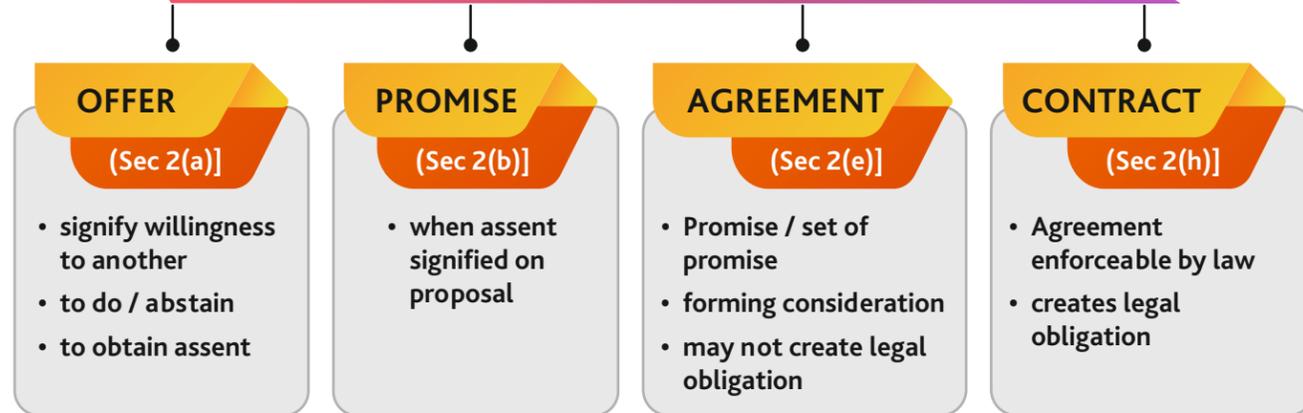
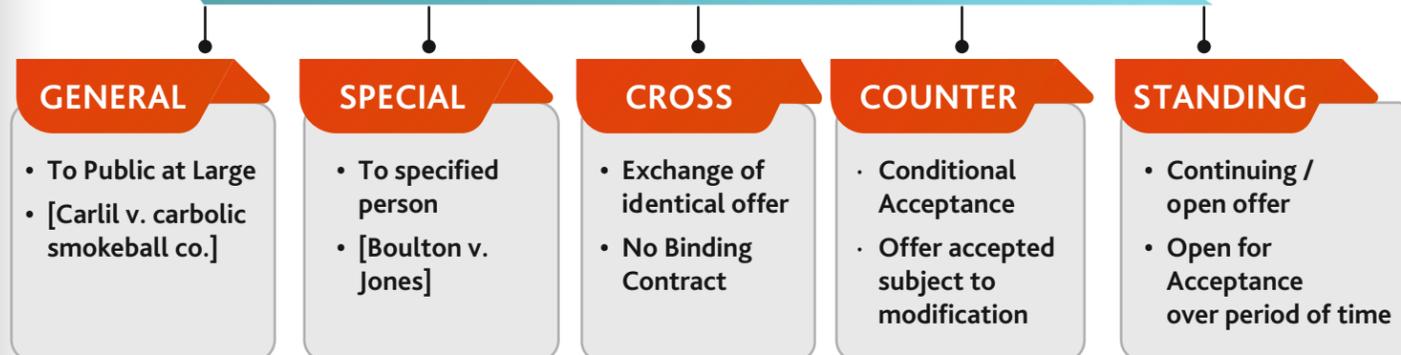


### OFFER + ACCEPTANCE = AGREEMENT

### AGREEMENT + ENFORCEABLE BY LAW = CONTRACT



### KINDS OF OFFER



### ESSENTIAL OF VALID OFFER

- Legal Relation**  
Legal relation must be created
- Certain, Definite, Not Vague**  
No contractual relationship if indefinite / vague
- Communicated to offeree**  
Must be communicated [Lalman Shukla v. Gauri Dutt]
- Assent**  
must be obtained
- Conditional**  
Can be subject to T&C
- Not contain term non-compliance of which would amount to acceptance
- Specific / General**  
made to public at large / specified person
- Express / Implied**  
offer can be in words or by conduct
- Invitation to offer**  
Terms proposed for negotiation
  - Act precedent to offer
  - Can be converted into offer

### LEGAL RULES - VALID ACCEPTANCE

- Given by person to whom offer is made  
General offer : Accepted by anyone  
Special offer : Accepted by specific person
- Absolute & unqualified**  
[Neale vs Merret]
- Must be communicated**  
Conditional acceptance ≠ Acceptance.  
[Brogden v. Metropolitan Railway Co.]
- Prescribed Mode**  
If mode prescribed Acceptance in that mode
- Time**  
If mentioned : within specified time  
If not : within reasonable time
- Mere Silence Not Acceptance**  
[Felthouse v. Bindley]
- By Conduct / Implied Acceptance**  
• Modes other than verbal / written

### Communication of offer

[Sec 4]

Complete

When comes to knowledge of offeree

### Communication of Acceptance

[Sec 4]

Complete

**Against the offeror**  
When put in course of transmission by the offeree

**Against the offeree**  
When comes to knowledge of the offeror

### Revocation of Acceptance & offer

[Sec 5]

### Revocation of offer

Anytime before it is accepted by offeree

Legal भाषा मे

"Revoked anytime before communication of Acceptance is complete as against the offeror"

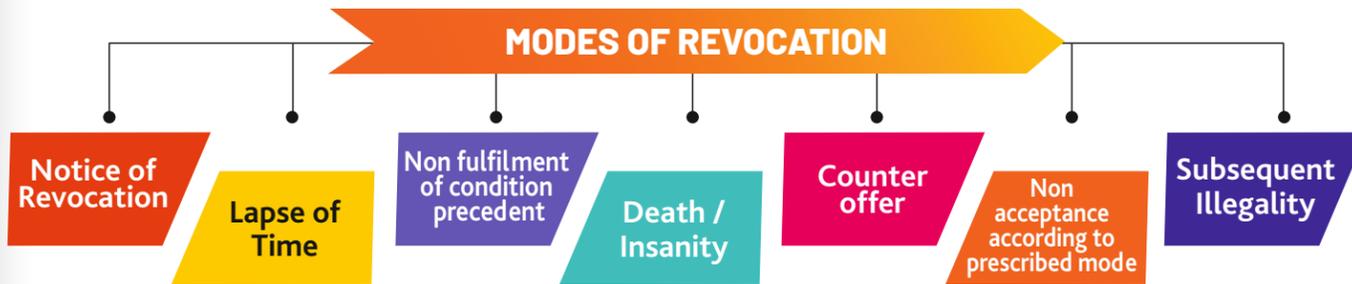
### Revocation of Acceptance

Anytime before it comes in knowledge of the offeror

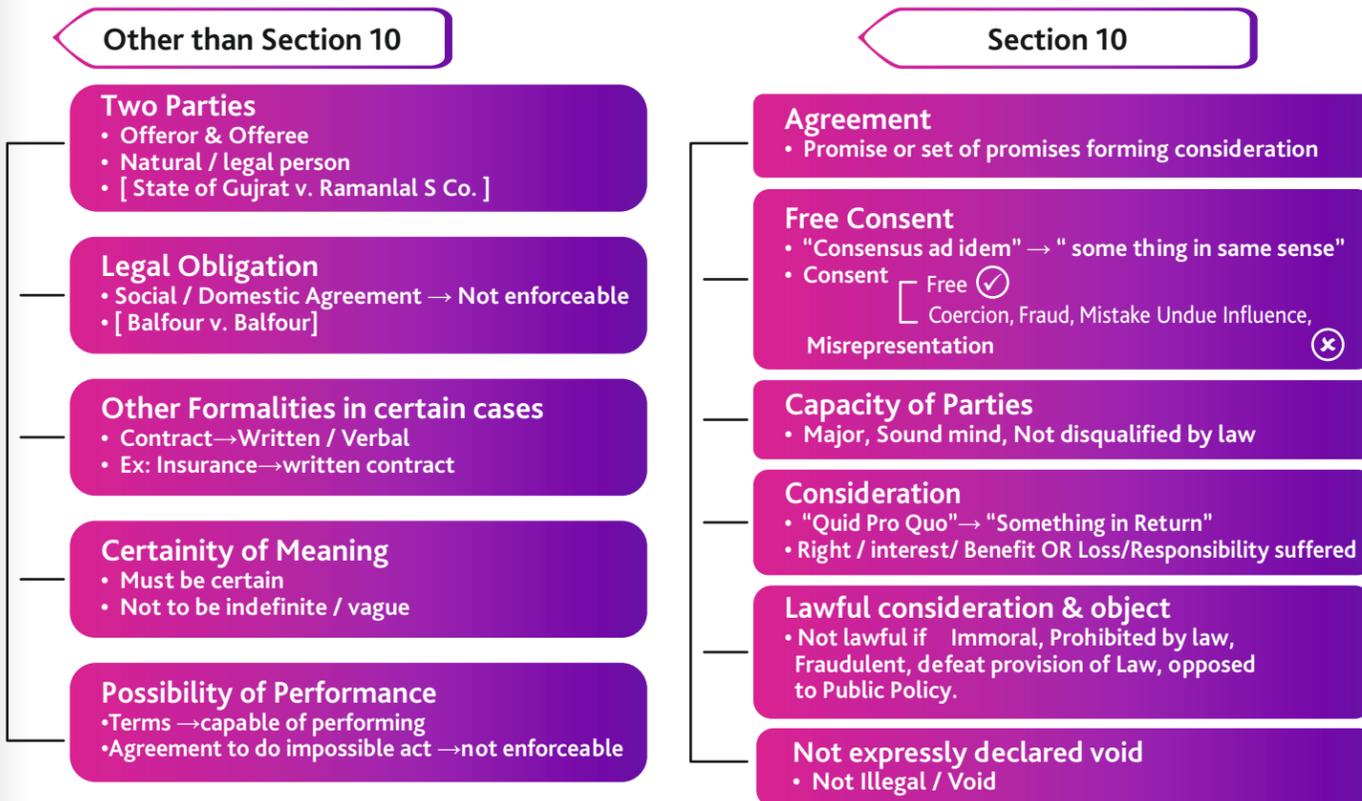
Legal भाषा मे

"Revoked anytime before communication of Acceptance is complete as against the offeree"

### MODES OF REVOCATION



### ESSENTIALS OF VALID CONTRACT



### TYPES OF CONTRACTS

#### On the basis of

#### VALIDITY

- Valid
- Void
- Voidable
- Illegal
- Unenforceable

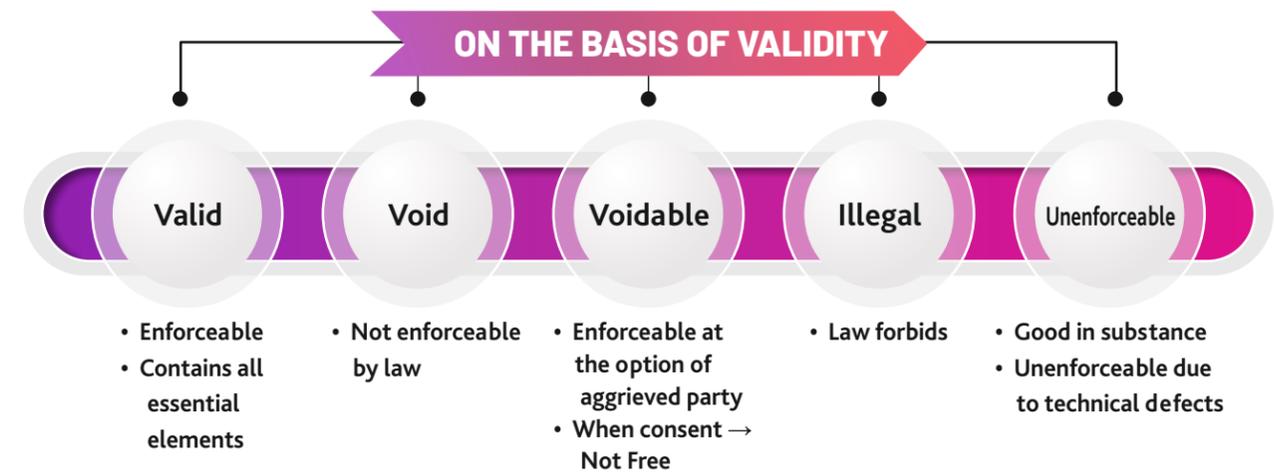
#### FORMATION

- Express
- Implied
- Quasi
- E-Contract

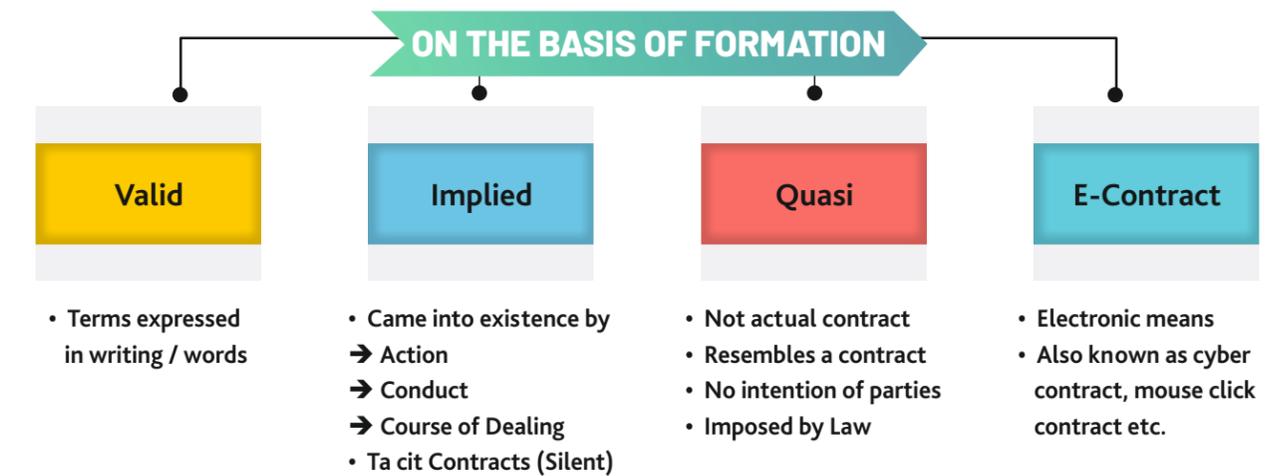
#### PERFORMANCE

- Executed
- Executory

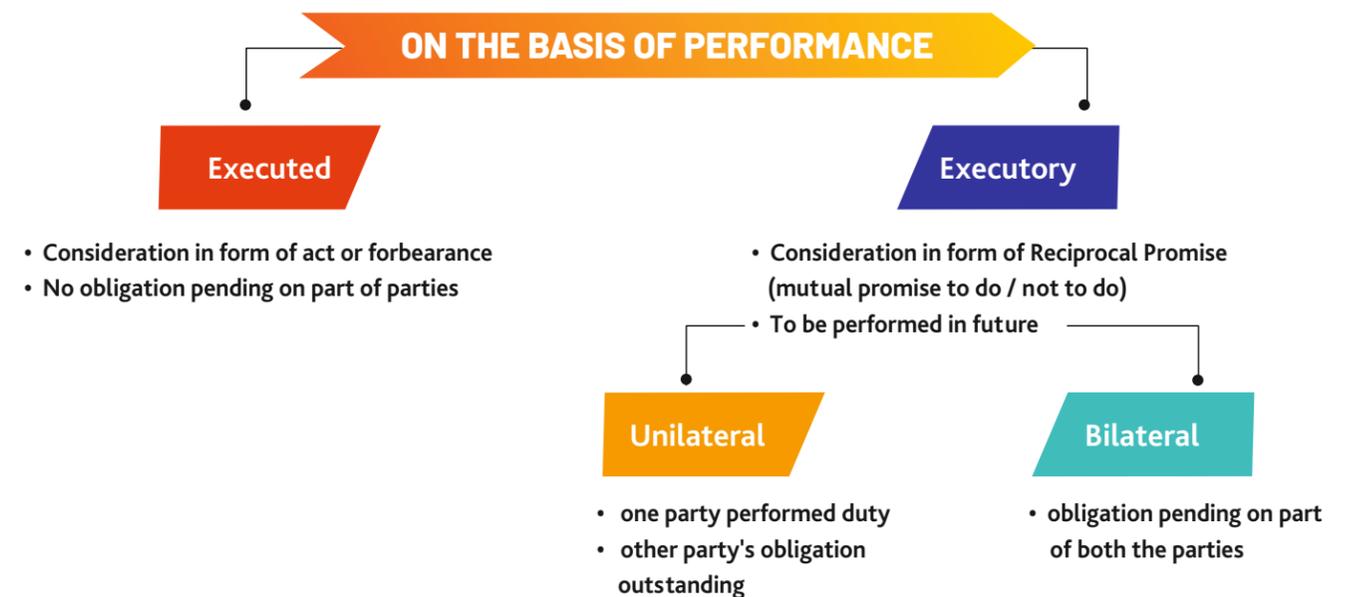
### ON THE BASIS OF VALIDITY



### ON THE BASIS OF FORMATION



### ON THE BASIS OF PERFORMANCE



### CONSIDERATION

#### Section 2 (d)

- When at the desire of Promisor
- Promisee or any other person
- Has done or abstained (Past), does or abstain (Present), Promises to do or abstain (Future)

