

Knowledge  
Hub  
*Satish D Baheti*

# CA Foundation

## BUSINESS LAW

*The Indian Contract Act 1872*

**STUDY MATERIAL**

EDITION I

*CS Satish D Baheti*

AUTHOR

# *From the Author's Pen....*

Learning Process can never be tedious when it is interactive, I believe in active participation of students in the classroom with the focus shifting from the teaching process to the learning. With the concepts explained and analyzed in every topic of our Business law, I invite students to discuss and debate on the topics / concepts through hand raise

Every Concept is probed from all possible perspectives till it is flawlessly comprehended in all the dimensions at a particular level. The same is done for all the concepts in our Business law Subject

The concepts & exercises are revised daily so as to make students to build the concepts at a high level. The analysis of a concept & topics helps a student to comprehend it beyond doubt

This book has been prepared in view of students so as to analyze, comprehend and interpret each concept easily through various flow charts, pictographs, examples, illustrations with a simple & easy language

Lets explore this world of law through joy

*Regards*

*CS Satish D Baheti*





# The Indian Contract Act 1872

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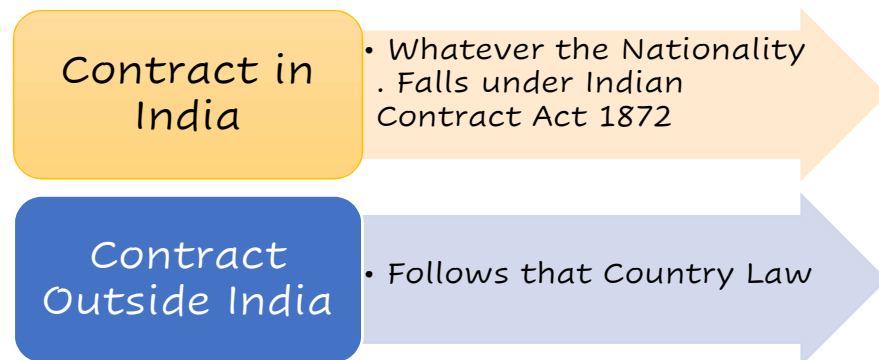
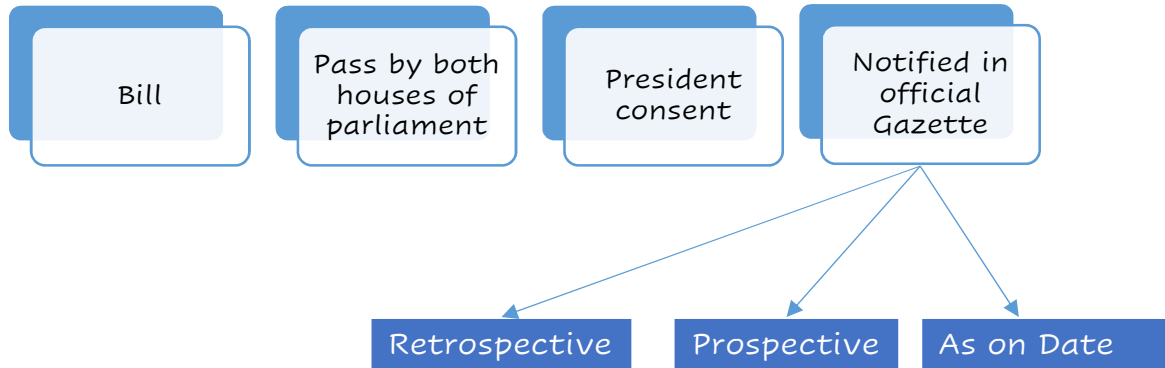
Unit 1

# Nature of Contract

# Unit 1 . Nature of Contract

## Introduction :

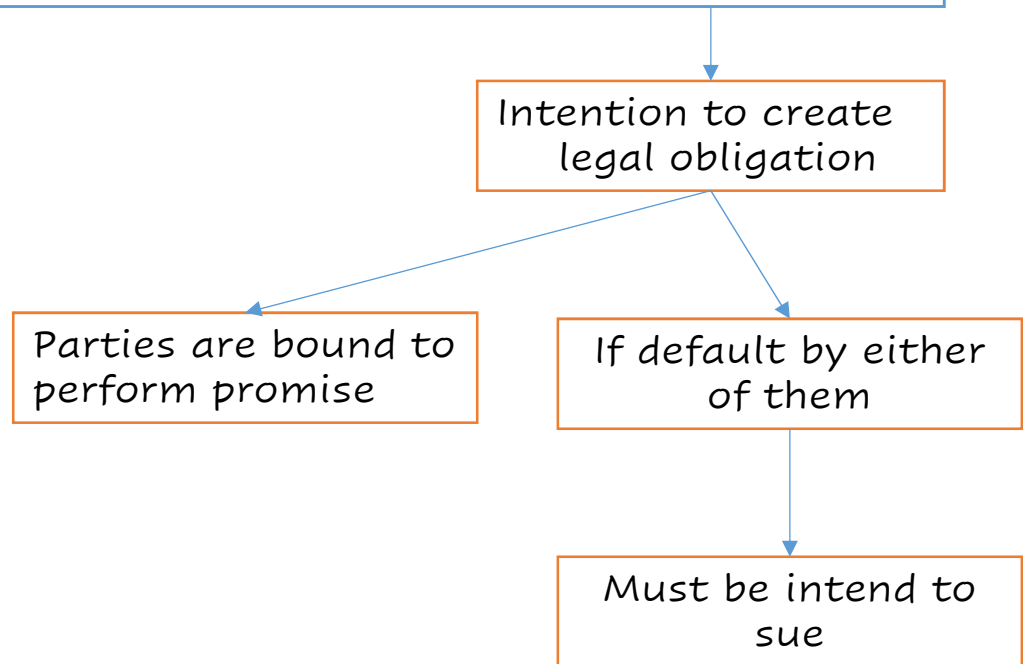
### Section 1 : Short title



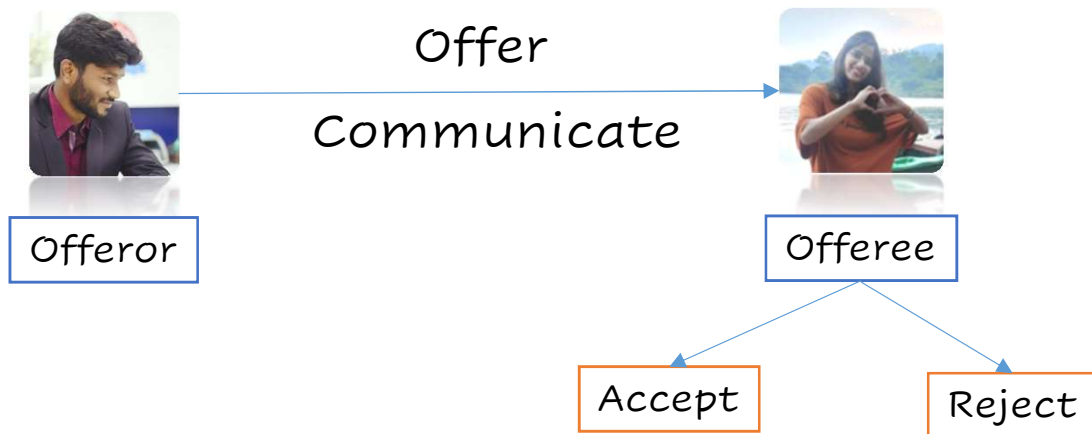
# Contract

## Section 2(h)

Contract = Agreement + Enforceable by Law



## Example :

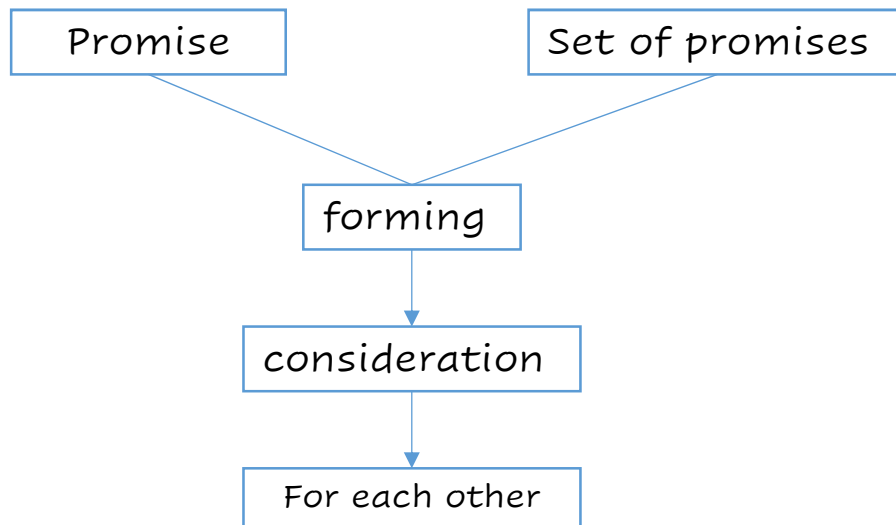


Offer + Acceptance = Promise

Promise + Consideration = Agreement

# Agreement

## Section 2(e)



Agreement = promise + Consideration

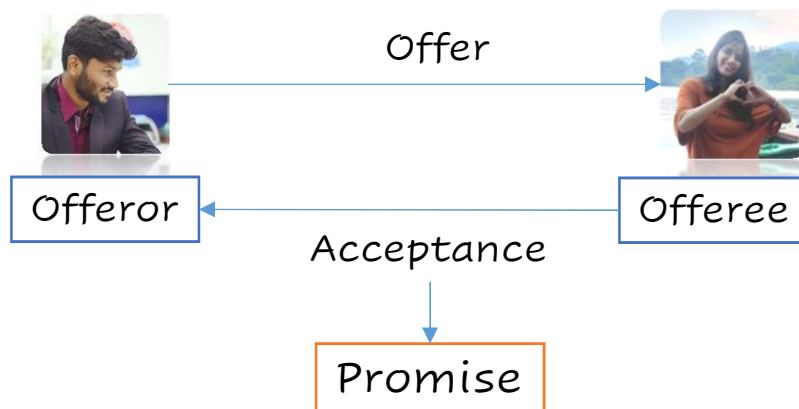
Agreement = Offer + Acceptance

Proposal When Accepted

Becomes Promise

Section 2(b)

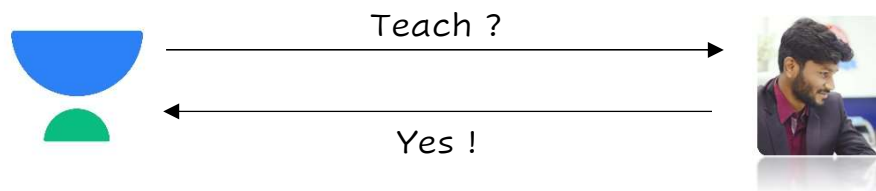
## Example



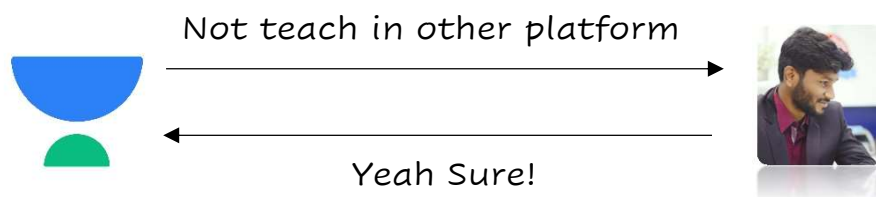
# Offer / Proposal

## Example

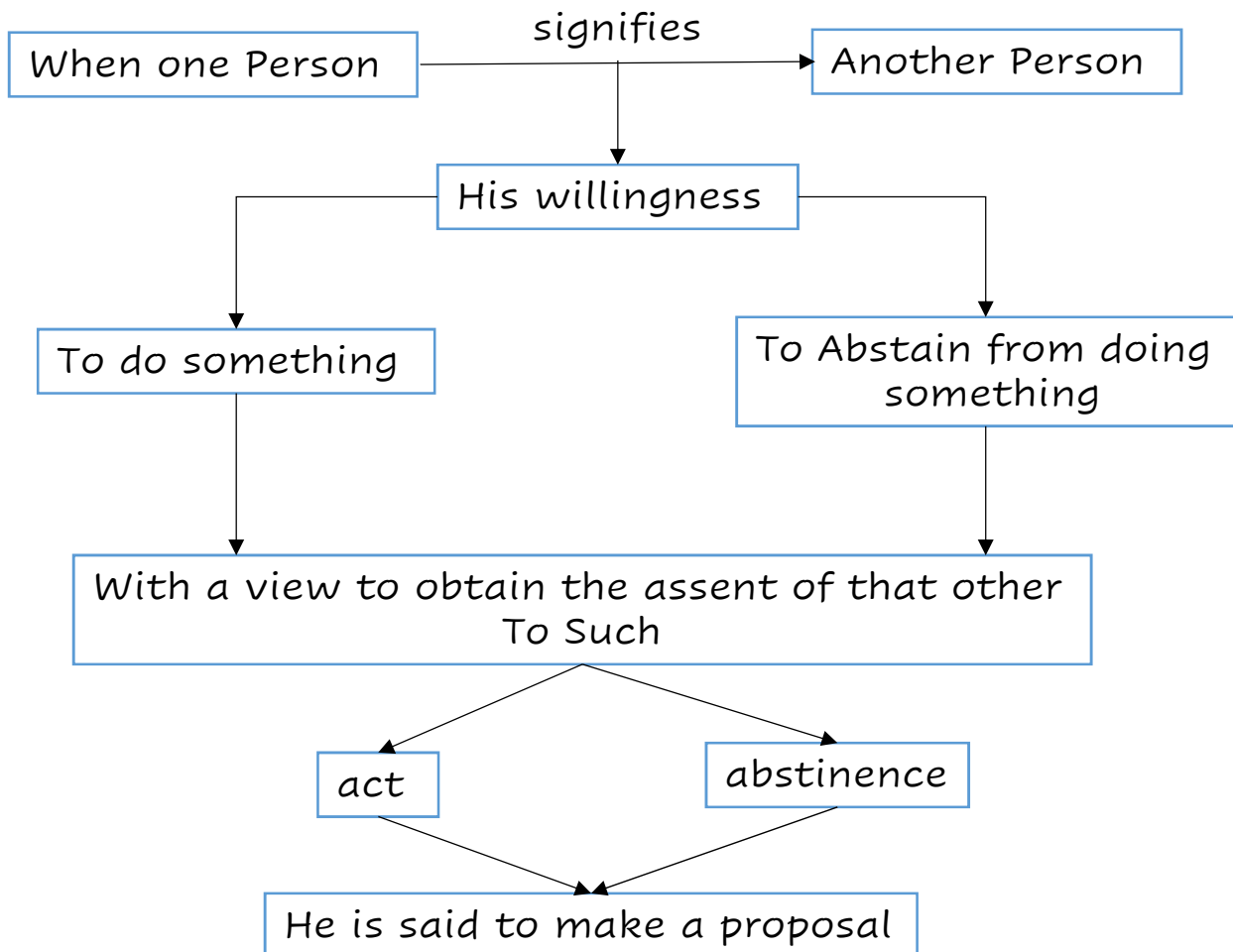
To do



Abstain from doing



## Section 2(a)





### **Definition of Offer/Proposal:**

According to Section 2(a) of the Indian Contract Act, 1872,

“when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal”.

### **Question 1 :**

The Law of Contract is not whole law of Agreements ?

Answer :

- Agreements that create legal obligations are called as Contracts
- Agreements that do not create legal obligations are just a promise

### **Question 2 :**

The Law of Contract is not whole law of Obligations

Answer :

- It deals with only those obligations
- Which arise out of Agreements - contract
- Which not arise out of Agreements - Not contract
  
- Example :
- An obligation to maintain wife and children, an order of the court of law etc. These are status obligations and so out of the scope of the Contract Act.

The Law of Contract is not whole law of Obligations

### Question 3

2018 Nov – 3 Marks

Mr. Ramesh promised to pay ` 50,000 to his wife Mrs. Lali so that she can spend the sum on her 30th birthday. Mrs. Lali insisted her husband to make a written agreement if he really loved her. Mr. Ramesh made a written agreement and the agreement was registered under the law. Mr. Ramesh failed to pay the specified amount to his wife Mrs. Lali. Mrs. Lali wants to file a suit against Mr. Ramesh and recover the promised amount.

Referring to the applicable provisions of the Contract Act, 1872, advise whether Mrs. Lali will succeed.

#### Provision of Law :

Parties must intend to create legal obligations: There must be an intention on the part of the parties to create legal obligation between them. Social or domestic type of agreements are not enforceable in court of law and hence they do not result into contracts.

#### Case law : Balfour vs. Balfour

#### Facts of the Case :

In the given question, Mr. Ramesh promised to pay ` 50,000 to his wife so that she can spend the same on her birthday. However, subsequently, Mr. Ramesh failed to fulfil the promise, for which Mrs. Lali wants to file a suit against Mr. Ramesh.

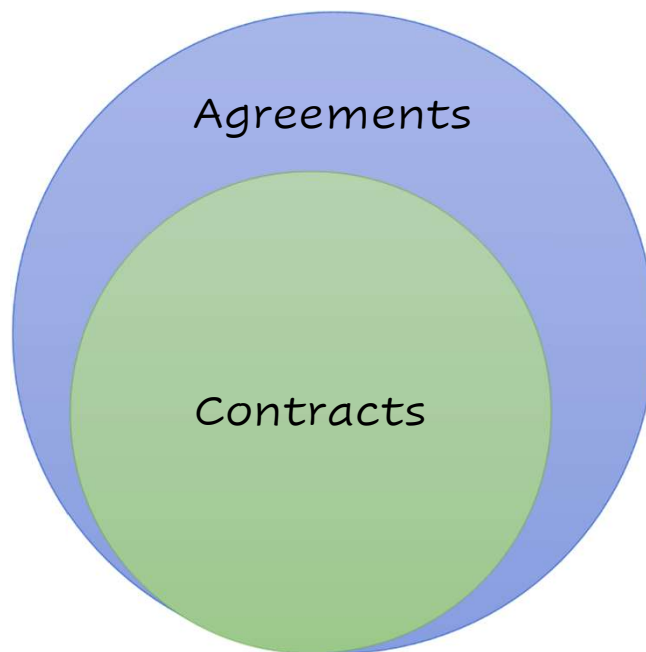
#### Analysis & Conclusion :

Referring to above provisions of law , Here in the given circumstance wife will not be able to recover the amount as it was a social agreement and the parties did not intend to create any legal relations.

**Question 4****3 Marks**

Differentiate between Agreement &amp; Contract ?

Basis	Agreement	Contract
1. Meaning	Every promise and every set of promises, forming the consideration for each other. (Offer + Acceptance)	Agreement enforceable by law. (Agreement + Legal enforceability)
2.Scope	wider	narrow
3. Legal. Obligation	Not creates	creates
4.Nature	All agreement are not contracts	All contracts are agreements.

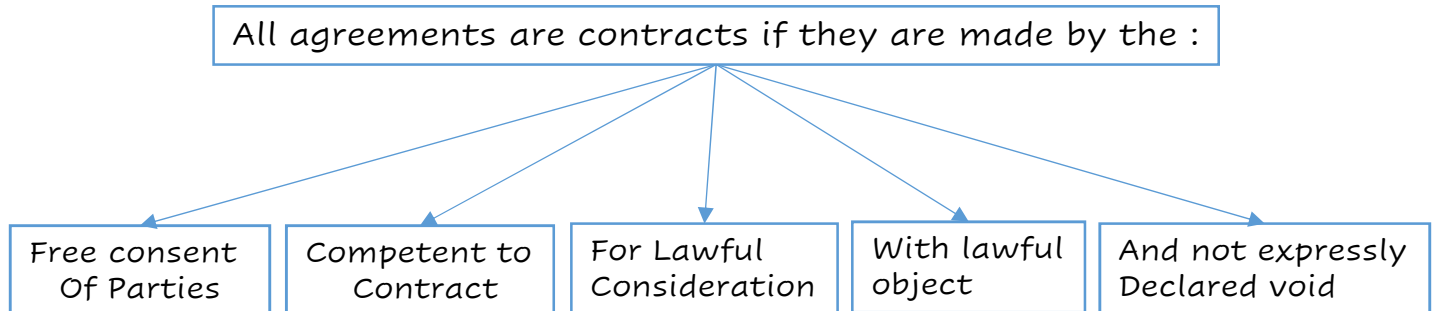


# Essentials of a Valid Contract

## Question 5

7 Marks

Define Contract . Describe the essentials of a valid contract ?



**In terms of Section 10 of the Act,**

“all agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void”.

Section 10 - Essential elements of a contract  
Section 29 - Uncertainty  
Section 56 - Possibility to perform

## 1. Intention to Create Legal Obligation

Example 1: Movie  
Picnic  
Dinner  
Trekking  
CA Exam

} Domestic , Social , Religious

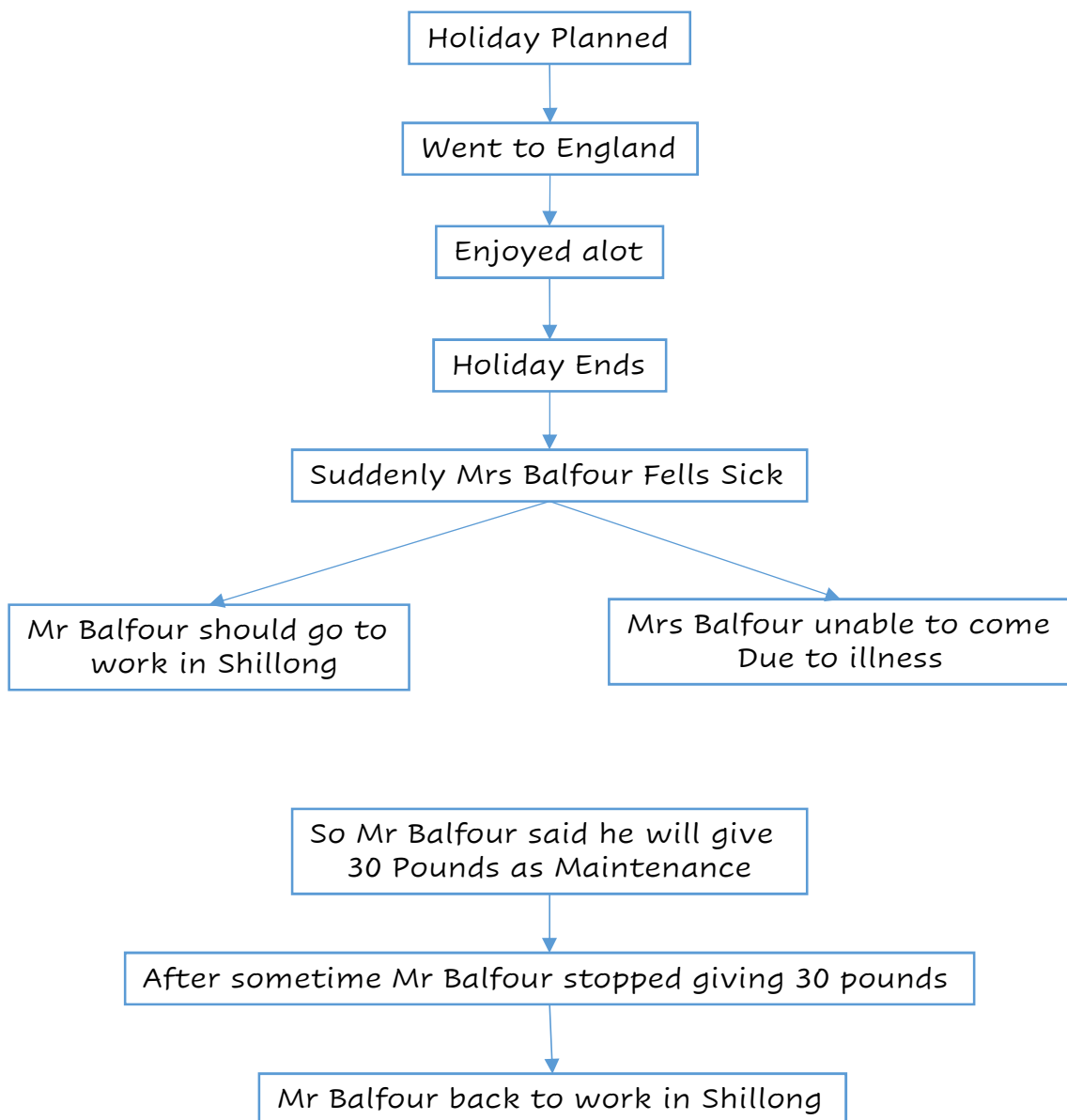
Presumption :  
Law believes that it is not enforceable unless expressly mentioned

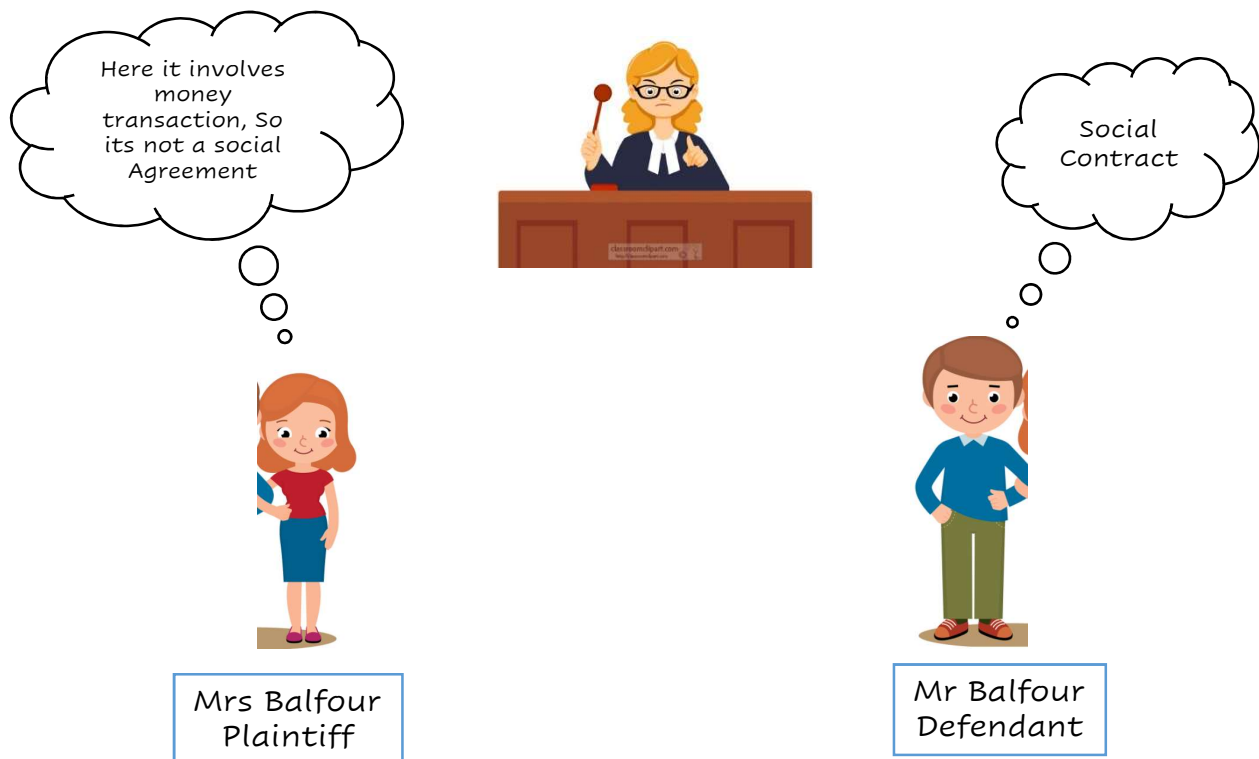
Example 2: Sale/Purchase  
Party Agreement  
NDA (Non Disclosure Agreement)  
Property Purchase

} Commercial transaction

Presumption :  
Generally enforceable by law , unless expressly exclude

## Case Law : Balfour vs. Balfour





**Courts Decision :**

It was held that transaction between Mr and Mrs Balfour was not commercial "Every Money Transaction not becomes commercial "

It was out of Love and Affection  
There is no intention to create legal obligations and therefore we can't sue against Mr Balfour

But if intention was clear at the time of entering into contract ,  
that failure to perform amounts to breach of duty and liable for action under court

## 2. Free Consent

**Consent** : Section 13

Agree upon Same thing in same sense

Consensus Ad Idem = Meeting of minds

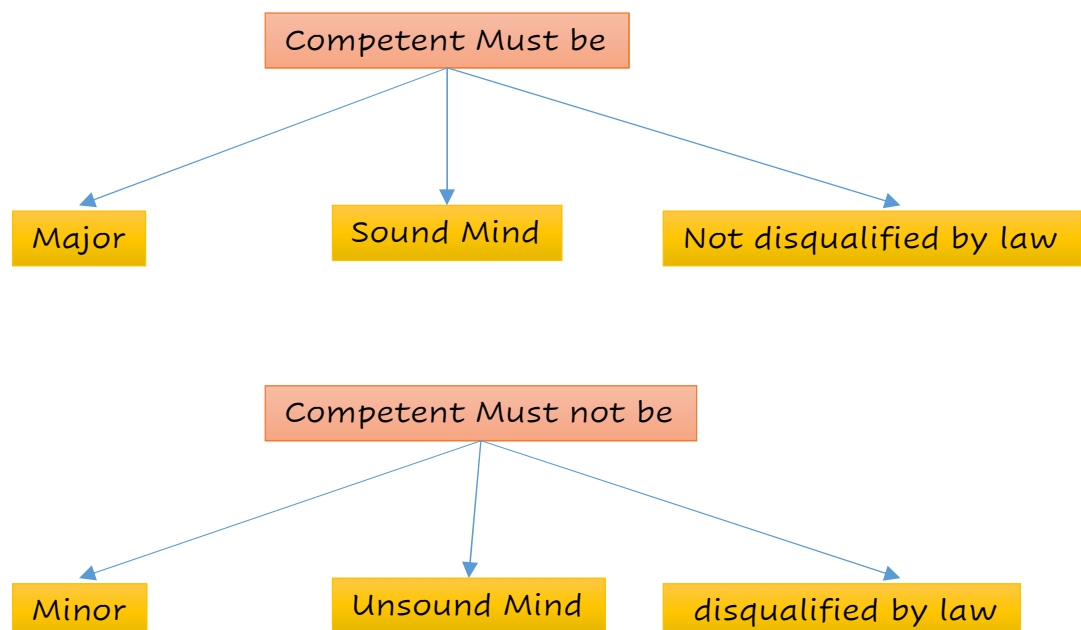
Free Consent : Section 14

When its not caused by

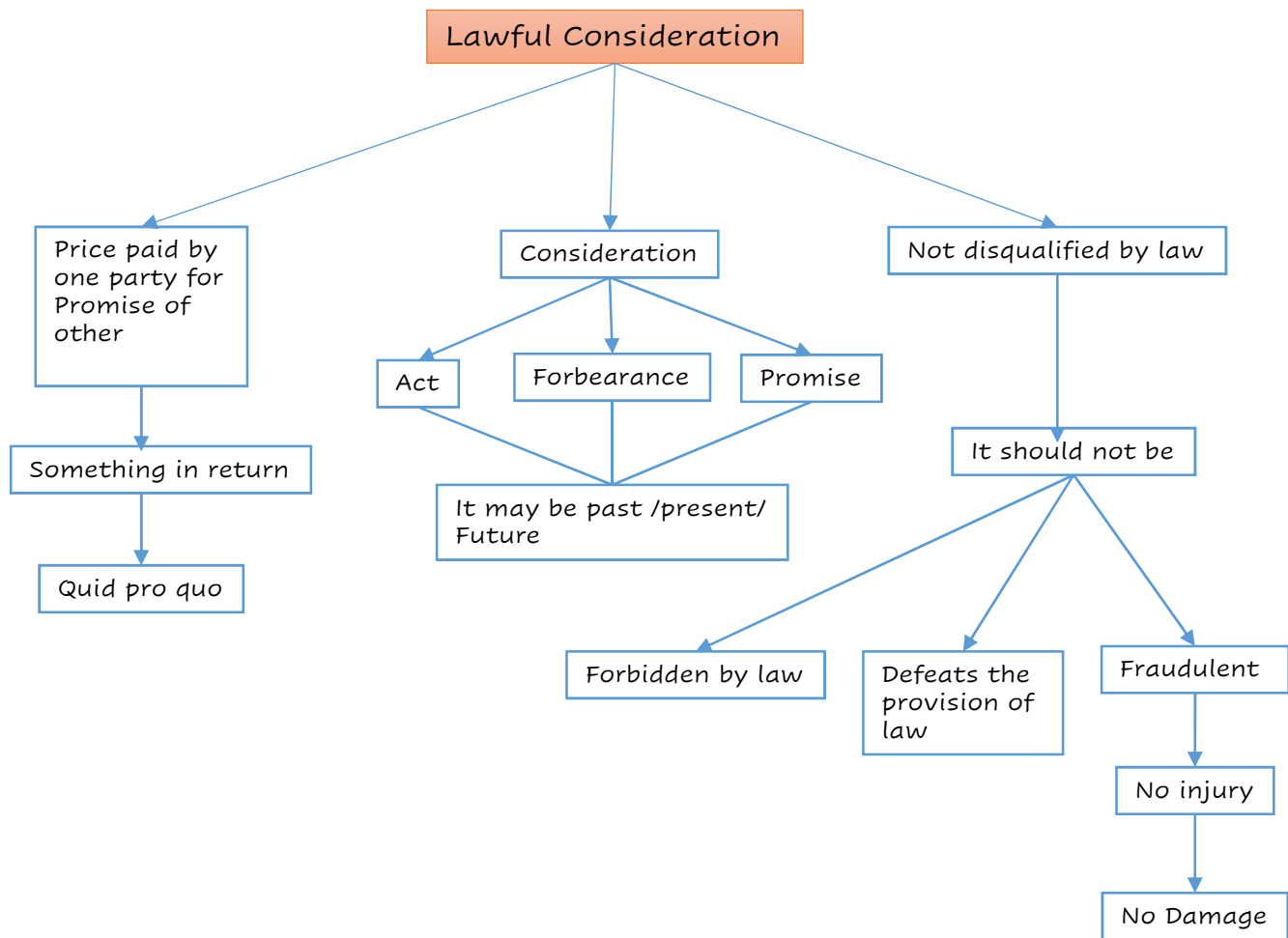
1. Coercion
2. Undue Influence
3. Fraud
4. Misrepresentation
5. Mistake ( Law & Fact )

## 3. Parties Competent to Contract

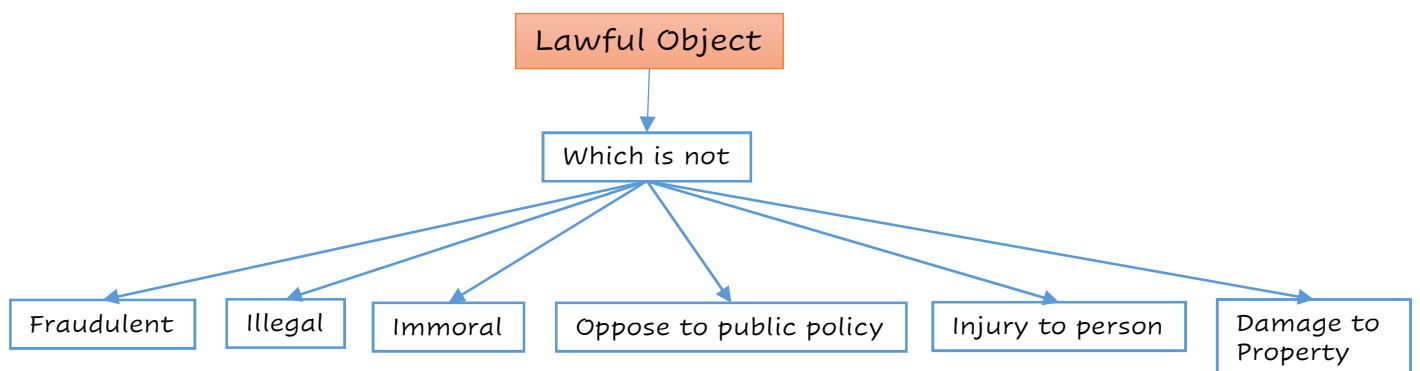
Parties must be Competent to Contract ,  
Otherwise it is not enforceable by court of law



#### 4. Lawful Consideration



#### 5. Lawful Object



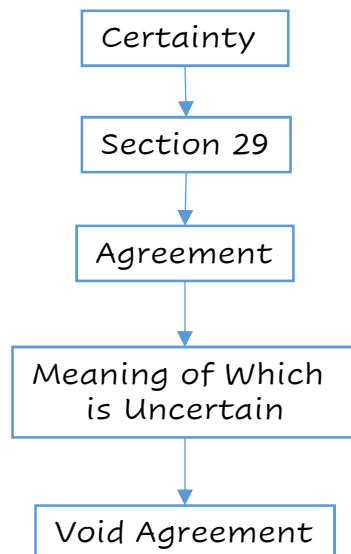


## 6. Not Expressly Declared Void

### Agreements Which are Expressly Declared Void

Section 24 : Agreements of Unlawful Consideration  
Section 25 : Agreements Without Consideration  
Section 26 : Restrain to Marriage  
Section 27 : Restrain to Trade  
Section 28 : Restrain to Legal Proceedings  
Section 29 : Uncertainty  
Section 30 : Wagering Agreements  
Section 56 : Impossible to Perform

## 7. Certainty



Note : Agreements must not be Vague / Uncertain

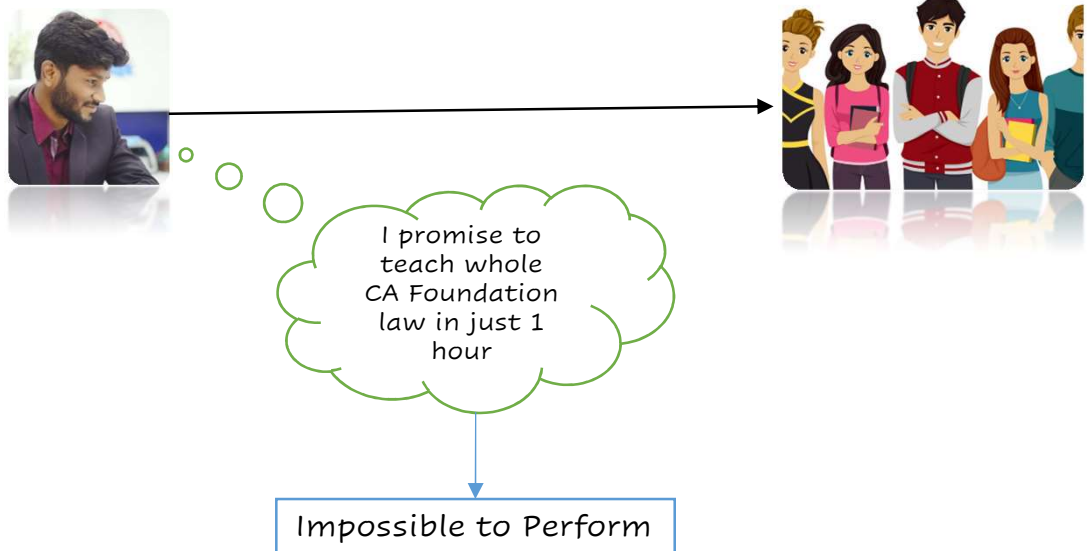
### Example



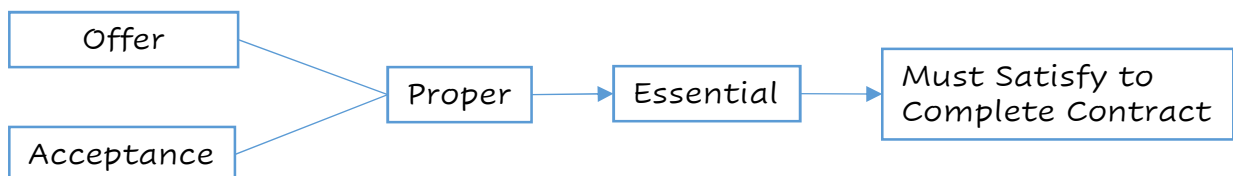
## 8. Possibility to Perform

- Capable of being performed
- If the act is impossible by itself, Physically or Legally, then the agreement cannot be enforceable by law

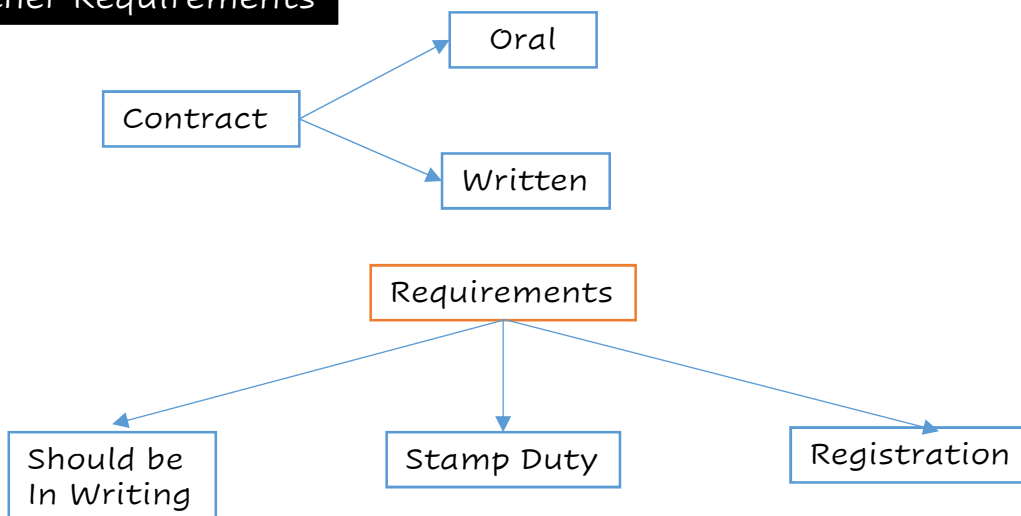
### Example



## 9. Offer + Acceptance



## 10. Other Requirements



# Summary



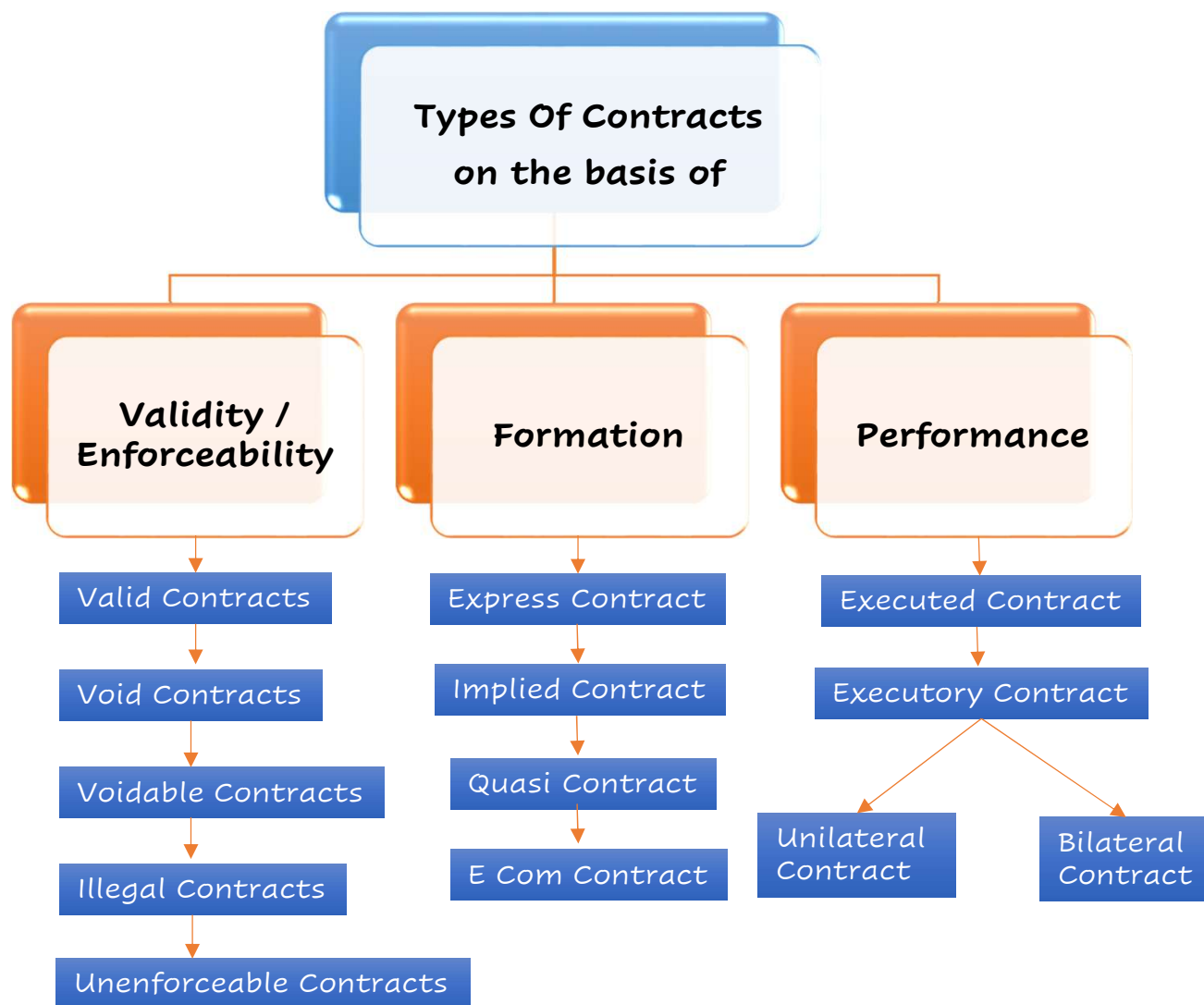
# Types Of Contracts

Question 6

RTP Nov 2019

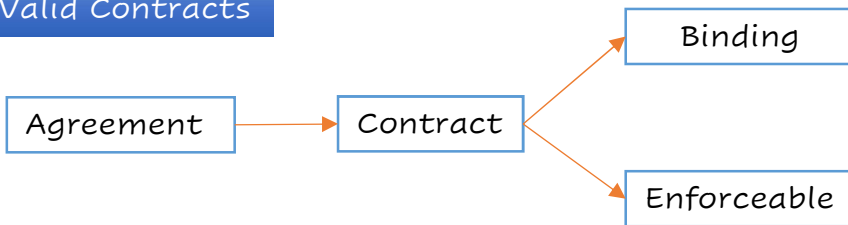
7 Marks

Define Contract . Describe about various types of Contracts



## On the basis of Validity / Enforceability

### 1. Valid Contracts



#### All Essential Elements

Section 10 : Essential Elements  
Section 29 : Certainty  
Section 56 : Possibility

“ An agreement which is binding and enforceable is a valid contract. It contains all the essential elements of a valid contract “

#### Example

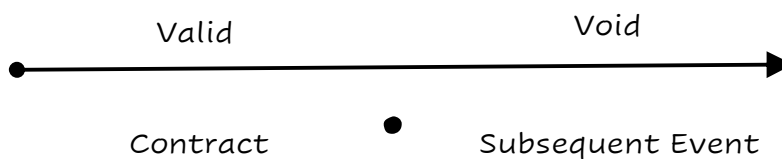
Purchasing a car for 5 lakhs



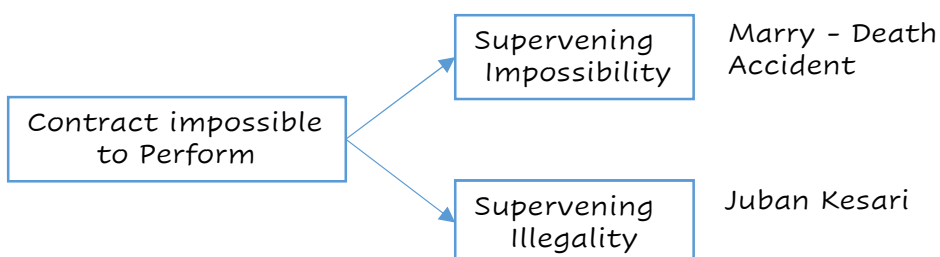
### 2. Void Contracts

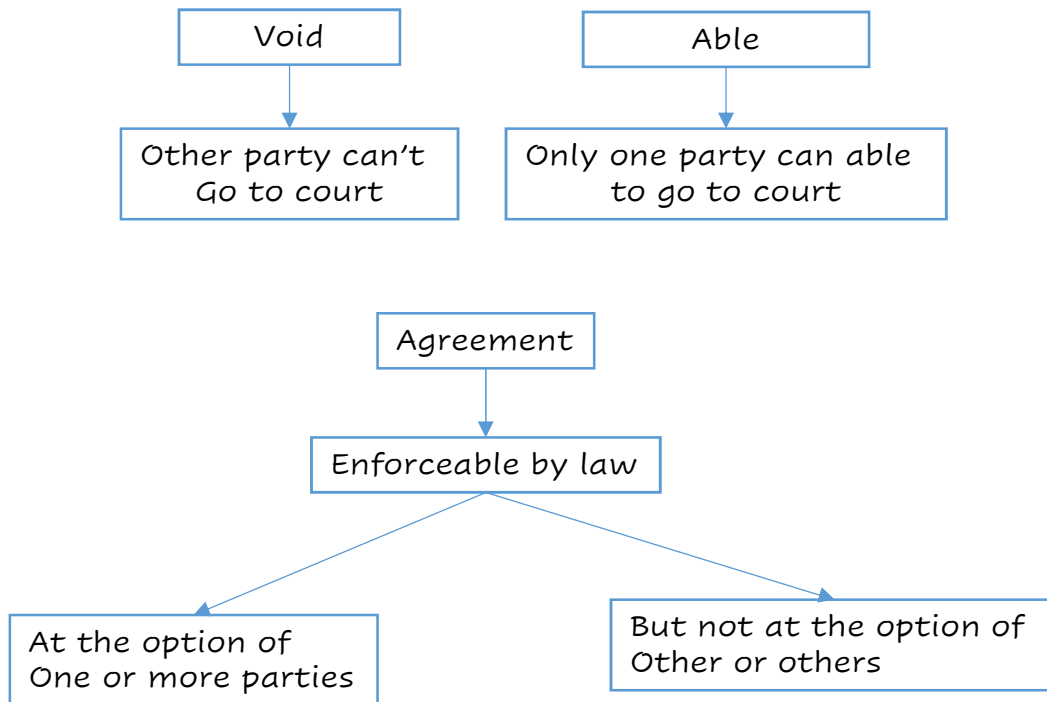
Section 2(j)

“A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable”.



#### Example





“an agreement which is enforceable by law at the option of one or more parties thereto, but not at the option of the other or others is a voidable contract”.

**Example**

**100 crores House**



Or else I will shoot you

Sell house

For 10 lakhs

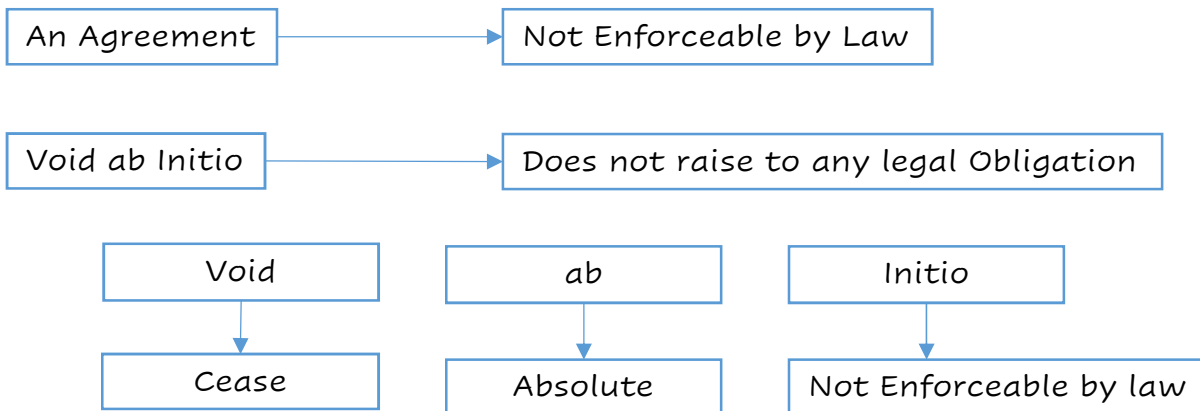


Note: Usually contract is voidable , When consent is not free

**Question 7****5 Marks**

Differentiate between Void Contract &amp; Voidable Contract

Basis	Void Contract	Voidable Contract
1. Meaning	➤ Ceases to be enforceable	➤ Enforceable at the option
2. Enforceability	➤ cannot	➤ At the option of AP
3. Cause	➤ Change in law ➤ Change in Circumstance	➤ Consent not free
4. Performance of Contract	➤ Cannot	➤ If AP not exercise option ➤ Any other can claim performance
5. Rights	➤ No right	AP has right to make ➤ Valid (or) ➤ Void

**Void Agreement****Example**

1. Agreement with Minor
2. Agreements without Consideration
3. Agreements Expressly declared Void

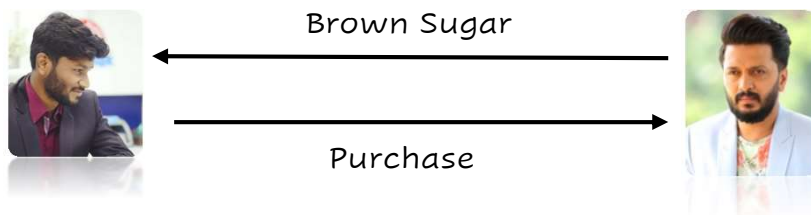


#### 4. Illegal Contracts

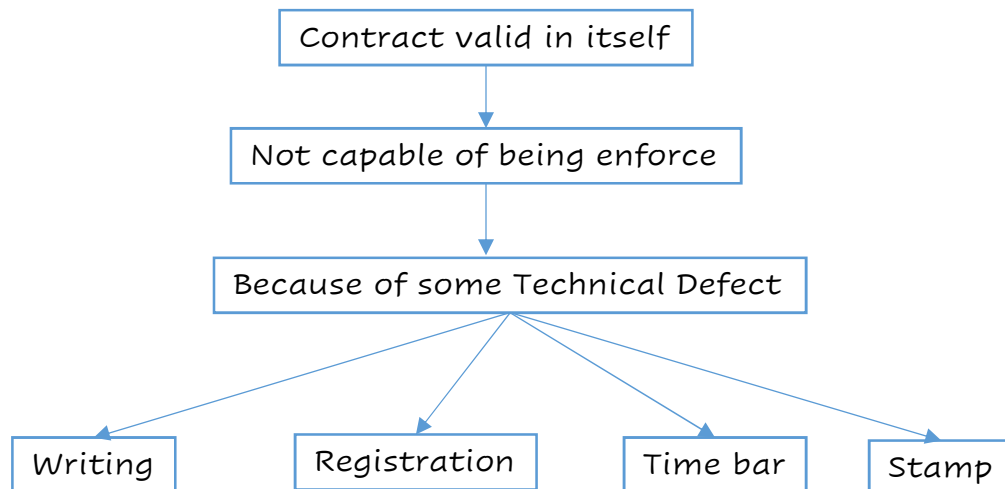
- Forbidden by Law – also Void
- Not enforceable by court of Law
- Oppose to Public Policy
- Immoral in Nature

**Example** Murder Kidnap

SDB Sir agrees to Purchase Brown Sugar from Ritesh  
➤ Which is an illegal Agreement



#### 5. Unenforceable Contracts



“Where a contract is good in substance but because of some technical defect i.e. absence in writing, barred by limitation etc. one or both the parties cannot sue upon it, it is described as an unenforceable contract ”

**Example** Partnership Deed - Oral/ Written  
Arbitration - Written  
Sale of House - Registered  
Barred by limitation Act

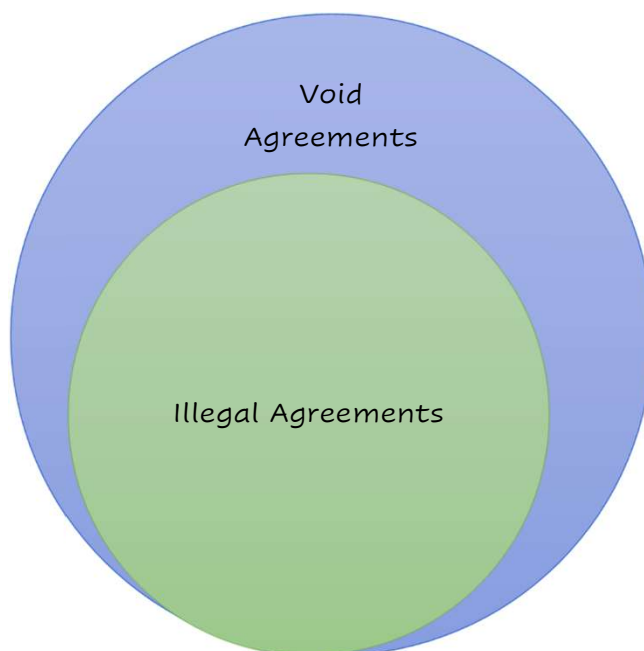




**Question 8****5 Marks**

Differentiate between Void Agreement &amp; Illegal Agreement ?

Basis	Void Agreement	Illegal Agreement
1. Meaning	➤ Not enforceable by Law	➤ Forbidden by law ➤ Oppose to Public Policy
2. Scope	➤ Not necessarily illegal	➤ Always Void (illegal)
3. Nature	➤ Not Forbidden by Law	➤ Forbidden by Law
4. Punishment	➤ No	➤ Yes
5. Collateral Agreement	➤ May be Void / Valid	➤ Always Void



**Question 9****MTP Nov 2019****4 Marks**

Point out with reason whether the following agreements are valid or void:

- (i) Riya promises Samarth to lend Rs. 500,000 in lieu of consideration that Samarth gets Riya's marriage dissolved and he himself marries her.
- (ii) Aryan agrees with Mathew to sell his black horse. Unknown to both the parties, the horse was dead at the time of agreement.
- (iii) Ravi sells the goodwill of his shop to Shyam for Rs. 4,00,000 and promises not to carry on such business forever and anywhere in India.
- (iv) In an agreement between Prakash and Girish, there is a condition that they will not institute legal proceedings against each other without consent.

**(i) Void Agreement:**

As per Section 23 of the Indian Contract Act, 1872, an agreement is void if the object or consideration is against the public policy.

**(ii) Void Agreement:**

As per Section 20 of the Indian Contract Act, 1872 the contracts caused by mistake of fact are void. There is mistake of fact as to the existence of subject matter.

**(iii) Void Agreement:**

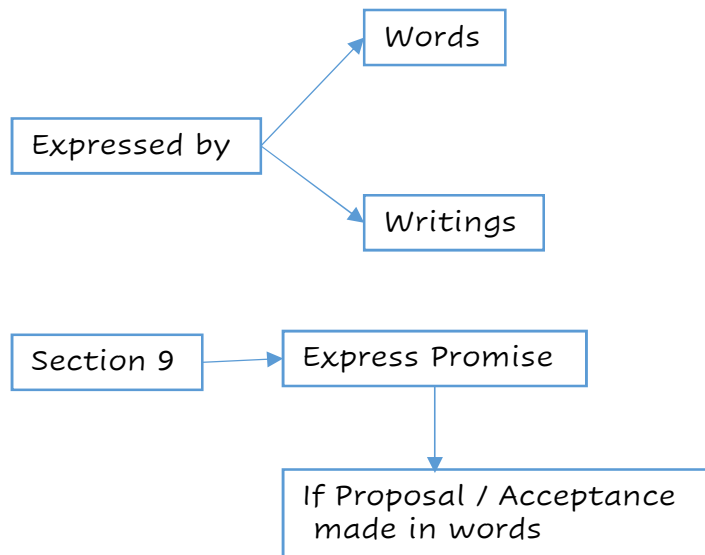
As per Section 27 of the Indian Contract Act, 1872 an agreement in restraint of trade is void. However, a buyer can put such a condition on the seller of good will, not to carry on same business. However, the conditions must be reasonable regarding the duration and the place of the business.

**(iv) Void Agreement:**

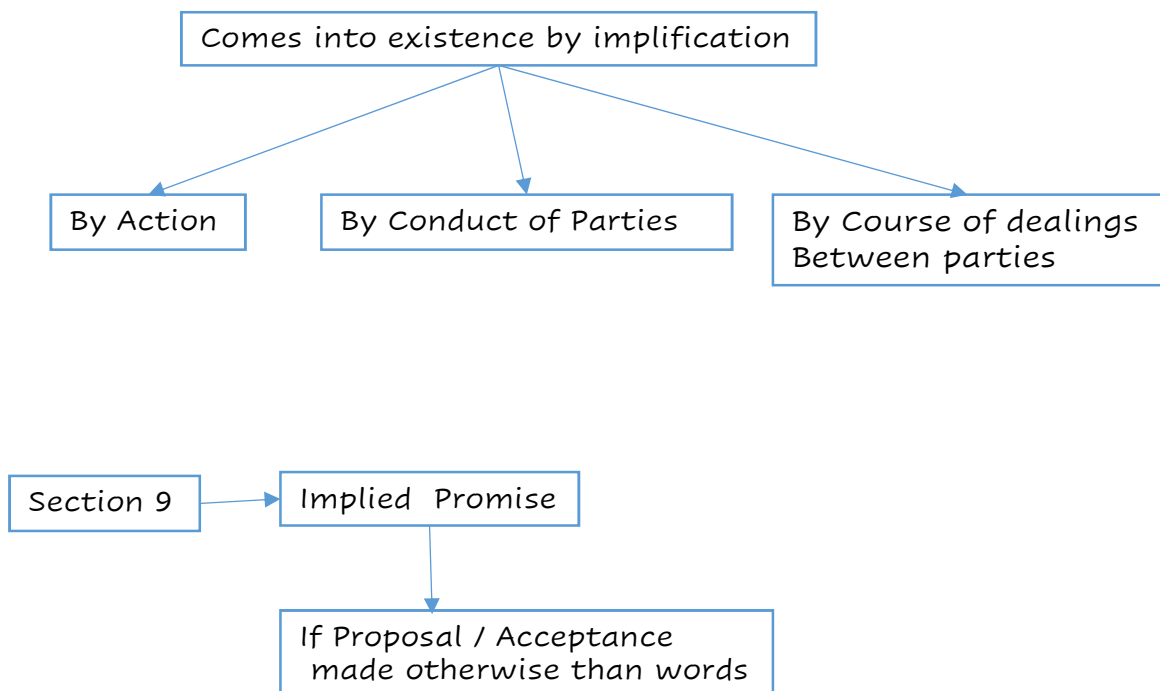
An agreement in restraint of legal proceedings is void as per Section 28 of the Indian Contract Act, 1872.

## On the basis of Formation

### 1. Express Contract



### 2. Implied Contracts



### 3. Tacit Contracts

- Tacit means Silent
- Inferred from the conduct of Parties

#### Example

1. Withdrawing Cash from ATM
2. Sale by Fall of Hammer in an Auction Sale



### 4. Quasi Contracts

Not actual Contract

But resembles a contract

Law

Creates and enforce obligations  
When no real Contract exists

#### Example

1. Finder of lost Purse
2. Pizza delivered to others
3. Money paid under mistake



### 5. E-Contracts

Contract between 2 or more parties

By using electronic means

E mail

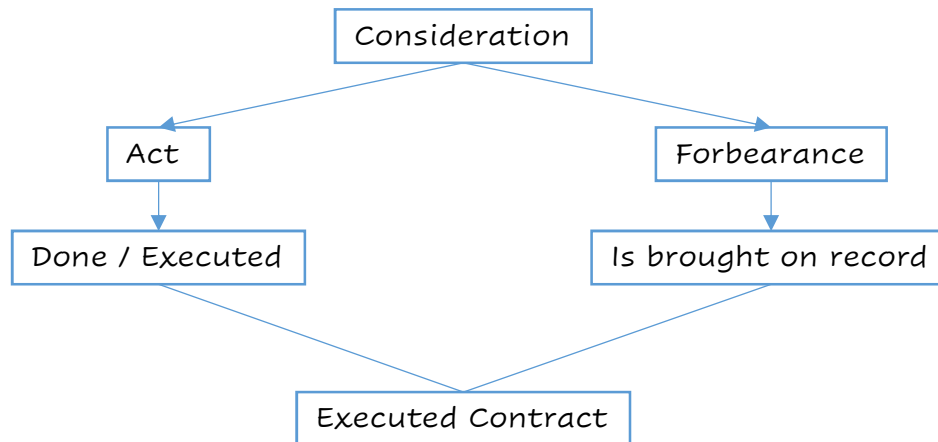
E commerce

Also Known as

- Electronic Data Interchange EDI
- Cyber Contract
- Mouse Click Contract

## On the basis of Performance

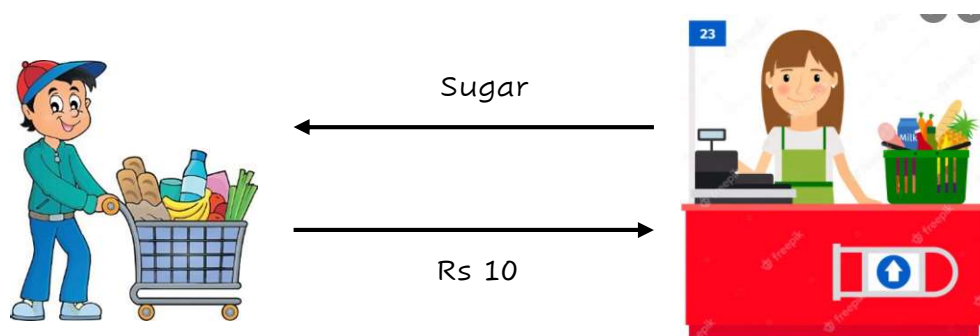
### 1. Executed Contract



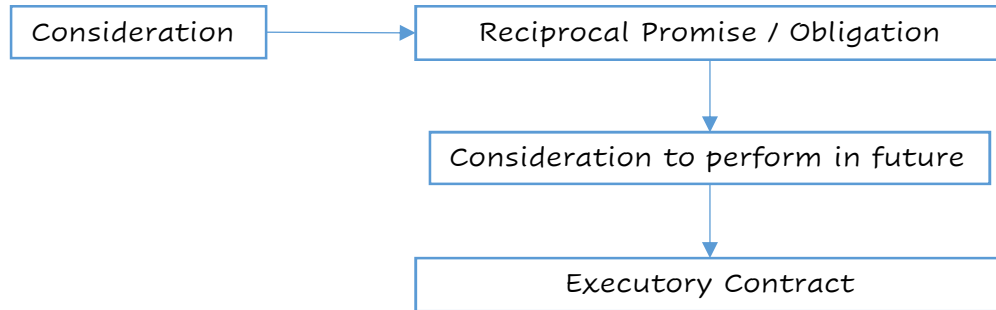
The consideration in a given contract could be an act or forbearance. When the act is done or executed or the forbearance is brought on record, then the contract is an executed contract

- Both the Parties of the contract have performed their obligation
- Both the Parties have done what they were to do

### Example

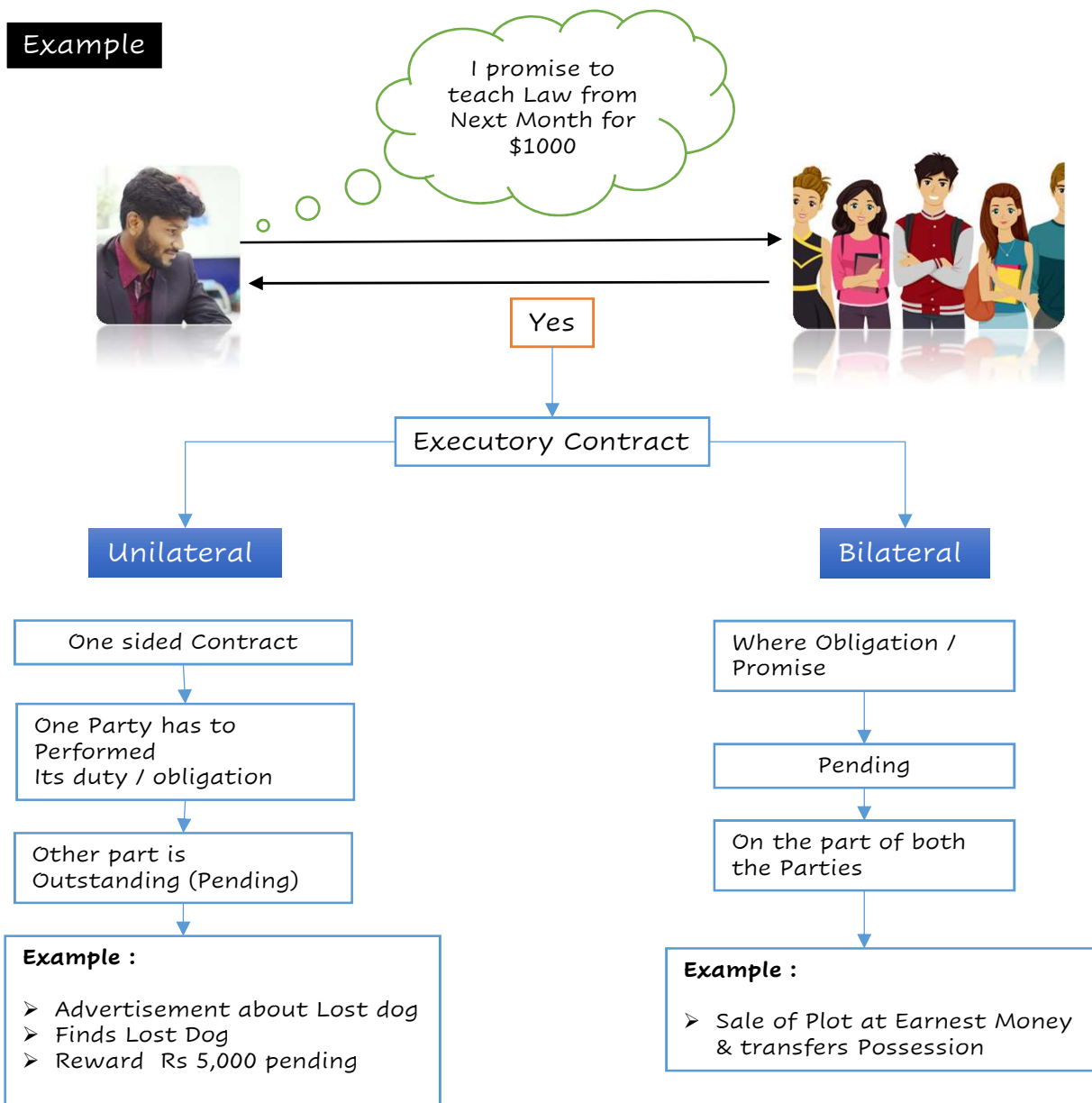


## 2. Executory Contract



: In an executory contract the consideration is reciprocal promise or obligation. Such consideration is to be performed in future only and therefore these contracts are described as executory contracts.

