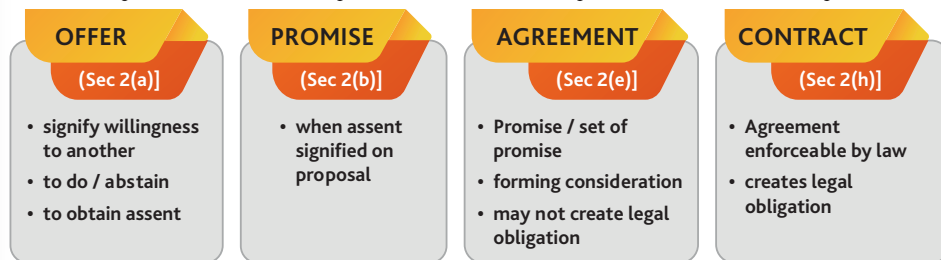


### OFFER + ACCEPTANCE = AGREEMENT AGREEMENT + ENFORCEABLE BY LAW = CONTRACT



### KINDS OF OFFER



### ESSENTIAL OF VALID OFFER

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li><b>Legal Relation</b><br/>Legal relation must be created</li> <li><b>Certain, Definite, Not Vague</b><br/>No contractual relationship if indefinite / vague</li> <li><b>Communicated to offeree</b><br/>Must be communicated [Lalman Shukla v. Gauri Dutt]</li> <li><b>Assent</b><br/>must be obtained</li> <li><b>Conditional</b><br/>Can be subject to T&amp;C</li> </ul> | <ul style="list-style-type: none"> <li>Not contain term non-compliance of which would amount to acceptance</li> <li><b>Specific / General</b><br/>made to public at large / specified person</li> <li><b>Express / Implied</b><br/>offer can be in words or by conduct</li> <li><b>Invitation to offer</b><br/>Terms proposed for negotiation                             <ul style="list-style-type: none"> <li>Act precedent to offer</li> <li>Can be converted into offer</li> </ul> </li> </ul> |
|--|---|

### 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"

# INDIAN CONTRACT ACT, 1872

## UNIT 1



**VIDHYODAY**  
VIDHYA KA UDAY

### MODES OF REVOCATION



### ESSENTIALS OF VALID CONTRACT

#### Other than Section 10

##### Two Parties

- Offeror & Offeree
- Natural / legal person
- [ State of Gujrat v. Ramanlal S Co. ]

##### Legal Obligation

- Social / Domestic Agreement → Not enforceable
- [ Balfour v. Balfour ]

##### Other Formalities in certain cases

- Contract → Written / Verbal
- Ex: Insurance → written contract

##### Certainty of Meaning

- Must be certain
- Not to be indefinite / vague

##### Possibility of Performance

- Terms → capable of performing
- Agreement to do impossible act → not enforceable

#### Section 10

##### Agreement

- Promise or set of promises forming consideration

##### Free Consent

- "Consensus ad idem" → "some thing in same sense"
- Consent
  - Free ✓
  - Coercion, Fraud, Mistake Undue Influence, Misrepresentation ✗

##### Capacity of Parties

- Major, Sound mind, Not disqualified by law

##### Consideration

- "Quid Pro Quo" → "Something in Return"
- Right / interest/ Benefit OR Loss/Responsibility suffered

##### Lawful consideration & object

- Not lawful if Immoral, Prohibited by law, Fraudulent, defeat provision of Law, opposed to Public Policy.

##### Not expressly declared void

- Not Illegal / Void

### TYPES OF CONTRACTS

#### On the basis of

##### VALIDITY

- Valid
- Void
- Voidable
- Illegal
- Unenforceable

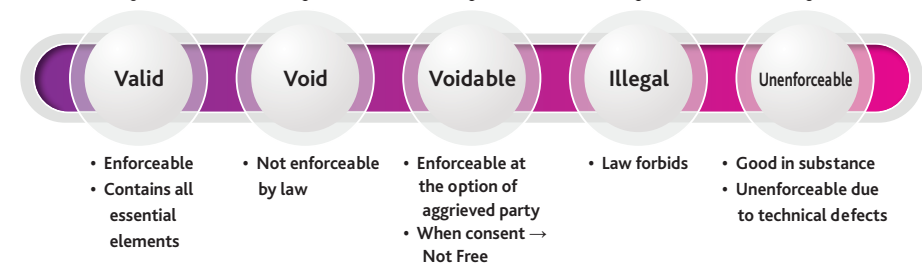
##### FORMATION

- Express
- Implied
- Quasi
- E-Contract

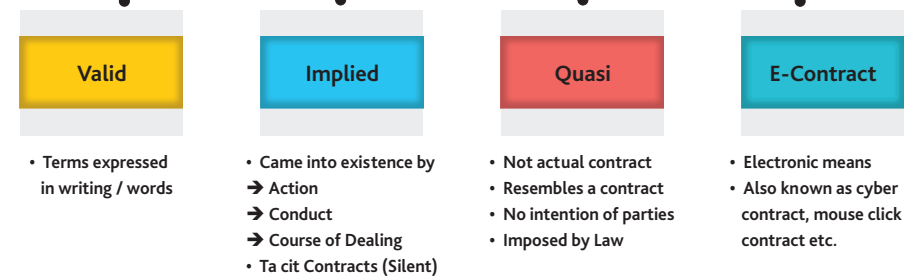
##### PERFORMANCE

- Executed
- Executory

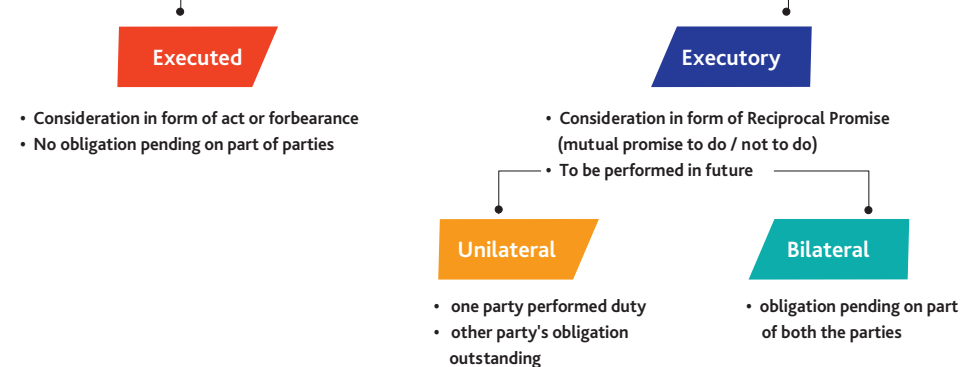
### ON THE BASIS OF VALIDITY



### 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

##### At the desire of Promisor

- If at desire of 3rd party → Not a consideration
- [Durga Prasad v. Baldeo]

##### From Promisee or any other person

- Stranger to consideration ✓
- Stranger to contract \*
- [Chinnaiya v. Ramaiyya]

##### Consideration

- Executed → consists in performance
- Executory → consists in promise

##### Consideration

- Past / Present / Future

##### Need not be Adequate

- Bad Bargain
- Something in return need not be equal to something given
- If consent free → cannot be void, just because consideration is inadequate

##### Must not be performance of what one is legally bound to perform

- Example : Paying ₹ 10,000 to police officer to investigate crime → Not a valid consideration

