Indian Regulatory Framework.

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Relevant For

Sep 2024

Jan 2025



Enforcing the Law

Ministries

- Ministry of Finance
- Ministry of Corporate affairs
- Ministry of Home Affairs
- Ministry of Law and Justice

Regulatory Bodies

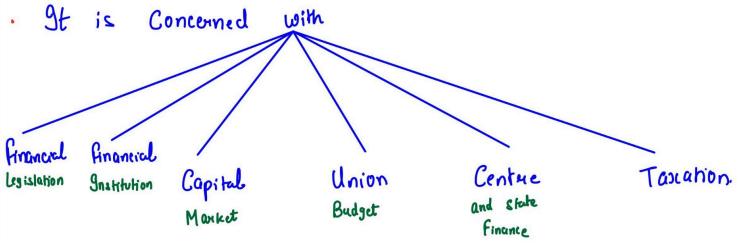
- SEBI
- RBI
- IBBI

Ministry of Finance

- Ministry within Government of India, Concerned with Economy of India, Serving as Treasury of India

Also known as Vitta Mantralya

- It is Concerned with



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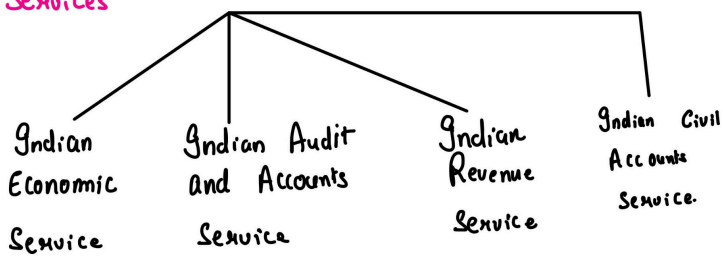
Which Finance Minister Presented how Many Budgets ??

- Shri Morarji Desai → 10
- Shri P. Chitambaram → 9
- Shri Pranab Mukherjee → 8
- Shri Yashwant Sinha → 8
- Dr. Manmohan Singh → 6

Constitution of Ministry of Finance

Apex Controlling authority of Four Central Services



Departments of Ministry of Finance

- Department of Expenditure
- Department of Financial Services.
- Department of Public Enterprise.
- Department of Economic Affair
- Department of Revenue
- Department of Investment and Public Asset Managment

MoF is also an Apex Controlling Authority of "Indian Cost and Management Accounts Service"

Ministry of Corporate Affairs

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- It is an Indian Government Ministry
- Primarily Concerned with
  - Companies Act 2013
  - Companies Act 1956
  - LLP Act 2008
  - Insolvency and Bankruptcy Code
- Ministry is Run by Civil Servants
  - ↳ of ICLS Cadre
- officers are elected through, Civil Service Examination Conducted by
  - ↳ UPSC [Union Public Service Comission]
- Highest Post
  - ↳ Director General of Corporate Affairs
    - ↓
    - Fixed at Apex Scale of ICLS

ICLS → Indian Corporate Law Service.

Ministry of Home Affairs

☞ Also known as Grah Mantralya

- It is Ministry of Government of India
- It is Interior Ministry of India, responsible for the Maintenance of
  - Internal Security
  - Domestic Policy.

Home Ministry is Headed by
↓
Union Ministers of Home Affairs

Department of Ministry of Home Affairs

- Department of Border Management
- Department of Internal Security
- Department of Jammu Kashmir and Laddakh
- Department of Home
- Department of official Language
- Department of State

Department of official Language

- Central Translation Bureau
- Central Hindi Training Institute
- Directorate of Census operation.

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Ministry of Law and Justice

- It is Cabinet Ministry in Government of India
- It deals with

Management of Legal Affairs → through Legislative department.

Management of Legislative Activities → through department of Legal Affairs

Administration of Justice in India → through department of Justice

Department of Ministry of Law and Justice

→ Dept. of Legal Affairs
→ Legislative department
→ Department of Justice

Department of Legal affairs Concerned with ↓
Advisory Ministry of Central Government

Legislative department is Concerned with
↓
Drafting of Principal Legislation of Central Government.



Security and Exchange Board of India

- Regulatory Body, for Security and Commodity Market in India
- It is under ownership of Ministry of Finance
- Established on → 12/4/1988 as Executory Body
- On 30/01/1992 → Was Given statutory Power through SEBI Act, 1992.

Reserve Bank of India

- RBI is India's Central Bank and Regulatory Body
- Responsible for Regulation of Indian Baking System
- It is under ownership of
  - Ministry of Finance
  - (+)
  - Government of India.
- It is Responsible for
  - Issue
  - Control
  - Maintaining Supply

  } of an Indian Rupee

- It also Manages
  ↓
  Country's Main Payment System's
- It Promotes Economic Development

BRBNM

Bhartiya Reserve Bank Note Mudran

- Specilised division of RBI through which it Prints and Mints Indian Currency.
- 2 Currency Printing Press
  - Nashik [MH]
  - Dewas [MP]

National Payment Corporation of India
↓
Regulate Payments and settlements in India

Deposit Insurance and Credit Guarantee Corporation
↓
Providing
- Insurance of deposits
- Guaranting of Credit Fascility to all Indian Banks

Insolvency and Bankruptcy Board of India

- It is Regulator for overseeing Insolvency Proceedings.
- It is Regulator for entities like
  - Insolvency Professional Agency (IPA)
  - Insolvency Professionals. (IP)
  - Information Utilities in India [IU]
- Established on 01/10/2016
- Given Statutory Powers through Insolvency Bankruptcy Code, which was passed by Lok Sabha on 05/05/2016
- It Covers
  - Individual
  - Company
  - LLP
  - Partnership
- Simplify Process of Insolvency & Bankruptcy



Structure of Indian Judicial System.

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- When there is dispute between Citizines or Between Citizen and Government, these disputes are Resolved by Judiciary.

Functions of Judiciary System

- Regulation & Interpretation of Acts and Codes
- Disputes Resolution
- Promote Fairness Among Citizens of Land

Hierarchy of Courts

Supreme Court at Top
↓
Followed By High Court
↓
Followed by District Court

#→ Metropolitan Court.

किस Court के Decision किन नीतियों पर लगेंगे

Decision of Supreme Court

Binding on High Courts under Article 141 of Indian Constitution

Final Word of Matter.

Decision of High Court

Binding in Respective State but only persuasive in other states.

Supreme Court

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Apex Body of Judiciary

Established on 26/01/1950

Cheif Justice of India is highest authority appointed under Article 126.

Principal Bench of Supreme Court has = 7 Members [including Chief Justice of India]

Presently Number have Increased to 34 Member including Chief Justice of India, due to Rise in No. of Cases

An Individual Can Seek Relief in Supreme Court by Filing Writ Petition under Article 32

High Court

Highest Court of Appeal in each state and Union territory is high Court

High Court have Appellant
- Original Jurisdiction
- Supervisory Jurisdiction.

An Individual Can Seek Remedies against Violation of Fundamental Right in high Court by filing Writ Petition under Article 226

oldest High Court → Calcutta established on 02/07/1862

In India there are 25 HighCourt one for each state and Union territory

Six state share Single High Court.

Article 227 of Constitution limits "High Court Supervisory Powers"

District Court

District Court are below High Court

District Court deals with Civil law ie
- Contractual Disputes
- Claim for Damges etc.

Court of Sessions → deal with Criminal Cases

Undoe Pecuniary Jurisdiction, Civil Judge Can try Suits Valuing Not More then ₹ 2 Crore.

Court Gets territorial Jurisdiction based on Areeas Covered by them

Jurisdiction Means Power to Control.

Cases are decided on
- Local limits within which Parties Reside
- Situation of Property under dispute

Metropolitan Court

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• Metropolitan Courts are established in Metropolitan Cities in Consultation of High Court

Cities having population 10 Lacs/ More.

Chief Metropolitan Magistrate → has Power of
↓
Chief Judicial Magistrate

Metropolitan Magistrate → has Power of
↓
Court of Magistrate of First Class

Why Indian Regulatory Framework

Purpose of IRF is to provide

↓

Set of Uniform Rules and Regulations

↓

that will Govern Conduct of people interacting with each other

↓

in personal Relationship as well as Business Relationship.

What is Law

Law is set of obligation and duties

↓

Imposed by Government

↓

For Securing welfare

(&)

For Providing Justice to Society.

Sources of Law

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Main Sources of law are :-

- Constitution
- Statues or Laws Made by Parliament and State Assemblies.
- Judicial decision of Various Courts
- Established Custom and Usage

दिमाग़ की batti जलाये

- India is Parliament democracy
- Constitution of India is basis and sources of all law
- We Elect our representatives to the parliament and Legislative Assemblies of Various State

Parliament → Is Law Making Body.

- Representative of People Make law
  - in Parliament
  - State Assemblies of Various states

Law Passed by Parliament May apply throughout all India or Portion of India.

Law Passed by States Legislative apply within borders of State Concerned

Government of India Act, 1935

- Govt. of India Act was passed by Parliament of United Kingdom
- Govt of India Act is precursore fore Constitution of India.
- It defines characterstics of Government from Unitary to Federal

About Federal Court??

- Federal Court established in 1937 and has Jurisdiction Appelate, Original, Advisory.
- Powers of Appelate Jurisdiction fore Civil Case and Criminal Case
- Powers of Advisory Jurisdiction to give advise to Governor General in Matter of Public opinion.
- Federal Court operated fore 12 years and heard Roughly 151 Cases.
- Federal Court was Replace by Apex Court, the Supreme Court of India.

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Central Law v/s State Law.

- Indian Constitution has 3 lists
  - Central List
  - State List
  - Joint List.
- Depending on the list in which it figures a Matter would become the subject fore
  - Central Law
  - State Law.

Process of Making Law.

- Law is Proposed in Parliament called as Bill
- After Discussion and Debate Law is Passed in Lok Sabha.
- Then it has to be Passed in Rajya Sabha
- Then it has to obtain Ascent of President of India.
- Law will be notified by Government in th Publication called as "official Gazette of India" e
- Once it is notified and Effective it is called "An act of Parliament"

Law will become applicable from date Mentioned in notification as Effective date.

Types of Law.

Criminal Law

- Criminal law is concerned with Laws pertaining to Violations of Rules of law (or) Public Wrong and Punishment for same

- Criminal law is governed under



Indian Penal Code ↓
- It define
  - Crime
  - Nature
  - Punishment

Code of Criminal Procedures ↓
It define Exhaustive Procedures for executing the punishment of the Crime

Exampels of Criminal law

Murder, Rape, Theft, Fraud, Cheating, Assault

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Civil Law

- Civil law primarily focuses on dispute Resolution rather then Punishment
- Act of Process (ft) Administration of Civil law } Governed by Code of Civil procedure. [1908] (CPC)
- Civil Court enforce Violation of Certain Right and obligations
  ↳ through a Civil Suit.
- Civil law Classified into

	Examples
→ Law of Contract	• Non delivery of Good
→ Family law	• Non Payment of dues to lendore
→ Propety law	• Breamth of Contract
→ Law of Tort [Civil Wrong]	• Dispute between landlord and Tennant.

Common Law.

Judicial Precedent (or) Case law is Common law.

Doctrine of Stare Decisis

Judgement delivered by Supreme Court will be binding ↴

Within territory of India

↓

Under article 141 of Indian Constitution.

- It is Latin Phrase
  - To Stand by that what is decided.
- It Reinforces Court to Follow Same Judgement, where facts are Similar on all Four Legs with Earlier decision.

Principle of Natural Justice

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Natural Justice known as Jus Natural deals, with Certain fundamentals of Justice, Going beyond written law.

Nemo Judex in Causa Sua

- It Means no one should be Made Judge in own Cause and its a Rule Against Prejudice

Audi Alteram Partem

- It Means,
  - Hear the other Party
  - Give other Party a Fair Hearing
- Reasoned decision are Rules of Natural Justice.

Judgement Can overrule (or) Alter Common Law
↓
but Cannot overrule / Alter any Statue.

Indian Contract Act Unit - 1

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Relevant For

Sep 2024

Jan 2025



What is Contract?? [2(h)]

An Agreement enforceable by law.

What is Agreement? 2(e)

Every Promise/ set of Promise Forming Consideration for each other

What is Promise ??

When the Person whom the Proposal is Made

↓

Signifies his assent thereto

↓

Proposal is Accepted

.

Proposal once Accepted becomes Promise

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Agreement = Offer + Acceptance + Consideration

What is enforceablity

An agreement to become Contract Must give Rise to Legal obligation

duly Enforceability by Law.

Essential Consideration of Valid Contract

1. Two Parties
2. offer + Acceptance
3. Free Consent
4. Intention to Create Legal Relationship
5. Capacity to Parties
6. Certainty & Meaning
7. Possibility & Performance
8. Not declare to Void
9. Legal Formalities
10. Lawful object
11. Lawful Consideration.

(6) Certainty of Meaning

The Agreement Must be Certain and not Vague/ Indefinite

(7) Possibility of Performance

- Terms of Agreement → Capable of Performance
- An Agreement to do an act → Impossible in itself → Cannot be enforced

(8) Not Expressely declared to be Void

Agreement entered into Must not be which Law declares
- Illegal
- Void

Illegal Agreement are Agreements → Prohibited by Law.

Void Agreement is agreement without any Legal Effect.

(9) Other Formalities to be Complied

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- Some Contracts Must be in writing → Contract of Insurance
- Some Contract Must be Registered → In Case of Immovable Property.

(10) Lawful object and Consideration

- Consideration + Object → Should be Lawful
- Consideration / object is not Lawful if
  - Prohibited by Law.
  - it is fraudlent
  - Involves injury to Person
  - Involves injury to Property.
  - Court Regard it as
    - Immoral
    - opposed to Public Policy.

Considerations

- Reffered as "Quid Pro Quo" [Something in Return]

- Valuable Consideration

Some Right
Interest
Profit
Benefit

Forbearance
Detriment
Loss
Responcblity Given / suffered / Undertaken.
by other.

Types of Contract

On the Basis of Validity

- Valid Contract
- Void Contract
- Voidable Contract
- Illegal Contract
- Unenforceable Contract

On the Basis of Formation

- Express
- Implied Contract
- Quassi Contract
- E- Contracts
- Tacit Contracts

On the Basis of Performance

- Executed Contract
- Executory Contract

On the Basis of Validity

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(a) Valid Contract

- An Agreement which is **Binding and Enforceable**
- Contains all Essential of Valid Contract

(b) Void Contract

- A Contract Ceases to be enforceable by law becomes Void [When it Ceases to be enforceable]
- Void Contract → Cannot be enforced by Court of law
- When Contract is Void → but for Identifying it it is not Contract at all → it is called as Contract.

(c) Voidable Contract

An Agreement which is enforceable by law
- at the option of one Party
- but not the option of other/ others

When Voidable Contract

1. Consent not Free when Caused by
   - Coercion
   - Undue Influence
   - Fraud
   - Misrepresentation
2. When Person Promise to do something for another Person
   - but other Person Prevent himself from Performing within that time
   - Contract is Voidable at option of one Person.
3. Where a Party to Contract Promise to Perform work within Specified time
   - Could not be Performed in that time
   - Contract is Voidable at the option of Promisee

(d) Illegal Contract

- It is Contract which law Forbids to be Made.
- Court will not enforce such Contract but also Connected Contracts

All Illegal Agreements = Void.
But all Void Agreements are not Illegal.

	Illegal Agreements	Void Agreements
Scope	All Illegal Agreements are Void	All Void agreements Are not Illegal
Nature & Character	Are Forbidden by law	Not Forbidden by Law
Effect on Collateral Transaction	All Collateral transaction to Illegal transaction are Void. [Illegal]	Collateral transaction Can be enforced to the Extent Collateral Can be Performed Independently.
Penalty/ Punishment	Punishable Under Indian Penal Code	No Penalties/ Punishment

(e) Unenforceable Contract

When Contract is Good in Substance
+
because of Some technical defect
- Absence in writing
- Barred by limitation

↓

One/ both Party Cannot Sue

↓

are Called Unenforceable Contract

On the Basis of Formation

- Express Contract
- Implied Contract
- Tacit
- Quasi
- E- Contracts

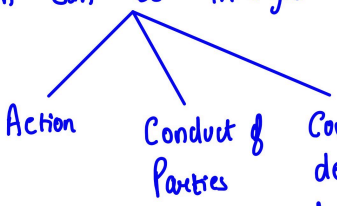


Express Contracts

- Terms are expressed by Words / Writing

Implied Contracts

- Come into Existence by Implications
- Implication can be through



Implied Contracts ↓

When Proposal (or) Acceptance is made otherwise then by Words.

Tacit Contracts

- Tacit = Silent
- Tacit Contracts are Inferred through the Conduct of Parties. Without any Words Spoken / Written
- Cash withdrawn from ATM.

Quasi Contract

- Not a Contract ; Resemble like Contract
- Created by Law Under Certain Circumstances
- When there is no Contract in existence ↓

but law Creates and Enforce Legal Rights and Obligations ↓

are Called as Quasi Contracts.

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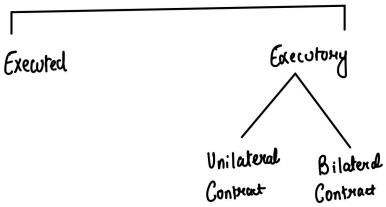
E- Contracts

- Where Contract is entered into by two or More Parties Using Electronic Means [Such as E-mails], is known as E- Commerce Contract
- Also known as
  - Electronic data Interchange
  - Cyber Contracts
  - More Click Contracts.

On the Basis of Performance





Executed Contract:

- Consideration can be < Act / Forbearance

- When Act is done / When Act is Executed } the Contract is Executed.

  Forebearance is brought on Records

Executory Contract:

- Consideration = Reciprocal Promise / obligation

- Consideration has to be performed in Future only, then it is called Executory Contract

Unilateral Contract

- Unilateral Contract is one sided Contract in which one party has performed his duty (or) obligation
  ↓
  and other party obligation is pending.

Example → Mohan Advertises payment of Rs. 15000 to any one who finds Missing boy. As soon as Bhanu finds the Missing boy, there Comes into Existence Unilateral Executory Contract because Bhanu has performed & Mohan has to pay Rs 15000.

Bilateral Contract

- Bilateral Contract is one where, the obligation (or) Promise is outstanding
  ↳ on the part of both the parties.

Example → A sold plot to B for Rs 20,00,000 with down payment of Rs 3,00,000 and A Gives Possession Plot to be Registered to B after payment of Rs 17,00,000 to A. The Contract between A and B is Bilateral Executory Contract because Something Remains to be done on both Sides.



Proposal (or) offer Sec- 2 (a)

When one party signifies to another

his willingness to do

to abstain from doing

With a view to obtain the assent of such Act/ Absitence.

Essential of Proposal / offer

- Promisor → Person Making the offer
- OFFEREE → Person to whom offer is Made
- Acceptor / Promisee → Person Accepting the offer

Party Making offer Must Express willingness To do/ Not to do Something.

There Must be Expression of willingness to do (or) not to do Some Act
↳ by offeror.

An offer Can be Positive as well as Negative

Doing Act → Positive

Not doing → Negative.

Willingness Must be Expressed with a view to obtain Assent of other Party to whom offer is Made.



Classification of offer

(a) General offer

- offer Made to public at large
- Can be Accepted by anyone
- Until General offer is retracted [वापस लेना] it Can be accepted by anyone.

Carlill v/s Carbollic Smoke Ball Co. [1893]

- Carbollic Smoke ball Co. advertised that Reward of 100£ would be Given to any Person who suffered Influenza after Consuming Smoke Ball.
- Mrs Carlill used Smoke Ball and then also suffered Influenza. She Can Recover the Amount as she Accepted the offer.

CASE LAW

(b) Specific offer

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- Made to [Specific / Ascertained Person] } it is known as Specific offer

- Specific offer Can be Accepted only by that specific Person, to whom offer is Made
  - ↳ Case Law → Boulton v/s Jones

CASE LAW

(c) Cross offer

When two parties Exchange Identical offers Ignoring each other offer
↳ these offers are called Cross offer

There is no binding Contract
↳ as each others offer Cannot be treated as Acceptance.

(d) Counter offer

- When offeree offers Conditional Acceptance to the offer Subjected to Modifications / Variation in terms of Original offer it is said to be Counter offer.

Counter offer = Rejection of Original offer

Counter offer = Conditional Acceptance.



(e) Standing offer

An offer which is allowed to Remain open for Acceptance over a period of time.

Essential of Valid offer

Capable of Creating Legal Relationshi

- Offer Must be such as in law is capable of being Accepted and Give Rise to Legal Relationship
- If offer does not Intend to Give
  - Rise to Legal Consequences
  - (+)
  - Creating Legal Relationship

  } it is not Considered as Valid offer.

Social Invitation is not Valid offer.

offer Must be Certain, Definite and not Vague

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If Terms of offer are Vague/ Indefinite
↳ its Acceptance Cannot Create any Contractual Relationship

Communicate to offeree

- An offer to be Compelete, Must be Communicated to person to whom it is Made.
  ↳ Else no Acceptance
- Unless an offer is Communicated there Can be no acceptance by it.

Acceptance of offer in Ignorance of offer is not acceptance
↳ Impose no Right on Acceptor.

View of obtaining Assent of Other Party.

Offer Must be Made with a View to obtain Assent of other party

↓

and not Merely view of disclosing Intention of Making offer.

It May be Conditional

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- An offer Can be Made subjected to terms and Conditions

Offer should not Contain a Term, the Non-Compliance of which is Acceptance

One Cannot say that

↓

If Acceptance is not Communicated by Certain time

↓

the offer would be Considered as Accepted.

An offer May be Specific or General

An offer Can be Made to either

- Public at Large → General offer
- Any other Specific Person → Specific offer.

Offer is Different From Mere

- Statement of Intention
- Communication of Information
- Invitation to offer
- Prospectus and Advertisment

I Statement of Intention and Announcemen

↓

Example→ A father wrote to his son about wish of Making him owner of Property

↓

It is Statement of Intention.

II

CASE LAW

Harvey Vs Facie [1893]

In the given case, the Plaintiff through telegram asked the defendants two questions

(a) Will You sell us Bumper Hall Pen ? ? and

(b) Telegraph lowest cash price

The defendants replied through telegram that " lowest price of bumper hall Pen is £ 900" However defendant refuse to sell property at that price.

The plaintiff sue the defendant contending that they had made an offer to sell property at £ 900 and therefore bound by offer.

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

Their lordships held that

→ the mere statement of lowest price at which Vendor would sell contained no implied contract to sell to person who enquired about price.

CASE LAW

Mac Pherson Vs Appanna [1951]

The final decision of Case law Harvey Vs Facies was followed wherein owner of property had said that he would not accept less then £ 6000 for it.

This statement did not indicate any offer but indicated only invitation to offer.

III Statement of Price is not offer

Quoting of Price does not Constitute as offer [Harvey Vs Facie]

IV Invitation to offer

In this Person makes Invitation to other Person to Make an offer.

Harris Vs Nickerson.

- Auction is an advertisement to Sell
- Prospectus is Invitation to public to Make an offer.

CASE LAW

Offer May be Express / Implied.

Offer May be Made either by Words Spoken / Written.

Statement of Price is not offer

↓

Difference between offer and Invitation to offer.

OFFER	Invitation to offer
According to Section - 2(a), "An offer is final Expression of willingnes by the offeror ↳ to be bound by offer. ↓ Should the other party chooses to accept it."	"Offers Made with Intention to Negotiate (OR) ↓ Offers to Receieve offers are known as Invitation to offer."
· If a person who makes the Statement has the intention to be bound by it as soon as the other accepts ↳ he is making an offer.	· If person has intention of Negotiating on terms it is called invitation to offer.

Prospectus by Company ↓ Invitation to offer

Display of Goods Sale ↓ Invitation to offer

Advertisement for Auction Sale ↓ Invitation to offer

Quotation of Price Sent in Reply to Query Regarding Price ↓ Invitation to offer

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DO NOT FORGET

SUMMARY

Acceptance

When the Person to whom Proposal is Made Signifies his Assent thereto ↳ Proposal is Accepted

Proposal once Accepted becomes Promise

- Acceptance Can only be Given by Person to whom offer is made
- Acceptance Must be Absolute and Unqualified.
- Acceptance Must be Communicated
- Time
  - Acceptance Must be in Prescribed Mode
  - Mere Silence is not acceptance
  - Acceptance by Conduct / Implied Acceptance

Rules Regarding Acceptance

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Acceptance Given by Person to whom OFFER IS MADE

Specific offer can be Accepted by Person to whom offer is Made

Boulton vs James 1857

- Boulton bought a business from Brocklehurst.
- Jones, who was Brocklehurst Creditor, Placed an Order with Brocklehurst for Supply of Certain Goods
- Boulton Supply the Goods even though the Order was not in his Name.
- Jones Refused to pay Boulton for the Goods because by Entering into the Contract with Brocklehurst
  - ↳ he Intended to set off his debt against Brocklehurst.
- Held that, as the offer was not Made to Boulton,
  - ↳ therefore there was no Contract between Boulton Jones.

Carlill vs Carbollic Smoke Ball Co. [1893]

In Case of General offer, it Can be Accepted by any person who has knowledge of the offer.

Acceptance Must be Absolute or Unqualified.

- Acceptance is Valid when it is Absolute (or) Unqualified
- Acceptance Must be expressed Usual Manner and Reasonable Manner
  - ↳ Unless Proposer Prescribe Manner of Acceptance.
- If Manner is Prescribed
  - ↳ then Acceptance Must be accordingly.

CASE LAW

Neale vs Merrett [1930]

M offered to sale his Land to N for £280. N replied to accept the offer but enclosed a Cheque of £80 only. He promised to pay balance £200 by monthly installments of £50 each.

It was held that N could not enforce his acceptance because it was not an unqualified one.

Union of India v/s Bahulal [1965]

CASE LAW

A offers to sell his house to B for 30,00,000 Rs. B replied that, "I can pay Rs 24,00,000 for it. The offer of A is rejected by B as acceptance is not unqualified. B however changes his mind and is prepared to pay Rs 30,00,000.

This is also treated as Counter offer and is upto A, whether to accept it or not.

Acceptance Must be Communicated

- Acceptance Must be Communicated in some Perscriptle [Acceptable] Forms
- Conditional Acceptance is not Acceptance
- " " Counter offere

Case Law → Brogden v/s. Metropolitan Railway Co.

B a Supplier, sent a draft Agreement Relating to the supply of coal to the Manager of Railway Company for acceptance. The Manager wrote the word "Approved" on the same and put the same in drawer, intending to send the same to Company's Solicitor for formal Contract to be drawn up.

CASE LAW

Held that there was no Contract as the Manager had not Communicated his Acceptance to the Supplier.

Heyworth v/s Knight [1864]

A Mere Variation in the language not involving any difference in substance would not make the acceptance ineffective

Bhangwandas v/s Girdharilal

CASE LAW

When an offer made by intended offeree without the knowledge that an offer has been made to him
→ Cannot be deemed as an Acceptance thereto

Acceptance Must be in Prescribed Mode

When Mode of Acceptance is Prescribed
↓
Acceptance Must be in Prescribed Mode

When the Mode of Acceptance is not Prescribed
↓
Must be Accepted in General Manner.

Time

- Acceptance Must be Given within specified time
- gp no time is Specified → then Acceptance Must be Given within Reasonable time

Reasonable time → Facts and Circumstances of the Case.

Mere Silence is not Acceptance

- Acceptance of offer Cannot be Implied from Silence of offeree/ failure to Answer
- But if offeree has in Previous Conduct that Silence is Evidence of Acceptance
  ↳ then it is Valid Acceptance

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Felt House v/s Bindley [1862] — CASE LAW

F offered to buy his Nephews horse for £30 saying "gp I hear no More about it, horse will be Mine at £30". Nephew told Auctioner not to Sale the horse to anyone and Reserve for Uncle. By Mistake Auctioner sold the horse. F Sued for Conversion of his property.

Held F Cannot Succeed as his Nephew did not Communicated the Acceptance to him.

Acceptance by Conduct/ Implied Acceptance

When Person Performs the Act "Intended by the Proposer", as Consideration of Promise
↓
the Performance of Act is called as Acceptance

Communication of offer

According to Section-4, Communication of offer is Complete
→ When it Comes to knowledge of Person to whom it is Made

Example → A Makes the proposal to B to sell the house for Rs 5,00,000 and letter containing offer is posted on 10th March and letter Reaches on 12th March, offer is Communicated on 12th March when B Received the letter.

If the letter reaches on 12th March and Read on 15th March, offer is Communicated on 15th March

Mode of Acceptance

Communication by Act

- It will Include any expression of words
  - Written
  - Oral

Writing → Letter / Telegram / Fax / Email / Advertisment.

Oral → Telephone Messages

☞ Communication would Include any Conduct Intended to Communicate
↓
Positive Act (or) Signs.

Communication of Acceptance by Omission to do Something

- Such Omission is Conveyed by Conduct (or) Foreberance
- However silence would not be treated as Communication.

Communication of Acceptance by Conduct

- Unilateral Assent in one's Mind would not amount to Communication

Central Bank Yeotmal v/s Vyankatesh [1949]

CASE LAW

When a resolution passed by bank to sell land to "A" remain uncommunicated to "A". It was held that there was no Communication hence no Contract

Practical Case of Communication of offer



Offer Sent by Post on 01.01.2024

Offer Came to knowledge of Sweety on 06.01.2024

Offer Communicated on 06.01.2024



Practical Case of Communication of Acceptance



Offer Sent by Post on 01.01.2024

Offer Came to knowledge of Sweety on 06.01.2024

Acceptance letter drafted on 07.01.2024

Acceptance letter Posted on 09.01.2024



Communication of Acceptance is Completed

- Against Proposee → When it is put in Course of transmission to him [Sonu], on 09.01.2024 now it is outside Power of Sweety to withdraw.
- Against Acceptor → When it Comes to knowledge of Proposer

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Q2 Offer कब तक Revoke कर सकते है??

Ans. Offer Can be Revoked before it is Accepted

Q3. Acceptance कब तक Revoke kar sakte hai ??
↳ Sweety karegi

Ans. An acceptance Can be Revoked at any time before the Communication of Acceptance is Complete Against the Acceptor.

Sweety Posted letter of Acceptance on 09.01.2024

Letter will Reach Sonu on 14.01.2024.

Acceptance Can be Revoked before 14.01.2024.



When Communication of Acceptance is Complete ??

Against the Proposer

When it is put into Course of transmission to him

↓

So as to be outside Power of Acceptor to withdraw the same

Against the Acceptor

When it Comes to knowledge of Proposer.

Communication of special Condition

Sometimes there are Contract with special Conditions

These special Conditions are conveyed Tacitly and Acceptance of these conditions are also Communicated Tacitly

Mukul Datta v/s Indian Airlines

CASE LAW

When someone travels by aire, it is seen that special conditions are printed at back of tickets in small letters Sometimes these conditions are found to have been displayed at notice board of airlines office which passenger may not have read. The question here is whether these conditions can be considered to be communicated to passenger and passengers have been treated as accepted the conditions. The answer to this is affirmative but such conditions should be reasonable.

Lilly White v/s Manmuswamy.

CASE LAW

P delivered some clothes to dry cleaner for which she received laundry receipt containing the condition that in case of loss, Customer shall be entitled to claim 15% of market price of value of article. P lost her new saree. Held the terms are unreasonable and P was entitled to recover full value of saree from the dry cleaner.

In the above the document have been accepted without a protest and hence amount to tacit acceptance.

CASE LAW

Raipur Transport Co. v/s Ghanshyam [1956]

A transport Carriers accepted the goods for transport without any conditions. Subsequently he issued circular to the owners of goods limiting his liability for the goods.

In such a case, since special conditions were not communicated prior to date of contract for transport, these were not binding on owners of goods.

Communication of Performance

Against the Proposer

When it is put into Course of transmission to him

↓

So as to be outside Power of Acceptor to withdraw the same

Against the Acceptor

When it comes to knowledge of Proposer.

Principle laid down in Case of Carlill v/s Carbollic Smoke Ball Co.

CASE LAW

→ An offer, to be Capable of Acceptance
  ↳ Must Contain a definite promise by the offeror that he would be bound
  ↓
  Provided the terms specified by him are accepted.

→ An offer may be Made either to — Particular Person / Public at Large

→ If an offer is made in the form of a promise in return for an Act [Performance for an Act]
  ↳ even without any Communication thereof
  ↓
  is to be treated as an Acceptance of the offer.

Revocation of offer

- offeror Can Revoke his offer before it is Accepted
- Once Revoked, offeree Cannot give acceptance
- An offer May be Revoked, Even though Originally agreed to hold open for definite Period of time.



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Revocation of Acceptance

- An acceptance May be Revoked at any time before
  ↓
  Communication of Acceptance is Complete Against Acceptor

English Law vis Indian Law.

Contract through Post

English Law

↓

An acceptance Cannot be Revoked once the letter of Acceptance is Posted.

Indian Law

↓

An acceptor Can Revoke acceptance any time before the letter of Acceptances Reaches offeror.

↓

Revocation Telegram Reaches Before Reaching of letter of Acceptance.

Contract over Telephone

- Contract over telephone is formed as soon as the offer is Accepted
- offeree should Make sure that his acceptance is Received by offeror.

If Telephone goes ↓ dead during Conversation

Acceptor Must Confirm that

↓

Words of Acceptance is heard by offeror.

Modes of Revocation

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- By Notice of Revocation
- By Lapse of time
  - The time for acceptance can lapse if acceptance not given within specified time and where no time is specified, then within Reasonable time.
- By Non-Fulfillment of Condition Precedent
  - When the acceptor fails to fulfill a condition precedent to Acceptance the Proposal gets revoked.
- By Death or Insanity.
  - Death or Insanity of proposer would Result in automatic revocation of proposal only if fact of death/Insanity comes to knowledge of acceptor
- By Counter offer
- By Subsequent Illegality
- By Non acceptance of offer according to Prescribed or Usual Mode

Indian Contract Act Unit - 2

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Relevant For

Sep 2024

Jan 2025



What is Consideration 2(d)

Where at desire of Promisor, the Promisee (or) any other Person

- has done
- has abstained from doing
- does / abstains from doing
- Promise to do / Abstain from doing something

Such an { Act, Abstinence, Promise } is called Consideration

In depth analysis.

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- Consideration is an Act doing Something
- Consideration is Abstenence ie abstains from doing
- Consideration May be desire of Promisor
- Consideration May be from Promisee / any other Person.
- Consideration May be { Post, Present, Future }

Legal Rules Regarding Consideration

① Consideration Must Move at desire of Promisor

- Consideration Must be offered by Promisee/ third party at desire of Promisor

- Contract of Marriage in consideration of Promise of settelment is enforceable

Act done at desire of third party is not Consideration

Durga Prasad vs Baldeo

- D Promised to Pay P Comission on articles sold through agency.
- Market was constructed by P at desire of C
- D was not bound to Pay P

② Consideration May Move from Promisee or any other Person

Consideration May Proceed from the Promisee/ any other Person who is not Party to Contract

Stranger to Consideration = ✓
Stranger to Contract = ✗

Chinnaya vs Ramaya.

