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# INDIAN REGULATORY FRAMEWORK



## WHAT IS A LAW?

Set of obligations/ duties imposed by the govt. for social welfare + providing justice to the society.

## SOURCES OF LAW

We elect **representatives**



Parliament

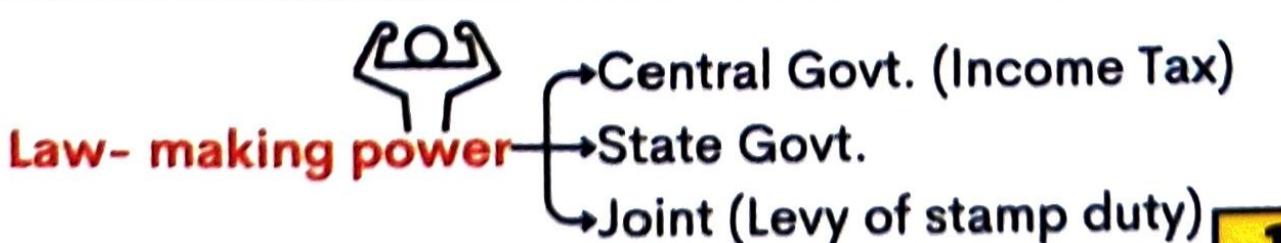
(ultimate law-making body)



Legislative assemblies

(makes laws for states)

- **Government of India Act, 1935** - Precursor of the Indian constitution.
- Power distribution between central and state govt. to avoid disputes.
- **1937** - Federal courts established (right to take decisions which extended to civil + criminal cases).
- Federal court operated for 12 yrs (heard 151 cases).
- The Supreme court later replaced Federal court.
- The constitution protects fundamental rights of the citizens.



# INDIAN REGULATORY FRAMEWORK

## THE PROCESS OF LAW MAKING

- **Bill**- Law proposed in the parliament.



## TYPES OF LAWS IN INDIAN LEGAL SYSTEM



### CRIMINAL LAW



- Concerned with the laws pertaining to violations of rule of law or public wrongs and punishment for the same.
- **Include**- Murder, Rape, Theft, Fraud, Cheating etc.
- **Governed under**- Indian Penal Code (1860) and Code of Criminal Procedure (1973)- CRPC.

### CIVIL LAW



- Deals with matters of disputes b/w individual or organisation.
- Primarily focus dispute resolution, rather than punishment.
- **Governed by**- Code of Civil Procedure, 1908 (CPC)



# INDIAN REGULATORY FRAMEWORK

Eg of civil offence and breach of contract-

1. Non-delivery of goods.
2. Non-payment of dues to lender.
3. Seller defamation.
4. Breach of contract.
5. Dispute b/w landlord and tenant.



## COMMON LAW



- A judicial precedent/ a case law is common law.
- The doctrine of stare decisis is principle supporting common law, means "to stand by which is decided".
- A judgement delivered by the supreme court, will be binding upon the courts within the territory of India under Article 141 of Indian constitution.

## PRINCIPLES OF NATURAL JUSTICE

- Known as Jus Naturae deal with certain fundamental principles of justice beyond written law.

### Principles-

- No one should be made a judge in his own cause, it's a rule against prejudice.
- Give the other party a fair hearing.



## ENFORCING THE LAW

- **Executive**- Monitors the law being enforced



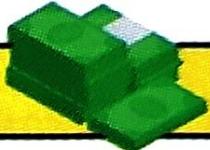
### Popular Ministers



# INDIAN REGULATORY FRAMEWORK

- **Civil servants**- Employed officials in the ministry.
- **Cabinet Minister**- Head of major ministers, sits in the Union Council of Minister, supported by team of junior ministers (Ministers of state).

## THE MINISTRY OF FINANCE



- Vitta Mantralaya is a ministry within the Govt. of India concerned with the economy of India.
- **It deals with-**

- Taxation
- Finance legislation
- Financial institutions
- Capital markets
- Centre and state finances
- Union Budget



**Note-** Shri. Morarji Desai (Finance Minister 1962– 1969) presented 10 union budgets (highest number).

## DEPARTMENTS (MINISTRY OF FINANCE)

- Department of economic affairs
- Department of Revenue
- Department of expenditure
- Department of financial services
- Department of Investment and Public asset management
- Department of Public enterprise



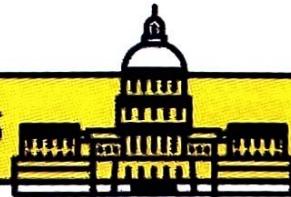
# INDIAN REGULATION FRAMEWORK

## MINISTRY OF CORPORATE AFFAIRS (MCA)

- Concerned with administration of the Companies Act (2013), the Limited liability Partnership Act (2008), Insolvency and bankruptcy code (2016).
- **Regulates-** Indian enterprises (Industrial + Service sector).
- **Run by-** Civil servants of the ICLS cadre.
- Officers elected by Civil Services Exam (Union Public Service Commission).
- **Highest post-** Director General of Corporate Affairs (DGCoA).



## MINISTRY OF HOME AFFAIRS



- Also known as Grih Mantralaya.
- **Responsible for-** Internal security, Domestic policy.
- **Headed by-** Union Minister of Home Affairs.

## DEPARTMENT (MINISTRY OF HOME AFFAIRS)

- Department of Border Management
- Department of Internal security
- Department of Jammu, Kashmir, Ladakh affairs
- Department of Home
- Department of States
- Department of official language



Central Translation Bureau      Central Hindi Training Institute      Directorate of census Operations

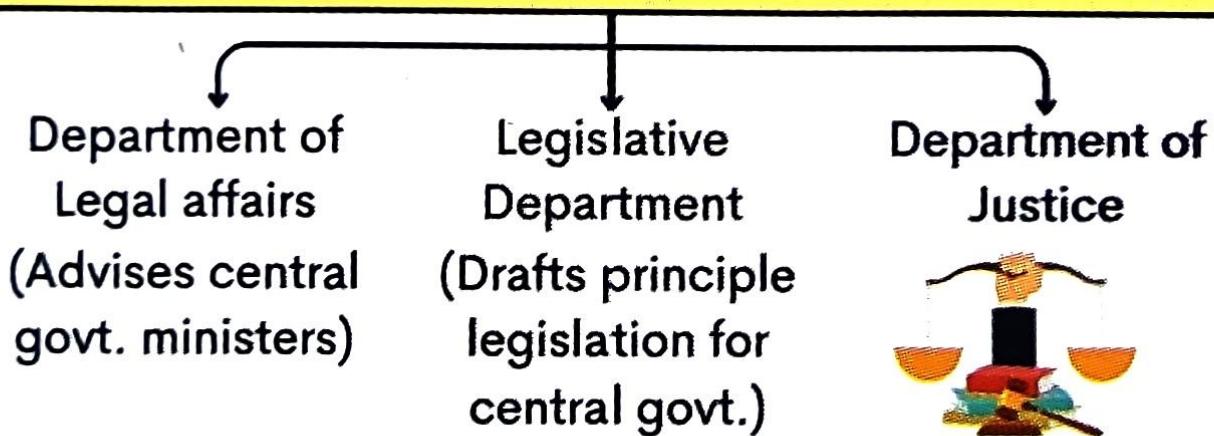
# INDIAN REGULATORY FRAMEWORK

## MINISTRY OF LAW AND JUSTICE



- Cabinet Ministry.
- Deals with-
  1. Management of legal affairs (Legislative dept.).
  2. Legislative activities (Dept. of Legal affairs).
  3. Administration of Justice (Dept. of Justice).

### DEPARTMENTS (Ministry of Law and Justice)



### SECURITIES AND EXCHANGE BOARD OF INDIA

- Regulatory body. (estd. 12th April, 1988)
- **Headed by-** Ministry of Finance
- **Given Statutory powers-** 30th Jan, 1992 (SEBI Act)



### RESERVE BANK OF INDIA (RBI)

- India's central bank, regulates Indian banking system.
- **Headed by-** Ministry of Finance.
- Controls/ maintains supply of currency.
- **Bhartiya Reserve Bank Note Murdan (BRBNM)-** Prints Indian currency notes in Nashik and Dewas.
- **National Payments Corporation-** Regulates payment settlements in India.



# INDIAN REGULATORY FRAMEWORK

- **Deposit Insurance and Credit Guarantee Corporation**- Provides Insurance of deposits and credit facilities.



## INSOLVENCY & BANKRUPTCY BOARD OF INDIA

- **Established**- 1st Oct 2016
- **Statutory powers given**- 5th May 2016 (Insolvency and Bankruptcy code by Lok Sabha).
- **Regulates insolvency proceedings**- Insolvency Professional Agencies (IPA), Insolvency Professionals (IP), Information Utilities (IU).
- Speeds up resolution process, simplify insolvency and bankruptcy proceedings.
- Handles cases using 2 tribunals- National company law tribunal (NCLT), Debt recovery tribunal

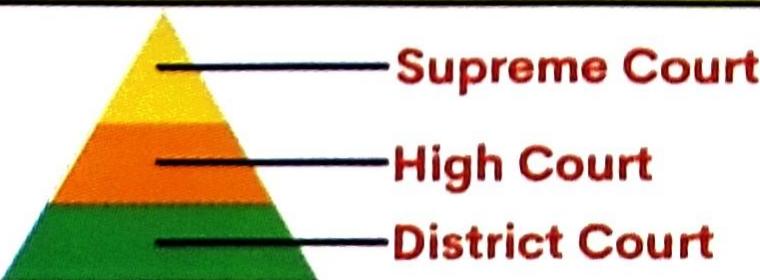


## STRUCTURE OF INDIAN JUDICIAL SYSTEM

- Judiciary resolves disputes between citizens and the govt.
- Functions-
  - Regulation of the interpretation of Acts, Codes
  - Dispute Resolution
  - Promotion of fairness among the citizens of land



## HIERARCHY OF COURTS



**Article 141-**  
Decisions of Supreme court are binding in all High courts

# INDIAN REGULATORY FRAMEWORK

## SUPREME COURT



- Apex of judiciary. (estd. 26th Jan, 1950)
- **Highest authority**- Chief Justice (Article 126).
- **Total members**- 34 (including chief justice).
- Individual can file petition under Article 32.



## HIGH COURT

- **Article 214**-There must be a high court in each state.
- It has appellate, original jurisdiction and supervisory jurisdiction.
- **In India**- 25 high courts (each state + UT)
- 6 states share a single high court.
- An Individual can file a writ under **article 226**
- **Oldest High court**- Calcutta High court (estd- 2nd July, 1862)



## DISTRICT COURT



- Deals with civil law matters (Contractual disputes, damage claims etc.).
- Under pecuniary jurisdiction- civil judge can try suits only upto Rs. 2 Cr.

## METROPOLITAN COURTS



- Established in metropolitan cities (population > 10 lakh).
- Chief metropolitan magistrate = powers as chief judicial magistrate.
- Metropolitan magistrate = powers of magistrate of first class.

# INDIAN CONTRACT ACT (1872)

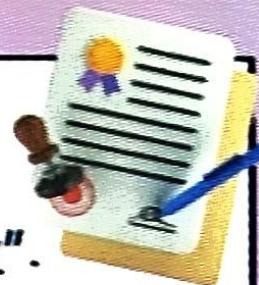
UNIT 1-

## NATURE OF CONTRACT

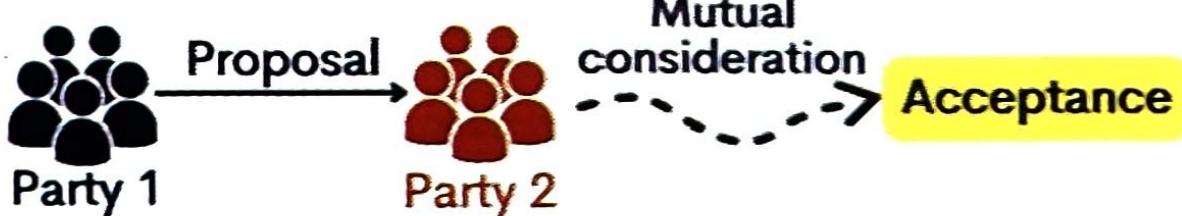
### What is a contract-

Defined under section 2(h) of Indian contract

Act (1872)- "an agreement enforceable by law".



- **Agreement**- Acc. to section 2(e)- "every promise and set of promises, forming the consideration for each other".



**Agreement= Proposal + Consideration + Acceptance**

- **Enforceability by Law-**

Agreement  $\xrightarrow{\text{Legal obligation/}} \text{Contract}$   
duty enforceable by Law

### AGREEMENT Vs CONTRACT

Agreement	Contract
Promise + Consideration	Agreement + Legal enforceability
Wider scope= Legal + social	Narrow scope= only legal
May not create legal obligation	Creates legal obligation

# NATURE OF CONTRACT

**Note-** All contracts are agreements, but all agreements are not contracts.

Acc. to Section 10- All agreements are contracts, if made by free consent of the parties, for lawful consideration, with lawful object, not expressly declared to be void.

## ESSENTIALS FOR A VALID CONTRACT



As provided by Section 10  
Indian Contract Act-1872

Essential but not given by  
Section 10

1. Agreement	
2. Free consent	
3. Competency of parties	
4. Lawful consideration	
5. Legal object	
6. Not expressly declared to be void	

1. Two parties	
2. Intention to create legal relationship	
3. Fulfilment of legal formalities	
4. Certainty of meaning	
5. Possibility of performance	

- **Two Parties-** One party cannot contract with itself, 2 parties need to have ascertainable identities.
- **Intention to create legal obligations-** Social/ domestic agreements are not enforced by law.
- **Compiling formalities-** The contract must be written, otherwise it is not valid.
- **Certainty of meaning-** The contract must be certain (not vague/ indefinite).
- **Possibility of performance-** An agreement with an impossible act cannot be enforced.

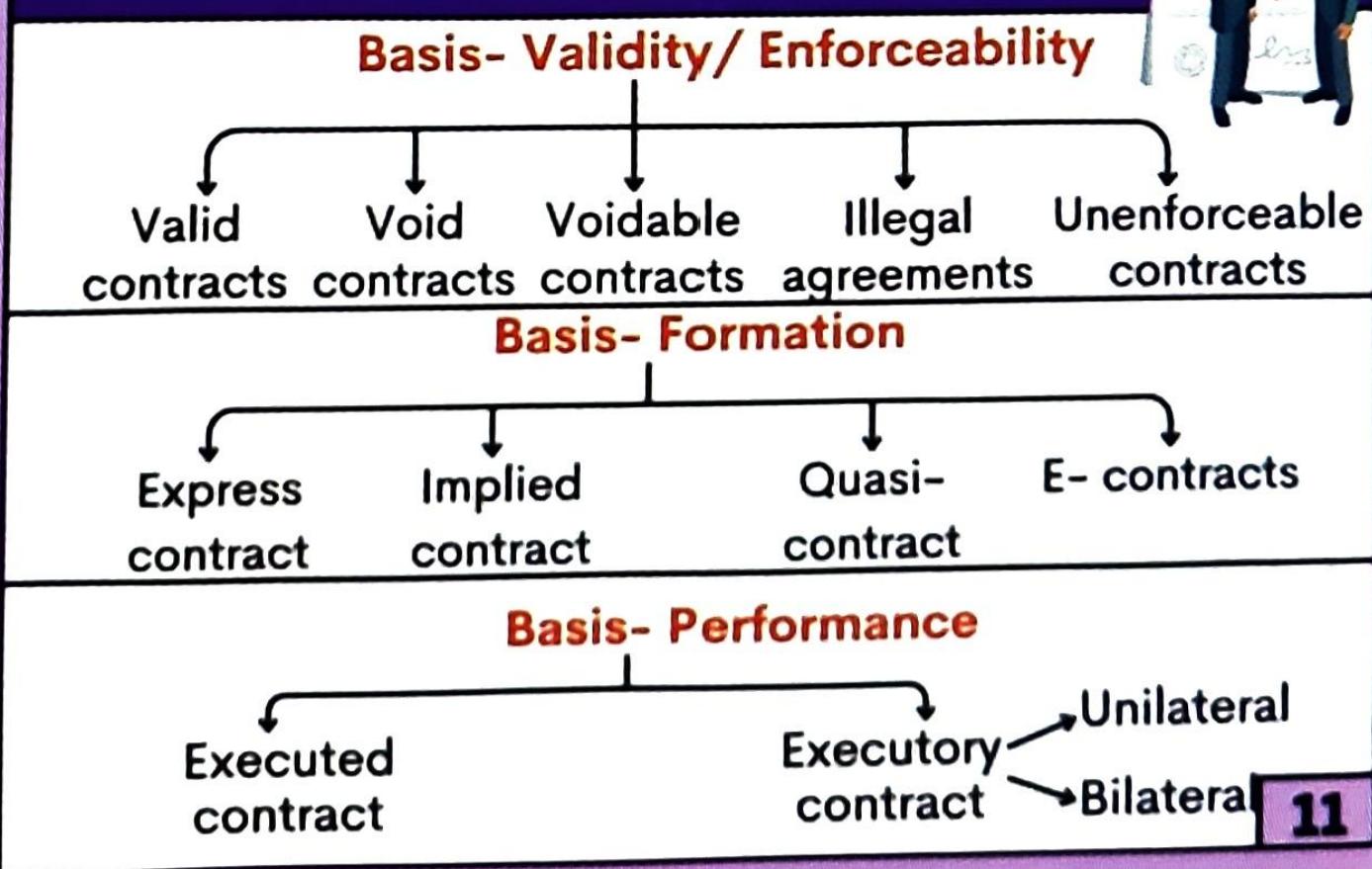


# NATURE OF CONTRACT

- **Agreement**- 1st essential element of valid contract.  
(Agreement= Offer + Acceptance)
- **Free consent**- 2 or more persons agreeing on the same thing in the same sense (not due to any persuasion, influence, fraud, misrepresentation etc.)
- **Capacity of parties**- Legal ability of a person to enter a valid contract.
  - Age of majority
  - Sound mind
  - Not disqualified by his status
- **Lawful consideration and object**- Acc. to Section 23 - a non- lawful object is prohibited.
- **Not declared to be void**- An illegal/ void agreement is without any legal effect.

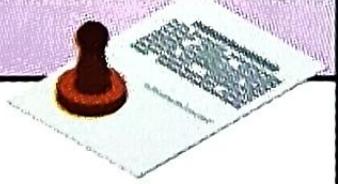


## TYPES OF CONTRACTS



# NATURE OF CONTRACT

## VALID CONTRACT



- Binding + enforceable
- Contain the essential elements.

**INVALID**

## VOID CONTRACT



- Acc. to **Section 2(j)**- "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable".
- A void cannot be enforced by the law.

## VOIDABLE CONTRACT

- Acc. to **Section 2(i)**- "agreement which is enforced by law at the option of one or more parties thereto, but not at the option of the other/ others in voidable contract"
- **Meaning**- In case one of the parties is in a position of not performing its part- the agreement becomes voidable.

VOID CONTRACT	VOIDABLE CONTRACT
<ul style="list-style-type: none"><li>• Cannot be enforced at all.</li></ul>	<ul style="list-style-type: none"><li>• Enforced only at opinion of aggrieved party.</li></ul>
<ul style="list-style-type: none"><li>• <b>Cause</b>- change in law/ circumstances.</li></ul>	<ul style="list-style-type: none"><li>• <b>Cause</b>- if the consent of the party was not free.</li></ul>
<ul style="list-style-type: none"><li>• Cannot be performed.</li></ul>	<ul style="list-style-type: none"><li>• Any party can sue the other for claiming the performance.</li></ul>

# NATURE OF CONTRACT

## ILLEGAL CONTRACT



- Forbidden by law.

**Note-** All illegal agreements are void, but all void agreements are not illegal.

## VOID AGREEMENT

## ILLEGAL AGREEMENT

Not forbidden under law

Forbidden under law

Parties not liable for any punishment under law

Liable for punishment

Agreements collateral to void agreement, may or may not be void.

Agreements collateral to illegal agreement are always void.

## UNENFORCEABLE CONTRACT

- When the contract cannot be enforced due to any technical defect.

## BASIS- FORMATION OF CONTRACT



## EXPRESS CONTRACT

- Terms are expressed by words or writing (**section 9**).

## IMPLIED CONTRACT

- Exists due to implication (of action/ conduct of parties dealing)- **Section 9** considers these contracts

**Note-** **Tacit contracts**- (silent in nature)- Conduct of parties without word spoken/ written.

# NATURE OF CONTRACT

## QUASI- CONTRACT

- It is a legal obligation, when no contract exists.

## E- CONTRACTS



- When parties/ persons create networks, linking by Electronic data Interchange (helps with easy business transactions).

## BASIS- PERFORMANCE OF CONTRACT

### EXECUTED CONTRACT

- When the contract is executed or intentionally delayed, it has to be brought in the record.

### EXECUTORY CONTRACT

- Consideration/ obligation to be performed in future.
- **TYPES-**

#### UNILATERAL

When 1 party has performed the duty, but the other has not.

#### BILATERAL

When both the parties have not performed their duties.

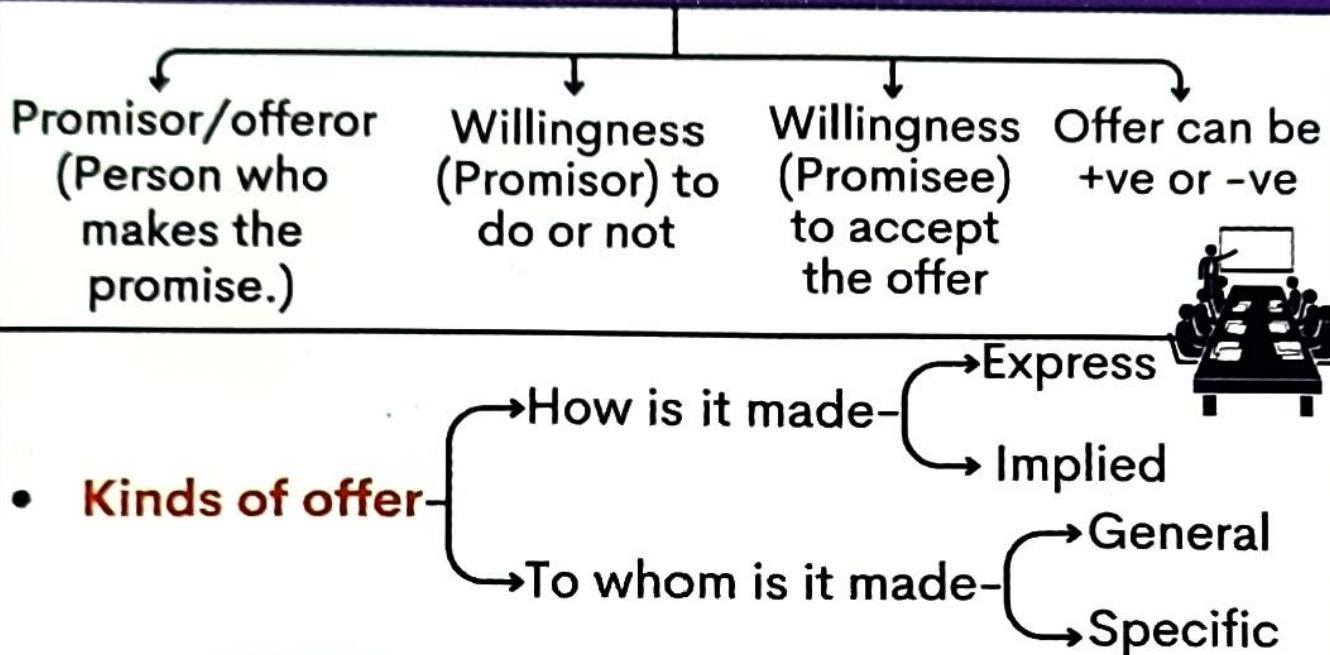
## PROPOSAL/ OFFER



- Acc. to **section 2(e)**- "when a person signifies to another, his willingness to do or to abstain from doing anything with a view to obtain the assent of that other to such act or abstinence, he is said to make a proposal".

# NATURE OF CONTRACT

## ESSENTIALS OF A PROPOSAL



## CLASSIFICATION OF OFFER

### GENERAL OFFER



- **Acc. to Section 8-** "Anyone performing the conditions of the offer can be considered to have accepted the offer".
- A public offer, that anyone can accept.

#### Carlill Vs. Carbolic Ball Co. (1893)

Carbolic smoke ball co. advertised a reward of £100 to anyone who contracted influenza, after using their Smoke balls, which was accepted by Mrs. Caelill.

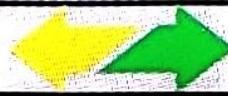
### SPECIAL/ SPECIFIC OFFER



- Can be accepted by a special person only.
- Eg- Boulton Vs. Jones.

# NATURE OF CONTRACT

## CROSS OFFER



- Both parties exchanging identical offers (irrespective of the time).
- NO Binding contract.

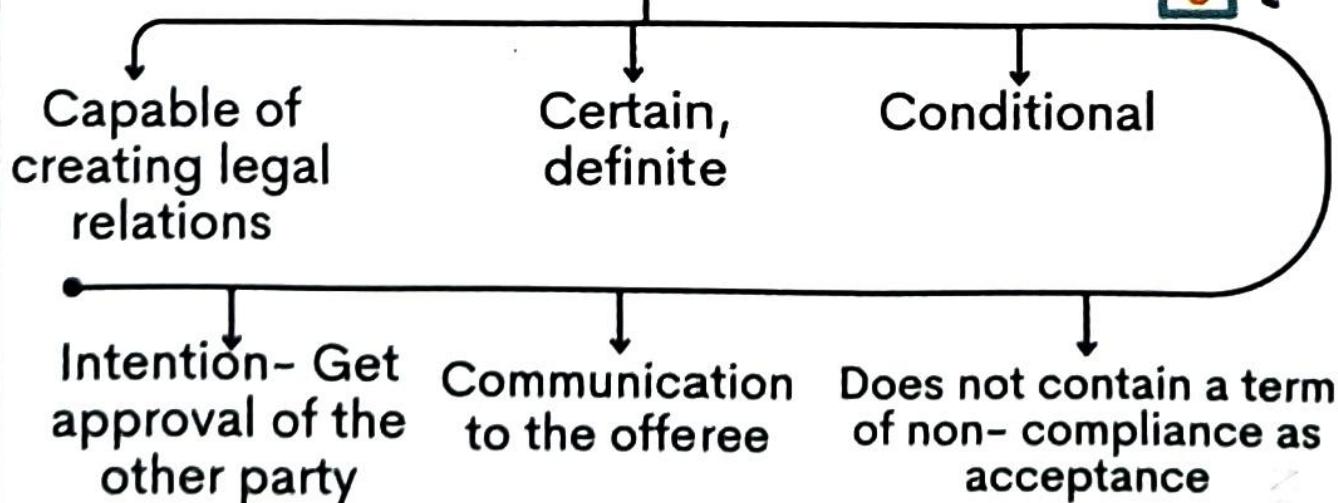
## COUNTER OFFER (CONDITIONAL ACCEPTANCE)

- When an offeree, offers acceptance, governed by modifications/ variations, in terms of original offer.

