

For CA FOUNDATION

PAPER 2

BUSINESS LAWS

Edition – 4

**TODD REVISION BOOK
(LAST DAY REVISION)**

CA CS Amit Tated
FCA, CS, DISA



For C.A. Foundation

Business Laws

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Preface

It gives me immense pleasure to present the Fourth edition of Business Laws. This edition has updated syllabus which is applicable from Sept, 2026, Jan 2027 Exams and onwards.

This book has everything which student may require to understand, remember and reproduce Law. The book has been developed keeping in mind the technicality of the subject to bring it at a student's grasping level.

This book will suffice to go with institute language as well as understanding the concept.

In recent exam papers we saw that the questions asked are more practical. Thus, students need to understand the concepts and logical reasoning of the Chapter. Only mugging-up shall not suffice to score in this subject.

For Class Work students can refer Amit Tated YouTube Channel.

(CA Amit Tated, CA Amit Tated Classes & Amit Tated Motivates)



Every effort has been made to avoid any errors and omissions in this book. Despite all the efforts we believe some errors might have crept in. The students are welcome to point out any errors / suggestions.

Best wishes,

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May, 2026

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CHAPTER - 1

INDIAN REGULATORY FRAMEWORK

1. INTRODUCTION

Awareness of law is essential to become a full-fledged Chartered Accountant. Chartered Accountant is the first level of contact on many legal matters. We should possess knowledge of law so that we can advise our management and clients on legal matters at a basic or threshold level.

The purpose of a regulatory framework is to provide a set of uniform rules and regulations that will govern the conduct of people interacting with each other in personal as well as business relationships.

2. WHAT IS LAW?

Set of obligations and duties imposed by the government for securing welfare and providing justice to society.

3. SOURCES OF LAW

The main sources of law in India are the Constitution, the statutes or laws made by Parliament & State Assemblies, Precedents Judicial Decisions established Customs & Usages.

4. THE PROCESS OF MAKING A LAW

Law is proposed in parliament it is called a Bill. After discussion and debate, the law is passed in Lok Sabha. Thereafter, it has to be passed in Rajya Sabha. It then has to obtain the assent of the President. Finally, the law will be notified by the Government. Once it is notified and effective, it is called an Act of Parliament.

Types of laws in the Indian Legal System

1. Criminal Law

2. Civil Law

3. Common Law

4. Principles of Natural Justice

5. ENFORCING THE LAW

This is the job of the executive. Depending on whether a law is a Central law or a State law the Central or State Government will be the enforcing authority. For this purpose government functions are distributed to various ministries.

(a) Ministries

1. *The Ministry of Finance*
2. *Ministry of Corporate Affairs (MCA)*
3. *Ministry of Home Affairs (Grha Mantralaya)*
4. *Ministry of Law and Justice*

(b) Regulatory bodies

1. *The Securities and Exchange Board of India (SEBI)*
2. *Reserve Bank of India (RBI)*
3. *Insolvency and Bankruptcy Board of India (IBBI)-*

6. STRUCTURE OF THE INDIAN JUDICIAL SYSTEM

The functions of judiciary system of India are:

- ♦ *Regulation of the interpretation of the Acts and Codes,*
- ♦ *Dispute Resolution,*
- ♦ *Promotion of fairness among the citizens of the land.*

The hierarchy of courts,

- (i) *Supreme Court*
- (ii) *High Court*
- (iii) *District Court*
- (iv) *Metropolitan Courts*

CHAPTER - 2

UNIT - 1 NATURE OF CONTRACTS

1.1 WHAT IS A CONTRACT?

"an agreement enforceable by law".

(i) Agreement

Agreement = Offer/Proposal + Acceptance + Consideration

(ii) Enforceability by law

Contract = Agreement + Enforceability by law

Difference between Agreement and Contract

<i>Basis</i>	<i>Agreement</i>	<i>Contract</i>
<i>Meaning</i>	<i>(Promise + Consideration)</i>	<i>(Agreement + Legal enforceability)</i>
<i>Scope</i>	<i>legal and social agreement.</i>	<i>only legally enforceable agreement.</i>
<i>Legal obligation</i>	<i>Does not always grant rights to the parties</i>	<i>Always grants certain rights to every party.</i>
<i>Nature</i>	<i>All agreement are not contracts.</i>	<i>All contracts are agreements.</i>

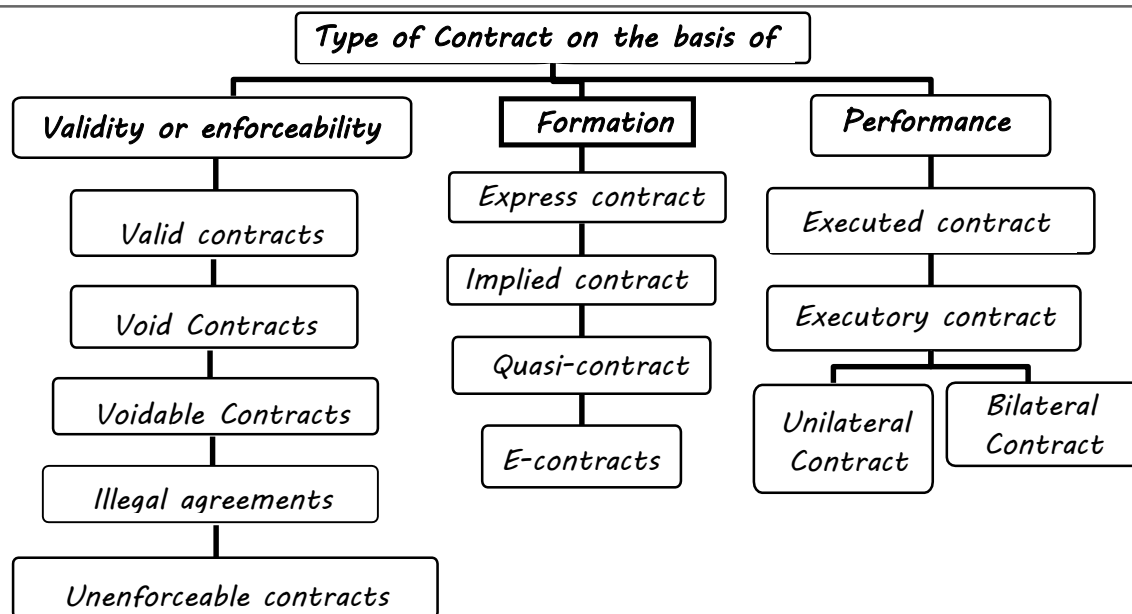
1.2 ESSENTIALS OF A VALID CONTRACT

	<i>As given by Section 10 of Indian Contract Act, 1872</i>		<i>Not given by Section 10 but are also considered essential</i>
1	<i>Agreement</i>	1	<i>Two parties</i>
2	<i>Free consent</i>	2	<i>Intention to create legal relationship</i>
3	<i>Competency of the parties</i>	3	<i>Fulfilments of legal formalities</i>
4	<i>Lawful consideration</i>	4	<i>Certainty of meaning</i>
5	<i>Legal object</i>	5	<i>Possibility of performance</i>
6	<i>Not expressly declared to be void [as per Section 24 to 30 and 56]</i>	6	<i>-</i>

In terms of Section 10 of the Act, "all agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void".

1.3 TYPES OF CONTRACTS

Now let us discuss various types of contracts.



Distinction between a Void Contract and a Voidable Contract

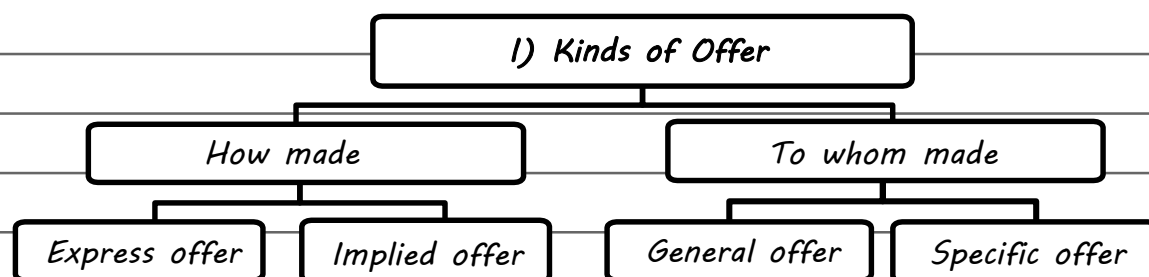
S. No.	Basis	Void Contract	Voidable Contract
1	Meaning	A Contract ceases to be enforceable by law becomes void	An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others
2	Enforceability	Cannot be enforced at all.	It is enforceable only at the option of aggrieved party
3	Cause	Change in law or change in circumstances beyond the contemplation of parties.	If the consent of a party was not free.

4	Performance of contract	Cannot be performed	If the aggrieved party does not, within reasonable time, exercise his right to avoid the contract, any party can sue the other for claiming the performance.
5	Rights	Does not grant any legal remedy to any party.	Within a reasonable time. If so rescinded, it becomes a void contract. If it is not rescinded it becomes a valid contract.

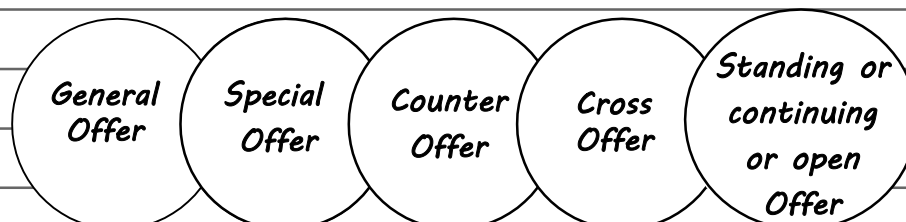
Basis of difference	Void agreement	Illegal agreement
Scope	Not necessarily illegal.	Is always void.
Nature	Not forbidden under law.	Forbidden under law.
Punishment	Not liable for any punishment	Liable for punishment.
Collateral Agreement	May also be void, valid also	Always void

1.4 PROPOSAL / OFFER [SECTION 2(a) OF THE INDIAN CONTRACT ACT, 1872]

According to Section 2(a) of the Indian Contract Act, 1872, "when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal".



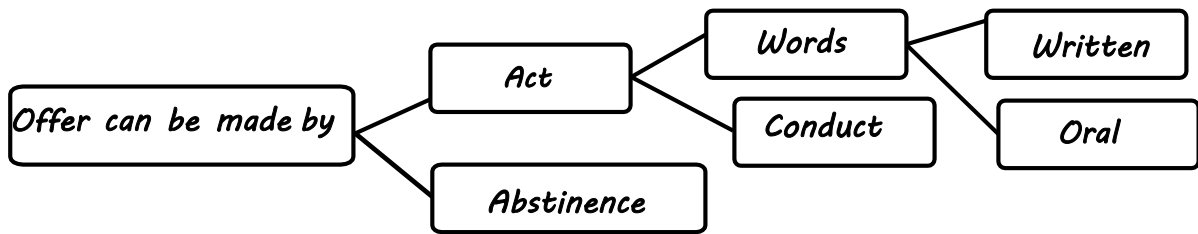
II) Classification of offer



III)	Essential of a valid offer
1.	It must be capable of creating legal relations (<i>Balfour v/s Balfour</i>)
2.	It must be certain, definite and not vague
3.	It must be communicated to the offeree
4.	It must be made with a view to obtaining the assent of the other party
5.	It may be conditional
6.	Offer should not contain a term the non-compliance of which would amount to acceptance
7.	The offer may be either specific or general
8.	The offer may be express or implied
9.	Offer is Different from a mere statement of intention, an invitation to offer, a mere communication of information, a prospectus and Advertisement.
(i)	A statement of intention and announcement.
(ii)	Offer must be distinguished from an answer to a question.
(iii)	A statement of price is not an offer
(iv)	An invitation to make an offer or do business
(v)	When goods are sold through auction
10.	A statement of price is not an offer

(IV)	Difference between offer and invitation to make an offer:			
	Basis	Offer	Invitation to offer	
	Meaning	Final expression of willingness by the offeror to be bound by the offer should the other party chooses to accept it.	A party without expressing his final willingness proposes certain terms on which he is willing to negotiate he does not make an offer, but only invites to make an offer.	
	Intention of the parties	To be bound by it as soon as the other accepts.	Negotiating on terms	
	Sequence	Cannot be an act precedent to invitation to offer.	Always an act precedent to offer.	

(V)



1.5 ACCEPTANCE

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

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

Relationship between offer and acceptance: According to Sir William Anson "Acceptance is to offer what a lighted match is to a train of gun powder".

Legal Rules regarding a valid acceptance

- (1) Acceptance can be given only by the person to whom offer is made (**Boulton vs. Jones**)
- (2) Acceptance must be absolute and unqualified
- (3) The acceptance must be communicated (**Brogden vs. Metropolitan Railway Co.**)
- (4) Acceptance must be in the prescribed mode
- (5) Time
- (6) Mere silence is not acceptance
- (7) Acceptance by conduct/Implied Acceptance

1.6 COMMUNICATION OF OFFER AND ACCEPTANCE

- 1) **Communication of offer:** "the communication of offer is complete when it comes to the knowledge of the person to whom it is made".
- 2) **Communication of acceptance**
 - (a) **modes of acceptance**
 - (i) Communication by act
 - (ii) Communication of acceptance by 'omission' to do something
 - (iii) Communication of acceptance by conduct
 - (b) Completion of communication of acceptance

- | | |
|-------|--|
| (i) | As against the proposer: when it is put in the course of transmission to him so as to be out of the power of the acceptor to withdraw the same; |
| (ii) | As against the acceptor: when it comes to the knowledge of the proposer. |
| (iii) | Where a proposal is accepted by a letter sent by the post; as against the proposer when the letter of acceptance is posted and as against the acceptor when the letter reaches the proposer. |
| 3) | Acceptance over telephone or telex or fax: When an offer is made of instantaneous the contract is only complete when the acceptance is received by the offeree, and the contract is made at the place where the acceptance is received. |
| 4) | Communication of special conditions: These special conditions are conveyed tacitly and the acceptance of these conditions are also conveyed by the offeree again tacitly or without him even realizing it. |

1.7 COMMUNICATION OF PERFORMANCE

- | | |
|-------|---|
| (a) | From the viewpoint of proposer: When the acceptance is put into a course of transmission, when it would be out of the power of acceptor |
| (b) | The other from the viewpoint of acceptor himself: Complete when it comes to the knowledge of the proposer. |
| (c) | At times the offeree may be required to communicate the performance (or act) by way of acceptance. Unless the offer includes a term that a mere performance will constitute acceptance. |
| (d) | clearly explained in the case of <i>Carlill Vs Carbolic & Smokeball Co.</i> |
| (i) | an offer, to be capable of acceptance, must contain a definite promise by the offeror that he would be bound provided the terms specified by him are accepted; |
| (ii) | an offer may be made either to a particular person or to the public at large, and |
| (iii) | if an offer is made in the form of a promise in return for an act, the performance of that act, even without any communication thereof, is to be treated as an acceptance of the offer. |

1-8 REVOCATION OF OFFER AND ACCEPTANCE

(a) Communication of revocation (of the proposal or its acceptance) is complete

(i) as against the person who makes it when it is put into a course of transmission to whom it is made so as to be out of the power of the person who makes it, and

(ii) as against the person to whom it is made, when it comes to his knowledge.

(b) Revocation of offer: An offer may be revoked by the offeror before its acceptance, even though he had originally agreed to hold it open for a definite period of time. So long as it is a mere offer, it can be withdrawn whenever the offeror desires.

(c) Revocation of acceptance: An acceptance may be revoked at any time before the communication of acceptance is complete as against the acceptor.

(d) Contract through post: In Indian law, can revoke his acceptance any time before the letter of acceptance reaches the offeror, if the revocation telegram arrives before or at the same time with the letter of acceptance, the revocation is absolute.

(e) Contract over Telephone:

(i) The rules are the same as for the contract made by the mutual meeting of the parties.

(ii) offeree must make it sure that his acceptance is received by the offeror, otherwise there will be no contract.

♦ **Revocation of proposal otherwise than by communication:** When a proposal is made, the proposer may not wait indefinitely for its acceptance.