- An old lady made property gifted to her daughter with direction to Pay Certain Sum of Money to Maternal Uncle [Mama]
- Daughter died not Pay Annuity and Uncle Sued to Recover it
- It was held uncle has sufficient Consideration to Recover the amount.

③ Executed Consideration and Executory Consideration

Consideration which Consists in Performance of an act → is said to Executed.

Where Consideration Consists in → Promise → is called Executory Consideration



④ Consideration may be Past/ Present/ Future

- Past Consideration May Move at Promisors request
- Consideration if Past May be Motive, but Connot be Real Consideration for Subsequent Promise

In Case of Services

In Case of Services Rendered in Past at desire / Request of Promisor, Subsequent Promise is regarded as that Past Consideration was not Gratuitous.

⑤ Consideration Need not be Adequate

- Consideration need not be of any particular Value
- It need not be approximately of Equal Value
- It Must be something to which law attaches some Value

⑥ Performance of what one is Legally bound to Perform

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- Consideration Must not be Performance of Existing duty.
- Performance of an act by person who is legally bound to perform, this Connot be Consideration
- Promise to Pay witness is Void [it is without Consideration]

⑦ Consideration Must be Real and not Illusory.

- Consideration Must be something to which law attaches some Value
- It is [legally / physically] impossible, hence not Valid Consideration.

⑧ Consideration Must not be Unlawful, Immoral, opposed to Public Policy

- Consideration Must be lawful
- Anything which is Immoral / opposed to Public Policy Connot be Valid Consideration

Cases when Third Party to Contract Can Sue.

(a) Trust

A Beneficiary can enforce his right under the trust, though he was not party to Contract between

- Settelee
- Trustee.

(b) Family Settelment

- Terms of settelment Reduced in writing
- Members of family who originally were not party to settelment, May enforce Agreement

(3) In Case of Certain Marriage Contract Agreements

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Provision May be Made for Benefit of any person, he may file though not Party to Contract.

(4) In Case of Assignment

- Benefit under Contract has been assigned then Asignee will enforce the Contract

(5) Acknowledgment / Estoppel

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(6) In Case of Covennant Running with Land

- Person who purchases the land with the notice that owner of land is bound to Pay Certain duties affecting land

↓

Covenant affecting land may be enforced by Successor of Seller

(7) Contract through Agent.

Principal Can enforce Contract entered by Agent ↓

where agent has acted within scope of Authority and in name of Principal.

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Validity of an Agreement without Consideration

① Natural Love and Affection

- Must be made out of Natural love and Affection (+)
- Parties Must stand in Near Relationship (+)
- Must be writing (+)
- Must also be Registered in law.

② Compensation of Past Voluntary Service

A Promise to Compensate wholly (or) in part to a person who has already voluntarily done Something ↓

Shall be valid if following Factor Exist :-

- Services should be Rendered Voluntarily (+)
- Services should be Rendered for the Promisor (+)
- Promisor Must be in Existence at the time when services are rendered. (+)
- Promisor has Intended to Compensate the Promisee.

③ Promised to Pay Time Barred Debts

Where a Promise is in writing

&

Signed by Person Making it (or) his authorized Agent

(+)

is Made to Pay debt barred by limitation

↓

is Valid without Consideration.

④ Agency

According to Section 185, no Consideration is necessary to Create Agency.

⑤ Completed Gift

In Case of Completed Gifts the Rule "No Consideration - No Contract" does not apply.

Gifts do not recquire any Consideration.

Transaction between donor and donee of any Gift is Valid.

⑥ Bailment

According to Section 148, No Consideration is required to effect Contract of Bailment.

⑦ Charity

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If a Promisee undertakes the liability
↓
on the Promise of Person to Contribute to Charity
↓
the Contract shall be Valid.

Kedarnath v/s Gouri Mohammad

- If a Promisee Undertakes the liability on the Promise of Person to Contribute to Charity
- Contract shall be Valid.

Indian Contract Act Unit - 3

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Relevant For

Sep 2024

Jan 2025



Capacity of Contract

What is Capacity

Capacity refers to Competence of Party to Make a Contract

Who is Competent to Contract

Every person is Competent to Contract

- who is age of Majority (+)
- who is of sound Mind (+)
- Not disqualified from Contracting by any law to which he is Subject.

Age of Majority

- Age of Majority is regulated by ↓ "Indian Majority Act, 1875"

When a Person becomes Major....	Every Person domiciled in India shall attain age of Majority on Completion of 18 Years of Age

Contract With or by Minor is Void- ab- initio

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A Minor is not Competent to Contract and any Agreement with (or) by Minor is Void from beginning.

Mohoribibi vs Dharmodas Ghose

- Mr. D[Minor] Mortgage house for Rs 20,000 to Money lender.
- Money lender Paid Rs 8000
- Minor Filed suit for Cancellation of Contract
- Contract is Void as D is Minor.

No Ratification after attaining Majority

Minor Cannot ratify a agreement after attaining Majority as original Agreement is Void Agreement Cannot be Ratified.

Minor Can be beneficiary (or) Can take Benefit out of Contract:

Though a Minor is not Competent to Contract, nothing in the Contract
↳ Prevents him from Making other party bound to Minor

Minor Can always Plead Minority

- Minor can always Plead Minority and is not stopped to do so even where
  - he has taken any Loan
  - Entered into Contract by Falsely representing Major.

Minor is allowed to Plea Minority in defence.

Rule of estoppel is not against Minor.

Liability for Necessaries

- Necessaries supplied to Minor
  (or)
  any other person to whom minor is legally bound to support

- Minor is not liable for any price that he may promise and Never for More then Value of Necessary

- Minor is not liable his property is liable

- Two Conditions Must be satisfied to Render Minor estate liable

Condition - 1

Contract Must be for Goods Reasonably necessary
↓
for his support
↓
in the station in the life.

Condition - 2

Minor must not have
↓
already a sufficient supply of these necessaries.

What do you Mean by Necessary ??

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- Necessary Means those things that are essentially Needed by Minor.
- Neecessary Cannot be
  - Luxury
  - Costly
  - Unnecessary articles.

- Necessary extend to all such things as Reasonable Person would supply to Infant
- Expenses on Minor's education / Funeral Ceremonies Come within Scope of Word Necessaries

whole Question depend upon Minor status in life
↳ Utility Rather then Ornament is the Criteria.

No Specific Performance

- Minor agreement exclusively Void, there Can be no question of specific performance

Contract by Guardian - How Far enforceable.

- When Guardian Makes a Contract for Minor, which is for Benefit of Minor, this is valid Contract which Minor Can enforce.

Guardian of Minor has no power to bind the minor by Contract for purchase of Immovable property

Contract entered by Certified Guardian [appointed by Court] of a Minor, with the sanction of Court for sale of the Minor's property may be enforced by either party of Contract.

No Insolvency.

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- Minor Cannot be declared as Insolvent as he is incapable of Contracting debts and dues
  - ↳ debts and dues are payable from Personal property of Minor and is not personally liable.

Partnership.

- Minor incapable of Contracting Cannot become Partner.
- But U/s 30 of Indian Partnership Act
  - ↳ Can be admitted to Benifits of Partnership.

Minor Cannot bind Parent (or) Guardian.

- In the Absence of Authority [Express / Implied] an Infant is not Capable of binding Parent (or) Guardian [even for Necessaries]

Parents will be held liable only when child is acting as agent for Parents.

Minor Can be Agent

- A Minor Can be agent, but he will not be liable to Principal for his Acts.
- A Minor Can [draw, deliver, Endorse] Negotiable Instruments

Joint Contract by Minor and Adult

In such a case adult will be liable on contract and not the Minor

Sain Das vs Ram chand

- Where there was joint purchase by two purchaser
- One of them is Minor
- it was held Contract Can be enforced against Major.

Surety of Minor

- In a Contract of Guarantee, where Adult stand as Surety for Minor, then adult liable to third party.

↓

and there is direct Contract between Surety and third party

Minor as Shareholder

- Minor → Incompetent to Contract → Cannot be shareholder
- Minor became share holder by Mistake → Company will Rescind the transaction and Removes Name from Register.
- Transfer/ Transmission of Fully Paid up shares → Minor Can shareholder with lawful Guardian

Liability for Torts

Tort = Civil Wrong

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- Minor is liable for Torts.
- Minor is not liable for Torts if it is breach of Contract.

Person of Sound Mind.

- A Person is said to be of sound Mind, for purpose of Making the contract, if at the time of Making the Contract
  - Capable of Understanding the Contract **and**
  - Forming of Rational Judgement

note to self:

A Person who is Usually of Unsound Mind, but occassionally of Sound Mind, May Make a Contract when is of Sound Mind

note to self:

Person who is Usually of Sound Mind but occassionaly of Unsound Mind, May not Make a Contract when he is of Unsound Mind.

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Person Disqualified by Law.

Free Consent.

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What is Consent

According to Section 13, When two or More Person are said to Give Consent when they agree upon
↓
"Same thing in same Sense"

- Consent is not Free when it is Caused by

- Coercion
- Undue Influence
- Fraud.
- Misrepresentation

Contract is Voidable

- Mistake

Contract is Void

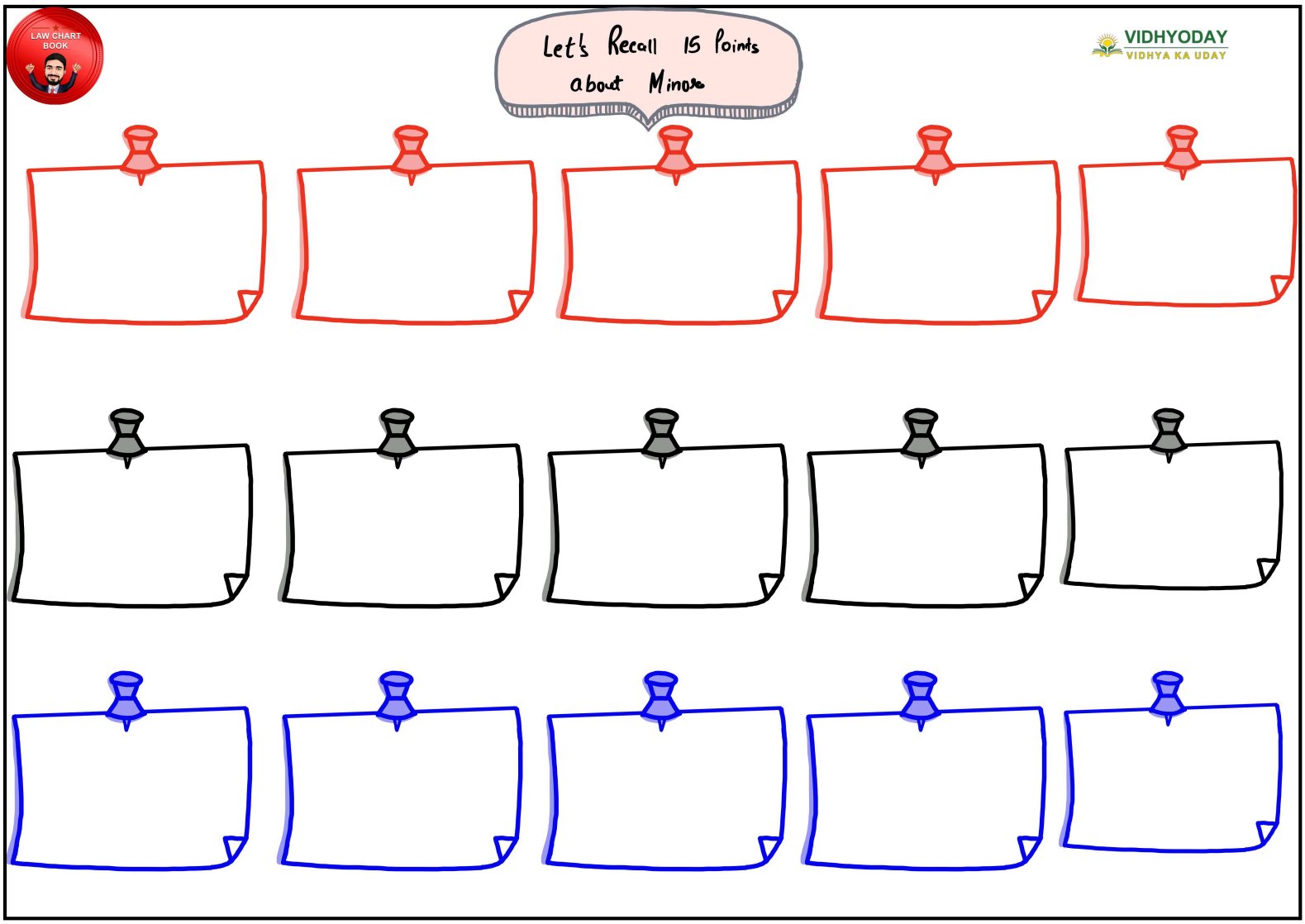
If fundamental Error is of
- Nature of transaction
- As to Person dealt with
- As to Subject Matter of Agreement

then Consent is not same thing in same Sense

Same thing Must be understood as the whole Content of Agreement

Consent May be Free/ Not Free

Only Free Consent is necessary for Validity of Contract


LAW CHART BOOK
Let's Recall 15 Points about Minors
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Coercion (Sec-15)

- Coercion is Committing / threatening to Commit any act Forbidden by Indian Penal Code

(OR)

- Unlawful detaining / threatening to detain any Property to prejudice of any person

↓

with the Intention of Causing any person to enter into Agreement

It is Immaterial whether Indian Penal Code is/not in force at place where Coercion is employed.

It is not necessary that subject of Coercion Must be other Contracting Party.

↓

It May be directed against third Person.

Contract Induced by Coercion is Voidable at option of Party whose Consent was so obtained.

A Person to whomm Money is paid/ things are delivered under Coercion → Must Repay/ Return it.

Suicide

- Suicide is Forbidden by Indian Penal Code
- Suicide is not Punishable as dead Man/ Women cannot be Punished.

Threatning to Commit Suicide will be regarded as Coercion

Undue Influence [Section 16]

A Contract is said to be Induced by Undue Influence where ↓

Relation subsisting between Parties are such that one of the party is in position to dominate will of the other

and

he Uses that position to obtain Unfaire Advantage over other.

Person Can be Influenced by the other when Near Relation Exists between the two.

Following Cases will be deemed to be in Position to Dominate Will.

Holds Real or Apparent Authority over the other

Where Person holds a Real Authority over others as in Case of

- Master and Servant
- Doctor and Patient

Fiduciary Relationship

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- Where Relationship of trust and Confidence exist between Parties. Such Relationships are:-
  - Father and Son
  - Husband and Wife
  - Spiritual Guru and Devotee
  - Solicitor and Client
  - Trustee and Beneficiary

Mental Distress

- An Undue Influence Can be Used against a person to get Consent on Contract

↓

Where Mental Capacity is
- Temporarily
- Permanently

} affected by Reason of

- Mental Issues
- Body Distress
- Illness
- Old age.

Unconscionable Bargains

Where one of the party is in position to dominate the will of others

and

Contract is Unconscionable [Unfair]

↓

it is presumed that Contract is of Undue influence

Found Mostly in
- Money Lending Transactions
- Gifts.

Person who is in Position to dominate will by getting Consent
↳ Must have object to take advantage

Party to Contract who decides to avoid the Contract, then he has to Prove

- other Party in Position to dominate will
- other Party actually Used the Position
- Transaction is Unfair

Power to set aside Contract [Sec 19A]

#Where Consent to an agreement is Caused by Undue Influence, agreement is Contract, Voidable at the option of Party whose Consent was so Caused.

Any such Contract May be set aside Absolutely

Party Received Benefit Must Return it

Fraud
Sec-17

Fraud Means and Includes any of following Acts Committed by Party to Contract/ with his Connivance/ with his agents

↓

With an Intent to deceive < Other Party (or) Agent

↓

to Induce other party to enter into Contracts.

Following Acts

- Suggestion of Fact that is not true (or) by one who does not believe it to be true
- Active Concealment of Fact by one having knowledge (or) belief of fact
- A Promise Made without Intention of Performing it
- Any other act fitted to deceive
- Any Such act/ omission as the Law Specially declares to be fraudulent

Essential Elements of Fraud.

- There Must be Representation / Assertion and it Must be false
- Representation Must be Related to fact
- Representation should be Made before Conclusion of Contract, with the Intention to Induce other party to enter into Contract
- Representation (or) Statement should be Made with knowledge of falsity (or) without belief in truth and not Caring whether true / false.
- Other Party Must have Induced to Act upon Representation / Assertion
- Other party Must have Relied on the representation and Must have been deceived.
- other party Acting upon Representation, Must have consequently suffered loss.

Remedies Available for Fraud

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- Contract is voidable at the option of other party
- He can Rescind the Contract within a Reasonable time
- He can Insist on performance of Contract on the condition that

↓

he shall be put in position in which he would have been
↳ had the Representation made true

Misrepresentation [Section -18]

- Statement of fact, which if false would constitute Misrepresentation if Maker belives it to be true but not justified by information he possessess.
- When there is Breach of duty by person without any intention to deceive, which brings an advantage to him
- When a party Causes [Even though done Innocently], the other party to agreement
  ↳ to Make a "Mistake as to Subject Matter"

Mistake

- Meaning of Mistake
- Mistake of Law
  - Mistake of Indian Law
  - Mistake of Foreign Law
- Types of Mistake
  - Bilateral Mistake
  - Unilateral Mistake
- Causes of Bilateral Mistake

Meaning of Mistake

- Mistake may be defined as Innocent/Erroneous belief which lead third party to Misunderstand the otheres.

Mistake of Law

Mistake of Indian Law

A person cannot be allowed to Get Relief on ground that it had done a particular Act in Ignorance of Law

Mistake of Foreign Law.

Such Mistake is treated as Mistake of Fact and hence agreement is Void.

Mistake of Fact → Always Void

Types of Mistake

Bilateral Mistake

When both the party to Contract are under
↓
Mistake as to Matter of facts
↓
Agreement is Void.

Unilateral Mistake

A Contract is not Voidable Merely because it was Caused by one of Party to it
↓
being under Mistake of Fact.

Causes of Bilateral Mistake

- Mistake as to Quality of Subject Matter
- Mistake as to Existence of Subject Matter
- Mistake as to Identity of Subject Matter
- Mistake as to Title of Subject Matter
- Mistake as to Price of Subject Matter
- Mistake as to Quantity of subject Matter.

Legality of Object and Considerations
[Section -10 + Section- 23]

Sec-10 of the act Provides for Legality of object and Consideration

Sec-23 of the act also states that, Every agreement of which object and Consideration is unlawful is Void

Agreement or Consideration is Unlawful in following Cases

- Consideration (or) object is Forbidden by Law.
- Consideration/ object are of such nature to defeat Law.
- It is Fraudlent
- Involves injury to Person/ Property
- Court Regard as Immoral
- Opposed to Public Policy
  - Trading with Enemy
  - Consideration Unlawful in Part
  - Stifling Prosecution
  - Marriage Brokerage Agreements
  - Agreement tending to Create Monopolies
  - Maintenance and Champerty
  - Interference with Course of Justice

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When Consideration (or) Object is Forbidden by Law.

Acts Forbidden by law are
- Punishable Under Statue
- Prohibited by Regulation
- Order Made in exercise of Authority Conferred by Legislature

Consideration (or) Objects are of such a Nature that if Permitted would defeat Law

If Consideration/ Object of an Agreement is of such a Nature that not directly but Indirectly, would defeat Provisions of law → the Agreement is Void.

When it is Fraudelent

Agreements which are entered into to Promote Fraud is Void.

When Consideration Involves Injury to Person/ Property

- Object or Consideration is unlawful as it Involves Injury to Person/ Property of another

Meaning of Injury → Criminal (or) Wrong full harm



When Consideration is Immoral

Agreements where object or Considerations is Unlawful being Immoral.

Where Consideration is opposed to Public Policy.

Public policy can be Interrupte in Wide and narrow Sense

Way to Learn

I C S Must Appoint Managers of I I T

T → Trading with Enemy
C → Consideration Unlawful in part
S → Stifling Prosecution
M → Marriage Brokerage Agreements
A → Agreement tending to Create Monopolies
M → Maintainance and champerty
I → Interference with Course of Justice
I → Interest Against obligation
T → Trafficking Related to public offices

Trading with Enemy

Any trade with Person owing Allegiance to Government at war with India without license of Government of India is Void as opposed to Public Policy.

Consideration Unlawful in Part

If any part of
- Single Consideration for one or More Objects
- Any one (or) part of any one of Several Consideration for single object

is unlawful hence Void.

Legal Part can be Seperated from Illegal Part → Bad Part can be Rejected and Good one can be Retained.

Illegal Part Cannot be Seperated → Contract is Void.

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Stifling Prosecution

Any agreement to Present Proceedings already Instituted from Running there normal Course Using Force

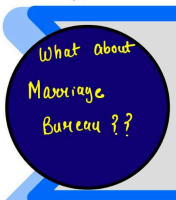
Compromise of any Public offence is Generally Illegal

☞ Principle is that one should not make Trade of Felony.

☞ According to Indian Criminal Procedure Code there is list of Compoundable offences and an agreement to drop proceedings Relating to such offence is not opposed to public policy hence Valid

Marriage Brokerage Agreements

- An agreement to Negotiate Marriage for Reward is opposed to Public Policy hence Void.



Marriage Bureau only Provides information and doesent Negotiate Marriage for Reward
↳ therefore not Void.

Agreement tending to Create Monopolies

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Agreement having there objects for establishment of Monopolies are opposed to Public Policy and Void.

Maintenance and Champerty

Maintainence is an Agreement in which Person Promise to Maintain Suit in which he has no Intrest

Champerty is an agreement in which Person agree to assist another in litigation
↓
in exchange of Promise
↓
to hand over a portion of Proceed of the Action

- If amount of Maintainence/ Champerty is unreasonable so as to be unjust to other party → Void

- It is Made by Malicious Motive in litigation the other party by encouraging Unrighteous suits and not by bonafide object in assisting claim hence Void.

Interference with Course of Justice

- An agreement whose object is to Induce any Judicial officer of State to act Partially/ Corruptly is Void

An agreement which Contemplates use of "Under Hand" Means to avoid legislation is Void

An agreement to Induce any executive officer of the State to act [Partially / Corruptly] is Void.

Interest Against Obligation.

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Following Exampels refer to agreement that are Void as they Create Interest against obligation

Ex- Stephie is manager of firm agree to Pass a Contract with Aruind if Aruind pays Stephie Rs 200000 Privately, the agreement is Void.

Trafficking Relating to Public offices

An agreement to trafficking in Public office is opposed to Public Policy

↓

as it interferes with the appointment of Person

↳ best qualified for service of Public

An agreement to Pay Money to Public Servant in Order to Induce him to retire from his office so that another Person May Secure the appointment is Void

An agreement to Procure a Public Recognition Reward Like Padma Vibhushan is Void.

Void Agreements

- Sec-26 → Agreement in Restraint of Marriage
- Sec-27 → Agreement in Restraint of Trade
- Sec-28 → Agreement in Restraint of Legal Proceedings
- Sec-29 → Agreement - the Meaning of which is Uncertain
- Sec-30 → Wagering Agreements

Agreement in Restraint of Marriage [Sec-26]

- Every Agreement in Restraint of Marriage of any Person other then Minor is Void.
- If Major Person agree for Good Consideration not to Marry → Promise is not binding → Considered as Void.

Agreements in Restraint of Trade [Sec-27]

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An agreement by which any person is restrained from Exercising { Lawful Profession, Trade, Business of any kind } is to that Extent Void.

कब कब Business करने के लिए छूट दी जा सकती है → Void नहीं होगा

→ Where Person sells Goodwill of Business and agree with buyer to refrain from Carrying out similar business within Specified local limits
↳ so long as the Buyer/his successor in Interest Carries on like business
Such Agreement is Valid.

→ If an outgoing Partner Makes agreement with Continuing Partner that he will not Carry similar business is Valid.

Goodwill is advantage enjoyed by Business on account of Public Patronage and encouragement from habitual Customers.

Local limits is within which seller of Goodwill agree not to Carry on similar business and it should be Reasonable

- An agreement of Service by which an employee binds himself
↳ during terms of Agreement
↓
not to Compete with employer
↓
is Valid.

Agreements in Restrain of Legal Proceedings [Sec-28]

- An agreement in restrain of legal Proceedings is the one by which any party is thereto restricted absolutely from enforcing the rights
  - Under a Contract through Court
  - (Or)
  - which Abridges the Usual Period of Starting legal proceedings
  - ↓
  - Void.

Such Contracts are Void.

Exceptions to Section - 28

A Contract by which Parties agreed that any dispute between them shall be referred to arbitration and only amount awarded in such arbitration shall be Recoverable
↳ these are Valid Contract.

Similarly Contract by which Parties agree to refer to arbitration ↓

Any Question between them which has already arisen (or) which May arise in Future ↓

but such Contract Must be in Writing hence Valid.

Agreement- the Meaning of which is Uncertain [Section - 29]

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- An agreement the Meaning of which is not Certain is void.
- An agreement Meaning thereof is Capable of being Certain, the agreement is Valid.

Wagering Agreements [Section - 30]

- An agreement involving Payment of sum of Money upon determination of Uncertain Event.
- Agreement by way of Wager → is Void
- Each side should Stand to either win or loose.

Essentials of Wagering Agreements

- There Must be Promise to Pay Money / Money worth
- Promise Must be Conditional on event happening / Non-happening.
- There Must be Uncertainty of Event.
- There Must be two party, each party must Win/Lose
- There Must be Common Intention to bet at time of Making such Agreement
- Parties should have no Intrest in Event Except for stake



All Below Transactions are Void

1. Lottery Transactions
2. Cross word Puzzle
3. Speculative transactions
4. Horse Race transactions

All Transactions are NOT Void

5. Chit Fund
6. Share Market transactions
7. Game of Skill and athletic Competition
8. Contract of Insurance

Lottery Transactions

- Lottery is game of Chance and not of Skill and knowledge
- Prime Motive is gambling → Wager → Void.
- Lottery Sanctioned by State Government → it is legal but is Void
- Person Running with lottery will not be punishable under Indian Penal Code.

Crossword Puzzle and Competition

- Cross word Puzzle are one in which Prize depends upon Correspondence of Competitors Solution
  - With Previously Prepared Solution
    - Kept with Editor of Newspaper
      - is lottery and therefore "Wagering Transaction"
        - Void.

Crossword Puzzle
Picture Competition
Athletic Competitions

Prizes are awarded on the basis of
↓
Skill and Intelligence
↓
are Valid.

According to Prize Competion Act, 1995
↓
Prize Competion in games of skill are not Wager, if Prize Money does not exceed Rs 1000.

State of Bombay vs R.M.D. Chamarbaug Wala

- A Crossword Puzzle was given in Magzine.
- "A" solved Crossword Puzzle and his solution Correspond with solution kept with Editor
- Held it was game of Chance and therefore lottery and hence Void.

Speculative Transaction

An Agreement (or) Share market transaction
- where Parties intention is to settle difference between
  - Contract Price
  - Market Price
    - of Certain Goods/Shares
      - on Specified day
        - is Gambling → Void.

Horse Race Transactions

Horse Race Competition where Prize Payable to Bet winnerx if

- Prize is less then ₹ 500 → Wagere
- Prize is ₹ 500 → Not Wagere
- Prize is Above ₹ 500 → Not Wagere.

Chit Fund

In Case of Chit Fund, Certain No. of Persons decide to Contribute
↓
Fixed Sum for Specified Period at the end of Month
↓
amount so Contributed is paid to Lucky Winner of Lucky draw.

- This is not Wager.

Share Market Transactions

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- Also known as Commmercial Transactions
- In these transactions there is delivery of Goods/ Shares
  ↓
  is Intended to Given/ taken → does not amount to Wager hence Valid.

Game of Skill and Athletic Competition

- Crossword Puzzle
- Picture Competitions
- Athletic Competitions

} where Prizes are awarded on the basis of Game of Skill and hence such Competitions are Valid

Contract of Insurance

Contract of Insurance is a type of Contingent Contract and is Valid under law
↓
and these Contracts are different from Wagering Agreements

Indian Contract Act Unit - 4

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Relevant For

Sep 2024

Jan 2025



Obligations of Parties to Contract

→ The Parties to Contract Must [either Perform / offer to Perform] ↓ these respective Promises

Unless such Performance is [dispensed / Excused] under the Provisions of Contract Act / any other law.

Actual Performance

Where a party to Contract has done what he had undertaken to do (OR)

Either of the parties have fulfilled Obligations within the time and Manner Prescribed

Attempted Performance

. It May happen that when Performance become due ↓

Promisor has offered to perform obligation, but Promisee Refuse to Accept the Performance

Conditions for Attempted Performance

→ It Must be Unconditional

→ It Must be Made at Proper time and Place

→ Reasonable opportunity to Examine Goods

→ It Must be for whole obligation.

By Whom Contract May be Performed

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Promisor himself | Agent | Legal Representative | Third Person | Joint Promisors

Promisor himself

These are Contracts which Involve the exercise of < Personal Skills, Deligence, Personal Confidence between Parties

then Must be Performed by Promisor himself

Agent

When Personal Consideration is not the foundation of the Contract
↳ then Promisor/Representative May employ a Competent Person

Legal Representative

. When Contract involves Use of Personal Skills (or) is founded on Personal Consideration
↳ this Contract Comes to end on death of Promisor.

. Unless a Contrary Intention appears
↳ Legal Representative will Perform the Contract

. Liability of Legal Representative is limited to Value of Property inherited

Third Person

- Where Promisee Accepts Performance of Promise from third Person
  ↳ he cannot afterwards enforce against Promisor
- Promisor is now discharged of his obligations.

Joint Promisors

- When two or More Person have made Joint Promise then unless a Contrary intention appear
  ↓
  All such Person shall Jointly fulfill the Promise

If any one of them dies → LR of dead Promisor and Surviving Promisor shall fulfills the Promise

If all of them dies → LR of all shall fulfill the Promise.

Succession V/s Assignment

Matter of Succession

- Where Benefits under a Contract are succeeded by Process of law
  ↓
  then both Budent and Benefits attaching to Contract will devolve on the Legal heirs

Example

① Father dies having loan of Rs 10,00,000 and Market of Value Property inherited Rs 15,00,000
↓
Entire loan will be Repaid.

② Father dies having loan of Rs 10,00,000 and Market of Value Property inherited Rs 8,00,000
↓
Loan of Rs 8,00,000 Only will be Repaid

Matter of Assignment

- Benefits of Contract can only be Assigned but not the liabillities there under, this is because when liabillity is assigned, third party gets involved in it
- A debtor Cannot Relieve himself on his liabillity to Creditor by assigning someone his obligations to Repay the debt.

If Creditor assigns benefits of Promise, he there by entitles the assignee to Realise debt from debtor

Where benefit Coupled with liability (or) when personal Consideration has entered into Making the Contract
↳ then benefit Cannot be assigned.

Effect of Refusal to Accept offer of Performance [Section 38]

- Where a Promisor has made an offer of Performance to the Promisee and offer has not been accepted.

↓

the Promisor is not Responsible for
- Non Performance
- Nor he losses the Right under the Contract

Effect of Refusal of Party to Perform Promise [Section 39]

Where a party to Contract has Refused to Perform/ Disable himself from Performing his Promise Entirely, the Promise may put an end to Contract Unless he Signify his Acquisence in its Continuance

Right of Aggrieved Party	→ To Terminate the Contract → To Indicate by words/ Conduct that he is Interested in its Continuance

Liability of Joint Promisor and Promisee

Devolution of Joint Liabilities [Sec-42]

- If two or More Persons have made Joint Promise, then Ordinarily all of them during life time
  - ↳ Must Jointly Fulfil the Promise
- # After death of any of them → his Legal Representative along with Survivor should Fulfill Promise.
- # After death of last Survivor → Legal Representative of all will Fulfill the Promise.

Any one of Joint Promisor may be Compelled to Perform [Sec-43]

- When two or More Person makes Joint Promise, in the Absence of Express Agreement to Contrary ↓

Promisee may Compell any (or) More Joint Promisors to perform whole of Promise.

Each of two (or) More Joint Promisor may Compell every other Joint Promisor to Contribute equally with himself to Performance of Promise ↳ Unless Contrary Intention appears from the Contract.

If any one of Joint Promisor is made to Perform whole of Performance of Contract ↓ he can call for Contribution from others

If any one of two (or) More Joint Promisors ↓ Makes default in such Contribution ↓ then Remaining Joint Promisors Must bear the loss arising from such default in Equal shares

Effect of Release of One Joint Promisor [Sec-44]

- When two or More Persons have made a Joint Promise, a Release of any one of such Joint Promisor by the Promisee ↓

[does not discharge the other Joint Promisor

[Neither it free joint Promisor so Released from Responsibility to other Joint Promisors.

Right of Joint Promisees [Section-45]

- Where a Person has made a promise to two/More Persons Jointly, then Unless Contrary intention appears from the Contract ↓

- Right to Claim them → during their Joint lifes and after death of any of them with Legal Representative of such Person and Survivors ↓ Performance Rests between him and

and after death of Last Survivor with Representative of all Jointly

Time and Place for Performance of the Promise [Sec-46 to 50]

Time for Performance of Promise where no application is to be Made and no time is specified [Section -46]

Where by the Contract, a Promisor is to Perform his promise without application by Promisee and No time of Performance is specified
↳ Engagment Must be Performed within Reasonable time

Reasonable time? → Depends on facts of the Case.

Time for Performance of Promise where no application is to be Made and time is specified [Section -47]

Where a Promise is to be performed on Certain day and Promisor has undertaken to perform it without application by Promisee
↓
then Promisor may perform it any time during Usual Business Hours
↓
On such day and Place at which Promise Ought to be Performed

Delivery may be Made at Usual Place of Business

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Application for Performance on Certain day to be at Proper time and Place [Sec-48]

Where a Promise is to be performed on Certain day and Promisor has not undertaken to perform without application by Promisee
↓
it is duty of Promisee to apply for Performance at a Proper place and within Usual hours of Business

Place of Performance of Promise where no application is to be Made and No Place Fixed for Performance

Where a Promise is to be performed without application by the Promisee
and
No Place fixed for Performance
} then it is duty of Promisor to apply to Promisee to appoint Reasonable Place of Performance.

Performance in Manner (or) at time Prescribed (or) Sanctioned by Promisor

Performance of a Promise May be made by such Manner (or) at any time which Promisee Prescribes

Performance of Reciprocal Promise
[Section 51 to 58]

Promisor not bound to perform, Unless Reciprocal Promisee Ready and willing to Perform [Section-51]

- Where a Contract Consists of Reciprocal Promise to be Performed Simultaneously, then promisor need not perform his promise Unless the Promisee is Ready and willing to Perform his Reciprocal Promise.