## STANDING/ CONTINUING/OPEN OFFER

- Open for acceptance over a period of time.
- Tenders are invited for such offers.

## ESSENTIALS OF A VALID OFFER



## INVITATION TO OFFER



- It is basically circulation of an offer (that precedes the definite offer).
- Acceptance of an invitation leads to process of negotiation in the offer.

# NATURE OF CONTRACT

OFFER	INVITATION TO OFFER
<ul style="list-style-type: none"> <li>Acc. to section 2(a)- Final expression of willingness by the offeror to be bound by the offer should the other party chooses to accept it.</li> <li>The party is bound by it, as soon as the other party accepts the offer.</li> <li>Is always sent after the invitation of offer</li> </ul>	<ul style="list-style-type: none"> <li>Offers made with an intention to negotiate/receive offers.</li> </ul>

## ACCEPTANCE



- Acc. to **Section 2(b)**- "When the person to whom the proposal is made signifies his assent thereto, proposal is said to be accepted. The proposal, when accepted, becomes a promise".



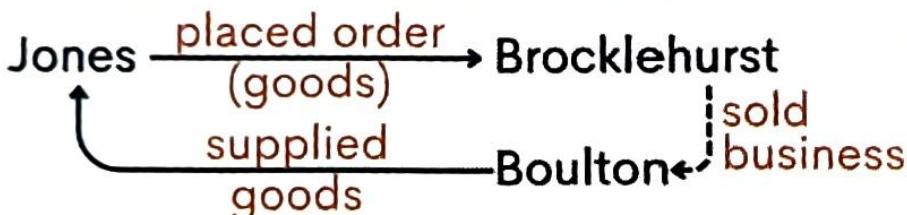
- Offer can be withdrawn, just before it is accepted.
- Acceptance creates a legal relationship.

## LEGAL RULES REGARDING OFFER ACCEPTANCE

- Acceptance can be given only by the person, to whom offer is made.

# NATURE OF CONTRACT

## Eg- Bulton Vs. Jones (1857)



Jones refused to pay for the goods, as the order was not in his name.

## 2. Acceptance must be absolute + unqualified (Section 7).

- If the proposal describes the manner, in which it is to be accepted; it must be accepted accordingly.
- 3. Acceptance must be communicated- Acceptance/ Conditional acceptance/ No acceptance must be well communicated.
- 4. Must be in prescribed mode.
- 5. Acceptance must be in specified time limit.
- 6. Silence is not termed as acceptance.
- 7. Acceptance should happen by conduct.



## COMMUNICATION OF OFFER AND ACCEPTANCE

**Communication of offer-** Acc. to **Section 4**- "the communication of offer is complete when it comes to the knowledge of the person to whom it is made".

**Communication of acceptance-**



Communication by  
**ACT**  
(Oral/ Written)



Communication by  
**OMISSION**  
(Conduct conveys willingness)

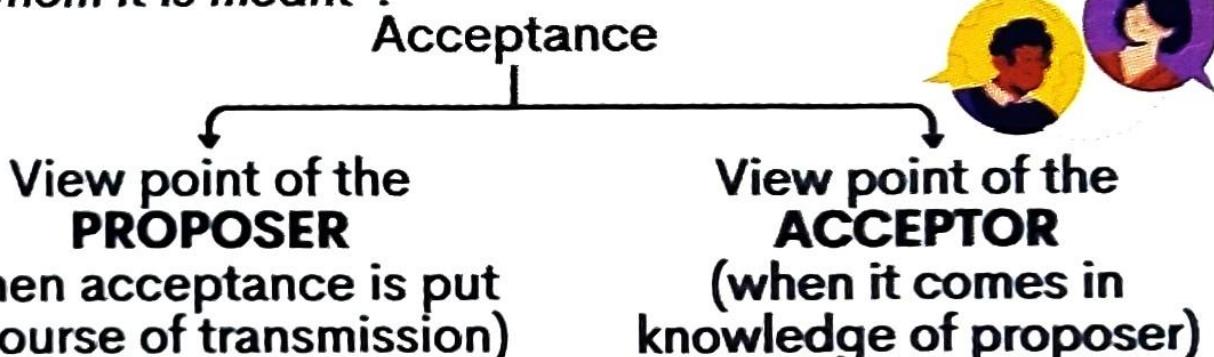
# NATURE OF CONTRACT

## COMMUNICATION OF ACCEPTANCE BY CONDUCT

- Indirect effort must result in effective communication (of both acceptance and non- acceptance).
- If the proposal is send by post, the acceptance will not be counted until it is received back by post.
- Sometimes, the contract has some special conditions – which are conveyed and accepted tacitly.

## COMMUNICATION OF PERFORMANCE

Acc. to **Section 4**– “Communication of a proposal is complete when it comes to the knowledge of the person to whom it is meant”.



- The offeree must also communicate the performance (of the way of acceptance)

## REVOCATION OF OFFER AND ACCEPTANCE

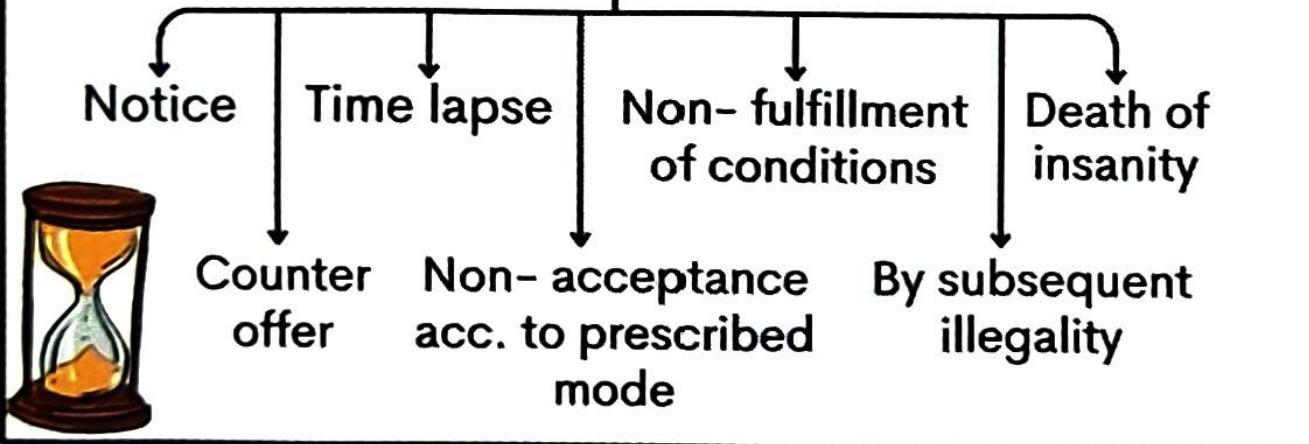
- Acc. to **Section 4**– Communication of revocation is complete–
  - As against the person who makes it, when it is put into course of transmission to the person to whom it is made so as to be out of the power of the person who makes it.
  - and as against the person to whom it is made, when it comes to his knowledge.

# NATURE OF CONTRACT

- Eg- The bidder at the auction sale may withdraw his bid, only before it is accepted by the auctioneer by the fall of hammer.
- Acc. to **Section 5**- "*Proposal can be revoked at any time before the communication of its acceptance is completed as against the acceptor*".
- **Note-** Once the letter of acceptance is posted or received via electronic means, it cannot be revoked.
- The proposer does not have to wait indefinitely, for the acceptance; the proposal can be revoked by communication.



## MODES OF REVOCATION

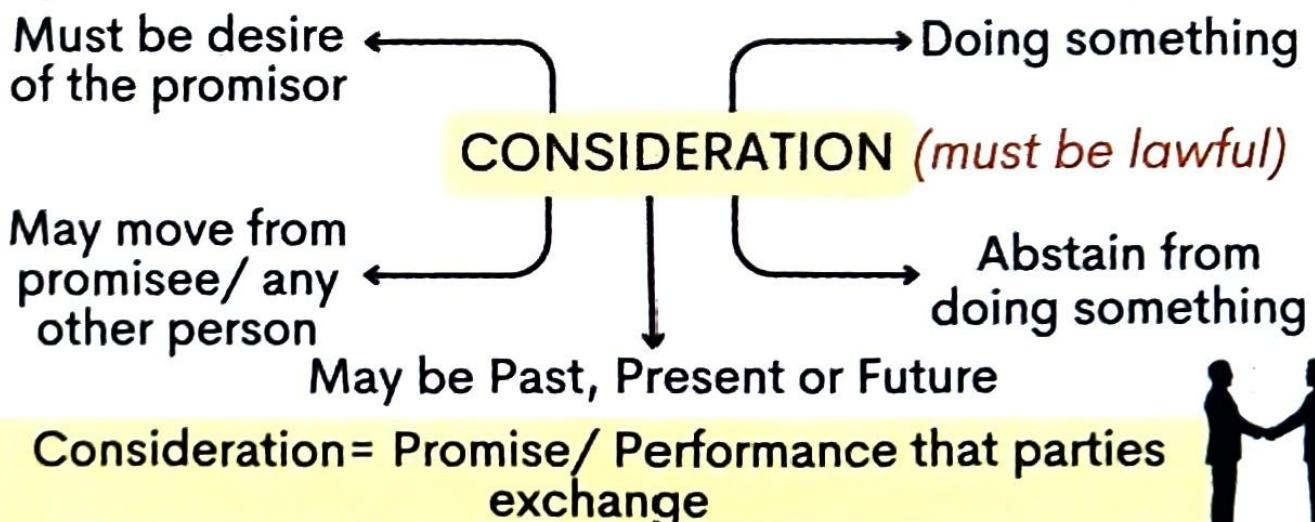


# INDIAN CONTRACT ACT (1872)

UNIT 2-

## CONSIDERATION

Acc. to **Section 2(d)**- "When at the desire of the promisor, the promisee or any other person has done or abstained from doing something, such an act or abstinence or promise is called consideration for the promise."

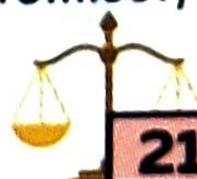


### LEGAL RULES REGARDING CONSIDERATION

#### 1. Must move at the desire of the promisor-

Consideration must be offered by the promisee/ third party at the request/ desire of the promisor.

#### 2. May move from promisee/ any other person- Acc. to **Section 2(d)**: When at the desire of the promisor, the promisee or any other person does something such an act is consideration.



# CONSIDERATION

## 3. Executed and executory consideration-

Consideration which consists in performance- Executed  
Consideration which consists in a promise- Executory.

## 4. May be Past, Present and Future- Consideration is given/ accepted in exchange of promise.

- A past consideration may be the motive, but cannot be the real consideration of subsequent promise.

## 5. Consideration need not be adequate- It need not be of equal value as the promise of exchange, which might be a bad bargain for the party.

- Acc. to **Explanation 2 of Section 25**- *"An agreement to which the consent of the promiser is freely given is not void merely because the consideration is inadequate".*



## 6. Performance of what one is legally bound to perform- When a party promises to do more/ pay more than what is legally bound is considered as void (but is not against the public policy).

## 7. It must be real and not imaginary.

## 8. Must not be unlawful, immoral, opp. to public policy.



## SUIT BY A THIRD PARTY TO A CONTRACT

Acc. to **Indian Contract Act (1872)**- *The consideration for an agreement may proceed from a third party, the third party cannot sue on contract. Only a person who is party to a contract can sue on it.*

# CONSIDERATION



**A stranger can enforce a claim only-**



## VALIDITY OF AN AGREEMENT WITHOUT CONSIDERATION

Acc. to **Section 25**- An agreement made without consideration is a void.

Cases where agreement without consideration is valid-

- **Natural Love + Affection**- Usually b/w parties in near relation.

Conditions [**Section 25 (1)**]-

- Must be made out of natural love and affection.
- Parties must stand in near relationship. ?
- Must be in writing.
- Must be registered under law.



- **Compensation for past voluntary services**-

Conditions [**Section 25(2)**]-

- Services must have been rendered voluntarily.
- Services must have been rendered for promisor.
- Promiser must be in existence at the time when services were rendered.

# CONSIDERATION

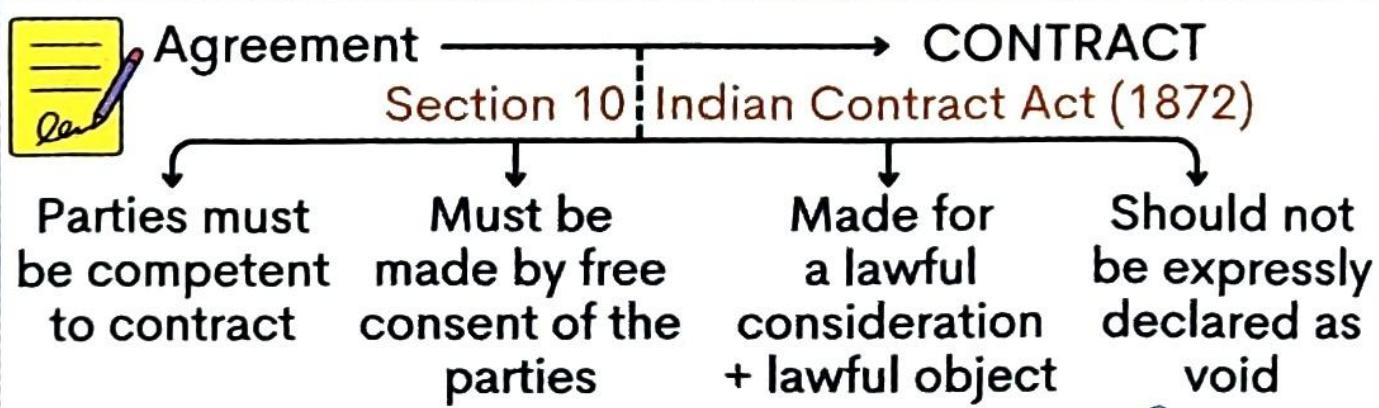
- The promiser must have intended to compensate promisee.
- **Promise to pay time barred debt**- Acc. to [Section 25(3)]- *"Where a promise in writing signed by the person making it, or by his authorized agent, is made to pay a debt barred by limitation it is valid without consideration".*
- **Agency**- Acc. to Section 185- *"No consideration is necessary to create an agency".*
- **Completed gift**- Acc. to explanation 1 of Section 25- *"Nothing in this section shall affect the validity as between the donor and the donee, of any gift actually made".*
- **Bailment**- Acc. to Section 148- Bailment is the delivery of good from one person to another. The delivery is made post accomplishment.
- **Charity**- If the promise contributes to charity, then the contract is valid.



# INDIAN CONTRACT ACT (1872)

## UNIT 3-

## OTHER ESSENTIAL ELEMENTS OF A CONTRACT



### CAPACITY TO CONTRACT

Competence of parties to make a contract.



Acc. to **Section 10**, Every person is competent to contract who



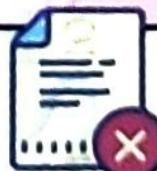
- Has attained age of majority.
- Is of sound mind.
- Is not disqualified from contracting by any law to which he is a subject.



### AGE OF MAJORITY

(regulated by Indian Majority Act, 1875)

- A contract made by a minor is void (*ab initio*).
- A minor cannot ratify the agreement on attaining majority (*since it is a void*).
- Acc. to **Section 30, Indian Partnership Act (1932)**—  
A minor, with the consent of all the partners, may be admitted to the benefits of partnership.



# OTHER ESSENTIAL ELEMENTS OF A CONTRACT

- A minor can plead minority, even in the case he falsely represented himself as major earlier.
- **Section 68-** Liable **Conditions** for a minor
  - The contract must be for the goods reasonably necessary for his support in the station in life.
  - The minor must not have already a sufficient supply of these necessaries.
- **Guardian** can enter a contract on minor's behalf but guardian has no power to bind the minor by a contract for immovable property purchase.
- **Cannot** be questioned for specific performance
- **Cannot** be declared **insolvent**.
- **Can act as an agent** (draw, deliver and negotiate without himself being liable).
- A minor **cannot bind guardian** for the necessaries.
- In case of **Joint contract**- adult is held liable.
- Minor **cannot be shareholder** in a company,  but he can transfer his shares to guardian.
- Minor is **liable for tort** unless, breach of contract.

## PERSON OF SOUND MIND



Acc. to **Section 12**- "a person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it is capable of understanding it and of forming a rational judgement as to its effect upon his interests".

\*Note- Contract made by an unsound mind is a **void**

# OTHER ESSENTIAL ELEMENTS OF A CONTRACT

## CONTRACT BY DISQUALIFIED PERSONS



Foreign  
sovereigns

Convicts

Insolvent

Corporations

Alien enemy

Ambassadors



\*Note- Contracts by such people are void

## FREE CONSENT

Consent is  
not free when



- Coercion
- Undue influence
- Fraud
- Misrepresentation
- Mistake ----- Void contract

Voidable



Bilateral mistake

Unilateral mistake

As to subject  
matter

Possibility of  
performance

Nature of  
contract

As to identity  
of person

**Section 13-** Two or more persons are said to consent when they agree upon the same thing in the same sense.

## FREE CONSENT is NOT caused by

Coercion  
Section 15

Undue  
Influence  
Section 16

Fraud  
Section 17

Misrepres-  
-entation  
Section 18

Mistake  
Sec. 20,  
21, 22

# OTHER ESSENTIAL ELEMENTS OF A CONTRACT

## ELEMENTS VITIATING FREE CONSENT

### COERCION

**Section 15-** "It is the committing, or threatening to commit, any act forbidden by the India Penal Code or the unlawful detaining, or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into any agreement".



**Effects of coercion (Section 19)-**

- Contract induced by coercion is voidable at the opinion of the party whose consent was so obtained.
- A person to whom money has been paid or anything delivered under coercion must repay or return it.

**(Section 72)**

\*Note- Threatening to commit suicide is regarded as coercion

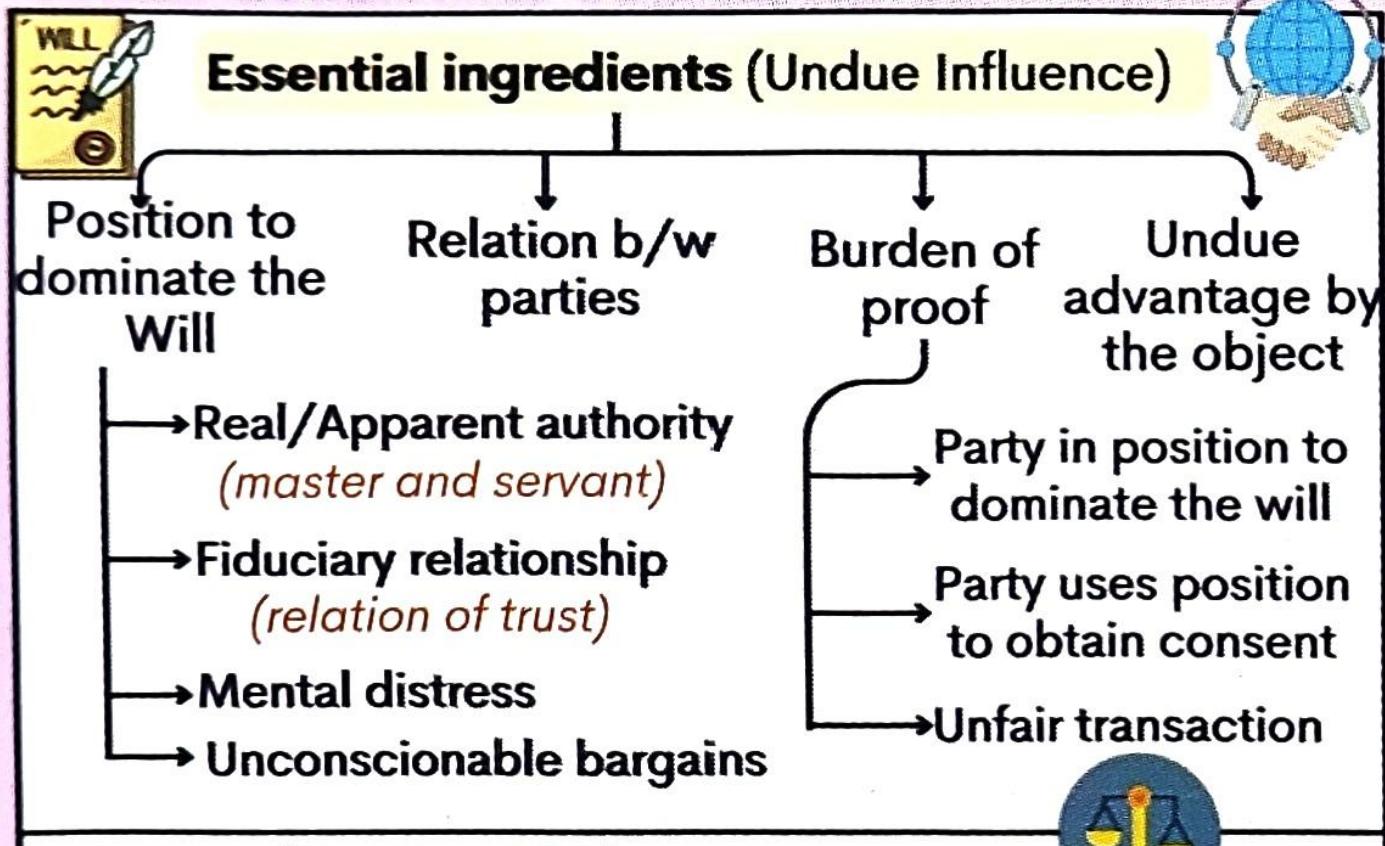


### UNDUE INFLUENCE

**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 he uses that position to obtain an unfair advantage over the other".

**VOID**

# OTHER ESSENTIAL ELEMENTS OF A CONTRACT



## EFFECTS (Section 19A) -

- When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.
- Any such contract may be set aside either absolutely or if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.



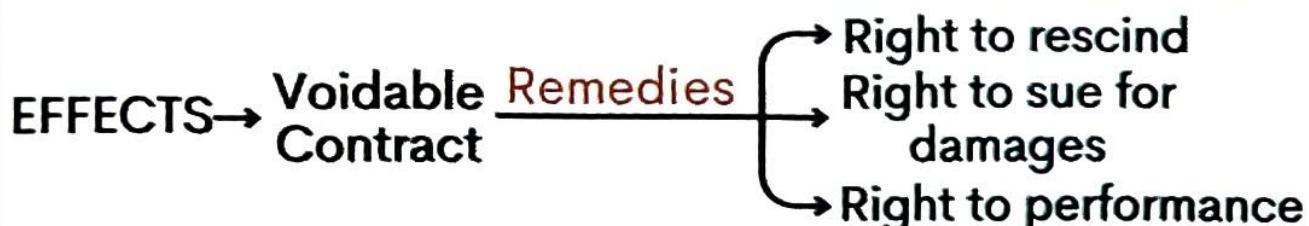
## FRAUD

**Section 17-** "Fraud is defined as any act committed by a party to a contract, or with his connivance (willingness to allow), or by his agents, to deceive or trick the other party, his agent, or to induce him to enter into the contract".

# OTHER ESSENTIAL ELEMENTS OF A CONTRACT

## ESSENTIAL ELEMENTS OF FRAUD

- Representation/ assertion of it to be false. Silence is fraud when there is duty to speak.
- Representation is related to fact.
- Induces the other party to act upon it.
- Other party relies upon the representation, hence suffering loss.



## MISREPRESENTATION



### Section 18-

- Statement of fact, which is false, would constitute misrepresentation if the maker believes to be true but which is not justified by the information he processes;
- When there is a breach of duty without any intention to deceive which beings an advantage to him;
- When a party causes, even though done innocently, the other party to the agreement to make a mistake as to the subject matter.

## COERCION

## UNDUE INFLUENCE

Involves physical force/ threat.

Involves moral/ mental pressure.

Relationship is not necessary.

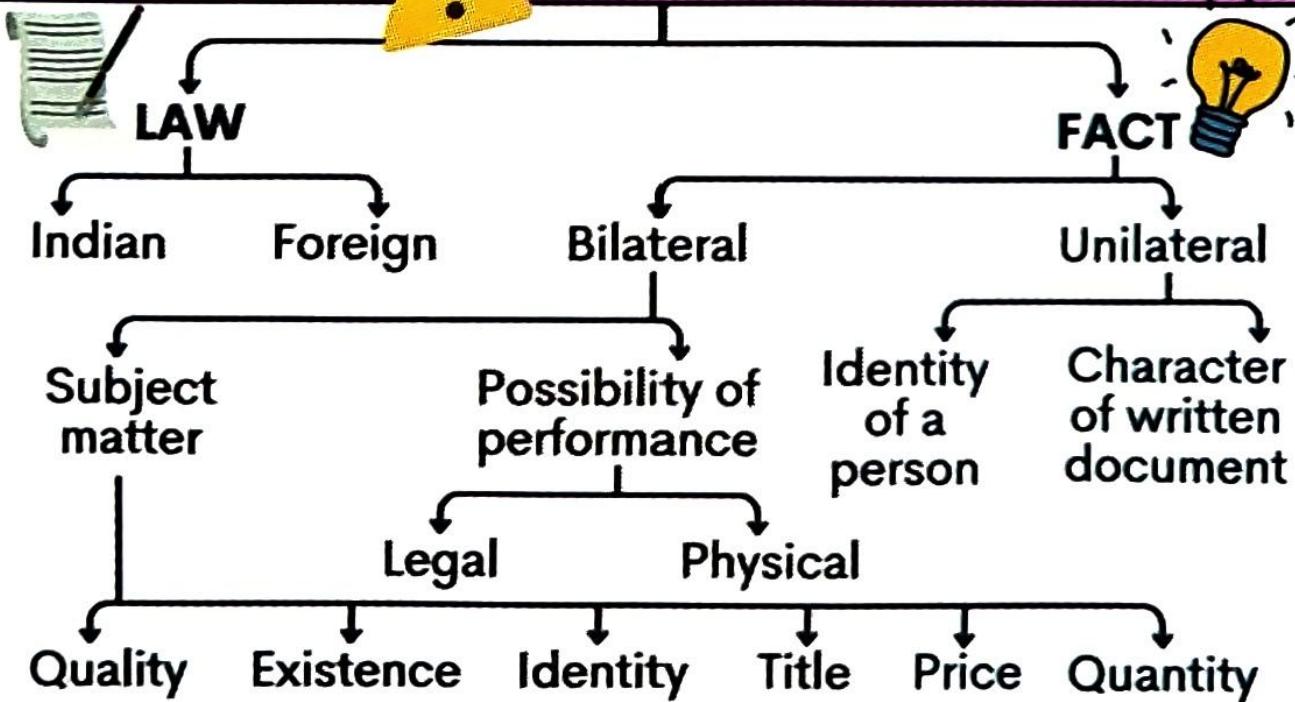
Relationship is necessary.

# OTHER ESSENTIAL ELEMENTS OF A CONTRACT

COERCION	UNDUE INFLUENCE
Involves committing/threatening for any forbidden act (IPC).	No such illegal act comes into play.
Can even be used by a stranger.	Always b/w parties of the contract.
Contract is voidable. 	Contract is either voidable or court may enforce its modified form.
Cancelled by the aggrieved party, benefits to the other party.	Court directs the aggrieved party to return benefits as a whole or in parts.
FRAUD	MISREPRESENTATION
Intention to deceive the other party. 	No such intention.
Person making statement, believes it to be untrue.	Person making statement believes it to be true, but is untrue.
Injured party can claim damage. 	Injured party can sue for restitution, but cannot claim damage.
Party cannot secure itself by telling that injured party has means to discover truth	Party can plead the injured party. 