Modes of revocation of offer

(i) By notice of revocation

(ii) By lapse of time

(iii) By non-fulfilment of condition precedent

(iv) By death or insanity

(v) By counter offer

(vi) By the non-acceptance of the offer according to the prescribed or usual mode

(vii) By subsequent illegality

CHAPTER - 2

UNIT - 2 CONSIDERATION

2.1 WHAT IS CONSIDERATION?

Section 2(d) defines consideration as follows:

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

- (1) *Consideration is an act- doing something*
- (2) *Consideration is abstinence- abstain from doing something.*
- (3) *Consideration must be at the desire of the promisor.*
- (4) *Consideration may move from promisee or any other person.*
- (5) *Consideration may be past, present or future*

2.2 LEGAL RULES REGARDING CONSIDERATION

- (i) *Consideration must move at the desire of the promisor: [Durga Prasad v. Baldeo]*
- (ii) *Consideration may move from promisee or any other person [Chinnayya vs. Ramayya]*
- (iii) *Executed and executory consideration*
- (iv) *Consideration may be past, present or future*
- (v) *Consideration need not be adequate*
- (vi) *Performance of what one is legally bound to perform*
- (vii) *Consideration must be real and not illusory*
- (viii) *Consideration must not be unlawful, immoral, or opposed to public policy*

2.3 SUIT BY A THIRD PARTY TO A CONTRACT

- (a) *The concept of stranger to consideration is a valid and is different from stranger to a contract.*
- (b) *Stranger to a contract cannot sue is known as a “doctrine of privity of contract”,*
- (c) *Exception: even a stranger to a contract may enforce a claim in the following cases:*
 - (1) *In the case of trust*

- | | |
|-----|--|
| (2) | In the case of a family settlement |
| (3) | In the case of certain marriage contracts/arrangements |
| (4) | In the case of assignment of a contract |
| (5) | Acknowledgement or estoppel |
| (6) | In the case of covenant running with the land |
| (7) | Contracts entered into through an agent |

2.4 VALIDITY OF AN AGREEMENT WITHOUT CONSIDERATION

The general rule is that an agreement made without consideration is void

Exceptions:-

- | | |
|----|--|
| 1. | Natural Love and Affection |
| 2. | Compensation for past voluntary services |
| 3. | Promise to pay time barred debt |
| 4. | Agency |
| 5. | Completed gift |
| 6. | Bailment |
| 7. | Charity [Kadarnath v. Gorie Mohammad] |

CHAPTER - 2

UNIT - 3 OTHER ESSENTIAL ELEMENTS OF A CONTRACT

3.1 CAPACITY TO CONTRACT

Who is competent to contract (Section 11)

(A) *Has attained the age of majority*

Law relating to Minor's agreement/Position of Minor

1. *A contract made with or by a minor is void ab-initio (Mohori Bibi vs. Dharmo Das Ghose)*
2. *No ratification after attaining majority*
3. *Minor can be a beneficiary or can take benefit out of a contract*
4. *A minor can always plead minority*
5. *Liability for necessities*

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

(i) *The contract must be for the goods reasonably necessary for his support in the station in life.*

(ii) *The minor must not have already a sufficient supply of these necessities.*

6. *Contract by guardian - how far enforceable*
7. *No specific performance*
8. *No insolvency*
9. *Partnership: A minor being incompetent to contract cannot be a partner.*
10. *Minor can be an agent*
11. *Minor cannot bind parent or guardian*
12. *Joint contract by minor and adult: The adult will be liable on the contract and not the minor.*
13. *Surety (Guarantor) for a minor: In a contract of guarantee when an adult stands surety for a minor then he (adult) is liable to third party.*
14. *Minor as Shareholder: A minor, being incompetent to contract cannot be a shareholder of the company.*
15. *Liability for torts: A minor is liable in tort unless the tort in reality is a breach of contract.*

(B) Person of sound mind

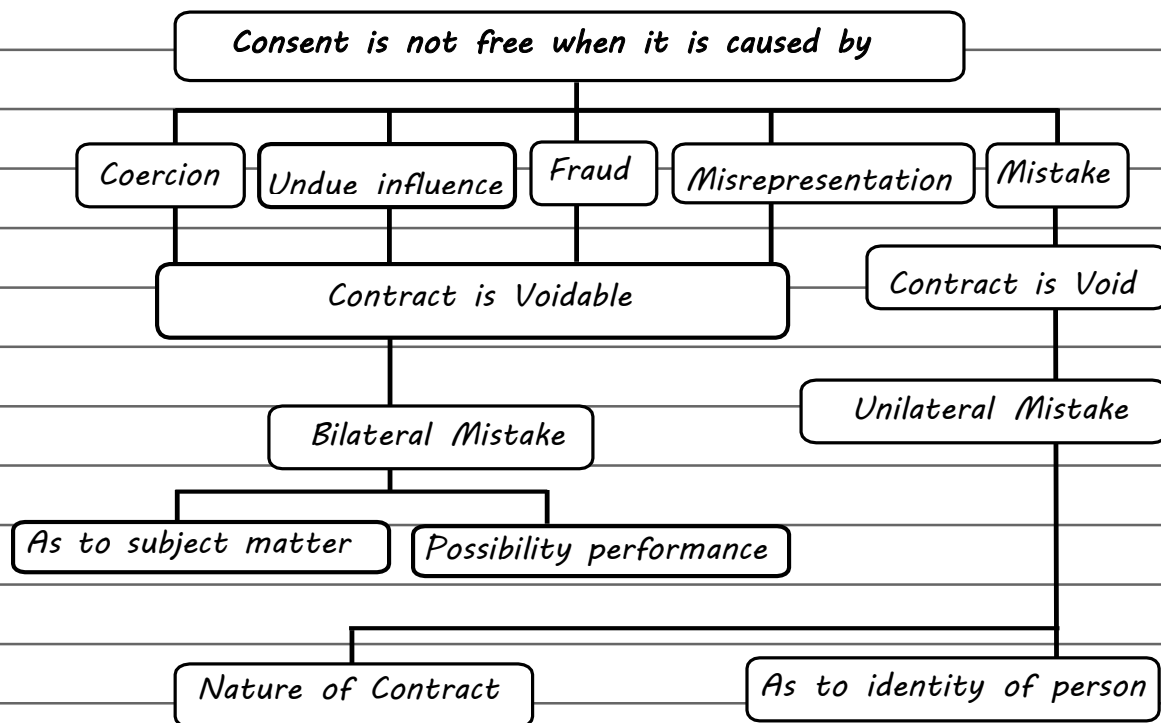
- ♦ A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.
- ♦ A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

(C) Is not disqualified from contracting by any law to which he is subject

3.2 FREE CONSENT

Definition of Consent according to (Section 13):

“Two or more persons are said to consent when they agree upon the same thing in the same sense.”



3.3 ELEMENTS VITIATING FREE CONSENT

1. Coercion (Section 15)

- ♦ “Coercion’ is the committing, or threatening to commit, any act forbidden by the Indian Penal Code or the unlawful detaining, or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.”

♦	<i>Effects of coercion under section 19 of Indian Contract Act, 1872</i>
(i)	<i>Contract is voidable at the option of the party whose consent was so obtained.</i>
(ii)	<i>Money or anything delivered under coercion must repay or return it.</i>
II.	<i>Undue influence (Section 16)</i>
	<i>According to section 16 "A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and he uses that position to obtain an unfair advantage over the other".</i>
♦	<i>The essential ingredients under this provision are:</i>
(1)	<i>Relation between the parties</i>
(2)	<i>Position to dominate the will</i>
(a)	<i>Real and apparent authority</i>
(b)	<i>Fiduciary relationship</i>
(c)	<i>Mental distress</i>
(d)	<i>Unconscionable bargains</i>
(3)	<i>The object must be to take undue advantage</i>
(4)	<i>Burden of proof</i>
♦	<i>Effect of undue influence- (Section 19A)</i>
(i)	<i>The agreement is a contract voidable at the option of the party.</i>
(ii)	<i>Set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms & conditions as to The Court may be seem just.</i>
III.	<i>Fraud (Section 17)</i>
	<i>Definition of Fraud under Section 17: 'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with an intent to deceive another party thereto or his agent, or to induce him to enter into the contract:</i>
(1)	<i>the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;</i>

- (2) *the active concealment of a fact by one having knowledge or belief of the fact;*
- (3) *a promise made without any intention of performing it;*
- (4) *any other act fitted to deceive;*
- (5) *any such act or omission as the law specially declares to be fraudulent.*

♦ ***The following are the essential elements of the fraud:***

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

♦ ***Effect of Fraud upon validity of a contract:*** *The contract is voidable at option of the party defrauded and he has the following remedies:*

- (1) *He can rescind the contract within a reasonable time.*
- (2) *He can sue for damages.*
- (3) *He can insist on the performance of the contract on the condition.*

(IV) *Misrepresentation (Section 18)*

According to Section 18, there is misrepresentation:

- (1) *Statement of fact, which of false, would constitute misrepresentation if the maker believes it to be true but which is not justified by the information he possesses;*

- (2) *When there is a breach of duty by a person without any intention to deceive which brings an advantage to him;*
- (3) *When a party causes, even though done innocently, the other party to the agreement to make a mistake as to the subject matter.*

Difference between Coercion and Undue influence:

<i>Basis of difference</i>	<i>Coercion</i>	<i>Undue Influence</i>
<i>Nature of action</i>	<i>Physical force or threat</i>	<i>Moral or mental pressure</i>
<i>Involvement of criminal action</i>	<i>Act forbidden by Indian Penal Code</i>	<i>No such illegal act is committed</i>
<i>Relationship between parties</i>	<i>Not necessary relationship</i>	<i>Some sort of relationship necessary.</i>
<i>Exercised by whom</i>	<i>It can be used even by a stranger to the contract.</i>	<i>Always exercised between parties to the contract.</i>
<i>Enforceability</i>	<i>Voidable at the option of the party</i>	<i>Either voidable or the court may set it aside or enforce it in a modified form.</i>
<i>Position of benefits received</i>	<i>to be restored back</i>	<i>The court discretion to return the benefit in whole or in part or not</i>

Distinction between fraud and misrepresentation:

<i>Basis of difference</i>	<i>Fraud</i>	<i>Misrepresentation</i>
<i>Intention</i>	<i>To deceive by hiding the truth.</i>	<i>No such intention to deceive.</i>
<i>Knowledge of truth</i>	<i>The person making the suggestion believes that the statement as untrue.</i>	<i>The person making the statement believes it to be true, although it is not true.</i>
<i>Rescission of the contract & claim for damages</i>	<i>Can repudiate and claim damages.</i>	<i>Repudiate the contract or sue for restitution but cannot claim the damages.</i>
<i>Means to discover the truth</i>	<i>The party using the fraudulent act cannot secure or protect himself.</i>	<i>Party can always plead that the injured party had the means to discover the truth.</i>

V)	<i>Mistake: Mistake may be defined as innocent or erroneous belief which leads the party to misunderstand the others.</i>
a)	<i>Mistake of Law (Section 21)</i>
(i)	<i>Mistake of Indian Law: A person cannot be allowed to get any relief act in ignorance of law.</i>
(ii)	<i>Mistake of foreign law: The agreement is void.</i>
b)	<i>Mistake of fact</i>
(i)	<i>Bilateral mistake: The agreement is void (Section 20)</i>
(ii)	<i>Unilateral Mistake: A contract is not voidable (Section 22)</i>
3.4	LEGALITY OF OBJECT AND CONSIDERATION
	<i>Under (Section 23) of the Indian Contract Act, in each of the following cases the consideration or object of an agreement is said to be unlawful:</i>
(i)	<i>When consideration or object is forbidden by law</i>
(ii)	<i>When consideration or object are of such a nature that if permitted it would defeats the provisions of law</i>
(iii)	<i>When it is fraudulent</i>
(iv)	<i>It involves injury to the person or property of another.</i>
(v)	<i>When consideration is immoral</i>
(vi)	<i>When consideration is opposed to public policy</i>
	<i>Some of the agreements which are held to be opposed to public policy are-</i>
(1)	<i>Trading with enemy</i>
(2)	<i>Stifling Prosecution</i>
(3)	<i>Maintenance and Champerty</i>
(4)	<i>Trafficking relating to Public Offices and titles</i>
(5)	<i>Agreements tending to create monopolies</i>
(6)	<i>Marriage brokerage agreements</i>
(7)	<i>Interference with the course of justice</i>
(8)	<i>Interest against obligation</i>
(9)	<i>Consideration Unlawful in Part</i>

3.5 VOID AGREEMENTS

Expressly declared Void Agreements

(1) *Agreement in restraint of marriage (Section 26)*

(2) *Agreement in restraint of trade (Section 27)*

Exception (Goodwill sold, Partnership, Employee)

(3) *Agreement in restraint of legal proceedings (Section 28)*

(4) *Agreement - the meaning of which is uncertain (Section 29)*

(5) *Wagering agreement (Section 30)*

(a) *Transactions similar to Wager (Gambling)*

(i) *Lottery transactions*

(ii) *Crossword Puzzles and Competitions*

(iii) *Speculative transactions*

(iv) *Horse Race Transactions*

(b) *Transactions resembling with wagering transaction but are not void*

(i) *Chit fund*

(ii) *Commercial transactions or share market transactions*

(iii) *Games of skill and Athletic Competition*

(iv) *A contract of insurance*

Distinction between Contract of Insurance and Wagering Agreement

	<i>Basis</i>	<i>Contracts of Insurance</i>	<i>Wagering Agreement</i>
1.	<i>Meaning</i>	<i>To indemnify the loss.</i>	<i>Promise to pay money or money's worth on the happening or non-happening of an uncertain event.</i>
2.	<i>Consideration</i>	<i>(premium and compensation amount)</i>	<i>No consideration</i>
3.	<i>Insurable Interest</i>	<i>In the life or property</i>	<i>There is betting on other's life and properties.</i>

4.	Contract of Indemnity	Except life insurance indemnifies the loss.	Loser has to pay the fixed amount on the happening of uncertain event.
5.	Enforceability	Valid and enforceable	Void & unenforceable agreement.
6.	Premium	Scientific & actuarial calculation	No such logical calculations
7.	Public Welfare	They are beneficial to the society.	They have been regarded as against the public welfare.

CHAPTER - 2

UNIT - 4 PERFORMANCE OF CONTRACT

4.1 PERFORMANCE OF CONTRACT

Types: On the basis of (Section 37), "Performance of Contract" may be actual or attempted.

(a) *Actual Performance*

(b) *Offer to perform or attempted performance or tender of performance*

4.2 CONDITIONS TO BE SATISFIED FOR A VALID TENDER OR ATTEMPTED PERFORMANCE

(i) *It must be unconditional.*

(ii) *It must be made at proper time and place.*

(iii) *Reasonable opportunity to examine goods.*

(iv) *It must be for whole obligation.*

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

The promise under a contract may be performed, as the circumstances may permit, by the promisor himself, or by his agent or his legal representative.

1. **Promisor himself:** *Which involve the exercise of personal skill or diligence*

2. **Agent:** *Where personal consideration is not the foundation of a contract.*

3. **Legal Representatives:** *The deceased promisor are bound to perform it unless a contrary intention appears from the contract. But their liability under a contract is limited to the value of the property.*

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

4.4 DISTINCTION BETWEEN SUCCESSION AND ASSIGNMENT

When the benefits of contract are succeeded to by process of law, then both burden

and benefits attaching to the contract, may sometimes devolve on the legal heir.

In the matter of assignment, however the benefit of a contract can only be assigned but not the liabilities thereunder.

4.5 LIABILITY OF JOINT PROMISOR & PROMISEE

♦ Devolution of joint liabilities (Section 42)

After death of any one of them, his legal representative jointly with the survivor or survivors should do so. After the death of the last survivor the legal representatives of all the original co-promisors must fulfil the promise.

♦ Any one of joint promisors may be compelled to perform - (Section 43)

In the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

♦ Each promisor may compel contribution - if one of the joint promisors is made to perform the whole contract he can call for a contribution from others.

♦ Sharing of loss by default in contribution - If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

♦ Effect of release of one joint promisor - (Section 44)

A release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors, neither does it free the joint promisors so released from responsibility to the other joint promisor or promisors.

♦ Rights of Joint Promisees - (Section 45)

When a person has made a promise to two or more persons jointly, then unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them.

4.6 TIME AND PLACE FOR PERFORMANCE OF THE PROMISE

(i) Time for performance of promise, where no application is to be made and no time is specified - (Section 46)

The engagement must be performed within a reasonable time.

(ii)	<i>Time and place for performance of promise, where time is specified and no application to be made - (Section 47)</i>
	<i>The promisor may perform it at any time during the usual hours of business.</i>
(iii)	<i>Application for performance on certain day to be at proper time and place - (Section 48)</i>
	<i>Is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.</i>
(iv)	<i>Place for the performance of promise, where no application to be made and no place fixed for performance - (Section 49)</i>
	<i>It is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise.</i>
(v)	<i>Performance in manner or at time prescribed or sanctioned by promisee- (Section 50)</i>
	<i>Any such manner, or at any time which the promisee prescribes or sanctions.</i>
4.7	PERFORMANCE OF RECIPROCAL PROMISE
(i)	<i>Promisor not bound to perform, unless reciprocal promisee ready and willing to perform- (Section 51)</i>
	<i>No promisor needs to perform his promise unless the promisee is ready and willing to perform his reciprocal promise.</i>
(ii)	<i>Order of performance of reciprocal promises - (Section 52)</i>
	<i>Reciprocal promises is expressly fixed by the contract, they shall be performed in that order, and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.</i>
(iii)	<i>Liability of party preventing event on which the contract is to take effect- (Section 53)</i>
	<i>One party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of and he is entitled to compensation.</i>
(iv)	<i>Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises (Section 54)</i>
	<i>If the promisor who has to perform his promise before the performance of the other's promise fails to perform it, he cannot claim performance and is also liable for compensation.</i>
(v)	<i>Effects of Failure to Perform at a Time Fixed in a Contract in which Time is Essential (Section 55)</i>

	<i>Becomes voidable at the option of the promisee, if the intention of the parties was that time should be of essence of the contract”.</i>
	<i>Effect of such failure when time is not essential</i>
	<i>The contract does not become voidable by the failure but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.</i>
	<i>Effect of acceptance of performance at time other than agreed upon -</i>
	<i>The promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of acceptance, he gives notice to the promisor of his intention to do so.</i>
(vi)	<i>Agreement to do Impossible Act (Section 56)</i>
(a)	<i>Initial Impossibility (Impossibility existing at the time of contract): would be void</i>
1.	<i>If known to the parties: Void</i>
2.	<i>If unknown to the parties: Void</i>
3.	<i>If known to the promisor only: the promisee is entitled to claim compensation for any loss he suffered.</i>
(b)	<i>Subsequent or Supervening impossibility (Becomes impossible after entering into contract)</i>
	<i>The effect of such impossibility is that it makes the contract void, and the parties are discharged from further performance of the contract.</i>
(vii)	<i>Reciprocal promise to do certain things that are legal, and also some other things that are illegal - (Section 57)</i>
	<i>The first set of promises is a valid contract, but the second is a void agreement.</i>
(viii)	<i>Alternative promise’ one branch being illegal - (Section 58)</i>
	<i>One branch of which is legal and the other illegal, the legal branch alone can be enforced”.</i>
4.8	<i>APPROPRIATION OF PAYMENTS</i>
(i)	<i>Application of payment where debt to be discharged is indicated (Section 59):</i>
	<i>With express intimation or under circumstances implying that the payment is to be applied to the discharge of some particular debt.</i>

(ii)	Application of payment where debt to be discharged is not indicated (Section 60):
	The creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, where its recovery is or is not barred by the law. However, he cannot apply the payment to the disputed debt.
(iii)	Application of payment where neither party appropriates (Section 61): The payment shall be applied in discharge of the debts in order of time. If the debts are of equal standing, the payments shall be applied in discharge of each proportionately.
4.9	CONTRACTS, WHICH NEED NOT BE PERFORMED - WITH THE CONSENT OF BOTH THE PARTIES
(i)	Effect of novation, rescission, and alteration of contract (Section 62)
	"If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed".
	Analysis of Section 62
(a)	Effect of novation: The parties to a contract may substitute a new contract for the old. If they do so, it will be a case of novation.
(b)	Effect of rescission: In the case of rescission, only the old contract is cancelled and no new contract comes to exist in its place.
(c)	Effect of alteration of contract: A contract is also discharged by alteration. The terms of contract may be so altered by mutual agreement that the alteration may have the effect of substituting a new contract for the old one.
	Novation and alteration:
1.	Novation may be made by changing in the terms of the contract or there may be a change in the contracting parties. But in case of alteration the parties to the contract will remain the same.
2.	In case of novation there is altogether a substitution of new contract in place of the old contract. In alteration, there may be a change in some of the terms and conditions of the original agreement.
(ii)	Promisee may waive or remit performance of promise (Section 63): A contract may be discharged by remission.

