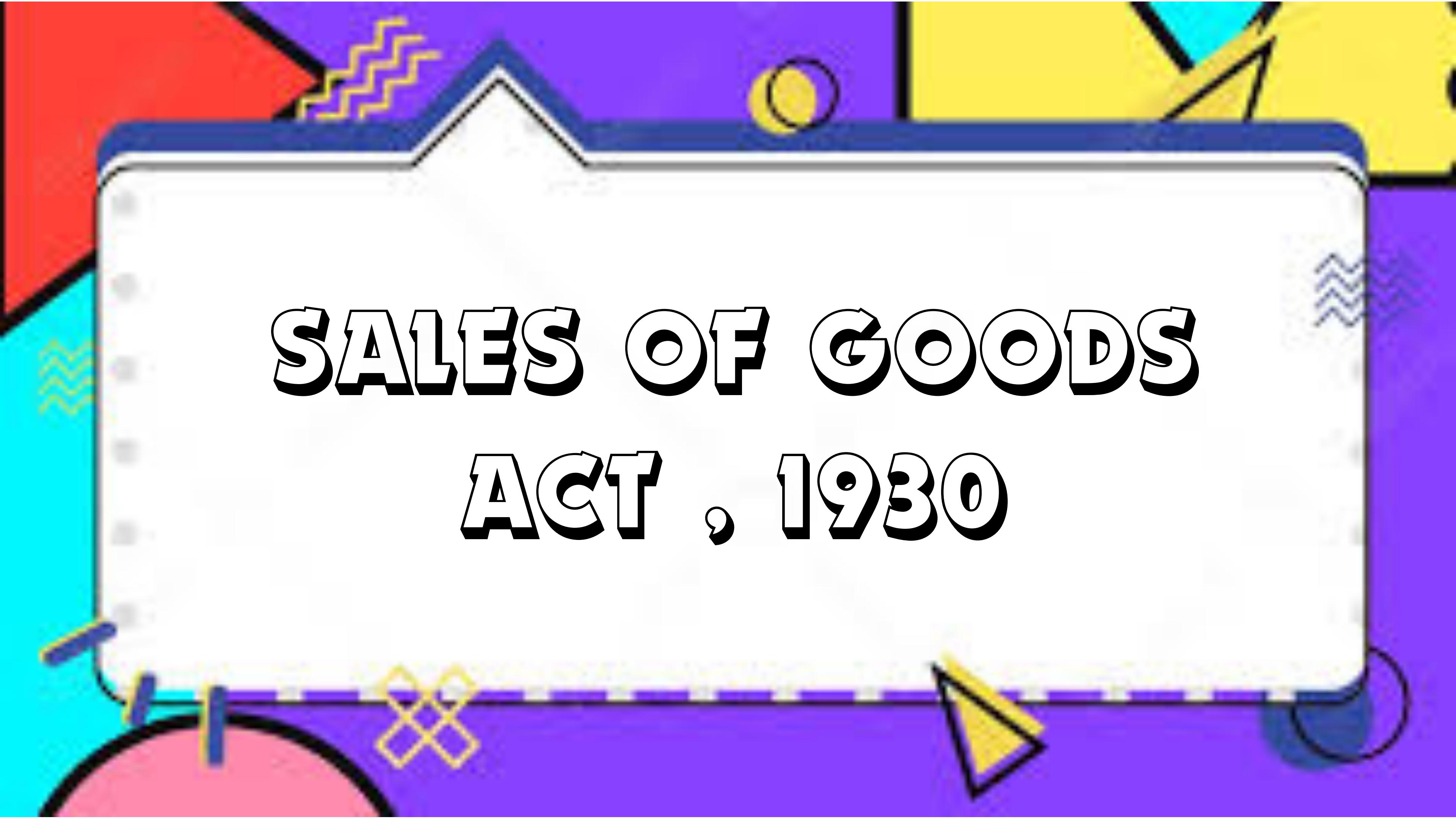




# **DIFFERENCE BETWEEN**





# **SALES OF GOODS**

## **ACT , 1930**



## SALE VS. AGREEMENT TO SELL

~~Property  
Parties~~

ACRONYM :-  
PNR hai NRI ke Rights

## BASIS

Transfer of property

Nature of contract

Remedies for breach

Liability of parties

Nature of rights

## SALE

The property in the goods passes to the buyer **immediately**

It is an **executed contract** i.e. contract for which consideration has been paid.