# OTHER ESSENTIAL ELEMENTS OF A CONTRACT

## MISTAKE



### Definition-

Innocent/ erroneous belief which leads to the party to misunderstand others.

#### Mistakes of LAW



##### Indian Law

Are not allowed to get any relief for a particular act in ignorance of law.

##### Foreign Law

Treated as mistake of void.

#### Mistakes of FACT



##### Unilateral

Contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

##### Bilateral

Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement.

# OTHER ESSENTIAL ELEMENTS OF A CONTRACT

## LEGALITY OF OBJECT AND CONSIDERATION

Under **Section 23**, In the following cases the consideration/ object are considered to be unlawful-

- When consideration/ object is forbidden by law (punishable under any status).
- When considerations/ objects are of such a nature that if permitted it would defeat the provisions of law.
- When it is fraudulent.
- When consideration is immortal.
- When consideration is opposed to public policy.



## AGREEMENTS HELD OPPOSED TO PUBLIC POLICY

- **Trading with enemy**- If the trade offends the public policy, it is considered as void.
- **Stifling Prosecution**- Compromising any public offence and drop proceedings unlawfully, is considered as void.
- **Maintenance and Champerty**
  - **Maintenance**- agreement in which a person promises to maintain suit, without any interest.
  - **Champerty**- Assist another in litigation in exchange of a promise to hand over a portion of proceeds of action.
- **Trafficking relating to public offices + titles**- Money considerations in appointment in offices instead of the best qualified is considered as void.
- **Agreements to create monopolies** are void.



# OTHER ESSENTIAL ELEMENTS OF A CONTRACT

- **Marriage brokerage agreements**- An agreement negotiating marriage for reward is void.
- **Interference with course of justice**- An agreement to induce judicial officer of the state, to act corruptly is a void.
- **Interest against obligation**- personal gains against official responsibility.
- **Consideration unlawful in part**- Acc. to **Section 24**- "*If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.*"



## VOID AGREEMENTS



### Agreement in restraint of marriage (Section 26)

- *Every agreement in restraint of marriage of any other person other than minor, is void.*

### Agreement in restraint of trade (Section 27)

- *An agreement by which any person is restrained from exercising a lawful profession, trade/ business of any kind, is to that extent void.*
- **Exception case- Section 36**- "*If an outgoing partner makes agreement with the continuing partners that he will not carry on any business similar to that of the firm within a specific period or within specific local limits.*"

# OTHER ESSENTIAL ELEMENTS OF A CONTRACT

## Agreement in restraint of legal proceedings (Section 28)

- Contract of such a nature is a void except-

In case of arbitration  
(Valid contract)

Future arbitration in form  
of a written contract



## Agreement- with uncertain meaning (Section 29)

- In case the meaning is capable to be made certain- the agreement becomes valid.

## Wagering agreement (Section 30)

- Agreement involving payment of money upon determination of an uncertain event is void.



### ESSENTIALS of a WAGER



Promise to pay  
money/ money's  
worth

Promise to be  
conditional on  
an event.

No interest in  
event (except  
stake)

Uncertainty  
of event

2 parties (one:  
win, other lose)

Common  
intention to bet

## TRANSACTIONS similar to WAGER (Gambling)

- Lottery transactions-

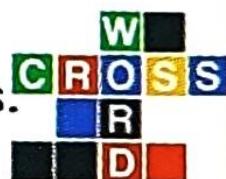
Chance game; no skill

Illegal under Section 294A, Indian Penal Code



# OTHER ESSENTIAL ELEMENTS OF A CONTRACT

- **Crossword puzzles and competitions -**
  - Prices depend on competitor's solutions.
- **Speculative transactions-**
  - Share market transaction, where the difference b/w contract price and market price is settled by goods and shares.
- **Horse Race transaction-**
  - Bet winner < than Rs. 500 is a wager.



## Transactions resembling wagering (but NOT VOID)

Chit funds      Share market      Athletic competitions      Insurance contract

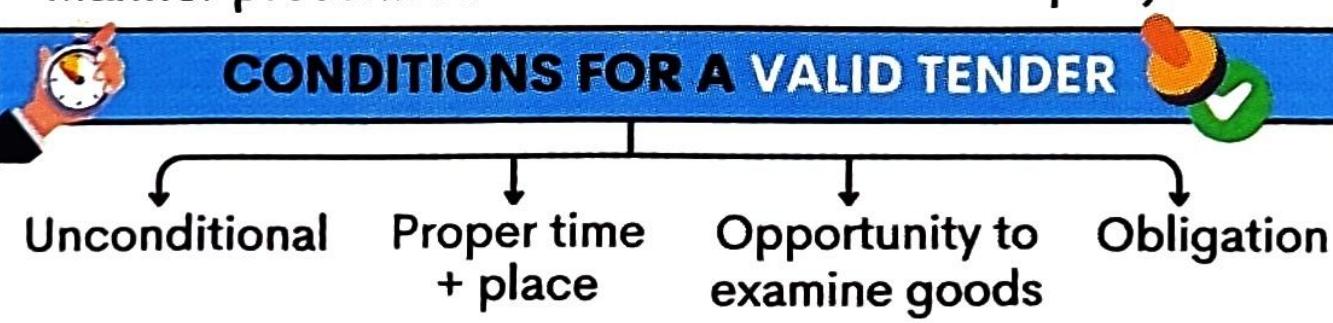
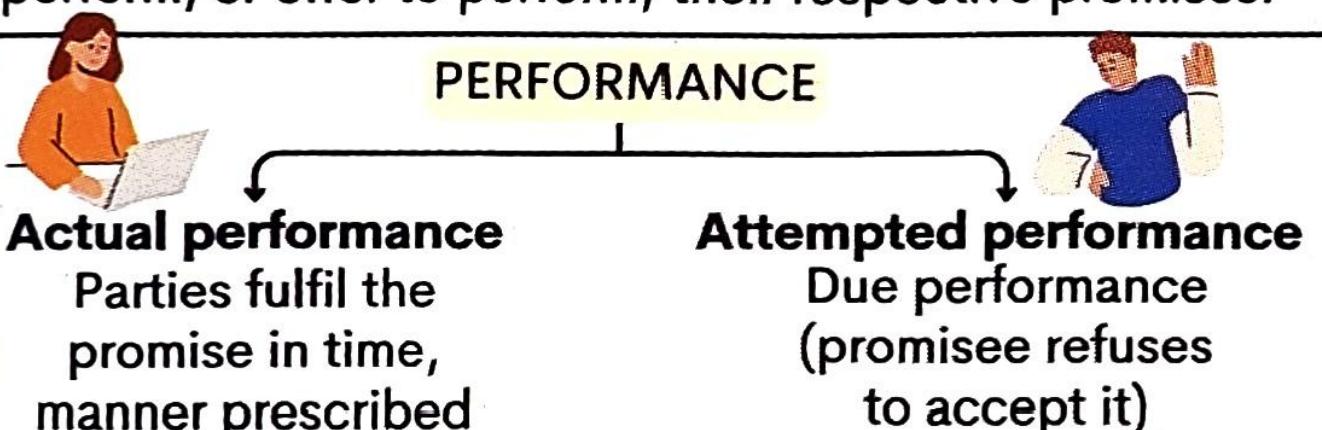
CONTRACT INSURANCE	WAGERING AGREEMENT
Contract to indemnify the loss.	Promise to pay money on basis of event.
Mutual consideration (+)	Mutual consideration (-)
Insurable interest in life + property	Bet on other's life + property
Contract of insurance compensates personal loss	Loser pays a fixed amount after the event
Valid + enforceable	Void + unenforceable
Risk calculation is scientific	No logical risk calculation
Beneficial to society	Against public welfare

# INDIAN CONTRACT ACT (1872)

## UNIT 4-

# PERFORMANCE OF CONTRACT

**Section 37**– The parties to a contract must either perform, or offer to perform, their respective promises.



## TO WHOM A CONTRACT MAY BE PERFORMED

According to **Section 40, 41, 42**–

- **Promisor himself**– The promise has to be performed by the promisor.
- **Agent**– Promisor/ agent tend to employ a competent person to complete the promise.
- **Legal Representative**– Bound to perform the promise in case of the death of the promisor  
**(Section 37; para 2)**

# PERFORMANCE OF CONTRACT

- **Third person**- Performance by a stranger, helps discharging the promisor.
  - **Section 41**- "When a promisee accepts performance of the promise from a third person, he cannot afterward enforce it against the promisor".
- **Joint promisors**- **Section 42**- "When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons must jointly fulfil the promise".



SUCCESSION	ASSIGNMENT
Burden + benefits both attached to contract devolve to the legal heir.	Benefits of the contract can only be assigned not the liabilities.

\*Note- If the debts owed by father > value of assets inherited- Then the son would not pay the excess.



## LIABILITIES OF JOINT PROMISOR AND PROMISEE

Acc. to **Section 42**- 2/ more people make a joint promise must fulfil them together.



- **In case a promisor dies**- his legal representative must work with the survivors.
- **In case all of them die**- all legal representatives must fulfil the promise.

**Section 43**- "When 2/ more persons make a joint promise, the promisors may, in absence of express agreement to the contrary, compel any one / more such joint promisors to perform the whole promise".



# PERFORMANCE OF CONTRACT

\*Note- If 1 joint promisor is made to perform the contract, he can ask the others to contribute.



## EFFECT of release of one joint promisor-

**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".



## RIGHTS of joint promisees-

**Section 45-** "When a person has made a promise to two or more persons jointly, then unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and after the death of any of them, with the representative of such deceased person jointly with the survivor/ survivors, and after the death of the last survivor, with the representatives of all jointly".

## TIME AND PLACE OF PERFORMANCE

**Section 46-** Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time



A reasonable time w.r.t circumstances.

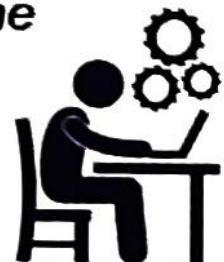
# PERFORMANCE OF CONTRACT

**Section 47-** "When a promise is to be performed on a certain day, and the promisor has undertaken to perform it **without application** by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.".



**Section 48-** "When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it **without application** by the promisee, it is the duty of the promisee to apply for **performance at a proper place and within the usual hours of business.**"

**Section 49-** "When a promise is to be performed **without application** by the promisee, and **no place** is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a **reasonable place for the performance** of the promise, and to perform it at such place."



**Section 50-** "The performance of any promise may be made in any such manner, or at any time which the promisee prescribes or sanctions."



## PERFORMANCE OF RECIPROCAL PROMISE

**Section 51-** "When a contract consists of **reciprocal promises** to be simultaneously performed, **no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.**"

# PERFORMANCE OF CONTRACT

**Section 52-** "Where the **order** in which reciprocal promises are to be performed is expressly **fixed** by the contract, they **shall be performed in that order**; and where the **order** is not expressly fixed by the contract, they shall be performed in that **order which the nature of the transaction requires.**"



**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 which he may sustain in consequence of the non-performance of the contract."



**Section 54-** "If the promisor who has to perform his promise before the performance of the **other's promise** fails to perform it, he **cannot claim performance of the other's promise**, and is also **liable for compensation** for his non- performance."



**Section 55-** "When a party to a contract **promises to do a certain thing at or before a specified time**, or certain things at or before specified times, **and fails to do any such thing at or before the specified time**, the contract, or so much of it as has not been performed, becomes **voidable** at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract."

# PERFORMANCE OF CONTRACT

Acc to **Section 56**- Agreement to do **IMPOSSIBLE ACT**

Initial impossibility  
(Agreement= void)

Subsequent impossibility  
• Post- contractual  
• Contract= void

Impossible to perform      Possibility ignored by parties      Impossible (only known by promiser)



**Section 57**- *"Where persons reciprocally promise, firstly 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 contract, but the second is a void agreement."*



**Section 58**- *"If one branch of the alternative promise is legal and the other is illegal, then only the legal branch can be enforced."*

## APPROPRIATION OF PAYMENTS

**Section 59**- *"Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying, that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly."*

# PERFORMANCE OF CONTRACT

**Section 60-** "Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits."

**Section 61-** "Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits."

## CONTRACTS WITH CONSENT OF BOTH PARTIES

**Section 62-** "If the parties to a contract agree to substitute a new contract for it, or to rescind it or alter it, the original contract need not be performed."



NOVATION	ALTERATION
Substitution of existing contract by new one.	Alteration of existing contract by mutual agreement.

# PERFORMANCE OF CONTRACT

**Section 63-** "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."

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

**Section 65-** "When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it."

**Section 66-** "The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal".

**Section 67-** "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."

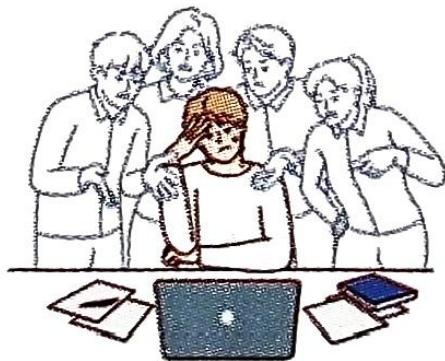


# PERFORMANCE OF CONTRACT

## DISCHARGE OF A CONTRACT



- Discharge by performance  
(Actual, Attempted)
- Discharge by mutual agreement  
(Novation, Rescission, Alteration, Remission)
- Discharge by impossibility of performance
- Discharge by time lapse
- Discharge by law operations  
(death of promisor, insolvency)
- Discharge by contract breach  
(party fails to perform)
- Discharge by remission of performance
- Discharge by neglection of promisee to get promisor reasonable facilities
- Merger of rights  
(Inferior + Superior- leading to non- enforcement of inferior rights)



BRANZI  
RANZI

# INDIAN CONTRACT ACT (1872)

UNIT 5-

## CONTINGENT AND QUASI CONTRACTS

**Section 31-** "A contract to do or not to do something, if some event, collateral to such contract, does or does not happen."

**Collateral Event-** an event which is neither a performance directly promised as a part of the contract, nor the whole of the consideration for a promise.  
**(by Pollock and Mulla)**



### ESSENTIALS for CONTINGENT CONTRACT

Collateral to contract (not a part of event)	Happening / non-happening of event	Contingent + will of the promisor	Event must be uncertain
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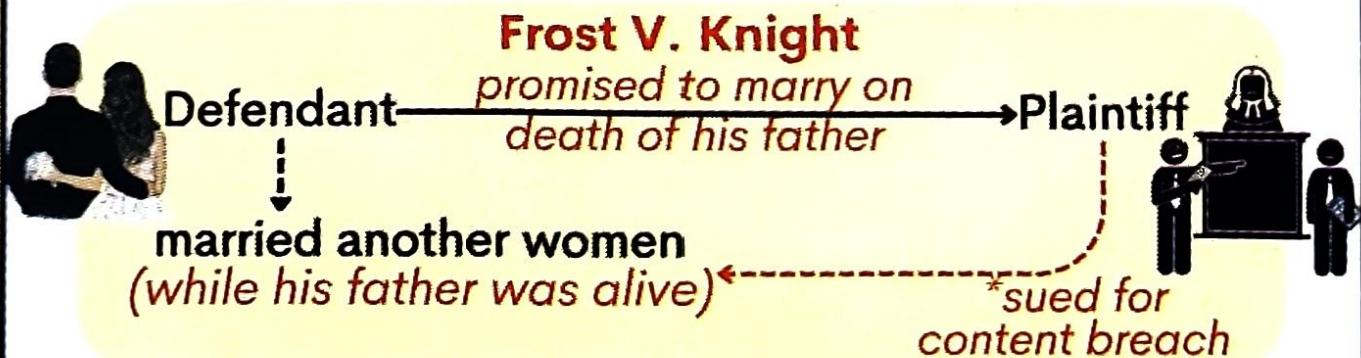
### RULES RELATING TO ENFORCEMENT

- Section 32-** "where a contingent contract is made to do or not to do anything if an uncertain future event happens, it cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contract becomes void."
- Section 33-** "where a contingent contract is made to do or not do anything if an uncertain future event does not happen, it can be enforced only when the happening of that event becomes impossible and not before."

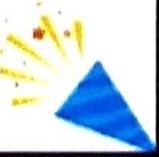


# CONTINGENT AND QUASI CONTRACTS

- **Section 34-** "if a contract is contingent upon as to how a person will act at an unspecific time, that event shall be considered to have become impossible when such person does anything which renders it impossible that he should so act within any definite time or otherwise than under further contingencies."



- **Section 35-** "Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired, and such event has not happened or before the time fixed has expired, if it becomes certain that such event will not happen."
- **Section 36-** "Contingent agreements to do or not to do anything, if an impossible event happens are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made."

CONTINGENT CONTRACT	WAGERING CONTRACT
Contract to do/ not do something with reference to a collateral event happening/ not. 	A promise to give money/ its worth with reference to an uncertain event happening/ not. 

# CONTINGENT AND QUASI CONTRACTS

CONTINGENT CONTRACT	WAGERING CONTRACT
May not contain reciprocal promises.	Consists of reciprocal promises.
Event is collateral	Uncertain event-core factor
May not be wagering in nature.	Essentially contingent in nature.
Parties show interest in subject matter.	No interest in subject matter.
Not based on doctrine of mutuality of loss and gain.	Game- losing and gaining matters.
Valid	Void

## QUASI CONTRACTS (Constructive contracts)

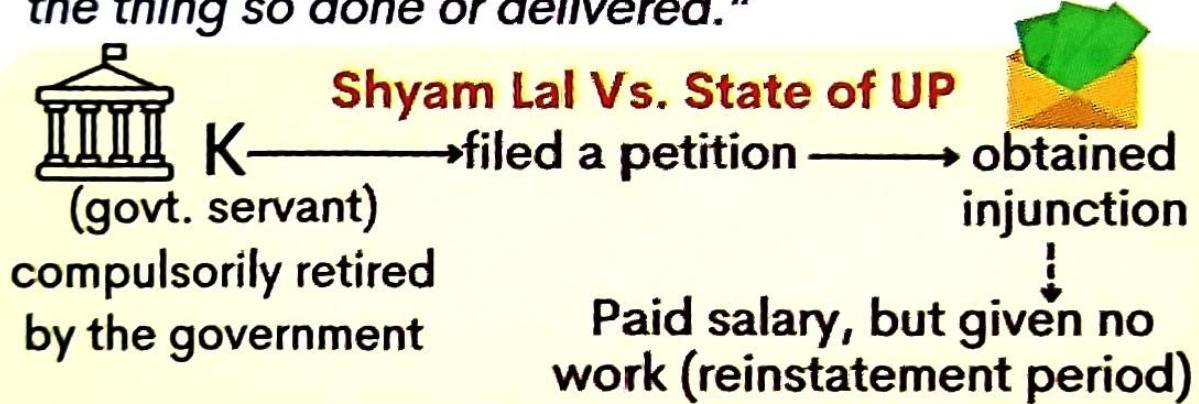
Obligations to be performed by a certain person, such as – offer, acceptance, capacity to contract, free consent, consideration.

### Salient features-

- Right to money (not always liquidated money). 
- Imposed by the law (not agreement b/w parties).
- Always against a particular person/ persons.
- **Section 68-** *"If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person."*

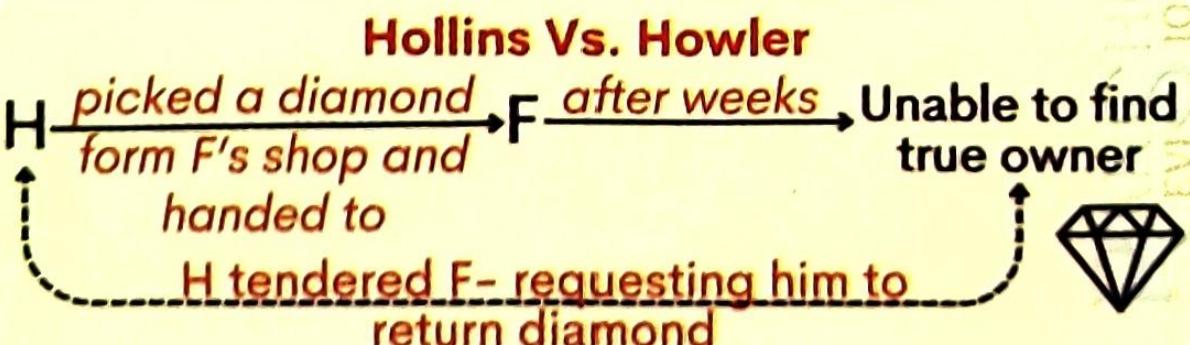
# CONTINGENT AND QUASI CONTRACTS

- **Section 69** - "A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other." 
- **Section 70** - "Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."



\*appeal when in favor of govt. and K was directed to return the salary paid.

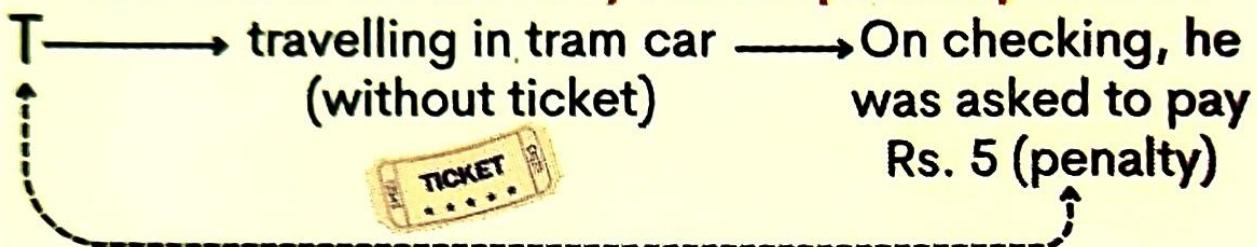
- **Section 71** - "A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee".



# CONTINGENT AND QUASI CONTRACTS

- **Section 72** - "A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it".

## Trikamdas Vs. Bombay Municipal Corporation



\*T filed a suit for recovery on ground

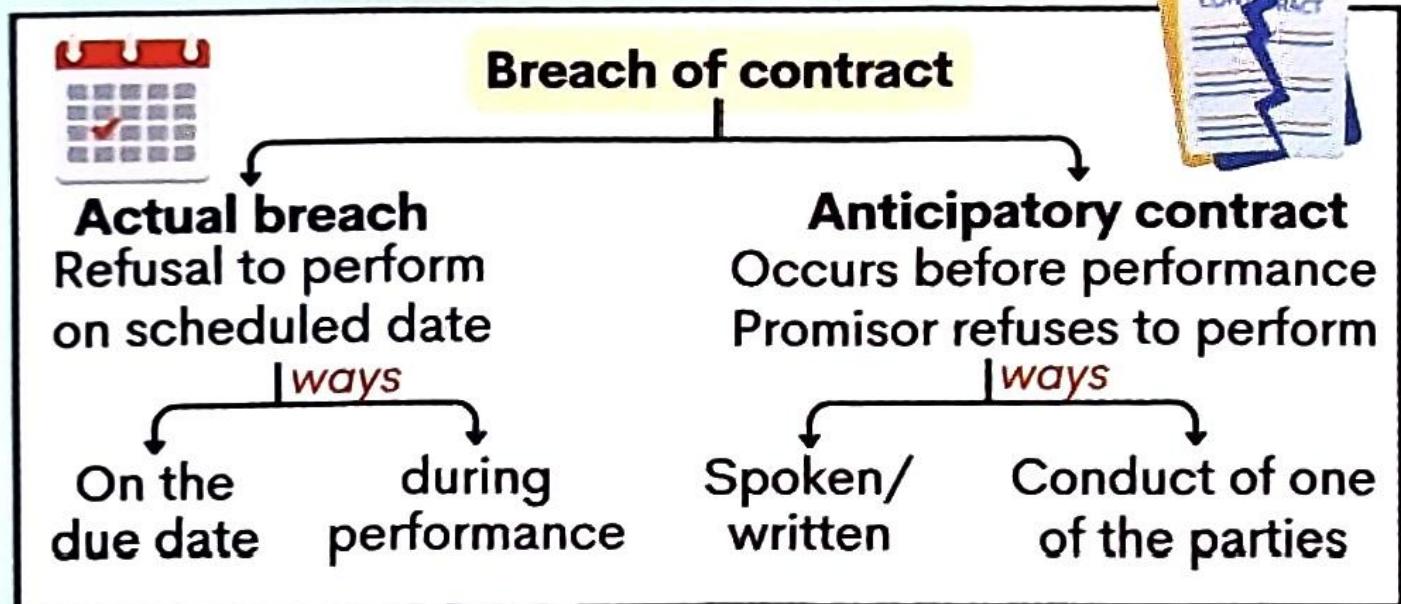
QUASI- CONTRACT	CONTRACT
Essentials for contract (-)	Essentials for contract (+)
Imposed by law	

RANS  
EVIS  
ION

# INDIAN CONTRACT ACT (1872)

UNIT 6-

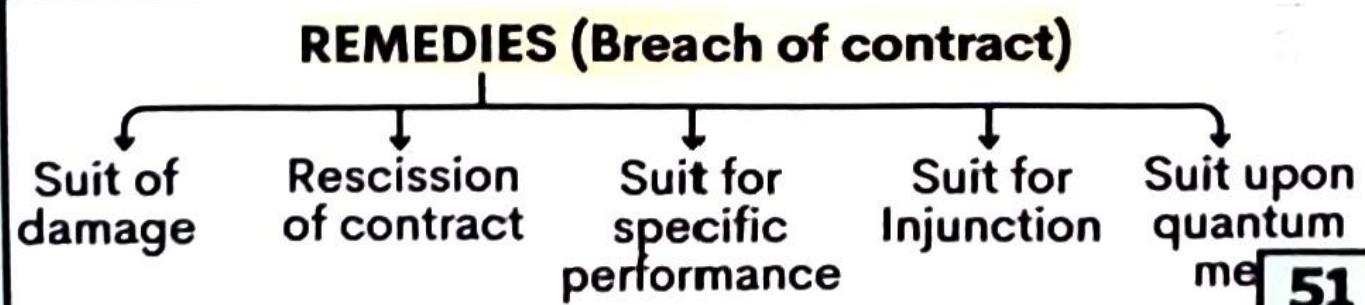
## BREACH OF CONTRACT AND ITS REMEDIES



**Section 39-** "When a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance."

### EFFECT (Anticipatory breach)

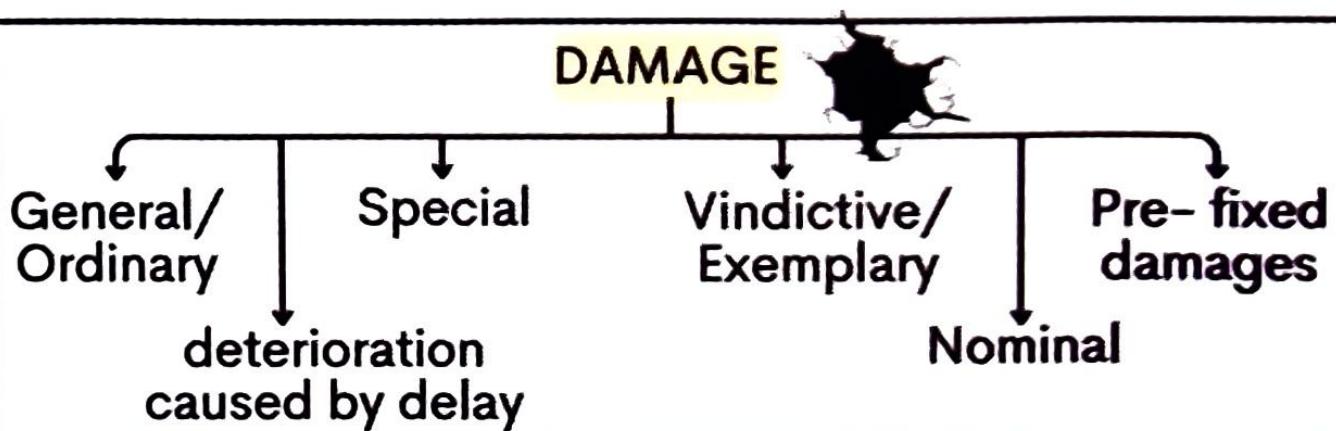
- Sue the other party for damage (without waiting for the due date of performance).
- Wait till the due date by keeping contract active.



