

*New Syllabus*

CA FOUNDATION



Concept & Chart Book

# BUSINESS LAWS

Applicable for June 24 / Dec 24

**CS Arjun Chhabra**  
(CS | LLB | LLM | BCOM)





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5	The Companies Act, 2013	135 - 152
6	The Limited Liability Partnership Act, 2008	153 - 164
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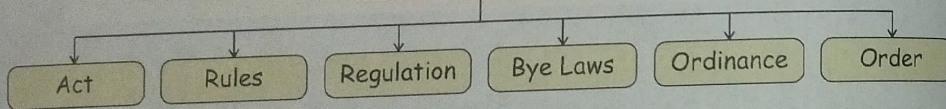




# Chapter - 1

## Business/Commercial Law

### What is Law



### Act

#### Central

Made by parliament  
[The Companies Act, 2013]

#### State

Made by state legislative assembly  
[Maharashtra Municipalities Act]

### Rules

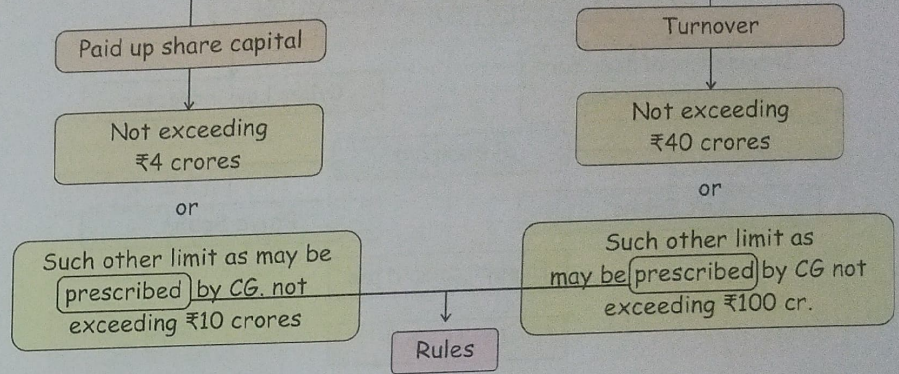
#### Central

On those matter mentioned in central Act

#### State

On those matters mentioned in state Act

### Small Company



### Regulation

Made by regulatory body eg. SEBI, CCI, RBI, TRAI, etc

### By Laws

Made by regulatory body to govern itself/itselfs

### Ordinance

Law made for time being in force in case of necessity by

#### President

#### Central

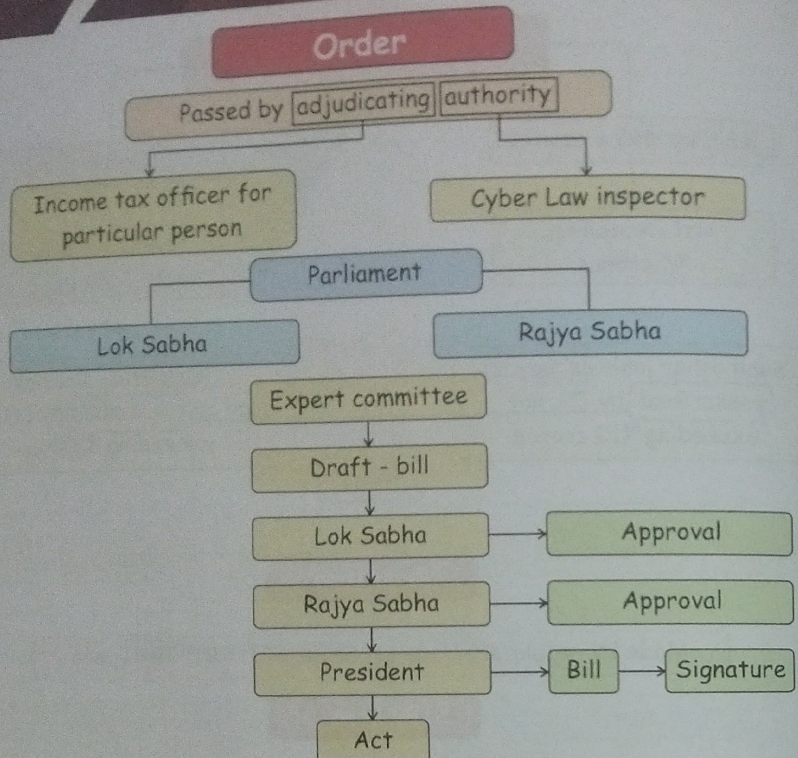
#### Governor

#### State

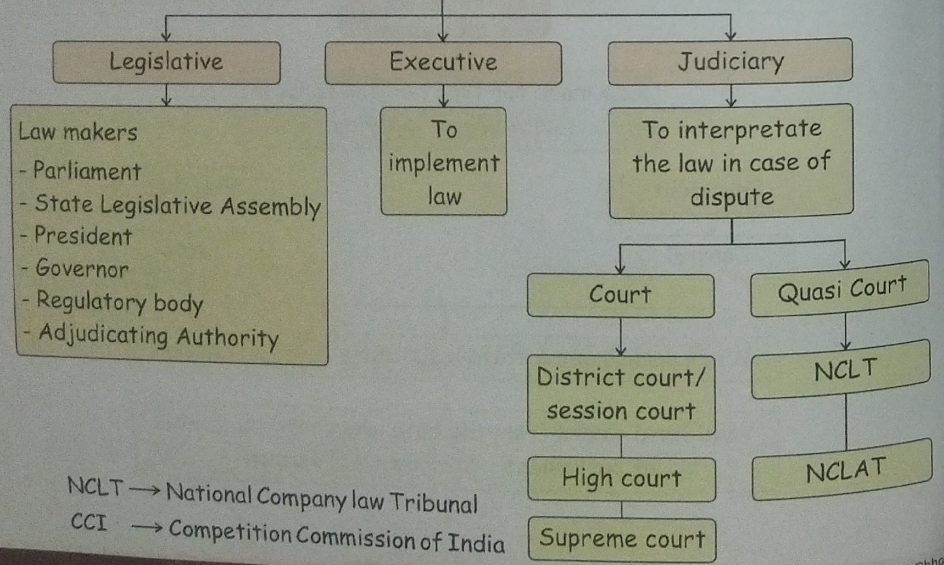
When parliament & state legislature is not in function

Valid for 6 weeks from the date when both the houses of parliament | SL comes into session





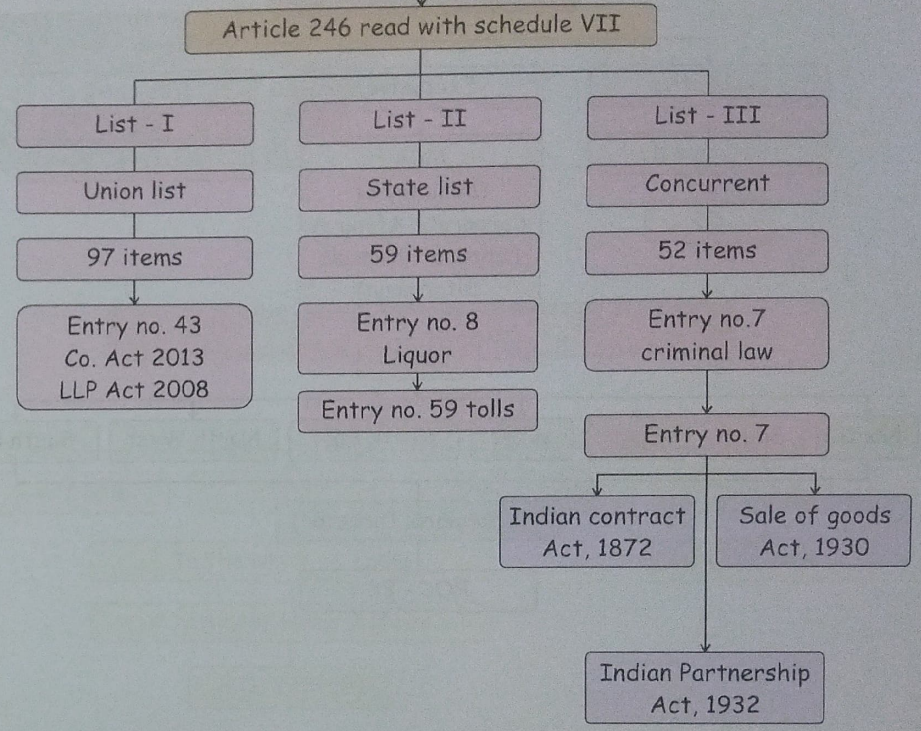
### Constitution of india



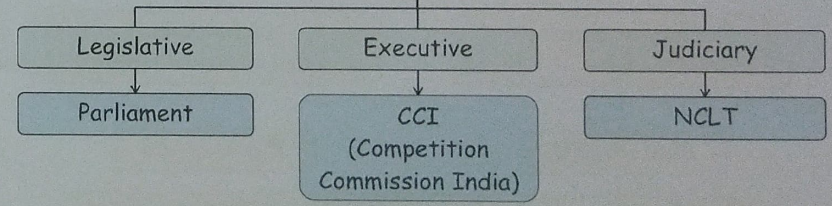
NCLT → National Company law Tribunal  
 CCI → Competition Commission of India



### Constitution of India



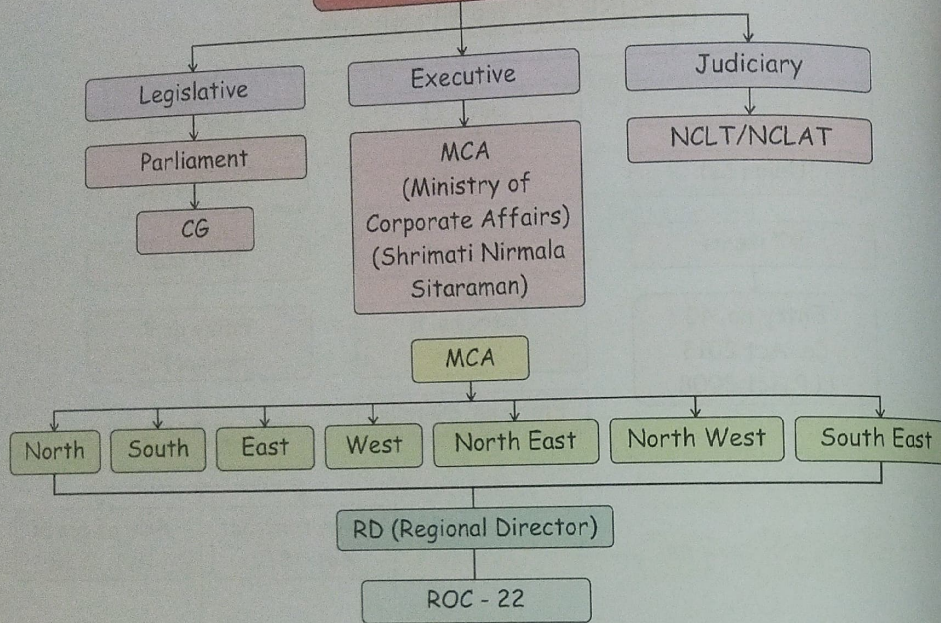
### Competition Act 2002





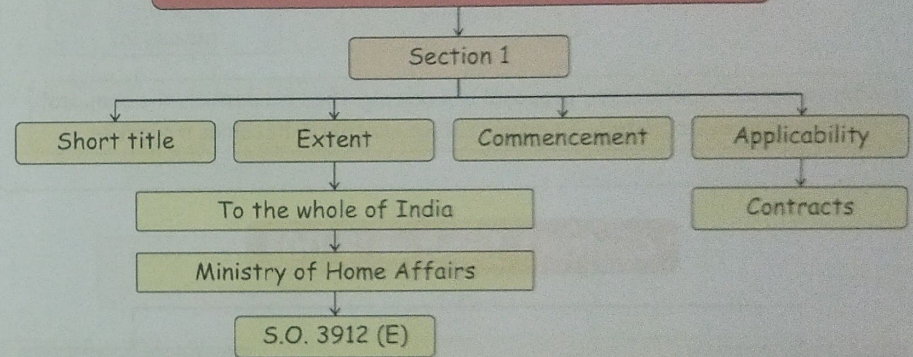


### Companies Act

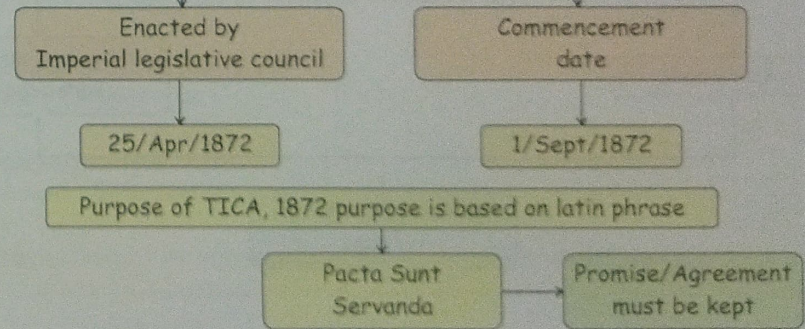


## Chapter - 2

### The Indian Contract Act, 1872



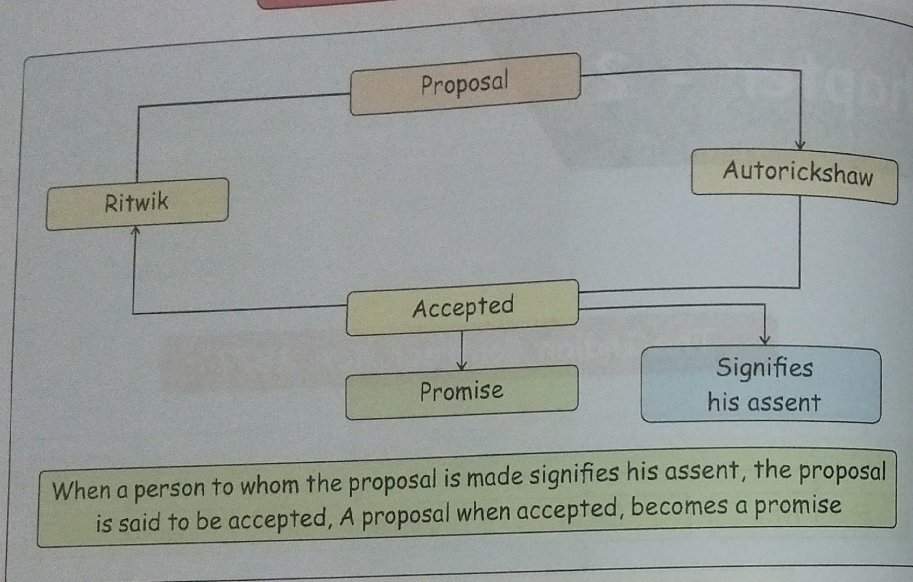
### Commencement



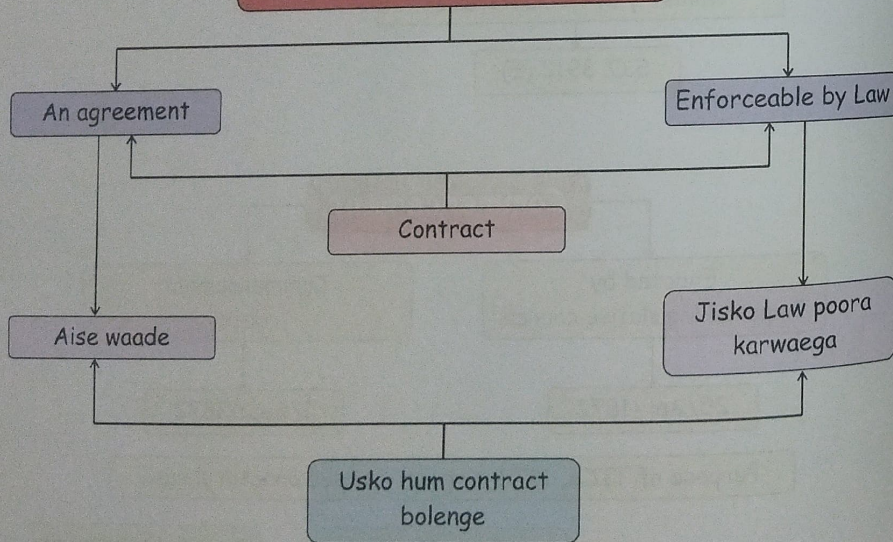




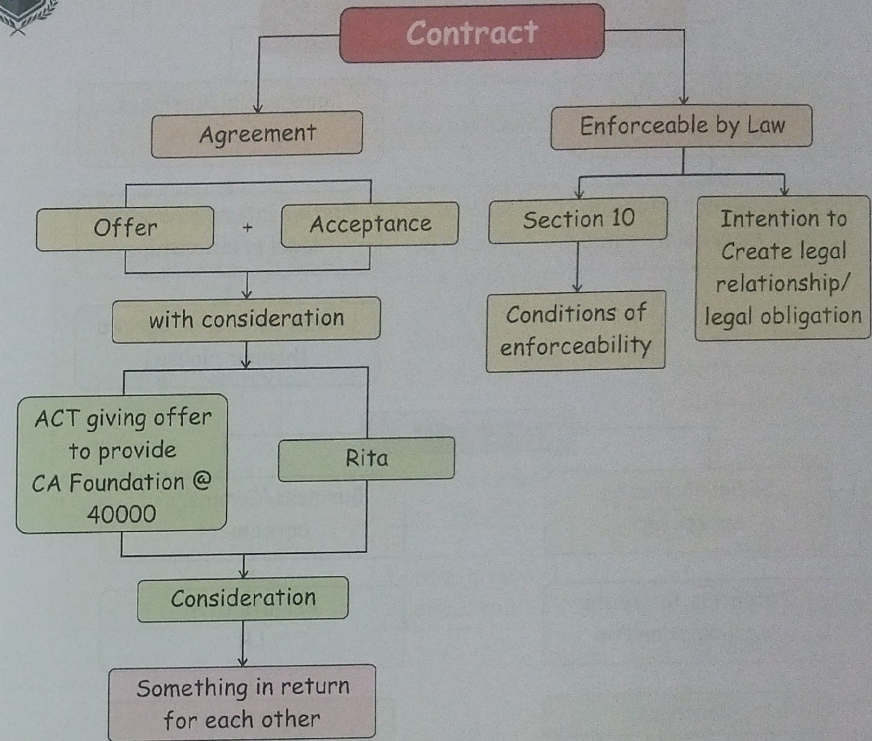
## Promise [Section 2 (b)]



## Contract [Section 2 (h)]



## Contract



### Promise [Section 2 (b)]

Offer + Acceptance

### Agreement [Section 2 (e)]

Every promise & every set of promises forming consideration for each other

### Agreement [Section 2 (e)]

Promise + Consideration

### Contract [Section 2 (h)]

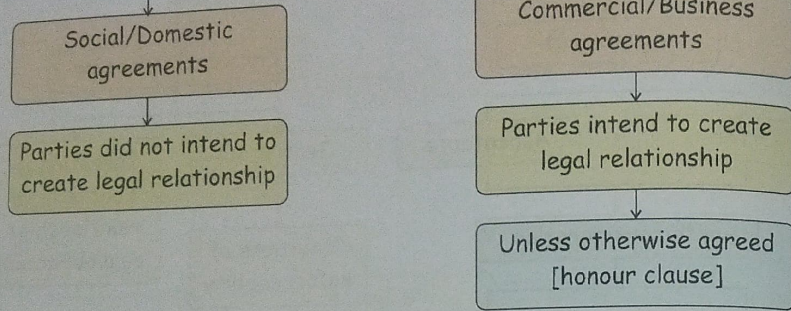
Agreement + Enforceable by law

Contract = Offer + Acceptance + Consideration + Enforceability of law

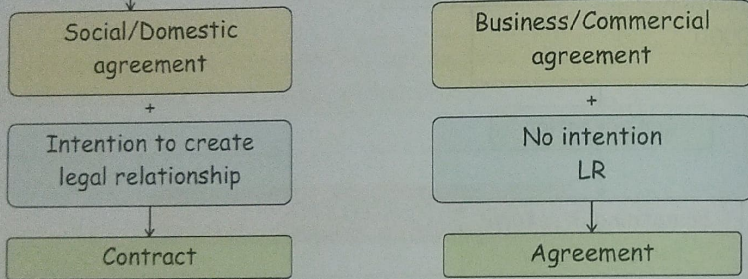




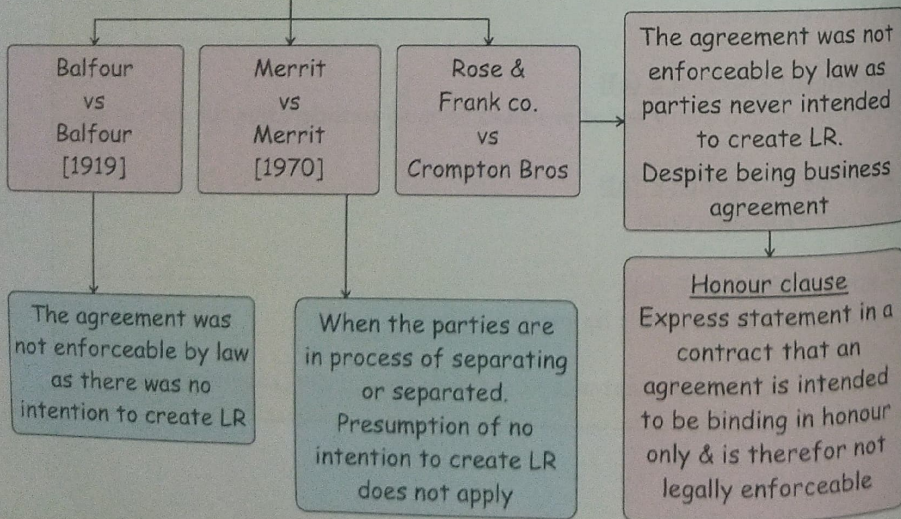
# Usual Presumption



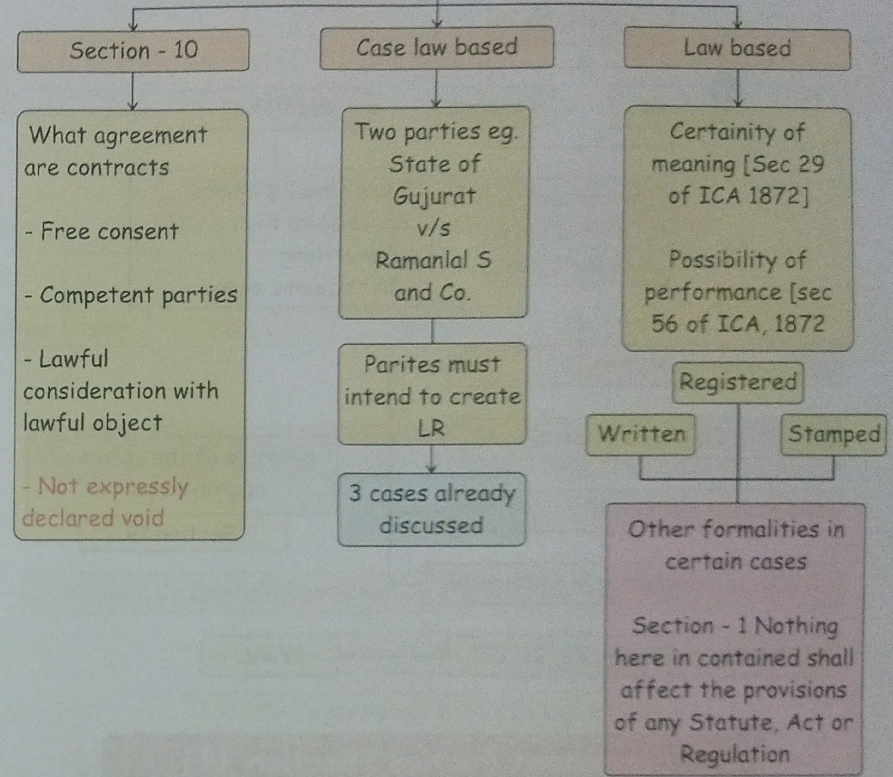
## Conclusion



## Intention to create LR



# Enforceable by law

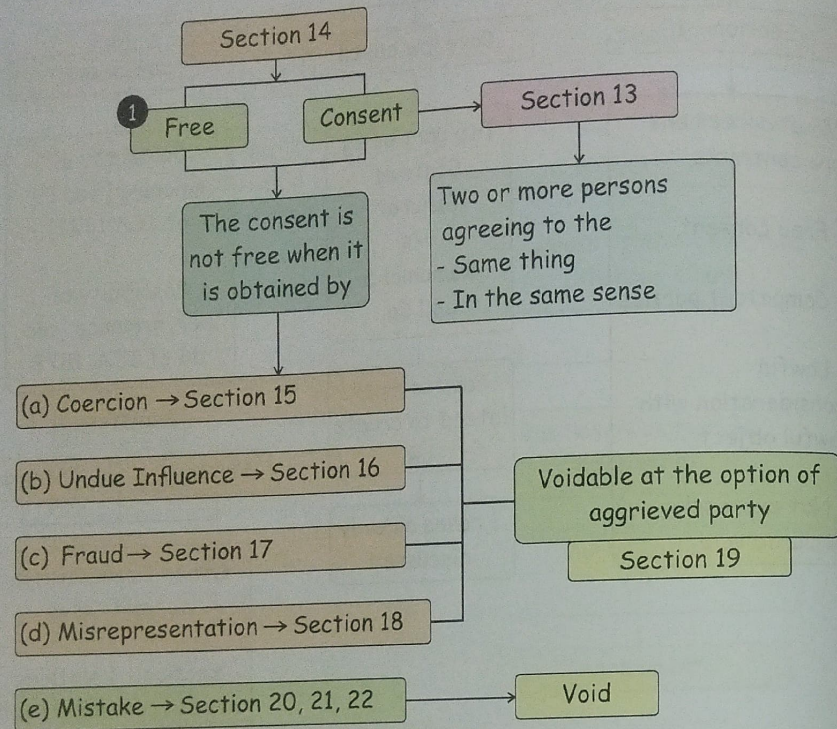


**Meaning of certainty**  
 Certain - Clear  
 Definite - Complete  
 Not Vague - No Confusion

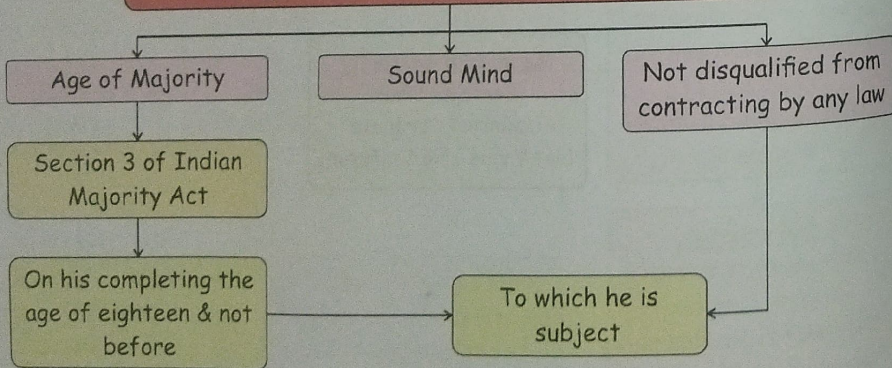




## Section - 10



## 2 Competent Parties [Section 11]



## Sound mind [Section -12]

Capable of understanding the terms of the contract

And

Of forming a rational judgement

## Disqualified from contracting

Alien Enemy

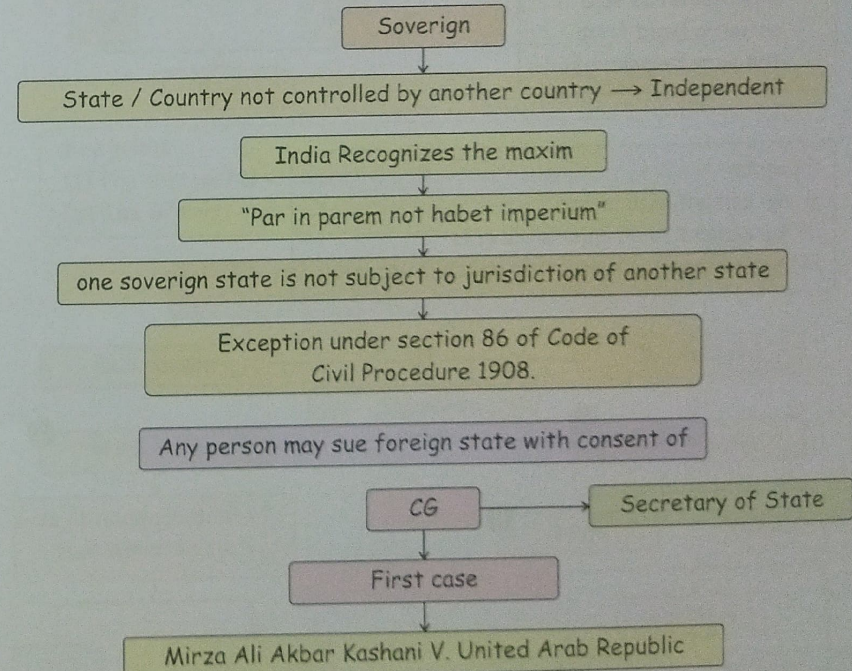
Convict

Insolvent

Dessarter

Foreign Sovereign

## Foreign Sovereign Immunities Act [FISA], 1976

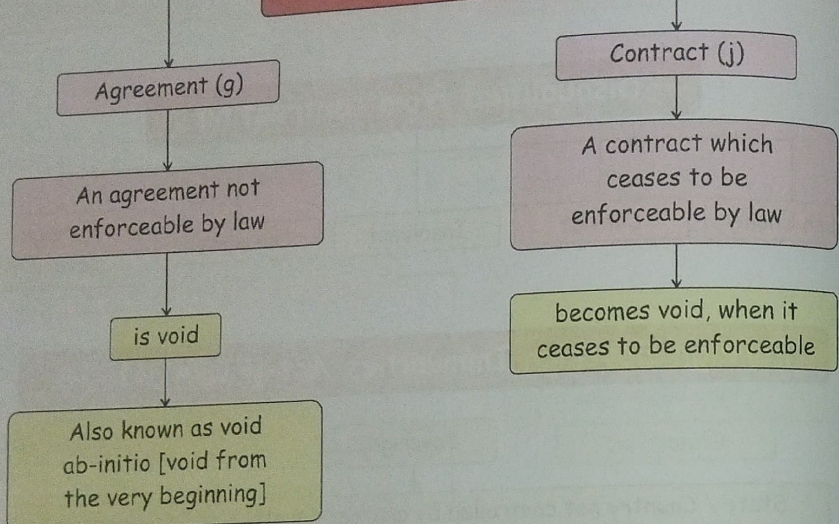






Void :- No legal existence in the eyes of law.

### Void [Section 2]



#### Example

- i) Agreement with minor
- ii) Agreement to do impossible acts
- iii) Agreement the meaning of which is uncertain.

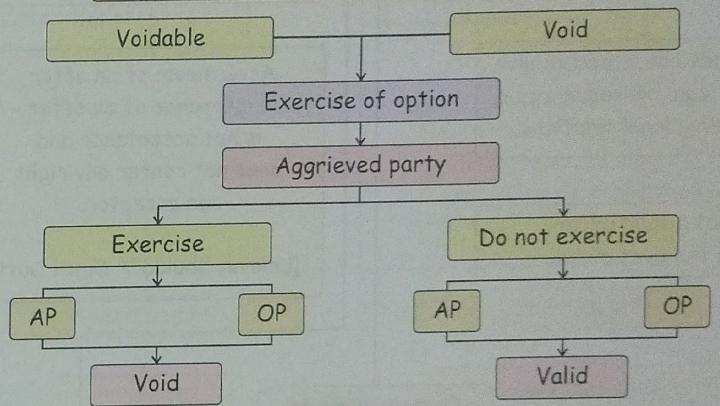


### Voidable Contract [Section 2 (i)]

Enforceable at the option of aggrieved party  
Aggrieved party chahe toh isko void bana sakta hai

Voidable at the option of AP

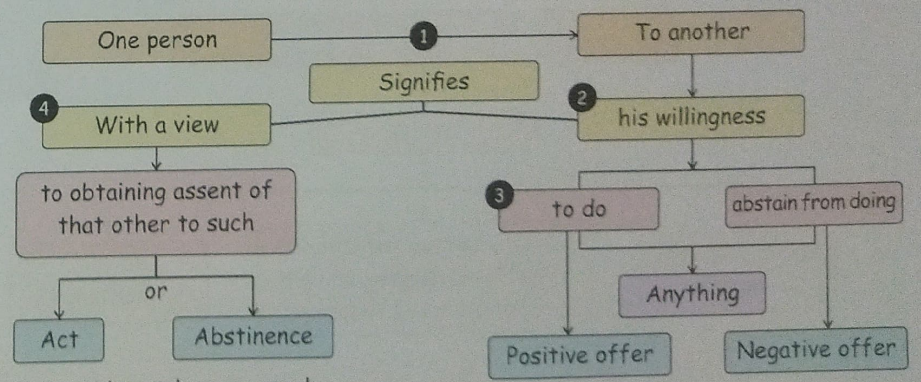
AP is having right to make a contract void in which his consent was not freely obtained



#### Key points

- (1) The contract is valid until & unless the AP is exercising the option
- (2) The AP must exercise the option within reasonable time

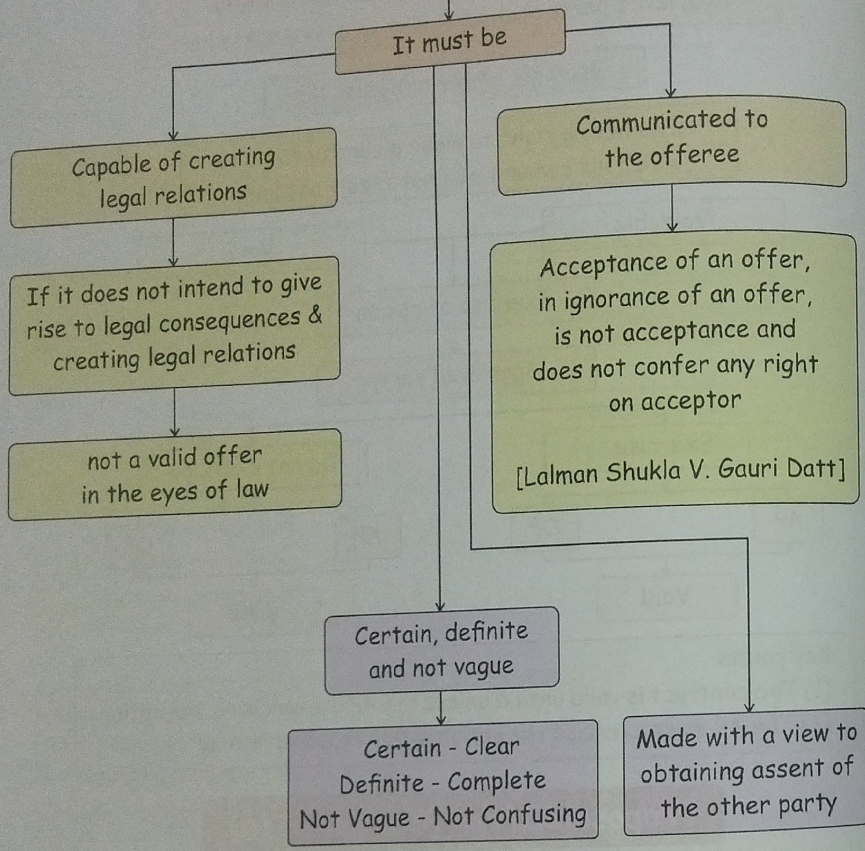
### Proposal/Offer [Section 2 (a)]



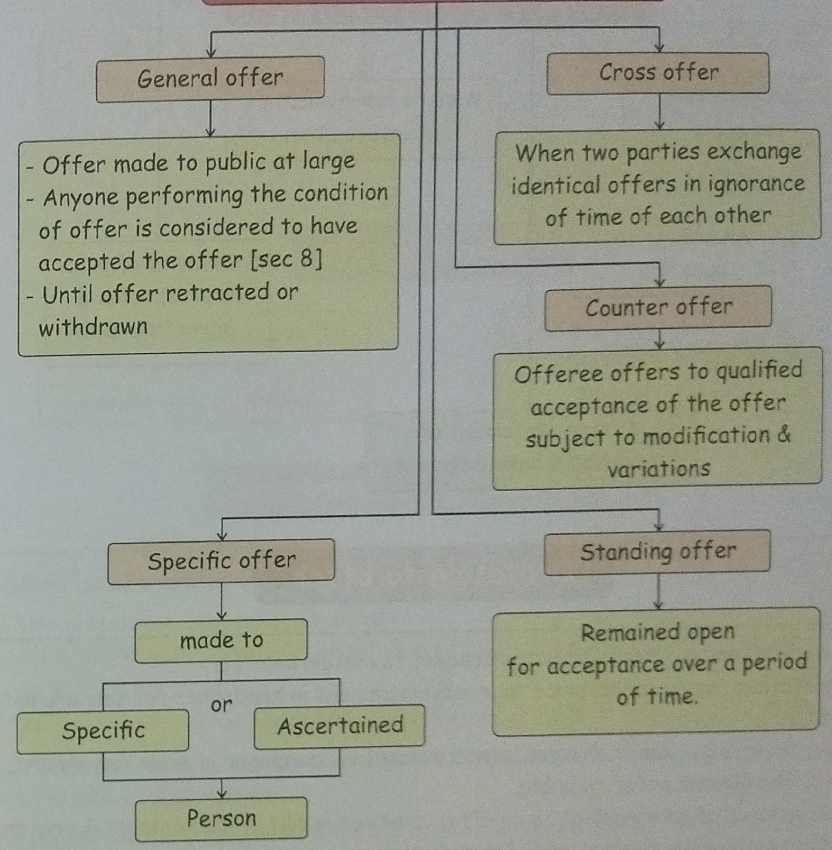
5 He is said to make a proposal.



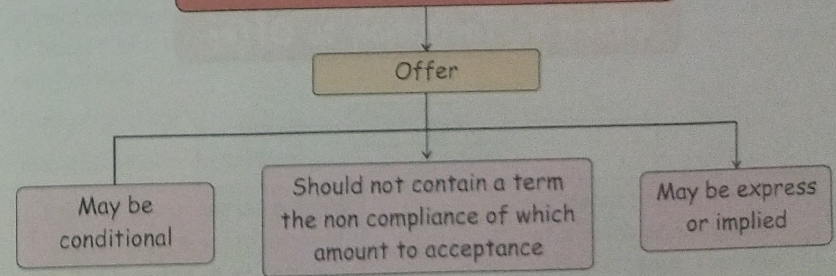
## Essential of a Valid offer



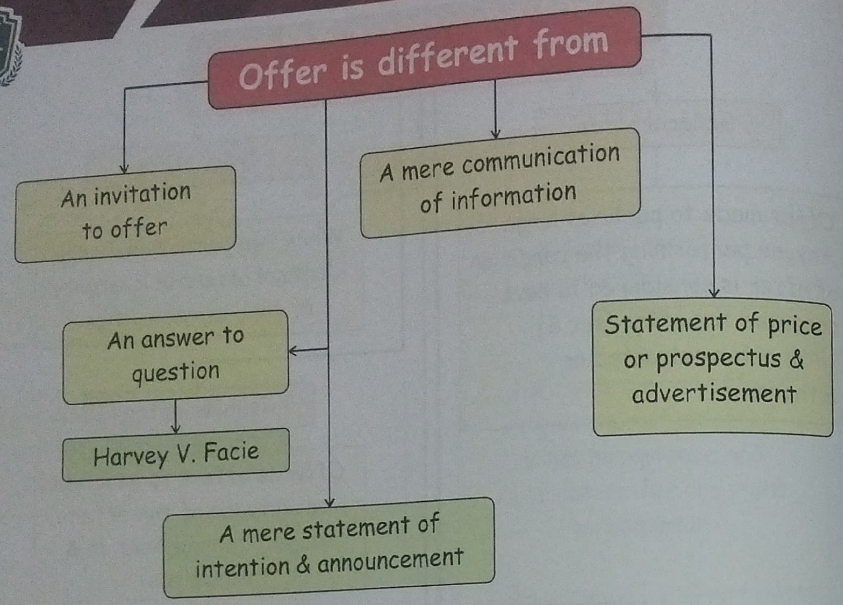
## Classification of Offer



## Miscellaneous Points of offer



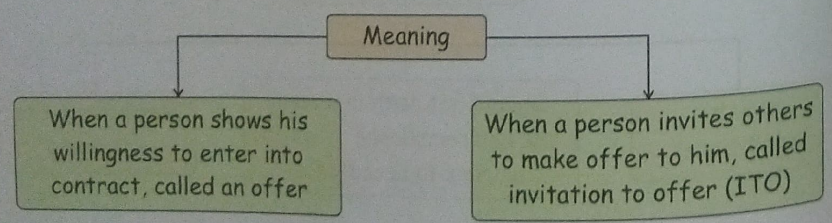




**Invitation to offer**

- An invitation to offer is an act precedent to making an offer.
- Quotations, menu cards, price tags, advertisement in newspaper for sale are not offer. But there is an exception when advertisement in newspaper is made for reward, it is the general offer to public.
- Acceptance of an invitation to an offer does not result in the contract & only an offer emerges in the process of negotiation.

**Offer V. Invitation to Offer**



**Purpose**

- Offer is made with the purpose of entering into contract
- Purpose of ITO is to receive the offers or to negotiate the terms in which the person making the invitation is willing to contract.

**Legal effect**

- An offer, if acted upon (ie. accepted), results into a contract.
- An invitation to offer, if acted upon, only results in making an offer.

