

# CA FOUNDATION COURSE PAPER 2 : BUSINESS LAWS

# The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

## **Board of Studies**

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#### **PREFACE**

The Board of Studies is dedicated to delivering outstanding services to its students, tirelessly striving for the highest standards of education and support. It imparts quality academic education through its value added study materials, that explain concepts clearly and in simple language. Illustrations and Test Your Knowledge Questions contained therein facilitate enhanced understanding and application of concepts learnt. Revision Test Papers provides Questions & Answers to help students to update themselves to revise the concepts by solving questions contained therein. Suggested Answers containing the ideal manner of answering questions set at examination which also helps students to revise for the forthcoming examination. Mock Test Papers empower students to gauge their readiness ahead of each examination, ensuring confidence and clarity. Additionally, BoS offers engaging live virtual classes led by distinguished faculty, reaching students far and wide across the nation.

To effectively engage with its students, the Board of Studies has been publishing subject-specific capsules in its monthly Students' Journal, "The Chartered Accountant Student," since 2017. These capsules are aimed at facilitating efficient revision of concepts covered across various topics at the Foundation, Intermediate, and Final levels of the Chartered Accountancy Course. This initiative underscores the BoS's commitment to enhancing learning and comprehension among its students through accessible and attractive educational materials. Each issue of the journal includes a capsule relating to specific topic(s) in one subject at each of the three levels. In these capsules, the concepts and provisions are presented in attractive colours in the form of tables, diagrams and flow charts for facilitating easy retention and quick revision of topics.

The Board of Studies is now introducing a comprehensive booklet titled 'Saransh - Last Mile Referencer for Business Laws'. This booklet consolidates key concepts from various topics in Business Laws covered in the syllabus, providing a clear and concise overview. With the inclusion of diagrams, flowcharts, tables, examples, and case laws, Saransh ensures a quick and effective understanding of concepts, helping students grasp and retain information effortlessly. This booklet is designed to offer a streamlined and insightful learning experience, making it an invaluable tool for exam preparation.

However, the readers are advised to refer the study material for comprehensive study and revision. Under no circumstances, this booklet substitutes the detailed study of the material provided by the Board of Studies.

By capturing essential points in a concise format, 'Saransh' will facilitate better understanding and retention of critical legal provisions, enhancing the learning experience for students preparing for their examinations and beyond. It will indeed serve as a valuable ready reckoner for readers, enabling them to grasp the essence of the subject comprehensively.

Happy Reading!

# PRESIDENT'S MESSAGE



It is with immense pride that I introduce the Saransh booklets, a meticulously curated resource available across the Foundation, Intermediate, and Final levels of the Chartered Accountancy course. ICAI has always been dedicated to providing our students with the best possible resources to succeed in their studies and careers, and Saransh is a demonstration of this commitment.

The Saransh — Last Mile Referencers have been thoughtfully designed by the Board of Studies (BoS) to serve as an invaluable companion for your studies and exam preparation. Our aim is to simplify complex concepts and provisions, making them easier to understand, memorize, and revise. However, Saransh is not a substitute for the detailed BoS study material but a supplementary tool to complement your in-depth study.

The newly revamped Saransh booklets have been updated not only in content but also in their presentation. With a more logical and organized structure, enhanced visual appeal, and a user-friendly layout, these booklets are now more effective in aiding your studies.

We have extended the Saransh series to cover all core areas of the Chartered Accountancy course. Whether you are studying Direct Tax Laws and International Taxation, Indirect Tax Laws, Accounting Standards, Indian Accounting Standards, Auditing, Cost and Management Accounting, Strategic Cost Management and Performance Evaluation, Company Law, or Financial Management and Strategic Management, you will find a Saransh booklet for each subject.

Saransh is designed not only to help you grasp and recall essential concepts but also to guide you in approaching each subject strategically. The insights provided in these booklets will help you develop a structured approach to your studies, ensuring that you are well-prepared for your examinations.

I urge you to make the most of the Saransh booklets. While these booklets will support you, it is your dedication, perseverance, and hard work that will ultimately determine your success.

I wish each of you the very best in your studies and future careers.

Warm regards,

CA. Ranjeet Kumar Agarwal

President, ICAI

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#### **BEFORE WE BEGIN**

#### Introduction

Understanding the law is crucial for becoming a successful Chartered Accountant. As Chartered Accountants often deal with legal issues, having a basic understanding of the law allows us to provide preliminary advice to our clients and management.

Laws in general, regulate the relationship of business and profession with the society. As Business forms an integral part of the society, so, law is essential for regulating the rules by which people and businesses connect with each other. Law affects almost every function and area of business. Study of Law is also important because it gives a legal framework which is ultimately accepted in society.

#### Syllabus coverage

The objective behind inclusion of this paper in a Chartered Accountancy course is 'To develop general legal knowledge of the law of Contracts, Sales and understanding of various forms of businesses and their functioning to regulate business environment and to acquire the ability to address basic application-oriented issues'.

The syllabus is consisting of following seven chapters carrying a total weightage of 100 marks.

- **I. Indian Regulatory Framework:** This chapter has been introduced in this paper for familiarizing the students with meaning of Law and its sources, process of making law, types of laws in the Indian Legal System i.e. Criminal Law, Civil Law, Common Law, Principles of Natural Justice and some of the major Regulators and the laws which are enforced by them.
- II. The Indian Contract Act, 1872: The Law of Contract is a pivotal aspect of mercantile or commercial law, influencing everyone but particularly impacting trade, commerce, and industry. Considered the cornerstone of civilized society, contracts form the basis of interactions and agreements. The Indian Contract Act, 1872 primarily addresses the fundamental principles and regulations governing contracts. It can be divided into two main sections. The first part (Sections 1-75) covers the general principles applicable to all contracts, regardless of their nature. The second part (Sections 124-238) deals with specific types of contracts such as indemnity and guarantee, bailment, pledge and agency.
- III. The Sale of Goods Act, 1930: Sale of goods is one of the specific forms of contracts recognized and regulated by law in India. Sale is a typical bargain between the buyer and the seller. The Sale of Goods Act, 1930 allows the parties to modify the provisions of the law by express stipulations. However, in some cases, this freedom is severely restricted. In this chapter, provisions related to formation of the Contract of Sale, Conditions and Warranties, Transfer of Ownership and Delivery of goods and Unpaid Seller are covered.

- **iv.** The Indian Partnership Act, 1932: In order to govern and guide partnership, the Indian Partnership Act, 1932 was enacted. The law relating to partnership in India which is contained in Indian Partnership Act, 1932 is concerned partly with the rights and duties of partners between themselves and partly with the legal relations between partners and third persons, which flow or are incidental to the formation of a partnership. In this chapter, provisions relating to General nature of a partnership, Relations of partners and Registration and dissolution of firm are covered.
- V. The Limited Liability Partnership Act, 2008: The Limited Liability Partnership (LLP) is a unique form of business organization that combines the advantages of limited liability with the flexibility of partnership structure. Due to its flexibility, LLPs are well-suited for small enterprises and attract venture capital investments. In order to acquaint the students with this LLP Act, 2008, only introduction is covered at this level so they can easily understand its application at Intermediate level. The major topics to be focused are meaning and Concept of LLP, its characteristics, Incorporation and Differences with other Forms of Organisation.
- VI. The Companies Act, 2013: The Companies Act, 2013 contains 470 sections and 7 schedules. A substantial part of this Act is in the form of Companies Rules. This is the most important piece of legislation that empowers the Central Government to regulate the formation, financing, functioning and winding up of companies. In order to apprise the students with this prominent Act, only introduction is covered at this level so they can easily understand it and apply the same for practical scenarios at further levels. In this chapter, Essential features of company, Corporate veil theory, Classes of companies, Incorporation, Memorandum of Association and Article of Association and Doctrine of Indoor Management are covered.
- VII. The Negotiable Instruments Act, 1881: The Law in India relating to negotiable instruments is contained in the Negotiable Instruments Act, 1881. This is an Act to define and enforce the law relating to promissory notes, bills of exchange and cheques. The main objective of the Act is to legalise the system by which instruments contemplated by it could pass from hand to hand by negotiation like any other goods. Certain topics such as Meaning and Characteristics of Negotiable Instruments, Classification of Instruments, Different provisions relating to Negotiation, Presentment of Instruments and Rules of Compensation are covered.

#### Some useful tips for a better preparation of the subject are:

- It's crucial to supplement your study material with Bare Acts of relevant statutes. These Bare
  Acts serve as the backbone of legal understanding and are indispensable for grasping the
  intricacies of the law effectively.
- While quoting sections and citing case laws is not mandatory at the foundation level, it's beneficial to develop the practice of supporting your answers with relevant sections and notable case laws whenever applicable. However, it's important to refrain from referencing incorrect section numbers or irrelevant case laws.

- While answering scenario based/ practical based questions
  - Relevant Legal Provision (with Correct Section Number and Correct name of the Act with year)
  - o The facts given in the problem
  - o Correlation of the legal provision with the facts.
  - Conclusion (if possible)
- While answering direct theoretical questions
  - o Highlight the main points with brief description- such as bullet points with headings
  - explain with the help of example (wherever possible)
  - o Break the answer in brief points or paragraphs
- Students often tend to provide generalized responses without addressing the specific provisions. It's advisable to avoid this practice. Responses should be articulated clearly in English with a legal perspective. Avoid using shorthand notes or diagrams in your answers.
- Refrain from using short forms or informal language, such as WhatsApp or SMS language, when answering questions. If abbreviations are necessary, provide their definitions before using them.
- As law is a dynamic subject, it's important for students to stay updated on the latest amendments relevant to their attempt. Consult the Revision Test Papers (RTP) for the most recent amendments and base your answers on the latest applicable legal provisions.

**SARANSH** 

INDIAN REGULATORY FRAMEWORK

#### **CHAPTER 1 - INDIAN REGULATORY FRAMEWORK**

# MEANING OF LAW imposed by the Government for securing welfare and providing justice to society SOURCES OF LAW

The Constitution

Precedents or the Judicial Decisions of various Courts

the statutes or laws made by Parliament and State Assemblies

in some cases, established Customs and Usages.

#### (i) Constitution of India

foremost law that deals with the framework within which our democratic system works

our laws are made for the people, by the people

provides and protects certain Fundamental rights of citizens

lays down Fundamental duties as well as the powers and duties of Governments, both Central and State

The laws in India are interconnected with each other forming a hybrid legal system

The people who wrote the Constitution decided to divide the lawmaking power between the Central Government and the various State Governments

Indian Constitution has three lists Viz., Central List, State List and Joint List.



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#### PROCESS OF MAKING A LAW

When a law is proposed in parliament, it is called a Bill.

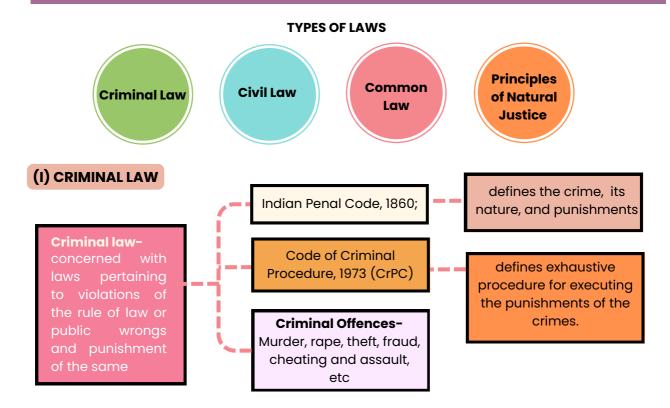
After discussion and debate, the law is passed in Lok Sabha

Thereafter, it has to be passed in Rajya Sabha.

Finally, the law will be notified by the Government in the publication called the Official Gazette of India.

It then has to obtain the assent of the President of India.

#### TYPES OF LAWS IN THE INDIAN LEGAL SYSTEM





#### (II) CIVIL LAW

Matters of disputes between individuals or organisations

Law primarily focuses on dispute resolution rather than punishment

Code of Civil Procedure, 1908 (CPC)

further classified into Law of Contract, Family Law, Property Law, and Law of Tort

**Civil offences**- breach of contract, non-delivery of goods, non-payment of dues to lender or seller defamation, breach of contract, and disputes between landlord and tenant, etc.

#### (III) COMMON LAW

A judicial precedent or a case law

A judgment
delivered by the
Supreme Court will
be binding upon the
courts within the
territory of India

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

doctrine of Stare Decisis -"to stand by that which is decided.

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#### (IV) PRINCIPLES OF NATURAL JUSTICE

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Natural justice, often known as Jus Natural deals with certain fundamental principles of justice going beyond written law.

### Rules of Natural Justice

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#### 00

A judgement can override or alter a common law, but it cannot override or change the statute

No one should be made a judge in his own cause, and it's a Rule against Prejudice

hear the other party or give the other party a fair hearing

reasoned decision

#### **ENFORCING THE LAW**

The Government of India exercises its executive authority through a few Government Ministries or Departments of State.

-Aldelinely

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.

and the feet have

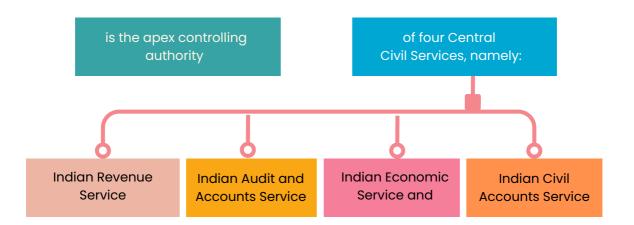
#### (i) MINISTRY OF FINANCE

- · concerned with the economy of India
- serving as the Treasury of India
- concerns itself with taxation, financial legislation, financial institutions, capital markets, centre and state finances, and the Union Budget
- important functions is the presentation of the Union Budget

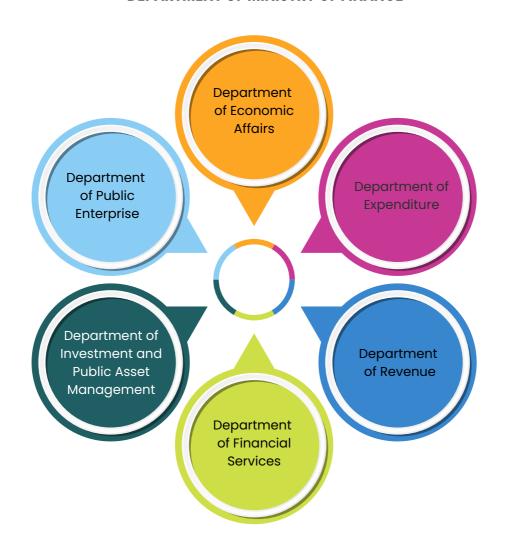


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#### **CONSTITUTION OF MINISTRY OF FINANCE**



#### **DEPARTMENT OF MINISTRY OF FINANCE**



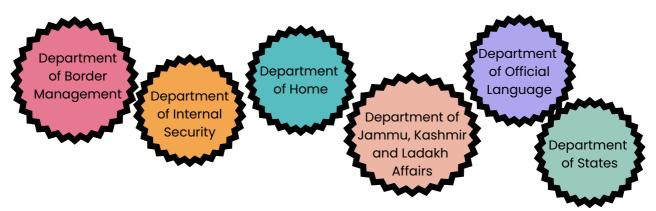
#### (ii) MINISTRY OF CORPORATE AFFAIRS

- is an Indian Government Ministry.
- primarily concerned with administration of the Companies Act, 2013, the Limited Liability Partnership Act, 2008, and the Insolvency and Bankruptcy Code, 2016.
- responsible mainly for the regulation of Indian enterprises in the industrial and services sector.
- The Ministry is mostly run by civil servants of the ICLS cadre.
- These officers are elected through the Civil Services Examination conducted by Union Public Service Commission.
- The highest post, Director General of Corporate Affairs (DGCoA), is fixed at Apex Scale for the ICLS.

#### (iii) MINISTRY OF HOME AFFAIRS (GRIHA 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.

#### **DEPARTMENT OF MINISTRY OF HOME AFFAIRS**



#### (iv) MINISTRY OF LAW AND JUSTICE

in the Government of India is a Cabinet Ministry

#### deals with the

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.

- management of the legal affairs through Department of Legal Affairs
  - legislative activities through the Legislative Department
- administration of justice in India through the Department of Justice



#### (v) 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.

#### (vi) RESERVE BANK OF INDIA (RBI)

- 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.

#### (vii) INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI)

It 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 list October 2016 and given statutory powers through the linsolvency 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

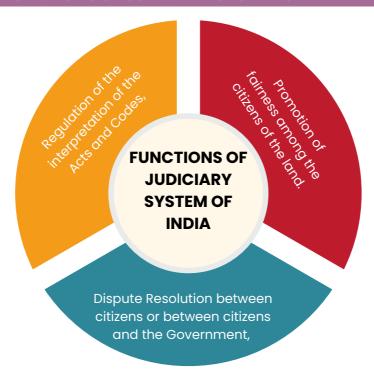


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**SARANSH** 

INDIAN REGULATORY FRAMEWORK

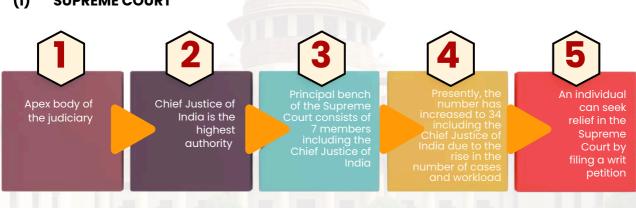
#### **FUNCTIONS OF JUDICIARY SYSTEM OF INDIA**



#### **HIERARCHY OF COURTS**







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#### (ii) HIGH COURT

High Court

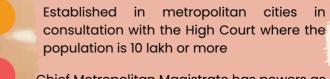
An individual can seek remedies against violation of fundamental rights in High Court by filing a writ

#### (iii) DISTRICT COURT

- Below the High Courts
- The Courts of District Judge deal with Civil law matters
- Civil judge can try suits valuing not more than Rupees 2 crore.
- 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.



#### (iv) METROPOLITAN COURTS



Chief Metropolitan Magistrate has powers as Chief Judicial Magistrate

Metropolitan Magistrate has powers as the Court of a Magistrate of the first class.



**SARANSH** 

THE INDIAN CONTRACT ACT, 1872

#### CHAPTER 2 - THE INDIAN CONTRACT ACT, 1872 (UNIT-1)





under obligation to give car



has right to receive the payment



right to receive the car on payment



under an obligation to make payment

The above situation talks about formation of an agreement. An agreement is the result of a proposal by one party and its acceptance by another with the consideration forming the foundation of any contract. Therefore, such an offer and its acceptance gives rise to right & obligation against each other.



An Agreement in order to be a Contract, **must** satisfy the conditions as specified under section 10 of the Indian Contract Act, 1872.

#### REQUIREMENT FOR AN AGREEMENT TO BE A CONTRACT

made by the free consent

between parties competent to contract for a lawful consideration and with a lawful object, and

are not hereby expressly declared to be void

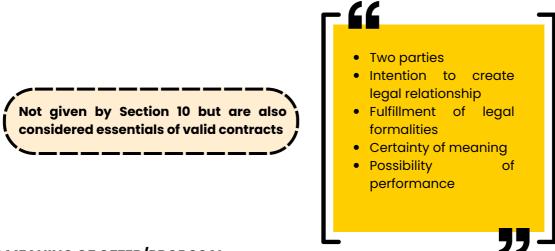
Since section 10 is not complete and exhaustive, so there are certain others sections which also contains requirements for an agreement to be enforceable.



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THE INDIAN CONTRACT ACT, 1872



#### (1) MEANING OF OFFER/PROPOSAL

An offer is the starting point in the making of an agreement. An offer is also called as proposal. Thus, for a valid offer, the party making it must express his willingness 'to do' or 'not to do' something.

Law defines the term offer/proposal as –

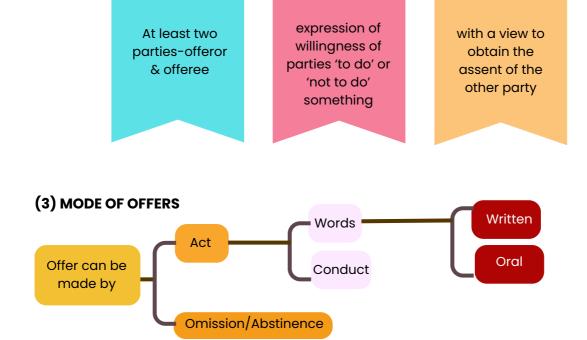
When one person signifies to another his willingness

to do, or to abstain from doing anything

with a view to obtain the assent of that other

to such act or abstinence

#### (2) ESSENTIALS OF THE OFFER/PROPOSAL:



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#### (4) CLASSIFICATION OF OFFER



#### **General offer**

offer made to public at large and anyone can accept by performing the desired act

#### Special/specific offer

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offer made to a specific / ascertained person, & can be accepted only by that specified person

#### **Cross offer**

2 parties exchange identical offers in ignorance of each other's offer at the same time. It is not binding

#### **Counter offer**

offeree offers to qualified acceptance of the offer subject to modifications and variations in the terms of original offer. Counter-offer amounts to rejection of the original offer

# Standing / continuing open offer

An offer of continuous nature which remains open for acceptance over a period of time

#### Important case laws

Name of the case laws	Facts of the case	Decision	
Carlill Vs. Carbolic Smoke Ball Co.	In this famous case, Carbolic smoke Ball Co. advertised in several newspapers that a reward of £100 would be given to any person who contracted influenza after using the smoke balls produced by the Carbolic Smoke Ball Company according to printed directions.	Held, she could recover the amount as by using the smoke balls she had accepted the offer. In terms of Sec. 8 of the Indian Contract Act, anyone performing the conditions of the offer can be considered to have accepted the offer. Until the general offer is retracted or withdrawn,	



#### **SARANSH**

#### THE INDIAN CONTRACT ACT, 1872

Case Laws	Facts of the case	Decision	
	One lady, Mrs. Carlill, used the smoke balls as per the directions of company and even then suffered from influenza.	it can be accepted by anyone at any time as it is a continuing offer.	
Lalman Shukla Vs. Gauri Dutt	Gauri Dutt sent his servant Lalman to trace his missing nephew. He then announced that anybody who traced his nephew would be entitled to a certain reward. Lalman traced the boy in ignorance of this announcement. Subsequently when he came to know of the reward, he claimed it.	Held, he was not entitled to the reward, as he did not know the offer. Section 4 of the Indian Contract Act states that the communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.  In Lalman case, the defendant's nephew absconded from home. The plaintiff who was defendant's servant was sent to search for the missing boy.  After the plaintiff had left in search of the boy, the defendant announced a reward of Rs. 501 to anyone who might find out the boy. The plaintiff who was unaware of this reward, was successful in searching the boy. When he came to know of the reward, which had been announced in his absence, he brought an action against the defendant to claim this reward. It was held that since the plaintiff was ignorant of the offer of reward, his act of bringing the lost boy did not amount to the acceptance of the offer and therefore he was not entitled to claim the reward.	
Boulton Vs. Jones	Boulton had taken over the business of one Brocklehurst, with whom Jones had previous dealings. Jones sent an order for goods to Brocklehurst, which Boulton supplied without informing Jones that the business had changed hands. When Jones found out that the goods had not come from Brocklehurst, he refused to pay for them and was sued by Boulton for the price.	Held: Jones is not liable to pay for the good. It is a rule of law that offer made to a specific / ascertained person can be accepted only by that specified person	

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#### (5) DIFFERENCE BETWEEN OFFER AND INVITATION TO OFFER AND INVITATION TO TREAT

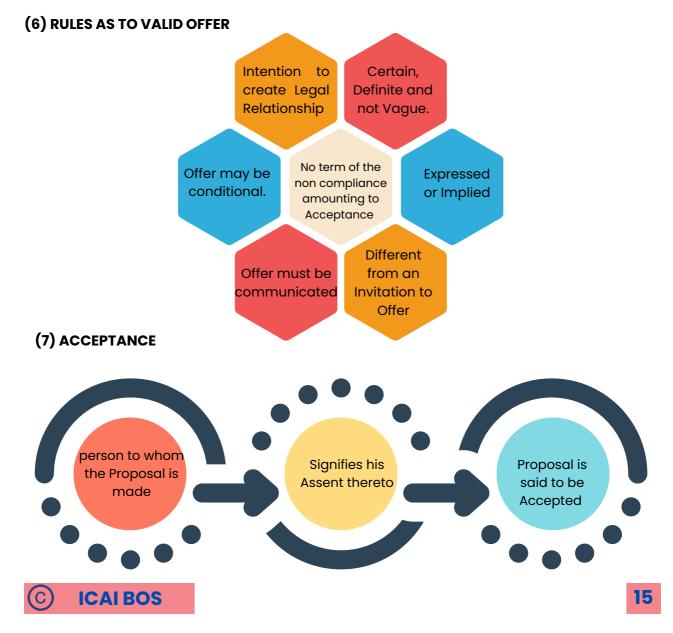
Case Laws	Facts of the case	Decision	
Harvey Vs. Facie	In this case, Privy Council briefly explained the distinction between an offer and an invitation to offer. In the given case, the plaintiffs through a telegram asked the defendants two questions namely, (i) Will you sell us Bumper Hall Pen? and (ii) Telegraph lowest cash price. The defendants replied through telegram that the "lowest price for Bumper Hall Pen is £900". The plaintiffs sent another telegram stating "we agree to buy Bumper Hall Pen at £900". However, the defendants refused to sell the property at the price. The plaintiffs sued the defendants contending that they had made an offer to sell the property at £900 and therefore they are bound by the offer.	Held that the mere statement of the lowest price at which the vendor would sell contained no implied contract to sell to the person who had enquired about the price.	
Mac Pherson Vs. Appanna	The owner of the property had said that he would not accept less than `6000/- for it.	It was held that this statement did not indicate any offer but indicated only an invitation to offer	
Harris Vs. Nickerson	An auctioneer advertised in a newspaper that a sale of office furniture will be held on a particular day. Plaintiff (Harris) with the intention to buy furniture came from a distant place for auction but the auction was cancelled	It was held that plaintiff cannot file a suit against the auctioneer for his loss of time and expenses because the advertisement was merely a declaration of intention to hold auction and not an offer to sell. The auctioneer (Nickerson) does not contract with any one who attends the sale. The auction is only an advertisement to sell but the items are not put for sale though persons who have come to the auction may have the intention to purchase	



#### **SARANSH**

THE INDIAN CONTRACT ACT, 1872

Case Laws	Facts of the case	Decision
Pharmaceutical Society of Great Britain Vs. Boots Cash Chemists Ltd	The goods were displayed in the shop for sale with price tags attached on each article and self-service system was there. One customer selected the goods but the owner refused to sell.	In this case, it was held that display of goods alongwith price tags merely amounts to invitation to treat and therefore if an intending buyer is willing to purchase the goods at a price mentioned on the tag, he makes an offer to buy the goods. Thus, the shopkeeper has the right to accept or reject the same. The contract would arise only when the offer is accepted. Hence there was no contract and customer had no rights to sue the owner.