(iii)	Restoration of Benefit under a Voidable Contract (Section 64)
	<i>The party rescinding avoidable contract shall, if he has received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received”.</i>
(iv)	Obligations of Person who has Received Advantage under Void Agreement or contract that becomes void (Section 65)
	<i>Any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.</i>
(v)	Communication of rescission (Section 66): <i>Rescission must be communicated to the other party in the same manner as a proposal is communicated under Section 4.</i>
(vi)	Effects of neglect of promisee to afford promisor reasonable facilities for performance (Section 67)
	<i>The promisor is excused by such neglect or refusal as to any non-performance caused thereby.</i>
4.10	DISCHARGE OF A CONTRACT
(i)	<i>Discharge by performance:</i>
1.	<i>Actual performance; or</i>
	<i>2. Attempted performance</i>
(ii)	<i>Discharge by mutual agreement</i>
(iii)	<i>Discharge by impossibility of performance: Supervening impossibility may take place owing to:</i>
a)	<i>an unforeseen change in law;</i>
b)	<i>the destruction of the subject-matter essential to that performance;</i>
c)	<i>the non-existence or non-occurrence of particular state of things</i>
d)	<i>the declaration of a war (Section 56).</i>
(iv)	<i>Discharge by lapse of time</i>
(v)	<i>Discharge by operation of law</i>
(vi)	<i>Discharge by breach of contract</i>
(vii)	<i>Promisee may waive or remit performance of promise</i>
(viii)	<i>Effects of neglect of promisee to afford promisor reasonable facilities for performance</i>
(ix)	<i>Merger of rights</i>

CHAPTER - 2

UNIT - 5 BREACH OF CONTRACT AND ITS REMEDIES

5.1 ANTICIPATORY BREACH OF CONTRACT

An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived.

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

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

Section 39 of the Indian Contract Act

“When a party to a contract has refused to perform or disable himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, but words or conduct his acquiescence in its continuance.”

Effect of anticipatory breach:

- 1. Rescinded and sue the other party for damages
- 2. To treat the contract as still operative and wait for the time of performance.

5.2 ACTUAL BREACH OF CONTRACT

It is a case of refusal to perform the promise on the scheduled date.

Actual breach of contract may be committed-

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

Remedies for Breach of Contract

Remedies Available

- 1. Suit for Damages
- 2. Rescission of Contract
- 3. Suit for specific performance
- 4. Suit for Injunction
- 5. Suit upon quantum meruit

5.3 SUIT FOR DAMAGES

The Act in Section 73, has laid down the rules as to how the amount of compensation is to be determined.

- (i) **Ordinary damages:** Compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties know, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach. ((Section 73) of the Contract Act and the rule in *Hadley vs. Baxendale*).
- (ii) **Special damages:** Where a party to a contract receives a notice of special circumstances affecting the contract.
- (iii) **Vindictive or Exemplary damages**
These damages may be awarded only in two cases-
 - (a) for breach of promise to marry
 - (b) for wrongful dishonour by a banker of his customer's cheque (*Gibbons v West Minister Bank*)
- (iv) **Nominal damages:** It is awarded just to establish the right to decree for the breach of contract.
- (v) **Damages for deterioration caused by delay:** damages can be recovered from carrier even without notice.
- (vi) **Pre-fixed damages:** It may amount to either liquidated damages. Section 74 the aggrieved party is entitled to receive from the party at fault a reasonable compensation not exceeding the amount so named.

5.4 PENALTY AND LIQUIDATED DAMAGES (SECTION 74)

- ♦ **English Law:** If the sum fixed in the contract represents a genuine pre-estimate by the parties it is liquidated damages. But where the sum fixed in the contract is unreasonable and is used to force the other party to perform the contract; it is penalty.
- ♦ **Indian Law:** Indian law makes no distinction between 'penalty' and liquidated damages'. Section 74 of the Contract Act lays down if the parties have fixed what the damages

will be, the courts will never allow more. But the court may allow less.

Exception: Bond to the Central or State government for the performance of any public duty or act.

Distinction between liquidated damages and penalty

1. Far in excess of the probable damage it is certainly a penalty.
2. Further sum in the event of default being made, the latter sum is a penalty.
3. Sum fixed is extravagant or exorbitant, the court will regard it as a penalty.
4. The essence of liquidated damages is a genuine pre-estimate of the damage.

The courts have not to bother about the distinction but to award reasonable compensation not exceeding the sum so fixed.

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

(i) **Rescission of contract:** He is absolved of all his obligations under the contract and is entitled to compensation for any damages.

(ii) **Quantum Meruit:** As much as the party doing the service has deserved. For the application of this doctrine, two conditions must be fulfilled.

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

Damages are compensatory in nature while quantum meruit is restitutory.

The claim for quantum meruit arises in the following cases:

- (a) When a contract becomes void.
 - (b) When something is done without any intention to do so gratuitously.
 - (c) There is no agreement as to remuneration.
 - (d) When one party abandons or refuses to perform the contract.
 - (e) where a contract is divisible and the party not in default has enjoyed the benefit of part performance.
 - (f) When an indivisible contract for a lump sum is completely performed but badly the person who has performed the contract can claim the lump sum.
- (iii) **Suit for specific performance:** to carry out his promise according to the terms of the contract.

(iv) *Suit for injunction: Restrain him from doing what he promised not to do.*

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

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

CHAPTER - 2

UNIT - 6 CONTINGENT AND QUASI CONTRACTS

Definition of 'Contingent Contract' (Section 31)

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

Contracts of Insurance, indemnity and guarantee fall under this category.

Meaning of collateral Event: Pollock and Mulla defined collateral event as "an event which is neither a performance directly promised as part of the contract, nor the whole of the consideration for a promise".

Essentials of a contingent contract

- (a) The performance of a contingent contract would depend upon the happening or non-happening of some event or condition.*
- (b) The event referred to as collateral to the contract.*
- (c) The contingent event should not be a mere 'will' of the promisor.*
- (d) The event must be uncertain.*

6.2 RULES RELATING TO ENFORCEMENT

- (a) Enforcement of contracts contingent on an event happening*
(Section 32) it cannot be enforced by law unless and until that event has happened. If the event has happened. If the event becomes impossible, such contracts become void".
- (b) Enforcement of contracts contingent on an event not happening: (Section 33) it can be enforced only when the happening of that event becomes impossible and not before".*
- (c) A contract would cease to be enforceable if it is contingent upon the conduct of a living person when that living person does something to make the 'event' or 'conduct' as impossible of happening.*
(Section 34)

(d) *Contingent on happening of specified event within the fixed time: (Section 35) becomes void if, at the expiration of time fixed, such event becomes impossible.*

(e) *Contingent on specified event not happening within fixed time: (Section 35) may be enforced by law when the time fixed has expired, and such event has not happened or before the time fixed has expired, if it becomes certain that such event will not happen”.*

(f) *Contingent on an impossible event (Section 36): are void*

Difference between a contingent contract and a wagering contract

<i>Basis of difference</i>	<i>Contingent contract</i>	<i>Wagering contract</i>
<i>Reciprocal promises</i>	<i>May not contain reciprocal promises.</i>	<i>Consists of reciprocal promises.</i>
<i>Uncertain event</i>	<i>the event is collateral.</i>	<i>the uncertain event is the core factor.</i>
<i>Nature of contract</i>	<i>may not be wagering in nature.</i>	<i>essentially contingent in nature.</i>
<i>Interest of contracting parties</i>	<i>interest in the subject matter</i>	<i>no interest in the subject matter.</i>
<i>Doctrine of mutuality of lose and gain</i>	<i>mutuality of lose and gain.</i>	<i>losing and gaining alone matters</i>
<i>Effect of contract</i>	<i>Valid</i>	<i>Void</i>

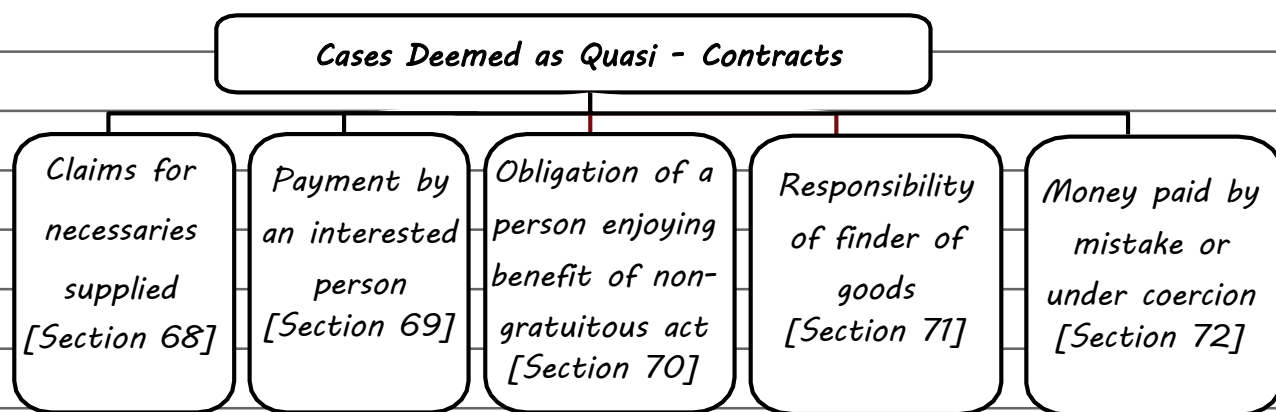
6.3 QUASI CONTRACTS

- ◆ *Sometimes the law implies a promise imposing obligations on one party and conferring right in favour of the other even when there is no offer, no acceptance, no genuine consent, lawful consideration, etc. and in fact neither agreement nor promise.*
- ◆ *Court recognises them as relations resembling those of contracts and enforces them as if they were contracts.*
- ◆ *based on principles of equity, justice and good conscience.*

- ♦ A quasi or constructive contract rest upon the maxims, “No man must grow rich out of another person’s loss”.

♦ **Salient features of quasi contracts:**

- In the first place, such a right is always a right to money and generally, though not always, to a liquidated sum of money.
- Secondly, it does not arise from any agreement of the parties concerned, but is imposed by the law; and
- Thirdly, it is a right which is available not against all the world, but against a particular person or persons only, so that in this respect it resembles a contractual right.



♦ **Obligation of a person enjoying benefit of non- gratuitous act [Section 70]**

It thus follows that for a suit to succeed, the plaintiff must prove:

- that he had done the act or had delivered the thing lawfully;
- that he did not do so gratuitously; and
- that the other person enjoyed the benefit.

♦ **Responsibility of finder of goods [Section 71]**

Thus, a finder of lost goods has:

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

CHAPTER - 2

UNIT - 7 CONTRACT OF INEMNITY AND GUARANTEE

7.1 CONTRACT OF INDEMNITY

Defined under Section 124 of the Indian Contract Act, 1872. It is “a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person.”

1) Parties:

- a. The party who promises to indemnify/ save the other party from loss- “indemnifier”,
- b. The party who is promised to be saved against the loss- “indemnified” or “indemnity holder”.

2) Mode of contract of indemnity

- a. Express when a person expressly promises to compensate.
- b. Implied when it is to be inferred from the conduct of the parties.

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

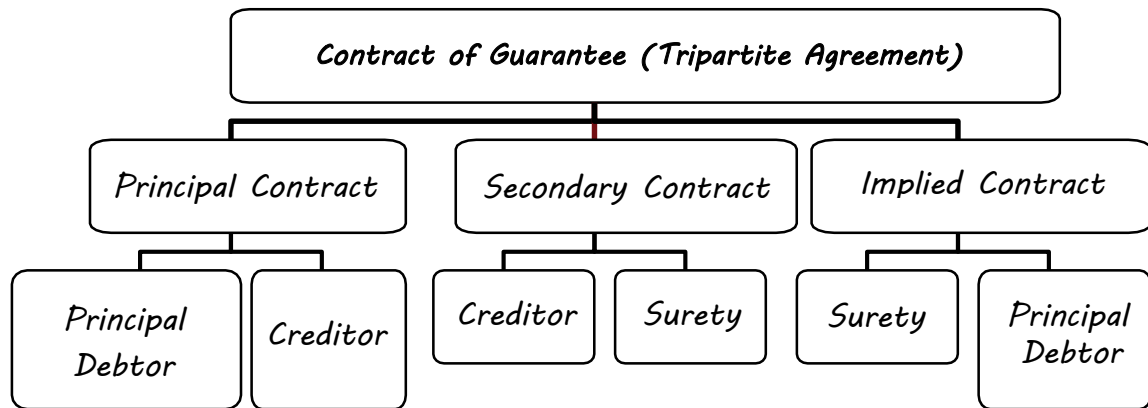
- (a) all damages which he may be compelled to pay in any suit
- (b) all costs which he may have been compelled to pay in bringing/ defending the suit and
- (c) all sums which he may have paid under the terms of any compromise of suit.

7.2 CONTRACT OF GUARANTEE

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

1) Parties

- a) Surety- person who gives the guarantee
- b) Principal debtor- person in respect of whose default the guarantee is given
- c) Creditor- person to whom the guarantee is given



3) **ESSENTIAL FEATURES OF A GUARANTEE**

- a) The purpose of a guarantee being to secure the payment of a debt
- b) Consideration received by the principal debtor is sufficient consideration to the surety for giving the guarantee.
- c) Existence of a liability
- d) No misrepresentation or concealment
- e) Writing not necessary
- f) Joining of the other co-sureties: the guarantee is not valid if that other person does not join.

7.3 **TYPES OF GUARANTEES**

- a) Specific guarantee
- b) Continuing Guarantee [Section 129]

7.4 **DISTINCTION BETWEEN A CONTRACT OF INDEMNITY AND A CONTRACT OF GUARANTEE**

Point of distinction	Contract of Indemnity	Contract of Guarantee
Parties to the contract	two parties indemnifier and the indemnified	Three parties- creditor, principal debtor and surety.

Nature of liability	<i>Liability of the indemnifier is primary and unconditional.</i>	<i>Liability of the surety is secondary and conditional</i>
Time of liability	<i>Only on the happening of a contingency.</i>	<i>Non-performance of an existing promise or non-payment of an existing debt.</i>
Time to Act	<i>Indemnifier need not act at the request of indemnity holder.</i>	<i>Surety acts at the request of principal debtor.</i>
Right to sue third party	<i>Indemnifier cannot sue a third party for loss in his own name</i>	<i>Surety can proceed against principal debtor in his own.</i>
Purpose	<i>Reimbursement of loss</i>	<i>For the security of the creditor</i>
Competency to contract	<i>All parties must</i>	<i>Where a minor is a principal debtor, the contract is still valid.</i>

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

- (i) Co-extensive with that of the principal debtor unless it is otherwise provided.*
- (ii) Secondary nature liable only on default of principal debtor.*
- (iii) Where a debtor cannot be held liable on account of any defect in the document, the liability of the surety also ceases.*
- (iv) A creditor may choose to proceed against a surety first, unless there is an agreement to the contrary.*

7.6 LIABILITY OF TWO PERSONS, PRIMARILY LIABLE, NOT AFFECTED BY ARRANGEMENT BETWEEN THEM THAT ONE SHALL BE SURETY ON OTHER'S DEFAULT [SECTION 132]

The liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

7.7 DISCHARGE OF A SURETY

A) By revocation of the Contract of Guarantee

- (a) Revocation of continuing guarantee by Notice [Section 130]
- (b) Revocation of continuing guarantee by surety's death [Section 131]
- (c) By novation [Section 62]

B) By conduct of the creditor

- (a) By variance in terms of contract [Section 133]
- (b) By release or discharge of principal debtor [Section 134]
- (c) Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor [Section 135]
 - ♦ A contract between the creditor and the principal debtor, discharges the surety, unless the surety assents to such contract.
 - i. Composition
 - ii. Promise to give time
 - iii. Promise not to sue:
 - ♦ Cases where surety not discharged
 - i. Surety not discharged when agreement made with third person to give time to principal debtor. [Section 136]
 - ii. Creditor's forbearance to sue does not discharge surety. [Section 137]
- (d) Discharge of surety by creditor's act or omission impairing surety's eventual remedy [Section 139]

C) By the invalidation of the contract of guarantee

- (a) Guarantee obtained by misrepresentation [Section 142]
- (b) Guarantee obtained by concealment [Section 143]
- (c) Guarantee on contract that creditor shall not act on it until co-surety joins [Section 144]

7.8 RIGHTS OF A SURETY

(A) Right against the principal debtor

(a) Rights of subrogation [Section 140]: on payment of the guaranteed debt, or performance of the guaranteed duty, the surety steps into the shoes of the creditor.

(b) Implied promise to indemnify surety [Section 145]: The surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee.

B) Right against the Creditor

(a) Surety's right to benefit of creditor's securities: [Section 141] Benefit of every security which the creditor has against the principal debtor at the time when the contract of surety ship.