The seller can sue the **buyer** for the price of the goods because of the **passing of the property** **therein to the buyer**.

A **subsequent loss or destruction** of the goods is the **liability of the buyer**.

Creates **jus in rem**

## AGREEMENT TO SELL

Property in the goods passes to the buyer on **future date** or on **fulfilment of some condition**.

It is an **executory contract** i.e. contract for which consideration is to be paid at a future date.

The **aggrieved party** can sue for **damages** only and not for the price, unless the price was payable at a stated date.

Such loss or destruction is the **liability of the seller**.

Creates **jus in personam**

Right of resale

*Seller*

In case of insolvency of seller

In case of insolvency of buyer

The seller cannot resell the goods.

Sale O-B ✓

The official assignee will not be able to take over the goods but will recover the price from the buyer.

*goods*

The official assignee will have control over the goods.

OA - Good ✓

The seller may sell the goods since ownership is with the seller.

O-S  
OA — Good ✓

The official assignee will acquire control over the goods but the price will not be recoverable.

OA → × Good



## CONDITION VS. WARRANTY

BASIS	CONDITION	WARRANTY
Meaning	<p>A condition is a stipulation <u>essential to the main purpose</u> of the contract.</p>	<p>A warranty is a stipulation <u>collateral to the main purpose</u> of the contract.</p>
<u>Right in case of breach</u>	<p>The aggrieved party can repudiate the contract or claim <u>damages</u> or both in the case of breach of condition.</p>	<p>The aggrieved party can claim only <u>damages</u> in case of breach of warranty.</p>
<u>Conversion of stipulations</u>	<p>A breach of condition may be treated as a breach of warranty.</p>	<p>A breach of warranty cannot be treated as a <u>breach of condition</u>.</p>

M&B



# SALE VS. HIRE PURCHASE

**ACRONYM :-**  
**PPT mein paper from RTI**

## BASIS

Time of passing property

Position of the party

Termination of contract

Burden of risk of insolvency of buyer

## SALE

Property in goods is transferred to the buyer immediately at the time of contract.

The position of the buyer is that of the owner of the goods.

The buyer cannot terminate the contract & is bound to pay the price of the goods.

The seller takes the risk of any loss resulting from the insolvency of the buyer.

## HIRE - PURCHASE

The property in goods passes to the hirer upon payment of the last installment.

The position of the hirer is that of a bailee till he pays the last installment.

The hirer may, if he so likes, terminate the contract by returning the goods to its owner without any liability to pay the remaining installments.

The owner takes no such risk, if the hirer fails to pay an installment, the owner has right to take back the goods.

Transfer of title

Resale

The buyer can pass a **good title** to a **bonafide purchaser** from him.

→ *honest*

The buyer in sales can **resell** the goods.

The hirer ~~cannot pass any title even to a bonafide purchaser.~~

The hire purchaser ~~cannot resell~~ unless he has paid all the installment.



## SALE VS. BAILEMENT

## BASIS

## ~~CONDITION~~

*Sale*

## ~~WARRANTY~~

*Bailment*

Transfer of property

The property in goods is transferred from the seller to the buyer. So, it is transfer of general property.

Return of goods

The return of goods in contract of sale is not possible.

Consideration

The consideration is the price in terms of money.

*CPR denz*

There is only transfer of possession of goods from the bailor to the bailee for any of the reasons like safe custody, carriage, etc. So, it is transfer of special property.