#### (8) ACCEPTANCE OF AN OFFER

#### **General Rule**

Offer can be
Accepted only by the
person or persons to
whom it is made

#### **Specific Offer**

accepted only by that definite person or particular group of persons to whom it has been made

#### **General Offer**

Accepted by any person by complying with the terms of the Offer

#### (9) LEGAL RULES FOR A VALID ACCEPTANCE



# Case Laws Facts of the case

Case Laws	Facts of the case	Decision	
Felthouse Vs Bindley	F offered by letter to buy a nephews horse, saying:" If I hear no more about it, I shall consider the horse mine. "The nephew did not reply but he told an auctioneer not to sell that particular horse as he had sold it to his uncle. By mistake, the auctioneer sold the horse. F sued for conversion against his nephew.	nephew had not communicated acceptance and there was no	

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#### **SARANSH**

THE INDIAN CONTRACT ACT, 1872

Case Laws	Facts of the case	Decision
Carlill Vs. Carbolic & Smoke Balls Co.	In this famous case Carbolic smoke Ball Co. advertised in several newspapers that a reward of £100 would be given to any person who contracted influenza after using the smoke balls produced by the Carbolic Smoke Company according to printed directions. One lady, Mrs. Carlill, used the smoke balls as per the directions of company and even then suffered from influenza. Here company took the defend that there was no communication of acceptance of an offer by Mrs. Carlill and so there was no contract between them.	In case of a general offer, it is not necessary to communicate the acceptance if it is made by acting upon the terms of the offer.
Neale Vs. Merret	M offered to sell his land to N for £280. N replied purporting to accept the offer but enclosed a cheque for £ 80 only. He promised to pay the balance of £ 200 by monthly installments of £ 50 each.	It was held that N could not enforce his acceptance because it was not an unqualified one
Brogden vs. Metropolitan Railway Co.	Brogden a supplier, sent a draft agreement relating to the supply of coal to the manager of railway Co. viz, Metropolitian railway for his acceptance. The manager wrote the word "Approved" on the same and put the draft agreement in the drawer of the table Intending to send it to the company's solicitors for a formal contract to be drawn up. By an over sight the draft agreement remained in drawer.	Held, that there was no contract as the manager had not communicated his acceptance to the supplier, Brogden

#### (10) RULES FOR COMMUNICATION OF OFFER AND ACCEPTANCE

For Valid Offer and Acceptance



Offer must be communicated to the Offeree

Acceptance
must be
communicated
to the Offeror



#### (11) WHEN COMMUNICATION OF OFFER IS COMPLETE?

Communication of an offer is complete

comes to the knowledge of the person to whom it is made

either by words spoken or written, or it may be inferred from the conduct of the parties

#### **Relevant Case laws**

Case Laws	Facts of the case	Decision		
Lilly White Vs. Mannuswamy	Plaintiff delivered some clothes to drycleaner for which she received a laundry receipt containing a condition that in case of loss, customer would be entitled to claim 15% of the market price of value of the article, Plaintiff lost her new saree.			

#### (12) WHEN IS COMMUNICATION OF ACCEPTANCE COMPLETE?



when put in course of transmission to the Proposer



when it comes to the knowledge of the Proposer

#### (13) COMMUNICATION OF ACCEPTANCE BY POST



when the letter of acceptance is posted

As against the Acceptor:

when the letter reaches the proposer



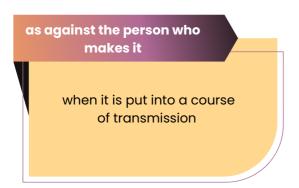
#### (14) ACCEPTANCE OVER TELEPHONE OR TELEX OR FAX

Offer is made by instantaneous communication
Contract is completed

when the acceptance is received by the offeror.

the contract is made at the place where the acceptance is received.

#### (15) WHEN REVOCATION OF OFFER AND ACCEPTANCE IS COMPLETE



whom it is made

when it comes to his knowledge.

#### (16) WHEN A PROPOSAL AND ACCEPTANCE CAN BE REVOKED?



#### **Proposal**

may be revoked at any time before the communication of its acceptance is complete as against the proposer

# STORTERS

#### **Acceptance**

may be revoked at any time before the communication of the acceptance is complete as against the acceptor

#### (17) MODES OF REVOCATION OF OFFER BY



Lapse of specified or reasonable time Death or Insanity of the parties

Non fulfilment of Conditions of Offer Counter Offer

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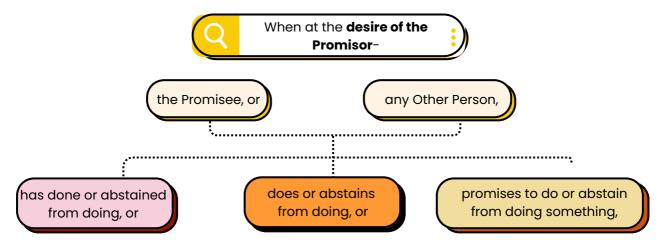
#### **UNIT - 2 & 3**

#### I. Consideration

#### (1) Importance of consideration



#### (2) Meaning of consideration



#### Such an Act or Abstinence or Promise is called Consideration for the Promise

#### (3) Requirements of valid consideration

adequacy of promisee or any move at the desire past or present consideration other person of the promisor or future. not be unlawful, other than the real and not immoral, or opposed Promisor's existing illusory to public policy obligation

#### **Relevant Case Law**

Case Laws	Facts	Decision
Durga Prasad v. Baldeo	D (defendant) promised to pay to P (plaintiff) a certain commission on articles which would be sold through their agency in a market. Market was constructed by P at the desire of the C (Collector), and not at the desire of the D (Promisor)	commission as it was without

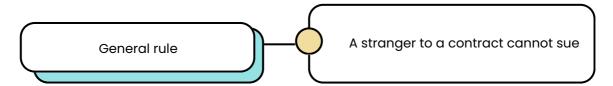
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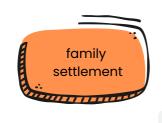
#### THE INDIAN CONTRACT ACT, 1872

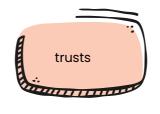
Case Laws	Facts	Decision	
Chinnayya vs. Ramayya	An old lady made a gift of her property to her daughter with a direction to pay a certain sum of money to the maternal uncle by way of annuity. On the same day, the daughter executed a writing in favour of the maternal uncle and agreeing to pay him annuity. The daughter did not, however, pay the annuity and the uncle sued to recover it.	It was held that there was sufficient consideration for the uncle to recover the money from the daughter.	

#### (4) Suit by a Third Party on an Agreement (Doctrine of Privity of Contract)



#### **Exceptions to the said rule**







Suit can be filed by the third Party in the following circumstances







#### (5) Contracts without consideration

Conditions where contract without consideration, is enforceable



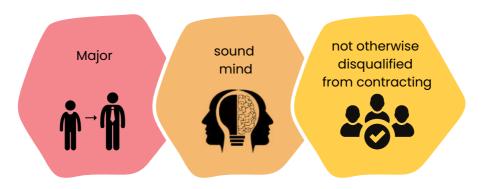
- Agreements made on account of natural love and affection
- Promise to pay time barred debt
- Promise to compensate
- Completed gift
- Bailment
- Charity
- Agency



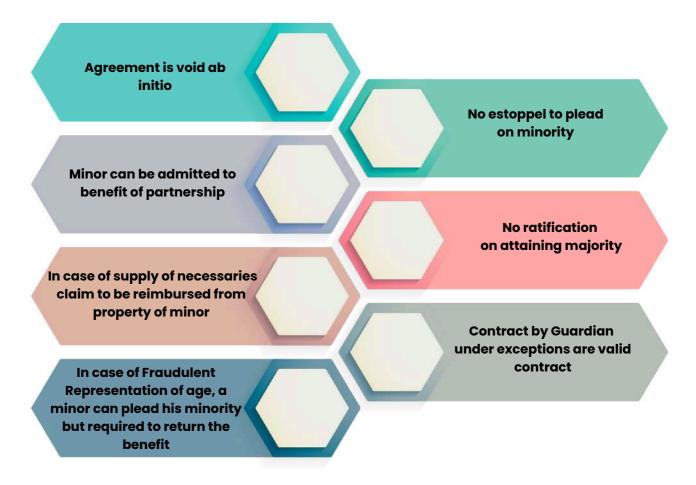
**Relevant Case Law**: In Kedarnath Vs. Gorie Mohammad, it was held that if a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid.

#### II. Competency of parties

#### (1) Persons eligible to make a contract



#### (2) Law relating to Minor's agreement/Position of minor

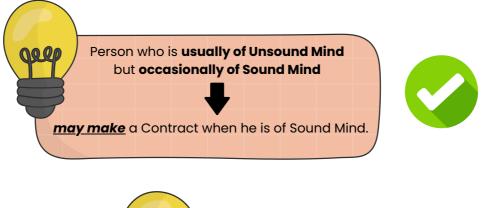


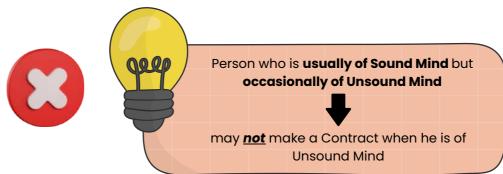
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Case Law	Facts	Decision
Mohori Bibi vs. Dharmo Das Ghose	A, a minor borrowed ₹ 20,000 from B and as a security for the same executed a mortgage in his favour. He became a major a few months later and filed a suit for the declaration that the mortgage executed by him during his minority was void and should be cancelled.	It was held that a mortgage by a minor was void and B was not entitled to repayment of money.
Sain Das vs. Ram Chand	Where there was a joint purchase by two purchaser, one of them was a minor	It was held that the vendor could enforce the contract against the major purchaser and not the minor

#### (3) Position of person of sound mind





#### (4) Position of agreements with persons of unsound mind

While he is of Unsound
 Mind

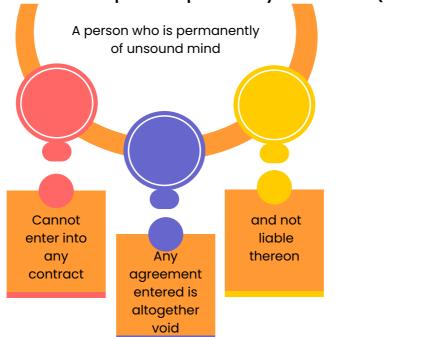
 Cannot enter into any Contract
 Contract entered during this period is altogether Void
 Cannot be held Liable thereon

While he is of sound mind

Can enter into a valid contract

Liable for such contracts

#### (5) Positions of agreements in case of persons of permanently unsound mind (in case of Idiots)



#### (6) Positions of agreements in case of Drunken/Intoxicated person

A Sane Person who is delirious from fever or who is so drunk cannot contract during such state because

• cannot understand the terms of a contract,
• cannot form a rational judgment as to its effect on his interest

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#### (7) Persons disqualified by law

Statutes
disqualify
certain persons
to enter into
contract

- Alien enemies
- Foreign ambassadors
- Convicts
- Insolvents
- Corporations
- Etc.

contracts by such person are Void.

#### **III. Free Consent**

#### (1) Meaning of consent

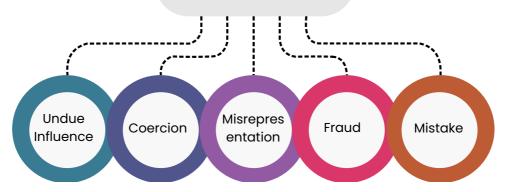
Two or more persons are said to have consented, when

- · they agree upon the same thing
- in the same sense

In absence of consent-Agreement is **void ab initio** 

#### (2) Free Consent

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



#### (3) Agreement caused by coercion

An agreement is said to be caused by **Coercion** if there is-

- Committing of any act which is forbidden by the IPC
- Threatening to commit any act which is forbidden by the IPC
- Unlawful detaining of any property
- Threatening to detain any property

#### (4) Consequences of Coercion

Contract induced by Coercion

the agreement is a contract voidable at the option of the party whose consent was so obtained.



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#### (5) Undue influence

Contract is said to be induced by Undue Influence when-

- Relations subsisting between the Parties are such that,
- One of the Parties is in a position to Dominate the will of the other, and
- The Dominant Party uses that position to obtain an Unfair Advantage over the other

#### (6) Effect of undue influence

#### when agreement caused by undue influence-

- contract is voidable at the option of the party whose consent was obtained
- · contract may be set aside



#### **Relevant Case Law**

In Kirpa Ram vs. Sami-Ud-din Ad. Khan, a youth of 18 years of age, spend thrift and a drunkard, borrowed Rs. 90,000 on a bond bearing compound interest at 2% per mensem (p.m.). It was held by the court that the transaction is unconscionable, the rate of interest charged being so exorbitant.

#### (7) Fraud

Fraud includes any of the following acts				
suggestion, as to a fact which is not true	active concealme nt of a fact	promise made without any intention of performing it	Any other act fitted to deceive	act or omission as to law specially declared to be fraudulent

#### (8) By whom and when fraud is said to be exercised?

Fraud can be committed by-

- a party to a contract, or
- with his connivance or
- by his agent

Act when done with intent to deceive-

- another party thereto or
- his agent, or
- · to induce him to enter into the contract



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#### (9) Effects of fraud



#### (10) Does mere silence amount to fraud?

General Rule- Mere silence as to facts,

- which is likely to affect the willingness of a person,
- to enter into a contract, -is no fraud

Exceptions-Mere silence as to facts,

- where it is the duty of a person to speak, or
- his silence is equivalent to speech, silence amounts to fraud

#### **Relevant Case Laws**

Case Laws	Facts	Decision
Word vs. Hobbs	H sold to W some pigs which were to his knowledge suffering from fever. The pigs were sold 'with all faults' and H did not disclose the fact of fever to W.	Held there was no fraud.
Peek vs Gurney	The prospectus issued by a company did not refer to the existence of a document disclosing liabilities. The impression thereby created was that the company was a prosperous one, which actually was not the case.	' '
Regier V. Campbell Staurt	A broker was asked to buy shares for client. He sold his own shares with disclosing this fact.	Held that the client was entitled to avoid the contract or affirm it with a right to claim secret profit made by broker on the transaction since the relationship between the broker and the client was relationship of utmost good faith.



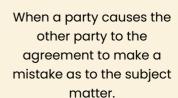
#### (11) Misrepresentation



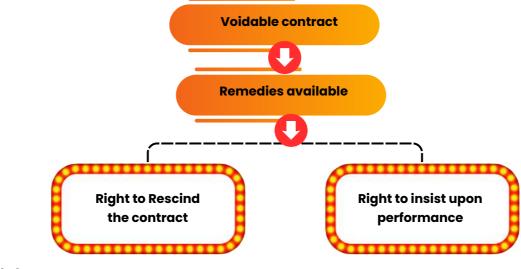
When a person positively states that a fact is true when his information does not warrant it to be so



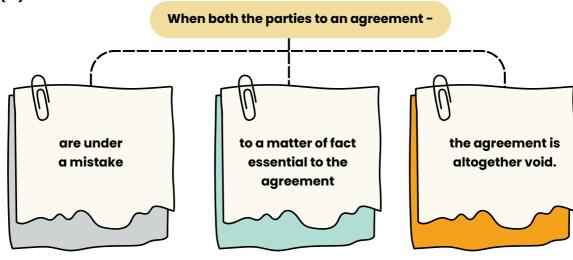
When there is a breach of duty by a person without intention to deceive which brings an advantage to him, and loss to the other;



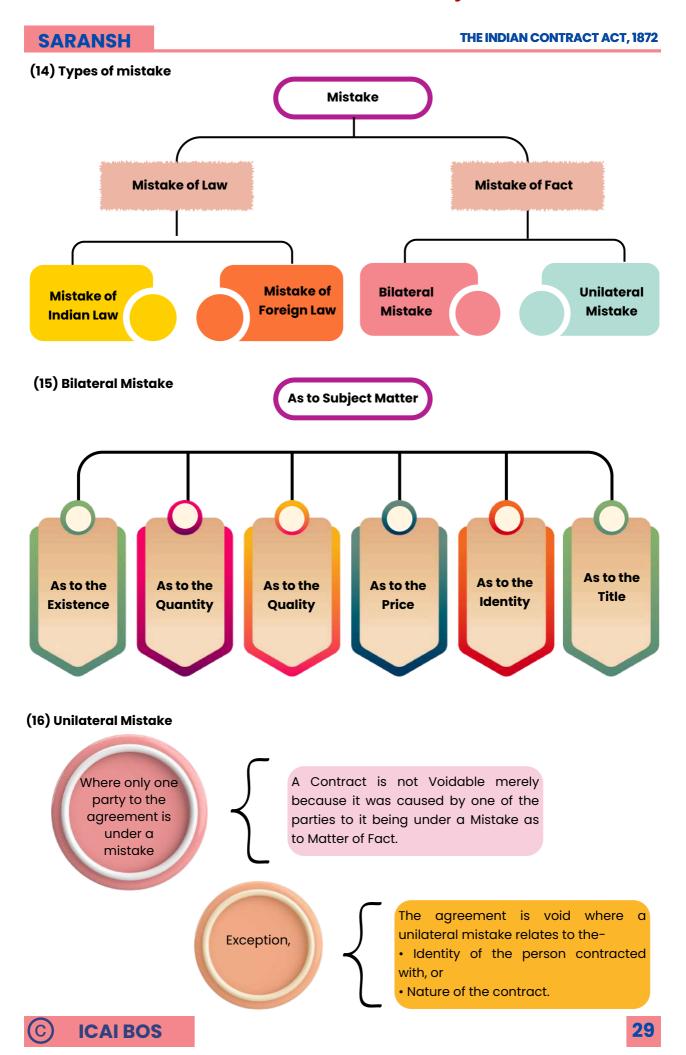
#### (12) Consequences of misrepresentation



#### (13) Mistake







# (17) Effects of mistake

# Nature of Mistake and the nature of Agreement

In Bilateral Mistake -

The agreement is void.

In Unilateral Mistake -

- As to identity of the person contracted with
- As to the nature of contract.
- As to other matter.

- The agreement is void.
- The agreement is void.
- The agreement is not void.

# (18) Remedies under mistake

# Obligation of aggrieved party

He must restore any benefit received by him under the contract to the other party from whom the benefit had been received [Section 64].

# Obligation of other party

The person to whom money has been paid or anything delivered by mistake must repay or return it. [Section 72]

# (19) Differences Coercion and Undue influence

Basis of difference	Coercion	Undue Influence	
Nature of action	It involves the physical force or threat.	It involves moral or mental pressure.	
Involvement of criminal action	It involves committing or threatening to commit any act forbidden by Indian Penal Code or detaining or threatening to detain property unlawfully.	No such illegal act is committed	
Relationship between parties	. Il some sort of relationship between the il between the barties is absoli		
Exercised by whom	Coercion need not proceed from the promisor nor need it be directed against the promisor. It can be used even by a stranger to the contract.	Undue influence is always exercised between parties to the contract.	



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Basis of difference	Coercion	Undue Influence
Enforceability	The contract is voidable at the option of the party whose consent has been obtained by the coercion.	Where the consent is induced by undue influence, the contract is either voidable or the court may set aside or enforce it in a modified form.

# Fraud and Misrepresentation

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

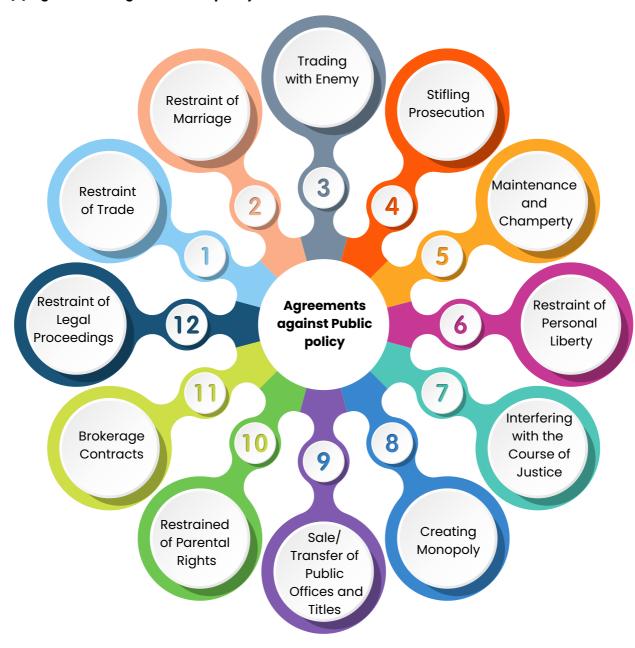
# IV. Legality of Object and Consideration

(1) When there is an unlawful object & unlawful consideration in an agreement, its effect

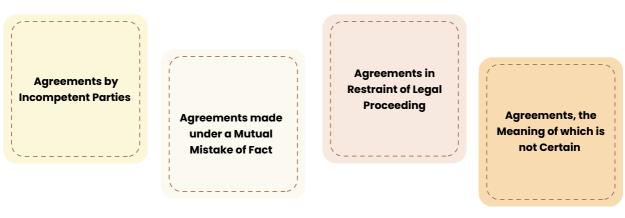
Consideration or Object of an agreement is unlawful, if				
forbidden by law	defeats provision of any law	vision of fraudulent or property of		immoral or opposed to public policy
The Agreement is Void.	The Agreement is Void.	The Agreement is Void.	The Agreement is Void.	The Agreement is Void.



# (2) Agreements against Public policy



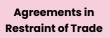
- V. Agreements which are expressly declared void
- (1) Law declares following agreement to be either illegal or void



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Reciprocal Promises to do things Legal and also Illegal Agreements, the Consideration or Object of which is Unlawful

Agreements made without Consideration

Agreements
Contingent on
Impossible Events

Agreements in Restraint of Trade Agreements in Restraint of Marriage

Agreements by way of wager

# (2) Consequences of agreement expressly declared void

Agreements
expressly
declared void /
illegal by the
Contract Act

Void-ab-initio

# **UNIT 4, 5 & 6**

# (1) Meaning of Performance

When the parties to the contract

- -Either perform, or
- -Offer to perform their promises

A contract is said to be performed

# (2) Types of performance of the Contract

# **Actual performance**

- Where a Promisor,
- made an offer of performance,
- to Promisee,
- and the offer has been accepted by the Promisee

# **Attempted Performance**

- Where a Promisor,
- made an offer,
- to the Promisee,
- and the offer has not been accepted by the Promisee

# (3) Effects of the performance of the contract

Actual Performance

- Liability of the Promisor comes to an end with the performance of the Act, and
- · there remains nothing to be done by him

Attempted Performance

- the Promisor is not responsible for nonperformance, and
- have right to claim.





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# (4) Who may demand performance of contract



# (5) Who may perform the contract



# (6) Liability of joint promisor

# General rule-If two or more persons have made a joint promise, all of them must jointly fulfill the promise.

After death of any one of them-

his legal representative jointly with the survivor/survivors

After the death of the last survivor-

the legal representatives of all the original co-promisors

# (7) Rules as to time and place for performance of the promise

Case where	Rule as to performance
Time not specified	Within the reasonable time
Time specified but promise is to be performed without promisee's application	During the usual business hours on that particular day
Time specified but promise is to performed on promisee's application	The promisee must apply for performance at a proper place and within usual business hours
Place not specified	The promisor must apply to the promisee to appoint a reasonable place for the performance and to perform the promise at such place.
Manner for performance	The promise must be performed in the manner and at the time prescribed by the promisee.

**(C)** 

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# (8) Is time an essence of Contract?

