



AD BROTHERS

BUSINESS LAW

Short Notes



@AD BROTHERS

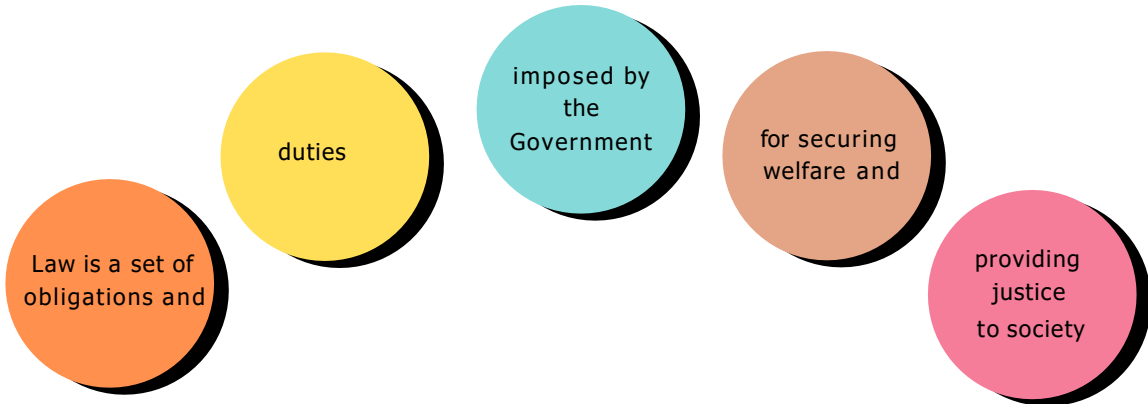
Business law

This capsule on Paper 2-Section A: Business Laws at Foundation, have been dealt with important concepts related to the formation of the valid contract under the Indian Contract Act, 1872. In this capsule, we have touched upon significant concepts that are required for making valid contract and the related concepts supported with relevant case laws to have conceptual understanding of the subject. This chapter is important from examination perspective as its form base for the understanding of the nature of the contract which constitutes unit 1 of Chapter 1 of the said paper in the Foundation course. Considering this capsule as summarized version of the unit 1 of chapter 1 will certainly benefit the students to recapitulate the important points while studying the subject.

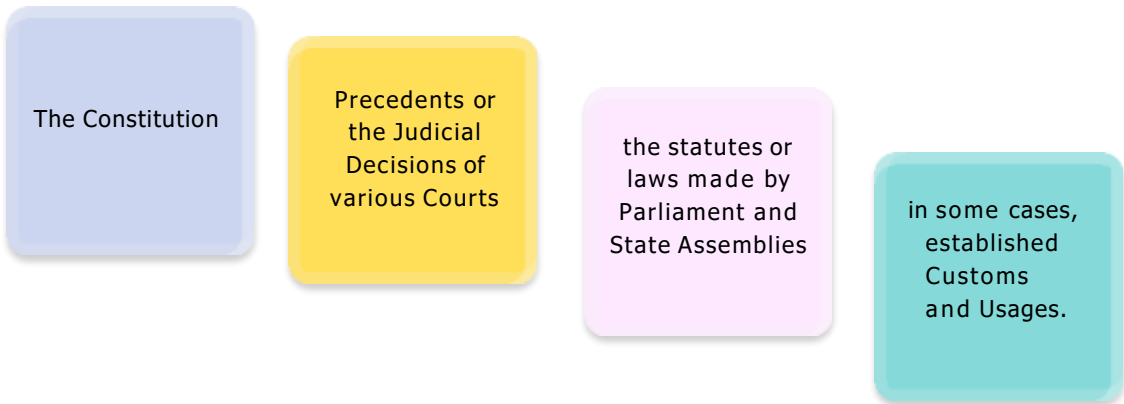


CHAPTER 1- INDIAN REGULATORY FRAMEWORK

MEANING OF LAW

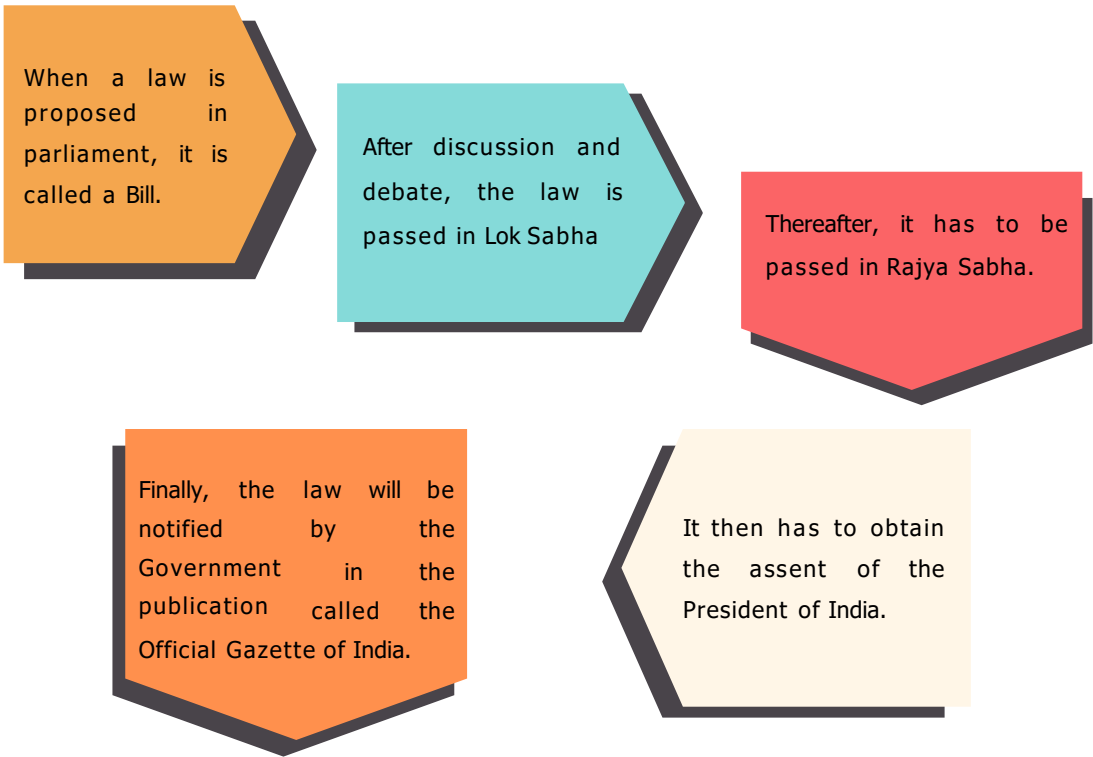


SOURCES OF LAW



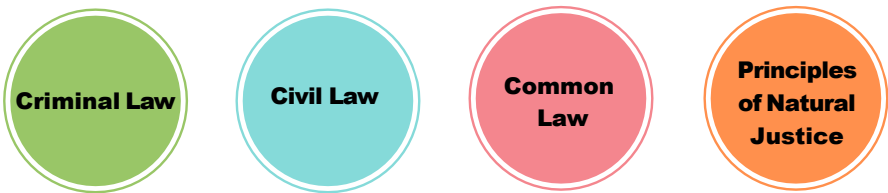
(i) Constitution of India	foremost law that deals with the framework within which our democratic system works
	our laws are made for the people, by the people
	provides and protects certain Fundamental rights of citizens
	lays down Fundamental duties as well as the powers and duties of Governments, both Central and State
	The laws in India are interconnected with each other forming a hybrid legal system
	The people who wrote the Constitution decided to divide the law- making power between the Central Government and the various State Governments
	Indian Constitution has three lists Viz., Central List, State List and Joint List.

PROCESS OF MAKING A LAW

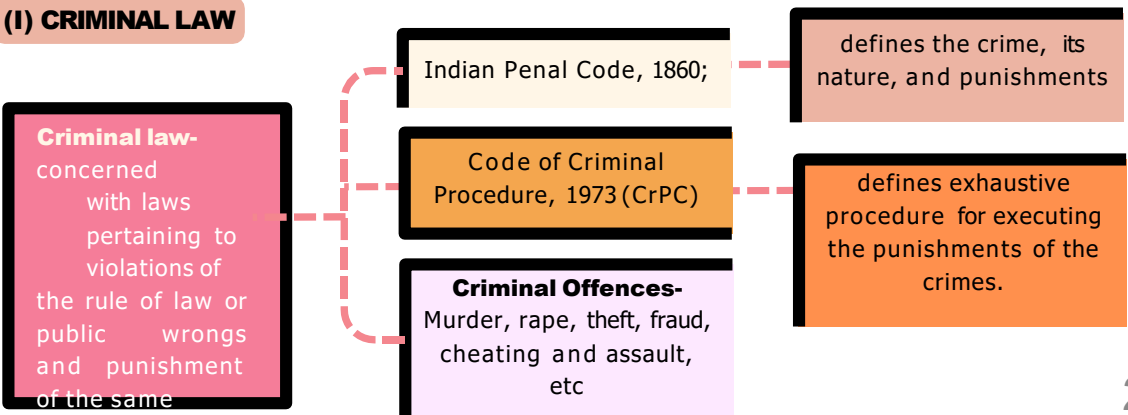


TYPES OF LAWS IN THE INDIAN LEGAL SYSTEM

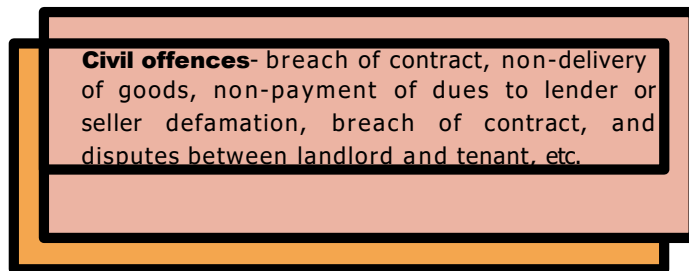
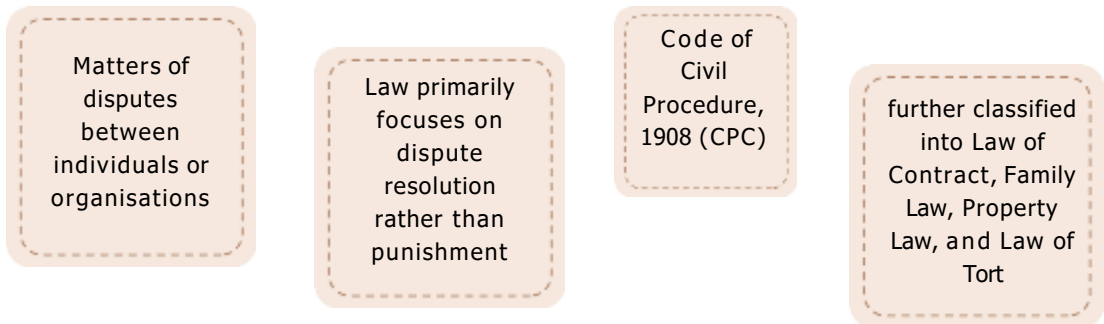
TYPES OF LAWS



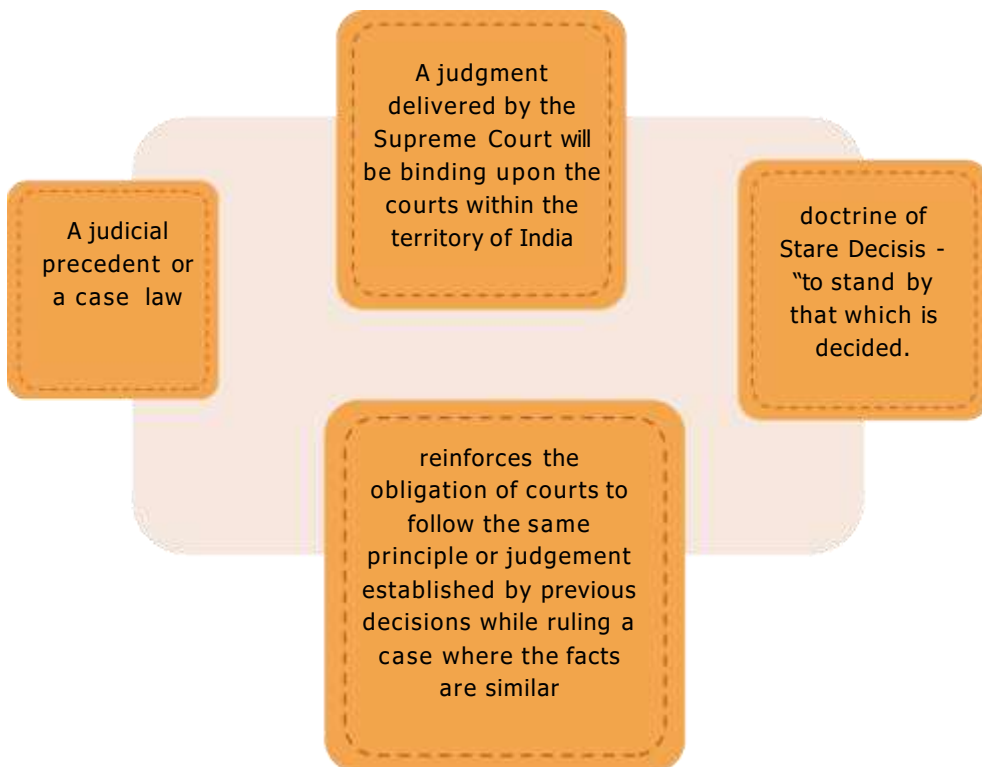
(I) CRIMINAL LAW

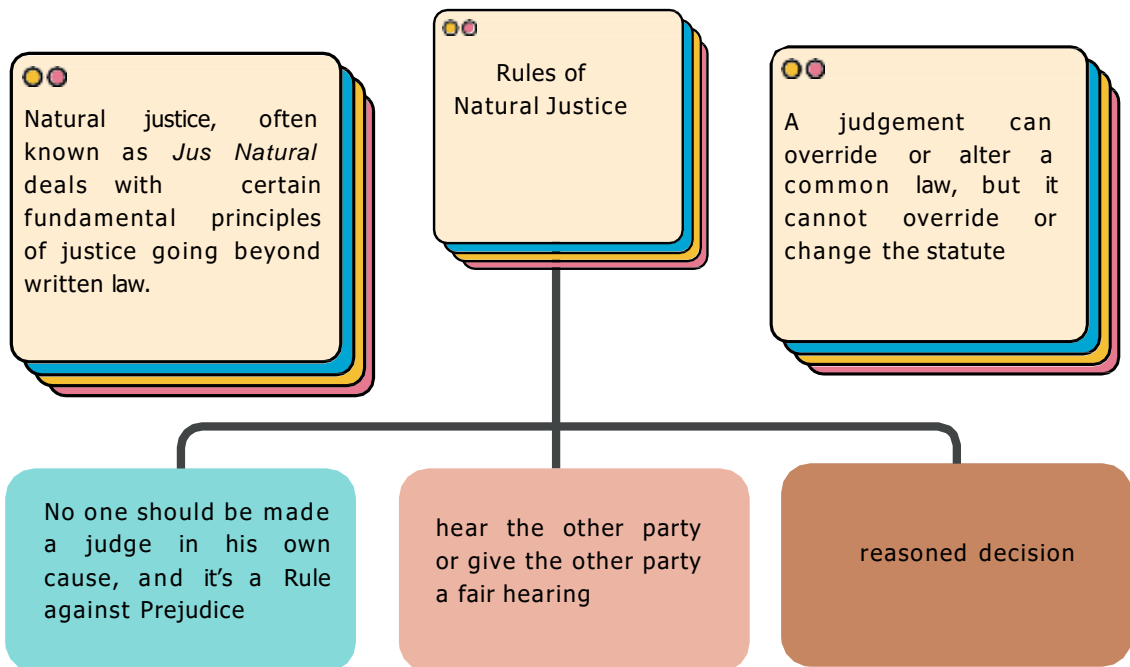


(II) CIVIL LAW



(III) COMMON LAW



(IV) PRINCIPLES OF NATURAL JUSTICE**ENFORCING THE LAW**

The Government of India exercises its executive authority through a few Government Ministries or Departments of State.

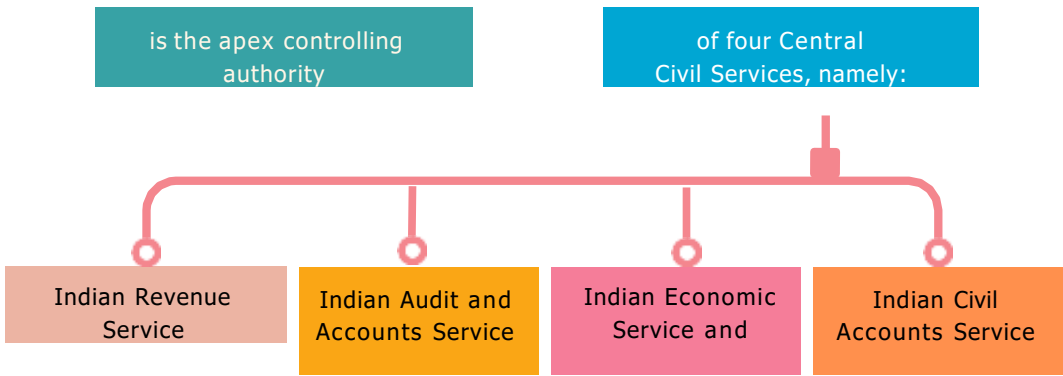
A Ministry is composed of employed officials, known as civil servants, and is politically accountable through a minister.

Most major Ministries are headed by a Cabinet Minister, who sits in the Union Council of Ministers, and is typically supported by a team of junior ministers called the Ministers of State.

(i) MINISTRY OF FINANCE

- concerned with the economy of India
- serving as the Treasury of India
- concerns itself with taxation, financial legislation, financial institutions, capital markets, centre and state finances, and the Union Budget
- important functions is the presentation of the Union Budget

CONSTITUTION OF MINISTRY OF FINANCE



DEPARTMENT OF MINISTRY OF FINANCE



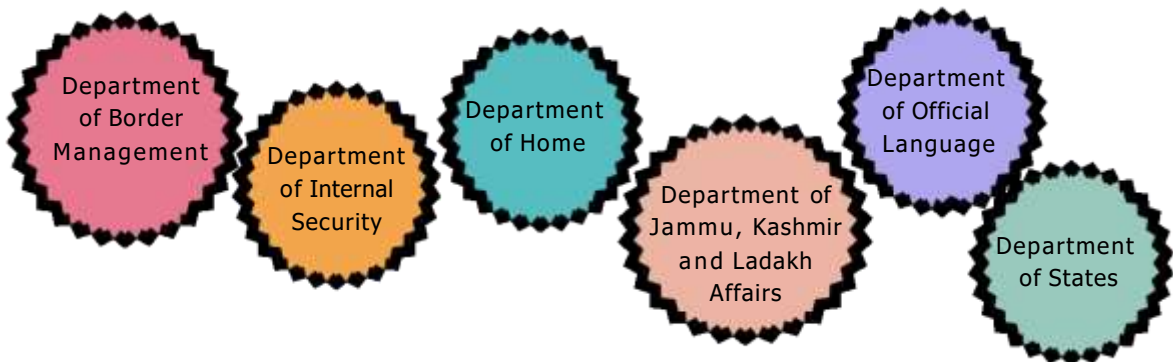
(ii) MINISTRY OF CORPORATE AFFAIRS

- is an Indian Government Ministry.
- primarily concerned with administration of the Companies Act, 2013, the Limited Liability Partnership Act, 2008, and the Insolvency and Bankruptcy Code, 2016.
- responsible mainly for the regulation of Indian enterprises in the industrial and services sector.
- The Ministry is mostly run by civil servants of the ICLS cadre.
- These officers are elected through the Civil Services Examination conducted by Union Public Service Commission.
- The highest post, Director General of Corporate Affairs (DGCoA), is fixed at Apex Scale for the ICLS.

(iii) MINISTRY OF HOME AFFAIRS (GRIHA MANTRALAYA)

- is a ministry of the Government of India.
- As an interior ministry of India, it is mainly responsible for the maintenance of internal security and domestic policy.
- The Home Ministry is headed by Union Minister of Home Affairs.

DEPARTMENT OF MINISTRY OF HOME AFFAIRS



(iv) MINISTRY OF LAW AND JUSTICE

in the Government of India is a Cabinet Ministry

deals with the

The Department of Legal Affairs is concerned with advising the various Ministries of the Central Government while the Legislative Department is concerned with drafting of principal legislation for the Central Government.

- management of the legal affairs through Department of Legal Affairs

- legislative activities through the Legislative Department

- administration of justice in India through the Department of Justice

(v) THE SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)**The Securities and Exchange Board of India (SEBI)**

- is the regulatory body
- for securities and commodity market in India
- under the ownership of Ministry of Finance within the Government of India.
- It was established on 12 April, 1988 as an executive body and was given statutory powers on 30 January, 1992 through the SEBI Act, 1992.

(vi) RESERVE BANK OF INDIA (RBI)

- is India's Central Bank and regulatory body responsible for regulation of the Indian banking system.
- It is under the ownership of Ministry of Finance, Government of India.
- It is responsible for the control, issue and maintaining supply of the Indian rupee.
- It also manages the country's main payment systems and works to promote its economic development.
- Bharatiya Reserve Bank Note Mudran (BRBNM) is a specialised division of RBI through which it prints and mints Indian currency notes (INR) in two of its currency printing presses located in Nashik (Western India) and Dewas (Central India).
- RBI established the National Payments Corporation of India as one of its specialised division to regulate the payment and settlement systems in India.
- Deposit Insurance and Credit Guarantee Corporation was established by RBI as one of its specialised division for the purpose of providing insurance of deposits and guaranteeing of credit facilities to all Indian banks.

(vii) INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI)

It is the regulator for overseeing insolvency proceedings and entities like Insolvency Professional Agencies (IPA), Insolvency Professionals (IP) and Information Utilities (IU) in India.

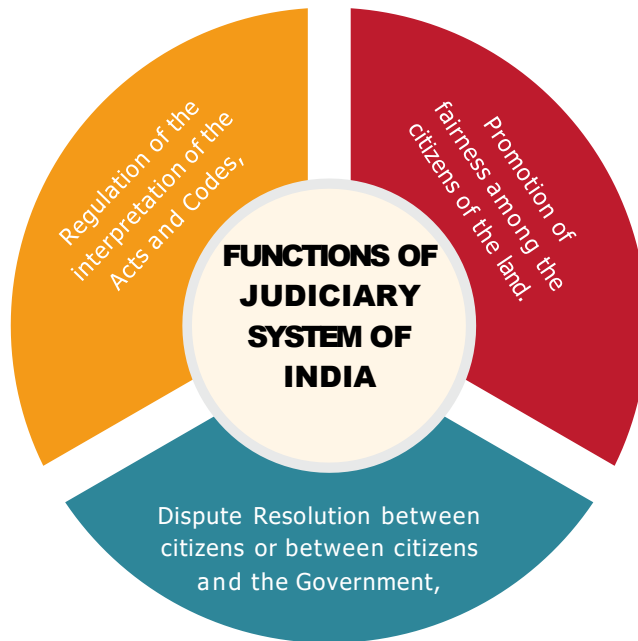
It was established on 1st October 2016 and given statutory powers through the Insolvency and Bankruptcy Code, which was passed by Lok Sabha on 5th May 2016.

It covers Individuals, Companies, Limited Liability, Partnerships and Partnership firms. The new code will speed up the resolution process for stressed assets in the country.

It attempts to simplify the process of insolvency and bankruptcy proceedings.

It handles the cases using two tribunals like NCLT (National Company Law Tribunal) and Debt Recovery Tribunal

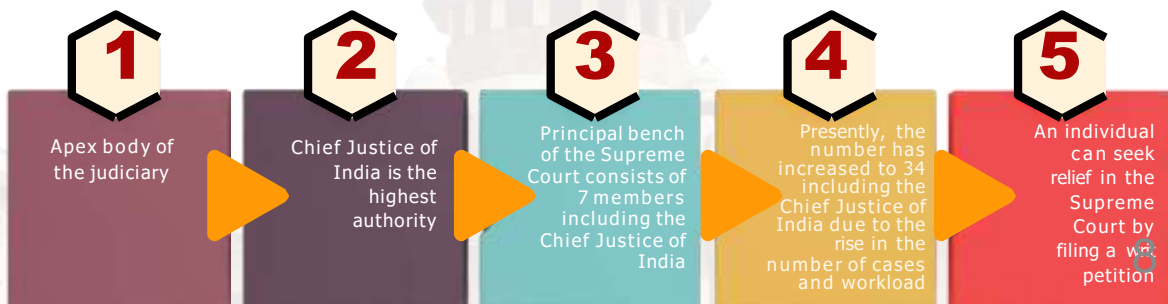
FUNCTIONS OF JUDICIARY SYSTEM OF INDIA

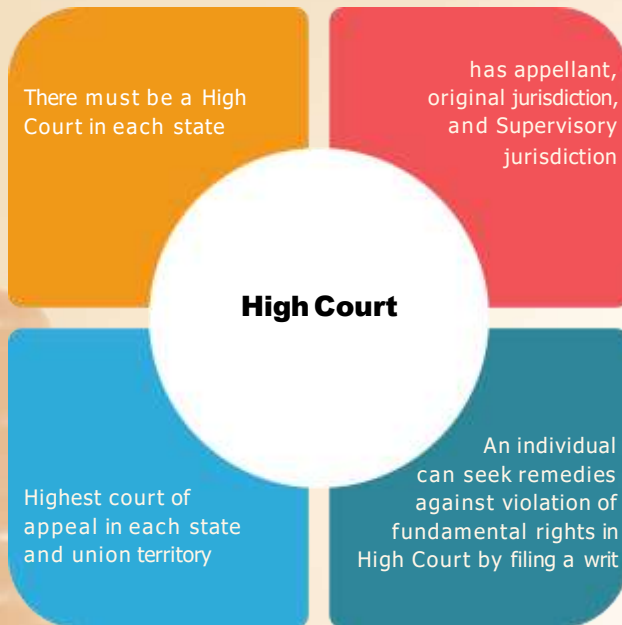


HIERARCHY OF COURTS



(i) SUPREME COURT



(ii) HIGH COURT**(iii) DISTRICT COURT**

- Below the High Courts
- The Courts of District Judge deal with Civil law matters
- Civil judge can try suits valuing not more than Rupees 2 crore.
- Courts get territorial Jurisdiction based on the areas covered by them
- Cases are decided based on the local limits within which the parties reside or the property under dispute is situated.

**(iv) METROPOLITAN COURTS**

Established in metropolitan cities in consultation with the High Court where the population is 10 lakh or more



Chief Metropolitan Magistrate has powers as Chief Judicial Magistrate



Metropolitan Magistrate has powers as the Court of a Magistrate of the first class.

CONCEPTS RELATED TO ENTERING OF CONTRACT UNDER THE INDIAN CONTRACT ACT, 1872



The above situation talks about formation of an agreement. An agreement is the result of a proposal by one party and its acceptance by another with the consideration forming the foundation of any contract. Therefore, such an offer and its acceptance gives rise to right & obligation against each other.

An Agreement in order to be a Contract, must satisfy the conditions as specified under section 10 of the Indian Contract Act, 1872.

Requirement of contract



Made by the free consent

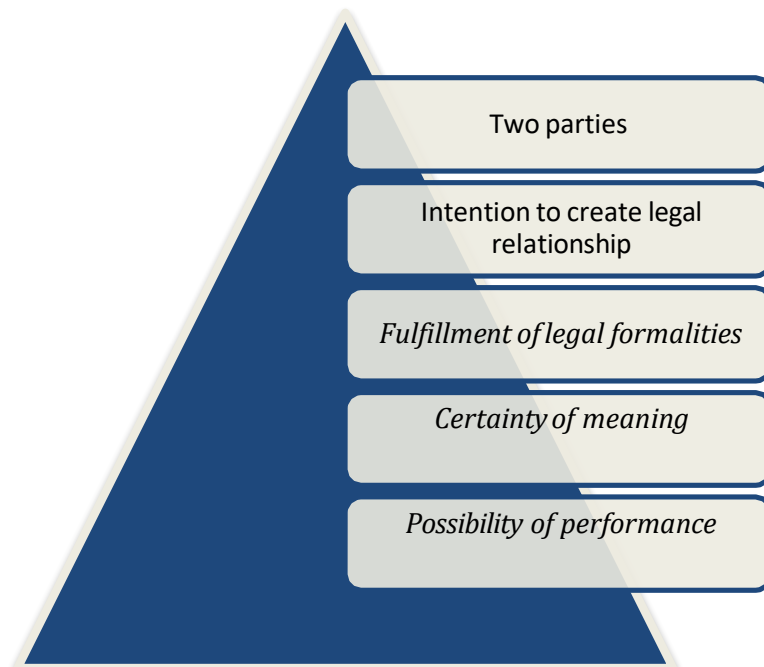
Between parties competent to contract,

For a lawful consideration and with a lawful object, and

Are not hereby expressly declared to be void

Since section 10 is not complete and exhaustive, so there are certain others sections which also contains requirements for an agreement to be enforceable.

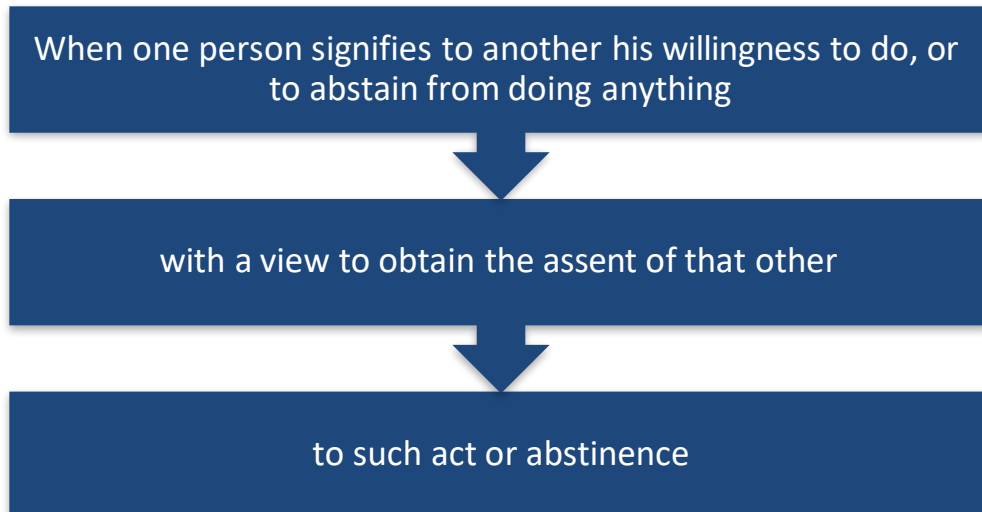
Not given by Section 10 but are also considered essentials of valid contracts



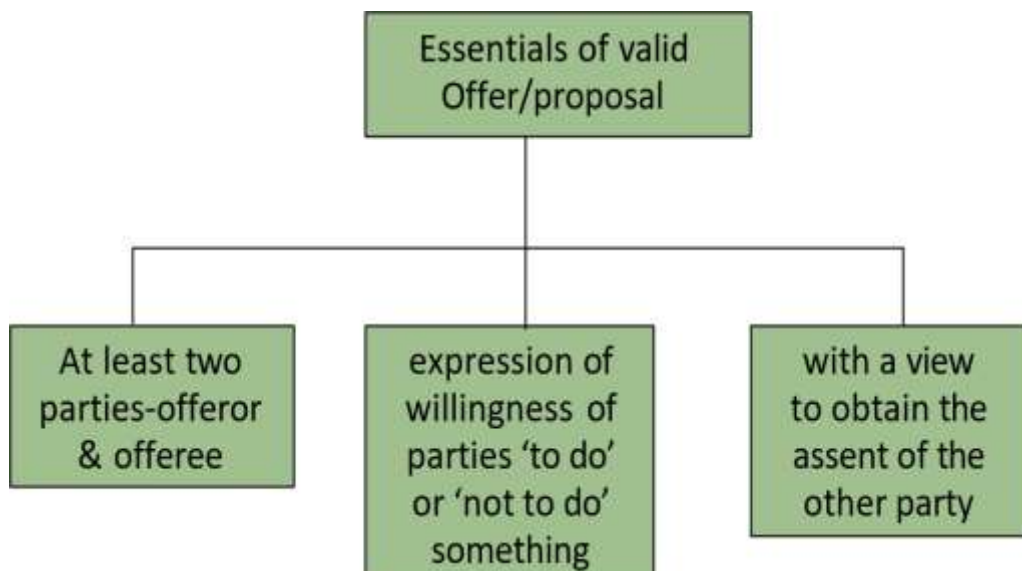
(1) Meaning of offer/proposal

As offer is the starting point in the making of an agreement. An offer is also called as proposal. Thus, for a valid offer, the party making it must express his willingness 'to do' or 'not to do' something.

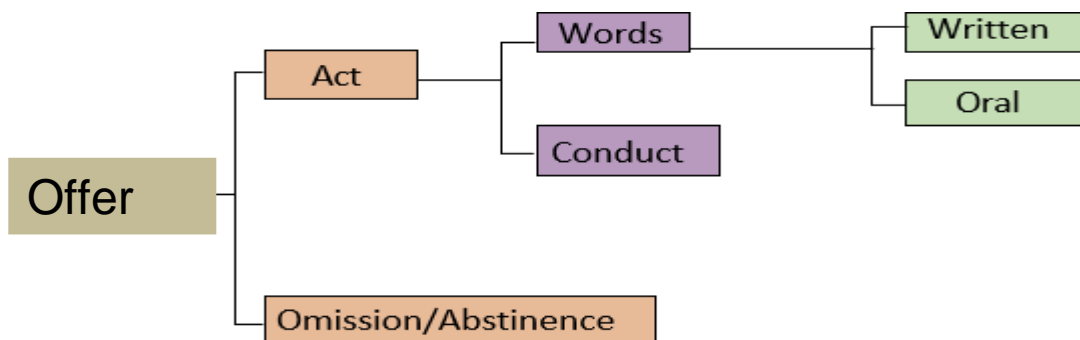
Law defines the term offer/proposal as –



(2) Essentials of the offer/proposal:



(3) Mode of offers



(4) Classification of Offer



General Offer

- offer made to public at large and anyone can accept by performing the desired act

Special/Specific Offer

- offer made to a specific / ascertained person, & can be accepted only by that specified person

Cross Offer

- 2 parties exchange identical offers in ignorance of each other's offer at the same time. It is not binding

Counter Offer

- offeree offers to qualified acceptance of the offer subject to modifications and variations in the terms of original offer. Counter- offer amounts to rejection of the original offer

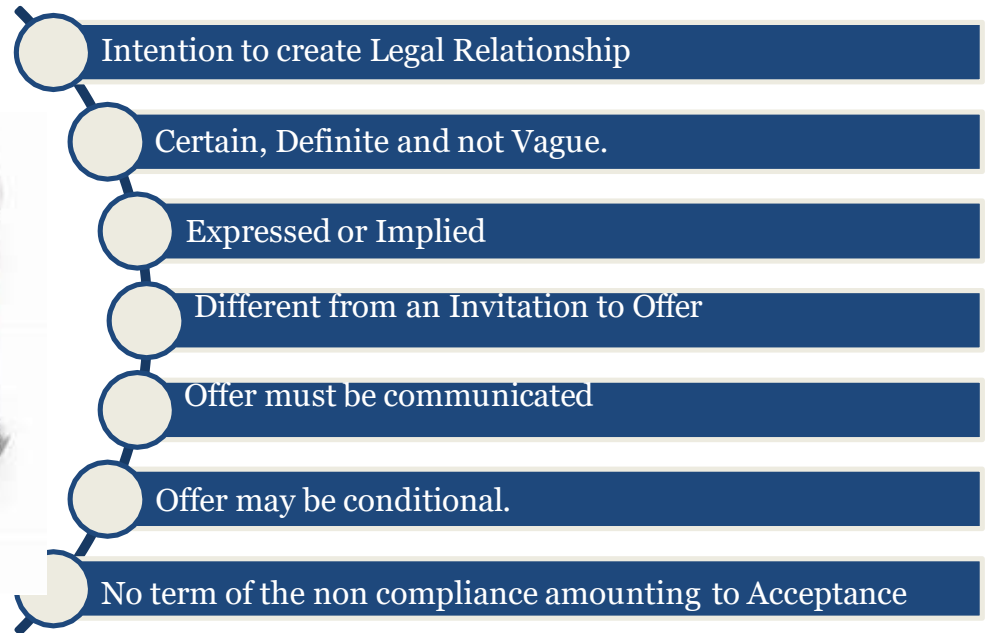
Standing/Continuing/open Offer

- An offer of continuous nature which remains open for acceptance over a period of time

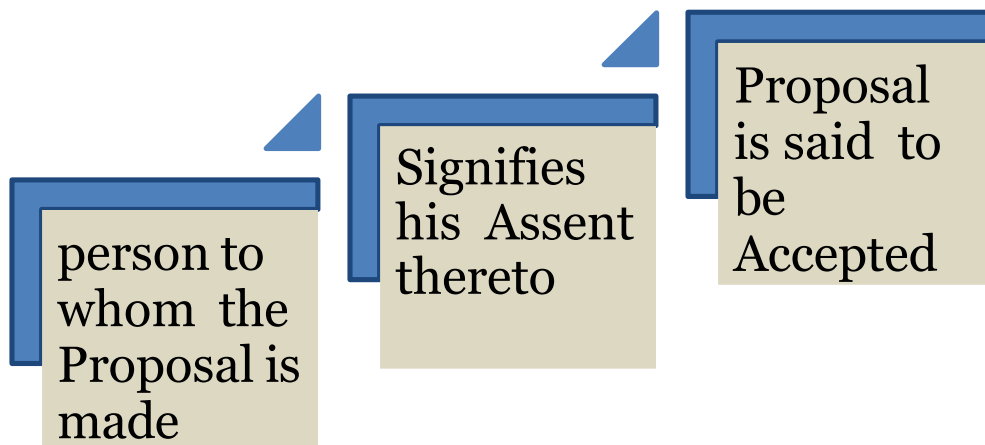
(5) Difference between Offer and Invitation to Offer, and Invitation to Treat

Case laws	Facts of the case	Decision
Harvey Vs. Facie	<p>In this case, Privy Council briefly explained the distinction between an offer and an invitation to offer. In the given case, the plaintiffs through a telegram asked the defendants two questions namely,</p> <p>(i) Will you sell us Bumper Hall Pen? and</p> <p>(ii) Telegraph lowest cash price.</p> <p>The defendants replied through telegram that the “lowest price for Bumper Hall Pen is £900”. The plaintiffs sent another telegram stating “we agree to buy Bumper Hall Pen at £900”. However, the defendants refused to sell the property at the price. The plaintiffs sued the defendants contending that they had made an offer to sell the property at £900 and therefore they are bound by the offer.</p>	<p>Held that the mere statement of the lowest price at which the vendor would sell contained no implied contract to sell to the person who had enquired about the price.</p>
Mac Pherson Vs. Appanna	<p>The owner of the property had said that he would not accept less than ` 6000/- for it.</p>	<p>It was held that this statement did not indicate any offer but indicated only an invitation to offer</p>

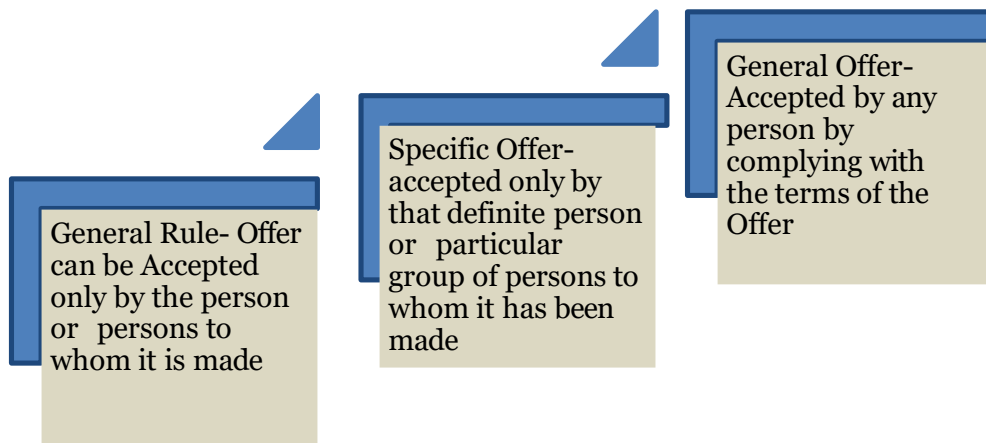
(6.) Rules as to Valid Offer



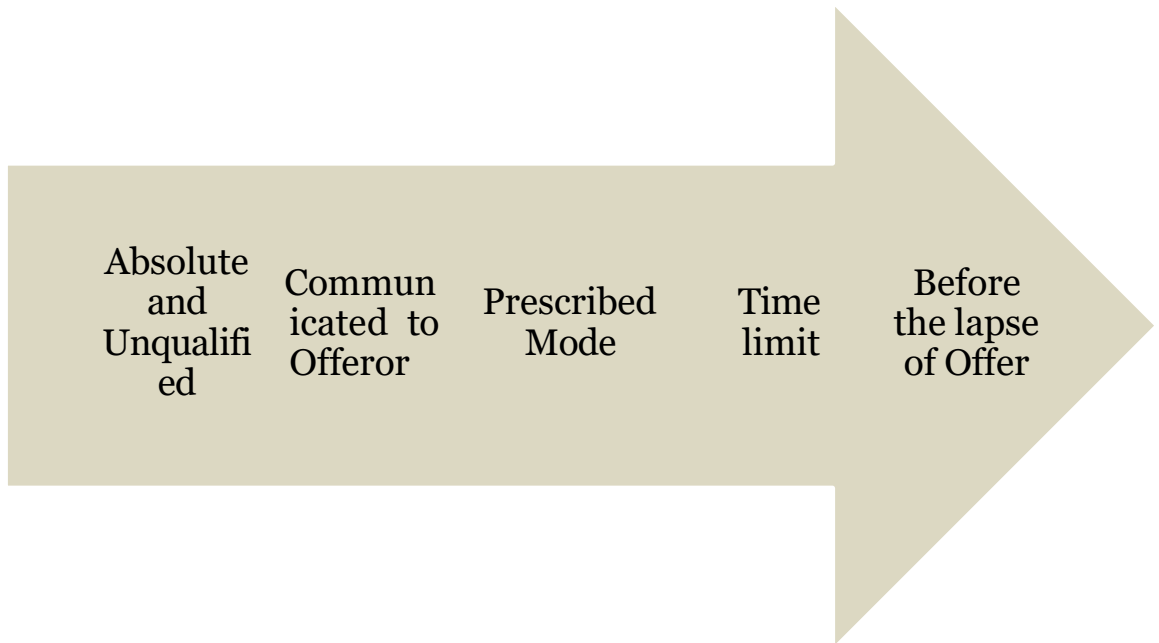
(7.) Acceptance



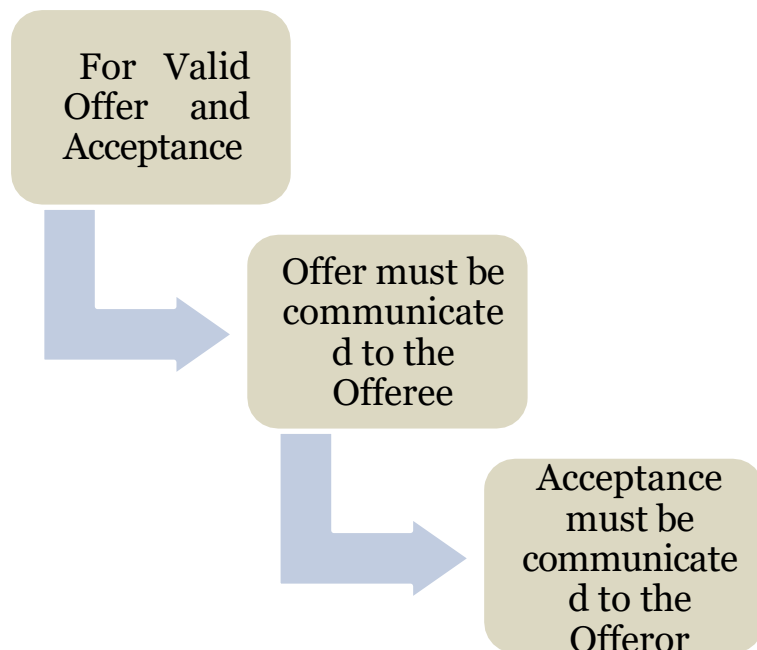
(8.) Acceptance of an offer



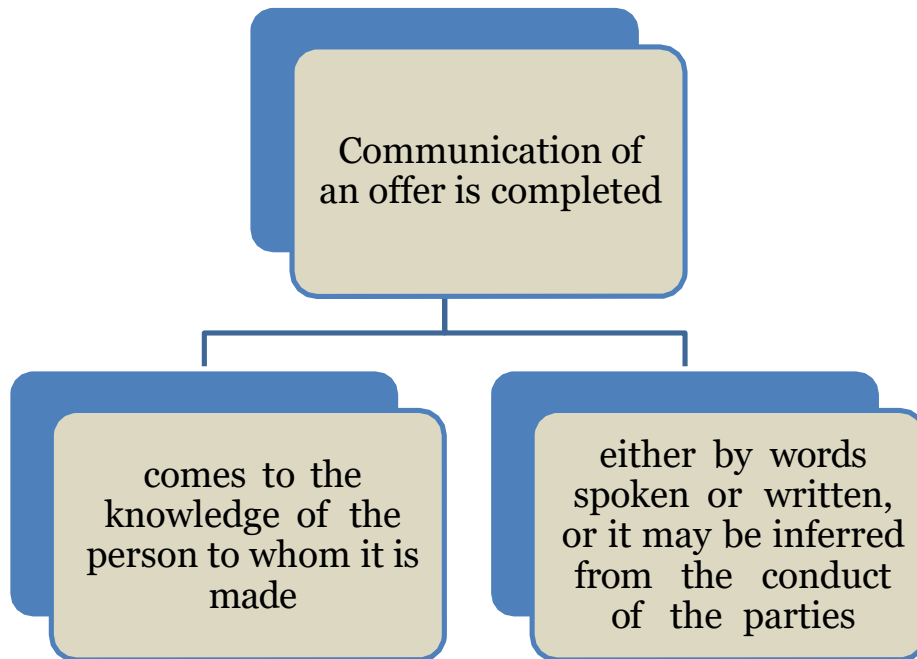
(9.) Legal rules for a valid acceptance



(10) Rules for Communication of Offer and Acceptance



(11)When communication of offer is complete?