Such act / abstinence / Promise → Consideration

#### Legal Rules → Consideration



#### Doctrine of Privity of Contract

- Private relation exists between the parties.
- "Stranger to contract cannot sue"
- Only party to contract can sue.
- EXCEPTIONS → Suit by third party to contract

### SUIT BY THIRD PARTY TO CONTRACT

Type of Contract	Contracting Parties		3rd party
	1st party	2nd party	
→ Trust	Settler	Trustee	Beneficiary
→ Family Settlement	Family member	Family member	Family member not included in Contract
→ Marriage Contract	Family member	Family member	Female member
→ Assignment	First party	Assignor	Assignee
→ Estoppel by Acknowledgement of Liability	Giver	Receiver	Beneficiary
→ Covenant Running with Land	Seller	Buyer	Successor of seller
→ Agent	First party	Agent	Principal

#### Validity of Agreement without Consideration

General Rule : Agreement without consideration → Void But → certain exceptions

#### Natural Love & Affection Sec 25 (1)

- Near relationship
- In writing
- Registered under Law

#### Compensation for past voluntary services Sec 25 (2)

- Services rendered voluntarily for Promisor
- Promisor intended to compensate

#### Time Barred Debt Sec 25 (3)

- Promise in writing
- Signed by person or his agent to pay time Barred Debt

#### Agency

- Sec 185: No consideration necessary to create agency

#### Completed Gift Sec 25 (1)

- "No Consideration – No Contract" Do not Apply

#### Bailment Sec 148

- No consideration required to effect contract of "Gratuitous Bailment" (Free ऋ)

#### Charity Sec 148

- Promisee takes Liability
- On promise of person to contribute to Charity
- [Kadarnath v. Gorie Mohammad]

### OTHER ESSENTIAL ELEMENTS OF CONTRACT

Section 11

Capacity to Contract

Major

Sound Mind

Not disqualified by Law



### PERSON OF SOUND MIND SEC 12

usually unsound mind occasionally sound mind

• Make contract, when of sound mind

usually sound mind occasionally unsound mind

• Not make contract, when of unsound mind

### NOT DISQUALIFIED BY LAW

Persons disqualified

Foreign Sovereign

Alien Enemy

Convicts

Insolvent

FREE CONSENT

Consent is Free, when not caused by

Coercion (Sec 15)

Undue Influence (Sec 16)

Fraud (Sec 17)

Misrepresentation (Sec 18)

Mistake (Sec 20, 21, 22)

VOIDABLE

VOID

#### COERCION

- Committing / threatening to commit any Act (Forbidden by IPC)
  - Unlawful detaining / threatening to detain any property
  - Intention : to cause person to make agreement
  - Effect : 1 Contract voidable
  - Effect : 2 Benefit received to be restored
  - Proceed from party to contract
  - Subject must be other contracting party
- Not Necessary

#### UNDUE INFLUENCE

- Near Relation between 2 parties
- One of them is position to dominate
- Person Deemed to be in position to dominate:-
  - Real & Apparent Authority (Father – Son)
  - Fiduciary Relationship (Trust) (Husband – Wife)
  - Mental Distress (Doctor Patient)
  - Unconscionable Bargain (Unreasonable)
- Effect: 1 Contract voidable
- Effect: 2 May be set aside by court

#### FRAUD

##### Commission of Following act:-

- Fact suggested → knows, not true
- Active concealment of fact
- Promise made without intention of performing
- Other act filled to deceive
- Any act declared by Law → as Fraud

##### Effect:-

- Contract voidable
- Sue for damages

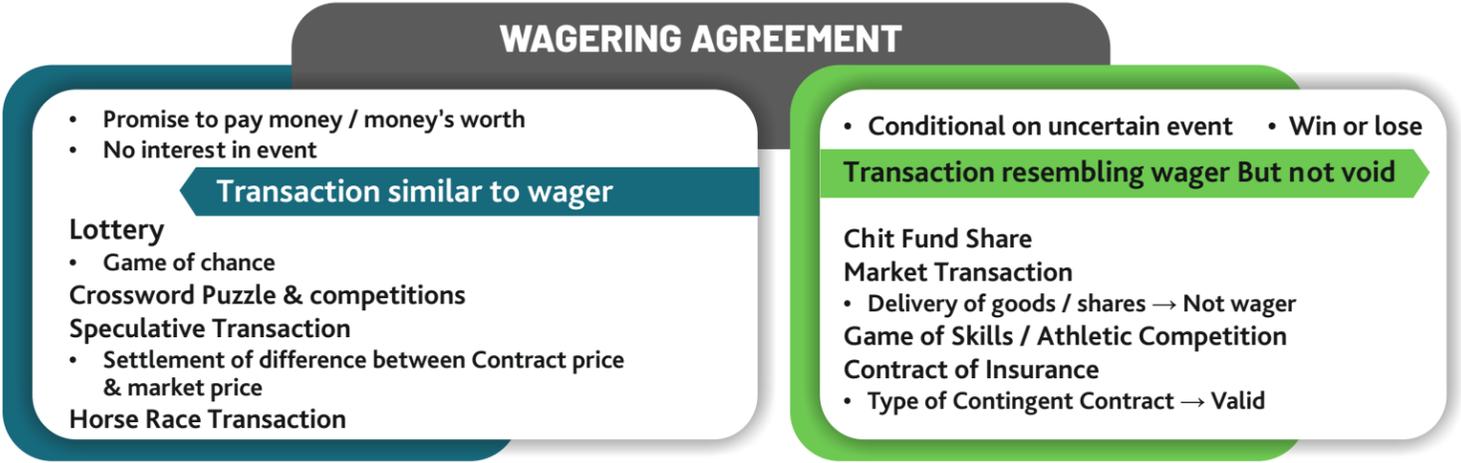
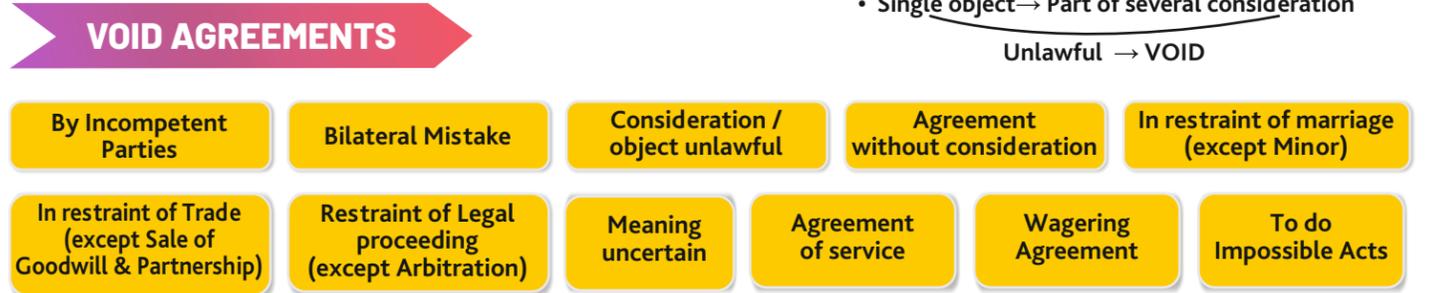
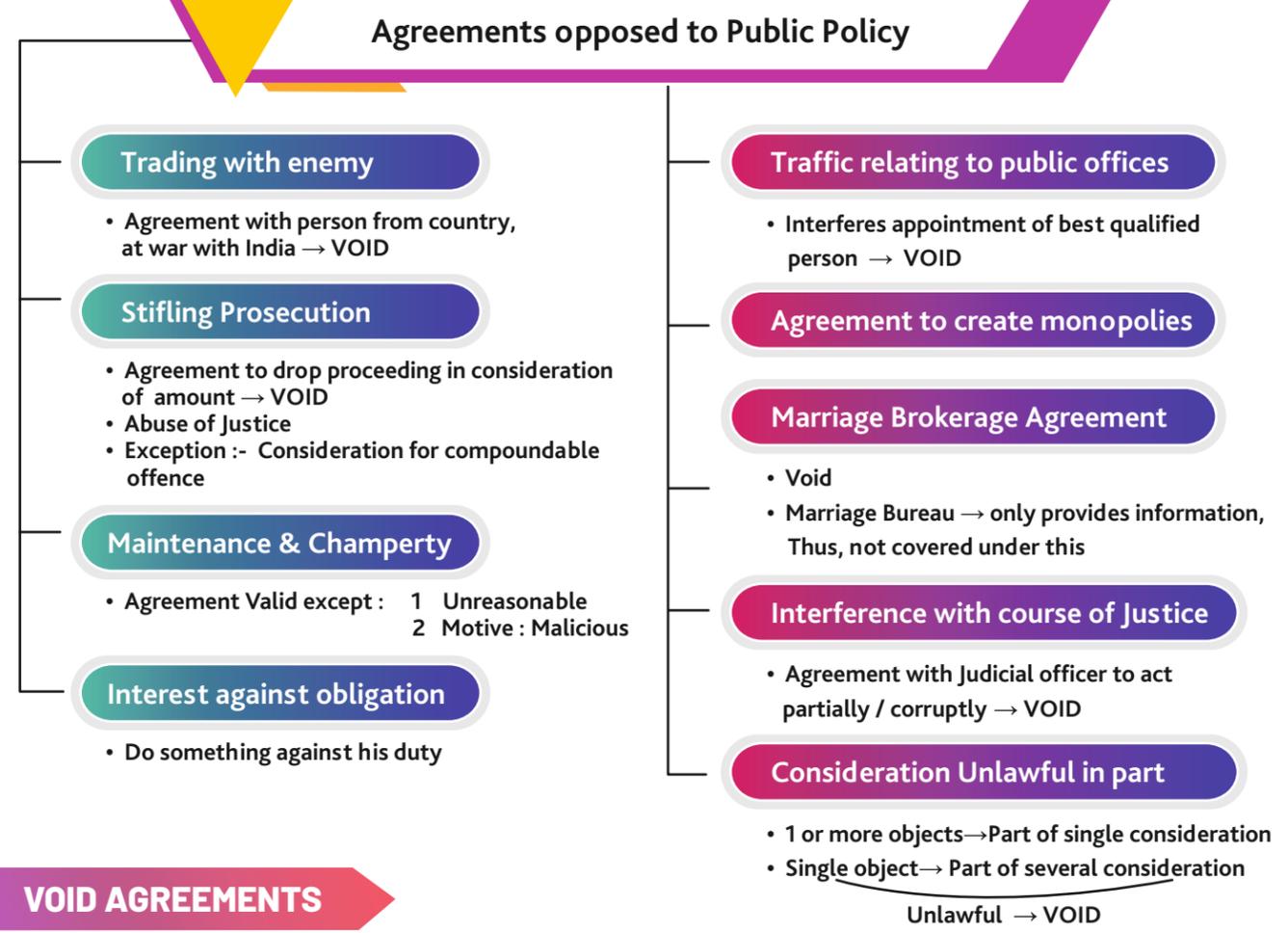
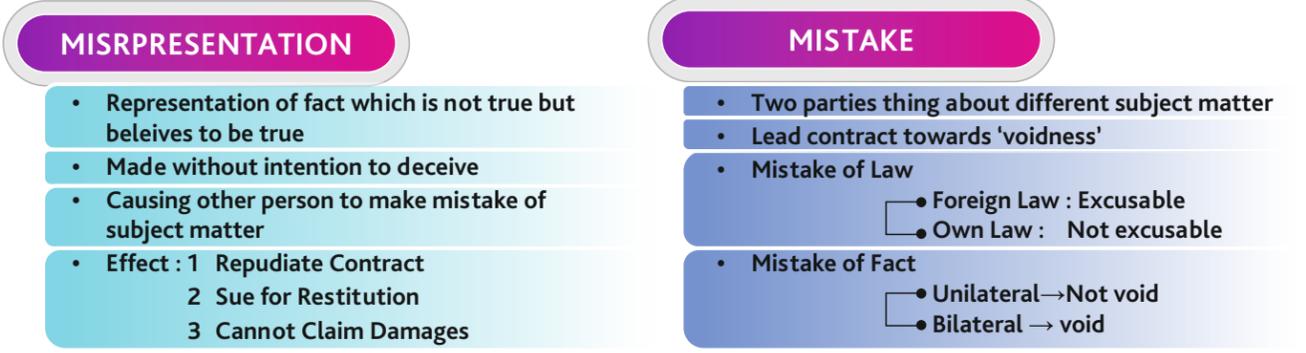
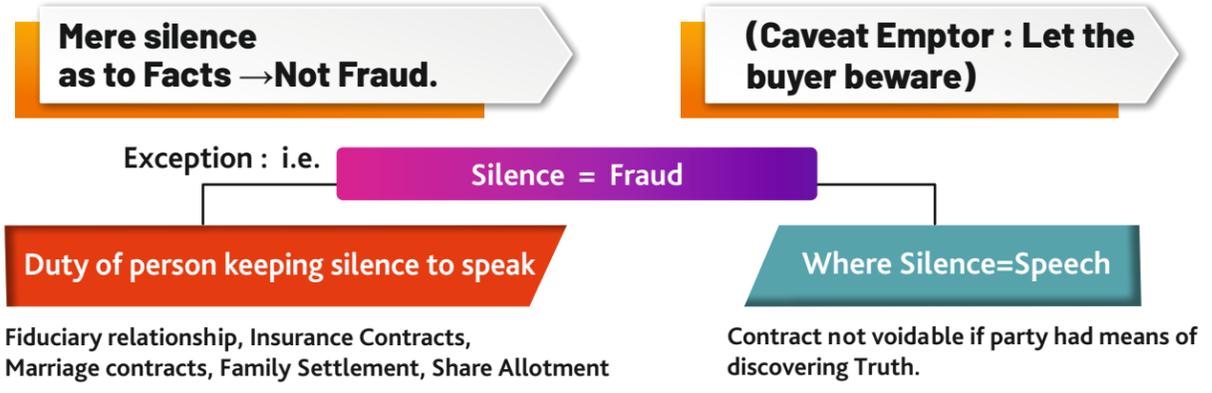
##### Committed by:-