Cases, where-	When time is essence of contract
Parties have Expressly agreed	Time is considered to be essence of Contract
Non-performance at the specified time results in an injury to the Party	Time is considered to be essence of Contract
Nature and necessity requires the performance of the Contract within the specified time	Time is considered to be essence of Contract

# (9) Consequences of Non-performance within the specified time

# Cases where time is essence of the contract co

# Cases where time is not essence of a contract

- Contract becomes Voidable at the option of the Promisee
- Contract does not become voidable at the option of the Promisee
- If performance beyond the specified time is accepted by the Promisee. The Promisee cannot claim compensation for any loss caused by nonperformance at the agreed time, unless at the time of acceptance ,he has given a notice to the Promisor of his intention to claim compensation.
- The Promisee is entitled to claim compensation for any loss occasioned to him by non-performance of the promise at the agreed time.

# (10) Impossibility of performance

A contract to do an act which, after the contract is made, becomes

# impossible, or, unlawful

by reason of some event which the promisor could not prevent, - becomes void when the act becomes impossible or unlawful and parties discharged from performance.



# (11) Impossibility existing at the time of contract or Initial Impossibility

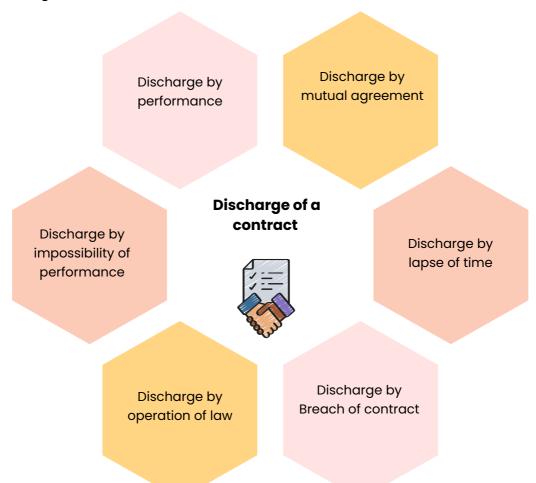
Case	Effects
If the impossibility is known to the parties	Such an agreement is void-ab-initio
If unknown to the parties	Such an agreement is void on the ground of mutual mistake
If known to the promisor only	Such promisor must compensate for any loss which such promisee sustains through the non performance of the promise.

# (12) Supervening impossibility

Case	Effects
Where an act becomes impossible after the contract is made	The contract becomes void when the act becomes impossible.
Where an act becomes unlawful by reason of some event beyond the control of promisor	The contract becomes void when the act becomes unlawful.
Where the promisor alone knows about the impossibility	Promisor must compensate the promisee for any loss which might have suffered on account of non-performance of the promise.
Where an agreement is discovered to be void or where a contract becomes void	Any person who has received any benefit under such agreement or contract is bound to restore it or to make compensation to the person from whom he received it.

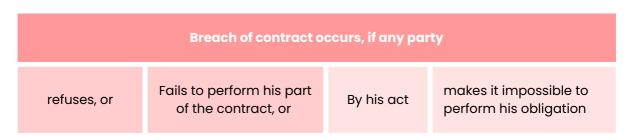


# (13) Discharge of a contract



### II. Breach of contract

(1) When breach of contract take place?

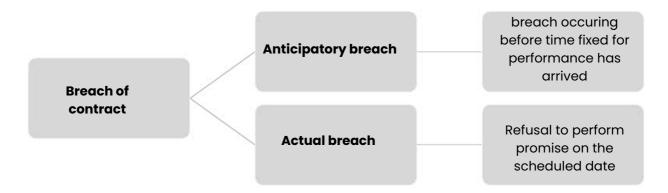


(2) Effects of the Breach of Contract



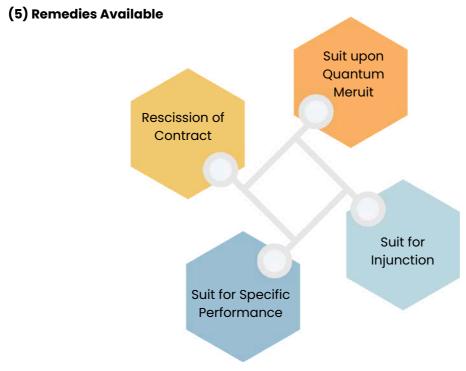


# (3) Types of breach of contract



# (4) Liability for Damages

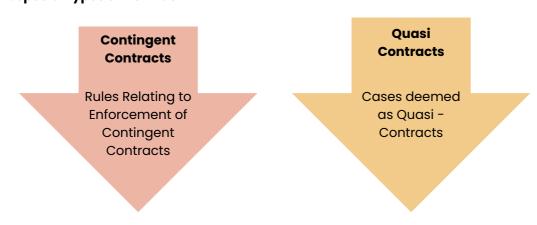




# Relevant case laws

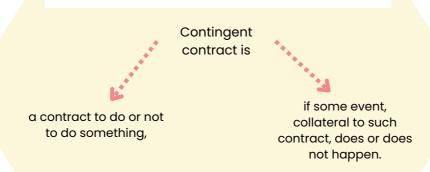
Case laws	Facts	Decision
Hadley Vs. Baxendale	The crankshaft of P's flour mill had broken. He gives it to D, a common carrier who promised to deliver it to the foundry in 2 days where the new shaft was to be made. The mill stopped working, D delayed the delivery of the crankshaft so the mill remained idle for another 5 days. P received the repaired crankshaft 7 days later than he would have otherwise received. Consequently, P sued D for damages not only for the delay in the delivering of the broken part but also for loss of profits suffered by the mill for not having been worked.	The court held that P was entitled only to ordinary damages and D was not liable for the loss of profits because the only information given by P to D was that the article to be carried was the broken shaft of a mill and it was not made known to them that the delay would result in loss of profits.
Gibbons Vs. West Minister Bank	A business man whose credit has suffered will get exemplary damages even if he has sustained no pecuniary loss.	In the case, it was held that a non-trader cannot get heavy damages in the like circumstances, unless the damages are alleged and proved as special damages.

# III. Special types of Contract





# (1) Contingent Contract

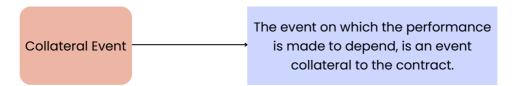


- (2) Essentials of a Contingent Contract
  - (a) Dependence on future event

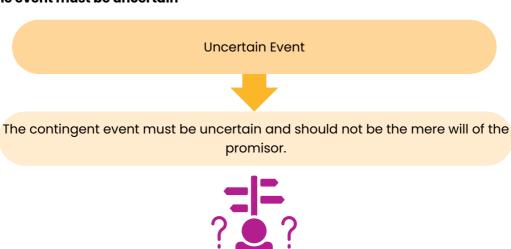
# Dependence on a future event

The performance of a contingent contract is made dependent upon the happening or non-happening of some event. A contract may be subject to a condition precedent or subsequent

(b) 'Event' referred is collateral to the contract



(c) The event must be uncertain





# (3) Rules regarding Contingent contracts



**Rule 1** Enforcement of contracts contingent on an event 'happening'.

**Rule 2** Enforcement of contracts contingent on an event 'not happening'

Rule 3 Contract contingent upon the future conduct of a living person

Rule 4 Contract contingent upon the happening of an uncertain specified event within a fixed time

Rule 5 Contracts contingent upon the non happening of an uncertain specified event within a fixed time.

**Rule 6** Agreement contingent on impossible event.

# (a) Rule 1: Regarding contingent contracts

Enforcement of contracts contingent on an event 'happening'

Where a contingent contract is made to do or not to do anything if an uncertain future event happens,

- it cannot be enforced by law unless and until that event has happened.
- If the event becomes impossible, such contracts become void.

# (b) Rule 2: Regarding contingent contracts

Enforcement of contracts contingent on an event 'not-happening

- Where a contingent contract is made to do or not do anything
- if an uncertain future event does not happen
- it can be enforced only when the happening of that event becomes impossible and not before.



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# (c) Rule 3: Regarding contingent contracts

Contract contingent upon the future conduct of a living person

- Where, the future event on which a contract is contingent is the way in which a person will act at an unspecified time.
- In such a case, the event shall be considered to have become impossible when such person does anything which renders it impossible that he should so act within any definite time or otherwise than under further contingencies.

# (d) Rule 4: Regarding contingent contracts

Contract contingent upon the happening of an uncertain specified event within a fixed time;

- Such type of contracts become void if before the expiry of fixed time
  - o Such event does not happen, or
  - o Such events becomes impossible.

# (e) Rule 5: Regarding contingent contracts

Contract contingent upon the non-happening of an uncertain specified event within a fixed time;

- Such contract can be enforced by law if before the expiry of fixed time-
  - Such event does not happen, or
  - It become certain that such event will not happen.

# (f) Rule 6: Regarding contingent contracts

Agreement contingent on impossible event.

- A contingent agreement to do or not to do anything, if an impossible event happens, is void
- The impossibility of the event may be or may not be known to the parties to the agreement at the time when they entered into it.

# IV. Quasi-Contract

### (1) Meaning

- An obligation imposed by law.
- upon person for the benefit of another.
- In the absence of a contract.

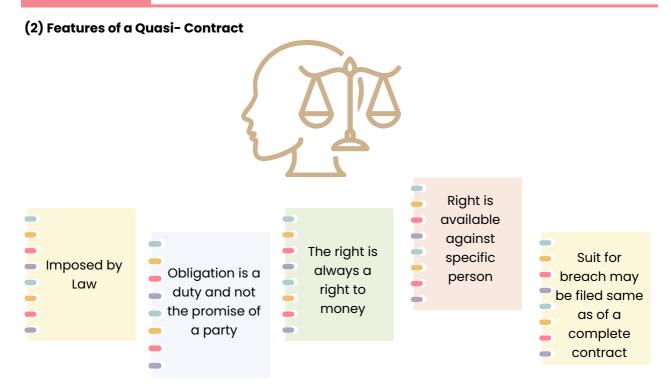
Quasi Contract



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# (3) Difference between quasi contracts and Contingent contract

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

# (4) Types of quasi-contracts

- Claim for necessaries supplied to persons incapable of contracting

  Right to recover money paid for another person

  Obligation of a person enjoying benefits of non-gratuitous act

  Responsibility of a finder of goods

  Liability for money paid or thing delivered by mistake or under coercion
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# (a) Type i of quasi-contracts

# Claim for necessaries supplied to persons incapable of contracting-



- If necessaries are supplied to a person who is incapable of contracting, e.g. minor or a person of unsound mind-
- the supplier is entitled to claim their price from the property of such a person

# (b) Type ii of quasi-contracts

# Right to recover money paid for another person

- A person who has paid a sum of money which another is obliged to pay-
- Such person is entitled to be reimbursed by that other person.

Provided, the payment has been made by him to protect his own interest

# (c) Type iii of quasi-contracts

# Obligation of a person enjoying benefits of non-gratuitous act



- Such an obligation/right to recover arises "where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof,
- the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.



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# (d) Type iv of quasi-contracts

# Responsibility of a finder of goods



- A person who finds goods belonging to another, and takes them into his custody
- there such person is subject to the same responsibility as a bailee

# (e) Type v of quasi-contracts

Liability for money paid or thing delivered by mistake or under coercion



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

# (5) Remedy on breach of quasi-contract

When the obligation created by the quasi-contract is not discharged-

 there the injured party is entitled to receive the compensation same as defaulted party had contracted to discharge as it had broken his contract.





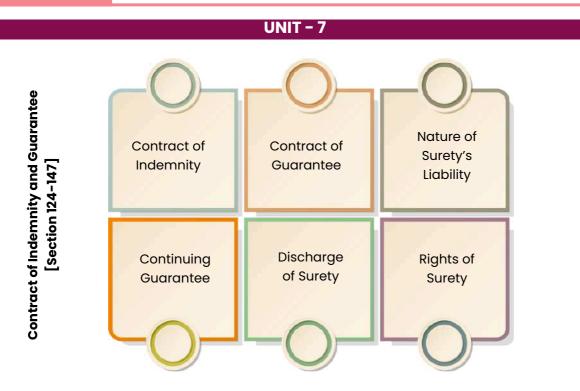
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### Relevant case laws

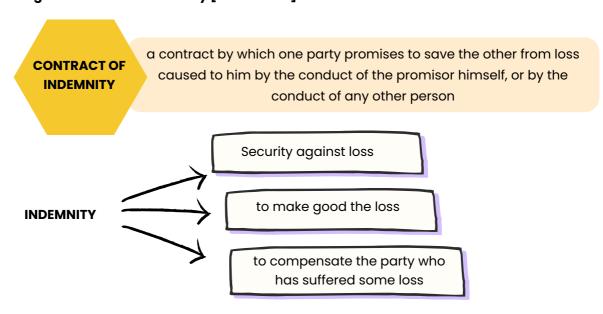
Case laws	Facts	Decision
ShyamLal vs. State of U.P	'S' a government servant was compulsorily retired by the government. He filed a writ petition and obtained an injunction against the order. He was reinstated and was paid salary but was given no work and in the mean time government went on appeal.	The appeal was decided in favour of the government and 'S' was directed to return the salary paid to him during the period of reinstatement
Hollins vs. Howler L. R. & H. L.	H' picked up a diamond on the floor of 'F's shop and handed over the same to 'F' to keep till the owner was found. In spite of the best efforts, the true owner could not be traced. After the lapse of some weeks, 'H' tendered to 'F' the lawful expenses incurred by him and requested to return the diamond to him. 'F' refused to do so.	Held that 'F' must return the diamond to 'H' as he was entitled to retain the goods found against everybody except the true owner.
Trikamdas vs. Bombay Municipal Corporation	T' was traveling without ticket in a tram car and on checking he was asked to pay Rs.5/- as penalty to compound transaction. T filed a suit against the corporation for recovery on the ground that it was extorted from him.	The suit was decreed in his favour.

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# 1. Meaning of Contract of Indemnity [Section 124]



To indemnify means to compensate or make good the loss. Thus, under a contract of indemnity the "existence of loss" is essential. Unless the promisee has suffered a loss, he cannot hold the promisor liable on the contract of indemnity

# 2. Parties to Contract of Indemnity





who is promised to be saved against the loss



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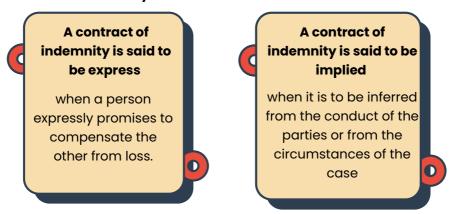
**Example**: Vishal may contract to indemnify Vibha against the consequences of any proceedings which Karan may take against Vibha in respect of a sum of R5000/- advanced by Karan to Vibha. In consequence, when Vibha who is called upon to pay the sum of money to Karan fails to do so, Karan would be able to recover the amount from Vishal as provided in section 124 of the Indian Contract Act, 1872.

# 3. Scope of Contract of Indemnity



Loss occasioned by an accident not caused by any person, or an act of God/ natural event, is not covered.

# 4. Mode of Contract of Indemnity



### 5. Rights of Indemnity Holder when Sued [Section 125]

The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor/indemnifier—

all damages which he may be compelled to pay in any suit

all costs which he may have been compelled to pay in bringing/ defending the suit and

all sums which he may have paid under the terms of any compromise of suit.

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**Commencement of liability of an indemnifier-** as soon as the liability of the indemnity holder becomes absolute and certain (as per various judicial pronouncements)

**Example**: Vishal may contract to indemnify Vibha against the consequences of any proceedings which Karan may take against Vibha in respect of a sum of R5000/- advanced by Karan to Vibha. In consequence, when Vibha who is called upon to pay the sum of money to Karan fails to do so, Karan would be able to recover the amount from Vishal as provided in section 124 of the Indian Contract Act, 1872. Thus, as soon as Vibha is called upon to pay the sum of money to Karan (i.e the loss has become certain), the liability of Vishal arises.

# 6. Meaning of Contract of Guarantee [Section 126]

Contract of Guarantee

a contract to perform the promise made or discharge the liability, of a third person in case of his default



#### **Parties to Contract of Guarantee**

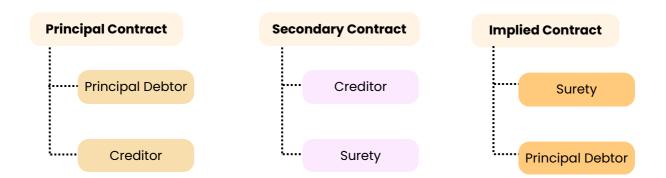
Three parties are involved in a contract of guarantee



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# **Contract of Guarantee (Tripartite Agreement)**



# 7. Essential Features of a Guarantee

**Principal Debt** 

there should be someone liable as a principal debtor and the surety undertakes to be liable on his default. If there is no principal debt, there can be no valid guarantee

- A guarantee without consideration is void, but there is no need for a direct consideration between the surety and the creditor
- consideration received by the principal debtor is sufficient consideration to the surety for giving the guarantee
- past consideration is no consideration for the contract of guarantee
- even if the principal debtor is incompetent to contract, the guarantee is valid. But, if surety is incompetent to contract, the guarantee is void

Consideration

**Existence of a liability** 

There must be an existing liability or a promise whose performance is guaranteed. The liability must be legally enforceable and not time barred



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No misrepresentation or concealment [Section 142 and 143]

- Any guarantee which has been obtained by the means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid (section 142)
- Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances, is invalid (section 143)

Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join

Joining of the other co-sureties

[Section 144]

Writing not necessary
[Section 126]

guarantee may be either oral or written

# 8. Types of Guarantees

Specific Guarantee

Guarantee which extends to a single debt/ specific

The surety's liability comes to an end when the guaranteed debt is duly discharged or the promise is duly performed Continuing Guarantee

Guarantee which extends to a series of transaction

it applies not to a specific number of transactions but to any number of transactions and makes the surety liable for the unpaid balance at the end of the guarantee

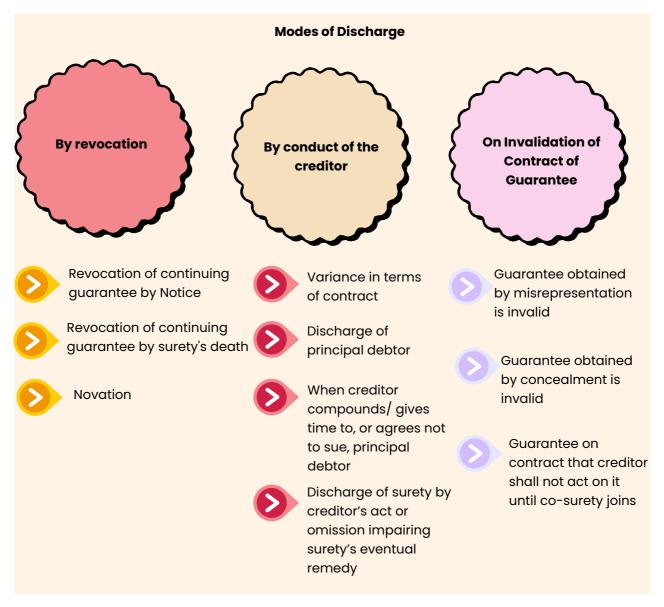
A surety's liability continues until the revocation of the guarantee.



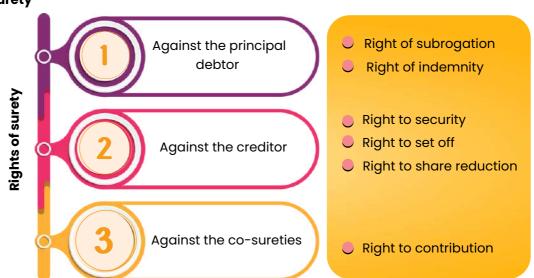
# 9. Distinction between a Contract of Indemnity and Contract of Guarantee

S. No	Point of distinction	Contract of Indemnity	Contract of Guarantee
1.	Number of parties to the contract	There are only two parties indemnifier [promisor] and indemnified [promisee]	There are three parties- creditor, principal debtor and surety
2	Nature of liability	The liability of the indemnifier is primary and unconditional	The liability of the surety is secondary and conditional as the primary liability is that of the principal debtor
3.	Time of liability	The liability of the indemnifier arises only on the happening of a contingency	The liability arises only on the non-performance of an existing promise or non- payment of an existing debt.
4.	Time to Act	The indemnifier need not act at the request of indemnity holder	The surety acts at the request of principal debtor
5.	Right to sue third party	Indemnifier cannot sue a third party for loss in his own name as there is no privity of contract. Such a right would arise only if there is an assignment in his favour.	Surety can proceed against principal debtor in his own right because he gets all the right of a creditor after discharging the debts.
6.	Purpose	Reimbursement of loss	For the security of the creditor
7.	Competency to contract	All parties must be competent to contract	All parties must be competent to contract

# 10. Discharge of Surety



# 11. Rights of Surety



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# Example:

1: Asha and Vidushi are very good friends. During the pandemic time, Vidushi started facing financial difficulties. Both Asha and Vidushi used to buy groceries from Alpha stores. Asha promises to pay Alpha stores for all groceries bought by Vidushi for a period of 12 months if Vidushi fails to pay. In the next three months, Vidushi buys ₹2000/- worth of groceries. After 3 months, Asha revokes the guarantee by giving a notice to Alpha stores. Vidushi further purchases R1000 of groceries. Vidushi fails to pay. Asha is not liable for ₹1000/- of purchase that was made after the notice but she is liable for ₹2000/- of purchase made before the notice.

2: Ayush, Bikram and Chandra, as sureties for Devinder, enter into three several bonds, each in a different penalty, namely, Ayush in the penalty of ₹1,00,000, Bikram in that of ₹2,00,000, Chandra in that of ₹4,00,000, conditioned for Devinder's duly accounting to Vishal. Devinder makes default to the extent of ₹3,00,000. Ayush, Bikram and Chandra are each liable to pay ₹1,00,000.

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#### **UNIT 8** Bailment and Pledge [Section 148-181] Bailment [Section 148-171] Pledge [Section 172-181] Pledge by **Duties and** General lien **Duties and** Pawnee Pawnor Finder of Mercantile Rights of Rights of and Rights Rights Goods Agent **Bailor** particular lien Bailee

# 1. MEANING OF BAILMENT [SECTION 148]



upon a contract, that the goods shall, when the purpose is accomplished, be returned or otherwise disposed

# **PARTIES TO BAILMENT**



# Example:

Mr. Pankaj delivers his car to Mr. Yash's garage for repair. Here, Mr. Pankaj is the bailor and Mr. Yash is the bailee.



# 2. ESSENTIAL ELEMENTS OF BAILMENT

#### Contract

- · express or implied
- no consideration is necessary to create a valid contract of bailment



# **Delivery of goods**

- delivery of goods from one person to another
- may be Actual Delivery or Constructive Delivery



# **Purpose**

- goods are delivered for some purpose
- purpose may be express or implied



#### **Possession**

- · possession of goods changes
- change of possession does not lead to change of ownership



# **Return of goods**

• Bailee is obliged to return the goods



**Deposit of money in a bank** is not bailment since the money returned by the bank would not be identical currency notes. **Depositing ornaments in a bank locker** is not bailment, because ornaments are kept in a locker whose key are still with the owner and not with the bank.

#### 3. DUTIES OF BAILOR



# Disclose known facts

- GRB- bailor is bound to disclose faults which he is aware of
- NGB-if goods are bailed for hire, bailor is responsible for such damage, whether he was or was not aware of the fault



#### **Bear necessary expenses**

- GRB-bailor shall repay to the bailee the necessary and extraordinary expenses incurred by him
- NGB- bailor is liable to pay extraordinary expenses incurred by the bailee



#### **Indemnify** bailee

When goods are lent gratuitously and bailor terminates the bailment before the expiry of the period of bailment, he must compensate the bailee for the loss suffered by the bailee that is in excess of the benefit received



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#### **Defective title**

 Indemnify for loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment.



### Bound to accept the goods

 When the bailee return goods after the time of bailment has expired or the purpose of bailment has been accomplished.