(b) Right to set off: Benefit of the set off, if any, that the principal debtor had against the creditor.

(c) Right to share reduction: To claim proportionate reduction in his liability if the principal debtor becomes insolvent.

C) Rights against co-sureties

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

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

CHAPTER - 2

UNIT - 8 BAILMENT AND PLEDGE

8.1 WHAT IS BAILMENT?

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

♦ Parties to bailment:

- (a) **Bailor:** The person delivering the goods.
- (b) **Bailee:** The person to whom the goods are delivered.

♦ Essential Elements:

- (a) **Contract:** No consideration is necessary to create a valid contract of bailment.
- (b) **Delivery of goods:** Bailment is only for moveable goods and never for immovable goods.
 - i. **Actual Delivery**
 - ii. **Constructive Delivery**
- (c) **Purpose:** The goods are delivered for some purpose.
- (d) **Possession:** Change of possession can happen by physical delivery or by any action which has the effect of placing the goods in the possession of bailee.
- (e) **Return of goods:** The goods should be returned in the same form as given or may be altered as per bailor's direction.

Types of bailment

- 1. On the basis of benefit, bailment can be classified into three types:
 - a. For the exclusive benefit of bailor
 - b. For the exclusive benefit of bailee
 - c. For mutual benefit of bailor and bailee

2.	<u>On the basis of reward, bailment can be classified into two types:</u>
a.	<i>Gratuitous Bailment: Either for the exclusive benefits of bailor or bailee.</i>
b.	<i>Non-Gratuitous Bailment: Bailment for the benefit of both bailor & bailee</i>
8.2	DUTIES OF A BAILOR
(i)	Bailor's duty to disclose faults in goods bailed [Section 150]:
a.	<i>In case of gratuitous bailment: Bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware.</i>
b.	<i>In case of non-gratuitous bailment: Responsible for such damage, whether he was or was not aware of the existence of such faults.</i>
(ii)	Duty to pay necessary expenses [Section 158]:
a.	<i>In case of Gratuitous bailment: Repay to the bailee the necessary expenses incurred by him and any extraordinary expenses incurred by him for the purpose of the bailment.</i>
b.	<i>In case of non-gratuitous bailment Liable to pay the extraordinary expenses incurred by the bailee.</i>
(iii)	Duty to indemnify the Bailee for premature termination [Section 159]
(iv)	Bailor's responsibility to bailee [Section 164]
a.	<i>Indemnify for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods or to give directions, respecting them (defective title in goods).</i>
b.	<i>to receive back the goods</i>
8.3	DUTIES OF A BAILEE
1.	Take reasonable care of the goods [Section 151] <i>Exception: Bailee when not liable for loss, etc., of thing bailed [Section 152]</i>
2.	Not to make inconsistent use of goods [Section 153 and 154]
3.	Not to mix the goods [Section 155, 156, 157]
4.	Return the goods [Section 160 & 161]

5.	<i>Return an accretion from the Goods [Section 163]</i>
6.	<i>Not to setup Adverse Title</i>
8.4	<i>RIGHTS OF A BAILOR</i>
(i)	<i>Right to terminate the bailment [Section 153]</i>
(ii)	<i>Right to demand back the goods [Section 150]</i>
(iii)	<i>Right to file a suit against a wrong doer [Section 180 & 181]</i>
(iv)	<i>Right to sue the bailee</i>
(v)	<i>Right to compensation</i>
8.5	<i>RIGHTS OF A BAILEE</i>
1.	<i>Right to Deliver the Goods to any one of the joint bailors [Section 165]</i>
2.	<i>Right to indemnity [Section 166]</i>
3.	<i>Right to claim compensation in case of faulty goods [Section 150]</i>
4.	<i>Right to claim necessary expenses [Section 158]</i>
5.	<i>Right to apply to Court to Decide the Title to the Goods [Section 167]</i>
6.	<i>Right of particular lien for payment of services [Section 170]</i>
7.	<i>Right of general lien [Section 171]</i>
8.6	<i>RIGHTS OF BAILOR AND BAILEE AGAINST ANY WRONG DOER (THIRD PARTY)</i>
♦	<i>Suit by bailor & bailee against wrong doers [Section 180] either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.</i>
♦	<i>Apportionment of relief or compensation obtained by such suits [Section 181] dealt with according to their respective interests.</i>
8.7	<i>TERMINATION OF BAILMENT</i>
1.	<i>On expiry of stipulated period</i>
2.	<i>On fulfillment of the purpose</i>
3.	<i>By Notice</i>
4.	<i>By death</i>

5. *Destruction modification of the subject matter*

8.8 *FINDER OF LOST GOODS*

- ♦ *Right of finder of lost goods - may sue for specific reward offered or else can retain goods for compensation. [Section 168]*
- ♦ *Finder of thing commonly on sale may sell it [Section 169]*
- (1) *Thing is in danger of perishing or of losing the greater part of its value, or*
- (2) *Lawful charges amount to two-thirds of its value.*

8.9 *RIGHT OF LIEN*

Difference between Bailee's General and Particular Lien

<i>Basis</i>	<i>General lien</i>	<i>Particular lien</i>
<i>Section</i>	<i>Section 171 of the Indian Contract Act, 1872 confer on Bailee the right of General Lien.</i>	<i>Section 170 of the Indian Contract Act, 1872 confers on the Bailee.</i>
<i>Definition</i>	<i>Right to keep possession of goods belonging to other against general balance of account.</i>	<i>To retain specific goods bailed for non-payment of amount.</i>
<i>Creation</i>	<i>Recognized through on agreement</i>	<i>It is automatic</i>
<i>Exercise</i>	<i>Exercised against goods even without involvement of labor or skill.</i>	<i>Some labor or skill is involved has resulting in an increase in value of goods.</i>
<i>Entitled by</i>	<i>Only such persons as are specified under section 171, Bankers, factors</i>	<i>Bailee, finder of goods, pledgee, unpaid seller, agent, partner etc.</i>

8.10 *PLEDGE*

The bailment of goods as security for payment of a debt or performance of a promise is called "pledge". [Section 172]

♦ *Essentials of Contract of Pledge*

- (a) *There shall be a bailment for security against payment or performance of the promise,*
- (b) *The subject matter of pledge is goods*

(c)	<i>Goods pledged for shall be in existence</i>
(d)	<i>There shall be the delivery of goods from pledger to pledgee</i>
♦	<i>Rights of A Pawnee/Pledgee</i>
(a)	<i>Right to retain the pledged goods [Section 173]</i>
(b)	<i>Right to retention of subsequent debts [Section 174]</i>
(c)	<i>Pawnee's right to extraordinary expenses incurred [Section 175]</i>
(d)	<i>Pawnee's right where pawnor makes default [Section 176]</i>
i.	<i>May bring a suit and retain the goods pledged as a collateral security</i>
ii.	<i>May sell the thing on giving the pawnor reasonable notice</i>
♦	<i>Rights of a pawnor</i>
a)	<i>Pawnor has all the rights of the bailor.</i>
b)	<i>To recover back the goods by making of the payment of debt or performance of promise.</i>
	<i>Duties of the Pawnee = Rights of a pawnor</i>
	<i>Duties of a Pawnor = Rights of a Pawnee</i>
8.11	<i>PLEDGE BY NON-OWNERS</i>
	<i>For bonafide pledges made by those persons who are not the actual owners of the goods.</i>
a.	<i>Pledge by mercantile agent [Section 178]:</i>
	<i>Pledge shall be valid as if were made with the authority of the owner of goods.</i>
b.	<i>Pledge by person in possession under voidable contract [Section 178A]:</i> <i>The pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.</i>
c.	<i>Pledge where pawnor has only a limited interest [Section 179]:</i> <i>The pledge is valid to the extent of that interest.</i>

- d. *Pledge by a co-owner in possession: With the consent of other owners*
- e. *Pledge by seller or buyer in possession: Provided the pawnee acts in good faith and he has no knowledge of the defect in title of the pawnor.*

8-12 DISTINCTION BETWEEN BAILMENT AND PLEDGE

<i>Basis of Distinction</i>	<i>Bailment</i>	<i>Pledge</i>
<i>Meaning</i>	<i>Some Specific Purpose</i>	<i>Security for repayment of debt</i>
<i>Parties</i>	<i>“Bailor” “Bailee”.</i>	<i>“Pawnor” “pawnee”.</i>
<i>Purpose</i>	<i>Any purpose</i>	<i>Security for payment of a debt, or performance of a promise.</i>
<i>Consideration</i>	<i>Consideration or without consideration.</i>	<i>Always made for a consideration.</i>
<i>Right to sell the goods</i>	<i>Bailee has no right to sell the goods even if the charges of bailment are not paid to him. Rights are limited to suing the bailor for his dues</i>	<i>The pawnee has right to sell the goods if the pawnor fails to redeem the goods.</i>
<i>Right to use of goods</i>	<i>Only for a purpose specified in the contract.</i>	<i>Pledgee or Pawnee cannot use the goods pledged.</i>

CHAPTER - 2

UNIT - 9 AGENCY

9.1 WHAT IS AGENCY?

Test of Agency

- (a) *The person has the capacity to bind the principal and make him answerable to the third party.*
- (b) *He can establish privity of contract between the principal and third parties.*

9.2 APPOINTMENT AND AUTHORITY OF AGENTS

◆ *Person qualified to appoint agent must be*

- *Major*
- *Sound mind*

◆ *Consideration not necessary: According to (Section 185), no consideration is necessary to create an agency. The acceptance of the office of an agent is regarded as a sufficient consideration for the appointment.*

9.3 CREATION OF AGENCY

"The relation of agency arises whenever one person called the agent has the authority to act on behalf of another called the principal and consents to act."

1. *Express Authority*

2. *Implied Authority*

Implied Agency includes:-

a. *Agency by Estoppel [Section 237]*

- *the principal must have made a representation;*
- *the representation may be express or implied;*
- *The representation must state that the agent has an authority to do certain act although really he has no authority;*
- *The principal must have induced the third person by such representation; and*
- *The third person must have believed the representation and made the contract on the belief of such representation.*

b.	<i>Agency by Necessity</i>
3.	<i>Agency by Operation of Law</i>
4.	<i>Rights of person as to acts done for him without his authority, Effect of ratification</i>
	<i>[Section 196]</i>
♦	<i>Essentials of a valid Ratification</i>
a.	<i>Ratification may be expressed or Implied [Section 197]</i>
b.	<i>Knowledge requisite for valid ratification [Section 198]</i>
c.	<i>The whole transaction must be ratified [Section 199]</i>
d.	<i>Ratification cannot injure third person [Section 200]</i>
e.	<i>Ratification within reasonable time</i>
f.	<i>Communication of Ratification</i>
g.	<i>Act to be ratified must be valid</i>
9.4	<i>EXTENT OF AGENT'S AUTHORITY</i>
(a)	<i>Agent's authority in normal circumstances [Section 188]: To do every lawful thing necessary for the purpose, or usually done in the course, of conducting such business.</i>
(b)	<i>Agent's authority in an emergency [Section 189]: To do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence.</i>
	<i>To constitute a valid agency in an emergency, following conditions must be satisfied.</i>
(i)	<i>Agent should not be in a position or have any opportunity to communicate with his principal within the time available.</i>
(ii)	<i>There should have been actual and definite commercial necessity for the agent to act promptly.</i>
(iii)	<i>the agent should have acted bonafide and for the benefit of the principal.</i>
(iv)	<i>the agent should have adopted the most reasonable and practicable course under the circumstances, and</i>
(v)	<i>the agent must have been in possession of the goods belonging to his principal and which are the subject of contract.</i>

9.5 SUB - AGENTS [Section 191]

The appointment of sub agent is not lawful, because the agent is a delegate and a delegate cannot further delegate. This is based on the Latin principle “*delegatus non potest delegare*”.

♦ Exception where an agent can appoint Sub-agent:

(1) The terms of appointment originally contemplated it.

(2) Customs of the trade

(3) Unforeseen emergency

♦ Representation of principal by sub-agent properly appointed [Section 192]: Where a sub-agent is properly appointed,

(1) Principal is liable to third parties for the acts of the sub-agent.

(2) The agent is responsible to the principal for the acts of the sub-agent.

(3) The sub-agent not to the principal, except in case of fraud or willful wrong.

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

(1) the agent is responsible for his acts both to the principal and to third persons;

(2) the principal is responsible for the acts of the sub agent,

(3) the sub agent is not responsible to the principal at all.

9.6 SUBSTITUTED AGENT

Substituted Agent is a person appointed by the agent to act for the principal, in the business of agency, with the knowledge and consent of the principal.

(a) Relation between principal and person duly appointed by agent to act in business of agency [Section 194]: Such person is not a sub-agent, but an agent of the principal.

(b) Agent's duty in naming such person [Section 195]: An agent is bound to exercise the same amount of discretion as a man of ordinary prudence.

9.7 DIFFERENCE BETWEEN A SUB-AGENT AND A SUBSTITUTED AGENT

Sr. No.	Sub Agent	Substituted Agent
1.	Under the control and directions of agent.	Instructions of the principal.

2.	<i>The agent not only appoints a sub-agent but also delegates duties.</i>	<i>The agent does not delegate any part</i>
3.	<i>No privity of contract between the principal.</i>	<i>Privity of contract is established between a principal.</i>
4.	<i>Responsible to the agent alone generally</i>	<i>Is responsible to the principal and not to the original agent</i>
5.	<i>The agent is responsible to the principal for the acts</i>	<i>The agent is not responsible to the principal for the acts</i>
6.	<i>No right of action against the principal for remuneration.</i>	<i>Can sue the principal for remuneration.</i>
7.	<i>May be improperly appointed.</i>	<i>Can never be improperly appointed.</i>
8.	<i>The agent remains liable for the acts of the sub-agent as long as the sub-agency continues.</i>	<i>The agent's duty ends once he has named the substituted agent.</i>

9.8 DUTIES AND OBLIGATIONS OF AN AGENT

- (i) Duty to follow instructions or customs [Section 211]*
- (ii) Duty of reasonable care and skill [Section 212]*
- (iii) Duty to render proper accounts [Section 213]*
- (iv) Agent's duty to communicate with principal [Section 214]*
- (v) Duty not to deal on his own account [Section 215 & 216]*
- (vi) Duty not to make secret profits*
- (vii) Duty not to delegate*
- (viii) Agent's duty to pay sums received for principal [Section 218]*
- (ix) Duty not to use any confidential information received in the course of agency against the principal.*

9.9 RIGHTS OF AN AGENT

- (i) Right of retain out of sums received on principal's account [Section 217]*
- (ii) Right to remuneration [Section 219]*
- (iii) Agent's lien on principal's property [Section 221]*

a.	<i>When the possession of the property is lost.</i>
b.	<i>When the agent waives his right.</i>
c.	<i>The agent's lien is subject to a contract to the contrary.</i>
(iv)	<i>Right to indemnity</i>
a.	<i>Right of indemnification for lawful acts [Section 222]</i>
b.	<i>Right of indemnification against acts done in good faith [Section 223]</i>
c.	<i>Non-liability of employer of agent to do a criminal act [Section 224]</i>
(v)	<i>Right to compensation for injury caused by principal's neglect [Section 225]</i>
9.10	PRINCIPAL'S LIABILITY TO THIRD PARTIES
(a)	<i>Principal's liability for the Acts of the Agent [Section 226]</i>
(b)	<i>Principal's liability when agent exceeds authority [Section 227]</i>
(i)	<i>Principal not bound when excess of agent's authority is not separable [Section 228]</i>
(ii)	<i>The principal is bound by such acts or obligations, if he has by his words or conduct induced such third persons to believe [Section 237]</i>
(c)	<i>Consequences of notice given to agent [Section 229]: Have the same legal consequence as if it had been given to or obtained by the principal.</i>
(d)	<i>Principal's liability for the agent's fraud, misrepresentation or torts [Section 238]: Matters which do not fall within their authority, do not affect their principals.</i>
9.11	PERSONAL LIABILITY OF AGENT TO THIRD PARTIES
	<i>Agent cannot personally enforce, nor be bound by, contracts on behalf of principal [Section 230]</i>
	EXCEPTIONS
(1)	<i>Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad/foreign principal</i>
(2)	<i>Where the agent does not disclose the name of his principal or undisclosed principal</i>
(3)	<i>Non-existent or incompetent principal</i>
(4)	<i>Pretended agent</i>
(5)	<i>When agent exceeds authority</i>

♦	RIGHTS OF THIRD PARTIES
i.	Rights of parties to a contract made by undisclosed agent [Section 231]: If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same right as he would have had as against the agent if the agent had been the principal.
ii.	Performance of contract with agent supposed to be principal [Section 232]: When agent does not disclosed that he is acting as an agent then the principal can obtain such performance subject to the rights and obligations between the agent and the other party.
iii.	Option to Third Person - sue the Agent or the Principal [Section 233]
a.	Right of person dealing with agent personally liable: A person dealing with him may hold either him or his principal, or both.
b.	Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable [Section 234]: A person cannot afterwards hold liable the agent or principal respectively.
9.12	REVOCATION OF AUTHORITY
1)	Termination of agency [Section 201]
	Putting an end to the legal relationship between principal and agent.
(a)	Revocation (Section 203/ 204/ 205)
(b)	Renunciation by agents (Section 206)
(c)	Completion of business
(d)	Death of Principal or the agent
(e)	Principal or agent becoming of unsound mind
(f)	Insolvency of principal
(g)	Expiry of time
2)	When the agency is irrevocable? [Section 202]
	Agent is personally interested in the subject matter of agency the agency becomes irrevocable.

3) Effects of Termination [Section 208]

a)	When termination of agent's authority takes effect as to agent, and as to third persons: does not take effect before it becomes known to him.
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b)	<i>Agent's duty on termination of agency by principal's death or insanity [Section 209]</i>
	<i>Agent is bound to take all reasonable steps for the protection and preservation of the interests entrusted to him.</i>

c) *Termination of sub-agent's authority [Section 210]*

CHAPTER - 3

UNIT - 1 FORMATION OF THE CONTRACT OF THE SALE

1.1 SCOPE OF THE ACT

Applicable to the contracts related to the sale of goods which means movable properties.