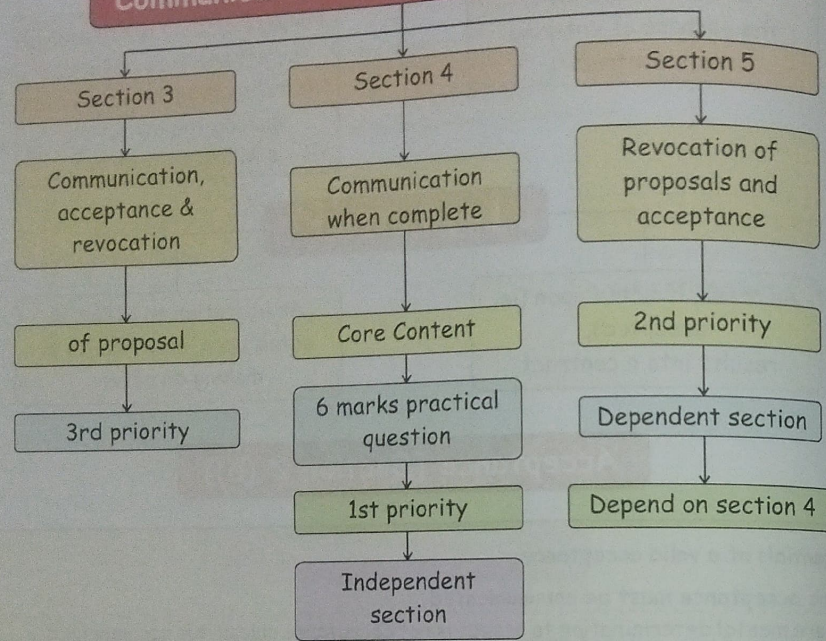
**Acceptance [Section 2 (b)]**

**Essentials of a valid acceptance**

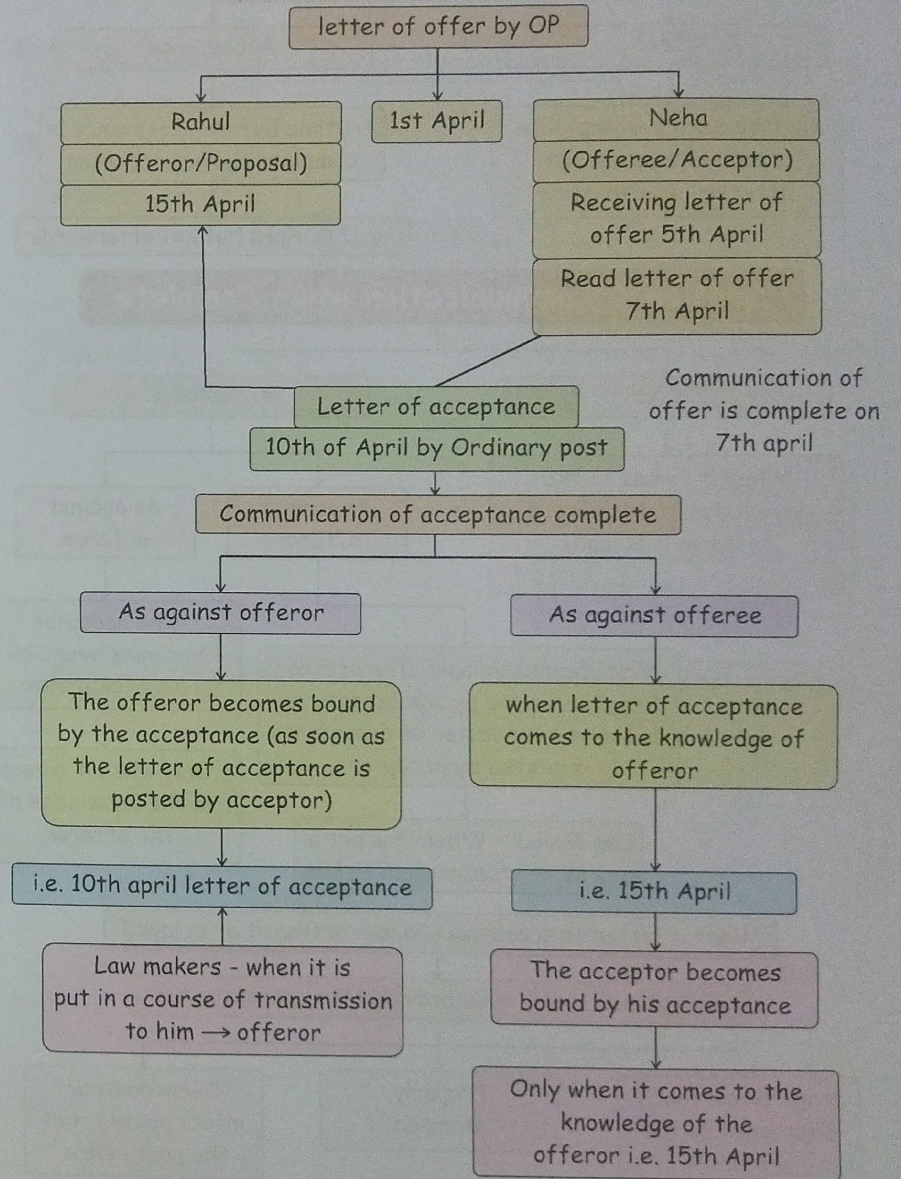
- **The acceptance must be communicated.**  
mere mental determination to accept is not acceptance unless it is accompanied by an external indication.  
An agreement does not result from or mere state of mind.
- **Acceptance must be communicated to the offerer himself / the acceptance cannot be presumed from silence**
- If acceptance is communicated to the person other than offerer, it will not create any legal relationship/silence does not amount to acceptance. [Felt House V. Bindley]
- **The acceptance must be communicated by a person who has the authority to accept.**  
A valid contract arises only if acceptance is communicated by a person who has authority to accept. If it is communicated by any unauthorized person, it will not create any legal relationship.  
Communication of acceptance must be made by authorized person.
- **The acceptance must be absolute & unqualified**  
without any Condition ↓ Expecting a valid registration certificate is not a condition  
acceptance should be in toto [i.e. of all terms of the offer]
- **A counter offer puts an end to the original offer, & it cannot be revived by subsequent acceptance.**



## Communication of Offer & Acceptance

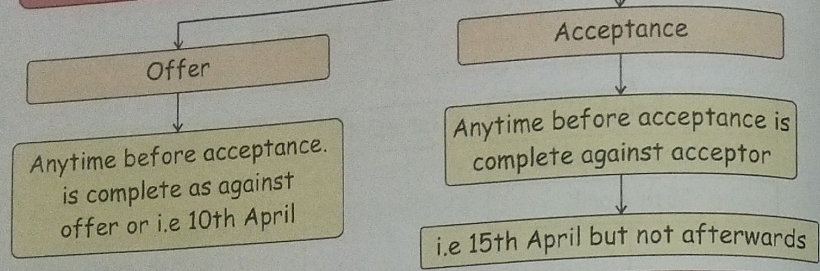


## Section 4 Communication when Complete

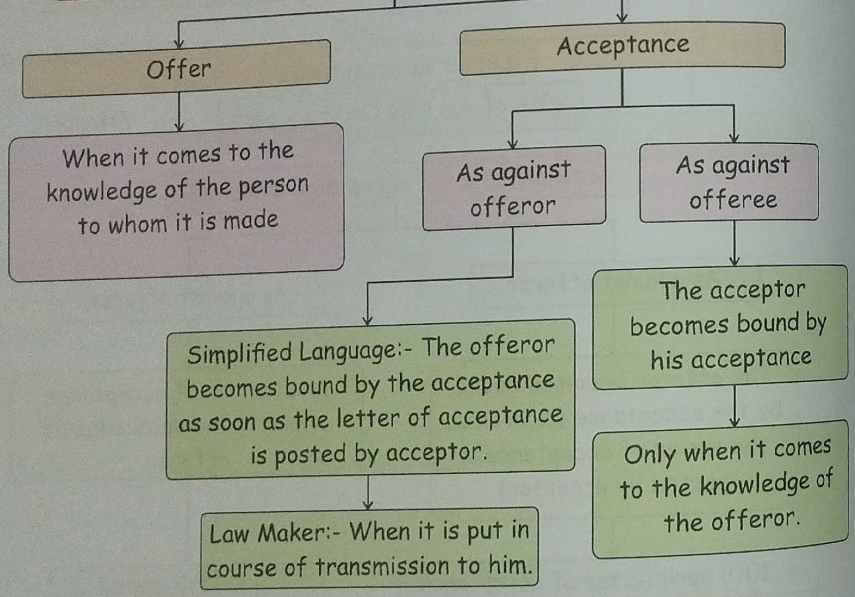




### Upto when Revocation can be done [Section 5]

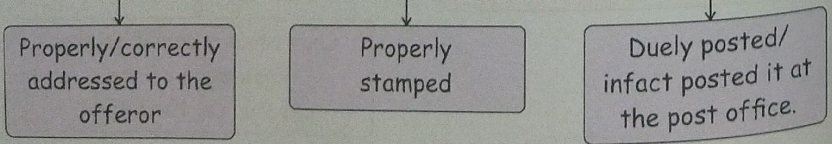


### Section 4 Communication when Complete

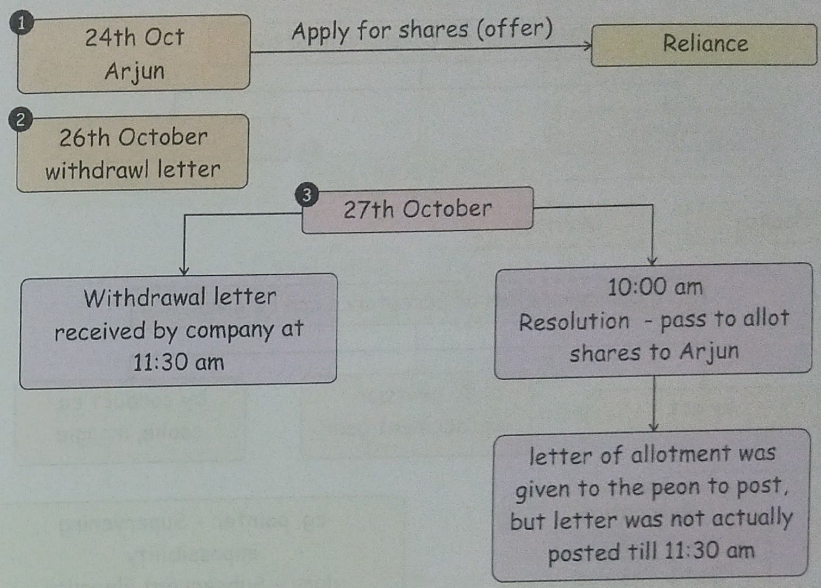


What if letter of acceptance is lost in transit or delayed

Acceptance is still valid provided that acceptor has



### Case Law - London & Northern bank V. Jones

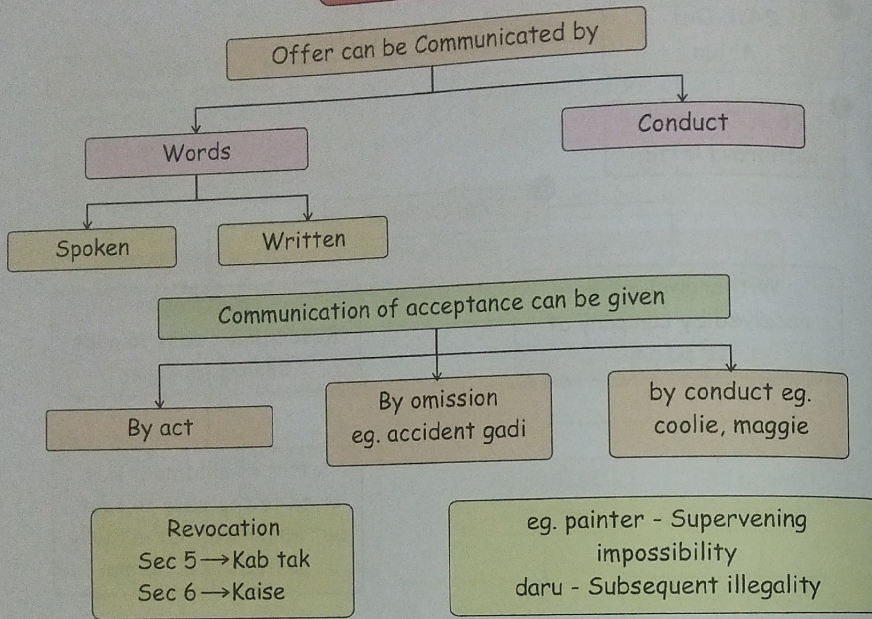


Decision :- The acceptance was too late as the letter was not actually posted till the offer had been revoked.

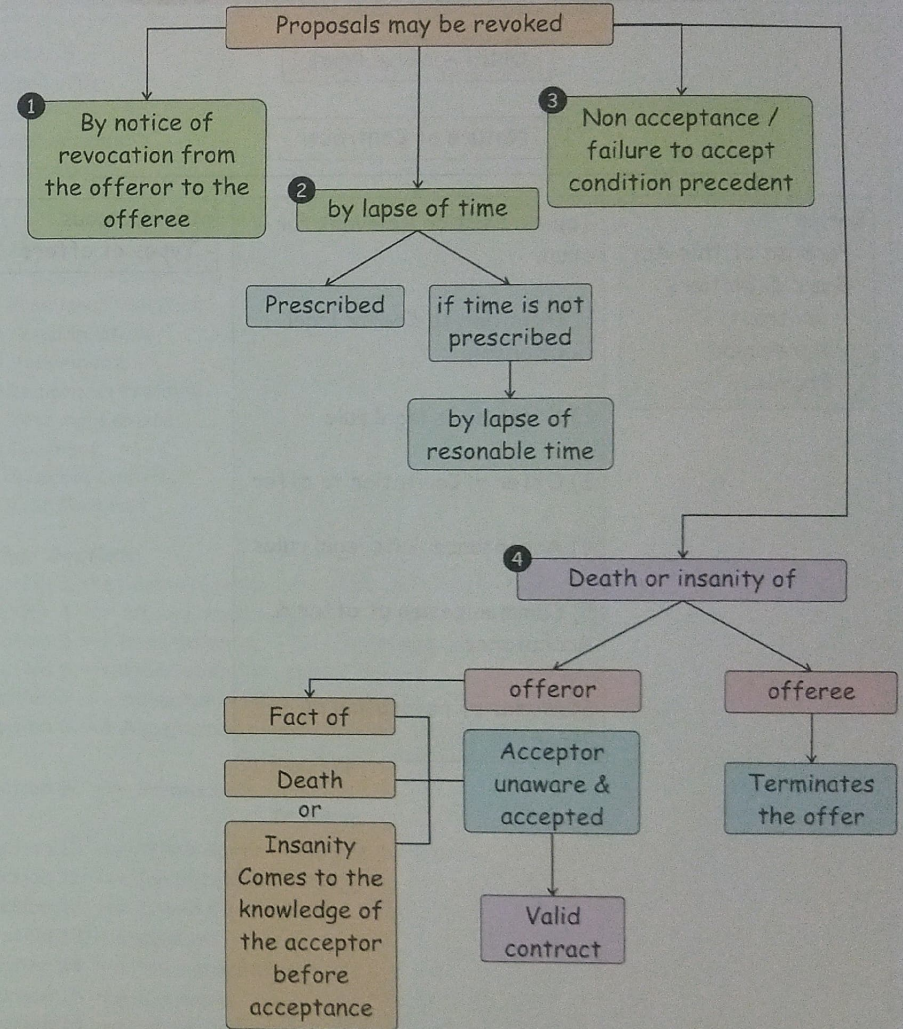




### Section 3



### Section 6 - Revocation how made



**Other situation of revocation of offer**

- Counter offer / Cross offer
- By subsequent illegality / Change in law by supervening impossibility / change in circumstances





# The Indian Contract Act, 1872

UNIT - 1 Blue Print

Nature of Contract

### Basics

- Purpose of this Act
- Basic definitions
  - Contract
  - Agreement
  - Promise

### Topics/Section Relevant for exam

- 1) Intention to Create legal relationship
- 2) Offer & its legal rule
- 3) Offer v. Invitation to offer
- 4) Acceptance & its legal rules
- 5) Communication of offer & Acceptance
- 6) Modes of revocation of offer.

### Miscellaneous

- Types of offers



## Coverage of Sections Under UNIT - 1 of Contract Act

### Section 1

- Short title
- Extent
- Commencement
- Applicability

### Section 2 → Interpretation Clause

- (a) offer
- (b) Promise/Acceptance
- (c) Promisor/Promisee
- (d) Consideration
- (e) Agreement
- (f) Reciprocal Promise
- (g) Void Agreement
- (h) Contract
- (i) Voidable Contract
- (j) Void Contract

### Other Sections

Section 3 → Communication, Acceptance & Revocation of Proposal.

Section 4 → When Communication is complete

Section 5 → Revocation of Offer & Acceptance

Section 6 → Revocation how made

Section 7 → Acceptance must be absolute

Section 8 → Acceptance by performing conditions

Section 9 → Promises  $\begin{cases} \text{Express} \\ \text{Implied} \end{cases}$

Section 10 → What Agreements are Contracts

Section 11 → Competent parties

Section 12 → Sound Mind

Section 13 → Consent

Section 14 → Free consent

Section 15 → Coercion

Section 16 → Undue Influence

Section 17 → Fraud

Section 18 → Misrepresentation.

Section 19 → Voidability of agreement without free Consent.

Section 20 → Bilateral Mistake → Void

Section 21 → Mistake of law

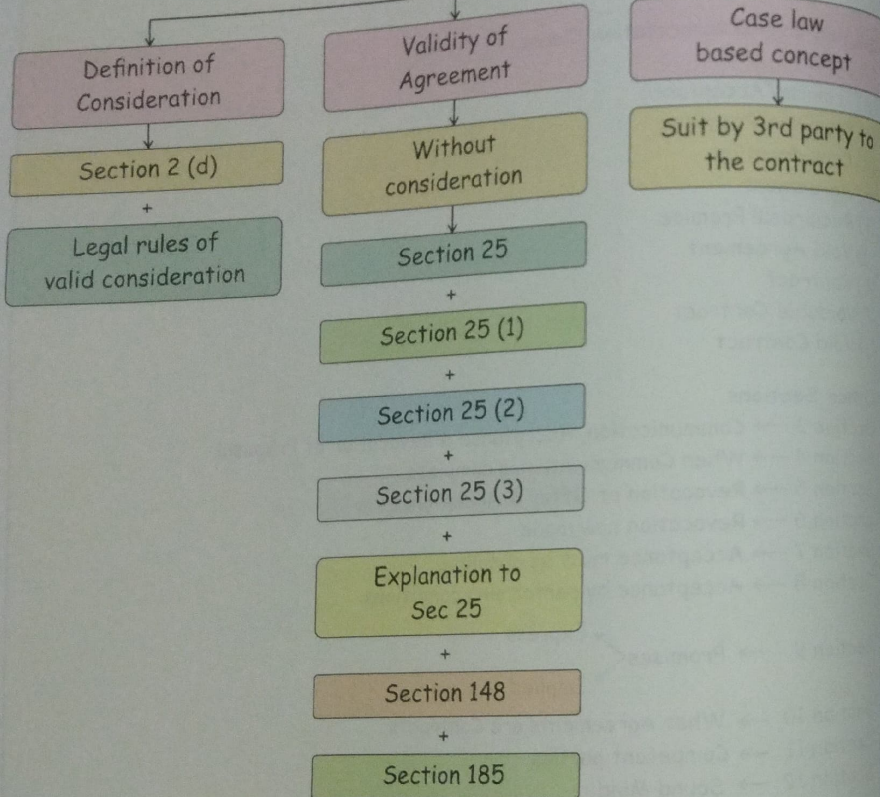
Section 22 → Unilateral mistake → Valid





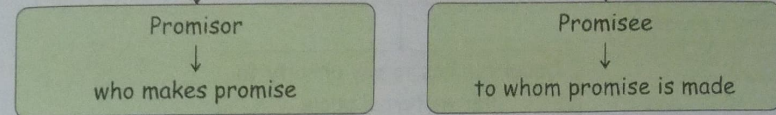
# The Indian Contract Act 1872

## UNIT - II - Important Unit



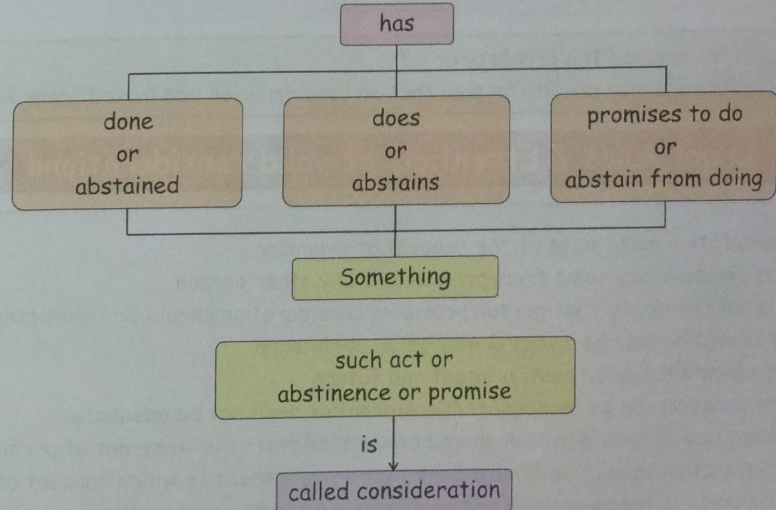
## Consideration

### Section 2 (c)



### Section 2 (d) Consideration

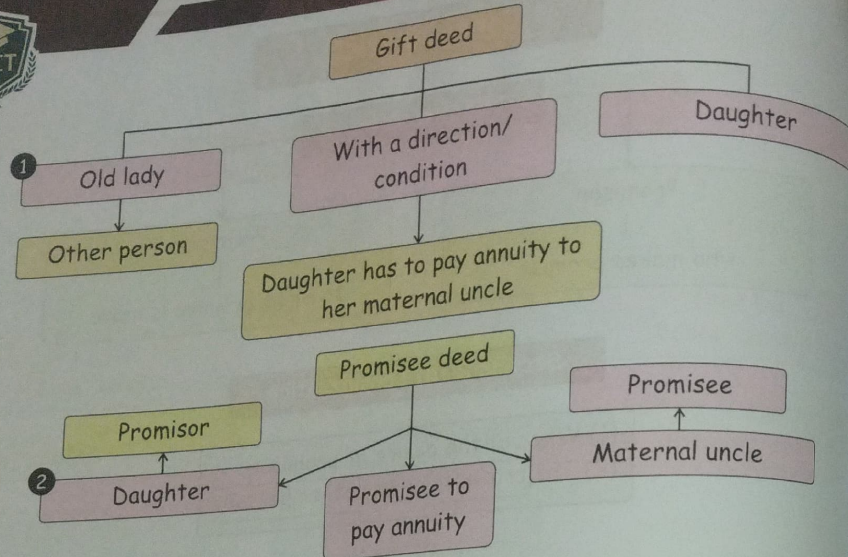
- (1) When at the desire of promisor
- (2) The promisee or any other person,



## Chinnayya V. Ramayya

- Three parties involved in this case
- 1) Old lady [mother]
  - 2) Daughter
  - 3) Maternal uncle





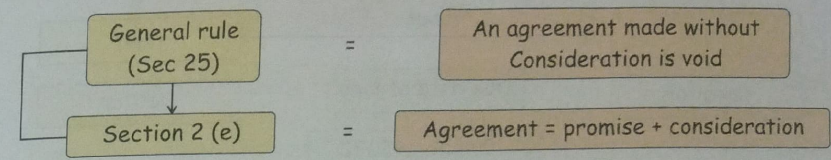
- Daughter received the property as gift
- But refused to pay annuity on plea that no consideration had moved from uncle.

### Legal Rules / Essentials of valid consideration

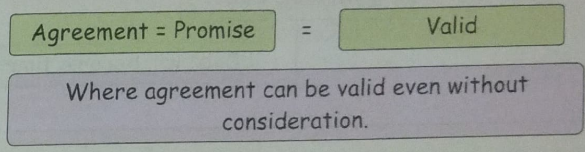
- 1) Consideration must move at the request of promisor.
- 2) Consideration may come from promisee or any other person
- 3) It is not necessary that person providing consideration should be benefitted
- 4) Consideration may be an act & may be an abstinence
- 5) Consideration may be past, present and future
- 6) Consideration can be inadequate/Consideration need not be adequate
  - Adequacy of consideration should be decided from the viewpoint of promisor
  - Explanation to section 25 provides that an agreement to which consent of the party is freely given is not void merely because consideration is inadequate.
  - However, inadequacy of consideration may be taken into account by court to determine whether the promisor's consent was freely given.
- 7) Consideration must be more than the performance of the **existing duties**
  - Legal obligations
  - Contractual obligations
- 8) Consideration must be real & not illusory
  - Physically impossible
  - Legally not permissible
  - Uncertain
  - Illusory
- 9) Consideration must not be unlawful, immoral, oppose to public policy.



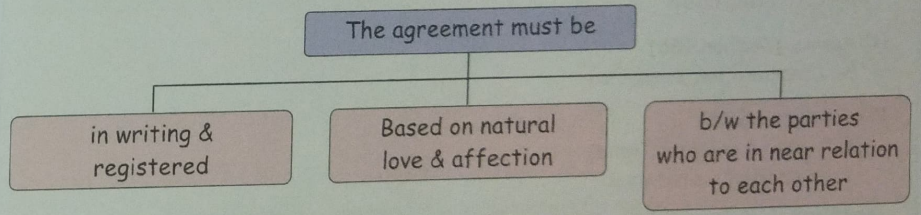
### Validity of Agreement without Consideration



### Exceptions to the General Rule



An agreement is valid and enforceable even if it is made without consideration.  
 (1) Natural love & affection [section 25(1)]

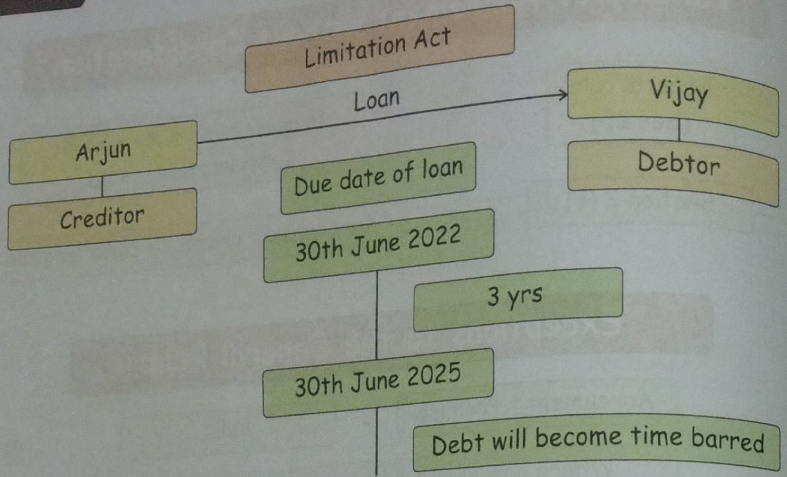


(2) Promise to pay for past voluntary services [sec 25 (2)]

- Services should have been rendered voluntarily
- Services should have been done for promisor,
- Promisor intended to compensate for past voluntary services.

(3) Promise to pay time barred debt [sec 25 (3)]





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

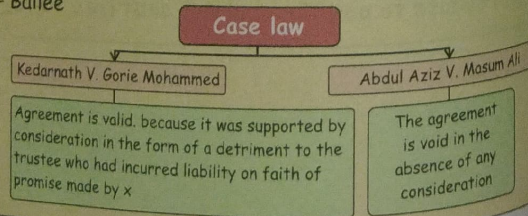
(4) Agency [Section 185]  
 No Consideration is required

(5) Completed Gift  
 Gift given & accepted (valid)  
 Promise to gift is not valid

(6) Gratuitous bailment [[Section 148]  
 Bailment contract is contract where one party delivers the goods to another party for some specific purposes on condition that once the purpose is accomplished, the goods shall be returned to the person delivering it.

- Bailment contract can be gratuitous & non gratuitous.
- No consideration is required in case of gratuitous bailment.
- Person delivering the goods - Bailor
- To whom goods are delivered - Bailee

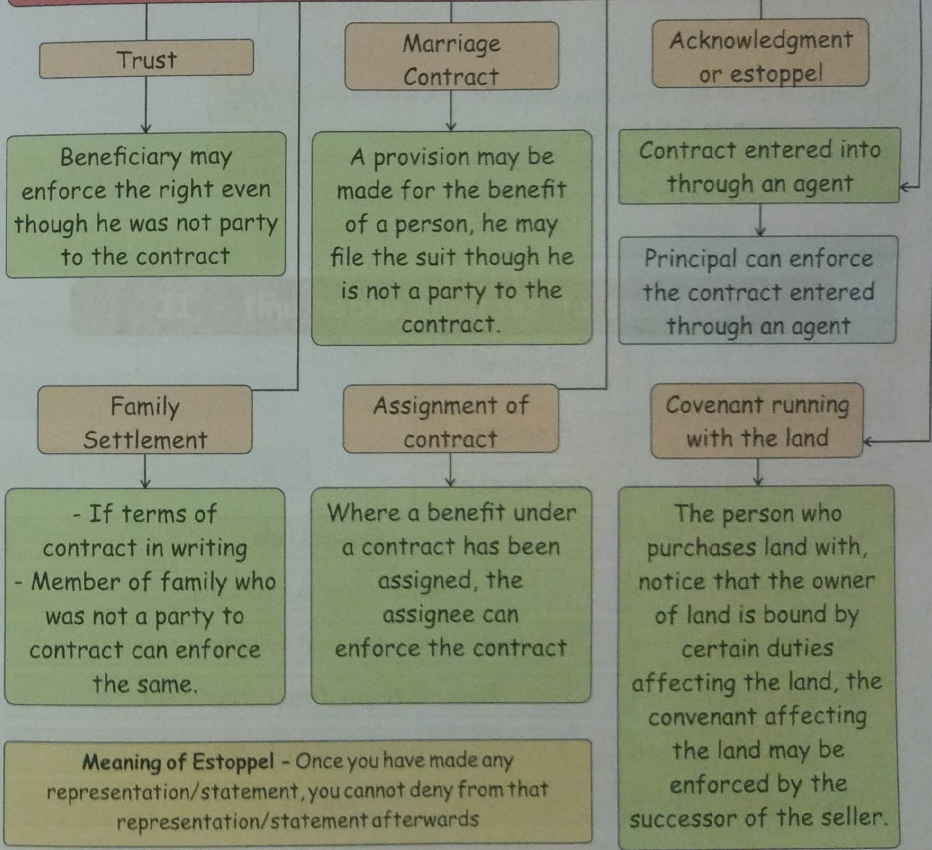
(7) Charity  
 - If promisee takes liability  
 - On promise of person  
 - To contribute to charity  
 - Contract shall be valid



## Doctrine of Privity of contract [A stranger to contract cannot sue]

Only those persons, who are parties to a contract, can sue and be sued upon the contract. This rule is called "Doctrine of privity of contract". A third party to a contract cannot sue upon it, even though the contract may be for his benefit.

## Exception. i.e stranger to contract has the right to sue



**Meaning of Estoppel** - Once you have made any representation/statement, you cannot deny from that representation/statement afterwards





# Blue print

## Unit II Consideration

### 1st Category

Most imp topic/hot topics

- 1) Definition of Consideration & its legal rules [5-7 marks] - Direct question
- 2) No Consideration no contract [section 25]
  - 25 (1) → Exceptions
  - 25 (2) →
  - 25 (3) →
- 3) Charity
- 4) Consideration can be inadequate [Explanation to Section 25]
- 5) Covenant running with the land
- 6) Consideration must be more than performance of existing duties

Practical Most IMP

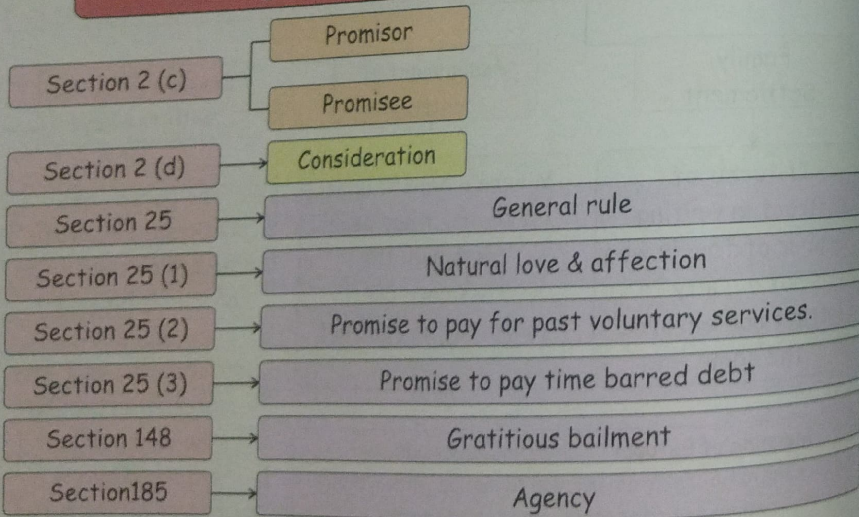
Practical Most IMP

### 2nd Category

Miscellaneous

Just read

## Coverage of sections under unit - II



### Important case laws

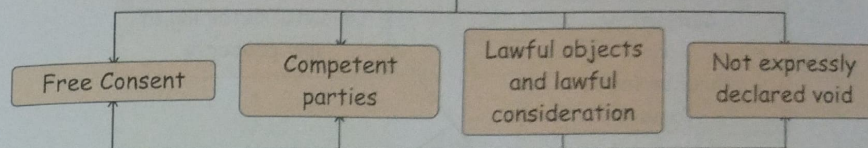
- Chinnaya V. Rammayya
- Kedarnath V. Gorie Mohammed
- Abdul Aziz V Masum



## Unit - III

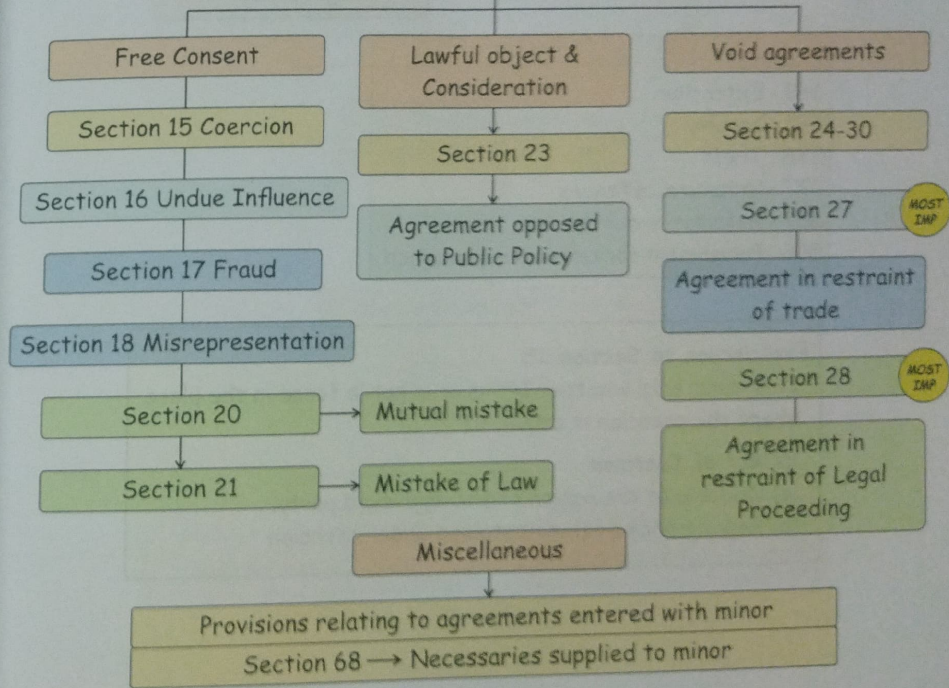
### Other Essential Elements of a Valid Contract

## Section 10 - What agreements are contracts



Detailed in unit III

## Agenda of unit - III



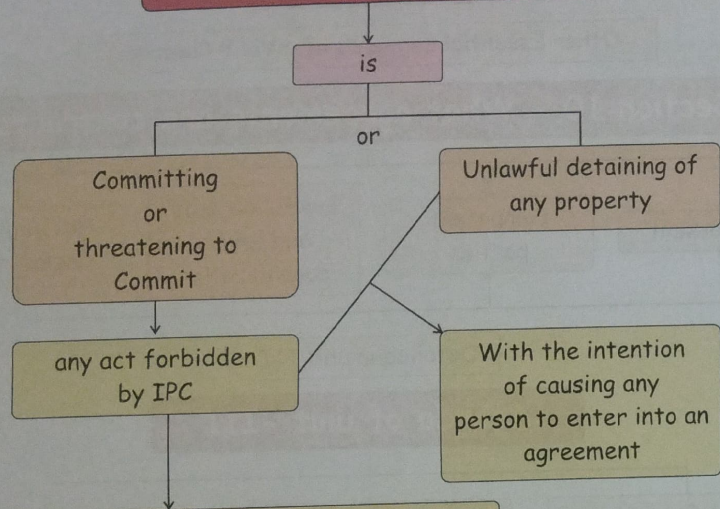
MOST IMP

MOST IMP





### Coercion - Section 15



- Examples**
- 383 - Extortion
  - 391 - Dacoity
  - 378 - Theft
  - 377 - Unnatural offences
  - 307 - Attempt to murder
  - 506 - Punishment for criminal intimidation

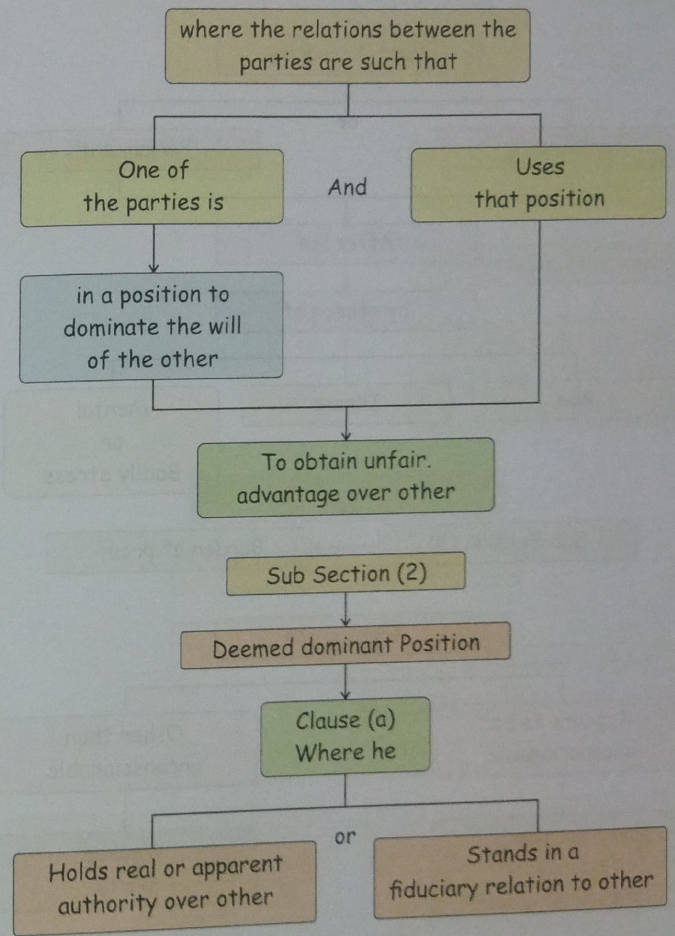
**Explanation to Section 15**  
 It is immaterial whether IPC is or is not in force in the place where the coercion is employed.

**Effect of Coercion**

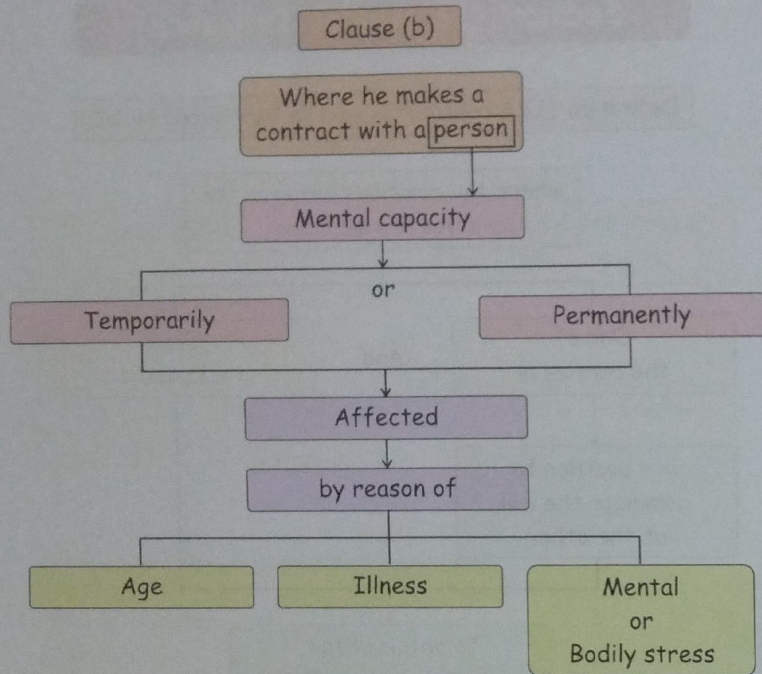
- (a) Voidable at the option of the aggrieved party.
- (b) Repay money or thing obtained under coercion

### Section -16 [Undue Influence]

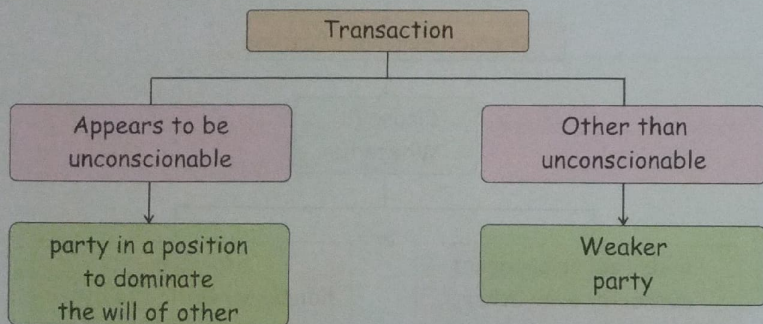
**Definition (1)** A contract is said to be induced by UI.