Here, GRB stands for Gratuitous bailment and NGB stands for Non gratuitous bailment

# 4. DUTIES OF BAILEE

# Dake reasonable care of the goods [Section 151 & 152]

• As a man of ordinary prudence would

# No unauthorized use of goods [Section 153 & 154]

- If bailee use the goods bailed, which is not according with terms and conditions of the bailment,
  - (i) he is liable to compensate the bailor for any loss of goods,
  - (ii) the contract of bailment is voidable at the option of the bailor

# No mixing of bailor's goods with his own [Section 155, 156 & 157]

- Mixing with consent both parties shall have an interest in proportion to their respective shares in the mixture thus produced
- Mixing without consent- if goods can be separated, the property in the goods remain in the parties respectively; but the bailee is bound to bear the expense of separation and any damage arising from the mixture
- Mixing without consent- if goods cant be separated, bailor is entitled to be compensated by the bailee for loss of the goods

# D To return any extra profit accruing from goods bailed [Section 163]

 Bailee has to deliver to the bailor any increase or profit which may have accrued from the goods bailed

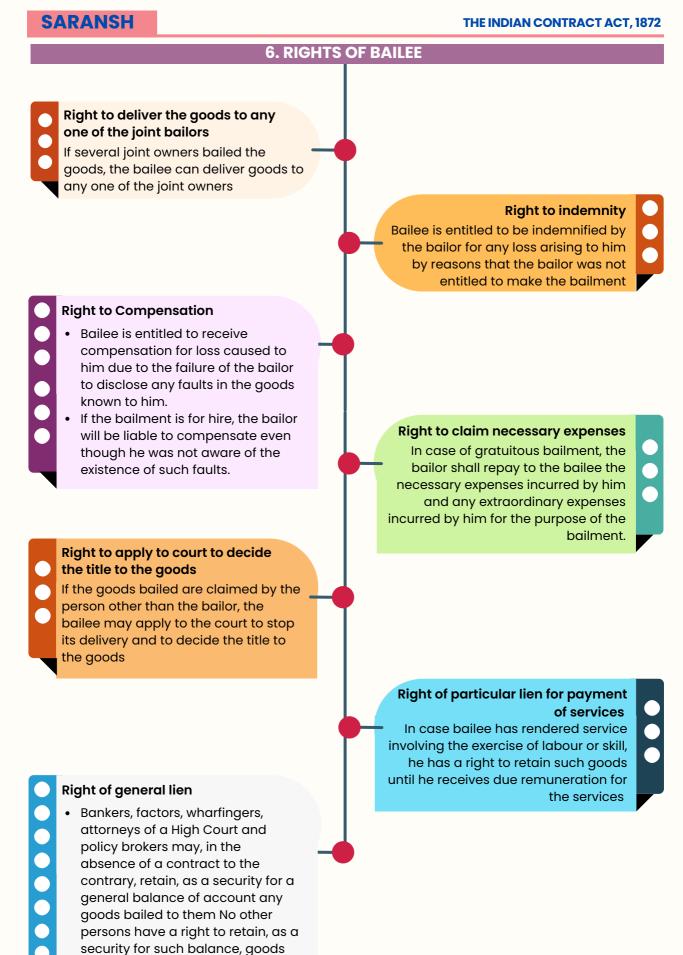
# No adverse title

 Bailee must hold the goods on behalf of and for the bailor. He cannot deny the title of the bailor

## **5. RIGHTS OF BAILOR**

- Right to terminate the bailment
- Right to demand back the goods at any time
- Right to file a suit against any wrong doer
- Right to file a suit for enforcement of duties imposed upon a bailee
- Right to claim compensation





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bailed to them, unless there is an express contract to the effect

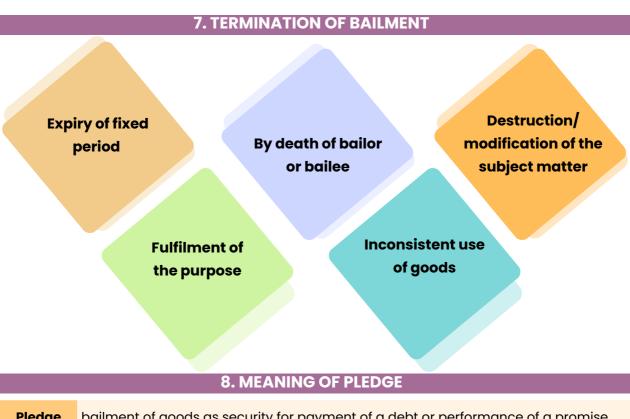
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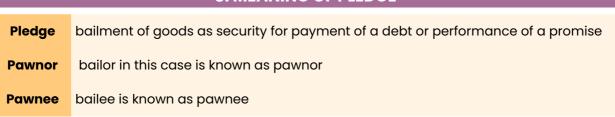
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#### **Example**

1: Mrs. Smita has inherited a huge diamond from her grandmother. She delivers the rough diamond to Panna Laal Jewellers to be cut and polished, which is accordingly done. The jewellers are entitled to retain the stone till it is paid for the services they have rendered.

2: Smita borrows ₹50,000/- from the bank without security and subsequently again borrows another ₹10,000/- but with security of say certain jewellery. In this illustration, even where Smita has returned ₹10,000/- being the second loan, the banker can retain the jewellery given as security to the second loan towards the first loan which is yet to be repaid.







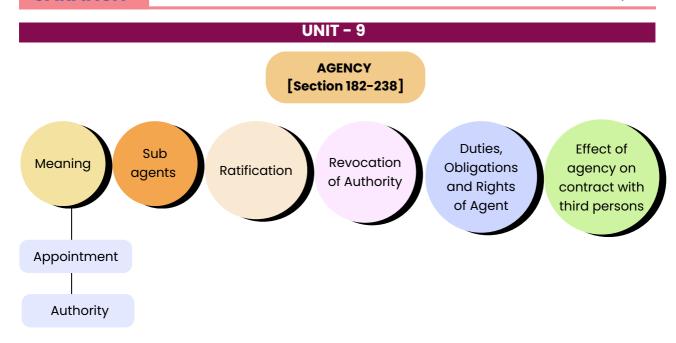
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# 9. DISTINCTION BETWEEN BAILMENT AND PLEDGE

S. No	Basis of Distinction	Bailment	Pledge
1.	Meaning	Transfer of goods by one person to another for some specific purpose is known as bailment.	Transfer of goods from one person to another as security for repayment of debt is known as the pledge
2.	Terms Applicable	The person delivering the goods under a contract of bailment is called as "Bailor".  The person to whom the goods are delivered under a contract of bailment is called as "Bailee"	The person who delivers the good as security is called the "Pawnor".  The person to whom the goods are delivered as security is called the "pawnee".
3	Purpose	Bailment may be made for any purpose (as specified in the contract of bailment, eg: for safe custody, for repairs, for processing of goods).	Pledge is made for the purpose of delivering the goods as security for payment of a debt, or performance of a promise
4.	Consideration	The bailment may be made for consideration or without consideration.	Pledge is always made for a consideration.
5.	Right to sell the goods	The bailee has no right to sell the goods even if the charges of bailment are not paid to him. The bailee's rights are limited to suing the bailor for his dues or to exercise lien on the goods bailed.	The pawnee has right to sell the goods if the pawnor fails to redeem the goods.
6.	Right to use of goods	Bailee can use the goods only for a purpose specified in the contract of bailment and not otherwise.	Pledgee or Pawnee cannot use the goods pledged.

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# Agency Rule of Agency He who acts through another does the act himself The self of Agency Qui facit per alium, facit per alium, facit per self the law of agency

# **Relevant Terms**

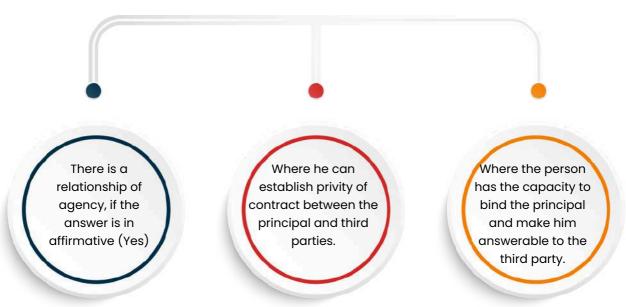
#### Agency: Not defined in the Act. Its Agent: **Principal:** used to describe the A person employed to do A person for whom such relationship between one any act for another or to act is done or who is so person and another. The represent another in represented [Section 182]. first mentioned person dealing with the third brings the second persons [Section 182]. mentioned person into legal relation with others.



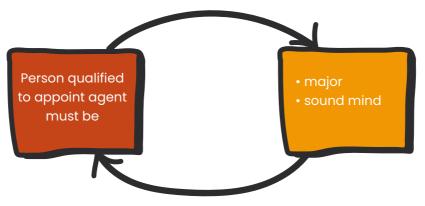
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# **Test of Agency**



# 2. WHO MAY EMPLOY AN AGENT [SECTION 183]



# 3. WHO MAY BE AN AGENT [SECTION 184]

any person

even a minor or a person of unsound mind

his act shall bound the principle

As a rule of caution, a minor or a person of unsound mind should not be appointed as an agent because he is incompetent to contract and in case of his misconduct or negligence, the principal shall not be able to proceed against him.

**Example:** Ajay appoints Bijay who is a minor, to sell his bike for not less than ₹60,000. However, Bijay sells it for ₹40,000. Ajay will be held bound by the transaction and further shall have no right against Bijay for claiming the compensation for having not obeyed the instructions, since Bijay is a minor and a contract with a minor is 'void-ab-initio'.

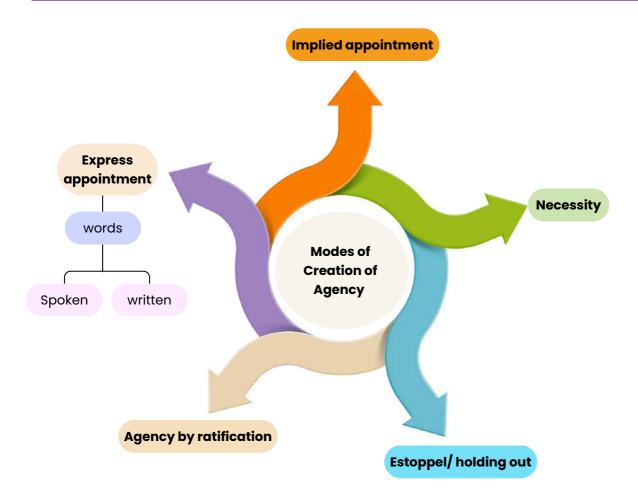
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# A. REQUIREMENT OF CONSIDERATION SECTION 185 Consideration for creation of Agency The acceptance of the office of an agent is regarded as a sufficient consideration for the appointment

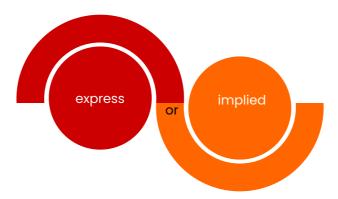
# **5. CREATION OF AGENCY**





# 6. THE AUTHORITY MAY BE EXPRESS OR IMPLIED [SECTION 186]

Authority of an agent may be



# Definitions of express and implied authority [Section 187]

# **Express Authority:**

Given by words, spoken or written

# **Implied Authority:**

inferred from the circumstances of the case, conduct of the parties and things spoken or written, or in the ordinary course of dealing

#### **Example**

- 1: A is residing in Delhi and he has a house in Kolkata. A authorizes B under a power of attorney, as caretaker of his house. Agency is created by express agreement.
- 2: If a person realizes rent and gives it to the landlord, he impliedly acts for the landlord as an agent.
- 3: Mr. A owns a shop in Laxmi Nagar, East Delhi, living himself in Gurugram and so visiting the shop occasionally. The shop is managed by F, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. F has an implied authority from A to order goods from C in the name of A for the purposes of the shop.



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#### 7. NECESSITY

An agency of necessity

arises due to some emergent circumstances In such case, a person is authorised to do what he cannot do in ordinary circumstances For that he acquires an extra-ordinary or special authority to prevent his principal from loss

**Example:** Rajkumar has a farm in which Sevakram is the security guard. During visit of Rajkumar to USA, huge fire was caught in the farm. Sevakram becomes an agent of necessity for Rajkumar so as to save the property from being destroyed by fire. Rajkumar (the principal) will be bear up all the expenses, which Sevakram (his agent of necessity) incurred to put out the fire and save the farm from destruction during Rajkumar's absence from the country.

#### 8. AGENCY BY ESTOPPEL [SECTION 237

When an agent has without authority -

- done acts or
- incurred obligations
   to third persons on behalf of his principal

the principal is bound by such

- acts or
- obligations

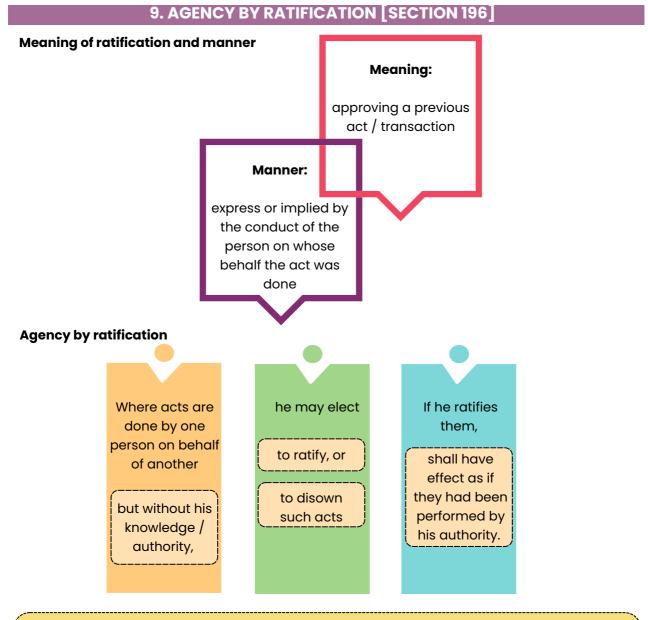
if he has by his words /
conduct induced such
third persons to
believe that such acts
and o obligations were
within the scope of the
agent's authority

#### **Example:**

Mr. P (the principal) for several months made Sukhdev, to buy goods on credit from a nearest provision store on his behalf and has paid for the goods bought by Sukhdev. Here P cannot later refuse to pay for the goods purchased from the provision store, who had supplied goods on credit to Sukhdev in the belief that he was P's agent and was buying the goods on behalf of P. In the given case, P is estopped from now asserting that Sukhdev is not his agent because on earlier occasions he permitted provision dealer to believe that Sukhdev was his agent and so he had acted in that belief.



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#### Example:

X is Y's agent. He (X) on 10th January 2021 purchased goods from Z on credit without seeking Y's permission. After that, on 20th January 2021, Y tells X that he (Y) will accept responsibility to pay for the purchases although at the time of purchase X had no authority to buy on credit. Y's subsequent statement on 20th January 2021 amounts to a ratification of the agent's (X's) purchase of goods on 10th January 2021.

#### **Essentials of Ratification**

- Ratification may be expressed or Implied [Section 197]
- Knowledge requisite for valid ratification [Section 198]
- Effect of ratifying unauthorized act forming part of a transaction [Section 199]
- Ratification of unauthorized act cannot injure third person [Section 200]
- Ratification within reasonable time
- Communication of Ratification



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#### **Example:**

- 1. Abhi, without B's authority, lends B's money to Mr. C. Afterwards B accepts interests on the money from C. B's conduct implies a ratification of the loan.
- 2. Abhi has an authority from Mr. Puri to buy certain goods at the market rate. He buys at a higher rate but Mr. Puri accepts the such transaction. Afterwards, Mr. Puri comes to know that the goods purchased by Abhi for him belonged to Abhi himself. The ratification is not binding on Mr. Puri. If, however the alleged principal (Mr. Puri) is prepared to take the risk of what the purported agent, Abhi has done, he can choose to ratify without full knowledge of facts.
- 3. Abhi, not being authorized thereto by B, demands on behalf of B, the delivery of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

#### 10. EXTENT OF AGENT'S AUTHORITY SECTION 188-189

#### The agent can bind the principal

only if he acts within the scope of his authority

#### The extent of an agent's authority, expressed or implied is determined by

the nature of the act / the business he is appointed to do things which are incidental to the business / are usually done in the course of such business, the usage of trade / business.

#### nature or extent of the agent's authority, will include

every lawful thing necessary for the purpose of carrying it out, every lawful thing justified by various customs of trades, in an emergency, such acts for the purpose of protecting the principal from loss, will be done by a person of ordinary prudence in his own case under similar circumstances.

#### agent's authority is governed by two principles -

in normal circumstances, and in emergency

\* An agent who has authority for sale of goods, may repair it if necessary.



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#### **Example:**

1. A is employed by B, residing in UK, to recover at Mumbai a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt and may give a valid discharge for the same.

2. A consigns perishable goods to B at Srinagar, with directions to send them immediately to C, at Tamil Nadu. B may sell the good if they begin to perish before reaching its destination.

#### 11. PROVISIONS RELATED TO SUB- AGENT [SECTION 190-193]

#### Sub-Agent [Section 190-193]







#### **Appointment of Sub-agent**

based on the Latin principle delegatus non potest delegare

#### **Appointment**

General principle



An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally.

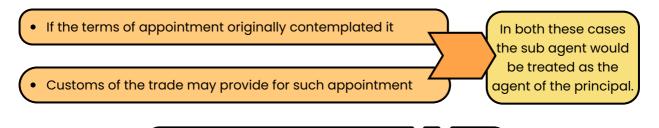
unless by the
ordinary custom of
trade a sub-agent
may, or from the
nature of the agency,

a sub-agent must, be employed.



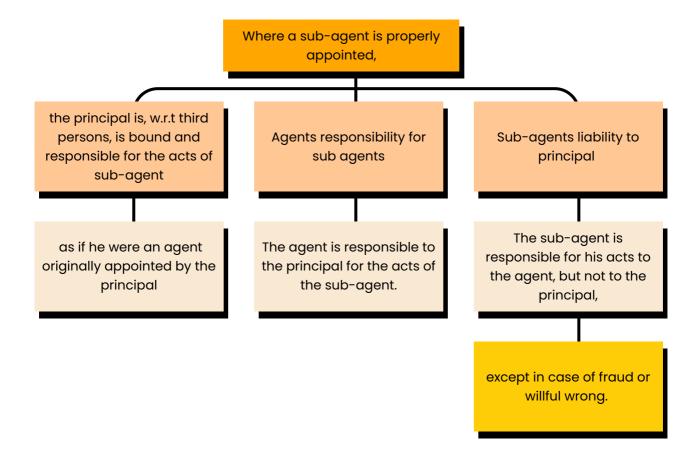
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#### Exception where an agent can appoint sub-agent



Where in the course of the agent's employment, unforeseen emergency arise which leads to delegate the authority given to him by the principal.

#### Representation of Principal by Sub-agent properly appointed [Section 192]



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Agent's responsibility for sub-agent appointed without authority [Section 193]

Where an agent, without having authority to do so, appointed a person to act as a sub-agent

- the agent stands towards such person in the relation of a principal to an agent,
- is responsible for his acts both to the principal and to third persons;
- the principal is not represented by or responsible for the acts of the sub agent,
- the sub agent is not responsible to the principal at all.
- He is answerable only to the agent.

**Example:** Mr. A, a carrier, agreed to carry 60 bags of cotton waste from Morvi to Bhavnagar by a truck. Mr. A asked Mr. B, another carrier, to carry the goods. The goods were damaged in transit. Held, Mr. A was liable even though it was proved that Mr. B was the carrier.

#### 12. PROVISION RELATED TO SUBSTITUTED AGENTS [SECTION 194-195]

#### **Substituted Agent**



person appointed by the agent-

 to act for the principal



in the business of agency-

 with the knowledge and consent of the principal



Substituted agents are **not**:

sub agents



Substituted agents are:

 agents of the principal

Relation between principal and person duly appointed by agent to act in business of agency

Where an agent,

- holding an express /implied authority
- to name another person
- to act for the principal
- in the business of the agency

named another person accordingly,

such person is

- · not a sub-agent,
- but an agent of the principal
- for such part of the business of the agency as is entrusted to him

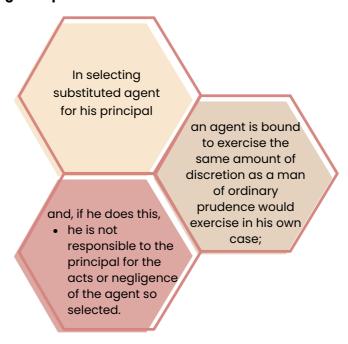


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THE INDIAN CONTRACT ACT, 1872

**Example:** Amir directs Badrinath, his lawyer, to sell his estate by auction, and to employ an auctioneer for the purpose. Badrinath names Chaman, an auctioneer, to conduct the sale. Chaman is not a sub-agent, but is A's agent for the conduct of the sale.

#### Agent's duty in naming such person



**Example:** Ansh instructs Bijay, a merchant, to buy a ship for him. Bijay hires a ship surveyor of good reputation to choose a ship for Ansh. The surveyor makes the choice casually and the ship turns out to be unseaworthy and is lost. Bijay is not, but the surveyor is, responsible to Ansh.

#### 13. DIFFERENCE BETWEEN A SUB-AGENT AND A SUBSTITUTED AGENT

S. No	Point of distinction	Sub Agent	Substituted Agent
1.	On the basis of assigned work	does his work under the control and directions of agent.	works under the instructions of the principal.
2.	Delegation of duties	The agent not only appoints a sub-agent but also delegates to him a part of his own duties.	The agent does not delegate any part of his task to a substituted agent.
3.	Relation with the principal	. ,	Privity of contract is established between a principal and a substituted agent.



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S. No	Point of distinction	Sub Agent	Substituted Agent
4.	Liability towards agents	The sub-agent is responsible to the agent alone and is not generally responsible to the principal.	A substituted agent is responsible to the principal and not to the original agent who appointed him
5.	Liability towards principle	The agent is responsible to the principal for the acts of the subagent.	The agent is not responsible to the principal for the acts of the substituted agent.
6	Right of action for receiving remuneration	The sub-agent has no right of action against the principal for remuneration due to him.	The substituted agent can sue the principal for remuneration due to him.
7.	Improper appointment	Sub-agents may be improperly appointed.	Substituted agents can never be improperly appointed.
8.	Liability of agent on their appointments	The agent remains liable for the acts of the sub-agent as long as the sub-agency continues.	The agent's duty ends once he has named the substituted agent.

#### 14. DUTIES AND OBLIGATIONS OF AN AGENT

Duty to execute Mandate order of principle

Conduct business in accordance with the directions given by the principal

Duty to communicate with the principal

Duty to avoid conflict of interest

Duty not to make secret profit

Duty to remit sums

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#### **Example:**

- 1. Ajeet, an agent is engaged for managing the business of B, in which it is a custom to invest money at hand for interest. If Ajeet omits to make such investment he must indemnify B for the losses i.e. for the interest B would have obtained for such investment.
- 2. Ajeet, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making proper and usual enquiries as to the solvency of B. B, at the time of such sale is insolvent. Ajeet must compensate his principal for the loss sustained by him.
- 3. Ajeet directs B to sell his estate. B buys the estate for himself in the name of C. Ajeet, on discovering that B has bought the estate for himself, may repudiate the sale if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.
- 4. Ajeet directs B, his agent, to buy a certain house for him. B tells Ajeet it cannot be bought, and buys the house for himself. Ajeet may, on discovering that B has bought the house, compel him to sell it to Ajeet at the price he gave for it.

#### 15. RIGHTS OF AN AGENT

#### **Rights of an Agent**

- Right to retain out of sums received on principal's account
- Right to remuneration
- Agent's lien on principal's property
- Right of indemnification for lawful acts
- Right of indemnification against acts done in good faith

**Example:** 1. Ashu employs B to recover ₹1,00,000 from C. Because of B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

- 2. Ashu residing in Delhi, appoints 'B' from Mumbai as an agent to sell his merchandise. As a result 'B' contracts to deliver the merchandise to various parties. But Ashu fails to send the merchandise to B and B faces litigations for non- performance. Here, Ashu is bound to protect B against the litigations and all costs, expenses arising of that.
- 3. Where P appoints Ashu as his agent and directs him to sell certain goods which in fact turned out to be not those belonging to P and if third parties sue Ashu for this act, Ashu is entitled for reimbursement and indemnification for such act done in good faith.
- 4. Ashu employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. Ashu is not liable to indemnify B for those damages.
- 5. Ashu employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskillfully put up, and B is in consequence hurt. Ashu must compensate B.

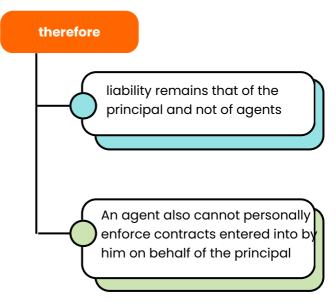


#### 16. PRINCIPAL'S LIABILITY TO THIRD PARTIES [SECTION 226-229]



#### General rule

As there is no privity of contract and passing of consideration between the agent and third party



#### Conditions when principal is liable for the acts of the agents

- Principal liable for the acts of agents which are within the scope of his authority
  - When an agent does more than he is authorised to do, so much only of what he does as is within his authority is binding as between him and his principal
    - Principal not bound when excess of agent's authority is not separable
  - Any notice given / information obtained by the agent, provided it be given or obtained in the course of the business for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.
- Misrepresentations or frauds committed, by agents acting in the course of their business for their principals, have the same effect as if such misrepresentations or frauds had been made, or committed, by the principals.

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#### **Example:**

- 1. Anu, being B's agent with authority to receive money on his behalf, receives from C, a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.
- 2. Anu, being owner of a ship and cargo, authorizes B to procure an insurance for ₹4,00,000 on the ship. B procures a policy for ₹4,00,000 on the ship, and another for the like sum on the cargo. Anu is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.
- 3. Anu is employed by B to buy from C certain goods of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, Anu learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set off a debt owing to him from C against the price of the goods. Thus, the knowledge of the agent is treated as the knowledge of the principal.
- 4. Anu, being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorized by B to make. The contract is voidable, as between B and C, at the option of C.

#### 17. PERSONAL LIABILITY OF AGENT TO THIRD PARTIES [SECTION 230]

#### General Rule:

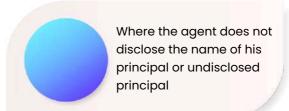
In the absence of any contract to that effect

an agent cannot personally enforce contracts entered into by him / behalf of his principal, nor is he personally bound by them

#### **Exceptions:**

In the following cases, the agent is presumed to have agreed to be personally bound













THE INDIAN CONTRACT ACT, 1872

#### Availability of rights to third parties in a contract entered by agent [Section 231-234]

# Rights to a contract made by undisclosed agent:

the same right as he would have had as against the agent if the agent had been the principal.

#### Example

S bought a ticket of IPL match at Wankehde Stadium through AB for himself because on personal grounds Stadium management would not have issued the ticket to S. Stadium management may repudiate the contract and refuse S to enter the stadium.

# Performance of contract with agent supposed to be principal:

Where one man makes a contract with another, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

#### Example

A, who owes ₹50,000 rupees to B, sells ₹1,00,000 rupees worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set off A's debt.