1.2 DEFINITIONS

(A) Buyer and Seller:

- ◆ 'Buyer' means a person who buys or agrees to buy goods [Section 2(1)]
- ◆ 'Seller' means a person who sells or agrees to sell goods [Section 2(13)]

(B) Goods and other related terms:

1. "Goods" section 2 (7) means every kind of movable property other than actionable claims and money;
2. 'Actionable claims' section 2 (7) are claims, which can be enforced only by an action or suit.

Classification of Goods

(i) Existing Goods goods which are in existence at the time of the contract.

The existing goods may be of following kinds:

- (a) Specific goods
- (b) Ascertained Goods
- (c) Unascertained goods

(ii) Future Goods means goods to be manufactured or produced or acquired.

(iii) Contingent Goods the acquisition of goods which depends upon an uncertain contingency.

(C) Delivery [Section 2(2)] its forms and derivatives

Voluntary transfer of possession by one person to another

- | | | |
|---------------------|----------------------------|-------------------------|
| (i) Actual delivery | (ii) Constructive delivery | (iii) Symbolic delivery |
|---------------------|----------------------------|-------------------------|

(D) "Document of title to goods" [Section 2(4)] includes bill of lading, dock-warrant, warehouse keeper's etc.

- (E) **Mercantile Agent [Section 2(9)]**: Such agent, authority either to sell goods.
- (F) **Property [Section 2(11)]**: Means 'ownership' or general property.
- (G) **Insolvent [Section 2(8)]**: Ceases to pay his debts in the ordinary course of business.
- (H) **Price [Section 2(10)]**: Money consideration for a sale of goods. It is the value of goods expressed in monetary terms. It is the essential requirement to make a contract of sale of goods.
- (I) **Quality of goods [Section 2(12)]** state or condition.

1.3 SALE AND AGREEMENT TO SELL [SECTION 4]

◆ Contract of sale

Sale: In Sale, the property in goods is transferred from seller to the buyer immediately.

◆ Agreement to Sell: The ownership of the goods is not transferred immediately. Intending to transfer at a future date upon the completion of certain conditions thereon.

◆ When agreement to sell becomes sale: when the time elapses or the conditions are fulfilled.

Elements must co-exist so as to constitute a contract of sale of goods

- (i) Must be at least two parties
- (ii) Subject matter of the contract must necessarily be goods.
- (iii) A price in money (not in kind) should be paid or promised.
- (iv) Transfer of property in goods from seller to the buyer must take place.
- (v) Contract of sale may be absolute or conditional.
- (vi) Essential elements of a valid contract must be present.

1.4 DISTINCTION BETWEEN SALE AND AN AGREEMENT TO SELL

The differences between the two are as follows:

Basis of difference	Sale	Agreement to sell
Transfer of property	Immediately.	Future date or on fulfilment of some condition.
Nature of contract	Executed	Executory

<i>Remedies for breach</i>	<i>The seller can sue the buyer for the price</i>	<i>The aggrieved party can sue for damages</i>
<i>Liability of parties</i>	<i>Subsequent loss or destruction</i>	<i>Such loss or destruction</i>
<i>Burden of risk</i>	<i>Buyer</i>	<i>Seller</i>
<i>Nature of rights</i>	<i>Jus in rem</i>	<i>Jus in personam</i>
<i>Right of resale</i>	<i>Seller cannot resell</i>	<i>Seller may sell</i>
<i>In case of insolvency of seller, The official assignee</i>	<i>Not to take over the goods</i>	<i>Acquire control over the goods but the price will not be recoverable</i>
<i>In case of insolvency of buyer the official assignee</i>	<i>Control over the goods</i>	<i>Not have any control</i>

1.5 SALE DISTINGUISHED FROM OTHER SIMILAR CONTRACTS

(i) Sale and Hire Purchase

<i>Basis of difference</i>	<i>Sale</i>	<i>Hire- Purchase</i>
<i>Time of passing property</i>	<i>Immediately</i>	<i>Payment of the last instalment</i>
<i>Position of the party</i>	<i>The owner</i>	<i>A bailee</i>
<i>Termination of contract</i>	<i>Buyer cannot</i>	<i>The hirer may</i>
<i>Burden of Risk of insolvency of the buyer</i>	<i>The seller takes the risk</i>	<i>The owner takes no such risk</i>
<i>Transfer of title</i>	<i>The buyer can pass a good title to a bona fide purchaser from him</i>	<i>The hirer cannot pass any title even to a bona fide purchaser until he pays the last instalment</i>
<i>Resale</i>	<i>Buyer in sale can</i>	<i>Hire purchaser cannot unless he has paid all the instalments</i>

(ii) Sale and Bailment

<i>Basis of difference</i>	<i>Sale</i>	<i>Bailment</i>
<i>Transfer of property</i>	<i>Transfer of general property.</i>	<i>Transfer of special property.</i>
<i>Return of goods</i>	<i>Not possible.</i>	<i>On the accomplishment of the purpose.</i>
<i>Consideration</i>	<i>Price in terms of money</i>	<i>Gratuitous or non-gratuitous</i>

(iii) Sale and contract for work and labour: Doing or rendering of some work of labour, then the contract is only of work and labour and not of sale of goods.

1.6 CONTRACT OF SALE HOW MADE [SECTION 5]

- (i) Offer to buy or sell goods for a price and acceptance.
- (ii) May be immediate delivery; or
- (iii) Immediate payment, but delivery at some future date; or
- (iv) Immediate delivery
- (v) Delivery or payment or both in instalments;
- (vi) Delivery or payment or both are to be made at some future date.

1.7 SUBJECT MATTER OF CONTRACT OF SALE

♦ **Existing or future goods [section 6]:**

- 1. The subject matter of a contract of sale may be either existing goods that are acquired, owned or possessed by the seller, or future goods.
- 2. The acquisition of which by the seller depends upon a contingency.
- 3. Where the seller purports to effect a present sale of future goods.

♦ **Goods perishing before making of contract [Section 7]:** The contract is void if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged.

♦ **Goods perishing before sale but after agreement to sell [Section 8]:** The agreement is thereby avoided or becomes void.

♦ **Perishing of future goods:** The destruction of such goods will amount to supervening impossibility and the contract shall become void.

1.8 ASCERTAINMENT OF PRICE [SECTION 9 & 10]

♦ *Ascertainment of price [Section 9]: The price in the contract of sale may be-*

- (1) fixed by the contract;*
- (2) Manner provided by the contract;*
- (3) Course of dealings between the parties.*

♦ *Agreement to sell at valuation [Section 10]:*

Section 10 provides for the Determination of price by a third party.

- 1. price has to be fixed by the third party and he either does not or cannot make such valuation, the agreement will be void.*
- 2. In case the third party is prevented by the default of either party from fixing the price, the party at fault will be liable to the damages.*
- 3. A buyer who has received and appropriated the goods must pay a reasonable price.*

CHAPTER - 3

UNIT - 2 CONDITIONS & WARRANTIES

2.1 STIPULATION AS TO TIME [SECTION 11]

- 1) Whether or not such a stipulation is of the essence of a contract depends on the terms agreed upon.
- 2) Stipulation as to time of delivery are usually the essence of the contract.

2.2 INTRODUCTION - CONDITIONS AND WARRANTIES

Condition and warranty [Section 12]: A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

“A condition 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”.

Difference between conditions and warranties:

The following are important differences between conditions and warranties.

Differences	Condition	Warranty
Meaning	Essential to the main purpose	Collateral to the main purpose
Right in case of breach	Repudiate the contract or claim damages or both.	only damages
Conversion of stipulations	May be treated as a breach of warranty.	Cannot be treated as a breach of condition

2.3 WHEN CONDITION IS TO BE TREATED AS WARRANTY [SECTION 13]

- 1) Section 13 specifies cases where a breach of condition be treated as a breach of warranty.
 - (i) Voluntary waiver by buyer
 - (ii) Buyer elects to treat the breach of the conditions, as one of a warranty.
 - (iii) Contract is non-severable
 - (iv) By reason of impossibility or otherwise.

2.4	EXPRESS AND IMPLIED CONDITIONS AND WARRANTIES [SECTION 14-17]
I)	Express conditions which are agreed upon between the parties at the time of contract and are expressly.
II)	Implied conditions presumed by law to be present in the contract. Following conditions are implied in a contract of sale of goods unless the circumstances of the contract show a different intention.
(i)	Condition as to title: (Section 14)
(a)	The seller has the right to sell the goods.
(b)	In the case of an agreement to sell, he will have right to sell the goods at the time when the property is to pass.
(ii)	Sale by description: (Section 15)
(a)	goods shall correspond with the description.
(b)	Whether the description was essential for identifying the goods where the buyer had agreed to purchase.
(iii)	Sale by sample - (Section 17)
(a)	Shall correspond with the sample in quality;
(b)	the buyer shall have a reasonable opportunity of comparing
(c)	the goods shall be free from any defect rendering them un-merchantable, which would not be apparent on reasonable examination of the sample.
(iv)	Sale by sample as well as by description: (Section 15) Bulk of the goods supplied shall correspond both with the sample and the description.
(v)	Condition as to quality or fitness: (Section 16) Condition as to the reasonable fitness may be implied if the buyer had made known to the seller the purpose of his purchase and relied upon the skill and judgment of the seller
(vi)	Condition as to Merchantability: (Section 16) Goods shall be of merchantable quality.
(vii)	Condition as to wholesomeness: In the case of eatables and provisions the goods shall be wholesome.
III)	Implied Warranties: Implied warranties are read into every contract of sale unless they are expressly excluded by the express agreement of the parties.

1. *Warranty as to undisturbed possession [Section 14 (b)]*
2. *Warranty as to non-existence of encumbrances [Section 14 (c)]*
3. *Warranty as to quality or fitness by usage of trade [Section 16 (3)]*
4. *Disclosure of dangerous nature of goods*

2.5 CAVEAT EMPTOR

The rule of Caveat Emptor is laid down in the Section 16, which states that, "subject to the provisions of this Act or of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale".

Following are the conditions to be satisfied:

- 1) *if the buyer had made known to the seller the purpose of his purchase*
- 2) *the buyer relied on the seller's skill and judgement*
- 3) *seller's business to supply goods of that description*

Exceptions

1. *Fitness as to quality or use*
2. *Goods purchased under patent or brand name*
3. *Goods sold by description*
4. *Goods of Merchantable Quality*
5. *Sale by sample*
6. *Goods by sample as well as description*
7. *Trade Usage*
8. *Seller actively conceals a defect or is guilty of fraud*

CHAPTER - 3

UNIT - 3 TRANSFER OF OWNERSHIP AND DELIVERY OF GOODS

3.1 PASSING OF PROPERTY [SECTIONS 18 - 26]

The rules regarding transfer of property in goods depend on two basic factors:

- (a) Identification of Goods (Section 18)
- (b) Intentions of parties (Section 19)

The primary rules determining the passing of property from seller to buyer are as follows:

A. Specific or Ascertained goods

- 1. **Specific goods in a deliverable state (Section 20):** the property in the goods passes to the buyer when contract is made
- 2. **Specific goods to be put into a deliverable state (Section 21):** Seller is bound to do something to the goods for the purpose of putting them into a deliverable state until such thing is done and the buyer has notice thereof.
- 3. **Specific goods in a deliverable state when seller has to ascertain price (Section 22):** The property does not pass until such act or thing is done and the buyer has notice thereof.

B. Unascertained goods - No property in goods is transferred to the buyer unless and until goods are ascertained

(1) By description and Appropriation [Section 23 (1)]

- (a) Contract for the sale of unascertained or future goods.
- (b) The goods should conform to the description and quality
- (c) The goods must be in a deliverable state
- (d) The goods must be unconditionally appropriated to the contract
- (e) The appropriation must be made by:
 - (i) the seller with the assent of the buyer; or
 - (ii) the buyer with the assent of the seller.
- (f) The assent may be express or implied
- (g) The assent may be given either before or after appropriation.

(2)	<i>Delivery of the goods to the carrier [section 23 (2)] for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.</i>
C.	<i>Goods sent on approval or “on sale or return” [Section 24]</i>
	<i>The buyer-</i>
(a)	<i>Signifies his approval or acceptance</i>
(b)	<i>Retains the goods without giving notice of rejection on the expiration of such time</i>
(c)	<i>Does something which is equivalent to accepting the goods</i>
	<i>Sale for cash only or Return</i>
	<i>The property therein does not pass to the buyer until the terms are complied with, i.e., cash is paid for.</i>
D.	<i>Reservation of right of disposal [Section 25]</i>
	<i>The seller may, by the terms of the contract or appropriation, as the case may be, reserve the right to dispose of the goods, until certain conditions have been fulfilled.</i>
3.2	<i>RISK PRIMA FACIE PASSES WITH PROPERTY [SECTION 26] When the property therein is transferred to the buyer, the goods are at the buyer’s risk whether delivery has been made or not”.</i>
	<i>Exception</i>
1)	<i>the goods are at the risk of the party in fault</i>
2)	<i>by special agreement</i>
3.3	<i>TRANSFER OF TITLE BY NON-OWNERS [SECTIONS 27 - 30]</i>
	<i>Seller cannot transfer a better title to the buyer for goods than he himself has. This rule is expressed “Nemo dat quod non habet” which means that no one can give what he has not got.</i>
	<i>Exceptions</i>

(1)	<i>Sale by a Mercantile Agent (Section 27)</i>
(2)	<i>Sale by one of the joint owners (Section 28)</i>
(3)	<i>Sale by a person in possession under voidable contract (Section 29)</i>
(4)	<i>Sale by one who has already sold the goods but continues in possession thereof</i>
(5)	<i>Sale by buyer obtaining possession before the property in the goods has vested in him (Section 30)</i>
(6)	<i>Effect of Estoppel</i>
(7)	<i>Sale by an unpaid seller (Section 54)</i>
(8)	<i>Sale under the provisions of other Acts</i>
3.4	<i>PERFORMANCE OF THE CONTRACT OF SALE [SECTIONS 31 - 44]</i>
	<i>Implies delivery of goods by the seller and acceptance of the delivery of goods and payment. (Section 31 and Section 32)</i>
I)	<i>Rules Regarding Delivery of goods</i>
(i)	<i>Delivery (Section 33):</i> <i>Doing anything which the parties agree shall be treated as delivery.</i>
(ii)	<i>Effect of part delivery (Section 34):</i> <i>has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole.</i>
(iii)	<i>Buyer to apply for delivery (Section 35)</i>
(iv)	<i>Place of delivery (Section 36):</i> <i>Whether it is for the buyer to take possession of the goods or for the seller to deliver them to the buyer is a question depending in each case.</i>
(v)	<i>Time of delivery (Section 36)</i>
(vi)	<i>Goods in possession of a third party (Section 36):</i> <i>There is no delivery unless and until such third person acknowledges to the buyer that he holds the goods on his behalf.</i>
(vii)	<i>Time for tender of delivery (Section 36)</i>
(viii)	<i>Expenses for delivery (Section 36):</i> <i>must be borne by the seller</i>
(ix)	<i>Delivery of wrong quantity (Section 37):</i>
	<ul style="list-style-type: none"> <i>Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate.</i>

- Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest or he may reject the whole.

(x) **Instalment deliveries (Section 38):** Buyer is not bound to accept delivery in instalments.

(xi) **Delivery to carrier (Section 39):** deemed to be delivery to the buyer.

(xii) **Deterioration during transit (Section 40):** Will fall on the buyer.

(xiii) **Buyer's right to examine the goods (Section 41)**

II) Rule related to Acceptance of Delivery of Goods

(a) intimates to the seller that he had accepted the goods;

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

(c) retains the goods after the lapse of a reasonable time, without intimating

III) **Buyer not bound to return rejected goods:** It is sufficient if he intimates to the seller that he refuses to accept them.

IV) **Liability of buyer for neglecting or refusing delivery of goods:** he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods.

CHAPTER - 3

UNIT - 4 UNPAID SELLER

4.1 UNPAID SELLER

The seller of goods is deemed to be an 'Unpaid Seller' when- (Section 45)

- (a) The whole of the price has not been paid or tendered and the seller had an immediate right of action for the price.
- (b) When a bill of exchange or other negotiable instrument has been received as conditional payment dishonour.

4.2 RIGHTS OF AN UNPAID SELLER (Section 46)

An unpaid seller has been expressly given the rights against the goods as well as the buyer.

- a) a lien on the goods
- b) right of stopping the goods in transit
- c) a right of re-sale

4.3 RIGHT OF UNPAID SELLER AGAINST THE GOODS

The unpaid seller has the following rights against the goods:

(A) Seller's lien [Section 47]

- ♦ **Rights of lien:** The lien can be exercised as long as the seller remains in possession of the goods.
- ♦ **Exercise of right of lien:**
 - Goods have been sold without any stipulation of credit;
 - Goods have been sold on credit but the term of credit has expired;
 - where the buyer becomes insolvent.
- ♦ **Part delivery [Section 48]:** An unpaid seller may exercise his right of lien on the remainder.
- ♦ **Termination of lien [Section 49]:** The unpaid seller loses his right of lien under the following circumstances:

(i)	He delivers the goods to a carrier.
(ii)	Buyer or his agent lawfully obtains possession.
(iii)	Seller has waived the right of lien.
(iv)	By Estoppel
♦	Exception: even if the seller has taken a price for the goods under a court case, he can still exercise his right to lien on those goods.)
(B)	Right of stoppage in transit
(a)	right of stopping the goods while they are in transit, to regain the possession and to retain them till the full price is paid. (Section 50)
	The following conditions are fulfilled:
(a)	The seller must be unpaid
(b)	He must have parted with the possession of goods.
(c)	The goods are in transit.
(d)	The buyer has become insolvent.
(e)	The right is subject to provisions of the Act. [Section 50]
(b)	Duration of transit (Section 51)
(i)	The goods are deemed to be in course of transit from the time when they are delivered to a carrier.
(ii)	The right of stoppage in transit is lost when transit comes to an end.
	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.
•	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.
•	Where the goods are delivered to a ship chartered by the buyer.