##### Consideration

- Real (Something, to which law attaches value)
- Not Illusory (not physically / legally impossible)

##### Must not be unlawful / Immoral / opposed to Public policy

#### 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 ₹)

##### 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

Contract → void-ab-initio  
(Mohari Bibi v. Dharmo Das Ghose)

No Ratification after attaining majority  
• Void agreement can never be ratified

Beneficiary  
• Minor → not competent to contract  
→ Can take benefit out of contract

Can always plead minority  
• Rule of Estoppel cannot be applied  
• Even when falsely represented majority

Liability for Necessaries Sec 68  
• No personal liability, only his property liable  
• 2 conditions  
□ Goods reasonably necessary  
□ Not have sufficient supply

Contract by Guardian  
• Within competence  
• On minor's behalf → for benefit of minor

Shareholder  
• Only in case of → Transfer / Transmission, minor can be shareholder  
□ of fully paid up shares  
□ through lawful Guardian

### LAW RELATING TO MINOR'S AGREEMENT

No Specific Performance  
• Void agreement → therefore no specific performance

No Insolvency  
• Debt & dues payable from personal property  
• Never held personally liable

Partnership Sec 30  
• Cannot be partner → can be admitted to benefits

Agent  
• But not liable to principal for his acts

Cannot bind Parent / Guardian  
• Parents liability → when child act as an agent for them

Joint Contract  
• Minor + Adult → Adult Liable  
• [Sain Das v. Ram Chand]

Surety  
• Contract of Guarantee  
□ Debtor is minor surety (Adult) is liable to third party

Torts  
• Civil wrong (ex: Defamation etc) • Liable for torts • Not liable for breach of contract

### 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

#### UNDUE INFLUENCE

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

#### FRAUD

#### Commission of Following act:-

1. Fact suggested → knows, not true
2. Active concealment of fact
3. Promise made without intention of performing
4. Other act filled to deceive
5. Any act declared by Law → as Fraud

#### Effect:-

1. Contract voidable
2. Sue for damages

#### Committed by:-

1. Party to contract, with his connivance
2. Agent of party to contract

#### Intention:-

1. To deceive
2. To induce to enter into contract

1. Rescind → within reasonable time
2. Insist performance

# INDIAN CONTRACT ACT, 1872

## UNIT 3

**Mere silence as to Facts → Not Fraud.**

**(Caveat Emptor : Let the buyer beware)**

Exception : i.e.

**Silence = Fraud**

**Duty of person keeping silence to speak**

Fiduciary relationship, Insurance Contracts, Marriage contracts, Family Settlement, Share Allotment

**Where Silence=Speech**

Contract not voidable if party had means of discovering Truth.

### MISREPRESENTATION

- Representation of fact which is not true but believes to be true
- Made without intention to deceive
- Causing other person to make mistake of subject matter
- Effect : 1 Repudiate Contract  
2 Sue for Restitution  
3 Cannot Claim Damages

### MISTAKE

- Two parties thing about different subject matter
- Lead contract towards 'voidness'
- Mistake of Law
  - Foreign Law : Excusable
  - Own Law : Not excusable
- Mistake of Fact
  - Unilateral → Not void
  - Bilateral → void

### CONTRACT NOT VOIDABLE

**Silence amounting to Fraud**

**Fraud / Misrepresentation**

**Enters into contract in ignorance of Fraud**

- Had means to discover truth
- Did not cause consent of party

### LEGALITY OF OBJECT & CONSIDERATION

Sec 23 : Consideration is said to be unlawful

#### Forbidden by Law

- Act punishable under any statute or prohibited

#### Defeat provisions of Law

- Intention of Parties → to defeat provision → Court will not enforce it

#### Fraudulent

- As per section 17

Consideration defeats any Rule for the time being in force in India

Consideration involves injury

- Harm to person or property of another

Consideration Immoral

Consideration opposed to Public Policy

### Agreements opposed to Public Policy

#### Trading with enemy

- Agreement with person from country, at war with India → VOID

#### Stifling Prosecution

- Agreement to drop proceeding in consideration of amount → VOID
- Abuse of Justice
- Exception :- Consideration for compoundable offence

#### Maintenance & Champerty

- Agreement Valid except : 1 Unreasonable  
2 Motive : Malicious

#### Interest against obligation

- Do something against his duty

#### Traffic relating to public offices

- Interferes appointment of best qualified person → VOID

#### Agreement to create monopolies

#### Marriage Brokerage Agreement

- Void
- Marriage Bureau → only provides information, Thus, not covered under this

#### Interference with course of Justice

- Agreement with Judicial officer to act partially / corruptly → VOID

#### Consideration Unlawful in part

- 1 or more objects → Part of single consideration
- Single object → Part of several consideration
- Unlawful → VOID

### VOID AGREEMENTS

By Incompetent Parties

Bilateral Mistake

Consideration / object unlawful

Agreement without consideration

In restraint of marriage (except Minor)

In restraint of Trade (except Sale of Goodwill & Partnership)

Restraint of Legal proceeding (except Arbitration)

Meaning uncertain

Agreement of service

Wagering Agreement

To do Impossible Acts

### WAGERING AGREEMENT

- Promise to pay money / money's worth
- No interest in event

#### Transaction similar to wager

##### Lottery

- Game of chance

Crossword Puzzle & competitions

Speculative Transaction

- Settlement of difference between Contract price & market price

Horse Race Transaction

- Conditional on uncertain event
- Win or lose

#### Transaction resembling wager But not void

Chit Fund Share

Market Transaction

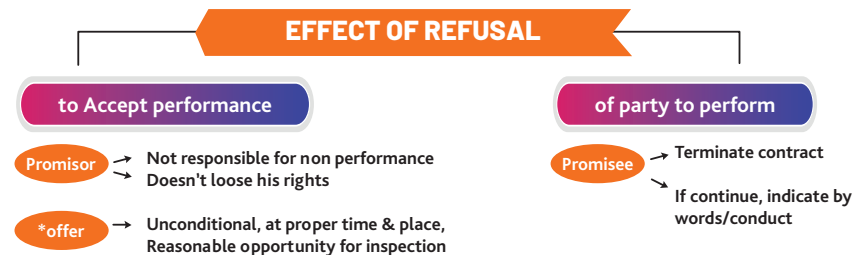
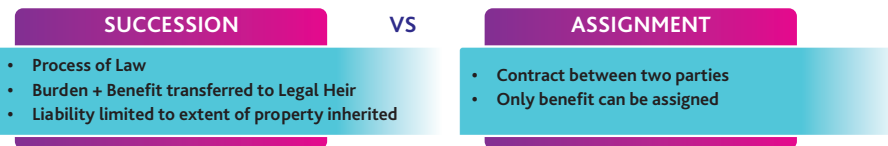
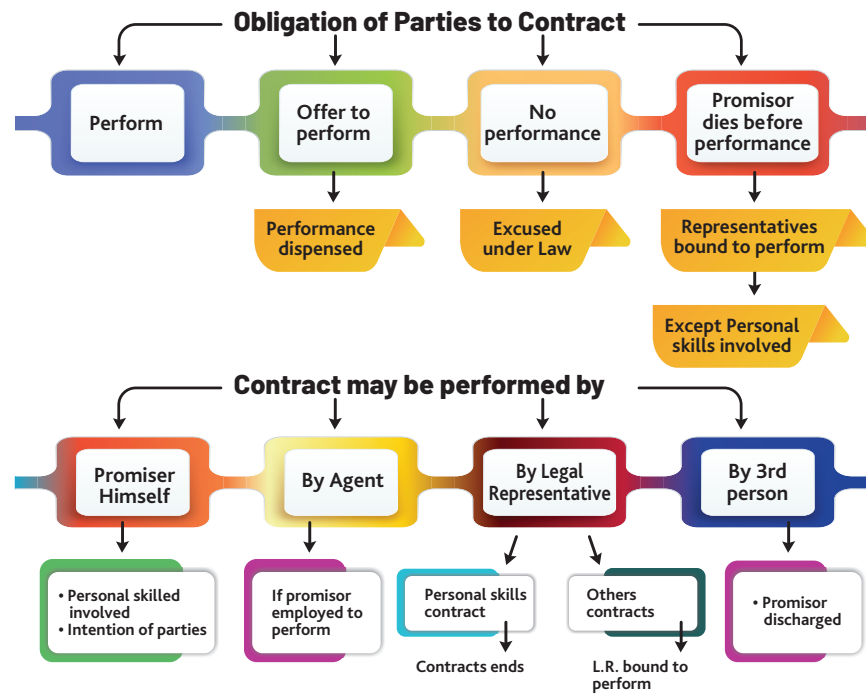
- Delivery of goods / shares → Not wager