Order of Performance of Reciprocal Promise [Sec-52]

Order of Performance of Reciprocal Promises

- If Fixed by Contract → they shall be Performed in that Order.
- If Not Fixed by Contract → they shall be Performed in that Order which Require by Nature of transactions

Liability of Party Preventing Event on which Contract is to take effect [Section -53]

- Where a Contract Contains Reciprocal Promises and one Party Prevents the other Party for Performing his promise, Contract become Voidable, at the option of Party so prevented

and

He is entitled to Compensation for any loss he May Sustain in Consequence of Non-Performance.

Effect of Default as to that Promise which should be First Performed in Contracts Consisting of Reciprocal Promises [Section-54]

- Promises are Reciprocal and dependent
- Promisor has to perform his promise before performance of other promise
  - ↓
  - Fails to perform it
  - ↓
  - He Cannot claim Performance of others Promise and is also liable for Compensation for his Non-performance

Effect of Failure to Perform at a time fixed in Contract in which time is essential [Sec-55]

Where a Party to Contract Promises to do Certain thing at (or) before specified time
↓
Contract not performed becomes Voidable at option of Promisee
↓
if Intention of Party was that, time was essential.

Effect of such Failure when time is not Essential	Effect of Acceptance of Performance at the time other then Agreed upon.
If it was not the Intention of the Parties that should be of Essence of the Contracts, Contract does not become Voidable by failure to do such things at/before such time ↓ but Promisee is entitled to Compensation from the Promisor for any loss to him by such failure	If in Case of Contract, Voidable on account of Promisors failure to perform his Promise at time agreed ↓ the Promisee accepts Performance of such Promise at any time other then agreed ↓ the Promisee Cannot Claim Compensation for any loss occasioned for Non-Performance of the Promise at time Agreed

Agreement to do Impossible Acts [Sec-56]

- An agreement to do Impossible Act is Void.
- Impossibility May be of two types

I Initial Impossibility → Existed at time of Contract

II Subsequent Impossibility → Arises after entering into Contract

- If known to Parties
- If Unknown to parties
- If Known to Promisor only

Initial Impossibility

- Where Parties agree upon doing of Something which is Impossible in Itself, the agreement would be Void.

Known to Parties

It would be observed that an agreement Constituted → Quite Unknown to Parties, may be Impossible of being Performed → hence Void.

Unknown to Parties

- When both Promisor and Promisee are Ignorant of Impossibility of Performance → the Contract is Void.

Known to Promisor only

Where at the time of entering into Contract

- Promisor alone knowns about Impossibility of Performance (OR) If he does not know, he should have known with Reasonable deligence → Promisee is entitled to claim Compensation for loss.

Subsequent Impossibility (OR) Supervening Impossibility

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- Becomes Impossible after entering into Contract.
- When Performance of Promise becomes Impossible/ Illegal by
  - occurence of Unexpected Event (OR) By Change in Circumstances } beyond Control [Contemplation] of parties → Contract becomes Void.

Also Called as "Post Contractual Impossibility"

Reciprocal Promise to do Certain things that are Legal and Some other things that are Illegal [Section-57]

When in Reciprocal Promise

- First to do Certain things which are Legal
- Secondly under specified Circumstances do to certain other things which are Illegal

→ First set of Promise is Valid Contract and Second agreement is Void Contract.

Appropriation of Payments [Sec- 59 to 61]

Appropriation is when the Payment is Adjusted against the debt and the debt is ↓ Not discharged in Full.

Section-59 ↓ Application of Payment where debt to be discharged is Indicated.

Section-60 ↓ Application of Payment where debt to be discharged is Not Indicated.

Section-61 Application of Payment where neither Party appropriates.

Section 59 — Application of Payment where debt to be discharged is Indicated

- Where a debtore owing several distinct debts to one person, Makes the payment to him
  - With Express Intimation
  - Circumstances Implying that Payment is to be applied to discharge some particular debts

} then Payment to be applied accordingly.

Section 60 — Application of Payment where debt to be discharged is NOT Indicated

Where a debtor has Omitted to Intimate and there are no other Circumstances Indicating to which debt Payment is to be applied ↓

Creditore May apply at his discretion to any debt actually due and Recovery is/not barred by law in Force.

Cannot be Applied to Disputed debts

Section 61 — Application of Payment where Neither Party Appropriates

Where neither Party makes appropriation, the Payment shall be Applied in discharge of debts in order of time. ↓ whether are not barred by law in Force for time being.

If Payments are of Equal standing ↳ Payment shall be applied in discharge of each proportionately.

Contracts which Need not be Performed With Consent of both the Parties

- Effect of Novation, Alteration, Recission
- Promisee May waive/ Remit Performance of Promise
- Restoration of Benefit Under Voidable Contract
- Obligation of Person Who has Received advantage Under Void Agreements
- Communication of Recission.

Novation, Recission, Alteration

Novation

- Parties to Contract May Substitute New Contract for the old Contract, it is called Novation
- Old Contract is discharged and Consequently need not be Performed
- Novation takes place by Mutual Agreements

Recission

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- Old Contract is Cancelled and No New Contract Comes into Existence
- When Parties to Contract agree to Rescind the Contract, Contract need not be performed.

Novation involves Recission

Alteration

- Terms of Contract may be so altered by Mutual Agreements
- Alteration may have effect of Substitute New Contract for old Contract.

Novation vs Alteration

Novation	Alteration
• Novation May be Made by change in terms of Contract/ change in Contracting Parties	• Terms of Contract altered by Mutual Agreement, but Parties to Contract Remains same
• In Novation there is Substitution of New Contract for old Contract	• In Alteration, not essential to Substitute New Contract for old Contract

Promisee may Waive/ Remit Performance of Promise

- Every Promisee May dispense with/ Remit, wholly (or) in part Performance of Promise made to him.

(OR)

- May Extend time for such Performance

(OR)

- May Accept instead of it any satisfaction which he thinks fit.

Restoration of Benefit Under Voidable Contract

- Voidable Contract Can be terminated at option of one Party who is empowered to do
- If he has Received any benefit under the Contract, he Must restore benefit to the Person from whom it has Received.

Obligation of Persons who has Received Advantage Under Void

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When an agreement is discovered to be Void (OR) Contract is Void

↓

Any Person who has Received any such advantage in Contracts / Agreement is bound to Restore

Communication of Recission [Sec-66]

- Recission of Contract Must be Communicated to other Party in same Manner
  ↳ as Proposal is Communicated

Effect of Neglect of Promisee to afford Promisor Reasonable Facilities of Performance [Sec-6]

If any Promisee Neglects (or) Refuse to afford } the Promisor reasonable Facilities for Performance of Promise

↓

the Promisor is excused by such neglect/ Refusal as to Non-performance.

Discharge of Contract

(1) Discharge by Performance

- Discharge of Performance may be Actual/ Attempted Performance
- **Actual Performance** is said to have taken Place when each of the Party has done what he had agreed in agreement.
- **Attempted Performance**, is said to have taken Place when Promisor offer to perform his obligation but Promisee refuse to accept.

(2) Discharge by Mutual Agreement

According to Sec-62, if Parties to Contract agree
- to Substitute new Contract
- to Rescind
- to Remit
- to Alter

then original Contract need not be Performed.

(3) Discharge by Impossibility of Performance

Impossibility may take Place owing to
- Unforseen Change in Law
- Destruction of Subject Matter essential to that Performance
- Declaration of War
- Non-Existence/Non-occurence of Particul State of things
  - ↳ which was Naturally Contemplated for Performing the Contracted.

If Impossibility Exists from Very starting then it will be "Impossibility Ab Initio"

(4) Discharge by Lapse of time

- A Contract should be Performed within specified Period as Prescribed by "Limitation Act 1963"
- If it is not Performed and if no action taken by Promisee within specified Period of limitation
  - ↳ he is deprived of Remedy at law

(5) Discharge by operation of Law

A Contract may be discharged by operation of law
- ↳ which Includes
  - death of Promisor
  - Insolvency.

(6) Discharge by Breach of Contract

Breach of Contract may be Actual / Anticipatory Breach.

(7) Promisee May waive/ Remit Performance of Promise

Every Promisee May
- Dispense
- Remit wholly/ in Part the Performance of Promise Made to him
- May Extend time for such Performance
- May Accept Instead of it any Satisfaction which he thinks fit.

LAW CHART BOOK

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⑧ Effect of Neglect of Promisee to afford Promisor Reasonable Facilities of Performance

If Promisee neglect/ Refuse to afford Promisor Reasonable Facility for Performance of his Promise, ∴

then Promisor excused by such neglect/ Refusal as to Non-Performance Caused.

⑨ Merger of Rights

- When Inferior and Superior rights Coincide and Meet in one.
- On Merger Inferior rights are Vanished and are not Required to be inforced.

Relevant For

Sep 2024

Jan 2025

Indian Contract Act - Unit-5

Breach of Contract

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Meaning of Breach of Contract [General Meaning]

- Breach Means Failure to Perform his/her obligation under a Contract
- Types of Breach < Actual Breach / Anticipatory Breach

Anticipatory Breach

Anticipatory Breach of Contract is Breach of Contract occuring Before time Fixed for performance has arrived.

Anticipator Breach Can be done in two ways [Expressly → Words spoken/Written / Impliedly → Conduct of Party.

Meaning of Breach of Contract

Where a party to Contract has [Refused to Perform / Disable himself from Performing.

his Promise in Entirety, Promisee will put an end to Contract

↳ Unless he has Signified by Words/Conduct his Acquiensence in its Continuance.

Effects of Anticipatory Breach

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- Promisee is excused from Performance/ further Performance
- Promisee has two option

To treat Contract as Rescinded and Sue the other party for damages
↓
Without waiting for due date of Performance

He May Elect not to Rescind the Contract and treat as still operative and hold other Party Responsible for Consequences of Non-Performance.

Actual Breach of Contract

Actual Breach of Contract May be Committed in two ways [At the time when Performance is due / During the Performance

↓

This Breach of Contract occurs when during the Performance of Contract one Party fails/ Refuse to perform his obligation by Express/ Implied Act.

Remedies for Breach of Contract

- **Suit for Damages**
  - Ordinary Damages
  - Special Damages
  - Vindictive Damages
  - Nominal Damages
  - Prefixed Damages
    - Liquidated Damages
    - Penalty.
- **Quantum Meruit**
- **Suit for specific Performance**
- **Suit for Injunction.**
- **Rescission of Contract**

Ordinary Damage

Where a Contract has been broken, the party who suffers from such breach, is entitled to Receive :-

Compensation of any loss/ Damage Caused to him, which in Usual Course of Business Naturally arose

(+)

Damages which party knew, when they Made to likely Result from Breach of Contract the Contract

CASE LAW

Hadley v/s Baxendale

- Crankshaft of P's flour Mill was broken. He gave to Carrier "D" who Promised to delivery to Foundry
- Mill stopped working, D delayed delivered for Mill was Idle for 5 days
- P Recd Crankshaft 7 days later.
- P filed Case on D for damages and loss of Profit
- It was held that P was entitled to Ordinary damages and not for Loss of Profit.
  - ↓
  - because P did not informed D about loss of Profit.

Special Damage

Where a party to Contract Receive Notice of Special Circumstances affecting the Contract, he will be liable for

- Ordinary damages [Which Naturally Arise]
- (+) special damages

Vindictive (or) Exemplary Damages

Can be Claimed in two Cases

#1 Breach of Promise to Marry because it causes injury to his/her feelings

#2 Wrongful Dishonour by Banker Cheque of Customer and it Causes

- Loss of Credit
- Loss of Reputation.

If Trader = Claim Damages

If Non Trader = Cannot Claim Damages.

↳ Case-Law → Gibbons v/s West Minister Bank



Nominal Damages

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- Plantiff has Proved that there has been breach of Contract but not suffered any Real damage
- Amount May be
  - 1 Ruppee
  - Ten Paise
- Awarded to Establish → Right to decree

Damages for Deterioration Caused by Delay

- Damage Caused due to delay Can be Recovered from Carrier Even without Notice.
- It Includes
  - Physical Damage
  - Loss of special opportunity of sale

Pre-Fixed Damages

- Parties to Contract stipulate at the time of its Formation, that on breach, certain Amount will be Claimed as damages



- **Liquidated Damages** → Reasonable Estimate of loss in case of Breach.
- **Penalty** → An Amount Arbitrarily fixed as damages payable.

Rescission of Contract

Where a Contract is broken by one party, the other party May treat the Contract as Rescinded.

- He is Absolved of all his obligations under Contract.
- Entitled to Compensation for any damage that he Might have suffered.

Quantum Meruit

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2 Condition
- Available only if Original Contract is discharged
- Claim Must be brought by Party not in default.

" Where one Person has Rendered Services to another in Circumstances which show Understanding between them ↓

that it is to be paid, Although No Remuneration is fixed
↳ Law will Infere Promisee to Pay

Quantum Meruit → " As Much as Party doing Service has deserved"

DO NOT FORGET

#Object of allowing Claim of Quantum Meruit is to Recompensate the Party for value of Work done

Damages are Compensatory while Quantum Meruit is Restitutory

Suit for Specific Performance

When Damages are not an adequate Remedy in Case of Breach of Contract
↳ Court May at its discretion
↓
direct the Party to Carry out Promise according to terms of Contract

Claim of Quantum Meruit Arises in Following Cases:-

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Where

- There is an Express / Implied Contract to Render Services but there is no Agreement as to Renemuneration.
- Contract is divisible and Party not in default has enjoyed benefit of Past Performance

When

- When Agreement / Contract is Void
- Something is done Without any Intention to do so Gratuitously.
- One Party Abadons (or) Refuses to Perform
- Indivisible Contract + Lumpsum is Completely Performed, other Person Can Claim Lumpsum Amount
  ↳ but other Party Can do deduction for Bad Work.

Suit for Injunction

- Where a Party to Contract is negating the terms of Contract
  ↓
  Court May Issue Injunction order
  ↓
  Restrain him from doing "what he Promised not to do"

Party Right Fully Rescinding Contract, Entitled Compensation [Sec-75]

A Person Right Fully Rescinding a Contract is entitled to Compensation for any damage
↓
Which he has sustained through Non-Fulfillment of Contract.

Liquidated Damage V/s Penalty

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- If Sum Payable is in far Excess of Probable Damage
  ↳ It is Penalty
- Where Sum Expressed is Payable on Certain date and Further Sum is payable in the event of default (EMI on 05/01/24) = 12000
  ↳ [Penalty of Rs 1000]
  ↳ Later Amount is Penalty
- If the Sum Fixed is Extravagent [Large], the Court will Regard it as Penalty
  ↳ even if it is termed as Liquidated Damage in Contract.
- Essence of Penalty is Payment of Money as
  ↳ terror term of offending Party
- English Law = Liquidated and Penalty are different
  Indian Law = No Difference between Liquidated and Penalty

Relevant For

Sep 2024

Jan 2025

Indian Contract Act [Unit-6]

Contingent and Quasi Contract

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QUASSI CONTRACT

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Also known as Resembling Contract

In the Absence Agreement/Contract
↓
Certain Social Relationship which
Give Rise to Certain Specific Obligation
↓
to be Performed by Certain Persons
↓
they are known as Quassi Contract

Based on
- Equity
- Justice
- Conscience

Quassi Contract is based upon Maxim
↓
"No Man Grows Rich out of Another Person loss"

These Relationships are Called as
- Quassi Contractual obligation
- Certains Relations Resembling those Created by Contracts.

Features of Quasi Contract

- Such Right is always
  - Right to Money
  - Right to Liquidated Sum of Money.
- It does not arise from Agreement
  - ↳ but is Imposed by law
- It is not Right against all, but it would be only
  - ↳ against a Particular Person.

Claim for Necessary Supplied to Person Incapable of Contracting.

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- If Person is incapable of entering into Contract and he is supplied by another Person with Necessary suited to Condition in life
  - ↓
  - the person who has furnished such supplies is entitled to Reimbursed of such Person

Payment by an Interested Person

A Person who is Interested in Payment of Money and another is bound to Pay by law
- ↓
- who therefore Pays it
- ↓
- Now he is entitled to be Reimbursed.

Obligation of Person Enjoying Benefits of Non-Gratuitous Act

According to Section - 70

- Where a Person lawfully does anything for another Person.
- Delivers anything to him not Intending to do so Gratuitously
  - ↓
  - such other Person enjoys benefit
  - ↓
  - such Person is bound to Pay Compensation (or) Restore the thing is done.

How to Win the Case ...??

The Plantiff Must Prove

- that he had done the Act/delivered the thing lawfully
- that he did not do so Gratuitously
- that other Person enjoyed Benefit

Shyam Lal V/s State of UP

- K was Government Servant and Compulsory Retiered
- He filed Writ Petition and obtain Stay from Government Order
- He was Paid Salary.
- Govt. Went to appeal and appeal in favour of Government was passed.
- K has to Return Salary.

Responsiblity of Finder of Goods [Section- 71]

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- Founder of Goods
  - To Take Proper Care of Goods as a Man of Ordinary Prudence would do.
  - No Right to appropriate Good.
  - To Restore the Good if the owner is found.

Person who find Goods belonging to another and takes him into his Custody
↳ is subjected to Same Responsblity as Bailee [Same Goods Wapas Lotana]

Hollins V/s Howlett L.R.

- H Picked diamond Ring on the floor of F's shop and Given to F until true owner is found
- Inspire of Best efforts true owner was not found
- After some weeks H tendered to F for lawful Expenses incurred by him and Requested to Return diamond
- F refused to Return. It was held that, F Must Return Diamond to H as he was Entitled to Retain the Goods against everybody Except True Owner

Money Paid by Mistake (or) Under Coercion

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Shiv Prasad v/s Sirish Chandra

Every kind of Payment of Money/ Delivery of Goods by Mistake is Recoverable

Sales Tax officer v/s Kanhaiya LoL

- A Muncipal Tax Made under Mistake
- Because of Misunderstanding of terms of lease
- Can be Recovered from Municipal Authorities

Seth Khanjelek v/s National Bank of India

- Money paid Under Coercion is also Recoverable
- Meaning of Coercion v/s 15.

Trikamdas v/s Bombay Municipal Corporation.

- In Case where T was travelling without ticket in Tramm Car and on Checking he was asked to pay Rs 5 as Penalty for Compounding Transaction
- T filed a suit against Corporation for Recovery on ground it was exorted for him.
- The order was pass in favour of T.

Contingent Contracts

Defination of Contingent Contract

A Contract to do / Not to do Something

↓

if some Event Collateral to such Contract

↓

does happen / does not happen.

Contract of Insurance

Contract of Indemnity

Contract of Guarantee.

Collateral Event

An event which is

- Neither Performance directly Promised as part of Contract
- Nor Whole of Consideration for a Promise

☞ Defined by Pollock and Mulla.

Essential of Contingent Contract

(a) The Performance of Contingent Contract would depend on happening / Non-happening of Some Event

The Condition Can be Precedent / Subsequent

(b) Event reffered to is Collateral Contract

- Event is not part of Contract
- Event should be
  - Neither Performance Promised
  - Nor a Consideration of Promise.

(c) Contingent Contract should not be Mere Will of Promisor

Event should be Contingent

(d) Event Must be Uncertain

When the Event is [Certain / Bound to happen] } then Contract is due to be performed

↓

then it is Not Contingent Contract.

Rules Relating to Enforcement

[Section 32, 33, 34, 35, 36]

Enforcement of Contract Contingent on Event Happening [Sec-32]

- Where a Contract Identifies happenning of future Contingent Event, the Contract Cannot be enforced until and Unless such Event happens.
- If happening of Event becomes Impossible
  ↳ Contingent Contract is Void.

Example → A Contracts to Pay sum of Money to B, when B Marries C. C dies without Marriage. Contract becomes Void.

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Enforcement of Contract Contingent on Event NOT Happening [Sec-33]

- Where a Contingent Contract is Made to do or not to do anything if Uncertain future Event does not happen
  ↳ it Can be enforced when happening of the Event becomes Impossible.

Ex- • Where P Promises to Pay Q sum of Rs 10,000 if Ship does not Return. The Contract is enforceable on Ship Sinks [it Cannot Return].

- If Ship Returns → Contract Void.

(c) Contract would Cease to be enforceable if it is Contingent upon Conduct of living Person and Living Person does something to Make Event/Conduct as Impossible [Sec-34]

- If a Contract is Contingent upon as how a Person will Act at an Unspecified time
  ↓
  the event shall be Considered to have become Impossible
  ↓
  When such Person does anything which Render it Impossible

Frost v/s Knight:

- Defendant Promised to Marry Plantiff on death of Defendant's Father
- While father was alive defendant Marries another Person
- It was impossible now that he should Marry Plantiff
- Plantiff was entitled to sue Defendant for Damages.

(d) Contingent upon Happening of specified Event in Fixed time [Sec-35]

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- Contingent Contract to do/not to do anything, if a specified Uncertain Event Event happens within Fixed time
  ↓
  Is Void if
  - at Expiration of Fixed time and such Event does not happen
  - before time Fixed such Event becomes Impossible.

Ex → A Promised B, if Ship Returns within 1 Year A will Pay B Rs 50,000.

This Contract will be enforced when, when Ship Returns within 1 Year

This Contract is Void if
- 1 Year has Expired (or)
- Ship is Burnt.

(c) Contingent on Specified Event Not Happening within fixed time [Section-35]

Contingent Contract to do (or) not to do something if Specified Uncertain Event does not happen within fixed time

May be enforceable

- When time Period has Expired and Such Event has not happened.
- Before time Period has Expired ↓ it becomes Certain that Event will not happen.

(d) Contingent on an Impossible Event

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- Contingent Agreements to do / Not to do anything if an **Impossible Event happens are Void**

↓

Whether the Impossibility of Event is known / not known to the parties to the Agreement, at the time when Contract is Made.

	Happening	Non-Happening	Time ??	
Sec-32 (a)	✓	–	–	
Sec-33 (b)	–	✓	–	
Sec-34 (c)	✓	✓	–	Conduct of living person
Sec-35 (d)	✓	–	✓	
Sec-35 (e)	–	✓	✓	
Sec-36	Happening of Impossible Event			Always Void

Indian Contract Act Unit - 7

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Relevant For

Sep 2024

Jan 2025



Meaning of Indemnity

Indemnity Means
- To Make Good the loss
- OR
- To Compensate the Party

} who suffered the loss.

Contract of Indemnity [Section - 124]

It is Contract by which one party Promises to save other from loss caused to him by Conduct of
- Promisor himself
- Conduct of any other Person.

Parties to Contract

Indemnifier → Party who Promises to Indemnify [Save] other Party from loss

Indemnified → Party who Promised to be Saved Against the Loss.

भुलना नहीं
- Loss due to Conduct of Accident / Act of God not Covered here
- Loss Covered is only by Act of Promisor / third Party.

Ganjan Moreshwar v/s Moreshwar Madan

CASE LAW

- As per English Law, Indemnity Means Promise to Save other Person from loss
- It Covers Every loss whether due to Negligence of Promise (or) by natural Calamity (or) by Accident.

Mode of Contract of Indemnity

Express	Implied
Contract is said to be Express when a person expressly Promises to Compensate other from Loss.	A Contract of Indemnity is said to be Implied when it is to be Inferred from Conduct of Party OR Circumstances of the Case

Contract of Indemnity is like any other Contract and Must fulfill all Essential of Valid Contract

Rights of Indemnity Holder – When Sued [Section - 125]

The Promisee in Contract of Indemnity, Acting within his Scope of Authority is Entitled to Recover From Promisor/ Indemnifier

- **All Damages** → which May be Compelled to Pay in any Suit
- **All Costs** → which May be Compelled to Pay in Bringing / Defending any Suit
- **All Sums** → which he May have Paid under the terms of any Compromise of Suit

भूलना नहीं

When Liability of Indemnifier Commence ??

Liability of Indemnifier Commence as Soon as liability of Indemnity holder becomes [Absolute and Certain]

Section - 126 Contract of Guarantee

- Contract of Guarantee is to Perform Promise Made / discharge the liability of third Person → in case of his default.

3 Parties in Contract of Guarantee

- **Surety** → Person who Gives Guarantee
- **Principal Debtor** → Person in Respect of whose default Guarantee is Given
- **Creditor** → Person to whom Guarantee is Given

3 Contracts in Contract of Guarantee

Principal Contract	Secondary Contract	Implied Contract
Contract between [Principal debtor and Creditor]	Contract between [Creditor and Surety]	A Contract between Surety and Principal debtor, Where by Principal debtor is under obligation to Indemnify Surety, If Surety is Made to Pay (or) Perform

Essential Feature of Guarantee (OR) Essential of Valid Guarantee

Purpose

- Purpose of Guarantee → To Secure Payment
- Existence of Recoverable Debt → Necessary
- If No Principal Debt → No Valid Guarantee

Consideration

- Guarantee without Consideration → Void
- Direct Consideration between Surety and Creditor → No Need

According to Section - 127, Consideration Received by Principal Debtor is sufficient Consideration to Surety for Giving the Guarantee

Past Consideration is not Consideration for the Contract of Guarantee

If Principal debtor is Incompetent to Contract → Guarantee is Valid

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If Surety is Incompetent to Contract → Guarantee is Void

Existence of Liability

- There Must be an [Existing Liability (or) Performance] is guaranteed
- Such liability (or) Promise Must be enforceable by Law

The liability Must be legally Enforceable and not time barred.

No Mispresentation (or) Concealment [Sec- 142 & 143]

- Any Guarantee which has been obtained by Means of Misrepresentation Made by Creditor (or) with his knowledge and Assent Concerning Material part of transaction is Invalid.
- Any Guarantee which the Creditor has obtained by Means of keeping Silence as to Material Circumstances is Invalid

Writing not Necessary.

- Guarantee May be Either [Oral (or) Written

Joining of Other Co-Sureties [Sec-144]

- Where a Person Gives a Guarantee upon a Contract, that the Creditor shall Act upon it Until ↓ Another Person has joined in it as Co-Surety ↓ the Guarantee is not Valid if that other Person does not join.

Guarantee by Surety, " Some other Person Must also Join as Co-Surety " but such other Person does not Join as Co-Surety.

Types of Guarantee

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Specific Guarantee

- Guarantee which Extends to < Single Debt (or) Specific Transaction.
- Sureties liability Comes to an end when
  - Guaranteed debt is duly Charged
  - Promise is duly Performed.

Continuing Guarantee

- A Guarantee which Extends to ↓ Series of transactions ↳ is called Continuing Guarantee
- Surety's liability Continues until Revocation of Guarantee

SUMMARY

Essence of Continuing Guarantee

Continuing Guarantee is that it applies not to specific No. of transactions but to any No. of transactions and

Make Surety liable for Unpaid Balance at End of Guarantee.

Nature and Extent of Surety's Liability [Section - 128]

Liability of Surety is Co-Extensive with that of Principal debtor unless it is otherwise provided by Contract.

- A Creditor may choose to Proceed against surety first unless there is an agreement to Contrary.
- Liability of surety is of secondry nature as he is liable only on default of Principal debtors
- Where debtor Cannot be held liable on account of any defect in document, liability of surety also ceases.

Liability of two Persons Primarily liable, not affected by Arrangement between them that one shall be Surety on others default

- When two persons contact with thired person to undertake Certain liability. also Contract with each other that one of them shall be liable only on default of Other, thired Person being Party to such Contract, liability of each of such two persons to thired person under first Contract is not affected by Existence of second Contract, although such third person may have been aware of Existence.

Discharge of Surety

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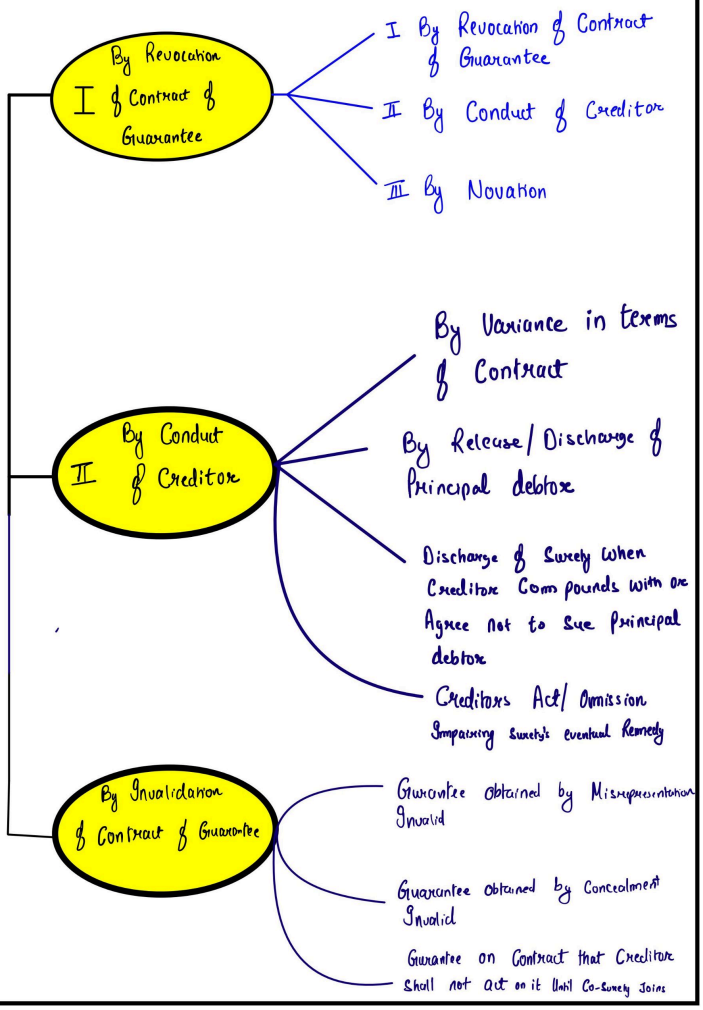

By Revocation of Contract of Guarantee

- Revocation of Continuing Guarantee by notice [Sec-130]
- Revocation of Continuing Guarantee by Surety's death [Sec-131]
- By Novation [Sec-62]

Revocation of Continuing Guarantee by Notice [Sec-130]

- Continuing Guarantee may at any time be revoked by Surety as to future transactions by notice to Creditors
- Specific Guarantee may be Revoked only if liability to Principal debtor has not accrued.

Revocation of Continuing Guarantee by Surety's Death [Sec-131]

- In the Absence of any Contract to Contrary, death of surety operates as Revocation of Continuing Guarantee as to future transactions taking place after death of Surety.
- However Surety Estates remains liable for past transactions taken place before death of Surety

By Novation

- Surety under Contract is discharged if a fresh Contract is entered into either between Same Parties (or) between other Parties
- Consideration is Mutual Discharge of old Contract.

By Conduct of the Creditor

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- By Variance in terms of Contract [Sec-133]
- By Release/ Discharge of Principal debtor
- When Creditor Compounds
- Creditor Act/ Omissions Impairing Surety's eventual Remedy.

By Variance in Terms of Contract [Sec-133]

When there is Variance in terms of Contract between Principal debtor and Creditor without Surety's Consent, it would discharge Surety in respect of all transactions taking place, subsequent to such Variance.

By Release or Discharge of Principal Debtor [Sec-134]

The Surety is discharged if the Creditor

- Enters into Fresh Contract or New Contract with Principal debtor by which Principal debtor is released
  (OR)
- does any Act/ omissions Legal Consequence of which is discharge of Principal debtor

Discharge of Surety when Creditor Compounds with/ Agree not to Sue Principal Debtor [Sec-135]

A Contract between the Creditor and Principal debtor by which

- Creditor makes Composition with
- Promise to Give time
- Promise not to Sue Principal debtor

} discharges the Surety Unless the surety assents to such Contract.

Composition
- If Creditor makes Composition with Principal debtor without Consulting Surety, Principal debtor is discharged
- Composition Involves Variation of Original Contract.

Promise to Give time
- When time for payment of guaranted debt Comes, the surety has the right to recquire principal debtor to pay off the debt
- It is one of the duties of Creditor towards surety not to allow Principal debtor More time of Payment

Promise not to Sue
- If Creditor under an Agreement with the Principal debtor Promises not to sue him, the surety is discharged

Special Case ↓ When Surety is not discharged
- Surety not discharged when Agreement Made with third person to Give time to Principal Debtor [Sec-135]
- Creditors Foreberance to Sue does not discharge Surety [Sec-137]

Special Case 1 Surety not discharged when Agreement Made with third person to Give time to Principal Debtor

- Where a Contract to Give time to Principal debtor is made by Creditor with third Person and not with principal debtor, surety is not discharged.

Special Case-2 Creditors Foreberance to Sue does not discharge Surety

Mere Foreberance on part of Creditor to sue the Principal debtor

(or)

to enforce any other Remedy against him

does not in the absence of any Provision to Contrary discharge the surety.

Discharge of Surety by Creditors Act (or) Omission Imparing Surety's Eventual Remedy [Sec-139]

- If the Creditor does any act which is inconsistent with right of Surety

(or)

Omits to do any act which his duty to the Surety Requires him to do and the eventual Remedy of Surety himself against Principal debtor is thereby Impaired

↓

then Surety is discharged.

State Bank of Saurashtra vs Chitranjan Rajnath Raja [1980]

- Bank Guranted Loan [on Security of stock in Godown]. Loan was also guaranted by Surety. Goods were lost from Godown on negligence of bank officials
- Surety was discharged for Value of stock so lost.

By Invalidation of Contract of Guarantee

Guarantee obtained by Misrepresentation Invalid [Sec-142]

Guarantee obtained by Concealment Invalid [Sec-143]

Guarantee on Contract that Creditor shall not act on it until Co-Surety Joins [Sec-144]

Guarantee obtained by Misrepresentation Invalid [Sec-142]

Any Guarantee which has been obtained by Means of Misrepresentation made by Creditor (or) with his knowledge and assent, Concerning a material Part of transaction is Invalid.

Guarantee obtained by Concealment Invalid [Sec-142]

Any Guarantee which the Creditor has obtained by Means of keeping Silence as to Material Circumstances is Invalid.

Guarantee on Contract that Creditor shall not act until Co-Surety Joins [Sec-144]

- Where a Person gives guarantee upon Contract that Creditor shall not act upon it, until Another Person joined in it as Co-Surety

↓

Guarantee not valid if that other Person does not join.

Rights of Surety

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- Right against Principal Debtor
  - Right of Subrogation [Sec-140]
  - Implied Promise to Indemnify Surety [Sec-145]
- Right Against Creditor
  - Right to Benefit of Creditor Securities
  - Right to set off
  - Right to Share Reduction.
- Right against Co-Surety
  - Co-Sureties liable to Contribute Equally
  - Liability of Co-Sureties bound in different Sums

Right Against Principal Debtor

Right of Subrogation [Sec-140]

- Where a Guaranteed debt has become due (or) default of Principal debtor to perform a Guaranteed duty has taken place then ↓

The Surety upon payment (or) Performance of all what he liable for is Invested with all Rights that Creditor had against Principal debtor

- It Means surety steps in shoes of Creditor

Implied Promise to Indemnify Surety [Sec-145]

In every Contract of Guarantee there is Implied Promise by principal debtor to Indemnify Surety.

