

SRI CHANDRASEKHARENDRA SARASWATHI VISWA MAHAVIDYALAYA
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Accredited with 'A' Grade by NAAC

ONLINE COURSE



DEPARTMENT OF MANAGEMENT STUDIES

BUSINESS LAW-I



DR. A.VANITHA
ASSISTANT PROFESSOR
DEPARTMENT OF MANAGEMENT STUDIES
SCSVMV DEEMED TO BE UNIVIERSITY
KANCHIPURAM-631561
E-MAIL : AVANITHA@KANCHIUNIV.AC.IN
MOBILE NO.: 8220781719

COURSE OUTCOMES

At the end of the course, the students will be able to

- Appreciate the relevance of business law to individuals and businesses and the role of law in an economic, political and social context.
- Identify the fundamental legal principles behind contractual agreement
- Develop basic understanding of the laws relating to agency, consumer protection, Consumer forums, Contract of sale, etc.
- Identify the nature of various negotiable instruments and the legalities as per the provision and its appropriate usage
- Appreciate the importance of law in business related to partnership and insurance

Introduction

- Business laws (mercantile law) comprises a set of laws concerning the business world-trade, commerce, and industry.
- For the proper working of the society, there must exist a code of conduct
- These rules and regulations took the form of law
- The dictum 'Ignorance of law is no excuse' (Ignorantia juris non excusat)

Sources of Business law

- 1) The English mercantile law
- 2) The statute law
- 3) Case laws or judicial decisions
- 4) Customs and usages



- Law of contract – Foundation upon which the superstructure of modern business is built
- Business – promise made between parties – performance follows later
- Breaking of a promise – without incurring liability – endless complications

Contd -

- Law of contract lays down legal rules relating to promises, their formation, performance and enforcement
- Applicable not only to business community but others



Definitions

- *Anson* – Legally binding agreement between two or more person by which rights are acquired by one or more to Act or forbearance on the part of the other.
- *Salmond* – an agreement creating and defining obligation between parties
- *Pollock* – Every agreement and promise enforceable at law is a contract

UNIT-I

Indian contract Act 1872

Introduction

- In our daily life, we enter into a series of contracts
- Like we enter into a bus, auto, restaurant, theatre, park and so on.
- The provisions of the Indian Contract Act, 1872, provides the firm foundation upon which the entire structure of the modern business is built.

The Indian Contract Act, 1872

- It extends to the whole of India except the state of Jammu and Kashmir
- Came into force on the first day of September 1872
- It does not deal with all the branches of the law of contract.

CONTRACT

- Sec 2(h) – “ An agreement enforceable by law is a ***contract***”.



- **Two elements** -
 - An Agreement
 - Legal obligation i.e., a duty enforceable by law.



Agreement

Section 2(e) – “Every promise and every set of promises forming the consideration for each other, is an agreement.”

- **Promise** – What is a promise?



– Sec 2(b) - **When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise**

Example

- ◎ Ram offers to sell his car for Rs 1,00,000 to Shyam. Shyam accepts this offer. This offer after acceptance becomes promise and this promise is treated as an agreement between Ram and Shyam
- ◎ Therefore, an agreement consists of an offer by one party and its acceptance by the other.
- ◎ Agreement = Offer + Acceptance of offer



Enforceability of Agreement

- An agreement is said to be enforceable by law if it **creates a legal obligation**.
- If an agreement is incapable of creating a duty enforceable by law, it is not a contract.
- Thus, an agreement is a wider term than contract.





Agreement + Legal obligation
(Enforceability at law) = Contract

Offer + acceptance = Promise

+

consideration

=

Agreement

+

enforceability By Law



Contract

Contract

- “All contracts are agreement but all agreements are not contracts”.
- **Agreements of social nature or domestic nature are not contracts**
 - they are not likely to create a duty enforceable by law
 - parties never intend to create a legal obligation.



- **Ex;**
 - **X** invites his friend **Y** to a dinner and **Y** accepts the invitation. If **Y** fails to turn up for the dinner. Can he take his friend to Court????
 - **X** cannot go to the court to claim his loss.
 - A father promises to pay his son Rs 1000 as pocket allowance. Later he refuses to pay. Can the son recover the Amount???
 - The son cannot recover as its is a domestic agreement and there is no intention on the part of the parties to create legal relations

Case

- A promise by the husband to pay his wife 30 pounds every month . Later Husband refuses to pay. Wife goes to court.
 - **Held: unenforceable as parties never intended it to be bound by legal obligations.**



Essentials of a Valid Contract

Valid contract

“ An agreements enforceable by law”,
an agreement becomes enforceable
by law when all the essential
elements of a valid contract as were
enumerated in below

Essential elements of a valid contract

1. Proper offer and its proper acceptance

Eg:- A and B agree to go to a movie on coming Sunday. A does not turn in resulting in loss of B's time B cannot claim any damages from B since the agreement to watch a movie is a domestic agreement which does not result in a contract.

2. Free Consent

- A consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake.