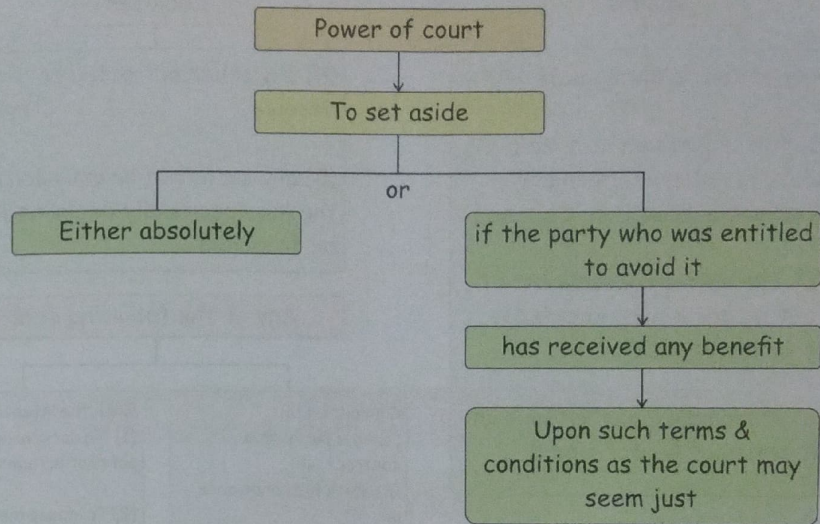


Sub Section (3) → Burden of proof

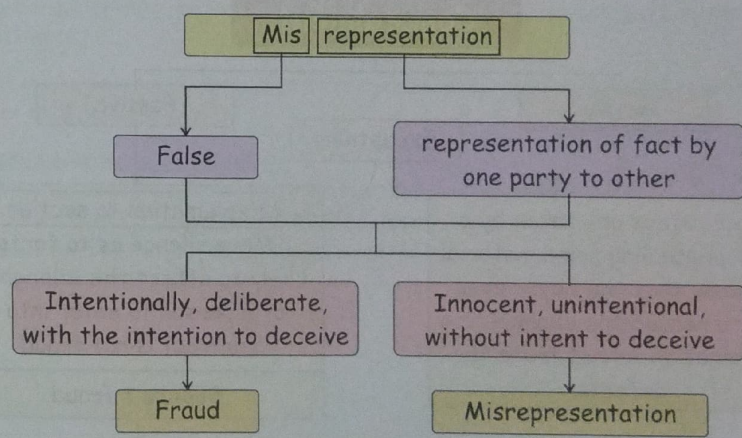


**Meaning of Unconscionable:-**  
Where dominant party makes extraordinary Profits of the others distress.

**Section 19A Power of Court to set aside contract induced by UI.**



**Section 17 Fraud**

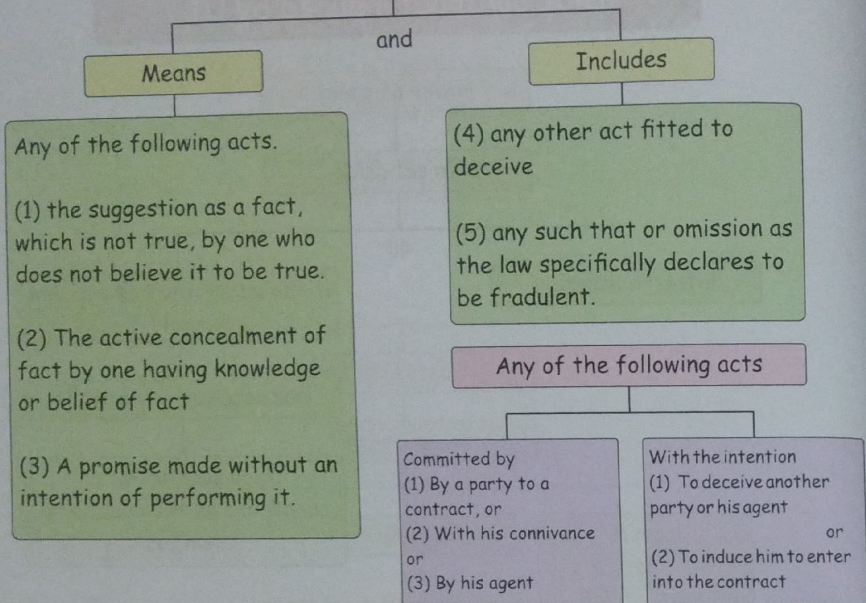


Every fraud = MR  
Every MR ≠ Fraud

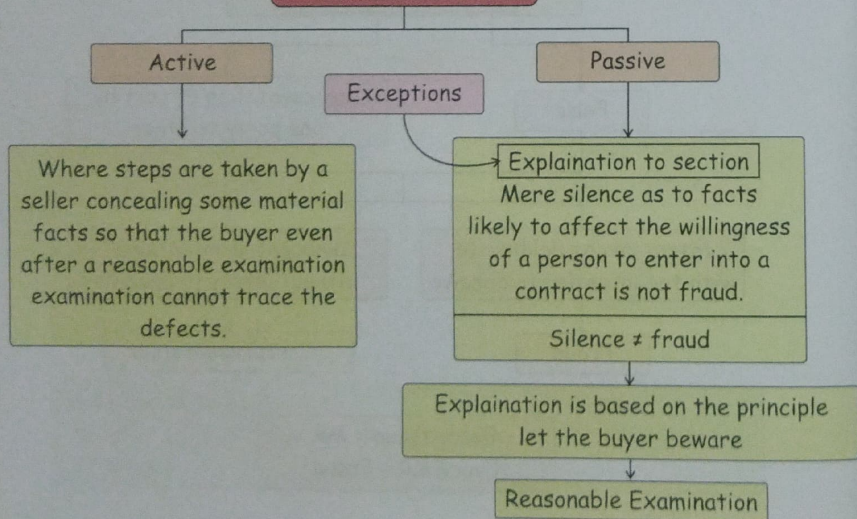




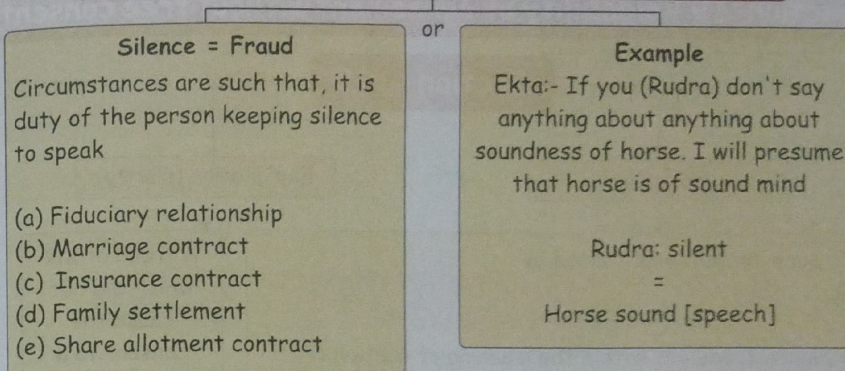
### Fraud - Section 17



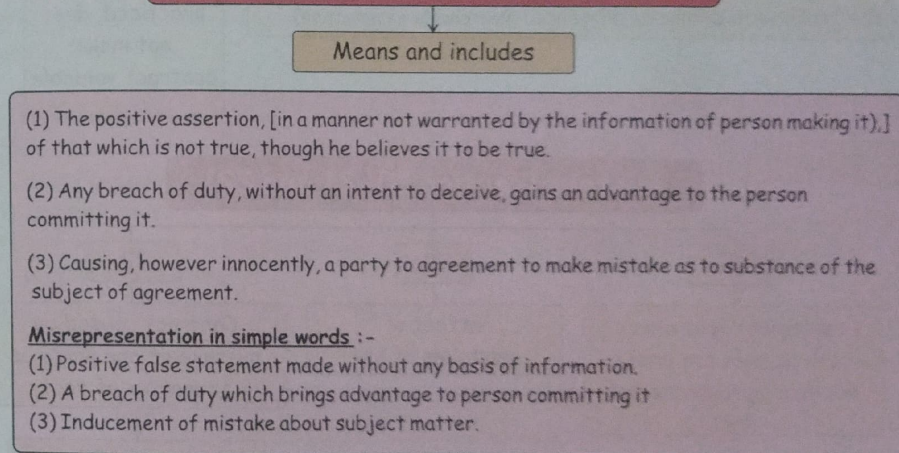
### Concealment



### Exception of Explanation to Section 17



### Misrepresentation [section 18]





## Section-19 Voidability of agreement without free consent

### Section - 19

Exception

(1) If such consent was Caused by  
- MR  
or  
- by silence fraudulent within the meaning of section 17.

(2) Provision:- The Contract is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence. [Reasonable examination]

Explanation (clarity)

A fraud or MR which did not cause the consent to a contract of the party on whom such fraud was practiced, does not make contract voidable

## Mistake [section 20, 21 and 22]

20

Agreement void where both parties are under mistake as to matter of fact

Bilateral mistake

Agreement void

21

Effect of mistakes of law

22

Contract caused by mistake of one party as to matter of fact

Unilateral mistake

A contract is not voidable merely because it was caused by one of the party to it being under a mistake.

Contract valid

## Section 21 Effect of mistake as to law

As to any law in force in India [mistake of law of your own country] is NO EXCUSE

a contract is not voidable

Contract valid

As to any law not in force in India [foreign law]

Has the same effect. as mistake of fact [Section 20 and 22]

## Lawful Object and Lawful Consideration

Section 23

What consideration and objects are lawful & what not.

- 1) forbidden by law.
- 2) Is of such nature, if permitted, it would defeat "the provision of law"
- 3) Is fraudulent
- 4) Involves injury to the person or property of another.
- 5) Court regards it as immoral or oppose to public policy

Section 24

Agreement void

If

Consideration

or Object

Unlawful in part

## Party unlawful consideration/object

Test of severability

If illegal part Cannot be severed from legal

Agreement altogether void

Possible to severe

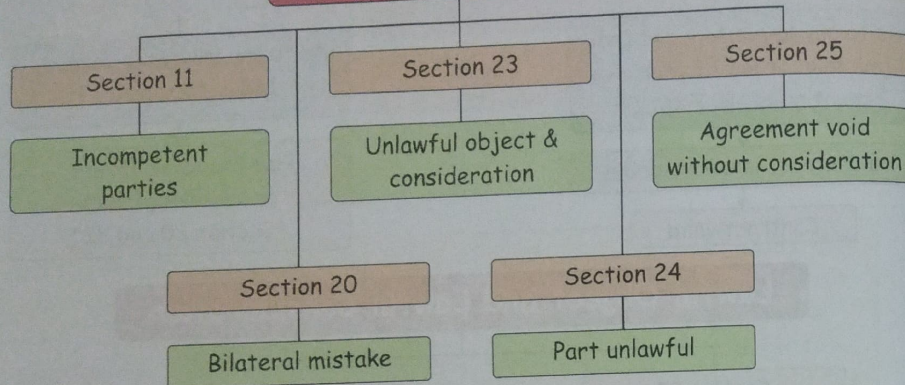
Lawful part of agreement will be valid

Unlawful part will be void

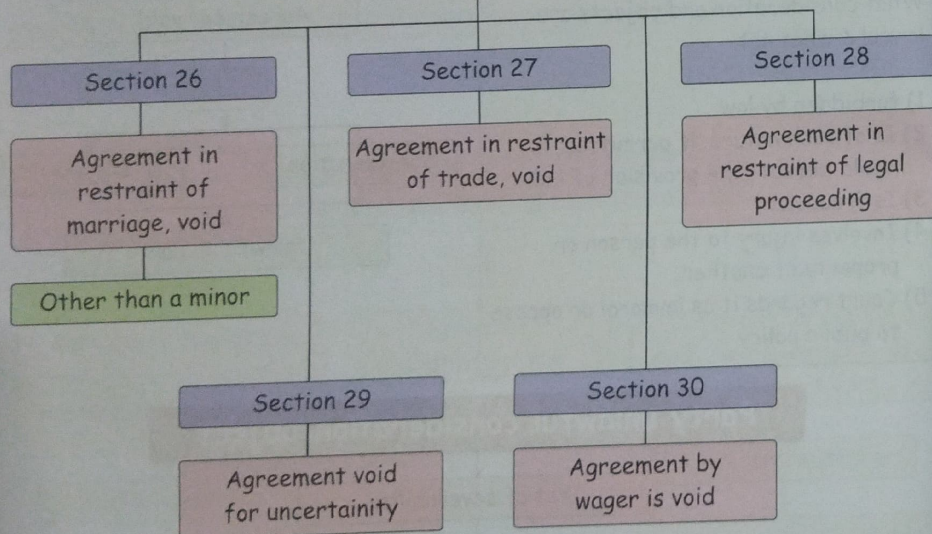




## Void agreements



## Void agreements



### Section 27 Agreement in restraint of trade

Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void

Exceptions i.e restraint of trade of valid.

The following are valid agreements even if they in restraint of trade

- a. Agreement with buyer of goodwill (as per exception of section 27]
- b. Trade combination to the extent they do not create monopoly or oppose to public policy.
- c. Service agreements with employees (eg. Chartered Accountant Trainee, Surgeon - Trainee)
- d. Agreements under the Partnership Act 1932
  - i. Agreement between partners not to carry on any business during continuance of partnership is valid.
  - ii. Agreement between partners not to carry on competitive business during continuance of partnership is valid
  - iii. Out going partner agreeing not to carry on competitive business is valid.

The restraint given above in point a, c & d is valid provided

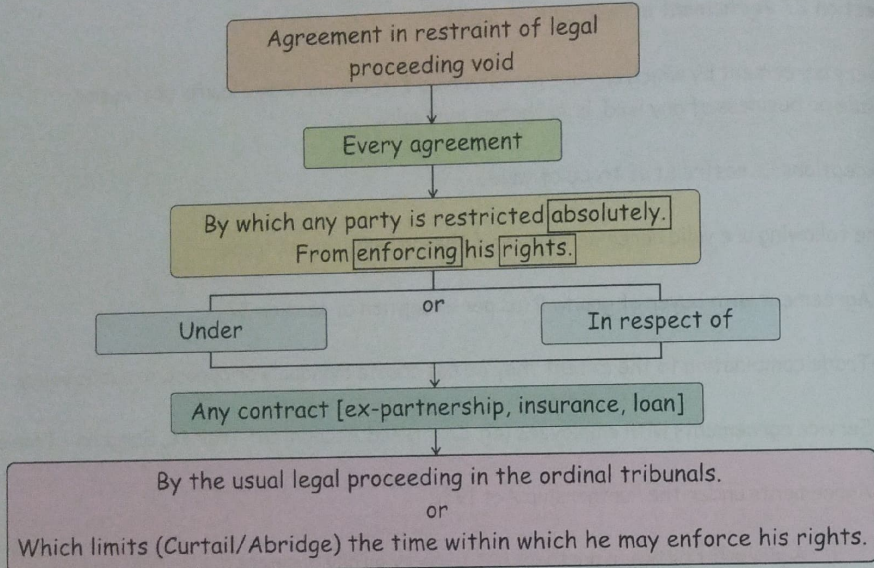
- i. Where restraint is to refrain from carrying on a similar business.
- ii. The restraint should be within the specified local limits
- iii. The restraint should be not to carry on similar business after sale of goodwill to the buyer for a price (this condition is applicable only for point a)
- iv. The restriction should be reasonable (i.e reasonable local limits & for reasonable time)

Note :- Reasonableness of restriction will depend upon number of factors as considered by court.





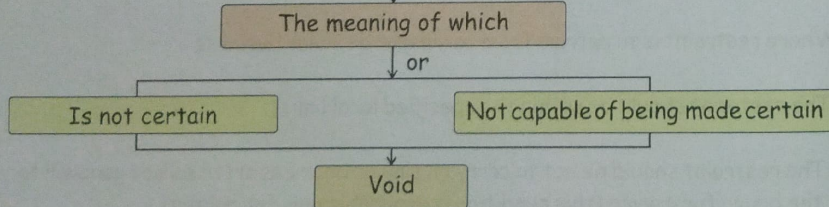
### Section 28



### Section - 29

Agreements void for uncertainty

### Agreements



### Section - 30

Agreement by way of wager is void.

And no suit shall be brought for recovering anything to be won on any wager.

#### Principle on which Section - 30 is based

- Crossword puzzles
- Picture competitions
- Athletic Competition
- Where price are awarded on basis of skill & intelligence are valid.
- Lottery transaction is game of chance and not of skill or knowledge is void

### Agreement oppose to public policy

Relevant/Important Exam point of view

- 1) Trafficking relating to public offices and titles
- 2) Agreements tending to create monopoly
- 3) Interference with the course of justice Sec 23

Most IMP

Read only

- 1) Trading with enemy (sec 11)
- 2) Stifling of prosecution
- 3) Maintinance and champerty
- 4) Interest against obligations

#### Trafficking relating to public offices and titles (under section 23)

- An agreement to trafficking in public office is opposed to public policy
- Because it interferes with appointment of person best qualified for service of public
- Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested

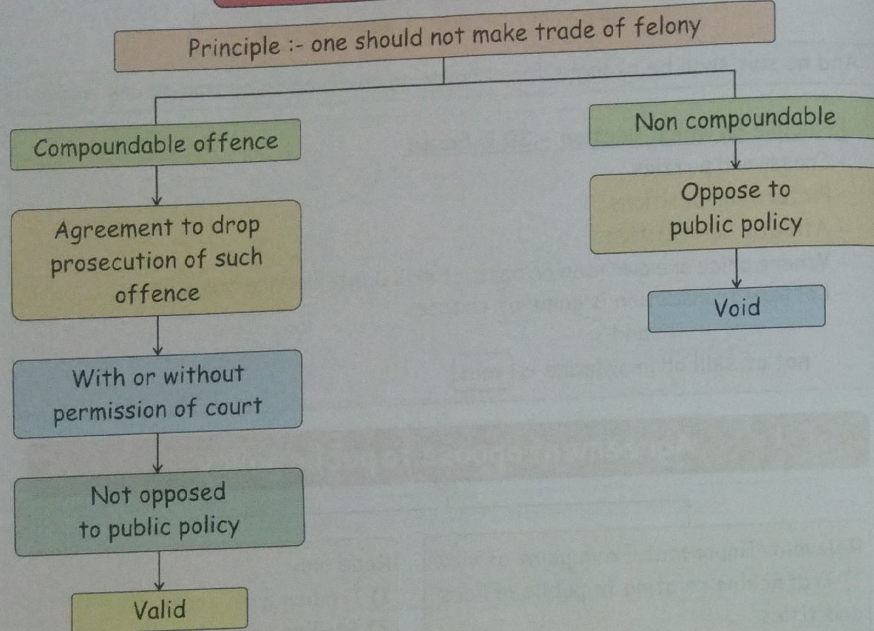
#### Interference with course of Justice

- As per section 10 & section 23 every agreement of which object is unlawful is void
- The given instance is a case of interference with the course of justice the object of which is to induce any judicial officer or any executive officer of state or country to act partially or corruptly results oppose to public policy & is void

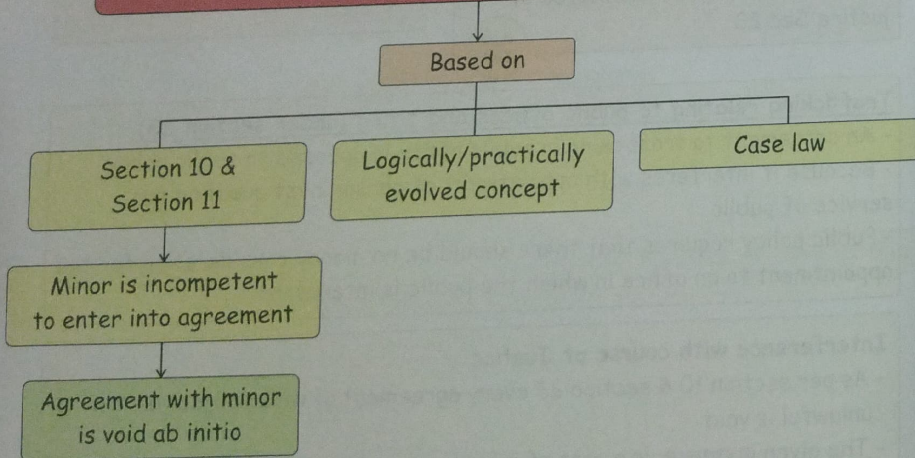




### Stiffing of prosecution



### Provisions relating to agreement with minor

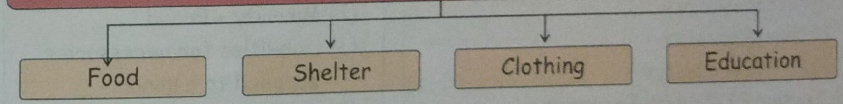


### Agenda

- |  |  |
|--|--|
| <b>Relevant for exams</b> <ul style="list-style-type: none"> <li>(1) Sec 68 - Liabilities relating to necessities supplied to minor</li> <li>(2) Minor can always plead minority</li> <li>(3) Minor can be an agent.</li> <li>(4) Minor's liability in tort (civil wrong)</li> </ul> | <b>Miscellaneous/reading category</b> <ul style="list-style-type: none"> <li>(1) No ratification (subsequent approval) after attaining majority.</li> <li>(2) Minor can be a beneficiary</li> <li>(3) Minor can never become insolvent.</li> <li>(4) Joint contract by minor &amp; adult</li> <li>(5) Surety for a minor.</li> </ul> |
|--|--|

- General Rule :- Minor is never personally liable.
- Minor can always plead minority
- Rule of estoppel cannot be applied against a minor even if he has taken any loan or entered into any contract by falsely representing that he was major.
- It means he can be allowed to take his minority in defence

### Liability for necessary supplied to minor (Section 68)



A claim for necessities supplied to a minor is enforceable by law only against minor's estate, if he possess but a minor is not personally liable only his property is liable

To render minor's estate liable for necessities, two conditions must be satisfied.

1. The contract must be for the goods/services reasonably necessary for his support in the station of life.
2. The minor must not have already a sufficient supply of this necessities.





### Minor can be an agent

A minor can act as an agent

But he will not be liable to his principle for his act.

### Minor liability in tort (civil wrong)

Civil wrong

Breach of contract

Minor is not liable for breach of contract

Other civil wrong

Except breach of contract minor is liable for other civil wrong.

### UNIT - (III) Blue Print

Other essential elements

Very IMP

Category 1

- 1) Free Consent (sec 15-22)
  - a) Difference b/w
  - b) Direct question
  - c) Practical question
- 2) Section 27-28 with Exceptions
- 3) Trafficking relating to public policy
- 4) Interference with Course of Justice
- 5) Agreement to create monopoly

Category 2

- (1) Wager V. Insurance
- (2) Minority + Fraud
- (3) Liabilities for necessaries supplied to a minor
- (4) Sec-24 partly unlawful

Category 3

Rest everything (III) category

### UNIT - IV

### Performance of Contract

Contracts which must be performed/what if the parties are not performing their promises

Section 37  
Section 38  
Section 39

Appropriation of payments

Section 59 - 61

By whom contracts must be performed  
Section 40 - 45

Contract which need not be performed

Section 62 - 67

### Devolution of Joint Liabilities [Section -42]

Joint promisors

During their joint lives

All the joint promisors shall perform promise

After the death of any of them

Representative of such deceased promisor together with surviving promisor (s)

After the death of the last survivor

Representatives of all the promisors jointly

Shall perform



## Demanding performance from any of the joint promisors [Section 43]

The promisee may,

- In the absence of an express agreement to the contrary
- Compell any one or more of such joint promises
- To perform the whole of promise

The liability of joint Promisors is joint and several

## Rights and duties of joint promisors [Sec 43]

- Unless a contrary intention appears from contract
- Each joint promisor may compell every other joint promisor
- To contribute equally with himself
- To the performance of the promise

Default by any of the joint promisor in contribution

Remaining joint promisors must equally share the loss arising from such default.

## Release of Joint Promisor [Sec 44]

Release of one of the joint promisors by the promisee does not discharge the other joint promisors

Such discharge does not free such promisor from responsibility to the other joint promisor (s)

## Person by whom promise is to be performed [Sec 40]

a) Only by the promisor

- Where it appears from the nature of the case,
- That the parties intended performance of promise by the promisor himself, then
- Only the promisor should perform such promise

By the promisor or other

Except Cases under (a)

Promisor himself

Agent appointed either by promisor or his LR

His representative

### Cases

When promise involves the exercise of personal skills by the promisor

eg. painting, dance, song

When promise is founded/based on personal confidence

eg. contract to marry ther person

## Section 42 & 45

Devolution of Joint

Section - 42

Liabilities

When their is two or more joint promisors & single promisee

Section - 45

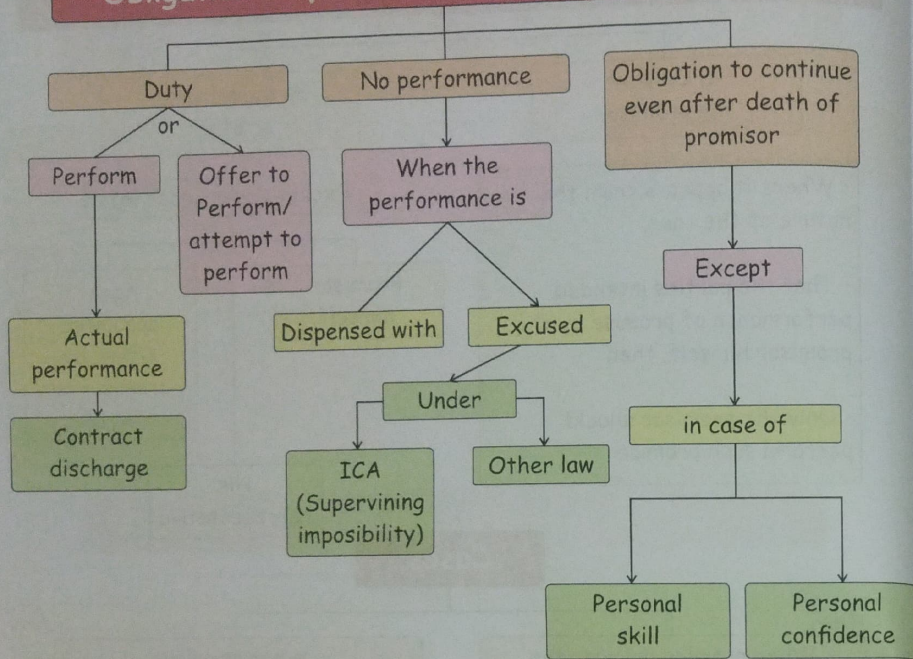
Rights

When their is two or more joint promisee & single promisor

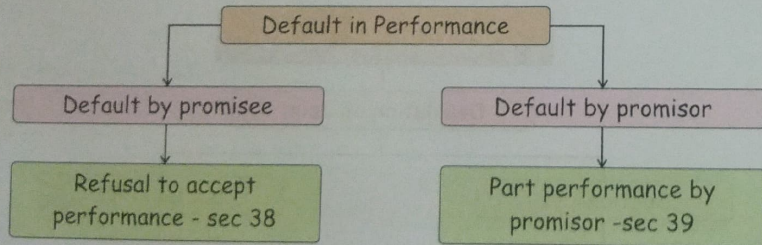




### Obligation of parties to contract [section 37]



### Non Performance/Part performance and non - acceptance of performance

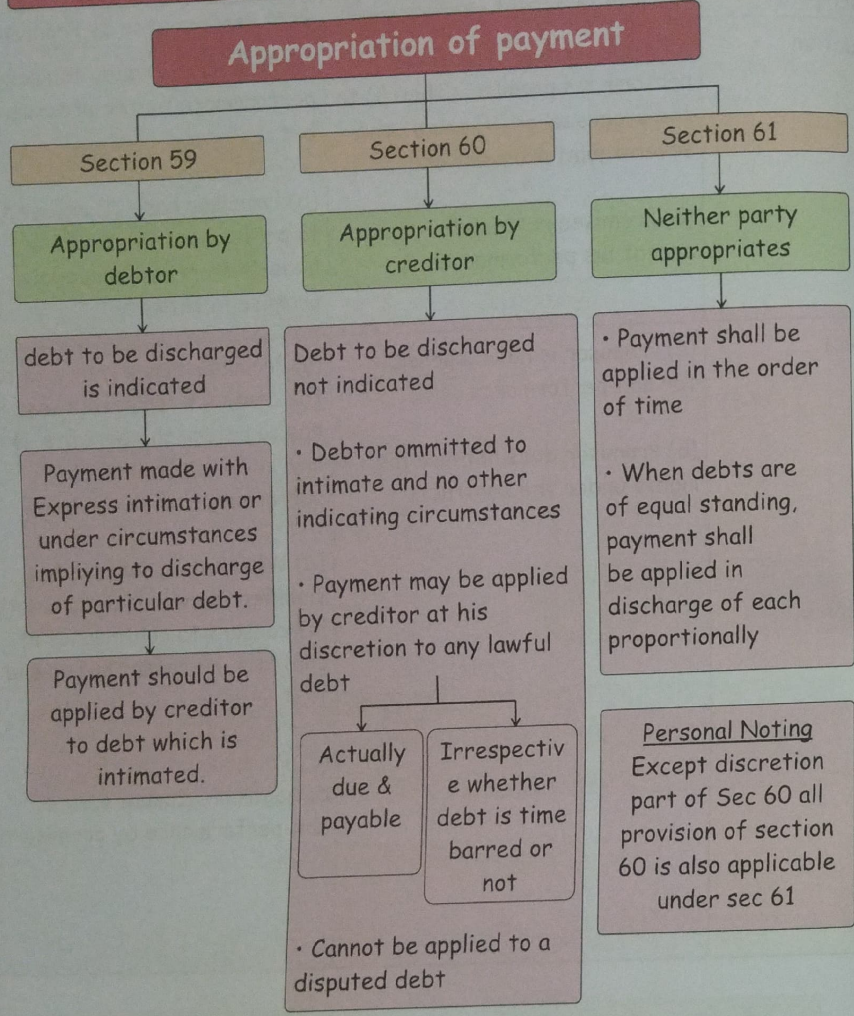


Default by	Promisee	Promisor
Description	Refusal to accept performance	Part Performance by Promisor
Situation	(a) Promisor has offered to perform his promise either (i) to the promisee, or (ii) one of the several joint promisee and  (b) Promisee refuses to accept his performance	(a) Promisee is ready to accept performance by the promisor, but  (b) Promisor has - (i) refused to perform, or (ii) disabled himself from performing his promise in entirety.
Effect	(a) Promisor is not responsible for non-performance,  (b) Promisor does not lose his rights under the contract.	(a) Promisee may put an end to the contract. In such a case he has to return the benefits, if any, received from part performance of the promise  (b) Where the promisee has signified (by words or conduct) his consent to continuance of contract, he cannot put an end to it  (c) Promisee is entitled to damages on account of non-performance by promisor.

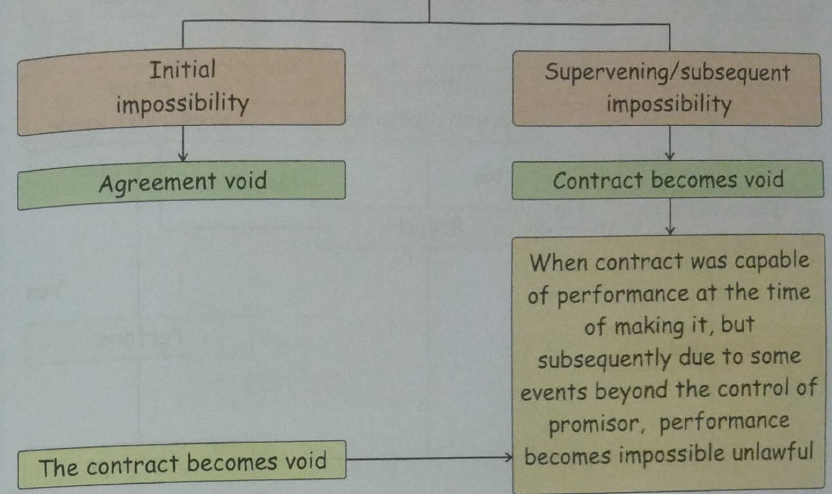




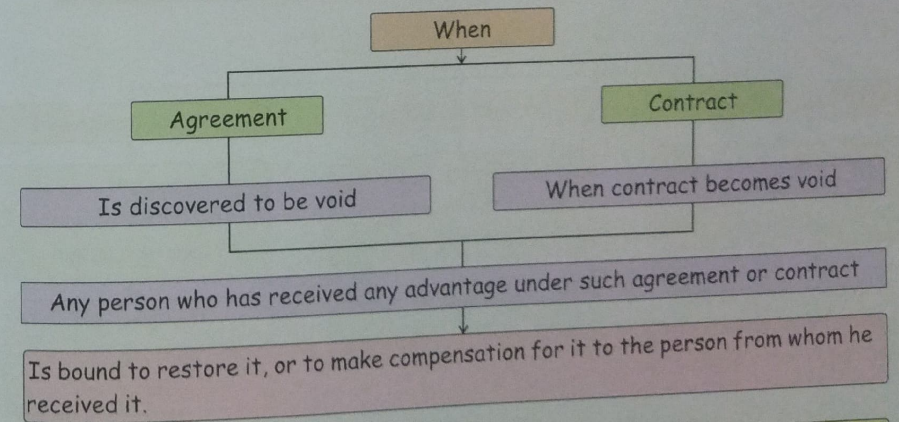
# Appropriation of payment = application of payment



# Impossibility [Sec 56]

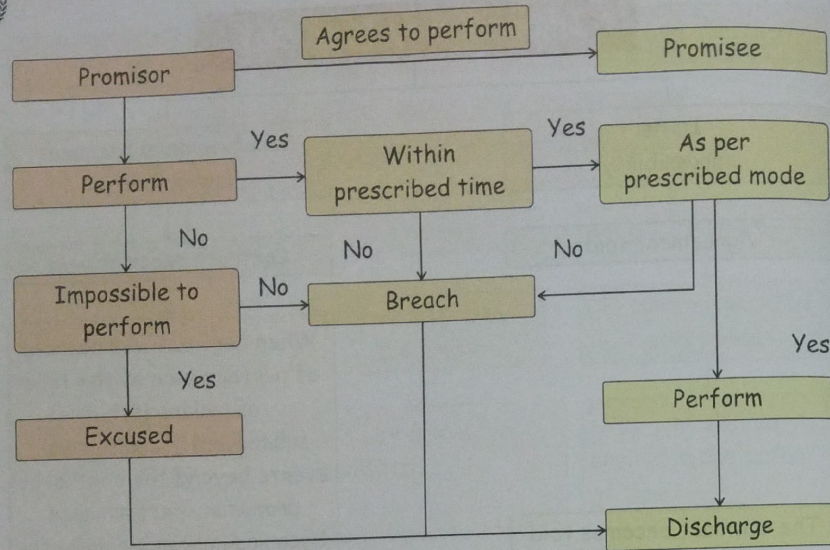


# Obligation of person who has received advantage under void agreement or contract that becomes void/restoration of benefits [Sec 65]

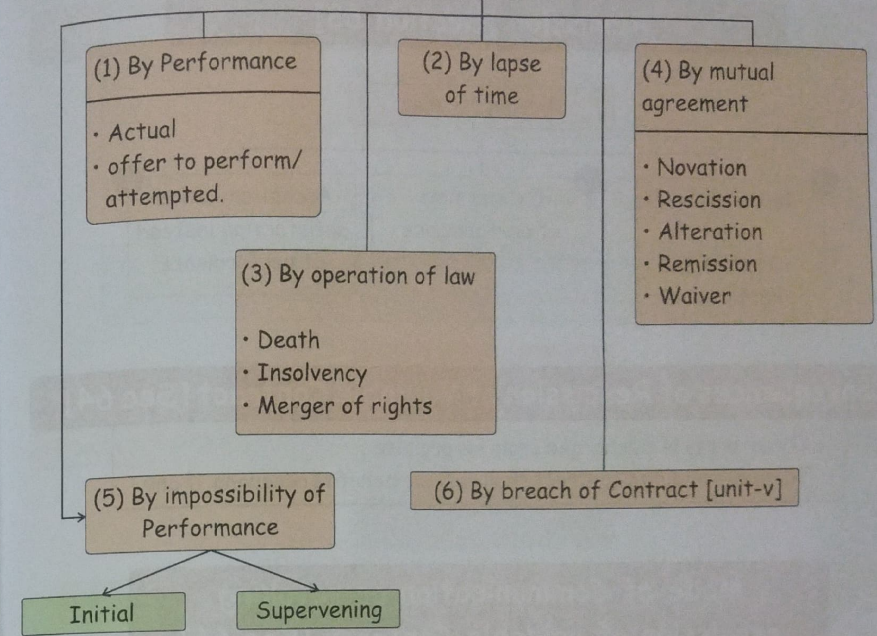


Note:- Security is not a benefit received under the contract, it is security that the purchaser would fulfil his contract and ancillary to the contract

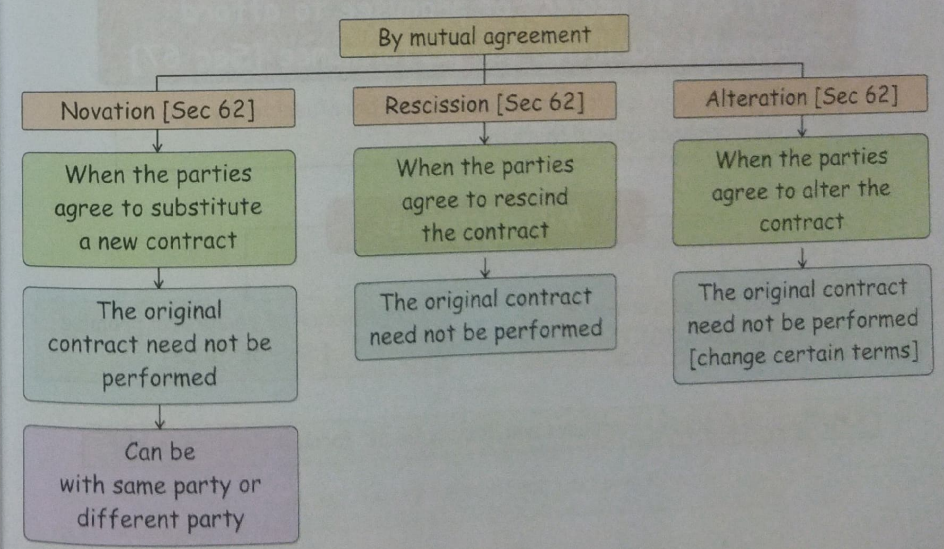




### Discharge of contract



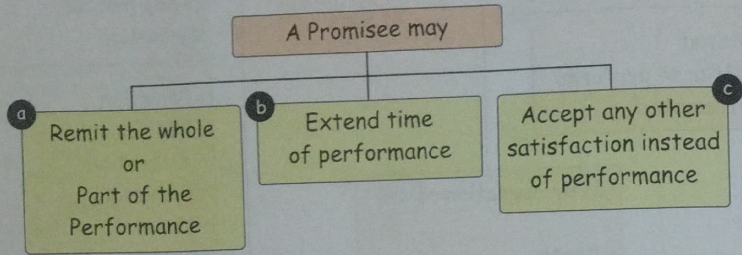
### Contract which need not be performed [Except 65]







### Remission [Section 63]



### Consequences of Rescission of Voidable Contract [Sec 64]

- Other party is discharged from his promise
- Party rescinding a contract shall restore benefits receiving, if any.

### Mode of Communication or revoking rescission of voidable Contract [Sec 66]

### Effect of neglect of promisee to afford reasonable facilities for performance [Sec 67]

- The promisor is excused by such neglect or refusal to any non performance caused there by.

### Miscellaneous

Time and place of performance [Section 46-50]

Performance of reciprocal promise [Section 51-58]

Reciprocal promise - Promises which must be performed simultaneously



### Rules as to performance of Reciprocal Promises [Sec 51 -57]

#### Section 51

- Contract consist of Reciprocal promises.
- and
- Such reciprocal promises are to be simultaneously performed

**Provision:-** Promisor need not perform his part of promise unless promisee is ready & willing to perform his reciprocal promise.

#### Section 52

If contract expressly provides for the order of performance of reciprocal promises

#### Provision

Promises shall be performed only in the order mentioned and not otherwise

#### Section 52

If contract does not provide for the order of performance

**Provision:-** Promises shall be performed in such order which the nature of transactions required

#### Section 53

Contract contains reciprocal promises, and one party to contract prevents the other from performing his promise.

**Provision:-** contract becomes voidable at the option of the party so prevented. and Prevented party is entitled to compensation from the preventing party, for any loss for non performance.





### Section 54

Contract contains Reciprocal promises and one of them

- Cannot be performed; or
- Its performance cannot be claimed till the other promise is performed

Defaulting promisor

Provision: promisor who is at fault, cannot claim performance of the reciprocal promise

- Such defaulting promisor shall compensate the other party to the contract for any loss suffered by him as a result of non performance

### Section 57

Contract Contains reciprocal promises &

- Certain promises therein are legal,
- Certain promises are illegal

Provision

- Set of promises to do legal things is valid (contract)
- Set of promises to do illegal things is void [ void agreement]

### Time and Place of Performance [Sec 46-50]

(A) Time specified, but application to be made by promisee [Sec 48]

Situation

Promise is to be performed on a certain day and the promisor has not undertaken to perform the promise without application by promisee.

Duty

- Application by promisee [duty]
- It is duty of the promisee to apply for the performance of promise.
  - At a proper place and within the usual hours of business.



(B) Time and place of performance when no application is to be made i.e without application by the promisee

Time for performance

Sec 46

When no time [day] is specified

Promise must be performed within a

Reasonable time

Place for performance

Sec 49

Promisor shall apply to the promisee to appoint a reasonable place for the performance of promise.

[When day is specified, Time not specified]

### Time and place of performance

Sec 47

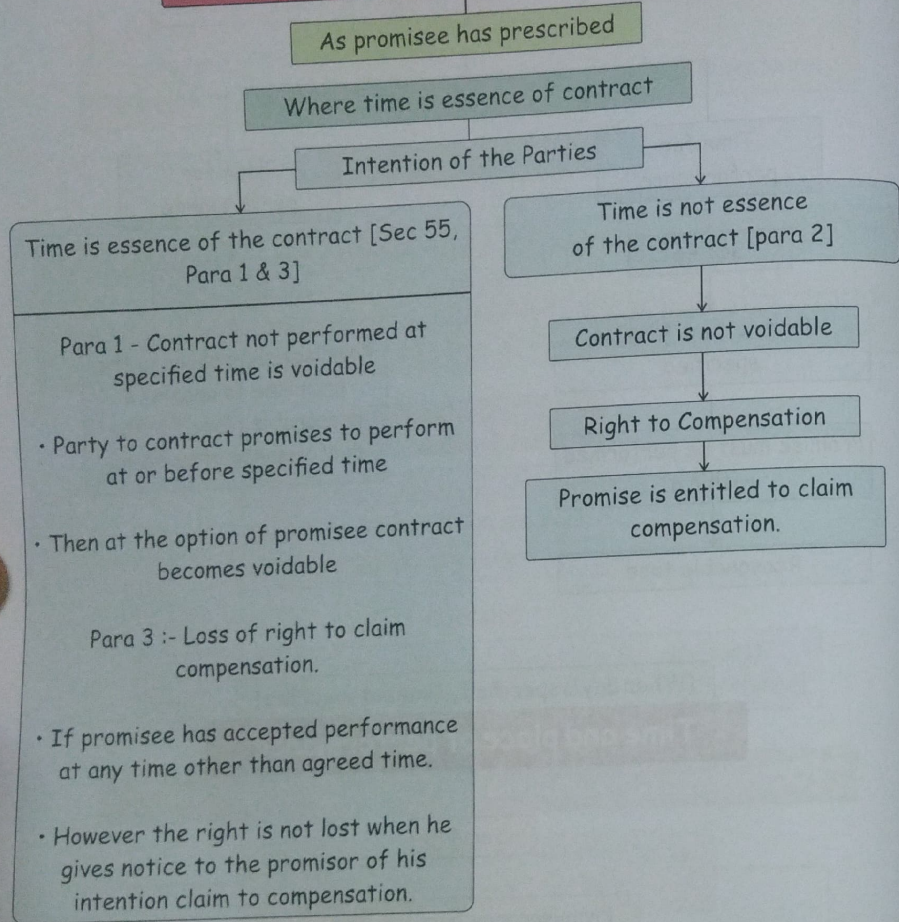
Promisor may perform the promise at any time.