(12.)When is communication of acceptance complete?

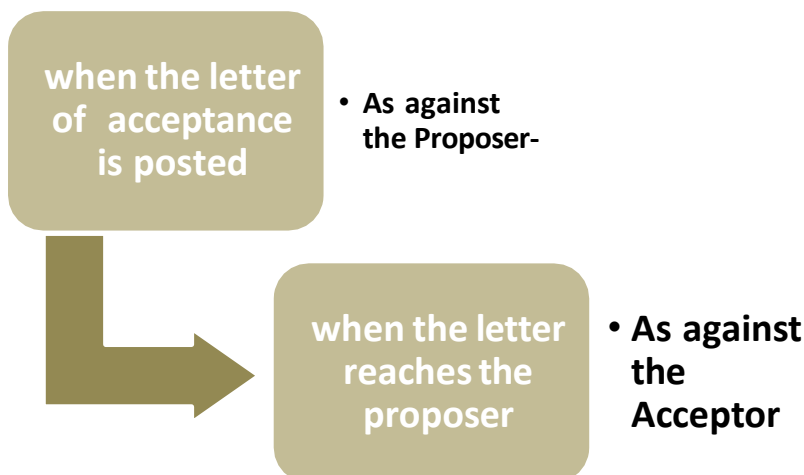
As against the Proposer-

when put in course of transmission to the Proposer

As against the Acceptor

when it comes to the knowledge of the Proposer

(13.)Communication of acceptance by post



(14) Acceptance over telephone or telex or fax

Offer is made by instantaneous communication- Contract is completed

When the Acceptance is received by the Offeror,

The Contract is made at the place where the Acceptance is received

(15) When revocation of offer and acceptance is complete

As against the person who makes it-

- When it is put into a course of transmission

As against the person to whom it is made-

- When it comes to his knowledge.

(16) When a Proposal and Acceptance can be revoked?

Proposal

May be revoked at any time before the communication of its acceptance is complete as against the proposer

Acceptance

May be revoked at any time before the communication of the acceptance is complete as against the acceptor

(17) Modes of revocation of offer by

Notice of Revocation



Lapse of specified or reasonable time


Non fulfilment of Conditions of Offer

Death or Insanity of the parties

Counter Offer

Important Case Studies

Name of the case laws	Facts of the case	Decision
<p>Carlill Vs. Carbolic Smoke Ball Co.</p> 	<p>In this famous case, 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 Company according to printed directions. One lady, Mrs. Carlill, used the smoke balls as per the directions of company and even then suffered from influenza.</p>	<p>Held, she could recover the amount as by using the smoke balls she had accepted the offer. In terms of Sec. 8 of the Indian Contract Act, anyone performing the conditions of the offer can be considered to have accepted the offer. Until the general offer is retracted or withdrawn, it can be accepted by anyone at any time as it is a continuing offer.</p>
<p>Lalman Shukla Vs. Gauri Dutt</p> 	<p>Gauri Dutt sent his servant Lalman to trace his missing nephew. He then announced that anybody who traced his nephew would be entitled to a certain reward. Lalman traced the boy in ignorance of this announcement. Subsequently when he came to know of the reward, he claimed it.</p>	<p>Held, he was not entitled to the reward, as he did not know the offer. Section 4 of the Indian Contract Act states that the communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.</p> <p>In Lalman case, the defendant's nephew absconded from home. The plaintiff who was defendant's servant was sent to search for the missing boy. After the plaintiff had left in search of the boy, the defendant announced a reward of Rs. 501 to anyone who might find out the boy. The plaintiff who was unaware of this reward, was successful in searching the boy.</p>

Name of the case laws	Facts of the case	Decision
		<p>When he came to know of the reward, which had been announced in his absence, he brought an action against the defendant to claim this reward. It was held that since the plaintiff was ignorant of the offer of reward, his act of bringing the lost boy did not amount to the acceptance of the offer and therefore he was not entitled to claim the reward.</p>
<p>Boulton Vs. Jones</p> 	<p>Boulton had taken over the business of one Brocklehurst, with whom Jones had previous dealings. Jones sent an order for goods to Brocklehurst, which Boulton supplied without informing Jones that the business had changed hands. When Jones found out that the goods had not come from Brocklehurst, he refused to pay for them and was sued by Boulton for the price.</p>	<p>Held: Jones is not liable to pay for the good. It is a rule of law that offer made to a specific / ascertained person can be accepted only by that specified person.</p>



Case laws	Facts of the case	Decision
Harris Vs. Nickerson	An auctioneer advertised in a newspaper that a sale of office furniture will be held on a particular day. Plaintiff (Harris) with the intention to buy furniture came from a distant place for auction but the auction was cancelled.	It was held that plaintiff cannot file a suit against the auctioneer for his loss of time and expenses because the advertisement was merely a declaration of intention to hold auction and not an offer to sell. The auctioneer (Nickerson) does not contract with any one who attends the sale. The auction is only an advertisement to sell but the items are not put for sale though persons who have come to the auction may have the intention to purchase.
Pharmaceutical Society of Great Britain Vs. Boots Cash Chemists Ltd	The goods were displayed in the shop for sale with price tags attached on each article and self-service system was there. One customer selected the goods but the owner refused to sell.	In this case, it was held that display of goods alongwith price tags merely amounts to invitation to treat and therefore if an intending buyer is willing to purchase the goods at a price mentioned on the tag, he makes an offer to buy the goods. Thus, the shopkeeper has the right to accept or reject the same. The contract would arise only when the offer is accepted. Hence there was no contract and customer had no rights to sue the owner.

Case laws	Facts	Decision
Felthouse Vs. Bindley	F offered by letter to buy a nephews horse, saying:" If I hear no more about it, I shall consider the horse mine. "The nephew did not reply but he told an auctioneer not to sell that particular horse as he had sold it to his uncle. By mistake, the auctioneer sold the horse. F sued for conversion against his nephew.	Held, F could not succeed as his nephew had not communicated acceptance and there was no contract.
Carlill Vs. Carbolic & Smoke Balls Co.	In this famous case 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 Company according to printed directions. One lady, Mrs. Carlill, used the smoke balls as per the directions of company and even then suffered from influenza. Here company took the defend that there was no communication of acceptance of an offer by Mrs. Carlill and so there was no contract between them.	In case of a general offer, it is not necessary to communicate the acceptance if it is made by acting upon the terms of the offer.
Neale Vs. Merret	M offered to sell his land to N for £280. N replied purporting to accept the offer but enclosed a cheque for £ 80 only. He promised to pay the balance of £ 200 by monthly installments of £ 50 each.	It was held that N could not enforce his acceptance because it was not an unqualified one

Case laws	Facts	Decision
Brogden vs. Metropolitan Railway Co.	<p>Brogden a supplier, sent a draft agreement relating to the supply of coal to the manager of railway Co. viz, Metropolitan railway for his acceptance.</p> <p>The manager wrote the word "Approved" on the same and put the draft agreement in the drawer of the table</p> <p>Intending to send it to the company's solicitors for a formal contract to be drawn up. By an oversight the draft agreement remained in drawer.</p>	<p>Held, that there was no contract as the manager had not communicated his acceptance to the supplier, Brogden. supplier, Brogden.</p>

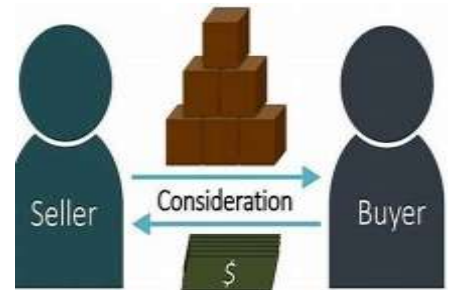
Relevant Case laws

Case laws	Facts	Decision
Lilly White Vs. Mannuswamy	<p>Plaintiff delivered some clothes to drycleaner for which she received a laundry receipt containing a condition that in case of loss, customer would be entitled to claim 15% of the market price of value of the article, Plaintiff lost her new saree.</p>	<p>Held, the terms were unreasonable and Plaintiff was entitled to recover full value of the saree from the drycleaner.</p> <p>The receipt carries special conditions and are to be treated as having been duly communicated to the customer and therein a tacit acceptance of these conditions is implied by the customer's acceptance of the receipt</p>

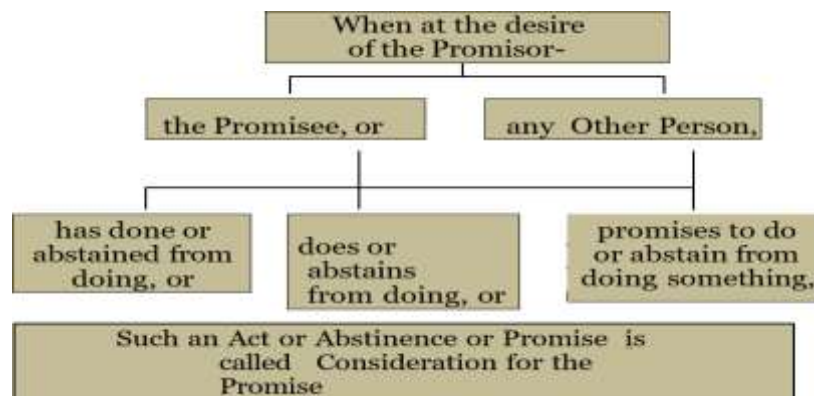
CONCEPTS RELATED TO THE ENTERING OF CONTRACT UNDER THE INDIAN CONTRACT ACT, 1872

(I.) Consideration

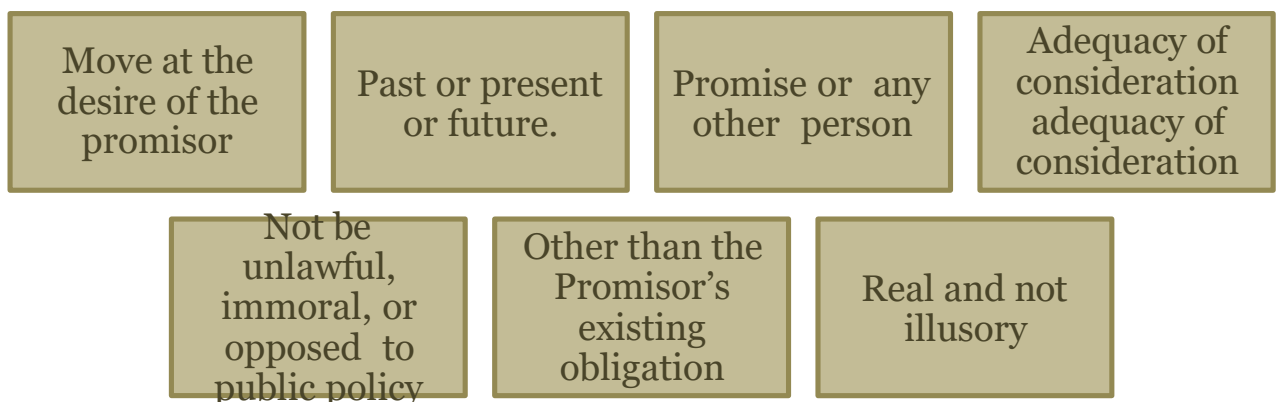
In the legal system, the term **consideration** in contract law refers to something of value given to someone in return for goods, services, or some other promise. A valid contract must include consideration for every party involved. In simple terms, consideration is the basic reason a party enters into a legal contract.



(2) Meaning of consideration



(3) Requirements of valid consideration



Caselaws	Facts	Decision
Durga Prasad v. Baldeo	D (defendant) promised to pay to P (plaintiff) a certain commission on articles which would be sold through their agency in a market. Market was constructed by P at the desire of the C (Collector), and not at the desire of the D (Promisor)	D was not bound to pay commission as it was without consideration and hence void.
Chinnayya vs. Ramayya	An old lady made a gift of her property to her daughter with a direction to pay a certain sum of money to the maternal uncle by way of annuity. On the same day, the daughter executed a writing in favour of the maternal uncle and agreeing to pay him annuity. The daughter did not, however, pay the annuity and the uncle sued to recover it.	It was held that there was sufficient consideration for the uncle to recover the money from the daughter.

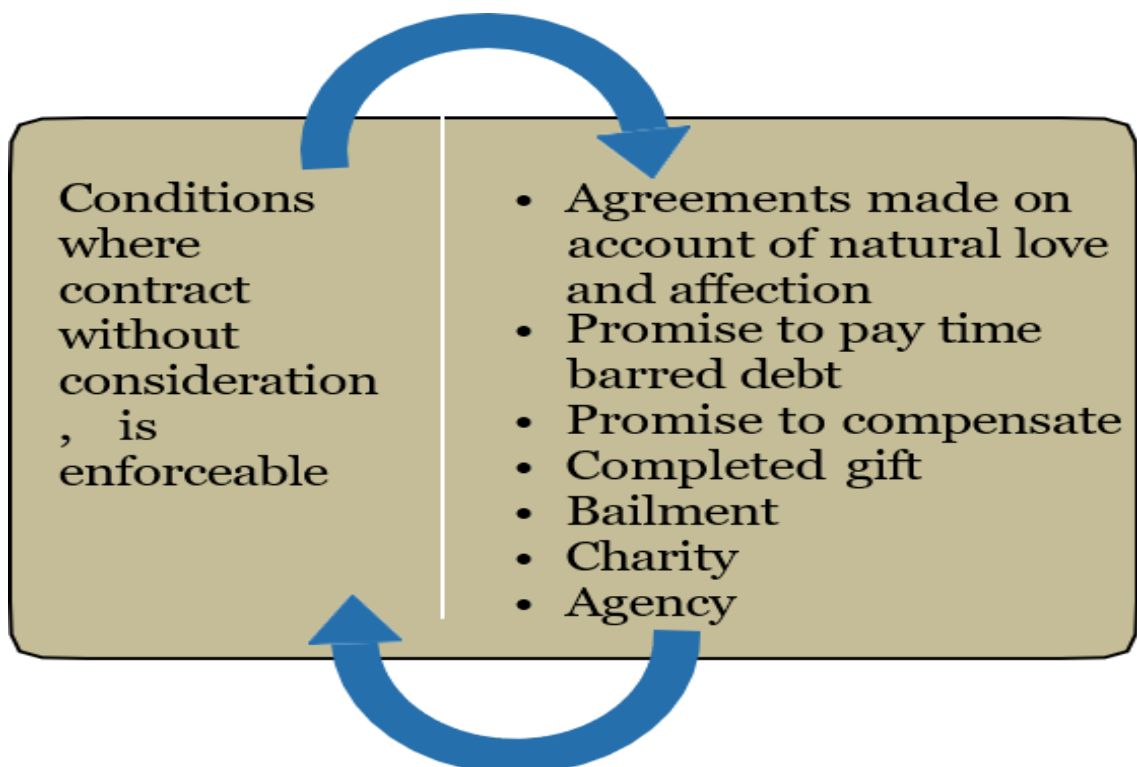
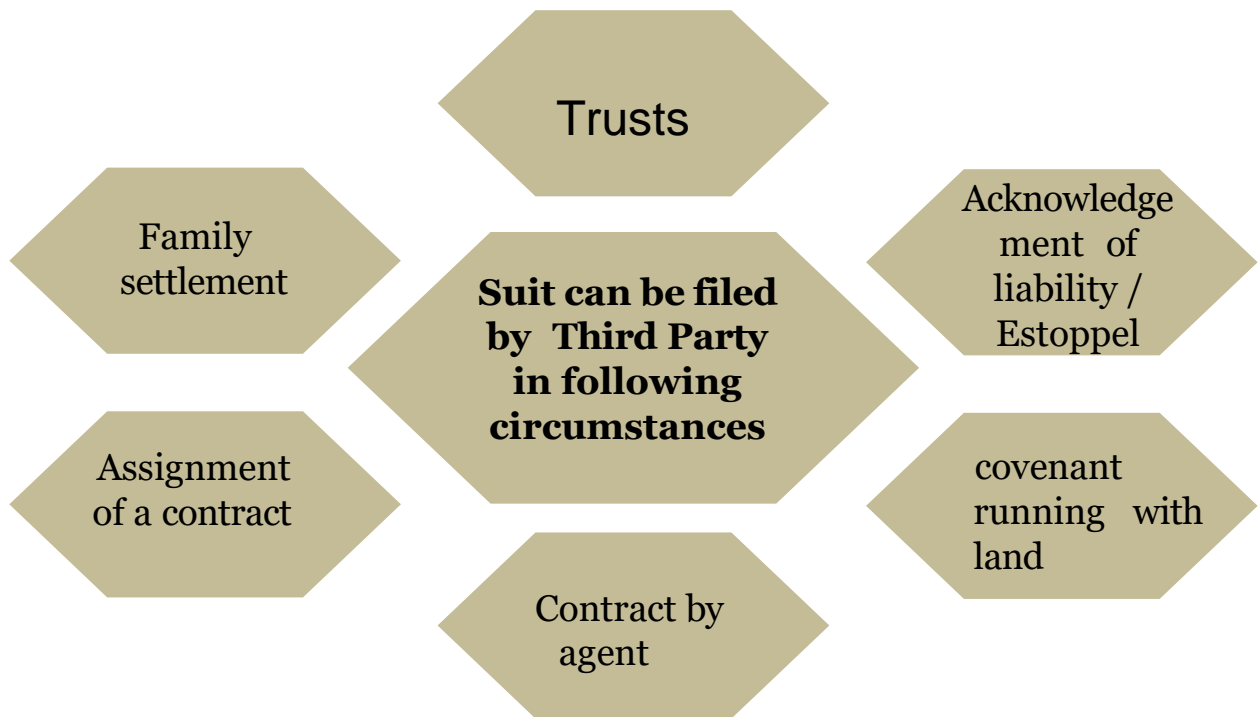
(4) Suit by a Third Party on an Agreement (Doctrine of Privity of Contract)



General rule

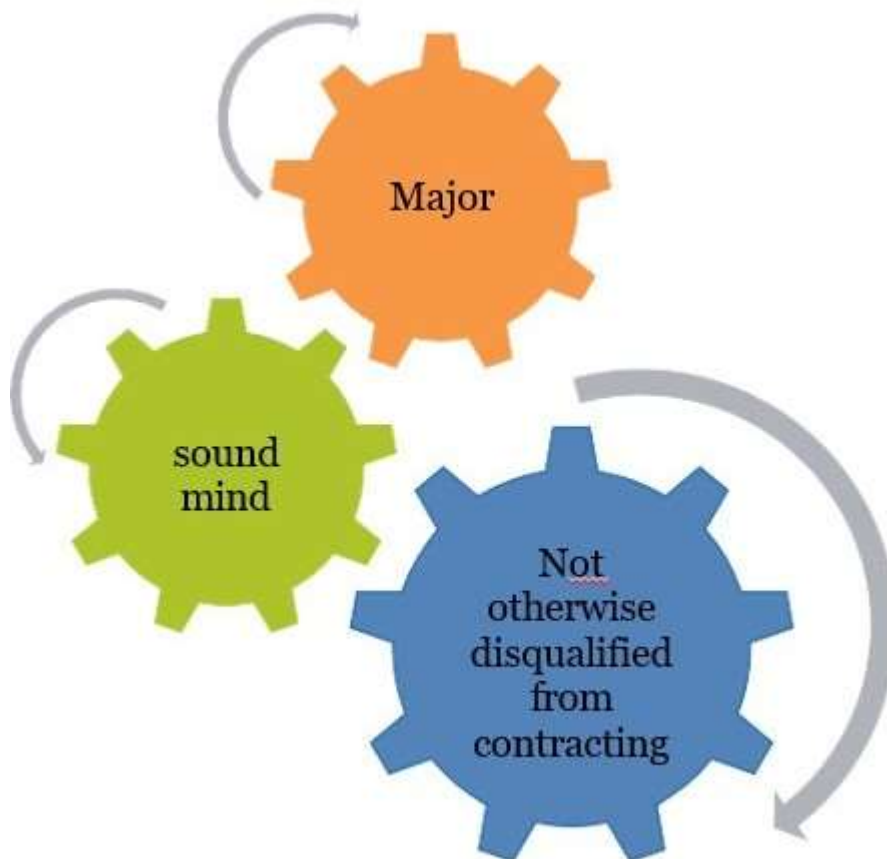
A stranger to a contract cannot sue

Exceptions to the said rule

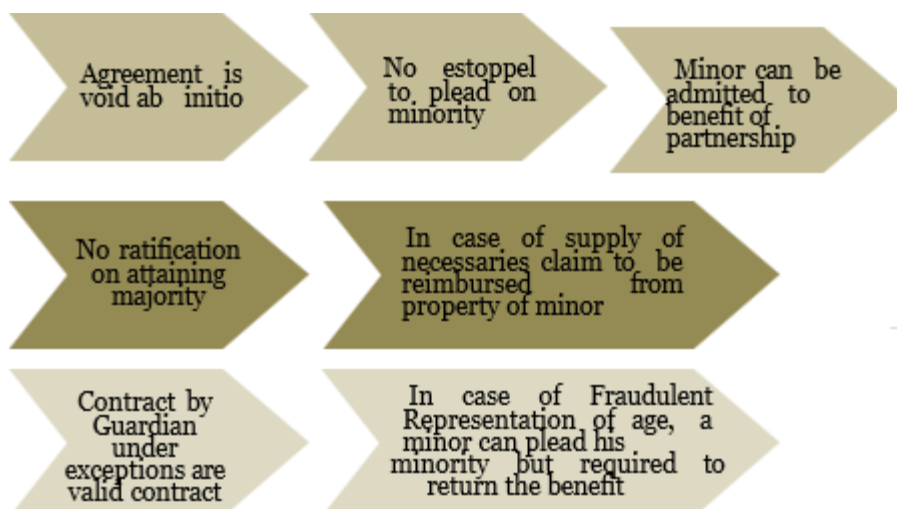


Relevant CaseLaw : In *Kedarnath Vs. Gorie Mohammad* , it was held that if a promisee undertakes the liability on the promise of the person to contribute to charity , there the contract shall be valid.

II. Competency of parties



(2) Law relating to Minor's agreement/ Position of minor



Case Law	Facts	Decision
Mohori Bibi vs. Dharmo Das Ghose	A, a minor borrowed R20,000 from B and as a security for the same executed a mortgage in his favour. He became a major a few months later and filed a suit for the declaration that the mortgage executed by him during his minority was void and should be cancelled.	It was held that a mortgage by a minor was void and B was not entitled to repayment of money.
Sain Das vs. Ram Chand	Where there was a joint purchase by two purchaser, one of them was a minor	It was held that the vendor could enforce the contract against the major purchaser and not the minor

(3) Position of person of sound mind

Person who is usually of Unsound Mind but occasionally of Sound Mind

may make a Contract when he is of Sound Mind.



Person who is usually of Sound Mind but occasionally of Unsound Mind

may not make a Contract when he is of Unsound Mind

While he is of Unsound Mind

- Cannot enter into any Contract
- Contract entered during this period is altogether Void
- Cannot be held Liable thereon

While he is of sound mind

- Can enter into a valid contract
- Liable for such contracts

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

(5) Positions of agreements in case of persons of permanently unsound mind (in case of Idiots)

A person who is permanently of unsound mind

Cannot enter into any contract

Any agreement entered is altogether void

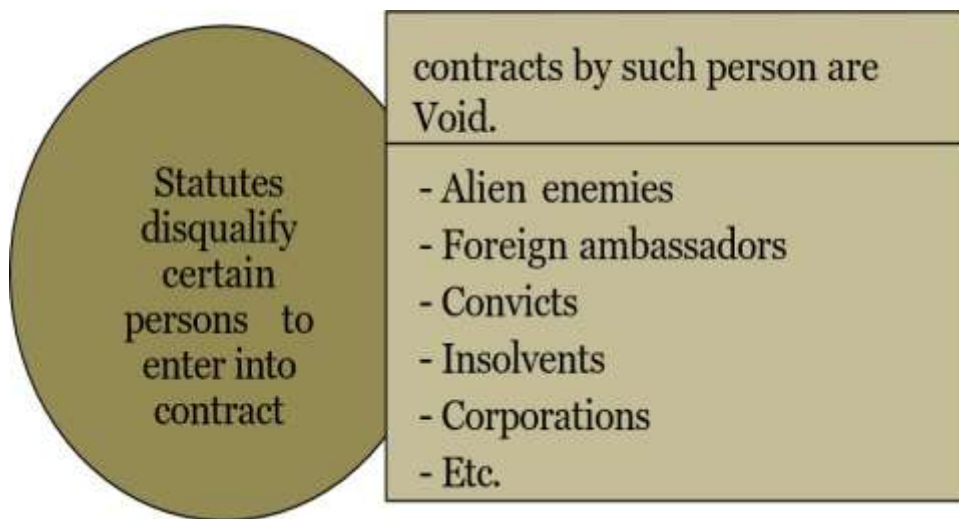
and not liable thereon

(6) Positions of agreements in case of Drunken/Intoxicated person

A Sane Person who is delirious from fever or who is so drunk cannot contract during such state because

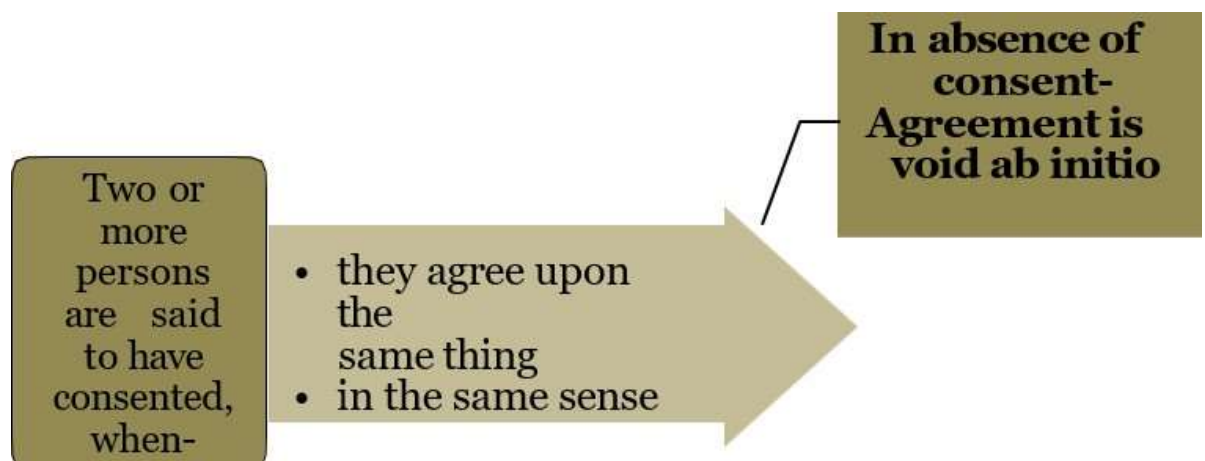
- cannot understand the terms of a contract,
- cannot form a rational judgment as to its effect on his interest

(7) Persons disqualified by law



III. Free Consent

(1) Meaning of consent





(3) Agreement caused by coercion

An agreement is said to be caused by Coercion if there is-

- Committing of any act which is forbidden by the IPC
- Threatening to commit any act which is forbidden by the IPC
- Unlawful detaining of any property
- Threatening to detain any property

(4) Consequences of Coercion

Contract induced by Coercion

the agreement is a contract voidable at the option of the party whose consent was so obtained.

(5) Undue influence

Contract is said to be induced by Undue Influence when-

- Relations subsisting between the Parties are such that,
- One of the Parties is in a position to Dominate the will of the other, and
- The Dominant Party uses that position to obtain an Unfair Advantage over the other

(6) Effect of undue influence

when agreement caused by undue influence-

- contract is voidable at the option of the party whose consent was obtained
- contract may be set aside

Relevant Case Law

In *Kirpa Ram vs. Sami-Ud-din Ad. Khan*, a youth of 18 years of age, spend thrift and a drunkard, borrowed Rs. 90,000 on a bond bearing compound interest at 2% per mensem (p.m.). It was held by the court that the transaction is unconscionable, the rate of interest charged being so exorbitant.

(7) Fraud

Fraud includes any of the following acts-			
suggestion, as to a fact which is not true	active concealment of a fact	promise made without any intention of performing it	Any other act fitted to deceive act or omission as to law specially declared to be fraudulent

(8) By whom and when fraud is said to be exercised?

Fraud can be committed by-



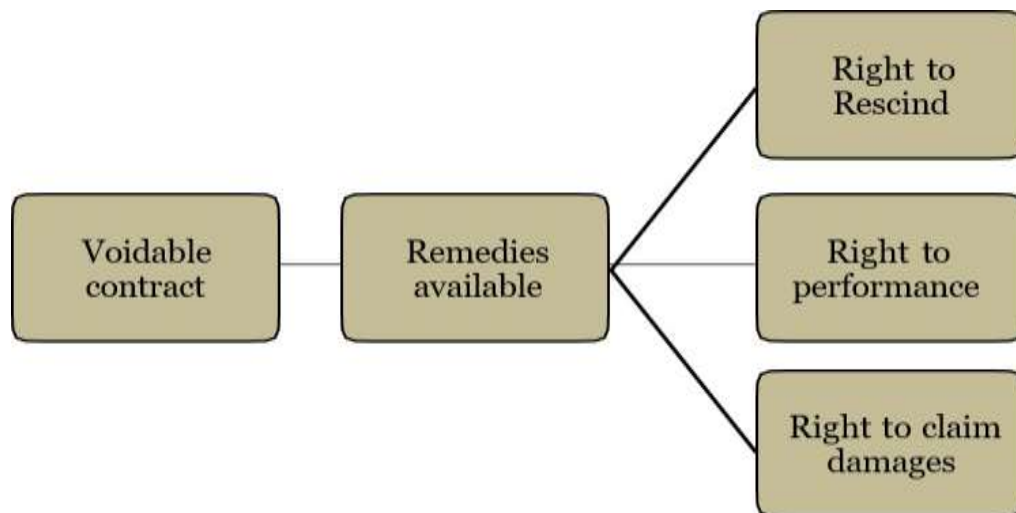
- a party to a contract, or
- with his connivance or
- by his agent

Act when done with intent to deceive-



- another party thereto or
- his agent, or
- to induce him to enter into the contract

(9) Effects of fraud



General Rule- Mere silence as to facts,

- which is likely to affect the willingness of a person,
- to enter into a contract, **-is no fraud**

Exceptions-Mere silence as to facts,

- where it is the duty of a person to speak, or
- his silence is equivalent to speech, **-silence amounts to fraud**

Relevant Case Law

Caselaws	Facts	Decision
Word vs. Hobbs	H sold to W some pigs which were to his knowledge suffering from fever. The pigs were sold 'with all faults' and H did not disclose the fact of fever to W.	Held there was no fraud.
Peek vs Gurney	The prospectus issued by a company did not refer to the existence of a document disclosing liabilities. The impression thereby created was that the company was a prosperous one, which actually was not the case.	Held the suppression of truth amounted to fraud.
Regier V. Campbell Staurt	A broker was asked to buy shares for client. He sold his own shares without disclosing this fact.	Held that the client was entitled to avoid the contract or affirm it with a right to claim secret profit made by broker on the transaction since the relationship between the broker and the client was relationship of utmost good faith.

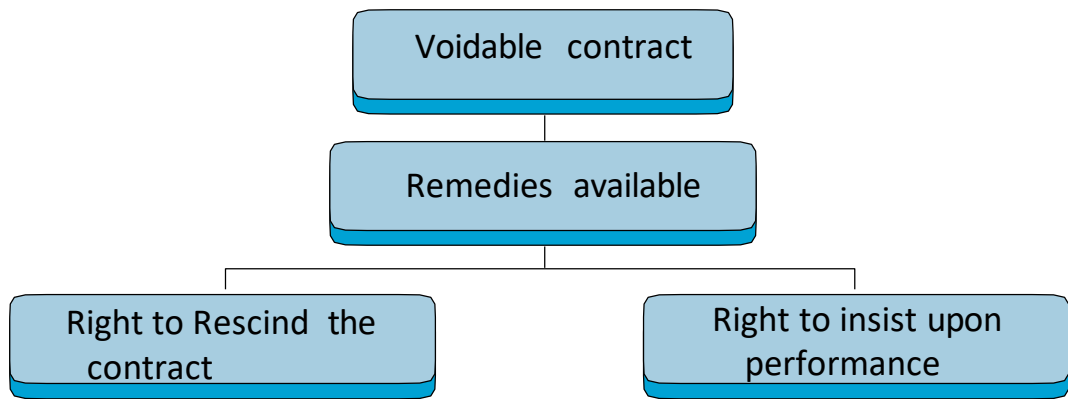
(11) Misrepresentation

When a person positively states that a fact is true when his information does not warrant it to be so

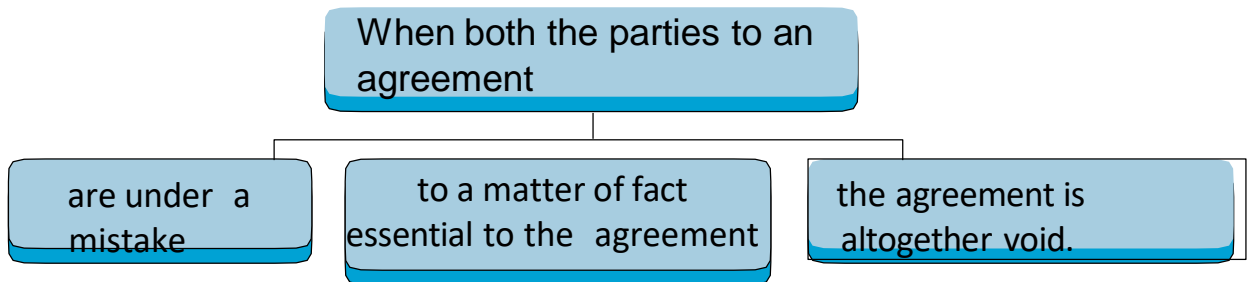
When there is a breach of duty by a person without intention to deceive which brings an advantage to him, and loss to the other;

When a party causes the other party to the agreement to make a mistake as to the subject matter.

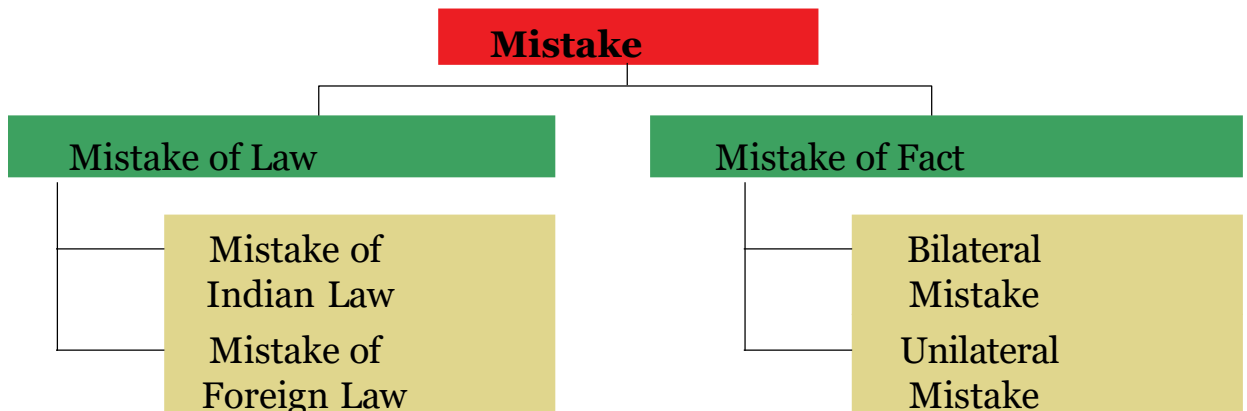
(12) Consequences of misrepresentation



(13) Mistake

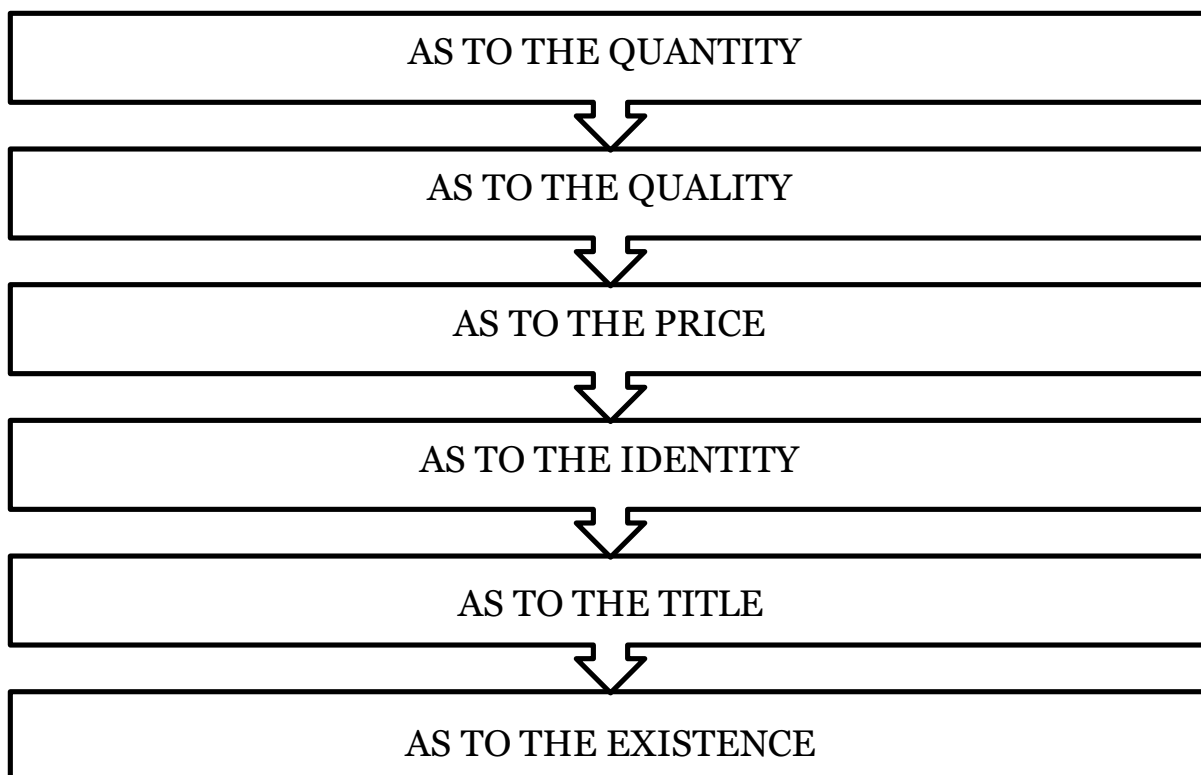


(14) Types of mistake



As to the Quantity As to the Quality As to the Price As to the Identity As to the Title As to the Existence

(15) Bilateral Mistake



(16) Unilateral Mistake

Where only one party to the agreement is under a mistake

A Contract is not Voidable merely because it was caused by one of the parties to it being under a Mistake as to Matter of Fact.