The bailee must return the goods to the bailor on the accomplishment of the purpose for which the bailment was made

The consideration may be gratuitous or non gratuitous.

*free*



# **INDIAN PARTNERSHIP ACT, 1930**

3 5  
6 6  
6 8



## PATNERSHIP VS. JOINT STOCK COMPANY

~~MD PPL of LA eats WoRMS~~

**ACRONYM :-**  
**MD of ~~LA~~ APPLe eats WoRMS**

<b>BASIS</b>	<b>PARTNERSHIP</b>	<b>JOINT STOCK COMPANY</b>
Legal status	<p>A firm is not legal entity i.e. it has no legal personality distinct from the personalities of its constituent members.</p>	<p>A company is a separate legal entity distinct from its members (Salomon v. Salomon).</p>
Agency	<p>In a firm, every partner is an agent of the other partners as well as of the firm.</p>	<p>In a company, a member is not an agent of the other members or of the company, his actions do not bind either.</p>
Distribution of profit	<p>The profits of the firm must be distributed among the partners according to the terms of the partnership deed.</p>	<p>There is no such compulsion to distribute its profits among its members. Some portion of the profits, but generally not the entire profit become distributable among the shareholders only when dividends are declared.</p>

## Extent of liability

In a partnership, the liability of the partners is unlimited. This means that each partner is liable for debts of a firm incurred in the course of the business of the firm and these debts can be recovered from his private property, if the joint estate is insufficient to meet them wholly.

## Property

The firm's property is that which is the "joint estate" of all the partners as distinguished from the 'separate' estate of any of them and it does not belong to a body distinct in law from its members.

In a company limited by shares, the liability of a shareholder is limited to the amount, if any, unpaid on his shares, but in the case of a guarantee company, the liability is limited to the amount for which he has agreed to be liable. However, there may be companies where the liability of members is unlimited.

In a company, its property is separate from that of its members who can receive it back only in the form of dividends or refund of capital.

## Transfer of shares

A share in a partnership cannot be transferred without the consent of all the partners.

## Management

In the absence of an express agreement to the contrary, all the partners are entitled to participate in the management.

In a company a shareholder may transfer his shares, subject to the provisions contained in its Articles. In the case of public limited companies whose shares are quoted on the stock exchange, the transfer is usually unrestricted.

Members of a company are not entitled to take part in the management unless they are appointed as directors, in which case they may participate. Members, however, enjoy the right of attending general meeting and voting where they can decide certain questions such as election of directors, appointment of auditors, etc.

## Registration

Registration is not compulsory in the case of partnership.

## Winding up

A partnership firm can be dissolved at any time if all the partners agree.

## Number of membership

According to section 464 of the Companies Act, 2013, the number of partners in any association shall not exceed 100. However, the Rule given under the Companies (Miscellaneous) Rules, 2014 restrict the present limit to 50.

A company cannot come into existence unless it is registered under the Companies Act, 2013.