During the usual hours of business on the specified day, at the place at which promise ought to be performed





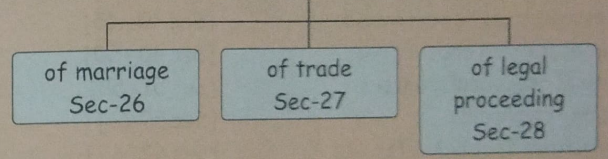
### Manner of Performance [Sec 50]



### Coverage of sections under Unit (III)

- Section 13 → Consent
- Section 14 → Free Consent
- Section 15 → Coercion
- Section 16 → Undue influence
- Section 17 → Fraud
- Section 18 → Misrepresentation
- Section 19 → Contract voidable
- Section 20 → Bilateral mistake
- Section 21 → Mistake of law
- Section 22 → Unilateral mistake
- Section 23 → Unlawful object or unlawful consideration
- Section 24 → Partly unlawful object & consideration
- Section 25 → Validity of agreement without consideration

#### Agreement in restraint



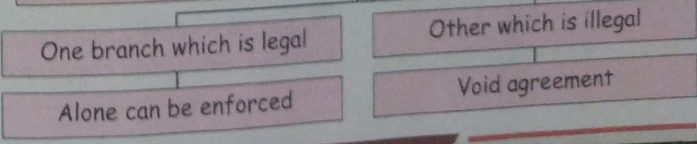
- Section 29 → Uncertain agreement
- Section 30 → Wager agreement
- Section 56 → Impossibility of performance
- Section 57 → Agreement to do reciprocal promises [one is legal another is illegal]

Sec 36 - Agreement Contingent upon impossible events

Section 19A - power of court to set aside contract induced by undue influence.

Except Section no. 21 & 22, sec 20 - sec 30, sec 11, sec 36, sec 56 & 57 are expressly declared void agreements.

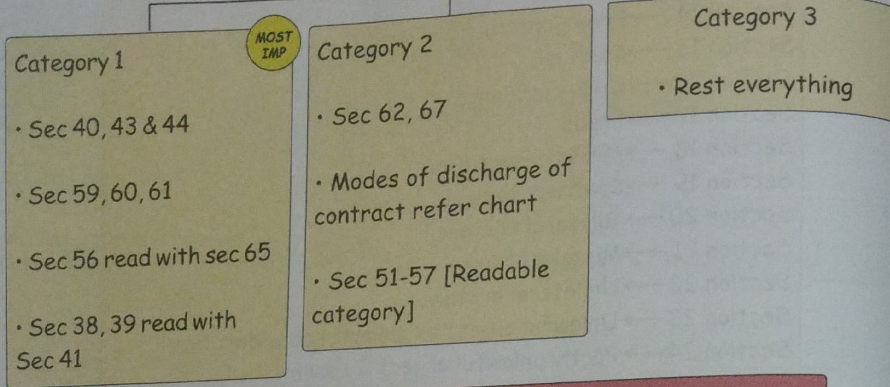
Section 58 - Alternative promise, one branch being illegal







## UNIT - (IV) Performance of Contract [Blue print]



### Coverage of section under Unit - (IV)

• Contract which must be performed.	[Sec 37, 38 & 39]
• By whom contract must be performed	[Sec 40 - 45]
• Time & place of performance	[Sec 40 - 50]
• Performance of reciprocal promises	[Sec 51 - 58]
• Appropriation of payments	[Sec 59-61]
• Contract which need not be performed	[Sec 62 - 67]

## UNIT - V Breach of Contract and its

### Agenda

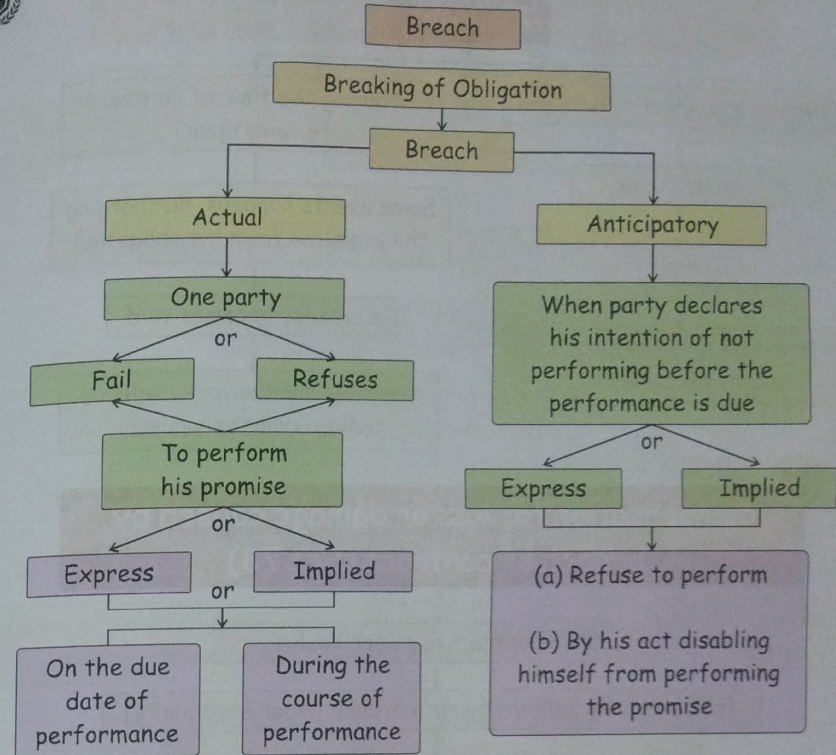
#### Meaning & types of breach of contract

##### Types of breach of contract

- Actual breach
- Anticipatory breach
- Remedies under anticipatory breach
- Remedies for Actual breach of contract.

#### Coverage of sections under this unit

- (1) Sec 73 → Compensation for loss or damage caused by breach of contract
- (2) Sec 74 → Compensation for breach of contract where penalty stipulated for
- (3) Sec 75 → Partly rightfully rescinding contract, entitled to compensation



### Remedies under Anticipatory Breach

#### Aggrieved party [promisee / party not at fault]

- 1 Put an end to contract and treat anticipatory as actual breach of contract
- 2 Choose to keep the contract alive  
Till the date of performance

#### 1) Promisee

Is excused from performing or further performance of his promise

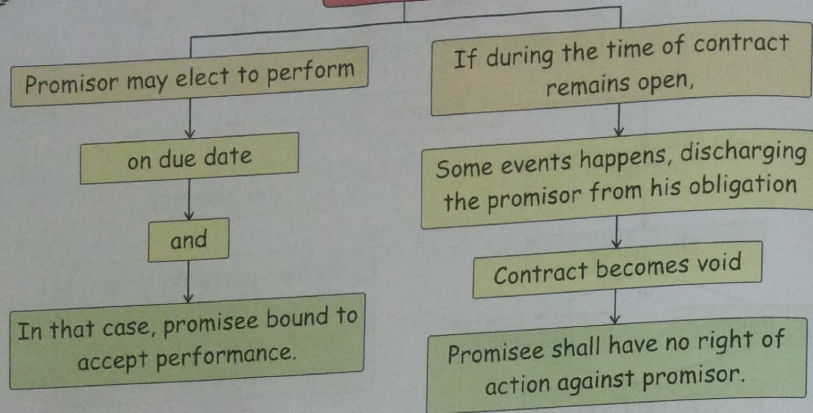
Can sue promisor for breach of contract

Immediately without waiting till date of performance



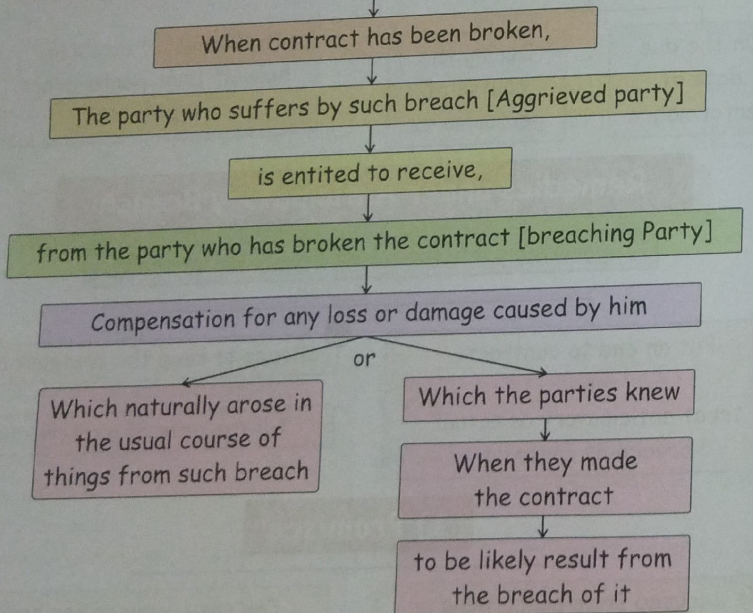


## 2) Right



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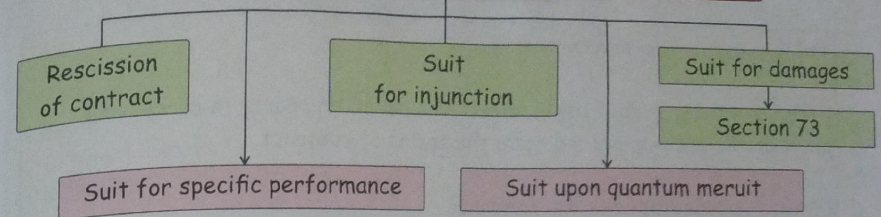
## Compensation for loss or damage caused by breach of contract (Sec 73)



Such compensation is not to be given for any remote & indirect loss or damage sustained by reason of breach



## Remedies for Actual breach of Contract



### Rescission of a contract

- Promisor refuses or fail to perform his promise
- Promisee has a right to rescind the contract
- He (promisee) relieved of all obligations under the contract

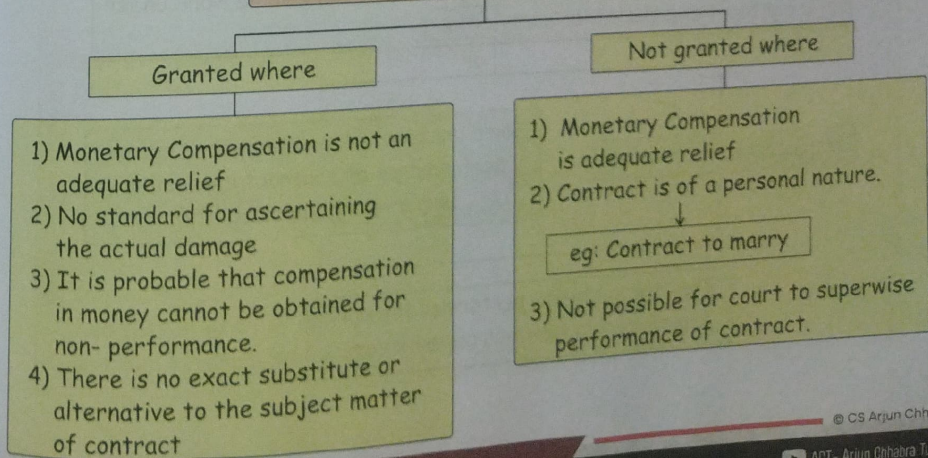
### Claim for Compensation [Section 75]

A person rightfully rescinding a contract can claim compensation for any loss or damage sustained due to non performance / non-fulfilment of promise.

### Specific Performance [Sec 10]

[Specific relief Act, 1963]

Specific performance is





## Provision

- 1) for breach of certain contracts.
- 2) The court may in such cases, direct the defaulting party to carry out / perform the promise according to the terms of contract
- (3) This is called Specific Performance

## Suit for injunction

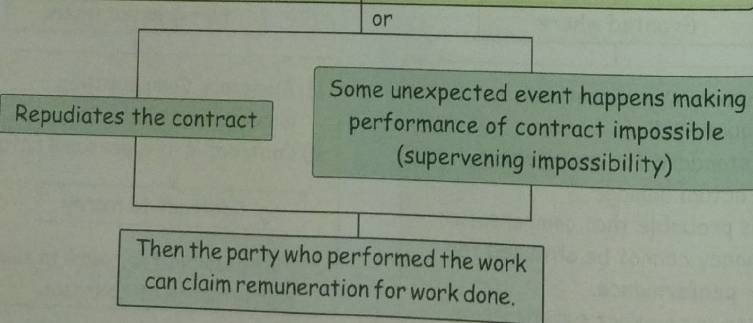
Court restraining a person from doing what he promised not to do.

When issued

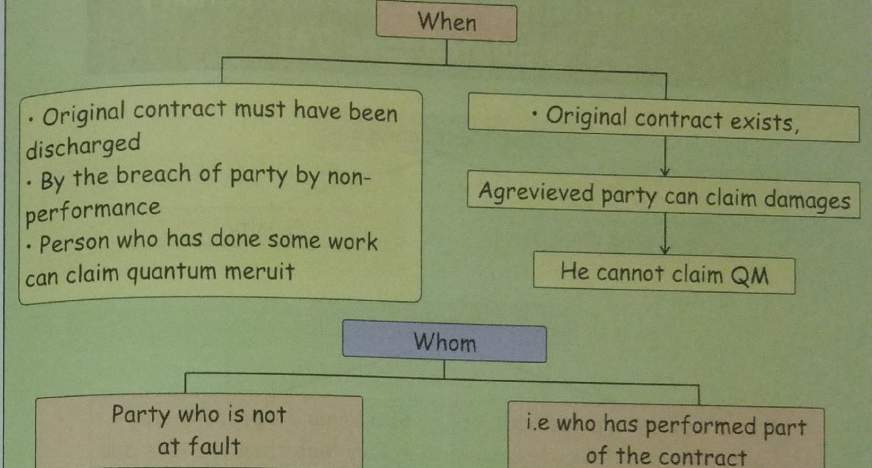
When a party to the contract performs some act what he promised not to do, the other party may approach the court to grant an order of injunction prohibiting the party from doing such act.

## Quantum meruit

- 1) As much as is merited (earned)
- 2) Quantum meruit - Exception to normal rule :
  - (a) Unless a party has performed his promise in full, he cannot claim performance from the other party.
  - (b) Exception to above rule:- When a person has done some work under a contract and the other party either



## 3) When and to whom right arise



## 4) Quantum Meruit fails

- (a) Contract is indivisible into parts and Lumpsum is to be paid on completion of work
- (b) Person claiming compensation is himself guilty of breach
- (c) Work is performed gratuitously

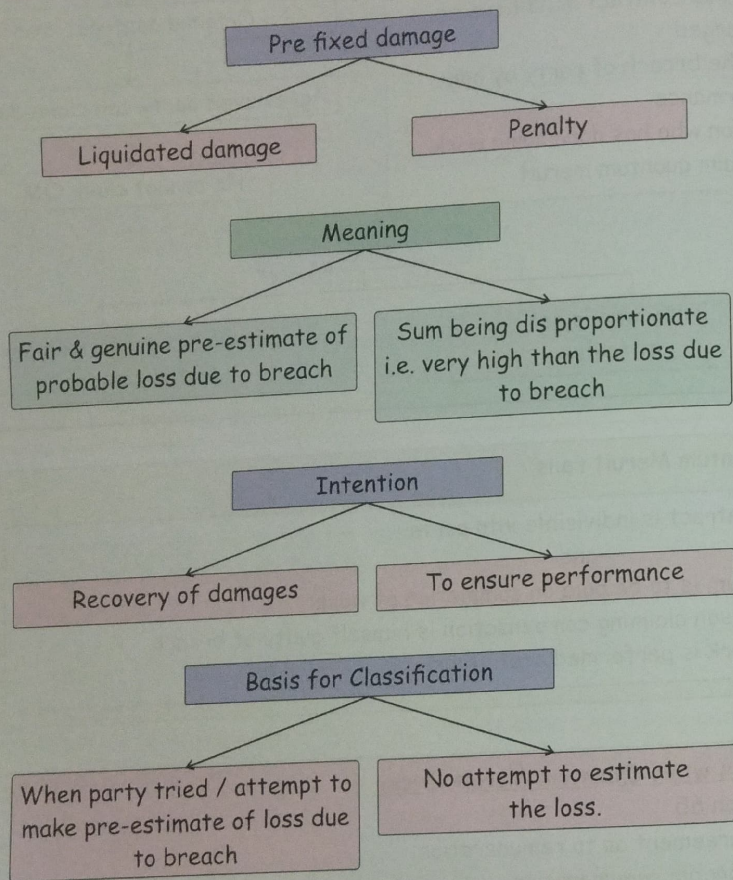
## Situation when Quantum Meruit arises

- 1) Section 65
- 2) No agreement as to remuneration.
  - Reasonable remuneration
- 3) Act done without intention of gratitouness [sec 70]
- 4) Abandonment of performance by one party.
- 5) Divisible contract
- 6) Indivisible contract performed badly
  - Then person who has performed,
  - Can claim lumpsum less deduction for bad work

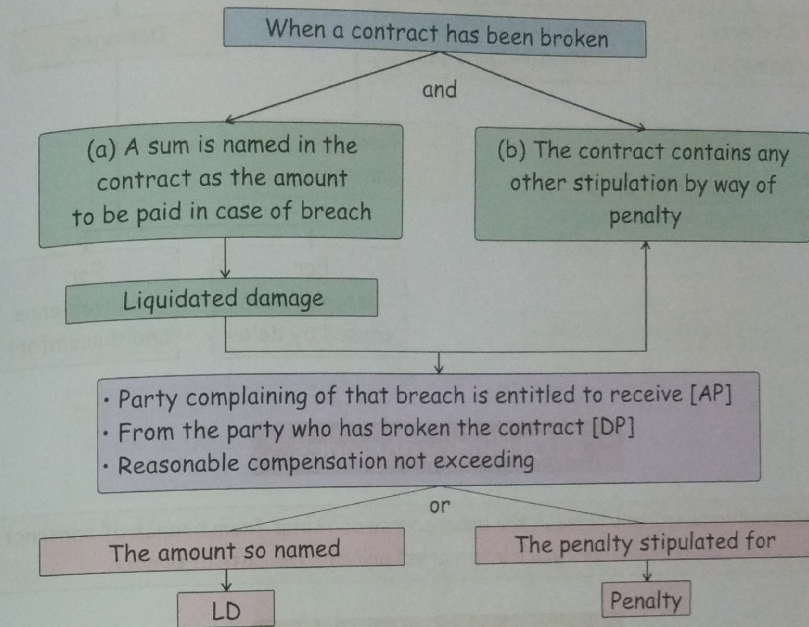




### Compensation for breach where penalty is stipulated [Sec 74]



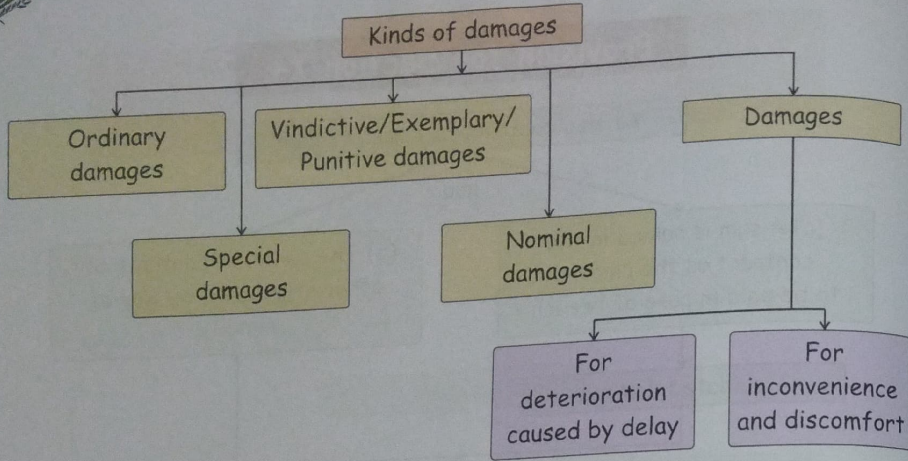
### Provision for Section 74



### Exception of Section 74

Full amount mentioned in contract shall be paid by a person who makes a breach of condition, where he has entered into any bail bond recognizance or other instrument of similar nature





### I) Ordinary damages

- Damages which naturally arise in the usual course of things from breach of contract.
- Ordinary damages = Contract price less market price on the date of breach.

### II) Special damages

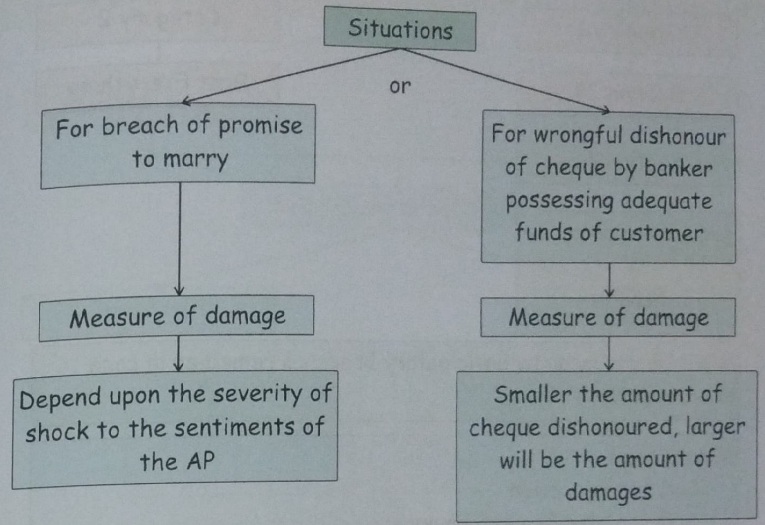
- Where
  - a party to a contract receives
  - a notice of special circumstances affecting the contract
- He will be liable
  - Not only for natural damages of breach
  - But also for special damages.

Note :- Special damage can be claimed only on a previous notice



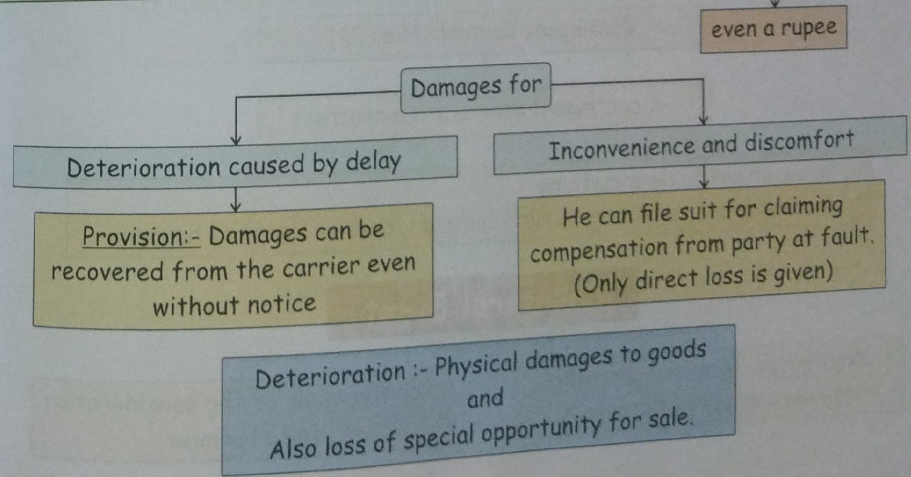
### III) Vindictive/Exemplary/Punitive

Purpose:- To punish the party and not compensation.



### IV) Nominal damages

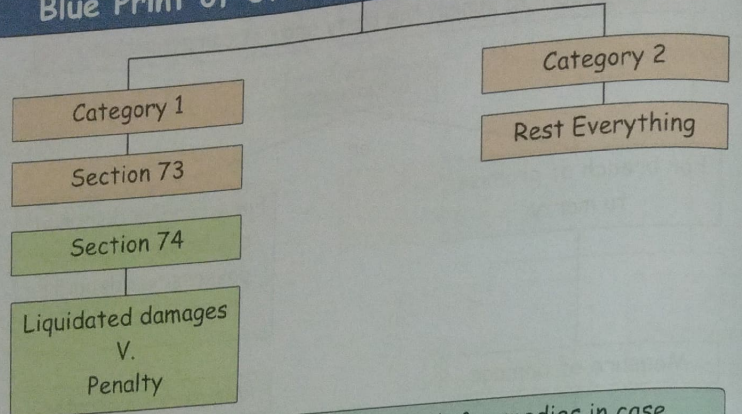
- Where there is only a technical violation of legal right, but no material loss is called thereby
- AP cannot claim damage as his right, court at its discretion can award nominal damages







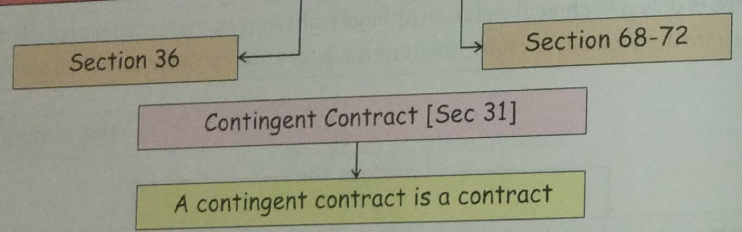
# Blue Print of UNIT - V Breach of contract



What do you mean by anticipatory breach & remedies in case of anticipatory

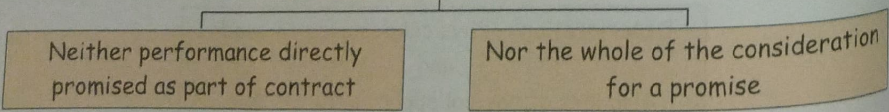
Minor topics  
- Suit for injunction  
- Suit for specific performance

# UNIT - VI Contingent and Quasi Contract



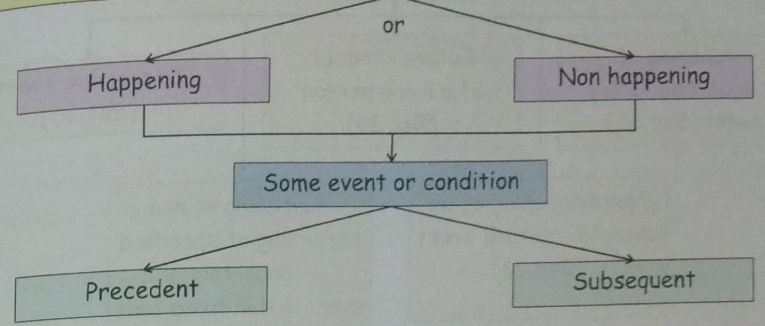
- (a) to do, or not to do something
- (b) if some event, collateral to such contract, does or does not happen.

## Collateral Event

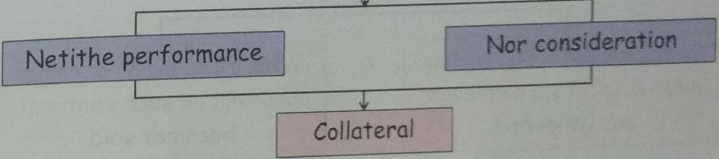


# Essentials of a Contingent Contract

(a) The performance of a contingent contract would depend upon the



(b) Event referred must be collateral.  
• Event must not be a part of contract.  
Event



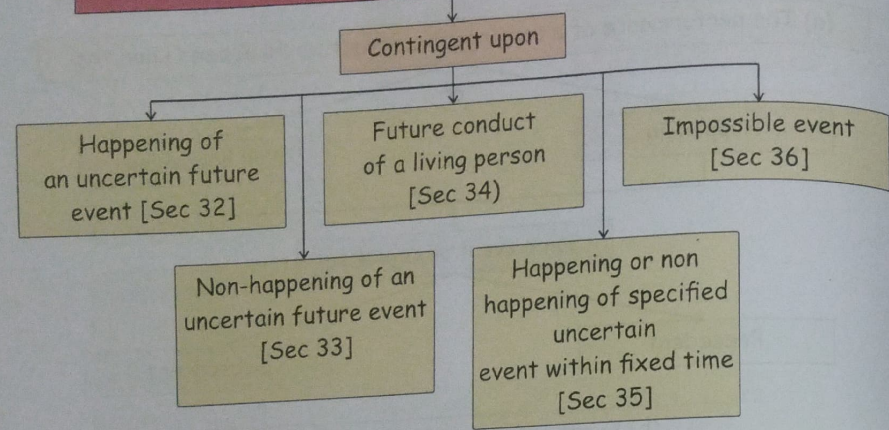
(c) Contingent event should not be a mere will of the promisor.  
Will + Uncertain Event = Contingent contract

(d) Event must be uncertain.  
• When event is certain  
or  
• bound to happen eg. death } Not contingent

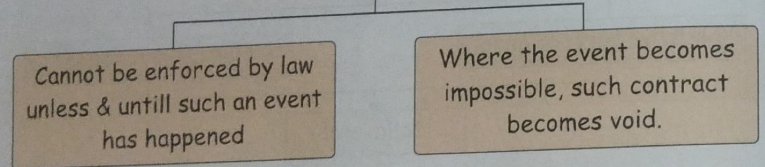




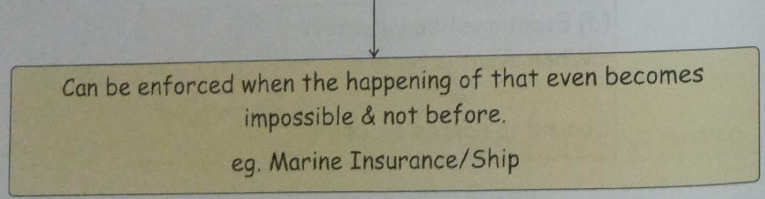
# Rules as to enforcement of Contingent Contract



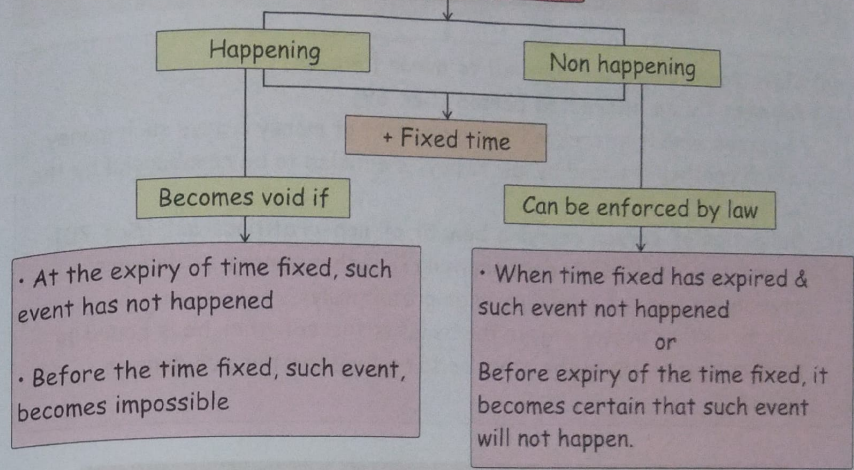
## Section - 32



## Section - 33



## Section - 35



## Section - 34

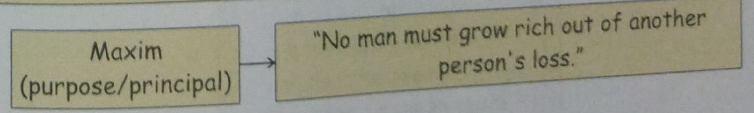
Event shall be considered to become impossible when such person (dream girl) does anything, which renders it impossible that he (Aditya) should so act within any definite time, or otherwise than under further contingency

## Section - 36

Void, irrespective of whether or not the parties know the impossibility of the of the event, at the time of entering into the agreement.

## Quasi Contract

Quasi contract is a contract in which rights & obligation, is created by law under certain circumstances (sec 68-72)







### Deemed quasi contract

- (a) Claim for necessaries supplied to minor [Sec 68]
- (b) Payment by an interested person [Sec 69]
  - a person, who is interested in the payment of money & pays such money which another is bound by law to pay, is entitled to be reimbursed by the other
- (c) Obligation of person enjoying benefit of non-gratituous act [Sec 70]
  - Where a person lawfully does anything for other person, or delivers anything to him, not intending to do gratuitously
  - And such other person enjoys the benefits thereof, then he is bound to make compensation to the other or to restore the thing so done or delivered.

### Sec-71 Responsibility of finder of lost goods

- If he takes it into his custody
- He has same responsibility as bailee

### Responsibilities: - [C. L. - Howlins vs. Howler]

- (i) To take proper care of property as man of ordinary prudence
- (ii) No right to appropriate goods
- (iii) Restore goods if owner found.

### (e) Money paid by mistake or under coercion [sec 72]

- A person to whom
  - Money is paid
 or
  - Anything delivered
- By mistake or coercion
- Must repay or return it.



## UNIT VI Contingent & Quasi Contract Blue Print

Most IMP

Category 1

Practical question on

- Responsibility of finder of lost goods [Sec 71]
- Payment by an interested person [Sec 69]
- Contingent contract [Sec 31]

Most IMP

Category 2

Rest Everything [direct que]

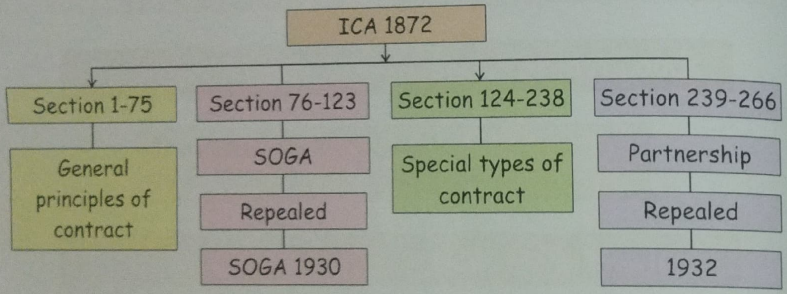
eg. define contingent contract & rules, essentials





# Chapter - 3

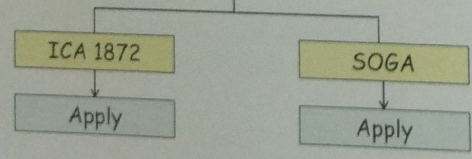
## SALE OF GOODS ACT 1930



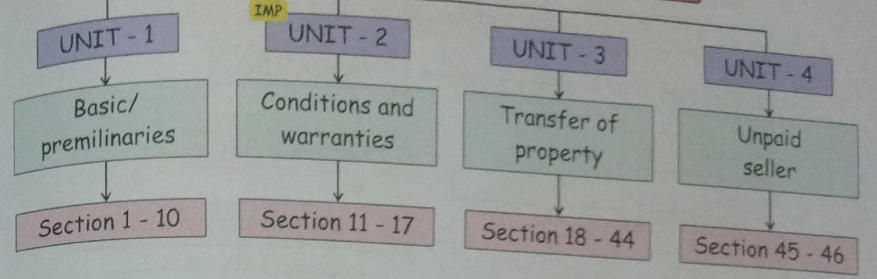
ICA, 1872 → General principles

Sale of goods Act, 1930 → Specific provision

## Contract of sale of goods

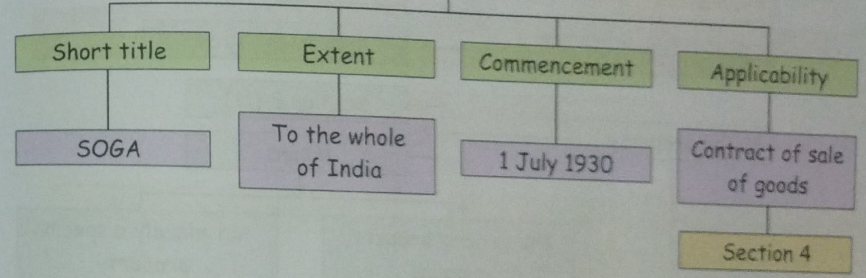


## Sale of Goods Act 1930

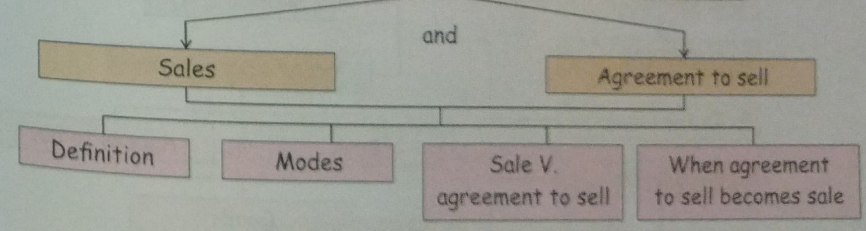


## UNIT - 1 - Basic

### Section 1 → SOGA



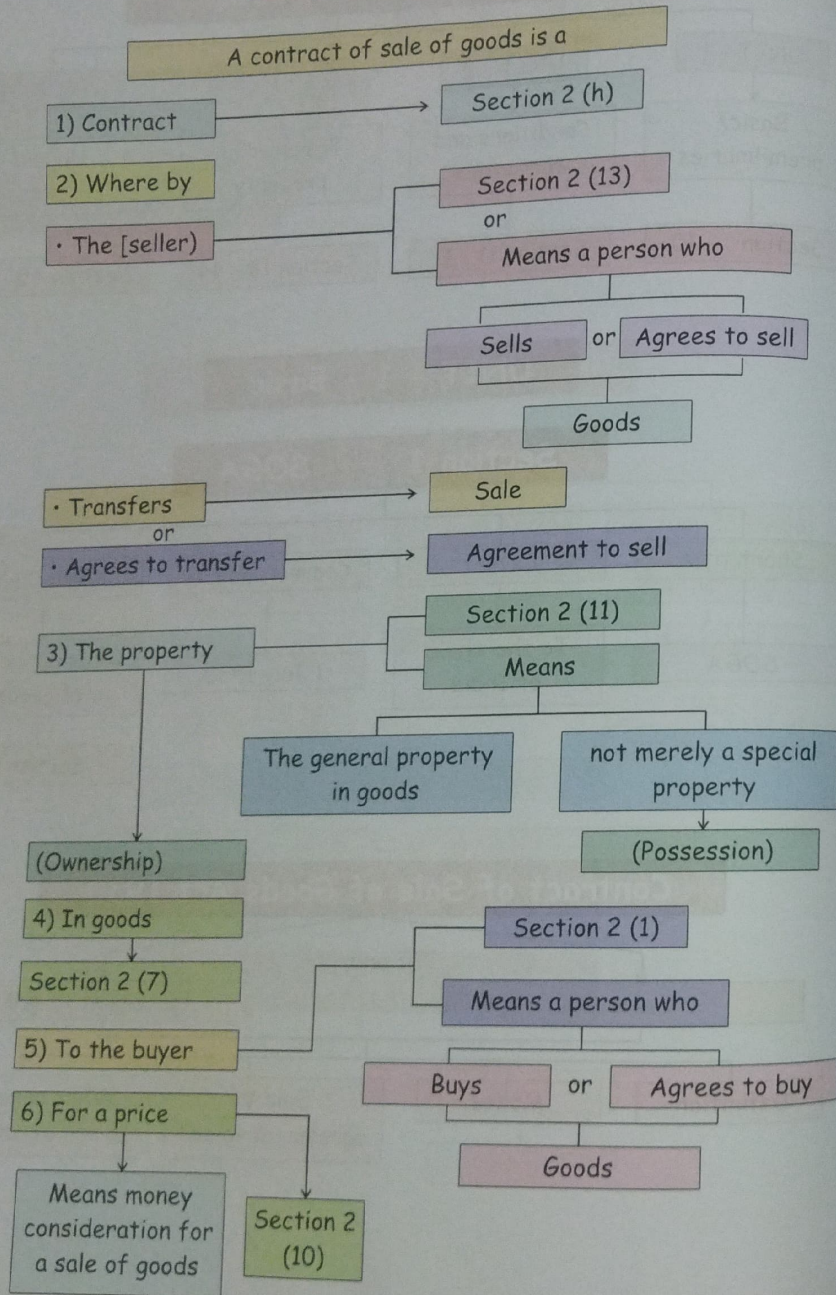
## Contract of Sale of Goods Act 1930



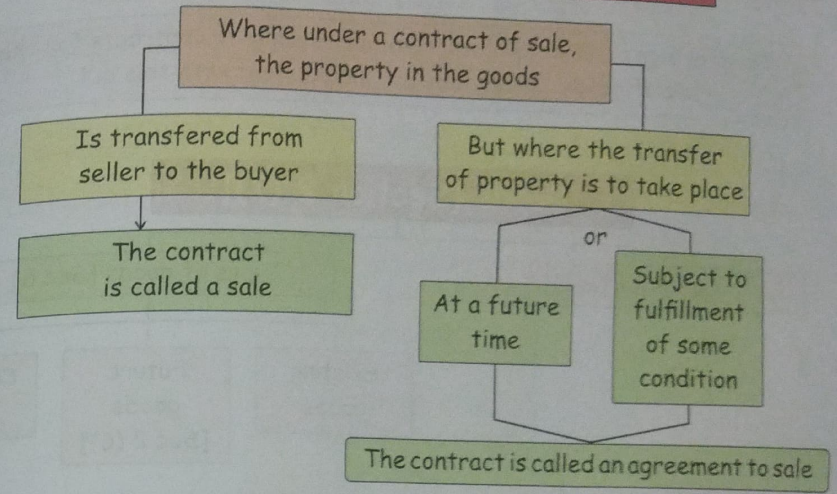




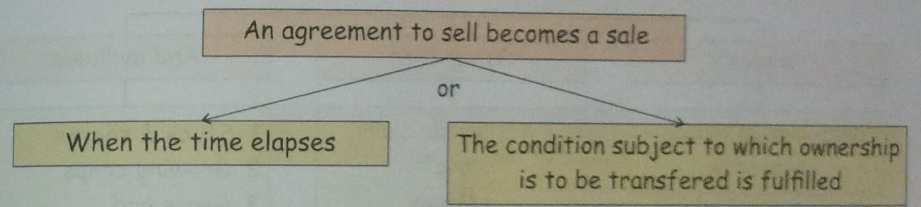
### Sub Section (1)



### Subsection 3: Sale V. Agreement to sell



### Sub-section 4: When agreement to sell become sale



### Essentials of a valid contract of sale of goods.

- 1) Two parties → bilateral Contract
- 2) Subject matter must be goods
- 3) Price
- 4) Transfer of general property
- 5) Absolute or conditional
- 6) All other essential elements of ICA 1872

### Sub-section-2 Modes

A contract of sale may be absolute or conditional.

