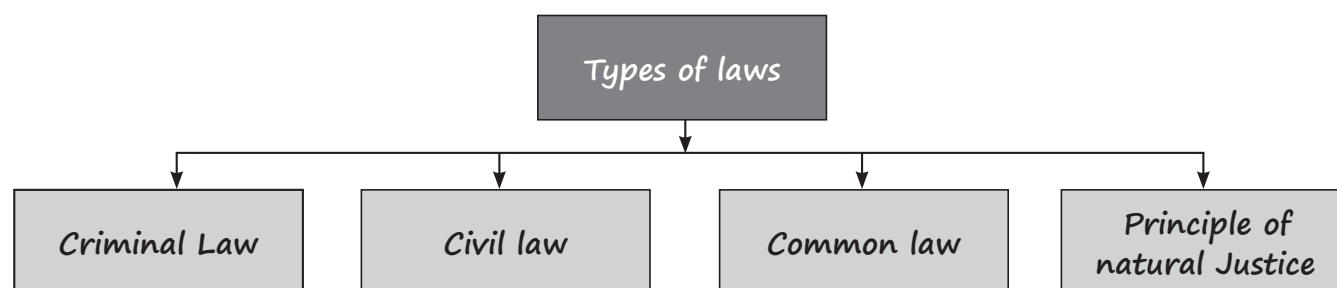
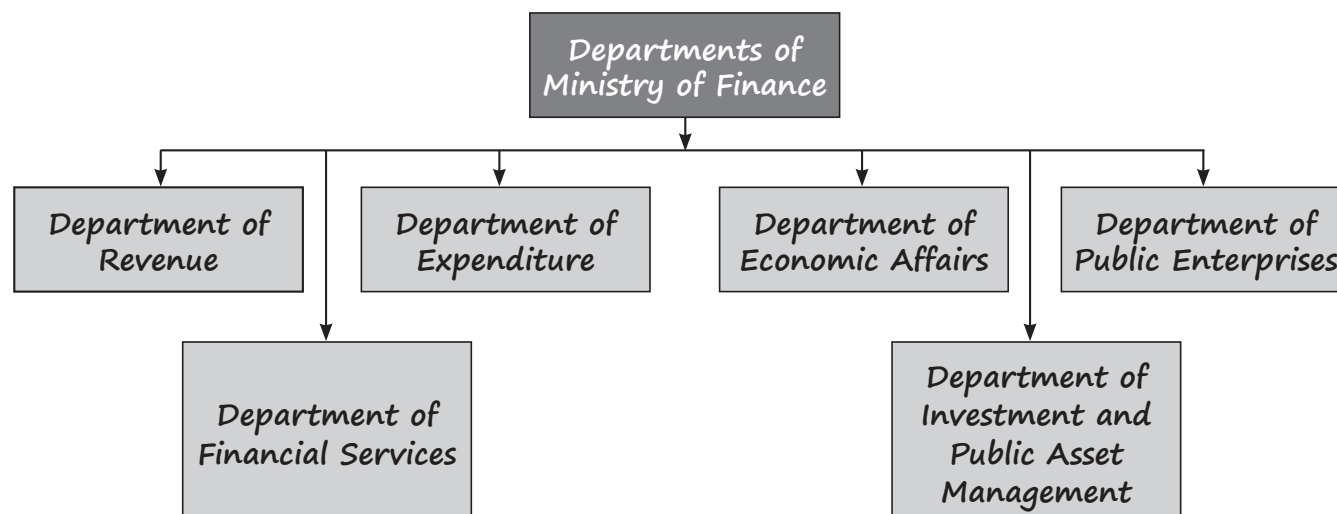
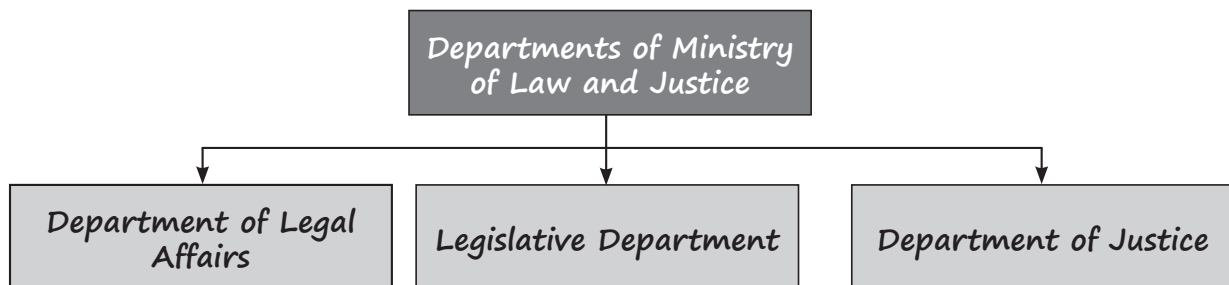
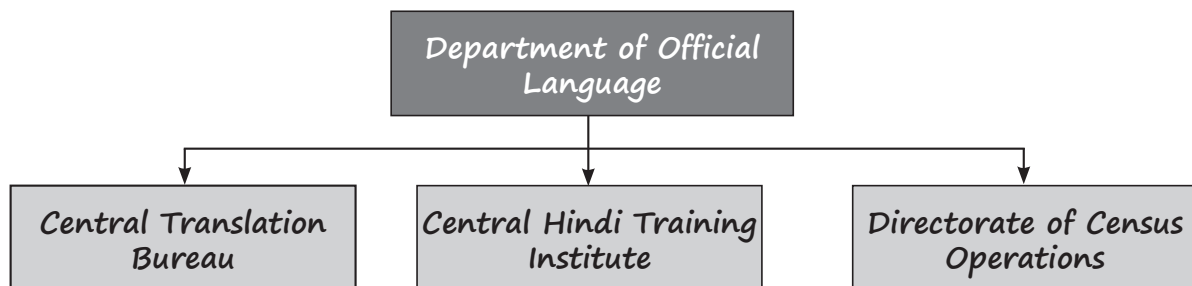
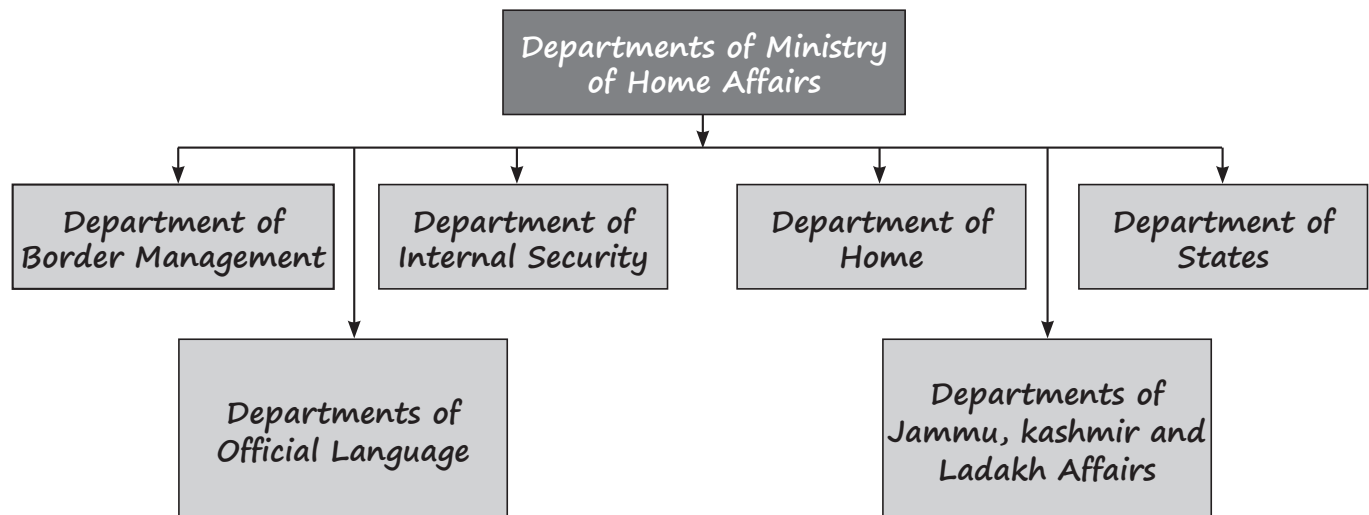


The Indian Regulatory Framework

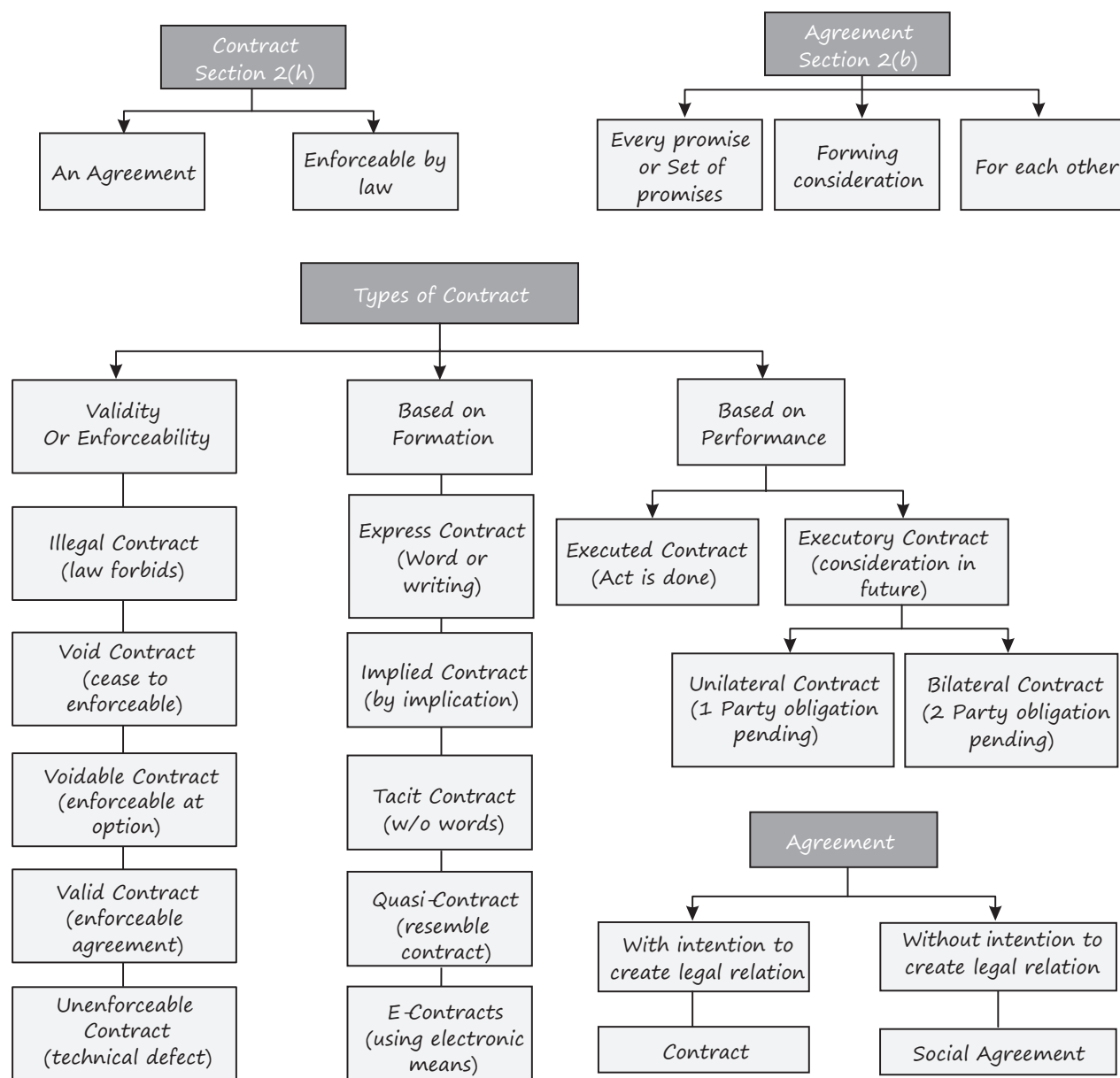


DEPARTMENTS UNDER THE MINISTRY OF FINANCE



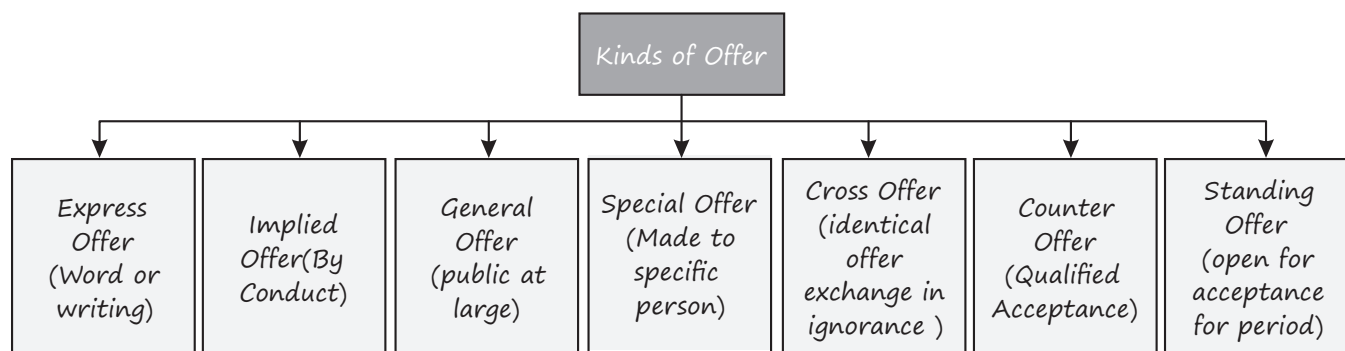
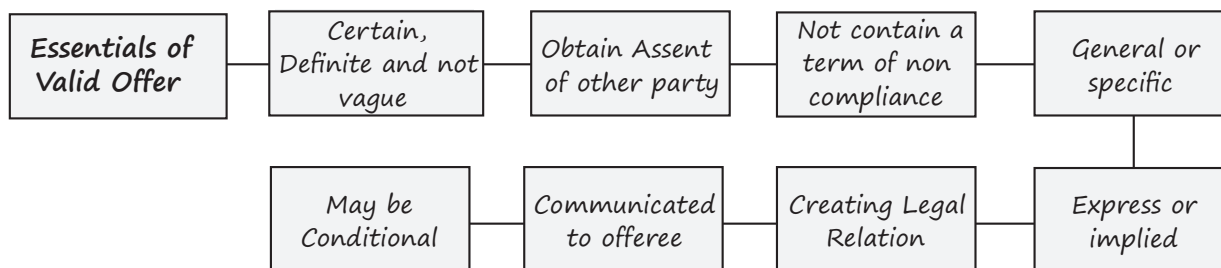
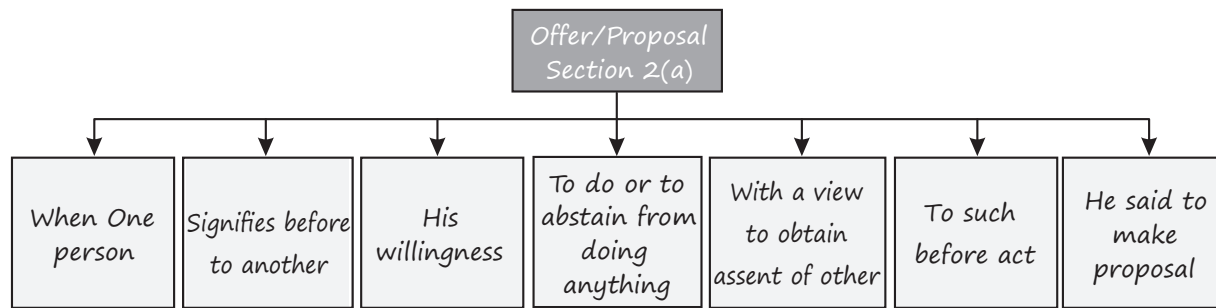


Unit-1: Nature of Contracts



Section 10– Essentials of Contract (C2L2AN)	Other than Section 10– Essentials of Contract – (COP3)
Free Consent	Certainty of meaning
Competency of the Parties	Other Formalities to be complied
Lawful Consideration	Possibility of Performance
Legal Object	Parties intend to create legal relation
Agreement	2 Parties
Not expressly declared Void	

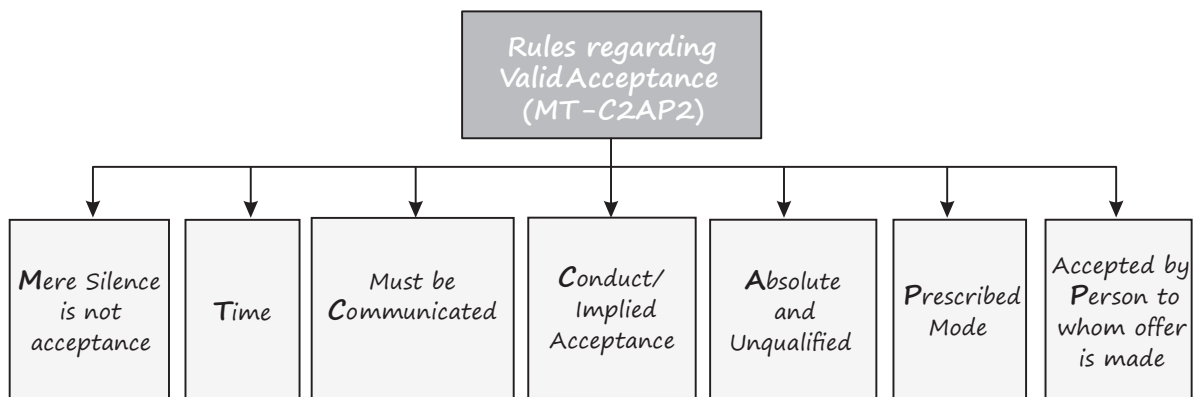
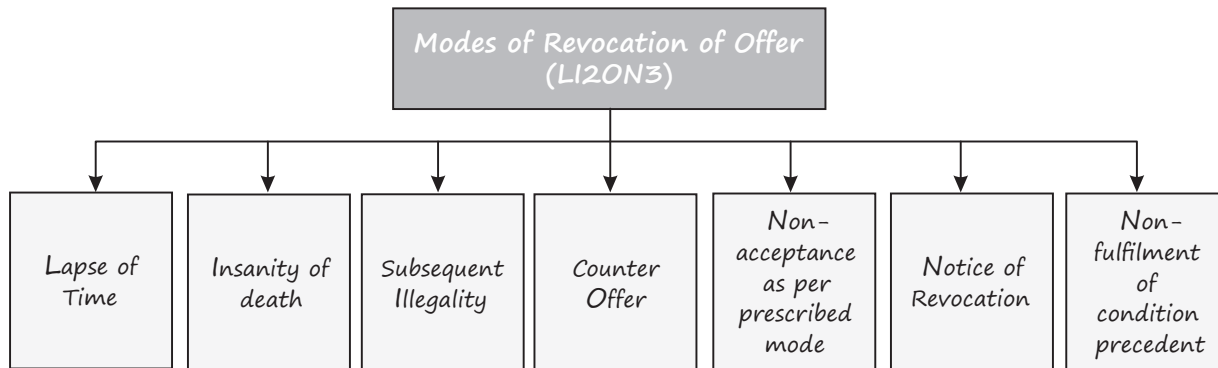
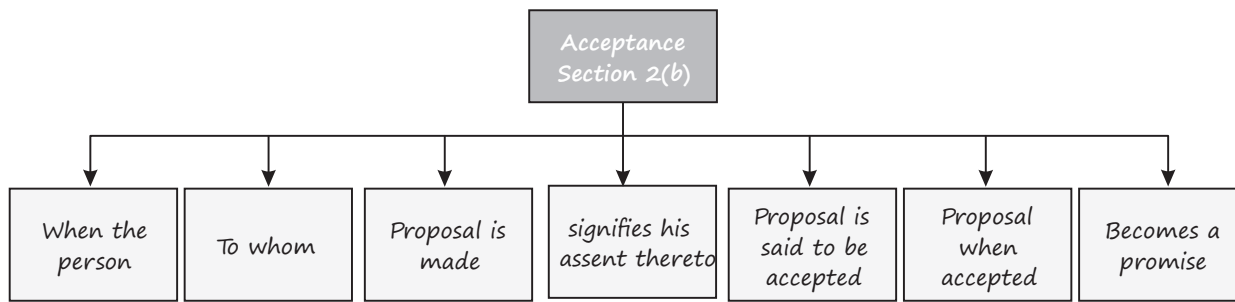
All contracts are agreements but all agreements are not contract

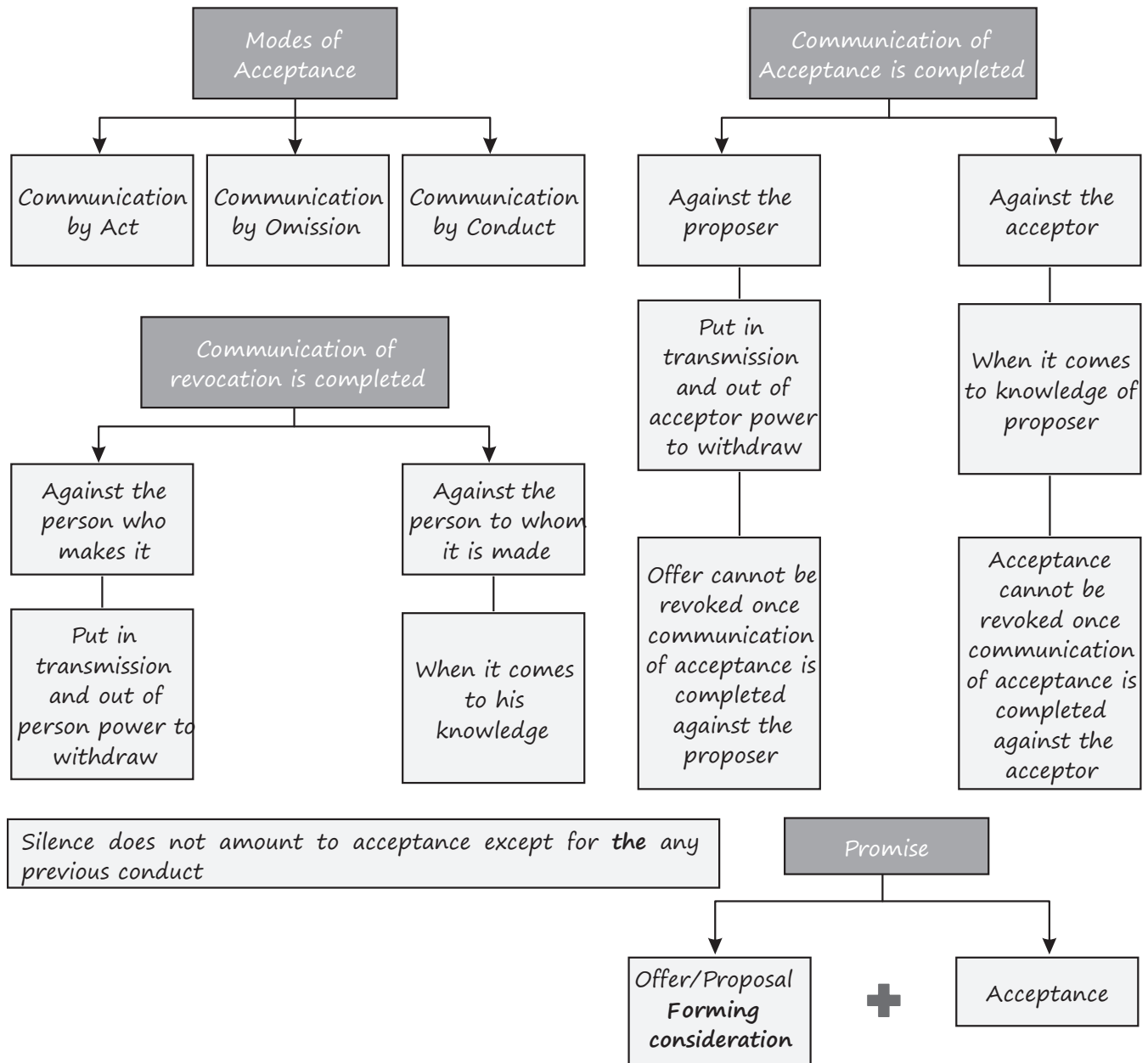


Examples of Invitation to Offer:	Offer is different from:
Invitation by company to public for subscribing its shares	Statement of Intention
Display of Goods for sale in shop	Statement of Price
Advertisement of Auction Sales	Statement of Announcement
Price Quotation in reply to query of price	Invitation to Offer
Menu card/price tags etc.	

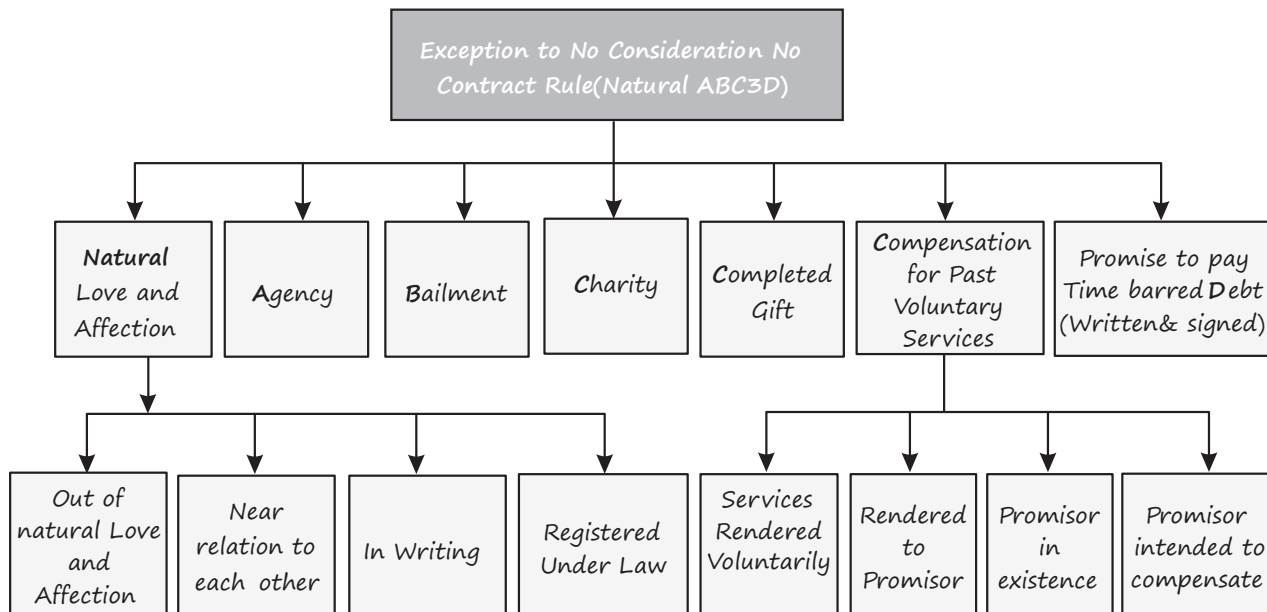
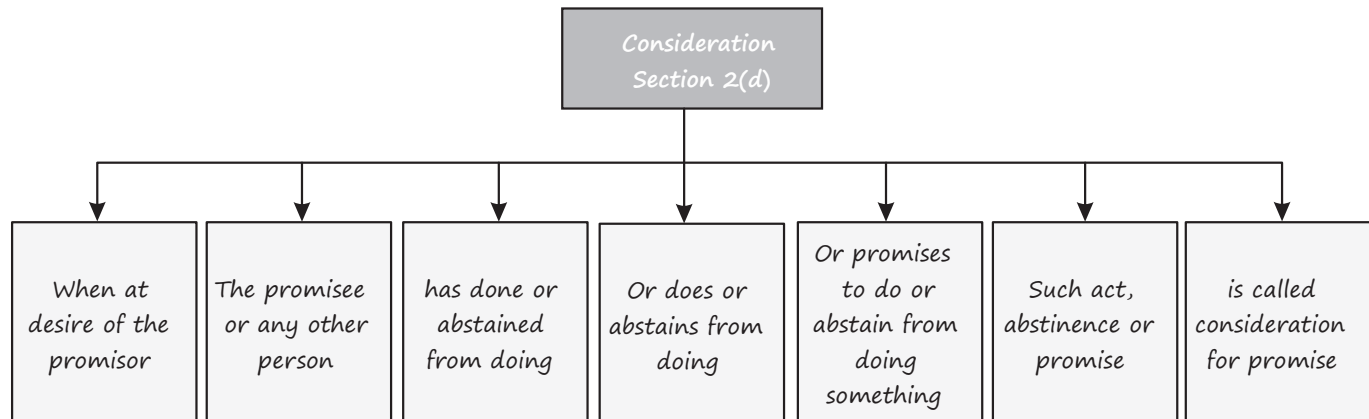
Communication of offer is complete when it comes to the knowledge of the person to whom it is made

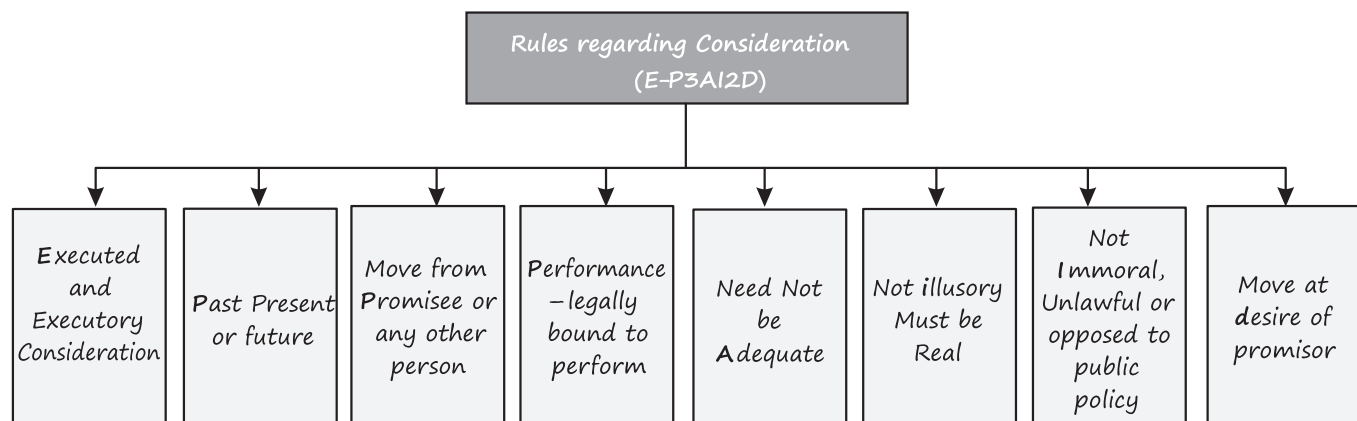
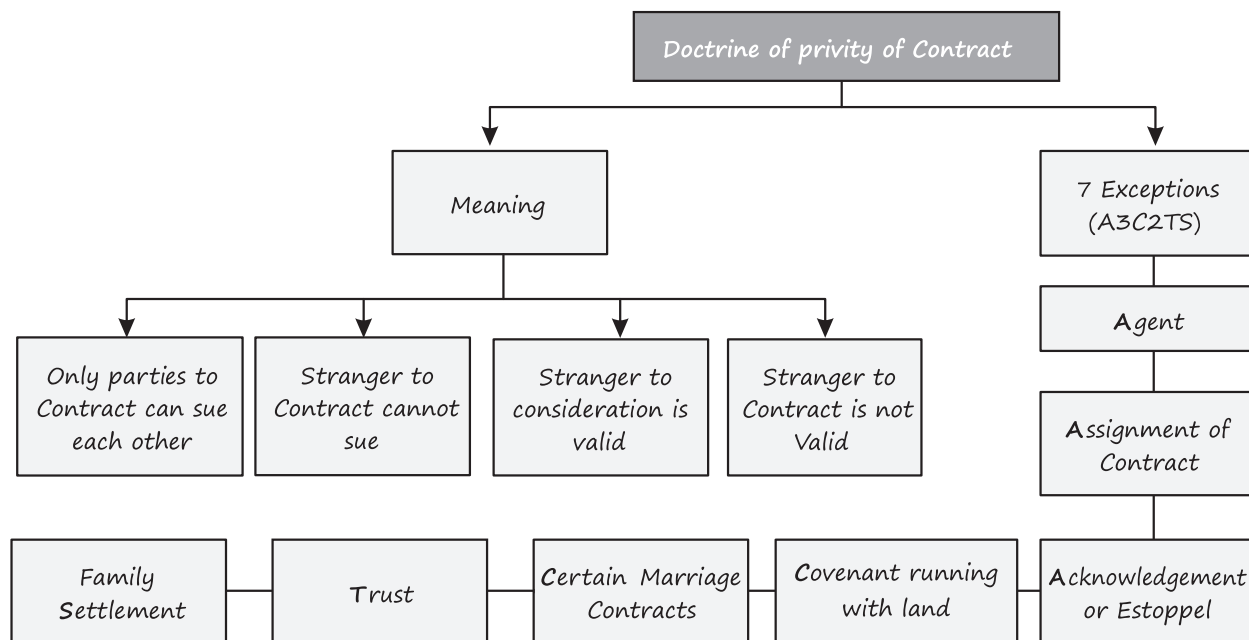
Advertisements are Invitation to offer except it is announced in the form of reward. Then it is considered as General Offer.



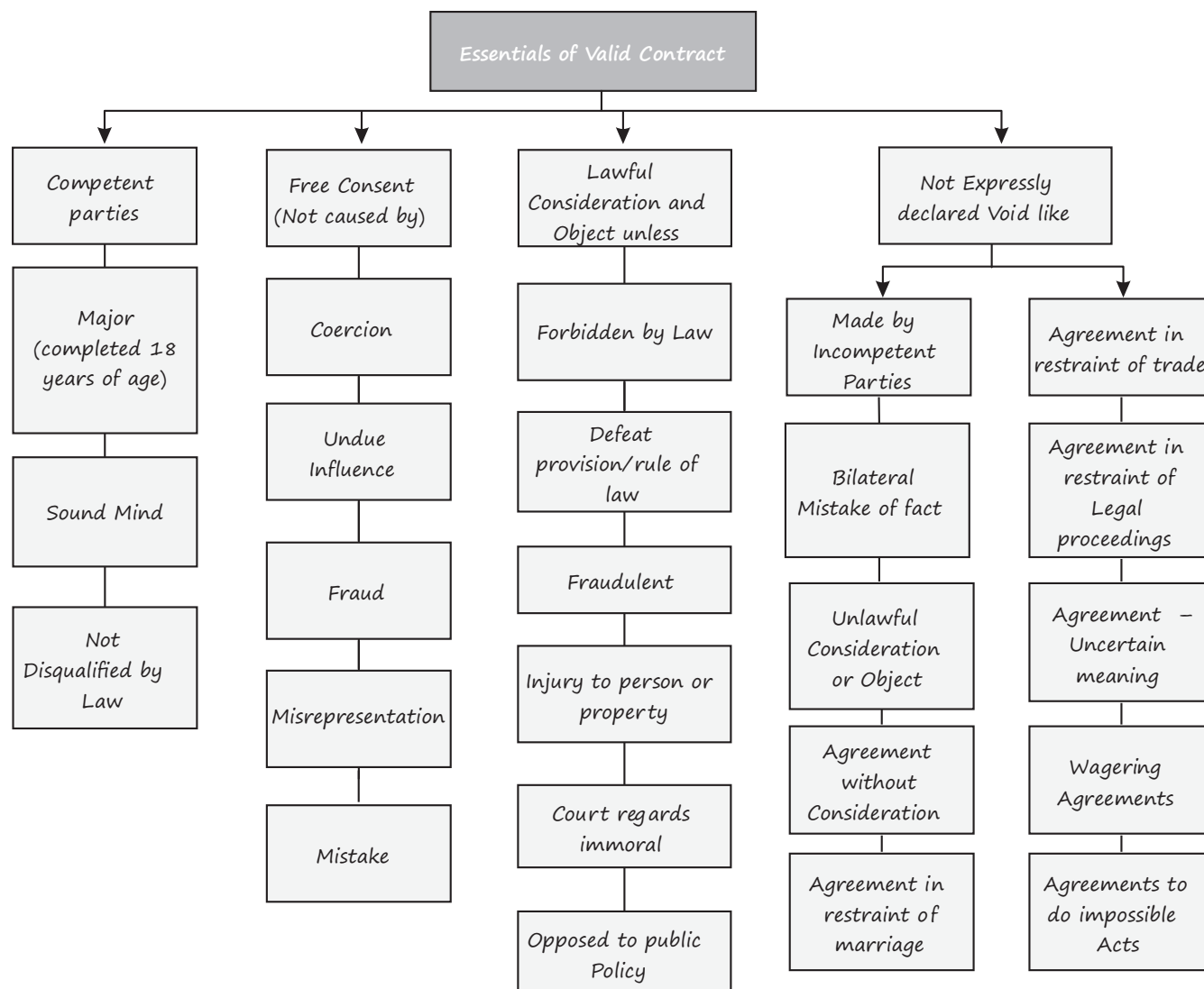


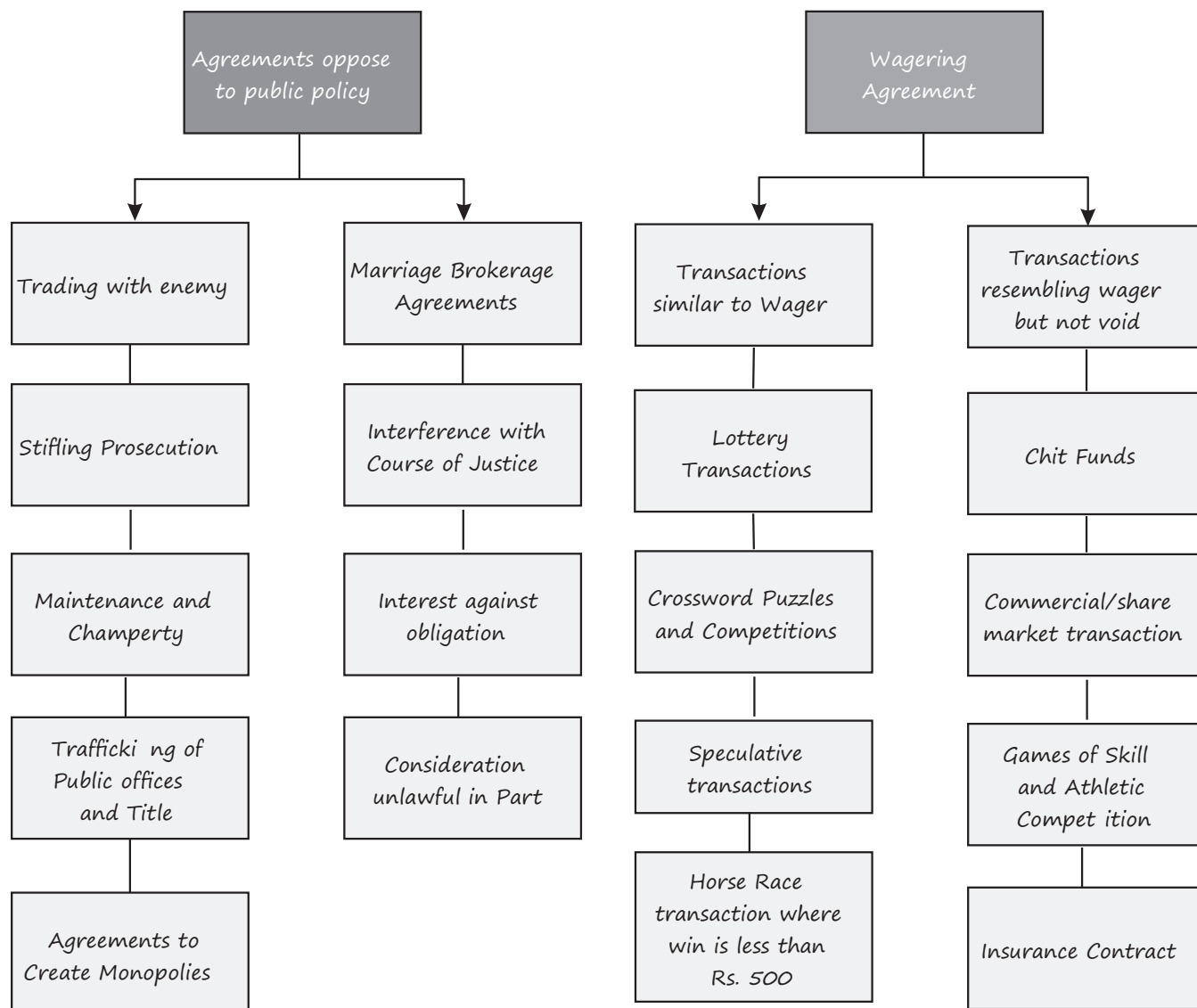
Unit-2: Consideration





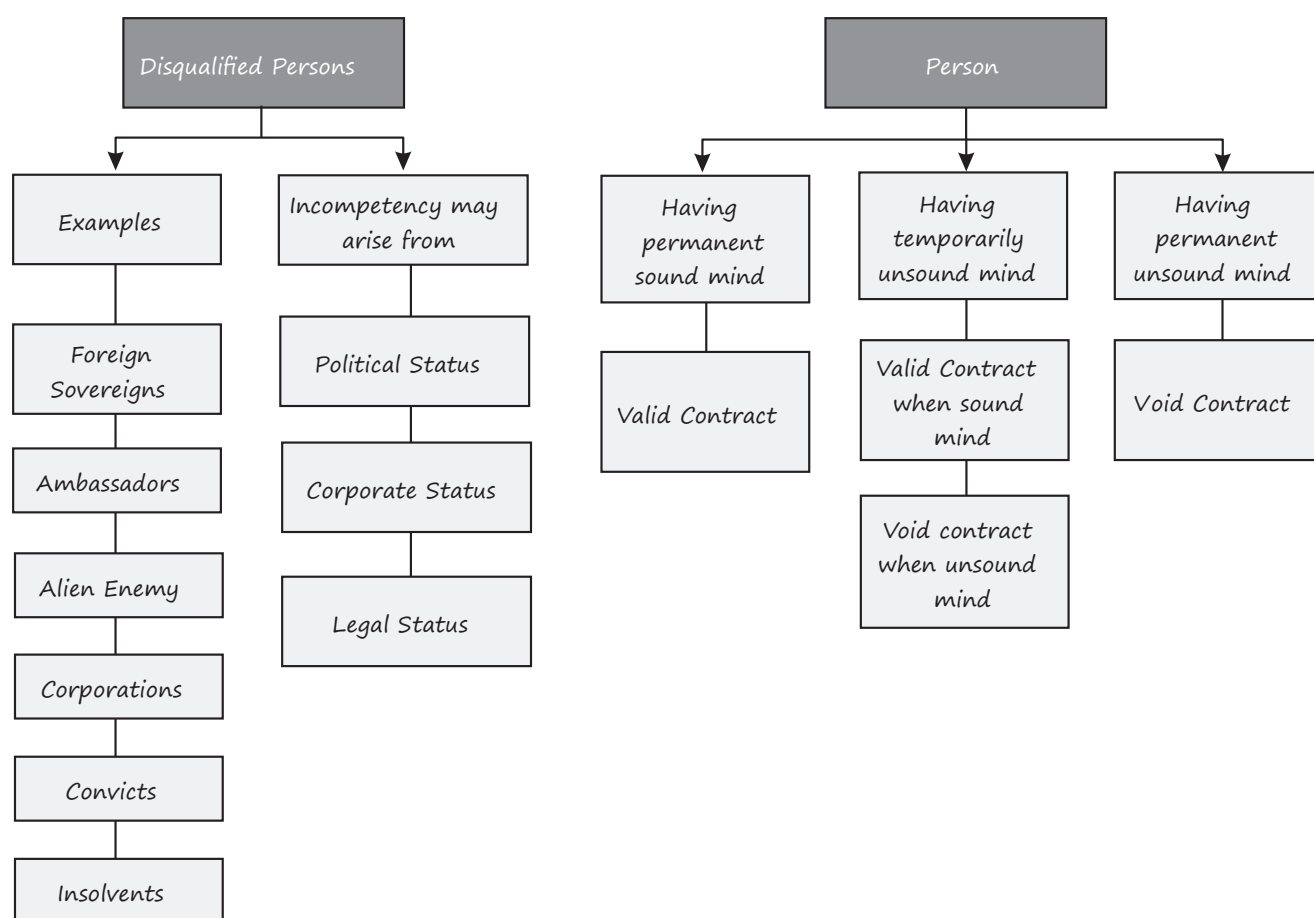
Unit-3: Other Essential Elements of a Contract