Game of Skills / Athletic Competition

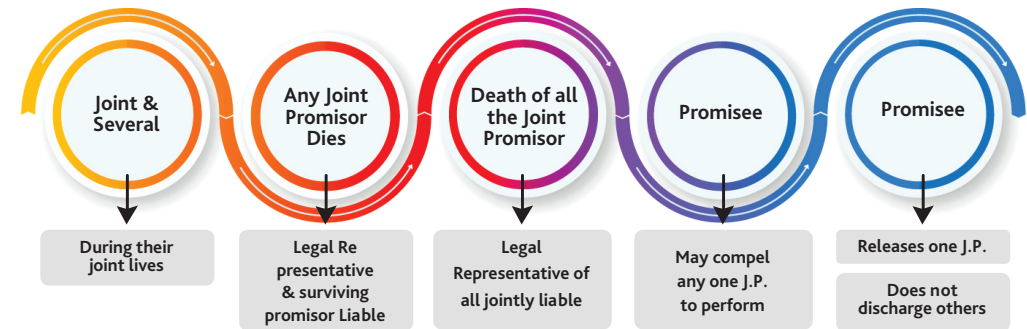
Contract of Insurance

- Type of Contingent Contract → Valid

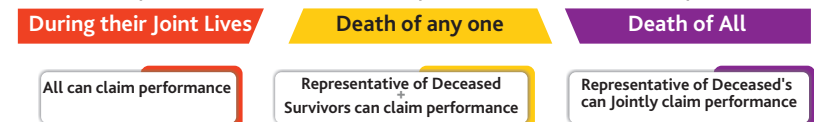




### Liability of Joint Promisor



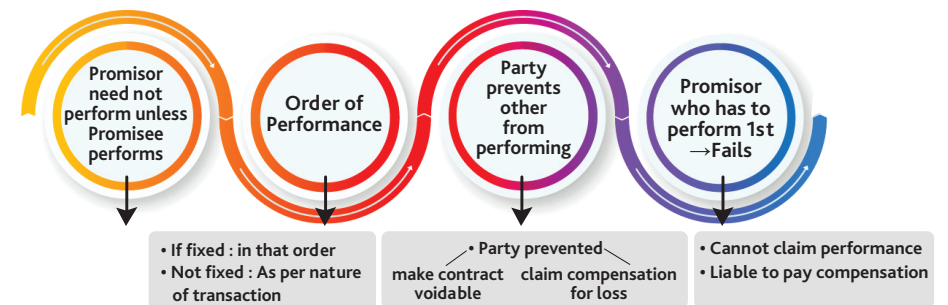
### RIGHT OF JOINT PROMISEE



### TIME & PLACE FOR PERFORMANCE



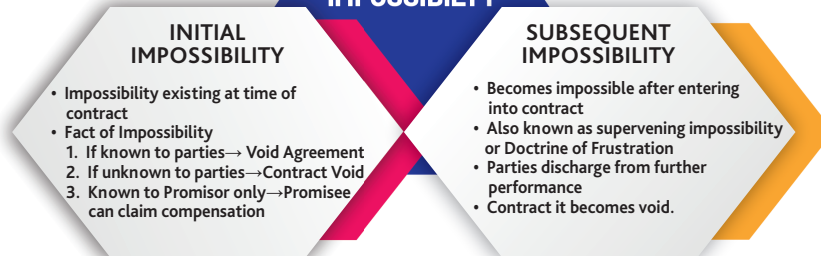
### Performance of Reciprocal Promise (mutual Promise to do / not to do)



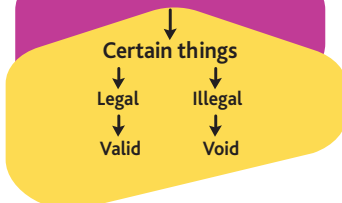
### EFFECT OF FAILURE TO PERFORM AT TIME FIXED



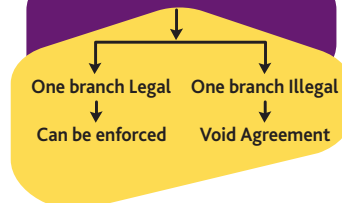
### IMPOSSIBILITY



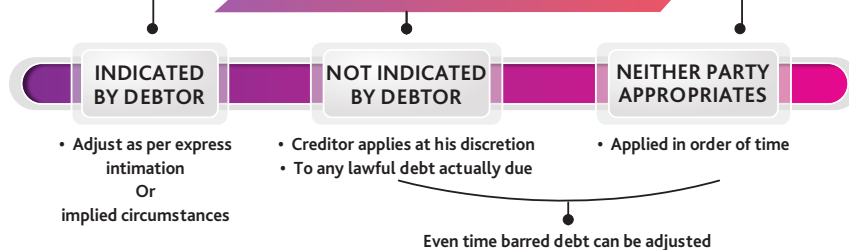
### RECIPROCAL PROMISE



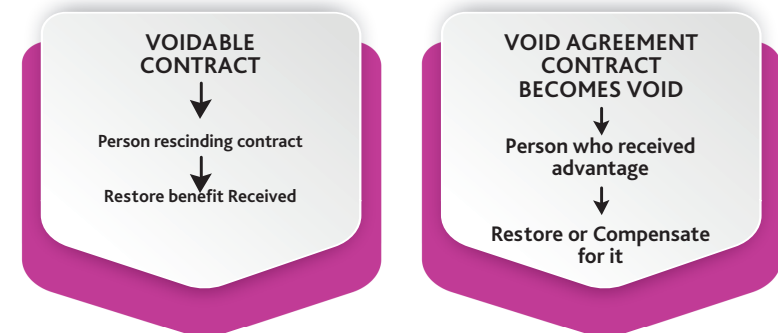
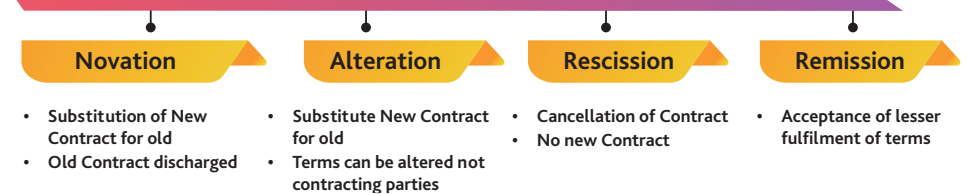
### ALTERNATIVE PROMISE