Exception,

The agreement is void where a unilateral mistake relates to the-

- Identity of the person contracted with, or
- Nature of the contract.

(17) Effects of mistake

Nature of Mistake and the nature of Agreement	
In Bilateral Mistake -	The agreement is void.
In Unilateral Mistake -	
• As to identity of the person contracted with	• The agreement is void.
• As to the nature of contract.	• The agreement is void.
• As to other matter.	• The agreement is not void.

(18) Remedies under mistake

Obligation of aggrieved party	He must restore any benefit received by him under the contract to the other party from whom the benefit had been received [Section 64].
Obligation of other party	The person to whom money has been paid or anything delivered by mistake must repay or return it. [Section 72]

(19) Differences

Coercion and Undue influence

Basis of difference	Coercion	Undue Influence
Nature of action	It involves the physical force or threat.	It involves moral or mental pressure.
Involvement of criminal action	It involves committing or threatening to commit any act forbidden by Indian Penal Code or detaining or threatening to detain property unlawfully.	No such illegal act is committed or a threat is given.
Relationship between parties	It is not necessary that there must be some sort of relationship between the parties.	Some sort of relationship between the parties is absolutely necessary.
Exercised by whom	Coercion need not proceed from the promisor nor need it be directed against the promisor. It can be used even by a stranger to the contract.	Undue influence is always exercised between parties to the contract.
Enforceability	The contract is voidable at the option of the party whose consent has been obtained by the coercion.	Where the consent is induced by undue influence, the contract is either voidable or the court may set aside or enforce it in a modified form.

Fraud and misrepresentation

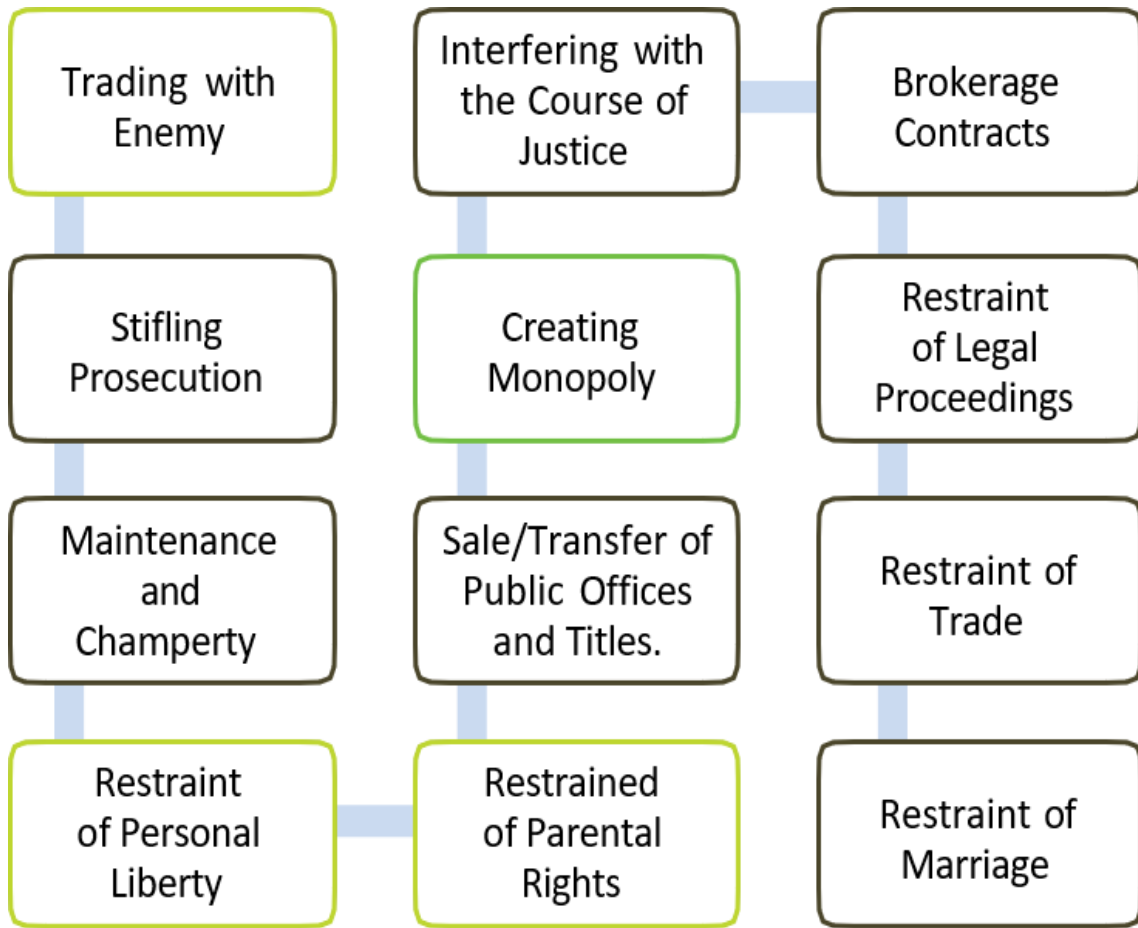
Basis of difference	Fraud	Misrepresentation
Intention	To deceive the other party by hiding the truth.	There is no such intention to deceive the other party.
Knowledge of truth	The person making the suggestion believes that the statement is untrue.	The person making the statement believes it to be true, although it is not true.
Recission of the contract and claim for damages	The injured party can repudiate the contract and claim damages.	The injured party is entitled to repudiate the contract or sue for restitution but cannot claim the damages.
Means to discover the truth	The party using the fraudulent act cannot secure or protect himself by saying that the injured party had means to discover the truth.	Party can always plead that the injured party had the means to discover the truth.

IV. Legality of Object and Consideration

(1) When there is an unlawful object & unlawful consideration in an agreement, its effect

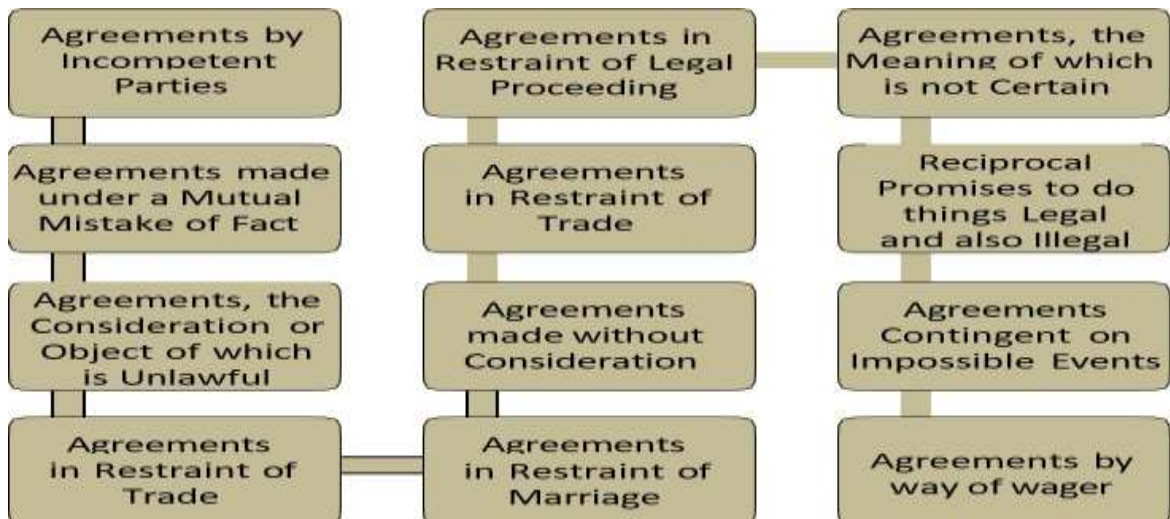
Consideration or Object of an agreement is unlawful, if-				
forbidden by law	defeats provision of any law	If it is fraudulent	involves or implies injury to a person or property of another	immoral or opposed to public policy
The Agreement is Void.	The agreement is void.	The agreement is void.	The agreement is void	The agreement is void.

(2) Agreements against Public policy



V. Agreements which are expressly declared void

(1) Law declares following agreement to be either illegal or void



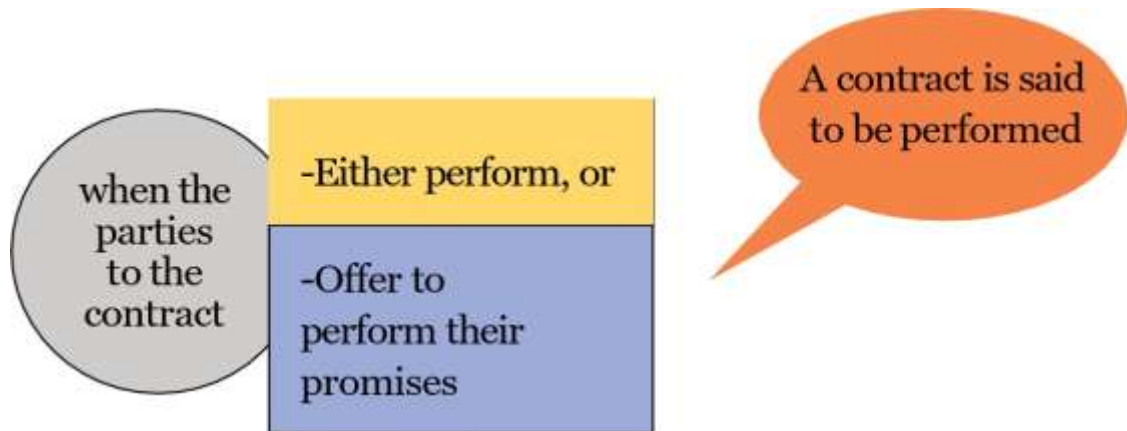
expressly
declared void
/ illegal by the
Contract Act

Void- ab- initio

CONCEPTS RELATED TO PERFORMANCE AND BREACH OF CONTRACT AND SPECIAL CONTRACT UNDER THE INDIAN CONTRACT ACT, 1872

I. Performance of Contract

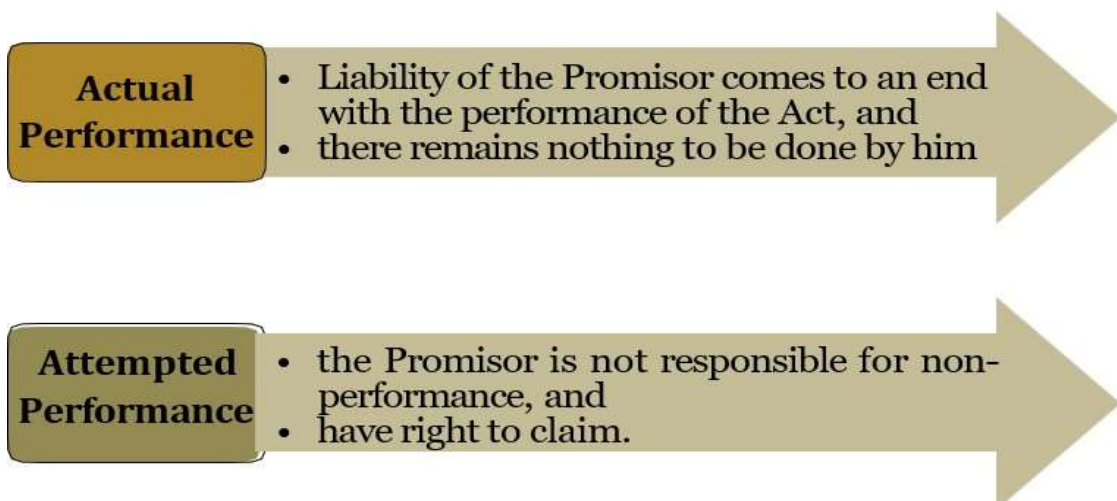
(1) Meaning of Performance



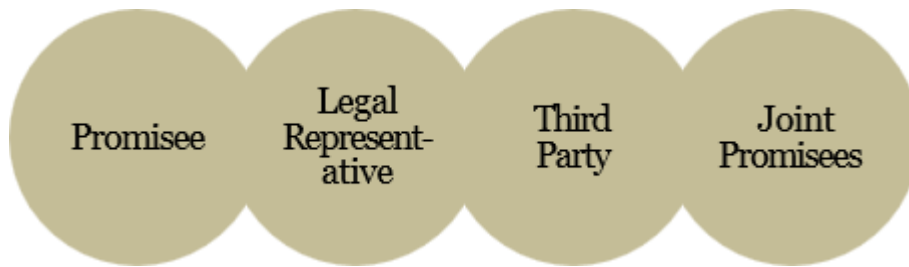
(2) Types of performance of the Contract

Actual performance	Attempted Performance
<ul style="list-style-type: none">• Where a Promisor,• made an offer of performance,• to Promisee,• and the offer has been accepted by the Promisee	<ul style="list-style-type: none">• Where a Promisor,• made an offer,• to the Promisee,• and the offer has not been accepted by the Promisee

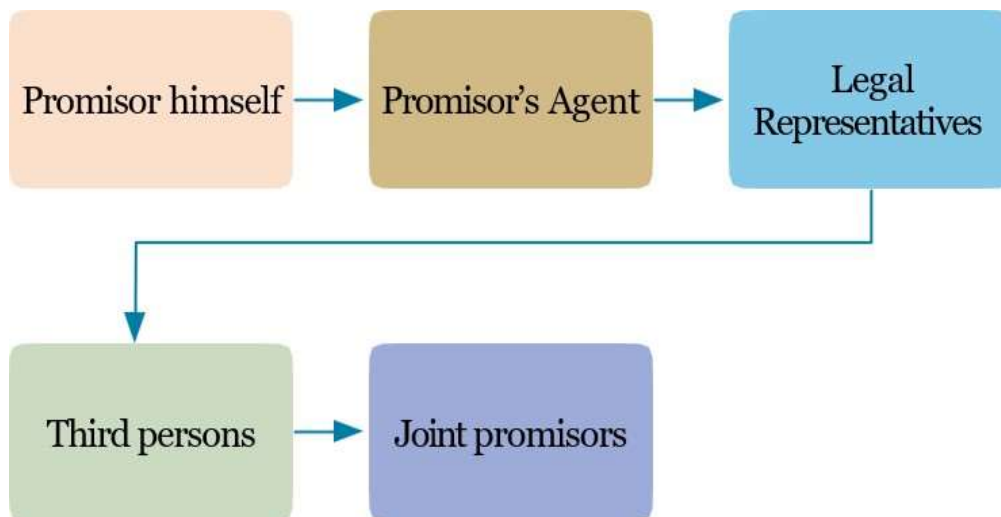
(3) Effects of the performance of the contract



(4) Who may demand performance of contract



(5) Who may perform the contract



(6) Liability of joint promisor

General rule-If two or more persons have made a joint promise, all of them must jointly fulfill the promise.

After death of any one of them-
his legal representative jointly with the survivor/survivors

After the death of the last survivor-
the legal representatives of all the original co-promisors

(7) Rules as to time and place for performance of the promise

Case where	Rule as to performance
Time not specified	Within the reasonable time
Time specified but promise is to be performed without promisee's application	During the usual business hours on that particular day
Time specified but promise is to be performed on promisee's application	The promisee must apply for performance at a proper place and within usual business hours
Place not specified	The promisor must apply to the promisee to appoint a reasonable place for the performance and to perform the promise at such place.
Manner for performance	The promise must be performed in the manner and at the time prescribed by the

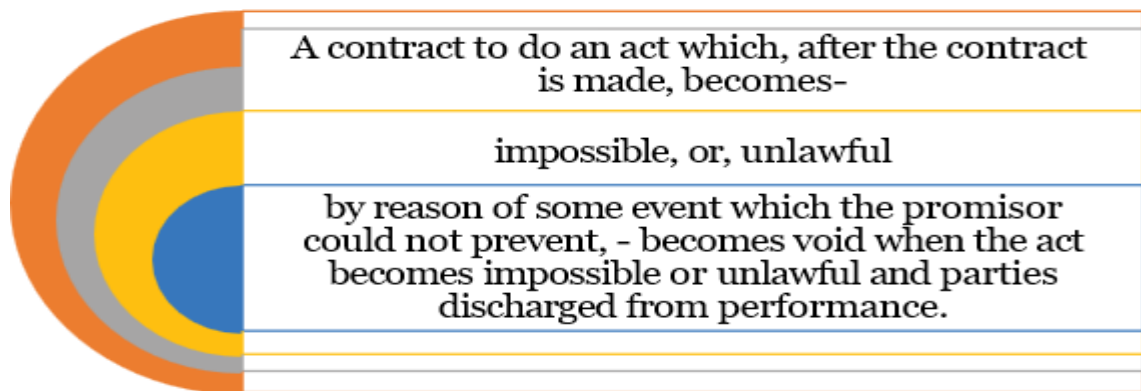
(8) Is time an essence of Contract?

Cases, where-	When time is essence of contract	
Parties have Expressly agreed	Time is considered to be essence of Contract	
Non-performance at the specified time results in an injury to the Party	Time is considered essence of Contract	to be
Nature and necessity requires the performance of the Contract within the specified time	Time is considered essence of Contract	to be

(9) Consequences of Non-performance within the specified time

Cases where time is essence of the contract	Cases where time is not essence of a contract
<ul style="list-style-type: none"> Contract becomes Voidable at the option of the Promisee 	<ul style="list-style-type: none"> Contract does not become voidable at the option of the Promisee
<ul style="list-style-type: none"> If performance beyond the specified time is accepted by the Promisee- The Promisee cannot claim compensation for any loss caused by non-performance at the agreed time, unless at the time of acceptance, he has given a notice to the Promisor of his intention to claim compensation. 	<ul style="list-style-type: none"> The Promisee is entitled to claim compensation for any loss occasioned to him by non-performance of the promise at the agreed time.

(10) Impossibility of performance



(11) Impossibility existing at the time of contract or Initial Impossibility

Case	Effects
If the impossibility is known to the parties	Such an agreement is void-ab- initio
If unknown to the parties	Such an agreement is void on the ground of mutual mistake
If known to the promisor only	Such promisor must compensate for any loss which such promisee sustains through the non performance of the promise.

(12) Supervening impossibility

Case	Effects
Where an act becomes impossible after the contract is made	The contract becomes void when the act becomes impossible.
Where an act becomes unlawful by reason of some event beyond the control of promisor	The contract becomes void when the act becomes unlawful.
Where the promisor alone knows about the impossibility	Promisor must compensate the promisee for any loss which might have suffered on account of non-performance of the promise.
Where an agreement is discovered to be void or where a contract becomes void	Any person who has received any benefit under such agreement or contract is bound to restore it or to make compensation to the person from whom he received it.

(13) Discharge of a contract

Discharge by performance

Discharge by mutual agreement

Discharge by impossibility of performance

Discharge by lapse of time

Discharge by operation of law

Discharge by breach of contract

II. Breach of contract

(1) When breach of contract take place?

Breach of contract occurs, if any party-

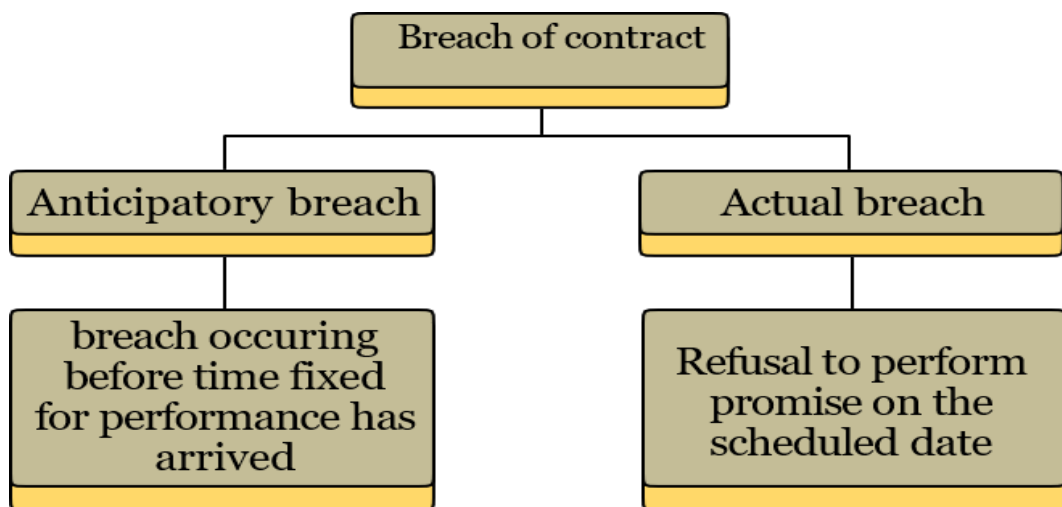
refuses, or	Fails to perform his part of the contract, or	By his act	makes it impossible to perform his obligation
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(2) Effects of the Breach of Contract

The aggrieved party is relieved from performing his obligation, and

gets a right to proceed against the party at fault

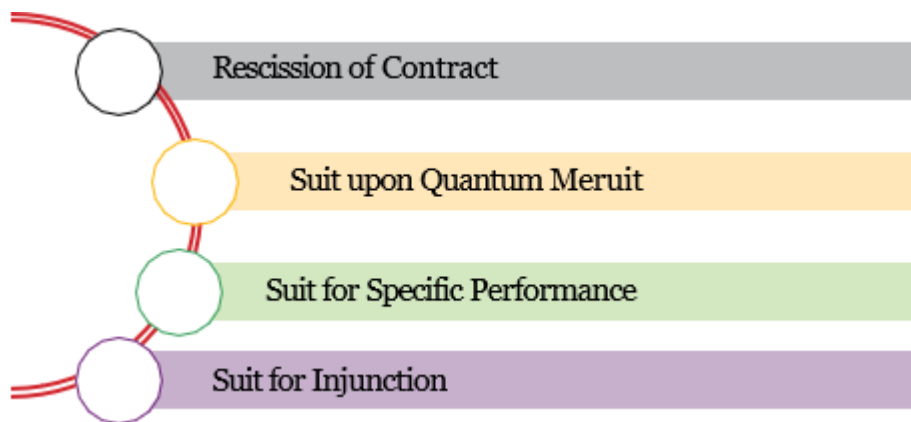
(3) Types of breach of contract



(4) Liability for Damages



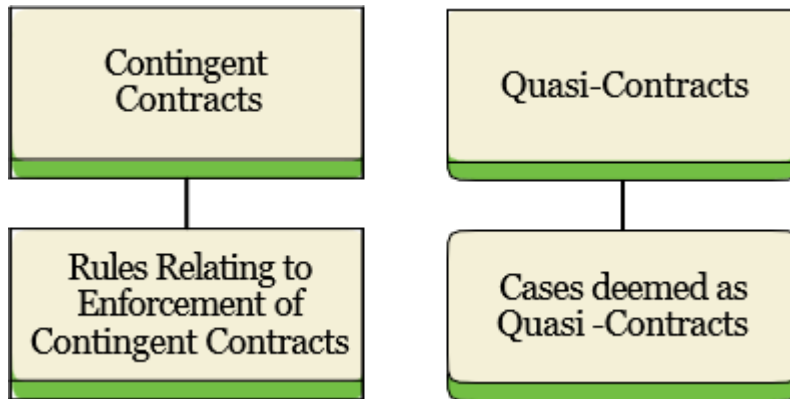
(5) Remedies Available



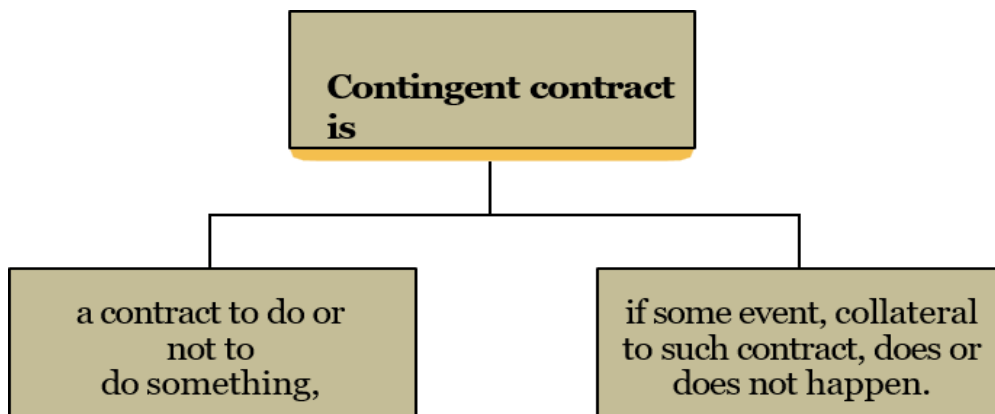
Relevant case law

Case laws	Facts	Decision
Hadley Vs. Baxendale	The crankshaft of P's flour mill had broken. He gives it to D, a common carrier who promised to deliver it to the foundry in 2 days where the new shaft was to be made. The mill stopped working. D delayed the delivery of the crankshaft so the mill remained idle for another 5 days. P received the repaired crankshaft 7 days later than he would have otherwise received. Consequently, P sued D for damages not only for the delay in the delivering of the broken part but also for loss of profits suffered by the mill for not having been worked.	The court held that P was entitled only to ordinary damages and D was not liable for the loss of profits because the only information given by P to D was that the article to be carried was the broken shaft of a mill and it was not made known to them that the delay would result in loss of profits.
Gibbons Vs. West Minister Bank	A business man whose credit has suffered will get exemplary damages even if he has sustained no pecuniary loss.	In the case, it was held that a non-trader cannot get heavy damages in the like circumstances, unless the damages are alleged and proved as special damages.

III. Special types of Contract



(1) Contingent Contract



(2) Essentials of a Contingent Contract

Dependence on a future event

The performance of a contingent contract is made dependent upon the happening or non- happening of some **event**. A contract may be subject to a condition precedent or subsequent.

(b) 'Event' referred is collateral to the contract



The Event Must be uncertain

Uncertain Event

The contingent event must be uncertain and should not be the mere will of the promisor.

Rules Regarding Contingent Contract

Rule 1
Enforcement of contracts contingent on an event 'happening'

Rule 2
Enforcement of contracts contingent on an event 'not-happening'

Rule 3
Contract contingent upon the future conduct of a living person

Rule 4
Contract contingent upon the happening of an uncertain specified event within a fixed time

Rule 5
Contracts contingent upon the non-happening of an uncertain specified event within a fixed time

Rule 6
Agreement contingent on impossible event.

(a) Rule 1 regarding contingent contracts

Enforcement of contracts contingent on an event 'happening'

Where a contingent contract is made to do or not to do anything if an uncertain future event happens,

- it cannot be enforced by law unless and until that event has happened.
- If the event becomes impossible, such contracts become void.

Rule 2 Regarding Contingent contract

Enforcement of contracts contingent on an event 'not-happening'

- Where a contingent contract is made to do or not do anything
- if an uncertain future event does not happen
- it can be enforced only when the happening of that event becomes impossible and not before.

(c) Rule 3 regarding contingent contracts

Contract contingent upon the future conduct of a living person

- Where, the future event on which a contract is contingent is the way in which a person will act at an unspecified time.
- In such a case, the event shall be considered to have become impossible when such person does anything which renders it impossible that he should so act within any definite time or otherwise than under further contingencies.

(d) Rule 4 regarding contingent contracts

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

- Such type of contracts become void if before the expiry of fixed time-
 - Such event does not happen, or
 - Such events becomes impossible.

(e) Rule 5 regarding contingent contracts

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

- Such contract can be enforced by law if before the expiry of fixed time-
 - Such event does not happen ,or
 - It become certain that such event will not happen.

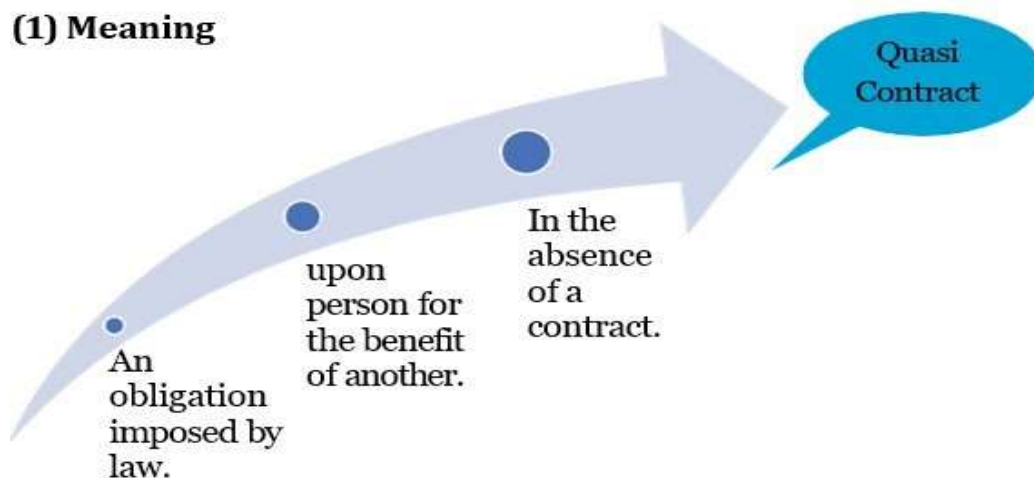
(f) Rule 6 regarding contingent contracts

Agreement contingent on impossible event.

- A contingent agreement to do or not to do anything, if an impossible event happens, is void.
- The impossibility of the event may be or may not be known to the parties to the agreement at the time when they entered into it.

IV. Quasi-Contract

(1) Meaning



(2) Features of a Quasi- Contract

Imposed by Law

Obligation is a duty and not the promise of a party

The right is always a right to money

Right is available against specific person

Suit for breach may be filed same as of a complete contract

Rule 1
Enforcement of contracts contingent on an event 'happening'

Rule 2
Enforcement of contracts contingent on an event 'not-happening'

Rule 3
Contract contingent upon the future conduct of a living person

Rule 4
Contract contingent upon the happening of an uncertain specified event within a fixed time

Rule 5
Contracts contingent upon the non-happening of an uncertain specified event within a fixed time

Rule 6
Agreement contingent on impossible event.

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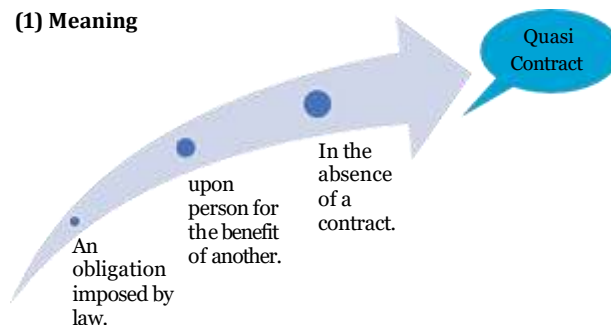
Contract contingent upon the non-happening of an uncertain specified event within a fixed time;

- Such contract can be enforced by law if before the expiry of fixed time-
- Such event does not happen, or
- It become certain that such event will not happen.

Agreement contingent on impossible event.

- A contingent agreement to do or not to do anything, if an impossible event happens, is void.
- The impossibility of the event may be or may not be known to the parties to the agreement at the time they entered into it.

(1) Meaning



(3) Difference between quasi contracts and Contingent contract

Basis of distinction	Quasi- Contract	Contingent Contract
Essential for the valid contract	The essentials for the formation of a valid contract are absent	Present
Obligation	Imposed by law	Created by the consent of the parties

Types of Quasi contacts

- i Claim for necessities supplied to persons incapable of contracting
- ii Right to recover money paid for another person
- iii Obligation of a person enjoying benefits of non-gratuitous act
- iv Responsibility of a finder of goods
- v Liability for money paid or thing delivered by mistake or under coercion

Types of 1 Quasi contracts

Claim for necessities supplied to persons incapable of contracting-

- If necessities are supplied to a person who is incapable of contracting, e.g. minor or a person of unsound mind-
- the supplier is entitled to claim their price from the property of such a person.

(b) Type ii of quasi-contracts

Right to recover money paid for another person

- A person who has paid a sum of money which another is obliged to pay-
- Such person is entitled to be reimbursed by that other person.

Provided, the payment has been made by him to protect his own interest

(c) Type iii of quasi-contracts

Obligation of a person enjoying benefits of non-gratuitous act

- Such an obligation/right to recover arises “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 make compensation to the former in respect of, or to restore, the thing so done or delivered.

(d) Type iv of quasi-contracts

Responsibility of a finder of goods

- A person who finds goods belonging to another, and takes them into his custody
- there such person is subject to the same responsibility as a bailee

(e) Type v of quasi-contracts

Liability for money paid or thing delivered by mistake or under coercion

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

(5) Remedy on breach of quasi-contract

When the obligation created by the quasi-contract is not discharged-

- there the injured party is entitled to receive the compensation same as defaulted party had contracted to discharge as it had broken his contract.

Relevant case laws

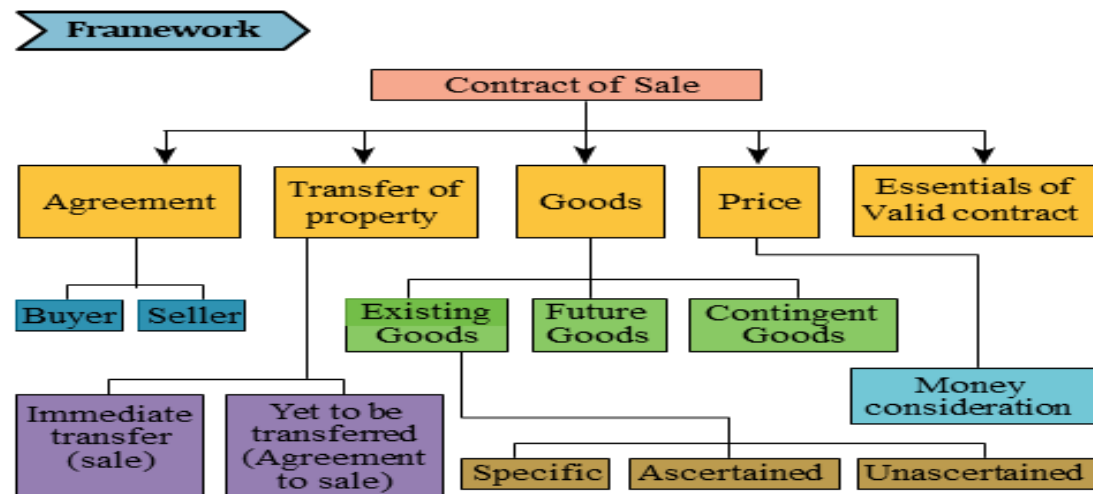
Case laws	Facts	Decision
ShyamLal vs. State of U.P	'S' a government servant was compulsorily retired by the government. He filed a writ petition and obtained an injunction against the order. He was reinstated and was paid salary but was given no work and in the mean time government went on appeal.	The appeal was decided in favour of the government and 'S' was directed to return the salary paid to him during the period of reinstatement
Hollins vs. Howler L. R. & H. L.,	H' picked up a diamond on the floor of 'F's shop and handed over the same to 'F' to keep till the owner was found. In spite of the best efforts, the true owner could not be traced. After the lapse of some weeks, 'H' tendered to 'F' the lawful expenses incurred by him and requested to return the diamond to him. 'F' refused to do so.	Held that 'F' must return the diamond to 'H' as he was entitled to retain the goods found against everybody except the true owner.
Trikamdas vs. Bombay Municipal Corporation	T' was traveling without ticket in a tram car and on checking he was asked to pay R5/- as penalty to compound transaction. T filed a suit against the corporation for recovery on the ground that it was extorted from him.	The suit was decreed in his favour.

THE SALE OF GOODS ACT, 1930

Primer to the Sale of Goods Act, 1930

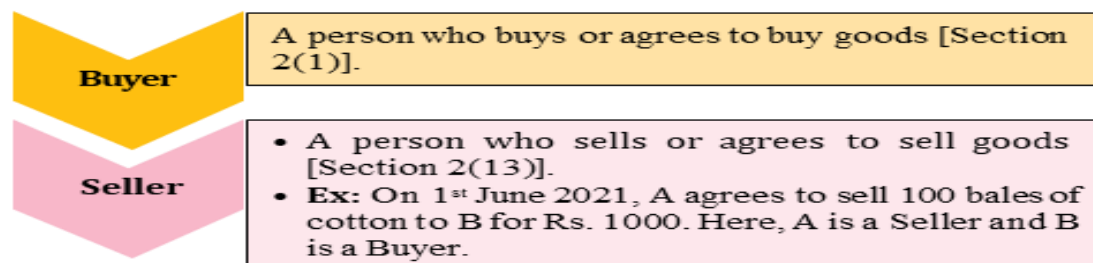
- Sale of goods is one of the specific forms of contracts recognized and regulated by law in India.
- It is an Act to define and amend the laws relating to the sale of goods.
- It came into force on 1st July, 1930.
- The provisions of the Act are applicable to the sale of ONLY movable properties and the Act is not applicable to immovable properties.
- It extends to the whole of India.

Formation of the Contract of Sale

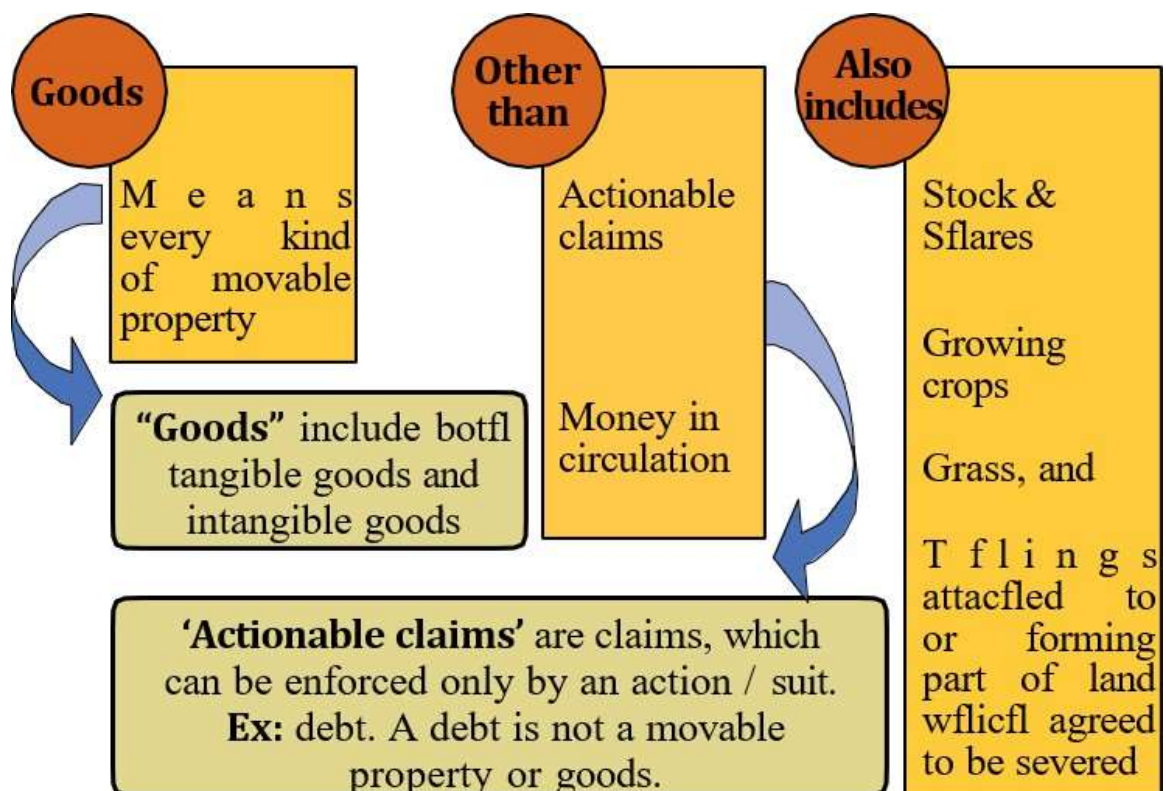


Important Terminologies

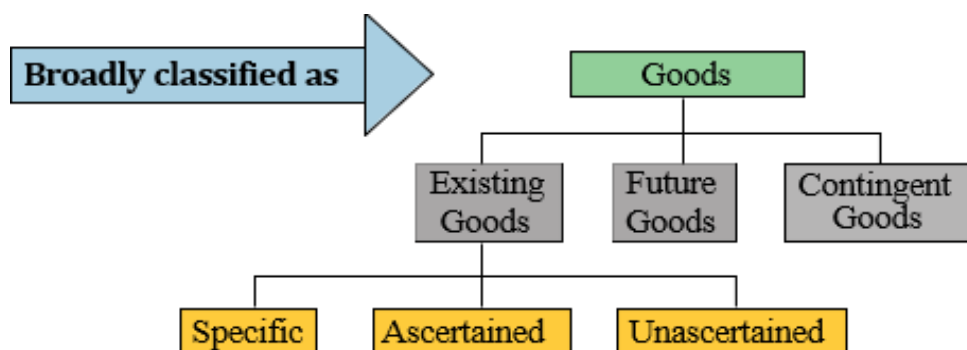
1. Buyer and Seller

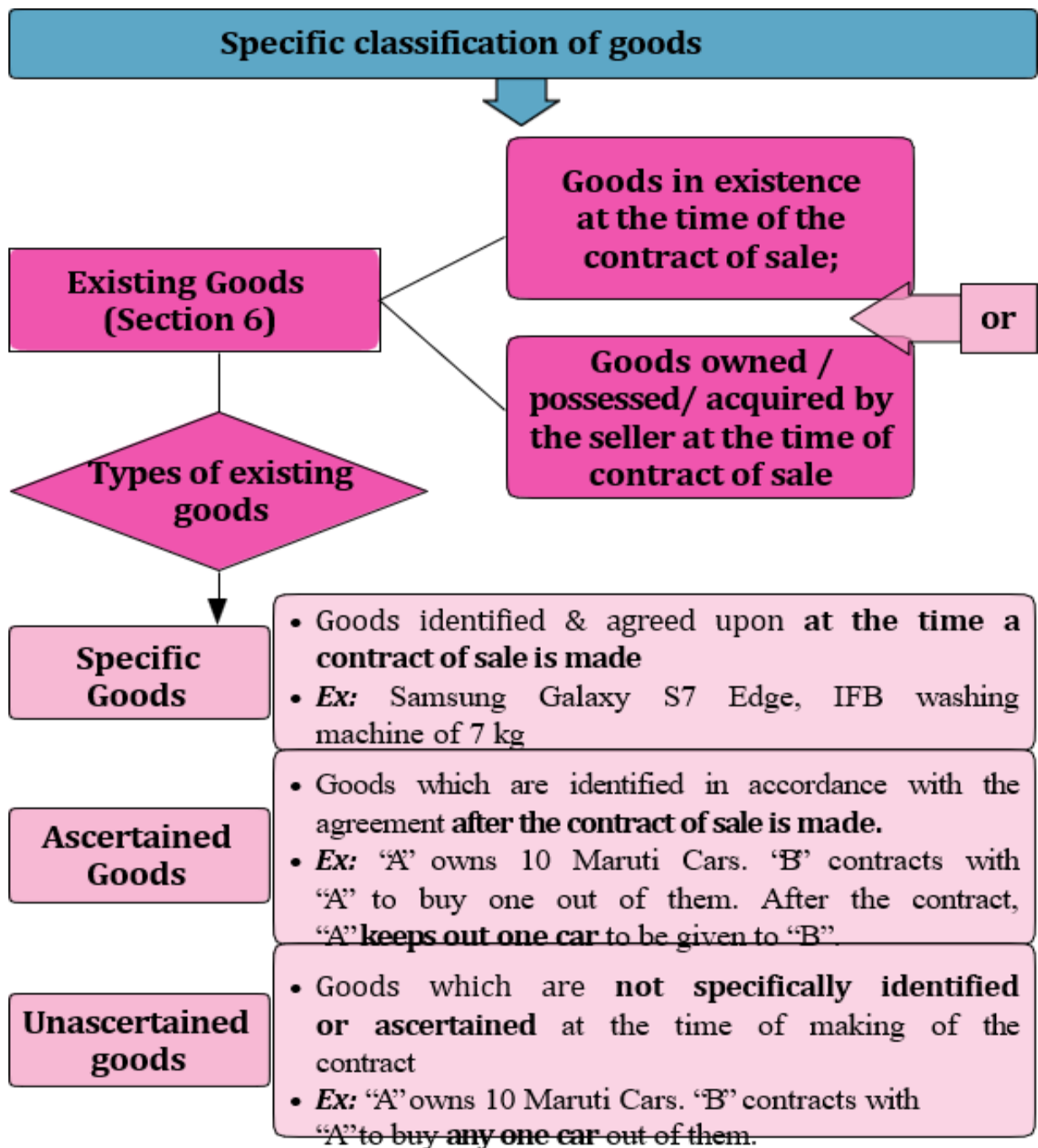


2. Goods [Section 2(7)] and related terms



3. Classification of Goods





Future Goods [Section 2 (6)].