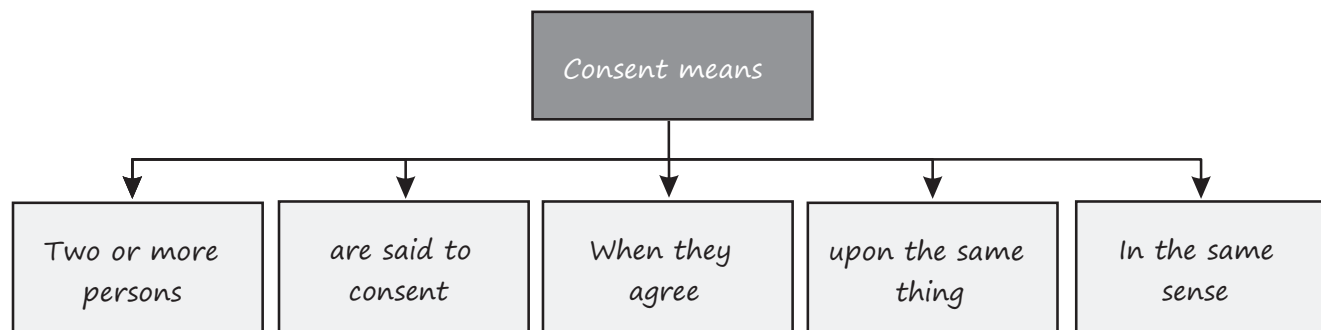




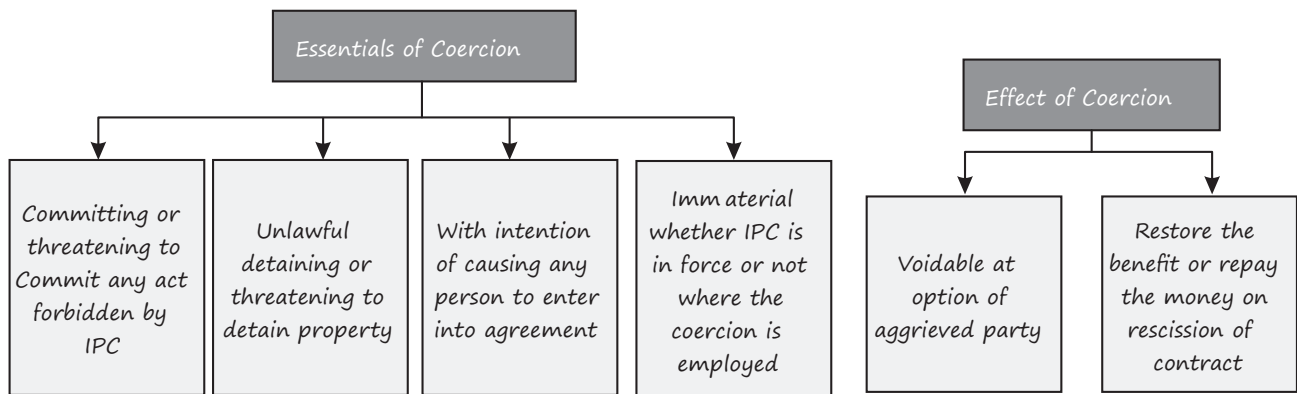
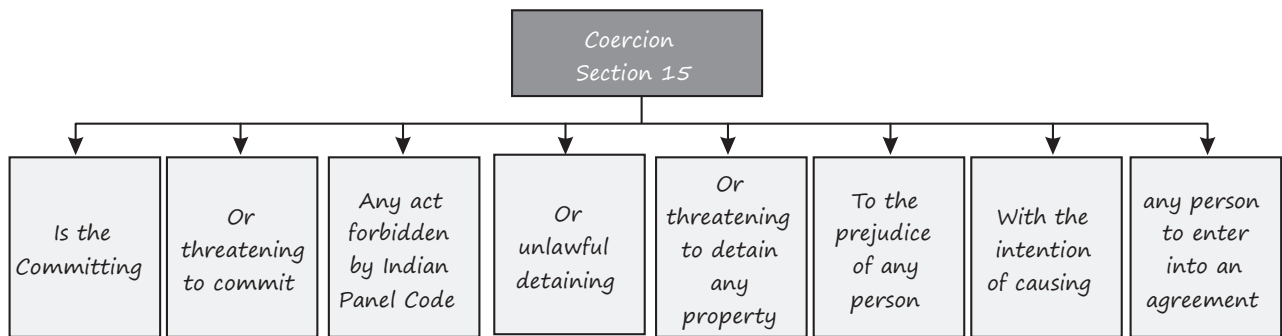
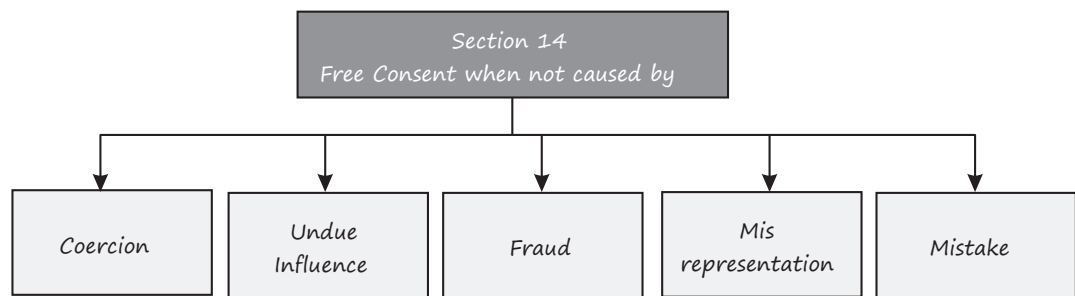
Minor – Age of majority is regulated by Indian Majority Act, 1875	Every person domiciled in India who not completed as 18 years of age will be termed as minor
Contract with Minor is Void ab initio	Guardian can enter into contract for benefit of minor
No ratification after attaining majority	Minor is not liable for specific performance
Minor can be beneficiary or take benefit out of contract	Minor cannot become a partner in partnership
Promissory note can be made in favour of Minor	Minor can be admitted to benefits of partnership with consent of all partners
Minor is liable for torts (civil wrong)	Minor cannot be declared insolvent

Minor – Age of majority is regulated by Indian Majority Act, 1875	Every person domiciled in India who not completed as 18 years of age will be termed as minor
For Necessaries, Minor's estate is liable but he is not personally liable	Minor can become agent but not liable to principal
Minor cannot bind guardian or parent	Adult will be liable in case of joint promise by Minor and adult
Minor cannot become shareholder of the Company. However through legal guardian can become shareholder of fully paid shares by transfer or transmission.	Surety (adult) of minor is directly liable to third party
Company will remove name of minor from member register if he mistakenly becomes a member	Minor can always plead minority even when earlier he falsely represent himself as major



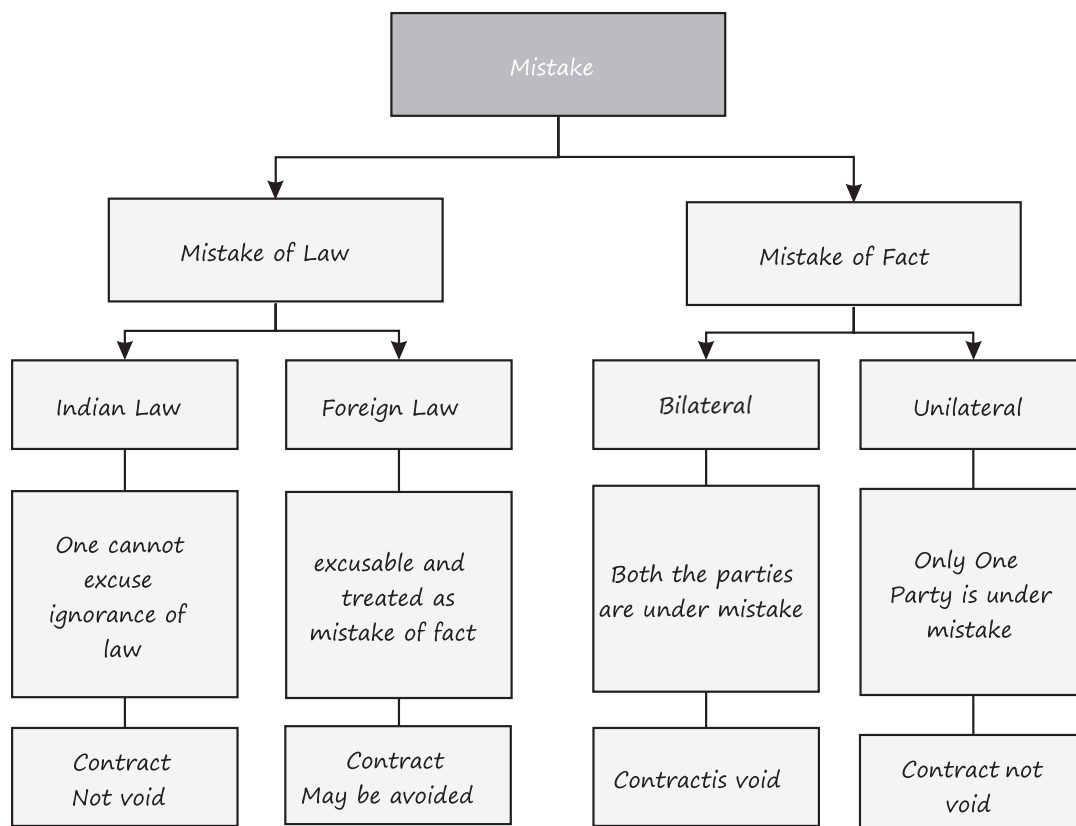
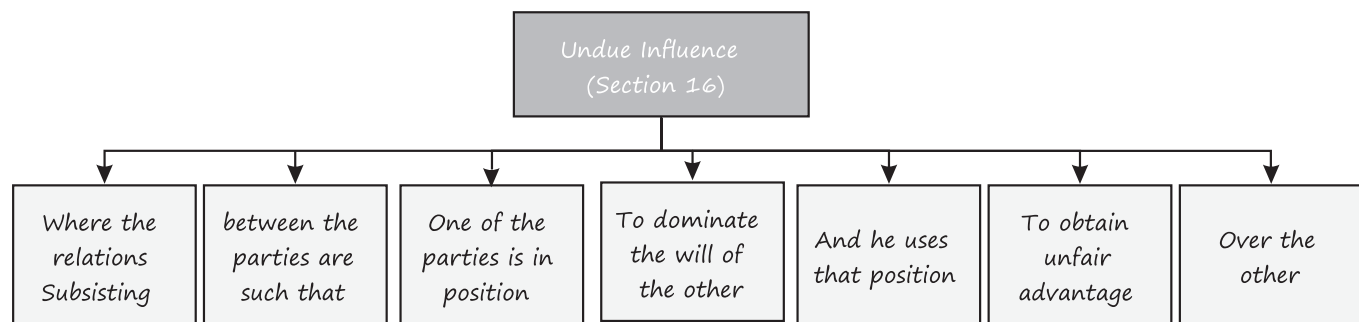


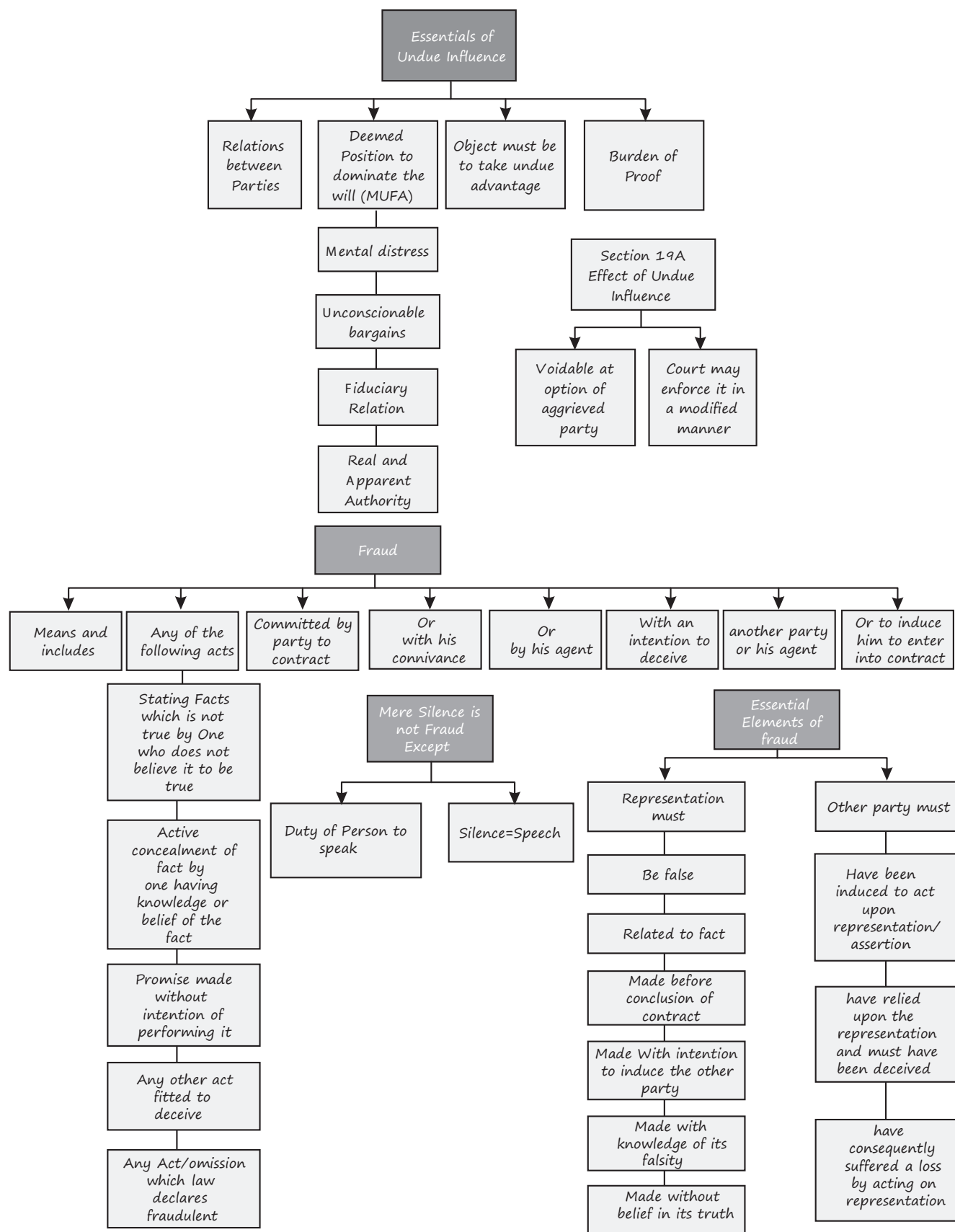
In case of Coercion, fraud, misrepresentation, or undue influence, the contract is voidable

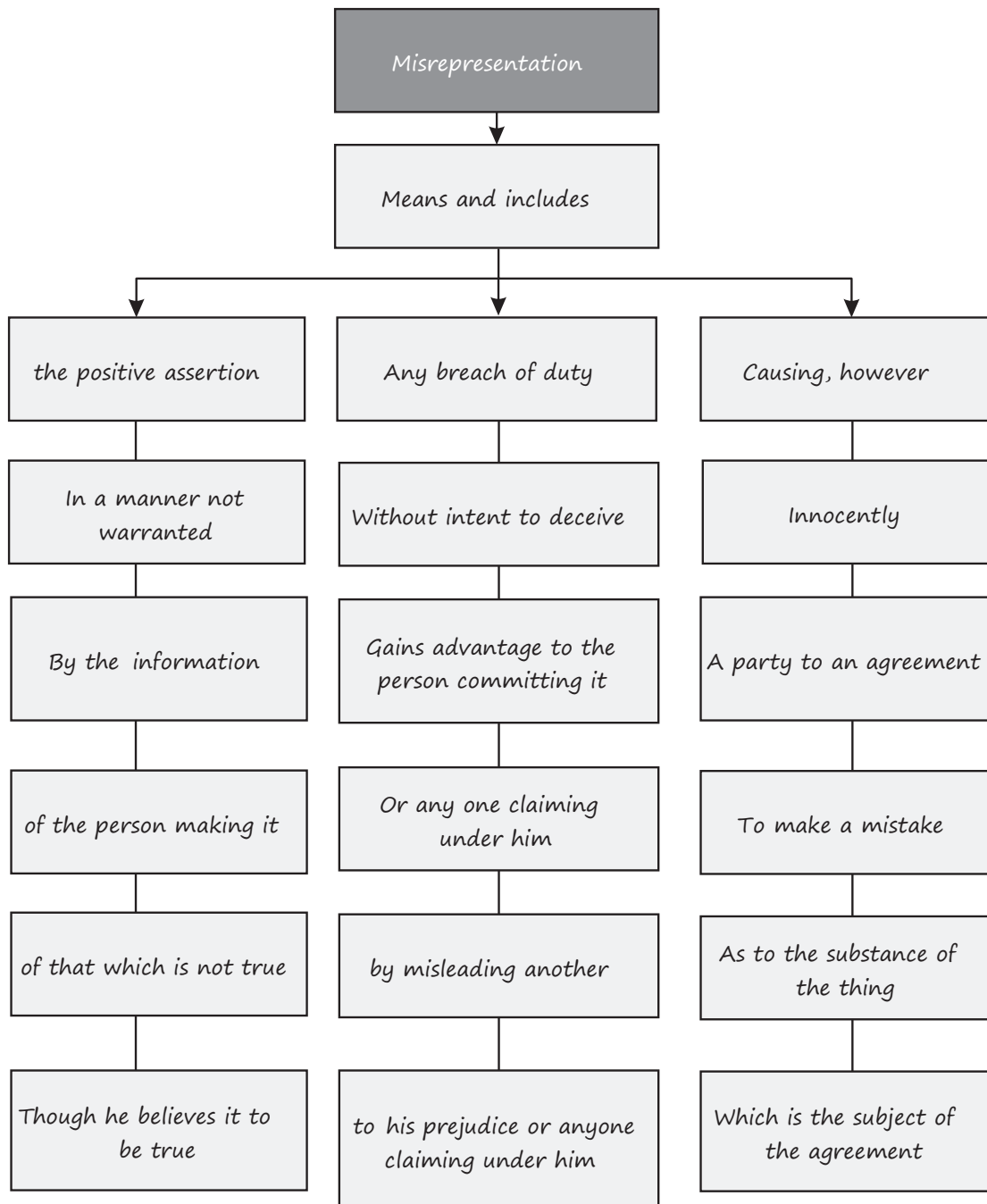
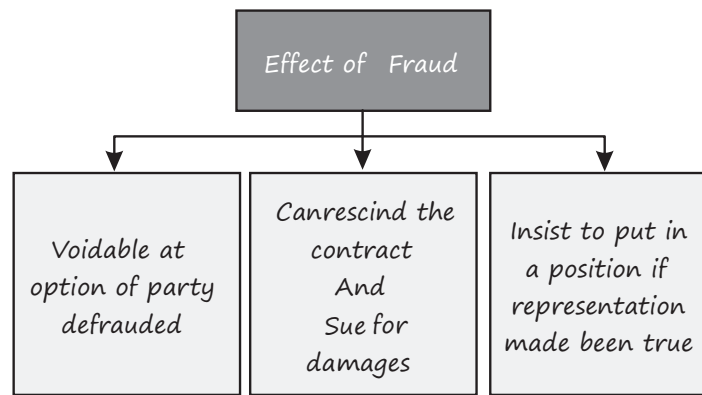


List of Voidable Contracts

	Where consent is not Free due to (a) Coercion (b) Fraud (c) Misrepresentation (d) Undue influence
	Party preventing event on which the contract is to take effect (Sec 53)
	Effect of failure to perform at fixed time, in which time is essential (Section 55)





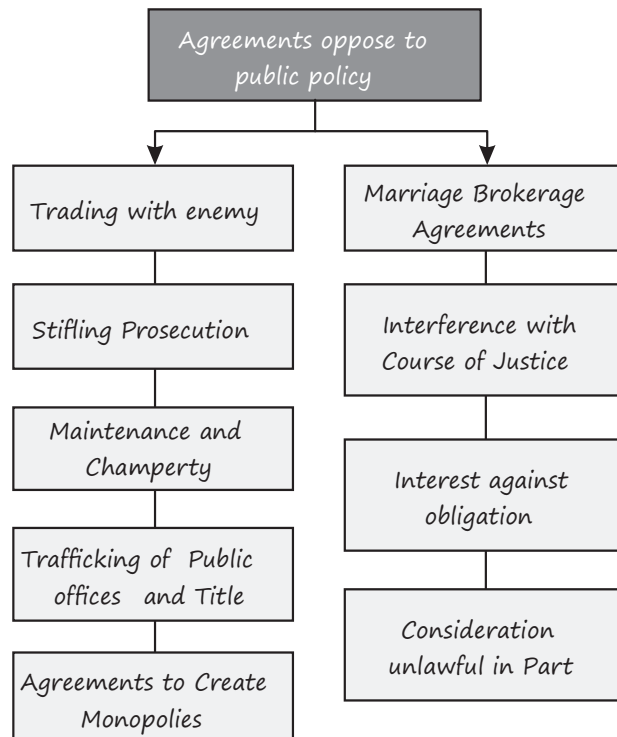


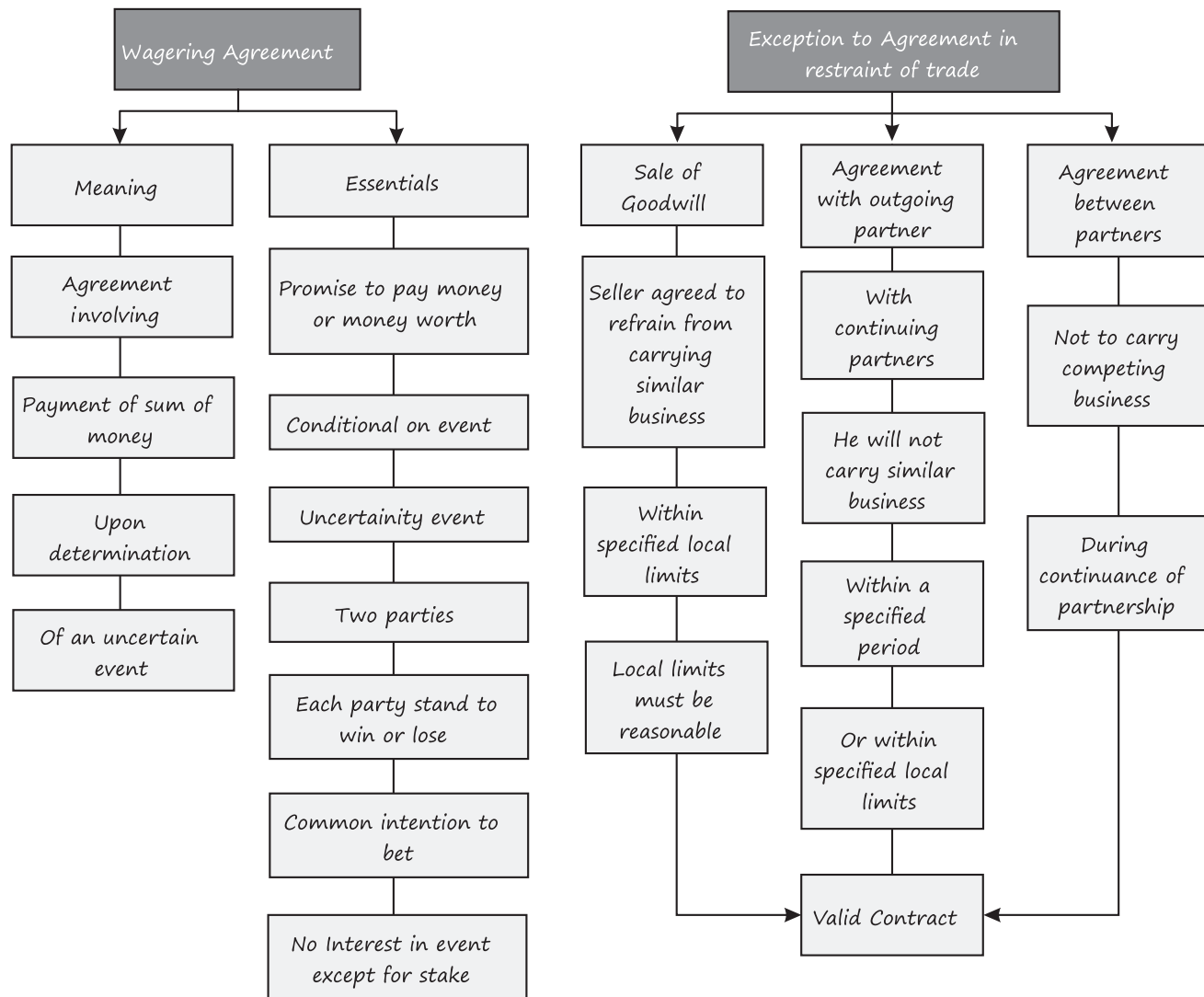
List of Agreements where consideration or object is unlawful

1.	Forbidden by Law
2.	Defeat the provisions of Law
3.	Fraudulent
4.	Involves injury to the person or property of another
5.	Court regards it as immoral
6.	Opposed to Public Policy (9 cases)

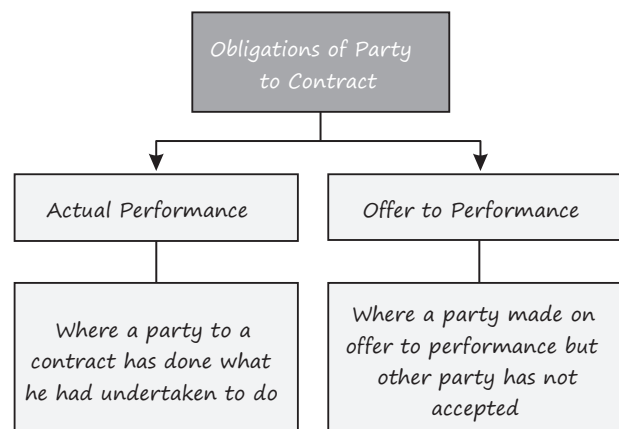
List of Void Agreements

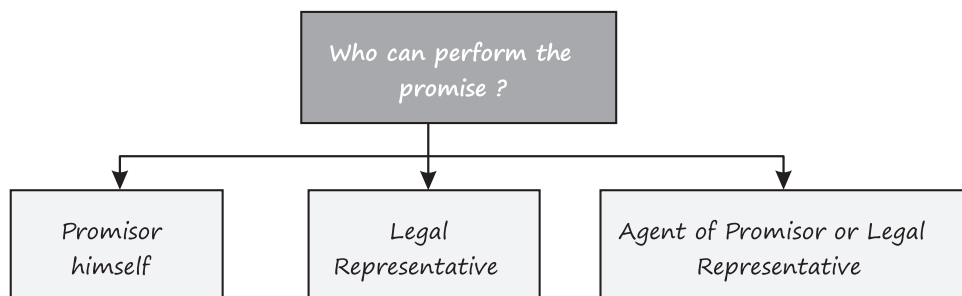
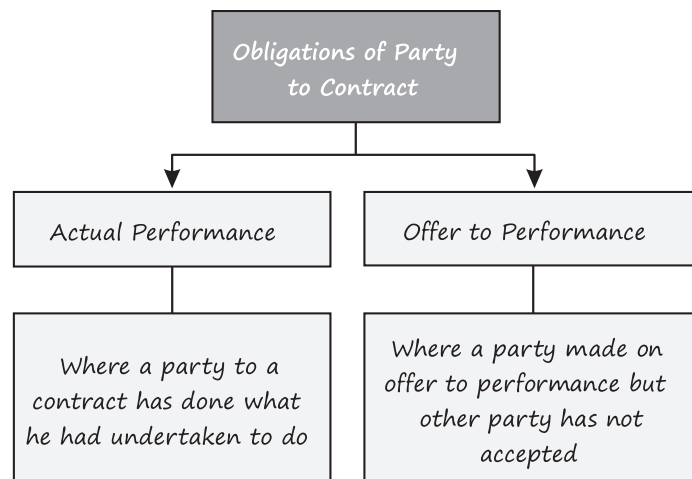
1.	Made by incompetent parties (Section 11)	6.	Agreement in restraint of marriage (Section 26)
2.	Agreements made under Bilateral mistake of fact (Section 20)	7.	Agreements in restraint of trade (Section 27)
3.	Agreements the consideration or object of which is unlawful (Section 23)	8.	Agreement in restraint of legal proceedings (Section 28)
4.	Agreement the consideration or object of which is unlawful in parts (Section 24)	9.	Agreement the meaning of which is uncertain (Section 29)
5.	Agreements made without consideration (Section 25)	10.	Agreements to do impossible Acts (Section 56)
		11.	Wagering Agreement





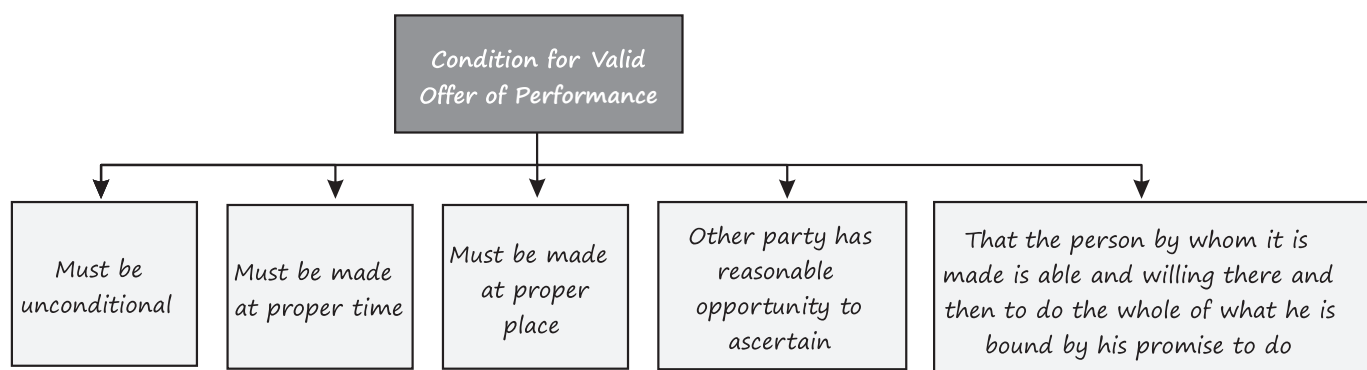
Unit-4: Performance of Contract





In case contract involves personal skills, then it can be performed by joint promisor only

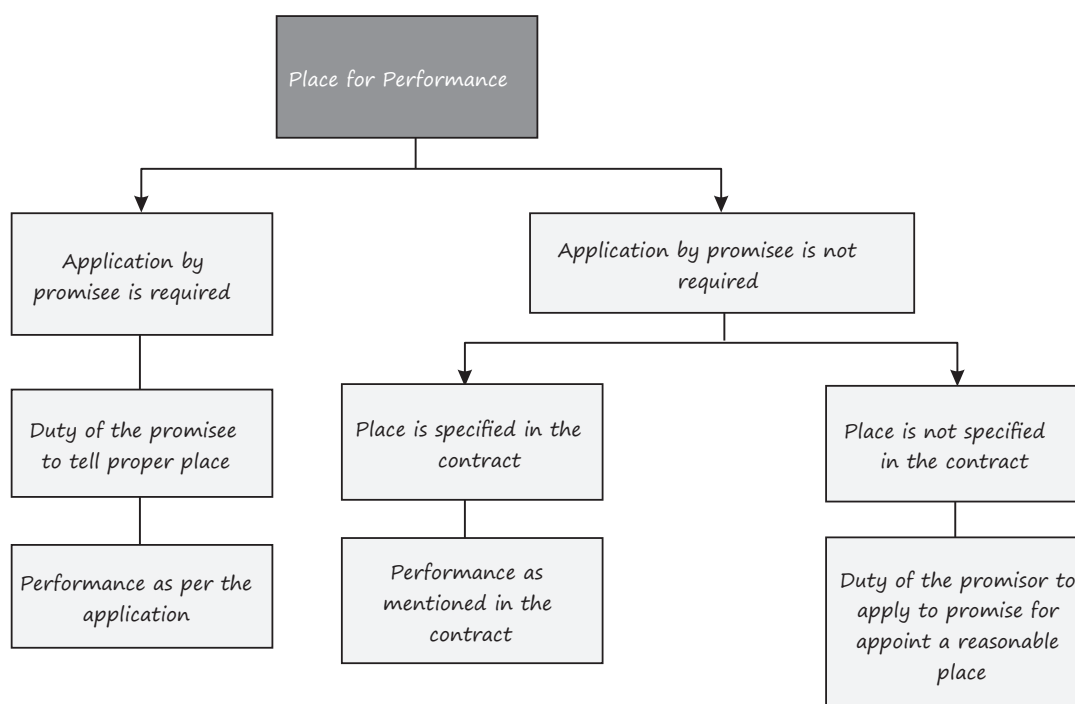
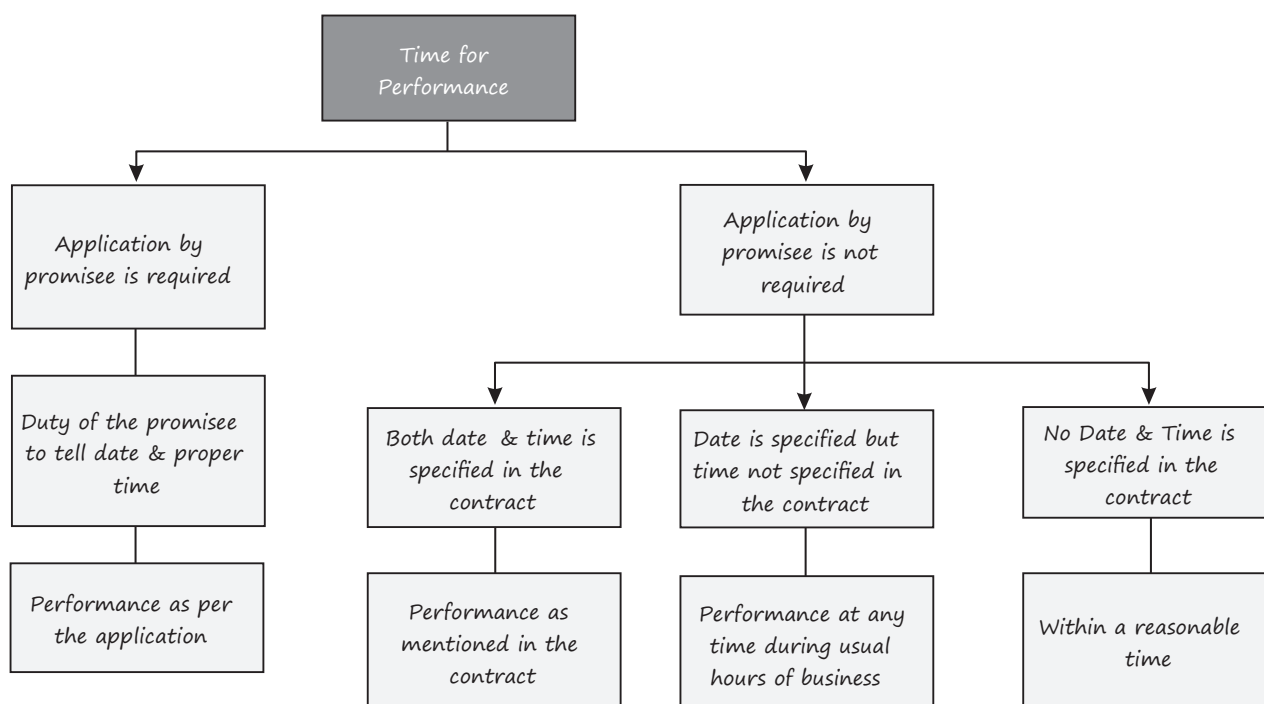
If promisee accepts whole or part of promise from third party then it cannot claim the same from promisor

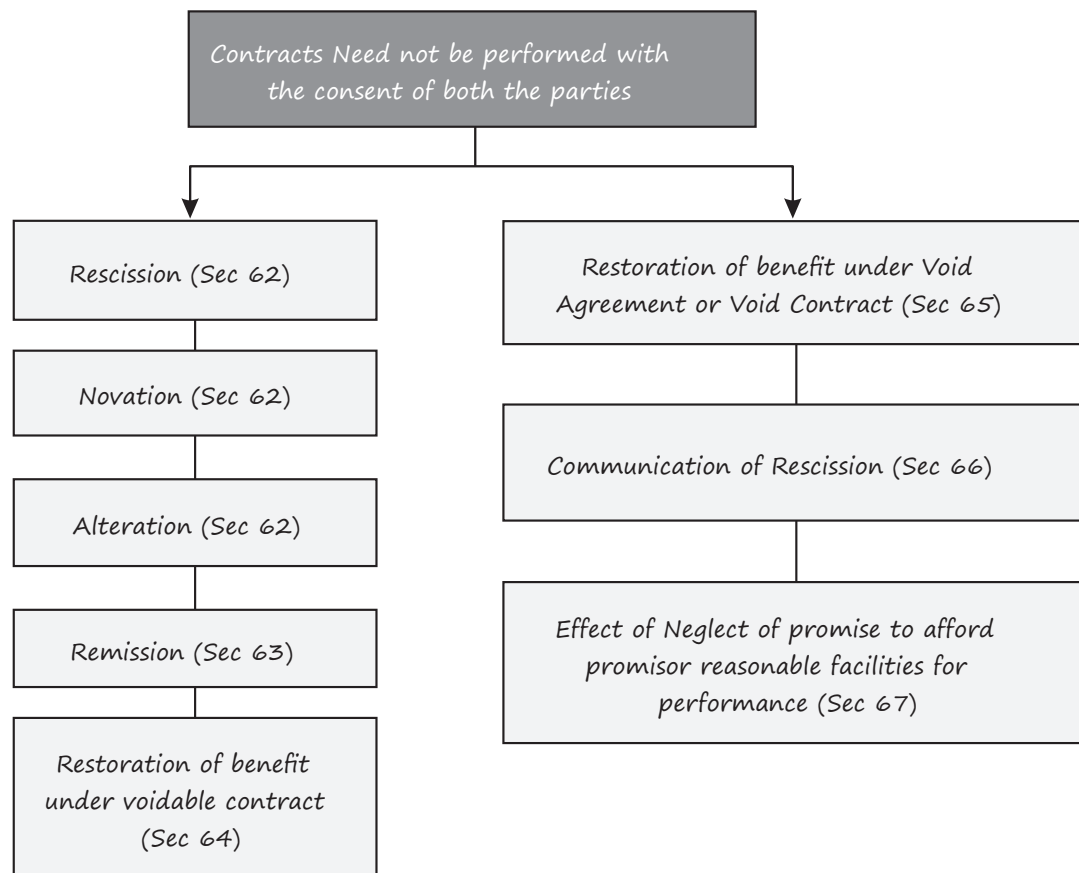


Succession	Assignment
Succeeded by law	Voluntarily
Both Burden and benefits get devolve on legal heir	Only benefits can get assigned to assignee and not the liabilities thereunder

Ex :- A son becomes owner of estate of his father after his death	Ex: Creditors assigns the benefit of a promise, he thereby entitles the assignee to realise the debt from the debtor
Liability of son is limited to the extent of the property inherited by him	In case of personal consideration, benefit cannot be assigned.