### APPROPRIATION OF PAYMENTS



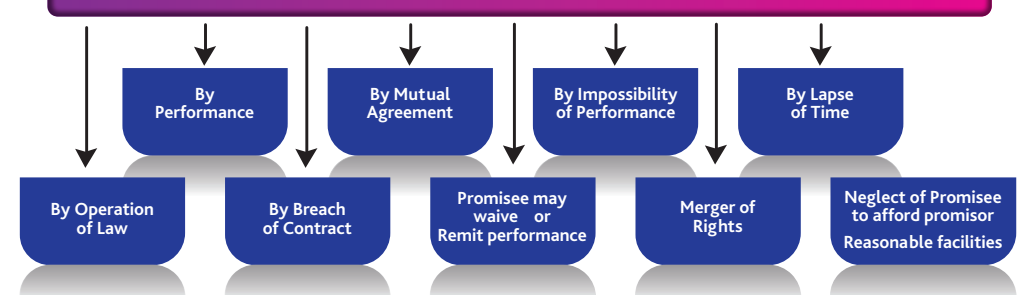
### CONTRACTS WHICH NEED NOT BE PERFORMED



### Effect of Neglect of Promisee

- Promisee → Not provided reasonable facilities for performance
- Promisor → excused by such neglect / refusal

### 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

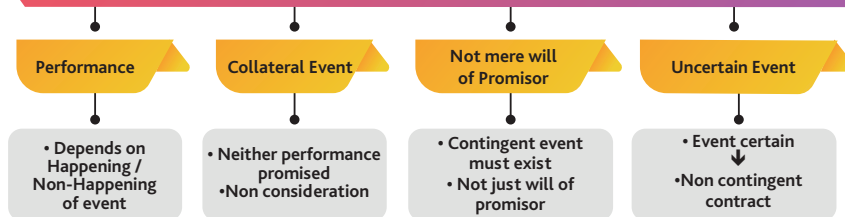
**SEC 31** Contract to do or not to do something, if some even, collateral to contract does or does not happen  
**Example** Contract of Insurance, Indemnity & Guarantee

\* Collateral Event (Pollock & Mulla)

Even in which

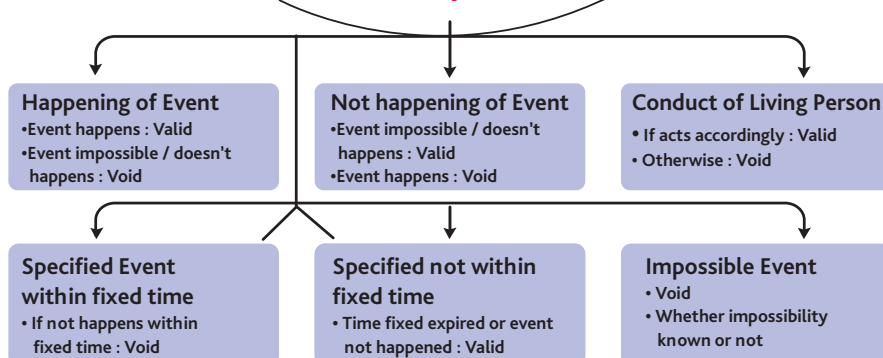
- Neither performance promised
- Nor consideration for a promise

#### ESSENTIALS OF CONTINGENT CONTRACT

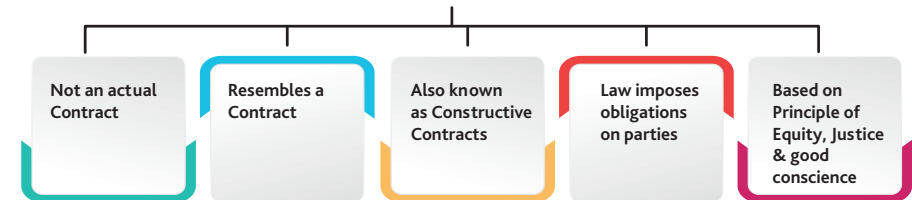


#### RULES RELATING TO ENFORCEMENT [Sec 32 – 36]

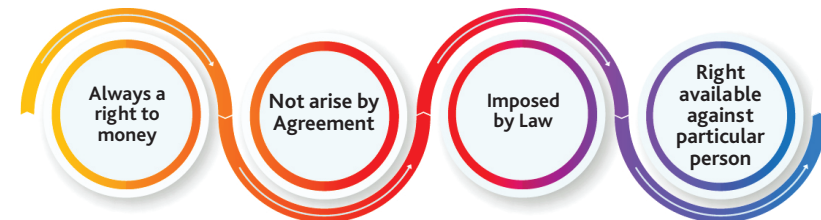
**Contract dependent on**



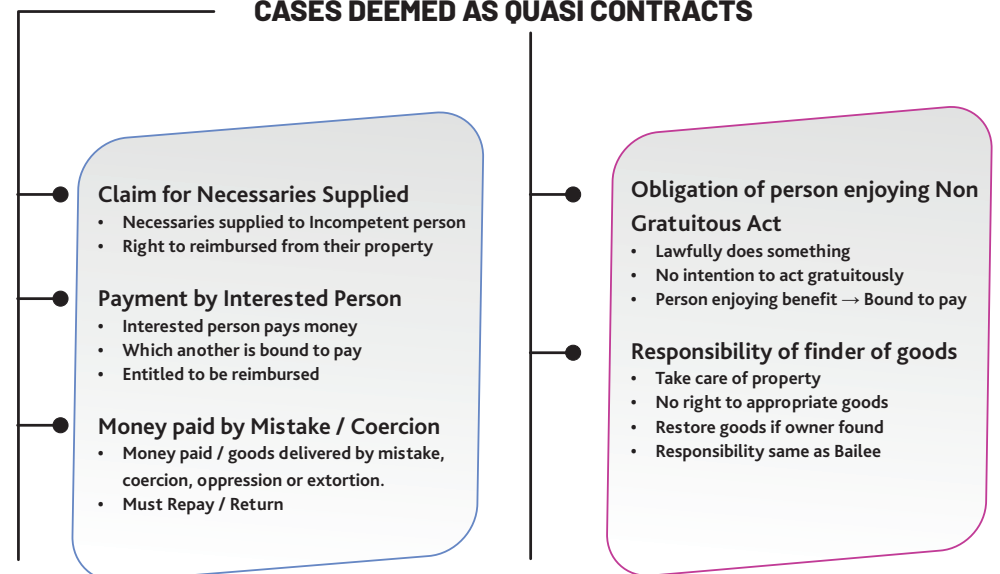
### QUASI CONTRACTS



#### FEATURES



#### CASES DEEMED AS QUASI CONTRACTS



# THE SALE OF GOODS ACT, 1930

## UNIT 1



**VIDHYODAY**  
VIDHYA KA UDAY

### 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.

# THE SALE OF GOODS ACT, 1930

## UNIT 2-3



**VIDHYODAY**  
VIDHYA KA UDAY

### CONDITIONS AND WARRANTIES

#### CONDITIONS

Essential to main Purpose of Contract  
↓  
Repudiation

#### WARRANTIES

Collateral to main Purpose of Contract  
↓  
claim for damaged

### CONDITIONS AND WARRANTIES

#### Difference

- Meaning
- Right in case of Breach
- Conversion of Stipulation

#### Voluntary

1. Waive Performance of Contract
2. Elect to Treat Condition as Warranty Compulsory
1. Non severability of Contract
2. Fulfillment of Condition executed by law Stipulation

