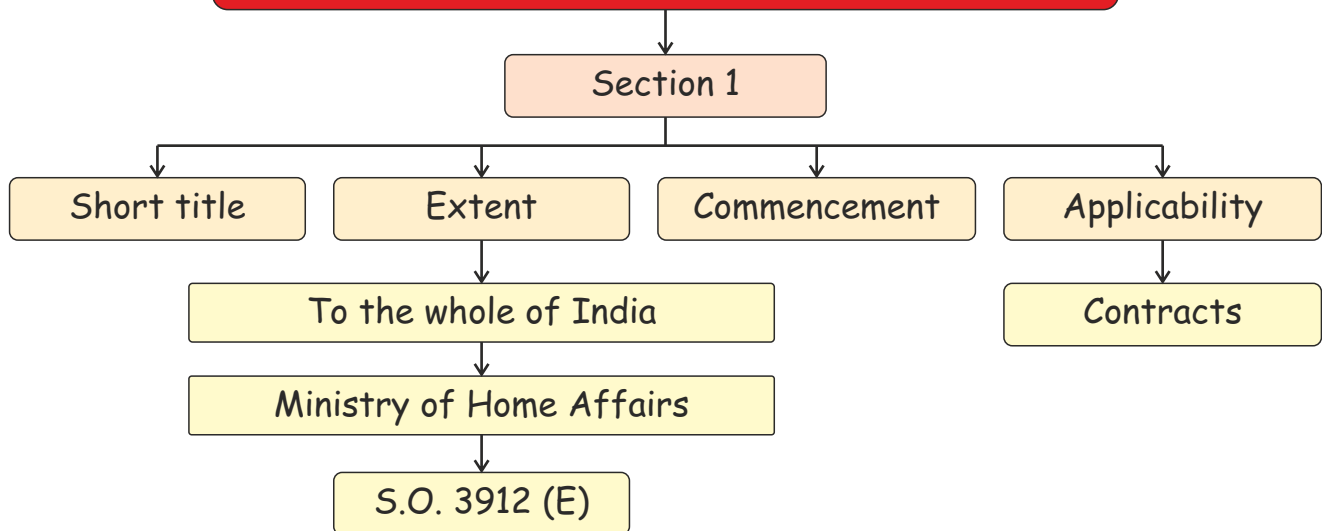
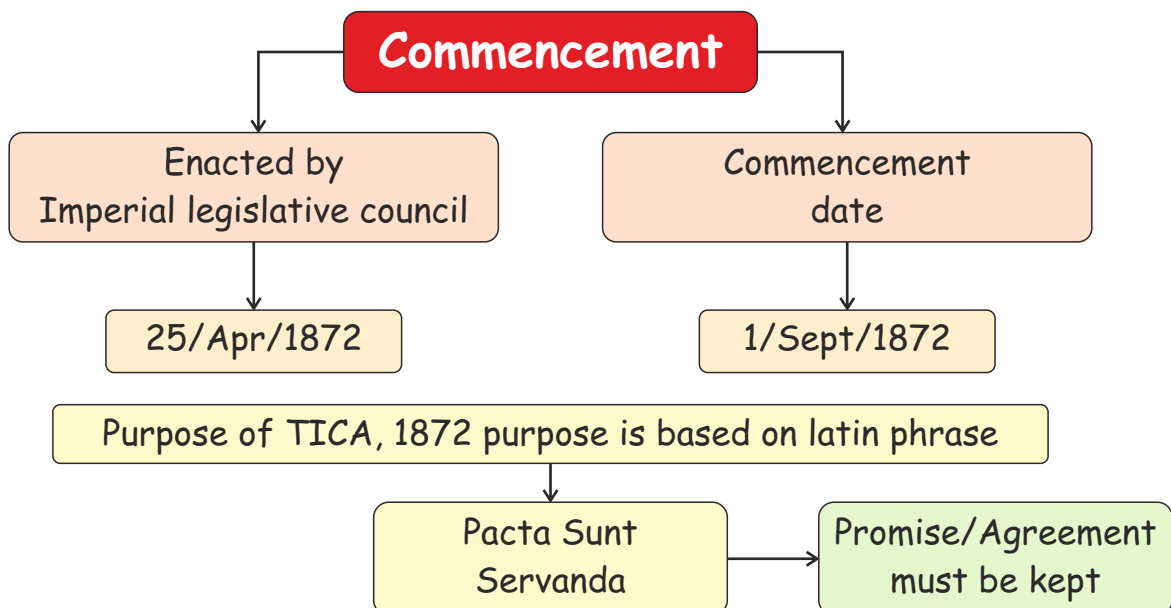


Chapter - 2

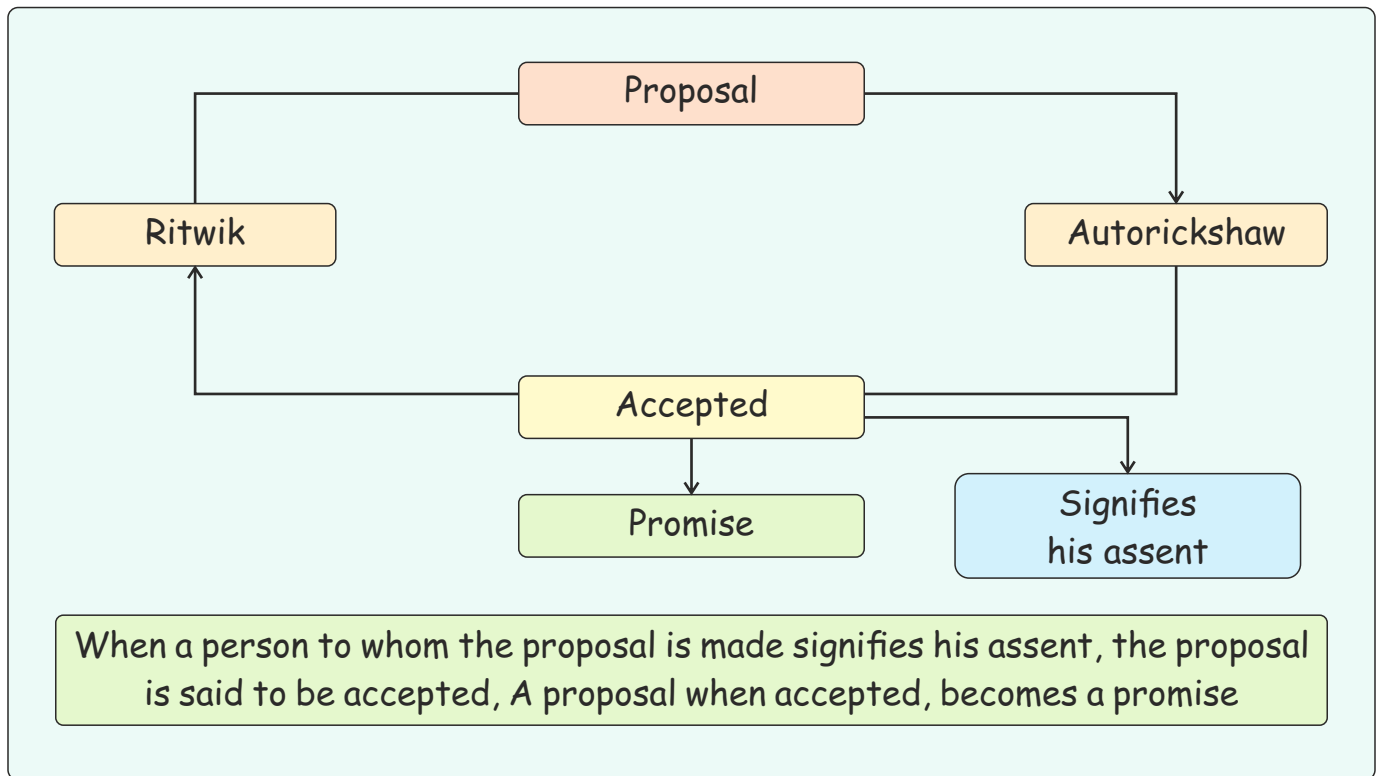
The Indian Contract Act, 1872



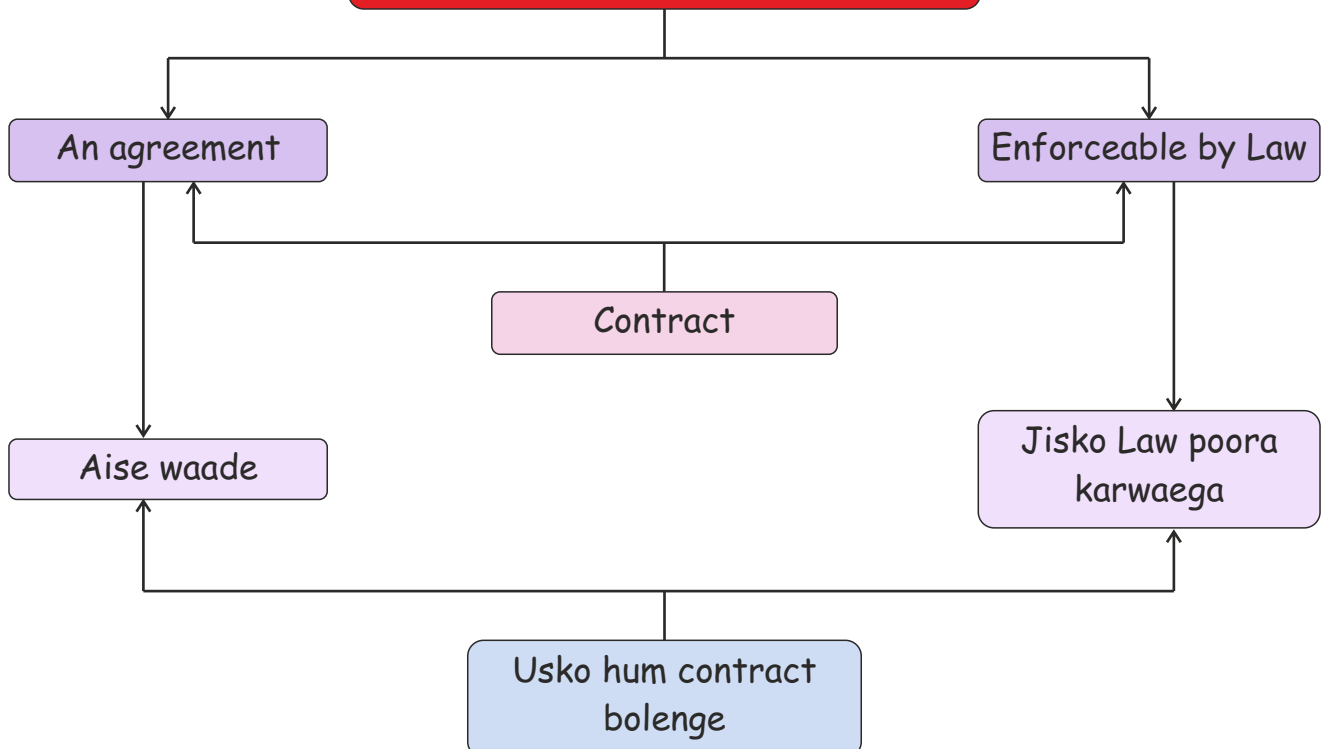
Commencement

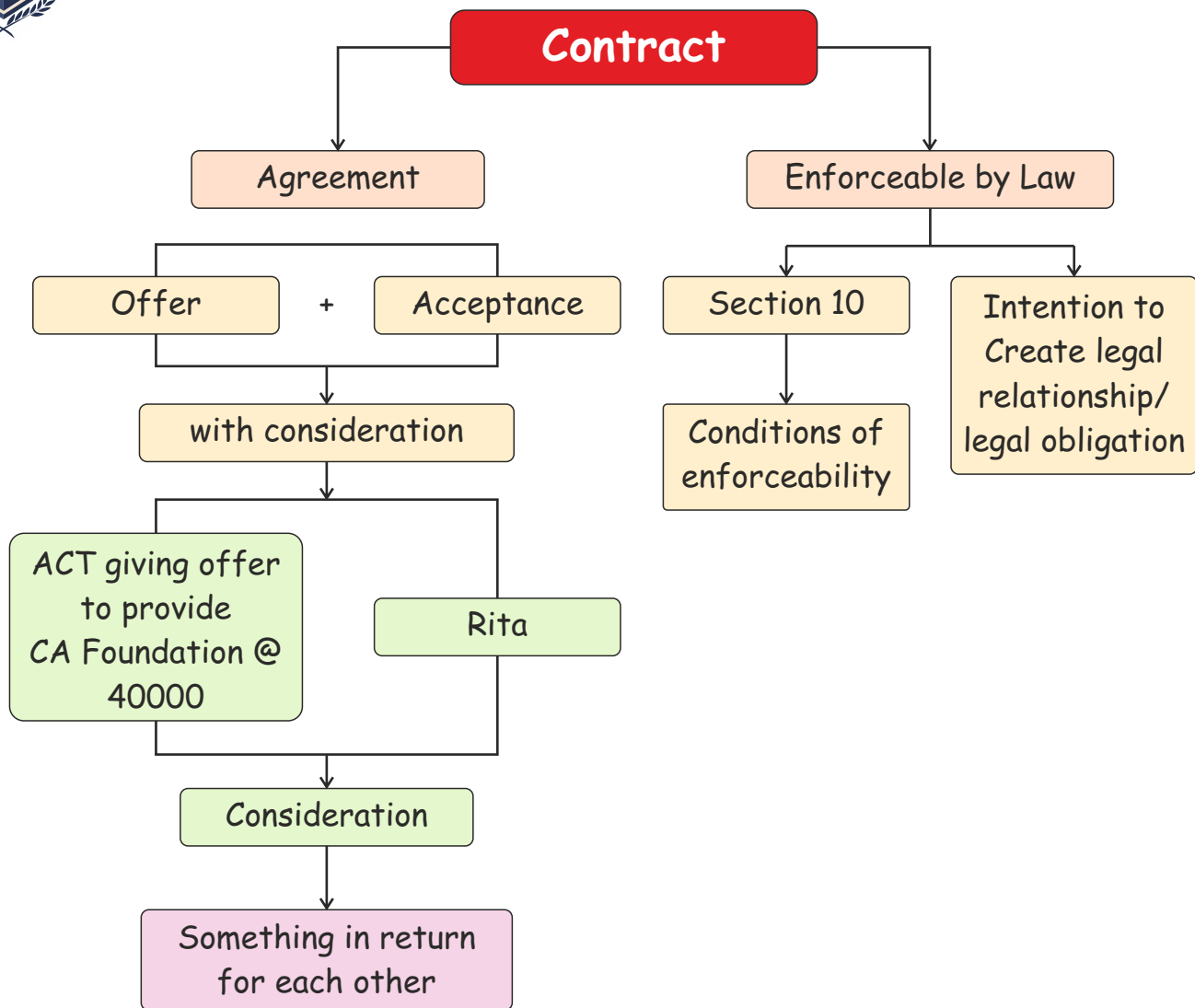


Promise [Section 2 (b)]



Contract [Section 2 (h)]





Promise [Section 2 (b)]

Offer + Acceptance

Agreement [Section 2 (e)]

Every promise & every set of promises forming consideration for each other

Agreement [Section 2 (e)]

Promise + Consideration

Contract [Section 2 (h)]

Agreement + Enforceable by law

Contract = Offer + Acceptance + Consideration + Enforceability of law

Usual Presumption

Social/Domestic agreements

Parties did not intend to create legal relationship

Commercial/Business agreements

Parties intend to create legal relationship

Unless otherwise agreed [honour clause]

Conclusion

Social/Domestic agreement

+

Intention to create legal relationship

Contract

Business/Commercial agreement

+

No intention LR

Agreement

Intention to create LR

Balfour vs Balfour [1919]

The agreement was not enforceable by law as there was no intention to create LR

Merrit vs Merrit [1970]

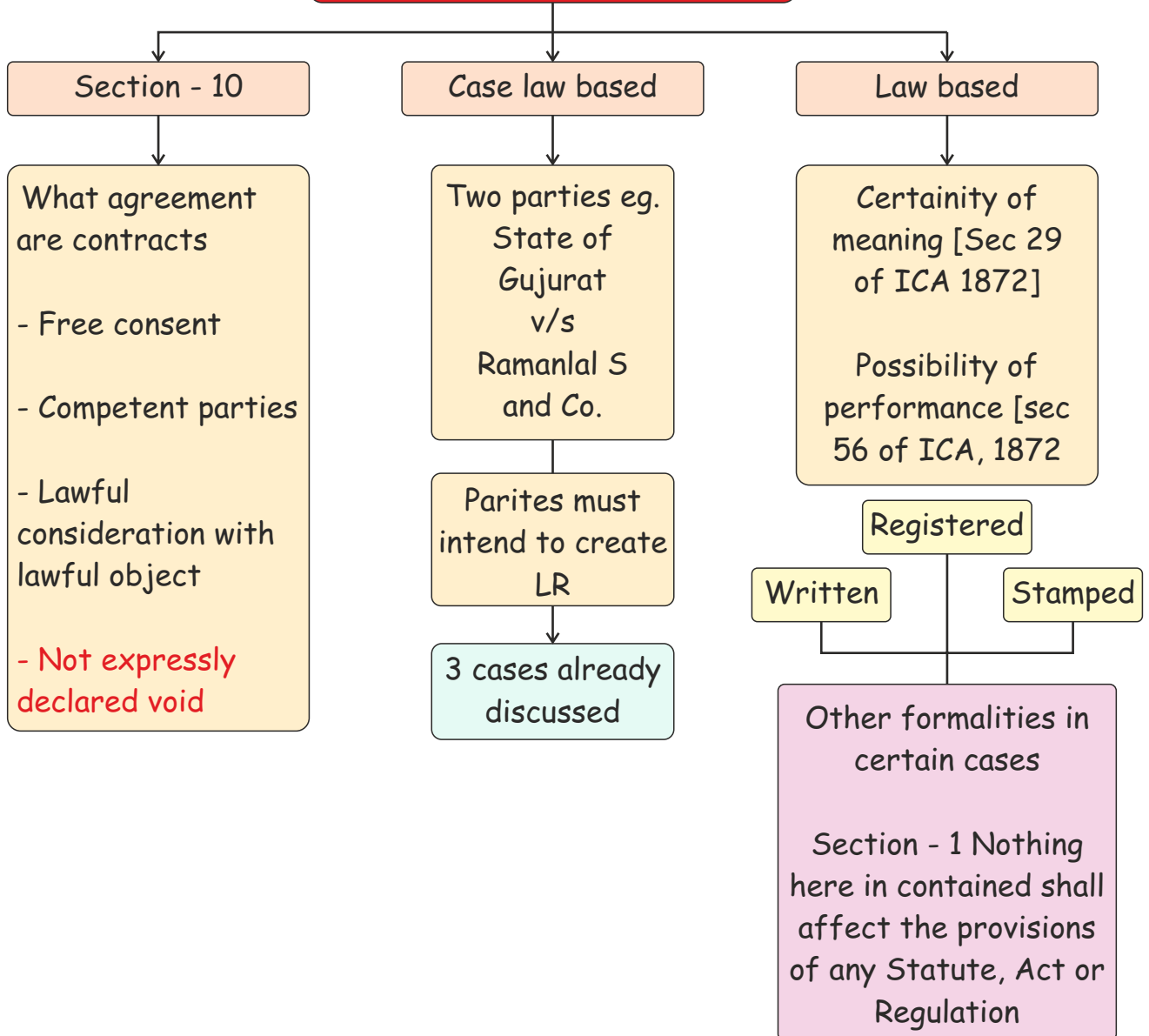
When the parties are in process of separating or separated. Presumption of no intention to create LR does not apply

Rose & Frank co. vs Crompton Bros

The agreement was not enforceable by law as parties never intended to create LR. Despite being business agreement

Honour clause
Express statement in a contract that an agreement is intended to be binding in honour only & is therefore not legally enforceable

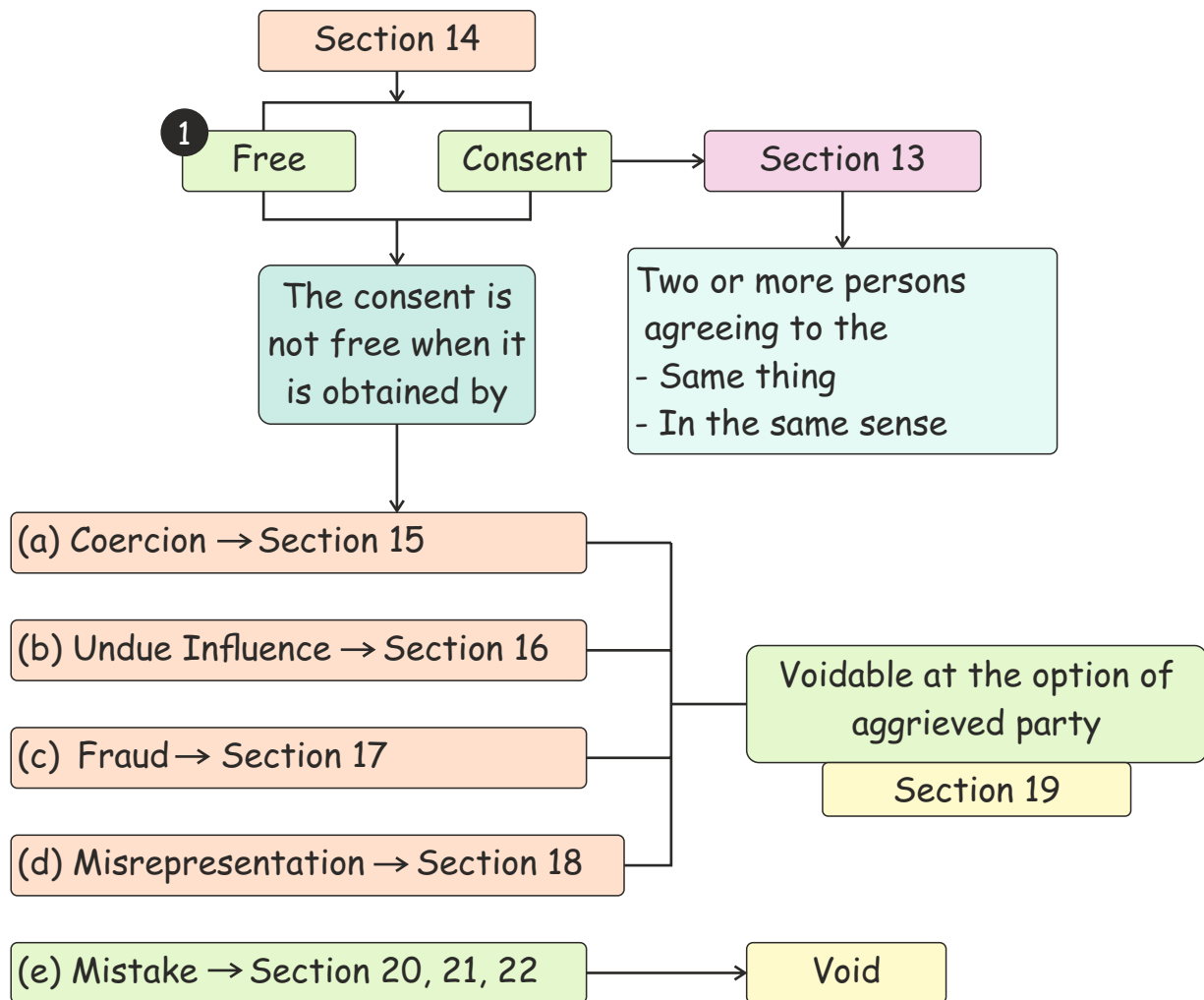
Enforceable by law



Meaning of certainty

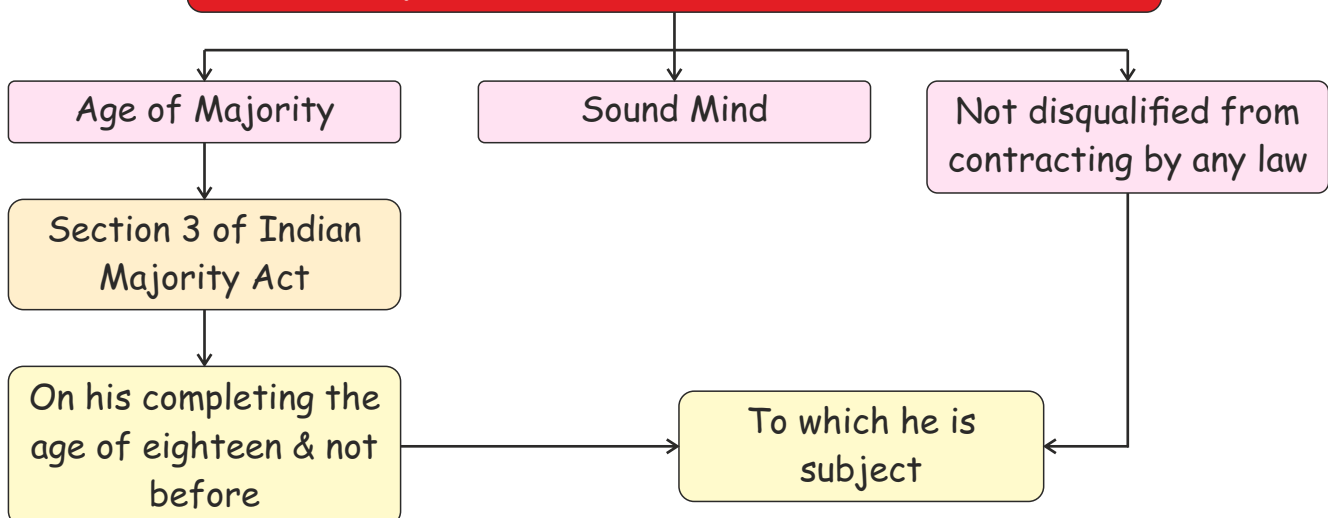
Certain - Clear
Definite - Complete
Not Vague - No Confusion

Section - 10



2

Competent Parties [Section 11]



Sound mind [Section -12]

Capable of understanding
the terms of the contract

And

Of forming
a rational judgement

Disqualified from contracting

Alien Enemy

Convict

Insolvent

Desserter

Foreign
Soverign

Foreign Soverign Immunities Act [FISA], 1976

Soverign

State / Country not controlled by another country → Independent

India Recognizes the maxim

"Par in parem not habet imperium"

one soverign state is not subject to jurisdiction of another state

Exception under section 86 of Code of
Civil Procedure 1908.

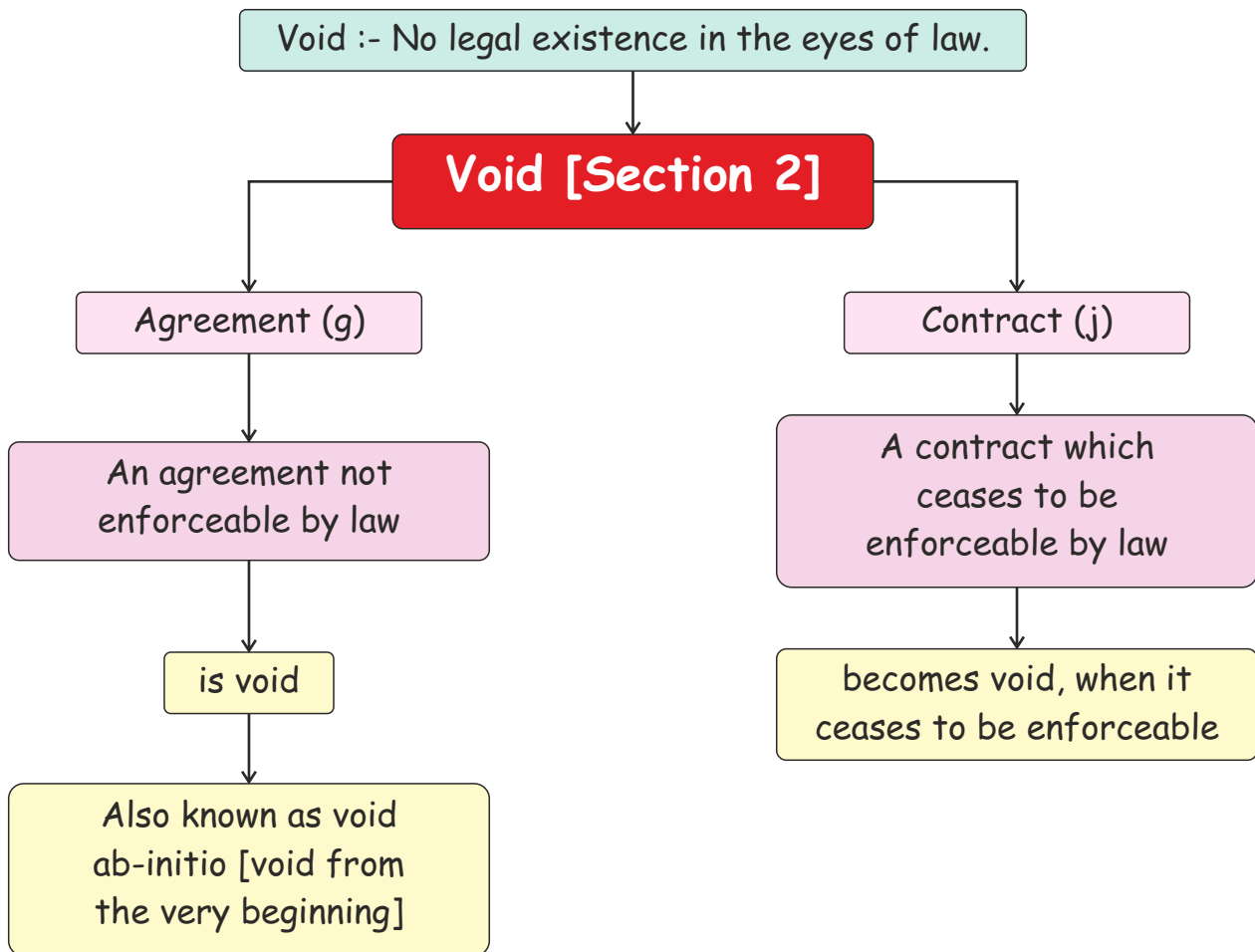
Any person may sue foreign state with consent of

CG

Secretary of State

First case

Mirza Ali Akbar Kashani V. United Arab Republic



Example

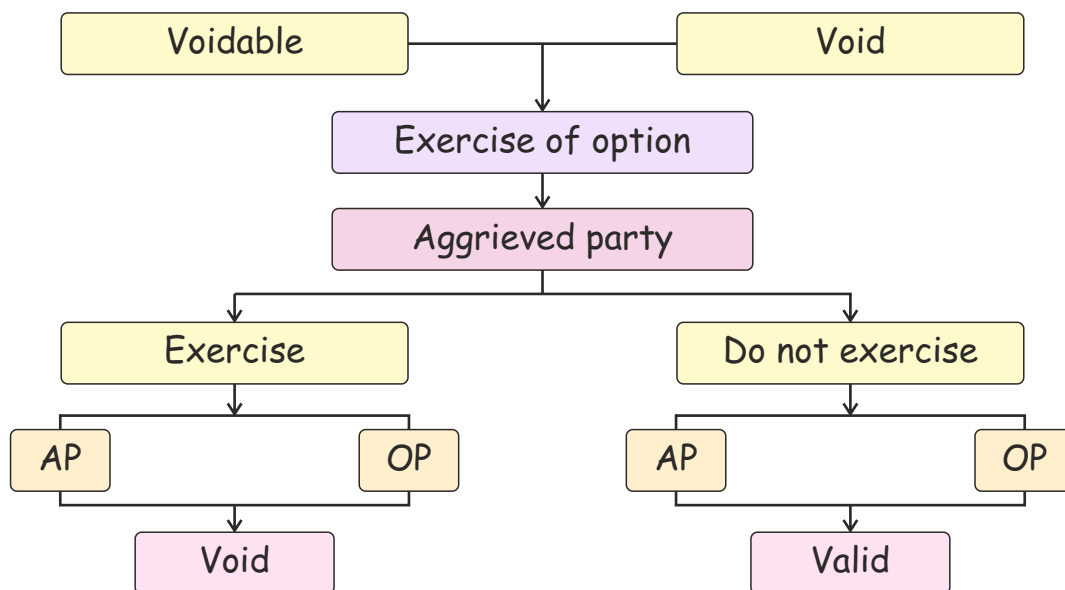
- i) Agreement with minor
- ii) Agreement to do impossible acts
- iii) Agreement the meaning of which is uncertain.

