where there is breach of warranty on the part of the seller,or where the buyer elects to treat breach of condition as breach of warranty, the buyer is not entitled to reject the goods only on the bases of such breach of warranty.

4) **Repudiation of contract before due date (Section 60):** Where either party to a contract of salerepudiates the contract before the date of delivery, the other may either treat the contract as subsistingand wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for thebreach.

5) **Suit for interest:** The court may award interest at such rate as it thinks fit on the amount of the price to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller

AUCTION SALES [Section 64]

- An auction sale is a sale at which the auctioneer, as agent for the seller, invites persons present to bid for goods sold.
- Auctioneer acts in a dual capacity

He acts as an agent of the seller till the article is 'knocked down' to the bidder.	He acts as an agent of the seller till the article is 'knocked down' to the bidder.

- Rules regarding Auction Sales:

  Section 64 of the Sale of Goods Act, 1930 provides following rules to regulate thesale by auction:

  a. Where goods are sold in lots: Where goods are put up for sale in lots, each lot is prima facie deemed to be subject of a separate contract of sale.
  b. Completion of the contract of sale: The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner and until such announcement is made, any bidder may retract from his bid.
  c. Right to bid may be reserved: Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction.
  d. Where the sale is not notified by the seller: Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer.
  e. Reserved price: The sale may be notified to be subject to a reserve or upset price; and
  f. Pretended bidding: If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

INCLUSION OF INCREASED OR DECREASED TAXES IN CONTRACT OF SALE (SECTION 64A)

- In the event of any tax of the nature described below, being imposed, increased, decreased or remitted in respect of any goods after the making of any contract for the sale or purchase of such goods without restriction as to the payment of tax where tax was not chargeable at the time of the making of the contract

  a. If the tax increases, the seller has to add the tax to the contract amount and the buyer is liable to be such increased amount. If he fails to pay, seller has a right to recover it and sue the buyer and
  b. If the tax decreases, the buyer may deduct such amount from the contract price, and he shall not be liable to pay, or be sued for, or in respect of, such deduction.

- Following taxes are applicable:
  a) any duty of customs or excise on goods;
  b) any tax on the sale or purchase of goods.

SUMMARY

UNIT 1: FORMATION OF CONTRACT OF SALE

INTRODUCTION

- ✓ It came into force on the 1st of July, 1930.
- ✓ It is applicable to whole of India except Jammu & Kashmir.
- ✓ The Law relating to this statute was contained in Indian Contract Act, 1872.
- ✓ Where the Sale of Goods Act is silent on any point, the general principles of the law of contract apply.

CONTRACT OF SALE [Section 4]

- Sale (Executed)
- Agreement to sell (Executory)

DEFINITIONS

1. Buyer [Section 2(1)]
2. Seller [Section 2(13)]
3. Goods [Section 2(7)]
4. Delivery [Section 2(2)]
5. Documents showing Title to Goods/ Documents of Title to Goods [Section 2(4)]
6. Price [Section 2(10)]
7. Property [Section 2(11)]
8. Mercantile Agent [Section 2(9)]
9. Insolvent [Section 2(10)]
10. Quality of Goods Section 2(12)]

ESSENTIAL ELEMENTS OF A VALID CONTRACT OF SALE

DISTINGUISH BETWEEN

1. Sale and agreement to sell
2. Sale and hire- purchase
3. Sale and bailment
4. Sale and contract for work and labour

- FORMATION AND MODES OF A CONTRACT OF SALE [Section 5]
- EFFECT OF DESTRUCTION OF GOODS [Section 6 to 8]
- PRICE AND MODES OF FIXING THE PRICE [Section 9 &10]
- STIPULATION AS TO TIME [Section 11]

UNIT 2: CONDITIONS AND WARRANTIES

- CONDITION (Section 12)-A condition is a stipulation essential to the main purpose of the contract
- WARRANTY (Section 12)-A warranty is a stipulation collateral to the main purpose of the contract
- WHEN A CONDITION CAN BE TREATED AS A WARRANTY (Section 13)
- CONDITIONS
  - EXPRESS CONDITIONS
  - IMPLIED CONDITIONS
- WARRANTY
  - EXPRESS WARRANTIES
  - IMPLIED WARRANTIES
- THE DOCTRINE OF CAVEAT EMPTOR (BUYER BEWARE)

(Section 14 to 17)

UNIT 3: TRANSFER OF OWNERSHIP AND DELIVERY OF GOODS

TRANSFER OF PROPERTY:
(Section 18 to 30)
3. Meaning
4. Rules

DELIVERY OF GOODS:
(Section 31 to 41)
3. Meaning
4. Rules

ACCEPTANCE OF GOODS
(Section 42 to 44)

UNIT 4 : UNPAID SELLER

MEANING OF UNPAID SELLER (SECTION 45)

RIGHTS OF UNPAID SELLER (SECTION 46)

Against Goods

When property in goods is transferred

1. Right of Lien (Section 47 to 49)
2. Right of stoppage in transit (Section 50 to 52)
3. Right of resale (Section 54)

When property in goods is not transferred

1. Right of withholding delivery
2. Any other right

Against Buyer

1. Suit for recovery of price (Section 55)
2. Repudiate the contract(Section 60)
3. Suit for damages(Section 56)
4. Suit for interest

EFFECTS OF SUB-SALE OR PLEDGE BY BUYER (Section 53)

RIGHTS OF PARTIES IN BREACH OF CONTRACT

Rights of Seller against Buyer[Section 55, 56, 60, 61]

1) Suit for recovery of price
2) Suit for damages
3) Repudiation (cancellation) of contract before due date
4) Suit for interest

Rights of Buyer against Seller (Section 57 to 60)

1) Damages for non-delivery
2) Suit for specific performance
3) Suit for breach of warranty
4) Repudiation (cancellation) of contract before due date
5) Suit for interest

AUCTION SALES (Section 64)

INCLUSION OF INCREASED OR DECREASED TAXES IN CONTRACT OF SALE (SECTION 64A)

LIST OF CASE LAWS

SR. NO.	NAME OF CASE LAW	PAGE NO. (This column is to be filled by students)
1.	Priest vs. Last	
2.	Bombay Burma Trading Corporation Ltd. vs. Aga Muhammad	
3.	Mount D. F. Ltd. vs Jay & Jay (Provisions) Co. Ltd	

LIST OF LATIN TERMS

SR. NO.	LATIN TERM	MEANING	PG NO. (To be filled by students)
1.	Jus in rem	Right against the whole world	
2.	Jus in personam	Right against a particular person	
3.	Caveat Emptor	Buyer beware	
4.	Nemo dat quod non-habet	no one can transfer a better title than he himself has	
5.	Prima facie	based on the first impression; accepted as correct until proved false	

LIST OF LEGAL TERMS

SR. NO.	LEGAL WORD	MEANING	PG NO. (To be filled by students)
1.	Customary course of business	Normal course of business	
2.	Ceases	Stops	
3.	Absolute	Unconditional	
4.	Levied	Applied	
5.	Gratuitous	Without Consideration i.e. free	
6.	Non- Gratuitous	With Consideration i.e. not free	
7.	Course of dealings	Past transactions	
8.	Stipulation	Restriction/ condition	
9.	Waive	Let go	
10.	Repudiating	Cancelling/ putting an end	

11.	Not severable	Not separable	
12.	Prevail	Shall be followed	
13.	Correspond	Here this word means 'match'	
14.	Usage of trade	Trade i.e business customs and traditions	
15.	Right of disposal	Right of selling	
16.	Bonafide buyer	Buyer who buys in good faith	
17.	Pawnee/ pledge	Person to whom good are given as security	
18.	Concurrent	Here this word means 'parallel'	
19.	Carrier	Transportation	
20.	Wharfinger	Warehouse keeper of warehouse on a dock/port	
21.	Subsisting	Existing/continuing	
22.	Retain possession	Keep the possession	
23.	Regain possession	Get the possession back	
24.	Precedes	Comes before	
25.	Unpaid seller has expressly reserved his right of resale	Unpaid Seller has informed in advance that if payment is not done, he will resell the goods	
26.	Witholding delivery	Holding back the delivery	
27.	Sub-sale	Buyer selling the goods further	
28.	Disposition of goods	Transferring/selling the goods	
29.	Upset/Reserve price	It's the minimum price set by the owner from which bidding starts	

3. THE INDIAN PARTNERSHIP ACT, 1932

UNIT 1:GENERAL NATURE OF PARTNERSHIP

INTRODUCTION :

- ❖ It came into force on 1st October, 1932.
- ❖ Prior to the passing of the Act, the law of partnership was included in Chapter XI of the Indian Contract Act.
- ❖ Where the Partnership Act is silent on any point, the general principles of the law of contract apply. The partnership is a specialized branch of the Contract Act.

DEFINITION OF PARTNERSHIP

Section 4 of the Partnership Act defines partnership as under:
Partnership is the relation between two or more persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

PARTNER& FIRM

- ❖ Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm", and the name under which their business is carried on is called the 'firm name".
- ❖ Crown', Emperor', 'Empress', 'Empire', 'Imperial', 'King', 'Queen', 'Royal', or words cannot be used in the name of the firm except when the State Government signifies its consent to the use of such words as part of the firm-name by order in writing.
  However, now such rule does not exist.

ESSENTIAL ELEMENTS OF PARTNERSHIP

Therefore, the essential elements of the relationship of partnership may be stated as follows:

(1) There must be an association of two or more persons.
(2) There must be an agreement.
(3) There must be a business
(4) There must be an agreement to share the profits of a business, and
(5) There must be an element of 'agency' i.e. the business must be carried on by all or any of them acting for all.

Thus, essential elements of relationship of partnership are:

(1) There must be two or more persons:

- ❖ There must be at least two persons to form a partnership. Maximum number of

partners, partnership act is silent. But Section 464 0f The Companies Act 2013 specifies it as 50. If number of partners fall below it ceases to be partnership. If it goes beyond 50, it will become an illegal association.

- ❖ The persons can be natural or artificial. Hence 2 companies can be partners. But a firm cannot enter into a contract for partnership though their partners can become partners.
- ❖ All such persons must be competent to contract. According to Indian Contract Act every person except the following:
  (i) Minor
  (ii) Person of unsound mind
  (iii) Person disqualified by any law to which they are subject (alien, insolvents etc)

(2) There must be an agreement:

- ❖ A partnership arises only as a result of an agreement. Such an agreement may be express or implied. Implied in the sense that it may be a voluntary act by the persons. Agreement can be oral or in writing but partnership deed must be in writing
- ❖ Partnership is thus created by contract; it does not arise by operation of law or from status
- ❖ Agreement must be valid
  Partnership agreement is like any other contract, so it must satisfy all the essentials of a valid contract. In other words, the parties must be 'competent', i.e. capable of entering into an agreement, their consent must be free and there should be a lawful consideration and object.

(3) There must be a business:

- ❖ The existence of a business is essential in a partnership. "Business" includes every trade, occupation and profession carried on with an intention to make profits.
- ❖ If two or more persons join together to form a 'dramatic club' it is not a partnership because there is no business in this case. Similarly, if A and Bare co-owners of a building and let it to a tenant for rent and divide the net rents between themselves. A and B are not partners because letting a house is not a business. But if A and B agree to convert the building into a hotel and to share the profits equally, there is a "business" here and hence A and B are partners in respect of such business.
- ❖ The business must be lawful.

(4) Sharing of profits:

- ❖ The agreement to share profit is essential, but it should be noted that an agreement to share the losses is not essential. Where nothing is said as to the sharing of losses, it is implied in a partnership deed.

It may, however, be agreed that as between the partners anyone or more of them shall not be liable for losses. But the reverse is not just possible. So where persons agree to share the profits of a money-lending business, they become partners, but where one of them, so called partner is not to receive profits, he is not a partner. E.g. A and B agree to work together as carpenters, but that A shall receive all profits and shall pay wages to B, A and B are not partners. When profit is made, it must be distributed (in absence of any agreement) equally, or in the agreed ratio.

❖ A person, who receives the profits of a business, is not necessarily a partner. The persons who receive the profits but are not the partners are referred as under:

1. Retired partner
   After retirement if the settlement of accounts is not done then the retired partner may get share in profits. But he is not treated as partner.
2. Money-lenders receiving profits:
   A money-lender is a person who lends money on interest. Sometimes, a money-lender receives, in addition to or in place of his interest, a portion of the profits of a business. In such cases, he cannot be said to be a partner only on the ground that he receives the profits of the business.
3. Employee or agent receiving profits:
   Sometimes, an employee or an agent of a business agrees to receive, in addition to or in place of his regular remuneration, a portion of the profits of the business. In such cases, he cannot be said to be a partner only on the ground that he receives the profits of the business.
4. Widow or child of a deceased partner:
   Sometimes, the widow or a child of deceased partner receives a portion of profits as annuity. In such cases, they cannot be said to be the partners of the firm only on the ground that they receive the profits of the business.
5. Seller of goodwill:
   Sometimes, a person who sells his business along with its goodwill, is given a share in the profits of the business he has sold. In such cases, that person does not become a partner in the business only on the ground that he receives the profits of the business.
6. Minor:
   Minor receives share in profits but is not considered as partner.

❖ Just because a person is sharing profits, he is not a partner. But if a person is a partner, he will definitely get share in profits.

(5) Business carried on by all or any of them acting for all:

❖ The business must be carried on by all the partners or by anyone or more of the

partners acting for all. This is the cardinal principle of the partnership Law. In other words, there should be a binding contract of mutual agency between the partners.

- An act of one partner in the course of the business of the firm is in fact an act of all partners. Each partner carrying on the business is the principal as well as the agent for all the other partners. He is an agent in so far as he can bind the other partners by his acts and he is a principal to the extent that he is bound by the act of other partners.
- It means every partner is a

Agent of the firm — Principal for other partners acts

- It may be noted that the true test of partnership is mutual agency rather than sharing of profits. If the element of mutual agency is absent, then there will be no partnership.

Case law: *KD Kamath & Co.*

The Supreme Court has held that the two essential conditions to be satisfied are that:

(1) there should be an agreement to share the profits as well as the losses of business; and

(2) the business must be carried on by all or any of them acting for all, within the meaning of the definition of 'partnership' under section 4.

- Example :

A, Band C are partners in a business. D an outsider deals with the firm through A. As between A and D, A is the agent of the firm and hence the whole firm is liable. Therefore, B, C are liable as principals

TRUE TEST OF PARTNERSHIP

- Mode of determining existence of partnership (Section 6): In determining whether a group of persons is a partnership firm or not or whether a person is or not a partner in a firm, all relevant facts should be taken together.

- For determining the existence of partnership, it must be proved.
  1. There was an agreement between all the persons concerned
  2. The agreement was to share the profits of a business and
  3. the business was carried on by all or any of them acting for all.

1. Agreement: Partnership is created by agreement and not by status (Section 5). The relation of partnership arises from contract and not from status; and in particular, the members of a Hindu Undivided family carrying on a family business as such,

or a Burmese Buddhist husband and wife carrying on business as such are not partners in such business.

2. Sharing of Profit: As discussed earlier, sharing of profit is an essential element to constitute a partnership. But, it is only a *prima facie* evidence and not conclusive evidence, in that regard. The sharing of profits would not by itself make such persons partners. Although the right to participate in profits is a strong test of partnership, and there may be cases where, upon a simple participation in profits, there is a partnership, yet whether the relation does or does not exist must depend upon the whole contract between the parties.
As discussed above, a person, who receives the profits of a business, is not necessarily a partner. The persons who receive the profits but are not the partners are referred as under: (already explained above)

3. Agency: Existence of Mutual Agency which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion in this regard. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. If the elements of mutual agency relationship exist between the parties, a partnership may be deemed to exist.

Case law: *Santiranjan Das Gupta Vs. Dasyran Murzamull (Supreme Court)*

In Santiranjan Das Gupta Vs. Dasyran Murzamull, following factors weighed upon the Supreme Court to reach the conclusion that there is no partnership between the parties:

(a) Parties have not retained any record of terms and conditions of partnership.
(b) Partnership business has maintained no accounts of its own, which would be open to inspection by both parties
(c) No account of the partnership was opened with any bank
(d) No written intimation was conveyed to the Deputy Director of Procurement with respect to the newly created partnership.

PARTNERSHIP DISTINGUISHED

A) PARTNERSHIP AND JOINT HINDU FAMILY FIRM (HINDU UNDIVIDED FAMILY):

Partnership	HUF
1. It arises from agreement	1. It arises by status.
2. Governed by Indian Partnership Act, 1932.	2. It is governed by Hindu Law.
3. Maximum partners can be 50.	3. No such limit is applicable here.

4. A person can be admitted by the consent of the other existing partners.	4. A male/ female person becomes a member merely by his birth.
5. A minor can be admitted only to the benefits of the firm.	5. A male/female minor becomes a member merely by his birth.
6. Each partner is implied authority to bind the firm for the actions done by him in the daily course of business.	6. Only Karta has such authority.
7. Unlimited liability.	7. Karta's liability is unlimited and the coparcener's liability is limited to their share in the family property
8. Each partner has the right to ask for the books of accounts and also for the profits and losses.	8. The coparceners have no such right
9. In case of death of a partner, partnership is dissolved unless otherwise agreed.	9. HUF continues to operate even after death of a coparcener.

Joint Hindu Family: The amendment in the Hindu Succession Act, 2005, entitled all adult members – Hindu males and females to become coparceners in a HUF. They now enjoy equal rights of inheritance due to this amendment. On 1st February 2016, Justice Najmi Waziri gave a landmark judgement which allowed the eldest female coparceners of an HUF to become its Karta.

B) PARTNERSHIP AND CO-OWNERSHIP:

Co-ownership means joint 'ownership X and Y jointly purchase a plot. They are co-owners but not necessarily partners. The distinction between the two is as under:

Partnership	Co-ownership
1. It arises from an agreement.	1. It may arise from agreement or operation of law.
2. It is formed to carry on business.	2. It may or may not involve carrying on a business.
3. It involves profit or loss.	3. It may or may not involve profit or loss
4. Partners have a mutual agency relationship.	4. Co-owners do not have a mutual agency agreement.
5. Maximum partners can be 50.	5. No such limit is applicable here.

6. A partner cannot transfer his share to a stranger without the consent of any other business.	6. A co-owner can transfer his share to a stranger without the consent of other owners.
7. A partner has no right to claim partition of property.	7. A co-owner has the right to claim partition of property.

C) PARTNERSHIP AND JOINT STOCK COMPANY:

Partnership	Joint Stock Company
1. A firm does not enjoy separate legal entity i.e. separate legal existence.	1. It has a separate legal existence.
2. The liability of the partner is unlimited.	2. Limited to the value of shares held by the members.
3. It does not enjoy a long lease of life because of dissolution due to different reasons.	3. It enjoys a perpetual existence.
4. Maximum partners can be 50.	4. In case of private limited company, Minimum members-2, maximum members -200 In case of public limited company, Minimum members -7, maximum members - no limit In case of One person Company (OPC)- only 1.
5. A partner cannot transfer his share without the consent of other partners.	5. A member can transfer his share as and when he wishes to.
6. There is mutual agency amongst the partners	6. There is no mutual agency amongst the members
7. Distribution of profits is compulsory as per the partnership deed	7. No such compulsion of distributing the profits.
8. The ownership & management lies with all the partners.	8. Ownership is with shareholders and the management is with board of directors
9. Property of the firm is the joint property of all the partners.	9. The property of company is not the joint property of the members.
10. The creditors of the firm can proceed against the partners jointly and severally.	10. The creditors of a company can proceed only against the company.
11. No compulsory Audit	11. Its compulsory

D) A PARTNERSHIP AND CLUB / ASSOCIATION:

A club is an 'association of persons' formed for social purpose and not for the purpose of any 'gain' or 'profit'. It differs from the partnership in the following respects

Partnership	Club / Association
1. Business oriented objects	1. Not aimed at making profits entirely.
2. Maximum partners can be 50.	2. No such limit is applicable here.
3. Does not enjoy long lease of life	3. Enjoys a long lease of life
4. There is mutual agency amongst the partners	4. There is no mutual agency amongst the members

CLASSES OF PARTNERSHIP:

Partnership can be classified as under:

1. Partnership at will according to Section 7 of the Act, partnership at will is a partnership when:
   1. No fixed period has been agreed upon for the duration of the partnership; and
   2. There is no provision made as to the determination of the partnership.

   These two conditions must be satisfied before a partnership can be regarded as a partnership at will.

   Where a partnership entered into for a fixed term is continued after the expiry of such term, it is to be treated as having become a partnership at will.

   A partnership at will may be dissolved by any partner by giving notice in writing to all the other partners of his intention to dissolve the same.

2. 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 particular period of time. Such a partnership comes to an end on the expiry of the fixed period.

3. Particular partnership: A partnership may be organized for the prosecution of a single adventure as well as for the conduct of a continuous business. Where a person becomes a partner with another person in any particular adventure or undertaking the partnership is called 'particular partnership'.