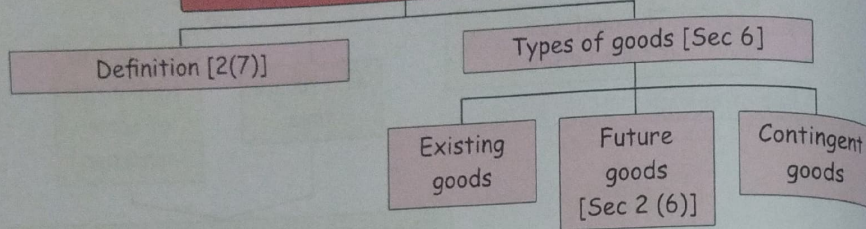




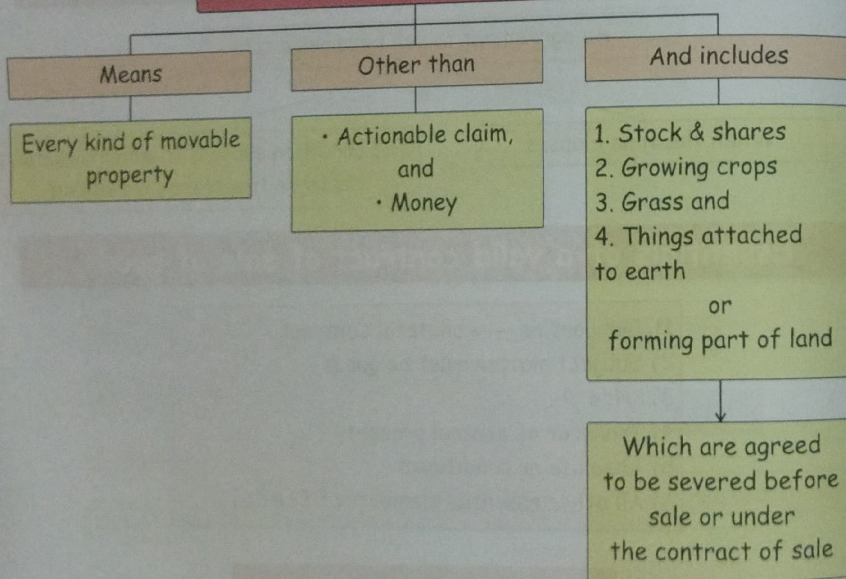
### Section 3 Application of provision of ICA 1872

The provision of ICA, 1872 will continue to apply to contracts for the sale of goods, unless they are inconsistent with this act

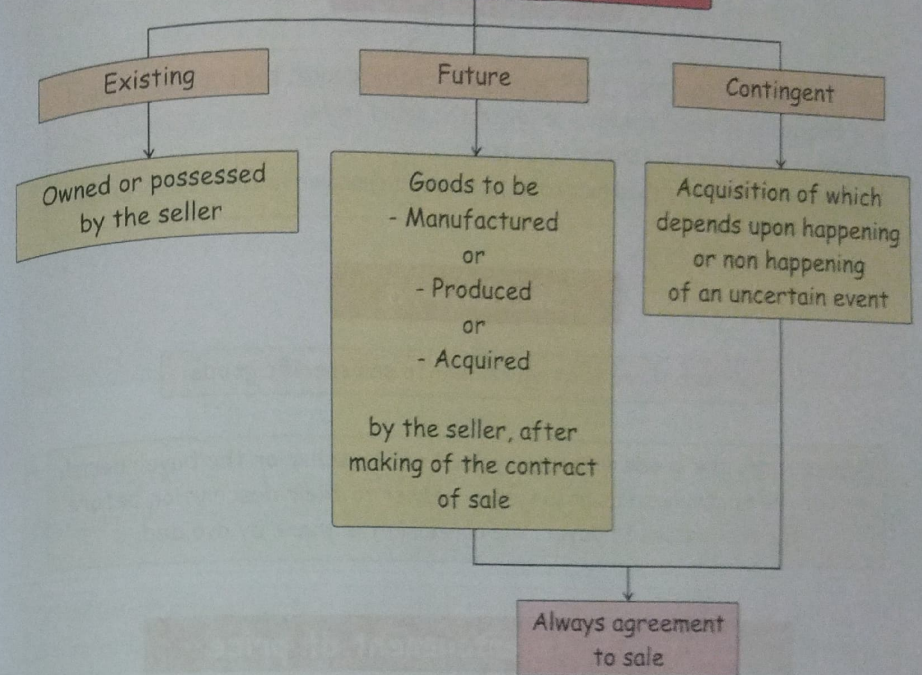
#### Goods [Section 2 (7)]



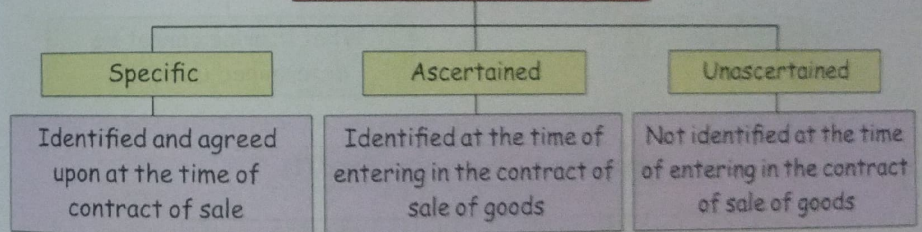
#### Goods [Section 2 (7)]



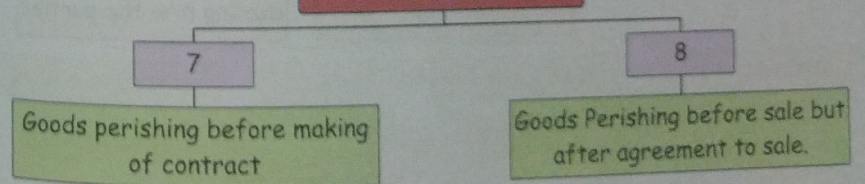
### Types of Goods (Sec 6)



#### Existing goods



#### Section







### Section - 7

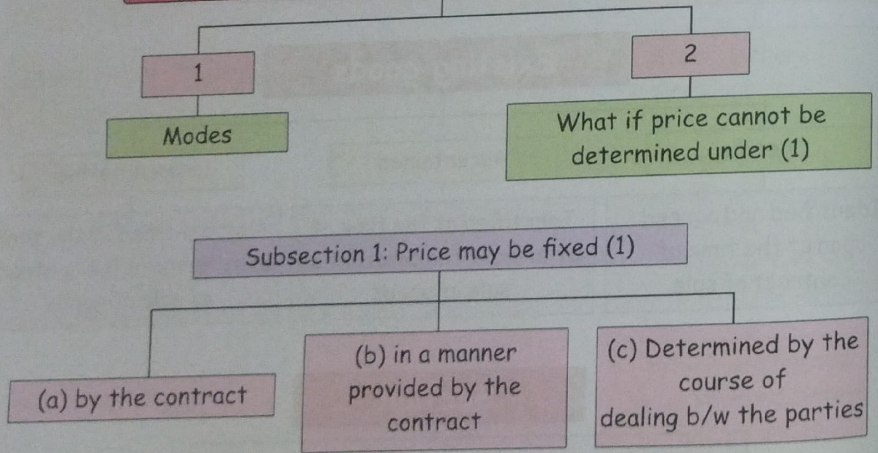
Where there is a contract for the sale of specific goods, the contract is void

- 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

### Section - 8

Where there is an agreement to sell specific goods  
and  
Subsequently the goods without any fault of the seller or the buyer perish or become so damaged as no longer to answer to their description before the risk passes to buyer, the agreement is there by avoided.

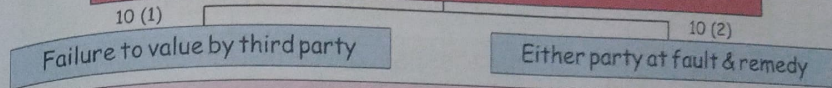
### Section 9 Ascertainment of price



### Reasonable Price [Section 9 (2)]

When price cannot be fixed in any of the ways mentioned under section 9(1), then buyer is bound to pay a reasonable price to the seller.

### Section 10 Agreement to sell at valuation



(1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of third party  
and  
Such third party cannot or does not make such valuation

Provision:- The agreement is thereby avoided.

Special Note :- What if goods or any part delivered and appropriated by the buyer.  
Provision:- Buyer shall pay reasonable price, regarding remaining goods the agreement is there by avoided.

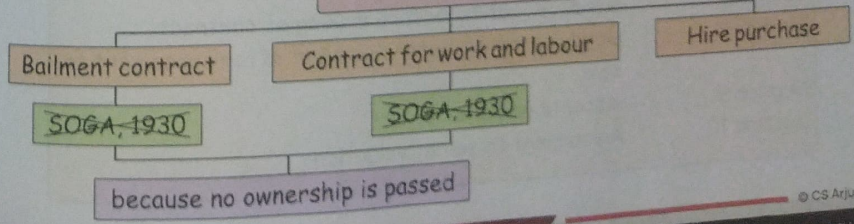
(2) Where the third party is prevented from making valuation by the default of the seller or buyer then, the party not at fault may sue the party at fault for damages.

### Section 5

Contract of sale how made

- offer and acceptance
- payment and delivery
  - immediate delivery of goods
  - immediate payment of price.
  - immediate payment & delivery of goods & price
  - the delivery or payment by installment
  - the postponement of delivery or payment or both

### Sale vs.







## Sale v. Hire purchase

Governed by hire purchase Act, 1972

Mean

Agreement

Goods let on hire & hirer has an option on TO PURCHASE

Includes

- a) POSSESSION OF GOODS DELIVERED
- b) Property in goods passed on payment of last installment
- c) Right to terminate agreement ANYTIME before property is passed

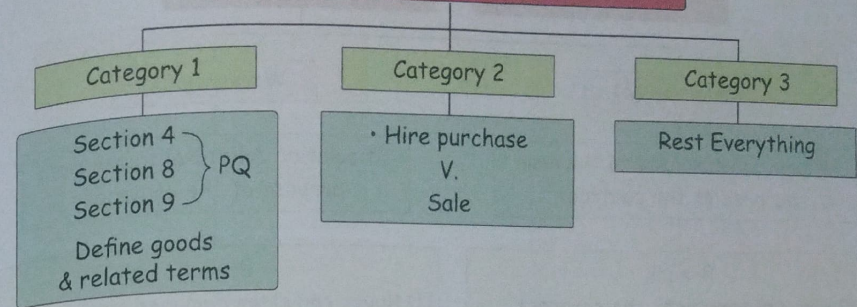
The contract is a sale if the customer cannot terminate the agreement at his will, and is bound to pay the price. It is a hire purchase agreement if he can terminate the agreement at his will and is not bound to pay the balance installments

## Coverage of sections under UNIT - 1

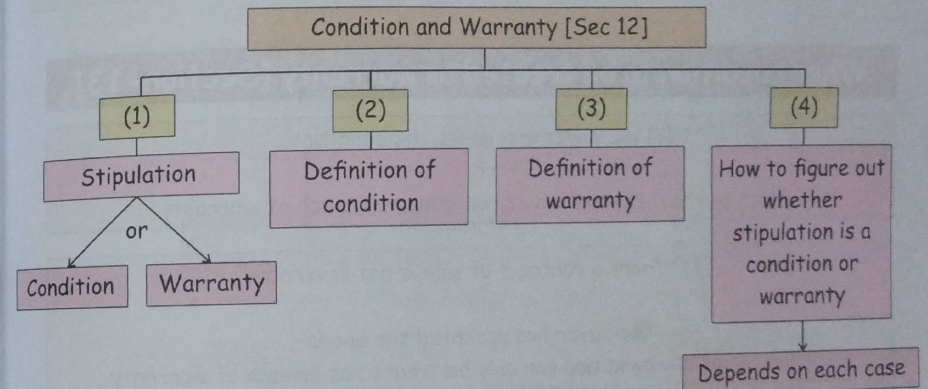
Section 1	Short title, Extent,
Section 2 (1)	Buyer
Section 2 (6)	Future goods
Section 2 (7)	Goods
Section 2 (10)	Price
Section 2 (11)	Property
Section 2(13)	Seller
Section 2 (14)	Specific goods
Section 3	Applicability of ICA of 1872 in contract of sale of goods
Section 4	Sale and agreement to sale
Section 5	Contract of sale how made
Section 6	Types of goods
Section 7	Goods perishing before making of contract
Section 8	Goods perishing before sale but after agreement to sale
Section 9	Ascertainment of price
Section 10	Agreement to sell at valuation



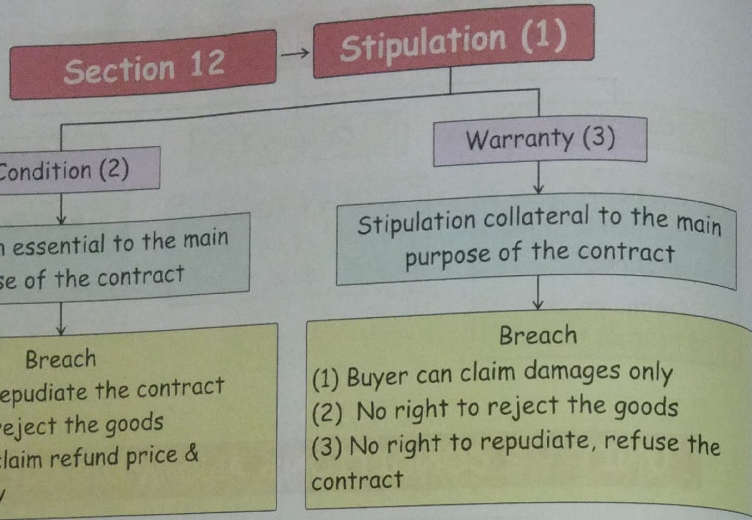
## UNIT - 1 Basic - Blue Print



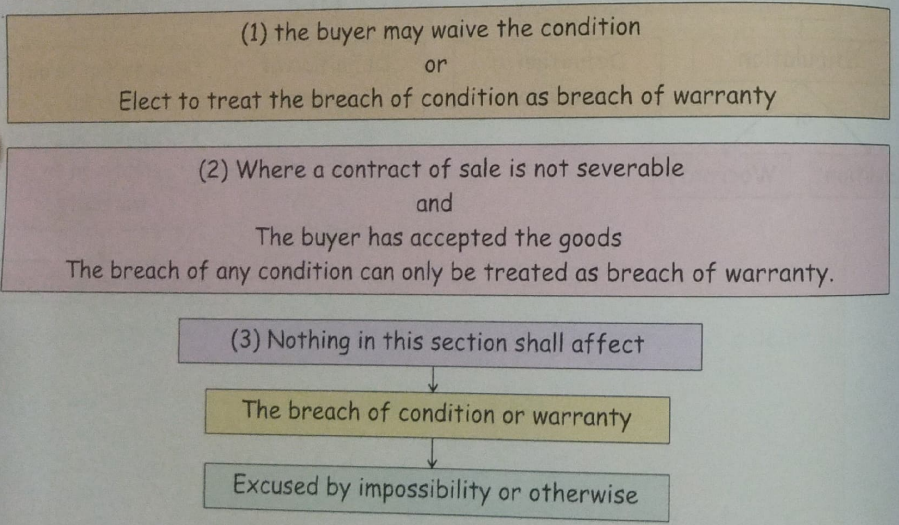
## UNIT - 2 CONDITIONS AND WARRANTIES



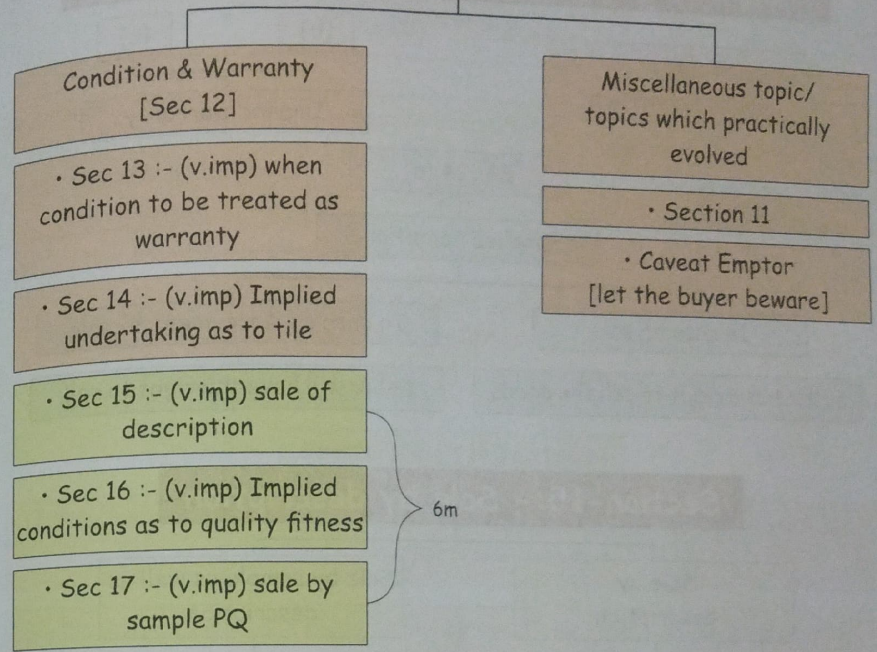




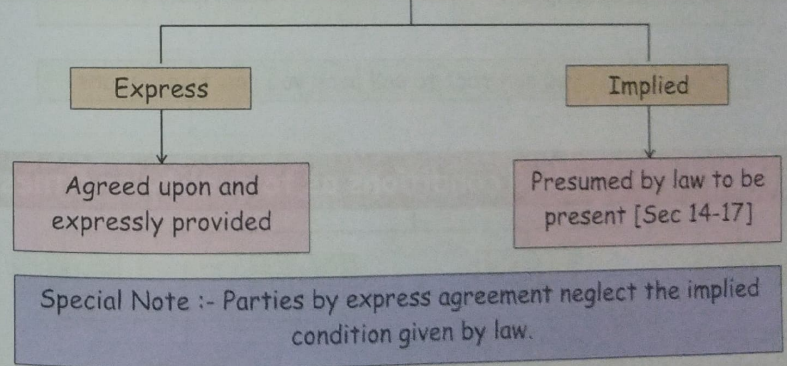
**When condition to be treated as warranty [Section-13]**



**Agenda of UNIT (II) - SOGA**



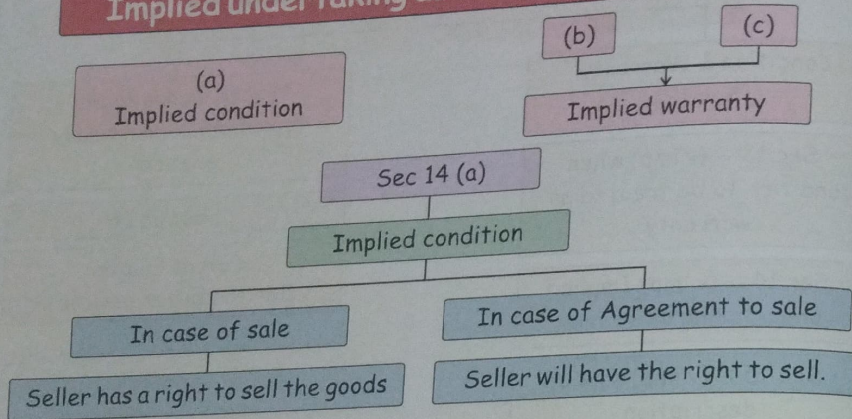
**Implied Conditions and Warranties**



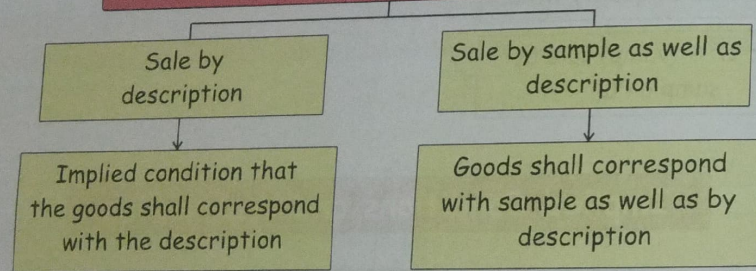




### Implied undertaking as to title [Section - 14]

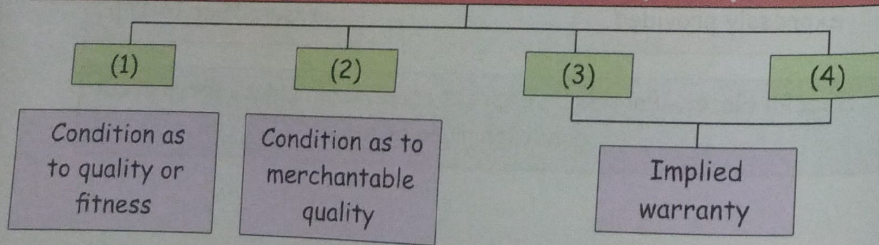


### Section-15:- Sale by description

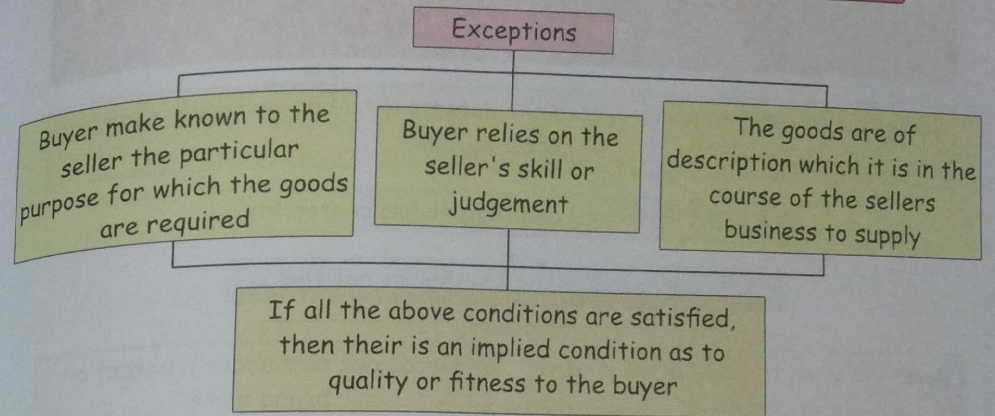


Principle :- If you contract to sell peas you can't sell beans

### Section 16:- Implied conditions as to quality or fitness



### Section 16 (1) :- Generally no implied condition

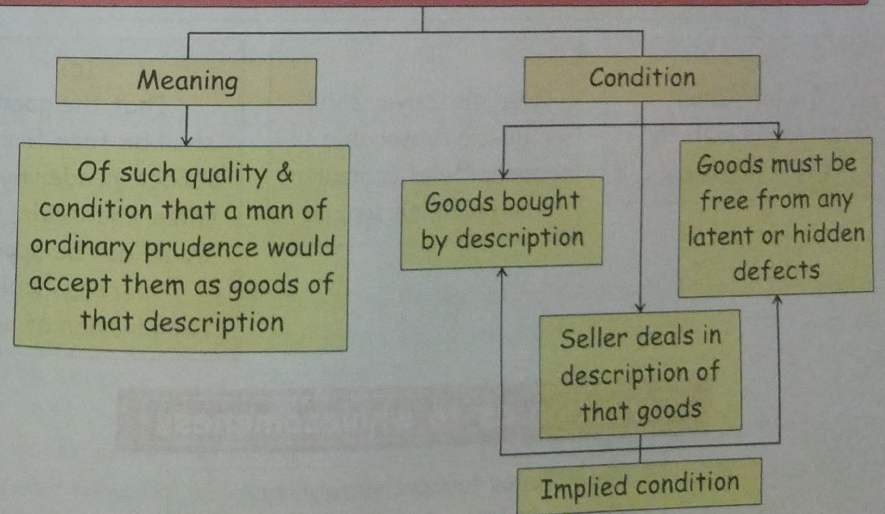


#### Special Note for Sec 16 (1)

(1) Disclosure of particular purpose is not required if the goods can be used only for a particular purpose

(2) No implied condition if buyer buys a specified article under its patent or other trade name.

### Section 16 (2) :- Condition as to merchantable quality



Most IMP





## Proviso to 16 (2) - Condition as to merchantable quality not applicable

Where buyer could have discovered the defects if he has reasonably examined the goods. eg. glue

Special Note for conditions to merchantability

It applies to goods whether or not the

Buyer refer on the skill & judgement of the seller

Goods are sold under a patent or brand name

## Section - 17

### Sale by sample

(1) Definition

(2) Implied conditions IMP

### Implied Conditions [Sec 17 (2)]

(a) The bulk shall correspond with the sample in quality

(b) That the buyer shall have a reasonable opportunity of comparing the bulk with sample

(c) That the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of sample

### Condition as to wholesomeness

1. Condition as to merchantability
2. Goods shall be wholesome.

## Implied warranty

14 (b)

14 (c)

16(3)

16(4)

(1) Warranty as to undisturbed possession :- buyer shall have and enjoy quite possession of goods.

(2) Warranty as to non-existence of encumbrances not declared or known to the buyer.

pledged or charged

(3) Warranty as to quality or fitness by usage of trade, [section 16 (3)]

here custom

(4) Disclosure of dangerous nature of goods.

- The seller must warn the buyer of the probable damage

## UNIT - II Conditions & Warranty - Blue Print

Category 1 very imp.

Category 2 imp.

- Section 15
- Section 16
- Section 17
- Section 13
- Caveat Emptor

Rest everything

## CAVEAT EMPTOR [Let the buyer beware]

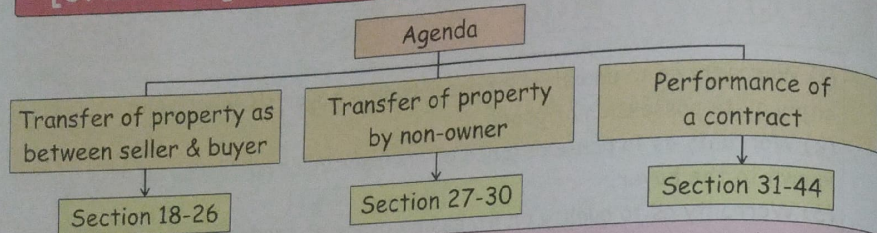
### Duty of the buyer according to the doctrine of 'CAVEAT EMPTOR'

- When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of goods.
- If the goods turn out to be defective, he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling. [Explanation to Sec 17 of ICA]
- Duty of seller according to the doctrine of caveat emptor. i.e CAVEAT VENDOR [let the seller beware] in case of all the implied condition seller is liable for any kind of defects.

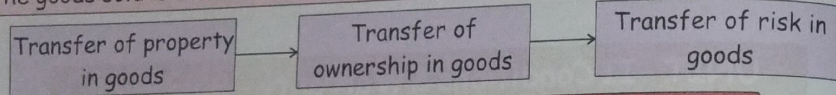




# [UNIT - III] Transfer of Ownership/Property of goods

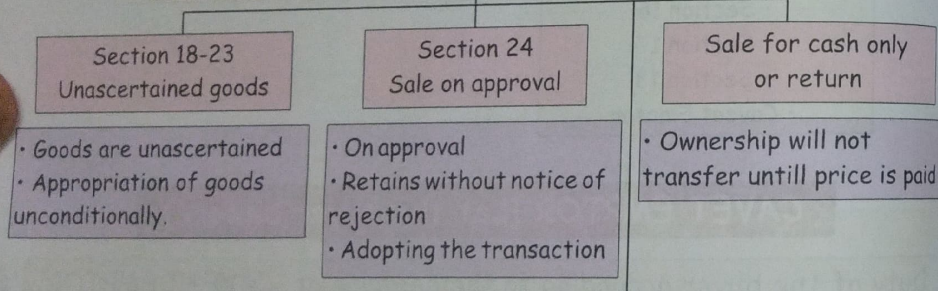


Principle:- The main object of contract of sale is, transfer of property in goods from the seller to the buyer. Once the ownership / property in goods is transferred, risk in the goods sold is also transferred.

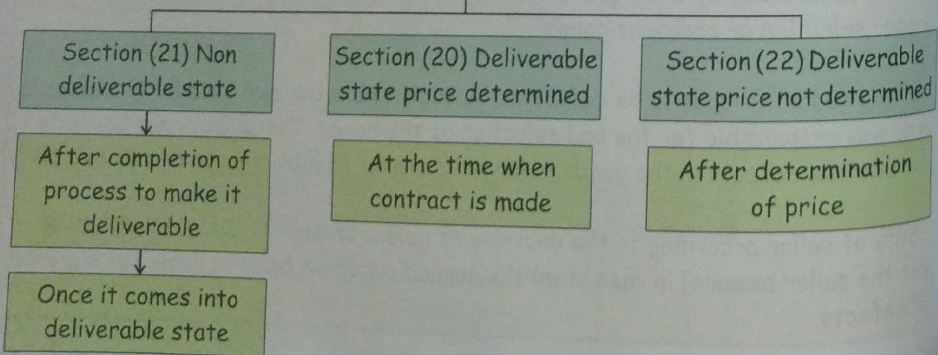


## Rules regarding transfer of property

### Transfer of property from seller to buyer

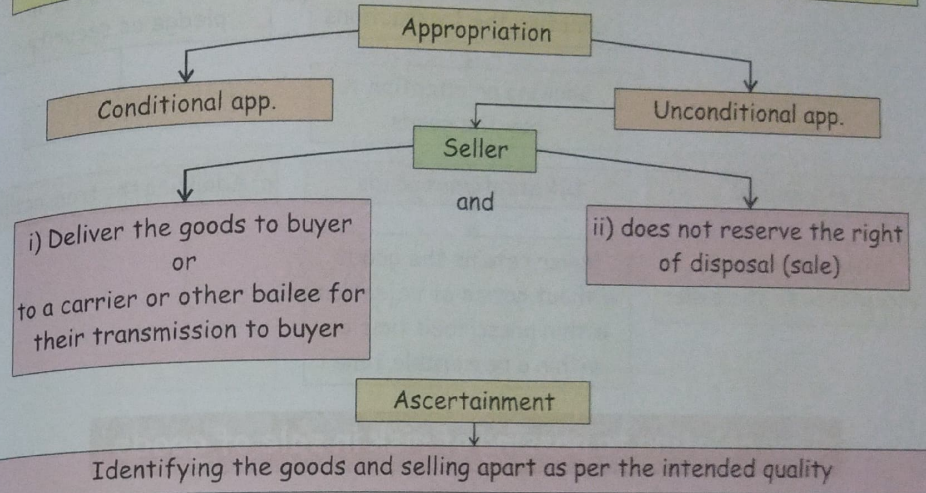


### Ascertained goods i.e. specific goods



# Transfer of property in unascertained goods [Sec 18 & 23]

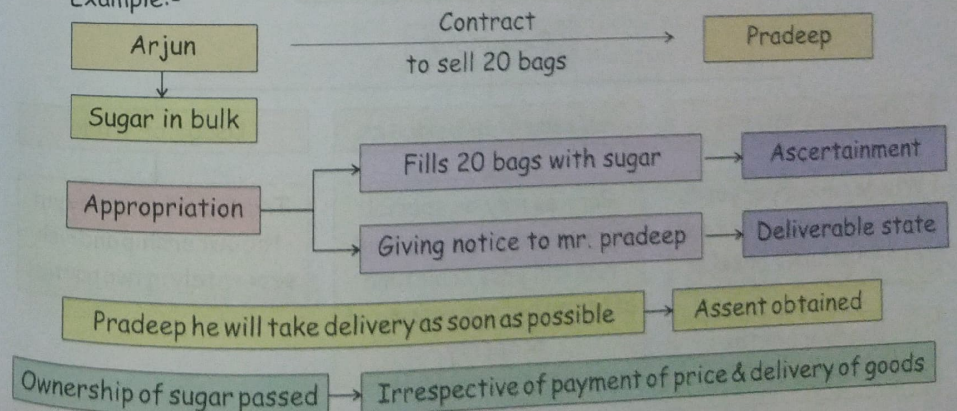
Appropriation:- Selection of goods with the intention of using them in performance of contract



## Appropriation

- 1) Goods of the description mentioned in the contract must be produced or obtained.
- 2) Goods must be in a deliverable state.
- 3) Goods must be unconditionally appropriated
- 4) Assent of the party

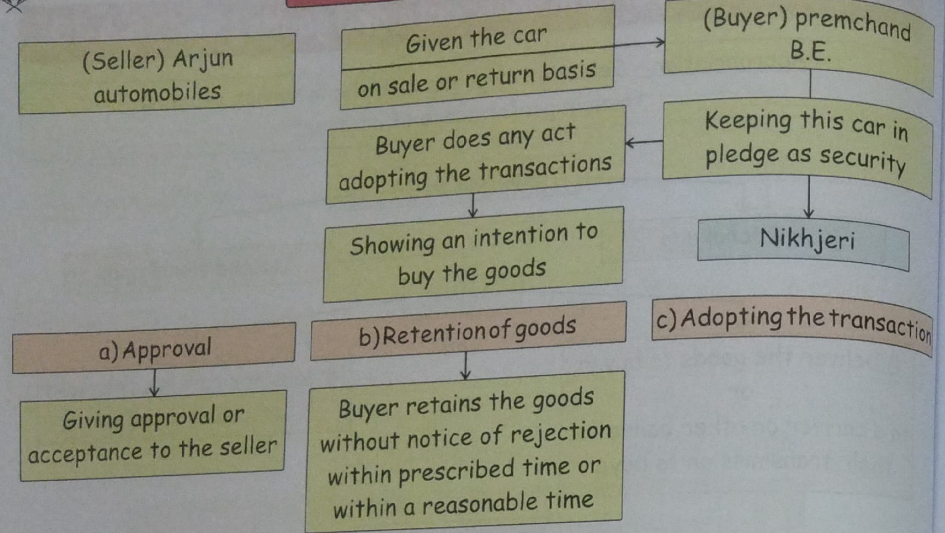
Example:-



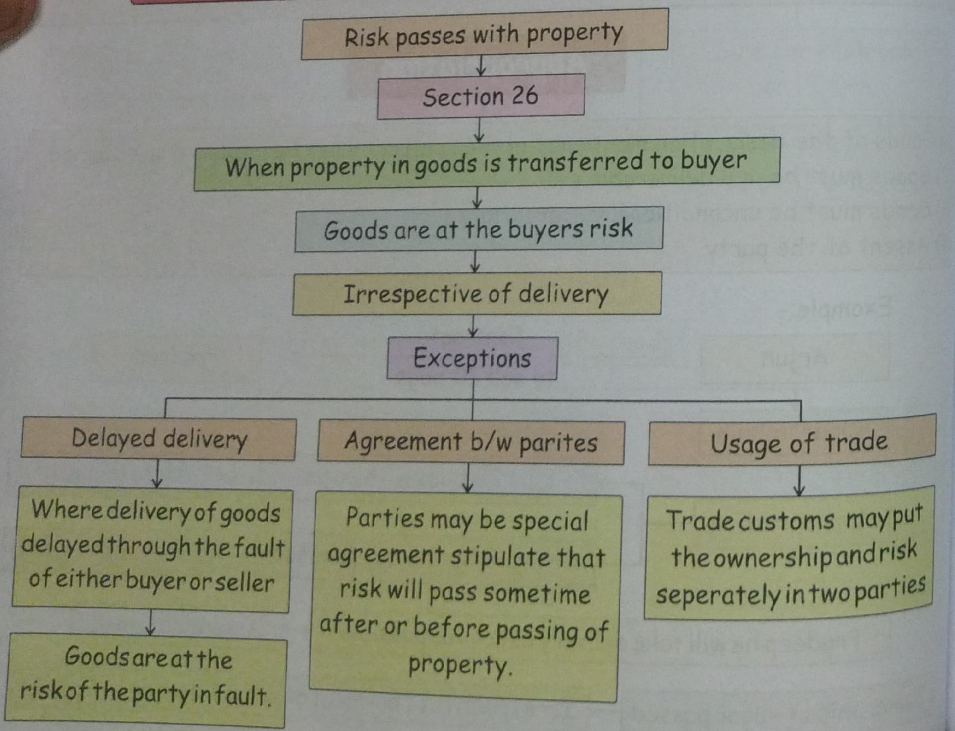




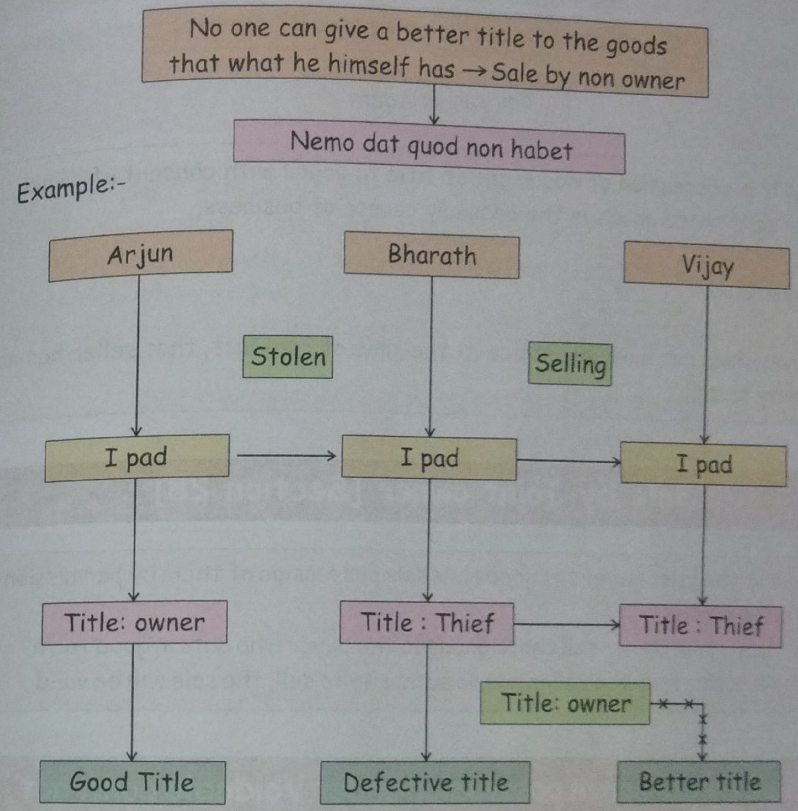
### SALE ON APPROVAL



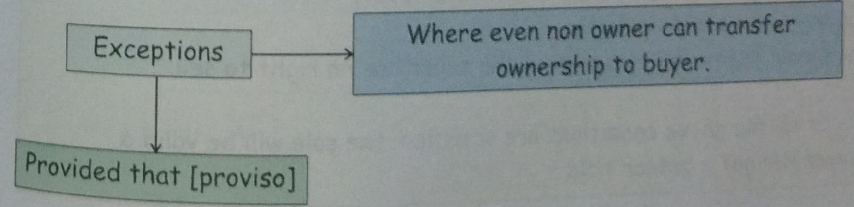
### Law relating to passing of risk in sale of goods



### Transfer of title by Non-Owner [Section 27]



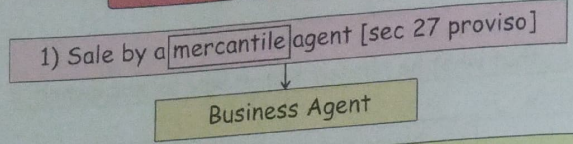
Special Note:- Even though the buyer acquired the goods in good faith and for value, still buyer cannot become or have better title.







### Proviso to Section 27



- (a) MA is in possession of document of title to goods with consent of owner
- (b) MA sells those goods in the ordinary course of business.
- (c) buyer buys 

Good faith

and

for value
- (d) Buyer does not have any notice at the time of contract, that seller has no authority to sell.

### Sale by Joint owner [Section 28]

- a) If one of the joint owners of goods has sole possession of them by permission of the co-owners.
- b) And such a joint owner sell those goods to the buyer who acts in good faith, without notice that the seller has no authority to sell, the sale will be valid.

### Sale by person in possession under Voidable contract [Section 29]

- 1) If a person has possession of goods under voidable contract.
  - 2) The contract has not been rescinded or avoided so far
  - 3) The person having possession sells it to a buyer.
  - 4) The buyer acts in good faith
  - 5) The buyer has no knowledge that the seller has no right to sell.
- Note:- If all the above conditions are satisfied, the sale will be valid & the buyer will get a better title.

### Sale by buyer obtaining possession before property passes - Section 30 (2)

### Sale by one who has already sold goods but continues possession - Section 30 (1)

- (i) A seller has possession of goods after sale
- (ii) With the consent of the other party (i.e buyer)
- (iii) The seller sells goods (already sold) to a new buyer.
- (iv) The new buyer acts in good faith
- (v) The new buyer has no knowledge that the seller has no authority to sell

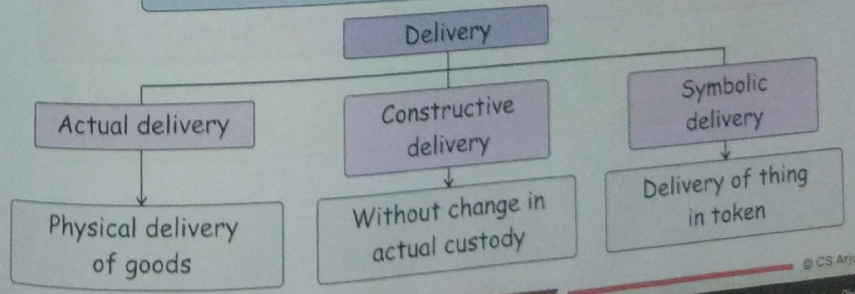
### Transfer of title by non owner

Practically evolved concept not covered by section

- (1) Effect of Estoppel  
True owner by his conduct, Act or omission leads the buyer to believe that seller has the authority to sell or induce buyer to buy the goods
- (2) Sale by an unpaid seller [Sec 54 (3)]
- (3) Sale under other provisions.
  - a) Liquidator
  - b) Finder of lost goods
  - c) Sale by pawnee.

### Section 33 / Sec 2 (2)

- Delivery means voluntary transfer of possession
- From one person to another







### Constructive delivery

When delivery is affected without any change in custody or actual possession of goods it is called constructive delivery or delivery by acknowledgement.