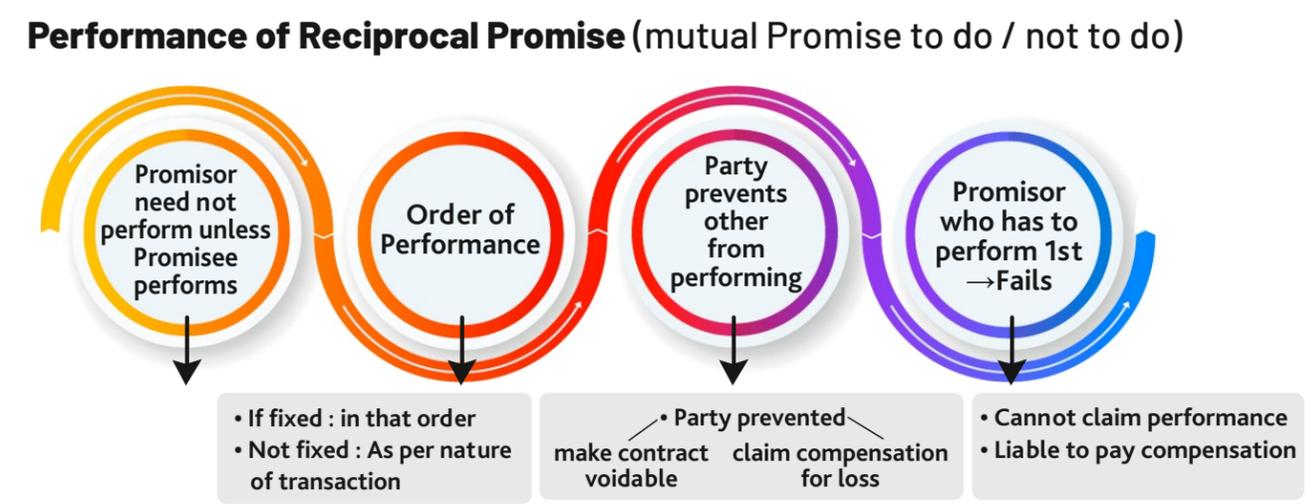
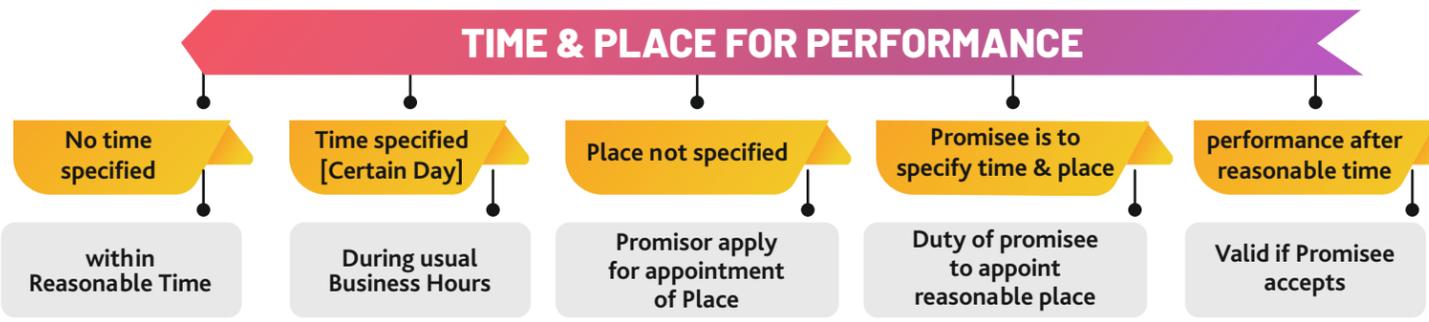
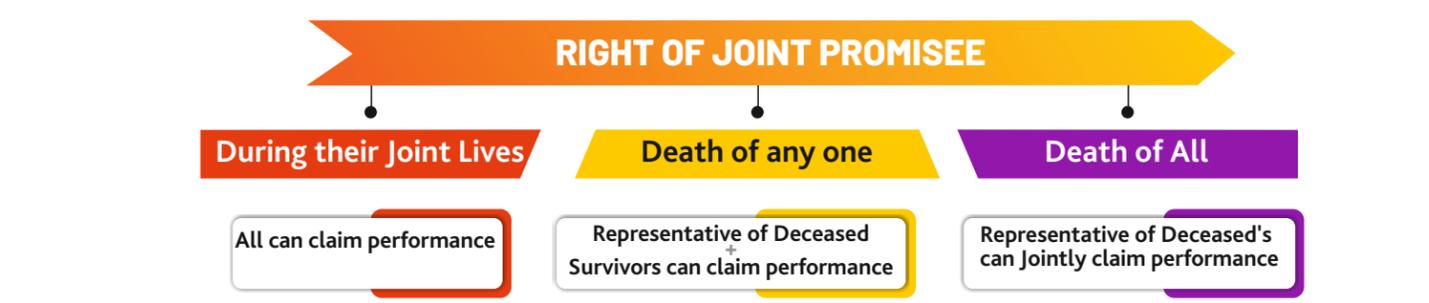
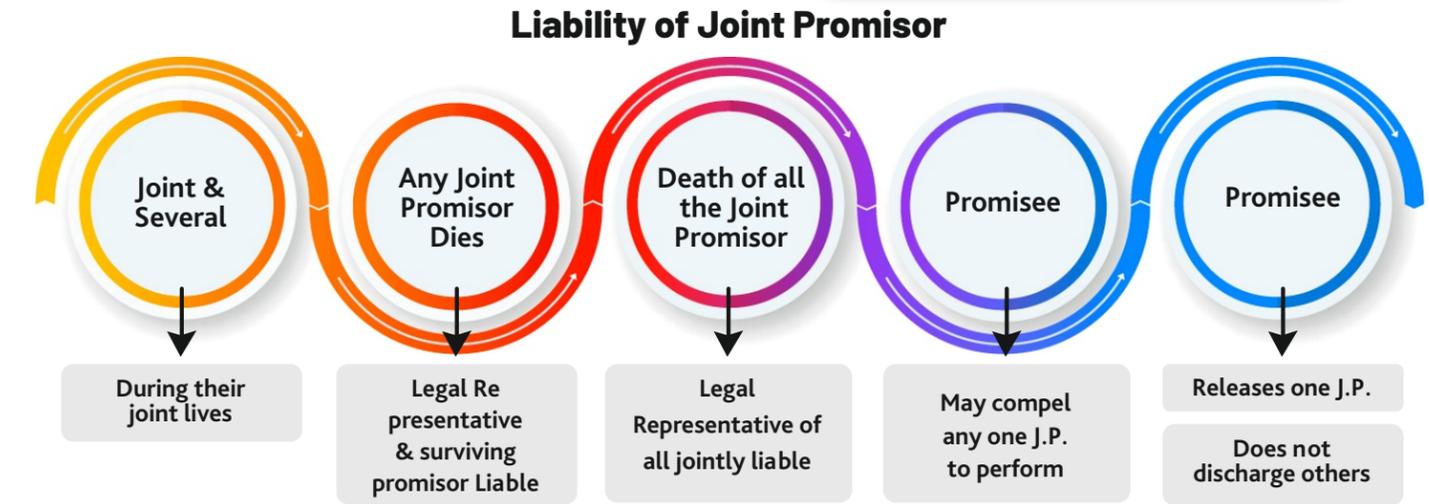
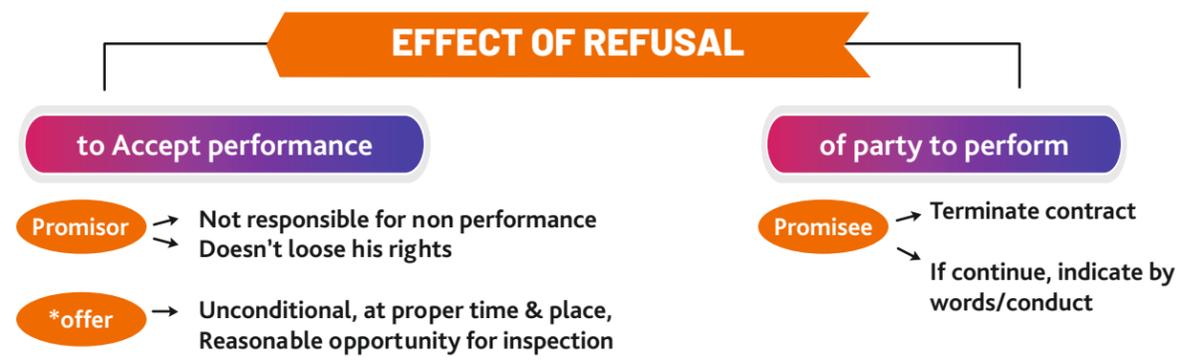
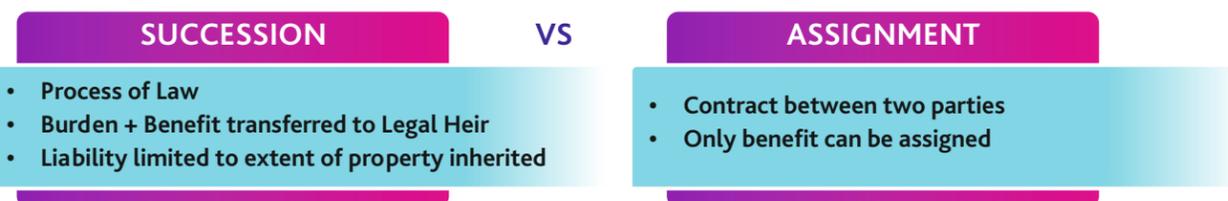
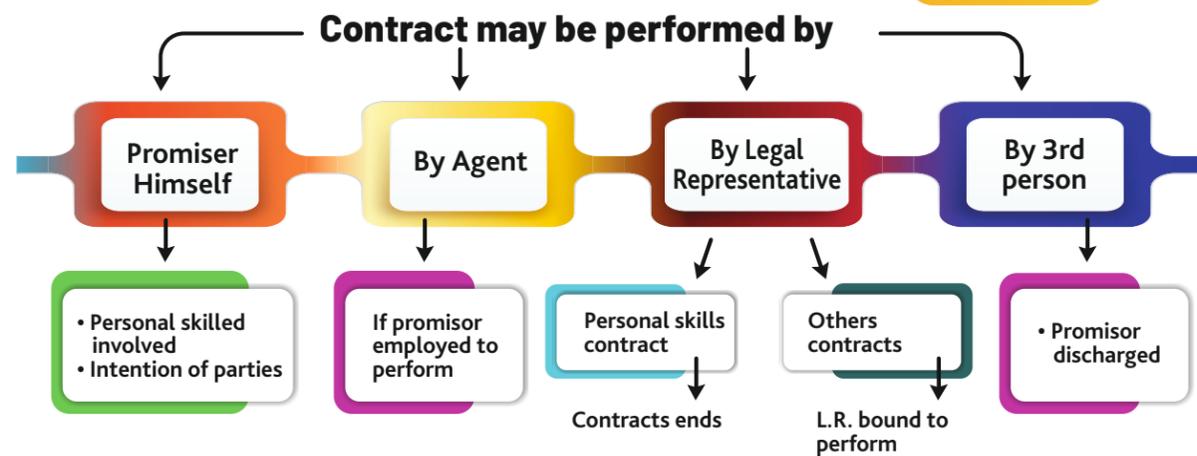
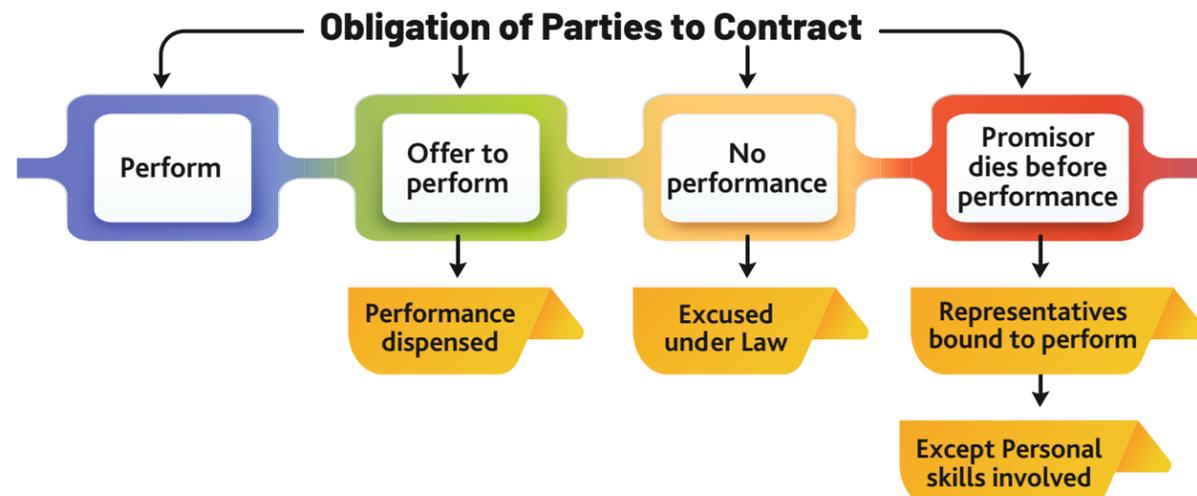
- Party to contract, with his connivance
- Agent of party to contract

##### Intention:-

- To deceive
  - To induce to enter into contract
- OR

- Rescind → within reasonable time
- Insist performance

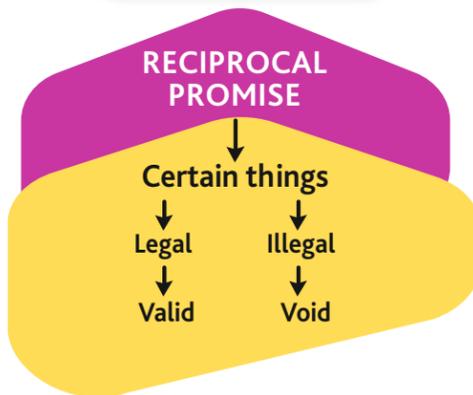
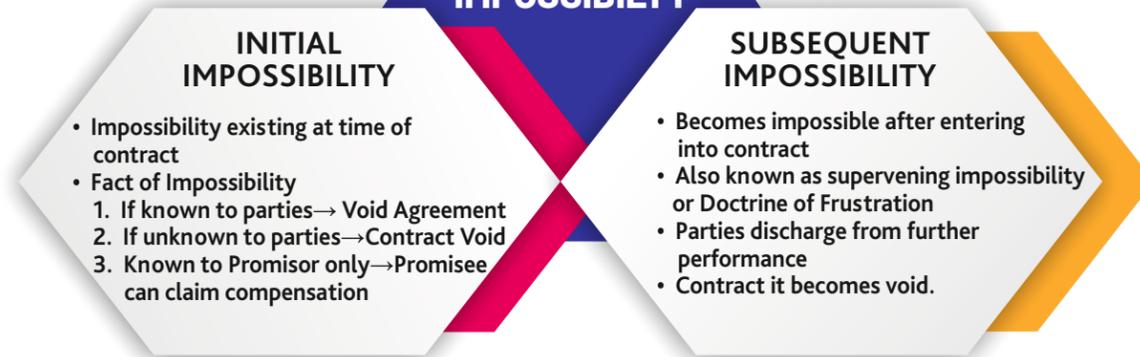




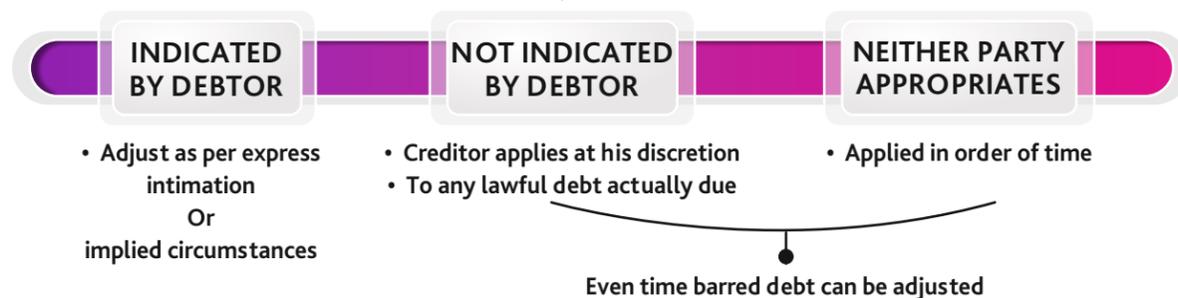
### EFFECT OF FAILURE TO PERFORM AT TIME FIXED



### IMPOSSIBILITY



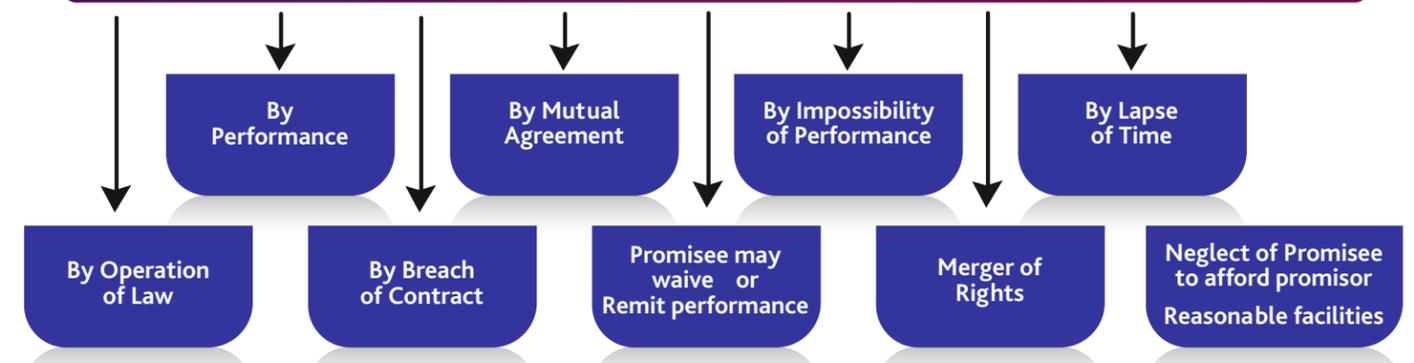
### APPROPRIATION OF PAYMENTS



### CONTRACTS WHICH NEED NOT BE PERFORMED



### DISCHARGE OF CONTRACT



**Breach FAILURE OF PARTY TO PERFORM HIS/ HER OBLIGATION UNDER CONTRACT**

**ANTICIPATORY**

- Breach occurring before time fixed for performance has arrived
- Express / Implied breach
- Effect —
  1. Rescind & Sue for Damages immediately.
  2. Not rescind & wait for performance
- Promisor may get benefit of supervening Impossibility

**ACTUAL**

- Breach occurs —
  1. when performance due
  2. during the performance
- Other party obtains Right of Action against defaulting party.