Voidable Contract [Section 2 (i)]

Enforceable at the option of aggrieved party
Aggrieved party chahe toh isko void bana sakta hai

Voidable at the option of AP

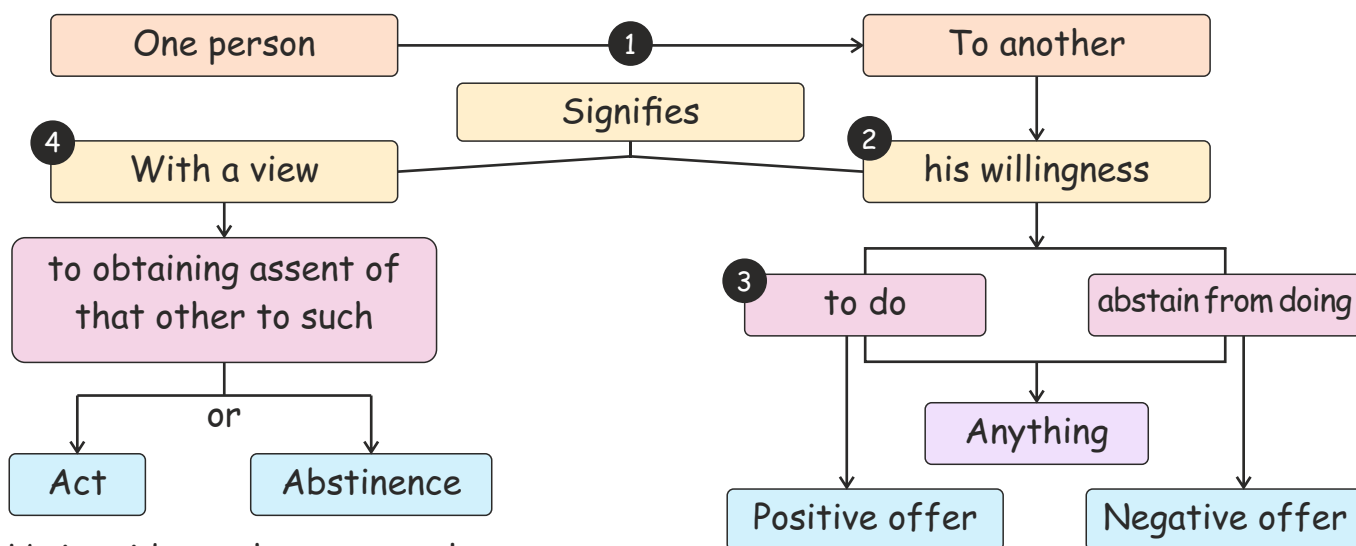
AP is having right to make a contract void in which his consent was not freely obtained



Key points

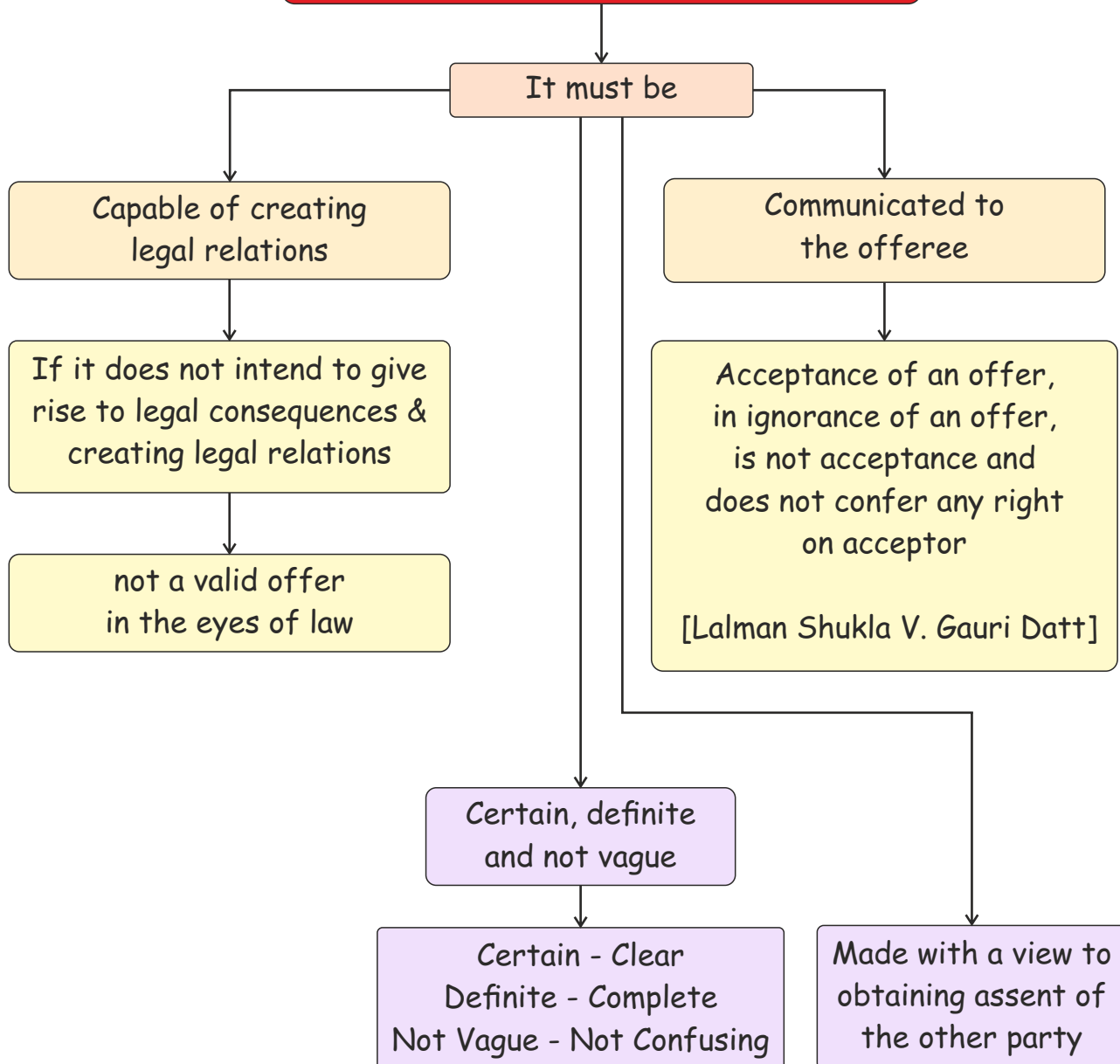
- (1) The contract is valid until & unless the AP is exercising the option
- (2) The AP must exercise the option within reasonable time

Proposal/Offer [Section 2 (a)]

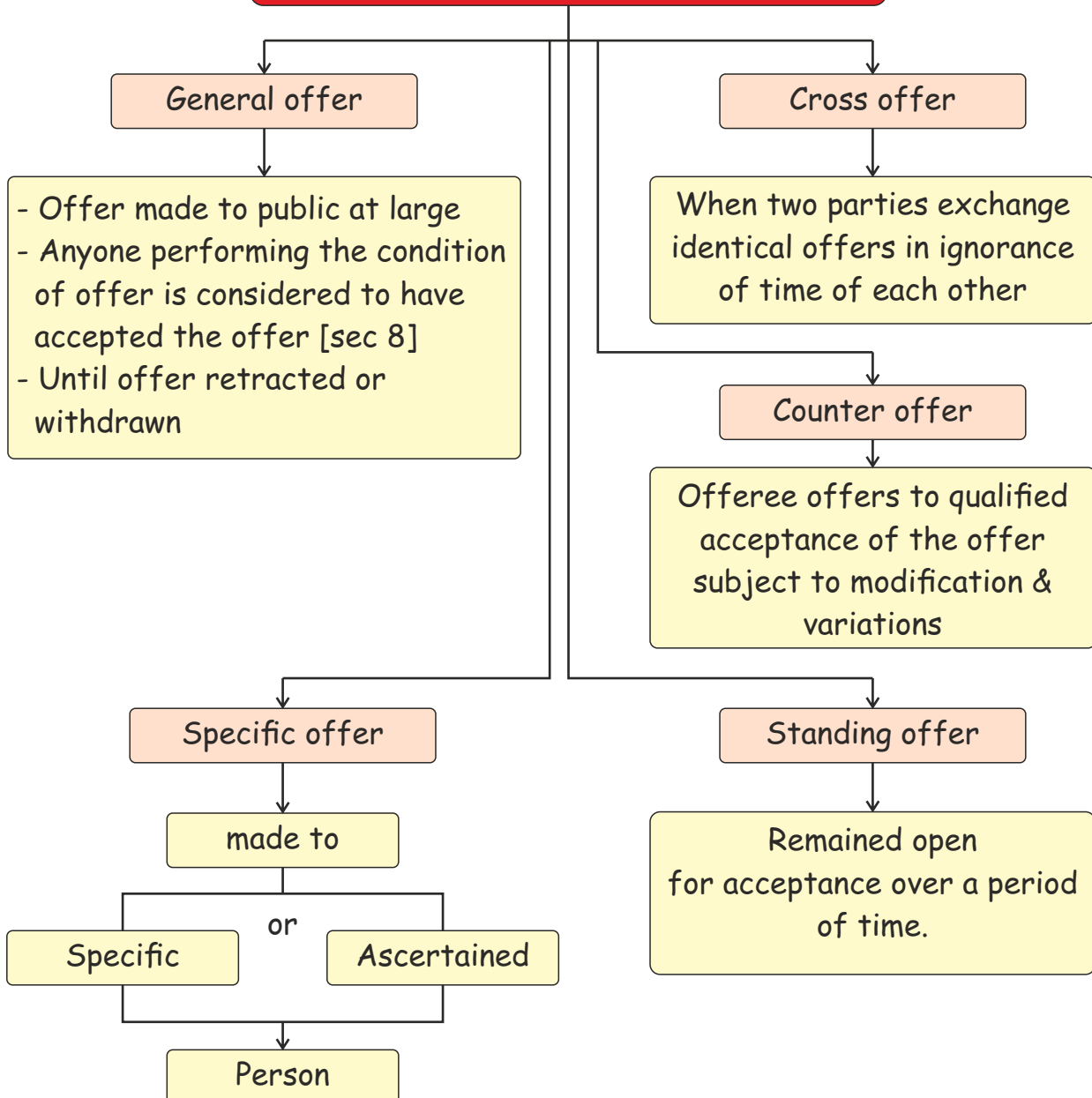


5 He is said to make a proposal.

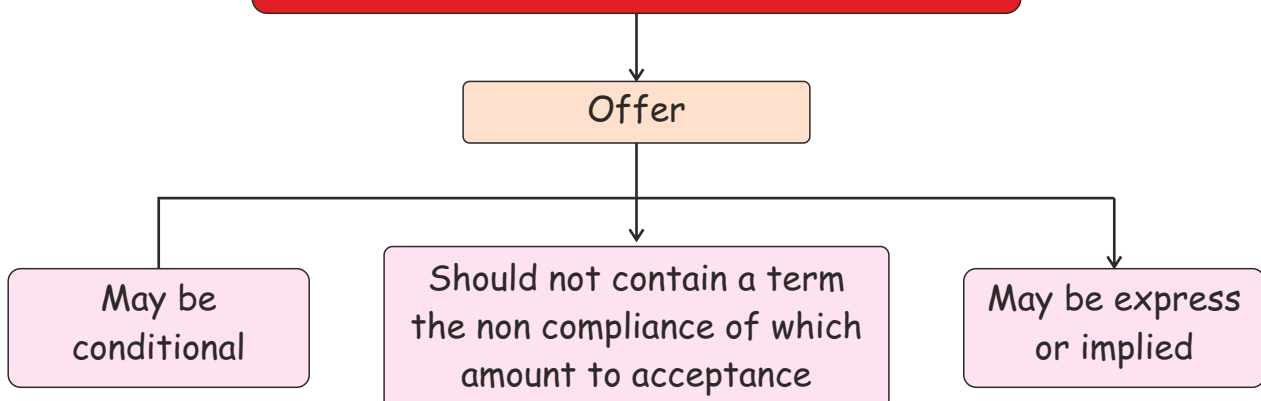
Essential of a Valid offer

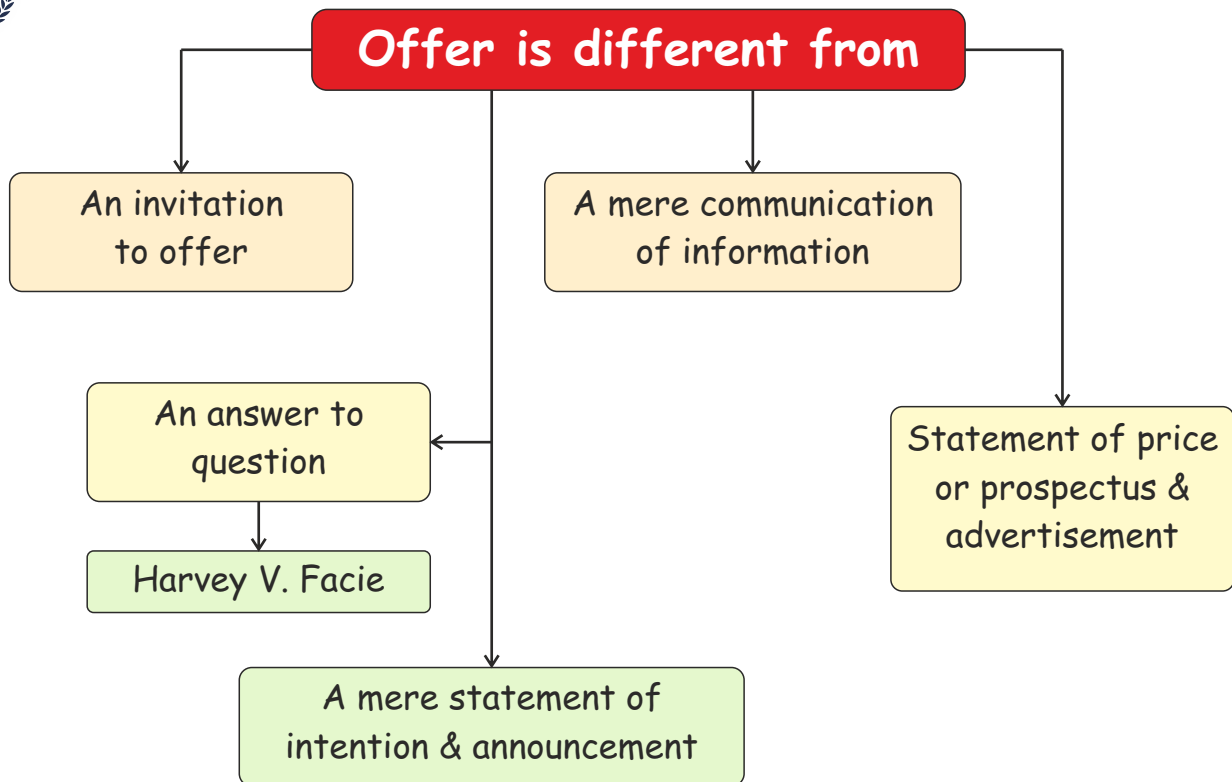


Classification of Offer



Miscellaneous Points of offer

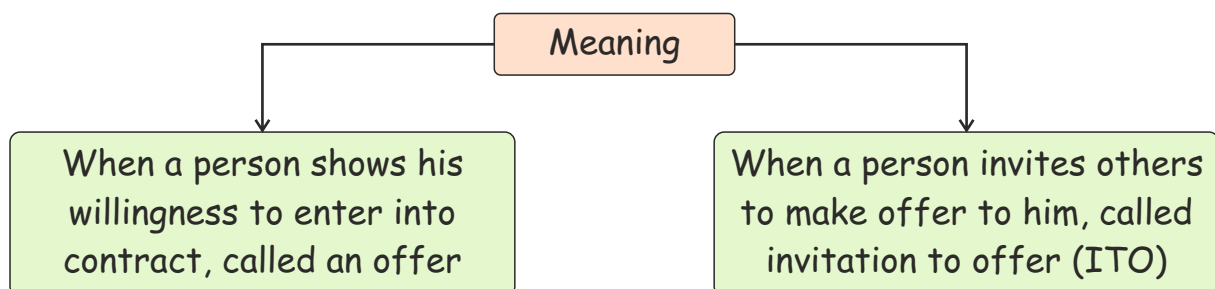


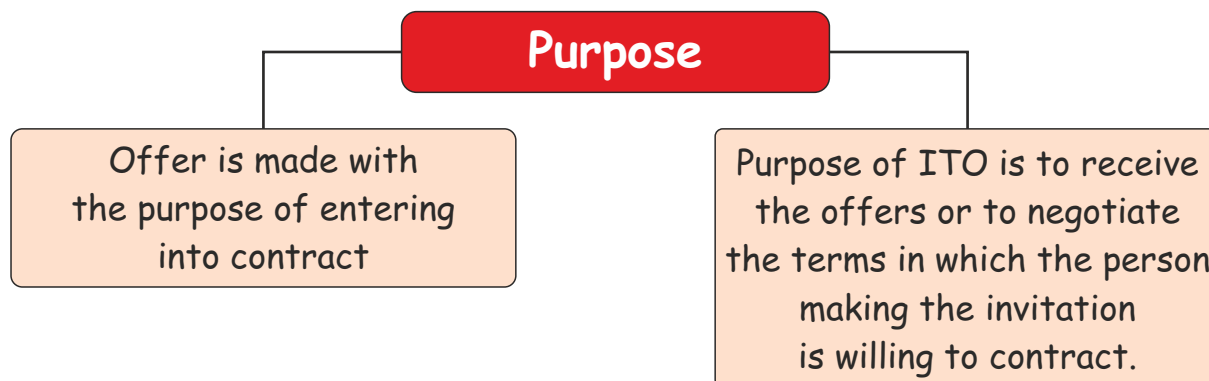


Invitation to offer

- An invitation to offer is an act precedent to making an offer.
- Quotations, menu cards, price tags, advertisement in newspaper for sale are not offer.
But there is an exception when advertisement in newspaper is made for reward, it is the general offer to public.
- Acceptance of an invitation to an offer does not result in the contract & only an offer emerges in the process of negotiation.

Offer V. Invitation to Offer



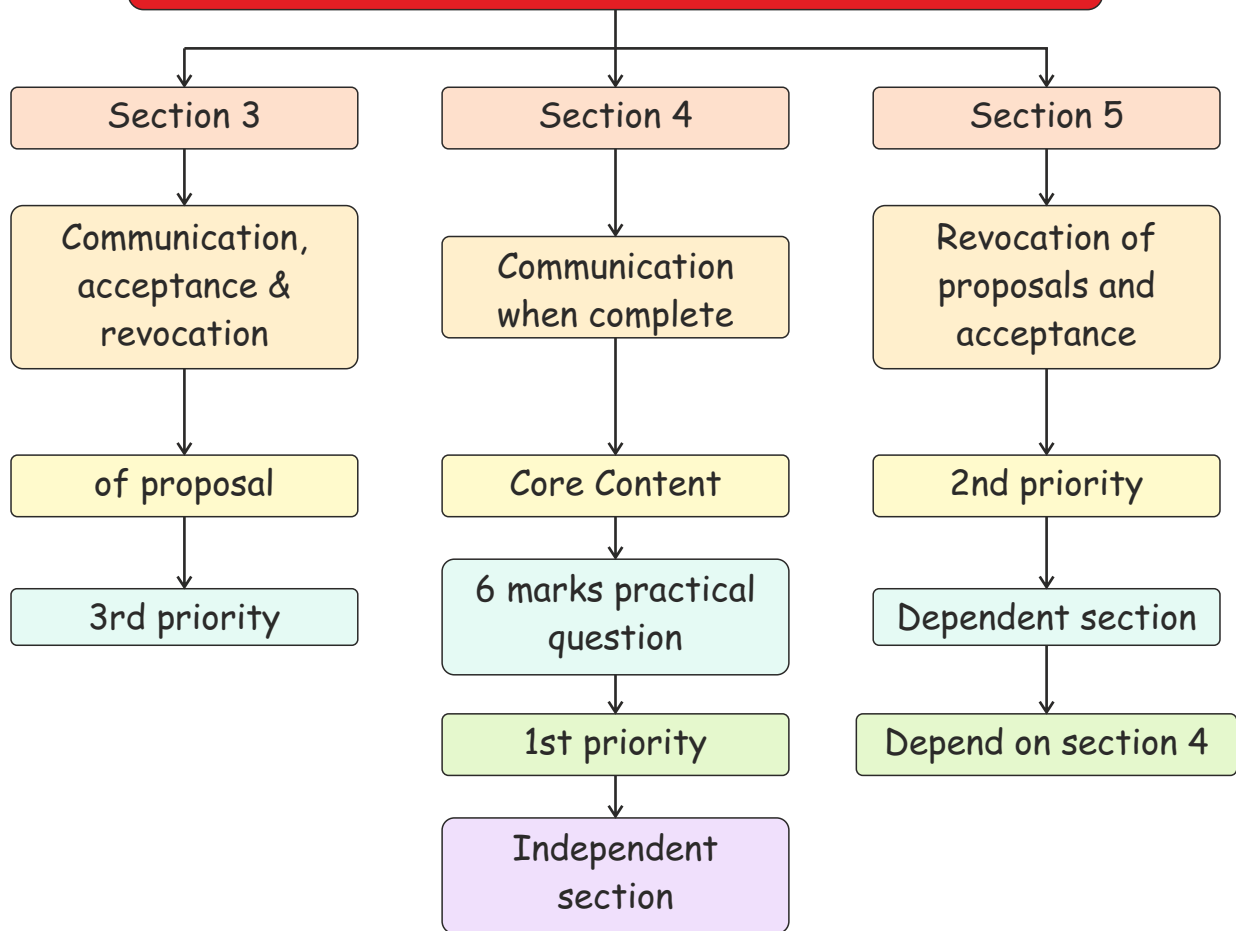


Acceptance [Section 2 (b)]

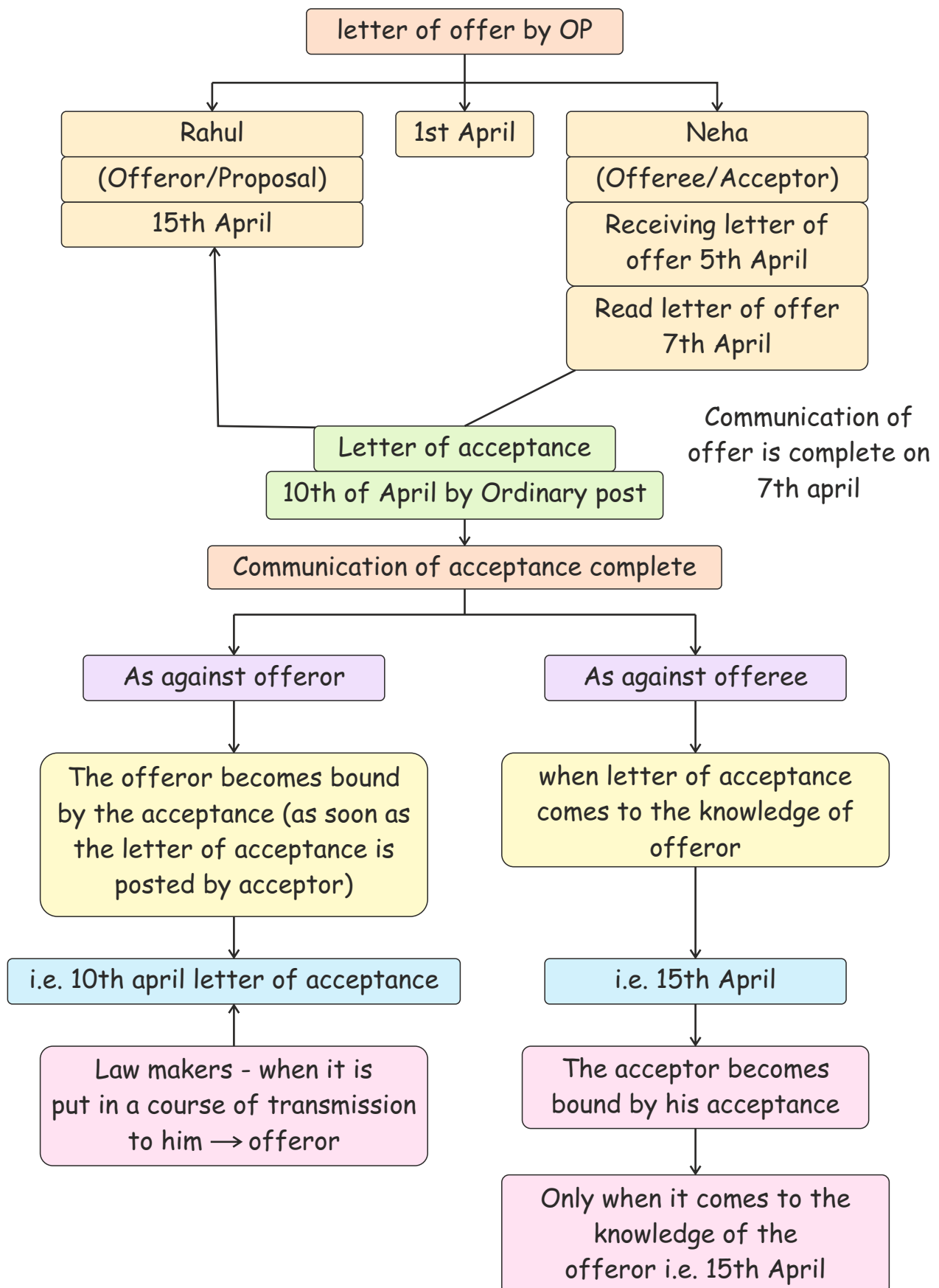
Essentials of a valid acceptance

- **The acceptance must be communicated.**
mere mental determination to accept is not acceptance unless it is accompanied by an external indication.
An agreement does not result from or mere state of mind.
- **Acceptance must be communicated to the offerer himself / the acceptance cannot be presumed from silence**
- If acceptance is communicated to the person other than offerer, it will not create any legal relationship/silence does not amount to acceptance. [Felt House V. Bindley]
- **The acceptance must be communicated by a person who has the authority to accept.**
A valid contract arises only if acceptance is communicated by a person who has authority to accept. If it is communicated by any unauthorized person, it will not create any legal relationship.
Communication of acceptance must be made by authorized person.
- **The acceptance must be absolute & unqualified**
 - without any Condition Expecting a valid registration certificate is not a condition
 - acceptance should be in toto [i.e of all terms of the offer]
- **A counter offer puts an end to the original offer, & it cannot be revived by subsequent acceptance.**

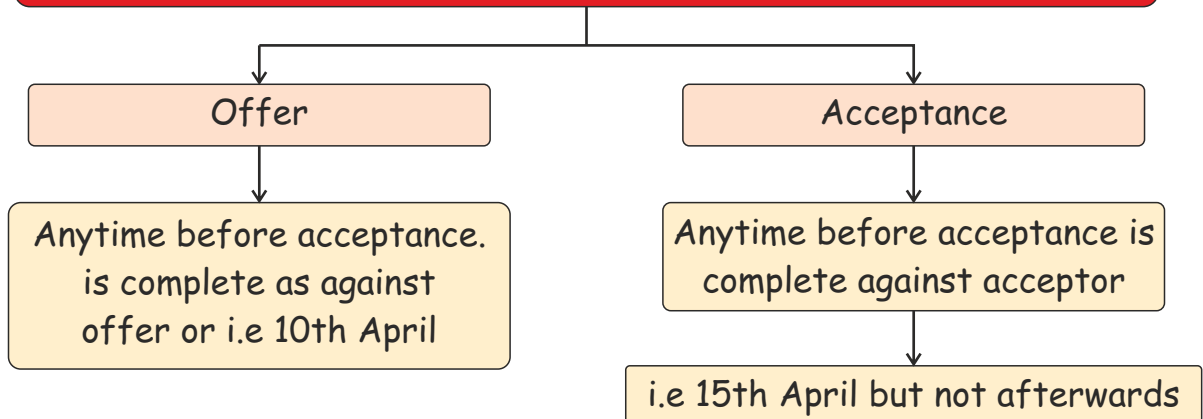
Communication of Offer & Acceptance



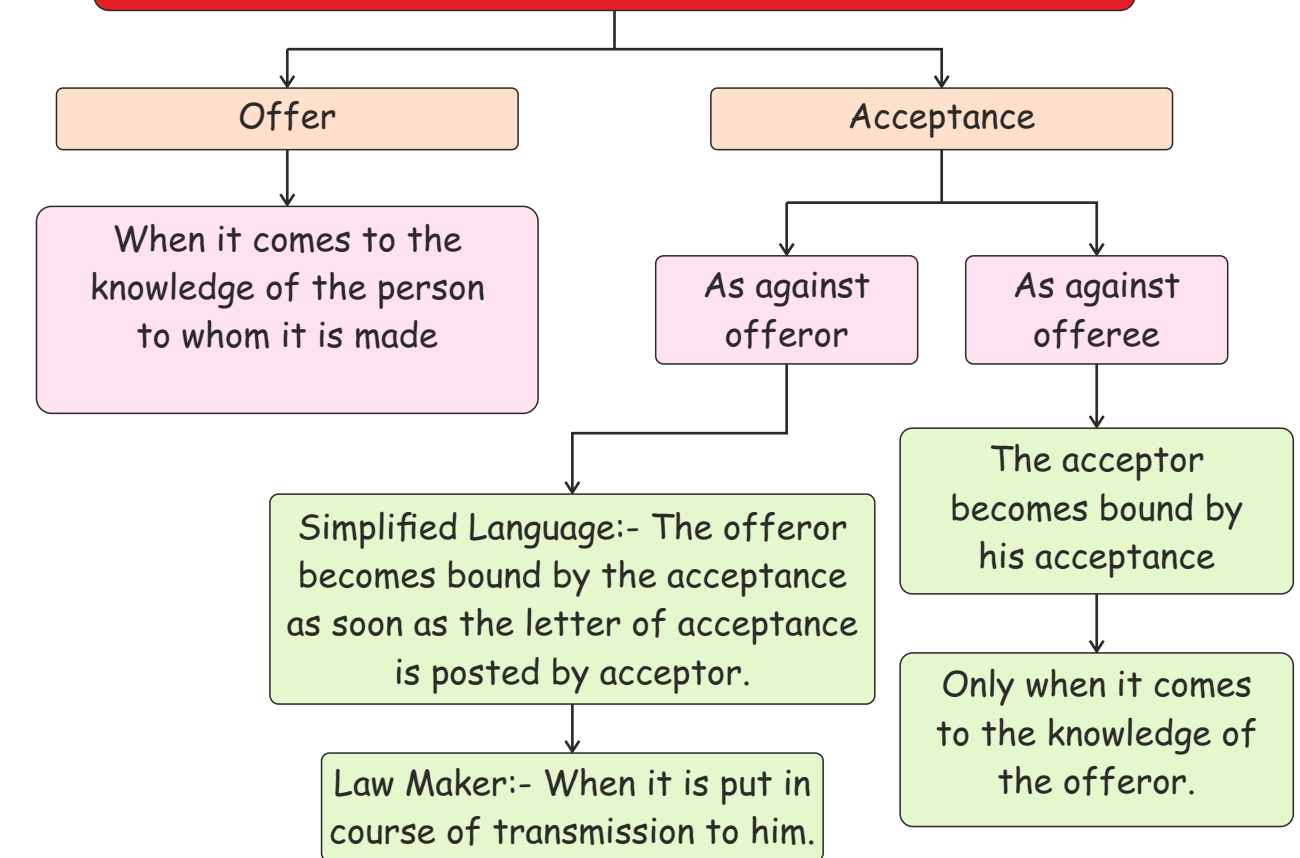
Section 4 Communication when Complete



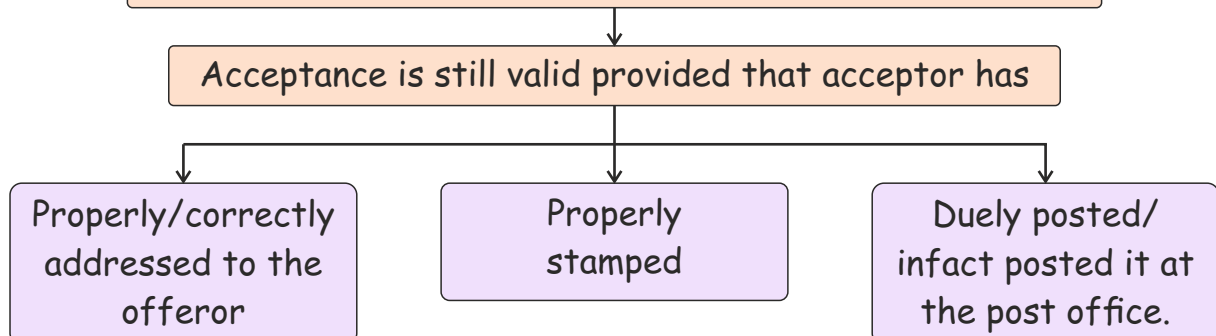
Upto when Revocation can be done [Section 5]