   A partnership, constituted for a single business, subject to any agreement, dissolved by the completion of the business.

4. General partnership: Where a partnership is constituted with respect to the business in general, it is called a general partnership. A general partnership is different from a particular partnership.

CLASSES OR TYPES OF PARTNERS :

Partners can be classified as shown below:

1. Active/Actual/Ostensible Partner:
   - ❖ A partner who is actively engaged in the conduct of the business of the partnership is known as 'active partner'.
   - ❖ When an active partner retires from the firm, he has to give a public notice. Otherwise, he will be liable on the principle of 'holding out'.
   - ❖ He is liable for acts of firm

2. Sleeping or Dormant Partner :
   - ❖ A 'Sleeping partner' is one who does not take any active part in the business.
   - ❖ Such partner joins the firm by agreement and invests capital and shares in the profit of the business like the other partners.
   - ❖ A sleeping partner need not give public notice of his retirement from the firm.
   - ❖ He is liable for acts of firm

3. Nominal Partner :
   - ❖ A partner, who simply lends his name to the firm, without having any real interest in it, is called a nominal partner.
   - ❖ He neither invests nor shares in the profits or takes part in the management of the business.
   - ❖ He, along with other partners, is liable to outsiders for all the debts of the firm.
   - ❖ Difference between sleeping and nominal partner: A nominal partner is known to the outside world as a partner of the firm but in reality does not share in the profit of the firm. A dormant partner on the other land, even though not known as a partner to the world at large but in fact shares in the profits of the business.

4. Partner for profits only :
   - ❖ Partners may agree that a particular partner shall get a share of the profits only but he will not be called upon to contribute towards the losses. Such a partner is known as 'partner for profits only'.
   - ❖ This is simply an, inter-se agreement binding the partners only. Hence, he continues to be liable to third parties for all acts of the firm.

5. Sub-Partner :
   - ❖ When a partner agrees to share his profits divided from the firm with a third person, that third person is known as 'sub-partner'. Such a sub-partner is in no way connected with the firm.
   - ❖ He cannot represent the firm and bind the firm by his acts. He has no right against

the firm nor is he liable for the acts of the firm.

6. Partner by Holding Out or by Estoppel (Section 28):

- To hold a person liable as a partner by holding out, it is necessary to establish the following :
  1. He represented himself or knowingly permitted himself to be represented as a partner.
  2. Such representation occurred by words spoken or written or by conduct.
  3. The other party on the faith of that representation gave credit to the firm.
- Once he poses himself as a partner, though he is not a partner, he is estopped from saying that he is not a partner in a firm.
- Example:

  X and Y are partners in a partnership firm. X introduced A, a manager, as his partner to Z. A remained silent. Z, a trader believing A as partner supplied 100 T.V sets to the firm on credit. After expiry of credit period, Z did not get amount of T.V sets sold to the partnership firm. Z filed a suit against X and A for the recovery of price. Here, in the given case, A, the Manager is also liable for the price because he becomes a partner by holding out (Section 28, Indian Partnership Act, 1932).
- 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.

  Example: A partnership firm consisting of P, Q, R and S. S retires from the firm without giving public notice and his name continues to be used on letterheads. Here, S is liable as a partner by holding out to creditors who have lent on the faith of his being a partner.

7. Incoming Partner:

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".

8. Outgoing Partner:

A partner who leaves a firm in which the rest of the partners continue to carry on business is called an outgoing partner.

PARTNERSHIP DEED

❖ Partnership is the result of an agreement. No particular formalities are required for an agreement of partnership. It may be in writing or formed verbally. But it is desirable to have the partnership agreement in writing to avoid future disputes. The document in writing containing the various terms and conditions as to the relationship of the partners to each other is called the 'partnership deed'. It should be drafted with care and be stamped according to the provisions of the Stamp Act, 1899. Where the partnership comprises of immovable property, the instrument of partnership must be in writing, stamped and registered under the Registration Act.

❖ Partnership deed may contain the following information:-

1. Name of the partnership form.
2. Names of all the partners.
3. Nature and place of the business of the firm.
4. Date of commencement of partnership.
5. Duration of the partnership firm.
6. Capital contribution of each partner.
7. Profit Sharing ratio of the partners.
8. Admission and Retirement of a partner.
9. Rates of interest on Capital, Drawings and loans.
10. Provisions for settlement of accounts in the case of dissolution of the firm.
11. Provisions for Salaries or commissions, payable to the partners, if any.
12. Provisions for expulsion of a partner in case of gross breach of duty or fraud.

❖ A partnership firm may add or delete any provision according to the needs of the firm.

REGISTRATION OF FIRM

❖ The registration of a firm is not compulsory. It is optional for the firm either to get itself registered or not. There is no penalty for non-registration of a firm. The registration can be done anytime, either in the beginning or during the continuance of business.

❖ Procedure (Section 58):

1. Step 1- Obtain a statement in the form from the office of the Registrar.
2. Step 2- State the following information:
   - Name of the firm
   - Principal place of the firm
   - Name of the other places where the firm carries its business
   - Date when each partner joined
   - Name in full and permanent address of each partner
   - Duration of the firm.

3. Step 3- Get the statement of duly verified and signed by all the partners or their agents.
4. Step4- File the statement along with prescribed fees
5. Step 5- Obtain a certificate or registration from the Registrar.

❖ Section 59: When the Registrar is satisfied that the provisions of Section 58 have been duly complied with, he shall record an entry of the statement in a Register called the Register of Firms and shall file the statement. Then he shall issue a certificate of Registration. However, registration is deemed to be completed as soon as an application in the prescribed form with the prescribed fee and necessary details concerning the particulars of partnership is delivered to the Registrar. The recording of an entry in the register of firms is a routine duty of Registrar.

❖ Late registration on payment of penalty (Section 59A-1): If the statement in respect of any firm is not sent or delivered to the Registrar within the time specified in sub-section (1A) of section 58, then the firm may be registered on payment, to the Registrar, of a penalty of one hundred rupees per year of delay or a part thereof.

❖ Consequences of non-registration (Section 69):

1. The partners cannot file a suit against the firm or other partners:
   A partner of an unregistered firm cannot file a suit against the firm or his other present or past partners, for the enforcement of any right arising from a contract or conferred by the Indian Partnership Act. However, this disability may be removed by getting the firm registered before filing the suit.
2. The firm cannot file a suit against third parties:
   An unregistered firm cannot file a suit against any third party for the enforcement of any right arising from some contract.
   This disability of an unregistered firm can be removed by getting the firm registered before filing the suit.
3. The partner of the firm cannot claim a set-off:
   The term 'set-off' means the adjustment of debts by one party due to him from the other party who files a suit against him. The partners of an unregistered firm or the firm itself cannot claim a set-off, in a suit filed against them or the firm. But the right of set-off is not affected if the claim for setoff does not exceed Rs 100 in value.

❖ Following rights are not affected by non-registration:

1. The right of third parties to sue the firm or any partner.
2. The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm.

3. The power of an Official Assignees, Receiver of Court to release the property of the insolvent partner and to bring an action.
4. The right to sue or claim a set-off if the value of suit does not exceed ₹ 100 in value.
5. The right to suit and proceeding instituted by legal representatives or heirs of the deceased partner of a firm for account s of the firm or to realise the property of the firm.

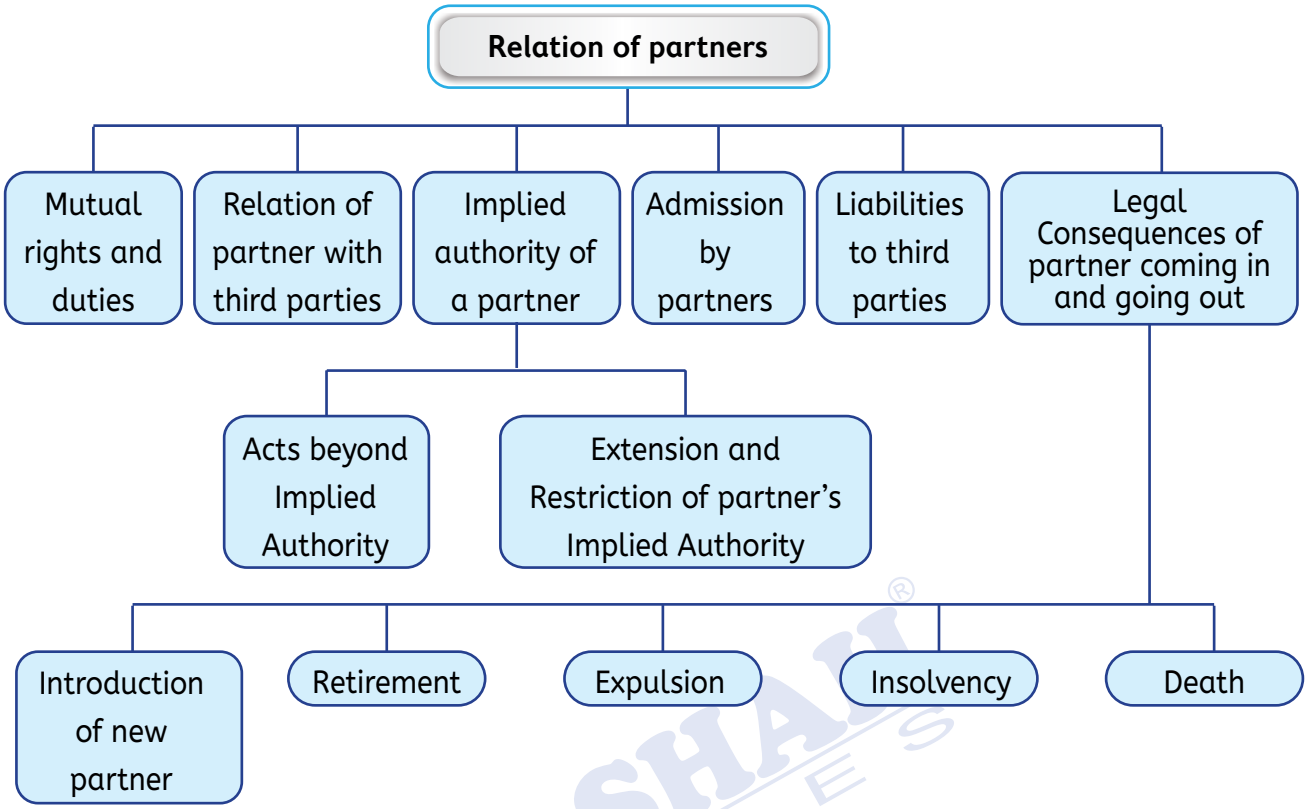
Example: A & Co. is registered as a partnership firm in 2017 with A, B and C partners. In 2018, A dies. In 2019, B and C sue X in the name and on behalf of A & Co. without fresh registration. Now the first question for our consideration is whether the suit is maintainable.

As regards the question whether in the case of a registered firm (whose business was carried on after its dissolution by death of one of the partners), a suit can be filed by the remaining partners in respect of any subsequent dealings or transactions without notifying to the Registrar of Firms, the changes in the constitution of the firm, it was decided that the remaining partners should sue in respect of such subsequent dealings or transactions even though the firm was not registered again after such dissolution and no notice of the partner was given to the Registrar.

If in the above example, what difference would it make, if in 2019 B and C had taken a new partner, D, and then filed a suit against X without fresh registration?

Where a new partner is introduced, the fact is to be notified to Registrar who shall make a record of the notice in the entry relating to the firm in the Register of firms. Therefore, the firm cannot sue as D's (new partner's) name has not been entered in the register of firms. It was pointed out that in the second requirement, the phrase "person suing" means persons in the sense of individuals whose names appear in the register as partners and who must be all partners in the firm at the date of the suit.

UNIT 2: RELATION OF PARTNERS



RIGHTS OF PARTNERS

The mutual rights of partners depend upon the provisions of the partnership agreement. However, subject to an agreement between the partners; the law confers the following rights upon all the partners:

1. Right to take part in business [Section 12 (a)]:

   It is the right of every partner to take part in the management of the business. This right is available to all the partners. This is, however, subject to contract between the partners i.e., the partners may provide, by a contract, that this right shall not be available to some partners.

2. Right to be consulted [Section 12 (c)]:

   It is also the right of every partner to be consulted in all matters affecting the business of the firm. Moreover, every partner also has the right to express his opinion before any decision is taken by the other partners.

   In case of difference of opinion, matter will be settled in following way:

In case of an ordinary matter	In case of fundamental matter
↓	↓
To be settled by a majority of partners	To be settled by consent of all the partners i.e. unanimous consent

3. Right to have access to books [Section 12 (d)]:

Every partner has the right to examine all the records, books and accounts of the firm. Moreover, he can also have the copy of such accounts etc. This right is, however, subject to a contract between the partners i.e., the partner may agree, by a contract that this right shall not be available to some of the partners.

4. Right to share profits [Section 13 (b)]:

Every partner has the right to have equal share in the profits of the firm. However, the partners may also agree to share the profits in different proportions. No agreement between the partners can restrict this right.

5. Right to interest on capital and on advance [Section 13(c), 13(d)]:

Right to interest on capital [Section 13 (c)]: Ordinarily, the partners have no right to receive any interest on their contribution towards the capital. However, the partnership agreement may provide that the partners shall be entitled to interest on capital at a certain rate. It may, however, be noted that where such interest is to be paid, it shall be paid only out of profit.

Right to interest on advances [Section 13 (d)]: Where in addition to the contribution towards the capital, a partner also advances a sum of money for the purpose of the business of the firm; he is entitled to interest on such advance at the rate of 6% per annum. Such interest on advance is payable even if the firm suffers loss.

6. Right to indemnity [Section 13 (e)]:

The partner of a firm has a right to be indemnified i.e., the right to recover expenses incurred and payments made by him in the following two circumstances.

(a) Expenses incurred in the ordinary course of business:
A partner has a right to recover from the firm any expenses incurred by him 'in the ordinary course of partnership business'.

(b) Expenses incurred in an emergency:
A partner has a right to recover from the firm any expenses incurred by him in order to protect the property of the firm from a loss threatened by an emergency. No agreement between the partners can restrict this right.

7. Right to use the partnership property:

It is the right of every partner to use the partnership property. It may, however, be noted that the partnership property should be used exclusively for the purpose of the partnership business.

8. Right to be consulted at the time of admission of a new partner :

It is the right of every partner to be consulted at the time of admitting a new partner in the firm.

9. Right to retire from the firm:
It is the right of every partner to retire from firm, if he finds it difficult to adjust with the other partners.

10. Right not to be expelled:
Every partner has the right to continue in the firm and he cannot be expelled from it by the other partners. However, the partners may enter into a contract providing for the expulsion of a partner by majority of the partners. But the power of expulsion must be exercised in good faith:

11. Right to remuneration [Section 13 (a)]:
Generally, the partners are not entitled to receive any remuneration for taking part in the conduct of the business of the firm. However, the partnership agreement may expressly provide for the payment of remuneration to working partners.

12 Right to dissolve the firm:
A partner has the right to dissolve the partnership with the consent of all partners. But where the partnership is at will the firm may be dissolved
by any partner giving notice in writing to all other partners of his intention to dissolve the firm.

DUTIES OF PARTNERS

Following are the duties of partners towards one another.

1. Duty of good faith:
It is the foremost and important general duty of the partners. Every partner should act in good faith, and he should be just and faithful in his dealings with the other partners. Good faith requires that a partner should not deceive the other partners by concealment of material facts e.g. a partner should not try to make secret profits, for himself, at the expense of the firm.

2. Duty to carry on the firm business to the greatest common advantage (Section 9):
Every partner is bound to carry on the business of the firm to the greatest common advantage. He must use his knowledge and skill for the common benefit of the firm. And he should not make any personal or private profits.

3. Duty to render true accounts:
It is another duty of every partner that he should keep proper accounts, and render correct and true accounts of partnership.

4. Duty to give full information:

It is also the duty of every partner that he should give full information of all things affecting the firm, to his co-partners. Thus, if a partner is in possession of more information about the affairs and assets of the firm, he should not conceal that from the other partners.

5. Duty to indemnify for loss caused by fraud (Section 10):

It is the duty of every partner to make good the loss suffered by the firm due to his fraud. Thus, if some loss is caused to the firm due to the fraud of a particular partner, the firm has the right to recover the loss from the same partner. It is an absolute duty and cannot be excluded by an agreement to the contrary.

However, the firm shall remain liable to the third parties for fraud of its partners.

6. Duty to attend diligently [Section 12 (b)]:

It is the duty of every partner that he should diligently (i.e., carefully) attend to the affairs of the business of the firm. If a partner does not attend diligently the business of the firm, and the firm suffers a loss due to his 'willful neglect', then he is bound to make compensation to the firm.

7. Duty to share losses:

It is the duty of every partner to share equally the losses suffered by the firm. However, this duty is subject to an agreement to the contrary i.e., the partners may agree to share the losses in different proportions. However this duty might be restricted by way of an agreement.

8. Duty to account for personal profits (Section 16):

This duty is based on the principle of good faith, which requires that a partner shall not make personal profits at the expense of the firm. If a partner makes personal profits in any of the following ways, he must give account of those profits and pay back the same to the firm:

(a) Personal profits from any transaction of the firm.
(b) Personal profits from the use of the property of the firm.
(c) Personal profits from the business connection of the firm.
(d) Personal profits from the use of the name of the firm.

However, the above duty is subject to a contract between the partners i.e., by a contract, the partners may allow/all or any of them to earn personal profits by using firm name, property etc.

Example: A, B, C & D established partnership business for refining sugar. A, himself was a wholesale grocer, was entrusted with the work of selection and purchase of sugar. As a wholesale grocer, A was well aware of the variations in the sugar market

and had the suitable sense of propriety as regards purchases of sugar. He had already in stock sugar purchased at a low price which he sold to the firm when it was in need of some, without informing the partners that the sugar sold had belonged to him. It was held that A was bound to account to the firm for the profit so made by him. This rule, however, is subject to a contract between partners. Where a partner carries on a competing business, he must account for and pay to the firm all profits made by him in that business.

Example: A, B, C and D started a business in partnership for importing salt from foreign ports and selling it at Chittagong. A struck certain transactions in salt on his own account, which were found to be of the same nature as the business carried on by the partnership. It was held that A was liable to account to the firm for profits of the business so made by him. This rule is also subject to a contract between the partners.

10. Duty to use firm property exclusively for firm (Section 15):

It is the duty of every partner to use the partnership property exclusively for the business of the firm. Thus, the partners should use the partnership property for the firm's business only. This duty is also subject to an agreement to the contrary.

11. Duty to act within authority:

It is the duty of every partner that he should act within the scope of actual or implied authority.

DETERMINATION OF RIGHTS AND DUTIES OF PARTNERS BY CONTRACT BETWEEN THE PARTNERS [SECTION 11]

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.

RIGHTS AND DUTIES OF PARTNERS AFTER A CHANGE IN THE FIRM (SECTION 17)

According to section 17, subject to contract between the partners-

a) After a change in the firm: Where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be;

b) After the expiry of the term of the firm: Where a firm constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the partners remain the same as they were before the expiry, so far as they may be consistent with the rules of partnership at will; and

c) Where additional businesses are carried out: where a firm constituted to carry out one

or more business, carries out other additional business, the rights & duties are the same as those in respect of the original business.

PROPERTY OF THE FIRM [Section 14]:

The expression 'property of the firm', also referred to as 'partnership property', 'partnership assets', 'joint stock', 'common stock' or 'joint estate', denotes all property, rights and interests to which the firm, that is, all partners collectively, may be entitled. The property which is deemed as belonging to the firm, in the absence of any agreement between the partners showing contrary intention, is comprised of the following items:

(i) All property, rights and interests which partners may have brought into the firm as their contribution to the common business;

(ii) All the property, rights and interest purchased by or for the firm, or for the purposes and in the course of the business of the firm;

(iii) All the property, rights and interest acquired by the firm in other way and

(iv) Goodwill of the business:

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.

When a partnership firm is dissolved every partner has a right, in the absence of any agreement, to have the goodwill of business sold for the benefit of all the partners.

Goodwill is a part of the property of the firm. It can be sold separately or along with the other properties of the firm.

THE AUTHORITY OF A PARTNER:

- Partner to be agent of the firm (Section 18):

  "Subject to the provisions of this Act, a partner is the agent of the firm for the purposes of the business of the firm."

- Authority :Authority means the right of a partner to bind the firm by his own acts.The authority of a partner to act on behalf of the firm can be divided into two categories:

Authority (Section 19 & 22)

Express authority

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The authority which is expressly given to a partner by the agreement of partnership is called "Express authority". The firm is bound by all acts done by a partner by virtue of any express authority given to him.

Implied authority

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Authority arising by implication of law

The act of a partner binds the firm which is done

(i) To carry on in the usual way,

(ii) The act must relate to a matter which is within the scope of the business of the firm,

(iii) And the act is in the name of the firm,

(iv) Or in any manner expressing or implying an intention to bind the firm, and

(v) Done by him in his capacity as partner.