- (c) **How stoppage in transit is effected (Section 52):** The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier.
- (d) **Effects of sub-sale or pledge by buyer (Section 53):** The right of lien or stoppage in transit is not affected by the buyer selling or pledging the goods unless the seller has assented to it.
1. **Exceptions where unpaid seller's right of lien and stoppage in transit are defeated:**
- (a) Seller has assented to the sale, mortgage or other disposition.
(*Mount D. F. Ltd. vs Jay & Jay (Provisions) Co. Ltd.*)
- (b) 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
2. **Effect of stoppage:** The contract of sale is not rescinded when the seller exercises his right of stoppage in transit.
- (C) **Right of re-sale** seller can exercise the right to re-sell the goods under the following conditions: (Section 54)
- (i) Where the goods are of a perishable nature
- (ii) Where he gives notice to the buyer of his intention to re-sell the goods
- (iii) Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods
- (iv) A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale
- (v) Where the property in goods has not passed to the buyer

4.4 RIGHTS OF UNPAID SELLER AGAINST THE BUYER

Rights of unpaid seller against the buyer personally: The rights of the seller against the buyer personally are called rights in personam and are in addition to his rights against the goods.

The right against the buyer are as follows:

1. **Suit for price (Section 55)**
2. **Suit for damages for non-acceptance (Section 56)**

3.	<i>Repudiation of contract before due date (Section 60)</i>
4.	<i>Suit for interest (Section 61)</i>
4.5	REMEDIES OF BUYER AGAINST THE SELLER
	<i>Breach of contract by seller, where he-</i>
	<ul style="list-style-type: none"> <i>Fails to deliver the goods at the time or in manner prescribed</i> <i>Repudiates the contract</i> <i>Deliver non-conforming goods and buyer rejects and revokes acceptance</i>
1.	<i>Damages for non-delivery (Section 57)</i>
2.	<i>Suit for specific performance (Section 58)</i>
3.	<i>Suit for breach of warranty (Section 59)</i>
4.	<i>Repudiation of contract before due date (Section 60)</i>
5.	<i>Suit for interest</i>
4.6	AUCTION SALE [SECTION 64]
	<i>Selling property by inviting bids publicly and the property is sold to the highest bidder.</i>
	<i>Rules to regulate the sale by auction:</i>
(a)	<i>Where goods are sold in lots</i>
(b)	<i>Completion of the contract of sale</i>
(c)	<i>Right to bid may be reserved</i>
(d)	<i>Where the sale is not notified by the seller</i>
(e)	<i>Reserved price</i>
(f)	<i>Pretended bidding</i>
4.7	INCLUSION OF INCREASED OR DECREASED TAXES IN CONTRACT OF SALE [SECTION 64A]
	<i>Where after a contract has been made but before it has been performed, tax revision takes place.</i>
	<i>The effect of provision can, however, is excluded by an agreement to the contrary.</i>

CHAPTER - 4

UNIT - 1 GENERAL NATURE OF A PARTNERSHIP

1.1 DEFINITION OF 'PARTNERSHIP', 'PARTNER', 'FIRM' AND 'FIRM NAME'

1.2 ELEMENTS OF PARTNERSHIP

- ❖ Partnership is an association of two or more persons.
- ❖ The partnership must be a result of an agreement entered into by all persons concerned.
- ❖ Partnership is organised to carry on some business.
- ❖ The agreement must be to share the profits of the business.
- ❖ The business must be carried on by all or any of them acting for all.

1.3 TRUE TEST OF PARTNERSHIP

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

1.4 PARTNERSHIP DISTINGUISHED FROM OTHER FORMS OF ORGANISATION

Partnership Vs. Joint Stock Company

Basis	Partnership	Joint Stock Company
Legal status	Not legal entity	Separate legal entity
Agency	Every partner is an agent of the other partners	Member is not an agent of the other members
Distribution of profits	According to the terms of the partnership deed.	No such compulsion, only when dividends are declared.
Extent of liability	Unlimited	Limited by shares
Property	"joint estate"	Separate from that of its members
Transfer of shares	Cannot without the consent of all the partners.	Subject to the provisions in Articles.

Management	All partners subject to agreement	By Directors									
Registration	Not compulsory	Cannot come into existence unless registered									
Winding up	Dissolved at any time	By the National Company Law Tribunal or struck									
Number of membership	Not exceed 100 Companies Rules, restrict limit to 50.	<table border="1"> <tr> <td></td><td>Min</td><td>Max</td></tr> <tr> <td>Private</td><td>2</td><td>200</td></tr> <tr> <td>Public</td><td>7</td><td>any number</td></tr> </table>		Min	Max	Private	2	200	Public	7	any number
	Min	Max									
Private	2	200									
Public	7	any number									
Duration of existence	Death, retirement or insolvency results dissolution of the firm.	Perpetual succession.									

Partnership Vs. Club

Basis of Difference	Partnership	Club
Definition	Earning profits from a business.	Object not of earning profit, but of promoting some beneficial purposes.
Relationship	partner is an agent for other	Member of a club is not the agent of other.
Interest in the property	Partner has interest property of the firm.	A member has no interest
Dissolution	Change in the partners of the firm affect its existence.	Change in the membership not affect its existence.

Partnership vs. Hindu Undivided Family

Basis of difference	Partnership	Joint Hindu family
Creation	By an agreement	By birth in the family
Death of a member	Leads to the dissolution	Does not give rise to dissolution
Management	Partners	Karta

Authority to bind	Every partner can, by his act, bind the firm.	The Karta or the manager
Liability	Unlimited	Liability of the Karta is unlimited, and other coparcener to the extent of their share in the profits of the family business.
Calling for accounts on closure	Partner can provided he also seeks the dissolution.	On the separation a member is not entitled
Governing Law	The Indian Partnership Act, 1932.	Hindu Law
Minor's capacity	The benefits of partnership, only	Becomes a member of the ancestral business by the incidence of birth.
Continuity	Subject to a contract between the partners gets dissolved by death or insolvency.	Continuity till it is divided.
Number of Members	Should not exceed 50.	May be unlimited
Share in the business	defined by an agreement	Fluctuating

Partnership Vs. Co-Ownership or joint ownership

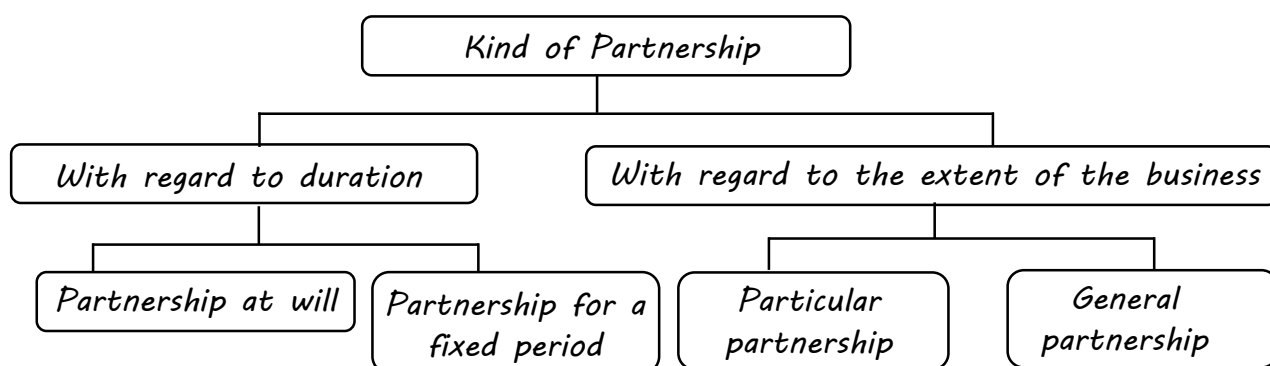
Basis of difference	Partnership	Co-ownership
Formation	A contract	Agreement or operation of law
Implied agency	Partner is the agent	Not the agent of other
Nature of interest	Profits and losses must have to be shared.	Does not necessarily involve sharing of profits and losses.
Transfer of interest	By the consent of other partners.	Without the consent of other co-owners.

Partnership vs. Association

<i>Basis of difference</i>	<i>Partnership</i>	<i>Association</i>
<i>Meaning</i>	<i>Relation of agency between two or more persons who have entered into a business for gains.</i>	<i>Evolves out of social cause</i>
<i>Examples</i>	<i>Partnership to run a business and earn profit thereon.</i>	<i>Members of charitable society trade protection association.</i>

1.5 KINDS OF PARTNERSHIPS

The following chart illustrates the various kinds of partnership:



1.6 TYPES OF PARTNERS

- ❖ *Active or Ostensible*
- ❖ *Nominal*
- ❖ *Sub - partner*
- ❖ *Outgoing Partner*
- ❖ *Sleeping or Dormant*
- ❖ *Partner in Profits only*
- ❖ *Incoming Partner*
- ❖ *Partner by Holding out (Section 28)*

CHAPTER - 4

UNIT - 2 RELATIONS OF PARTNERS

2.1 RELATION OF PARTNERS TO ONE ANOTHER

1. GENERAL DUTIES OF PARTNERS [SECTION 9]

- a) The partners should carry business of the firm to the greatest common advantages.
- b) they should render to any partner or his legal representatives full information of all things affecting the firm.
- c) A partner must observe the utmost good faith in his dealings with the other partners.

2. DUTY TO INDEMNIFY FOR LOSS CAUSED BY FRAUD [SECTION 10]

The partner, committing fraud in the conduct of the business of the firm, must make good the loss sustained by the firm

3. DETERMINATION OF RIGHTS AND DUTIES OF PARTNERS BY CONTRACT BETWEEN THE PARTNERS [SECTION 11]

- (1) The mutual rights and duties of the partners of a firm may be determined by contract between the partners.
- (2) Agreements in restraint of trade

4. THE CONDUCT OF THE BUSINESS (Section 12)

Rights of partners in relation to conduct of the business.

- (i) Right to take part in the conduct of the Business
- (ii) Right to be consulted
- (iii) Right of access to books
- (iv) Right of legal heirs/ representatives/ their duly authorised agents have a right of access to and to inspect and copy any of the books of the firm.

5. MUTUAL RIGHTS AND LIABILITIES [SECTION 13]

- (i) Right to remuneration
- (ii) Right to share Profits
- (iii) Interest on Capital

(iv)	<i>Interest on advances</i>
(v)	<i>Right to be indemnified</i>
(vi)	<i>Right to indemnify the firm</i>
2.2	<i>PARTNERSHIP PROPERTY [SECTION 14]</i>
1.	<i>THE PROPERTY OF THE FIRM</i>
(i)	<i>all property, rights and interests which partners may have brought into the common stock</i>
(ii)	<i>all the property, rights and interest acquired or purchased by or for the firm</i>
(iii)	<i>Goodwill of the business.</i>
2.	<i>APPLICATION OF THE PROPERTY OF THE FIRM (Section 15): The property of the firm shall be held and used exclusively for the purpose of the firm.</i>
2.3.	<i>PERSONAL PROFIT EARNED BY PARTNERS [SECTION 16]</i>
	<i>According to section 16, subject to contract between the partners,-</i>
(a)	<i>If a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;</i>
(b)	<i>If a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.</i>
2.4	<i>RIGHTS AND DUTIES OF PARTNERS AFTER A CHANGE IN THE FIRM [SECTION 17]</i>
(a)	<i>after a change in the firm: Remain the same as they were immediately before the change, as far as may be;</i>
(b)	<i>after the expiry of the term of the firm: Remain the same as they were before the expiry, so far as they may be consistent with the incidents of partnership at will; and</i>
(c)	<i>where additional undertakings are carried out: Same as those in respect of the original adventures or undertakings.</i>
2.5	<i>RELATION OF PARTNERS TO THIRD PARTIES</i>

3.	EXTENSION AND RESTRICTION OF PARTNERS' IMPLIED AUTHORITY [SECTION 20]:
	<i>The restrictions imposed on the implied authority of a partner by agreement shall be effective against a third party:</i>
1.	<i>The third party knows about the restrictions, and</i>
2.	<i>The third party does not know that he is dealing with a partner in a firm.</i>
4.	PARTNER'S AUTHORITY IN AN EMERGENCY [SECTION 21]
	<i>To do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence.</i>
2.6	EFFECT OF ADMISSIONS BY A PARTNER [SECTION 23]
	<i>An admission or representation by a partner will not however, bind the firm if his authority on the point is limited and the other party knows of the restriction.</i>
2.7	EFFECT OF NOTICE TO ACTING PARTNER [SECTION 24]
	<i>The Notice to a partner would constitute a notice to firm if,</i>
1)	<i>On matters relating to the affairs of the firm except in the case of a fraud on the firm committed by or with the consent of that partner.</i>
2)	<i>Received by a working partner</i>
2.8	LIABILITY TO THIRD PARTIES
1.	LIABILITY OF A PARTNER FOR ACTS OF THE FIRM [SECTION 25]: <i>The partners are jointly and severally responsible to third parties for all acts which come under the scope of their express or implied authority.</i>
2.	LIABILITY OF THE FIRM FOR WRONGFUL ACTS OF A PARTNER [SECTION 26]: <i>The firm is liable to the same extent as the partner for any loss or injury caused to a third party by the wrongful acts of a partner, if they are done by the partner while acting.</i>
(a)	<i>in the ordinary course of the business of the firm.</i>
(b)	<i>with the authority of the partners.</i>

(ii)	<i>After attaining majority</i>
(a)	<i>When he becomes partner</i>
(i)	<i>He becomes personally liable to third parties</i>
(ii)	<i>His share in the property and the profits of the firm remains the same</i>
(b)	<i>When he elects not to become a partner:</i>
(i)	<i>His rights and liabilities continue to be those of a minor up to the date of giving public notice.</i>
(ii)	<i>His share shall not be liable for any acts of the firm done after the date of the notice.</i>
2.11	LEGAL CONSEQUENCES OF PARTNER COMING IN AND GOING OUT [SECTION 31 - 35]
(i)	INTRODUCTION OF A PARTNER [SECTION 31]:
1)	<i>contract between partners</i>
2)	<i>the consent of all the existing partners.</i>
	<i>Rights and liabilities of new partner: The liabilities of the new partner ordinarily commence from the date when he is admitted as a partner, unless he agrees to be liable for obligations incurred by the firm prior to the date.</i>
(ii)	RETIREMENT OF A PARTNER [SECTION 32]:
(1)	<i>A partner may retire:</i>
(a)	<i>Consent of all the other partners;</i>
(b)	<i>An express agreement by the partners; or</i>
(3)	<i>Partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement:</i>
(iii)	EXPULSION OF A PARTNER [SECTION 33]:
(i)	<i>the power of expulsion must have existed in a contract between the partners;</i>
(ii)	<i>the power has been exercised by a majority of the partners;</i>
(iii)	<i>it has been exercised in good faith.</i>

(iv)	INSOLVENCY OF A PARTNER [SECTION 34]:
(1)	He ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is hereby dissolved.
(2)	Where under a contract the estate of a partner so adjudicated is not liable for any act of the firm and the firm is not liable for any act of the insolvent.
(v)	LIABILITY OF ESTATE OF DECEASED PARTNER [SECTION 35]:
1)	dissolution subject to a contract between the parties
2)	estate of the deceased partner may be absolved from liability for the future obligations of the firm.
2.12	RIGHTS OF OUTGOING PARTNER TO CARRY ON COMPETING BUSINESS [SECTION 36]:
	Subject to contract to the contrary, he may not,-
(a)	use the firm name,
(b)	represent himself as carrying on the business of the firm or
(c)	solicit the custom of persons who were dealing with the firm before he ceased to be a partner.
	Agreement in restraint of trade: A partner may make an agreement with his partners that on ceasing to be a partner he will not carry on any business similar to that of the firm.
2.13	RIGHT OF OUTGOING PARTNER IN CERTAIN CASES TO SHARE SUBSEQUENT PROFITS [SECTION 37]:
	Outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent per annum on the amount of his share in the property of the firm.
2.14	REVOCATION OF CONTINUING GUARANTEE BY CHANGE IN FIRM [SECTION 38]
	In the absence of an agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.

CHAPTER - 4

UNIT - 3 REGISTRATION AND DISSOLUTION OF A FIRM

3.1 REGISTRATION OF FIRMS

(a) APPLICATION FOR REGISTRATION [SECTION 58]:

- (1) The registration of a firm may be effected at any time by sending by post or delivering to the Registrar a statement in the prescribed form.
- (2) Stating-
 - firm's name
 - Place of business
 - Date of joining of partner
 - Name and addresses of partner, duration of firm
- (3) The statement shall be signed and verified by all the partners

(b) REGISTRATION [SECTION 59]:

- 1) When the Registrar is satisfied that the provisions of section 58 have been duly complied with, he shall record an entry of the statement in a Register called the Register of Firms and shall file the statement.
- 2) Registration is deemed to be completed as soon as an application is delivered to the Registrar.

