

**CA FOUNDATION**



**MARATHON**

**JUNE 2024**

**Business Laws**  
**Part – II**

**By – CS Rajeev Choudhary Sir**



# *Chapter Name*

---

---

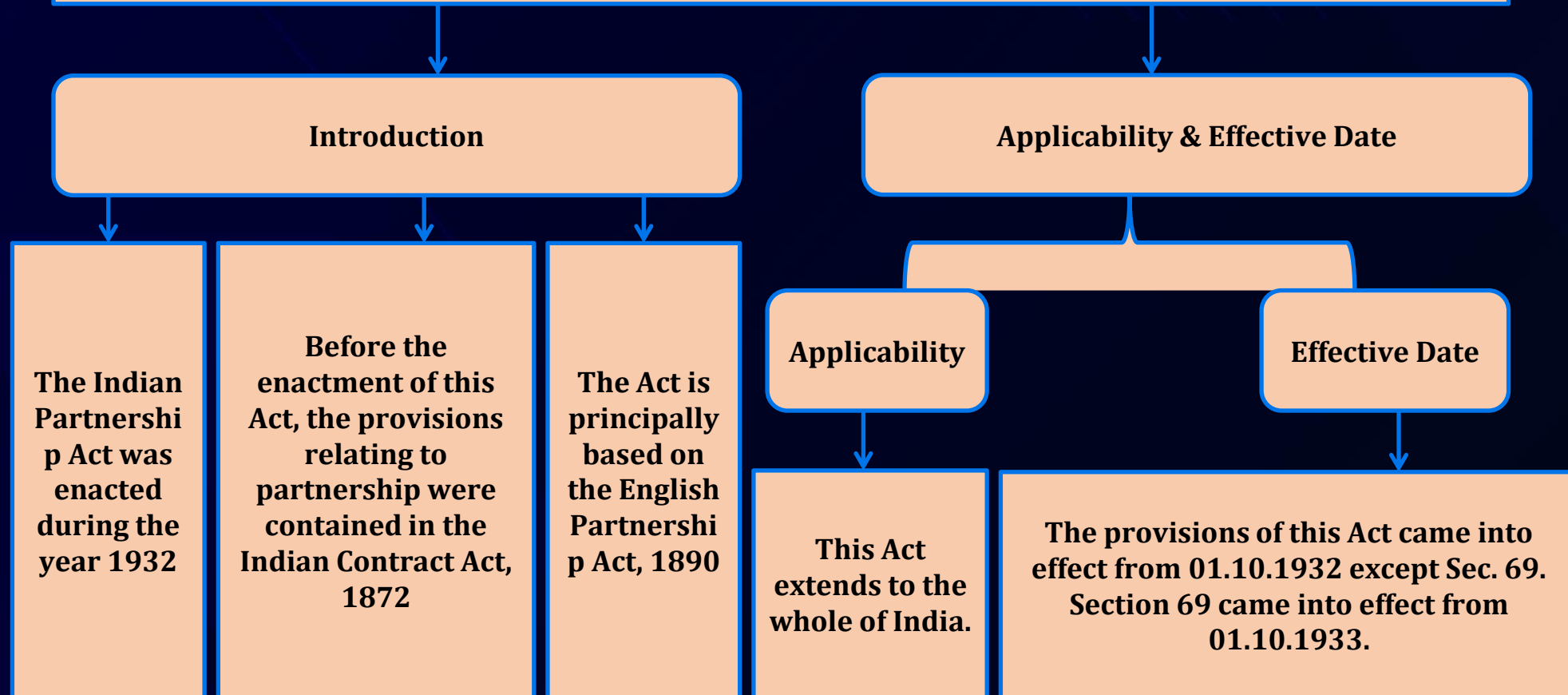
Indian Partnership Act, 1932





# Indian Partnership Act, 1932

# Indian Partnership Act, 1932: Introduction, Applicability & Effective Date



# Partnership: Definition, Essential Elements & Types

## Definition & Essential Elements

Section 4 defines the term 'partnership' as the relationship between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

The term 'partners' is defined as persons, who have entered into partnership with one another are called individually 'partners'

A 'firm' is the collective of the partners

The 'firm name' is the name under which the business is carried on.

Following are the essential ingredients of a partnership-

There should be an agreement between the parties;

Agreement must be to share the profits of the business

The business must be carried on by all or any of them acting for all;