### Example



# Offer

## Question 10

7 Marks

Define offer & its essentials . Describe various types of offer ?

### Definition of Offer/Proposal:

According to Section 2(a) of the Indian Contract Act, 1872,

“when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal”.

### Essentials of a Offer / Proposal

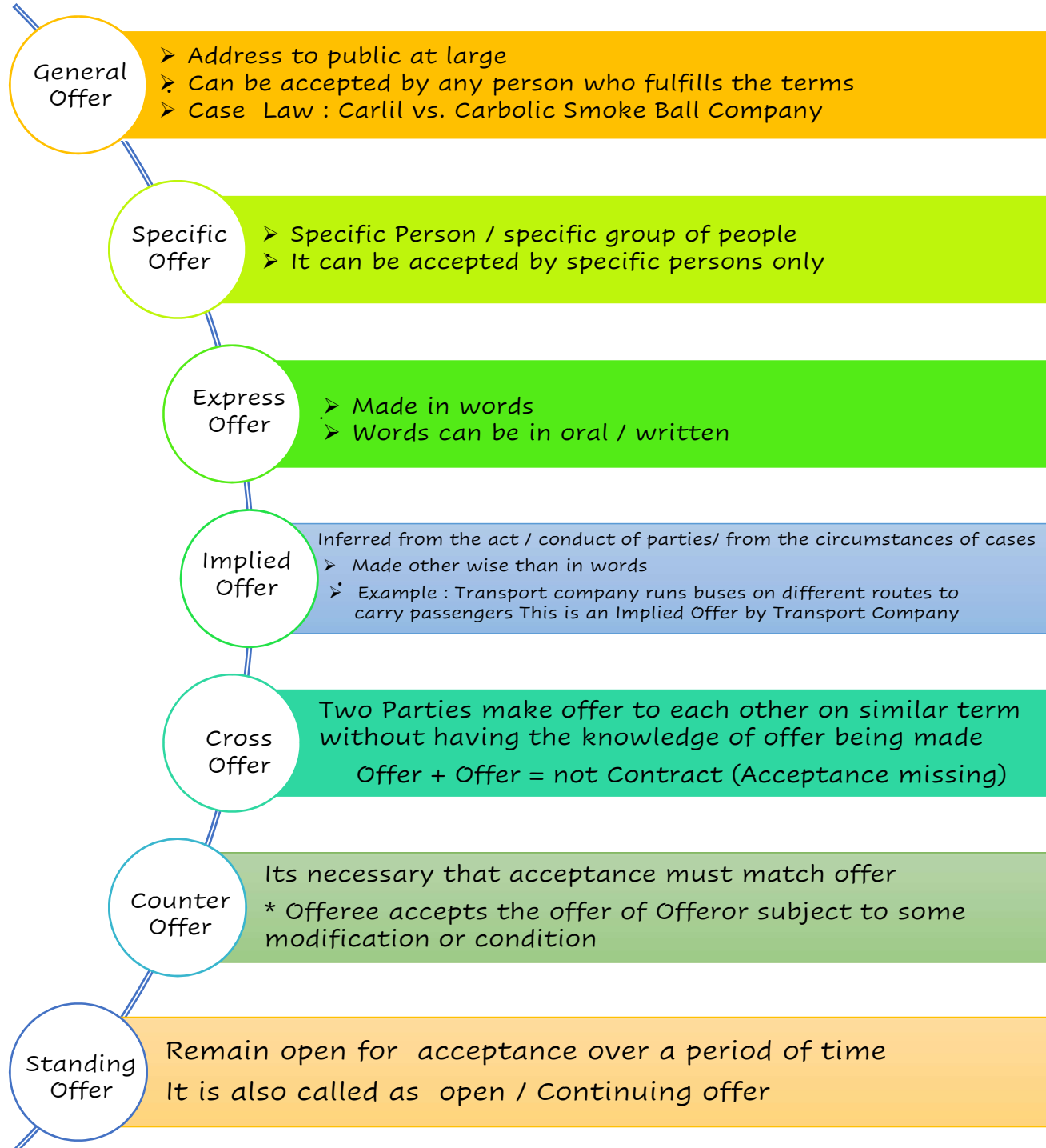
Person making the offer is called  
Offeror / Promisor

Person must express his willingness  
To do or not to do something

With a view to obtain the assent of  
the other party to whom the offer is  
made

Positive or Negative

# Types of Offer





## Essentials of a valid offer

### Question 11 (Imp)

RTP Nov 2019

7 Marks

Define offer . Describe the essentials of a valid offer .

1.

- It must be capable of creating legal obligation

2.

- It must be Certain Definite & not Vague

3.

- It must be communicated to Offeree

4.

- Offer must be with a view to obtain the assent of other party

5.

- Offer may be conditional

6.

- Offer should not contain term the non compliance of which amount to acceptance

7.

- Offer may be either Specific / General / Express / Implied

8.

- Offer is differentiated from
- Mere statement of intention & Announcement

9.

- Offer must be distinguished from an answer to a question

10.

- A Statement of Price is not an offer

11

- Invitation to make an offer or to do business

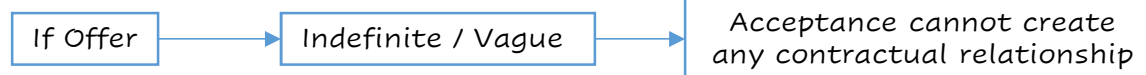
## 1. It must be capable of creating legal obligation

- Capable of being performed and gives rise to legal obligation
- No Intention – Then not valid offer
- General Presumption : 1. Social / Domestic  
2. Business Agreements

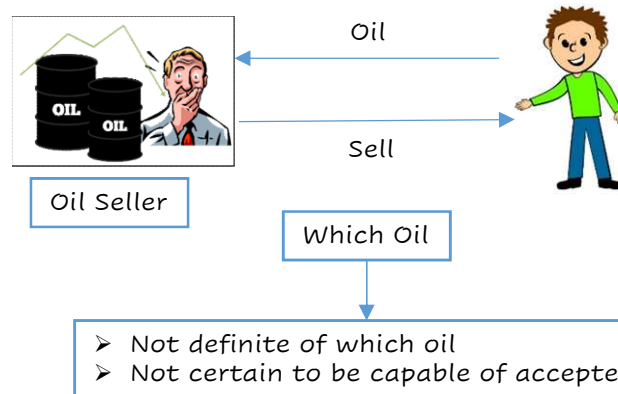
### Example

1. Social invitation
2. Diamond ring to wife

## 2. It must be Certain Definite & not Vague



### Example



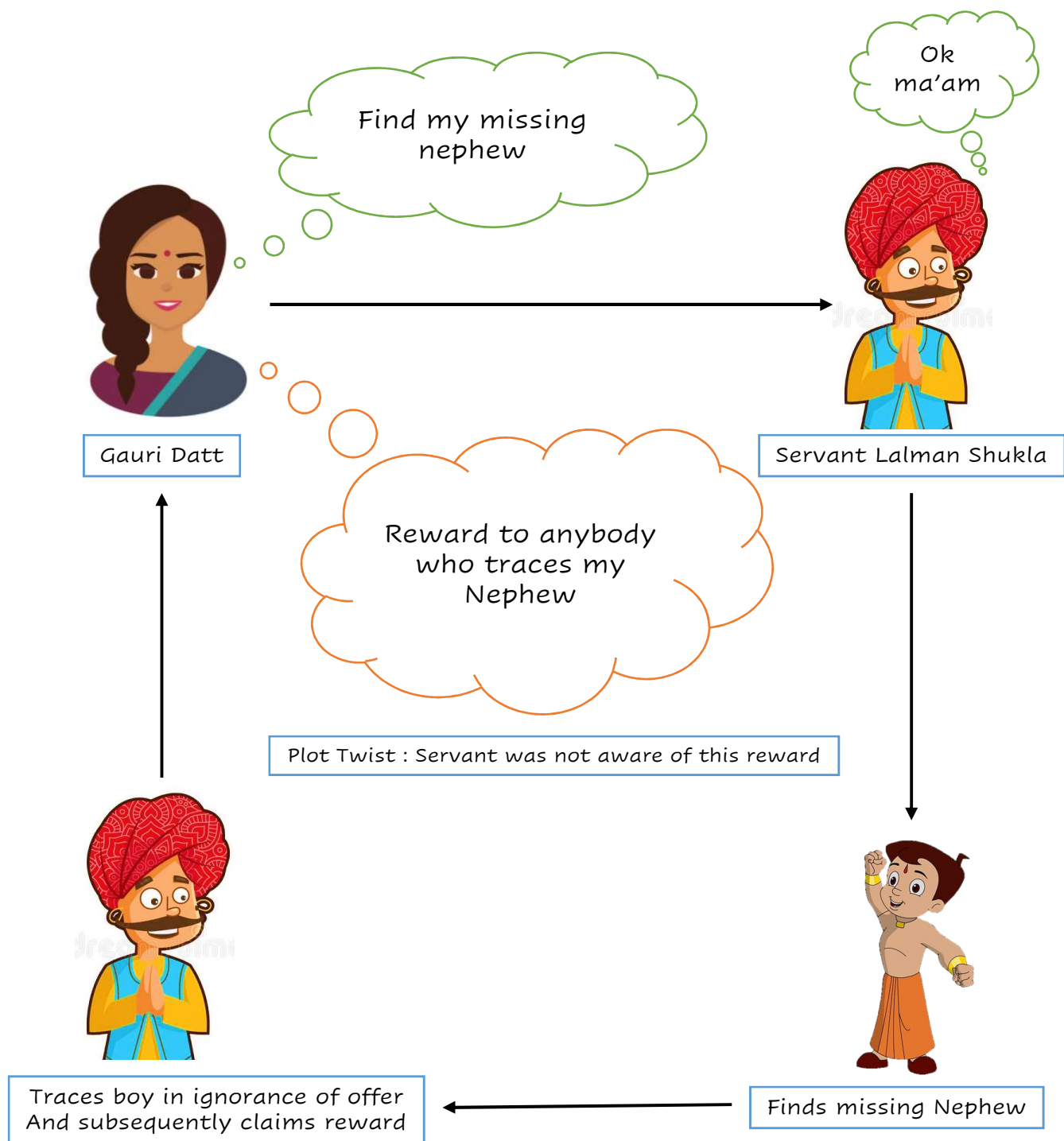
## 3. Offer must be communicated to Offeree

- An offer, to be complete, must be communicated to the person to whom it is made
- otherwise there can be no acceptance of it.
- Unless an offer is communicated, there can be no acceptance by it.
- An acceptance of an offer, in ignorance of the offer, is not acceptance and does not confer any right on the acceptor

### Case Law

Lalman Shukla vs. Gauri Datt

# Lalman Shukla vs Gauri Datt



## Courts Decision

- Servant was not entitled to receive reward
- As he did not know about offer

#### 4. Offer must be with view to obtain the assent of other Party

- Offer must be made with a view to obtaining the assent of the other party addressed
- it should not merely with a view to disclosing the intention of making an offer.

#### 5. Offer may be conditional

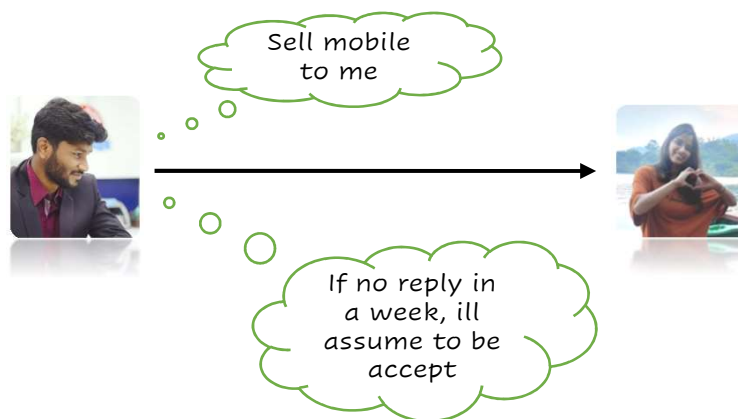
An offer can be made subject to any terms and conditions by the Offeror

**Example** Payment through G pay only

#### 6. Offer should not contain term the non compliance of which amount to acceptance

Thus, one cannot say that if acceptance is not communicated by a certain time the offer would be considered as accepted.

**Example**

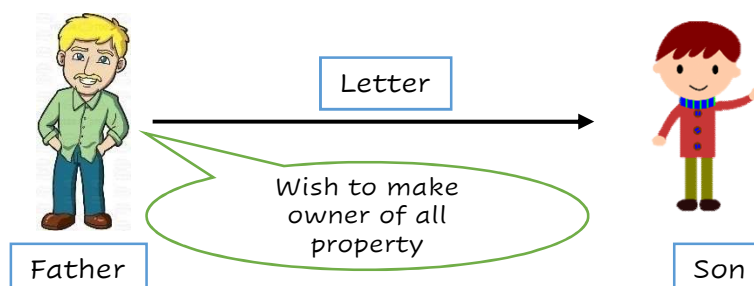


#### 7. Offer may be either Specific / General / Express / Implied

- Any offer can be made to either public at large or to the any specific person
- An offer may be made either by words or by conduct.

#### 8. Offer is differentiated from Mere statement of intention & Announcement

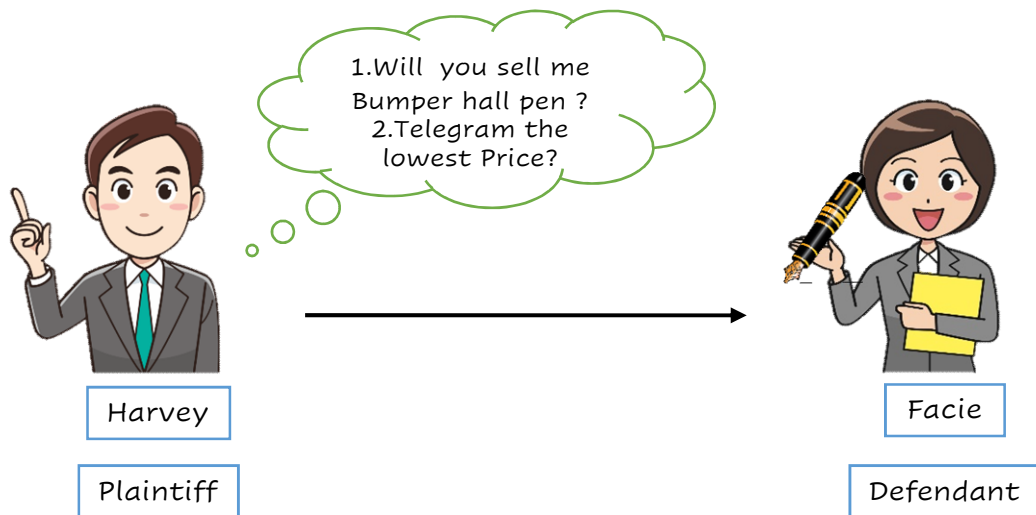
**Example**



## 9. Offer must be distinguished from an answer to a question

### Case Law 1

### Harvey Vs Facie

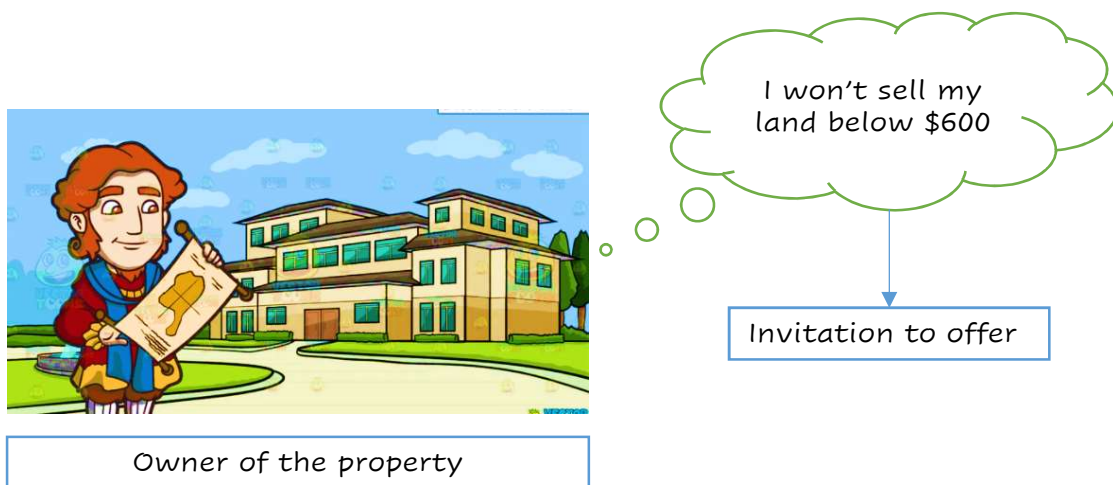


### Courts Decision :

- The defendant replied to only 2<sup>nd</sup> Question
- Thus Quotation of Price does not amount to acceptance of an offer

### Case Law 2

### Mac Pherson vs Appanna



- He is not selling , But he made a price to sell

## 10. A Statement of Price is not an offer

- Quoting the price of a product does not constitute it as offer.  
(refer case of Harvey Vs. Face as discussed above)

## 11. Invitation to make an offer or to do business

- Person making invitation does not making offer
- Rather he invite other party to make an offer

### Case Law

#### Harries vs Nickerson

Advertisement

Sale of goods by auction

Auction is only advertisement of sale  
But items are not put for sale



**Question 12****5 Marks**

Differentiate between offer & Invitation to offer.

Basis	Offer	Invitation to offer
1. Meaning	<ul style="list-style-type: none"> <li>➤ Definite</li> <li>➤ Capable to convert intention to contract</li> </ul>	<ul style="list-style-type: none"> <li>➤ Circulation of offer</li> <li>➤ Attempt to induce offer</li> <li>➤ Acts Precedents to making offer</li> <li>➤ Acceptance to invitation to offer not constitute contract</li> </ul>
2. Intention	<ul style="list-style-type: none"> <li>➤ Intention to bound as soon as accepted</li> </ul>	<ul style="list-style-type: none"> <li>➤ Intention to do some farther act , before he became bound by it</li> </ul>
3. Example	<ul style="list-style-type: none"> <li>➤ An offer to sell car</li> </ul>	<ul style="list-style-type: none"> <li>➤ Prospectus</li> <li>➤ Display of Goods</li> <li>➤ Advertisement of Auction sale</li> <li>➤ Quotation of Price</li> </ul>
4. Sequence	<ul style="list-style-type: none"> <li>➤ An offer cannot be an act precedent to invitation to offer</li> </ul>	<ul style="list-style-type: none"> <li>➤ An invitation to offer is always an act precedent to offer</li> </ul>

**Question 13****Nov 2018****3 Marks**

A shop-keeper displayed a pair of dress in the show-room and a price tag of ₹ 2,000 was attached to the dress. Ms. Lovely looked to the tag and rushed to the cash counter. Then she asked the shop-keeper to receive the payment and pack up the dress. The shop-keeper refused to hand-over the dress to Ms. Lovely in consideration of the price stated in the price tag attached to the dress

Ms. Lovely seeks your advice whether she can sue the shop-keeper for the above cause under the Indian Contract Act, 1872.

Provision of Law : Invitation to offer

Facts of the Case :

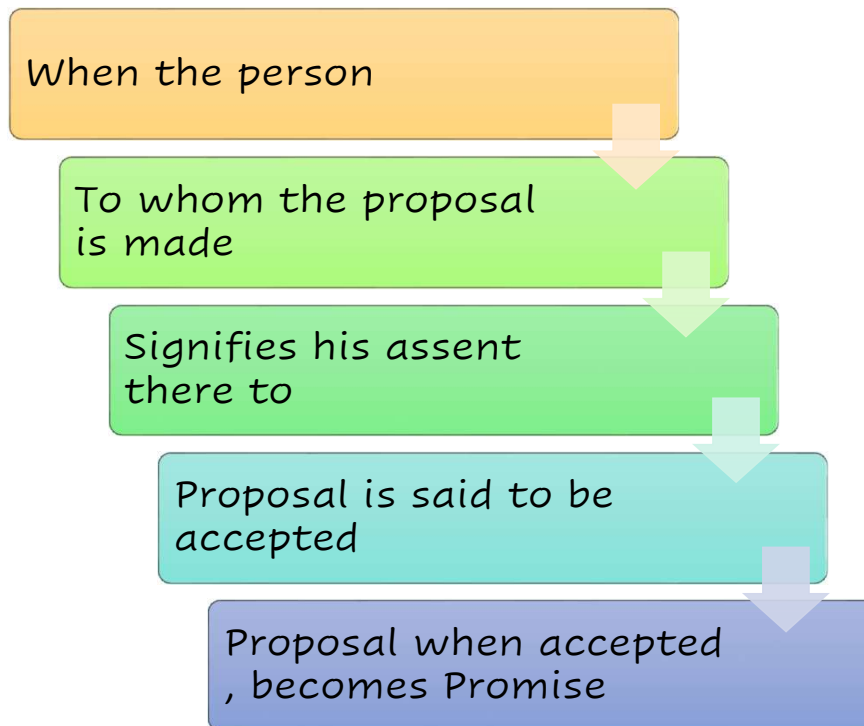
In the given question, Mrs Lovely selected a dress and went to shopkeeper , But the shopkeeper refused to hand over the dress to her

Analysis & Conclusion :

- Dress displayed in the showroom is invitation to offer but not an offer
- Invitation to offer does not resulting generation of Acceptance ,Instead it give raise to offer
- Hence Mrs Lovely cannot sue the shopkeeper

# Acceptance

## Section 2 (b)



In terms of Section 2(b) of the Act, 'the term acceptance' is defined as follows:

"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

## Relationship between offer & Acceptance

### According to Sir William Anson

- "Acceptance is to offer what a lighted match is to a train of gun powder".

Acceptance once triggered

It cannot be recalled or undue

- Train of Gun powder [offer] in itself is inert, but it is the lighted match [the acceptance] which causes the gun powder to explode.
- The significance of this is an offer in itself cannot create any legal relationship
- But it is the acceptance by the Offeree which creates a legal relationship.
- Once an offer is accepted it becomes a promise and cannot be withdrawn or revoked.
- An offer remains an offer so long as it is not accepted but becomes a contract as soon as it is accepted.



# Legal rules regarding valid Acceptance

## Question 14

January 2021

7 Marks

Differentiate between offer & Invitation to offer.

1.

- Acceptance can be given only by the person to whom offer is made

2.

- Acceptance must be absolute and unqualified

3.

- The acceptance must be communicated

4.

- Acceptance must be in the prescribed mode

5.

- Time

6.

- Mere silence is not acceptance

7.

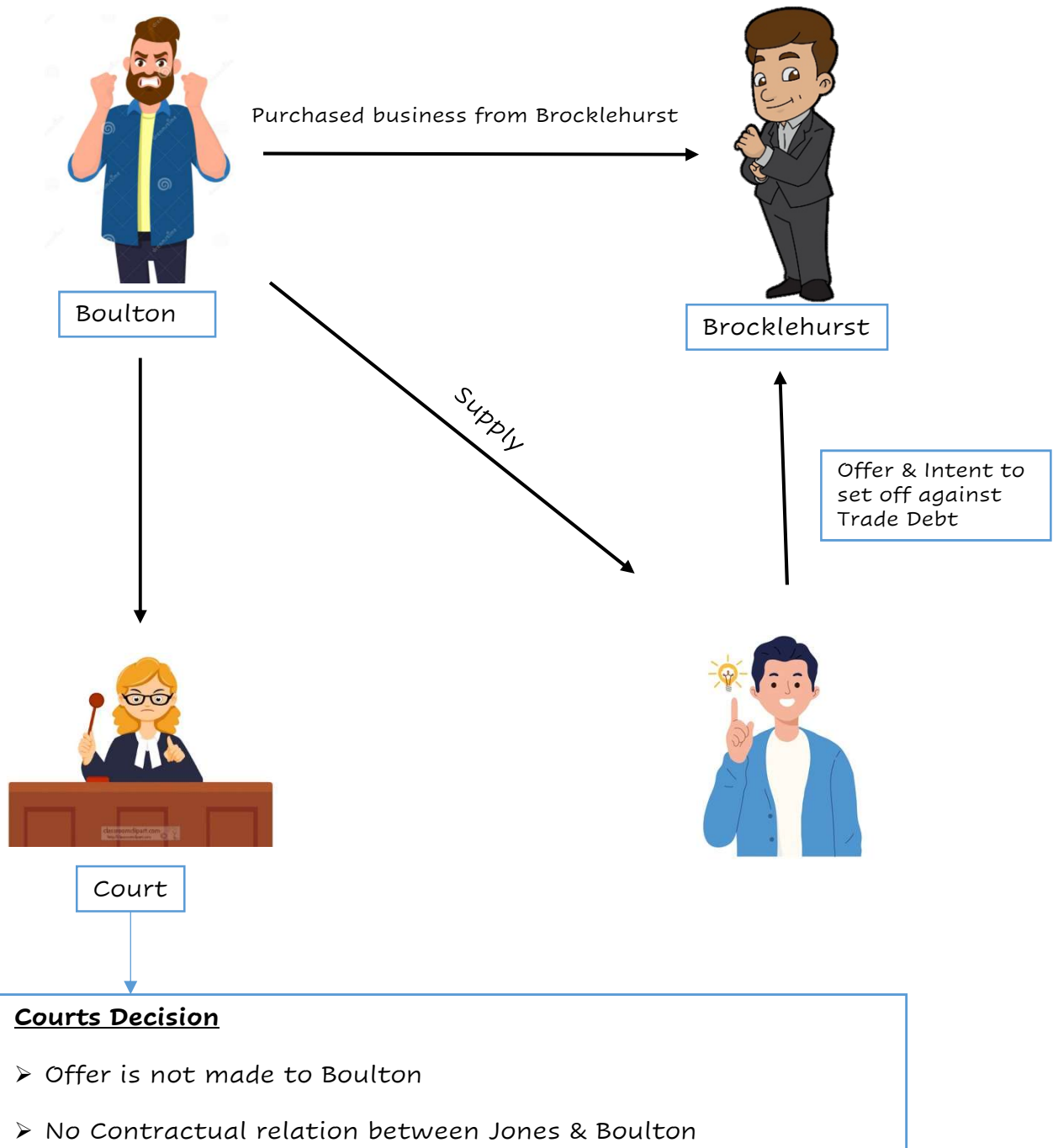
- Acceptance by conduct/Implied Acceptance

## 1 . Acceptance can be given only by the person to whom offer is made

- In case of a **specific offer**, it can be accepted only by the person to whom it is made

### Case Law 1

### Boulton vs Jones



- In case of a **General offer**, it can be accepted by any person who has knowledge of the offer

## Case Law 2

## Carlil vs Carbolic smoke ball Company

### Carbolic Smoke ball Company Advertisement

FEB. 25, 1903 THE ILLUSTRATED LONDON NEWS 253

**£100 REWARD**  
WAS RECENTLY OFFERED BY THE  
**CARBOLIC SMOKE BALL CO.**  
To any person who contracted Influenza, Coughs, Colds, Catarrh, Asthma, Bronchitis, Sore Throat, Hoarseness, Loss of Voice, Throat Discomfort, Croup, Whooping Cough, or any Disease caused by taking Cold, after having used the Carbolic Smoke Ball according to the printed directions.

Many thousands Carbolic Smoke Balls were sold on these advertisements, but only three persons claimed the reward of £100, thus proving conclusively that this invaluable remedy will prevent and cure the above-mentioned diseases.

**THE CARBOLIC SMOKE BALL CO., Ltd.,**  
NOW OFFER  
**£200 REWARD**  
to the person who purchases a Carbolic Smoke Ball and afterwards contracts any of the following diseases, viz.—

INFLUENZA	CATARRH	THROAT DEAFNESS	DIPHTHERIA
COUGHS	ASTHMA	LOSS OF VOICE	CROUP
COLD IN THE HEAD	BRONCHITIS	LARYNGITIS	WHOOPIING COUGH
COLD ON THE CHEST	SORE THROAT	SNORING	NEURALGIA
	HOARSENESS	SORE EYES	HEADACHE

or any disease caused by taking cold while using the Carbolic Smoke Ball. This offer is made to those who have purchased a Carbolic Smoke Ball since Jan. 1, 1903, and is subject to conditions to be obtained on application, a duplicate of which must be signed and deposited with the Company in London by the applicant before commencing the treatment specified in the conditions. This offer will remain open only till March 31, 1903.

As all the diseases mentioned above arise from one cause, they can therefore be cured by the remedy which stops the cause, viz.—  
**THE CARBOLIC SMOKE BALL.**

Our CARBOLIC SMOKE BALL will last a family for several months, making it the cheapest remedy in the world at the price—10s. post free.

The CARBOLIC SMOKE BALL will be refilled and returned, post free, the same day, on receipt of Money or Postal Order for 5s.

**CARBOLIC SMOKE BALL CO., LTD.,**  
27, PRINCES STREET, HANOVER SQUARE, LONDON, W.

PARIS DEPOT—14, Rue de la Paix. AMERICAN DEPOT—106, Broadway, New York. CANADIAN DEPOT—71 & 72, Front Street, Toronto, Ontario.

- Carbolic smoke Ball Co. advertised in several newspapers that a reward of £100 would be given to any person who contracted influenza after using the smoke balls produced by the Carbolic Smoke Ball Co. according to printed directions.



Carlil

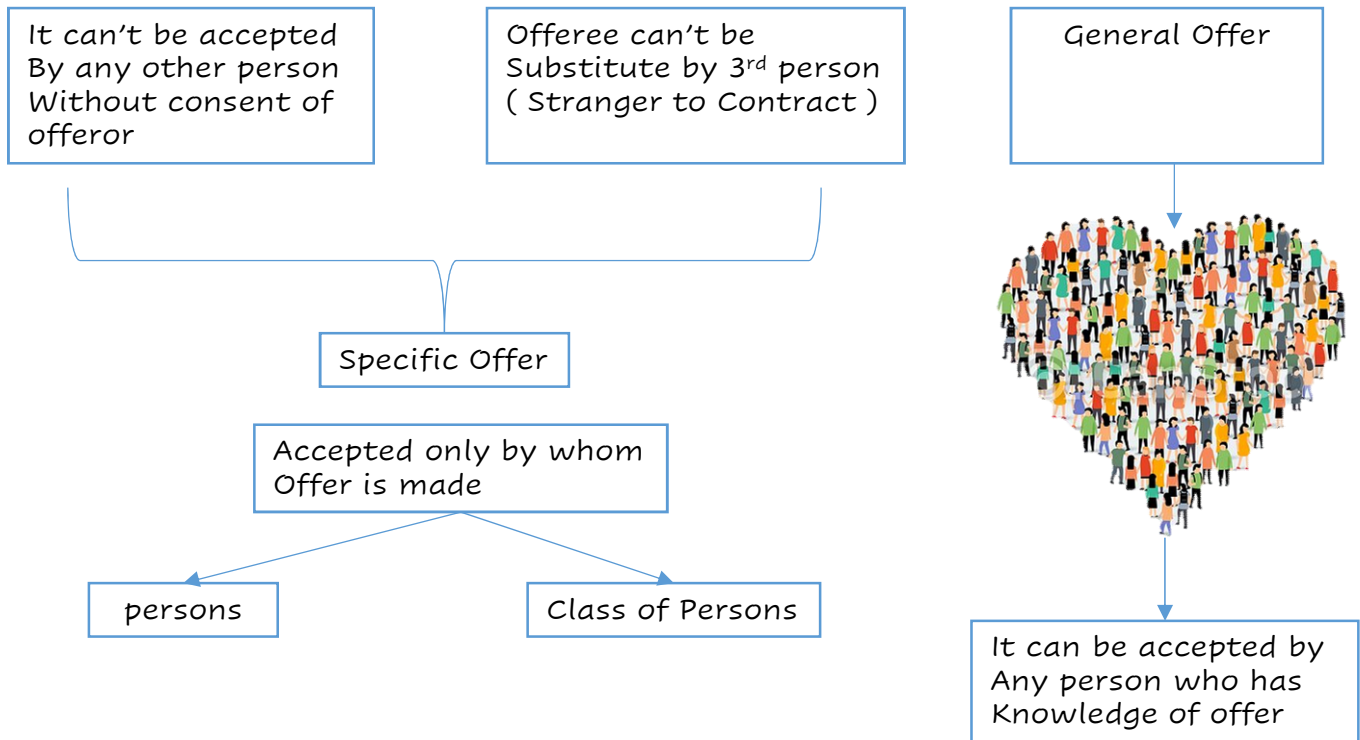
She went to claim reward  
after suffering from influenza



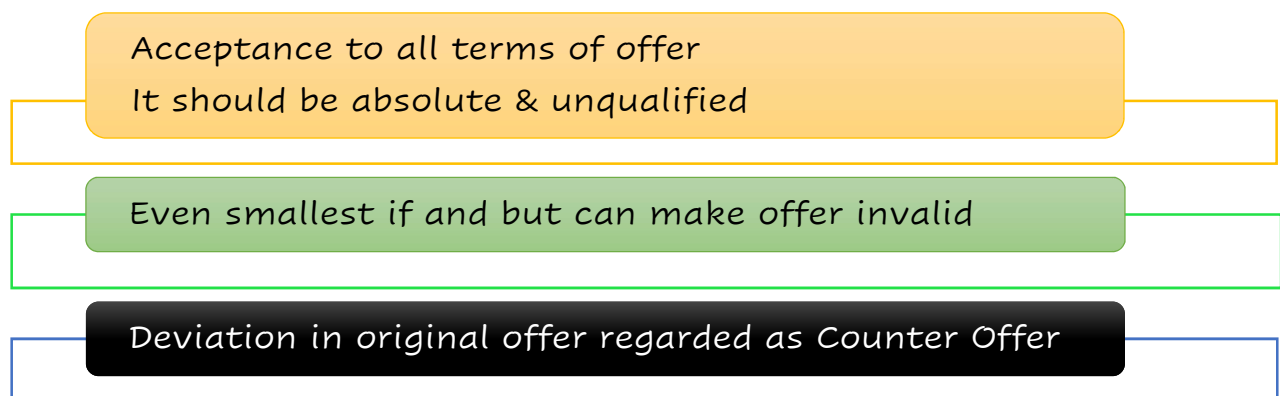
Carbolic Smoke Ball Co.

- , Mrs. Carlil , used the smoke balls as per the directions of company and even then, suffered from influenza.
- **Courts Decision**
- Held, she could recover the amount as by using the smoke balls she had accepted the offer

## 1 . Acceptance can be given only by the person to whom offer is made

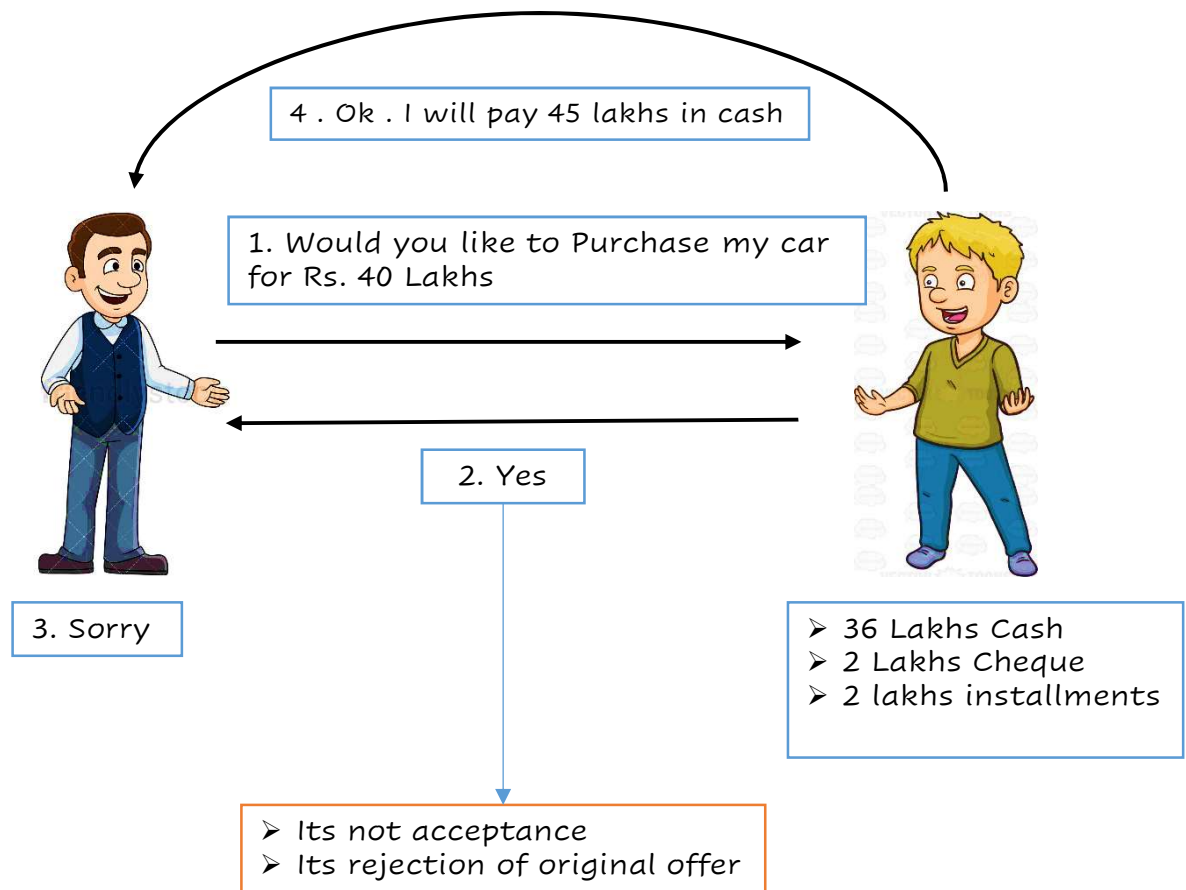


## 2 . Acceptance must be Absolute & unqualified

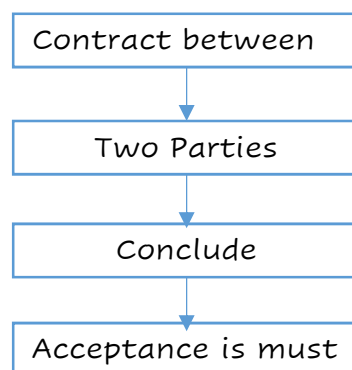


Case Law

Neal Vs Merret



### 3. Acceptance must be communicated



- To conclude a contract between the parties, the acceptance must be communicated in some perceptible form.
- Any conditional acceptance or acceptance with varying or too deviant conditions is no acceptance.
- Such conditional acceptance is a counter proposal and has to be accepted by the proposer, if the original proposal has to materialize into a contract



Supplier

Sent a Draft Agreement regarding supply of coal



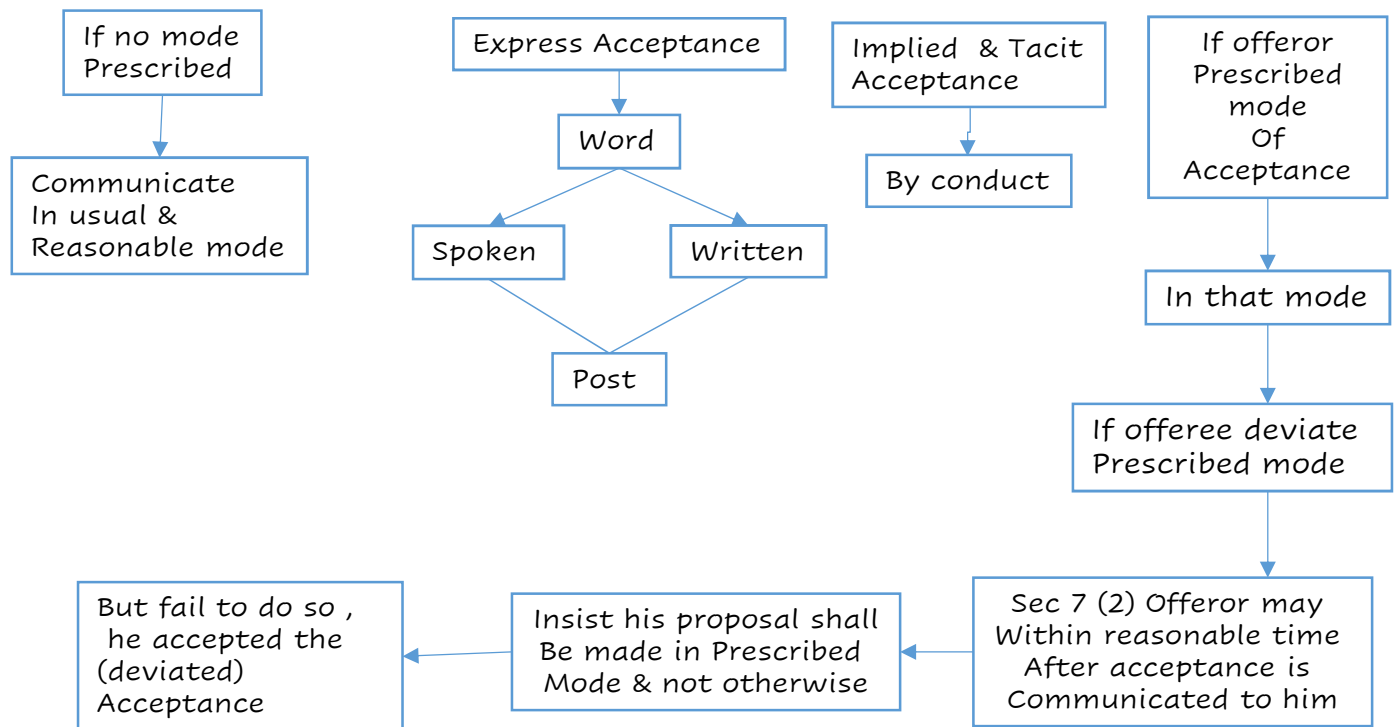
Manager of Railway Co.

### **Courts Decision :**

- Held that there was no Contract between them
- Because the acceptance is not communicated

Read & Kept in Drawer

### 4 . Acceptance must be in the prescribed mode



## 5. Time

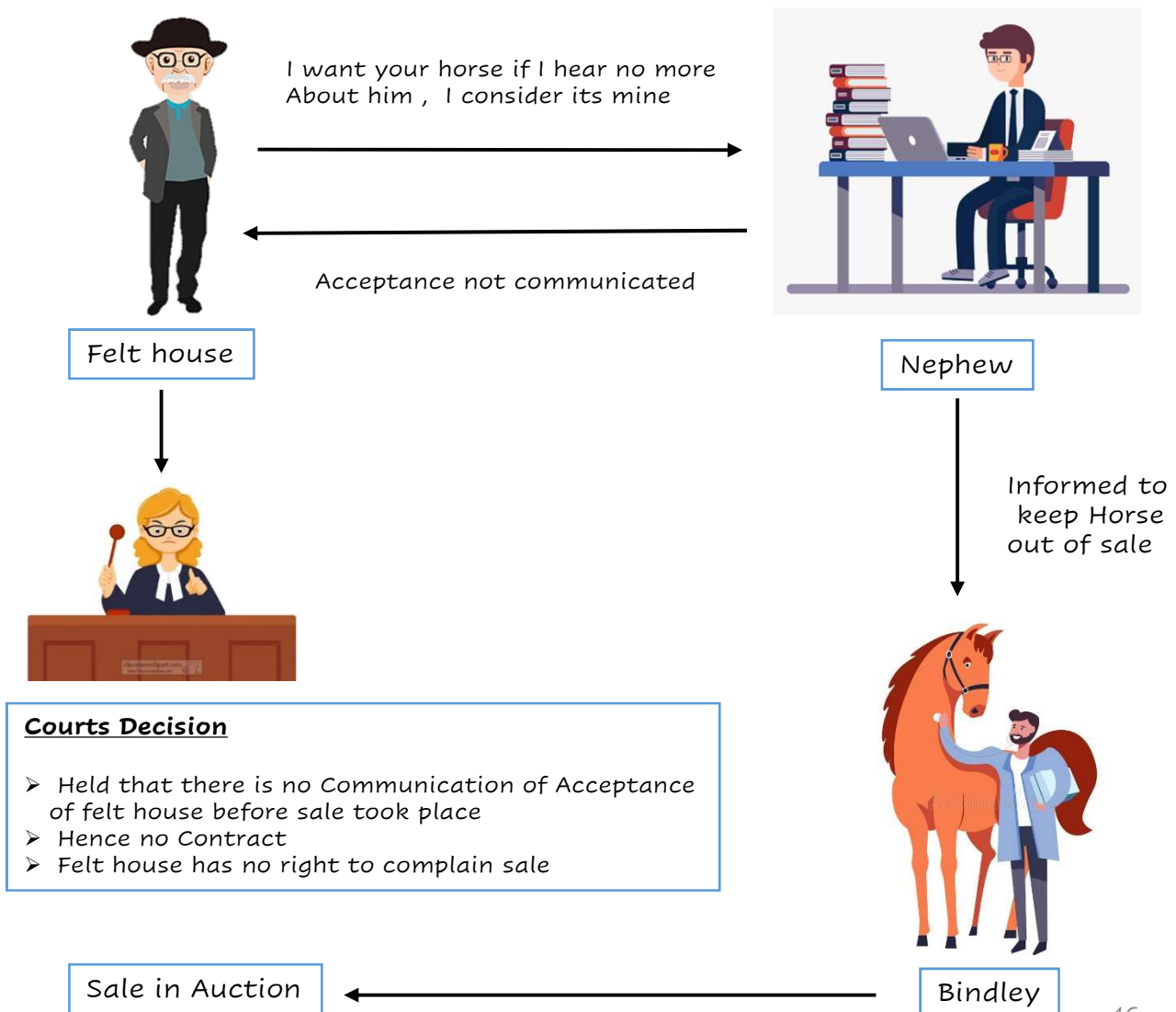
- Acceptance must be given within the specified time limit, if any,
- if no time is stipulated, acceptance must be given within the reasonable time and before the offer lapses.
- What is reasonable time is nowhere defined in the law and thus would depend on facts and circumstances of the particular case.

## 6. Mere silence is not Acceptance

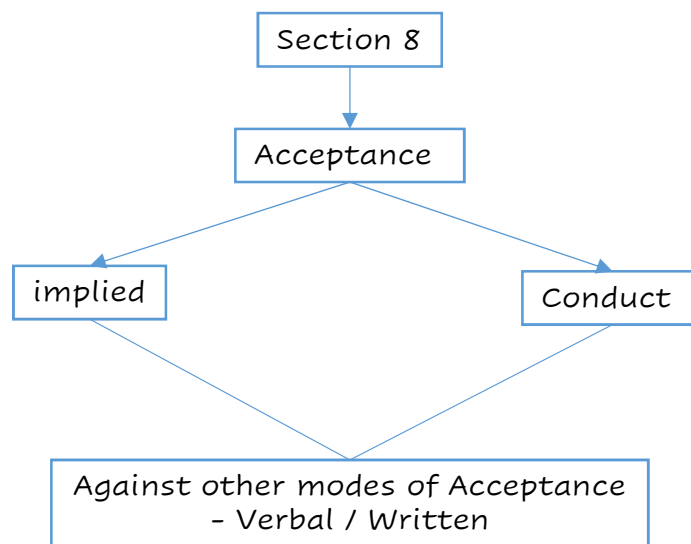
- Law does not permit to put terms & conditions "That silence of offeree amounts to acceptance"
- There are certain exceptions to this rule
- Mental Acceptance ineffectual, It must be communicated

### Case Law

### Felt house vs Bindley



## 7. Acceptance by conduct / Implied Acceptance



- Section 8 of the Act lays down that “the performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, constitutes an acceptance of the proposal.
- This section provides the acceptance of the proposal by conduct as against other modes of acceptance i.e. verbal or written communication.

### Example

When a cobbler sits with a brush and polish, a person giving his shoes for polishing constitutes as acceptance by conduct.

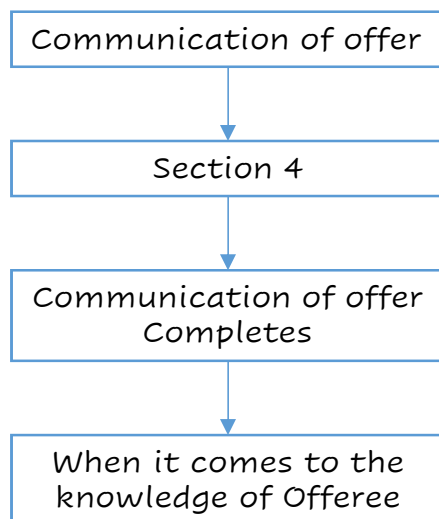




# Communication of offer & Acceptance

## Communication of offer & acceptance

### Communication of offer



### Example



1

Reached to Jenny on Feb 10

**February 1<sup>st</sup>**  
SDB Sir  
Posted  
" Ham Aapse Pyar  
karthe hai "



2

Jenny read on  
Feb 12th

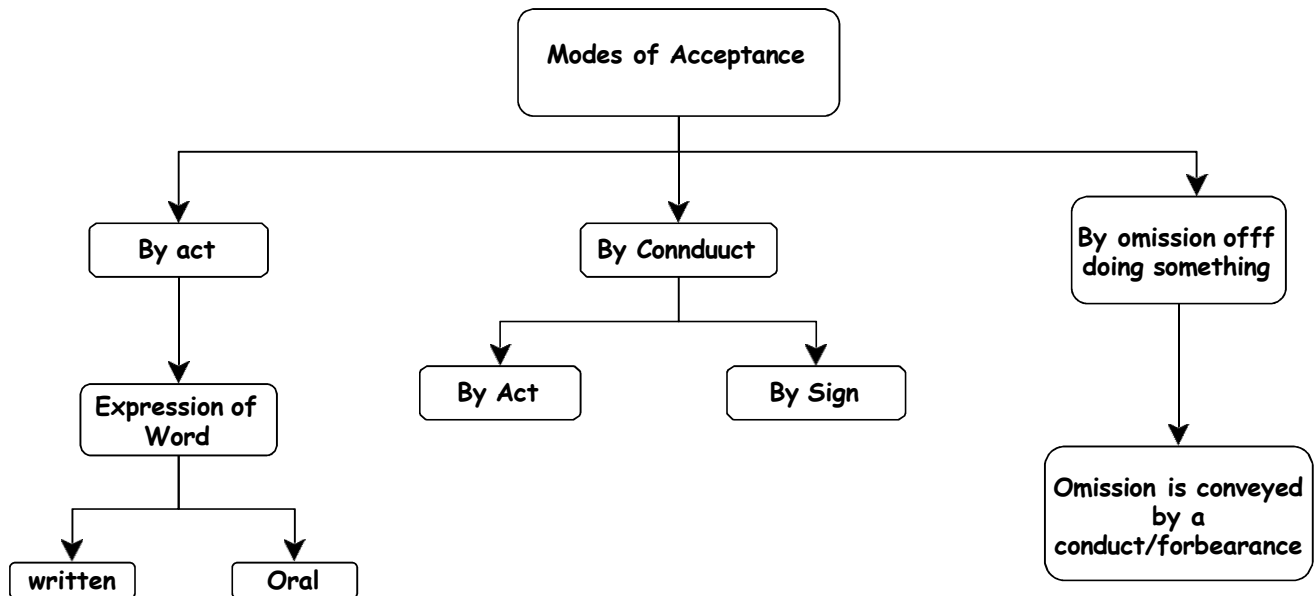
### Communication of offer:

1. When it reaches to offeree

+

2. When letter is read by offeree

## Communication of acceptance



### Case Law

### Central Bank Yeotmal vs Venkatesh



Bank

Resolution to  
sell land to A

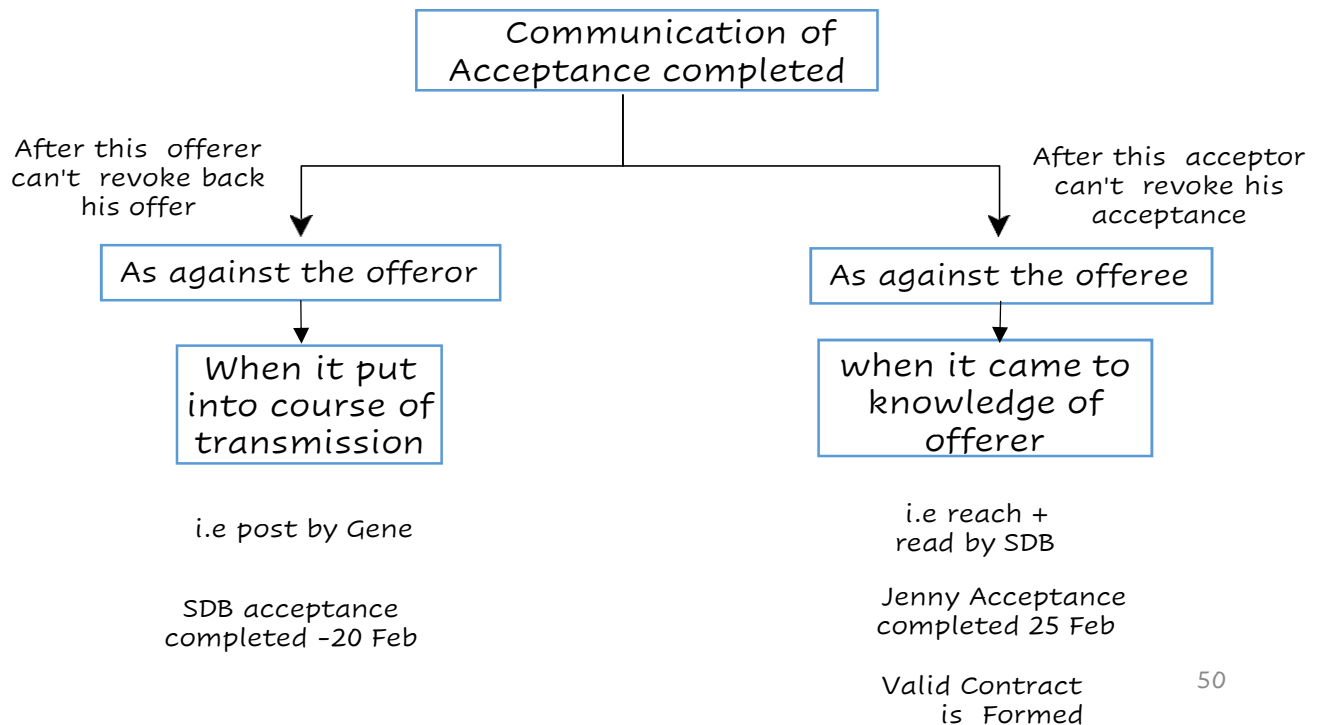
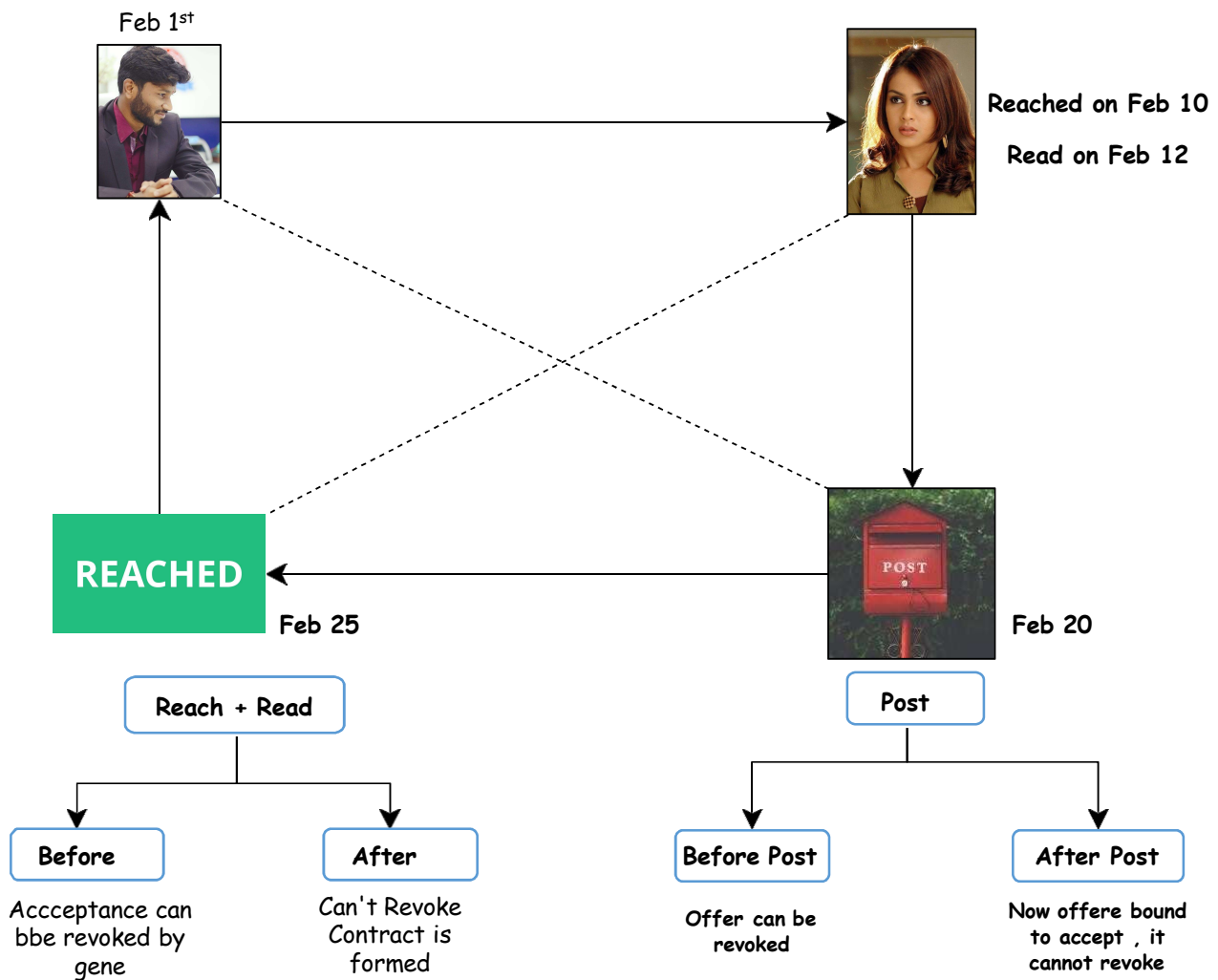
Not informed  
to A

Its not acceptance

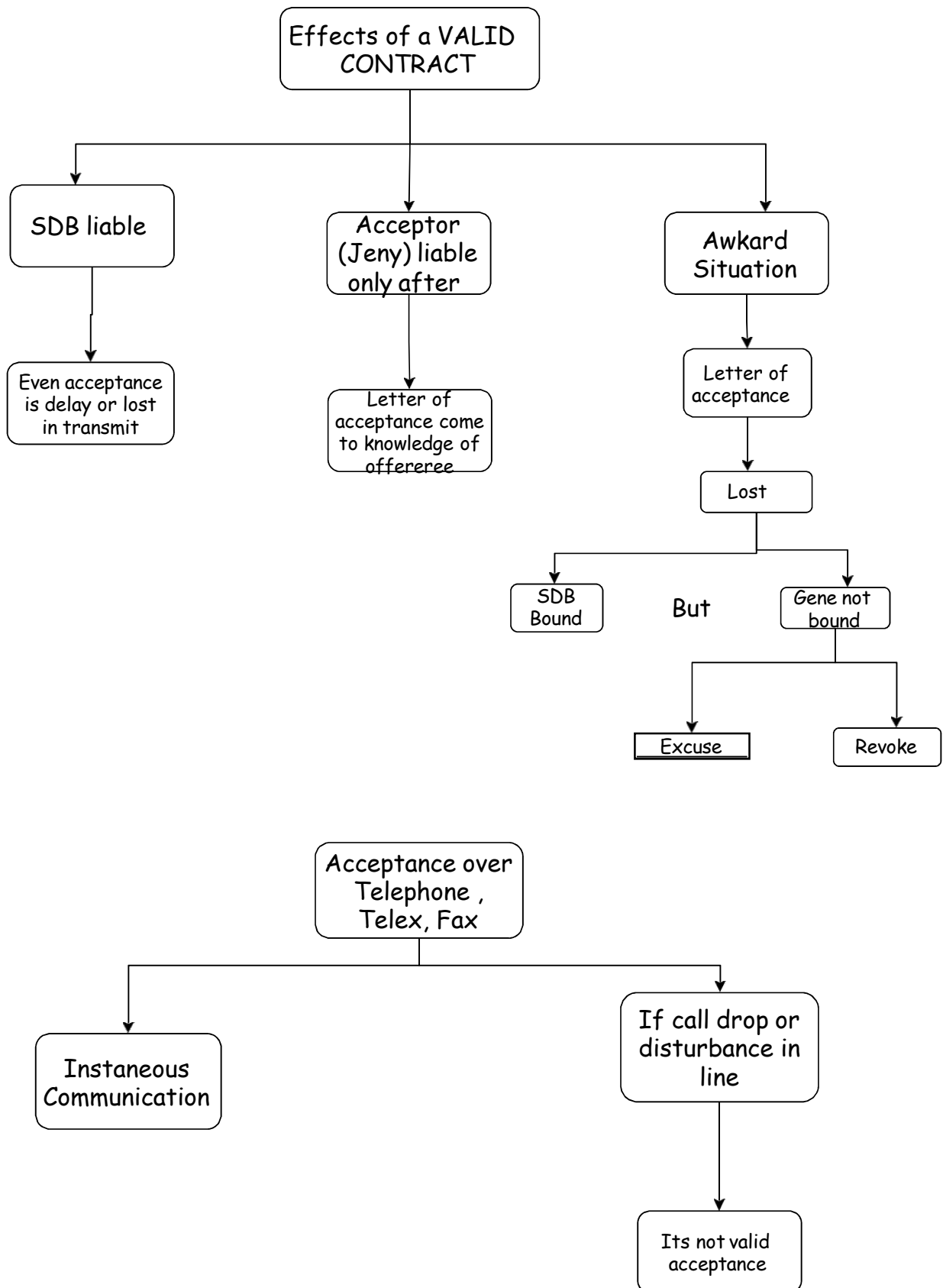
### Courts Decision

- Mental unilateral assents (acceptance) in own mind not amount to communication of acceptance

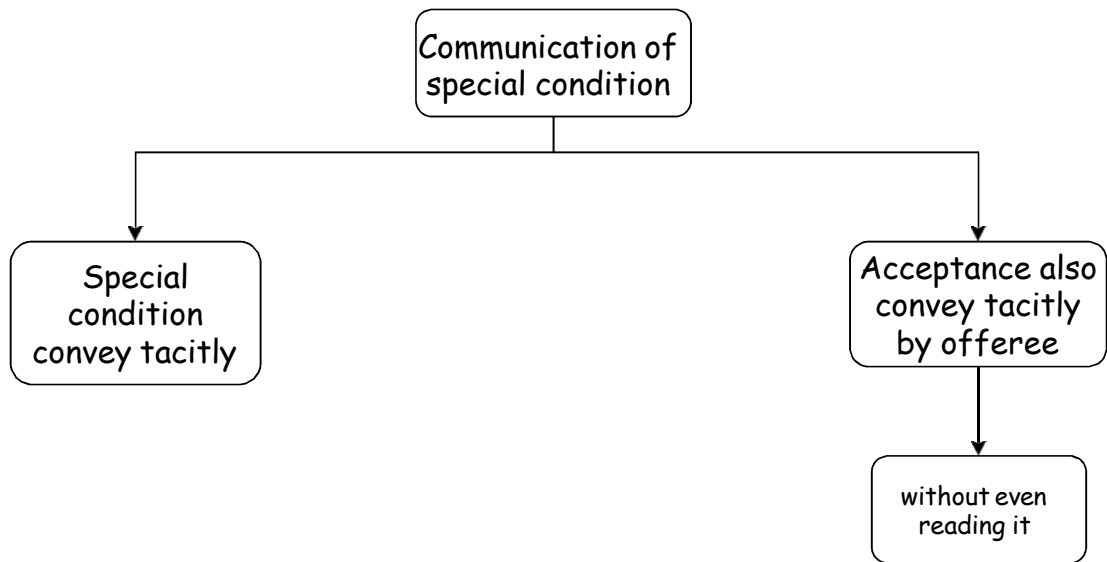
## Communication of acceptance when gets completed



## Effects of a valid Contract



## Communication of Special Condition



Caselaw : Mukun Datta vs Indian Airline (1961)



**Case law :** Lilly White vs Manuswamy

Laundry if cloth damages only 15% is liable for payment out of the market value

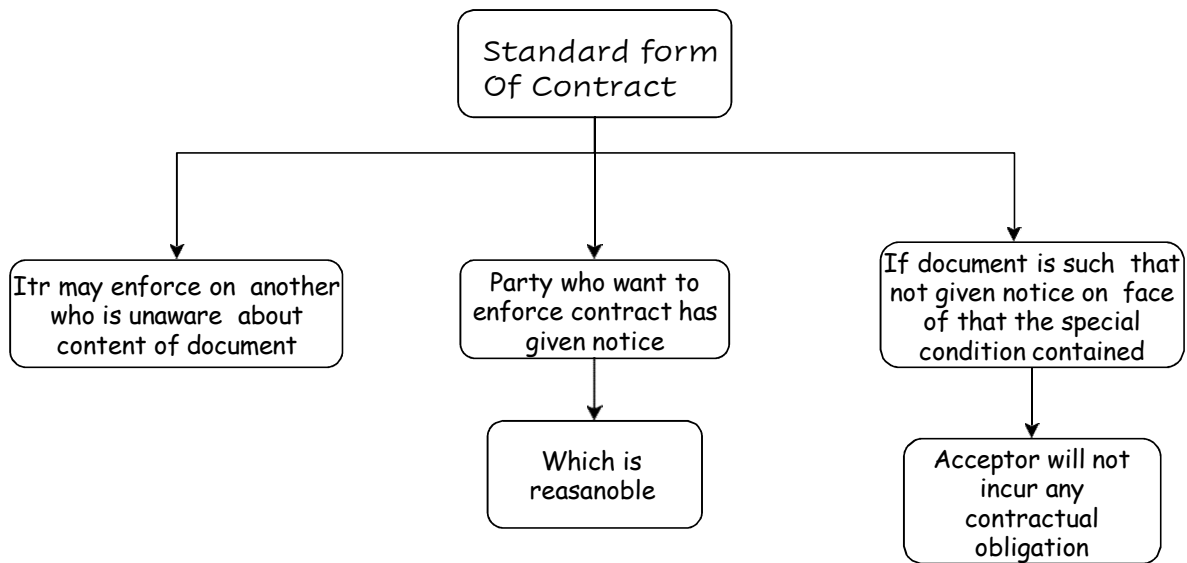


**Courts decision :**

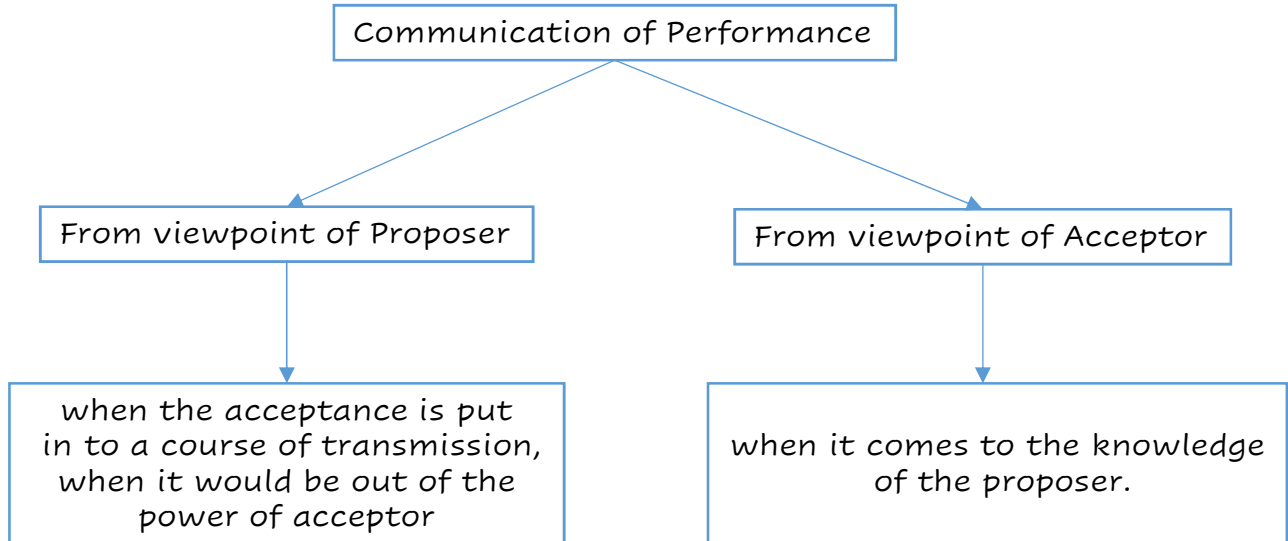
The terms are unreasonable & the plaintiff is entitled to receive full amount

- Sometimes there are situations where there are contracts with special conditions.
- These special conditions are conveyed tacitly and the acceptance of these conditions are also conveyed by the offeree again tacitly or without him even realizing it.