**REMEDIES FOR BREACH OF CONTRACT**

Suit for Damages

Rescission of Contract

Suit for Specific Performance

Suit for Injunction

Suit upon Quantum Meruit

**SUIT FOR DAMAGES**

**ORDINARY**

- Compensation for damages naturally arose during usual course of events.
- No Compensation for Remote / Indirect Loss

**SPECIAL**

- Arises on previous notice of special circumstances affecting contract

**VINDICTIVE / EXEMPLARY**

- Breach of Promise to marry
- Wrongful dishonour of cheque by Bank

**NOMINAL**

- No real damage suffered
- Establishes Right to decree

**DETERIORATION CAUSED BY DELAY**

- Damages recovered even without Notice

**PRE – FIXED DAMAGES**

- Sum to be paid for breach → mentioned in contract

**LIQUIDATED DAMAGES/SPENALTY**

- Reasonable Compensation
- Genuine Pre estimate
- Not exceeding sum mentioned

- Exorbitant amount
- Create terror
- Sum payable in excess of Damage

**RECISSION OF CONTRACT**

- Contract broken
- Other party may rescind contract
- Can claim compensation

**SUIT FOR SPECIFIC PERFORMANCE**

- Damages are not adequate remedy
- Court may direct to carry out promise as per terms of Contract

**SUIT FOR INJUNCTION**

- Party negates terms of contract
- Court → restrains from doing, what he promised not to do.

**QUANTUM MERUIT**

- As much as the party has deserved
- Recompensate for value of work done, where no remuneration fixed
- 2 Condition for application of Doctrine

Original contract discharged

Claim brought by party not in default

- Claim of Quantum Meruit in following cases —

Something done with No intention to do gratuitously

Void Agreement Contract becomes void

One party refuses to perform

Contract Divisible

Contract Indivisible

Pay for part performance enjoyed

- Performed badly but completely
- Deduction for bad work

### CONTINGENT & QUASI CONTRACT

#### CONTINGENT CONTRACTS

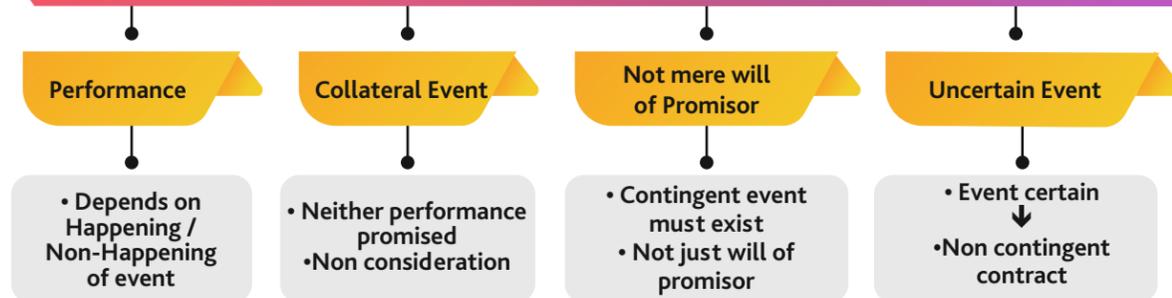
**SEC 31** Contract to do or not to do something, if some even, collateral to contract does or does not happen  
**Example** Contract of Insurance, Indemnity & Guarantee

\* Collateral Event (Pollock & Mulla)

Even in which

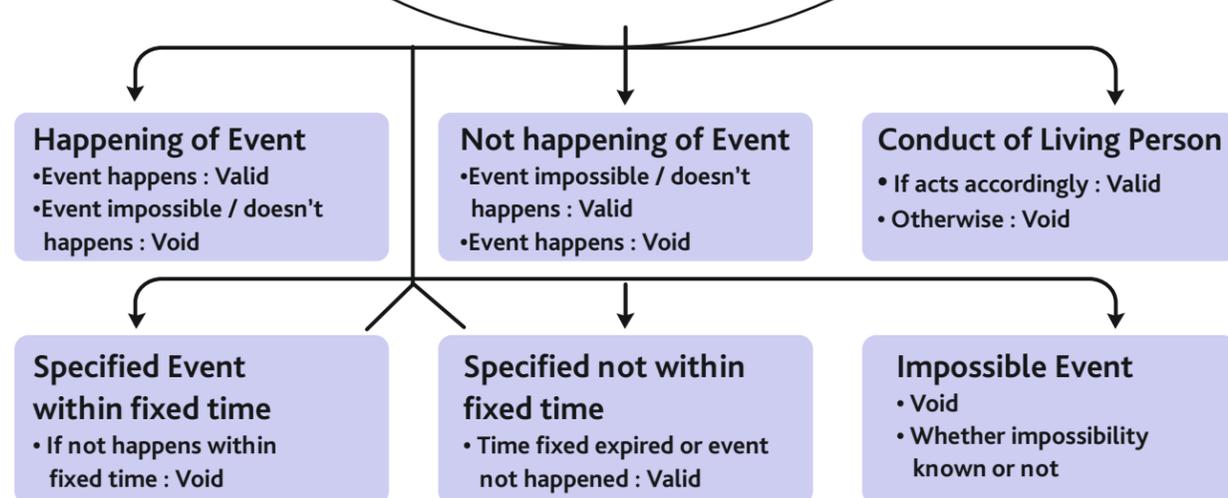
- Neither performance promised
- Nor consideration for a promise

#### ESSENTIALS OF CONTINGENT CONTRACT

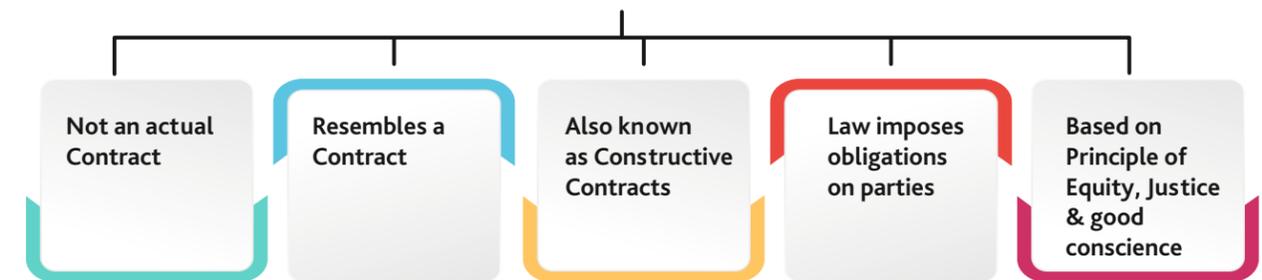


#### RULES RELATING TO ENFORCEMENT [Sec 32 - 36]

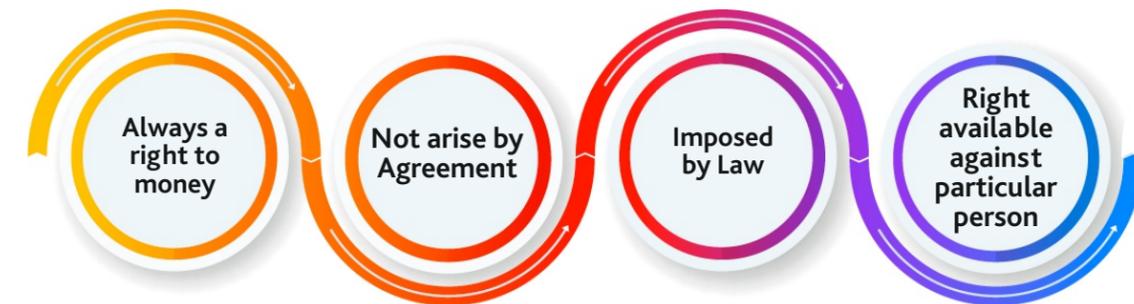
Contract dependent on



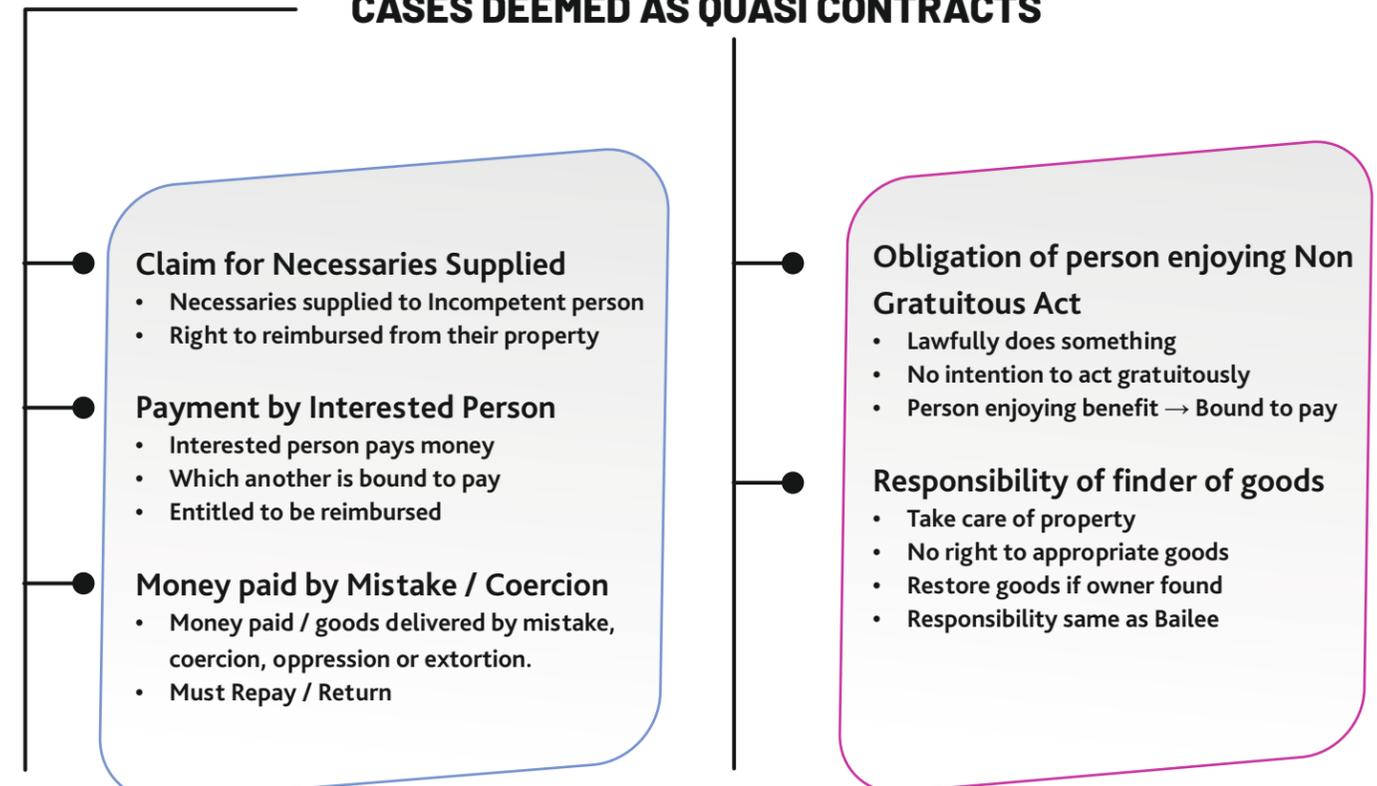
### QUASI CONTRACTS



#### FEATURES



#### CASES DEEMED AS QUASI CONTRACTS



### FORMATION OF THE CONTRACT OF SALE

#### Scope of the act

- Only movable Property
- General provision of Contract Act also applicable
- Expression of Indian Contract Act
- Custom & Usage

- **Buyer & Seller Goods**
  - All movable property other than money & actionable claim
- **Delivery**
  - Voluntary transfer of Possession from one person to another
- **Document of title**
  - Proof of the possession or control of Goods OR
  - Is for authorising or purporting to authorise either by endorsement or delivery
- **Document showing title**
  - Share certificate is document showing title
- **Property (Special vs General)**
  - Ownership or General property
- **Insolvent**—Ceases to pay his debts in ordinary course
- **Price**—Money Consideration for Sale of Goods
- **Quality**—State or Condition

### CONTRACT OF SALE HOW MADE (Section 5)

#### Section 5(1)

- Offer to buy or sale Goods at Price + Acceptance of offer
- Immediate delivery of Goods Or Immediate Payment Or Both
- Delivery or Payment or both in Installment
- Delivery or Payment or both shall be postponed

#### Section 5(2)

- Contract may be made
- In writing
  - By word of mouth
  - Partly in writing & partly by word of mouth
  - Implied from conduct of parties

### GOODS

#### Existing

Goods are in existence at the time of Contract of Sale

#### Future

Goods to be manufacture produced Or acquired after Contract of Sale

#### Contingent

acquisition depends upon contingency

**Specific** Identified and agreed upon at the time of Contract of Sale.

**Ascertained** Identified after Contract of Sale.

**Unascertained** Not specifically identified or agreed upon at the time of Contract of Sale.

### DELIVERY

#### Actual

Goods are physically delivered to buyer

#### Constructive

Effected without change in custody or physical possession

#### Symbolic

Delivery of things in token of transfer of something

#### Contract of Sale

Sale  
↓  
Agreement to sale

#### Sale vs Agreement to Sale

1. Transfer of property
2. Nature of contract
3. Remedies for breach
4. Liabilities of parties
5. Burden of risk
6. Nature of right
7. Right of resale
8. In case of insolvency of seller
9. In case of insolvency of buyer

#### Token Agreement to sale become sale

When time elapses or Condition is fulfilled

#### Sale VS Hire Purchase

1. Time of passing of property
2. Position of party
3. Termination of contract
4. Burden of risk of insolvency of buyer
5. Transfer of title
6. Resale

#### Sale VS Bailment

1. Transfer of property
2. Return of Goods
3. Consideration

Sales and contract for Work and Labour

### subject matter of contract of sale

#### Section 6

Existing Or Future Goods

#### Section 7

Goods Perishing before making contract

#### Section 7

Goods Perishing before sale but after agreement to sale

### PERISHING OF FUTURE GOODS

#### Section 9 & 10

#### Ascertainment of Price

by Contract OR Fixed in a manner agreed OR By the course of dealing between Parties

#### Agreement to sale at Valuation by Third Party

1. Third Party does not OR cannot make such valuation. Contract will be avoided
2. Third Party is prevented by buyer OR seller. Party in fault will file suit.

## CONDITIONS AND WARRANTIES



## CONDITIONS AND WARRANTIES



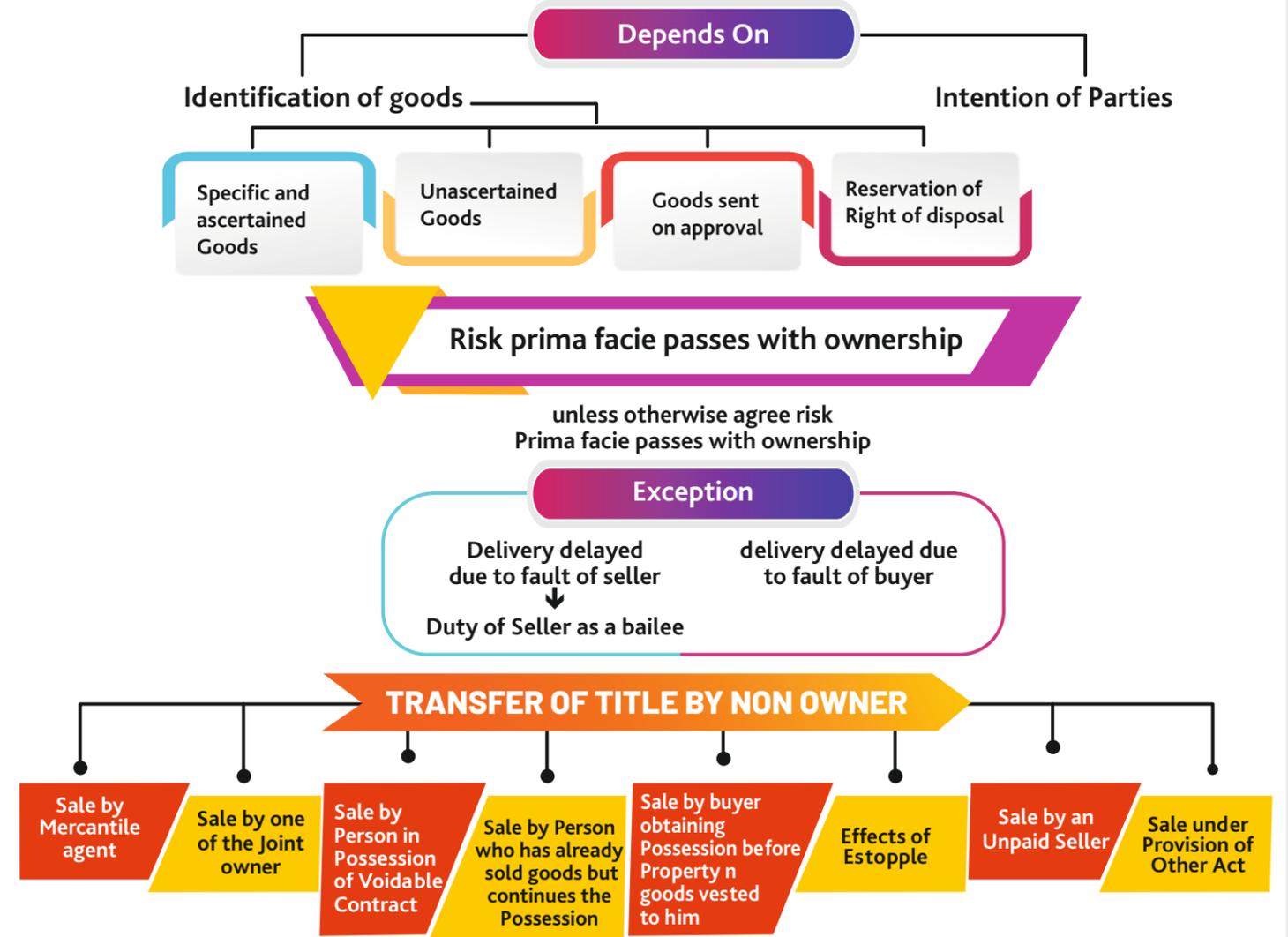
- |   |  |  |
|---|--|--|
| <ul style="list-style-type: none"> <li>• Meaning</li> <li>• Right in case of Breach</li> <li>• Conversion of Stipulation</li> </ul> | <p><b>Voluntary</b></p> <ol style="list-style-type: none"> <li>1. Waive Performance of Contract</li> <li>2. Elect to Treat Condition as Warranty Compulsory</li> </ol> <p><b>Compulsory</b></p> <ol style="list-style-type: none"> <li>1. Non severability of Contract</li> <li>2. Fulfillment of Condition executed by law Stipulation</li> </ol> | <p><b>Implied Condition</b></p> <ol style="list-style-type: none"> <li>1. Condition as to title</li> <li>2. Sale by sample</li> <li>3. Condition as to quality or fitness</li> <li>4. Condition as to whole some noss</li> <li>5. Condition as to Description</li> <li>6. Sale by Sample as well as description</li> <li>7. Condition as to merchantability</li> <li>8. Implied Warranty</li> </ol> <p>(1) Warranty as to undisturbed possession<br/>(2) Warranty as to non existence of circumference<br/>(3) Discloser of dangerous nature of goods</p> <p>Warranty as to quality OR fitness by usage of trade</p> |
|---|--|--|