## Types of Partnership & Types of Partner

### Types of Partnership

General Partnership

Limited Partnership

Partnership at will

Particular Partnership

### Types of Partner

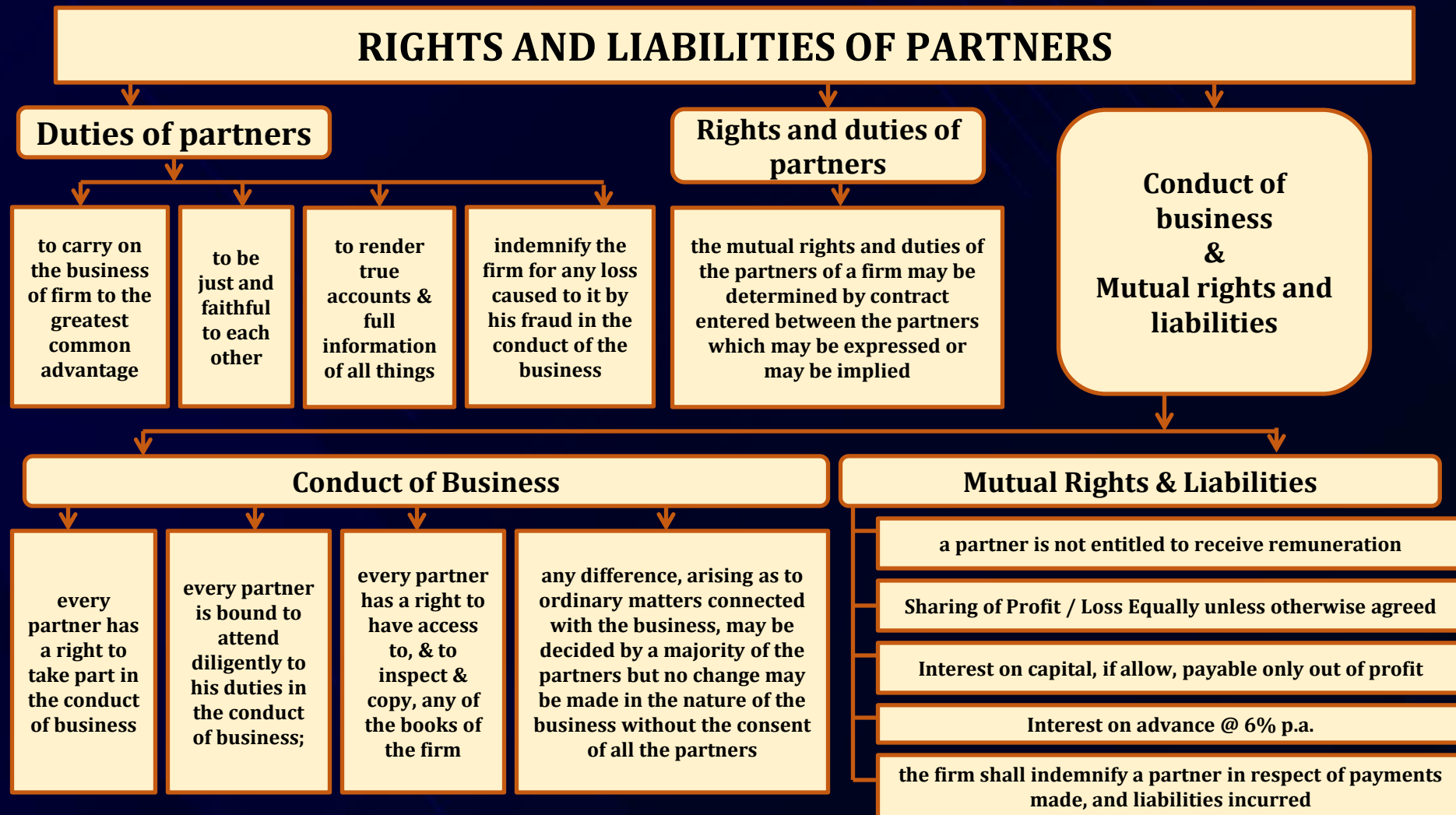
Working partner or Active partner

Sleeping or dormant partner

Partner in profits only

Nominal or quasi partner

Minor as a partner





## Minors as partners, Rights and liability of minor & Election on majority

Section 30 of the Indian partnership act provides that though a minor cannot be a partner of a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of the partnership by an agreement executed through his guardian with the other partners.

### Rights and liability of minor

A minor has a right to share of the property and of the profits of the firm.

He is having power to have access to and inspect and to get copy, any of the accounts of the firm

The share of a minor in a partnership firm is liable for the acts of the firm. But he is not personally liable for any such act

### Election on majority

On attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership whichever date is later, a minor may within six months from such date give public notice that he has elected to become or that he has elected not to become a partner in the firm. If a minor fails to give such notice, he shall become a partner in the firm on the expiry of the said six months

#### If a minor elects to become a partner-

his rights and liabilities as a minor continue up to the date on which he becomes a partner,

He becomes personally liable to third parties for all acts of the firm done after he give notice to become as partner;

his share in property & profits of the firm shall be the share to which he was entitled

#### If a minor does not elect to become a partner

his rights and liabilities shall continue to be those of a minor up to the date on which he gives public notice

his share shall not be liable for any acts of the firm done after the date of the notice

he shall be entitled to sue the partners for his share of the property

## FORMATION OF A PARTNERSHIP

Partnership is one of the modes of business. It is governed under the Indian Partnership Act, 1932. For constituting a partnership, the following ingredients are necessary-

There should be an agreement between the parties;

The agreement must be to share the profits of the business and the business must be carried on by all or any of them acting for all;

The existing of an agency between the concerned persons inter-se



# RECONSTITUTION OF FIRM

The reconstitution of a partnership firm may take place in the following occasions-

Change in  
profit sharing  
ratio of the  
existing  
partners

Admission of a  
new partner

Retirement of  
existing  
partner

Death of a  
partner

Amalgamation  
of two  
partnership  
firm

# Admission of a new partner & Retirement of an existing partner

## Admission of a new partner

A new partner may be admitted with the consent of all existing partners as per the provisions of the agreement

The new partner is entitled the following rights-

The right to share in the assets of the partnership firm;

The right to share the profits in the business

## Retirement of an existing partner

Retiring of a partner from the firm amounts to reconstitution of the firm. On the retirement of a partner, the existing partnership deed comes to an end. In its place the new partnership deed needs to be framed.

A partner can retire from the firm in three ways-

A partner may retire if all the partners agree on the decision of his retirement

When there is a provision in the partnership deed for retirement, in that case the partner may retire from the firm by expressing his intention of leaving the firm through a notice to the other partners of the firm

When partnership is at will a partner may retire by giving notice in writing to all other partners

Liability of a retiring partner

A retiring partner may be discharged from any liability to any third part for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm

Despite the retirement of a partner of a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement.

# REGISTRATION OF FIRMS & EFFECT OF NON REGISTRATION

## Registrars of Firms

The SG may appoint Registrars of Firms for the purposes of this Act and may define the areas within which they shall exercise their powers and perform their duties.

## Application for registration

for the purpose of registration a statement in the prescribed form stating-

the name of the firm

the place, or principal place, of business of the firm

the names of any other places where the firm carries on business;

the names, in full, & permanent address of the partners;

the duration of the firm.

shall be prepared and duly signed by all partners, or by their agents specifically authorized in this behalf

The consequences of non-registration of a firm are as under;

No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm

No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm



# **DISSOLUTION OF A FIRM**

# Dissolution of Firm & Mode of Dissolution

The dissolution of partnership between all the partners of a firm is called the 'dissolution of the firm'

Modes of Dissolution of a firm

Dissolution without the order of the court or voluntary dissolution

Dissolution by notice of partnership at will

Dissolution by agreement

Compulsory dissolution

Dissolution on the happenings of certain contingencies

Dissolution by notice of partnership at will

a firm may be dissolved with the consent of all partners or in accordance with a contract between the parties.

A firm is dissolved- • By the adjudication of all the partners or of all the partners except one as insolvent; or  
• By the happening of any event which makes the business unlawful

Subject to the contract b/w the partners, a firm is dissolved • if constituted for a fixed term, by the expiry of that term; • if constituted to carry out one or more adventures or undertakings, by the completion thereof; • by the death of a partner; and • by the adjudication of a partner as an insolvent.

Firm may be dissolved by any partner giving notice, in writing, to all the other partners. Firm is dissolved as from the date mentioned in the notice or if no date is mentioned, from the date of the communication of notice

if a partner has become of unsound mind

if a partner has become permanently incapable

if a partner is guilty of conduct which is likely to affect prejudicially the carrying on of business,