## Standard form of Contract



## Communication of Performance

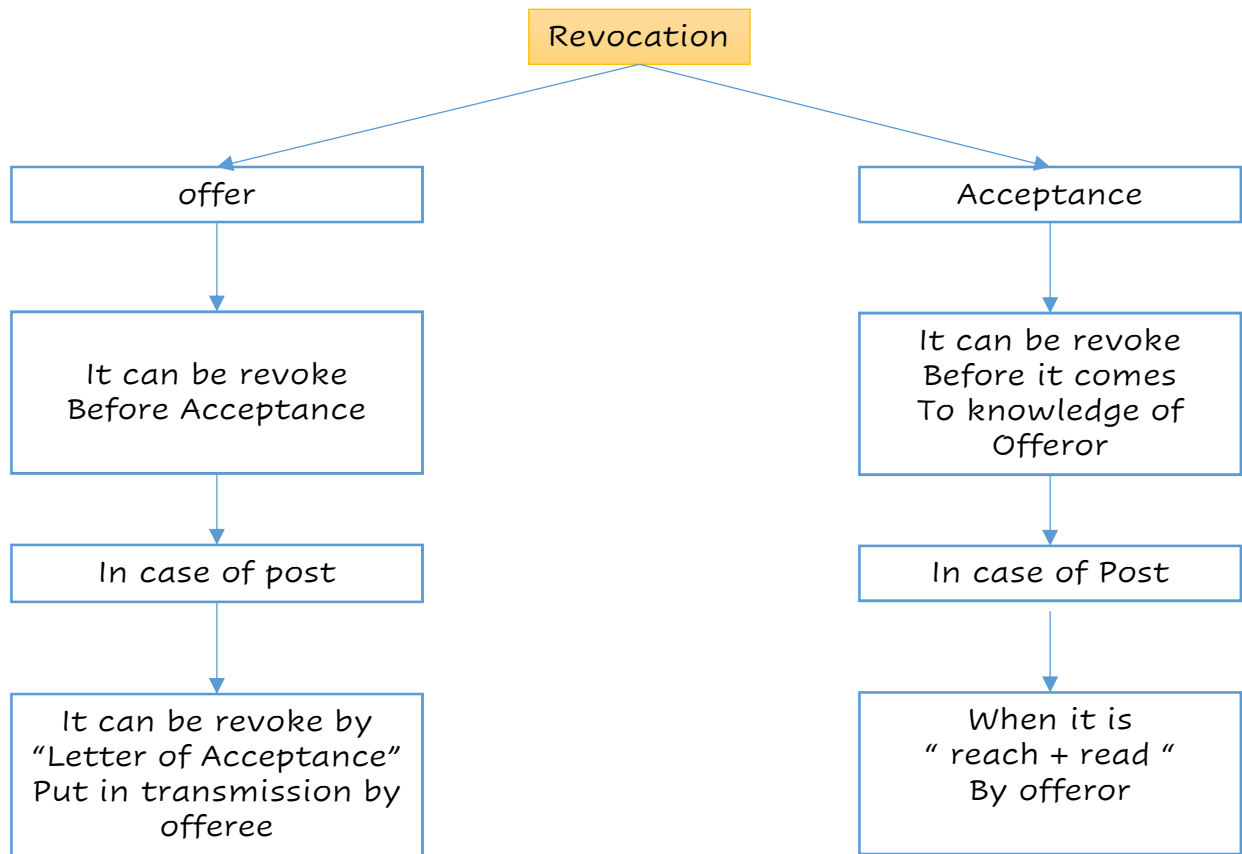


- At times the offeree may be required to communicate the performance (or act) by way of acceptance.
- In this case it is not enough if the offeree merely performs the act but he should also communicate his performance unless the offer includes a term that a mere performance will constitute acceptance.

### Case Law

Carlil vs Carbolic Smoke ball Co.

# Revocation of offer & Acceptance

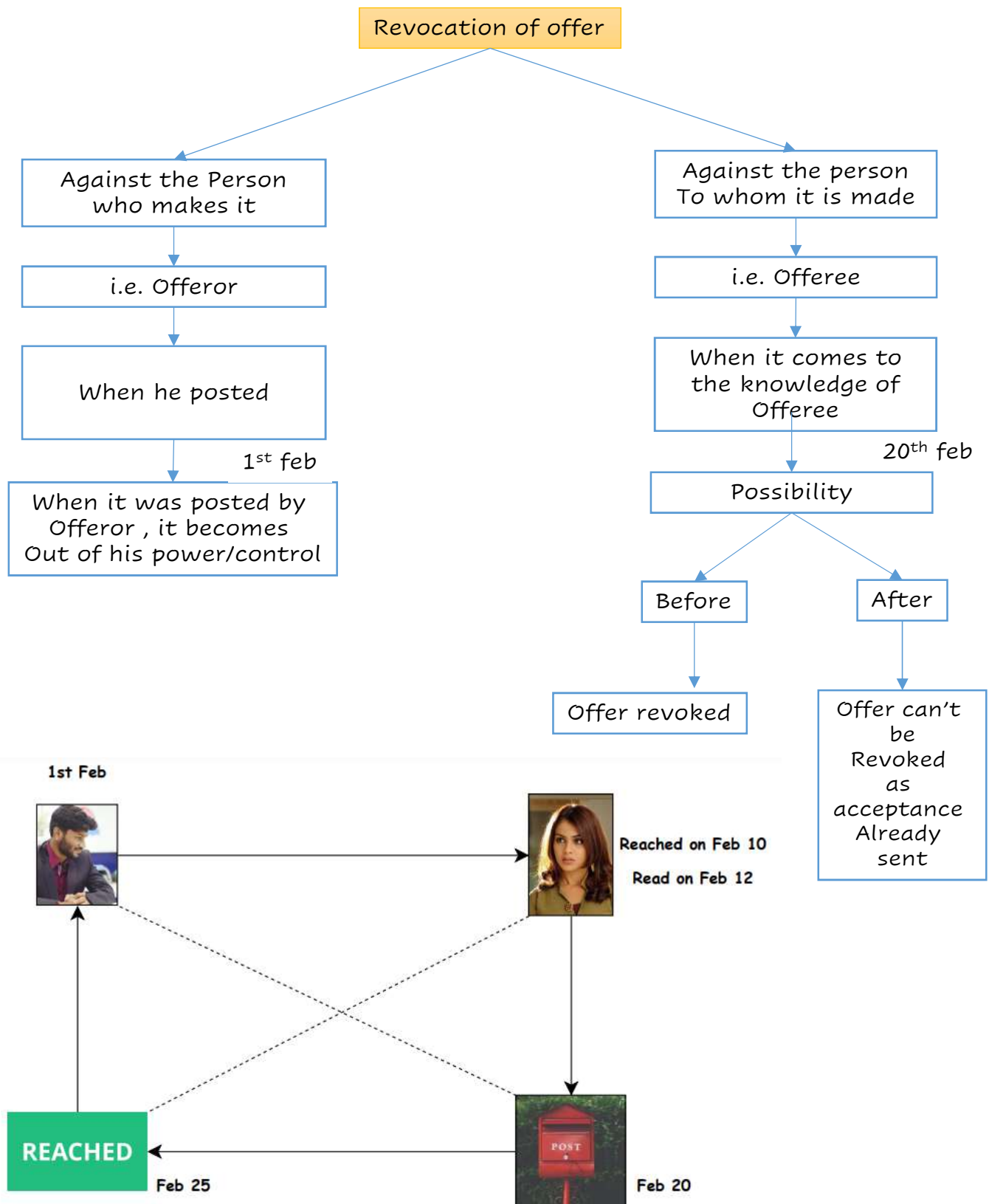


## Example

The bidder at an auction sale may withdraw (revoke) his bid (offer) before it is accepted by the auctioneer by fall of hammer.

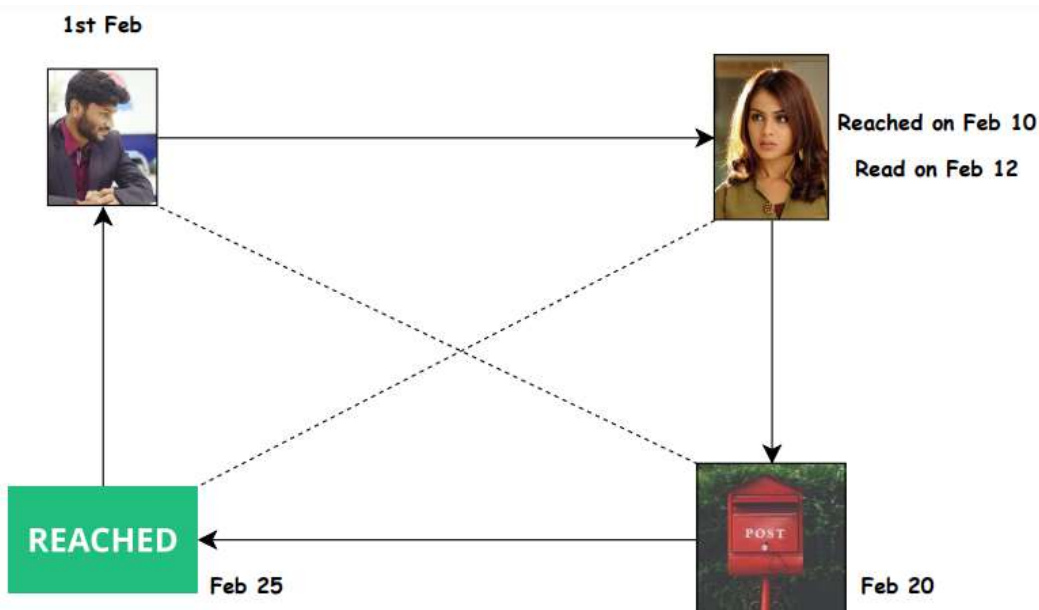
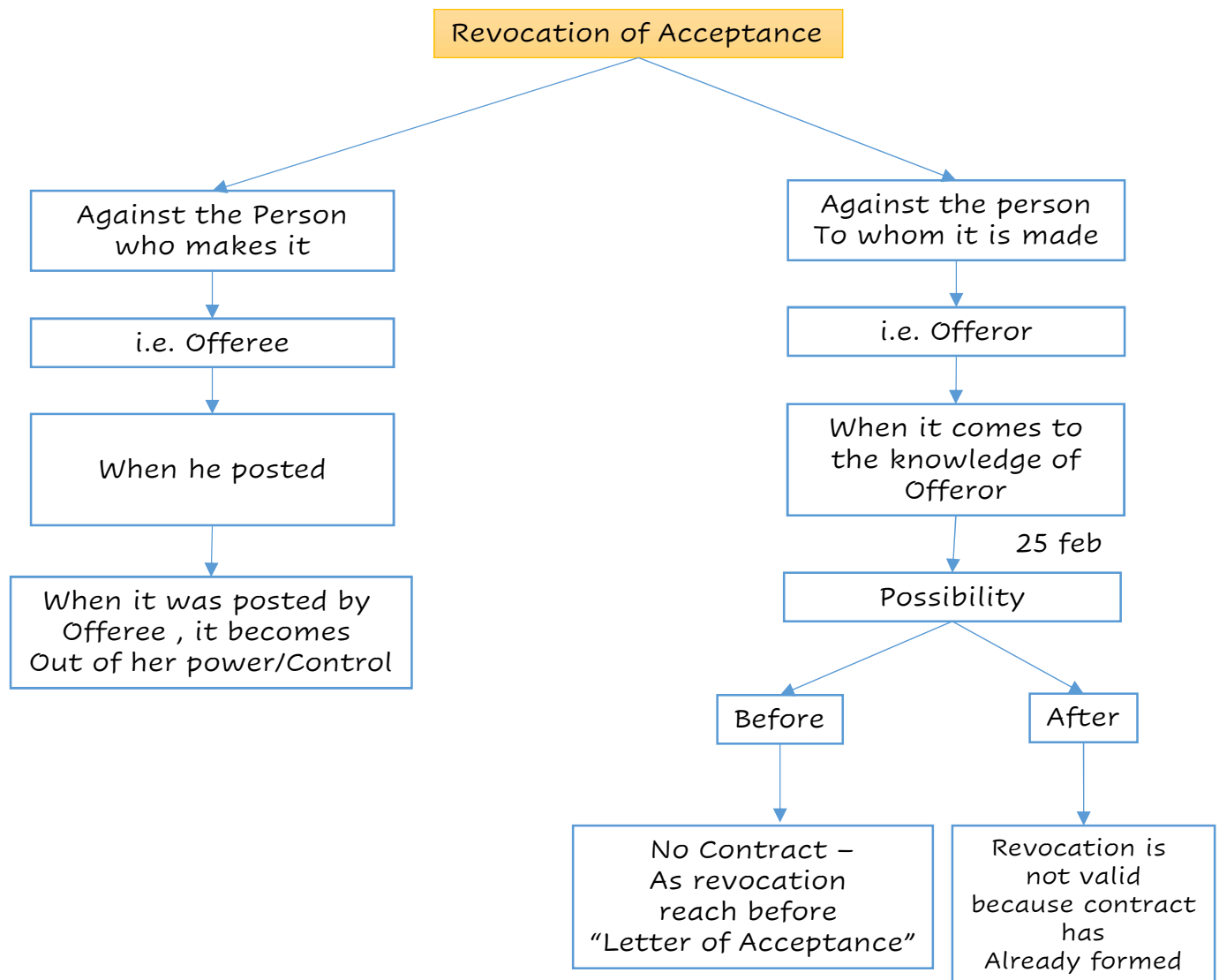


## Revocation of offer





## Revocation of Acceptance



Explain the modes of revocation of an offer as per Indian Contract Act 1872

### 1. By Notice

- An offer may be revoked by communication of notice to offeree by the offeror before the communication of acceptance is completed as against him

### 2. By Lapse of time

- The time for acceptance can lapse if the acceptance is not given within the specified time and where no time is specified, then within a reasonable time. This is for the reason that proposer should not be made to wait indefinitely

### 3. By failure to fulfill condition precedent

- Failure to satisfy any condition will result in lapse of the proposal. As stated earlier 'condition precedent' to acceptance prevents an obligation from coming into existence until the condition is satisfied

### 4. By death or insanity

- Death or insanity of the proposer would result in automatic revocation of the proposal but only if the fact of death or insanity comes to the knowledge of the acceptor

### 5. By counter offer

- When the acceptance is given by the offeree on terms of conditions different from the original offer
- Then the offer stands revoked

### 6. By non acceptance of offer according to prescribed mode

- When the offeree sends acceptance in a mode other than mode prescribed by offeror
- Then the offer may be treated as revoked

### 7. By Subsequent illegality

- When the offer becomes impossible due to change in law prior to acceptance, thereby making it unlawful then the offer stands revoked
- Example : Juban Kesari

### 8. By Destruction of Subject matter

- When the Subject matter of offer is destroyed prior to acceptance
- Then the offer stands revoked

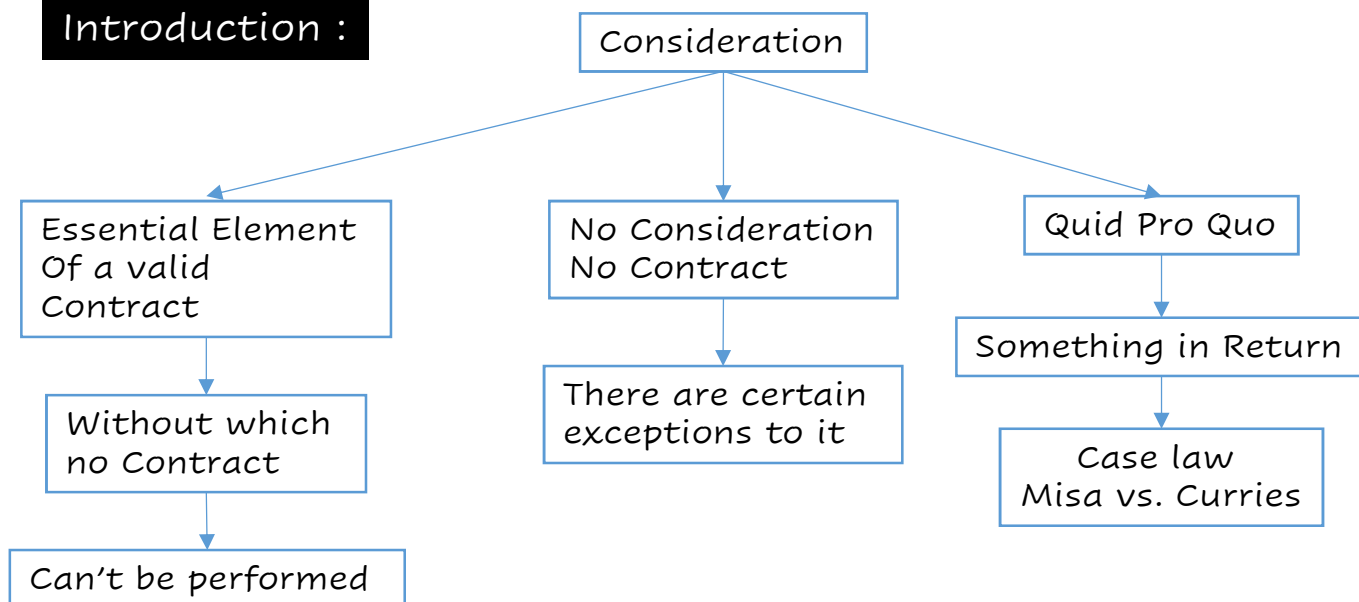
A white circle with a blue outline, containing the text 'Unit 2'. Two green lines cross behind the circle, one from the top-left and one from the bottom-left.

Unit 2

# Consideration

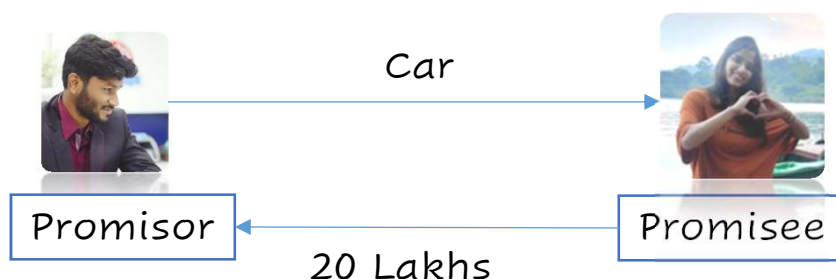
# Unit 2. Consideration

## Introduction :



Promisor	Promisee
Right	Forbearance
Interest	Loss
Profit	Determinant
Benefit	Responsibility

## Example



## Example

Employer – Employee relationship



# Consideration

## Section 2(d)

When at the desire  
of the Promisor

Promisee or any  
other person

Done / abstain ( Past Consideration )

Does / abstains ( Present Consideration )

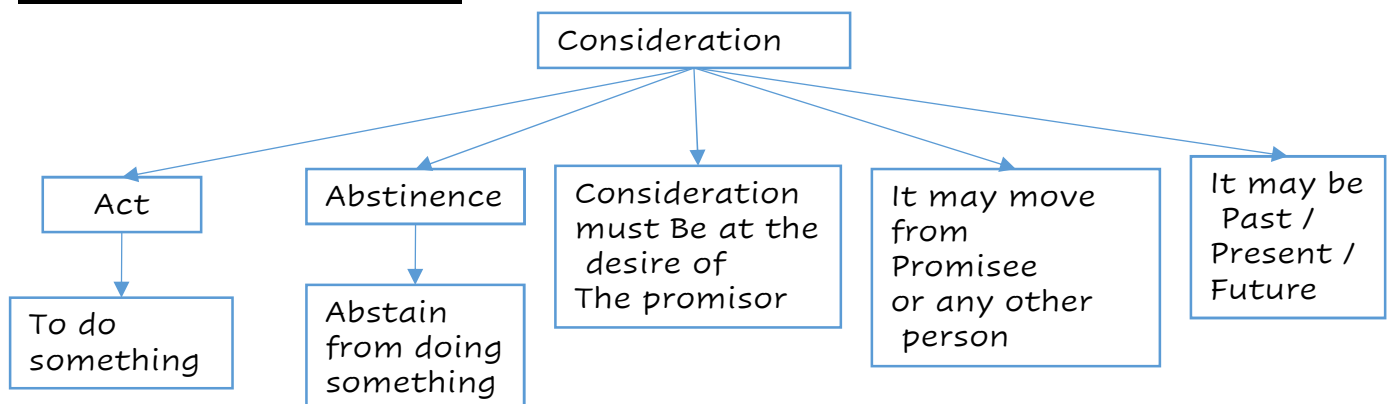
Promise to do / abstains ( Future Consideration )

Is called Consideration for Promise

Section 2(d) defines consideration as follows:

“When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise

## Analysis of Definition



## Example

SDB Sir wants to open shop in FC road . As the competition increased , The other Competitors came to SDB sir and agreed to give 2 Lakhs per month for not opening shop

# Legal Rules regarding Consideration

## 1. Consideration must move at the desire of the Promisor

(a) What is not a consideration

Act done /  
Service rendered

At the desire of the third party

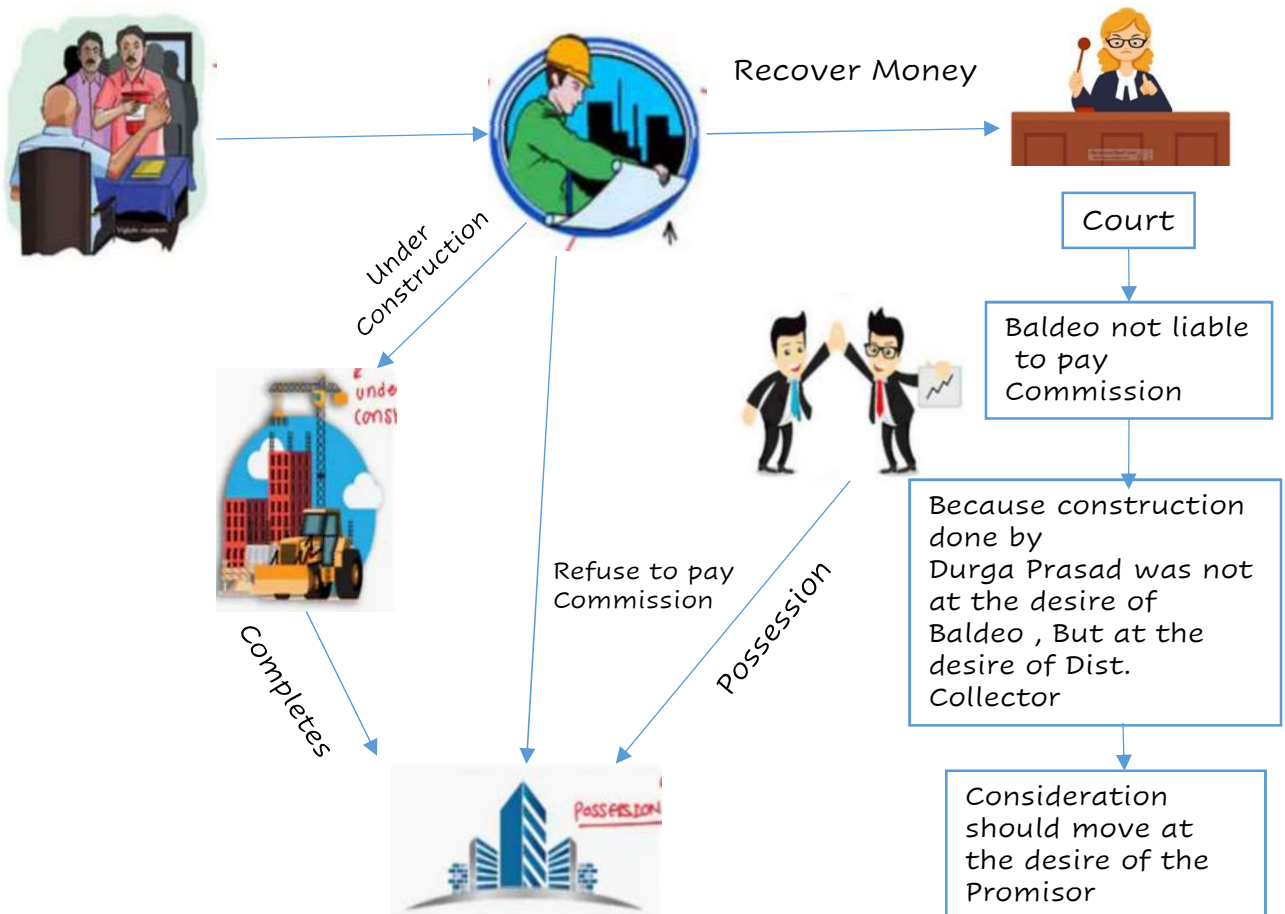
Voluntarily

(b) Its not necessary that consideration must confer some benefit – Guarantee

(c) Benefit may incurred to third party for at or forbearance at desire of Promise

### Case Law

### Durgaprasad vs Baldeo



## Example

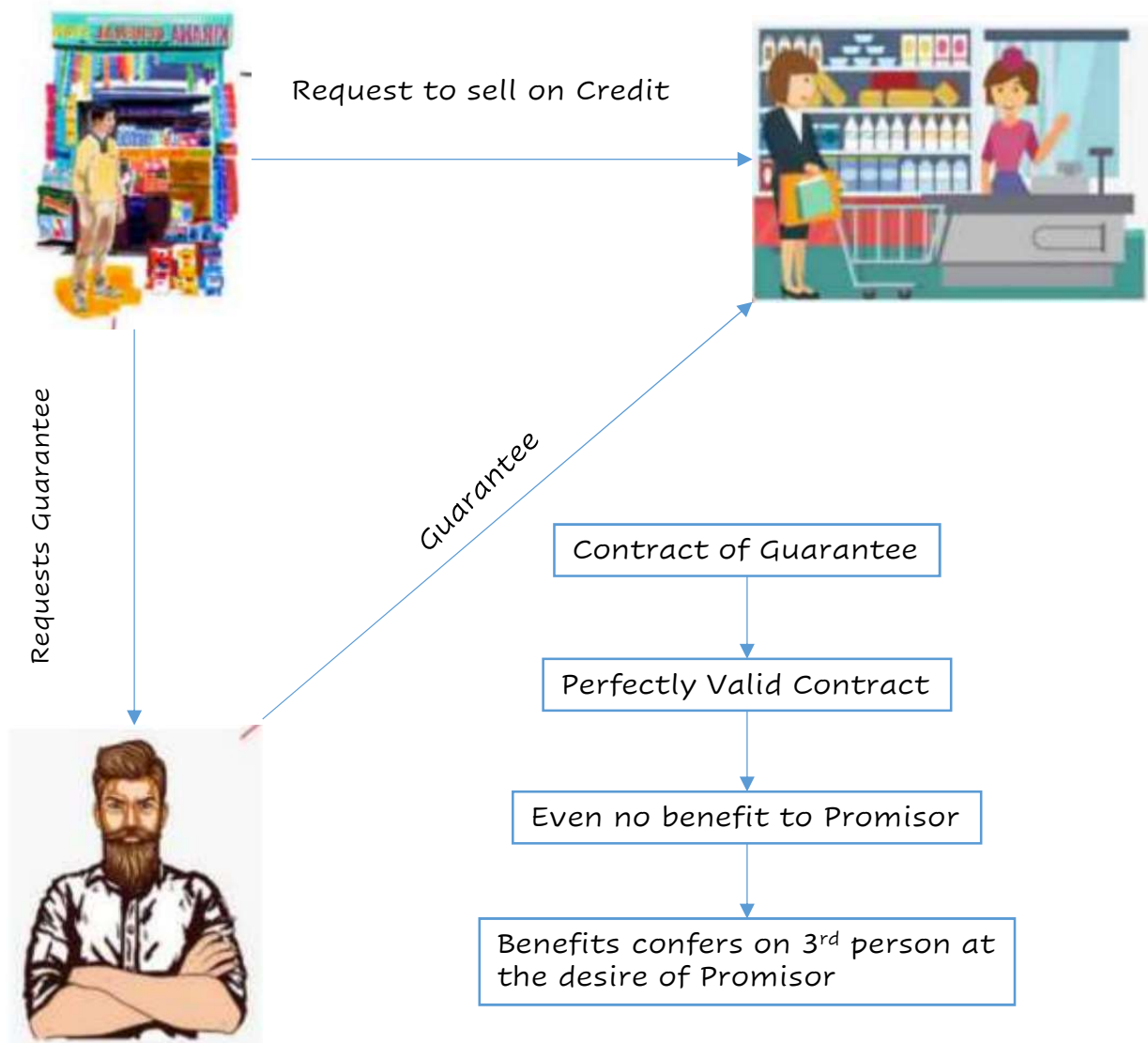


Cannot claim payment for his service



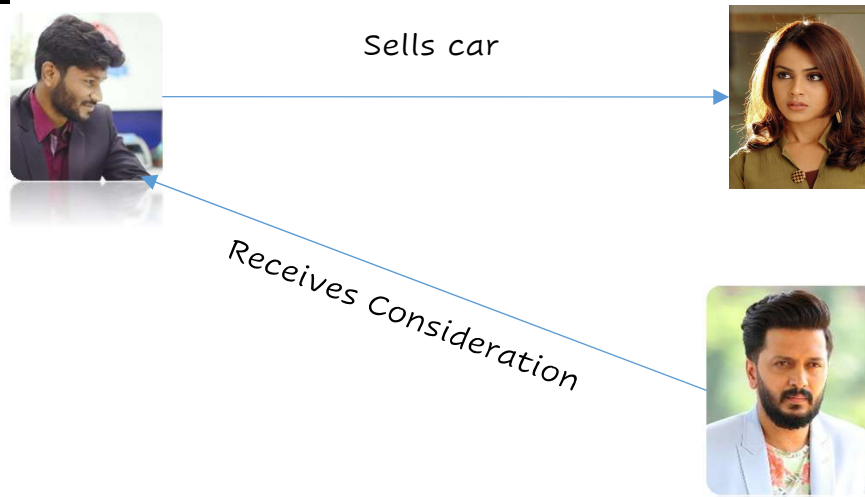
Done Voluntarily

## Example



## 2. Consideration may move from Promisee or any Other Person

### Example

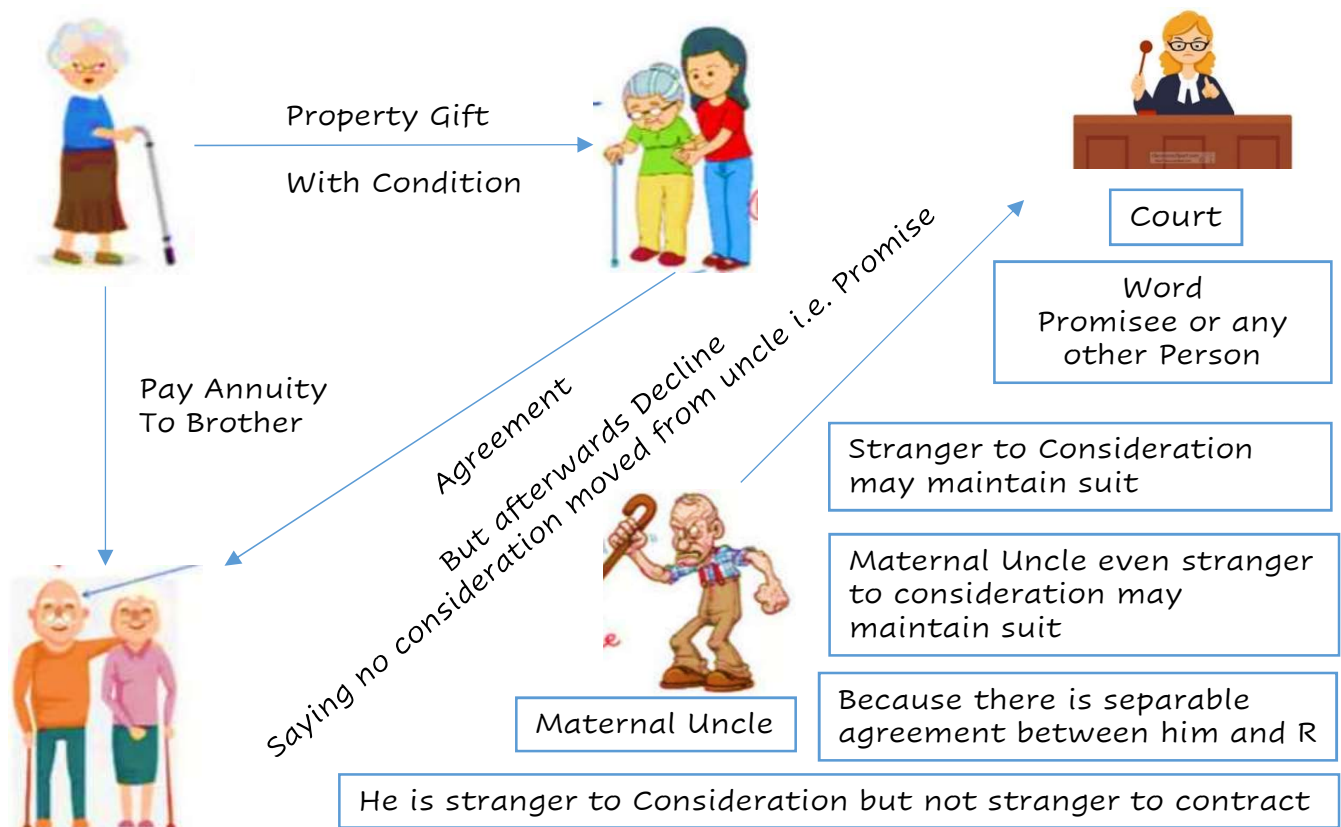


There can be stranger to consideration , but not stranger to Contract

- Consideration may proceed from 3<sup>rd</sup> person
- As long as Consideration exist , its not relevant who furnish it
- Stranger to consideration can sue contract , provided he is party to contract

### Case Law

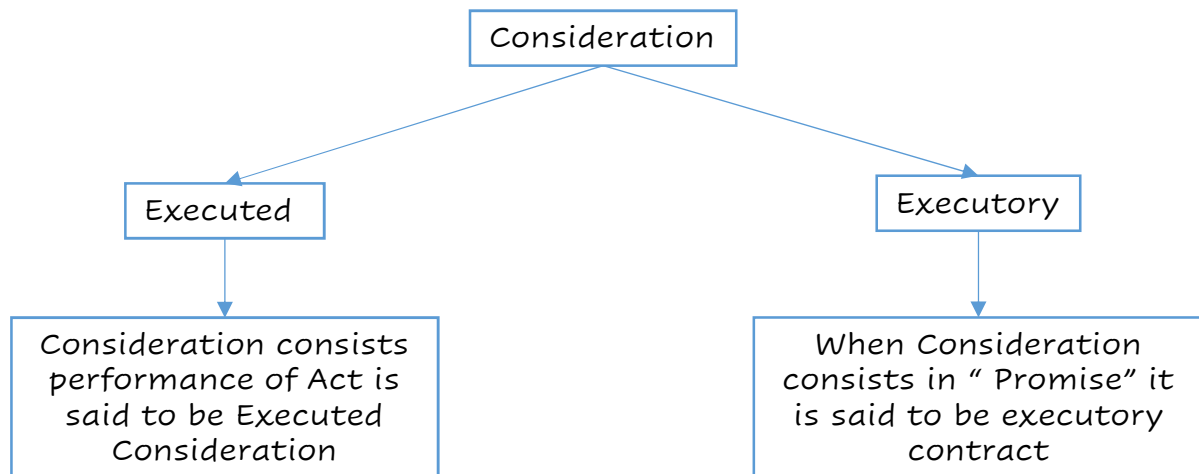
### Chinnayya vs Ramayya



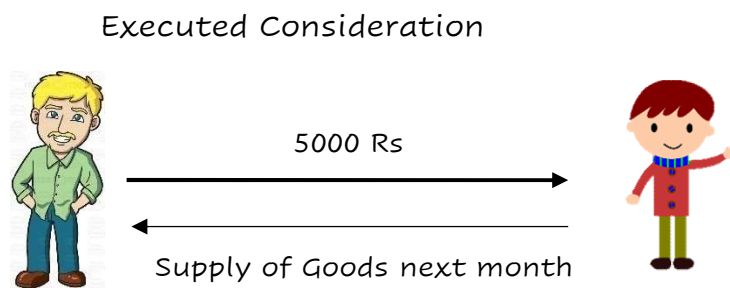
**Note :** Maternal uncle could not sued on Gift deed executed by A in favour of R because he is not party to it



### 3. Consideration may be executed or executory



#### Example



### 4. Consideration may be Past / Present / Future

#### Past

- Has done or abstained from doing
- It should be at the desire of the promisor

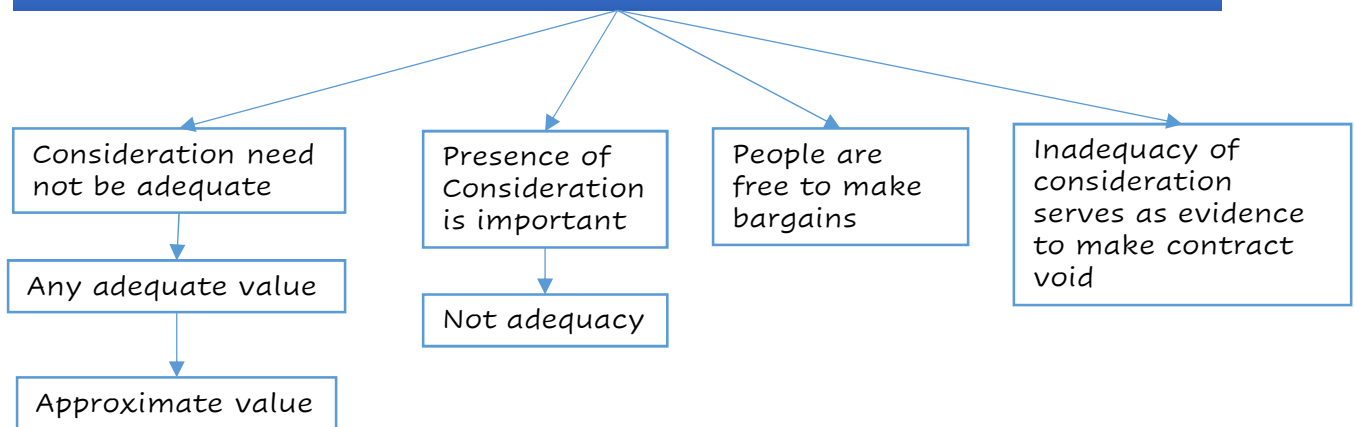
#### Past

- Does / abstains from doing
- Kind of executed / executory by other / executed by one

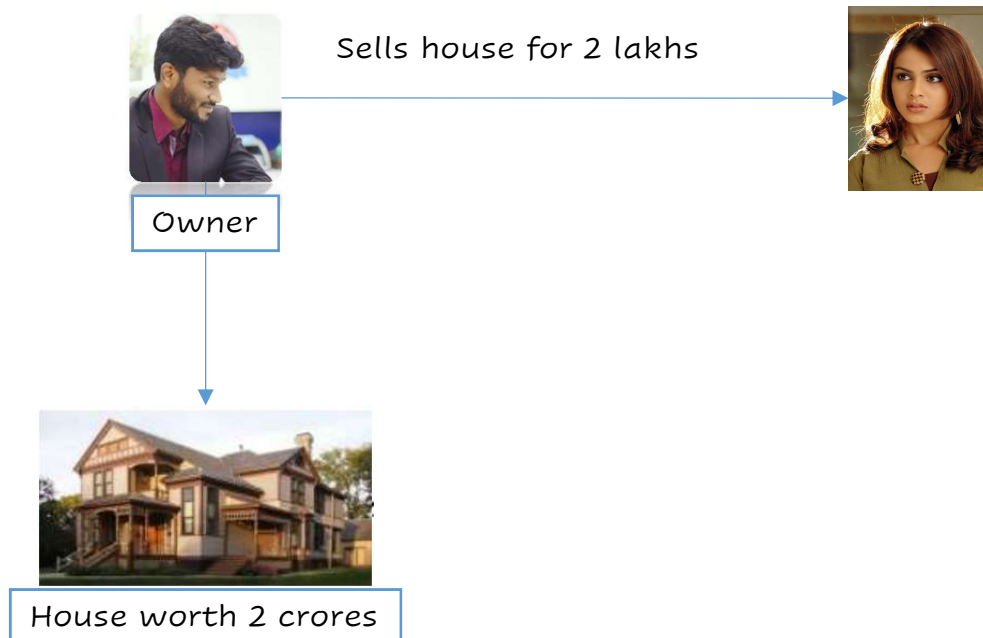
#### Past

- Promise to do / abstain from doing
- Consideration from both side move at future date
- Exchange of Promise

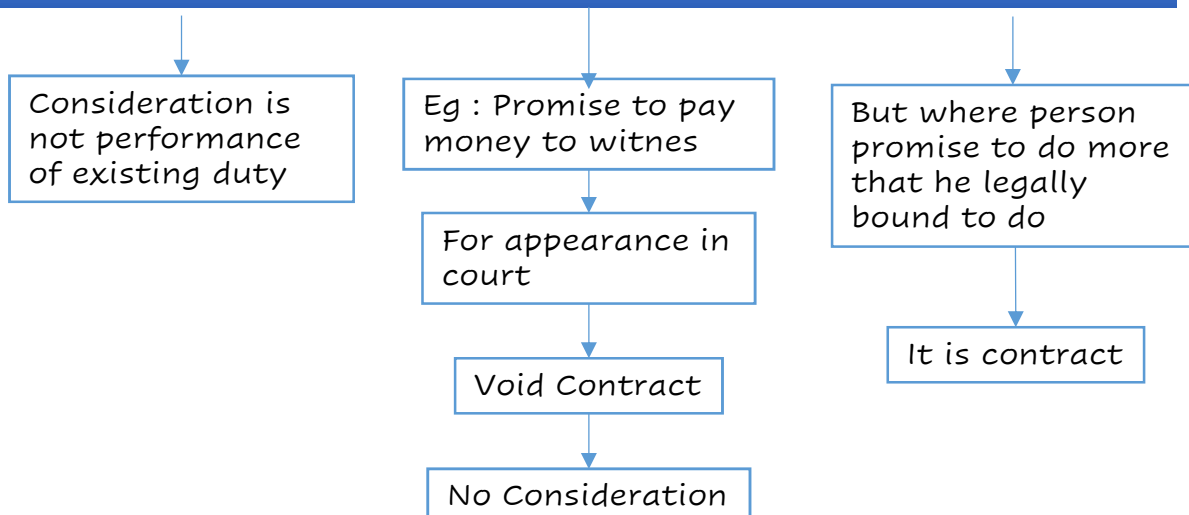
## 5. Consideration need not to be adequate



### Example



## 6. Consideration is not what one legally bound to perform



## 7. Consideration must be real not illusory

- A. Physically Impossible
- B. Legally impossible
- C. Illusory

It must be something to which law attach some value

### Example

A man promises to discover treasure by magic, bringing the dead person to live again. This transaction can be said to be void as it is illusory.

## 8. Consideration must not be unlawful , Immoral & Oppose to Public Policy

Only presence of consideration is not sufficient it must be lawful. Anything which is immoral or opposed to public policy also cannot be valued as valid consideration.

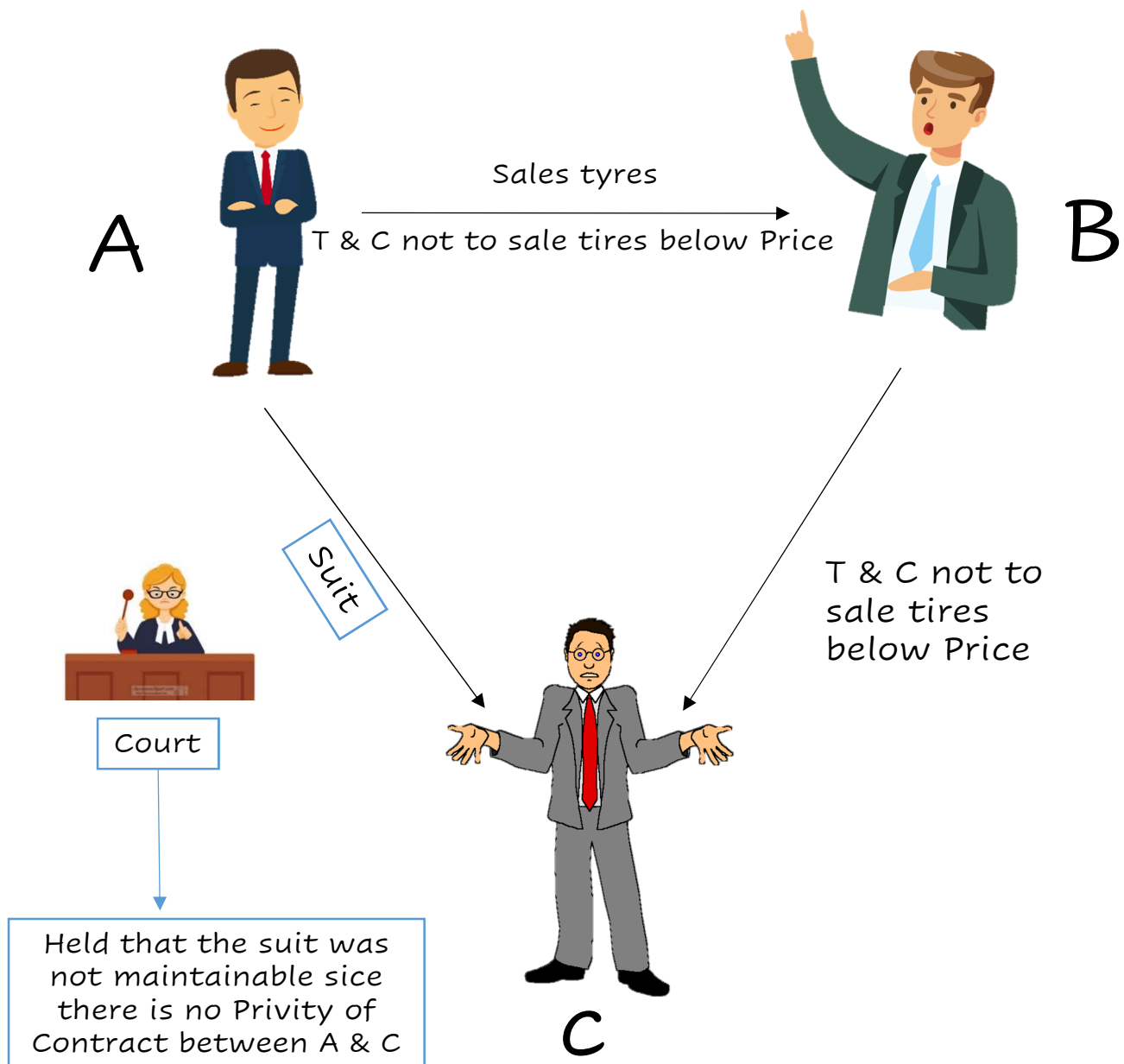
### Example

SDBL td. promises to give job to Mr. X in a Government bank against payment of ` 50,000 is void as the promise is opposed to public policy

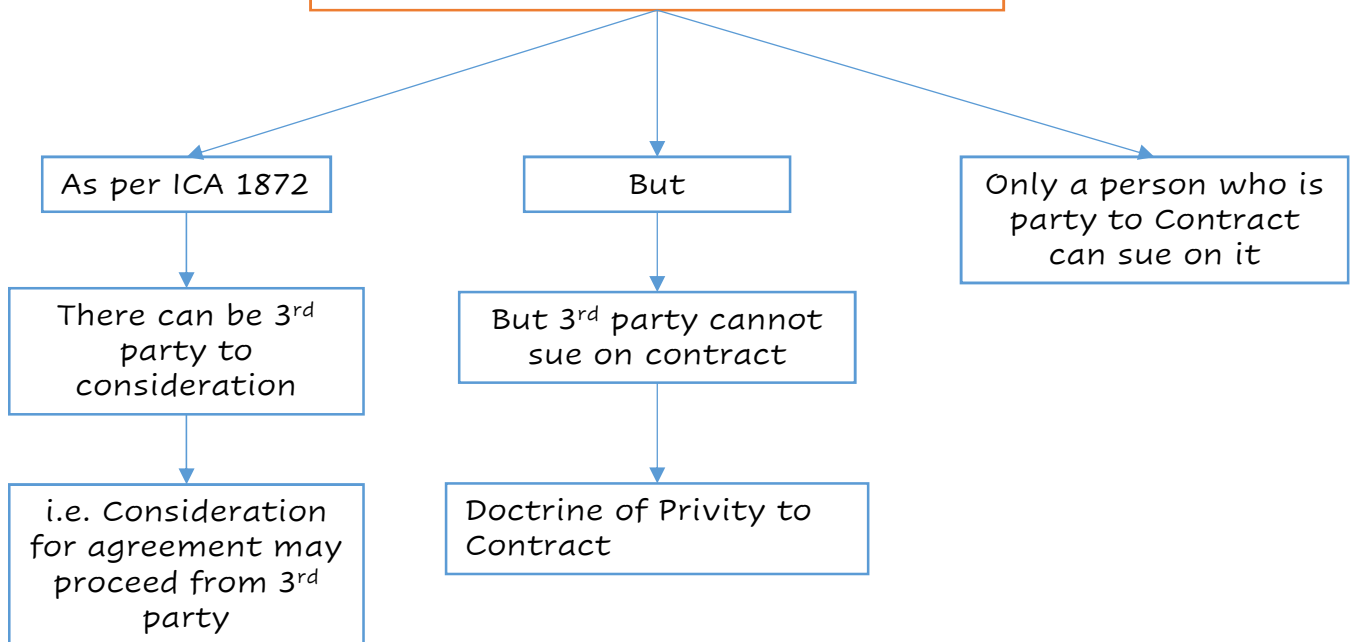
## Suit by Third Party to Contract

- Doctrine of Privity to Contract
- “ The stranger to contract cannot sue “
- Third Party cannot sue on Contract
- Only a person who is party to contract can sue on it

### Example



## Suit by Third Party to Contract

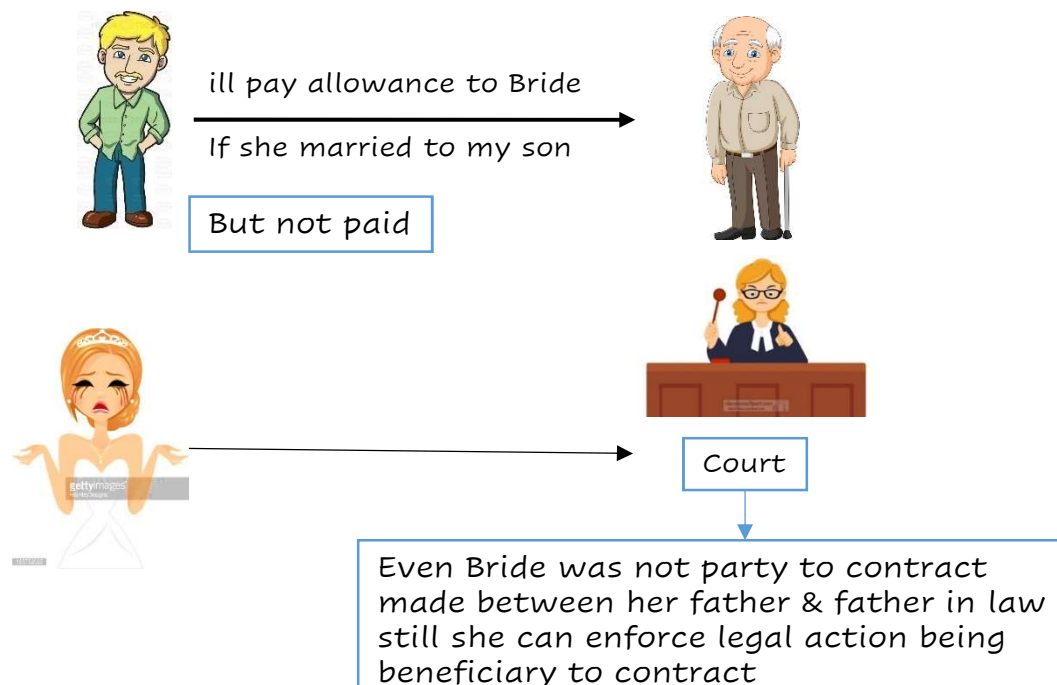


## Exceptions

### 1. Beneficiary in case of Trust

- a beneficiary can enforce his right under the trust, though he was not a party to the contract between the settler and the trustee.

#### Example



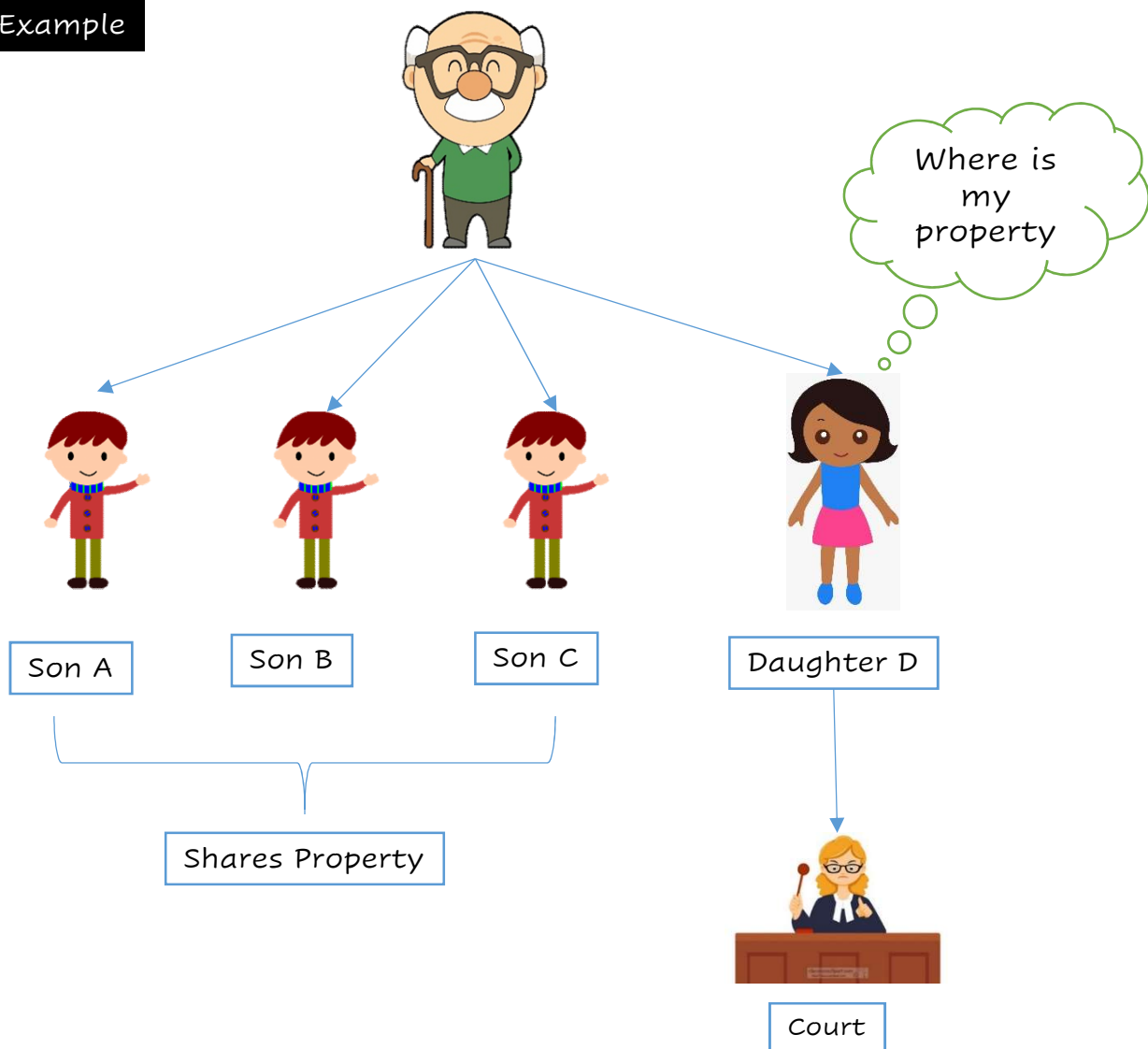
## 2. Family settlements

If terms & conditions are reduced in writing

then members of the family

Who originally not been parties to settlement may enforce the agreement

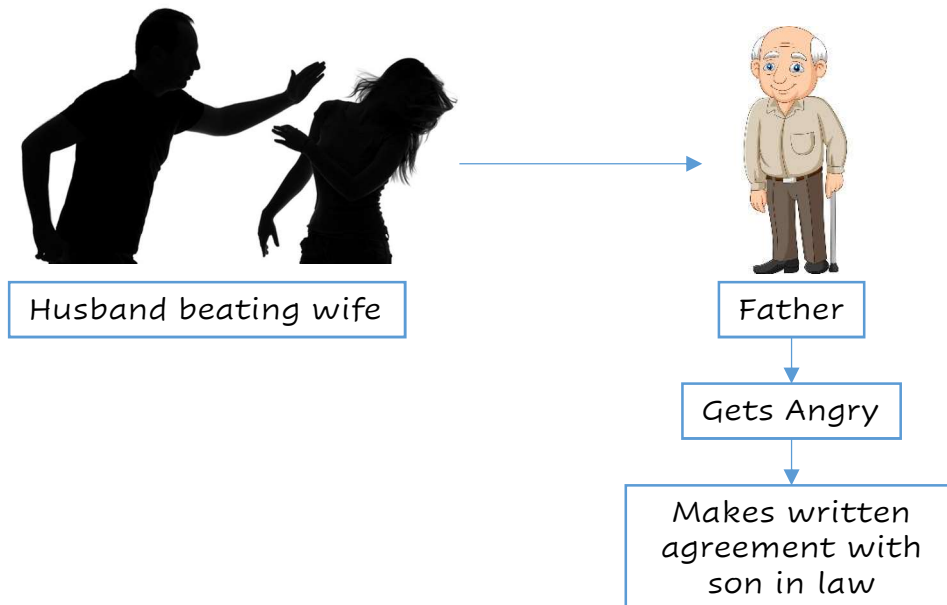
### Example



### 3. Marriage Contracts

- A provision may be made for the benefit of a person, he may file the suit though he is not a party to the agreement.

#### Example

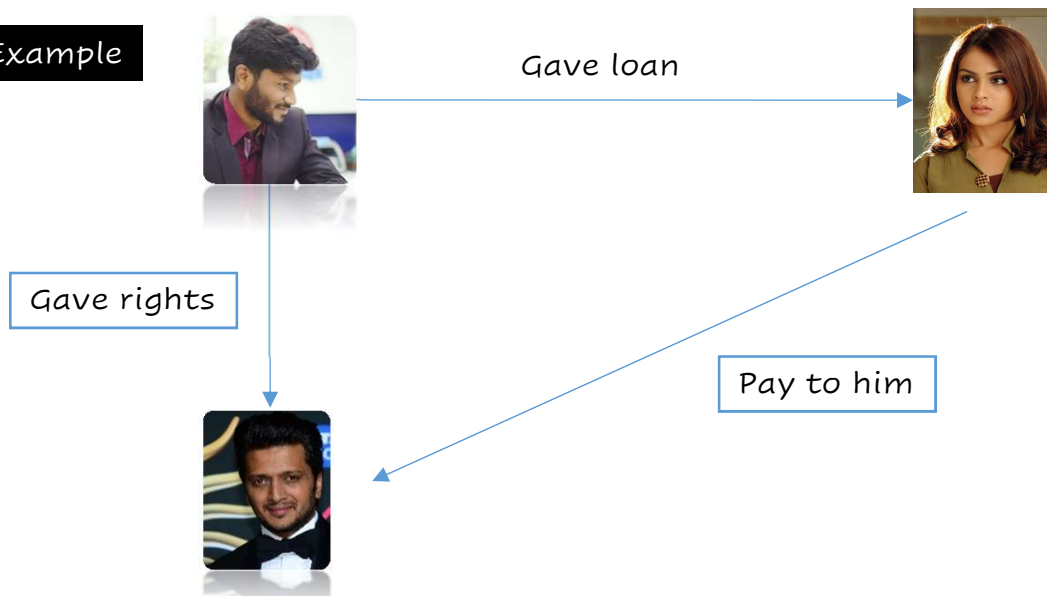


Wife can even go to court even husband does anything

### 4. Assignment of Contract

when the benefit under a contract has been assigned, the assignee can enforce the contract but such assignment should not involve any personal skill.

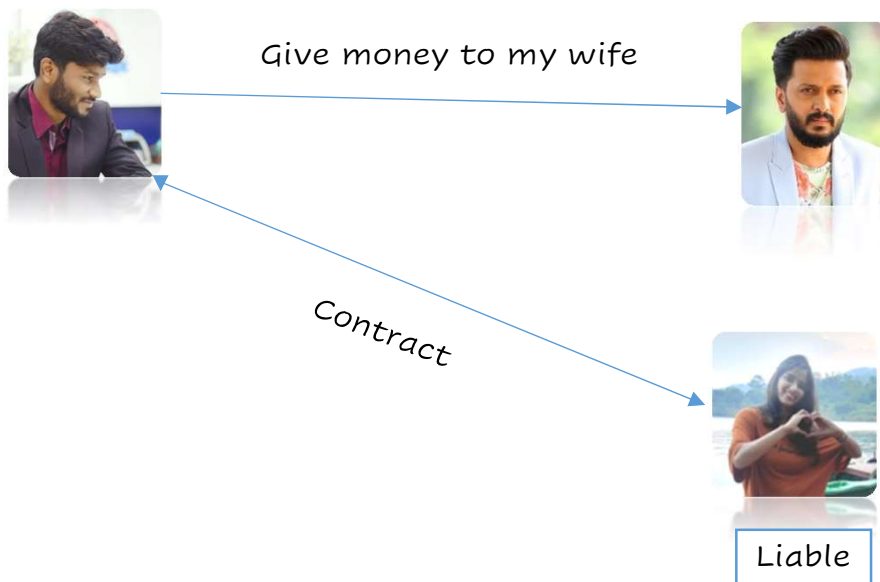
#### Example



## 5. Acknowledgement of Liability ( Debt )

where the promisor by his conduct acknowledges himself as an agent of the third party, it would result into a binding obligation towards third party

### Example



## 6. Covenants relating to land

- The person who purchases land with notice that the owner of land is bound by certain duties affecting land,
- The covenant affecting the land may be enforced by the successor of the seller.

### Example

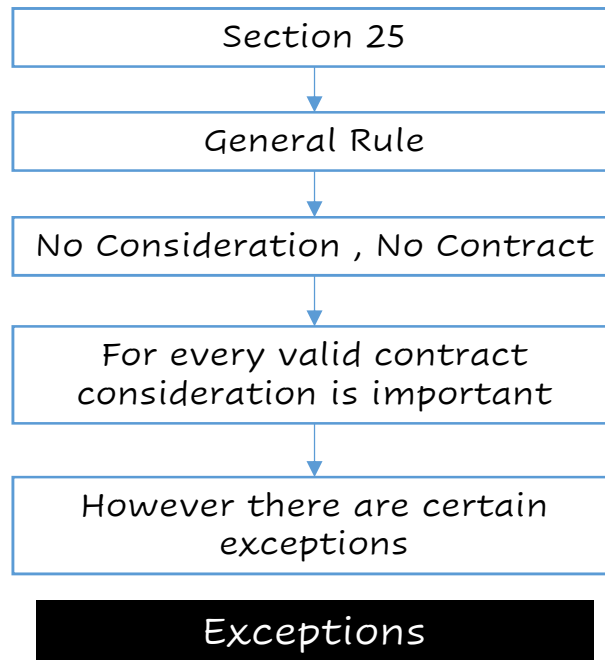
One owner of the land having two land adjacent to each other. One was agricultural land. He sold the other land containing a condition that it can never be used for Industrial purpose so as to protect the other agricultural land from pollution. Such condition is attached with the land so who so ever is the successor of land has to abide by it. Such are called restrictive covenants and all successor are bind to it.