#### Option to Third Person-sue the Agent or the Principal-

- Right of person dealing with agent personally liable:

   a person dealing with him may hold either him or his
   principal, or both of them, liable.
- Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable: the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively

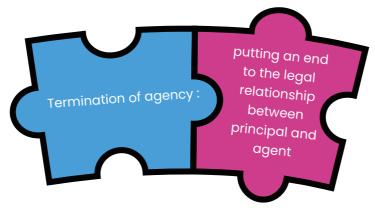
#### Example

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

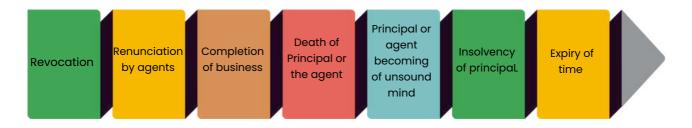


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#### 18. TERMINATION OF AGENCY [SECTION 201]



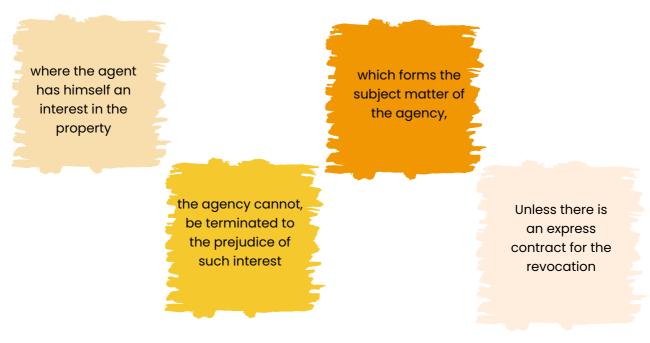
#### **Modes of termination:**



#### **Example:**

- 1. Amit authorizes Bhim to buy 1,000 bales of cotton on account of Amit, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.
- 2.A empowers B to let out A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

#### When the agency is irrevocable [Section 202]



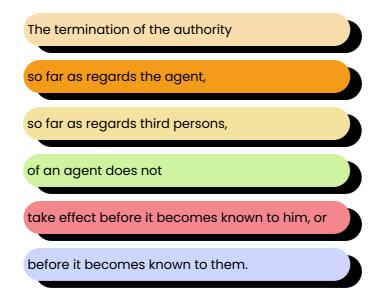


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THE INDIAN CONTRACT ACT, 1872

**Example:** Arun gives authority to Bharti to sell Arun's land, and to pay himself, out of the proceeds, the debts due to him from Arun. Arun cannot revoke this authority, nor can it be terminated by his insanity or death.

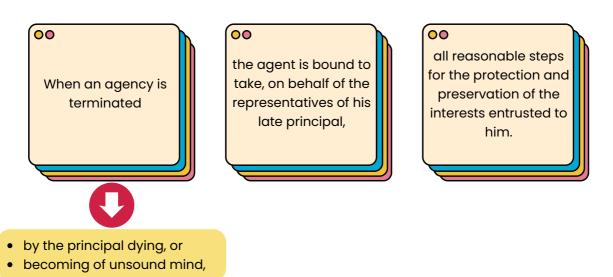
#### **Effects of Termination [Section 208]**



#### **Example:**

- Asim directs Biharilal to sell goods for him. Asim agrees to give Biharilal 5% commission on the price fetched by the goods. Asim afterwards, by letter, revokes his authority. Biharilal, after the letter is sent, but before he receives it sells the goods for ₹1,00,000. The sale is binding on Asim, and Biharilal is entitled to ₹5,000 as his commission.
- Asim directs Biharilal, his agent, to pay certain money to Chamanlal. Asim dies, and Mr.
   Dhanush takes out probate to his will. Biharilal, after Asim's death, but before hearing of it, pays the money to Chamanlal. The payment is good as against Dhanush, the executor.

#### Agent's duty on termination of agency by principal's death or insanity [Section 209]





#### Termination of sub-agent's authority [Section 210]



termination of the authority of an agent

causes the termination of the authority of all sub-agents appointed by him

subject to the rules regarding the termination of an agent's authority

THE SALE OF GOODS ACT, 1930

#### CHAPTER-3: THE SALE OF GOODS ACT, 1930 (UNIT - 1)

#### PRIMER TO THE SALE OF GOODS ACT, 1930

- Sale of goods is one of the specific forms of contracts recognized and regulated by law in India.
- It is an Act to define and amend the laws relating to the sale of goods.
- It came into force on 1st July, 1930.
- The provisions of the Act are applicable to the sale of ONLY movable properties and the Act is not applicable to immovable properties.
- It extends to the whole of India.

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

Framework of Contract of Sale		
Agreement	Buyer     Seller	
Transfer of property	Immediate transfer (sale)     Yet to be transferred (Agreement to sale)	
Goods	<ul> <li>Existing Goods:</li> <li>Specific, Ascertained, Unascertained</li> <li>Future Goods</li> <li>Contingent Goods</li> </ul>	
Price	Money consideration	
Essentials of Valid contract		

#### **IMPORTANT TERMINOLOGIES**

#### 1. BUYER AND SELLER



#### **Buyer**

A person who buys or agrees to buy goods [Section 2(1)].

Seller

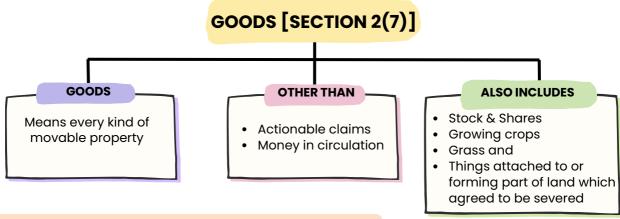
A person who sells or agrees to sell goods [Section 2(13)].



Ex: On 1st June 2021, A agrees to sell 100 bales of cotton to B for Rs. 1000. Here, A is a Seller and B is a Buyer.



#### 2. GOODS [SECTION 2(7)] AND RELATED TERMS

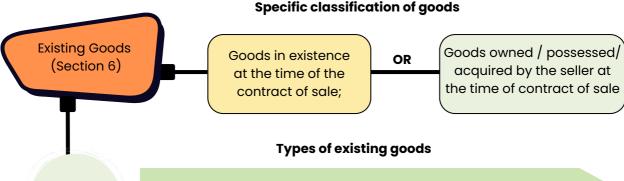


"Goods" include both tangible goods and intangible goods

'Actionable claims' are claims, which can be enforced only by an action / suit. Ex. debt. A debt is not a movable property or goods.

#### 3. CLASSIFICATION OF GOODS





# Specific Goods

- Goods identified & agreed upon at the time a contract of sale is made
- Ex: Samsung Galaxy S7 Edge, IFB washing machine of 7 kg

Ascertained Goods

- Goods which are identified in accordance with the agreement after the contract of sale is made.
- Ex: "A" owns 10 Maruti Cars. "B" contracts with "A" to buy one out of them. After the contract, "A" keeps out one car to be given to "B".
- Goods which are not specifically identified or ascertained at the time of making of the contract
   Eve #A" course 10 Marretic Care #B" contracts with #A" to be a grey and an account.
- Ex: "A" owns 10 Maruti Cars. "B" contracts with "A" to buy any one car out of them.



**Unascertained** 

goods

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THE SALE OF GOODS ACT, 1930

#### Future Goods [Section 2 (6)]

- Goods to be
- 1. manufactured or
- 2. produced or
- 3. acquired
- by the seller after making the contract of sale
- Ex: 1000 quintals of potatoes to be grown in Mr. A's field.

# Contingent Goods [Section 6(2)]

- The acquisition of which
- by the seller
- depends upon an uncertain contingency (uncertain event)
- Ex: P contracts to sell 500 pieces of particular item provided the ship which is bringing them reaches the port safely.

#### 4. DELIVERY - MEANING [SECTION 2(2)]

voluntary transfer of possession



from one person to another

0



Delivery

O

#### 5. TYPES OF DELIVERY

#### **Actual delivery**

Goods physically delivered to the buyer.
Ex: A shop- keeper sold one Apple Smart watch to B.

#### Constructive delivery

- without any change in the custody or actual possession of the thing.
- Ex: A ware-houseman holding the goods of A agrees to hold them on behalf of B, at A's request.

#### Symbolic delivery

- delivery of a thing in token of a transfer of something else
- Ex: Key of a warehouse containing the goods is handed over to buyer.

## 6. DOCUMENT OF TITLE TO GOODS [SECTION 2(4)]

for authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented

Document of title to goods

Proof of the possession or control of goods or

Ex: Bill of lading, dock warrant, warehouse keeper's certificate, wharfinger's certificate, railway receipt, warrant, an order of delivery of goods

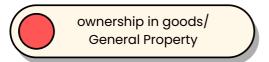
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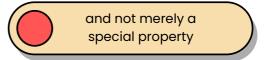
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#### 7. PROPERTY [SECTION 2(11)]

#### **Property means**





#### 8. PRICE [SECTION 2(10)]

Money consideration for a sale of goods



expressed in monetary terms

Essential requirement to make a contract of sale of goods

#### SALE AND AGREEMENT TO SELL [SECTION 4]

#### 1. MEANING OF CONTRACT OF SALE OF GOODS

It is a contract whereby

- the seller transfers, or
- agrees to transfer the property in goods to the buyer for a price

#### 2. MODE FOR CONTRACT OF SALE OF GOODS

A contract for the sale of goods may be either through

Sale

- Where the property in goods
- is transferred from the seller to the buyer

Agreement to sell

- Where the transfer of the property in the goods
- take place at a future time
- subject to fulfillment of some condition

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. [Section 4(4)]

#### 3. DIFFERENCES IN SALE AND AGREEMENT TO SELL

Basis of difference	Sale	Agreement to sell
Transfer of property	Immediately	Future Date or fulfillment of condition
Nature of contract	Executed	Executory

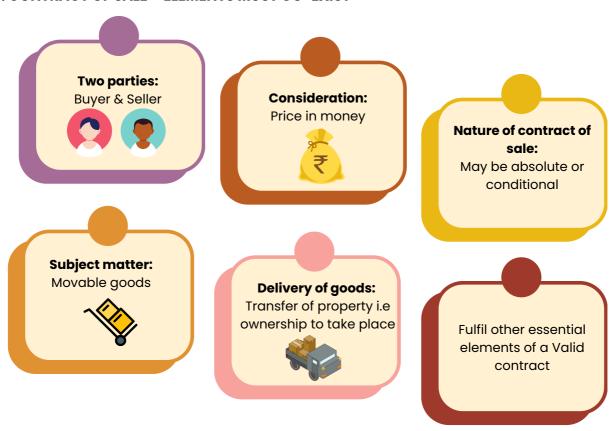


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THE SALE OF GOODS ACT, 1930

Remedies for breach	Sue for price	Sue for damages only and not for price
Liability of parties	Liability of the buyer	Liability of the seller
Burden of risk	Buyer	Seller
Nature of rights	Jus in rem	Jus in personam
Right of resale	Seller cannot re-sell the goods	Seller may re-sell
Insolvency of seller	Official Assignee • not be able to take over the goods • will recover the price from the buyer.	Official Assignee
Insolvency of buyer	Official Assignee • control over the goods.	Official Assignee • no control over the goods.

#### 4. CONTRACT OF SALE - ELEMENTS MUST CO-EXIST





#### SALE DISTINGUISHED FROM OTHER SIMILAR CONTRACTS

#### 1. SALE AND HIRE PURCHASE

Basis of difference	Sale	Hire- Purchase
Time of passing property	Immediately	On payment of last instalment
Position of the party	Buyer is like that of owner	Position of the hirer is like that of bailee till final payment
Termination of contract	the buyer cannot terminate the contract and bound to pay price	The hirer may terminate the contract by returning the goods
Burden of Risk of insolvency of the buyer	risk of seller	Owner takes no risk and has right to take back the goods
Transfer of title	The buyer can pass a good title to a bona fide purchaser	Hirer cannot pass any title even to a bonafide purchaser
Resale	The buyer can	Hirer cannot, unless all installments paid

#### 2. SALE AND BAILMENT

Basis of difference	Sale	Bailment
Transfer of property	Transferred from seller to buyer	Transfer of possession of goods from bailor to bailee
Return of goods	Not possible	Bailee must return the goods to the Bailor on accomplishment of the purpose
Consideration	It is the Price in terms of money	It may be gratuitous or non- gratuitous.



#### 3. SALE AND CONTRACT FOR WORK AND LABOUR

Basis of difference	Sale	Contract for work and labour
Nature of Contract	It's a contract in which some goods are sold or are to be sold for a price	No goods are sold, and there is only the doing or rendering of some work of labour.

#### PROCEDURE FOR CONDUCT OF CONTRACT OF SALE [SECTION 5]

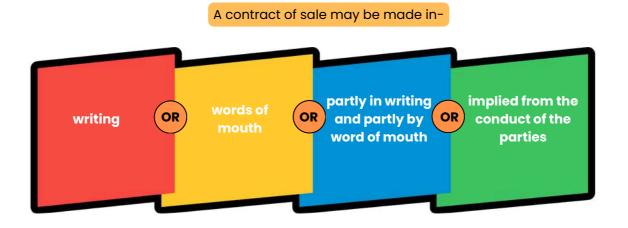
#### 1. PROCESS



#### 2. MODE OF DELIVERY AND PAYMENT



#### 3. MODE FOR ENTERING INTO CONTRACT OF SALE





THE SALE OF GOODS ACT, 1930

#### SUBJECT MATTER OF CONTRACT OF SALE [SECTION 6, 7, & 8]

#### 1. GOODS WHICH FORM THE SUBJECT MATTER OF A CONTRACT OF SALE

**Existing goods** 

existing goods that are acquired, owned or possessed by the seller

**Future goods** 

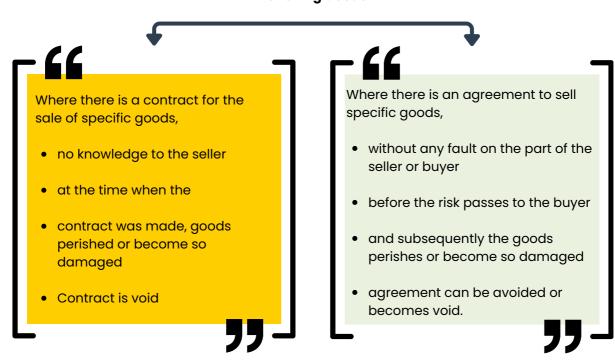
the acquisition of which by the seller depends upon a contingency which may or may not happen



Whereby a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

#### 2. NATURE OF CONTRACT OF SALE WITH RESPECT TO PERISHING GOODS

#### **Perishing Goods**



If the future goods are specific and the destruction of such goods

**Future Goods** 

amount to supervening impossibility contract becomes void



#### **ASCERTAINMENT OF PRICE [SECTION 9]**

fixed by the contract, or

agreed to be fixed in a manner provided by the contract, or

determined by the course of dealings between the parties.

Where price is not determined, the buyer shall pay the seller a reasonable price

#### AGREEMENT TO SELL AT VALUATION [SECTION 10]

Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of third party; and

such third party cannot or does not make such valuation,

if the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall pay a reasonable price therefore.

the agreement is thereby avoided.

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 default.

**Example:** P is having two bikes. He agrees to sell both of the bikes to S at a price to be fixed by the Q. He gives delivery of one bike immediately. Q refuses to fix the price. As such P ask S to return the bike already delivered while S claims for the delivery of the second bike too. In the given instance, buyer S shall pay reasonable price to P for the bike already taken. As regards the Second bike, the contract can be avoided.



THE SALE OF GOODS ACT, 1930

#### UNIT - 2

#### STIPULATION AS TO TIME OF PAYMENT AND TIME OF DELIVERY [SECTION 11]

Stipulation as to the time of payment

are not deemed to be of the essence from the terms of the contract of sale, unless terms of contract state otherwise.

Stipulations as to time of delivery are usually the essence of the contract

Delivery of goods must be made without delay

#### **CONDITIONS AND WARRANTIES WITH REFERENCE TO THE GOODS [SECTION 12]**

#### 1. MEANING - CONDITION AND WARRANTY

#### 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

- is a stipulation
- co-lateral 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.

#### 2. DIFFERENCES

#### Point of differences Condition

#### Warranty

Meaning

A stipulation essential to the main purpose of the contract.

A stipulation collateral to the main purpose of the contract.

Right in case of breach

Repudiate or claim damages or both

Claim only damages

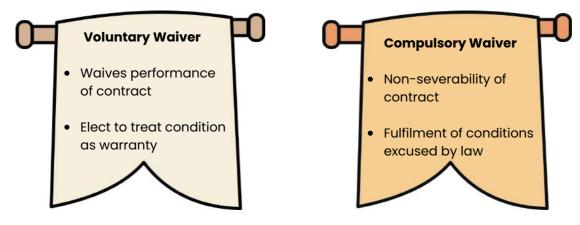
Conversion of stipulations A breach of condition may be treated as a breach of warranty.

A breach of warranty cannot be treated as a breach of condition.



THE SALE OF GOODS ACT, 1930

#### 3. WAIVER OF CONDITIONS [SECTION 13]



#### **MODE OF CONDITIONS AND WARRANTIES**

'Conditions' and 'Warranties'



may be either express or implied

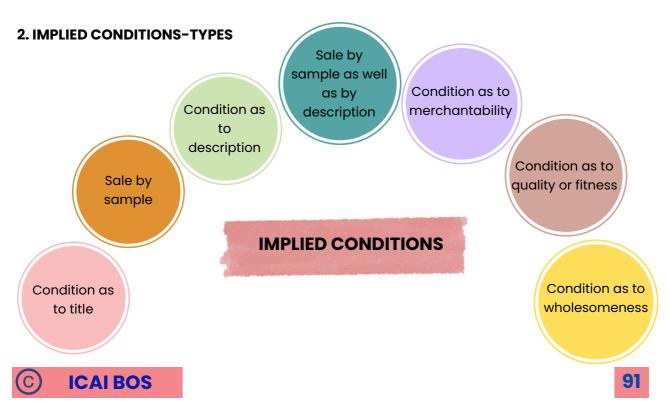
#### 1. EXPRESS AND IMPLIED CONDITIONS-MEANING



- Agreed upon between the parties at the time of contract and
- are expressly provided in the contract.



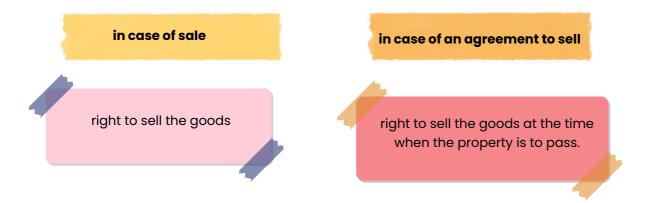
- Which are presumed by law to be present in the contract.
- an implied condition may be negated or waived by an express agreement.



#### 3. CONDITION AS TO TITLE [SECTION 14]

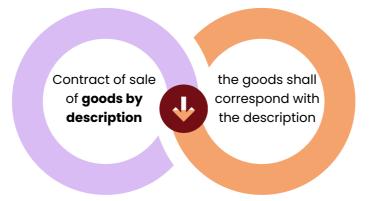
#### Condition as to title-

In every contract of sale, the first implied condition on the part of the seller is



**Ex:** A purchased a tractor from B who had no title to it. After 2 months, the true owner spotted the tractor and demanded it from A. Held that A was bound to hand over the tractor to its true owner and that A could sue B, the seller without title, for the recovery of the purchase price.

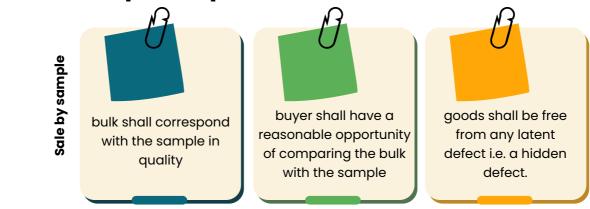
#### 4. SALE BY DESCRIPTION [SECTION 15]



there is an implied condition that

**Ex:** A ship was contracted to be sold as "copper-fastened vessel" but actually it was only partly copper-fastened. Held that goods did not correspond to description and hence could be returned or if buyer took the goods, he could claim damages for breach.

#### **5. SALE BY SAMPLE [SECTION 17]**

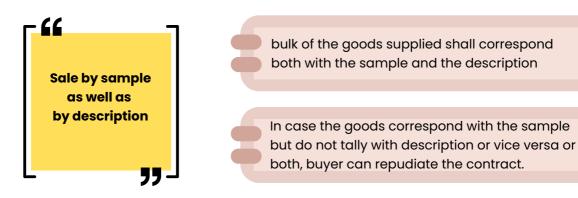


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**Ex:** A company sold certain shoes made of special sole by sample for the French Army. The shoes were found to contain paper not discoverable by ordinary inspection. Held, the buyer was entitled to the refund of the price plus damages.

#### 6. SALE BY SAMPLE AS WELL AS BY DESCRIPTION [SECTION 15]



**Ex:** A agreed with B to sell certain oil described as refined sunflower oil, warranted only equal to sample. The goods tendered were equal to sample but contained a mixture of hemp oil. B can reject the goods.

#### 7. CONDITION AS TO QUALITY OR FITNESS [SECTION 16(1)]

The goods supplied shall be reasonably fit for the purpose for which the buyer wants them, provided the stated **Condition as to quality or fitness are fulfilled** 

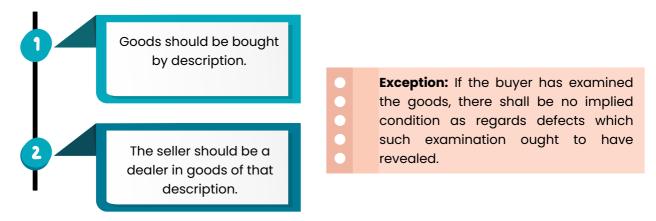
- The buyer should have made known to the seller the particular purpose for which goods are required.
- The buyer should rely on the skill and judgement of the seller.
- The goods must be of a description dealt in by the seller, whether he be a manufacturer or not.

**Ex:** 'A' bought a set of false teeth from 'B', a dentist. But the set was not fit for 'A's mouth. 'A' rejected the set of teeth and claimed the refund of price. It was held that 'A' was entitled to do so as the only purpose for which he wanted the set of teeth was not fulfilled.

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THE SALE OF GOODS ACT, 1930

#### 8. CONDITION AS TO MERCHANTABILITY [SECTION 16(2)]



**Ex:** A bought a black velvet cloth from C and found it to be damaged by white ants. Held, the condition as to merchantability was broken.

#### 9. CONDITION AS TO WHOLESOMENESS

#### Condition as to wholesomeness

In the case of eatables and provisions,
in addition to the implied condition as to merchantability,
there is another implied condition that the goods shall be wholesome.

**Ex:** A supplied F with milk. The milk contained typhoid germs. F's wife consumed the milk and was infected and died. Held, there was a breach of condition as to fitness and A was liable to pay damages.

#### **10. IMPLIED WARRANTIES-TYPES**

warranty as to undisturbed possession

#### **Implied Warranties**

warranty as to quality or fitness by usage of trade

Warranty as to non-existence of encumbrances

disclosure of dangerous nature of goods



#### 11. IMPLIED WARRANTY

Warranty as to undisturbed possession

- buyer shall have and enjoy quiet possession of the goods
- If the buyer having got possession of the goods, is later on disturbed in his possession,
- he is entitled to sue the seller for the breach of the warranty.
- **Ex:** A Purchased a second hand typewriter which happened to be stolen

Warranty as to quality or fitness by usage of trade

- An implied warranty as to quality or fitness for a particular purpose may be annexed or attached by the usage of trade
- **Ex:** Shares purchased from broker expected to be free from bad deliveries

Warranty as to non-existence of encumbrances

- the goods shall be free from any charge or encumbrance
- in favour of any third party not declared or known to the buyer
- before or at the time the contract is entered into.
- **Ex:** S sells a car which was given as security by Y against a loan

Disclosure of dangerous nature of goods

- the goods are dangerous in nature and
- the buyer is ignorant of the danger,
- the seller must warn the buyer of the probable danger.
- If there is a breach of warranty, the seller may be liable in damages.
- **Ex:** Lid of disinfectant powder to be opened with care.

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#### **CAVEAT EMPTOR [SECTION 16]**

#### 1. MEANING OF DOCTRINE

General rule

It is the duty of the buyer to examine the goods thoroughly before he buys them in order to satisfy himself that the goods will be suitable for his purpose for which he is buying them.

**Ex:** A purchases a horse from B. A needed the horse for riding but he did not mention this fact to B. The horse is not suitable for riding but is suitable only for being driven in the carriage. Caveat emptor rule applies here and so A can neither reject the horse nor can claim compensation from B.