### CAVEAT Emptor

- Exceptions —**
- |   |   |
|---|---|
| <ol style="list-style-type: none"> <li>1. Fitness as to quality OR use</li> <li>2. Goods Purchased under patent or brand name</li> <li>3. Goods sold by description</li> <li>4. Goods of merchandise quality</li> </ol> | <ol style="list-style-type: none"> <li>5. Sale by sample</li> <li>6. Goods by sample as well as description</li> <li>7. Trade usage</li> <li>8. Sellers actively cancels the defects</li> </ol> |
|---|---|

## TRANSFER OF OWNERSHIP AND DELIVERY OF GOODS

### TRANSFER OF PROPERTY

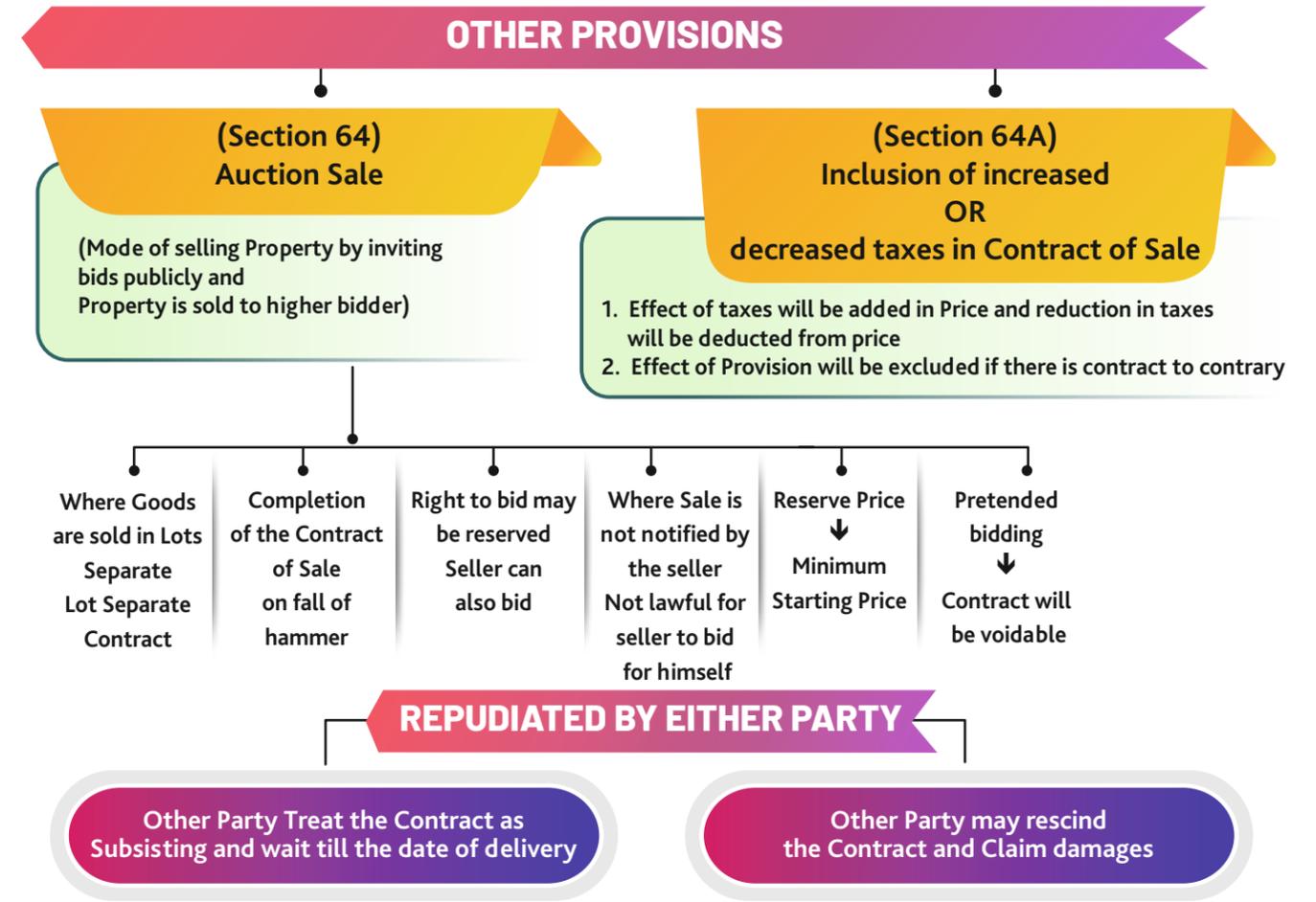
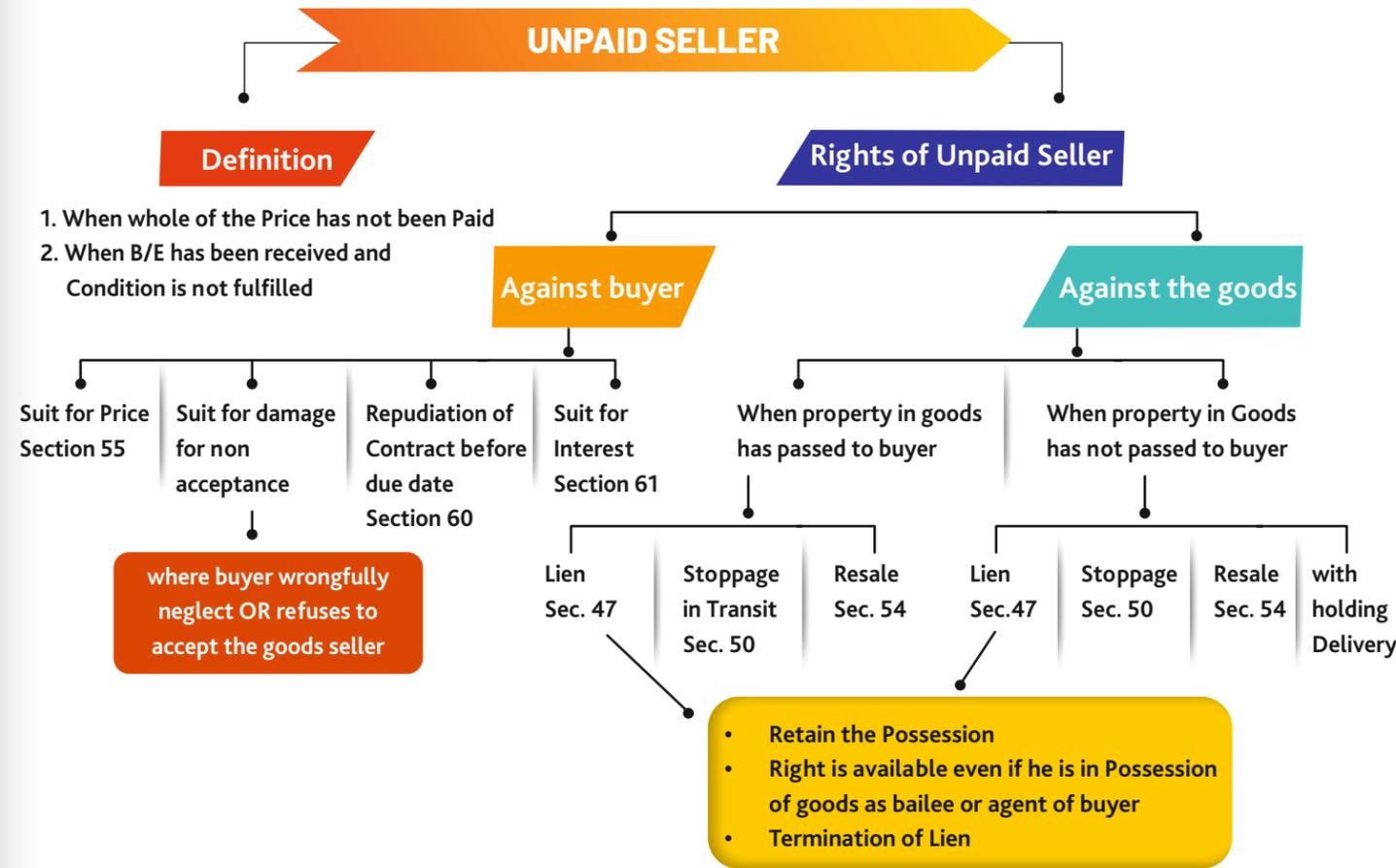


### (SEC-34-41) RULES REGARDING DELIVERY OF GOODS

- |  |   |  |
|--|---|--|
| <ol style="list-style-type: none"> <li>1. Part delivery</li> <li>2. Buyer to apply for delivery</li> <li>3. Place of delivery</li> <li>4. Time of delivery</li> <li>5. Installment delivery</li> </ol> | <ol style="list-style-type: none"> <li>6. Delivery of wrong quantity</li> <li>7. Expenses of delivery</li> <li>8. Goods in possession of third party</li> <li>9. Delivery to carrier</li> <li>10. Determination during transit</li> </ol> | <ol style="list-style-type: none"> <li>11. Buyer right to examine the goods</li> <li>12. Installment delivery</li> <li>13. Delivery in wrong quantity</li> </ol> |
|--|---|--|

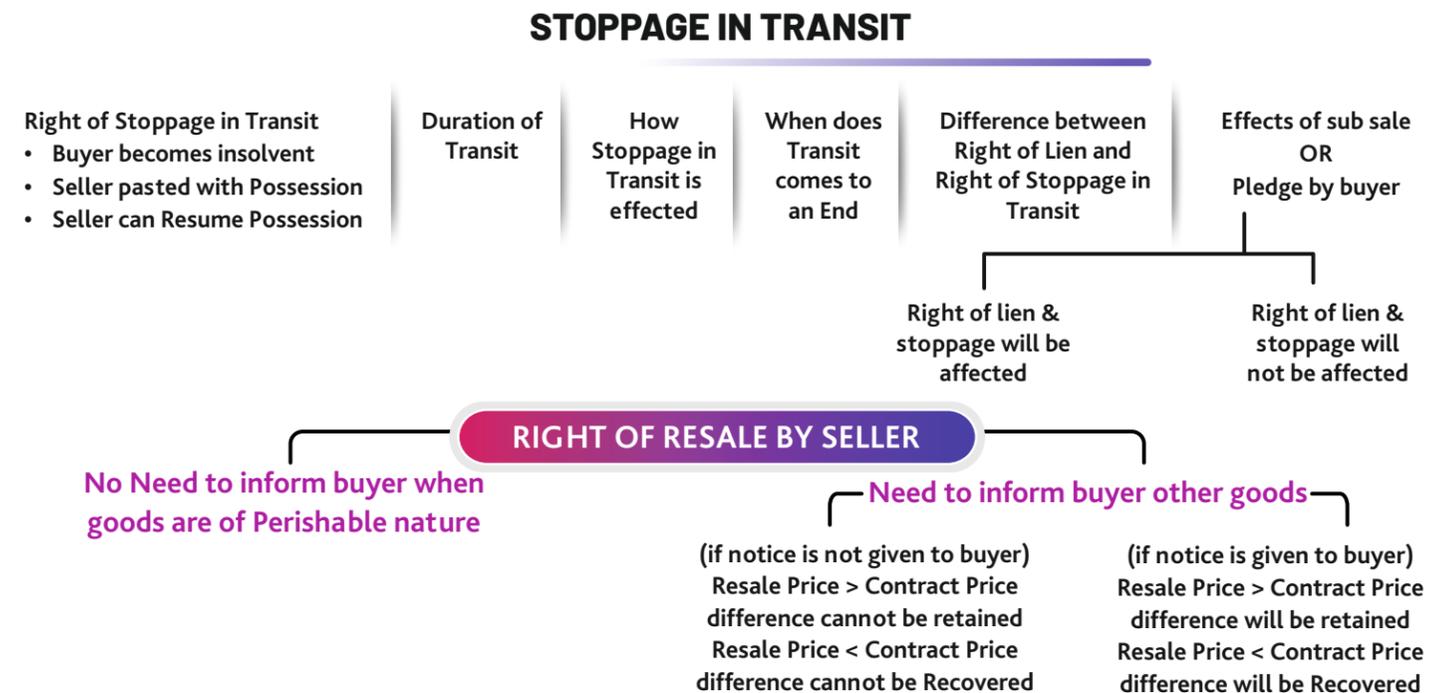
### DELIVERY





### REMEDIES OF BUYER AGAINST SELLER

Damage for non delivery Section 57	Suit for Specific Performance Section 58	Suit for breach of warranty Section 59	Suit for anticipatory breach Section 60	Suit for Interest
Seller wrongfully refuses to deliver the goods	<ol style="list-style-type: none"> <li>Contract for sale of specific/ ascertained Goods</li> <li>Provision of specific Relief act</li> <li>Damage is not adequate remedy</li> <li>If goods are of special nature OR unique</li> </ol>	buyer can not reject the goods due to Breach of Warranty		recover interest when Interest is recoverable as per any Law



# THE INDIAN PARTNERSHIP ACT, 1932

## UNIT 1

**Partnership Firm** Relation between Partners  
Partners who have entered into Partnership are collectively called Firm  
**Firm Name** Name under which their business is carried on

### Association of 2 OR More Persons

- Firm and minor cannot be Partner
- Limit 50

### Agreement

- Must be the result of an agreement
- May be oral or written
- May be express or implied

### Business

includes Trade occupation and Profession motive (acquisition of Gain)

### Sharing of Profit

- Sharing of profit is essential
- Sharing of loss is not essential

### Carried on by all OR Any of them acting for all

- Each partner is principal as well agent
- He can bind other Partner by his act (agent)
- He is bound by the acts of other partner (Principal)

### TEST OF PARTNERSHIP

#### Agreement

Relation of Partnership arises from contract not from status

#### Sharing of Profit

Sharing of Profit is Prima facie evidence not conclusive evidence

#### Mutual Agency

- Existence mutual agency is cardinal principal's law
- Each Partner carrying on business is Principal as well as agent

### TYPE OF PARTNERS

#### Active or Ostensible Partner

Who become Partner by agreement & Who actively participate in the conduct of business

#### Sleeping Partner or Dormant Partner

Who is Partner by agreement & who does not actively take part in the conduct of business

#### Nominal Partner

- Lends his name
- Without having any real interest
- Not entitled to share any profit
- Does not take part in conduct of business
- Liable to third party

#### Partner in Profit Only

- Entitled to Share Profit only
- Not liable for losses
- Liable to third party for All acts of profit only

**Incoming Partner**— admitted with the consent of All Partners not liable for acts done before admission.

**Outgoing Partner**— • who leaves the firm • Liable for All acts till Public notice is given

**Partner by holding out only** — Partner by estoppel

When a Person represent himself

OR

Knowingly permits himself

to be represented himself as Partner in a firm

he is Liable like a Partner in a firm

### VARIOUS KINDS OF PARTNERSHIP

#### WITH REGARD TO DURATION

##### Partnership at Will

- Not fixed period agreed upon & No provision as to determination of Partnership
- Partner is for fixed term Continued after Expiry of term
- Can be dissolved any time by giving notice in Writing

##### Partnership for Fixed Period

Contract for duration of Partnership

#### WITH REGARD TO EXTENT OF BUSINESS

##### General Partnership

Partnership constituted with respect to business in General

##### Particular Partnership

- Particular adventure or undertaking
- Liability extends to Particular venture or undertaking

### PARTNERSHIP DEED

A document in writing containing various terms and conditions as to the relationship of Partner to each other is called Partnership deed.