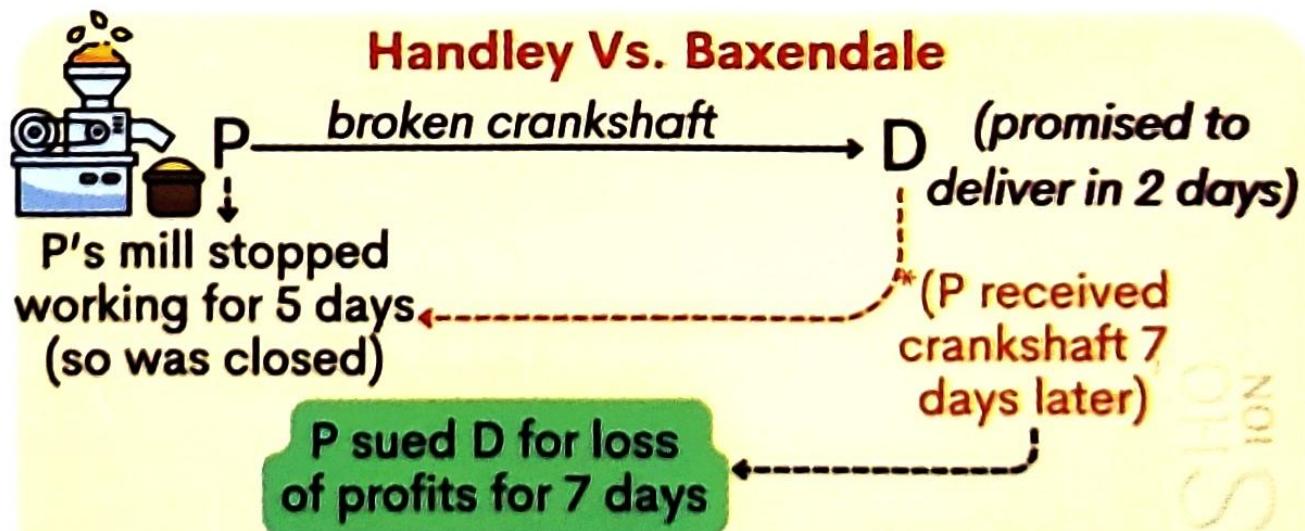
# BREACH OF CONTRACT AND ITS REMEDIES

## SUIT FOR DAMAGE

**Section 73-** "On the breach of the contract, the party who suffers from such a breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him by breach".



- **Ordinary damage**- Compensation from any loss/ damage due natural course of things.



\*The court declared that D was not liable for the loss.

- **Special damage**- Where the party receives notice for special circumstances.

# BREACH OF CONTRACT AND ITS REMEDIES

- **Vindictive/ Exemplary damage-**

breach of promise to marry

wrongful dishonor by banker  
of his customer's cheque

- **Nominal damage-** False plaintiff contract breach.
- **Damage of delay-** Mainly includes physical damage/ loss of opportunity; can be recovered.
- **Pre- fixed damages-** Pre- fixed penalty on the breach of contract.



## PENALTY AND LIQUIDATED DAMAGES



- **Liquidated damage-** Pre- estimation of parties for the loss, which would be caused by future breach of the contract.
- **Penalty-** when the amount fixed is unreasonable and forces the other party to perform the contract.
- Section 74 of contract act fixes the amount paid for the damage.

*Note- In case of any bond signed for the breach condition, the party is liable to pay the whole amount mentioned.*

## REMEDIES OTHER THAN CLAIMING DAMAGE



- **Rescission of contract-** Termination of contract by the promisee, when promisor refuses to perform.
- **Quantum Meruit-** Reasonable sum of money to be paid for services rendered/ work done when the amount due is not stipulated in a legally enforceable contract.

# BREACH OF CONTRACT AND ITS REMEDIES

## CONDITIONS

Original contract discharged

Claim must be brought by party

### Cases where Quantum Meruit is applicable

Void agreement

Something is done non-gratuitously

No agreement to remuneration

Refusal to perform



Divisible contract

Indivisible contract- entitled to compensation

- **Suit for specific performance**- No adequate remedy for contract breach, the court directs to carry out the promise acc. to terms and conditions of contract.
- **Suit for injunction**- Party does something against the terms and conditions, court issued 'injunction orders' to stop them from doing so.

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# INDIAN CONTRACT ACT (1872)

UNIT 7-

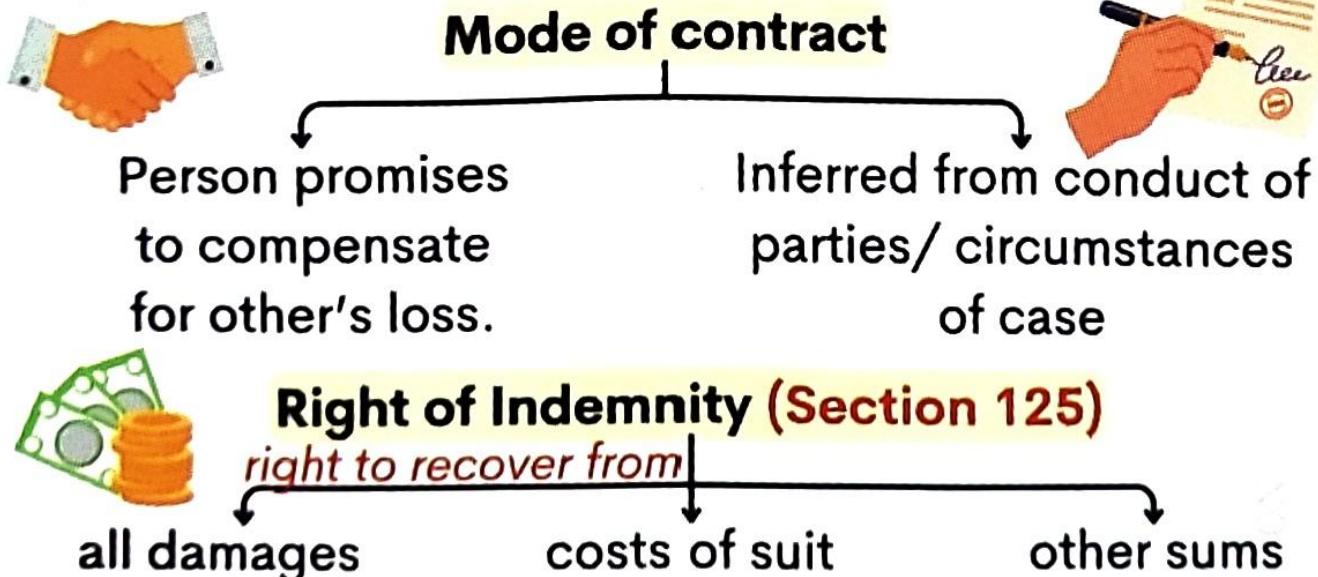
## CONTRACT OF INDEMNITY AND GUARANTEE

**Contract of Indemnity (Section 124)** - "a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person."



### Note-

- Indemnifier - Party who saves other party from loss.
- Indemnified/ Indemnity holder - Party who is promised to be saved.



Liability of the indemnifier commences as soon as liability of indemnity holder becomes certain.

# CONTRACT OF INDEMNITY AND GUARANTEE

## CONTRACT OF GUARANTEE

A contract to perform the promise made/ discharge the liability, of 3rd person in case of default.



**INVOLVES**

- Surety (*gives guarantee*)
- Principal debtor (*with respect to whom guarantee is given*)
- Creditor (*to whom guarantee is given*)

### Tripartite agreement-



\*Note- In case- surety pays/ performs, principle debtor needs to indemnify the surety.

### ESSENTIALS FEATURES OF A GUARANTEE

- **Purpose**- To secure the payment of debt.  
No principle debt = No valid guarantee.
- **Consideration**- Guarantee without consideration= void. **Section 127**- "Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee."
- **Existence of a liability/ promise**- legally enforceable (not time barred).
- Either **oral/ written**.



# CONTRACT OF INDEMNITY AND GUARANTEE

- **No misrepresentation/ concealment-**  
**Section 142-** "Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid."  
**Section 143-** "Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances, is invalid."
- **Joining of other co- sureties- Section 144-**  
"Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join."



## TYPES of GUARANTEE



### Specific guarantee

- Single debt/ specific transaction.
- Surety's liability comes to an end when promise is performed.

### Continuing guarantee

- **Section 129-** "A continuing guarantee is one that extends over a series of transactions. The surety is liable to pay the creditor for all transactions covered by this guarantee."

## Contract of INDEMNITY

2 parties- promisor, promisee.



For reimbursement of loss.

## Contract of GUARANTEE

3 parties- creditor, principal debtor, surety.

For security of creditor



# CONTRACT OF INDEMNITY AND GUARANTEE

Contract of INDEMNITY	Contract of GUARANTEE
Liability of indemnifier- primary, unconditional.	Liability of debtor- Primary
Liability arises- happening of contingency.	Liability arises- non-performance of existing promise.
Indemnifier does not act on request of indemnity holder	Acts on the request of principal debtor. 
Indemnifier cannot sue 3rd party for loss.	Surety can proceed against principal debtor.
Parties must be competent to contract. 	Contract is valid even if principal debtor is a minor.

## NATURE + EXTENT OF SURETY'S LIABILITY

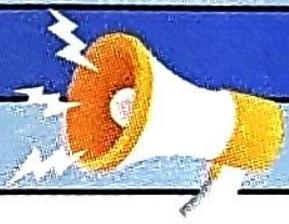
- **Section 128-** *"The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract."* 
- Liability of surety= Secondary in nature.
- Debtor cannot be held liable on account of any defect in document.
- Creditor may choose to proceed against surety (unless there is an agreement in contrary).

**Section 132-** *"Liability of two persons, primarily liable, not affected by arrangement between them that one shall be surety on other's default."*

# CONTRACT OF INDEMNITY AND GUARANTEE

## DISCHARGE OF A SURETY

### MODE OF DISCHARGE



#### REVOCATION

- **Continuing guarantee by notice**- **Section 130**- "A continuing guarantee given to a court cannot be revoked by the surety as to future transactions, without the permission of the court".
  - Surety is not liable for any future transaction.
- **Continuing guarantee by surety's death**- **Section 131**- "The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions."
- **Novation**- (**Section 62**)- Original contract is mutually discharged, if fresh contract enters b/w the parties.



#### BY CONDUCT OF THE CREDITOR

- **By variance in terms of contract**- **Section 133**- "Any variance, made without the surety's consent, in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance."
- **By release/ discharge of principal debtor**- Surety is discharged if creditor-
  - Enters in fresh contract with principle debtor.
  - Does any act/ omission- discharging principal debt



# CONTRACT OF INDEMNITY AND GUARANTEE

- **When creditor agrees not to sue principal debtor-**  
This happens by-
  - **Composition**- Involving variation of original contract, discharging surety.
  - **Promise to give time**- Surety has the right to ask principal debtor to pay debt at the given time.
  - **Promise not to sue**- If creditor in an agreement with principal debtor promises not to sue him, surety is discharged.
- **Section 139-** *"If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged."*



**State bank of Saurashtra Vs. Chitrangan Raja**

Bank *via surety* → granted loan on stock security



Goods got lost due to negligence of bank - surety discharged.

## CASES WHEN SURETY IS NOT DISCHARGED



### Section 136-

Surety not discharged when agreement made with third person to give time to principal debtor.



### Sector 137-

Creditor's forbearance to sue does not discharge surety.



# CONTRACT OF INDEMNITY AND GUARANTEE

## INVITATION OF THE CONTRACT OF GUARANTEE

- **Section 142**- "Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid."
- **Section 143**- "Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances, is invalid."
- **Section 144**- "Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join."

## RIGHTS OF SURETY



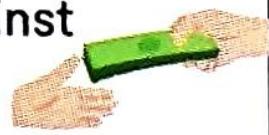
## RIGHTS AGAINST PRINCIPAL DEBTOR

- **Section 140**- "Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor."
- **Section 145**- "In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety, and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but, no sums which he has paid wrongfully."

# CONTRACT OF INDEMNITY AND GUARANTEE

## RIGHTS AGAINST CREDITOR

- **Section 141** - "A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security."
- **Right to set off** - any principal debtor against creditor, in case the creditor sues surety.
- **Right to share reduction** - in his liability in case principal debtor becomes insolvent.



## RIGHTS AGAINST CO- SURETIES

- **Liable to contribute equally** - for discharge of whole or a part of debt left unpaid by the debtor.
- **Section 147** - "co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit."

# INDIAN CONTRACT ACT (1872)

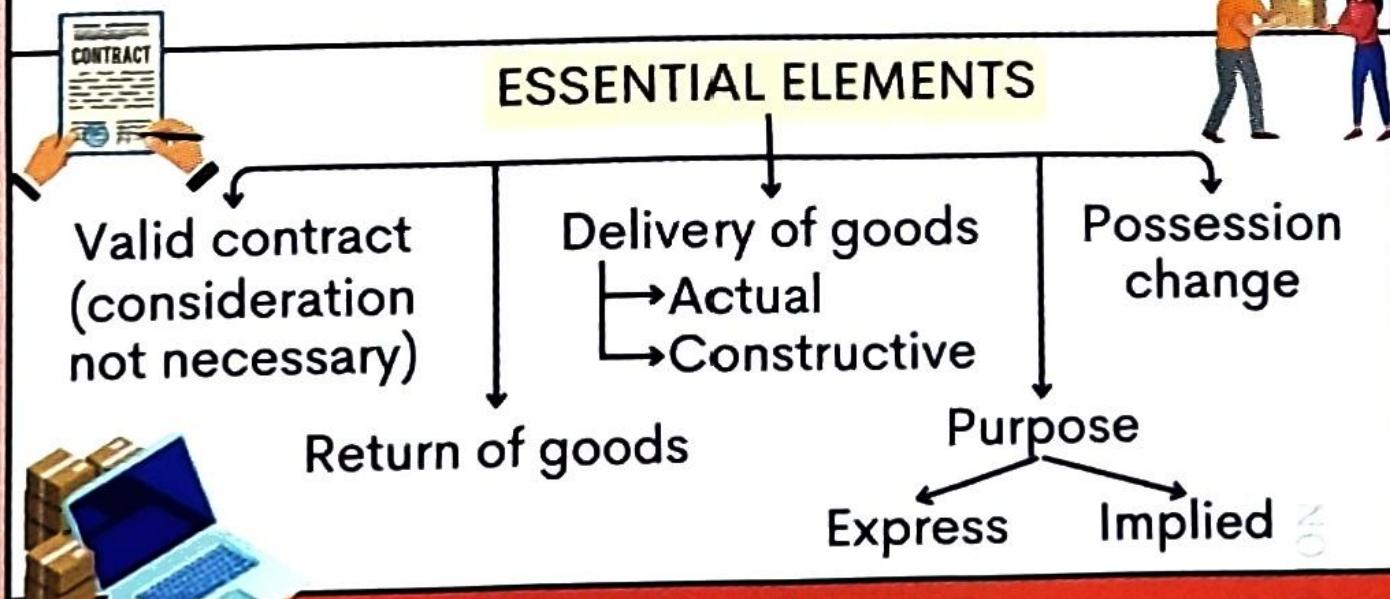
UNIT 8-

## BAILMENT AND PLEDGE

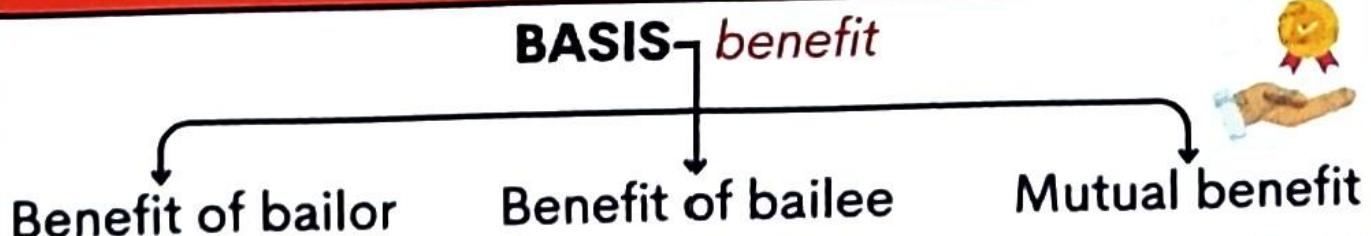
**Section 148-** "A bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them."



Parties → **Bailor** (person who delivers the goods)  
Parties → **Bailee** (to whom goods are delivered)



### TYPES OF BAILMENT



# BAILMENT AND PLEDGE



**BASIS-** *reward*



Gratuitous bailment  
(free of charge)

Non- gratuitous bailment  
(both parties obtain benefit)

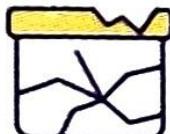


## DUTIES OF BAILOR

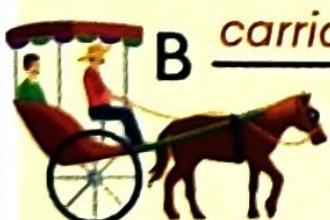


### DISCLOSE KNOWN FAULTS

- **Case of Gratuitous bailment-** **Section 150-** "The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults."
- **Case of non- gratuitous bailment-** Bailor is responsible for the damage.



### Hyman & Wife Vs. Nye & sons



B  $\xrightarrow{\text{carriage + pair of horses + driver}}$  A

(during journey)

A bolt from carriage broke, A got injured

\*B was liable to pay the damage because the bailor was responsible for the damage.



### PAY NECESSARY EXPENSES

- **Case of non- gratuitous bailment-** Bailor is liable to pay the extraordinary expenses incurred by bailee

# BAILMENT AND PLEDGE

- **Case of Gratuitous bailment- Section 158-**

*"Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment."*

## Indemnify the BAILEE for PREMATURE TERMINATION

- The bailor can terminate the bailment before the expiry period, in case of excess benefit in gratuitous bailment, to compensate for any loss.



## BAILOR'S RESPONSIBILITY TO BAILEE



- **Section 164-** *"The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions respecting them."*

## DUTIES OF A BAILEE

### TAKE CARE OF GOODS



- **Section 151-** *"In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed."*

# BAILMENT AND PLEDGE

- **Section 152-** "The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151."

## NO INCONSISTENT USE OF GOODS

- **Section 153-** "A contract of bailment is avoidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment."
- **Section 154-** "If the bailee makes any use of the goods bailed which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them."

## NOT TO MIX GOODS



- **Section 155-** "If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced."
- **Section 156-** "If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture."

# BAILMENT AND PLEDGE

- **Section 157-** "If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods, and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods."



## RETURN GOODS

- **Section 160-** "It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished."
- **Section 161-** "If by the fault of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time."



## RETURN AN ACCRETION FROM THE GOODS

- **Section 163-** "In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed."

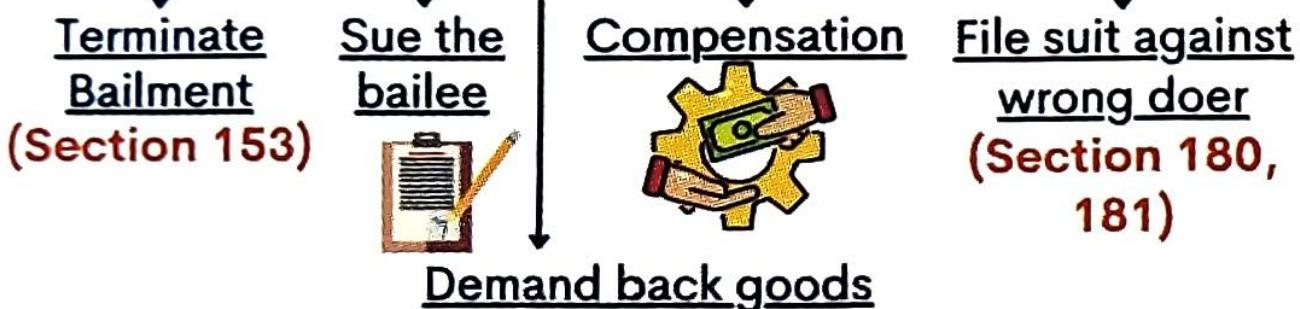
## NOT TO SETUP ADVERSE TITLE

- Bailee must hold goods on behalf of bailor.



# BAILMENT AND PLEDGE

## RIGHTS OF A BAILOR



**Section 159-** "The lender of a thing for use may at any time require its return, if the loan was gratuitous, even though he lent it for a specified time or purpose."

## RIGHTS OF BAILEE

- **Section 165-** "If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all in the absence of any agreement to the contrary."
- **Section 166-** "If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery."
- **Section 150-** "The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults."

# BAILMENT AND PLEDGE

- **Section 158-** "Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment."
- **Section 167-** "If a person, other than the bailor, claims goods bailed he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods."
- **Section 170-** "Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them."



## Rights of Bailor and Bailee against Third party



- **Section 180-** "If a third person wrongfully deprives the bailee of the use of possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury."

# BAILMENT AND PLEDGE

- **Section 181-** "Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests."

## TERMINATION OF BAILMENT

- Expiry of stipulated period
- Fulfilment of purpose
- Notice 
- By death
- Destruction of subject matter

## FINDER OF LOST GOODS

- **Section 168-** "The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it."
- **Section 169-** "When a thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—
  - when the thing is in danger of perishing or of losing the greater part of its value, or,
  - when the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its va

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# BAILMENT AND PLEDGE

## RIGHTS OF LIEN



Retain the goods, until the claim is satisfied or some debt due to him is repaid.

PARTICULAR LIEN	GENERAL LIEN
Section 171 confers its rights.	Section 170 confers its rights.
Right to keep possession of goods against general balance of account.	Right to retain goods bailed for non- payment of amount.
Via agreement	Automatic
Can be exercised against goods.	Only when labor/ skill are involved in inc. value of goods.
Specific people- bankers, factors, policy brokers etc.	Specific people- bailee, finder, seller, partner etc.

## PLEDGE/ PAWN (Special kind of bailment)



**Section 172-** "a Pledge is a contract where a person deposits an article or good with a lender of money as security for the repayment of a loan or performance of a promise."



- Bailor= Pawnor; Bailee= Pawnee.

**ESSENTIALS**

- bailment against performance/ promise
- subject matter of pledge
- Delivery of goods

# BAILMENT AND PLEDGE

## RIGHTS OF PAWNEE



- **Section 173-** "The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interests of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged."
- **Section 174-** "The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee."
- **Section 175-** "The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged."
- **Section 176-** "If the pawnor makes default in payment of the debt, or performance; at the stipulated time or the promise, in respect of which the goods were pledged,
  1. the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security;
  2. or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale."





# BAILMENT AND PLEDGE

## RIGHTS OF PAWNOR



\*Same as bailor

- **Section 177-** "If a time is stipulated for the payment of the debt, of performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay, in addition, any expenses which have arisen from his default."

\*Duties of Pawnee and Pawnor= Same as bailee and bailor

## PLEDGE BY NON- OWNERS



- **Section 178-** "Where a mercantile agent is, with the consent of the owner, in possession of goods or the document of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the pawnee acts in good faith and has not at the time of the pledge notice that the pawnor has not authority to pledge."
- **Section 178A-** "When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A, but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title."



# BAILMENT AND PLEDGE

- **Section 179-** "the pledge between the pawnor having limited interest and Pawnee can be valid, if during the pledge the pawnee acted in good faith and does not know about the title of the goods."
- **Pledge by co- owners for possession** by one of the co- owners.

BAILMENT	PLEDGE
Goods transfer for some purpose.	Goods transfer as a security for debt repayment.
Parties- Bailor, Bailee	Parties- Pawner, Pawnee
Can be made with/ without consideration.	Always made for a consideration. 
Bailee has no right to sell goods. 	Pawnee has right to sell, if pawnor fails to pay.
Bailee can use goods for that specific contract.	Pawnee cannot use the goods pledged.

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# INDIAN CONTRACT ACT (1872)

## UNIT 9-

## AGENCY

**Section 182-** "Agent means a person employed to do any act for another or to represent another in dealing with the third person and The principal means a person for whom such an act is done or who is represented."



### Test of Agency

Bind the principal,  
make him answerable  
to 3rd party

Establish privity of  
contract b/w principal  
and 3rd parties



**Rule of Agency-** "Qui facit per alium, facit per se"  
i.e. he who acts through an agent is himself acting.

## APPOINTMENT AND AUTHORITY OF AGENTS



- **Who may employ an agent-** **Section 183-** "Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent."
- **Who may be an agent-** **Section 184-** "any person may be an agent i.e even a minor (as well as a person of unsound mind) to become an agent as between the principal and third persons without being responsible to his principal.



# AGENCY

**Note- Section 185-** "no consideration is necessary to create an agency."

## CREATION OF AGENCY



*"The relation of agency arises whenever one person called the agent has the authority to act on behalf of another called the principal and consents to act. The relationship has genesis in a contract." by Desai J*



### AUTHORITY



**Express authority**  
(by words, spoken/  
written)

**Implied authority**  
(inferred from  
circumstances of the  
case- spoken/ written)

## IMPLIED AGENCY INCLUDES



**Agency by Estoppel** can be created with

### Section 237

Principal- made  
representation

Representation  
(express/ implied)

Representation  
must state  
authority of agent



Principal- introduce  
third person

Third person- believe  
representation (make  
contract)

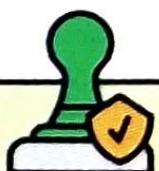
**Agency by necessity-** arises in case of emergency,  
agent acquires special authority to prevent principal's  
loss.

# AGENCY

**Agency by operation of law-** 1 person from the business itself is treated as agent by the law.



**Effect of Ratification-** **Section 196-** "Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts."



## ESSENTIALS (VALID RATIFICATION)

- **Section 197-** "Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done."
- **Section 198-** "No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective, except where such person intends to ratify the act and take the risk whatever the facts of the case may be."
- **Section 199-** "A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part."- The principal cannot ratify a part of transaction.
- Ratification cannot injure third person.
- Should be communicated and made within a reasonable time.
- Should be valid.