#### Section 13 When condition is to be treated as warranties

#### Section 14 Express & Implied Condition & Warranties

Express Terms  
Condition  
Expressly  
Provides  
Implied  
  
Implied  
Not Expressly  
provided

#### Implied Condition

1. Condition as to title
2. Sale by sample
3. Condition as to quality or fitness
4. Condition as to whole some noss
5. Condition as to Description
6. Sale by Sample as well as description
7. Condition as to merchantability
8. Implied Warranty
- (1) Warranty as to undisturbed possession
- (2) Warranty as to non existence of circumference
- (3) Discloser of dangerous nature of goods
- Warranty as to quality OR fitness by usage of trade

### CAVEAT Emptor

#### Exceptions —

1. Fitness as to quality OR use
2. Goods Purchased under patent or brand name
3. Goods sold by description
4. Goods of merchandise quality

5. Sale by sample
6. Goods by sample as well as description
7. Trade usage
8. Sellers actively cancels the defects

### TRANSFER OF OWNERSHIP AND DELIVERY OF GOODS

#### TRANSFER OF PROPERTY

Depends On

Identification of goods

Intention of Parties

Specific and ascertained Goods

Unascertained Goods

Goods sent on approval

Reservation of Right of disposal

Risk prima facie passes with ownership

unless otherwise agree risk  
Prima facie passes with ownership

#### Exception

Delivery delayed due to fault of seller  
↓  
Duty of Seller as a bailee

delivery delayed due to fault of buyer

### TRANSFER OF TITLE BY NON OWNER

Sale by Mercantile agent

Sale by one of the Joint owner

Sale by Person in Possession of Voidable Contract

Sale by Person who has already sold goods but continues the Possession

Sale by buyer obtaining Possession before Property n goods vested to him

Effects of Estoppel

Sale by an Unpaid Seller

Sale under Provision of Other Act

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

1. Part delivery
2. Buyer to apply for delivery
3. Place of delivery
4. Time of delivery
5. Installment delivery
6. Delivery of wrong quantity
7. Expenses of delivery
8. Goods in possession of third party
9. Delivery to carrier
10. Determination during transit
11. Buyer right to examine the goods
12. Installment delivery
13. Delivery in wrong quantity

#### DELIVERY

Actual delivery

Symbolic delivery

Constructive delivery

# THE SALE OF GOODS ACT, 1930

## UNIT 4



**VIDHYODAY**  
VIDHYA KA UDAY

### UNPAID SELLER

#### Definition

1. When whole of the Price has not been Paid
2. When B/E has been received and Condition is not fulfilled

#### Rights of Unpaid Seller

#### Against buyer

- Suit for Price Section 55
- Suit for damage for non acceptance
- Repudiation of Contract before due date Section 60
- Suit for Interest Section 61

where buyer wrongfully neglect OR refuses to accept the goods seller

#### Against the goods

- When property in goods has passed to buyer
  - Lien Sec. 47
  - Stoppage in Transit Sec. 50
  - Resale Sec. 54
- When property in Goods has not passed to buyer
  - Lien Sec. 47
  - Stoppage Sec. 50
  - Resale Sec. 54
  - with holding Delivery

- Retain the Possession
- Right is available even if he is in Possession of goods as bailee or agent of buyer
- Termination of Lien

### REMEDIES OF BUYER AGAINST SELLER

#### Damage for non delivery Section 57

Seller wrongfully refuses to deliver the goods

#### Suit for Specific Performance Section 58

1. Contract for sale of specific/ ascertained Goods
2. Provision of specific Relief act
3. Damage is not adequate remedy
4. If goods are of special nature OR unique

#### Suit for breach of warranty Section 59

buyer can not reject the goods due to Breach of Warranty

#### Suit for anticipatory breach Section 60

#### Suit for Interest

recover interest when Interest is recoverable as per any Law

### OTHER PROVISIONS

#### (Section 64) Auction Sale

(Mode of selling Property by inviting bids publicly and Property is sold to higher bidder)

#### (Section 64A) Inclusion of increased OR decreased taxes in Contract of Sale

1. Effect of taxes will be added in Price and reduction in taxes will be deducted from price
2. Effect of Provision will be excluded if there is contract to contrary

- Where Goods are sold in Lots Separate Lot Separate Contract
- Completion of the Contract of Sale on fall of hammer
- Right to bid may be reserved Seller can also bid
- Where Sale is not notified by the seller Not lawful for seller to bid for himself
- Reserve Price Minimum Starting Price
- Pretended bidding Contract will be voidable

### REPUDIATED BY EITHER PARTY

Other Party Treat the Contract as Subsisting and wait till the date of delivery

Other Party may rescind the Contract and Claim damages

### STOPPAGE IN TRANSIT

- Right of Stoppage in Transit
- Buyer becomes insolvent
  - Seller parted with Possession
  - Seller can Resume Possession

Duration of Transit

How Stoppage in Transit is effected

When does Transit comes to an End

Difference between Right of Lien and Right of Stoppage in Transit

Effects of sub sale OR Pledge by buyer

Right of lien & stoppage will be affected

Right of lien & stoppage will not be affected

### RIGHT OF RESALE BY SELLER

No Need to inform buyer when goods are of Perishable nature

Need to inform buyer other goods

(if notice is not given to buyer)  
Resale Price > Contract Price difference cannot be retained  
Resale Price < Contract Price difference cannot be Recovered

(if notice is given to buyer)  
Resale Price > Contract Price difference will be retained  
Resale Price < Contract Price difference will be Recovered

# THE INDIAN PARTNERSHIP ACT, 1932

## UNIT 1



**VIDHYODAY**  
VIDHYA KA UDAY

**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
- Exclusion 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
- Interest 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**