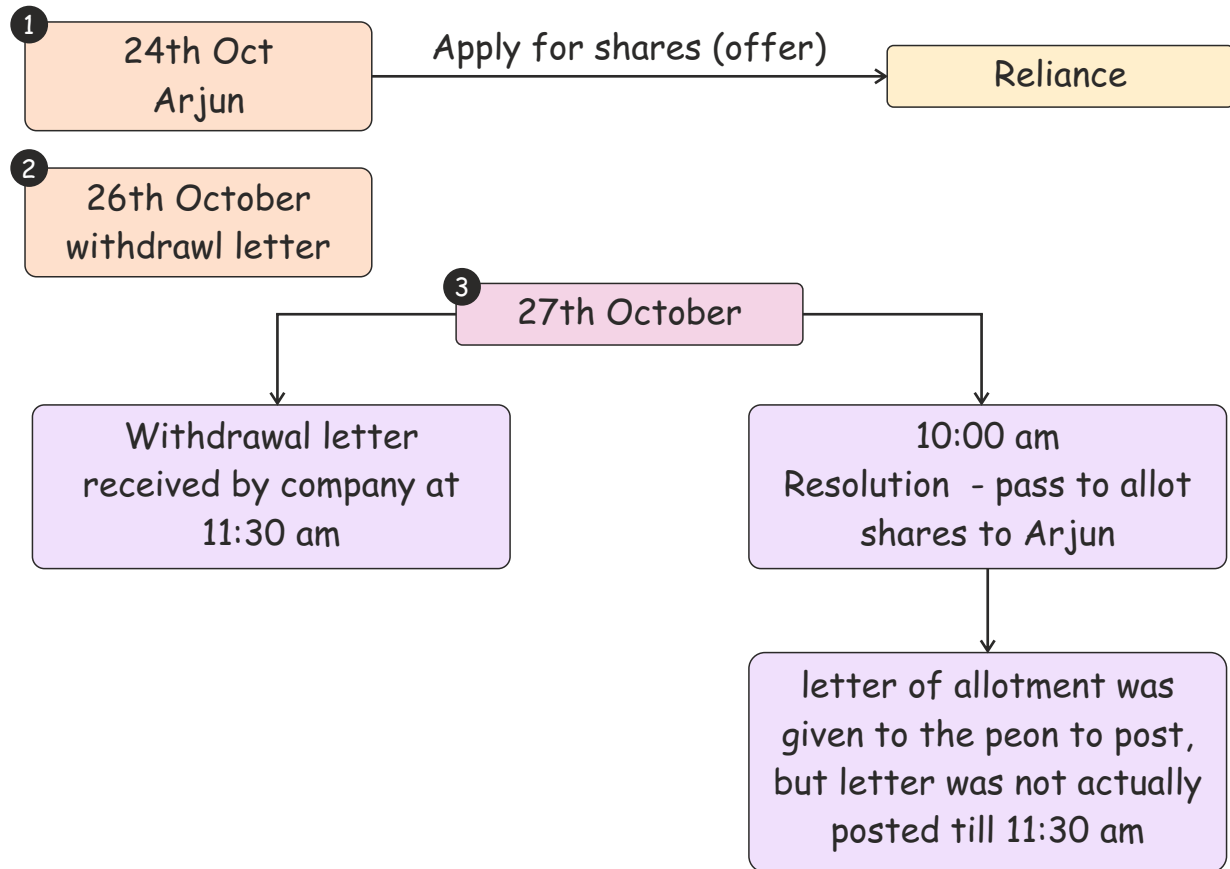
Section 4 Communication when Complete



What if letter of acceptance is lost in transit or delayed

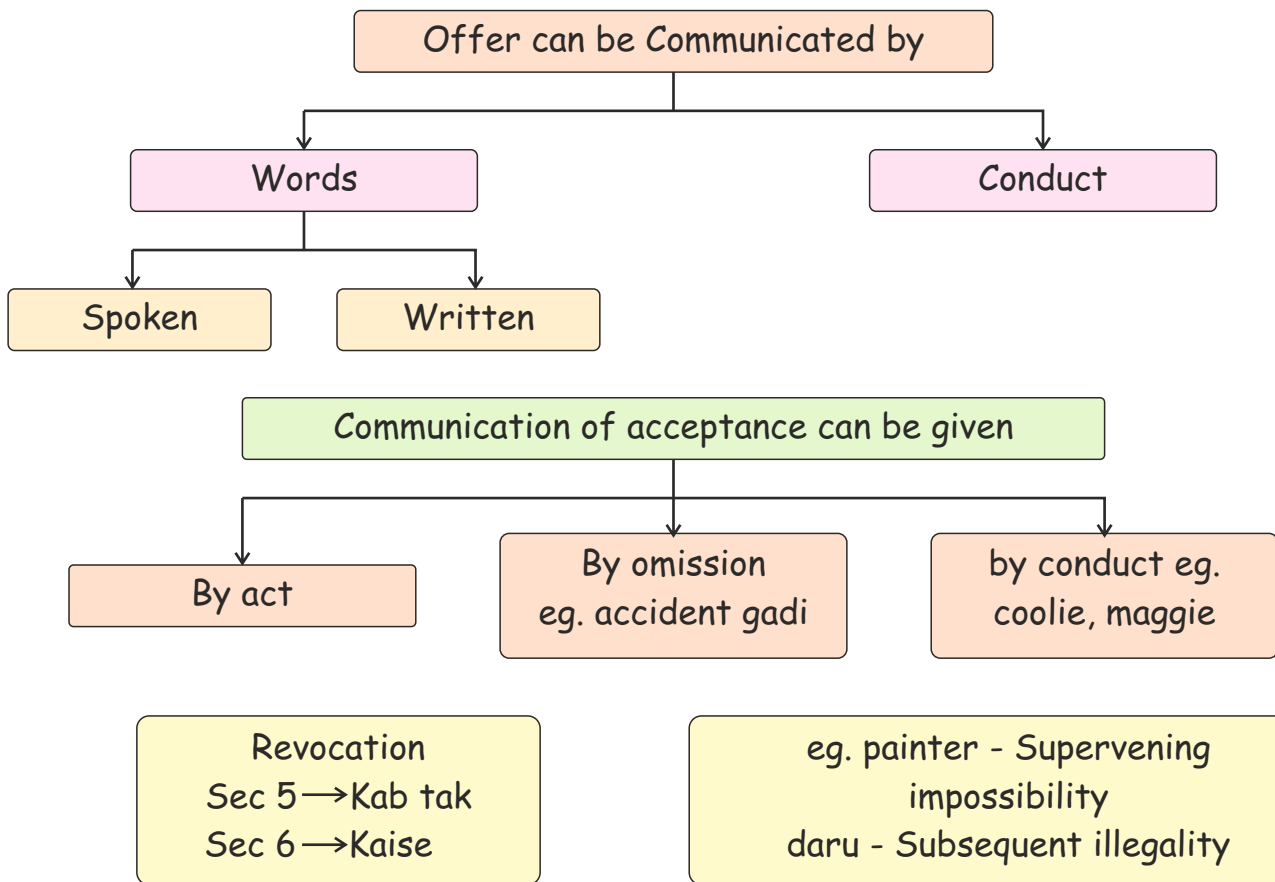


Case Law - London & Northern bank V. Jones

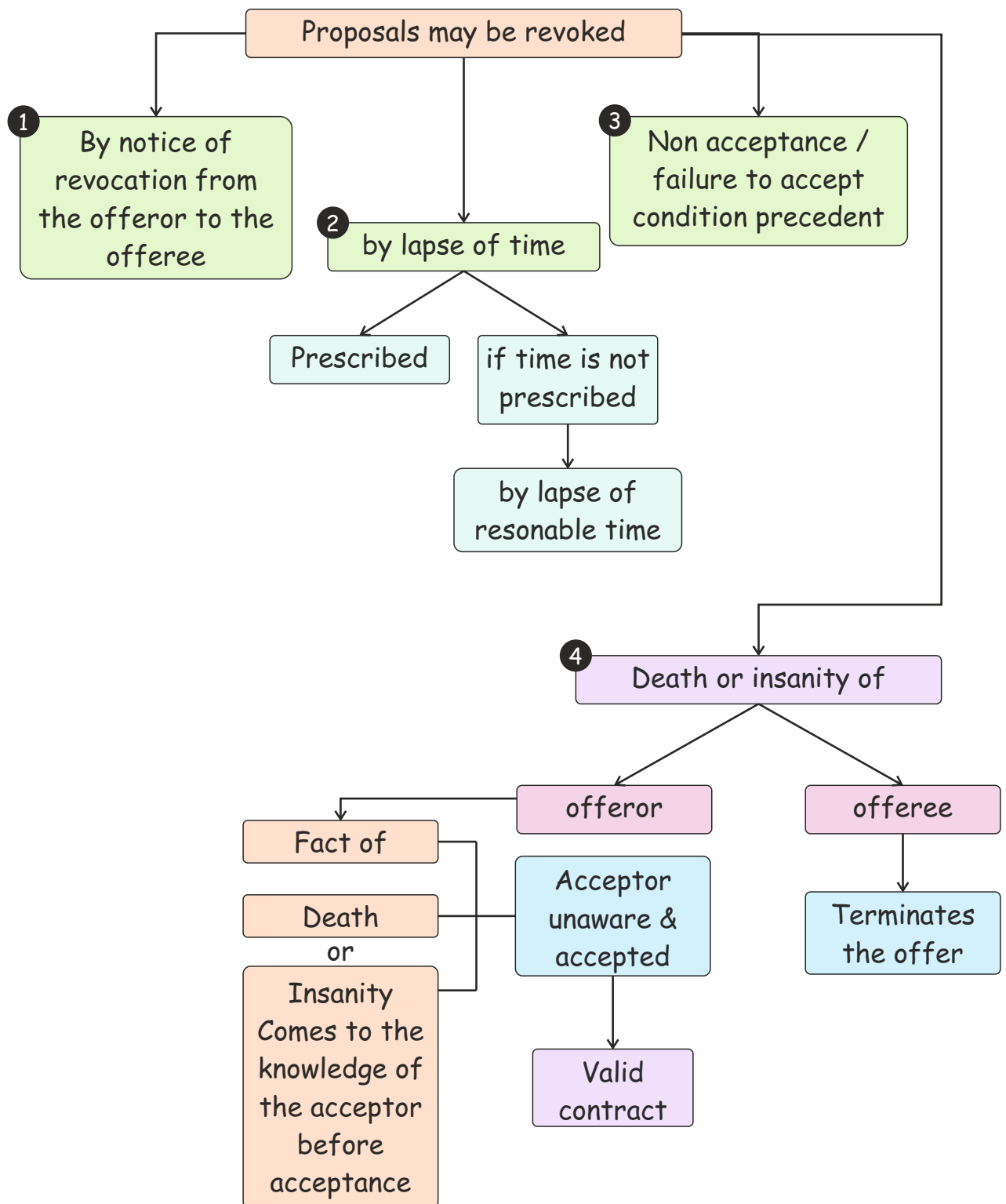


Decision :- The acceptance was too late as the letter was not actually posted till the offer had been revoked.

Section 3



Section 6 - Revocation how made



Other situation of revocation of offer

- (1) Counter offer/Cross offer
- (2) By subsequent illegality/Change in law by supervening impossibility/change in circumstances

The Indian Contract Act, 1872

UNIT - 1 Blue Print

Nature of Contract

Basics

- Purpose of this Act
- Basic definitions
 - Contract
 - Agreement
 - Promise

Topics/Section Relevant for exam

- 1) Intention to Create legal relationship
- 2) Offer & its legal rule
- 3) Offer v. Invitation to offer
- 4) Acceptance & its legal rules
- 5) Communication of offer & Acceptance
- 6) Modes of revocation of offer.

Miscellaneous

- Types of offers

Coverage of Sections Under UNIT-1 of Contract Act

Section 1

- Short title
- Extent
- Commencement
- Applicability

Section 2 → Interpretation Clause

- (a) offer
- (b) Promise/Acceptance
- (c) Promisor/Promisee
- (d) Consideration
- (e) Agreement
- (f) Reciprocal Promise
- (g) Void Agreement
- (h) Contract
- (i) Voidable Contract
- (j) Void Contract

Other Sections

Section 3 → Communication, Acceptance & Revocation of Proposal.

Section 4 → When Communication is complete

Section 5 → Revocation of Offer & Acceptance

Section 6 → Revocation how made

Section 7 → Acceptance must be absolute

Section 8 → Acceptance by performing conditions

Section 9 → Promises $\begin{cases} \nearrow \text{Express} \\ \searrow \text{Implied} \end{cases}$

Section 10 → What Agreements are Contracts

Section 11 → Competent parties

Section 12 → Sound Mind

Section 13 → Consent

Section 14 → Free consent

Section 15 → Coercion

Section 16 → Undue Influence

Section 17 → Fraud

Section 18 → Misrepresentation.

Section 19 → Voidability of agreement without free Consent.

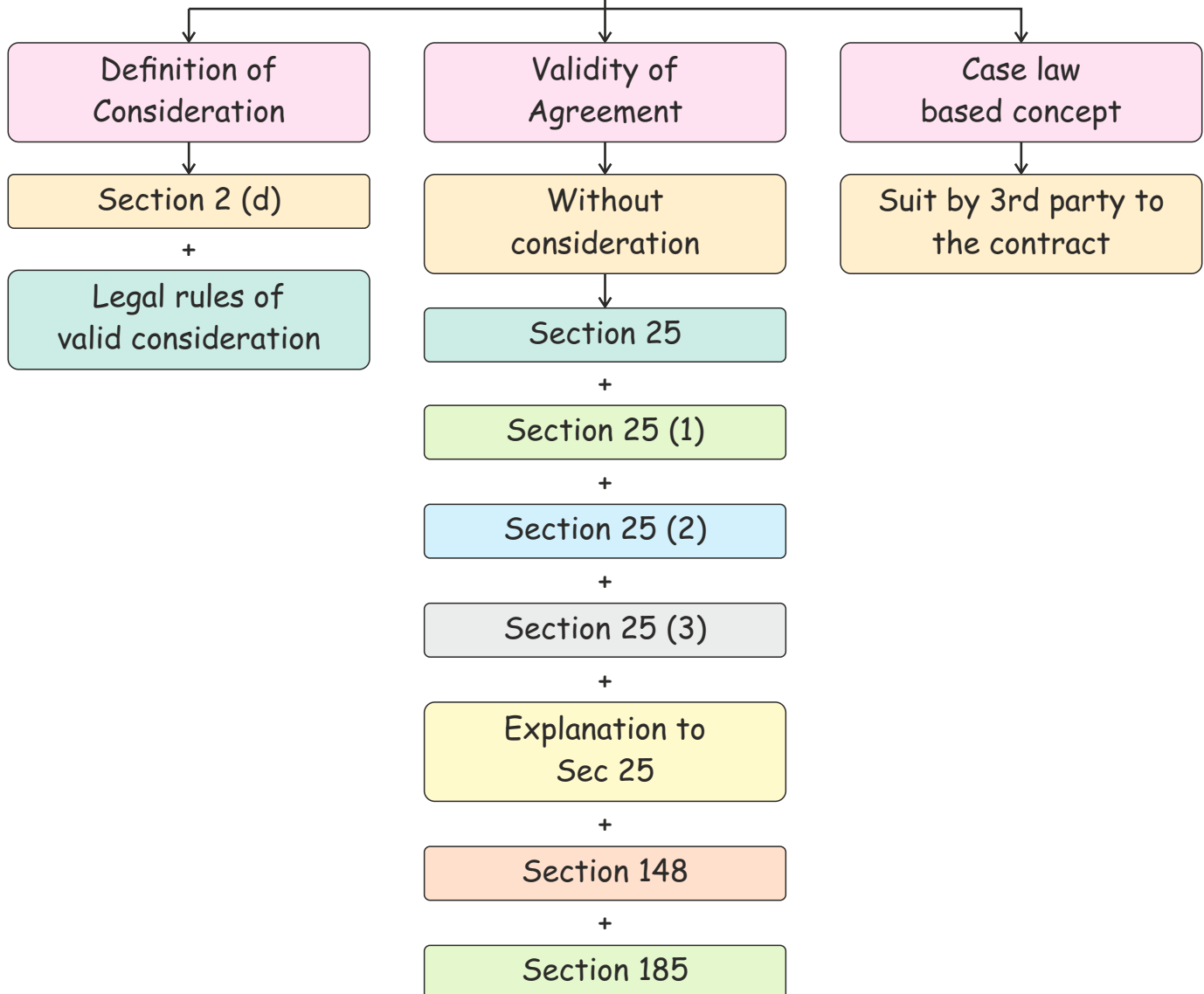
Section 20 → Bilateral Mistake → Void

Section 21 → Mistake of law

Section 22 → Unilateral mistake → Valid

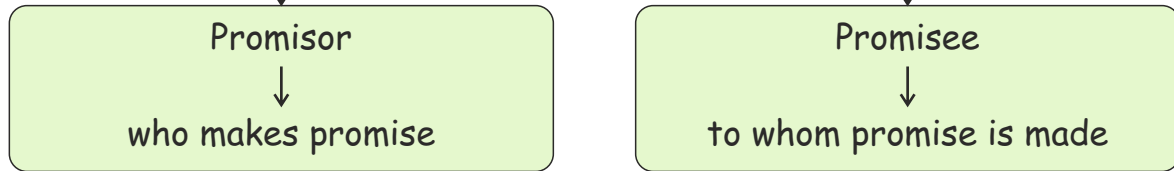
The Indian Contract Act 1872

UNIT -II - Important Unit



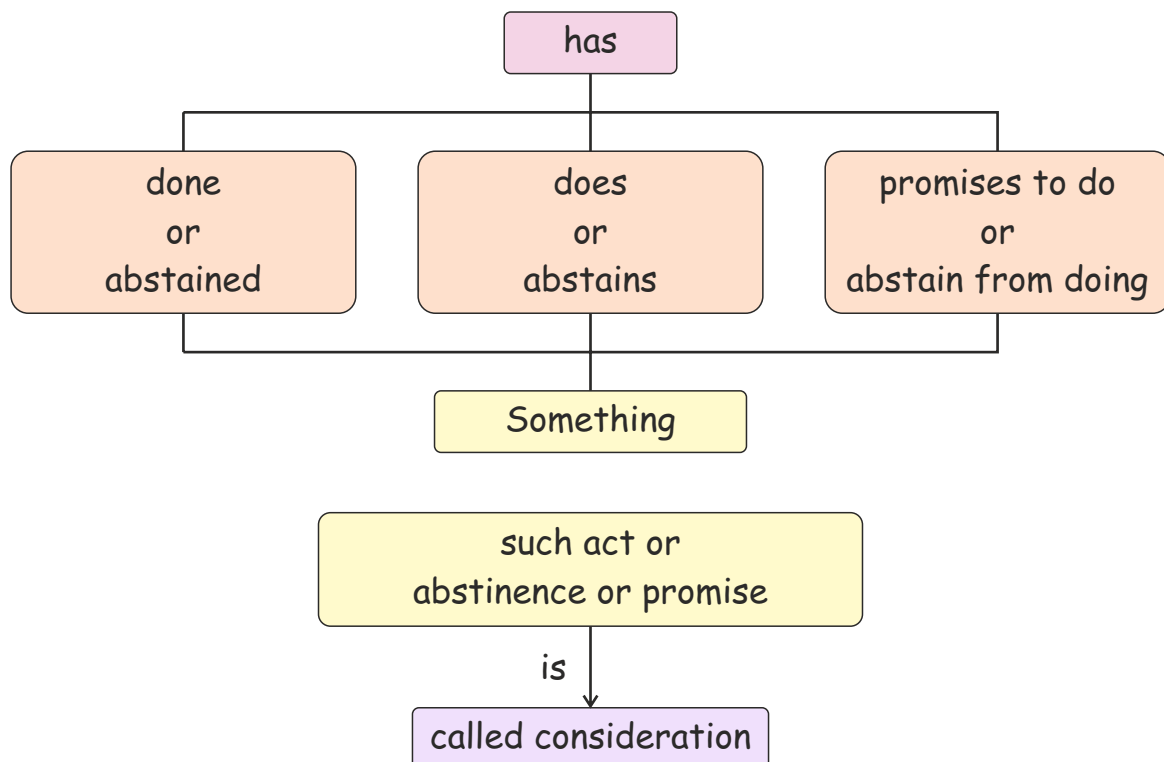
Consideration

Section 2 (c)



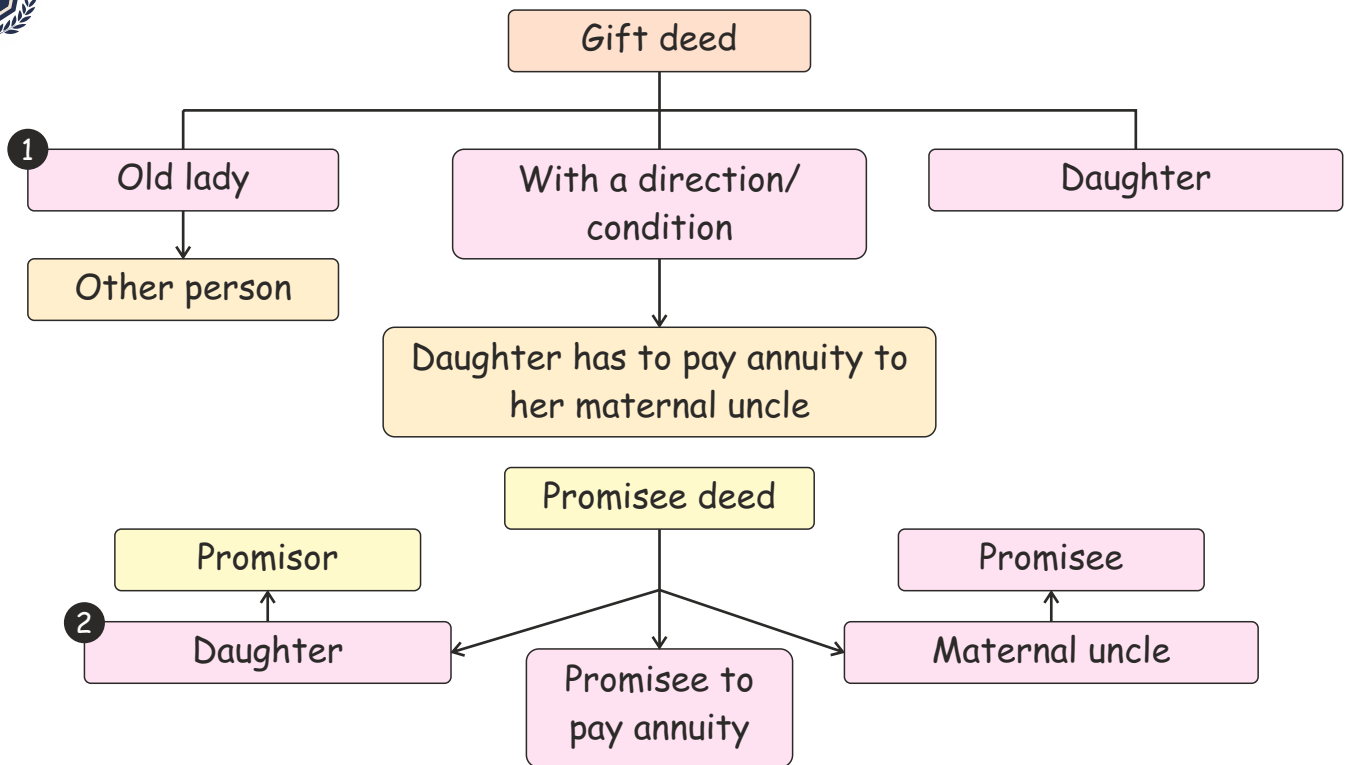
Section 2 (d) Consideration

(1) When at the desire of promisor
(2) The promisee or any other person,



Chinnayya V. Ramayya

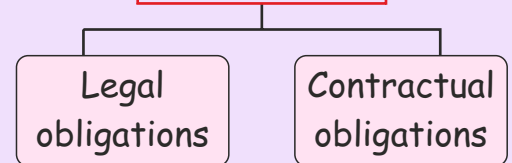
Three parties involved in this case
1) Old lady [mother]
2) Daughter
3) Maternal uncle



- Daughter received the property as gift
- But refused to pay annuity on plea that no consideration had moved from uncle.

Legal Rules / Essentials of valid consideration

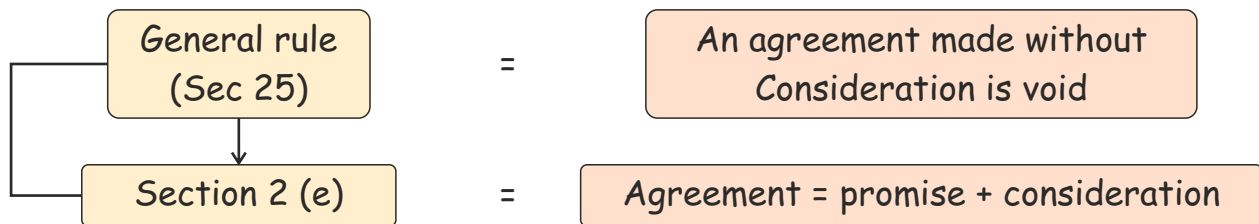
- 1) Consideration must move at the request of promisor.
- 2) Consideration may come from promisee or any other person
- 3) It is not necessary that person providing consideration should be benefitted
- 4) Consideration may be an act & may be an abstinence
- 5) Consideration may be past, present and future
- 6) Consideration can be inadequate/Consideration need not be adequate
 - Adequacy of consideration should be decided from the viewpoint of promisor
 - Explanation to section 25 provides that an agreement to which consent of the party is freely given is not void merely because consideration is inadequate.
 - However, inadequacy of consideration may be taken into account by court to determine whether the promisor's consent was freely given.
- 7) Consideration must be more than the performance of the **existing duties**



```

graph TD
    ED[existing duties] --> LO[Legal obligations]
    ED --> CO[Contractual obligations]
  
```
- 8) Consideration must be real & not illusory
 - Physically impossible
 - Legally not permissible
 - Uncertain
 - Illusory
- 9) Consideration must not be unlawful, immoral, oppose to public policy.

Validity of Agreement without Consideration

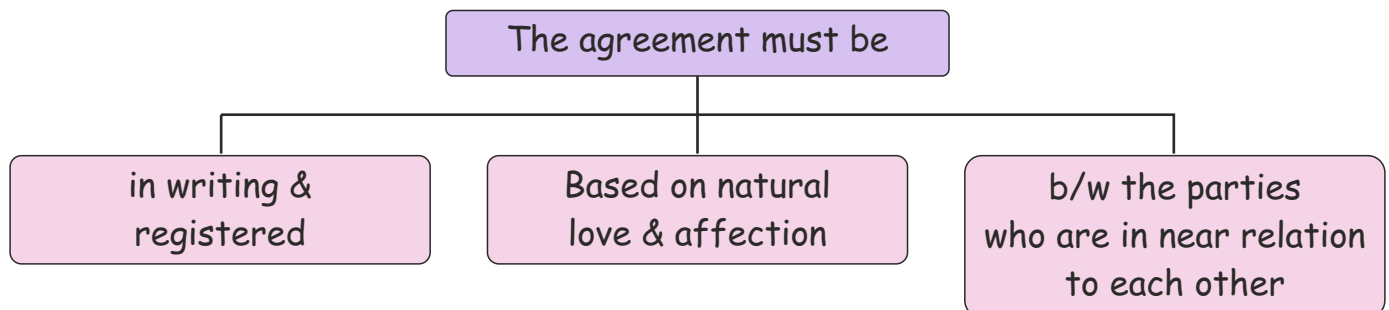


Exceptions to the General Rule

Agreement = Promise = Valid

Where agreement can be valid even without consideration.

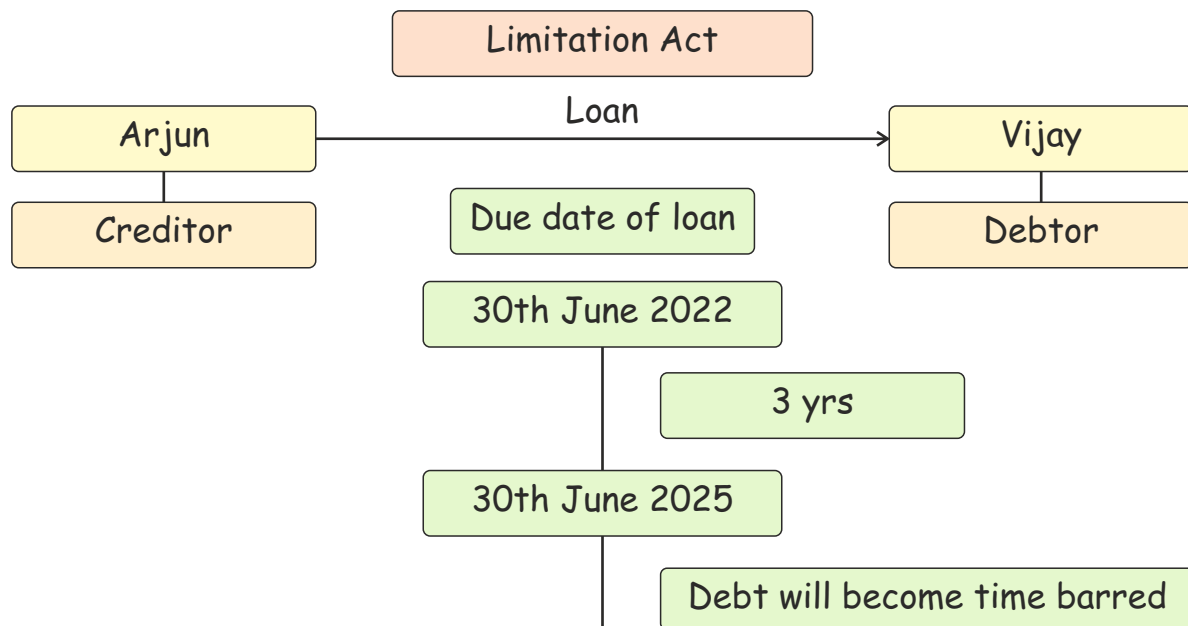
An agreement is valid and enforceable even if it is made without consideration.
(1) Natural love & affection [section 25(1)]



(2) Promise to pay for past voluntary services [sec 25 (2)]

- Services should have been rendered voluntarily
- Services should have been done for promisor,
- Promisor intended to compensate for past voluntary services.

(3) Promise to pay time barred debt [sec 25 (3)]



A promise to pay time barred debt is valid and enforceable if such promise is

In writing

&

Signed by the promisor

or

his authorised agent

(4) Agency [Section 185]

No Consideration is required

(5) Completed Gift

Gift given & accepted (valid)

Promise to gift is not valid

(6) Gratuitous bailment [[Section 148]

Bailment contract is contract where one party delivers the goods to another party for some specific purposes on condition that once the purpose is accomplished, the goods shall be returned to the person delivering it.

- Bailment contract can be gratuitous & non gratuitous.
- No consideration is required in case of gratuitous bailment.
- Person delivering the goods - Bailor
- To whom goods are delivered - Bailee

(7) Charity

- If promisee takes liability
- On promise of person
- To contribute to charity
- Contract shall be valid

Case law

Kedarnath V. Gorie Mohammed

Agreement is valid, because it was supported by consideration in the form of a detriment to the trustee who had incurred liability on faith of promise made by x

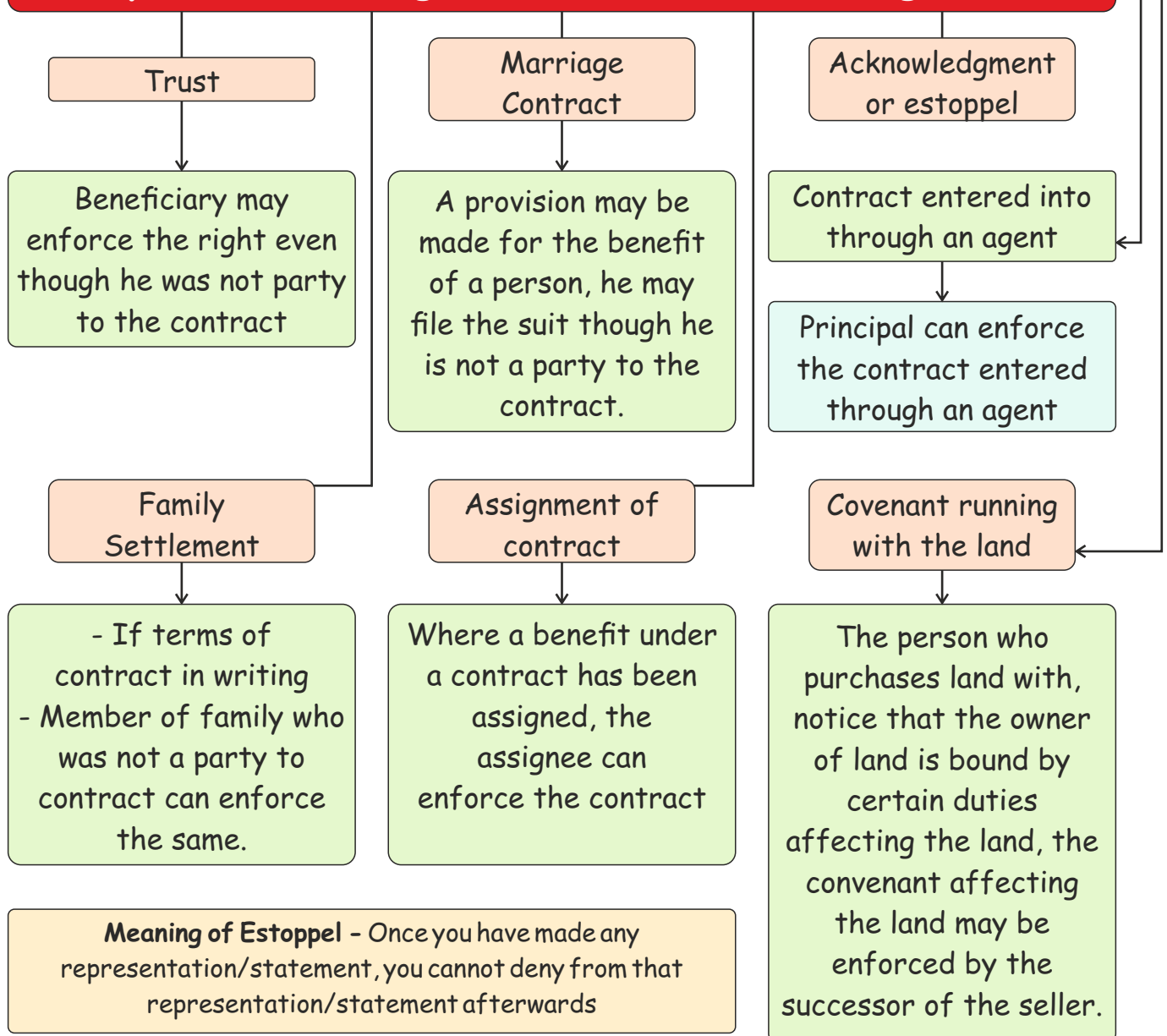
Abdul Aziz V. Masum Ali

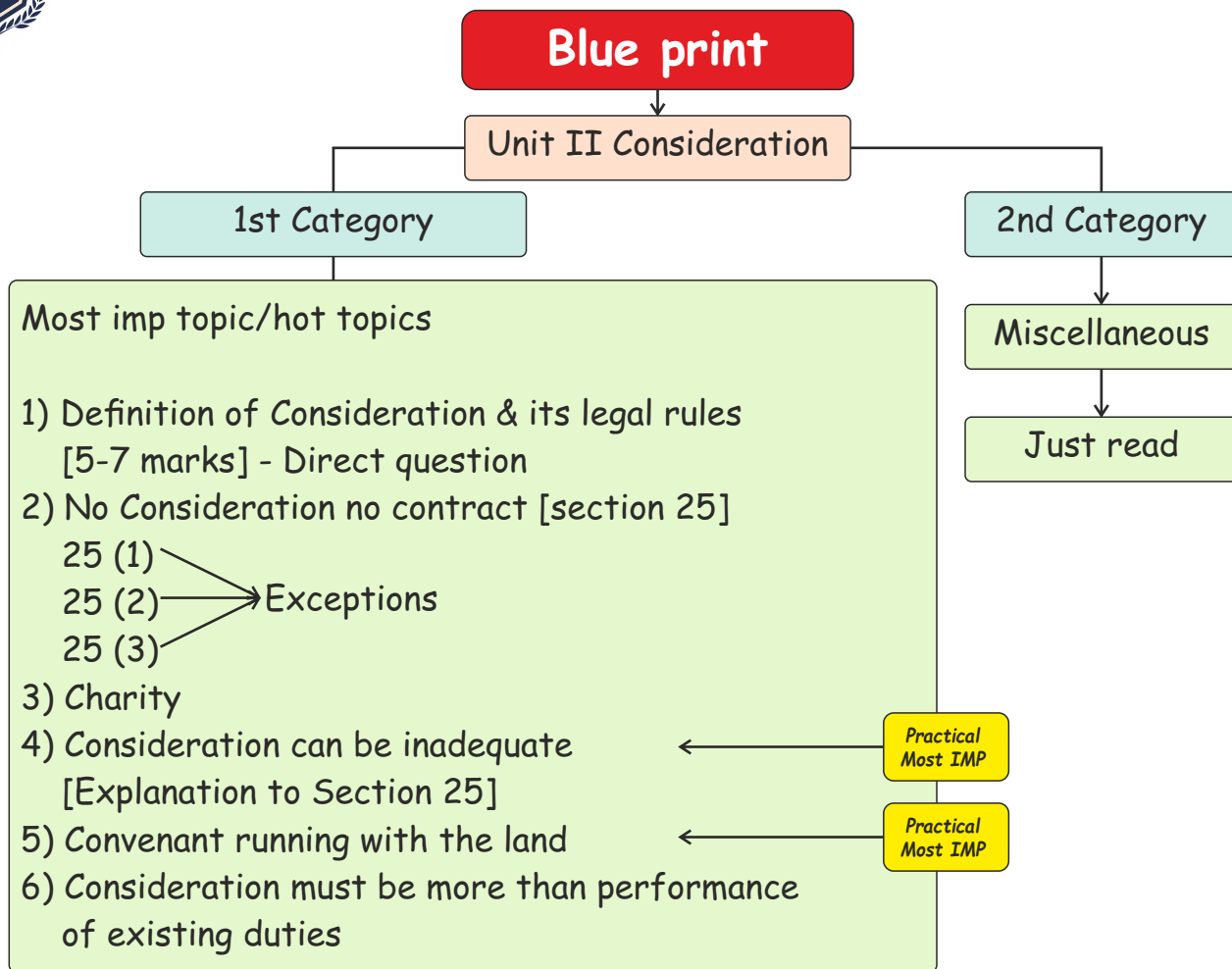
The agreement is void in the absence of any consideration

Doctrine of Privity of contract [A stranger to contract cannot sue]

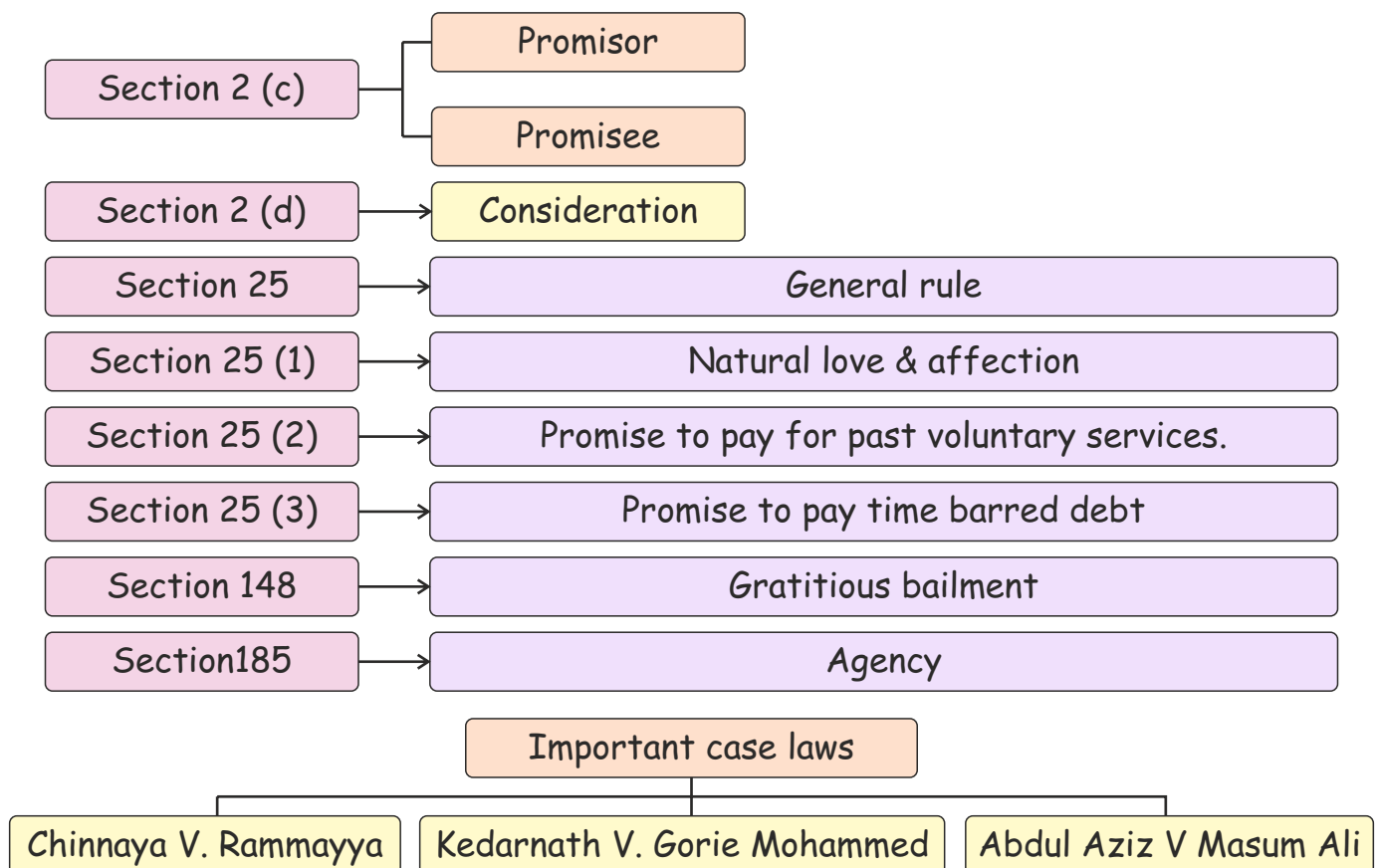
Only those persons, who are parties to a contract, can sue and be sued upon the contract. This rule is called "Doctrine of privity of contract". A third party to a contract cannot sue upon it, even though the contract may be for his benefit.