☞ What Sum Surety Can Recover From Principal Debtor → Whatever sum is Rightfully Paid under Guarantee

☞ What Sum Surety Cannot Recover From Principal Debtor → Sums which Surety Paid Wrongfully.

Right Against the Creditor

Surety's Right to Benefit of Creditors Security [Sec-141]

- A Surety is entitled to the benefit of every security which Creditor has against Principal debtor at the time, when Contract of Suretyship is entered into
- It will not make any difference whether the Surety known the existence of such security or not.
- If the Creditor loses (or) without Consent of Surety parts with such security, the Surety is discharged from liability to the extent of Value of such security.

Right to Set-off

- If Creditor Sues the Surety, for Payment of Principal debtor liability, the Surety may have benefit of set off that Principal debtor had against the Creditor.

Right to Share Reduction

Surety has right to claim Proportionate Reduction in his liability, if Principal debtor become Insolvent.

Right Against Co-Sureties

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Meaning of Co-Surety

When the same debt/ duty is Guaranteed by two or More person Such Persons are called as Sureties

Co-Sureties liable to Contribute Equally [Sec-146]

Unless otherwise Agreed, each Surety is liable to Contribute equally for discharge of whole debt/ Part of debt, remains unpaid by debtor

Liability of Co-Surety Bound in different Sums

- Surety Can fix Maximum limit of Liability
- Co-Sureties which are bound in different sums are liable to Pay Equally as far as limits of their obligations permit.

Case - (A)	Case - (B)	Case - (C)
Default of ₹ 300000	Default of ₹ 400000	Default of ₹ 7,00,000
↓	Mode of Payment	↓
Mode of Payment	↓	Mode of Payment
↓	A → ₹ 1,00,000	A → ₹ 1,00,000
A, B, C Equally	B → ₹ 1,50,000	B → ₹ 2,00,000
	C → ₹ 1,50,000	C → ₹ 4,00,000

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LAW CHART BOOK

Indian Contract Act

Unit - 8

Section - 148 Bailment

Bailment has been derieved from French Word "Bailier" which Means to deliver

Defination of Bailment

Bailment is delivery of Goods by one person to another for some purpose upon a contract that the goods shall when purpose is accomplished be returned (or) otherwise disposed of according to direction of bailor

Bailor → Means person delivering the Goods

Bailee → Means person to whom Goods are delievered.

Elements of Contract of Bailment

- Contract
- Delivery of Goods
- Purpose
- Possession
- Return of Goods

Contract

- Bailment is based on Contract
- Contract May be Expressed/Implied
- No Consideration necessary to Create Valid Contract of bailment

Delivery of Goods

Bailment involves delivery of Goods from one person to another for some purpose

- Bailment is only for Movable Goods
- Bailment is not for Immmovable Goods (or) Money.
- Delivery Can be Actual Delivery and Constructive delivery.

Actual Delivery

When Goods are physically handed over to Bailee by bailor.

Constructive Delivery

When delivery is made by doing anything that has effect of putting the Goods in Possession of Bailee (or) to any Person Authorised to hold on his behalf

Purpose

Goods are delivered for some purpose. Purpose may be Express/Implied

Possession

- Change of Possession Can happen by Physical delivery/action which has effect of Placing Goods in Possession of Bailee
- Change of Possession does not Mean change in ownership
- Where a Person is in Custody without Possession he does not become bailee

Return of Goods

- Bailee is obliged to Return Goods physically to bailor.
- Goods should be Returned in Same Form as given (or) Altered as per bailor's direction.
- Bailee Cannot deliver other Goods even not those of higher Value

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Popular Forms of Bailment

- Delivering Goods for Carriages
- Delivering Goods for Repair with/without Remuneration
- Delivering Goods to Creditor to serve as Security for loan
- Hiring of Goods
- Goods Given to Friend for his own use without any Charge

Types of Bailment

On the Basis of Benefit

- For Exclusive Benefit of Bailor
  - Ex- Delivery of Valuable with neighbour for safe custody without Charge
- For Exclusive Benefit of Bailee
  - Ex- Lending of Bicycle to Friend for his house without Charge
- For Mutual Benefit of Bailor and Bailee
  - Ex- Giving Watch for Repair

On the Basis of Reward

- Gratuitous Bailment
- Non-Gratuitous Bailment

Gratuitous Bailment

↓

In Gratuitous bailment the bailment would be either for

- Exclusive benefits of bailor (or)
- Exclusive benefits of bailee

Un-Gratuitous Bailment

In Ungratuitous bailment, the bailment would be for Bailor and Bailee

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Gratuitous Means → Free of Charge

Duties of Bailor

- Disclose known Facts
- Bear Necessary Expenses
- Indemnify Bailee
- Bound to Accept the Goods

(a) Bailor duty to disclose faults in Goods Bailed

In Case of Gratuitous Bailment

- Bailor is bound to disclose to bailee, fault in goods bailed of which bailor is aware and Materially Interfere with use of them (or) expose bailee to extra ordinary Risks.
- If Bailor does not disclose, he is responsible for damage arising to directly from such faults.

In Case of Non Gratuitous Bailment

- If the Goods are bailed for Hire, bailor is responsible for such damage whether he was/was not aware of Existence of such Faults in the Goods bailed.

Duty to Pay Necessary Expenses [Sec-158]

In Case of Gratuitous Bailment

Where by conditions of bailment the goods are to be kept / to be Carried / to have work done upon them by bailee for bailor and bailee is to receive no Renemuration [Gratuitous bailment] the bailor shall repay to bailee
- Necessary Expenses (and)
- Extra Ordinary Expenses incurred.

In Case of Non Gratuitous Bailment

Bailor is liable to Pay the extraordinary Expenses.

Duty to Indemnify Bailee for Premature Termination [Sec-159]

Buyer Must Compensate Bailee for the loss / damage suffered by bailee that is in excess of benefit Received, where he lends Goods Gratuitously and decide to terminate Bailment before Expiry of Period of Bailment.

Bailors Responsiblity to Bailee [Sec-164]

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Bailor is responsible to bailee for the following

(a) Indemnify any loss which bailee may sustain by reason that
- Bailor was not Entitled to bailment
- to Receive back the Goods
- to give direction regarding them.

(b) To Receive back the Goods when bailee returns them after the time when bailment has expired (or) purpose of Bailment is accomplished

If bailor refuse to take delivery when it is offered at Proper time, bailee can claim Compensation for Necessary Expenses incurred for safe custody.

Duties of Bailee

Take Reasonable Care of Goods [Sec-151 & 152]

According to Section 151

- Bailee is bound to take as much care of Goods bailed to him as Man of Ordinary Prudence would under similar Circumstances take of his own Goods of same Bulk/Quality/Value of Goods bailed.

According to Section 152

Bailee not responsible for loss/destruction/deterioration of the things bailed if he has taken reasonable care under section 151

Not to Make Inconsistent Use of Goods [Sec-153 & 154]

As per Section 154, if bailee makes Use of Goods bailed, which is not according to Conditions of bailment he is liable to Compensate the bailor for any damage arising to the goods from (or) during such Use of them

According to sec-153, a Contract of bailment is voidable at option of bailor, if bailee does not Use the goods according to terms and Conditions of bailment

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Not to Mix the Goods [Sec-155/156/157]

Bailee is not entitled to Mix up Goods bailed with own Goods except with Consent of bailor

Goods Mixed with Consent of Bailor

- Bailee Mixes the Goods bailed with his own Goods, both the Parties will have Intrest in Proportion to respective Share in the Mixture thus produced

Goods Mixed Without Consent of Bailor

Goods Can be Seperated or divided

↓

Property in Goods Remains with respective parties and bailee is responsible to bear all Expenses of Seperation and damage

Goods Cannot be Seperated/Divided

Bailor is entitled to Compensation by bailee for loss of Goods

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Return the Goods [Sec-160 and 161]

According to section 160 It is duty of bailee to Return / deliver according to direction of bailor, the Goods bailed without demand as soon as the time for which Goods bailed has expired or purpose for which Goods bailed is accomplished.

According to Section 161 If by default of bailee the Goods are not Returned / Delivered at proper time, he is responsible for any loss / destruction from that time.

Return on Accretion from the Goods [Sec-163]

In the Absence of Contract to contrary bailee is bound to deliver to bailor (or) according to his direction

any Increase (or) Profit which may accrued from goods bailed.

Not to Setup Adverse title

- Bailee must not setup title adverse to that of bailor.
- He Must hold Goods on behalf of and for Bailor
- He Cannot deny on title of Goods.

Rights of Bailor

Right to terminate Bailment

A Contract of Bailment is voidable at option of Bailor if Bailee does any act with regards to goods bailed (or) inconsistent with Conditions of Bailment

Right to Demand Back the Goods

Where Goods are lent Gratuitously, bailor can demand back the Goods any time before Expiry of time fixed/ achievement of object.

Due to Premature Return of Goods, if Bailee suffers any loss which is More then the Benefit actually obtained by him from Use of Goods bailed, Bailor has to Compensate Bailee.

Right to file suit against Wrong doers [Sec-180 and 181]

Right to Sue the Bailee

Bailor has right to sue the bailee for enforcing all the duties and liabilities for him.

Right to Compensation

If any damage is Caused to Goods bailed because of Unauthorised Use of Goods / Unauthorize Mixing of Goods, Bailor has right to Claim Compensation for same.

Rights of Bailee

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① Right to Deliver Goods to any one of Joint Bailor [Sec-165]

If several Joint owners bailed the goods, bailee has right to deliver them to any one of Joint Owners Unless there was Contract to Contrary.

② Right to Indemnity [Sec-168]

Bailee is entitled to be Indemnified by Bailor for any Loss Arising to him by Reasons that Bailor was not entitled to make bailment (or) Receive back the Goods (or) Give direction in respect to them

- If the bailor has no title to the Goods and the bailee is in Good faith delivers them back to (or) according to directions of bailor
  - ↳ the bailee shall not be responsible to the owner in respect of such delivery

Bailee Can also Claim Expenses incurred for Gratuitous bailment

③ Right to Claim Compensation in case of faulty Goods [Sec-150]

A bailee is entitled to Receive Compensation from the bailor (or) any loss Caused to him due to failure of bailor to disclose any faults in Goods known to him

If Bailment is for hire, bailor will be liable to Compensate even though he was not aware of Existence of such fault.

④ Right to Claim Necessary Expenses [Sec-158]

In Case of Gratuitous Bailment, bailor shall repay to bailee necessary Expenses incurred by him and Extra ordinary Expenses incurred by him for the Purpose of Bailment

Right to apply to Court to decide title of Goods [Sec-167]

If the Goods bailed are claimed by person other then bailor, the bailee may apply to Court to stop its delivery and to decide title to goods

⑥ Right of Particular Lien for Payment of Services [Sec-170]

⑦ Right of General Lien [Sec-171]

Rights of Bailor and Bailee against any Wrong Doers [Third Party]

- Section-180
- Section - 181

Suit by Bailor and Bailee against Wrong Doers [Section-180]

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If third person wrongfully deprives the Bailee of the Use or possession of Goods Bailed.

(or)

Does them any injury, then bailee is entitled to use such Remedies as the owner might have used in the like Case [if no bailment Made) and either the bailee/ Bailor may bring suit against third Person.

Apportionment of Relief (or) Compensation obtained by Such Suit [Sec-181]

Whatever is obtained by way of Relief (or) Compensation in any such suit be dealt between Bailor and Bailee according to there Respective Interests.

Termination of Bailment

- Expiry of Stipulated Period
- Fulfillment of Purpose
- Death of Bailor and Bailee
- By Notice
- Destruction of Subject Matter

On Expiry of Stipulated Period

If the goods were given for stipulated Period the Contract of Bailment would terminate after Expiry of such Period.

On Fulfillment of Purpose

If the Goods were delivered for specific Purpose, bailment shall terminate on fulfillment of such purpose

Death of Bailor and Bailee

A Gratuitous bailment terminates upon death of either Bailor/Bailee

By Notice

Where Bailee acts in a Manner which is Inconsistent with terms of Bailment
↳ bailor can always terminate the Contract by giving notice to Bailee.

- A Gratuitous Bailment Can be terminated by Bailor at any time by giving notice to Bailee

Termination should not Cause loss to bailee in excess of benefit derieved by him.

In Case the loss exceeds the benefit derieved by the bailee, Bailor Must Compensate the bailee.

Destruction of Subject Matter

If the Original Condition of bailed Goods does not exist or is destroyed
↳ Contract of Bailment is automatically terminated

Finder of Lost Goods

Section-168 Right of Finder of Lost Goods

Finder → A Person who find some Goods which do not belong to him

Duty of Finder
- Find the true owner
- Surrender the Goods

Right to Retain Goods → Right to retain Goods until he Receives Compensation and Reward [if True owner has offered specific Reward]

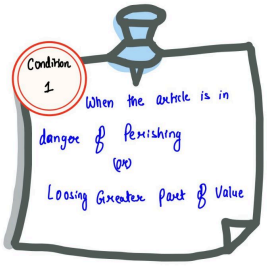
No Right to Sue For
- Compensation for Trouble
- Expenses Voluntary incurred
- Preserving the Goods

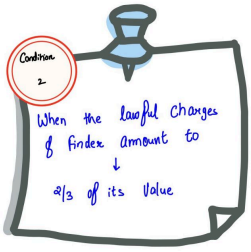
When Finder of thing Commonly on Sale May sell it

Finder has no right to sell the Goods found in normal Course but he may sell the Goods if

↓

Real owner Cannot be Found (or) owner refuse to pay lawful Charges, subjected to following Conditions





Lien

Meaning

Types of Lien

Meaning of Lien

Lien is right of Person to retain the Goods belonging to Another until his claim is satisfied / debt due to him is repaid.

Types of Lien

Particular Lien | General Lien

Particular Lien

When Bailee has, in accordance with purpose of Bailment rendered any Service Involving Exercise of Labour or Skill in respect of Goods bailed

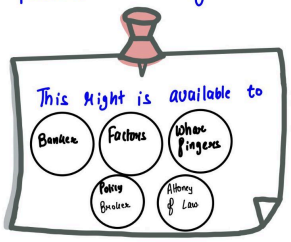
↓

he has right to retain such Goods until he Receives due Remuneration [In the Absence of Contract to Contrary]

. Where Bailee delivers goods without Remuneration, he has right to Sue Bailor, in this case Particular lien may be waived

General Lien.

It is right to Retain Goods not only for demand arising out of Goods retained but for General Balance of Account in favour of Certain Persons



Under Rights of General Lien the Goods Cannot be sold but Can only be Retained for dues.

PLEDGE

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What is Pledge ?

Bailment of Goods as Security for Payment of debt/ Performance of Promise is called Pledge

Who is Pawnor/ Pawnee ??

- Bailor is Pawnor in Case of Pledge
- Bailee is Pawnee in Case of Pledge

Essential of Contract of Pledge ?

- There Must be bailment for
  - Security of Payment of debt
  - Performance of Promise
- Goods Must be Subject Matter of Pledge
- Goods Pledge Must be in Existence
- There shall be delivery of Goods from Pledgor to Pledgee

Pawnee Right [Sec-173 to 176]

- Right to Retain Pledged Goods [Sec-173]
- Right to retention of Subsequent Debts [Sec-174]
- Pawnee's Right to Extra Ordinary Expenses
- Pawnee Right when Pawnor makes default

Right to Retain Pledged Goods [Section - 173]

Pawnee May retain Pledged Goods not only for Payment of debt/ Performance of Promise but also for Interest of debt and all Necessary Expenses incurred by him in respect of Possession of Goods Pledged/ Preservation.

Right to Retention of Subsequent Debts [Section - 174]

Pawnee can retain the Goods Pledged for any debt/ Promise other then debt/ Promise for which they were Pledged only when it is Provided in Contract.

Pawnee Right to Extraordinary Expenses [Section - 175]

Pawnee is entitled to Receive from the Pawnor extraordinary Expenses incurred by him for Preservation of Goods Pledged.

For Extraordinary Expenses, he does not have right to retain Goods, but Can sue Pawnor for such Expenses

Pawnees Right when Pawnor Makes default [Section - 176]

If Pawnee makes default in Payment of debt / Performance at the stipulated time of Promise in respect of which Goods were Pledged, Pawnee may bring suit against Pawnor upon debt/ Promise and retain goods Pledged as Collateral Security (or) he may Sell the thing Pledged on Giving Pawnor Reasonable notice of Sale

If Sale Proceeds are less then amount due → Pawnor is Still liable

If Sale Proceeds are More then amount due → Pawnee shall Pay over Surplus to Pawnor.

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Rights of Pawnor

All Rights of Bailor are right of Pawnor and Pawnor has additional Right → Redemption of Pledged Goods

Section - 177
Right to Redeem

Redemption Means to Recover Goods by Paying debt and Performance of Promise

- If a time is stipulated for Payment of debt (or) Performance of Promise for which Pledge is made and Pawnor makes default then he may Redeem Goods Pledged at any time before actual Sale of them

↓

but he must pay in addition any expenses which may have arisen from his default.

Duties of Pawnee

1. Duty to take Reasonable Care of Goods Pledged
2. Duty to Return Goods, when debt has been repaid or Promise has been performed
3. Duty not to Mix his own goods with Goods Pledged
4. Duty not to make Unauthorised Use of Pledged Goods
5. Duty not to do any act which is inconsistent with terms of Contract
6. Duty to Return Accretion [Secret Profit] to the Goods [If any]

Duties of Pawnor

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1. Pawnor liable to Pay debt (or) Perform the Promise
2. It is duty of Pawnor to Compensate Pawnee for any extraordinary Expenses incurred by him for Preserving the Goods Pawned
3. It is duty of Pawnor to disclose all Faults which may put Pawnee under extraordinary Risk
4. If loss occurs to Pawnee due to, defect in Pawnors title to goods, Pawnor must Indemnify Pawnee.
5. If Pawnee sells good due to default by Pawnor, Pawnor Must pay deficit

Pledge by Non-Owners

- Ordinarily owner of Goods / Any person authorised by him in that behalf can Pledge the Goods

Exception to Above
↓
"When Non-Owner Can Pledge"

Pledge by [Sec-178] Mercantile Agent

6 Conditions.

Condition - 1 Person Pledging the Goods must be Mercantile agent

Condition - 2 Mercantile Agent must be in Possession either of Goods/document of title to Goods

Condition - 3 Such Possession must be with Consent of owner.

Condition - 4 Pledge must have been made by Mercantile agent when acting in Ordinary Course of business of Mercantile Agent

Condition - 5 Pledgee must act in Good faith

Condition - 6 Pledgee should have no notice of Pledger defect of title

Pledge by Person in Possession Under Viodable Contract [Sec-178A)

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When Pawnor has obtained Possession of Goods Pledged by him under Viodable Contract, but Contract not rescinded at time of Pledge, then Pawnee acquires good title to goods Provided he act in good faith and without notice of Pawnors defect in title.

Pledge where Pawnor has only a limited Interest

Where a person pledges goods in which he has only limited Interest, Pledge is valid to extent of that Interest.

Pledge by Co-owner in Possession

where goods are owned by Many Person and with the Consent of any other owner, Goods are left in Possession of one of the other Co-owner.
Such Co owner can make valid Pledge of Goods.

Pledge by Seller (or) Buyer in Possession

A seller in whose Possession goods have been left after sale
or
buyer with Consent of seller obtains possesion of Goods before sale Can Make Valid Pledge
↳ Provided Pawnee acts in Good faith and he has no Knowledge of defect in title

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Indian Contract Act Unit - 9

Relevant For

Sep 2024

Jan 2025



Agency.

- Indian Contract Act does not define word Agency.

Agent

Agent Means a person employed to do any Act for another (or) to represent another in dealing with third Parties

Principal

Principal Means a Person for whom such act is done or who is so represented.

- Agency is Relationship between Principal and Agent

Test of Agency.

- Where Person has Capacity to bind the Principle and Make him answerable to third party.

⊕

- Whether he can Establish Privity of Contract between Principle and third party.

Rule of Agency is based on Maxim

"Qui Facit Per Alium, Facit Per se"

↓

ie who acts through an Agent

Who Can Employ an Agent??

- Who has attained Majority

⊕

Who is of sound Mind.

Who Can be Agent??

- Any Person Can be Agent
  - # Minor Can be Agent
  - # Unsound Mind Person Can be Agent

☞ Principal shall be bound by Acts of Agent

As Rule of Caution Principal should not such person as agent although permitted by law to appoint

Whether Consideration Requiered to Create Agency

Ans. No Consideration is necessary to create agency Acceptance of offre is sufficient Consideration.

Creation of Agency

- Express Authority
- Implied Authority
  - Agency by Estoppel
  - Agency by Necessity

Meaning of Agency

- Relation of Agency arises whenever one person called as Agent has the authority to act on behalf of another Called Principal and Consents to Act

Relationship is Essence [Grenser] of Contract

Express Authority

An authority is said to be express when it is Given by Words Spoken (or) written

Implied Authority

An Implied authority arises when it is to be inferred from

- Circumstances of the Case
- Conduct of Parties
- in ordinary Course of dealing
- May be accounted from Circumstances of the Case

Agency by Estoppel [Sec-237]

- Where the Principal by his Conduct/statement willfully Induces another Person to believe that
  ↳ Certain person is Agent
  ↓
  he is subsequently Prevented / Estopped from denying Facts of Agency

Conditions for Creating Agency by Estoppel

1. Principal Must have Made a Representation
2. Representation Must be [Express / Implied]
3. Representation Must state that agent has authority to do Certain Act
   ↳ Although Really has no authority
4. Principal Must have induced third Person by such Representation
5. Third Person must have believed the representation and made Contract on belief of such Representation.

Agency by Necessity

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- In emergency Person is authorised to do what he Cannot do in ordinary Circumstances.
- Where agent is authorised to do Certain Act and while doing such Acts an emergency arises
  ↳ Agent acquire an Extra-Ordinary (or) special Authority
  ↓
  to Prevent Principal from loss.

Points to Remember

- Where acts are done by one person on behalf of another but without his knowledge / Authority he may elect to ratify or disowns such Acts
- If he rectifies then the same effects will follow as they had been performed by his authority
- Ratification may be Express / Implied by Conduct of Person on whose behalf act was done

Ratification

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Ratification Means approving Previous Acts (or) transaction.

① Ratification May be Express/Implied

Ratification may be express/ Implied in Conduct of Person on whose behalf acts are done.

② Knowledge Requisite for Valid Ratification

No Valid Ratification Can be Made by Person whose knowledge of Facts are defective.

③ Whole transactions Must be Ratified

- There Can be Ratification of Act in entirely or its rejection in Entirely
- Principal Connot Ratify Part of transaction.

④ Ratification Connot Injure third Person.

- When Interest of third party is affected, Principal of Ratification does not apply
- Ratification Connot Relate back to date of Contract, if third party has in Intervening time acquired Rights.

⑤ Ratification within Reasonable Estimate

- Ratification Must be Made within Reasonable Period of time

⑥ Communication of Ratification

Ratification Must be Communicated to other party.

⑦ Act to be Ratified Must be Valid

Act to be Ratified should not be < Void / Illegal.

- Payment of Dividend out of Capital
- Forgery of Signatures
- Any Criminal offence
- Any thing which is not Permitted under Law.

Extent of Agent's Authority

- Agents authority in Normal Circumstances
- Agents authority in Emergency

Agent Authority in normal Circumstances

An agent having authority to do an Act, has authority to do every lawful thing which is necessary in order to such Act

An agent having authority to Carry on bussiness, has authority to do every lawful thing necessary for purpose of conducting such business

Agents authority in Emergency

An agent has authority in an Emergency to do all such Acts for Protecting Principal from loss, as would be done by a Man of Ordinary Prudence in his own case in similar Circumstances

Conditions of Valid Agency in Emergency

- Agent's should not be in Position or have opportunity to Communicate with Principal within the time Available
- There should have been Actual/ Definite Commercial Necessity for Agent to Act Promptly
- Agent should have adopted Most Reasonable and Practicable Course
- Agent Must have been in Possession of Goods belonging to his Principal and which are Subject Matter of Contract

Sub- Agents

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Who are Sub Agents

Sub Agent is a Person
- Employed by
- Acting Under Control of

} Original Agent in business of Agency.

What is Sub- Agency

- Sub agency refers to case where agent appoints another agent
- Appointment of Sub- Agent is not lawful, because agent is delegatee and delegatee cannot delegate.

☞ This principle is based on ↓
"Delegatus non potest delegare"

- Contract of Agency is of fiduciary character.

- It is based on confidence reposed by Principal in agent and therefore agent cannot delegate.

When Agent Cannot Delegate [Sec-190]

An agent Cannot lawfully employ another to Performs acts which he has Expressly / Impliedly undertaken to Perform Personally ↓

Unless by Ordinary Custom of trade, a Sub Agent May/ Must be employed.



When Agent Can Appoint Sub-Agent

① Appointment of Sub Agent would be Valid if terms of appointment Originally Contemplated it

② Sometimes Customs of Trade may provide for appointment of Sub-Agent

In the above 2 Cases, agent will be treated as agent of Principal

③ Where in Course of Agent's employment, unforseen emergency arises

Making it necessary to delegate the Authority given to him by Principal

Representation of Principal by Sub Agent Properly Appointed [Sec- 192]

Where a Sub Agent is Properly Appointed

- Principal is liable to third parties for Acts of Sub Agent
- Agent is responsible to principal for the acts of Sub Agent
- Sub Agent is responsible for his Acts to the agent but not to Principal [Except in Case of Fraud | Willful Wrong]

Agent's Responsiblity for Sub-Agent appointed without Authority [Sec- 193]

Where an agent without having authority to do so has appointed a person to act as Sub Agent

- Agent is Responsible for his acts both to the Principal and third Person.
- Principal is responsible for the Acts of Sub-Agent
- Sub Agent is not responsible to Principal at all → he is answerable only to agent

Substituted Agent

Meaning of Substituted Agent

- Substituted agent is the Person appointed by agent
  - ↳ to act for Principal in business of Agency.

Substituted agents are not Sub-Agent

Substituted agents are agents of Principal.

Relation between Principal and Substituted Agent to act in business of Agency

↓

Where an agent holding an Express/Implied authority to name another Person to act as Substituted Agent and such person appointed Substituted Agent

↓

Such Person is not Sub-Agent Agent

(+)

but an agent of Principal for such part of business of Agency as is entrusted to him

Agents duty in naming such Person. [Sec-195]

- In selecting such agent for Principal, an agent is bound to exercise
  - ↓
  - the same amount of discretion as a Man of Ordinary Prudence would exercise in own case
  - ↓
  - and if he does this, he is not responsible to Principal for the acts / negligence of agent so selected.

Duties and Obligations of an Agent

① Duty to Follow Instructions (or) Customs [Sec-211]

- Directions दिए हैं → An agent is bound to Conduct business of Principal according to directions given by his principal.
- Directions नहीं दिए हैं → Agent should act according to Custom which prevails in doing such business of same kind
  ↓
  at such place where business in Conducted.

Where Agents acts otherwise

- Any loss sustained by Principal, Agent Must Indemnify.
- Any Profit accrued → he Must account for it.

② Duty of Reasonable Care and Skill

According to Section 212, an Agent is bound to conduct the business of Principal with as much skill as is possessed by Persons engaged in similar line of business, Unless Principal has notice of want of skill.

- Agent is always bound to act with Resonable deligence and Use such skill as he Possesses **and**

to make Compensation to Principal for direct Consequences of his
- Own Neglect
- want of skill
- Misconduct

- But agent is not bound in respect of loss of damage which are
  - Indirectly
  - Remotely

  } Caused by such
  - Neglect
  - want of skill
  - Misconduct

③ Duty to Render Proper Accounts

An agent is bound to Render Proper Accounts on demand

Anand Prasad vs Durgeshnanda

Rendering accounts does not Mean showing Accounts but accounts supported by Vouchers

④ Duty not to deal in his own Accounts

Agent should not deal in his own Accounts without first obtaining Consent of Principal otherwise
- Repudiate the transactions [Sec-215]
- Claim from Agent any benefit that have Resulted to him from the transaction.

⑤ Duty not to Make Secret Profit

"Secret Profit Means any advantage obtained by agents over and above his agreed Remuneration and which he would not able to Make but for his position as agent."

- It is duty of an agent not to make any secret profit in the business of agency.

Relationship is of Fiduciary nature and this Require Absolute and Good Faith.

⑥ Agent duty to Communicate with Principal

- In Cases of difficulty to use all Reasonble deligence in Communicating with Principal and Seeking to obtain his Instruction.

⑦ Duty not to Delegate [Sec- 190]

- An agent Cannot lawfuly Employ to perform acts which he has [Expressely / Impliedly] Undertake to Perform Personally

↓

Unless by ordinary Custom of trade a Sub- Agent May be employed.

⑧ Agents duty to Pay Sum Received for Principal

Subjected to such deductions, agent is bound to Pay to his principal all Sum Received on his account.

⑨ Duty not Use any Confidential Information Received in the Course of Agency against the Principal

Rights of an Agent

- Right to Retain out of Sums Received on Principal's Account
- Agent Lien on Principal's Property
- Right to Compensation for injury Caused by Principal's Neglect
- Right to Remuneration
- Right to Indemnity
  - Right of Indemnification of Lawful Acts
  - Right of Indemnification against act done in Good Faith
  - Non Liability of Employer of agent to do Criminal Act

Right to Retain out of Sum Received on Principal's Account

Sum May be Retained for Following Payments

- All Money Due to himself in respect of any Advances Made ⊕
- In Respect of Expenses Property Incurred by him in Conducting of such Agency ⊕
- Such Remuneration as May be Payable to him for acting as an Agent.

Right to Remuneration (Section - 219)

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Contract है → Agent is entitled for Remuneration as per Contract

Contract नहीं है → Entitled to Remuneration in usual Customary Course of Business

अगर Agent ने Misconduct कार्य किया
then Principal not liable to Pay Remuneration for part of Business in which he has Misconducted.

Agent's Lien on Principal Property [Sec-221]

In Absence of any Contract to Contrary, agent is entitled to Retain
- Goods
- Paper
- other Property

} whether movable/Immovable of Principal Recived by him until ↓

Amount due to himself for
- Comission
- disbursments
- Services

} in respect of same has been Paid/Accounted.



Two Condition for Lien on Principals Property

Condition - 1 → Agent should be lawfully entitled to Receive From Principal a Sum of Money by way of Commission, disbursement or Services, rendered in business of Agency

Condition - 2

- Property on which lien to be exercised should be of Principal and it should be Received by agent in his Capacity and during ordinary Course of Business.

When Agent's Right to Lien is Lost

(a) When Possession of Property is lost

(b) When the agent waives his right. Waiver may arise out of Agreement either Express/Implied

(c) Agent lien is subject to Contract to Contrary.

Right to Indemnity

- Right of Indemnification of Lawful Acts [Sec-222]
- Rights of Indemnification against acts done in Good Faith [Sec-223]
- Non Liability of Employer of Agent to do a Criminal Act

Right of Indemnification of Lawful Acts Sec-222

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A Principal is bound to Indemnify the agents against all Consequences of lawful Acts done in exercise of Authority.

Right of Indemnification against Acts done in Good Faith [Sec-223]

When agent acts in Good faith on the Instruction of Principal
↳ agent is entitled for Indemnification of any loss/damage from the Principal.

Agent Cannot claim Compensation/Indemnification arising out of Acts done by him in Voilation of Penal Laws

Non-Liability of Employer of Agent to do a Criminal Act [Sec-224]

According to Section 224, where one Person employ another to do an act which is Criminal, the Employer not liable to agent
↳ either upon express/Implied Promise to Indemnify against Consequences of the Act.

Right to Compensation for Injury Caused by Principal's Neglect [Sec-225]

- Principal Must Compensate his agent in respect of Injury Caused to such Agent due to
  - Principal Neglect
  - Want of Skill

Every Principal owes to agent duty of Care and
- not expose him to Unreasonable Risks

Principal Liability to third Parties

- Introduction
- Principal liability for acts of Agent [Sec-226]
- Principal liability when Agent exceeds authority [Sec-227]
  - Exception Section-228
  - Exception Section-237
- Consequences of notice given to agent [Sec-229]
- Principal liability for Agents Fraud, Misrepresentation (or) torts [Sec-238]

Introduction

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- An agent does not act on behalf of Principal but incurs no personal liability
- Unless there is Contract to Contrary all liabilities will be of Principal
- An agent also cannot personally enforce Contracts entered by him on behalf of Principal.

Principals Liability for Acts of Agent [Sec-226]

Principal liable for Acts of Agents which are within is scope of Authorities

Principal's liability when Agent Exceeds Authority [Sec-227]

Where an agent does more then he is authorised to do and when part of what he does, does within his authority can be seperated from part which is beyond his authority
- ↳ so much only of what he does as within his authority is binding between him (and) his Principal.

When Principal not Bound by Acts of Agent

Exception — Section 228

Principal not bound when excess of Agents Authority is not Seperable [Sec-228]

- When agent does more than he is authorised to do what he does beyond the scope of his authority
  ↓
  Cannot be seperated from what is within it
  ↓
  Principal is not bound to recognise the transaction

Exception — Section 237

Liability of Principal inducing Belief that Agents Unauthorised Acts were Authorised [Sec-237]

Where an agent has without authority done Acts / Incurred obligation to third Person on behalf of his principal is bound by such Acts / obligations
↓
if he has by his words / Conduct **induced such** third person to believe that such Acts and Obligations were within the scope of Agent authority

Consequences of Notice Given to Agent [Section - 229]

Any notice given to / or any information by agent, Provided it be given / obtained in Course of Busness transacted by him for the Principal
↓
Shall be between Principal and third Party, has same legal Consequences as if it had been given to (or) Obtained by Principal

Principal's liability for the Agents Fraud / Misrepresentation / torts [Sec-238]

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Misrepresentations Made (or) Fraud Committed by agents acting in Course of their business for their Principals
↓
have the same effect on Agreements made by such agent
↓
as if such Misrepresentations / Fraud has been Made / Committed by Principal.

Misrepresentations made (or) Fraud Committed by Agents in Matters which do not fall within there Authority
↳ do not affect their principals.

Personal Liability of Agent to third Parties

Section - 230 Agents Cannot Personally enforce nor be bound by Contracts on behalf of Principal

In the Absence of Contract

- an agent Cannot Personally enforce Contract entered into by him on behalf of Principal
- nor Personally bound by them

≠ He Can neither Sue/ nor be Sued on Contracts made by him on his Principals behalf

Exception to Section - 230

↓

Ye Sab Cases Me Agent Personally Liable Hoga

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When Contract is Made by Agent for Sale/Purchase of Goods for Merchant Resident Abroad (or) Foreign Principal

- Where agent has entered into Contract for sale/ Purchase of Goods on behalf of Principal Resident abroad

↓

the Presumption is that agent undertakes to be Personally liable for the performance of such Contracts

When Agent does not disclose Name of Principal (or) Undisclosed Principal

- Where agent does not disclose name of Principal then arises the presumption that, he himself undertakes to be Personally liable

Non - Existent (or) Incompetent Principal

Where Principal is disclosed (+) But Cannot be Sued } then Agent Presumed to be Personally liable

Pretended Agent

- If agents Pretends but is not an Actual agent and Principal does not rectify the Act but disowns it ↓ then Pretended agent will be himself liable.