- *Goods to be*
 - manufactured or
 - produced or
 - acquired
- *by the seller after making the contract of sale*
- **Ex:** 1000 quintals of potatoes to be grown in Mr. A's field.

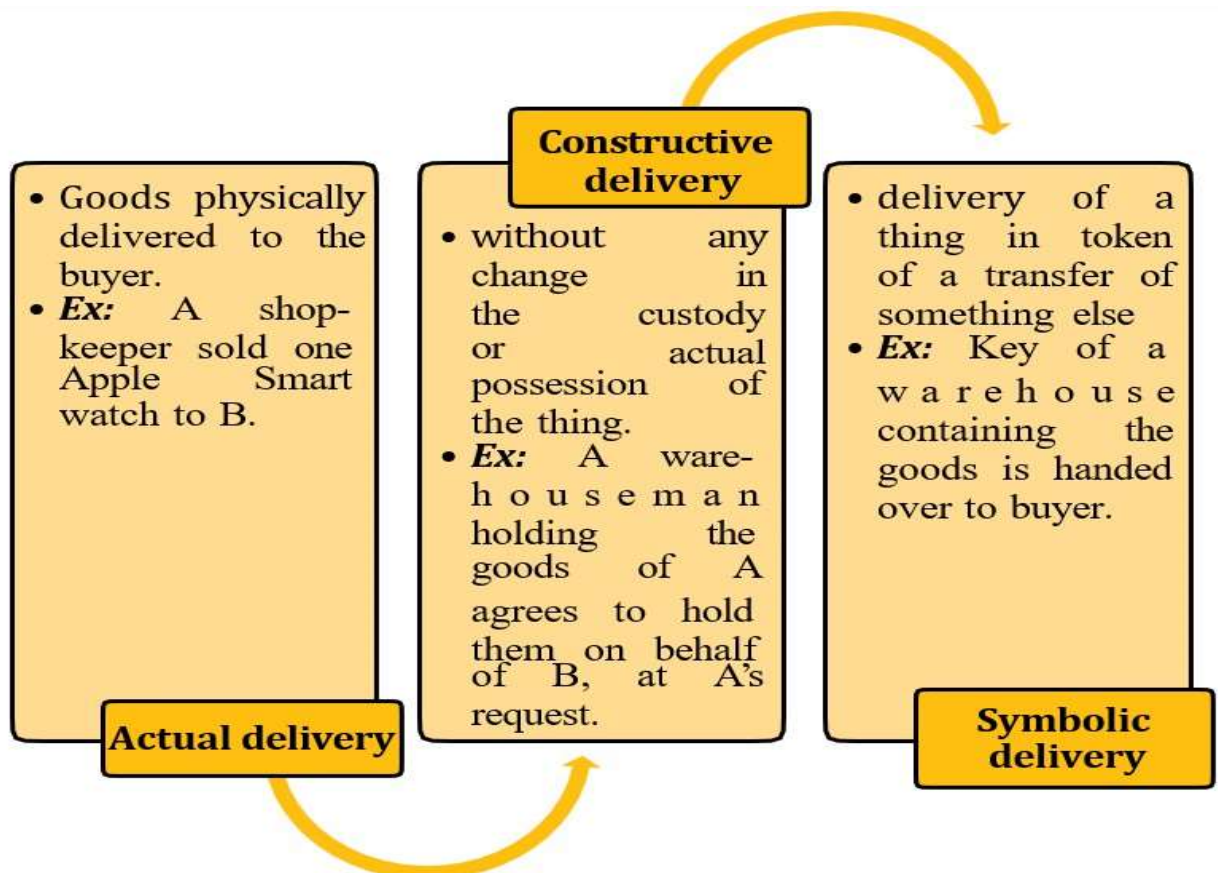
Contingent Goods [Section 6(2)]

- *The acquisition of which*
- *by the seller*
- depends upon an uncertain contingency (uncertain event)
- **Ex:** P contracts to sell 500 pieces of particular item provided the ship which is bringing them reaches the port safely.

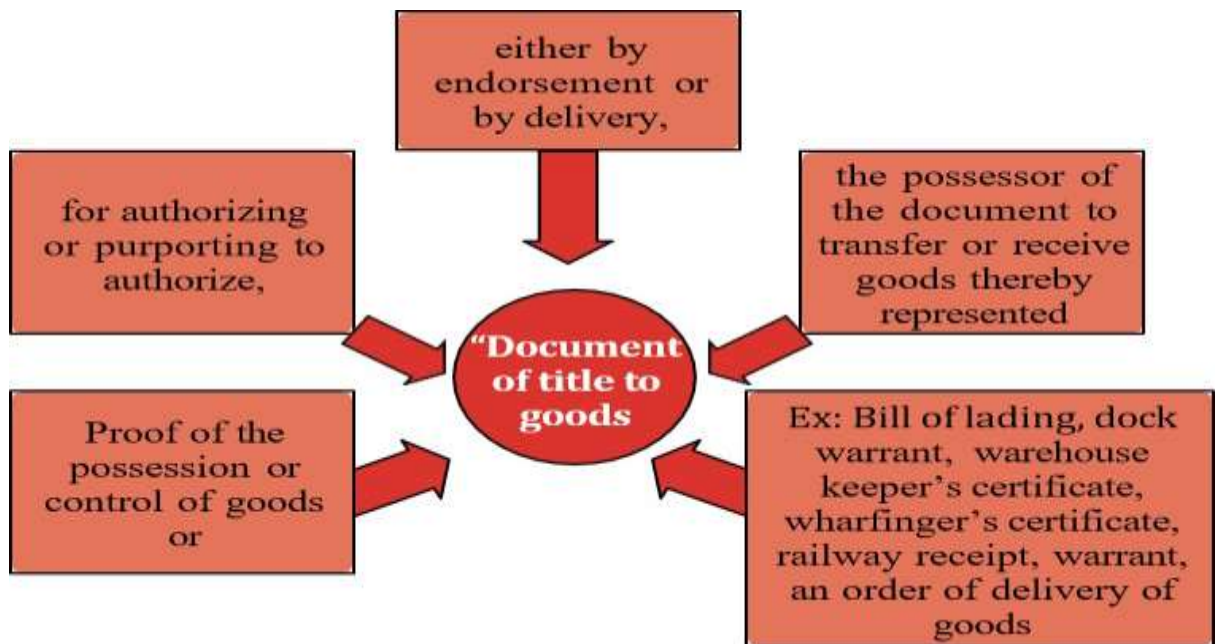
4. Delivery – Meaning [Section 2(2)]



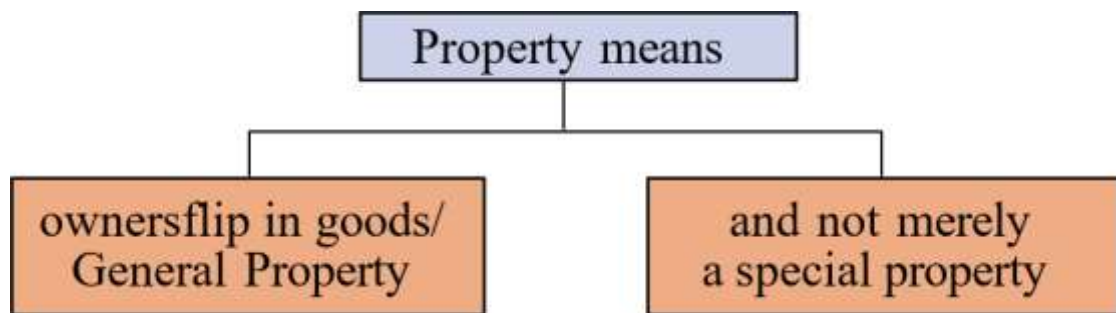
5. Types of Delivery



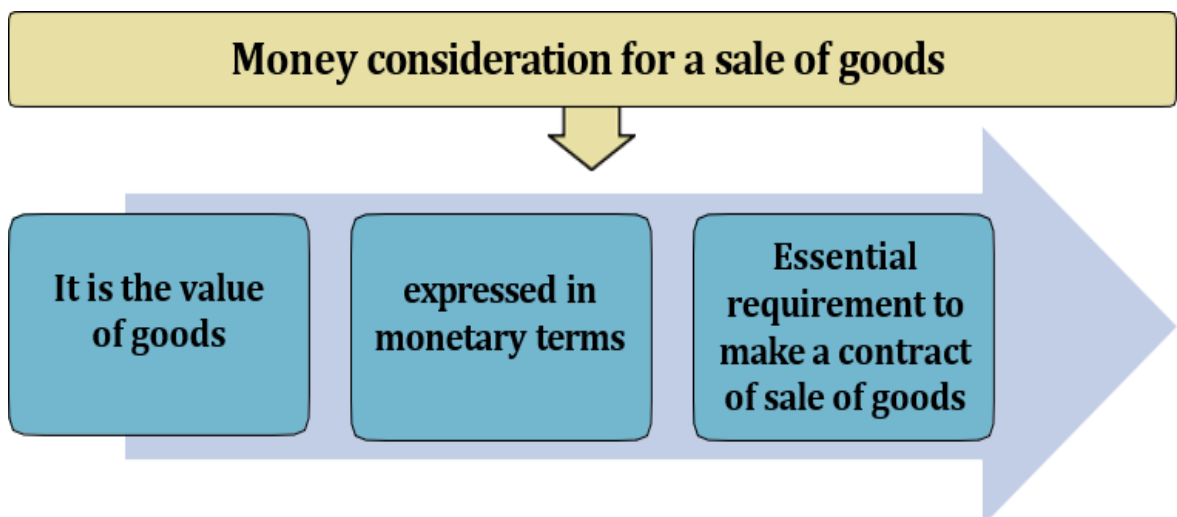
6. Document of title to goods [Section 2(4)]



7. Property [Section 2(11)]

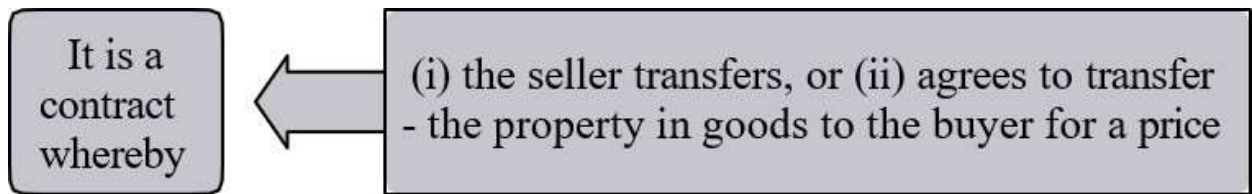


8. Price [Section 2(10)]

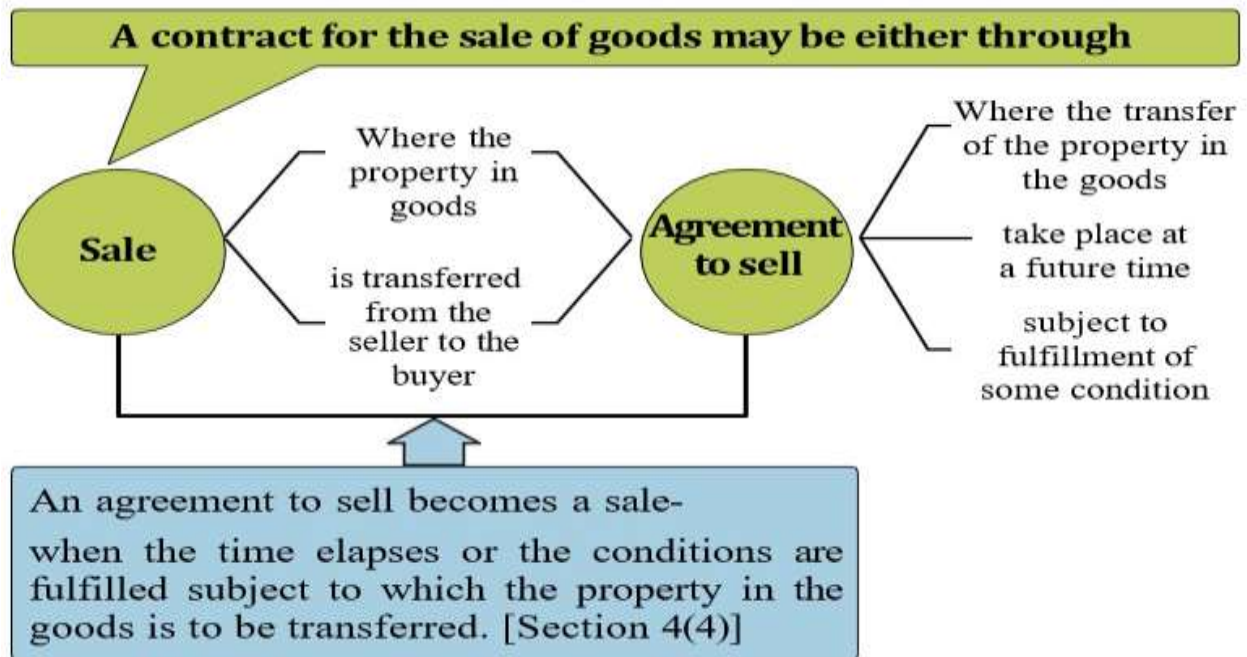


Sale and agreement to sell [Section 4]

1. Meaning of Contract of Sale of goods



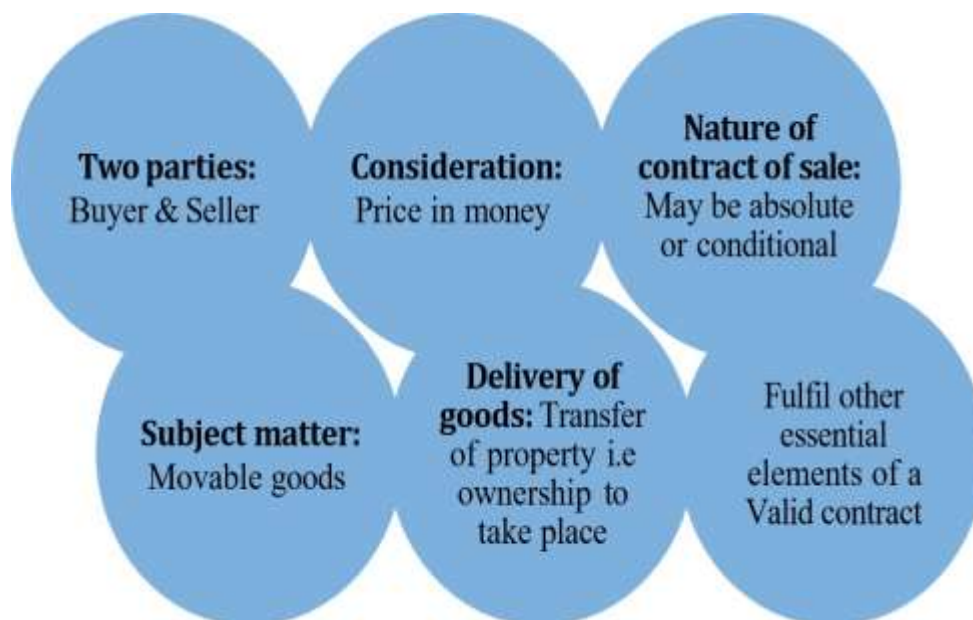
2. Mode for contract of sale of goods



3. Differences in Sale and Agreement to Sell

Basis of difference	Sale	Agreement to sell
Transfer of property	Immediately	Future Date or fulfillment of condition
Nature of contract	Executed	Executory
Remedies for breach	Sue for price	Sue for damages only and not for price
Liability of parties	Liability of the buyer	Liability of the seller
Burden of risk	Buyer	Seller
Nature of rights	Jus in rem	Jus in personam
Right of resale	Seller cannot re-sell the goods	Seller may re-sell
Insolvency of seller	Official Assignee <ul style="list-style-type: none">not be able to take over the goodswill recover the price from the buyer.	Official Assignee <ul style="list-style-type: none">acquire control over the goodsthe price will not be recoverable.
Insolvency of buyer	Official Assignee <ul style="list-style-type: none">control over the goods.	Official Assignee <ul style="list-style-type: none">no control over the goods.

4. Contract of sale – elements must co-exist



Sale Distinguished from other Similar Contracts

1. Sale and Hire Purchase

Basis of difference	Sale	Hire- Purchase
Time of passing property	Immediately	On payment of last instalment
Position of the party	Buyer is like that of owner	Position of the hirer is like that of bailee till final payment
Termination of contract	the buyer cannot terminate the contract and bound to pay price	The hirer may terminate the contract by returning the goods
Burden of Risk of insolvency of the buyer	risk of seller	Owner takes no risk and has right to take back the goods
Transfer of title	The buyer can pass a good title to a bona fide purchaser	Hirer cannot pass any title even to a bonafide purchaser
Resale	The buyer can	Hirer cannot, unless all installments paid

2. Sale and Bailment

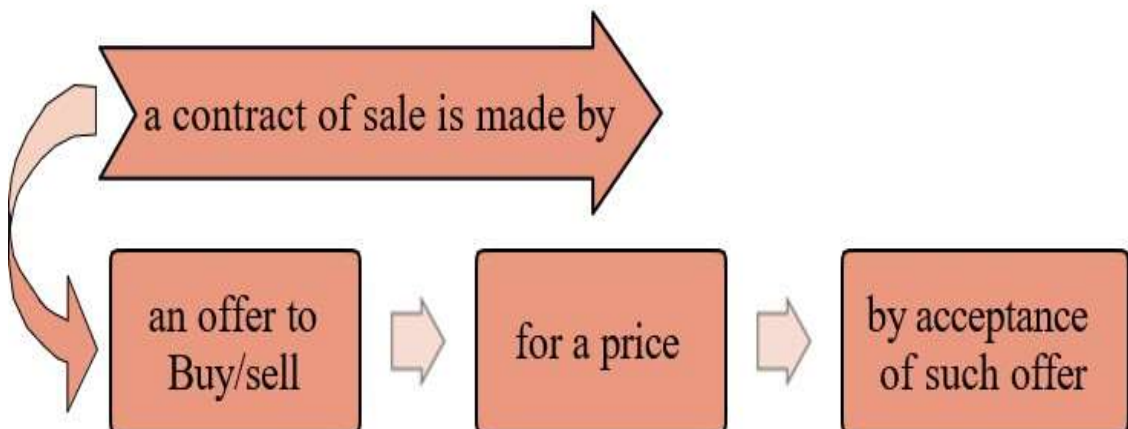
Basis of difference	Sale	Bailment
Transfer of property	Transferred from seller to buyer	Transfer of possession of goods from bailor to bailee
Return of goods	Not possible	Bailee must return the goods to the Bailor on accomplishment of the purpose
Consideration	It is the Price in terms of money	It may be gratuitous or non-gratuitous.

3. Sale and contract for work and labour

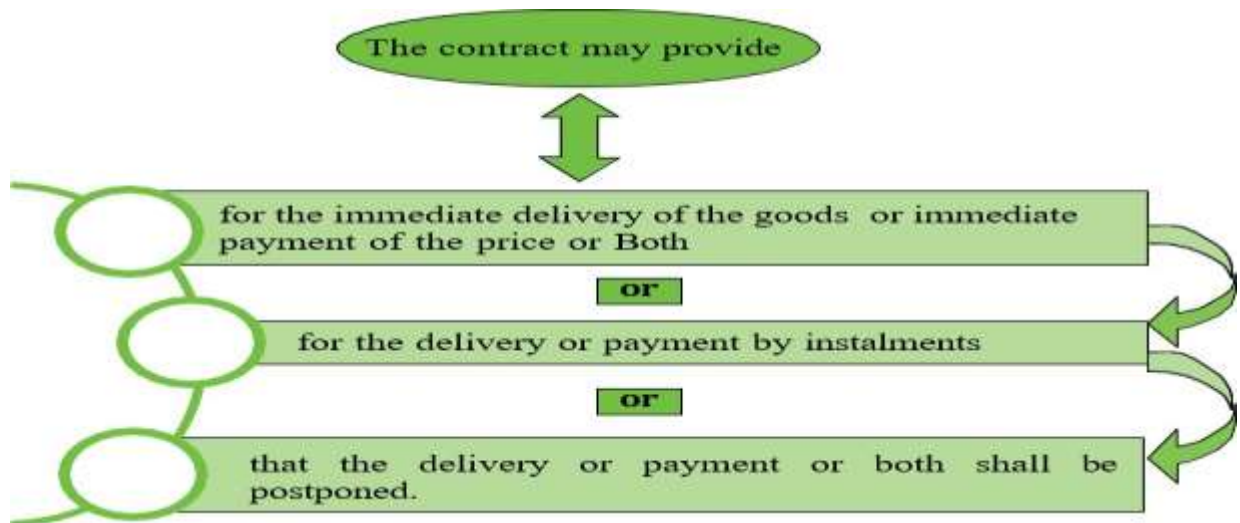
Basis of difference	Sale	Contract for work and labour
Nature of Contract	It's a contract in which some goods are sold or are to be sold for a price	No goods are sold, and there is only the doing or rendering of some work of labour.

Procedure for conduct of Contract of Sale [Section 5]

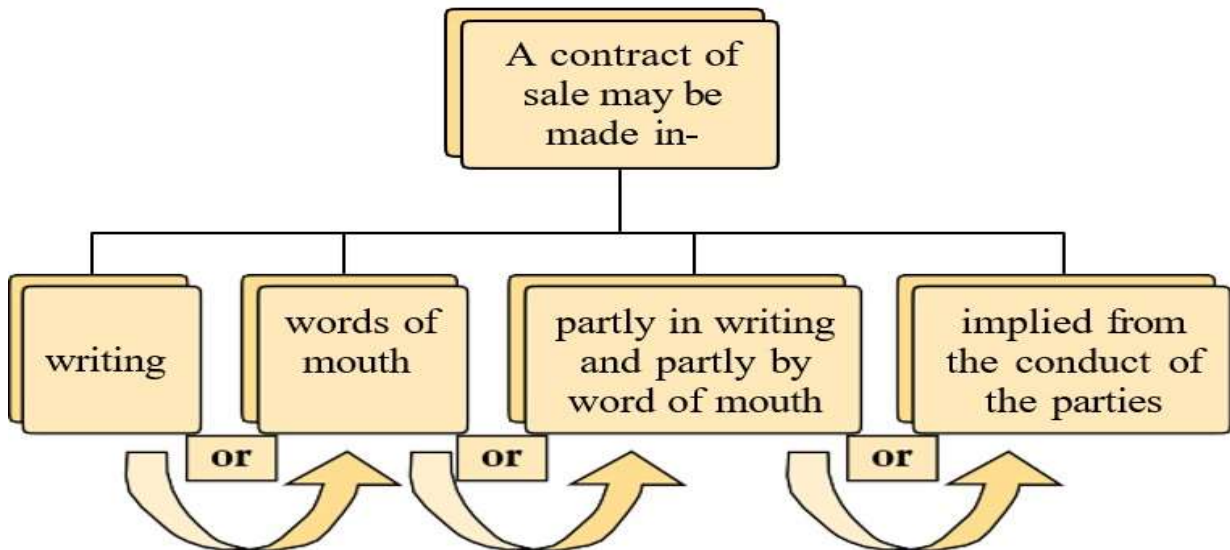
1. Process



2. Mode of delivery and Payment



3. Mode for entering into contract of Sale



Subject matter of Contract of Sale [Section 6, 7, & 8]

1. Goods which form the subject matter of a contract of sale

Existing goods

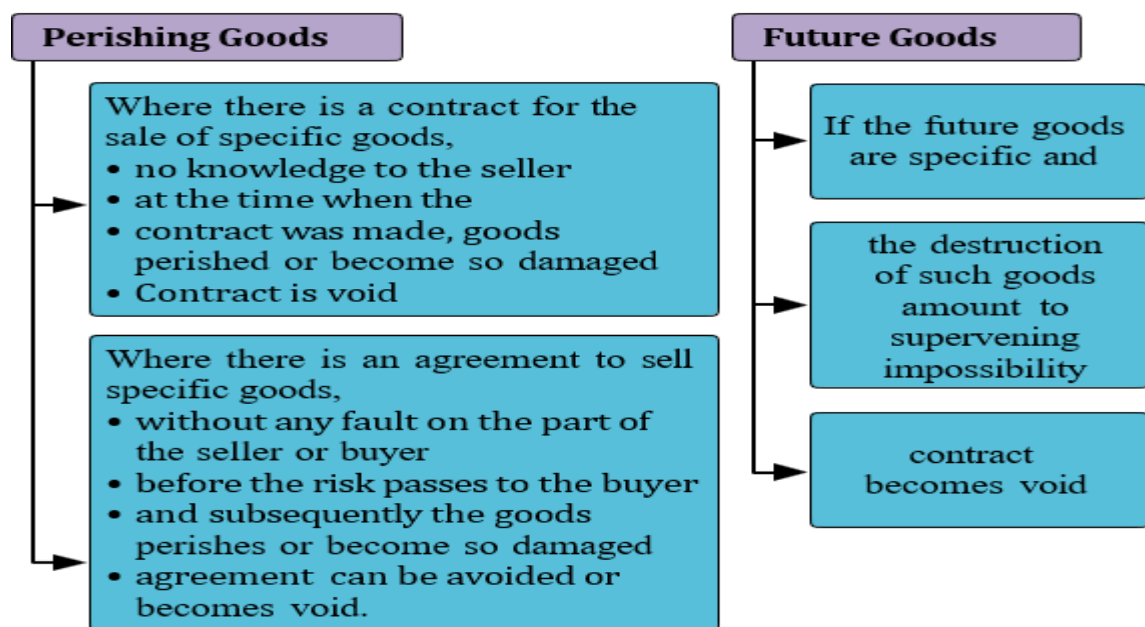
existing goods that are acquired, owned or possessed by the seller

Future goods

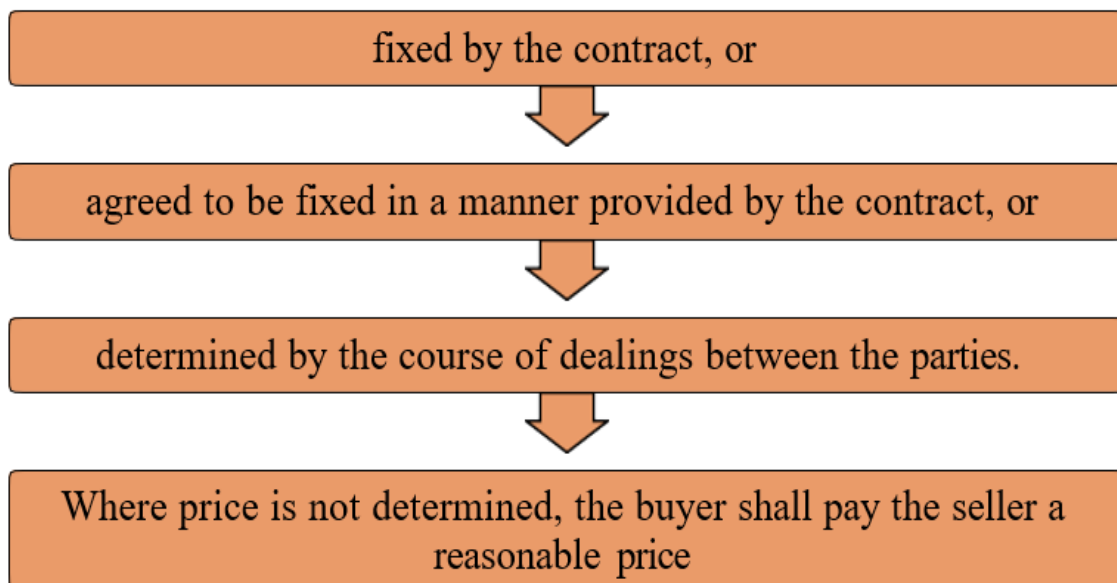
the acquisition of which by the seller depends upon a contingency which may or may not happen

Whereby a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods

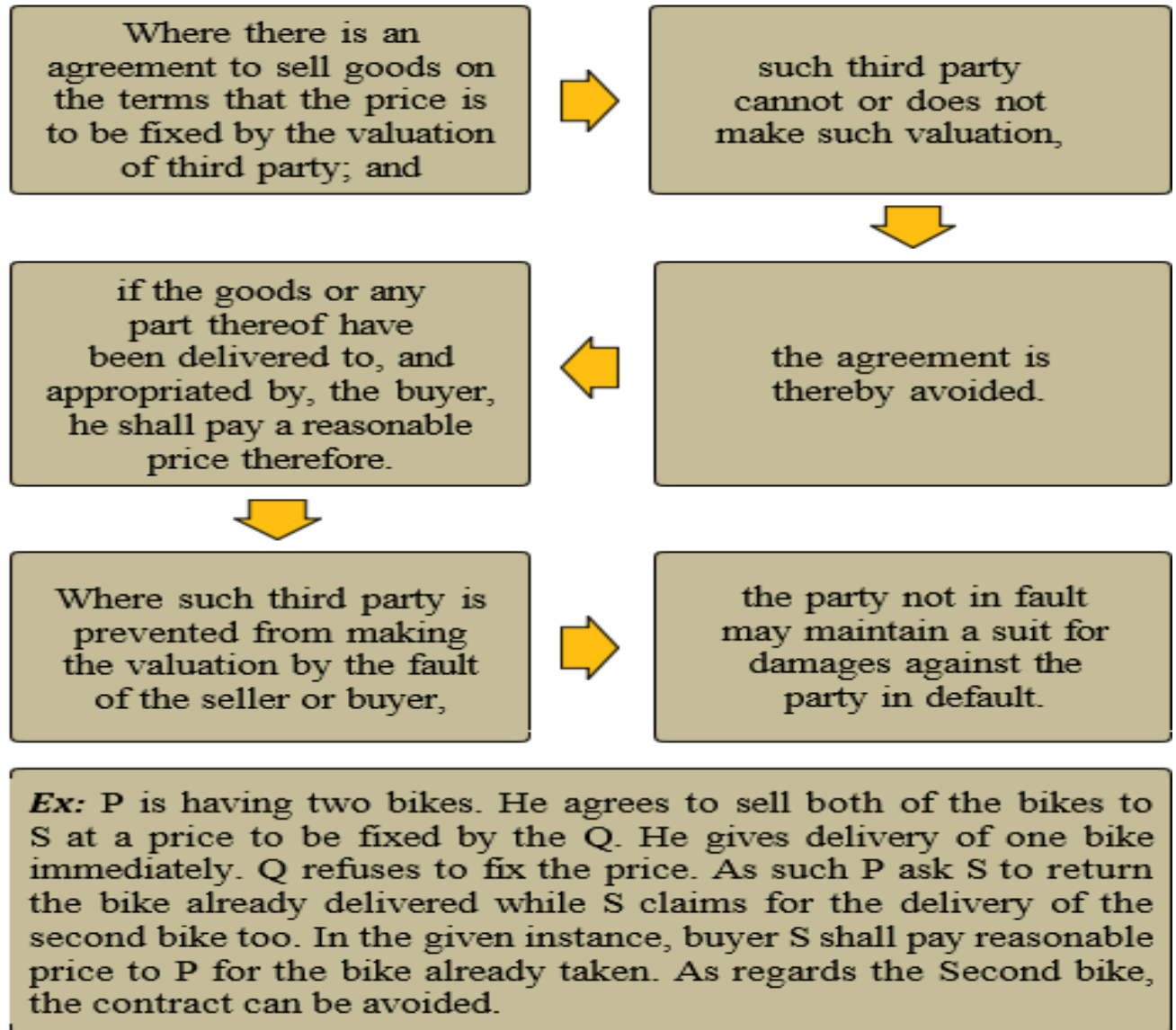
2. Nature of contract of sale with respect to perishing goods



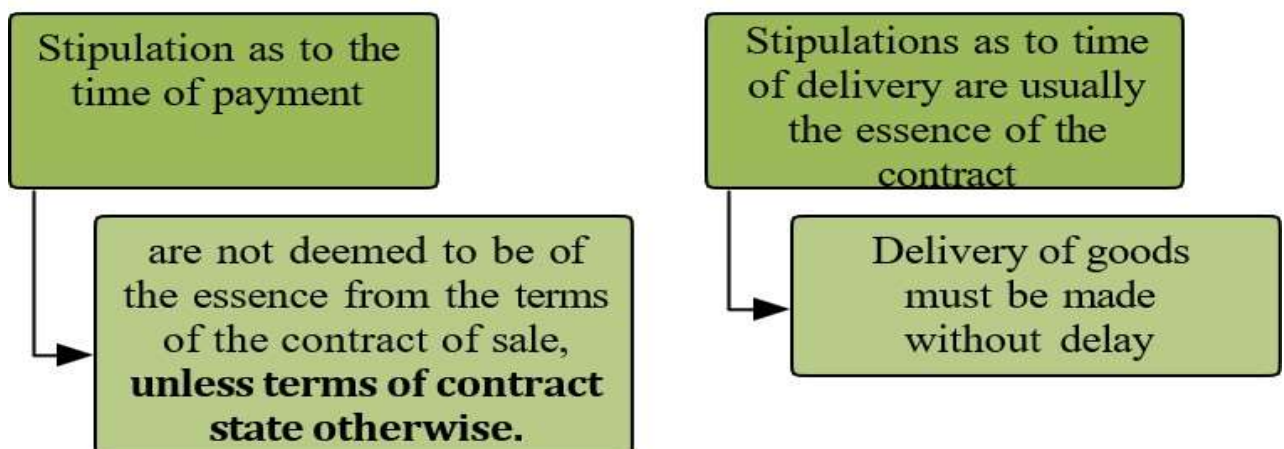
Ascertainment of price [Section 9]



Agreement to sell at valuation [Section 10]



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



Conditions and Warranties with reference to the goods [Section 12]

1. Meaning -Condition and Warranty

Condition	Warranty
is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.	is a stipulation co-lateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

2. Differences

Point of differences	Condition	Warranty
Meaning	A stipulation essential to the main purpose of the contract.	A stipulation collateral to the main purpose of the contract.
Right in case of breach	Repudiate or claim damages or both	Claim only damages
Conversion of stipulations	A breach of condition may be treated as a breach of warranty.	A breach of warranty cannot be treated as a breach of condition.