Exception. i.e stranger to contract has the right to sue





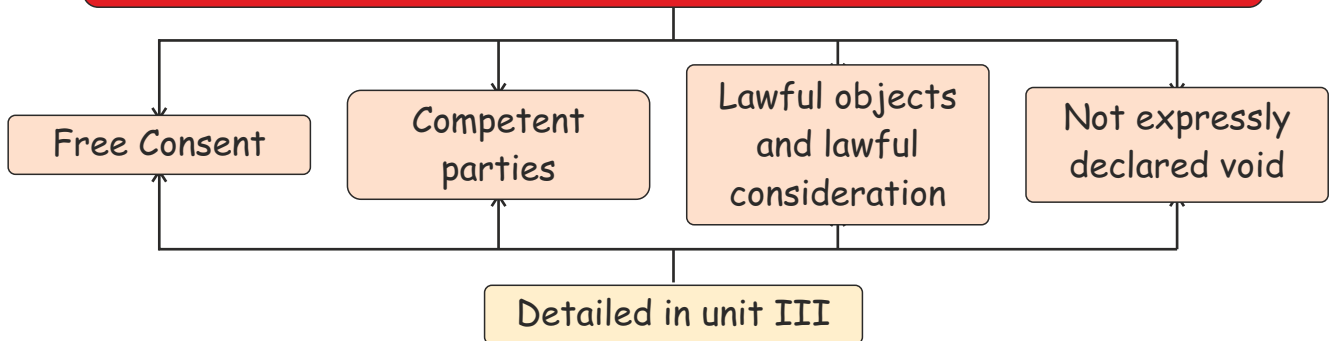
Coverage of sections under unit - II



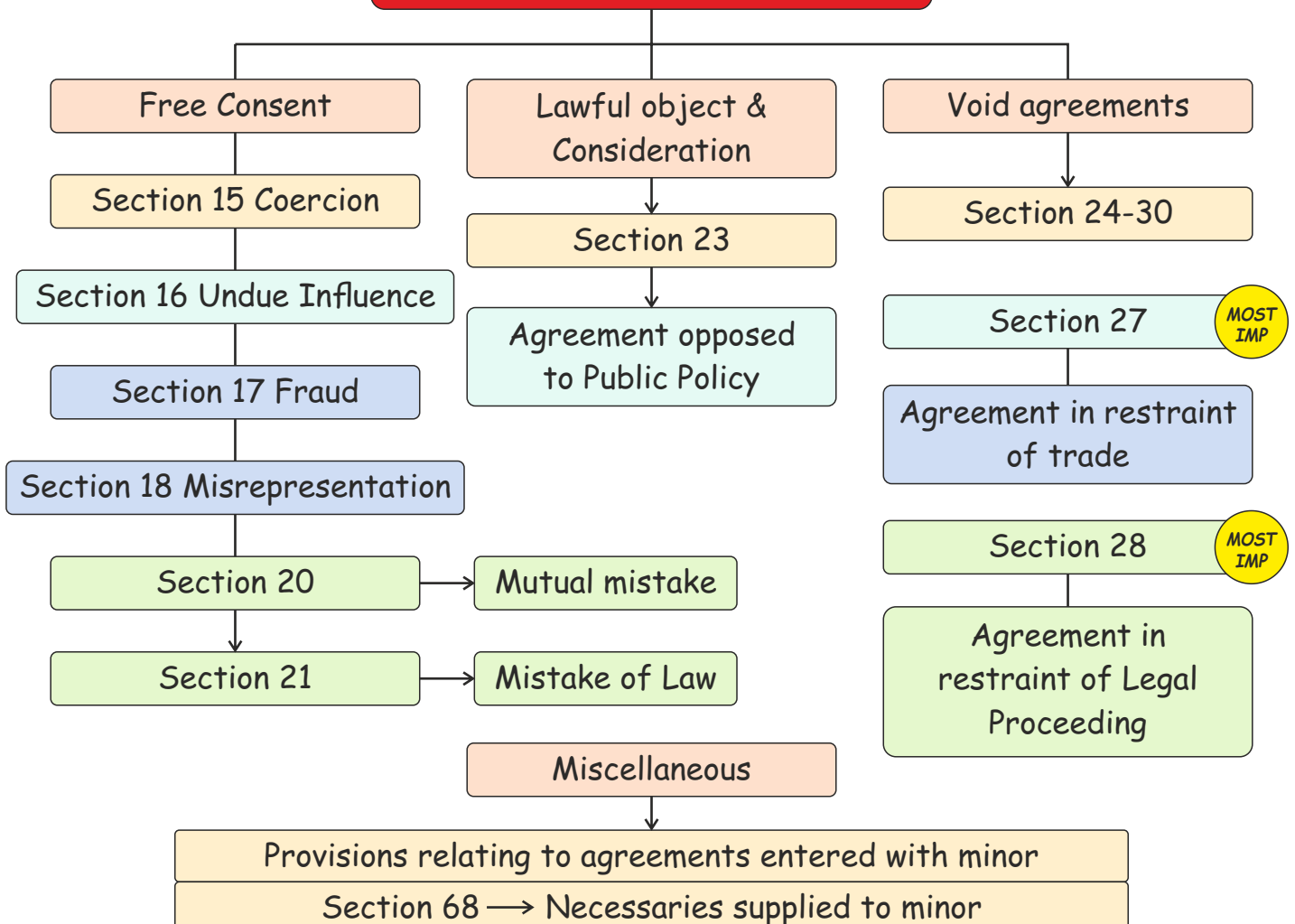
Unit - III

Other Essential Elements of a Valid Contract

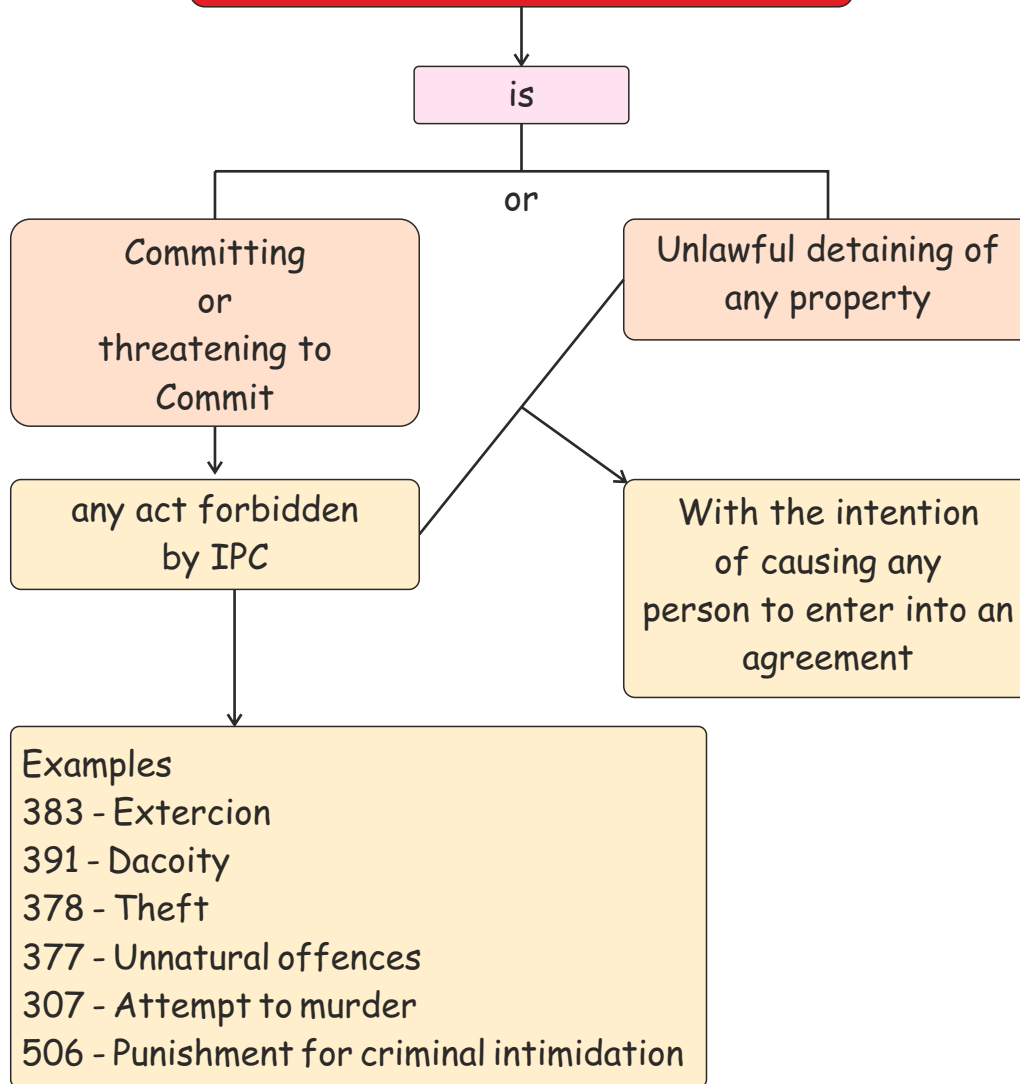
Section 10 - What agreements are contracts



Agenda of unit -III



Coercion - Section 15



Explanation to Section 15

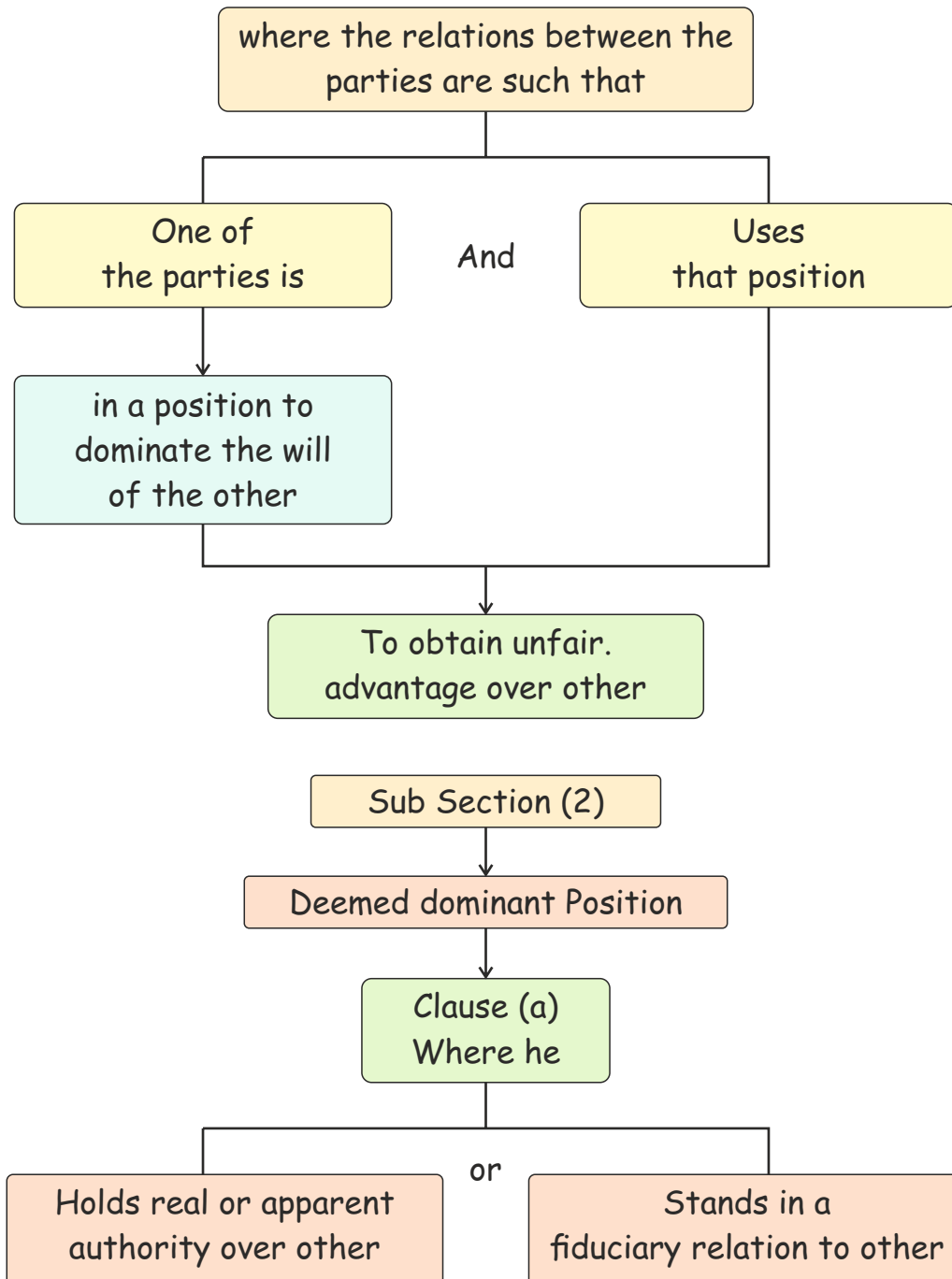
It is immaterial whether IPC is or is not in force in the place where the coercion is employed.

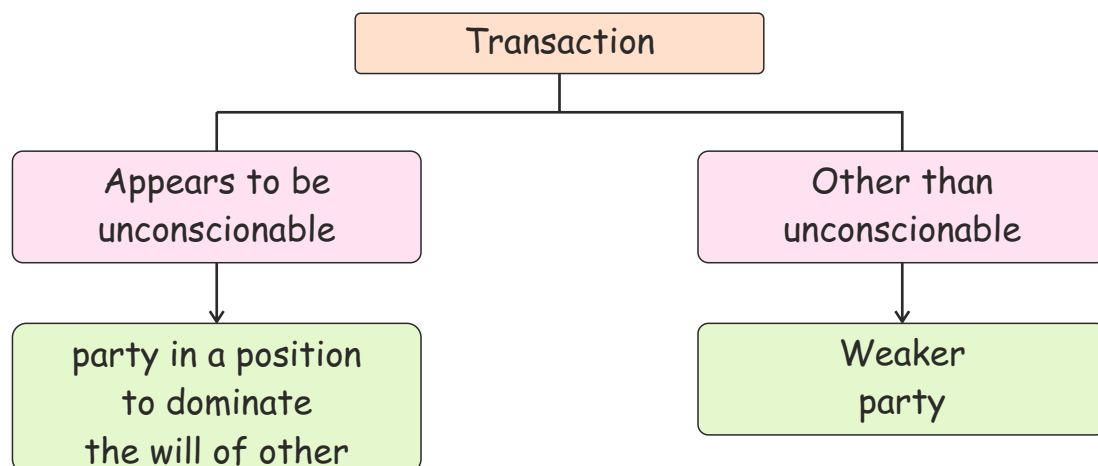
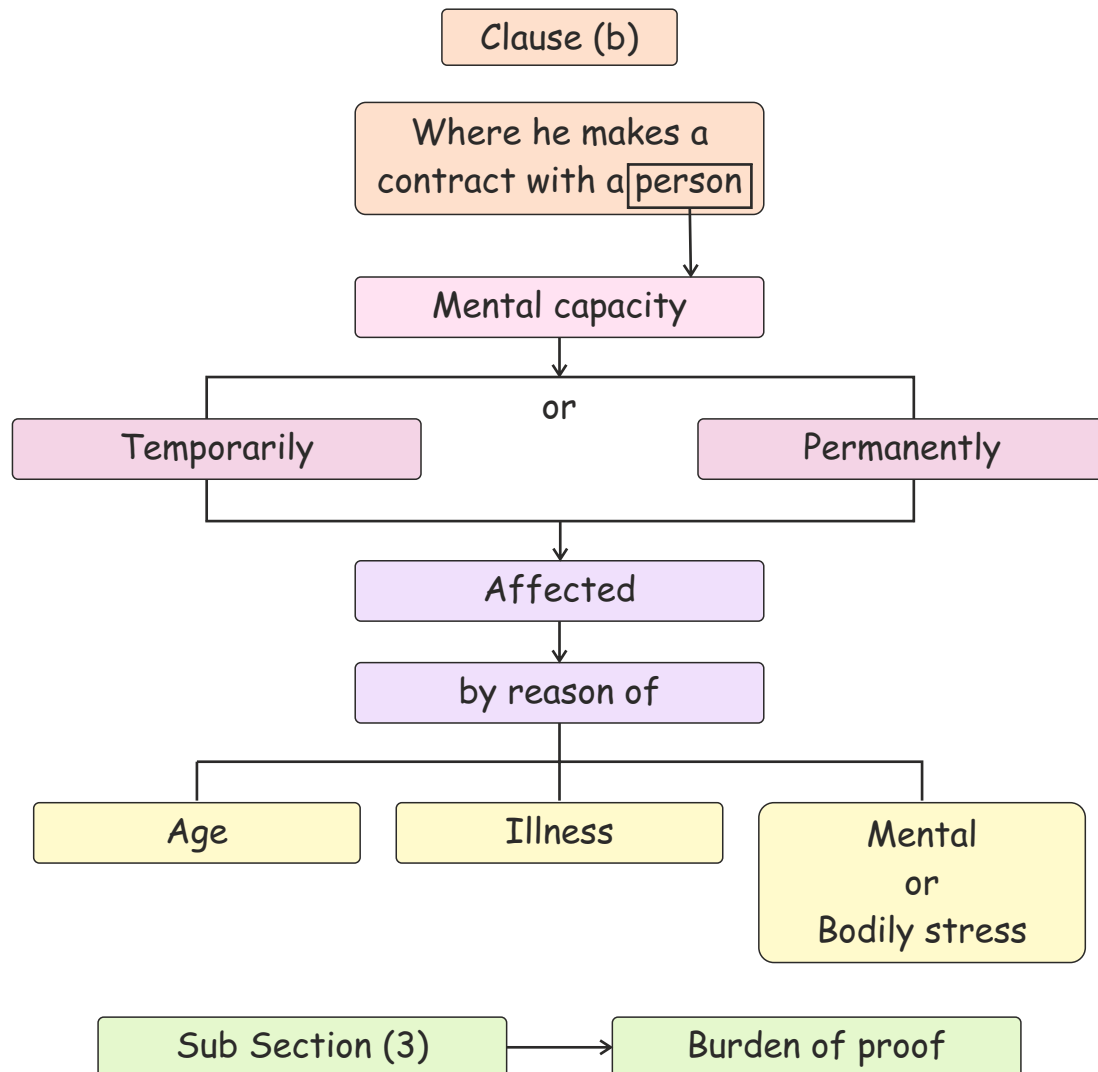
Effect of Coercion

- (a) Voidable at the option of the aggrieved party.
- (b) Repay money or thing obtained under coercion

Section -16 [Undue Influence]

Definition (1) A contract is said to be induced by UI.

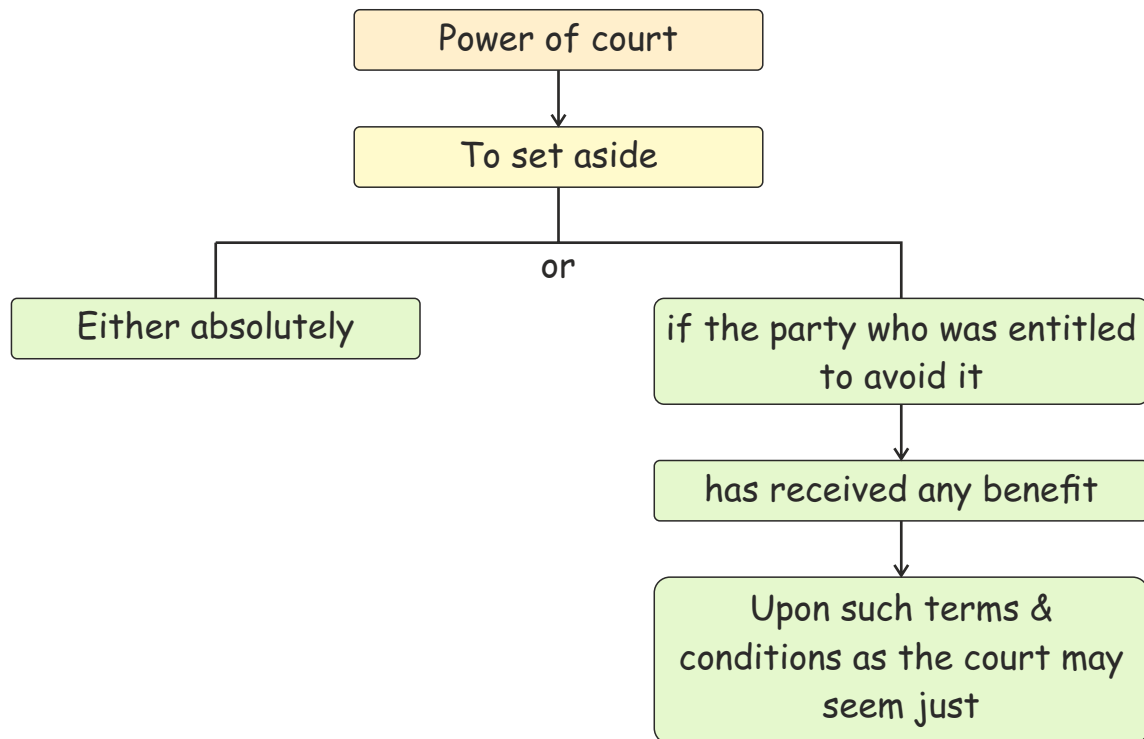




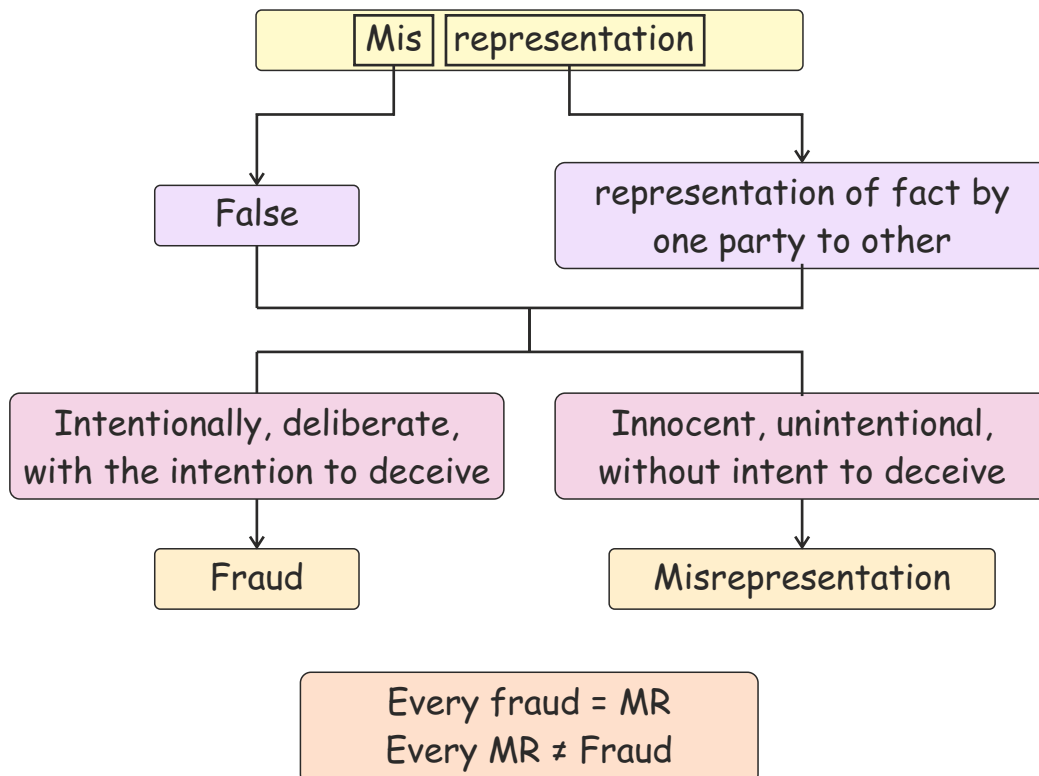
Meaning of Unconscionable:-

Where dominant party makes extraordinary Profits of the others distress.

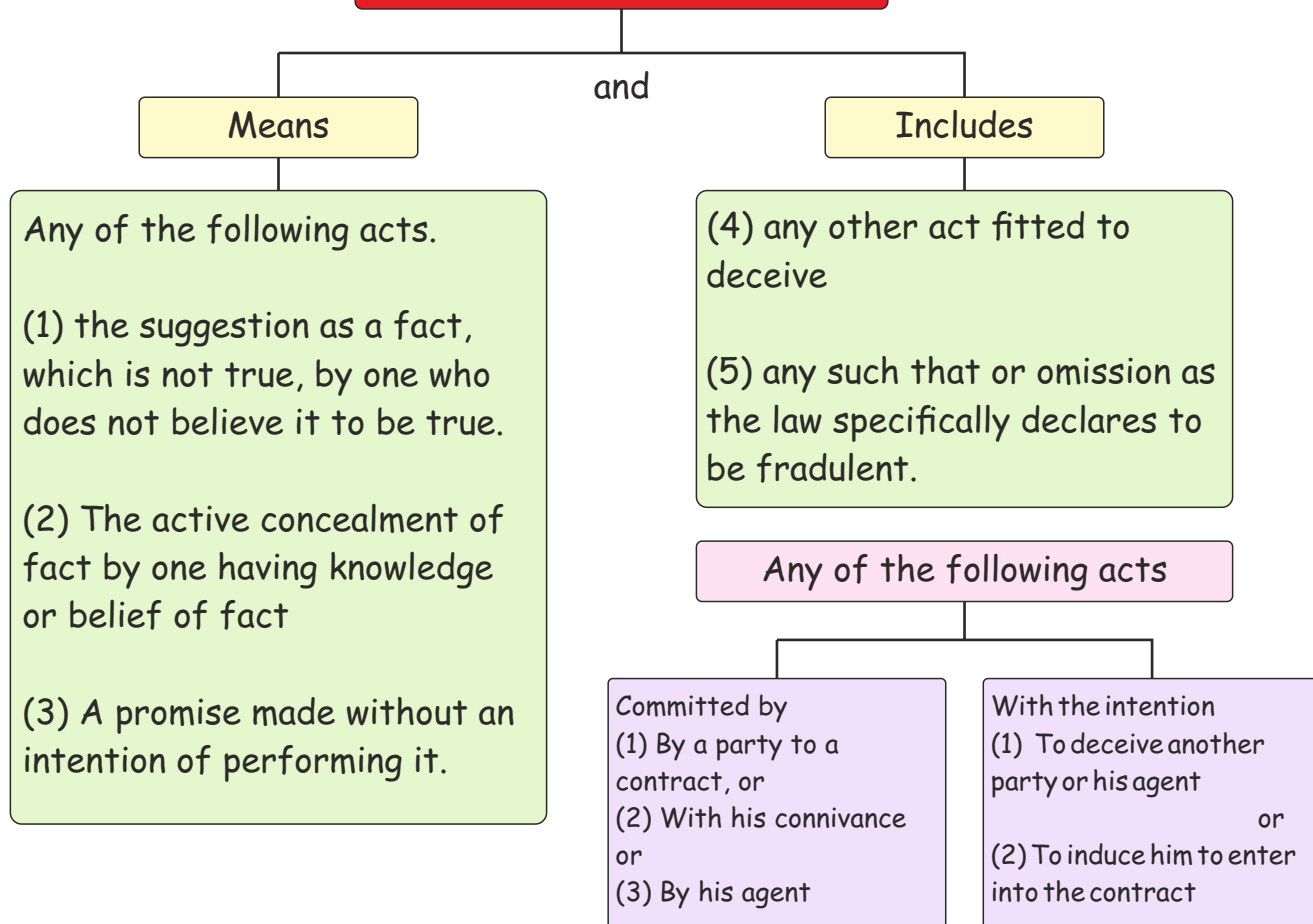
Section 19A Power of Court to set aside contract induced by UI.



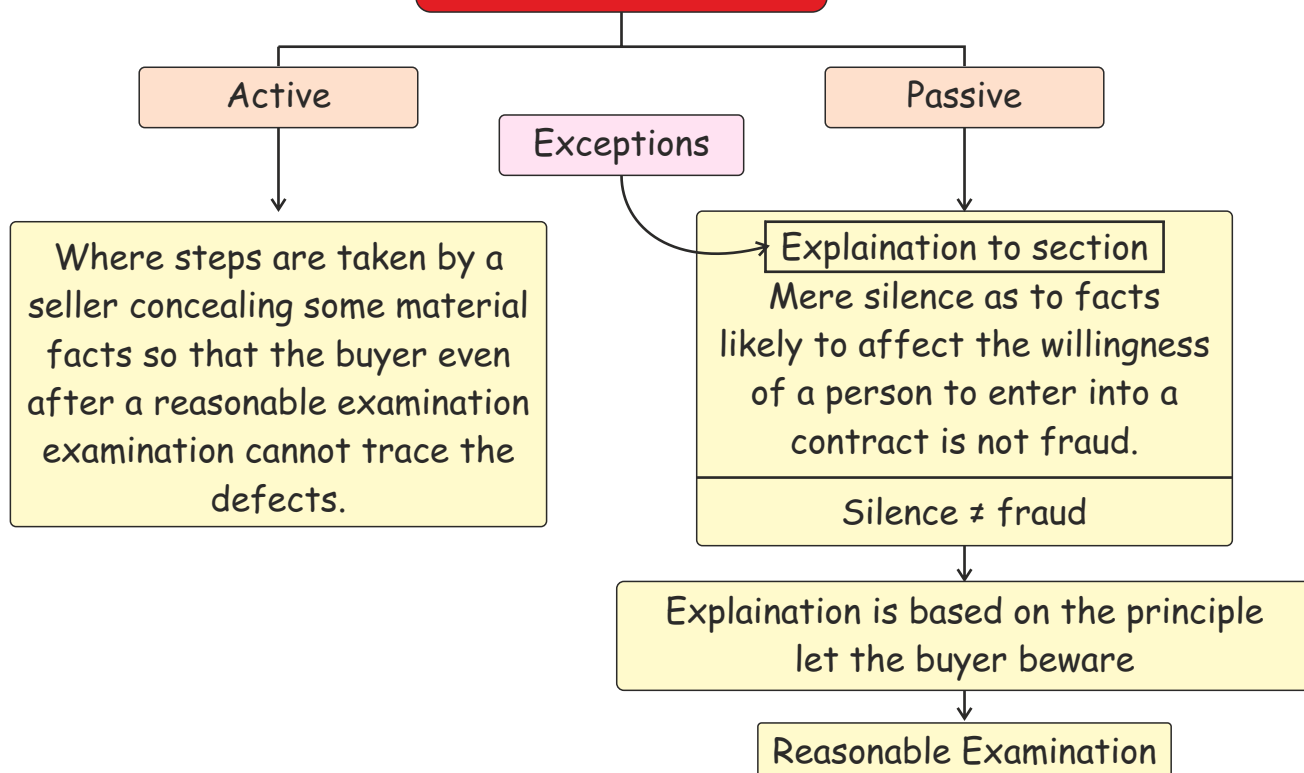
Section 17 Fraud



Fraud - Section 17



Concealment



Exception of Explanation to Section 17

Silence = Fraud

Circumstances are such that, it is duty of the person keeping silence to speak

- (a) Fiduciary relationship
- (b) Marriage contract
- (c) Insurance contract
- (d) Family settlement
- (e) Share allotment contract

or

Example

Ekta:- If you (Rudra) don't say anything about anything about soundness of horse. I will presume that horse is of sound mind

Rudra: silent

=

Horse sound [speech]

Misrepresentation [section 18]

Means and includes

(1) The positive assertion, [in a manner not warranted by the information of person making it),] of that which is not true, though he believes it to be true.