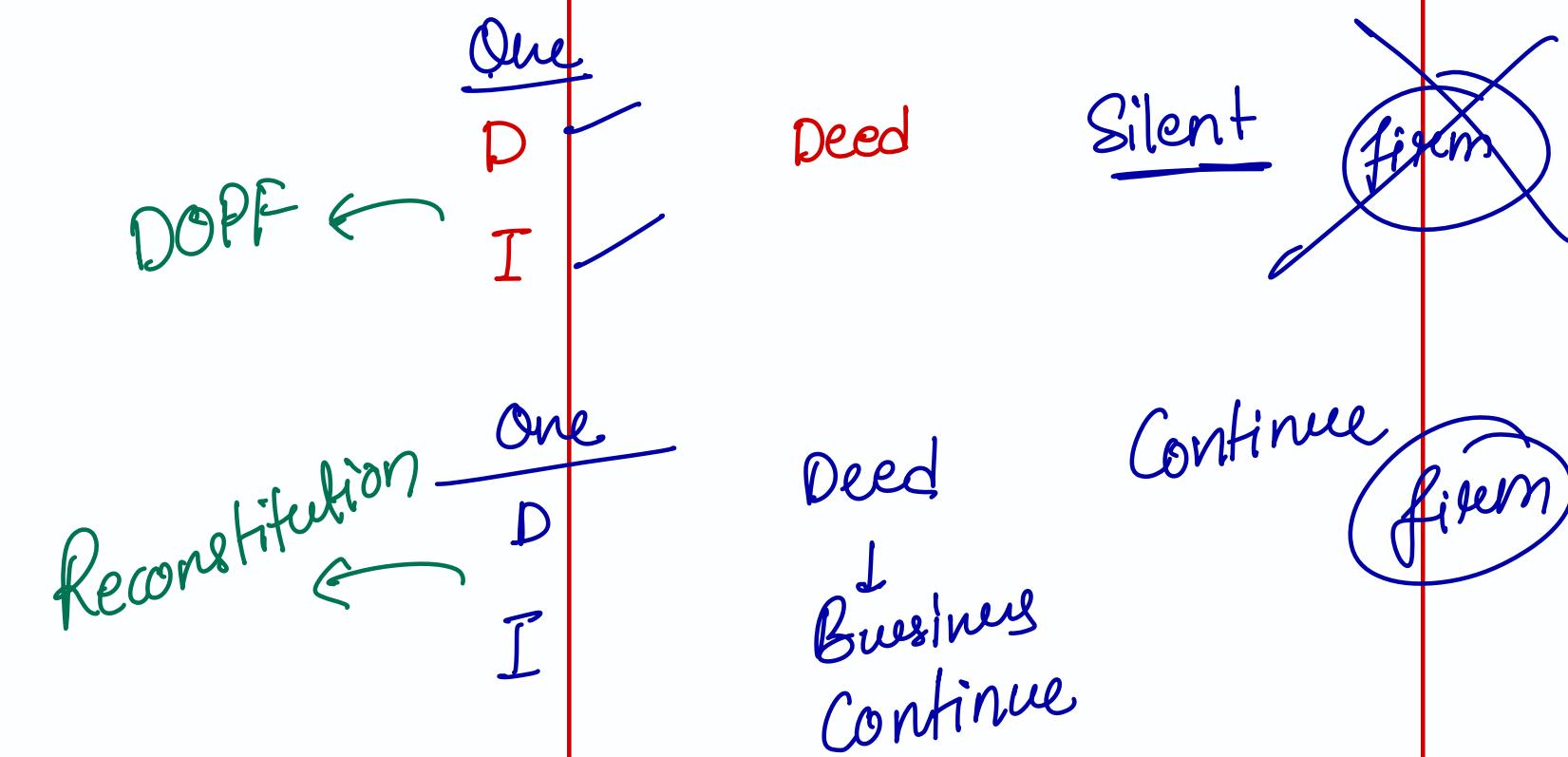
A company, being a legal person is either wind up by the National Company Law Tribunal or its name is struck off by the Registrar of Companies.

A private company may have as many as 200 members but not less than two and a public company may have any number of members but not less than seven. A private Company can also be formed by one person known as one person Company.

## Duration of existence

Unless there is a contract to the contrary, death, ~~retirement~~ or insolvency of a partner results in the dissolution of the firm.

A company enjoys a perpetual succession.



Most Excepted

End



## PATNERSHIP VS. CLUB

ACRONYM :-  
DRIeD

## BASIS

## PARTNERSHIP

## JOINT HINDU FAMILY

Mode of creation

Partnership is created necessarily by an agreement.

The right in the joint family is created by status means its creation by birth in the family.

Death of a member

Death of a partner ordinarily leads to the dissolution of partnership.

The death of a member in the Hindu undivided family does not give rise to dissolution of the family business.

Management

All the partners are equally entitled to take part in the partnership business.

The right of management of joint family business generally vests in the Karta, the governing male member or female member of the family.