Constructive delivery takes place when a person in possession of goods belonging to seller acknowledges to the buyer he is having the goods on buyers behalf

### Liability of buyer for neglecting or refusing delivery of goods - Section 44

The buyer is liable to the seller

a) for any loss occasioned by his

- Neglect

or

- Refusal

to take delivery

and

b) for a reasonable charge for the care & custody of the goods  
ex: godown charges

Buyer - when liable ?

and

(a)

Seller is ready & willing to deliver goods and requested the buyer to take delivery.

(b)

Buyer does not within a reasonable time after such request, take delivery of the goods.

### UNIT -03 Transfer of property Ownership of goods - Blue Print

Category 1

- Sale on Approval [Section 24]
- Sale for cash only/ return
- Risk passes with property [sec 26]
- Transfer of title for non-owner [sec 29-30]

- Liability of buyer for neglecting or refusing delivery of goods [sec 44]
- Constructive delivery

Category 2

Transfer of property in unascertain goods [sec 18-23]

Category 3

Miscellaneous

Rest everything

### UNIT -4 UNPAID SELLER

Agenda

#### 1. Right of unpaid seller against goods

- Section 45 definition
- Section 46 rights

#### 2. Unpaid sellers lien

- Section 47-49

#### 3. Stoppage in transit

- Section 50-52

#### 4. Suits for breach of the contract

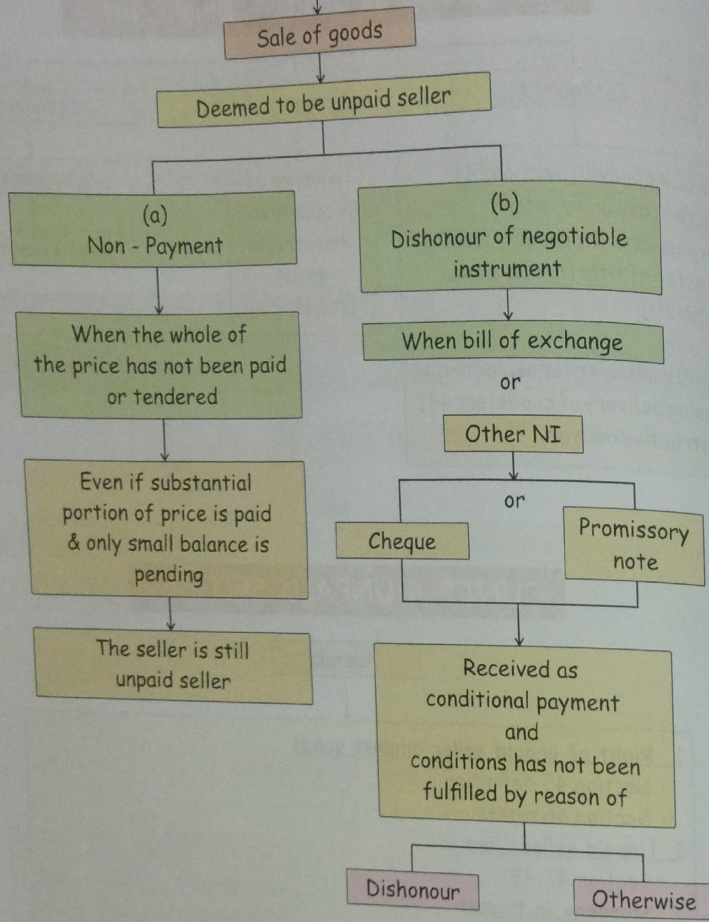
- Section 55-61

#### 5. Miscellaneous

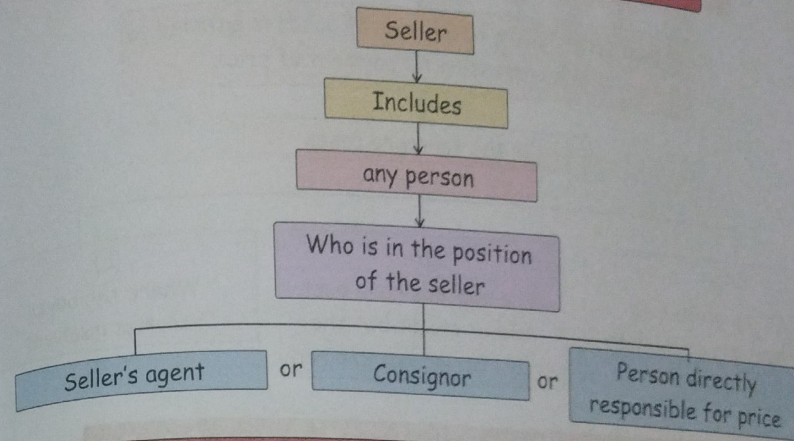
- Section 62 -66



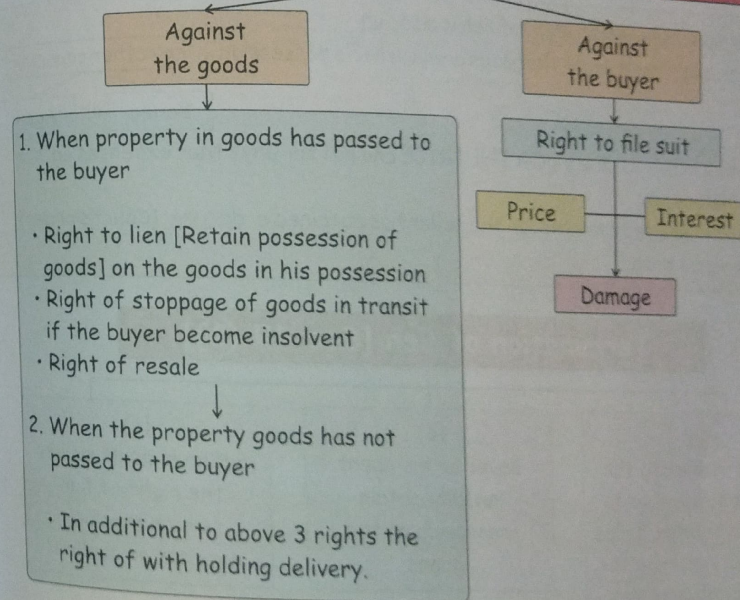
## Unpaid Seller [Sec 45 (1)]



## Seller to include Agent [Sec 45 (2)]



## Rights of an Unpaid seller [Section 46]







## When to Retain Possession - Section 47

Unpaid seller having possession of goods is entitled to retain possession till payment of price

In the following cases

- (a) Where goods sold without any stipulation as to credit
- (b) Where goods have been sold on credit but the credit period has expired
- (c) Where the buyer becomes insolvent

## SPECIAL NOTE in case of right of lien

- Once the possession is lost, right of lien is also lost
- Lien can be exercised even if the goods are in seller's possession in **any other capacity**.
  - Bailee or Agent
- Lien can be exercised ONLY FOR THE PRICE and not for any other expenses eg. lien godown charges, etc
- Lien can be exercised even though the seller has obtained a decree (Court's order) for the price of goods

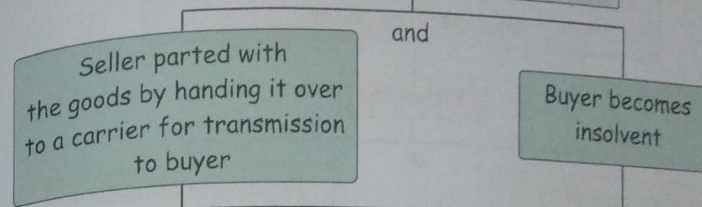
## Termination of lien [Sec 49 (1)]

- (a) Seller delivering the goods to buyer or to carrier or other bailee without reserving the right of disposal.
- (b) Buyer or his agent lawfully obtain possession of the goods
- (c) Seller himself waives the right of lien which may be express or implied.



## Right of stoppage in transit

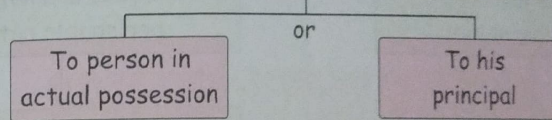
When can be stoppage? [Section 50]



Seller can stop the goods in transit and reclaim possession of goods

(2) Buyer must have become insolvent (Special points for right of stoppage in transit)

(3) Notice of stoppage may be given

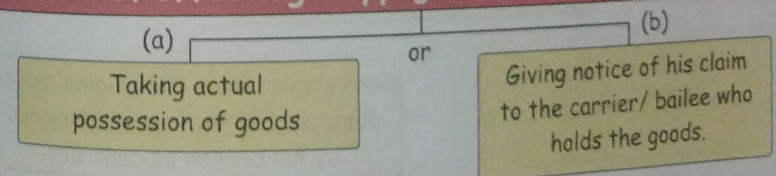


(4) Goods are deemed to be transit until the buyer or his agent takes delivery of them

(5) The cost of redelivery shall be borne by seller

(6) Unpaid seller lost his right of lien, since he has parted with possession of goods

## Manner of effecting stoppage in transit - Section 52 (1)







## Right of resale

Can be exercised only when the seller is in possession of goods.

Either by

or

Exercise of lien on goods

Regained possession from carrier upon buyers insolvency

## Right as to Resale [Sec 54]

### Situation

Goods are of perishable nature

Unpaid seller can resell such goods without any notice to buyer

Goods are not of perishable nature

Where unpaid seller gives notice to the buyer of his intention of

Buyer does not pay or tender of the price without reasonable time

## What is unpaid seller right in such situation ??

USR [unpaid seller right]

or

Resell the goods without reasonable time

Can recover from the original buyer damages for any loss occasioned by his breach of contract.



## What if ?? If the unpaid seller has not given the notice ?

Unpaid seller's point of view

and

Cannot claim any damages

The buyer is entitle to profit, if any on resale

## What if the notice is given ?

Unpaid seller

and

Can claim any damages

Buyer is not entitle to profit, if any on resale

## Special points to be noted

- Subsequent buyer acquires good title as against the original buyer, despite the fact that no notice of resale has been given by seller to original buyer.
- Where the buyer had paid some money by way of advance or deposit, then such amount can be claimed by him, subject to the seller's claim for damages.
- No notice is required to be given to the buyer if seller expressly reserve a right of resell in case the buyer makes any default.

## Suits for breach of contract [55-61]

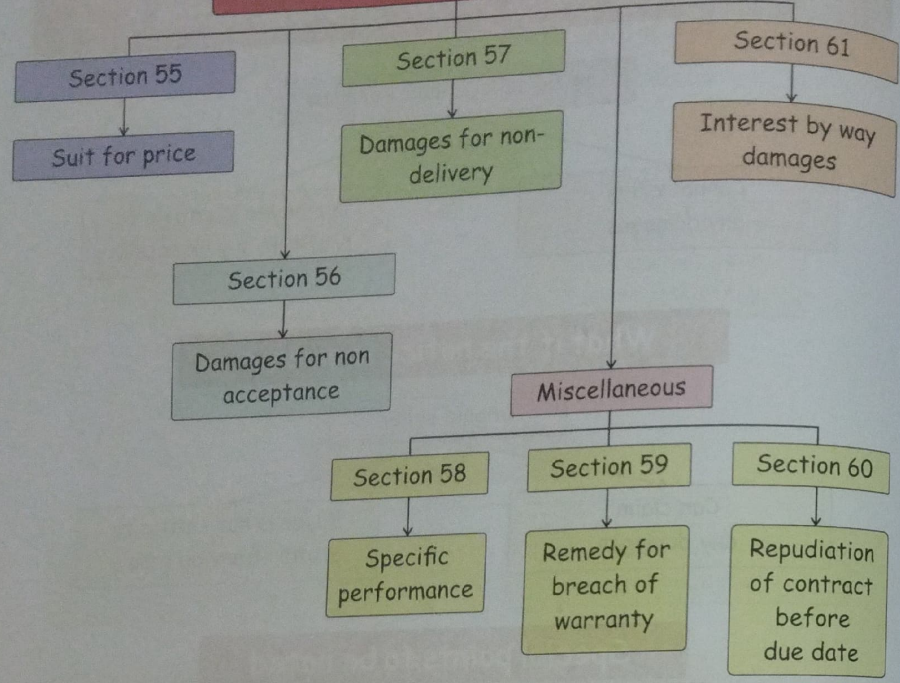
Right of us against the buyer

Right of buyer against the seller

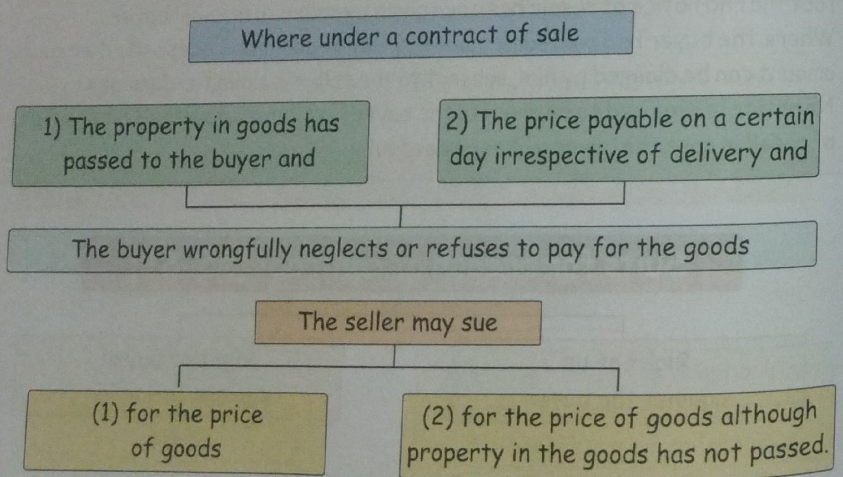




### Suit for breach of contract

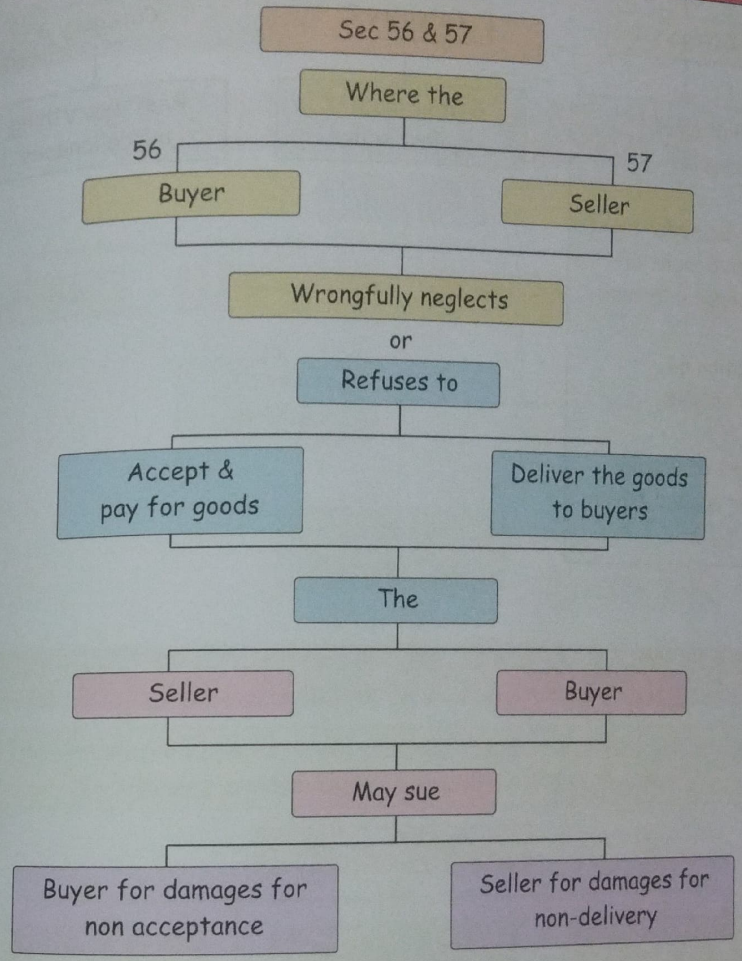


### Section 55 → Suit for Price



### Damages for non acceptance and Section 56

### Damages for non delivery Section 57



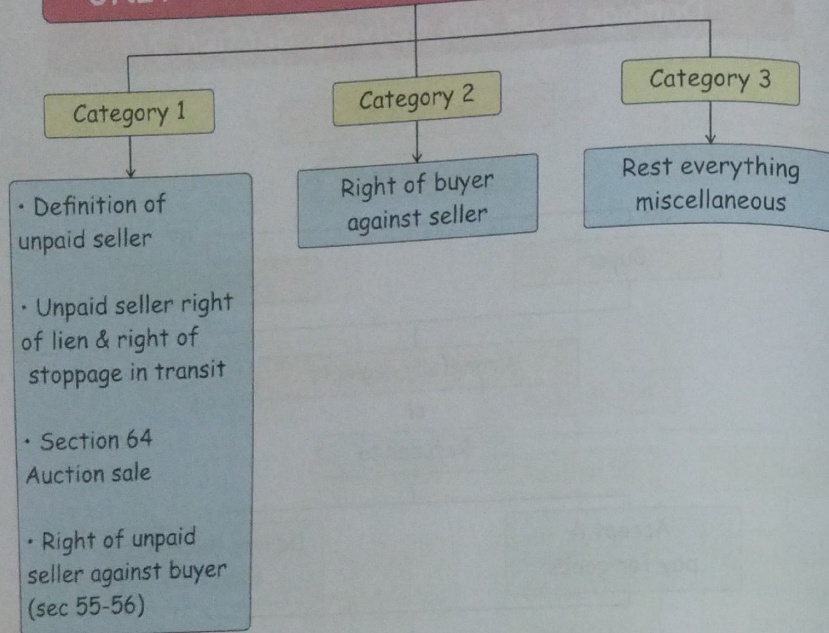
### Section 64 - Auction sale

Refer bulls eye



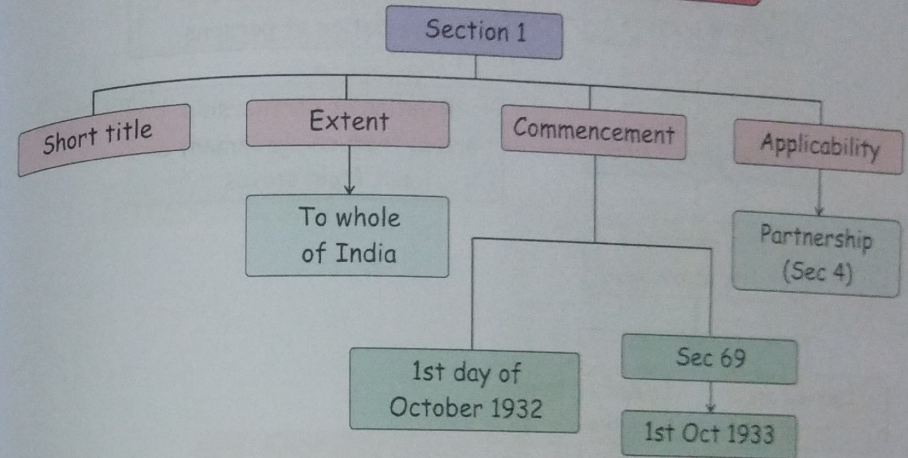


## UNIT - 04: UNPAID SELLER - Blue Print



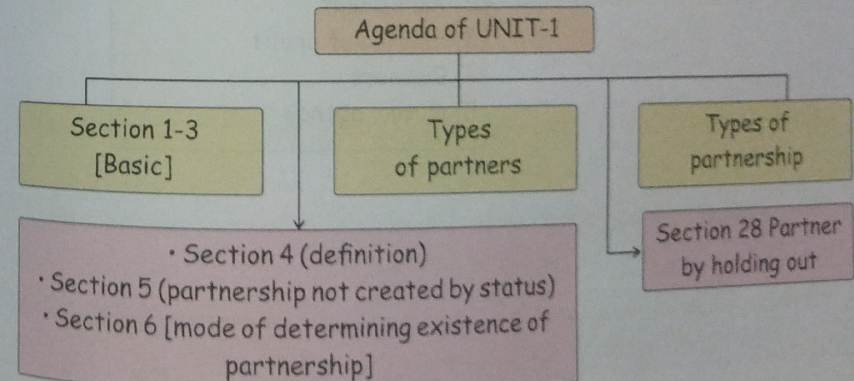
## Chapter - 4

### The Indian Partnership Act, 1932



### Section 3 Application of provision of IPA 1932.

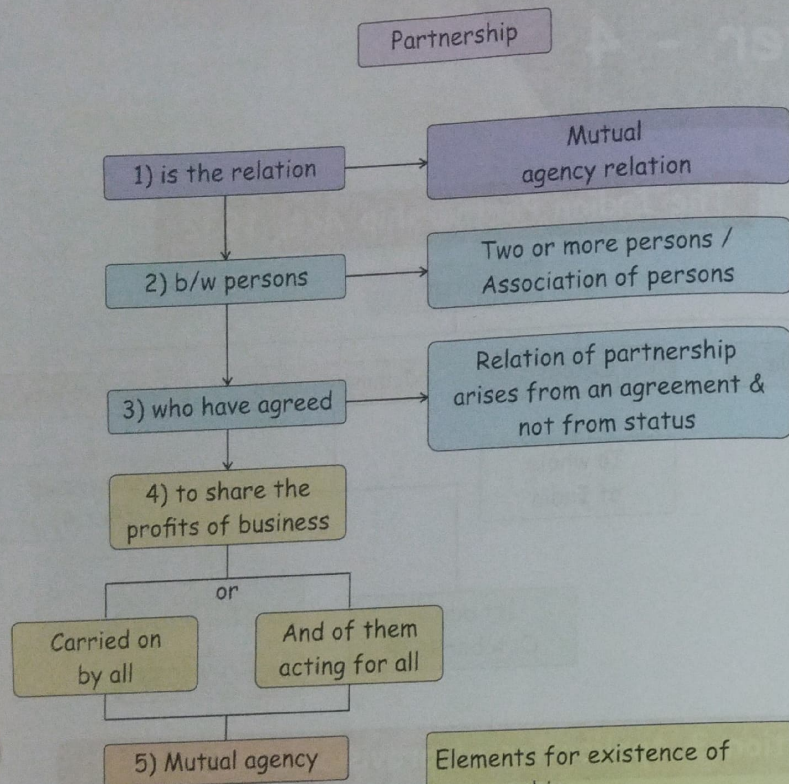
The provision of IPA 1932 will continue to apply to contracts for the partnership, unless they are inconsistent with this Act.







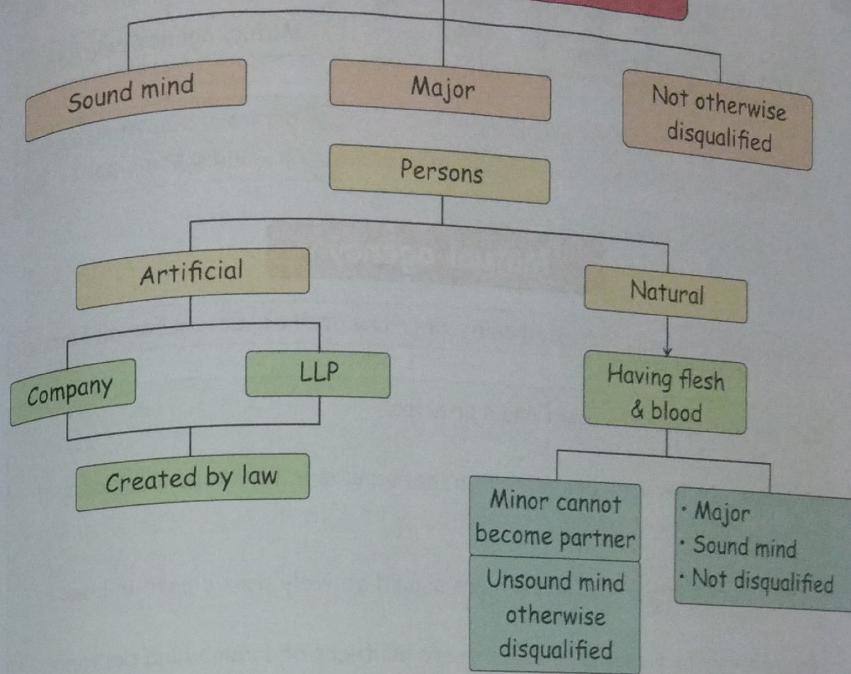
## Definition of Partnership [Sec 4]



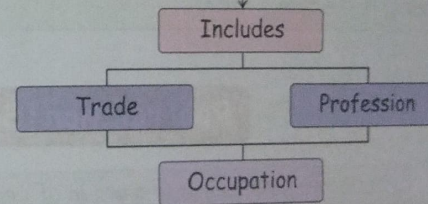
### Elements for existence of partnership

- 1) Association
- 2) Agreement
- 3) Sharing of profit
- 4) Business
- 5) Mutual agency

## Association of persons



## Sharing of profit of a business

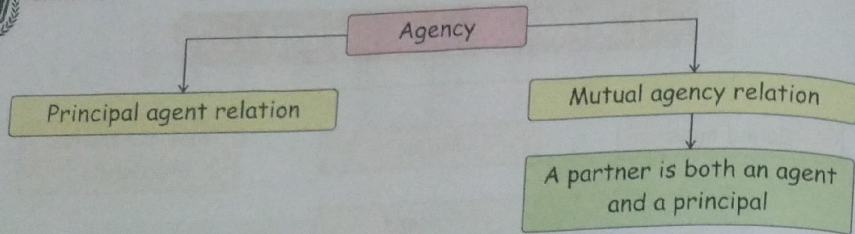


In simple words, persons entering into agreement must be having motive of earning of profit.

Associations created for charitable, religious and social purposes are not partnerships.

Sharing profit of business is one of the essential element of partnership but it cannot be the conclusive evidence of partnership.





### Mutual agency

Partnership business is carried on by all or any of them acting for all Hence:-

- a) A partner is both an agent and a principal
- b) Partner, by his acts, bind other partners and is in term bound by acts of other partners
- c) It is not essential that all partners should actively participate in business

Business may be managed by one or more partners and remaining partners will be bound by their acts provided.

Such acts relate to carrying on firm's business in the ordinary course of business in the firm's name.

### Real relation [Sec 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 b/w parties

i.e Existence of mutual Agency - True test

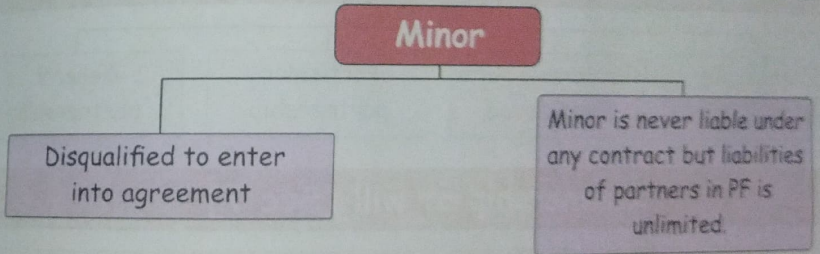
The true test lies in existence of mutual agency relationship, i.e. the capacity of a partner to bind other partners by his acts done in firm's name and be bound by the acts of other partners.

### Specific Exclusions from partnership

- A lender of money → to any persons engaged or about to engage in any business
- A servant or agent as remuneration
- A widow or child of deceased partner as annuity
- A previous owner or part owner of business as consideration for sale of goodwill
- Joint owners sharing gross returns arising from property held by them are not partners.

### Minor may be admitted to the benefits of partnership with the consent of all existing partners - Section 30

Other words, minor may become beneficiary in partnership but cannot become partner in partnership



### Persons competent to be partners

- 1) Every person competent to enter into a valid contract
- 2) Minor cannot become a partner he may become beneficiary
- 3) Company can become a partner.
- 4) Two partnership firms cannot enter into partnership.
- 5) Two partnership firms cannot enter into partnership, though all partners of the two firms may form a partnership



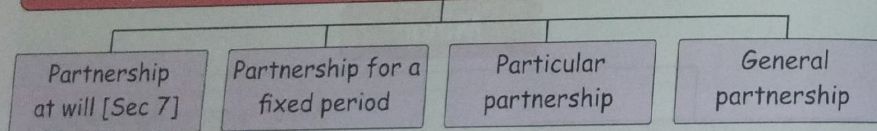


## Partner by holding out - Section 28

Anyone who by

- Words spoken or spoken or written or
- By conduct represents himself or knowingly permit himself to be represented to be partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, such partnership is known as the partnership by holding out or partnership by estoppel
- Sec 28 is also applicable to a former partner who has retire from the firm without giving proper public notice of his retirement.
- In such cases a person who, even subsequent to the retirement gives credit to firm on the believe that he was a partner, will be entitled to hold him liable

## Types of partnership | kinds of partnership



## Partnership at will [Sec 7]

1. When no fixed period has been agreed upon for the duration of the partnership and
2. There is no provision made as to the determination of the partnership. In simple words, there is no provision in the partnership deed as how partnership will come to the end
3. A partnership at will may be dissolved by any partner by giving notice in writting to all other partners of his intention to dissolve the same

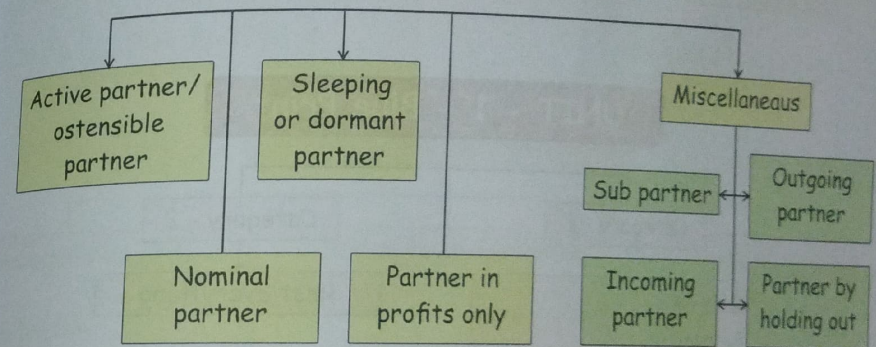
## Partnership for a fixed period

1. When provision is made by a contract for duration of partnership, the partnership is called partnership for fixed period
2. It is created for a particular period of time
3. It comes to an end on the expiry of the fixed period.

## Particular Partnership - Sec 8

1. Person may become partner with another in particular undertaking
2. Adventure/undertaking: once the undertaking is completed, particular partnership is dissolved.

## Types of partner



**Active partners:** - who actively participates in the conduct of partnership business.

**Sleeping partner :-** who does not actively take part in conduct of the partnership business

**Nominal partner:** - A partner who lend his name to the firm without having any real interest in the firm & is not entitled to share the profits, does not take active participation in business, However he is liable to third parties for all acts of the firm

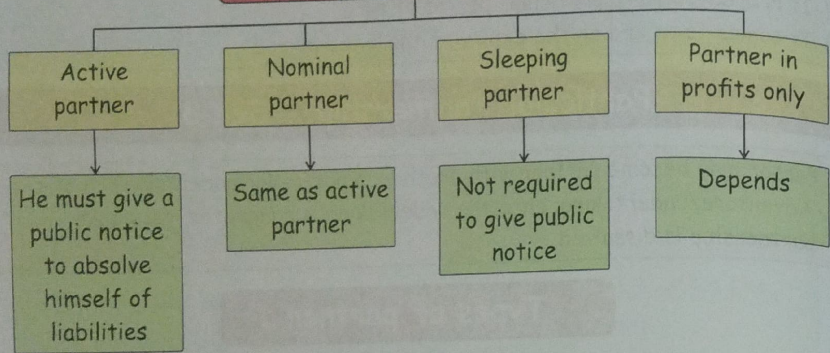
**Partner in profits only:-**

- Entitle to share the profits only
- Not liable for losses
- Liable to third parties for all acts of partners

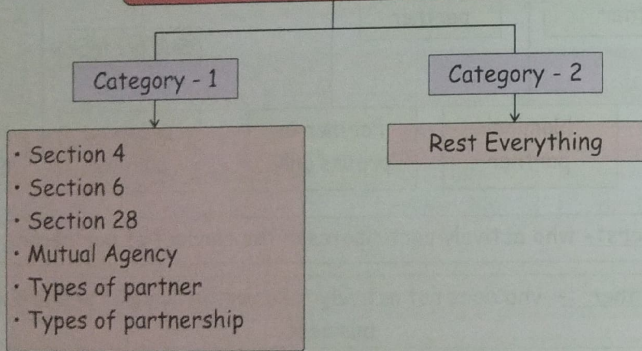




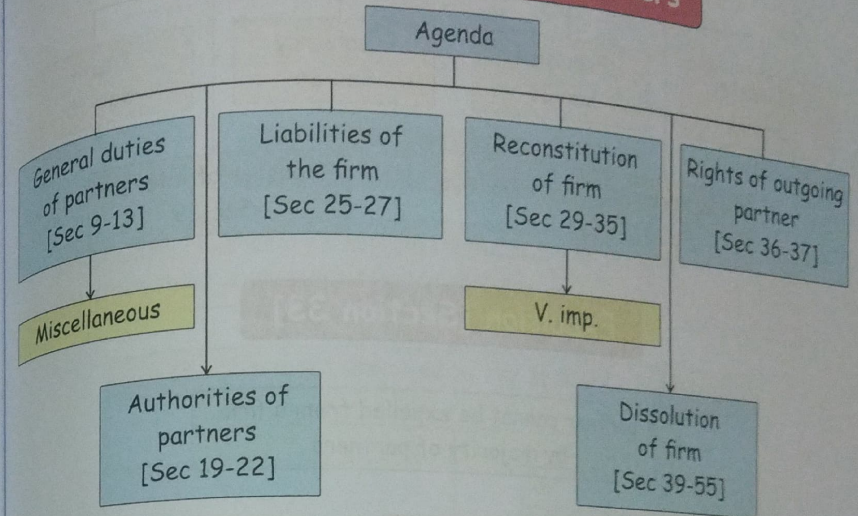
### Public notice



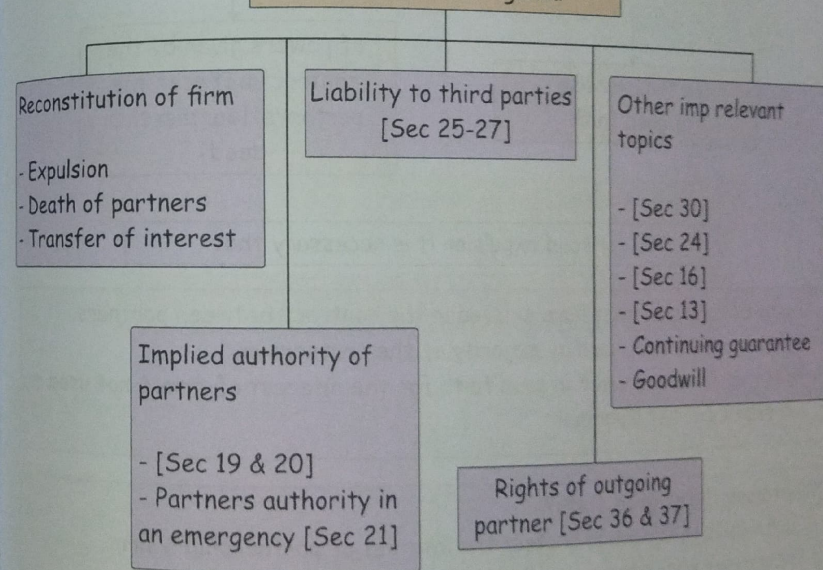
### UNIT - 1 - Blue Print



## UNIT-02 Relations of Partners



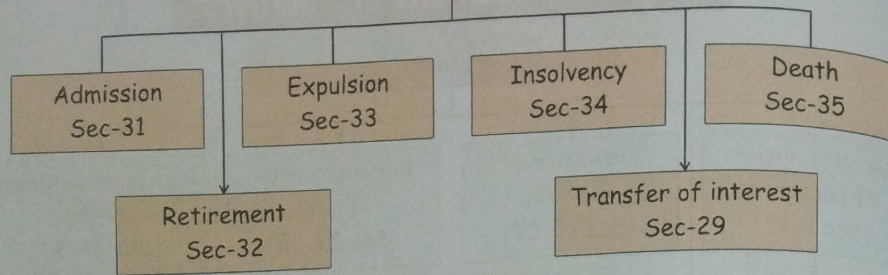
### Our Classroom Agenda







## Reconstitution of firm



## Expulsion [Section 33]

A partner cannot be expelled from a firm - by majority of partners

Except

In the exercise of good faith

of powers given by the contract between the partners, [partnership deed]

a) for valid expulsion it is necessary that

- Power of expulsion must have existed in the contract between partners.
- Power has been exercised by majority of the partners and
- Power has been exercised in good faith for the interest of firm & not used as vengeance against a partner

### What constitutes good faith?

- Such expulsion is done to protect the interest of partnership & firm
- The partner who is to be expelled has been served with a notice
- Such partner has given an opportunity of being heard.

## Expulsion void

When a partner is otherwise expelled that in good faith, it is null & void.  
- He continues to be partner & can claim reinstatement

## Death [Section 35]

- (a) The firm is generally dissolved on the death of a partner.
- (b) When under a contract b/w the partners

The firm is not dissolved by the death of a partner

(a)

The estate of deceased partner remains liable only for such acts as were done during tenure of his partnership

(b)

His estate is NOT LIABLE for any act of the firm done after his death

(c) No public notice is required on the death of a partner.

## Transfer of interest [Section 29]

Modes of transfer [Sec 29]

- a) Absolute transfer, or
- b) Mortgage or
- c) Creation of charge by the transferor

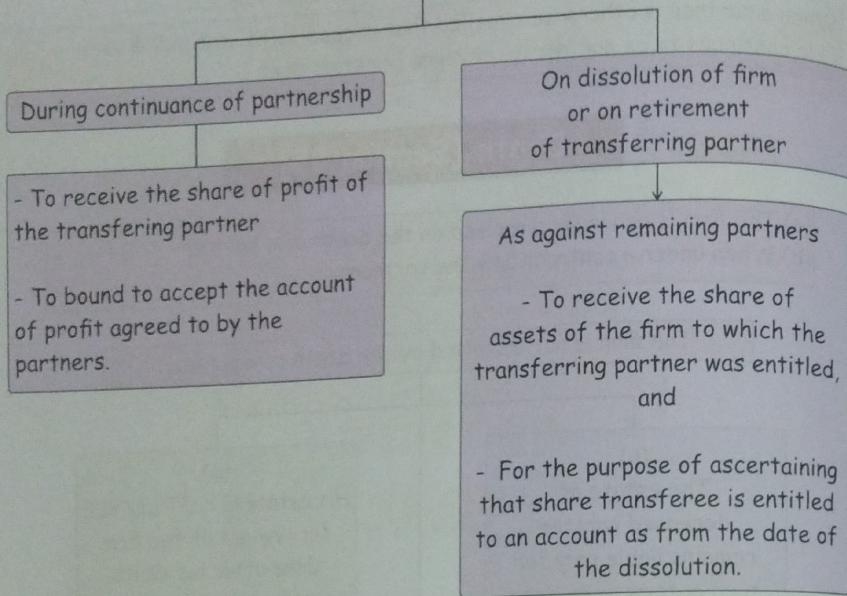
Transferee not entitled to [sec 29]

- a) Interfere with the conduct of business.
- b) To require accounts
- c) To inspect books of the firms.

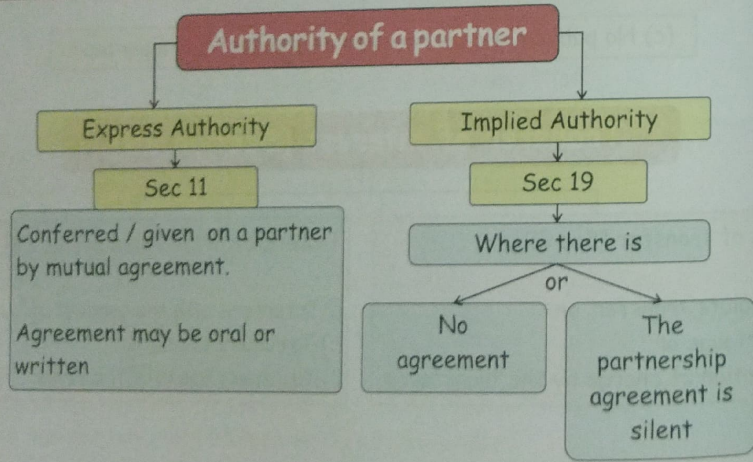




### Transferee's Rights



### Concept of implied authority of a partner [Sec-19]



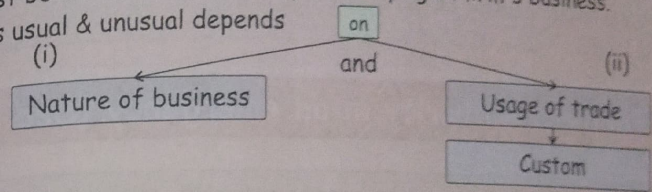
### Conditions of partner's act to bind the firm i.e for implied authority. [Sec 19(1)]

#### 1. Normal business

- (a) Act done by partners must relate to normal business of the firm.
- (b) If the act is of nature not relating to the normal business of firm it will not bind the firm even if it has been done in firm's name

#### 2. Usual way of carrying of business

- (a) Act must be done in the usual way of carrying on firm's business.
- (b) What is usual & unusual depends



#### 3. In the firm's name

The act must be done in firms name or should be done in some manner which shows an intention to bind the firm.

### Restriction or extension of implied authority [Sec 20]

- (a) The partners, by mutual agreement can restrict or extend the implied authority of any partner

- (b) Notwithstanding any restriction, any act done by a partner on behalf of the firm.

- Which falls within his implied authority, bind the firm.
- Unless the person with whom he is dealing
- Knows of the restriction
- in simple words, a third party is not affected by limitation of implied authority unless he has actual notice of it.
- Does not know or believe that partner to be a partner





### Acts outside Implied Authority [Section 19 (2)]

In the absence of any custom to the contrary, implied authority of a partner does not enable him to -

- (a) Submit to arbitration, a dispute relating to business of the firm.
- (b) Open a bank account on behalf of the firm in partner's own name
- (c) Compromise or relinquish any claim or portion of claim by the firm.
- (d) Withdraw any suit or proceeding filed on behalf
- (e) Admit any liability in a suit or proceeding against firm
- (f) Acquire immovable property on behalf of the firm
- (g) Transfer immovable property belonging to the firm
- (h) Enter into partnership on behalf of the firm

### Partners Authority in an emergency [Sec 21]

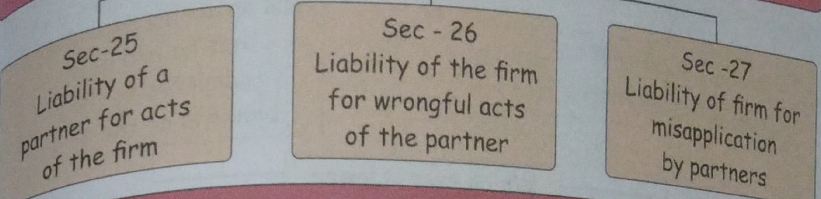
In case of an emergency, a partner has the authority to do all such acts so as to protect the firm from loss as would be done by a man of ordinary prudence under similar conditions. This acts binds the firm even though outside the implied authority of the partner.