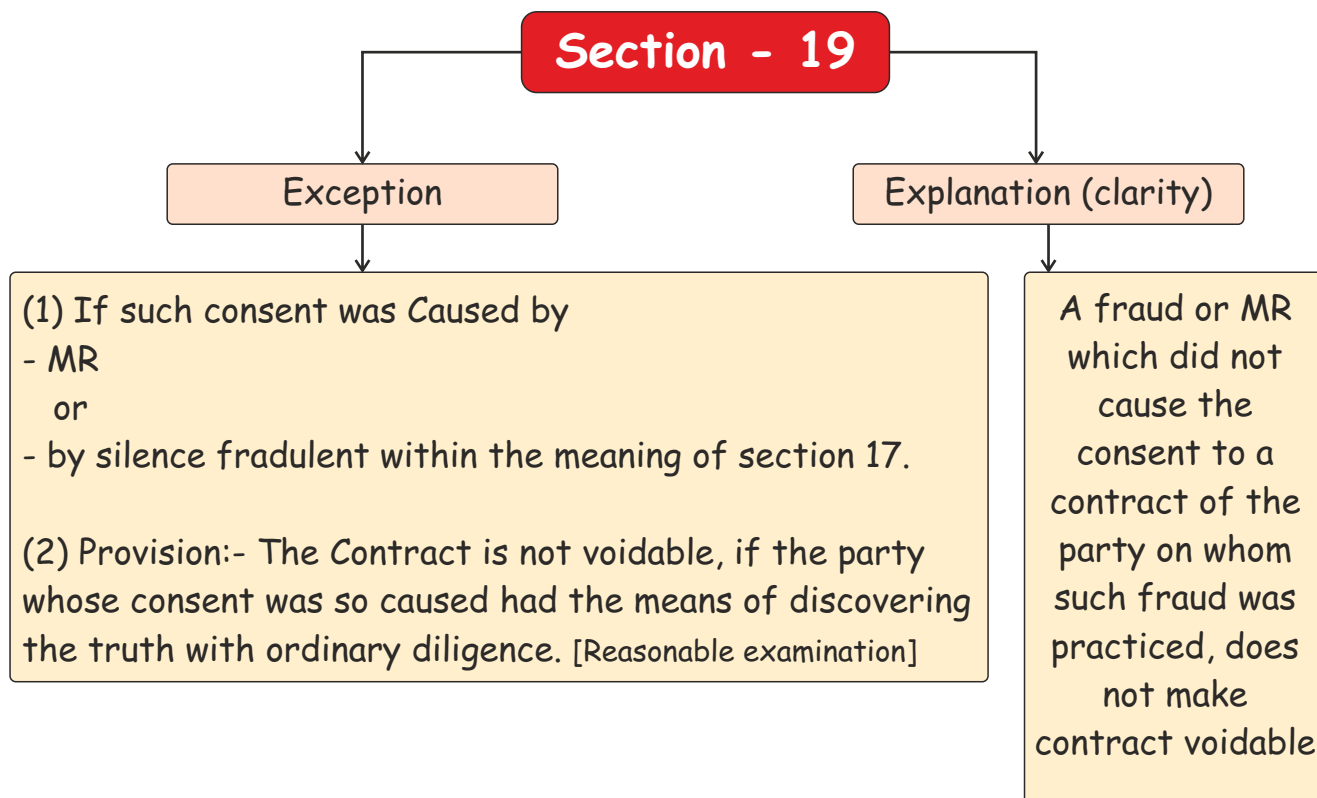
(2) Any breach of duty, without an intent to deceive, gains an advantage to the person committing it.

(3) Causing, however innocently, a party to agreement to make mistake as to substance of the subject of agreement.

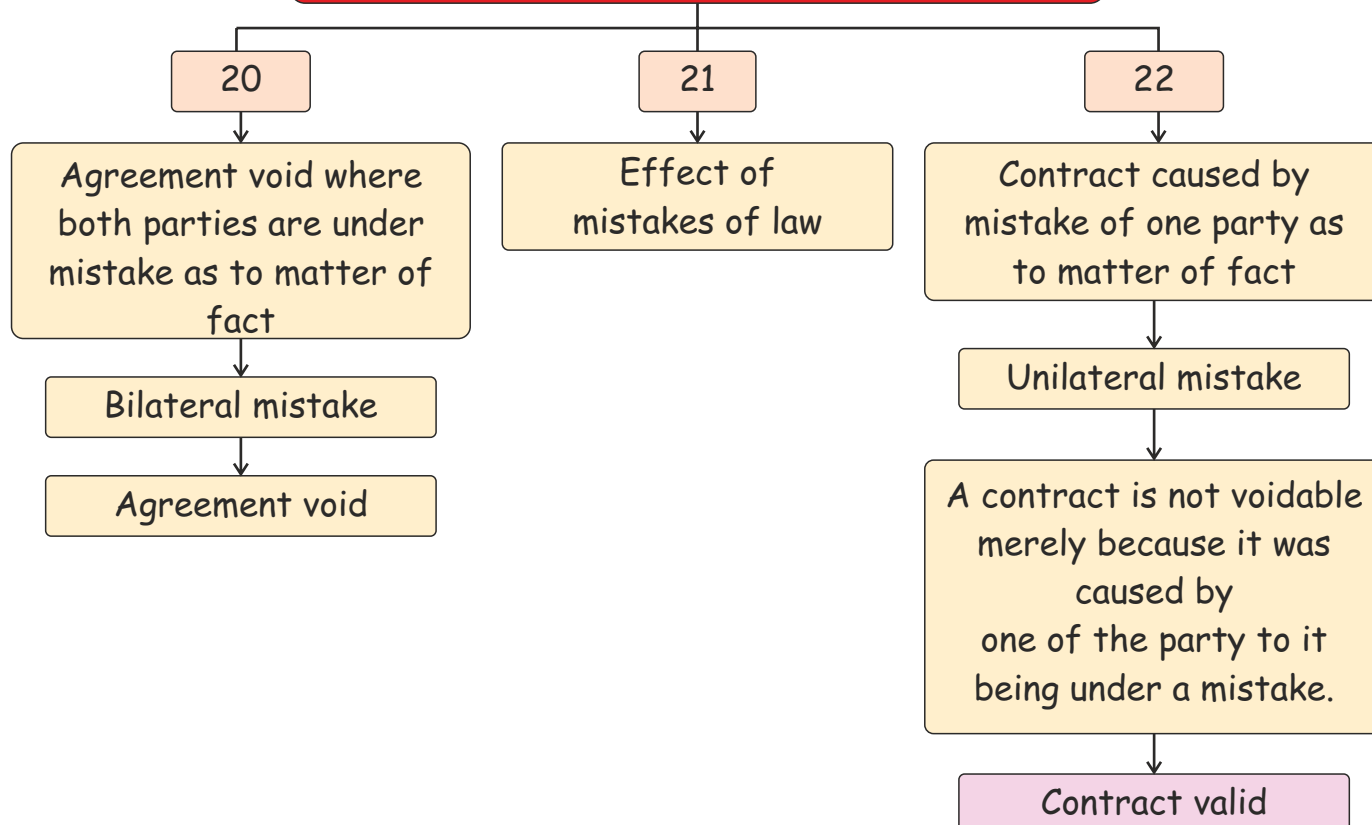
Misrepresentation in simple words :-

- (1) Positive false statement made without any basis of information.
- (2) A breach of duty which brings advantage to person committing it
- (3) Inducement of mistake about subject matter.

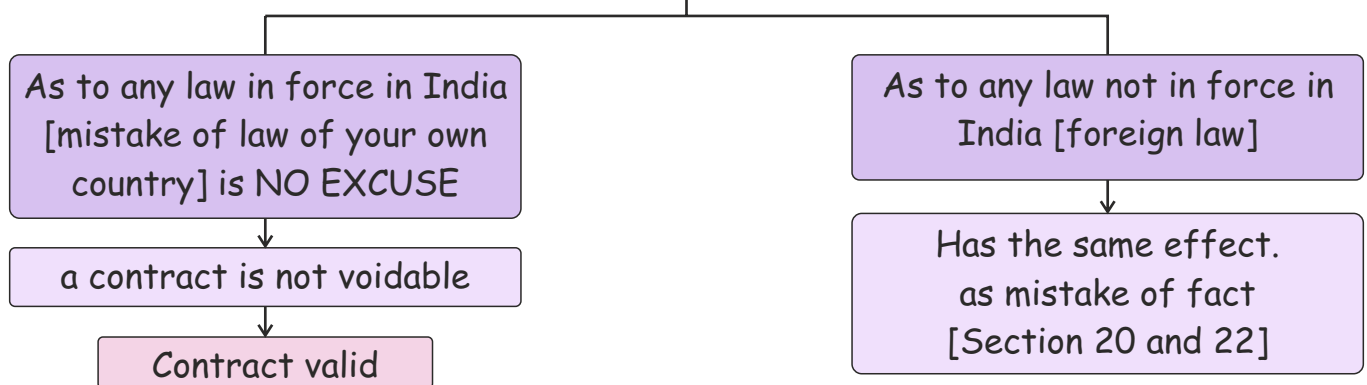
Section-19 Voidability of agreement without free consent



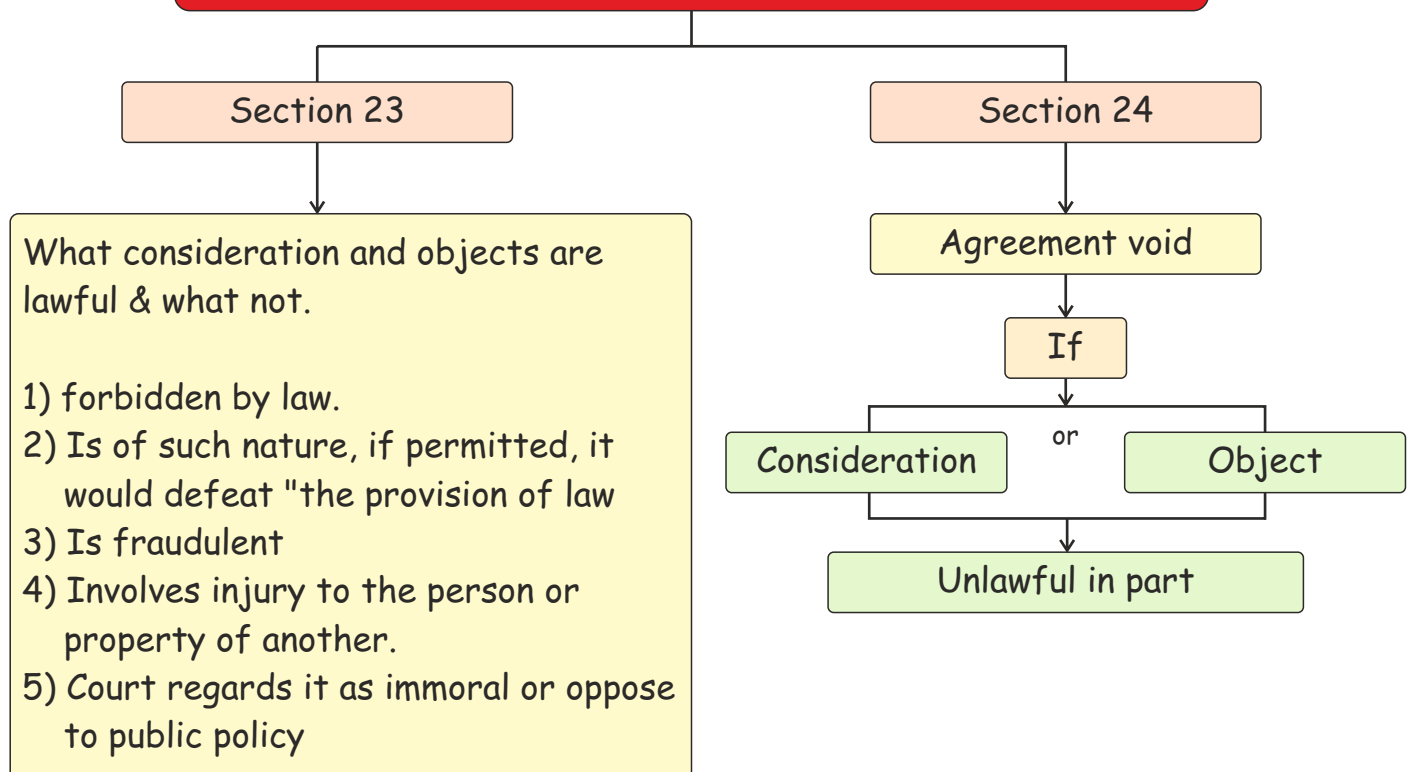
Mistake [section 20, 21 and 22]



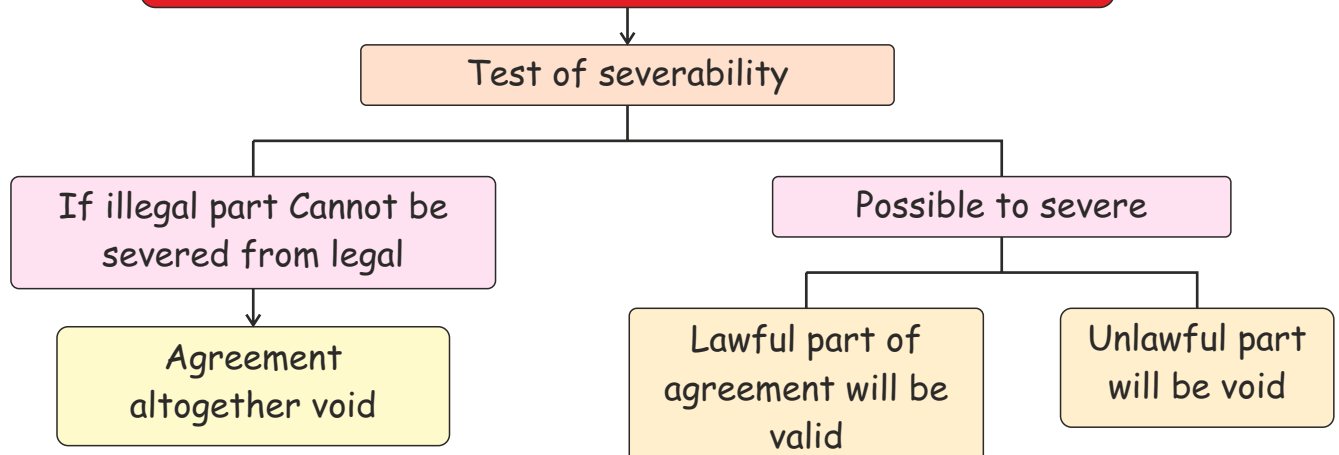
Section 21 Effect of mistake as to law



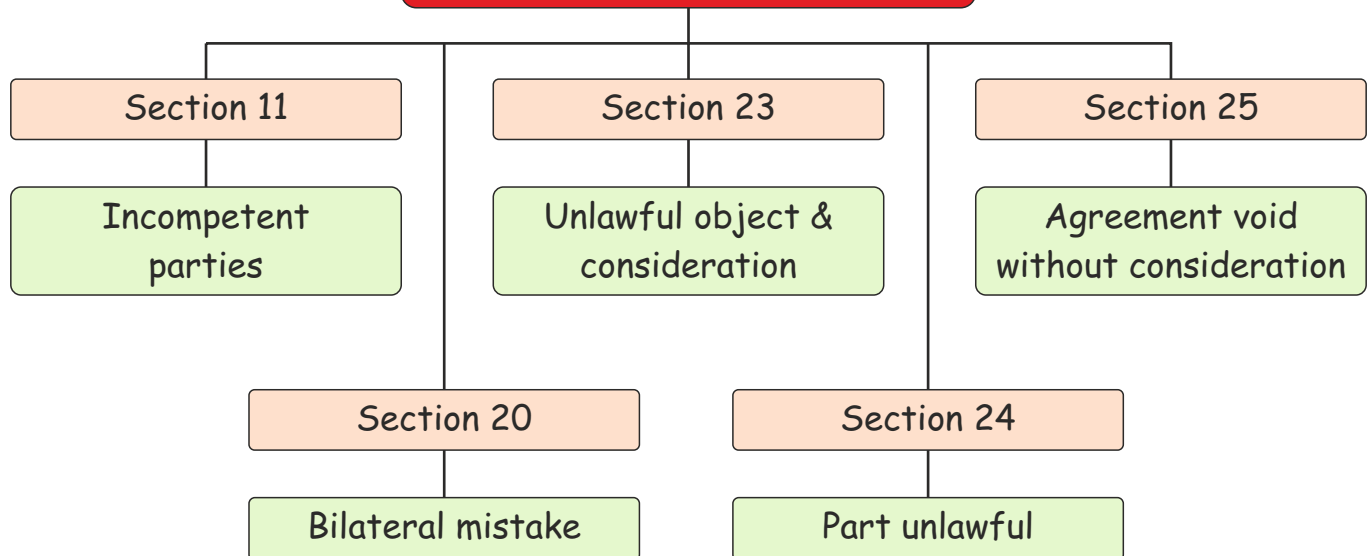
Lawful Object and Lawful Consideration



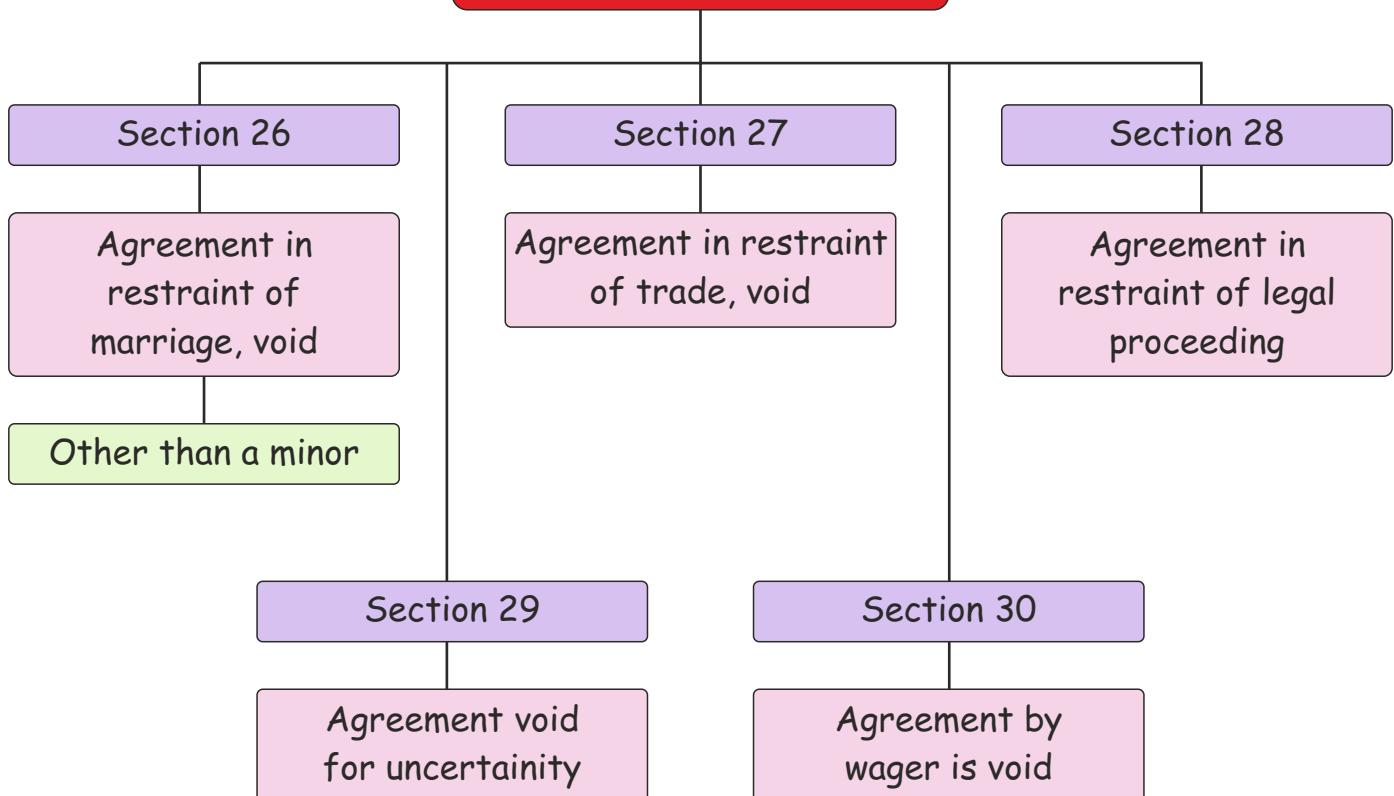
Party unlawful consideration/object



Void agreements



Void agreements



Section 27 Agreement in restraint of trade

Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void

Exceptions i.e restraint of trade of valid.

The following are valid agreements even if they in restraint of trade

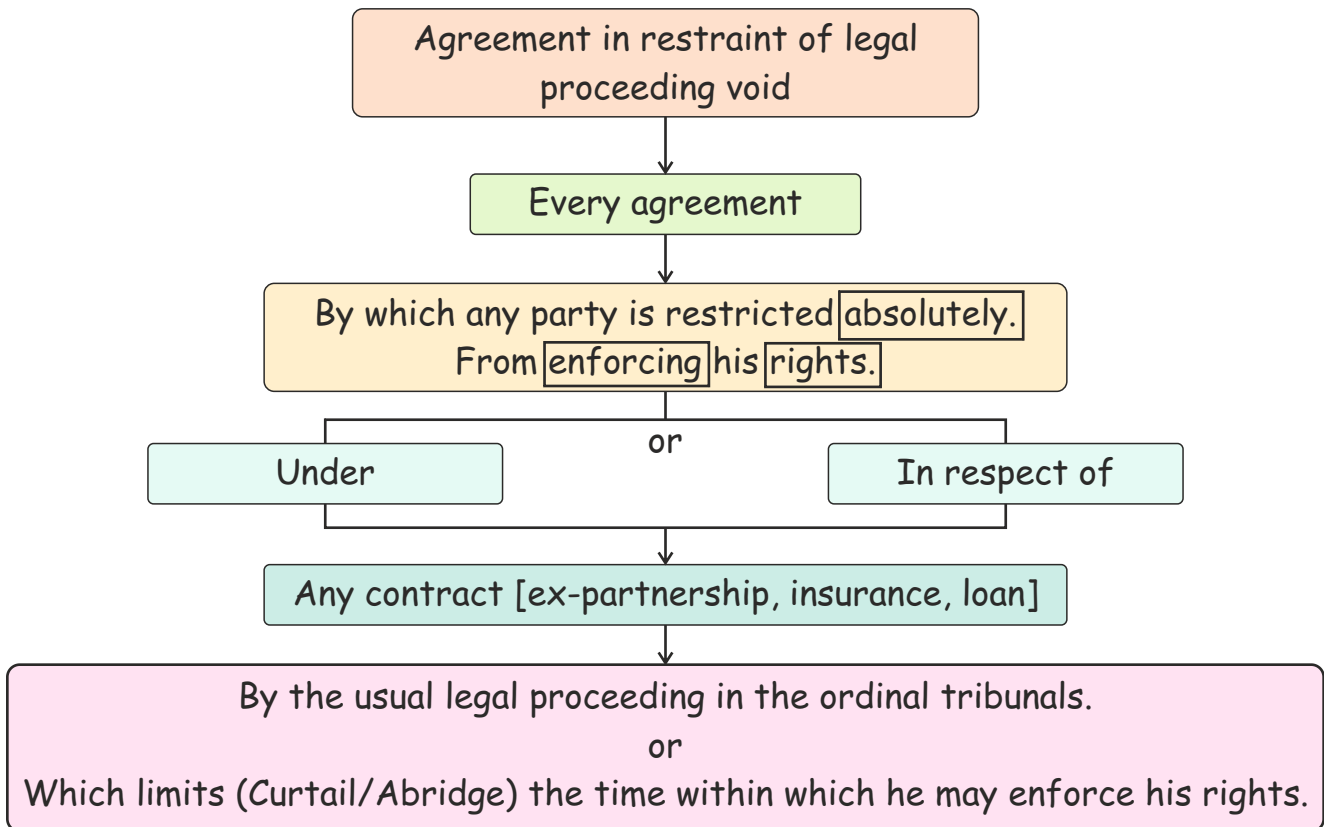
- a. Agreement with buyer of goodwill (as per exception of section 27]
- b. Trade combination to the extent they do not create monopoly or oppose to public policy.
- c. Service agreements with employees (eg. Chartered Accountant Trainee, Surgeon - Trainee)
- d. Agreements under the Partnership Act 1932
 - i. Agreement between partners not to carry on any business during continuance of partnership is valid.
 - ii. Agreement between partners not to carry on competitive business during continuance of partnership is valid
 - iii. Out going partner agreeing not to carry on competitive business is valid.

The restraint given above in point a, c & d is valid provided

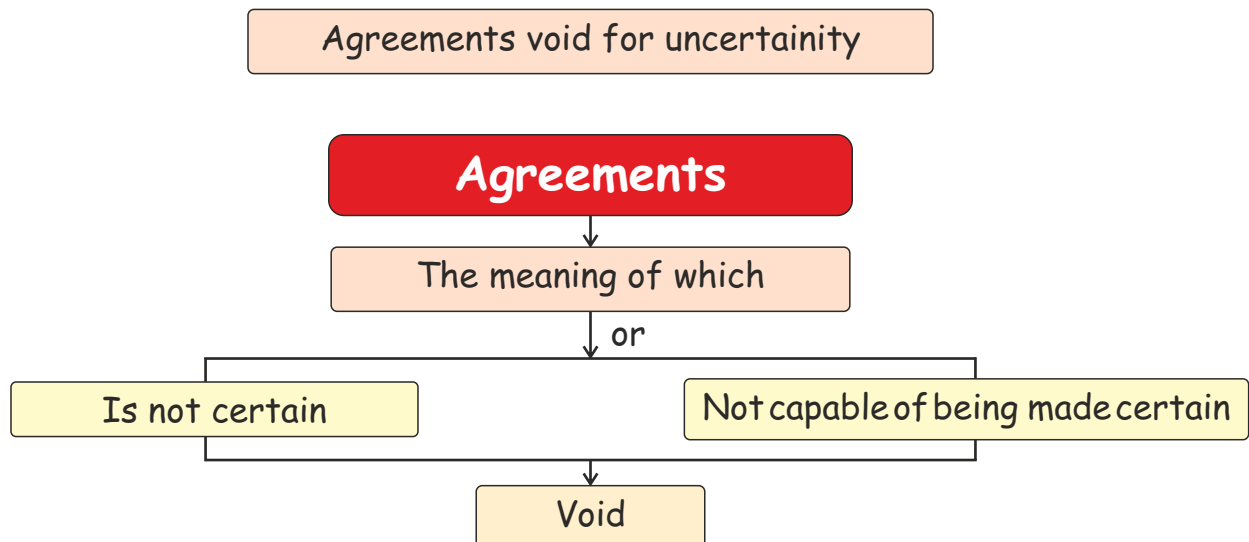
- i. Where restraint is to refrain from carrying on a similar business.
- ii. The restraint should be within the specified local limits
- iii. The restraint should be not to carry on similar business after sale of goodwill to the buyer for a price (this condition is applicable only for point a)
- iv. The restriction should be reasonable (i.e reasonable local limits & for reasonable time)

Note :- Reasonableness of restriction will depend upon number of factors as considered by court.

Section 28



Section - 29



Section - 30

Agreement by way of wager is void.

And no suit shall be brought for recovering anything to be won on any wager.

Principle on which Section - 30 is based

- Crossword puzzles
 - Picture competitions
 - Athletic Competition
 - Where price are awarded on basis of skill & intelligence are valid.
 - Lottery transaction is game of chance
- and
- not of skill or knowledge is void

Agreement oppose to public policy

Relevant/Important Exam point of view

- 1) Trafficking relating to public offices and titles
- 2) Agreements tending to create monopoly
- 3) Interference with the course of justice Sec 23

Most
IMP

Read only

- 1) Trading with enemy (sec 11)
- 2) Stifling of prosecution
- 3) Maintenance and champerty
- 4) Interest against obligations

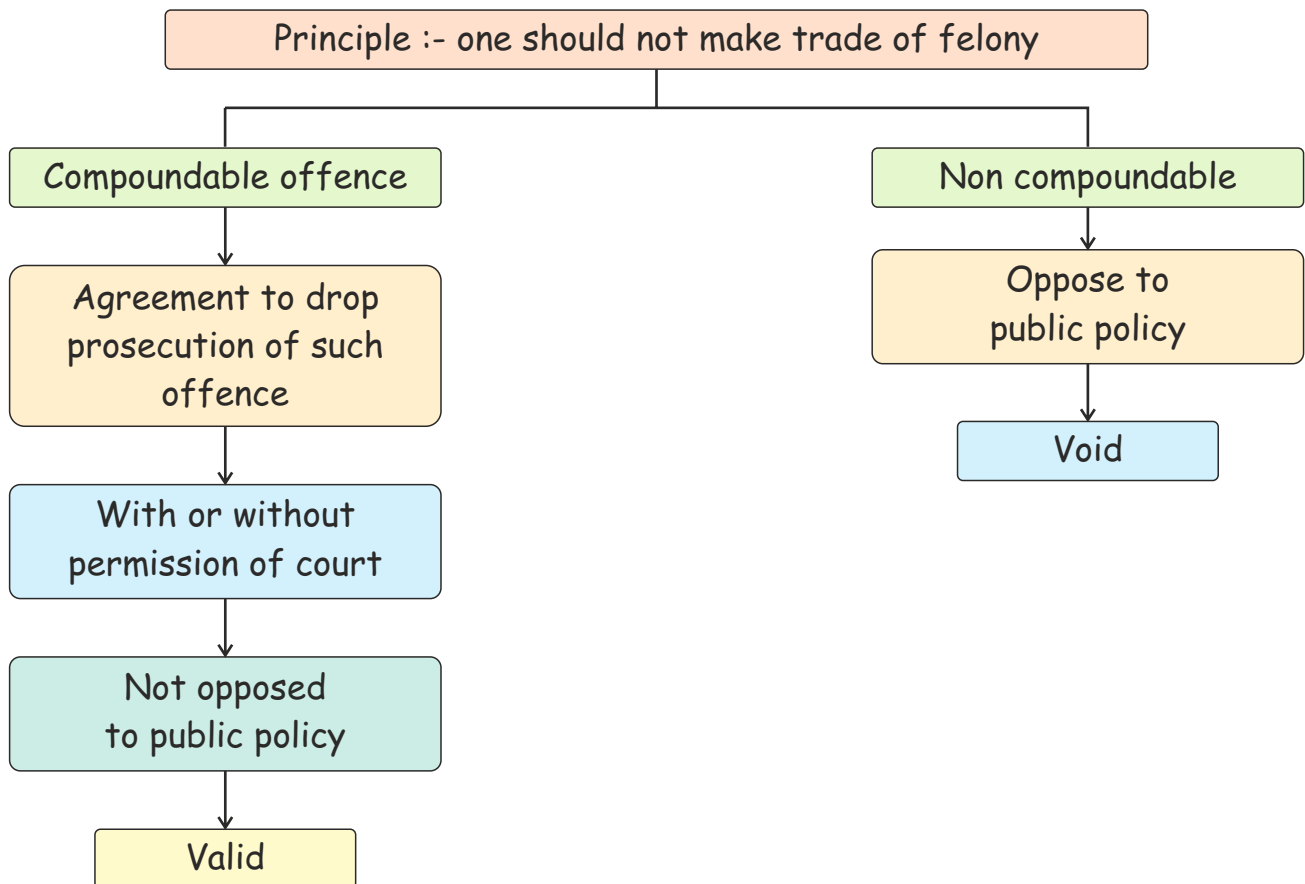
Trafficking relating to public offices and titles (under section 23)

- An agreement to trafficking in public office is opposed to public policy
- Because it interferes with appointment of person best qualified for service of public
- Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested

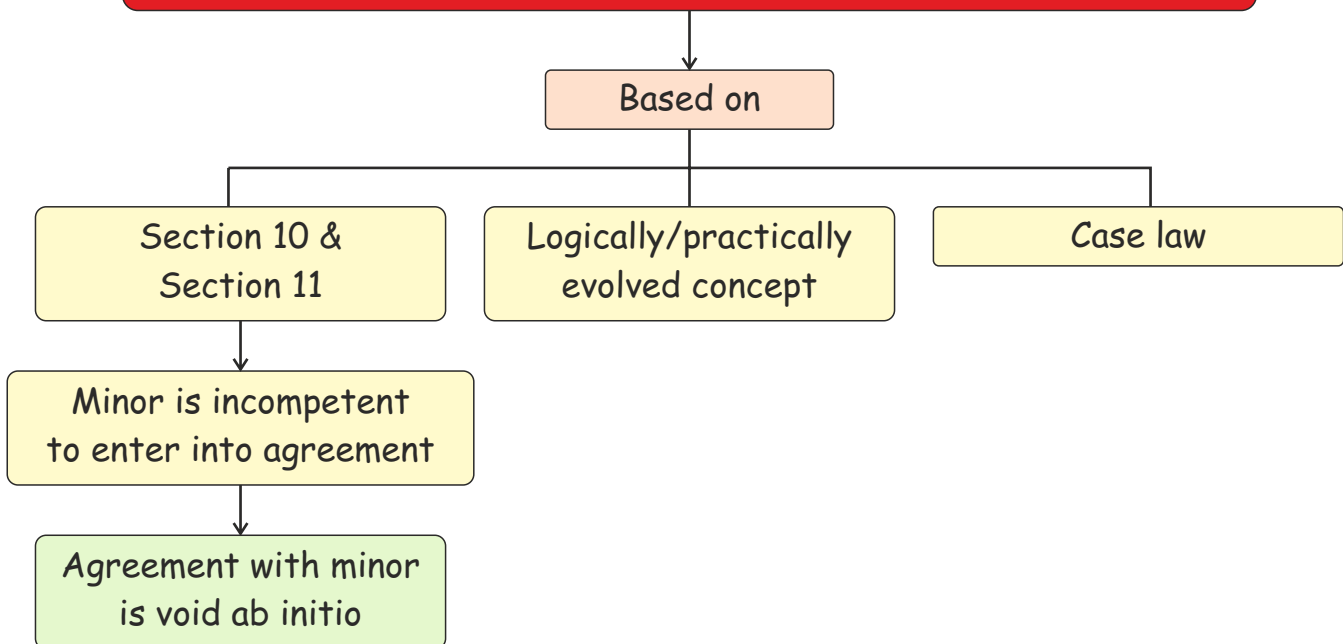
Interference with course of Justice

- As per section 10 & section 23 every agreement of which object is unlawful is void
- The given instance is a case of interference with the course of justice the object of which is to induce any judicial officer or any executive officer of state or country to act partially or corruptly results oppose to public policy & is void

Stiffling of prosecution



Provisions relating to agreement with minor



Agenda

Relevant for exams

- (1) Sec 68 - Liabilities relating to necessities supplied to minor
- (2) Minor can always plead minority
- (3) Minor can be an agent.
- (4) Minor's liability in tort (civil wrong)

Miscellaneous/reading category

- (1) No ratification (subsequent approval) after attaining majority.
- (2) Minor can be a beneficiary
- (3) Minor can never become insolvent.
- (4) Joint contract by minor & adult
- (5) Surety for a minor.