When Agent Exceeds Authority

- When Agent Exceeds authority (or) Misleads third Person in beliving that agent has requisite authority in doing the Act ↓ then agent Can be liable Personally for breach of warranty of Authority.

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Rights of third Party [Sec 231 to 234]

Section - 231

Rights of Parties to Contract Made by Undisclosed Agent

- If agent makes Contract with the Person who neither knows (or) nor has reason to suspect, that he is Agent ↳ his Principal may require Performance of Contract.

Other Contracting Party has against the Principal, the same right as he would have had against the agent, if agent had been the Principal

Super Important ...!!

If Principal discloses himself before the Contract is Completed, the other Contracting Party may Refuse to fulfill the Contract if

- If he Can show that he had known who was Principal in the Contract (OR)
- If he had known that agent was not Principal he would not have entered into Contract

Performance of Contract with Agent Supposed to be Principal [Sec-232]

- When agent does not disclosed that he is acting as agent
  and
  the Principle requires the performance of Contract

then Principal can obtain such performance subjected to Rights and Obligation subsisting between Agent and other party to Contract

option to third Person - Sue the Agent (or Principal

Section - 233

Section - 234

Right of Person dealing with Agent Personally liable [Sec-233]

In Case where agent is personally liable a person dealing with him may hold either

him his Principal Both

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Consequences of Inducing Agent (or) Principal to act on belief that Principal (or) Agent will be held Exclusively Liable [Section - 234]

- Where a Person who has made a Contract with an agent
  - ↳ Induces an agent to act on the belief that the Principal only would be held liable

(OR)

Induces the Principal to act upon belief that agent only will be held liable

↓

he cannot afterwards hold Agent/ Principal liable respectively.

Revocation & Authority

Meaning of Termination of Agency

Termination of Agency Means Putting an end to legal relationship between principal and Agent.

Modes of Revocation

Mode 1- Revocation

Agency may be terminated by Principal Revoking authority of Agent

Principal May Revoke authority Given to agent at any time before authority is exercised so as to bind the Principal

Revocation and Renunciation may be Express/ Implied in Conduct of Principal

When Principal having Justification to do so Revokes the authority he Must Give Reasonable notice of such Revocation to agent Else liable to Pay Compensation.

Principal Cannot Revoke authority after authority has been partly Exercised

so far as Regards such Acts and obligation as arised for Acts already done in Agency.

If there is Premature Revocation of Agency without Sufficient Cause Principal Must Compensate Agent for such Revocation

Mode-2 Renunciation By Agent

- An agent May Renounce the business of Agency in same Manner in which Principal has right of Revocation.

Agency for Fixed Period.

Section- 205

If Agency for Fixed Period, the Agent would have to Compensate ↓ the Principal for any Premature Renunciation without sufficient Cause

Notice and Length of Notice

- Reasonable notice of Renunciation is necessary
- Length of Notice/ Time Period of notice ↳ determined by same Principle which apply to Revocation of Principle
- If Agent Renounces without Proper notice, he shall have Make Good any damage ↳ Resulting to Principal

Mode-3 Completion of Business

- An agency is automatically and operation of law, terminated when its business is Completed

Mode-4 Death or Insanity

- An agency is determined automatically on death/Insanity of Principal/Agent
- Act done by agent before death would Remain binding

Mode-5 Principals Insolvency

An agency ends on Principals being adjudicated as Insolvent

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Mode - 6
On Expiry of time

- Where agent has been appointed for fixed term, the expiration of term puts an end to agency, whether or not Purpose of Agency has been accomplished.

When Agency is Irrevocable

- When agent Personally intrested in subject Matter of Agency, agency becomes Irrevocable
- When Agent has Intrest in property which forms Subject Matter of Agency ↓

agency Cannot be terminated to the prejudice to such Intrest [In Absence of Express Contract]

When Termination of Agents authority takes effect as to Agent/ third Person (Sec-208)

Termination of authority of Agent does not so far as Regards to agent take effect

before
- it becomes known to him
- before it Come known to third Person

Agent's duty on termination of Agency by Principal Death/Insanity [Section - 209]

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- When an agency is terminated by
  - Principal dying (or)
  - Becoming Unsound Mind

↓

agent is bound to take on behalf of Representative of late Principal
↳ All Reasonable steps for Protection and Preservation of Intrest entrusted to him.

Termination of Sub Agents Authority [Section - 210]

Termination of authority of an agent Causes termination [Subjected to Rules here in Contained Regarding termination of Agent authority] ↓

of authority of all sub Agents appointed by him.

Relevant For

Sep 2024

Jan 2025

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Sales of Goods Act, 1930

Unit - 1 Formation of Contract of Sale



Applicable on → Sale of Movable Property

Not applicable on → Sale of Immovable Property.

Buyer

- Who Buy Goods (OR)
- Who Agree to Buy Goods

Seller

- Who Sells Goods
- Agree to Sell Goods

Classification of Goods

- Existing Goods
- Future Goods
- Contingent Goods

Goods.

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- Goods Means Every kind of Movable Property other then Actionable Claims and Money.
- Goods include
  - Stock and Shares
  - Growing Crops
  - Grass
  - things attached to (or) Forming Part of land

  [which are Served / Agree to Serve under Contract of Sale)

Goods includes
- Gas
- Steam
- Water
- Electricity
- Decree [Orders] of Court.

What is Actionable Claims

Actionable Claim are those claims which can be Initiated through
- Action (or)
- Suit

Goods includes both Tangible and Intangible Property. like
- Goodwill
- Patent
- Copyright
- Trademark.



Existing Goods

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Existing Goods are those Goods which are in Existence ie

- Owned
- Acquired
- Possession

} of Seller at the time of Contract of Sale

Specific Goods

Specific Goods are those Goods which are Identified and Agreed upon at the time of Contract of Sale

Ascertained Goods

Ascertained Goods are those goods which are Identified
→ according to Contract
↓
after Making Contract of Sale

Unascertained Goods

Unascertained Goods are those goods which are not Identified and Agreed upon at the time of Contract of Sale



Future Goods



Tyre → Baby Pink
Front No. Plate → Princess
Back No. Plate → "Only Hum No Tum"
Seat → Pink
Body → Pink
Head light → Nahhri Bhabhi

Future Goods are those Goods

- Which are to be Manufactured/ Produced.
- Acquired by Seller after Making Contract of sale.

Contingent Goods

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- Agreement to Sell.
- Acquisition of which by Seller depends upon Uncertain Contingency

DELIVERY

- Voluntary Possession transfer From one Person to another
- Delivery of Goods May be Made by doing anything which has the effect of

- Putting the Goods in Possession of Buyer
- Any Person authorised by buyer.

Types of Delivery.

- Actual Delivery
- Symbollic Delivery
- Constructive Delivery.

Actual Delivery

- When Goods are physically delivered
- Seller tlf physical Possession of Goods
  - to Buyer
  - to third Person authorised by buyer.

- Most Common Method of delivery

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Symbollic Delivery

— When there is delivery of thing in token of transfer of Something Else.

प्रतीकी सुपुर्दगी

— Delivery of Goods in transit May be Made by handing over Document of title.

- Bill of Lading
- Railway Receipt
- Delivery Ordere
- Key of Warehouse Containing the Goods

When Actual delivery is not Possible
↓
there May be delivery of "Means of Getting Goods"

Goods in Deliverable state

☞ Goods are said to be in deliverable state ↓

they are in such condition that buyer would be bound to take delivery of them.

Constructive Delivery

Constructive delivery takes place when

↓

a Person in Possession of Goods [Sharma Ji]

↓

Belonging to seller 4c

↓

Acknowledge to Buyer, that he hold Goods now on Buyers behalf.

When it is effected without change in Custody / Actual Possession

↳ Delivery & Attornment [Acknowledgement]

Document of Title.

- → Bill of lading
- → Dock Warrant
- → Warehouse keeper Certificate
- → Railway Receipt
- → Wharfinger Certificate
- → MultiModal Transport document
- → Any other document.

Mates Receipt

· It is NOT document of title.

Document of Title [DOT]	Document showing Title [DST]
· When document Represent ownership of Goods and it can be freely transferable and holder of document gets title to such Goods is called Document of title	· The document Represent the Goods and also Mention name of owner of such Goods and cannot transfer title by delivery.
· When document is handed over from one person to another it transfer ownership when such handing over is done	· It Requires Valid Agreement for transfer of such document and ownership of Goods.
· DOT is Negotiable can be freely transferable	· DST is not Negotiable and can be transferred only by Agreement
Example → · Railway Receipt · Bill of lading	Example → · Share Certificate · Property documents

Mercantile Agent

It Means an agent who in Customary [Ordinary] Course of Business has Authority

- To Buy Goods
- To Sell Goods
- To Consign Goods for sale
- To Raise Money on Security of Goods

Insolvent

A Person is said to be insolvent when

- Ceases (बंद) to Pay debts in the Ordinary Course of Business
- (OR)
- Cannot Pay debts as they become due

Whether or not Commited Act of Insolvency.

Price

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- Money Consideration for Sale of Goods
- Value of Goods Expressed in Monetary terms
- It is Essential Requirement for Contract of Sale.

Quality

Quality of Goods includes
- State
- Condition.

Property

- Property Means
  - Ownership
  - General Property.
- General Property → All Ownership Rights of Goods.
- In Every Contract of sale
  - Ownership of Goods Must be tip
  - there should be an Agreement by seller to transfer ownership.
- It is Possible that General Property in a thing May be in one person and Special Property with another.
- The General Property May be transferred, subjected to Special Property Remains with same person.

Sale and Agreement to Sell

[Section- 4]

Section 4(1)

A Cos of Goods is a Contract where Seller transfer/ Agree to transfer Property in Good to buyer for Price

Section -4(2)

A Contract of sale May be
- Absolute [Without Cond.]
- Conditional

Section - 4(3)

Sale

Where Under Cos, the Property is t/f from Seller to Buyer

Sell

Where Property is to t/f at
- Future time
- Subject to fulfillment of Certain Conditions

Section 4(4) Sell → Sale कब बनेगा

Agreement to sell become sale when

- Time Elapses
- Conditions are fulfilled subjected to which Property in Goods is to transfered.

Elements of Contract of Sale [6 Points]

- There Must be atleast 2 Parties < Seller, Buyer } and the 2 Must be different
- "Subject Matter of Contract of sale", Must be Goods [Movable Property]

  Goods
  - Existing Goods
  - Future Goods
  - Contingent Goods
- Price in Money [Not in kind] Should be
  - Paid
  - Promised

  # Consideration Can be Partly in Money and Partly in kind
- Transfer of Property in Goods from seller to Buyer Must take place

  (Ex→ Zoom Car में Contract of sale नहीं Banega)
- Contract of sale May be
  - Absolute
  - Conditional
- All other Essential Elements of Valid Contract Must be Present in Cos

Sale and Bailment

- Bailment is delivery of Goods for some specific Purpose" under a Contract on a Condition that

  - Same Goods are to be Returned when purpose is fulfilled.

    (OR)

  - To be Disposed of acc. to direction of Bailor

Bailor is Person who deliver the Good

Bailee is Person to whom Goods are Delivered

Diff. b/w Sale and Bailment → Book.

Sale v/s Contract for work and Labour

- When no Goods are sold and there is only doing / Rendering of some work of labour
  - ↳ then Contract for work and Labour and not Sale.

Sale and Hire Purchase

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- Governed by Hire Purchase Act, 1972
- An agreement under which
  - Goods are Lent on Hire **and** under which Hirer has option to Purchase them in accordance with terms of Agreement

Hire Purchase Agreement includes

Possession of Goods is delivered by owner to Person on Condition that such Person Pays Agreed Amount in Periodical Instalments

(+)

Property is to Pass on Payment of last Instalment

(+)

Such Person has Right to terminate the Agreement at any time befor Property Passes.

Contract of Sale – How Made (Sec-5)

Section 5 (1)

A Contract is made by an offer to Buy/Sell Goods for Price
(+)
Acceptance of this offer.

Section - 5(2)

Subjected to any Provisions of the act
Contract of sale May be

- Made in Writing
- Word of Mouth
- Partly in Writing/ Partly word of Mouth.
- May be Implied by Conduct of Party

Modes of Making the Contract

- Offer to Buy/Sell + Acceptance of offer for Price
- Immediate delivery of Goods
- Immediate Payment (+) Delivery at future date
- Immediate delivery (+) Immediate Payment.
- Delivery (+) Payment = Instalment
- Delivery (+) Payment = Future date.

Existing (or) future (or) Contingent Goods [Section - 6]

- Meaning of Existing/ Future/ Contingent Goods - Same as before
- When Contract for Future Goods, the Contract will be Agreement to Sell.

Goods Perishing Before Making the Contract [Section-7]

- When there is Contract of sale of Specific Good

(+)

if Goods without knowledge of seller at the time of Cos

(+)

becomes [perished
so deemed as no longer answer to description

↓

Contract is Void.

Goods Perishing Before Sale and After Agreement to Sell [Section - 8]

When there is Agreement to sell Specific Good

(+)

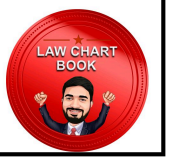
Subsequently the Goods without any fault on part of seller/ Buyer

becomes [perished
so deemed as no longer answer to description

in an Agreement before Risk Passes to Buyer

↓

Agreement become Void.



Ascertainment of Price
(Section - 9)

Price in Contract of Sale May be

- Fixed by Contract
- May be left to be Fixed in Manner Agreed
- Determined by Course of dealing.

- When Price not determined according to Above Provisions
  ↳ Buyer Shall Pay Seller Reasonable Price

Reasonable Price → Facts & Circumstances.

Agreement to Sell at Valuation [Sec-10]

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- When there is Agreement to sell Goods on terms that Price is to fixed by
  Valuation of third party
  ↓
  third party does not/ Cannot make Valuation
  the agreement is avoided [Void]

Goods delivered to Buyer (+) Appropriated by Buyer [Use] → he shall Pay Reasonable Price.

Where such third party is Prevented from Making Valuation by Seller / Buyer
↓
Party not in fault May file a suit on other party in fault for damages.



Relevant For

Sep 2024

Jan 2025

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Sales of Goods Act, 1930

Unit-2 Condition and Warranty



Condition

[Section - 12(2)]

Condition is Stipulation [शर्त]

↓

Essential to Main purpose of Contract

↓

the Breach of which gives Rise to

↓

"Right to treat Contract as Repudiated"

तोड़ना

Warranty

Section - 12(3)

Warranty is Stipulation [शर्त]

↓

Collateral to Main Purpose

↓

the Breach of which give Right

↓

to claim damages [ONLY],

↓

but not Right to Reject Goods and treat Contract as Repudiated.

Whether Stipulation is Condition or Warranty depends upon Facts & Circumstances

(OR)

Construction of Contract

Basis of Difference	Condition	Warranty
Meaning	Condition is a stipulation essential to Main purpose of the Contract	Warranty is stipulation Collateral to main purpose of Contract
Right in Case of Breach	The Aggrieved party can repudiate the Contract or claim damages or both in Case of breach of Condition	The Aggrieved party can claim only damages in Case of breach of Warranty
Conversion of Stipulations	Breach of condition may be treated as breach of Warranty	Breach of Warranty Cannot be treated as breach of Condition

- **Express Condition** → Expressly Agreed between parties as Condition in Contract
- **Express Warranties** → Expressly Agreed between parties as Warranty in Contract
- **Implied Conditions** → (7)
- **Implied Warranties** → (4)

Implied Conditions

Condition as to Quality / Fitness

Ordinarily there is no Implied Condition as Quality / Fitness of Goods sold any particular Case.

- There is Implied Condition on part of Seller that Goods supplied shall be Reasonbly fit for purpose, if following Condition are satisfied.

(1) Buyer has made known to Seller the Particular Purpose for which Goods are Required.

(2) Buyer should Rely on Skill and Judgement of Seller.

(3) Goods must be of description dealt in by Seller
↳ whether Manufacturer or not.

Sale by Sample



(1) Bulk [800 Qty] Shall Correspond with Sample in Quality.

(2) Buyer has Reasonable opportunity of Comparing Bulk [800 Qty] with Sample.

(3) Goods shall be free from defect Rendering them Unmerchantable.
↳ Which would not be Apparent on Reasonable Examination of Goods.

This Condition applicable only with Regard to defects
↳ which Could not be discovered on Ordinary Examination

#
If defects are hidden, then buyer Can Avoid Contract.

Sale by Sample and Description.

When Goods sold by Sample as well as by description the Implied Condition ↓

that Bulk [So Washing Machine] shall Correspond with both sample as well as description.

- If Bulk does not Correspond with sample (or) Description Buyer Can Repudiate the Contract.

Condition as to whole someness

- In Case of [Eatables / Provision]

Goods shall be Merchantable + Goods shall be Whole Some [Fit for eating]

Sale by Description.

- When there is Contract of sale of Goods by description there is Implied Condition
  ↳ Goods shall Correspond with description

- If You Contract to sell Peas, You Cannot Compell buyer to take beans.

- Buyer is not bound [to Accept (+) / Pay for Goods] } Goods which are not in according to description.

Condition as to title

In Every Contract of sale, Unless there is Agreement to Contrary ↓

- In Case of Sale of Goods ↓ he has Right to Sale
- In Case of Agreement to Sell ↓ he has Right to Sell Goods when Property Pass.

Condition as to Merchantability

Where Goods are brought by description from seller who deals in Goods of that description [whether Manufacturer (or) not]

↳ there is Implied Condition that Goods shall be of Merchantable Quality.

What is Merchantable Quality.

Goods are of such Quality } that a Man of Ordinary Prudence
(or)
Goods are in such Condition }

↓

would accept them as Goods by description.

Two Requirements

1. Goods should by description
   [and]
2. Seller should be dealer of Goods by description.

If Buyer has Examined the Goods

↓

there shall be no Implied Condition as Regard to defects which ought to Revealed on Examination

Implied Warranties

Disclosure Dangerous Nature of Goods

Where Goods are dangerous in nature (+) Buyer is Ignorant of danger → Seller Must Warn the buyer ↓ of Probable Danger.

Warranty as to Quality / Fitness by Usage of Trade.

An Implied Warranty as to [Quality / Fitness] May be annexed/Attached by Usage of Trade.

Warranty as to Non-Existence of Encumbrances (Charge)

An Implied Warranty that Goods shall be Free from [Charge (or) Encumbrances] in favour of third Party not declared/known to buyer before/at any time Property so passes.

Warranty as to Undisturbed Possession.

If the buyer having got Possession of Goods ↳ is later on disturbed in Possession ↓ he is entitled to Sue Seller for breach of Warranty.

Caveat Emptore

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Introduction

Let the buyer be aware.

Rule.

- Subjected to Provision of this act (or) any law time being in force
  ↓
  there is no Implied Condition as to Quality / Fitness for any Particular Purpose

3 Conditions

Condition - 1

If Buyer Made known to Seller Purpose of Purchase

Condition - 2

Buyer Relied on Sellers Skill and Judgement

Condition - 3

Seller business is to Supply Goods of that description

Exceptions

5 Implied Conditions
↓
Already Learnt Previously

1 Implied Warranties
↓
Already Learnt Previously

2 New Points
↓
1 [Next Page]
2

#1

Seller Actively Conceals a defect (or) is Guilty of Fraud

- Where Seller Sell Goods by Making Some Misrepresentation / Fraud
  - ↳ Buyer Relies on it

(OR)

When Seller Actively Conceals defect in Goods so that it Cannot be discovered by buyer on Reasonable Examination.

↳ Rule of Caveat Emptor will not apply.

#2

Goods purchased under Brand Name/ Patent Name

In Case where Goods are Purchased under its Patent Name/ Brand Name

↓

there is No Implied Condition that the Goods shall be fit for Purpose.

When Condition to be treated as Warranty.

- Buyer altogether waive performance of Condition. A Party of own benefit waive a stipulation.
- Where Buyer Elects to treat Breach of Condition as Breach of Warranty.
- Where Contract is non-Severable (or)

  Buyer has Accepted either
  - Whole Goods
  - Part thereof

- Where Fulfillment of any Condition/ Warranty is Excused by Law
  - ↳ by Reason of
    - Impossibility
    - otherwise.

Relevant For

Sep 2024

Jan 2025

Sales of Goods Act, 1930 [Unit-3]

Transfer of Ownership and Delivery of Goods

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Passing of Property.

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- Sec-18
- Sec. 19 to Sec. 22
- Sec. 23
- Sec-24
- Sec-25

Section - 18

Where there is Contract of Sale of Unascertained Goods
↳ the Property Cannot Pass to buyer Unless and Until Goods are ascertained.



Property Passes when Intended to Pass [Sec-19]

Sec-19(1)

When there is Contract of sale of Specific / Ascertained Goods, Property in them is transferred to buyer
↳ at such time when parties intended to get transfer

Sec-19(2)

For Ascertaining Intention

- The terms of Contract
- Conduct of Parties
- Circumstances of the case.

Sec-19(3)

Unless different Intention appear
↓
Follow Section 20 to 24.







Sec-20 Specific Good in Deliverable State

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When there is Unconditional Contract for sale of Specific Good in Deliverable State
↓
Property Passes to buyer when Contract is Made

- It is Immaterial whether
  - time of Payment of Price
  - time of delivery of Good

  } is Postponed.

Sec-21 Specific Good to be Put into Deliverable State

- When there is Contract of sale of Specific Good
  and
  Seller is bound to do Something to Goods for the purpose of Putting them in deliverable State

the Property does not Pass until such thing is done and buyer has notice thereof.



Sec-22 Specific Good in Deliverable State ; Seller has to Ascertain Price

- When there is Contract of sale of Specific Good in Deliverable State but Seller is bound to

  - Weigh
  - Measure
  - Test
  - do some other Act/thing

  } for the purpose of Ascertaining the Price.

Property does not pass until such thing is done and buyer has notice thereof.

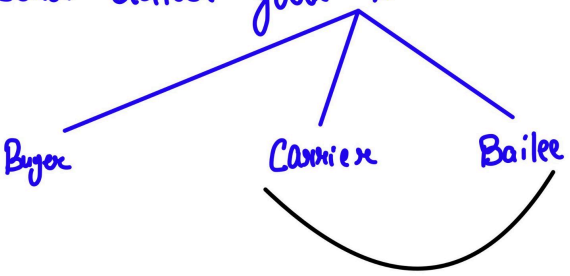


Sec-23 Sale of Unascertained Goods.

- There is Contract of sale of Unascertained / Future Goo
- Goods shall Conform to description and Quality as Stated in Contract
- Goods are in deliverable State
- Goods are Unconditionally Appropriated to the Contract either
  - deliver to Buyer
  - deliver to Agent
  - deliver to Courier.
- Appropriation Must by Made by
  - Seller with Assent of Buyer
  - Buyer with Assent of Seller.
- Assent May be < Express / Implied.
- Assent May be Given Either < Before / After } Appropriation

Sec- 23 (2) Delivery to Carriers

- When in Pursuance [According] of Contract, Seller delivers goods to



For the purpose of transmission to buyer and does not Reserve Right of Disposal

↓

Deemed that Goods are Unconditionally Appropriated.

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Appropriation of Goods.

Selection of Goods with Intention of using them in performance of Contract

and

With Mutual Consent of Buyer and Seller.

LAW CHART BOOK

Goods Sent on Approval [Sec-24]

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- When Goods are delivered to Buyer on Sale (or) Return Basis, Property there in Passes:-

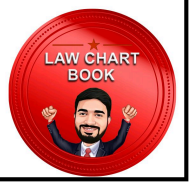
1. When he Signifies his approval. (or) Acceptance (or) any act adopting the Good.

OR

2. If he does not Signify the Approval, but Retain the Goods without giving notice of Rejection
   - If time Fixed for Return of Goods → On Expiration of such time
   - If no time Fixed → On Expiration of Reasonable time

OR

3. he does Something to Good which is Equivalent to Accepting the Goods.



Reservation of Right of Disposal [Sec-25]

- This section Preserve the Right of disposal of Goods
  ↓
  to Secure that Price is paid
  ↓
  before Property so passes to Buyer

- Whether Goods are Specific/Ascertained, Reserve Right to dispose Goods until Certain Conditions are Fulfilled.

- Inspite of Fact that Goods have been delivered to [Buyer, Carrier, Bailee] the Property will not Pass to Buyer till the Condition Imposed by seller have been fulfilled.

Circumstances Under which Right of Disposal May be Reserved.

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If Goods are shipped [Bill of lading] and delivered to Railways [Railway Receipt] for Carriage
⊕
"Goods are delivered to order of Seller"
↓
that the seller has Prima Facie Reserved Right of Disposal.

Where seller draws a Bill (Bills Receivable) on Buyer for Price and Send Bills of Exchange along will Bill of lading/ Railway Receipt
↓
to Secure Payment
↓
the Buyer Must Return Bill of lading/ Railway Receipt if he does not accept to pay Bill [Bills Receivable]



Risk Passes with Property (Sec-26)

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Exceptions of Risk follows Ownership

It provides that where delivery of Goods has been delayed through the fault of Either buyer (or) Seller.

↓

the Goods are at Risk of party in fault (as Regards any loss which Might not have occured, but For such fault.

Ordinary Circumstances.

Risk is borne by buyer only when, the property in Goods passes over to him.

Special Circumstances.

Parties May by Special Agreement stipulate that Risk will pass Sometime after/Before "Property" has Passed

Transfer of Title by Non-Owner [Section - 27 to 30]

If Seller is not the owner of Goods, the buyer will not become owner

↓

Rule is Expressed in "Latin Maxim"

↓

"Nemo dat quod non-Habet"

- Exception
  - (1) Sale by Mercantile Agent
  - (2) Sale by Joint Owner
  - (3) Sale by Person having Possession under Voidable Contract
  - (4) Sale by Unpaid Seller.
  - Sale by one who already sold Goods but Continue Possession
  - Effect by Estoppel
  - Sale by buyer obtaining Possession before Property in Goods was Vested in him
  - Sale Under Provisions of Other Acts

जब Non- Owner, Ownership Transfer कर सकता

Sale by Mercantile Agent

→ Goods in Possession/document with Consent of Seller

→ Acting in Ordinary Course of Business

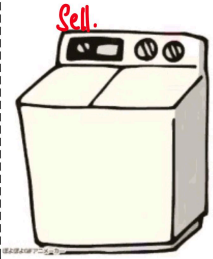
→ Buyer Acted in Good Faith
↓
at the time of Contract of sale Buyer had no notice of fact that seller does not have authority to Sell.

Sale by One of Joint owner

→ One of the Joint Owner has Sole Possession of Goods

→ Permission of all Co-Owner

→ Buyer Acted in Good Faith
↓
at the time of Contract of sale Buyer had no notice of fact that seller does not have authority to Sell.



Sale by Person Obtaining Possession under Voidable Contract





- Buyer obtaining Possession of Goods in Good Faith. from Seller who obtained Possession on Ground of

  - Coercion
  - Fraud
  - Undue Influence
  - Misrepresentation.

Sale by Unpaid Seller

RoL → Right of Lien

RoSIT → Right of stoppage in transit.

Where Unpaid Seller has Exercised RoL Or RoSIT

↓

Unpaid Seller Can Resell the Goods

↓

the Buyer Acquires Good title to goods as Against Original Buyer.

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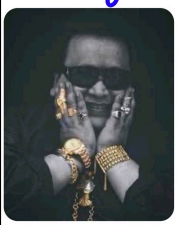
Sale by one who already sold Goods but Continue Possession

- 500 gms Necklace for ₹ 30,00,000 and Possession was with Me.



. Babu came for Buying Necklace for her Shona ₹ 70,00,000. [Good Faith]
↓
Valid Ownership transferal.

☞ Sale by Person who Sold Goods but Continue Possession/ Document

☞ Resell to third Person, third Person Buy such Goods in Good Faith.

☞ Pledge/ Disposing → Equal Effect.

Effect of Estoppel

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- When the owner is estopped by Conduct from denying Sellers authority to sell, transferee will get Good title against true owner

But before Good title by Estoppel Can be Made
↓
it Must be shown that true owner had Actively suffered

LAW CHART BOOK

Sale by Buyer obtainning Possession before Property in Goods Vested [transferred]

- Buyer obtainning Possession with Consent of seller
  - ↓
  - Before Property Passes
  - ↓
  - Now he May
    - Sell Goods
    - Pledge Goods
    - Dispose of the Goods

- Buyer Purchase in Good Faith without notice of RoL / RoSIT

Sale under Provision of other Acts

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- Official Receiver or Liquidator
  - ↓
  - will Give Purchaser a Valid title.

- Sec-169 of Indian Contract Act
  - ↓
  - Purchase from finder of Goods

- Sec-176 Indian Contract Act
  - ↓
  - Sale by Pawnee.

Performance of the Contract

Delivery of Goods by Seller
(+)
Acceptance of delivery
(+)
Payment for Price

} According to terms of Contract.

Sec-31 Duty of Buyer and Seller. [Sec-31]

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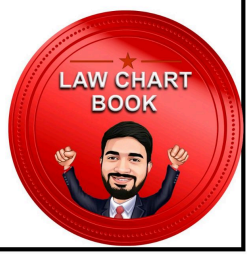
Duty of Seller → Deliver the Goods

Duty of Buyer → Accept and Pay for Goods, according to terms of Contract

Payment and Delivery are Concurrent Conditions. [Sec-32]

- Unless otherwise Agreed
  ↓
  Delivery and Payment are Concurrent Conditions.
- Seller is Ready and Willing to Give Possession and Buyer is Ready and willing to Pay for Goods.



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100

Sec- 33

to

Sec- 44



LAW CHART BOOK

Sec-33 Delivery

- Doing anything which party treats as delivery
- Putting Goods in
  - Possession of Buyer
  - Any Person authorise to hold Goods

Sec-34 Effect of Part Delivery

- Delivery of Part in Progress of whole of Goods
  ↓
  has same effect as delivery of whole Goods.

Ex → 600 kg Sugar Delivered out of 1000 kg Sugar. Goolu will also have same Right.

Buyer to apply for delivery Sec-35

Apart from Express Contract
↓
Seller is not bound to deliver Until and Unless Buyer apply for delivery.

Place of delivery Sec-36(1)

Good Sold = To be delivered where they were at the time of Contract of Sale.

Goods Manufacture/ Produce = Delivered at Place where it is Manufactured

Agreement to Sell = Delivered at Place where Good are at time of Agreement.

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Time for Delivery Sec-36(2)

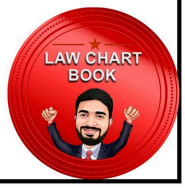
Agar Buyer to apply for delivery = Ye Section Nahi Lagega

When Seller is bound to deliver

- Time Fixed of Sending ↓ Seller will delivered at time fixed.
- No Time Fixed for Sending ↓ Seller should send within Reasonable Hour.

Goods in Possession of third Party Sec-36(3)

Goods in Possession of third Party [शर्मा जी]
(+)
No delivery uptil third Party [शर्मा जी] Acknowledge to Buyer [बापूजी] that he hold Goods on Buyers behalf



Time for Tender of Delivery Sec. 36(4)

उ ये Section लगी लगेगा जब Buyer को Apply करना होगा Delivery के Liye.

Demand / Tender May be treated as ineffectual, Unless Made at Reasonable Hour.

Expenses of Delivery [Sec. 36(5)]

- Expenses of Putting Good into Deliverable State
- Seller will Bear Expenses [apart from Express Contract]

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Delivery of Wrong Quantity [Sec-37]

Sec-37(1)

When Seller delivers to Buyer Quantity of Goods less then Contracted to Sell [C → 100 Red Bull, D → 80 Red Bull]

- Buyer May Reject [Reject → 80]
- Accept Goods delivered and Pay at Contracted Rate [Accept 80 Red Bull and Pay at ₹ 200 each]

C → Contracted Quantity → 100
D → Delivered Quantity
CR = Contract Rate Per = ₹ 200.
Con

Sec-37(2)

When Seller delivers to Buyer Quantity of Goods More then Contracted to Sell [C → 100 Red Bull, D → 125 Red Bull]

- Accept Goods in Contract and Reject the Rest
  Accept = 100
  Reject = 25
  ↓
  Pay at Contracted Rate
  [Pay 100 Red Bull x 200/- each]
- Reject the whole
  Reject = 125
  ↓
  (Pay → Zero)
- Accept the whole
  Accept = 125
  ↓
  Pay at Contracted Rate
  [Pay for 125 Red Bull at ₹ 200 each]

Instalment Delivery [Sec-38]

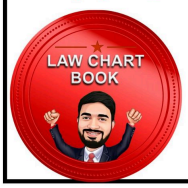
- Unless otherwise Agreed, Buyer not bound to Accept delivery in Instalment.
- Rights / Liabilities / Payment
  ↳ determine by Parties.

Delivery to Carrier [Sec-39(1)]

Subjected to terms of Contract
Delivery of Goods to Carrier for transmission to Buyer
↳ it is Prima Facie deemed to be delivery to Buyer.

Deterioration During Transit Sec-40

When Goods are delivered at distant Places
↓
the liability for Deterioration Necessarily Incidental to Course of transit, will Fall on Buyer
↓
through Seller delivers at own Risk.



Buyer Right to Examine Goods. [Sec-41]

When Goods are delivered who has not Previously Examined them
↓
he is entitled to Reasonable opportunity of Examining them
↓
in order to ascertain whether they Match with the Contract.

Unless otherwise Agreed.
Seller is bound on Request to afford Reasonable opportunity of Examining Goods.

Rules Related to Acceptance of Delivery [Sec-42]

- Intimate Seller that he Accepted the Goods
- does act with Goods, Considered Inconsistent with ownership
- Retain Goods after the Lapse of Reasonable time Without Intimating to Seller that he has Rejected them.

Buyer not Bound to Return Rejected Goods [Sec-43]

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Unless otherwise Agreed

Where Goods are delivered to Buyer and he Refuse to Accept them
(+)
He is not bound to Return to Seller
+
but it is Sufficient if he Intimates Seller that he Refuse to Accept them.

Liability of Buyer for Refusing / Neglecting Delivery of Goods. [Section - 44]

Where Seller is Willing and Ready to deliver the Goods
(+)
Request Buyer to take Delivery
(+)
Buyer does not take delivery after Reasonable time
(+)
he is liable to Seller for any loss due to [Neglect / Refusal] to take delivery
(+)
Reasonable Charge Care and Custody of Goods.