TIME FOR PERFORMANCE OF THE CONTRACT (SEC 46 TO 50)



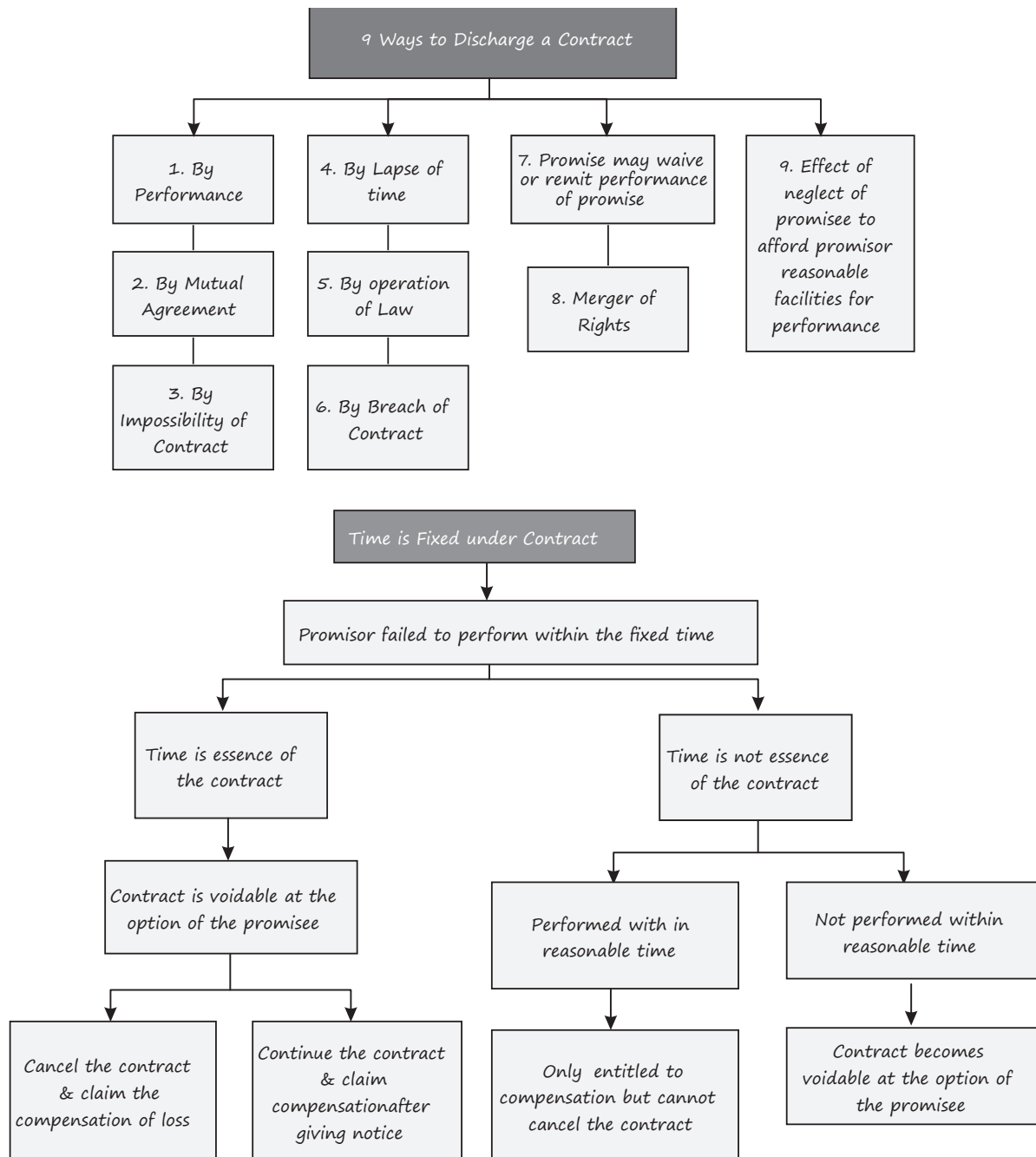


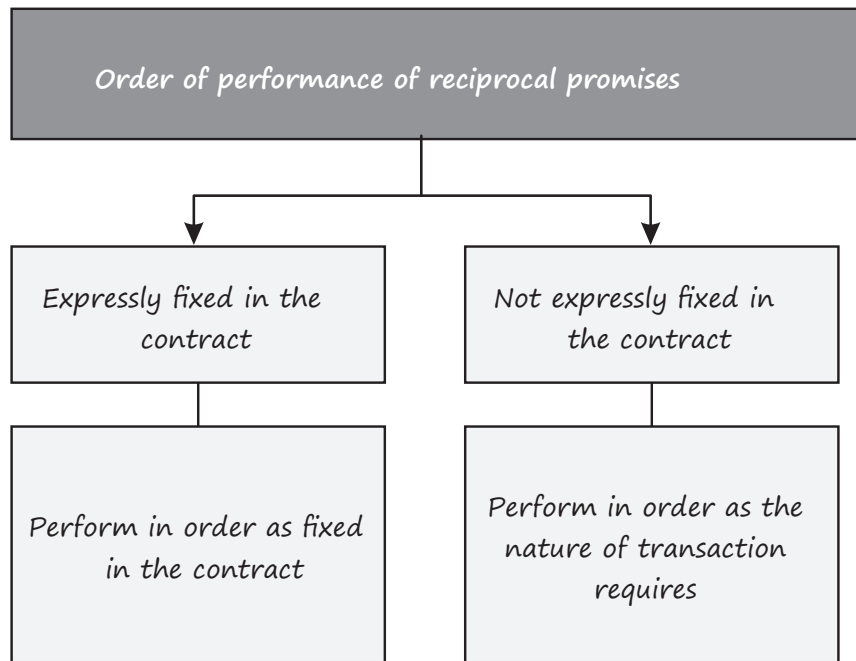
Joint Promisors

Devolution of Join Liabilities	Devolution of Joint Rights
When two or more persons have made a joint promise, then all such persons during lives, must jointly perform the promise	When a person has made a promise to two or more persons jointly, then unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and after the death of the last survivor, with the representatives of all jointly
After the death of any of joint promisor, then legal representative jointly with the survivors must fulfil the promise	
In case of death of all the joint promisors, then legal representative of all joint promisors jointly must fulfil the promise	
Promise may any one or more of joint promisors to perform the whole of promise	
If one of the joint promisors is made to perform the whole contract, then Joint Promisor may compel other joint promisors to compel equally	
A release of one of such joint promisors by the promisee does not discharge the other joint promisors neither it does free the joint promisor from responsibility to the other joint promisors	
In case of default in contribution by the joint promisor(s), remaining joint promisors must bear the loss arising from such default in equal shares	

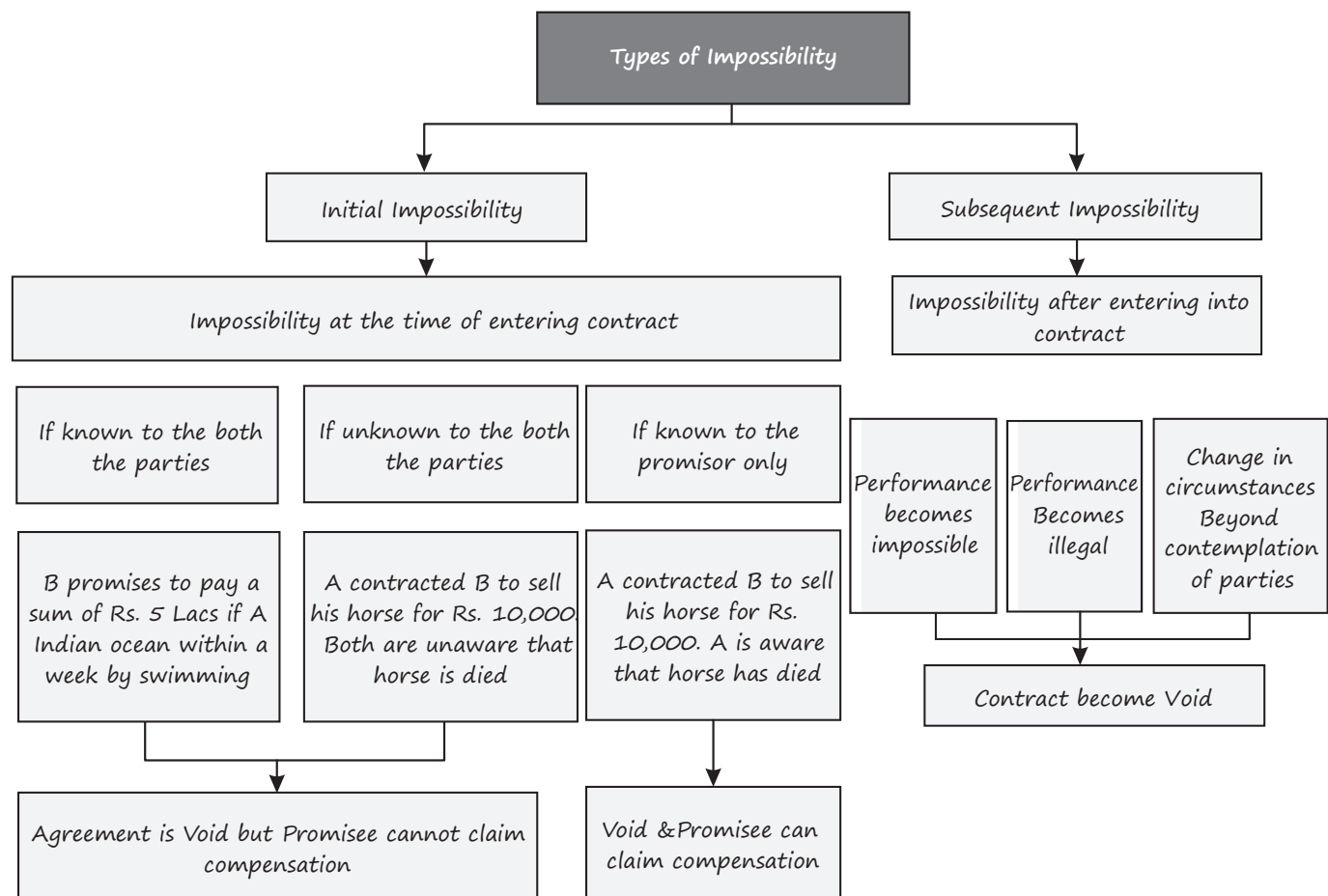
Sequence for Appropriation of Payments

- ❑ **Section 59:** Debtor expressly or impliedly intimated against which debt to be applied.
- ❑ **Section 60:** If debtor does not intimate expressly or impliedly, then Creditor may apply as per his wish against any debt due & payable including time barred debt but excluding disputed debts.
- ❑ **Section 61:** Neither Debtor nor Creditor appropriated, then as per law, apply payment in order of time of debts including time barred debts. If the debt are of same date then then apply proportionately.

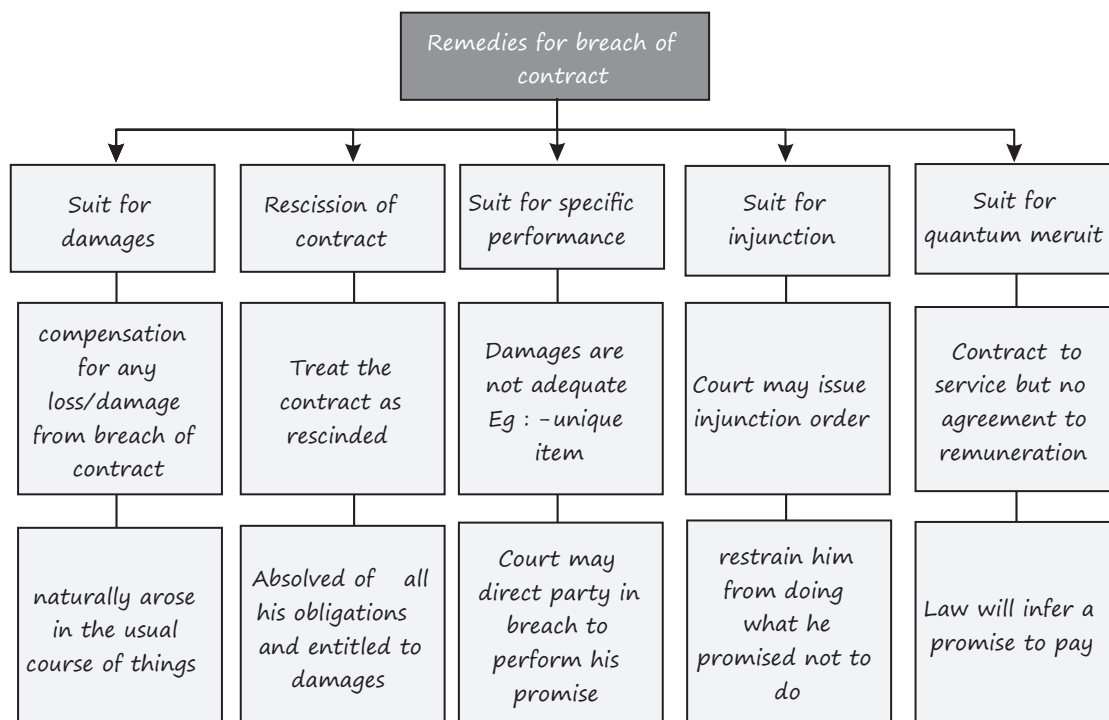
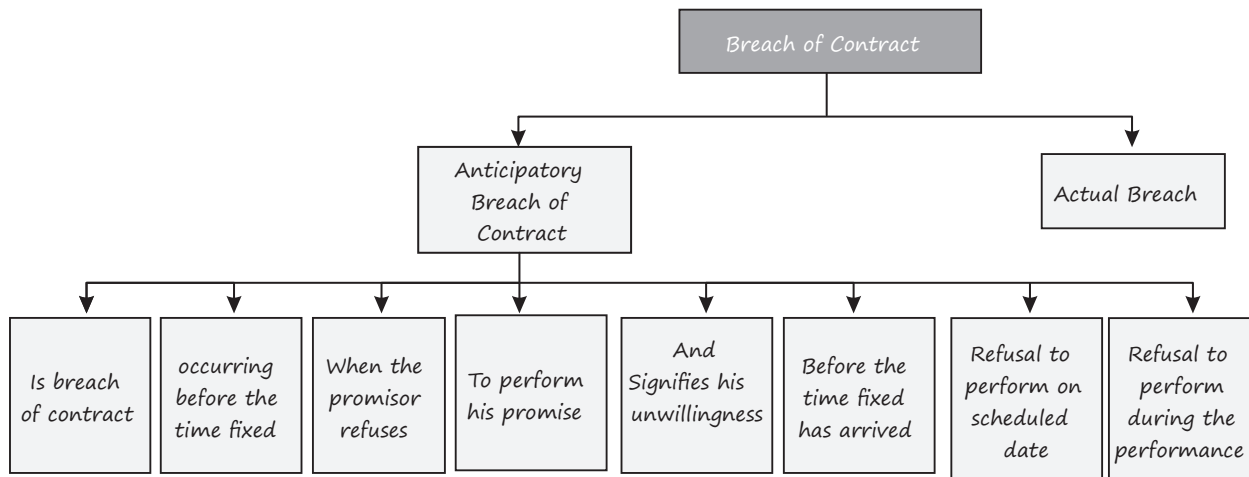


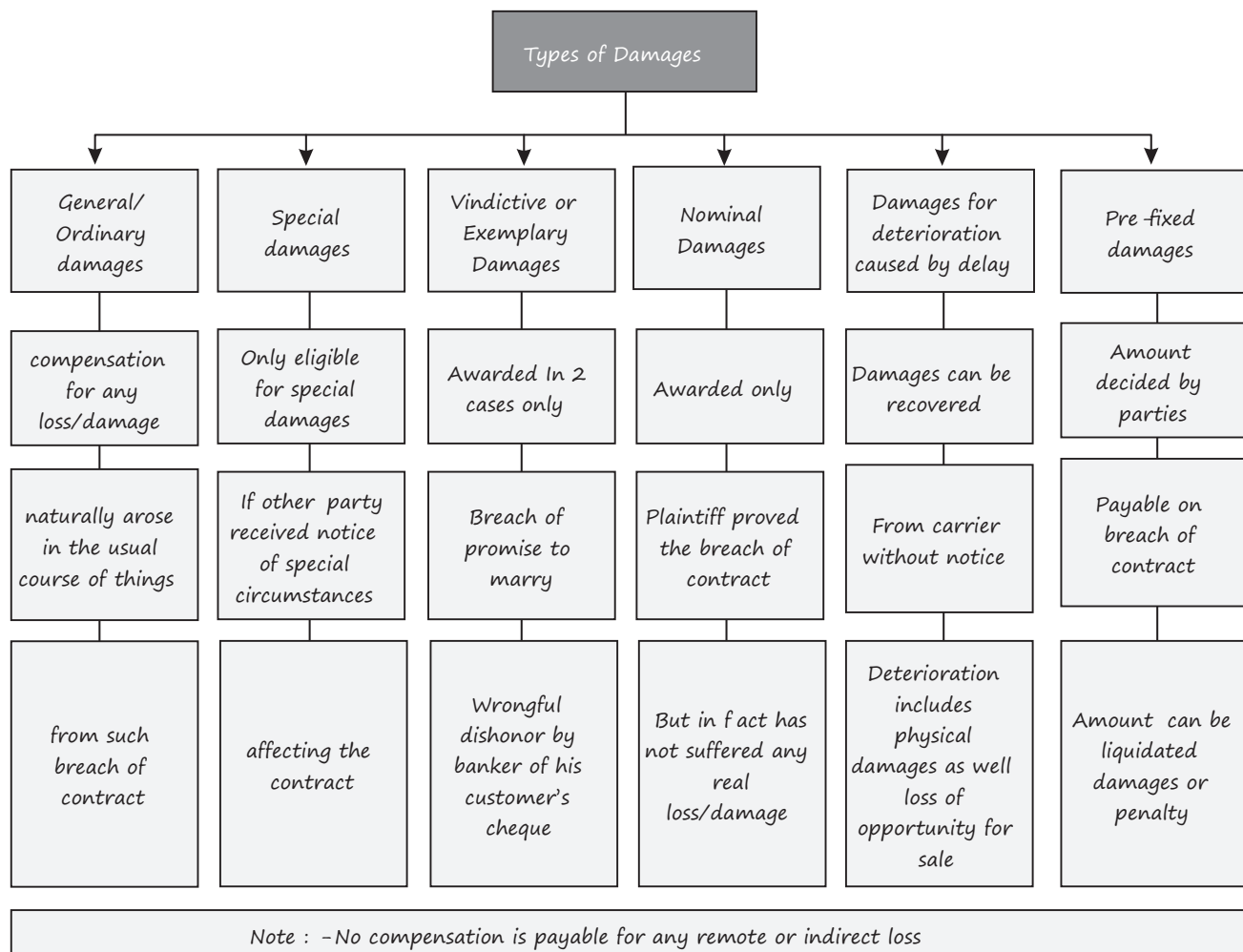
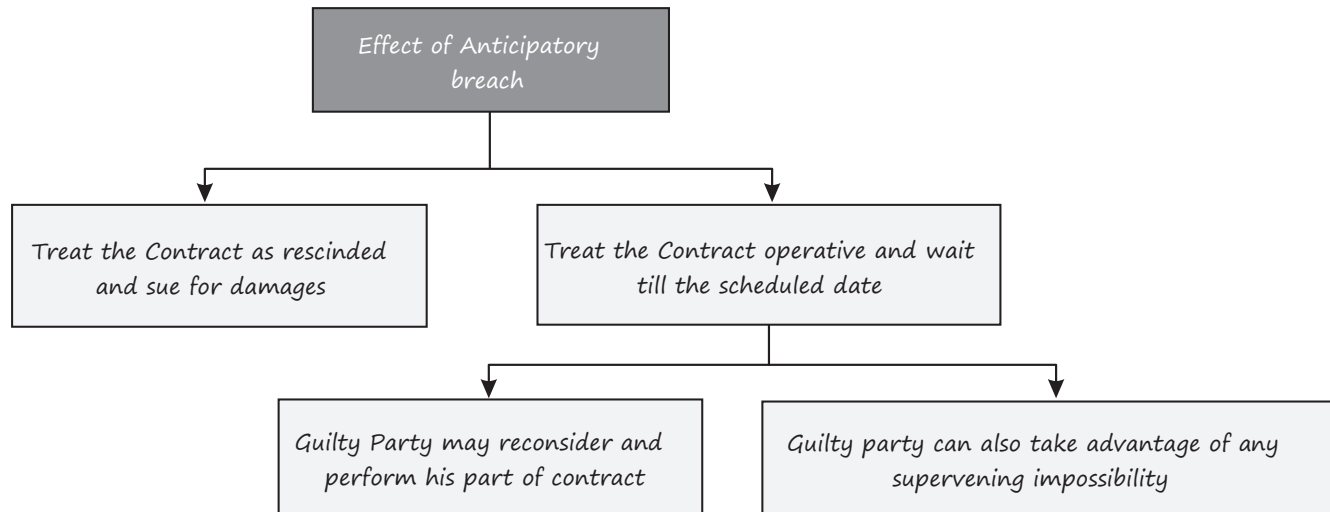


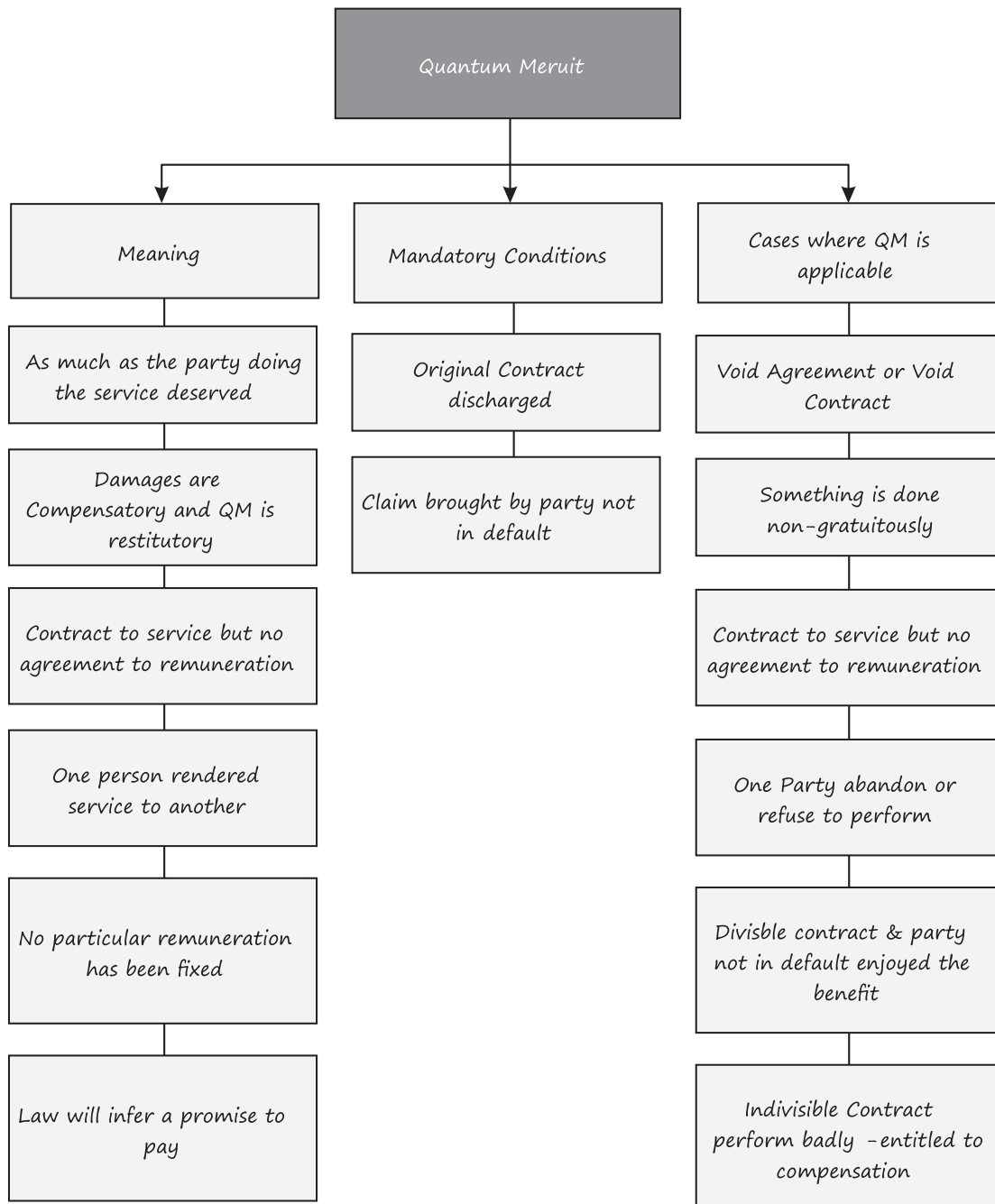
AGREEMENT TO DO IMPOSSIBLE ACT IS VOID (SECTION 56)



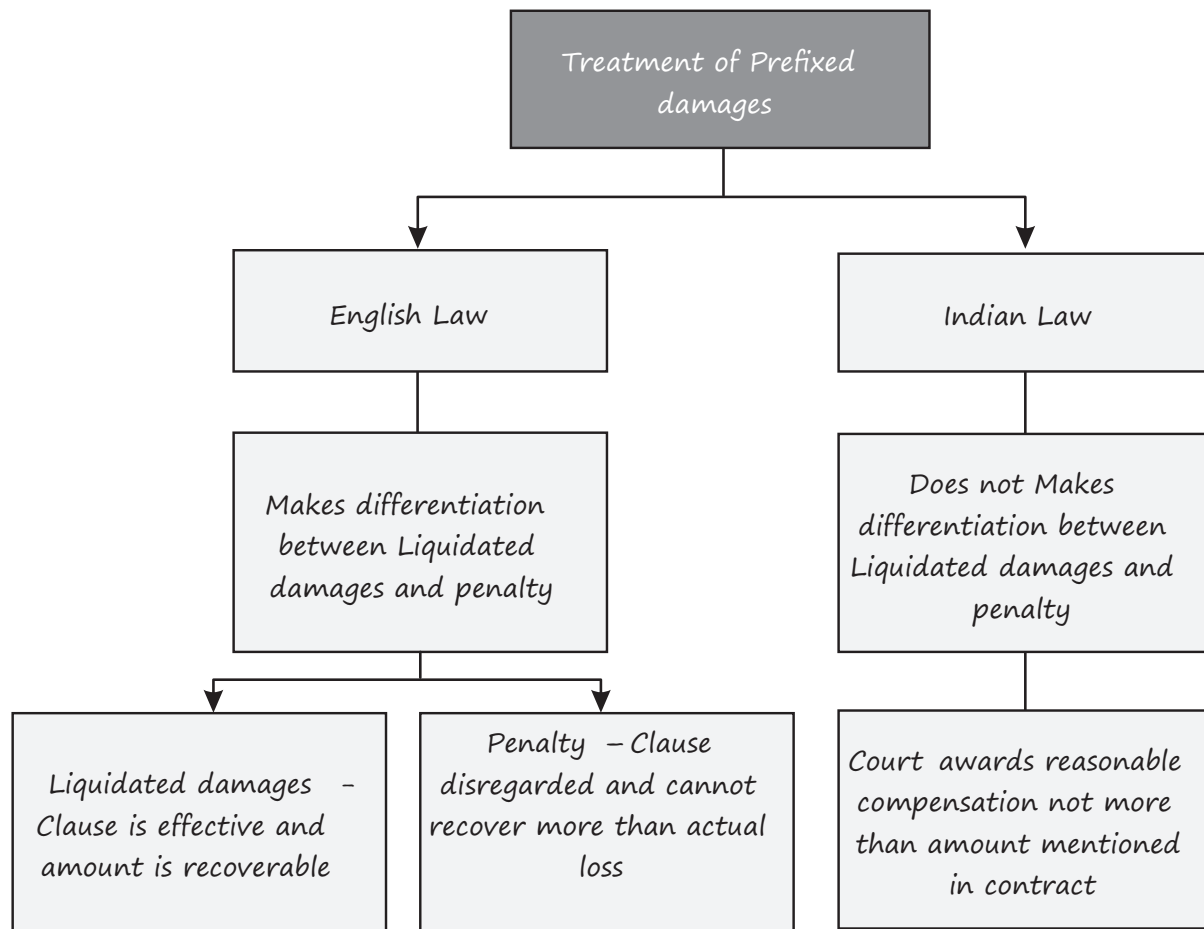
Unit-5: Breach of Contract and its Remedies



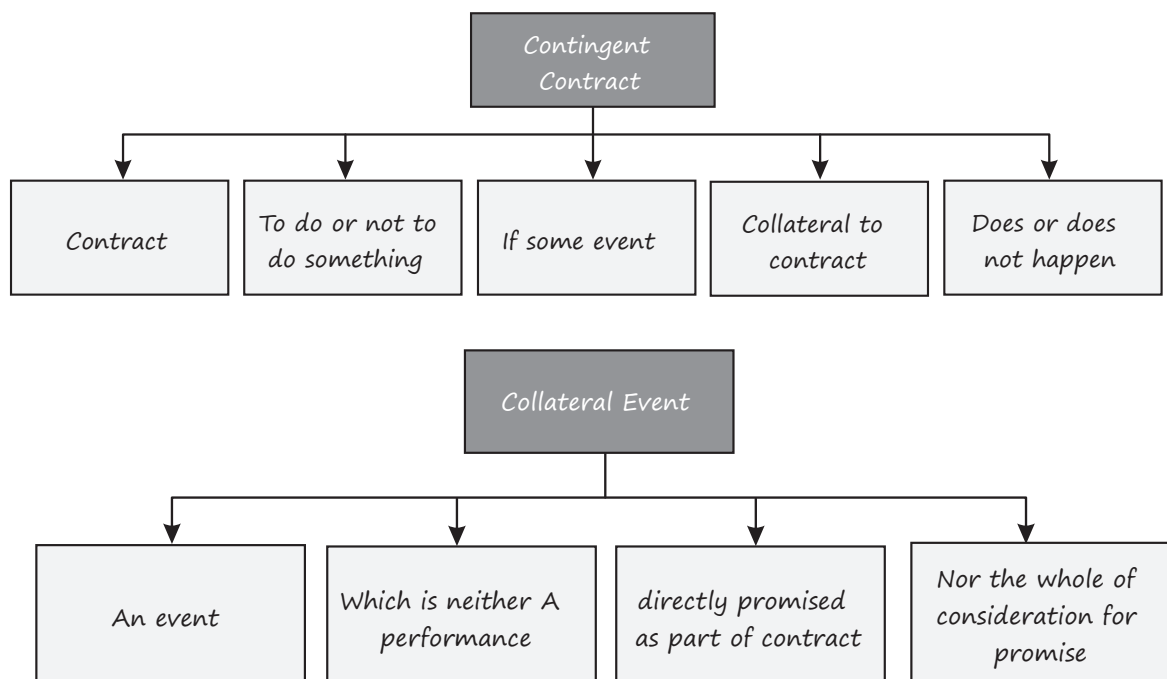


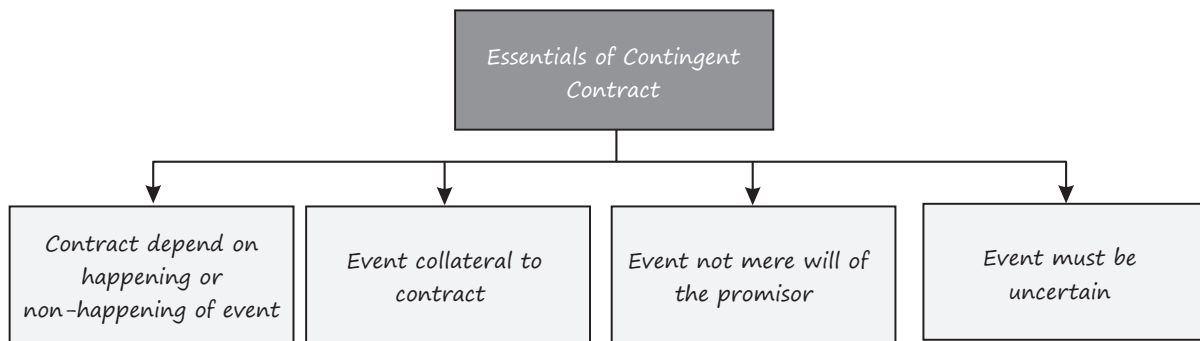


Pre-Fixed Damage	
Liquidated Damages	Penalty
Reasonable estimate of likely loss in case of breach	An amount arbitrarily fixed as the damages payable
Sum payable is approx. to the probable damage	Sum payable is so large as to be far in excess of probable damages
Liquidated damages is a genuine pre-estimate of the damage	Penalty is amount stipulated as terrorem of the offending party



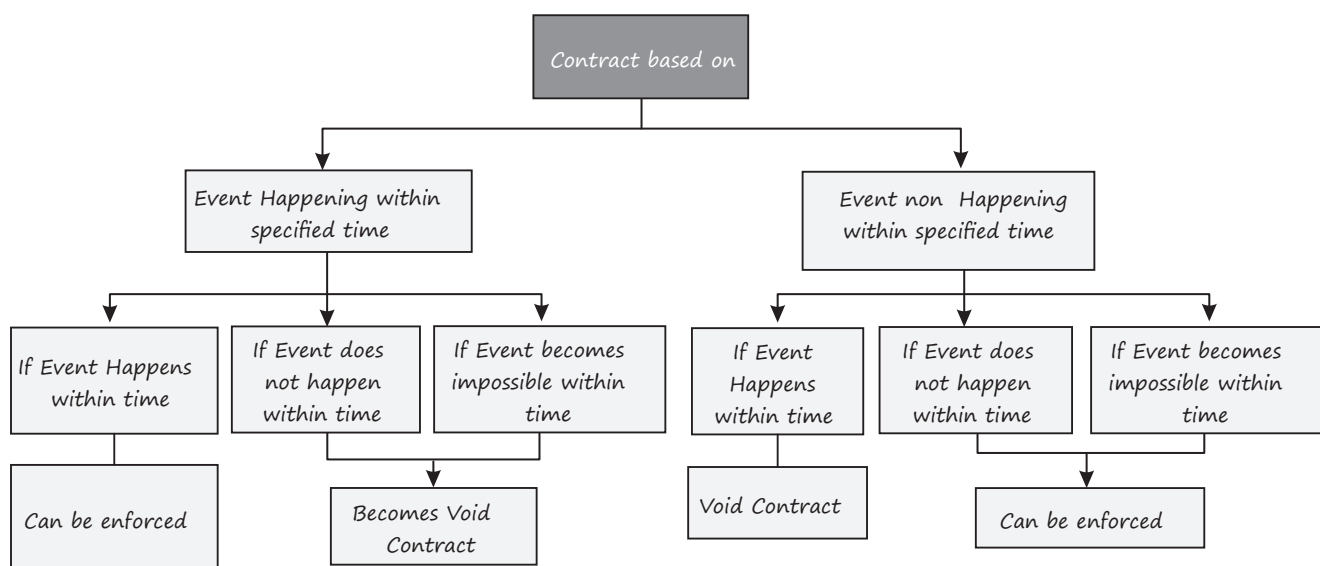
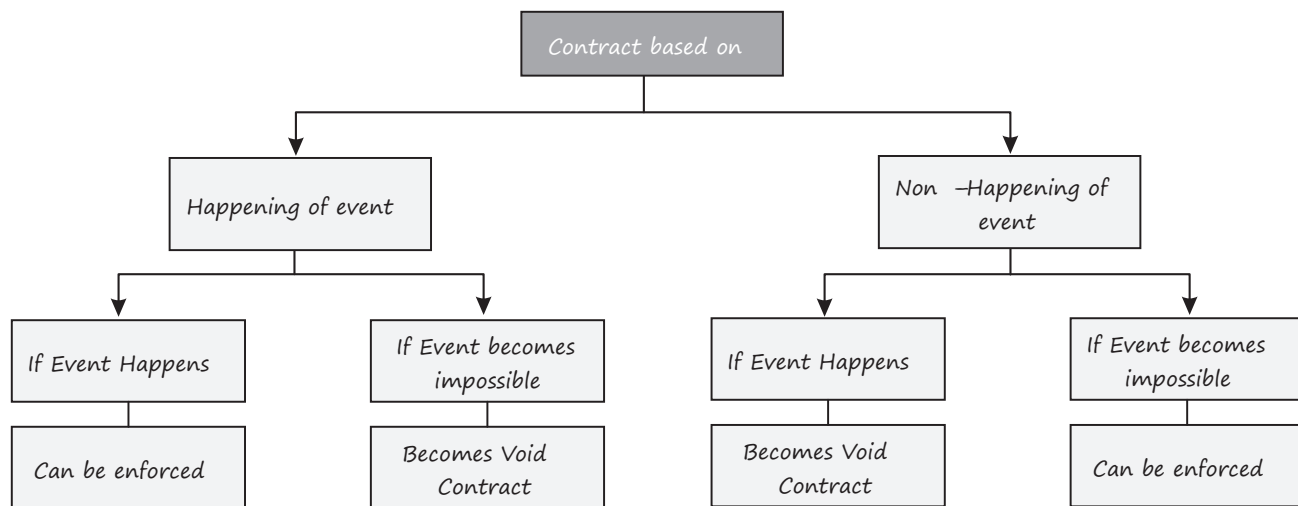
Unit-6: ~~Scope~~ of Contract and its Remedies