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If the partnership be of a general commercial nature, following acts are within implied authority:

(i) Buy or sell or pledge goods on account of the partnership

(ii) Incur normal expenses.

(iii) Borrow money and pay debts on account of the partnership

(iv) Drawing, making, signing, endorsing, accepting, transferring, discounting any negotiable instruments.

Examples:

(1) A, a partner of a firm of textile goods, purchases cloth on credit, in the firm's name. The firm is bound to pay for the cloth.

(2) A, a partner of a firm of textile goods, purchases a race-horse on credit in the firm's name. The firm is not bound to pay for the horse.

❖ Limitations of Partner's Implied Authority :

In the absence of any usage or custom of trade to the contrary, the implied authority

of a partner does not empower him to

(a) Submit a dispute relating to the business of the firm to arbitration,
(b) Open a banking account on behalf of the firm in his own name,
(c) Compromise or relinquish any claim or portion of a claim by the firm,
(d) Withdraw a suit or proceeding filed on behalf of the firm,
(e) Admit any liability in a suit or proceeding against the firm,
(f) Acquire immovable property on behalf of the firm.
(g) Transfer immovable property belonging to the firm, or
(h) Enter into partnership on behalf the firm.

❖ Alteration of Authority (Section 20):

The partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner.

The implied authority of a partner may be extended or restricted by contract between the partners. Under the following conditions, the restrictions imposed on the implied authority of a partner by agreement shall be effective against a third party:

1. The third party knows about the restrictions, and
2. The third party does not know that he is dealing with a partner in a firm.

Example: A, a partner, borrows from B ₹ 1,000 in the name of the firm but in excess of his authority, and utilizes the same in paying off the debts of the firm. Here, the fact that the firm has contracted debts suggests that it is a trading firm, and as such it is within the implied authority of A to borrow money for the business of the firm. This implied authority, as you have noticed, may be restricted by an agreement between him and other partners. Now if B, the lender, is unaware of this restriction imposed on A, the firm will be liable to repay the money to B. On the contrary, B's awareness as to this restriction will absolve the firm of its liability to repay the amount to B.

❖ Authority in an emergency (Section 21):

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.

❖ Admission/Representation by a partner (Section 23):

An admission or representation made by a partner relating to affairs of the firm will make the whole firm liable, if it is made in the ordinary of course of business.

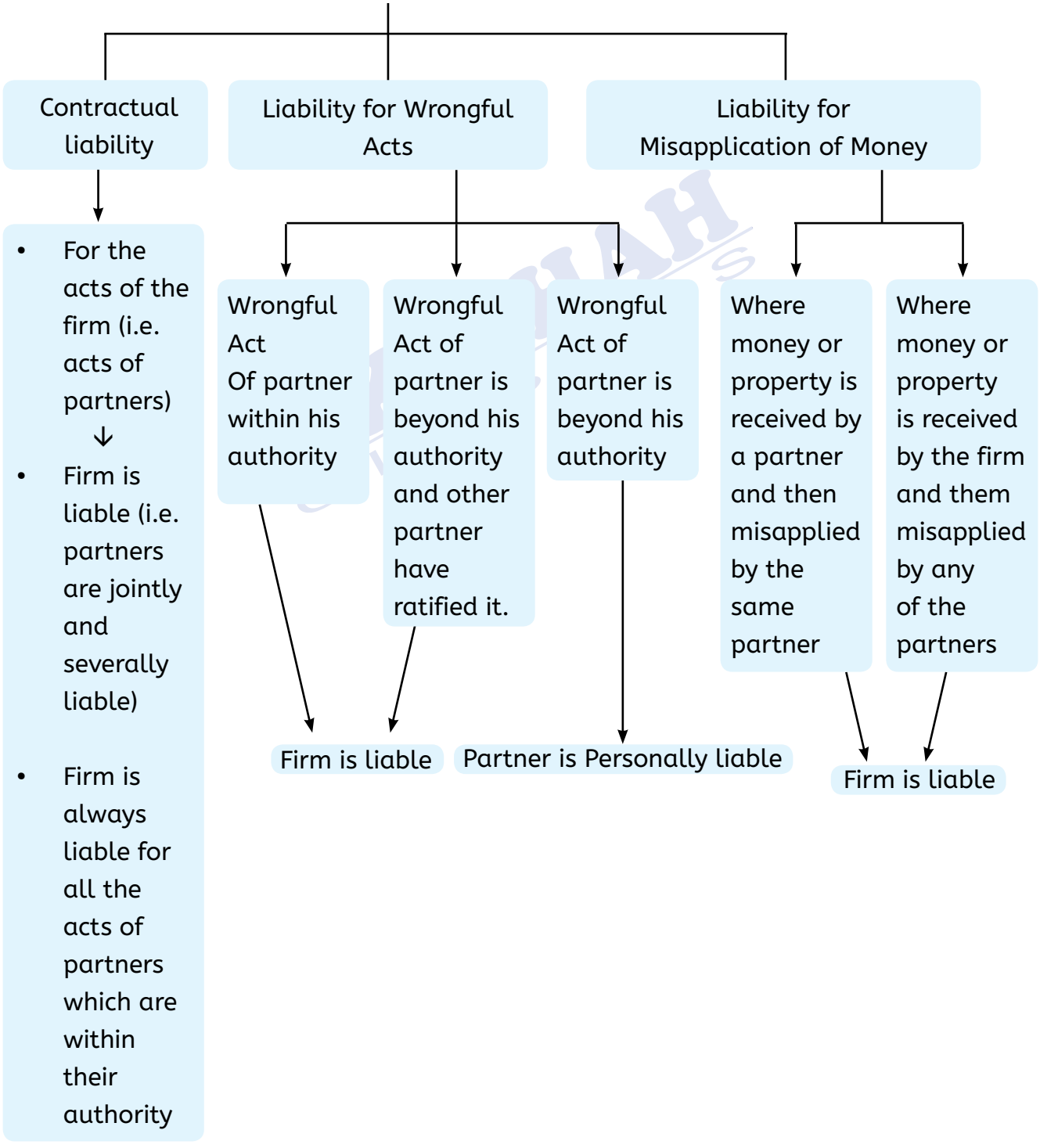
Example: X and Y are partners in a firm dealing in spare parts of different brands of motorcycle bikes. Z purchases a spare part for his Yamaha motorcycle after being told by X that the spare part is suitable for his motorcycle. Y is ignorant about this transaction. The spare part proves to be unsuitable for the motorcycle and it is damaged. X and Y both are responsible to Z for his loss.

❖ Notice to the Acting Partner (Section 24):

The notice to a partner, who habitually acts in business of the firm, on matters relating to the affairs of the firm, operates as a notice to the firm except in the case of a fraud on the firm committed by or with the consent of that partner. Thus, the notice to one is equivalent to the notice to the rest of the partners of the firm. It must be received by a working partner and not by a sleeping partner. It must further relate to the firm's business. Only then it would constitute a notice to the firm.

❖ LIABILITY OF A FIRM AND ITS PARTNERS TO A THIRD PARTY (Section 25 to 27)

This liability may be discussed under the following heads:



1. Liability of a partner for acts of the firm- Contractual liability (Section 25): The partners are jointly and severally responsible to third parties for all acts which come under the scope of their express or implied authority. This is because that all the acts done within the scope of authority are the acts done towards the business of the firm.
   The expression 'act of firm' indicates any act or omission by all the partners or by any partner of the firm, which gives rise to a right enforceable by or against the firm.

2. Liability of the firm for wrongful acts of a partner (Section 26): The firm is liable to the same extent as the partner for any loss or injury caused to a third party by the wrongful acts of a partner, if they are done by the partner while acting.
   (a) in the ordinary course of the business of the firm
   (b) with the authority of the partners.
   All the partners in a firm are liable to a third party for loss or injury caused to him by the negligent act of a partner acting in the ordinary course of the business.

3. Liability of firm for misapplication by partners (Section 27): Analysis of section 27:
   a) A partner acting within his apparent authority receives money or property from a third party and misapplies it, the firm is liable to make good the loss, 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.

TRANSFER OF PARTNER'S INTEREST (Section 29):

A share in a partnership is transferable like any other property, but as the partnership relationship is based on mutual confidence, the transferee of a partner's interest by sale, or otherwise cannot enjoy the same rights and privileges as the original partner.

The rights of such a transferee are as follows:

1) During the continuance of partnership, such transferee is NOT entitled
   a) to interfere with the conduct of the business,
   b) to require accounts, or
   c) to inspect books of the firm.
   He is only entitled to receive the share of the profits of the transferring partner and he is bound to accept the profits as agreed to by the partners, i.e., he cannot challenge the accounts.
2) On the dissolution of the firm or on the retirement of the transferring partner, the transferee will be entitled, against the remaining partners:
   a) to receive the share of the assets of the firm to which the transferring partner was

entitled, and

b) for the purpose of ascertaining the share, he is entitled to an account as from the date of the dissolution.

MINOR'S POSITION IN PARTNERSHIP FIRM (Section 30)

- A minor cannot become a partner in a firm because partnership is founded on a contract and contract with a minor is void-ab-initio. Though a minor cannot be a partner in a firm, he can be admitted to the benefits of partnership with the consent of all the partners.

- Note: We have put the rights and liabilities of minor in a chart for convenience of students. However, students are requested to write all the points in a paragraph/point form in exam.

❖ The rights and liabilities of such a partner are as follows:

Rights:

i. A minor partner has a right to his agreed share of the profits and property of the firm.
ii. He can have access to, inspect and copy the accounts of the firm.
iii. He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.
iv. Right to become a partner within 6 months from the date of attaining majority or when he comes to know whichever is later.

Where he has elected not to become partner he may give public notice that he has elected not to become partner and such notice shall determine his position as regards the firm. If he fails to give such notice he shall become a partner in the firm on the expiry of the said six months.

Before attaining majority

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i. Minor has no personal liability for the debts of the firm incurred during his minority.
ii. The liability of the minor is confined only to the extent of his share in the profits and the property of the firm.
iii. Minor cannot be declared insolvent, but if the firm is declared insolvent his share in the firm vests in the Official Receiver/ Assignee.

After attaining majority

When he elects to become a partner

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i. He becomes personally liable to third parties for all acts of the firm since he was admitted to the benefits.
ii. His share in the property and profits remains the same as decided.

When he elects not to become a partner

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i. His rights and liabilities continue to be those of a minor up to the date of giving public notice.
ii. His share shall not be liable for any acts of the firm done after the date of the notice.
iii. He shall be entitled to sue the partners for his share of the property and profits.

CONSEQUENCES OF PARTNER COMING IN AND GOING OUT- RECONSTITUTION OF A FIRM (SECTION 31- 38)

The reconstitution of a firm means a change in the constitution i.e., composition of the firm and it takes place in the following cases:

(1) Admission of a new partner (Section 31)
(2) Retirement of a partner (Section 32)
(3) Expulsion of a partner (Section 33)
Rights of Outgoing Partner (Section 36 &37)
(4) Insolvency of a partner. (Section 34)
(5) Death of a partner (Section 35)
(6) Revocation of continuing guarantee (Section 38)

(1) Admission of a Partner (Section 31)

- A newly admitted partner is known as 'incoming partner'.
- A new partner can be admitted into an existing firm in any of the following ways :
  (a) With the consent of all the partners.
  (b) In accordance with a contract already entered into between the partners for the admission of a new partner.
- The liability of an incoming partner may be discussed as under :
  1. Liability for the acts of the firm done before admission:
     An incoming partner is not liable for the acts of the firm done before his admission into the firm. Thus, he is not liable for the past debts of the firm.
  2. Liability for the acts of the firm done after admission:
     As a matter of fact, the liability of an incoming partner starts from the date of his admission into the firm. Thus, he is liable for all the acts of the firm done after he became a partner in the firm.
  3. If the incoming partner agrees to bear the past liabilities, then for past liabilities he shall not be liable to third parties as he is a stranger to contract but he shall be liable to other partners.

(2) Retirement of a Partner (Section 32)

- A partner may also retire from an existing firm. The partner who retires from an existing firm is known as a 'retiring partner' or an 'outgoing partner'.
- A partner may retire from the firm in anyone of the following three modes :
  (a) By consent. A partner may retire, at any time with the consent of all other partners.
  (b) By agreement. The partners may enter into an express agreement about the retirement of a partner. In such cases, a partner may retire according to the terms of the agreement.
  (c) By notice. In case of partnership at will, a partner may retire by given a

written notice of retirement to all other partners.

- Retirement of a partner from a firm does not dissolve it unless the firm has only 2 partners.
- The liability of a retiring partner may be discuss as under :

1. Liability for the acts of the firm done before retirement:

   A retiring partner continues to be liable to third parties for the acts of the firm done before his retirement unless there is an agreement made by him with the third party concerned and the partners of the reconstituted firm. Such an agreement may be implied by a course of dealings between the third party and the reconstituted firm after he had knowledge of the retirement.

2. Liability for the acts of the firm done after retirement:

   A retiring partner also continues to be liable to third parties for the acts of the firm done even after his retirement until a public notice of his retirement is given This liability of a retiring partner is based on the principle of 'holding out'.

(3) Expulsion of a Partner (Section 33)

- A partner cannot be ordinarily expelled from the firm.
- However, in certain exceptional cases, he can be expelled by following a prescribed procedure.

He can be expelled only if the following conditions are satisfied:

(a) The power of expulsion should be given to the partners by an express contract between them.
(b) The power of expulsion should be exercised by majority of partners.
(c) The power of expulsion should be exercised in absolute good faith.

The test of good faith includes three things:

(1) That the expulsion must be in the interest of the partnership
(2) That the partner to be expelled is given a notice to that effect
(3) That he was given an opportunity of being heard.

- It these conditions are not fulfilled the expulsion is null and void and the expelled partner can demand re-instatement in the firm

- Example:

A, B and C are partners in a partnership firm. They were carrying their business successfully for the past several years. Spouses of A and B fought in ladies club on their personal issue and A's wife was hurt badly. A got angry on the incident and he convinced C to expel B from their partnership firm. B was expelled from partnership without any notice from A and C. According to the test of good faith as required expulsion of Partner B is not valid.

- ❖ An expelled partner continues to be liable to third parties for the acts of the firm done even after his expulsion until a public notice of his expulsion is given.
- ❖ The public notice can be given either by the expelled partner himself or by the firm.

RIGHTS OF AN OUTGOING PARTNER (Section 36 & 37):

The rights of an outgoing partner are as follows:

1) To carry on competing business (section 36):

An outgoing partner may carry on a business, but it can be restricted by an agreement (below mentioned).

However he cannot:

(a) Use the firm name.

(b) Represent himself as carrying on the business of the firm, or

(c) Solicit the customers of the old firm.

Restraint of trade agreement:

A partner may make an agreement with his partners that on ceasing to be a partner he will not carry on any business similar to that of the firm within a specified period or within specified local limits, such agreement shall be valid if the restrictions imposed are reasonable (Section 27 of the Indian Contract Act, 1872).

2) To share subsequent profits (Section 37):

If settlement of accounts is not yet done, then,

Right of outgoing partner to share subsequent profits OR Right to claim interest@ 6%p.a

(4) Insolvency of a Partner (Section 34)

- ❖ The partner declared an insolvent; he ceases to be a partner on the date on which the order of adjudication is made.
- ❖ The firm is dissolved on the date of the order of insolvency unless the contract specifies that firm will continue.
- ❖ The estate of the insolvent is not liable for any act of the firm after the date of the order of insolvency.
- ❖ The firm cannot be held liable for any acts of the insolvent partner after the date of the order of insolvency.

(5) Death of a Partner (Section 35)

- ❖ The firm is automatically dissolved on the death of a partner. However, the partners may specifically provide in their agreement that the firm shall not be dissolved,

and the remaining partners shall continue the firm's business.

- ❖ Where the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any acts of the firm which are done after his death

(6) Revocation of continuing guarantee:

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

UNIT 3 : DISSOLUTION OF FIRM (SECTION 39 TO 55)

DISSOLUTION OF PARTNERSHIP

The term 'dissolution of partnership' may be defined as a change in the relations of partners, and not the extinction of relationship. In this case, the firm as a whole is not closed down. But only the relations between some of the partners come to an end, and the remaining partners continue to carry on the business of the firm. Thus, the 'dissolution of firm' is different from 'dissolution of partnership.'

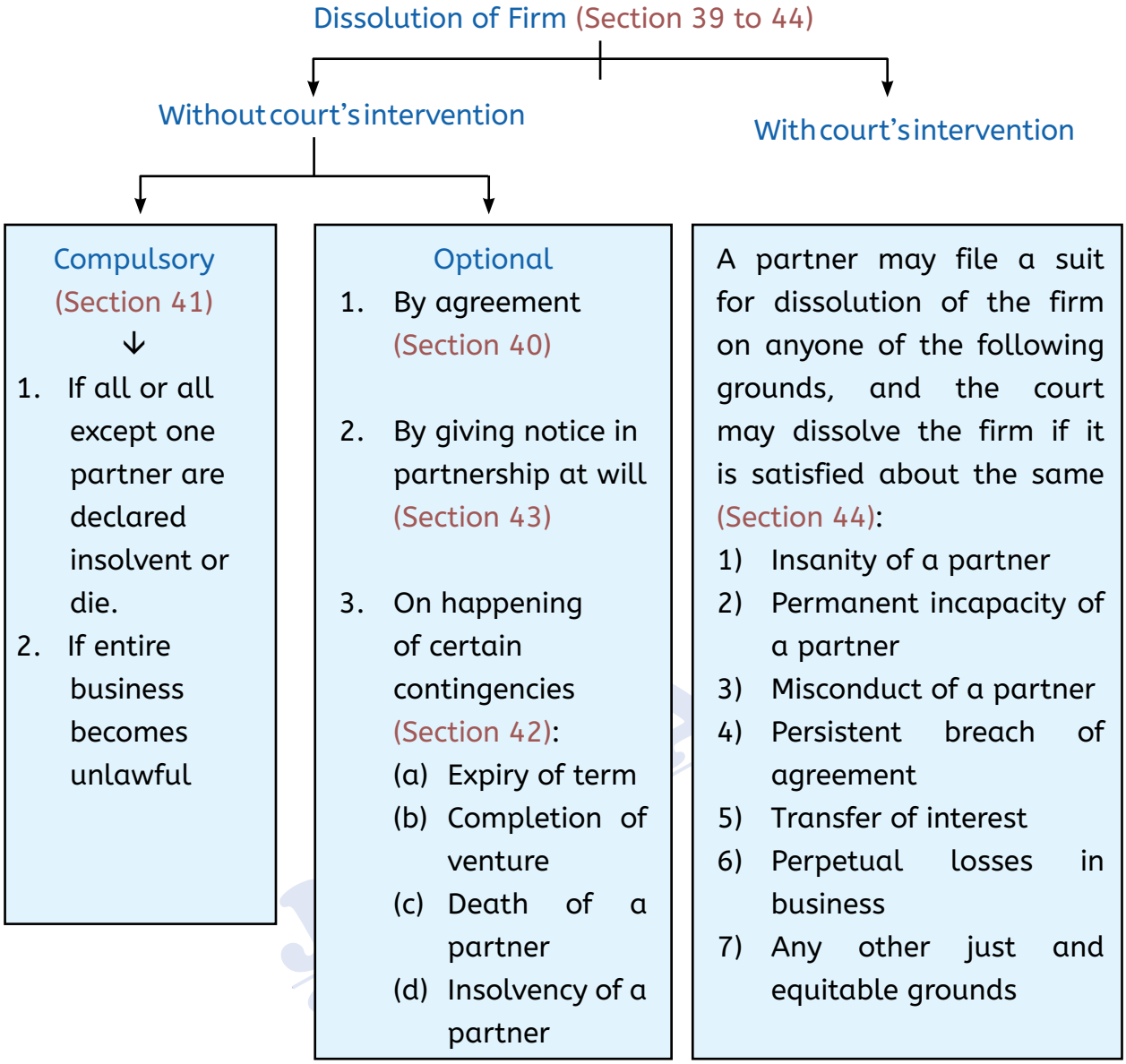
Example :

A, B and C were partners in a firm. A retires. Only the partnership between A, B and C is dissolved and a new partnership between B and C comes into existence. The new firm is called the 'reconstituted firm'. Thus, only the relations between the partners are changed on A's retirement.

DISSOLUTION OF FIRM (Section 39)

When the firm as a whole is closed down, it is called the dissolution of the firm. Thus, in case of dissolution of the firm, the business of the firm is stopped and the relations between all the partners come to an end.