3. Waiver of conditions [Section 13]

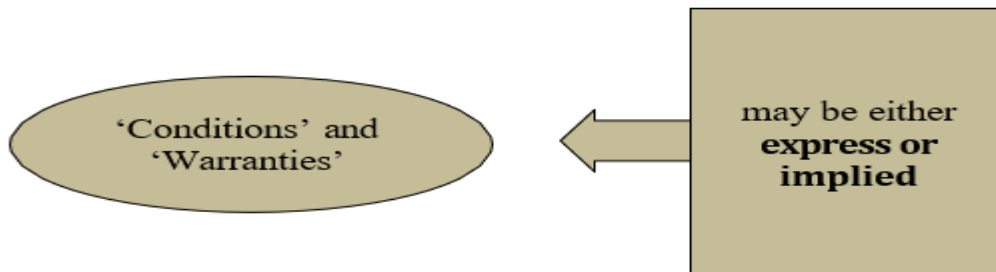
Voluntary Waiver

- ☐☐ Waives performance of contract
- ☐☐ Elect to treat condition as warranty

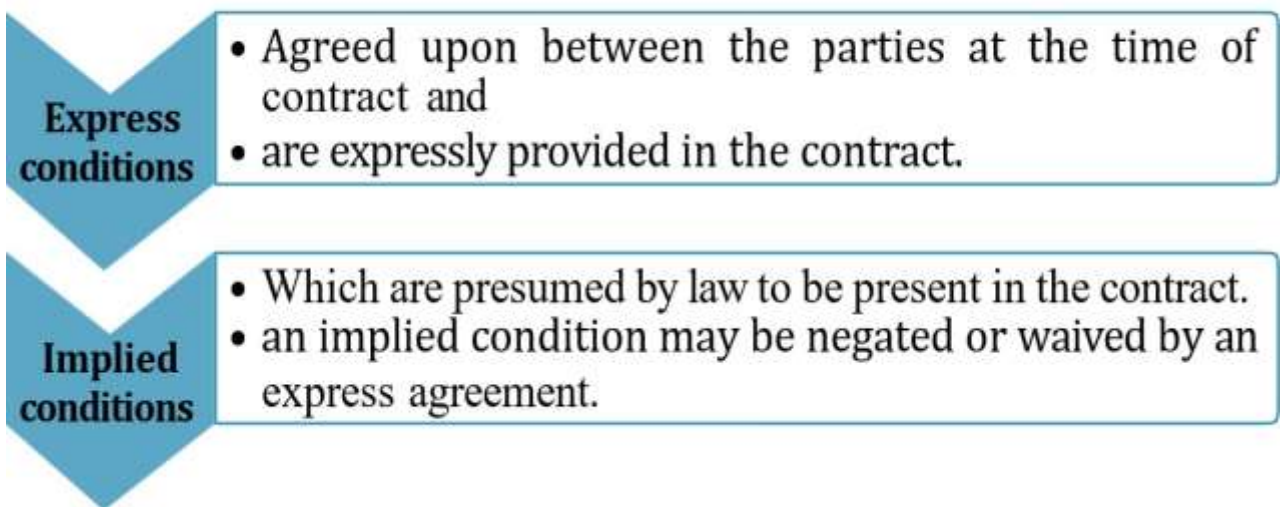
Compulsory Waiver

- ☐☐ Non-severability of contract
- ☐☐ Fulfilment of conditions excused by law

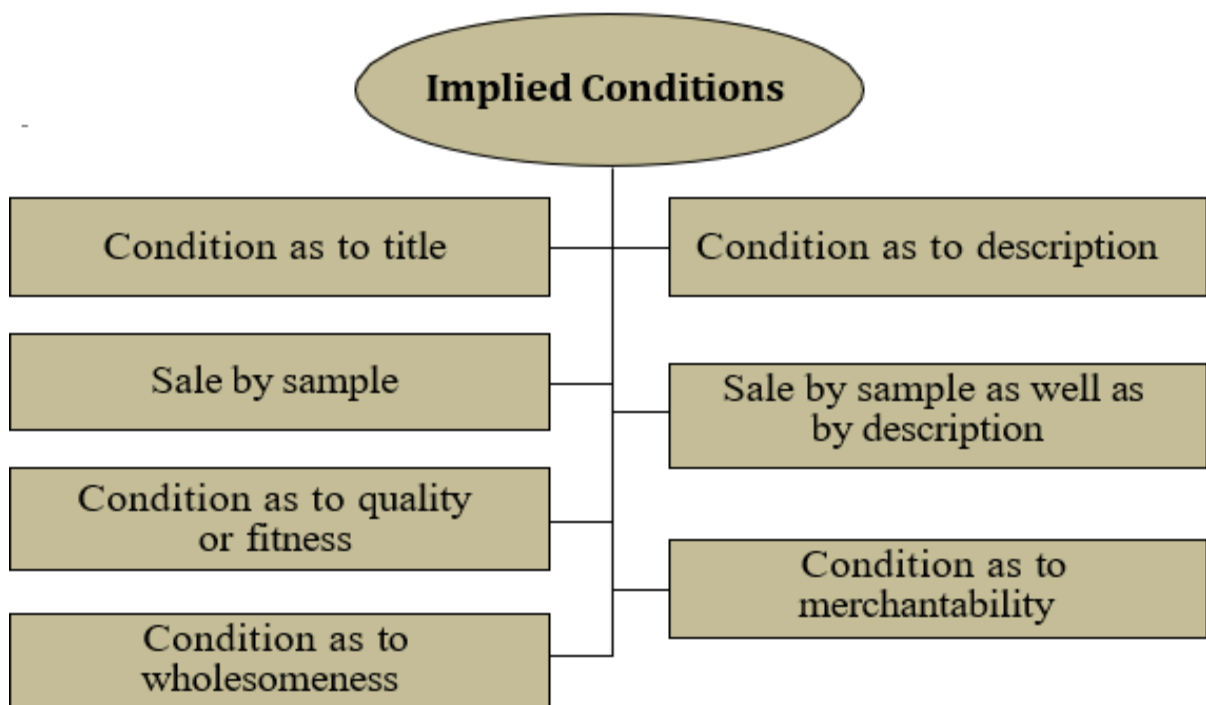
Mode of Conditions and Warranties



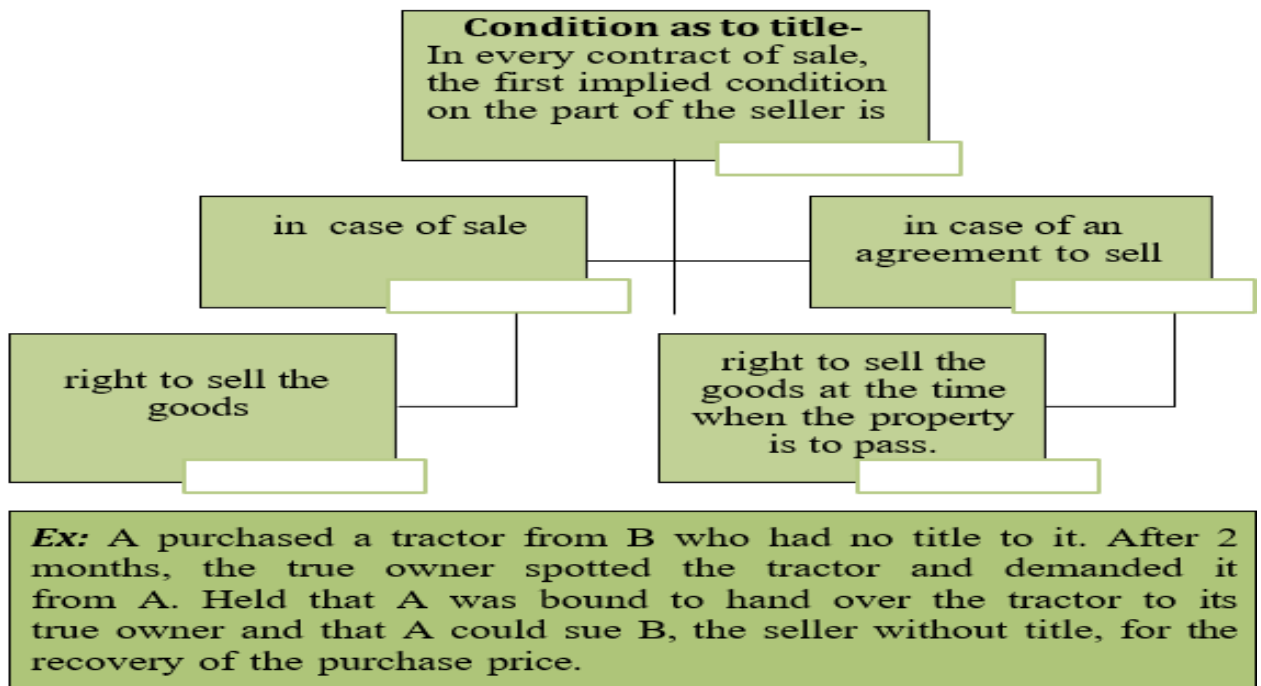
1. Express and Implied Conditions-Meaning



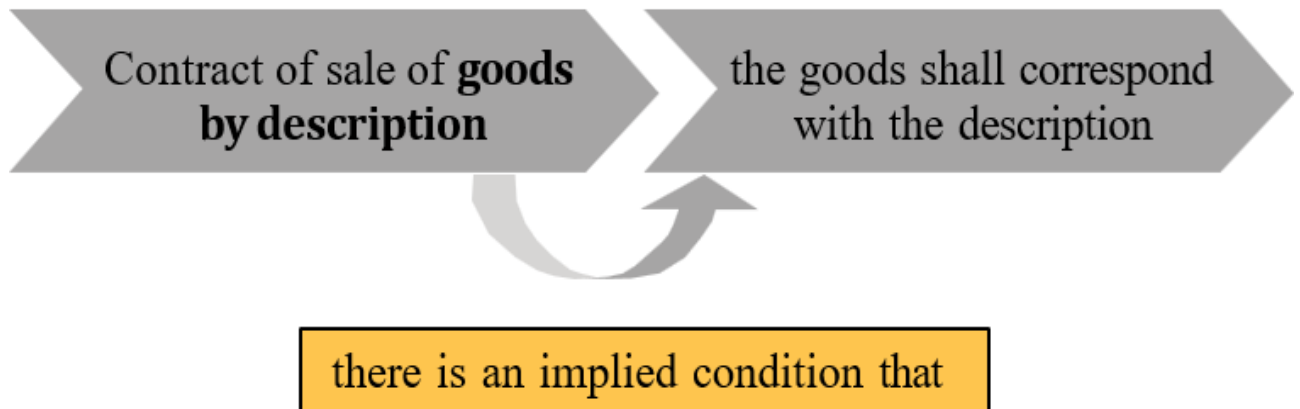
2. Implied Conditions-Types



3. Condition as to title [Section 14]

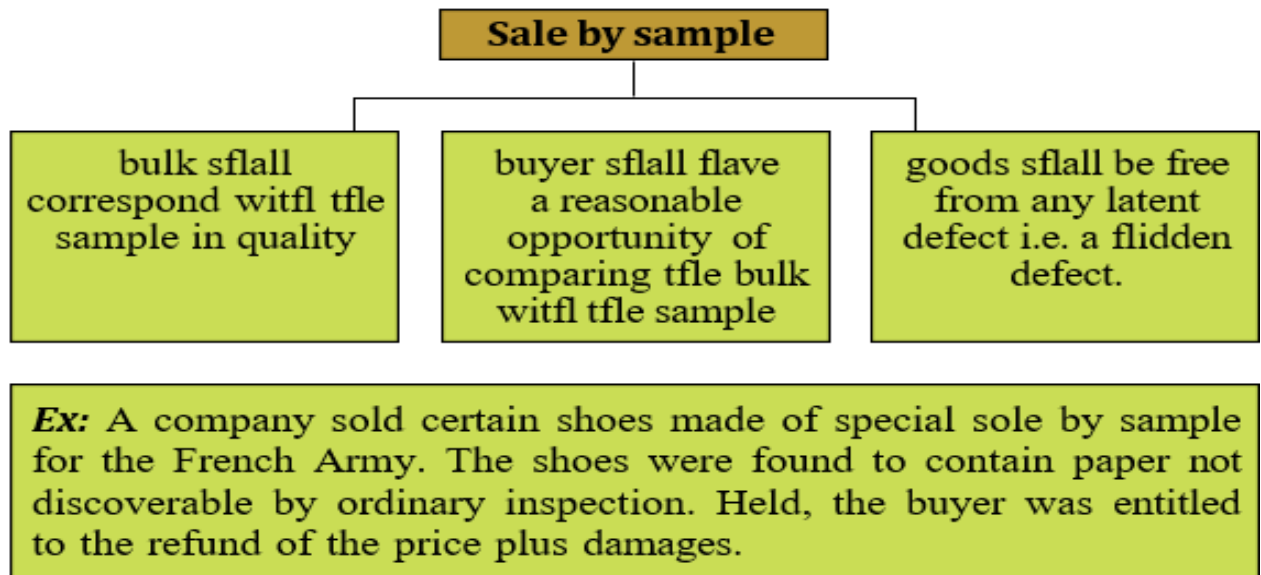


4. Sale by description [Section 15]



Ex: A ship was contracted to be sold as “copper-fastened vessel” but actually it was only partly copper-fastened. Held that goods did not correspond to description and hence could be returned or if buyer took the goods, he could claim damages for breach.

5. Sale by sample [Section 17]



6. Sale by sample as well as by description [Section 15]

Sale by sample as well as by description

bulk of the goods supplied shall correspond both with the sample and the description

In case the goods correspond with the sample but do not tally with description or vice versa or both, buyer **can repudiate the contract**.

Ex: A agreed with B to sell certain oil described as refined sunflower oil, warranted only equal to sample. The goods tendered were equal to sample but contained a mixture of hemp oil. B can reject the goods.

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

the goods supplied shall be reasonably fit for the purpose for which the buyer wants them, provided the stated **Condition as to quality or fitness** are fulfilled

- The buyer should have made known to the seller the particular purpose for which goods are required.
- The buyer should rely on the skill and judgement of the seller.
- The goods must be of a description dealt in by the seller, whether he be a manufacturer or not

Ex: 'A' bought a set of false teeth from 'B', a dentist. But the set was not fit for 'A's' mouth. 'A' rejected the set of teeth and claimed the refund of price. It was held that 'A' was entitled to do so as the only purpose for which he wanted the set of teeth was not fulfilled.

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

Condition as to Merchantability

- Goods should be bought by description.
- The seller should be a dealer in goods of that description.
- **Exception:** If the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

Ex: A bought a black velvet cloth from C and found it to be damaged by white ants. Held, the condition as to merchantability was broken.

9. Condition as to wholesomeness

Condition as to wholesomeness

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

Ex: A supplied F with milk. The milk contained typhoid germs. F's wife consumed the milk and was infected and died. Held, there was a breach of condition as to fitness and A was liable to pay damages.

10. Implied Warranties-Types

Implied Warranties

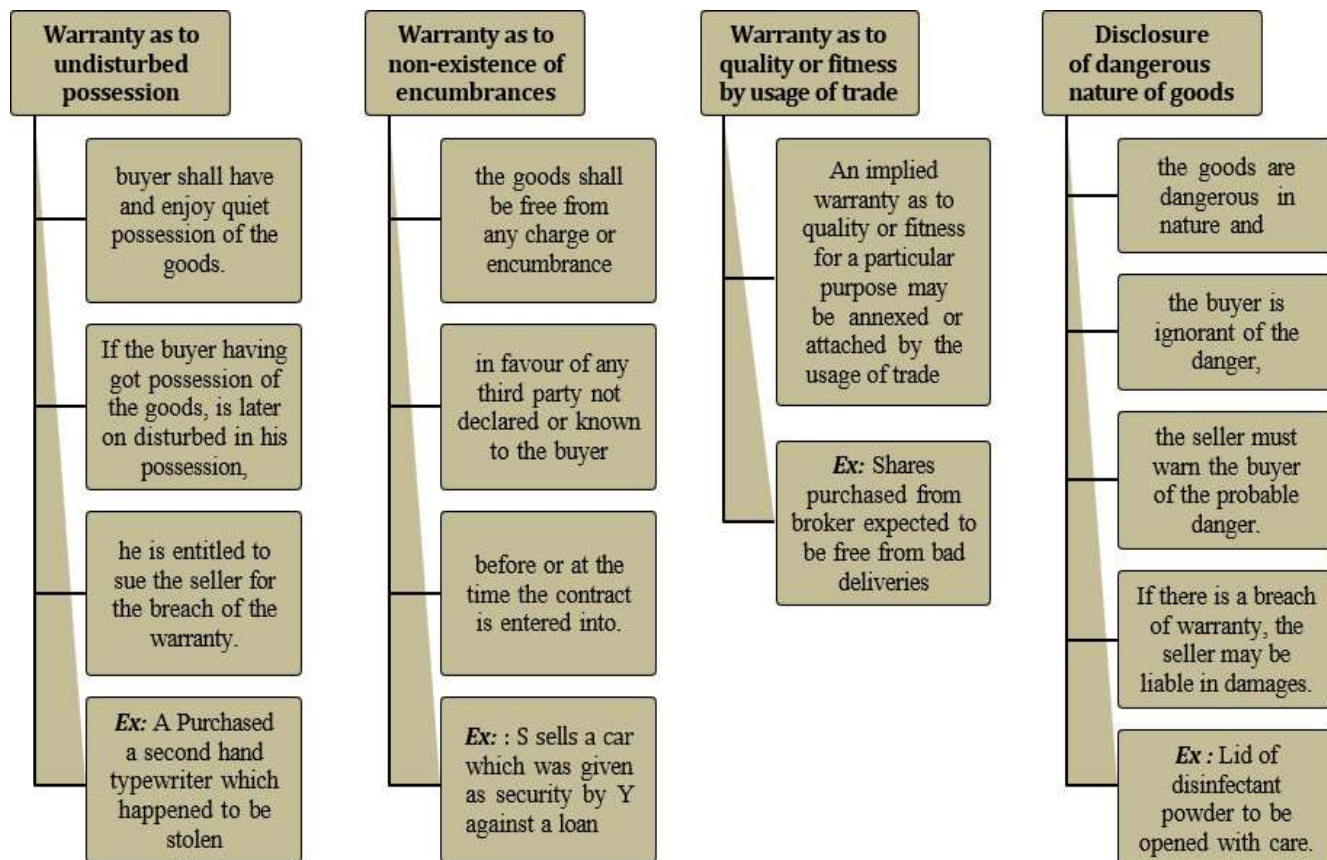
warranty as to
undisturbed
possession

Warranty as to non-
existence of encumbrances

disclosure of dangerous
nature of goods

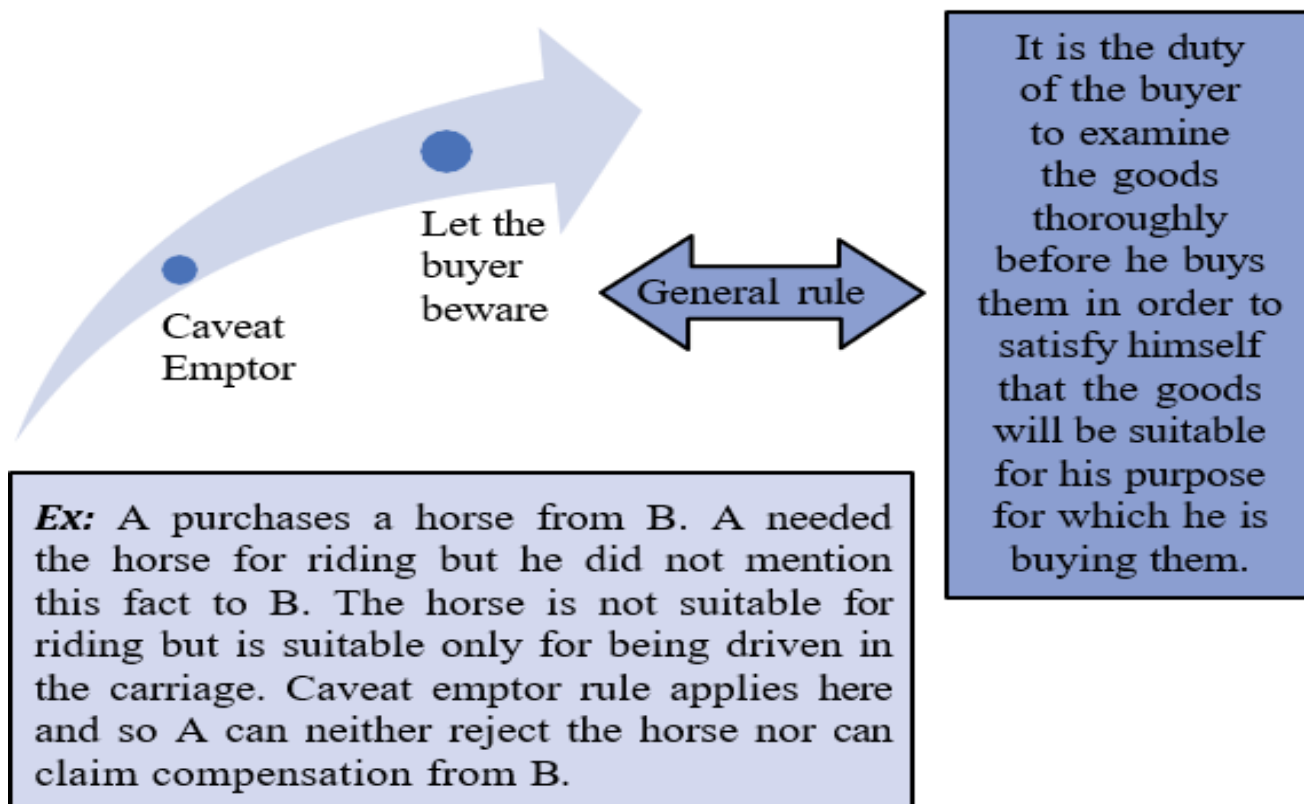
warranty as to
quality or fitness
by usage of trade

11. Implied warranty

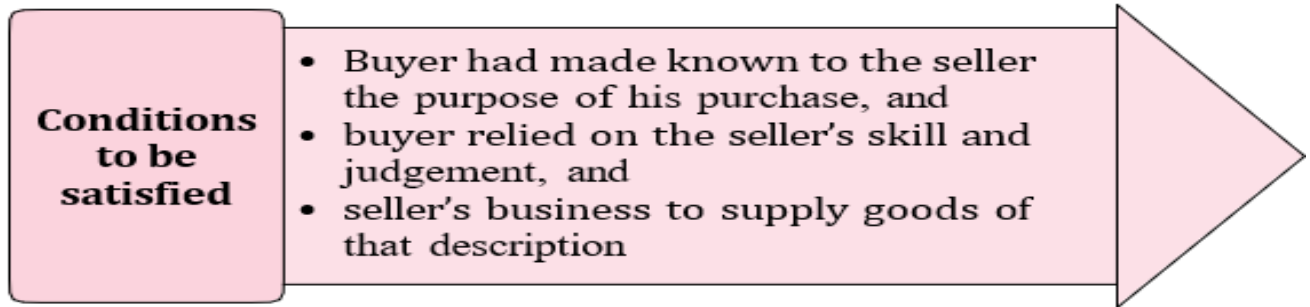


Caveat Emptor [Section 16]

1. Meaning of doctrine



2. Required conditions when doctrine is not attracted:



3. Exceptions to Doctrine of caveat Emptor:

Exceptions

- Fitness as to quality or use
- Goods purchased under patent or brand name
- Goods sold by description
- Goods of Merchantable Quality
- Sale by sample
- Goods by sample as well as description
- Trade Usage
- Seller actively conceals a defect or is guilty of fraud

(I) Provisions related to transfer of Ownership [Section 18-26]

(i) Stages involved in transfer of ownership:



Passing of Property



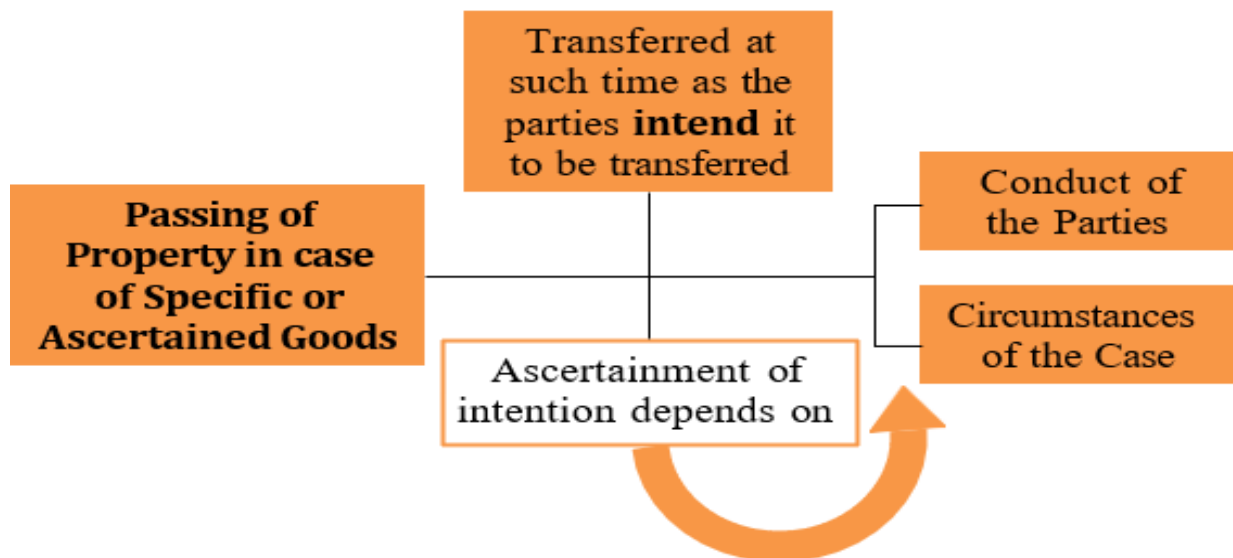
- Passing of Ownership
- If the property has passed to the buyer, the RISK in the goods sold is that of the buyer and NOT of the seller

Rules regarding transfer of property in goods
Depends on two basic factors:

Identification of goods	Intention of parties
<p>Goods must be ascertained in order to pass the property in goods to buyer</p> <p>Goods must be specific and ascertained to acquire the ownership right on the goods by buyer</p>	<p>Property in goods is transferred at the time-</p> <ul style="list-style-type: none">• when parties intend it to be transferred <p>Ascertaining of intention shall be on the basis of-</p> <ul style="list-style-type: none">• terms of contract• conduct of the parties, and• circumstances of the case

Primary Rules: For determination of passing of property from seller to Buyer

1. Passing of Property in Case of Specific or Ascertained Goods



Different stages of Goods while passing of property under this category:

Specific Goods in Deliverable Stage

Property in goods passes to the buyer when the contract is made

irrespective of time of the payment or delivery or both.

Example: X buys a Washing Machine and asks for home delivery. The washing machine immediately becomes the property of X.

Specific Goods to be put in Deliverable Stage

When there is a contract for the sale of specific goods;

seller is bound to do something to the goods for putting them into deliverable state;

the property does not pass until such thing is done and buyer has notice thereof.

Example: X purchased a laptop and asks for home delivery but that laptop does not have a Windows operating system installed. The property transfers to X only after shopkeeper installed OS making the laptop ready for delivery and intimated the buyer about it.

**Specific Goods
in a Deliverable
Stage when
seller has to do
anything to put
it in deliverable
stage**

- Contract for sale of specific goods
- seller is bound to weigh, measure, test or do something for purpose of ascertaining price
- then the Property in goods passes to the buyer
- only when such thing is done and buyer has notice of it.

Example: A sold carpets to the Company which were required to be laid. The carpet was delivered to the company's premises but was stolen before it could be laid. It was held that the carpet was not in deliverable state as it was not laid, which was part of the contract and hence, the property had not passed to the buyer company.

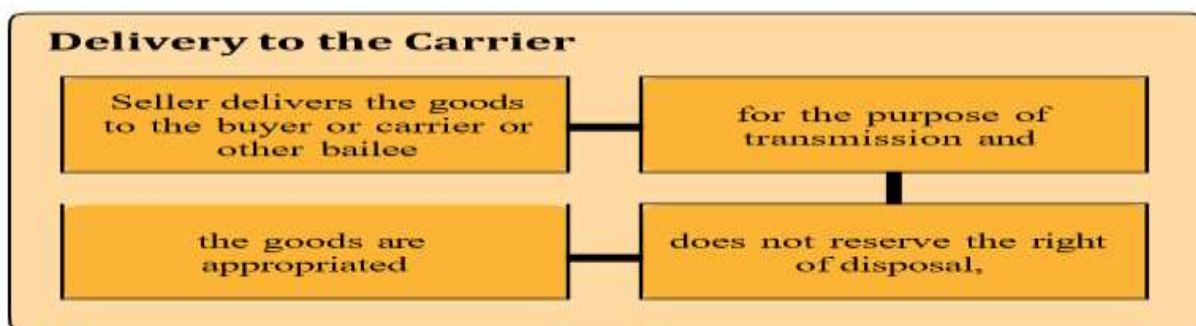
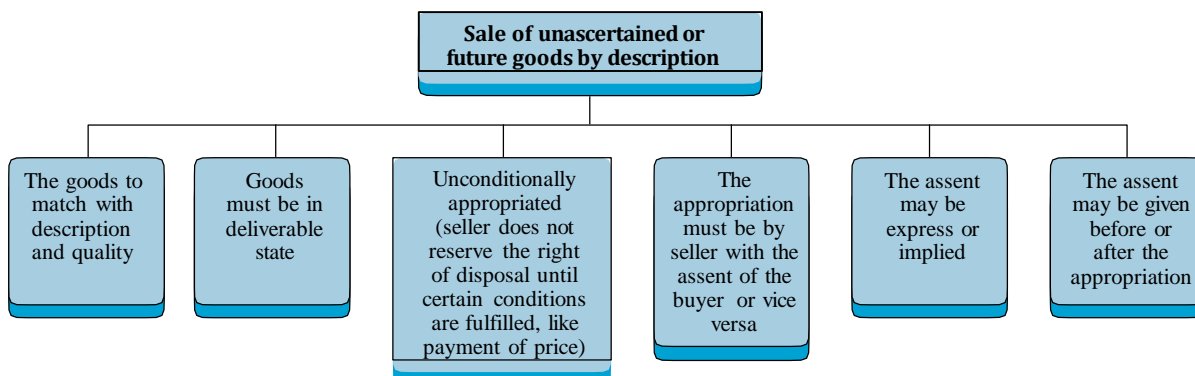
2. Sale of Unascertained Goods

When there
is a sale of
Unascertained
Goods,

no property is
transferred to
the buyer

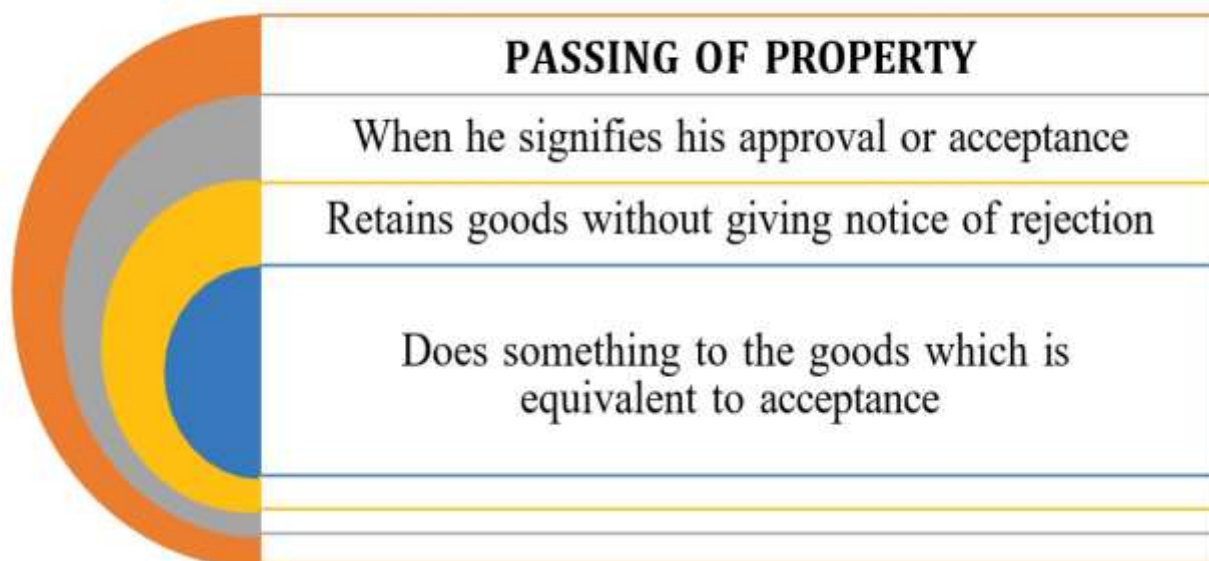
unless the
goods are
ascertained

Rules in respect of passing of property under this category



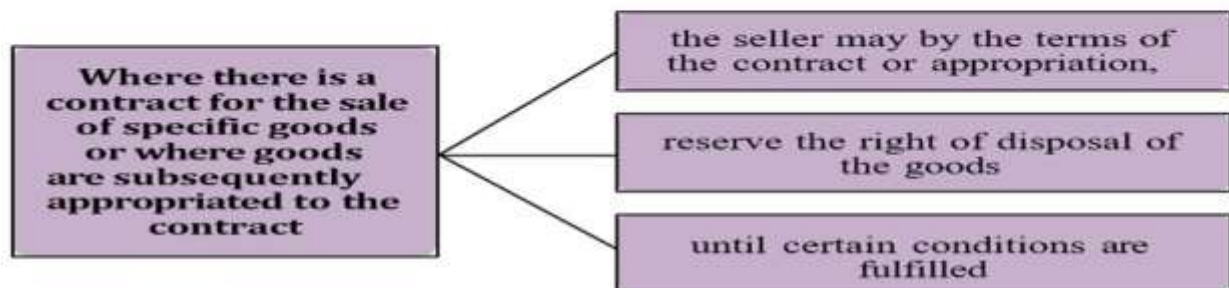
Example: A bill of lading of railway parcel is made out in the name of the buyer and is sent to him, the ownership in the goods passes from the seller to the buyer. In case the goods are subjected to accidental loss or by theft, the seller will not be liable.

3. Goods sent on Approval or “Sale Or Return”



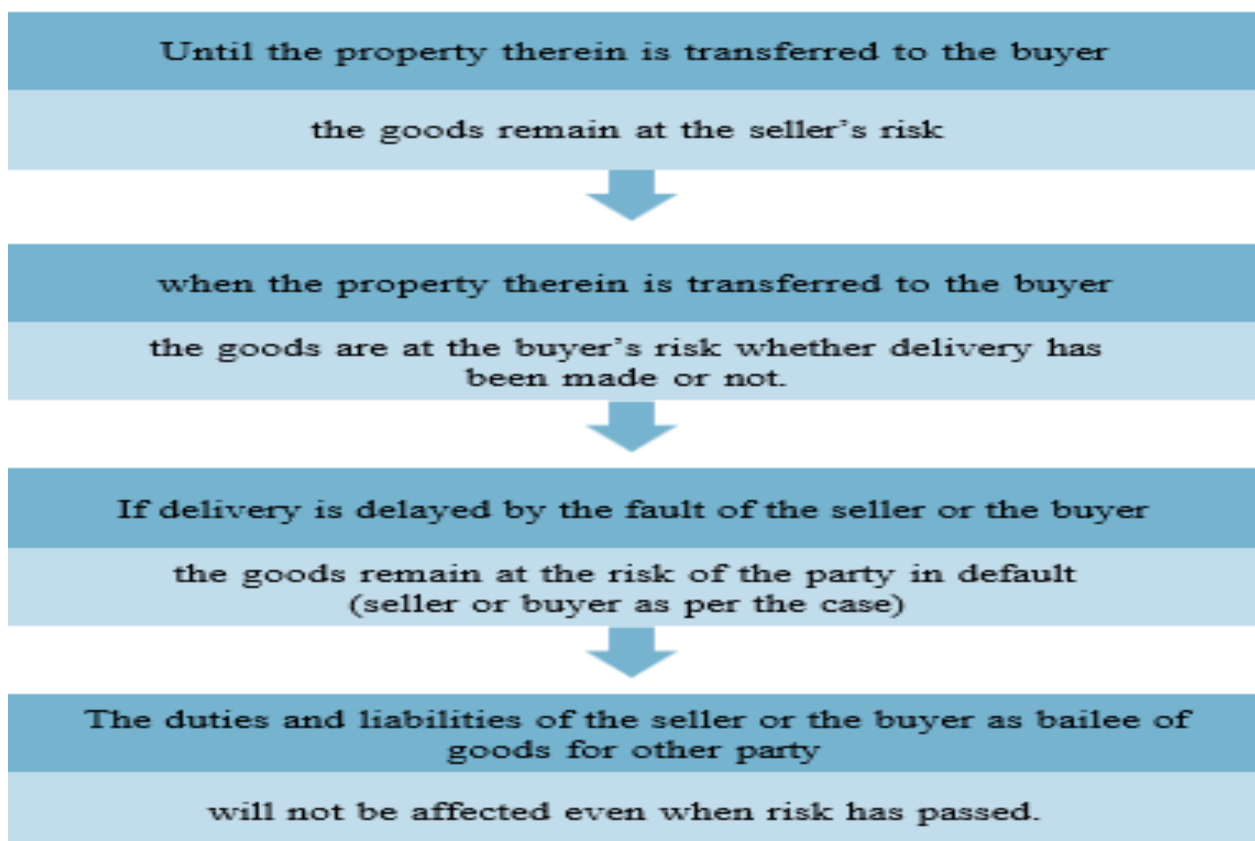
Example: A sends to B a water motor on approval or return in March, 2020. B to return it after trial in August, 2020. The water motor has not been returned within a reasonable time, and therefore, A is not bound to accept it and B must pay the price.

4. Reservation of Right of Disposal



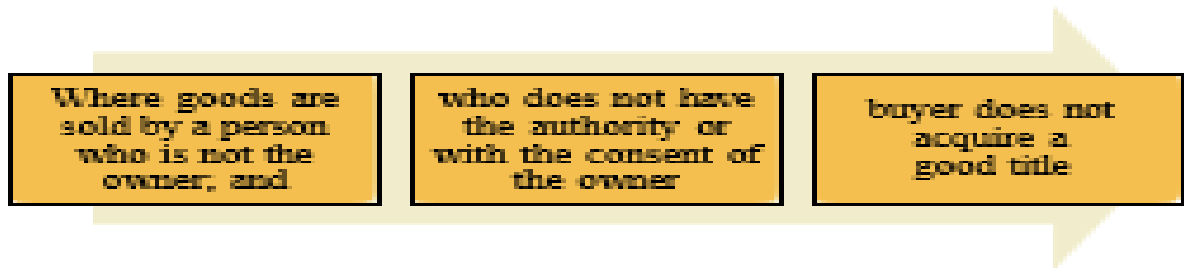
Example: X sends furniture to a company by a truck and instructs the driver not to deliver the furniture to the company until the payment is made by company to him. The property passes only when the payment is made.

Risk Prima Facie passes with Property



Example: A bids for an antique painting at a sale by auction. After the bid, when the auctioneer struck his hammer to signify acceptance of the bid, he hit the antique which gets damaged. The loss will have to be borne by the seller, because the ownership of goods has not yet passed from the seller to the buyer.

(II) Transfer of Title by Non Owners (Section 27-30)



Example: P, the hirer of vehicle under a hire purchase agreement, sells them to Q. Q, though a bona fide purchaser, does not acquire the ownership in the vehicle. At the most he acquires the same right as that of the hirer.

**NEMO DAT
QUOD NON
HABET** – No one
can give what he
has not got.

Exceptions:

Sale by a Mercantile Agent

Sale by one of the joint owners

Sale by a person in possession under voidable contract

Sale by a person who has already sold goods but continues in possession thereof

Effect of Estoppel

Sale by an unpaid seller

Sale by a buyer obtaining possession before the property vested in him

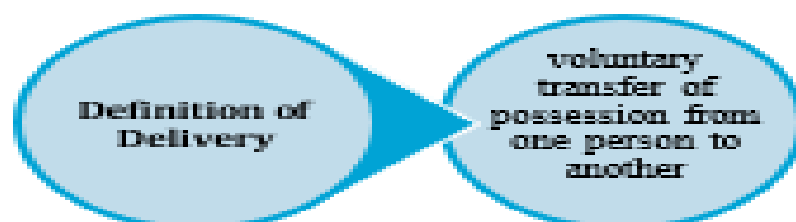
Sale under provisions of other Acts

Examples: 1. A, B, and C are three brothers and joint owners of a T.V and VCR and with the consent of B and C, the VCR was kept in possession of A. A sells the T.V and VCR to P who buys it in good faith and without notice that A had no authority to sell. P gets a good title to VCR and TV.

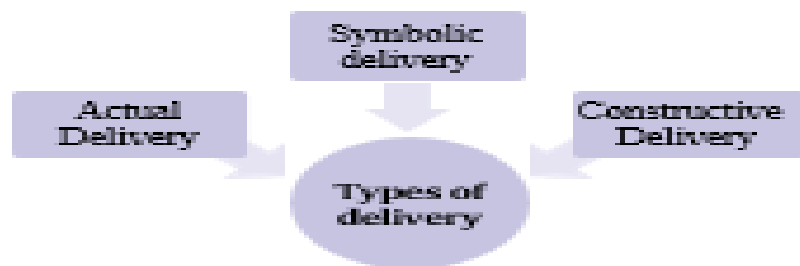
2. During IPL matches, P buys a TV set from R. R agrees to deliver the same to P after some days. In meanwhile R sells the same to S, at a higher price, who buys in good faith and without knowledge about the previous sale. S gets a good title.

(III) Performance of the Contract of Sale (Section 31-44)

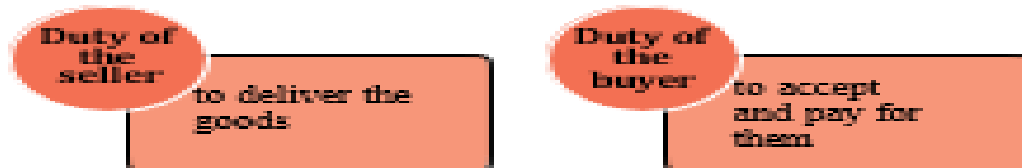
Meaning of delivery



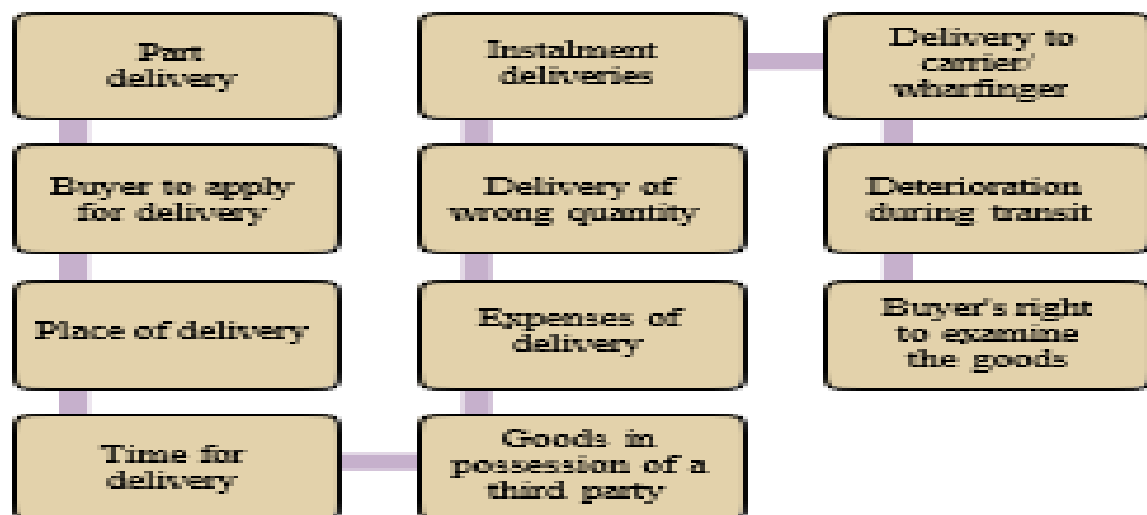
Types of Delivery



Duties of seller and Buyer



Rules regarding Delivery of Goods



Examples: 1. Certain goods lying at wharf were sold in a lot. The seller instructed the wharfinger to deliver them to the buyer who had paid for them and the buyer, thereafter, accepted them and took away part. Held, there was delivery of the whole.

2. A agrees to sell 100 quintals of wheat to B at ₹ 1,000 per quintal. A delivers 1,100 quintals. B may reject the whole lot or accept only 1,000 quintals and reject the rest or accept the whole lot and pay for them at the contract of sale.

Rule Related to Acceptance of Delivery of Goods

Acceptance is deemed to take place when the buyer-

intimates to the seller that he had accepted the goods; or

does any act to the goods, which is inconsistent with the ownership of the seller; or

retains the goods after the lapse of a reasonable time, without intimating to the seller that he has rejected them.

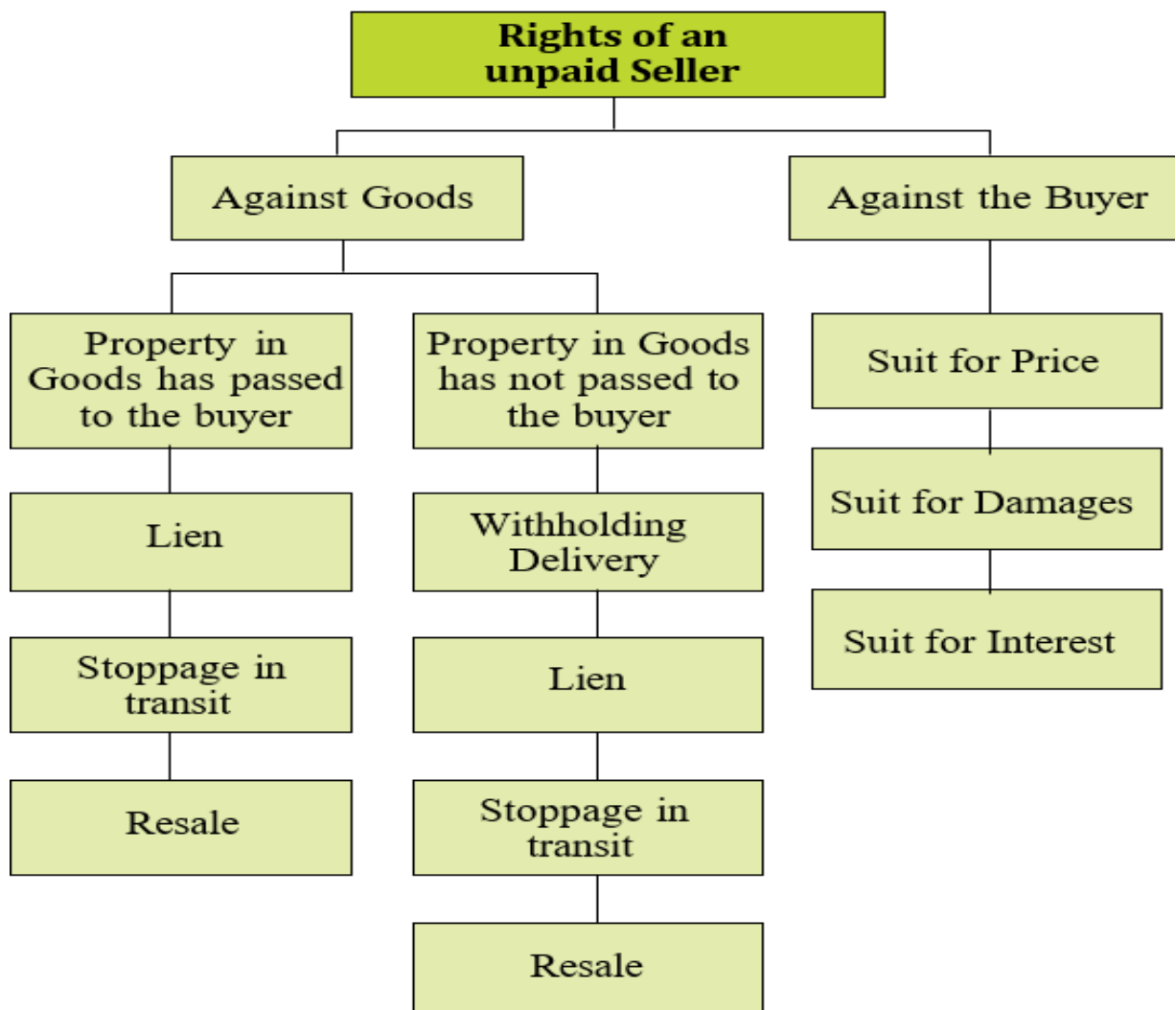
(IV) Unpaid Seller (Section 45-61)

UNPAID SELLER

1. The Whole price has not been paid or tendered and the seller has an immediate right of action for the price
2. When a bill or exchange or other negotiable instrument has been received as conditional payment and it has been dishonoured.