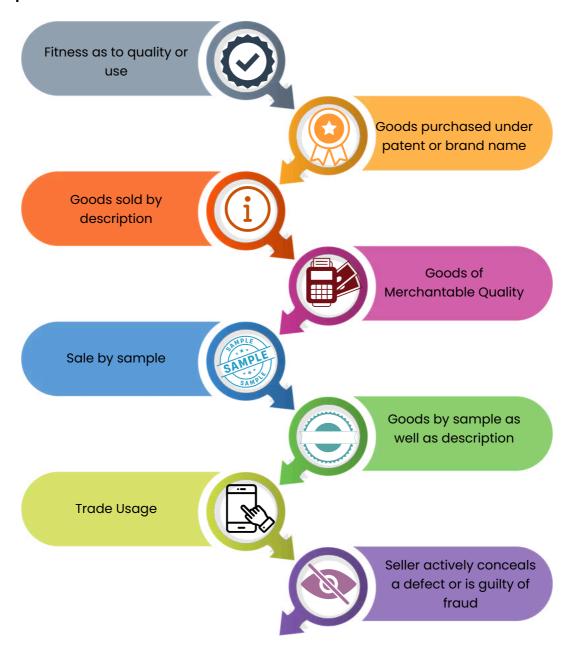
#### 2. REQUIRED CONDITIONS WHEN DOCTRINE IS NOT ATTRACTED:



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#### 3. EXCEPTIONS TO DOCTRINE OF CAVEAT EMPTOR:

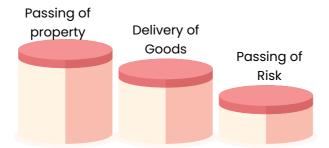
#### **Exceptions**



#### **UNIT - 3**

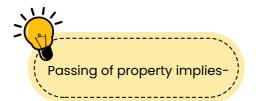
#### (I) PROVISIONS RELATED TO TRANSFER OF OWNERSHIP [SECTION 18-26]

#### (i) Stages involved in transfer of ownership:





#### **Passing of Property**



#### 000000

- Passing of Ownership
- If the property has passed to the buyer, the RISK in the goods sold is that of the buyer and NOT of the seller

#### Rules regarding transfer of property in goods



Depends on two basic factors:



#### **Identification of goods**

Goods must be ascertained in order to pass the property in goods to buyer

Goods must be specific and ascertained to acquire the ownership right on the goods by buyer



#### **Intention of parties**

Property in goods is transferred at the time-

• when parties intend it to be transferred

Ascertaing of intention shall be on the basis of-

- terms of contract
- · conduct of the parties, and
- · circumstances of the case

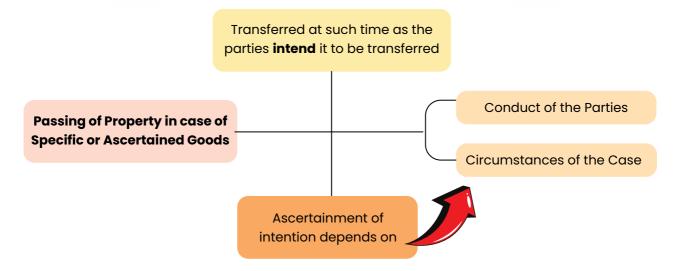


THE SALE OF GOODS ACT, 1930

Primary Rules: For determination of passing of property from seller to Buyer



#### 1. Passing of Property in Case of Specific or Ascertained Goods

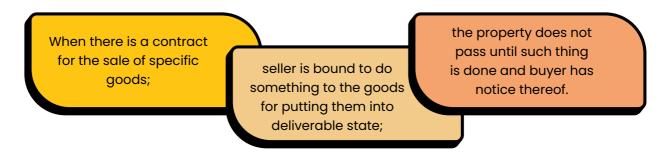


#### Different stages of Goods while passing of property under this category:



**Example:** X buys a Washing Machine and asks for home delivery. The washing machine immediately becomes the property of X.

#### Specific Goods to be put in Deliverable Stage





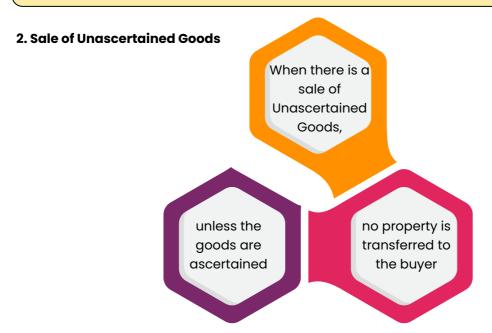
**Example:** X purchased a laptop and asks for home delivery but that laptop does not have a Windows operating system installed. The property transfers to X only after shopkeeper installed OS making the laptop ready for delivery and intimated the buyer about it.

Specific Goods in a Deliverable Stage when seller has to do anything to put it in deliverable stage



- Contract for sale of specific goods
- seller is bound to weigh, measure, test or do something for purpose of ascertaining price
- then the Property in goods passes to the buyer
- only when such thing is done and buyer has notice of it.

**Example:** A sold carpets to the Company which were required to be laid. The carpet was delivered to the company's premises but was stolen before it could be laid. It was held that the carpet was not in deliverable state as it was not laid, which was part of the contract and hence, the property had not passed to the buyer company.



#### Rules in respect of passing of property under this category Sale of unascertained or future goods by description

- The goods to match with description and quality
- · Goods must be in deliverable state
- Unconditionally appropriated (seller does not reserve the right of disposal until certain conditions are fulfilled, like payment of price)
- The assent may be express or implied
- The assent may be given before or after the appropriation
- The appropriation must be by seller with the assent of the buyer or vice versa



# Seller delivers the goods to the buyer or carrier or other bailee for the purpose of transmission and does not reserve the right of disposal,

**Example:** A bill of lading of railway parcel is made out in the name of the buyer and is sent to him, the ownership in the goods passes from the seller to the buyer. In case the goods are subjected to accidental loss or by theft, the seller will not be liable.

#### 3. Goods sent on Approval or "Sale Or Return"

# When he signifies his approval or acceptance Retains goods without giving notice of rejection Does something to the goods which is equivalent to acceptance

**Example:** A sends to B a water motor on approval or return in March, 2020. B to return it after trial in August, 2020. The water motor has not been returned within a reasonable time, and therefore, A is not bound to accept it and B must pay the price.



#### 4. Reservation of Right of Disposal

Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract



**Example:** X sends furniture to a company by a truck and instructs the driver not to deliver the furniture to the company until the payment is made by company to him. The property passes only when the payment is made.

#### Risk Prima Facie passes with Property



Until the property therein is transferred to the buyer

the goods remain at the seller's risk

cccccc

when the property therein is transferred to the buyer

the goods are at the buyer's risk whether delivery has been made or not.

# ccccccc

If delivery is delayed by the fault of the seller or the buyer

the goods remain at the risk of the party in default (seller or buyer as per the case)

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The duties and liabilities of the seller or the buyer as bailee of goods for other party

will not be affected even when risk has passed.

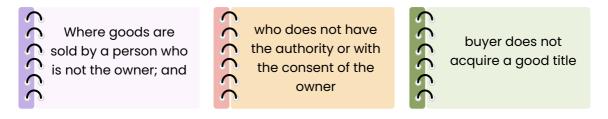


#### **SARANSH**

THE SALE OF GOODS ACT, 1930

**Example:** A bids for an antique painting at a sale by auction. After the bid, when the auctioneer struck his hammer to signify acceptance of the bid, he hit the antique which gets damaged. The loss will have to be borne by the seller, because the ownership of goods has not yet passed from the seller to the buyer.

#### (II) TRANSFER OF TITLE BY NON OWNERS (SECTION 27-30)



**Example:** P, the hirer of vehicle under a hire purchase agreement, sells them to Q. Q, though a bona fide purchaser, does not acquire the ownership in the vehicle. At the most he acquires the same right as that of the hirer.

NEMO DAT QUOD NON HABET:
No one can give what he has not got.

- Sale by a Mercantile Agent
- Sale by one of the joint owners
- Sale by a person in possession under voidable contract
- Sale by a person who has already sold goods but continues in possession thereof

#### **Exceptions:**

- Effect of Estoppel
- Sale by an unpaid seller
- Sale by a buyer obtaining possession before the property vested in him
- Sale under provisions of other Acts

#### **Examples:**

- 1. A, B, and C are three brothers and joint owners of a T.V and VCR and with the consent of B and C, the VCR was kept in possession of A. A sells the T.V and VCR to P who buys it in good faith and without notice that A had no authority to sell. P gets a good title to VCR and TV.
- 2. During IPL matches, P buys a TV set from R. R agrees to deliver the same to P after some days. In meanwhile R sells the same to S, at a higher price, who buys in good faith and without knowledge about the previous sale. S gets a good title.



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THE SALE OF GOODS ACT, 1930

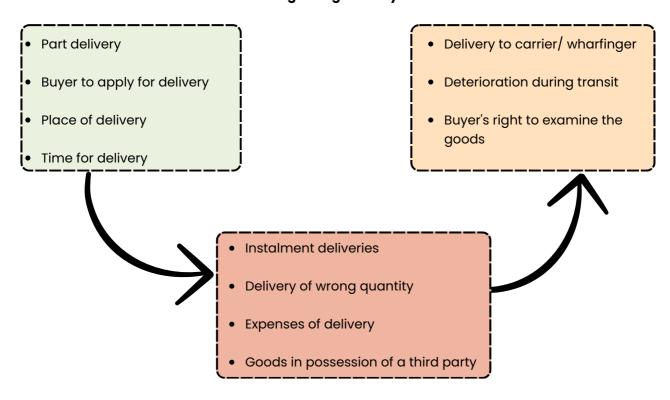
#### (III) PERFORMANCE OF THE CONTRACT OF SALE (SECTION 31-44)

# Meaning of delivery Definition of Delivery voluntary transfer of possession from one person to another Types of Delivery Symbolic delivery 2 Constructive Delivery

#### **Duties of Seller and Buyer**



#### **Rules regarding Delivery of Goods**



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#### **Examples:**

- 1. Certain goods lying at wharf were sold in a lot. The seller instructed the wharfinger to deliver them to the buyer who had paid for them and the buyer, thereafter, accepted them and took away part. Held, there was delivery of the whole.
- 2. A agrees to sell 100 quintals of wheat to B at `1,000 per quintal. A delivers 1,100 quintals. B may reject the whole lot or accept only 1,000 quintals and reject the rest or accept the whole lot and pay for them at the contract of sale.

#### Rule Related to Acceptance of Delivery of Goods

Acceptance is deemed to take place when the buyer-

intimates to the seller that he had accepted the goods; or does any act to the goods, which is inconsistent with the ownership of the seller; or retains the goods after the lapse of a reasonable time, without intimating to the seller that he has rejected them. **SARANSH** 

THE SALE OF GOODS ACT, 1930

#### UNIT - 4

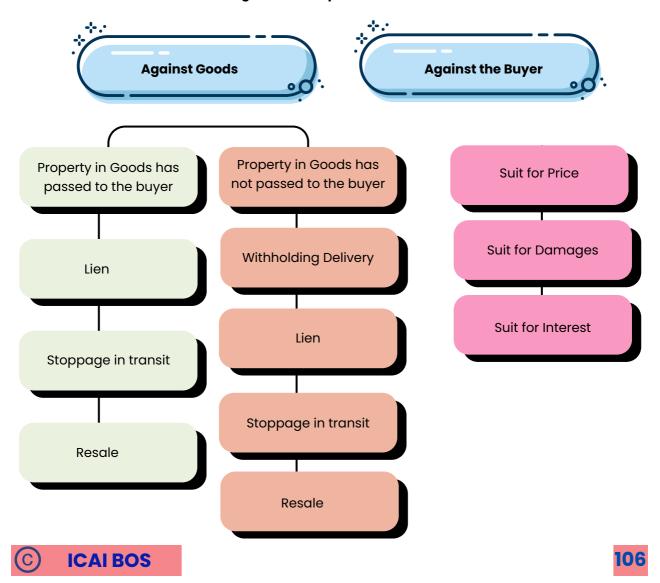
#### **UNPAID SELLER (SECTION 45-61)**

#### **Unpaid Seller**

- 1. The Whole price has not been paid or tendered and the seller has an immediate right of action for the price.
- 2. When a bill or exchange or other negotiable instrument has been received as conditional payment and it has been dishonoured.

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

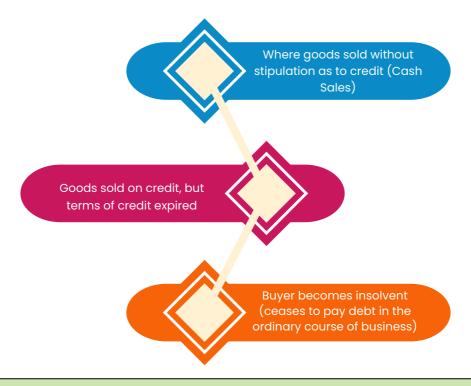
#### **Rights of an Unpaid Seller**



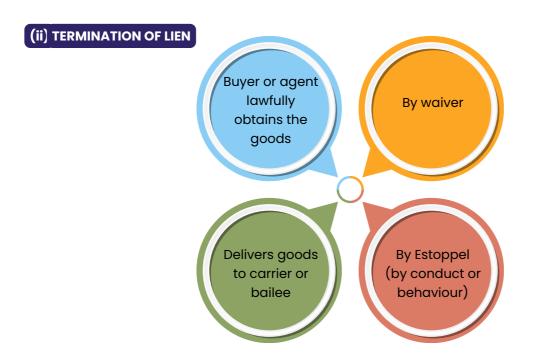
#### Right of Unpaid Seller against the Goods

1. Seller's Lien

#### (i) RIGHT TO RETAIN POSSESSION UNTIL PAYMENT:



**Example:** A sold certain goods to B for a price ₹50,000 and allowed him to pay the price within one month. B becomes insolvent during this period of credit. A, the unpaid seller, can exercise his right of lien.



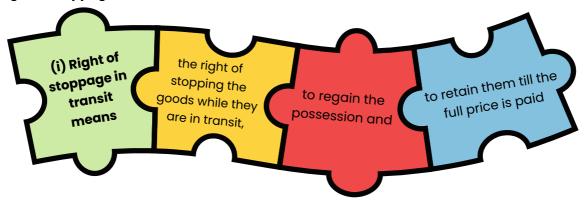


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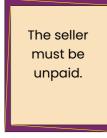
THE SALE OF GOODS ACT, 1930

**Example:** A sold a car to B for ₹1,00,000 and delivered the same to the railways for the purpose of transmission to the buyer. The railway receipt was taken in the name of B and sent to B. Now A cannot exercise the right of lien.

#### 2. Right of stoppage in transit:



(ii) Right of stoppage in transit is exercised only when the following conditions are fulfilled



He must have parted with the possession of goods. The goods are in transit. The buyer has become insolvent.

The right is subject to provisions of the Act.

#### (iii) Goods in the course of transit



The goods are deemed to be in course of transit

from the time when they are delivered to a carrier or other bailee

for the purpose of transmission to the buyer,

until the buyer or his agent in that behalf takes delivery of them

from such carrier or other bailee.

#### **SARANSH**

THE SALE OF GOODS ACT, 1930

#### (iv) When does the transit come to an end?

Where the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods as soon as the goods are loaded on the ship, unless the seller has reserved the right of disposal of the goods.

Where the part delivery of the goods has been made to the buyer, the transit will come to an end for the remaining goods which are yet in the course of transmission.

Where the goods are delivered to a ship chartered by the buyer, the transit comes to an end.

Buyer obtains
delivery before the
arrival of goods at
destination

If the carrier
wrongfully refuses
to deliver the
goods to the buyer.

Where goods are delivered to the carrier hired by the buyer

When the buyer or other bailee obtains delivery.



#### (v) Stoppage in transit

By taking actual possession of goods by giving notice to the carrier not to deliver the goods.

#### (vi) Exceptions where unpaid seller's right of lien and stoppage in transit are defeated

When the seller has assented to the sale, mortgage or other disposition of the goods made by the buyer When a document of title
to goods has been
transferred to the buyer
and the buyer transfers the
documents to a person
who has bought goods in
good faith and for value

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



#### **SARANSH**

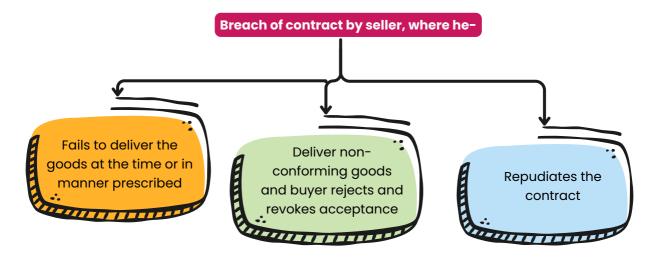
THE SALE OF GOODS ACT, 1930



# Rights of unpaid seller against the buyer

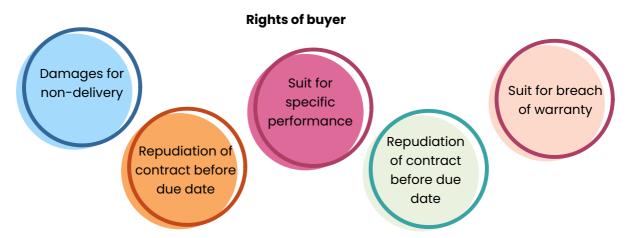
- · Suit for price
- Suit for damages for nonacceptance
- Repudiation of contract before due date
- · Suit for interest

#### **Breach of Contract by Seller**





#### Right of Buyer in case of breach of contract by seller



**Example:** A' agreed to sell a rare painting of Mughal period to 'B'. But on the due date of delivery, 'A' refused to sell the same. In this case, 'B' may file a suit against 'A' for obtaining an order from the Court to compel 'A' to perform the contract (i.e. to deliver the painting to 'B' at the agreed price).

#### (V) Auction Sale (Section 64)

#### Meaning

Auction sale is mode of selling property by inviting bids publicly and the property is sold to the highest bidder

#### **Legal Rules of Auction Sale**

#### Rules

- Where goods are sold in lots
- · Completion of the contract of sale
- Right to bid may be reserved
- Where the sale is not notified by the seller
- Reserved price
- · Pretended bidding

**Example:** P sold a car by auction. It was knocked down to Q who was only allowed to take it away on giving a cheque for the price and signing an agreement that ownership should not pass until the cheque was cleared. In the meanwhile till the cheque was cleared, Q sold the car to R. It was held that the property was passed on the fall of the hammer and therefore R had a good title to the car. Both sale and sub sale are valid in favour of Q and R respectively.



#### CHAPTER 4: THE INDIAN PARTNERSHIP ACT, 1932 (UNIT -1)

#### 1. DEFINITION OF 'PARTNERSHIP', 'PARTNER', 'FIRM' AND 'FIRM NAME'

relation between persons
who agreed to share the profits
of a business
carried on by all or any of them
acting for all

Persons who have entered into partnership with one another are called

the name under which their business is carried on

'Partners'

'a firm'

#### 2. ELEMENTS OF PARTNERSHIP



#### **ASSOCIATION OF PERSONS**

- association of 2 or more persons
- persons recognised by law can enter into an agreement of partnership



#### **AGREEMENT**

- partnership must be the result of an agreement
- Agreement may be express or implied
- Agreement may be oral or in writing



#### BUSINESS CARRIED ON BY ALL OR ANY OF THEM ACTING FOR ALL

- Binding contract of mutual agency between the partners
- Partner is the principal as well as the agent for all other partners.



## AGREEMENT TO SHARE PROFITS

 Sharing of profits is must

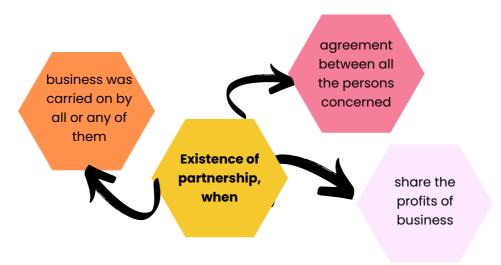


#### **BUSINESS**

- Existence of business
- Acquisition of gains



#### 3. TRUE TEST OF PARTNERSHIP



#### 4. PARTNERSHIP DISTINGUISHED FROM OTHER FORMS OF ORGANISATION

#### I. Partnership Vs Joint Stock Company

Basis of difference	Partnership	Joint Stock Company
Legal status	Not a legal entity	Is an artificial legal person. (Salomon Vs Salomon)
Agency	Partner is an agent of firm and other partners.  A member is not an agent of company or of other members.	
Distribution of profits	The profits of the firm are distributed as per the Partnership Deed.	There is no such compulsion to distribute the profits among the members. Dividend is declared out of profits.
Extent of liability	Liability of the members limited by shares or by guaranteed.  There can be unlimited also.	
Property	The firm's property is the "Joint Estate" of all the partners.	Company's property is separate from that of its members who can receive it back only in the form of dividends or refund of capital.

#### **SARANSH**

THE INDIAN PARTNERSHIP ACT, 1932

Transfer of shares	A share in Partnership cannot be transferred without the consent of all the partners.	Shares of a private limited company can be transferred with ease.
Management	Partners can take part in management of a firm.	Only director members can take part in management.
Registration	For a partnership, firm registration is not compulsory.	Company is created by registration under Companies Act, 2013.
Winding up	A partnership may be dissolved by any partner at any time if all the partners agree.	A Company is wind up by NCLT or its name is struck off by the ROC.
Number of membership	Number of partners: maximum-100 (As per Section 464 of the Companies Act, 2013) Present limit is 50 [As per Companies (Miscellaneous) Rules, 2014]	Private company: minimum- 2, maximum- 200 Public Company: minimum- 7, maximum- No limit One person company: 1
Duration of existence	Firm does not have perpetual succession.	Company has perpetual succession.

#### II. Partnership Vs Club

Basis of Difference	Partnership	Club
Objective	Profit	Not profit
Relationship	Partners	Members
Interest in the property	Yes	No
Dissolution	Change in partners affect existence	Change in members don't affect existence



#### III. Partnership Vs Hindu Undivided Family (HUF)

Basis of difference	Partnership	HUF
Mode of creation	An agreement.	Status means its creation by birth in the family.
Death of a member	Ordinarily leads to the dissolution of partnership.	Does not give rise to dissolution of the family business.
Management	All the partners are equally entitled to take part.	Generally vests in the Karta, the governing male member or female member of the family.
Authority to bind	Every partner can, by his act, bind the firm.	The Karta or the manager, has the authority to contract for the family business and the other members in the family.
Liability	Liability of a partner is unlimited.	Only the liability of the Karta is unlimited, and the other coparcener are liable only to the extent of their share in the profits of the family business.
Calling for accounts on closure	A partner can bring a suit against the firm for accounts, provided he also seeks the dissolution of the firm.	On the separation of the joint family, a member is not entitled to ask for account of the family business.
Governing Law	Governed by the Indian Partnership Act, 1932.	Governed by the Hindu Law.
Minor's capacity	A minor cannot become a partner, though he can be admitted to the benefits of partnership, only with the consent of all the partners.	A minor becomes a member of the ancestral business by the incidence of birth. He does not have to wait for attaining majority.

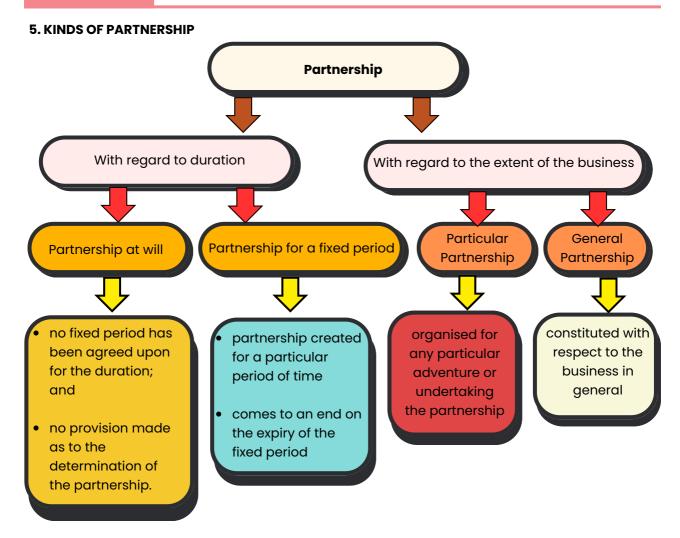
#### **SARANSH**

#### THE INDIAN PARTNERSHIP ACT, 1932

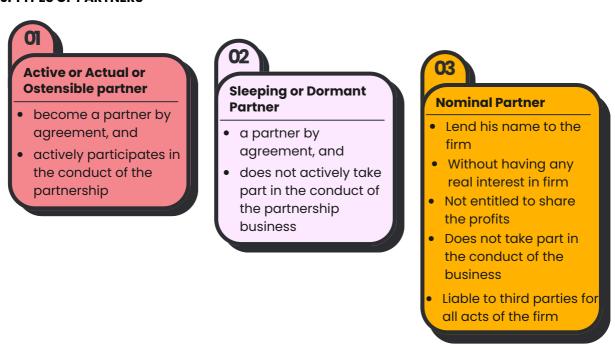
Continuity	Subject to a contract between the partners, gets dissolved by death or insolvency of a partner.	Has the continuity till it is divided. The status of HUF is not thereby affected by the death of a member.
Number of Members	Should not exceed 50.	Unlimited in number.
Share in the business	Each partner has a defined share by virtue of an agreement between the partners.	No coparceners have a definite share.

#### IV. Partnership Vs Co-Ownership or joint ownership

Basis of difference	Partnership	Co-ownership
Formation	It arises out of a contract.	Arise either from agreement or by the operation of law, such as by inheritance.
Implied agency	A partner is the agent of the other partners.  A co-owner is not the age other co-owners.	
Nature of interest	There is community of interest which means that profits and losses must have to be shared.	Co-ownership does not necessarily involve sharing of profits and losses.
Transfer of interest	A share in the partnership is transferred only by the consent of other partners.	A co-owner may transfer his interest or rights in the property without the consent of other co-owners.