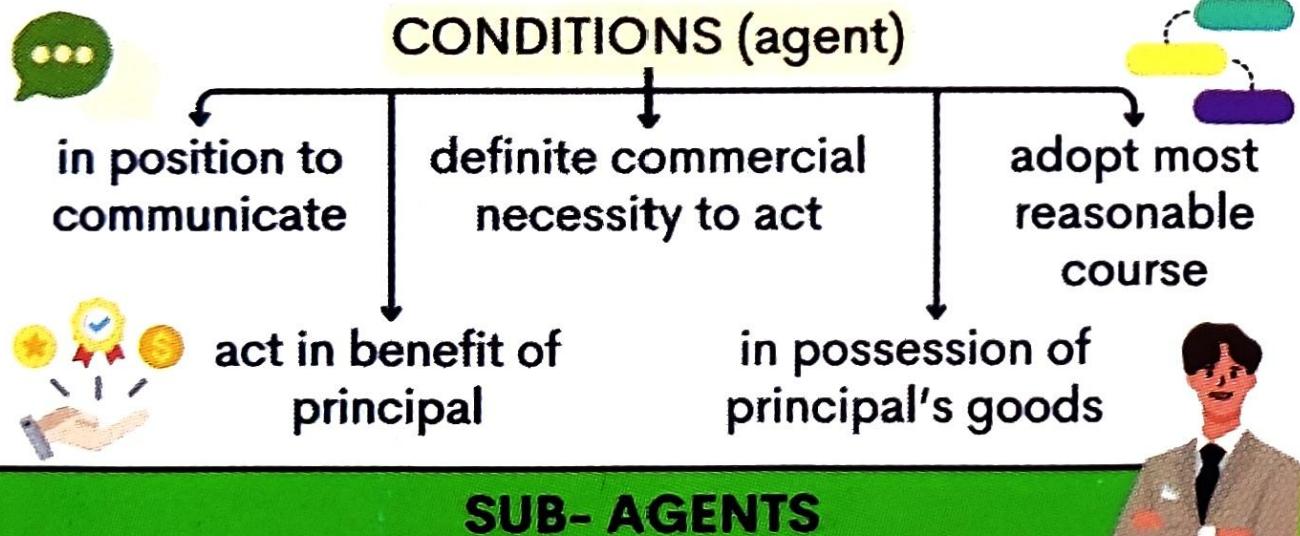
## EXTENT OF AGENTS AUTHORITY



- **Section 188-** "An agent, having an authority to do an act, has authority to do every lawful thing which is necessary in order to do such act."

# AGENCY

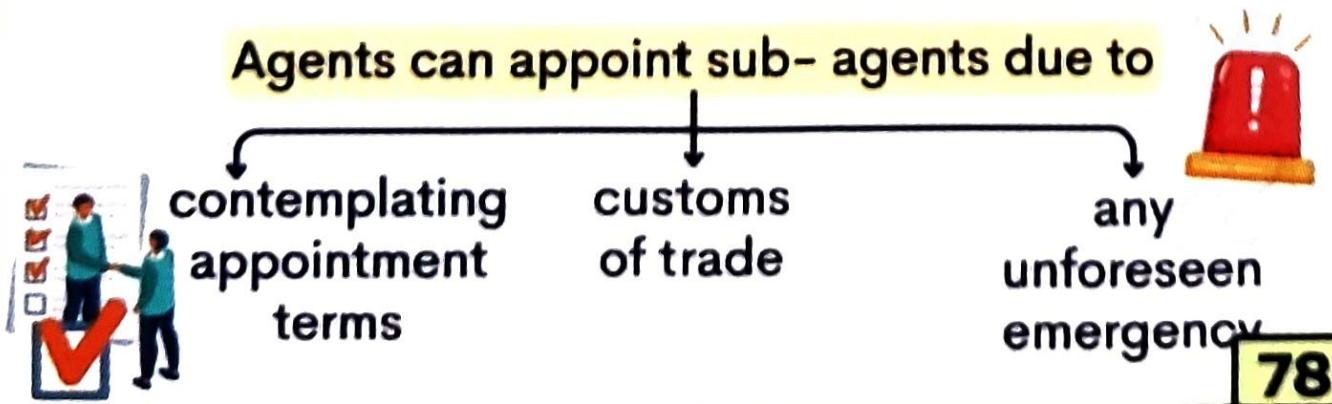
- **Section 189-** "An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances."



## SUB- AGENTS

**Section 190-** "An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed."

**DEFINITION-** "A "Sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency."- **Section 191**



# AGENCY

- **Section 192-** "Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal."
- **Section 193-** "Where an agent, without having authority to do so, has appointed a person to act as a sub-agent,
  - the agent stands towards such person in the relation of a principal to an agent,
  - and is responsible for his acts both to the principal and to third persons;
  - the principal is not represented by or responsible for the acts of the person so employed,
  - nor is that person responsible to the principal."



## SUBSTITUTED AGENT



- **Section 194-** "where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him."
- **Section 195-** "In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected."

# AGENCY

SUB AGENT	SUBSTITUTED AGENT
Works under agent.	Works under principal.
Agent delegates part of his own duties to sub- agent.	Agent does not delegate any task.
Privity of contract (-) 	Privity of contract (+)
Responsible to the principal via agent.	Responsible to the principal directly. 
Cannot sue principal for remuneration. 	Can sue principal for remuneration.
Can be improperly appointed. 	Cannot be improperly appointed.
Agent is liable for acts of sub agent.	Agent's duty ends after naming substituted agent.

## DUTIES AND OBLIGATIONS OF AGENT



- **Section 211-** "An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business."
- **Section 212-** "An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business unless the principal has notice of this want of skill."

# AGENCY

- **Section 213-** "An agent is bound to render proper accounts to his principal on demand."
- **Section 214-** "It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions."
- Agent should not deal on his own account, without consent of the principal.
- Agent should not make secret profits.
- **Section 190-** "An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed."
- **Section 218-** "Subject to such deductions, the agent is bound to pay to his principal all sums received on his account."

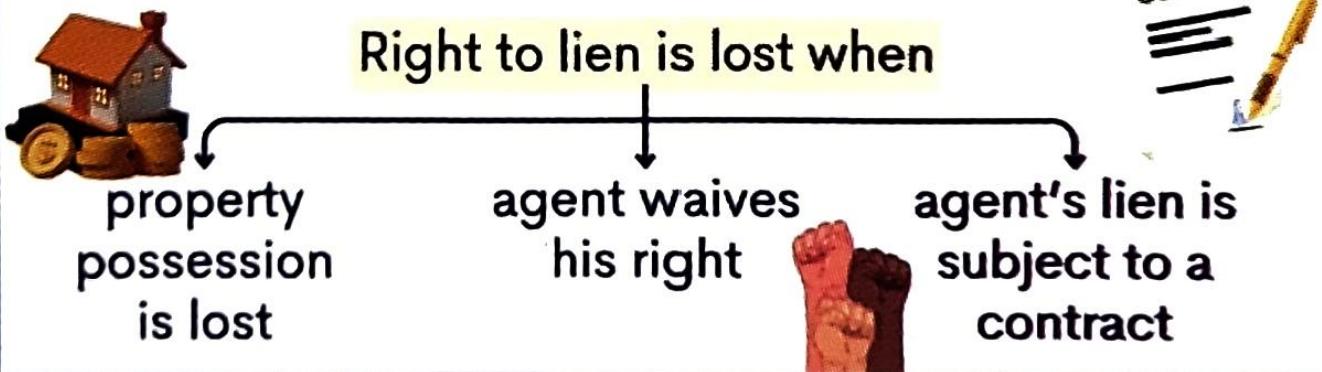


## RIGHTS OF AN AGENT

- **Right to retain sums-** **Section 217-** "An agent may retain, out of any sums received on account of the principal in the business of the agency, all money due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent."

# AGENCY

- **Right to remuneration-** **Section 219-** "an agent has a right to receive the agreed remuneration or in absence of agreement, a reasonable remuneration for rendering the services to the principal that are not voluntary or gratuitous." 
- **Right to lien-** **Section 221-** "In the absence of any contract to the contrary, an agent is entitled to retain goods, papers and other property, whether movable or immovable of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for to him."



- **Right to indemnity-** **Section 222-** "the employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him."
- **Section 223-** "Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cause an injury to the rights of third persons."

# AGENCY

**Section 224-** "Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that Act"

- **Right to compensation-** **Section 225-** "The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill."



## PRINCIPAL'S LIABILITY TO THIRD PARTIES

- **Section 226-** "Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person."
- **Section 227-** "When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal."
- **Section 228-** "Where an agent does more than he is authorised to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction."



# AGENCY

- **Section 229-** "Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequences as if it had been given to or obtained by the principal."
- **Section 238-** "Misrepresentation made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals; but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals."



## PERSONAL LIABILITY OF AGENT TO THIRD PARTIES

- **Section 230-** "In the absence of any contact to that effect an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them."



### EXCEPTIONS



Contract for  
sale/ purchase  
for a foreign  
principal

Undisclosed/  
Non-existent  
principal



Pretended  
agent

Agent  
exceeds  
authority

# AGENCY

## RIGHTS OF THIRD PARTIES



- **Contract by undisclosed agent- Section 231-** "If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal."
- **Agent supposed to be principal- Section 232-** "Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the right and obligations subsisting between the agent and the other party to the contract."
- **Sue the agent/ principal- Section 233-** "In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them liable."
- **Section 234-** "When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively."



# AGENCY

## REVOCATION OF AUTHORITY

## TERMINATION OF AGENCY



Revocation



Principal's insolvency

Renunciation  
by agent

Completion  
of business

Death of  
principal  
/ agent

Expiry of time



## REVOCATION

**Section 203-** "The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal."

**Section 204-** "The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency."



## CHARACTERISTICS of Revocation



Compensation by  
principal  
**(Section 205)**

- Premature  
revocation
- no sufficient cause

Notice of  
Revocation  
**(Section 206)**



Expressed/  
Implied  
revocation  
**(Section 207)**

# AGENCY

## AGENCY IS IRREVOCABLE



- **Section 202-** "Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest."

## EFFECT OF TERMINATION



- **Section 208-** "The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them."
- **Section 209-** "When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him."

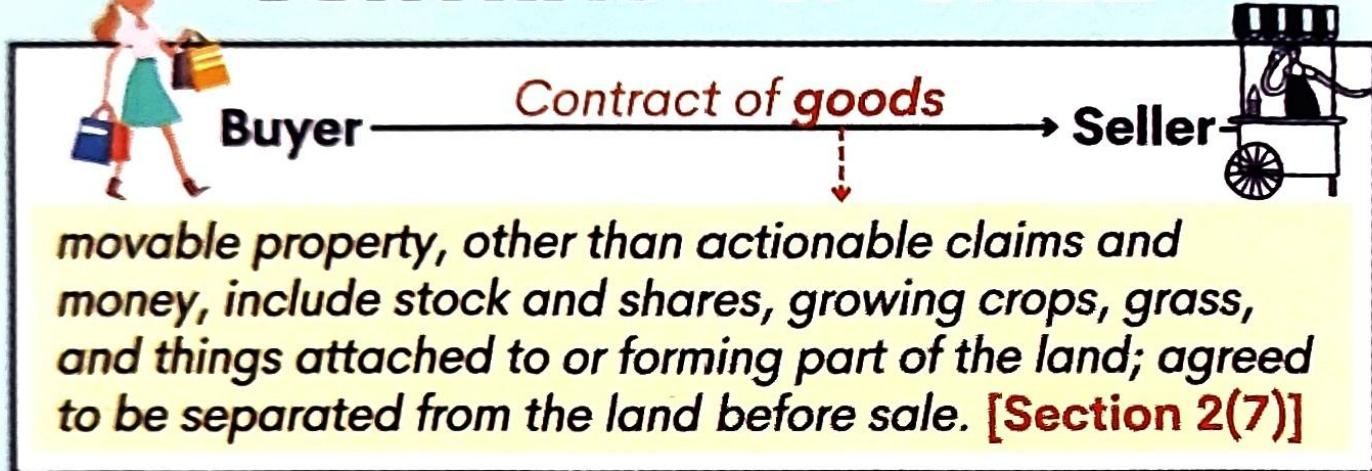
## TERMINATION OF SUB- AGENT'S AUTHORITY

- **Section 210-** "The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him."



# THE SALE OF GOODS ACT (1930)

## UNIT 1 - FORMATION OF THE CONTRACT OF SALE

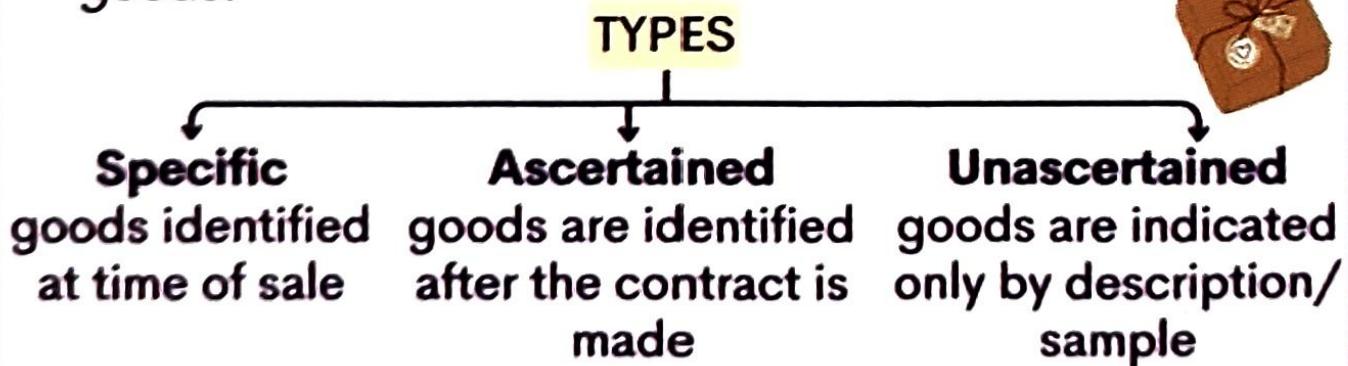


**Note-** Goods also include goodwill, copyrights, patents, trademarks, stocks, shares etc.

## CLASSIFICATION OF GOODS



- **EXISTING goods- Section 6-** “The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or future goods.”



- **FUTURE goods**- **Section 2(6)**- the goods that will either be manufactured/ produced/ acquired by the seller at the time the contract of sale is made.”

# FORMATION OF THE CONTRACT OF SALE

- **CONTINGENT** goods- **Section 6**- "Acquisition of goods depends upon an *uncertain contingency (uncertain event)*."

## DELIVERY



**Section 2(2)**- "Voluntary transfer of possession from one person to another."



## FORMS of DELIVERY



### Actual

Goods are delivered physically to buyer.

### Constructive

Transfer of goods without change in actual possession

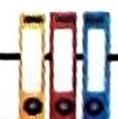
### Symbolic

Delivery in token of transfer of something else.

**Section 2(3)**- "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 from them."



## DOCUMENT OF TITLE TO GOODS



Any documents used in the ordinary course of business as a proof of possession/ control of goods/ represents the transfer of goods.



**Note-** **Share certificate**- A person named in a share document is entitled to the share represented by it, but it does not allow that person to transfer the share by mere endorsement on the back of the certificate and the delivery of the certificate.

# FORMATION OF THE CONTRACT OF SALE

## MERCANTILE AGENT

**Section 2(9)-** "agent in the customary course of business has, as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods."



## PROPERTY

**Section 2(11)-** "property means 'ownership' or the general property i.e. all ownership right of the goods." In contract for sale, ownership must be transferred from seller to buyer.



## INSOLVENT

**Section 2(8)-** "someone who 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."



## PRICE

**Section 2(10)-** "The consideration for the sale of goods is called price."

## QUALITY OF GOODS ★★★★★

**Section 2(12)-** "The quality includes the state or condition in which the goods are expected or promised to be delivered."



## SALE AND AGREEMENT TO SELL

- Section 4(1)-** "A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price."

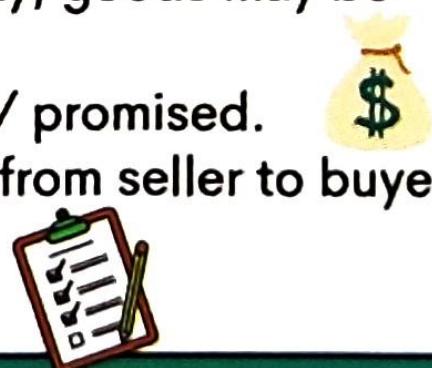
# FORMATION OF THE CONTRACT OF SALE

- **Section 4(2)**- "A contract of sale may be absolute/ conditional."
- **AGREEMENT TO SELL**- **Section 4(3)**- "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."
- **SALE**- **Section 4(4)**- "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."



## WHEN AGREEMENT TO SELL BECOMES SALE

- At least 2 parties- seller, buyer.
- Goods must be a movable property; goods may be existing/ future goods.
- The price (money) should be paid/ promised.
- Transfer of property must happen from seller to buyer.
- Contract- absolute/ conditional.
- Other essentials of a contract.



SALE	AGREEMENT TO SALE
Property is passed to buyer immediately.	Property is passed on future date/ condition fulfilment.
Executed contract.	Executory contract.
Seller cannot resell goods.	Seller can resell goods.
loss/ destruction- liability of buyer.	loss/ destruction- liability of seller.

# FORMATION OF THE CONTRACT OF SALE

SALE	AGREEMENT TO SALE
Seller can sue the buyer for price of goods.	Aggrieved party can sue only for damages (not any price).
Risk of loss- buyer.	Risk of loss- seller. 
Rights against the whole world.	Rights against a particular party of contract.
Official assignee will not take over the goods, but can recover price from buyer.	Official assignee acquires control over goods, but price is non recoverable.
Official assignee has control over goods.	Official assignee will not have control over goods.
SALE	HIRE- PURCHASE
Property transferred to buyer at the time of contract.	Property passed to hirer on payment of last instalment.
Buyer- owner of the goods.	Hirer- Bailee till last instalment. 
Buyer cannot terminate contract. 	Hirer can terminate contract without payment.
Seller takes risk of any loss.	Owner takes no risk of loss.
Buyer passes title to a bona fide purchaser. 	Hirer cannot pass the title until last instalment.
Buyer can resell the goods.	Hirer cannot resell unless he has paid the last instalment.

# FORMATION OF THE CONTRACT OF SALE

SALE	BAILMENT
General property (goods) transferred from seller to buyer.	Special property transfer from bailor to bailee.
Return of goods- not possible.	Bailee must return goods to bailor.
Consideration- price (money)	Consideration- can be gratuitous/ non- gratuitous.

**Note-** Contract of sale- goods are sold

Contract of labour- only work and labour (no sale of goods)



## HOW IS CONTRACT OF SALE MADE



**Section 5(1)-** "A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed."



## SUBJECT MATTER OF CONTRACT OF SALE

**Section 6- (1)** "The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or future goods."

**(2)** "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."



# FORMATION OF THE CONTRACT OF SALE

**(3)** "Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods."



**Section 7-** "Where there is a contract for the sale of specific goods, the contract is void 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 in the contract."

**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 agreement is thereby avoided."



## ASCERTAINMENT OF PRICE



**Section 9- (1)** The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties."



**Section 10- (1)** Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided: Provided that, if the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall pay a reasonable price therefor.

## **FORMATION OF THE CONTRACT OF SALE**

**Section 10- (2)** "Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in fault."

# THE SALE OF GOODS ACT (1930)

UNIT 2 -

## CONDITIONS AND WARRANTIES

**Conditions and warranty- Section 12 (1)-** "A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or an warranty."



**Section 12 (2)-** "A **condition** is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated."

**Section 12 (3)-** "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 to a right to reject the goods and treat the contract as repudiated."

**Section 12 (4)-** "Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract."

CONDITION	WARRANTY
Essential stipulation.	Collateral stipulation.
Aggrieved party can reject/ claim damage due to condition breach.	Aggrieved party can claim damage due to warranty breach.

# CONDITIONS AND WARRANTIES

**Note-** Breach of condition can be treated as breach of warranty but vice versa is not true.



## WHEN IS CONDITION = WARRANTY ?



Buyer waives performance of contract

Buyer treats condition breach as warranty

Contract is non-severable

Condition fulfilment excused by law

## EXPRESS, IMPLIED CONDITIONS + WARRANTIES

- **Express conditions**- Agreed upon within the parties at the time of contract; expressly provided in the contract.
- **Implied conditions**- Presumed by the law to be in the contract.

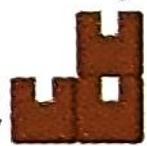


## EXPRESS CONDITION

- **Condition as to title**- **Section 14(a)**- "*an implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass.*"
- **Sale by description**- **Section 15**- "*Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and, if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods correspond with the sample if the goods do not also correspond with the description.*"

# CONDITIONS AND WARRANTIES

- **Sale by sample-** **Section 17-** "In the case of a contract for sale by sample there is an implied condition—
  - that the bulk shall correspond with the sample in quality;
  - that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;
  - that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample."
- **Condition as to quality/ fitness-** **Section 16(1)-** "Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be reasonably fit for such purpose: Provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose."
- **Conditions as to wholesomeness-** In case of eatables, the goods should be wholesome



# CONDITIONS AND WARRANTIES

- **Conditions as to merchantability-** **Section 16 (2)-**  
"Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality: Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed."

**DISCLAIMER**

## IMPLIED WARRANTIES



- **Warranty as to undisturbed possession-** **Section 14(b)-** "an implied warranty that the buyer shall have and enjoy quiet possession of the goods."
- **Warranty as to non- existence of encumbrances-** **Section 14(c)-** "an implied warranty that the goods shall be free from any charge or encumbrance in favor of any third party not declared or known to the buyer before or at the time when the contract is made."
- **Warranty as to quantity/ fitness by usage of trade-** **Section 16(3)-** "An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade."
- **Disclosure of dangerous nature of goods-** The seller must warn the buyer for any probable danger.



# CONDITIONS AND WARRANTIES



## CAVEAT EMPTOR



- Caveat emptor means 'let the buyer beware'.
- Seller is not responsible for buyer's bad selection.
- **Acc. to rule of Caveat Emptor- Section 16-**

*"subject to the provisions of this act or of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale."*

 buyer has told seller the purpose of purchase

### CONDITIONS

buyer relied on seller's skills



 seller's business to supply goods (described)

### EXCEPTIONS

- **Fitness as to quality/ use-** If buyer tells seller about the purpose and trusts the skills of the seller, it becomes the duty of seller to supply reasonably fit goods.

Chemist



### Priest Vs. Last

sold hot water bottle  
(telling that it will stand boiling water)



as boiling water was poured, the bottle did burst

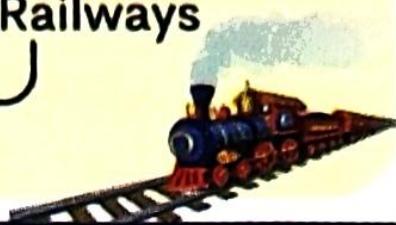
\*chemist was liable to pay for the damage to P

# CONDITIONS AND WARRANTIES

**Bombay Burma Trading Co. Ltd. Vs. Aga Muhammad**  
timber purchased → For Railways



*but was found unfit*



\*the court asked to avoid the contract

- **Goods purchased under patent/ brand name-** have NO implied condition to be fit for a particular purpose.
- **Goods sold by description-** have an implied condition that they shall correspond to the description.
- **Goods of Merchantable quality-** The rule of caveat emptor imply if the defects have not been revealed by ordinary explanation.
- **Sale by sample-** Rule does not apply if bulk does not correspond to sample.
- **Goods by sample + description-** Rule does not apply if goods don't correspond to either/ both the sample and description.
- **Trade usage**
- **Seller activity conceals a defect/ is guilty of fraud-** Buyer has right to avoid contract/ claim damages.



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# THE SALE OF GOODS ACT (1930)

UNIT 3 -

## TRANSFER OF OWNERSHIP + DELIVERY OF GOODS

**Sale of goods-**

**Seller** → **ownership transfer** → **Buyer**



In case of any damage, loss is borne by the owner.

### PASSING OF PROPERTY



depends on

→ **Identification of goods** - **Section 18** - "Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained."

→ **Intention of parties** - **Section 19** - Transfer of properties happen if parties intend to transfer.

to the terms  
of contract

to the conduct  
of the parties

to the circumsta-  
-nces of the case



### INTENTION TO PASS



**Section 19 (1)** - "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."

# TRANSFER OF OWNERSHIP + DELIVERY OF GOODS

**Section 19 (2)-** "For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case."



**Section 19 (3)-** "Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer."

## STAGES OF GOODS WHILE PASSING OF PROPERTY-

- **STAGE 1- 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." 
- **STAGE 2- Section 21-** "Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof." 
- **STAGE 3- Section 22-** "Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof."

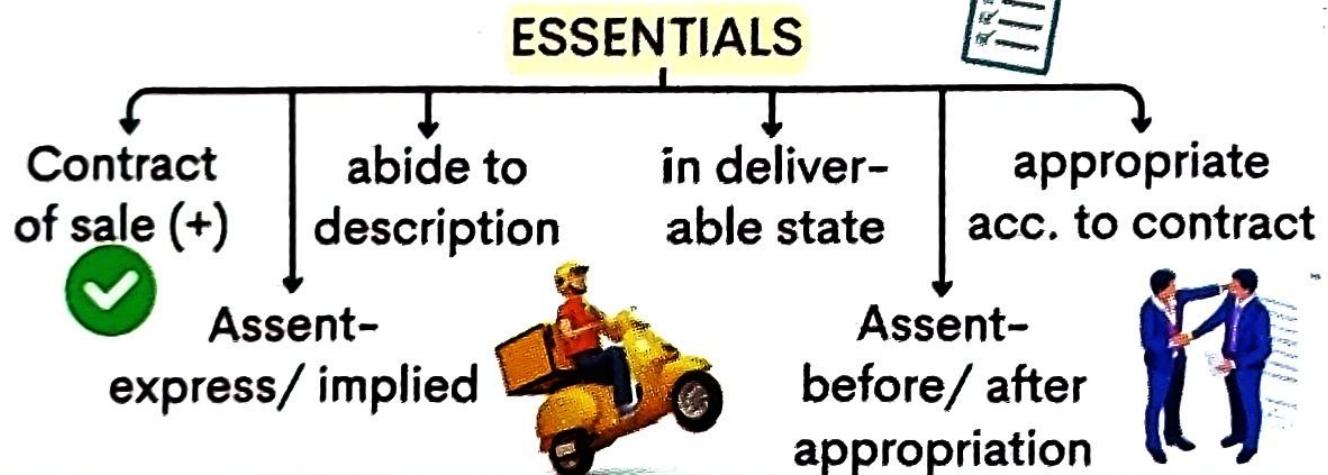
# TRANSFER OF OWNERSHIP + DELIVERY OF GOODS

## UNASCERTAINED GOODS

**Section 18-** "Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained."



### RULES FOR UNCERTAINED GOODS-



- Section 23(2)-** "Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract."