### CLAUSES

#### SPECIFIC POINTS

- Admission & retirement of Partner
- Settlement of A/c on Dissolution
- Expulsion of Partners

#### GENERAL POINTS

- Name of Partners & Firm
- Place of Business & Date
- Nature of Business & Duration
- Capital
- IOD, IOC & Interest on Loan
- Salary & Commission
- P S R

#### Partnership VS HUF

- Legal status
- Agency
- Distribution of profit
- Extent of liability
- Property
- Transfer of Shares
- Management
- Registration
- Winding up
- No. of membership
- Duration of Existence

#### Partnership VS Club

- Definition
- relationship
- Intrest in Property
- Dissolution

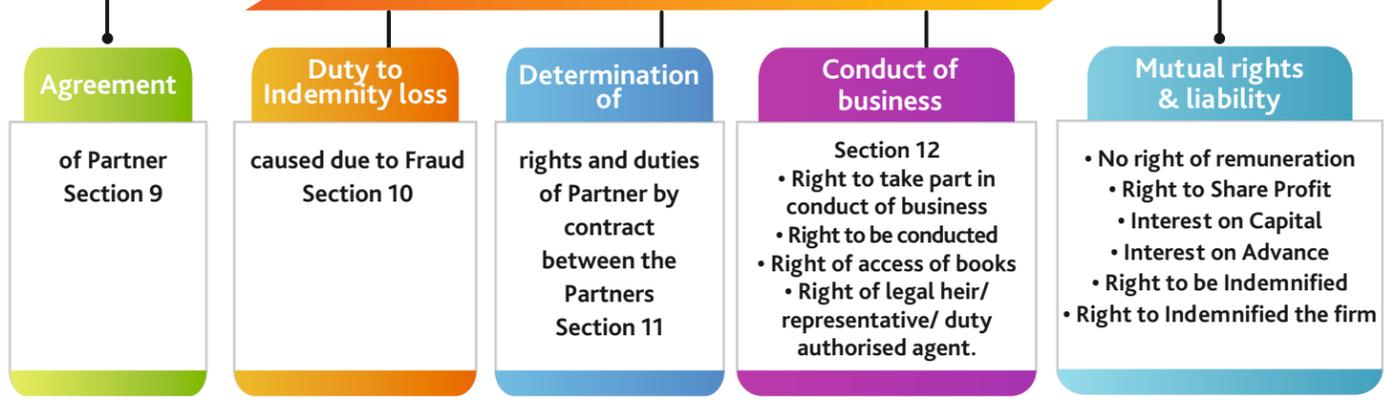
#### Partnership VS HUF

- Mode of creation
- Death of member
- Management
- Authority to bind
- Liability
- Calling for accounts on clauses
- Governing Law
- Minors capacity
- Continuity
- Number of members
- Share in business

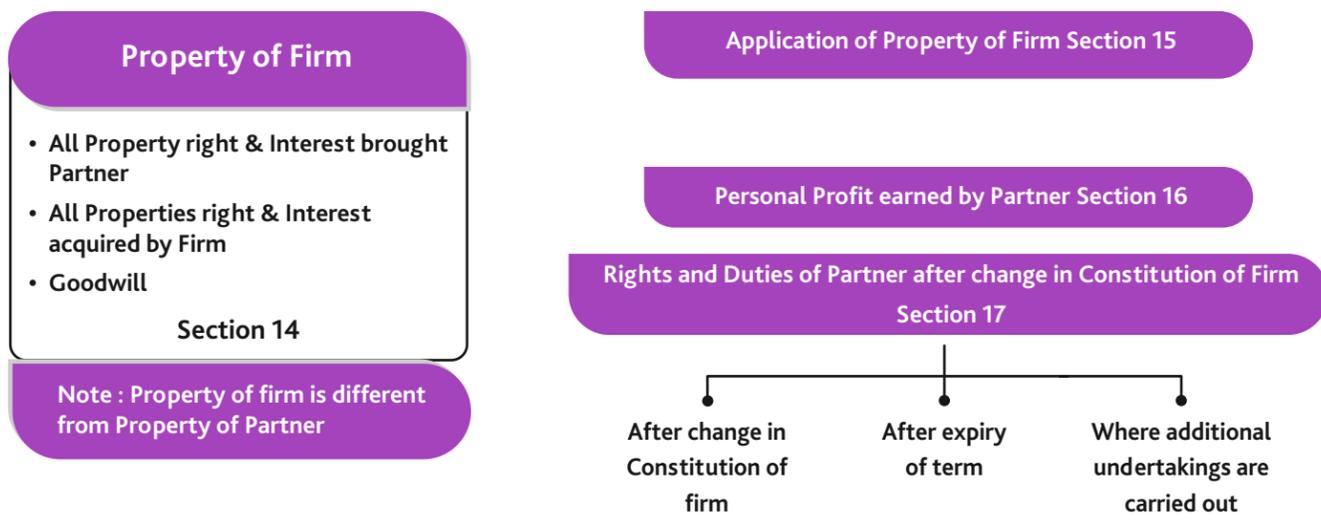
#### Partnership VS Co ownership

#### Partnership VS Association

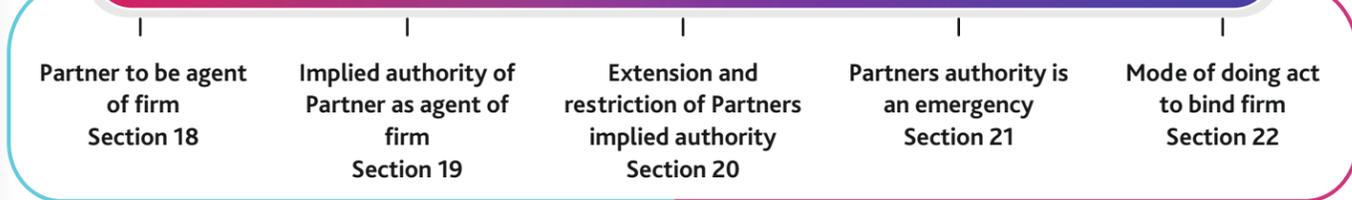
### RELATION OF PARTNER TO ONE ANOTHER



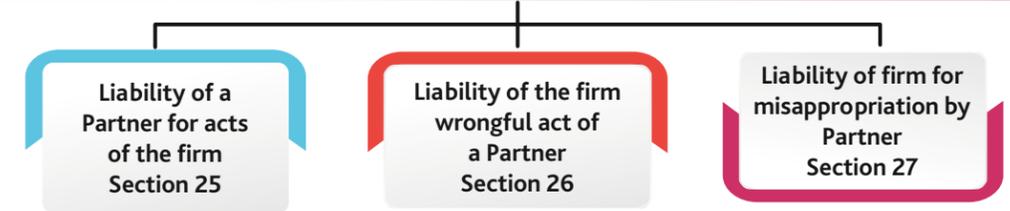
### PARTNERSHIP PROPERTY



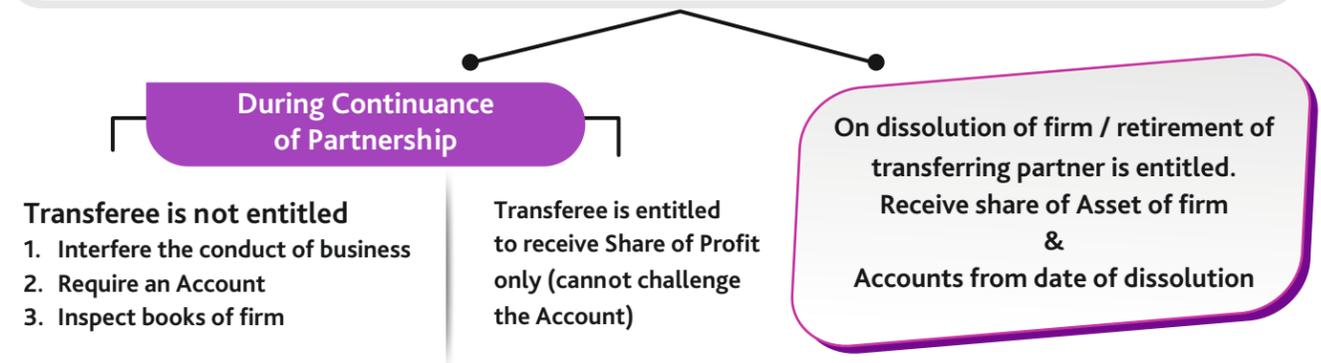
### RELATION OF PARTNER TO THIRD PARTY



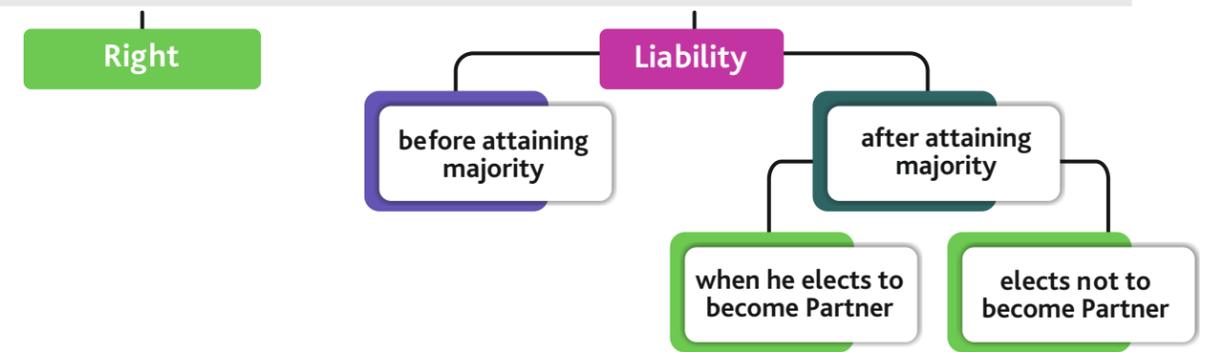
### LIABILITY TO THIRD PARTY



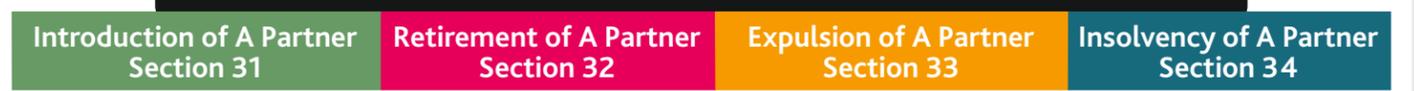
### RIGHT OF A TRANSFEREE OF A PARTNER'S INTEREST (Section 29)



### MINOR ADMITTED TO THE BENEFIT OF PARTNERSHIP (Section 30)



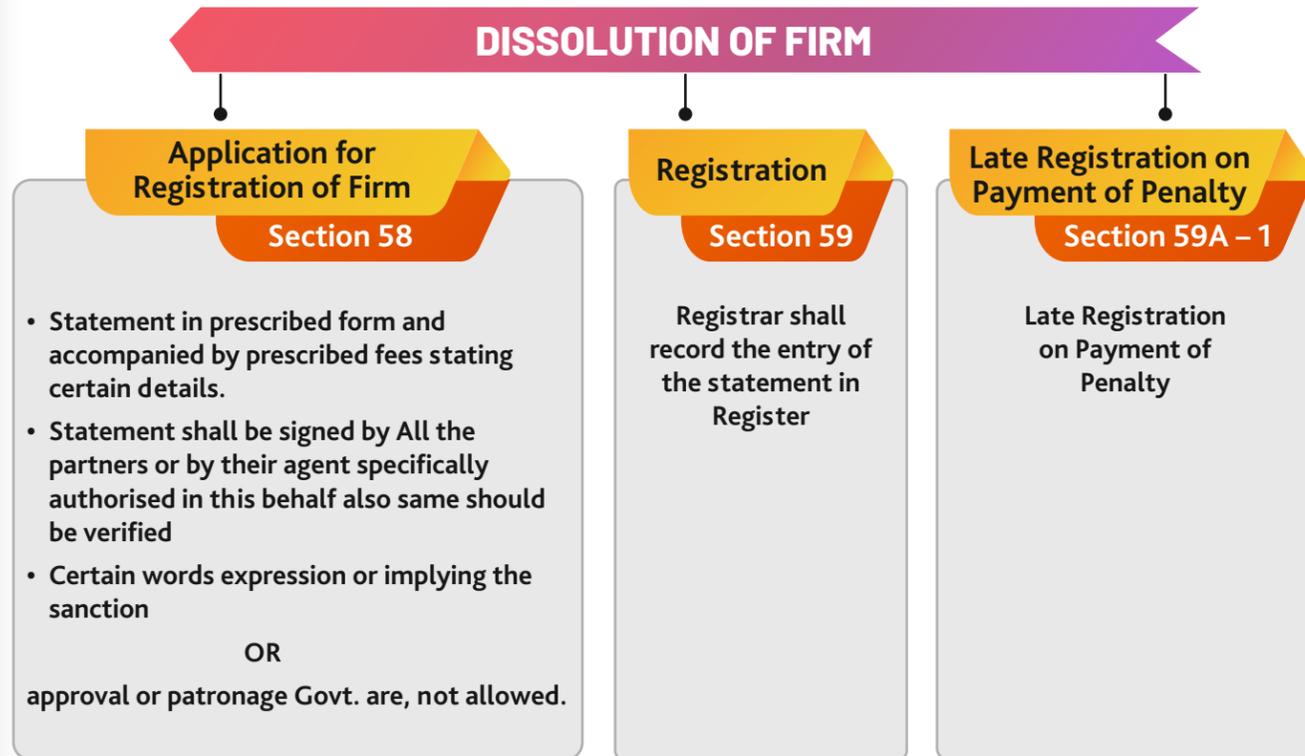
### LEGAL CONSEQUENCES OF PARTNER COMING IN & GOING OUT