Authority to bind

Every partner can, by his act, bind the firm.

The Karta or the manager, has the authority to contract for the family business and the other members in the family.

## Liability

In a partnership, the liability of a partner is unlimited.

## Calling for accounts on closure

A partner can bring a suit against the firm for accounts, provided he also seeks the dissolution of the firm.

## Governing Law

A partnership is governed by the Indian Partnership Act, 1932.

## Continuity

A firm subject to a contract between the partners gets dissolved by death or insolvency of a partner.

In a Hindu undivided family, only the liability of the Karta is unlimited, and the other coparcener are liable only to the extent of their share in the profits of the family business.

On the separation of the joint family, a member is not entitled to ask for account of the family business.

A Joint Hindu Family business is governed by the Hindu Law.

A Joint Hindu family has the continuity till it is divided. The status of Joint Hindu family is not thereby affected by the death of a member.

## Minor's capacity

Profit

In a partnership, a minor cannot become a partner, though he can be admitted to the benefits of partnership, only with the consent of all the partners.

## Share in the business

In a partnership, each partner has a defined share by virtue of an agreement between the partners.

In Hindu undivided family business, a minor becomes a member of the ancestral business by the incidence of birth. He does not have to wait for attaining majority.

In a HUF, no coparceners has a definite share. His interest is a fluctuating one. It is capable of being enlarged by deaths in the family diminished by births in the family.

$$\frac{100}{6}$$
$$5 + 1$$

Expected



## PATNERSH1P VS. CO- OWNERSH1P

ACRONYM :-  
FLINT ~~FLINT~~ STONE

## BASIS

## PARTNERSHIP

## CO - OWNERSHIP

Formation

Partnership always, arises out of a contract express or implied.

Implied agency

A partner is the agent of the other partners.

Nature of interest

There is community of interest which means that profits and losses must have to be shared.

Transfer of interest

A share in the partnership is transferred only by the consent of other partners.

Co-ownership may arise either from agreement or by the operation of law, such as by inheritance.

A co-owner is not the agent of other co-owners.

Co-ownership does not necessarily involve sharing of profits and losses.

A Co - owner may transfer his interest or rights in the property without the consent of other co-owners.



Dissolution

## of **PATNERSHIP VS. FIRM**

~~Partnership~~

Dissolution  
of  
Partnership  
firm

**ACRONYM :-**  
**COW banayegi FSt**

BASIS	DISSOLUTION OF FIRM	DISSOLUTION OF PARTNERSHIP
	Partnership	
Continuation of business	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
Winding up	It involves winding up of the firm and requires realization of assets and settlement of liabilities.	It involves only reconstitution & requires only revaluation of assets and liabilities of the firm.
Order of court	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
Scope	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
Final closure of books	It involves final closure of books of the firm.	It does not involve final closure of the books of the firm.

**LIMITED LIABILITY**

**PARTNERSHIP**

**ACT, 2008**



## LLP VS. LLC

ACRONYM :-

**Manoj jo hai MD has been Named ~~on~~ MRI ke Liye**

## BASIS

## LLP

## LLC

Regulating act

The LLP Act, 2008.

The Companies Act, 2013.

Members/Partners

The persons who contribute to LLP are known as partners of the LLP.

The persons who invest the money in the shares are known as members of the company.

Internal governance. Structure.

The internal governance structure of LLP is governed by contract agreement between the partners.

The internal governance structure of a company is regulated by statute.

Name

Name of the LLP to contain the word "Limited Liability partnership" or "LLP" as suffix.

Name of the public company to contain the word "limited" and Pvt. Co. to contain the word "Private limited" as suffix.

Minimum number directors/designated partners of

Minimum 2 designated partners

Pvt. Co. - 2 directors  
Public co. - 3 directors

## BASIS

## LLP

## LLC

No. of members /  
partners

Minimum - 2 members  
Maximum - No such limit on the  
members in the Act. The  
members of the LLP can be  
individuals/or body corporate  
through the nominees.