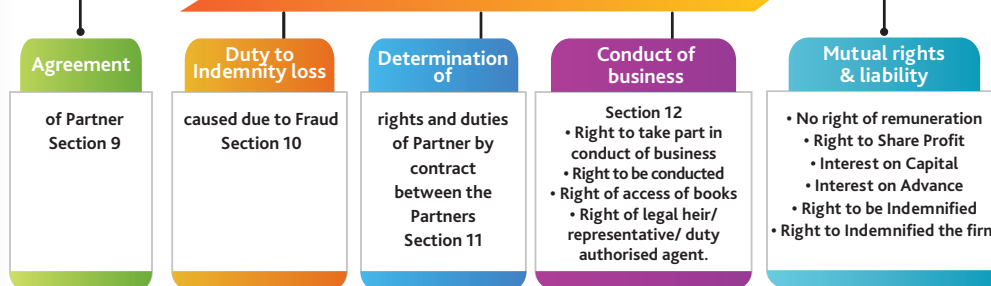
**Partnership VS Association**



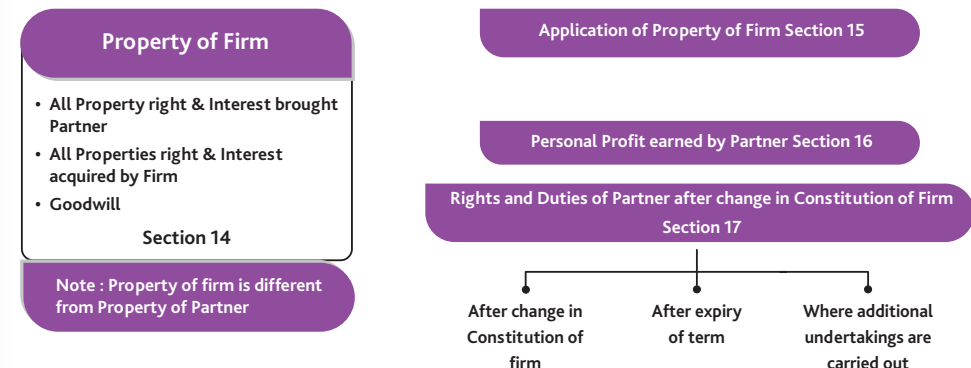
# THE INDIAN PARTNERSHIP ACT, 1932

## UNIT 2

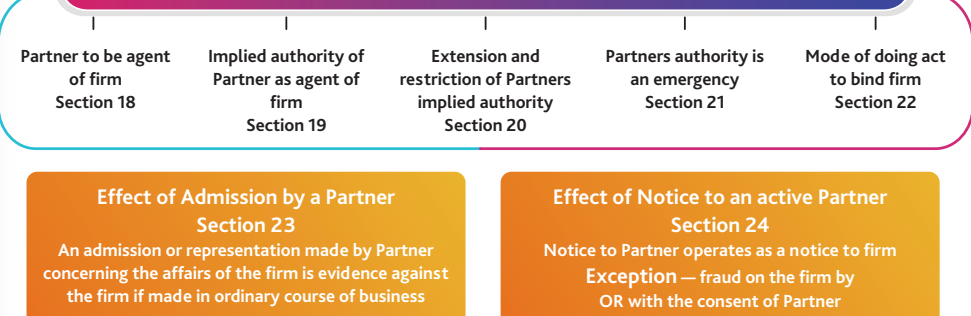
### RELATION OF PARTNER TO ONE ANOTHER



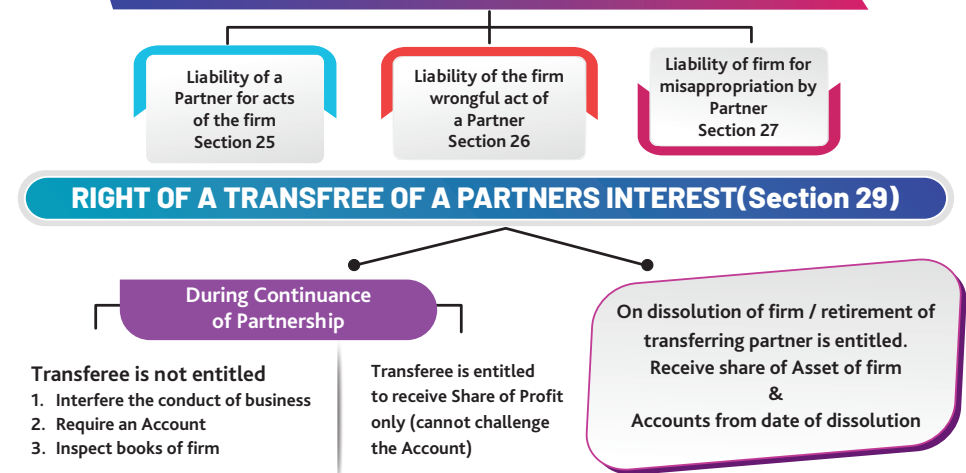
### PARTNERSHIP PROPERTY



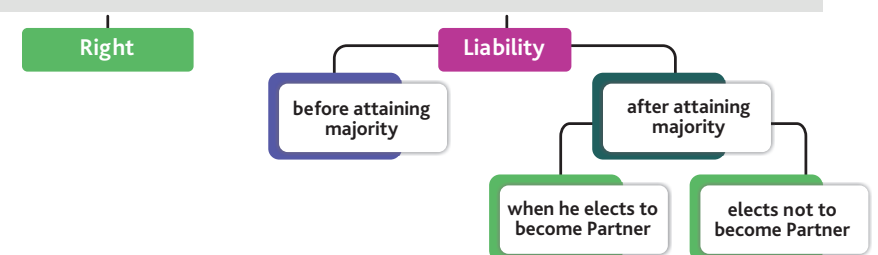
### RELATION OF PARTNER TO THIRD PARTY



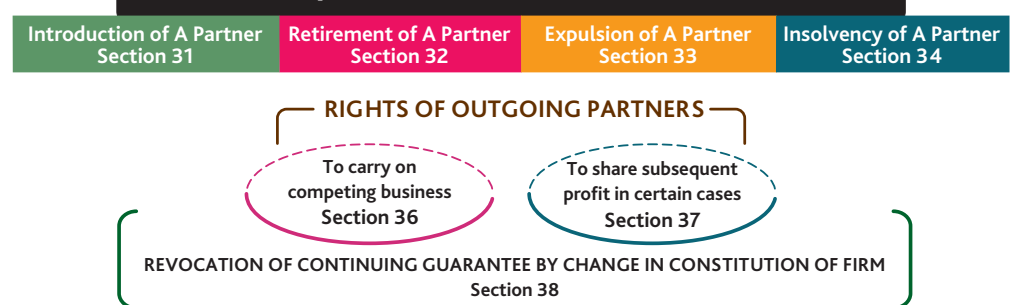
### LIABILITY TO THIRD PARTY



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



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



# THE INDIAN PARTNERSHIP ACT, 1932

## UNIT 3



**VIDHYODAY**  
VIDHYA KA UDAY

### DISSOLUTION OF FIRM

#### Application for Registration of Firm

Section 58

- Statement in prescribed form and accompanied by prescribed fees stating certain details.
- Statement shall be signed by All the partners or by their agent specifically authorised in this behalf also same should be verified
- Certain words expression or implying the sanction

OR

approval or patronage Govt. are, not allowed.