(c) LATE REGISTRATION ON PAYMENT OF PENALTY

3.2 CONSEQUENCES OF NON-REGISTRATION (SECTION 69)

- (i) No suit in a civil court by firm or other co-partners against third party
- (ii) No relief to partners for set-off of claim
- (iii) Aggrieved partner cannot bring legal action against other partner or the firm
- (iv) Third party can sue the firm

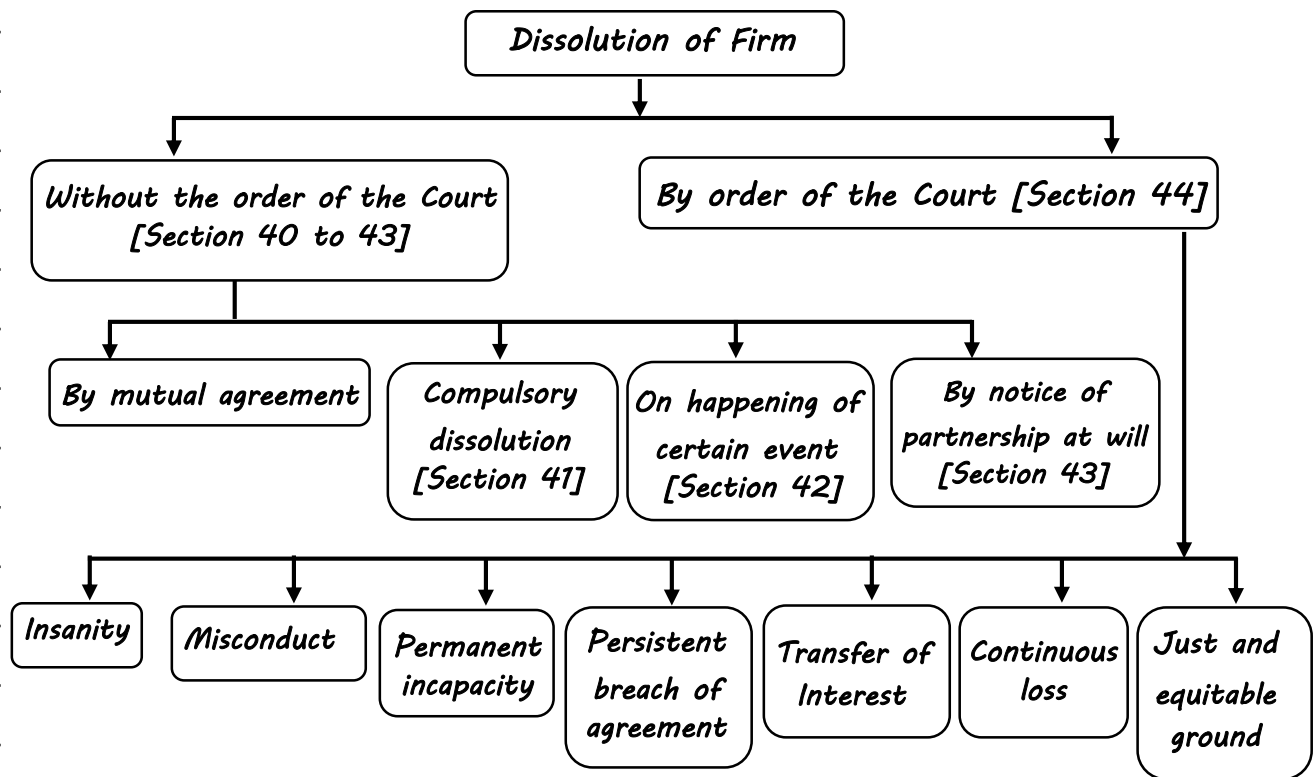
3.3 DISSOLUTION OF FIRM

Dissolution of Firm Vs. Dissolution of Partnership

S. No.	Basis of Difference	Dissolution of Firm	Dissolution of Partnership
1.	Continuation of business	Discontinuation of business in partnership.	Involves only reconstitution firm.
2.	Winding up	Realization of assets and settlement of liabilities.	Only revaluation of assets and liabilities
3.	Order of court	By the order of the court.	Not ordered by the court.
4.	Scope	Necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
5.	Final closure of books	Final closure of books of the firm.	Not involve final closure of the books of the firm.

Modes of Dissolution of a firm [Sections 40-44]

The dissolution of partnership firm may be in any of the following ways:



3.4 CONSEQUENCES OF DISSOLUTION

(a) Liability for acts of partners done after dissolution (Section 45)

- (1) *Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution.*
- (b) **Right of partners to have business wound up after dissolution (Section 46):** *to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed.*
- (c) **Continuing authority of partners for purposes of winding up (Section 47):** *So far as may be necessary to wind up*
- (d) **Mode of Settlement of partnership accounts (Section 48)**
- (i) *Losses, including deficiencies of capital, shall be paid first out of profits next out of capital and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.*
- (ii) *The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order-*
- (a) *in paying the debts of the firm to third parties;*
- (b) *in paying to each partner rateably what is due to him from capital;*
- (c) *in paying to each partner rateably what is due to him on account of capital; and*
- (d) *the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.*
- (e) **Payment of firm debts and of separate debts (Section 49):**
- (i) *the property of the firm shall be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the share of each partner shall be applied to the payment of his separate debts or paid to him.*
- (ii) *the separate property of any partner shall be applied first in the payment of his separate debts and surplus, if any, in the payment of debts of the firm.*

CHAPTER - 5

THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

INTRODUCTION

The LLP Act, 2008 is applicable to the whole of India.

The LLP Act, 2008 has 81 sections and 4 schedules

The First Schedule deals with mutual rights and duties of partners

The Second Schedule deals with conversion of a firm into LLP.

The Third Schedule deals with conversion of a private company into LLP

The Fourth Schedule deals with conversion of unlisted public company into LLP.

1. LIMITED LIABILITY PARTNERSHIP-MEANING AND CONCEPT

LLP as a separate legal entity and business organisation is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.

Important Definitions

1. **Body Corporate [(Section 2(1) (d))]:** It means a company as defined in clause (20) of section 2 of the Companies Act, 2013 and includes—

- (i) a LLP registered under this Act;
- (ii) a LLP incorporated outside India; and
- (iii) a company incorporated outside India,

but does not include—

- (i) a corporation sole;
- (ii) a co-operative society registered under any law
- (iii) any other body corporate (not being a company as defined in clause (20) of section 2 of the Companies Act, 2013

2. **Financial Year [Section 2 (1) (l)]:** “Financial year”, in relation to a LLP, means the period from the 1st day of April of a year to the 31st day of March of the following year.

However, in the case of a LLP incorporated after the 30th day of September of a year, the financial year may end on the 31st day of March of the year next following that year.

3. **Small Limited Liability Partnership [Section 2(1) (ta)]:**

- (i) the contribution of which, does not exceed twenty-five lakh rupees
- (ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees

Non-applicability of the Indian Partnership Act, 1932 (Section 4):

Partners (Section 5): Any individual or body corporate may be a partner in a LLP. However, an individual shall not be capable of becoming a partner of a LLP, if—

- (a) he has been found to be of unsound mind
- (b) he is an undischarged insolvent; or
- (c) he has applied to be adjudicated as an insolvent and his application is pending.

Minimum number of partners (Section 6):

Every LLP shall have at least two partners.

Designated partners (Section 7):

- (i) Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
- (ii) Resident in India: Period of not less than 120 days during the financial year.

2. **CHARACTERISTIC OF LLP**

- ♣ Body Corporate
- ♣ Perpetual Succession
- ♣ Separate legal entity
- ♣ Mutual Agency
- ♣ LLP Agreement
- ♣ Artificial Legal person

◆	<i>Common Seal</i>
◆	<i>Limited liability</i>
◆	<i>Management of business</i>
◆	<i>Minimum and maximum number of partners</i>
◆	<i>Business for profit only</i>
◆	<i>Investigation</i>
◆	<i>Compromise or Arrangement</i>
◆	<i>Conversion into LLP</i>
◆	<i>E-filing of documents</i>
◆	<i>Foreign LLPs</i>
3.	<i>INCORPORATION OF LLP</i>
	<i>Incorporation document (Section 11)</i>
(1)	<i>For a LLP to be incorporated</i>
(a)	<i>two or more persons associated for carrying on a lawful business</i>
(b)	<i>the incorporation document shall be filed in such manner</i>
(c)	<i>Statement to be filed:</i>
➤	<i>there shall be filed along with the incorporation document, a statement in the prescribed form,</i>
➤	<i>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</i>
➤	<i>by any one who subscribed his name to the incorporation document</i>
(2)	<i>The incorporation document shall—</i>
(a)	<i>be in a form as may be prescribed;</i>
(b)	<i>state the name of the LLP;</i>
(c)	<i>state the proposed business of the LLP;</i>
(d)	<i>state the address of the registered office of the LLP;</i>
(e)	<i>state the name and address of each of the persons who are to be partners</i>
(f)	<i>state the name and address of the persons who are to be designated partners</i>
(g)	<i>contain such other information</i>

(3)	<i>If a person makes a statement as discussed above which he—</i>
(a)	<i>knows to be false; or</i>
(b)	<i>does not believe to be true, shall be punishable</i>
➤	<i>with imprisonment for a term which may extend to 2 years and</i>
➤	<i>with fine which shall not be less than ₹ 10,000 but which may extend to ₹ 5 Lakhs.</i>
	<i>Incorporation by registration (Section 12)</i>
(1)	<i>the Registrar shall retain the incorporation document and, unless the requirement imposed by clause (a) of that sub-section has not been complied with, he shall, within a period of 14 days—</i>
(a)	<i>register the incorporation document; and</i>
(b)	<i>give a certificate that the LLP is incorporated by the name specified therein.</i>
	<i>Registered office of LLP and change therein (Section 13):</i>
(1)	<i>Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.</i>
(2)	<i>A LLP may 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</i>
	<i>Effect of registration (Section 14):</i>
◆	<i>suing and being sued;</i>
◆	<i>acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;</i>
◆	<i>having a common seal, if it decides to have one; and</i>
◆	<i>doing & suffering such other acts and things as bodies corporate may lawfully do & suffer.</i>
	<i>Name (Section 15):</i>
(1)	<i>Every limited liability partnership shall have either the words “limited liability partnership” or the acronym “LLP” as the last words of its name.</i>

(2)	No LLP shall be registered by a name which, in the opinion of the Central Government is—
(a)	undesirable; or
(b)	identical or too nearly resembles to that of any other LLP or a company or a registered trade mark of any other person under the Trade Marks Act, 1999.
	Reservation of name (Section 16):
(1)	Registrar for the reservation of a name set out in the application as—
(a)	the name of a proposed LLP; or
(b)	the name to which a LLP proposes to change its name.
(2)	Reserve the name for a period of 3 months from the date of intimation by the Registrar.
	Change of name of LLP (Section 17):
(1)	If through inadvertence or otherwise, a LLP, on its first registration or on its registration by a new body corporate, its registered name, is registered by a name which is identical with or too nearly resembles to -
(a)	that of any other LLP or a company; or
(b)	a registered trade mark of a proprietor under the Trade Marks Act, 1999, as is likely to be mistaken for it,
	Then on an application of such LLP or proprietor referred
	The Central Government may direct that such LLP to change its name or new name within a period of 3 months from the date of issue of such direction.
	It is further provided that an application of the proprietor of the registered trade marks shall be maintainable within a period of 3 years from the date of incorporation or registration or change of name of the LLP under this Act.
(3)	Within a period of 15 days from the date of such change, give notice of the change to Registrar.
(4)	If the LLP is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the LLP in such manner as may be prescribed and the Registrar shall enter the new name in the register of LLP.

4. DIFFERENCES WITH OTHER FORMS OF ORGANISATION

Distinction between LLP and Partnership Firm

	<i>Basis</i>	<i>LLP</i>	<i>Partnership firm</i>
1.	<i>Act</i>	<i>The Limited Liability Partnership Act, 2008.</i>	<i>The Indian Partnership Act, 1932.</i>
2.	<i>Body corporate</i>	<i>A body corporate.</i>	<i>Not a body corporate,</i>
3.	<i>Separate legal entity</i>	<i>Separate from its members.</i>	<i>No separate legal entity.</i>
4.	<i>Creation</i>	<i>Registration</i>	<i>By an agreement</i>
5.	<i>Registration</i>	<i>Mandatory</i>	<i>Voluntary</i>
6.	<i>Perpetual succession</i>	<i>Continues forever</i>	<i>No perpetual succession.</i>
7.	<i>Name</i>	<i>Contain the word (LLP)</i>	<i>No guidelines</i>
8.	<i>Liability</i>	<i>Limited</i>	<i>Unlimited</i>
9.	<i>Mutual agency</i>	<i>Partner can bind the LLP but not the other partners.</i>	<i>Partner can bind the firm as well as other partners.</i>
10.	<i>Designated partners</i>	<i>At least two</i>	<i>No provision</i>
11.	<i>Common seal</i>	<i>May have</i>	<i>No</i>
12.	<i>Legal compliances</i>	<i>Designated partners</i>	<i>All partners</i>
13.	<i>Annual filing of documents</i>	<i>LLP is required to file:</i>	<i>Not to file any annual document</i>
14.	<i>Foreign partnership</i>	<i>Can become a partner</i>	<i>Cannot become a partner</i>
15.	<i>Minor as partner</i>	<i>Cannot be admitted to the benefits</i>	<i>Can be admitted to the benefits</i>

Distinction between LLP and Limited Liability Company

	<i>Basis</i>	<i>LLP</i>	<i>Limited Liability Company</i>
1.	<i>Act</i>	<i>The LLP Act, 2008.</i>	<i>The Companies Act, 2013.</i>
2.	<i>Members/Partners</i>	<i>Partners</i>	<i>Members</i>
3.	<i>Internal governance structure</i>	<i>by agreement</i>	<i>by Companies Act</i>
4.	<i>Name</i>	<i>“LLP” suffix</i>	<i>“limited” “Private limited” as suffix</i>

5.	<i>No. of members/partners</i>	<i>Minimum - 2 members Maximum - No such limit</i>	<i>Private company: Minimum - 2 Maximum - 200 Public company: Minimum - 7 members Maximum - No such limit</i>
6.	<i>Liability</i>	<i>To the extent of agreed contribution</i>	<i>To the amount unpaid on the shares</i>
7.	<i>Management</i>	<i>Partners including the designated partners authorized</i>	<i>Board of directors</i>
8.	<i>Minimum number of directors/designated partners</i>	<i>2</i>	<i>Pvt. Co. - 2 Public co. - 3</i>

CHAPTER - 6

THE COMPANIES ACT, 2013

1. COMPANY: MEANING AND ITS FEATURES

- I. Separate Legal Entity
- II. Perpetual Succession
- III. Limited Liability
- IV. Artificial Legal Person
- V. Common Seal

2. CORPORATE VEIL THEORY

- (i) Corporate Veil: Whereby the company is identified separately from the members of the company. [*Salomon Vs. Salomon and Co Ltd.*]
- (ii) Lifting of Corporate Veil: Where company law disregards the principle of corporate personality.
 - (1) To determine the character of the company i.e. to find out whether co-enemy or friend: *Daimler Co. Ltd. vs. Continental Tyre & Rubber*
 - (2) To protect revenue/tax [*Dinshaw Maneckjee Petit*]
 - (3) To avoid a legal obligation: (*The Workmen Employed in Associated Rubber Industries Limited, Bhavnagar vs. The Associated Rubber Industries Ltd., Bhavnagar and another*).
 - (4) Formation of subsidiaries to act as agents: *Merchandise Transport Limited vs. British Transport Commission (1982)*
 - (5) Company formed for fraud/improper conduct or to defeat law: [*Gilford Motor Co. vs. Horne*]

3. CLASSES OF COMPANIES UNDER THE ACT

1. On the basis of liability:
 - (a) Company limited by shares: [Section 2(22)] of the Companies Act, 2013, defines that when the liability of the members of a company is limited by its memorandum of association to the amount (if any) unpaid on the shares held by them.

(b)	Company limited by guarantee: [Section 2(21)] of the Companies Act, 2013 defines it as the company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up.
(c)	Unlimited company: [Section 2(92)] of the Companies Act, 2013 defines unlimited company as a company not having any limit on the liability of a member ceases when he ceases to be a member.
2.	On the basis of members
(a)	One person company: [Section 2(62)] According to section 3(1)(c) of the Companies Act, 2013, OPC is a private limited company with the minimum paid up share capital as may be prescribed and having one member.
	OPC (One Person Company) - significant points
♦	Only one person as member.
♦	Minimum paid up capital - no limit prescribed.
♦	The memorandum of OPC shall indicate the name of the other person
♦	The other person whose name is given in the memorandum shall give his prior written consent in.
♦	Such other person may be given the right to withdraw his consent.
♦	The member of OPC may at any time change the name of such other person
♦	Only a natural person who is an Indian citizen whether resident in India or otherwise and has stayed in India for a period of not less than 120 days during the immediately preceding financial year
	<ul style="list-style-type: none"> • shall be eligible to incorporate a OPC; • shall be a nominee for the sole member of a OPC.
♦	No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
♦	No minor shall become member or nominee of the OPC
♦	Such Company cannot be incorporated or converted into a company under section 8 of the Act.