if a partner wilfully or persistently commits breach of agreements

the business of the firm cannot be carried on except at a loss

Transfer of Interest by the Partner without consent other Partners

# *Chapter Name*

---

---

## Indian Regulatory Framework



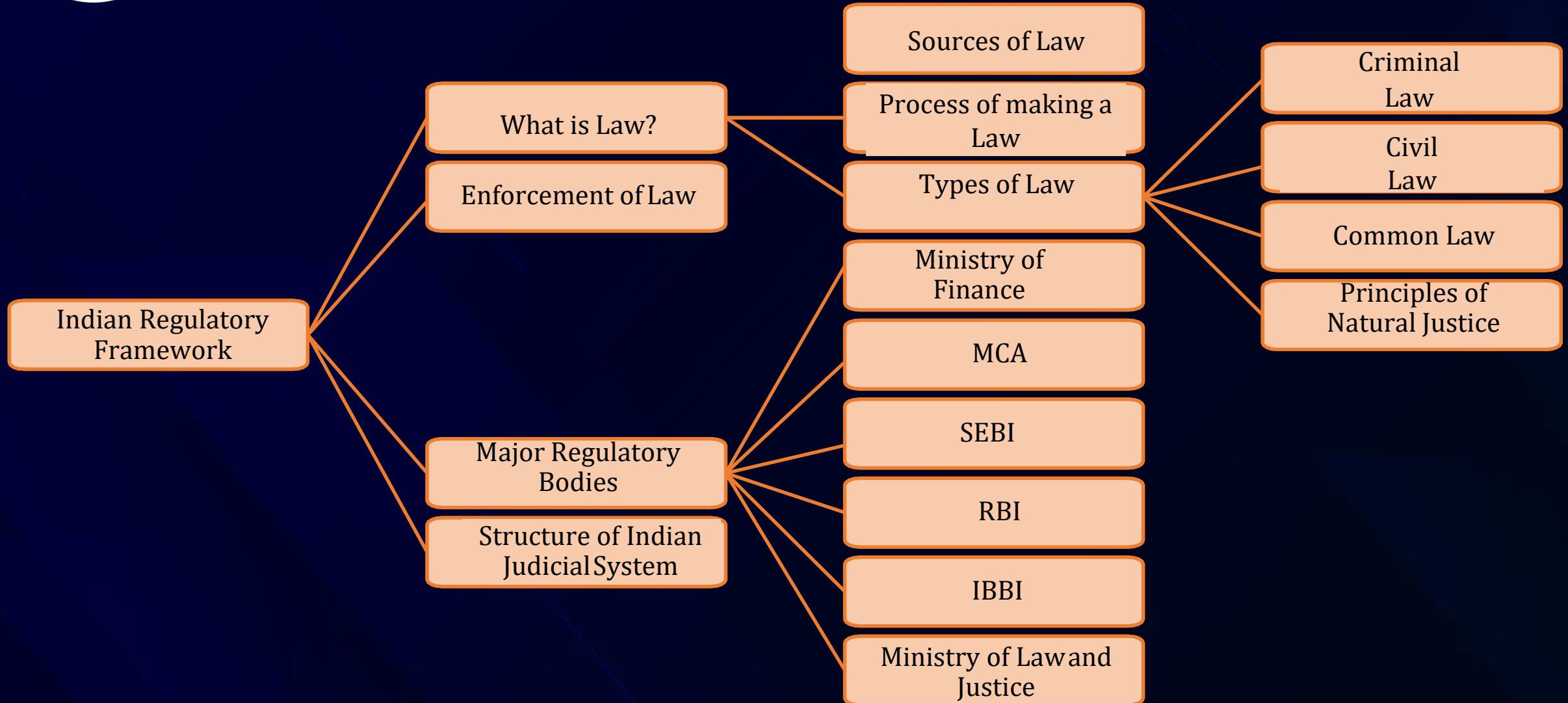


# Indian Regulatory Framework





## Topic : Chapter Overview





## Topic : What is Law ?



Law is a set of obligations and duties  
↓  
imposed by the government  
↙ ↘  
for securing welfare and providing justice to society.

India's legal framework reflects the social, political, economic, and cultural aspects of our vast and diversified country.



## Topic : Sources of Law



The main sources of law in India are

- the Constitution,
- the statutes or laws made by Parliament and State Assemblies,
- Precedents or the Judicial Decisions of various Courts and
- in some cases, established Customs and Usages.

The laws passed by parliament may apply throughout all or a portion of India, whereas the laws passed by state legislatures apply only within the borders of the states concerned.



## Topic : Sources of Law



- The law-making power divided between the Central Government and the various State Governments.
- The Indian Constitution has three lists Viz., Central List, State List and Joint List.



## Topic : The Process of Making a Law



- When a law is proposed in parliament it is called a Bill.
- After discussion and debate, the law is passed in Lok Sabha.
- Thereafter, it has to be passed in Rajya Sabha.
- It then has to obtain the assent of the President of India.
- Finally, the law will be notified by the Government in the publication called the Official Gazette of India.
- The law will become applicable from the date mentioned in the notification as the effective date.
- Once it is notified and effective, it is called an Act of Parliament.

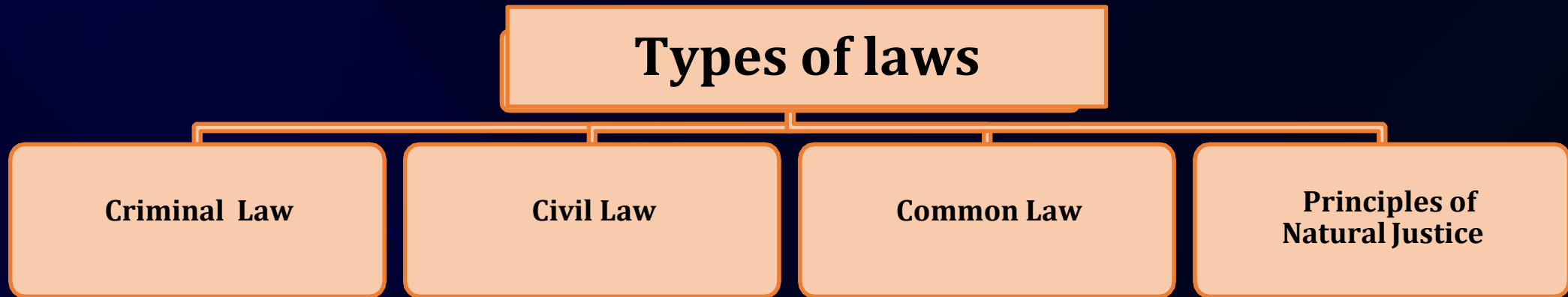


## Topic : The Process of Making a Law



### Types of laws in the Indian Legal System:

The laws in the Indian legal system could be broadly classified as follows:





## Topic : The Process of Making a Law



### **Criminal Law:**

- Criminal law is concerned with laws pertaining to violations of the rule of law or public wrongs and punishment of the same.
- Criminal Law is governed under the Indian Penal Code, 1860, and the Code of Criminal Procedure, 1973 (Crpc).
- The Indian Penal Code, 1860, defines the crime, its nature, and punishments
- The Criminal Procedure Code, 1973, defines exhaustive procedure for executing the punishments of the crimes.





## Topic : The Process of Making a Law



### Civil Law:

- Matters of disputes between individuals or organisations are dealt with under Civil Law.
- Civil courts enforce the violation of certain rights and obligations through the institution of a civil suit.
- Civil law primarily focuses on dispute resolution rather than punishment.
- The act of process and the administration of civil law are governed by the Code of Civil Procedure, 1908 (CPC).
- Civil law can be further classified into Law of Contract, Family Law, Property Law, and Law of Tort.



## Topic : The Process of Making a Law



### Common Law:

- A judicial precedent or a case law is common law.
- A judgment delivered by the Supreme Court will be binding upon the courts within the territory of India under Article 141 of the Indian Constitution.
- The doctrine of Stare Decisis is the principle supporting common law.
- It is a Latin phrase that means “to stand by that which is decided.”
- The doctrine of Stare Decisis reinforces the obligation of courts to follow the same principle or judgement established by previous decisions while ruling a case where the facts are similar or “on all four legs” with the earlier decision.



## Topic : The Process of Making a Law



### Principles of Natural Justice:

- Natural justice, often known as Jus Natural deals with certain fundamental principles of justice going beyond written law.
- Nemo judex in causa sua (Literally meaning “No one should be made a judge in his own cause, and it’s a Rule against Prejudice),
- audi alteram partem (Literally meaning “hear the other party or give the other party a fair hearing), and reasoned decision are the rules of Natural Justice.
- A judgement can override or alter a common law, but it cannot override or change the statute.