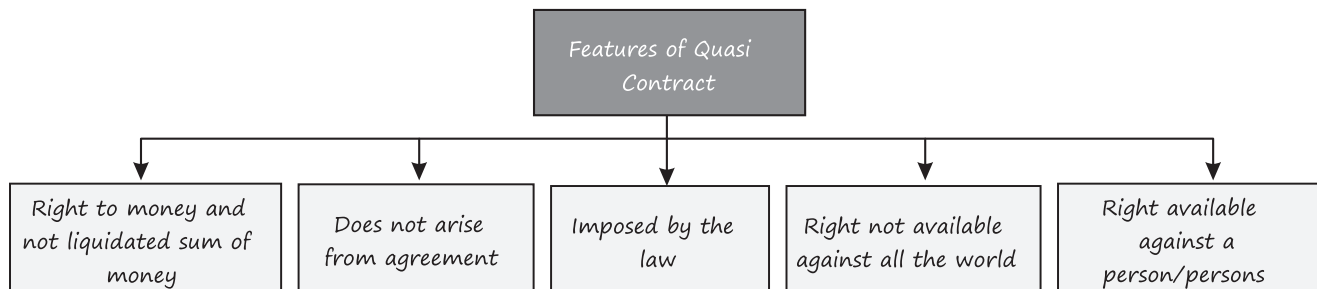
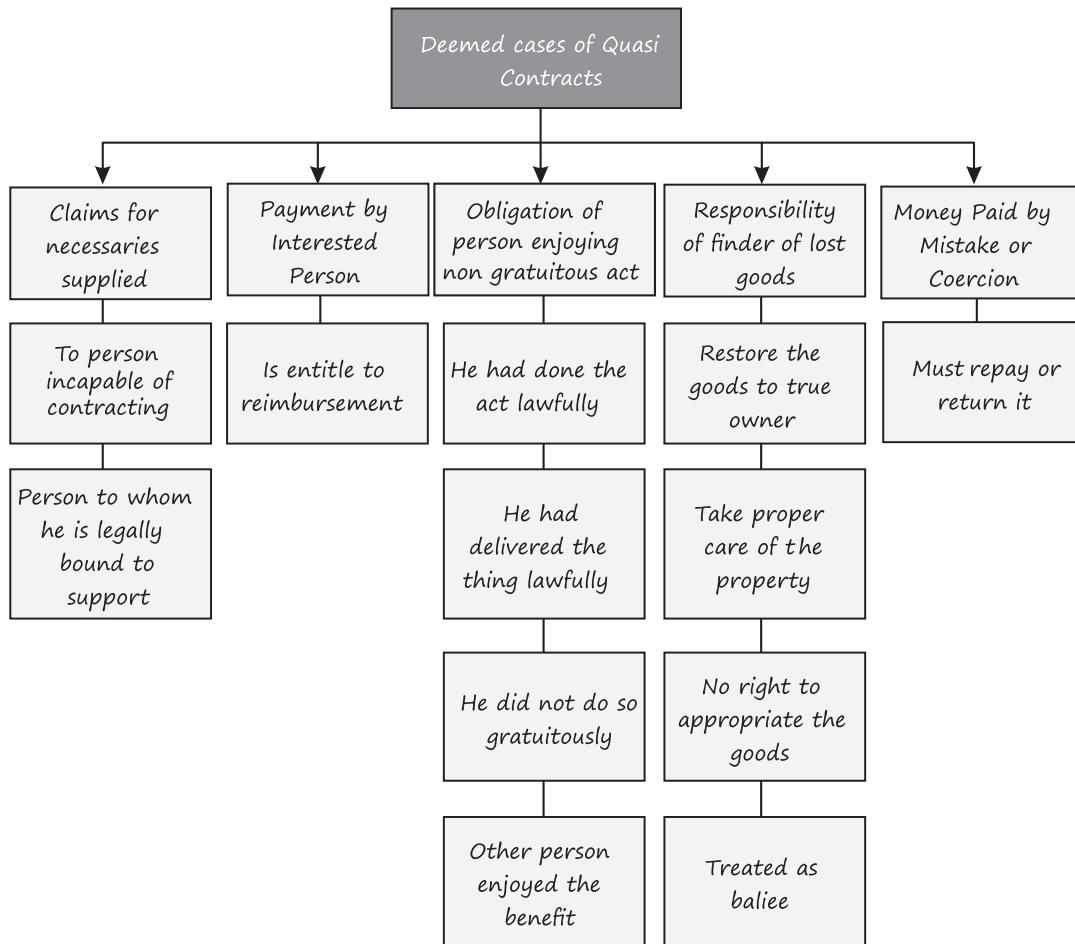
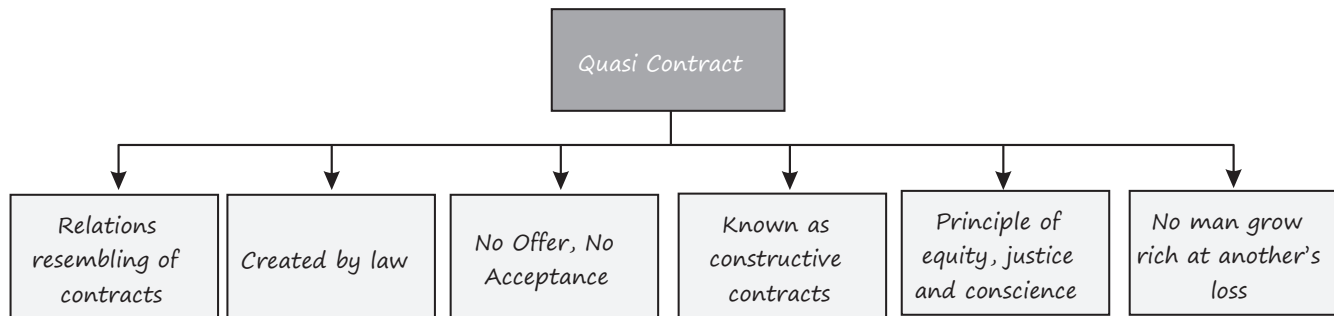




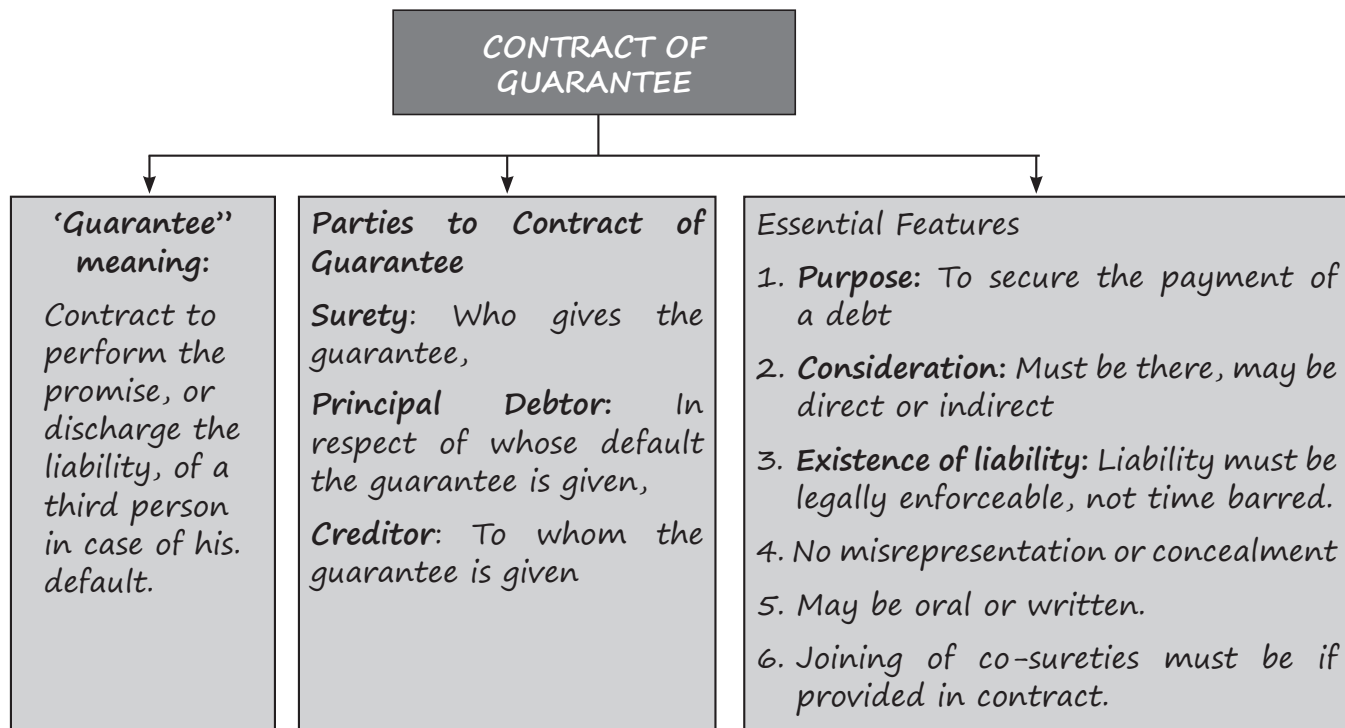
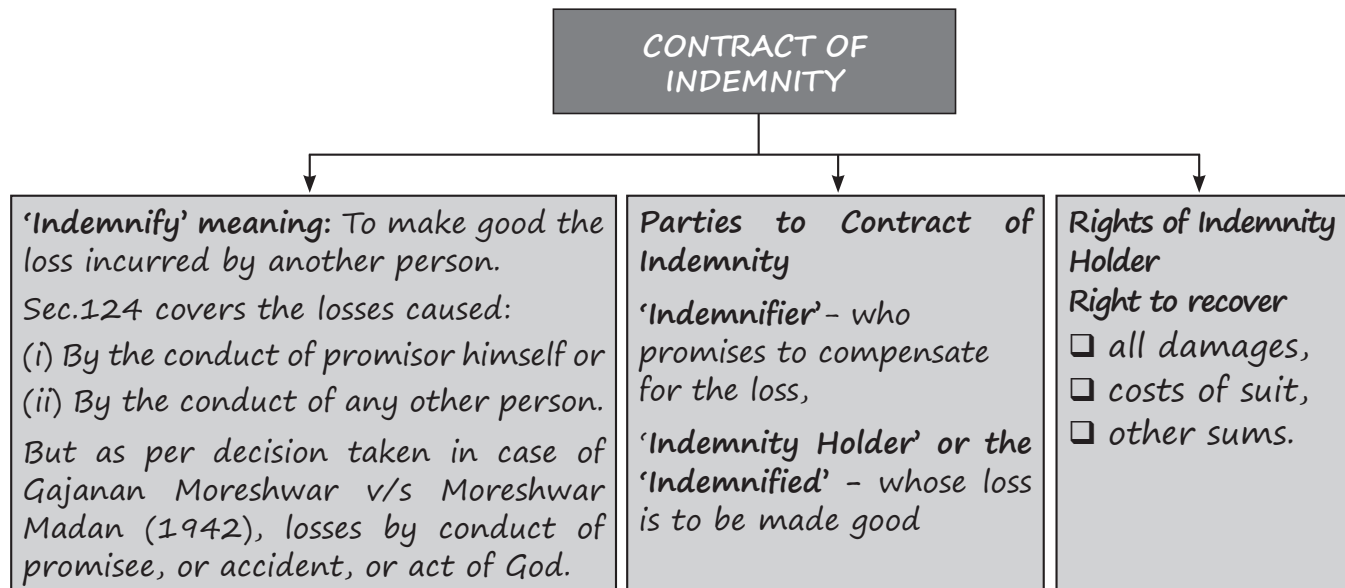
Contracts contingent on happening of an impossible event is void

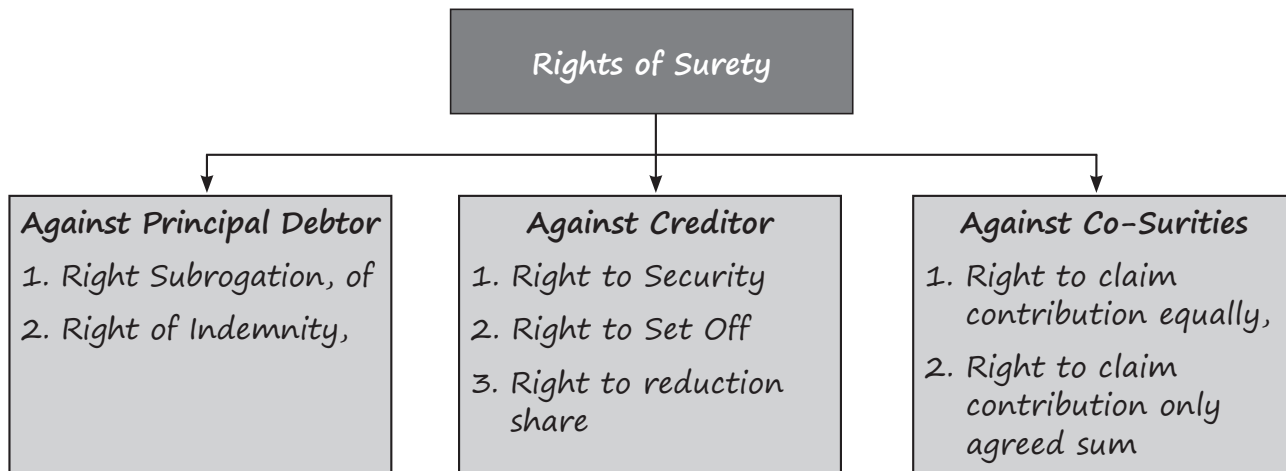
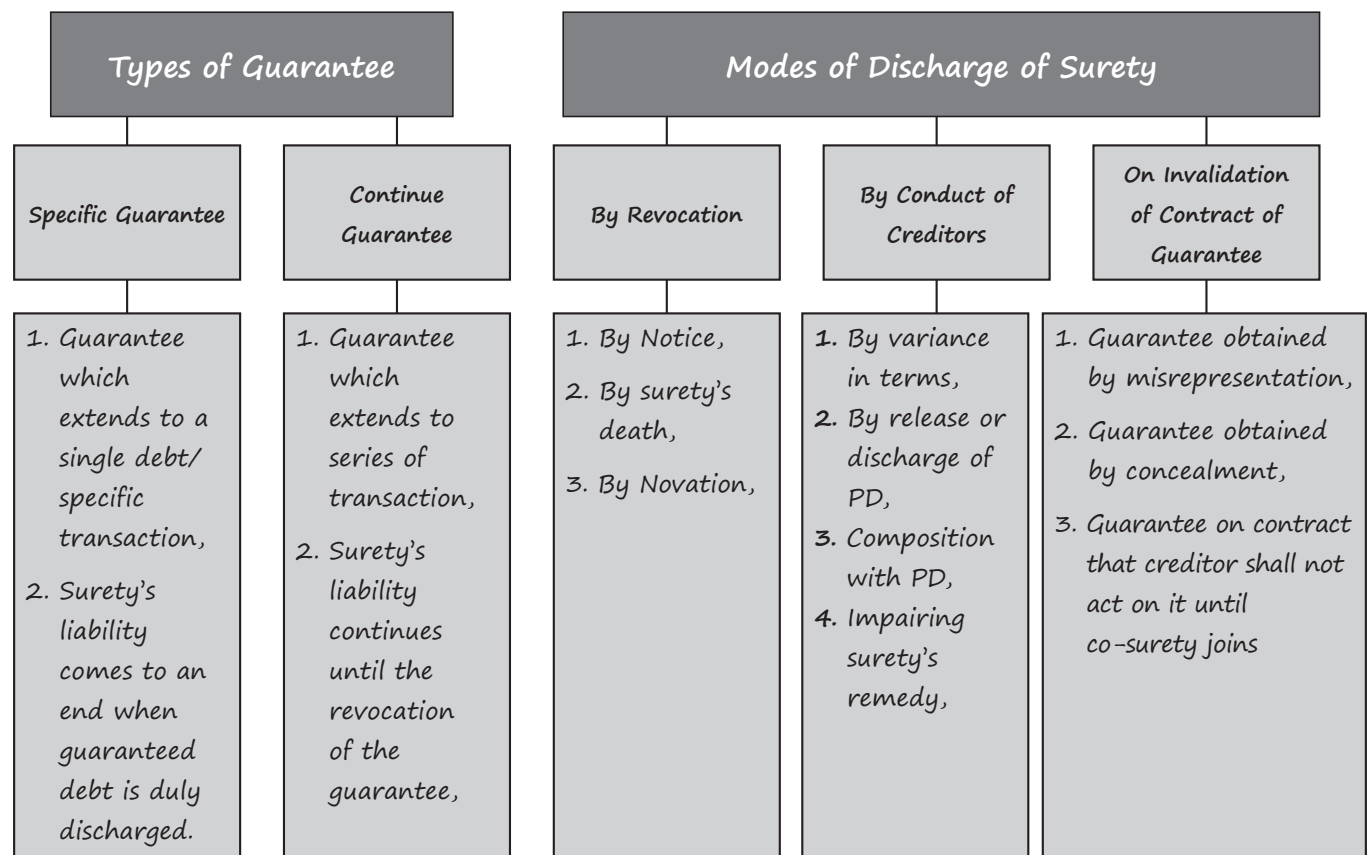
Contingent Contract based on happening of conduct of living person is unenforceable if living person does something to make event impossible



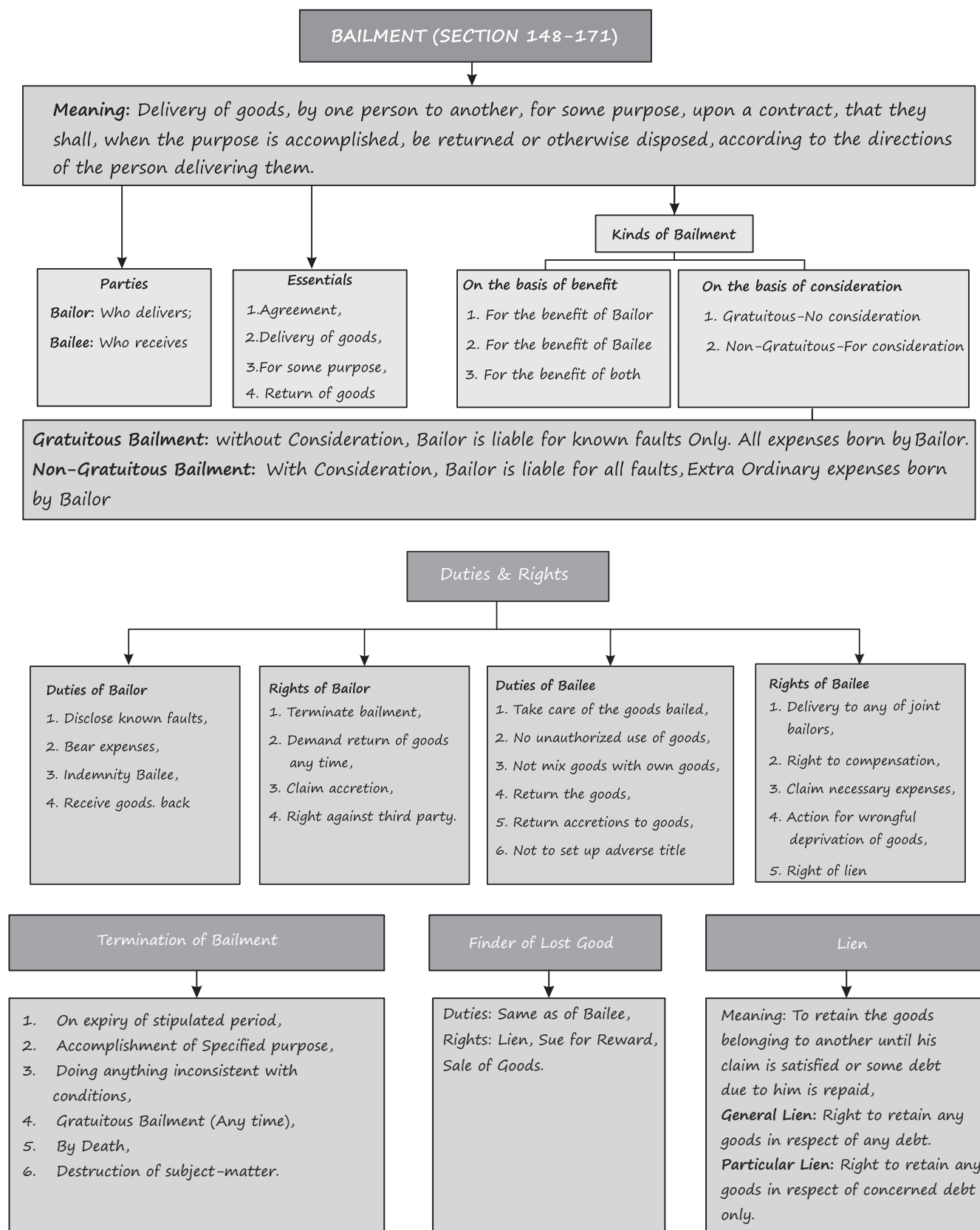


Unit-7: Breach of Contract and its Remedies





Unit-8: Bailment and Pledge



PLEDGE (SECTION 171-181)

Meaning: Bailment of goods as security for payment of a debt or performance of a promise.

Parties: Bailor-Pawnor, Bailee-Pawnee

Duties & Rights

Duties of Pawnor

1. Pay Debt,
2. Indemnify Pawnee,
3. Disclose all the faults,
4. Pay extra ordinary expenses,
5. Pay deficit if Pawnee sells goods due to default by Pawnor

Rights of Pawnor

Same as that of Bailor alongwith right of redemption (to recover back the goods by making of the payment of debt)

Duties of Pawnee

1. Take care of the goods bailed,
2. No unauthorized use of goods,
3. Not mix goods with own goods,
4. Return the goods,
5. Return accretions to the goods,
6. Not to set up adverse title

Rights of Pawnee

1. Retain the Pledged Goods,
2. Retention for Subsequent Debts,
3. Recover Extraordinary Expenses,
4. Right on Default by Pawnor

Pledge by Non-owner

1. Pledge by Mercantile Agent,
2. Pledge by Person in Possession under voidable contract,
3. Pledge where Pawnor has only a Limited Interest,
4. Pledge by co-owner in possession,
5. Pledge by buyer or seller in possession

Unit-9: Contract of Agency

AGENCY (SECTION 172-238)

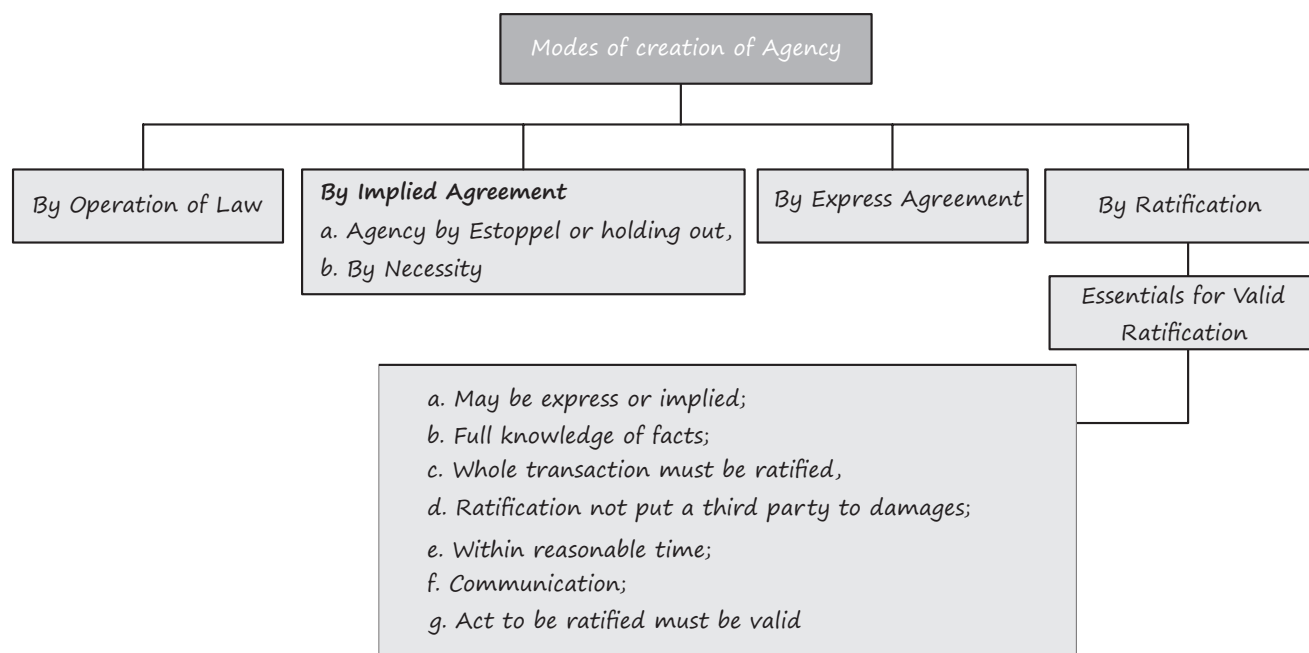
Agency : Relation between an agent and his principal created by an express/ implied agreement authorising an agent by his principal to create contractual relations with third parties.

Agent: Person employed to do any act for another, or to represent another.

Principal: person for whom such act is done or who is so represented.

Who can be Agent: any person including minor, Person of Unsound mind

Who can appoint an Agent: Major, Person of sound mind



Extent of Agent's Authority

1. An agent, having an authority to do an act, has authority to do every lawful thing which is necessary in order to do such act.
2. An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course, of conducting such business.
3. In emergency, an agent has authority to do all such acts for the purpose of protecting his principal from loss.

Sub-Agent

A person who is appointed by and acts under the control and direction of original agent.

Rules of Sub-Agent

1. Work under control and directions of agent.
2. Agent delegates a part of his own duties to Sub Agent.
3. No privity of contract between principal and sub-agent.
4. Sub-agent is responsible to the agent only.
5. Agent is responsible to the principal for the acts of the sub-agent.
6. Sub-agent has no right of action against the principal for remuneration due to him.

Substituted Agent

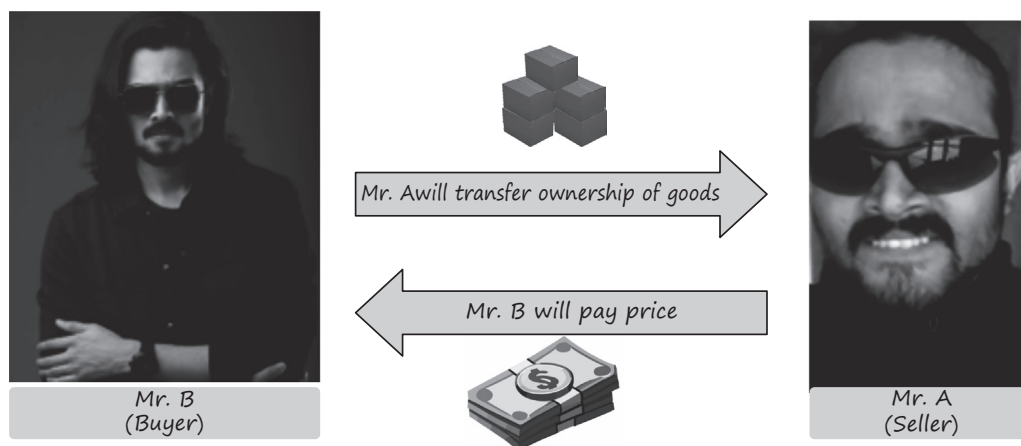
A person appointed by agent to act for principal with knowledge and consent of principal.

Rules of Substituted Agent

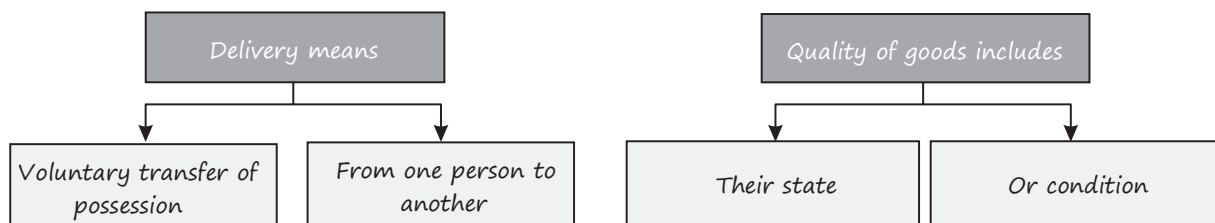
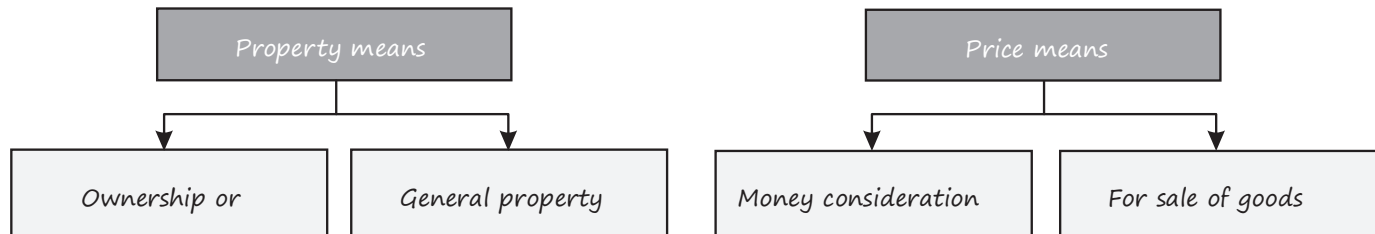
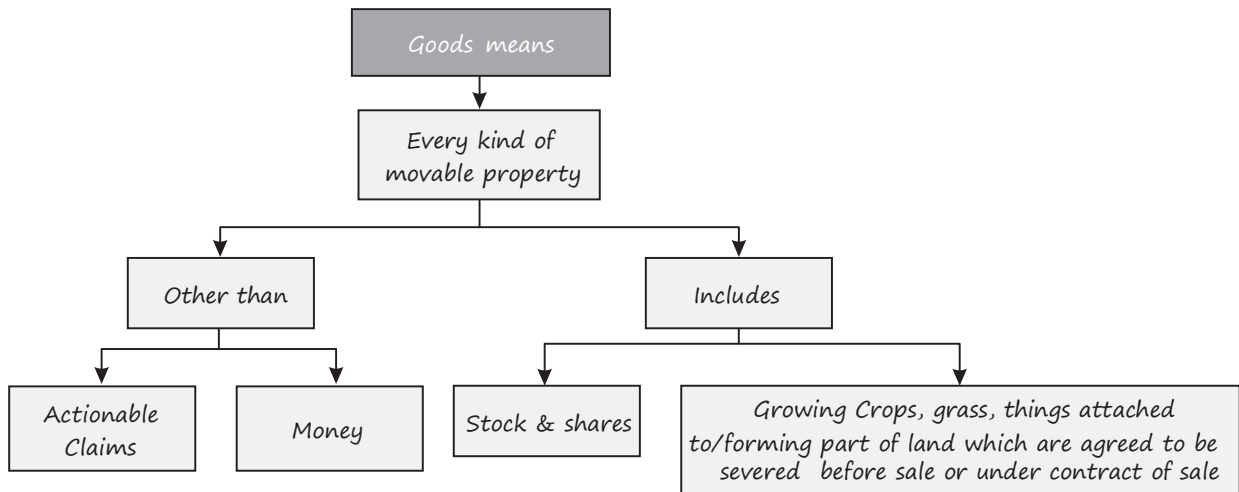
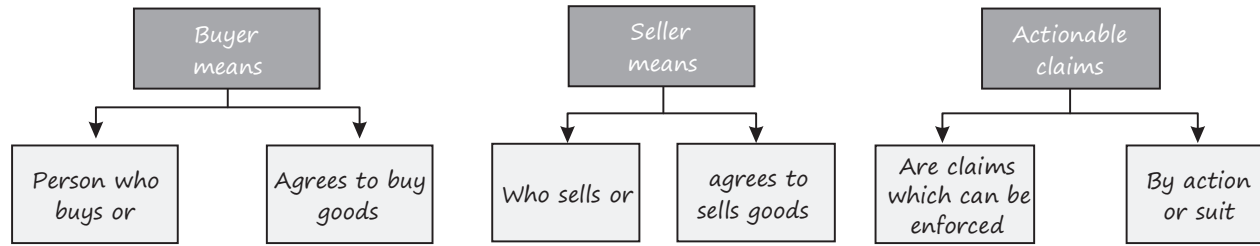
1. Works under the instructions of the principal.
2. Agent does not delegate any part of his task to a substituted agent.
3. Privity of contract exists between a principal and a substituted agent.
4. Responsible to the principal.
5. Agent is not responsible to the principal for the acts of the substituted agent.
6. Substituted agent can sue the principal for remuneration due to him.

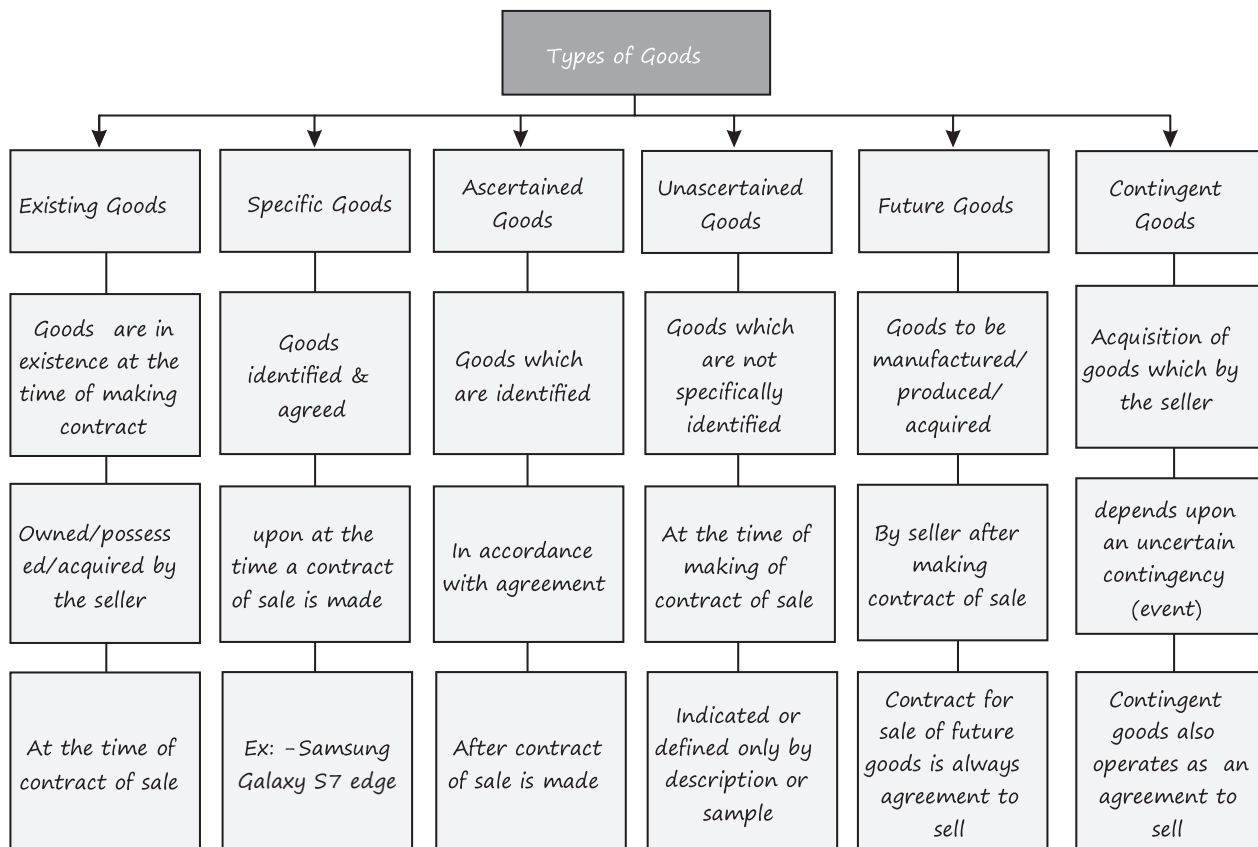
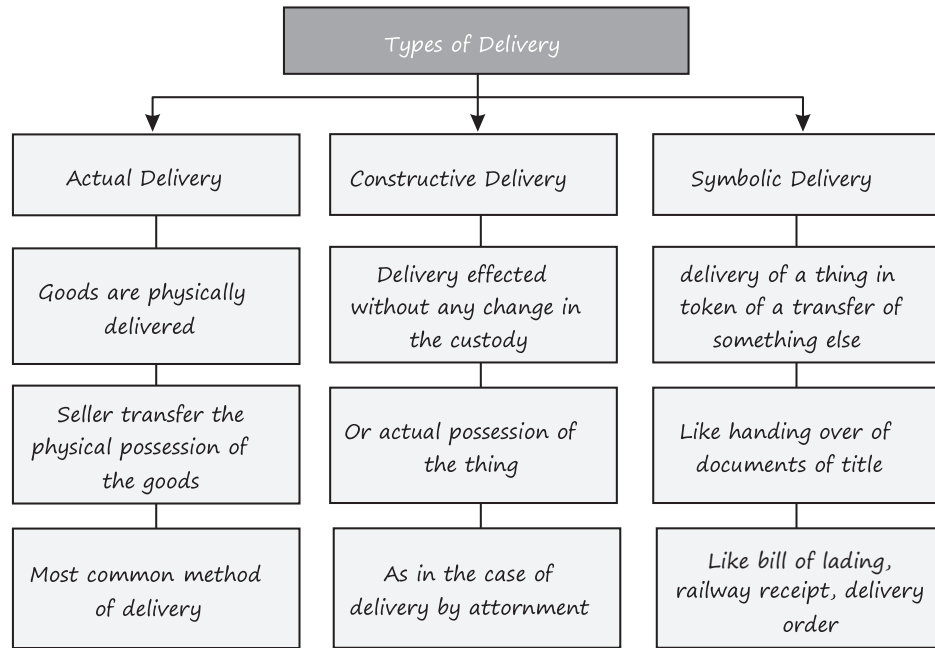
Duties & Rights of Agent			Termination of Agency
Duties of Agent 1. To act according to Principal, 2. Reasonable care, 3. Present proper accounts, 4. Communicate with principal, 5. Not to deal on his own account, 6. Not to make secret profit, 7. Not to delegate authority. 8. Pay sums received, 9. Not to Mis-use information obtained	Rights of Agent 1. Right of Retainer, 2. To receive agreed remuneration, 3. Right of lien, 4. Right of indemnification, 5. Right of compensation for injuries.	Personal Liability of Agent 1. Foreign principal, 2. Undisclosed principal, 3. Principal incompetent 4. Pretended Agent. 5. Acts beyond his authority	1. By Revocation 2. By Renunciation by agent 1. On completion of business. 4. On death or insanity of Principal or Agent 5. Principal's insolvency 6. On expiry of time

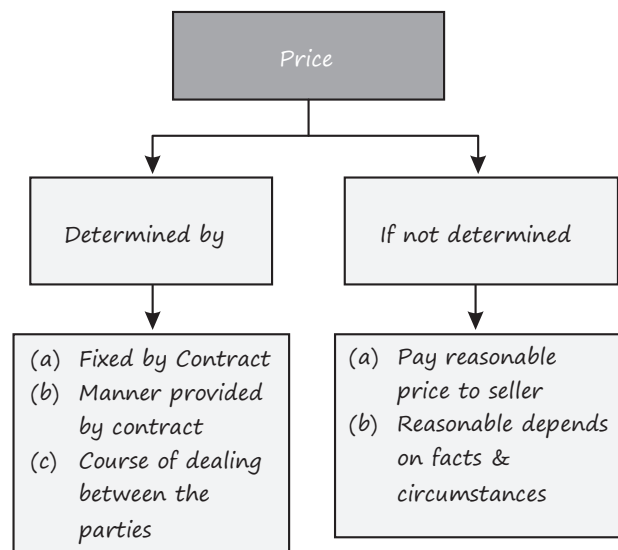
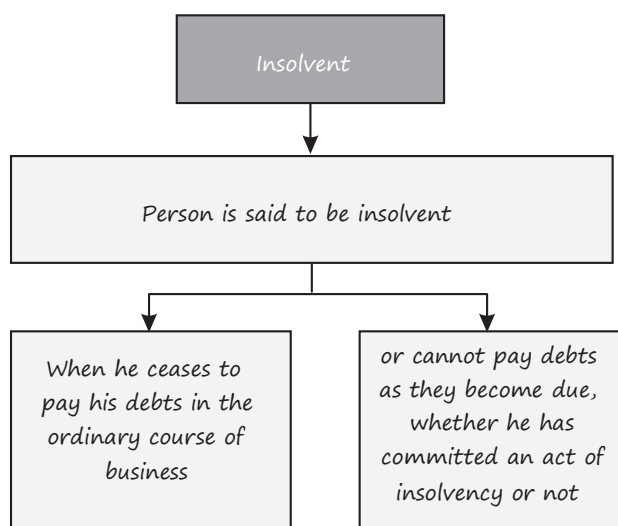
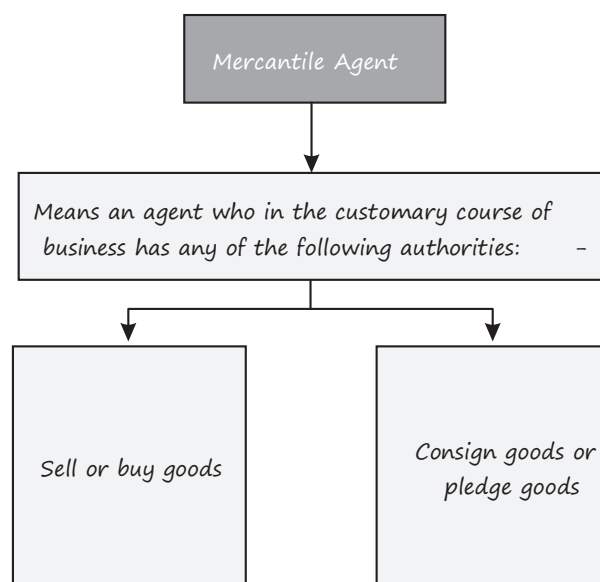
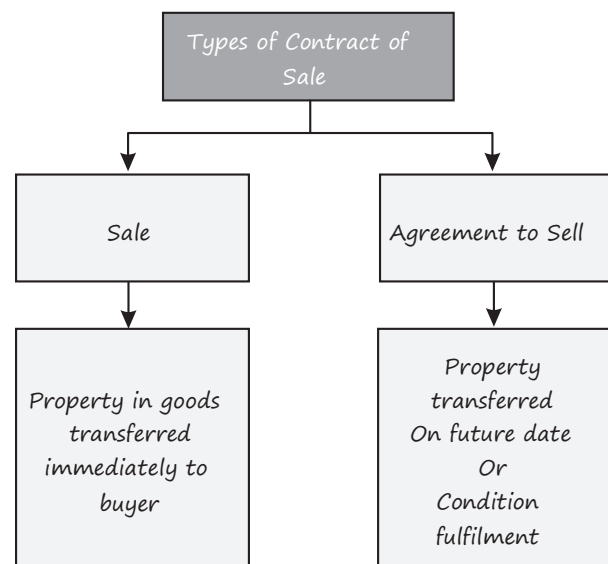
The Sale of Goods Act, 1930



Unit-1: Formation of the Contract of Sale

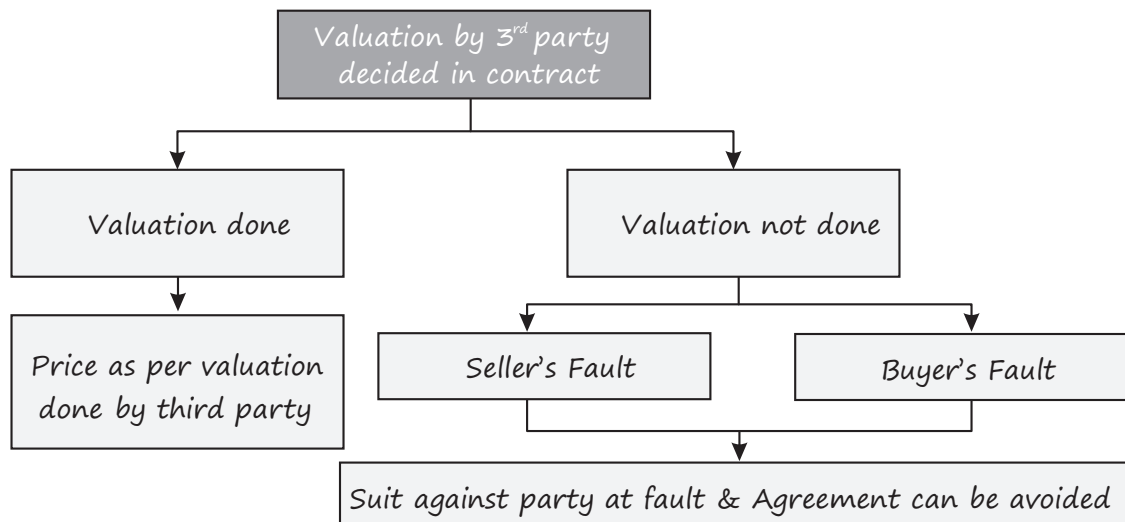






Essential elements of Contract of Sale

1. Minimum 2 parties (Buyer and seller)
2. Subject Matter of Contract-Goods (Movable property)
3. Price-Wholly in Money or Partly in Money and Partly in kind
4. Transfer of property (ownership) of Goods-Immediately or future
5. May be Absolute or Conditional
6. All other essentials of a valid contract (Covered under ICA, 1872)



Various Mode of Contract of Sale : -

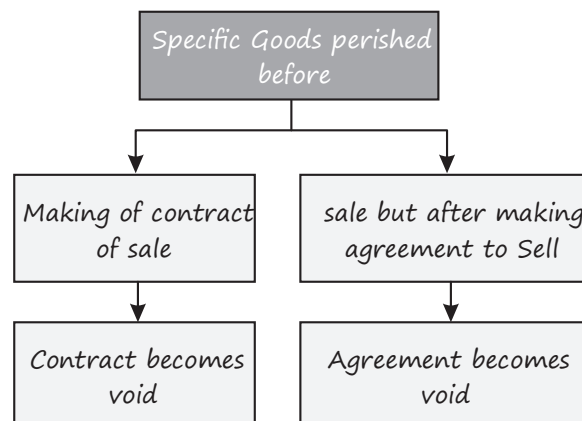
1. Immediate Delivery & Immediate Payment

2. Immediate Delivery & payment in future

3. Immediate payment & delivery in future

4. Payment & Delivery both in future

5. Delivery/payment / both in instalments



OWNERSHIP JISKI RISK USKA

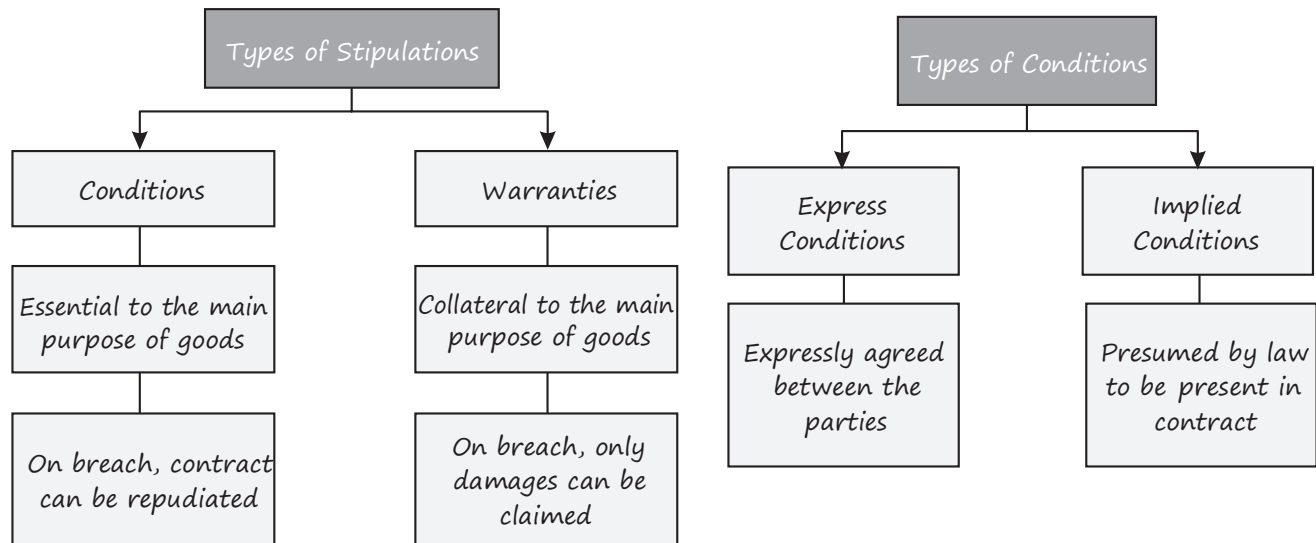
PROPERTY JISKI RISK USKA

Risk passes with the property

Exception to risk follows ownership :-

If delivery has been delayed by the fault of the seller or the buyer, the goods shall be at the risk of the party in default, as regards loss which might not have arisen but for the default.