Example: P sold some goods to R for R60,000 and received a cheque for a full price. On presentment, the cheque was dishonoured by the bank. P is an unpaid seller.

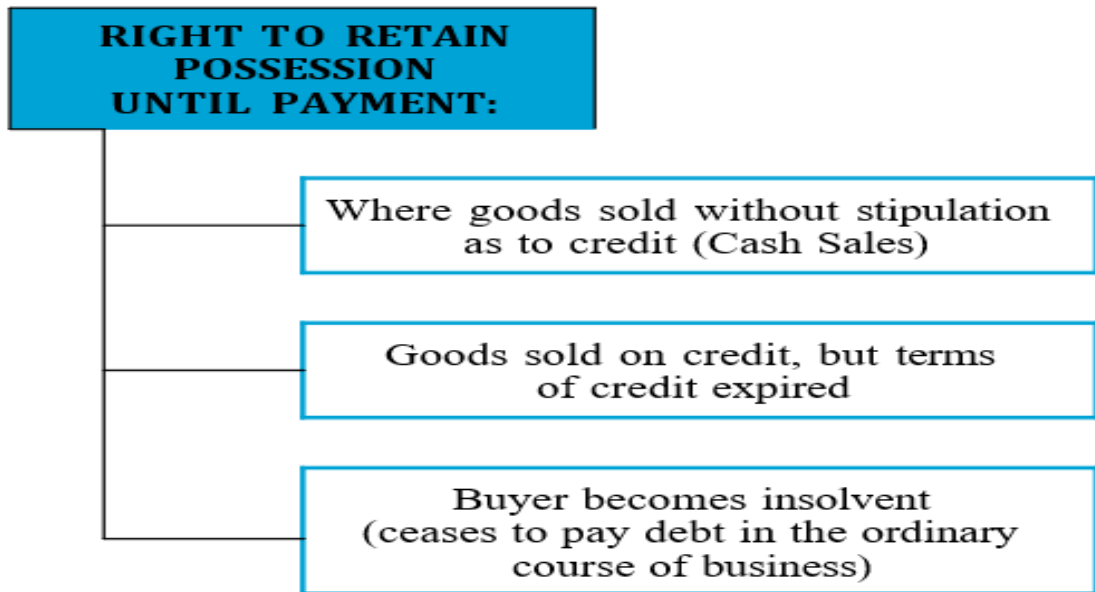
Rights of an Unpaid Seller



Right of Unpaid Seller against the Goods

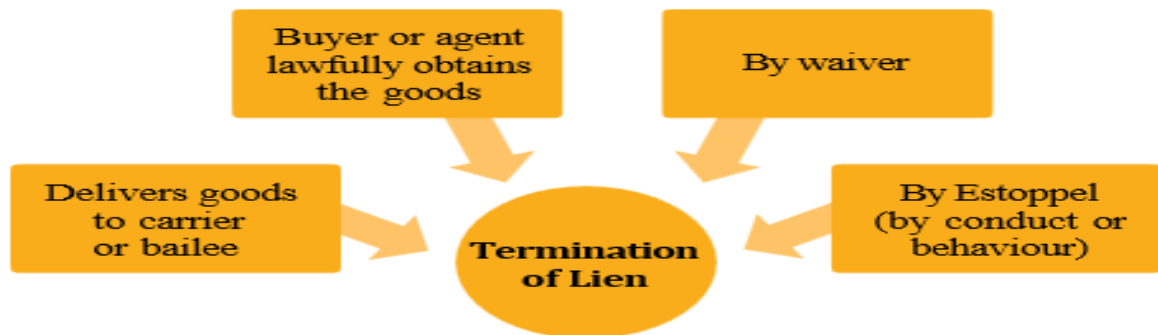
1. Seller's Lien

(i)



Example: A sold certain goods to B for a price R50,000 and allowed him to pay the price within one month. B becomes insolvent during this period of credit. A, the unpaid seller, can exercise his right of lien.

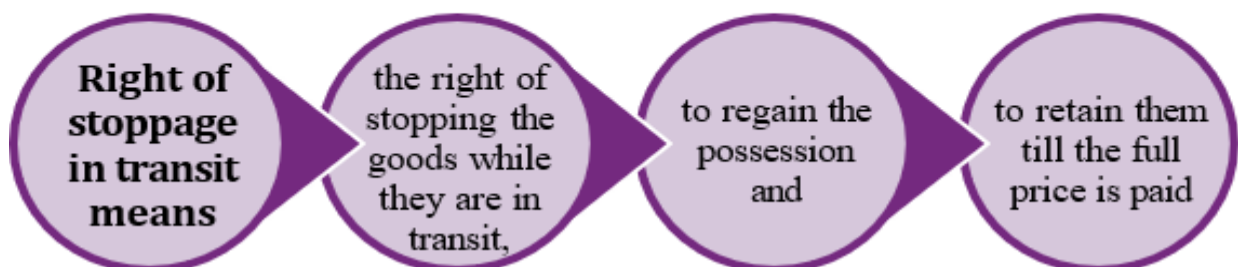
(ii)



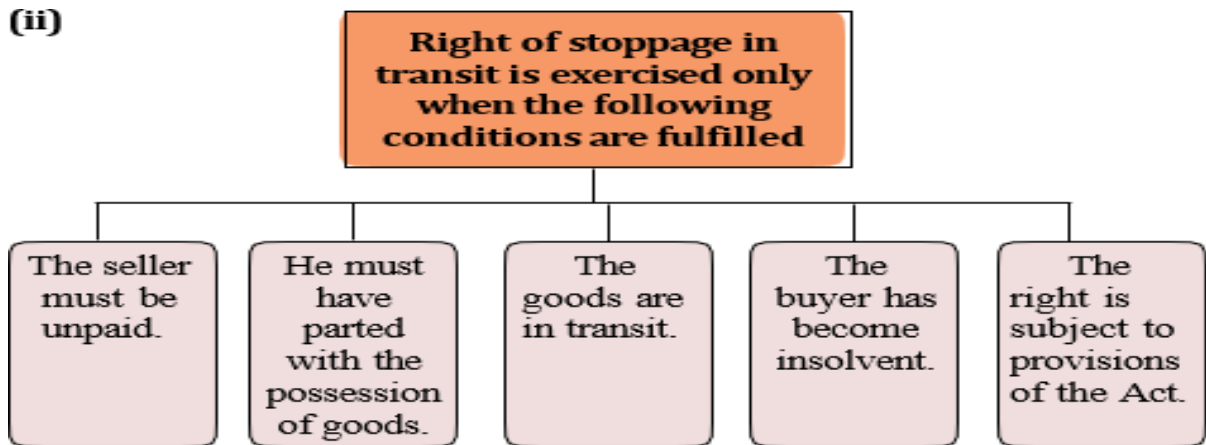
Example: A sold a car to B for R1,00,000 and delivered the same to the railways for the purpose of transmission to the buyer. The railway receipt was taken in the name of B and sent to B. Now A cannot exercise the right of lien.

2. Right of stoppage in transit:

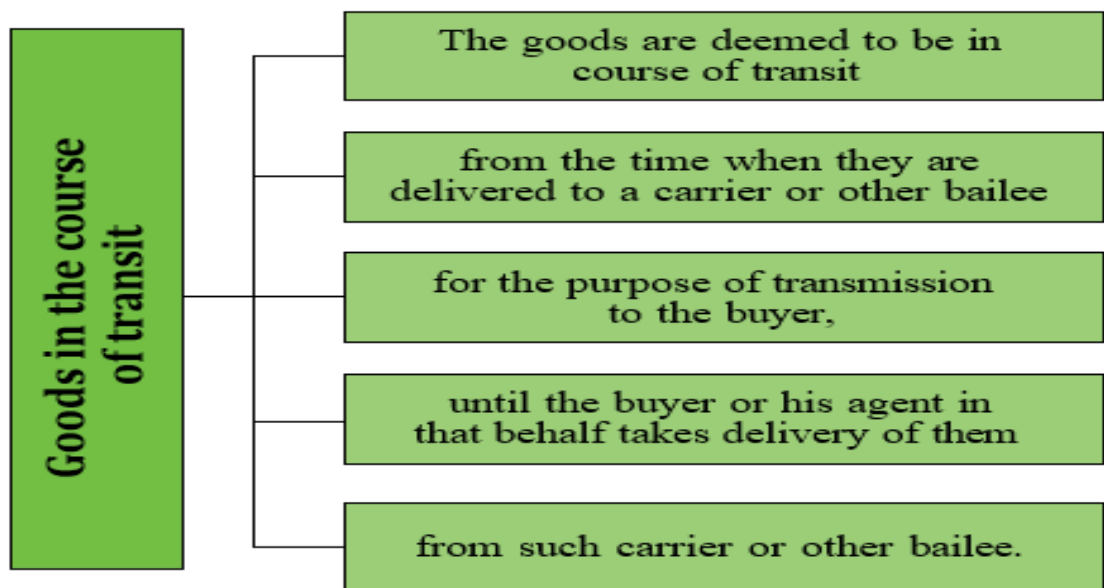
(i)



(ii)



(iii)



(iv)

When does the transit come to an end?						
When the buyer or other bailee obtains delivery.	Buyer obtains delivery before the arrival of goods at destination	Where the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods as soon as the goods are loaded on the ship, unless the seller has reserved the right of disposal of the goods.	If the carrier wrongfully refuses to deliver the goods to the buyer.	Where goods are delivered to the carrier hired by the buyer	Where the part delivery of the goods has been made to the buyer, the transit will come to an end for the remaining goods which are yet in the course of transmission.	Where the goods are delivered to a ship chartered by the buyer, the transit comes to an end.

(v)



(vi)

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

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

When a document of title to goods has been transferred to the buyer and the buyer transfers the documents to a person who has bought goods in good faith and for value

Example: A entered into a contract to sell cartons in possession of a wharfinger to B and agreed with B that the price will be paid to A from the sale proceeds recovered from his customers. Now B sold goods to C and C duly paid to B. But anyhow B failed to make the payment to A. A wanted to exercise his right of lien and ordered the wharfinger not to make delivery to C. Held that the seller had assented to the resale of the goods by the buyer to the sub-buyers. As a result, A's right to lien is defeated.

3. Right of re-sale

Where the goods are of a perishable nature

Where he gives notice to the buyer of his intention to re-sell the goods

Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods

A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale

Where the property in goods has not passed to the buyer

Rights of Unpaid Seller against the Buyer

Rights of unpaid seller against the buyer {

- Suit for price
- Suit for damages for non-acceptance
- Repudiation of contract before due date
- Suit for interest

Breach of Contract by Seller

Breach of contract by seller, where he-

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

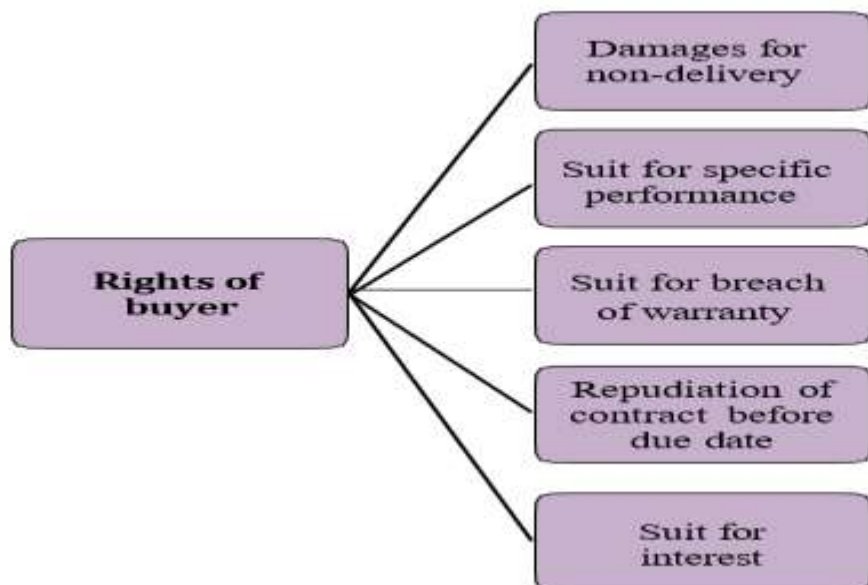
Breach of contract by seller, where he-

Repudiates the contract

Breach of contract by seller, where he-

Deliver non-conforming goods and buyer rejects and revokes acceptance

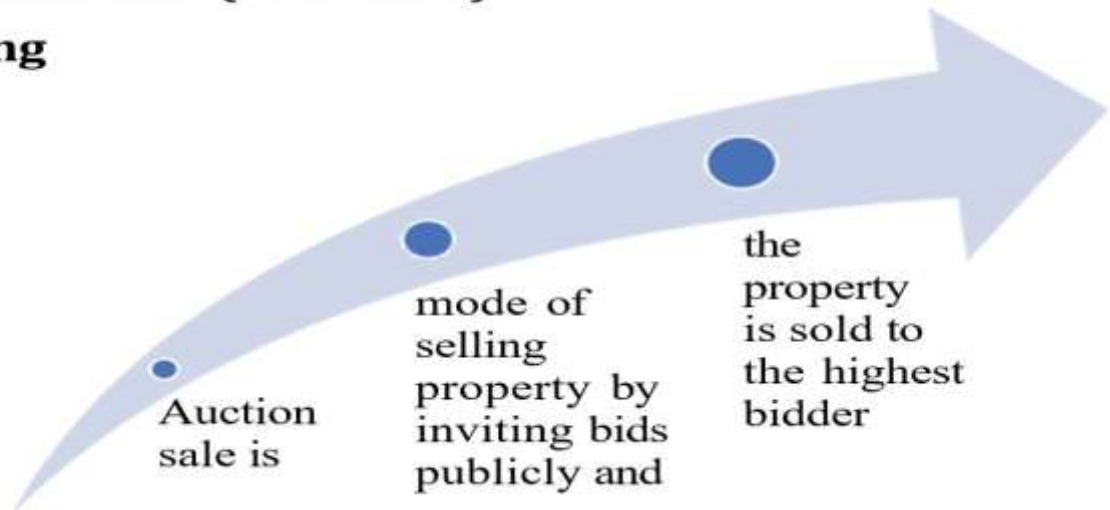
Right of Buyer in case of breach of contract by seller



Example: A' agreed to sell a rare painting of Mughal period to B'. But on the due date of delivery, 'A' refused to sell the same. In this case, 'B' may file a suit against 'A' for obtaining an order from the Court to compel 'A' to perform the contract (i.e. to deliver the painting to 'B' at the agreed price).

(V) Auction Sale (Section 64)

Meaning



Legal Rules of Auction Sale

Rules

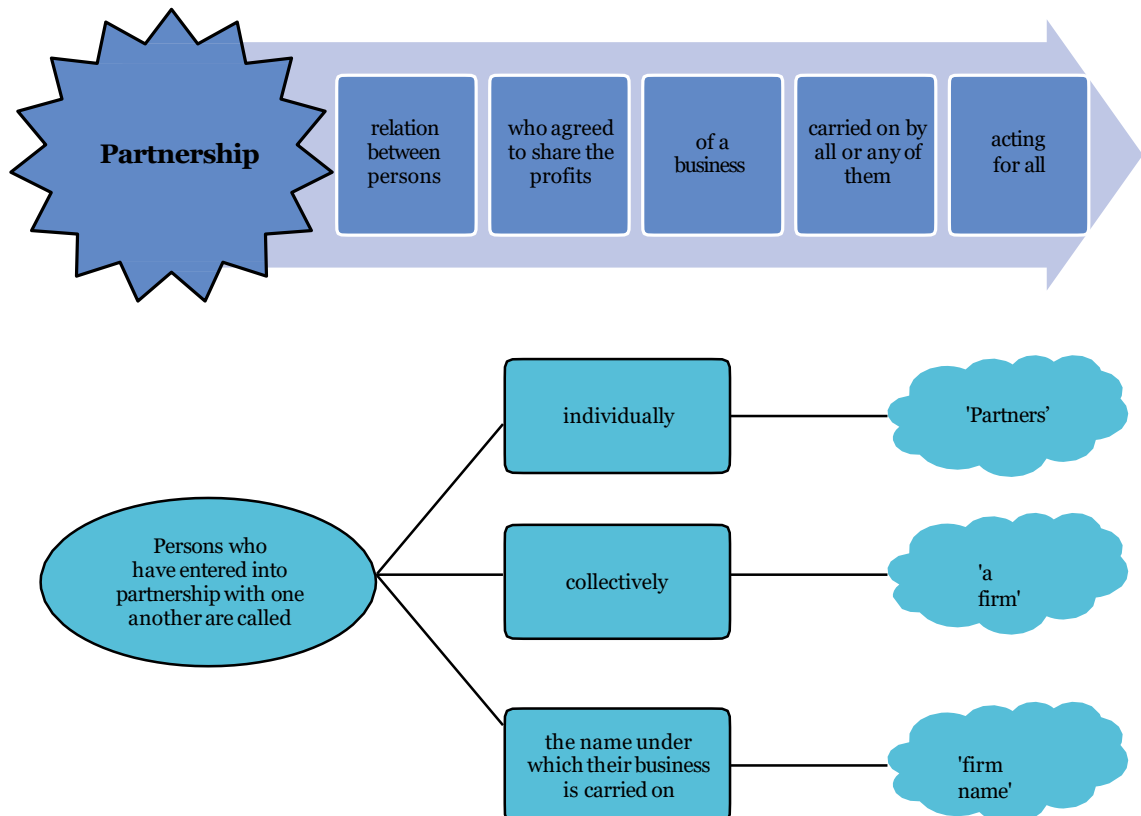
- Where goods are sold in lots
- Completion of the contract of sale
- Right to bid may be reserved
- Where the sale is not notified by the seller
- Reserved price
- Pretended bidding

Example: P sold a car by auction. It was knocked down to Q who was only allowed to take it away on giving a cheque for the price and signing an agreement that ownership should not pass until the cheque was cleared. In the meanwhile till the cheque was cleared, Q sold the car to R. It was held that the property was passed on the fall of the hammer and therefore R had a good title to the car. Both sale and sub sale are valid in favour of Q and R respectively.

CHAPTER 3: THE INDIAN PARTNERSHIP ACT, 1932

UNIT 1: GENERAL NATURE OF PARTNERSHIP

1. Definition of 'Partnership', 'Partner', 'Firm' and 'Firm name'



2. Elements of Partnership

ASSOCIATION OF PERSONS

- association of 2 or more persons
- persons recognised by law can enter into an agreement of partnership

AGREEMENT

- partnership must be the result of an agreement
- Agreement may be express or implied
- Agreement may be oral or in writing

BUSINESS

- Existence of business
- Acquisition of gains

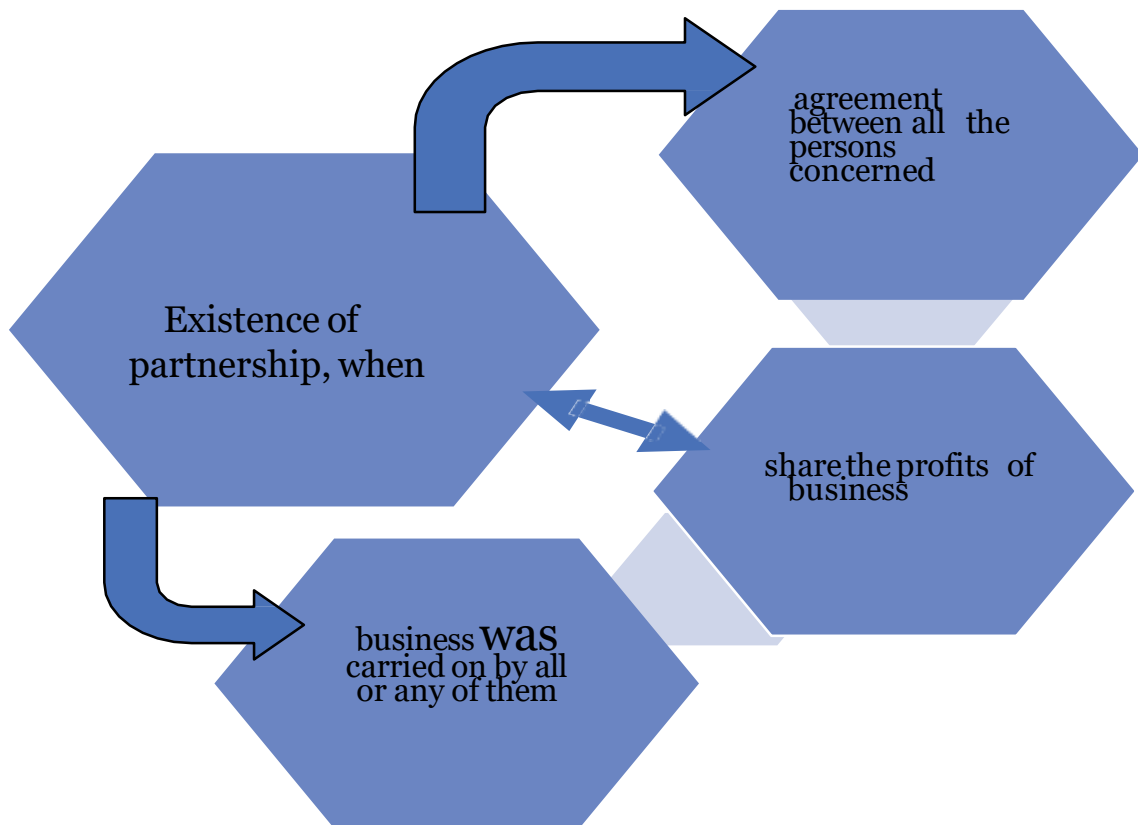
**AGREEMENT TO
SHARE
PROFITS**

- Sharing of profits is must

**A business
carried on by all or
any of them acting
for all**

- Binding contract of mutual agency between the partners
- Partner is the principal as well as the agent for all other partners.

3. True Test of Partnership



4. Partnership distinguished from other forms of Organization

(i). Partnership Vs Joint Stock Company

Basis of Difference	Partnership	Joint Stock Company
Legal Status	Not a legal entity.	Is an artificial legal person (Salomon Vs Salomon).
Agency	Partner is an agent of the firm and other partners.	A member is not an agent of the company or other members.
Distribution of Profits	The profits of the firm are distributed as per the Partnership Deed.	There is no compulsion to distribute profits among the members. Dividends are declared out of profits.
Extent of Liability	Liability of members is unlimited.	Liability of members can be limited by shares or guarantee. There can be unlimited liability also.
Property	The firm's property is the "Joint Estate" of all the partners.	Company's 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 partnership cannot be transferred without the consent of all partners.	Shares of a private limited company can be transferred with ease.
Management	Partners can take part in the management of the firm.	Only director members can take part in management.
Registration	For a partnership, firm registration is not compulsory.	Company is created by registration under the Companies Act, 2013.
Winding Up	A partnership may be dissolved by any partner at any time if all partners agree.	A company is wound up by NCLT or its name is struck off by the ROC.
Number of Membership	Number of partners: maximum 100 (As per Section 464 of the Companies Act, 2013). Present limit is 50 (As per Companies (Miscellaneous) Rules, 2014).	Private company: minimum 2, maximum 200. Public company: minimum 7, no limit. One person company: 1.
Duration of Existence	Firm does not have perpetual succession.	Company has perpetual succession.

(ii). Partnership Vs Club

Basis of Difference	Partnership	Club
Objective	<i>Profit</i>	<i>Not profit</i>
Relationship	<i>Partners</i>	<i>Members</i>
Interest in the property	<i>Yes</i>	<i>No</i>
Dissolution	<i>Change in partners affect existence</i>	<i>Change in members don't affect existence</i>

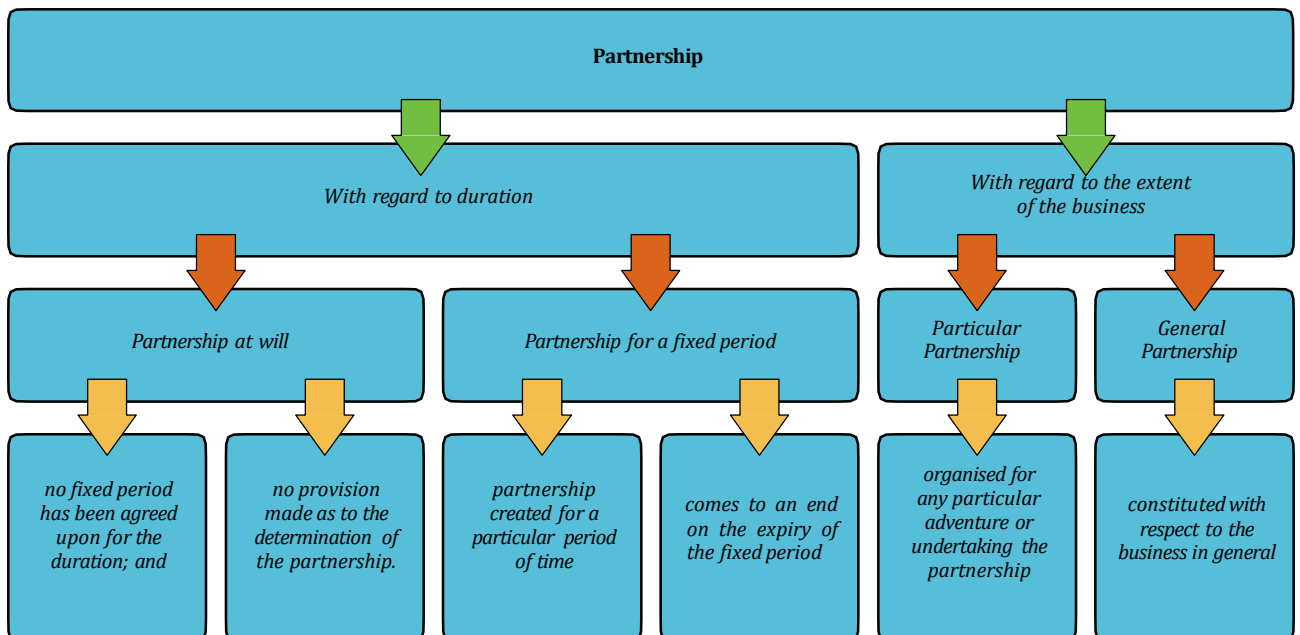
Basis of difference	Partnership	HUF
Mode of creation	An agreement.	Status means its creation by birth in the family.
Death of a member	Ordinarily leads to the dissolution of partnership.	Does not give rise to dissolution of the family business.
Management	All the partners are equally entitled to take part.	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	Liability of a partner is unlimited.	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.
Calling accounts closure for on	A partner can bring a suit against the firm for accounts, provided he also seeks the dissolution of the firm.	On the separation of the joint family, a member is not entitled to ask for account of the family business.

Basis of difference	Partnership	HUF
Governing Law	Governed by the Indian Partnership Act, 1932.	Governed by the Hindu Law.
Minor's capacity	A minor cannot become a partner, though he can be admitted to the benefits of partnership, only with the consent of all the partners.	A minor becomes a member of the ancestral business by the incidence of birth. He does not have to wait for attaining majority.
Continuity	Subject to a contract between the partners, gets dissolved by death or insolvency of a partner.	Has the continuity till it is divided. The status of HUF is not thereby affected by the death of a member.
Number of Members	Should not exceed 50.	Unlimited in number.
Share in the business	Each partner has a defined share by virtue of an agreement between the partners.	No coparceners have a definite share.

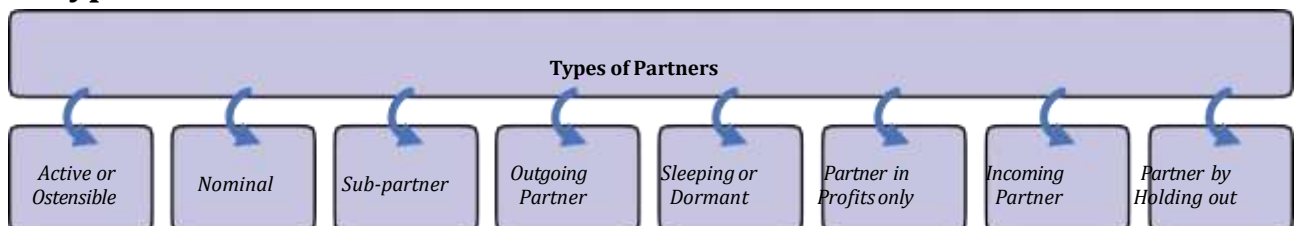
(iii). Partnership Vs Co-Ownership or joint ownership

Basis of difference	Partnership	Co-ownership
Formation	<i>It arises out of a contract.</i>	<i>Arise either from agreement or by the operation of law, such as by inheritance.</i>
Implied agency	<i>A partner is the agent of the other partners.</i>	<i>A co-owner is not the agent of other co-owners.</i>
Nature of interest	<i>There is community of interest which means that profits and losses must have to be shared.</i>	<i>Co-ownership does not necessarily involve sharing of profits and losses.</i>
Transfer of interest	<i>A share in the partnership is transferred only by the consent of other partners.</i>	<i>A co-owner may transfer his interest or rights in the property without the consent of other co-owners.</i>

5. Kinds of Partnership



6. Types of Partners

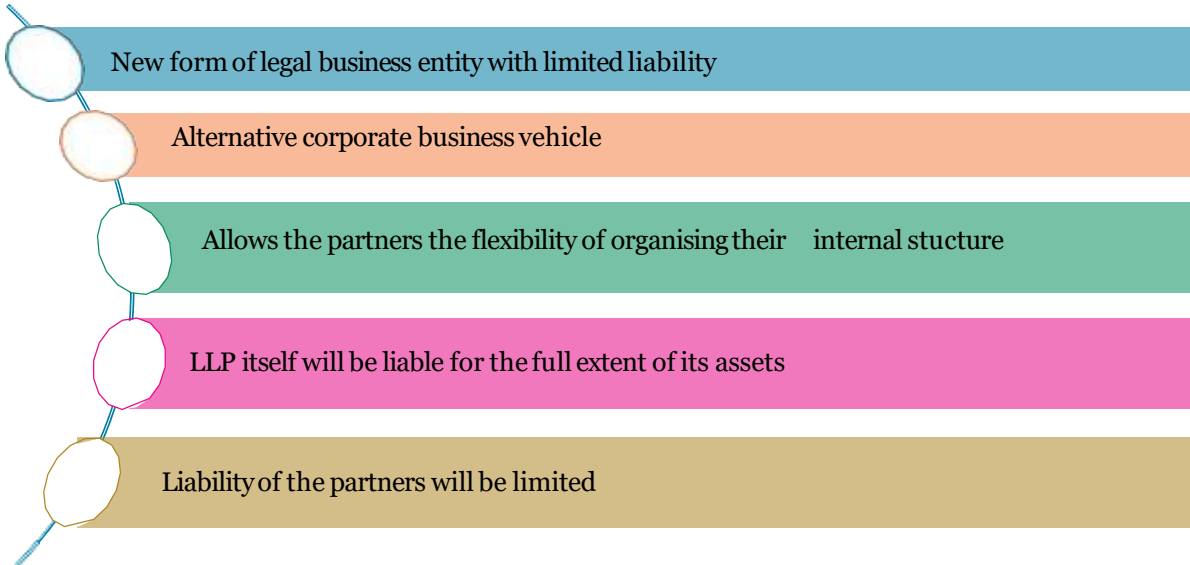


Active or Actual or Ostensible partner	Sleeping or Dormant Partner	Nominal Partner	Partner in profits only	Incoming partner	Outgoing partner	Partner by holding out
become a partner by agreement, and	a partner by agreement, and	Lend his name to the firm	Entitled to share the profits only	admitted as a partner into an already existing firm with the consent of all the existing partners.	A partner who leaves a firm in which the rest of the partners continue to carry on business.	When a person represent himself, or
		Without having any real interest in firm				Knowingly permits himself,
		Not entitled to share the profits	Not liable for the losses			to be represented as a partner in a firm (when in fact he is not)
actively participates in the conduct of the partnership	does not actively take part in the conduct of the partnership business	Does not take part in the conduct of the business		Not liable for any act of the firm done before his admission as a partner.	remains liable to third parties for all acts of the firm until public notice is given of his retirement.	he is liable, like a partner in the firm
		Liable to third parties for all acts of the firm	Liable to the third parties for all acts of the profits only			to anyone who on the faith of such representation has given credit to the firm.

CHAPTER 4: LIMITED LIABILITY PARTNERSHIP ACT, 2008

I. LIMITED LIABILITY PARTNERSHIP- MEANING AND CONCEPT

1.



2. Important Definitions

(i) Body Corporate [Section 2(d)]

It means a company as defined in clause (20) of section 2 of the Companies Act, 2013 and **includes**

- a LLP registered under this Act;
- a LLP incorporated outside India; and
- a company incorporated outside India

but does **not** include

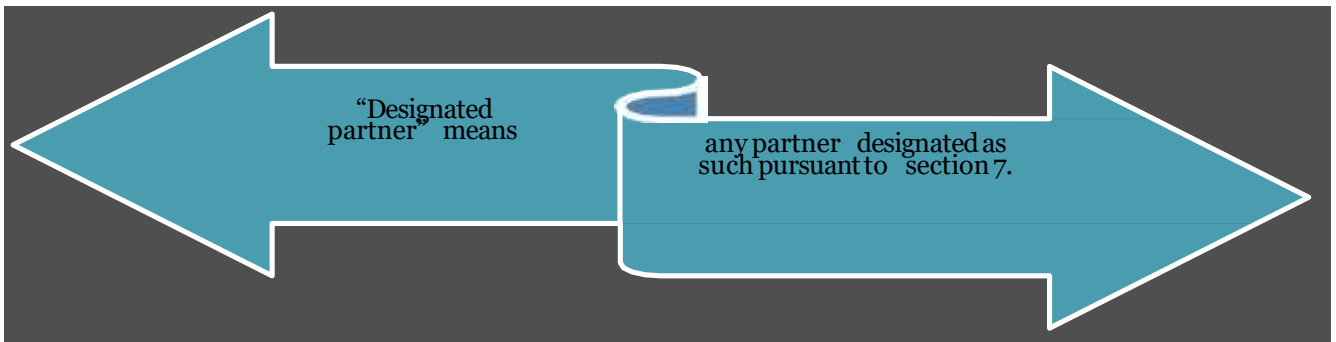
- a corporation sole;
- a co-operative society registered under any law for the time being in force; and
- any other body corporate (not being a company as defined in clause (20) of section 2 of the Companies Act, 2013 or a LLP as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf.

(ii) Business [Section 2(e)]

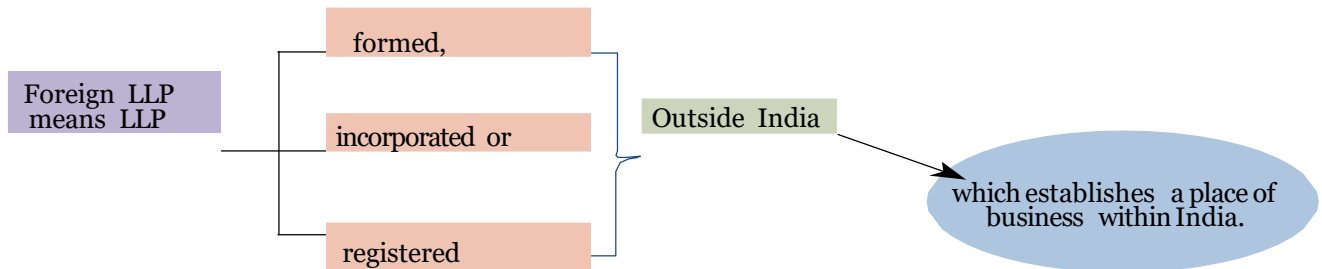
"Business" includes

- every trade,
- profession,
- service and
- occupation
- except any activity which the Central Government may, by notification, exclude.