## 7. Contract entered through an Agent

- The principal can enforce the contracts entered by his agent where the agent has acted within the scope of his authority and in the name of the principal



# VALIDITY OF AN AGREEMENT WITHOUT CONSIDERATION



## 1. Out of love and Affection

Sec 25 (1)

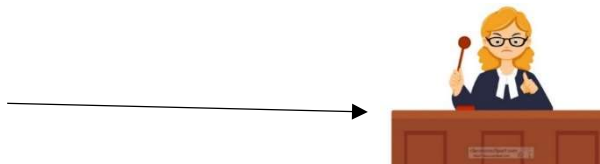
- It must be made out of natural love and affection between the parties.
- Parties must stand in near relationship to each other.
- It must be in writing.
- It must also be registered under the law.

### Case Law

Rajilakhi devi vs Bhootnath Mukherjee



Wife beats Husband for Property



Court

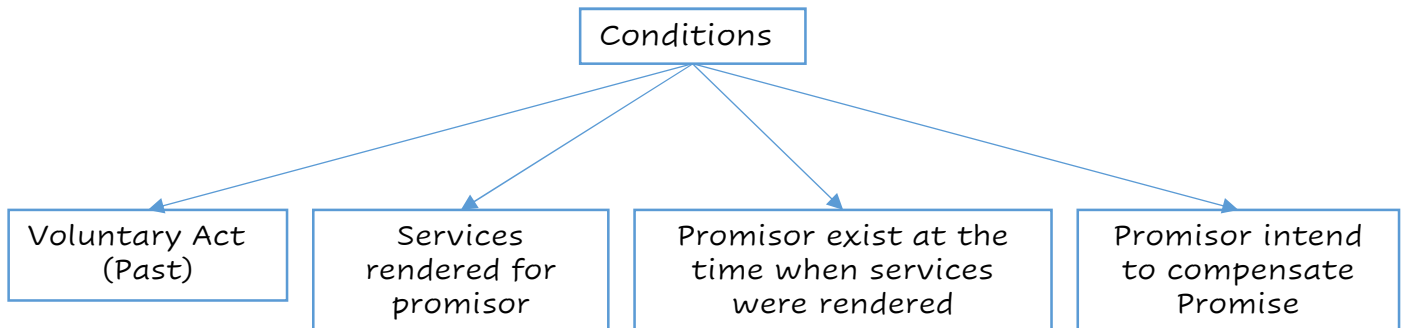
Two Possibilities

No Love & Affection

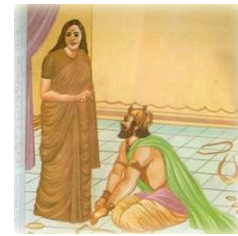
Happily Married-  
Contract is Valid

## 2. Compensation for Past voluntary services

- A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable under Section 25(2).
- In order that a promise to pay for the past voluntary services be binding, the following essential factors must exist:



**Example** Kaikeyi in Ramayana saves Dasharatha in Past



## 3. Compensation to pay time barred debt

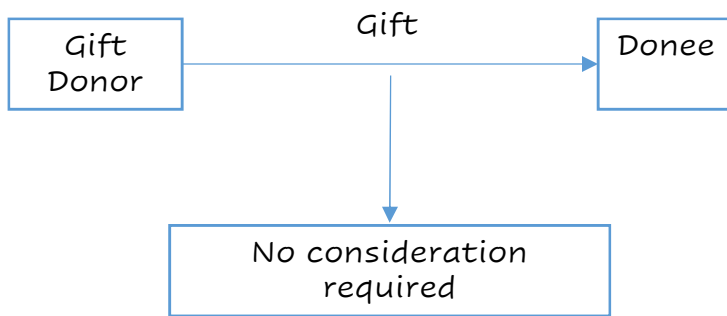
- Where a promise in writing signed by the person making it or by his authorised agent, is made to pay a debt barred by limitation
- it is valid without consideration

**Example** A is indebted to C for `60,000 but the debt is barred by the Limitation Act. A sign a written promise now to pay `50,000 in final settlement of the debt. This is a contract without consideration, but enforceable.

## 4. Agency



## 5. Completed Gift



## 6. Bailment

- No consideration is required to affect the contract of bailment.
- Section 148 of the Indian Contract Act, 1872, defines bailment
- "As the delivery of goods from one person to another for some purpose. This delivery is made upon a contract that post accomplishment of the purpose, the goods will either be returned or disposed of, according to the directions of the person delivering them."
- No consideration is required to affect a contract of bailment

### Example

- Giving mobile for repair in Mobile shop
- After Mobile is ready , we take again

## 7. Charity

- If a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid

### Case Law

### Kadarnath vs Gorie Mohammad

The decision made suggests, although in a few words, that such **revocation is impossible**. The accused, in that case, was held responsible as soon as the contract for the construction of the room was concluded



Promises  
For Construction of Room



Guru of Charity

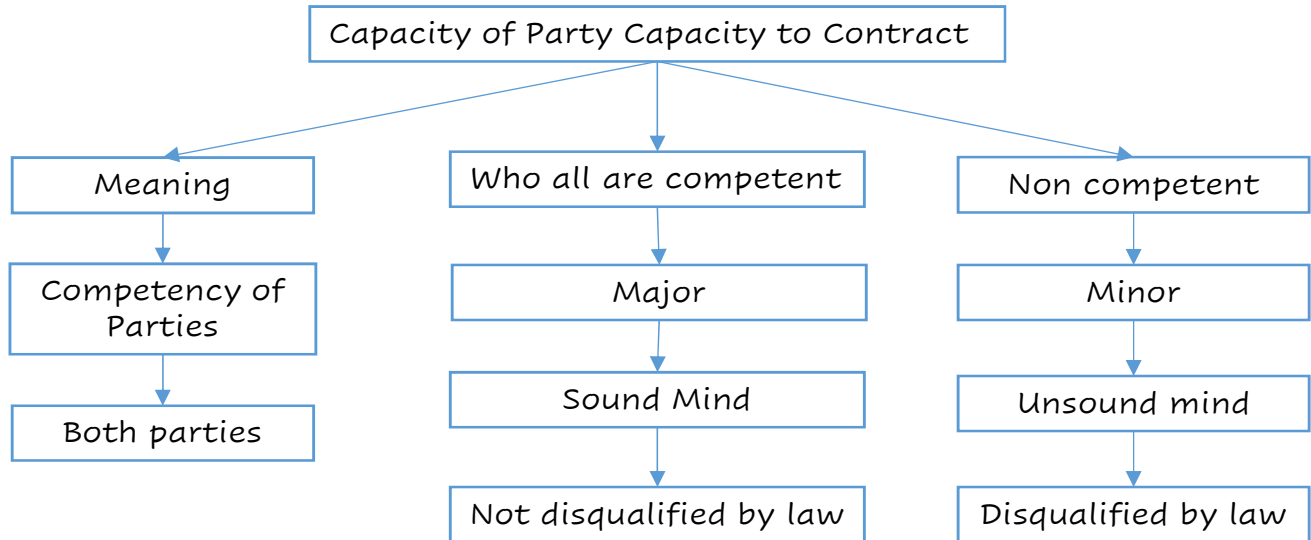


## Unit 3

# Other Essential Elements of a Contract

# Unit 3. Other Essential Elements of a Contract

## Introduction :

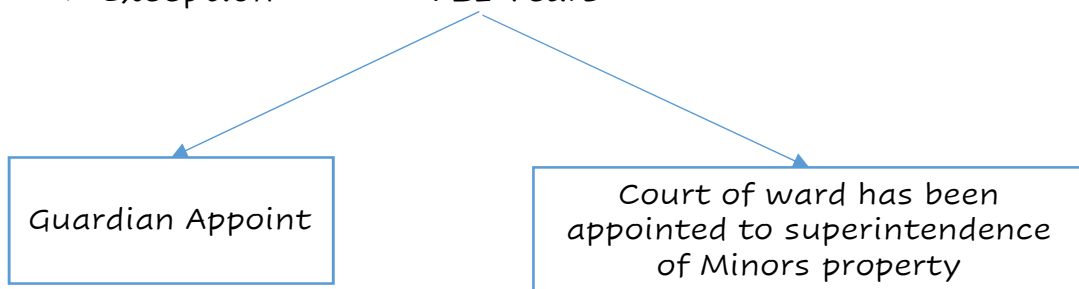


## Age of Majority

### Section 3 of Indian Majority Act 1875

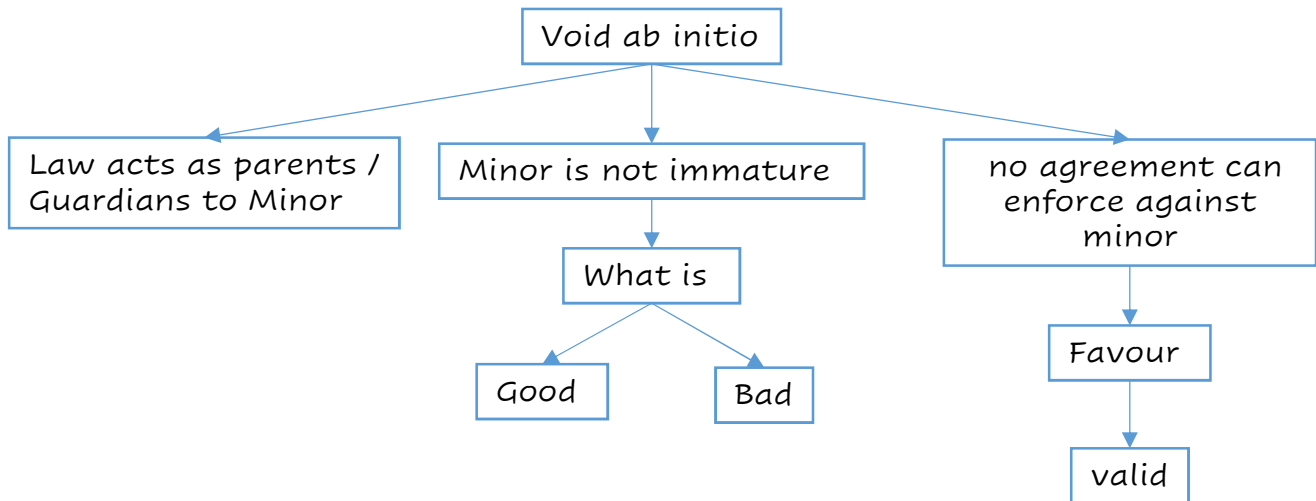
➤ Every person : Age 18 years above

➤ Exception : 21 Years



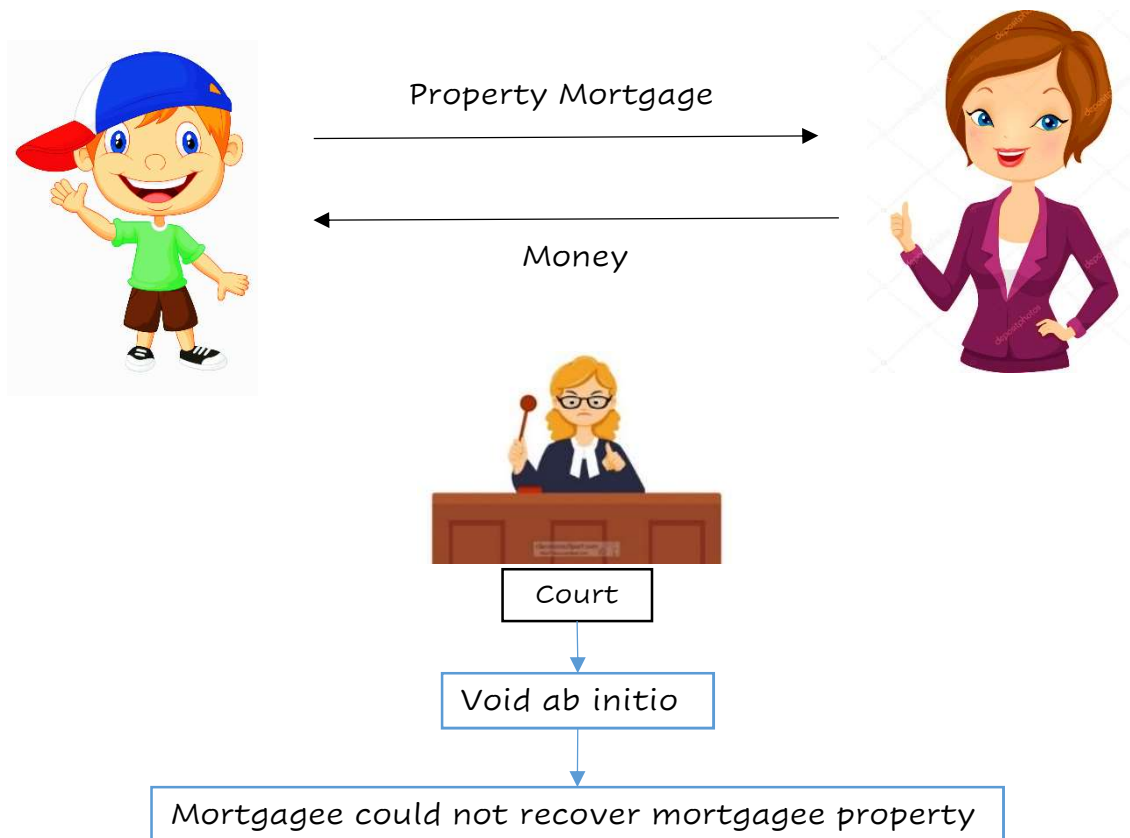
# Law relating to Minor's agreement/Position of Minor

## 1. Contract with minor is Void ab initio



### Case Law

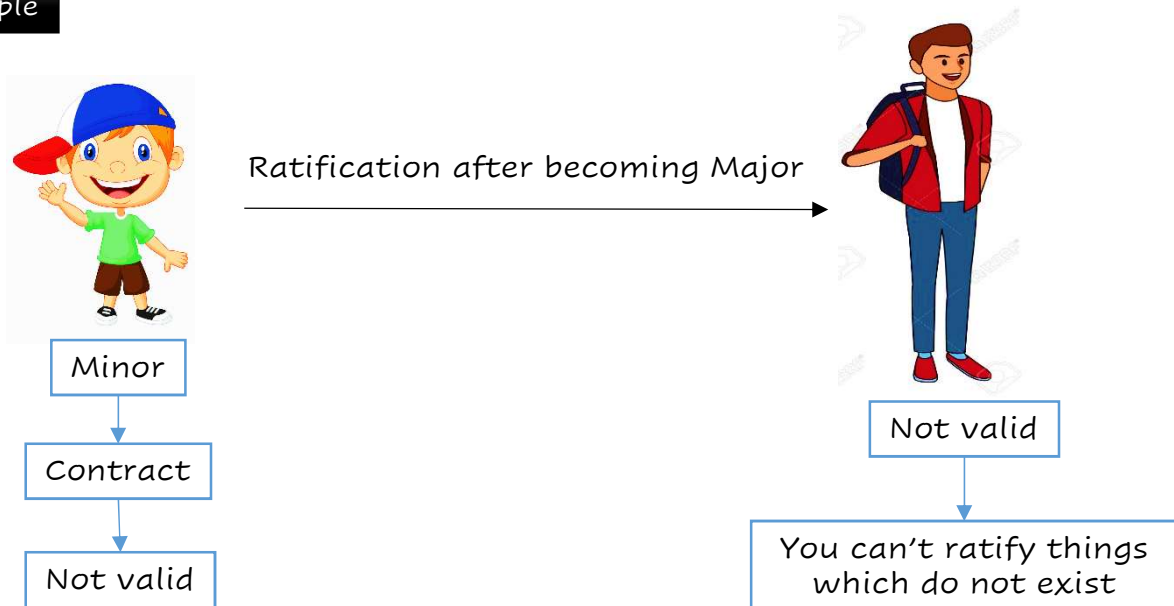
### Mohori bibi vs Dharmo Das Ghose



## 2. No ratification after attaining Majority

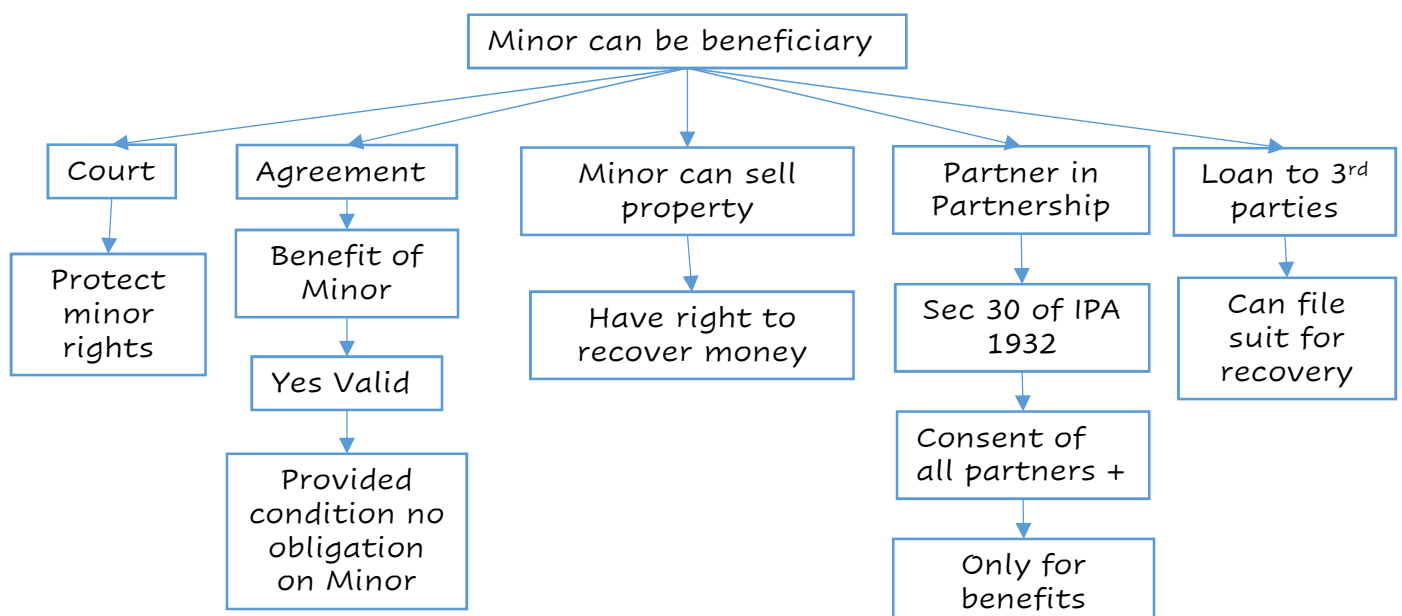
- A minor cannot ratify the agreement on attaining majority as the original agreement is void ab initio
- void agreement can never be ratified.

### Example



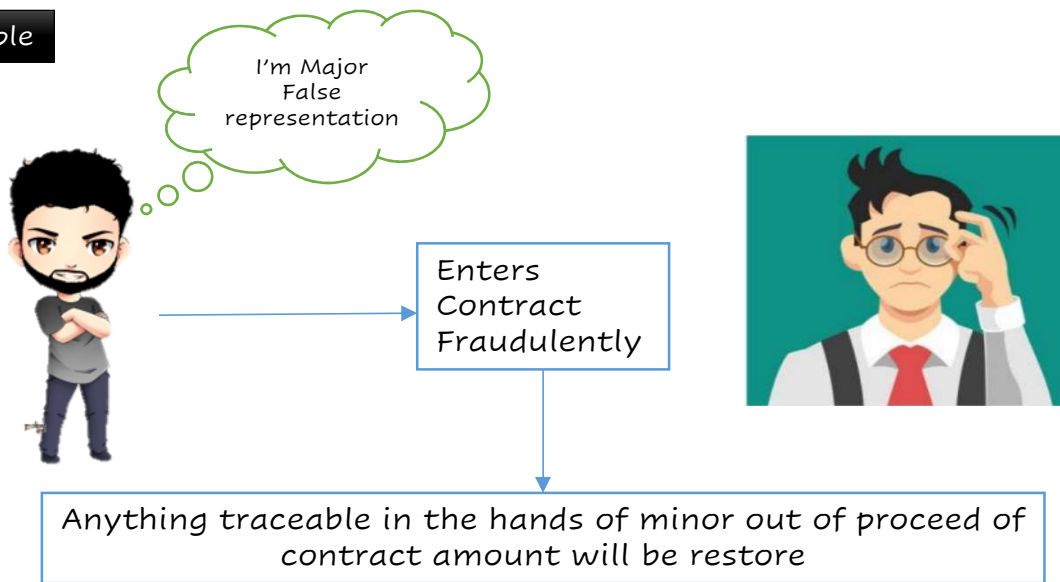
- Ratification related to back date when agreement was made which was void and can't be ratified
- In other words Void agreements cannot mature into valid contract through ratification

## 3. Beneficiary Agreements are valid Contracts



#### 4. Rules of Estoppel does not apply to Minor

##### Example



Court protect the rights of a minor

- Minor can always plead his minority
- Rules of estoppel does not apply to minor
- Minor plead Minority as defense
- Minor can plead minority even he has taken loan & entered into contract , falsely stating he was major
- Fraud - restoring things to other party on equitable consideration

Minor has no privilege to cheat others

#### 5. Minors liability for necessities

- It can be recovered out of his property
- To suited his condition in life (Minor can personally liable)

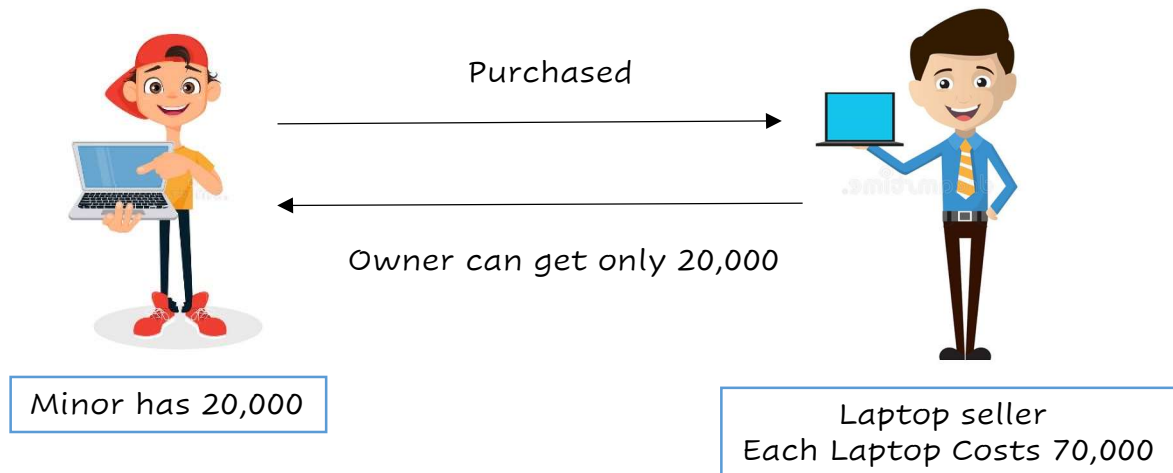
##### **Meaning of Necessaries**

- Minor does not have sufficient quantity
- Suitable to his life
- It cannot be luxury

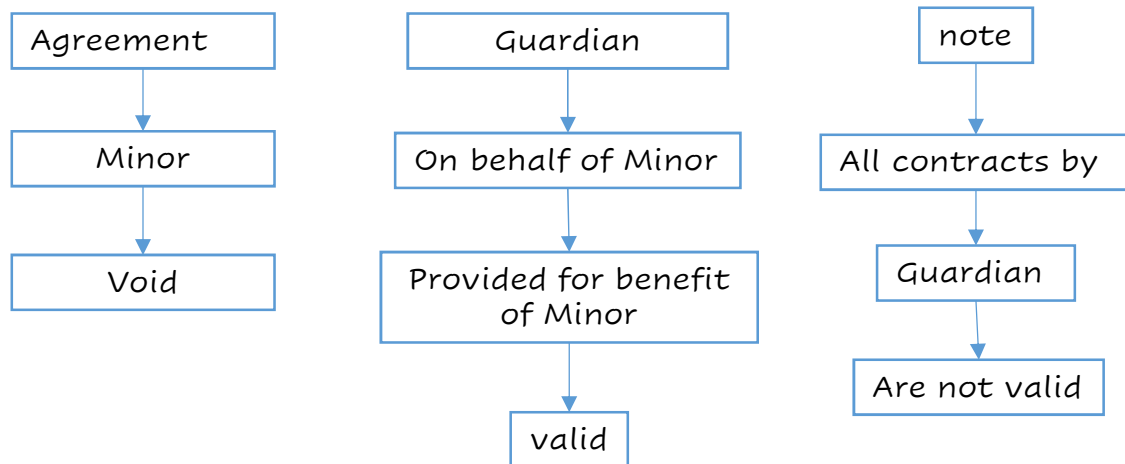
**Claim** - Against Minors Property  
**Guardian** - Not liable for act of minor ,Liable only if minor acting as their agent .



### Example



## 6. Contract by Guardian



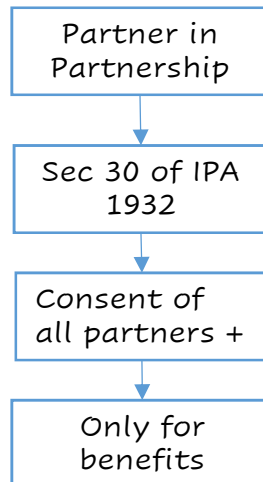
## 7. No Specific Performance

- A minor's agreement being absolutely void, there can be no question of the specific performance of such an agreement.

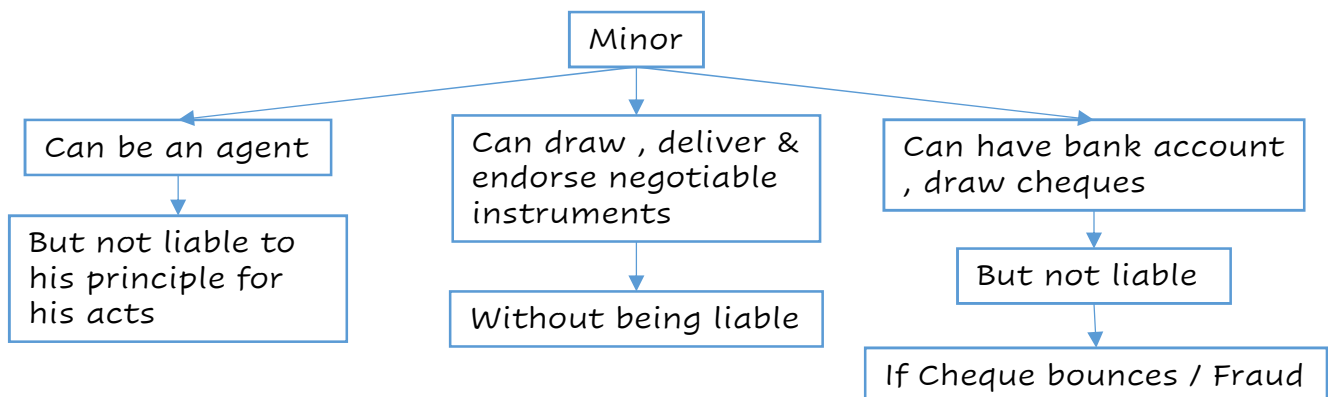
## 8. No Insolvency

- A minor cannot be declared insolvent as he is incapable of contracting debts and dues are payable from the personal properties of minor and
- he shall never be held personally liable

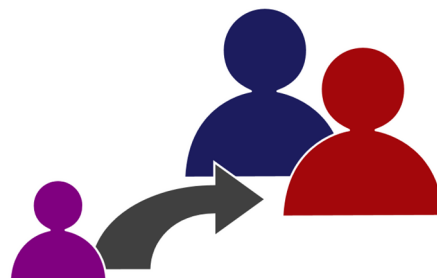
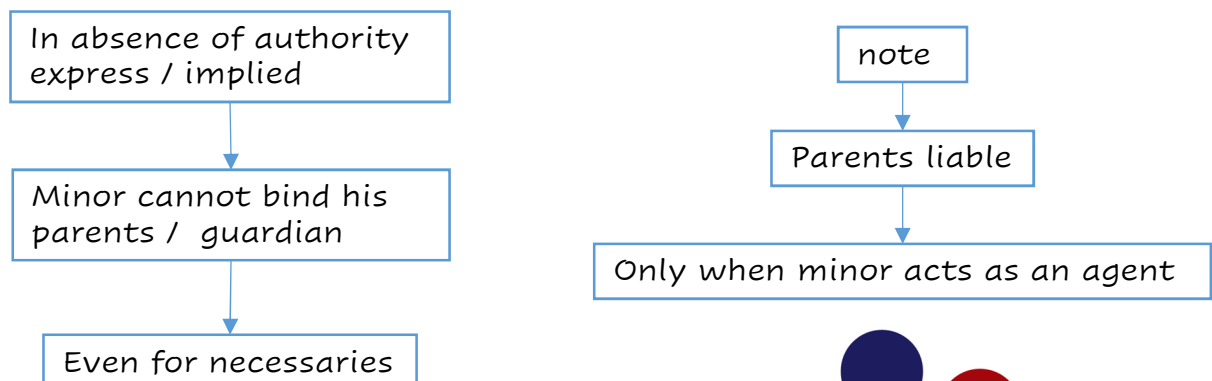
## 9. Partnership



## 10. Minor can be Agent



## 11. Minor cannot bind parent / Guardian

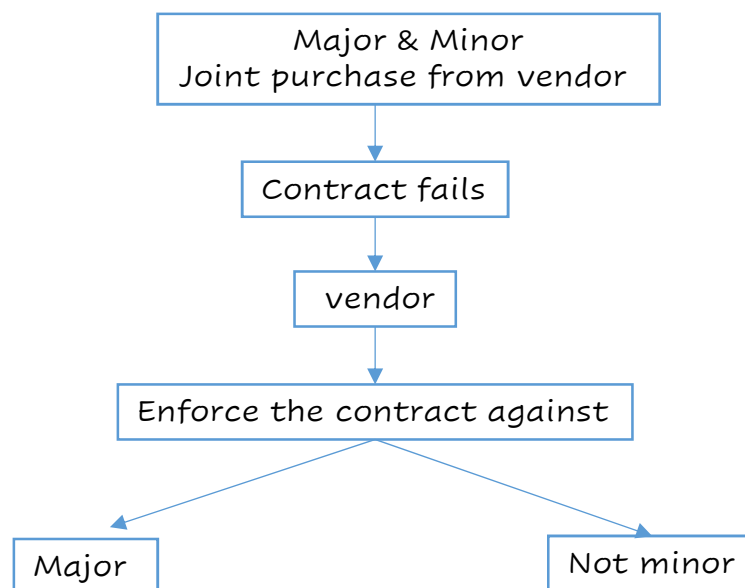


## 12. Joint contract by Minor & Adult

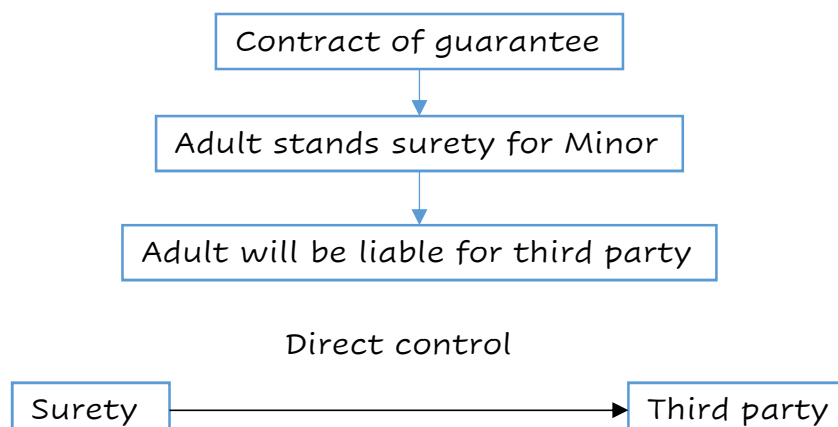
➤ : In such a case, the adult will be liable on the contract and not the minor

Case Law

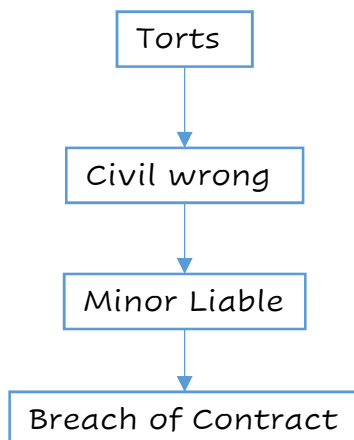
Sain Das vs Ram chand



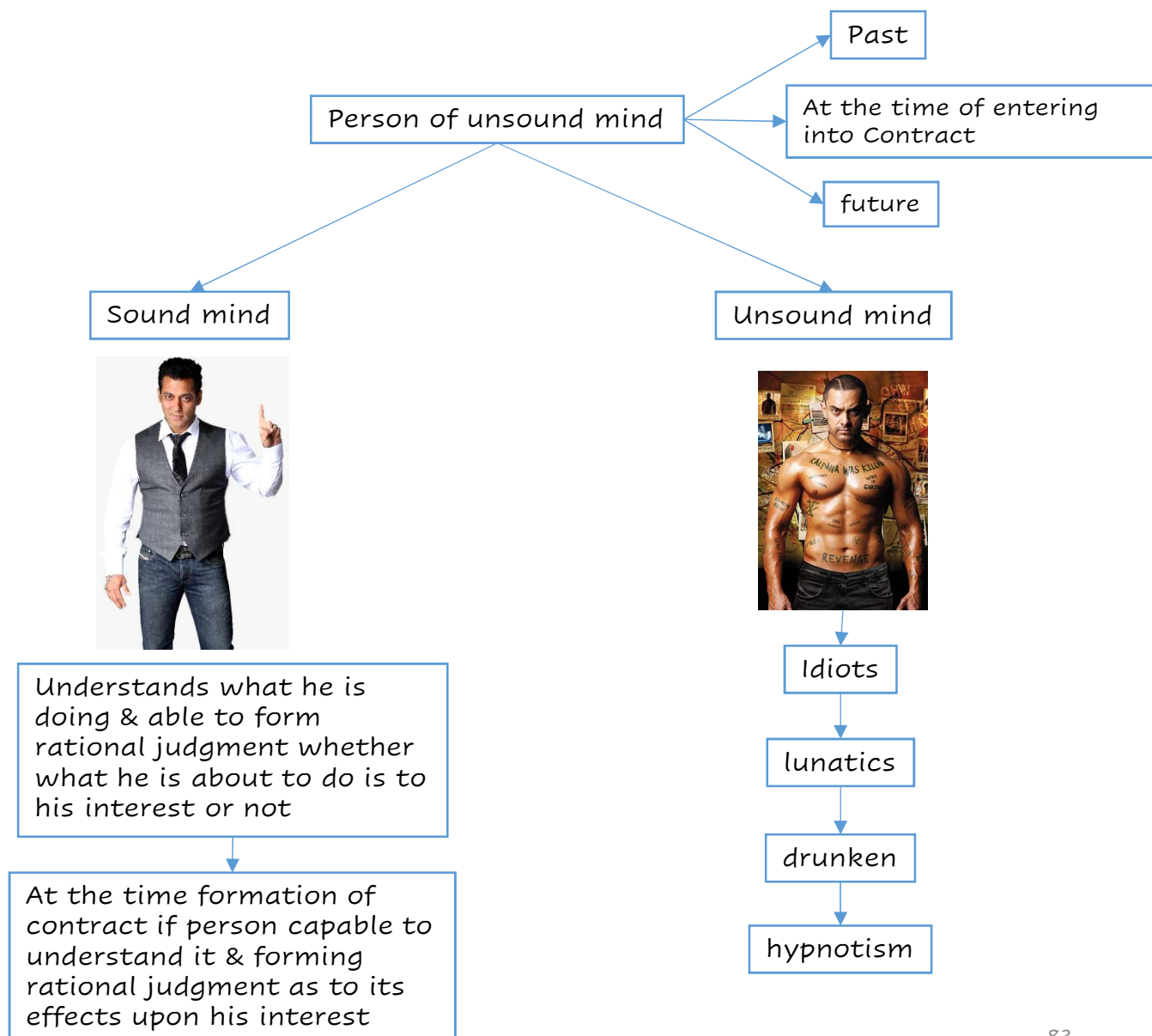
## 12 . Surety for a minor



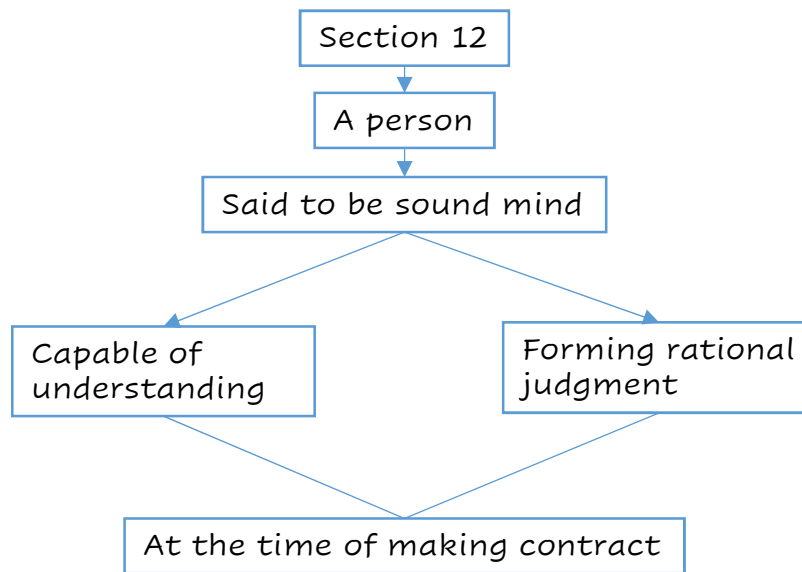
### 13. Liability for torts



### Person of Unsound mind



## Definition



Usually	Occasionally	
Unsound mind	Sound mind	May make contract when he is sound mind
Sound mind	Unsound mind	May not make contract when he is unsound mind

## Persons of Unsound Mind

1. Unsound Mind	May enter contract when he is sound mind
2. Lunatic person	A mentally de-arranged person. He can enter into contract when he is sound mind
3. Idiot	A person who has lost his mental balance completely. He cannot enter into contract

Burden of Proof

Person who challenge validity of Contract

Unsound mind

effect

Unsound mind

Absolutely void  
& inoperative

Status = Minor  
he can take  
benefit , not  
personally  
liable but his  
property liable

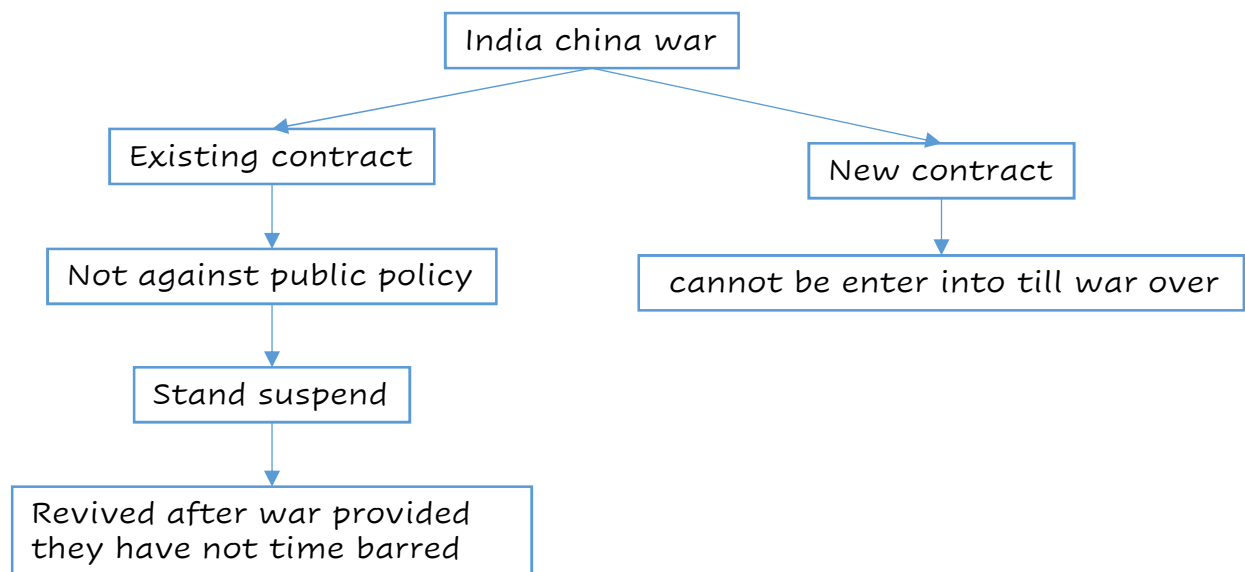
Sound Mind

Valid

## Contract by disqualified person



### 1. Alien Enemy



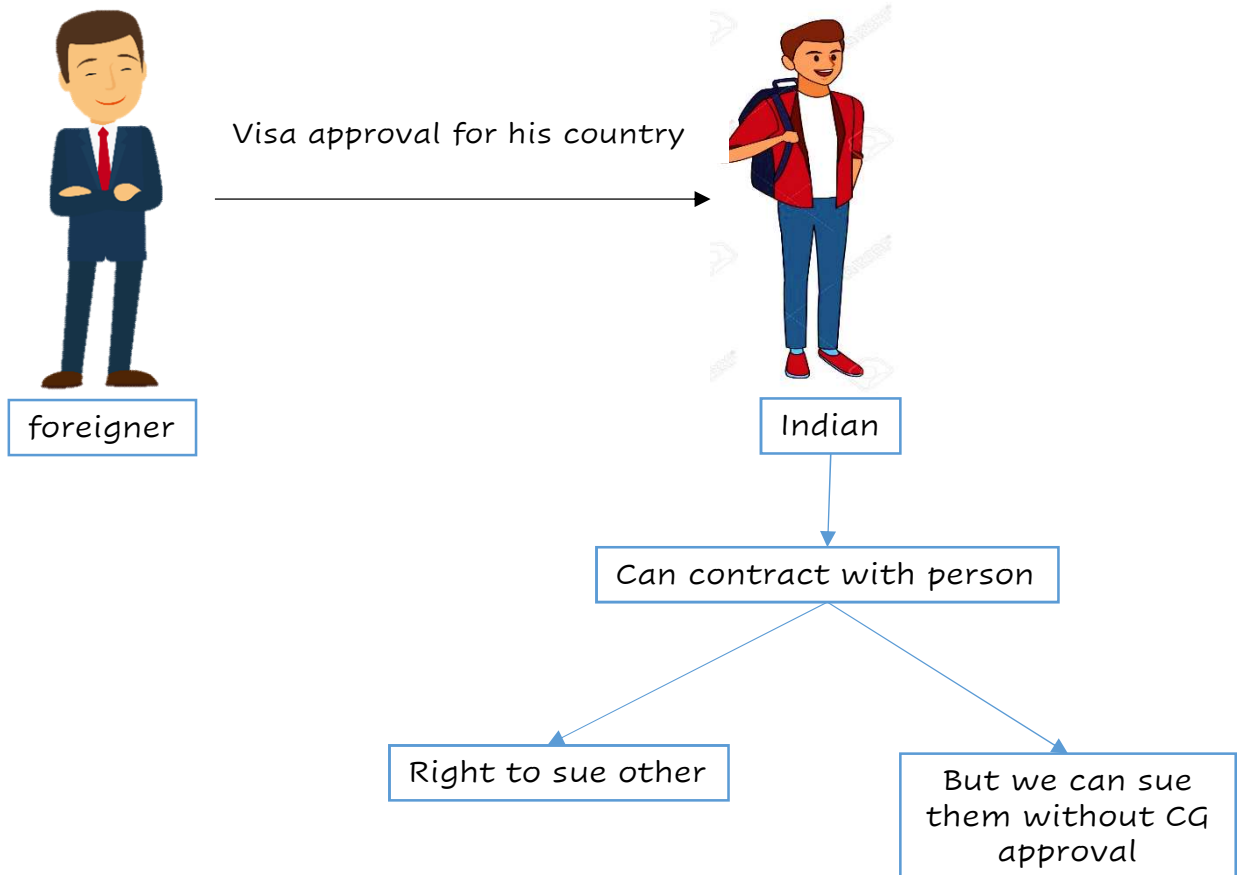
Note : Both contracts can be executed by the approval of Central Govt

## 2. Foreign Sovereign



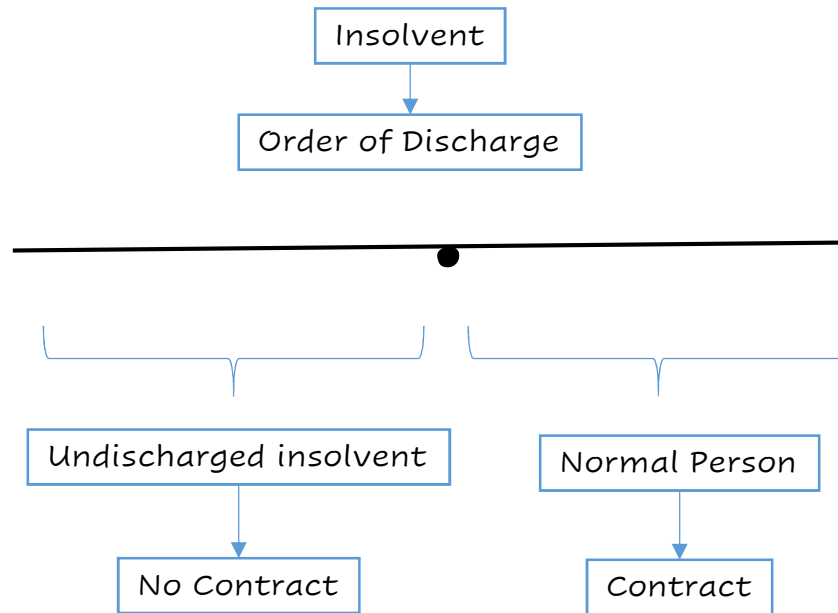
Contract is valid But can't take action

example



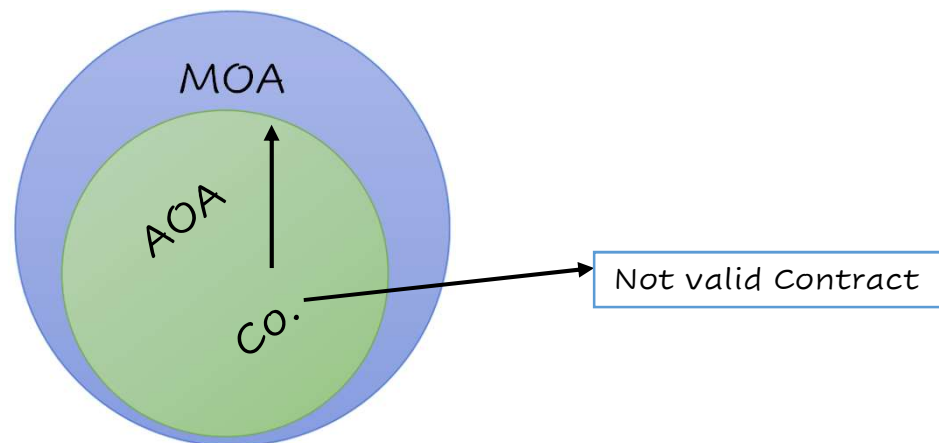


### 3. Insolvent

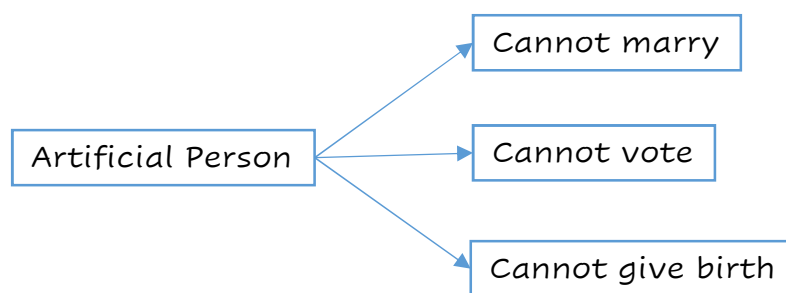


### 4. Company beyond its powers

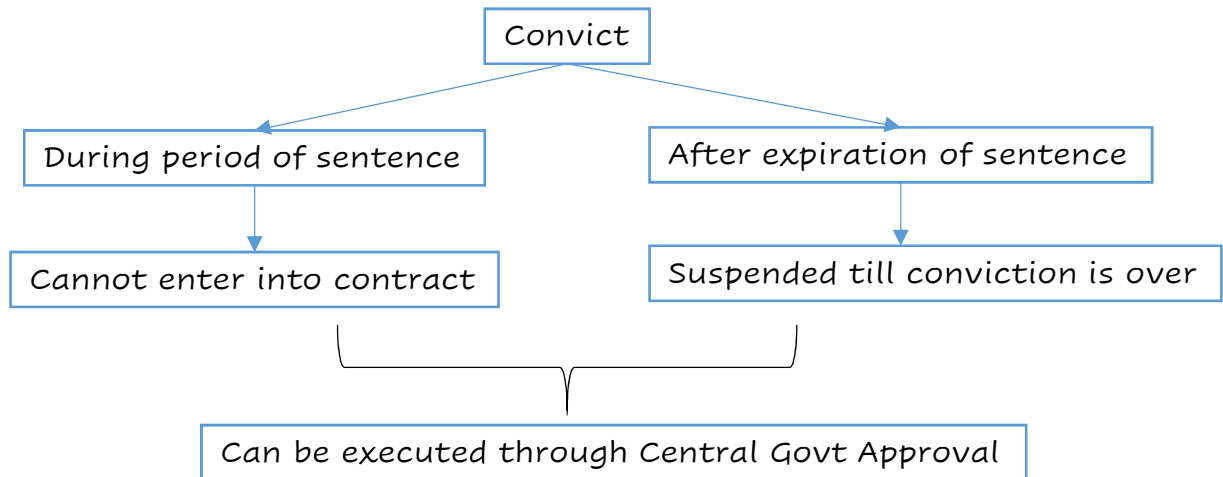
#### Aspect 1



#### Aspect 1



## 5. Convict



# Free consent

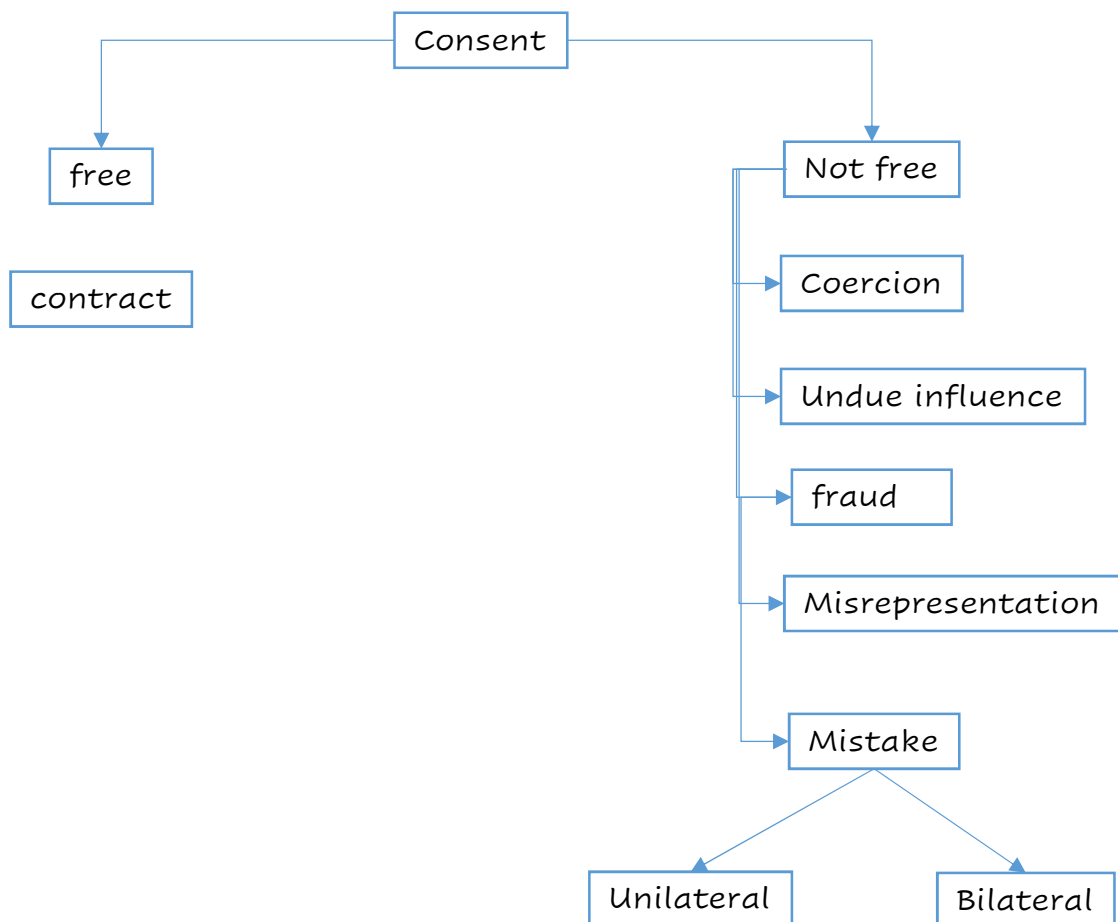
## Section 13 Consent

Two or more persons are said to be in consent when they agree the same thing in the same sense

Meeting of Minds

- **Errors in consensus** : Contract cannot arise in absence of consent
- **Errors in Causa** : If contract is there , but not free

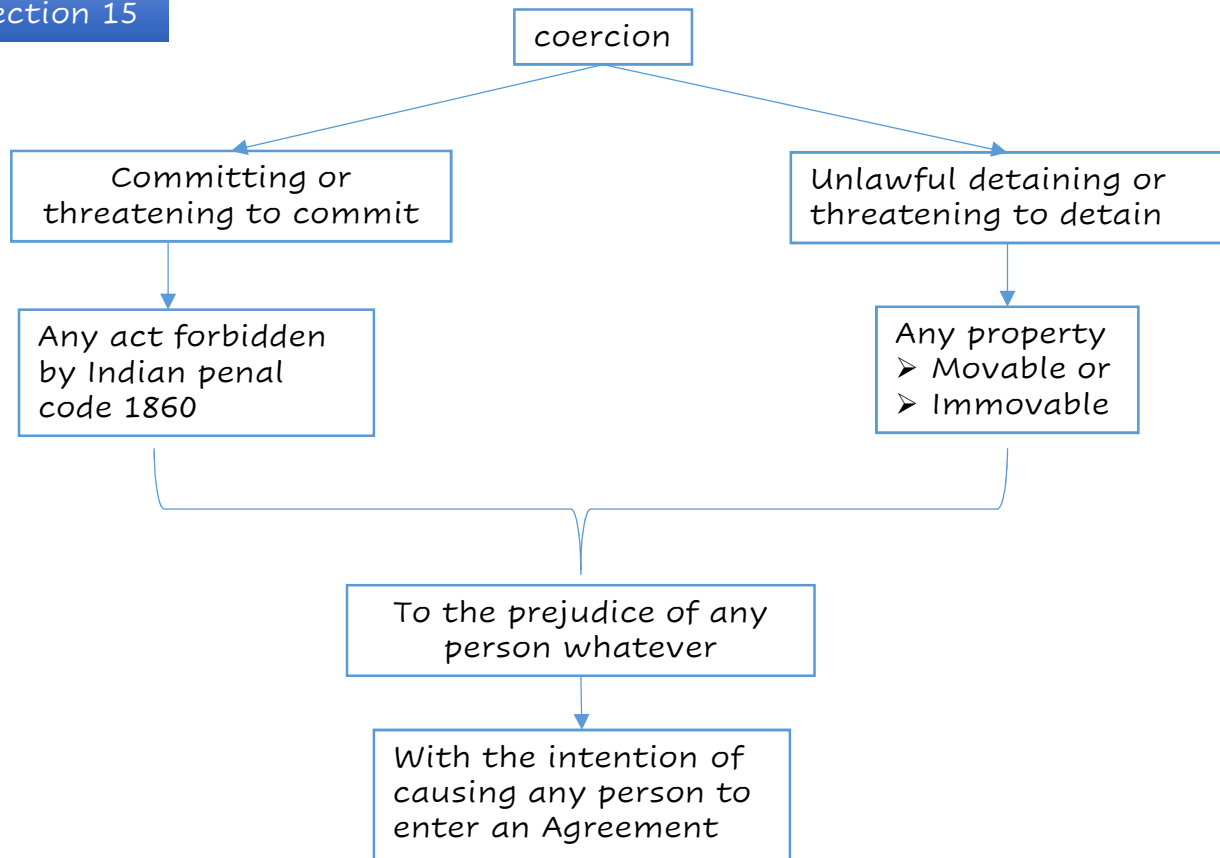
## Section 14 Free Consent



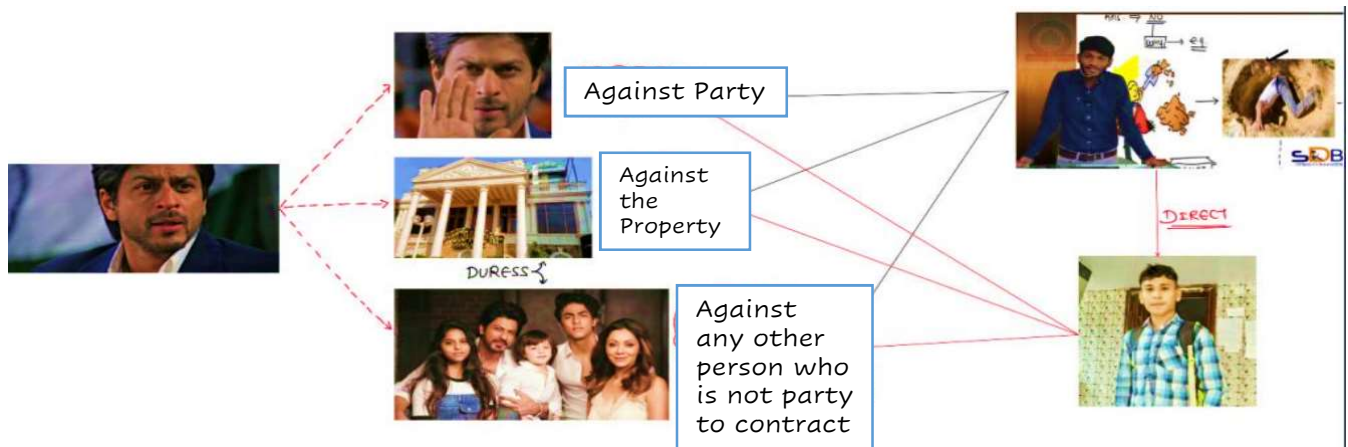
When consent to an agreement is caused by coercion, fraud, misrepresentation, or undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. When the consent is vitiated by mistake, the contract becomes void.