#### Registration

Section 59

Registrar shall record the entry of the statement in Register

#### Late Registration on Payment of Penalty

Section 59A – 1

Late Registration on Payment of Penalty

### CONSEQUENCE OF NON-REGISTRATION

(Section 69)

Disabilities

Exceptions

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

Continuation of Business

Wending up

Order of Court

Scope

Final Closure of books

### DISSOLUTION OF FIRM

#### Without the Court Order (Section 40 to 43)

1. Mutual Agreement (Section 40)
2. Compulsory Dissolution (Section 41)
3. On happening of certain event by notice (Section 42)
4. By Notice (Partnership at Will) (Section 43)

#### By Order of Court (Section 44)

1. Insanity
2. Misconduct
3. Permanent Capacity
4. Persistent breach of Agreement
5. Transfer of Interest
6. Continuous Loss
7. Just and Equitable Ground

### RIGHT AND LIABILITIES OF PARTNERS AFTER DISSOLUTION

Section 45

Liabilities for Acts of Partner done after dissolution

Section 46

Right of Partner to have business wound up

Section 47

Continuing authority of Partner for the purpose of winding up

Section 48

Mode of settlement of Partnership Account

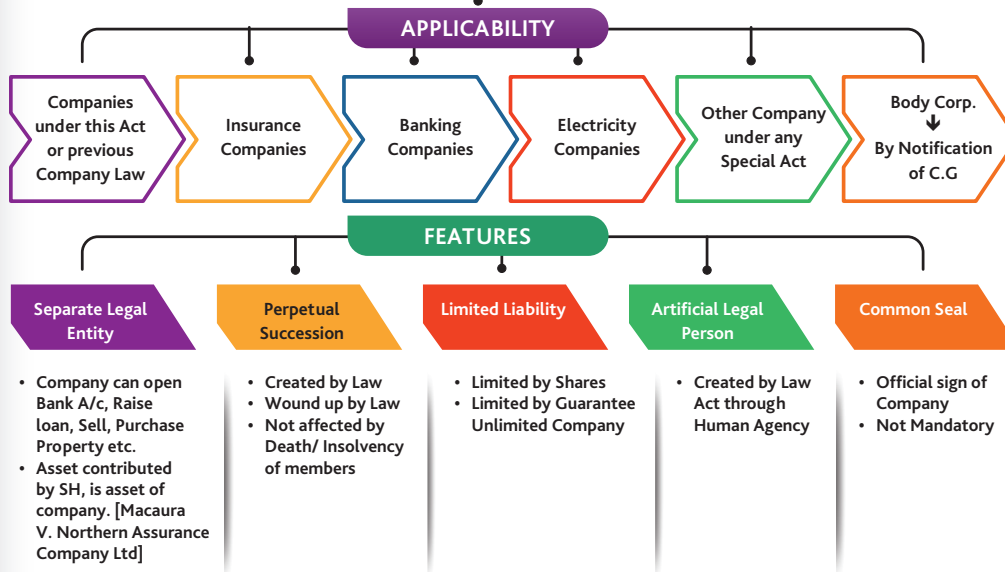
Section 49

Payment of firm debt and of separate debts

# THE COMPANIES ACT, 2013

## 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

#### ONE PERSON COMPANY Sec 2(62)

- Company which has only one case of death of member will become member.
- Member / Nominee shall be :-
  1. Natural Person
  2. Indian Citizen
  3. Resident in Indian (Min 120 Days stayed in previous F.Y.)
- Cannot be converted into Sec. 8 Co.

#### PRIVATE COMPANY Sec 2(68)

- Share Capital : No limit
- Restricts by its Articles :-
  1. Transfer of Shares is restricted
  2. Public offer is prohibited
  3. Max. member : 200 (except OPC)
- Present & past employees excluded from Counting of 200 Joint Shareholder to be counted as one
- Min. Director : 2; Min. Member : 2

#### PUBLIC COMPANY Sec 2(62)

- Co. which is not a private company
- Articles do not have restricting clauses
- Members Min: 7 Max: No limit
- Subsidiary of Public Co. → Deemed to be Public Co.

#### SMALL COMPANY Sec 2(85)

company other than public co.

- PSC**  
4cr or such a Higher amt. As may be prescribed
- Turnover**  
40cr. Or such a Higher amt. As may be prescribed

### 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 to be considered as Listed Company

#### UNLISTED COMPANY

- Company other than listed company

# THE COMPANIES ACT, 2013

## 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 filed financial statement/ Annual Return

During last 2 F.Y.

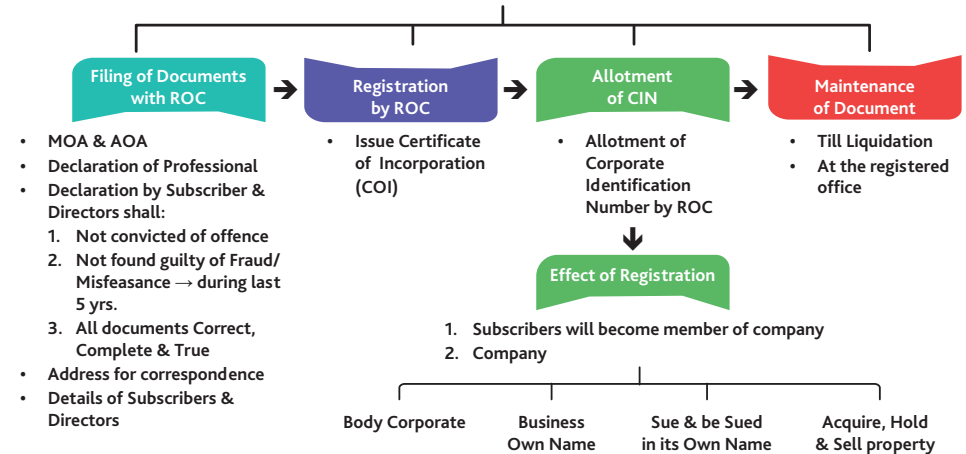
### Section 8 Company

- 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

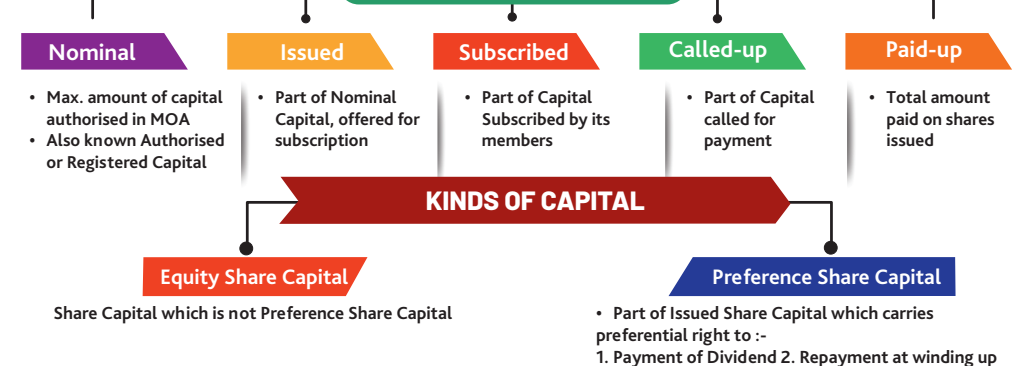
### Company has been Incorporated

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

## TRIBUNAL IF SATISFIED

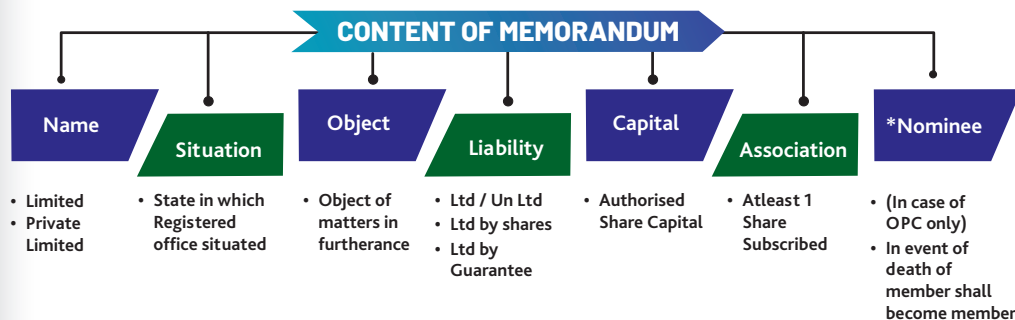
- Pass order for change in MOA / AOA
- Member's Liability unlimited
- Removal of Name from Register of Companies
- Order for winding up
- Other orders