## GOODS sent on APPROVAL/ "ON SALE OR RETURN"

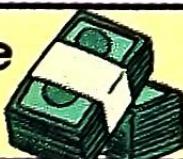
- Section 24-** "When goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer (a) when he signifies his approval or acceptance to the seller or does any other act adopting the transacti



# TRANSFER OF OWNERSHIP + DELIVERY OF GOODS

- (b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.
- (c) he does something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods."

**Note-** The property remains of the seller until the terms are compiled (cash is paid).



## RESERVATION OF RIGHTS OF DISPOSAL

- **Section 25 (1)-** "Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to a buyer or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled."
- **Section 25 (2)-** "Where goods are shipped or delivered to a railway administration for carriage by railway and by the bill of lading or railway receipt, as the case may be, the goods are deliverable to the order of the seller or his agent, the seller is *prima facie* deemed to reserve the right of disposal."

# TRANSFER OF OWNERSHIP + DELIVERY OF GOODS

## RISK PRIMA FACIE PASSES WITH PROPERTY

**Section 26-** "Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.



Provided that, where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.



Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party."



**Note-** **Risk-** liability to bear loss.



## TRANSFER OF TITLES BY NON- OWNERS

**Rule-** "Nemo dat quod non habet"- no one can give what he has not got. i.e. a seller can only sell such goods of which he is the absolute owner.



### EXCEPTIONS-

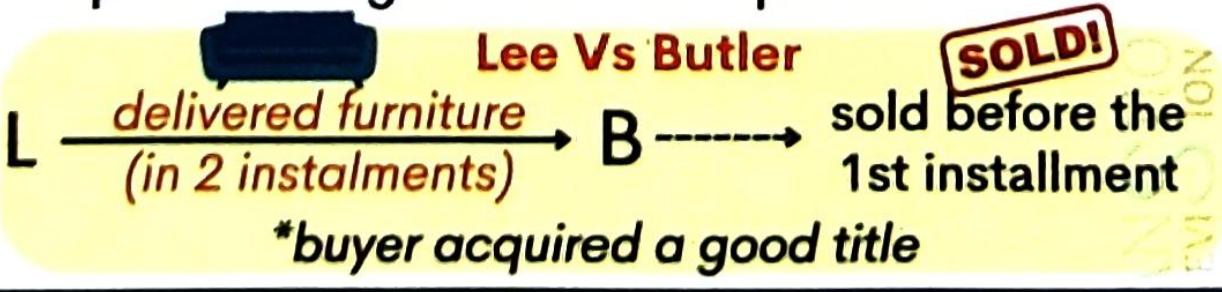
- **Sale by a mercantile agent-** Pass title of goods under following conditions-

he has  
possession  
of goods

sale is made  
by him

no notice that seller  
has no authority to  
sell

# TRANSFER OF OWNERSHIP + DELIVERY OF GOODS

- **Sale by one of the joint owners-** **Section 28-** "If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell." 
- **Sale by a person in possession under voidable contract-** **Section 29-** "the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title." 
- **Sale by one who has already sold goods but continues in possession-** He may sell the goods to the third person, and may provide a good title to them. The disposition of goods to the other party is equally valid. 
- **Sale by buyer obtaining possession before property has been versed-** he may sell/ pledge or dispose of the goods to a third person  


Lee Vs Butler  
L  $\xrightarrow{\text{delivered furniture  
(in 2 instalments)}}$  B  $\xrightarrow{\text{sold before the  
1st installment}}$   
\*buyer acquired a good title
- **Effect of estoppel-** The transferee gets a good title against the true owner

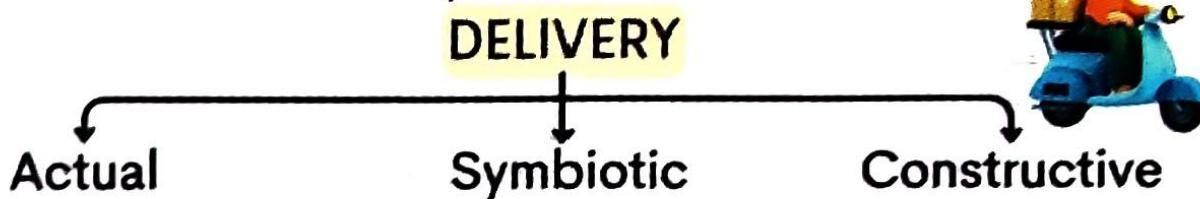
# TRANSFER OF OWNERSHIP + DELIVERY OF GOODS

- **Sale by unpaid seller**- In case of reselling of goods, buyer acquires a good title against original buyer.
- **Sale under provisions of other acts-**
  - Sale by official receiver, gives purchaser a valid title.
  - Purchase by a finder of goods also gives valid title
  - Sale by pawnee also provides a good title.



## PERFORMANCE OF THE CONTRACT OF SALE

- **Performance**- Delivery of goods + acceptance of delivery + payment of price.
- **Section 2(2)**- "delivery" means voluntary transfer of possession from one person to another.

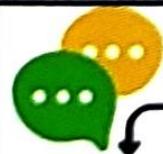


- **Duties**- Seller- delivers goods; Buyer- accepts, pays for them.
- **Delivery and payment are concurrent conditions**- seller should be ready to give possessions of goods; buyer should be ready to pay the price.
- **Delivery**- Putting goods in possession of buyer, by any method that is agreed upon.
- **Delivery of part goods**- in process of whole, has the same effect.
- **Buyer needs to apply for delivery**- Seller is not bound to deliver until buyer applies.



# TRANSFER OF OWNERSHIP + DELIVERY OF GOODS

- **Place of delivery**- Goods are to be delivered at place mentioned in the agreement.
- **Time of delivery**- If no time is fixed, a reasonable time is assumed.
- **Goods in possession of third party**- There is no delivery unless the 3rd person acknowledges the buyer that he holds good on his behalf.
- **Delivery expense**- must be borne by the seller.
- **Delivery of wrong quantity**- the buyer may reject it or pay at the contract rate or may accept a part of it.
- **Instalment deliveries**- unless in contract, buyer may not accept deliveries in instalments.
- **Deterioration in transit**- the liability falls on the buyer.
- **Buyer has the right to examine goods.**



## RULES for accepting goods



Intimates the seller does any act, inconsistent with ownership of seller retains goods after some time, without intimating the refusal

**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."

# THE SALE OF GOODS ACT (1930)

UNIT 4 -

## UNPAID SELLER

**Sector 45(1)-** "The seller of goods is deemed to be an 'unpaid seller' within the meaning of this Act—

- (a) when the whole of the price has not been paid or tendered;
- (b) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise."



### RIGHTS OF AN UNPAID SELLER

**Section 46 (1)-** "Subject to the provisions of this Act and of any law for the time being in force, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law—

- (a) a lien on the goods for the price while he is in possession of them;
- (b) in case of the insolvency of the buyer a right of stopping the goods in transit after he has parted with the possession of them;
- (c) a right of re-sale as limited by this Act."



# UNPAID SELLER

## RIGHT OF UNPAID SELLER AGAINST GOODS

### SELLER LIEN-

**Rights-** Unpaid seller has right for lien on the goods, while he is in possession, until payment.



### CONDITIONS

goods sold  
without credit

terms of credit-  
expired

buyer becomes  
insolvent

**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, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien."



### Lien termination- Section 49-

- "when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
- when the buyer or his agent lawfully obtains possession of the goods;
- by waiver thereof."
- by estoppel.



### RIGHT OF STOPPAGE IN TRANSIT-

To stop goods in transit (regain possession)



### CONDITIONS

unpaid seller

goods in transit

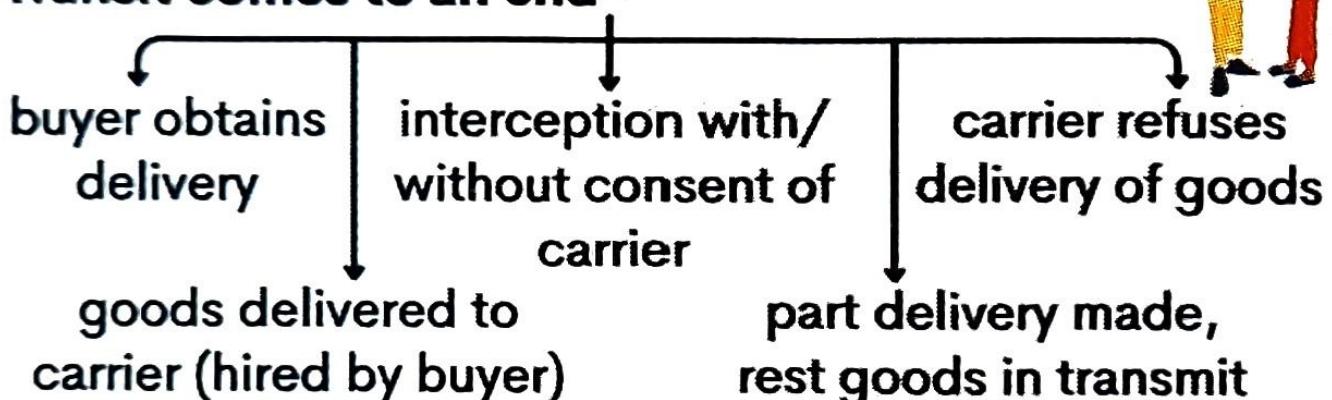
buyer= insolv

# UNPAID SELLER

**Duration of transit-** **Section 51(1)-** "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."



**Transit comes to an end-**



**How is stoppage in transit effected-**

- Unpaid seller may stop in transit/ provide a claim notice to carrier/ his principal, who may communicate to prevent delivery.
- They may also redeliver the goods to seller, acc. to the directions.



RIGHT OF LEIN	RIGHT TO STOPPAGE
To retain possession.	To regain possession.
Seller in possession.	Carrier in possession.
Buyer may/ may not be insolvent.	Buyer should be insolvent.
End- starting of right to stoppage.	End- goods delivered to buyer.

# UNPAID SELLER

**Effects of sub-sale/ pledge by buyer-** Rights are not affected by buyer selling/ pledging until approved by the seller.

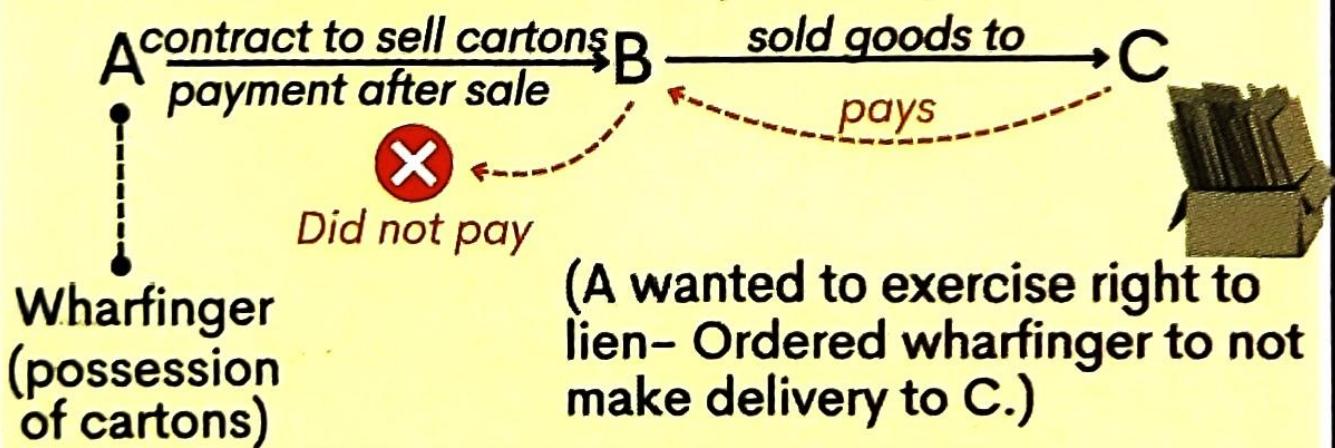
## EXCEPTIONS



when seller has  
approved sale

title transferred to buyer,  
who transfers to the  
person buying from him

### Mount D. F. Ltd Vs Jay and Jay Co. Ltd.



**Note-** If transfer is by way of pledge, then the rights can be exercised.

**Effect of stoppage-** Contract of sale remains in force, buyer can ask for delivery on payment.

### RIGHT OF RE-SALE- *Conditions-*

- Goods are perishable in nature.
- Notifying the buyer about reselling (seller can recover damages and retain profits too.)
- Subsequent buyer acquires the title against the original buyer.



# UNPAID SELLER

- Sometimes, resale terms are mentioned in the contract itself.
- Unpaid seller has right to withhold goods- **quasi-lien**

## RIGHTS OF UNPAID SELLER AGAINST BUYER



### Suit for price-

- **Section 55(1)-** "Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods."
- **Section 55(2)-** "Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract."



### Suit for damages for non- acceptance-

**Section 56-** "Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance."



### Rejection of contract before due date-

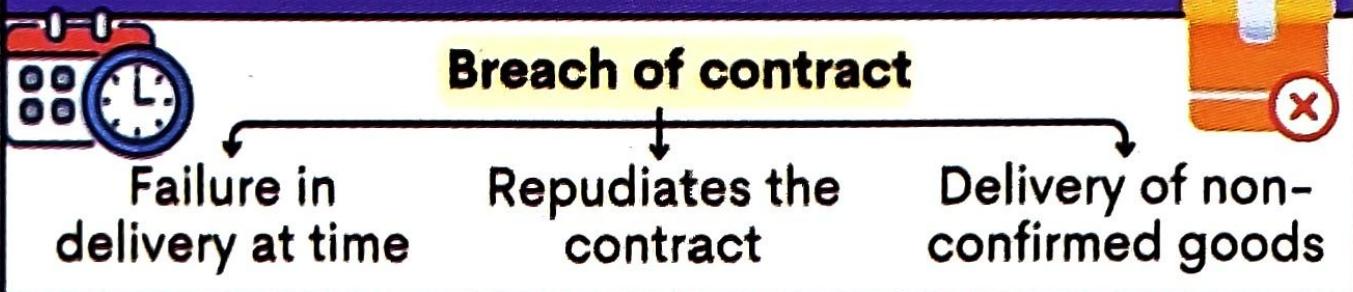
**Section 60-** "Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach."

# UNPAID SELLER

- **Suit for interest-** **Section 61-** With specific agreement b/w seller and buyer (on prices and payment), seller may recover interest from buyer. In case of NO such agreement, seller may charge interest on price.



## REMEDIES OF BUYER AGAINST SELLER



## RIGHTS-

- **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."
- **Suit for specific performance-** **Conditions**
  - specific/ascertained goods
  - Provision of special relief act (1963)
  - unique goods
- **Section 59 (1)-** "Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may—
  - (a) set up against the seller the breach of warranty in diminution or extinction of the price; or
  - (b) sue the seller for damages for breach of warranty

# UNPAID SELLER

- **Rejection of contract before due date- Section 60**
- **Suit of interest-** Special damages maybe recoverable. In case of NO contract, court may award interest rate to the buyer.

## AUCTION SALE



Selling by inviting bids publicly, and property is sold to highest bidder.

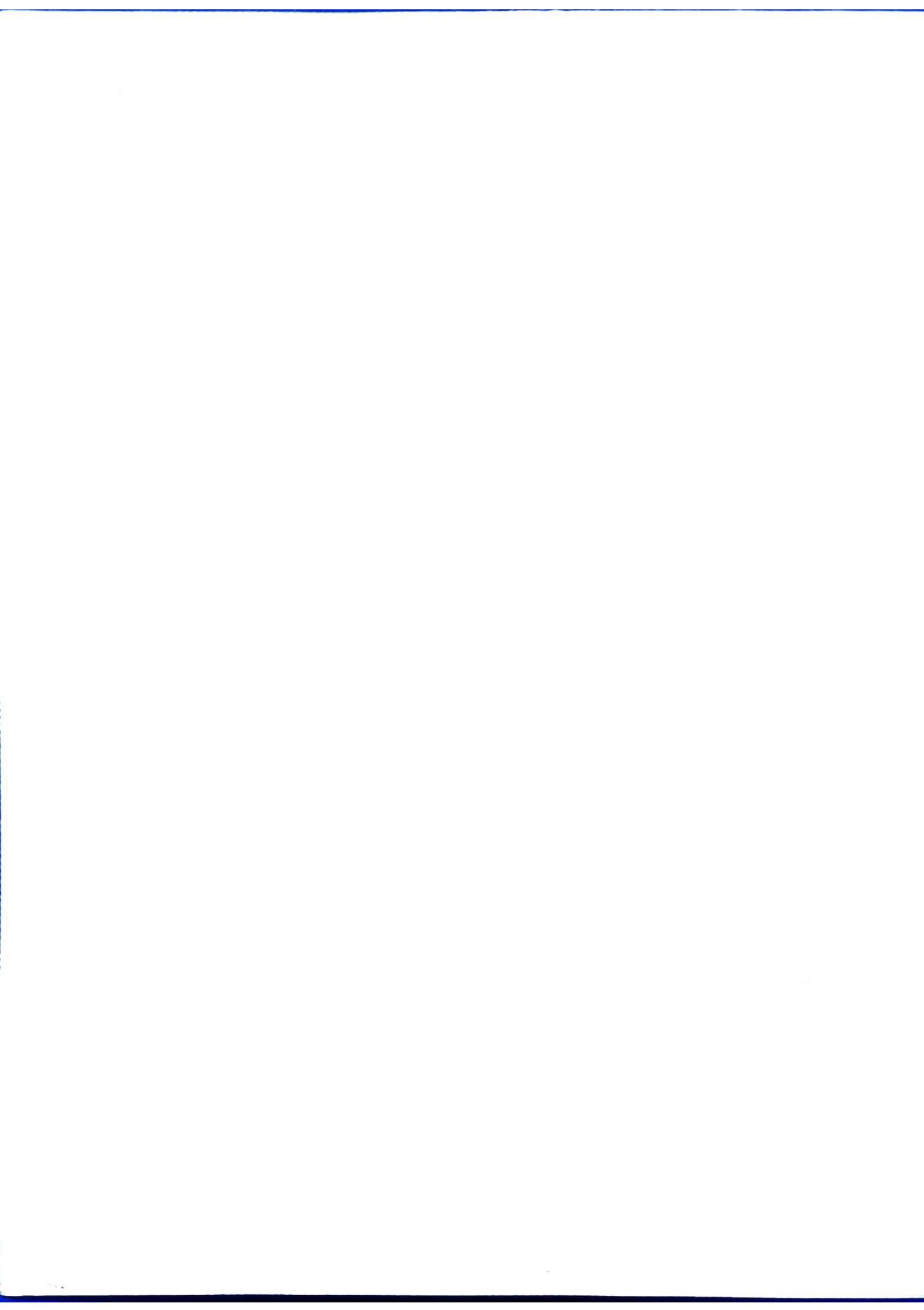
### Legal RULES-

1. **Goods are sold in lots-** Each lot is subject to separate contract.
2. **Completion of the contract of sale-** Fall of hammer by auctioneer.
3. **Reserved right to bid-** on the behalf of the seller.
4. Reserved price
5. **Pretended bidding-** sale is voidable at the option of buyer.



## INCLUSION OF INCREASED/ DECREASED TAXES

Any duty or tax to sale and purchase of goods is to be increased/ decreased with respect to goods.



# CONTENT

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## CHAPTER 4- THE INDIAN PARTNERSHIP ACT (1932)

# UNIT 1- GENERAL NATURE OF PARTNERSHIP

**PARTNERSHIP**- Relation between persons who have agreed to share profits of a business carried on by all/ any of them acting for all.



## ELEMENTS OF PARTNERSHIP

### **Association of 2 or more people**

- A minor cannot be a partner but can get benefits of partnership.
- Max limit- 50 partners (section 464, Companies act)

## Partnership agreement =Partnership deed

## Agreement

- Partnership- Voluntary, contractual
- May be Express/ Implied and oral/ written



## Agreement to share profits

- NO agreement to share loss.

## Business carried by all

- Each partner is a principal and agent for all others.
- Binding contract of mutual agency



#### TRUE TEST OF PARTNERSHIP-



**Section 6-** "In determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

## **AGREEMENT**

**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."**

## PROFIT SHARING



- Receiving profits from a shared property doesn't make someone a business partner.
- **Section 4**- "Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all."
- Other relevant factors ascertain partnership.

## AGENCY

- Each partner acts as the principal and agent for others.
- Mutual agency- central part of partnership law.

PARTNERSHIP	JOINT STOCK COMPANY
Firm- NO separate legal entity.	Company is a separate legal entity.
Every partner is an agent.	A member is not an agent.
Profits distributed among the partners.	Some portion of profits is distributed among shareholders.
Each partner is liable for debts, which can be recovered from his private property.	Liability of shareholders is limited to the amount. In some companies liability of members is unlimited.
Firms property- 'joint estate' of all partners.	Property is separate from its members, received in the form of dividends/ refund of capital
Share cannot be transferred without consent of all partners.	For shares in stock exchange, transfer is unrestricted.
Registration not compulsory.	Registration compulsory under companies act, 2013
Death, retirement- results in dissolution of firm.	Company continues its succession.

## Santiranjan Das Gupta Vs. Dasyran Murzamull

\*Court concluded- NO partnership b/w the parties

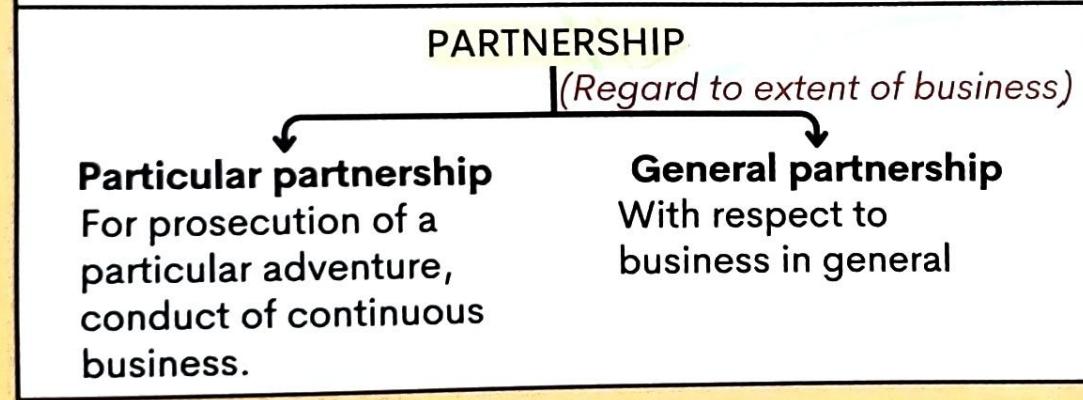
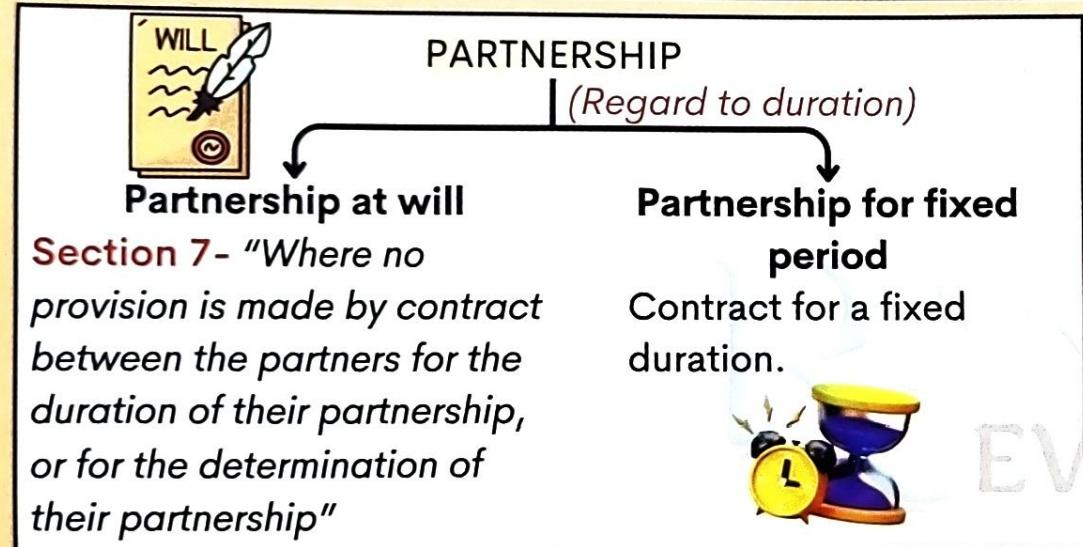
Reasons-

- No record of terms and conditions.
- No maintained accounts.
- No partnership account in any bank.
- No intimation to deputy director of Procurement.



PARTNERSHIP	JOINT STOCK COMPANY
In absence of any agreement, all partners participate in management.	Members don't take part in management unless they are directors.
Partnership can be dissolved any time.	Winding up happens by National Company Law Tribunal or struck off by Registrar of companies.
Max limit (under Companies Rules)- 50	Private- May have 200 members (max), 2 members (min); Public - 7 members (min)
PARTNERSHIP	CO-OWNERSHIP
Arises out of contract- express/ implied.	Arises from agreement/ operations of law.
Partner is an agent to others.	Co-owner is not an agent.
Share profits, losses.	May not involve sharing.
Share transferred by consent.	Share transferred as rights.

PARTNERSHIP	ASSOCIATION
Involves setting up relations b/w 2 or more people, who enter in business for gains and intention to share profits	It evolves out of social cause, NO intention of gains and sharing profits. Eg- Charitable society etc.



- Partner by holding out**- Person by words/ conduct make others believe that he is the partner (when in fact he is not)

PARTNERSHIP DEED
A result of agreement of partnership, is a document containing terms and conditions to avoid future disputes. <ul style="list-style-type: none"> <li>Drafted and stamped acc. to Stamp Act (1899).</li> <li>Partnership should be registered under Registration Act.</li> </ul>

INCLUDES
<ul style="list-style-type: none"> <li>Name of firm</li> <li>Names of partners</li> <li>Nature + place of firm</li> <li>Dates of start of partnership</li> <li>Duration of partnership</li> <li>Capital contribution of partners</li> <li>Profit sharing ratio in partners</li> <li>Admission, retirement of partner</li> <li>Rate of interest on capital, loans</li> <li>Provisions of settlement (firm dissolution)</li> <li>Provisions of salaries</li> </ul>

TYPES OF PARTNERS
<ul style="list-style-type: none"> <li><b>Actual/ Active/ Ostensible partner</b>- Partner by agreement, actively participate; gives public notice for retirement.</li> <li><b>Sleeping/ Dormant partner</b>- Does not actively participate; they are liable for acts of the firm.</li> <li><b>Nominal Partner</b>- Lends his name, without any interest; He is not liable for the acts.</li> <li><b>Partners in profit only</b>- Not liable for losses.</li> <li><b>Incoming partners</b>- Admitted in existing firm.</li> <li><b>Outgoing partners</b>- Leaves the firm (retiring)</li> </ul>





## RELATIONS OF PARTNERS TO ONE ANOTHER



## General DUTIES

**Section 9-** "Partners are bound to carry on the business of the firm to greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner, his heir or legal representative."