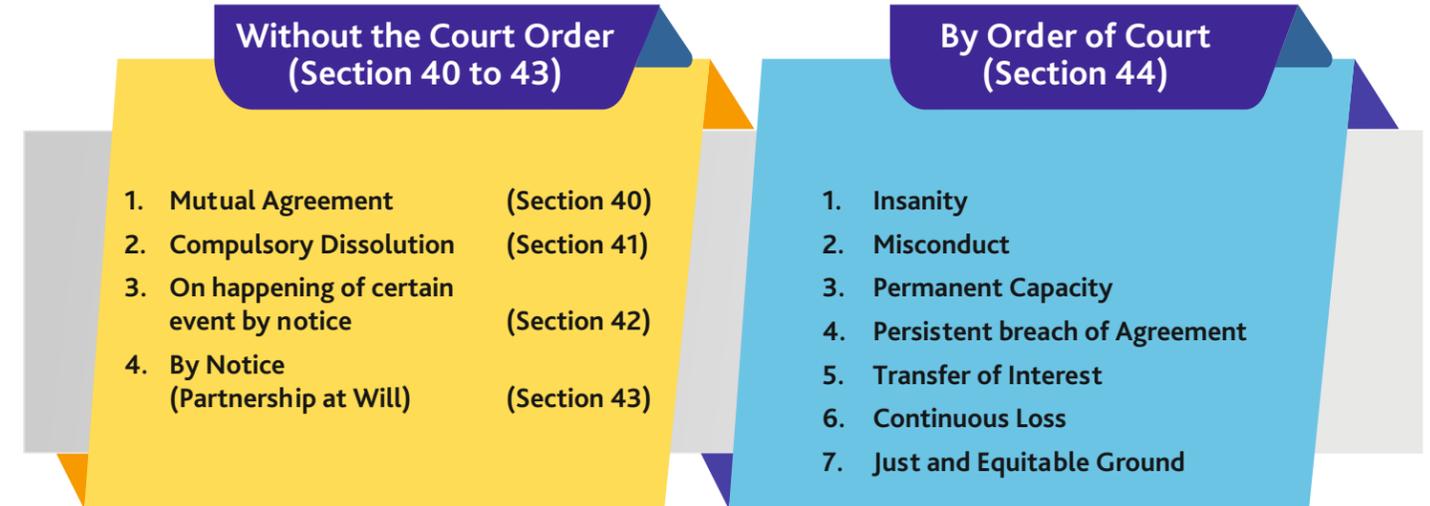
### RIGHTS OF OUTGOING PARTNERS



### DISSOLUTION OF FIRM



### DISSOLUTION OF FIRM



### CONSEQUENCE OF NON-REGISTRATION (Section 69)

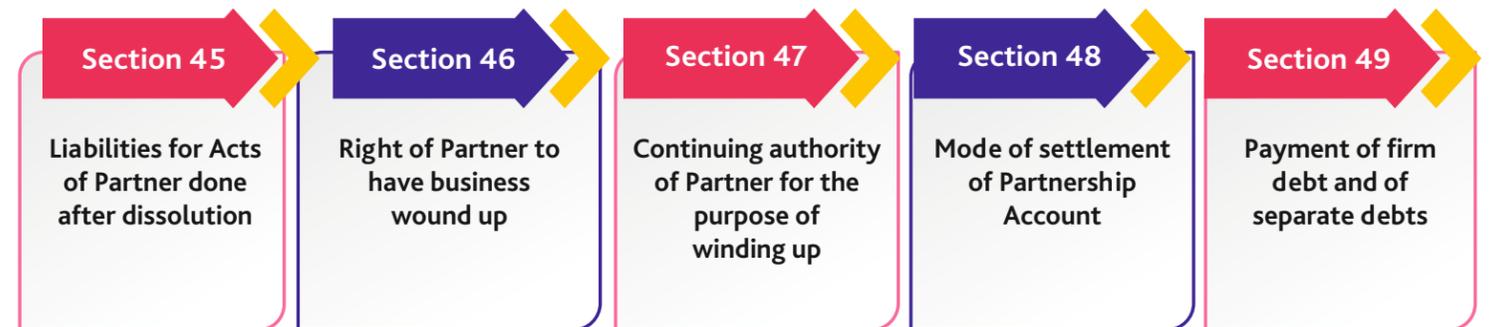
Disabilities

Exceptions

### CONSEQUENCE OF NON-REGISTRATION (Section 69)

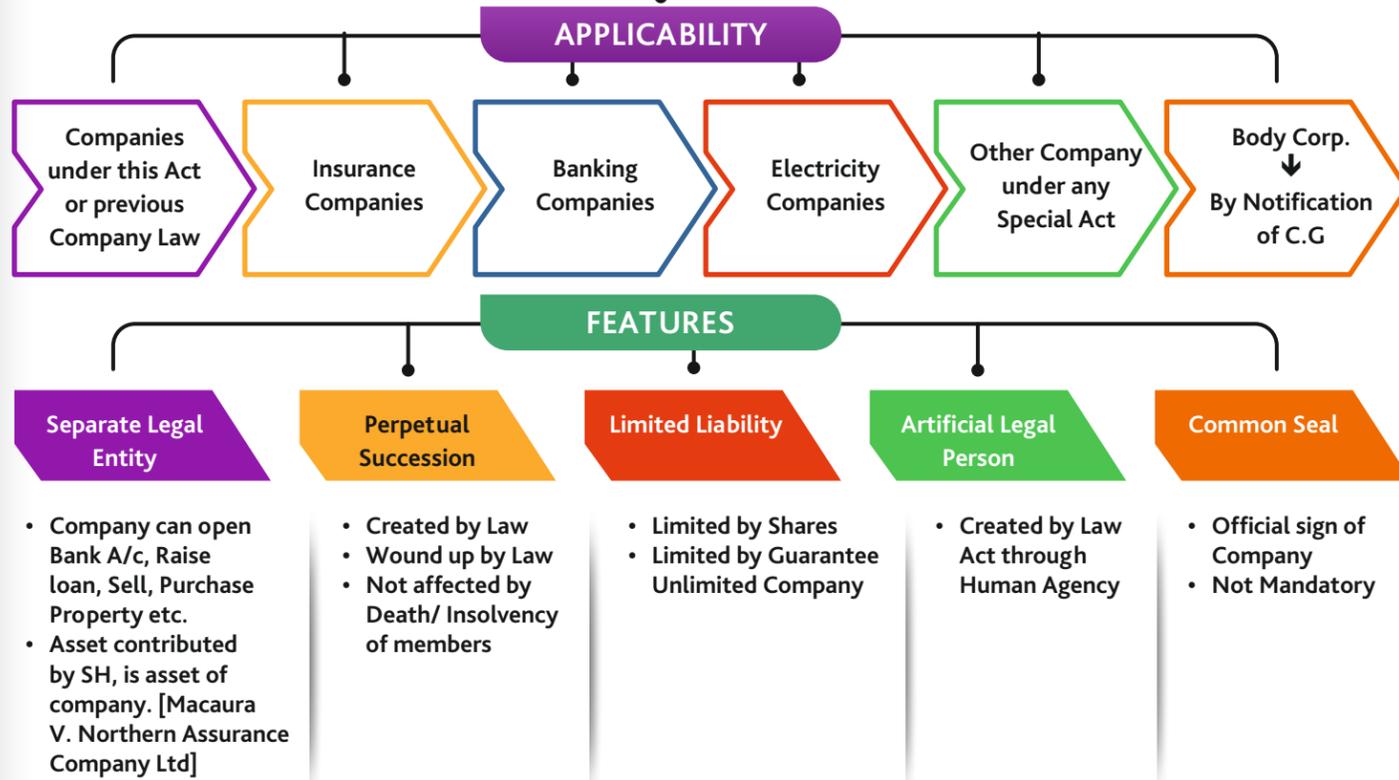


### RIGHT AND LIABILITIES OF PARTNERS AFTER DISSOLUTION



## THE COMPANIES ACT, 2013

Sec(20) : Company Incorporated under this act or under any previous company law.



### CORPORATE VEIL THEORY

- Members Shielded from liability connected to Company's Action
- Company identified separately from its members [Salomon V. Salomon & Co. Ltd.]

### LIFTING OF CORPORATE VEIL

- Courts ignore company & concerns directly with its members
- Disregarding corporate entity & paying regard to realities behind the legal facade.

### CASES WHERE COMPANY LAW DISREGARD CONCEPT OF "SEPERATE LEGAL ENTITY"

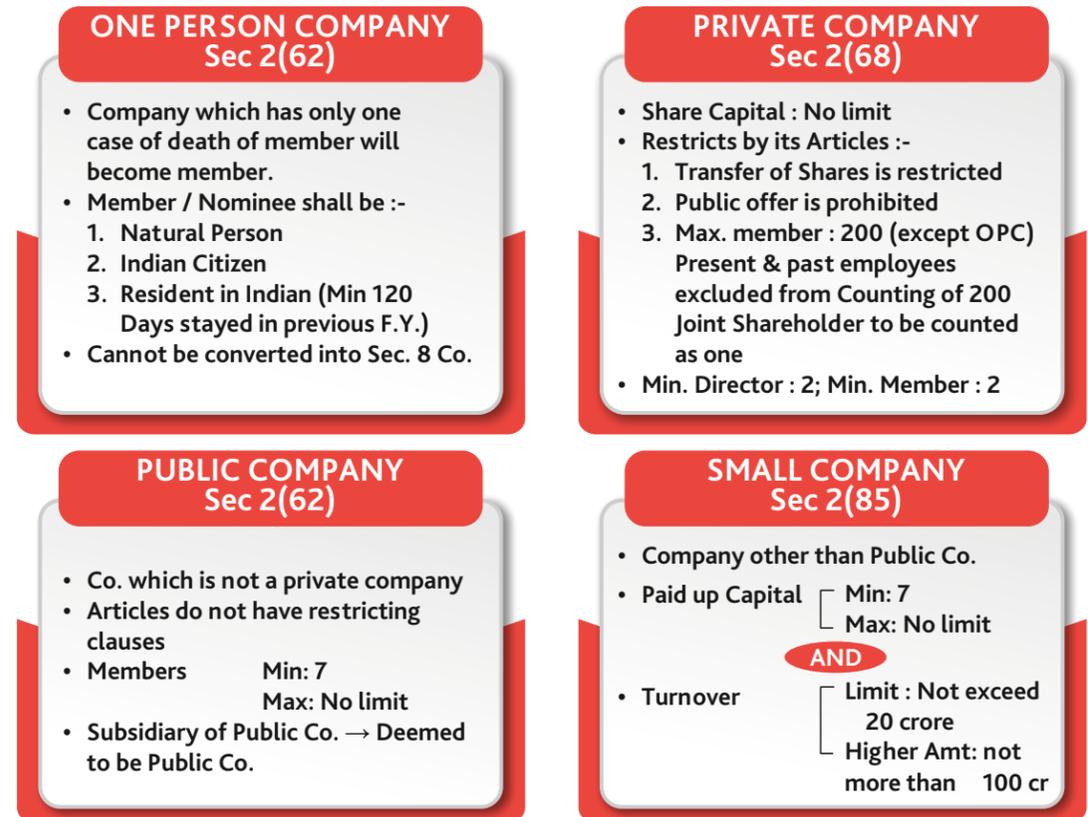
- Determine Character of Company Daimler Co. Ltd V. Continental Tyre & Rubber Co
- To Protect Revenue / Tax Dinshaw Maneckjee Petit
- To Avoid Legal Obligation Workmen of Associates Rubber Industry V. Associates Rubber Ind. Ltd.
- Formation of Subsidiary to act as agents Merchandise Transport Ltd. V. British Transport Commission
- Company formed for Fraud/ Improper Conduct Gilford Motor Company Ltd. V. Horne

## CLASSES OF COMPANIES

### On the basis of Liability

- Limited by Shares**
  - Liability limited to nominal value of shares held
- Limited by Guarantee**
  - Liable to extent of amount guaranteed in MOA.
  - At the time of Liquidation
- Unlimited Company**
  - Liability unlimited
  - Contribute in event of winding up

### ON THE BASIS OF MEMBERS



### ON THE BASIS OF ACCESS TO CAPITAL

- LISTED COMPANY**
  - SEC 2 (52)
  - Company which has any of its securities listed on any recognised Stock Exchange
  - If SEBI prescribes : - Co. not t be considered as Listed Company
- UNLISTED COMPANY**
  - Company other than listed company

## ON THE BASIS OF CONTROL

### HOLDING COMPANY

- Sec 2 (46)
- A company of whose other companies are subsidiary or Associate companies

### ASSOCIATE COMPANY

- Sec 2 (6)
- A company in which other company has "Significant Influence" (Atleast 20% of total voting power / control)
- Includes Joint venture but not a Subsidiary Co.

### SUBSIDIARY COMPANY

- Sec 2 (87)
- A company in which Holding Co. :-
  1. Controls composition of B.O.D.
 OR
  2. Controls more than half of total voting Power
 on its own or together with its subsidiary
- Deemed to be Subsidiary Co. :- If control is of another Subsidiary Co. of the Holding Co.

## OTHER COMPANIES

### Government Company

- Sec 2 (45)
- Company in which atleast 51% of paid up Share Capital held by :-
  1. CG
  2. SG
  3. CG + SG

### Foreign Company

- Sec 2 (42)
- Company incorporated outside India
- Has place of business in India
- Through itself or agent, physically or electronically.

### Nidhi Company

- Sec 406 (1)
- Company incorporated to Cultivate habit of savings amongst its members

### Dormant Company

- Company formed for future project or to hold IPR / Asset
- No Significant Accounting Trans.
- Inactive Company :-
  1. Not carrying business
  2. Not Significant Accounting Tr.
  3. Not field financial statement/ Annual Return

During last 2 F.Y.

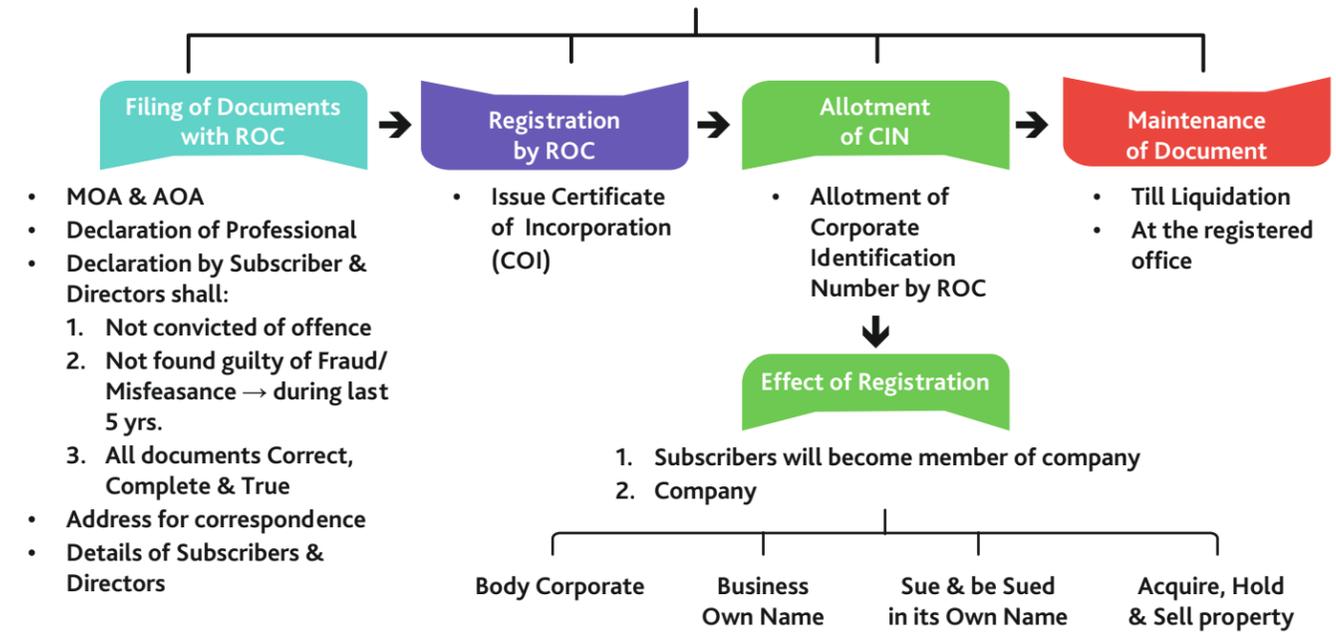
### Section 8 Company

- To promote Art, Science, Commerce, Sports, Religion, Environment etc.
- Profit utilized for promotion of objects
- Dividend distribution prohibited
- Need not use word 'Limited' or 'Private Limited'

### Public Financial Institution

- LIC
- UTI
- IDFC Ltd.
- Notified by CG in consultation with RBI
- Established under Central State Act
- Atleast 51% paid up capital held by CG / SG / CG +SG

## INCORPORATION OF COMPANIES



## PENALTY FOR FALSE DISCLOSURE

**Company Not been Incorporated**

- Person furnishing false information
- Liable for Fraud u/s 447

**Company has been Incorporated**

- Promoter / First Directors / Person making Declaration
- Liable for Fraud u/s 447

## TRIBUNAL IF SATISFIED

- Pass order for change in MOA / AOA
- Member's Liability unlimited
- Removal of Name from Register of Companies
- Order for winding up
- Other orders

## CLASSIFICATION OF CAPITAL



## KINDS OF CAPITAL

### Equity Share Capital

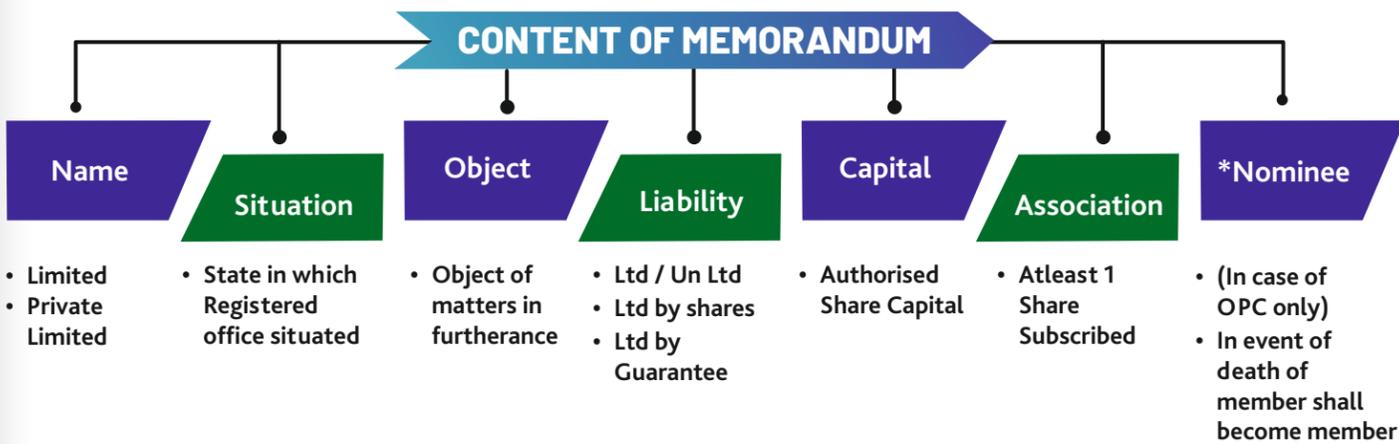
Share Capital which is not Preference Share Capital

### Preference Share Capital

- Part of Issued Share Capital which carries preferential right to :-
  1. Payment of Dividend
  2. Repayment at winding up

# THE COMPANIES ACT, 2013

- Chartered document, defines scope of powers of Company
- Contains object for which company is formed, Beyond which actions cannot go.
- Sec 399 :Memorandum is public document, person contracting with company presumed to have knowledge of it
- Any contract beyond the power of memorandum ULTRA VIRES & VOID
- Form of MOA : Table A, B, C, D, E
- Memorandum: Printed, Paragraphed, Numbered, Signed in presence of 1 witness, Description of Subscribers.
- MOA must comply with provisions of Companies Act, 2013.