# Coercion

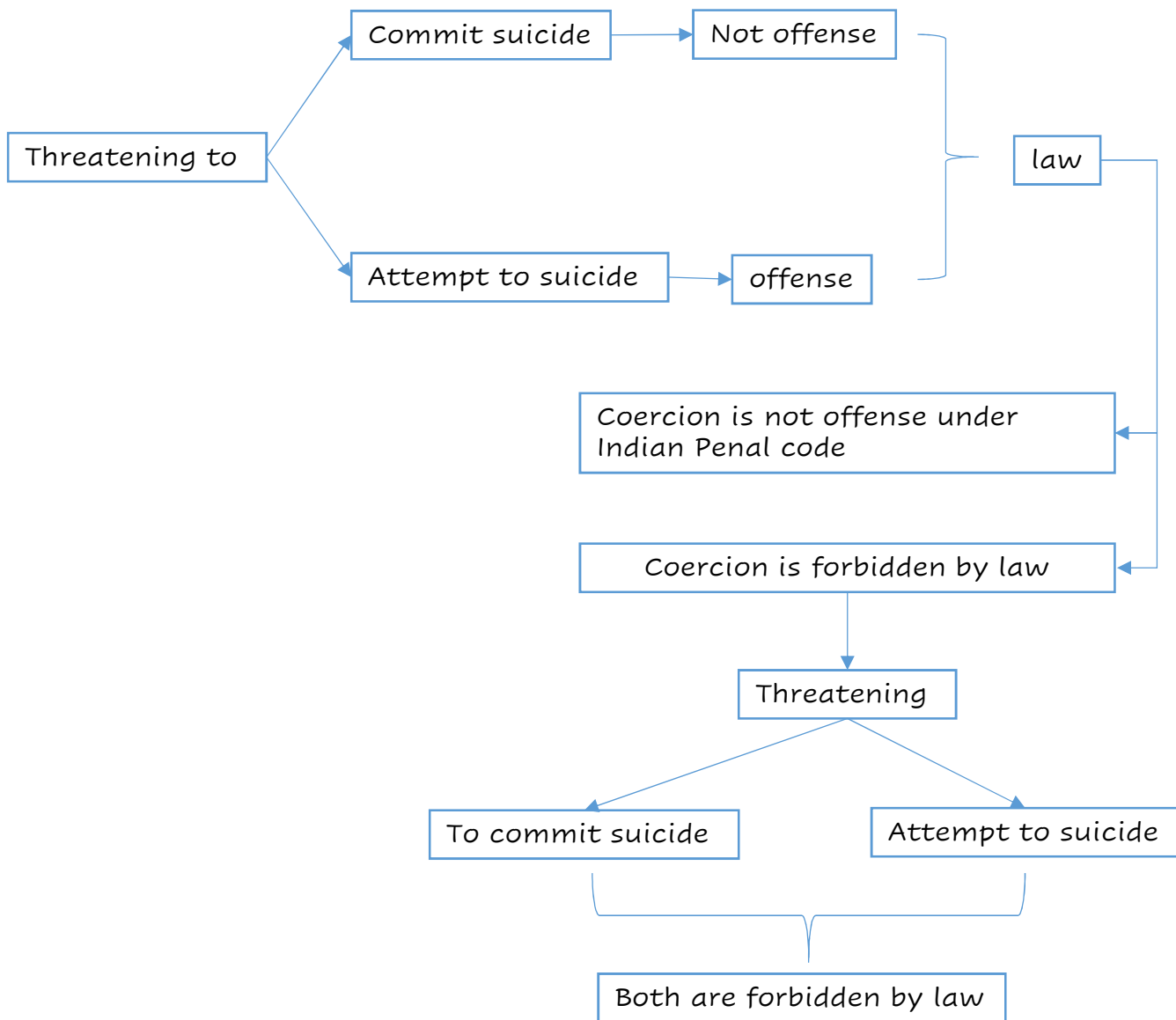
## Section 15



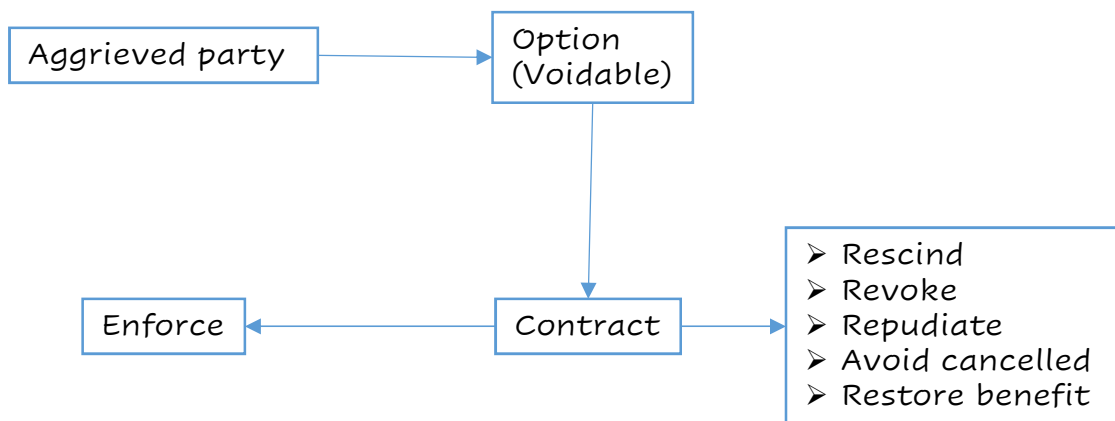
## Example



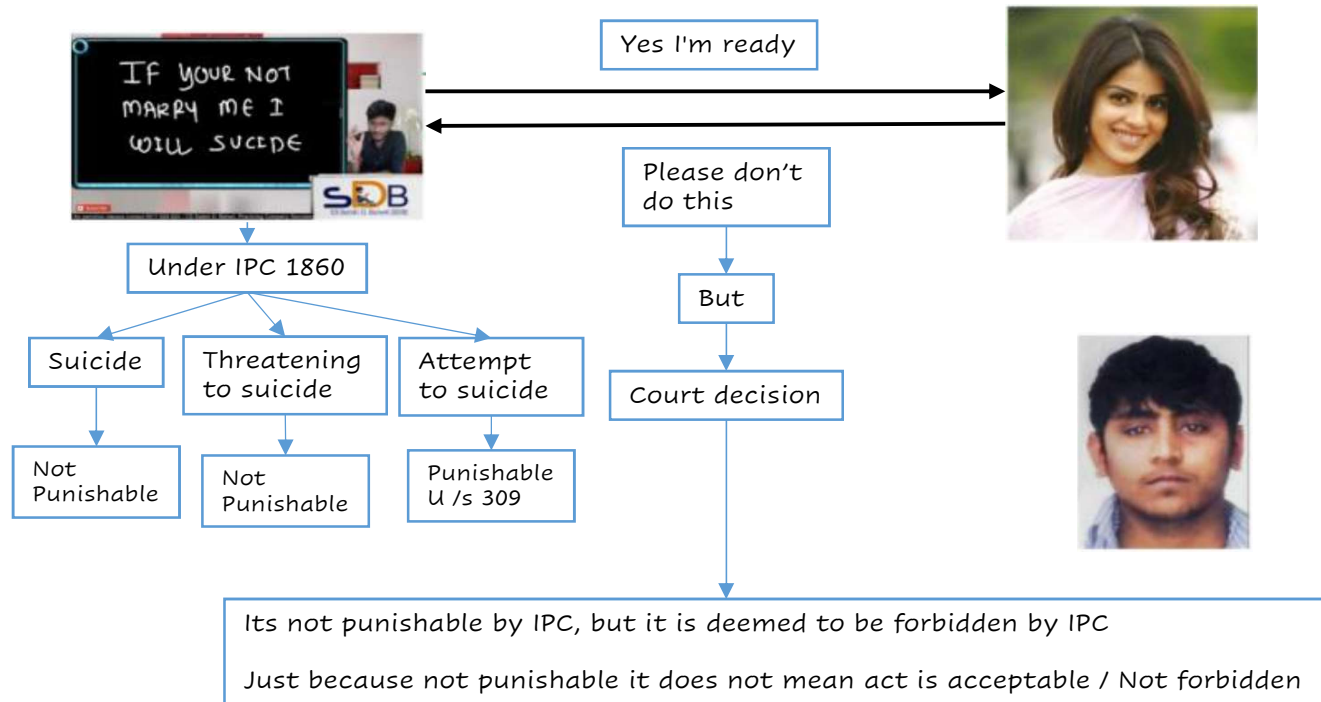
- Coercion not required to proceed from party to contract and not necessary subject matter of coercion is other party to contract
- i.e it may proceed against third person



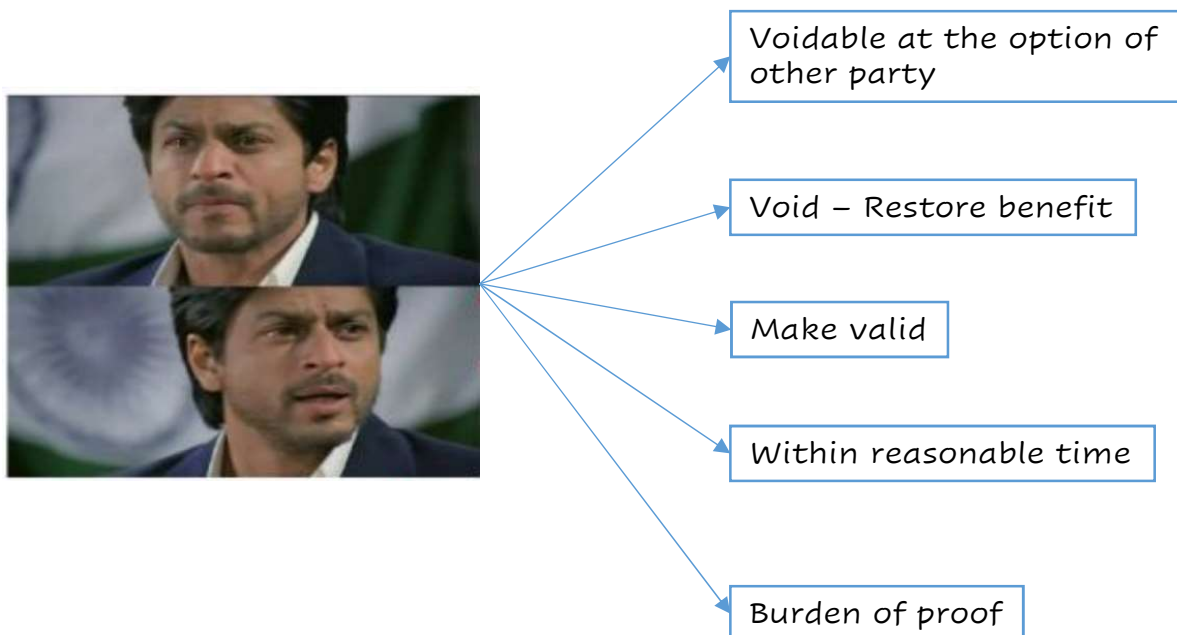
## Remedy



## Example

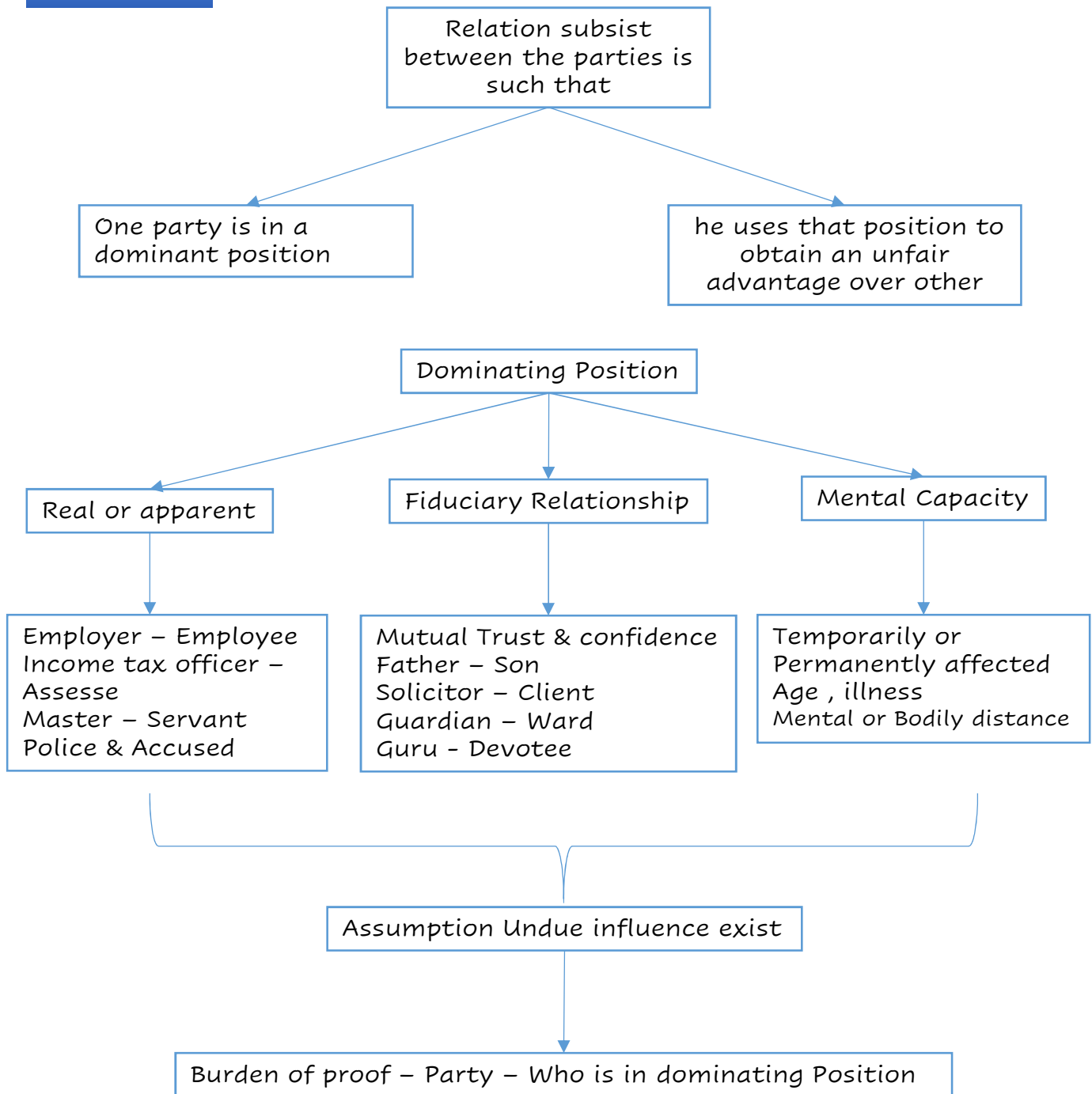


## Effects of Coercion



# Undue Influence

## Section 16



## Burden of Proof

1. Full disclosure of all Material Fact
2. Price- inadequate (Consideration was adequate)
3. Receipt of independent advice
4. Transaction was fair

## Presumption

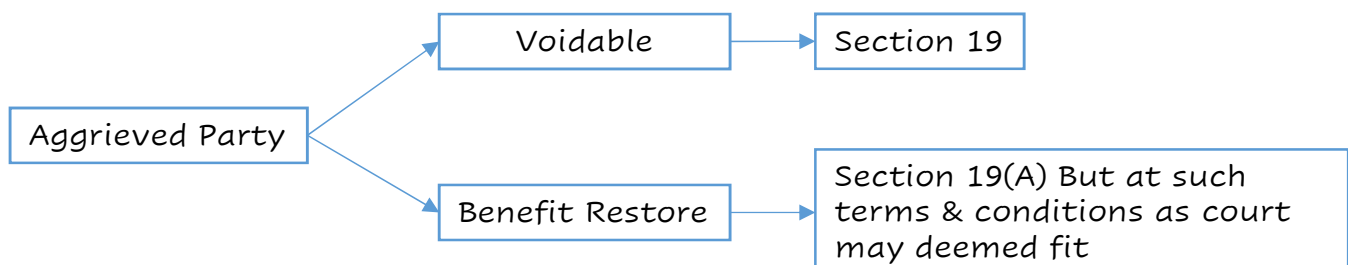
1. Parents – Child
2. Guardian – Ward
3. Trustee –Beneficiary
4. Doctor – Patient
5. Lawyer – Client
6. Spiritual Guru – Disciple
7. Employer – Employee
8. Master – Servant
9. Income tax Officer- Assesse



## Paradanashin Women

- By virtue of custom & community
- Is regarded live behind the veil
- Totally excluded from ordinary social interactions
- Any contract made by such women is under presumption of Undue influence

## Effect



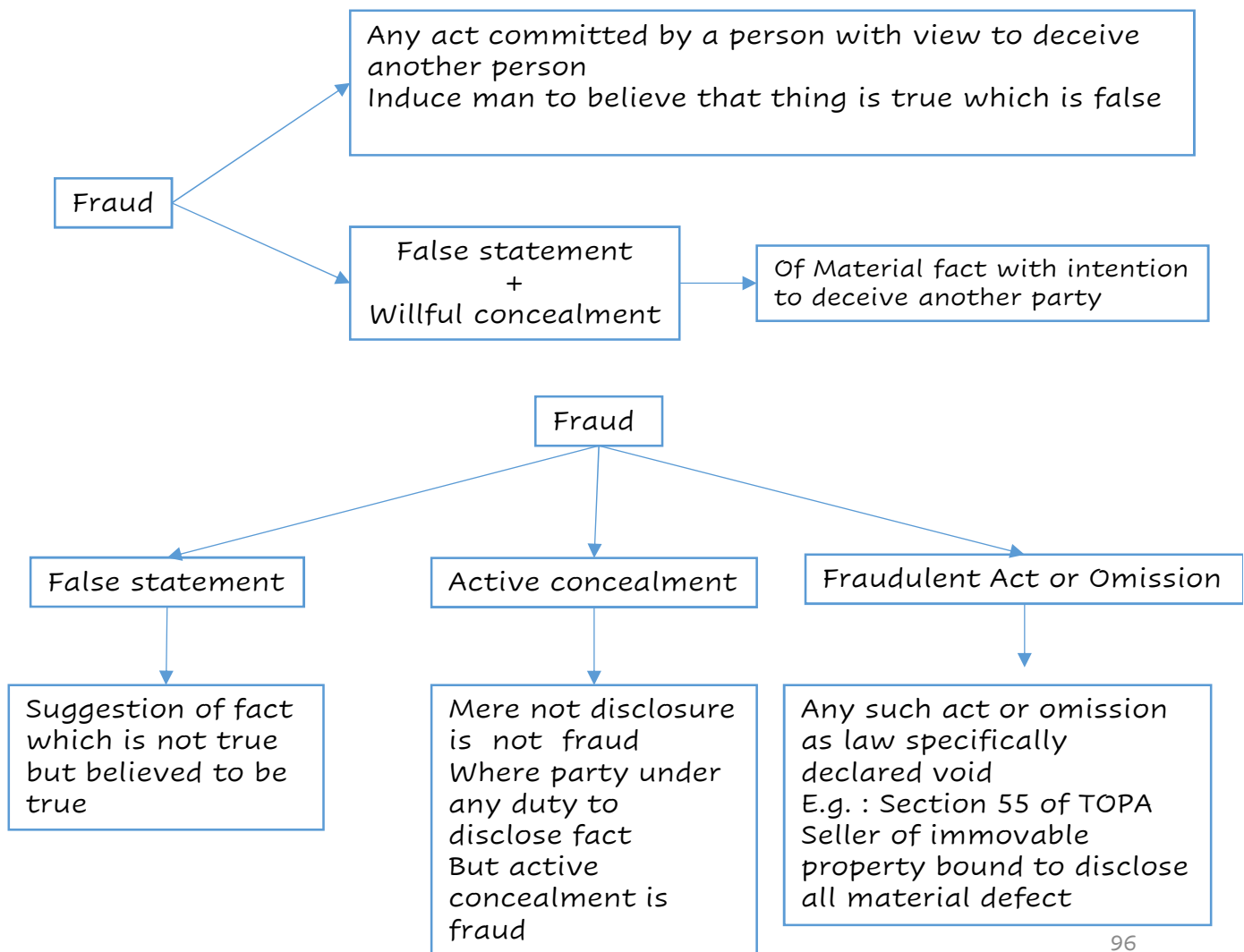


# Fraud

## Section 17

**Definition of Fraud under 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:

- (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.

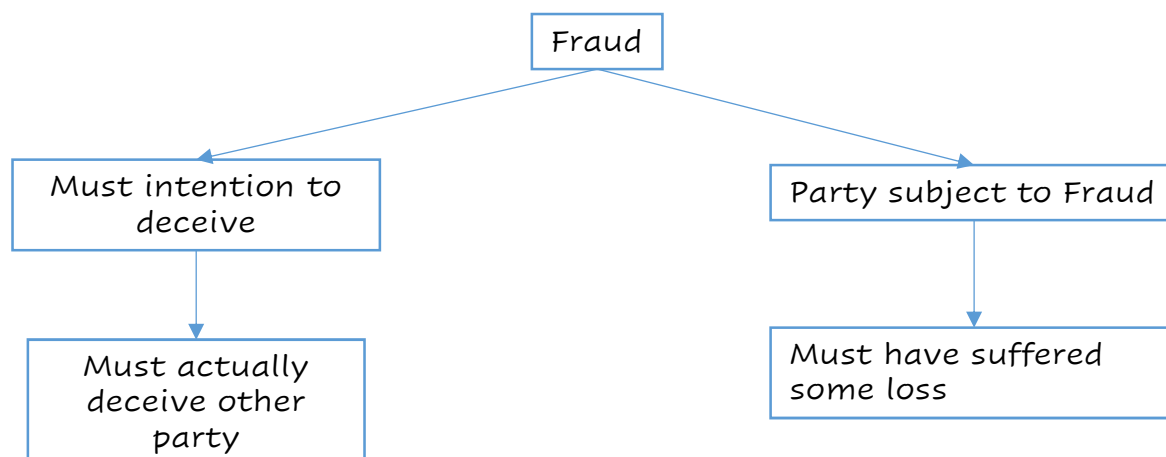
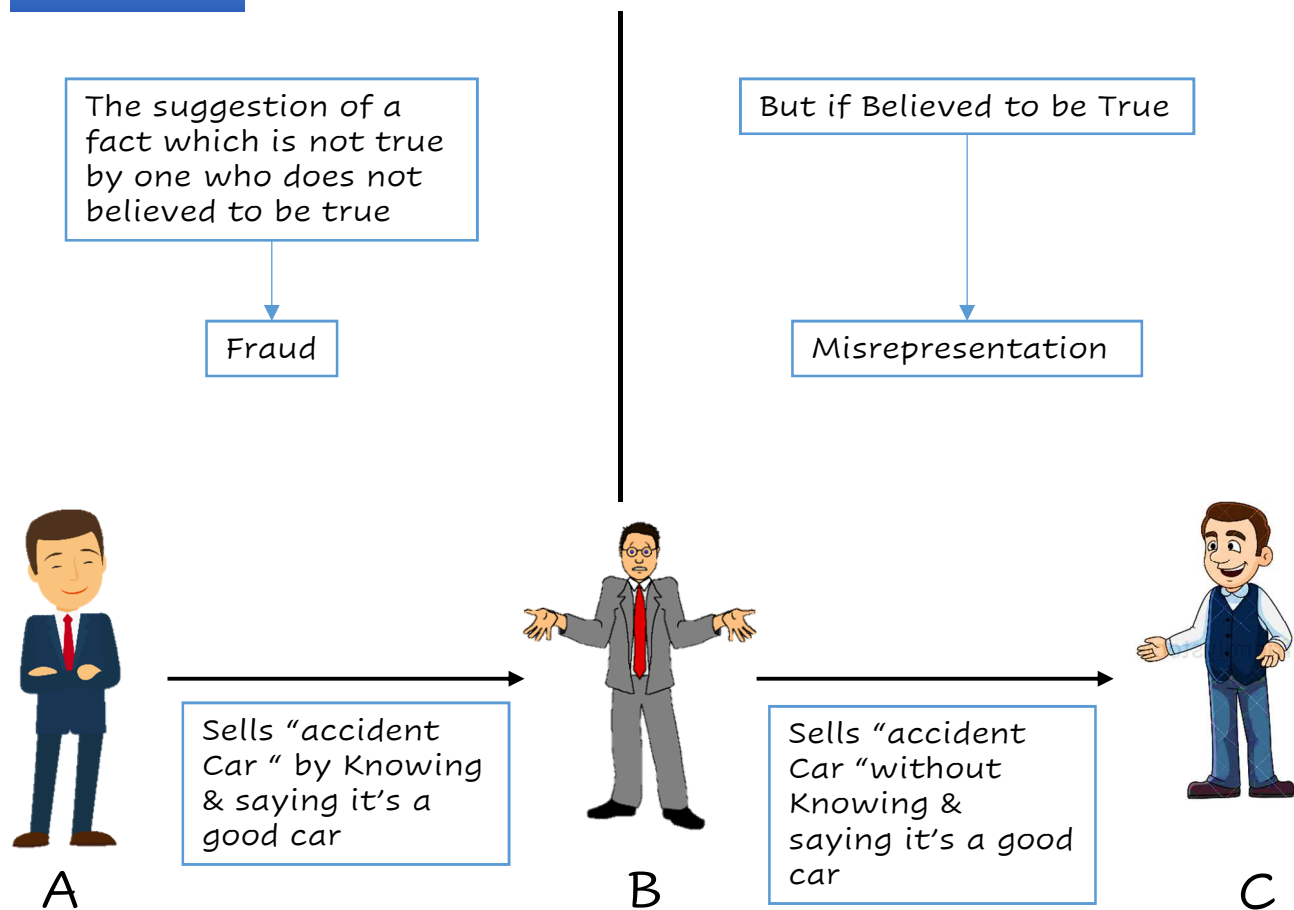


## Note

A deceit which does not deceived → Not Fraud

If promise not deceived or did no rely on representation → Not fraud

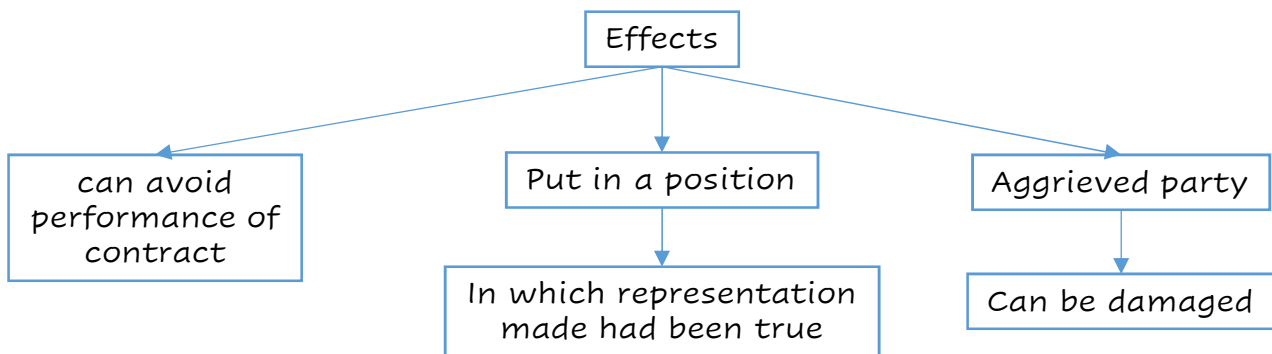
## Example



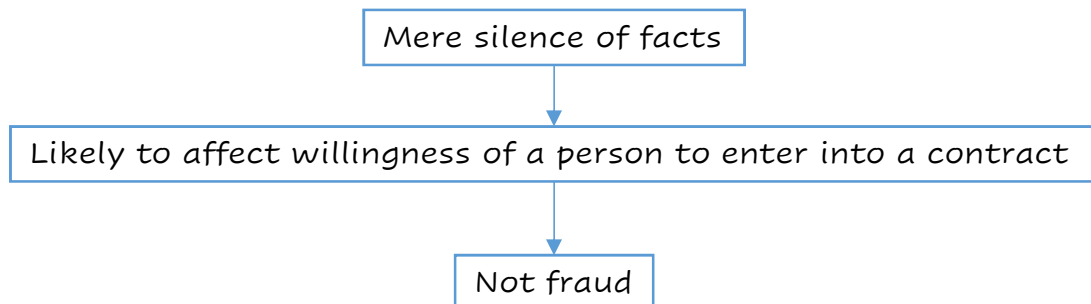
## Essential elements of Fraud

1. Act must be committed with intention to cause fraud
2. Statement made must be false and should be related to material fact of Agreement
3. The person who make a statement does not believed to be true
4. The ac must communicated to party to contract
5. Other party relied on false information
6. Party must be deceived by fraud

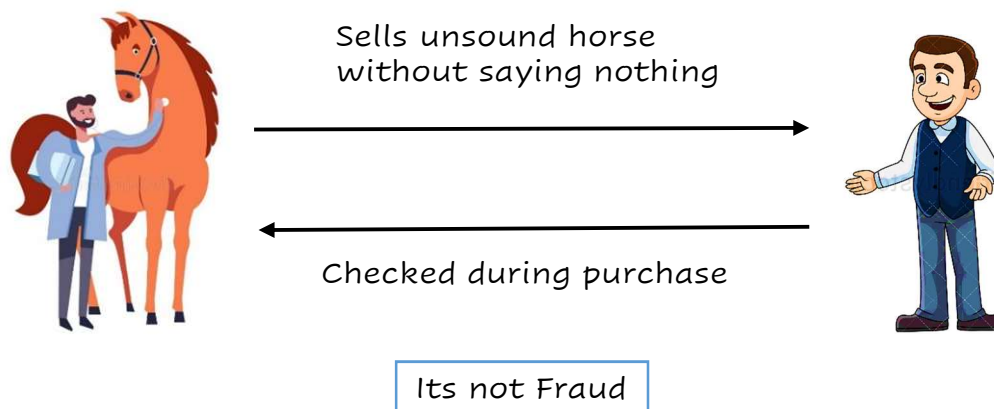
## Effect / Consequences of Fraud



## Mere silence is not Fraud



## Example



## Exceptions where silence is Fraud

### Duty to speak

1. Fiduciary relationship
2. Contract of Insurance
3. Contract of Marriage
4. Contracts of Family settlements
5. Share allotment contracts

#### **Fiduciary Relation**

If relationship arise even when one party completely depend upon another Party

Eg Insurance company

### Where silence is equal to speech



Sells unsound horse without saying nothing



If u say nothing I believe horse is Good

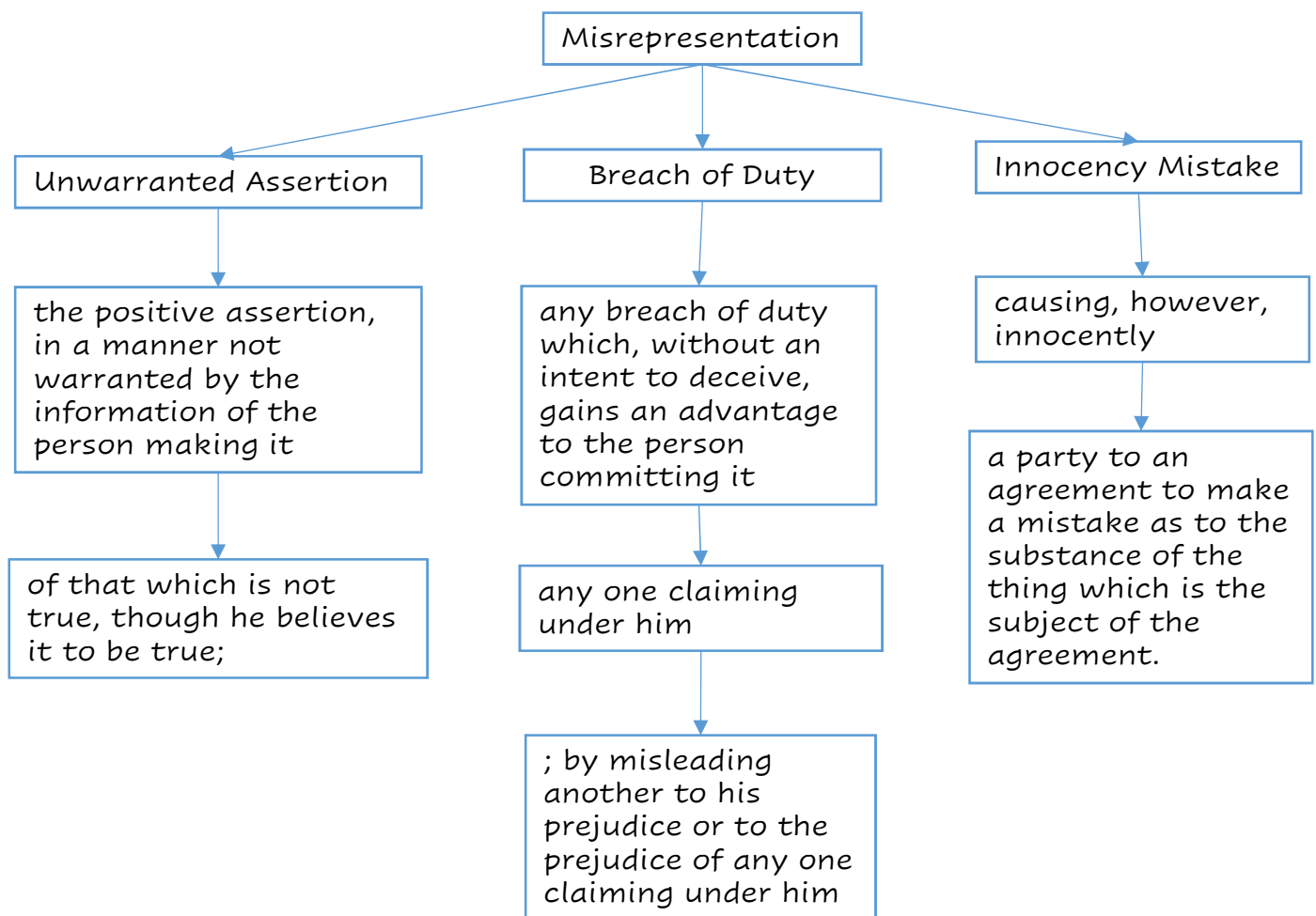
Its Fraud

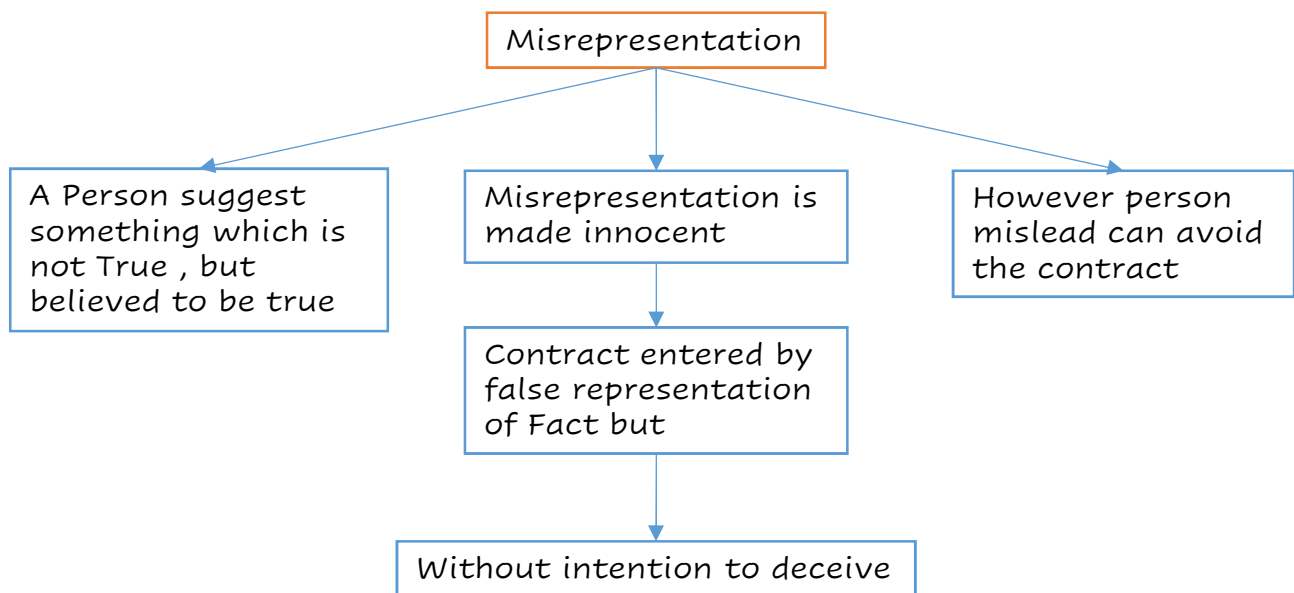
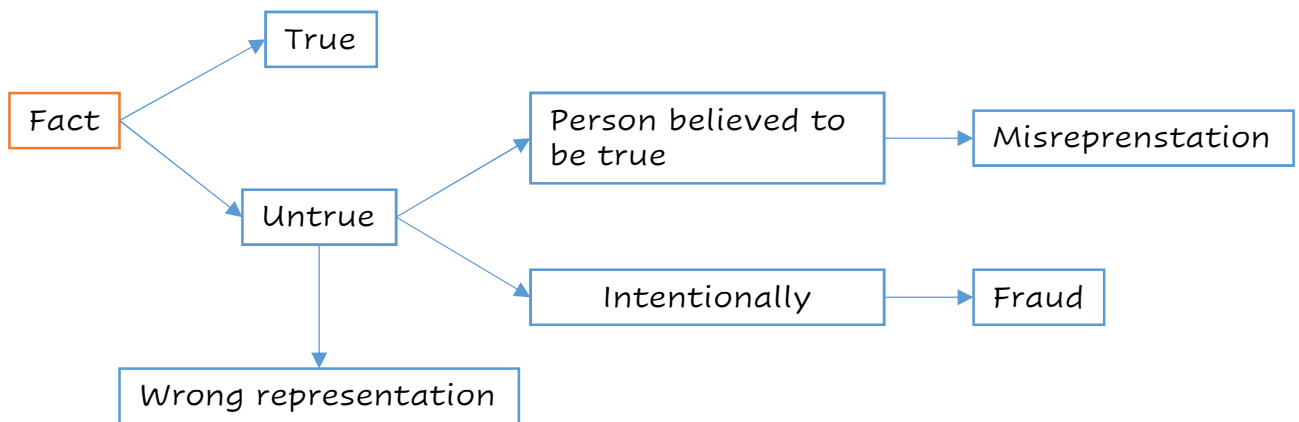
# Misrepresentation

## Section 18

### Definition of Misrepresentation means and includes –

- (1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
- (2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him; by misleading another to his prejudice or to the prejudice of any one claiming under him;
- (3) causing, however, innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.





## Essentials

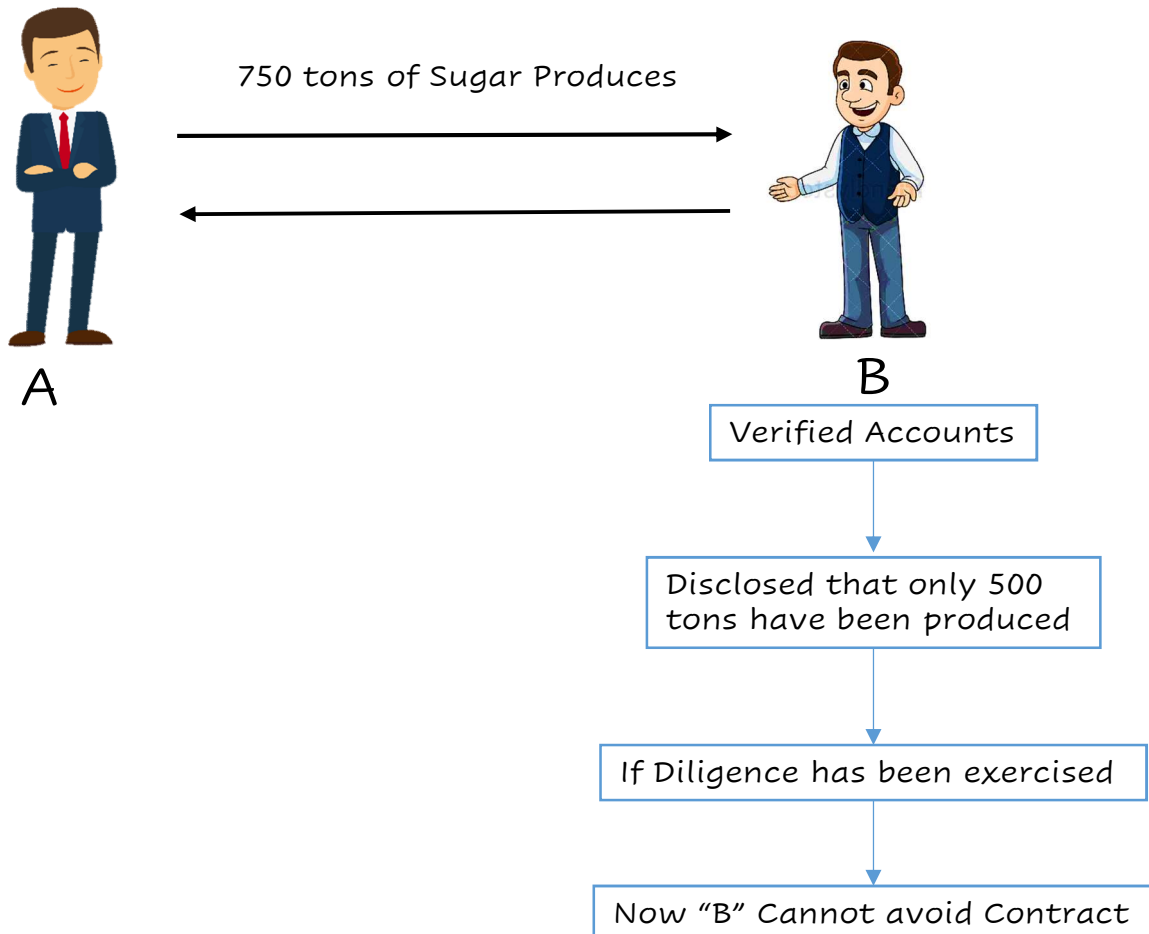
- Statement must be Material
- Statement should be False
- Person making believed out to be true
- No intention to deceive
- Misrepresentation must induce other party to contract
- Party mislead by such statement and enter into Agreement

## Consequences of Misrepresentation

- Voidable
- Party may insist that contract should be performed and he should put in the same position in which he would have been if representation had been true

### Note :

- Consent was caused by Misrepresentation , silence which amounts to Fraud. But person can't avoid the contract if he have means to discover truth in ordinary diligence

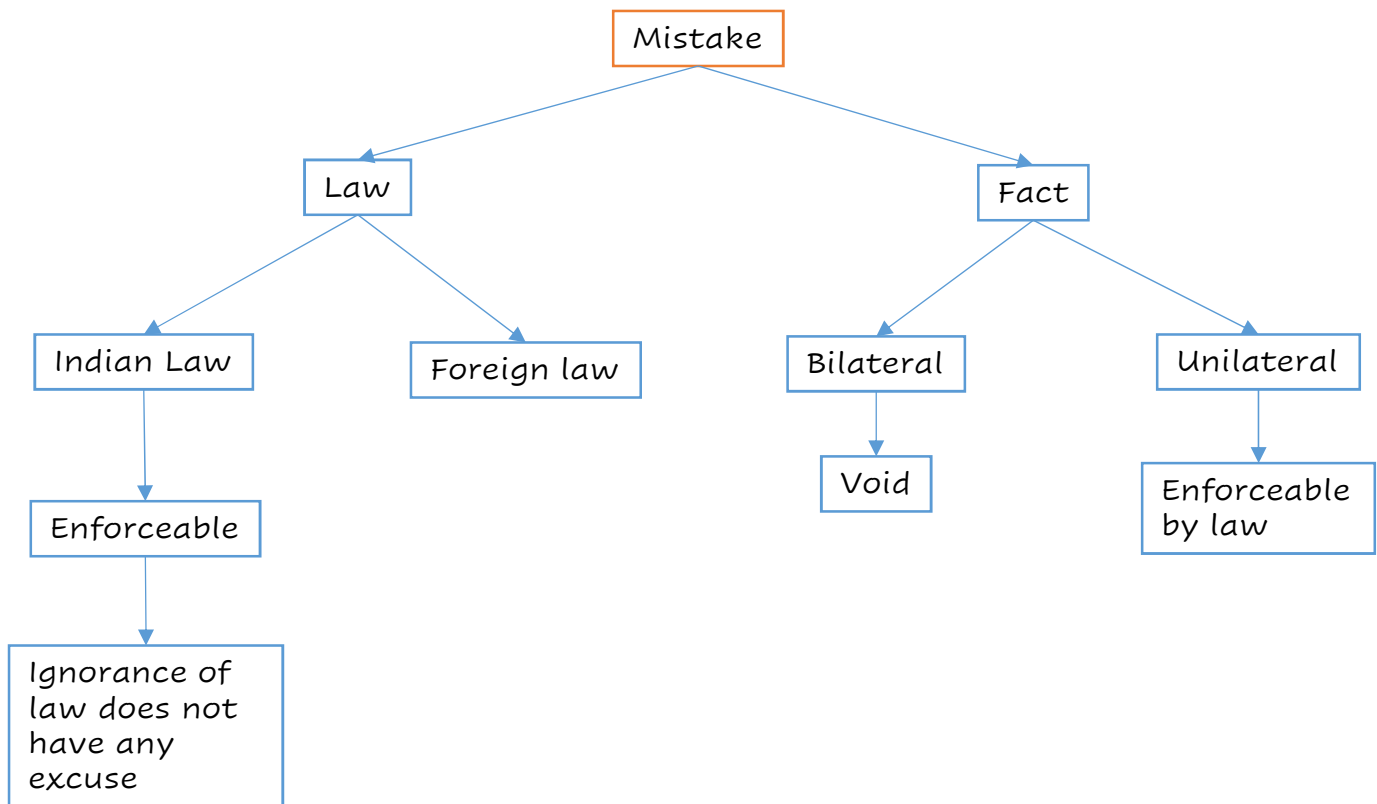


# Mistake

## Definition

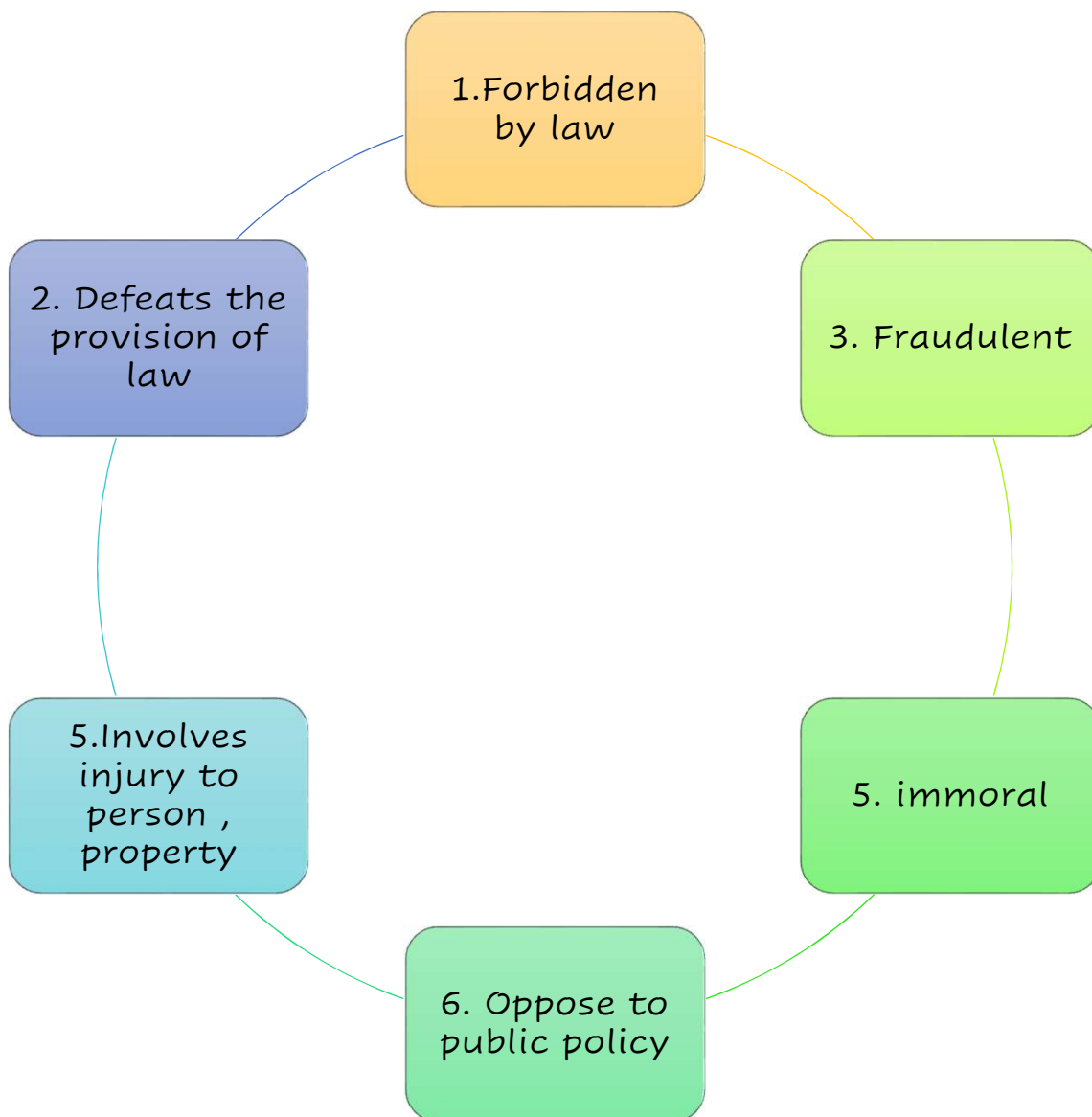
- Mistake may be defined as innocent or erroneous belief which leads the party to misunderstand the others.
- Mistake may be either Bilateral or Unilateral.
- Bilateral mistake is when both the parties to a contract are under a mistake.
- Unilateral mistake is when only one party to the contract is under a mistake

Erroneous / incorrect belief about something





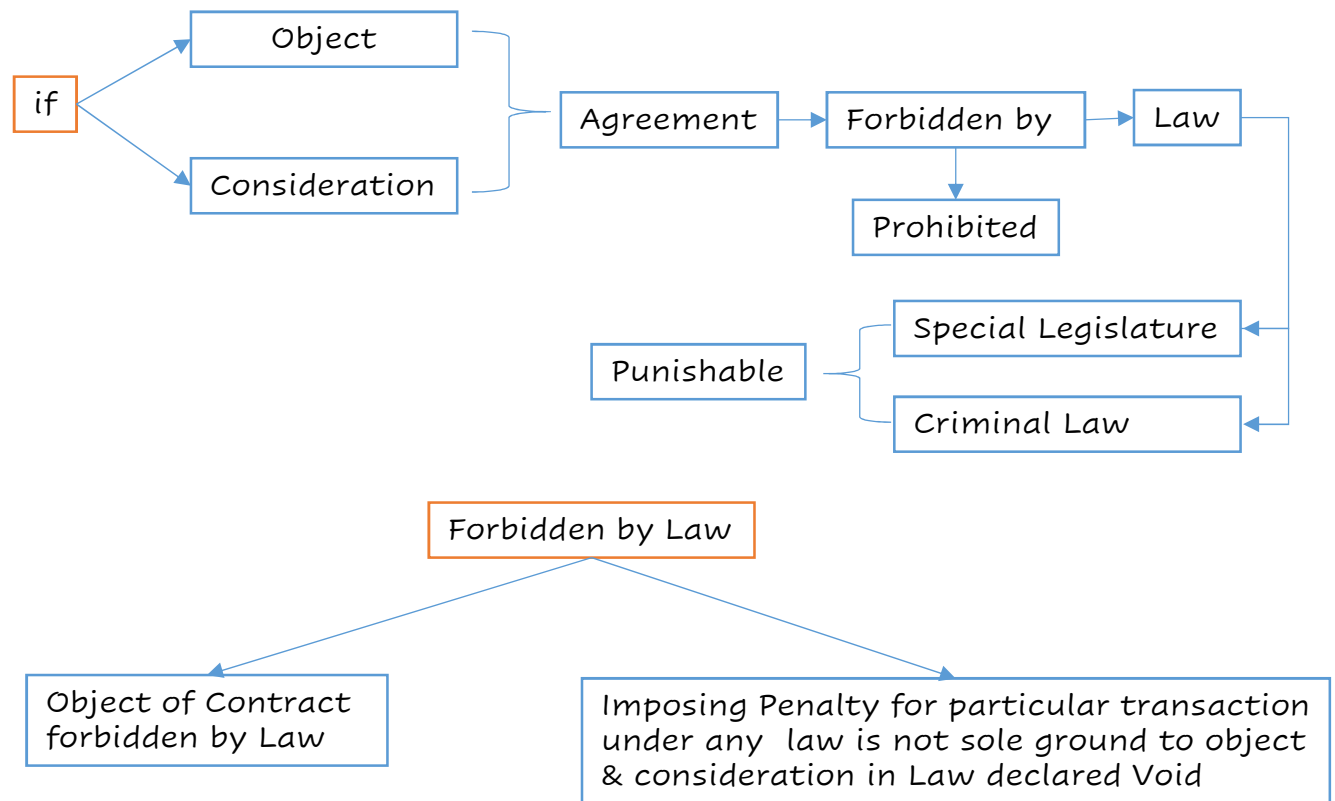
## Legality of Object & Consideration



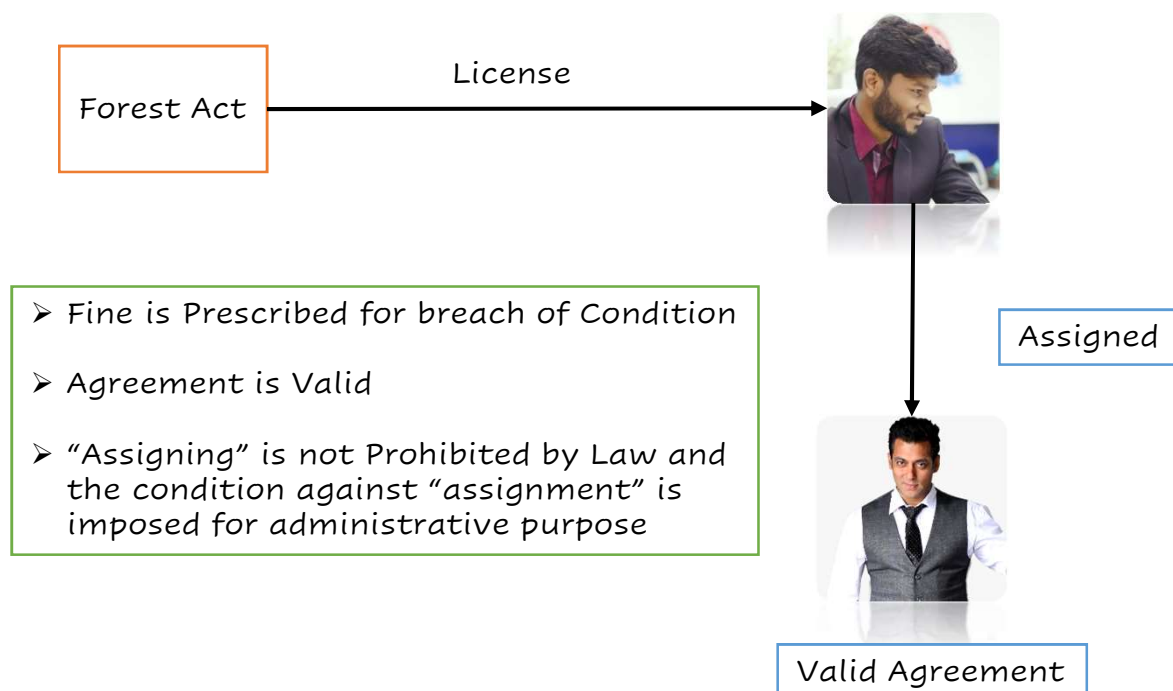
1. Trading with enemy
2. Stifling prosecution
3. Maintenance and Champerty
4. Sale of Public offices
5. Agreements for creation of monopolies
6. Marriage brokerage contracts
7. Interference with court of justice
8. Agreements in restraint of marriage
9. Agreements in restraint of Trade
10. Service Agreements
11. Agreements Restrain to Parental Rights
12. Restrain to Personal Liberty
13. Consideration Unlawful in Part

## 1. Forbidden by Law

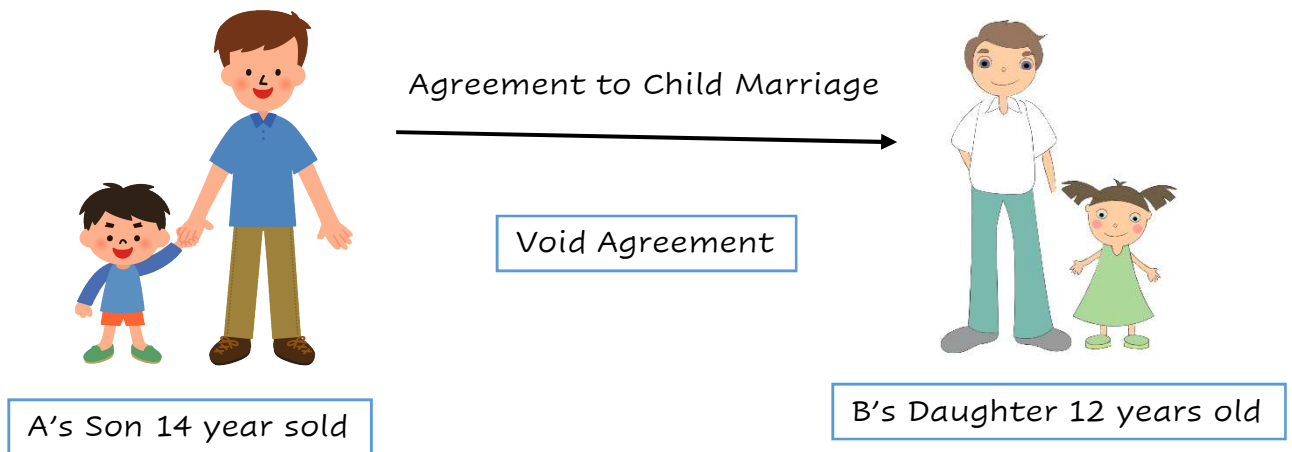
Acts forbidden by law are those which are punishable under any statute as well as those prohibited by regulations or orders made in exercise of the authority conferred by the legislature.



### Example 1

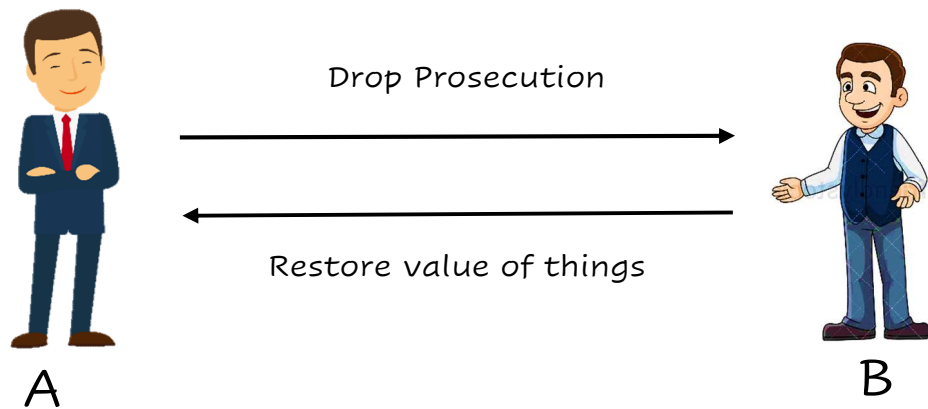


### Example 2



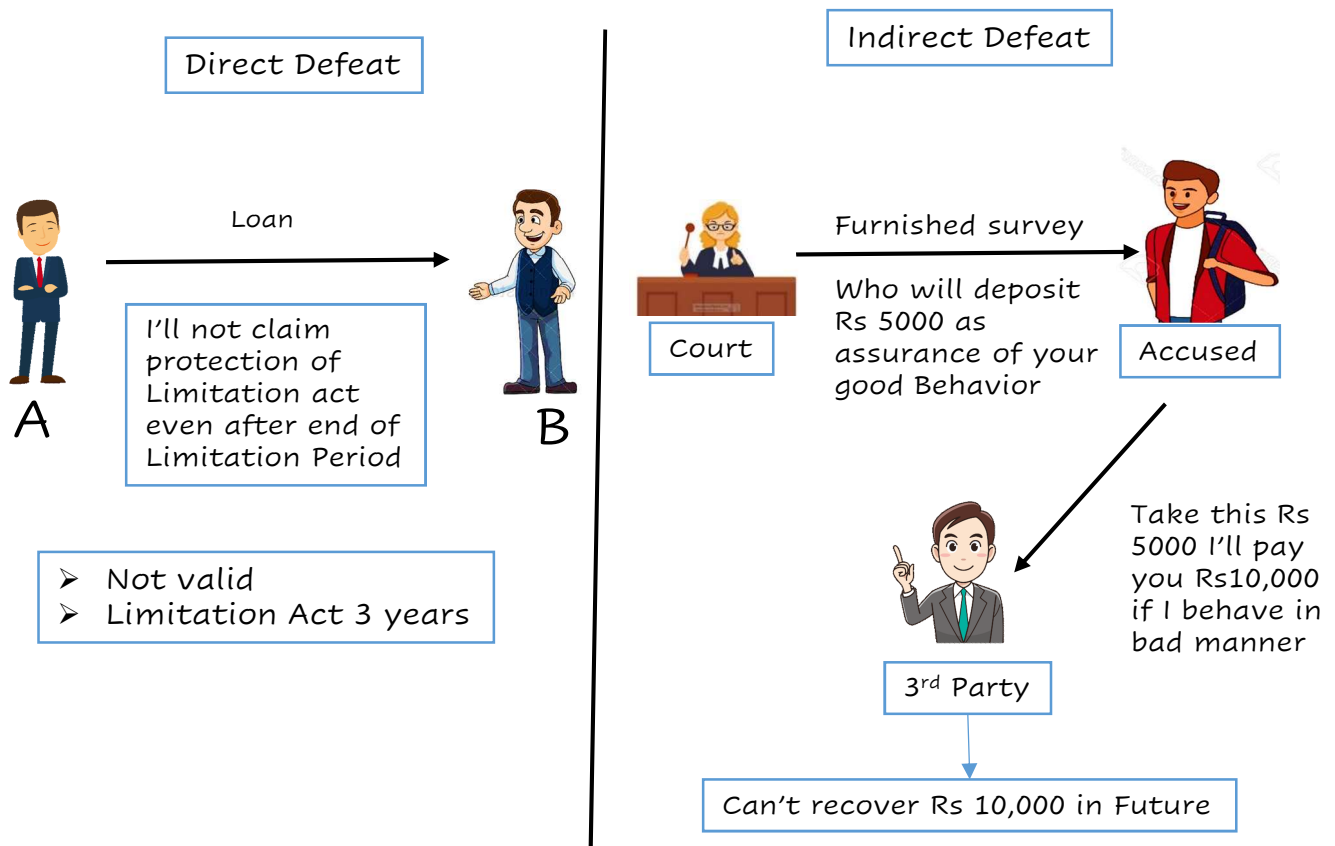
### Example 3

#### A vs B Robbery

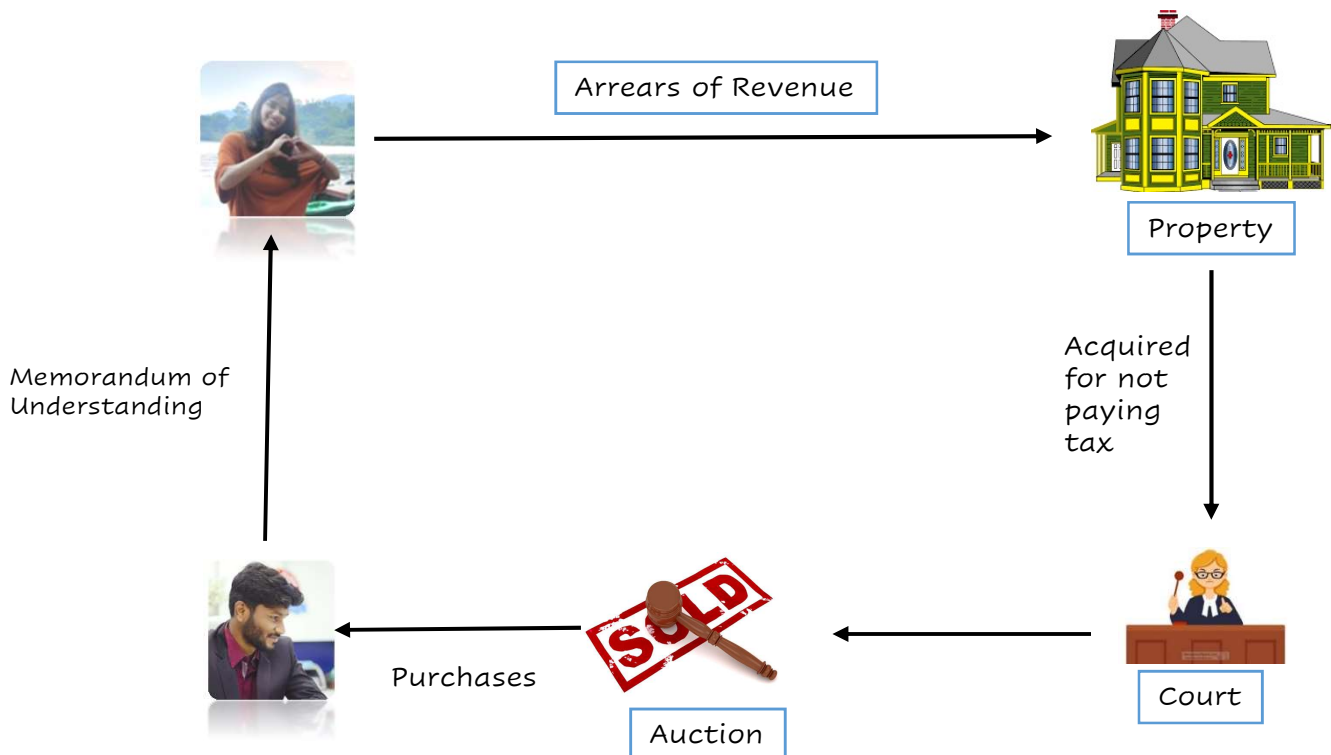


- Void Agreement
- Object and consideration are unlawful

## 2. Defeats the provision of Law



### Example



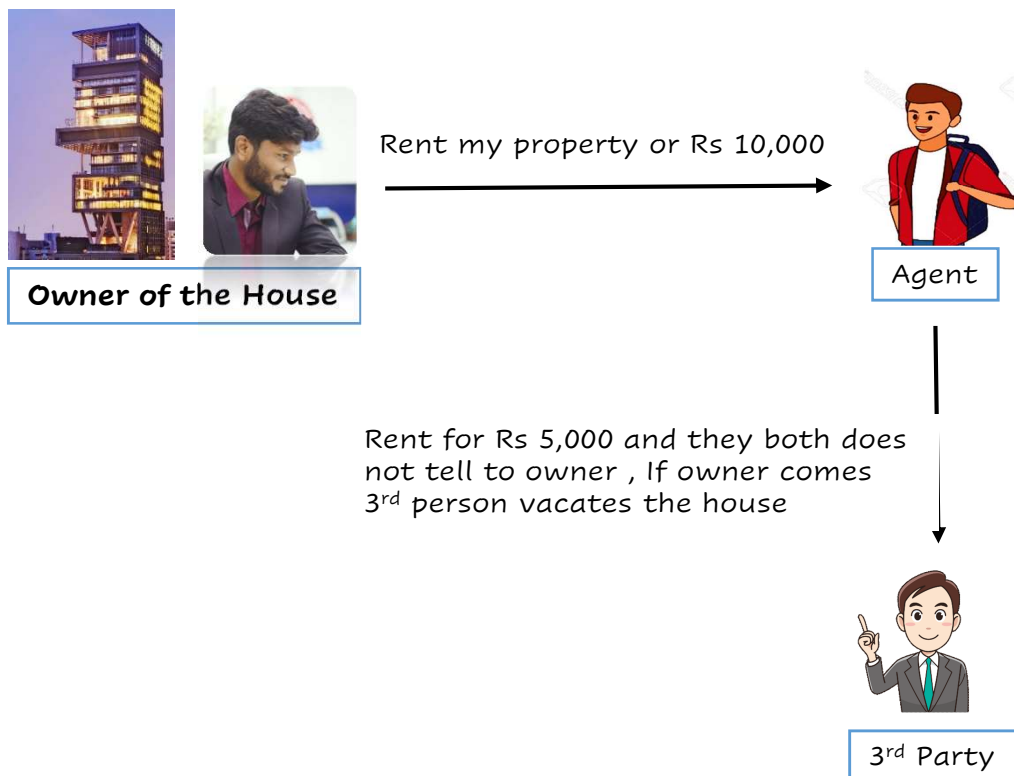
### Courts Decision

- Agreement is Void
- As it tenders the Transaction , in effect purchase by defaulter and would so defeat the object / Provision of Law

### 3. Fraudulent

Agreement between the two parties with intention to fraud third person

#### Example

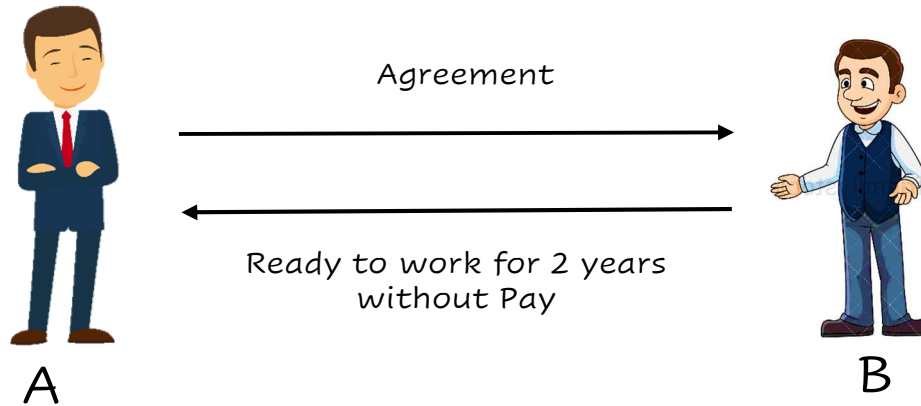


- Agreements which are entered into to promote fraud are void.
- For example, an agreement for the sale of goods for the purpose of smuggling them out of the country is void and the price of the goods so sold, cannot be recovered.

### 4. Injury to Person or Property of Another

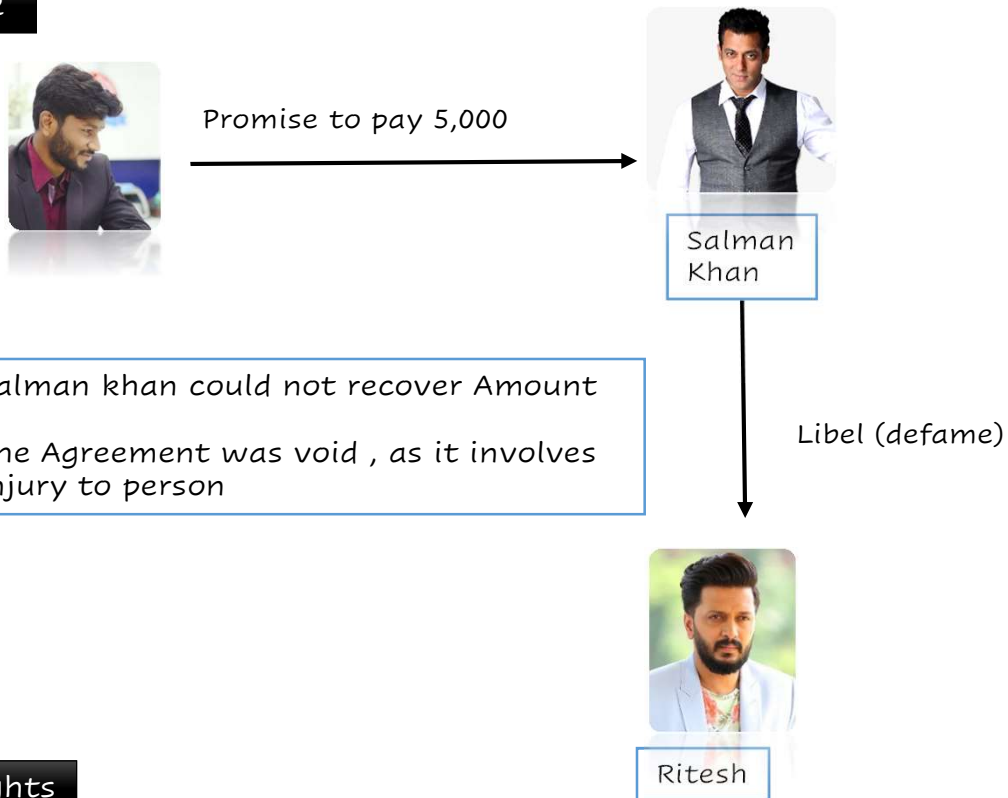
- The general term "injury" means criminal or wrongful harm. In the following examples, the object or consideration is unlawful as it involves injury to the person or property of another.
- **Example** : Human Trafficking (Bajrangi BhaiJan Movie )

### Example 1



- Void Agreement
- Because it involves Injury to Mr B

### Example 2



- Salman Khan could not recover Amount
- The Agreement was void, as it involves injury to person

### Copy Rights

- C – Cinema
- S – Sound
- M – Music
- A – Artistic
- D – Drama
- L – Literature

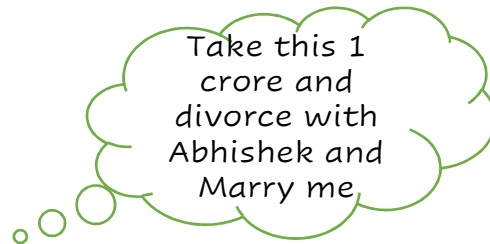
## 5. Immoral Agreement

- The following are the examples of agreements where the object or consideration is unlawful, being immoral.