S. No.	Basis of difference	Dissolution of firm	Dissolution of Partnership
1.	Continuation of business	It Involves discontinuation of business in partnership.	It dose not affect continuation of business. It involves only reconstitution of the firm.
2.	Winding Up	It involves winding up of the firm and requires realization of assets and settlement of liabilities.	It involves only reconstitution and requires only revaluation of assets and liability of the firm.
3.	Order to court	A firm may be dissolve by the order of the court.	Dissolution of partnership is not ordered by the court.
4.	Scope	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
5.	Final closure of books	It involves final closure of books of the firm.	It does not involve final closure of the book.



(A) DISSOLUTION WITHOUT THE INTERVENTION OF COURT

A firm may be dissolved without the intervention of the court i.e., without going to the Court of Law. The dissolution without the intervention of the court may take place in any of the following ways:

1. Compulsory dissolution (Section 41):

In the following cases, the firm is compulsorily dissolved even if there is a contrary contract between the partners i.e., even if the partners agree that the firm shall not be dissolved in such cases.

(a) Insolvency/death of all the partners:

Where all the partners of the firm become insolvent/death, the firm is dissolved. The firm is also dissolved when all the partners except one have become insolvent/died. The reason for the same is that when a partner is declared as insolvent by the court, he ceases to be a partner from the date of the order of insolvency.

(b) Business of the firm becoming unlawful:

Where an event happens which makes the business of the firm unlawful, the firm is also dissolved. This includes the cases where the business of the firm is rendered unlawful by the outbreak of war, or where the object for which the firm was formed becomes unlawful or illegal, or where the business remains lawful but it is forbidden to be carried on in partnership.

2. Optional dissolution:

(a) Dissolution by agreement between the partners (Section 40):

A firm may also be dissolved in accordance with a contract between the partners in the same way as a firm is formed with the contract between the partners. There may be a separate contract for the dissolution of the firm, or it may also be contained in the partnership deed itself.

(b) Dissolution by notice (Section 43):

A firm can also be dissolved by any partner by giving a notice of dissolution to the other partners where the partnership firm is 'at will '.

(c) Dissolution on the happening of certain contingencies (Section 42):

On the happening of anyone of the following contingencies (i.e., events), the firm is automatically dissolved.

(i) Expiry of fixed term:

Where the firm is constituted for a fixed term, the firm is dissolved on the expiry of that term. This is, however, subject to a contract to the contrary i.e., if the contract provides that the firm shall not be dissolved, then it will not be dissolved.

(ii) Completion of the adventure or undertaking:

Where the firm is constituted to carry out one or more adventure or undertaking, the firm is dissolved on the completion of such adventure or undertaking. This is also subject to a contract to the contrary.

(i) Death of a partner:

Sometimes, one of the partners of a firm dies during the continuance of the firm. In such cases, the firm is dissolved on the death of the partner. This is subject to a contract to the contrary.

(iv) Insolvency of a partner:

Sometimes, one of the partners of a firm is declared as insolvent by the court. In such cases the firm is dissolved from the date of the order of insolvency. This is also subject to a contract to the contrary.

(B) DISSOLUTION WITH THE INTERVENTION OF COURT (Section 44)

Sometimes, a partner wants that the firm should be dissolved. But the other partners may not agree to the dissolution. In such cases, he can go to Court 'of Law, and file a suit for dissolution of the firm. A partner may like to have the firm dissolved for various reasons. It may, however, be noted that the court has the discretion to pass an order of dissolution i.e., the court may or may not allow the dissolution of the firm. A partner may file a suit for dissolution of the firm on anyone of the following grounds, and the court may dissolve the firm if it is satisfied about the same:

1. Insanity of a partner:

   Sometimes, a partner becomes insane i.e., of unsound mind. In such cases, the court may allow the dissolution of the firm. The suit for dissolution of the firm may be filed by anyone of the partners other than the partner who has become insane. The suit may also be filed by the next friend (i.e., legal representative) of the insane partner.

2. Permanent incapacity of a partner:

   Sometimes, a partner becomes permanently incapable of performing his duties. In such cases also, the court may allow the dissolution of the firm. The suit for dissolution of the firm may be filed by anyone of the partners other than the partner who has become incapable.

3. Misconduct of a partner:

   Where a partner is guilty of misconduct, the court may allow the dissolution of the firm. The suit for dissolution of the firm may be filed by anyone of the partners other than the partner who is guilty of misconduct.

4. Persistent breach of agreement:

   Sometimes, a partner willfully or persistently (i.e., frequently) commits a breach of agreements relating to the management of the affairs of the firm, or conducts the partnership business in such a way that the other partners find it difficult to carry on the partnership business with him. In such cases, the court may allow the dissolution of the firm. The suit for dissolution of the firm may be filed by anyone of the partners other than the partner who commits the breach of agreements. Keeping erroneous accounts and not entering receipts, continuing quarrelling between the partners, refusal to meet on matters of business, taking away books of the firm, and misappropriations of income etc., are held to be sufficient ground for dissolution of a firm.

5. Transfer of interest:

   Where a partner transfers the whole of his interest or share to a third party, the court may allow the dissolution of the firm. The court may also allow the dissolution when the entire share of a partner is attached or sold by an order of the court. The suit for dissolution of the firm may be filed by anyone of the partners other than the partner who has transferred his interest or share.

6. Perpetual losses in business:

Where the business of a firm cannot be carried on, except at a loss, the court may allow the dissolution of the firm. The suit for dissolution of the firm may be filed by anyone of the partner. When the court is satisfied that the business of a firm cannot be carried on, except at a loss, it may pass an order of dissolution of the firm.

7. Other just and equitable grounds:

A firm may also be dissolved by the court on any 'other just and equitable ground. A 'just and equitable ground', is a ground which is fair and reasonable according to the opinion of the court.

(i) Deadlock in the management.
(ii) Where the partners are not in talking terms between them.
(iii) Loss of substratum.
(iv) Gambling by a partner on a stock exchange.

CONSEQUENCES OF DISSOLUTION (Section 45 to 55)

1. Liabilities for the acts done after dissolution (Section 45):

On the dissolution of a firm, partners have to give a public notice of the dissolution. If it is not given, the partners shall remain liable to the third party for their acts done even after the dissolution of the firm

Example: X and Y who carried on business in partnership for several years, executed on December 1, a deed dissolving the partnership from the date, but failed to give a public notice of the dissolution. On December 20, X borrowed in the firm's name a certain sum of money from R, who was ignorant of the dissolution. In such a case, Y also would be liable for the amount because no public notice was given.

2. Continuing Authority for Winding Up (Section 47):

On the dissolution of a firm, the authority of each partner to bind the firm continues for the following purpose:

(a) If it is necessary to wind up the affairs of the firm, and
(b) If it is necessary to complete the transactions started but not completed at the time of dissolution.

3. Partner's Right for Utilization of Assets (Section 46)

On the dissolution of the firm, each partner is entitled to the following rights:

(a) He is entitled to have the property of the firm utilized in payment of its debts and liabilities.
(b) He is entitled to have the surplus distributed among all the partners according to their rights.

The surplus here means the surplus amount left after the payment of all the debts and liabilities of the firm.

4. Mode of Settlement of Accounts (Section 48):

After the dissolution of a firm, the accounts of the firm are settled according to the terms of partnership. If there is no specific agreement, then the accounts are settled according to the following fundamental rules contained in the Indian Partnership Act.

A. Payment of losses:

The losses of the firm, including the deficiencies of capitals shall be paid in the following manner and order:

(a) First of all, the losses shall be paid out of the profits.

(b) If the profits, are not sufficient to pay the losses, then the balance of loss shall be paid out of capital, and

(c) If still some balance of losses remains, it shall be paid by the partners individually in the proportion in which they were entitled to share profits.

B. Utilization of assets:

The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be utilized in the following manner and order:

(a) First of all, the assets shall be utilized in paying the debts of the firm to the third parties.

(b) If there is any surplus, the same shall be utilized in paying each partner the amount of loan advanced to the firm other than the capital. This is done in proportion to the advances made by the partners.

(c) If there is still any surplus, the same shall be utilized in paying each partner towards the amount of his capital. This is done in proportion to the amount of capital contributed by the partners.

(d) If there is still any surplus, the same shall be divided among all the partners in proportion to their share in the profits of firm.

5. Payment of firm's debts and Partner's Private Debts (Section 49):

1) Firm's property shall be applied first in payment of firm's debts then the surplus, if any, shall be applied for payment of partner's private debts to the extent in which the concerned partner is entitled to the surplus.

2) Partner's private property shall be applied first in the payment of his debts and the surplus, if any, shall be used in payment of firm's debts.

ICAI Module has not covered Section 50 to 55

SUMMARY

UNIT 1: NATURE OF PARTNERSHIP

INTRODUCTION

- ❖ It came into force on 1st October, 1932.
- ❖ Prior to the passing of the Act, the law of partnership was included in Chapter XI of the Indian Contract Act.
- ❖ Where the Partnership Act is silent on any point, the general principles of the law of contract apply. The partnership is a specialized branch of the Contract Act.

PARTNERSHIP (Section 4)

PARTNER& FIRM

ESSENTIAL ELEMENTS OF PARTNERSHIP

1. It is an association of two or more persons
2. There must be an agreement
3. There must be business.
4. Sharing of Profits
5. Business carried on by all or any of them acting for all

TRUE TEST OF PARTNERSHIP (Section 5 & 6)

DISTINCTION BETWEEN

1. Partnership and HUF
2. Partnership and Co-ownership
3. Partnership and Company
4. Partnership and Club/ Association

TYPES OF PARTNERSHIP

1. Partnership at will (Section 7)
2. Partnership for a fixed period
3. Particular Partnership
4. General Partnership

TYPES OF PARTNERS

1. Active/Actual Partner
2. Sleeping or Dormant Partner
3. Nominal Partner
4. Partner for profits only

5. Sub-Partner
6. Partner by Holding Out or by Estoppel (Section 28)
7. Incoming Partner
8. Outgoing Partner

- PARTNERSHIP DEED
- REGISTRATION OF FIRM (Section 58, 59, 59A-1, 69)

UNIT 2: Relation of Partners

- RIGHTS OF PARTNERS
- DUTIES OF PARTNERS

(Section 10,12,13,16)

- DETERMINATION OF RIGHTS AND DUTIES OF PARTNERS BY CONTRACT BETWEEN THE PARTNERS (Section 11)
- RIGHTS AND DUTIES OF PARTNERS AFTER A CHANGE IN THE FIRM (Section 17)
- PROPERTY OF THE FIRM (Section 14 & 15)
- AUTHORITY OF A PARTNER (Section 18 to 24)
- LIABILITY OF A FIRM AND ITS PARTNERS TO A THIRD PARTY (Section 25 to 27)
- TRANSFER OF A PARTNER'S INTEREST (Section 29)
- MINOR'S POSITION IN PARTNERSHIP FIRM (Section 30)
- RECONSTITUTION OF A FIRM

(1) Admission of a new partner (Section 31)
(2) Retirement of a partner (Section 32)
(3) Expulsion of a partner (Section 33)
Rights of Outgoing Partner (Section 36 &37)
(4) Insolvency of a partner. (Section 34)
(5) Death of a partner (Section 35)
(6) Revocation of continuing guarantee (Section 38)

UNIT 3: DISSOLUTION OF FIRM

DISSOLUTION OF PARTNERSHIP

DISSOLUTION OF FIRM (Section 39 to 44)

CONSEQUENCES OF DISSOLUTION (Section 45 to 55)

ICAI Module has not covered Section 50 to 55

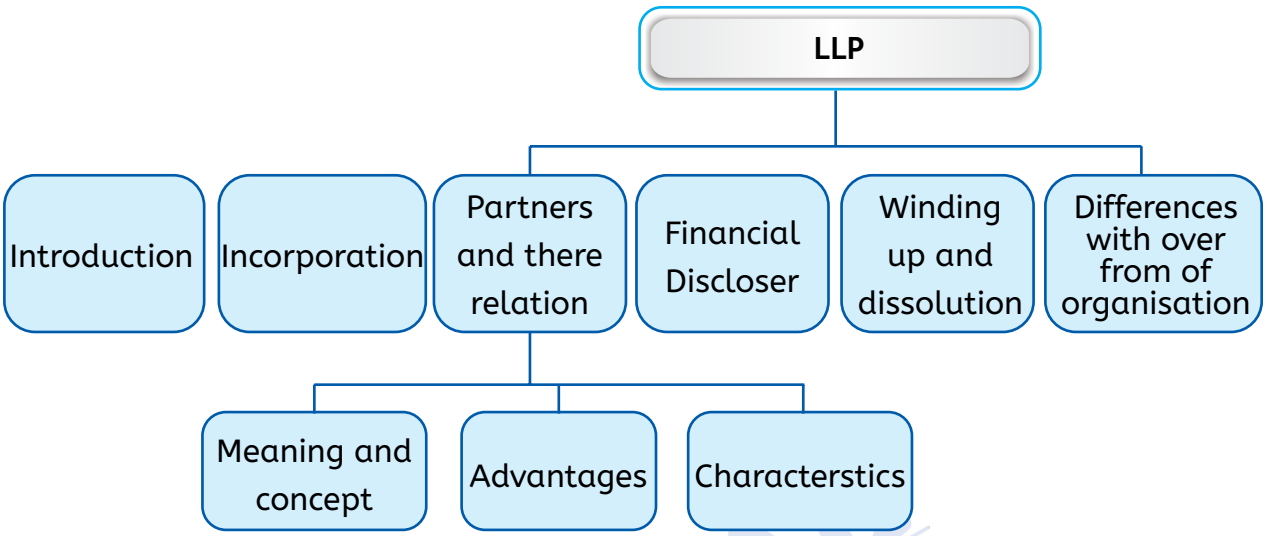
LIST OF CASE LAWS

SR. NO.	NAME OF CASE LAW	PAGE NO. (This column is to be filled by students)
1.	*KD Kamath & Co.*	
2.	*Santiranjan Das Gupta Vs. Dasyran Murzamull (Supreme Court)*	

LIST OF LEGAL TERMS

SR. NO.	LEGAL WORD	MEANING	PAGE NUMBER (This column is to be filled by students)
1.	Cardinal Principle	Very important principle	
2.	Render	Give	
3.	To indemnify	To Compensate	
4.	Exclusively	Only	
5.	Admission/ Representation by a partner	Statement made by a partner	
6.	Bind the firm	Make the firm liable	
7.	Interest of the partnership	Advantageous to the firm	
8.	Opportunity of being heard	Opportunity to speak	
9.	Re-instatement in the firm	Taking back in the firm	
10.	Solicit the customers	directly asking potential customers to purchase goods or services, rather than using advertisements	

4. THE LIMITED LIABILITY PARTNERSHIP ACT, 2008



INTRODUCTION :

- The Parliament passed the Limited Liability Partnership Bill on 12th December, 2008 and the President of India has assented the Bill on 7th January, 2009 and called as the Limited Liability Partnership Act, 2008, and many of its sections got enforced from 31st March 2009.
- This Act have been enacted to make provisions for the formation and regulation of Limited Liability Partnerships and for matters connected there with or incidental thereto.
- The LLP Act, 2008 has 81 sections and 4 schedules.
- The First Schedule deals with mutual rights and duties of partners, as well limited liability partnership and its partners where there is absence of formal agreement with respect to them.
- The Second Schedule deals with conversion of a firm into LLP.
- The Third Schedule deals with conversion of a private company into LLP.
- The Fourth Schedule deals with conversion of unlisted public company into LLP.
- The Ministry of Corporate Affairs (MCA) and the Registrar of Companies (ROC) are entrusted with the task of administrating the LLP Act, 2008. The Central Government has the authority to frame the Rules with regard to the LLP Act, 2008, and can amend them by notifications in the Official Gazette, from time to time.
- Need of new form of Limited Liability Partnership:

  A need has been felt for a new corporate form that would provide an alternative to the traditional partnership with unlimited personal liability on the one hand and the

statute-based governance structure of the limited liability company on the other hand, in order to enable professional expertise and entrepreneurial initiative to combine, organize and operate in flexible, innovative and efficient manner.

It provides the benefits of limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements.

LLP- MEANING & CONCEPT

- A LLP is a new form of legal business entity with limited liability.
- The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited.
- Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure' LLP is called a hybrid between a company and a partnership.

IMPORTANT DEFINITIONS

1. Body Corporate [(Section 2(d)]: It means a company as defined in section 3 of the Companies Act, 1956 (now Companies Act, 2013) and includes–
   a) a LLP registered under this Act;
   b) a LLP incorporated outside India;
   c) a company incorporated outside India,

   but does not include–
   a) a corporation sole;
   b) a co-operative society registered under any law for the time being in force; and
   c) any other body corporate (not being a company as defined in section 3 of the Companies Act, 1956 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.

2. Business [Section 2(e)]: "Business" includes every trade, profession, service and occupation.

3. Designated Partner [Section 2(j)]: "Designated partner" means any partner designated as such pursuant to section 7.

4. Entity [Section 2(k)]: ''Entity" means any body corporate and includes, for the purposes of sections 18, 46, 47, 48, 49, 50, 52 and 53, a firm setup under the Indian Partnership Act, 1932.

5. Financial Year [Section 2(l)]: "Financial year", in relation to a LLP, means the period from the 1st day of April of a year to the 31st day of March of the following year. However, in the case of a LLP incorporated after the 30th day of September of a year, the financial year may end on the 31st day of March of the year next following that year.
   Example: If LLP is incorporated on 20th October, 2010 the first Financial Year will be 20th October,2010 to 31st March,2011

6. Foreign LLP [section 2(m)]: It means a LLP formed, incorporated or registered outside India which establishes a place of business within India.

7. Limited liability partnership [Section 2(n)]: Limited Liability Partnership means a partnership formed and registered under this Act.

8. Limited Liability partnership agreement [Section 2(o)]: It means any written agreement between the partners of the LLP or between the LLP and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that LLP

9. Partner [Section 2(q)]: Partner, in relation to a LLP, means any person who becomes a partner in the LLP in accordance with the LLP agreement.

NON-APPLICABILITY OF THE INDIAN PARTNERSHIP ACT, 1932 (SECTION 4):

NON-APPLICABILITY OF THE INDIAN PARTNERSHIP ACT, 1932 (SECTION 4):
Unless otherwise provided, the provisions of the Indian Partnership Act, 1932 shall not apply to a LLP.

PARTNERS (SECTION 5):

Any individual or body corporate may be a partner in a LLP. However, an individual shall not be capable of becoming a partner of a LLP, if–

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

MINIMUM NUMBER OF PARTNERS (SECTION 6):

1. Every LLP shall have at least two partners.
2. If at any time the number of partners of a LLP is reduced below 2 and the LLP carries

on business for more than 6 months while the number is so reduced, the person, who is the only partner of the LLP 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 LLP are individuals incurred during that period.

DESIGNATED PARTNERS (SECTION 7)

1. Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
2. If in LLP, partners can be natural individuals (i.e human beings) or body corporate. At least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.
3. Resident in India: For the purposes of this section, the term "resident in India" means a person who has stayed in India for a period of at least 182 days during the immediately preceding one year.

CHARACTERISTICS OF LLP

Following are the characteristics of a LLP:

1. LLP is a body corporate: Section 3 of LLP Act provides that a LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.

2. Perpetual Succession: The LLP can continue its existence irrespective of changes in partners. Death, insanity, retirement or insolvency of partners has no impact on the existence of LLP. It is capable of entering into contracts and holding property in its own name.

3. Separate Legal Entity: The LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP. In other words, creditors of LLP shall be the creditors of LLP alone.

4. No mutual Agency: Further, no partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct. In other words, all partners will be the agents of the LLP alone. No one partner can bind the other partner by his acts. Hence there is no mutual agency in LLP unlike a partnership firm.

5. LLP Agreement: Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners. The LLP Act, 2008 provides flexibility to partner

to devise the agreement as per their choice. In the absence of any such agreement, the mutual rights and duties shall be governed by the provisions of the LLP Act, 2008.

6. Artificial Legal Person: A LLP is an artificial legal person because it is created by a legal process and is clothed with all rights of an individual. It can do everything which any natural person can do, except of course that, it cannot be sent to jail, cannot take an oath, cannot marry or get divorce nor can it practice a learned profession like CA or Medicine. A LLP is invisible, intangible, immortal (it can be dissolved by law alone) but not fictitious because it really exists.

7. Common Seal: A LLP being an artificial person can act through its partners and designated partners. LLP may have a common seal, if it decides to have one [Section 14(c)]. Thus, it is not mandatory for a LLP to have a common seal. It shall remain under the custody of some responsible official and it shall be affixed in the presence of at least 2 designated partners of the LLP.

8. Limited Liability: Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section. 26). The liability of the partners will be limited to their agreed contribution in the LLP.

9. Management of Business: The partners in the LLP are entitled to manage the business of LLP. But only the designated partners are responsible for legal compliances.

10. Minimum and Maximum number of Partners: Every LLP shall have least two partners and shall also have at least 2 individuals as designated partners, of whom at least one shall be resident in India. There is no maximum limit on the partners in LLP.