- General Rule :- Minor is never personally liable.
- Minor can always plead minority
- Rule of estoppel cannot be applied against a minor even if he has taken any loan or entered into any contract by falsely representing that he was major.
- It means he can be allowed to take his minority in defence

Liability for necessary supplied to minor (Section 68)

Food

Shelter

Clothing

Education

A claim for necessities supplied to a minor is enforceable by law only against minor's estate, if he possess but a minor is not personally liable only his property is liable

To render minor's estate liable for necessities, two conditions must be satisfied.

1. The contract must be for the goods/services reasonably necessary for his support in the station of life.
2. The minor must not have already a sufficient supply of this necessities.

Minor can be an agent

A minor can act as an agent

But he will not be liable to his principle for his act.

Minor liability in tort (civil wrong)

Civil wrong

Breach of contract

Minor is not liable for breach of contract

Other civil wrong

Except breach of contract minor is liable for other civil wrong.

UNIT - (III) Blue Print

Other essential elements

Very IMP

Category 1

- 1) Free Consent (sec 15-22)
 - a) Difference b/w
 - b) Direct question
 - c) Practical question
- 2) Section 27-28 with Exceptions
- 3) Trafficking relating to public policy
- 4) Interference with Course of Justice
- 5) Agreement to create monopoly

Category 2

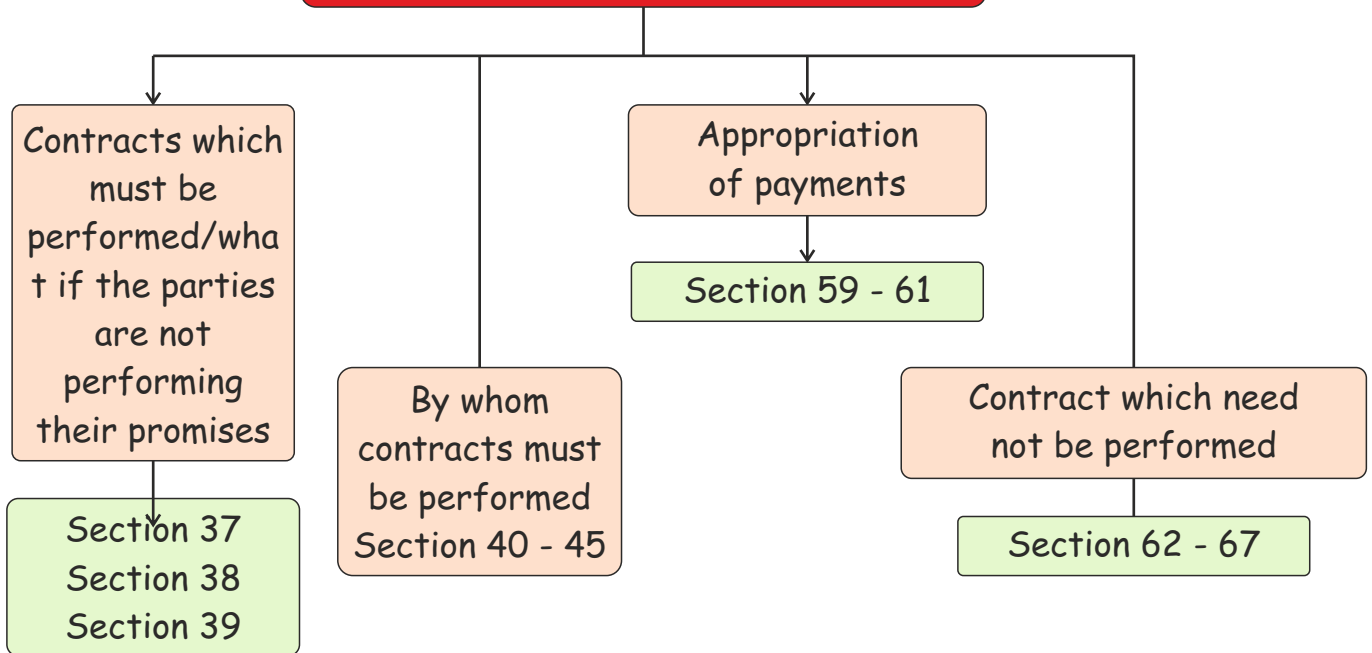
- (1) Wager V. Insurance
- (2) Minority + Fraud
- (3) Liabilities for necessities supplied to a minor
- (4) Sec-24 partly unlawful

Category 3

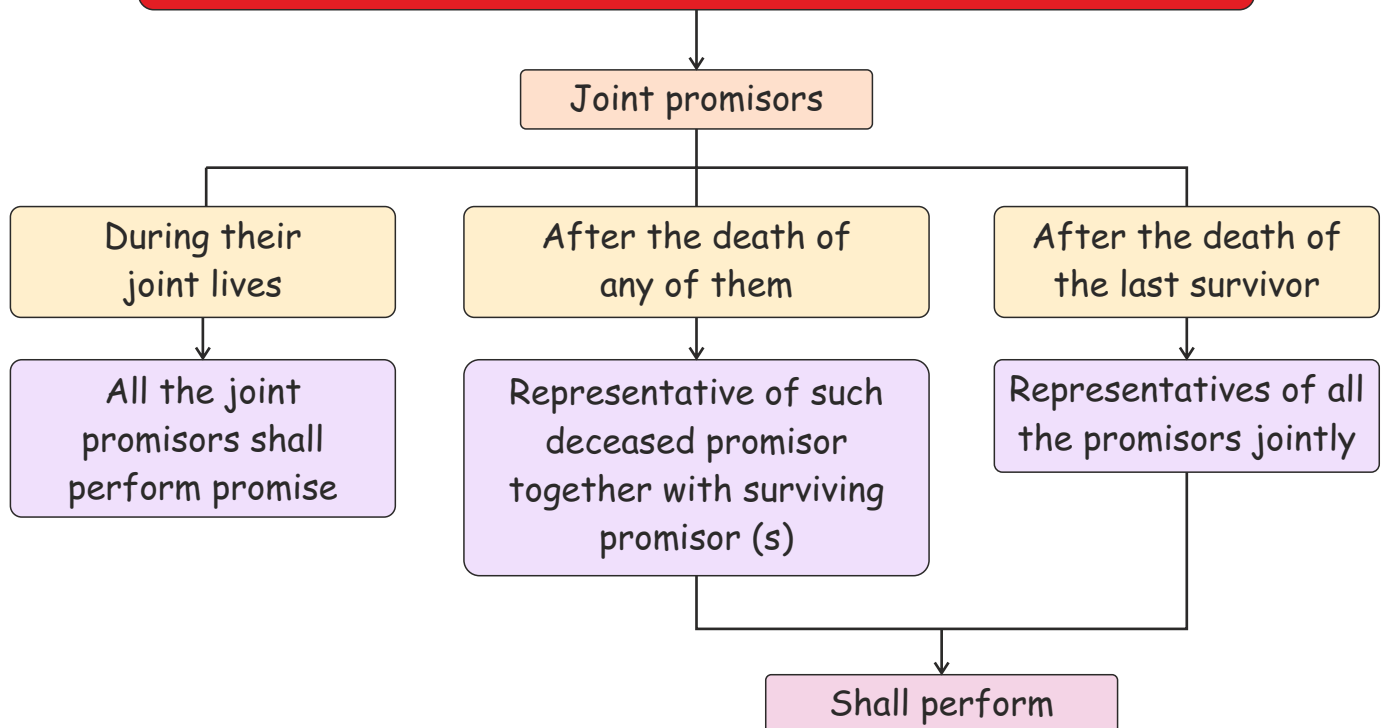
Rest everything (III) category

UNIT - IV

Performance of Contract



Devolution of Joint Liabilities [Section -42]



Demanding performance from any of the joint promisors [Section 43]

The promisee may,

- In the absence of an express agreement to the contrary
- Compell any one or more of such joint promises
- To perform the whole of promise

The liability of joint Promisors is joint and several

Rights and duties of joint promisors [Sec 43]

- Unless a contrary intention appears from contract
- Each joint promisor may compell every other joint promisor
- To contribute equally with himself
- To the performance of the promise

Default by any of the joint promisor in contribution

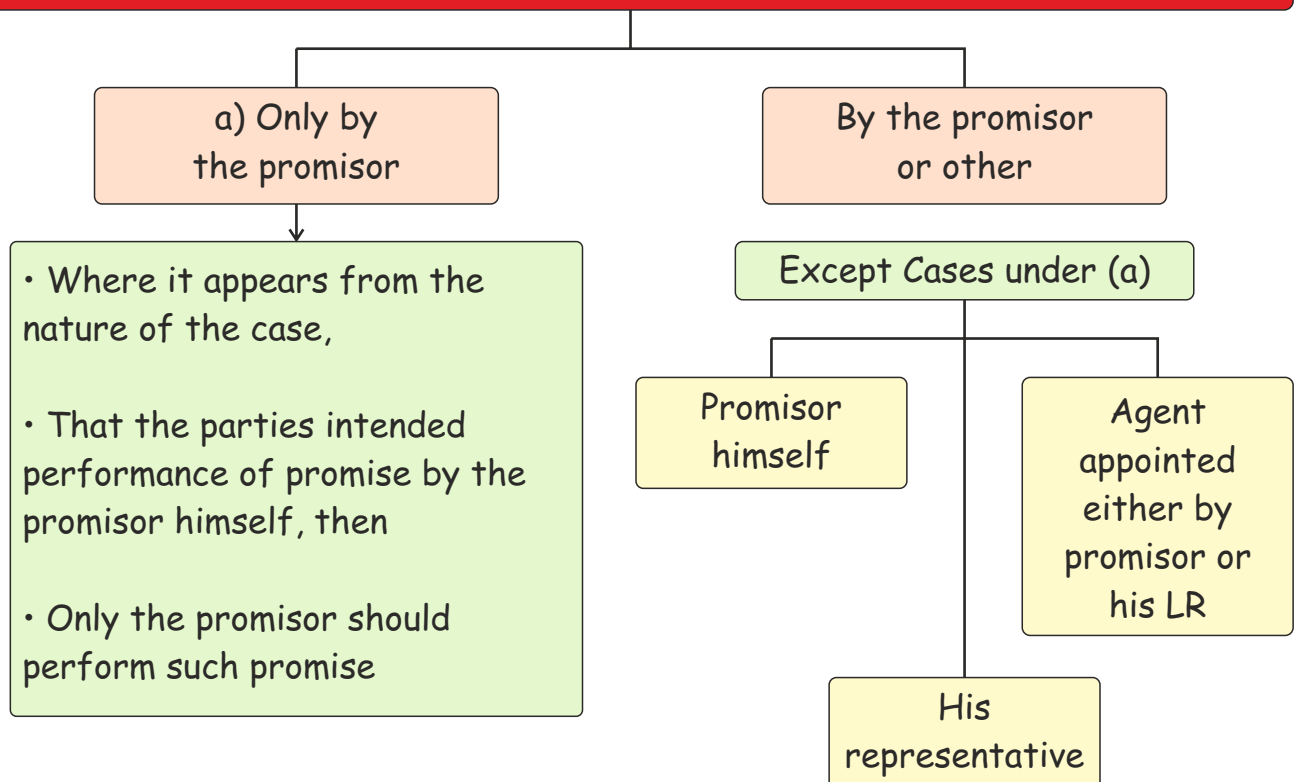
Remaining joint promisors must equally share the loss arising from such default.

Release of Joint Promisor [Sec 44]

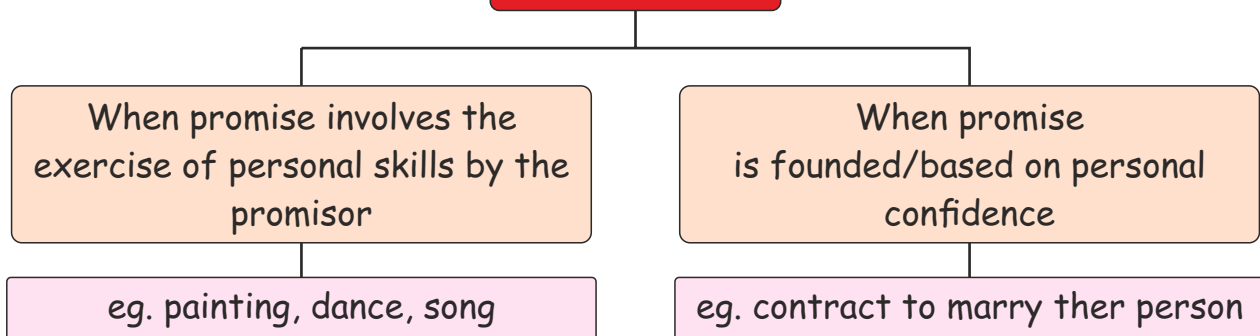
Release of one of the joint promisors by the promisee does not discharge the other joint promisors

Such discharge does not free such promisor from responsibility to the other joint promisor (s)

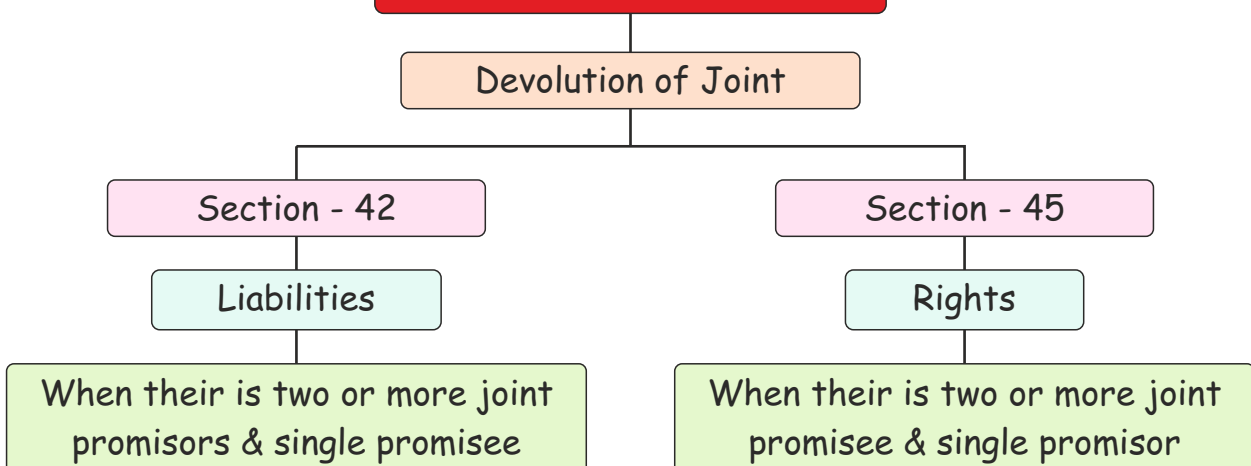
Person by whom promise is to be performed [Sec 40]



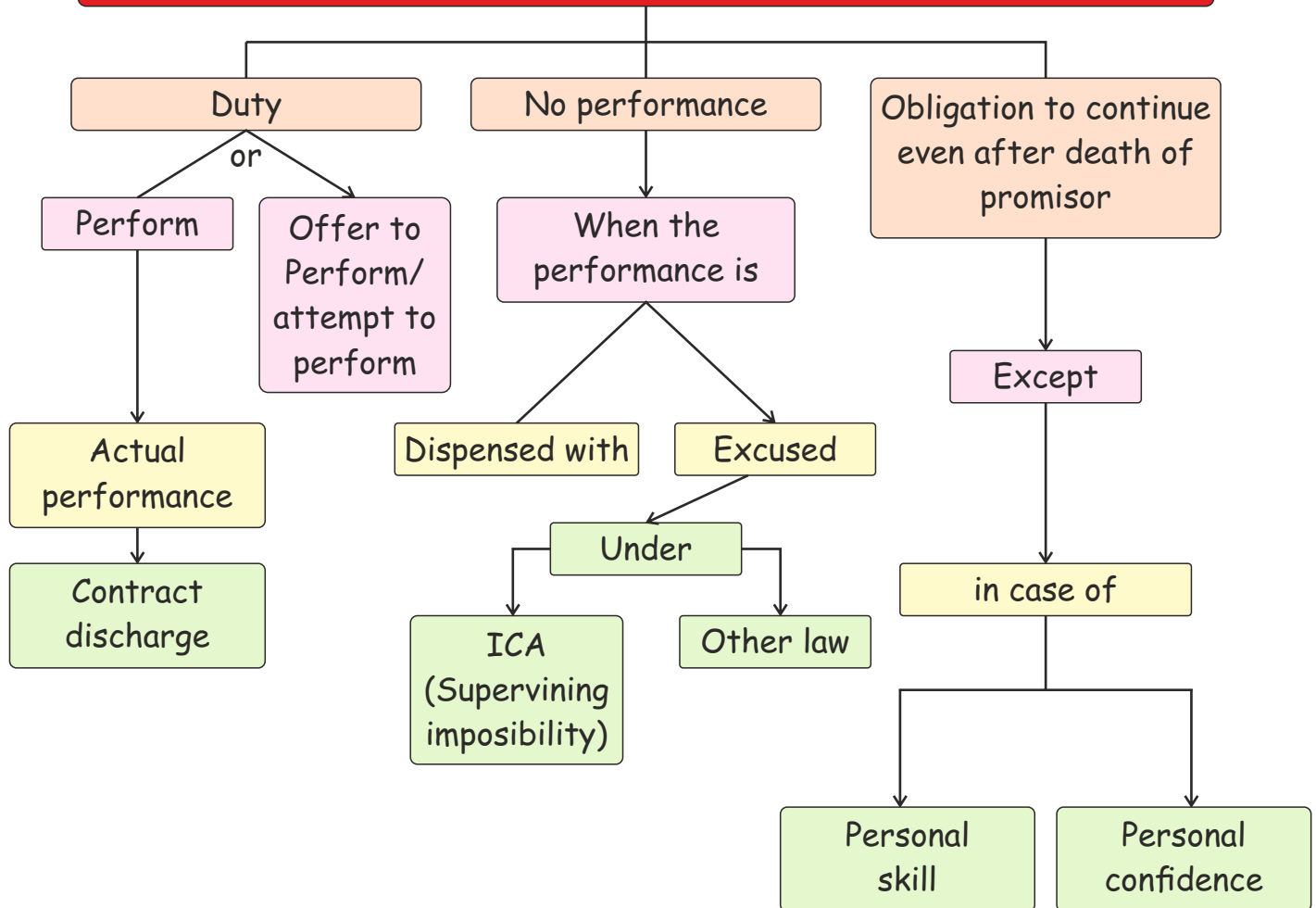
Cases



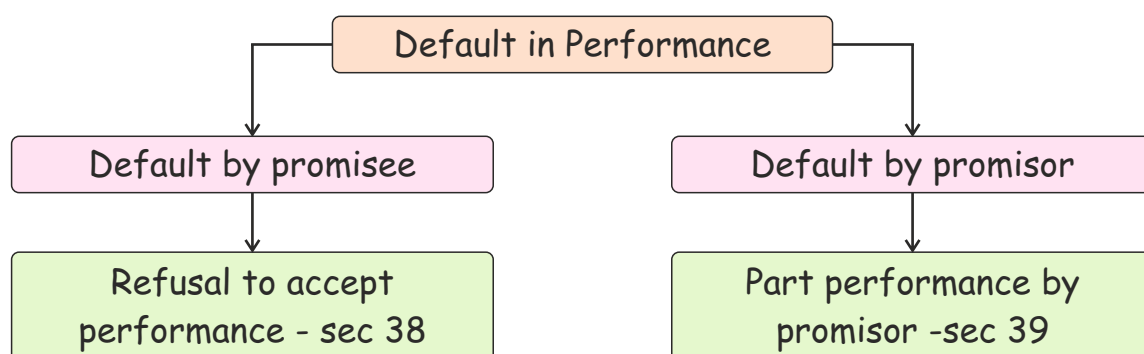
Section 42 & 45



Obligation of parties to contract [section 37]

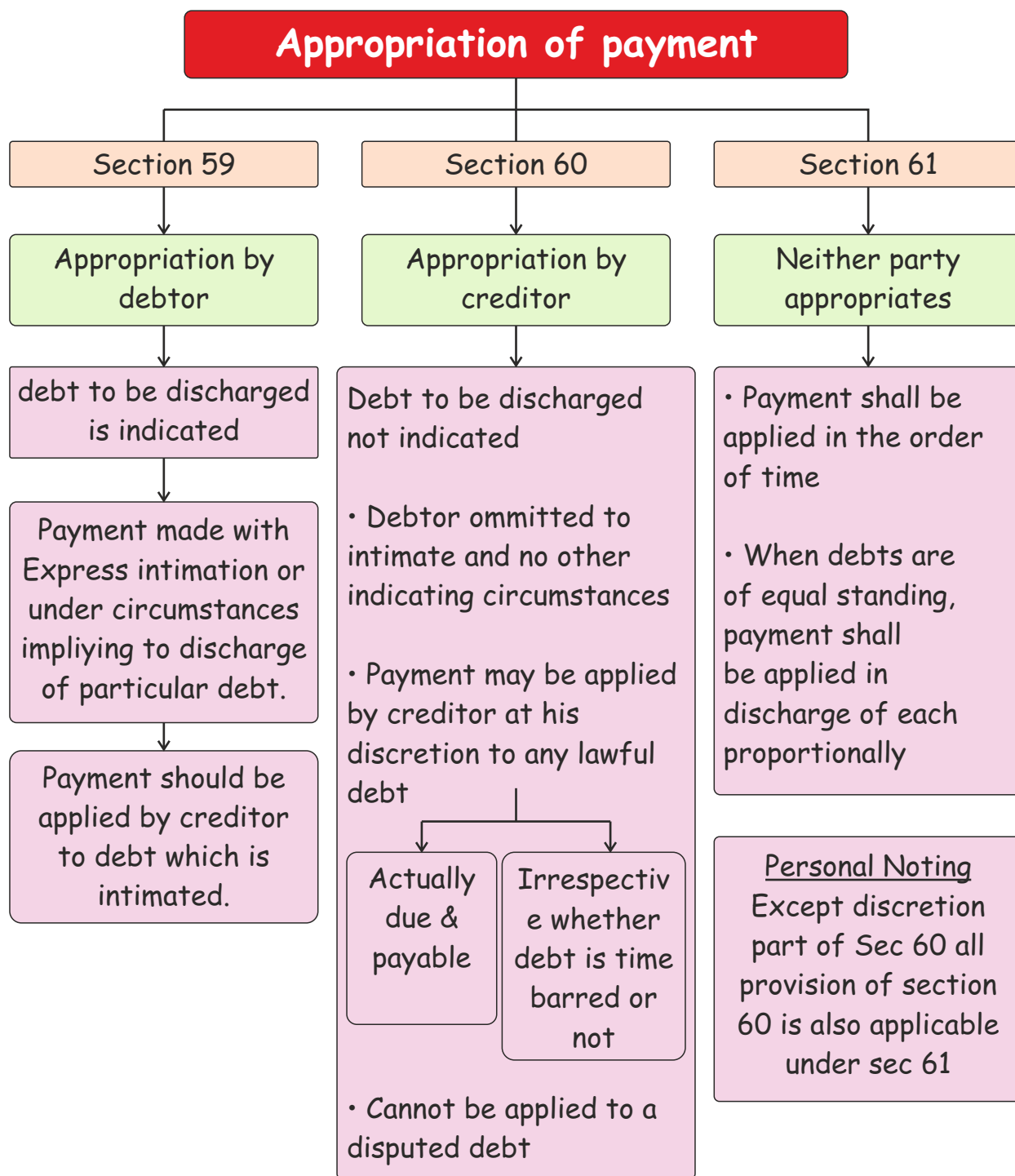


Non Performance/Part performance and non - acceptance of performance

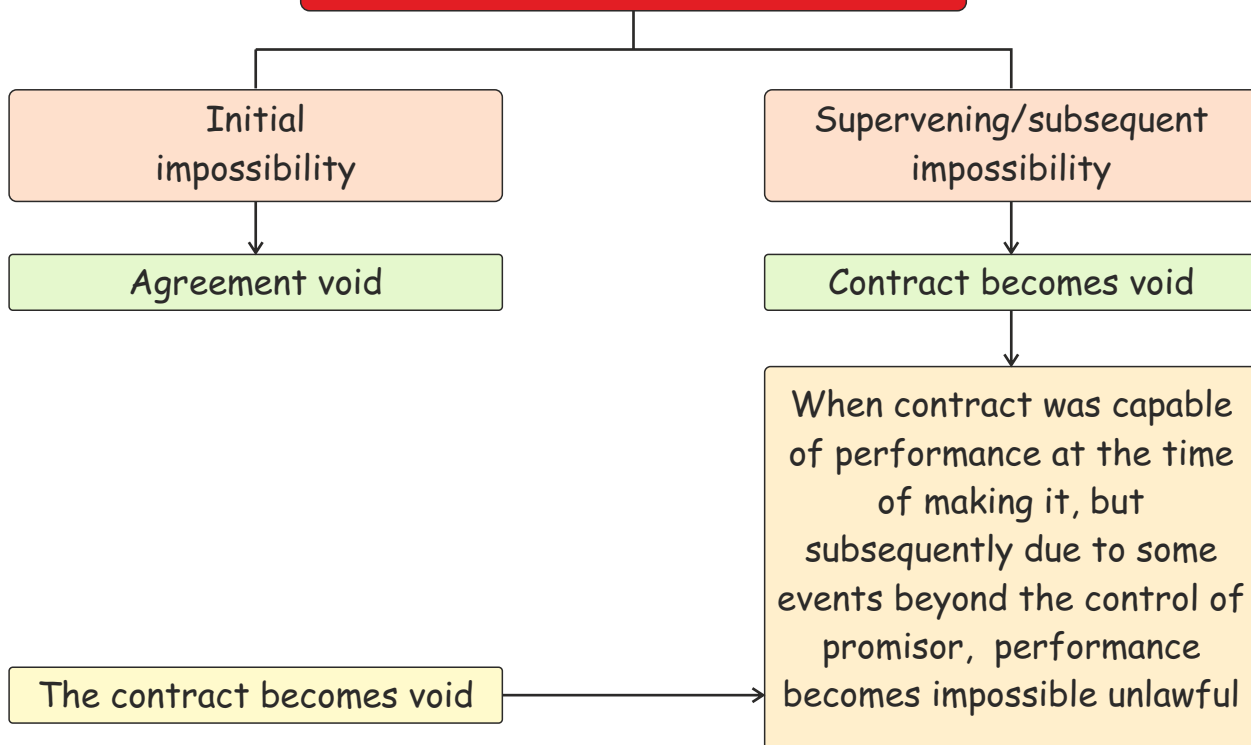


Default by	Promisee	Promisor
Description	Refusal to accept performance	Part Performance by Promisor
Situation	<p>(a) Promisor has offered to perform his promise either (i) to the promisee, or (ii) one of the several joint promisee and</p> <p>(b) Promisee refuses to accept his performance</p>	<p>(a) Promisee is ready to accept performance by the promiser, but</p> <p>(b) Promisor has - (i) refused. to perform, or (ii) disabled himself from performing his promise in entirety.</p>
Effect	<p>(a) Promisor is not responsible for non-performance,</p> <p>(b) Promisor does not lose his rights under the contract.</p>	<p>(a) Promisee may put an end to the contract. In such a case he has to return the benefits, if any, received from part performance of the promise</p> <p>(b) Where the promisee has signified (by words or conduct) his consent to continuance of contract, he cannot put an end to it</p> <p>(c) Promisee is entitled to damages on account of non-performance by promisor.</p>

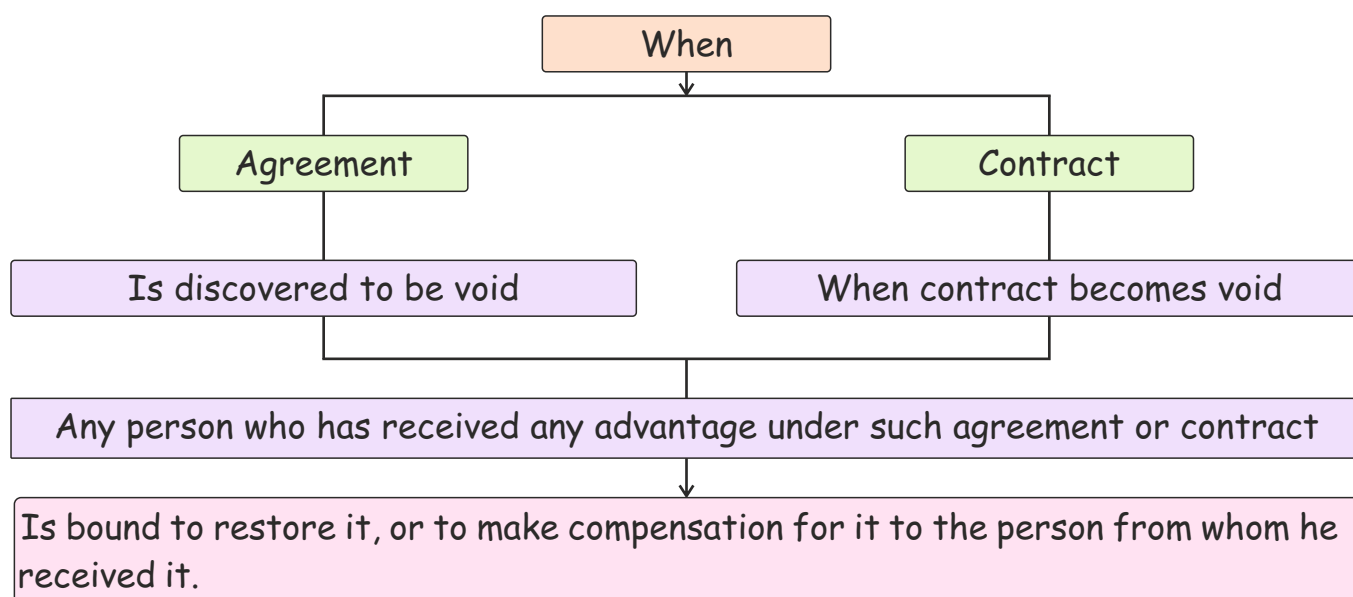
Appropriation of payment = application of payment



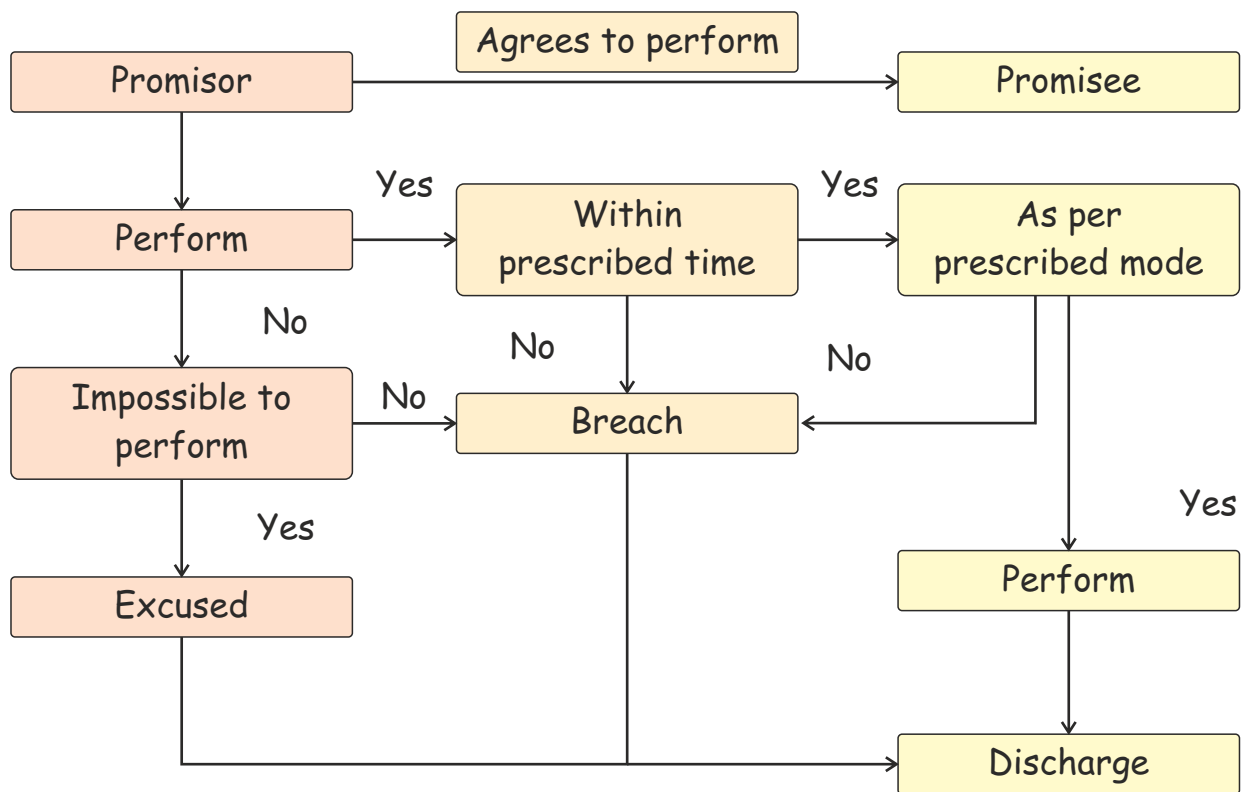
Impossibility [Sec 56]