### Example 1



Salman Khan



Aishwarya Rai

- Salman Khan was not entitled to recover amount
- Because the agreement had for its object of divorce and the promise of marriage was against

### Example 2



Landlord

Rents property  
→  
Knowingly Purpose



A

For Prostitute or Gambling

## 6. Oppose to Public Policy

### 1. Trading with enemy

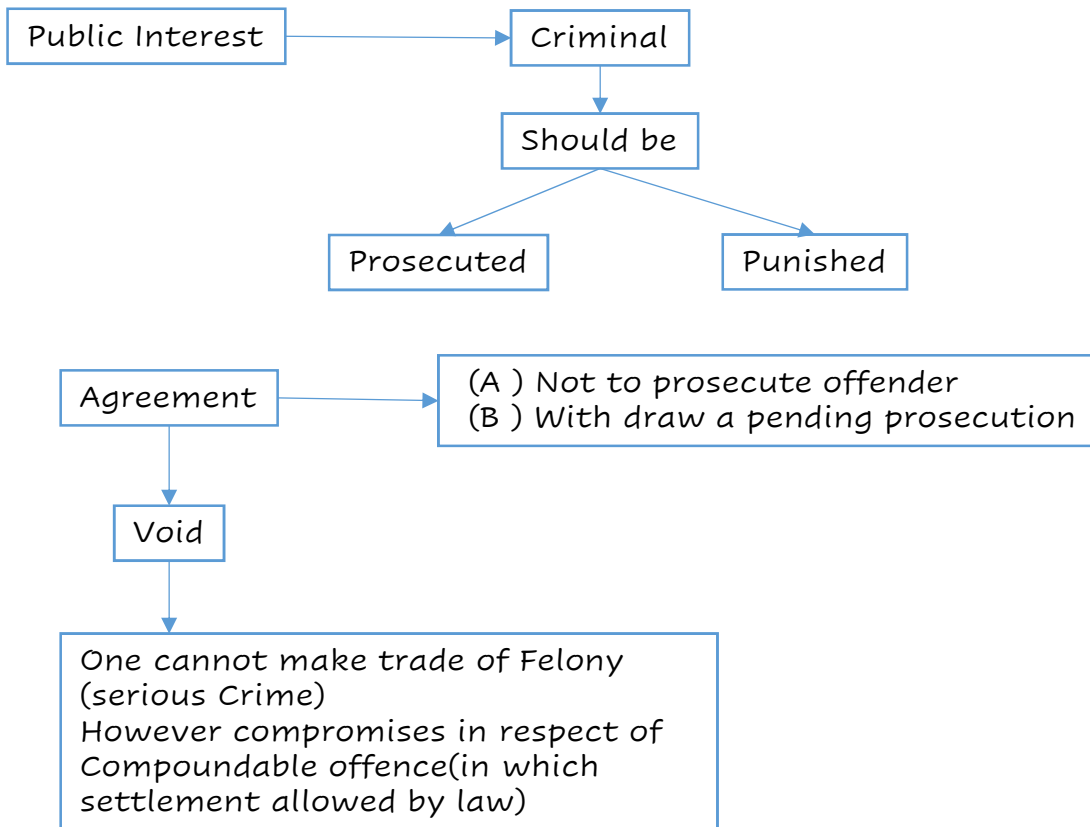
An agreement made with alien enemy are illegal on ground of oppose to public policy

**Example :** Agreements which have tendency to injure public interest / public welfare

**Example :** During India China War , Contract with China

## 2. Stifling prosecution

An agreement to present proceedings already instituted from running their normal course using Force



### Example



Gave 50 crores to Murder Ritesh





### 3. Maintenance & Champerty

Maintenance is an agreement in which a person promises to maintain suit in which he has no interest

#### Example 1



SDB sir supports Jenny to  
file case against Ritesh



File case



- Person agree to provide Fund or otherwise to another
- To file suit and no Monitory interest of his own

#### Champerty Example



SDB sir supports Jenny to  
file case against Ritesh

Support + Interest



File case



- Person agree to provide Fund or otherwise to another
- To file suit and in return demands share in gains arise from such action

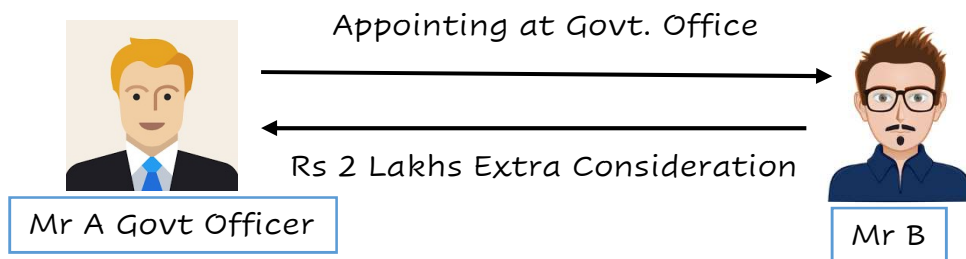
- Agreement is valid Unless
  - Unreasonable + Unjust to other parties
  - Malicious motive (Gambling in Litigation) not motive to justice another party

#### 4. Sale of Public Offices

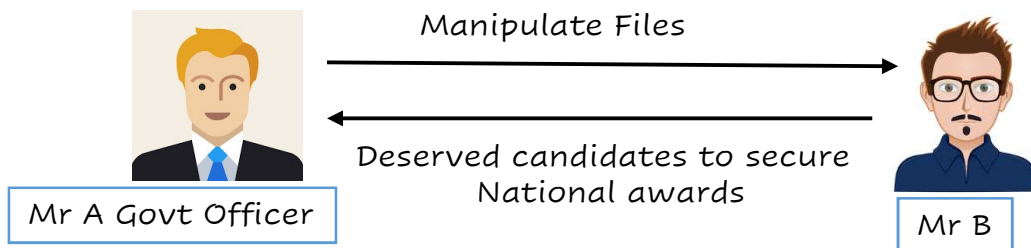
➤ Agreements relating to sale / Purchase of

- a) Public Office
  - b) Public title
- } illegal

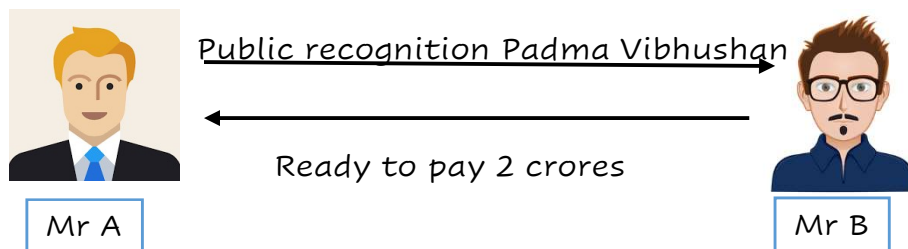
##### Example 1



##### Example 2



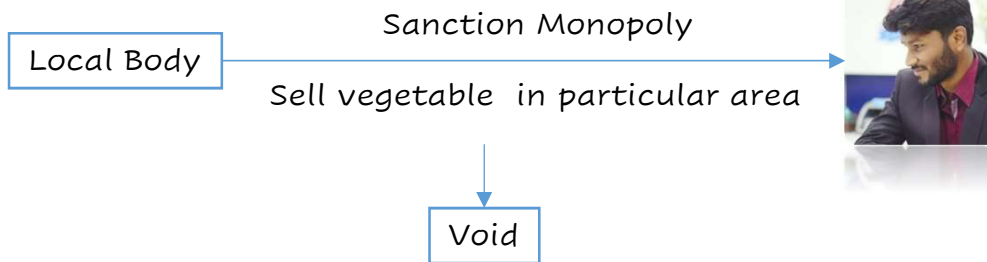
##### Example 3



#### 5. Agreement for creation of Monopolies

Agreement having for their object the establishment of monopolies are opposed to public policy. They are void

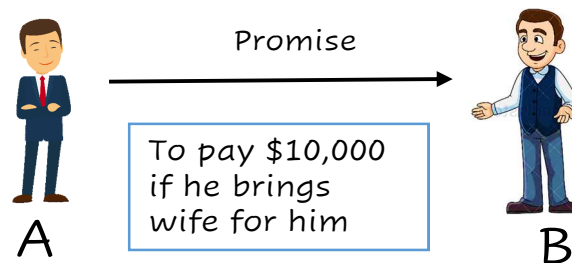
## Example



## 6. Marriage brokerage contracts

Agreement procure the marriage of person in consideration of sum ( Money)  
Marriage brokerage contracts are void

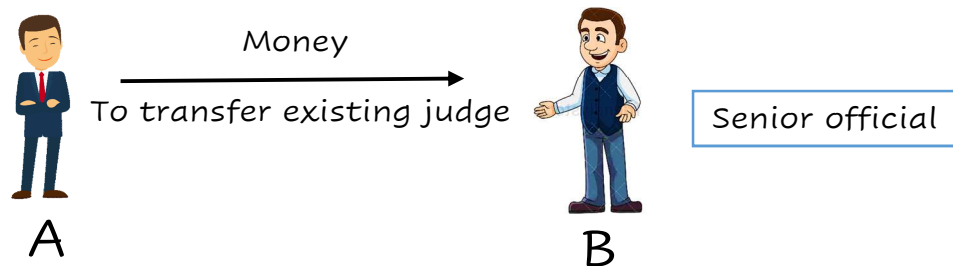
## Example



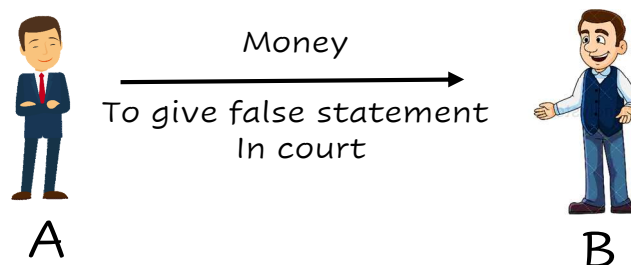
## 7. Inference with court of Justice

Agreements – create inference in ordinary process of justice , it is  
void agreement

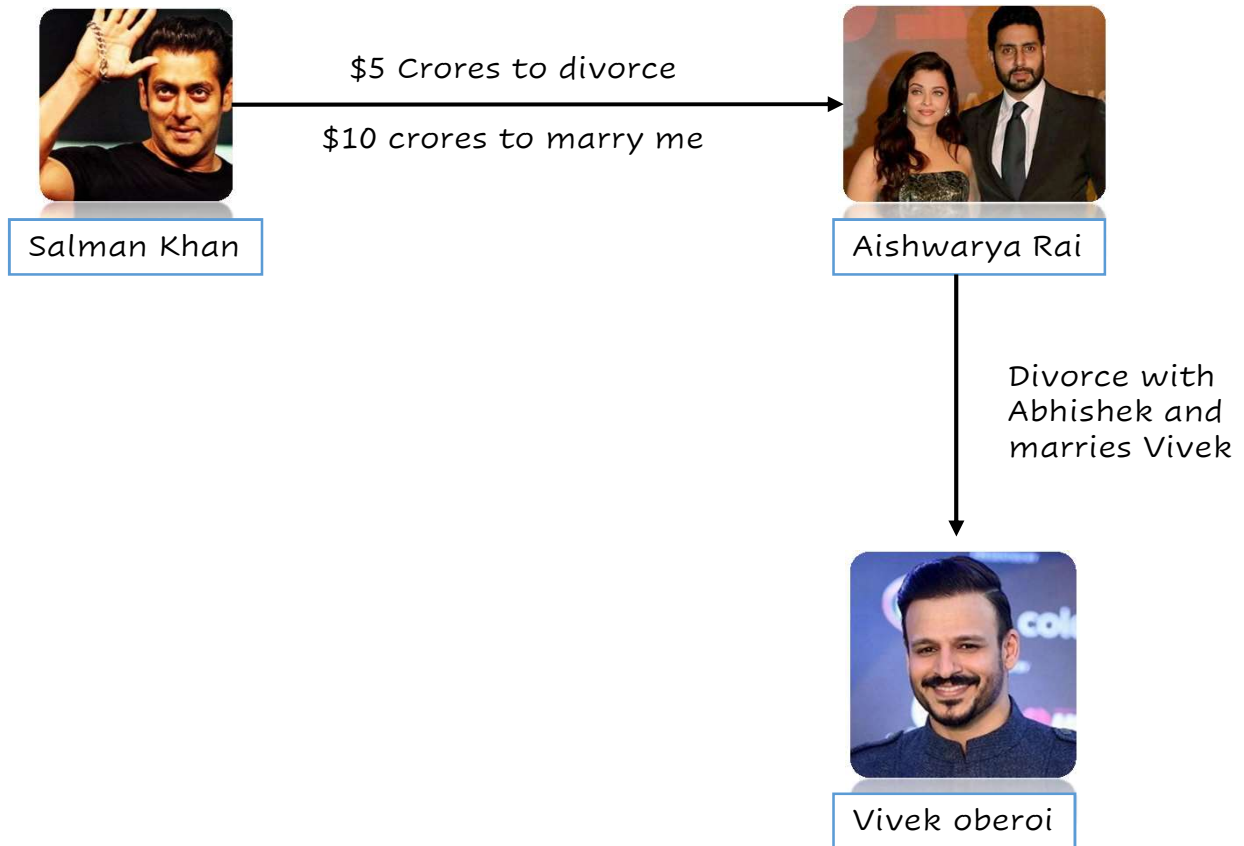
## Example



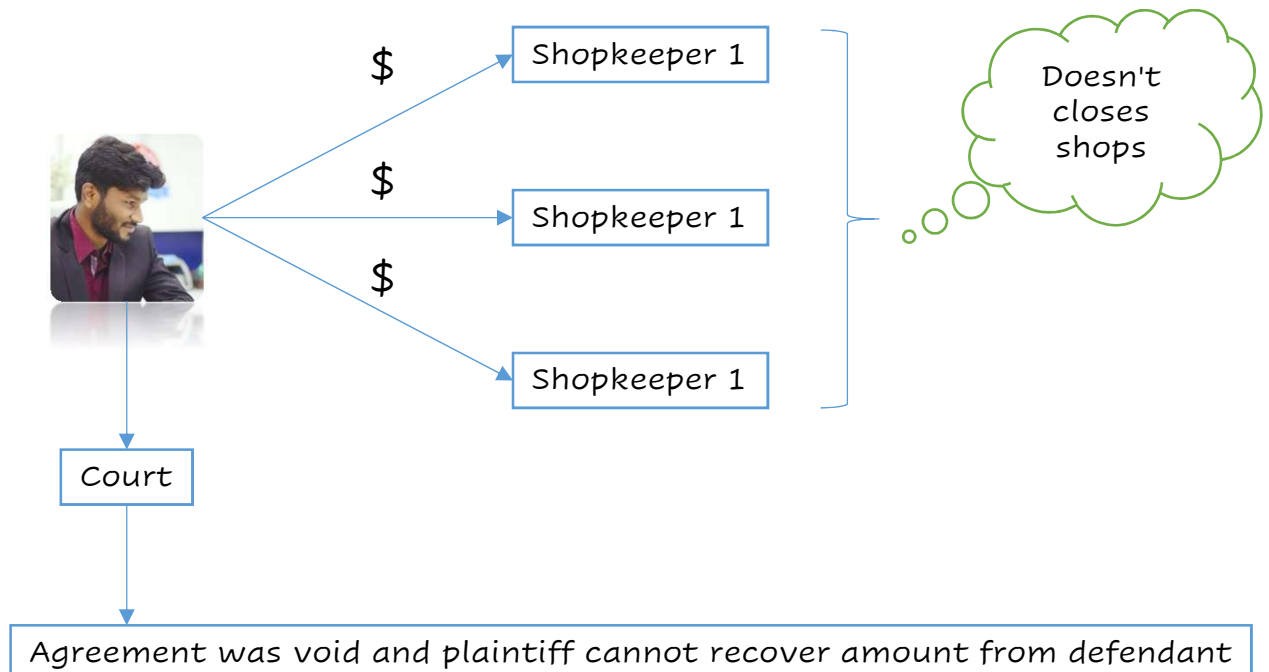
## Example



## 8. Agreements in restraint of Marriage

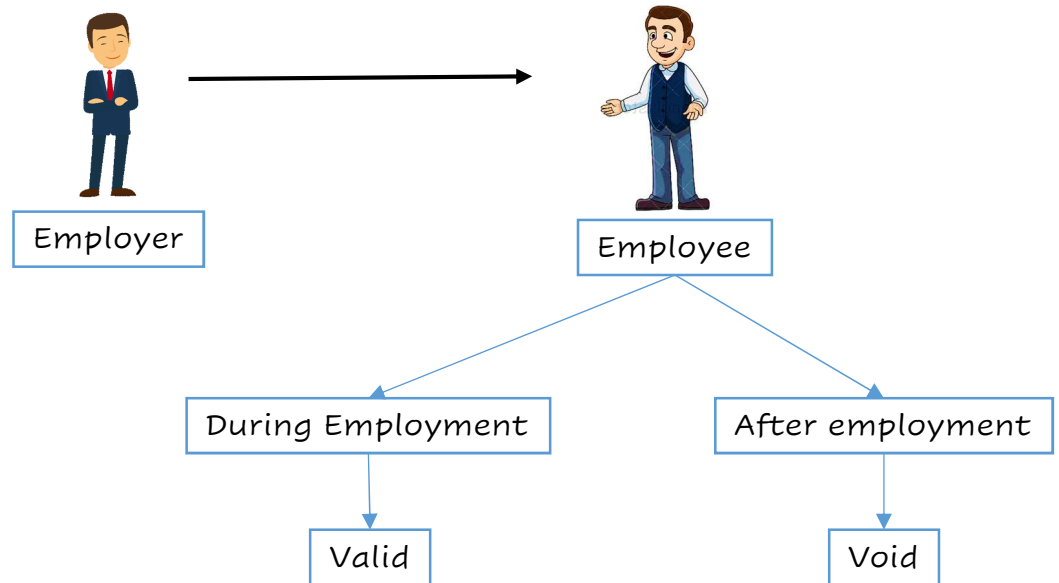


## 9. Agreements in restraint of trade



## 10. Service Agreement

Example

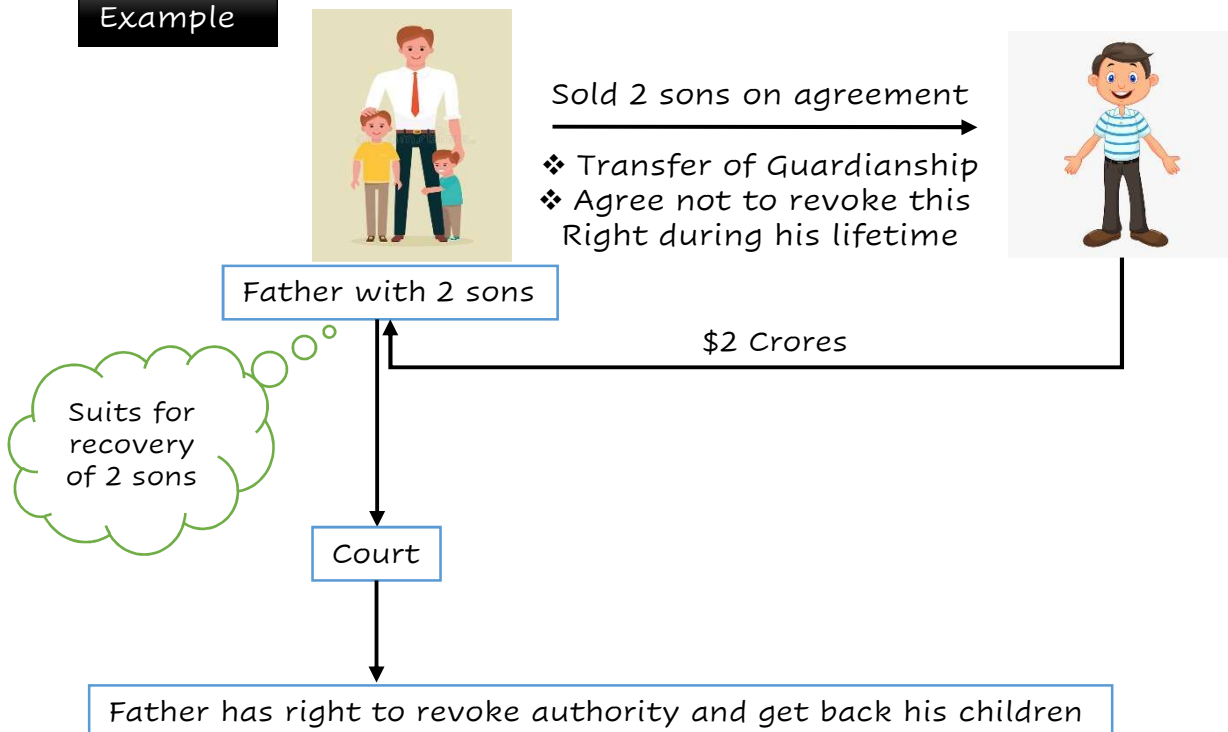


## 11. Agreements restrain to parental rights

Agreement – prevent parents / to restrain to exercise their parental right / right of guardian ship

These are void Agreements on ground of Public policy

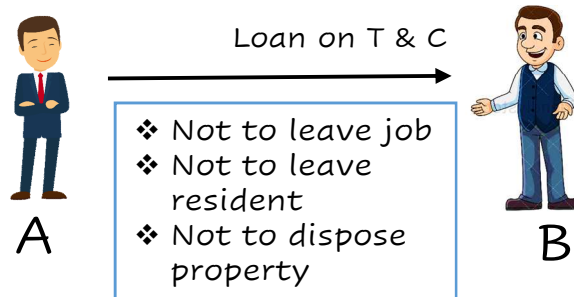
Example



## 12. Restrain to personal Liberty

Restraining personal liberty of any person is Void

Example



## 13. Consideration unlawful in part

By virtue of Section 24, if any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void."

This section is an obvious consequence of the general principle of Section 23. There is no promise for a lawful consideration if there is anything illegal in a consideration which must be taken as a whole. The general rule is that where the legal part of a contract can be severed from the illegal part, the bad part may be rejected and the good one can be retained. But where the illegal part cannot be severed, the contract is altogether void

## Expressly declared Void Agreements

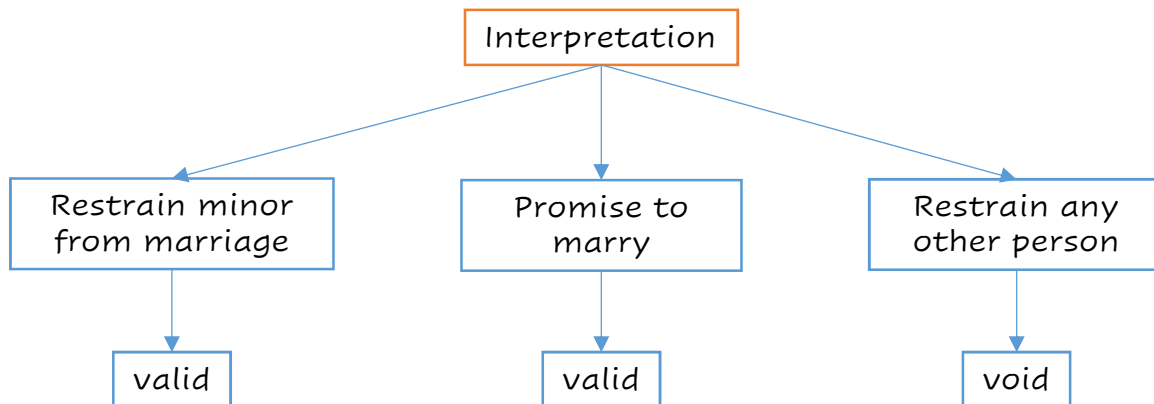
1.	Made by incompetent parties (Section 11)	6.	Agreement in restraint of marriage (Section 26)
2.	Agreements made under Bilateral mistake of fact (Section 20)	7.	Agreements in restraint of trade (Section 27)
3.	Agreements the consideration or object of which is unlawful (Section 23)	8.	Agreement in restraint of legal proceedings (Section 28)
4.	Agreement the consideration or object of which is unlawful in parts (Section 24)	9.	Agreement the meaning of which is uncertain (Section 29)
5.	Agreements made without consideration (Section 25)	10.	Wagering Agreement (Section 30)
		11.	Agreements to do impossible Acts (Section 56)

## Void Agreements

- Section 2(g)
- Agreements which are not enforceable by law
- It is not enforceable from time when it is made

### 1. Restrain to Marriage

Restrain to marriage of any other person other than minor



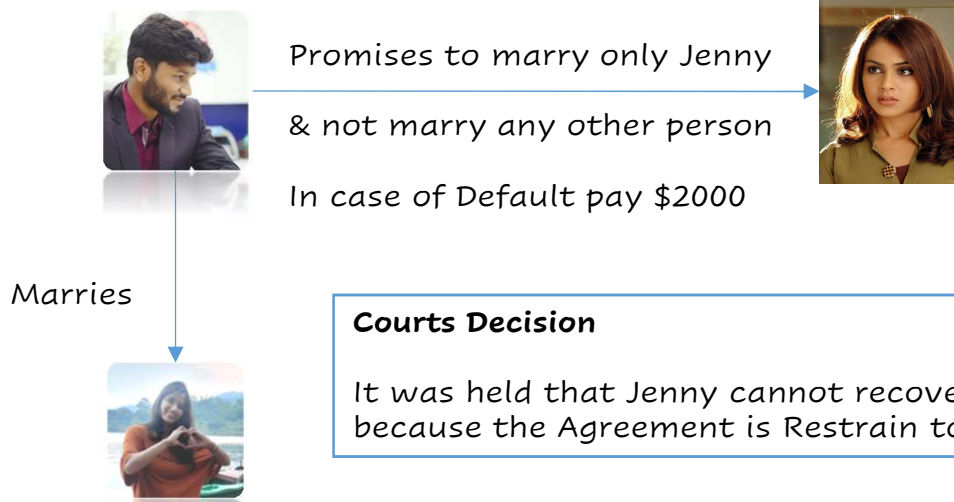
#### Situations

1. Not to marry at all
2. Not to marry a particular person
3. Not to marry a particular class of person
4. Not to marry for fixed debate of time
5. Agreement to Marry
6. Agreement to marry a particular person

void

valid

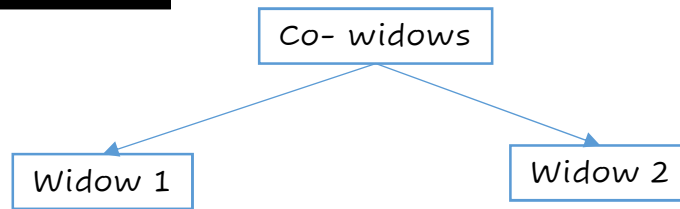
#### Example 1



Note :

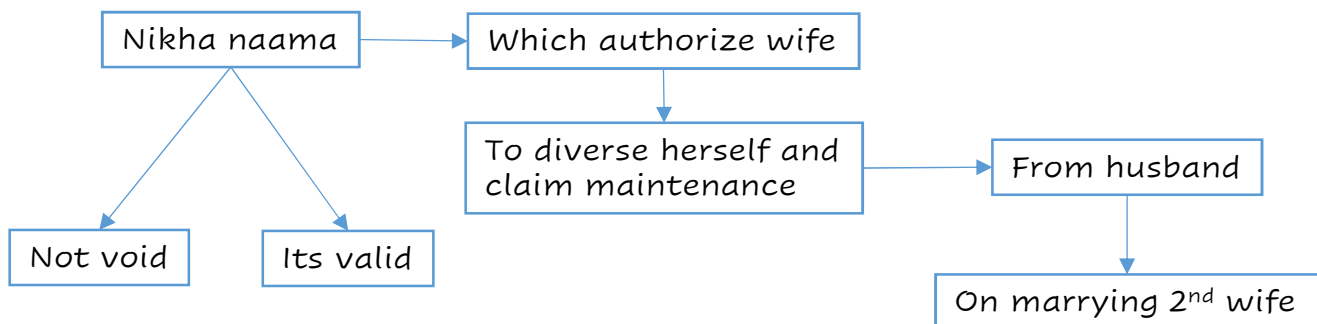
Agreements which provide Penalty upon marriage are not considered as Restrain to Marriage

Exam Case Law :



- If anyone of them “re-married” should forfeit her share in deceased husband property
- This is not void because it is not restrain to Marriage

Exam Case Law :



It is not void because no restrain imposed on husband to marry 2<sup>nd</sup> one

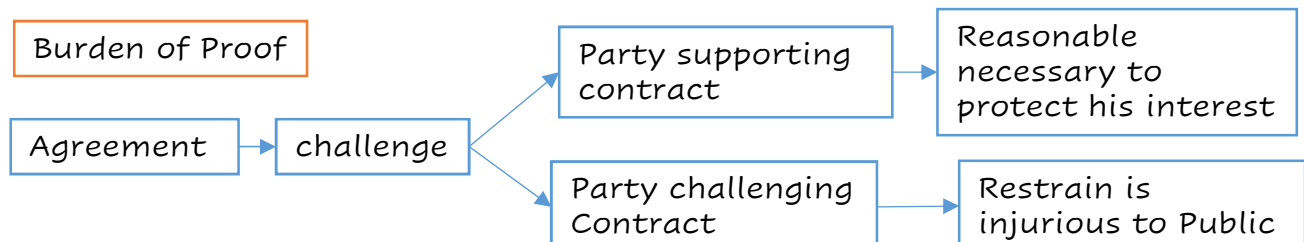
## 2. Restrain to Trade

Every Agreement from which anyone is restraining from exercising **Lawful**

- Profession
  - Trade
  - Business of any kind
- } Is to that extent is void

### Fundamental Right

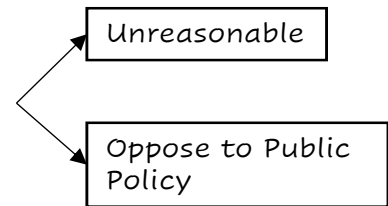
Article 19 – right to carry on trade



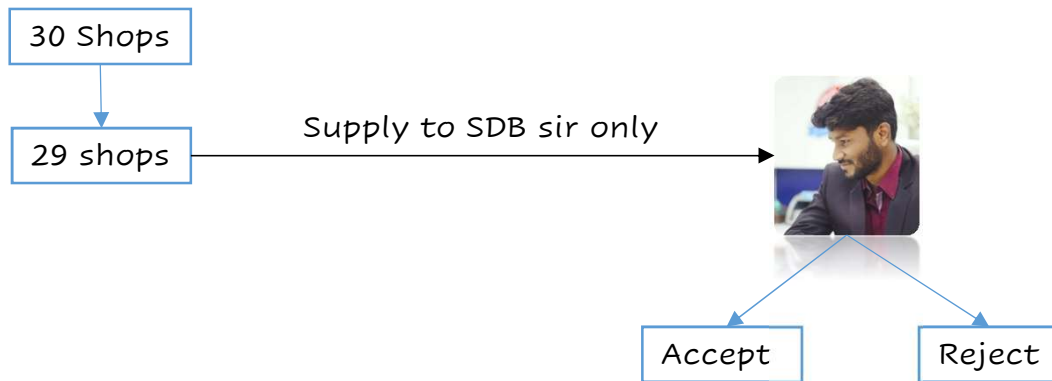


## Meaning "To That Extent"

- If one clause in Agreement is "Restrain to Trade"
- Only that portion of Agreement is Void - Consider
- Rest of the agreement is valid

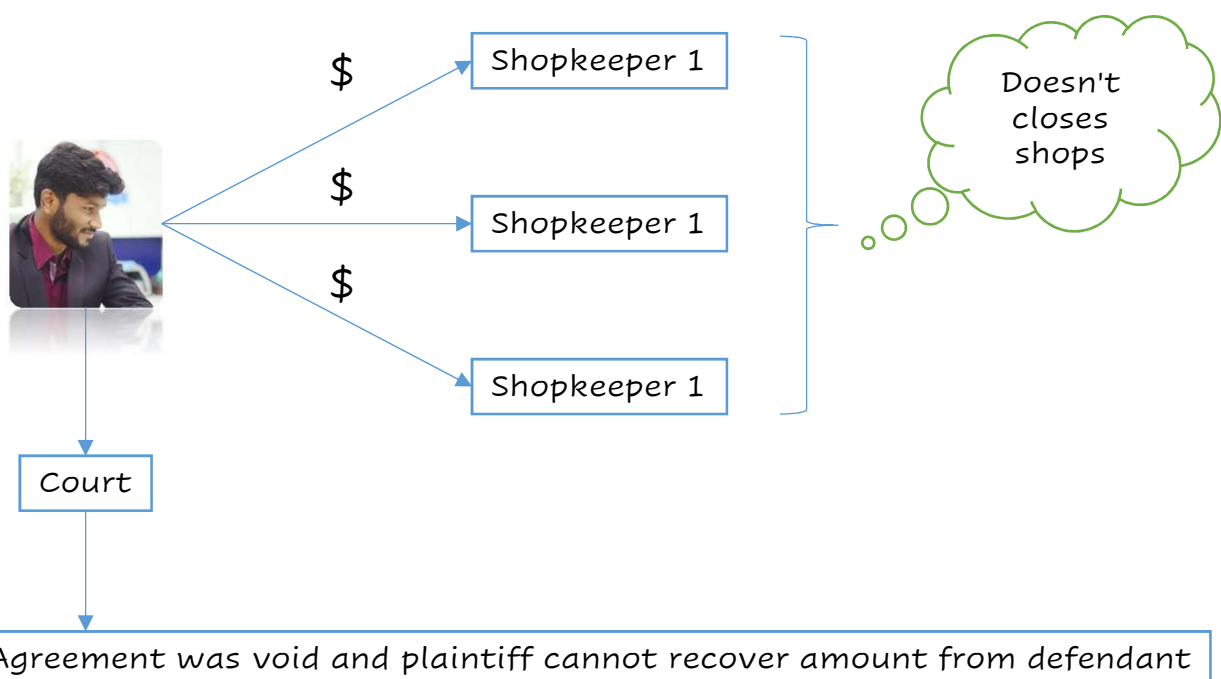


### Example 1



- It was held that the Agreement was Restrain to Trade
- So void Agreement

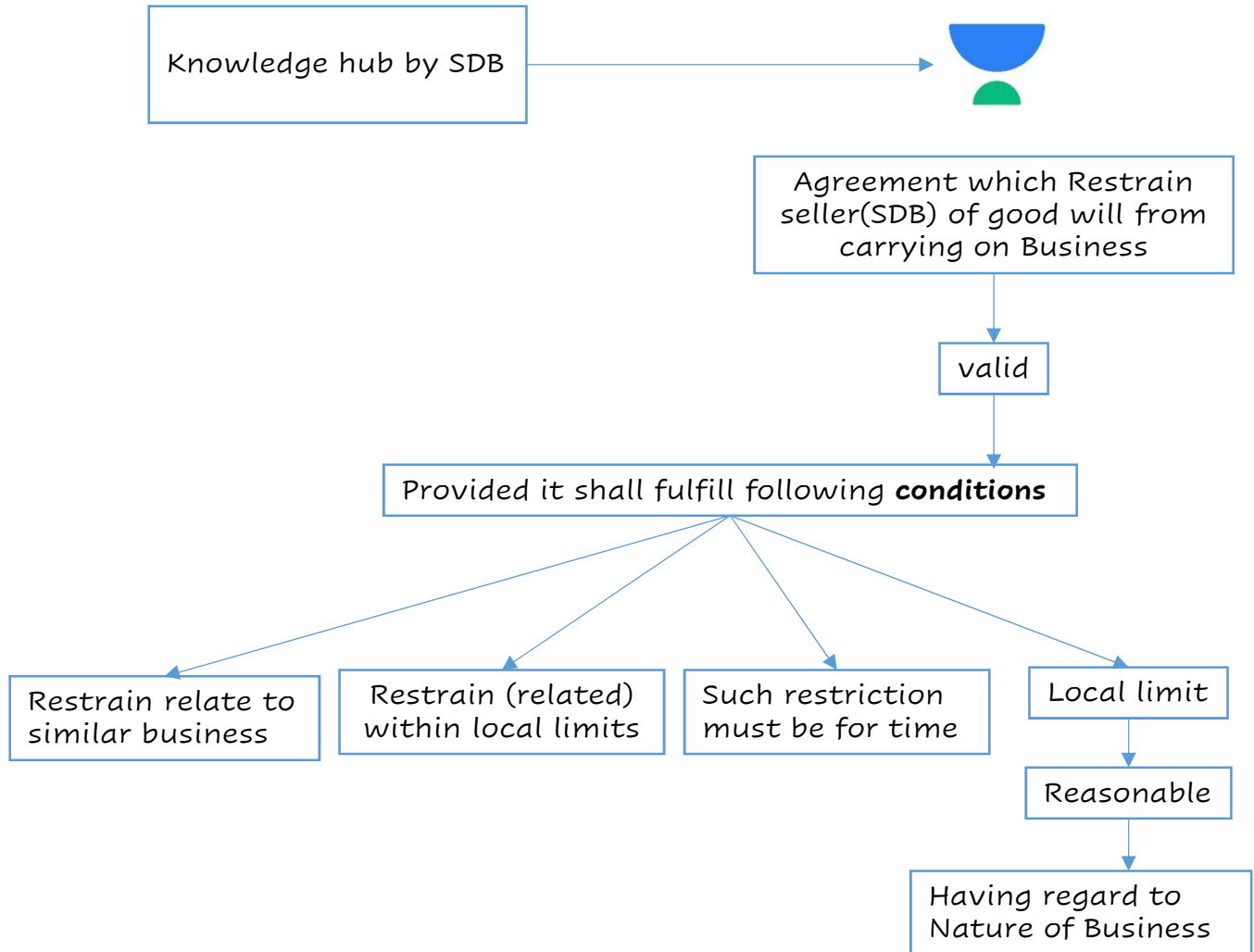
### Example 2



## Statutory Exceptions

### 1. Statutory Exceptions

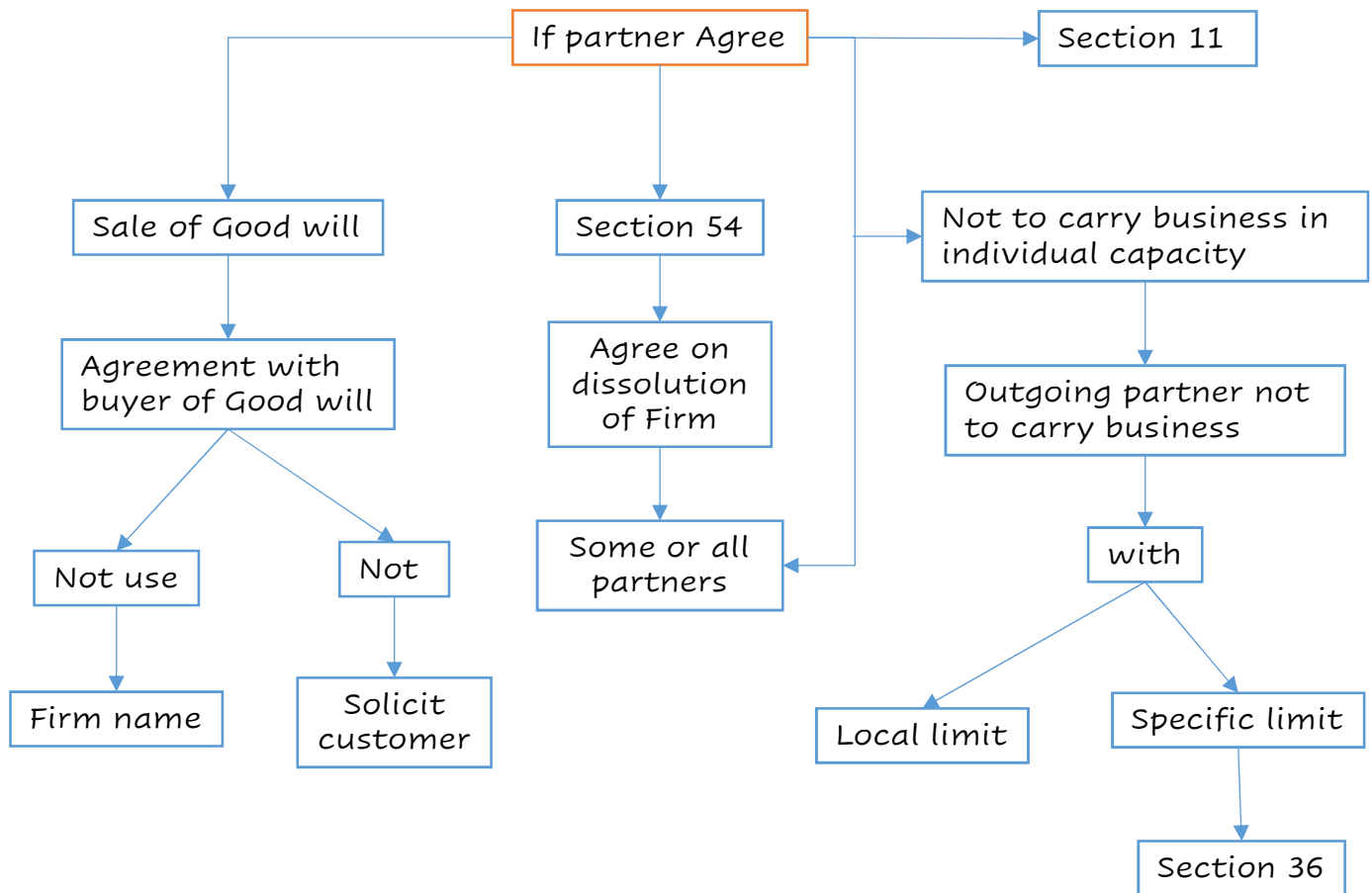
#### Example



### 2. Indian Partnership Act 1932

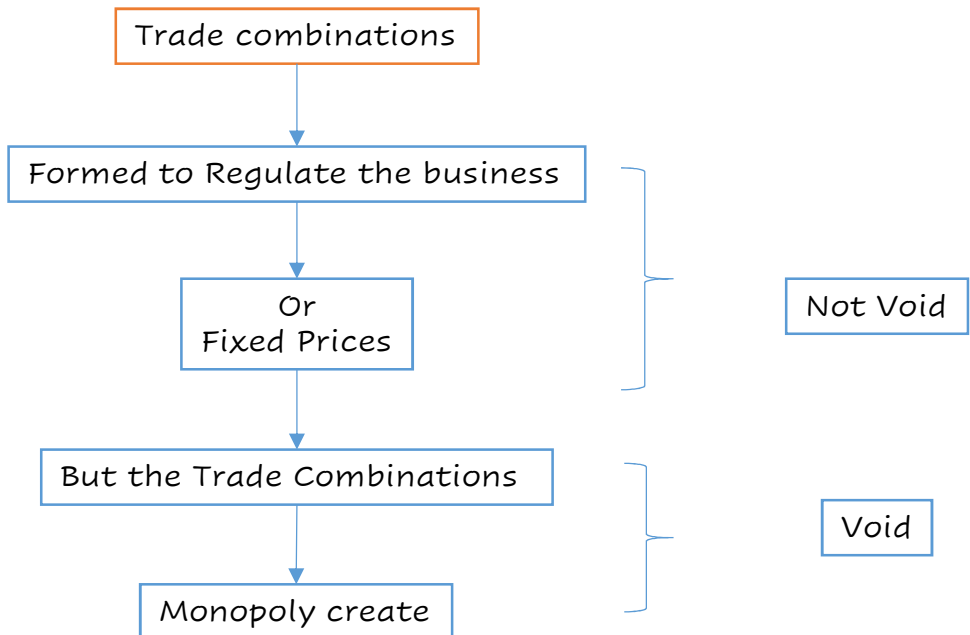
1. During Partnership
2. Outgoing Partner
3. Dissolution Partner
4. Sale of Good will

### 3 . Partnership

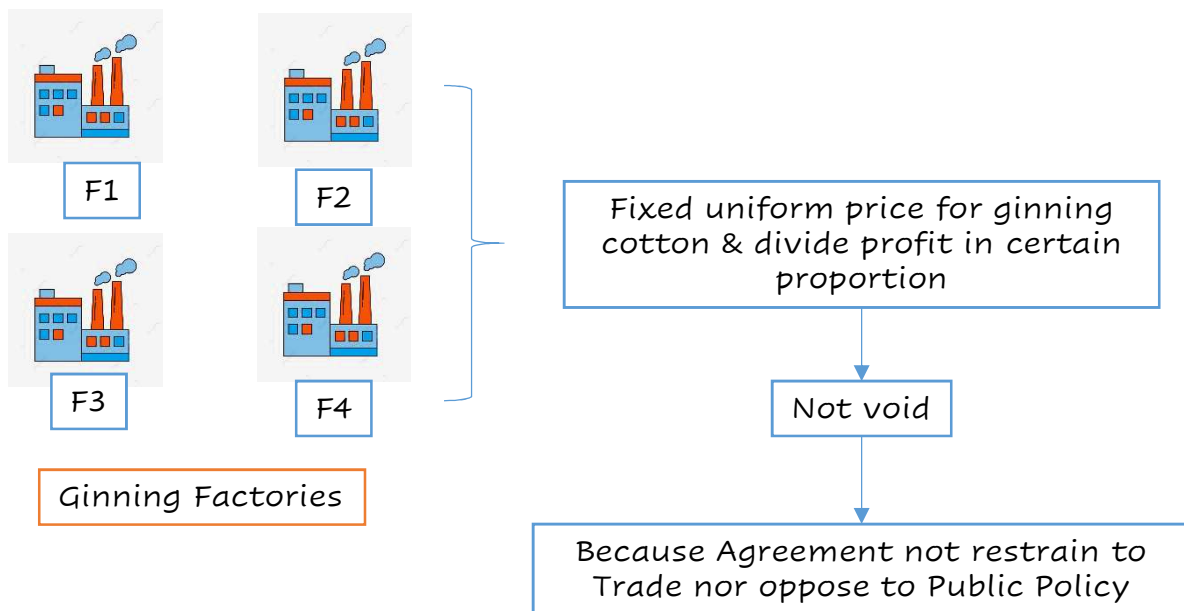


## Judiciary Exceptions

### 1. Trade



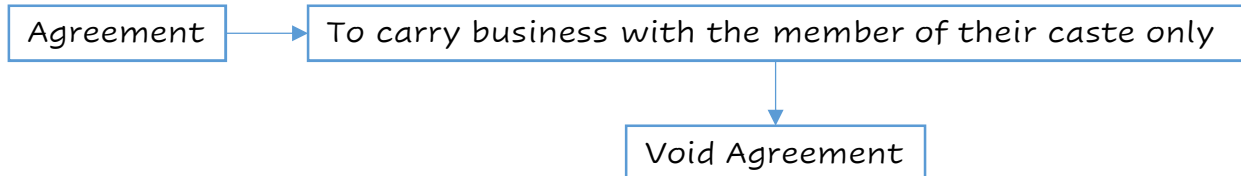
#### Example 1



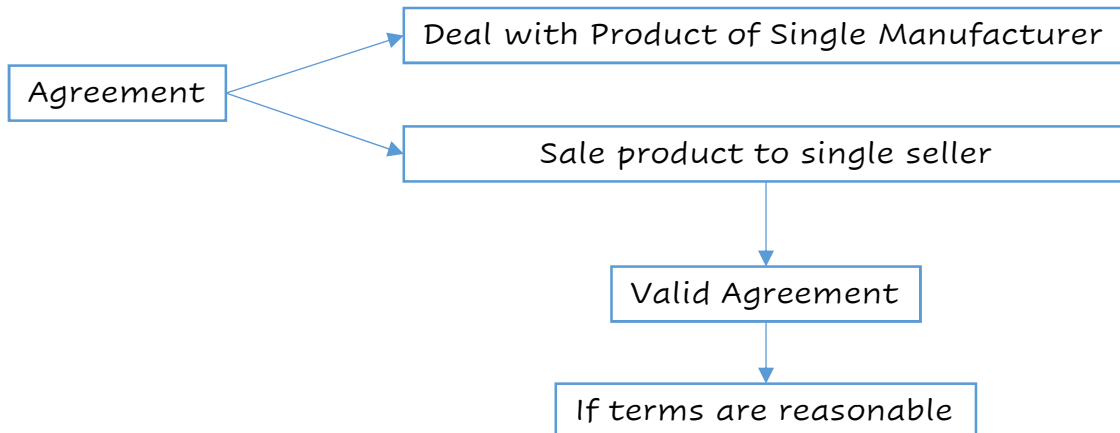
#### Example 2

Agreement by 2 firms to avoid competition is void  
Because it tend to create monopoly and it is against Public policy

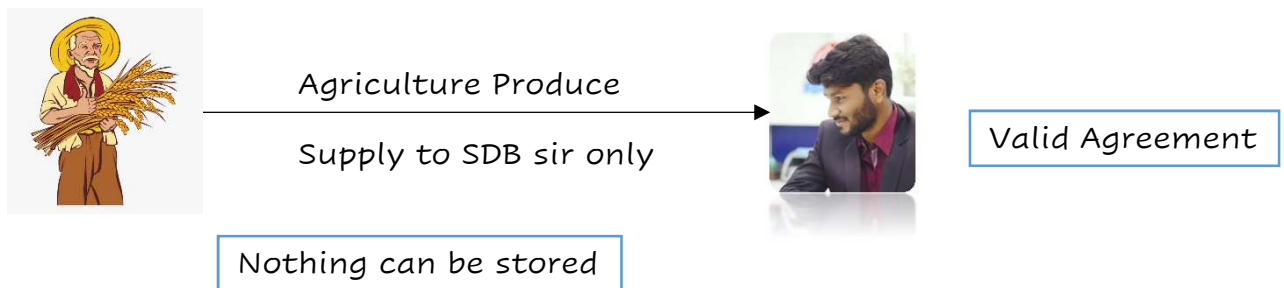
### Example 3



### 2. Sole dealing Authority

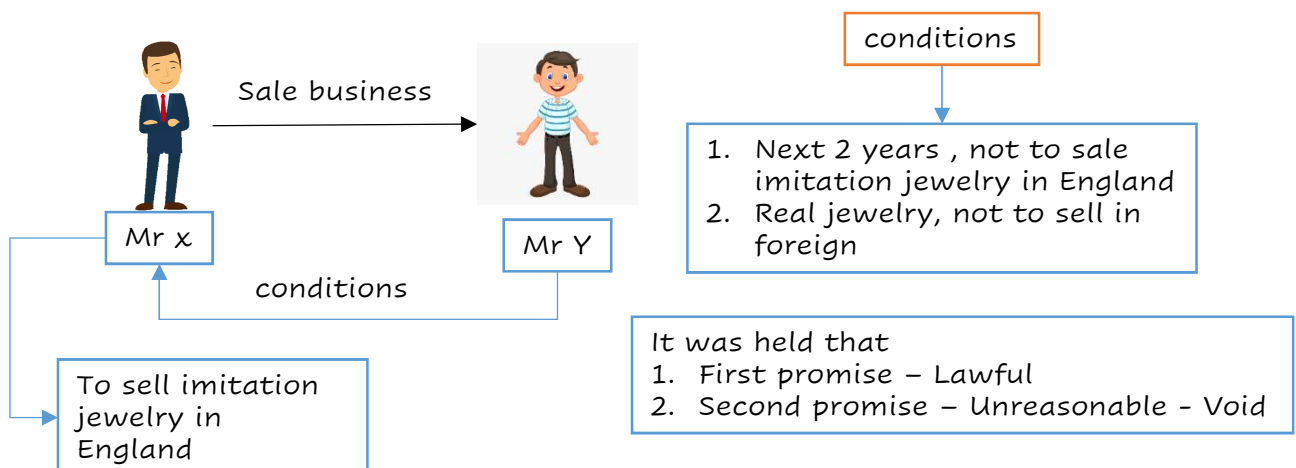


### Example



### Exam Case law

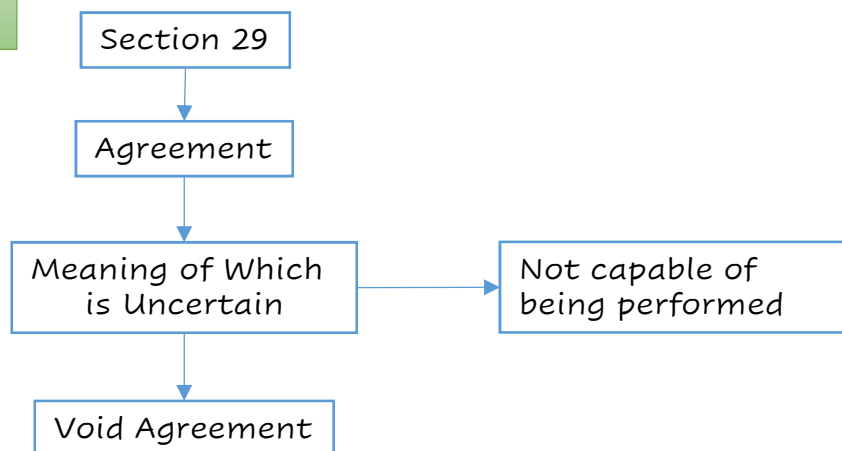
Mr x sales imitation jewelry in England



### 3. Service Agreement

1. A clause to serve the Employer for stipulated Period } Enforceable
2. A clause to prevent the Employee from accepting other engagement during employment } Enforceable
3. A clause Preventing Employee from accepting engagement after Employment
  - i. If restrain is intended only to protect an employer against the employee making use of trade secret learned by him in course of employment } Enforceable
  - ii. Other purpose } Not Enforceable

### 4. Uncertain Agreement



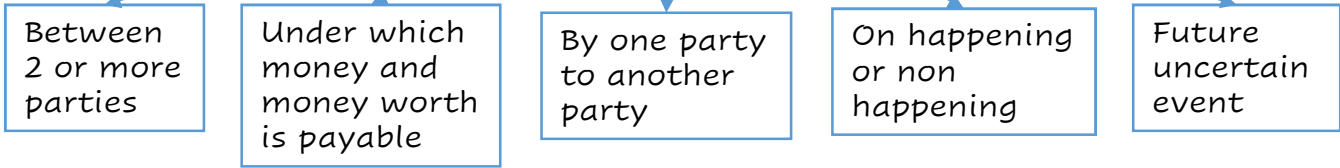
#### Example

Note : Agreements must not be Vague / Uncertain



## Section 30

## Wagering Agreements



## Example

## India vs Pakistan Match betting



## Essentials of Wagering Agreements

1. Promise to pay money or money's worth

Must

Mere promise without money  
and money worth in return is  
not wagering agreements



## 2. Uncertain Event

Performance of promise depend upon determination of uncertain event

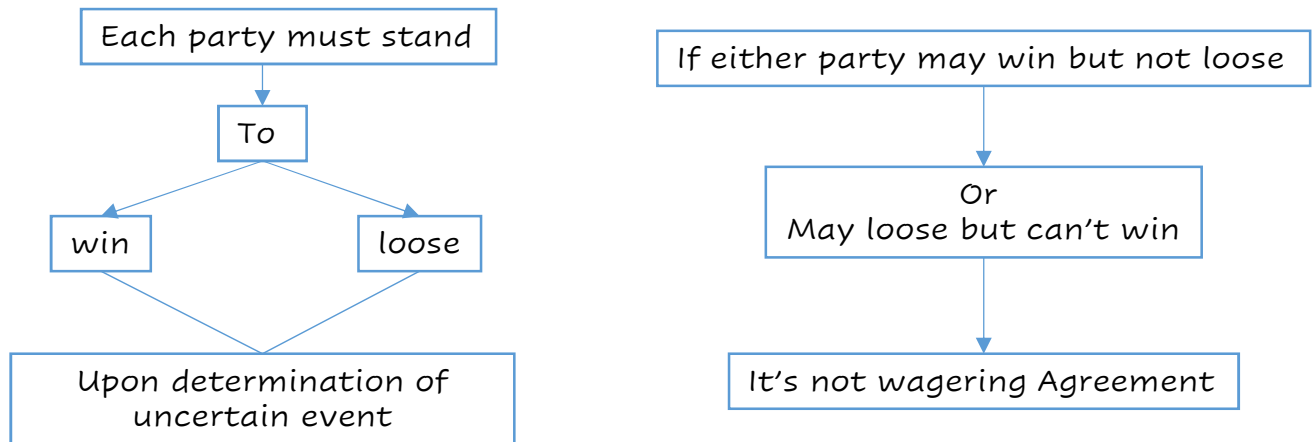
## Meaning

Event when it is yet to take place

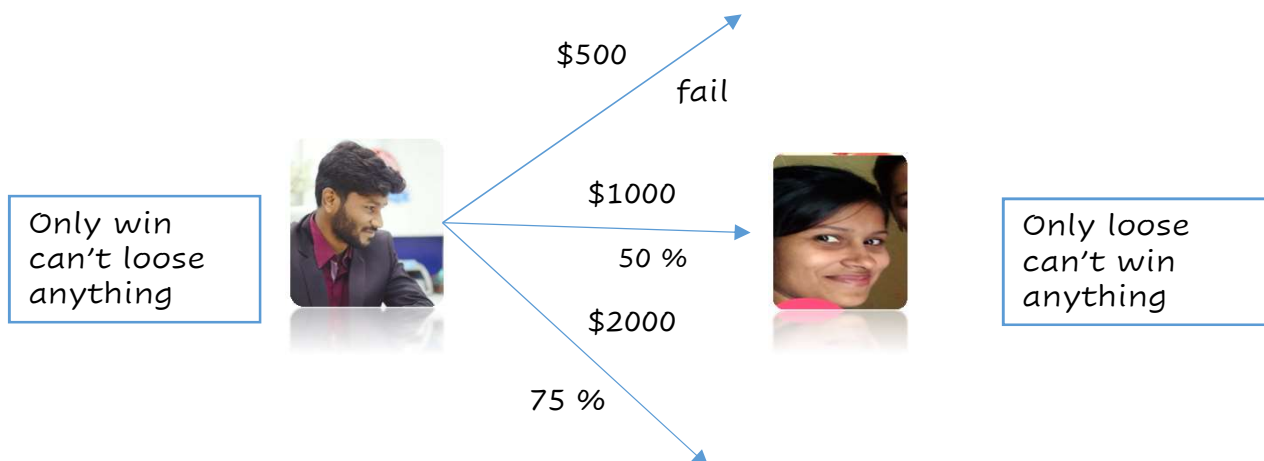
Might have already happened. But parties are not aware of its result



### 3. Mutual chance of gain and loose



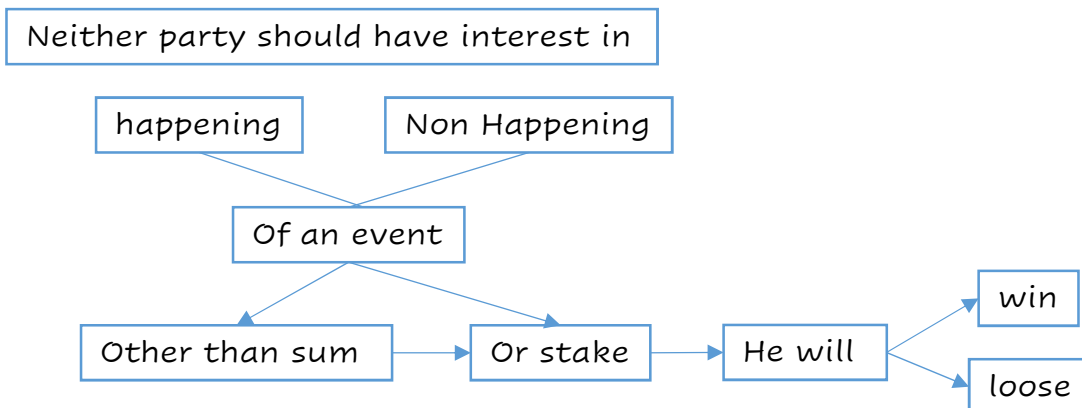
#### Example



### 4. Neither party can have control over event

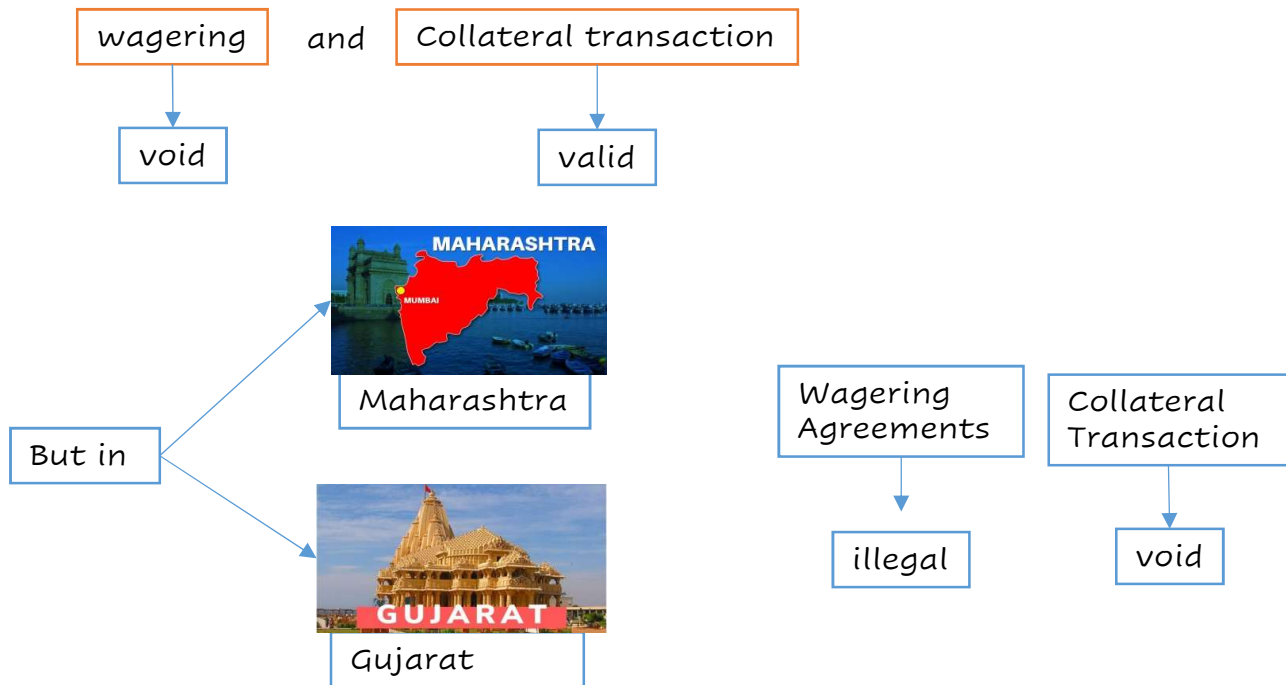
- Neither party have control over the happening of event one way or another way

### 5. No other interest

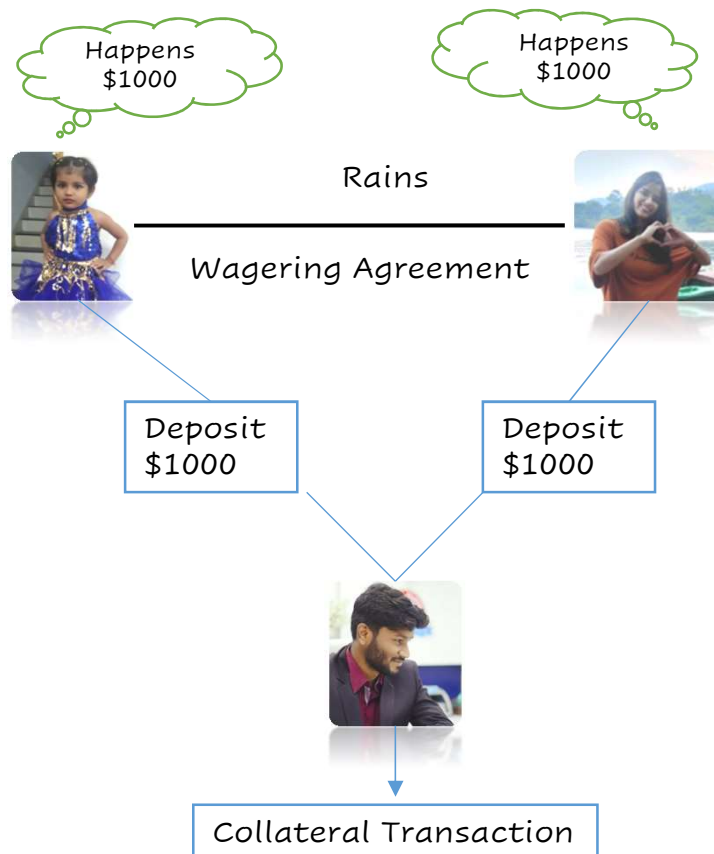


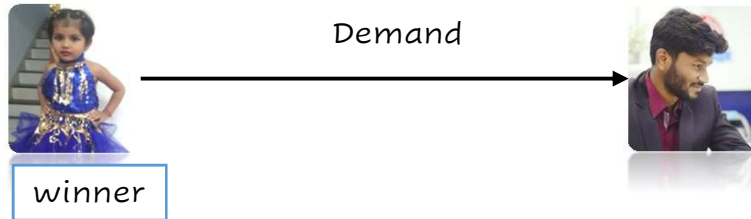


## Effect of Wagering Agreements



### Example





- Winner in wager cannot recover stake from other party
- More over money deposited with 3<sup>rd</sup> person to pay , winner can't be recovered by winner
- But depositor may recover it back from stakeholder if it has not been paid to winner
- However where money paid to winner can't be recovered back

### Collateral Transaction

Wagering Agreement

void

Except in Maharashtra , Gujarat

Collateral Transaction

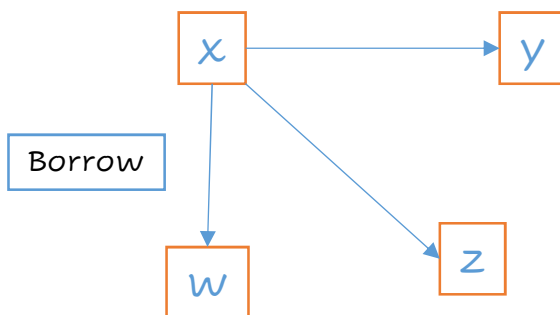
valid

Broker may recover his brokerage in wagering agreement

### Example

If win India Match \$1,00,000

Match India vs Pakistan



- The agreement between x & y is wagering because the performance depend upon happening or non happening of Future uncertain event
- Each party stand to win or loose
- If India win : he can't recover amount from "Z" (depositor)
- Winner Y : can't recover anything from "x"
- But "x" looser can recover if not paid to "Y"
- If "z" paid money to "y" then "x" can't recover
- "X" & "W" collateral Transaction – valid
- But in Maharashtra & Gujarat – Void

## Transactions similar to Wagering Agreements

### 1. Lottery Transactions



- Game of Chance
- Prime Motive - Gambling - Wagering
- Government of India - sanctions - Still it is Wagering Agreement
- The person running lottery business on behalf of Govt. is not punishable under IPC



INDIAN  
PENAL CODE  
1860

### 2. Crossword Puzzle & competition

- Wagering - Prizes depend upon correspondence of competitor solution kept with editor of Newspaper

#### Case Law

#### State of Bombay vs. RMD Chamarbangwale

#### Decision

It was held that it was a game of chance and therefore Lottery (wagering Agreement)

#### Note

Cross word , puzzles , competition and athletic competition where prizes are awarded on basis of skills & intelligence are game of skill and Hence competition is valid

Prize Competition Act 1955 - Prizes up to Rs 1,000 , its not Wager



### 3. Horse Race

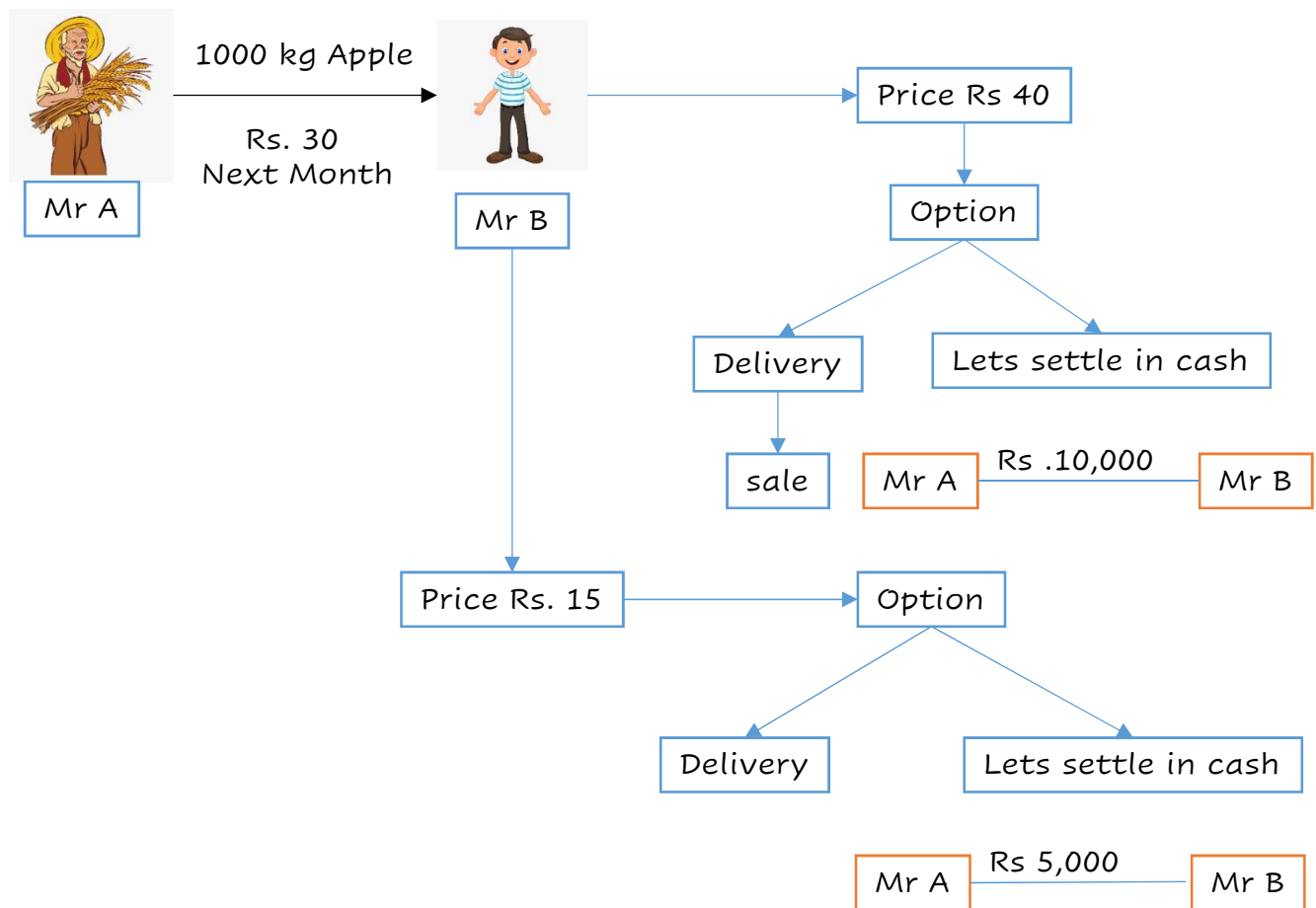
Rich

**Price** less than Rs 500 - Wager

Payable to winner

## 4. Speculative Transaction

### Example



### Conclusion

#### Intention

- Cash Settlement – Wagering Agreement
- Delivery – Not wagering
- At the time of entering into contract, intention to have delivery but settled with cash – Not Wagering Agreement