11. Business for Profit Only: The essential requirement for forming LLP is carrying on a lawful business with a view to earn profit. Thus LLP cannot be formed for charitable or non-economic

12. Investigation: The Central Government shall have powers to investigate the affairs of an LLP by appointment of competence authority for the purpose.

13. Compromise or Arrangement: Any compromise or arrangement including merger and amalgamation of LLPs shall be in accordance with the provisions of the LLP Act, 2008.

14. Conversion into LLP: A firm, private company or an unlisted public company would be allowed to be converted into LLP in accordance with the provisions of LLP Act, 2008.

15. E-Filling of Documents: Every form or application of document required to be filed or

delivered under the act and rules made thereunder, shall be filed in computer readable electronic form on its website www.mca.gov.in and authenticated by a partner or designated partner of LLP by the use of electronic or digital signature.

16. Foreign LLPs: Section 2(1)(m) defines foreign limited liability partnership "as a limited liability partnership formed, incorporated, or registered outside India which established a place of business within India". Foreign LLP can become a partner in an Indian LLP.

INCORPORATION OF LLP

Name Reservation

- The first step to incorporate Limited Liability Partnership (LLP) is reservation of name of LLP.
- Application has to file e-Form 1, for ascertained availability and reservation of the name of a LLP business.

Incorporated LLP

- After reservation a name, user has to file e-Form 2 for incorporating a new Limited Liability Partnership (LLP).
- e-Form 2 contains the detail of LLP proposal to be incorporated, partner's / designated partner's details and consent of the partners / designated partners to act as partners / designated partners.

LLP Agreement

- Execution of LLP Agreement is mandatory as per Section 23 of the Act.
- LLP Agreement is required to be filled with the register in e-Form 3 within 30 days of incorporation of LLP.

Step 1: LLP Name

➢ Name (Section 15):

(i) Every limited liability partnership shall have either the words "limited liability partnership" or the acronym "LLP" as the last words of its name.

(i) LLP shall not 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 partnership firm or LLP or body corporate or a registered trade mark, or a trade mark which is the subject matter of an application for registration of any other person under the Trade Marks Act, 1999.

➢ Reservation of name (Section 16):

a) A person has to apply in such form and manner and accompanied by such fee as may be prescribed to the Registrar for the reservation of a name set out in the

application as the name of a proposed LLP; or

b) Upon receipt of an application and on payment of the prescribed fee, the Registrar may, if he is satisfied, reserve the name for a period of 3 months from the date of intimation by the Registrar.

Step 2: Incorporation Document (Section 11)

1) For a LLP 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 in such manner and with such fees, as may be prescribed with the Registrar of the State in which the registered office of the LLP is to be situated; and

c) Statement to be filed:

- ❖ Along with the incorporation document, a statement in the prescribed form shall also be filed,
- ❖ 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 LLP and
- ❖ by anyone who subscribed his name to the incorporation document,
- ❖ that all the requirements of this Act and the rules made there under have been complied with,
- ❖ in respect of incorporation and matters related to it.

2) The incorporation document shall–

a) be in a form as may be prescribed;

b) state the name of the LLP;

c) state the proposed business of the LLP;

d) state the address of the registered office of the LLP;

e) state the name and address of each of the persons who are to be partners of the LLP on incorporation;

f) state the name and address of the persons who are to be designated partners of the LLP on incorporation;

g) contain such other information concerning the proposed LLP as may be prescribed.

3) If a person makes a statement as discussed above which he knows to be false; or shall be punishable

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

Step 3: Incorporation Registration (Section 12)

1) When the requirements imposed by Section 11 have been complied with, the Registrar shall retain the incorporation document & accept the statement as mentioned above and, he shall, within a period of 14 days–
   a) register the incorporation document; and
   b) give a certificate that the LLP is incorporated by the name specified therein.
2) The certificate issued shall be signed by the Registrar and authenticated by his official seal.
3) The certificate shall be conclusive evidence that the LLP is incorporated by the name specified therein.

Step 4: Effect of registration (Section 14)

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.

Step 5: LLP Agreement (Section 23)

1. Unless otherwise provided by this Act, the mutual rights and duties of the partners of a LLP, and the mutual rights and duties of a LLP and its partners, shall be governed by the LLP agreement between the partners, or between the LLP and its partners.
2. The LLP agreement, made therein shall be filed with the Registrar in e-Form 3 within 30 days of incorporation of LLP and accompanied by such fees as may be prescribed.
3. In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the LLP and the partners shall be determined by the provisions relating to that matter as are set-out in the First Schedule.

REGISTERED OFFICE OF LLP AND CHANGE THEREIN (SECTION 13)

1) Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.
2) If any document is to be sent to LLP or a partner or designated partner thereof by post or by any other manner, at the registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed.
3) A LLP may change the place of its registered office and file the notice of such change

with the Registrar in such form and manner as may be prescribed and any such change shall take effect only upon such filing.

4) If the LLP contravenes any provisions of this section, the LLP and its every partner shall be punishable with fine which shall not be less than ₹2,000 but which may extend to ₹25,000.

CHANGE OF NAME OF LLP (SECTION 17)

1. Where the Central Government is satisfied that a LLP has been registered (whether through inadvertence or otherwise and whether originally or by a change of name) under a name which –
   a) is a name referred to section 15; or
   b) is identical with or too nearly resembles the name of any other LLP or body corporate or other name as to be likely to be mistaken for it,
   The Central Government may direct such LLP to change its name, and the LLP shall comply with the said direction within 3 months after the date of the direction or such longer period as the Central Government may allow.
2. Any LLP which fails to comply with a direction given shall be punishable with fine which shall not be less than ₹10,000 but which may extend to ₹5 Lakhs.
3. The designated partner of such LLP shall be punishable with fine which shall not be less than ₹10,000 but which may extend to ₹1 Lakh.

PARTNERS AND THEIR RELATIONS

Eligibility to be partners (Section 22):	On the incorporation of a LLP, the persons who subscribed their names to the incorporation document shall be its partners and any other person may become a partner of the LLP by and in accordance with the LLP agreement.
LLP Agreement (Section 23):	Already explained above in Step 5 of Incorporation Process
Cessation of partnership interest (Section 24):	1. A person may cease to be a partner of a LLP in accordance with an agreement with the other partners or, in the absence of agreement with the other partners as to cessation of being a partner, by giving a notice in writing of not less than 30 days to the other partners of his intention to resign as partner. 2. A person shall cease to be a partner of a LLP– a) on his death or dissolution of the LLP; or b) if he is declared to be of unsound mind by a competent court; or c) if he has applied to be adjudged as an insolvent or declared as an insolvent.

	3. Where a person has ceased to be a partner of a LLP (hereinafter referred to as "former partner"), the former partner is to be regarded (in relation to any person dealing with the LLP) as still being a partner of the LLP unless a) the person has notice that the former partner has ceased to be a partner of the LLP; or b) Notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar. 4. The cessation of a partner from the LLP does not by itself discharge the partner from any obligation to the LLP or to the other partners or to any other person which he incurred while being a partner. 5. Where a partner of a LLP ceases to be a partner, unless otherwise provided in the LLP agreement, the former partner or a person entitled to his share in consequence of the death or insolvency of the former partner, shall be entitled to receive from the LLP– a) an amount equal to the capital contribution of the former partner actually made to the LLP; and b) his right to share in the accumulated profits of the LLP, after the deduction of accumulated losses of the LLP, determined as at the date the former partner ceased to be a partner. 6. A former partner or a person entitled to his share in consequence of the death or insolvency of the former partner shall not have any right to interfere in the management of the LLP.
Registration of changes in partners (Section 25):	1. Every partner shall inform the LLP of any change in his name or address within a period of 15 days of such change. 2. A LLP shall– a) where a person becomes or ceases to be a partner, file a notice with the Registrar within 30 days from the date he becomes or ceases to be a partner; and b) where there is any change in the name or address of a partner, file a notice with the Registrar within 30 days of such change. 3. A notice filed with the Registrar– a) shall be in such form and accompanied by such fees as may be prescribed; b) shall be signed by the designated partner of the LLP and authenticated in a manner as may be prescribed; and

	c) if it relates to an incoming partner, shall contain a statement by such partner that he consents to becoming a partner, signed by him and authenticated in the manner as may be prescribed. 4. If the LLP contravenes the provisions, the LLP and every designated partner of the LLP shall be punishable with ne which shall not be less than ₹2,000 but which may extend to ₹25,000. 5. If any partner contravenes the provisions, such partner shall be punishable with ne which shall not be less than ₹2,000 but which may extend to ₹25,000. 6. Any person who ceases to be a partner of a LLP may himself file with the Registrar the notice if he has reasonable cause to believe that the LLP may not file the notice with the Registrar and in case of any such notice filed by a partner, the Registrar shall obtain a confirmation to this effect from the LLP unless the LLP has also filed such notice. However, where no confirmation is given by the LLP within 15 days, the registrar shall register the notice made by a person ceasing to be a partner under this section.

EXTENT AND LIMITATION OF LIABILITY OF LLP AND PARTNER

Partner as agent (Section 26):	Every partner of a LLP is, for the purpose of the business of the LLP, the agent of the LLP, but not of other partners.
Extent of liability of LLP (Section 27):	1. A LLP is not bound by anything done by a partner in dealing with a person if– a) the partner in fact has no authority to act for the LLP in doing a particular act; and b) the person knows that he has no authority or does not know or believe him to be a partner of the LLP. 2. The LLP is liable if a partner of a LLP is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the LLP or with its authority. 3. An obligation of the LLP whether arising in contract or otherwise, shall be solely the obligation of the LLP. 4. The liabilities of the LLP shall be met out of the property of the LLP.

Extent of liability of partner (Section 28):	1. A partner is not personally liable, directly or indirectly for an obligation referred to in section 27 solely by reason of being a partner of the LLP. 2. But the partners are personally liable for his own wrongful act or omission, but a partner shall not be personally liable for the wrongful act or omission of any other partner of the LLP.
Holding out (Section 29):	1. Any person, who by words spoken or written or by conduct, represents himself, or knowingly permits himself to be represented to be a partner in a LLP is liable to any person who has on the faith of any such representation given credit to the LLP, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit. However, where any credit is received by the LLP as a result of such representation, the LLP shall, without affecting the liability of the person so representing himself or represented to be a partner, be liable to the extent of credit received by it or any financial benefit derived thereon. 2. Where after a partner's death the business is continued in the same LLP name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the LLP done after his death.
Unlimited liability in case of fraud (Section 30):	1. In case of fraud: • In the event of an act carried out by a LLP, or any of its partners, • with intent to defraud creditors of the LLP or any other person, or for any fraudulent purpose, • the liability of the LLP and partners who acted with intent to defraud creditors or for any fraudulent purpose • shall be unlimited for all or any of the debts or other liabilities of the LLP. However, in case any such act is carried out by a partner, the LLP is liable to the same extent as the partner unless it is established by the LLP that such act was without the knowledge or the authority of the LLP.

	2. Where any business is carried on with such intent or for such purpose as mentioned, every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with • Imprisonment for a term which may extend to 2 years and • With fine which shall not be less than ₹50,000 but which may extend to ₹ 5 Lakhs. 3. Where a LLP or any partner or designated partner or employee of such LLP has conducted the affairs of the LLP in a fraudulent manner, then without prejudice to any criminal proceedings which may arise under any law for the time being in force, the LLP and any such partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or damage by reason of such conduct. However, such LLP shall not be liable if any such partner or designated partner or employee has acted fraudulently without knowledge of the LLP.
Whistle blowing (Section 31):	1. The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a LLP, if it is satisfied that– • Such partner or employee of a LLP has provided useful information during investigation of such LLP; or • When any information given by any partner or employee (whether or not during investigation) leads to LLP or any partner or employee of such LLP being convicted under this Act or any other Act. 2. No partner or employee of any LLP may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his LLP or employment merely because of his providing information or causing information to be provided.

FINANCIAL DISCLOSURES

Maintenance of books of account, other records and audit, etc. (Section 34):	1. Proper Books of account: • The LLP shall maintain such proper books of account as may be prescribed • relating to its affairs for each year of its existence • On cash basis or accrual basis and • According to double entry system of accounting and

	• shall maintain the same at its registered office • for such period as may be prescribed. 2. Statement of Account and Solvency: • Every LLP shall, • Within a period of 6 months from the end of each financial year, • prepare a Statement of Account and Solvency • for the said financial year as at the last day of the said financial year • in such form as may be prescribed, and • such statement shall be signed by the designated partners of the LLP. 3. Every LLP shall file within the prescribed time, the Statement of Account and Solvency prepared with the Registrar every year in such form and manner and accompanied by such fees as may be prescribed. 4. The accounts of LLP shall be audited in accordance with such rules as may be prescribed. However, the Central Government may, by notification in the Official Gazette, exempt any class or classes of LLP from the requirements of this sub-section. 5. Any LLP which fails to comply with the provisions of this section shall be punishable • With fine which shall not be less than ₹ 25,000 • But which may extend to ₹ 5 Lakhs Every designated partner of such LLP shall be punishable • With fine which shall not be less than ₹ 10,000 but which may extend to ₹1 Lakh.
Annual return (Section 35):	1. Every LLP shall file an annual return duly authenticated with the Registrar within 60 days of closure of its financial year in such form and manner and accompanied by such fee as may be prescribed. 2. Any LLP which fails to comply with the provisions of this section shall be punishable with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 5 Lakhs. 3. If the LLP contravenes the provisions of this section, the designated partner of such LLP shall be punishable with ne which shall not be less than ₹ 10,000 but which may extend to ₹ 1 Lakh.

CONVERSION INTO LLP

Conversion from firm into LLP (Section 55):	A firm may convert into a LLP in accordance with the provisions of this Chapter and the Second Schedule.
Conversion from private company into LLP (Section 56):	A private company may convert into a LLP in accordance with the provisions of this Chapter and the Third Schedule.
Conversion from unlisted public company into LLP (Section 57):	An unlisted public company may convert into a LLP in accordance with the provisions of this Chapter and the Fourth Schedule.
Registration and effect of conversion (Section 58):	Registration: 1. The Registrar, on satisfying that a firm, private company or an unlisted public company, as the case may be, has complied with the provisions of the various Schedules, provisions of this Act and the rules made there under, register the documents issue a certificate of registration in such form as the Registrar may determine stating that the LLP is, on and from the date specified in the certificate, registered under this Act. 2. The LLP shall, within 15 days of the date of registration, inform the concerned Registrar of Firms or Registrar of Companies, as the case may be, with which it was registered under the provisions of the Indian Partnership Act, 1932 or the Companies Act, 1956/2013 as the case may be, about the conversion and of the particulars of the LLP in such form and manner as may be prescribed. 3. Upon such conversion, the partners of the firm, the shareholders of private company or unlisted public company, as the case may be, will become partners of the LLP to which such firm or such company has converted, and shall be bound by the provisions of the various Schedules, as the case may be, applicable to them. 4. Upon such conversion, on and from the date of certificate of registration, the effects of the conversion shall be such as specified in the various schedules, as the case may be. Effect of Registration: On and from the date of registration specified in the certificate of registration issued under the various Schedule, as the case may be,–

	1. There shall be a LLP by the name specified in the certificate of registration registered under this Act; 2. All tangible (movable or immovable) and intangible property vested in the firm or the company, as the case may be, all assets, interests, rights, privileges, liabilities, obligations relating to the firm or the company, as the case may be, and the whole of the undertaking of the firm or the company, as the case may be, shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and 3. The firm or the company, as the case may be, shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be.

FOREIGN LLP- FOREIGN LIMITED LIABILITY PARTNERSHIPS (SECTION 59):

The Central Government may make rules for provisions in relation to establishment of place of business by foreign LLP within India and carrying on their business therein by applying or incorporating, with such modifications, as appear appropriate, the provisions of the Companies Act, 1956 or such regulatory mechanism with such composition as may be prescribed.

WINDING UP AND DISSOLUTION

- Winding up and dissolution (Section 63): The winding up of a LLP may be either voluntary or by the Tribunal and LLP, so wound up may be dissolved.
- Circumstances in which LLP may be wound up by Tribunal (Section 64):

  A LLP may be wound up by the Tribunal:
  1. if the LLP decides that LLP be wound up by the Tribunal;
  2. if, for a period of more than six months, the number of partners of the LLP is reduced below two;
  3. if the LLP is unable to pay its debts;
  4. if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
  5. if the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any 5 consecutive financial years; or
  6. if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.
- Rules for winding up and dissolution (Section 65): The Central Government may make rules for the provisions in relation to winding up and dissolution of LLP.

MISCELLANEOUS

Business transactions of partner with LLP (Section 66):	A partner may lend money to and transact other business with the LLP and has the same rights and obligations with respect to the loan or other transactions as a person who is not a partner.
Application of the provisions of the Companies Act (Section 67):	1. The Central Government may, by notification in the Official Gazette, direct that any of the provisions of the Companies Act, 1956 speci-fied in the notification– • shall apply to any LLP; or • shall apply to any LLP with such exception, modification and adaptation, as may be specified, in the notification. 2. A copy of every notification proposed to be issued • shall be laid in draft before each House of Parliament, while it is in session, • for a total period of 30 days which may be comprised in one session or in two or more successive sessions, and • if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, • the notification shall not be issued or, as the case may be, • shall be issued only in such modified form as may be agreed upon by both the Houses.
Electronic filing of documents (Section 68):	1. Any document required to be filed, recorded or registered under this Act may be filled, recorded or registered electronically subject to such conditions as may be prescribed. 2. A copy of or an extract from any document electronically filed with or submitted to the Registrar which is supplied or issued by the Registrar and certified through affixing digital signature as per the Information Technology Act, 2000 to be a true copy of or extract from such document shall, in any proceedings, be admissible in evidence as of equal validity with the original document. Any information supplied by the Registrar that is certified by the Registrar through affixing digital signature to be a true extract from any document filed with or submitted to the Registrar shall, in any proceedings, be admissible in evidence.

Payment of additional fee (Section 69):	Any document or return required to be filed or registered under this Act with the Registrar, if, is not filed or registered in time provided therein, may be filed or registered after that time upto a period of 300 days from the date within which it should have been led, on payment of additional fee of ₹100 for every day of such delay in addition to any fee as is payable for filing of such document or return. However, such document or return may, also be filed after such period of 300 days on payment of fee and additional fee specified in this section.

DIFFERENCES WITH OTHER FORMS OF ORGANISATION

1) Distinction between LLP and Partnership Firm: The points of distinction between a limited liability partnership and partnership firm are tabulated as follows:

	Basis	LLP	Partnership firm
1.	Regulating Act	The Limited Liability Partnership Act, 2008.	The Indian Partnership Act, 1932.
2.	Body corporate	It is a body corporate.	It is not a body corporate.
3.	Separate legal entity	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.
4.	Creation	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
5.	Registration	Registration is mandatory. LLP can sue and be sued in its own name.	Registration is voluntary. Only the registered partnership firm can sue the third parties.
6.	Perpetual succession	The death, insanity, Retirement or insolvency of the partner(s) does not affect its existence of LLP. Members may join or leave But its existence continues	The death, insanity, retirement or insolvency of the partner(s) may affect its existence. It has no perpetual succession.
7.	Name	Name of the LLP to contain the word limited liability partners (LLP) as suffix.	No guidelines. The partners can have any name as per their choice.

8.	Liability	Liability of each partner limited to the extent to agreed contribution except in case of wilful fraud.	Liability of each partner is unlimited. It can be extended upto the personal assets of the partners.
9.	Mutual agency	Each partner can bind the LLP by his own acts but not the other partners.	Each partner can bind the firm as well as other partners by his own acts.
10.	Designated partners	At least two designated partners and atleast one of them shall be resident in India.	There is no provision for such partners under the Indian partnership Act, 1932.
11.	Common seal	It may have its common seal as its official signatures.	There is no such concept in partnership
12.	Legal compliances	Only designated partners are responsible for all the compliances and penalties under this Act.	All partners are responsible for all the compliances and penalties under the Act.
13.	Annual filing documents	LLP is required to file: (a) Annual statement of accounts (b) Statement of solvency (c) Annual return with the registration of LLP every year.	Partnership firm is not required to file any annual document with the registrar of firms.
14.	Foreign partnership	Foreign nationals can become a partner in a LLP.	Foreign nationals cannot become a partner in a
15.	Minor as partner	Minor cannot be admitted to the benefits of LLP.	Minor can be admitted to the Benefits of the partnership with the prior consent of the existing partners.