## Topic : Enforcing the Law



- After a law is passed in parliament it has to be enforced.
- This is the job of the executive.
- Depending on whether a law is a Central law or a State law the Central or State Government will be the enforcing authority.



## Topic : Enforcing the Law



- The Government of India exercises its executive authority through a number of Government Ministries or Departments of State.
- A Ministry is composed of employed officials, known as civil servants, and is politically accountable through a minister.
- Most major Ministries are headed by a Cabinet Minister, who sits in the Union Council of Ministers, and is typically supported by a team of junior ministers called the Ministers of State.



## Topic : Enforcing the Law



### (1) **The Ministry of Finance:**

- The Ministry of Finance (Vitta Mantralaya) is a Ministry within the Government of India concerned with the economy of India, serving as the Treasury of India.
- In particular, it concerns itself with taxation, financial legislation, financial institutions, capital markets, centre and state finances, and the Union Budget.
- One of the important functions of the Finance Ministry is the presentation of the Union Budget.
- This annual event is eagerly awaited by professionals and the common man as it provides for the rates of taxes and budget allocations for the ensuing year.



## Topic : Enforcing the Law



### Constitution of the Ministry of Finance-

#### Ministry of Finance:

- is the apex controlling authority
- of four Central Civil Services, namely:
  - Indian Revenue Service
  - Indian Audit and Accounts Service
  - Indian Economic Service and
  - Indian Civil Accounts Service.
- Also the apex controlling authority of one of the central commerce services namely
- Indian Cost and Management Accounts Service.

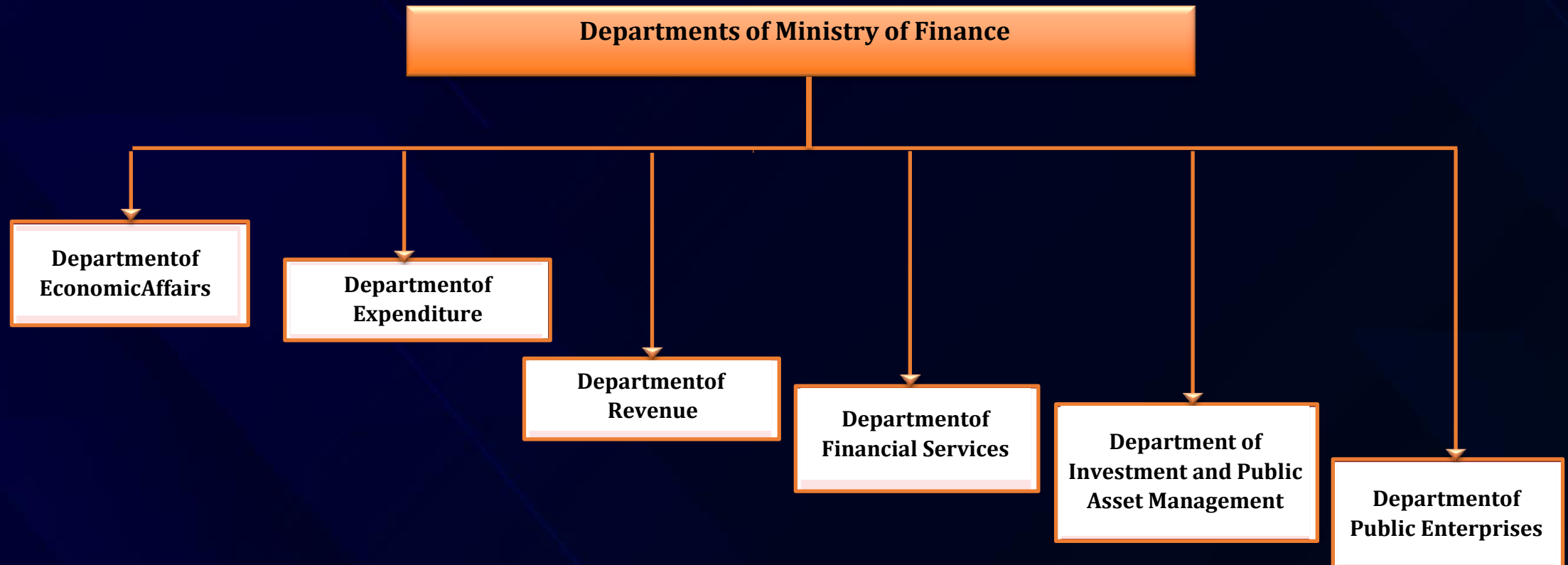




## Topic : Enforcing the Law



### Departments under the Ministry of Finance:-





## Topic : Enforcing the Law



### (i) Ministry of Corporate Affairs (MCA):

#### Ministry of Corporate Affairs

- is an Indian Government Ministry.
- primarily concerned with administration of the Companies Act 2013, the LLP Act, 2008, and the IBC, 2016.
- responsible mainly for the regulation of Indian enterprises in the industrial and services sector.
- These officers are elected through the Civil Services Examination conducted by Union Public Service Commission.
- The highest post, Director General of Corporate Affairs (DGCoA)



## Topic : Enforcing the Law



### Ministry of Home Affairs (Gṛha Mantralaya)

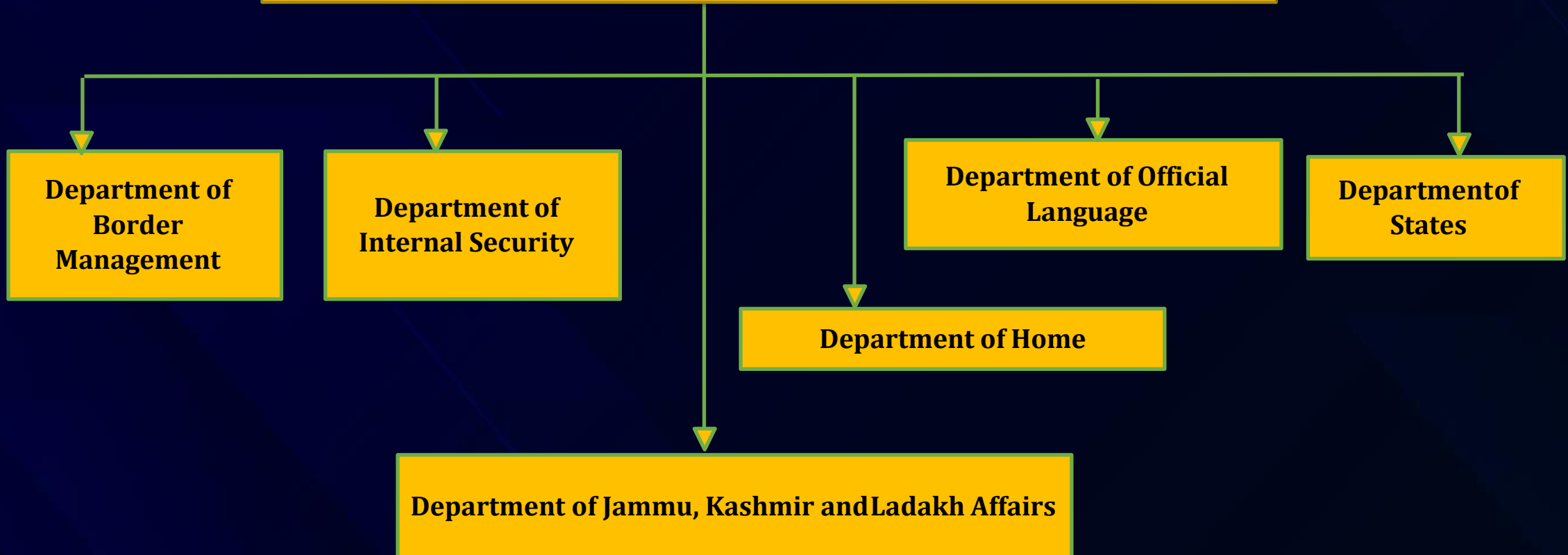
- is a ministry of the Government of India.
- As an interior ministry of India, it is mainly responsible for the maintenance of internal security and domestic policy.
- The Home Ministry is headed by Union Minister of Home Affairs.