#### **6. TYPES OF PARTNERS**



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#### Partner in profits only

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

pr

#### **Outgoing partner**

- A partner who leaves a firm in which the rest of the partners continue to carry on business.
- remains liable to third parties for all acts of the firm until public notice is given of his retirement.

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#### **Incoming partner**

- admitted as a partner into an already existing firm with the consent of all the existing partners.
- Not liable for any act of the firm done before his admission as a partner.

07

#### Partner by holding out

- When a person represent himself, or
- Knowingly permits himself,
- to be represented as a partner in a firm (when in fact he is not)
- he is liable, like a partner in the firm
- to anyone who on the faith of such representation has given credit to the firm.

#### **UNIT - 2**

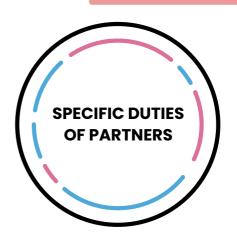
#### 1. PROVISIONS REGULATING THE RELATIONSHIP BETWEEN PARTNERS [SECTION 9-13]



- carry on the business of the firm to the greatest common advantage,
- · be just and faithful to each other,
- · render true accounts and
- give full information of all things affecting the firm to any partner / his legal representative

#### determination of rights and duties of partners by contract between the partners -

- the mutual rights and duties of the partners may be determined by contract between the partners,
- may be express or implied
- varied by consent of all the partners
- may provide that a partner shall not carry on any business other than that of the firm while he is a partner.



# duty to indemnify for loss caused by fraud-

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

#### mutual rights and liabilities of partners-

- not entitled to receive remuneration
- entitled to share equally in the profits earned, and to contribute equally for the losses sustained
- entitled to interest on the capital subscribed by him
- a partner making any payment or advance beyond the amount of capital agreed to subscribe, is entitled to interest @ 6% p.a.;
- the firm shall indemnify a partner in respect of payments made and liabilities incurred by him-
  - in the ordinary and proper conduct of the business, and
  - o in doing an act in an emergency,
- shall indemnify the firm for loss caused by his wilful neglect in the conduct of business of the firm



**ICAI BOS** 

# In the conduct of the business, every partner-

- has a right to take part
- is bound to attend diligently to his duties
- in case of any difference as to ordinary matters of business may be decided by majority is decided, but no change in the nature of the business without the consent of all
- has a right to have access to and to inspect and copy any of the books of the firm
- in the event of the death, his heirs or legal representatives or authorised agents shall have a right of access and to inspect and copy any of the books of the firm

#### 2. PARTNERSHIP PROPERTY [SECTIONS 14-15]

Property of Firm also referred as-

Partnership Property Partnership Assets

Joint Stock

Common Stock, or

Joint Estate

The Property of the Firm includes:

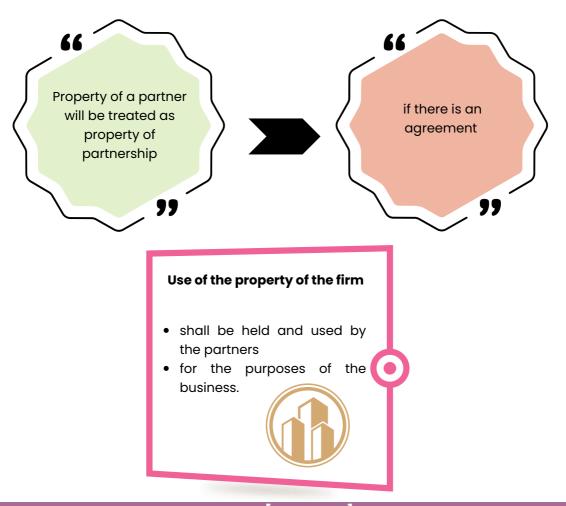
all property and rights and interest in property to which the firm, that is, all partners collectively, may be entitled

In absence of any agreement between the partners showing contravention

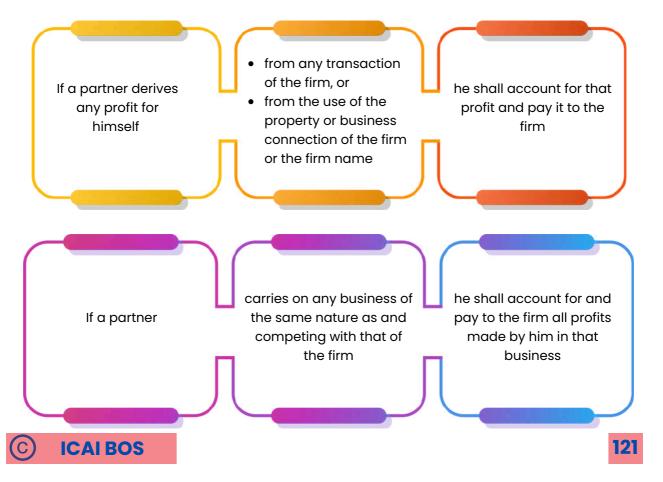
The property which is deemed as belonging to the firm, is comprised of the following items:

- all property, rights and interests which partners may have brought into the common stock as their contribution to the common business;
- all the property, rights and interest acquired or purchased by or for the firm, or for the purposes and in the course of the business of the firm; and
- · Goodwill of the business.

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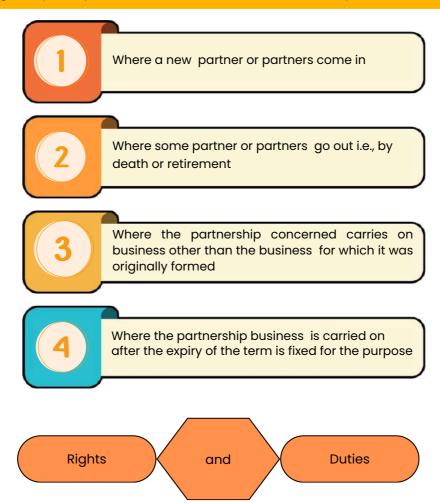
#### 3. PERSONAL PROFIT EARNED BY PARTNERS [SECTION 16]



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#### 4. RIGHTS AND DUTIES OF PARTNERS AFTER A CHANGE IN THE FIRM [SECTION 17]

A change may take place in the constitution of the firm in any of the following ways:



Where a change occurs in the constitution of a firm

 the mutual rights and duties of the partners in the reconstituted firm remain the same as they were before the change

Where a firm constituted for a fixed term continues to carry after the expiry of that term

 the mutual rights and duties of the partners remain the same as they were before the expiry, so far as they may be consistent with the partnership at will

Where a firm constituted to carry out one or more adventures or undertakings, carries out other adventures or undertakings

 are the same as those in respect of the original adventures or undertakings.

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## 5. RELATION OF PARTNERS TO THIRD PARTIES [SECTIONS 18-21] (a) Authority to act Every partner is liable-• jointly with all the other **General Law** partners, also severally, for all acts of the firm done while he is a partner Actual **Authority** Type of authority of partner Implied/ **Apparent Authority**

#### **Relevant Rules:**

Rule	States that-
Partner to be <b>agent of the firm</b> (Section 18)	A partner is the agent of the firm for the purposes of the business of the firm
Partner acts for himself and in his own interest in the common concern of the partnership	he may be deemed a principal
Partner acts for his partners	he may be deemed as an agent
This may be <b>actual authority</b>	its result of consent by all other partners and the firm
Implied authority of partner as agent of the firm (section 19)	This is the authority of a partner to bind the firm. It's the act of a partner which is done to carry on business of the kind carried on by the firm, binds the firm.
This may be apparent/implied authority	Principal (Firm as well as the other partners) represents or is regarded by law as having represented that the other has the authority.



Rule	States that-
Consequences	It's binding on-  Third party and the firm, and  Individual partner and the firm
Out of scope of implied authority: the implied authority of a partner does not empower him (partner) to do certain acts.	<ul> <li>(a) Submit a dispute relating to the business of the firm to arbitration;</li> <li>(b) open a banking account on behalf of the firm in his own name;</li> <li>(c) compromise or relinquish any claim or portion of a claim by the firm;</li> <li>(d) withdraw a suit or proceedings filed on behalf of the firm;</li> <li>(e) admit any liability in a suit or proceedings against the firm;</li> <li>(f) acquire immovable property on behalf of the firm;</li> <li>(g) transfer immovable property belonging to the firm; and</li> <li>(h) enter into partnership on behalf of the firm.</li> </ul>

#### (b) Mode of doing act to bind firm (Section 22):

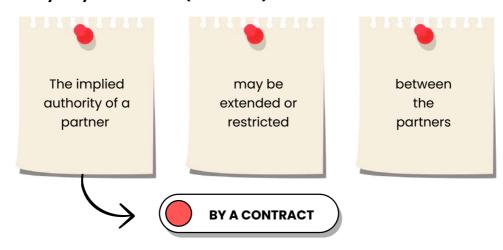


In order to bind a firm-

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

## 77

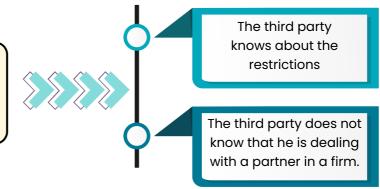
#### (c) When authority may be restricted (Section 20)





#### When restrictions imposed on the implied authority shall be effective:

Conditions under which restrictions is imposed on the implied authority of a partner shall be effective against third party



#### (d) Partner's authority in an emergency (Section 21)

as would be done by a person for the purpose A partner has of ordinary of protecting to do all such such acts prudence, in his authority the firm from acts bind the firm own case, acting loss under similar circumstances, and

#### 6. EFFECT OF ADMISSIONS BY A PARTNER [SECTION 23]

Partners, as agents of each other,

- can make binding admissions
- but only in relation to partnership transaction, and
- in the ordinary course of business.



#### Restrictions:

- An admission / representation by a partner will not bind the firm
- if his authority on the point is limited and
- the other party knows of the restriction.



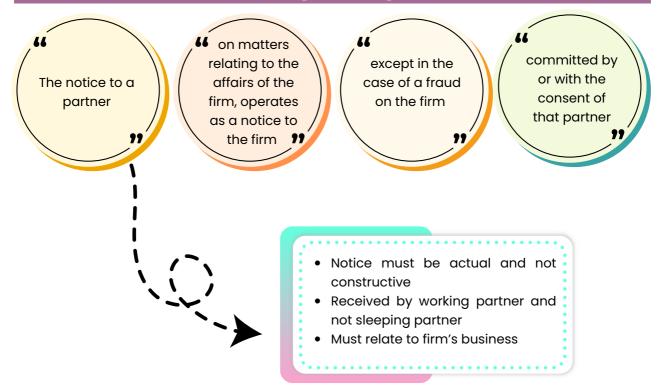
#### Consequences:

- they will affect the firm when tendered by third parties;
- they may not have the same effect in case of disputes between the partners themselves.

(C)

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#### 7. EFFECT OF NOTICE TO ACTING PARTNER [SECTION 24]



#### 8. LIABILITY TO THIRD PARTIES (SECTION 25 TO 27)

# Liability of a partner for acts of the firm (section 25)

- The partners are jointly and severally responsible to third parties
- for all acts which come under the scope of their express or implied authority.

# Liability of the firm for wrongful acts of a partner (section 26)

- The firm is liable to the same extent as the partner
- for any loss or injury caused to a third party
- by the wrongful acts of a partner,
- if they are done by the partner while acting:
  - in the ordinary course of the business of the firm
  - o with the authority of the partners.

# Liability of firm for misapplication by partners (section 27):

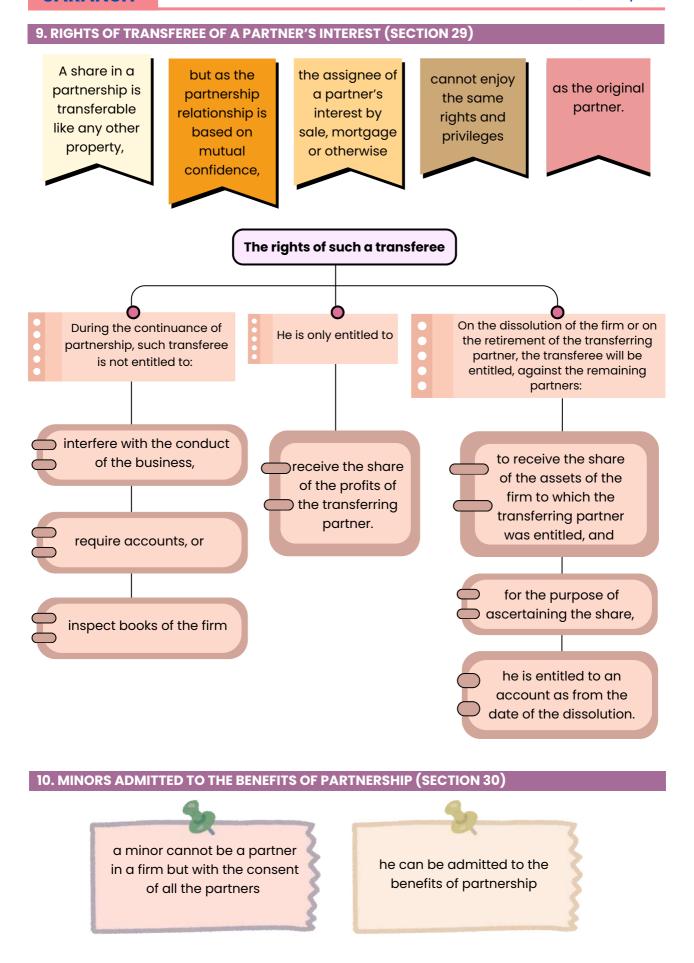


- where a partner acts within his authority
- · and due to his authority as partner,
- he receives money or property belonging to a third party and
- misapplies that money or property
- when such money or property has come into the custody of the firm and
- it is misapplied by any of the partners.
- The firm would be liable in both the cases.



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#### Rights of a minor partner

- his agreed share of the profits and of the firm.
- can have access to inspect and copy the accounts of the firm.
- can sue the partners for accounts or for payment of his share
- On attaining majority, he may within 6 months elect to become a partner or not to become a partner.
  - If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor
  - If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.

# Liabilities (Before attaining majority)

- The liability of the minor is confined only to the extent of his share in the profits and the property of the firm.
- Minor has no personal liability for the debts of the firm incurred during his minority.
- Minor cannot be declared insolvent, but if the firm is declared insolvent his share in the firm vests in the Official Receiver/Assignee.

# Liabilities (After attaining majority)

#### • When he becomes partner

- He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.
- His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

# • When he elects not to become a partner

- His rights and liabilities continue to be those of a minor up to the date of giving 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 and profits.
- It may be noted that such minor shall give notice to the Registrar that he has or has not become a partner.

#### 11. INTRODUCTION OF A PARTNER (SECTION 31):

- No person shall be introduced as a partner into a firm
- without the consent of all the existing partners
- A person who is introduced as a partner into a firm
- does not thereby become liable for any acts of the firm done before he became a partner



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#### 12. RETIREMENT OF A PARTNER (SECTION 32):

#### A partner may retire

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

# A retiring partner continues to be liable to third party

- or acts of the firm after his retirement
- until public notice of his retirement has been given
- either by himself or by any other partner.

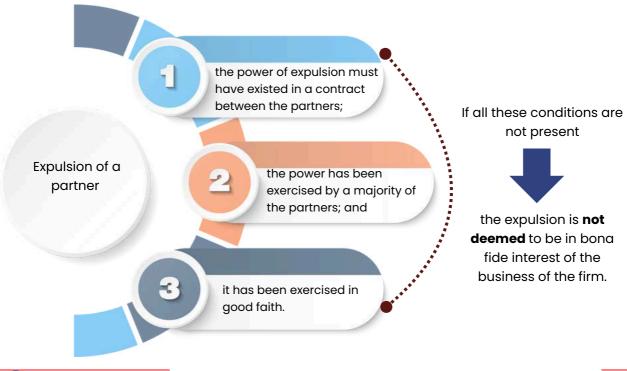
# Retired partner will not be liable to any third party

 if the latter deals with the firm without knowing that the former was partner

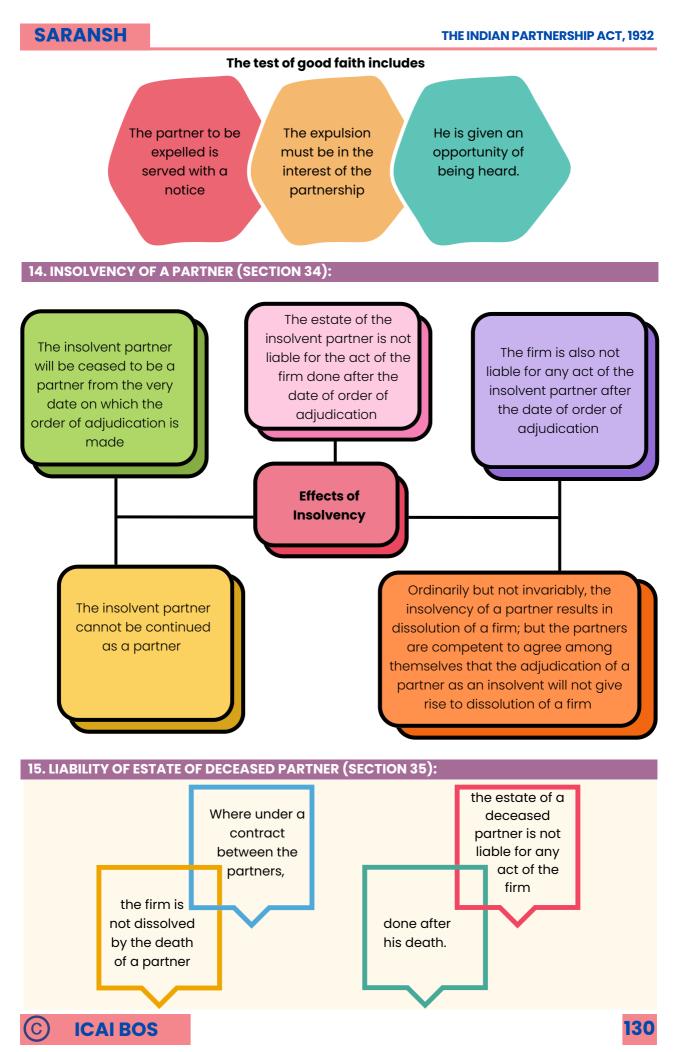
# Liability of retired partner for acts of the firm done before his retirement

- the retiring partner remains liable for the same,
- unless there is an agreement
- made by him with the third party concerned and the partners of the reconstituted firm.
- Such an agreement may be implied by a course of dealings between the third party and the reconstituted firm
- after he had knowledge of the retirement.

#### 13. EXPULSION OF A PARTNER (SECTION 33):

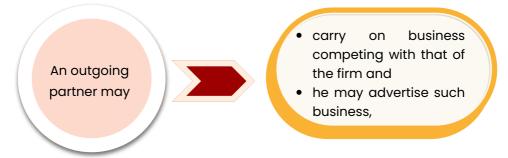


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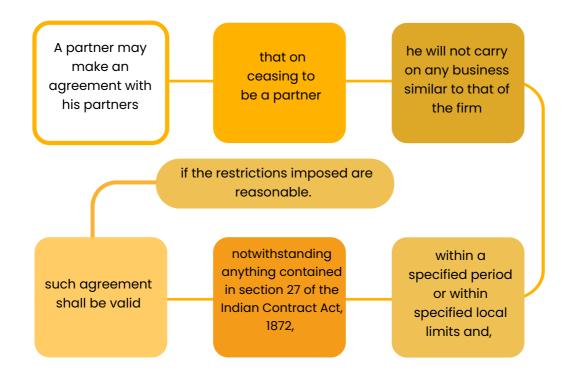
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#### 16. RIGHTS OF OUTGOING PARTNER TO CARRY ON COMPETING BUSINESS (SECTION 36)



but subject to contract to the contrary, he may not-

- use the firm name,
- represent himself as carrying on the business of the firm or
- solicit the custom of persons who were dealing with the firm before he ceased to be a partner.



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**THE INDIAN PARTNERSHIP ACT, 1932** 

#### **UNIT - 3**

#### 1. REGISTRATION OF FIRMS (SECTIONS 58 & 59)

(i)

Meaning of registration

Getting registered with the Registrar of Firm

(ii)

**Procedure** 

· Application in prescribed form with prescribed fees

Contents of Application Form

- · Name of the firm.
- Principal & other places of business of the firm.
- Date when each partner joined the firm.
- Names & addresses of the partners.
- The duration of the firm.

#### (iii) Consequences of Non-registration (Section 69)

No suit in a civil court by firm or other co-partners against third party

No relief to partners for setoff of claim Aggrieved partner cannot bring legal action against other partner or the firm

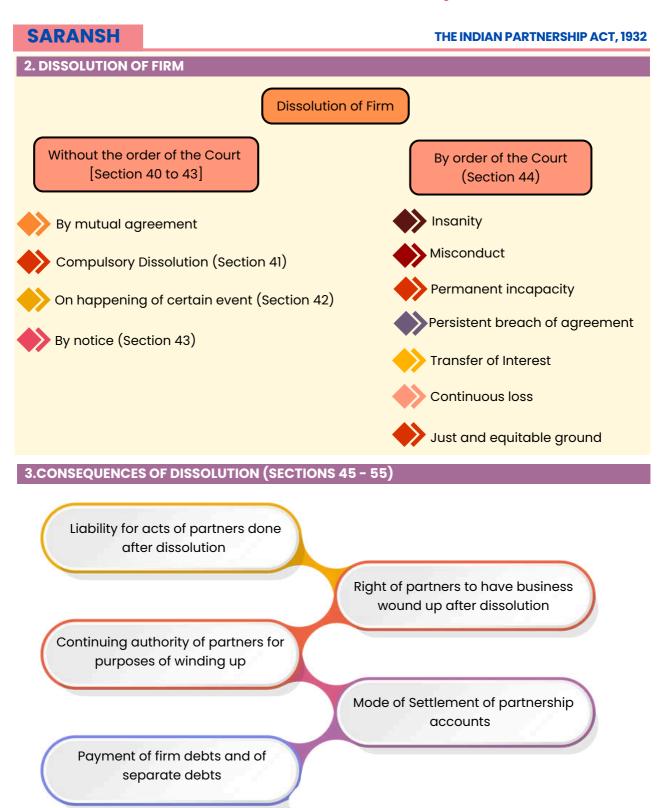
Third party can sue the firm

#### (iv) Rights not affected by non-registration

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



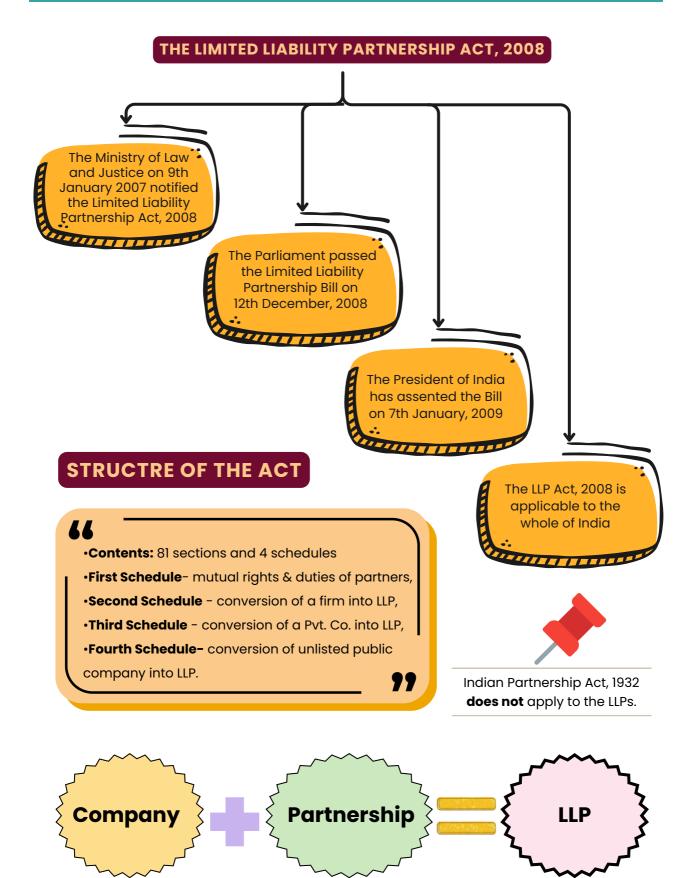
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THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

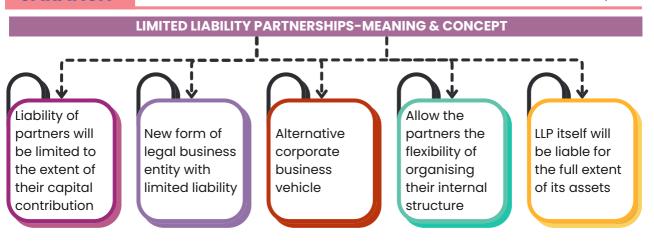
#### **CHAPTER 5: THE LIMITED LIABILITY PARTNERSHIP ACT, 2008**



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THE LIMITED LIABILITY PARTNERSHIP ACT, 2008



#### **IMPORTANT DEFINITIONS**

#### **Body Corporate** [(Section 2(1)(d)]

It means a company as defined in clause (20) of section 2 of the Companies Act, 2013 and



- •a limited liability partnership registered under this Act
- •a limited liability partnership incorporated outside India; and
- ·a company incorporated outside India,

But does not Include:

- ·a corporation sole;
- ·a co-operative society registered under any law for the time being in force; and
- any other body corporate which the Central Government may, by notification in the Official Gazette, specify in this behalf.