2) Distinction between LLP and Limited Liability Company (LLC)

	Basis	LLP	LLC
1.	Regulating Act	The LLP Act, 2008.	The Companies Act, 2013.
2.	Members / Partners	The persons who contribute to LLP are known as partners of the LLP.	The persons who invest the money in the shares are known as members of the company.
3.	Internal governance structure	The internal governance structure of a LLP is governed by agreement between the partners.	The internal governance structure of a company is regulated by statute (i.e., Companies Act, 2013).
4.	Name	Name of the LLP to contain the word "Limited liability partnership" or "LLP" as suffix.	Name of the public company to contain the word "limited" and Private company to contain the word "Private Limited'
5.	Number of members/ partners	Minimum - 2 members Maximum - No such limit on the members in the Act. The members of the LLP can be individuals /or body corporate through the nominees.	Private company: Minimum - 2 members Maximum - 200 members Public company: Minimum - 7 members Maximum - No such limit on the members.
6.	Liability of members/ partners	Liability of a partners is limited to the extent of agreed contribution except in case of wilful fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.
7.	Management	The business of the company managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected shareholders.
8.	Minimum number of directors/ partners	Minimum 2 partners.	Private Co. - 2 directors Public Co. - 3 directors

SUMMARY

INTRODUCTION

- The Parliament passed the Limited Liability Partnership Bill on 12th December, 2008 and the President of India has assented the Bill on 7th January, 2009 and called as the Limited Liability Partnership Act, 2008, and many of its sections got enforced from 31st March 2009.
- The LLP Act, 2008 has 81 sections and 4 schedules.
- The First Schedule deals with mutual rights and duties of partners, as well limited liability partnership and its partners where there is absence of formal agreement with respect to them.
- The Second Schedule deals with conversion of a firm into LLP.
- The Third Schedule deals with conversion of a private company into LLP.
- The Fourth Schedule deals with conversion of unlisted public company into LLP.

LLP- MEANING & CONCEPT

IMPORTANT DEFINITIONS

1. Body Corporate [(Section 2(d)]
2. Business [Section 2(e)]
3. Designated Partner [Section 2(j)]
4. Entity [Section 2(k)]
5. Financial Year [Section 2(l)]
6. Foreign LLP [section 2(m)]
7. Limited liability partnership [Section 2(n)]
8. Limited Liability partnership agreement [Section 2(o)]
9. Partner [Section 2(q)]

NON-APPLICABILITY OF THE INDIAN PARTNERSHIP ACT, 1932 (SECTION 4)

PARTNERS (SECTION 5)

MINIMUM NUMBER OF PARTNERS (SECTION 6)

DESIGNATED PARTNERS

CHARACTERISTICS OF LLP

INCORPORATION OF LLP

Step 1: LLP Name
- Name (Section 15)
- Reservation of name (Section 16)

Step 2: Incorporation Document (Section 11)

Step 3: Incorporation Registration (Section 12)

Step 4: Effect of registration (Section 14)

Step 5: LLP Agreement (Section 23)

REGISTERED OFFICE OF LLP AND CHANGE THEREIN (SECTION 13)

CHANGE OF NAME OF LLP (SECTION 17)

PARTNERS AND THEIR RELATIONS

- Eligibility to be partners (Section 22)
- LLP Agreement (Section 23)
- Cessation of partnership interest (Section 24)
- Registration of changes in partners (Section 25)

EXTENT AND LIMITATION OF LIABILITY OF LLP AND PARTNER

- Partner as agent (Section 26)
- Extent of liability of LLP (Section 27)
- Extent of liability of partner (Section 28)
- Holding out (Section 29)
- Unlimited liability in case of fraud (Section 30)
- Whistle blowing (Section 31)

FINANCIAL DISCLOSURES

- Maintenance of books of account, other records and audit, etc. (Section 34)
- Annual return (Section 35)

CONVERSION INTO LLP

- Conversion from firm into LLP (Section 55)
- Conversion from private company into LLP (Section 56)
- Conversion from unlisted public company into LLP (Section 57)
- Registration and effect of conversion (Section 58)

FOREIGN LLP- FOREIGN LIMITED LIABILITY PARTNERSHIPS (SECTION 59)

WINDING UP AND DISSOLUTION

- Winding up and dissolution (Section 63)
- Circumstances in which LLP may be wound up by Tribunal (Section 64)

- Rules for winding up and dissolution (Section 65)

MISCELLANEOUS

- Business transactions of partner with LLP (Section 66)
- Application of the provisions of the Companies Act (Section 67)
- Electronic filing of documents (Section 68)
- Payment of additional fee (Section 69)

DIFFERENCES WITH OTHER FORMS OF ORGANISATION

1) Distinction between LLP and Partnership Firm
2) Distinction between LLP and Limited Liability Company (LLC)

LIST OF LEGAL TERMS

SR. NO.	LEGAL WORD	MEANING	PAGE NUMBER (This column is to be filled by students)
1.	Hybrid	Mixture	
2.	Official Gazette	It is a periodical publication that has been authorised to publish public or legal notices.	
3.	Undischarged insolvent	Not declared as solvent	
4.	Conclusive evidence	Conclusive Evidence is evidence that cannot be contradicted by any other evidence. It is so strong as to overbear any other evidence to the contrary.	

5. THE COMPANIES ACT, 2013

INTRODUCTION

- The Companies Act, 2013 was enacted to consolidate and amend the law relating to the companies. The Companies Act, 2013 was preceded by the Companies Act, 1956.

- Due to changes in the national and international economic environment and to facilitate expansion and growth of our economy, the Central Government decided to replace the Companies Act, 1956 with a new law. The Companies Act, 2013 contains 470 sections and seven schedules. The entire Act has been divided into 29 chapters. The Companies Act, 2013 aims to improve corporate governance, simplify regulations, and strengthen the interests of minority investors. Thus, this enactment seeks to make our corporate regulations more contemporary

DEFINITION OF COMPANY

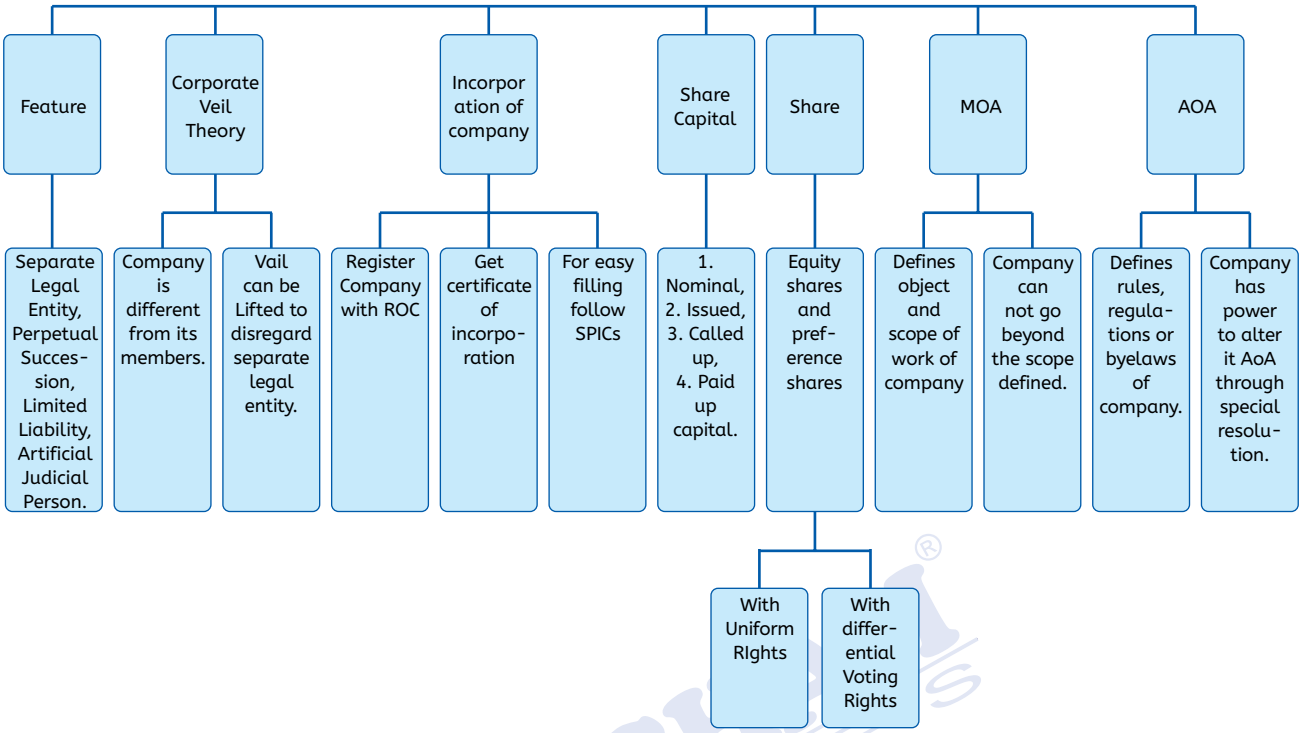
The term 'company' has been defined under Section 2(20) of the Companies Act, 2013. As per this, 'company' means a company incorporated under Companies Act, 2013 or under any of the previous laws relating to companies.

ACT APPLICABLE TO:

The provisions of this Act shall apply to-

1. Companies incorporated under this Act or under any previous company law.
2. Insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 or the Insurance Regulatory and Development Authority Act, 1999;
3. Banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949;
4. Companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003;
5. Any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act , and
6. Such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf. Example: Food Corporation of India (FCI), National Highway Authority of India (NHAI) etc.

OVERVIEW OF CHAPTER



CHARACTERISTICS OF COMPANY

Following are the characteristics of a company:

1. Separate legal entity: A company is an artificial person having a personality which is distinct from the members constituting it. Thus, a company has got an entity which is separate from its members. And since this separate entity concept is conferred by law, it is said that a company has got a separate legal entity.

Case law: *Macaura vs. Northern Assurance Co. Ltd.*

M was the holder of nearly all the shares except one of a timber company. He was also a substantial creditor of the company. He insured the company's timber in his own name. The timber was destroyed by fire & M claimed the loss from Insurance Company.

Held that, the Insurance Company was not liable to him. A shareholder cannot insure the company's property in his own name even if he is the owner of all or most of the company's shares.

2. Perpetual Succession: An incorporated company never dies. Perpetual succession, therefore, means that the membership of a company may keep changing from time to time but does not affect its continuity. Members may come and go but the company will continue forever.

3. Limited liability: A company limited by shares is a registered company having the liability of its members limited to the amount, if any, unpaid on the shares respectively held by them. If his shares are fully paid - up, he has nothing more to pay.
   (i) Thus, in the case of a limited liability company, the debts of the company in totality do not become the debts of the shareholders. The liability of the members of the company is limited to the extent of the nominal value of shares held by them. In no case can the shareholders be asked to pay anything more than the unpaid value of their shares.
   (ii) In the case of a company limited by guarantee, the members are liable only to the extent of the amount guaranteed by them and that too only when the company goes into liquidation.
   (iii) However, if it is an unlimited company, the liability of its members is unlimited as well.

4. Artificial Legal Person:
   1) A company is an artificial person as it is created by a process other than natural birth, it is created by law. It is a person since it is clothed with all the rights of an individual.
   2) Further, the company being a separate legal entity can own property, have banking account, raise loans, incur liabilities and enter into contracts. Even members can contract with company, acquire right against it or incur liability to it. It can sue and be sued in its own name. It can do everything which any natural person can do except be sent to jail, take an oath, marry or practice a learned profession. Hence, it is a legal person in its own sense.
   3) As the company is an artificial person, it can act only through some human agency, i.e., directors. The directors can either act on their own or through the common seal (of the company) can authenticate its formal acts.

5. Common Seal: Since a company has no physical existence, it must act through its agents. All the important documents of a company must be under the seal of the company. The common seal, thus, acts as the official signature of a company.
   The Companies (Amendment) Act, 2015 has made the common seal optional by omitting the words "and a common seal" from Section 9 so as to provide an alternative mode of authorization for companies who opt not to have a common seal. Reason for this amendment is that common seal is considered as an old concept now. This amendment provides that, now common seal is optional. The documents which need to be authenticated by a common seal will be required to be so done, only if the company opts to have a common seal. In case a company does not have a common seal, the authorization shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

IS COMPANY A CITIZEN?

Although, a company is regarded as a legal person (though artificial), it is not a citizen either under the Constitution of India or the Citizenship Act, 1955.

DOES A COMPANY HAVE NATIONALITY AND RESIDENCE?

It is established through judicial decisions that a company cannot be a citizen, yet it has nationality, domicile and residence.

LIFTING OR PIERCING THE CORPORATE VEIL

Corporate veil: Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company.

The term Corporate Veil refers to the concept that members of a company are protected from liability connected to the company's actions. If the company incurs any debts or contravenes any laws, the corporate veil concept implies that members should not be liable for those errors. Thus, the shareholders are protected from the acts of the company.

Effect of corporate veil: Only company is liable for the acts/defaults done in name of company, even though directors/employees acted on behalf of company.

Case law: *Salomon v. Salomon & Co. Ltd.*

Salomon had, for some years, carried on a prosperous business as a leather merchant and boot manufacturer. He formed a limited company consisting of himself, his wife and a daughter, and his 4 sons as the shareholders, all of whom subscribed for one share of 1 pound each. Salomon was the managing director and two of his sons were other directors.

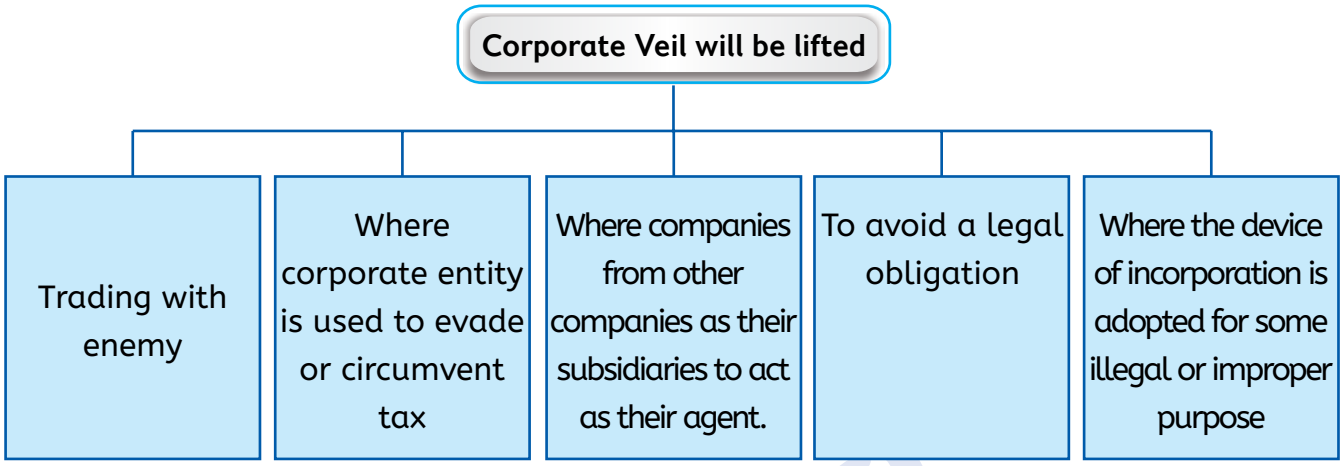
Salomon sold his business (which was perfectly solvent at that time) to the Company for the sum of 38,782 £. He got the following consideration:-

10,000	Secured Debentures of 1£ each
20,000	Fully - paid Shares of 1 £ each
8,782	Cash

The company soon ran into difficulties and the debenture holders appointed a receiver and the company went into liquidation. The total assets of the company amounted to 6,050£, its liabilities were 10,000£ secured debentures and 8,000£ owing to unsecured trade creditors. The unsecured trade creditors claimed the whole of the company's assets, viz. 6,050 £ on the ground that as the company was a mere agent for Salomon and thus they were entitled to payment of their debts in priority to debentures.

The House of Lords rejected these contentions and held that a company, on registration, has its own existence or personality separate and distinct from its members and, as a result, a shareholder cannot be equated with a company, even if he holds virtually the entire share capital of the company.

Lifting of corporate veil: It means looking behind the company as a legal person, i.e., disregarding the corporate entity and paying regard, instead, to the realities behind the legal facade. Where the Courts ignore the company and concern themselves directly with the members or managers, the corporate veil may be said to have been lifted. Only in appropriate circumstances, the Courts shall lift the corporate veil.



The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members:

1. Where the device of incorporation is adopted for some illegal or improper purpose, e.g., to defeat or circumvent law, to defraud creditors or to avoid legal obligations.

Case law: *Gilford Motor Co. v. Home*

Mr. Homes, a past employee of Gilford Motors company was conditioned not to start a similar business with that of the company. So, he formed a company to carry on his business and started doing similar business. An injunction order was granted against him and the company to stop them.

2. For determining residence and character : The Courts also look behind the facade of the company and its place of registration in order to determine its residence for the purposes of taxation or the character of the company, for example whether it is enemy.

Case law: *Daimler Co. Ltd. vs. Continental Tyre & Rubber Co.*

C company was floated in London for marketing tyres manufactured in Germany. The majority of the C's shares were held by German nationals residing in Germany. During World War I, C Company filed a suit against D company for the recovery of trade debt. The D company contented that C company was an alien enemy company (Germany being at war with England at that time) and that the payment of the debt would be trading with the enemy. The court agreed with the contention of the defendants.

3. Formation of Companies to divide income and avoid tax or avoid any welfare laws:

Case law: *Sir Dinshaw Maneckjee Petit*

D was a rich man having dividend and interest income. He wanted to avoid income-tax. For this purpose, he formed four private companies, in all of which he was the majority share holder. The companies made investments and whenever interest and dividend income were received by the companies, D applied to the companies for loans, which were immediately granted and he never repaid. In a legal proceeding the corporate veil of all the companies were lifted and the income of the companies treated as if they were of 'D'.

4. To avoid a legal obligation: Where it was found that the sole purpose for the formation of the company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Supreme Court upheld the piercing of the veil to look at the real transaction

Case law: *Workmen employed in Associated Rubber Industries Ltd v. Associated Rubber Industries Ltd*

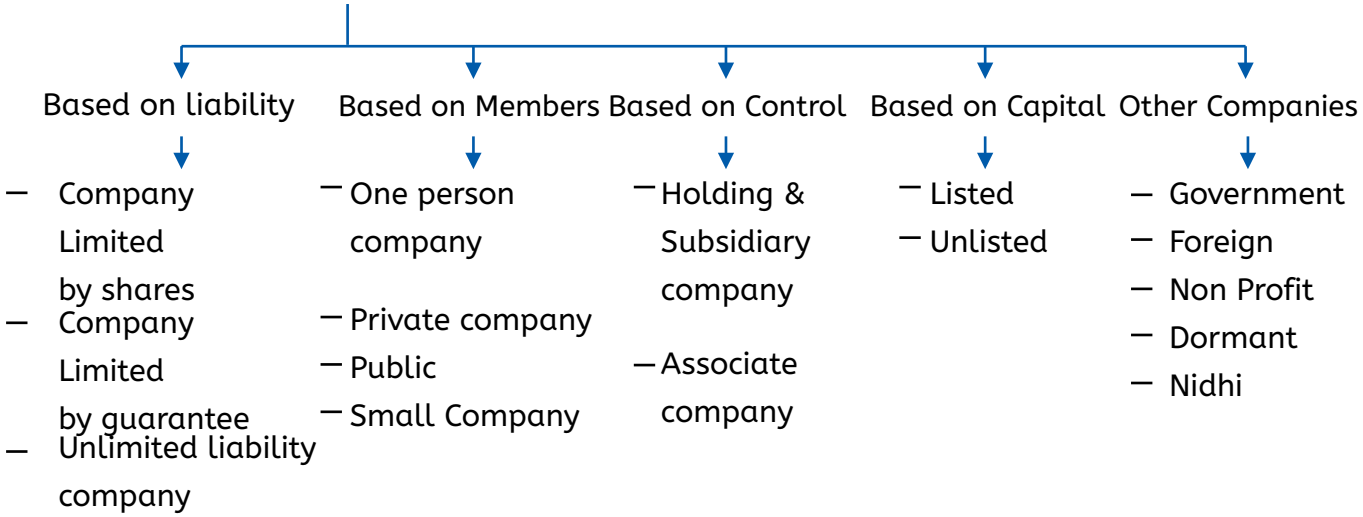
A subsidiary company was formed wholly by the holding company with no assets of its own except those transferred to it by the holding company, with no business or income of its own except receiving dividend from shares transferred to it by the holding company. Court held that the new company was formed as a device to reduce the profits of the holding company and thereby reduce the bonus to workmen.

5. Where companies form other companies as their subsidiaries to act as their agent.

Case law: *Merchandise Transport Limited vs. British Transport Commission (1982)*

Transport Company wanted to obtain licences for its vehicles, but could not do so if applied in its own name. It, therefore, formed a subsidiary company, and the application for licence was made in the name of the subsidiary. The vehicles were to be transferred to the subsidiary company. Held, the parent and the subsidiary were one commercial unit and the application for licences was rejected.