## Topic : Enforcing the Law



### Departments of Ministry of Home Affairs





## Topic : Enforcing the Law



**Department of Official Language**

**Central Translation  
Bureau**

**Central Hindi  
Training Institute**

**Directorate of  
Census Operations**



## Topic : Enforcing the Law



### Ministry of Law and Justice:

#### Ministry of Law and Justice

- in the Government of India is a Cabinet Ministry
- deals with the
  - management of the legal affairs, through the Legislative Department
  - legislative activities through the Department of Legal Affairs
  - administration of justice in India through the Department of Justice
- The Department of Legal Affairs is concerned with advising the various Ministries of the Central Government while the Legislative Department is concerned with drafting of principal legislation for the Central Government.



## Topic : Enforcing the Law



### Departments of Ministry of Law and Justice

Department of Legal Affairs

Legislative Department

Department of Justice





## Topic : Enforcing the Law



### (ii) The Securities and Exchange Board of India (SEBI):

#### The Securities and Exchange Board of India (SEBI)

- is the regulatory body
- for securities and commodity market in India
- under the ownership of Ministry of Finance within the Government of India.
- It was established on 12 April, 1988 as an executive body and was given statutory powers on 30 January, 1992 through the SEBI Act, 1992.



## Topic : Enforcing the Law



### (iii) Reserve Bank of India (RBI):

#### Reserve Bank of India-

- is India's Central Bank and regulatory body responsible for regulation of the Indian banking system.
- It is under the ownership of Ministry of Finance, Government of India.
- It is responsible for the control, issue and maintaining supply of the Indian rupee.
- It also manages the country's main payment systems and works to promote its economic development.
- Bharatiya Reserve Bank Note Mudran (BRBNM) is a specialised division of RBI through which it prints and mints Indian currency notes (INR) in two of its currency printing presses located in Nashik (Western India) and Dewas (Central India).
- RBI established the National Payments Corporation of India as one of its specialised division to regulate the payment and settlement systems in India.
- Deposit Insurance and Credit Guarantee Corporation was established by RBI as one of its specialised division for the purpose of providing insurance of deposits and guaranteeing of credit facilities to all Indian banks.



## Topic : Enforcing the Law



### (iv) Insolvency and Bankruptcy Board of India (IBBI):

#### Insolvency and Bankruptcy Board of India (IBBI)-

- is the regulator for overseeing insolvency proceedings and entities like Insolvency Professional Agencies (IPA), Insolvency Professionals (IP) and Information Utilities (IU) in India.
- It was established on 1 October 2016 and given statutory powers through the Insolvency and Bankruptcy Code, which was passed by Lok Sabha on 5th May 2016.
- It covers Individuals, Companies, Limited Liability, Partnerships and Partnership firms. The new code will speed up the resolution process for stressed assets in the country.
- It attempts to simplify the process of insolvency and bankruptcy proceedings.
- It handles the cases using two tribunals like NCLT (National company law tribunal) and Debt recovery tribunal.



## Topic : Structure of the Indian Judicial System



When there is a dispute between citizens or between citizens and the Government, these disputes are resolved by the judiciary.

The **functions** of judiciary system of India are:

- Regulation of the interpretation of the Acts and Codes,
- Dispute Resolution,
- Promotion of fairness among the citizens of the land.

In the **hierarchy of courts**, the Supreme Court is at the top, followed by the High Courts and District Courts. Decisions of a High Court are binding in the respective state but are only persuasive in other states. Decisions of the Supreme Court are binding on all High Courts under Article 141 of the Indian Constitution. In fact, a Supreme Court decision is the final word on the matter.



## Topic : Structure of the Indian Judicial System



### (i) **Supreme Court:**

- The Supreme Court is the apex body of the judiciary.
- It was established on 26th January, 1950.
- The Chief Justice of India is the highest authority appointed under Article 126.
- The principal bench of the Supreme Court consists of seven members including the Chief Justice of India.
- Presently, the number has increased to 34 including the Chief Justice of India due to the rise in the number of cases and workload.
- An individual can seek relief in the Supreme Court by filing a writ petition under Article 32.



## Topic : Structure of the Indian Judicial System



### (ii) **High Court:**

The highest court of appeal in each state and union territory is the High Court. Article 214 of the Indian Constitution states that there must be a High Court in each state. The High Court has appellant, original jurisdiction, and Supervisory jurisdiction. However, Article 227 of the Indian Constitution limits a High Court's supervisory power. In India, there are twenty-five High Courts, one for each state and union territory, and one for each state and union territory. Six states share a single High Court. An individual can seek remedies against violation of fundamental rights in High Court by filing a writ under Article 226.

#### **Which is the oldest High Court in India?**

The oldest high court in the country is the Calcutta High Court, established on 2nd July, 1862.



## Topic : Structure of the Indian Judicial System



### **(iii) District Court:**

Below the High Courts are the District Courts. The Courts of District Judge deal with Civil law matters i.e. contractual disputes and claims for damages etc., The Courts of Sessions deals with Criminal matters.

Under pecuniary jurisdiction, a civil judge can try suits valuing not more than Rupees two crore.

Jurisdiction means the power to control. Courts get territorial Jurisdiction based on the areas covered by them. Cases are decided based on the local limits within which the parties reside or the property under dispute is situated.





## Topic : Structure of the Indian Judicial System



### **(iv) Metropolitan courts:**

Metropolitan courts are established in metropolitan cities in consultation with the High Court where the population is ten lakh or more. Chief Metropolitan Magistrate has powers as Chief Judicial Magistrate and Metropolitan Magistrate has powers as the Court of a Magistrate of the first class.