## Indemnify for LOSS by FRAUD

**Section 10-** "Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm."



## The conduct of the business

**Section 12(a)-** "every partner has a right to take part in the conduct of the business." (there should be no contract of contrary b/w partners)



**Section 12(d)-** "every partner has a right to have access to and to inspect and copy any of the books of the firm."

**Section 12(c)-** "any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion." (majority rule does not apply where there is change in nature of firm itself)

## Determination of RIGHTS and DUTIES (by contract)

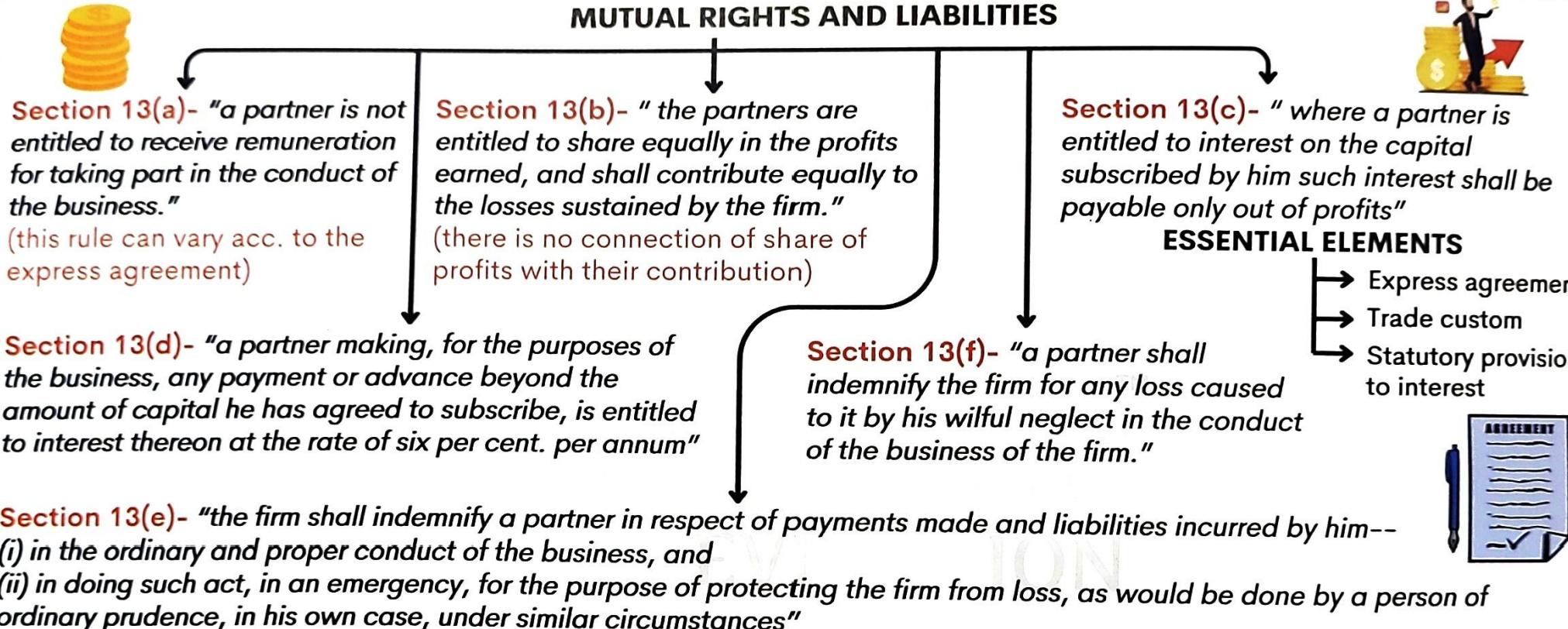
Eg- Restrain from trade, while he is a partner (Section 27, Indian Contract Act)



## Mutual rights and liabilities

**Section 12(e)-** "In the event of death of a partner, his heirs/ legal representatives shall have a right to access to and to inspect and copy any of the books of the firm."

## MUTUAL RIGHTS AND LIABILITIES



### Property of the firm-



### PARTNERSHIP PROPERTY (held exclusively for the purpose of the firm)



- Also known as partnership property/ partnership assets, joint stock, common stock , joint estate.

### COMPRIMES OF

1. Rights + interests which partners may have brought into common stock as their contribution.
2. Rights + interests acquired or purchased by or for the firm
3. Goodwill of business

### GoodWill-

- Value of reputation of business in respect of profits expected in future.
- Can be sold separately or with other properties of the firm.



If a property belongs to a person, it can become a partnership property only if there is an agreement.

## PERSONAL PROFIT EARNED BY PARTNERS



**Section 16(a)-** "if a partner derives any profits for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm"

**Section 16(b)-** "if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business."



### RIGHTS + DUTIES AFTER CHANGE IN FIRM



#### AFTER CHANGE IN FIRM

**Section 17(a)-** "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"

#### AFTER EXPIRY OF TERM OF FIRM

**Section 17(b)-** "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 incidents of partnership at will"

#### ADDITIONAL UNDERTAKINGS

**Section 17(c)-** "where a firm constituted to carry out one or more adventures or undertakings carries out other adventures or undertakings, the mutual rights and duties of the partners in respect of the other adventures or undertakings are the same as those in respect of the original adventures or undertakings."

## RELATION OF PARTNERS TO THIRD PARTIES



**A Section 18-** "a partner is the agent of the firm for the purposes of the business of the firm."

- He has a community of interest in business and liabilities of partnership.



Authority does not empower him to-

- Submit dispute related to business of firm.
- Open a bank account on behalf of firm, in his name.
- Withdraw any claim/ its part by the firm.
- Withdraw suit/ proceedings on behalf of firm.
- admit any liability in proceedings against the firm.
- acquire immovable property on behalf of firm.
- transfer immovable property of the firm.
- enter in partnership on behalf of firm.

Act must be related to business of firm.

Act done acc. to nature of particular case.

Act done in name of the firm

*restrictions*

**Section 22-** "In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm."

**C EXTENSION AND RESTRICTION OF PARTNER'S IMPLIED AUTHORITY-** Done by agreement (with consent)

Conditions → Third party knows about restrictions.

→ Third party does not know that he is dealing with a partner.



**D 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."

### EFFECT OF ADMISSIONS BY A PARTNER



**Section 23-** "An admission on representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business."

- Admission will not bind, if authority is limited, and everybody knows about the restriction.



**Section 25-** "Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner."



### EFFECT OF NOTICE TO ACTING PARTNER

**Section 24-** "Notice to a partner, who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner."

- Notice to one is equivalent to notice to all partners.



### LIABILITY TO THIRD PARTIES



**Section 26-** "Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner."

**Section 27-** "a partner acting within his apparent authority receives money or property from a third party and misapplies it, or 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."

## RIGHTS OF TRANSFeree (Partnership is transferable)



**During continuance of partnership**

- Not allowed to interfere in business
- Not entitled to require accounts
- Not entitled to inspect books of firm



**After retirement**

entitled to receive share of assets

entitled to ascertain the shares



## MINORS ADMITTED TO BENEFITS OF PARTNERSHIP

### RIGHTS

- Share profits of the firm
- Access, inspect, copy accounts of the firm.
- Sue partners for shares of payment.
- On attaining majority, he may elect to become a partner.

### Before attaining majority

Share in profits, property of the firm.

Not liable for debts.

Cannot be declared insolvent.



### LIABILITIES

### After attaining majority

#### When he becomes partner

- Becomes liable for acts to 3rd parties.
- Share in profits remain same.

## LEGAL CONSEQUENCES OF PARTNER COMING AND GOING OUT



### INTRODUCTION OF A PARTNER

**Section 31(a)-** "no person shall be introduced as a partner into a firm without the consent of all the existing partners."

- Agreement b/w partners and incoming partner, making him liable for debts, not giving creditors of the firm any right against him.

**Note-** In case he is not elected as partner

- Rights + liabilities continue as minor.
- Not liable for any acts of firm.
- Sue partners for shares of payment.



### RETIREMENT OF A PARTNER

**Section 32(1)-** "A partner may retire-

- with the consent of all the other partners,
- in accordance with an express agreement by the partners, or
- where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire."



- **Section 32(2)-** "A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement."
- **Section 32(3)-** "Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement:  
Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner."
- **Section 32(4)-** "Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm."

### EXPULSION OF A PARTNER

EXIT

- **Section 33(1)-** "A partner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith of powers conferred by contract between the partners."
- Expulsion of partners is not necessarily dissolution of firm!

### LIABILITY OF ESTATE OF DECREASED PARTNER

- **Section 33(1)-** "Where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death."

### RIGHTS OF ONGOING PARTNERS



- Use firm's name
- Represent himself as carrying business of firm
- Solicit the customs, before he ceases to be the partner

**Note-** In case a partner dies, without any contract, his shares are used as property of firm at 6% interest rate per annum.

### INSOLVENCY OF A PARTNER

- **Section 34(1)-** "Where a partner in a firm is adjudicated an insolvent he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is thereby dissolved."
- **(2)** "Where under a contract between the partners the firm is not dissolved by the adjudication of a partner as an insolvent, the estate of a partner so adjudicated is not liable for any act of the firm and the firm is not liable for any act of the insolvent, done after the date on which the order of adjudication is made."

### EFFECTS OF INSOLVENCY

- Insolvent partner cannot continue as a partner.
- Not liable for any act after date of adjudication.
- Dissolution of firm.

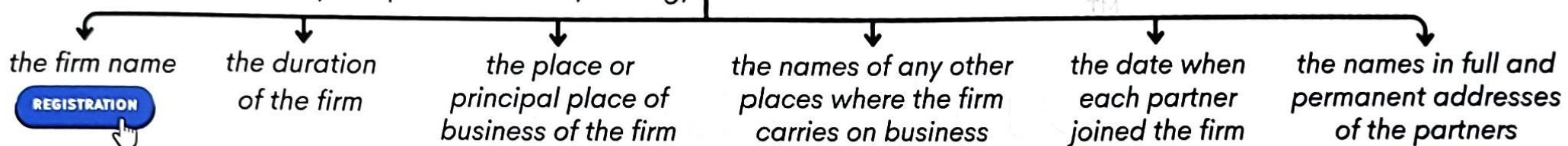


**Section 38-** "A continuing guarantee given to a firm, or to a third party in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm."

## REGISTRATION OF FIRMS



**Section 58-** "The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating,



**Note-** Statement shall be signed by all partners, in manner prescribed. The Firm shall not contain any of the words such as- 'Crown', 'Emperor', 'Empress', 'King' etc.

## REGISTRATION-

**Section 59-** "Where 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."

- Registrar issues a certificate, fee payment completes registration.

**LATE REGISTRATION-** Penalty- Rs. 100 per year delay is to be paid.



## CONSEQUENCES OF NON-REGISTRATION



Firm cannot sue for breach of contract to any 3rd party.

In case any 3rd party sues the firm, it cannot claim any set-off.

Any 3rd party can sue the firm

Aggrieved partner cannot take legal action against other partner/ firm



## Rights NOT AFFECTED in case of non- Registration



Right of 3rd party to sue partner/ firm.

Right to claim a set- off if suit < Rs. 100

Right of partners to sue for account settlement in case of firm dissolution

Right of legal heir to sue firm for accounts

Power of official assignees to release property of insolvent partners

**Note-** In case one partner dies, the remaining partners can sue any third party in future, without notifying the registrar. In case a new partner joins the firm, notice to registrar is important before filing suit to a third party.

## DISSOLUTION OF FIRMS

**Section 39-** "the dissolution of a partnership between all the partners of a firm is called the dissolution of the firm."

### DISSOLUTION OF FIRM



Discontinuation of business in partnership.



Settlement of assets and liabilities occurs.



Happens by order of court.

Business continues; Reconstruction of firm happens.

Involves dissolution of partnership.

Revaluation of assets and liabilities occur.

Involves final closure of books of firm.

May/ may not lead to dissolution of firm.



## DISSOLUTION WITHOUT ORDER OF COURT



### AGREEMENT

**Section 40-** "A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners."

### COMPULSORY DISSOLUTION

**Section 41-** "(a) by the adjudication of all the partners or of all the partners but one as insolvent,  
(b) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership"

### CONTINGENCIES

by the expiry of that term (fixed term); completion of one/ more adventures; death of partner; adjudication of a partner as an insolvent.

### PARTNERSHIP AT WILL

by notice to all other partners, firm dissolves from date mentioned in notice/ date of communication.

## DISSOLUTION WITH ORDER OF COURT

**UNSOOUND MIND** of a partner  
Note- Temporary illness is no ground for dissolution of firm



partner has **TRANSFER OF INTERESTS**, asked court to sell his shares

partner becomes **PERMANENTLY INCAPABLE** to perform

If partner's **MISCONDUCT** affects business

Business cannot be carried due to **CONTINUOUS LOSSES**

If partner **PERSISTENTLY** commits **BREACH OF AGREEMENT** in business matters



## CONSEQUENCES OF DISSOLUTION

**PARTNERS** are **LIABLE** for acts done **after dissolution**- Protects the third parties and partners



**Exception-**

- Decreased partner
- Insolvent partner
- Dormant partner

**Section 46-** "On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.."

**WINDING UP-** After partnership ends, partners still have authority to finish the ongoing business, and other wind up affairs. (However, the partner should not be insolvent)

### SETTLEMENT OF ACCOUNTS-

- Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.
- Assets of the firm, should be used for-

Paying debts of the firm

Paying each partner, due to him

Rest dividing amongst partners



**DEBTS- Section 49-** "Where there are joint debts due from the firm, and also separate debts due from any partner, the property of the firm shall be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the share of each partner shall be applied in payment of his separate debts or paid to him. The separate property of any partner shall be applied first, in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm."

# THE LIMITED LIABILITY PARTNERSHIP ACT (2008)



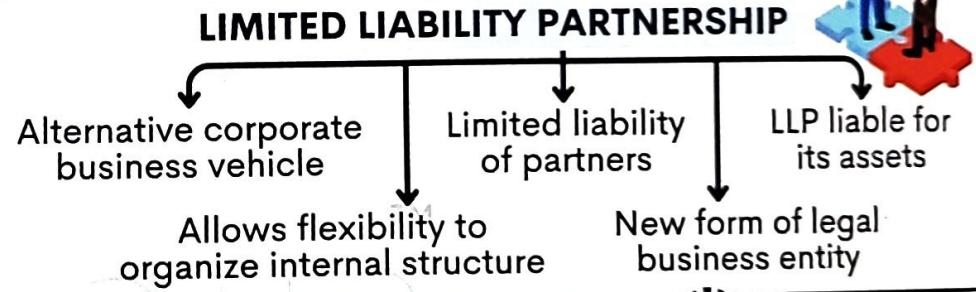
## FEATURES



- **9th Jan, 2007**- Ministry of Law and Justice notified about LLP Act.
- **12th Dec, 2008**- Parliament passes Limited Liability Partnership bill.
- **7th Jan, 2009**- President of India assented the bill.
- LLP Act- 81 sections, 4 schedules.
  - **1st schedule**- Rights, duties of partners (formal agreement- absent).
  - **2nd Schedule**- Conversion of firm to LLP.
  - **3rd Schedule**- Conversion of private company to LLP.
  - **4th Schedule**- Conversion of unlisted public company to LLP.
- Limited Liability Act- amended through Limited Liability Partnership Act, dated 13th Aug, 2021.

\**Indian Partnership Act, 1932 is not applicable to LLP's.*

**Note-** LLP is called a hybrid between a corporate structure and a partnership firm.



## DEFINITIONS



- **Body Corporate**- **Section 2(1)(d)**- means a company, that includes-
  1. limited liability partnership registered under this Act.
  2. limited liability partnership incorporated outside India.
  3. company incorporated outside India.
- **Business**- **Section 2(1)(e)**- "includes every trade, profession, service and occupation except any activity which the Central Government may, by notification, exclude."
- **Designated partner**- **Section 2(1)(j)**- "any partner designated as such pursuant to section 7."
- **Entity**- **Section 2(1)(k)**- "any body corporate and includes, for the purposes of sections 18, 46, 47, 48, 49, 50, 52 and 53, a firm set-up under the Indian Partnership Act, 1932 (9 of 1932)."

- **Financial Year**- **Section 2(1)(l)**- "means the period from the 1st day of April of a year to the 31st day of March of the following year:  
Provided that in the case of a limited liability partnership incorporated after the 30th day of Sept of a year, the financial year may end on the 31st day of March of the year next following that year."
- **Limited Liability Partnership**- **Section 2(1)(n)**- "a partnership formed and registered under this Act."
- **Limited Liability partnership agreement**- **Section 2(1)(o)**- "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."
- **Partner**- **Section 2(1)(q)**- "means any person who becomes a partner in the limited liability partnership in accordance with the limited liability partnership agreement."
- **Small Limited Liability Partnership**- **Section 2(1)(ta)**- "means a limited liability partnership—
  1. the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed;
  2. the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed;
  3. which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed"



#### Individual INCAPABLE to be partners if-

Found to be of unsound mind by court

He is an undischarged insolvent



Adjudicated as insolvent (Pending application)



#### Minimum number of partners- Each LLP- atleast 2 partners

*\*If no. of partners < 2, and LLP carries on business > 6 months- He alone shall be liable for LLP obligations*

#### DESIGNATED PARTNERS

At least Two (One- Resident of India)



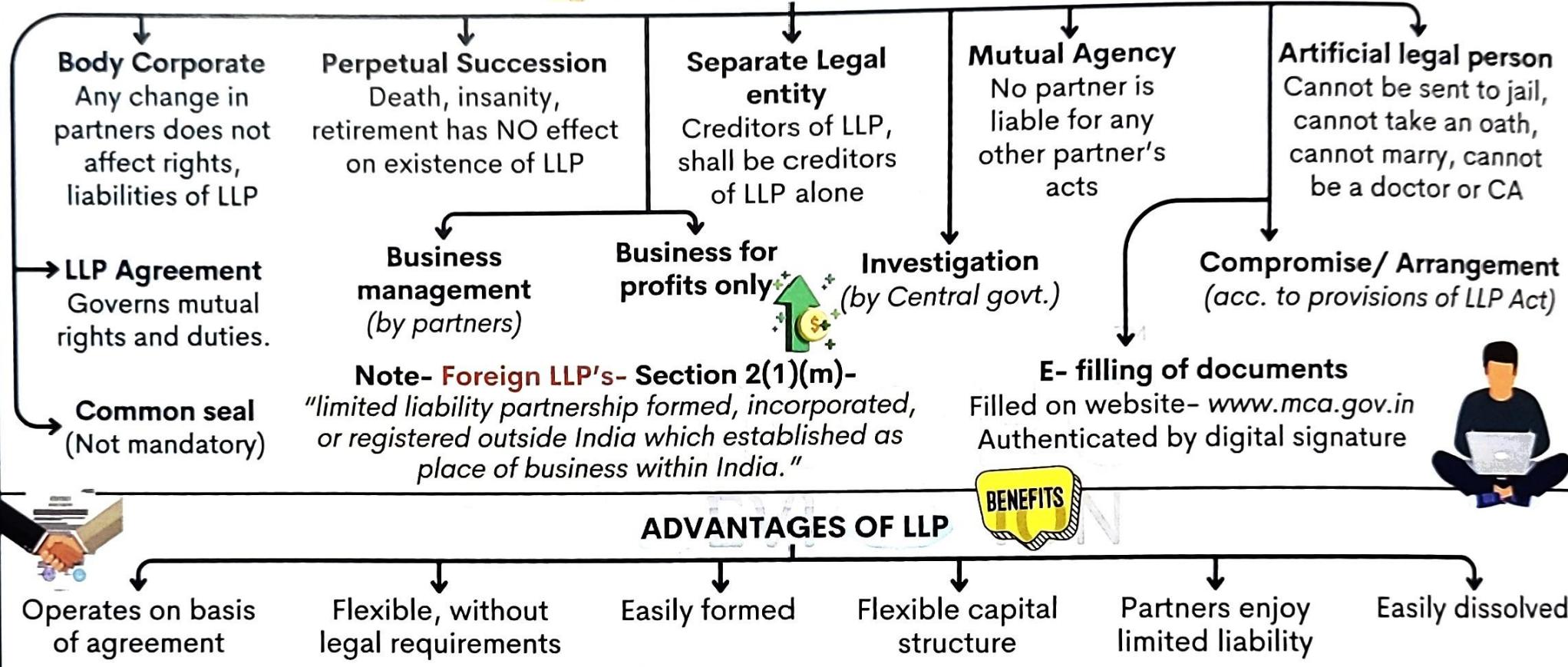
Resident of India- Stayed in India for > 120 days in financial year.

If all partners are body corporate, at least 2 individuals/ nominees shall be designated partners.





## CHARACTERISTICS OF LLP



**INCORPORATION OF LLP**

**Section 11(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 limited liability partnership is to be situated; and

**(c)** there shall be filed along with the incorporation document, a statement in the prescribed form, made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the limited liability partnership and by any one who subscribed his name to the incorporation document, that all the requirements of this Act and the rules made thereunder have been complied with, in respect of incorporation and matters precedent and incidental thereto."

## Incorporation document shall- Section 11 (2)

(a) be in a form as prescribed

(b) state the name of LLP

(c) state the proposed business

(d) state the address of registered office

(e) state the name, address of persons to be partners

(f) state the name, address of designated partners



(f) contain other info. concerning proposed LLP, as prescribed



**Section 11 (3)-** "If a person makes a statement under clause (c) of sub-section (1) which he-

(a) knows to be false; or

(b) does not believe to be true, shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees.

## Incorporation by registration-



When the conditions in clauses (b) and (c) of section 11(1) are met, the Registrar keeps the incorporation document. If clause (a) is also met, within 14 days, the Registrar will:

- Register the document.
- Provide a certificate confirming the incorporation under the specified name.

The Registrar can consider the statement from section 11(1) (c) as proof of compliance with section 11(1)(a).

The certificate, signed by the Registrar and sealed, is proof of the partnership's incorporation under the specified name.

## Registered office of LLP -



- Every limited liability partnership must have a registered office where all communications and notices can be sent and received.
- Documents can be served to the LLP or its partners by post or in any other prescribed manner at the registered office or any other address declared by the LLP.
- The LLP can change its registered office by filing a notice with the Registrar.
- Failure to comply with these requirements can result in a penalty of up to fifty thousand rupees for the LLP and its partners.

## 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

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



Name-



**Section 15(1)-** "Every limited liability partnership shall have either the words "limited liability partnership" or the acronym "LLP" as the last words of its name.

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

(a) undesirable; or

(b) identical or too nearly resembles to that of any other limited liability partnership or a company or a registered trade mark of any other person under the

#### Reservation of Name-

Reserve

- A person can request the Registrar to reserve a name for either a new limited liability partnership or for an existing one wishing to change its name.
- Upon receiving the application and the prescribed fee, the Registrar may reserve the name for three months if it meets the criteria and rules set by the Central Government.
- ensuring it's not rejected based on specific grounds mentioned in section 15(2).

#### Change of Name-



- If a limited liability partnership is inadvertently registered with a name identical/ similar to another LLP, company/ registered trademark, the Central Govt. can direct it to change its name within 3 months of the directive.
- The proprietor of the trademark can make such a request within three years of the LLP's incorporation/ name change.
- Upon receiving the directive, the LLP must inform the Registrar within 15 days and update its incorporation certificate, partnership agreement within 30 days.
- If the LLP fails to comply, the Central Govt. will assign a new name, which the LLP must use. However, the LLP can still change its name later according to Section 16.

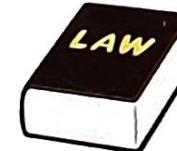
LLP	PARTNERSHIP FIRM
Body corporate	Not body corporate
Legal entity; separate from its members.	No separate legal entity
Created by registration under LLP Act, 2008.	Created by agreement b/w partners.
Registration- mandatory	Registration- voluntary
Existence continues forever.	No perpetual succession
Suffix- LLP in name	No guidelines for name
Cannot bind other partners for ones acts.	Binds other partners for ones acts.
At least 2 designated partners.	No boundaries
Common seal- official sign.	No such concept
Annual filing of documents- imp	Not required
Foreign partners- can exist	No foreign partners
Minors- No benefits	Minors- can get benefits

LLP	LIMITED LIABILITY COMPANY
The LLP Act (2008)	The Companies Act (2013)
Partners- Contribute to LLP.	Members- Invest money as shares.
Internal governance- Contract agreement b/w partners.	Internal governance- Regulated by statute.
Suffix in name- LLP	Suffix in name- Private Ltd. or Pvt. Co.
Min- 2 partners; Max- No limit	Private Company- Min- 2; Max- 200 Public company- Min- 7; Max- No limit
Liability of partner- limited to contribution (except wilful fraud)	Liability of member- limited to shares
Business managed by partners.	Company affairs managed by board of directors. (Pvt. Co.- 2 directors; Public Co.- 3 directors)

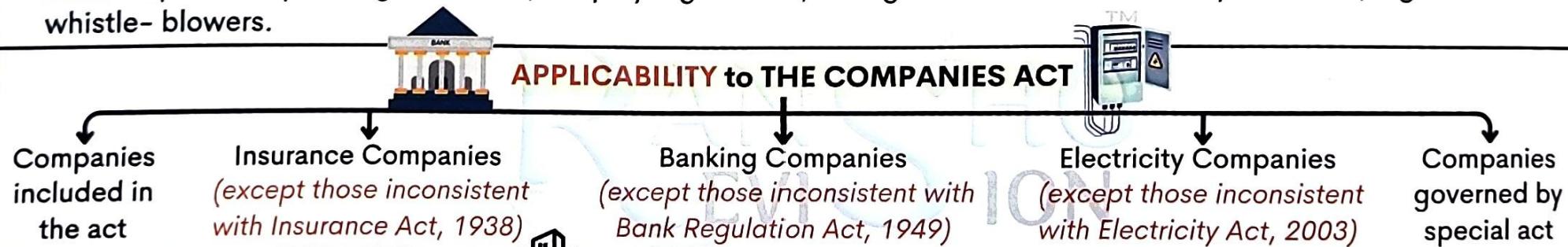
# THE COMPANIES ACT (2013)

## FEATURES

- The Companies Act, 2013 was preceded by Companies Act 1956.
- Contains**- 470 sections; 7 schedules. (29 chapters)
- AIM**- Improve corporate governance, Simplify regulations, strengthen interests of minority investors, legislate role of whistle- blowers.



## APPLICABILITY to THE COMPANIES ACT



## COMPANY



- "A corporation is an artificial being, invisible, intangible, existing only in contemplation of law. Being a mere creation of law, it possesses only those properties which the charter of its creation confers upon it, either expressly/ as accidental to its very existence."* -Chief Justice Marshall
- "A company is an incorporated association, which is an artificial person created by law, having a separate entity, with a perpetual succession and a common seal."*
- Professor Henry**
- "Company means a company incorporated under this under this Act or under any previous company law."*
- Section 2(20)**

## FEATURES of a COMPANY-

→ **Separate legal entity**- Company's existence is separate from its members.

- Has its own property, bank account, liabilities etc.
- Members can contract with company or acquire rights against it.
- Company becomes owner of its capital and assets.