(iii) Designated Partner [Section 2]



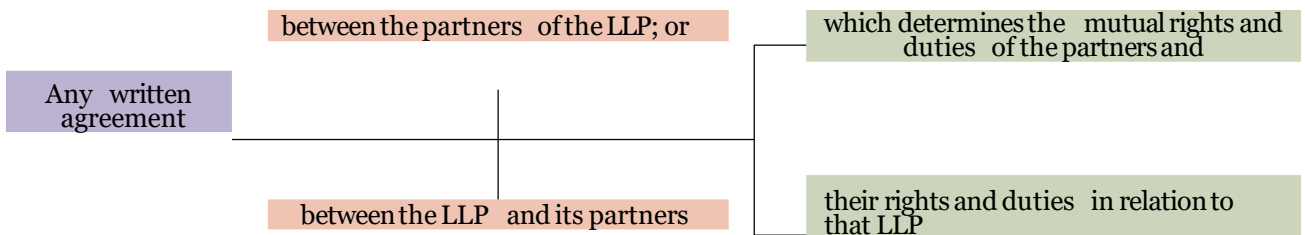
(iv) Foreign LLP [Section 2(m)]



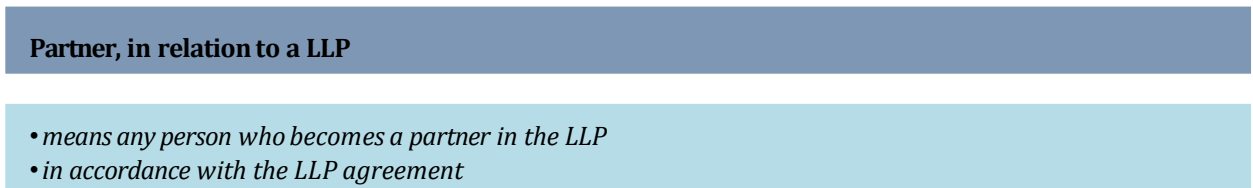
(v) Limited Liability Partnership [Section 2(n)]:



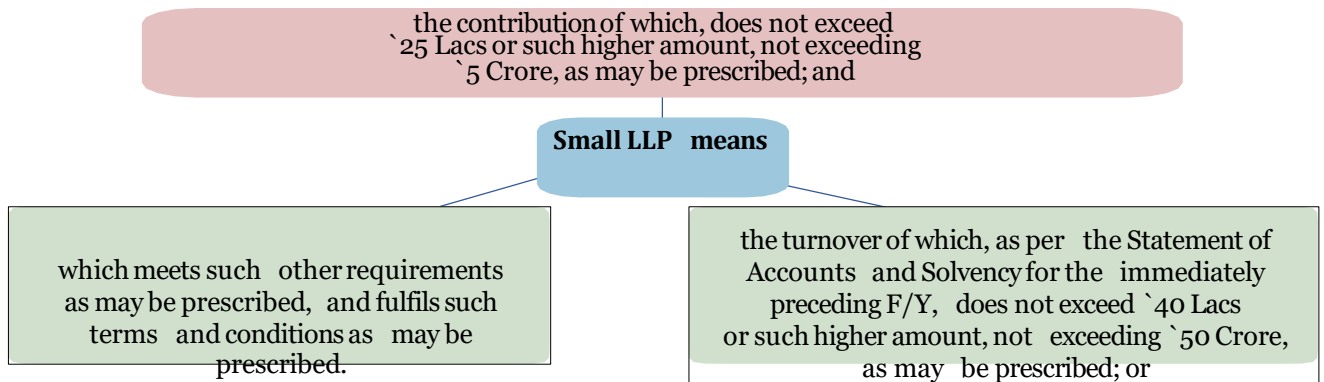
(vi) LLP Agreement [Section 2(o)]:



(vii) Partner [Section 2(q)]



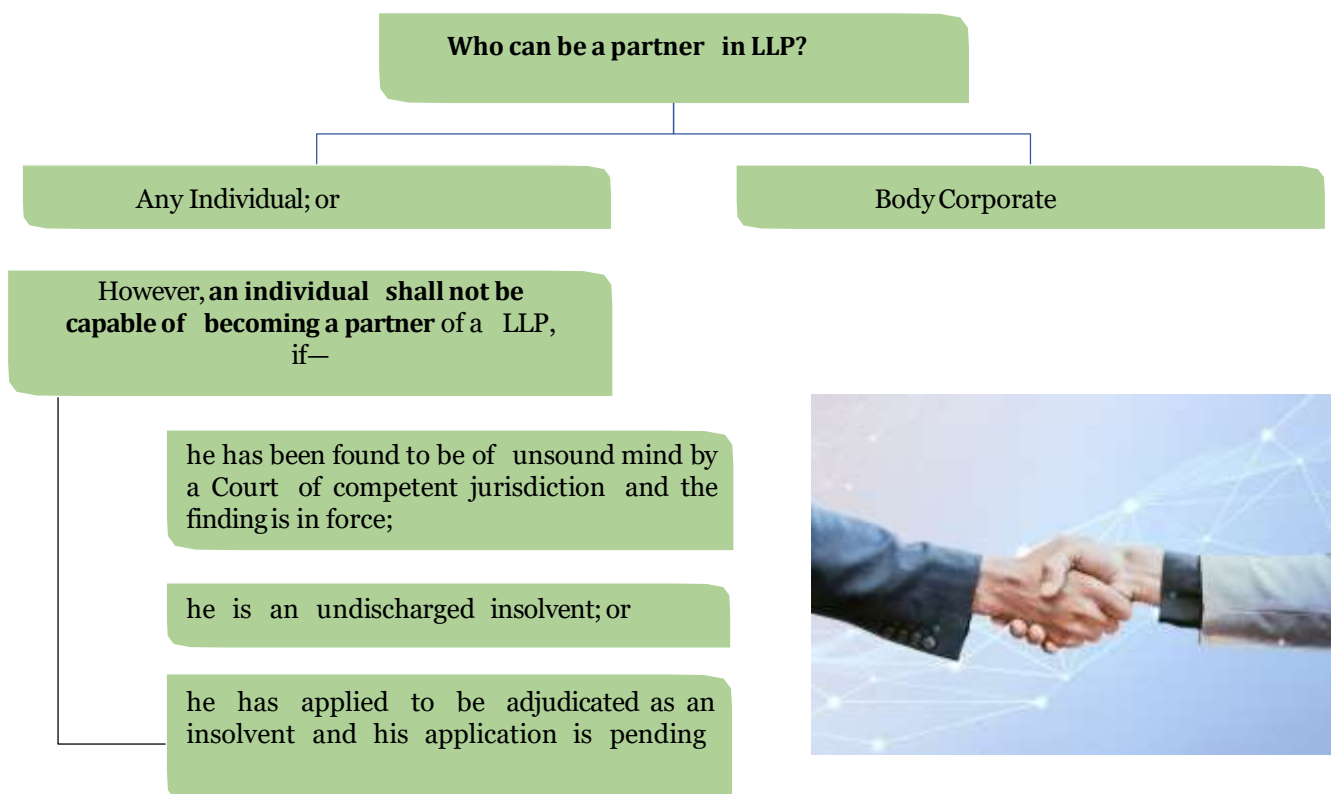
(viii) Small Limited Liability Partnership [Section 2(ta)]



3. Non-applicability of the Indian Partnership Act, 1932



4. Partners (Section 5)

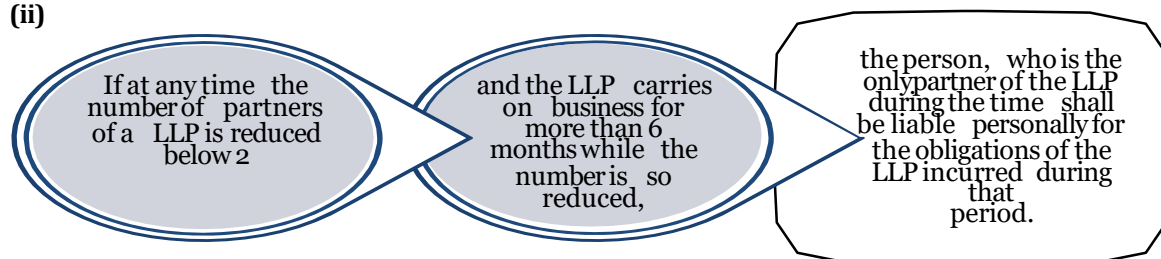


5. Minimum number of partners (Section 6)

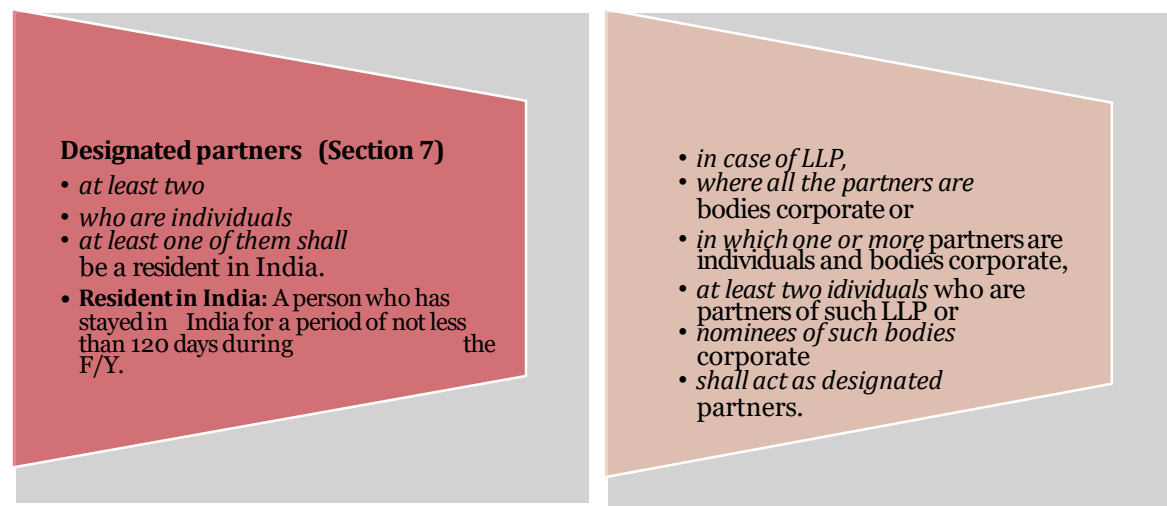
(i)



(ii)



6. Designated partners (Section 7)



7. Characteristic of LLP

Body Corporate	Perpetual Succession	Separate Legal Entity	Mutual Agency
LLP Agreement	Artificial Legal Person	Common Seal	Limited Liability
Management of Business	Minimum and Maximum number of Partners	Business for Profit Only	Investigation
Compromise or Arrangement	Conversion into LLP	E-Filing of Documents	Foreign LLPs

8. Advantages of LLP form

is organized and operates on the basis of an agreement

provides flexibility without imposing detailed legal and procedural requirements

easy to form

all partners enjoy limited liability

flexible capital structure

easy to dissolve



II.INCORPORATION OF LLP

1. Incorporation Document (Section 11)

Incorporation document	<p>Two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;</p> <ul style="list-style-type: none"> • The incorporation document shall be filed in such manner and with such fees, as may be prescribed with the Registrar of the State in which the registered office of the LLP is to be situated; and <p>Statement to be filed:</p> <ul style="list-style-type: none"> ➤ There shall be filed along with the incorporation document, a statement in the prescribed form, ➤ Made by either an advocate, or a Company Secretary or a Chartered Accountant or ➤ a Cost Accountant, who is engaged in the formation of the LLP and ➤ By any one who subscribed his name to the incorporation document, ➤ That all the requirements of this Act and the rules made thereunder have been complied with, ➤ In respect of incorporation and matters precedent and incidental thereto.
	<ul style="list-style-type: none"> • The incorporation document shall— • be in a form as may be prescribed; • state the name of the LLP; • state the proposed business of the LLP; • state the address of the registered office of the LLP; • state the name and address of each of the persons who are to be partners of the LLP on incorporation; • state the name and address of the persons who are to be designated partners of the LLP on incorporation; • contain such other information concerning the proposed LLP as may be prescribed.
	<ul style="list-style-type: none"> • If a person makes a statement as discussed above which he— • knows to be false; or • does not believe to be true, shall be punishable ➤ with imprisonment for a term which may extend to 2 years and ➤ with fine which shall not be less than `10,000 but which may extend to `5 Lakhs.

2. Incorporation by registration (Section 12)

- The Registrar shall retain the incorporation document and shall, within a period of 14 days—
- register the incorporation document; and
- give a certificate that the LLP is incorporated by the name specified therein.

The certificate issued shall be signed by the Registrar and authenticated by his official seal.

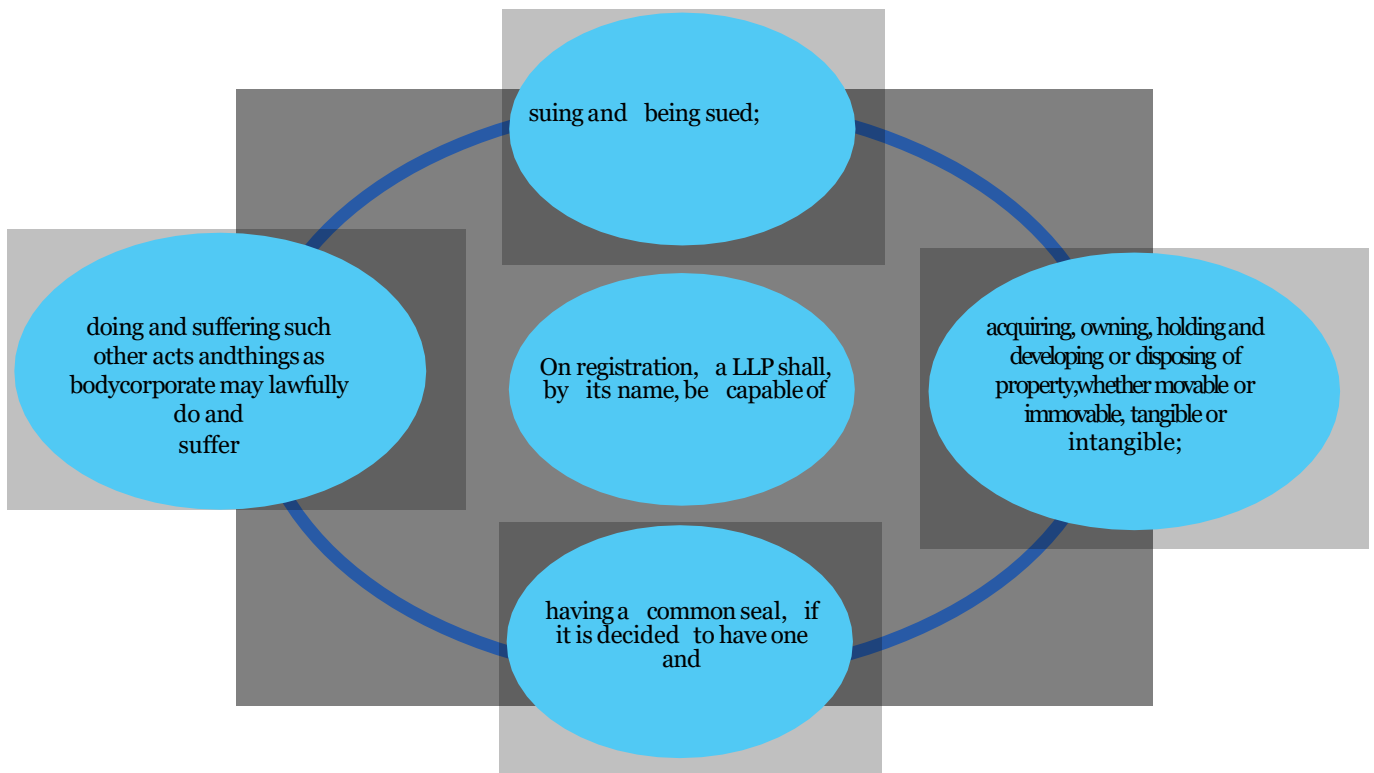
The certificate shall be conclusive evidence that the LLP is incorporated by the name specified therein



3. Registered office of LLP and change therein (Section 13)

Registered office	Manner of sending	Change in Default	Registered office
<ul style="list-style-type: none"> All communications and notices may be addressed and shall be received. 	<ul style="list-style-type: none"> by post under a certificate of posting or by registered post or by any other manner 	<ul style="list-style-type: none"> change the place of its registered office and file the notice of such change with the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing. 	<ul style="list-style-type: none"> LLP and its every partner shall be liable to a penalty of `500 for each day during which the default continues, subject to a maximum of `50,000

4. Effect of registration (Section 14):



5. Name (Section 15)

Every limited liability partnership shall have either the words as the last words of its name.

“limited liability partnership”
or

the acronym “LLP”

No LLP shall be registered by a name which, in the opinion of the Central Government is—

undesirable; or identical or too nearly resembles to that of any other limited liability partnership or a company or a registered trade mark of any other person under the Trade Marks Act, 1999.

6. Reservation of name (Section 16)

A person may apply in such form and manner and accompanied by such fee as may be prescribed to the Registrar for the reservation of a name set out in the application as—

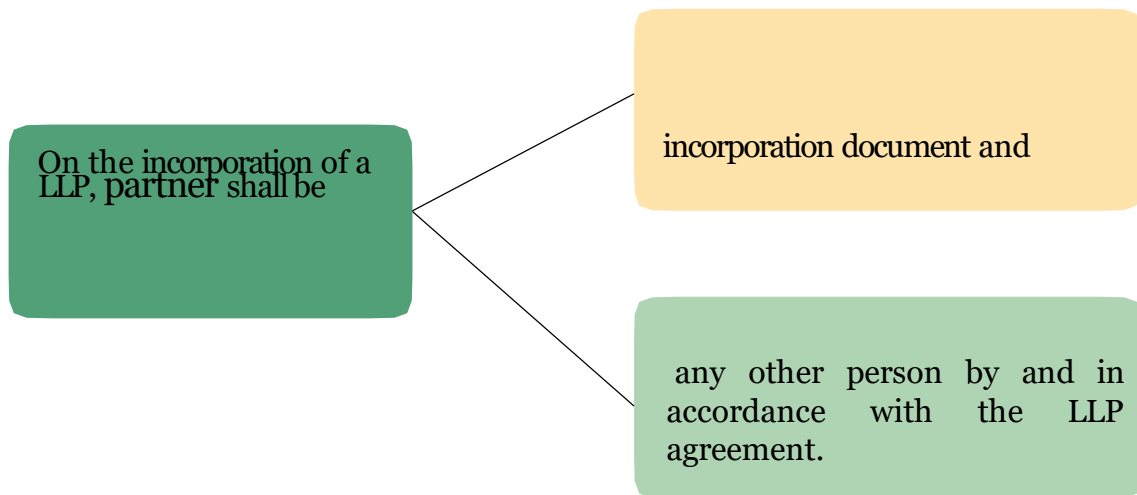
- name of a proposed LLP; or
- name to which a LLP proposes to change its name.

Registrar may, if he is satisfied, subject to the rules prescribed by the Central Government in the matter

- that the name to be reserved is not one which may be rejected on any ground
- reserve the name for a period of 3 months from the date of intimation by the Registrar.

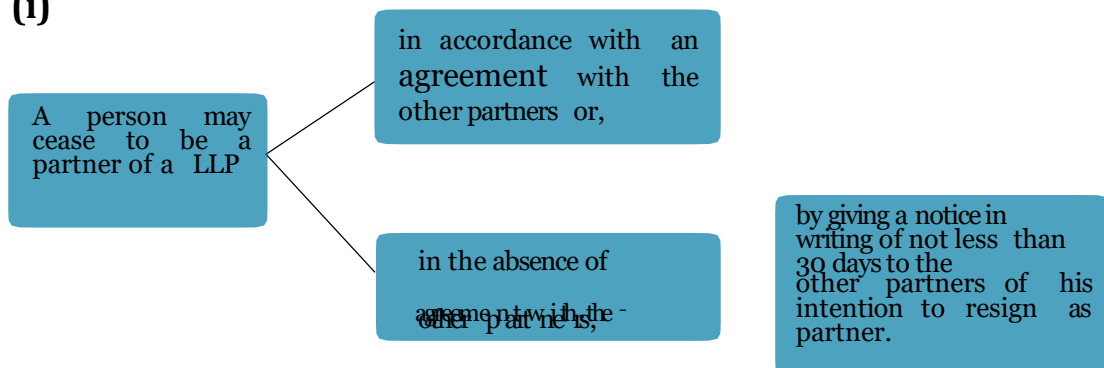
III. PARTNERS AND THEIR RELATIONS

1. Eligibility to be partners (Section 22)

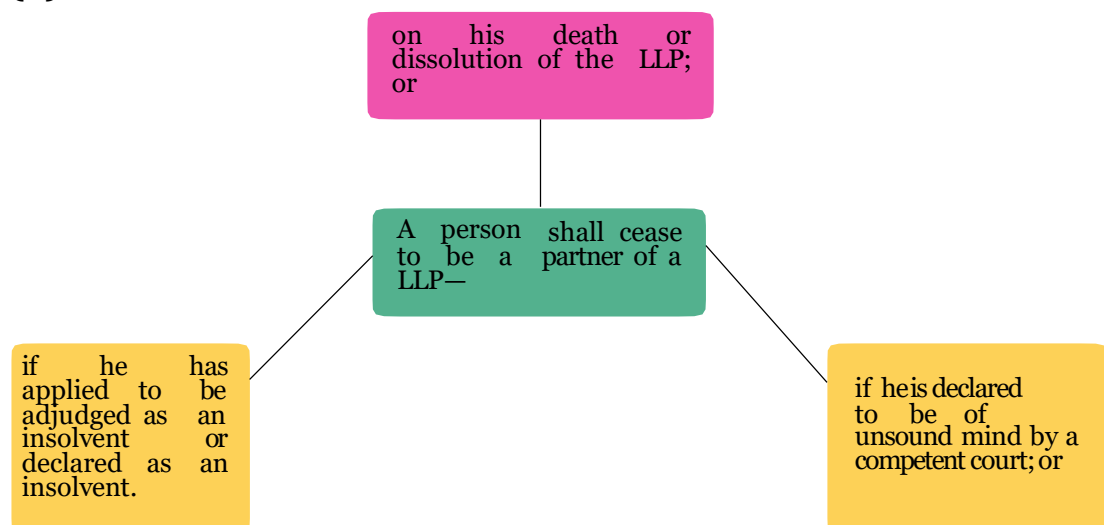


2. Cessation of partnership interest (Section 24)

(i)



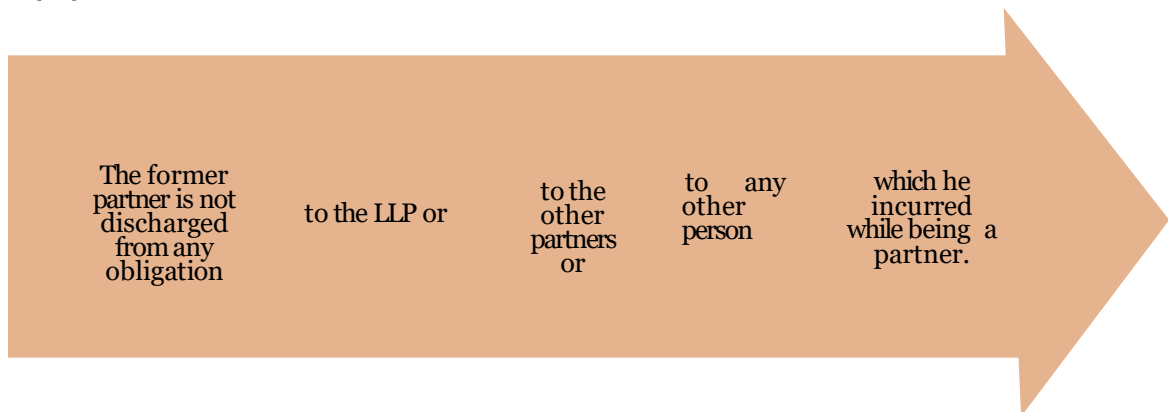
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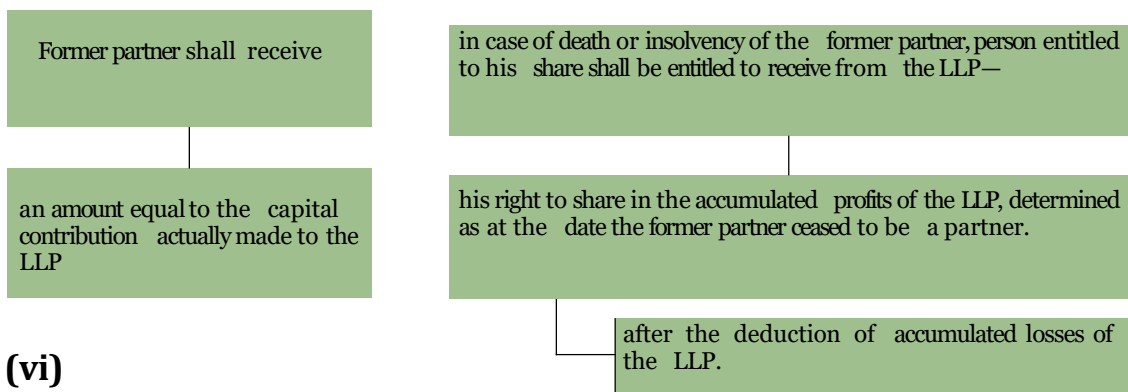
(iii)

Former partner is to be regarded as still being a partner of the LLP unless—	the person has notice that the former partner has ceased to be a partner of the LLP; or
	notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar.

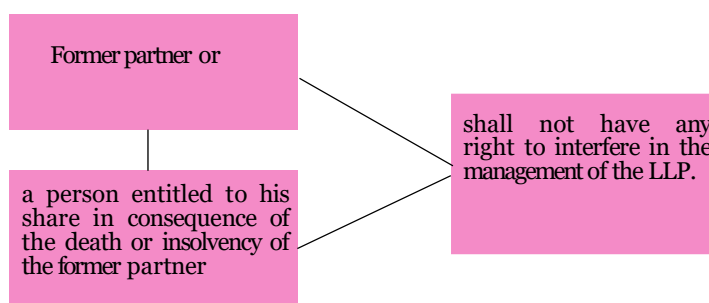
(iv)



(v)

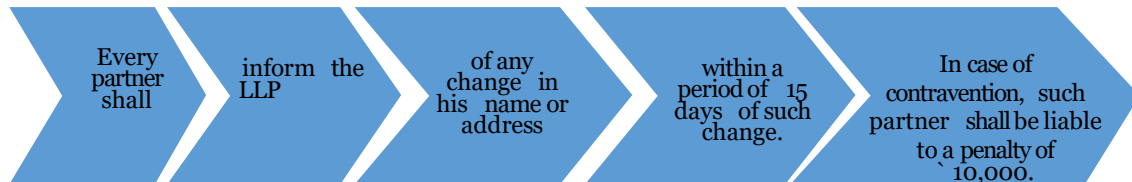


(vi)

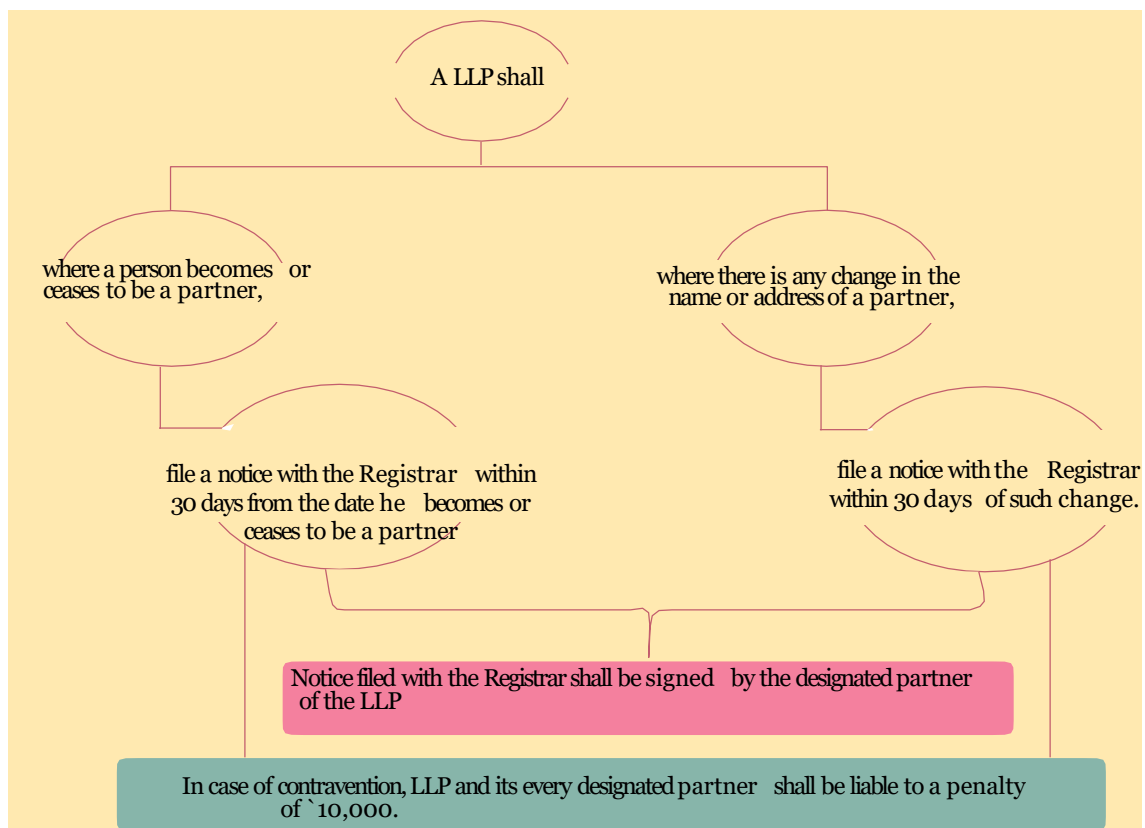


3. Registration of changes in partners (Section 25):

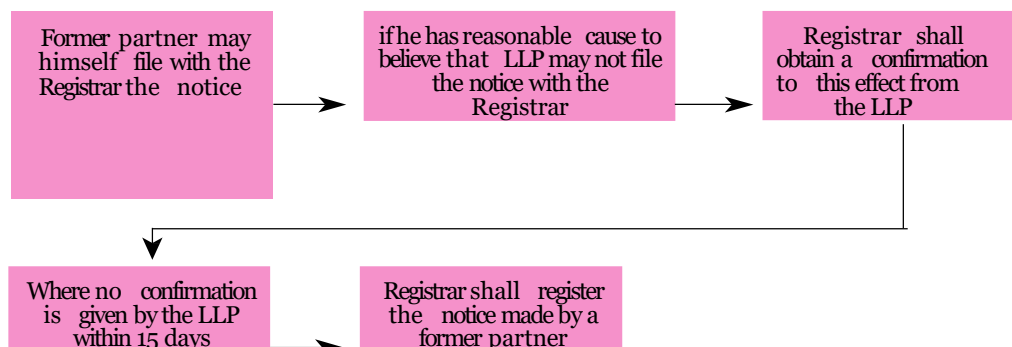
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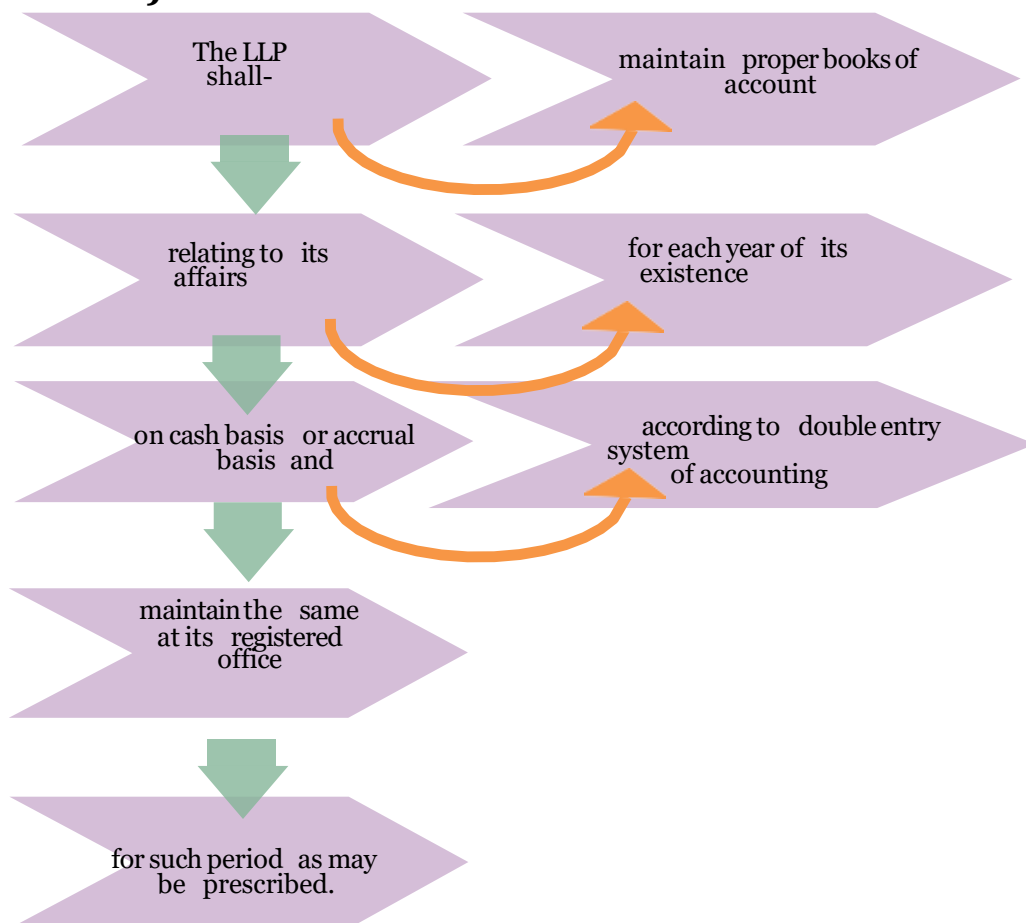
(iii)



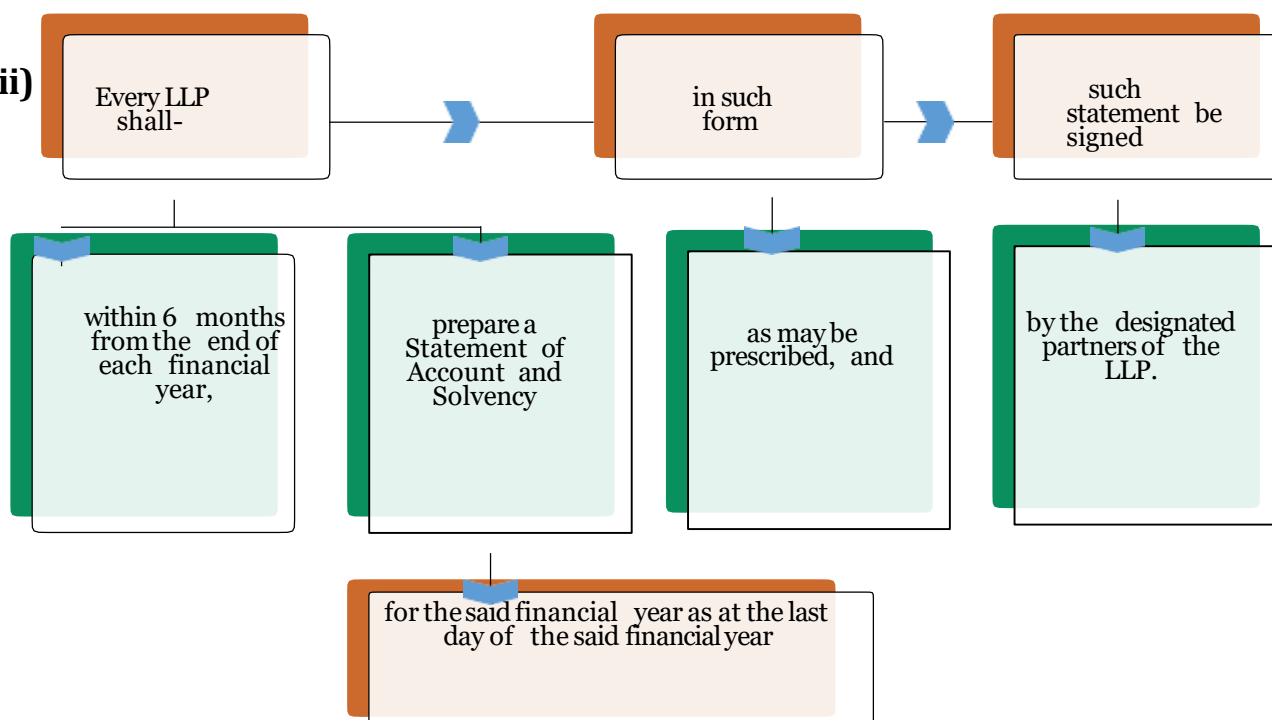
IV. FINANCIAL DISCLOSURES

1. Maintenance of books of account, other records and audit, etc. (Section 34)

(i)



(ii)



(iii)

Every LLP shall file

- within the prescribed time,
- the Statement of Account and Solvency as prepared
- with the Registrar
- every year
- in such form and manner
- and accompanied by such fees as may be prescribed

The accounts of LLP shall be audited in accordance with prescribed rules.

The CG may, exempt any class /s of LLP from the requirements by notification in the Official Gazette.

(iv)

Any LLP which fails to comply the provisions related to the filing of Statement of Account and Solvency-

Such LLP and its designated partners-

- shall be liable to a penalty of ₹100 for each day during which such failure continues,
- subject to a maximum of ₹1 lakh for the LLP and
- ₹50,000 for every designated partner.

(v)

Any LLP which fails to comply with the provisions of sub-section (1), sub-section (2) and sub-section (4),

such LLP shall be punishable with fine -not less than ₹25,000, but may extend to ₹5 lakh,

its every designated partner shall be punishable with fine -not less than ₹10,000, but may extend to ₹1 lakh.

2. Annual return (Section 35):

Every LLP shall file an annual return

duly authenticated with the Registrar

within 60 days of closure of its financial year.

V. WINDING UP AND DISSOLUTION

(i)

The winding up of an LLP may be either

voluntary

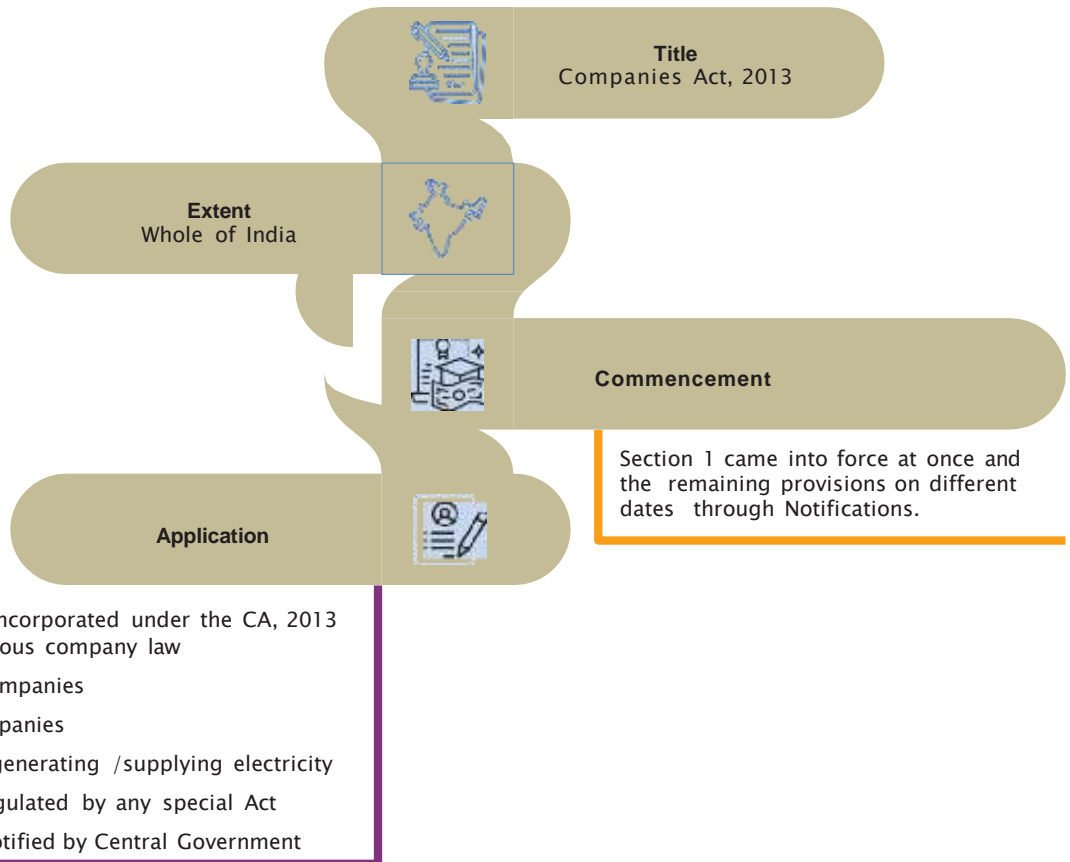
or by the Tribunal

(ii)

Circumstances in which LLP may be wound up by Tribunal

- *if the LLP decides;*
- *if, for a period of more than six months, the number of partners of the LLP is reduced below two;*
- *if the LLP is unable to pay its debts;*
- *if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;*
- *if the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any 5 consecutive financial years; or*
- *if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.*

Companies Act, 2013



What is a Company: Company means a company incorporated under this Act or under any previous Company Law.

Major Definitions

1

Associate Company

In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

"Significant influence" means control of at least 20% of total voting power, or control of or participation in business decisions under an agreement.

"Joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.



2

Company Limited by Guarantee

- Liability of its members is limited by the Memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up
- Members cannot be called upon to contribute beyond that stipulated sum



3

Company Limited by shares

- Liability of the members of a company is limited by its Memorandum of Association (MOA) to the amount (if any) unpaid on the shares held by them



4

Government company (GC)

At least 51% of the paid up share capital is held by -



The Central Government (CG),
or



Any State Govt./s (SG),
or



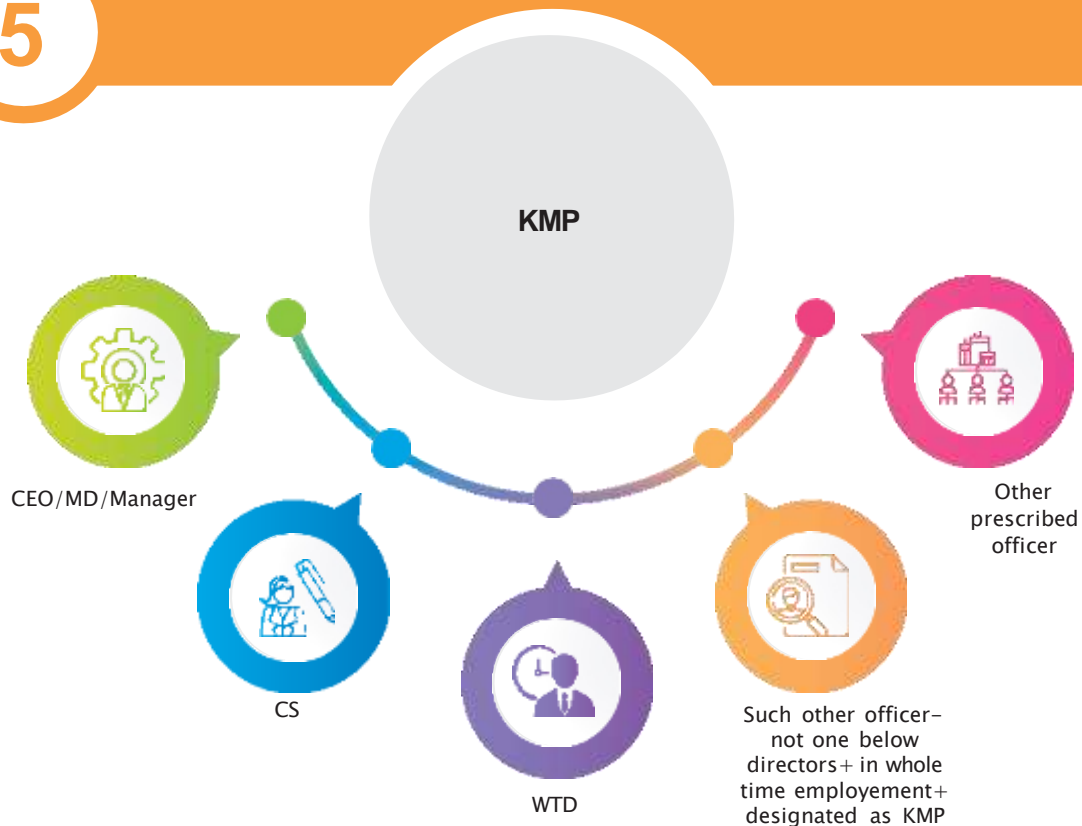
Partly by CG and partly by one or more
SG



Includes a company which is a subsidiary company of such Government company.

Here, the "paid up share capital" shall be construed as "total voting power", where shares with differential voting rights have been issued.

5



6

Listed company

Which has any of its securities listed on any recognised stock exchange

Here, such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with SEBI, shall not be considered as listed companies.



7

Holding company: Holding company, in relation to one or more other companies, means a company of which such companies are subsidiary companies.



8

Subsidiary company: means a company in which the holding company—

- controls the composition of the Board of Directors; or
- exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

Explanation

- a company shall be deemed to be a subsidiary company of the holding company even if the control is of another subsidiary company of the holding company.
- the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors.



9

One Person company (OPC): means a company which has only one person as a member.



1

Private Company

- No minimum paid-up capital requirement
- Minimum number of members – 2 (except if private company is an OPC, where it will be 1)
- Maximum number of members – 200, excluding present employee-cum- members and erstwhile employee-cum- members
- Right to transfer shares restricted
- Prohibition on invitation to subscribe to securities of the company
- Small company is a private company
- OPC can be formed only as a private company



1

Public Company

- Is not a private company (Articles do not have the restricting clauses)
- Shares freely transferable
- No minimum paid up capital requirement
- Minimum number of members – 7
- Maximum numbers of members – No limit
- Subsidiary of a public company is deemed to be a public company



Related party, with reference to a company, means—

- (i) a **director** or his relative;
- (ii) a **key managerial personnel** or his relative;
- (iii) a **firm**, in which a director, manager or his relative is a partner;
- (iv) a **private company** in which a director or manager or his relative is a member or director;
- (v) a **public company** in which a director or manager is a director and holds along with his relatives, more than two per cent of its paid-up share capital;
- (vi) any **body corporate** whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- (vii) **any person** on whose advice, directions or instructions a director or manager is accustomed to act:
Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;
- (viii) any **body corporate** which is—
 - (A) a holding, subsidiary or an associate company of such company;
 - (B) a subsidiary of a holding company to which it is also a subsidiary; or
 - (C) an investing company or the venturer of the company;
 Note: Clause (viii) shall not apply with respect to section 188 (Related Party transactions) to a private company.
- (ix) such other person as may be prescribed.