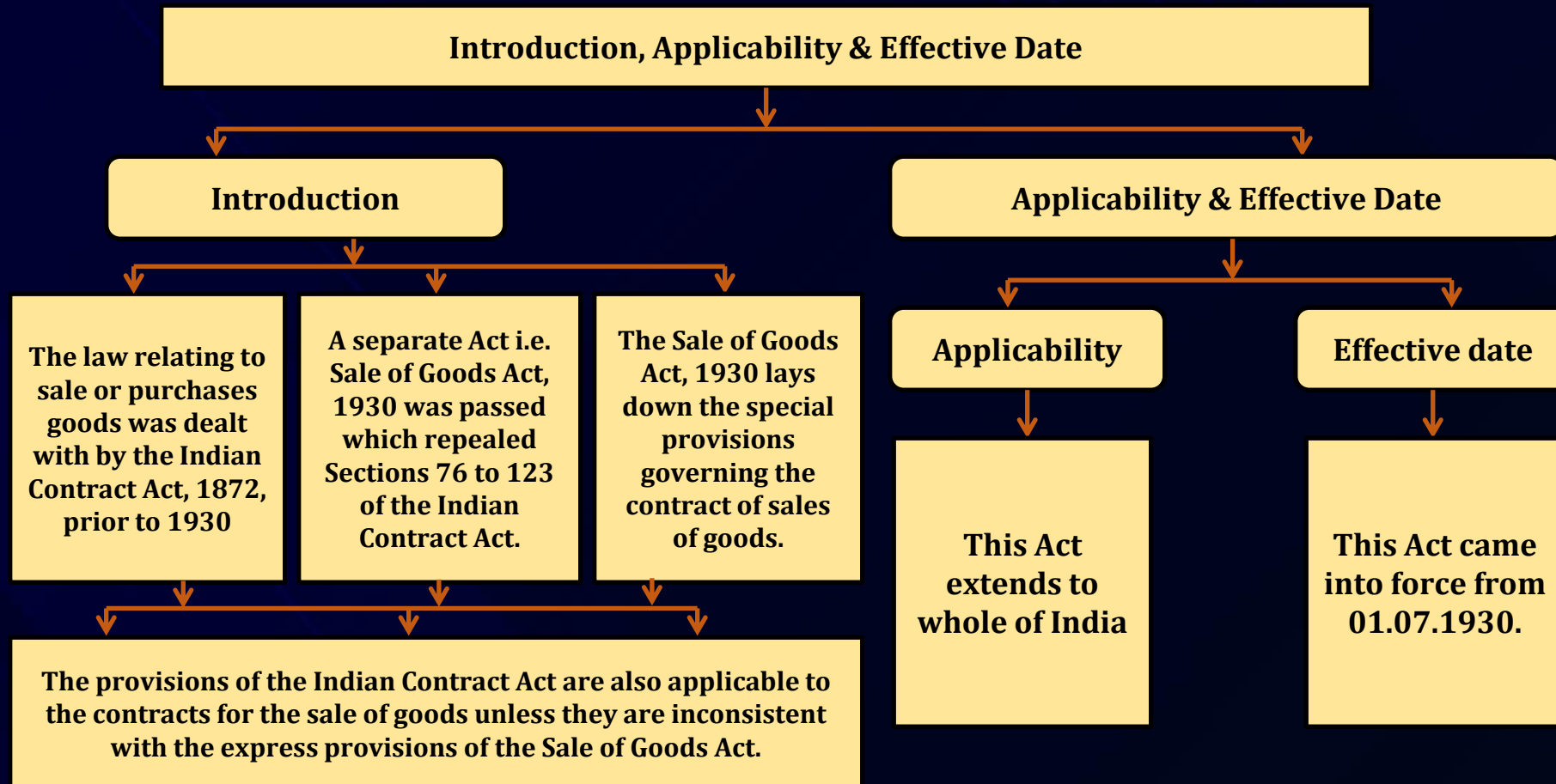
# *Chapter Name*

---

---

**Sale of Goods Act, 1930**







# **IMPORTANT DEFINITIONS**

# Goods, Future Goods & Specific Goods

## Goods

Section 2(7) defines the term 'goods' as every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

## Future Good

Section 2(6) defines the phrase 'future good' as goods to be manufactured or produced or acquired by the seller after making of the contract of sale.

## Specific goods

Section 2(14) defines the phrase 'specific goods' as goods identified and agreed upon at the time a contract of sale is made;

# Document of title to goods

*Section 2(4) defines the phrase 'document of tile to goods' as including bill of lading dock-warrant, warehouse keeper's certificate, wharfingers' certificate, railway receipt, multimodal transport document, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.*

## Other Definitions

### Insolvent

Section 2 (8) provides that a person is said to be “insolvent” who has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not;

### Mercantile agent

Section 2(9) defines the phrase ‘mercantile agent’ as a mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods.



# **CONTRACT OF SALE & AGREEMENT TO SELL**

# Contract of Sale & Agreement to Sell

## Contract of Sale & Essentials of Contract of Sale

## Agreement to sell

As per sec. 4(1)  
“A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.”

According to Section 4(2), a contract of sale may be absolute or conditional.

## Essentials of a Contract of Sale

### Bilateral contract

It is a bilateral contract because the property in goods has to pass from one party to another. A person cannot buy the goods himself

### Transfer of property

The object of a contract of sale must be the transfer of property in goods from one person to another.

### Goods

The object of a contract of sale must be the transfer of property in goods from one person to another.

### Price / money consideration

The goods must be sold for some price, where the goods are exchanged for goods it is barter, not sale.

All essential elements of a valid contract must be present in a contract of sale

As per Section 4(3), where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

Section 4(4) provides that an agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.



## Contract of sale how made

Section 5(1) provides that a contract of sale is made by-

an offer to buy or  
sell goods for a  
price;