3. Intention to create legal relationship

Eg:-M promises his wife N to get her a necklace if she will sing a song. N sang the song M did not bring the necklace for her.

A) N cannot bring an action in a court to enforce the agreement as it lacked the intention to create legal relations.

4. Lawful consideration

The something given or obtained is the price for the promise and is called 'consideration' subject to certain exceptions; unnecessary promises are not enforceable at law.

5. Capacity to contract

- (i) Is of the age of majority according to the Law which he is subject, and
- (ii) Who is of sound mind and
- (iii) Is not disqualified from contracting by any law to which he is subject.

6. Agreement not expressly declared void

Eg: an agreement in restraint of marriage, agreement in restraint of trade, agreement in restraint of legal proceedings and agreement by way of wager .

- (a)** A agrees with B for good consideration that she will not marry C. It is a void agreement.
- (b)** A agrees with B that she will marry him only; it is a valid contract of marriage

7. Lawful object

The object of agreement should be lawful and legal.

Two persons cannot enter into an agreement to do a criminal act.

- Consideration or object of an agreement is unlawful if it
 - (a) is forbidden by law; or
 - (b) is of such nature that, if permitted, would defeat the provisions of any law; or
 - (c) is fraudulent; or
 - (d) Involves or implies, injury to person or property of another; or
 - (e) Court regards it as immoral, or opposed to public policy.

8. Certainty

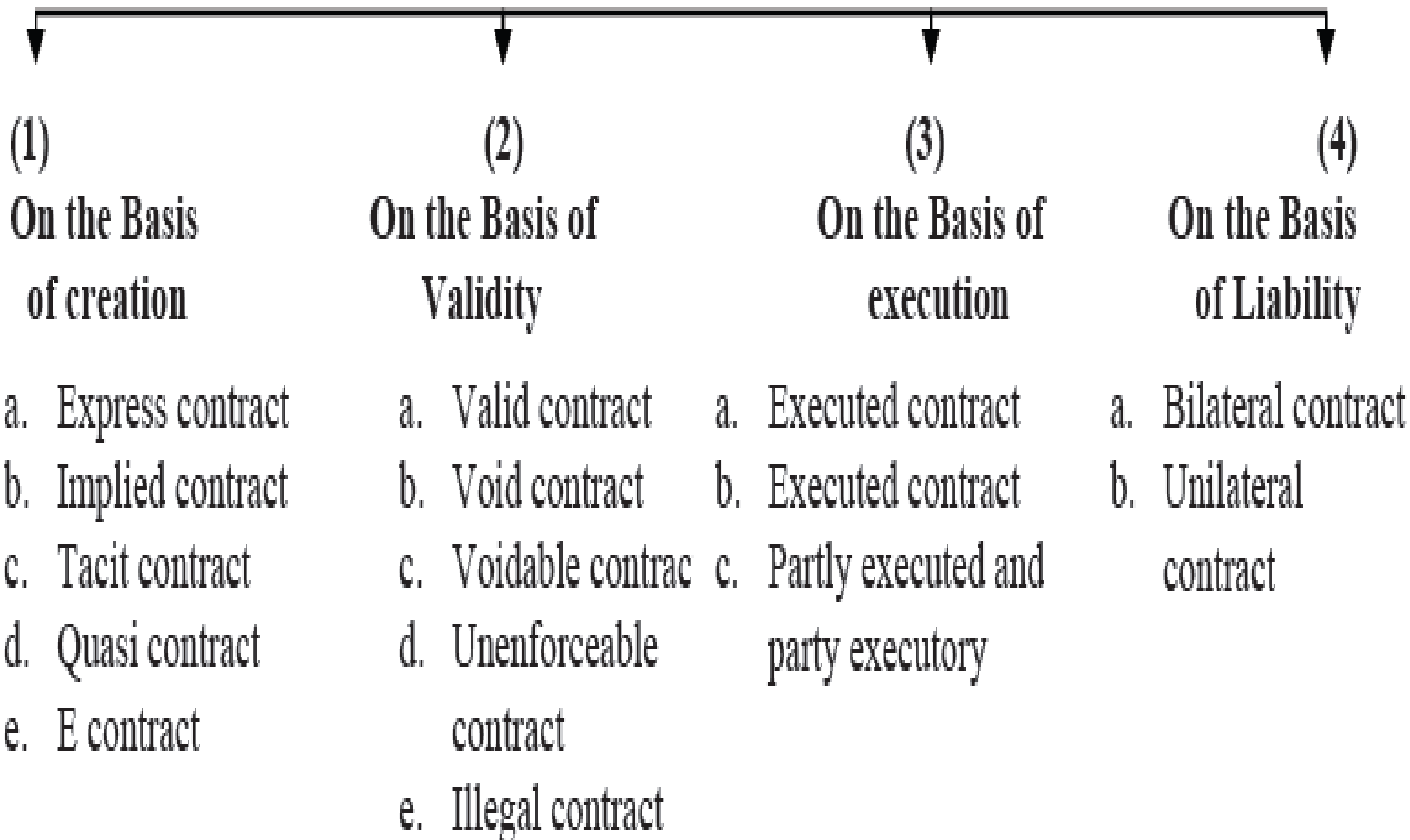
Eg: Amar agrees to sell Bharat “hundred tons of oil”. The agreement is void on the ground of uncertainty because it is not clear what kind of oil is intended to be sold.

9. Possibility of performance

Eg: A agrees to B to discover treasure by magic. The agreement is void because the act in itself is impossible to be performed from the very beginning.

10. Writing and registration

Types of contracts :-



On the basis of creation

(a) Express contract :- A contract made by word spoken or written. According to sec 9 in so far as the proposal or acceptance of any promise is made in words, the promise is said to be express.

Example : A says to B ‘will you purchase my bike for Rs.20,000?’ B says to A “Yes”.

(b) Implied contract:- A contract inferred by

- The conduct of person or
- The circumstances of the case.

By implies contract means implied by law

Example:

A stops a taxi by waving his hand and takes his seat. There is an implied contract that A will pay the prescribed fare.

(c) Tacit contract: - A contract is said to be tacit when it has to be inferred from the conduct of the parties. Example obtaining cash through automatic teller machine, sale by fall hammer of an auction sale.

(d) Quasi Contracts are contracts which are created -

- Neither by word spoken
- Nor written
- Nor by the conduct of the parties.
- But these are created by the law.

Example:

If Mr. A leaves his goods at Mr. B's shop by mistake, then it is for Mr. B to return the goods or to compensate the price. In fact, these contracts depend on the principle that nobody will be allowed to become rich at the expenses of the other.

(e) e – Contract: An e – contract is one, which is entered into between two parties via the internet.

On the basis of validity

(a) Valid contract:- An agreement which satisfies all the requirements prescribed by law

(b) Void contract (2(j)):- a contract which ceases to be enforceable by law becomes void, when it ceases to be enforceable.

When valid contract transform into a void contract:-

- supervening impossibility
- Subsequent illegality
- Repudiation of a voidable contract
- Contract contingent on the happening of an uncertain future event.

- Eg: 1. A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract to marry becomes void.
2. A agree to sell B 100 bags of wheat at Rs.650 per bag. Before delivery the government bans private trading in wheat. The contract becomes void.
3. M by threatening to murder B's son, makes B agree to sell his car worth Rs. 3,00,000 for a sum of Rs. 10,000 only.
4. A contracts to give Rs. 1 crore as loan to B marries C. C dies without being married to B. the contract becomes void.

(c) Voidable contract 2(i) :- ‘an agreement’ which is enforceable by law at the option of one or more the parties thereto, but not at the option of the other or others is a voidable contract.

Result of coercion, undue influence, fraud and misrepresentation.

Eg: A: threatens to shoot B if he does not sell his new scooter to A for Rs.20,000. B agree. The contract has been brought about by coercion and is voidable at the option of B.

Void agreement

- An agreement not enforceable by law is said to be void. Void agreement does not give rise to any legal consequences and is void ab-initio
- An agreement with a minor, without consideration.
- Eg: A pays B Rs. 1,000 for B's agreeing to sell his horse to him. It turns out that the horse was dead at the time of the bargain, through neither party was aware of the fact. In this case the agreement is discovered to be void and B must repay to A Rs. 1,000.

(d) Unenforceable contract: - where a contract is good in substance but because of some technical defect i.e. absence in writing barred by imitation etc one or both the parties cannot sue upon but is described as unenforceable contract.

Example: Writing registration or stamping.

Example: An agreement which is required to be stamped will be unenforceable if the same is not stamped at all or is under stamped.

(e)Illegal contract:- Illegal or unlawful contract.
The word 'illegal' means 'contrary to law' and the term 'contract' means 'an agreement enforceable by law'.

On the basis of execution

(a) Executed contract :- A contract in which both the parties have fulfilled their obligations under the contract.

Example: A contracts to buy a car from B by paying cash, B instantly delivers his car.

(b) Executory contract:- A contract in which both the parties have still to fulfilled their obligations.

Example : D agrees to buy V's cycle by promising to pay cash on 15th August. V agrees to deliver the cycle on 20th August.

- **(c) Partly executed and partly executory:-** A contract in which one of the parties has fulfilled his obligation but the other party is yet to fulfill his obligation.
- **Example :** A sells his car to B and A has delivered the car but B is yet to pay the price. For A, it is executed contract whereas it is executory contract on the part of B since the price is yet to be paid.

On the basis of liability

(a) Bilateral contract:- A contract in which both the parties commit to perform their respective promises is called a bilateral contract.

Example : A offers to sell his fiat car to B for Rs.1,00,000 on acceptance of A's offer by B, there is a promise by A to Sell the car and there is a promise by B to purchase the car there are two promise.

(b) Unilateral contract:- A unilateral contract is a one sided contract in which only one party has to perform his promise or obligation party has to perform his promise or obligation to do or forbear.

Example :- A wants to get his room painted. He offers Rs.500 to B for this purpose B says to A “ if I have spare time on next Sunday I will paint your room”. There is a promise by A to pay Rs 500 to B. If B is able to spare time to paint A’s room. However there is no promise by B to Paint the house. There is only one promise.

OFFER

"When your future arrives, will you blame your past?"
- Robert Hall





☞ **Offer**

when one person signifies his willingness to another

Offeror – the person who make the offer

Offeree – the person who takes the offer

OFFER/PROPOSAL

Section 2 (a) A proposal is defined as “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.”



Simple Example 1

- Jing says to jack “I will sell you this cellphone for Rs.8000”.
- jack says, “I agree”.
- We have an offer and an acceptance
- Jing is the offeror
- jack is the offeree



Simple Example 2

- Richard says to Nelda, “I will give you Rs.500 for your pocket money”.
- Nelda says, “OK”.
- Again, we have an offer and an acceptance
- Richard is the offeror
- Nelda is the offeree



Identifying an Offer

- In the two examples, it is very clear that the statements are offers
- However, in real life, the situation is often more complicated
- It may be necessary to examine the statement and the circumstances in which it was made to see if it is an offer or some other kind of statement which is not an offer



Identifying an Offer (cont.)


The following types of statement are **not** offers:

- statement of intention
- supply of information
- invitation to treat



Statement of Intention

- If a person is simply stating their intention, then this is not an offer because they may change their mind in the future
- They are not offering to be bound by a contract



Statement of Intention (cont.)

- For example, a man married a woman because her father told him that she would get all her father's money when he died.
- The court decided this was not an offer.
- It was just a statement of the father's intention at that time
- It was possible that he could change his mind later



Supply of Information

- If you simply supply information, this is not an offer
- For example, you own a BMW car.
- Someone asks you how much you would be prepared to sell it for.
- You say, “I’d want at least Rs.25,00000 for it”
- This is **not** an offer by you
- You are simply informing the person of how much you would expect to get if you sold the car



Invitation to Treat

- This is an invitation to others to make offers
- In other words, you are asking other people to make an offer to you
- The previous example of the BMW is an invitation to treat
- When you say, “I’d want at least Rs.25,00000 for it”, you are inviting the person to make an offer to buy the car for Rs.25,00000 or more



Invitation to Treat (cont.)

Some common examples of invitations to treat

- goods displayed in a shop window
- goods displayed on the shelf of a self-service shop
- a public advertisement
- a share prospectus



Goods displayed in a shop window 1

- If you see goods displayed in the window of a shop, this is not an offer to sell them to you
- It is an invitation for you to enter the shop and make an offer to buy them



Goods displayed in a shop window 2

- For example, you see a camera in the window of a shop with a price tag on it which says Rs. 5,000
- This is **not** an offer by the shop to sell you the camera for Rs. 5,000
- It is an invitation by the shop to you
- They are inviting you to enter the shop and offer to purchase the camera for Rs. 5,000



Goods displayed in a shop window 3

- This may seem like a very small difference. However, it is important
- Because it is you who makes the offer, the shop can refuse to sell you the camera
- Or they may say, “I’m sorry: the price is actually Rs.6000”.
- The shop could not do that if displaying the good in the window was making an offer



Self-service shops

- Many shops (like supermarkets) display their goods on shelves and you choose what you want to buy and take those goods to the cash desk
- Again, displaying goods like this is an invitation to treat, it is not an offer
- You make the offer when you take the goods to the cash desk



A public advertisement

- Again, this is an invitation to treat and not an offer
- If you advertise your Flat for sale in your local newspaper at offers over Rs.4500000, you are inviting people to make offers to you
- You are not making an offer



Auctions

An auctioneer's call for bids is an invitation to treat, a request for offers. The bids made by persons at the auction are offers, which the auctioneer can accept or reject as he chooses. Similarly, the bidder may retract his bid before it is accepted.



Mere Statement of Price

A statement of the minimum price at which a party may be willing to sell will not amount to an offer.

Tenders

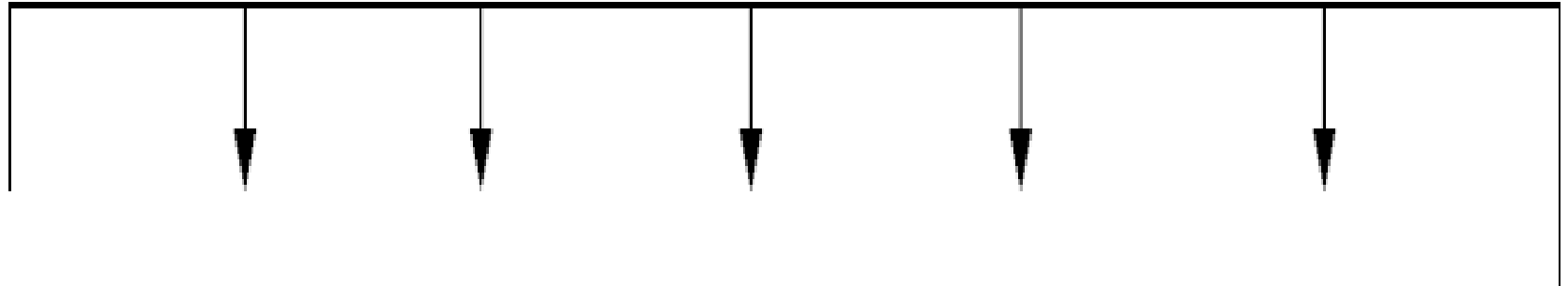
Goods advertised for sale by tender, is a request by the owner of the goods for offers to purchase them. The statement is not an offer, but an invitation to treat.

Legal Rules to Valid Offer

- An offer, when accepted, must create legal relationship between the parties
- The terms of the offer must be clear and certain
- Declaration of intention by one person to another does not constitute a valid offer
- An invitation to offer is different from valid offer
- Offer must be communicated

- Offer must not contain a term the non-compliance of which would amount to acceptance
- A mere statement of price does not constitute an offer to sell
- Special terms of offer, if any, must be communicated to the offeree at the time when the offer is made

KINDS OF OFFER



Express
offer

Implied
offer

Specific
offer

General
offer

Cross offer

Counter
offer

Standing
Open and
Continuou
s offer

I. **Express offer** - When the offeror expressly communication the offer the offer is said to be an express offer the express communication of the offer may be made by
Spoken word
Written word

II. **Implied offer** - when the offer is not communicate expressly. An offer may be implied from:-
The conduct of the parties or
The circumstances of the case

III. **Specific:-** It means an offer made in

(a) a particular person or

(b) a group of person: It can be accepted only by that person to whom it is made
communication of acceptance is necessary in case of specific offer.

IV. **General offer:** - It means an offer which is made to the public in general.

- General offer can be accepted by anyone.

- If offeree fulfill the term and condition which is given in offer then offer is accepted.

- Communication of acceptance is not necessary in case of general offer

V. **Cross offer:-** When two parties exchange identical offers in ignorance at the time of each other's offer the offer's are called cross offer.

Two cross offer does not conclude a contract. Two offer are said to be cross offer if

- 1. They are made by the same parties to one another*
- 2. Each offer made in ignorance of the offer made by the*
- 3. The terms and conditions contained in both the offers' are same.*

Example : A offers by a letter to sell 100 tons of steel at Rs.1,000 per ton. On the same day, B also writes to A offering to buy 100 tons of steel at Rs.1,000 per ton.

Counter offer :- when the offeree give qualified acceptance of the offer subject to modified and variations in the terms of original offer. Counter offer amounts to rejection of the original offer.

Legal effect of counter offer:-

- (1) Rejection of original offer
- (2) The original offer is lapsed
- (3) A counter offer result is a new offer.

In other words an offer made by the offeree in return of the original offer is called as a counter offer.

Example:

A offered to sell his pen to B for Rs.1,000. B replied, “ I am ready to pay Rs.950.” On A’s refusal to sell at this price, B agreed to pay Rs.1,000. Held, there was not contract as the acceptance to buy it for Rs.950 was a counter offer, i.e. rejection of the offer of A. Subsequent acceptance to pay Rs.1,000 is a fresh offer from B to which A was not bound to give his acceptance.

Standing, open and continuous offer:- An offer is allowed to *remain open for acceptance over a period of time* is known as standing, open or continually offer. Tender for supply of goods is a kind of standing offer.

Example:

When we ask the newspaper vendor to supply the newspaper daily. In such case, we do not repeat our offer daily and the newspaper vendor supplies the newspaper to us daily. The offers of such types are called Standing Offer.

LAPSE OF AN OFFER

- By communication of notice of revocation
- By lapse of time
- By failure to accept condition precedent
- By the death or insanity of the offeror
- By counter – offer by the offeree
- By not accepting the offer, according to the prescribed or usual mode
- By rejection of offer by the offeree
- By change in law

Acceptance

Acceptance

Acceptance 2(b):- When the person to whom the proposal is made, signifies his assent there to , the proposal is said to be accepted.

Legal Rules for the Acceptance

1. Acceptance must be absolute and unqualified
2. Mere mental acceptance is not enough
3. Acceptance must be given according to the prescribed mode
4. Acceptance must be given within the time specified in the offer
5. Acceptance must be given only by the person to whom the offer is made or by an authorised person and that too officially

- acceptance must be conveyed only to the offeror or a person authorized by him
- Under the normal circumstances, acceptance cannot be implied from the silence of the offeree or his failure to reply
- An acceptance based on the presumption of an offer is not valid
- Acceptance must be given before the offer lapses or is withdrawn

General Rules as to Communication of Acceptance

1. In case of acceptance by post

Where the acceptance is given by post, the communication of acceptance is complete as against the proposer when the letter of acceptance is posted. Thus, mere posting of letter of acceptance is sufficient to conclude a contract. However, the letter must be properly addressed and stamped.

2. Delayed or no delivery of letter

Where the letter of acceptance is posted by the acceptor but it never reaches the offeror, or it is delayed in transit, it will not affect the validity of acceptance. The offeror is bound by the acceptance.

3. Acceptance by telephones telex or fax

If the communication of an acceptance is made by telephone, tele-printer, telex, fax machines, etc, it completes when the acceptance is received by the offeror. The contract is concluded as soon as the offeror receives not hears the acceptance.

4. The place of Contract

In case of acceptance by the post, the place where the letter is posted is the place of contract. Where the acceptance is given by instantaneous means of communication (telephone, fax, tele-printer, telex etc.), the contract is made at the place where the acceptance is received,

5. The time of Contract

In case of acceptance by post, the time of posting the letter of acceptance to the time of contract. But in case of acceptance by instantaneous means of communication, the time of contract is the time when the offeror gets the communication, the time of contract is the time when offeror gets the communication of acceptance.

6. Communication of acceptance in case of an agent.

Where the offer has been made through an agent, the communication of acceptance is completed when the acceptance is given either to the agent or to the principal. In such a case, if the agent fails to convey the acceptance received from offeree, still the principal is bound by the acceptance.

7. Acceptance on loudspeakers

Acceptance given on loudspeaker is not a valid acceptance

Consideration

Consideration sec 2(d)

- 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 to abstain from doing something, such act or abstinence or promise is called a consideration for the promise.
- Quid proquo(something in return)
- No consideration, No contract.

Definition [Sec 2(d)]

When at the desire of the Promisor, the promisee or any other person.

- (a) has done or abstained from doing , or [**Past consideration**]
- (b) does or abstains from doing, or [**Present consideration**]
- (c) promises to do or abstain from doing something [**Future consideration**] such act or abstinence or promise is called a consideration for the promise.

Example

- (i) 'P' agrees to sell his car to 'Q' for Rs.50,000
Here 'Q's Promise to pay Rs50,000 is the consideration for P's promise and 'P's promise to sell the car is the consideration for 'Q's promise to pay Rs.50,000.
- (ii) 'A' promises his debtor 'B' not to file a suit against him for one year on 'A's agreeing to pay him Rs.10,000 more. Here the abstinence of 'A' is the consideration for 'B's Promise to pay.

Legal Rules for valid consideration

1.Consideration must move at the desire of the promisor.

Eg: A sees B's house on fire and helps in extinguishing it. He cannot demand payment for his services because B never asked him to come for help.

2.Consideration may move from the promisee or any other person who is not a party to the contract.

- A owed Rs.20,000 to B. A convinced C to sign a Pro Note in favour of B. C promised B that he would pay the amount. On faith of promise by C, B credited the amount to A's account. Held, the discharge of A's account was consideration for C's promise.

3. Consideration may be past, present, Future:

- Past: Eg: A teaches the son of B at B's request in the month of January, and in February B promises to pay A a sum of Rs500 for his services. The services of A will be past
- Present Consideration which moves simultaneously with the promise.
- Future or executory consideration:- A Promises to B to deliver him 100 bags of sugar at a future date . B promise to pay first on delivery.

**4. Consideration should be real and not illusory.
Illusory consideration renders the transaction void consideration is not valid if it is.**

(i) Physically impossible

(ii) Legally not permissible

(iii) Uncertain

(iv) illusory (***fulfillment of a pre existing obligation***)

5. Must be legal:-

- Consideration must not be unlawful, immoral or opposed to public policy.

6. consideration need not be adequate.

Example:

A agreed to sell a watch worth Rs.500 for Rs.20, A's consent to the agreement was freely given. The consideration, though inadequate. Will not affect the validity of the contract. However, the inadequacy of the consideration can be considered in order to know whether the consent of the promisor was free or not .

7. A contract not supported by consideration is void

Exceptions to the Rule “ No consideration . No contract”

1. *Written and registered agreements arising out of love and affection:- [25 (1)]*

- Expressed in writing and registered under law for the time being in force for registration of document
- Natural love and affection
- Between parties standing in a near relation to each other
- **Example:-** An elder brother, on account of natural love and affection, promised to pay the debts of his younger brother. Agreement was put to writing and registered. Held, agreement was valid.

2. Promise to compensate [25(2)]

Promise to compensate wholly or in part Who has already voluntarily done something for the promisor. Something which the promisor was legally compellable to do.

- ***Example:- A finds B's purse and give to him. B Promise to give A Rs.500. This is a valid contract.***

3. Promise to pay a time – barred debt. [Sec 25(3)]

- A debt barred by limitation can not recovered. Hence, a promise to pay a such a debt is without any consideration.
- Can be enforced only when – in writing and signed by Debtor or his authorized agent.
- **Example** : A owes B Rs.10,000 but the debt is barred by Limitation Act. A signs a written promise to pay B Rs.8,000 on account of debt. This is a valid contract.

4. Completed gift- gift do not require any consideration.

5. Agency (185) – According to the Indian contract Act. No consideration is necessary to create an agency.

6. Bailment (148)- consideration is not necessary to effect a valid bailment of goods. It is
– Called Gratuitous Bailment.

7. Remission (63).

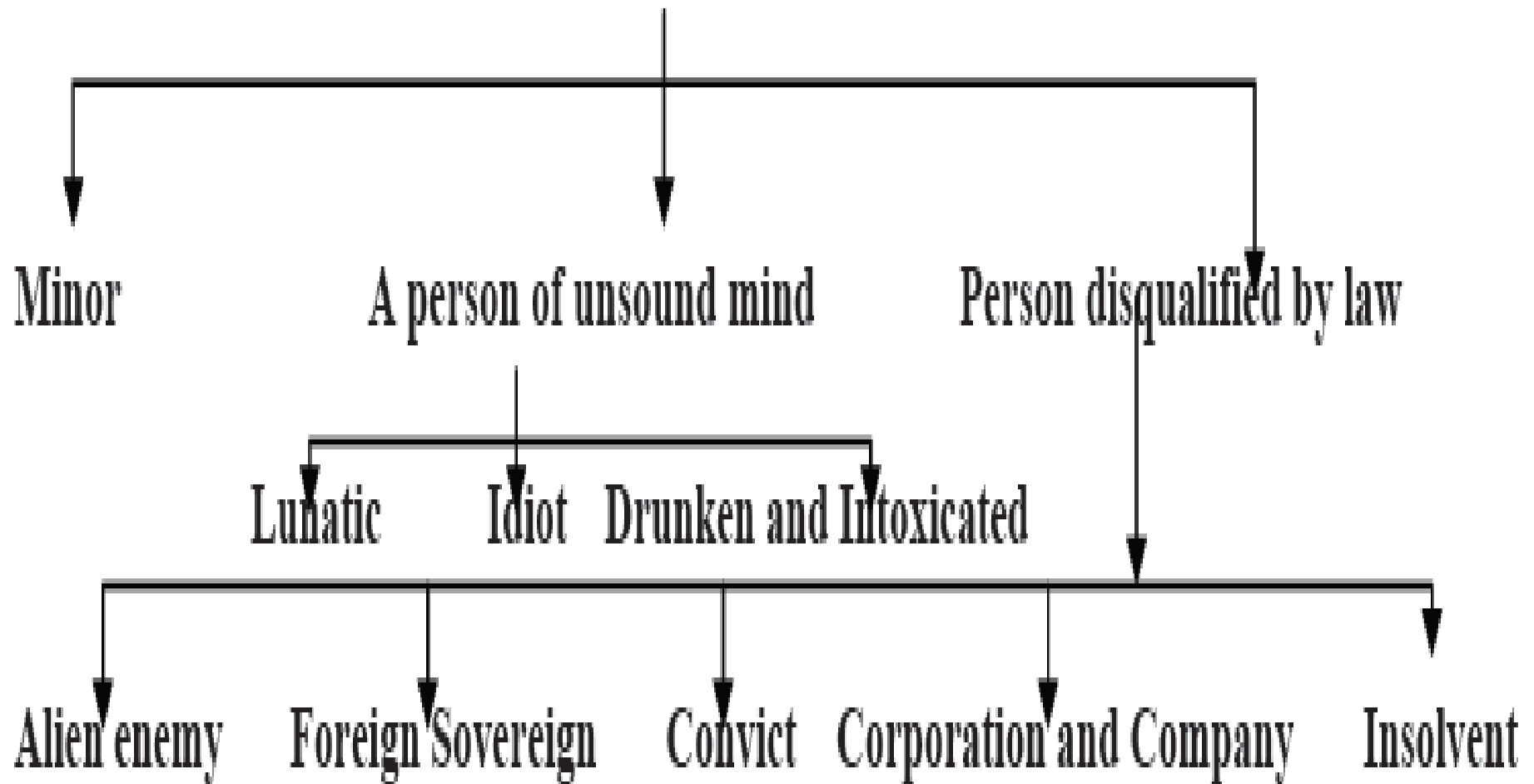
8. Charity- If a person promises to contribute to charity and on this faith the promises undertakes a liability to the extent not exceeding the promised subscription, the contract shall be valid.

Capacity(or) competence to
contract

Capacity of contract

- According to **sec 11**
- “Every person is competent to contract who is of the **age of majority** according to the law to which he is subject, and **who is of sound mind**, and is **not disqualified** from contracting by and law to which he is subject”.

Parties unable to Enter into a contract



Position of Agreements by Minor

- 1. Validity: - An agreement with a minor is void-ab-initio, and not just voidable***

Example :

Mr. Dinesh, a minor, mortgaged his house for Rs.20000 to a money – lender, but the mortgagee, i.e. the money – lender, paid him a sum of Rs.8000. Subsequently, the minor sued for setting aside the mortgage. Held that the contract was void, as Mr. Dinesh was minor and therefore he is not liable to pay anything to the lender.