**Macaura Vs. Northern Assurance Co. Ltd (1925)**

M  
(holder of almost all shares of company) → company's timber lost in fire → M claimed insurance  
\*timber was in company's name, M could not claim insurance

→ **Perpetual Succession** - Change in shares does not impact existence of the company.

- Only Law can bring an end to its life.

→ **Limited liability** - Liability of company is different from liability of its members.

- Liability of members is limited to shares.
- Liability of members is unlimited in an unlimited company.

→ **Artificial legal person** - Created by law- so legal and judicial.

- Can act through human agency (directors).

→ **Common seal** - Official signature of company.

- Seal used by corporation (symbol of its incorporation)
- Common seal is optional; authorization can be made by directors/ Company secretary.

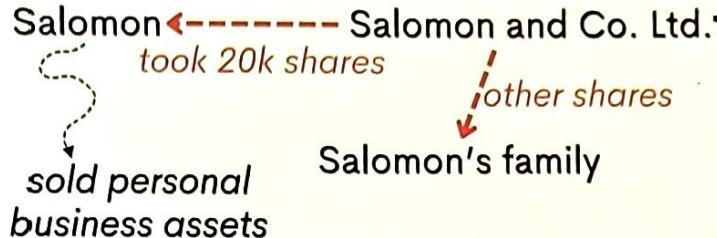


## CORPORATE VEIL THEORY



Company is identified separately from members of the company. (members are not liable for company's actions).

### Salomon Vs. Salomon and Co Ltd.



\*Creditors asked Salomon to pay them by his personal assets, but couldn't legally, because of 'Corporate Veil'



### LIFTING OF CORPORATE VEIL-

When court ignores the company and directly concerns with the members/ managers, the corporate veil is lifted.

### CASES OF LIFTING OF CORPORATE VEIL

To determine character of the company  
(If the affairs of the company are in control of enemy country)

Eg- Daimler Co. Ltd. Vs. Continental Tyre And Rubber Co.



To protect revenue/ tax  
(If corporate entity is used to avoid taxes, court disregards it)

Eg- Juggilal Vs. Commissioner of Income Tax

To avoid legal obligations  
Eg- Workmen of Associated Rubber Industry Ltd. Vs. Associated Rubber Industry Ltd.

A Ltd. purchased shares  
formed  
profits payable as bonus  
C Ltd. (subsidiary)  
[to reduce bonus]

\*Court considered subsidiary as part of A Ltd. (just made to reduce bonus)

Subsidiary formation to act as agents

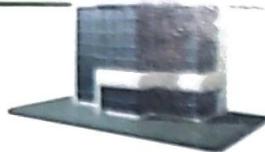
Eg- Merchandise transport Ltd. Vs. British transport commission

Transport Co. formed  
to get licence of vehicles

\*application rejected- as under the name of subsidiary co.

Company formed for fraud  
Eg- Gilford Motor Co. Vs. Horne





## CLASSES OF COMPANIES UNDER THE ACT

### Basis- LIABILITY

**GUARANTEED**

#### Company LIMITED by SHARES

**Section 2(22)**- "company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them"

Note- Shareholders might be co-owners of the company, but are not the co-owners of company's assets.

#### Company LIMITED by GUARANTEE

**Section 2(21)**- "company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up"

Liability limited to amt. unpaid on shares

#### UNLIMITED Company

**Section 2(92)**- "company not having any limit on the liability of its members"  
Liability extends to whole amt. of company's debts.



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### Basis- BASIS of MEMBERS

#### ONE- PERSON Company

**Section 2(62)**- "company which has only one person as a member"

- Separate legal entity; limited liability

**Section 3(1)(c)**- "OPC is a private limited company."

- Min. paid capital- NO limit
- Indian citizen (120 days in preceding financial year)
- OPC memorandum- defines nominee
- Cannot carry non- banking financial investment activities.



#### PRIVATE Company

- Limits right to transfer shares. (multiple people jointly own shares- counted as 1 member)
- Max.- 200 members; Min- 2 members
- Present + former employees- not counted as members.
- Prohibits to ask public to buy shares.

#### SMALL COMPANY

Paid up capital  
< Rs. 50 lakh

Turnover  
< Rs. 2 crores

Should not be  
Sec. 8  
company  
Subsidiary  
company

#### PUBLIC Company



**Section 2(71)**- "a company which—

- is not a private company and;
- has a minimum paid-up share capital, as may be prescribed:

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles"

- Min- 7 members; Transferable shares

## Basis- CONTROL



### HOLDING and SUBSIDIARY Company

**Section 2(87)**- "a company in which the holding company—  
 (i) controls the composition of the Board of Directors; or  
 (ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies."



### ASSOCIATE Company

**Section 2(6)**- "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."

- Control of at least 20% voting power.
- Joint venture= joint agreement



## Basis- ACCESS to CAPITAL

### LISTED Company

**Section 2(52)**- " company which has any of its securities listed on any recognised stock exchange."



### OTHER COMPANIES

#### GOVERNMENT Company

**Section 2(45)**- " company in which not less than 51% of the paid-up share capital is held 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, and includes a company which is a subsidiary company of such a Government company."

#### FOREIGN Company

**Section 2(42)**- " any company or body corporate incorporated outside India which;

1. has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
2. conducts any business activity in India in any other manner."



### Companies with charitable objects

**Section 8**- "Company--

- (a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- (b) intends to apply its profits, if any, or other income in promoting its objects; and
- (c) intends to prohibit the payment of any dividend to its members."

#### License registration:

- Limited liability for the companies which don't have 'Limited' or 'Private Ltd' in their names.
- Registrar must register companies under Section 8.
- Registration provides privileges + obligations to the company.

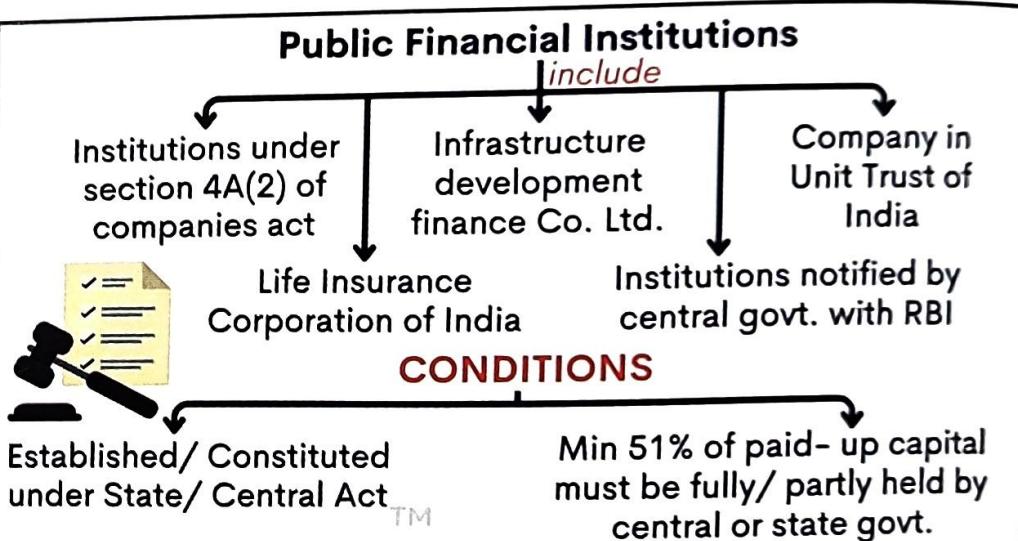
**Note:** In case the company violates any requirements/ conditions the Central govt. declares license invalid.

- After license revocation, The company can be amalgamated with another registered company.
- Contravention of any condition may lead to penalty (10 lakh-1 crore) on the company and penalty (25 thousand to 25 lakh) on individual officers.

### DORMANT Company

A company registered with no significant accounting transactions.

- Inactive company:** Company not carrying any business, no significant accounting transactions (last 2 financial years), not filing annual financial statements.



**NIDHI Company:** Mutual benefit society, mainly created for cultivating habit of thrift and savings among its members.

**REGISTER NOW**

### MODE OF REGISTRATION/ INCORPORATION OF COMPANY

Acc. to Section 2(69)

#### PROMOTERS

A person named as a promoter in the prospectus/ identified by the company in its annual return in Section 92.

A person who controls the company affairs, indirectly or directly, whether as a director, shareholder or otherwise.

A person in accordance with whose directions, advice or instructions the Board of Directors of a company are accustomed to act.



#### FORMATION of a Company (Section 3)

PUBLIC Co. 7/ more people      PRIVATE Co. 2/ more people      ONE PERSON Co. 1 person

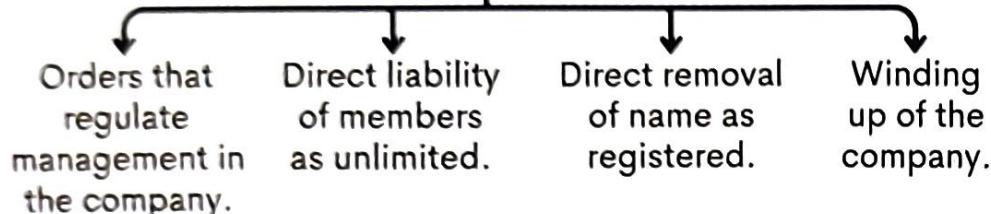
#### INCORPORATION of a Company

##### FILING DOCUMENTS-

- Memorandum signed by all the subscribers.
- Declaration by person engaged in company formation, and by the person named in the articles.

- Declaration of each subscribers, to the memorandum, stating 'not guilty' for any fraud or offence.
- Address of correspondence, till the registered office is established.
- Particularities with identity proof of every subscriber.
- Particulars of interests of people mentioned in the articles.
  - Issue of certificate of incorporation on registration by the registrar.
  - Allotment of Corporate Identity Number (CIN) by the registrar, as a distinct identity of the company.

- The company has to maintain the documents at its registered office, till its dissolution.
- In case of any false information at the time of incorporation, the person is liable for fraud under section 447.
- The Tribunal may pass orders acc. to the situation over any fraudulent action, Such as



## EFFECT OF REGISTRATION

**LEGAL**

- Members of the company shall be body corporate.
- From the date of incorporation, company becomes a legal person, until dissolved.
- Company may purchase shares of another company, and become the controlling company.

## EFFECT OF MEMORANDUM AND ARTICLES

- The provisions of the articles bind the company and each member to same extent.
- Any amount paid by any member, under the articles, shall be considered as debt to the company.

## CLASSIFICATION OF CAPITAL



"The contributions of persons to the common stock of the company forms the capital of the company."



**Nominal/ Authorised capital**

- Authorised by memorandum of the company.
- Amt. on which stamp duty is paid.
- Fixed amt. that a company needs= Working capital + Reserve capital.



### Issued capital

- Capital issued by company for subscriptions.
- Part of authorized capital.
- Should be disclosed in balance sheet (Schedule III)

### Called- up capital

- Total amt. called up on shares issued.

**Subscribed capital**

- Capital subscribed by the members of the company.
- Nominal amt. of shares taken by public.
- Capital must be shared equally in conspicuous characters. Penalty on default: Rs. 10k to Rs. 5k



### Paid- up capital

- Total amt. paid up on shares issued.
- Equal to called Called up capital- calls in arrears

**SHARES:** "A measure of the interest in the company's assets to which a person holding shares is entitled."

- Memorandum prescribes the rights and obligations associated with the share.
- Note: Stakeholders are different from the owners of the undertaking.
- Shareholders have contractual rights against the company along with the other rights.
- Shares are movable (transferable)
- Every share is distinguishable with a specific number.



## SHARE CAPITAL

Equity

- Uniform voting rights
- Different voting rights

Preference

## PREFERENCE SHARE CAPITAL

**Section 43:** "with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to (a) payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and (b) repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company."

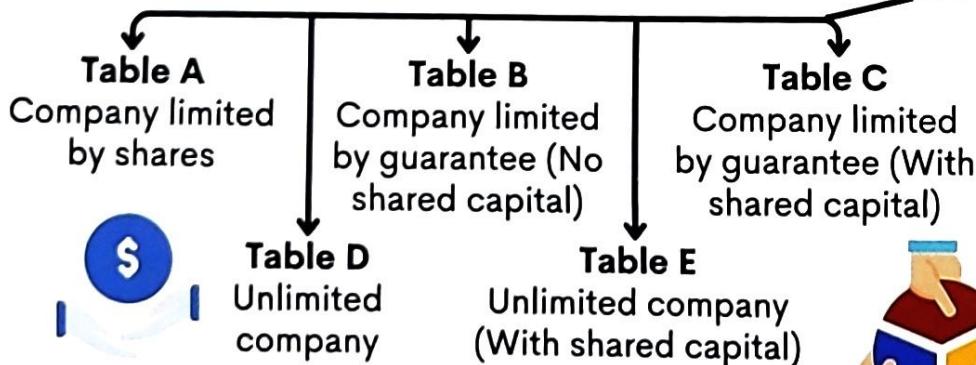
## MEMORANDUM OF ASSOCIATION:

Foundation of the company, defines its scope of powers.

### OBJECT OF REGISTERING

Object at which the company is formed. Powers: Activities it can engage in. (People in the contract must have knowledge of the conditions) Shareholders must be informed of the risks and the usage of his money.

**Section 4:** Memorandum must be drawn in the form of tables-



## CONTENT of the memorandum

- Name clause:** Name of the company. Acc. to MCA notification, dated 5th June, 2015- Last words: 'Limited' or 'Private Limited' (Not applicable for companies under sec- 8). Name must include 'Electoral Trust', in accordance with the Electoral Trust scheme (2013), notified by CBDT.
- Registered office clause:** The state in which the registered office is situated.
- Object clause:** The object for which the company is incorporated.
- Liability clause:** The liability of members of the company.



### Company limited by shares

Liability is limited to the amt. unpaid.

### Company limited by guarantee

Each member contributes a specific amt. towards company's assets in case of winding up (including debts, liabilities and expenses during membership)

- Capital clause:** Amt. of authorized capital divided in the shares of fixed amt. and no. of shares.
- Association clause:** Details of the subscribers in a company.

**Note-** The memorandum must be printed, divided in paragraphs, numbered; signed by min. 7 people in presence of at least 1 witness.

A minor cannot be a signatory to the memorandum.

*Signature*

## DOCTRINE OF ULTRA VIRES (public document)

**Meaning:** 'beyond (their) powers'

- Any act done beyond the powers, not only in case of directors but also for the company is void, and does not bind the company.
- Company can hold back from using funds for non-sanctioned purposes.

- The ultra vires act in the power of the directors, can be approved by the stakeholders only if it is done irregularly, and stakeholder validates it.



Court ruled the contract as null/ void, emphasized that 'general contractors' must be interpreted in context of the company's main business, to prevent any broad interpretation in terms of scope.

- The ultra vires contract cannot be made binding to the company.

### Memorandum of Association

Defines, delimits objectives of the company.

### Articles of Association

Lays down rules for management, objectives of the company.

Relationship of company with outside members.

Relationship within the company.

Can be altered only in specific conditions.

Can be altered by special resolution.

Ultra- vires cannot be ratified by unanimous consent.

Ultra- vires can be ratified by special resolution of stakeholders.

## ARTICLES OF ASSOCIATION

Rules and regulations, framed to manage internal affairs.

### Section 5- Laws

- Rules for management
- Additional matters imp. for management
- Provisions of entrenchment (to protect something)
- Manner of inclusion of provision of entrenchment (by agreement of all members or by special resolution)
- Forms of articles
- Model articles: rules applicable to the company
- Company is registered after commencement of the act: the rules shall be applicable to it as well



## DOCTRINE OF INDOOR MANAGEMENT

(Turquand rule)

**DOCTRINE OF CONSTRUCTIVE NOTICE:** Section 399- "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."

- Constructive notice:** Presumed/ Implied notice (includes memorandum, articles, special resolutions).

**DOCTRINE OF INDOOR MANAGEMENT:** Outsiders dealing with the company needs to assume that there are no irregularities in working of the company, and the formalities have been observed.

### Royal British Bank Vs. Turquand

- Mr. Turquand, oversee the insolvent Cameron's Coalbrook steam, Coal and Swansea and Loughor Railway company.
- Mr. Turquand issued a £ 2000 bond to royal british bank under Joint Stock Company's act (1844).
- Despite the company's claim of borrowing limitations, the court upheld the bond's validity, emphasizing the indoor management rule.
- The rule underscores that a company's internal affairs are its own responsibility.

### LIMITATIONS of TURQUAND RULE

- **Actual/ Constructive knowledge of irregularity:** Does not protect the person dealing with any notice.
  - Eg- Howard Vs. Patent Ivory Manufacturing Co.
- **Suspicion of Irregularity:** In case of any unusual behavior, not in the ordinary course of business, that affects the outsider; the outsider has the right to enquire.
  - Eg 1- Anand Bihari Lal Vs. Dinshaw and Co.
  - Eg 2- Haughton and Co. Vs. Nothard, Lowe and wills Ltd.
- **Forgery:** In case of forgery the rule limits itself.
  - Ruben Vs. Great Fingall Consolidated  
*(share certificate issued with company's seal and forged signatures of directors, the company now cannot deny the genuineness of documents)*

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# THE NEGOTIABLE INSTRUMENT ACT (1881)

## FEATURES:

- Enacted to ease the activities to trade and commerce.
- Provides provisions to the instruments of credit, that tend to be convertible and can be easily passes from one person to another.
- OBJECTIVE:** Legalize systems by which instruments tend to pass hand to hand as other goods.
- The Negotiable Instrument Act:** Defines and amends laws related to promissory notes, bills of exchange and cheques.



## AMENDMENTS-

- 2002- The Negotiable Instruments (Amendment + Miscellaneous Provisions) Act.
- 2015, 2018- The Negotiable Instruments (Amendment) Act

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## NEGOTIABLE INSTRUMENTS (freely transferable via delivery or endorsements)

Promissory notes

Bill of exchange

Cheque

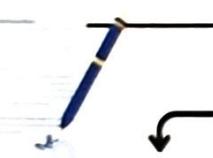
### PAYABLE To ORDER:

- Expressed as payable
- Does not contain the word: 'prohibiting its transfer'.

### PAYABLE To BEARER:

- Expressed as payable to bearer
- The person who does the last indorsement can demand payment.

## CHARACTISTICS of NEGOTIABLE INSTRUMENTS



Written

Signed

Freely transferable  
(any no. of times)

Amount, time of payment must be certain

Holder's title:  
free from defects

Instrument must be deliverable.

Contains an unconditional  
promise or an order to pay money

**PROMISSORY NOTE:** Section 4- " promissory note is an instrument in writing containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument."

**PARTIES INVOLVED:**

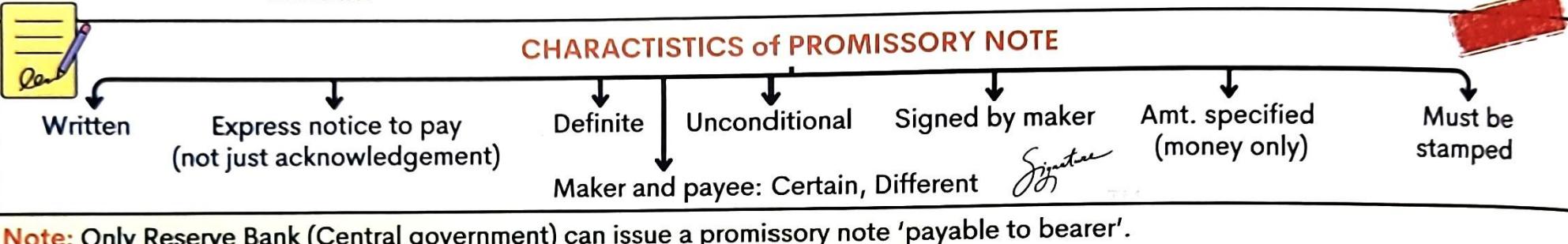


**DRAWER**  
 • Maker  
 • Debtor  
 • Payer  
 (Promises to pay)

*Supplies goods/ services*  
*Issues promise note*



**DRAWEE**  
 • Bearer  
 • Creditor  
 • Payee



**BILLS OF EXCHANGE:** Written instrument, containing an unconditional order, signed by the maker, directing a certain person to pay a certain amt. of money only to, or to the order of, a certain person or the bearer of the instrument.

**PARTIES INVOLVED:** **DRAWER:** Makes the bill of exchange

**ION**



**DRAWEE:** Liable of the payment.

**PAYEE:** Person in the instrument, to whose order money is directed to be paid.



**CHARACTISTICS of BILL OF EXCHANGE**

*Written*   *Contain express order to pay*   *Definite*   *Unconditional*   *Signed by drawer*   *Amt. specified (money only)*   *Drawer, drawee, payee- Certain*   *Must be stamped*

<b>PROMISSORY NOTE</b>	<b>BILL OF EXCHANGE</b>	<b>PROMISSORY NOTE</b>	<b>BILL OF EXCHANGE</b>
Undertaking by maker, to pay money to bearer.	Unconditional order, signed by maker to pay/ order to pay money to the bearer.	Does not require acceptance	Need acceptance of drawee
Promise to pay money	Order of making payment	Cannot be made payable to bearer.	Can be drawn payable to bearer.

**CHEQUE:** Section 6- "bill of exchange drawn on a specific banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form."

- Cheque in electronic form- Cheque drawn in electronic format, with digital signature.
- Truncated cheque- Cheque cut- short during clearing cycle by clearing house (RBI) or bank.

**PARTIES INVOLVED:**



→ **DRAWER:** Maker of the cheque

→ **DRAWEE:** Person who is directed to pay.

→ **PAYEE:** Person in whose favor cheque is issued.



**CHARACTERISTICS-**

- Same as bill of exchange
- Drawn on specific banker
- Payable on demand

### CLASSIFICATION: NEGOTIABLE INSTRUMENTS

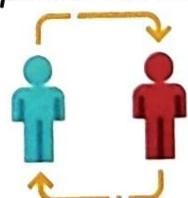
BEARER INSTRUMENT	ORDER INSTRUMENT	INCHOLATE INSTRUMENT	AMBIGUOUS INSTRUMENT
Name of payee: blank/ specified as 'bearer'	Payable to a person or his order.	An incomplete instrument, maker delivers (blank/ incomplete) it to another person having capacity.	<b>Section 17:</b> "where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly."
Last indorsement is blank	Last endorsement is full.		
Can be negotiated by delivery	Can be negotiated by indorsement and delivery.		
INLAND INSTRUMENT	FOREIGN INSTRUMENT		
Promissory note, bill of exchange or cheque drawn/ made in India, drawn by any person resident in India.	One that is not an inland instrument. (Liability is regulated by law, where it is made and where it is payable	Liability: person signing the instrument and delivering are liable to holder.	The holder may, at his discretion, treat it as either (promissory note/ bill of exchange), and the instrument shall thereafter be treated accordingly.

### TRANSFER OF NEGOTIABLE INSTRUMENTS:

**Section 14:** "When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute the person the holder thereof, the instrument is said to be negotiated."

**MODES:**

1. **By delivery:** In case the promissory note or bill of exchange is payable to bearer.
2. **By Indorsement + delivery:** In case the promissory bill or bill of exchange is payable to order.



**NEGOTIATION BY DELIVERY:** Section 47: "Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof."

**NEGOTIATION BY INDORSEMENT:** Section 48: "Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof."

### IMPORTANCE OF DELIVERY IN NEGOTIATION

- Delivery: Voluntary, property mentioned in the instrument must be passed to the person referred.
- Types → **ACTUAL**- Instrument changes hands physically.



→ **CONSTRUCTIVE**- Instrument is delivered to an agent, clerk or servant.

- In case the instrument is conditioned, the property is not passed unless negotiated to a holder.
- Section 57**- "The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered."

### DISHONOUR OF CHEQUES- INSUFFICIENCY OF FUNDS

- "Cheque drawn by a person on an account- **Section 138**
  - Payment of any amt. of money
  - To any other person from that account
  - For discharge of whole/ a part of any debt/ liability
  - Returned by bank unpaid
  - Amt. in account is insufficient for the cheque
  - It exceeds amt. to be paid from account by any agreement made by bank



such a person shall be deemed to have committed an offence and shall, be punished with imprisonment for a term which may extend to 2 yrs., or with fine may extend to twice the amt. of the cheque, or with both."

- This condition does not apply when:



Cheque is in validity period (3 months)

Payment is demanded via notice (30 days)



Drawer of the cheque fails to make payment

### PRESUMPTION IN FAVOR OF HOLDER

**Section 139:** "It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

### PRESENTMENT

**Presentment of acceptance:** Bill of exchange must be presented for acceptance in a reasonable time (if nothing is mentioned).

- Failure in the same absolves any party from liability.
- If drawee not found in reasonable search- bill dishonoured.
- Present via registered mail- acceptable (if agreed upon)

### Presentment of promissory note for sight:

- A promissory note payable after sight must be presented to the maker within a reasonable time during business hours, if the maker can be found after a reasonable search.
- Failure to present it absolves any party from liability to the person who failed to present it.

### Drawee time for deliberation:

**Section 63:** "The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee forty-eight hours (exclusive of public holidays) to consider whether he will accept it."



### Presentment for payment:

- A promissory note, bill of exchange, cheque must be presented to the drawee on behalf of the holder.
- Failure in presentment: Liability of holder
- \*Presentment not required if promissory note is payable on demand and there is no specified place



### Hours of presentment:

**Section 65:** "Resentment for payment must be made during the usual hours of business, and, if at a banker's within banking hours.

**Presentment for payment of instrument payable after date/sight:** **Section 66:** "A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity."

**Presentment for payment of promissory note payable by instalments:** **Section 67:** "A Promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity."

**Presentment for payment of instrument payable at specified place and not elsewhere:** **Section 68:** "A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place."

### Instrument payable at specified place:

**Section 69:** "A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place."

**Presentment where no exclusive place specified:** Should be done on the place of the business/ on the residence of the drawee.

**Presentment when maker, etc., has no known place of business or residence:** May be made to him in person wherever he can be found.

### Presentment of cheque to charge drawer:

**Section 72:** "A cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer."



### Presentment of cheque to charge any other person:

**Section 73:** "A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person."

### Presentment of instrument payable on demand

**Section 74:** "A negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder."

**Presentment of instrument payable on demand:**

**Section 74:** "Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder."

**Presentment by or to agent, representative of deceased, or assignee of insolvent:** **Section 75:** "May be made to the duly authorised agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee."

Excuse for delay - In case the maker/ acceptor dies or assignee is declared insolvent.

**Presentment dishonoured:**

1. Maker/ Acceptor intentionally prevents it.
2. Place of presentment is closed during the business hours.
3. People authorized do not attend the specified place in the business hours.
4. Instrument cannot be found after due search.

- If a party agrees to pay, it is liable to pay, regardless of its presence.
- Moreover, in opposition to any party, if it is known that the instrument is not being presented, the act of making a partial payment and pledging to settle the remaining amount owed, or exploiting any lapse in the presentation of payment, is prohibited.
- Also against the drawer, if the drawer could not incur harm due to the absence of such presentation.

**LIABILITY OF BANKER:** **Section 77:** "When a bill of exchange accepted payable at a specified bank has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss."