

**This Book is Dedicated,**

To my pillars of unwavering support, my parents “Sangita Jain & Manoj Jain” and family, whose love and encouragement have been the greatest chapters in the book of my life.



**Special mention,**

To CA Vishal Bhattad Sir, Dr. Ujwal Bhattad Sir, Snehal Taori Mam, CA Ravi Taori Sir & my Vsmart Team, Your invaluable guidance and constant support made this book possible.

**My Super Amazing Law Ki पाठशाला Team!**

Jiya, Pranav, Suyash

**Thank you!**

Akshita for the support.

**Best Regards,  
CA Amol Jain  
#AJ Sir**

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## What is Law?

- Set of obligations and duties
- Imposed by the GOV
- For securing welfare and providing justice
- India's legal framework reflects the social, political, economic, and cultural aspects.



## Why imp for CA?

- Awareness to become a full-fledged CA.
- First level of contact .
- Advise our management and clients on legal matters

## SOURCES OF LAW



Constitution



Statutes



Parliament and State Assemblies



- Precedents / Judicial Decisions
- Established Customs and Usages.

## OTHER KEY POINTS

India is a parliamentary democracy.

Laws passed by - (i) Parliament - throughout all or a portion of India.  
(ii) State Legislatures - within the borders of the states concerned.

Constitution - basis and source for all laws

Parliament - ultimate law-making body

## THE PROCESS OF MAKING A LAW



Rajya Sabha.



assent of the  
President of India.

Applicable from date mentioned as  
effective date.

Official Gazette of India.

भारत का राजपत्र  
The Gazette of India

## Types of Law

Criminal Law

Civil Law

Common Law

Principles of Natural Justice

- (i) Rule of law or public wrongs
- (ii) The Indian Penal Code, 1860 - crime, its nature, and punishments
- (iii) Criminal Procedure Code, 1973, defines exhaustive procedure

- i) Disputes - individuals or organisations.
- ii) Civil courts enforce rights and obligations
- iii) Process and Administration Code of Civil Procedure, 1908 (CPC).

- i) Binding upon the courts within the territory of India
- ii) Doctrine of Stare Decisis
- iii) courts to follow the same principle by previous decisions

- i) Fundamental principles of justice going beyond written law.
- ii) Can override or alter a common law
- iii) Nemo judex in causa sua
- iv) Audi alteram partem

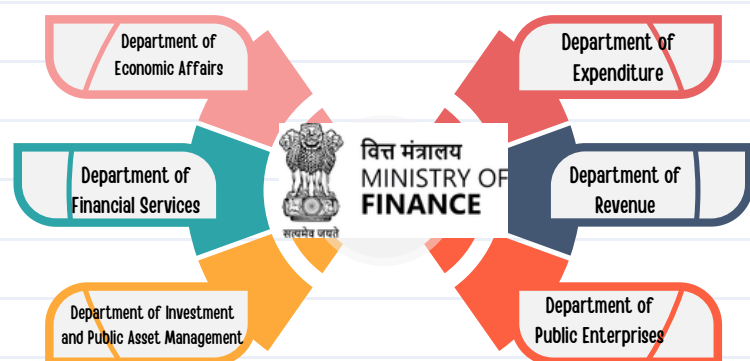
- i) Depending Central law or a State law the Central or State Government will be the enforcing authority.
- ii) Ministries are headed by a minister and run by officers of the Indian administrative and other services.

### What is a ministry?

- i) Composed of employed officials, civil servants politically accountable
- ii) headed by a Cabinet Minister and supported by a team of junior ministers
- iii) Ministries are headed by a minister and run by officers of the Indian administrative and other services.

### Ministry of Finance

- i) Vitta Mantralaya, economy of India, serving as the Treasury of India
- ii) As a Chartered Accountant day-to-day work life will be impacted
- iii) important functions - Presentation of the Union Budget.



Constitution is Apex controlling authority for -

1. Indian Revenue Service
2. Indian Audit and Accounts Service
3. Indian Economic Service and
4. Indian Civil Accounts Service.

### Ministry of Home Affairs (Griha Mantralaya)

interior ministry of India, internal security and domestic policy.

headed by Union Minister

#### Departments of Ministry of Home Affairs

Department of Border Management

Department of Internal Security

Department of Jammu, Kashmir and Ladakh Affairs

Department of Home

Department of Official Language

Department of States



### Ministry of Corporate Affairs (MCA)

- regulation of Indian enterprises in the industrial and services sector.
- run by civil servants of the ICLS (Indian Corporate Law Services) cadre

### Ministry of Law and Justice

- management of the legal affairs
- legislative activities
- administration of justice in India

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

- regulatory body for securities and commodity market in India
- ownership of Ministry of Finance
- established on 12 April, 1988, statutory powers on 30 January, 1992 through the SEBI Act, 1992.

## Reserve Bank of India (RBI)



- regulation of the Indian banking system.
- ownership of Ministry of Finance
- control, issue and maintaining supply of the Indian rupee.
- manages the country's main payment systems
- Bharatiya Reserve Bank Note Mudran (BRBNM) currency printing presses located in Nashik and Dewas

## Insolvency and Bankruptcy Board of India (IBBI)

- Regulator for overseeing insolvency proceedings, Insolvency Professional Agencies (IPA), Insolvency Professionals (IP) and Information Utilities (IU)
- established on 1 October 2016 and statutory powers on 5th May 2016.
- simplify the process of insolvency and bankruptcy proceedings.
- handles the cases using two tribunals like NCLT and Debt recovery tribunal.

## STRUCTURE OF THE INDIAN JUDICIAL SYSTEM

- dispute between citizens or between citizens and the Government resolved by the judiciary.
- Supreme Court > High Courts > District Courts.
- Decisions of a High Court are binding in the respective state
- Decisions of the Supreme Court are binding on all High Courts

## STRUCTURE OF THE INDIAN JUDICIAL SYSTEM

### Supreme Court



- i) apex body of the judiciary.
- ii) established on 26th January, 1950.
- iii) Chief Justice of India
- iv) principal bench seven members, Presently, the number has increased to 34

### High Court



- i) highest court of appeal in each state and union territory
- ii) appellant, original jurisdiction, and Supervisory jurisdiction
- iii) twenty-five High Courts in India. Six states share a single High Court.
- iv) principal bench seven members, Presently, the number has increased to 34

### District Courts



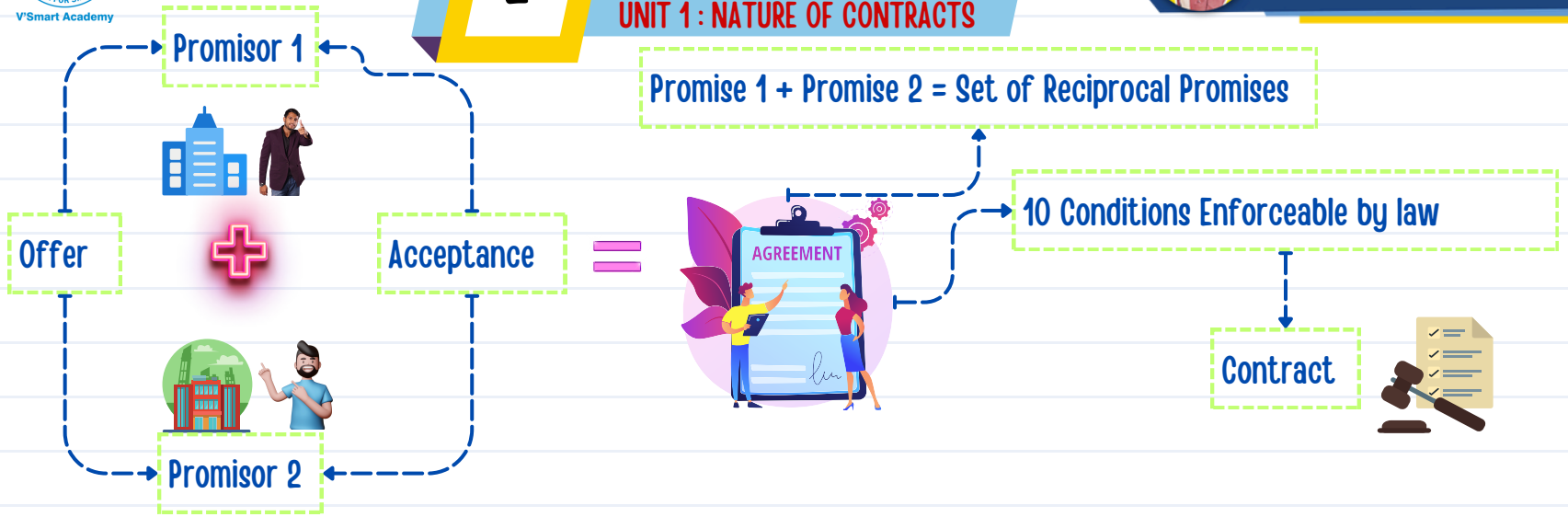
- i) High Courts > District Courts.
- ii) Courts of Districts deal with Civil law
- iii) Courts of Sessions deals with Criminal matters.
- iv) suits valuing not more than Rupees two crore.
- v) Jurisdiction means the power to control.
- vi) local limits

### Metropolitan courts



- i) metropolitan cities in consultation with the High Court
- ii) population is ten lakh or more.
- iii) Chief Metropolitan Magistrate has powers as Chief Judicial Magistrate
- iv) Metropolitan Magistrate has powers as the Court of a Magistrate
- v) Jurisdiction means the power to control.
- vi) local limits





### WHAT IS A CONTRACT? Section 2(h)

"An agreement enforceable by law".

All agreement are not contracts, but All contracts are agreements

### Two Elements of Contract

- (i) Agreement - Section 2(e) "every promise and every set of promises, forming the consideration for each other".
- (ii) Enforceability by law - Duly enforceable by law and must give rise to a legal obligation

### ESSENTIALS OF A VALID CONTRACT

As given by Section 10

1. Offer and Acceptance or an agreement
2. Free Consent- consensus ad idem
3. Capacity of the parties - major+sound mind+not idiot  
lunatic drunken or otherwise disqualified
4. Consideration- quid pro quo
5. Lawful Consideration and Object
6. Not expressly declared to be void - not illegal or void by law

Not given by Section 10

1. Two Parties [state of Gujrat vs. Ramanlal S & Co.]
2. Parties must intend to create legal obligations  
(Balfour vs. balfour)
3. Other Formalities to be complied with in certain cases
4. Certainty of meaning (A to Sell oil, but which oil?)
5. Possibility of performance of an agreement

### TYPES OF CONTRACTS

#### Validity of Contract

- 1) Valid Contract - binding and enforceable.
- 2) Void Contract - ceases to be enforceable by law
- 3) Voidable Contract - enforceable by law at the option of one or more (consent, prevention of performance, performance not within time)
- 4) Illegal Contract - law forbids, always void
- 5) Unenforceable Contract - some technical defects

#### Formation of contract

- 1) Express Contracts
- 2) Implied Contract - existence by implication (conduct of parties, course of dealings)
- 3) Tacit Contracts - Silent, falls within Implied Contract (ATM withdrawal, action sale)
- 4) Quasi-Contract - not an actual contract
- 5) E-Contracts - using electronics means

#### Performance of contract

- 1) Executed Contract - act is done or executed or forbearance is brought on record
- 2) Executory Contract - performed in future only : -
  - a) Unilateral - other party's obligation is outstanding.
  - b) Bilateral - Both party's obligation is outstanding.

Person signifies to another his willingness to do or not to do with a view to obtaining the assent said to make a proposal.

Essentials of a proposal/offer are-

1. 'promisor' or 'offeror'
2. willingness must be expressed with a view to obtain the assent
3. express his willingness 'to do' or 'not to do'
4. offer may be +ve or -ve

### Classification of offer

Special offer - specific or an ascertained person.  
[Boulton Vs. Jones]

General offer - public at large  
[Carlill Vs. Carbolic Smoke Ball Co. (1893)]

Cross offer - exchange identical offers in ignorance at the time of each other's offer  
no binding contract

Counter offer -

- modifications and variations in the terms of original offer.
- Conditional Acceptance

Standing or continuing or open offer - remain open for acceptance over a period of time

### Essential of a valid offer

1) capable of creating legal relations.

2) certain, definite and not vague.

5) communicated to the offeree. (Lalman Shuklav vs. Gauri Dutt)

3) made with a view to obtaining the assent

6) not contain a term non-compliance of which would amount to acceptance

7) may be conditional

8) specific or general.

9) express or implied

4) differ mere statement of intention, an invitation to offer

### What is invitation to offer ?

Without expressing his final willingness proposes certain terms he is willing to negotiate he does not make an offer, invites the other party to make an offer

Instances of invitation to offer to buy or sell:

- (i) A Prospectus by a company to the public to subscribe for its shares.
- (ii) Display of goods for sale in shop windows.
- (iii) Advertising auction sales and
- (iv) Quotation of prices sent in reply to a query regarding price

## ACCEPTANCE [Section 2(b)]



Offer



When the person to whom the proposal is made signifies his assent thereto, proposal is said to be accepted. The proposal, when accepted, becomes a promise.

### Legal Rules regarding a valid acceptance

1. Acceptance can be given only by the person to whom offer is made. [Boulton vs. Jones (1857)]

2. Acceptance must be absolute and unqualified. [Neale vs. Merret [1930], Union of India v. Bahulal AIR 1968]

3. The acceptance must be communicated. [Brogden vs. Metropolitan Railway Co. (1877)]

4. Acceptance must be in the prescribed mode.

5. Acceptance must be given within the specified time limit. No time is stipulated, within reasonable time

6. Mere silence is not acceptance. [Felthouse vs. Bindley (1862)]

7. Acceptance by conduct/Implied Acceptance -

- performance of the conditions or
- the acceptance of any consideration for a reciprocal promise constitutes an acceptance.

### COMMUNICATION OF OFFER AND ACCEPTANCE

#### COMMUNICATION OF OFFER

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

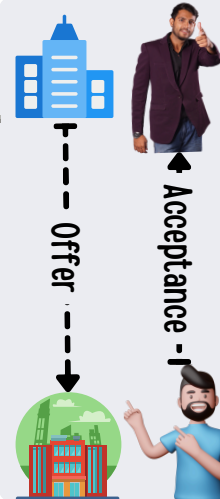
01 Dec 2024

Communication of offer  
Knowledge - Receive or read the message

06 Dec 2024

Letter Received

Offerer



Acceptor

11 Dec 2024

REVOCATION OF ACCEPTANCE

Knowledge - Receive or read the message

REVOCATION OF OFFER

08 Dec 2024

#### COMMUNICATION OF ACCEPTANCE

##### Modes of acceptance:

- 1) Communication by act: expression of words whether written or oral. include any conduct.
- 2) Communication of acceptance by 'omission' to do something: by a conduct or a forbearance.

##### When communication of acceptance is complete.

- As against the proposer, when it is put in the course of transmission
- As against the acceptor, when it comes to the knowledge of the proposer.

##### Communication of acceptance by conduct

1. delivery of goods at a price by a seller to a willing buyer
2. {Central Bank Yeotmal vs Vyankatesh (1949)}

## Revocation of proposal otherwise than by communication

### Modes of revocation of offer



Communication of revocation is complete

- as against the person who makes it when it is put in course of transmission, out of the power of the person who makes it, and
- as against the person to whom it is made, when it comes to his knowledge.

- By notice of revocation.
- By lapse of time.
- By non fulfilment of condition precedent.
- By death or insanity : when it comes to the knowledge of the acceptor.
- By counter offer.
- By the non acceptance of the offer according to the prescribed or usual mode.
- By subsequent illegality.

### COMMUNICATION OF PERFORMANCE (Section 4)

- From the viewpoint of proposer, when it would be out of the power of acceptor.
- From the viewpoint of acceptor, when it comes to the knowledge of the proposer.
- [CARLILL Vs. CARBOLIC SMOKE BALL CO]

### REVOCATION OF OFFER AND ACCEPTANCE

- a proposal can be revoked at any time before the communication of its acceptance is complete as against the proposer.
- acceptance may be revoked before the communication of acceptance is complete as against the acceptor.

### COMMUNICATION OF ACCEPTANCE

Where a proposal is accepted by a letter sent by the post

- As against the proposer, when the letter of acceptance is posted
- As against the acceptor, when the letter reaches the proposer

Acceptance over telephone or telex or fax

- complete when the acceptance is received by the offeree
- In case of a call drops and disturbances in the line, may not be a valid contract

Communication of special conditions

- Special conditions are tacitly and
  - acceptance conveyed by the offeree again tacitly
- [Mukul Datta vs. Indian Airlines [1962], Lilly White vs. Mannuswamy (1970)]



Consideration - quid pro quo, i.e. something in return.

WHAT IS A CONSIDERATION ? [Section 2(d)]

"When at the desire of the promisor, the promisee or any other person has done or abstained from doing, such an act or abstinence is called consideration."

Consideration 1

Future

Offer Teaching

Acceptance Fees

Consideration 2

Present

Promisor 2

### LEGAL RULES REGARDING CONSIDERATION

- (i) Consideration must move at the desire of the promisor - offered by the promisee or the third party at the desire or request of the promisor. [DURGA PRASED Vs. BALDEO]
- (ii) Consideration may move from promisee or any other person. [CHINNAYYA Vs. RAMAYYA]
- (iii) Executed and executory consideration.
- (iv) Consideration may be past, present or future: In event of the services being rendered in the past, subsequent promise admission that the past consideration was not gratuitous.
- (v) Consideration need not be adequate - if consent is free
- (vi) Performance of what one is legally bound to perform isn't consideration
- (vii) Consideration must be real and not illusory- value attached by law
- (viii) Consideration must not be unlawful, immoral, or opposed to public policy.

### SUIT BY A THIRD PARTY TO A CONTRACT

1. Stranger to consideration is a valid and stranger to a contract is invalid.
2. Stranger to a contract cannot sue is known as a "doctrine of privity of contract"

Indebted  
Paise Dena h

METO MELA PAITA DO  
I want my money back

Sells Property

Promises to pay to TOTLA SETH

IF she fails to Pay, TOTLA Seth cannot sue as she is Stranger to Contract

#### EXCEPTIONS

- 1) In the case of trust - Beneficiary can enforce his right
- 2) In the case of a family settlement - terms in writing members of family had not been parties may enforce the agreement.
- 3) In the case of certain marriage contracts/arrangements - suit though he is not a party to the agreement.
- 4) In the case of assignment of a contract - assignee can enforce, not involve any personal skill.
- 5) Acknowledgement or estoppel - Promisor acknowledges himself as an agent of third party

#### EXCEPTIONS

- 6) In the case of covenant running with the land.
- 7) Contracts entered into through an agent - principal can enforce, Agent acts within scope of authority and in name of principal.



## VALIDITY OF AN AGREEMENT WITHOUT CONSIDERATION

### 1) Natural Love and Affection -

#### CONDITIONS

- a) must be made out of natural love and affection
- b) near relationship
- c) in writing
- d) registered under law

### 2) Compensation for past voluntary services -

#### CONDITIONS

- (i) The services should have been rendered voluntarily.
- (ii) The services must have been rendered for the promisor.
- (iii) The promisor must be in existence at the time when services were rendered.
- (iv) The promisor must have intended to compensate the promisee.

### 3) Agency [Section 185] : No consideration is necessary to create an agency.

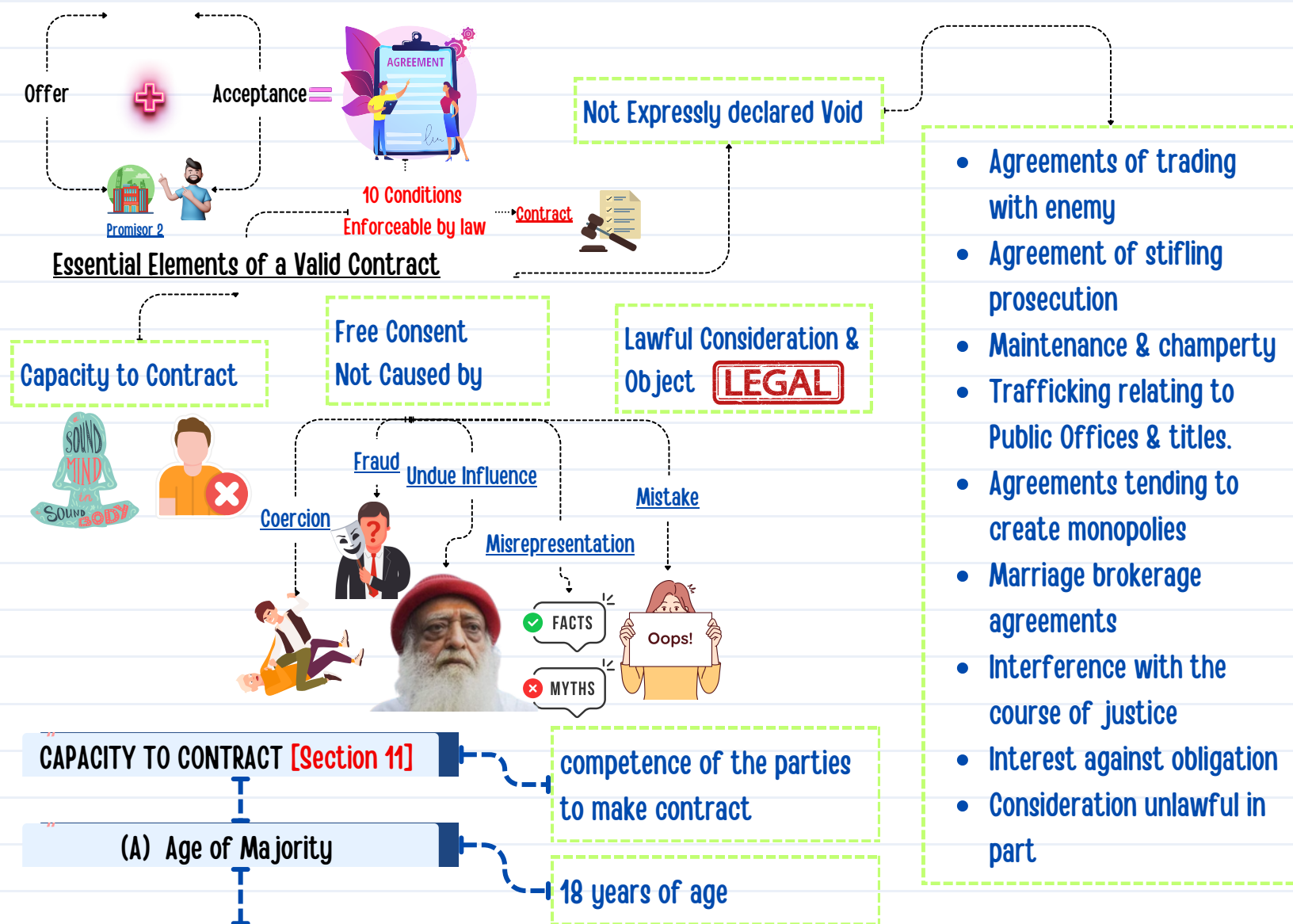
### 4) Promise to pay time barred debt : promise in writing is made to pay a debt barred by limitation.

### 5) Completed gift : gifts do not require any consideration.

### 6) Bailment : No consideration is required to affect the contract of bailment.

### 7) Charity: promise to take on liability to contribute to charity is valid consideration





### Law relating to Minor's agreement/Position of Minor :

- 1) A contract made with or by a minor is void ab-initio: **Mohori Bibi vs. Dharmo Das Ghose (1903)**
- 2) No ratification after attaining majority.
- 3) Minor can be a beneficiary or can take benefit out of a contract: **Minor with consent of all partners admitted to the benefit of partnership.**
- 4) A minor can always plead minority: **Rule of estoppel cannot be applied against a minor.**
- 5) Liability for necessities:
  - a) Not liable more than the value of the necessities, b) his property is liable.
  - c) must be for the goods reasonably necessary and minor must not have sufficient supply of these necessities
  - d) Necessaries cannot include luxuries or costly or unnecessary articles.
- 6) Contract by guardian - how far enforceable: within his competence and for the benefit of the minor.
- 7) No specific performance.
- 8) No insolvency: a) cannot be declared insolvent as he is incapable. b) Dues payable from personal properties
- 9) Partnership: cannot be a partner in a partnership firm but can be admitted to benefits of partnership.
- 10) Minor can be an agent: not be liable to his principal.
- 11) Minor cannot bind parent or guardian: not capable of binding his parent or guardian, even for necessities.
- 12) Joint contract by minor and adult: **Adult will be liable.**
- 13) Surety (Guarantor) for a minor: **Adult stands surety for minor then adult is liable to third party.**
- 14) Minor as Shareholder: **Cannot be a shareholder of the company**
- 15) Liability for torts: **A minor is liable in tort unless the tort in reality is a breach of contract.**

## (B) Person of Sound Mind [Section 12]

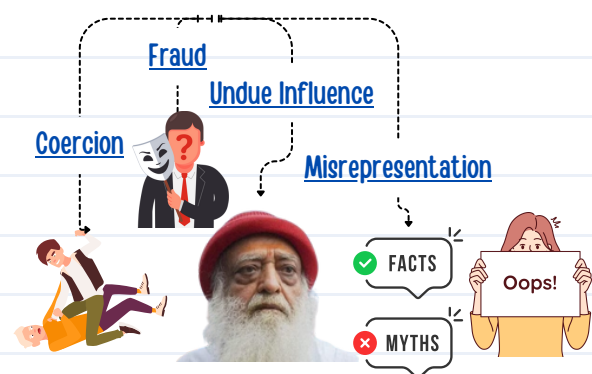
- 1) A person is said to be of sound mind purposes of making a contract if, at the time when he makes it is capable of understanding it and of forming a rational judgement.
- 2) May make a contract when he is of sound mind.
- 3) May not make a contract when he is of unsound mind.
- 4) A contract by a person who is not of sound mind is void.

## (C) Contract by disqualified persons

- 1) contracts by persons who are disqualified from contracting, partially or wholly are void.
- 2) The following persons fall in this category:
  - Foreign Sovereigns and Ambassadors,
  - Alien enemy,
  - Corporations,
  - Convicts, Insolvent etc.

## ELEMENTS VITIATING FREE CONSENT

- Definition of Consent according to **Section 13** : two or more persons are said to consent when they agree upon the same thing in the same sense.
- Definition of 'Free Consent' (Section 14) : Consent is said to be free when it is not caused by



### 1. Coercion (Section 15) :

- "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, with the intention of causing any person to enter into an agreement."
- Coercion must not proceed from a party to the contract; also, it may be directed against any third person whatever.
- Threat to commit suicide – Whether is it coercion? – a) not punishable, as a dead man cannot be punished. b) committing or threatening to commit any act forbidden by Indian Penal Code is coercion.

Effect of coercion (Section 19) : voidable at option of the party whose consent was taken person to whom money has been paid or anything delivered under coercion must repay or return it

2. Undue influence (Section 16) : Relations subsisting one of the parties to dominate the will of the other and uses that position to obtain an unfair advantage over the other".

The essential ingredients under this provision are

- (1) Relation between the parties.
- (2) Position to dominate the will.
- (3) The object must be to take undue advantage.
- (4) Burden of proof

A person is deemed to be in such position in the following circumstances:

- a) Real and apparent authority
- b) Fiduciary relationship
- c) Mental distress
- d) Unconscionable bargains

Effect of undue influence (Section 19A) : Contract voidable at the option of the party whose consent was so caused.

**3. Fraud (Section 17) :** 'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with an intent to deceive another party thereto or his agent, or to induce him to enter into the contract.

T

- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (2) the active concealment of a fact by one having knowledge or belief of the fact;
- (3) a promise made without any intention of performing it;
- (4) any other act fitted to deceive;
- (5) any such act or omission as the law specially declares to be fraudulent.

The following are the essential elements of the fraud:

- (1) There must be a representation or assertion and it must be false. However, silence may amount to fraud or an active concealment may amount to fraud.
- (2) The representation must be related to a fact.
- (3) The representation should be made before the conclusion of the contract with the intention to induce the other party to act upon it.
- (4) The representation or statement should be made with a knowledge of its falsity or without belief in its truth or recklessly not caring whether it is true or false.
- (5) The other party must have been induced to act upon the representation or assertion.
- (6) The other party must have relied upon the representation and must have been deceived.
- (7) The other party acting on the representation must have consequently suffered a loss.

**Effect of Fraud upon validity of a contract**

**Voidable + the following remedies:**

- (1) Rescind the contract within a reasonable time.
- (2) Sue for damages.
- (3) Insist on the performance > condition > put in the position in which he would have been had the representation made been true.

**Not- Voidable in the following cases :**

- (1) Consent caused by silence which amounting to fraud, had the means of discovering the truth with ordinary diligence.
- (2) A fraud which did not cause the consent of the party to agreement.

**Misrepresentation (Section 18) :**

- (1) Statement of fact, which of false, would constitute misrepresentation if the maker believes it to be true but which is not justified by the information he possesses;
- (2) breach of duty by a person without any intention to deceive
- (3) a mistake as to the subject matter.



## Mistake :

Mistake may be defined as innocent or erroneous belief which leads the party to misunderstand the others.



## LEGALITY OF OBJECT AND CONSIDERATION

Following cases the consideration or object of an agreement is said to be unlawful:

(i) When consideration or object is forbidden by law.

(v) When consideration is immoral.

(ii) When consideration or object are of such a nature that if permitted it would defeats the provisions of law.

(iii) When it is fraudulent.

(iv) When consideration or object involves injury to the person or property of another.

(vi) When consideration is opposed to public policy.

Some of the agreements which are held to be opposed to public policy are :

(1) Trading with enemy.

(3) Maintenance : An agreement in which a person promises to maintain suit in which he has no interest.

8) Interest against obligation.

(5) Agreements tending to create monopolies.

Champterty : An agreement in which a person agrees to assist another in litigation in- exchange of a promise to hand over a portion of the proceeds of the action.

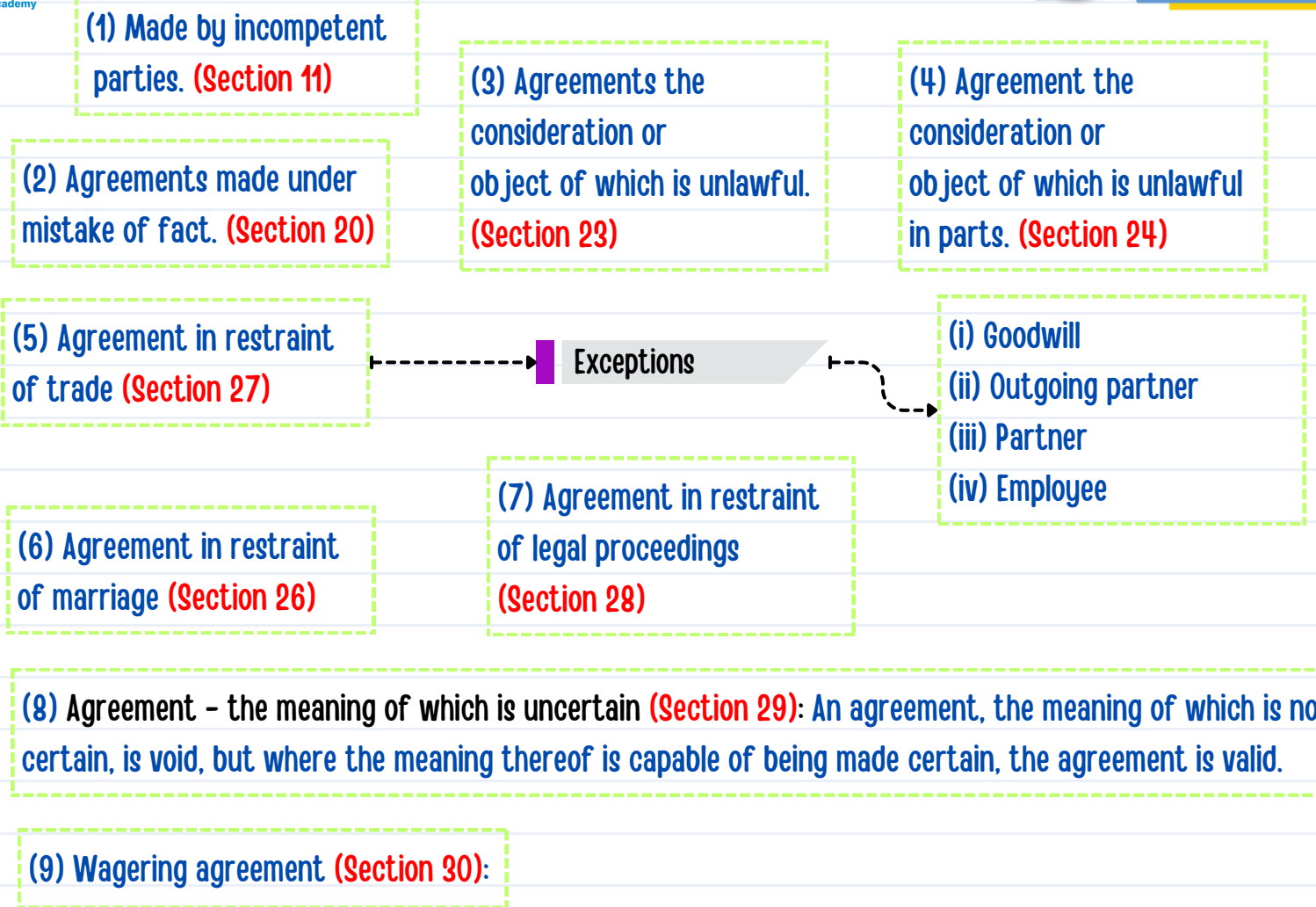
(9) Consideration Unlawful in Part: Section 24

(7) Interference with the course of justice.

(6) Marriage brokerage agreements.

(4) Trafficking relating to Public Offices and titles.

(2) Stifling Prosecution : An agreement to stifle prosecution i.e. "an agreement to present proceedings already instituted from running their normal course using force" tends to be a perversion or an abuse of justice; such an agreement is void.



### Essentials of a Wager

- (i) Promise to pay money or money's worth.
- (ii) Promise must be conditional on an event happening or not happening.
- (iii) Uncertainty of event.
- (iv) Each party must stand to win or lose.
- (v) Common intention to bet.
- (vi) No interest in the event except for stake.

### Transactions similar to Wager (Gambling) :

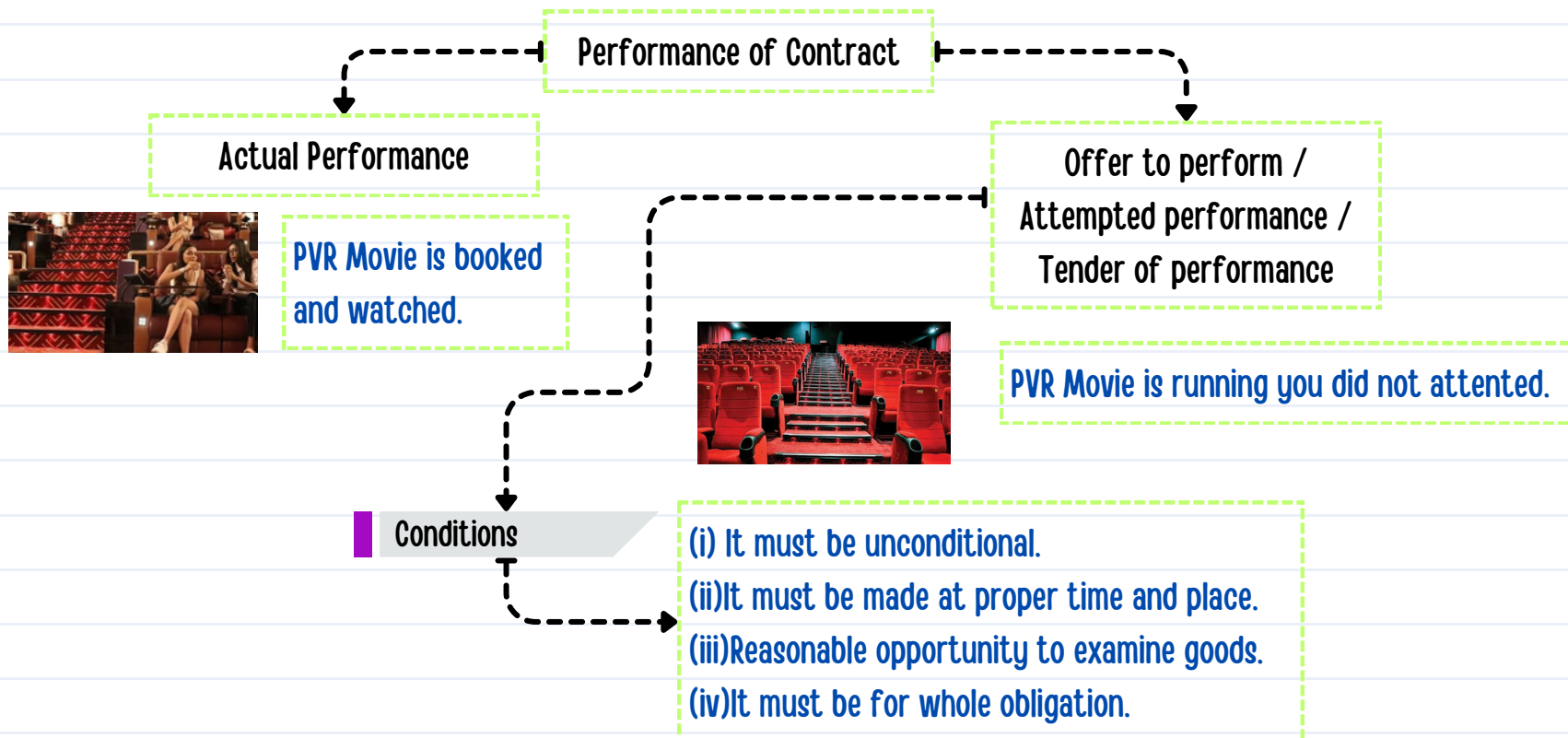
1. Lottery transactions.
2. Crossword Puzzles and Competitions.
3. Speculative transactions.
4. Horse Race Transactions

### Transactions resembling with wagering transaction but are not void :

- (i) Chit fund.
- (ii) Commercial transactions or share market transactions.
- (iii) Games of skill and Athletic Competition.
- (iv) A contract of insurance.

## CONCEPT

According to **Section 37**, the parties to a contract must either perform, or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of the Contract Act or of any other law



## BY WHOM A CONTRACT MAY BE PERFORMED (SECTION 40, 41 AND 42)

1. Promisor himself: must fulfill promises especially in case of personal skill or diligence

2. Agent: Personal consideration is not the foundation of a contract, promisor or his representative may employ a competent person.

3. Legal Representatives: A contract > personal skill or is founded on personal consideration > end on death of the promisor.

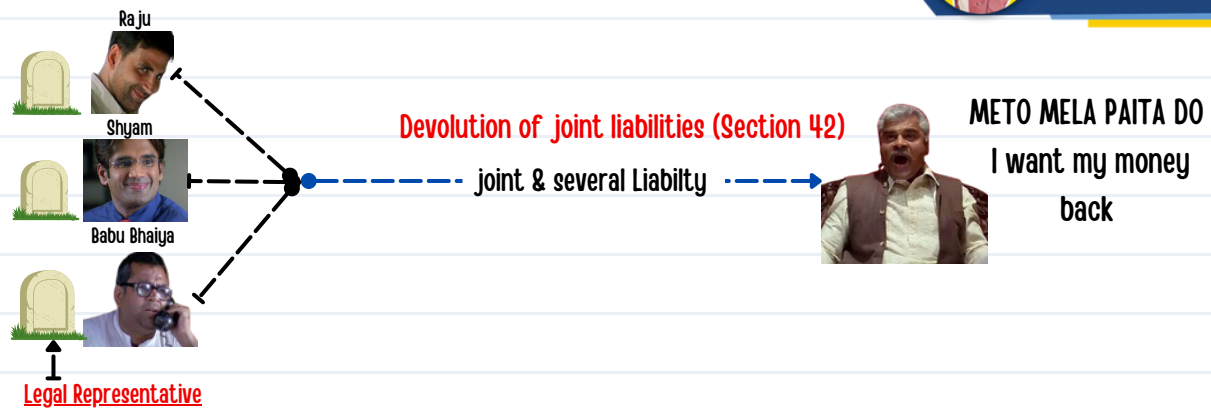
4. Third persons: Effect of accepting performance from third person (**Section 41**): When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

5. Joint promisors (**Section 42**): When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons must jointly fulfill the promise. (Details in next Page)

## SUCCESSION AND ASSIGNMENT

**Succession** : Benefits of a contract are succeeded to by process of law, then both burden and benefits attaching to the contract,

**Assignment** : Benefits of a contract can only be assigned but not the liabilities thereunder.



### Devolution of joint liabilities (Section 42) :

- (i) If two or more persons have made a joint promise, ordinarily all of them during their lifetime must jointly fulfill the promise.
- (ii) death of any one of them, his legal representative jointly with the survivor or survivors must do so and
- (iii) death of the last survivor the legal representatives of all the original co-promisors must fulfil the promise.

Any one of joint promisors may be compelled to perform (Section 43) : In the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

Sharing of loss by default in contribution - The remaining JP must bear the loss arising from such default in equal

Effect of release of one joint promisor (Section 44) : Does not discharge the other joint promisor or joint promisors, neither does it free the joint promisors so released from responsibility to the other joint promisor or promisors.

Rights of Joint Promisees (Devolution of joint rights is contained in (Section 45) : 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.

## PERFORMANCE OF RECIPROCAL PROMISE

(i) Promisor not bound to perform, unless reciprocal promisee ready and willing to perform. (Section 51)

(ii) Order of performance of reciprocal promises (Section 52) : Expressly fixed then in that order; and when not expressly fixed, in order which the nature of the transaction requires.

(iii) Liability of party preventing event on which the contract is to take effect (Section 53): If one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss.

(iv) Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises (Section 54) :

1. Section 54 applies when the promises are reciprocal and dependent.
2. If the promisor who has to perform his promise before the performance of the others promise fails to perform it, he cannot claim performance of the others promise, and is also liable for compensation for his non-performance.



(v) Effects of Failure to Perform at a Time Fixed in a Contract in which Time is Essential (Section 55) :

If fails to do any such thing at or before the specified time, then the contract becomes voidable at the option of the promisee, if the intention of the parties was that time should be of essence of the contract”.

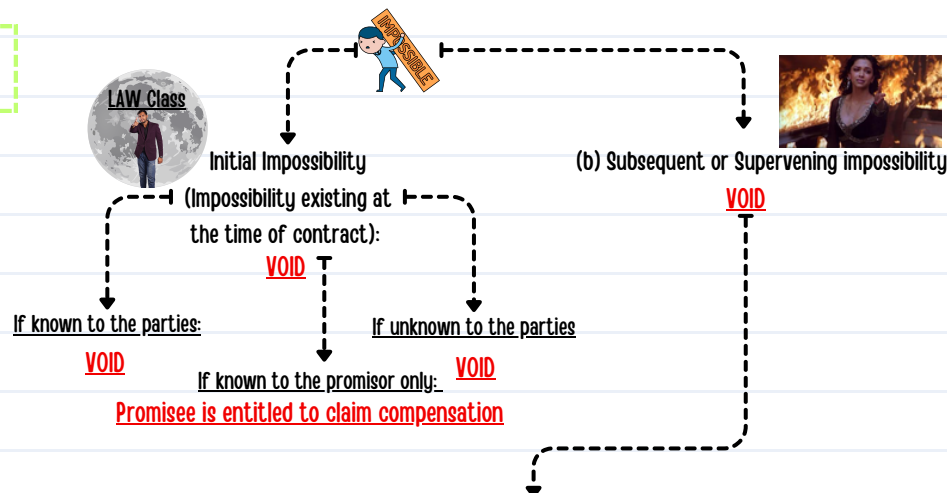
Effect of such failure when time is not essential :

The contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

(vi) Agreement to do Impossible Act (Section 56)

(vii) Reciprocal promise to do certain things that are legal, and also some other things that are illegal- (Section 57) - The first set of promises is a valid contract, but the second is a void agreement.

(viii) 'Alternative promise' one branch being illegal - Section 58 - the legal branch alone can be enforced”.



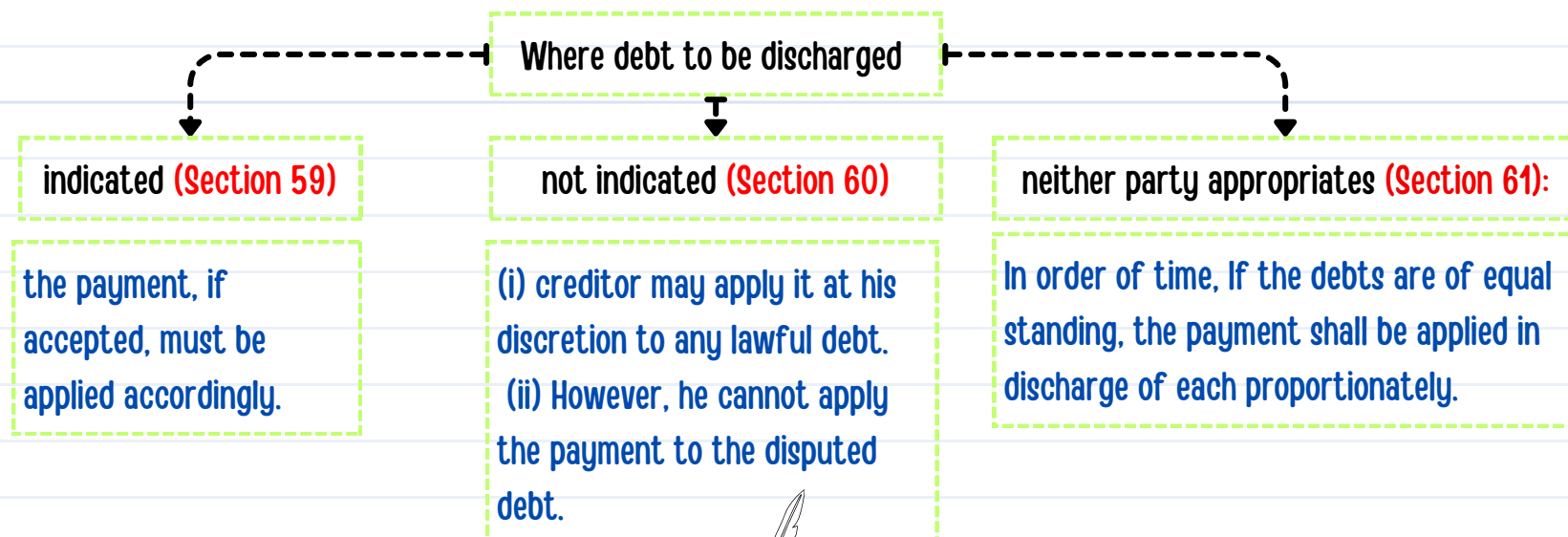
Post-Contractual Impossibility: If an unforeseen event or legal change occurs after contract formation, making performance impossible or unlawful, the contract becomes void, and both parties are discharged.

## TIME AND PLACE FOR PERFORMANCE OF THE PROMISE - Sections 46 to 50

- Sec 46: If no time is specified, the promise must be performed within a reasonable time.
- Sec 47: If a date is fixed, performance can be anytime during business hours at the specified place.
- Sec 48: If no application is needed, the promisor must perform at a proper place and usual business hours.
- Sec 49: If no place is fixed, the promisor must apply to the promisee to fix a reasonable place.
- Sec 50: Performance must follow the manner, time, or conditions prescribed by the promisee.

## APPROPRIATION OF PAYMENTS

Sometimes, a debtor owes several debts to the same creditor and makes payment, which is not sufficient to discharge all the debts - Appropriated (i.e. adjusted against the debts) as per Section 59 to 61.



## CONTRACTS, WHICH NEED NOT BE PERFORMED – WITH THE CONSENT OF BOTH THE PARTIES

### (i) Effect of novation, rescission, and alteration of contract (Section 62)

(A) Effect of novation: The old contract is discharged and consequently, it need not be performed.

(B) Effect of rescission : Only the old contract is cancelled and no new contract comes to existence.

(C) Effect of alteration of contract : Parties agree to alter it, the original contract is rescinded, with the result that it need not be performed.

### (ii) Promisee may waive or remit performance of promise (Section 63)

### (iii) Restoration of Benefit under a Voidable Contract (Section 64)

### iv) Obligations of Person who has Received Advantage under Void Agreement or contract that becomes void (Section 65)

### (v) Communication of rescission (Section 66)

### (vi) Effects of neglect of promisee to afford promisor reasonable facilities for performance (Section 67)



If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

## DISCHARGE OF A CONTRACT

(i) Discharge by performance  
– When obligations are fulfilled as per contract terms. Includes actual performance and attempted performance.

(ii) Discharge by mutual agreement: A new contract can replace or modify the existing one (Novation, Rescission, Alteration, Remission – (Sec 62).

(iv) Discharge by lapse of time: If performance becomes impossible due to law, destruction of subject matter, or unforeseen events (Sec 56).

(iii) Discharge by impossibility of performance – If not performed within the limitation period, legal remedy is lost.

(v) Discharge by operation of law – Happens due to death, insolvency, or other legal changes.

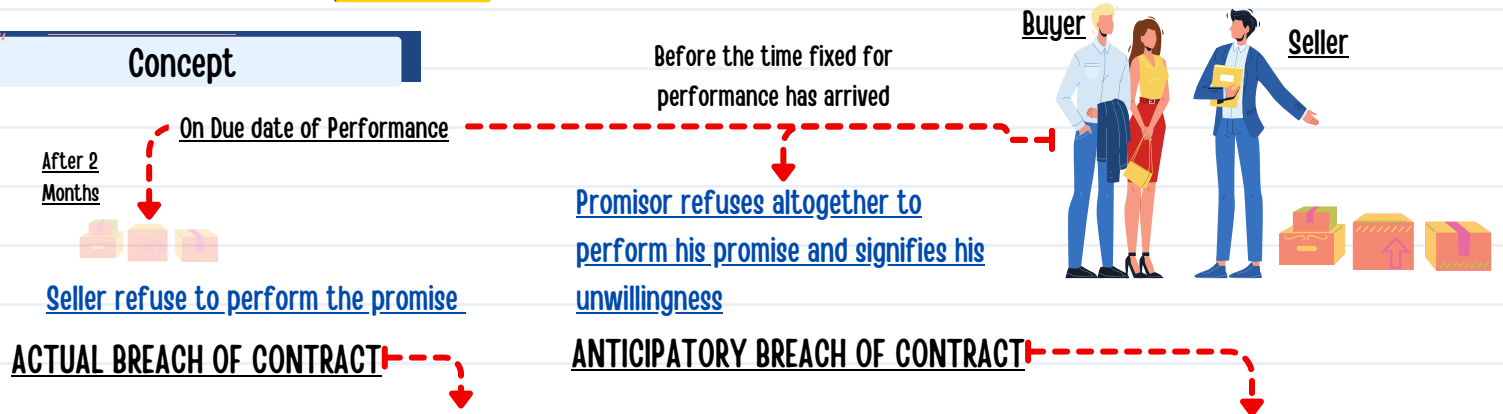
(vi) Discharge by breach of contract – If a party defaults on the due date (actual breach) or repudiates before performance is due (anticipatory breach), they lose rights and may face damages.

(vii) Promisee may waive or remit performance of promise. – A promisee can dispense with, remit, or extend performance as per (Sec 63)

(viii) Neglect of promisee to afford promisor reasonable facilities for performance – Promisor is Excused

(ix) Merger of Rights : Inferior rights and the superior rights coincide and meet in one and the same person. In such cases, the inferior rights merge into the superior rights. On merger, the inferior rights vanish and are not required to be enforced.

### Concept



- A right of action against the one who has refused to perform his promise.
- Actual breach of contract may be committed-

(A) the time when the performance of the contract is due.

(B) During the performance of the contract: One party fails or refuses to perform his obligation under it by express or implied act

May take either of the following two ways:

- (a) Expressly by words spoken or written, and
- (b) Impliedly by the conduct of one of the parties

Effect- The promisee is excused from performance or from further performance.

Further, he gets an option:

- (1) rescinded and sue the other party for damages immediately. **or**
- (2) elect not to rescind but to treat the contract as still operative and wait for the time of performance.

Contract Remains Alive: The contract stays valid for both parties' benefit, including the guilty party. Guilty Party Can Perform: If reconsidered, the guilty party may still fulfill their obligation.

### Suit for Damages

- 1) Compensation for any loss or damage which naturally arises in the usual course of events.
- 2) Compensation for any loss or damage which the party knew when they entered into the contract.
- 3) Special damage can be claimed only on a previous notice.
- 4) No compensation is payable for any remote or indirect loss.

### Nominal damages

- 1) Awarded where the plaintiff has proved that there has been a breach of contract but he has not in fact suffered any real damage.
- 2) May be a rupee or even 10 paise.

### Ordinary damages

- (i) The party who suffers by such breach is entitled to receive.
- (ii) Compensation is not to be given for any remote and indirect loss or damage. **(Hadley vs. Baxendale)**

### Special damages

Where a party to a contract receives a notice of special circumstances affecting the contract, he will be liable also for special damages.

### Vindictive or Exemplary damages

Only in two cases -

- (a) for breach of promise to marry because it causes injury to his or her feelings; and
- (b) for wrongful dishonour by a banker of his customer's cheque.

**(Gibbons v West Minister Bank)**



- 1) In the case of deterioration caused to goods by delay, damages can be recovered from carrier even without notice.
- 2) Deterioration also mean loss of special opportunity for sale.

### Pre-fixed damages

- (i) At the time of its formation that on a breach of contract by any of them, a certain amount will be payable as damage. It may amount to either liquidated damages or a penalty.
- (ii) If a sum is named in a contract as the amount to be paid in case of a breach, the aggrieved party is entitled to receive from the party at fault a reasonable compensation not exceeding the amount so named.

### PENALTY AND LIQUIDATED DAMAGES (SECTION 74)

#### Difference

- The parties to a contract may provide before hand, the amount of compensation payable in case of failure to perform the contract.
- English Law: The sum so fixed in the contract may be interpreted either as liquidated damages or as a penalty.
- Indian Law: No distinction between 'penalty' and 'liquidated damages'.
- If the parties have fixed the damages, the courts will never allow more. But the court may allow less.
- Exception: Where any person gives any bond to the CG or SG for the performance of any public duty or act in which the public are interested, on breach of the condition of any such instrument, he shall be liable to pay the whole sum mentioned therein.

- Common Point: Both are payable on breach of contract.
- Penalty: If the sum is excessively high compared to probable damage or if extra payment is imposed for delay, it is a penalty.
- Liquidated Damages: A genuine pre-estimate of damage, not intended to intimidate.
- Court's Role: Courts assess whether the amount is a penalty or liquidated damages, regardless of contract wording.
- English vs. Indian Law: English law distinguishes: Indian courts focus on actual loss and award reasonable compensation, not exceeding the fixed sum.

Besides claiming damages as a remedy for the breach of contract, the following remedies are also available

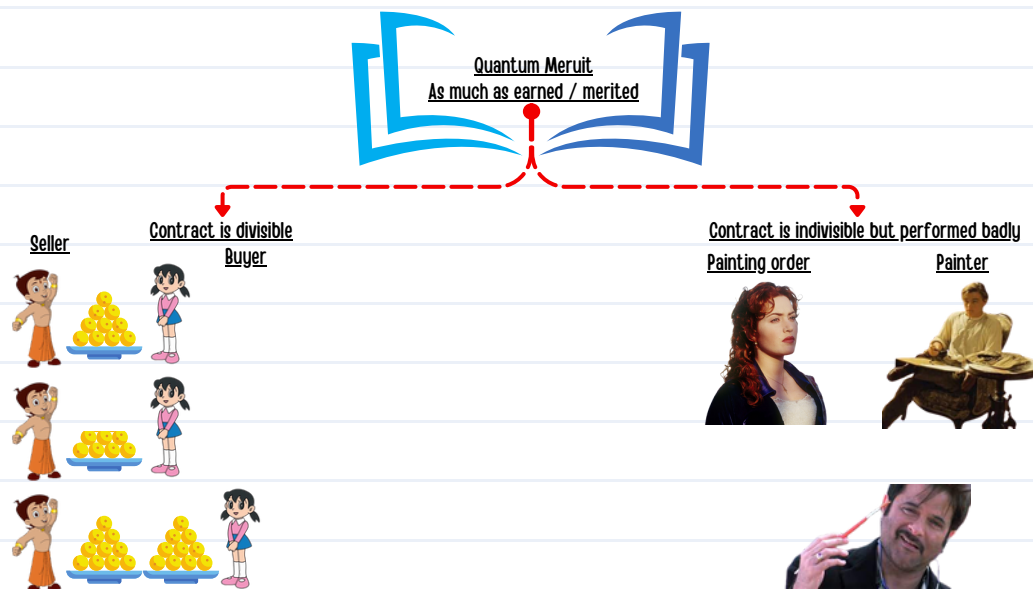
#### (i) Rescission of contract

#### (ii) Quantum Meruit - i.e. as much as the party doing the service has deserved.

- 1) Where one person has rendered service to another in circumstances that it is to be paid for although no particular remuneration has been fixed, the law will infer a promise to pay.
- 2) Party injured by the breach done part but not all of the work and seeks to be compensated.  
For this doctrine, two conditions must be fulfilled:
  - a) Only available if the original contract has been discharged.
  - b) The claim must be brought by a party not in default.

### Objective

- a) Allowing a claim on quantum meruit is to recompensate the party or person for value of work which he has done.
- b) Damages are compensatory in nature while quantum merit is restitutory.



The claim for quantum meruit arises in the following cases:

- (a) When an agreement is discovered to be void or when a contract becomes void.
- (b) When something is done without any intention to do so gratuitously.
- (c) Where is an express or implied contract to render services but there is no agreement as to remuneration.
- (d) When one party abandons or refuses to perform the contract.
- (e) Where a contract is divisible and the party not in default has enjoyed the benefit of part performance.
- (f) When an indivisible contract for a lump sum is completely performed but badly the person who has performed the contract can claim the lump sum, but the other party can make a deduction for bad work.

(iii) **Suit for specific performance** : Where damages are not an adequate remedy, the court may in its discretion on a suit for specific performance direct party in breach, to carry out his promise according to the terms of the contract.

(iv) **Suit for injunction** : Where a party to a contract is negating the terms of a contract, the court may by issuing an 'injunction orders', restrain him from doing what he promised not to do.

Party rightfully rescinding contract, entitled to compensation **(Section 75)** :

Compensation for any damage which he has sustained through non-fulfilment of the contract.

### Difference Between Contingent Contract and Wagering Contract

BASIS	Contingent contract	Wagering contract
Meaning	to do or not to do something.	promise to give money or money's worth
Reciprocal promises	may not contain reciprocal promises.	consists reciprocal promises.
Uncertain event	In a contingent contract, the event is collateral	In a wagering contract, the uncertain event is the core factor.
Nature of contract	not be wagering in nature.	essentially contingent in nature.
Interest of contracting parties	interest in the subject matter.	no interest in the subject matter.
Doctrine of mutuality of lose and gain	not based on doctrine of mutuality of lose and gain.	A wagering contract is a game, losing and gaining alone matters.
Effect of contract	Contingent contract is valid.	A wagering agreement is void.

### CONTINGENT CONTRACTS [Section 31]

“A contract to do or not to do something, if some event, collateral to such contract, does or does not happen”.

Essentials of a contingent contract

1) Performance depend upon the happening or non-happening of some event or condition.

2) Event collateral to the contract. The event should be neither performance promised nor consideration for a promise.

3) event should not be a mere 'will' of the promisor.

4) The event must be uncertain. Where the event is certain or bound to happen, the contract is due to be performed, then it is a not contingent contract

### RULES RELATING TO ENFORCEMENT

Enforcement of contracts contingent on an event happening:

1) It cannot be enforced by law unless and until that event has happened.  
 2) If the event becomes impossible, such contracts become void.

Enforcement of contracts contingent on an event 'not-happening

It can be enforced only when the happening of that event becomes impossible and not before

Contract contingent upon the future conduct of a living person

In such a case, the event shall be considered to have become impossible if such person does anything which renders it impossible

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

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

Such type of contracts become void if before the expiry of fixed time.  
Event does not happen or become impossible

Such contract can be enforced by law if before the expiry of fixed time.  
Event does not happen or become impossible

Agreement contingent on impossible event

- a) If an impossible event happens, is void.
- b) The impossibility of the event may be or may not be known to the parties to the agreement at the time when they entered into it.

### QUASI CONTRACTS (Constructive contract)

- 1) Such cases are not contract in the strict sense, but the Court enforces them as if they were contracts.
- 2) Hence the term Quasi -contracts (i.e. resembling a contract).
- 3) In India it is also called as 'certain relations resembling those created by contracts'.

#### Salient features of quasi contracts

- (i) Such a right is always a right to money and generally, though not always, to a liquidated sum of money.
- (ii) It does not arise from any agreement, but is imposed by the law; and
- (iii) It is a right which is available not against all the world, but against a particular person or persons only.

#### Quasi- Contract

- The essentials for formation of a contract are absent
- Imposed by law

#### Contract

- The essentials for formation of a contract are present the valid
- Created by the consent of the parties

#### Cases Deemed as Quasi - Contracts

##### 1. Claims for necessities supplied [Section 68]



##### 2. Payment by an interested person. [Section 69]



1) Person incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person who supplies is entitled to be reimbursed from the property of such incapable person.

2) Supplier must prove goods were supplied to a minor or a lunatic and they were suitable to his actual requirements at the time of the sale and delivery.

A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.



### 3. Obligation of a person enjoying benefit of non gratuitous act [Section 70]



1) Where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered”.

2) Plaintiff must prove:

- a) done the act or had delivered the thing lawfully;
- b) not do so gratuitously; and
- c) other person enjoyed the benefit

[Shyam Lal vs. State of U.P. A.I.R (1968) 130]

### 4. Responsibility of finder of goods [Section 71]



1) A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee’.

2) A finder of lost goods has:

- to take proper care of the property as man of ordinary prudence would take
- no right to appropriate the goods and
- to restore the goods if the owner is found.

(Hollins vs. Howler L. R. & H. L.)

### 5. Money paid by mistake or under coercion[Section 72]



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

(Shivprasad Vs Sirish Chandra)

(Sales tax officer vs. Kanhaiyalal)

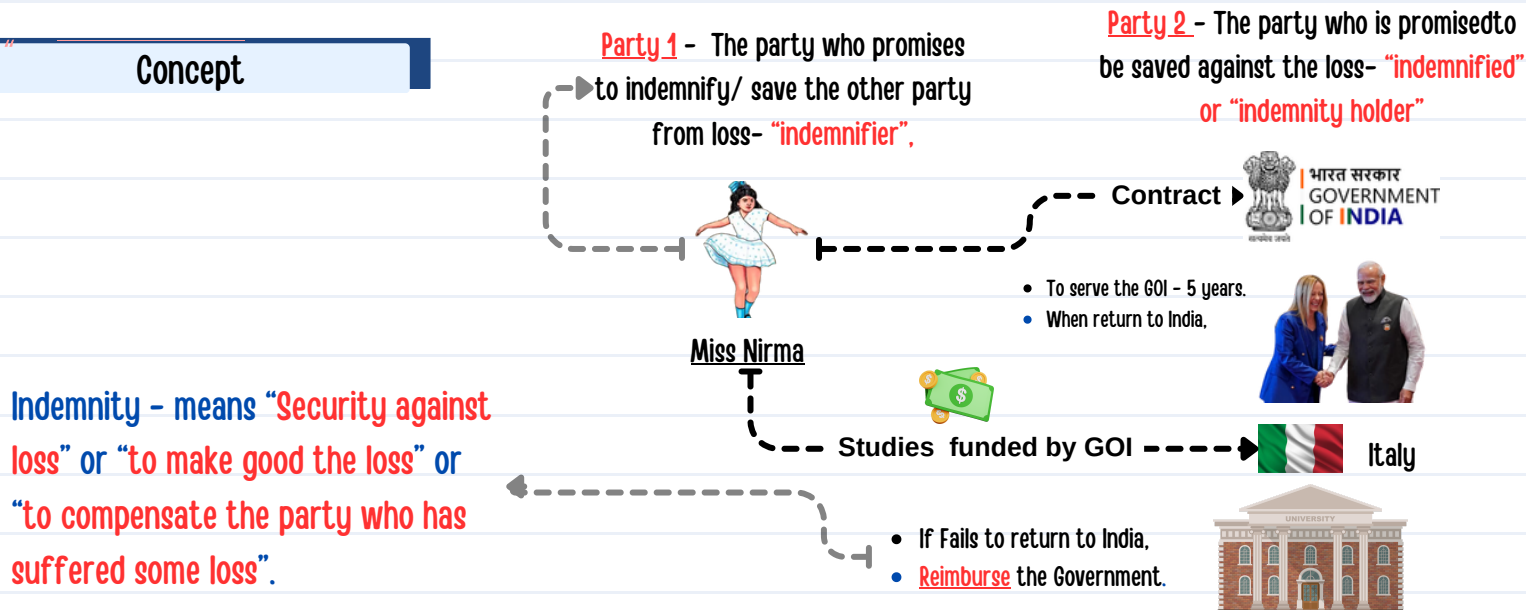
(Seth Khanjelek vs National Bank of India)

(Trikamdas vs. Bombay Municipal)





## Concept



### Rights of Indemnity-holder when sued (Section 125):

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

- all damages to pay in any suit
- all costs to pay in bringing/ defending the suit and
- all sums paid under the terms of any compromise of suit.

### But when does the liability of an indemnifier commence?

On the basis of judicial pronouncements it can be stated that the liability of an indemnifier commences as soon as the liability of the indemnity-holder becomes absolute and certain.

## CONTRACT OF INDEMNITY

It is "a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person. (Section 124)

It covers only the loss caused by:

- the conduct of the promisor himself, or
- the conduct of any other person.

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

### Mode of contract of indemnity

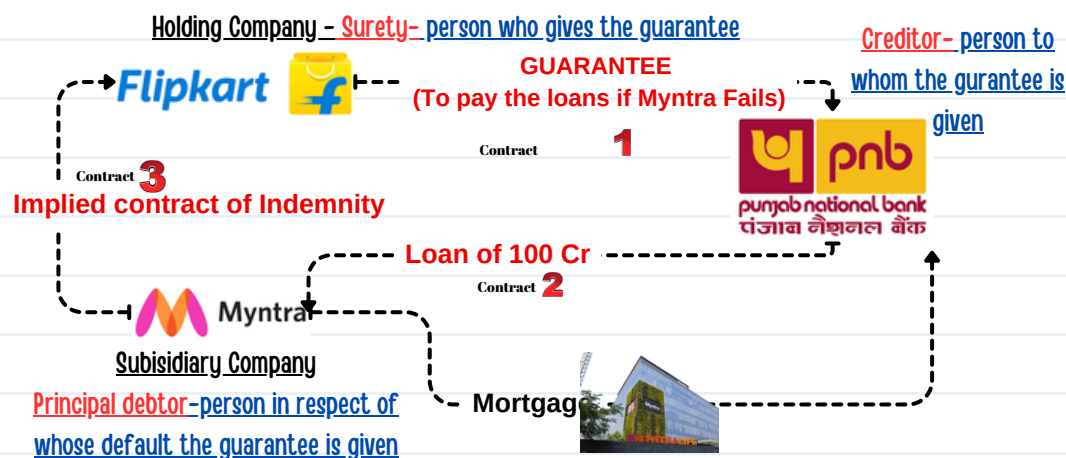
May be express or implied.

i) A contract of indemnity is said to be express when a person expressly promises to compensate the other from loss.

ii) A contract of indemnity is said to be implied when it is to be inferred from the conduct of the parties or from the circumstances of the case.

A contract of indemnity is like any other contract and must fulfil all the essentials of a valid contract.

In case of Gajanan Moreshwar v/s Moreshwar Madan (1942), decision is taken on the basis of English Law. As per English Law, Indemnity means promise to save another harmless from the loss. Here it covers every loss whether due to negligence of promisee or by natural calamity or by accident



“Contract of guarantee”, “surety”, “principal debtor” and “creditor” [Section 126] :

**Contract of guarantee:** A contract of guarantee is a contract to perform the promise made or discharge the liability, of a third person in case of his default.

A contract of guarantee is a tripartite agreement between principal debtor, creditor and surety.

There are, in effect three contracts :

- A principal contract between the principal debtor and the creditor.
- A secondary contract between the creditor and the surety.
- An implied contract between the surety and the principal debtor

### ESSENTIAL FEATURES OF A GUARANTEE

**1. Purpose (Principal debt)**  
- to secure the payment of a debt.

**3. Existence of a liability:** There must be an existing liability or a promise whose performance is guaranteed. Such liability or promise must be legally enforceable by law and not time barred.

**2. Consideration:**

- A guarantee without consideration is void.
- There is no need for a direct consideration between surety and creditor.

As per **Section 127:**

- Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration.
- Past consideration is no consideration for the COG.
- Even if debtor is incompetent to contract, the guarantee is valid. i.e., debtor can be minor.
- But, if surety is incompetent to contract, the guarantee is void.

**4. No misrepresentation by Cr or with his knowledge or concealment > Material Circumstances is invalid**

**5. Writing not necessary:** **Sec 126** expressly declares that a guarantee may be either oral or written

**6. Joining of the other co-sureties**  
**(Sec144):** Where a person gives a guarantee upon a contract that creditor shall act upon it only when another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

### TYPES OF GUARANTEES

**Specific Guarantee :**

- Extends to single debt/specific transaction
- Surety's liab. discharged when debt is paid

**Continuing Guarantee**

- Extends to a series of transaction
- Surety's liability continues until revocation of guarantee or discharge of all transactions entered into .

### DISTINCTION BETWEEN A CONTRACT OF INDEMNITY AND A CONTRACT OF GUARANTEE

Point of distinction	Contract of Indemnity	Contract of Guarantee
No. of parties to the contract	2 parties- Indemnifier [promisor] and the indemnified [promisee]	Loser has to pay the fixed amount on the happening of uncertain event.
Nature of liability	Indemnifier - primary and unconditional	Principal debtor - Primary liability Surety is secondary and conditional
Time of liability	only on happening of a contingency.	only on non- performance
Time to Act	The indemnifier need not act at the request of indemnity holder.	The surety acts at the request of principal debtor.
Right to sue third party	Indemnifier cannot sue a third party. Such a right would arise only if there is an assignment in his favour.	Surety can proceed against principal debtor in his own right
Purpose	Reimbursement of loss	For the security of the creditor
Competency to contract	All parties must be competent	Where minor is a debtor, the COG is still valid.

### NATURE AND EXTENT OF SURETY'S LIABILITY [SECTION 128]

1. The liability of the surety is co- extensive with that of PD, unless it is otherwise provided by contract.
2. "Co-extensive with that of PD" means that surety is liable for what PD is liable.
3. Liability of surety may be made less (not more) than debtor by express contract to that effect (80Cr)-  
Maximum Guarantee
4. Where a debtor cannot be held liable on account of any defect in the document, the liability of the surety also ceases.
5. A creditor may choose to proceed against a surety first, unless there is an agreement to contrary.

### LIABILITY OF TWO PERSONS, PRIMARILY LIABLE, NOT AFFECTED BY ARRANGEMENT BETWEEN THEM THAT ONE SHALL BE SURETY ON OTHER'S DEFAULT

- Where 2 persons contract with a 3rd person to undertake a certain liability (contract 1), and also contract with each other that one of them shall be liable only on default of other (contract 2),
- the third person not being a party to such contract,
- the liability of each of such two persons to the third person under the first contract (C1) is not affected by the existence of the second contract (C2),
- although such third person may have been aware of its existence.

## 1. By revocation of the Contract of Guarantee

### a) Revocation of continuing guarantee by Notice (Section 130):

- (i) Revoked by surety as to future transactions by notice to the creditors.
- (ii) Once it is revoked, the surety is not liable for any future transaction.
- (iii) He is liable for all the past transactions before the notice was given.
- (iv) A specific guarantee can be revoked only if liability to debtor has not accrued.

### (b) Revocation of continuing guarantee by surety's death

#### (Section 131):

- (i) The death of surety operates as a revocation of a continuing COG as to future transactions taking place after death.
- (ii) The surety's estate remains liable for the past transactions.

### (c) By novation [Section 62]:

## 2. By conduct of the creditor

### (a) By variance in terms of contract (Section 133):

Variance in terms of contract between PD and creditor without surety's consent, it discharges surety in respect of all transactions taking place subsequent to such variance.

### (b) By release or discharge of principal debtor

#### (Section 134):

The surety is discharged if the creditor:

- (i) enters into a fresh/ new contract with PD by which the PD is released, or
- (ii) does any act or omission, the legal consequence of which is the discharge of PD.

### (c) Discharge of surety

when creditor compounds with, gives time to, or agrees not to sue, principal debtor

[Section 135]:

Discharges the surety, unless surety assents to such contract.

i. Composition: If the creditor makes a composition with the principal debtor, without consulting the surety, the latter is discharged.

ii. Promise to give time: When time for the payment of the guaranteed debt comes, the surety has the right to require the principal debtor to pay off the debt.

iii. Promise not to sue: If the creditor under an agreement with the principal debtor promises not to sue him, the surety is discharged.

### Cases where surety not discharged :

- (i) Surety not discharged when agreement made with third person to give time to principal debtor [Section 136]
- (ii) Creditor's forbearance to sue does not discharge surety [Section 137]

### (d) Discharge of surety by creditor's act or omission impairing surety's eventual remedy [Section 139]:

If creditor does any act which is inconsistent with rights of the surety, or omits to do any act which his duty to the surety requires him to do, and eventual remedy of the surety himself against PD is thereby impaired, the surety is discharged.



### 3. By the invalidation of the contract of guarantee

(a) Guarantee obtained by misrepresentation [Section 142]:  
Misrepresentation made by creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

(b) Guarantee obtained by concealment [Section 143]:  
Keeping silence as to material circumstances is invalid.

(c) Guarantee on contract that creditor shall not act on it until co-surety joins [Section 144]:  
The guarantee is not valid if that other person does not join.

#### RIGHTS OF A SURETY

##### 1) Right against the Principal Debtor

(a) Rights of subrogation [Section 140]: On Due/ Default - The surety, upon payment or performance of all that he is liable for, is vested with all the rights which the creditor had against the PD. This right is known as right of subrogation.

##### (b) Implied promise to indemnify surety [Section 145]:

The surety is entitled to recover from PD whatever sum he has rightfully paid under the guarantee, but not sums which he paid wrongfully.

##### 2) Right against the Creditor

##### (a) Surety's right to benefit of creditor's securities [Section 141]:

A surety is entitled to the benefit of every security which creditor has against the PD and, if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

##### (c) Right to share reduction:

The surety has right to claim proportionate reduction in his liability if the principal debtor becomes insolvent.

##### (b) Right to set off:

If the creditor sues the surety, for payment of PD's liability, the surety may have the benefit of the set off, if any, that the PD had against the creditor.

##### 3) Rights against co-sureties

##### (a) Co-sureties liable to contribute equally [Section 146]:

(i) Equality of burden is the basis of Co-suretyship.

(ii) All the co-sureties are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.

##### (b) Liability of co-sureties bound in different sums [Section 147]:

The principle of equal contribution is, however, subject to the maximum limit fixed by a surety to his liability. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

## Concept

(1) **Bailor:** The person delivering the goods.



(2) **Bailee:** The person to whom the goods are delivered

As per **Section 148** of the Act, "bailment is the delivery of goods by one person to another for some purpose, upon a contract, that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them"

## Essential Elements

(a) **Contract:**

- (i) may be expressed or implied.
- (ii) No consideration is necessary to create a valid contract of bailment

(b) **Delivery of Goods: Actual or Constuctive**  
Bailment is only for movable goods. It is never for immoveable property or money.

(d) **Possession:** Possession of the goods changes

(c) **Purpose :** Goods are delivered for some purpose. The purpose may be express or implied.

(e) **Return of goods:**

- (i) Bailee is obliged to return good physically to Bailor.
- (ii) Return in the same form as given or may be altered as per bailor's direction.
- (iii) The bailee cannot deliver some other goods, even not those of higher value.

## Types of bailment

1. On the basis of benefit, bailment can be classified into three types:

a. For the exclusive benefit of bailor

b. For the exclusive benefit of bailee

c. For mutual benefit of bailor and bailee

2. On the basis of reward, bailment can be classified into two types:

a. **Gratuitous Bailment:** (free of charge)

b. **Non-Gratuitous Bailment:**

## DUTIES OF A BAILOR

Disclose known facts

Bear necessary expenses

Indemnify bailee

Bound to accept the goods

## 1. Bailor's duty to disclose faults in goods bailed [Section 150] :

### a. In case of gratuitous bailment:

- (i) Bound to disclose fault of which bailor is aware and materially interfere with use thereof or extraordinary risk.
- (ii) Non disclosure – Bailor to pay damages arising directly due to such faults

### b. In case of non- gratuitous bailment:

- If bailed for hire, bailor responsible whether or not he was aware of existence of such fault.
- (Hyman & Wife v. Nye & Sons)

## 2. Duty to pay necessary expenses [Section 158] :

- a. In case of gratuitous bailment: Bailor shall repay to bailee – Necessary expense (petrol) and extra ordinary exp. (engine repair)

- b. In case of non- gratuitous bailment: Bailor is liable to pay the necessary extraordinary expenses ONLY incurred by the bailee (E.g. Toll)

## 3. Duty to indemnify the Bailee for premature termination [Section 159] :

Bailor must compensate bailee for loss or damage suffered by bailee that is in excess of the benefit received, (in case of gratuitous bailment is terminated before expiry)

## 4. Bailor's responsibility to bailee [Section 164] :

- a. Indemnify for any loss: Bailor to indemnify any loss that bailee may sustain by reason that bailor was not entitled to make the bailment, or to receive back the goods.

### b. Bound to receive goods:

- 1. It is the duty of bailor to receive back the goods when bailee returns them after expiry of time or purpose of bailment is accomplished.
- 2. If bailor refuses – when offered at the proper time- the bailee can claim compensation for all necessary expenses incurred for safe custody.

## DUTIES OF A BAILEE

### 1. Take reasonable care of the goods (Section 151 & 152):

- a) Bailee is bound to take as much care of such goods as a man of ordinary prudence would for his own goods
- b) The bailee, in the absence of any special contract, is not responsible for loss, destruction or deterioration of the thing bailed, if he has taken reasonable amount of care of it.

### 2. Not to make inconsistent use of goods (Sec. 153 & 154):

- a) If the bailee makes any use of the goods bailed, which is not according to the T&Cs of bailment, he is liable to compensate bailor for any loss or destruction of goods.
- b) Bailment contract is voidable at option of the bailor, if bailee does not use the goods according to the T&Cs of bailment

- 3. Return an accretion from the Goods [Section 163]: In absence of any contract, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed. (E.g. Cow/Calf)

#### 4. Not to mix the goods (Section 155, 156 and 157):

- a) If Bailee, mixes the goods bailed with his own goods, with consent of bailor, both parties shall have an interest in proportion to their respective shares in the mixture thus produced.
- b) Separable – property in goods remains in the parties respectively. However, bailee is bound to bear expense of separation and damage arising from mixture (E.g., mixing colored cottons)
- c) Impossible to separate – the bailor is entitled to be compensated by the bailee for loss of the goods.(E.g., Flour)

#### 5. Return the goods (Section 160 & 161) :

- a) It is the duty of bailee to return, or deliver as per bailor's directions, the goods bailed without demand, as soon as bail period expired or purpose accomplished.
- b) Bailee responsible for damage: If, by default of the bailee, the goods are not returned, delivered or tendered at the proper time, bailee is responsible to the bailor for any loss, destruction or deterioration of the goods from that time. (E.g., school books given for binding)

6. Not to setup Adverse Title: Bailee must not setup a title adverse to that of the bailor. He must hold the goods on behalf of and for the bailor. He cannot deny the title of the bailor.

### RIGHTS OF A BAILOR

1. Right to terminate the bailment [Section 153]: A contract of bailment is voidable at the option of the bailor, if the bailee does any act inconsistent with the conditions of the bailment.

2. Right to demand back the goods [Section 159]: i) Gratuitously, the bailor can demand back the goods at any time even before the expiry of the time fixed or the achievement of the object.  
ii) Due to the premature return of the goods, if the bailee suffers any loss, which is more than the benefit actually obtained by him from the use of the goods bailed, the bailor has to compensate the bailee.

3. Right to file a suit against a wrong doer [Section 180 and section 181]

4. Right to sue the bailee: For enforcing all the liabilities and duties of him.

5. Right to compensation: If any damage is caused to the goods bailed because of the unauthorized use of the goods or unauthorized mixing of the goods, the bailor has a right to claim compensation for the same.

### RIGHTS OF A BAILEE

1. Right to Deliver the Goods to any one of the joint bailors [Section 165]:

2. Right to indemnity (Section 166): For any loss arising to him by reasons that bailor was not entitled to make bailment or to receive back goods or to give directions in respect to them.

3. Right to claim compensation in case of faulty goods (Section 150):

- i) Bailee is entitled to receive compensation for loss caused due to failure of bailor to disclose any faults in goods known to him.
- ii) If bailment is for hire, bailor will be liable to compensate even though he was not aware of the existence of such faults.



4. Right to claim necessary expenses (Section 158): In case of gratuitous bailment - bailor shall repay to bailee necessary and extraordinary exp. incurred by him for purpose of bailment.

5. Right to Apply to Court to Decide the Title to the Goods [Section 167]

6. Right of particular lien for payment of services [Section 170]

7. Right of general lien (Sec. 171)

## RIGHTS OF BAILOR AND BAILEE AGAINST ANY WRONG DOER (THIRD PARTY)

1. Suit by bailor & bailee against wrong doers [Section 180]:

If a third person wrongfully deprives the bailee of use or possession of the goods bailed, or does them any injury, bailee is entitled to use remedies as the owner might have used in the like case if no bailment had been made and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

2. Apportionment of relief or compensation obtained by such suits [Section 181]:

Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

## TERMINATION OF BAILMENT

1. On expiry of stipulated period

2. On fulfillment of the purpose

3. By Notice:

- a) Where bailee acts inconsistent with T&C of COB - Bailor can terminate such COB by giving notice to bailee
- b) Gratuitous bailment can be terminated anytime by giving notice to bailee.

4. By death: Gratuitous bailment terminates upon death of either bailor or bailee.

5. Destruction of the subject matter:

COB is terminated if subject matter of bailment is destroyed or there is a change in nature of goods which makes it impossible to be used for purpose of bailment

## FINDER OF LOST GOODS

Right of finder of lost goods- may sue for specific reward offered [Section 168]:

- i) A person who finds some goods which do not belong to him, is called the finder of the goods.
- ii) It is duty of finder of goods to find true owner and surrender goods to him.
- iii) Finder has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him in finding the owner and preserving the goods found.
- iv) But he has a right to retain the goods against owner until he receives such compensation; and,
- v) However, where the owner has offered a specific reward on the lost goods, finder may sue owner for such reward, and may retain goods until then.

When finder of thing commonly on sale may sell it [Section 169]:

However, if owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it:

- 1) when the thing is in danger of perishing or of losing the greater part of its value, or
- 2) when lawful charges of finder amount to 2/3rd of its value.

**Particular Lien:**  
In case of bailment for a specified purpose, where the bailee has, as per the purpose of the bailment, rendered any service involving exercise of labour or skill w.r.t. goods bailed, he has a right to retain such goods until he receives due remuneration for such services

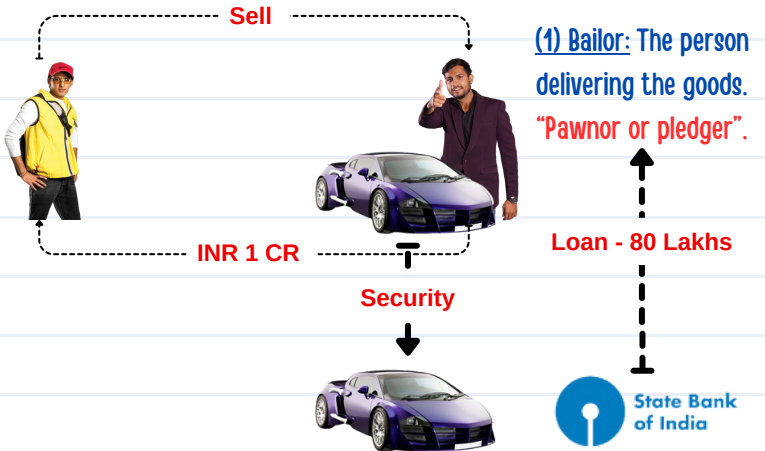
**General Lien :**  
Bankers, factors, wharfingers, attorneys of a High Court and policy brokers [FAB PW] may, in the absence of a contract to the contrary, retain, as a security for general balance of account any goods bailed to them; but no other persons have such a right to retain unless there is an express contract to the effect

General lien	Particular lien
Rights of general lien is conferred by Sec 171	Rights of particular lien conferred by Sec 170
It is the right to keep possession of goods belonging to other against general balance of account.	It implies a right to retain specific goods bailed for non-payment of amount
It is not automatic but is recognized through on agreement.	It is automatic.
It can be exercised against goods even without involvement of labor or skill.	It comes into play only when some labor or skill is involved resulting in increase in value of good
Only Bankers, factors, wharfingers, policy brokers etc. are entitled to general lien.	Bailee, finder of goods, pledgee, unpaid seller, agent, partner etc. are entitled

PLEDGE

1. Bailment of goods as security for payment of a debt or performance of a promise is called "pledge".
2. Bailor in this case is called "pawnor or pledger".
3. Bailee is called the "pawnee or pledgee".

ESSENTIALS OF CONTRACT OF PLEDGE:



There shall be a bailment for security against payment or performance of the promise,

The subject matter of pledge is goods,

Goods pledged for shall be in existence,

There shall be the delivery of goods from pledger to pledgee

RIGHTS OF A PAWNEE/ PLEDGEE:

1. Right to retain the pledged goods [Section 173] : May retain goods pledged, not only for payment or performance of promise, but for the interest (of debt) and all necessary expenses incurred by him.
2. Right to retention of subsequent debts [Section 174] : Pawnee can retain goods pledged for any debt/promise, but he can exercise this right only when there is a contract to this effect.
3. Pawnee's right to extraordinary expenses incurred [Section 175] : For preservation of pledged goods. (he doesn't have right to retain goods for this but can sue)

#### 4. Pawnee's right where pawnor makes default [Section 176]:

- a) Where pawnor makes default, the pawnee has the following rights:
- the pawnee may bring a suit against pawnor and retain the goods pledged as a collateral security; or
  - he may sell goods pledged on giving the pawnor reasonable notice of sale.
- b) If Sales proceed < Amount due – Pawnor still liable to pay balance
- c) If Sales proceed > Amount so due – pay over surplus to pawnor

#### RIGHTS OF A PAWNOR/PLEDGER:

- As the bailor of goods, pawnor has all the rights of the bailor.
- Pawnor also has right of redemption to the pledged goods

Right to redeem [Section 177] : If a time is stipulated for which the pledge is made, and pawnor makes default in payment/performance at the stipulated time, he may redeem the goods pledged at any subsequent time before actual sale of them but he must, in that case, pay, in addition, any expenses which have arisen from his default.

#### Duties of the Pawnee

- Take reasonable care of pledged goods
- Not make unauthorised use
- Not to mix with his own goods
- Return the goods when debt
- paid/promise performed
- Return accretion to the goods
- Not act inconsistent with terms

#### Duties of a Pawnor

- Liable to pay debt/perform promise
- Compensate pawnee for extraordinary exp. for preserving
- Indemnify the pawnee
- Disclose all the faults which may put pawnee at extra- ordinary risk
- If pawnee sells the pledged goods and receives shortfall, pawnor to pay the deficit.

#### PLEDGE BY NON-OWNERS

##### a. Pledge by mercantile agent [Section 178] :

- Such agent having the possession of goods/documents to title of goods with consent of owner can pledge these goods while acting in the OCOB.
- This pledge is as valid as if the owner of the goods expressly authorizes him to do so.
- Valid only when the pawnee acts in good faith and at the time of pledge is unaware of fact that such agent did not have the authority to pledge.

##### b. Pledge by person in possession under voidable contract [Section 178A] :

When pawnor has obtained the possession of goods pledged by him under contract voidable u/s 19 or 19A (not free consent), but contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

##### c. Pledge where pawnor has only a limited interest [Section 179] :

The pledge is valid only to the extent of such limited interest.

d. Pledge by a co-owner in possession:

When a co-owner in possession of the goods with the assent of all the other co-owners pledges them, it is a valid pledge.

e. Pledge by seller or buyer in possession:

A seller, in whose possession, the goods have been left after sale or a buyer who with the consent of the seller, obtains possession of the goods, before sale, can make a valid pledge, provided the pawnee acts in good faith and he has no knowledge of the defect in title of the pawnor.

DISTINCTION BETWEEN BAILMENT AND PLEDGE

Basis of Distinction	Bailment	Pledge
Meaning	Transfer of goods by one person to another for some specific purpose	Transfer of goods from one person to another as security for repayment of debt or performance of promise
Parties	2 – Bailor and Bailee	2 – Pawnor and Pawnee
Purpose	Can be made for any purpose	For securing a debt or performance of promise
Consideration	With or without consideration	Always with consideration
Right to sell the goods	Bailee has no right to sell the goods even if the charges of bailment are not paid to him. The bailee's rights are limited to suing the bailor for his dues or to exercise lien on the goods bailed	The pawnee has right to sell the goods if the pawnor fails to redeem the goods.
Right to use of goods	Use only for the purpose specified. Not otherwise.	Cannot use pledged goods





### Test of Agency

1. Whether the person has the capacity to bind the principal and make him answerable to the third party.
2. Whether he can establish privity of contract between the principal and third parties

YES

### Relationship of agency.

The Rule of Agency is based on the maxim "Qui facit per alium, facit per se" i.e., he who acts through an agent is himself acting

### APPOINTMENT AND AUTHORITY OF AGENTS

Who may employ an agent : **Section 183**, Any person who has attained majority and who is of sound mind, may employ an agent.

Who may be an agent?

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

Consideration not necessary: **According to Section 185**, no consideration is necessary to create an agency.

### CREATION OF AGENCY

1. Express Authority : When it is given by words (spoken or written).

Implied Agency includes:-

2. Implied Authority: When it is to be inferred from the circumstances of the case, conduct of the parties and things spoken or written, or in ordinary course of dealing,

a. Agency by Estoppel [**Section 237**] : Based on principle of estoppel i.e., "when a person by declaration, act or omission has intentionally caused or permitted another person to believe a thing to be true, he shall not be allowed to deny his previous statement".

**b. Agency by Necessity :** Here an agent is authorised to do certain act, and while doing such an act, an emergency arises, he acquires an extra-ordinary or special authority to prevent his principal from loss.

**3. Agency by Operation of Law:** When law treats one person as an agent of other.

**4. Rights of person as to acts done for him without his authority, Effect of ratification [Section 196] :** He may elect to ratify or to disown such acts.

#### Essentials of a valid Ratification

**a. Ratification may be expressed or Implied [Sec. 197]**

**b. Knowledge requisite for valid ratification [Sec. 198]**

**c. The whole transaction must be ratified [Sec. 199]**

**e. Ratification within reasonable time**

**d. Ratification cannot injure third person [Sec. 200]**

**f. Communication of Ratification**

#### EXTENT OF AGENT'S AUTHORITY

**(a) Agent's authority in normal circumstances [Section 188] :** An agent having an authority to carry on a business has authority to do every lawful thing, or usually done in the course, of conducting such business.

**(b) Agent's authority in an emergency [Section 189] :** Following conditions must be satisfied.

- Agent was not in position/had no opportunity to Communicate with principal within available time
- Actual and definite Commercial necessity for agent to act promptly
- Agent has Acted bonafide and for the benefit of the principal
- Agent adopted most practical and Reasonable course under such circumstances
- Agent must be in Possession of goods which are subject of contract

#### SUB-AGENTS

**"Sub-agent" defined [Section 191] :** Person employed by, and acting under the control of, the original agent in the business of the agency.

**When agent cannot delegate [Section 190] :** An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by ordinary custom of trade a sub-agent may be employed, or from the nature of the agency, a sub-agent must, be employed.

**Exception where an agent can appoint Sub-agent :**

1. Where the terms of appt. of the agent originally contemplated appt. of sub-agents
2. Custom of trade
3. Where in the course of employment, unforeseen emergency arises

**Representation of principal by sub-agent properly appointed [Section 192] :**

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

1. Principal is bound and responsible to 3rd party.
2. Agent is responsible to the principal.
3. Sub-agent responsible to agent, but not to principal, except for fraud or willful wrong.

1. Agent responsible to principal and third person
2. Principal is not responsible.
3. Sub-agent is answerable to the agent but not to the principal

Person appointed by the agent to act for the principal, with the knowledge and consent of the principal.

Relation between principal and person duly appointed by agent **[Section 194]** : Agent holding authority to name another person to act for the principal, has another person, such person is not a sub-agent, but an agent of the principal.

Agent's duty in naming such person **[Section 195]** : Agent is bound to exercise discretion as a man of ordinary prudence and, if he does this, he is not responsible to the principal.

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

S.no	Sub Agent	Substituted Agent
1.	work <b>under</b> the control and directions of <b>agent</b> .	works <b>under</b> the instructions of the <b>principal</b> .
2.	The agent <b>delegates</b> to him a part of his own duties.	The agent <b>does not delegate</b> any part of his task.
3.	There is <b>no privity</b> of contract between the principal and the sub-agent.	<b>Privity</b> of contract is established between a <b>principal</b> and a substituted <b>agent</b> .
4.	The sub-agent is <b>responsible to agent</b> alone.	Substituted agent is <b>responsible to principal</b>
5.	The <b>agent is responsible to principal</b>	The <b>agent is not responsible to principal</b>
6.	The sub-agent has <b>no right of action</b> against the principal	The substituted agent <b>can sue the principal</b>
7.	Sub-agents <b>may be improperly</b> appointed.	Substituted agents can <b>never be improperly</b> appointed.
8.	The agent remains liable for the acts of the sub-agent as long as the sub-agency continues.	The <b>agent's duty ends</b> once he has named the substituted agent.

### DUTIES AND OBLIGATIONS OF AN AGENT

(i) Duty to follow instructions or customs:  
a) Agent is bound to principal's direction  
b) Agent acts otherwise – Indemnify losses.

(ii) Duty of reasonable care and skill: (Similar business)

a) The agent is always bound to act with reasonable diligence,  
b) Agent to compensate his principal for direct consequences of his own neglect, want of skill or misconduct, but not indirectly or remotely caused

(iii) Duty to render proper accounts **[Section 213]** : Accounts supported by vouchers. (Anandprasad vs. Dwarkanath)

(iv) Agent's duty to communicate with principal **[Section 214]**

(v) Duty not to deal on his own account : If an agent deals on his own account without consent of principal, the principal may repudiate the transaction if (Fact dishonestly concealed dealings disadvantageous

(vii) Duty not to delegate : An agent cannot lawfully employ to perform acts which he perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of agency, a sub-agent, must be employed.

(viii) Agent's duty to pay sums received for principal **[Section 218]**

(vi) Duty not to make secret profits:

(i) Right of retain out of sums received on principal's account [Section 217]

(a) in respect of advances made

(b) in respect of expenses incurred

(c) such remuneration payable to him

(ii) Right to remuneration [Section 219] :

a) In absence of any agreed amount - Entitled for usual remuneration which is customary in business.

b) Agent who is guilty of misconduct is not entitled to any remuneration [Section 220].

(iv) Right to indemnity:

a. Right of indemnification for lawful acts [Section 222]

b. Right of indemnification against acts done in good faith [Section 223]

c. Non-liability of employer of agent to do a criminal act

(iii) Agent's lien on principal's property [Section 221] :

1. Agent is entitled to retain property, of the principal received by him, until the amount due to himself has been paid or accounted for him.

2. The conditions of this right are:

a. The agent lawfully entitled to receive such commission.

b. The property over which the lien is to be exercised should belong to the principal and

c. it should have been received by agent in his capacity and during the course of his ordinary duties as an agent

3. The agent's right to lien is lost in the following cases: [PWC Loses]

(a) possession of the property is lost.

(b) agent waives his right.

(c) The agent's lien is subject to a contract to the contrary.

(v) Right to compensation for injury caused by principal's neglect [Section 225]

## PRINCIPAL'S LIABILITY TO THIRD PARTIES

(i) Principal's liability for the Acts of the Agent [Section 226]

Same legal consequences, as if the contracts had been entered into

(ii) Principal's liability when agent exceeds authority [Section 227] : What agent does as is within his authority is binding as between him and his principal.

Exception: Liability of principal inducing belief that agent's unauthorized acts were authorized [Section 237]:

Principal not bound when excess of agent's authority is not separable [Section 228]

an agent without authority incurred obligations to third persons, the principal is bound, if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

(iii) Consequences of notice given to agent [Section 229] : Same legal consequence obtained by principal.

(iv) Principal's liability for the agent's fraud, misrepresentation or torts [Section 238] :

Misrepresentations or frauds which do not fall within agent's authority, do not affect their principals.



Agent cannot personally enforce, nor be bound by, contracts on behalf of principal **[Section 230]** :  
He can neither sue nor be sued on contracts made by him on his principal's behalf.

## EXCEPTIONS

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

1. Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad/foreign principal:

2. Where the agent does not disclose the name of his principal or undisclosed principal: (Principal unnamed):

When the principal is undisclosed, the liability is of the agent only, and the principal cannot be sued in such a case.

3. Non-existent or incompetent principal

4. Pretended agent: If agent pretends but is not an actual agent, and the principal does not ratify the act but disowns it, the pretended agent will be himself liable **(Sec 235)**.

5. When agent exceeds authority

## RIGHTS OF THIRD PARTIES

ii. Performance of contract with agent supposed to be principal  
**[Section 232]**: can only obtain such performance

i. Rights of parties to a contract made by undisclosed agent **[Section 231]** :  
contracting party has, as against the principal, the same right as he would have had as against the agent if the agent had been the principal.  
If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract.

iii. Option to Third Person-sue the Agent or the Principal:

a. Right of person dealing with agent personally liable **[Section 233]** :

A person dealing with agent may hold either agent or principal or both of them, liable.

b. Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable **[Section 234]** :

he cannot afterwards hold liable the agent or principal respectively.

## REVOCATION OF AUTHORITY

a. Revocation : Terminated by the principal revoking the authority of the agent **[Sec 203]**.

Principal cannot revoke the authority w.r.t. acts after authority has been partly exercised for such acts. **[Sec 204]**

Compensation for revocation by principal **[Section 205]** :

If there is premature revocation of agency without sufficient cause the principal must compensate the agent  
Compensation is NOT mandatory in case where it is justified with sufficient cause.

Notice of revocation **[Section 206]** : Principal must give reasonable notice of such revocation to the agent, otherwise, he can be liable to pay compensation for any damage caused to the agent.

Revocation and renunciation may be expressed or implied [Section 207]

b. Renunciation by agent [Section 206] : A reasonable notice of renunciation is necessary. Length of notice is to be determined by the same principles which apply to revocation by the principal. If the agent renounces without proper notice, he shall have to make good any damage thereby resulting to the principal.

c. Completion of business : Agency is automatically and by operation of law terminated when business is completed.

d. Death or insanity : Agency is terminated automatically on the death or insanity of the principal or the agent. Winding up of a company or dissolution of partnership has the same effect. Act done by agent before death would remain binding.

e. Principal's insolvency

f. On expiry of time.

When the agency is irrevocable?

When the agent is personally interested in the subject matter of agency the agency becomes irrevocable.

(Note – In such cases, even death or insanity doesn't lead to termination of agency contract)

Effects of Termination [Section 208]

When termination of agent's authority takes effect as to agent, and as to third persons [Section 208] :

The termination of the authority of an agent does not, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

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

The agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

Termination of sub-agent's authority [Section 210] : The termination of the authority of an agent causes the termination of the authority of all sub-agents appointed by him.

## Concept

**Goods** means every kind of movable property

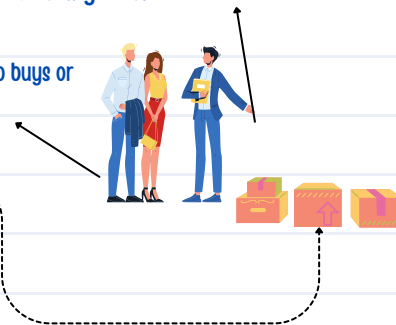
**Excludes** - Actionable claims, Money in circulation

**Includes** - Stock & Shares, Growing crops, Grass, and Things attached to or forming part of land which agreed to be severed

"Goods" include both tangible goods and intangible goods like goodwill, copyrights, patents, trademarks etc. & **FDR's**

Seller means a person who sells or agrees to sell goods.

Buyer means a person who buys or agrees to buy goods.



## Classification of Goods

**1. EXISTING GOODS [Sec 6]** : Goods which are in existence at the time of the contract of sale.

a) **SPECIFIC GOODS [Sec 2(14)]** : Goods identified and agreed upon at the time a contract of sale is made.

b) **ACERTAINED GOODS** : Goods identified in accordance with agreement after the contract of sale is made.

c) **UNASCERTAINED GOODS** : Goods not specifically identified or ascertained at the time of making of the contract.

**2. FUTURE GOODS [Sec 2(6)]** : Goods to be manufactured or produced or acquired by the seller after making the contract of sale.

**3. CONTIGENT GOODS [Sec 6(2)]** : the acquisition of which by the seller depends upon an uncertain contingency. The property does not pass to the buyer at the time of making the contract.

## DELIVERY - ITS FORMS AND DERIVATIVES

**Delivery** means voluntary transfer of possession from one person to another.

### FORMS OF DELIVERY:

(i) **ACTUAL DELIVERY** : When the goods are physically delivered to the buyer.

(ii) **CONSTRUCTIVE DELIVERY** : When it is effected without any change in the custody or actual possession of the thing.(acknowledgement).

(iii) **SYMBOLIC DELIVERY** : Delivery of goods in the course of transit may be made by handing over document of title to goods, like bill of lading.

Goods are said to be in a deliverable state when they are in such a condition that the buyer would, under the contract, be bound to take delivery of them **[Section 2(3)]**.

**DOCUMENT OF TITLE TO GOODS** : Document used in the ordinary course of business, for ex dock warrant, bill of lading, wharfingers certificate etc

**PROPERTY** - Ownership

**PRICE** - money consideration

**INSOLVENT**: When he ceases to pay his debt or cannot pay his debt as they become due.



### CONTRACT OF SALE OF GOODS [Section 4(1)] :

“A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price”.

There may be a contract of sale between one part-owner and another.

A contract of sale may be absolute or conditional. [Section 4(2)]

**AGREEMENT TO SALE :** The ownership of the goods is not transferred immediately. It is intending to transfer at a future date upon the completion of certain conditions thereon.

**SALE :** The property in goods is transferred from seller to the buyer immediately.

An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Following elements must co-exist so as to constitute a contract of sale of goods :

1. at least two parties, the seller and the buyer

2. Absolute or conditional.

5. All the essential elements of a valid contract.

3. Subject matter of the contract must necessarily be goods (movable property)

4. A transfer of property in goods must take place.

6. A price in money (not in kind) should be paid or promised. Can be partly cash and kind.

### DISTINCTION BETWEEN SALE AND AN AGREEMENT TO SELL (Refer Main Module)

#### SALE DISTINGUISHED FROM OTHER SIMILAR CONTRACTS

##### A. HIRE PURCHASE

Agreement under which goods are let on hire and under which the hirer has an option to purchase and includes an agreement under which:

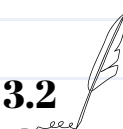
1. Possession of goods is delivered on condition that such person pays the agreed amount in periodical instalments, and
2. The property in the goods is to pass on the payment of the last of installments, and
3. Such person has a right to terminate the agreement at any time before the property so passes.

##### B. BAILMENT

A 'bailment' is the delivery of goods for some specific purpose under a contract on the condition that the same goods are to be returned to the bailor or are to be disposed off according to the directions of the bailor

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

Where no goods are sold, and there is only the doing or rendering of some work of labour, then the contract is only of work and labour and not of sale of goods.





## CONTRACT OF SALE HOW MADE: (Sec 5)

The contract of sale may be made in any of the following modes:

1. offer to buy or sell goods for a price and acceptance of offer.
2. immediately delivery
3. immediately payment of price, the delivery at future date, or
4. immediate delivery and immediate payment.
5. delivery or payment or both are to be made in instalments,
6. delivery or payment or both are to be made at some future date.

## CONTRACT OF SALE HOW MUBJECT MATTER OF CONTRACT OF SALE: (Sec 6)

Existing or future goods (section 6): (1) Goods form the subject matter may be either existing goods.

(2) Acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Seller purports to effect a present sale of future goods, such contract operates as an agreement to sell

Goods perishing before making of contract (Section 7) : Sale of specific goods, the contract is void when the goods are perished & becomes so damaged that they no longer match the description.

Goods perishing before sale but after agreement to sell (Section 8) : Agreement is avoided or becomes void.

Perishing of future goods : If the future goods are specific it will lead to supervening Impossibility , thus contract shall become void.

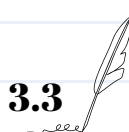
## ASCERTAINMENT OF PRICE (SECTION 9 & 10)

Section 9, the price in the contract of sale may be-  
fixed > contract, or  
agreed to be fixed in a  
manner > contract, or  
Determined by the course  
of dealings between the  
parties.

Agreement to sell at valuation (Section 10)

Determination of price by a third party:

1. he either does not or cannot make such valuation, the agreement will be void.
2. In case the third party is prevented by the default of either party from fixing the price, the party at fault will be liable
3. However, a buyer who has received and appropriated the goods must pay a reasonable price for them in any eventuality.





Concept

What is Stipulation?

Statements  
Representations

to induce the buyer to  
purchase the goods

Seller

Buyer



Stipulation as to time of Payment and time of delivery [Section 11]

Stipulation as to time of payment



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

Stipulation as to time of delivery



Delivery must be made without delay

CONDITIONS AND WARRANTIES (Sec 12)

POINT OF DIFFERENCES	CONDITION	WARRANTY
MEANING	A condition is <b>essential to the main purpose</b> of the contract	It is only <b>collateral</b> to the main purpose of the contract.
RIGHT IN CASE OF BREACH	The aggrieved party can <b>repudiate the contract or claim damages or both</b> in the case of breach of condition	The aggrieved party can claim <b>only damages</b> in case of breach of warranty.
CONVERSION OF STIPULATIONS	A breach of condition <b>may be treated as a breach of warranty.</b>	A breach of warranty <b>cannot</b> be treated as a breach of condition.

WHEN CONDITION IS TO BE TREATED AS WARRANTY (SECTION 13)

The buyer loses his right to rescind the contract and can claim damages only.

Voluntary Waiver



- i) Buyer altogether waives the performance of the condition. For his own benefit.
- ii) Elect to treat condition as warranty. He may claim only damages.

Compulsory Waiver

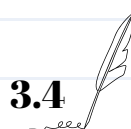


- i) Where the contract is non-severable and the buyer has accepted either the whole goods or any part.
- ii) Fulfilment of conditions excused by law

EXPRESS AND IMPLIED CONDITIONS AND WARRANTIES (SECTION 14-17)

Express Conditions : **Agreed and expressly provided in the contract.**

Implied Conditions : **Presumed by law and may be negated or waived by an express agreement.**



## Implied Conditions

### 1. Condition as to title [Section 14 (a)]

The first implied condition on the part of the seller

- (a) Sale -right to sell the goods, and
- (b) Agreement to sell - right to sell at the time when the property is pass.

### 2. Sale by description [Section 15]

- 1. There is an implied condition that the goods shall correspond with the description.
- 2. This rule is based on the principle that "if you contract to sell peas, you cannot compel the buyer to take beans."
- 3. The buyer is not bound to accept and pay for the goods.
- 4. If goods tendered do not correspond with the description, it would be breach of condition entitling the buyer to reject the goods.

### 3. Sale by sample [Section 17]

- 1. The bulk shall correspond with the sample in quality
- 2. The buyer shall have a reasonable opportunity of comparing the bulk with the sample
- 3. The goods shall be free from any latent defect which would not be apparent on reasonable examination of the sample. If the defects are latent, then the buyer can avoid the contract.

### 4. Sale by sample as well as by description [Section 15]

- 1. The goods supplied shall correspond both with the sample and the description.
- 2. In case the goods correspond with the sample but do not tally with description or vice versa or both, the buyer can repudiate the contract.

### 5. Condition as to quality or fitness [Section 16(1)]

- 1. Buyer should have made known to seller, particular purpose for which goods are required.
- 2. Buyer should rely on the skill and judgement of the seller.
- 3. The goods must be of a description dealt in by the seller.

### 6. Condition as to Merchantability [Section 16(2)]

- 1. The goods shall be of merchantable quality.
- 2. There are two requirements for this condition to apply:
  - (a) Goods should be bought by description.
  - (b) The seller should be a dealer in goods of that description.
- 3. If the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

### 7. Condition as to wholesomeness

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



## Implied Warranties

1. Warranty as to undisturbed possession

[Section 14(b)]

---

(a) The buyer shall have and enjoy quiet possession of the goods.  
(b) If the buyer got possession of the goods, is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.

2. Warranty as to non-existence of encumbrances

[Section 14(c)]

---

The goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.

3. Warranty as to quality or fitness by usage of trade

[Section 16(3)]

---

(a) An implied warranty as to quality or fitness for a particular purpose may be annexed or attached by the usage of trade.  
(b) Regarding implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied, the rule is 'let the buyer beware'

4. Disclosure of dangerous nature of goods:

---

(a) Where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger.  
(b) If there is a breach of warranty, the seller may be liable in damages.

## CAVEAT EMPTOR (SECTION 16)

1. Caveat Emptor 'means 'let the buyer beware'

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

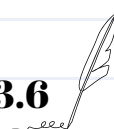
### Conditions

- (a) If the buyer had made known to the seller the purpose of his purchase, and
- (b) The buyer relied on the seller's skill and judgement, and
- (c) Seller's business to supply goods of that description.

Case Law : Priest vs. Last

### EXCEPTIONS

- i) Fitness as to quality or use
- ii) Goods purchased under patent or brand name
- iii) Goods sold by description
- iv) Goods of Merchantable Quality
- v) Sale by sample
- vi) Goods by sample as well as description
- vii) Trade usage
- viii) Seller actively conceals a defect or is guilty of fraud





## Concept

A contract of sale of goods involves transfer of ownership in three stages:



## PASSING OF PROPERTY (SECTIONS 18 – 26)

The rules regarding transfer of property :

- (a) Identification of Goods (Sec 18) : The buyer can get the ownership right on the goods only when the goods are specific and ascertained.
- (b) Intentions of parties [Sec 19(1)] : The property in goods is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

A. Property (Specific or ascertained goods) passes when intended to pass (Section 19):

1. The property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.
2. Ascertaining the intention of the parties, shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

## STAGES OF GOODS WHILE PASSING OF PROPERTY:

### 1. SPECIFIC GOODS IN A DELIVERABLE STATE (Section 20)

The property in the goods passes to the buyer when the contract is made, immaterial of payment.

### 2. SPECIFIC GOODS TO BE PUT INTO A DELIVERABLE STATE (Section 21)

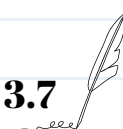
Where seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

### SPECIFIC GOODS IN A DELIVERABLE STATE, WHEN THE SELLER HAS TO DO ANYTHING THERETO IN ORDER TO ASCERTAIN PRICE (Section 22) :

The seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such thing is done and the buyer has notice thereof.

## B. Unascertained goods

No property in the goods is transferred to the buyer unless and until the goods are ascertained. [Section 18]



## 1. Sale of unascertained goods by description and Appropriation

[Section 23 (1)] :

### ESSENTIALS

(a) Contract for the sale of unascertained or future goods.

(b) The goods should conform to the description and quality stated in the contract.

(f) The assent may be express or implied.

(c) The goods must be in a deliverable state.

(d) The goods must be unconditionally appropriated (with no reserve right to disposal)

(g) The assent may be given either before or after appropriation.

(e) The appropriation must be made by: (i) the seller with the assent of the buyer; or (ii) the buyer with the assent of the seller.

D. Reservation of right of disposal (Section 25) - There is a contract for sale of specific goods or where goods are subsequently appropriated to contract, seller may by terms of contract or appropriation, reserve the right of disposal of goods until certain conditions are fulfilled (Example - No Payment no Delivery)

## 2. Delivery of the goods to the carrier [Section 23(2)] :

Seller delivers the goods to buyer or to a carrier or other bailee for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

### C. Goods sent on approval or "on sale or return" (Section 24)

The property passes to the buyer :

(b) retains goods without giving notice of rejection

(a) when he signifies his approval or acceptance

(c) does something to the good which is equivalent to acceptance

Sale for cash only or Return - Sale or return on the terms that the goods were to remain the property of the seller till they are paid for.

### RISK PRIMA FACIE PASSES WITH PROPERTY (SECTION 26)

The goods remain at the seller's risk until property therein has passed to the buyer. After that event they are at the buyer's risk, whether delivery has been made or not.

This rule is, however, subject to two qualifications:

i) Delivery > delayed by the fault of the seller or buyer

Risk of the party in default, as regards loss which might not have arisen but for the default.

(ii) Duties and liabilities of the seller or the buyer as bailee of goods for the other party remain unaffected even when the risk has passed generally.

## Sale by person not the owner (Section 27)

Where goods are sold by a person who is not the owner and who does not have authority or with the consent of owner, buyer does not acquire a good title.

### EXCEPTIONS

#### 1. Sale by a Mercantile Agent

(a) Possession with the consent of the owner

b) Sale > ordinary course of business as a mercantile agent

(c) Buyer acted in good faith and, no notice of the fact that the seller had no authority to sell.

#### 2. Sale by one of the joint owners (Section 28)

Buyer acted in good faith and has not notice that seller has no authority to sell.

#### 3. Sale by a person in possession under voidable contract (Section 29)

A buyer would acquire a good title to the goods and contract is not terminated until the time of sale.

#### 4. Sale by one who has already sold the goods but continues in possession [Section 30(1)]

Buyer acted in good faith and without notice of the previous sale, he would have good title to them.

#### 5. Sale by buyer obtaining possession before the property in the goods has vested in him [Section 30(2)]

Third person obtains the delivery of the goods in good faith and without notice of the lien or right of the original seller in respect of the goods, he would get a good title to them. (Lee Vs Butler)

Exception – Hire Purchase unless sale is made

#### 6. Effect of Estoppel

Where the owner is estopped by the conduct from denying the seller's authority to sell, the transferee will get a good title as against the true owner.

#### 7. Sale by an unpaid seller

Unpaid seller resells good title to goods as against the original buyer. [Section 54 (3)]

#### 8. Sale under the provision of other act

- i) Sale by an Official Receiver or Liquidator
- ii) Purchase of goods from a finder of goods.
- iii) A sale by pawnee

## PERFORMANCE OF THE CONTRACT OF SALE (SECTIONS 31 – 44)

**Sec 31** : The performance of a contract of sale implies delivery of goods by the seller and acceptance of the delivery of goods and payment of price for them by the buyer in accordance of the terms of the contract.

Payment and delivery are concurrent conditions (Section 32) : Both things to be done at the same time.

### Important points on Delivery :

- a) Delivery means voluntary transfer of possession from one person to another [Sec 2(2)].
- b) For delivery, physical possession is not important.
- c) Buyer should be in position so he can exercise his right over goods.

### Rules Regarding Delivery of goods (Section 33-41)

- a) DELIVERY: Putting the goods in possession of buyer.[Sec 33]
- b) EFFECT OF PART DELIVERY : Has the same effect as delivery of the whole. [Sec 34]  
Except - intention of severing it from the whole
- (i) BUYER TO APPLY FOR DELIVERY: Seller is not bound to deliver them until the buyer applies. [Sec 35]
- (ii) PLACE OF DELIVERY: [Sec 36(1)]
  - 1. Sale - Place at which they are at the time of sale,
  - 2. Agreed to be sold - Place at which they are at the time of the agreement to sell
  - 3. Not then in existence - Place at which they are manufactured or produced.

- c) TIME OF DELIVERY : If no time fixed then at reasonable time. [Sec 36 (2)]
- d) GOOD IN POSSESSION OF A THIRD PARTY : No delivery until such third person acknowledge to buyer that he holds the goods on his behalf [Sec 36(3)]
- e) TIME FOR TENDER OF DELIVERY : Should be at reasonable hour. [Sec 36 (4)]
- f) EXPENSES OF DELIVERY: Borne by the seller unless contrary to the contract [Sec 36(5)]

- g) DELIVERY OF WRONG QUANTITY [SEC 37] : i) Less quantity - Buyer may reject them or accepts, he shall pay for them [Sub Sec 1]. ii) More quantity - Buyer may accept as contracted and reject extra, he may reject whole accept whole and pay from whole.[Sub Sec 2]. iii) Mix goods - Buyer may accept which are in accordance of contract and reject balance or whole (sub 3)

- h) INSTALLMENT DELIVERIES : Buyer is not bound to accept the delivery in instalments. [Section 38]
- i) DELIVERY TO CARRIER : Is prima facie deemed to be delivered to buyer. [Section 39(1)]
- j) DETERIORATION DURING TRANSIT: Liability will fall on buyer. [Section 40]
- k) BUYER'S RIGHT TO EXAMINE THE GOODS: the seller is bound to buyer a reasonable opportunity of examining goods.

Rule related to  
Acceptance of Delivery  
of Goods (Section 42)

Acceptance is deemed to take place when the buyer-

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

Buyer not bound to return  
rejected goods (Section 43)

He is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

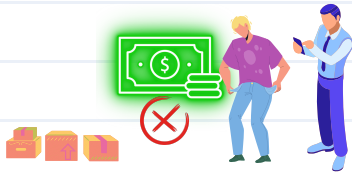
Liability of buyer for  
neglecting or refusing  
delivery of goods (Section 44)

Liable to the seller for any loss occasioned and also for a reasonable charge for the care and custody of the goods.





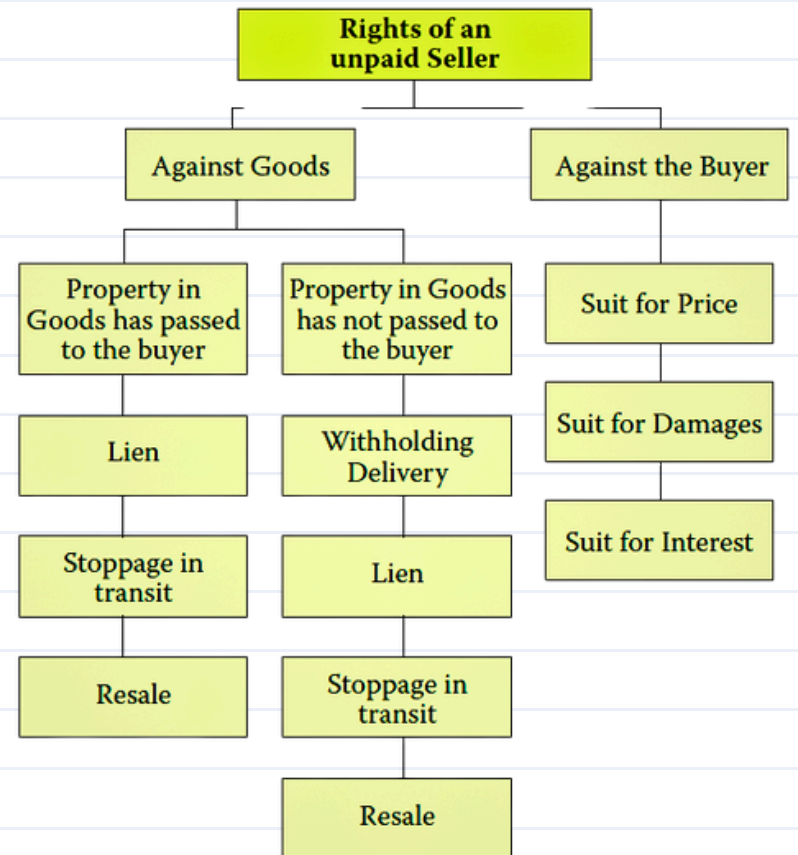
## Concept



### Unpaid Seller [Section 45 (1)] :

The seller of goods is deemed to be an 'Unpaid Seller' when-

1. The whole of the price has not been paid or tendered and the seller had an immediate right of action for the price.
2. When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition has not been fulfilled by the reason of the dishonour of the instrument



## RIGHT OF UNPAID SELLER AGAINST THE GOODS

### (1) Seller's lien (Section 47)

1. An unpaid seller has a right of lien on the goods for the price while he is in possession until the payment or tender of the price of such goods.
2. The lien can be exercised as long as the seller remains in possession of goods

### Exercise of right of lien

- (a) where goods sold without any stipulation of credit
- (b) where goods sold on credit but the term of credit has expired
- (c) where the buyer becomes insolvent

**Part Delivery (Sec 48) :** He may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien

### Termination of Lien

### By waiver

Delivers goods to carrier or bailee

Buyer or agent lawfully obtains the goods

### By Estoppel

**EXCEPTION :** Unpaid seller does not lose his lien by reason that he has obtained a decree for price of goods.

### (2) RIGHT OF STOPPAGE IN TRANSIT (SIT) [Sec 50 - 52] :

To regain the possession and to retain them till the full price is paid.

- (a) The seller must be unpaid.
- (b) He must have parted with the possession of goods.
- (c) The goods are in transit.
- (d) The buyer has become insolvent.
- (e) The right is subject to provisions of the Act.

## Duration of transit (Section 51)

From the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee.

When does the transit comes to an end

- Buyer or bailee obtains delivery / before destination
- Carrier or bailee acknowledge to buyer or his agent that he holds the goods, unless the seller has reserved the rights of disposal of the goods.
- If the carrier wrongfully refuses to deliver the goods to the buyer.
- Where goods are delivered to the carrier hired by the buyer.
- Part delivery made, transit will come to an end for remaining goods which are yet in course of transmission.
- Goods are delivered to a ship chartered by the buyer.

How  
stoppage in  
transit is  
effected  
(Section  
52)

- Taking actual possession, or by giving notice of his claim to the carrier or other bailee.
- Notice > Person with actual possession of the goods by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.
- The buyer transfers the documents to a person who has bought goods in good faith and for value the provision stipulates as follows: (A) If the last mentioned transfer is by way of sale, right of lien or stoppage in transit is defeated, or  
(B) If the last mentioned transfer is by way of pledge, unpaid seller's right of lien or stoppage only

Exceptions where unpaid seller's right of lien and stoppage in transit are defeated:

When the seller has assented to the sale, mortgage or other disposition of the goods made by the buyer

[Mount D. F. Ltd. vs Jay & Jay (Provisions) Co. Ltd]

Effect of stoppage: Contract > not rescinded.

(3) Right of re-sale [Section 54] : These right only entitled the unpaid seller to retain goods until paid by buyer.

The unpaid seller can exercise the right to resell the goods under the following conditions:

- No Notice - Where the goods are of a perishable nature - need not be informed of the intention of resale.
  - Notice - Where he gives notice to the buyer of his intention to re-sell the goods. If Buyer fails within a reasonable time to pay or tender the price, the seller may resell the goods. Seller can recover damages and retain the profits only when goods are resold after giving notice of resale to the buyer.
- The subsequent buyer acquires the good titles.
  - Right of resale is expressly reserved - (i) Seller not required to give notice of resale.  
(ii) Can recover damages from original buyer.
  - Where the property in goods has not passed to the buyer: The unpaid seller has in addition to his remedies a right of withholding delivery of the goods. This right is similar to lien and is called "quasi-lien".

## RIGHT OF UNPAID SELLER AGAINST THE BUYER (Section 55-61)

### SUIT FOR PRICE (Section 55)

Sale - Property passed to buyer and buyer wrongfully neglects or refuses to pay. Seller may sue him for the price of the goods.

Agreement to Sell - buyer wrongfully neglects or refuses to pay, the seller may sue him for the price although property in goods has not passed and goods have not been appropriated.

### SUIT FOR DAMAGES FOR NON-ACCEPTANCE (Section 56) :

Where the buyer wrongfully neglects or refuses to accept and pay for the goods

### REPUDIATION OF CONTRACT BEFORE DUE DATE (Section 60) :

The seller may treat the contract as rescinded and sue damages for the breach.

SUIT FOR INTEREST (Section 61) : a) Specific agreement as to interest on the price from the date on which payment becomes due, the seller may recover interest from the buyer.

b) there is no specific agreement, the seller may charge interest on the price when it becomes due from such day as he may notify to the buyer

### Breach of contract by seller

i) Fails to deliver the goods at the time or in manner prescribed

ii) Repudiates the contract

iii) Deliver non-conforming goods and buyer rejects and revokes acceptance

## REMEDIES OF BUYER AGAINST THE SELLER

### 1. Damages for non-delivery [Section 57]

Buyer may sue the seller for damages for non-delivery.

### 2. Suit for specific performance (Section 58)

Buyer can appeal to the court for specific performance. The court can order for specific performance only when the goods are ascertained or specific.

#### Conditions

(d) if goods are of special nature or are unique.

(b) subject to provisions of Specific Relief Act of 1963.

(a) sale of specific and ascertained goods.

(c) It empowers court to order specific performance where damages would not be an adequate remedy.

### Suit for breach of warranty (Section 59)

Buyer is not entitled to reject the goods. But he may - (i) set up against the seller the breach of warranty in diminution or extinction of the price; or (ii) sue the seller for damages for breach of warranty

### 4. Repudiation of contract before due date (Section 60)

the other party may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

### 5. Suit for interest

1. the right of the seller or the buyer to recover interest or special damages, where recoverable.
2. Court may award interest at such rate as it thinks fit on the amount of the price to the buyer in a suit by him for the refund of the price

1. An 'Auction Sale' is a mode of selling property by inviting bids publicly and the property is sold to highest bidder.
2. An auctioneer is an agent governed by the Law of Agency.

### RULE OF AUCTION SALE

- |  |   |
|--|---|
| <p>a) WHERE GOODS ARE SOLD IN LOTS : Each lot is <b>prima facie</b> deemed to be subject of a separate contract of sale.</p> <p>b) COMPLETION OF THE CONTRACT OF SALE : The sale is complete when auctioneer announces its completion by fall of hammer or in any other customary manner and until such announcement is made, any bidder may retract from his bid.</p> <p>c) RIGHT TO BID MAY BE RESERVED : Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved.</p> | <p>d) WHERE THE SALE IS NOT NOTIFIED BY THE SELLER : It shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such other person and any sale contravening this rule may be treated as fraudulent by the buyer.</p> <p>e) RESERVED PRICE : Upset price/ Base Price/ Floor Price</p> <p>f) PRETENDED BIDDING: If the seller does it to raise the price, the sale is voidable at the option of the buyer</p> |
|--|---|

### AUCTION SALE (SECTION INCLUSION OF INCREASED OR DECREASED TAXES IN CONTRACT OF SALE (SECTION 64A)

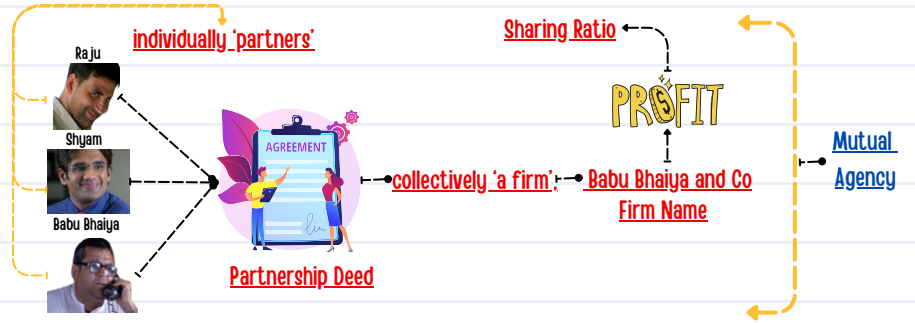


1. The parties would become entitled to read just the price of the goods. (Change ko consider karlo price me)
2. The buyer would have to pay the increased price where the tax increases and may derive the benefit of reduction if taxes are curtailed.
3. Provision can be excluded by an agreement to the contrary.
4. It is open to the parties to stipulate anything regard to taxation.



## Unit 1 - GENERAL NATURE OF PARTNERSHIP

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



### ELEMENTS OF PARTNERSHIP

Association of two or more persons :

- i) 2 or more persons
- ii) persons recognized by law
- iii) a firm, is not a person-recognized
- iv) minor cannot be a partner in a firm
- v) limit of 50 partners in any association/partnership firm.

Agreement to share profits :

- i) essential feature of partnership
- ii) no partnership where 1 of partner entitled to whole of the profits
- Profit : Must agree to share the profits in any manner they choose.
- Loss : a) Sharing losses is not an essential element.
- b) It is open to one or more partners to agree to share all the losses.
- c) Loss must be borne in the profit-sharing ratio

Agreement :

- i) Created by agreement and not by status. Voluntary contractual nature of partnership
- ii) it may be express or implied.
- iii) It may be oral or in writing.

Business Carried on by all or any of them acting for all :

- i) business carried on by all the partners or any of them acting for all.
- ii) a binding contract of mutual agency between the partners.
- iii) An act of one partner in course of the business of the firm is in fact act of all partners.
- iv) Each partner > principal & agent for all the other partners.
- v) Agent, as he can bind the other partners by his acts and he is a principal to the extent that he is bound by the act of other partners.
- vi) True test of partnership is mutual agency rather than sharing of profits. [KD Kamath & Co]

BUSINESS :

- i) there must exist a business
- ii) motive - "acquisition of gains."

### TRUE TEST OF PARTNERSHIP

Mode of determining existence of partnership  
(Section 6):

1. There was an agreement between all the persons;
2. The agreement was to share the profits
3. the business was carried on by all or any of them acting for all.

the following will not be considered as partnership

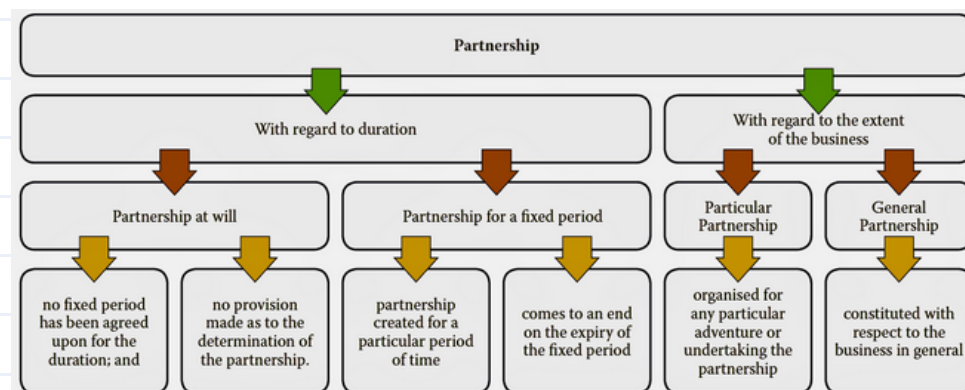
- i) a lender of money
- ii) servant or agent as remuneration
- iii) widow or child of a deceased partner, as annuity
- iv) previous owner or part owner of the business, as consideration for the sale of the goodwill

## Santiranjan Das Gupta Vs. Dasyran Murzamull

Factors weighed upon the Supreme Court to reach the conclusion that there is no partnership between the parties:

- (a) Parties have not retained any record of T&C of partnership.
- (b) Partnership business has maintained no accounts of its own
- (c) No account of the partnership was opened with any bank.
- (d) No written intimation was conveyed to Deputy Director of Procurement w.r.t newly created partnership.

### KINDS OF PARTNERSHIPS



#### Partnership Deed

- i) result of an agreement.
- ii) No particular formalities are required
- iii) writing or formed verbally.
- iv) Contains various T&C as to the relationship of the partners to each other.
- v) It should be drafted with care and be stamped
- vi) Where the partnership comprises immovable property, the instrument of partnership must be in writing, stamped and registered under the Registration Act.

#### Partnership deed may contain the following information :

1. Name of the partnership firm.
2. Names of all the partners.
3. Nature & place of the business of the firm.
4. Date of commencement of partnership.
5. Duration of the partnership firm.
6. Capital contribution of each partner.
7. Profit Sharing ratio of the partners.
8. Admission and Retirement of a partner.
9. Rates of interest on Capital, Drawings and loans.
10. Provisions for settlement of accounts in the case of dissolution of the firm.
11. Provisions for Salaries or commissions, payable to the partners, if any.
12. Provisions for expulsion of a partner in case of gross breach of duty or fraud.

Refer Difference between from Concept book

## TYPES OF PARTNERS

### Active or Actual or Ostensible partner:

- i) Who has become a partner by agreement, and
- ii) Who actively participates in the business
- iii) acts as an agent of other partners for all acts done in the ordinary course of business.
- iv) Retirement → give a public notice .

### Sleeping or Dormant Partner

- i) Who is a partner by agreement
- ii) Who does not actively take part in the business
- iii) liable to the third parties for all acts of the firm.
- iv) Not required to give public notice of their retirement

### Nominal Partner

- i) lends his name to the firm, without having any real interest in it
- ii) Not entitled to share the profits
- iii) Does not take part in the conduct of the business
- iv) Liable to third parties for all acts of the firm

### Partner in profits only

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

### Incoming partners:

- i) admitted → partner → already existing firm → consent of all the existing
- ii) not liable for any act → before his admission

### Outgoing partner:

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

### Partner by holding out (Section 28):

- i) known as partnership by estoppel
- ii) man holds himself out as a partner → then stopped from denying character he has assumed → creditors may be presumed to have acted.
- iii) words or conduct → believe that he is a partner or he may have allowed others to represent him as a partner

### Enforce liability

- i) whom the representation has been made and acted thereon .
- ii) It is not necessary to show that he was actuated by a fraudulent intention.
- iii) Section 28 applicable to a former partner who has retired without giving proper public notice of his retirement.

## RELATION OF PARTNERS TO ONE ANOTHER

### 1. GENERAL DUTIES OF PARTNERS (SECTION 9) :

- Carry business to greatest common advantages and should render to any partner or his legal representatives full information.
- Observe the utmost good faith in his dealings with the other partners.
- bound to render accounts to each other, but where > accounts kept by one of them, prima facie he would be the proper person

### 2. DUTY TO INDEMNIFY FOR LOSS CAUSED BY FRAUD (SECTION 10) :

- Partner, committing fraud in the business of the firm, must make good loss sustained by the firm by his misconduct and amount so brought in the partnership should be divided between partners.
- An act of a partner imputable to the firm or the principles of agency, entitles the co-partners, to throw the whole of the consequences upon him.

### 4. THE CONDUCT OF THE BUSINESS (SECTION 12) :

#### (i) Right to take part in the conduct of the Business [Section 12(a)] :

If there is contrary between the partners. as per the contract.

In such a case, the Court will normally be unwilling to interpose with the management with such partner or partners, unless it is clearly made out that something was done illegally or in breach of the trust reposed in such partners.

#### (ii) Right to be consulted [section 12(c)] :

a) Difference - majority , and every partner express his opinion.

b) Nature of the business - All the partners.

c) In routine matters, the opinion of the majority of the partners will prevail. Of course, the majority must act in good faith and every partner must be consulted as far as practicable.

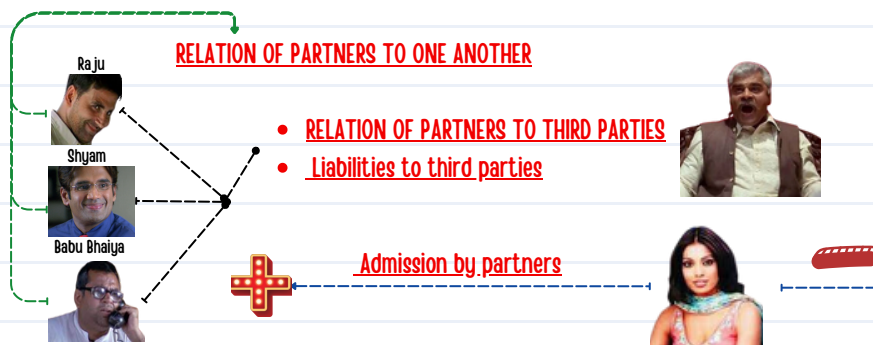
d) majority rule will not apply where there is a change in the nature of the firm itself. In such a case, the unanimous consent of the partners is needed.

#### (iii) Right of access to books [Section 12(d)]:

Every partner whether active or sleeping is entitled to have access to any of the books of the firm and to inspect and take out of copy thereof. The right must, however, be exercised bona fide.

#### (iv) Right of legal heirs/ representatives/ their duly authorised agents [Section 12(e)]:

In the event of the death of a partner, his heirs or legal representatives or their duly authorised agents shall have a right of access to and to inspect and copy any of the books of the firm.



### 3. DETERMINATION OF RIGHTS AND DUTIES OF PARTNERS BY CONTRACT BETWEEN THE PARTNERS (SECTION 11) :

- Mutual rights and duties of the partners determined by contract, and such contract may be express or may be implied by a course of dealing.
- Such contract may be varied by consent of all the partners, and such consent may be express or may be implied by a course of dealing.
- "Agreements in restraint of trade" is not void (Eg - A partner shall not carry on any business other than that of the firm while he is a partner)



## 5. MUTUAL RIGHTS AND LIABILITIES (SECTION 13) :

### i) Right to remuneration [Section 13(a)] :

No partner is entitled to receive any remuneration in addition to his share in the profits.

### ii) Right to share Profits [Section 13(b)] :

Partners are entitled to share equally in the profits and losses sustained by the firm.

### iii) Interest on Capital [Section 13(c)] :

Partner can be entitled to interest on moneys brought by him in the partnership business:

- (a) an express agreement or
- (b) any trade custom to that effect; or
- (c) a statutory provision which entitles him to such interest.

### Right to be indemnified [Section 13(e)] :

Any payments made and liabilities incurred by him in the ordinary and proper conduct of the business of the firm as well as in the performance of an act in an emergency for protecting the firm from any loss.

### iv) Interest on advances [Section 13(d)] :

- (a) the partner is entitled to claim interest thereon @ 6% per annum.
- (b) While interest on capital account ceases to run on dissolution, the interest on advances keep running even after dissolution and up to the date of payment.

### Right to indemnify the firm [Section 13(f)] :

A partner must indemnify the firm for any loss caused to it by wilful neglect in the conduct of the business of the firm.

## PARTNERSHIP PROPERTY (SECTION 14)

The property which is deemed as belonging to the firm :

- (i) all property, rights and interests which partners may have brought into the common stock as their contribution to the common business;
- (ii) all the property, rights and interest acquired or purchased by or for the firm, and
- (iii) Goodwill of the business.

Exclusive property of partner > used for the firm shall not be partnership property unless it is intended. Partners may, by agreement, convert the property of any partner or partners (in good faith), or the separate property of any partner into a partnership property.

Goodwill : i) Regarded as property of the firm.

ii) Partnership firm is dissolved every partner has a right, to have the goodwill of business sold.

iii) Goodwill - value of the reputation of a business house in respect of profits expected in future over and above the normal level of profits earned by undertaking belonging to the same class of business.

Sale of Goodwill : i) Property of the firm. It can be sold separately or along with the other properties of the firm.

ii) Any partner, may upon the sale of the goodwill of a firm, will not carry on any business similar to that of the firm within a specified period or within specified local limits.

## APPLICATION OF THE PROPERTY OF THE FIRM (SECTION 15) :

i) Section 15 Property of the firm shall be held and used exclusively for the purpose of the firm.

ii) That does not mean, a particular partner has any proprietary (ownership) interest in the assets of the firm.

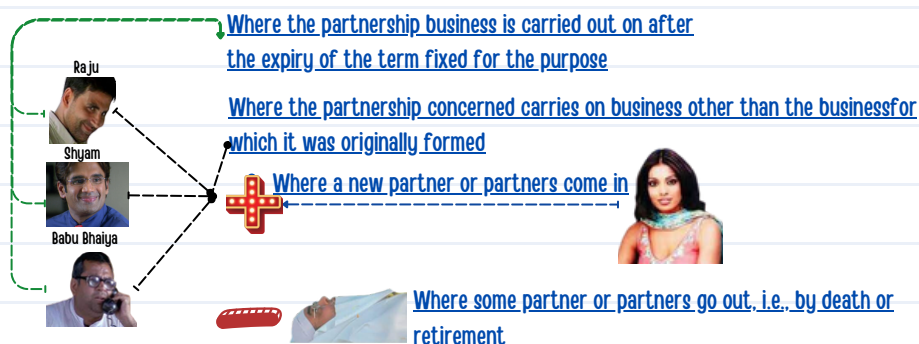
iii) Every partner of the firm has a right to get his share of profits till the firm subsists and he has also a right to see that all the assets of the partnership are applied to and used for the purpose of partnership business.

## PERSONAL PROFIT EARNED BY PARTNERS (SECTION 16) :

- If a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;
- If a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

## RIGHTS AND DUTIES OF PARTNERS AFTER A CHANGE IN THE FIRM (SECTION 17)

- After a change in the firm: **Mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change.**



- After the expiry of the term of the firm : the mutual rights and duties of the partners remain the same as they were before the expiry, may be consistent with the incidents of partnership at will ; and

- Where additional undertakings are carried out : Other adventures or undertakings rights and duties are the same as those in respect of the original adventures or undertakings.

## RELATION OF PARTNERS TO THIRD PARTIES

### 1. PARTNER TO BE AN AGENT OF THE FIRM (SECTION 18) :

- A partner is agent of firm for the purpose of the business of the firm. He acts for himself and in his own interest.
- Principal distinction between him and a mere agent is that he has a community of interest with other partners in the whole property and business and liabilities, whereas an agent as such has no interest in either.
- Cannot be applied to all transactions and dealings between the partners themselves. It is applicable only to the act done by partners for the purpose of the business of the firm.

### 2. IMPLIED AUTHORITY OF PARTNER AS AGENT OF THE FIRM (SECTION 19) :

- The act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. This authority is called his "implied authority".
- Implied authority of a partner does not empower him to -

- Submit a dispute relating to the business to arbitration;
- open a banking account on behalf of firm in his own name;
- compromise or relinquish any claim by firm;
- withdraw a suit or proceedings filed on behalf of the firm;
- admit any liability in a suit or proceedings against the firm;
- acquire immovable property on behalf of the firm;
- transfer immovable property belonging to the firm; and
- enter into partnership on behalf of the firm.

### MODE OF DOING ACT TO BIND FIRM (SECTION 22) :

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

Sections 19(1) and 22 deal with the implied authority of a partner.

Such implied authority is to the following restrictions:

- a) Act done by the partner must be within the scope of his authority and related to the normal business of the firm.
- b) Act is done for normal conduct of business of the firm. Depends on the nature and circumstances of each particular case [Section 19(1)].
- c) Act to be done in the name of the firm or in any other manner expressing or implying an intention to bind the firm (Section 22).

If partnership be of a general commercial nature,

- (i) he may pledge or sell the partnership property;
- (ii) he may buy goods on account of the partnership;
- (iii) he may borrow money, contract debts and pay debts on account of the partnership;
- (iv) he may draw, make, sign, endorse, transfer, negotiate and procure to be discounted, and other negotiable papers in the name and on account of the partnership.

### 3. EXTENSION AND RESTRICTION OF PARTNERS' IMPLIED AUTHORITY (SECTION 20) :

- i) The implied authority of a partner may be extended or restricted by contract between the partners.
- ii) Effective against a third party : The third party knows about the restrictions, and the third party does not know that he is dealing with a partner in a firm.  
Only possible with the consent of all the partners. Any one partner, or even a majority of the partners, cannot.

### 4. PARTNER'S AUTHORITY IN AN EMERGENCY (SECTION 21) :

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

### EFFECT OF ADMISSIONS BY A PARTNER (SECTION 23) :

Will not bind the firm if his authority on the point is limited and the other party knows of the restriction.

EFFECT OF NOTICE TO ACTING PARTNER (SECTION 24) : (i) The notice to a partner, who habitually acts in business, operates as a notice to the firm except in the case of a fraud or with consent of partner.

(ii) This notice must be actual and not constructive.

(iii) Received by working partner only. Relate to firm's business. Constitute a notice to firm.

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

LIABILITY OF A PARTNER FOR ACTS OF THE FIRM (SECTION 25) : Jointly & severally responsible to third parties for all acts coming under the scope > express / implied authority which Must have been done while he was a partner.

### 2. LIABILITY OF THE FIRM FOR WRONGFUL ACTS OF A PARTNER (SECTION 26) :

(i) The firm is liable to the same extent as the partner, if they are done by the partner while acting:

(a) in the ordinary course of the business of the firm. (b) with the authority of the partners.

(ii) If act is authorized and falls within categories mentioned above, then the method employed by the partner in doing it was unauthorized or wrongful would not affect the question.

(iii) All the partners are liable to a third party for loss or injury caused to him by the negligent act of a partner.



### 3. LIABILITY OF FIRM FOR MISAPPLICATION BY PARTNERS (SECTION 27) :

- (i) Clause (a) Where a partner acts within his authority and due to his authority as partner, he receives money or property belonging to a third party and misapplies that money or property. Clause (b) would be attracted when such money or property has come into the custody of the firm and it is misapplied by any of the partners.
- (ii) The firm would be liable in both the cases.
- (iii) If receipt of money by one partner is not within the scope of his apparent authority, his receipt cannot be regarded as a receipt by the firm and the other partners will not be liable.

### RIGHTS OF TRANSFeree OF A PARTNER'S INTEREST (SECTION 29) :

- (i) A share in a partnership is transferable, based on mutual confidence, the assignee of a partner's interest by sale, mortgage or otherwise cannot enjoy the same rights and privileges as the original partner.
- (ii) The rights of such a transferee are as follows:
  - (1) During the continuance of partnership, such transferee is not entitled:
    - (a) to interfere with the conduct of the business, (b) to require accounts, or (c) to inspect books of the firm. he is bound to accept the profits as agreed to by the partners, i.e., he cannot challenge the accounts.
  - (2) On the dissolution of the firm or on the retirement of the transferring partner, the transferee will be entitled, against the remaining partners:
    - (a) to receive the share of the assets of the firm to which the transferring partner was entitled, and
    - (b) for the purpose of ascertaining the share, he is entitled to an account as from the date of the dissolution.

### MINORS ADMITTED TO THE BENEFITS OF PARTNERSHIP (SECTION 30) :

- (i) A minor cannot become a partner in a firm. He can be admitted to the benefits of partnership.
- (ii) Done with the consent of all the partners then rights and liabilities will be governed as follows :

#### (1) Rights:

- (i) Right to his agreed share of the profits and of the firm.
- (ii) He can have access to, inspect and copy the accounts of the firm.
- (iii) He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.
- (iv) On attaining majority, he may within 6 months elect > partner or not > partner. If elects > partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after date of the public notice served to that effect.

#### (2) Liabilities

- (i) Before attaining majority : (a) The liability of the minor is only to the extent of his share in profits and property of the firm. (b) Minor has no personal liability .(c) Minor cannot be declared insolvent, but if the firm is declared insolvent his share in the firm vests in the Official Receiver/Assignee.

#### (ii) After attaining majority:

- (a) Within 6 months or on his obtaining knowledge that he had been admitted , whichever date is later, the minor partner has to decide whether he shall remain a partner or leave the firm.
- (b) Where he has elected not to become partner, he may give public notice. If he fails to give such notice he shall become a partner in the firm on the expiry of the said six months.

- (a) When he becomes partner: He becomes personally liable to third parties for all acts of the firm. His share in the property and the profits of the firm remains the same to which he was entitled as a minor.



(b) When he elects not to become a partner:

His rights and liabilities continue to be those of a minor up to the date of giving public notice. He shall be entitled to sue the partners for his share of the property and profits.

## LEGAL CONSEQUENCES OF PARTNER COMING IN AND GOING OUT (SECTION 31 – 35)

### 1) INTRODUCTION OF A PARTNER (SECTION 31) :

(i) New partners can be introduced into a firm with the consent of all the existing partners.

Rights and liabilities of new partner:

(a) Commence from the date when he is admitted as a partner, unless he agrees to be liable for obligations incurred by the firm prior to the date.

(b) The new firm may agree to assume liability for the existing debts of the old firm, and creditors may agree to accept the new firm as their debtor and discharge the old partners.

(c) The creditor's consent is necessary in every case to make the transaction operative.

(d) But a mere agreement amongst partners cannot operate as Novation.

(e) Does not apply to partnership of two partners which automatically dissolved by death of one of them.

### (ii) RETIREMENT OF A PARTNER (SECTION 32) :

(1) A partner may retire: (a) with the consent of all the other partners; (b) express agreement by the partners; or (c) partnership > will, by giving notice in writing to all the other partners.

(2) Retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm.

(3) Until Public Notice, partners continue to be liable for acts which would have been an act of the firm if done before the retirement,

**Vishnu Chandra Vs. Chandrika Prasad [Supreme Court]**

### (iii) EXPULSION OF A PARTNER (SECTION 33) :

(a) power of expulsion must have existed in a contract between the partners; (b) the power has been exercised by a majority of the partners; and (c) it has been exercised in good faith.

(1) If all these conditions are not present, the expulsion is not deemed to be in bonafide interest.

(2) The test of good faith : (a) The expulsion must be in the interest of the partnership. (b) The partner to be expelled is served with a notice (c) He is given an opportunity of being heard.

(3) If a partner is otherwise expelled, expulsion is null and void.

(4) The expulsion of partners does not necessarily result in dissolution of the firm. The invalid expulsion of a partner does not put an end to the partnership even if the partnership is at will and it will be deemed to continue as before.

### (iv) INSOLVENCY OF A PARTNER (SECTION 34):

(1) he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is hereby dissolved.

(2) Firm is not dissolved by the adjudication of a partner as an insolvent, the estate of a partner so adjudicated is not liable for any act of the firm and the firm is not liable for any act of the insolvent, done after the date on which the order of adjudication is made.

#### Effects of Insolvency

- The insolvent partner cannot be continued as a partner
- He will be ceased to be a partner from the very date on which the order of adjudication is made.

The estate of the insolvent partner is not liable for the act of the firm done after the date of order of adjudication

The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication

Ordinarily but not invariably, the insolvency of a partner results 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.

**(V) LIABILITY OF ESTATE OF DECEASED PARTNER (SECTION 35) :**

- (1) Ordinarily, the effect of the death of a partner > dissolution of the partnership.
- (2) partners are competent to agree that the death of one will not have the effect of dissolving
- (3) In order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.

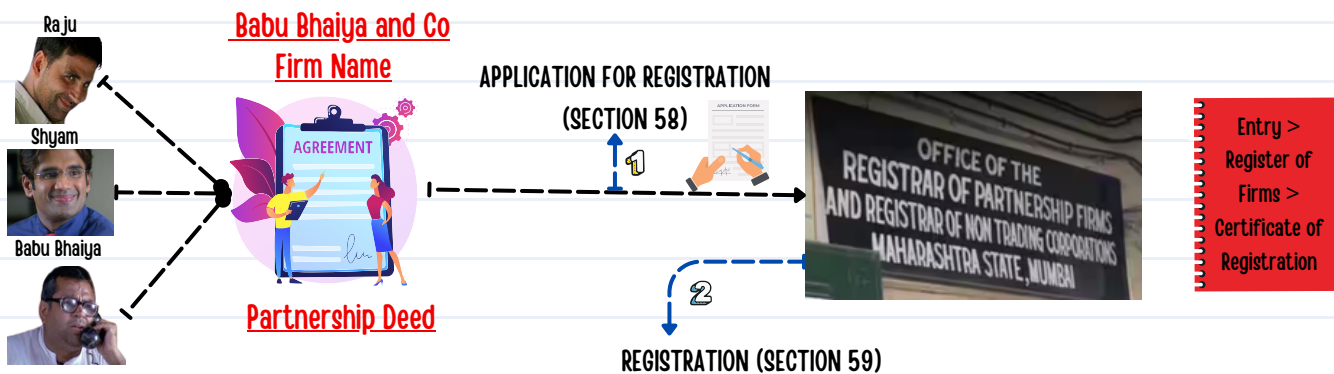
**RIGHTS OF OUTGOING PARTNER TO CARRY ON COMPETING BUSINESS (SECTION 36) :**

- (1) An outgoing partner may carry on business competing with that of the firm and he may advertise such business, but subject to contract to the contrary, he may not,-
  - (a) use the firm name,
  - (b) represent himself as carrying on the business of the firm or
  - (c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.
- (2) Agreement in restraint of trade

**RIGHT OF OUTGOING PARTNER IN CERTAIN CASES TO SHARE SUBSEQUENT PROFITS (SECTION 37) :**

- (1) Where any member of a firm has died or otherwise ceased to be partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate.
- (2) the outgoing partner or his estate is entitled to such 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 or to interest at the rate of 6% p.a. on the amount of his share in the property of the firm.
- (3) Purchase of interest : An option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits:

According to **section 38**, a 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



### APPLICATION FOR REGISTRATION (SECTION 58) :

(i) The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement stating

(ii) The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

(1) Each person signing the statement shall also verify it in the manner prescribed.

(2) A firm name shall not contain any of the following words, namely:-

'Crown', 'Emperor', 'Empress', 'Empire', 'Imperial', 'King', 'Queen', 'Royal', or words expressing or implying the sanction, approval or patronage of Government except when the State Government signifies its consent to the use of such words as part of the firm-name by order in writing.

(a) The firm's name,

(b) The place or principal place of business of the firm,

(c) The names of any other places where the firm carries on business,

(d) The date when each partner joined the firm,

(e) The names in full and permanent addresses of the partners, and

(f) The duration of the firm.

### REGISTRATION (SECTION 59) :

1) Registrar is satisfied, he shall record an entry of the statement in a Register called the Register of Firms and shall file the statement. Then he shall issue a certificate of Registration.

2) 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.

3) Registration may also be effected even after a suit has been filed by the firm but in that case it is necessary to withdraw the suit first and get the firm registered and then file a fresh suit.

### LATE REGISTRATION ON PAYMENT OF PENALTY (SECTION 59A-1) :

Penalty of one hundred rupees per year of delay or a part thereof.

### CONSEQUENCES OF NON-REGISTRATION (SECTION 69)

Indian Partnership Act does not make registration compulsory nor does it impose any penalty

3. Aggrieved partner cannot bring legal action against other partner or the firm : But, such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.

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

2. No relief to partners for set-off of claim

4. Third party can sue the firm

1. The right of third parties to sue the firm or any partner.
2. The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm.
3. Power of an Official Assignees, Receiver of Court to release property of insolvent partner and to bring an action.
4. The right to sue or claim a set-off if the value of suit does < INR 100 in value.
5. The right to suit and proceeding instituted by legal representatives or heirs of the deceased partner of a firm for accounts of the firm or to realise the property of the firm.

### DISSOLUTION OF FIRM (SECTIONS 39 - 47)

- (1) According to **Section 39** of the Indian Partnership Act, 1932, the dissolution of partnership between all partners of a firm is called the 'dissolution of the firm'.
- (2) But when only one or more partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership is dissolved, but the rest may decide to continue.
- (3) On the other hand, the whole firm is dissolved.

### MODE OF DISSOLUTION (Section 40 - 44)

#### By Mutual Agreement (Sec. 40)

With the consent of all the partners or as per contract between the partners

#### By Operation of law (Sec. 41)

- (i) All but one of the partners are adjudicated as insolvent.
- (ii) By the happening of an event which makes partnership unlawful.

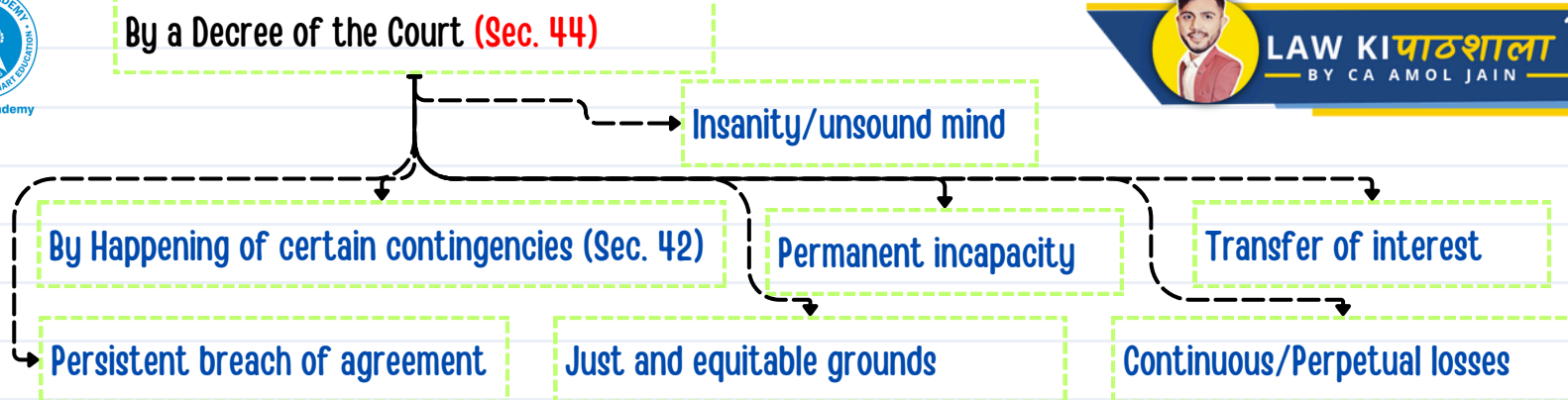
#### By Happening of certain contingencies (Sec. 42)

- (i) Where the firm is constituted for a fixed term, on the expiry of that term.
- (ii) Where the firm is constituted to carry out one or more adventures or undertaking, then by completion thereof
- (iii) On the death of a partner;
- (iv) On the insolvency of a partner.

#### By Notice of Dissolution (Sec. 43)

- (i) Partnership at will.
- (ii) Notice once given cannot be withdrawn without consent of all partners.





## CONSEQUENCES OF DISSOLUTION (SECTIONS 45 - 55)

Liability for acts of partners done after dissolution (Section 45) :

Protect third parties dealing with the firm who had no notice of prior dissolution and it also seeks to protect partners of a dissolved firm from liability towards third parties.

### Exceptions

(a) the estate of a deceased partner

(b) an insolvent partner

(c) a dormant partner.

Right of partners to have business wound up after dissolution (Section 46)

Entitled to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus.

Continuing authority of partners for purposes of winding up (Section 47)

(i) To complete transactions begun but unfinished at the time of the dissolution, but not otherwise:

Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent:

(ii) but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.

Mode of Settlement of partnership accounts (Section 48)

(i) Losses, including deficiencies of capital, shall be paid

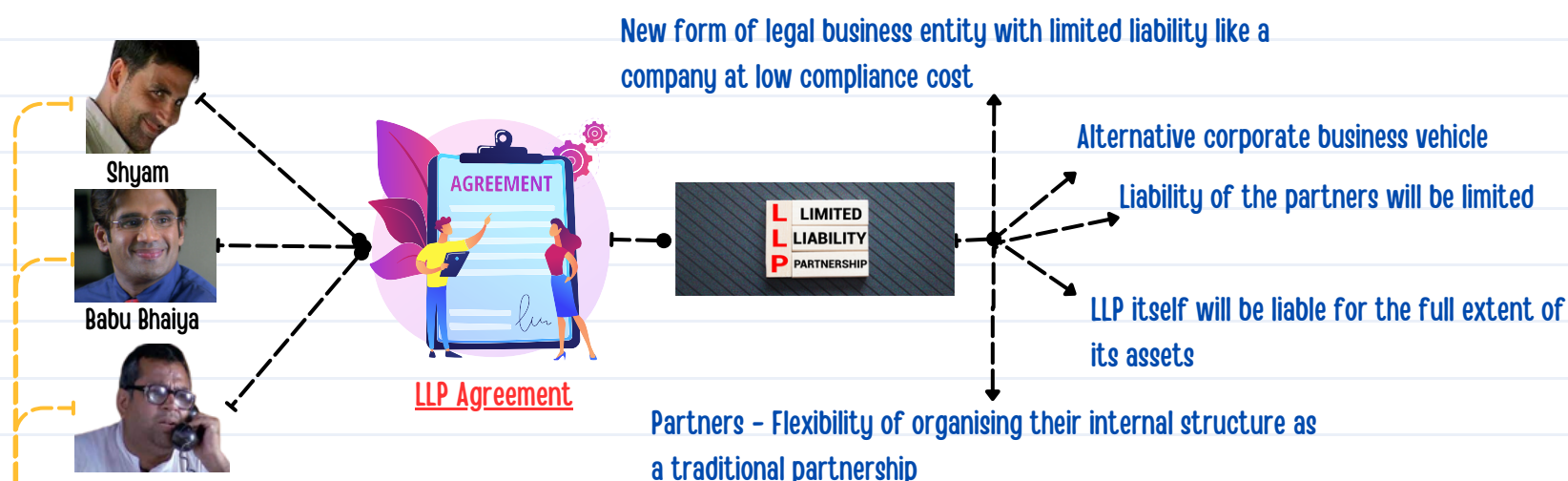
1) profits, 2) out of capital, 3) partners individually in the proportions in which they were entitled to share profits:

(ii) The assets, including any sums contributed by the partners to make up deficiencies of capital,

(a) in paying the debts of the firm to third parties;  
(b) in paying to each partner rateably what is due to him from capital;  
(c) in paying to each partner rateably what is due to him on account of capital;  
(d) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

Payment of firm debts and of separate debts (Section 49)

(i) the property of the firm shall be applied in payment of the debts of the firm, and if there is any surplus, then the share of each partner shall be applied to the payment of his separate debts or paid to him;  
(ii) the separate property of any partner shall be applied first in the payment of his separate debts and surplus, if any, in the payment of debts of the firm



### Partners (Section 5)

Any individual or body corporate may be a partner in an LLP.  
Not be capable of becoming a partner of a LLP, if—  
(a) unsound mind  
(b) insolvent

### Minimum number of partners (Section 6)

(i) at least two partners.  
(ii) If number of partners of a LLP is reduced below two and LLP > business for > six months only partner carrying on business with him alone, shall be liable personally for the obligations of the LLP incurred during that period.

### Designated partners (Section 7)

(i) At least two designated partners who are individuals and at least one of them shall be a resident in India.  
(ii) at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.  
(iii) Resident in India

## Important Definitions

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

(i) a LLP registered under this Act;  
(ii) a LLP incorporated outside India;  
(iii) a company incorporated outside India, but does not include

- a corporation sole;
- a co-operative society and
- any other body corporate which the CG may, by notification in the Official Gazette specify in this behalf.

### Small Limited Liability Partnership [Section 2(1)(ta)]:

It means a limited liability partnership—  
(i) contribution  $\leq$  25 Lakhs (not exceeding rupees 5CR, as may be prescribed) and  
(ii) the turnover of immediately preceding financial year  $\leq$  40 lakh (not exceeding rupees 50 CR, as may be prescribed); or  
(iii) meets & fulfils such other requirements and conditions as may be prescribed.

## Advantages - LLP form is a form of business model which:

is organized and operates on the basis of an agreement

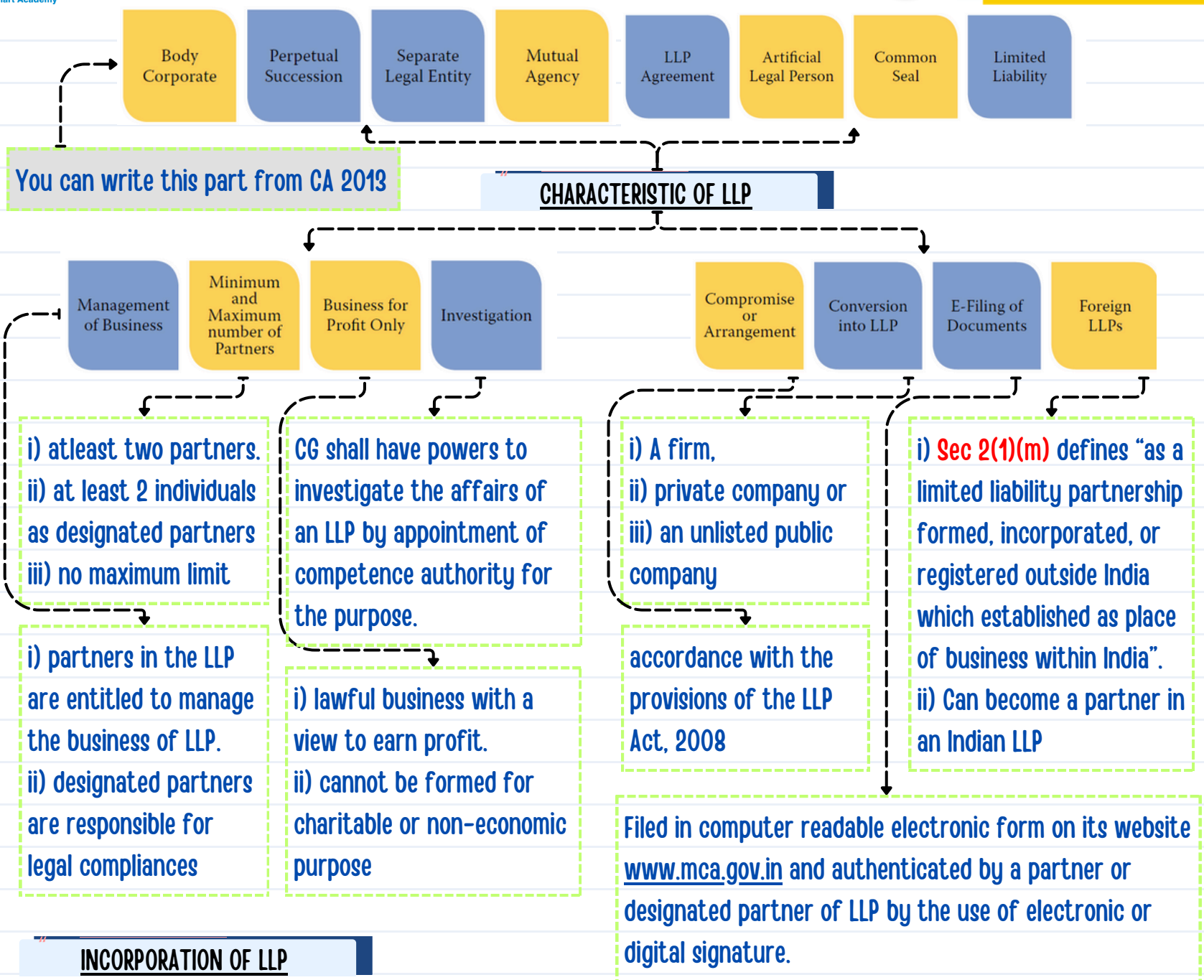
provides flexibility without imposing detailed legal and procedural requirements

easy to form

all partners enjoy limited liability

flexible capital structure

easy to dissolve



## INCORPORATION OF LLP

### Incorporation Document "ID" (Section 11)

#### (1) For a LLP to be incorporated

- two or more persons lawful business profit shall subscribe their names to an ID (ID)
- ID shall be filed in prescribed manner with the Registrar of the State
- Statement to be filed:-
  - in the prescribed form,
  - made by either an advocate, or a CS or a CA or a Cost A, who is engaged in the formation of the LLP &
  - by any one who subscribed his name to the ID,
  - all the requirements of this Act and the rules made thereunder have been complied with.

#### (2) The ID shall-

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

#### (3) If a person makes a statement as discussed above which he-

- knows to be false; or
- does not believe to be true, shall be punishable with imprisonment for a term which may extend to 2 years and with fine which shall not be less than 10,000 but which may extend to 5 Lakhs.



## Incorporation by registration (Section 12):

- The Registrar shall retain the incorporation document and shall, within a period of 14 days—
- register the incorporation document; and
- give a certificate that the LLP is incorporated by the name specified therein.

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

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

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

### Registered office

All communications and notices may be addressed and shall be received

### Manner of sending

- by post under a certificate of posting or
- by registered post or
- by any other manner

### Change in Registered office

- change the place of its registered office and
- file the **notice of such change**
- with the Registrar** in such form and manner and
- subject to such conditions** as may be prescribed and
- any such **change shall take effect only upon such filing.**

### Default

- LLP and its
- every partner
- shall be liable to a penalty of **₹ 500 for each day** during which the default continues,
- subject to a
- maximum of 50,000**

### ➤ Effect of registration (Section 14):

On registration a LLP shall be capable of

- Suing and being sued;
- doing and suffering such other acts
- having a common seal (OPTIONAL)
- acquiring, owning, holding and developing or disposing of property whether movable or immovable, tangible or intangible

### ➤ Name (Section 15):

- words "limited liability partnership" or the acronym "LLP" as the last words of its name
- No LLP shall be registered by a name which, in the opinion of the CG is—
  - undesirable; or
  - identical or too nearly resembles to that of any other LLP or a company or a registered trade mark of any other person under the Trade Marks Act, 1999

### ➤ Reservation of name (Sec 16)

- Apply in such form and manner and accompanied by such fee as may be prescribed to the Registrar for the reservation of a name set out in the application as—
  - the name of a proposed LLP;
  - or
  - the name to which a LLP proposes to change its name

### Change of name of LLP (Section 17):

If name of registered LLP is identical or too nearly resembles to any other partnership firm or LLP or company or a registered trade mark, CG may direct such LLP to change its name within 3 months. (On Application)

### Application of the proprietor of the registered trade marks

3 years from the date of incorporation or registration or change of name of the LLP under this Act.

### Default in with any direction given under sub-section (1):

CG shall allot a new name to the LLP & Registrar shall enter the new name in the register of LLP & issue a fresh certificate of incorporation

### Change in name

within a period of 15 days → give notice of the change to Registrar along with the order of the Central Government → necessary changes in the certificate of incorporation and within 30 days of such change in the certificate of incorporation



## COMPANY: MEANING AND ITS FEATURES

**Section 2(20) :** Company means a company incorporated under this Act OR under any previous company law

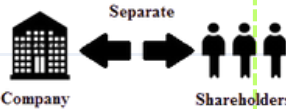
### FEATURES

1) **SEPARATE LEGAL ENTITY:** Legally separate from the members.

a) A member does not even have an insurable interest

**.MACAURA Vs. NORTHERN ASSURANCE CO.**

b) Same rights and powers as a human being.



c) Its existence is distinct and separate

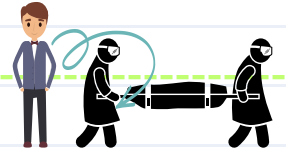
d) Different from the subscribers to the MOA

e) can own property, have bank account, raise loans, incur liabilities and enter into contracts.

f) For Debts, only its creditors can sue it and not its members

g) shareholders are not the private or joint owners of the company's property.

2) **PERPETUAL SUCCESSION :**



a) Change in members does not affect existence of Company

b) Members may die or change, but the company goes on till it is wound up

c) Shares of the company may change hands infinitely

d) Law alone can bring an end to its life

3) **LIMITED LIABILITY:** **LIMITED**

a) Limited by shares : unpaid amount of shares.

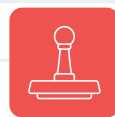
b) Company limited by guarantee : Only to the extent of the amount guaranteed by them and that too only when company goes into liquidation.

c) Unlimited company : The liability of members is unlimited.

4) **COMMON SEAL :** Common seal is optional for the company

a) Common seal is the official signature of a company

b) The company does not have a common seal, the authorization shall be made by two directors or by a director and the Company secretary.



4) **ARTIFICIAL LEGAL PERSON :**

a) A company is an artificial person as it is created by a process other than natural birth.

b) It can do everything which any natural person can do except sent to jail, take an oath, marry or practice a learned profession.

c) It can act only through some human agency, viz., directors. The directors cannot control affairs of the company and act as its agency

### CORPORATE VEIL



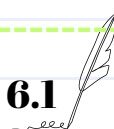
A) The term corporate veil refers to the concept the members of a company are shielded from liability connected to the company's actions.

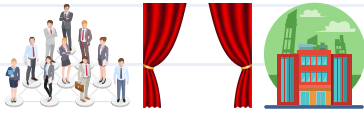
B) If the company incurs any debt or contravenes any laws, the corporate veil concept implies that members should not be liable for those errors.

C) In other words, they enjoy corporate insulation.

D) Thus, the shareholders are protected from the acts of the company.

**[ SALOMON Vs. SALOMON AND CO. LTD. ]**





## LIFTING OF CORPORATE VEIL

1) To determine the character of the company i.e. to find out whether co-enemy or friend.

**Daimler Co. Ltd. vs. Continental Tyre & Rubber Co**

2) To protect revenue/tax

**(Juggilal vs. Commissioner of Income Tax (SC))**  
**(DINSHAW MANECKJEE PETIT)**

3) To avoid a legal obligation

**ASSOCIATED RUBBER INDUSTRIES LIMITED, BHAVNAGAR V. ASSOCIATED RUBBER INDUSTRY LTD**

4) Formation of subsidiaries to act as agents

**MERCHANDISE TRANSPORT LIMITED Vs. BRITISH TRANSPORT COMMISSION**

5) Company formed for fraud/improper conduct or to defeat law

## CLASSES OF COMPANIES UNDER THE ACT

### A) ON THE BASIS OF LIABILITY:

Company limited by shares: To the unpaid amount of the shares.

Company limited by guarantee: The members are liable only to the extent of the amount guaranteed by them and that too only when company goes into liquidation.

**Narendra Kumar Agarwal vs. Saroj Maloo**

Unlimited company: The liability of members is unlimited. (Only during winding up)

### B) On the basis of members

#### 1) ONE PERSON COMPANY

- Only one person as member
- Minimum paid up capital – no limit prescribed
- The MOA of OPC > NOMINEE > subscriber's death or his incapacity to contract > member of the company (written consent shall be filed with ROC at the time of INC of the company along with its e-MOA and AOA)
- Nominee can has the right to withdraw his consent.
- The member of OPC may change the Nominee by giving notice company Registrar.
- Any such change in the name of the person shall not be deemed to be an alteration of the memorandum

Who can be a OPC member or Nominee ???

- Natural person Indian citizen (Resident in India or otherwise)
- One person incorporate One OPC
- One person can be One Nominee

→ Private ✓

→ Public or Sec 8 ✗

- Non-Banking Financial Investment activities ✗
- Investment in securities of any body corporate. ✗

#### 2) Private Company [Section 2(68)]

Means a company having a minimum paid-up share capital as may be prescribed, and which by its articles-

- 1) Restrict the right to transfer its shares;
- 2) number of its members to two hundred (Except OPC)
- 3) Prohibits any invitation to the public to subscribe for any securities of the company

Persons holding shares jointly, they shall > treated as a single member:

Shall not be included in the number of members

- (a) Persons who are in the employment of the company; and
- (b) Persons who, having been formerly in the employment of the company,

### 3) Small Company **Section 2(85)**

**SMALL COMPANY** means a company other than a public company-

- (i) PUSC  $\leq$  4 Cr (Higher as prescribed Cap of 10 Cr)
- (ii) Turnover  $\leq$  40 Cr Last P&L account (Higher amount as prescribed Cap of 100 Cr):

Exceptions: Not apply to:

- A holding company or a subsidiary company;
- Section 8 and Company under Special act



### 4) Public Company **Section 2(71)**

**PUBLIC COMPANY** means a company which-

- Is not a private company; and
- Has a minimum paid up share capital, as may be prescribed:
- Notes: Public > Subsidiary > Deemed Public (AOA continues to be private)
- Minimum members – 7 and Maximum – No limit.
- Shares transferable

## C) On the basis of Control

### 1) Holding and subsidiary companies

**[Section 2(46)]** A company is a holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies.

**Section 2(87)** - Subsidiary company in relation to any other company (say holding company), means a company in which the holding company-

- (i) controls the composition of the Board of Directors;
- or
- (ii) exercises or controls more than one-half ( $> 50\%$ ) of the total voting power either at its own or together with one or more of its subsidiary companies.

### 2) Associate company **[Section 2(6)]**:

In relation to another company, means a company in which that other company has a significant influence ( $\geq 20\%$  VP or control of or participation in business decisions ) which is not a subsidiary and includes a joint venture company.

JV = means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

## D) On the basis of access to capital:

Listed company **[Section 2(52)]**

Unlisted company

## E) Other Companies

### 1) Government company **[Section 2(45)]**

Company in which not less than 51% ( $\geq 51\%$ ) PUSC is held by-

- (i) the CG, or
  - (ii) by any SG or SG's, or
  - (iii) partly by CG and partly by one or more SG's,
- includes company which is a subsidiary company of such a Government company.

### 2. Foreign Company **[Section 2(42)]**:

It means any company or body corporate incorporated outside India which-

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



### 3) Formation of companies with charitable objects (Section 8)

Formation
• To promote Charitable objects
Application of profits
• To promote its objects
• No payment of dividends out of profits
Type of Co.
• Limited Liability
• Without the addition of words "Ltd" or "Pvt Ltd."
How status is granted
• The CG can grant such status
• However, CG has delegated the power to grant licence to ROC
Revocation of licence
• CG may revoke licence
• If conditions of section 8 are contravened, or
• affairs of the company are conducted fraudulently, or prejudicial to public interest
Effect of revocation of licence
• Co has to use words "Ltd." or "Pvt Ltd."

#### 4) Dormant company (Section 455)

company formed and registered, for a future projects or to hold an asset or intellectual property & has no significant accounting transaction, \*an inactive company\* may make an application to the registrar.

Inactive company which has not been carrying on any business or operation, or as not made any significant accounting transaction during the last two years, or has not filed financial statements and annual returns during the last two financial years.

Significant accounting transactions means any transaction other than-

- Payments of fees by a company to the registrar;
- Payments made by it to fulfil the requirements of this act or any other law;
- Allotment of shares to fulfil the requirements of this act; and
- Payments for maintenance of its office and records.

### MODE OF REGISTRATION/INCORPORATION OF COMPANY

#### PROMOTERS 2(69)

means a person-

- named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
- has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- with whose advice, directions, or instructions the Board of Directors of the company is accustomed to act.

#### 5. Nidhi Companies (Section 406 [1])

"Nidhi" or Mutual benefit society" means a company which the central government may, by notification in the official Gazette, declare to be a Nidhi or Mutual benefit Society, as the case may be.

Nidhi Companies are created mainly for cultivating the habit of thrift and savings amongst its members.

#### 6. Public Financial Institutions (PFI)

[Section 2(72)]

The following are regarded as PFI (LIC, IDFC, UTI) notified by the CG

Conditions for an institutions to be notified as PFI

- It has been established or constituted by or under any central or state act other than this act or the previous companies law; or
- Not less than fifty one percent ( $\geq 51\%$ ) of a paid up share capital is held or controlled by the CG or SG or partly by CG and partly by one or more SG.

#### FORMATION OF COMPANY (Section 3)

Minimum Number of Persons

Public company - 7 Persons

Private company - 2 Persons

OPC- 1 Person



### Step 1 - FILLING OF THE DOCUMENTS AND INFORMATION WITH THE REGISTRAR:

- The MOA and AOA duly signed by all the subscribers to the memorandum.
- Declaration by person who is engaged in the formation (an advocate, a CA, Cost A or CS in practice), and by a person named in the AOA (director, manager or secretary of the company), that all the requirements of this Act and the rules made thereunder have been complied with.
- Declaration > subscribers > MOA and persons named as the first directors > AOA stating
  1. not convicted of any offence (promotion, formation or management of any company)
  2. not been found guilty of any fraud or misfeasance (Last 5 yr)\
  3. All the documents filed with the Registrar for registration of the company contain information that is correct and complete and true.
- the address for correspondence till its registered office is established
- particulars (names, family names, DIN etc.) of every subscriber to the MOA and persons mentioned in AOA along with proof of identity
- particulars of the interests of the persons > AOA as the first directors of the company in other firms or bodies corporate along with their consent to act as directors

Step 2. Issue of certificate of incorporation (COI) on registration

Step 3. Allotment of Corporate Identity Number (CIN) - On and from the date mentioned in the COI

Step 4. Maintenance of copies of all documents and information

### Order of the Tribunal

Company incorporated by furnishing false or incorrect information or representation or by suppressing any material fact etc, the tribunal may, on an application made to it, on being satisfied that the situation so warrants,-

1. Pass such orders, > regulation of the management of the company including changes, > MOA and AOA, in public interest or in the interest of the company.
2. Direct that liability of the members shall be unlimited; or
3. Direct removal of the name of the company from the register of companies; or Pass an order for the winding up the company; or
4. Pass such other orders as it may deem fit:

Provided that before making any order,-

- The company shall be given a reasonable opportunity of being heard in the matter; and
- The tribunal consider > transactions entered into by the company, including the obligations, if any, contracted payment of any liability.

### EFFECT OF REGISTRATION (**Section 9**)

From the date of incorporation (mentioned in the COI), All the features of the company will start.

[Hari Nagar Sugar Mills Ltd. vs. S.S. Jhunjhunwala]

[Spencer & Co. Ltd. Madras vs. CWT Madras].

[Heavy Electrical Union vs. State of Bihar].

MOA Features

- The MOA of company is in fact its charter
- It defines its constitution and the scope of the powers of the company with which
- It is the very foundation on which the whole edifice of the company is built.

Object of registering a memorandum of association

- Object for which the company is formed and possible scope of its operations beyond which its actions cannot go.
- to know what its powers are and what activities it can engage in.
- A MOA is a public document . every person entering into a contract with the company is presumed to have the knowledge
- The shareholder must know the purposes for which his money can be used by the company and what risks he is taking in making the investment.

CONTENT OF MEMORANDUM OF ASSOCIATION

1. Name Clause : last word “Limited” ➡ public limited company  
last words “Private Limited” ➡ private limited company.  
not applicable ➡ section 8 of the Act.

2. Registered Office Clause : the State in which the registered office of the company is to be situated

3. Object Clause : the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof

4. Liability Clause : Unlimited company  
Company limited by shares  
Company limited by guarantee

5. Capital Clause (Authorised Capital) : the amount of authorized capital (Capital Clause) divided into share of fixed amounts and the number of shares with the subscribers

6. Association clause : the detail of the subscribers MOA

7. Nomination Clause (OPC) : the name of the person who, in the event of death of the subscriber, shall become the member of the company ( APPLICABLE ONLY FOR OPC )

Doctrine of ultra vires:

Important Points

- Ultra vires means “beyond (their) powers”.
- Applicable ➡ acts done in excess of the legal powers of the doers.
- Act beyond object clause of MOA is ultravires the company & null and void.
- Act cannot be ratified even by unanimous consent of all the shareholders.
- Act ultravires the directors, but Intravires Company, shareholders may ratify it.
- Act ultravires the AOA, can be ratified by altering AOA by Special Resolution.

Impact of Ultra Vires

- a company can neither be sued on an ultravires transaction, nor can it sue on it.
- Memorandum is a “public document”, it is open to public inspection.
- Therefore, one is deemed to know about the powers of the company.
- If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.

ASHBURY RAILWAY CARRIAGE AND IRON COMPANY LIMITED V. RICHE-(1875)

- The AOA of a company are its rules and regulations to manage its internal affairs. (Guinness vs. Land Corporation of Ireland).
- The document containing the AOA of a company (the Magna Carta) is a business document; hence it has to be construed strictly. It regulates domestic management of a company and creates certain rights and obligations between the members and the company [S.S. Rajkumar vs. Perfect Castings(P) Ltd.].

### Contents and model of articles of association (Section 5)

1) Contains regulations : The articles of a company shall contain the regulations for management of the company.

3) Contain provisions for entrenchment: The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than SR, are met or complied with..

5) Notice to the registrar of the entrenchment provision: The company shall give notice to the Registrar of such provisions.

7) Company registered after the commencement of this Act: In case registered articles of such company do not exclude or modify the regulations contained in the model articles applicable to such company. The same is applicable to that company..

2) Inclusion of matters: The AOA matters prescribed under the rules. However, a company may additional matters considered necessary for its management.

4) 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 private company and by a SR public company.

6) Forms of articles: The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company.

8) Model articles: A company may adopt all or any of the regulations contained in the model articles applicable to such company.

Refer Difference between from Concept book



- i) Companies Act, 2013 provides that any person can inspect by electronic means any document kept by the Registrar, or make a record of the same, or get a copy or extracts of any document, (Eg: COI, Annual Return etc;)
- ii) The MOA and AOA of a company when registered with ROC , become public documents.
- iii) It is therefore, the duty of every person dealing with a company to inspect its documents and make sure that his contract is in conformity with their provisions but whether a person reads them or not, it will be presumed that he knows the contents of the documents.
- iv) This kind of presumed/implied notice is called constructive notice
- v) Every person dealing with the company not only has the constructive notice of the memorandum and articles, but also of all the other related documents, such as Special Resolutions etc., which are required to be registered with the Registrar.

### DOCTRINE OF INDOOR MANAGEMENT [Turquand Rule]

- i) The Doctrine of Indoor Management is the exception to the doctrine of constructive notice.
- ii) Outsiders are not deemed to have notice of the internal affairs of the company.
- iii) if an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed. (The Royal British Bank Vs Turquand.)

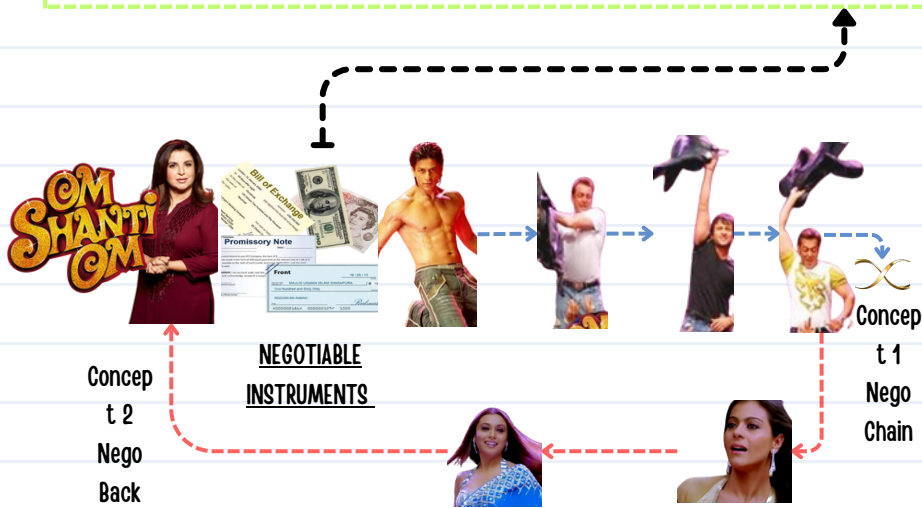
### EXCEPTIONS TO THE DOCTRINE OF INDOOR MANAGEMENT:

- 1) Actual or constructive knowledge of irregularity: The rule does not protect any person when the person dealing with the company has notice, whether actual or constructive, of the irregularity.  
[ Howard vs. Patent Ivory Manufacturing Co.] & [ Morris v Kansseen ]
- 2) Suspicion of irregularity: The doctrine in no way, rewards those who behave negligently. Where the person dealing with the company is put upon an inquiry, for example, where the transaction is unusual or not in the ordinary course of business, it is the duty of the outsider to make the necessary enquiry.  
[ Anand Bihari Lal vs. Dinshaw & Co.] & [ Haughton & Co. v. Nothard, Lowe & Wills Ltd. ]
- 3) Forgery: The doctrine of indoor management applies only to irregularities which might otherwise affect a transaction but it cannot apply to forgery which must be regarded as nullity.  
[ The Royal British Bank vs. Turquand.]

Doctrine of Constructive Notice	Doctrine of Indoor Management
AOA and MOA are Public Documents and can be easily verified by outsiders	Internal ruled and regulation cannot be verified by the outsiders
Against the outsiders	Favour of Outsiders
An outsider entering into unusual transaction must read the MOA and AOA to check whether it is within the powers of the company	An outsider who read the MOA and AOA to check whether it is within the powers of the company cannot be expected to check whether the company has actually followed the procedure and regulation
Objects of the MOA	Procedure in AOA
Exception – DIM	3 Exception



Negotiable Instruments is an instrument (the word instrument means a document) which is freely transferable (by customs of trade) from one person to another by mere delivery or by indorsement and delivery. The property in such an instrument pass to a bonafide transferee for value.



### Characteristics of Negotiable Instruments

- 1) writing
- 2) signed
- 3) transferrable
- 4) title is free from defects
- 5) can be transferred any number of times
- 6) unconditional promise or order to pay money
- 7) sum payable, time of payment and payee - must be certain
- 8) should be delivered.

### Section 13 - Three kinds of negotiable instruments

**PROMISSORY NOTE :** A 'promissory note' is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertakingsigned by the maker,to pay a certain sum of money only to, or to order of, a certain person, or to bearer thereof.

Parties to promissory note:  
**Maker (of the promise) & Payee**

- Characteristics of a Promissory Note
- 1) writing
  - 2) signed by maker
  - 3) promise definite and unconditional.
  - 4) Promise to pay money only
  - 5) Promise to pay a certain sum
  - 6) express promise to pay
  - 7) The maker and payee must be certain, definite and different persons
  - 8) stamping

**BILLS OF EXCHANGE:** A "BOE" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to order of, a certain person or to bearer of instrument

Parties to the bill of exchange  
**Drawer, Drawee & Payee**

- Characteristics of bill of exchange
- 1) writing
  - 2) signed
  - 3) Order definite & unconditional
  - 4) Order to pay money only
  - 5) Order to pay a certain sum
  - 6) express order to pay
  - 7) Drawer, drawee, and payee must be certain
  - 8) stamping

**CHEQUE [SECTION 6] :** A "cheque" is a bill of exchange drawn on a specified banker and NOT expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

Parties to the bill of exchange  
**Drawer, Drawee & Payee**

- Characteristics of bill of exchange
- 1) all the essential characteristics of a bill of exchange
  - 2) must be drawn on a specified banker
  - 3) it must be payable on demand

a. Cheque in the electronic form  
a cheque drawn in e-form by using any computer resource

b. truncated cheque  
cheque which is truncated during a clearing cycle, either by clearing house or bank

## CLASSIFICATION OF NEGOTIABLE INSTRUMENTS

a. Bearer Instrument : where the name of the payee is blank or payee is specified with the words "or bearer" or where the last indorsement is blank & negotiated by mere delivery.

b. Order Instrument: : which is payable to a person or Payable to a person or his order or Payable to order of a person or where the last indorsement is in full & negotiated by indorsement and delivery

c. Inland instrument : A PN, BOE or cheque, drawn or made in India and made payable in India or drawn upon any PRI shall be deemed to be an inland instrument.

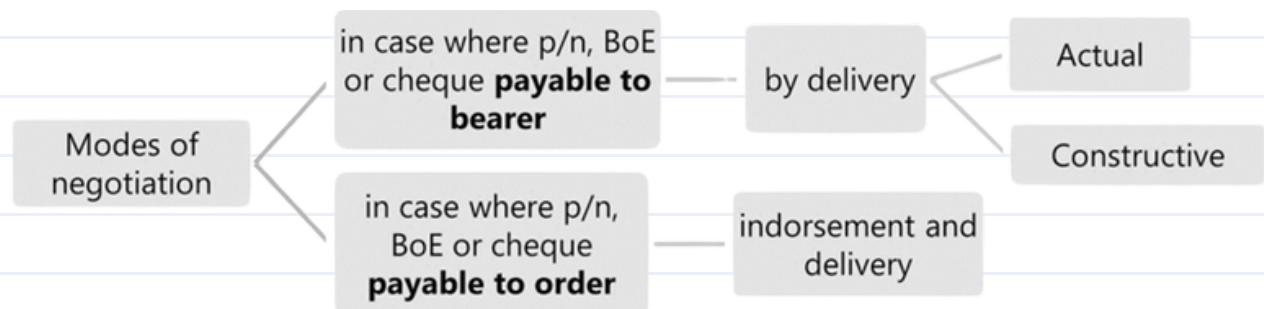
d. Foreign instrument : all instrument other than inland is considered as foreign instrument.  
liability of maker/drawer ← regulated by law of place where he made the instrument.  
liabilities of acceptor/indorser ← place where instrument is made payable

e. Inchoate Instrument :

- i) incomplete in certain respects
- ii) NI may signs AND DELIVERS it to another person leaving the instrument wholly blank or having written the word incomplete
- iii) give power to its holder to make it complete by writing any amount:  
either within limits specified therein or  
within limits specified by the stamps affixed on it
- iv) liable to both - Holder and HDC
- v) Holder cannot recover amount in excess
- vi) HDC can recover any amount on such NI

- c. Inland instrument :
  - i) instrument may be construed either as a PN or BOE
  - ii) the holder may at his election, treat it as either, and
  - iii) the instrument shall be thenceforward treated accordingly
  - iv) After exercising his option, the holder cannot change that it is the other kind of instrument

## NEGOTIATION (TRANSFER) OF NEGOTIABLE INSTRUMENTS



### Importance of Delivery in Negotiation [Section 46]

- i) Delivery ← voluntary ← intention to pass property
- ii) Actual delivery ← instrument changes hand physically
- iii) Constructive delivery ← instrument is delivered to the agent, clerk or servant of the indorsee on his behalf or when indorser, after indorsement, holds the instrument as an agent of the indorsee
- iv) instrument is indorsed conditionally or for a special purpose only, the property in it does not pass to the transferee, unless the NI is negotiated to HDC
- v) Until delivery, contract on a NI remains incomplete and revocable
- vi) Delivery is essential not only at time of negotiation but also at time of making/drawing of NI
- vii) Death of indorser ← legal representatives of the deceased person CANNOT negotiate the same by mere delivery thereof (Section 57)

### Delivery when effective between the parties

Negotiation of instruments between the parties	How delivery is to be made
As between parties standing in <b>immediate relation</b>	Delivery to be effectual must be <b>made by maker, acceptor or indorser</b> , or by person authorized by them
As between <b>such parties</b> and any <b>holder (not HDC)</b>	It may be shown that instrument was delivered <b>conditionally</b> or for a <b>special purpose only</b> , and not for purpose of transferring absolutely property therein.

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

Where any cheque drawn by a person on an account maintained by him with a banker

- for payment of any amount of money
- to another person from that account
- for the discharge, in whole or in part, of any debt or other liability
- is returned by the bank unpaid,
- either because of the
  1. amount of money to credit of account is insufficient to honor cheque, or
  2. that it exceeds amt arranged to be paid from that account by an agreement made with bank, such person shall be deemed to have committed an offence (criminal) and shall be punished with :-
- imprisonment ➡ 2 years, or
- fine ➡ 2x amount of the cheque, or both

Provided that this section shall not apply, unless:

- Cheque presented within validity period i.e. within 3 months from date on which it is drawn or within period of its validity, whichever is earlier.
- Demand for payment through notice within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and
- Failure of drawer to make payment within 15 days of the receipt of the said notice.



Rules When presentment unnecessary

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 3 <sup>rd</sup> 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.
<b>Note:</b> Delay in presentment for acceptance or payment is excused if the delay is caused by circumstances beyond the control of the holder	

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.

## PRESENTMENT OF INSTRUMENTS

The compensation payable in case of dishonour of NI, by any party liable to the holder or any endorsee, shall be determined by the following rules:

- (a) Holder gets the due amount + expenses of presenting, noting, and protesting.
- (b) If payer is in a different place, holder gets amount at current exchange rate.
- (c) Endorser who paid is entitled to reimbursement + 18% p.a. interest + expenses.
- (d) If endorser and payer are in different places, exchange rate applies.
- (e) Compensation can be claimed via a bill on the liable party, payable on sight/demand, with dishonoured instrument & protest (if any). If dishonoured, compensation applies as in the original bill.