**MEMORANDUM OF ASSOCIATION**

- Rules & Regulations framed to manage Internal affairs.
- Forms of Articles : Table F,G, H, I & J
- Model Articles : May adopt all or any regulations
- Entrenchment Provision :
  1. Amendment, if more restrictive provisions are inserted
  2. At the time of Incorporation or by Amendment (Special Resolution)

BASIS	MOA	V/S	AOA
Objectives	Defines & delimits the objectives of Company		Rules & Regulation for management of Company
Relationship	Company and outside world		Company and its members
Alteration	Only under certain circumstances with permission of RD/ NCLT		By passing Special Resolution
Ultra Vires	Acts done beyond MOA – void and ultravires, cannot be ratified		Acts beyond AOA, Ratified by Special Resolution of Shareholder

## DOCTRINE OF ULTRA VIRES

- Act done in excess of legal powers
  - Acts done beyond the power of Director and Company →void & not binding on Company
  - Company can neither sue nor can it sue on it
  - MOA public document (open for inspection)
  - Person dealing with Company cannot enforce against Company, if ultra vires.
  - Acts ultra vires the Director →SH can ratify
  - Acts ultra vires the Articles → Articles altered
  - Acts ultra vires the Company →VOID, SH cannot ratify
  - [Ashbury Railway Carriage & Iron Company Ltd V. Riche]
- Protects Company

## DOCTRINE OF CONSTRUCTIVE NOTICE

- "Right of Inspection to all."
  - Any person can inspect by electronic means, make record or get copies.
  - Duty of person dealing with company:
    1. To inspect documents
    2. Ensure, Contract is in conformity with provisions.
  - Person reads the document or not → Presumed to have knowledge of contents.
  - If Contracts, beyond power of Company → Cannot acquire any rights against Company
- Protects outsiders

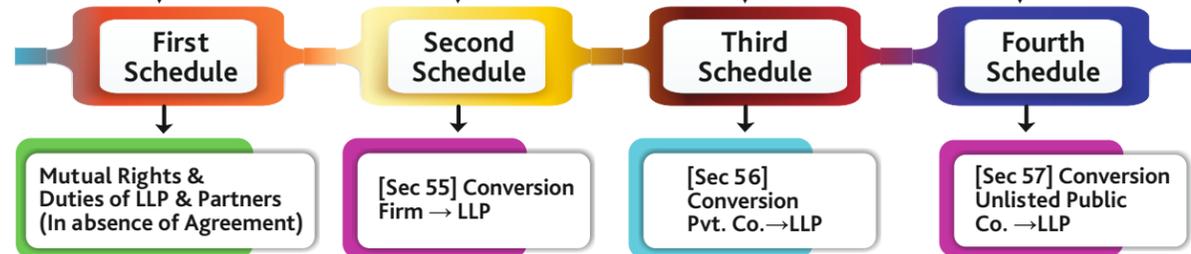
## DOCTRINE OF INDOOR MANAGEMENT

- Exception to doctrine of Constructive Notice
- Outsiders not deemed to have notice of internal affairs of Company.
- Popularly known as Turquand Rule [Royal British Bank V. Turquand]
- Indoor management is internal problem of Company, Outsiders not deemed to have knowledge of internal Affairs of Company.

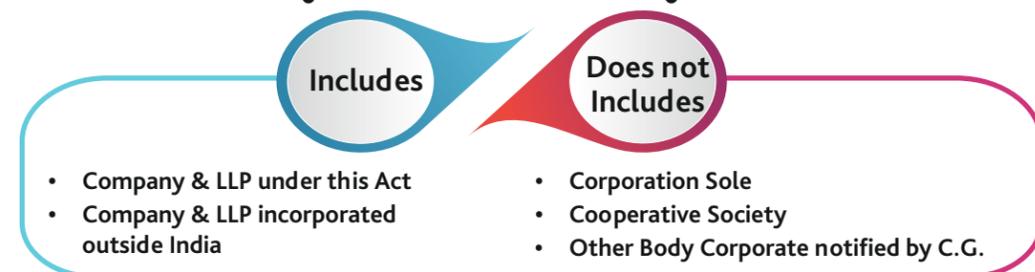
## EXCEPTIONS TO DOCTRINE OF INDOOR MANAGEMENT

1 Actual Constructive Knowledge of Irregularity	2 Suspicion of Irregularity	3 Forgery
<ul style="list-style-type: none"> <li>• [Howard V. Patent Ivory Manufacturing Co.]</li> <li>• Omitting to do something that is necessary.</li> <li>• Cannot be protected under Doctrine of Indoor Management</li> </ul>	<ul style="list-style-type: none"> <li>• [Anand Biharilal V. Dinshaw &amp; Co.]</li> <li>• Person dealing with Company suspicious about circumstances</li> <li>• Still doesn't enquire, then cannot rely on Doctrine of Indoor Management</li> </ul>	<ul style="list-style-type: none"> <li>• [Ruben V. Great Fingall Consolidated]</li> <li>• Doctrine of Indoor Management not applicable on Forgery.</li> <li>• Forgery is considered Null &amp; Void</li> </ul>

## Administration : Ministry of Corporate Affairs and Registrar of Companies (ROC)



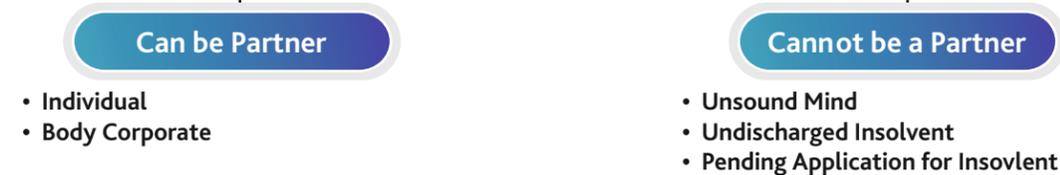
### BODY CORPORATE Sec 2 (d)



### SMALL LLP Sec 2 (ta)



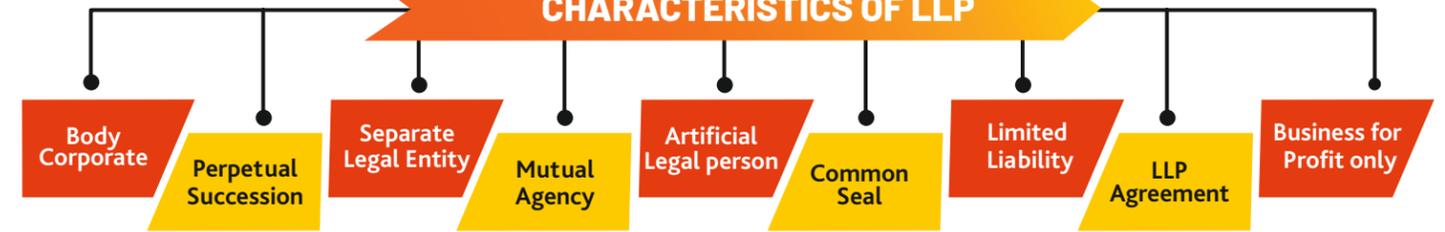
### LLP Sec 5



### PARTNER



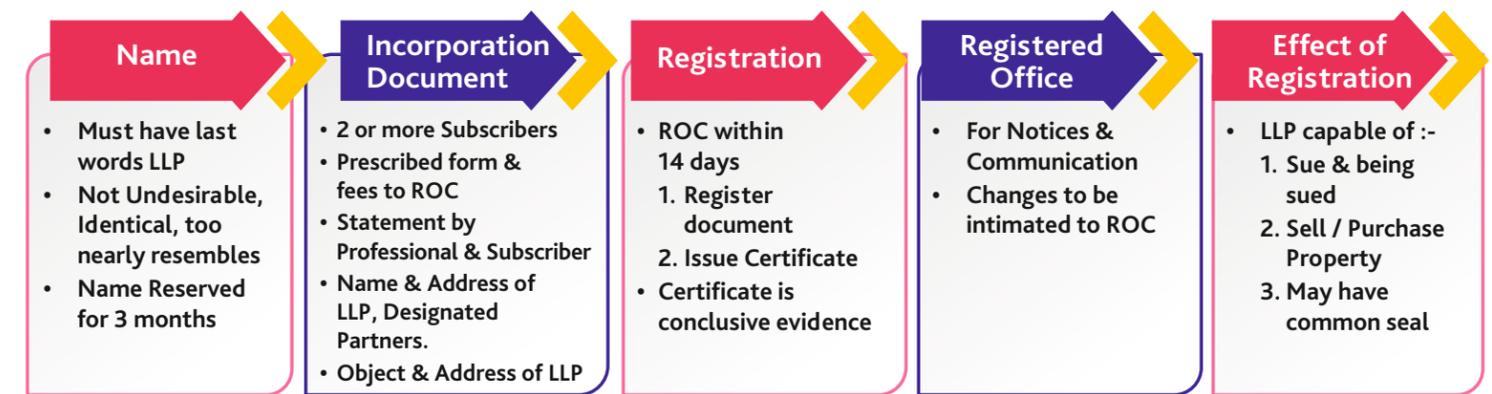
### CHARACTERISTICS OF LLP



### ADVANTAGES OF LLP

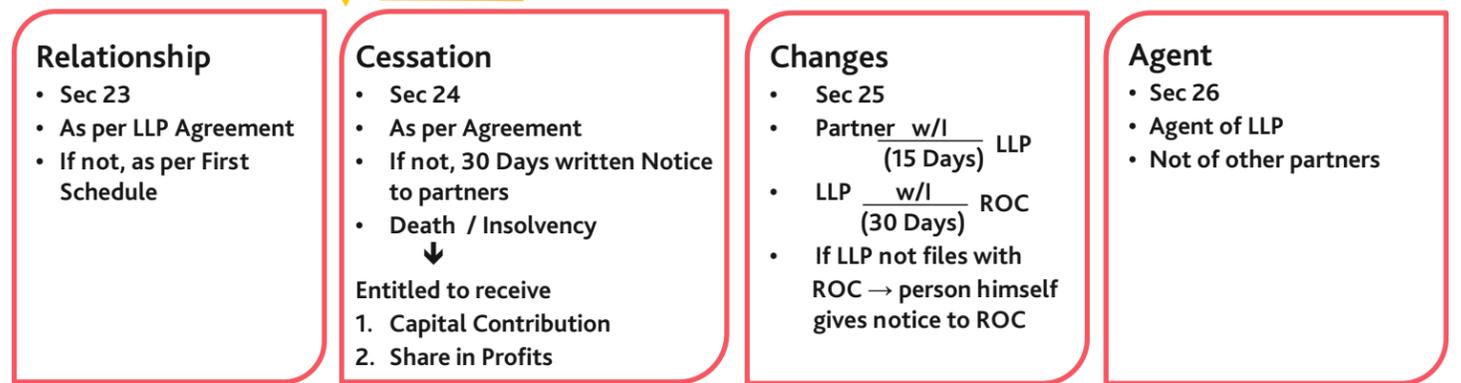


### INCORPORATION OF LLP



\* CG → Order for change of Name → to be change within 3 months, If not changed → CG → Allot new name

### PARTNERS & THEIR RELATIONS



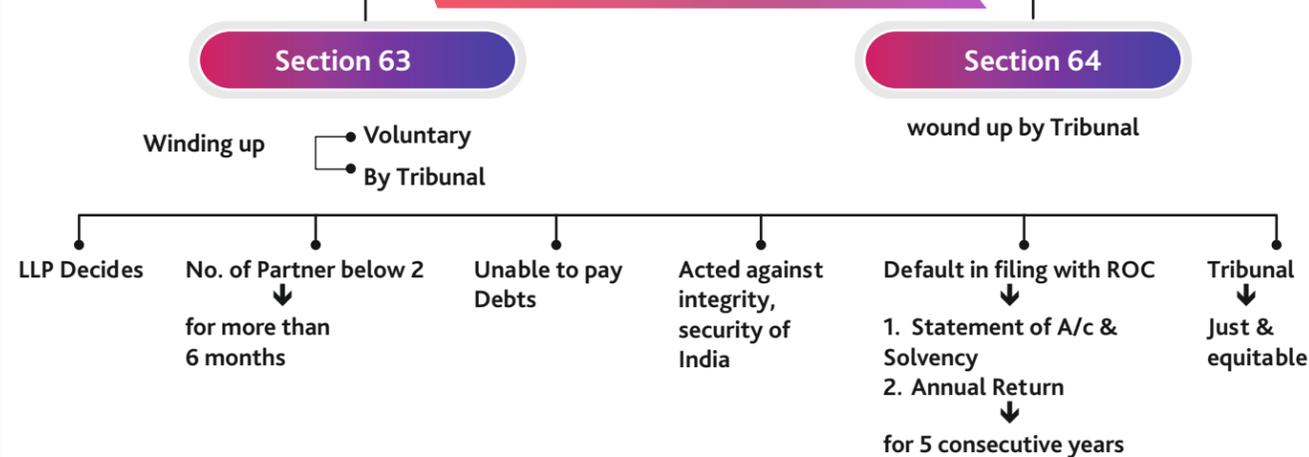
## LIABILITY OF LLP & PARTNER

LLP Liability	Partner's Liability	Holding Out	Fraud	Whistle Blowing
<ul style="list-style-type: none"> <li>• Sec 27</li> <li>• LLP not liable if:                             <ol style="list-style-type: none"> <li>1. Partner had no authority</li> <li>2. Person dealing knows the fact</li> </ol> </li> <li>• LLP liable if:                             <ol style="list-style-type: none"> <li>1. Within authority</li> <li>2. in ordinary course of Business</li> </ol> </li> <li>• Liabilities met out of Property of LLP</li> </ul>	<ul style="list-style-type: none"> <li>• Sec 28</li> <li>• Partners not personally liable except:-                             <ol style="list-style-type: none"> <li>1. own wrongful act or omission</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• Sec 29</li> <li>• Represents himself</li> <li>• Permits to be represented as partner</li> <li>• Liable for credit receive on such representation</li> </ul>	<ul style="list-style-type: none"> <li>• Sec 30</li> <li>• If intention to defraud</li> <li>• Unlimited liability of LLP &amp; Partners</li> <li>• If act without Knowledge of LLP, only partner liable</li> </ul>	<ul style="list-style-type: none"> <li>• Sec 31</li> <li>• Partner, employee provides useful information for conviction of LLP or its partners                             <p style="text-align: center;">↓</p>                             court may reduce, waive penalty                         </li> </ul>

## FINANCIAL DISCLOSURES

<b>Books of Account &amp; Other Records etc.</b> <ul style="list-style-type: none"> <li>• Sec 34</li> <li>• For each year</li> <li>• Cash / Accrual Basis, Double entry system</li> <li>• Maintain at Registered office</li> <li>• Statement of Account &amp; Solvency within 6 months from end of each F.Y.</li> </ul>	<b>Accounting &amp; Auditing Standards</b> <ul style="list-style-type: none"> <li>• Sec 34a</li> <li>• CG with consultation with NFRA prescribes:-                             <ol style="list-style-type: none"> <li>1. Standards of Accounting</li> <li>2. Standards of Auditing</li> </ol> </li> </ul>	<b>Annual Return</b> <ul style="list-style-type: none"> <li>• Sec 35</li> <li>• Annual Return within 60 Days of closure of F.Y.</li> </ul>
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## WINDING UP & DISSOLUTION



## SPECIAL COURT

### Establishment

- Sec 67A
- For speedy Trial of offences
- Until special court designated, Courts u/s 435 of Companies Act, 2013 → deemed to be special court.

### Procedure & Powers

- Sec 67B
- Offences u/s 67A triable only by special courts
- Special court may try another offence
- May proceed with summary trial

### Appeal & Revision

- Sec 67C
- High Court may exercise powers conferred by CrPC.