## Transactions resembling with Wagering Agreements but are not void

### 1. Chit Fund



- ❖ It doesn't come within scope of Wager ( section 30)
- ❖ In case of a chit fund , a certain number of persons decide to contribute a fixed sum for a specific period & at end of a month , amount so contributed is paid to lucky winner of lucky draw

### 2. Commercial Transaction or share market Transactions

- ❖ In these transactions in which delivery of goods or shares is intended to be given or taken , do not amount to wager

### 3. Game of skill & Athletic Competition

- ❖ Crossword puzzles , competition and athletic competition where prizes are awarded on the basis of skills & where prizes are awarded on the basis of skills & intelligence are game of skill – valid
- ❖ Prize Competition Act 2005 – Prize upto Rs. 1,000 – Not wager

### 4. A contract of Insurance

- ❖ A contract of insurance is a type of contingent contract and valid under law and these contracts are differ from wagering Agreements



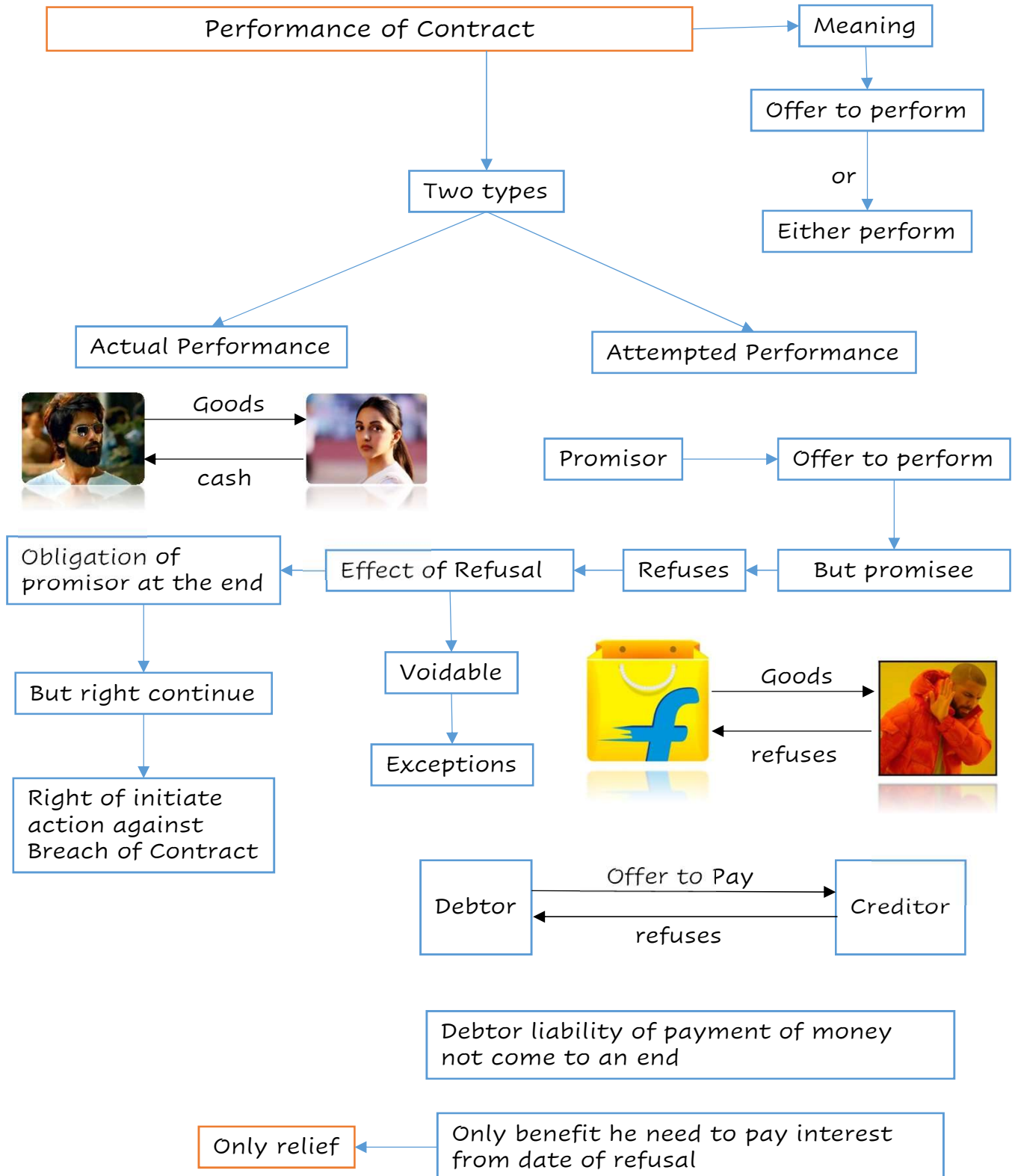


## Unit 4

# Performance of Contract

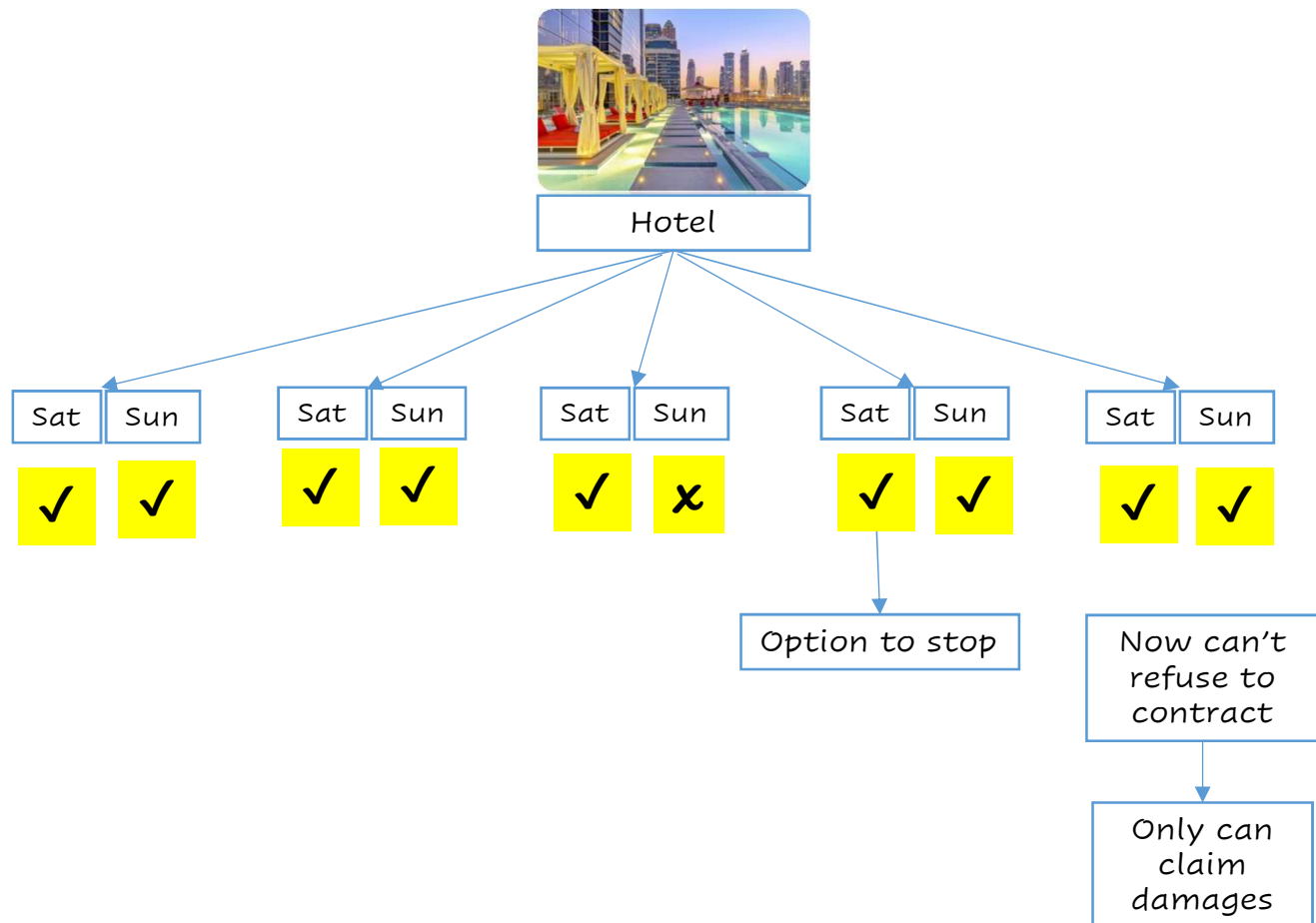
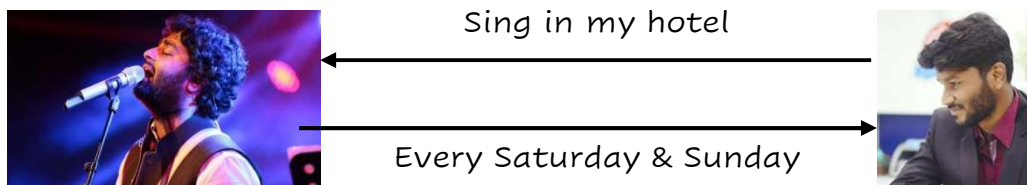
# Unit 4 . Performance of Contract

## 1. Introduction :



## 2. Effect of Refusal of party to perform promise only

### Case study



## 3. Valid Tender conditions ( Attempt to Perform)

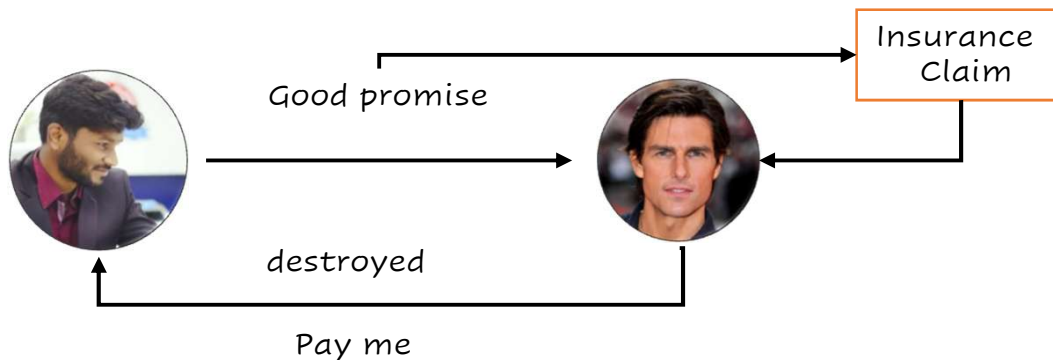
1. Unconditional
2. At proper time
3. Opportunity to inspect
4. Must be made to promise/ Authorize agent
5. Proper place
6. Person making tender must be able to & willing to perform it
7. Tender – Whole obligations

**8. Note :** Tender made before due date not valid tender



#### 4. Who perform

- a) Promisor himself (personal consideration & personal skill involved)
- b) Agent – during life
- c) Promisor Death Legal Representative – Liability up to property  
- Inherited by promisor
- d) Third person
- e) Joint Promisor



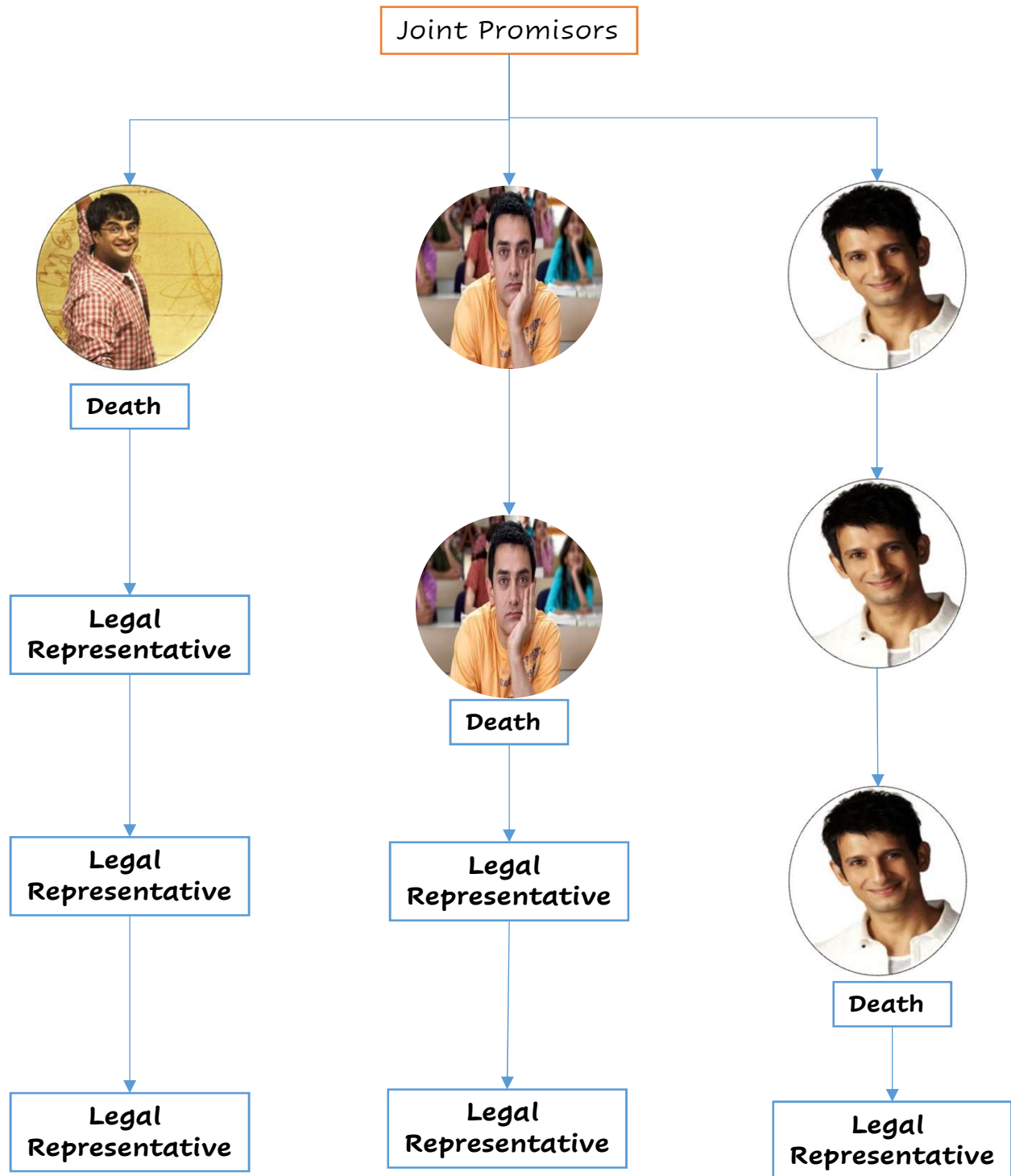
SDB sir (Promisor) is not liable

#### 5. Who can demand

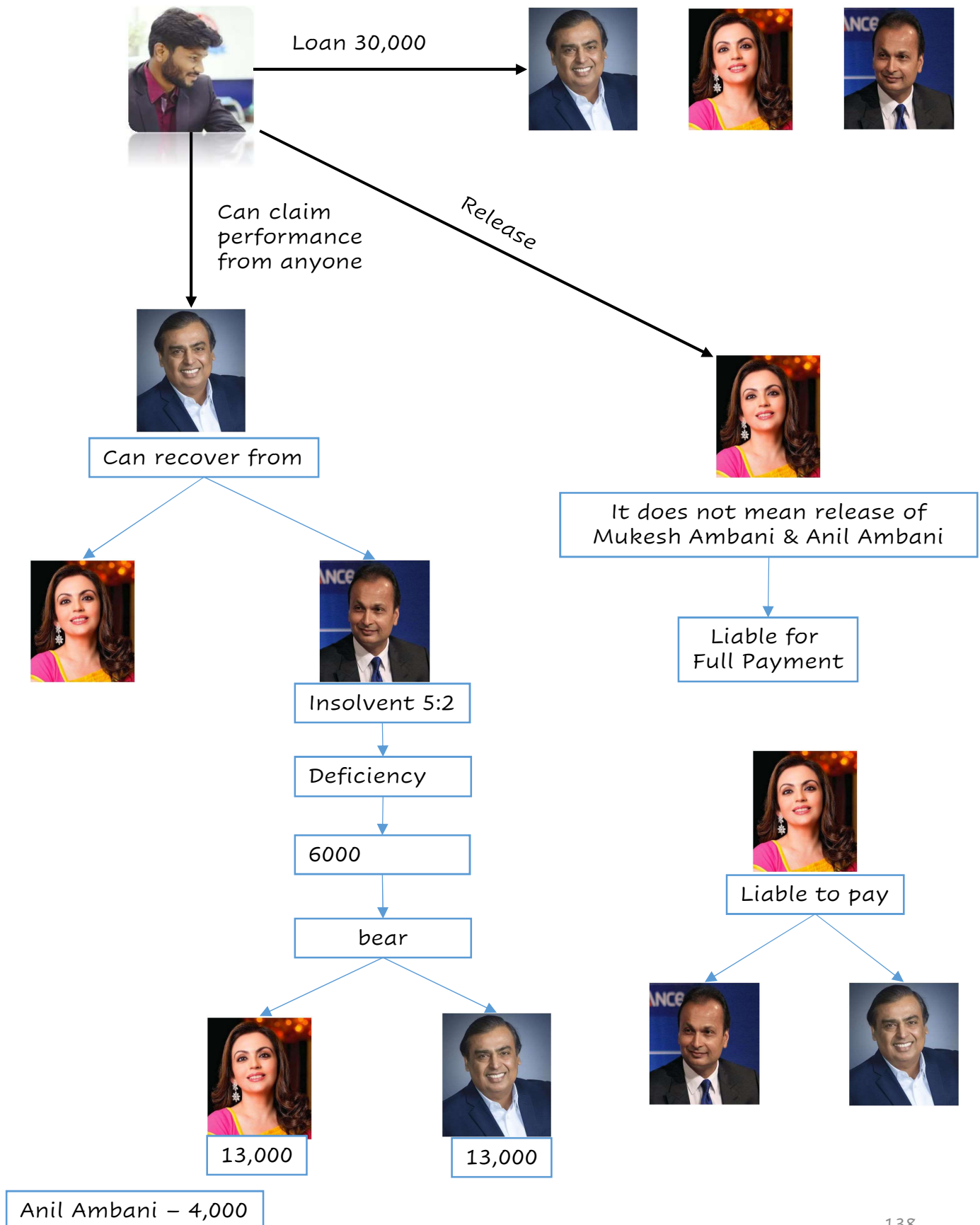
- a) Promisee
- b) Agent
- c) Death – legal representative
- d) Joint Promisee
- e) Third person – Can't

## 6. Devolution of joint rights & Liabilities

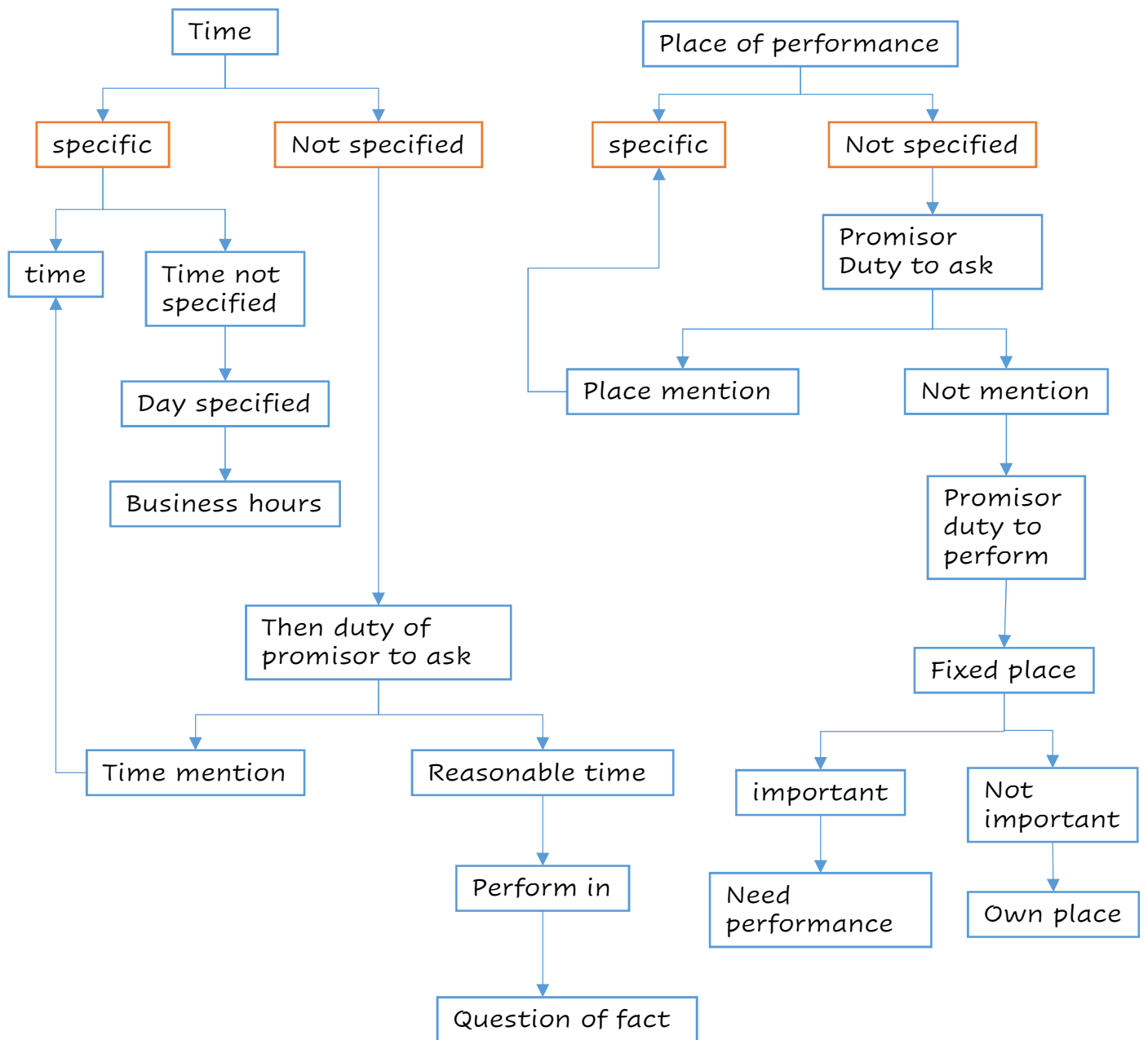
Example



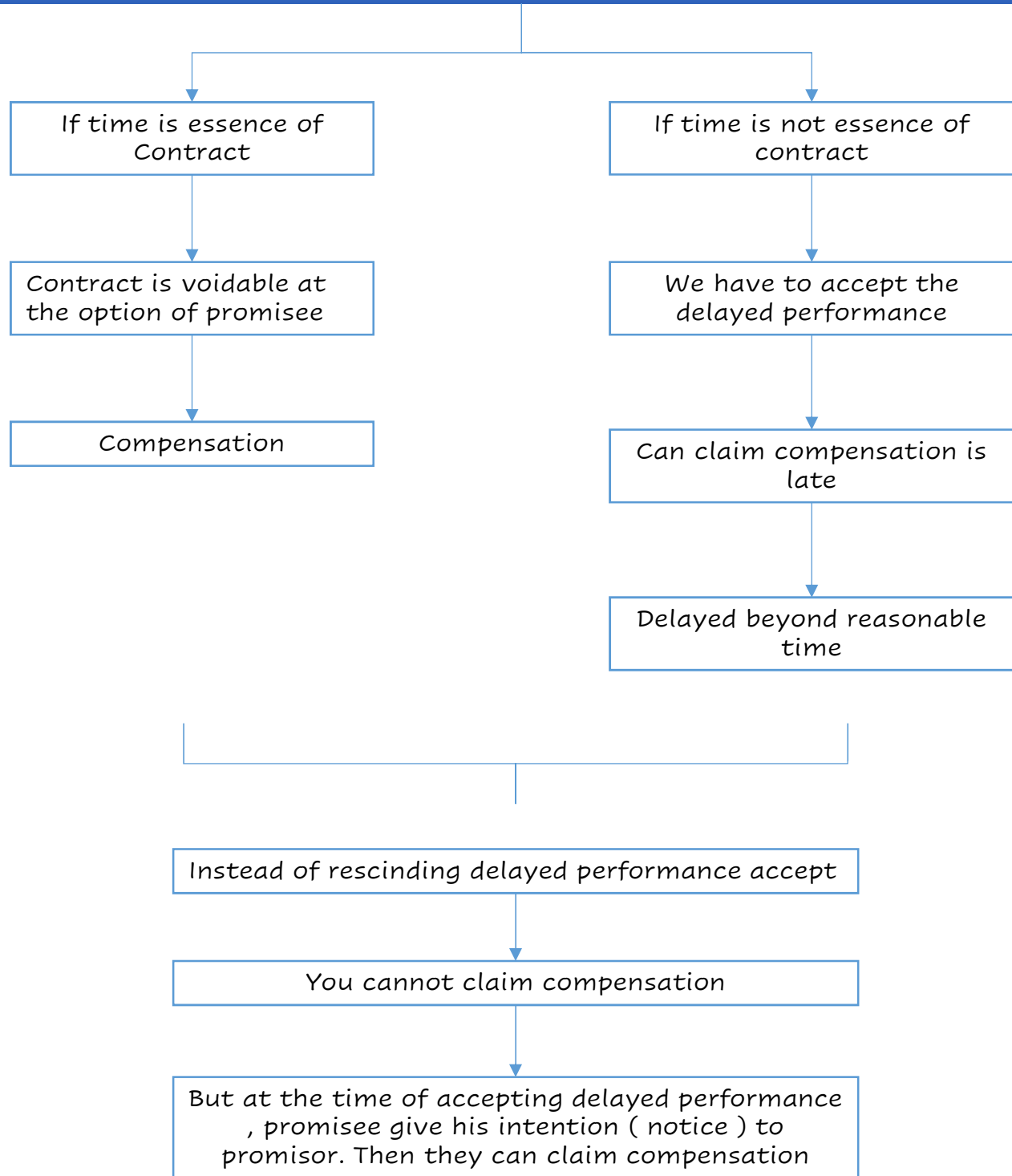
## 7. Joint liability



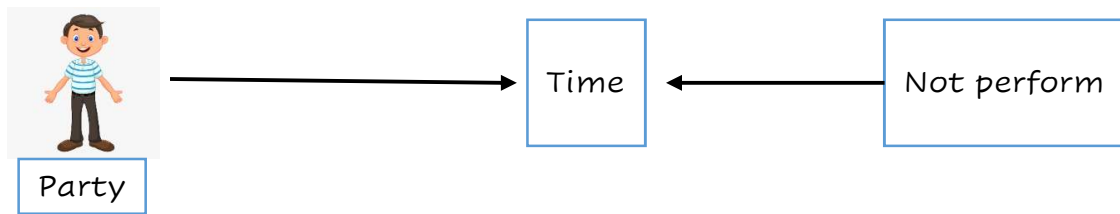
## 8. Time & place of performance



## Effect of failure to perform contract within stipulated reasonable time



## When the time is essence of Contract



What will happen

Whether the time is essence

or

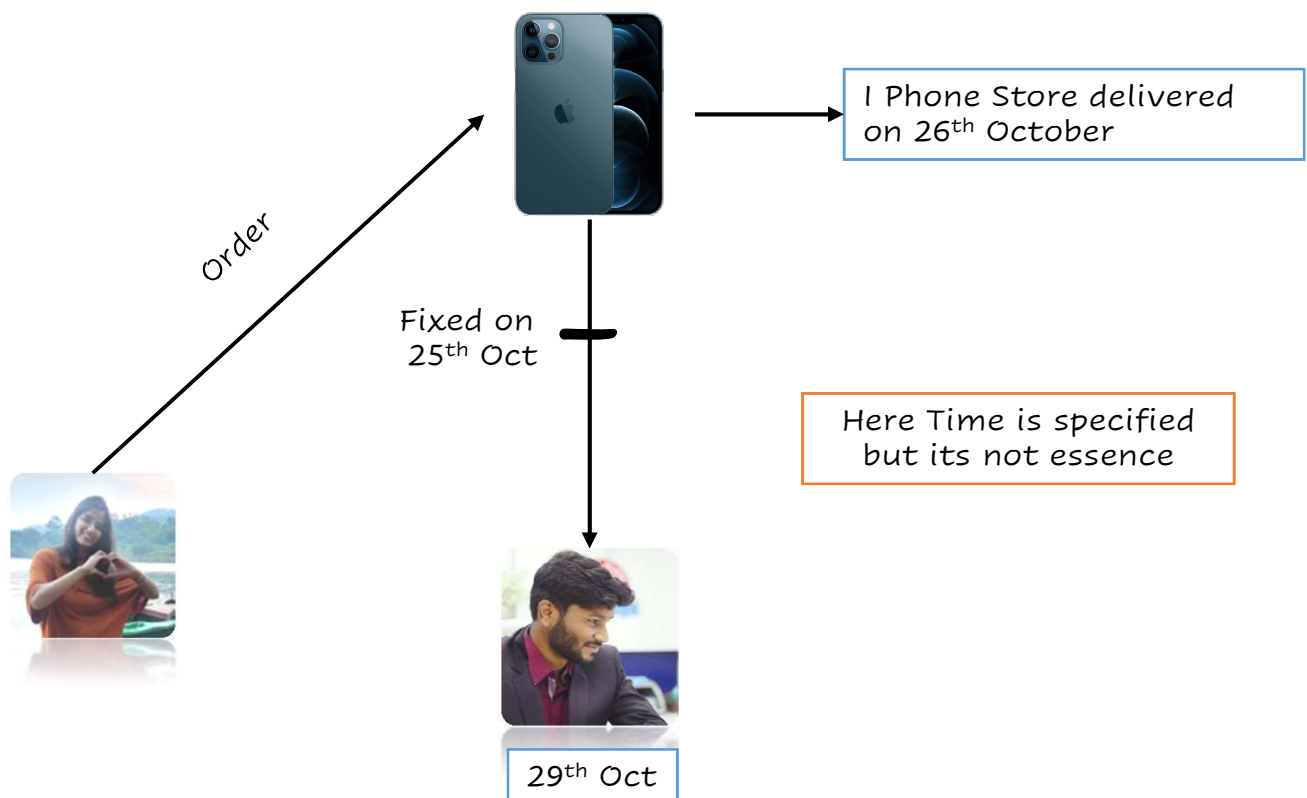
Not essence

Performance within time is most vital condition of contract

### Question

If time is mention , does it amount to essence of Contract?

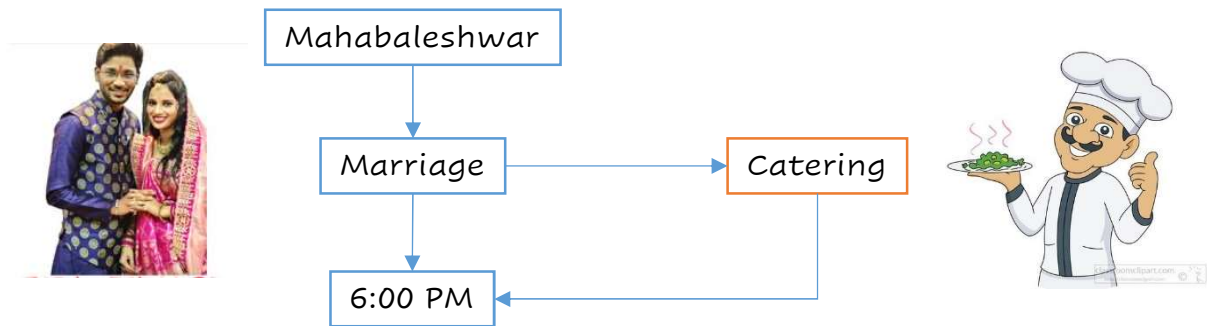
**Answer : False**



## Question

If time is not specified , But its essence of Contract ?

**Answer** : True

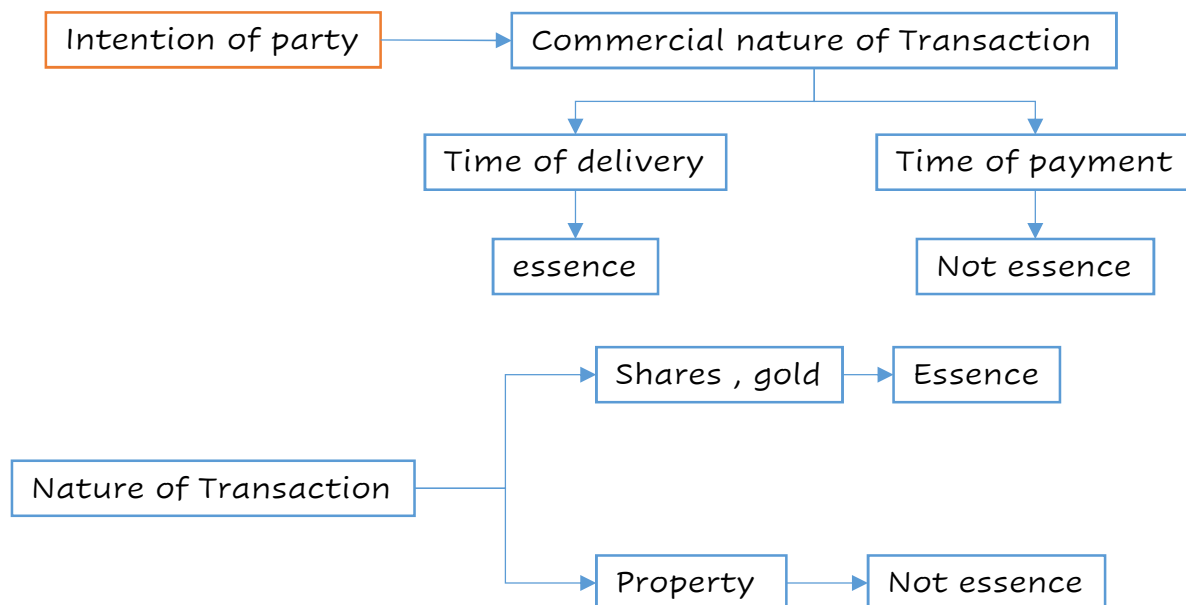


1. Time Depend

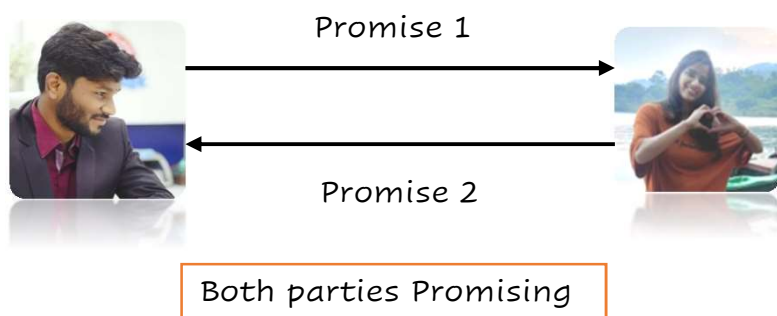
- Intention of Party
- Nature of Transaction
- Terms of Contract

1. When Party agree to treat it as such
2. Implied nature of Transaction
3. Just because time mention it is not necessary essence of Contract

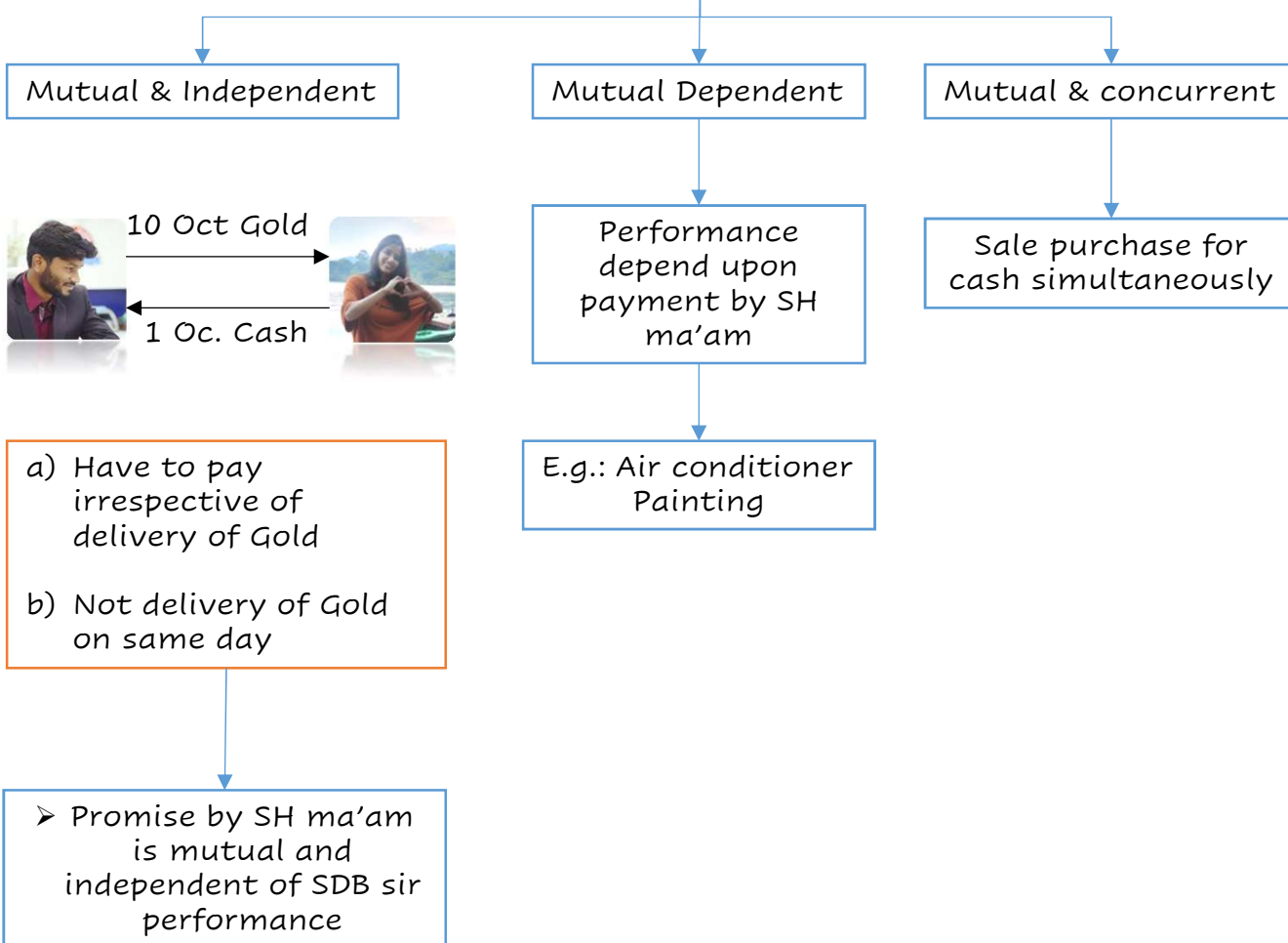
## Example



## Reciprocal Promise



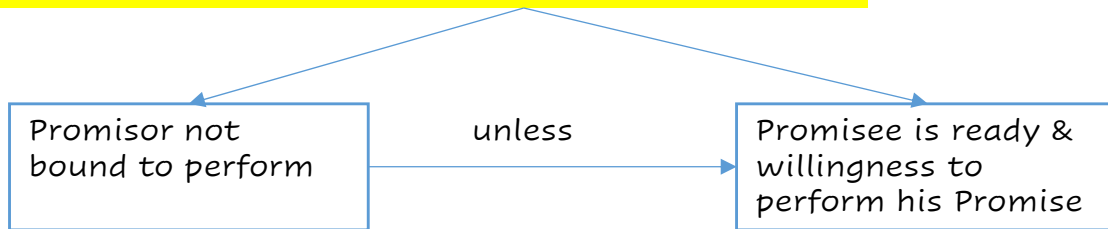
### Types





## Rules regarding performance

### 1. When Reciprocal promise simultaneously performed



### 2. When order is Fixed

According to that order

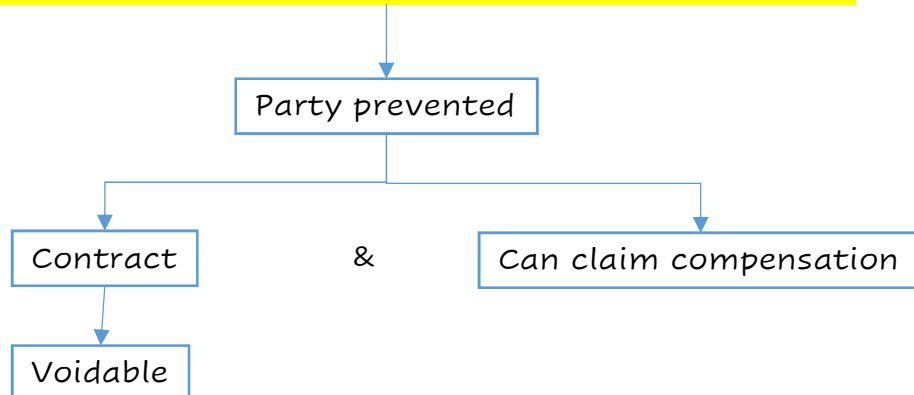
### 3. When order is not Fixed

By implication

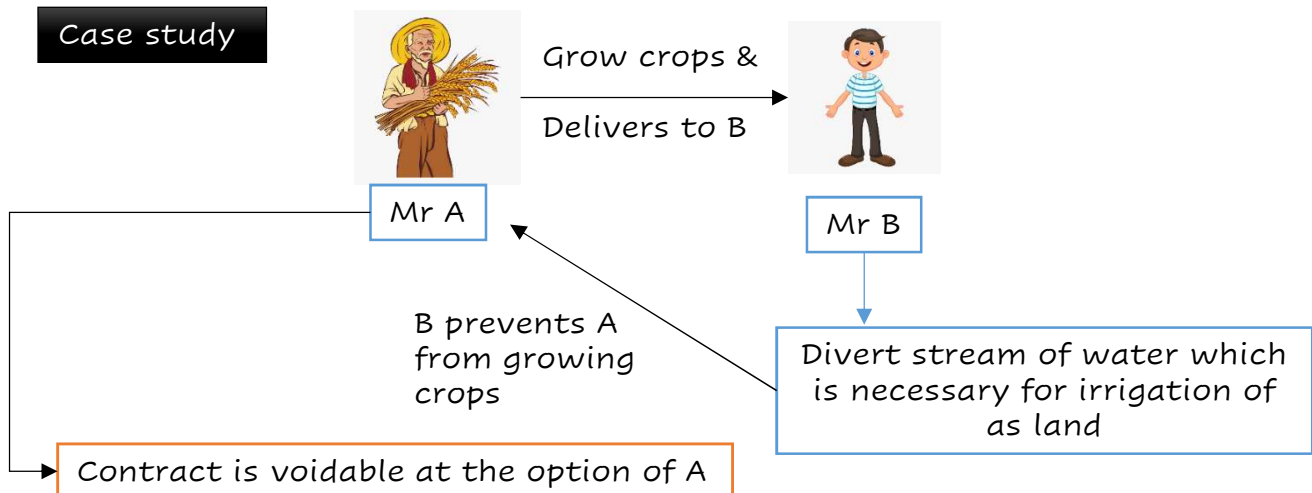
Party never said

- Security
- Rent
- Possession

### 4. If one Party Preventing other party to perform his promise

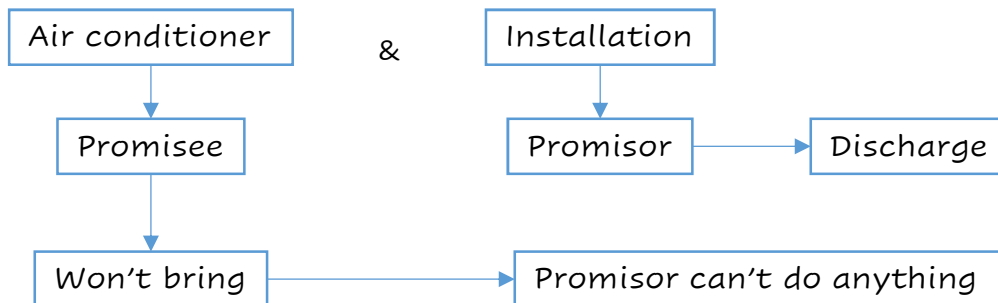


### Case study

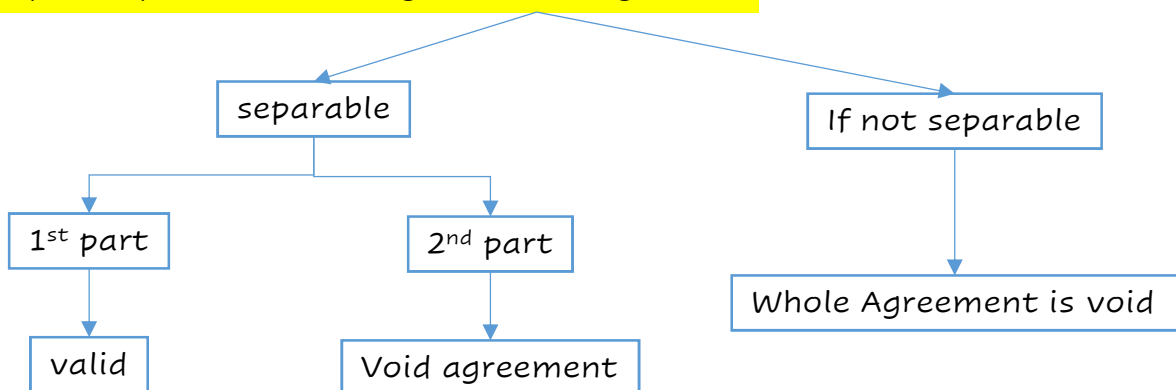


If he elect to rescind it, he is entitled to recover from "B" compensation for any loss which was incurred because of Non Performance

5. The nature of Promise is such that one can't be performed unless other party perform his part

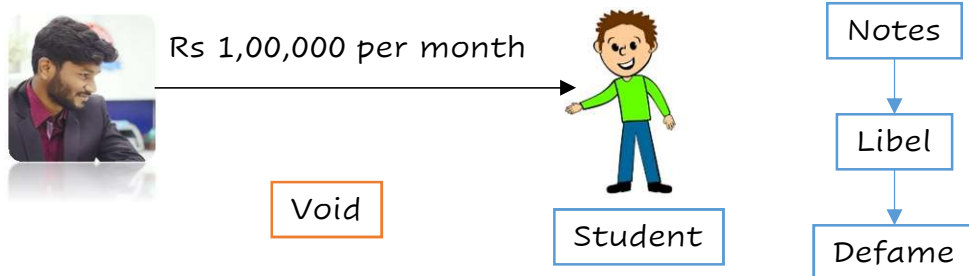


6. Reciprocal promise to do legal & also illegal act

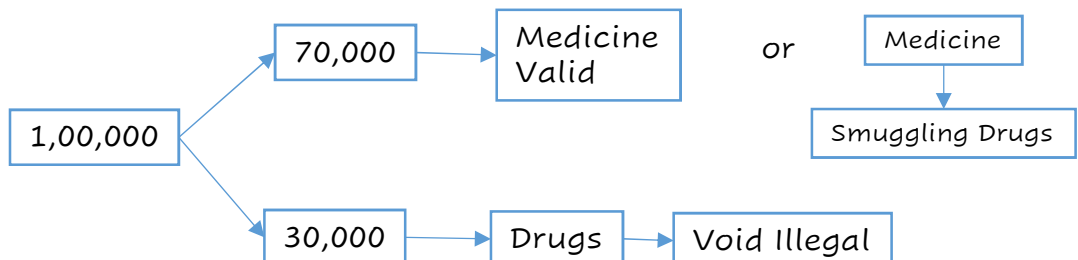


Example

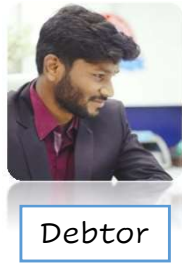
Situation 1



Situation 2

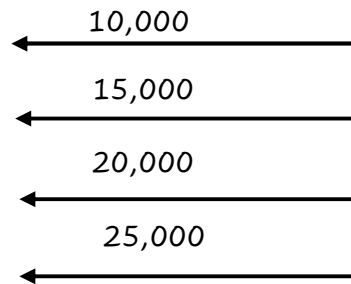


## Appropriation of Payment



Debtor

Payment



### Rules

1. Debtor expressly Mention

2. Debtor implied instruction

15,000

2<sup>nd</sup>

25,000

4<sup>th</sup>

3. Nothing

Express

Implied

Creditor will

He can also adjust again time bar debt

4. Debtor

Not Express

Not Implied

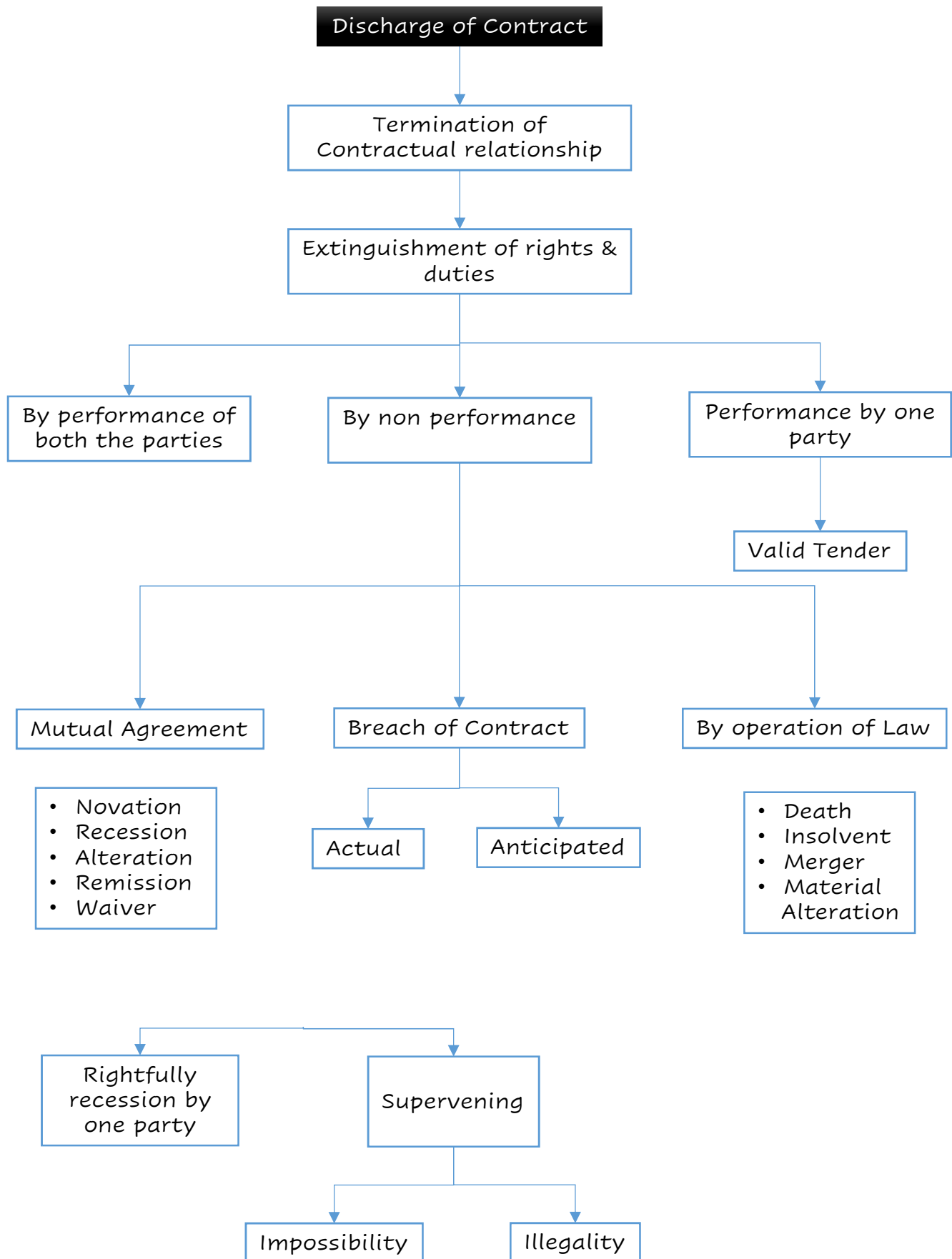
Creditor not ready to use his discretion - FIFO

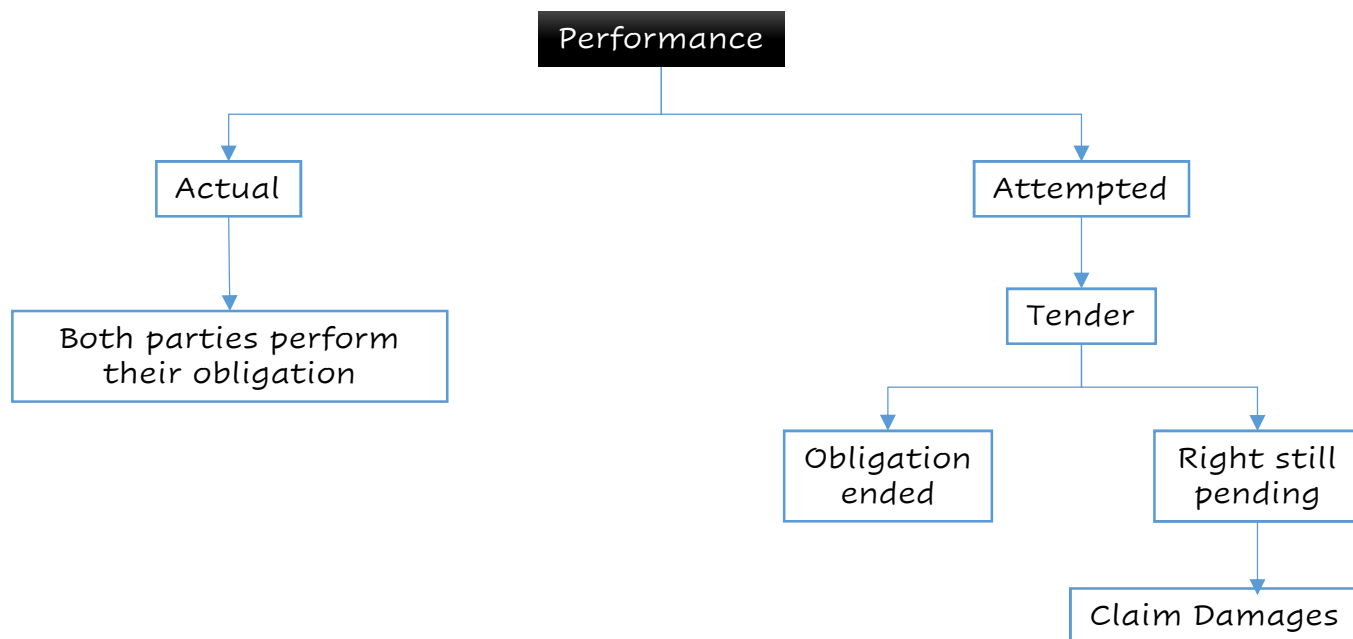
5. What if two credit on same day

Proportion

6. Principle + Interest

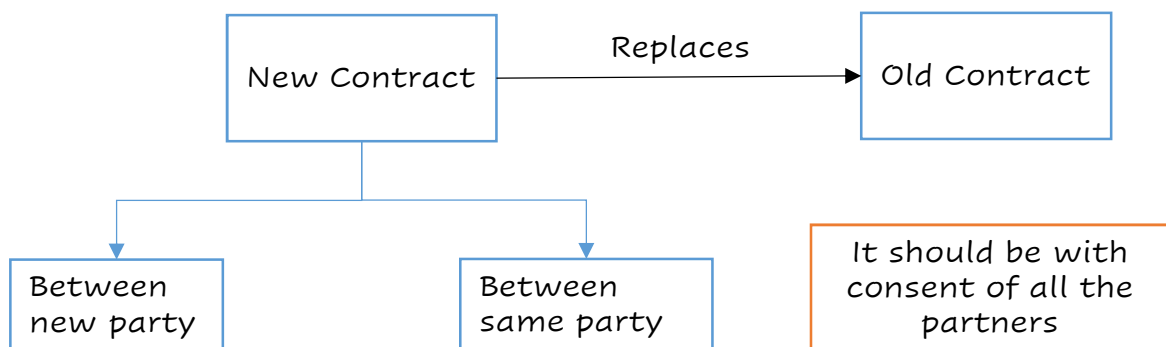
- Debtor expression
- If not
  - 1) 1<sup>st</sup> Interest
  - 2) Then Principle



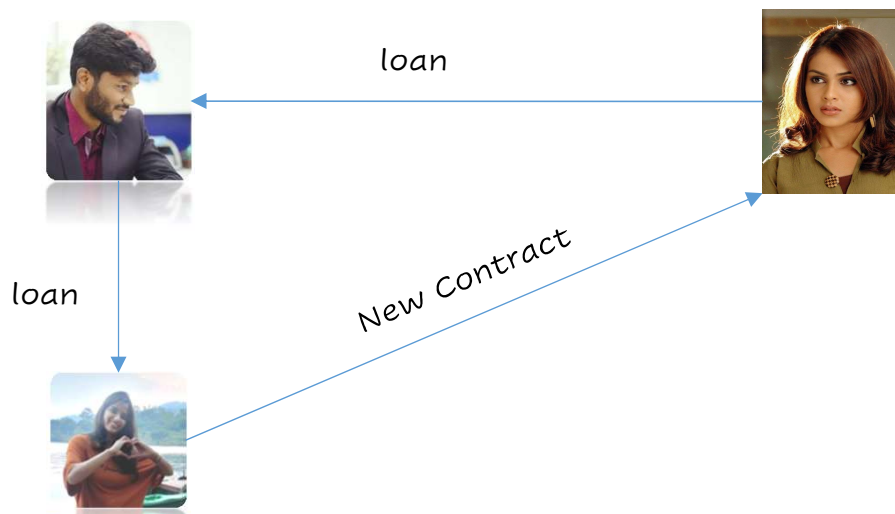


Mutual Consent of Parties

1. Novation



Example



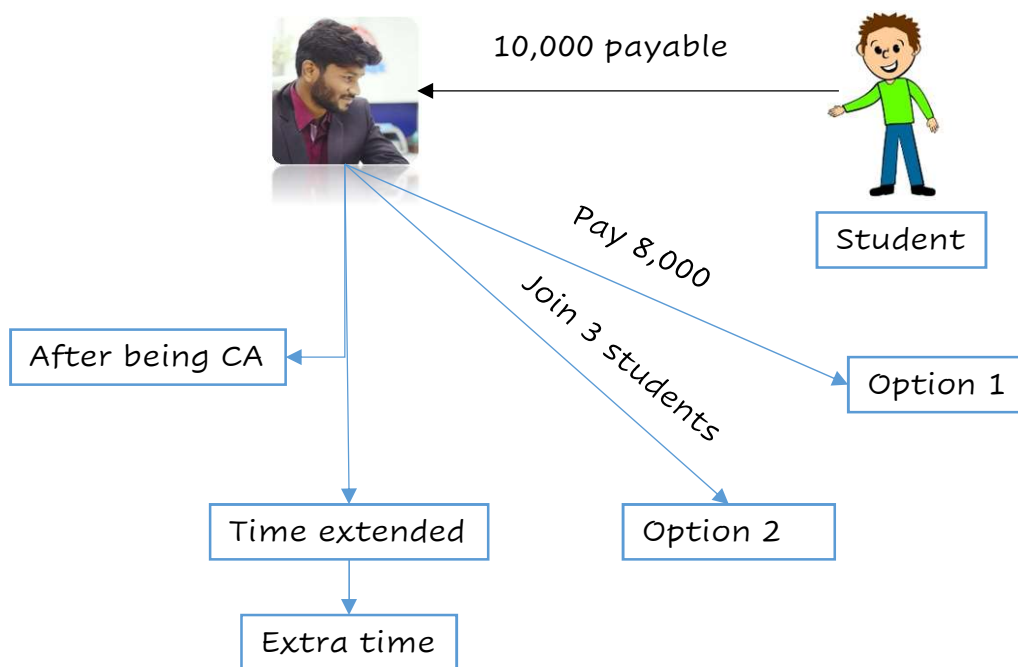
## 2. Recession

➤ Cancellation of Contract by all Parties

### Example

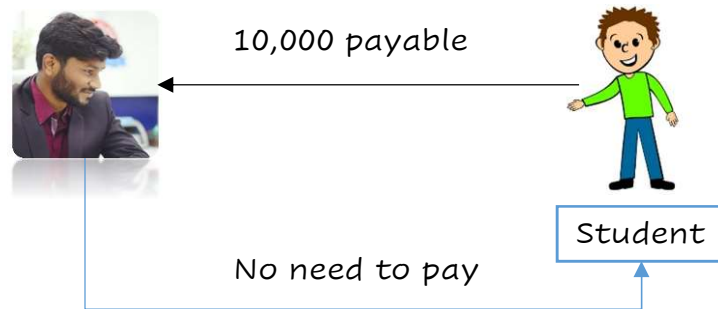


## 3. Remission



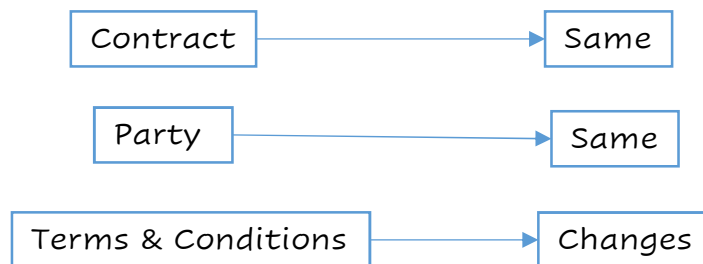
Accepting lesser degree of performance

#### 4. Waiver

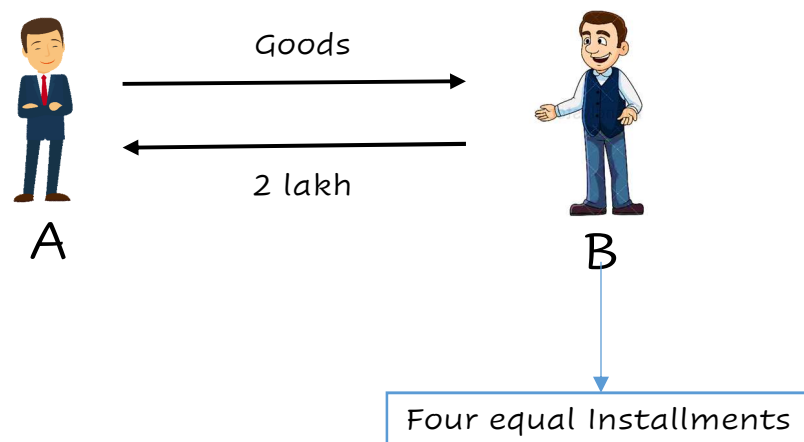


100 % Remission

#### 5. Alteration



#### Example



## Discharge by lapse of time

### Example

Limitation Act → Period of limitation → ends

Promissee barred to instituting suit in the court of law

Time

Essence of contract

If contract not performed within stipulated time

Party not yet fault , need not to be perform contract

## Discharge by operation of Law

### 1. Death

- If the contract is done on the basis of personal skills, death of any party
- Contract ends

### Example



Sing in my Hotel

Every Saturday & Sunday

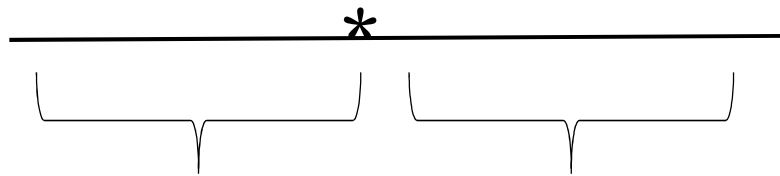


If Dead

Contract ends



## 2. insolvency



Contract Made

Contract ends lawfully



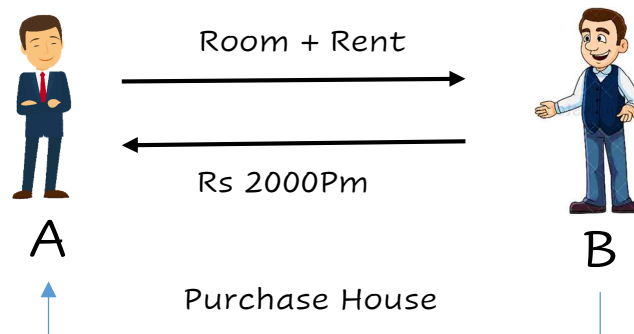
insolvent

Discharge from liability upto date of insolvency

## 3. Unauthorized Material Alteration

- If anyone party make changes in contract material without approval of other party
- Then the whole contract becomes void
- Not liable to pay single rupee

## 4. Merger of rights



## Discharge by supervening impossibility & illegality

At the time of Contract made , all the performance are legally possible to do

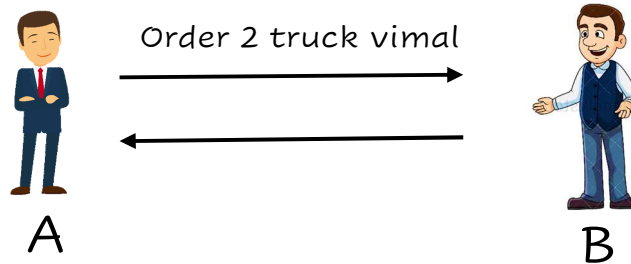
Unknown to both party

- Becomes void
- ( Restoration is Possible )

One party suppose to know

- Becomes voidable

### Example



- After few time , Vimal got banned
- Now contract becomes impossible to perform

## Discharge by Breach of Contract

End of obligation that is created by contract

Party not in fault , may sue for damages

Actual Breach

Party of the contract refuses or fail to perform contract

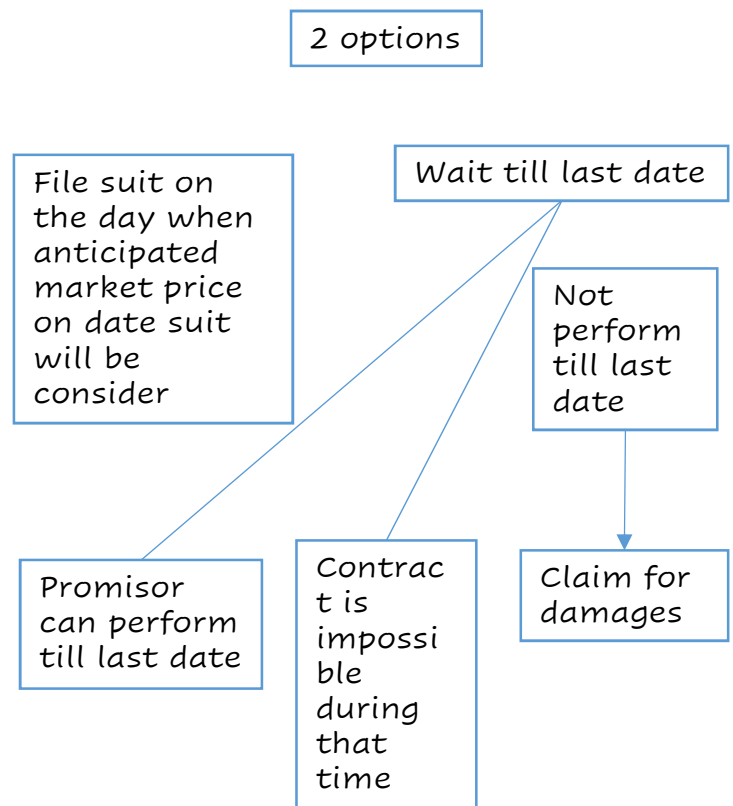
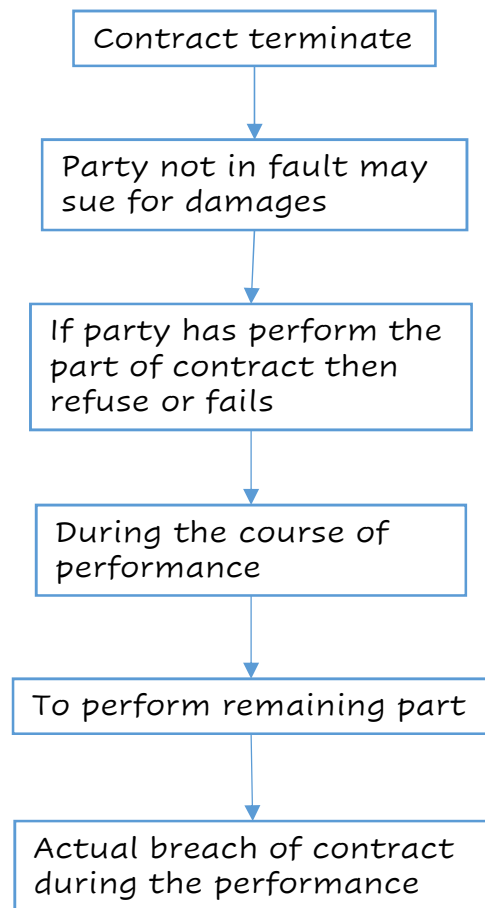
At the time of fixed for performance

Anticipatory Breach

When party declares his intention not to perform the contract before perform is due

Express

Implied





## Unit 5

# Breach of Contract & its Remedies

# Unit 5 Breach of contract & its Remedies

## 1. Introduction :

Breach means failure of a party to perform his or her obligation under a contract. Breach of contract may arise in two ways:

- (1) Actual breach of contract
- (2) Anticipatory breach of contract

## 1. Actual Breach

The parties to a lawful contract are bound to perform their respective promises. But when one of the parties breaks the contract by refusing to perform his promise, he is said to have committed a breach

Actual breach of contract may be committed-

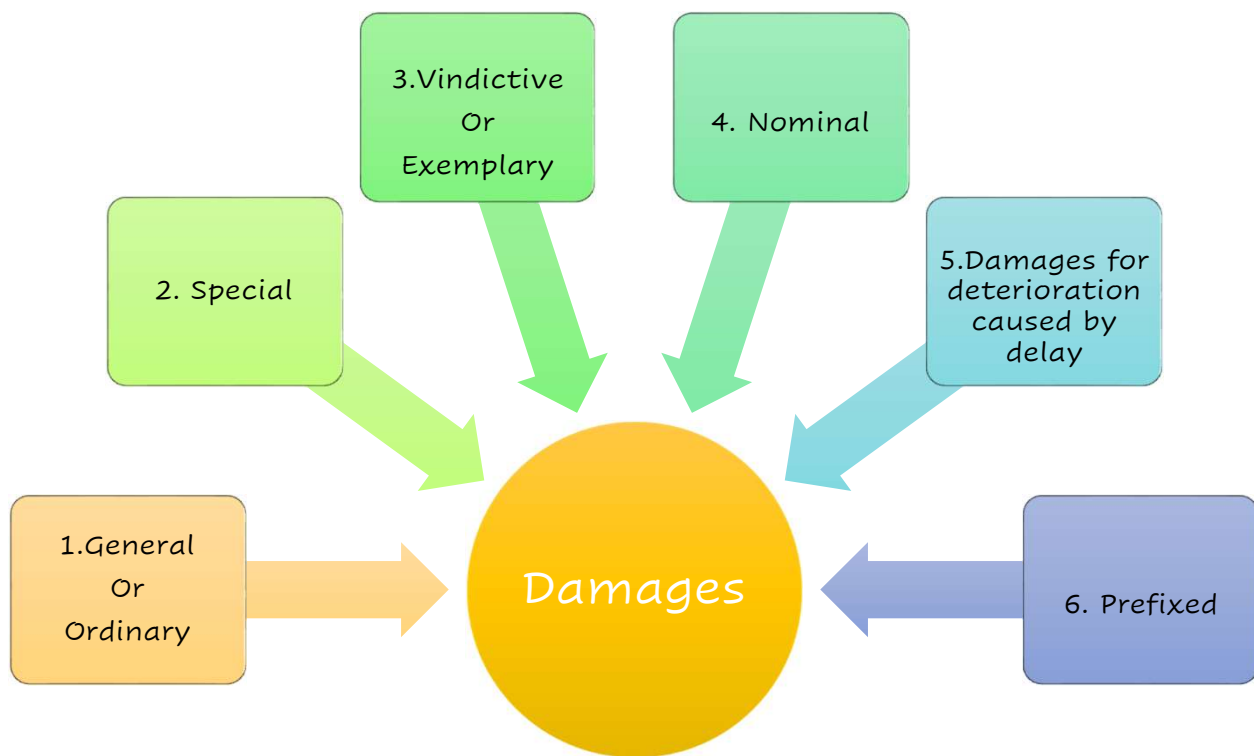
- a) At the time when the performance of the contract is due.
- b) During the performance of the contract

## 2. Anticipatory Breach

An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived. When the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived, it is called Anticipatory Breach.