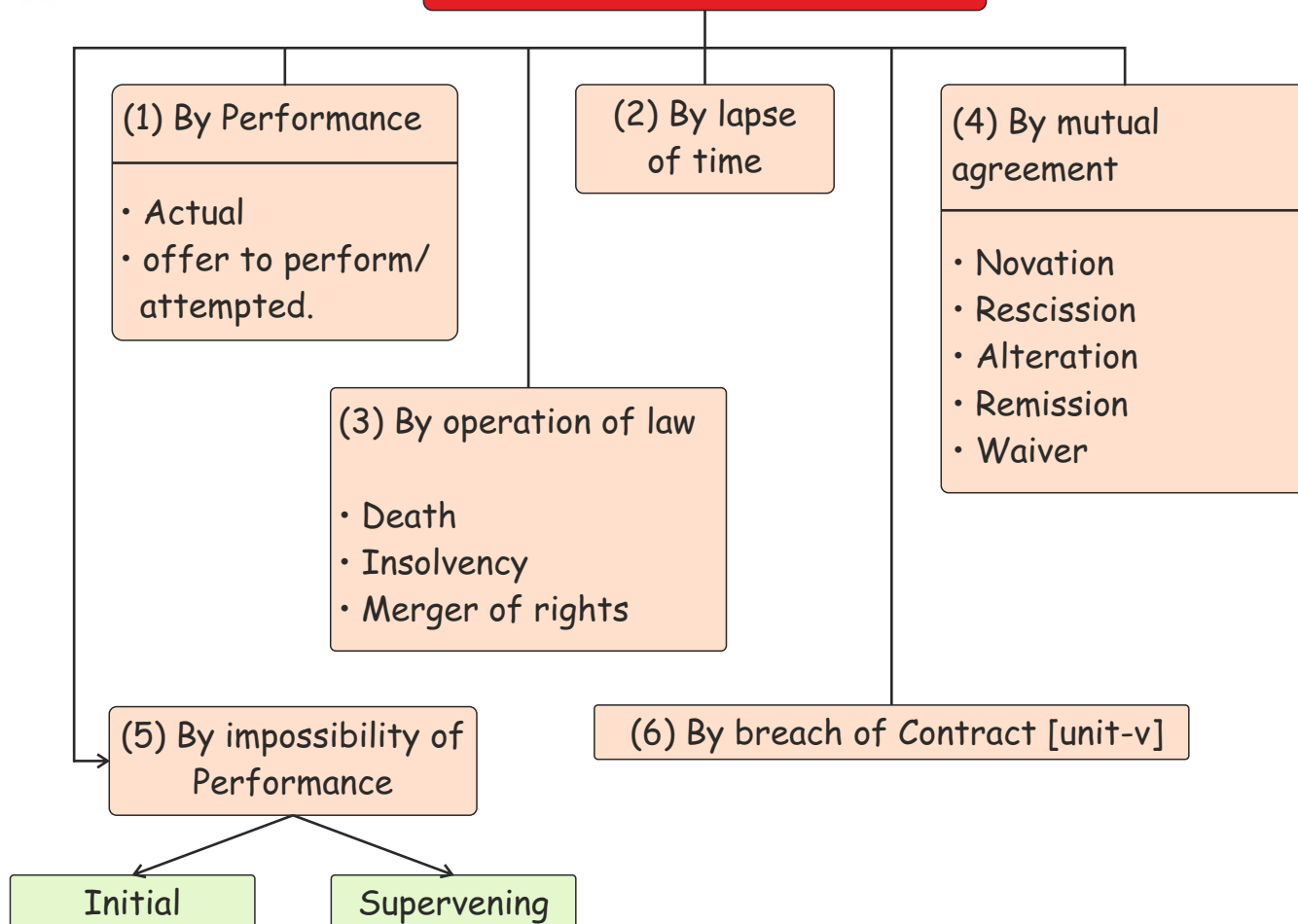
Obligation of person who has received advantage under void agreement or contract that becomes void/restoration of benefits [Sec 65]



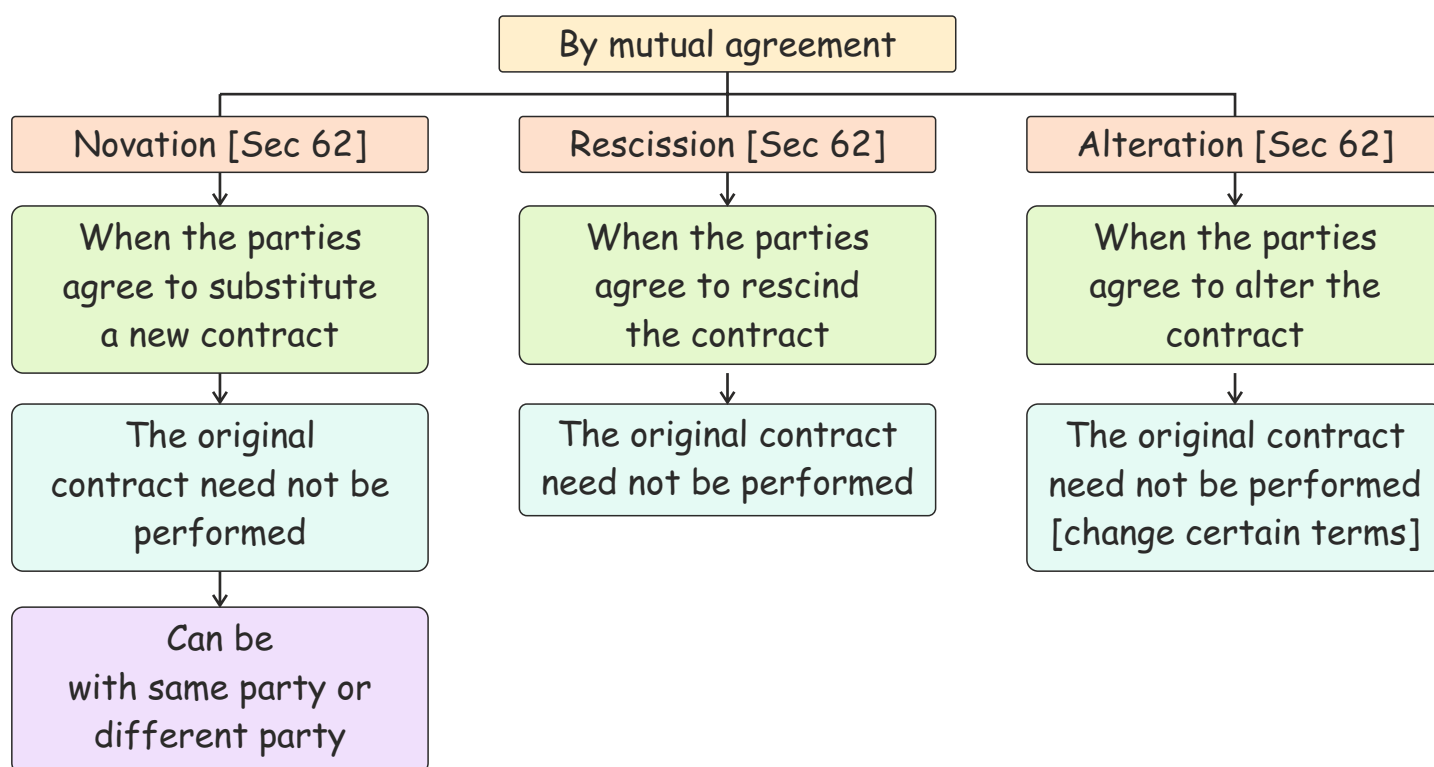
Note:- Security is not a benefit received under the contract, it is security that the purchaser would fulfil his contract and ancillary to the contract



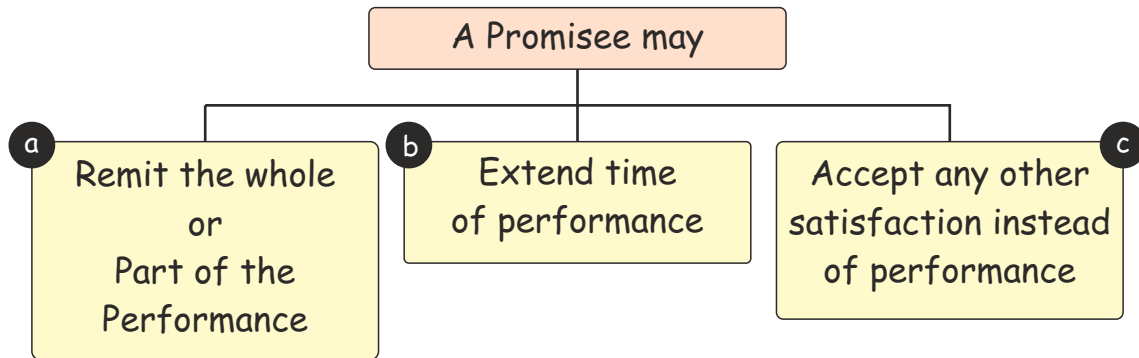
Discharge of contract



Contract which need not be performed [Except 65]



Remission [Section 63]



Consequences of Rescission of Voidable Contract [Sec 64]

- Other party is discharged from his promise
- Party rescinding a contract shall restore benefits receiving, if any.

Mode of Communication or revoking rescission of voidable Contract [Sec 66]

Effect of neglect of promisee to afford reasonable facilities for performance [Sec 67]

- The promisor is excused by such neglect or refusal to any non performance caused there by.

Miscellaneous

Time and place of performance
[Section 46-50]

Performance of reciprocal promise
[Section 51-58]

Reciprocal promise - Promises which must be performed simultaneously

Rules as to performance of Reciprocal Promises [Sec 51 -57]

Section 51

- Contract consist of Reciprocal promises.
and
- Such reciprocal promises are to be simultaneously performed

Provision: - Promisor need not perform his part of promise unless promisee is ready & willing to perform his reciprocal promise.

Section 52

If contract expressly provides for the order of performance of reciprocal promises

Provision

Promises shall be performed only in the order mentioned and not otherwise

Section 52

If contract does not provide for the order of performance

Provision:- Promises shall be performed in such order which the nature of transactions required

Section 53

Contract contains reciprocal promises, and one party to contract prevents the other from performing his promise.

Provision:- contract becomes voidable at the option of the party so prevented.
and
Prevented party is entitled to compensation from the preventing party, for any loss for non performance.

Section 54

Contract contains Reciprocal promises and one of them

- Cannot be performed; or
- Its performance cannot be claimed till the other promise is performed

Defaulting promisor

Provision: promisor who is at fault, cannot claim performance of the reciprocal promise

- Such defaulting promisor shall compensate the other party to the contract for any loss suffered by him as a result of non performance

Section 57

Contract Contains reciprocal promises &

- Certain promises therein are legal,
- Certain promises are illegal

Provision

- Set of promises to do legal things is valid (contract)
- Set of promises to do illegal things is void [void agreement]

Time and Place of Performance [Sec 46-50]

(A) Time specified, but application to be made by promisee [Sec 48]

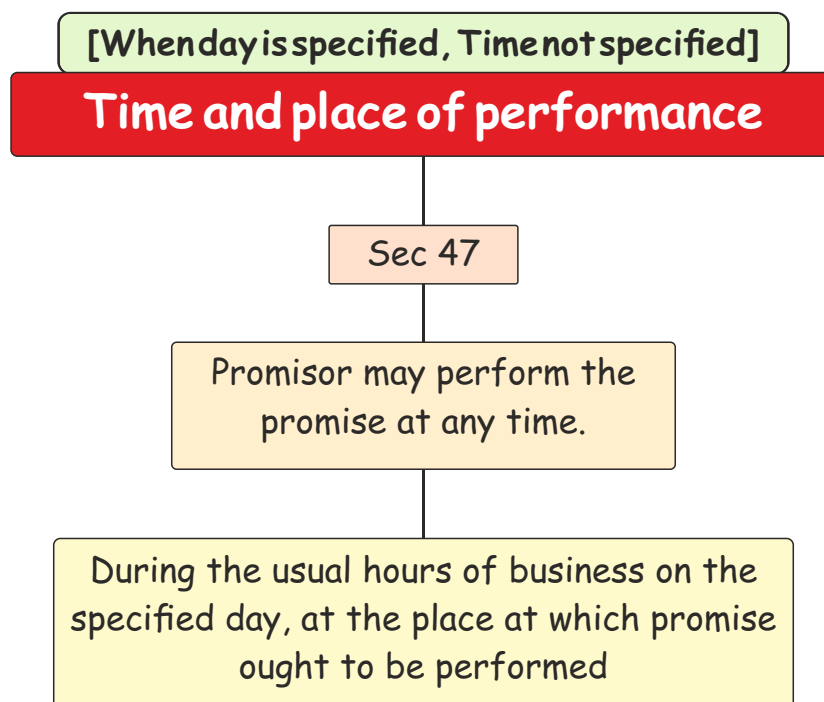
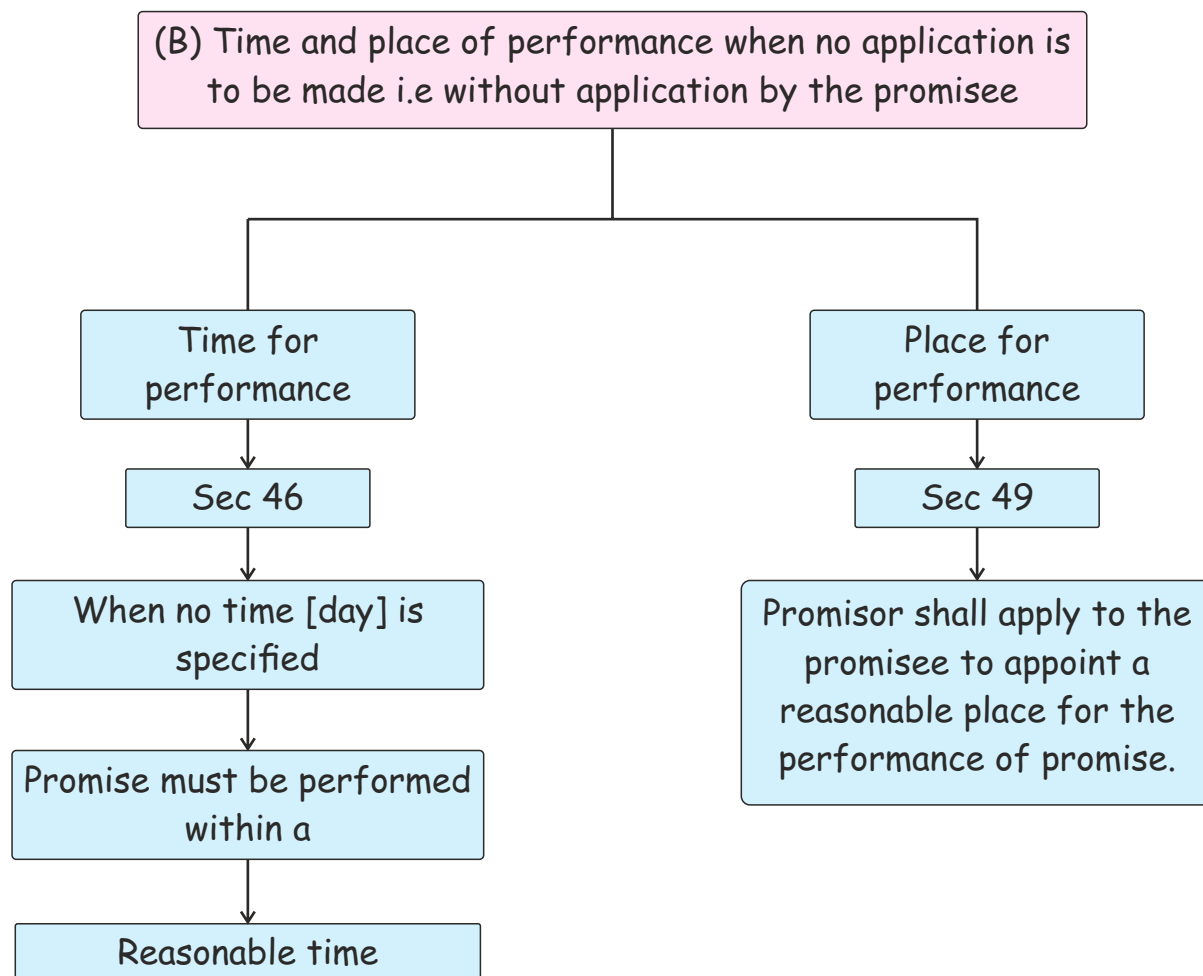
Situation

Promise is to be performed on a certain day and the promisor has not undertaken to perform the promise without application by promisee.

Duty

Application by promisee [duty]

- It is duty of the promisee to apply for the performance of promise.
- At a proper place and within the usual hours of business.



Manner of Performance [Sec 50]

As promisee has prescribed

Where time is essence of contract

Intention of the Parties

Time is essence of the contract [Sec 55, Para 1 & 3]

Para 1 - Contract not performed at specified time is voidable

- Party to contract promises to perform at or before specified time
- Then at the option of promisee contract becomes voidable

Para 3 :- Loss of right to claim compensation.

- If promisee has accepted performance at any time other than agreed time.
- However the right is not lost when he gives notice to the promisor of his intention claim to compensation.

Time is not essence of the contract [para 2]

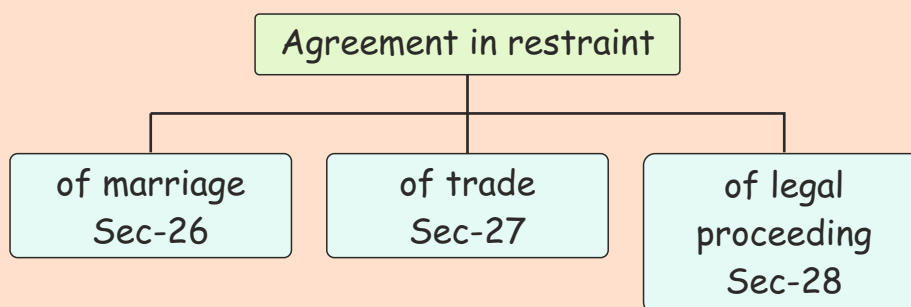
Contract is not voidable

Right to Compensation

Promise is entitled to claim compensation.

Coverage of sections under Unit (III)

Section 13 → Consent
 Section 14 → Free Consent
 Section 15 → Coercion
 Section 16 → Undue influence
 Section 17 → Fraud
 Section 18 → Misrepresentation
 Section 19 → Contract voidable
 Section 20 → Bilateral mistake
 Section 21 → Mistake of law
 Section 22 → Unilateral mistake
 Section 23 → Unlawful object or unlawful consideration
 Section 24 → Partly unlawful object & consideration
 Section 25 → Validity of agreement without consideration



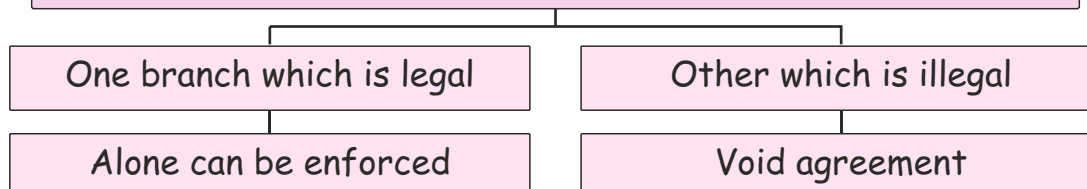
Section 29 → Uncertain agreement
 Section 30 → Wager agreement
 Section 56 → Impossibility of performance
 Section 57 → Agreement to do reciprocal promises [one is legal another is illegal]

Sec 36 - Agreement Contingent upon impossible events

Section 19A - power of court to set aside contract induced by undue influence.

Except Section no. 21 & 22, sec 20 - sec 30, sec 11, sec 36, sec 56 & 57 are expressly declared void agreements.

Section 58 - Alternative promise, one branch being illegal



UNIT - (IV) Performance of Contract [Blue print]

Category 1

- Sec 40, 43 & 44
- Sec 59, 60, 61
- Sec 56 read with sec 65
- Sec 38, 39 read with Sec 41

**MOST
IMP**

Category 2

- Sec 62, 67
- Modes of discharge of contract refer chart
- Sec 51-57 [Readable category]

Category 3

- Rest everything

Coverage of section under Unit - (IV)

- | | |
|--|-------------------|
| • Contract which must be performed. | [Sec 37, 38 & 39] |
| • By whom contract must be performed | [Sec 40 - 45] |
| • Time & place of performance | [Sec 40 - 50] |
| • Performance of reciprocal promises | [Sec 51 - 58] |
| • Appropriation of payments | [Sec 59-61] |
| • Contract which need not be performed | [Sec 62 - 67] |

UNIT - V Breach of Contract and its

Agenda

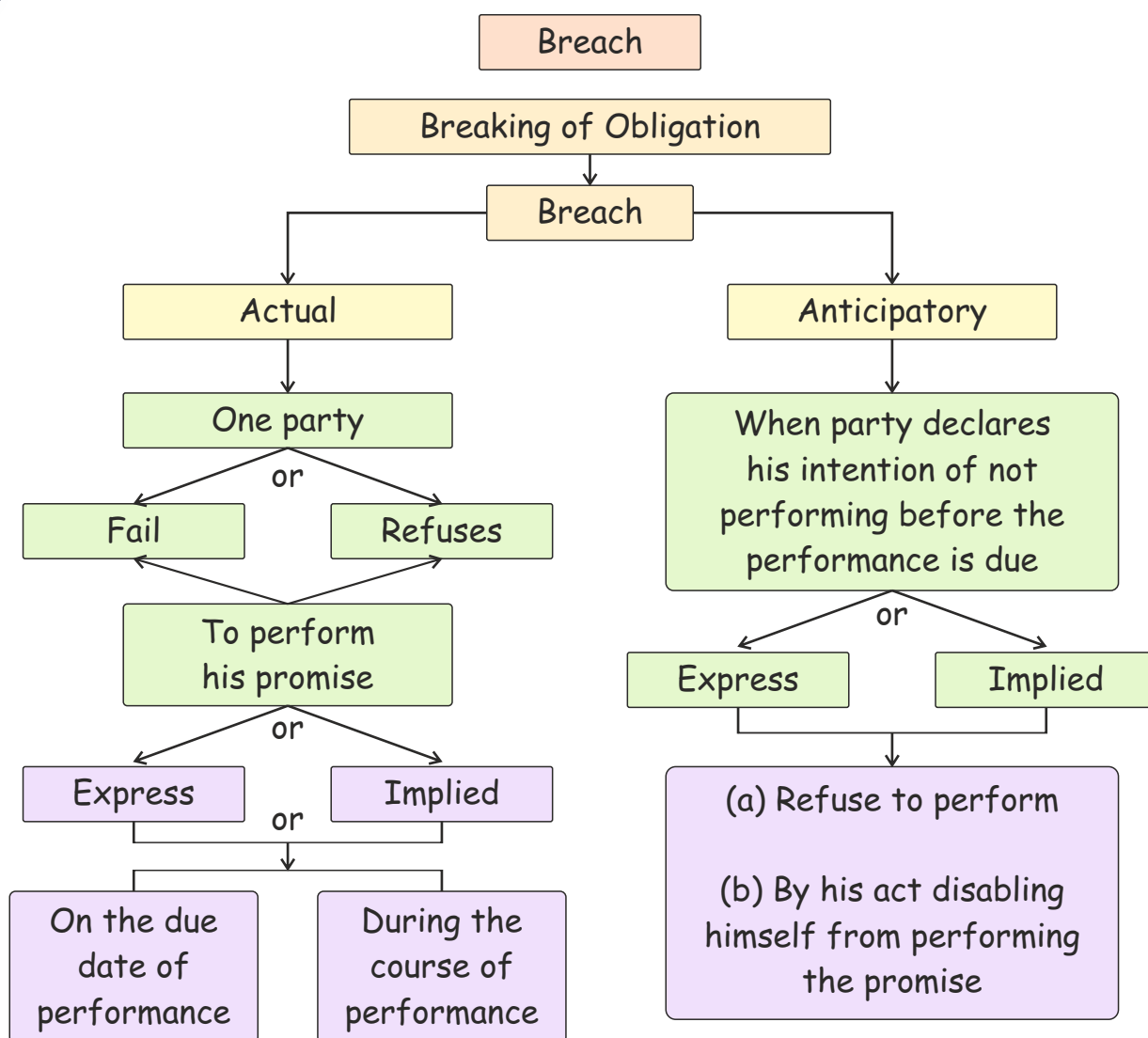
Meaning & types of breach of contract

Types of breach of contract

- Actual breach
- Anticipatory breach
- Remedies under anticipatory breach
- Remedies for Actual breach of contract.

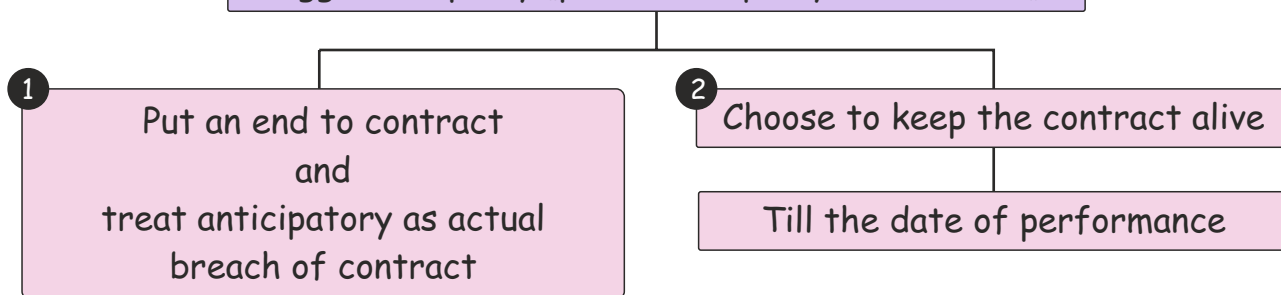
Coverage of sections under this unit

- (1) Sec 73 → Compensation for loss or damage caused by breach of contract
- (2) Sec 74 → Compensation for breach of contract where penalty stipulated for
- (3) Sec 75 → Partly rightfully rescinding contract, entitled to compensation

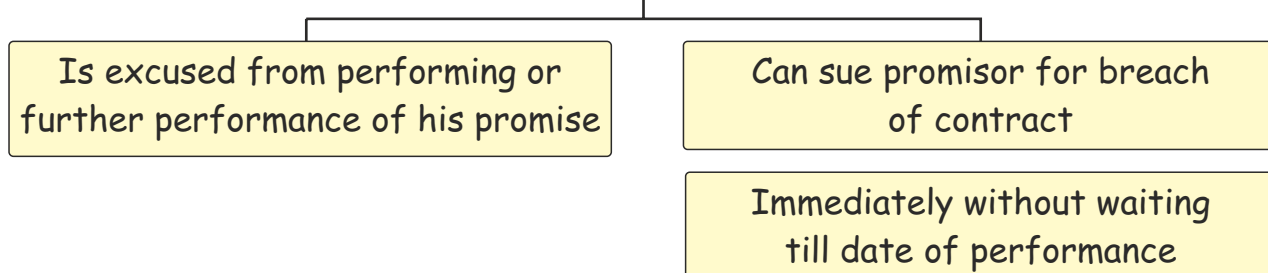


Remedies under Anticipatory Breach

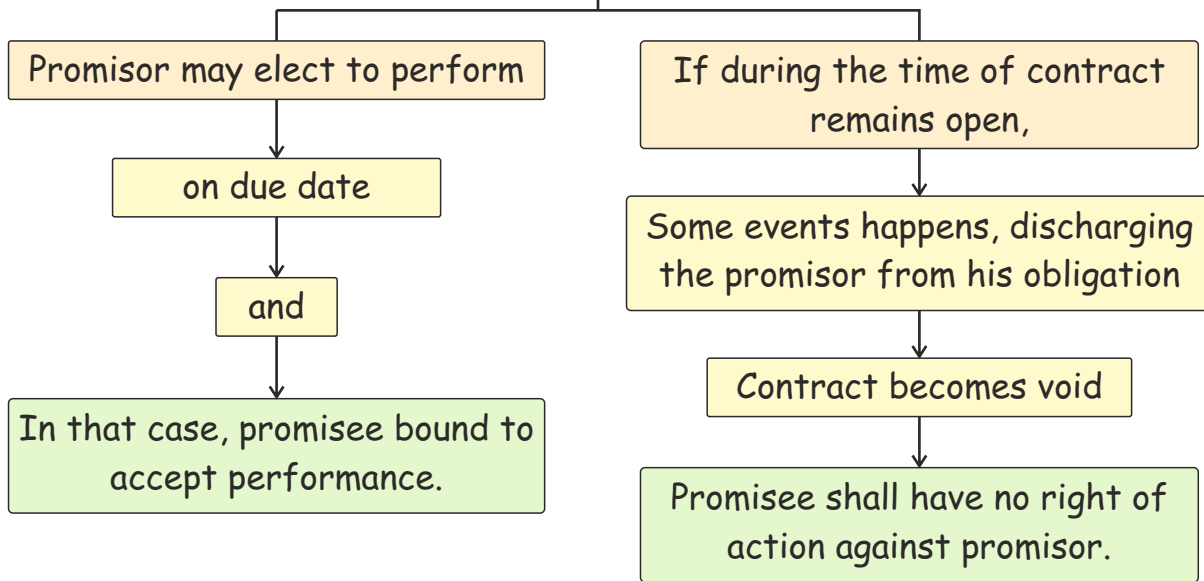
Aggrieved party [promisee / party not at fault]



1) Promisee

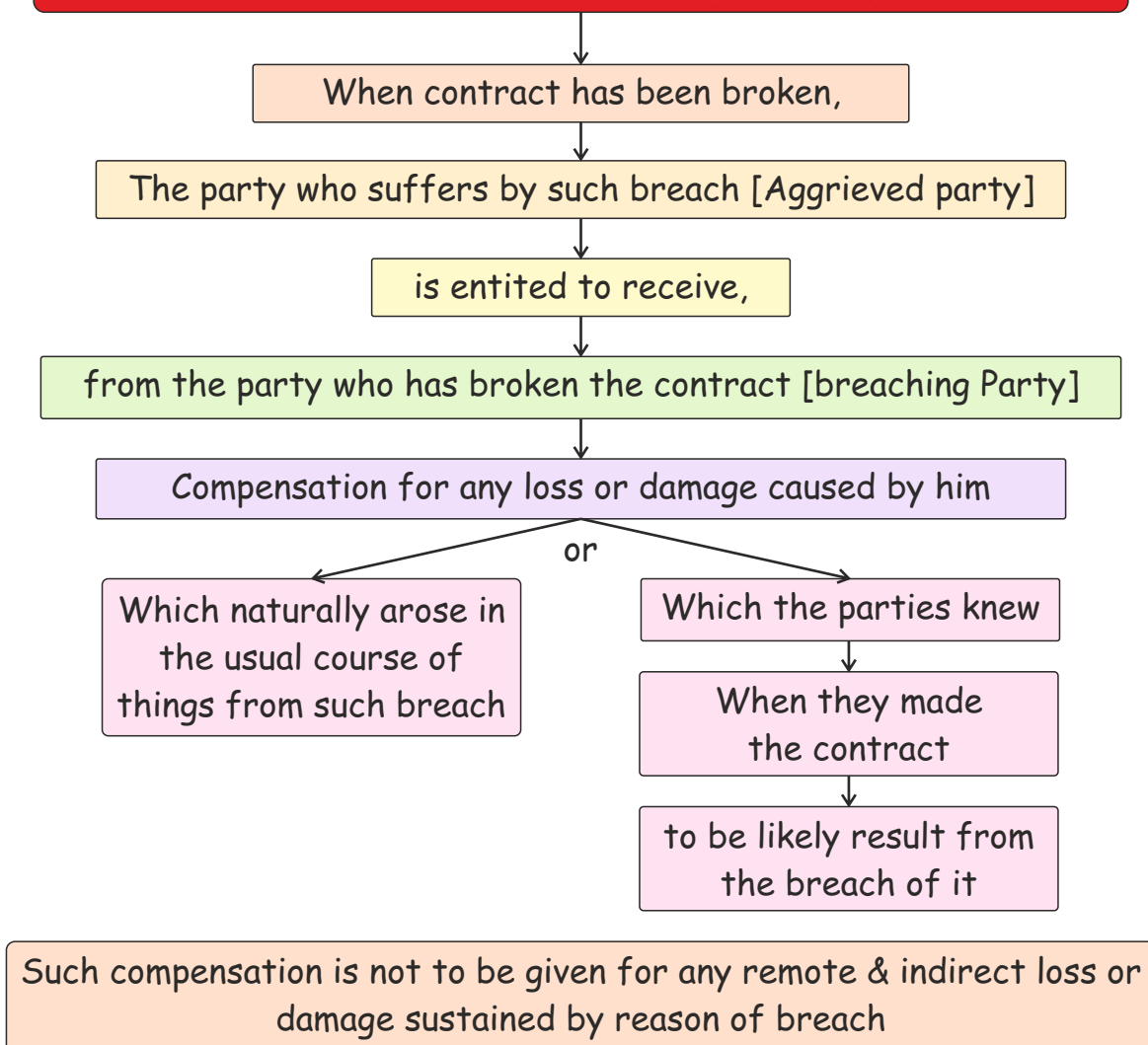


2) Right

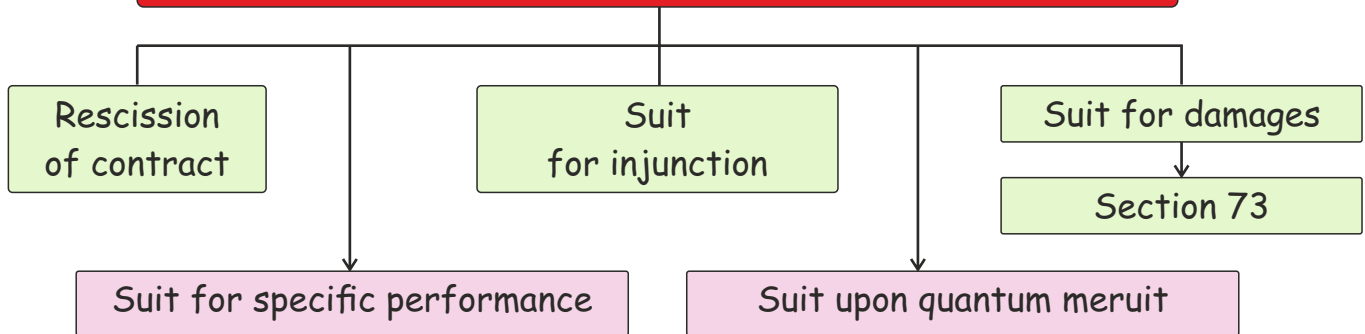


Most
IMP

Compensation for loss or damage caused by breach of contract (Sec 73)



Remedies for Actual breach of Contract



Rescission of a contract

- Promisor refuses or fail to perform his promise
- Promisee has a right to rescind the contract
- He (promisee) relieved of all obligations under the contract

Claim for Compensation [Section 75]

A person rightfully rescinding a contract can claim compensation for any loss or damage sustained due to non performance / non-fulfilment of promise.

Specific Performance [Sec 10]

[Specific relief Act, 1963]

Specific performance is

Granted where

- 1) Monetary Compensation is not an adequate relief
- 2) No standard for ascertaining the actual damage
- 3) It is probable that compensation in money cannot be obtained for non- performance.
- 4) There is no exact substitute or alternative to the subject matter of contract

Not granted where

- 1) Monetary Compensation is adequate relief
- 2) Contract is of a personal nature.
↓
eg: Contract to marry
- 3) Not possible for court to supervise performance of contract.

Provision

- 1) for breach of certain contracts.
- 2) The court may in such cases, direct the defaulting party to carry out / perform the promise according to the terms of contract
- (3) This is called Specific Performance

Suit for injunction

Court restraining a person from doing what he promised not to do.

When issued

When a party to the contract performs some act what he promised not to do, the other party may approach the court to grant an order of injunction prohibiting the party from doing such act.