♦	<i>Such Company cannot carry out Non-Banking Financial Investment activities</i>
(b)	Private Company [Section 2(68)]
	Private Company - significant points
♦	<i>No minimum paid-up capital requirement.</i>
♦	<i>Minimum number of members - 2 (except if private company is an OPC, where it will be 1).</i>
♦	<i>Maximum number of members - 200, excluding present employee-cum-members and erstwhile employee-cum-members.</i>
♦	<i>Right to transfer shares restricted.</i>
♦	<i>Prohibition on invitation to subscribe to securities of the company.</i>
♦	<i>Small company is a private company.</i>
♦	<i>OPC can be formed only as a private company.</i>
	Small Company - Significant points
♦	<i>A private company</i>
♦	<i>Paid up capital - not more than ₹ 4 crores</i>
	<i>Or</i>
	<i>Turnover - not more than 40 crores.</i>
♦	<i>Should not be - Section 8 company</i>
	<i>- Holding or a Subsidiary company</i>
(c)	Public company [Section 2(71)]
♦	<i>Is not a private company (Articles do not have the restricting clauses).</i>
♦	<i>Shares freely transferable.</i>
♦	<i>No minimum paid up capital requirement.</i>
♦	<i>Minimum number of members - 7.</i>
♦	<i>Maximum numbers of members - No limit</i>
♦	<i>Subsidiary of a public company is deemed to be a public company.</i>
3.	On the basis of control
(a)	Holding and subsidiary companies: [Section 2(46)] & section 2(87)

	<i>Whereas section 2(87) defines “subsidiary company” in relation to any other company</i>
	<i>(that is to say the holding company), means a company in which the holding company-</i>
<i>(i)</i>	<i>controls the composition of the Board of Directions; or</i>
<i>(ii)</i>	<i>exercise or controls more than one-half of the total voting power</i>
<i>(b)</i>	<i>Associate company [Section 2(6)]: 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.</i>
4.	<i>On the basis of access to capital:</i>
<i>(a)</i>	<i>Listed company [section 2(52)]: It is a company which has any of its securities listed on any recognised stock exchange.</i>
<i>(b)</i>	<i>Unlisted company: means company other than listed company.</i>
5.	<i>Other companies:</i>
<i>(a)</i>	<i>Government company [Section 2(45)]: Government Company means any company in which not less than 51% of the paid-up share capital is held by-</i>
<i>(i)</i>	<i>the Central Government, or</i>
<i>(ii)</i>	<i>by any State Government or Governments, or</i>
<i>(iii)</i>	<i>partly by the Central Government and partly by one or more State Governments, and the section includes a company which is a subsidiary company of such a Government company.</i>
<i>(b)</i>	<i>Foreign Company [Section 2(42)]: It means any company or body corporate incorporated outside India which -</i>
<i>(i)</i>	<i>has a place of business in India whether by itself or through an agent, physically or through electronic mode, and</i>
<i>(ii)</i>	<i>conducts any business activity in India in any other manner.</i>
<i>(c)</i>	<i>Section 8 Company- Significant points</i>
♦	<i>Formed for the promotion of commerce, art, science, religion, charity, protection of environment, sports, etc.</i>
♦	<i>Requirement of minimum share capital does not apply.</i>

♦	<i>Uses its profits for the promotion of the objective for which it is formed.</i>
♦	<i>Does not declare dividend to members.</i>
♦	<i>Operates under a special licence from Central Government.</i>
♦	<i>Need not use the word Ltd./Pvt. Ltd. in its name and adopt a more suitable name such as club, chambers of commerce etc.</i>
♦	<i>Licence revoked if conditions contravened.</i>
♦	<i>On revocation, Central Government may direct it to</i> → <i>Converts its status and change its name</i> → <i>Wind- up</i> → <i>Amalgamate with another company having similar object.</i>
♦	<i>Can call its general meeting by giving a clear 14 days' notice instead of 21 days.</i>
♦	<i>Requirement of minimum number of directors, independent directors etc. does not apply.</i>
♦	<i>Need not constitute Nomination and Remuneration Committee and Shareholders Relationship Committee.</i>
♦	<i>A partnership firm can be a member of Section 8 Company.</i>
(d)	<i>Dormant company [Section 455]:</i> <i>Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.</i>
	<i>"Inactive Company"</i> <i>means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.</i>
	<i>"Significant accounting transaction"</i> <i>means any transaction other than -</i>
(i)	<i>payment of fees by a company to the Registrar;</i>
(ii)	<i>payments made by it to fulfil the requirements of this Act or any other law;</i>
(iii)	<i>Allotment of shares to fulfil the requirements of this Act; and</i>
(iv)	<i>Payments for maintenance of its office and records.</i>

(e)	<i>Nidhi Companies [Section 406(1)]</i>
(f)	<i>Public Financial Institutions (PFI): By virtue of [Section 2(72)] of the Companies Act, 2013 the following institutions are to be regarded as public financial institutions:</i>
(i)	<i>The Life Insurance Corporation of India</i>
(ii)	<i>The Infrastructure Development Finance Company Limited,</i>
(iii)	<i>Specified company referred to in the Unit Trust of India</i>
(iv)	<i>Institutions notified by the Central Government</i>
(v)	<i>Such other institution as may be notified by the Central Government</i>
	<i>Conditions for an institution to be notified as PFI: No institution shall be so notified unless -</i>
(A)	<i>It has been established or constituted by or under any Central or State Act other</i>
(B)	<i>Not less than fifty-one per cent of the paid-up share capital is held or controlled by the Central Government or by any State Government</i>
4.	MODE OF REGISTRATION/INCORPORATION OF COMPANY
(a)	INCORPORATION OF COMPANY
(1)	<i>Filing of the documents and information with the registrar</i>
♦	<i>the memorandum and articles of the company duly signed</i>
♦	<i>a declaration by person who is engaged in the formation of the company and by a person named in the articles</i>
♦	<i>a declaration from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles stating-</i>
	<i>➤ he is not convicted of any offence</i>
	<i>➤ he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last five years.</i>
	<i>➤ And that all the documents filed with the Registrar</i>
♦	<i>the address for correspondence</i>
♦	<i>the particulars of every subscriber</i>

♦	<i>the particulars of the persons mentioned in the articles as the subscribers to the Memorandum</i>
♦	<i>the particulars of the interests of the persons mentioned in the articles as the first directors of the company.</i>
(2)	<i>Issue of certificate of incorporation on registration</i>
(3)	<i>Allotment of Corporate Identity Number</i>
(4)	<i>Maintenance of copies of all documents and information</i>
(5)	<i>Furnishing of false or incorrect information or suppression of material fact at the time of incorporation</i>
(6)	<i>Company already incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact</i>
(7)	<i>Order of the Tribunal</i>
(b)	EFFECT OF REGISTRATION: (Section 9)
	<i>Such a registered company shall be capable of exercising all the functions of an incorporated company under this Act and having perpetual succession.</i>
(c)	EFFECT OF MEMORANDUM AND ARTICLES (Section 10) : <i>When registered, shall bind the company and the members thereof</i>
5.	CLASSIFICATION OF CAPITAL
(a)	<i>Nominal or authorised or registered capital: [Section 2(8)]</i>
(b)	<i>Issued capital: [Section 2(50)]</i>
(c)	<i>Subscribed capital: [Section 2(86)]</i>
(d)	<i>Called-up capital: [Section 2(15)]</i>
(e)	<i>Paid-up capital</i>
6.	SHARES
(a)	Nature of shares:
1)	<i>Share is an interest in the company</i>
2)	<i>Shares are a movable property</i>

3)	<i>Shares shall be numbered</i>
(b)	<i>Kinds of share capital</i>
1.	<i>“Equity share capital”</i>
♦	<i>with voting rights; or</i>
♦	<i>with differential rights as to dividend, voting or otherwise in accordance with prescribed rules;</i>
2.	<i>“Preference share capital”: which carries or would carry a preferential right with respect to -</i>
(a)	<i>payment of dividend</i>
(b)	<i>repayment in the case of a winding up or repayment</i>
7.	MEMORANDUM OF ASSOCIATION
(a)	Object of registering a memorandum of association:
♦	<i>Identifies the possible scope of its operations beyond which its actions cannot go.</i>
♦	<i>To know what its powers are and what activities it can engage in.</i>
♦	<i>The purposes for which his money can be used by the company.</i>
(b)	Content of the memorandum: <i>The memorandum of a company shall state—</i>
(i)	<i>Name Clause</i>
(ii)	<i>Registered Office clause</i>
(iii)	<i>Object clause</i>
(iv)	<i>Liability clause</i>
(v)	<i>Capital Clause</i>
(vi)	<i>Association clause</i>
8.	DOCTRINE OF ULTRA VIRES
	<i>The leading case through which this doctrine was enunciated is that of Ashbury Railway Carriage and Iron Company Limited v. Riche-(1875).</i>
	<i>Doctrine of ultra vires can be summed up as:</i>
(i)	<i>When an act is performed, which though legal in itself, is not authorized by the object</i>

	<i>clause of the memorandum, or by the statute, it is said to be ultravires the company, and hence null and void.</i>
(ii)	<i>An act which is ultravires, the company cannot be ratified even by the unanimous consent of all the shareholders.</i>
(iii)	<i>An act which is ultravires the directors, but intravires the company can be ratified by the members of the company through a resolution.</i>
(iv)	<i>If an act is ultravires the Articles, it can be ratified by altering the Articles by a Special Resolution.</i>
	<i>However, the disadvantages of this doctrine outweigh its main advantage, namely to provide protection to the shareholders and creditors.</i>
9.	ARTICLES OF ASSOCIATION
	<i>Section 5 of the Companies Act, 2013 seeks to provide the contents and model of articles of association.</i>
(1)	<i>Contains regulations</i>
(2)	<i>Inclusion of matters</i>
(3)	<i>Contain provisions for entrenchment</i>
(4)	<i>Manner of inclusion of the entrenchment provision</i>
(5)	<i>Notice to the registrar of the entrenchment provision</i>
(6)	<i>Forms of articles</i>
(7)	<i>Model articles</i>
10.	DOCTRINE OF INDOOR MANAGEMENT
A]	Doctrine of Constructive Notice:
	<i>The duty of every person dealing with a company to inspect its documents and make sure that his contract is in conformity with their provisions but whether a person reads them or not, it will be presumed that he knows the contents of the documents.</i>
B]	Doctrine of Indoor Management: <i>The Doctrine of Indoor Management is the exception to the doctrine of constructive notice. The aforesaid doctrine of constructive notice</i>

does in no sense mean that outsiders are deemed to have notice of the internal affairs of the company. The Royal British Bank vs. Turquand.

Exceptions to the doctrine of Indoor Management:

- (a) Actual or constructive knowledge of irregularity: The rule does not protect any person when the person dealing with the company has notice,*
- (b) Suspicion of Irregularity:*
circumstances surrounding the contract are suspicious and therefore invite inquiry.
Anand Bihari Lal vs. Dinshaw & Co.
- (c) Forgery: The doctrine cannot apply to forgery which must be regarded as nullity.*
Ruben v Great Fingall Consolidated.

CHAPTER - 7

THE NEGOTIABLE INSTRUMENTS ACT, 1881

1. MEANING OF NEGOTIABLE INSTRUMENTS

The Act does not define the term 'Negotiable Instruments'. However, Section 13 of the Act provides for only three kinds of negotiable instruments namely bills of exchange, promissory notes and cheques, payable either to order or bearer.

2. PROMISSORY NOTE

Is 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."

(a) Parties to promissory note

1. Maker
2. Payee

(b) Essential Characteristics of a Promissory Note

1. In writing
2. An express promise to pay
3. The promise to pay should be definite and unconditional
4. A promissory note must be signed by the maker
5. Promise to pay money only
6. Promise to pay a certain sum
7. The maker and payee must be certain, definite and different persons
8. Stamping

3. BILLS 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.

(a) Parties to the bill of exchange

- Drawer
- Drawee
- Payee

(b) Essential characteristics of bill of exchange

- 1) It must be in writing
- 2) Must contain an express order to pay
- 3) The order to pay must be definite and unconditional
- 4) The drawer must sign the instrument
- 5) Drawer, drawee, and payee must be certain

(c) Process of bill of exchange

Difference between promissory note and bill of exchange

Sr. No	Basis	Promissory Note	Bill of Exchange
1.	Nature of Instrument	Promise to pay money.	Order for making payment.
2.	Parties	i. the maker and ii. the payee	i. the drawer ii. the drawee iii. the payee
3.	Acceptance	Does not require any acceptance	Needs acceptance from the drawee.
4.	Payable to bearer	Cannot be	Can be drawn payable to bearer.

4. CHEQUE [SECTION 6]

Is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

(a) *Parties to Cheque*

- *Drawer*
- *Drawee*
- *Payee*

(b) *Essential Characteristics of a cheque*

- 1) *all the essential characteristics of a bill of exchange*
- 2) *Must be drawn on a specified banker.*
- 3) *It must be payable on demand.*

5. *CLASSIFICATION OF NEGOTIABLE INSTRUMENTS*

(a) *“Bearer instrument” and “order instrument” [Section 13]*

Bearer Instrument: It is an instrument where the name of the payee is blank or where the name of payee is specified with the words “or bearer” or where the last indorsement is blank.

Order Instrument: It is an instrument which is payable to a person or payable to a person or his order or payable to order of a person or where the last indorsement is in full.

(b) *“Inland instrument” and “Foreign instrument” [Sections 11 & 12]*

- ♦ *Inland instrument - when B·o·E/P/N, Cheque*
 - *drawn / made in India*
 - *made payable in/drawn upon person resident in India*
- ♦ *Foreign instrument - when B·o·E/P/N, Cheque, IS NOT*
 - *Drawn in India*
 - *Made in India*
 - *Made payable in India*

(c) *Inchoate and Ambiguous Instruments*

- ♦ *Inchoate Instrument: It means an instrument that is incomplete in certain respects.*
- ♦ *The principle of this rule of an inchoate instrument is based on the principle of estoppel.*

	<i>Liability on drawing inchoate instrument: The person signing and delivering the inchoate instrument is liable both to a holder and holder in due course.</i>
	<i>The holder of such an instrument cannot recover the amount in excess of the amount intended to be paid by the signor.</i>
	<i>The holder in due course can, however, recover any amount on such instrument provided it is covered by the stamp affixed on the instrument.</i>
	♦ <i>Ambiguous Instrument: Which is vague and cannot be clearly identified either as a bill of exchange, or as a promissory note.</i>
6.	NEGOTIATION (TRANSFER) OF NEGOTIABLE INSTRUMENTS
	<i>Modes of Negotiation</i>
(a)	Negotiation by delivery [Section 47]
	<i>Subject to the provisions of section 58 [Instrument obtained by unlawful means or for unlawful consideration], a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.</i>
	<i>Exception: A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable.</i>
(b)	Negotiation by indorsement [Section 48]
	<i>Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.</i>
(c)	Importance of Delivery in Negotiation [Section 46]
	<i>The contract on a negotiable instrument until delivery remains incomplete and revocable.</i>
	<i>If a person makes the indorsement of instrument but before the same could be delivered to the indorsee the indorser dies, the legal representatives of the deceased person cannot negotiate the same by mere delivery thereof. (Section 57)</i>
7.	DISHONOUR OF CHEQUES FOR INSUFFICIENCY OF FUNDS IN THE ACCOUNTS
	[SECTION 138]
(A)	<i>Where any cheque drawn by a person on an account maintained by him with a banker-</i>
	<ul style="list-style-type: none"> • <i>for payment of any amount of money</i> • <i>to another person from that account</i>

	<ul style="list-style-type: none"> for the discharge, in whole or in part, of any debt or other liability, [A cheque given as gift or donation, or as a security or in discharge or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section] is returned by the bank unpaid, either because of the <ol style="list-style-type: none"> amount of money standing to the credit of that account is insufficient to honor the cheque that it exceeds the amount arranged to be paid from that account by an agreement made with that bank such person shall be deemed to have committed an offence and shall, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both.
	<i>When section 138 shall be not apply</i>
	<ol style="list-style-type: none"> Cheque presented within validity period Demand for the payment through the notice Failure of drawer to make payment
	B) PRESUMPTION IN FAVOR OF HOLDER [SECTION 139]
	<ol style="list-style-type: none"> it shall be presumed that the holder of a cheque received the cheque of the nature referred to in section for the discharge. The effect of this presumption is to place the evidential burden on the accused.
	C) DEFENCE WHICH MAY NOT BE ALLOWED IN ANY PROSECUTION UNDER SECTION 138 [SECTION 140]
	<i>That the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment.</i>
8.	PRESENTMENT OF INSTRUMENTS
	<ol style="list-style-type: none"> Presentment for acceptance [Section 61] <p><i>A bill of exchange payable after sight must [if no time or place is specified therein for</i></p>

presentment] be presented to the drawee thereof for acceptance [if he can, after reasonable search, be found] by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day.

Presentment of promissory note for sight [Section 62]

A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can after reasonable search be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day.

Drawee's time for deliberation [Section 63]: allow the drawee 48 hours (exclusive of public holidays]

Presentment for payment [Section 64]

Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as here in after provided.

In default of such presentment, the other parties thereto are not liable thereon to such holder.

Exception: Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

Hours for presentment (Section 65): Usual hours of business

Presentment for payment of instrument payable after date or sight (Section 66):
Must be presented for payment at maturity.

Presentment for payment of promissory note payable by instalments (Section 67):
Must be presented for payment on the third day after the date fixed for payment of each instalment;

Presentment for payment of promissory note payable by instalments (Section 67): must be presented for payment on the third day after the date fixed for payment of each instalment.

Presentment for payment of instrument payable at specified place and not elsewhere (Section 68): In order to change any party thereto, be presented for payment at that place.

Instrument payable at specified place (Section 69): Order to charge the maker or drawer thereof, be presented for payment at that place.

Presentment where no exclusive place specified (Section 70): At the place of business (if any) or at the usual residence, of the maker, drawee or acceptor.

Presentment when maker, etc., has no known place of business or residence (Section 71) Such presentment may be made to him in person wherever he can be found.

Presentment of cheque to charge drawer (Section 72): Before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

Presentment of cheque to charge any other person (Section 73): be presented within reasonable time after delivery thereof by such person.

Presentment by or to agent, representative of deceased, or assignee of insolvent (Section 75)

Excuse for delay in presentment for acceptance or payment (Section 75A): if the delay is caused by circumstances beyond the control of the holder.

When presentment unnecessary (Section 76)

(a) (i) If the maker, drawee or acceptor intentionally prevents the presentment

- (ii) if the instrument being payable at his place of business, he closes such place
- (iii) if the instrument being payable at some other specified place, neither he nor any person authorised to pay it attends at such place
- (iv) if the instrument not being payable at any specified place, he cannot after due search be found;

(b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment.

(c) as against any party if, after maturity, with knowledge that the instrument has not been presented -

- He makes a part payment on account of the amount due on the instrument,
- Or promises to pay the amount due thereon in whole or in part,
- Or otherwise his right to take advantage of any default

(d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

◆ **When presentment unnecessary**

◆ **Liability of banker for negligently dealing with bill presented for payment (Section 77)**
If the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

9. RULES OF COMPENSATION

Rules as to compensation (Section 117)

The compensation payable in case of dishonour determined by the following rules:

- (a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it.
- (b) the holder is entitled to receive such sum at the current rate of exchange between the two places.
- (c) Interest at 18% per annum from the date of payment until tender or realisation.
- (d) the endorser is entitled to receive such sum at the current rate of exchange between the two places;

(e) *the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him.*