Management

The business of the company  
managed by the partners  
including the designated partners  
authorized in the agreement.

Private company:

Minimum - 2 members

Maximum 200 members

Public company:

Minimum - 7 members

Maximum - No such limit on the  
members.

Members can be organizations,  
trusts, another business form or  
individuals.

The affairs of the company are  
managed by board of directors  
elected by the shareholders.



# LLP VS. PARTNERSHIP FIRM

## BASIS

## LLP

## PARTNERSHIP FIRM

Regulating act

The LLP Act, 2008.

The Indian Partnership Act, 1932.

Body corporate

It is a body corporate.

It is not a body corporate.

Separate legal entity

It is a legal entity separate from its members.

It is a group of persons with no separate legal entity.

Creation

It is created by a legal process called registration under the LLP Act, 2008.

It is created by an agreement between the partners.

Registration

Registration is mandatory. LLP can sue and be sued in its own name.

Registration is voluntary. Only the registered partnership firm can sue the third parties.

Name

Name of the LLP to contain the word limited liability partners (LLP) as suffix.

No guidelines. The partners can have any name as per their choice.

## BASIS

## LLP

## PARTNERSHIP FIRM

### Perpetual succession

The death, insanity, retirement or insolvency of the partner(s) does not affect its existence of LLP. Members may join or leave but its existence continues forever.

### Liability

Liability of each partner limited to the extent to agreed contribution except in case of willful fraud.

### Designated partners

At least two designated partners and atleast one of them shall be resident in India.

### Common seal

It may have its common seal as official signatures.

The death, insanity, ~~retirement~~ or insolvency of the partner(s) may affect its existence. It has no perpetual succession.

Liability of each partner is unlimited. It can be extended upto the personal assets of the partners.

There is no provision for such partners under the Partnership Act, 1932.

There is no such concept in partnership

## BASIS

## LLP

## PARTNERSHIP FIRM

Legal compliances

Only designated partners are responsible for all the compliances and penalties under the act.

Annual filing of documents

LLP is required to file:  
(i) Annual statement of accounts <sup>SOA</sup>  
(ii) Statement of solvency <sup>SOS</sup>  
(iii) Annual return with the registration of LLP every year.

Minor as partner

Minor cannot be admitted to the benefits of LLP.

Foreign partnership

Foreign nationals can become a partner in a LLP.

All partners are responsible for all the compliances and penalties under the Act.

Partnership firm is not required to file any annual document with the registrar of firms.

Minor can be admitted to the benefits of the partnership with the prior consent of the existing partners.

Foreign nationals cannot become a partner in a partnership firm.

PL PC

24 35

~~Partner~~ Benefit

# **NEGOTIABLE INSTRUMENTS**

**ACT, 1881**



## PROMISSORY VS. BILL OF EXCHANGE

NOTE

ACRONYM :-

Do Not Panic, Act Peacefully

## BASIS

### PROMISSORY NOTE

#### Definition

"A Promissory Note" is an instrument in writing (not being a banknote or a currency currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

#### Nature of Instrument

✓

In a promissory note, there is a promise to pay money.

#### Parties

In a promissory note, there are 2 parties namely :-

- i. the maker and
- ii. the payee

## BILLS OF EXCHANGE

"A bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money to, or to the order of a certain person or to the bearer of the instruments.

In a bill of exchange, there is an promise to pay payment.

order

In a bill of exchange, there are 3 parties which are as under :-

- i. the drawer
- ii. the drawee
- iii. the payee

SS

RKH

CSG

## BASIS

## PROMISSORY NOTE

## BILLS OF EXCHANGE

Acceptance

Payable to bearer

A promissory note does not require any acceptance, as it is signed by the person who is liable to pay.

A promissory note cannot be made payable to bearer.

A bills of exchange needs acceptance from the drawee

*Cek*

On the other hand, a bill of exchange can be drawn payable to bearer. However, it cannot be payable to bearer on demand.