## CLASSIFICATION OF CAPITAL



# 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



**VIDHYODAY**  
VIDHYA KA UDAY

## 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

- [Howard V. Patent Ivory Manufacturing Co.]
- Omitting to do something that is necessary.
- Cannot be protected under Doctrine of Indoor Management

### 2 Suspicion of Irregularity

- [Anand Biharilal V. Dinshaw & Co.]
- Person dealing with Company suspicious about circumstances
- Still doesn't enquire, then cannot rely on Doctrine of Indoor Management

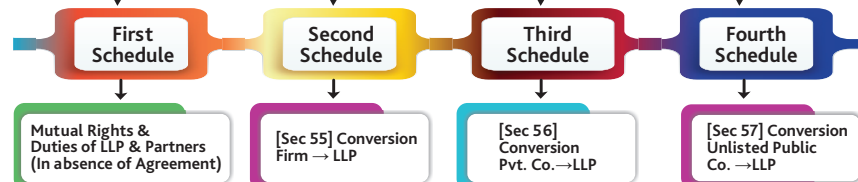
### 3 Forgery

- [Ruben V. Great Fingall Consolidated]
- Doctrine of Indoor Management not applicable on Forgery.
- Forgery is considered Null & Void

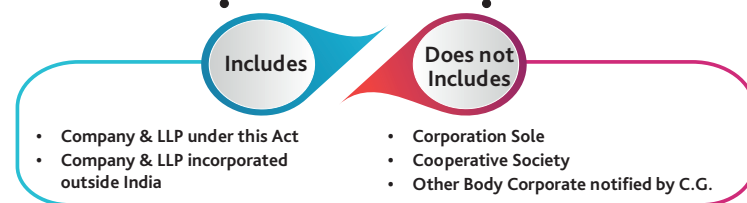


# LLP ACT, 2008

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



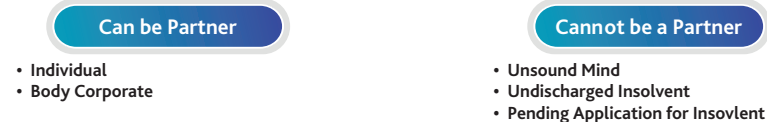
### BODY CORPORATE Sec 2 (d)



### SMALL LLP Sec 2 (ta)



### LLP Sec 5



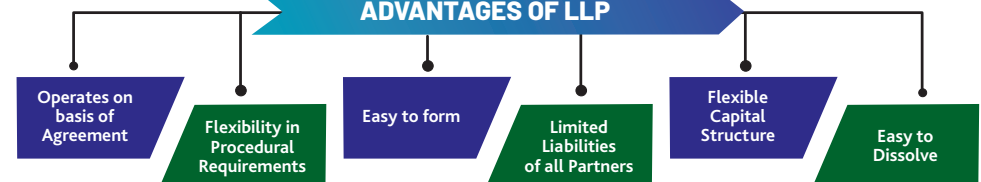
### PARTNER



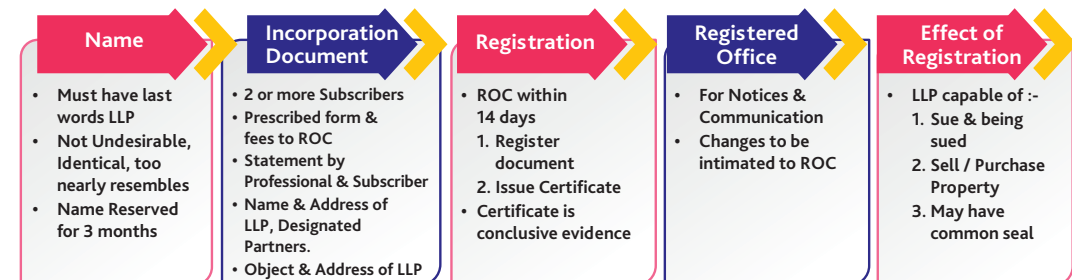
## CHARACTERISTICS OF LLP



## ADVANTAGES OF LLP

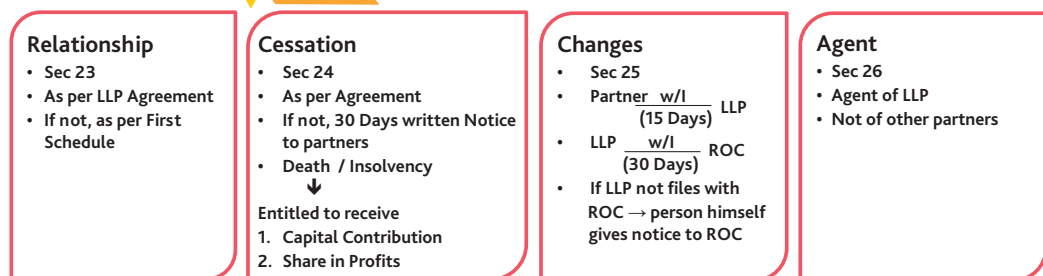


## INCORPORATION OF LLP



\* 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>Partner had no authority</li> <li>Person dealing knows the fact</li> </ol> </li> <li>LLP liable if:                             <ol style="list-style-type: none"> <li>Within authority</li> <li>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>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                             <div>↓</div>                             court may reduce, waive penalty                         </li> </ul>

## FINANCIAL DISCLOSURES

### Books of Account & Other Records etc.

- Sec 34
- For each year
- Cash / Accrual Basis, Double entry system
- Maintain at Registered office
- Statement of Account & Solvency within 6 months from end of each F.Y.

### Accounting & Auditing Standards

- Sec 34a
- CG with consultation with NFRA prescribes:-
  - Standards of Accounting
  - Standards of Auditing

### Annual Return

- Sec 35
- Annual Return within 60 Days of closure of F.Y.

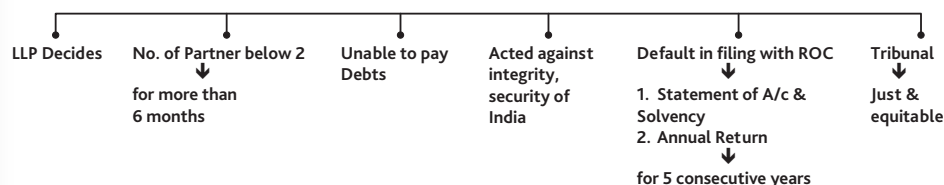
## WINDING UP & DISSOLUTION

### Section 63

- Winding up
- Voluntary
  - By Tribunal

### Section 64

wound up by Tribunal



## 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.