Unit-2: Condition & Warranties



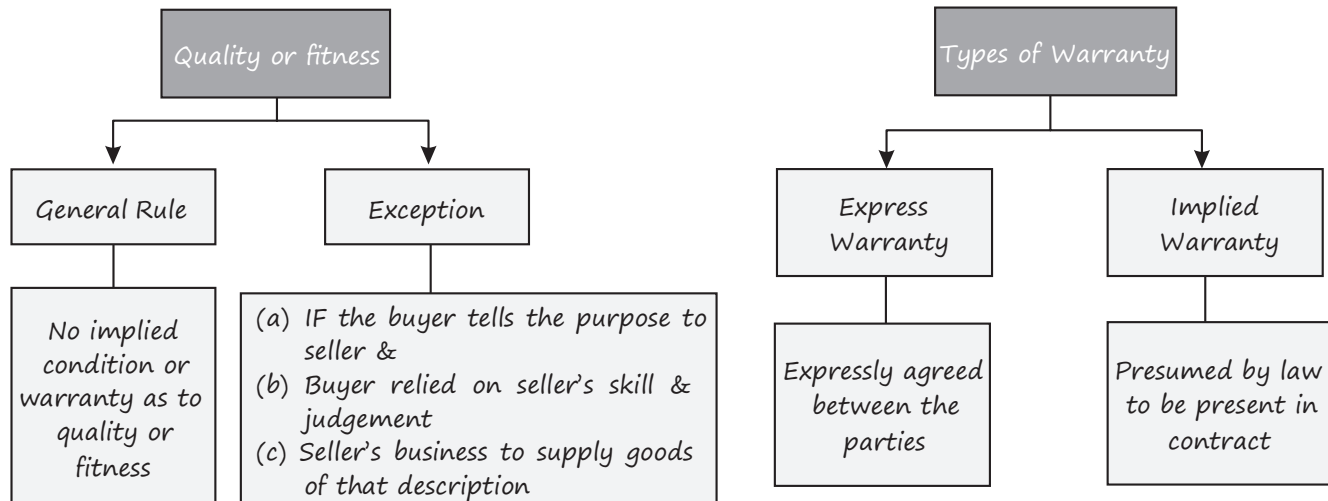
4 Cases where Condition can be treated as Warranty

Buyer altogether waives the performance of the condition

Buyer elects to treat the breach of the conditions, as one of a warranty

Contract is non severable and the buyer has accepted either the whole goods or part of it

Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.



7 Implied Conditions

Condition as to title

Sale by sample

Condition as to quality or fitness

Condition as to wholesomeness

Condition as to description

Sale by sample as well as by description

Condition as to merchantability

4 Implied Warranties

Warranty as to undisturbed possession

warranty as to quality or fitness by usage of trade

Warranty as to non existence of encumbrances

disclosure of dangerous nature of goods

Exceptions to Caveat Emptor/ Duties of Seller

Goods Sold by Description

Sale by sample

Fitness as to quality or use except brand or patent name

Goods by sample as well as description

Trade usage

Seller actively conceal defect or guilty of fraud

Goods of Merchantable quality

Caveat Emptor/Duties of Buyer

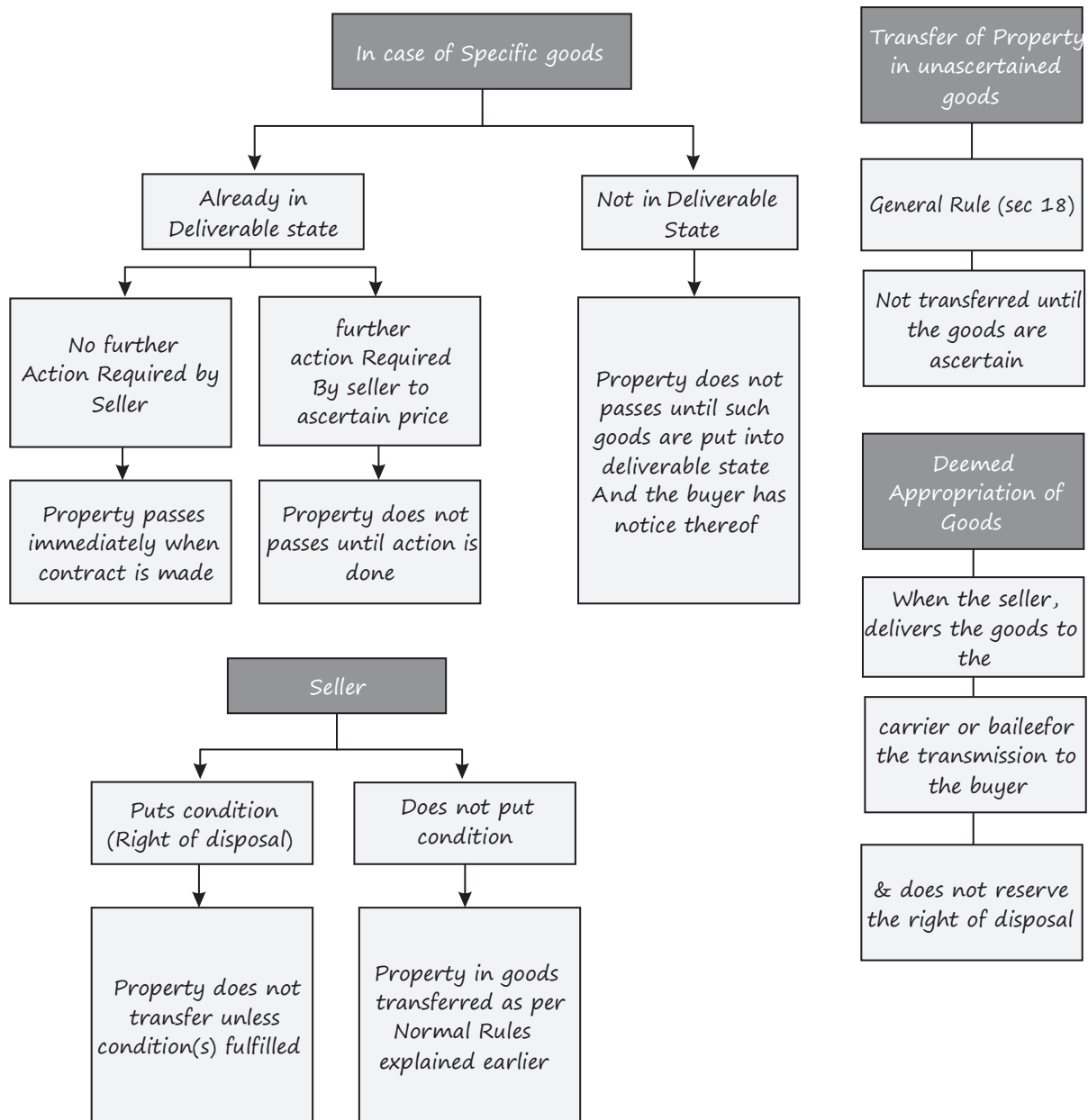
Let the Buyer beware

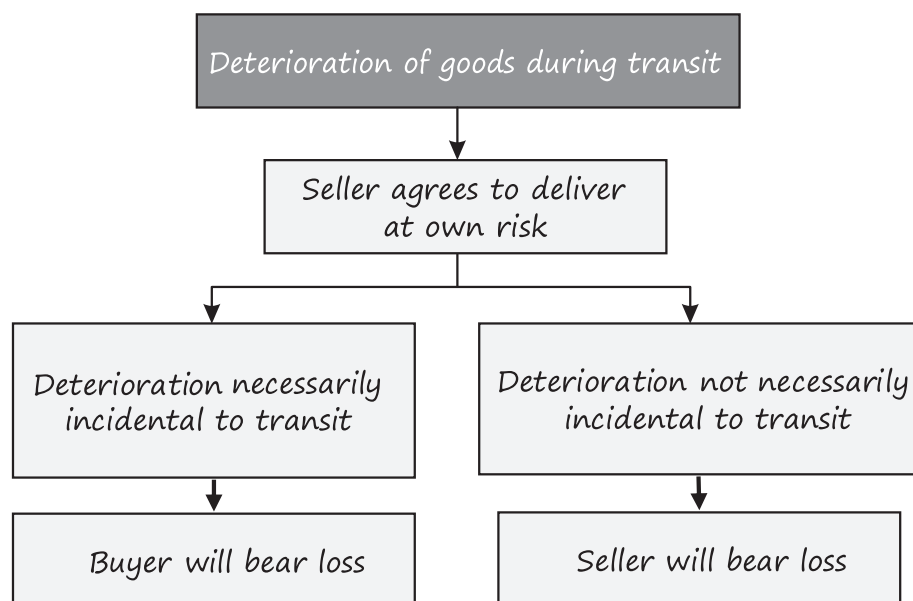
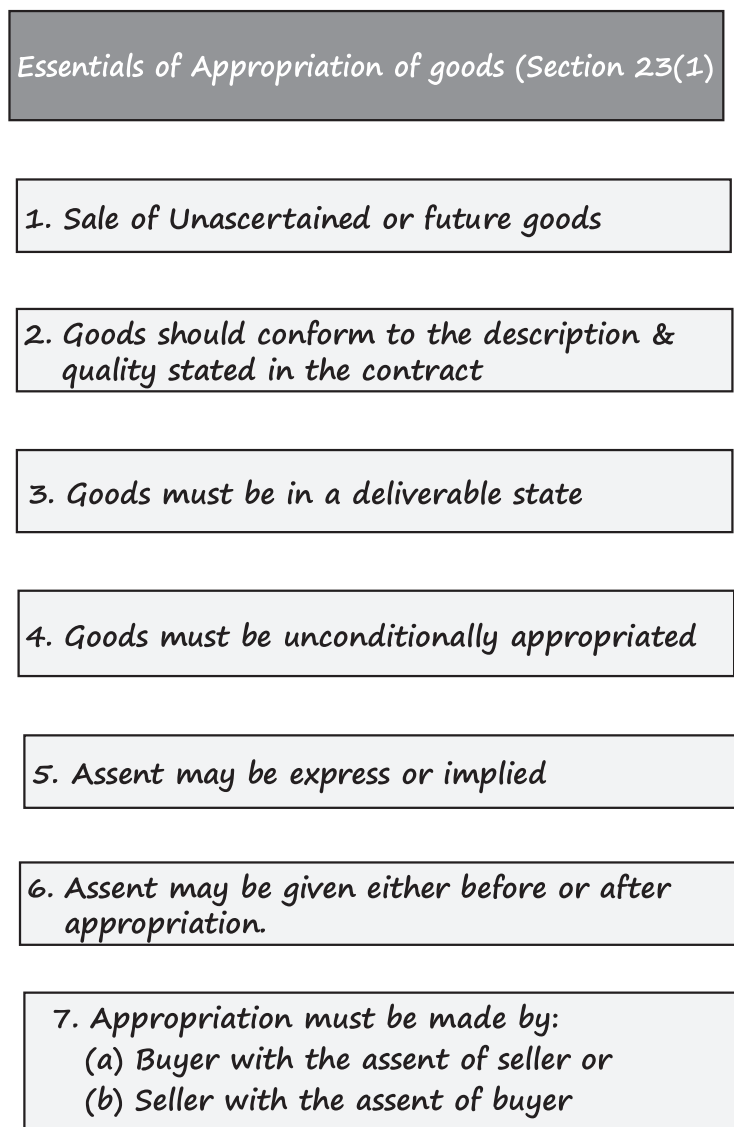
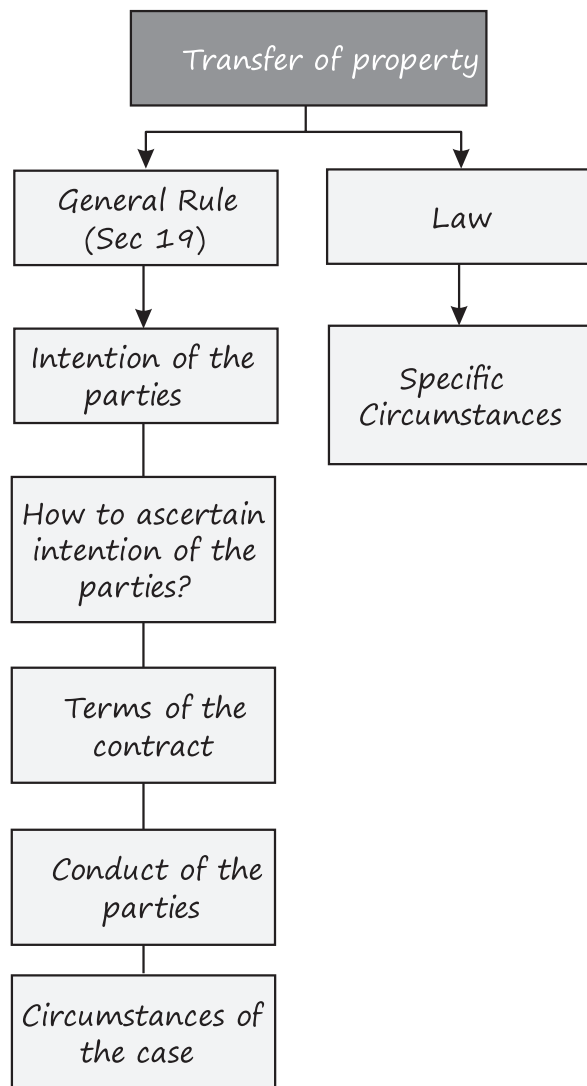
Seller is not bound to disclose the defects in the goods

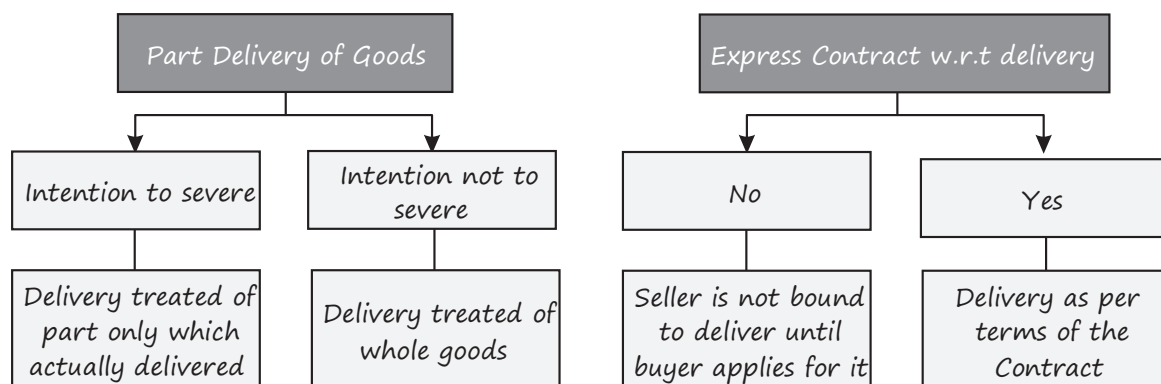
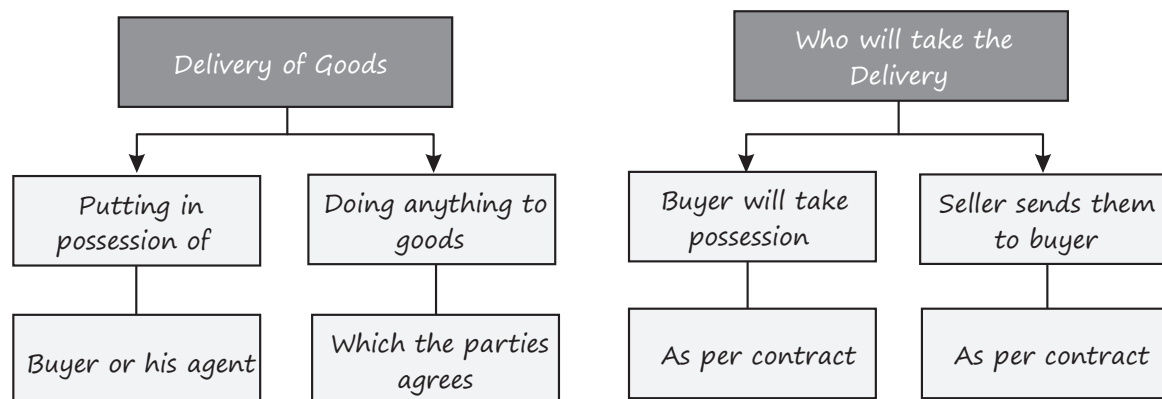
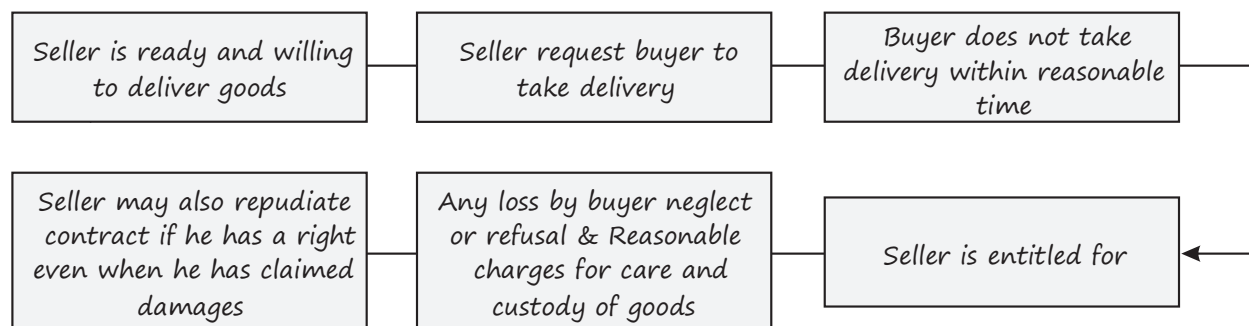
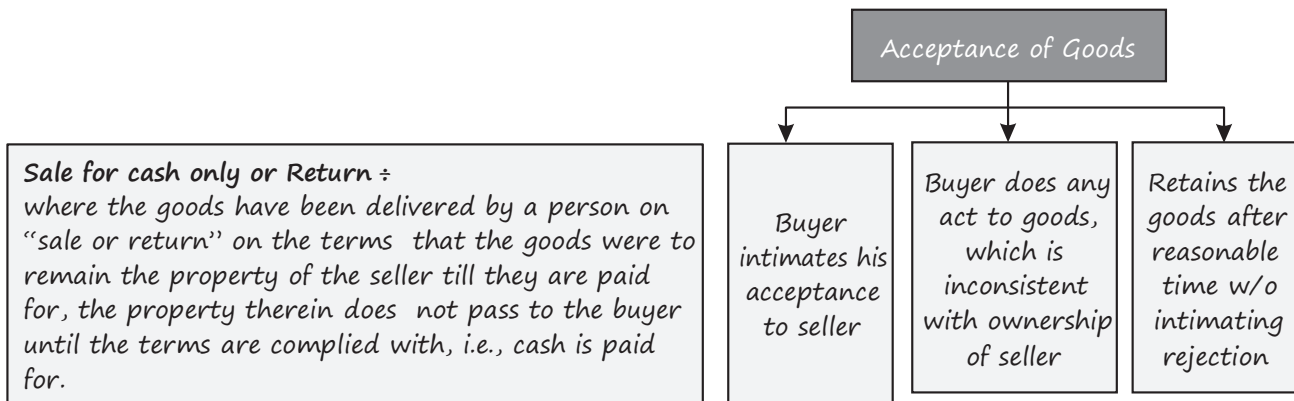
Buyer cannot holds seller responsible for his bad selection of goods

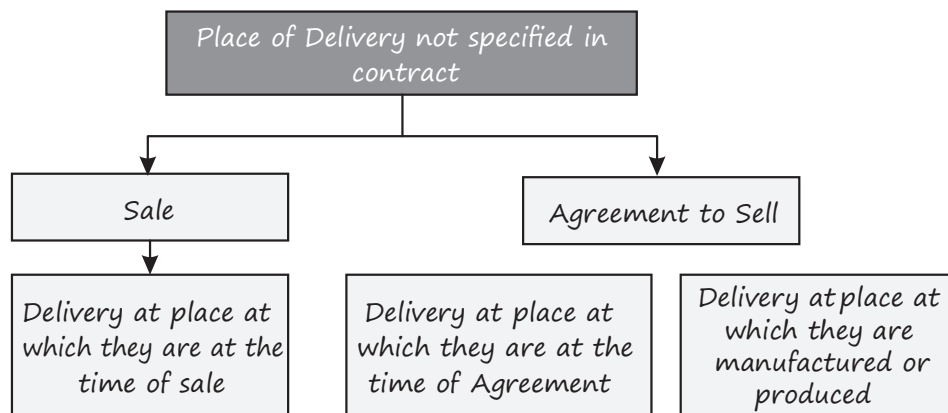
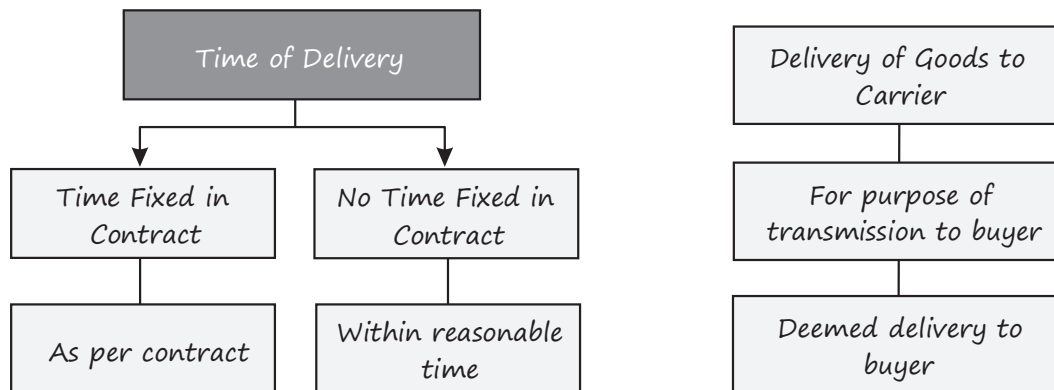
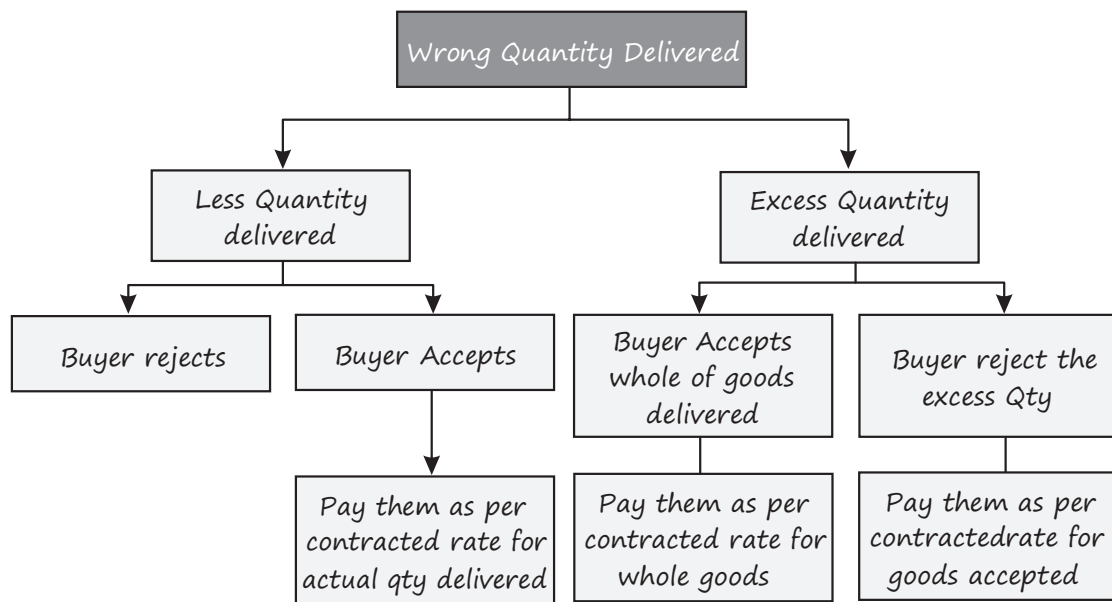
Rules is laid down in section 16

Unit-3: Transfer of Ownership and Delivery of Goods



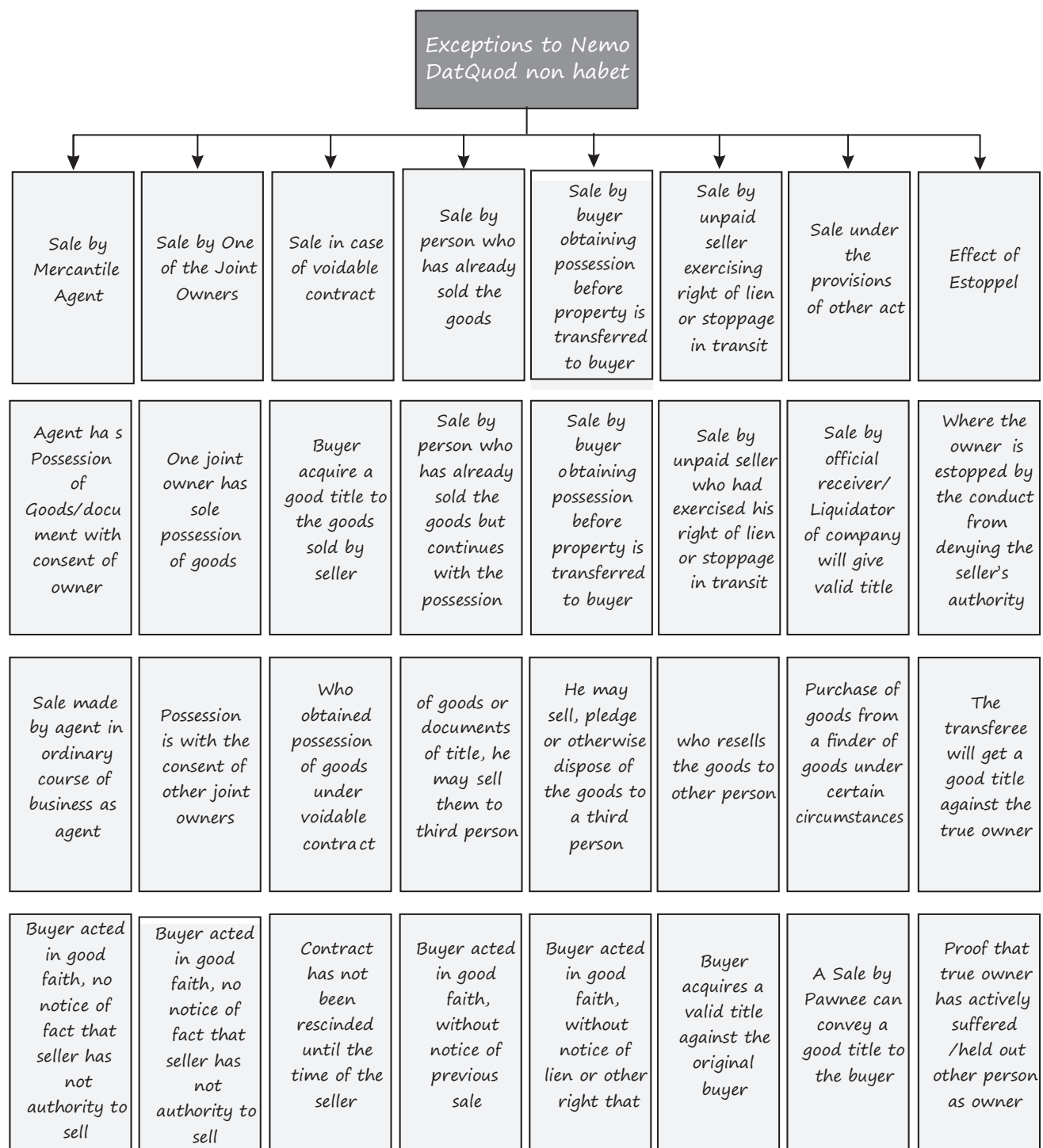




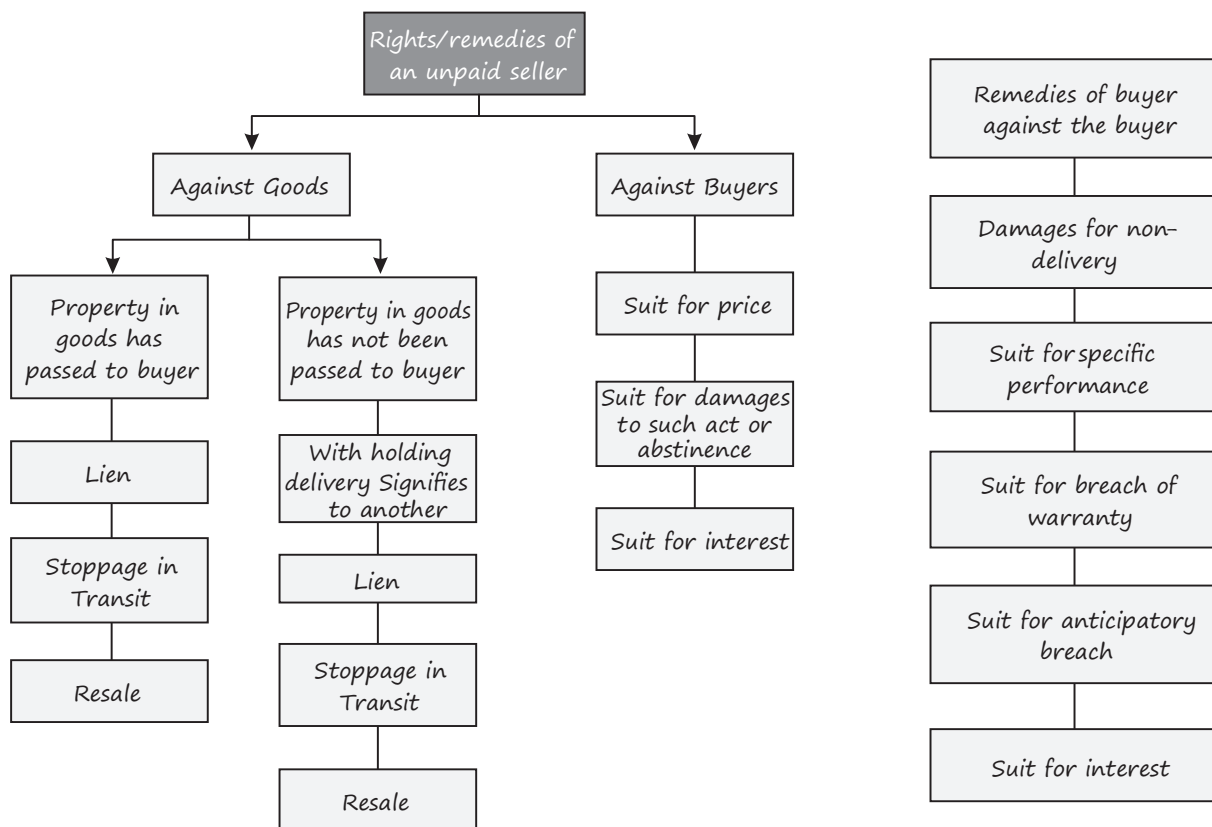
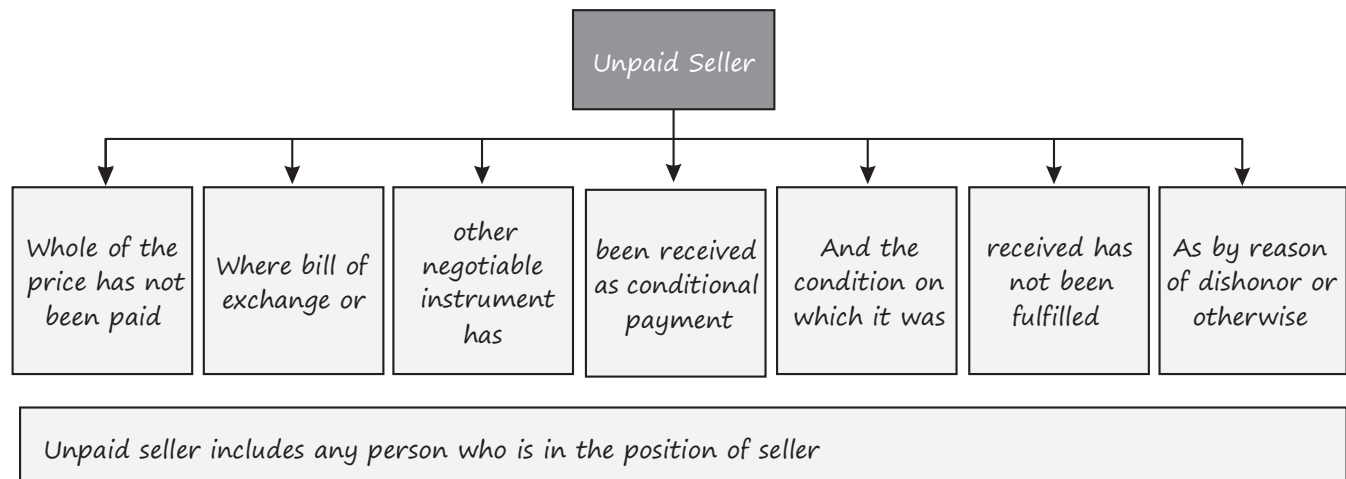


Note :-Expenses of and incidental to putting goods into deliverable state must be borne by seller in absence of contract to contrary

Note :-Buyer must have a reasonable opportunity to examine the goods on delivery if not previously examined