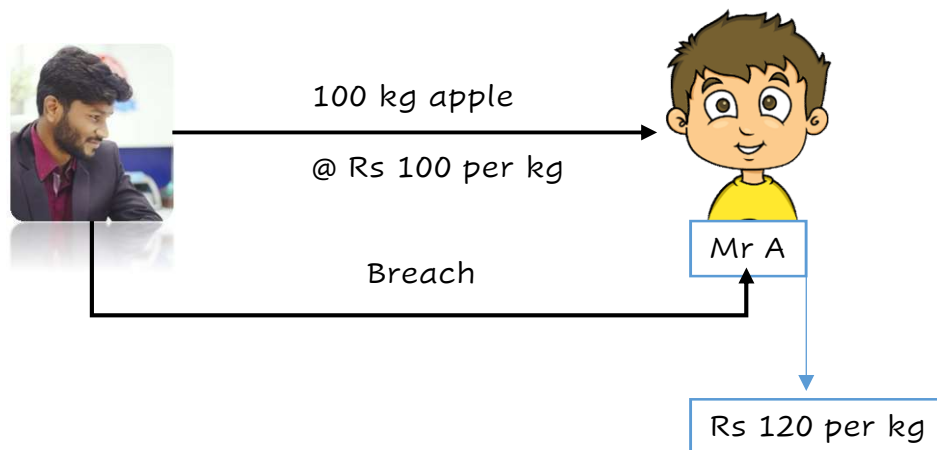
Anticipatory breach of a contract may take either of the following two ways:

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



### 1. General / ordinary Damages

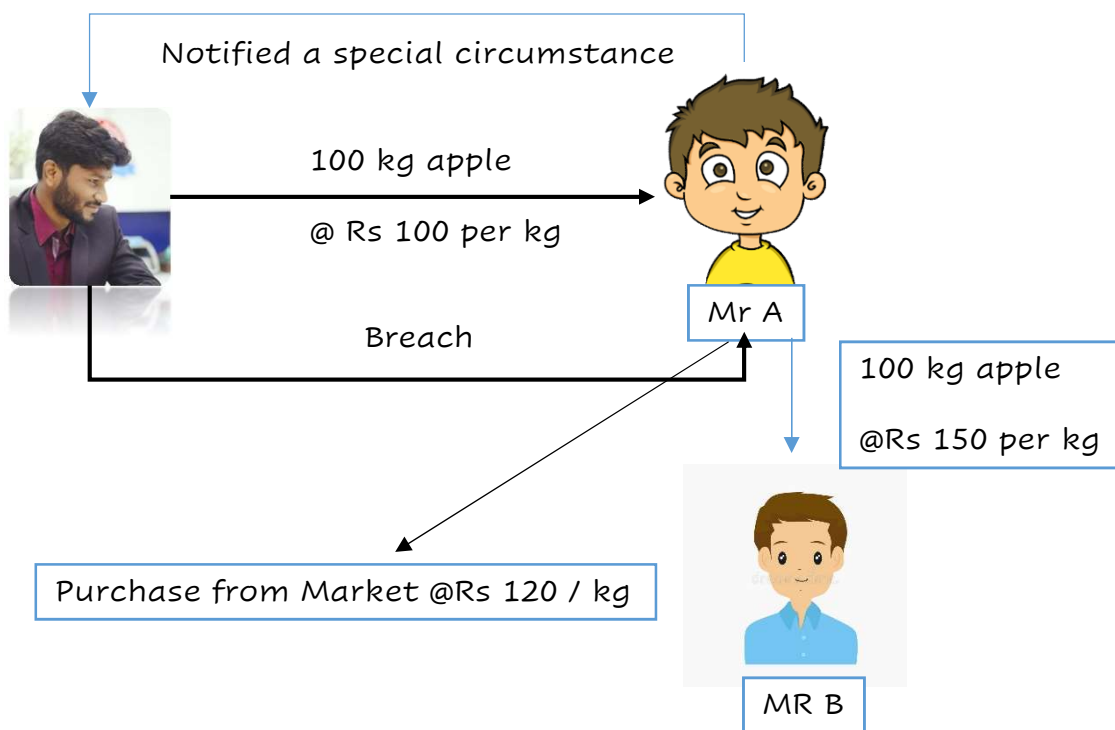
s: When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage



➤ Mr A is entitled to recover compensation of Rs 20 per Kg

## 2. Special Damages

Where a party to a contract receives a notice of special circumstances affecting the contract, he will be liable not only for damages arising naturally and directly from the breach but also for special damages.



- Here SDB sir is entitle to recover the damages @ 50 / kg ( not purchase from Market)
- SDB is entitle to recover the damages of RS 30 / kg ( Purchase from market )

### Case study

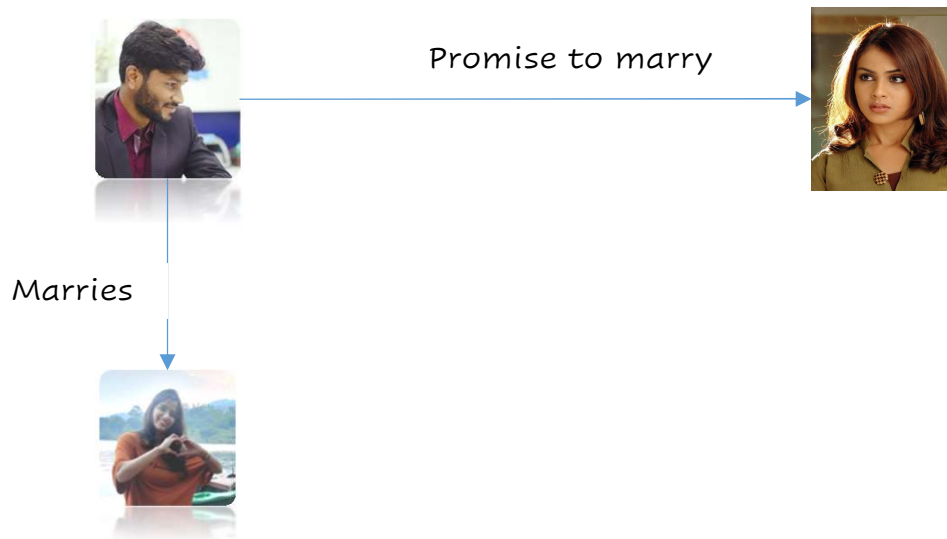


- Shipping charges ☒
- Factory worker , sale ☐
- Government – 2 crs ☐

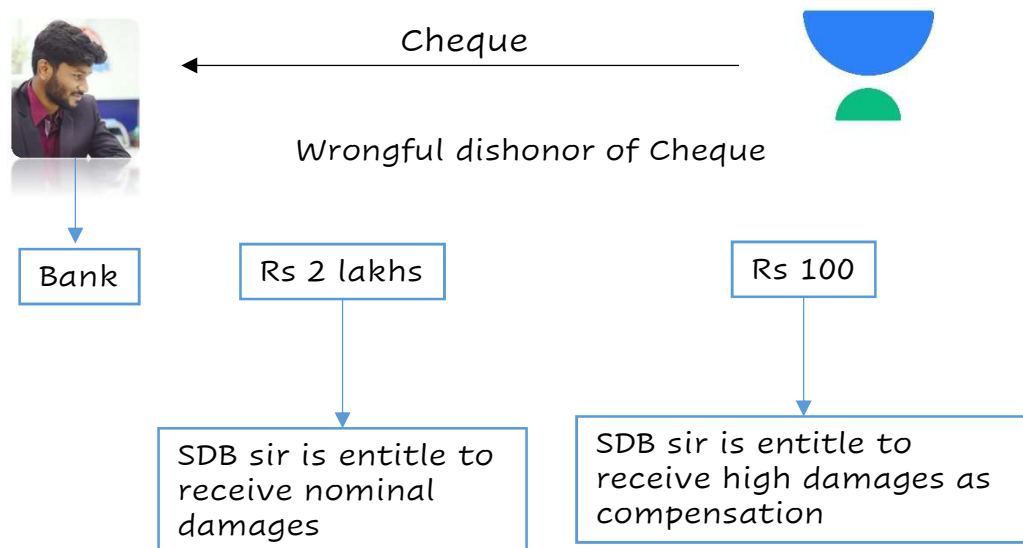
### 3. Vindictive or exemplary damages

These damages may be awarded for

- 1) for breach of promise to marry because it causes injury to his or her feelings; and



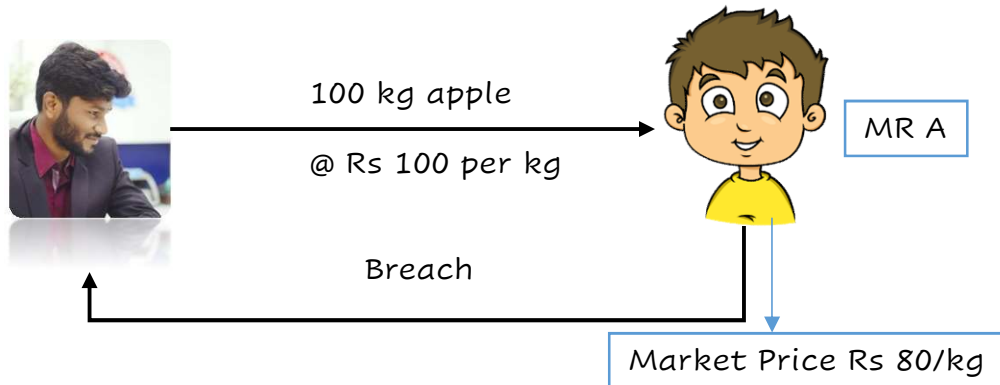
- 2) Wrongful dishonor by a banker of his customer Cheque because it causes injury of reputation to him





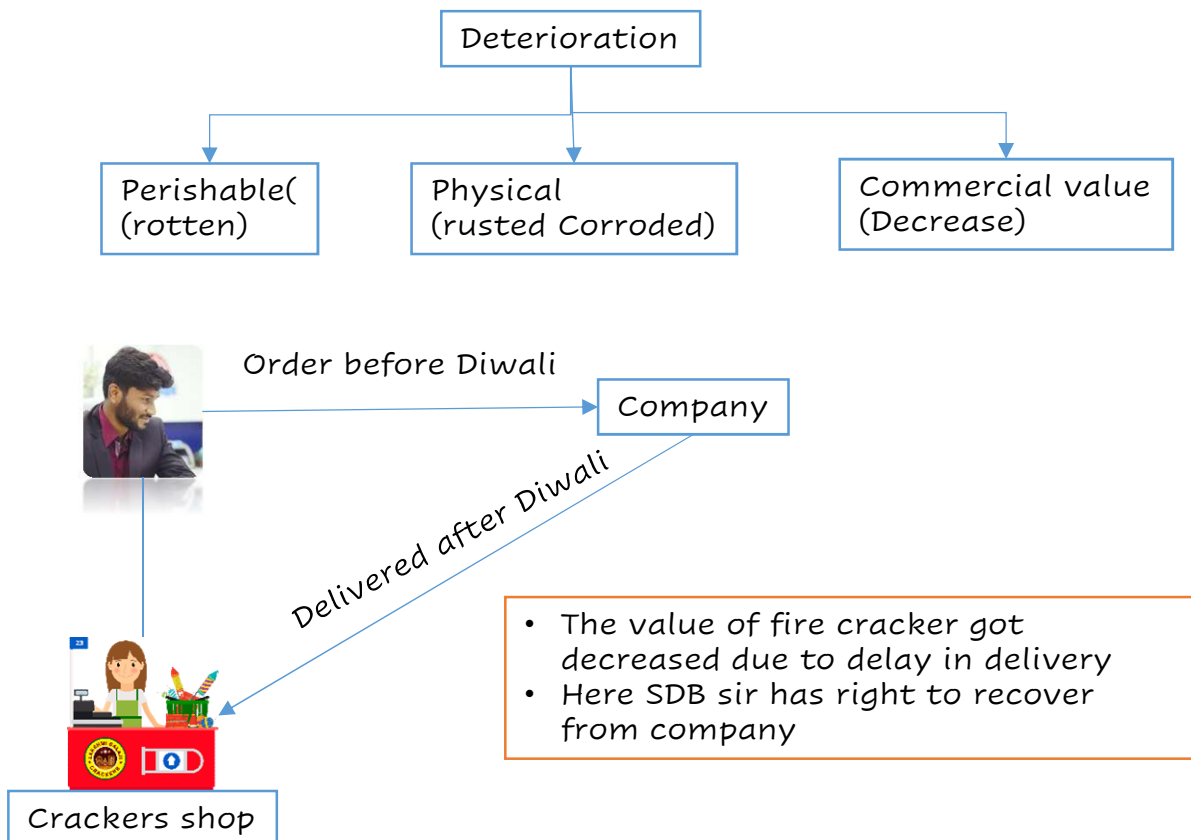
#### 4. Nominal Damages

Nominal damages are awarded where the plaintiff has proved that there has been a breach of contract but he has not in fact suffered any real damage. It is awarded just to establish the right to decree for the breach of contract.

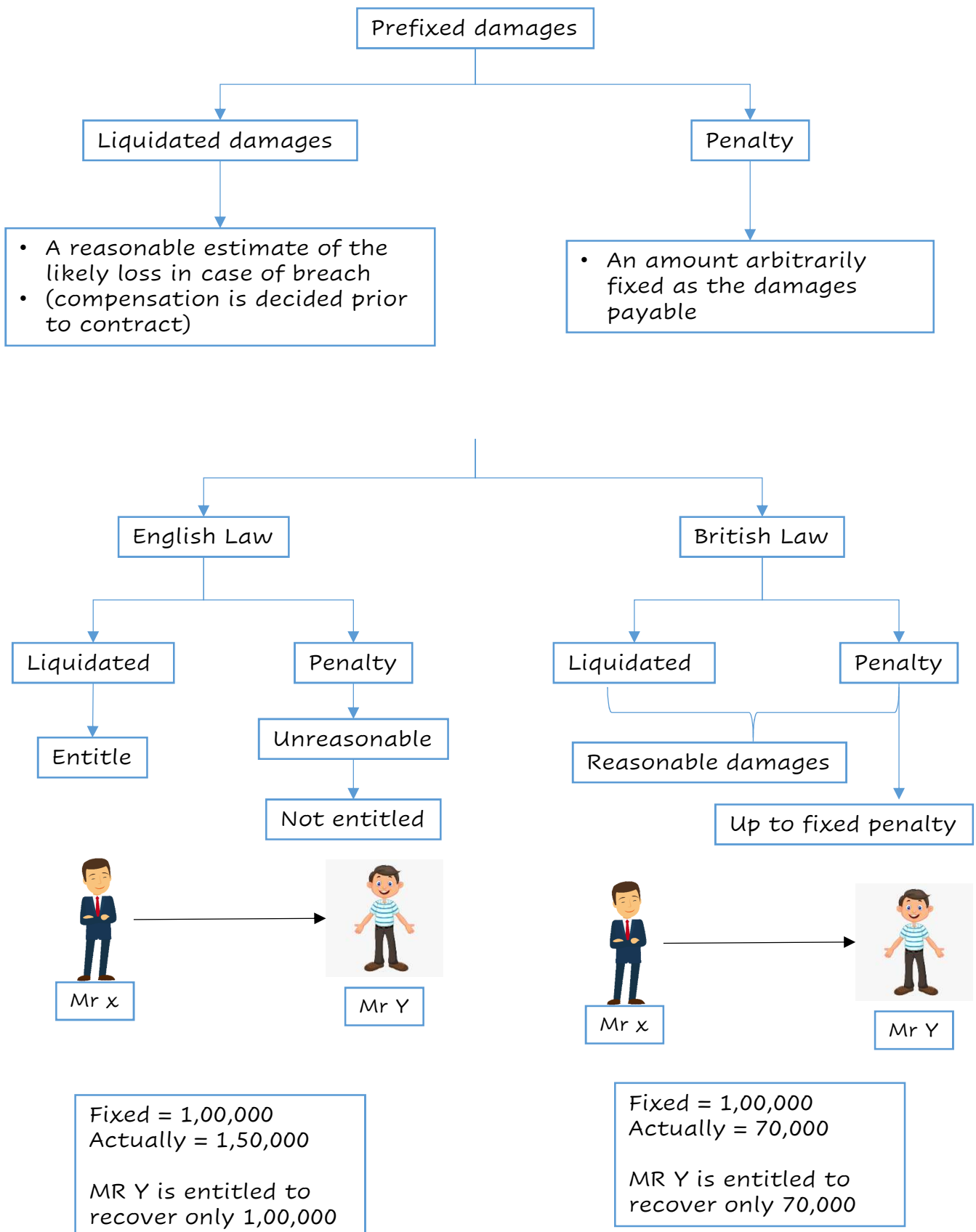


Mr A is entitled to collect may be a rupee or even 10 paise

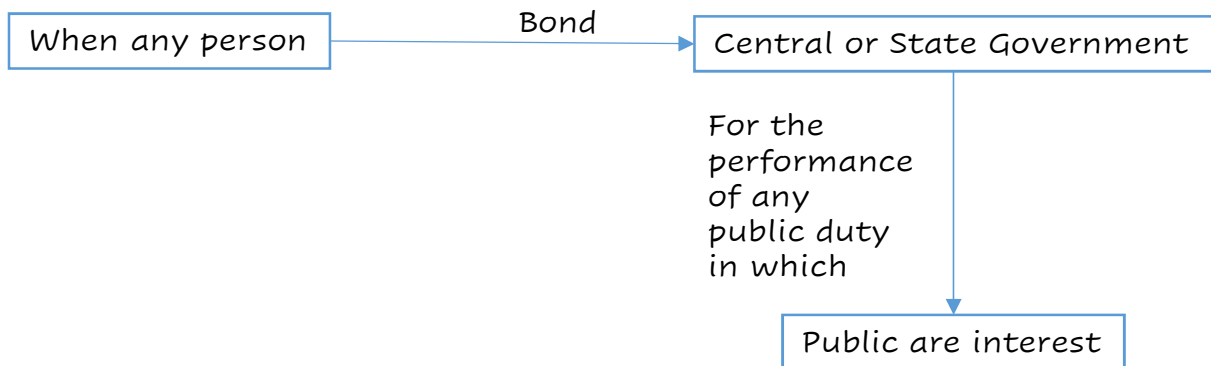
#### 5. Damages for deterioration caused by delay



## 6.Pre fixed Damages



## Exceptions



Here that person has to compensate to the whole sum mentioned in the contract T & C

## Following remedies

### 1. Recession of Contract

When contract is broken by one party , other party can cancel the contract

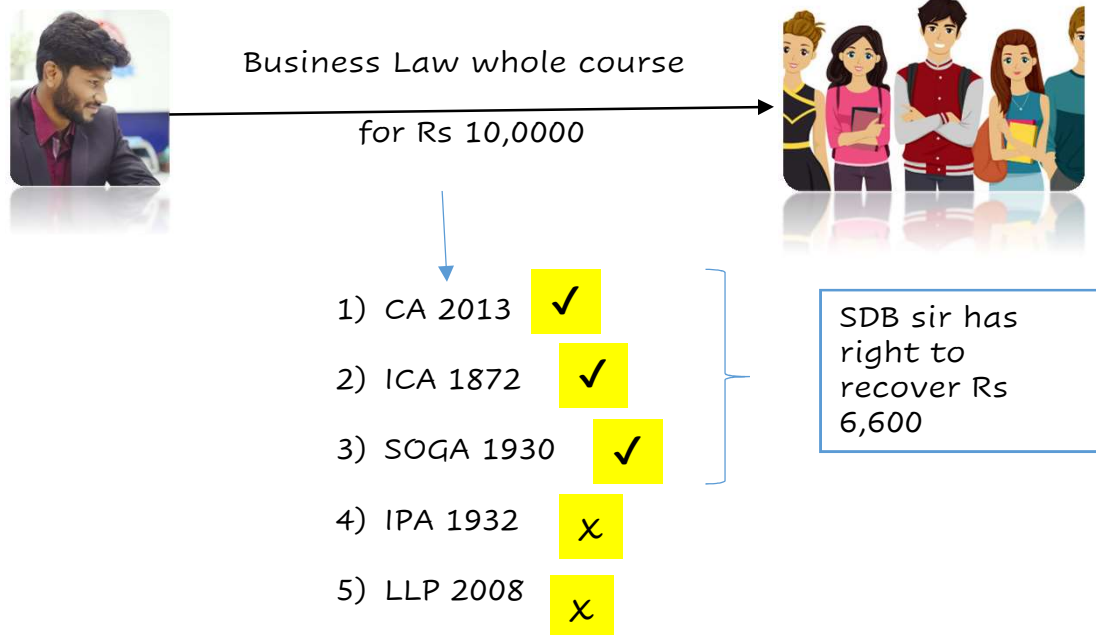
### 2. Quantum Meruit

As much as the party doing the service has deserved

For the application of this doctrine, two conditions must be fulfilled

- (1) It is only available if the original contract has been discharged.
- (2) The claim must be brought by a party not in default.

## Example



## Claim for Quantum Meruit arises

The claim for quantum Meruit arises in the following cases:

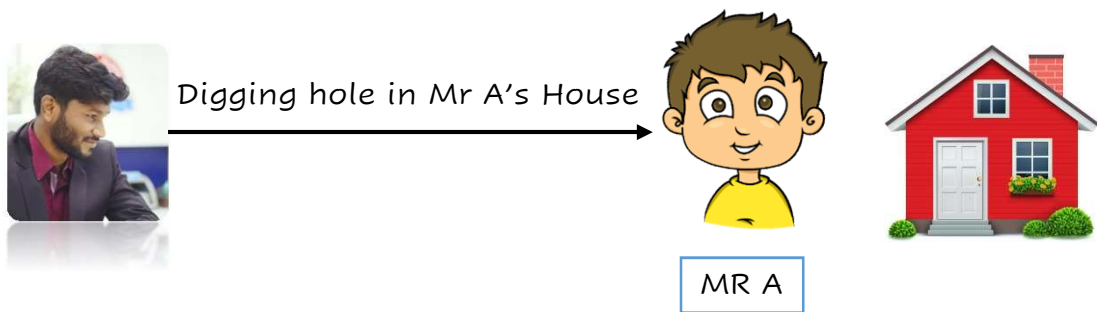
- (a) When an agreement is discovered to be void or when a contract becomes void.
- (b) When something is done without any intention to do so gratuitously.
- (c) Where there is an express or implied contract to render services but there is no agreement as to remuneration.
- (d) When one party abandons 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.

### 3. Specific performance

: Where damages are not an adequate remedy in the case of breach of contract, 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.

### 4. 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



- Mr A can complaint in the court
- The court issue "injunction order " to stop SDB sir to dig a hole

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

A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through non-fulfilment of the contract.



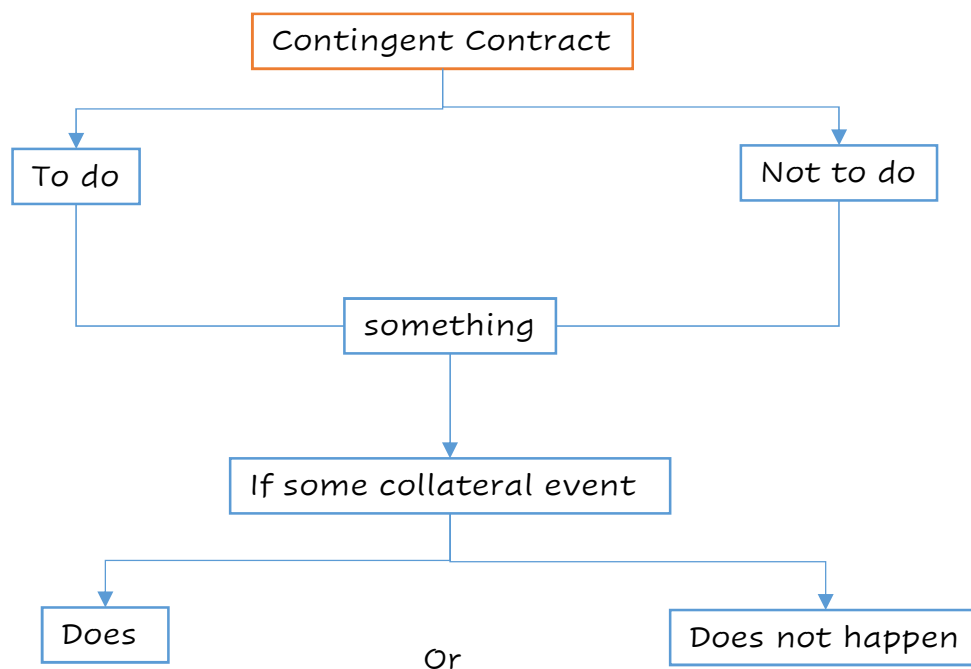
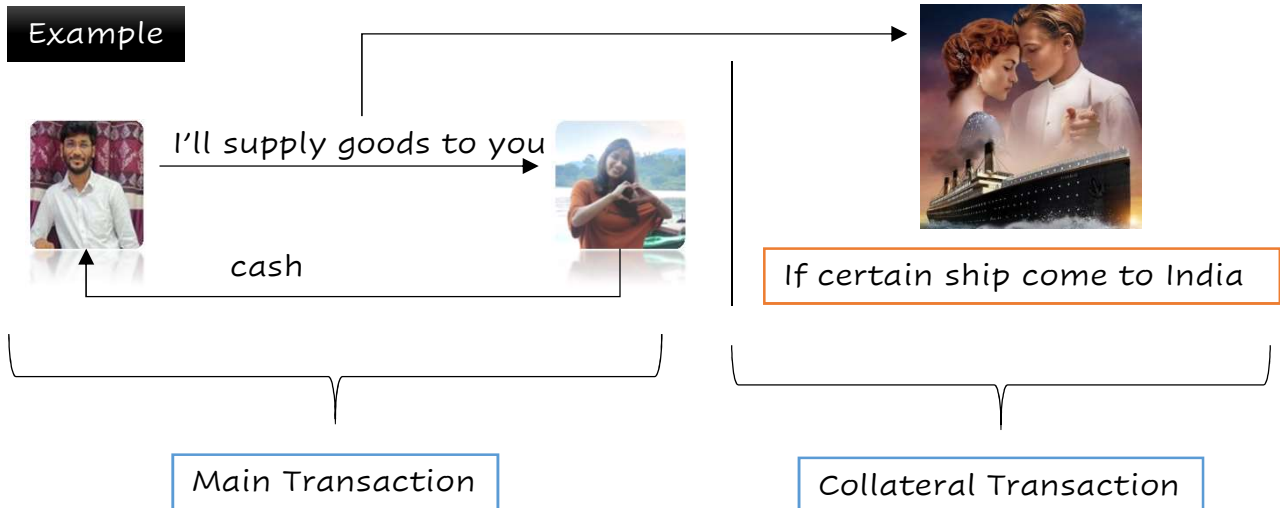
## Unit 6

# Contingent & Quasi Contracts

# Unit 6. Contingent & Quasi Contracts

## 1. Introduction :

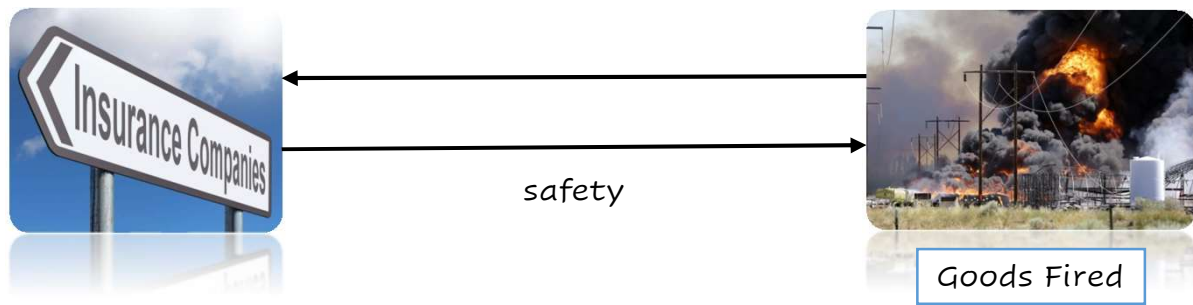
### Contingent contract – Section 31



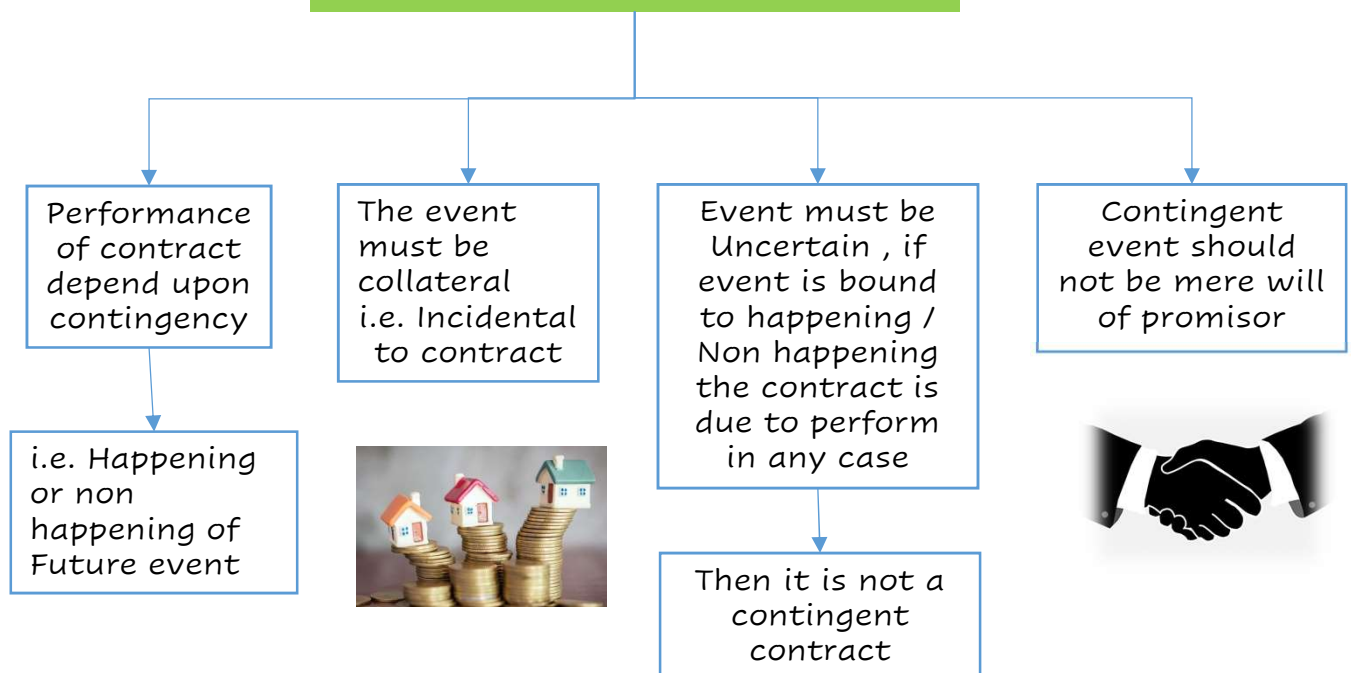
### Definition of 'Contingent Contract' (Section 31)

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

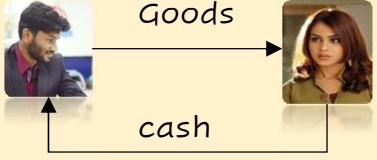
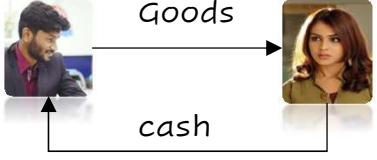
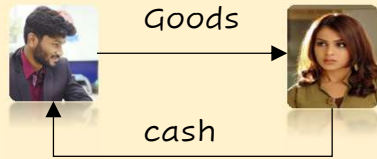
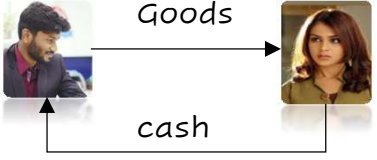

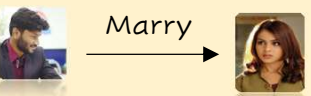
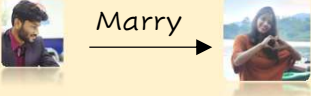
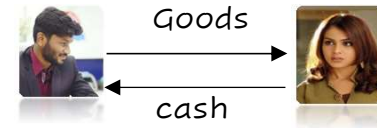
## Example



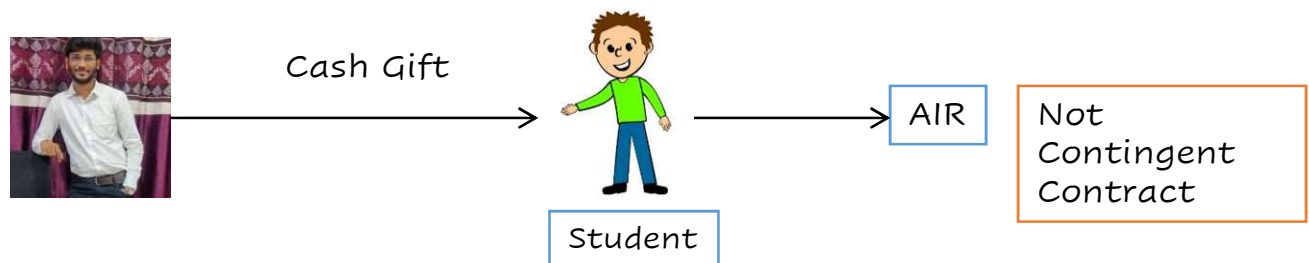
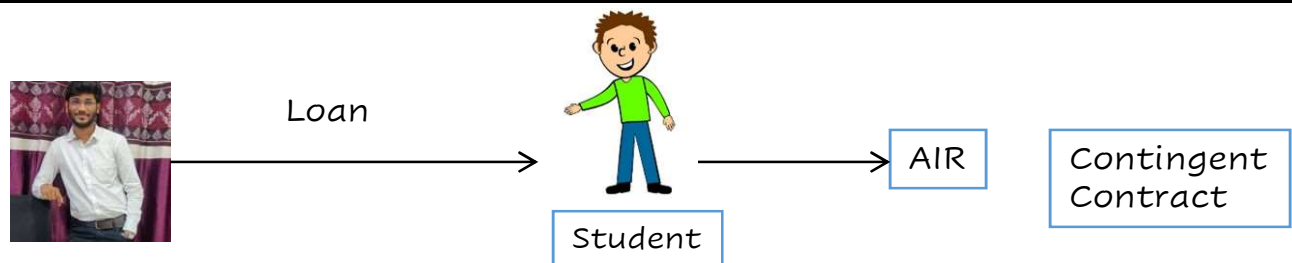
## Essentials of Contingent Contract





Rule	Example	Enforceable	Void
<b>1. Happening of Event</b> <b>(Section 32)</b>	 <p>Depends on Ship reach</p>	If ship reach to India	Event is impossible to happen (if ship Sinks)
<b>2. Non Happening of event</b> <b>(section 33)</b>	 <p>Ship not reach</p>	Event is impossible to happen (if ship Sinks)	When ship reaches Event Happens
<b>3. Happening of event in stipulated time</b> <b>(Section 35)</b>	 <p>If ship reaches before Oct 7</p>	If ship reach before Oct 7 <sup>th</sup> Happening within time	1. Not happen in time 2. Impossible to happen
<b>4. Non Happening within time</b> <b>(Section 35)</b>	 <p>If ship not reaches on Oct 7</p>	1. Not happen in time 2. Impossible to happen	Happening within time
<b>5. Contract contingent upon Future conduct of living person</b>	 <p>if</p>	Conduct of 3 <sup>rd</sup> party happen 	 <p>Person does something that make event impossible within definite period or other wise under future contingency</p>
<b>6. Contingency impossible to happen</b> <b>(section 36)</b>	 <p>         ➤ Calculate stars in sky          ➤ Dead to life       </p>	Not at all Enforceable	Void from begining

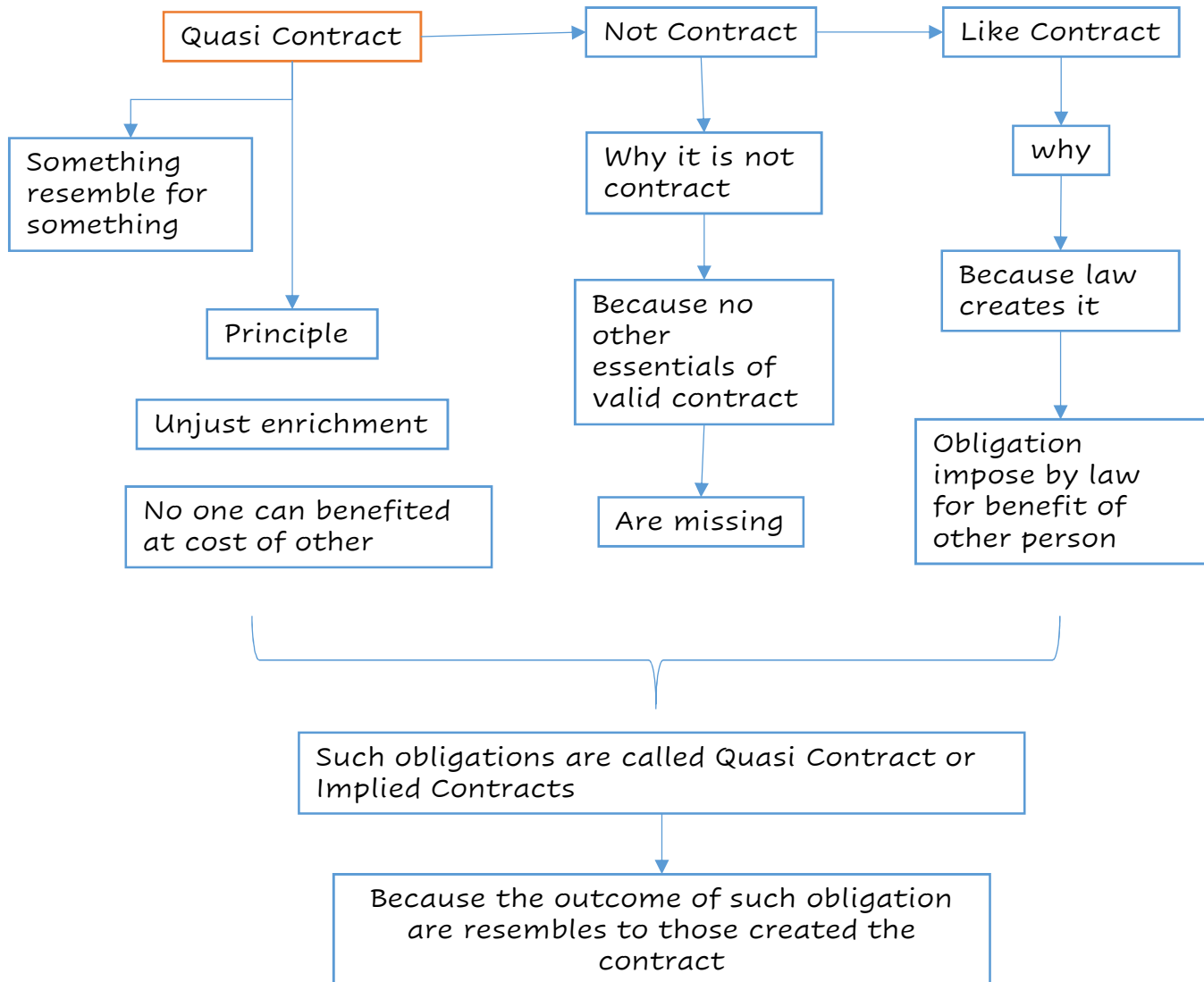
## Example



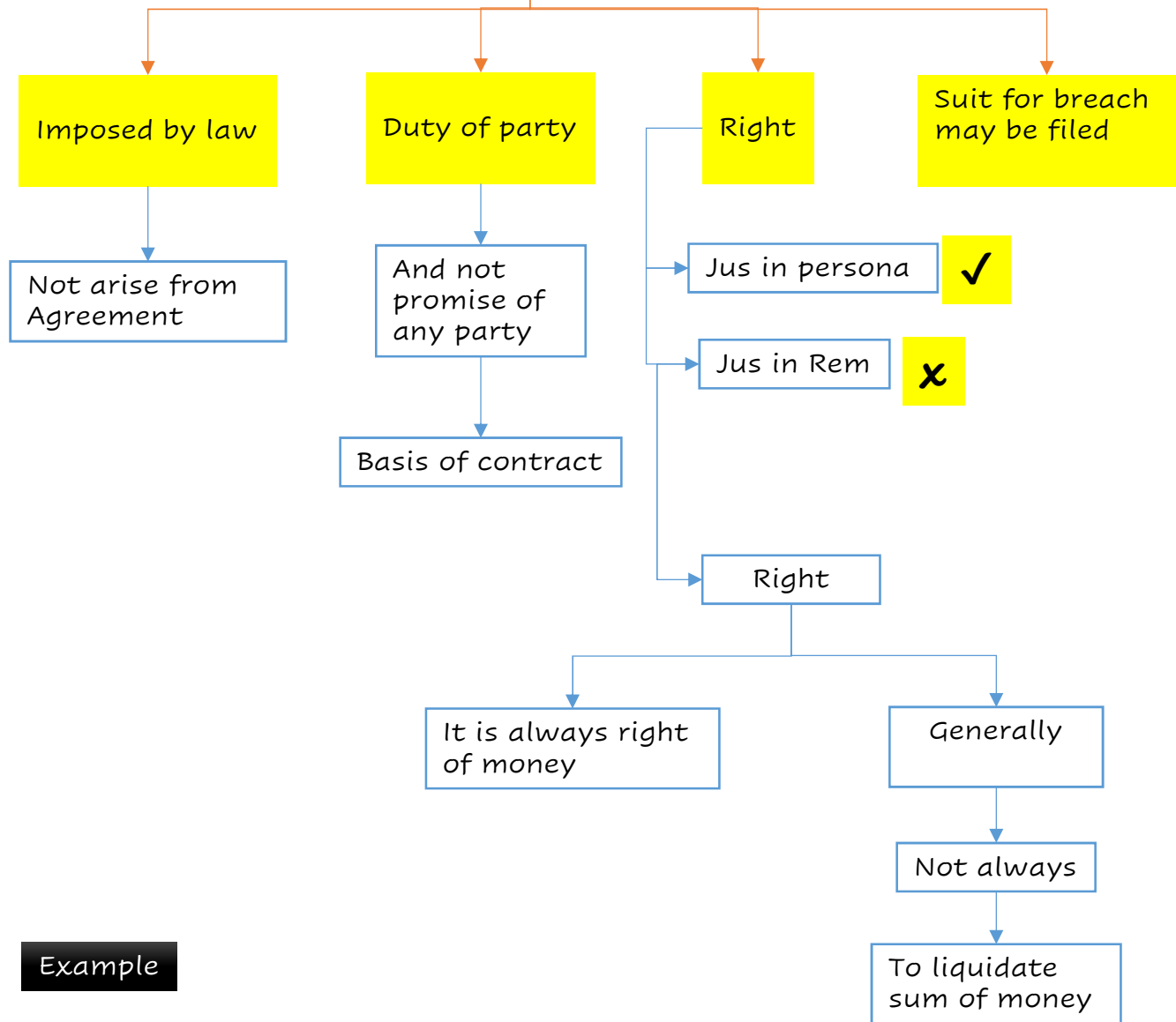
## Difference between wagering Agreement & contingent Contract

Basis	Wagering	Contingent
1. Meaning	A contingent contract is a contract to do or not to do something with reference to a collateral event happening or not happening.	A wagering agreement is a promise to give money or money's worth with reference to an uncertain event happening or not happening
2. Interest	➤ Don't have interest for parties	➤ Have interest for parties
3. Main Transaction	➤ Uncertain	➤ valid
4. Collateral transaction	➤ May / May not	➤ always

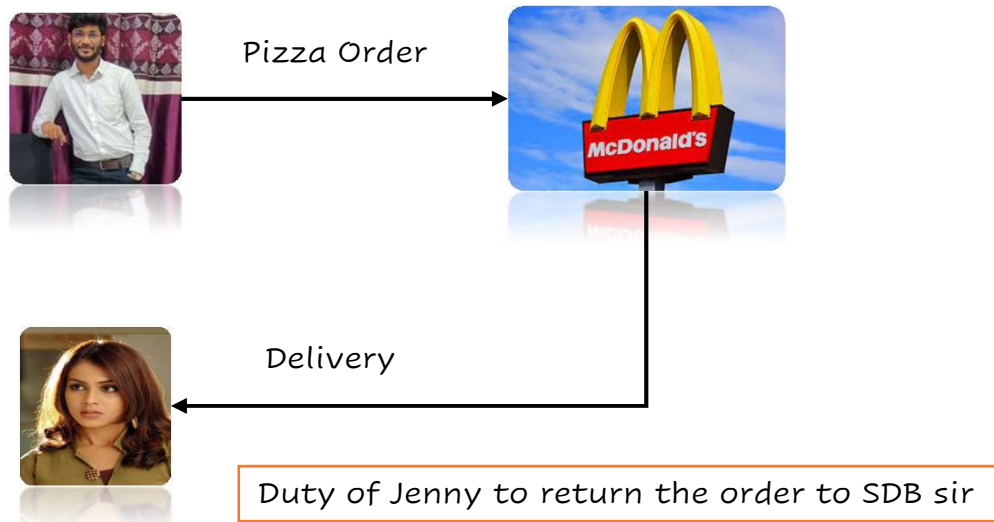
## Section 68 – 72 Quasi Contract



## Features of Quasi Contract



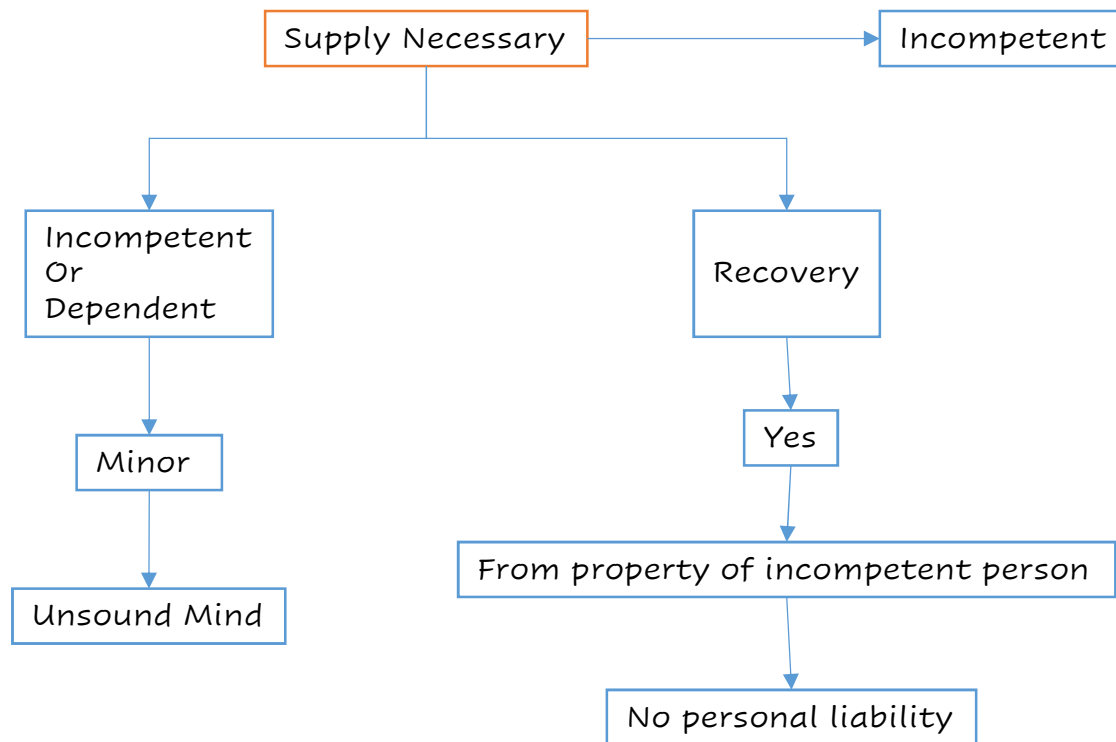
### Example



## Cases of Quasi Contract

### Section 68

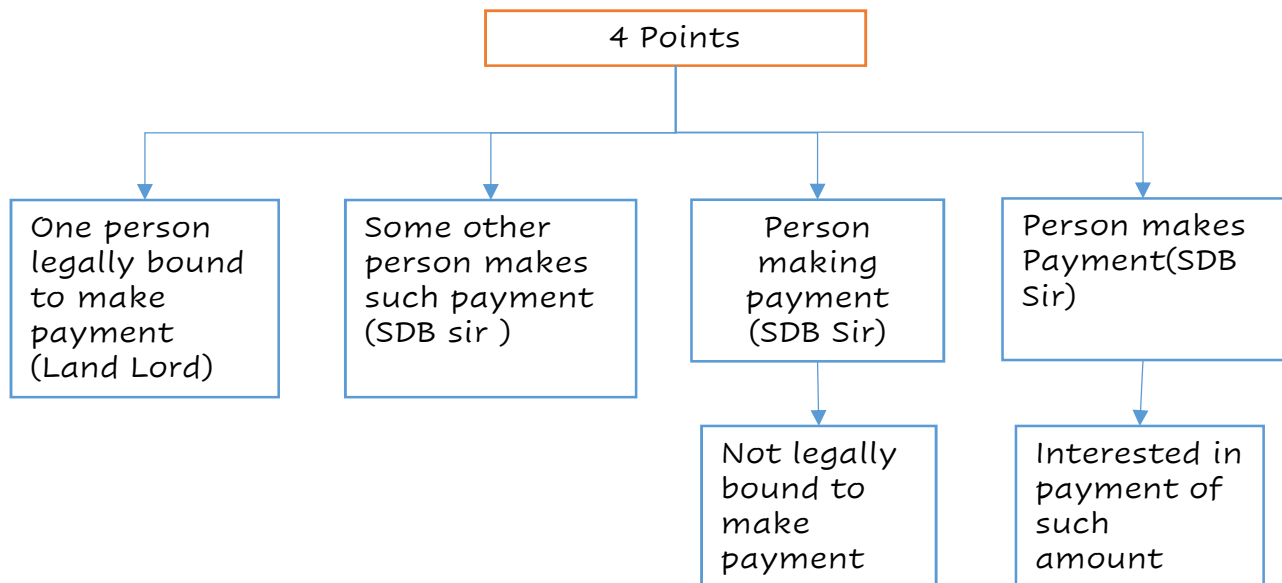
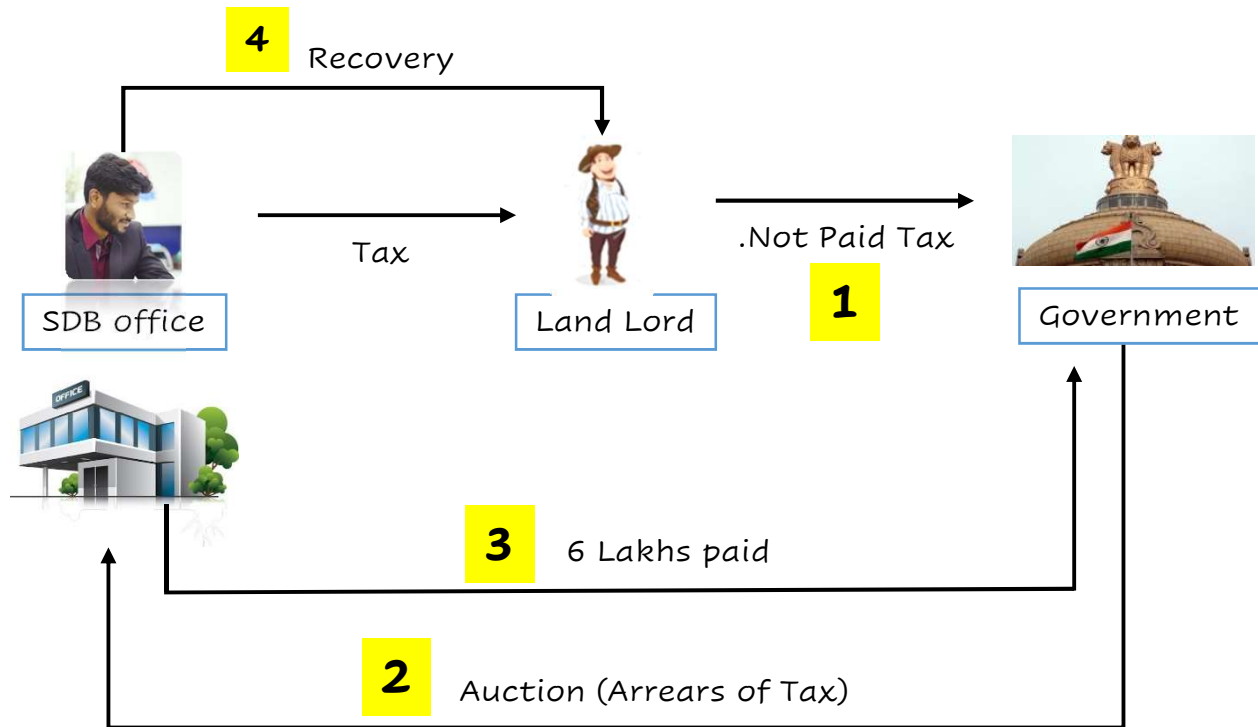
#### 1. Supply of necessities to person who is incompetent to contract



Note : No Property – No liability



## 2. Right to recover money paid to another person



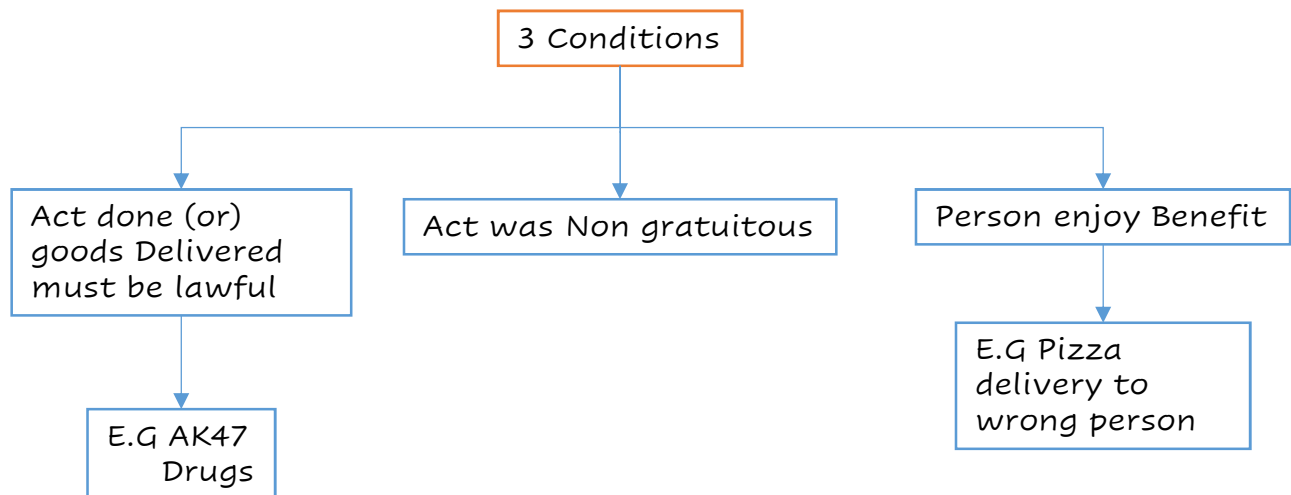
## Section 70

### 3. Non Gratuitous Act

➤ It is Obligation of person who enjoy benefit of Non Gratuitous Act

#### Example

1. Coolie
2. Shoe Polish
3. Pizza delivery

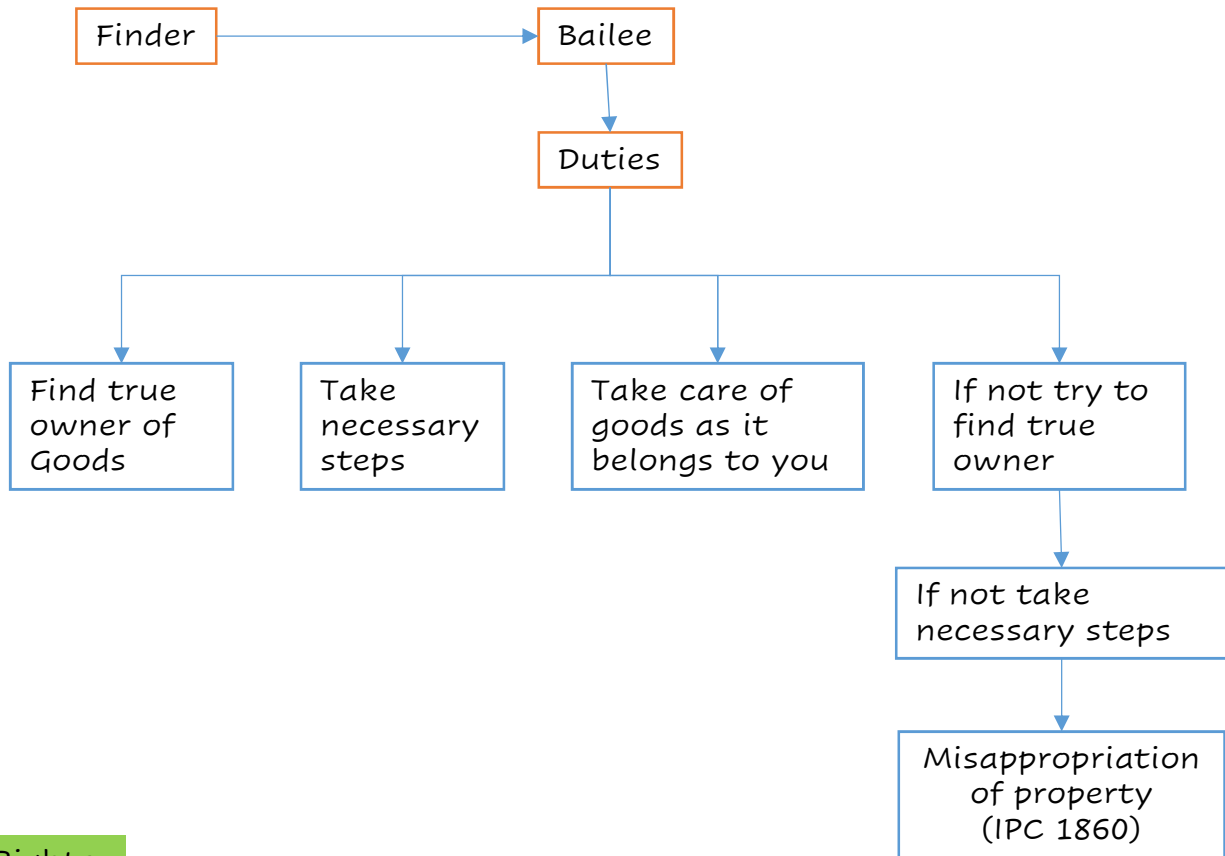


: In term of section 70 of the Act “where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered”



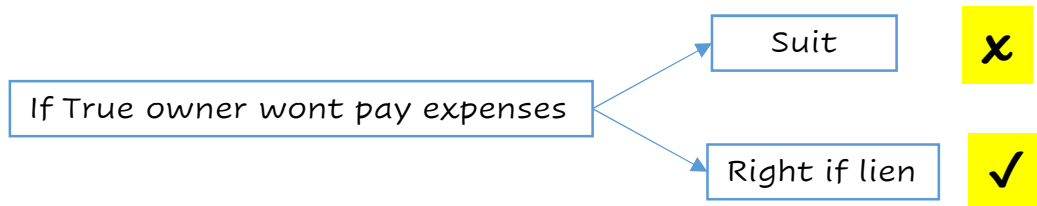
## Section 71

### 4. Finder of Goods

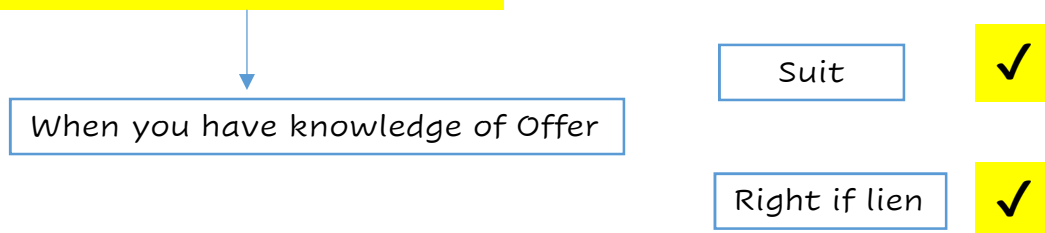


### Rights

#### 1. Right to recover Expenses from True Owner



#### 2. Right of Reward



### 3. Right to Sale

1. True owner not Found

**or**

2. Find , but not refunded amount of expenses

A) Goods – Perishable – sale

**or**

B) Goods value –  $\frac{2}{3}$ <sup>rd</sup> expenses – can sell

## Section 72

### 5. Liability of person to whom money paid under coercion

"A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it". Every kind of payment of money or delivery of goods for every type of 'mistake' is recoverable



Varun



Bike