Relevant For

Sep 2024

Jan 2025

SOGA Unit - 4

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Unpaid Seller Sec-45(1)

Seller is Unpaid Seller when

- Whole of Price is not Paid
  (+)
  Seller has Immediate Right of action for Price
- When BOE/Negotiable Instrument has been Received as Conditional Payment
  (+)
  Condition on which it was Received has not been fulfilled by Reason of
  - Dishonour
  - Otherwise

Right of unpaid Seller Against Goods.

Sec - 47 to Sec - 52.

Sellers Lien (Sec-47)

- Unpaid Seller has Right of Lien on Goods upto in Possession
  +
  Until Price (or) tender have been Made

- Right to Retain the Goods
  (+)
  Refuse to deliver
  Until Price is Paid/tendered.

It is Possessory Lien.

Exercise Right of Lien

- When Goods have been sold without any stipulation of Credit (शर्त)
  (OR)
- When Goods are sold on Credit but Credit terms has Expired.
  (OR)
- When Buyer becomes Insolvent.

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Part Delivery [Sec-48]

Where Unpaid Seller has Made Part delivery of Goods [600 kg Sugar out of 1000 kg Sugar]
↳ he May Exercise lien on the Remaining Goods [400 kg Sugar]

- Unless Part delivery has been Made under Circumstances as to show an Agreement, to waive the lien [Lien ko chod dena]

Termination of Lien (Sec-49)

- Goods delivered to Carrier/bailee without Reserving Right of Disposal
- When buyer/Agent Lawfully obtained Possession of Goods
- Seller has Waived Right of Lien.
- By Estoppel
  ↓
  Where Seller Conducts himself that lead third Party to believe
  ↓
  that lien does not Exist.

Exception

Right of Stoppage in Transit [Sec-50]

- When Goods are in transit
- Regain the Possession
- Retain them Until Price is Paid

☞ When Unpaid Seller has Parted with Goods to Carriers
(+)
Buyer has become Insolvent
(+)
Seller can ask Carrier — not to deliver Goods to buyer (OR) Return Goods to Seller.

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Conditions for RO&IT

- Seller is unpaid
- Seller has Parted with Possession of Goods
- Buyer is Insolvent
- Goods are in transit
- Right is Subjected to Provision of other Acts

Duration of Transit [Sec-51]

From, Goods are delivered to Carrier/ Bailee for the purpose of transmission to Buyer

Until the buyer/Agent takes delivery from Carriage/ Bailee

When transit Comes to End ??

- **Buyer/ Bailee obtains delivery.**

When Buyer obtains delivery before arrival of Goods at destination [Interception by buyer] with the Permission/ without the Permission of Carriese.

If Carriese Wrongfully Refuses delivery to Buyer.

When Carriese/Bailee Acknowledge to Buyer/Agent,
↳ as soon as the Goods are loaded on Ship,
Unless Right of Disposal is Reserved by seller.

When Goods are delivered to Carrier, Hired by Buyer.

Where Goods are delivered to Ship Chartered, Hired by buyer.

Where Part delivery of Goods has been made to buyer
↳ the transit will Come to end for Remaining Goods.

How Stoppage in transit is effected ??

- Taking Possession of Goods
- Give notice of Claim to Carriese
- Give notice to other Bailee in whose Possesion Goods are.

Notice to be Given to
- Person in Possession of Goods
- his Principal

If notice to be Given to Principal, should be Given at such time and such Circumstances that Principal can Exercise "Reasonable Deligence"
↓
to Communicate Servant/ Agent in time to stop delivery



Difference b/w ROL u/s ROSIT

ROL	ROSIT
· Retain Possession	Regain Possession
· Seller should be in Possession of Goods.	① Seller Parted with Possession ② Possession is with Courier ③ Buyer has not acquired Possession ④ Buyer is Insolvent
· Can be Exercised whether (or) not Buyer is Insolvent	· Only when Buyer is Insolvent

Auction Sale.

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· Mode of Selling Property ; Inviting bids publically ; Property is sold to highest bidder

· Auctioneer is Agent of Seller.

Goods are sold in Lot

Each Lot is Prima Facie deemed to Seperate Contract of Sale.

Completion of Contract of Sale.

· When Auctioneer announce Complete of Sale
  - Fall of Hammer
  - Customary Manner

} Before this Bidder May Retract his Bid.

Pretended Bidding

· Seller Makes Use of Pretended Bidding (+) to Raise Price

↓

Sale is Voidable to Buyer.

Right to Bid Reserved.

· Right to Bid May be Reserved by (or) on behalf of Seller and when Right is Reserved Seller Can bid at Auction.

Reserved Price (OR) Upset Price

Minimum Price at which Seller willing to Sell.

Sale is not notified by the seller

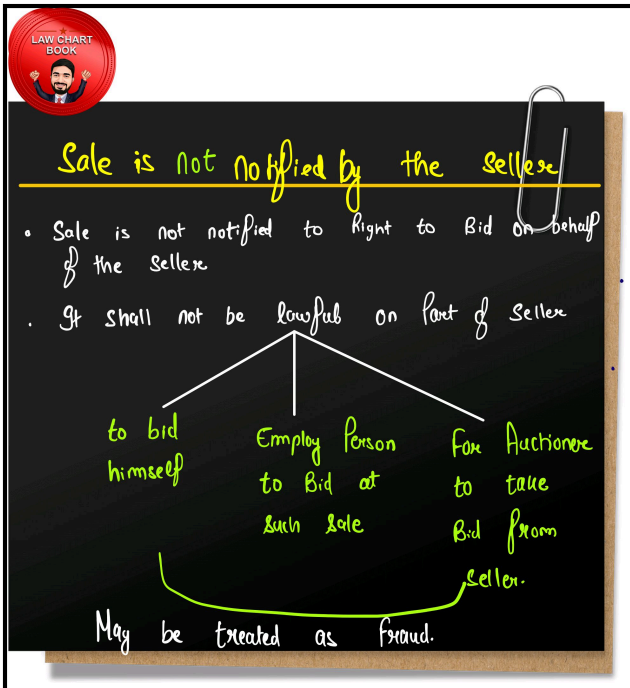
- Sale is not notified to Right to Bid on behalf of the seller
- It shall not be lawful on Part of Seller

to bid himself

Employ Person to Bid at such sale

For Auctioneer to take Bid from seller.

May be treated as Fraud.



Inclusion of Increased / Decreased Taxes

After Making Contract, but before Performance, tax Revision takes place

- Imposed
- Increased
- Decreased
- Remitted

in Respect of any Goods Without any Stipulation to tax

↓

Parties to Read the Price accordingly.

Right of Unpaid seller Against Goods.

Rights of Resale [Section - 54]

- Rights of Resale are with Unpaid seller.

(i) Where Goods are of Perishable Nature

- Buyer need not be informed of Intention of Resale.

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(ii) Where notice Given & intention of Resell.

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Where notice is Given to Buyer & intention of Resell

Contract Price → 5001000
Resell Price → 5,201000
201000 Profit Retained by Seller

Contract Price → 500000
Resale Price → 490000
Loss of Rs 101000 will be borne by buyer

When notice of Resell is not Given to Buyer

Contract Price → 5001000
Resell Price → 5,201000
Profit of 201000 will be taken by buyer

Contract Price → 500000
Resale Price → 490000
Loss of Rs 101000 will be borne by Seller

(iii) Where an unpaid Seller has exercise RoL or RoSIT to Resell the Goods.

- Subsequent Buyer Acquires Good title as against Original Buyer
  ↳ despite of Fact that Notice of Resell has not been Given by seller to Original Buyer.

(v) When the Property in Goods has not Passed to Buyer

- Seller has Right to withold Property
- Quasi lien. ☜

(iv) Right of Resale is Expressely Reserved in Contract of Sale

- Expressely Reserved in Contract, that when Buyer Makes default in Payment of Price
  ↳ the seller May Resell the Goods to other buyer.
- Seller not Responsible to Give notice to buyer
- Seller Can Recover damages
  ↳ even when No notice is Given.

Right of Unpaid Seller Against the Buyer

(OR)

"Sellers Remedies for Breach of Contract of sale"

What is Right in Personam	Right of Seller Against Buyer Personally

- Suit for Price (Sec-55)
- Suit for Damages of Non-Acceptance (Sec-56)
- Repudiation of Contract before Due date (Sec-60)
- Suit for Interest (Sec-61)

Suit for Price [Sec-55]

Section 55(1)

- Property Pass
  +
  Buyer Wrongfully Neglect
  ↓
  Seller May Sue for Price
  ↓
  "Contract of Sale"

Section 55(2)

- Price is Payable on Certain day
  +
  Irrespective of delivery
  (+)
  buyer Wrongfully Refuses to Pay Price / Neglect for Price
  ↓
  the Seller May Sue for Price Although
  - Property not tlf
  - No Appropriation.

  ↓
  "For Agreement to Sell"

Suit for Damages [Sec-56]

- Where Buyer Wrongfully Neglect/Refuse to Accept and Pay for Goods
  ↓
  Seller May Sue him for Damages for Non-Acceptance.

Repudiation of Contract before Due Date. [Sec-60]

- Where Buyer Repudiates the Contract before date of delivery
  ↳ Seller May treat the Contract as Rescinded and Sue for damages

Suit for Interest

- **When there is Specific Agreement**

  as to Interest on Price of Goods from the date of Payment becomes due, the Seller May Recover Int. From Buyer.

When there is No Specific Agreement

- the seller May Charge Interest on Price of Goods from such day
  ↳ as he May notify to buyer.

In Absence of Contract to Contrary, the Court May award Interest to Seller

- at such Rate as Courts thinks fit.
- on amount of Price of Goods.
- From the date of tender of Goods / From the date on which Price was Payable.

Right of Buyer against Seller.

I Damages of Non-delivery

- Where the seller Wrongfully Neglects/ Refuse to deliver Goods

↓

the buyer May Sue for damages of Non-delivery.

II Suit for Specific Performance.

1. Contract is for sale of Specific Goods/ Ascertained Goods
2. Power of Court to Specific Performance is subjected to Provisions of "Specific Relief Act 1963"
3. When damages are not be of adequate Remedy.
4. It will be Granted if Goods are of Uniquel special Nature.

III Suit for Breach of Warranty

When there is Breach of Warranty on Part of Seller

When Buyer treats Conditions as Warranty

(1) File a Suit Against Seller for breach of Warranty with Respect to Price

(2) Sue seller for damages for breach of Warranty

IV Repudiation of Contract before due data

the Buyer May treat the Contract as Rescinded and Sue for damages.

Buyer May treat the Contract as Subsisting and wait till date of delivery.

V Suit fore Interest

Buyer Can Recover from Seller

Tab hoga Jab Contract Me likha hoga.

- Interest (or) Special Damage, where Interest on Special Damages may be Recoverable
- To Recover Money paid where Consideration of it has failed.

On the Absence of Contract

- The Court May award Interest at such rate it thinks fit.
- On Amount of Price to buyer in a suit by him
- From the date on which Payment Was Made
- Fore Refund of Price in Case of Breach of Contract of Seller.

Effect of Sub-Sale (or) Pledge by Buyer [Section - 53]

RoL, RoSIT } is not affected by buyer selling/ Pledging the Goods

↓

Until the Seller has assented to it.

This Rule is Based on the Second Buyer Cannot Stand in better Position then his Seller [First Buyer]

#RoSIT will be defeated if Buyer

- has transferred document of title
- Pledged the Goods.

(&) Sub-Buyer Purchased in Good Faith

Proviso to Sec. 53.

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Exception

- When the Seller has assented (Permission de di) to Sale/ Mortgage/ disposition of Goods
- Where document of title is transferred to Buyer and Buyer transferred to other Person in Good Faith and for Price

If Last Mentioned transfer is by way of Sale

↓

RoL + RoSIT are defeated.

A → Sale → B → Sale → C = ~~RoL/RoSIT~~

A → Sale → B → Pledge → C = RoL/RoSIT Can be Exercised.

[Rights of Pledgee ko dhyan Rakhna hoga]

If Last Mentioned transfer is Pledge

↓

RoL + RoSIT Can be Exercised

↓

Subjected to Right of Pledgee.

Indian Partnership Act Unit - 1

General Nature of Partnership

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Relevant For

Sep 2024

Jan 2025



Definitions

Partnership

Partnership is relation between persons who have agreed to share profits of business "Carried on by all (or) any of them acting for all."

Partners and Firm

Persons who have entered into partnership with one another are called Individually "Partners" and Collectively "firm"

Firm Name

Name under which their business is Carried on is called the "Firm Name"

Elements of Partnership

- Partnership is Association of two (or) More Persons
- Partnership Must be a Result of an Agreement entered into by all Person Concerned
- Partnership is Organised to Carry on Some business
- Agreement Must be to Share the Profits of business
- Agreement Must be Carried on by all (or) any of them acting for all

Association of Two (or) More Person

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- Partnership is Association of Two (or) More Person
- Only Person Recognised by law Can enter into agreement of Partnership

☞ Can a firm be Partner in another firm → Firm is not Person Recognised in eyes of law, hence Cannot be Partner.

☞ Can Minor be Partner → Minor Cannot be a Partner in a firm but with Consent of all the Partners may be admitted to benefit of Partnership

Maximum No. of Partners ??

- Partnership Act is silent about Maximum No. of Partners.
- Sec-464 of Companies Act 2013, has put limit of 50 Partners in any Association / Firm

Agreement

- Partnership Must be Result of an Agreement between two (or) Person
- Agreement Must be entered into all Persons Concerned
- Nature of Partnership is Voluntary and Contractual
- Partnership Must be Express or Implied
- Agreement May be Implied From Act done by Partners and Consistent Course of Conduct being followed showing Mutual Understanding them.
- It May be Oral (or) in Writing.

Business

- There Must Exist a business
- Existence of business is esential
- Motive of Business is "Acquisition of Gains" which leads to formation of Partnership
- There Can be no Partnership when there is no intention to Carry on business and to share Profit

What is Business

The term business includes every
- → Trade
- → Occupation
- → Profession

Agreement to share Business

- Sharing of Profits is an essential feature of Partnership.
- There Can be no Partnership where only one of the Partners is entitled to whole of Profits of Business
- Partners Must agree to share Profits in any Manner they Choose
- Agreement to share losses is not essential Element

How to share losses?

- Unless otherwise agreed, losses Must be borne by Profit sharing Ratio
- It is open to One (or) More to Agree to share all loss.

☞ No Charitable Institution (or) Club may be Floated in Partnership

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☞ Joint stock Company May be Floated for Non-Economic Purpose.

Business Must be Carried on by all (or) any of them Acting for all.

Cardinal Principle of the Partnership Law

Business must be Carried on by all the Partner (or) any one (or) More of the Partner acting for all.

- There should be binding Contract of Mutual agency between the Partners
- True test of Partnership is Mutual Agency rather then sharing of Profit
- If the elements of Mutual agency is absent there will be no Partnership
- An act of one Partner in Course of business of firm is infact an act of all the Partner.
- Each Partner Carrying on business is Principal as well as agent for all other Partner
- He Can be agent in so far he can bind other Partners by his acts and he is Principal to the extent that he is bound by acts of other Partners

K.D. Kamath and Co

Supreme Court has held that two essential conditions are :-

- There should be an agreement to share profits as well as losses of business
- The business Must be Carried on by all (or) any of them acting for all within the Meaning of definition of Partnership

Partnership Agreement is called Partnership deed

Below three points are not destructive of theory of Partnership

- Exclusive Control and Management is Vested in one Partner

(OR)

- Only one Partner Can operate Bank A/c

(OR)

- Only one Partner Can borrow on behalf of Firm.

True Test of Partnership

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Mode of Determining Existence of Partnership.

In determining whether a group of Person is (or) not a Firm

(OR)

Whether is a person is are not Firm

↓

Regard shall be had to the Real Relations between the Parties, as shown by all Relevant Facts taken together

For Determining the Existence of Partnership, it Must be Proved

There Must be an Agreement between all the Persons Concerned	+	The Agreement was to share the Profits of a business	+	The Business was Carried on by all (or) any of them acting for all.

Agreement

- Partnership is Created by an Agreement and Not Status [Section-5]
- Members of HUF Carrying on family business

(OR)

Burmese Buddhist husband and Wife Carrying on business as such are not partners in such business

Sharing of Profit

- Sharing of Profit (or) Gross Return arising from property by Person holding a Joint/Common Interest in that property does not make itself make such Persons partners.
- Receipt by a Persons of share of Profits of business (or) of a payment Contingent upon Earning of Profits (or) Varying with the Profits Earned by business does not itself make him Partner with the Persons Carrying on the business and in particular the Receipt of such share (or) Payment
- By Lender of Money to Persons engaged (or) about to engage in any business.
- By Servant/Agent as Renemuration
- By a Widow/Child of deceased Partner as Annuity
- By a Previous Owner/Part Owner of business as Consideration for Sale of Goodwill/shares there of does not Itself make Receiver a Partner

SUMMARY

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Sharing of Profit is Essential element to Constitute Partnership But it is only Prima Facie Evidence but not Conclusive Evidence.

When to reffer to Section-6

- When either there is no specific Agreement
- The Agreement is as such does not speak specifically speak about Partnership
- In such a Case for testing Existence of Partnership relation, Section 6 has to be reffered

Section-6, क्या बोलता है??

According to Section-6
↓
Regard Must be had to Real Intention between the Parties as shown by all Relevant Facts taken together

Baap Level Conclusion

Cumulative Effects of Following effects such as

- Written or Oral Agreement
- Real Intention
- Conduct of Parties
- Others Surrounding Circumstances

are to considered while deciding Relationship between the parties and Ascertaining the Existence of Partnership

Agency.

- Existence of Mutual Agency is Cardinal Principle of Partnership Law.
- Each Partner Carrying on the business is Principal as well as agent of other Partners
- The act of one partner done on behalf of firm binds all the partner.
- If the elements of Mutual agency relationship exist between the parties Constituted a group Formed with a View to Earn Profit by Running a business, a Partnership May deemed to Exist

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Following factors Weighted upon Supreme Court to Reach Conclusion that there is no partnership.

Santi Ranjan Das Gupta v/s Dasyrao Murzamull

- Parties have not retained any Records of Terms and Conditions of Partnership
- Partnership business has maintained no accounts of its own, which would be open for inspection to both the parties
- No Account of Partnership was opened with any Bank
- No Written Intimation was Conveyed to Deputy Director of Procurment with respect to Newly Created Partnership

Kinds of Partnership

- With Regard to Duration (I)
  - Partnership at will (I a)
  - Partnership for fixed Period (I b)
- With Regard to Extent of Business
  - Particular Partnership II (a)
  - General Partnership II (b)

I(a) Partnership at will

Partnership at will is partnership when

- No fixed period has been agreed upon duration of partnership
  and
- There is no provision made as to determination of partnership

Where partnership is entered into for fixed term, then after expiry of such term it is treated as partnership at will.

Partnership at will may be dissolved by any partner by Giving notice in writing to all other partners of his Intention to dissolve the same.

I(a) Partnership for fixed Period

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- Where a provision is made by Contract, for duration of Partnership the Partnership is called Partnership for fixed Period.
- It is partnership created for a particular Period of time
- Such Partnership comes to end on Expiry of fixed Period.

II(a) Particular Partnership

- A Partnership may be Organized for "Prosecution of Single Adventure as well as for Conduct of Continous business"
- When a person becomes a partner with another Person in any Particular Adventure/ Undertaking, the partnership is called Particular Partnership
- The Partnership is dissolved by Completion of Adventure/ Undertaking

II (b) General Partnership

Where a Partnership is Constituted with respect to business in General, it is called General partnership.

Partnership Deed.

- What is Partnership Deed
- About Partnership Deed
- Contents of Partnership Deed

What is Partnership Deed.

- Partnership deed is a document in writing Containing Various terms and Conditions as to relation of partners to each Other is called Partnership deed.

Partnership deed may Stamped according to Provision of "Stamp Act, 1899".

About Partnership Deed

- Partnership is a result of an Agreement
- No Particular formalities are required for an Agreement of Partnership
- It May be in writing (or) Formed Verbally
- It is advisable to have Partnership deed in writing to avoid disputes

When Partnership Comprises Immovable Property, the instrument of Partnership Must be in writing, Stamped, Registered under Registration Act.

Contents of Partnership Deed.

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- Name of Partnership Firm
- Name of all partners
- Nature and place of business of firm
- Date of Commencement of Partnership
- Duration of Partnership
- Capital Contribution of each partner
- Profit Sharing Ratio of the Partners.
- Rates of
  - Interest on Capital
  - Interest on Drawing
  - Interest on Loan
- Admission and Retirement of Partner
- Provisions for
  - Settle of Accounts in Case of dissolution of firm
  - Salary | Comission Payable to Partner
  - Expulsion of Partner in Case of Breach of duty | Fraud.

WTL → Amazon Prime is about of New Horror Series

Types of Partners

- Active Partner
- Partner in Profits only
- Incoming Partner
- Sleeping Partner
- Outgoing Partner
- Nominal Partner
- Partner by Holding out

Active Partner

- Active Partner is a person who has become partner by Agreement and who actively participate in Conduct of Partnership
- Also Called as
  - Active Partner
  - Ostensible Partner
- He acts as agent of other partner for all acts done in ordinary Course of business

Retirement of Active Partner

Active Partner must give public notice in order to Absolve himself of liabilities for acts of other partners done after his Retirement.

Partners in Profits only

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- A partner who is entitled to share the Profits only without being liable for losses is known as Partner in Profits only
- He is also liable to third party for Acts of the firm.

Incoming Partner

- A Person who is admitted as partner into an already Existing firm, with Consent of all Existing Partner, is called Incoming Partner
- Such partner is not liable for any act of the firm done before his admission as partner.

Sleeping Partner

- It is a person who is partner by Agreement and who does not actively take part in Conduct of Partnership business
- Also called as Dormant Partner
- They share Profits/ Losses
- They are liable to third party for all acts of the firm
- Sleeping Partner are not recquired to give public notice of there retirment.

Outgoing Partner

- A partner who leaves a firm in which, Rest of Partners Carry on the business is called as Outgoing partner
- Also called as Retiring Partner
- Such Partners Remains liable to third parties for all acts of Firm Until Public notice is given of his Retirement

Nominal Partner

- A Person who lends his name to the firm without having Real Interest, it is called a Nominal Partner
- He is not entitled to share Profit of the firm.
- Neither he Invest in the firm nor he takes Part in Conduct of firm.
- He is liable to third parties for all acts of the firm.

Partner by Holding Out

- Partnership by holding out is also known as Partnership by Estoppel

where a Person represent himself
↓
knowingly permits himself
↓
to be represented as partner in firm
[when infact he is not]
↓
to anyone who on faith of such representation has given Credit to firm
↓
He is liable like a Partner in firm

Sub Partner

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- Partner agree to share of Profits in Partnership Firm with an outsider, such an outsider is called Sub- Partner
- Such Person Neither has rights against the firm / Nor liable for debts of firm

Indian Partnership Act Unit - 2
Relation of Partners

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Relevant For

Sep 2024

Jan 2025



General Duties of Partners

Duty - 1

The Partner should Carry business of the firm to Greatest Common advantage and they should render to any partner (or) his legal representative full information of all things affecting the Firm.

Duty - 2

A Partner Must observe utmost Good faith in his dealings with other partner

Duty - 3

All Partners are bound to Render accounts to each other

When some accounts are kept by any of them, then prima facie he will be proper person to Explain and Give full information.

Duty to Indemnify For loss Caused by Fraud [Sec-16]

Partner Committing fraud in Conduct of business of firm must make Good loss sustained by Firm by his misconduct and amount so brought in partnership should be divided between the partner.

Determination of Rights and duties of Partner by Contract between the the Partner [Sec-11]

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- According to Sec - 11(1), subjets to Provision of the act the Mutual Rights and duties of partner of Firm May be determined by Contract between partners
- Such Contract May be Express/ Implied by Course of dealing
- Such Contract may be Varied by Concent of all the partners
- Contract between the partner may provide that a partner shall not Carry on any business other then that of Firm While he is partner

Conduct of Business [Sec-12]

- Right to take Part in Conduct of Business [Sec-12(a)]
- Right to be Consulted [Sec-12(c)]
- Right of Access to Books [Sec-12(d)]
- Right of Legal Heirs/ Representatives/ Duly Authorised Agent [Sec-12(e)]

Right to take Part in Conduct of business

Partnership business is business of Partners and their Management Powers are generally Co-Extensive

Every partner has right to take part in business of firm.

Right to be Consulted

- Where any difference arises between the partners with Regard to business of firm, it shall be determined by the Views of Majority of them and every partner has right to express his opinion before the Matter is decided.

- Majority Must Act in Good faith and every partner Must be Consulted as far as practicable.

This Majority rule will not apply, when there is Change in Nature of firm itself
↓
In such a Case Unanimous Consent of Partner is needed

No Change in Nature of business of firm Can be made Without Consent of all the Partners

Right of Access to Books [Sec-12(d)]

Every Partner whether Active (or) Sleeping partner is entitled to

- Access to any of Books of firm
- Inspect books of firm
- Take Copy thereof

Right of Legal Heirs/ Representatives/ Duly Authorised Agents [Sec-12(e)]

In the event of death of Partner

- his heirs
- Legal Representative
- Duly Authorised agents

} shall have right to Inspect/ Take Copies of/ Inspect books of Accounts

Mutual Rights and Liabilities [Section -13]

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- Right to Remuneration [Sec-13(a)]
- Right to Share Profit [Sec-13(b)]
- Interest on Capital [Sec-13(c)]
- Interest on Advance [Sec-13(d)]
- Right to be Indemnified Sec-13(e)
- Right to Indemnify the Firm [Sec-13(f)]

Right to Remuneration [Sec-13(a)]

- No Partner is entitled to Receive any Remuneration in addition to his share in profits of the firm for taking part in business of the firm
- This Rule Can be Varied by an Express Agreement/ by Course of dealing.

Right to Share Profit [Sec-13(b)]

- Partners are entitled to equal share in Profits Earned (or) Equally is loss sustained by the Firm.
- Amount of Partners share Must be Ascertained by Enquiring whether there is any Agreement in that behalf between the partner

There is no Connection between Proportion in which they share Profit and proportion in which they have Contributed the Capital

Interest on Capital Sec-13(c)

Following Elements Must be there before Partner is entitled to Interest on Capital

- An Express Agreement
- Trade Customs to that effect
- Statutory Provision.

Interest on Advance Sec-13(d)

When Partner make Advance to Firm [in addition to amount of Capital] in such Case the partner Can Claim Interest thereon @ 6% p.a.

Right to be Indemnified [Sec-13(e)]

Every Partner has the Right to be Indemnified by Firm is respect of

- Payment Made and Liabilities Incurred by him in Ordinary Course and proper Conduct of business of Firm as well as in performance of an Act in an emergency of Firm.
- For any loss if Payment/Liability/Act are such as Prudent Man would do in his own Case under Similar Circumstances

Right to Indemnify the Firm Sec-13(e)

A partner Must Indemnify the Firm for any loss Caused to it by will ful neglect in Conduct of business of the Firm.

Partnership Property Section - 14

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What is Property of Firm??

Property of firm is also reffered as

- Partnership Property
- Partnership Assets
- Joint Stock
- Common Stock
- Joint Estate
- All Property, Rights and Interests to which the Firm [ie all Partners] Collectively May be entitled.

What is Partnership Property in the Absence of Agreement

- All Property/Right/Interest which Partners may have brought into Common Stock as their Contribution to Common business
- All Property, Right and Interest Acquired/Purchased by Firm in Course of business of Firm
- Goodwill of business

Application of Property of Firm [Sec-15]

- Property of Firm shall be held and Used Exclusive for Purpose of the firm
- Particular Partner has just Proprietary Interests in Assets of the Firm.

Every partner of the Firm has a Right to get his share of profit till the Firm subsists and he has also the Right to see that all Assets of partnership are applied to and Used for purpose of Partnership business

Personal Profit Earned by Partners [Sec-16]

Where any partner derives any profit for himself from
- Any transaction of firm
- From use of Property
- Business Connection of firm
- Firm Name

he must account for that profit and pay it to the firm

Where a partner carries on a competing business he must account for and pay to the firm all profits made by him in that business.

Rights and Duties of Partner after Change in Firm [Sec-17]

- After a Change in Firm
- After the Expiry of Term of firm
- Where additional Undertakings are Carried out

After a change in Firm

Where a change occures in constitution of firm, the mutual rights and duties of partner in Reconstituted firm, the mutual rights and duties of partner in Reconstituted firm remains the same as they were immediately before change.

After the Expiry of Term of Firm

Where a firm is constituted for fixed term carry on business after Expiry of firm, the mutual rights and duties of partner in Reconstituted firm remains the same as they were before Expiry.

Where additional Undertakings are Carried out

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Where a firm constituted to carry out one(or) more but carries out other Adventure/Undertakings are the same in respect original Adventure/Undertaking.

Relation of Partner to third Parties

- Partner to be Agent of firm [Sec-18]
- Implied Authority of Partner as agent of firm
- Restriction of Implied Authority

Partner to be an Agent of the firm [Section - 18]

- A partner is the agent of the firm for the purpose of business of the firm
- Partner indeed virtually embraces the character of both Principal and Agent

So far partner acts for himself and in own interest in common concern of partnership, he may properly be deemed as principal and so far he acts for his partners he may properly be deemed as agent.

Implied Authority of Partner as agent of the firm [Section - 19]

An Authority of Partner to bind the firm is called Implied Authority

- Section 19(1) and Sec-22 deal with Implied authority of partner
- Act of Partner which is done to carry on in the usual way, business of kind carried on by firm binds the firm provided that
  - → Act is done in firm Name
  - → Any Manner Expressing (or) Implying an Intention to bind the firm.

Restriction of Implied Authority

- → Act done must relate to Usual business of the firm.
- → Act is such as done in normal Course of Conduct of business. Usual way of Carrying on the business will depend upon Nature and Circumstances of the Case
- → Act to be done in the Name of the firm (or) in any other Manner Expressing (or) Implying an Intention to bind the firm.

Extension and Restriction of Partners Implied Authority [Sec-20]

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- The Implied Authority of Partner May be Extended (or) Restricted by Contract between partners
- The Restriction Imposed on Implied Authority of Partner by Agreement shall be effective against a third party if
  - → Third party knows about Restriction
  - → Third party does not know that he is dealing with partner in a Firm.

Partners Authority in Emergency [Section - 21]

According to Section 21, a Partner has authority in an emergency to do all such acts for the purpose of

↓

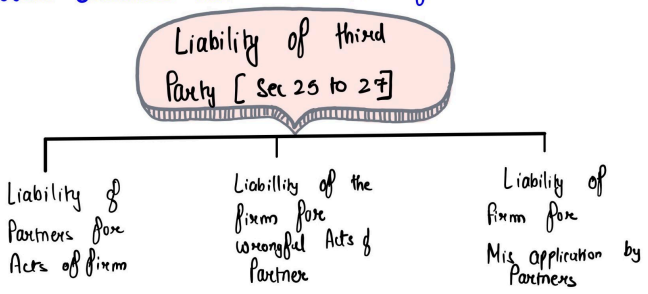
Protecting the firm from loss as a man of Ordinary prudence would do in his own Case, Acting under similar Circumstances and such Acts bind the firm.

Effect of admission by Partner [Section - 23]

- Partners as Agents of each other Can make binding admission but only in Relationship to partnership transaction and in ordinary Course of business.
- An admission (or) Representation by partner will not however bind the firm if his authority on the point is limited and other party knows Restriction.

Effect of Notice to Acting Partner [Section - 24]

- Notice to partner who habitually acts in business of the firm on Matters relating to affairs of the firm
  ↓
  operates as notice to firm, except in Case of fraud on firm Committed by (or) with Consent of that partner
- Notice to one is equivalent to notice to Rest of Partners of firm, just as notice to agent is notice to Principal.
- Notice Must be Actual and not Constructive
- It must be Received by Working partner and not sleeping partner
- It Must further relate to firm business, only then it would Constitute notice to the firm.



Liability of Partner for Acts of firm [Section - 25]

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The Partners are Jointly and severally responsible to third party for acts of the firm which come under there Express and Implied Authority

Liability of firm for wrongful Acts of Partner [Section - 26]

The firm is liable to the same Extent as the partner for any loss (or) injury Caused to third party by wrongful acts of partners if they are done by partner while Acting

- → In Ordinary Course of Business
- → With Authority of Partners

Liability of Firm for Mis application by Partners [Section - 27]

There are two Category of Cases by Misapplication of Money by Partners

Clause A

Clause (A) Covers the Case where partner acts within his authority and due to his authority as partner, he Receives Money (or) Property belonging to third party and Mis applies such Money (or) property.
For this purpose it is not necessary whether Money have actually Come in Custody of firm or Not

Clause B

Clause B would be attracted when such Money (or) property have come in Custody of firm and Mis applied by any one of the partner.

Firm will be liable in Both the Cases

Right of Transferee of Partner Interest [Section - 29]

A share in partnership is transferable like any other property But as partnership relation is based on Mutual Confidence the asignee Interest of partners Interest by Sale/ Mortgage otherwise Cannot enjoy same right and Privileges as Original Partner.

There are 2 Rights of Transferee :-

Right - 1

During Continuance of Partnership such transferee is not entitled
- → to Interfere with Conduct of business
- → To Require accounts
- → to inspect Books of firm

He is only entitled to Receive the share of Profits of transferring partner and he is bound to accept Profits, he Cannot challenge accounts

Right - 2

On dissolution of firm (or) Retirment of transferring partner, the transferee will be entitled against Remaining partner

To Receive share of Assets of firm to which the transfering Partner was entitled.

For Ascertaning the share he is entitled to an Amount as from date of dissolution

Points to Remember

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→ No Person Can be introduced as partner in firm without Consent of all other partner

→ A Person Cannot by transferring his own Interest make anybody else a partner in his place unless other Person agree to accept that Person as partner.

→ A partner Can transfer his Interest ie partner Interest in partnership Can be regarded as an Existing Interest and Tangible property which Can be Assigned

Minor admitted to Benefits of Partnership [Sec- 30]

- Can Minor Become Partner
- Rights of Minor [3 Rights]
- Minor Becoming Major
- Liabilities of Minor
  - Before attaining Majority
  - After attaining Majority
    - When he becomes Partner
    - When he Elects not to become Partner

Can Minor Be Partner in Firm??

- Minor Cannot become partner in firm because partnership is founded on Contract
- He Can be Validly Given share in partnership Profits with Consent of all the partners

Rights of Minor

- Minor partner has right to his Agreed share in profits of firm
- He Can have Access to
  - Inspects the accounts
  - Copy of Accounts of the firm.
- He Can sue the partners for
  - accounts of the firm
  - (or) for Payment of his share

  but only when having Connection with firm and not otherwise.

Minor Becoming Major

- On attaining Majority, he may within 6 Months elect to become partner (or) not

If he elects to become partner then he is entitled to share to which he was Entitled as Minor.

If he elects not to become partner he is not liable for acts of firm after date of Public notice.