Quantum meruit

- 1) As much as is merited (earned)
- 2) Quantum meruit - Exception to normal rule :
 - (a) Unless a party has performed his promise in full, he cannot claim performance from the other party.
 - (b) Exception to above rule:- When a person has done some work under a contract and the other party **either**

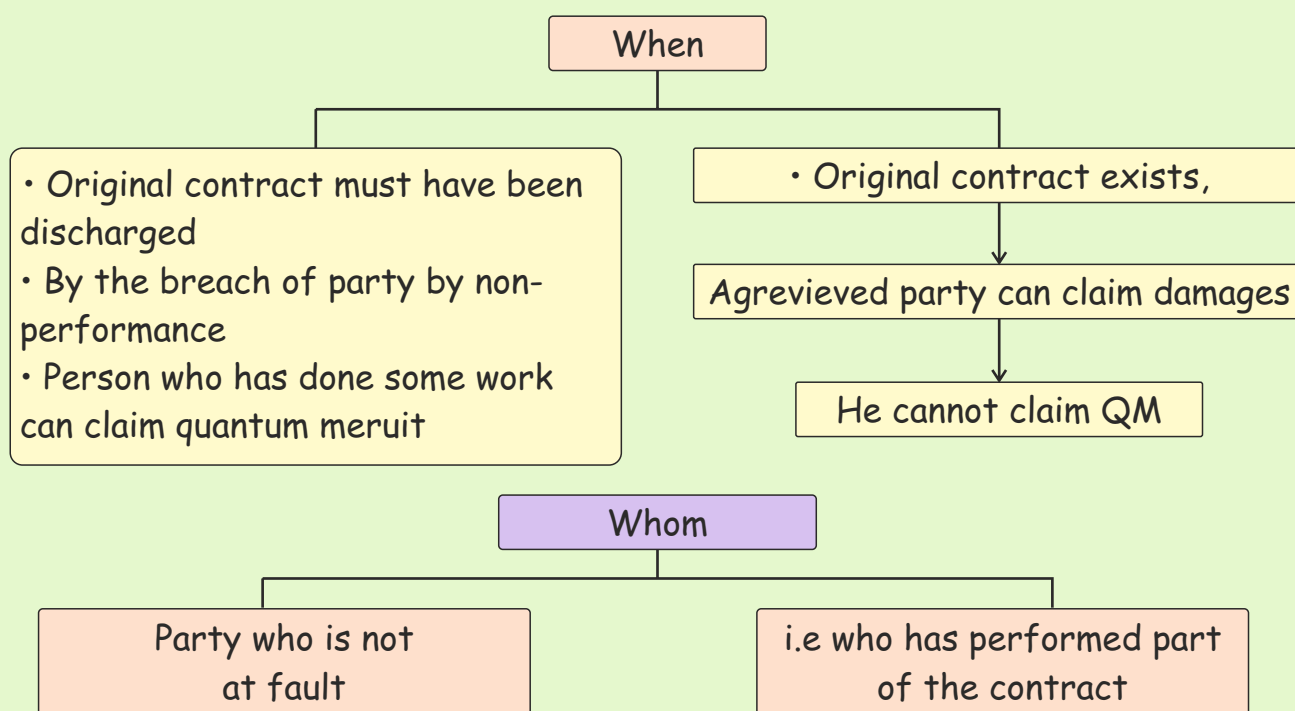
or

Repudiates the contract

Some unexpected event happens making performance of contract impossible (supervening impossibility)

Then the party who performed the work can claim remuneration for work done.

3) When and to whom right arise



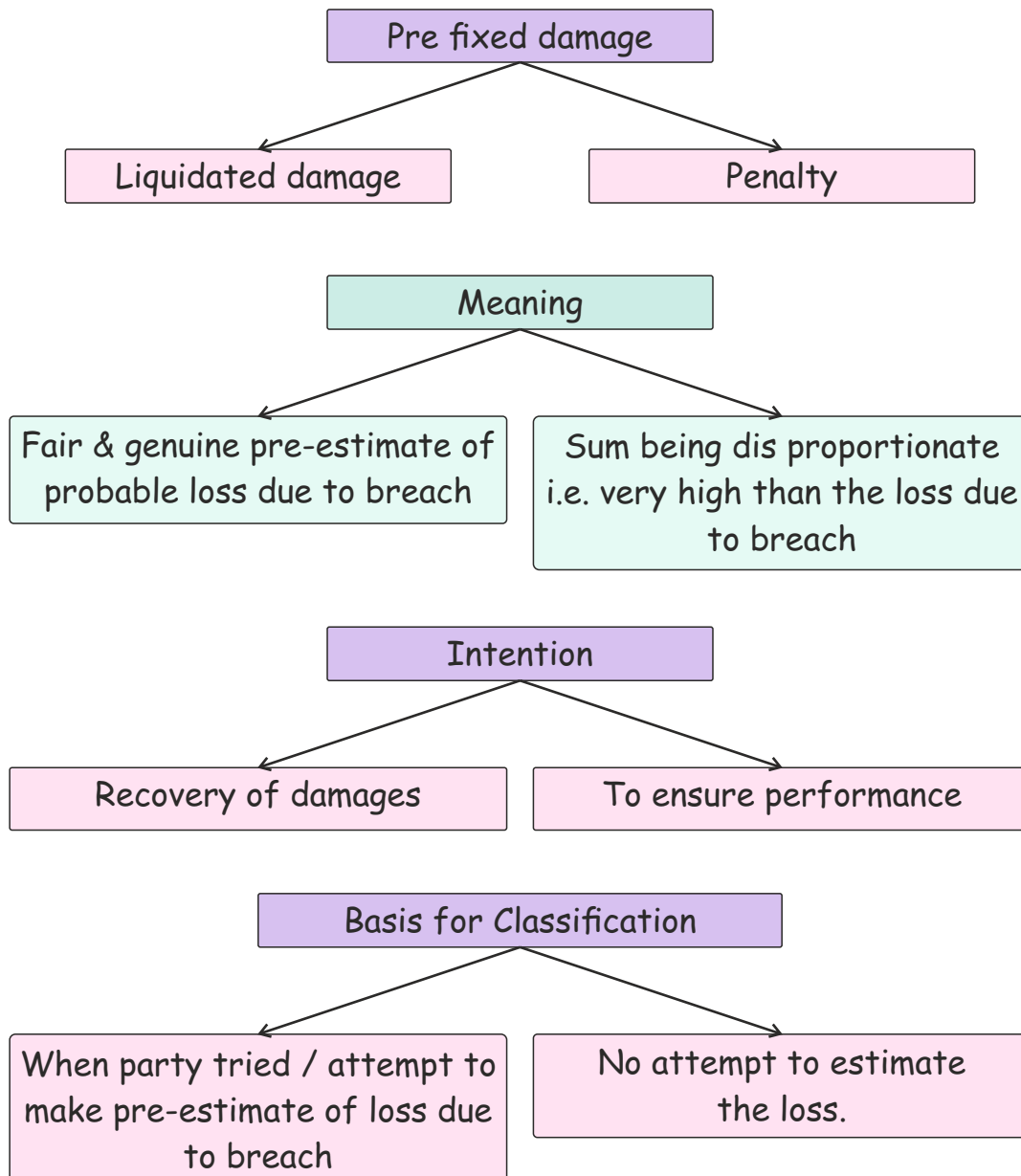
4) Quantum Meruit fails

- (a) Contract is indivisible into parts
and
Lumpsum is to be paid on completion of work
- (b) Person claiming compensation is himself guilty of breach
- (c) Work is performed gratuitously

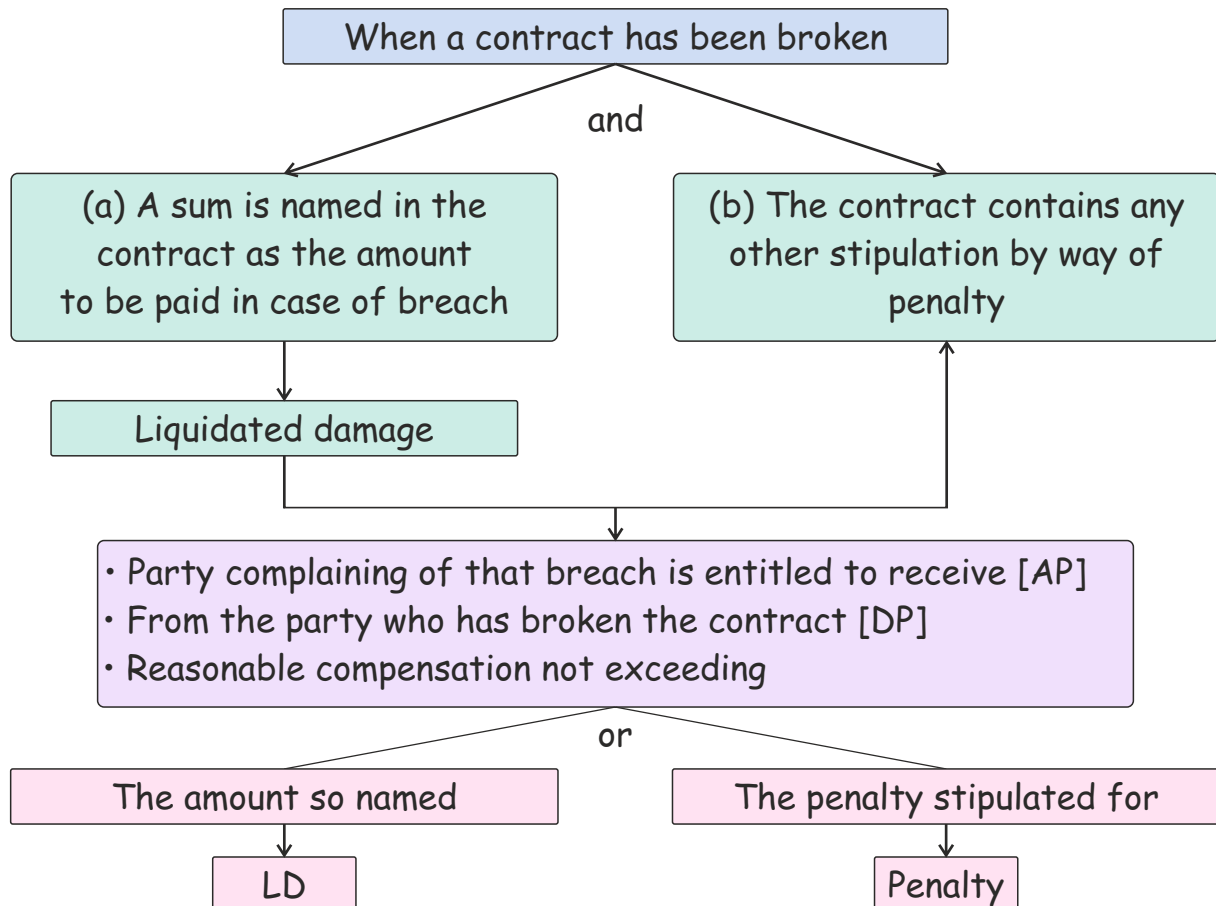
Situation when Quantum Meruit arises

- 1) Section 65
- 2) No agreement as to remuneration.
 - Reasonable remuneration
- 3) Act done without intention of gratutiousness [sec 70]
- 4) Abandonment of performance by one party.
- 5) Divisible contract
- 6) Indivisible contract performed badly
 - Then person who has performed,
 - Can claim lumpsum less deduction for bad work

Compensation for breach where penalty is stipulated [Sec 74]

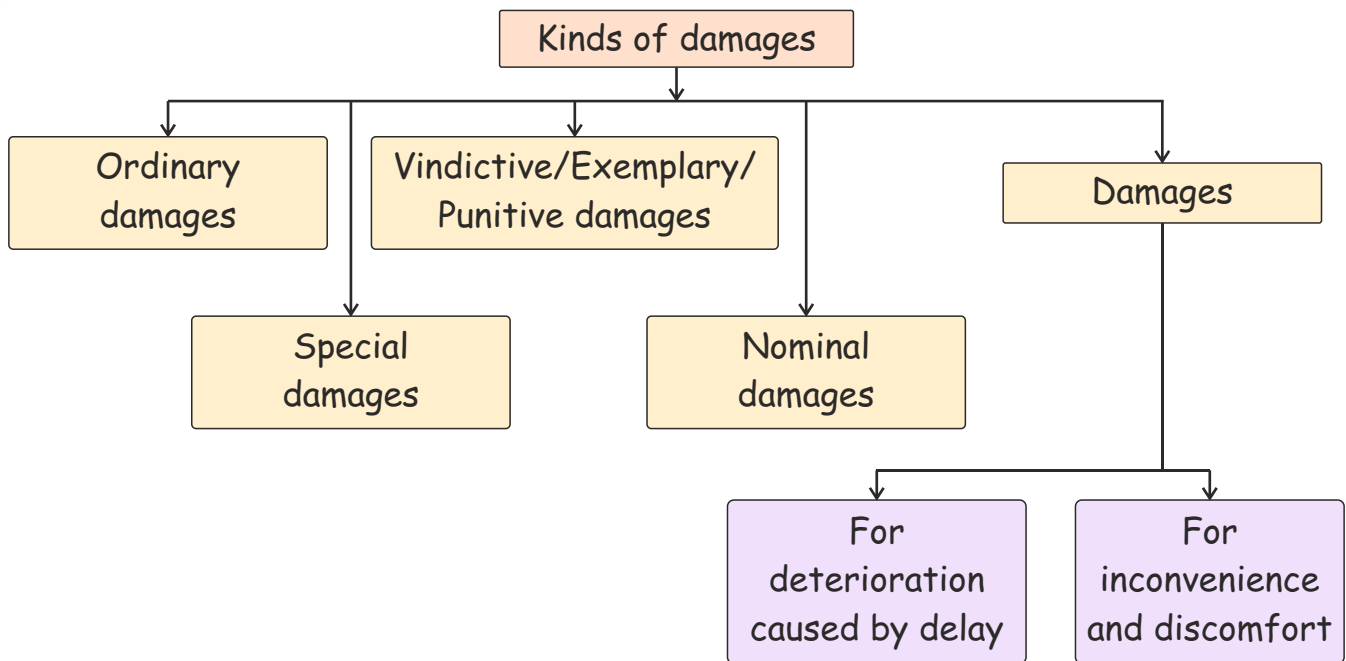


Provision for Section 74



Exception of Section 74

Full amount mentioned in contract shall be paid by a person who makes a breach of condition, where he has entered into any bail bond recognizance or other instrument of similar nature



I) Ordinary damages

- Damages which naturally arise in the usual course of things from breach of contract.
- Ordinary damages = Contract price less market price on the date of breach.

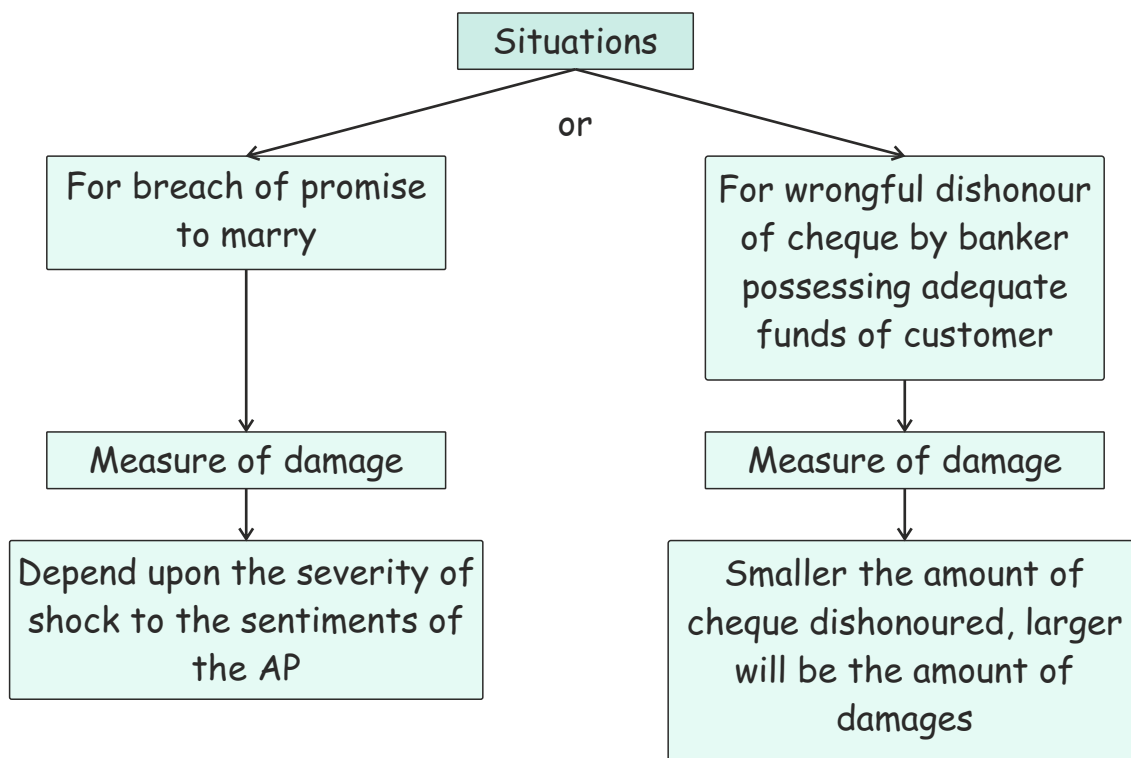
II) Special damages

- Where
 - a party to a contract receives
 - a notice of special circumstances affecting the contract
- He will be liable
 - Not only for natural damages of breach
 - But also for special damages.

Note :- Special damage can be claimed only on a previous notice

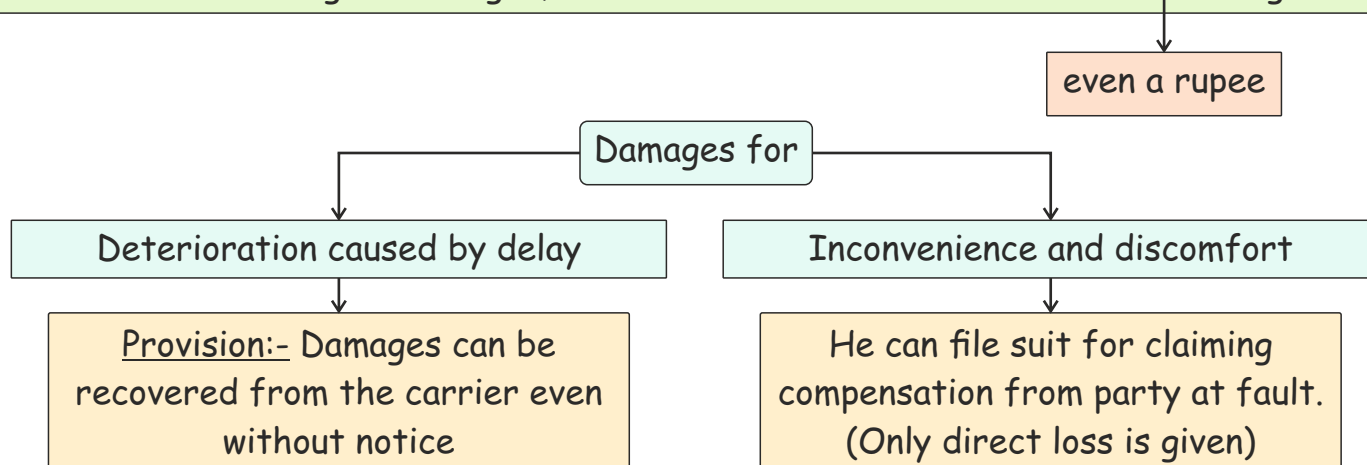
III) Vindictive/Exemplary/Punitive

Purpose:- To punish the party and not compensation.



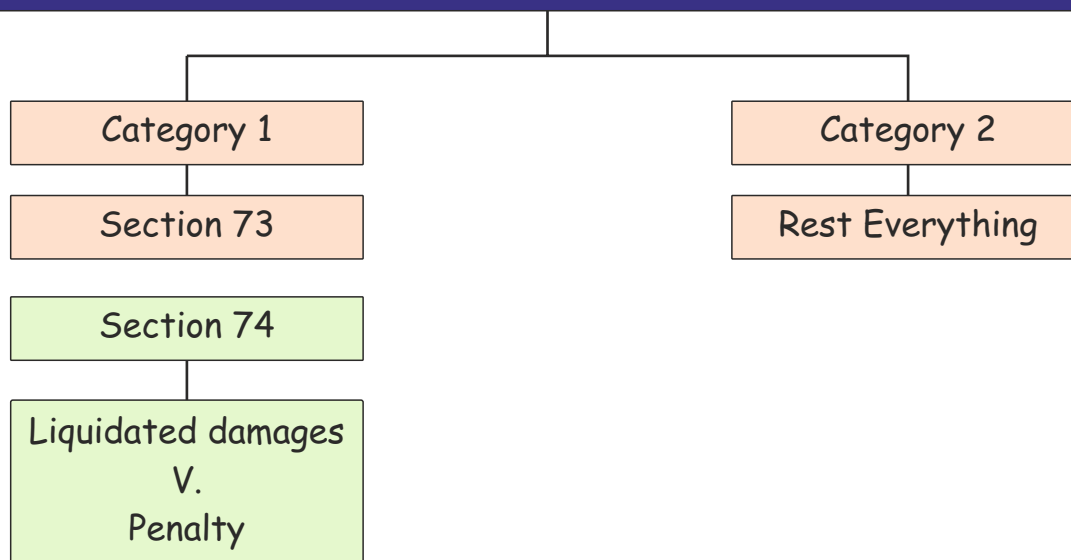
IV) Nominal damages

- Where there is only a technical violation of legal right, but no material loss is called thereby
- AP cannot claim damage as his right, court at its discretion can award nominal damages



Deterioration :- Physical damages to goods and
Also loss of special opportunity for sale.

Blue Print of UNIT- V Breach of contract

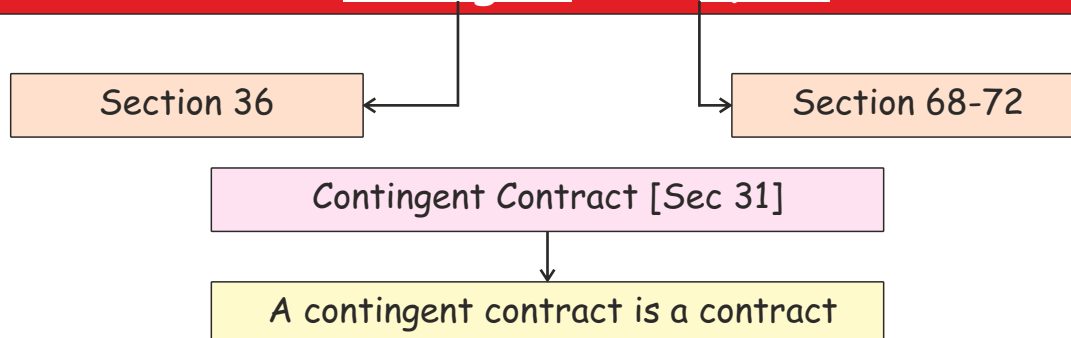


What do you mean by anticipatory breach & remedies in case of anticipatory

Minor topics

- Suit for injunction
- Suit for specific performance

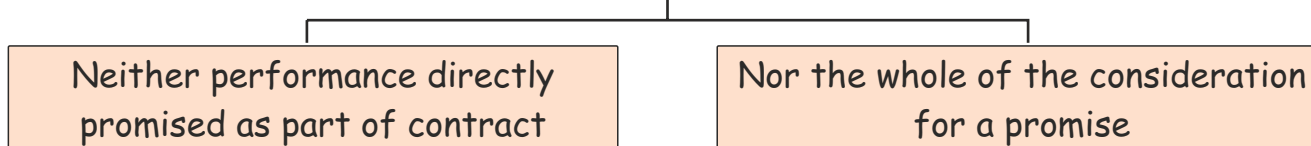
UNIT - VI Contingent and Quasi Contract



(a) to do, or not to do something

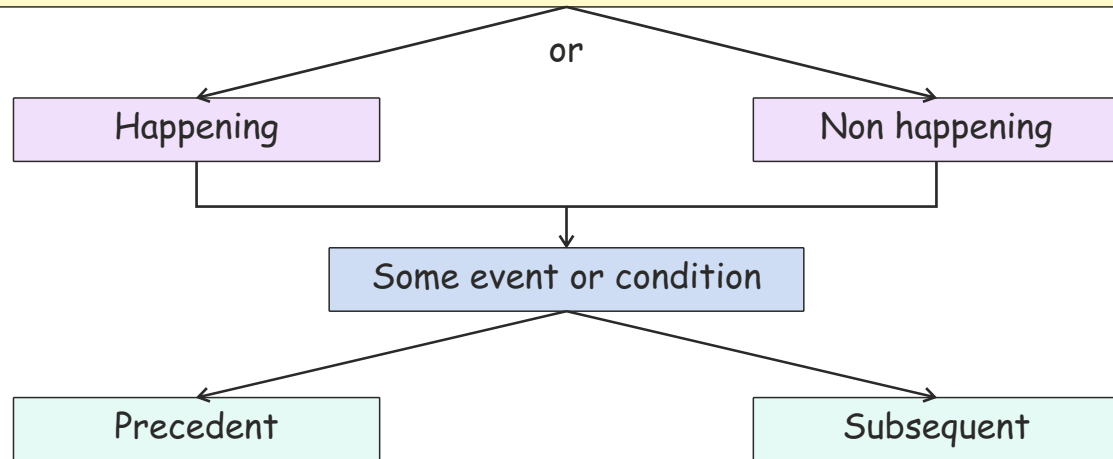
(b) if some event, collateral to such contract, does or does not happen.

Collateral Event



Essentials of a Contingent Contract

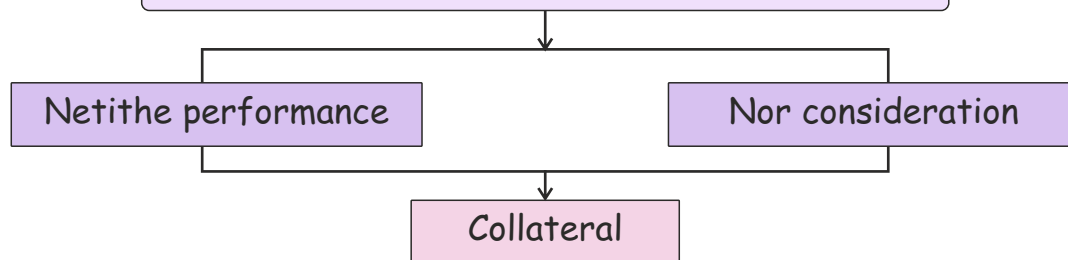
(a) The performance of a contingent contract would depend upon the



(b) Event referred must be collateral.

- Event must not be a part of contract.

Event



(c) Contingent event should not be a mere will of the promisor.

Will + Uncertain Event = Contingent contract

(d) Event must be uncertain.

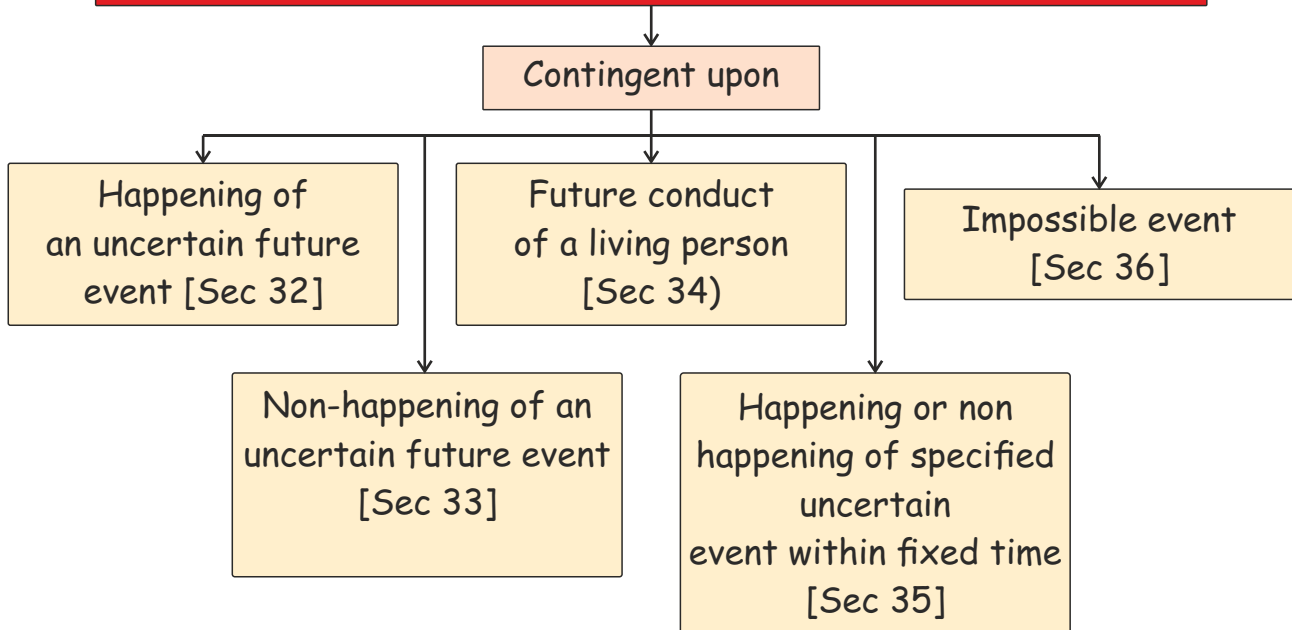
- When event is certain

or

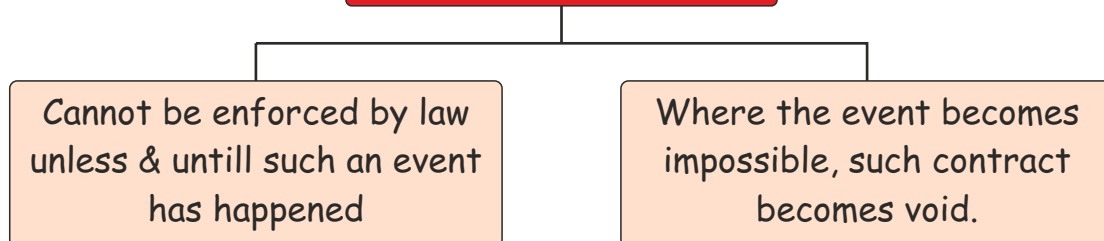
- bound to happen eg. death

} Not
contingent

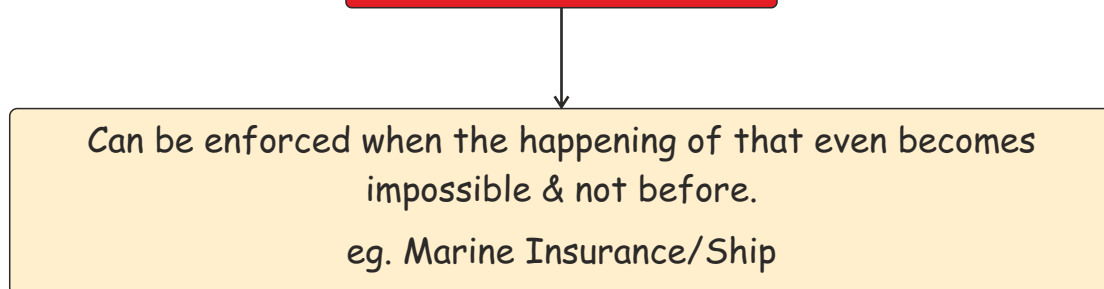
Rules as to enforcement of Contingent Contract



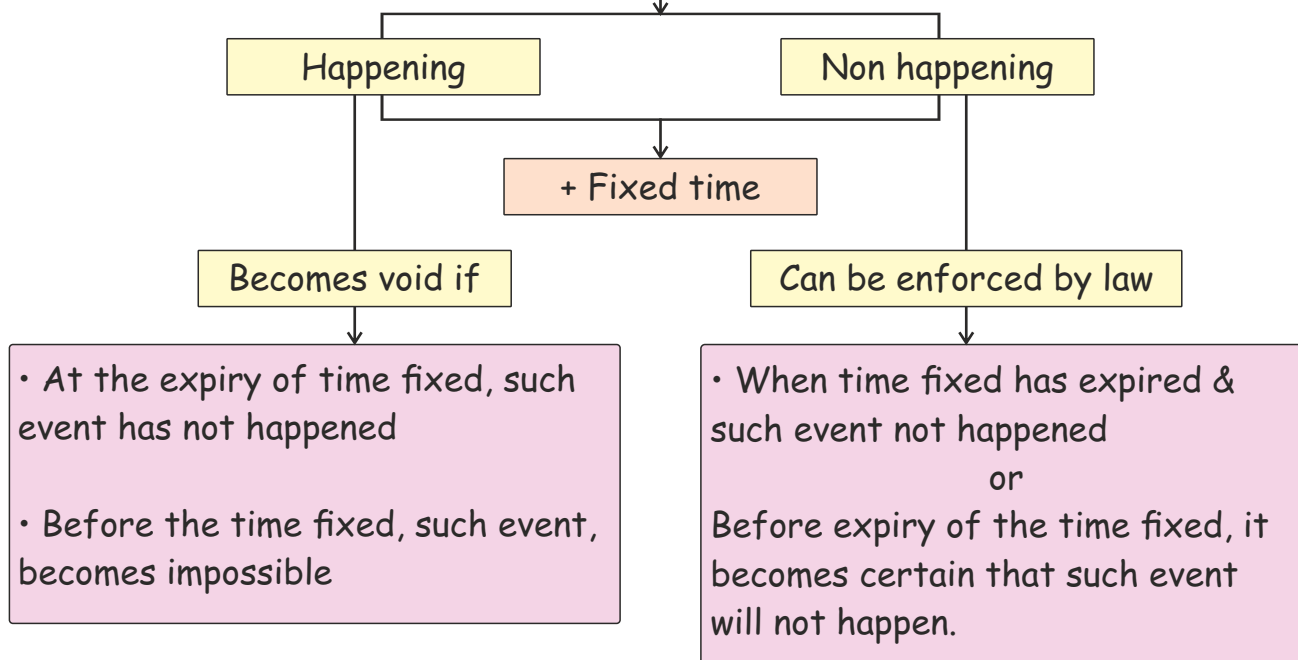
Section - 32



Section - 33



Section - 35



Section - 34

Event shall be considered to become impossible when such person (dream girl) does anything, which renders it impossible that he (Aditya) should so act within any definite time, or otherwise than under further contingency

Section - 36

Void, irrespective of whether or not the parties know the impossibility of the of the event, at the time of entering into the agreement.

Quasi Contract

Quasi contract is a contract in which rights & obligation, is created by law under certain circumstances (sec 68-72)

Maxim
(purpose/principal)

"No man must grow rich out of another person's loss."

Deemed quasi contract

- (a) Claim for necessities supplied to minor [Sec 68]
- (b) Payment by an interested person [Sec 69]
 - a person, who is interested in the payment of money & pays such money which another is bound by law to pay, is entitled to be reimbursed by the other
- (c) Obligation of person enjoying benefit of non-gratituous act [Sec 70]
 - Where a person lawfully does anything for other person, or delivers anything to him, not intending to do gratuitously
 - And such other person enjoys the benefits thereof, then he is bound to make compensation to the other or to restore the thing so done or delivered.

Sec-71 Responsibility of finder of lost goods

- If he takes it into his custody
- He has same responsibility as bailee

Responsibilities: - [C. L: - Howlins vs. Howler]

- (i) To take proper care of property as man of ordinary prudence
- (ii) No right to appropriate goods
- (iii) Restore goods if owner found.

(e) Money paid by mistake or under coercion [sec 72]

- A person to whom
 - Money is paid
 - or
 - Anything delivered
- By mistake or coercion
- Must repay or return it.

UNIT VI Contingent & Quasi Contract Blue Print