Unit-4 Unpaid Seller



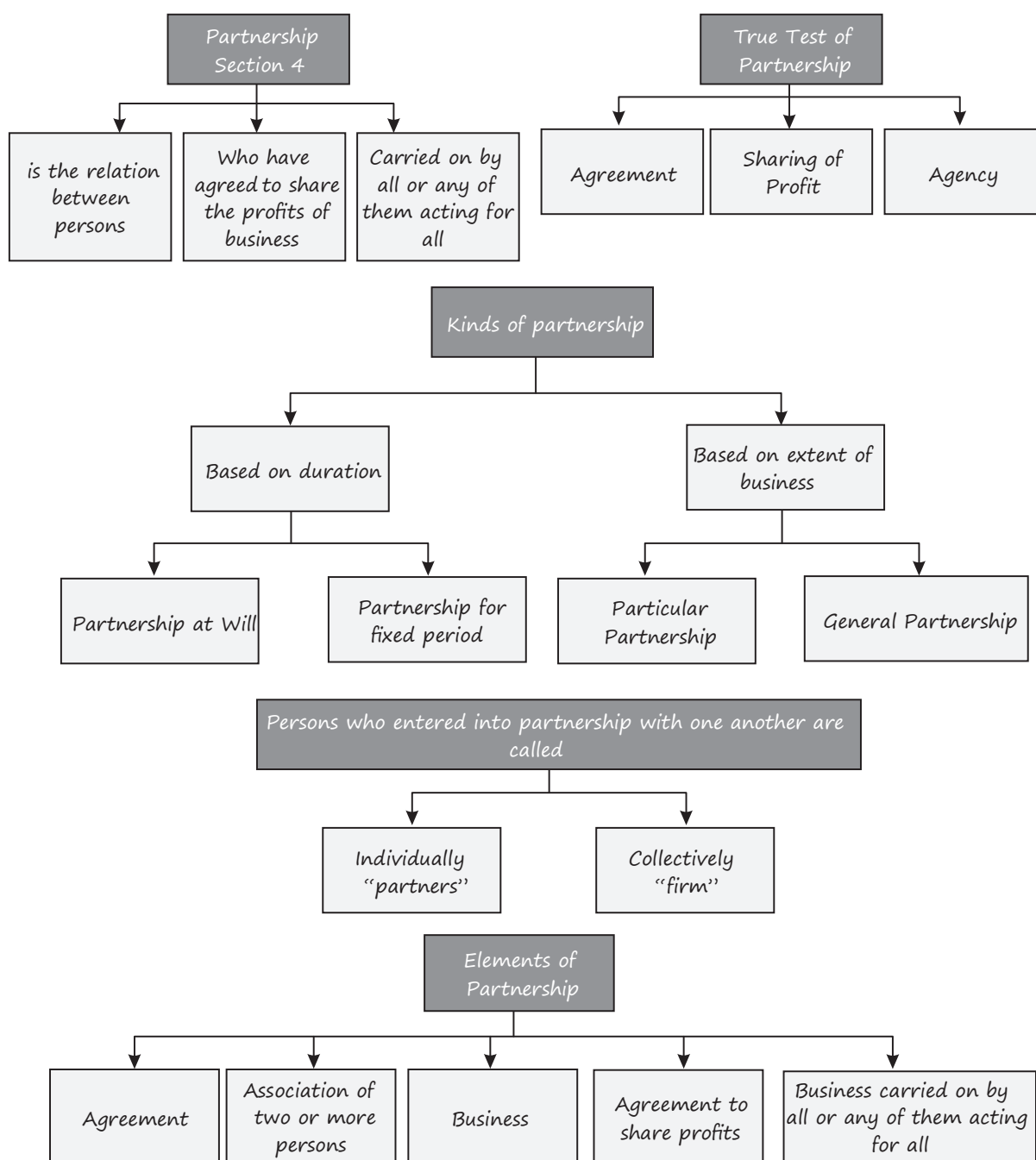
Auction Rules

- 1. Separate contract of sale for each lot*
- 2. Contract completed on fall of hammer*
- 3. Right to bid may be reserved expressly*
- 4. Fraud if right to bid not notified*
- 5. Reserved or upset price may be notified*
- 6. Sale voidable if seller use pretending bidding*

When tax on goods (like excise/custom/GST) increase or decrease after entering into contract of sale but before performance, then buyer would have to pay the revised price considering the revised tax rates. The effect of above provision can be excluded by an agreement to contrary

The Indian Partnership Act, 1932

Unit-1: General Nature of a Partnership



Content of Partnership Deed / Agreement

Name of the Partnership Firm

Name of all the partners

Nature of business of firm

Principal place & other place of business of firm

Date of Commencement of partnership

Duration of Partnership Firm

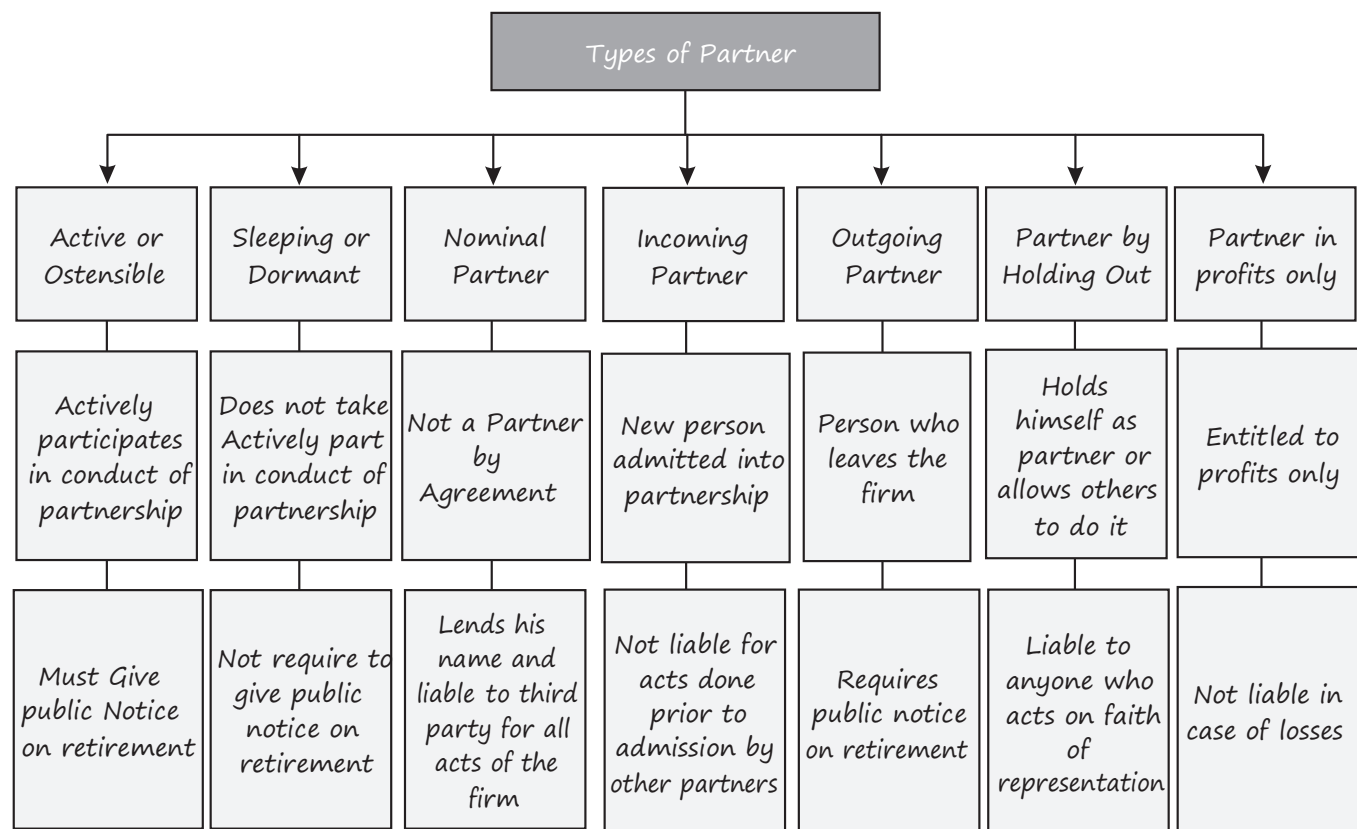
Capital Contribution of each partner

Profit sharing ratio

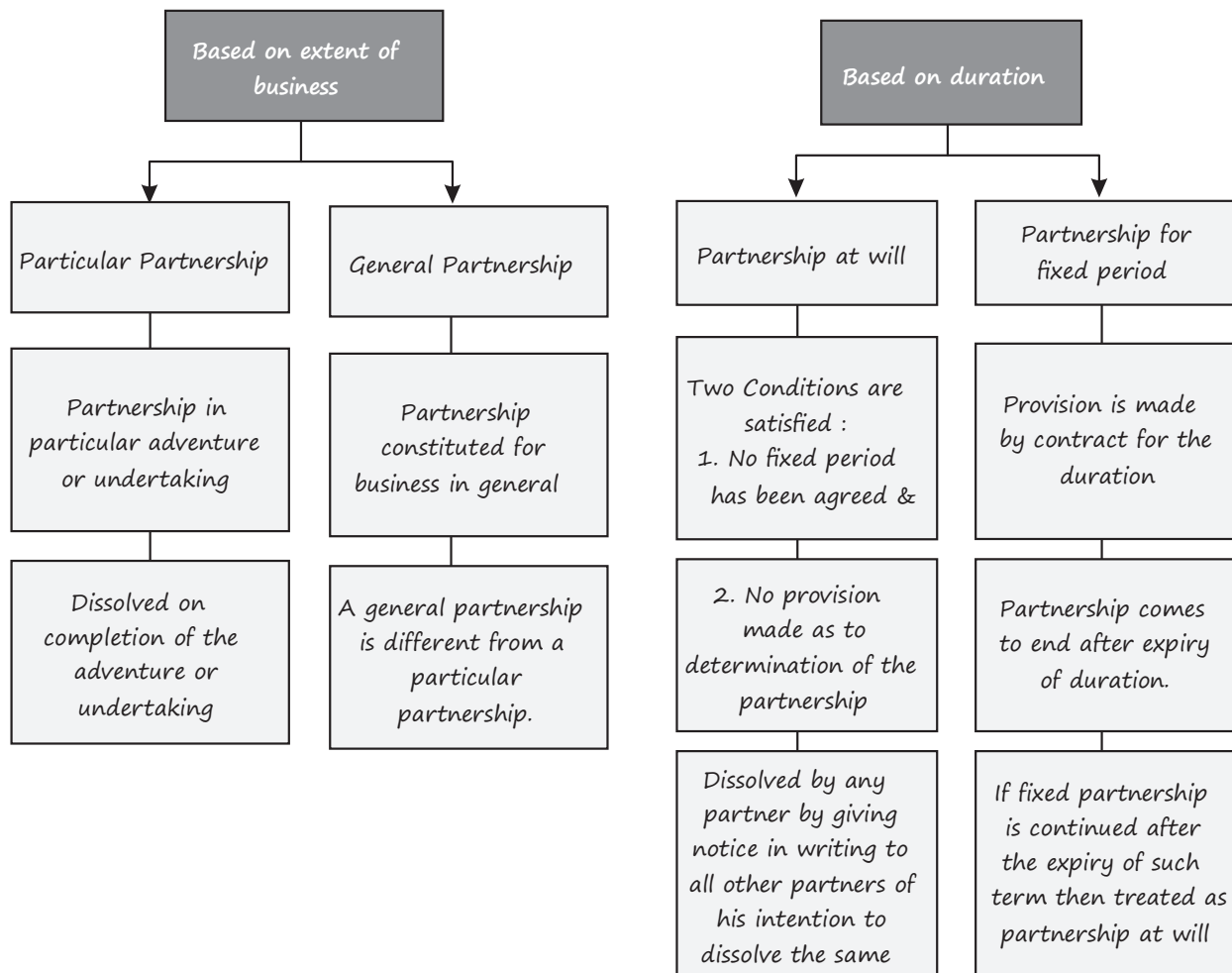
Provision for admission, retirement, expulsion

Rate of interest on Capital, drawings & Loan etc.

Salaries or Commission payable to partners



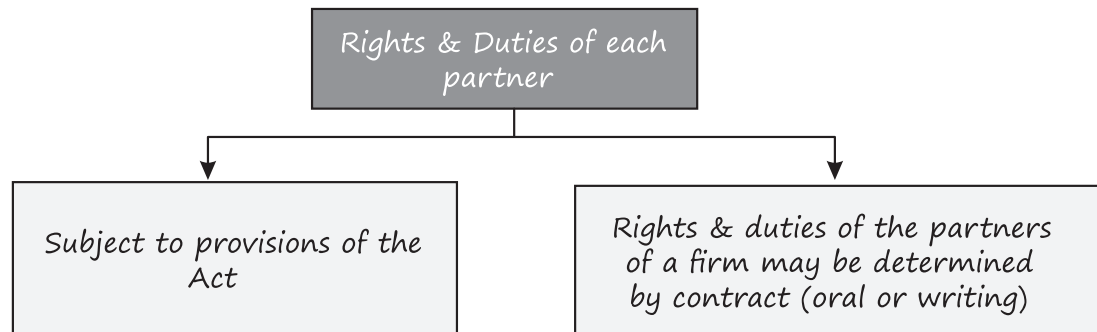
Note :-Nominal Partner and Partner by holding out/estoppel is not entitled to share in profits



Unit-2: Relations of Partners

4 General Duties of Partner (Section 9):

- Bound to carry business to the greatest common advantage
- Just & faithful to each other
- To render true accounts to other partners or their legal representative
- To render full information of all things affecting firm to other partners or their legal representative



What is Partnership property?

all property, rights and interests which Partners contributed to common business

+

all the property, rights and interest acquired or purchased by or for the firm

+

Goodwill of the business

Subject to contract, partnership property shall be used by partners exclusively for the purpose of the business of firm only

What is property of partner?

Property which exclusively belong to the partner only

MUTUAL RIGHTS & LIABILITIES: SUBJECT TO CONTRACT

Partner is not entitled to any remuneration for taking part in conduct of business of firm except in case of customs

Both Profit & Losses to be shared equally amongst partners

where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits;

partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six percent per annum

firm shall indemnify a partner in respect of payments made and liabilities incurred by him

CONDUCT OF BUSINESS: SUBJECT TO CONTRACT

Every partner has a right to take part in the conduct of the business

Every partner is bound to attend diligently to his duties in the conduct of the business

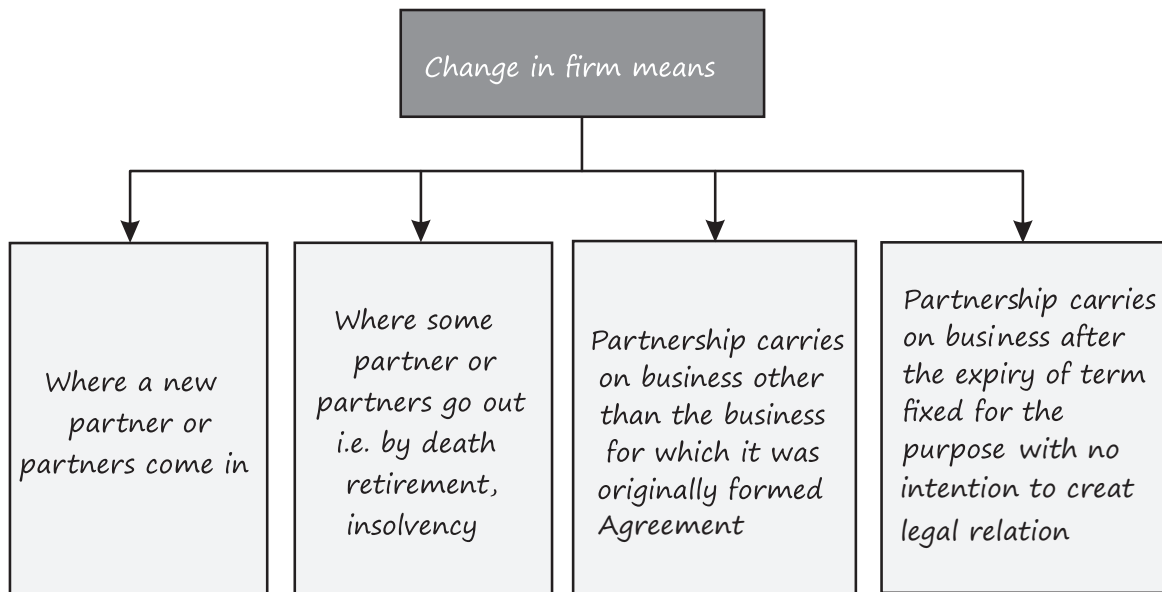
Every partner has right to express his opinion on business matters

Ordinary matters are decided by majority of partners

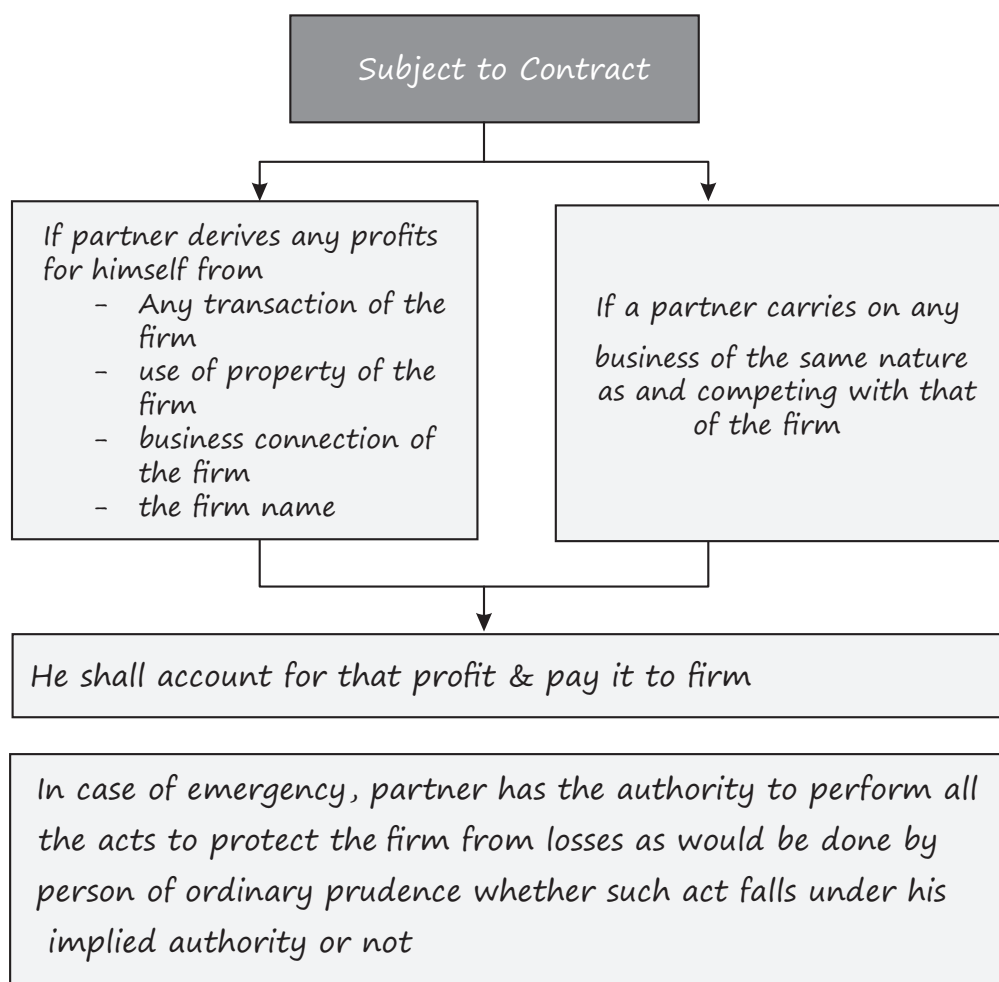
Change in nature of firm business require consent of all partners

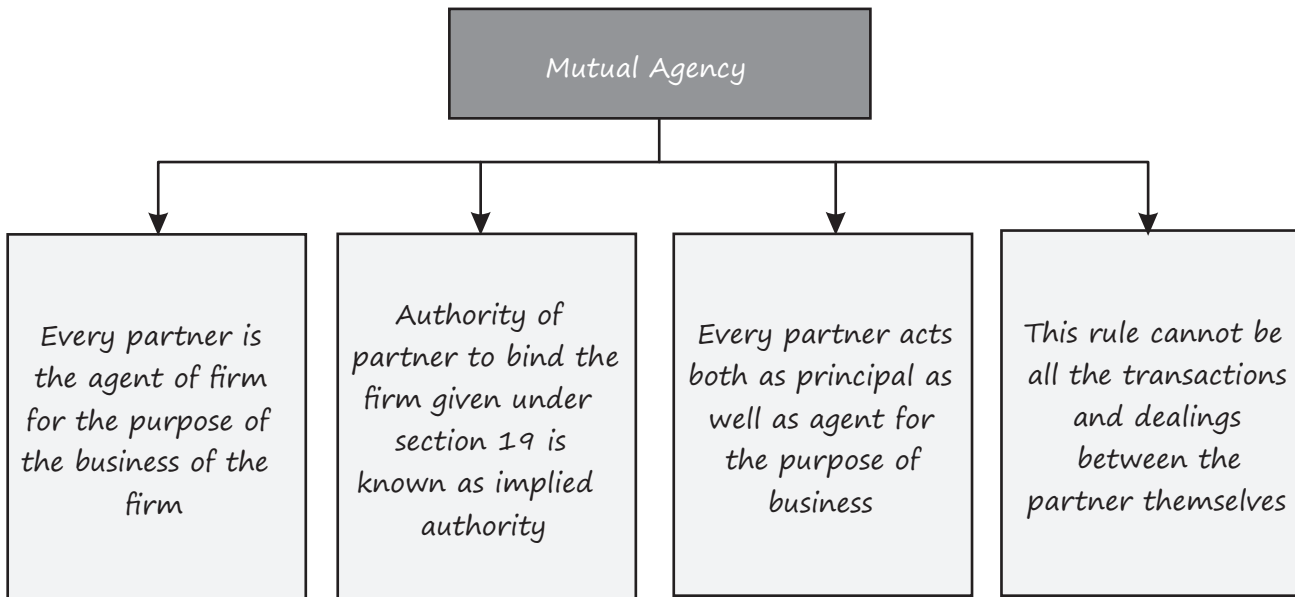
Every partner & his duly authorized agent has right to have access to / inspect / take copy of books of firm

In event of death, partner's legal representative has right to have access to / inspect / take copy of books of firm



As per section 17, subject to contract, rights & duties of partner remain same as far as possible after there is any change in the firm with a view to obtain assent of other





8 Acts which are not in implied authority of partners

Submit a dispute relating to business of firm to arbitration

Open a bank account on behalf of firm in his own name

Compromise or relinquish any firm's claim or its portion

Withdraw a suit or proceedings filed on behalf of firm

Admit any liability in a suit or proceedings against the firm

Acquire any immovable property on behalf of firm

Transfer immovable property belonging to the firm

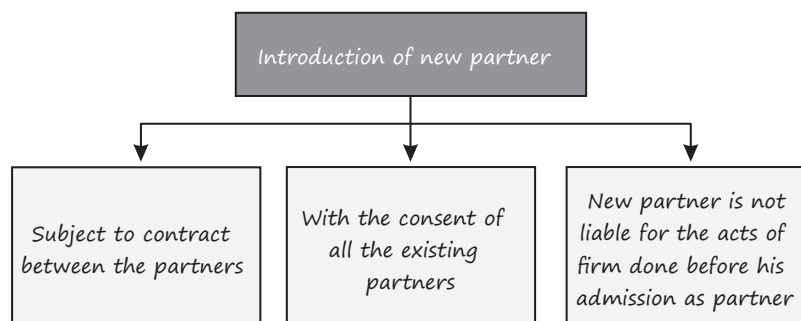
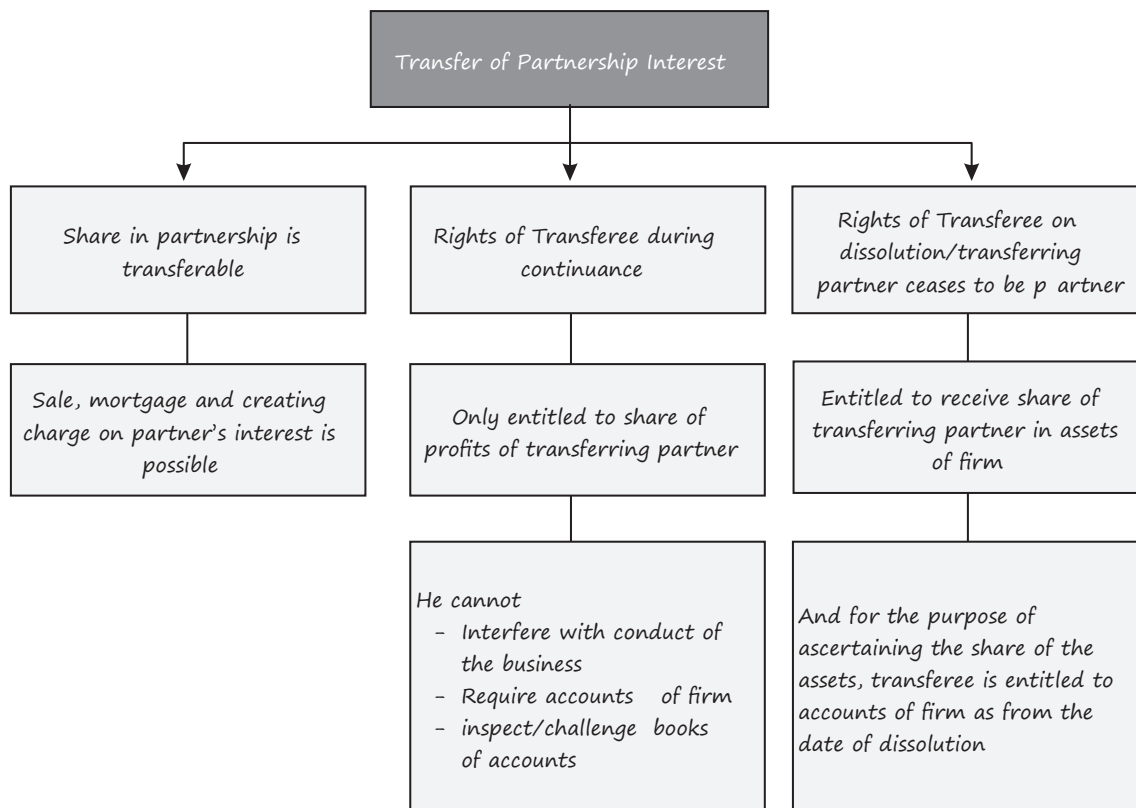
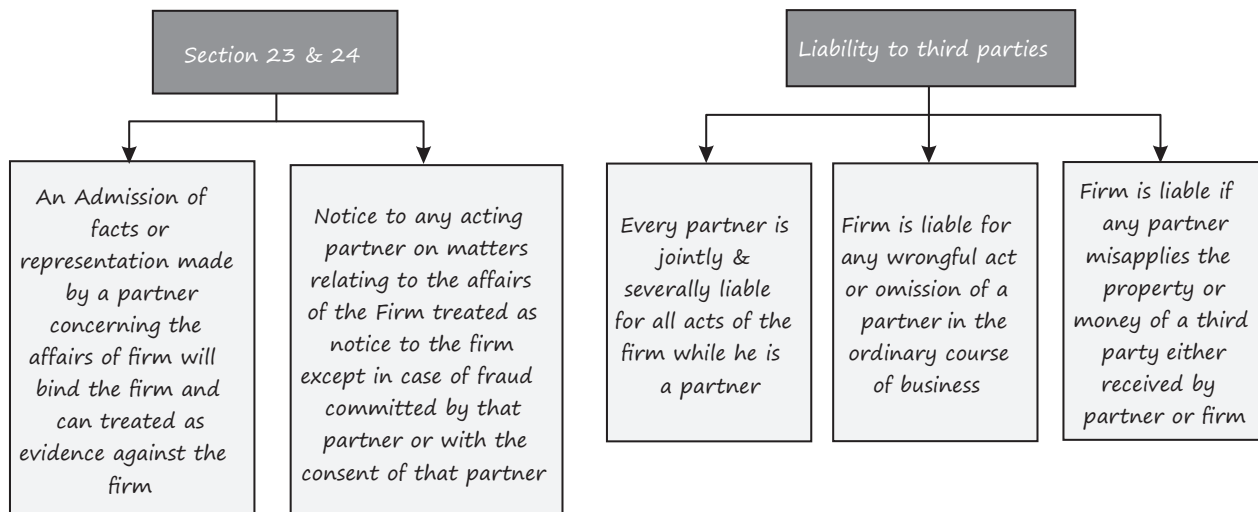
Enter into partnership on behalf of firm

Implied authority can be extended or restricted by a contract between the partners

But restriction on implied authority is only effective against a third party if

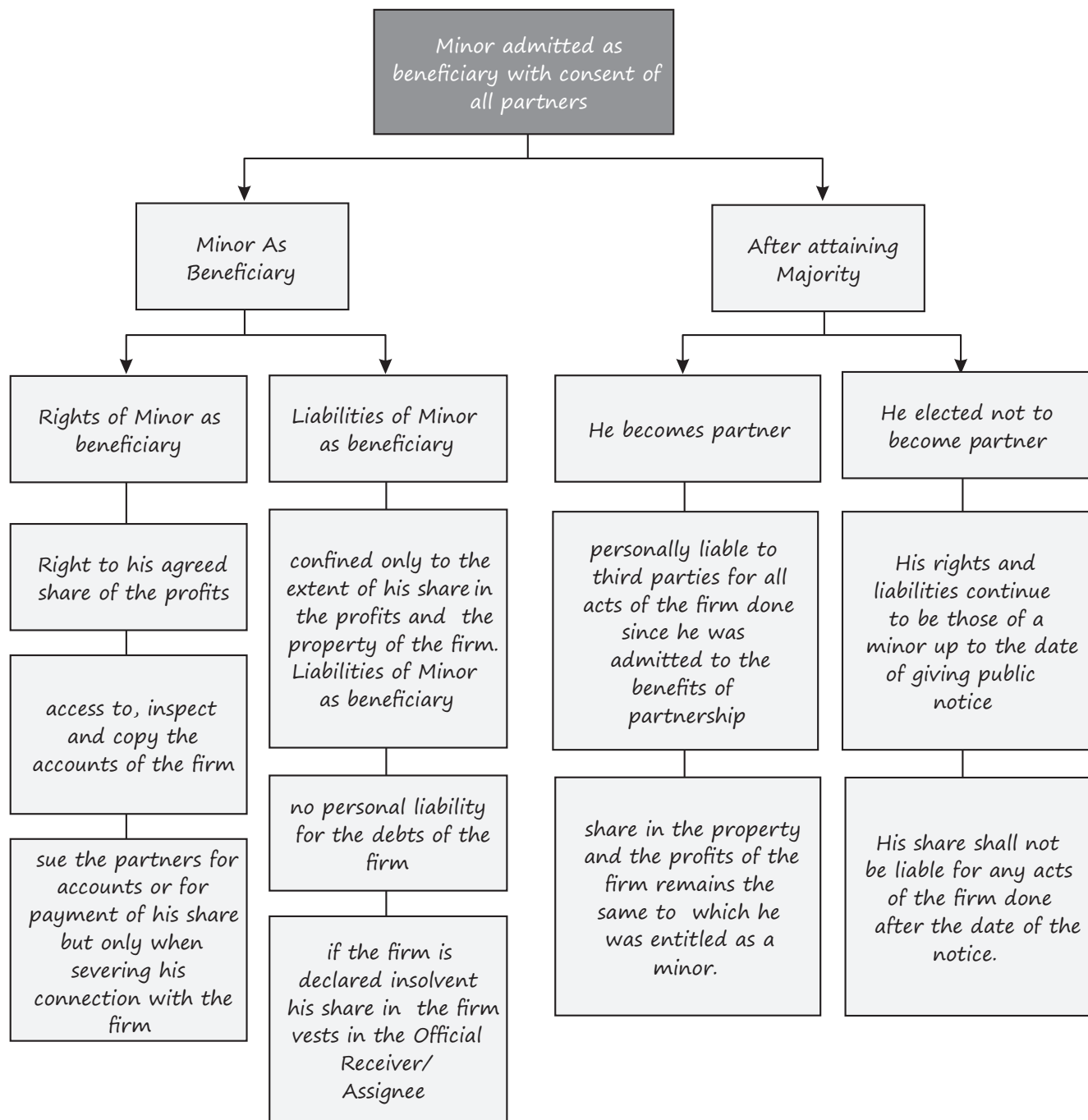
(a) Third party knows about such restriction; or

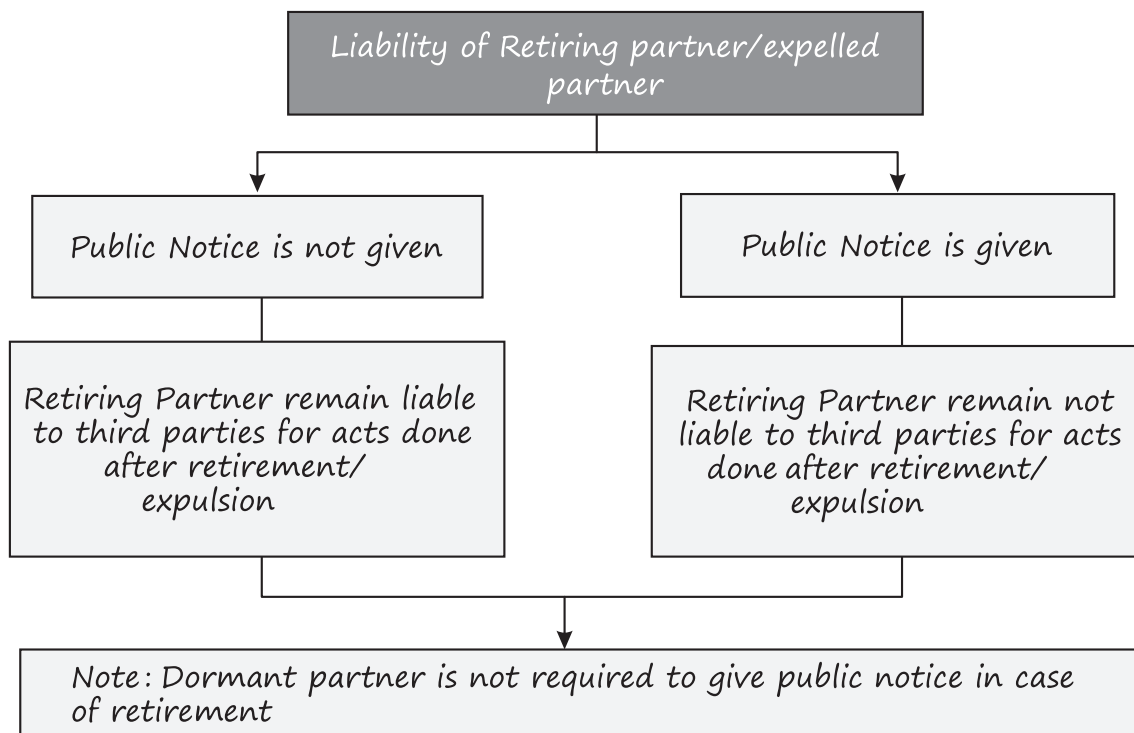
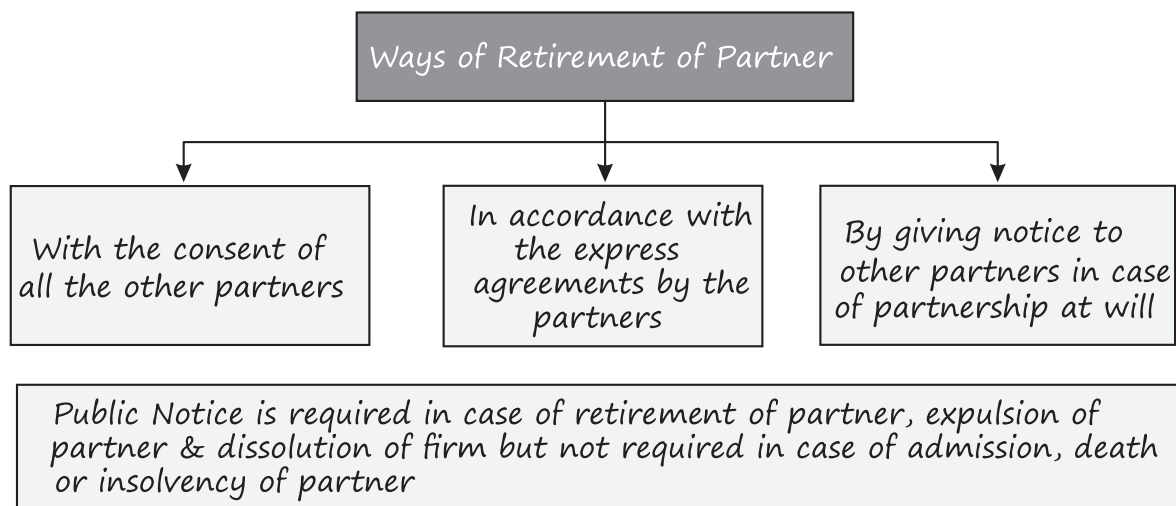
(b) Third party does know that he is dealing with a partner of firm

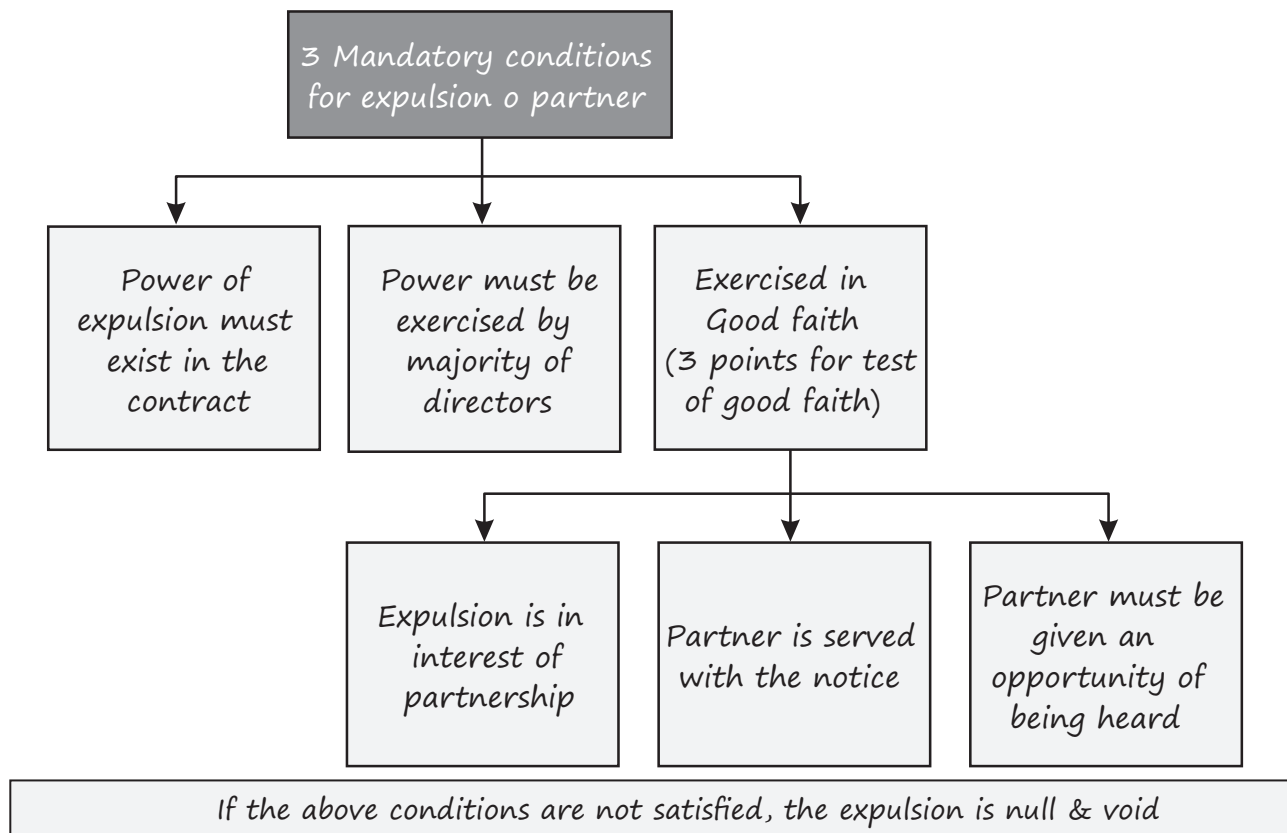


Minor cannot become a partner in firm but can be admitted as beneficiary in the firm with the consent of all the existing partner

Within 6 months on attaining majority or obtaining knowledge that he is a beneficiary in firm, whichever date is later, such person require to give public notice that whether he has elected to become partner or not.
If he fails to give notice within 6 months, then treated as partner of firm on expiry of said 6 months

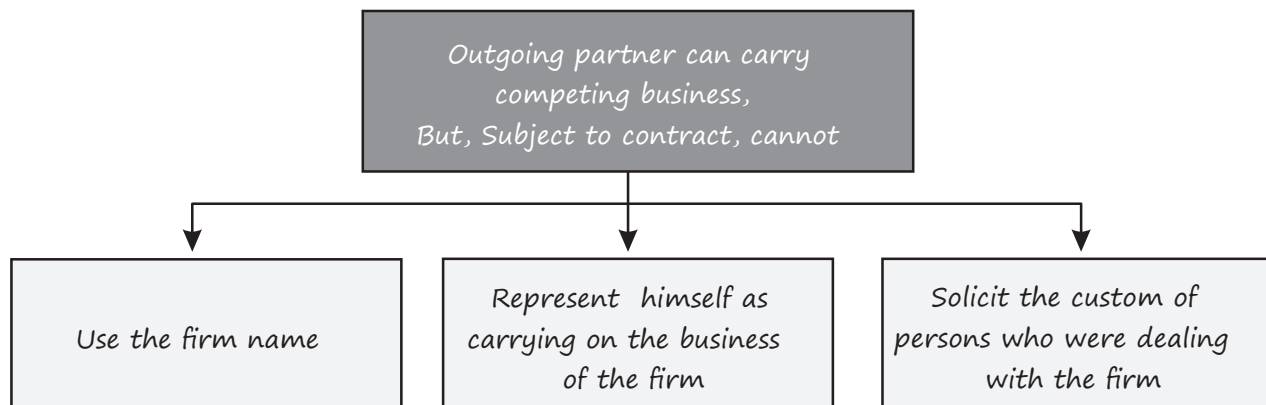






LIABILITY OF ESTATE OF DECEASED PARTNER :

Where under a contract between the partners, the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.