CLASSIFICATION OF COMPANY



A. BASED ON LIABILTY

1. **Company limited by shares:** As per Section 2(22),a company limited by shares is a registered company having the liability of its members limited to the amount, if any, unpaid on the shares respectively held by them. If his shares are fully paid - up, he has nothing more to pay.

2. **Company limited by guarantee:**
   - As per Section 2(21), a company limited by guarantee or a "guarantee company" is a company having the liability of its members limited to such an amount as the members may respectively thereby undertake, by the memorandum of association of the company, to contribute to the assets of the company.
   - A special feature of this type of company is that the liability of members to pay their guaranteed amounts arises only when the company has gone into liquidation and not when it is a going concern.
   - Clubs, trade associations and societies for promoting different objects are examples of companies limited by guarantee.
   - The point of distinction between these two types of companies is that in the company limited by guarantee, the members may be called upon to discharge their liability only after commencement of the winding up and only subject to certain conditions; but in company limited by shares, they may be called upon to do so at any time, either during the company's life-time or during its winding up.

Case law: In *Narendra Kumar Agarwal vs. Saroj Maloo*, the Supreme court has laid down that the right of a guarantee company to refuse to accept the transfer by a member of his interest in the company is on a different footing than that of a company limited by shares. The membership of a guarantee company may carry privileges much different from those of ordinary shareholders.

3. Unlimited Company:
   - As per Section 2(92), unlimited company is a company not having any limit on the liability of its members. In such a company the liability of a member ceases when he ceases to be a member.
   - Thus, the maximum liability of the members of such a company could extend to their entire personal property to meet the debts and obligations of the company.
   - The members of an unlimited company are not liable directly to the creditors of the company, unlike in the case of partners of a firm. The liability of the members is only towards the company, so long it is a going concern; and in the event of its being wound up, only the Liquidator can ask the members to contribute to the assets of the company.

B. BASED ON MEMBERS

1. Private Company:
   - As per Section 2(68), private company is a company which by its articles,–
     (i) Restricts the right to transfer its shares;
     (ii) Limits the number of its members to 200 (except in case of One Person Company):
     The clause provides that where two or more persons hold one or more shares in a company jointly, they shall be treated as a single member:
     However following shall not be included in the number of members:
     persons who are in the employment of the company; and persons who, having been in the employment of the company in the past and they are still members of the company
     (iii) Prohibits any invitation to the public to subscribe for any securities of the company.
   - There should be at least two persons to form a private company i.e., the minimum no. of members in a private company is two. A private company should have at least two directors. The name of a private limited company must end with the words "Private Limited".

2. Public Company:
   - As per Section 2(71), public company is a company which-
     - is not a private company and
     - Seven or more members are required to form the company.
     - a private company which is a subsidiary of a public company shall also be deemed to be a public company for the purposes of this Act, even where such subsidiary company continues to be a private company in its articles (three restrictions).

➢ There should be at least seven persons to form a public company i.e., the minimum no. of members in a public company is seven. A public company should have at least 3 directors. The name of a public limited company must end with the word "Limited".

3. One Person Company:

- Definition: As per Section 2(62),one person company is a company which-
  One Person Company' means a company which has only one person as a member.
  It is basically a private company with some unique features.
  As regards the name of a One Person Company, the Act provides that the words "One Person Company" or 'OPC' shall be mentioned in brackets below the name of such Company, wherever its name is printed, affixed or engraved.

- Logic and Advantages of New Concept OPC: To encourage unorganized proprietorship business to enter into organized corporate world, the concept of "one person company" 'OPC') was recommended by J.J. Irani Committee. As the name suggests, it means a company which has only one person as member. The concept is widely accepted in countries like China, Pakistan, Singapore, US. In the case of India, if you wish to set up a private company, minimum two shareholders are required. In many cases, because of this legal requirement a second shareholder is forcefully roped in. This second shareholder at times takes advantage of his position. Having recognized this problem the concept of OPC has been introduced.
- Relaxation for OPC:
  a) An OPC is primarily a private company. However, certain provisions which are applicable to a private company will not apply to an OPC. For instance, only one director is sufficient (as against two in the case of private company).
  b) OPC is not required to hold annual general meeting.
  c) Information to be provided in the directors' report has been significantly reduced (as compared to a private company).

d) Annual return in other companies shall be signed by director and company secretary and in case of no company secretary by a practicing company secretary whereas in the case of OPC annual return shall be signed by company secretary and in case of his absence it will be signed by director of the company.

e) The requirement of a minimum number of Board meetings to be convened shall not apply to an OPC having one director. However, in case of OPC having more than one director, the OPC shall hold at least one meeting of the Board of directors in each half of calendar year and the gap between two meetings is not less than ninety days.

f) One Person Company need not have a Cash Flow Statement.

- Law with respect to formation of OPC provides that–
  - ✓ The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
  - ✓ The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.
  - ✓ Such other person may be given the right to withdraw his consent.
  - ✓ The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.
  - ✓ Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
  - ✓ Only a natural person who is an Indian citizen and whether resident in India or otherwise (person who has stayed in India for a period of not less than 120 days during the immediately preceding one financial year)-
    - a) Shall be eligible to incorporate a OPC;
    - b) Shall be a nominee for the sole member of a OPC.
  - ✓ A natural person shall not be a member of more than a OPC at any point of time and the said person shall not be a nominee of more than a OPC.
  - ✓ No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
  - ✓ Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases. The procedure of conversion is given in the rules 6 & 7 of the Chapter II.
  - ✓ Such Company cannot carry out Non-Banking Financial Investment

Omitted

activities including investment in securities of anybody corporate.

~~✓ OPC can voluntarily convert into any kind of company after two years have expired from the date of incorporation,~~

~~But if, the paid up share capital is increased beyond 50 lakh rupees~~

~~Or~~

~~Its average annual turnover during immediately preceding 3 consecutive financial years exceeds 2crore rupees.~~

~~then it ceases to be OPC and it has to compulsorily convert itself into a private or public company.~~

Example 1: Rajesh has formed a 'One Person Company (OPC)' with his wife Roopali as nominee. For the last two years, his wife Roopali is suffering from terminal illness and due to this hard fact he wants to change her as nominee. He has a trusted and experienced friend Ramnivas who could be made nominee or his (Rajesh) son Rakshak who is of seventeen years of age. In the instant case, Rajesh can appoint his friend Ramnivas as nominee in his OPC and not Rakshak because Rakshak is a minor.

4. Small Company:

- Definition: As per Section 2(85),small company means a company, other than a public company,-
  - (i) Paid-up share capital of which does not exceed 2 crore rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees;

    and
  - (ii) Turnover of which as per as per profit and loss account for the immediately preceding financial year does not exceed 20 crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.
- Provided that nothing in this clause shall apply to-
  - (i) a holding company or a subsidiary company;
  - (ii) a company registered under section 8; or
  - (iii) a company or body corporate governed by any special Act.

  It is basically a private company meeting prescribed threshold.
- Logic and Advantages of New Concept Small Company: The 2013 Act provides for a new entity in the form of Small Company, empowering the Central Government to provide for a simpler compliance regime for small companies. Because of their size, they cannot be burdened with the same level of compliance requirements. The small companies have to be enabled to take

quick decisions, be adaptable in the changing economic environment, yet be encouraged to comply with the essential requirements of the law through low cost of compliance cost.

- Following are some of the important relaxations provided to a small company:
  (i) Financial statements of small company may not include the cash flow statement.
  (ii) Small company shall be deemed to have complied with the provisions relating to Board meeting if at least one meeting of the Board of directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days.
  (iii) Merger or amalgamations between two or more small companies have been simplified without the requirement of court process.

C. BASED ON CONTROL

1. Holding & Subsidiary Company

- As per Section 2(87) provides that a company shall be a subsidiary of another, if any of the following conditions are satisfied :-
  (a) That other controls the composition of its Board of Directors;
  (b) That other exercises or-controls more than one-half of the total voting power either on its own or together with one or more of its subsidiary companies; or
  (c) The first-mentioned company is a subsidiary of any company which is that other's subsidiary.

  Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

- For the purpose of clause (a) above, the control of the composition of the Board of directors of a company means that the holding company has power, at its discretion, to appoint or remove all or majority of the directors of the subsidiary company without the consent of the other persons.
- It should be noted that holding and subsidiary companies are incorporated companies and each is a separate legal entity.
- For the purpose of this clause, the term 'company' includes anybody corporate. Thus, holding and subsidiary relationship can be established between an Indian Company and a Foreign Company.
- As per Section 2(46), 'Holding Company', in relation to one or more other companies, means a company of which such companies are subsidiary companies.
- Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

- Example 1: A will be subsidiary of B, if B controls the composition of the Board of Directors of A, i.e., if B can, without the consent or approval of any other person, appoint or remove a majority of directors of A.
  Example 2: A will be subsidiary of B, if B holds more than 50% of the share capital of A.
  Example 3: B is a subsidiary of A and C is a subsidiary of B. In such a case, C will be the subsidiary of A.

2. Associate company
   - As per Section 2(6), In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.
   - The term "significant influence" means control of at least 20% of total share capital, or of business decisions under an agreement
   - The term "Total Share Capital", means the aggregate of the - paid-up equity share capital; and convertible preference share capital.
   - This is a new definition inserted in the 2013 Act.

D. BASED ON CAPITAL

1. Listed company:
   As per the definition given in the Section 2(52), it is a company which has any of its securities listed on any recognised stock exchange.
   Following classes of companies shall not be considered as listed companies, namely:-
   (a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their –
      (i) non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or
      (ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or
      (iii) both categories of (i) and (ii) above.
   (b) Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;
   (c) Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in section 23(3) of the Act.".

2. Unlisted company: Means a company other than listed company.

E. OTHER COMPANIES

1. Government Company

- As per Section 2(45), government company means any company in which not less than fifty- one per cent. of the paid-up share capital is held by-
  (i) the Central Government, or
  (ii) by any State Government or Governments, or
  (iii) partly by the Central Government and partly by one or more State Governments,
- And the section includes a company which is a subsidiary company of such a Government company
- "Paid-up share capital" shall be construed as "total voting power", where shares with differential voting rights have been issued.

2. Foreign Company

As per Section 2(42), foreign company means any company or body corporate incorporated outside India which-

(i) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
(ii) Conducts any business activity in India in any other manner

3. Company not for profit/Non-Profit companies

➢ Object of formation of Section 8 Company: Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.

➢ Examples of section 8 companies are FICCI, ASSOCHAM, National Sports Club of India, CII etc.

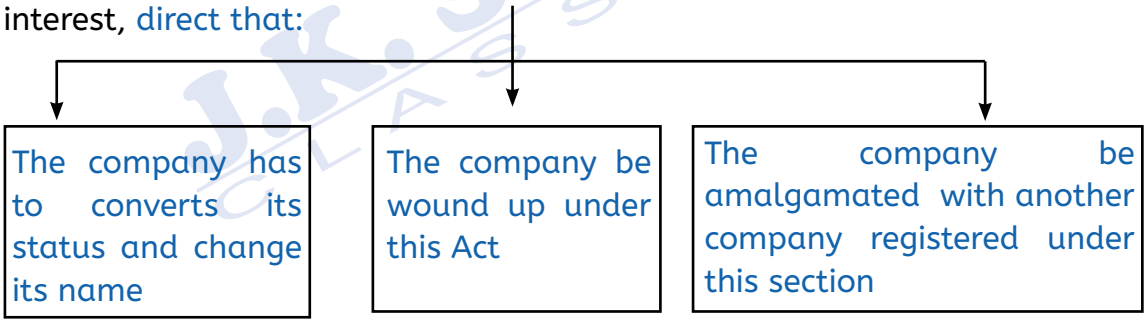
➢ Restrictions on such company:
(i) Such company is prohibited from declaring any dividend to its members
(ii) Such company has to apply its surplus only in promoting its objects

➢ Power of Central government to issue the license :
✓ This section allows the Central Government to register such person or association of persons as a company with limited liability without the addition of words 'Limited' or 'Private limited' to its name, by issuing licence on such conditions as it deems fit. The registrar shall on application register such person or association of persons as a company under this section.

- Privileges of Limited Company: On registration the company shall enjoy same privileges and obligations as of a limited company.

- Revocation of license:
  - ✓ The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register.
  - ✓ But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.
  - ✓ Such order shall be made only after the company is given a reasonable opportunity of being heard.

- Order of the Central Government: Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that:



- Penalty/ punishment in contravention: If a company makes any default in complying with any of the requirements laid down in this section,
  the company shall, be punishable with
  Fine: Minimum 10 lakhs upto 1 crore
  and
  The directors and every officer of the company who is in default shall be punishable with:
  ~~Imprisonment Upto 3 years~~
  or
  Fine: Minimum 25000 upto 25 lakhs rupees,
  ~~or~~
  ~~Both.~~
  And where it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.

4. Dormant company (Section 455):

- Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed 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 two financial years, or has not filed financial statements and annual returns during the last two financial years.
- "Significant accounting transaction" means any transaction other than–
  (i) payment of fees by a company to the Registrar;
  (ii) payments made by it to fulfil the requirements of this Act or any other law;
  (iii) allotment of shares to fulfil the requirements of this Act; and
  (iv) Payments for maintenance of its office and records.

5. Nidhi Company:

As per Section 406, a company which has been incorporated as a nidhi with the object of cultivating the habit of thrift (cost cutting) and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefits and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.

6. Public financial institutions

As per Section 2(72), following institutions are to be regarded as public financial institutions.

(i) The Life Insurance Corporation of India, established under the Life Insurance Corporation Act, 1956;
(ii) The Infrastructure Development Finance Company Limited,
(iii) Specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;
(iv) Institutions notified by the Central Government under section 4A(2) of the Companies Act, 1956 so repealed under section 465 of this Act;
(v) Such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India:

Provided that no institution shall be so notified unless–

(A) it has been established or constituted by or under any Central or State Act other than this Act or the previous company law; or
(B) not less than fifty-one per cent of the paid-up share capital is held or controlled by the Central Government or by any State Government or

Governments or partly by the Central Government and partly by one or more State Governments

MODE OF REGISTRATION/ INCORPORATION OF COMPANY

PROMOTERS: Persons who form the company are known as promoters. It is they who conceive the idea of forming the company. They take all necessary steps for its registration. 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.

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.

INCORPORATION OF COMPANIES

(SECTION 7)

Following is the procedure, in brief, for the incorporation of a company:-

I. Selection of the type of company: The promoters of a company may however select the type of a company as they wish to form themselves into viz, One person company, private company, public company, non-profit company, etc.

II. Preliminary Requirements:
All the directors of the proposed company must ensure that they are having Director's Identification Number (DIN). Out of all the directors of the proposed company, atleast one director should have digital signature to digitally sign the incorporation and other related documents.

III. Reservation of Name:
Any of the promoters should apply to the Registrar of Companies (ROC) regarding the reservation of name.

IV. Preparation of the Memorandum of Association and Articles of Association:
Drafting of the MOA and AOA is generally a step subsequent to the reservation of name made by the Registrar. MOA and AOA shall be in the respective forms as specified in Schedule -1. These two documents are basically the charter and internal rules and

regulations of the company. Therefore, it must be drafted with utmost care and with the advice of the experts and the ancillary clause for attainment of the main object clause should be drafted in a very broader sense.

V. Filing of the documents with the Registrar of Companies:

An application shall be filed, with the Registrar of Companies within whose jurisdiction the registered office of the company is proposed to be situated.

Filing of the documents and information with the registrar: For the registration of the company, following documents and information are required to be filed with the registrar.

1. The memorandum and articles of the company duly signed by all the subscribers to the memorandum.

2. Declaration by person who is engaged in the formation of the company (an advocate, a chartered accountant, cost accountant or company secretary in practice), and by a person named in the articles(director, manager or secretary of the company), that all the requirements of this Act and the rules made there under in respect of registration and matters precedent or incidental thereto have been complied with.

3. Declaration from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles stating that-
   - He Is not convicted of any offence in connection with the promotion, formation or management of any company, or
   - He has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last 5 years,
   - and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;
4. The address for correspondence till its registered office is established;

5. The particulars (names, including surnames or family names, residential address, nationality) of every subscriber to the memorandum along with proof of identity, and in the case of a subscriber being a body corporate, such particulars as may be prescribed.

6. The particulars (names, including surnames or family names, the Director Identification Number, residential address, nationality) of the persons mentioned in the articles as the subscribers to the Memorandum and such other particulars including proof of identity as may be prescribed; and

7. The particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.
   - Maintenance of copies of all documents and information: The company shall maintain and preserve at its registered office copies of all documents and information as originally filed, till its dissolution under this Act.

VI. Certificate of Incorporation and allotment of Corporate Identity Number: If the Registrar of Companies is satisfied that everything has been complied with in regard to incorporation of companies, he shall issue a certificate of incorporation in to the company signed & dated under his hand.

VII. Effect of Registration [Sec. 9]:
- Section 9 provides that from the date of incorporation, the subscribers become the members of the company. The company shall be a body corporate with a name, capable of exercising all the functions of an incorporated company under this Act and shall have perpetual succession with power to acquire, hold and dispose of property, to contract, to sue and be sued, by the said name.

- From the date of incorporation mentioned in the certificate, the company becomes a legal person separate from the incorporators; and there comes into existence a binding contract between the company and its members as evidenced by the Memorandum and Articles of Association

- It may be noted that under the provisions of the Act, a company may purchase shares of another company and thus become a controlling company. However, merely because a company purchases all shares of another company it will not end the corporate character of another company and each company is a separate juristic entity.

- The law recognizes such a company as a juristic person separate and distinct from its members. The mere fact that the entire share capital has been contributed by the Central Government and all its shares are held by the President of India and other officers of the Central Government does not make any difference in the position of registered company and it does not make a company an agent either of the President or the Central Government.

VIII. Commencement of Business (Section 10A):

- A company (both public and private) having a share capital shall not commence any business or exercise any borrowing powers, unless the following documents are filed with the ROC:
  (i) A declaration by a director in the prescribed form within 180 days that every subscriber to the memorandum has paid the value of shares taken by him. The declaration in prescribed form with prescribed fees and the contents of the said form shall be verified by a Company Secretary or a Chartered Accountant or a Cost Accountant, in practice.

  and

  (ii) The verification of its registered office (e-Form INC22).

- If any default is made in complying with the requirements of this section, the company shall be liable to pay penalty of ₹50,000 and every officer in default shall be liable to a penalty of ₹1000 for each day during which such default continues but not exceeding an amount of ₹100,000.

- Where no declaration has been filed with the Registrar within a period of 180 days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on business or operations, he may remove the name of the company from the register of companies.

EFFECT OF FURNISHING OF FALSE OR INCORRECT INFORMATION OR SUPPRESSION OF MATERIAL FACT

Furnishing of false or incorrect information or suppression of material factat the time of incorporation (i.e. at the time of incorporation process)

↓

If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action for fraud under section 447.

Furnishing of false or incorrect information or suppression of material factor representation or by suppressing any material fact (i.e. post incorporation)

↓

1. The promoters, the persons named as the first directors of the company and the persons making declaration under this section shall each be liable for action for fraud under section 447.