Liabilities of Minor

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- Before attaining Majority
- After attaining Majority

Before attaining Majority

- Liabilities of Minor is Confined only to extent of his share in Profits and in property of firm
- Minor has no personal liability for debts of firm incurred during Minority
- Minor Cannot be declared insolvent, but if firm is declared insolvent
  - ↳ Minor share in firm Rests with official Receiver/ Asignee.

After attaining Majority.

Within 6 Months of his attaining Majority (or) on his obtaining knowledge that he had been admitted to benefits of Partnership (whichever date is later)

↓

Minor partner has to decide whether he shall Remain partner (or) leave the firm.

When he Elect to become Partner

When he becomes partner by his Own Willingness (or) Failure to Give Public notice his rights and liabilities are under Section 30(7) are as follows

→ He becomes personally liable to third party for all acts of the firm done since he was admitted to benefits of partnership

→ His share in property and the Profits of the firm remains same to which he was entitled as Minor.

When he Elects Not to become Partner

→ His Rights and liabilities Continue to be those of Minor upto date of Giving Public notice

→ His share shall not be liable for any acts of the firm done after date of notice.

→ He shall be entitled to sue partners for his share of Property and Profits



Minor shall Give notice to Registrar that he has or has not not become Partner.

Super Important

When he elected not to become Partner, he may give Public notice that he has elected not to become Partner and such notice shall determine his position in firm.

If he fails to Give such notice he shall become partner in firm on Expiry of said 6 Months

Liabilities of New Partner [Section - 31]

• Liabilities of New partner ordinarily Commences from the date when he is admitted as partner, Unless he agrees that he is liable for obligations Incurred by Firm prior to that date.

In Case of Partnership of two partners, this section does not apply as it is automatically dissolved on death of any one partner

≠ An agreement between partner and Incoming partner that he shall be liable for Existing debts will not Ipso facto Give Creditors of firm Right against him

Creditors Consent is Necessary in every case to make transaction operative.

Retirement of Partner [Sec. 32]

- A Partner May Retire
  - With Consent of all other partners
  - in accordance with Express Agreement by the Partners
  - When Partnership is at will by giving notice in writing to all other partner of his intention to Retire

Retiring Partner may be discharged from any liability to any third party for acts of the firm done before his Retirement by an Agreement Made by him with such third party and the partners of Reconstituted firm

and

Such Agreement May be Implied by Course of dealing between the third party and Reconstituted firm after he has knowledge of Retirement

Subsection (3) Notwithstanding Retirement of Partner from firm he and Partners Continue to be Liable as third party for any act done by any of them which would have been an act of firm, if done before Retirement until Public notice is Given for Retirement

Provided that a Retired partner is not liable to any third party who deals with the firm without knowing that he was Partner.

Notice under subsection (3) may be Given by Retired Partner (or) by any Partner of reconstituted Firm.

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Vishnu Chandra vs Chandmika Prasad

- Supreme Court held that expression, "If any Partner wants to dissociate from Partnership business, in Course of Partnership deed which was being Construed, Comprehends a situation where a Partner wants to Retire from Partnership
- The Expression Clearly Indicated that in event of Retirement, Partnership business will not Come to end.

Liabilities of an Outgoing Partner

- A Retiring Partner Continue to be liable to third party for acts of the firm, after his Retirement, Until public notice of Retirement has been given either by
  - himself
  - (or)
  - any other Person
- Liability of Retired Partner to third party Continues Until public notice of Retirement is Given

Retired Partner will not Liable to third party if later deals with Firm without knowing Former was Partner.

As regard the Liability for the acts of the firm done before Retirement, the Retirement Partner remains Liable for the same, Unless there is an agreement made by him
  - third Party Concerned
  - Partners of Reconstituted firm.

Such an agreement May be Implied by Course of dealing between third party and Reconstituted firm after he has knowledge of Retirement.

When No Public notice is Requiered

If Partnership is at will, Partner by Giving notice in writing to all other Partner of his intention to Retire will be Relieved as Partner without Giving Public notice

Expulsion of Partner [Sec- 33]

If all these conditions are not present, Expulsion is not deemed to be bonafide in Interest of Firm

- Power of Expulsion Must have Existed in Contract between the Partners
- Power has been Exercised by Majority of Partners
- It has been Exercised in Good Faith

If Partner is otherwise Expelled, the Expulsion is Null and Void.

Test of Good Faith [Sec-33(1)]

- Expulsion Must be in Interest of Partnership
- Partner to be Expelled is Served with the notice
- He is Given an opportunity of being Heard

Points to Remember

- Expulsion of Partner does not Necessary Result in dissolution of Firm
- Invalid Expulsion of Partner does not put an end to partnership, even if Partnership is at will it will deemed to Continue as before

Insolvency of Partner [Section - 34]

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- When a Partner in Firm is adjudicated as Insolvent he Ceases to be Partner, on date of order of adjudication whether or not Firm is dissolved

His estate [which thereupon Vests in official Asignee], Ceases to be liable for any act of the Firm done after date of Order.

Firm is also not liable for any act of Partner after such date

Effects of Insolvency :-

1. Insolvent Partner Cannot be Continued as Partner
2. He will be Ceased to be Partner from the date on which the order of adjudication is made
3. The Estate of Insolvent Partner is not liable for the act of the Firm done after date of Order of adjudication.
4. The Firm is not liable for any act of the insolvent Partner after the date of order of adjudication
5. Ordinarily but not Invariably the Insolvency of Partner Results in dissolution of Firm, but the Partners are Competent to agree among themselves that adjudication of Partner as insolvent will not Give Rise to dissolution of Firm.

Liability of Estate of Deceased Partner [Sec-35]

Ordinarily the effect of death of partner is dissolution of partnership but this rule is subjected to Contract between the parties

The Estate of deceased partner May be Absolved from Liability for future obligation of the firm, it is not necessary to Give any notice to public (or) Person dealing with the firm.

Rights of an Outgoing Partner to Carry on Competing Business [Sec-36]

An outgoing partner May Carry on business Competing that of firm and he may Advertise such business but subject to Contract to Contrary he may not

- Use the Firm Name
- Represent himself as Carrying on the business of the Firm
- Solicit the Custom of Persons who are dealing with the Firm before he Ceased to be partner

Agreement in Restraint of Trade

A Partner May Make an Agreement with his partner that on Ceasing to be partner he will not Carry on the business similar that of firm

- within specified Period
- within specified local limits

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Notwithstanding anything Contained under Section - 27 of Indian Contract Act, such Agreement will be Valid if Restriction Imposed are Reasonable.

Right of Outgoing Partner in Certain Cases to Share Subsequent Profits [Section-37]

- Where any Member has died/Ceased to be partner and the Surviving Partner Carries on the business of the firm with the property of firm without final Settelment of Accounts as between them and Outgoing Partner then

↓

In the Absence of Agreement to Contrary, then Outgoing Partner is entitled to such share of Profits made

Since he Ceased to be Partner as may be attributable to Use of his share of property of firm (or) to Interest at Six Percent Per Annum on Amount of his share in property of the firm.

Revocation of Continuing Guarantee By Change in Firm [Section - 38]

- According to Section - 38, a Continuing Guarantee Given to Firm (or) third party in respect of transaction of firm, In Absence of Agreement to Contrary Revoked as future transaction

- Such Change May occur
  - by death of Partner
  - by Retirement of Partner
  - By Admission of Partner

IPA Unit - 3

Registration and Dissolution of FIRM

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Relevant For

Sep 2024

Jan 2025



Application for Registration [Sec-58]

- The Registration of firm may be effected at any time by sending by Post (or) Delivering to Registrar of the area in which any place of business of firm is situated (or) proposed to be situated a statement in Prescribed Form and Accompanied by Prescribed fees stating :-

→ The firm's Name
→ The Place (or) Principal Place of business of firm
→ The Name of any other places where firm Carries on the business
→ Date when each Partner Joined the firm
→ Name in full and permanent Adresses of the Partner
→ Duration of the firm.

Statement shall be signed by
→ all the Partners
(OR)
→ By their agent specifically authorised in this behalf

Each Person signing the statement shall also verify it in Manner Prescribed.

A firm shall not Contain any of following Names :-

- Crown
- Emperor
- Empress
- Empire
- Imperial
- King
- Queen
- Royal
- Words expressing (or) Implying the Sanction (or) Approval (or) Patronage of Government

Bhulna Mat

When the state Government Signifies its Consent to the Use of such Words as part of firm Name by Order in writing.

The Registration of Partnership is optional and one Partner cannot Compel another Partner to join in Registration of firm.

Registration [Section - 59]

- When the Registrar is satisfied that provisions of Section 58 have been Compiled with he shall record an entry of Statement in the register called "The Register of firms" and file the Statement
- Firm when Registered shall Use bracket and word [Registered], immediately after its name

When Registration is deemed to be Completed

- Registration is deemed to be Completed as soon as application in Prescribed Form with Prescribed fee and Necessary details Concerning the details of Partnership is delivered to Registrar.
- Recording of an entry in Register of firm is Routine duty of Registrar

Registration when suit is filed??

Registration may also be effected even after suit is filed by firm ↓

but in that Case it is necessary to withdraw suit first ↓

Get firm Registered ↓

then file a fresh suit

Late Registration on Payment of Penalty [Sec - 59 A - 1]

• In Case of failure to send and deliver the statement within a time specified in Sec 58[1A]

↓

Firm may get Registration on payment of Rs 100 per year of delay (or) Part thereof as Penalty to Registrar of Firms.

Consequences of Non- Registration [Section 69]

Indian Partnership Act does not make Registration of Firms is Compulsory nor it Impose Penalty for Non- Registration.

☞ Non- Registration of Partnership gives Rise to Number of disabilities

① No Suit in a Civil Court by Firms (or) other Co- Partners Agains third Party

A Registered Firm Can only file suit against third party and party suing have been in the Register of Firm as Partners in the Firm.

2 No Relief to Partners for Set off of Claim

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• If an action is brought against the Firm by third party then neither the Firm nor the Partner Can Claim Setoff, if the suit be Valued for More then Rs 100 (or) Pursue other Proceedings to enforce the arising from any Contract

3 Aggrieved Partner Cannot bring Legal Action against other Partner (or) the Firm

A Partner of an Unregistered Firm or any other person on his behalf is precluded from bringing legal action against the Firm (or) any person Alleged to be a Partner in Firm

Such Partner may sue for
→ Dissolution of Firm
→ For accounts and Realization of his share in Firms Property where Firm is dissolved.

Third Party Can Sue the Firm

In Case of Unregistered firm an action Can be brought against the Firm by a third party.

Non Registration of firm does not Effect following Rights

(a) The Right of third parties to sue Firm/ Any partner.

(b) The Right of Partners to sue for
- Dissolution of Firm
- Settelement of Accounts of dissolved Firm
- Realization of Property of dissolved firm.

(c) The Power of official Asignees (or) Receiver of Court to Release of property of Insolvent partner and to bring an action

(d) Right to Suit/ Claim setoff is Value of suit does not exceed Rs 100 in Value

(e) Right to suit and Proceedings Instituted by Legal Representative (or) heirs of deceased partner of firm for
- Accounts of firm
- to Realise property of Firm

Dissolution of Firm

Section - 39

According to Section - 39, the dissolution of partnership between all partner of firm is called "Dissolution of Firm"

Dissolution of Firm Means discontinuation of Legal Relation Existing between all the Partners of the firm.

Dissolution of firm Means discontinuation of Legal Relation Existing between all the Partners of the firm.

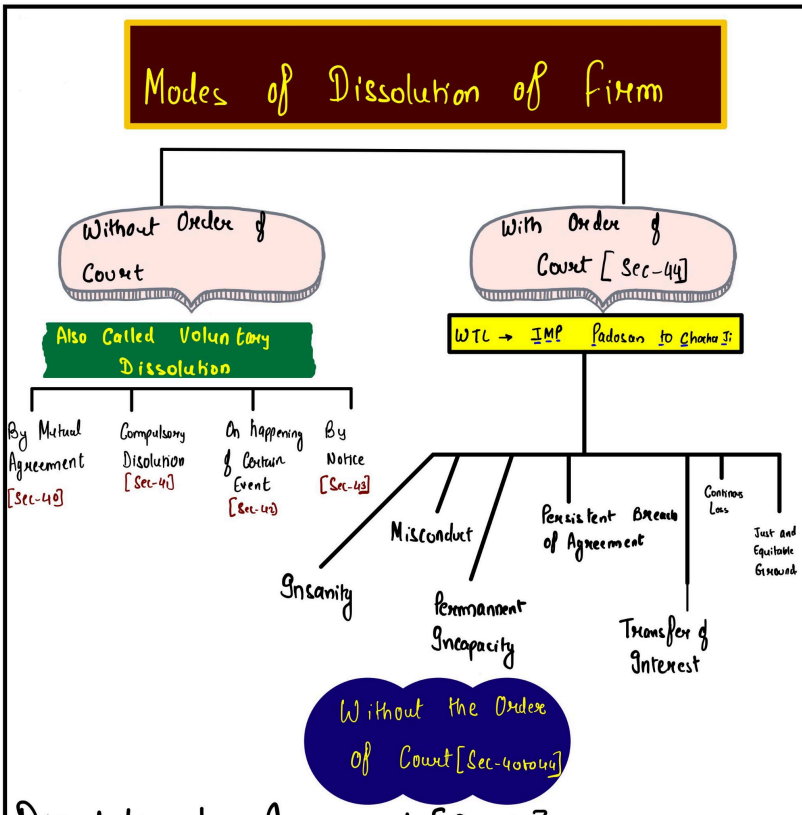
When
- One (or) More partner Retires
- Death of Partner
- Insolvency of Partner
- Insanity of Partner

Relation between such a partner and other is dissolved, but Rest may decide to Continue ↓ there is no dissolution of Firm

The Particulare Person goes out, but the Remaining Partners carry on the business of firm is called Dissolution of Partnership.

In Case of dissolution of firm, whole firm is dissolved.

Modes of Dissolution of Firm



Dissolution by Agreement [Sec-40]

Section -40 gives right to partners to dissolve the partnership by Agreement with Consent of all partners (or) in accordance with "Contract between Partners" which Means Contract already Made.

Compulsory Dissolution [Section-41]

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A Firm is Compulsory dissolved by

- By Adjudication of all the partners (or) of all the partners but one as Insolvent (OR)
- By happening of any event which makes unlawful for the business of the firm to be carried on (or) for the partners to carry it on Partnership.

However when More then one Seperate Adventure (or) Undertaking is Carried on by the Firm, the Illegality of one (or) More shall not Itself Cause dissolution of firm in respect of its lawful adventures and Undertaking.

Dissolution on happening of Certain Contingencies [Sec-42]

Subject to Contract between the partners a Firm May be dissolved on happening of any of following Contigencies

- When a firm Constituted for fixed term, on expiry of fixed term
- When Firm Constituted to Carry out one (or) More Adventure | Undertaking, then by Complete there of
- By death of Partner
- By Adjudication of Partner as Insolvent.

Dissolution by Notice of Partnership at Will [Sec-43]

When the Partnership is at will, Firm may be dissolved by any Partner Giving notice in writing to all other Partners of his Intention to dissolve the Firm.

On which date Firm is Dissolved

- If date Mentioned in notice → Firm is dissolved as from the date Mentioned in notice as at date of dissolution
- If no date Mentioned in notice → As from date of Communication of notice

With the Order of Court [

Insanity (or) Unsound Mind

Where a Partner [not sleeping Partner] has became of Unsound Mind, the Court may dissolve the Firm

- on Suit of other Partners
- Next Friend of Insane Partner

When Sleeping Partner is of Unsound Mind, Firm will not get dissolved

Misconduct

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When a Partner [other then suing Partner] is guilty of Conduct which is likely to affect, Prejudicially the Carrying on business

↓

the Court may order dissolution of Firm, by giving regard to Nature of business

Temporary Sickness is no ground for dissolution of Firm.

- It is not necessary that Misconduct Must Relate to business
- Important Point is Adverse effect of Misconduct on business
- Nature of business will decide whether an act is Misconduct or not.

Permanent Incapacity

When a Partner [other than suing Partner], has become in any way Permanently Incapable of Performing his duties as Partner, then Court may dissolve the Firm.

Permanent Incapacity may Result from [Physical Disability / Illness

Persistent Breach of Agreement

Where a Partner [other then partner suing] willfully (or) Persistently Commits breach of Agreement relating to

- Management of affairs of Firm
- Conduct of business
- Otherwise

} so Conducts himself in Matters relating to business, that is not Reasonbily Practicable for other Partners to Carry on business in Partnership with him, Court May dissolve Firm at Instance of any of the Partner.

Categories of Breach of Contract



Transfer of Interest

Where a partner [other then partner suing], has transferred the whole of his Interest in Firm to third party

(OR)

has allowed his share to be charged (or) sold by Court, in the Recovery of land Revenue due by the partner

the Court may order for dissolution of the firm.

Continous and Perpetual Losses

- Where the business of the firm cannot be carried except at Loss in future Also, the Court may order for its dissolution.

Just and Equitable Grounds

Following are Just and Equitable Grounds :-

- Deadlock in Management
- When partners are not in talking terms between them.
- Loss of Substratum
- Gambling by Partners on Stock Exchange

Consequences of Dissolution

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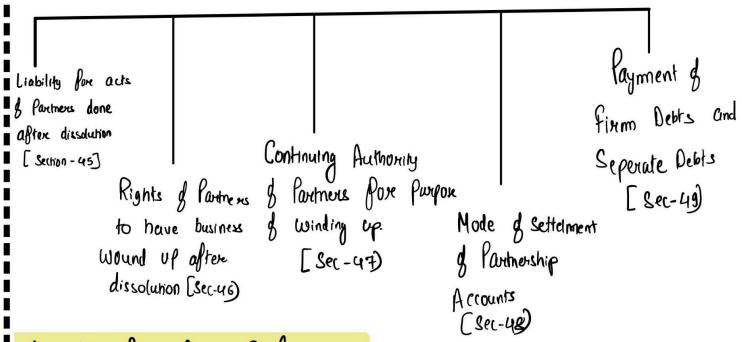
Consequent to the dissolution of Partnership firm, the Partners have Certain Rights and liabilities which are



Liability for Acts of Partners done after dissolution [Sec-45]

Section 45 has two fold objectives

- It seeks to Protect third parties dealing with the firm who had no notice of Prior dissolution
- It also seeks to Protect Partners of dissolved firm from liability towards third Parties

Even when notice of dissolution has not been given, there will be no liability for subsequent Acts in case of

- Estate of deceased Partner
- An Insolvent Partner
- A Dormant Partner [A Partner who was not known as Partner to Person dealing with Firm]

Rights of Partners to have business wound up after dissolution [Sec-46]

On dissolution of firm every partner (or) his representative is entitled against all other partners (or) their representative is entitled

↓

as against all other partner (or) their Representative

↓

to have property of firm applied in Payment of Debts and liabilities of firm. and to have surplus distributed among Partners/ their representative according to right.

Continuing Authority of Partners for Purpose of Winding up [Sec-47]

After the dissolution of firm, authority of Each Partner to bind the firm and other Mutual Rights and Obligation of Partner Continue notwithstanding dissolution

↓

so far as necessary to wind up affairs of firm and to Complete transaction begun but Unfinished at time of dissolution, but not Otherwise

Provided that firm in no case bound by Acts of Partner who has been adjudicated Insolvent

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But this Proviso does not effect the Liability of any Person who has been adjudication represented himself (or) knowingly Permitted himself to be Represented as partner of Insolvent.

Mode of Settelment of Partnership Accounts [Section -48]

Following are Rules, Subjected to an Agreement, in Settling of Accounts of Firms after Dissolution.

Losses including Deficencies of Capital

- It shall be paid first out of Profit
- Next out of Capital
- Lastly [if Necessary], by partners Individually in the proportion in which they were entitled to share Profit

Assets of firm including such Contributed by Partner to Make up Deficiency of Capital

- In paying the debts of firm to third parties
- In Paying to each partner Rateably what is due to him from Capital
- In Paying to each partner Rateably what is due to him on Account of Capital
- the Residue [if any] shall be divided among Partners in proportion in which they were entitled to share Profit.

Payment of Firm Debts and Seperate Debts

[Section - 49]

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- When there Joint debts due from firm and also seperate debts due from any Partner

Property of Firm

the Property of firm shall be applied in first Instance in Payment of debts of the firm

and

if there is any Surplus then share of each Partner shall be applied to the Payment of his seperate debts and paid to him.

Seperate Property

the Seperate Property of any Partner shall be applied first in Payment of seperate debts and Surplus (if any) in Payment of debts of firm.

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LAW CHART BOOK

Limited Liability Partnership Act, 2008

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LLP Act, 2008

Minimum → 5 Marks

Maximum → 10 Marks

Only theoritical Question will be Asked

Dates to be Remembered

09/01/2007 → Ministry of Law and Justice

12/12/2008 → Passed by Lok Sabha and Rajya Sabha

07/01/2009 → President Signature [Bill becomes Law]

4 Schedules of LLP

- I → Mutual Rights & duties of Partners in Absence of Agreement
- II → Firm to LLP
- III → Pvt. Co to LLP
- IV → Unlisted Public Co to LLP

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Administration of LLP Act

MCA → Ministry of Corporate Affairs
RoC → Registrar of Company
} Administer the LLP Act 2008

CG
- New Rules
- Ammend Rules

} notifications in "Official Gazettee"

Partner

Who Can be Partner

- Individual
- Body Corporate

Indian Person = Partner? = Yes
Pakistan Person = Partner? = Yes
Indian Company = Partner? = Yes
Foreign Company = Partner? = Yes
Stephie = Russia की आई = Yes

Who Cannot be Partner

- Unsound Mind.
- Undischarged insolvent
- Applied to Adjudicate as insolvent and application is Pending

Minimum no. of Partner

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- Every LLP shall have Minimum 2 Partners
- No. of Partners are Reduced below two (+) LLP Carries Business For More then 6M } Only one Remaining Partner shall be Responsible.

Foreign LLP

- Incorporated / Registered outside India and Place of business in India

Financial Year

Period From 1st day of April of a Year to 31st day of March of Following Year

Designated Partner

- Every LLP shall have Minimum 2 Designated Partner
- Designated Partner (+) should always be Individual
- Atleast 1 designated Partner (+) should be Resident



All Partners are Body Corporate + Some are Individual and Some are Body Corporate

atleast 2 Individuals shall act as designated partner

(OR)

Nominee of Body Corporate shall act as designated Partner.

Small LLP

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Contribution of which do not Exceed Rs. 25 lakhs → Higher Amount May be not Exceeding ₹ 5 Crore

and

Turnover do not Exceed ₹ 40 lakhs [as Per Statement of Account and Solvency] of Preceeding financial Year. → Higher Amount May be not Exceeding ₹ 50 Crore

and

which Meet Other Requirements and Fulfill terms and Conditions.

	Contribution	Turnover	Small LLP?
A	₹4,00,000	39,00,000	Yes
B	₹5,00,000	40,00,000	Yes
C	₹2,50,000	42,00,000	NO
D	70,00,000	6,00,000	NO

Body Corporate [Sec 2(1)(d)]

Body Corporate Means

- a Company as defined u/s 2(20) of Companies Act 2013
- LLP Registered under this Act
- LLP Incorporated Outside India
- Company incorporated outside India.

Body Corporate does not includes

- a Co-operative sole
- a Co-operative Society registered under any law for time being in force
- any body Corporate which CG may by notification in official Gazette Specify in this behalf.

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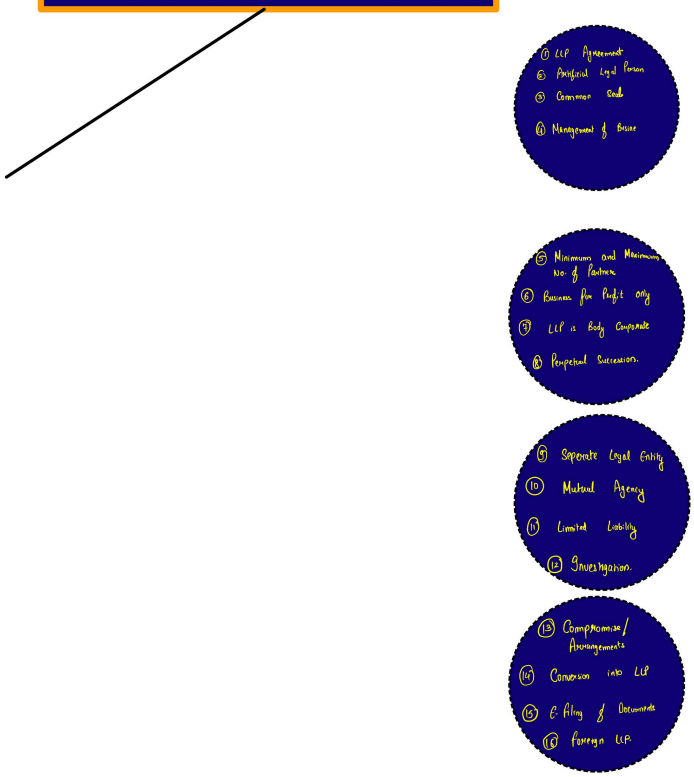

1. LLP Agreement

- Mutual Rights and duties of Partners of LLP.
- Flexibility to Make LLP Agreement
- In Absence of Agreement
  ↓
  Mutual Rights and duties as per LLP Act.

② Artificial Legal Person

- Created by Legal Process (+)
  Clothed with Rights of Individual
- LLP Can do what a natural Person Can do.
- LLP
  - Cannot Sent to Jail
  - Cannot Marry
  - Cannot Divorce
  - Cannot take oath [शपथ]
  - Cannot Practice Learned Profession. [Ex- Doctor]
- LLP is
  - Invisible
  - Intangible
  - Immortal

  but not Fictitious.

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③ Common Seal.

- Common Seal is optional
- Custody → Responsible official/ Partner
- Affixed → in Presence of 2 designated Partner.

④ Management of Business

- Partners = will Manage Business
- Designated Partner = Responsible for Legal Compliances

⑤ Minimum and Maximum No. of Partners

Minimum

- Min → 2 Partners
- Min → 2 Designated Partner (+) Individual (+) Out of which atleast 1 is Resident

Maximum

↓

No Limit

⑥ Business for Profit only.

- Lawfull Business [Legal Business]
- View to Earn Profit

(7) LLP is Body Corporate

- LLP is body Corporate [Formn Incorporate] } Under LLP Act
- (+) Legal Entity (+) Seperate From Partners (+) Shall have Perpetual Succession
- Change of Partners = will not affect LLP
- Defn is Under Section - 2

(8) Perpetual Succession

- LLP will Continue Irrespective of Partner
- Death, Insanity, Retirement, Insolvent } will not affect LLP.

(9) Seperate Legal Entity

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- LLP is liable to Full Extent of Assets
- Personal liability of Partner = Limited to Agreed Contribution

(10) Mutual Agency

- Partner not liable for [Independent Action, Unauthorized Action]
- All Partner are agent of LLP
- No Partner Can bind Each other

(11) Limited Liability

- Partner liability is limited to Agreed Contribution
- Contribution [Tangible, Intangible]

(12) Investigation

- CGt has Powers to Investigate affairs of LLP
- CGt will approing Competent authority

(13) Compromise (or) Arrangement

Compromise — Agreement [including Merger (or) Amalgamation]

According to Provisions of LLP Act

(14) Conversion into LLP

- Firms
- Private Co.
- Unlisted Public Co.

→ Convert into LLP, in accordance with Provisions of LLP Act

(15) E-Filing of Documents

- Every Form
- Application & document

→ as per Act + Rules → File on www.mca.gov.in → in "Computer Readable Electronic Form"

- Authenticate by
  - Partner
  - Designated Partner
- Authenticate through
  - Electronic Signature (OR) Digital Signature

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(16) Foreign LLP

- Formed
- Incorporated

→ Outside India and has Place & business in India

Advantages of LLP

- 2 Chotu
  - Easy to Form
  - Easy to Dissolve
- 2 Medium
  - All Partners enjoy limited liability
  - Flexible Capital structure
- 2 Large
  - Provides Flexibility without Imposing detailed Legal and Procedural Requirements
  - LLP is Organise and Operates on the Basis of Agreement.

Incorporation Document (Section - 11)

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"Incorporation Document"

- Most important document for Incorporation.
- Two or More Person associated
  - Lawful (+) Business
  - View to (+) Profit Earning.

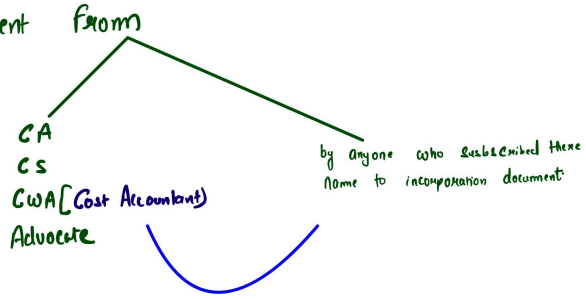
  ↓
  Shall Subscribe name to Incorporation document.

- Incorporation document shall be filed with Registrar in such Manner + Such fees

  ↓
  with Registrar of State where Reg. office of LLP is to be Situated.

"Statement in Prescribed Form"

- Filed along with Incorporation document
- Statement From



that all Reqq. of this Act + Rules with Respect to incorporation and Matters [Precedent and Incidental] have been Complied With.

If a Person Making Statement which
- he knows to be False
- Does not believe it to be true

→ Imprisonment upto 2 years
→ Fine not less than 10,000 but 500,000.

Contents of Incorporation Document

- in a Form as May be Prescribed.
- State the Name of LLP
- Proposed Business of LLP
- Address of Registered office
- Name (+) Address of Partners
- Name (+) Address of Designated Partner.
- Contain such other info as May be Prescribed.

Incorporation by Registration. [Section - 12]

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- When Requirements imposed by Section - 11(1) [b and c] have been Complied
  → Registrar shall Retain Incorporation Doc. (+)
- Requirements imposed by Section - 11(1)(a) have been complied

within 14 days
- Register Incorporation document
- Give a Certificate of Incorporation.

Registrar may accept "Stat in Prescr. Form" as Conclusive Evidence

Certificate of Incorporation shall be
- Signed by Registrar
- Authenticate by Common Seal.

Registered office of LLP and Change there in (Sec-13)

- Every LLP shall have Registered office to which all Communication May be addressed.
- LLP / Partner / Designated Partner. Under
  - Certificate of Posting.
  - Registered Post
  - Any other Manner Prescribed.

Where
- Registered office
- Any other adress specified.

RO Can be Changed

Notice to Registrar [in such forms and Manner as Prescribed]

Only upon filling Registered office change is effective

Penalty
- LLP → Rs 500 Per day [Max= Rs 50,000]
- Partner → Rs 500 Per day [Max= Rs 50,000]
- No Imprisonment.

EFFECT OF REGISTRATION [Section -14]

- Suing and be Sued
- Common Seal [optional]
- Doing and Suffering all acts which body Corporate Can do.
- Acquiring
- Owning
- Holding
- Developing
- Disposing

- Movable
- Immovable
- Tangible
- Intangible

Name of LLP [Section - 15]

- Every LLP shall have
  - Limited Liability Partnership
  - Acronym LLP
- LLP shall not be Registered by Name which in opinion of CG
  - Identical
  - Too Nearly Resembel (मिलता जुलता)
    - Any other LLP
    - Any other Company
    - Registered trademark under "Trade mark Act, 1999"

Reservation of LLP [Section - 15]

- Name of Proposed LLP
  - Name to which LLP Propose to Change
- Application + Fees → Registrar
- Name Reserved should not be one reffered in Section - 15(2)

Reserve the name for 3 Months from date of Intimation by Registrar.

Change of Name of LLP [Section - 17]

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- Notwithstanding anything Contained in Section - 15 and Section - 16
- LLP Registered by name which is Identical/ nearly Resembel to any
  - Other LLP
  - Company
  - Registered trade mark.

↓

then on application to CG

↓

CG May direct LLP to change name within 3 Months from date of Issue of such direction.

Yaha Par Sub section (1) Khatam hua hai.

Provided that

on Application of Proprietor of Registered trade Mark, shall be Maintainable for a Period of 3 Years from
- date of Incorporation
- Change of Name

- LLP do not Comply with Subsection (1), then CG will allot new name and Issue Fresh Certificate of Incorporation.

Companies Act, 2013

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Relevant For

Sep 2024

Jan 2025



Applicability of Companies Act

- Incorporated under this Act or Previous Company Law
- Insurance Company Except where provisions are Inconsistent with Provisions of
  - → Insurance Act, 1938
  - → IRDA Act, 1999
- Banking Company Except where provisions are Inconsistent with Provisions of
  - → Banking Regulation Act
- Companies Engaged in Generation (or) Supply of Electricity, except where provisions are inconsistent with Provisions of
  - → Electricity Act, 2003
- Any other Company Governed by any Special Act
- Any other Body Corporate incorporate in any other Act which CG may by notification specify in this behalf

Meaning of Company Sec- 2(20)

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Company Means Company incorporated unde this Act (or) Previous Company law.

Features of Company

- Seperate Legal Entity
- Limited Liability
- Perpetual Succession
- Artificial Judicial Person
- Common Seal

Why Companies Act 2013 ??

- Aims to Improve Corporate Governance
- Simplify Regulations
- Strength of Minority Investor
- First time legislates the role of whistle-blowers and provisions to class action suit

I Seperate Legal Entity

- On Registration Cothed with Legal Personality and Rights/ Powers of human being are vested.
- Company is different from Members
- Company is different from Subscribers to Memorandum.

- Company Can
  - Own Property
  - Have Bank Account
  - Raise loan
  - Incur liabillity
  - Enter into Contract
  - Can sue and Can be sued.

- Member Can
  - Contract with Company
  - Acquire Right against it
  - Incur liability to it.

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Macaura v/s Nothern Assurance Co

CASE LAW

- Macaura was the holder of all shares Except one
- Macaura was the Major Creditor of Company
- He Insured Company timber in its own name
- Timber was lost in fire
- SH has no right in Assets of Company
- A Member does not even have an Insurable Interest in Property of Company.

II Perpetual Succession

- Members may die / change, Company goes on until wound up
- Share of Company may change hands infinetly, it will not affect Existence of of Company.
- Company is artificial Legal Person, Law will bring end to life.

III Limited Liability.

Company Limited By Shares

- Member liability limited to Extent to Extent to Nominal Value upto Amount unpaid on Shares
- Amount May be called any time.

Company Limited by Guarantee

Liability of Member limited to amount guaranted at the time of liquidation.

Unlimited Company

Member liabillity is Unlimited at the time of liquidation.

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IV Artificial Legal Person

Part - A

- Company is Artificial Legal Person Created by Process other then Natural Birth.
- Company is Person it is clothed with rights of Individual.
- Company Can
  - Own Property
  - Have Bank Account
  - Raise loan
  - Incur liability
  - Enter into Contract
  - Can Sue and Can be Sued.