Outgoing partner may make an agreement with his partner that he will not be carrying competing business and such agreement will be valid if restrictions imposed are reasonable

As per section 38, continuing guarantee given to a firm or to third party in respect of the transaction of a firm is, in the absence of an agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.

Right of outgoing partner/representative of deceased partner if a/cs are not settled

in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives

share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm

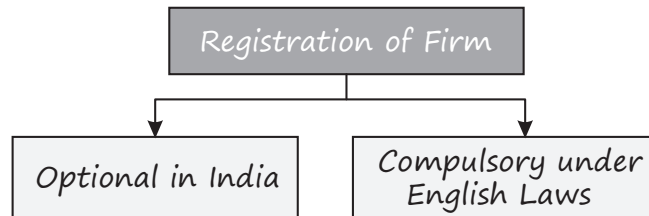
to interest at the rate of six per cent per annum on the amount of his share in the property of the firm:

Note :-Above provision is not applicable if option is given to other partner for purchase & such partner exercise such option

Effect of Insolvency of a partner

- 1. No public notice is required in case any partner become insolvent*
- 2. He will be ceased to be a partner from the very date on which the order of adjudication is made.*
- 3. The insolvent partner cannot be continued as a partner.*
- 4. The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.*
- 5. The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication,*
- 6. Ordinarily but not invariably, the insolvency of a partner result in dissolution of a firm; but the partners are competent to agree among themselves that the adjudication of a partner as an insolvent will not give rise to dissolution of the firm*

Unit-3: Registration and Dissolution of a Firm



Steps for Registration of Firm (Section 58 & 59)

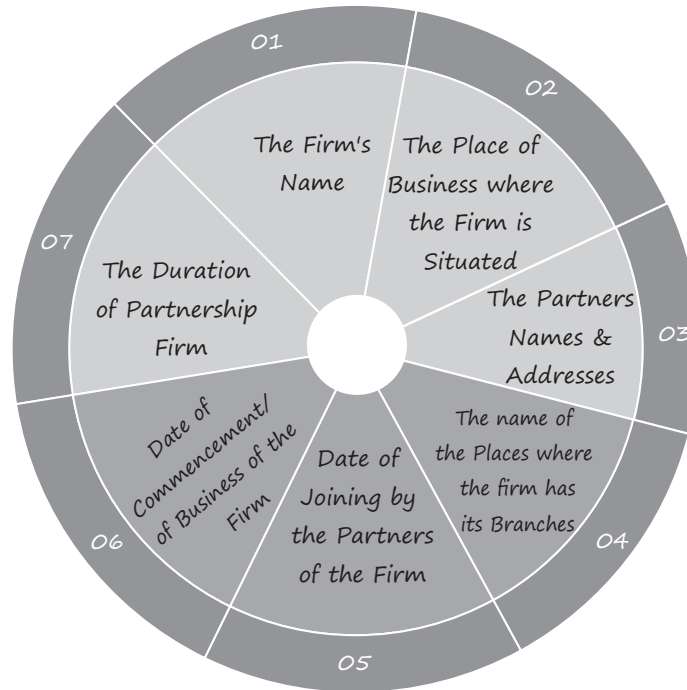
Files statement with RoF in the prescribed form with prescribed Fees
RoF of the area in which any place of business is situated
Statement need to be signed by all the partners

RoF issues Certificate of Registration after
(a) Satisfying all the provisions are being complied with
(b) Recording an entry in the register of firms

Effective Date of Registration :
Registration is deemed to be completed as soon as an application in the prescribed form with the prescribed fee and necessary details concerning the particulars of partnership is delivered to the Registrar

Registered Firm shall use the bracket & word (Registered) immediately after is name

Content of Statement



Firm name shall not contain following words:

Crown

X

Emperor

X

Empire

X

Imperial

X

King

X

Queen

X

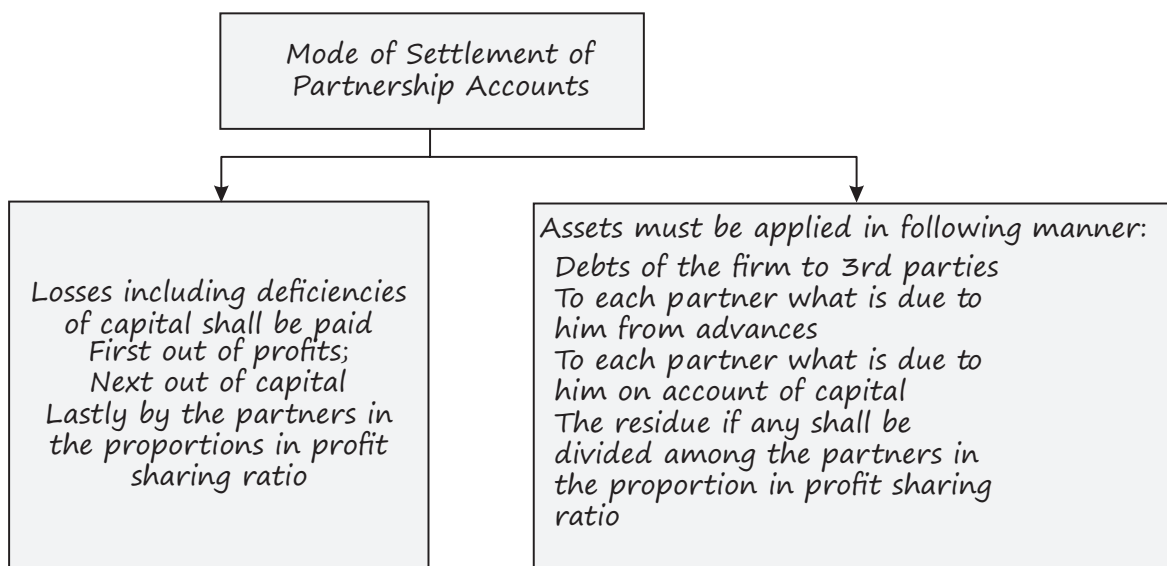
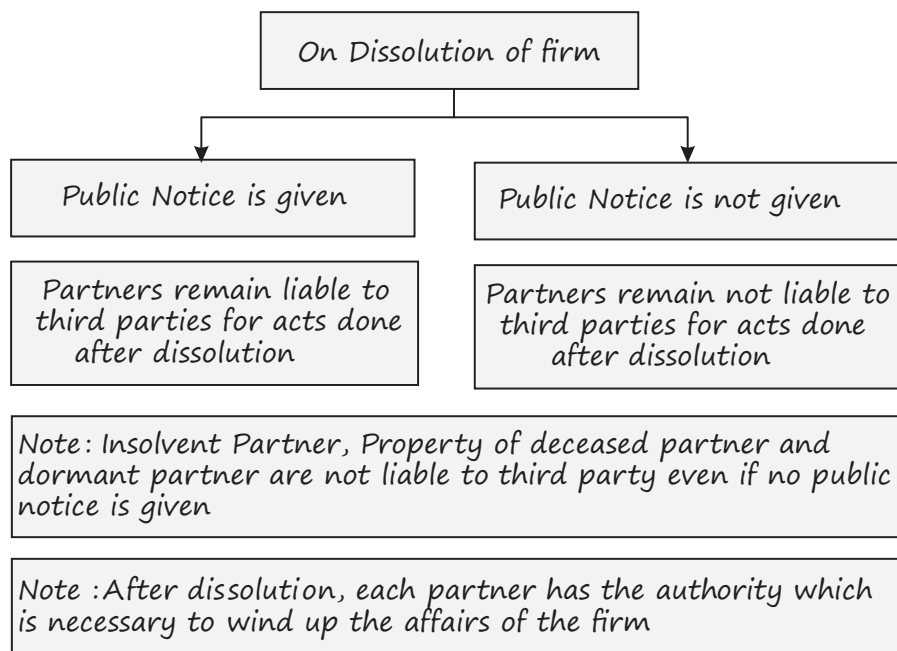
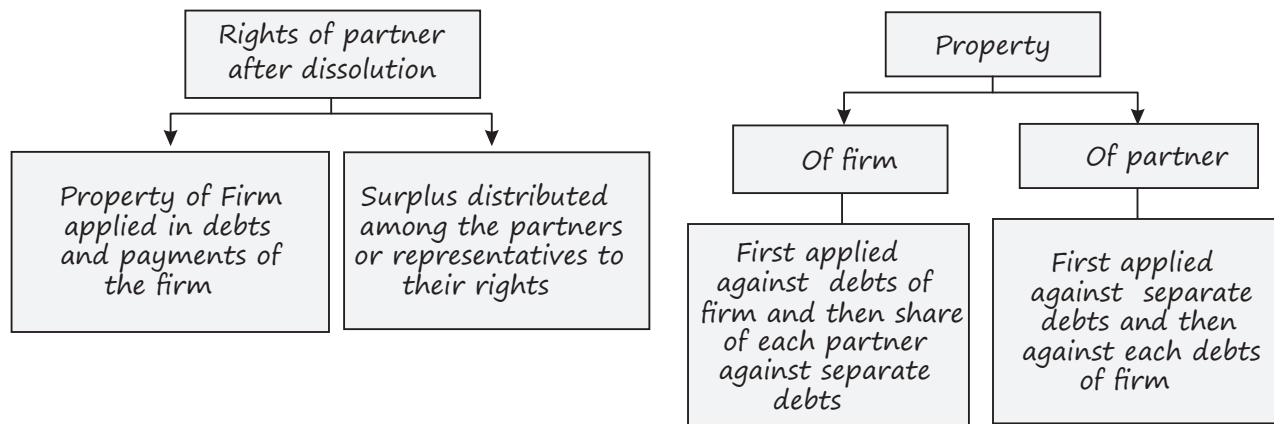
Royal

X

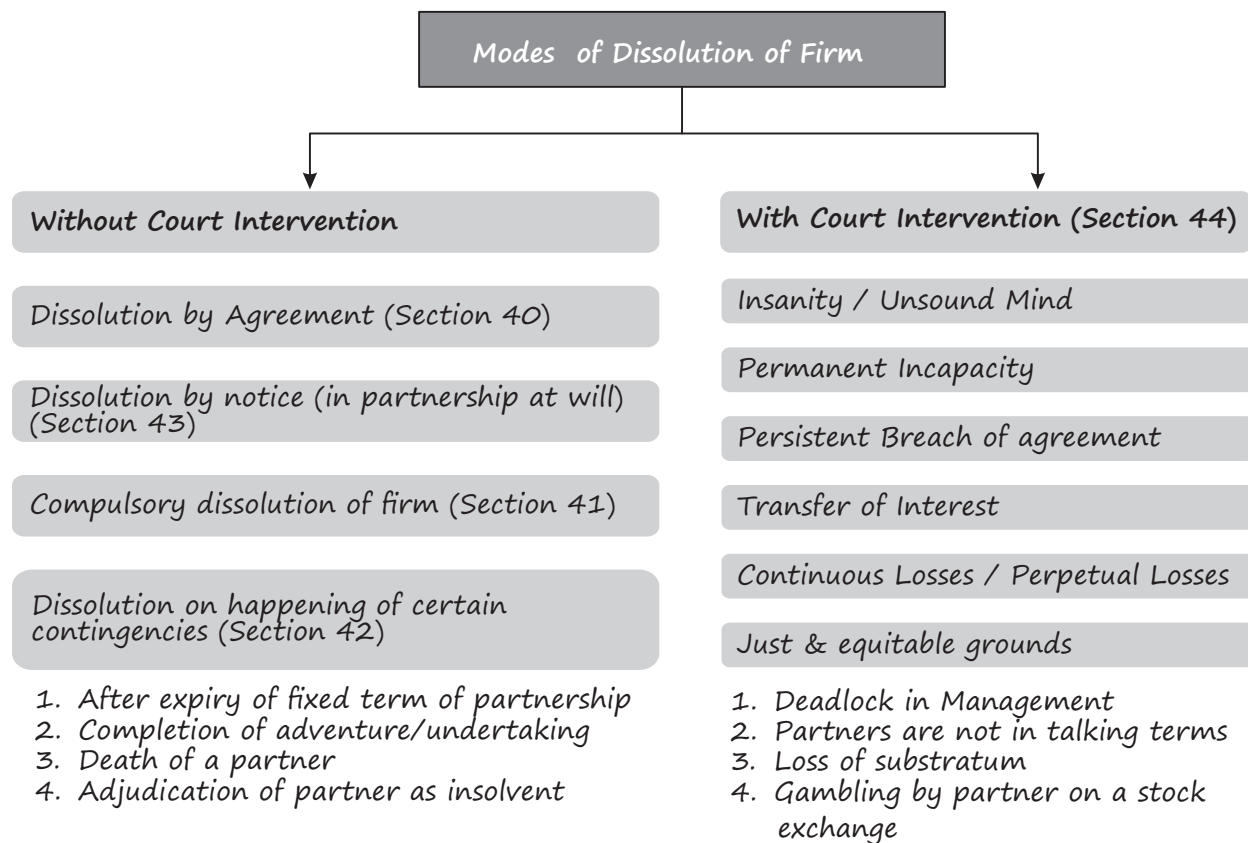
Govt linked

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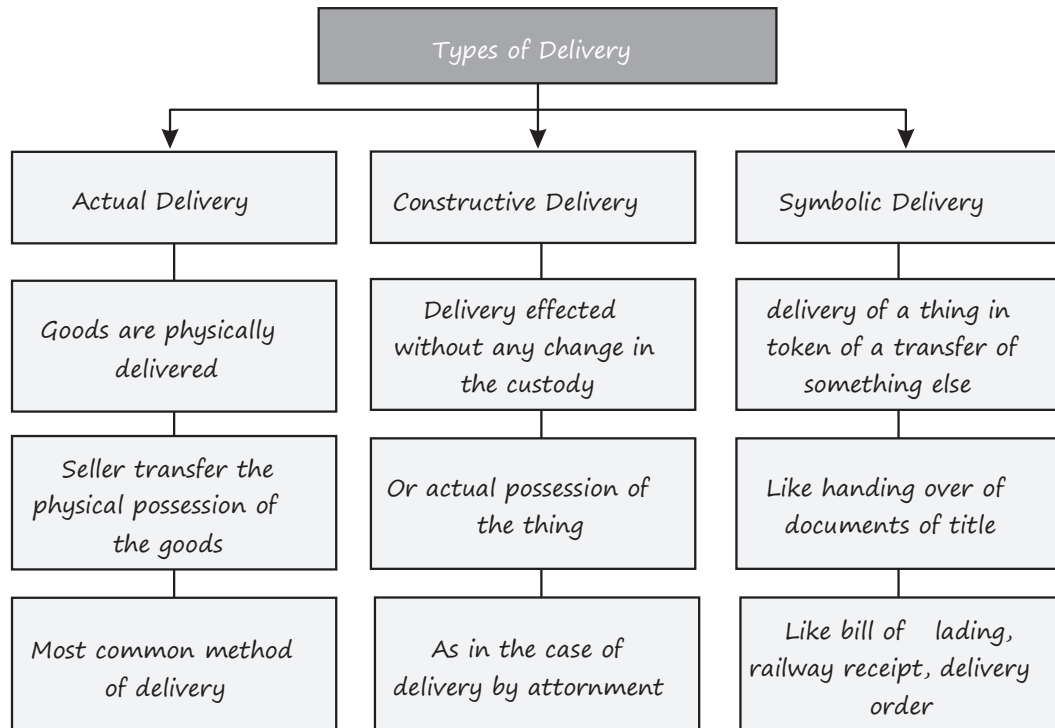
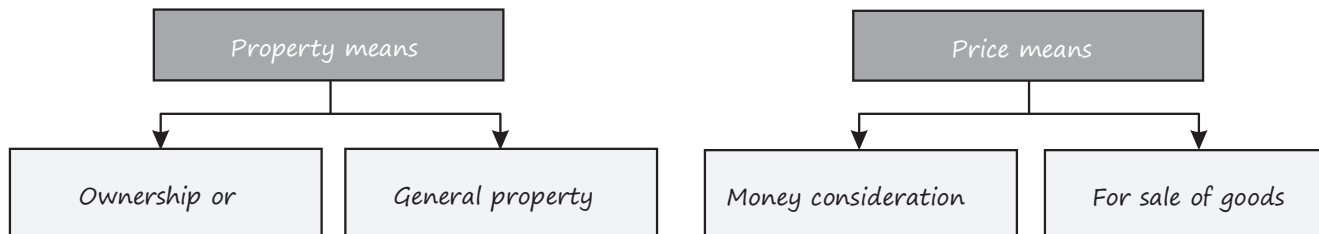
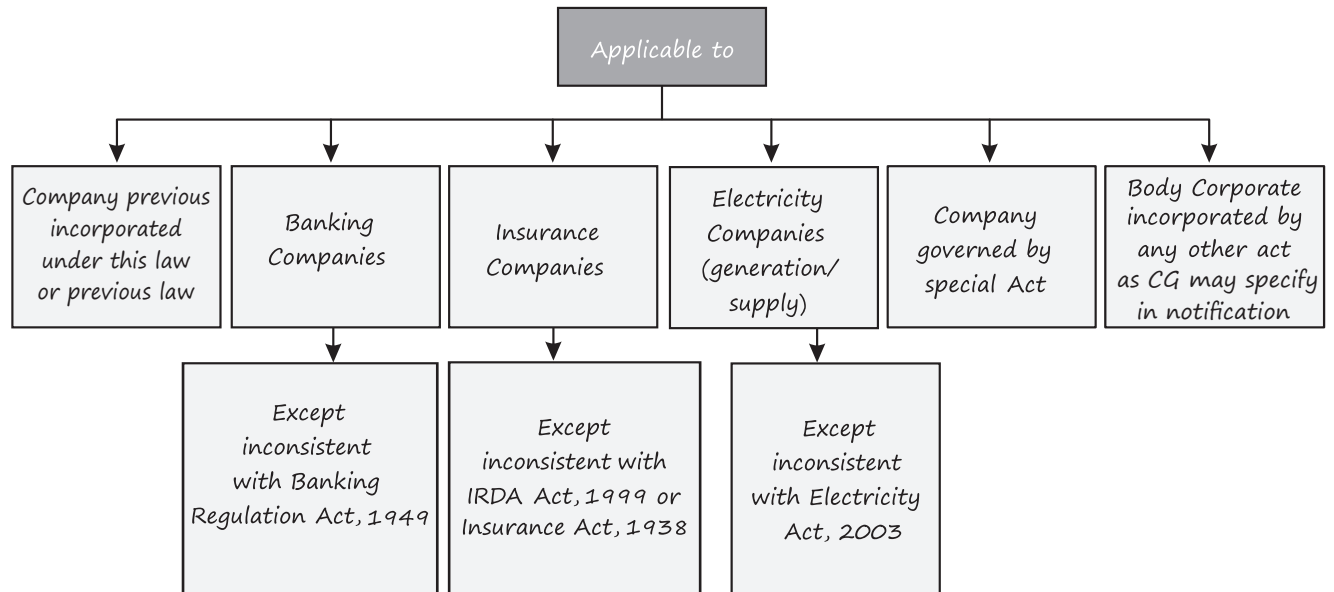
State Govt can give approval to use firm name linked with govt. by order in writing

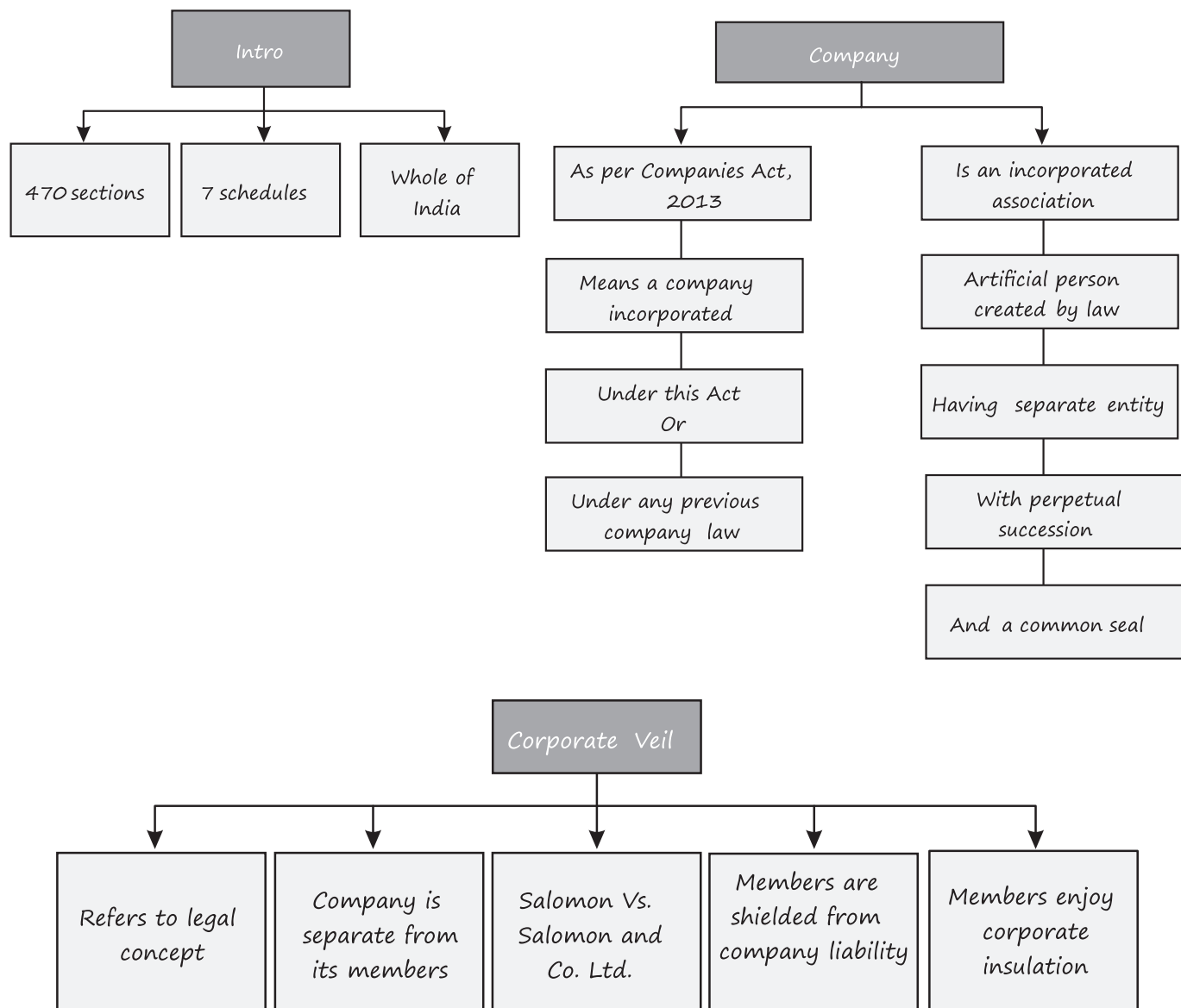


<i>Consequences of Non-Registration (Section 69)</i>	<i>Exceptions :- Non – Registration of firm does not, however the following rights</i>
1. No suit in civil court by firm or other co-partners against third party	1. Right of third parties to sue the firm or any partner
2. No relief to firm or partner for set-off of claim	2. right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm.
3. Aggrieved partner cannot partner legal action against firm or other partners	3. The power of an Official Assignees, Receiver of Court to release the property of the insolvent partner and to bring an action
4. Third party can sue both registered or unregistered firm	4. The right to sue or claim a set-off if the value of suit does not exceed Rs. 100 in value
	5. The right to suit and proceeding instituted by legal representatives or heirs of the deceased partner of a firm for account s of the firm or to realise the property of the firm



The Companies Act, 2013

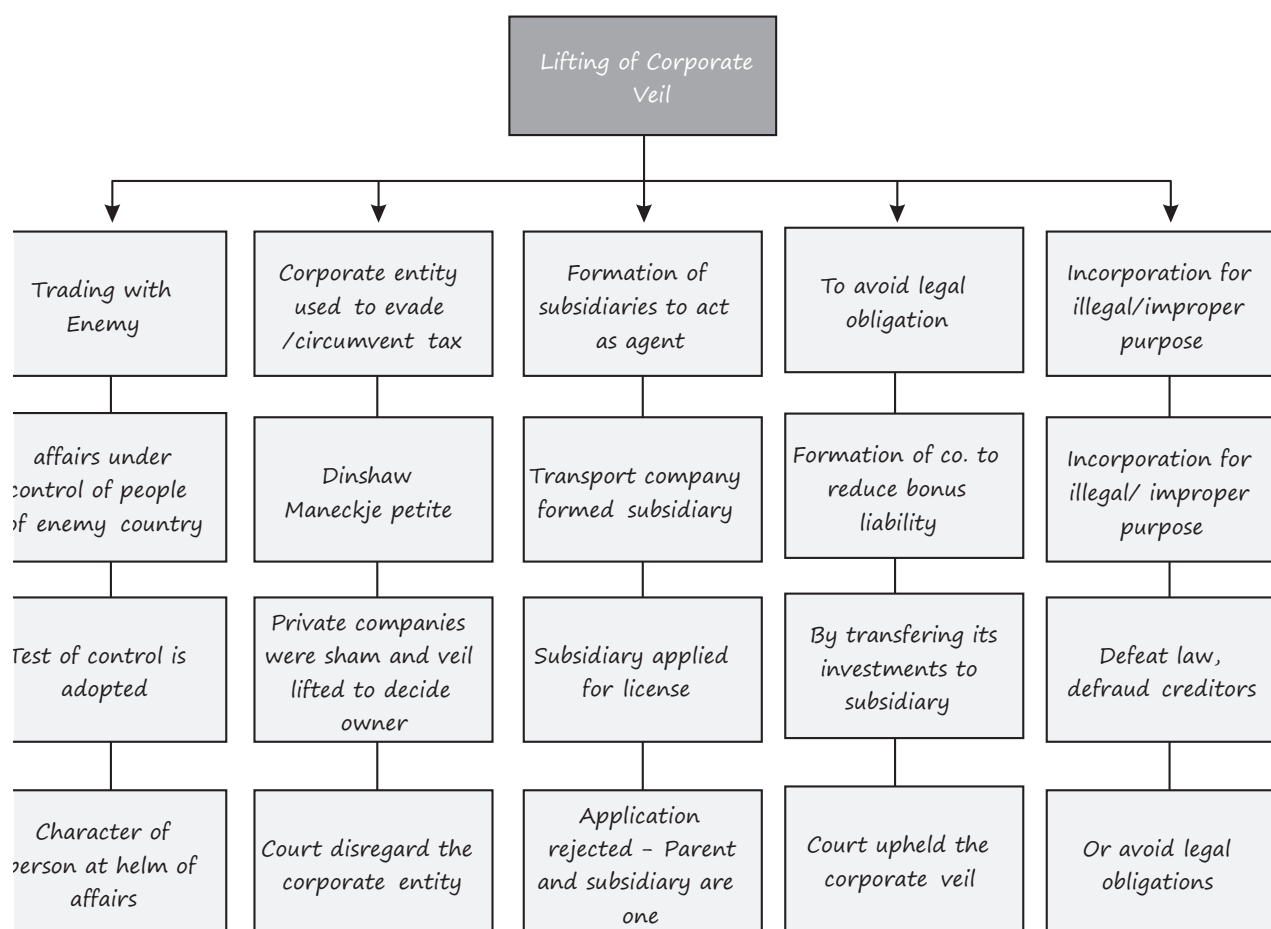


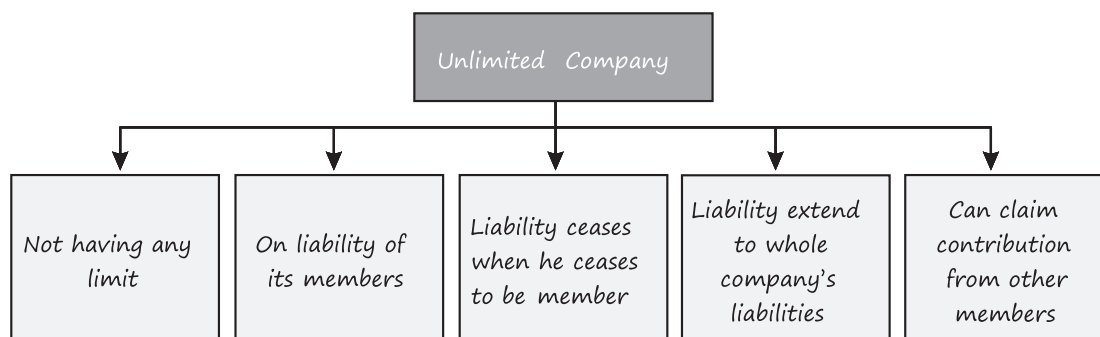
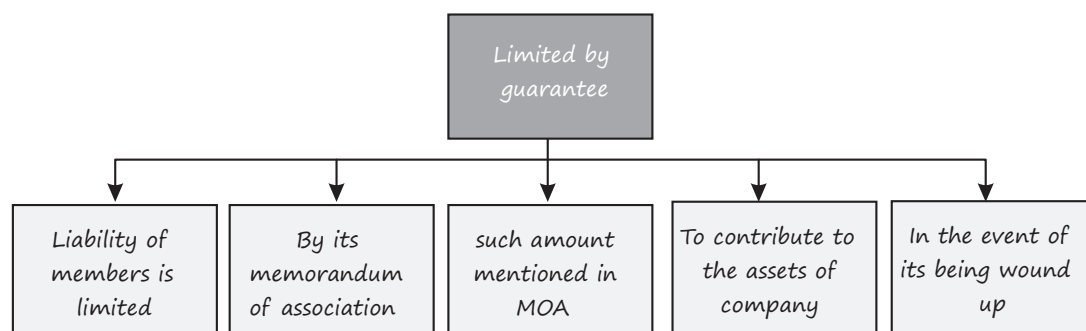
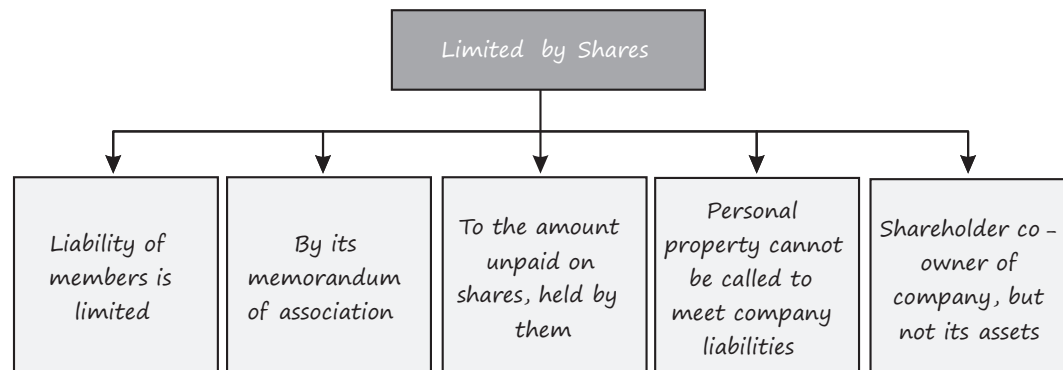
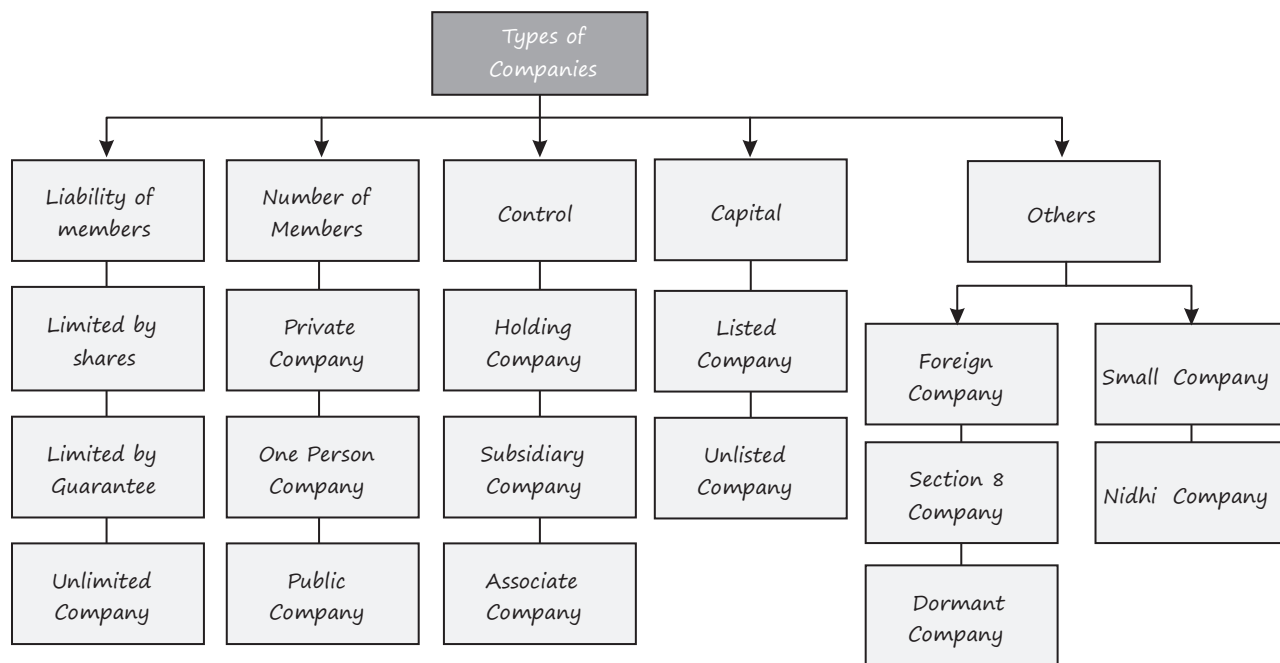


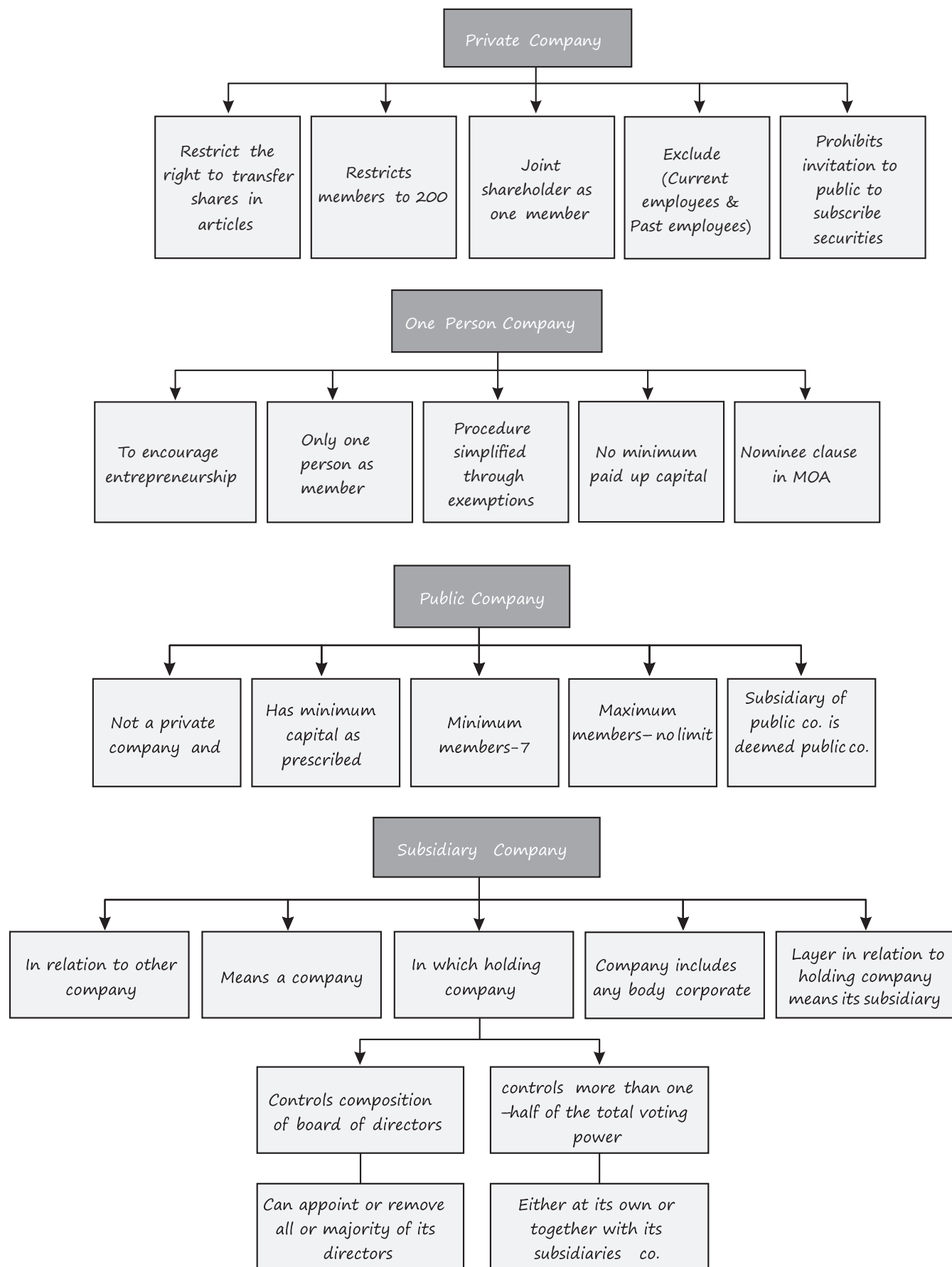
In *Salomon vs. Salomon & Co. Ltd.* the House of Lords laid down that a company is a person distinct and separate from its members. In this case one Salomon incorporated a company named –Salomon & Co. Ltd., with seven subscribers consisting of himself, his wife, four sons and one daughter. This company took over the personal business assets of Salomon for ₹38,782 and in turn, Salomon took 20,000 shares of ₹1 each, debentures worth ₹ 10,000 of the company with charge on the company's assets and the balance in cash. His wife, daughter and four sons took up one ₹1 share each. Subsequently, the company went into liquidation due to general trade depression. The unsecured creditors to the tune of ₹7,000 contended that Salomon could not be treated as a secured creditor of the company, in respect of the debentures held by him, as he was the managing director of one-man company, which was not different from Salomon and the cloak of the company was a mere sham and fraud.