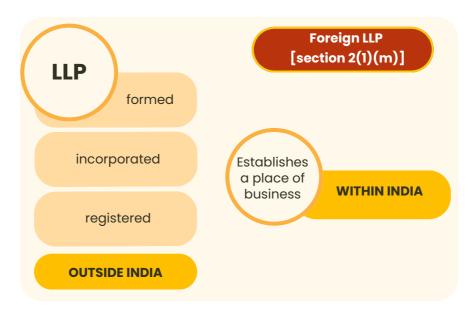
#### **Business** [Section 2(1)(e)]

includes every trade, profession, service and occupation

except any activity which the Central Government may, by notification, exclude.

> **Designated Partner** [Section 2(1)(j)]

any partner designated as such pursuant to section 7.



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#### THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

Limited liability partnership [Section 2(1)(n)]

LLP means:

a partnership formed and registered under LLP Act, 2008.

## Partner [Section 2(1)(q)]

#### Partner, in relation to a LLP

- means any person who becomes a partner in the LLP
- in accordance with the LLP agreement

# Limited Liability partnership agreement [Section 2(1)(o)]

any written agreement

which determines the mutual rights and duties of the partners and

their rights and duties in relation to that LLP.

between the partners of the LLP or

between the LLP and its partners

# Small limited liability partnership [Section 2(1)(ta)]

SMALL LL

the contribution of which, does not exceed 25 lakh rupees or such higher amount, not exceeding 5 crore rupees, as may be prescribed; and SMALL LLP

the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed 40 lakh rupees or such higher amount, not exceeding 50 crore rupees, as may be prescribed; or

SMALL LLF

which meets such other requirements as may be prescribed and fulfils such terms and conditions as may be prescribed.

#### 3. NON-APPLICABILITY OF THE INDIAN PARTNERSHIP ACT, 1932

Save as otherwise provided, the provisions of the Indian Partnership Act, 1932

shall **not** apply to a LLP.



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#### 4. PARTNERS (SECTION 5)

#### **PARTNERS** [SECTION 5]

Any individual or body corporate may be a partner in a LLP.

However, an individual shall not be capable of becoming a partner of a LLP, if—

he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force; he is an undischarged insolvent; or

he has applied to be adjudicated as an insolvent and his application is pending.

#### 5. MINIMUM NUMBER OF PARTNERS (SECTION 6)

#### **MINIMUM NUMBER OF PARTNERS [SECTION 6]**

Every LLP shall have at least two partners.

If at any time the number of partners of a LLP is reduced below two and the LLP carries on business for more than six months while the number is so reduced

1

the person, who is the only partner of the LLP during the time that it so carries on business after those six months and

2

has the knowledge of the fact that it is carrying on business with him alone,

3

shall be liable personally for the obligations of the LLP incurred during that period.



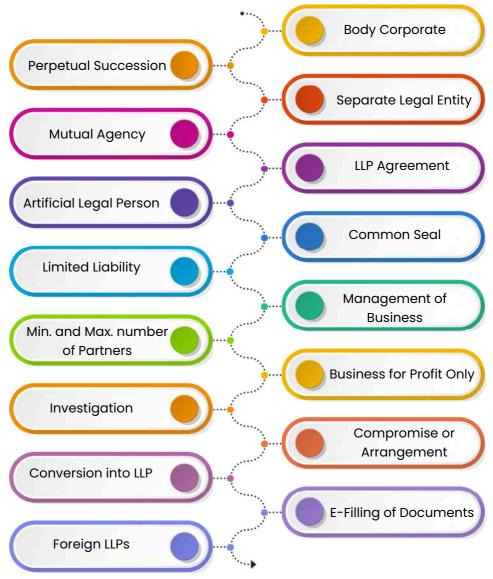
### 6. DESIGNATED PARTNERS (SECTION 7)

### Designated partners (Section 7)

- at least two
- who are individuals
- at least one of them shall be a resident in India.
  - Resident in India: A person who has stayed in India for a period of not less than 120 during the F/Y.

- in case of LLP,
- where all the partners are bodies corporate or
- in which one or more partners are individuals and bodies corporate,
- at least two individuals who are partners of such LLP or
- nominees of such bodies corporate
- shall act as designated partners..

# 7. CHARACTERISTIC OF LLP



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### 8. ADVANTAGES OF LLP FORM

- •is organized and operates on the basis of an agreement
- •provides flexibility without imposing detailed legal and procedural requirements.
- ·Easy to form
- •All partners enjoy limited liability
- •Flexible capital structure
- •Easy to dissolve

### II. INCORPORATION OF LLP

### 1. Incorporation Document (Section 11)

### **Incorporation documents**

- Two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;
- The incorporation document shall be filed in such manner and with such fees, as may be
  prescribed with the Registrar of the State in which the registered office of the LLP is to be
  situated; and

### Statement to be filed:

- There shall be filed along with the incorporation document, a statement in the prescribed form,
- Made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the LLP and
- By any one who subscribed his name to the incorporation document,
- That all the requirements of this Act and the rules made thereunder have been complied with,
- In respect of incorporation and matters precedent and incidental thereto.

### The incorporation document shall—

- be in a form as may be prescribed;
- state the name of the LLP;
- state the proposed business of the LLP;
- state the address of the registered office of the LLP;
- state the name and address of each of the persons who are to be partners of the LLP on incorporation;
- state the name and address of the persons who are to be designated partners of the LLP on incorporation;
- contain such other information concerning the proposed LLP as may be prescribed.





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### THE LIMITED LIABILITY PARTNERSHIP ACT, 2008



If a person makes a statement as discussed above which he—

- knows to be false; or
- does not believe to be true, shall be punishable
- >with imprisonment for a term which may extend to 2 years and

with fine which shall not be less than `10,000 but which may extend to `5 Lakhs.

### 2. Incorporation by registration (Section 12)

The Registrar shall retain the incorporation document and shall, within a period of 14 days—

- register the incorporation document; and
- give a certificate that the LLP is incorporated by the name specified therein.

The certificate issued shall be signed by the Registrar and authenticated by his official seal.

The certificate shall be conclusive evidence that the LLP is incorporated by the name specified therein

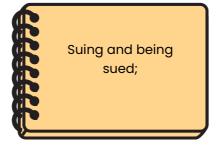
### 3. Registered office of LLP and change therein (Section 13)

Registered office	all communications and notices may be addressed and shall be received.	
Manner of sending	<ul> <li>by post under a certificate of posting or</li> <li>by registered post or</li> <li>by any other manner</li> </ul>	
Change in Registered office	<ul> <li>change the place of its registered office and</li> <li>file the notice of such change</li> <li>with the Registrar in such form and manner and</li> <li>subject to such conditions as may be prescribed and</li> <li>any such change shall take effect only upon such filing.</li> </ul>	
Default	<ul> <li>LLP and its every partner</li> <li>shall be liable to a penalty of Rs. 500 for each day during which the default continues,</li> <li>subject to a maximum of Rs. 50,000</li> </ul>	

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### 4. Effect of registration (Section 14):

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



On registration, a LLP shall, by its name, be capable of

acquiring, owning,
holding and developing
or disposing of property,
whether movable or
immovable, tangible or
intangible;

having a common seal, if it is decided to have one and

### 5. Name (Section 15)

Every limited liability partnership shall have either the words as the last words of its name.

- limited liability partnership" or
- the acronym "LLP"

### No LLP shall be registered by a name which, in the opinion of the Central Government is—

- · undesirable; or
- identical or too nearly resembles to that of any other limited liability partnership or a company or a registered trade mark of any other person under the Trade Marks Act, 1999.

### 6. Reservation of name (Section 16)

A person may apply in such form and manner and accompanied by such fee as may be prescribed to the Registrar for the reservation of a name set out in the application as—

- name of a proposed LLP; or
- name to which a LLP proposes to change its name.

Registrar may, if he is satisfied, subject to the rules prescribed by the Central Government in the matter

- that the name to be reserved is not one which may be rejected on any ground
- reserve the name for a period of 3 months from the date of intimation by the Registrar.



### III. DIFFERENCES WITH OTHER FORMS OF ORGANISATION

### 1. LLP Vs. Partnership firm

Basis	LLP	Partnership firm
Regulating Act	The Limited Liability Partnership Act, 2008.	The Indian Partnership Act, 1932.
Body corporate It is a body corporate.		It is not a body corporate.
Separate legal entity	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.
Creation	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
Registration	Registration is mandatory. LLP can sue and be sued in its own name.	Registration is voluntary. Only the registered partnership firm can sue the third parties.
Perpetual succession	It has perpetual succession.	It has no perpetual succession.
Name	Name of the LLP to contain the word limited liability partners (LLP) as suffix.	No guidelines. The partners can have any name as per their choice.
Liability	Liability of each partner limited to the extent to agreed contribution except in case of willful fraud.	Liability of each partner is unlimited.
Mutual agency	Each partner can bind the LLP by his own acts but not the other partners.	Each partner can bind the firm as well as other partners by his own acts.
Designated partners	At least two designated partners and atleast one of them shall be resident in India.	There is no provision for such partners under the Partnership Act, 1932.
Common seal	It may have its common seal as its official signatures.	There is no such concept in partnership.
Legal compliances	Only designated partners are responsible for all the compliances and penalties under this Act.	All partners are responsible for all the compliances and penalties under the Act.
Annual filing of documents	LLP is required to file:(i) Annual statement of accounts(ii) Statement of solvency(iii) Annual return with the registration of LLP every year.	Partnership firm is not required to file any annual document with the registrar of firms.
Minor as partner	Minor cannot be admitted to the benefits of LLP.	Minor can be admitted to the benefits of the partnership with the prior consent of the existing partners.



### 2. LLP Vs. Limited Liability Company

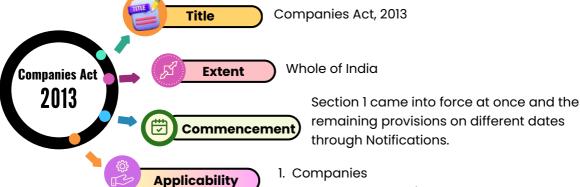
Basis	LLP	Limited Liability Company
Regulating Act	The LLP Act, 2008.	The Companies Act, 2013.
Members/Partners	The persons who contribute to LLP are known as partners of the LLP.	The persons who invest the money in the shares are known as members of the company.
Internal governance structure	The internal governance structure of a LLP is governed by contract agreement between the partners.	The internal governance structure of a company is regulated by statute (i.e., Companies Act, 2013).
Name	Name of the LLP to contain the word "Limited Liability partnership" or "LLP" as suffix.	Name of the public company to contain the word "limited" and Pvt. Co. to contain the word "Private limited" as suffix.
No. of members/partners	Minimum – 2 members  Maximum – No such limit on the  members in the Act.  The members of the LLP can be individuals/or body corporate through the nominees.	Private company:  Minimum - 2 members  Maximum 200 members  Public company:  Minimum - 7 members  Maximum - No such limit on the members.  Members can be organizations, trusts, another business form or individuals.
Liability of members/partners	Liability of a partners is limited to the extent of agreed contribution in case of intention is fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.
Management	The business of the company managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected by the shareholders.
Minimum number of directors/designated partners	Minimum 2 designated partners.	Pvt. Co. – 2 directors Public co. – 3 directors



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**THE COMPANIES ACT, 2013** 

### **CHAPTER-6 THE COMPANIES ACT, 2013**



- 2. Insurance companies
- 3. Banking companies
- 4. Companies producing /supplying electricity
- 5. Company regulated by special Act
- 6. Entities as notified by Central Government

### A BRIEF INTRODUCTION ABOUT COMPANY AND ITS TYPES

What is a Company: Company means a company incorporated under this Act or under any previous Company Law [Section 2(20)]. A company is an incorporated association, which is an artificial person created by law, having a separate entity, with a perpetual succession.

### **TYPES OF COMPANIES**

### 1. On the basis of liability

**Company Limited by** shares [Section 2(22)]

Memorandum of Association (MOA) to the amount (if any)

**Company Limited by Guarantee** [Section 2(21)]

- Liability of its members is limited by the Memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up
- Members cannot be called upon to contribute beyond that stipulated sum

**Unlimited Company** [Section 2(92)]

- No limit on the liability of members
- The liability ceases when he ceases to be a member

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### 2. On the basis of members

One Person company (OPC) [Section 2(62)]

- Only one person as member.
- Minimum paid up capital no limit prescribed
- The MOA shall indicate the name of the other person (nominee), who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company
- The member of OPC may at any time change the name of nominee by giving notice to the company and the company shall intimate the same to the Registrar
- No person shall be eligible to incorporate more than one OPC
- No minor shall become member of the OPC
- Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases
- Such Company cannot carry out NBFC activities including investment in securities of any body corporate
- Here, the member can be the sole member and director

# Private Company [Section 2(68)]

- No minimum paid-up capital requirement
- Minimum number of members 2 (except if private company is an OPC, where it will be 1)
- Maximum number of members 200, excluding present employee-cum-members and erstwhile employee-cum-members
- Right to transfer shares restricted
- Prohibition on invitation to subscribe to securities of the company
- Small company is a private company
- OPC can be formed only as a private company

### Public Company [Section 2(71)]

- Is not a private company (Articles do not have the restricting clauses).
- Shares freely transferable
- No minimum paid up capital requirement
- Minimum number of members 7
- Maximum numbers of members No limit
- Subsidiary of a public company is deemed to be a public company



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### 3. On the basis of control

### **Holding and Subsidiary company**

### Holding company [Section 2(46)]

Holding company, in relation to one or more other companies, means a company of which such companies are subsidiary companies.

### Subsidiary company [Section 2(87)]

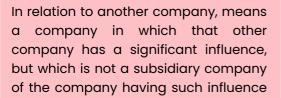
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it means a company in which the holding company—

- controls the composition of the Board of Directors; or
- exercises or controls more than one-half of the total Voting Power either at its own or together with one or more of its subsidiary companies.

However, prescribed class or classes of holding companies shall not have layers of subsidiaries beyond such numbers as may be prescribed.

### Associate Company [Section 2(6)]



and includes a joint venture company.

**"Significant influence"** means control of at least 20% of total voting power, or control of or participation in business decisions under an agreement.

"Joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

**"Total voting power"**, in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes.

### 4. On the basis of access to capital

Listed company [Section 2(52)]

Which has any of its securities listed on any recognised stock exchange

Here, such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the SEBI, shall not be considered as listed companies.



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Unlisted company

company other than listed company

### 5. Other companies

### Government company (GC) [Section 2(45)]

At least 51% of the paid up share capital is held by-

The Central Government (CG), or

Any State Govt./s (SG), or

 Partly by CG and partly by one or more SG

Here, the "paid up share capital" shall be constructed as "total voting power", where shares with differential voting rights have been issued. Includes a company which is a subsidiary company of such Government company.

### Small Company [Section 2(85)]

- A private company
- Paid up capital not more than ₹4 crore or such higher amount as may be prescribed which shall not be more than ₹10 crore rupees; and
- Turnover (as per P&L A/c of immediate preceding FY) not more than ₹40 crores or such higher amount as may be prescribed which shall not be more than ₹100 crore.
- Should not be Section 8 company
  - Holding or a Subsidiary company
  - a company or body corporate governed by any special Act

### Foreign company [Section 2(42)]

Any company or body corporate incorporated outside India which-

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



### Formation of companies with charitable objects etc. [Section 8]

- Formed for the promotion of commerce, art, science, religion, charity, protection of environment, sports, etc.
- Uses its profits for the promotion of the objective for which formed
- Does not declare dividend to members
- Operates under a special licence from Central Government
- Need not use the word Ltd./ Pvt. Ltd. in its name and adopt a more suitable name such as club, chambers of commerce etc.
- Enjoy same privileges and obligations as of a limited company
- Licence revoked if conditions contravened
- Can call its general meeting by giving a clear 14 days notice instead of 21 days
- Requirement of minimum number of directors, independent directors etc. does not apply

### Nidhi Company (Section 406)

Nidhi" or "Mutual Benefit Society" means a company which the Central Government may, by notification in the Official Gazette, declare to be a Nidhi or Mutual Benefit Society, as the case may be.

### **Dormant Company [Section 455]**

- Where a company is formed and registered under this Act
  - for a future project; or
  - to hold an asset or intellectual property and
  - · has no significant accounting transaction
- Such a company or an inactive company may make an application to the Registrar as prescribed under the relevant rules for obtaining the status of a dormant company.
- Registrar on consideration of application allow the status of a dormant co. to an applicant and issue certificate
- In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.
- Inactive company
  - which has not been carrying on any business or operation, or
  - has not made any significant accounting transaction during the last two financial years, or
  - has not filed financial statements and annual returns during the last two financial years
- "Significant accounting transaction" is any transaction other than
  - o payment of fees by a company to the Registrar;
  - o payments made by it to fulfil the requirements of this Act or any other law;
  - o allotment of shares to fulfil the requirements of this Act; and
  - o payments for maintenance of its office and records.



### **CHAPTER 7: THE NEGOTIABLE INSTRUMENTS ACT, 1881**

### 1. NEGOTIABLE INSTRUMENTS

### (i) Type of Negotiable Instruments



### (ii) Essential Characteristics of Negotiable Instruments

It is necessarily in writing.

It should be signed.

It is freely transferable from one person to another.

Holder's title is free from defects.

It can be transferred any number of times till its satisfaction. Every negotiable instrument must contain an unconditional promise or order to pay money. The promise or order to pay must consist of money only.

The sum payable, the time of payment, the payee, must be certain. The instrument should be delivered. Mere drawing of instrument does not create liability.

### 2. PROMISSORY NOTE

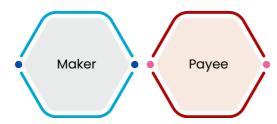
(i) Meaning of Promissory Note

- An instrument in writing (not being a bank-note or a currency-note)
- containing an unconditional undertaking signed by the maker,
- to pay a certain sum of money
- only to, or to the order of, a certain person, or to the bearer of the instrument.

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### (ii) Parties to promissory note



### (iii) Essential Characteristics of a Promissory Note



### 3. BILLS OF EXCHANGE

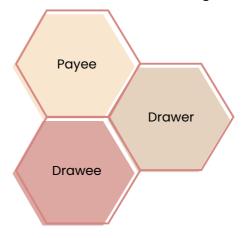
(i) Meaning of Bill of Exchange

- It is an instrument in writing
  - containing an unconditional order
  - signed by the maker directing a certain person
  - to pay a certain sum of money
  - only to a certain person; or the order of a certain person; or the bearer of instrument.

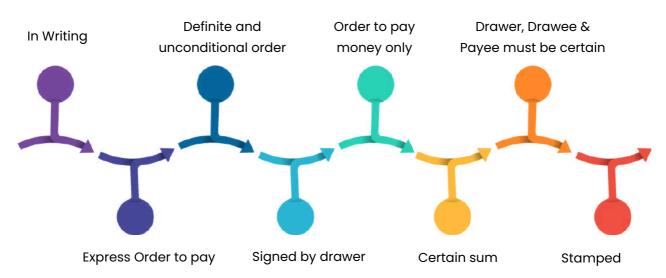
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### (ii) Parties to the Bill of Exchange



### (iii) Essential Characteristics of Bill of Exchange



### 4. DIFFERENCE BETWEEN PROMISSORY NOTE AND BILL OF EXCHANGE

S. No.	Basis	Promissory Note	Bill of Exchange
1.	Definition	"A Promissory Note" is an instrument in writing (not being a banknote or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.	instrument in writing
2.	Nature of Instrument	In a promissory note, there is a promise to pay money.	In a bill of exchange, there is an order for making payment.

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### THE NEGOTIABLE INSTRUMENTS ACT, 1881

S. No.	Basis	Promissory Note	Bill of Exchange
3.	Parties	In a promissory note, there are only 2 parties namely: i. the maker and ii. the payee	In a bill of exchange, there are 3 parties which are as under: i. the drawer ii. the drawee iii. the payee
4.	Acceptance	A promissory note does not require any acceptance, as it is signed by the person who is liable to pay.	· ·
5.	Payable to bearer	A promissory note cannot be made payable to bearer.	On the other hand, a bill of exchange can be drawn payable to bearer. However, it cannot be payable to bearer on demand.

# Cheque Bill of exchange Payable on demand Person who is a maker Drawer Person who is directed to pay Person in whose favour issued Payee

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### (iii) Essential Characteristics of a cheque

All the essentials of a BOE

Drawn on a specified banker.

Payable on demand.

### 6. CLASSIFICATION OF NEGOTIABLE INSTRUMENTS

(i)



### **Bearer Instrument**

- name of the payee is blank or
- name of payee is specified with the words "or bearer" or
- the last indorsement is blank
- negotiated by mere delivery

### Order Instrument

- payable to a person, or
- Payable to a person / his order, or
- Payable to order of a person, or
- · the last indorsement is in full,
- negotiated by indorsement and delivery

Place where Instrument is drawn and made payable

P/N, BOE, C drawn/made in India

Residence of Person on whom Instrument is drawn

+ Payable in India OR + drawn upon a person resident in India.

**Nature of Instrument** 

are Inland Instruments

(iii)

Place where bill is drawn

P/N, BOE, C drawn/made outside India

Residence of Person on whom drawn and place where made payable

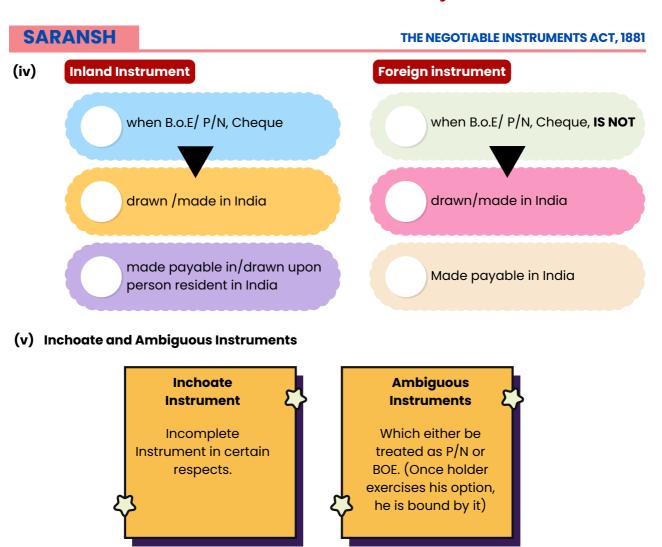
- on a person resident in or outside India
   + made payable in India
- on a person residing outside India + payable outside India.
- on a person residing in India + payable outside India

**Nature of Instrument** 

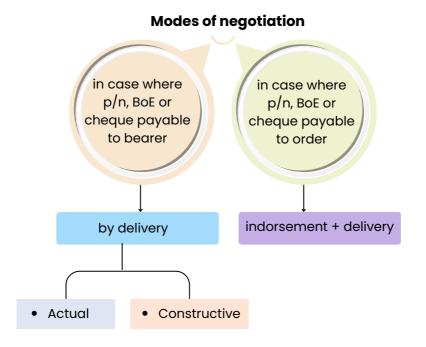
are foreign bills



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### 7. MODES OF NEGOTIATION



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### 8. DELIVERY WHEN EFFECTIVE BETWEEN THE PARTIES

# Negotiation of instruments between the parties

### How delivery is to be made

As between parties standing in immediate relation

Delivery to be effectual must be made by the party making, accepting, or endorsing the instrument, or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course

It may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

# 9. DISHONOUR OF CHEQUES FOR INSUFFICIENCY OF FUNDS IN THE ACCOUNTS [SECTION 138 TO 142]

Debt

Cheque was issued to discharge a legally enforceable debt

Reason for dishonour

insufficiency of funds

Within 3 months

Demand

Default by drawer to pay

within 15 days of demand made

Within 30 days of dishonour

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made from drawer

## 10. RULES REGARDING PRESENTMENT FOR PAYMENT (P/N, BOE, CH)

To whom	Maker (P/N), Acceptor (BOE), Drawee (CH)	
If default in presentment	no party liable thereto	
Exception	If P/N is payable on demand and is not payable at a specified place, no presentment is necessary.	
Time	During usual business hours	
If instrument payable after date or sight	must be presented for payment at maturity	
P/N payable by instalments	must be presented for payment on 3rd day after date fixed for payment of each instalment	
instrument payable at specified place	Must be presented for payment at that place.	
where no exclusive place specified	must be presented for payment at the place of business (if any) or at the usual residence	
no known place of business or residence	presentment may be made to him in person wherever he can be found	
Instrument payable on demand	Must be presented for payment within a reasonable time after it is received by the holder.	
Note: Delay in presentment for acceptance or payment is excused if the delay is caused by		

Note: Delay in presentment for acceptance or payment is excused if the delay is caused by circumstances beyond the control of the holder

### 11. WHEN PRESENTMENT UNNECESSARY (NI IS DISHONOURED ON DUE DATE)

Maker, drawee or acceptor prevents the presentment,

Payable at business place & that's closed on business day during usual business hours, Payable at specified place & liable party doesn't attend place

> Not payable at specified place & liable party not found after due search,



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Liable party engaged to pay notwithstanding non-presentment,

Liable party makes part payment, Liable party waives off his right to take advantage.

If drawer could not suffer damage from want of such presentment.

### 12. RULES AS TO COMPENSATION (SEC.117)



### In case of dishonour of NI, holder can claim:

- Amount due on NI
- Expenses incurred in presenting, noting & protesting.
- Interest 18% p.a. from due date of payment to date of realisation.