2. Order of the Tribunal:

The Tribunal may, on an application made to it, on being satisfied that the situation so warrants–

(i) Pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or

(ii) Direct that liability of the members shall be unlimited; or

(iii) Direct removal of the name of the company from the register of companies; or

(iv) Pass an order for the winding up of the company; or

(v) Pass such other orders as it may deem fit:

Provided that before making any order,–

(i) The company shall be given a reasonable opportunity of being heard in the matter; and

(ii) The Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

SIMPLIFIED PROFORMA FOR INCORPORATING COMPANY ELECTRONICALLY (SPICe)

The Ministry of Corporate Affairs has taken various initiatives for ease of business. MCA has simplified the process of filing of forms of incorporation of company through Simplified Proforma for Incorporating Company ELECTRONICALLY (SPICe)

MEMORANDUM OF ASSOCIATION

Meaning:	The Memorandum of Association of company is in fact its charter; it defines its constitution and the scope of the powers of the company with which it has been established under the Act. It is the very foundation on which the whole base of the company is built.
Object of registering a Memorandum of Association:	1. It contains the object for which the company is formed and therefore identifies the possible scope of its operations beyond which its actions cannot go. 2. It enables shareholders, creditors and all those who deal with company to know what its powers are and what activities it can engage in. A memorandum is a public document under Section 399 of the Companies Act, 2013. Consequently, every person entering into a contract with the company is presumed to have the knowledge of the conditions contained therein. 3. The shareholders must know the purposes for which his money can be used by the company and what risks he is taking in making the investment. 4. A company cannot go beyond the provisions contained in the memorandum however necessary it might be. It cannot enter into a contract or engage in any trade or business, which is beyond the power confessed on it by the memorandum. If it does so, it would be ultra vires (i.e. beyond the powers)the company and void.
Form of Memorandum [Section 4]:	As per Section 4, Memorandum of a company shall be drawn up in such form as is given in Tables A, B, C, D and E in Schedule I of the Companies Act, 2013. ➢ Table A is applicable to companies limited by shares; ➢ Table B is applicable to companies limited by guarantee and not having a share capital; ➢ Table C is applicable to the companies limited by guarantee and having a share capital;

	➢ Table D is applicable to unlimited companies and not having a share capital; ➢ Table E is applicable to unlimited companies and having a share capital.
Contents of the Memorandum:	
1. Name clause	➢ The first clause in the memorandum must state the name by which a company is known. ➢ The name of the company with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company. This clause is not applicable on the companies formed under section 8 of the Act. ➢ The name including phrase 'Electoral Trust' may be allowed for Registration of companies to be formed under section 8 of the Act, in accordance with the Electoral Trusts Scheme, 2013 notified by the Central Board of Direct Taxes (CBDT). For the Companies under section 8 of the Act, the name shall include the words foundation, Forum, Association, Federation, Chambers, Confederation, council, Electoral trust, etc.
2. Situation or registered office clause	The name of the State in which the registered office of the company is to be situated must be given in the memorandum. But the exact address of the registered office is not required to be stated therein.
3. Object clause	➢ The objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof; ➢ If any company has changed its activities which are not reflected in its name, it shall change its name in line with its activities within a period of six months from the change of activities after complying with all the provisions as applicable to change of name.
4. LiabilityClause:	The liability of members of the company, whether limited or unlimited, and also state,– ➢ in the case of a company limited by shares, that the liability of its members is limited to the amount unpaid, if any, on the shares held by them; and ➢ in the case of a company limited by guarantee, the amount up to which each member undertakes to contribute–

	➢ to the assets of the company in the event of its being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case maybe; and ➢ to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves;
5. Capital Clause (only in the case of a company having a share capital):	The amount of authorized capital divided into share of fixed amounts and the number of shares with the subscribers to the Memorandum has agreed to take, indicated opposite their names, which shall not be less than one share. A company not having share capital need not have this clause.
6. Association Clause and Subscription:	In this clause, the persons (includes a body corporate) subscribing to the memorandum declare their desire to be formed into a company and agree to take the shares indicated opposite their respective names. Following are the statutory requirements regarding subscription of memorandum:- (i) The memorandum must be signed by each subscriber in the presence of at least one witness who must attest the signatures; (ii) Each subscriber must take at least one share; if any and (iii) Each subscriber must write opposite his name the number of shares (if any) which he agrees to take.
7. Succession Clause (only in the case of OPC):	This clause shall state the name of the person who, in the event of the death of the subscriber, shall become the member of the company.

- The memorandum must be printed, divided into paragraphs, numbered consecutively, and signed by at least seven persons (two in the case of a private company and one in the case of One Person Company) in the presence of at least one witness, who will attest the signatures.

- The particulars about the signatories to the memorandum as well as the witness, as to their address, description, occupation etc., must also be entered.

- It is to be noted that a company being a legal person can through its agent, subscribe to the memorandum. However, a minor cannot be a signatory to the memorandum as he is not competent to contract. The guardian of a minor, who subscribes to the memorandum on his behalf, will be deemed to have subscribed in his personal capacity.

- The Memorandum of Association of a company cannot contain anything contrary to the provisions of the Companies Act. If it does, the same shall be devoid of any legal effect. Similarly, all other documents of the company must comply with the provisions of the Memorandum

ARTICLES OF ASSOCIATION

Meaning:	➢ The articles of association of a company are its rules and regulations, which are framed to manage its internal affairs. Just as the memorandum contains the fundamental conditions upon which the company is allowed to be incorporated, so also the articles are the internal regulations of the company ➢ These general functions of the articles have been aptly summed up by Lord Cairns as follows: "The articles play a part subsidiary to memorandum of association. They accept the memorandum as the charter of incorporation, and so accepting it the articles proceed to define the duties, the rights and powers of the governing body as between themselves and the company and the mode and form in which the business of the company is to be carried on, and the mode sand form in which changes in the internal regulation of the company may from time to time be made." ➢ The document containing the articles of association of a company (the Magna Carta) is a business document; hence it has to be construed strictly. It regulates domestic management of a company and creates certain rights and obligations between the members and the company. ➢ The articles of association are in fact the bye-laws of the company according to which director and other officers are required to perform their functions as regards the management of the company, its accounts and audit.
Contents and model of articles of association. (Section 5)	(1) Contains regulations: The articles of a company shall contain the regulations for management of the company. (2) Inclusion of matters: The articles shall also contain such matters, as are prescribed under the rules. However, a company may also include such additional matters in its articles as may be considered necessary for its management.

	(3) Entrenchment Provision: A new provision on entrenchment has been provided under the Companies Act, 2013 which provides that articles may contain provision for entrenchment to the effect that the specified provisions of articles can be altered only if the more restrictive conditions or procedures as compared to those applicable in case of special resolution are met or complied with. Such provision for entrenchment in the articles shall only be made either at the time of formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company. It is further provided that the company shall give notice to the ROC of entrenchment provisions in the prescribed form. (4) Forms of articles: The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company. (5) Model articles: A company may adopt all or any of the regulations contained in the model articles applicable to such company. (6) Company registered after the commencement of this Act: A company may adopt all or any of the regulations of the aforesaid Model Articles. If duly registered articles of a company do not expressly exclude or modify the regulations contained in applicable model articles, such regulations shall apply as if they were contained in the duly registered articles of a company.

DIFFERENCES BETWEEN THE MEMORANDUM OF ASSOCIATION VS.ARTICLES OF ASSOCIATION:

The following are the key differences between the Memorandum of Association vs. Articles of Association:

1. Objectives: Memorandum of Association defines and delimits the objectives of the company whereas the Articles of association lays down the rules and regulations for the internal management of the company. Articles determine how the objectives of the company are to be achieved.

2. Relationship: Memorandum defines the relationship of the company with the outside world and Articles define the relationship between the company and its members.

3. Alteration: Memorandum of association can be altered only under certain circumstances and in the manner provided for in the Act. In most cases permission of the Regional Director or the Tribunal is required. The articles can be altered simply by passing a special resolution.

4. Ultra Vires: Acts done by the company beyond the scope of the memorandum are ultra-vires and void. These cannot be ratified even by the unanimous consent of all the shareholders. The acts ultra-vires the articles can be ratified by a special resolution of the shareholders provided they are not beyond the provisions of the memorandum.

EFFECT OF MEMORANDUM AND ARTICLES

As per Section 10 of the Companies Act, 2013, where the memorandum and articles when registered, shall bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and an agreement to observe all the provisions of the memorandum and of the articles. All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

DOCTRINE OF ULTRA VIRES

- The meaning of the term 'ultra vires' is 'beyond the powers of. Anything which is outside the specified objects and powers of the object clause of memorandum of association is ultra vires the company and therefore is null and void.

- An act which is ultra vires memorandum, the company cannot ratify even by the unanimous consent of all the shareholders.

- No rights and liabilities, on the part of the company, arise out of such transactions and it remains nullity even if every member assent to it.

- Consequently, an act, which is ultra vires the company, does not bind the company and neither the company nor the other contracting party can sue on it.

- But an act which is ultra vires the powers of directors, but intravires (i.e. within the powers) Memorandum can be ratified by the members of the company through a resolution passed at a general meeting.

- Similarly if an act is ultra vires the Articles but intravires Memorandum, can be ratified by altering the Articles by a Special Resolution at a general

Case law: *Ashbury Railway Carriage and Iron Company Limited v. Riche*-(1875).

The facts of the case are:

The main objects of a company were:

(a) To make, sell or lend on hire, railway carriages and wagons;

(b) To carry on the business of mechanical engineers and general contractors.

(c) To purchase, lease, sell and work mines.

(d) To purchase and sell as merchants or agents, coal, timber, metals etc.

The directors of the company entered into a contract with Riche, for financing the construction of a railway line in Belgium, and the company further ratified this act of the directors by passing a special resolution. The company however, repudiated the contract as being ultra-vires. And Riche brought an action for damages for breach of contract. His contention was that the contract was well within the meaning of the word general contractors and hence within its powers. Moreover it had been ratified by a majority of shareholders.

However, it was held by the Court that the contract was null and void. It said that the terms 'general contractors' was associated with mechanical engineers, i.e. it had to be read in connection with the company's main business. If, the term general contractors' was not so interpreted, it would authorize the making of contracts of any kind.

DOCTRINE OF CONSTRUCTIVE NOTICE

- Section 399 of the Companies Act, 2013 provides that any person can inspect by electronic means any document kept by the Registrar, or make a record of the same, or get a copy or extracts of any document, including certificate of incorporation of any company, on payment of prescribed fees.

  The memorandum and articles of association of a company when registered with Registrar of Companies become public documents, and they are available for inspection to any person, on the payment of nominal fees. So, Section 399 gives the right of inspection to all. It is, therefore, the duty of every person dealing with a company to inspect its documents and make sure that his contract with the company is within the company's Memorandum.

- Whether a person reads them or not, it will be presumed that he knows the contents of the documents. Hence, every person dealing with the company is under an obligation to know the contents of these documents.

- Whether a person reads the documents or not, he is presumed to have knowledge of the contents of the documents. He is not only presumed to have read the documents but also understood them in their true perspective,

- Thus, if a person enters into a contract which is beyond the powers of the company as defined in the memorandum, or outside the memorandum, he cannot acquire any rights under the contract against the company.

- The doctrine of "constructive notice" seeks to protect the company against the outsiders.

DOCTRINE OF INDOOR MANAGEMENT

- While persons dealing with a company are presumed to have read the public documents and understood their contents and ascertain that the transaction is not inconsistent therewith, they are entitled to assume that the PROVISIONS of the articles have been observed by the officers of the company. It is no part of the duty of an outsider to see how the company carries out its own internal proceedings or indoor management. He can assume that all is being done regularly.

- The doctrine of indoor management, thus, imposes an important restriction on the scope of doctrine of constructive "notice. While the doctrine of "constructive notice" seeks to protect the company against the outsiders, the principle of indoor management operates to protect the outsiders against the company.

Case law: *The Royal British Bank vs. Turquand*

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

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

- Exceptions: The doctrine of indoor management is subject to the following exceptions or limitations:-
  1. Actual or constructive knowledge of irregularity: The rule does not protect any person when the person dealing with the company has notice, whether actual or constructive, of the irregularity.

Case law: In Howard vs. Patent Ivory Manufacturing Co. where the directors could not defend the issue of debentures to themselves because they should have known that the extent to which they were lending money to the company required the assent of the general meeting which they had not obtained.

Case law: Likewise, in Morris v Kansseen, a director could not defend an allotment of shares to him as he participated in the meeting, which made the allotment. His appointment as a director also fell through because none of the directors appointed him was validly in office.

2. Suspicion of Irregularity: Where the person dealing with the company is put upon an inquiry, for example, where the transaction is unusual or nothing the ordinary course of business, it is the duty of the outsider to make the necessary enquiry.
The protection of the "Turquand Rule" is also not available where the circumstances surrounding the contract are suspicious and therefore invite inquiry. Suspicion should arise, for example, from the fact that an officer is purporting to act in matter, which is apparently outside the scope of his authority.

Case law: In Anand Bihari Lal vs. Dinshaw & Co. the plaintiff accepted a transferor of a company's property from its accountant, the transfer was held void.
The plaintiff could not have supposed, in absence of a power of attorney that the accountant had authority to effect transfer of the company's property.

Case law: Similarly, in Haughton & Co. v. Nothard, Lowe & Wills Ltd. where a person holding directorship in two companies agreed to apply the money of one company in payment of the debt to other, the court said that it was something so unusual "that the plaintiff were put upon inquiry to ascertain whether the persons making the contract had any authority in fact to make it" Any other rule would "place limited companies without any sufficient reasons for so doing, at the mercy of any servant or agent who should purport to contract on their behalf"

3. Forgery: The doctrine of indoor management applies only to irregularities which might otherwise affect a transaction but it cannot apply to forgery which must be regarded as nullity.
Forgery may in circumstances exclude the 'Turquand Rule'.

Case law: In Ruben v Great Fingall Consolidated, the plaintiff was the transferee of a share certificate issued under the seal of the defendant's company.
The company's secretary, who had affixed the seal of the company and forged the signature of the two directors, issued the certificate.
The plaintiff contended that whether the signature were genuine or forged was a part of the internal management, and therefore, the company should be estopped from denying genuineness of the document. But it was held, that the rule has never been extended to cover such a complete forgery.

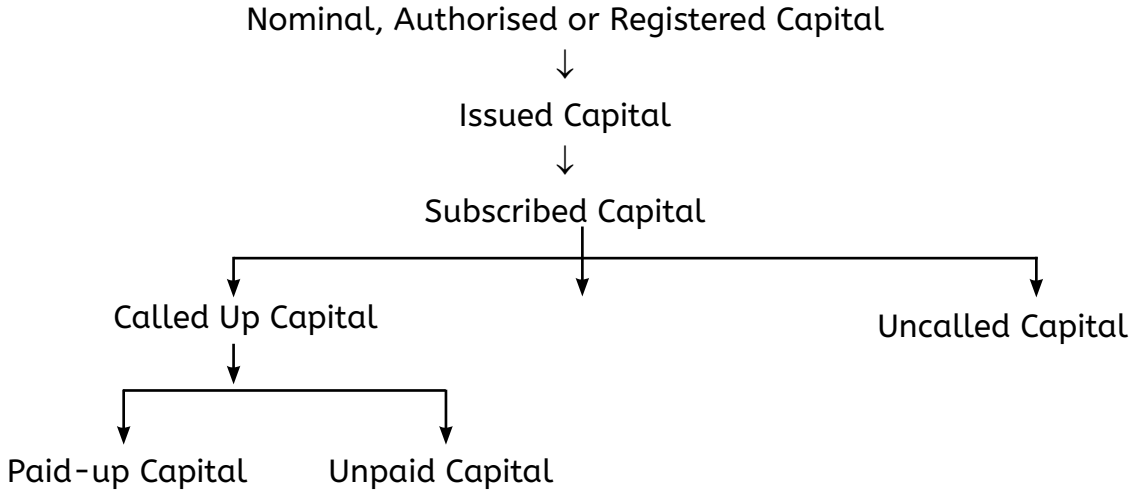
SHARE

- Definition and Meaning of Share: Section 2(84) of the Companies Act, 2013 defines the term "share". As per this, share means a share in the share capital of a company and includes stock.
- By its nature, a share is not a sum of money but a bundle of rights and liabilities. A share is a right to participate in the profits of a company, while it is a going concern and declares dividend; and a right to participate in the assets of the company, when it is wound up.
- Shares are a movable property: According to Section 44 of the Companies Act, 2013, the shares or debentures or other interests of any member in a company shall be movable property transferable in the manner provided by the articles of the company.
- Share

Dematerialised Shares	Physical Shares
• It mandates that every company making public offer and any class of companies as specified shall issue the securities only through dematerialized form. • Proof of ownership: Records of depository • Every share in a company having a share capital shall not be distinguished by its distinctive number (Section 45).	• Other companies may issue securities in physical or in dematerialized form. • Proof of ownership: Share Certificate • Every share in a company having a share capital shall be distinguished by its distinctive number (Section 45).

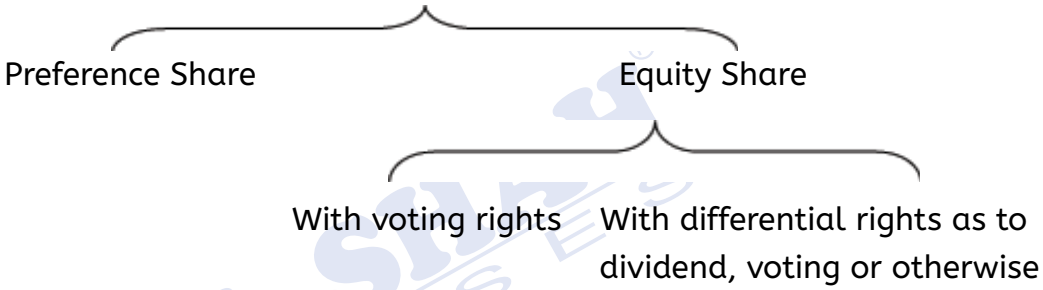
CLASSIFICATION OF SHARE CAPITAL

The share capital of a company can be classified as :



- According to Section 2(8) "authorised capital" or "nominal capital" means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company.
- Whereas Section 2(86) "subscribed capital" means such part of the capital which is for the time being subscribed by the members of a company.
- As per Section 2(15) "Called-up capital" means such part of the capital, which has been called for payment.
- Section 2(64) defines "paid-up share capital" or "share capital paid-up" means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called.

KINDS OF SHARE CAPITAL



(A) Preference Share

A preference share is a share which fulfils the following two conditions:

- It carries preferential right in respect of payment of dividend; andIt also carries preferential right in regard to repayment of capital.
- In simple terms, preference share capital must have priority both regards to dividend as well as capital.

(B) Equity Share

- "Equity share capital" with reference to any company limited by shares, means all share capital which is not preference share capital;
- Equity share capital –
  (1) with voting rights; or
  (2) with differential rights as to dividend, voting or otherwise in accordance with prescribed rules;
- Example: It is to be noted that, Tata Motors in 2008 introduced equity shares with differential voting rights called 'A' equity shares in its rights issue. In the issue, every 10 'A' equity shares carried only one voting right but would get 5percentage points more dividend than that declared on each of the ordinary shares.
  Since 'A' equity share did not carry the similar voting rights, it was being traded at discount to other common shares having full voting. Other companies which have issued equity shares with differential voting rights (popularly called DVRs) are Future Retail, Jain Irrigation among others.

LIST OF CASE LAWS

SR. NO	NAME OF CASE LAW	PAGE NO. (This column is to be filled by students)
1.	Macaura vs. Northern Assurance Co. Ltd.	
2.	Salomon v. Salomon & Co. Ltd.	
3.	Gilford Motor Co. v. Home	
4.	Daimler Co. Ltd. vs. Continental Tyre & Rubber Co.	
5.	Sir Dinshaw Maneckjee Petit	
6.	Workmen employed in Associated Rubber Industries Ltd v. Associated Rubber Industries Ltd	
7.	Merchandise Transport Limited vs. British Transport Commission (1982)	
8.	Narendra Kumar Agarwal vs. Saroj Maloo	
9.	Ashbury Railway Carriage and Iron Company Limited v. Riche	
10.	The Royal British Bank vs. Turquand	

LIST OF LEGAL TERMS

SR. NO.	LEGAL TERM	MEANING	PG NO. (To be filled by students)
1.	Corporate governance	It is the technique by which companies are directed and managed. It is actually conducted by the board of Directors and the concerned committees for the company's stakeholder's benefit.	
2.	Authenticated	proved that something is real	
3.	Domicile	The place where a person lives	
4.	Revoke the licence	Take back the license	
5.	Misfeasance	the fact of someone in authority performing a legal act in an illegal way	
6.	Suppresses	ends something by force	
7.	Magna Carta	Great Charter (important document)	
8.	Ratified	Approved	

SUMMARY

INTRODUCTION

The Companies Act, 2013 contains 470 sections and seven schedules. The entire Act has been divided into 29 chapters.

DEFINITION OF COMPANY [Section 2(20)]

PPLICABILITY OF THE ACT

CHARACTERISTICS OF COMPANY

IS COMPANY A CITIZEN?

DOES A COMPANY HAVE NATIONALITY AND RESIDENCE?

LIFTING OR PIERCING THE CORPORATE VEIL

CLASSIFICATION OF COMPANY

- **Based on liability**
  - Company Limited by shares
  - Company Limited by guarantee
  - Unlimited liability company
- **Based on Members**
  - One person company
  - Private company
  - Public
  - Small Company
- **Based on Control**
  - Holding & Subsidiary company
  - Associate company
- **Based on Capital**
  - Listed
  - Unlisted
- **Other Companies**
  - Government
  - Foreign
  - Non Profit
  - Dormant
  - Nidhi

PROMOTERS [Section 2(69)]

INCORPORATION OF COMPANIES (SECTION 7)

EFFECT OF FURNISHING OF FALSE OR INCORRECT INFORMATION OR SUPPRESSION OF MATERIAL FACT

SIMPLIFIED PROFORMA FOR INCORPORATING COMPANY ELECTRONICALLY (SPICe)

- MEMORANDUM OF ASSOCIATION (Section 4)
- ARTICLES OF ASSOCIATION (SECTION 5)
- DIFFERENCES BETWEEN THE MEMORANDUM OF ASSOCIATION VS.ARTICLES OF ASSOCIATION
- EFFECT OF MEMORANDUM AND ARTICLES (Section 10)
- DOCTRINE OF ULTRA VIRES
- DOCTRINE OF CONSTRUCTIVE NOTICE
- DOCTRINE OF INDOOR MANAGEMENT
- SHARE [Section 2(84)]
- CLASSIFICATION OF SHARE CAPITAL
- KINDS OF SHARE CAPITAL