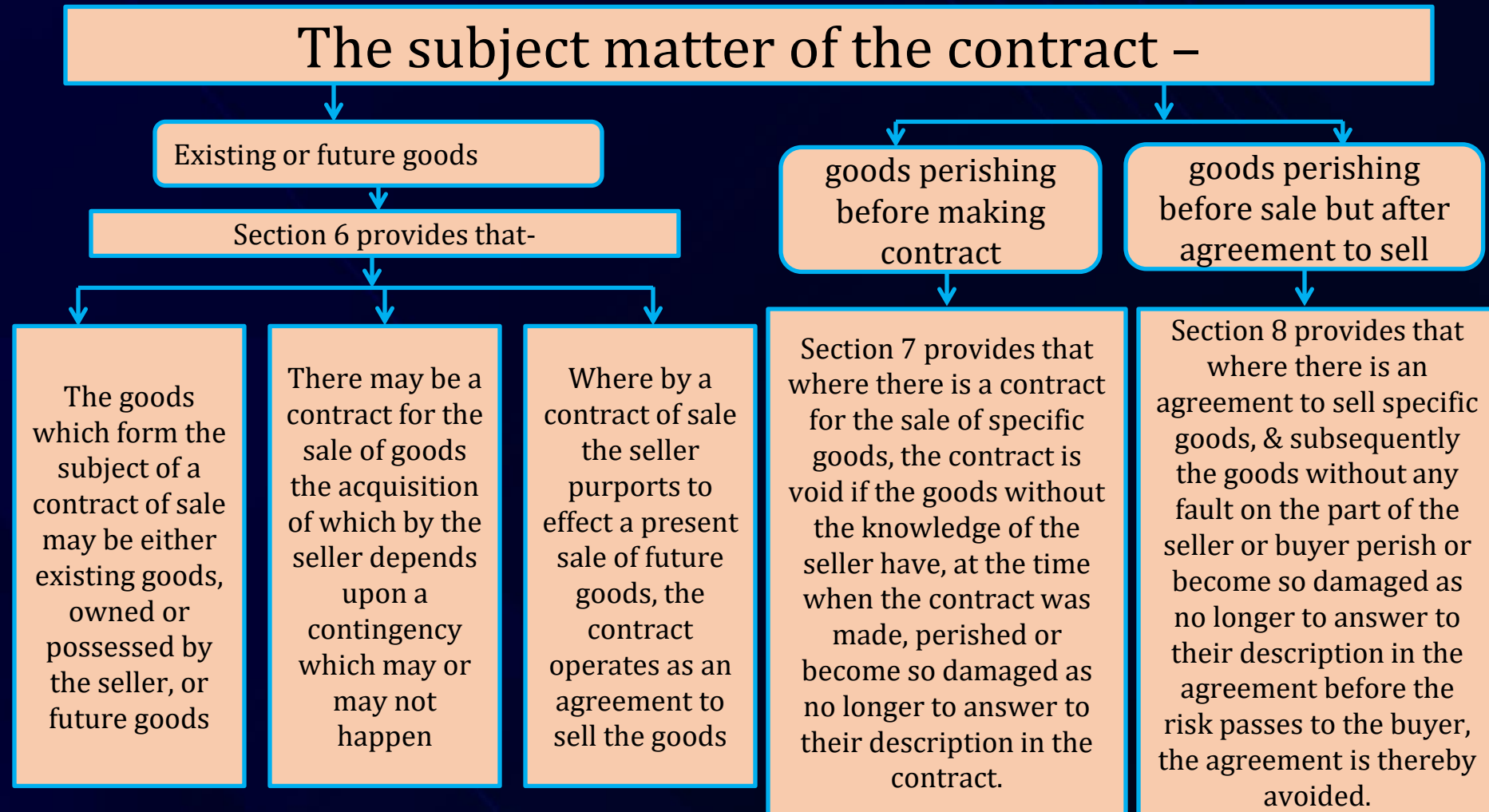
the acceptance of  
such offer

the contract may provide for the immediate delivery of the goods or immediate payment of the price of both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed.

Section 5(2) provides that a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.



# Subject matter of contract



# Ascertainment of price

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

*Section 9(2) provides that where the price is not determined in accordance with the foregoing provisions, the buyer shall pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.*

## Agreement to sell at valuation

- *Section 10(1) provides that where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided. If the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall pay a reasonable price therefor.*
- *Section 10(2) provides that where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in fault.*

## Stipulations to time

- *Section 11 provides that unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract*



# TRANSFER OF OWNERSHIP

# TRANSFER OF OWNERSHIP

## Goods must be ascertained

As per section 18 in a contract for sale of unascertained goods, the property in the goods does not pass to the buyer unless and until the goods are ascertained.

## Intention of the parties for such transfer (section 19)

When intention of the parties cannot be ascertained, rules contained in section 20-24 are required to be applied for ascertaining the time of transfer of property and the same are discussed hereunder

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

### Specific goods

The property, in case of goods in deliverable state, passes to the buyer when the contract is made,. Goods are said to be in deliverable state when they are in such a state that the buyer would under the contract is bound to take delivery thereof.

Where there is a contract for the sale of specific goods and the seller is bound to do something to put the goods into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof

If there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof

### Unascertained goods

Where there is a contract for sale of unascertained or future goods by description & goods of that description & in a deliverable state are unconditionally appropriated to the contract, either by seller with the assent of buyer or by buyer with the assent of seller, the property in the goods thereupon passes to the buyer.



## Goods on approval or 'on sale or return' (Sec 24)

In order to push up the sales generally there is a practice of sending goods to the customer with the clear cut understanding that he has option to approve or return the goods within a given period. This type of sales is known as "approval or sale or return"

In such cases, the transaction does not culminate into sale until the goods are approved by the customer and the property in goods still remains with the seller.

When goods are delivered to the buyer on approval or on sale or return or other similar terms, the property therein passes to the buyer—

(a) When he signifies his approval or acceptance to the seller

(b) When he does any other act adopting the transaction

(c) If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time

## Reservation of Right of Disposal (Sec 25)

**Section 25(1)** – Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, *the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled*

**Sec 25(2)** – Where goods are shipped or delivered to a railway administration for carriage by railway and by the bill of lading or railway receipt, as the case may be, the goods are deliverable to the order of the seller or his agent, *the seller is prima facie deemed to reserve the right of disposal.*

**Sec 25(3)** – Where the seller of goods draws on the buyer for the price and transmits to the buyer the bill of exchange together with the bill of lading or, as the case may be, the railway receipt, to secure acceptance to payment of the bill of exchange, *the buyer is bound to return the bill of lading or the railway receipt if he does not honour the bill of exchange, and, if he wrongfully retains the bill of lading or the railway receipt, the property in the goods does not pass to him.*

## Rule Relating to Risk Follow the Ownership & its Exceptions

As per section 26 of the Act, unless otherwise agreed, the goods remains at the seller's risk until the property therein is transferred to the buyer, but when the property in goods is transferred to the buyer, the goods are at the risk of the buyer whether delivery of the goods has been made or not.

Thus, risk prima facie passes with property unless otherwise is agreed by the parties.

The rule regarding risk passes with the property enshrined in section 26 is subject to the following exceptions:

This rule of 26 will apply only if there is no agreement to the contrary. It is permissible for the parties to provide in the agreement that although the property does not pass, the risk passes and they may fix the point of time when it is to pass

Where delivery has been delayed through the fault of either party the buyer or the seller, the goods are at the risk of the party who is at fault in delay of delivery

If there is a custom in that particular trade that the risk does not pass with property, in such a case the risk will pass as per the custom

# Transfer of Title by Non-Owners of Goods

As per section 27, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had.

“Nemo dat qui non habet” means that no one can give what he himself does not have. It means a non owner cannot make valid transfer of property in goods. Thus, If the seller has no title, the buyer does not acquire any title.

Following exceptions to this doctrine which seek to protect the interest of bona fide buyers

Sale by a mercantile agent

Transfer of title by Estoppels

Sale by a joint owner

Sale by person in possession under voidable contract

Sale by an unpaid seller

Sale by seller in possession after sale

Sale by buyer in possession after sale

a finder of the goods has the right to sell

a pawnee of goods has the right to sell the goods pawned

a special right of sale is given to officers of court, liquidators of the companies, receivers of insolvents estate, custom officers for dues and duties remaining unpaid etc.

# Provisions relating to Conditions & Warranties

A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

## Condition [Section 12(2)]

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

## Warranty [Section 12(3)]

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

Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract

When condition to be treated as warranty?  
Section 13 provides that where a contract of sale is-

subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of condition as a breach of warranty

not severable and the buyer has accepted the goods or part thereof, the breach of any condition to be treated as a breach of warranty

Nothing in this section shall affect the case of any condition or warranty fulfilment of which is excused by law by reason of impossibility or otherwise

## Remedies Available to the Buyer for Breach of Conditions

*(a) Affected party may claim refund of price and reject the goods;*

*(b) Elect to treat breach of condition as breach of warranty and claim damages or compensation;*

*(c) When the affected party treat, breach of condition as breach of warranty he cannot repudiate the contract but claim damages only*

## Consequences of Breach of Warranty

*(a) The breach of warranty gives right to a claim for damages but not to reject the goods and treat the contract as repudiated.*

*(b) Buyer may sue for damages.*

# Implied Conditions & Implied Warranties

Implied conditions are of the following types:

Condition as to title

Sale by description

condition as to merchantability

condition as to quality or fitness

Sale by sample

implied condition as to wholesome.