### Personal profit earned by partners [Sec 16]

According to section 16, subject to contract between the partners

- (a) If a partner derives any profit for himself from
  - Any transaction of the firm, or
  - From the use of the property or business connection of the firm or
  - The firm name.
  - He shall account for that profit & pay it to the firm
- (b) If a partner carries on any business of the same nature and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business

### Liability to third Parties [Sec 25-27]



### Section - 25

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

### Section - 26

Where by the wrongful act or omission of a partner in the ordinary course of business of the 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 to the same extent as the partner

### Section - 27

- a) Where a partner acting within his apparent authority receives money or property from a third party & miss applies it, or
- b) A firm in the course of its business receives money or property from a third party, & 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.

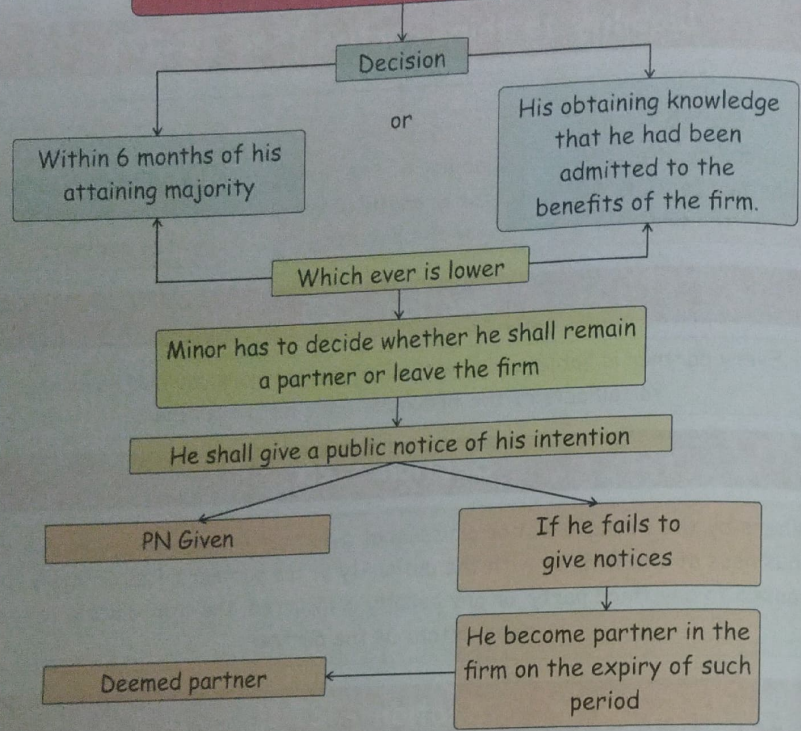
### Rights & liabilities of minor in partnership firm [Sec 30]

- Rights**
- 1) Sharing of profits and property of firm
  - 2) Inspection & copying of accounts, he cannot inspect books other than account books that may contain confidential information restricted to partner only

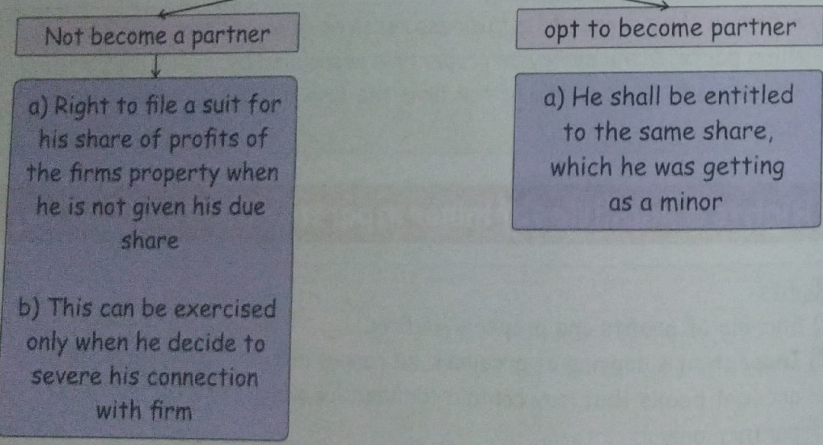




### Position on attaining majority



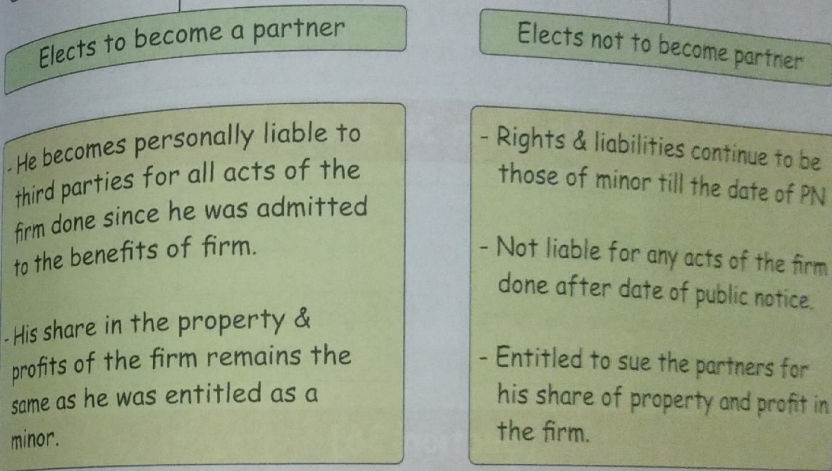
### Option to become partner



### Liabilities of a minor in a firm

- a) Liability is confined [limited] only to the extent of his share in profits and property of the firm
- b) He is neither liable nor his private estate liable
- c) He cannot be declared insolvent, but if the firm is declared insolvent, his share in the firm rests in the official receiver

### Exercise of option by minor attaining majority



### Effect of notice to an acting partner of the firm - Sec 24

According to section 24 of the IPA, 1932, notice to a partner who habitually acts in the business of 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

This notice must be actual & not constructive

It must relate to the firm's business, only then it would be regarded as notice to the firm





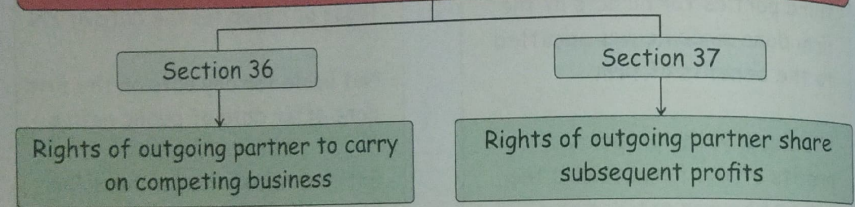
### Remuneration of partner [Section 13 (a)]

A partner is not entitled to receive remuneration for taking part in conduct of business

- But this rule can always be varied by an express agreement, or by a course of dealing in which event the partner will be entitled to remuneration
- Thus a partner can claim remuneration even in the absence of a contract, when such remuneration is payable under the continued usage of the firm

In other words, where it is customary to pay remuneration to a partner for conduct of the business, he can claim it even in the absence of a contract

### [Section 36 & 37]



### [Section 36]

He may carry on business competing with that of the firm & may also advertise such business but subject to a contract to contrary, he may not

- Use the firm name, or
- Represent himself as carrying on firm's business or
- Solicit the custom of persons who were dealing with firm before he ceased to be a partner

He may sometimes agree with his partner that on his cessation, he will not carry on a business similar to that of firm within

- A specified period
- Specified local limit and

not with standing anything contained in section 27 of ICA 1872, such agreement shall be valid if the restrictions are reasonable

### [Section 37]

- In the absence of contract to contrary, outgoing partner is entitled to such share of profits made since his cessation as may be attributable to the use of his share of the firm property
- Alternatively he can claim interest at 6% p.a on his share in the firm's property.
- The right is available only when the firm carries on the business with the firm's property without final settlement of accounts b/w them & outgoing partner.
- Even the representative of deceased partner can claim share in subsequent partners
- When by a contract b/w partners, an option to purchase the interest of outgoing partner was exercised by the other partners, then outgoing partner will not be entitled to any further share of profit.

### Two marks segment topics

- Goodwill
- Revocation of continuing guarantee
- Insolvency of a partner
- Retirement of a partner

### Goodwill

The term "Goodwill" has not been defined in IPA 1932 section 14 of the act says that goodwill of a business is to be regarded as a property of firm.

Goodwill may be defined as the value of the reputation of a business house in respects of profits expected in future over & above the normal level of profits earned by undertaking belonging to the same class of business





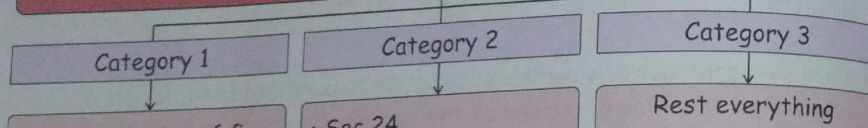
## Revocation of continuing guarantee Sec-38

- Continuing guarantee
- A continuing guarantee given to a firm or
  - To the third party in respect of the transaction of the firm, is

In the absence of an agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.

Such change may occur by the death, or Retirement of partner or by a introduction of a new partner

## Unit No. 2 Relations of partners - Blue Print



- Category 1
- Reconstitution of firm
  - Expulsion
  - Death
  - Transfer of interest

• Implied authority of partner [Sec 19 & 20]

• Partners authority in emergency

• Rights & authorities of minor in a partnership firm. [Sec 30]

• Liability to third parties [Sec. 25-27]

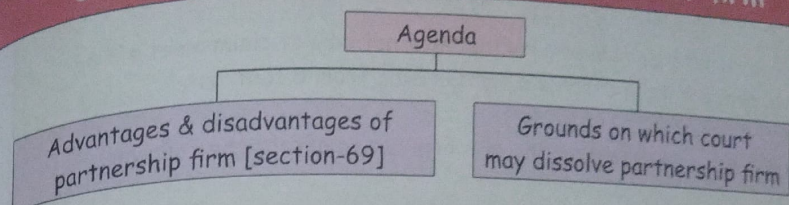
• Rights of outgoing partner [Sec 36-37]

- Category 2
- Sec 24
  - Sec 16
  - Goodwill
  - Revocation of continuing guarantee
  - Settlement of partnership account

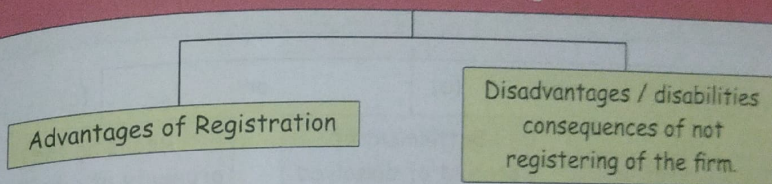
Category 3

Rest everything

## Unit No. 3 Registration & dissolution of firm



## Consequences of non-registration of partnership firm [Section 69]



## Disabilities

### (i) No suit in a civil court by firm or other co-partners against third party.

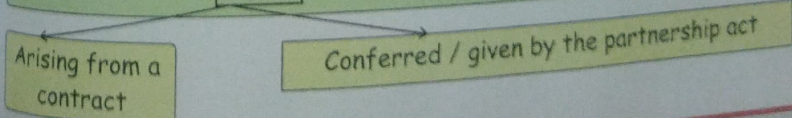
- An unregistered firm cannot file suit against third party to enforce any right arising from a contract, unless the firm is registered and the persons suing are or have been shown in the registered of firm as partners in the firm

In other words, a registered firm can only file a suit against a third party if the person suing have been in the register of firms as partners in the firm

"Person suing" - individuals whose name appear in the register" as a partners & who must be all partners in the firm at the date of suit

### ii) No civil suit between partness & firm / Aggrieved partner cannot bring legal action against other partner of firm

- A partner of an unregistered firm cannot sue the firm or any other partner of the firm to enforce a [right]





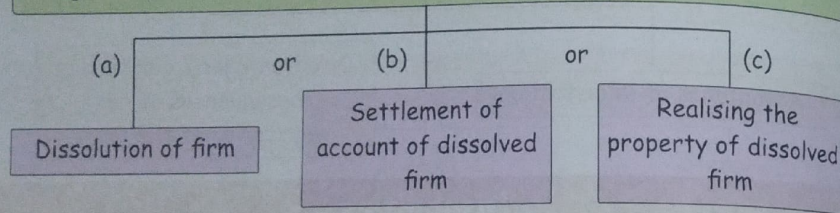


### iii) No relief to partners for set-off claim.

- An unregistered firm or a partner thereof cannot claim a set off or other proceeding to enforce a right arising from a contract

**Exceptions:-** Non registration of a firm not to affect the following

- 1) Third party can sue the firm, in case of an unregistered firm, an action can be brought against the firm by a third party.
- 2) Right of partner to sue for



3) Power of an official assignee, receiver of court to realise the property of the insolvent partner & to bring action

4) Right of firm to institute a suit or claim of set-off not exceeding ₹100.  
or

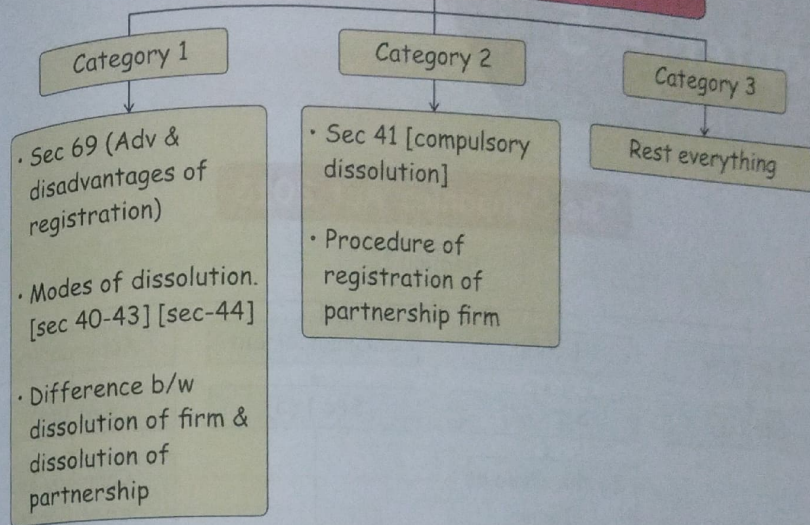
5) Right to suit by legal representative of heirs of deceased partner of a firm for accounts of the firm or to realise property of the firm

**Special Note:-** Non registration of firm does not

- Affect a partners right to seek settlement of accounts of a dissolved firm
- Prohibits institution of criminal suit - Section 69 (1)



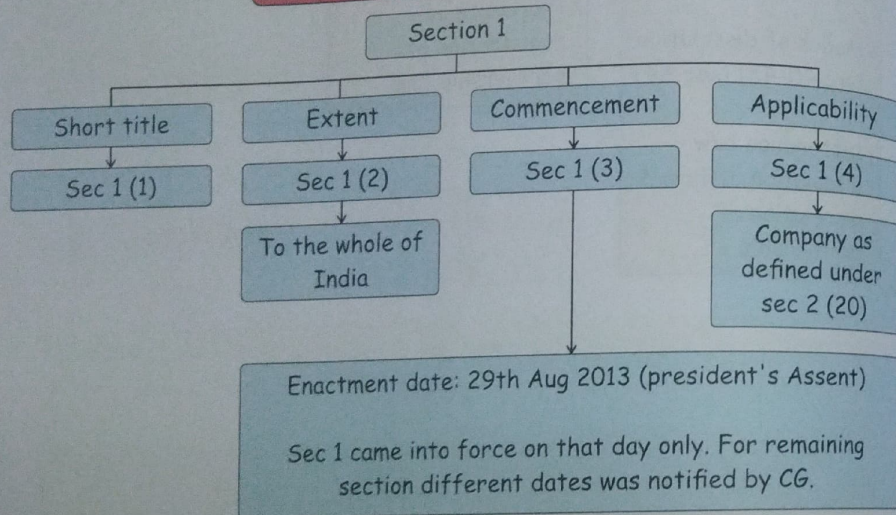
## Unit No. - 3 Blue Print



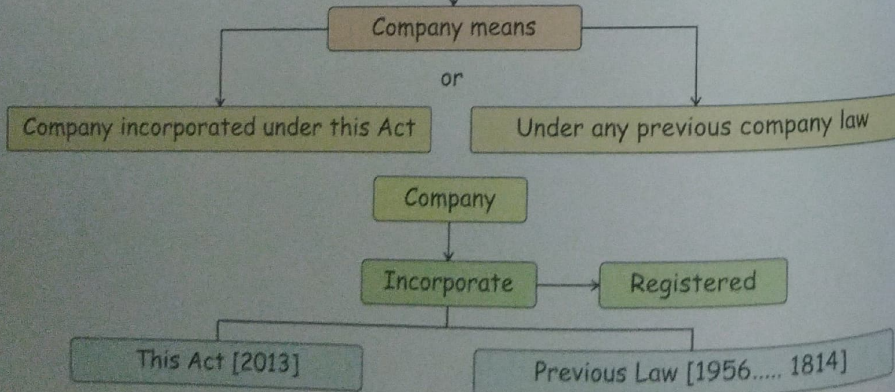


# Chapter - 5

## The Companies Act 2013



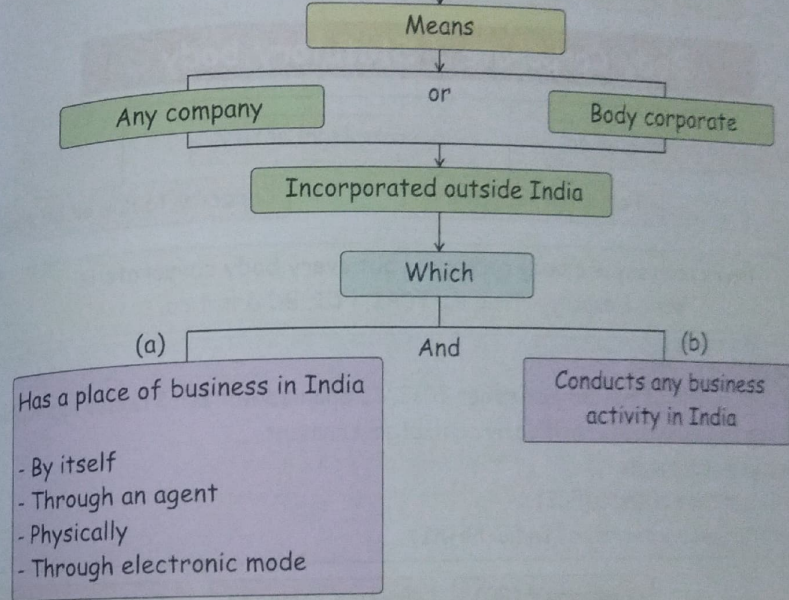
## Company [section 2 (20)]



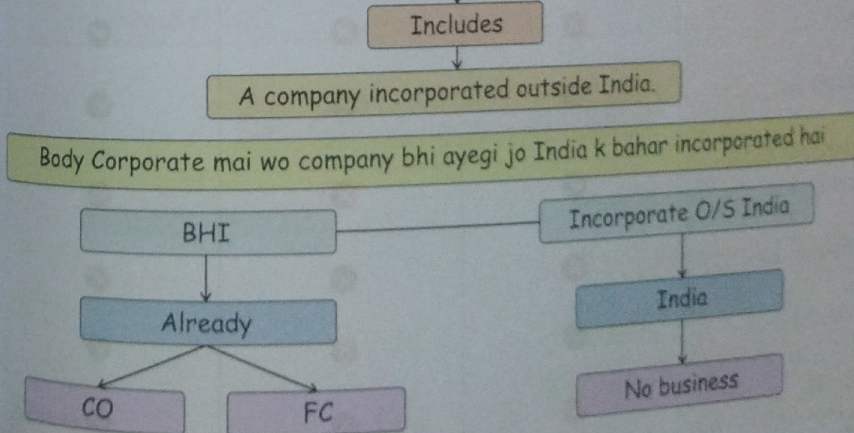
## Applicability

Company's incorporated under Indian companies Act

## Foreign Company [Sec 2 (42)]



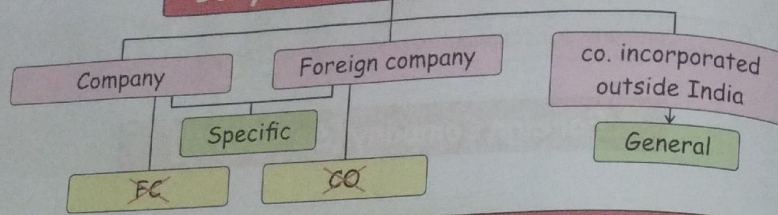
## Body Corporate [Sec 2 (11)]



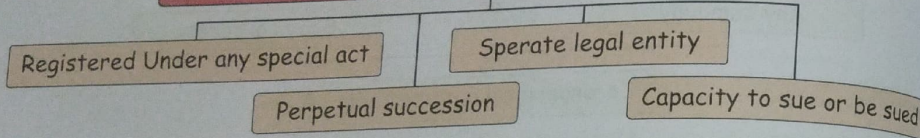




## Body Corporate (Inclusive)



## Body Corporate / Statutory body



Every company is a body corporate but every body corporate is not a company - True eg. ICAI, FCI, BC & not co.

### Special Note:

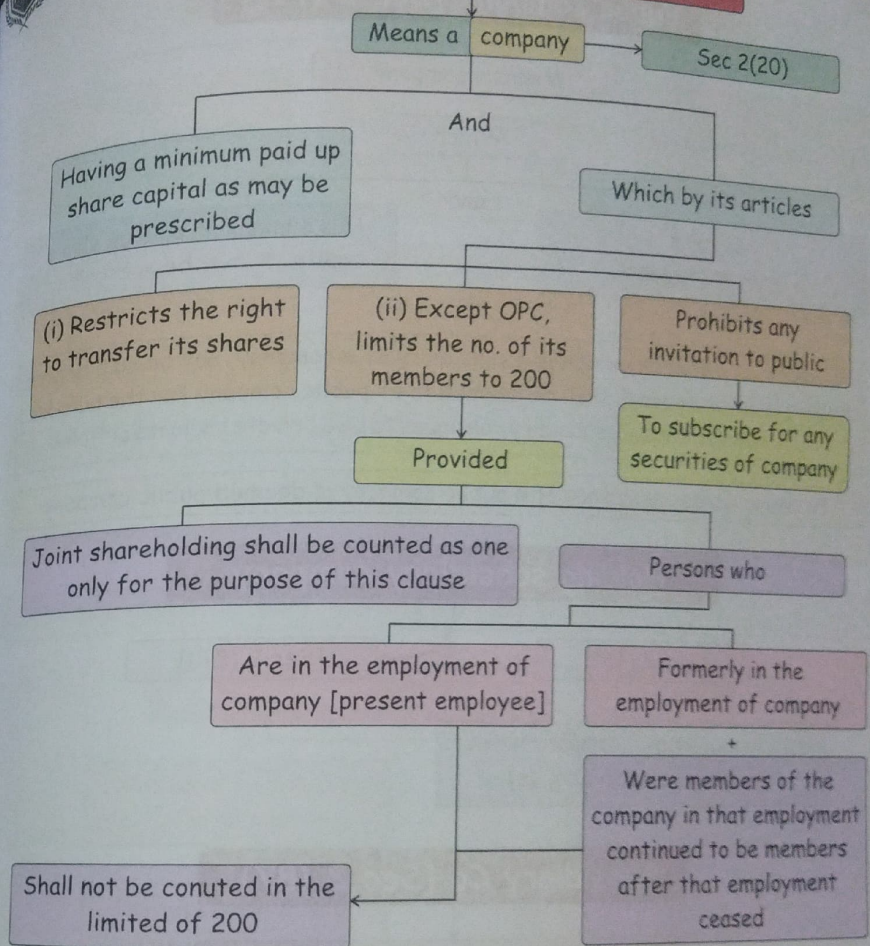
As per section 1 (4) of the companies act 2013, Companies Act 2013 is also applicable to all those body corporate notified by central government

### Notified body corporate

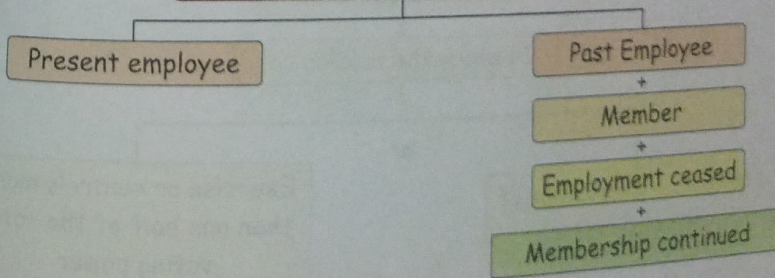
- Food Corporation of India (FCI)
- National highway authority of India (NHAI)

	Company 2 (20)	Foreign company	Body corporate
ACT Pvt Ltd	✓	✗	✓
ICAI	✗	✗	✓
Apple Inc	✗	✓	✓
Samsung India Pvt Ltd	✓	✗	✓
Unilever Ltd	✗	✓	✓
HU Ltd	✓	✗	✓
NHAI	✗	✗	✓ (notified)

## Private Company [Sec 2 (68)]

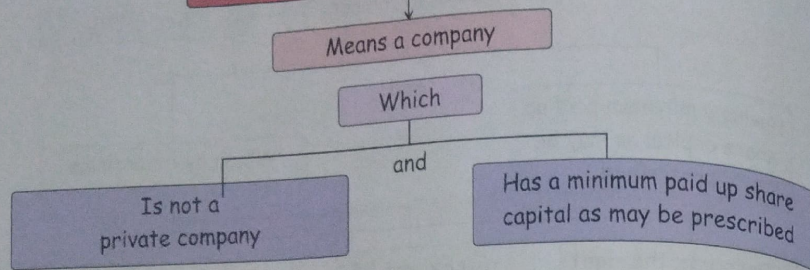


## Employee





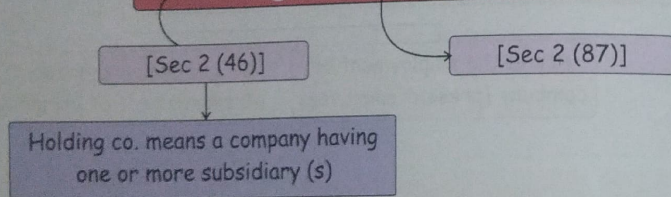
## Public company [Sec 2 (71)]



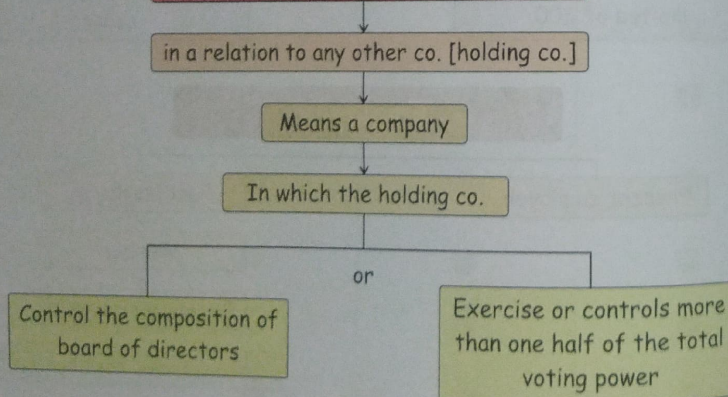
Provided that a company which is a subsidiary of a company, not being a private company [public company], shall be deemed to be public company for the purposes of this act even where such subsidiary continues to be a private co. in its articles

In simple words, subsidiary of a public company is deemed public company

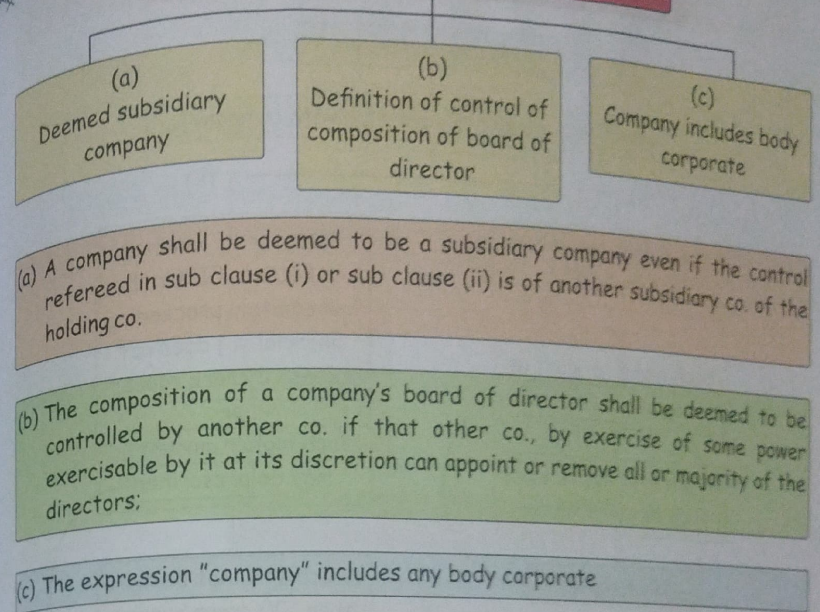
## Holding subsidiary company



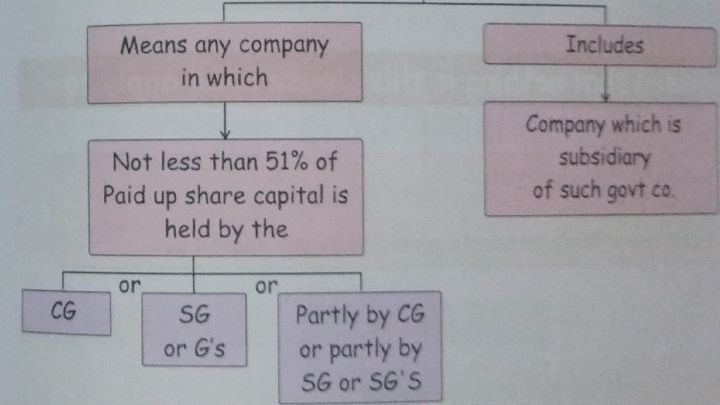
## Subsidiary Co [Sec 2 (87)]



## Explanation [Sec 2 (87)]



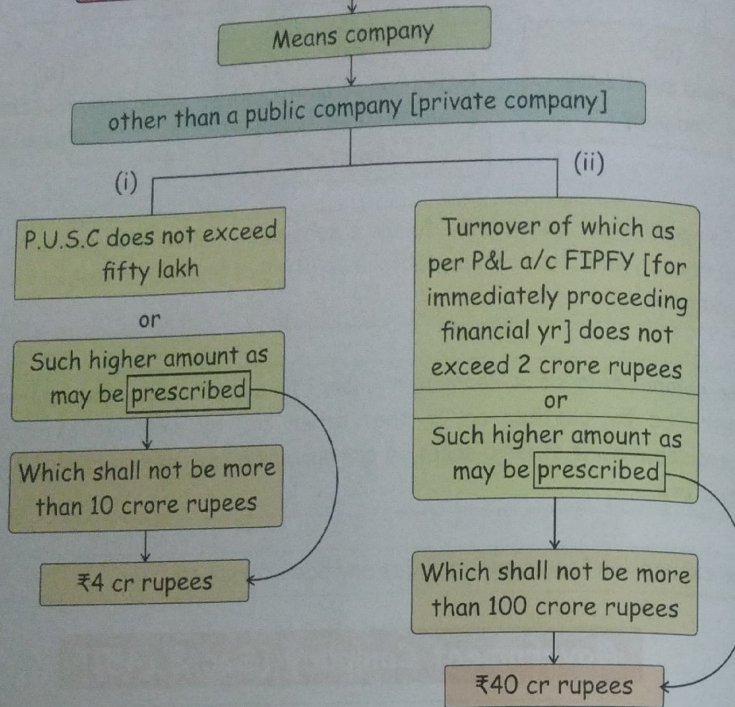
## Government Company [Sec 2 (45)]







## Small Company [Sec 2 (85)]

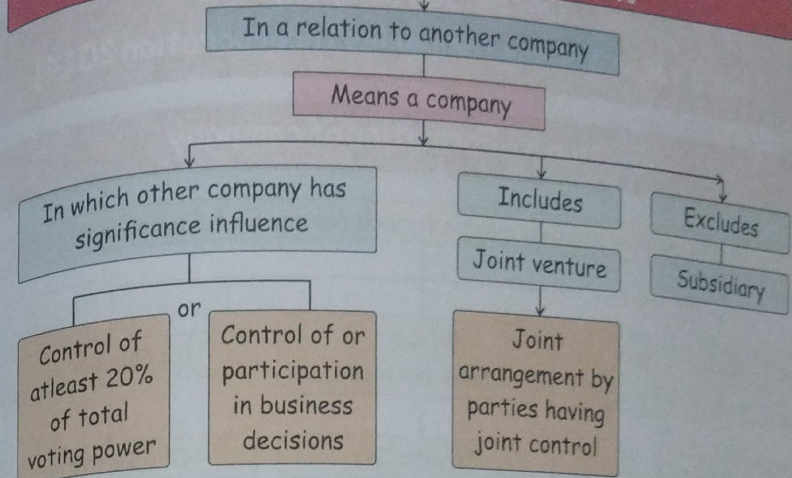


Provided that nothing in this clause shall apply to

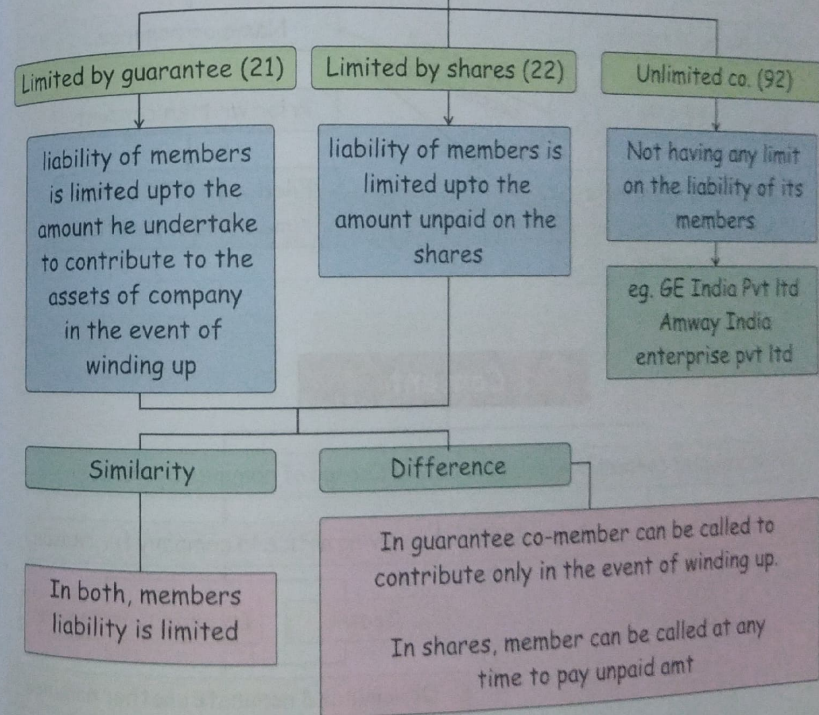
- (a) Holding or a subsidiary co.
- (b) Section 8 Co.
- (c) A company or body corporate governed by any special act



## Associate Company [Sec 2(6)]



## Company [Sec 2]



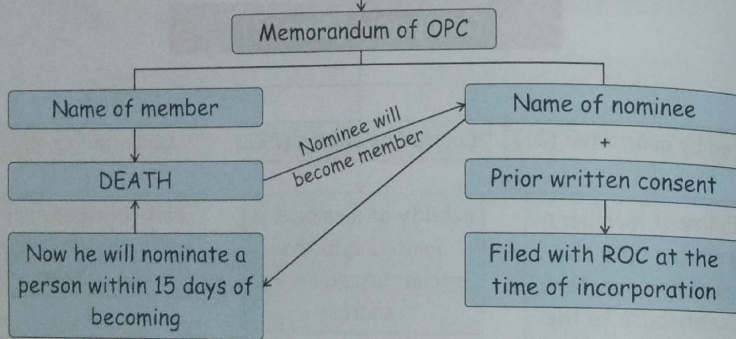
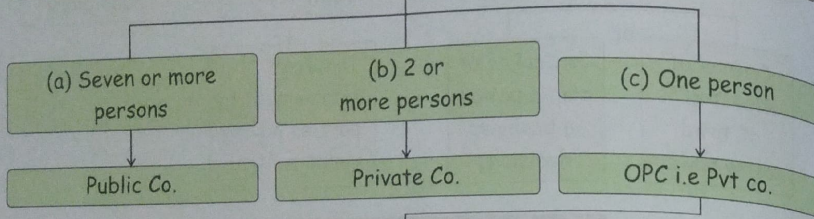




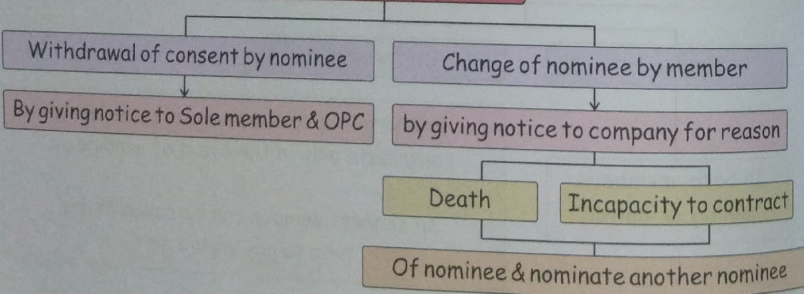
# One person Company [Sec 3 + Rule 3 of the companies Incorporation 2014]

## Section 3 - Formation of company

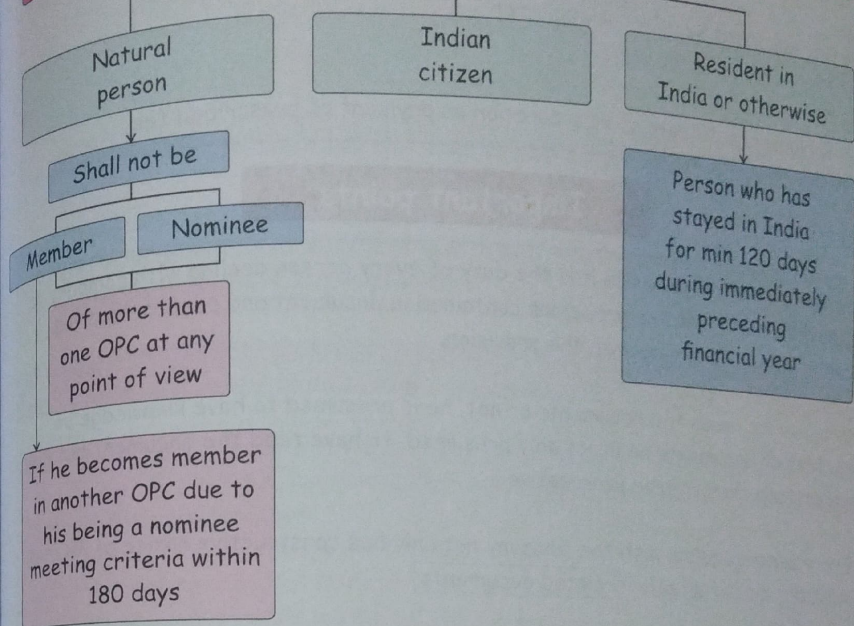
(1) a company may be formed for any lawful purpose by



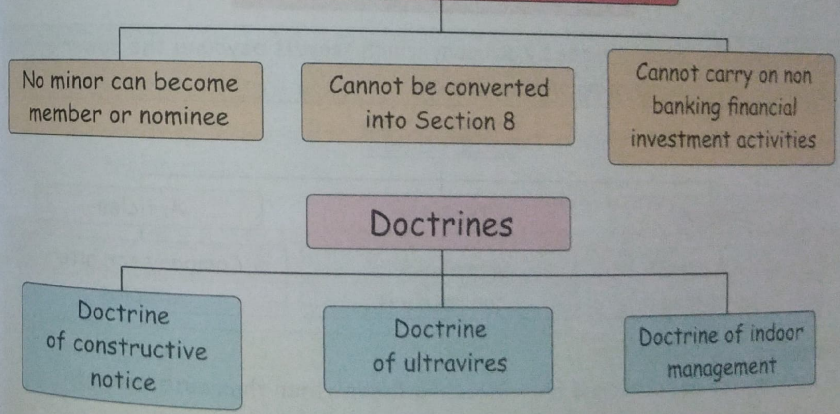
### Consent



## Who can become member and nominee of OPC - Rule 3 only



### Miscellaneous point for OPC







## Doctrine of constructive notice

Any person can inspect by electronic means

- 1 Any document kept by the registrar
- 2 Make record of the same
- 3 Get copy of it.
- 4 Including certificate of incorporation on payment of prescribed fee

### Important points

Considering above provision it is the duty of every person dealing with company to get well versed with the provisions contained in document and confirm that his contract is in continuity with the provision.

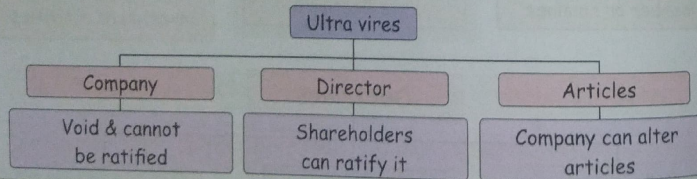
Whether he reads the documents or not, he is presumed to have knowledge of content of documents he is not only presumed to have read the document but also understood them in true perspective

Every person dealing with the company not only has constructive notice of MOA & AOA but also of all other related documents.

- like special resolution which are required to register with ROC

## Doctrine of ultra vires

Any act done or contract made by company which travels beyond the power of the company is void & not binding on the company



### Remedies

- 1) Company can be restrained from investing funds other than authorised to authorised object
- 2) Company can be restrained from carrying on unauthorised business

## Effects

- 1) Company neither can sue nor can be sued on ultra vires transactions
- 2) Money advanced for ultra vires transactions but utilized to pay lawful debts of the company, lender steps into the shoes of creditor paid off and entitled to recover his loan to the extent from company

CASE LAW: *Aishbury Railway carriage and iron company limited vs Riche*

Court - Contract is void  
The term general contractors associated with mechanical engineers, it has to be read in connection with company's main business.