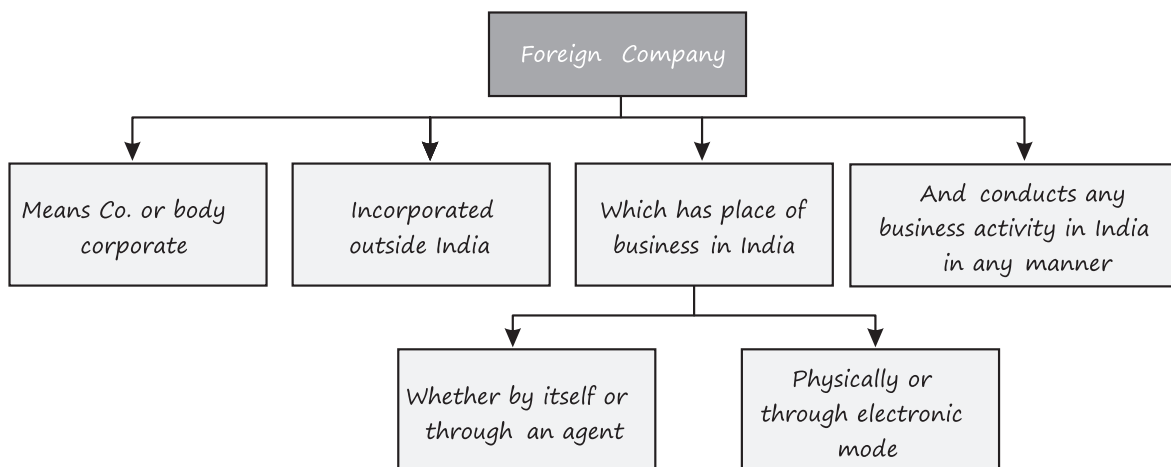
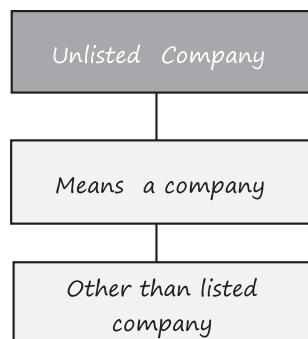
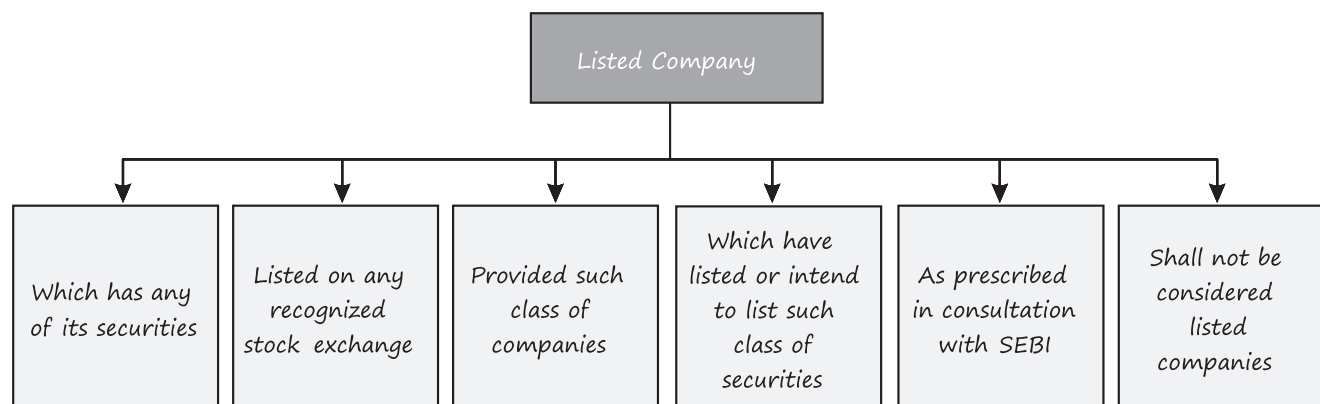
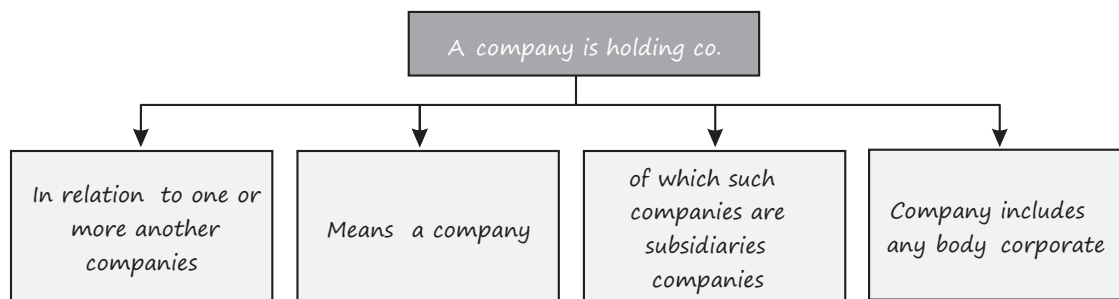
It was held by Lord Mac Naughten:

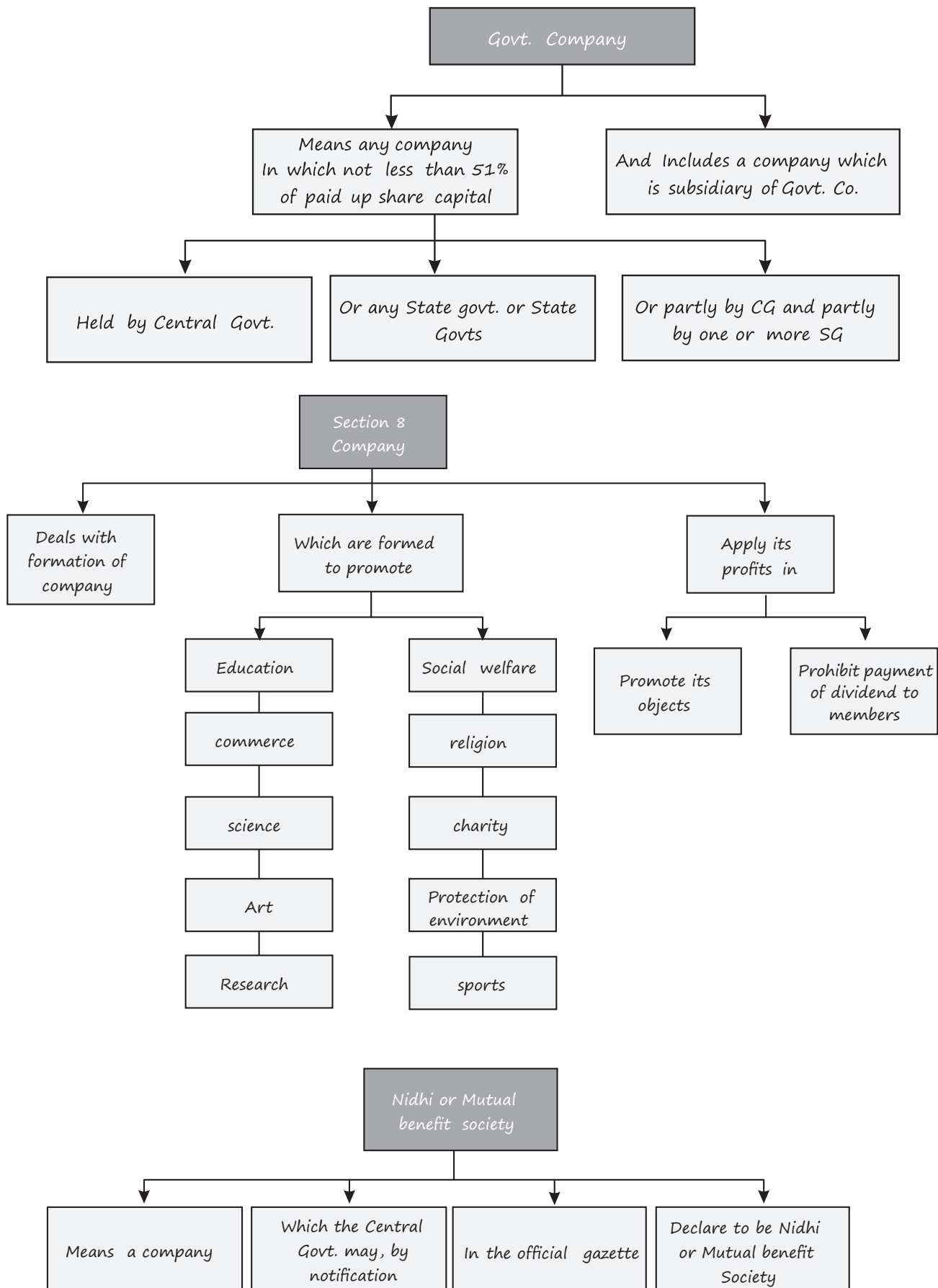
The Company is at law a different person altogether from the subscribers to the memorandum, and though it may be that after incorporation the business is precisely the same as it was before and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustees for them. Nor are the subscribers, as members, liable, in any shape or form, except to the extent and in the manner provided by the Act.”

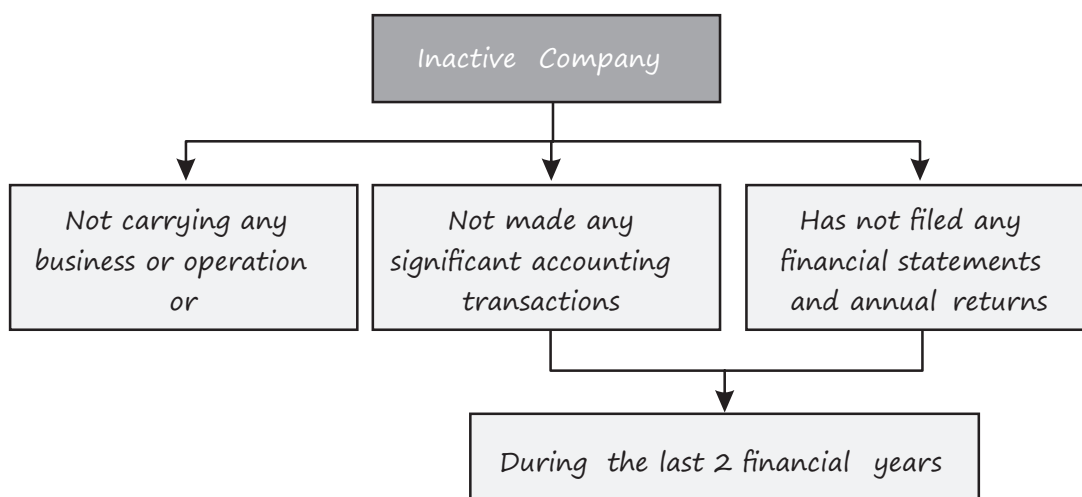
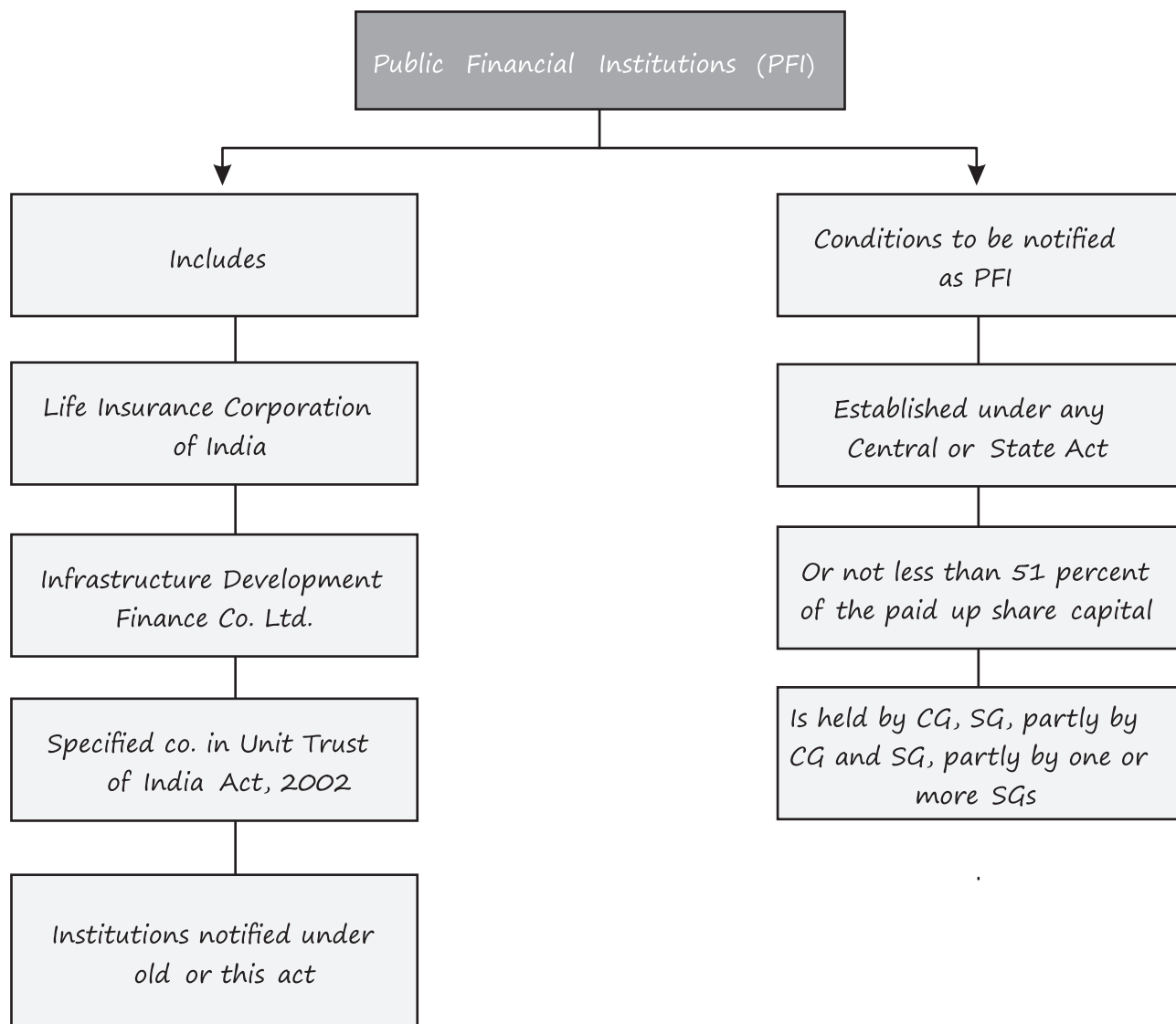


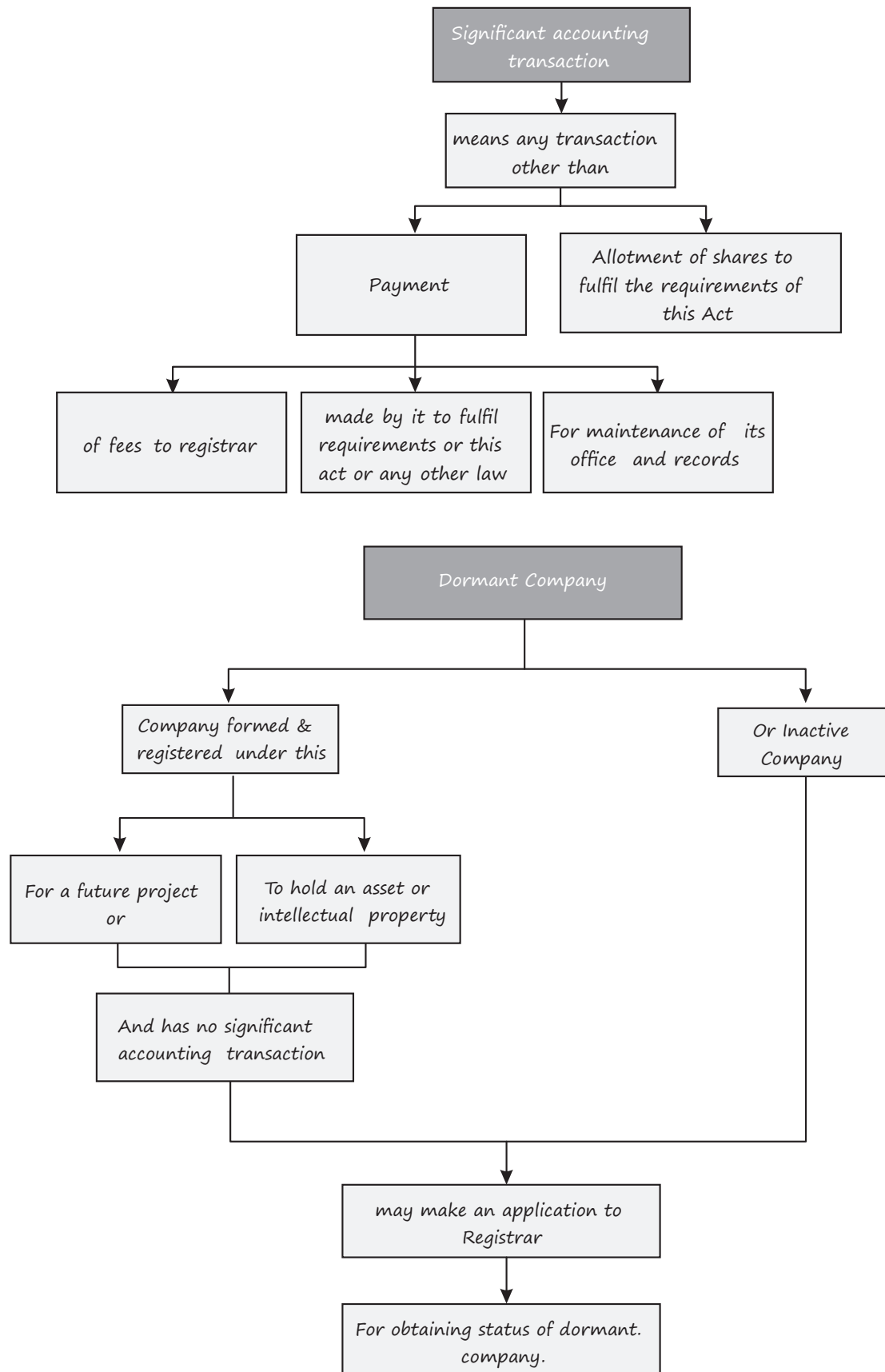


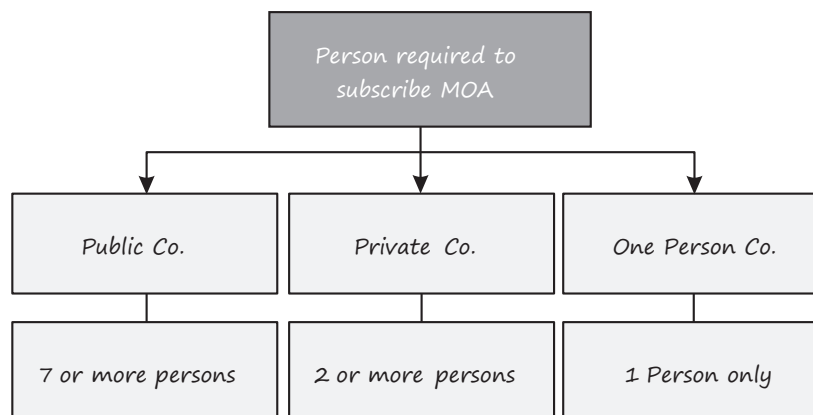
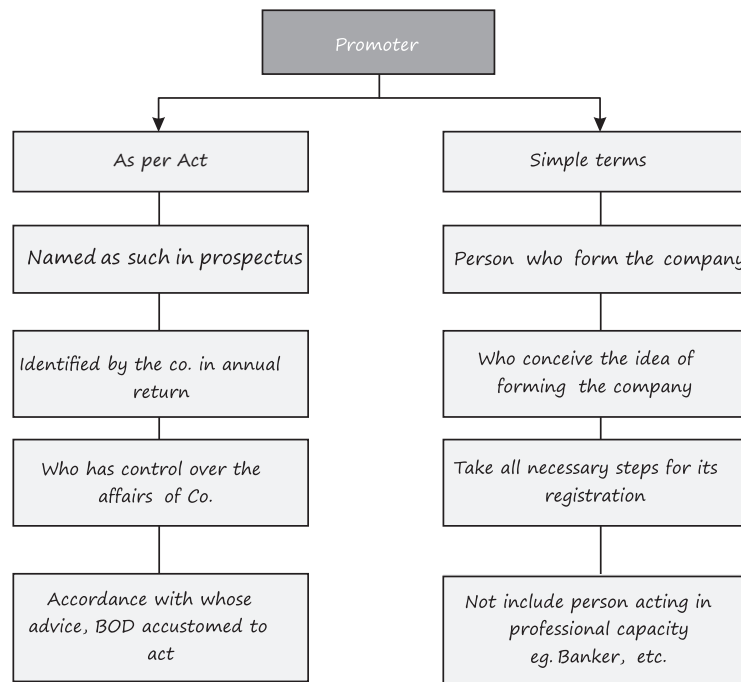




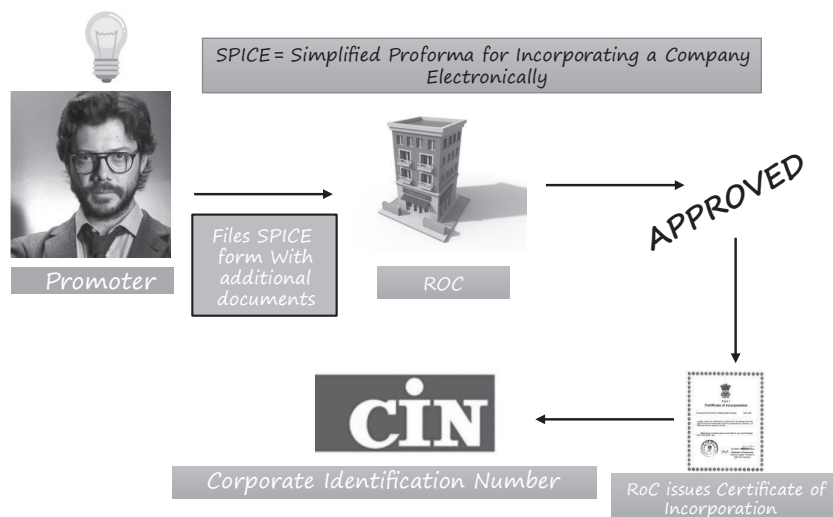








SECTION 7 – INCORPORATION OF COMPANY



LIST OF ADDITIONAL DOCUMENTS

1. MoA and AoA duly signed by subscribers to the MOA
2. Declaration that requirement for registration mentioned in the Act and rules are complied
3. Declaration that not convict/ not guilty for fraud
4. Correspondence address till registered office is established
5. Specified particulars of every subscriber to the memorandum
6. Specified particulars of First Director mentioned in articles
7. Interest of the first directors in other companies or firms

EFFECT OF REGISTRATION

1. From date of incorporation, Company is separate from Subscriber to MoA (Separate legal entity)
2. A company purchase 100 percent shares of other company but still they are different
3. Central Govt owns 100 percent shares of all the company but still it is not an agent of Govt
4. Any money payable by members to company will be considered as debt due to company

Where a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants.

1. Pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
2. direct that liability of the members shall be unlimited
3. Declaration that not convict/ not filed guilty for fraud
4. direct removal of the name of the company from the register of companies;
5. pass an order for the winding up of the company
6. pass such other orders as Tribunal may deem fit:

Before passing order, Tribunal

1. Give the company shall be given a reasonable opportunity of being heard in the matter.
2. Shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

CONTENT OF MOA – COMPULSORY CLAUSES

1. *Name Clause* – Name of the Company Private Co/. – Private Limited, Public Co. – Limited
2. *Registered Office Clause* – Only name of state in which registered office is situated
3. *Object Clause* – Main object and incidental objects thereto
4. *Liability Clause* – Limited by shares/guarantee/ unlimited Liability
5. *Capital Clause* – Only applicable for company limited by shares
6. *Association Clause* – Every subscriber must take atleast 1 share
7. *Nominee clause* (applicable to OPC) – In death of subscriber who will become member

MOA IS CHARTER OF THE COMPANY

1. Contains the object of the Company
2. Identifies the possible scope of its operations
3. MoA is a public document
4. Deemed Assumption – Everyone dealing with Co. has knowledge about the content of MoA
5. Format of MoA is given for each type of company

FORMAT	Applicable for
Table A	Limited by shares
Table B	Limited by guarantee and not having share capital
Table C	Limited by guarantee and having a share capital
Table D	Unlimited Company
Table E	Unlimited Company having share capital

CONTENT OF AOA

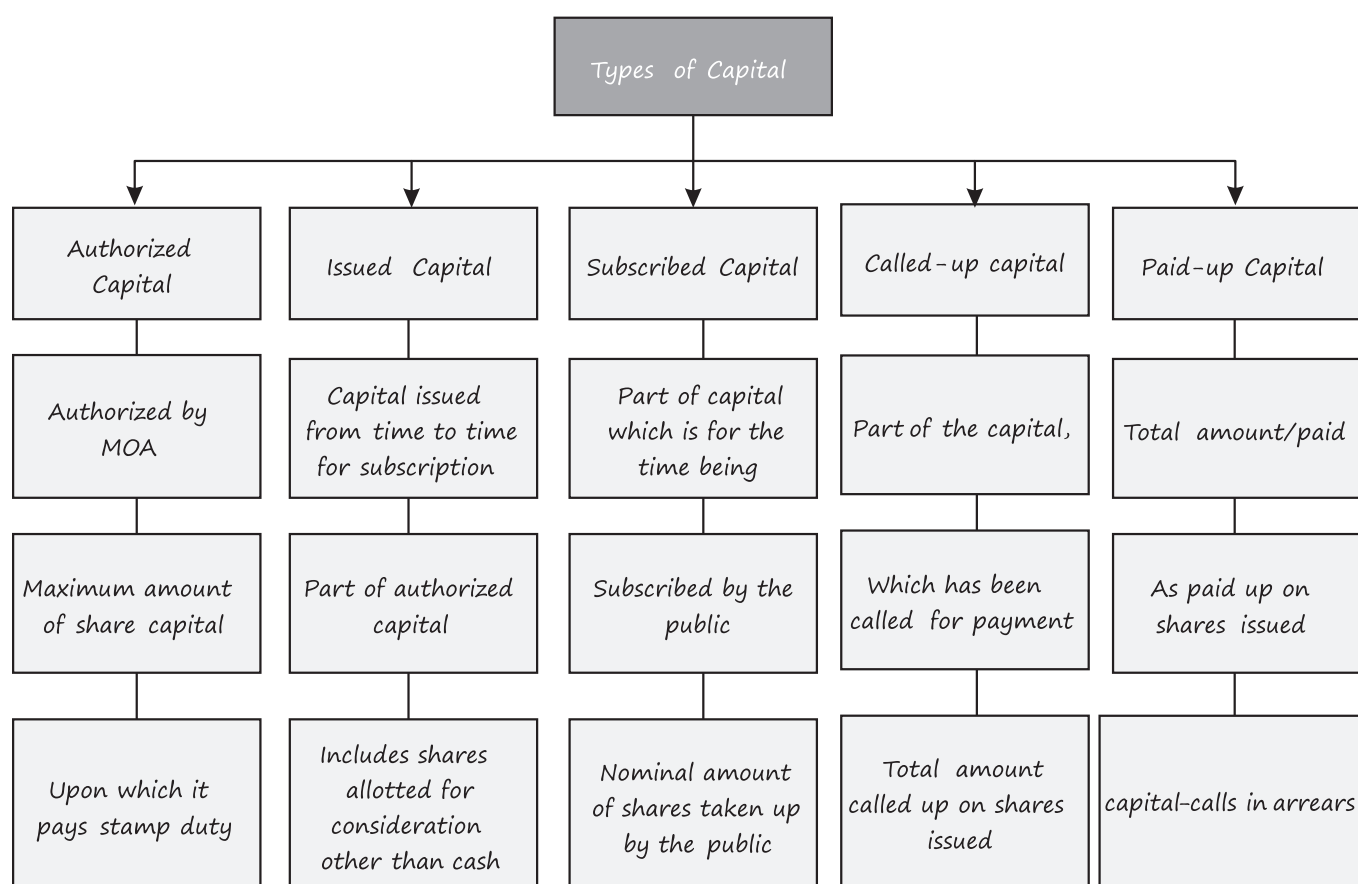
1. *Contains Regulations:* Contain the regulations for management of the Company.
2. *Other Matters:* Contains Matters as are prescribe under the Rules.
3. Contains provision for Entrenchment.
4. Manner of Inclusion of Entrenchment.
5. Notice to Registrar of the entrenchment Provision.
6. *Forms of Articles:* Table F, G, H, I & J in Schedule I.
7. A company may adopt all or any of the regulations contained in the model articles.
8. In case of any company, which is registered after the commencement of this Act, in so far as the registered articles of such company do not exclude or modify the regulations contained in the model articles applicable to such company, those regulations shall, so far as applicable, be the regulations of that company in the same manner and to the extent as if they were contained in the duly registered articles of the company.

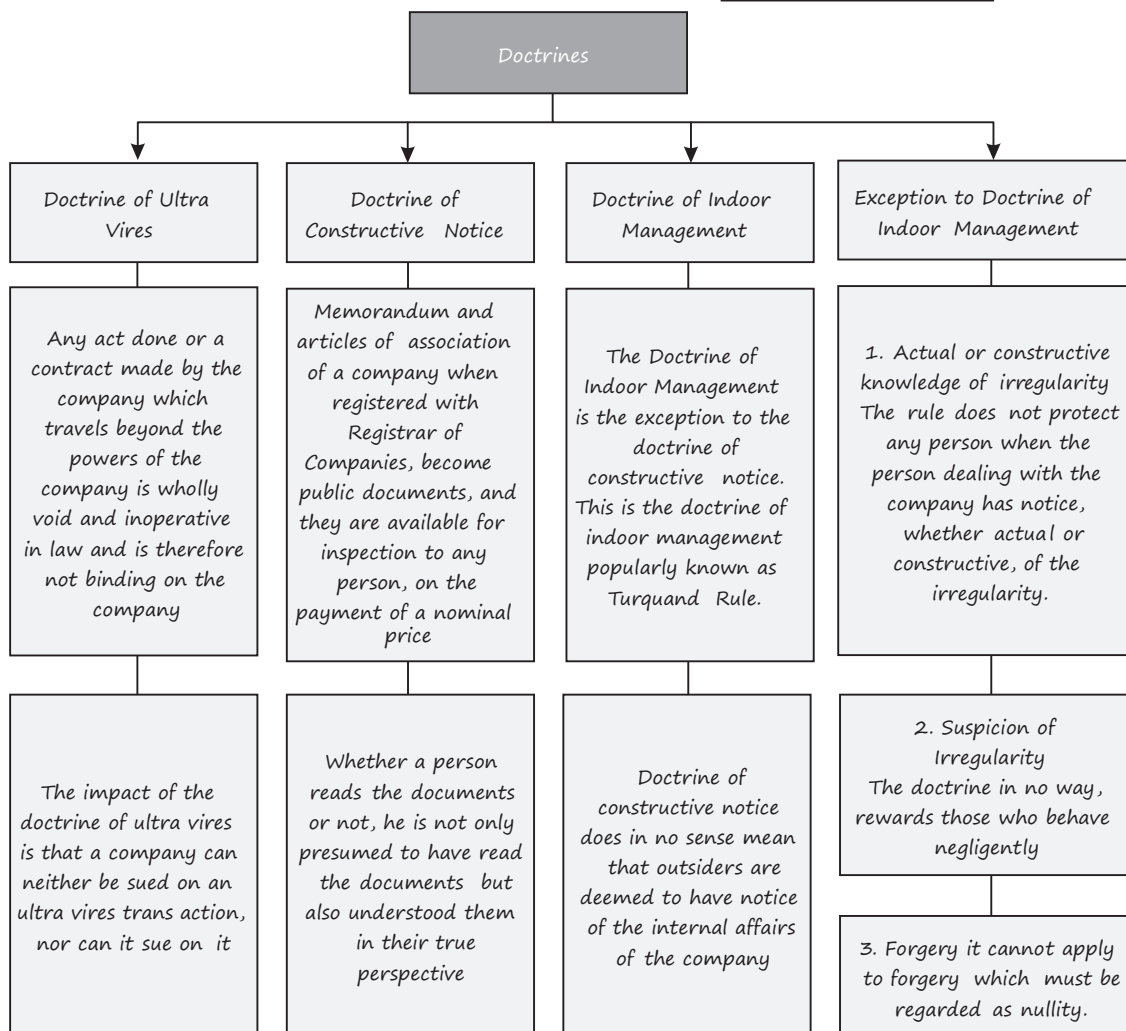
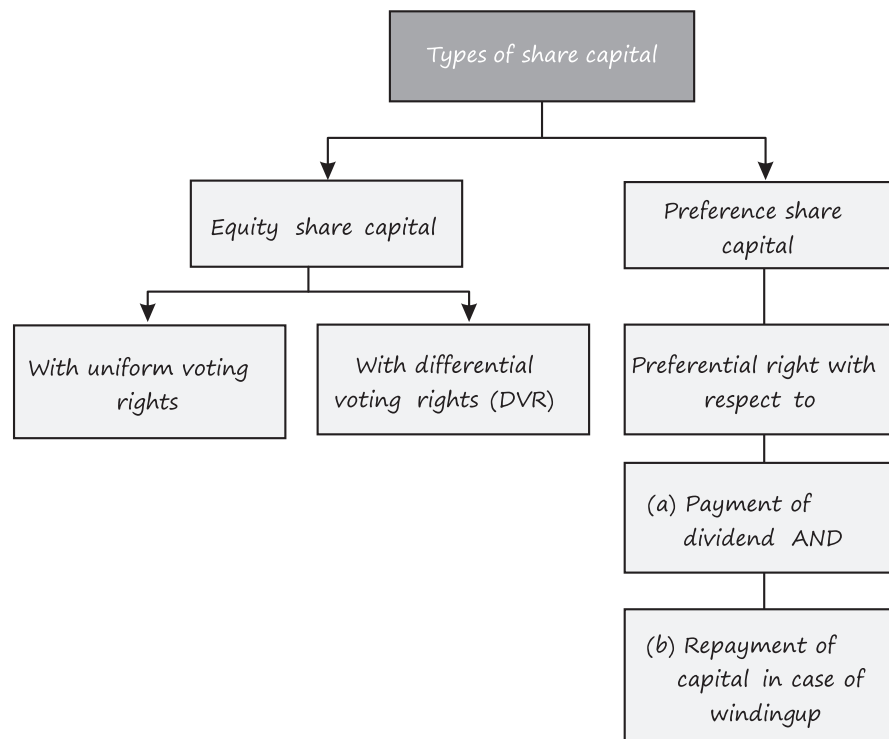
ENTRENCHMENT

Contain provisions for entrenchment: The articles may contain provisions for entrenchment (to protect something) to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

Manner of inclusion of the entrenchment provision: The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

Notice to the registrar of the entrenchment provision: Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.





FACTS of the Royal British Bank vs. Turquand

Mr. Turquand was the official manager (liquidator) of the insolvent Cameron's Coalbrook Steam, Coal and Swansea and Loughor Railway Company. It was incorporated under the Joint Stock Companies Act, 1844. The company had given a bond for £ 2,000 to the Royal British Bank, which secured the company's drawings on its current account. The bond was under the company's seal, signed by two directors and the secretary. When the company was sued, it alleged that under its registered deed of settlement (the articles of association), directors only had power to borrow up to an amount authorized by a company resolution. A resolution had been passed but not specifying how much the directors could borrow.

Held, it was decided that the bond was valid, so the Royal British Bank could enforce the terms. He said the bank was deemed to be aware that the directors could borrow only up to the amount resolutions allowed. Articles of association were registered with Companies House, so there was constructive notice. But the bank could not be deemed to know which ordinary resolutions passed, because these were not registrable. The bond was valid because there was no requirement to look into the company's internal workings. This is the indoor management rule, that the company's indoor affairs are the company's problem.

The Negotiable Instrument Act, 1881

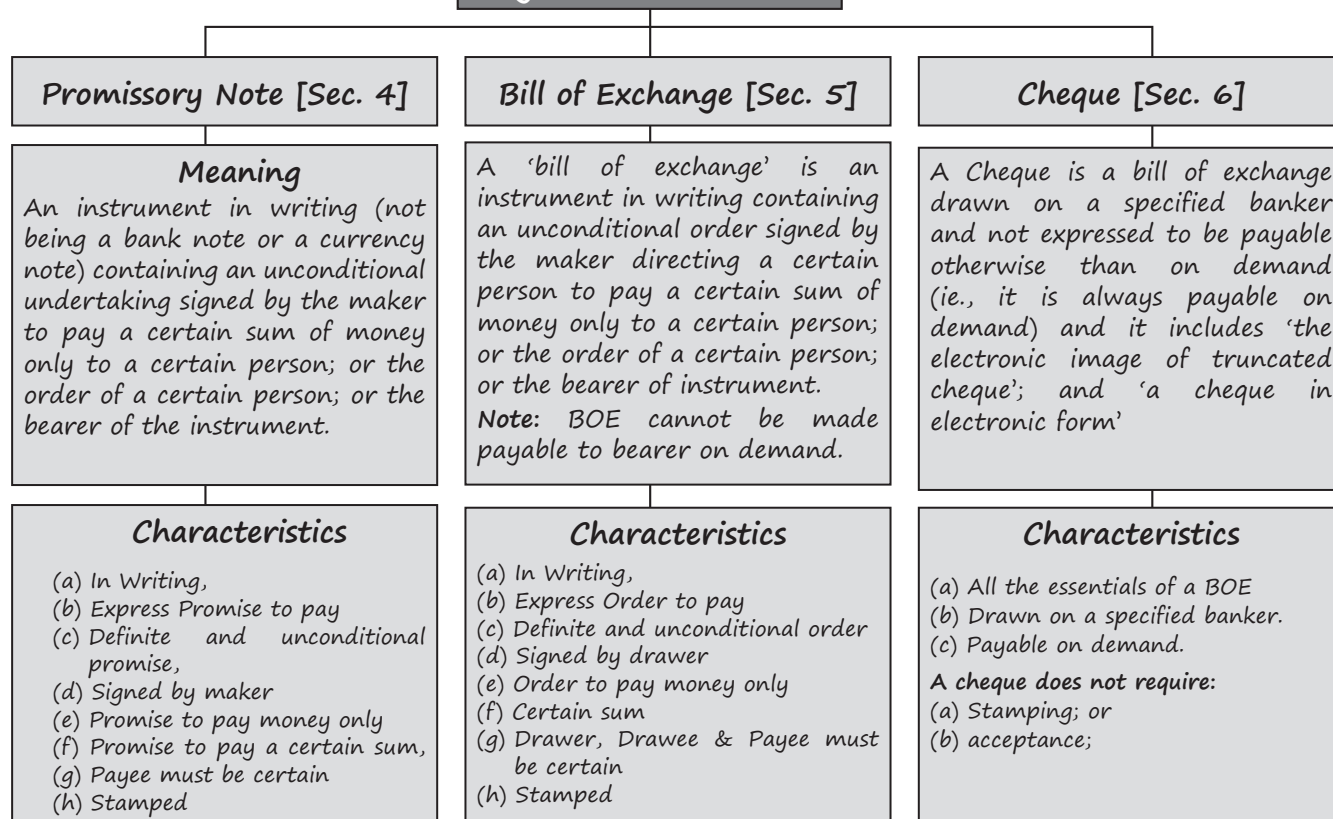
The Negotiable Instruments Act, 1881

Meaning of Negotiable Instruments (Sec. 13)
P/N, BOE, Cheque - payable either to order; or to bearer

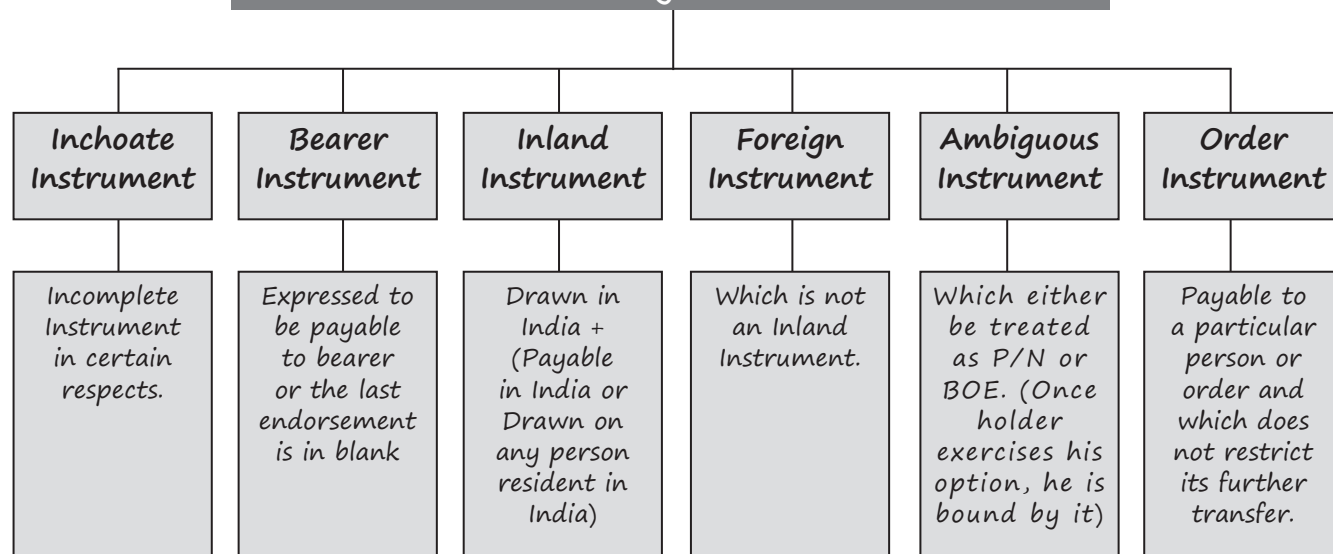
Characteristics of Negotiable Instruments:

1. in writing,
2. Signed,
3. Freely transferable,
4. Title free from defects,
5. Can be transferred any number of times,
6. Unconditional promise or order to pay money,
7. Certainty of sum payable, time of payment & payee,
8. Delivery

Negotiable Instruments



Classification of Negotiable Instruments



Presentment for acceptance (Only for BOE)

BOE payable after sight must	Must be presented within a reasonable time & in business hours on a business day. (Note: 48 hours, excluding public holidays, are given to drawee for acceptance)	
In default of such presentment	no party liable thereto	If Drawee not found after reasonable search, BOE is dishonored.
If BOE is directed to drawee at a particular place	must be presented at that place	

Presentment of Promissory Note for sight

P/N payable at a certain period after sight	Must be presented within a reasonable time & in business hours on a business day.	
In default of such presentment	no party	liable thereto

Rules as to Compensation (Sec.117)

In case of dishonour of NI, holder can claim

1. Interest 18% pa, from due date of payment to date of realisation
2. Amount due on Negotiable instrument
3. Expenses incurred in presenting, noting & protesting

Note: In case of foreign currency, current rate of exchange.

Dishonour of Cheques for Insufficiency of Funds in the Accounts [Section 138 to 142]

Debt - Cheque was issued to discharge a legally enforceable debt

Reason for dishonour - insufficiency of funds

Presentment of cheque - Within 3 months

Demand made from drawer - Within 30 days of dishonour

Default by drawer to pay - within 15 days of demand made

Rules regarding presentment for payment (P/N, BOE, CH)

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

When Presentment Unnecessary

1. Maker, drawee or acceptor prevents the presentment,
2. Payable at business place & that's closed on business day during usual business hours,
3. Payable at specified place & liable party doesn't attend place,
4. Not payable at specified place & liable party not found after due search,
5. Liable party engaged to pay notwithstanding non-presentment,
6. Liable party makes part payment,
7. Liable party waives off his right to take advantage.
8. If drawer could not suffer damage from want of such presentment.