- Company Can do what a natural Person Can do

- Company Cannot
  - Sent to Jail
  - Take oath
  - Marry
  - Practice Learned Profession

Part - B

Company is Artificial Legal Person and act through some human agency called as director

- Director Cannot Control affairs of Company but director is agent of Company but not agent of Member
- Director Can authenticate Formal Acts Using Common Seal
- Therefore Company is called Artificial Legal Person.

V Common Seal

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- Common Seal is Used by Company as Symbol of Incorporation
- It is official Signature of Company which is affixed by officer/ Employees

As per Companies Ammendment Act 2015 Common Seal is optional.

In the Absence of Common Seal authorisation shall be Given by :-

#Company do not have Company Secretary → Authorisation shall be Given by 2 directors

#Company have Company Secretary → Authorisation shall be Given by One director and One Company secretary

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Classification of Companies

On the basis of Liability

- Company Limited by Shares
- Company Limited by Guarantee
- Unlimited Company

On the basis of Members

- One Person Co.
- Private Co.
- Public Co.

On the Basis of Control

- Holding and Subsidiary Co
- Associate Co.

On the Basis of Access to Capital

- Listed Company
- Unlisted Company

Other Company

- Government Co.
- Foreign Co.
- Nidhi Company
- Dormant Co
- Public Financial Inst.
- Formation of Company with Charitable Objects [Sec. 8]

Company Limited by Shares [Section 2(22)]

- Liability of Member of Company is limited by MOA
  - to the Amount unpaid on shares held by them
- # SH is Co-owner of Company and not of Company Assets
- # Co Asset ownership is with Co.
- # Extent of Rights and duties of SH is Measured by his shareholding

His Seperate Property Cannot be encompassed to Meet Companies debt.

Unlimited Company Section - 2(92)

- Unlimited Company is a Company not having limit on liability of Members
- Liability of Member Ceases when Ceases to be Member

Liability of each Member Extends to the whole Amount of Companies debt and liabilities but he will be entitled to claim Contribution from Members.

Company limited by Guarantee Section 2(21)

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- Company having liability of Member limited by MOA to the amount Member may undertake to Contribute to assets of Company in the event of winding up

Guarantee Co. V/s Co. having share Capital

- In Case of Guarantee Company Member may be Called upon to pay only after Commencement of Winding up
- In Case of Company having share Capital may be Called upon to pay at any time

- Guarantee Company does not Raise Initial working funds from Members
- Such a Company may be Useful when no working funds are Needed or where these funds can be held from other sources

Narendra Kumar Agarwal V/s Suraj Maloo

CASE LAW

- Supreme Court has laid down that right of Guarantee Company to Refuse to accept the transfer by a Member of his Interest in Guarantee Company is different in Company limited by shares.
- Both the Company Membership have different Privileges.

One Person Company Sec-2(62)

- OPC is Co which have only One Person as Member
- OPC Introduce to Encourage
  - Entrepreneurship
  - Corporatisation of Business
- OPC is Private Ltd. Co.
- Minimum Paid up Capital → as May be Prescribed.

Who Can be Member of OPC??

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- only a Natural Person who is an Indian Citizen whether Resident in India or Otherwise and has stayed in India for a period of not less then 120 days during Immediately Preceeding Financial Year.
  - Shall be eligible to Incorporate OPC
  - Shall be Nominee for Sole Member of a OPC

Other Person.

"Name of other Person", shall be Indicated in MOA, who in the event of
- death of Member
- Incapacity to Contract

Shall be Member

- # Other Person shall Give "Prior written Consent", which shall be filed with Registrar at time of Incorporation. along with e-Memorandum and e-Articles.
- Other Person Can withdraw the Consent

Member of OPC (Vada Par didi)
↓
Change of Name of other Person
↓
Notice to Company
↓
Co. will Intimate Registrar.

Change in name of other Person
↓
Shall not be Considered Alteration in Memorandum
↓
No Permission of CG is Requirered.

What OPC Can do??

→ Can be Converted into Private (or) Public Company.

What OPC Cannot do??

- Cannot be incorporated as section 8 Company
- OPC Cannot be Converted into Sec-8 Company.
- OPC Cannot Carry out "Non-Banking Financial Investment Activity"
- OPC Cannot purchase Securities of any Other Company.

Points to be Noted	Penalty Provisions.
· No Person Can become Member in More then one OPC · Cannot become Nominee in More then OPC	One Person Co (+) Officer in default → Fine upto Rs 10000 (+) Rs 1000 Per day.

Private Company

Minimum No. of Members is 2.

- Minimum Paid up Capital → as May be Prescribed
- Restrict → Right of transfer of shares.
- Limit → No. of Members to 200 **
- Prohibit → to Invite Public to subscribe for Securities

Who are not Included in 200 **

- Present Employee + Member
- Erstwhile Employee + Member [पूर्वतन]

[Job Joined in 2013, Become Member in 2014, Job left 2021 He is still Member]

Chinki and Minki Purchased share in Joint Name
↓
The will be Counted as One Member.

SMALL Company

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Private Company.

Small Company Means a Company other than Public Co.

- Paid up Share Capital → do not exceed ₹ 4 Crore (OR) higher Amt as May be Prescribed [Higher Amt is ₹ 10 Crore]

and

- Turnover → as per Profit/Loss A/c of Immediately Preceeding F.Y. does not exceed ₹ 40 Crore (OR) Higher Amt as May be Prescribed. [Higher Amt. May be Prescribed upto 100 Crore]

Public Co. Sec-2(71)

Public Co.

- It is a Company which is not Private Co.
- A Company which is Subsidiary of Co. [not being Pvt. Co]
  ↓
  shall be deemed to be Public Company

Holding Company → 2(46)

Subsidiary Co → 2(87)

Subsidiary Company

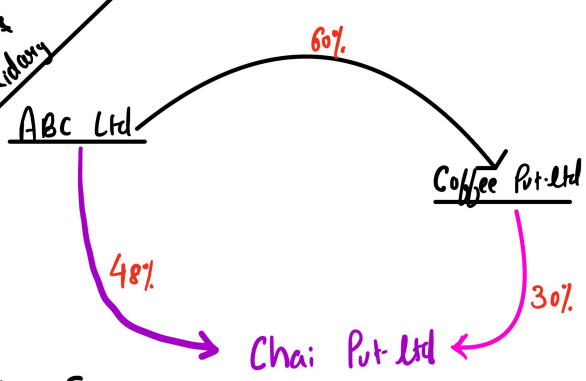
Subsidiary Company in relation to any other Company [Holding Company], means a Company in which the holding Company

→ Controls Composition of Board of directors

(OR)

→ Exercise (or) Control More then half of Total Voting Power either at its own (or) together with One (or) More subsidiary.

Example Holding & Subsidiary



48% + [60 x 30%] = 66%

ABC = Holding

Chai Pvt. Ltd = Subsidiary

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Provided that such Class (or) Classes of holding Companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Layers in Relation to holding Company means its Subsidiary (or) Subsidiaries.

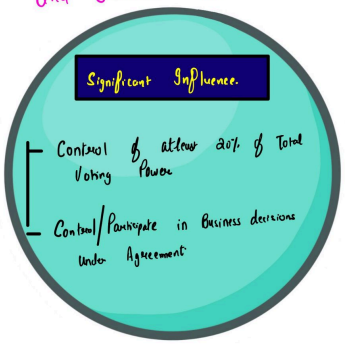
Holding Company.

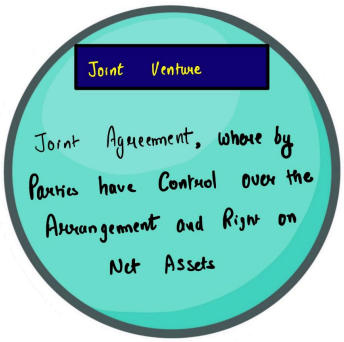
· A Company is a holding Company in Relation to one or More other Companies, means a Company of which such Companies are subsidiary Companies.

Associate Company

- In Relation to another Company

Associate Co means a Co. in which other Co has Significant Influence, but which not are Subsidiary Co. and Includes Joint Venture





Listed Companies

- Company whose Security are listed on Recognised Stock Exchange.
- Security as per Companies Act has same Meaning as defined u/s 2(h) of Securities Contracts [Regulation] Act, 1956.

Unlisted Company

Co's which are not listed Companies.

Government Company.

Government Company is a Company in which not less then 51% of paid up share Capital is held by Central Government (or) by State Government (or) Partly by Central Govt + State Govt.

Paid up share Capital = Total Voting Power.

Subsidary of Government Company is Government Company.

Foreign Company.

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- It Means any Company (or) Body Corporate incorporated Outside India which
  - → has a place of business in India, whether by itself (or) through an Agent either physically (or) Electronic Mode and
  - → Conduct business in India.

Nidhi Company 406(1)

CG by notification Specify in official Gazette a Co. to be Nidhi Co/Mutual Benefit Society.

Nidhi Companies are Created Mainly for Cultivating habit of Thrift and Saving among Members.

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Dormant Company

- Dormant Co is Co which is formed for
  - Future Project
  - To Hold an Asset
  - To hold Intellectual Property Right

  and has no Significant Accounting Transaction
  - Inactive Company

May Make application to Registrar to declare such Co as dormant Co.

Significant Accounting Transaction

Any transaction other then

4 अपवाद

→ Payment of fees by Company to the Registrar

→ Payment Made to fulfill the Requirements of the act (or) any other law.

→ Allotment of shares to fulfill the Requirements of this Act

→ Payment for Maintenance of office and Records.

Inactive Company

- Which is not Carrying any business/operation.

(OR)

- has not Made ANY Significant Accounting transactions during last 2 Previous F.Y.

(OR)

- Has not filed [Financial Stat. And Annual Return] during last 2 Previous F.Y

Public Financial Institutions

- Life Insurance Corporation of India,
  Established Under LIC Act, 1956
- Infrastructure Development Finance Co. Ltd.
- Specified Companies refferred in Unit trust of India [Transfer of Undertaking and Repeal] Act. 2002
- Institutes notified by CG u/s 4(A)(2) of Companies Act, 1956
  ↳ so Repealed under Under Sec- 465 of Co. Act 2013

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- Such other Institutes as May be notified by CG in Consultation with RBI.

Condition - 1

It is Established under
- Central Act
- State Act
- Other then this Act
- Previous Co. Law

OR

Condition - 2

Not less then 51% of Paid up share Capital is held By CG / SG / Partly by CG/SG

Formation of Company with Charitable Objects [Section - 8]

- Promote Charitable objects of
  - Commmerce
  - Arts
  - Science
  - Sports
  - Education
  - Research
  - Welfare
  - Religion
  - Charity
  - Protection of Environment.

- Such Co intends to apply Profit in Promoting objects of Co.
- Prohibit to declare dividend to Members

CG Power to Issue License

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- CG has Power to Register
  - Person
  - Association of Person.
- With limited liability (+) without adding Ltd/ Pvt.Ltd at end of its name. and Issue License.
- Registrar shall on Application Register Person/ AOP as Co. Under Section 8
- On Registration
  - ↳ Co. shall enjoy all Rights Previleges of limited Co.

Revocation of License → [License वापस लेना]

License May be Revoked when

- Company Contravens any of the Requirement of this Section
  - Subjected to which License was Issued.

OR

- Where affairs of Company
  - Conducted Fraudelently
  - Violate the objects of Co. ↳ तोड़ना
  - Prejudicial to public Interest. (Harmful)

- CG will Give Opportunity of being Heard [OOBH] (+) Written Notice

On Revocation Registrar shall Put "Ltd/ Pvt.Ltd" at end of its name

Order by Central Government

Where a License is Revoked, then CG May in Public Interest order

- Company Registered in this section shall be Amalgamated with → Another Co. Registered under this section → Having Similar objects → With such liabilities, duties, obligation as May be specified in Order.

OR

- Wound up the Company

Penalty Provisions

If default made in Complying with any of the Provision of this section then

Penalty on Company → ₹ 10 lacs to ₹ 1 Crore

Penalty on officer in default → ₹ 25000 to ₹ 25 lacs

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Where it is Proved that, affairs of the Company Conducted fraudlently, officer in default shall be punishable Uls 447.

Requirement of Minimum No. of directors, Independent directors does not apply to Sec- 8 Company.

Sec. 8 Co. Can

Call General Meeting
↓
by Giving
↓
14 days Clear Notice

Need not Constitute

- Nomination and Remuneration Committee
- Shareholder Relation ship Committee

A Partnership Firm Can be Member of Section - 8 Company.

Corporate Veil

Meaning of Corporate Veil

- Members of Company are shielded from the liability Connected from Companies Action
- If Company Incur debts or Contraven any law, members are not liable as they enjoy Corporate Insulation.

Shareholders are Protected from Acts of Company.

When Corporate Veil May be lifted?

- When Court Ignore Company and Concern directly to Manager/ Member
- In appropriate Circumstances when "Question of Control" are Involved Rather then Question of Ownership.

CASE LAW

Salomon v/s Salomon and Company Ltd

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- Salomon made a Company in the name of Salomon Co. Ltd.
- Co had 7 subscribers → Himself/ Wife/ 4 Sons/ 1 daughter
- Co. Took over Personal Assets of £3872 of Salomon and Gave 20,000 shares of 1£ each, 10,000£ debentures, 8772 £ in Cash.

His Wife/ Daughter and Four Sons took £1 share each.

- Company Gone into Liquidation.
- Unsecured Creditor of 7000£ Contended that Salomon Could not be treated as Secured Creditor[For debenture] as Salomon is Managing Director of one Man Company and it is Mere sham and Fraud.
- Co is at law different Person altogether from subscribers to MOA.
- Co is not in law agent of subscribee/ trustee of them.

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Lifting of Corporate Veil

- To Determine the Character of Company
- To Protect Revenue / Tax
- To Avoid Legal Action
- Formation of Company to Act as Subsidiary.
- Company Formed for Fraud / Improper Conduct (or) to defeat Law.

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(a) To determine character of Company whether Enemy Company (or) Friend Company.

In law relating to trading with enemy where Test of Control is adopted.

Diamler Co Ltd v/s Continental Tyre and Rubber Company.

CASE LAW

- If Public Interest is not Jeopardy [Affected] Court May not lift Corporate Veil.
- But Court may crack it to find out whether Company is enemy Company (or) Friend Company.

What is enemy Company ??

A Company may be Characterised by as enemy Company when its affairs are under Control of People of enemy Country.

(b) To Protect Revenue / Tax

S. Berendsen Ltd v/s Comissoner of Inland Revenue

In Certain Matters Concerning the laws of Tax / Duty / Stamp
↳ Particularly when Controlling Interest is Involved.

CASE LAW

Jugilal v/s Commissoner of Income Tax

CASE LAW

When Corporate Entity is Used to Evade Tax the Court May disregard Corporate Entity.

Dinshaw Manekji Petit

- Assessee Earned huge income by way of Interest and dividend. So he opened some Companies purchase share with his Income.
- Interest transferred by way of loan
- Court decided that Private Company is Sham and Corporate Veil may be lifted to decide Real owner

CASE LAW

(c) To Avoid Legal Action

- Where it is found that the purpose of formation of Company was a way to Reduce Bonus to workmen then Supreme Court lifted Corporate Veil.

Workmen of Associated Rubber Industry v/s Associated Rubber Industry Ltd.



- A Ltd. purchase shares of B Ltd by Investing ₹ 4,60,000 Dividend was shown in Profit/Loss Account every year, it was taken into account for Calculation of bonus payable to workmen.
- In 1968, A Ltd. transfered shares of B Ltd to C Ltd, C Ltd is wholly owned by B Ltd.
- Dividend income did not find place in PL A/c of A Ltd. with this Surplus on which bonus was to be paid got Reduced.

Supreme Court set aside Corporate Veil.

- The New Company so formed had no assets of its own except those transfered by Principal Company, with no business and no Income except Receiving dividends
- Serving no purpose except to Reduce Gross profit to Reduce amount by way of Bonus.

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(d) Formation of Company to Act as Subsidary

- A Company may sometimes be regarded as an agent (or) trustee of Members (or) of another Company and therefore be deemed to have lost individuality in Favour of its principal

Here Principal will be held liable for acts of that Company.

Merchandise Transport Ltd v/s British Transport Commission.

- Transport Company wanted to obtain Licence for Vehicle but could not obtain in own name
- It formed subsidary and applied Licence in the name of subsidary
- Vehicle transfered to subsidary Company.
- Held that Parent and subsidary are one Commercial Unit and licence was Rejected.



(e) Company Formed for Fraud/Improper Conduct (or) to defeat Law.

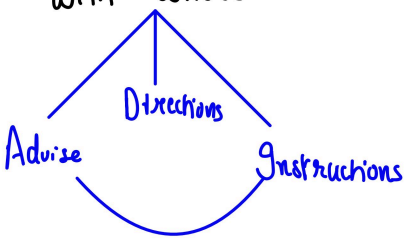
Where device of Incorporation is adopted for some Illegal Purpose/ some Improper purpose

→ To Defeat Law
→ To Defraud Creditors
→ To Avoid Legal obligation



Promoter

- Who has been named in Prospectus
- Identify by Company in Annual Return in (Sec-92)
- Who has Control over the affairs of Co directly/Indirectly whether as Shareholder/Director/Manager
- In Accordance with whose



BOD is accustomed to act.

Formation of Company. Sec-3

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Public Co → 7 (or) More Person, Subscribing there name to MOA

Private Co → 2 (or) More Person, Subscribing there name to MOA

OPC → 1 Person only Can Form OPC

Incorporation of Company (Section - 7)

Step - 1

Step - 2

Step - 3

Step - 4

Step - 5

Step - 6

Step - 7

Step- 1 Filing of Document

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→ MoA + AoA duly Signed by all Subscribers to MoA

→ Declaration No. 1 [Bahar Wale]

Person who are engaged in formation of Company ie

- Advocate
- CA
- CS
- Cost Accountant

} in practice

→ Declaration No. 2 [Ghar Wale Se]

Person named in Articles

- Director of Co.
- Manager of Co
- Secretary of Co.

} that all the Requirements of this Act + Rules with Respect to Registration and — Matters Precedent, Incidental have been complied with.

Declaration No. 3

From Subscribers to Memorandum

(+)

First Directors

- He has not Convicted [गु नाह Prove ho Jana] of any offence in Connection
  - Promotion of Co.
  - Formation of Co.
  - Management of Co.
- He has Not Found Guilty of
  - any Fraud
  - Misfesance
  - Breach of duty

  of this Act/ Previous Co. Law during Last 5 Years
- All documents filed with Registrar Contains info Correct/ Complete/ True to best of knowledge and Beleif.

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→ Adress for Correspondence, till its Registered office is established [Reply]

→ Name, Surname, Nationality, Address — Subscribers to MoA along with Proof of Identity.

→ Name, Surname, Director Identification No., Address — Person named as subscribers to MoA (+) Along with Consent of First director.

→ Particulars of "Intrest of Person" Mentioned in Articles as First director
- Other Firms
- Other Body corporate

(+)

Consent to act as director of Company.

Step-2 Issue of Certificate of Incorporation on Registration

Registrar on the basis of Document + Info filed, shall Register all document and Info in the Register

↓

Issue Certificate of Incorporation in Prescribed Form

Step-3 Allotment of CIN

- Registrar shall allot to Company "Corporate Identity Number" From the date Mentioned in Certificate of Incorporation.

- CIN shall be distinct Identity and be included in Certificate

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Step-4 Maintainence of Copies of all Documents and Information

Company shall Maintain and Preserve all documents and Info Originally filed.

↓

at Registered office

↓

till its dissolution under this Act.

Step 5 → Furnishing of false/ Incorrect Information (OR) Suppressing Material Fact

- If any Person
  - Furnishes false/ Incorrect Info (OR)
  - Suppressing Material Fact [Which he is aware] (Chapeau)

in any documents / info. filed with Registrar in Relation to Registration

↓

he is liable for Action for Fraud. u/s 447

Step - 6 Company incorporated by Furnishing false/ Incorrect information / Suppressing Material fact

Where at any time after incorporation it is Proved that Company Incorporated by
- Furnishing false/ Incorrect info
- Suppressing Material Fact

- Promoter
- Person named as first directors
- Person Making declaration

↓

Shall be liable for fraud u/s 447

Step 7 → Order of Tribunal [National Co. Law Tribunal]

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Where a Co. got incorporated by
- Furnishing False Info
- Furnishing Incorrect Info
- Suppressing Material Fact

(OR)

- Company formed for fraudulent action

Tribunal on an application made (or) being satisfied that situation so warrants.

↓

Pass an order for Regulation of Management of Company
includes Changes in MOA/ AOA
- in Public Interest
- in Interest of Member and Creditors

- Direct that liability of Member is Unlimited
- Direct the Removal of Name from Register of Co.
- Pass an order of winding up
- Pass an Order as May deem fit

SPICe

MCA Simplify Process of filing Forms ↓

for incorporating Co. Electronically

Full Form → Simplified Proforma for incorporating Co. Electronically.

Effect of Registration (Sec-9)

- Having Perpetual Succession
- To Contract
- To Sue and Can be Sued
- Power to
  - Acquire
  - Hold
  - Dispose
    - Movable
    - Immovable
    - Tangible
    - Intangible
- Exercising all functions of Incorporated Co.

CASE LAW

Hari Nagar Sugar Mills vs S.S. Jhunjhunwala

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- From date of Incorporation, becomes legal Person(+) Seperate from Members
- Binding Contract between Co. and Member, evidenced (साबूत होना) by MoA/AoA

CASE LAW

State Trading Corporation of India vs Commercial Tax officers

- Legal Personality Emerges from the Moment of Registration.
- Subscribers to MoA (+) Members = Body Corporate
- Co on Registration have Seperate Existence and Law Recogni Seperate from Members

Spencer and Co. Ltd v/s CWT Madras.

- A Co purchases share of another Co and thus becoming Controlling Company.
- A Co. Purchase ALL shares of another Co.
  ↓
  it will not put an End to Corporate character and each Co. is seperate Entity.



Heavy Electrical Union v/s State of Bihar

Entire Capital has been Contributed by CG
(+)
all shares held by → President of India, Officers of CG



↓

does not affect Position of Registered Company

↓

Co not agent of Preesident and CG.

Classification of Capital

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Authorised Share Capital.

- Maximum Amount of Share Capital
- Stated in Memorandum as Maximum Amt, with which Co. is to be Registered.
- Stamp duty Paid according to Authorised Share Capital.
- Usually fixed at Amount which is Sum Total of
  - Working Capital
  - Reserve Capital

Example → 1,00,000 Equity Shares of 10 each.

Issued Share Capital.

- Part of Asc, which Co. Issues from time to time.
- Also Includes shares "other then Cash"

Ex → 60,000 @ 10 each = 6,00,000 Rs.
10,000 @ 10 each = 1,00,000 [Building]

☞ Issued Capital to be shown in BS Compulsorily as per Schedule III

Subscribed Share Capital.

- Part of Issued Capital, Subscribed by Public
- Nominal Value of shares taken by Public [Face Value]

Ex → 55000 × 10 = 5,50,000

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- Notice
- Advertisement
- Official Comm^n
- Business letter
- Bill Head

Disclose in Conspicious Character

Auth. / Issued / Sub Cap / Paid

_____ x _____ x _____

Penalty on Co → 10,000 Rs

Penalty on OID → 5000 Rs

[officer in default]

Called up Share Capital.

Part of Capital which has been called by Company.

Ex → 55000 x 8 = 4,40,000

Paid up Share Capital.

Called up Capital	55000 x 8	= 4,40,000
(-) Calls in Arrears	(-) 2000 x 3	= (-) 6000
Paid up Capital		4,34,000

SHARES

Meaning of Shares [2 (84)]

- Share Means Share in Share Capital of Co and includes Stock
- Share Represent Portion of Interest of Shareholder as Amount paid bear on Capital of Co.

$\frac{5000}{1000000} \times 100 = 5\%$

Shares are Movable Property [Sec-44]

- Share
  & Debenture
  & Other Interest

} Shall be Movable and transferable in Manner Prescribed in articles

Shares shall be Numbered [Sec-45]

VIDHYODAY VIDHYA KE UPAY

Every share in Company shall be distinguished by its distinctive Number [Unique Number]

Bhulna Nahi Isko ...!!

Sec 45 shall not apply to Shares held by Person whose name is entered as

↓

Holder of Beneficial Interest

↓

in Records of depository

Kinds of Share Capital

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Preference Share Capital

Preference Share Capital with reference to any Company limited by shares, Means that part of Issued Capital which Carries Preferential Right to

Payment of Dividend

- Either as Fixed Amount
- Amount Calculated at Fixed Rate which is either
  - ☞ Subjected to Income Tax
  - ☞ Free of Income Tax

Repayment of Capital

- Repayment of Capital in Case of Wind up (or) Otherwise of Amount of share Capital Paid up (or) deemed to be Paid up

Equity Share Capital

Equity share Capital with reference to any Company limited by shares Means all share Capital which is not Preference share Capital

Memorandum of Association

Meaning of MoA

- MoA is Charter [Pilot]
- It define [Constitution
  Scope of Business
- It is very Foundation on which whole edifice [structure] of Company is built

Object of Registering MoA

- MoA is public document [Sec-399]
- Every person entering into Contract with Company is Presumed to have knowledge of Condition in MoA
- It Contains object of Co. for which it is Formed and therefore it defines Possible Scope of its operation beyond which it Cannot Go.

Forms of MoA

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Table A → Co. Ltd by Shares

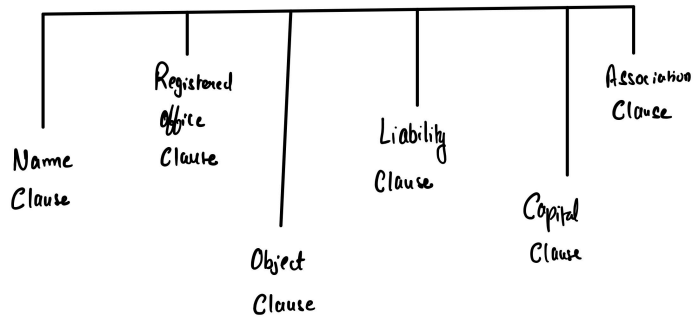
Table B → Co. Ltd by Guarantee

Table C → Co. Ltd by Guarantee Having Share Cap.

Table D → Unlimited Company

Table E → Unlimited Company Having Share Cap.

Contents in Memorandum



Name Clause

- Name of Co. shall include
  - "Limited" → Public Ltd Co. [Last Words]
  - "Private Limited" → Pvt. Ltd. Co. [Last Words]

- Not applicable to Sec. 8 Co.

Section 8 Company shall include

3F — Foundation, Forum, Federation	A – Association
	E – Electrol Trust
3C — Chamber, Confederation, Council	[Electoral Trust Scheme, 2013 by CBDT]

Registered office Clause

State in which Registered office of Co is Proposed to be situated.

Object Clause

Object for which Company is proposed to be Incorporated.

and

Matters Considered necessary in Furtherance thereof.

Liability Clause

- Company Limited by Shares
- Company Limited by Guarantee

Co. Ltd. by Shares

Liability of Member is limited

↓

to the Amount unpaid on Shares held by them.

Company Limited by Guarantee

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Guaranted Member left the Company on 15/4/2024
Co. Got winded up on 12/10/2024

Liabillity on → 10/7/2017 → 5,00,000 = Yes •
Liabillity on → 12/4/2022 → 6,00,000 = Yes
Outstanding Salary on → 18/06/2021 → 70500 = Yes
Electric bill due of → 17/04/2024 → 30000 = No.

- Undertake to Contribute to Assets of Company in the event of wind up
  - While he is a Member
    (OR)
  - Within One Year after he Ceases to be Member

↓

FOR.

- Payment of Debts and Liability of Co.
- Payment of (OR) debts and liability before he Cease to be Member
- Contribute to Cost and Expense of Winding up
- For Adjustment of Right of Contributories

Capital Clause

- Amount of Authorised share Capital divided into shares of Fixed Amt and No. of shares
- No. of shares that Subscribers to MoA agree to take [which shall not be less then one share]

Association Clause

- Every Subscriber to MoA shall take atleast one share
- Shall write against the Name, No. of shares held.

भूल मत जाना

- Memorandum Must be
  - Printed
  - Divided into Paragraphs
  - Numbered

Signing the Memorandum

- Must be Signed by atleast
  - Public = 7 Person
  - Pvt = 2 Person
  - OPC = 1 Person
- Signed in Presence of atleast One witness (+) who will Attest the Signatory

Adress, description, Occupation ↓ about subscribers to MoA + witness ↓ Must also be entered in MoA.

Minor ki कहानी Memorandum की ज़ुबानी

Ex → सस्ते नशे Pvt Ltd.

- Minor Cannot be Signtory to MoA, as he is not Competent to Contract
- Guardian of Minor, who subscribed MoA on Minor behalf ↓ will be deemed to subscribed in Personal Capacity



DON'T FORGET

- MoA Cannot be Against Co's Act
- All Document of Co. shall be according to MoA
- All Clauses of MoA are Compulsory

Doctrine of Ultra Vires

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Baap Level Conclusion For Case Based Questions.

- When Act Performed is Legal
  - Not authorise by Object Clause of Memorandum (or) by Statute [Law]
  - it is said to be Ultravires the Company
  - Hence NULL and Void.

An act Ultravires the Company
- Cannot be Ratified even by Unanimous Consent of all Share holder [100% Vote in favour]

An Act Ultravires the direction but intravires [within Power] of Co.] the Company
- Can be Ratified by Members of Co. through Resolution Passed at GM

If an Act is Ultravires the Articles
- it Can be Ratified
- by Altering Articles by Passing Special Resolution at General Meeting

Impact of Doctrine of Ultra Vires

- Company can neither be sued on Ultra Vires transaction nor it can sue on it
- Since Memorandum is public document, it is open to public inspection.
- Therefore one who deals with Co is deemed (मान के चलना) to know about Powers of Company

Ashbury Railway Carriage and Iron Co. Ltd Vs Riche

CASE LAW

- One of the object of Company is "To Carry on Mechinical Engineering and General Contractor"
- Director of Company entered into Contract with Riche to finance "Construction of Railway Line in Belgium"
- Riche filed a Case for damages and claimed that Construction of Railway was within Meaning of General Contractor
- General Contractor was associated with Mechinical Engineering and to be Read According to Company Main Business

Articles of Association

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- AoA of Company are its Rules and Regulation, which are framed to Manage internal affairs.

They Accept Memorandum as Charter

Article Play Role Subsidary to Memorandum

Ashbury Carriage Co. Vs Riche

Article define duties

Mode and Forms in which business of Company to be Carried.



Rights and Power of Governing Body.

Contains Regulation

AoA shall Contain Regulations for Management of Company

Inclusion of Matters

- Article Prescribe Matters as Given in Rules
- Company May also include such additional Matters, Considered Necessary for Management

Model Articles

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A Company May adopt [All / Any] Regulations Contained in Articles

Contrains Provisions for Entrenchment

Entrenchment = To Protect Something

- Specified Provisions of Articles May be altered only if
  ↓
  Conditions are More Restrective then those applicable

Manner of Inclusion of Entrenchment Provision

Provision of Entrenchment shall be Made either

- On Formation of Co
- By Ammendment in Articles
  - Private Company → Agreed by all Members
  - Public Co. → Agreed by Special Resolution

Notice to Registrar for Entrenchment Provisions

[At time of Formation of Company (or) Ammendment in Articles] → the Co shall Give notice to Registrar ↓ in such Form & Manner Prescribed.

Forms of Articles

- Given in Schedule I
  - Table F
  - Table G
  - Table H
  - Table I
  - Table J

Difference Between MOA and AOA.

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	MoA	AoA
Objectives	MoA define objectives of Company.	AoA defines Internal Rules and Regulations.
Relationship	MOA define Relationship Between Company and Outsider	AoA define Relationship Between Co. and Member.
Alteration	MoA Can be altered in Certain Circumstances - Permission of Reigonal director - Permission of Tribunal	AoA Can be altered by Passing Special Resolution.
UltraVires	An Act Ultravires the MoA is Void ↓ Cannot be Ratified by Unanimous Concent.	Acts ultra Vires the AoA, SR will be Passed ↳ Provided that it is not Ultra Vires the Memorandum.

Doctrine of Constructive Notice

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According to Section 399, Any Person by Electronic Means

- Inspect any document kept by Registrar
- Make a Record of Same
- Get a Copy / Extract of document

on Payment of Prescribed Fees.

What is Constructive Notice

- Where a Person Reads a document or not
  - ↳ he is Presumed [मान के चलना] to have knowledge of document.
- He is not only Presumed to have knowledge but also understand in True Prespective
- Also have Constructive notice of all other documents Filed
  - ↓
  - With Registrar.

MOA and AOA when Registered become public document and are Available for Inspection

If Person Enters into Contract which is beyond Powers of Company → He Cannot Acquire Right to Co

Doctrine of Indoor Management

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- It is Exception of Constructive Notice
- Also known as Turquand Rule.



Royal British Bank vs Turquand.

- Turquand was official Liquidator of Insolvent Company
- Company Given Bond of 2000 £ to Royal British Bank to Secure Companies Drawing [Loan] on Current A/c
- Bond was under Common Seal and Signed by 2 director and Secretary
- When Company was sued, it can borrow upto Amount specified on Resolution, Resolution was Passed, but no Amount Specified
- Bond was Valid, Royal British Bank will enforce
- Bond was Valid as there is no requirement to look into Companies Internal Working

Exception of Doctrine of Indoor Management.

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Exception No. 1

Actual (or) Constructive knowledge of Irregularity

This Rule does not Protect any Person dealing with Company
↳ which has notice of Actual / Constructive Irregularity.

Howard vls Patent Ivory Manu. Co.

- Director could not depend the Issue of debentures
- Because they were lending Money to Co., which Requires Assent of Member in General Meeting

CASE LAW

Moores vls Kanseen

Director Could not depend on allotment of shares to him as he Participated in Meeting in which allotment was Made

CASE LAW

Exception No. 2

Suspicious of Irregularity

- Doctrine will not Reward those who behave Negligently.
- Where a Person dealing with Company is put upon an Enquiry
  ↓
  it is duty of outsider to Make Necessary Enquiry.

CASE LAW

Anand Bihari Lal vls Dishaw and Co.

- Plaintiff Accepted transfer of Company Property from Accountant and transfer was Void.
- In the Absence of "Power of Attorney", Plaintiff Could not Suppose that accountant has Authority to transfer Company Property

Exception No. 3

Forgery.

> The doctrine of Indoor Management applies only to Irregularities which Might otherwise affect the transaction.

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Royen v/s Great Fingall Consolidated.

- In this case Plaintiff was transferee of share Certificate issued by Company under Common Seal.

जिसने share खरीदे हैं



- Company Secretary has Affixed Seal of Company and Forged signature of two directors and issued Certificate
- Plaintiff Contended that whether the Signature was genuine/ Forged was part of Internal Affairs/ Management and therefore Company should stop from denying genuineness of document.
- Rule has never been extended to Cover Complete Forgery.