Implied warranties are of following types

Warranty of quiet possession

Warranty of freedom from encumbrances

Warranty as to quality or fitness by usage of trade

Warranty to disclose dangerous nature of goods



# Doctrine of Caveat Emptor & its Exceptions

## Doctrine of Caveat Emptor

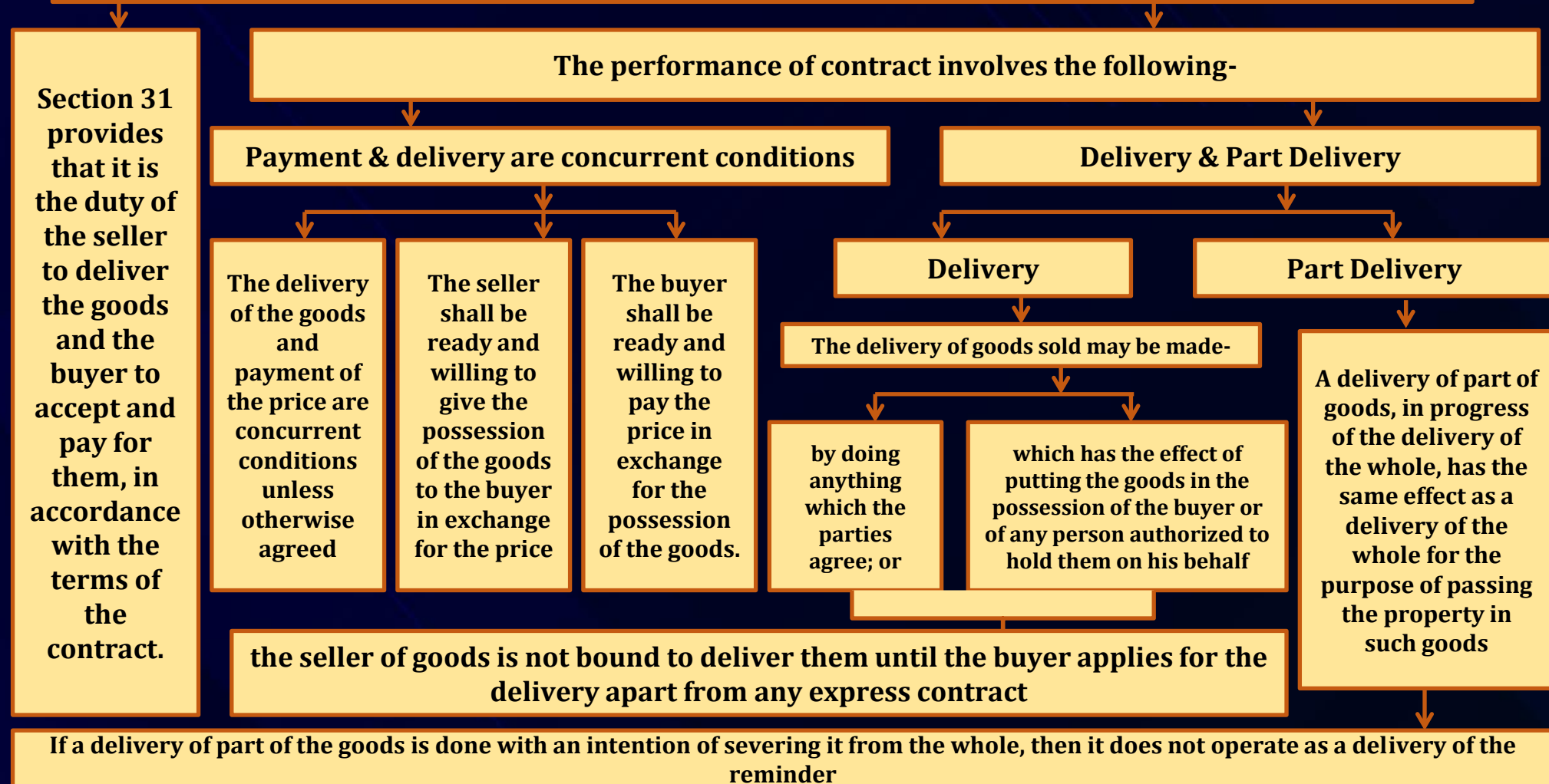
The term “caveat emptor” is a Latin word which means “let the buyer beware”. This principle states that it is for the buyer to satisfy himself that the goods which he is purchasing are of the quality which he requires. If he buys goods for a particular purpose, he must satisfy himself that they are fit for that purpose.

In simple words, it is not the seller’s duty to give to the buyer the goods which are fit for a suitable purpose of the buyer. If he makes a wrong selection, he cannot blame the seller if the goods turn out to be defective or do not serve his purpose

## following exceptions to the doctrine of Caveat Emptor

- (1) Where the seller makes a false representation and the buyer relies on it.
- (2) When the seller actively conceals a defect in the goods which is not visible on a reasonable examination of same
- (3) When the buyer, relying upon the skill and judgement of the seller, has expressly or impliedly communicated to him the purpose for which the goods are required.
- (4) Where goods are bought by description from a seller who deals in goods of that description.

# Performance of Contract of Sale



# Rules as to delivery

unless otherwise agreed, goods sold are to be delivered at the place at which they are at the time of the sale

Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time

Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless until such third person acknowledges to the buyer that he holds the goods on his behalf;

Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller

# Delivery of wrong quantity

The transfer of goods, in a sale, is expected to be delivered as agreed to in the contract. If there is variation in the quantity of goods delivered, the following action may be taken by the buyer-

where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them. If the buyer accepts the goods so delivered he shall pay for them at the contract rate

where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest. Or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate

where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest or may reject the whole



# **UNPAID SELLER & RIGHTS OF AN UNPAID VENDOR**

## Unpaid Seller & Right of Unpaid Seller

the seller of the goods is deemed to be 'unpaid seller'

when the whole of the price has  
not been paid or tendered

when a bill of exchange or other negotiable instrument has  
been received as conditional payment, but there is a  
dishonour of the instrument

### Right of Unpaid Seller

#### Against the Goods

A lien or  
right of  
retention

The right of  
stoppage in  
transit

The right of  
resale

#### Against the Buyer

Suit for price

Suit for  
damages for  
non-acceptance

Suit for  
repudiation

Suit for  
interest

# Buyer's Remedies against Seller for Breach of Contract

Suit for Damages for Non-Delivery

Suit for price

Suit for specific performance

Suit for Breach of Warranty

Repudiation of contract before the due date

Suit for interest



# AUCTION SALE



## **Section 64 provides that in the case of a sale by auction-**

**where goods are put up for sale in lots, each lot is prima facie deemed to be the subject of a separate contract of sale**

**the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and until such announcement is made, any bidder may retract his bid**

**a right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bid at the auction**

**where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer**

**if the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.**



# Summary





# Homework





**THANK YOU**