Small Company



- A private company

- Paid-up capital – not more than ` 4 crore or such higher amount as may be prescribed which shall not be more than 10 crore rupees; and Turnover (as per P&L A/c of immediate preceding FY) – not more than ` 40 crore or such higher amount as may be prescribed which shall not be more than 100 crore rupees.

- Should not be
 - A Section 8 company
 - Holding or a Subsidiary company
 - a company or body corporate governed by any special Act

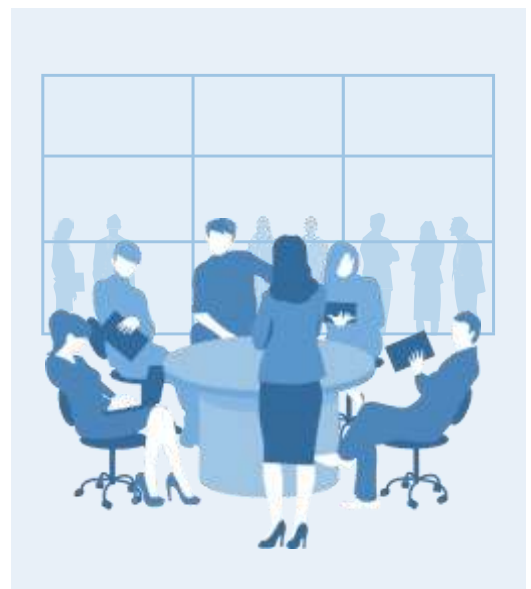
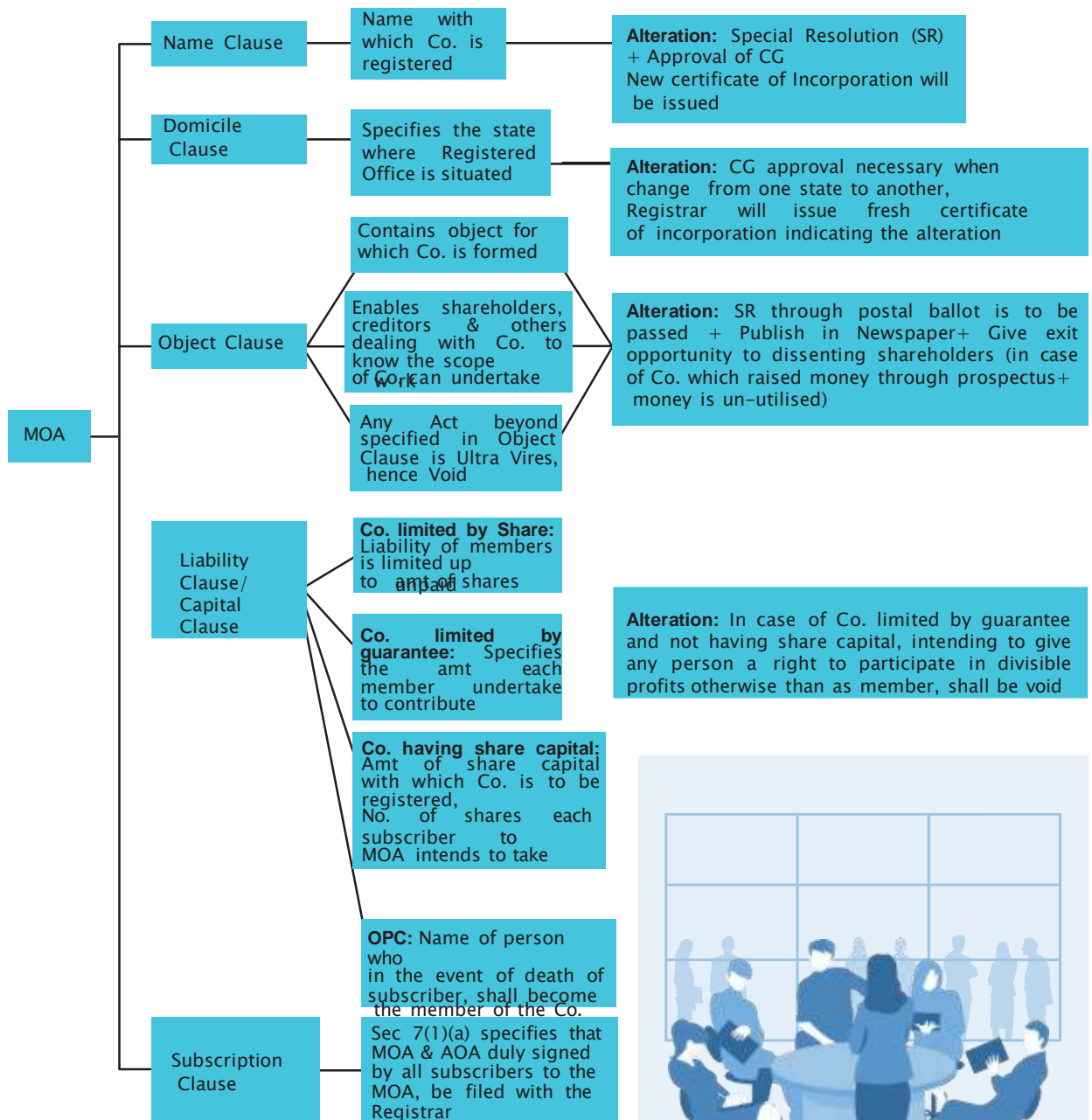
Total voting power, in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes.



Chapter 2

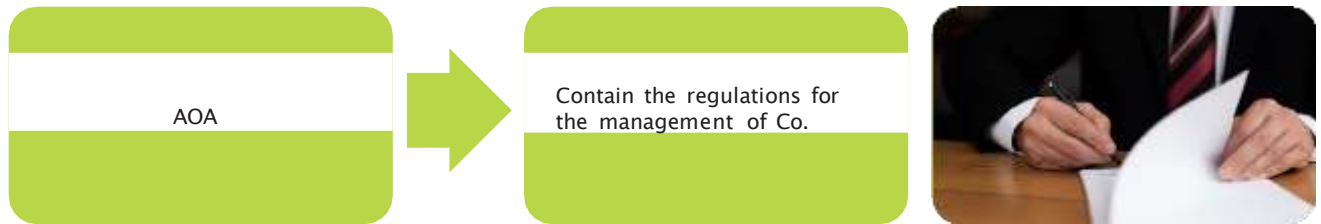
Incorporation of Company and Matters Incidental thereto

I. Memorandum of Association (MOA)



Incorporation of Company and Matters Incidental thereto

II. Articles of Association (AOA)

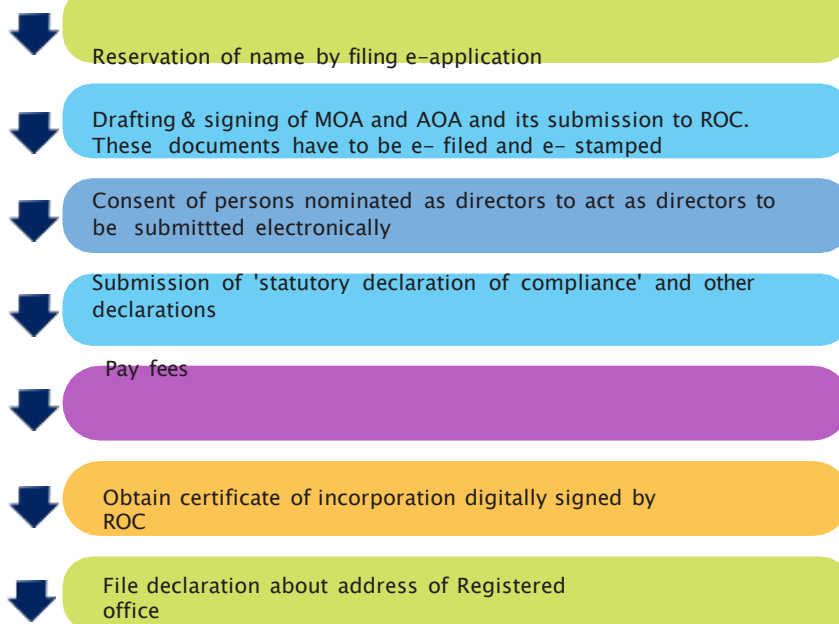


Alteration Of AOA



- (i) Alteration is effected by SR
- (ii) Alteration of AOA may include the Conversion of Pvt Co. to Public Co. and Vice versa. However, when Public Co. is converted into Pvt. Co., approval of CG is necessary.
- (iii) Alteration of AOA+ Approval of CG (if any) to be filed with ROC within 15 days
- (iv) Alterations once registered will be valid as if it were originally contained in AOA

III. Steps for Incorporation of Company



Note: New requirement of submitting declaration that 'all subscribers have paid the value of shares agreed to be taken by him' and 'verification of Registered office has been filed' has been inserted vide section 10A. This requirement is needed to be complied with before the commencement of business

Incorporation of Company and Matters Incidental thereto

IV. One Person company (OPC)



- Only one person as member.
- Minimum paid up capital – no limit prescribed
- The MOA shall indicate the name of the other person (nominee), who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company
- The member of OPC may at any time change the name of nominee by giving notice to the company and the company shall intimate the same to the Registrar
- No person shall be eligible to incorporate more than one OPC
- No minor shall become member of the OPC
- Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases
- Such Company cannot carry out NBFC activities including investment in securities of any body corporate
- Here, the member can be the sole member and director

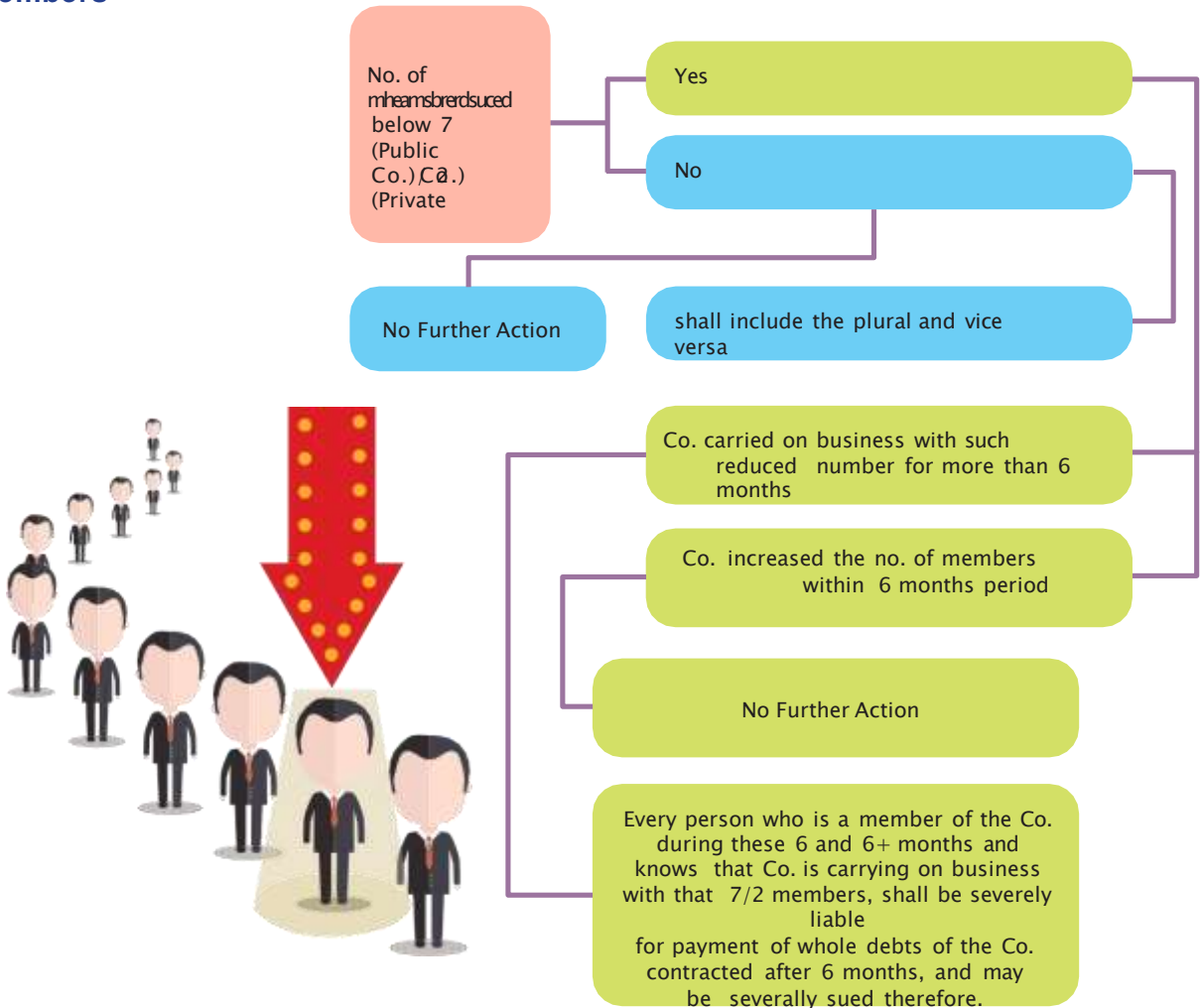
V. Formation of companies with charitable objects



- Formed for the promotion of commerce, art, science, religion, charity, protection of environment, sports, etc.
- Uses its profits for the promotion of the objective for which formed
- Does not declare dividend to members
- Operates under a special licence from Central Government
- Need not use the word Ltd./ Pvt. Ltd. in its name and adopt a more suitable name such as club, chambers of commerce etc.
- Enjoy same privileges and obligations as of a limited company
- Licence revoked if conditions contravened
- Can call its general meeting by giving a clear 14 days notice instead of 21 days
- Requirement of minimum number of directors, independent directors etc. does not apply

Incorporation of Company and Matters Incidental thereto

VI. Company to Maintain Minimum Number of Members



VII. Commencement of Business Etc



Co. incorporated after the commencement of the Companies (Amendment) Act, 2019 + having a share capital shall not commence any business or exercise any borrowing powers unless—

1. Declaration is signed by director
 - Within 180 days of the date of incorporation with the Registrar
 - that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration
2. The Co. has filed with the Registrar a verification of its registered office
3. If no declaration has been filed with the Registrar within a period of said 180 days and the Registrar has reasonable cause to believe that the Co. is not carrying on any business or operations,
 - Registrar may, initiate action for the removal of the name of Co. from the register of companies under Chapter XVIII.

Incorporation of Company and Matters Incidental thereto

VIII. Registered office (RO) of Company

1. Need for RO

- It is a physical office, capable of receiving & acknowledging all communication and notices.
- Domicile & nationality of Co. is determined by the place of RO

Time Limit

- A Co. within 30 days of its incorporation and at all times thereafter, must have RO

Verification of RO

- Within 30 days of incorporation furnish to ROC verification of RO

Labeling of company: Every company shall—

- Paint/ affix its name, address of RO on the outside of every office / place of business, in a conspicuous position, in legible letters, and if the characters employed are not those of the language/s in general use in that locality, then also in the characters of that language/s.
- have its name engraved in legible characters on its seal, if any;
- get its name, address of RO and the CIN along with Ph no., fax no., if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications; and
- have its name printed on hundies, promissory notes, bills of exchange and other prescribed documents

Name change by the company during the last two years

- Co. shall paint or affix or print, along with its name, the former name or names so changed during the last two years.

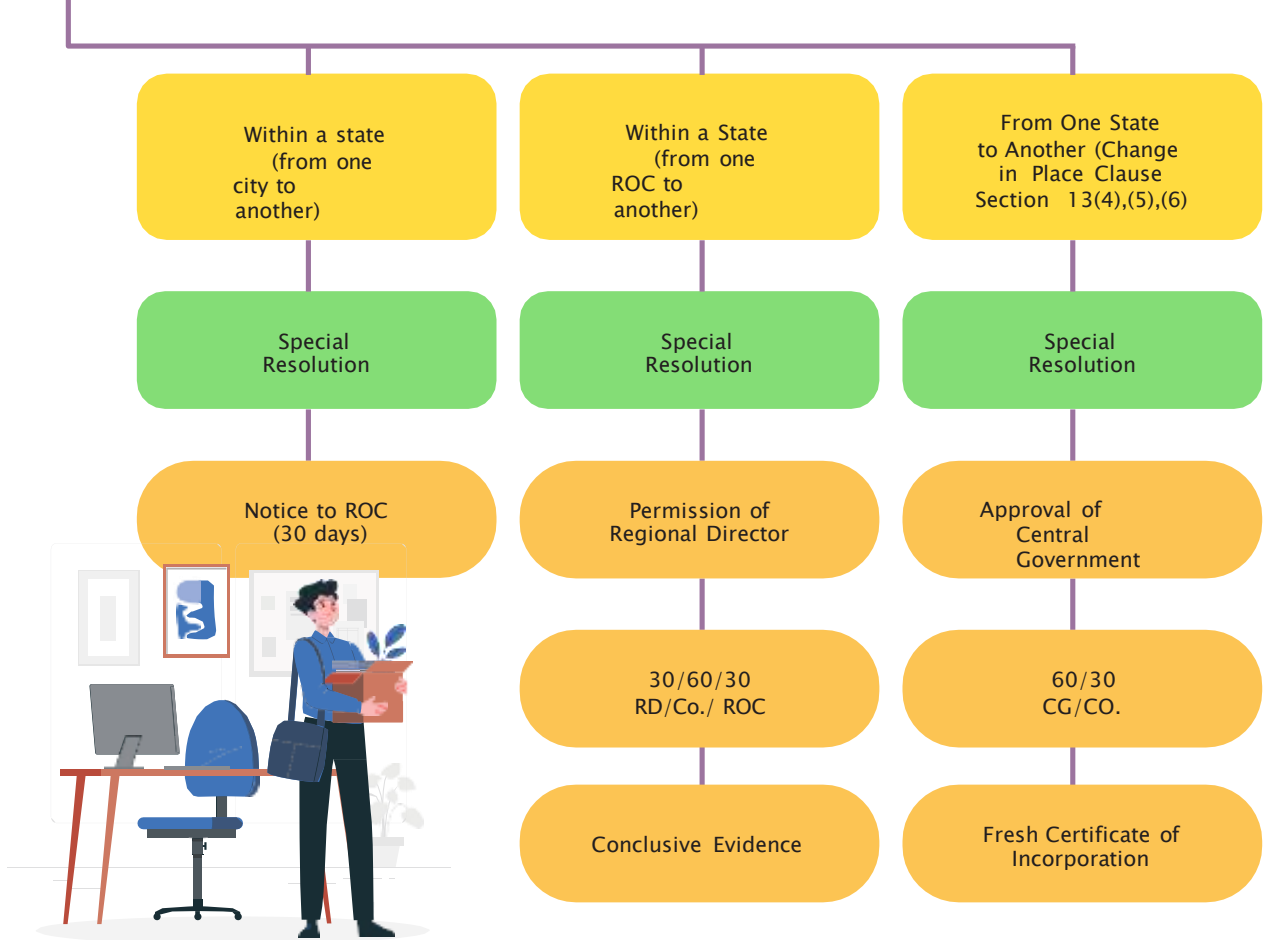
In case of OPC

- The words “One Person Company” shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

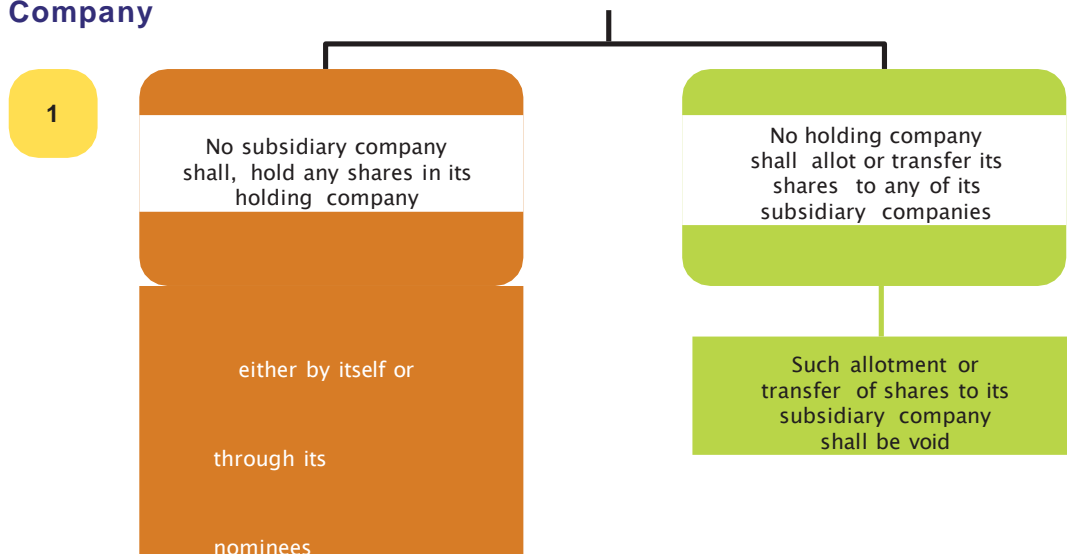


Incorporation of Company and Matters Incidental thereto

2. Change in Place of Registered office



IX. Subsidiary Company not to Hold Shares in its Holding Company



Incorporation of Company and Matters Incidental thereto

2 Exceptions to point (1)

- ➡ where the subsidiary company holds such share as the **legal representative of a deceased** member of the holding company; or
- ➡ where the subsidiary company holds such shares as a **trustee**; or
- ➡ where the subsidiary company is a shareholder even **before it became a subsidiary** company of the holding company.

X. Authentication of Documents, Proceedings and Contracts

Authentication of documents, proceedings and contracts

As per Sec 21 these may be signed by any "key managerial personnel" or an officer or employee of the company duly authorised by the Board in this behalf.

As per Sec 2(51)–Key managerial personnel, in relation to a company, means—

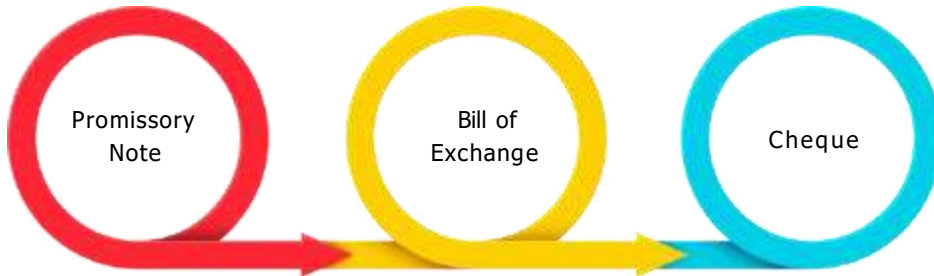
- (i) the CEO or the MD or the manager;
- (ii) the company secretary;
- (iii) the whole-time director;
- (iv) the CFO;
- (v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and
- (vi) such other officer as may be prescribed;



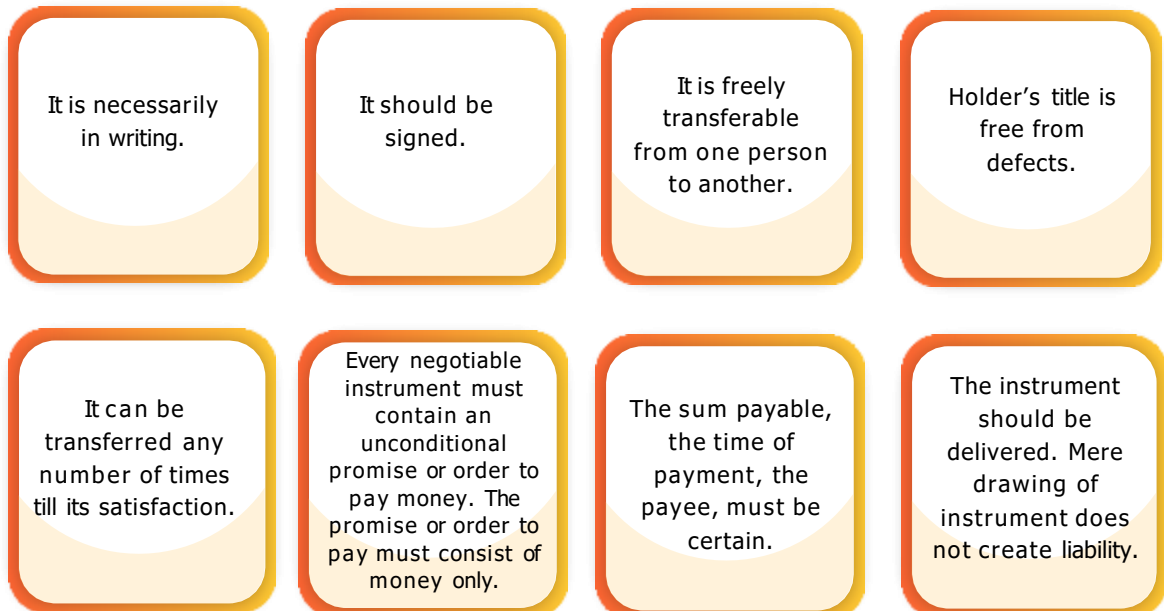
CHAPTER 7: THE NEGOTIABLE INSTRUMENTS ACT, 1881

1. NEGOTIABLE INSTRUMENTS

(i) Type of Negotiable Instruments



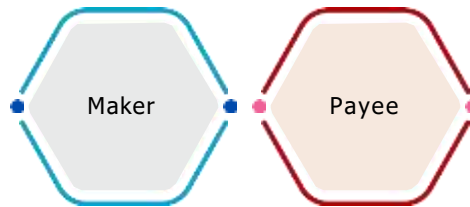
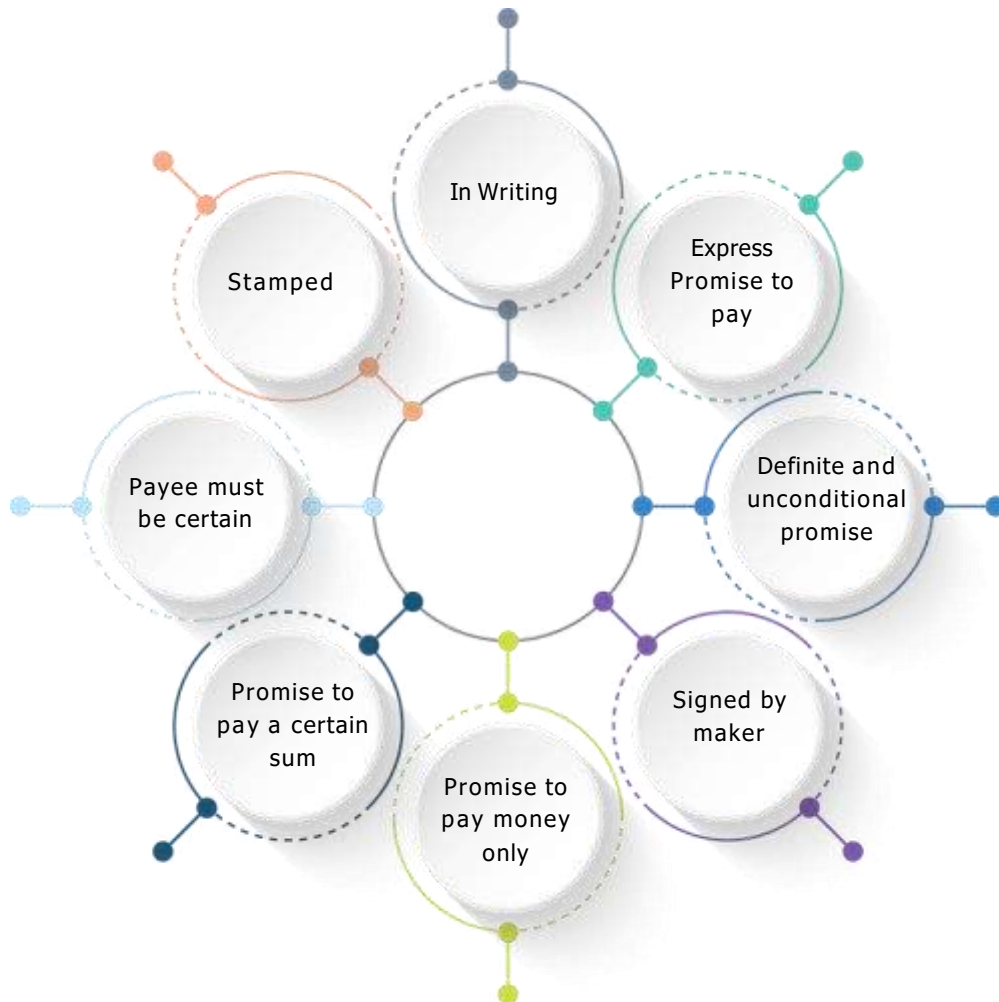
(ii) Essential Characteristics of Negotiable Instruments



2. PROMISSORY NOTE

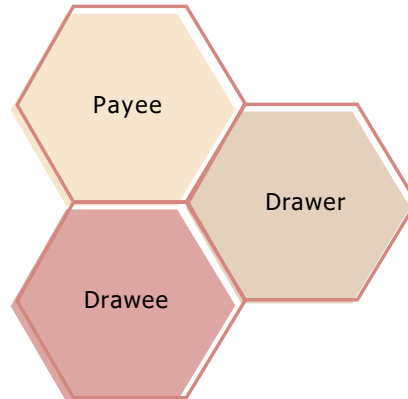
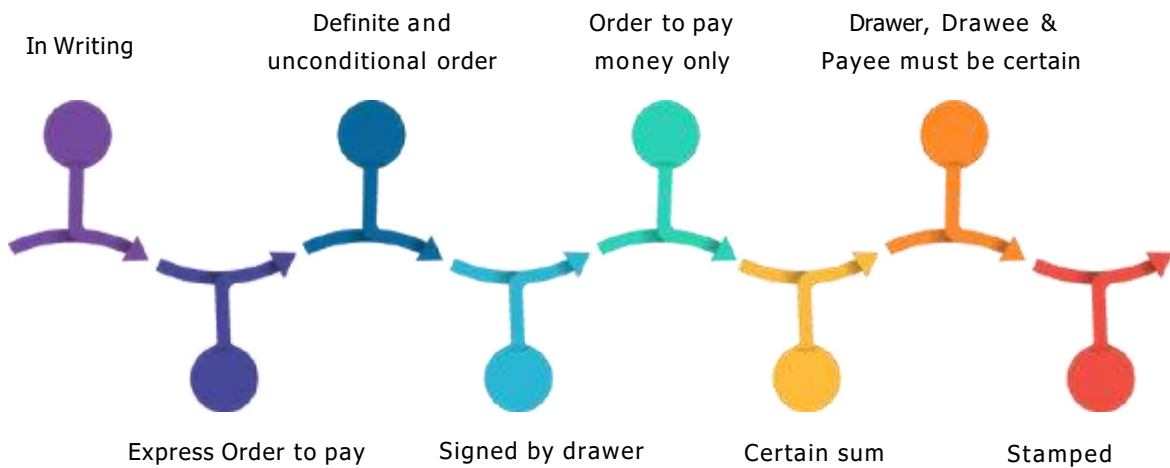
(i) Meaning of Promissory Note

- ♦ An instrument in writing (not being a bank-note or a 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.

(ii) Parties to promissory note**(iii) Essential Characteristics of a Promissory Note****3. BILLS OF EXCHANGE**

(i)
Meaning of
Bill of Exchange

- ◆ It is an instrument in writing
- ◆ containing an unconditional order
- ◆ signed by the maker directing a certain person
- ◆ to pay a certain sum of money
- ◆ only to a certain person; or the order of a certain person; or the bearer of instrument.

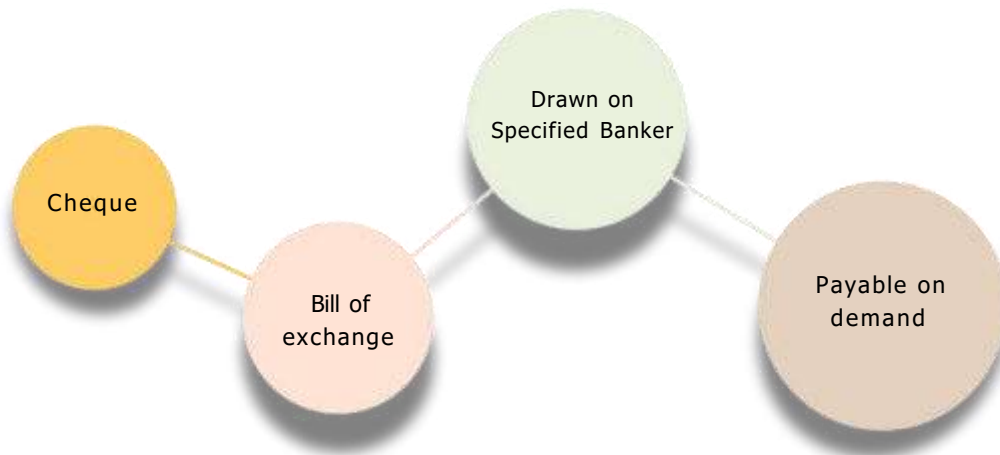
(ii) Parties to the Bill of Exchange**(iii) Essential Characteristics of Bill of Exchange****4. DIFFERENCE BETWEEN PROMISSORY NOTE AND BILL OF EXCHANGE**

S. No.	Basis	Promissory Note	Bill of Exchange
1.	Definition	"A Promissory Note" is an instrument in writing (not being a banknote or a 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.	"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 only to, or to the order of a certain person or to the bearer of the instrument.
2.	Nature of Instrument	In a promissory note, there is a promise to pay money.	In a bill of exchange, there is an order for making payment.

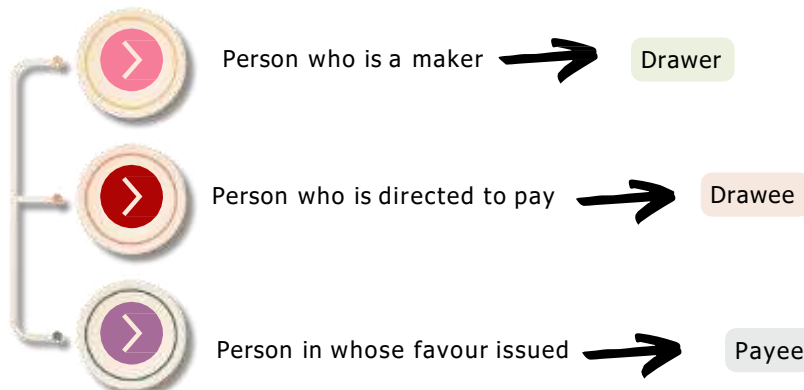
S. No.	Basis	Promissory Note	Bill of Exchange
3.	Parties	In a promissory note, there are only 2 parties namely: i. the maker and ii. the payee	In a bill of exchange, there are 3 parties which are as under: i. the drawer ii. the drawee iii. the payee
4.	Acceptance	A promissory note does not require any acceptance, as it is signed by the person who is liable to pay.	A bills of exchange needs acceptance from the drawee.
5.	Payable to bearer	A promissory note cannot be made payable to bearer.	On the other hand, a bill of exchange can be drawn payable to bearer. However, it cannot be payable to bearer on demand.

5. CHEQUE

(i)



(ii)



(iii) Essential Characteristics of a cheque

All the essentials
of a BOE

Drawn on a
specified banker.

Payable on
demand.

6. CLASSIFICATION OF NEGOTIABLE INSTRUMENTS**(i)****Bearer Instrument**

- ♦ name of the payee is blank or
- ♦ name of payee is specified with the words "or bearer" or
- ♦ the last indorsement is blank
- ♦ negotiated by mere delivery

Order Instrument

- ♦ payable to a person, or
- ♦ Payable to a person / his order, or
- ♦ Payable to order of a person, or
- ♦ the last indorsement is in full,
- ♦ negotiated by indorsement and delivery

(ii)

**Place where Instrument is
drawn and made payable**

P/N, BOE, C drawn/made in India

**Residence of Person on
whom Instrument is drawn**

+ Payable in India OR
+ drawn upon a person resident in India.

Nature of Instrument

are Inland Instruments

(iii)

**Place where bill is
drawn**

P/N, BOE, C drawn/made outside India

**Residence of Person on
whom drawn and place
where made payable**

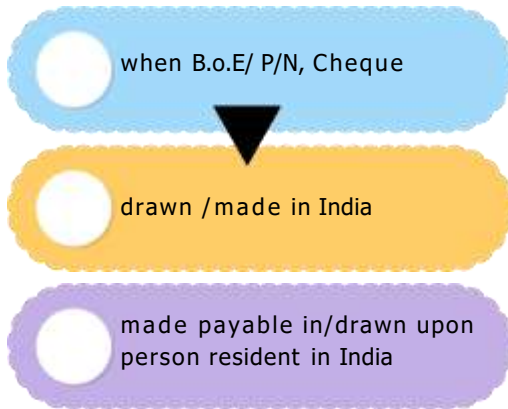
- ♦ on a person resident in or outside India + made payable in India
- ♦ on a person residing outside India + payable outside India.
- ♦ on a person residing in India + payable outside India

Nature of Instrument

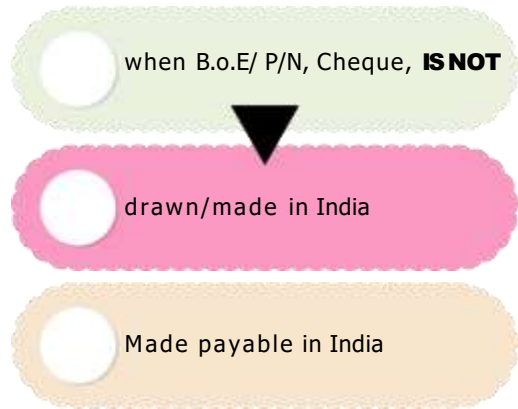
are foreign bills

(iv)

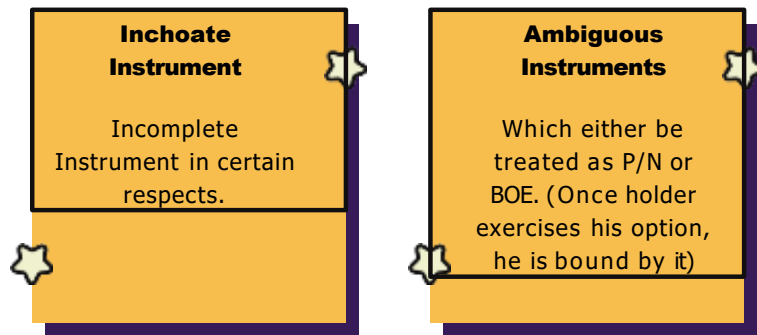
Inland Instrument



Foreign instrument

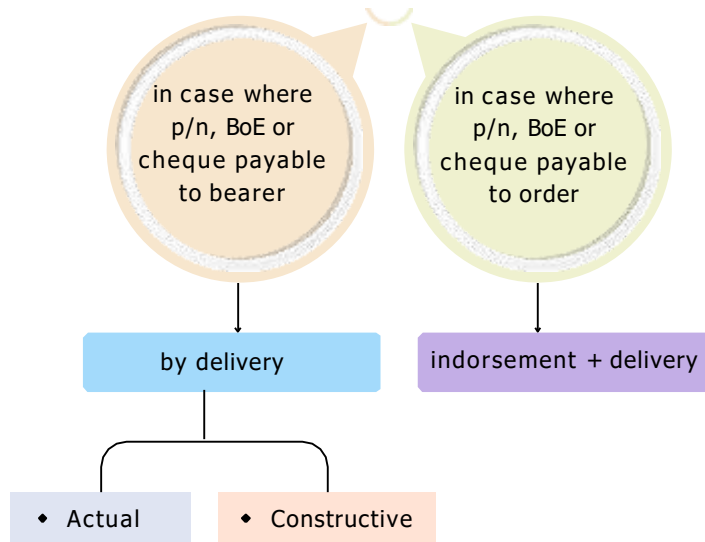


(v) Inchoate and Ambiguous Instruments



7. MODES OF NEGOTIATION

Modes of negotiation

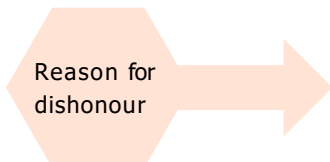


8. DELIVERY WHEN EFFECTIVE BETWEEN THE PARTIES

Negotiation of instruments between the parties	How delivery is to be made
As between parties standing in immediate relation	Delivery to be effectual must be made by the party making, accepting, or endorsing the instrument, or by a person authorized by him in that behalf.
As between such parties and any holder of the instrument other than a holder in due course	It may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

9. DISHONOUR OF CHEQUES FOR INSUFFICIENCY OF FUNDS IN THE ACCOUNTS [SECTION 138 TO 142]

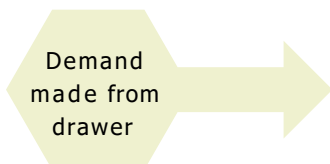
Cheque was issued to discharge a legally enforceable debt



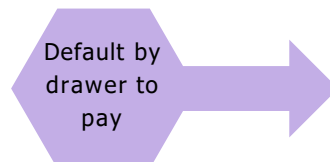
insufficiency of funds



Within 3 months



Within 30 days of dishonour



within 15 days of demand made

10. RULES REGARDING PRESENTMENT FOR PAYMENT (P/N, BOE, CH)

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

Note: Delay in presentment for acceptance or payment is excused if the delay is caused by circumstances beyond the control of the holder

11. WHEN PRESENTMENT UNNECESSARY (NI IS DISHONoured ON DUE DATE)

Maker, drawee or acceptor prevents the presentment,

Payable at business place & that's closed on business day during usual business hours,

Payable at specified place & liable party doesn't attend place

Not payable at specified place & liable party not found after due search,

Liabe party engaged to pay notwithstanding non-presentment,

Liabe party makes part payment,

Liabe party waives off his right to take advantage.

If drawer could not suffer damage from want of such presentment.

12. RULES AS TO COMPENSATION (SEC.117)



In case of dishonour of NI, holder can claim:

- ♦ Amount due on NI
- ♦ Expenses incurred in presenting, noting & protesting.
- ♦ Interest 18% p.a. from due date of payment to date of realisation.