## Doctrine of Indoor Management

- Doctrine of indoor management is an exception to doctrine of constructive notice
- Doctrine of CN in no sense means that outsiders are deemed to have notice of internal affairs of company
- The doctrine of indoor management is popularly known as "Turquand Rule"
- Indoor management of the company is the company's Internal problems outsiders are not deemed to know the internal affairs of the company

CASE LAW :- *Royal British bank V. Turquand*

Courts comment :-

- Bank was deemed to be aware that directors could borrow only upto amount resolution allowed because AOA is registered
- But bank could not be deemed to know which ordinary resolution passed because this were not registerable.

## Exceptions to the doctrine of Indoor Management

- a) Actual or constructive knowledge of irregularity
- b) Suspicion of irregularity
- c) Forgery





## Features of Company

### 1) Separate legal entity

Capital and asset contributed by shareholders and company becomes the owner of the same.

**Note:** Shareholder are not the joint & private owners of company property

**CASE LAW:** Macaura v Northern Assurance Co. Ltd.

- No insurable interest of the member in the property of the company

**Decision:** - Insurance Co. was not liable to macaura because no shareholder has any right to any property owned by company

### (2) Artificial legal person

- It acts through some human agency called directors, but directors are not agents of the company.

### (3) Common seal

- Official signature of company
- Optional - Amendment act 2015
- Now - signed by atleast two directors  
or  
by a director & company secretary of any.

### (4) Perpetual succession

### (5) Corporate veil theory

Members of a company are shielded from liability of company's action.

**CASE LAW:** - Salomon V. Saloman & Co. Ltd.

**Decision:** - Company is at law is altogether different person from subscriber/ member even though same person was manager and same hand receive profit as before

**Note:** - Members are not liable for the acts of the company

## Lifting of Corporate Veil (piercing of corporate veil)

1) To determine the character of the company at the time of war i.e to find whether the company is friend or foe

**CASE LAW:** - Daimler Co. Ltd V. continental types & rubber co.

**Decision:** - At the time of war as all directors are german's & as they are in war with Uk making of payment not allowed.

2) To protect revenue / tax

**CASE LAW:** - Dinshaw maneckjee petit

**Decision:** - Court decided to convert his income into loan to prevent tax that the private companies was mere a sham and corporate veil was lifted to decide the real owner.

3) To avoid a legal obligation

**CASE LAW:** - Workmen of Associated rubber industry ltd. V. Associated rubber Industry Ltd.

**Decision:** - The company was serving no purpose except to reduce the gross profit of principal company to reduce the amount paid as bonus to workmen

4) Formation of subsidiaries to act as agents.

**CASE LAW:** - Merchandise transport limited V. British transport Commission

**Decision:** - Parent and subsidiary were one commercial unit and application for license rejected.

5) Company formed for fraud / improper conduct or to defeat law.

**CASE LAW:** - Gilford motor Co. Ltd V. Horne.

**Court of Appeal:** - Granted an injunction, so that horne was forced to stop competing through company





## Formation of companies with charitable object [Sec 8 company]

- Formed for promotion of
  - Art,
  - Science
  - Religion
  - Charity
  - Protection of environment
  - Sports etc
- Use its profits for promotion of objectives for which it is formed
- Does not declare dividend to members
- Operate under special license from central government
- Need not use the word the Ltd / Pvt. Ltd in its name but use club, chambers of commerce, etc.

### Example

**FICCI** - Federation of Indian Chambers of Commerce & Industry

- License revoked if conditions contravened
- On revocation, central government may direct it to
  - Convert its status & change its name
  - Wind up
  - Amalgamate with another company having similar object.
- A partnership firm can be a member of section 8 company.

## Chapter - 6

### Limited liability Partnership Act 2008

#### History

- During the financial crisis of the late 1980's & early 1990's hundreds of US saving & loan firms were declared insolvent.
- Successful claims could have resulted in all partners, including those who were not responsible for the failure of the savings and loan firms, being liable to repay millions of dollars in compensation.

US saving & Loan firms declared insolvent

1980 and 1990

Texas introduced the concept of LLP

1991

Eventually all state of us adopted the concept

UK

Gulf countries

Australia

UK LLP Act, 2000

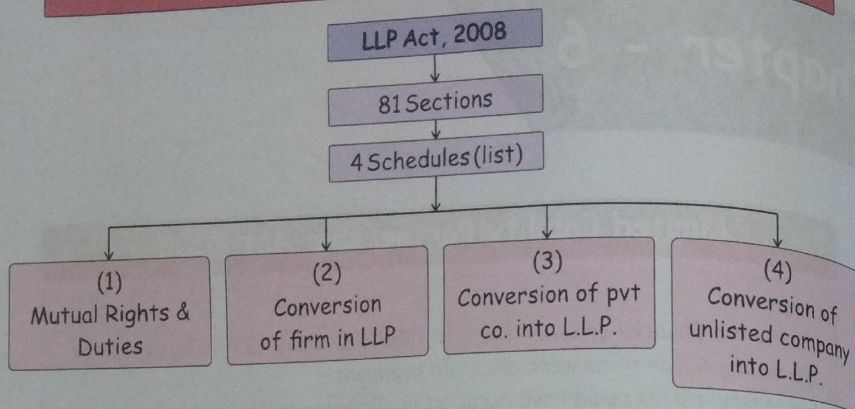
Singapore LLP Act 2005

LLP Act 2008

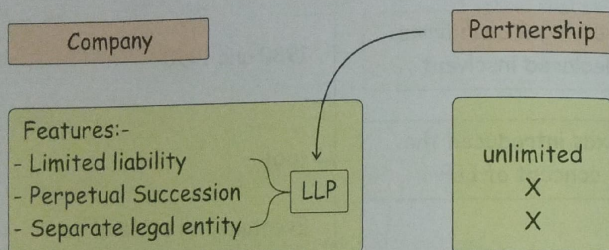




# Limited Liability Partnership Act, 2008



## Meaning & concept



### Meaning:-

- New form of legal business with limited liability
- Alternative corporate business form.
- Allows its partners flexibility in a traditional partnership.
- Separate legal entity.
- Contains elements of separate legal entity and partnership. Hence, called hybrid of both.

# Body Corporate

## Includes

- (i) Company [Section 2 (20)]
- (ii) LLP under this Act.
- (iii) LLP outside this Act.
- (iv) Company incorporated outside India.

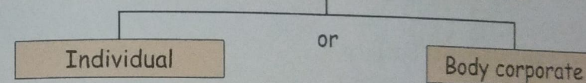
## Does not includes

- (i) Corporation sole.
- (ii) Co-operate society.
- (iii) Other companies notified by govt.

## L.L.P Agreement

Non - applicability of Partnership Act, 1932

## Who can become partner of LLP?



## Who cannot?

- Unsound mind
- Undischarged insolvent → Insolvent but not discharged by court
- Applied to be declared as insolvent but application in pending

## Minimum number of Partners [Sec 6]

- At least two partners.
- If any time number of partners below 2 and more than 6 month lapsed. Lone partner shall be liable LLP can be dissolved.

## Designated partner

- Every LLP shall have atleast 2 D.P.
- Who are INDIVIDUALS, out of which one should be resident in India





## Characteristics

- 1) LLP is a body corporate.
- 2) Perpetual Succession
- 3) Separate Legal Entity
- 4) Mutual Agency
  - Partners will be the agents of LLP alone.
  - No Partner can bind other Partner.
- 5) Artificial legal person.
- 6) Common seal (optional as in co.)
- 7) Limited liability
- 8) Management of business (D.P.)
- 9) Minimum & Maximum partners.
- 10) Business for Profit only.

## Advantages

- 1) Organised and operates on the basis of agreement.
- 2) Provides flexibility and no detailed legal and procedural requirements.
- 3) Easy to form
- 4) All partners enjoy limited liability
- 5) Easy to dissolve.

## Incorporated of LLP [Sec 11]

### (1) Requirements

- (a) Two or more person → Lawful business
  - Subscribe name to an incorporation document.
- (b) Incorporation document filed such manner, such fees - prescribed.
- (c) Statement to be filed
  - Prescribed form
  - Made by either
    - Advocate
    - CS or CA or CWA/CMA
  - Engaged in formation of LLP

and

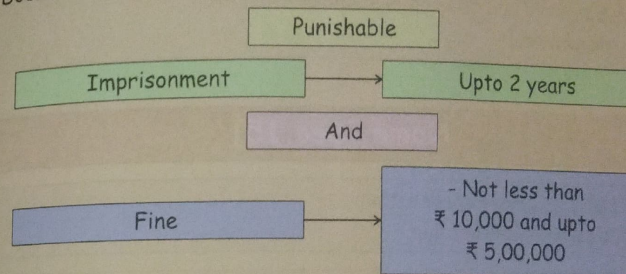
  - Anyone who subscribed his name to incorporation document
  - All requirement of this act an rules for incorporation is complied

### (2) Incorporation document shall

- (a) In such forms as prescribed
- (b) State name of LLP
- (c) State proposed business
- (d) State address of registered office
- (e) Name & address of each partners and D.P.

### (3) Person making statement as discussed above which he

- (a) Knows to be false
- (b) Does not believe to be true



## Incorporation by Registration [Section 12]

- (1) On fulfillment of requirement of Sec 11 Registrar retain incorporation document and shall within a period of 14 days
  - (a) Register the incorporation document.
  - (b) Give a certificate in name of LLP.
- (2) Sufficient evidence → That requirements are complied.
- (3) Certificate → Authenticated by his office seal
- (4) Conclusive evidence → Certificate





## Registered office and Changes:- [Sec 13]

- 1) Every LLP must have Registered office for all correspondence.
- 2) LLP may change the place in accordance with LLP Act
- 3) LLP contravenes → This section

Fine → LLP + Partner = ₹500/day | Max = ₹5000

## Effects of Registration [Sec 14]

- Suing and being sued
- Acquire, own, hold and develop or dispose property.
- Have a common seal.

## Name [Sec 15]

- 1) Every LLP → Have words either
  - Limited Liability Partnership.

- 2) LLP cannot be registered with name
  - (a) Undesirable
  - (b) Identical or too nearly resembles with name of other firm or LLP or body corporate or registered trademark

## Reservation of Name [Sec 16]

- 1) A person may apply to registrar for
  - Reservation of name of proposed LLP
  - Change the name of LLP

- 2) Registrar on satisfaction that sub sec (2) of sec 15 is complied with
  - Reserve the name for a period of 3 months from date of intimation by registrar

## Change of name of LLP [Sec 17]

- (1) Notwithstanding anything contained in section 15 and 16

- If CG satisfied that LLP is registered with name referred in sub sec 2 of sec 15
- CG may direct such LLP to change its name
- LLP shall comply with such direction within 3 months after date of direction or longer period as prescribed by C.G.

## Steps to incorporate LLP

Name Reservation

First step

Applicant has to file e-form 1 for availability and reservation of LLP's name.

Incorporate LLP

Second step

Applicant has to file e-form 2 for incorporating New LLP.  
Contents of this is almost same as statement

LLP agreement

Third step

To be filed with Registrar in e- form 3 within 30 days of incorporation of LLP.





## Partners & their relations [Sec 23]

- (1) Mutual rights and duties of
  - Partners of LLP, and
  - LLP and its partners
  - Governed by LLP Agreement
- (2) Any changes in mutual rights and duties shall be filed with Registrar.
- (3) In the absence of agreement
  - Partnership shall be governed by provisions contained in first schedule

## Cessation of Partnership Interest [Sec 24]

- (1) In accordance with agreement with other partner.
  - In absence of agreement by giving notice in writing of not less than 30 days of intention to resign as partner.
- 2) (a) On his death:  
(b) Declared unsound mind by competent court.  
(c) Applied to be adjudicated as insolvent or declared insolvent.
- (3) Former partner/ceased partner still be regarded as partner of LLP until
  - (a) Notice is given.
  - (b) Notice is delivered to registrar.
- 4) Past obligation will not be affected by cessation of partner.
- 5) In case of death or insolvency of former partner
  - Former partner or any person entitled to receive.
  - Amount equal to the contribution of former partner actually made.
  - Share in accumulated profit after deducting accumulated loss.



## Registration of Changes in Partners [Sec 25]

- 1) Every Partner inform LLP [sub sec 1]
  - Any change in his name or address.
  - Within a period of 15 days of change
- 2) LLP shall [sub sec 2]
  - (a) where
    - Person become partner
    - or
    - Ceases to be a partner
  - File notice with ROC within 30 days of such event
  - b) When change in address of partner (same provisions as above).
- 3) (a) Prescribed form or fees  
(b) Signed by D.P and authenticated as prescribed.  
(c) If notice relates to incoming partner → consent of partner  
→ signed and authenticated
- 4) If LLP contravenes. Sub sec (2) ←  
LLP and every designated partner  
- Penalty of ₹10000
- 5) If Partner contravenes Sub Sec (1)
- (6) Partner may himself file notice if he has reasonable cause to believe that LLP may not file the notice  
**In such case**  
ROC shall take confirmation of same from LLP  
**Note:-** No confirmation within

15 days

Registrar shall register notice





## Extent and Limitation of Liability of LLP and Partners [Sec 27]

Partner as agent

Extent of Liability of LLP

1) LLP not bound by act of Partner if  
 (a) Partner has no authority to act.  
 (b) Third person knows that partner has no authority  
 or  
 Does not know whether he is dealing with partner.

2) LLP liable for act of partner if it  
 - Is within his authority  
 - Is in ordinary course of business

3) An obligation of LLP is solely the obligation of LLP.

4) Liabilities of LLP shall be met out of property of LLP.

## Extent of liability of Partner [Sec 28]

- 1) A Partner is not personally liable for obligation of LLP
- 2) But a partner is personally liable for his wrongful act or omission done outside his authority
- 3) Partner not liable for act of any other partner

## Holding Out [Sec 29]

(1) Any person who

- By any manner written/oral
- Represents himself or knowingly permits himself to be represented as partner in LLP
- Is liable to any person (natural/artificial)
- Who on such faith given credit to firm

Note:- If credit is received by LLP. Both, the partner by estoppel / holding out as well as LLP is liable for the credit or benefit arised from it.

(2) Where after partner's death

- Business is continued in the same LLP name
- Continued use of firm's name or name of deceased partner will not make his legal representative liable.

## Unlimited liability is case of fraud [Sec 30]

(1) If the act is done by

- LLP (implied to be D.P.)  
or
- By any partner (other partners besides D.P.)

With intention

- Defraud creditors of LLP  
or
- Any other person

- For fraudulent purpose

The liability of such LLP and partner shall be unlimited for all debts and liabilities.

Note :- If the act is done without knowledge of authority of LLP, Partner alone is liable

(2) If act is done as mentioned in sub section (I)

- Every person party to such act.
- Imprisonment → up to 5 years
- Fine → not less than 50K upto 5 lakhs

(3) If LLP or partner or DP or employee of such LLP done some act in fraudulent manner

- Apart from criminal proceeding
- They are liable to pay compensation to all those who suffered loss for such conduct

Note:- LLP not liable if act is conducted without knowledge of LLP.



## Whistle Blowing [Sec 31]

### (1) Court or tribunal may

- Reduce or waive
- Any penalty
- Charged against any partner or employee of LLP.

If such partner or employee provided useful information for investigation of LLP

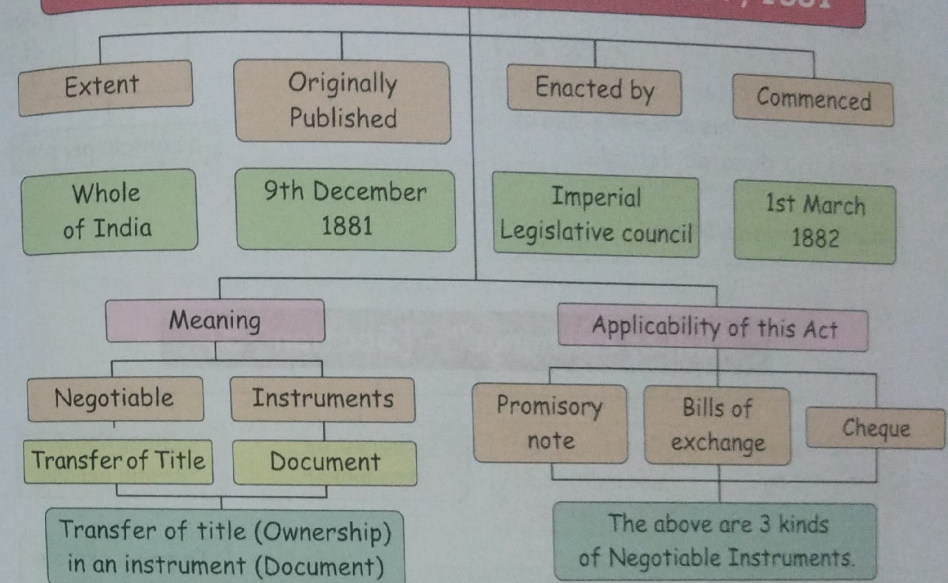
(2) Partner or employee shall not be discharged demoted, suspended, threatened, harassed or discriminated merely because he is providing information for such investigation.

## Winding Up and Dissolution

- If LLP decides to be wound up by tribunal.
- Number of partners reduced below 2 for more than 6 months.
- LLP unable to pay its debt.
- LLP acted against the sovereignty and integrity of India, security of state of public order
- Made default in filing with registrar
  - State of A/c & solvency (5 consecutive financial years)
  - Annual returns for 5 consecutive financial years
- In the opinion of tribunal it is just and equitable to wound up LLP.

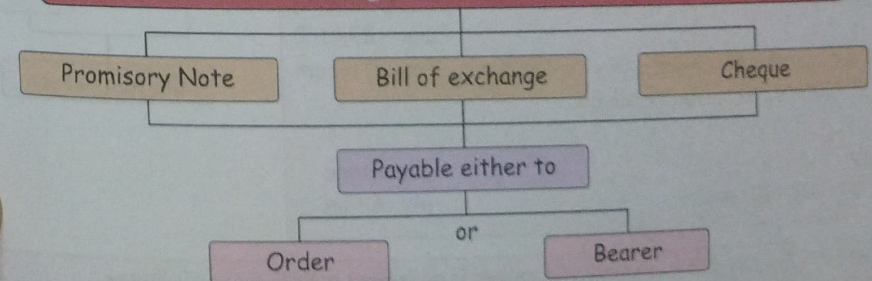
# Chapter - 7

## THE NEGOTIABLE INSTRUMENTS ACT, 1881



Note: The Act does not define the term "Negotiable Instruments". It provides the types of NI u/s 13.

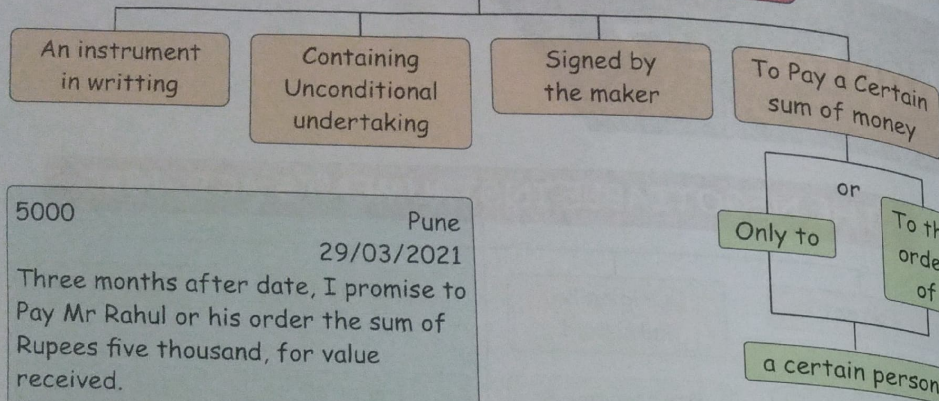
## Section-13 "Negotiable Instrument" means







### Promisory Note [Section 4]

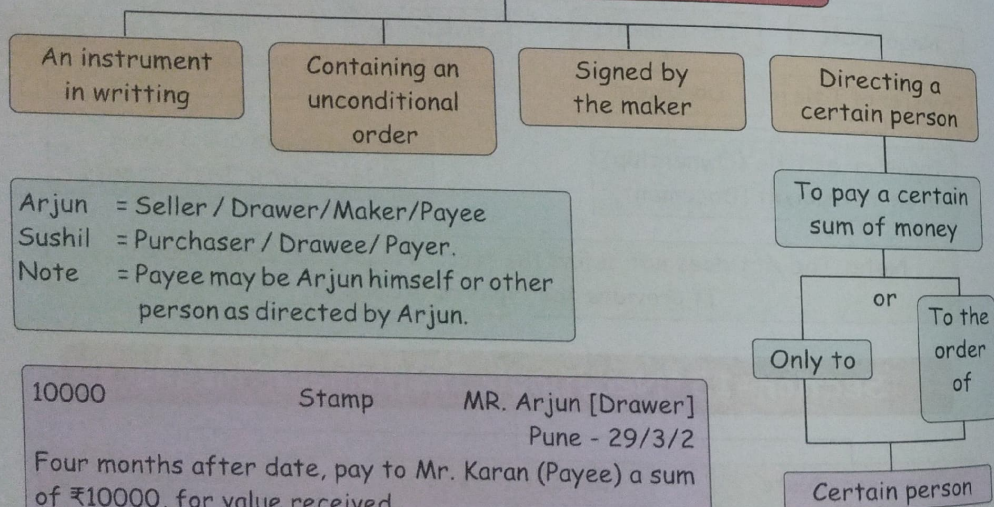


5000 Pune  
29/03/2021

Three months after date, I promise to Pay Mr Rahul or his order the sum of Rupees five thousand, for value received.

[maker] Revenue Stamp.

### "Bill of Exchange" - [Section -5]



Arjun = Seller / Drawer/Maker/Payee  
Sushil = Purchaser / Drawee/ Payer.  
Note = Payee may be Arjun himself or other person as directed by Arjun.

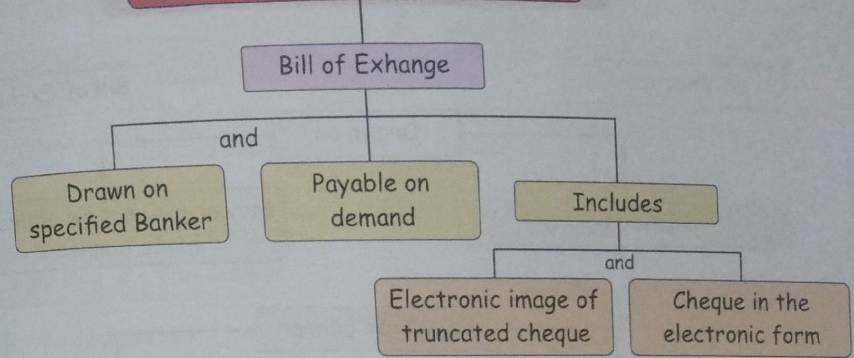
10000 Stamp MR. Arjun [Drawer]  
Pune - 29/3/2

Four months after date, pay to Mr. Karan (Payee) a sum of ₹10000, for value received.

To, Signature  
Mr. Sushil [Drower] Mr. Arjun

Note 2 = In case of Promisory note, maker is payer but in BOE maker is Payee.

### Cheque - Section 6

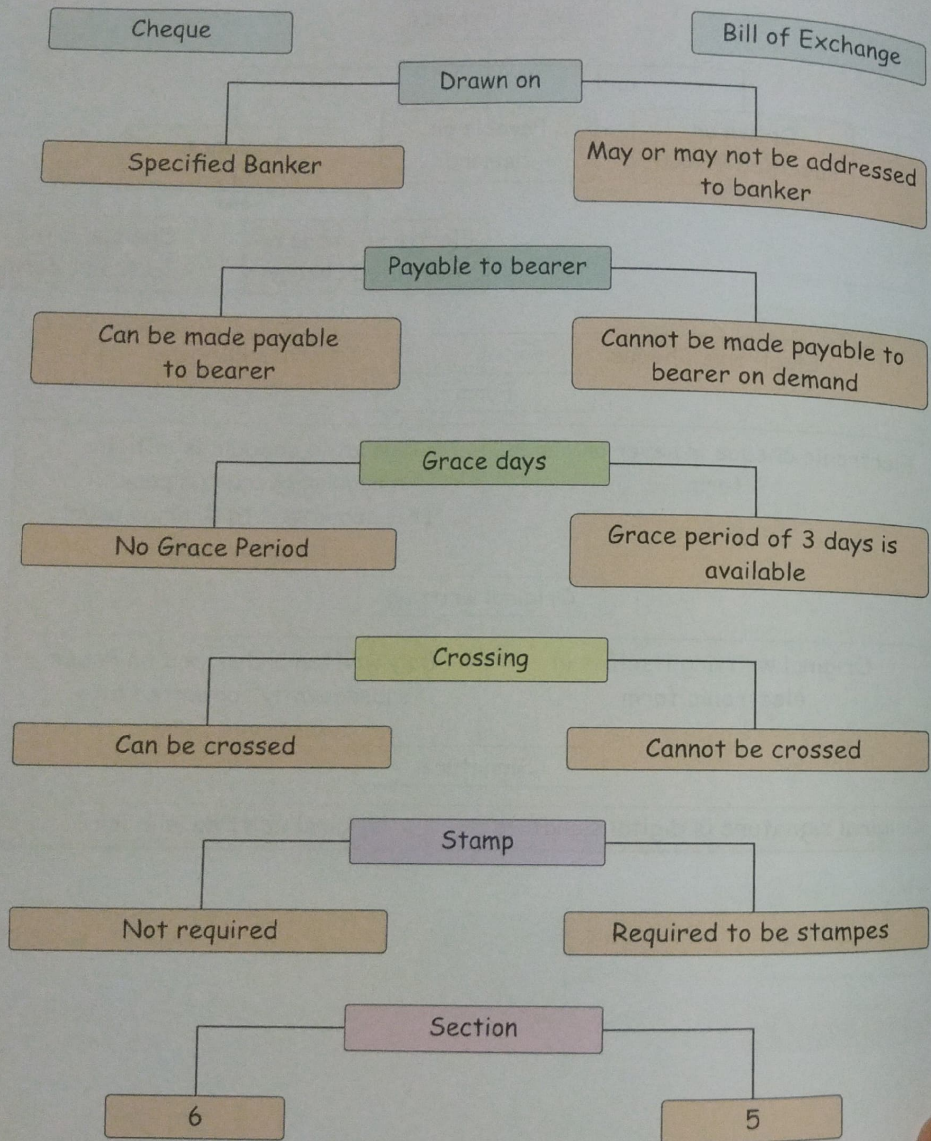


Electronic Cheque	Truncated Cheque
Form	Form
Electronic cheque is never on paper form	Truncated cheque is initially a regular cheque on paper. It is submitted to Bank as usual for clearance
Original writing	Original writing
Original writing itself is in electronic form	Duly written and signed on Paper subsequently converted into electronic form
Signature	Signature
Original signature is digital signature	Original writing is in ink

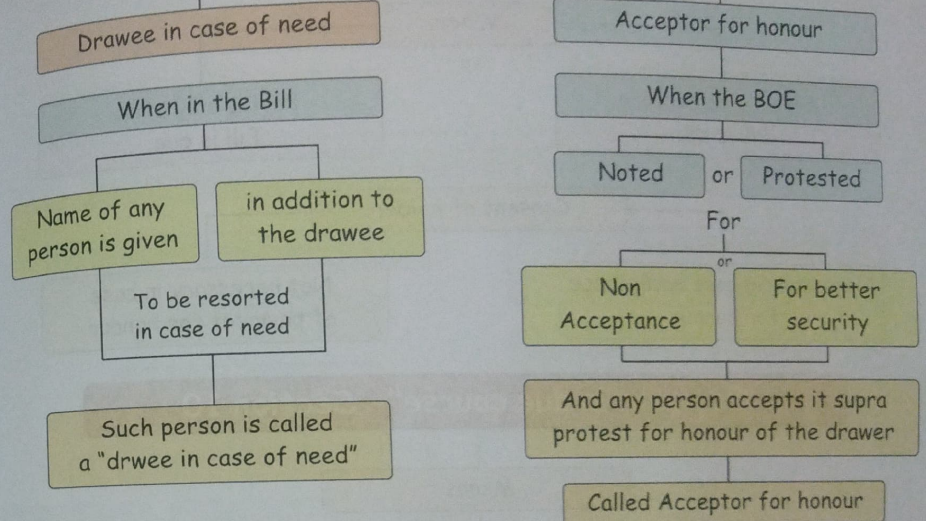




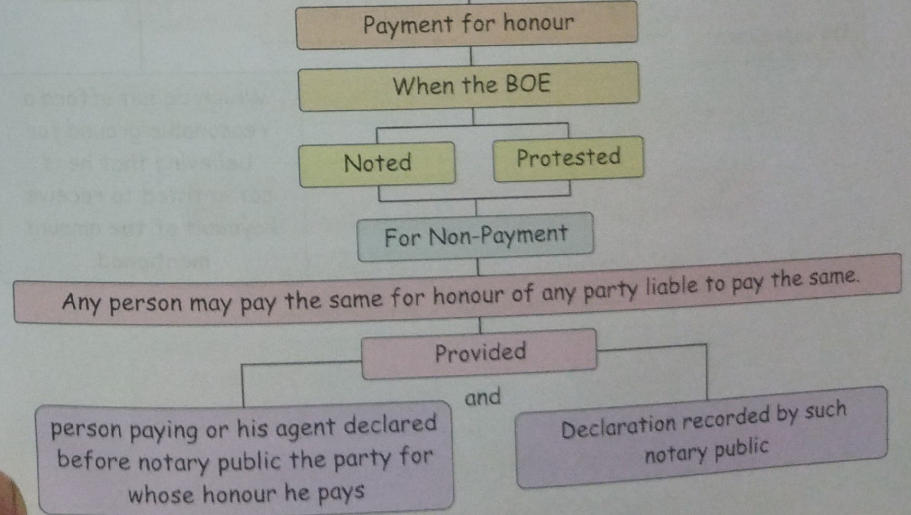
### Bill of Exchange V. Cheque



### Section 7



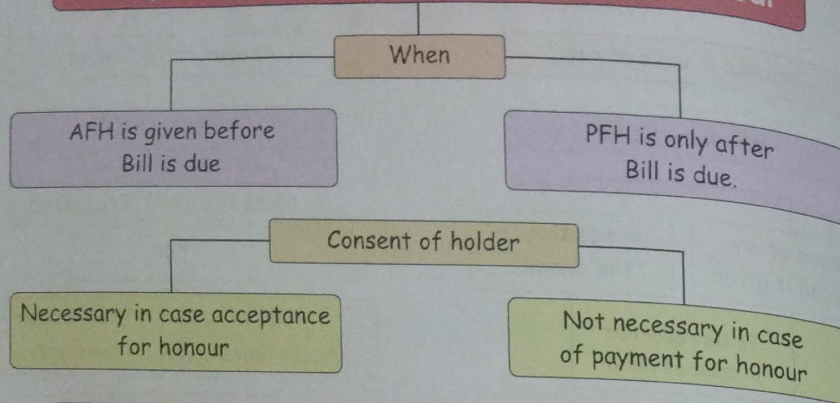
### Section 113



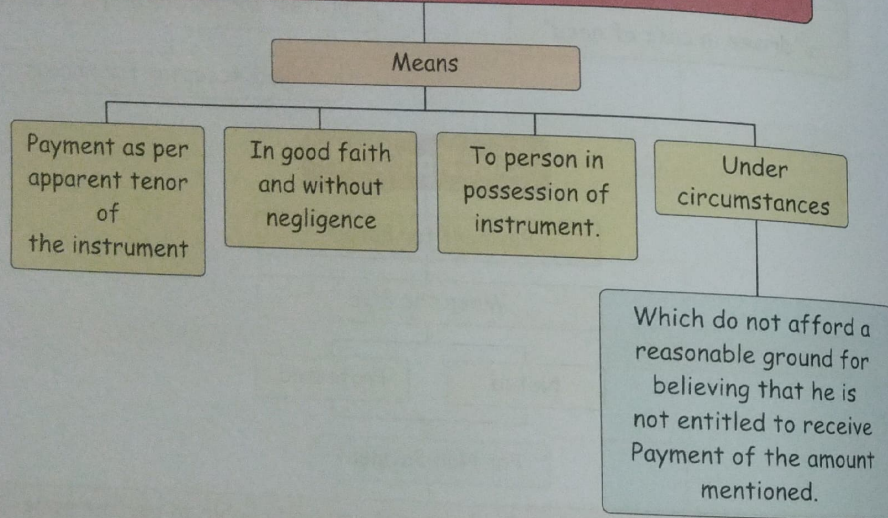




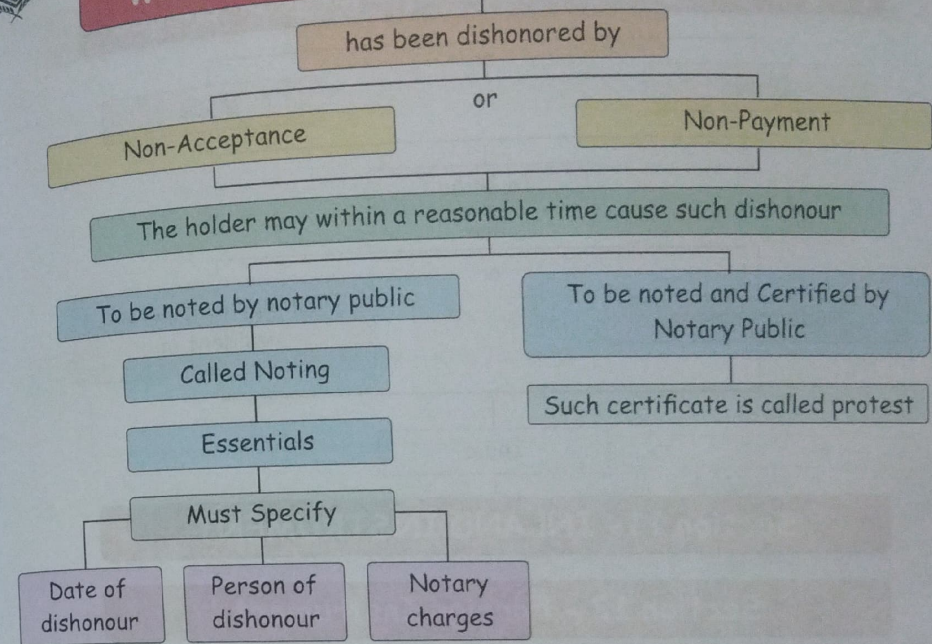
### Acceptance for honour V. Payment for honour



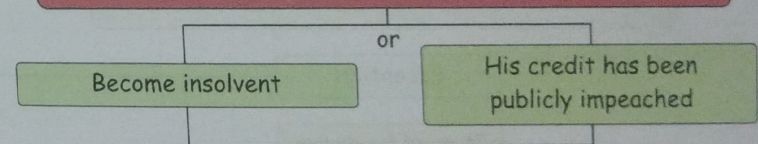
### "Payment in due course"- Section 10



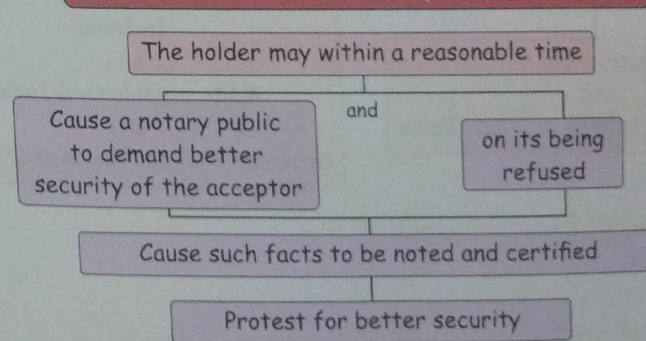
### When a Promisory Note or Bill of Exchange



### When acceptor of Bill of Exchange



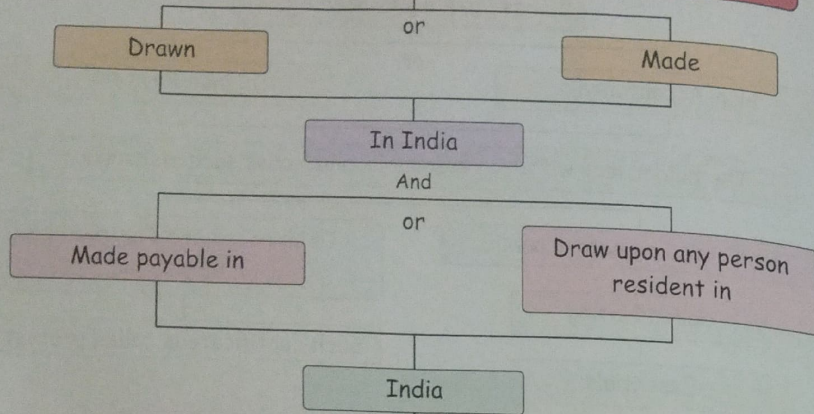
### Before The Maturity of The Bill







### A promissory note, bill of exchange or cheque



### Section 11 - INLAND INSTRUMENT

### Section 12 - Foreign Instrument

An instrument which is not inland instrument is deemed to be a foreign instrument.

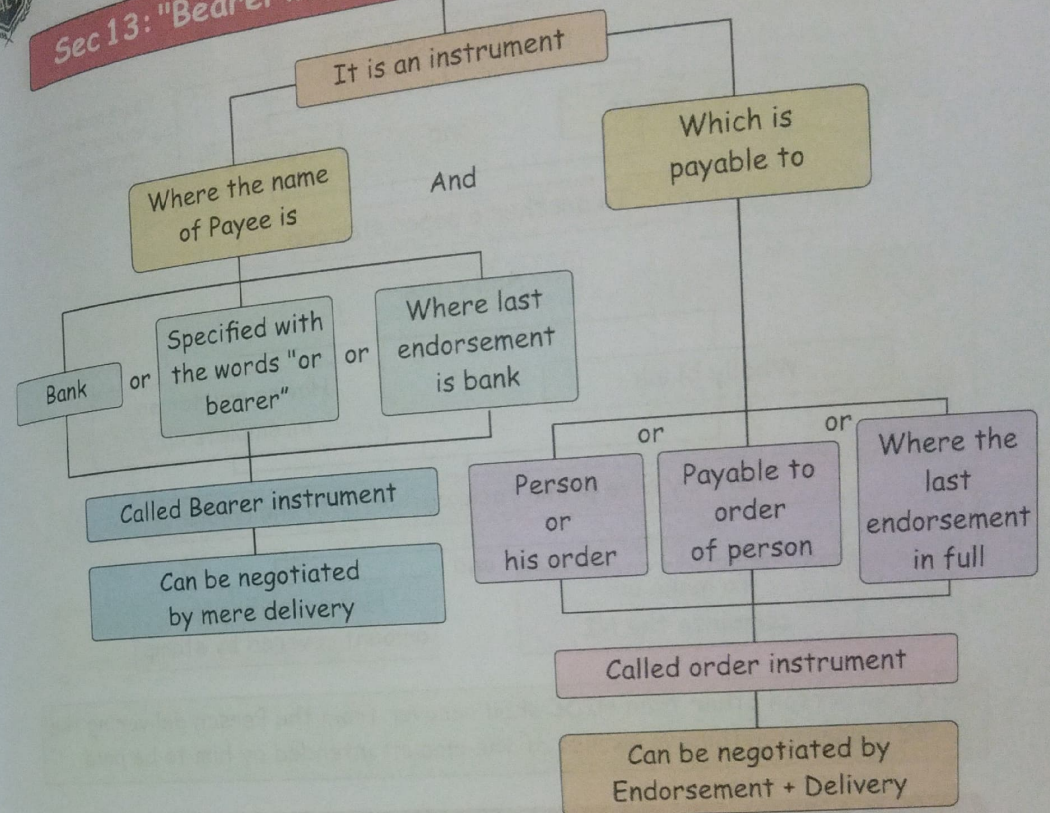
Essentials

It must be drawn

Outside India and Made payable outside or inside India

In India and Made payable O/S India and Drawn on a person resident o/s India

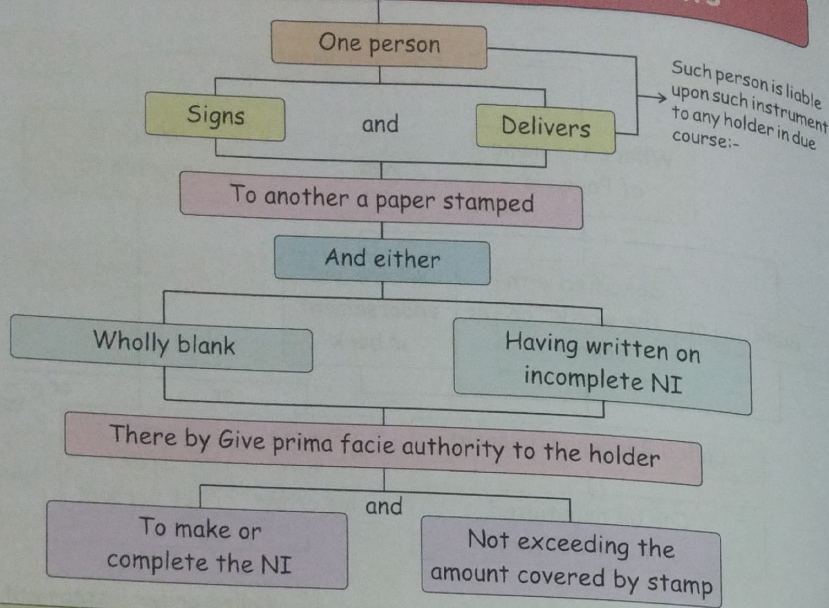
### Sec 13: "Bearer instrument" and "order instrument"





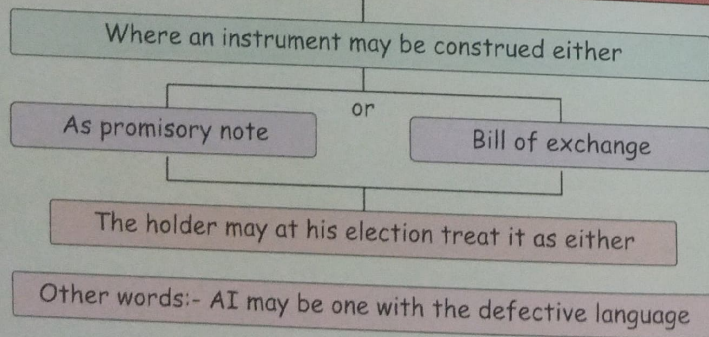


### Section 20-Inchoate stamped Instruments



Note: No person other than HDC shall recover from the Person delivering the instrument anything in excess of the amount intended by him to be paid

### Section 17-Ambiguous instruments



### Demand and time instrument