2. If a minor has happened to receive some benefits under a void contract, he cannot be asked to return or refund such benefits.
3. A minor can be a promisee or a beneficiary.
4. The minor, even on his attaining the majority, cannot ratify his old agreement.
5. A minor can always take the plea of being a minor.
6. A minor cannot become a partner in any partnership firm. However, he may be admitted to the benefits of an already existing partnership firm.

7. The estate of a minor is liable to a person who supplies the necessaries of life to him.
8. The guardians and parents of a minor are not liable to the creditors of a minor, for any breach of contract by a minor, even for the supply of the necessaries, or otherwise.
9. A minor can act as an agent, and bind the principal, but not himself.

EXCEPTION

- **Contract for the benefit of a minor.**
- **Contract by Guardian**
- Benefit of a minor by his guardian or manager of his estate.
 - a) within the scope of the authority of the guardian.
 - b) Is for the benefit of the minor.
- **Liability for tort:** A minor is liable for a tort, i.e., civil wrong committed by him.
- **Example :**
- A, a 14 – year – old boy drives a car carelessly and injures B. He is liable for the accident i.e., tort.

- **Contract for supply of Necessaries.**

Example :

Food, clothes, bed, shelter, shoes, medicines and similar other things required for the maintenance of his life or for the life of his dependents, expenses for instruction in grade or arts; expenses for moral religions or intellectual education, funeral expenses of his deceased family members, marriage expenses of a dependent female member in the family; expenses incurred in the protection of his property or personal liberty, Diwali , pooja expenses, etc. have been held by courts to be necessities of life. **However, the things like earrings for a female, spectacles for a blind person or a wild animal cannot be considered as necessities.**

Person of Unsound Mind

- A person who is usually of unsound mind, but occasionally of sound mind can make a contract when he is of sound mind. Similarly, a person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.
- **At time of entering into a contract, a person must be sound mind.**
- **An idiot**

- **Delirious persons**
- **Hypnotized persons**
- **Mental decay**
- ***Lunatic is not permanently of unsound mind. He can enter into contract during lucid intervals i.e., during period when he is of sound mind.***
- **Drunken person**

Person Disqualified by Law

- Convicts
- Insolvent person
- Alien enemy
- Foreign Sovereigns & Ambassadors & Delegates & Representatives, Embassies
- Company going Ultra vires its Memorandum
- Paradanashin Women

Free consent

Free consent

Section 13, “ two or more persons are said to consent when they agree upon the same thing in the same sense and at the same time”.

- The contract is void if there is no consent.
- Even if there is a consent, the consent must be free.
- A consent is not said to be free when it is obtained through:
 - 1) Coercion
 - 2) Undue Influence
 - 3) Fraud
 - 4) Misrepresentation
 - 5) Mistake

1.Coercion

According to sec. 15 “ coercion is

- a) The committing or threatening to commit any act forbidden by the Indian Penal Code
- b) The unlawful detaining, or threatening to detain any property
- c) With the intention of causing any person to enter into an agreement

Examples- coercion

- AKhil threatens to kill Bharat and obtains his consent for a contract. Here, the threat to kill is an offence punishable under the Indian Penal Code. Therefore, it amounts to coercion.
- An agent refused to handover books of accounts to his principal unless the principal agreed to a settlement. It was held that the threat amounted to coercion.

Duress

Duress means committing or threatening to commit bodily violence or imprisonment with a view to obtain the consent of the other party to the contract.

In this case, the threat is against persons and not against properties. In brief, it is an equivalent term for coercion.

2. Undue Influence

Sec. 16, a contract is said to be induced by undue influence where

- 1] the parties are so related that one of them is in a position to dominate the will of the other, and
- 2] the position has been used for obtaining an unfair advantage over the other

Relationship dominates the will of other -
voidable

1. Real & apparent authority-Doctor-patient, master-servant
2. Fiduciary relationship- father-son, solicitor-client, spiritual guru-devotee
3. Mental stress-old age, illness, mental or body distress

An undue influence may be presumed in the case of the following relationships

- 1] parent and child
- 2] Guardian and ward
- 3]Trustee and beneficiary
- 4]Lawyer and client
- 5]Master and disciple
- 6]Doctor and patient and similar other relationships

- The presumptions of exercising undue influence has not been accepted in the following relationships:
 - Husband and wife
 - Master and servant
 - Landlord and tenant
 - Creditor and debtor

coercion

1. Physical force
2. consent is given under the threat of an offence

Undue influence

1. Mental pressure
2. consent is given under moral influence

Fraud

Sec. 17 “Fraud means and includes any of the following acts committed by a party to a contract or by his agent with intent to deceive or to induce a person to enter into a contract.

- 1] False representation or declaration or active concealment,
- 2] A promise made without any intention of performing it,
- 3] Any other act fitted to deceive,
- 4] any such act or omission declared as fraud by law.

Misrepresentation

Innocent misrepresentation means false representation made with a honest belief in its truth.

Sec.18 of the act lays down the following essentials of misrepresentation:

- 1] there must be representation or declaration of fact but not of an opinion
- 2] such declaration must induce a person to enter into a contract
- 3] such representation must have become untrue

Fraud

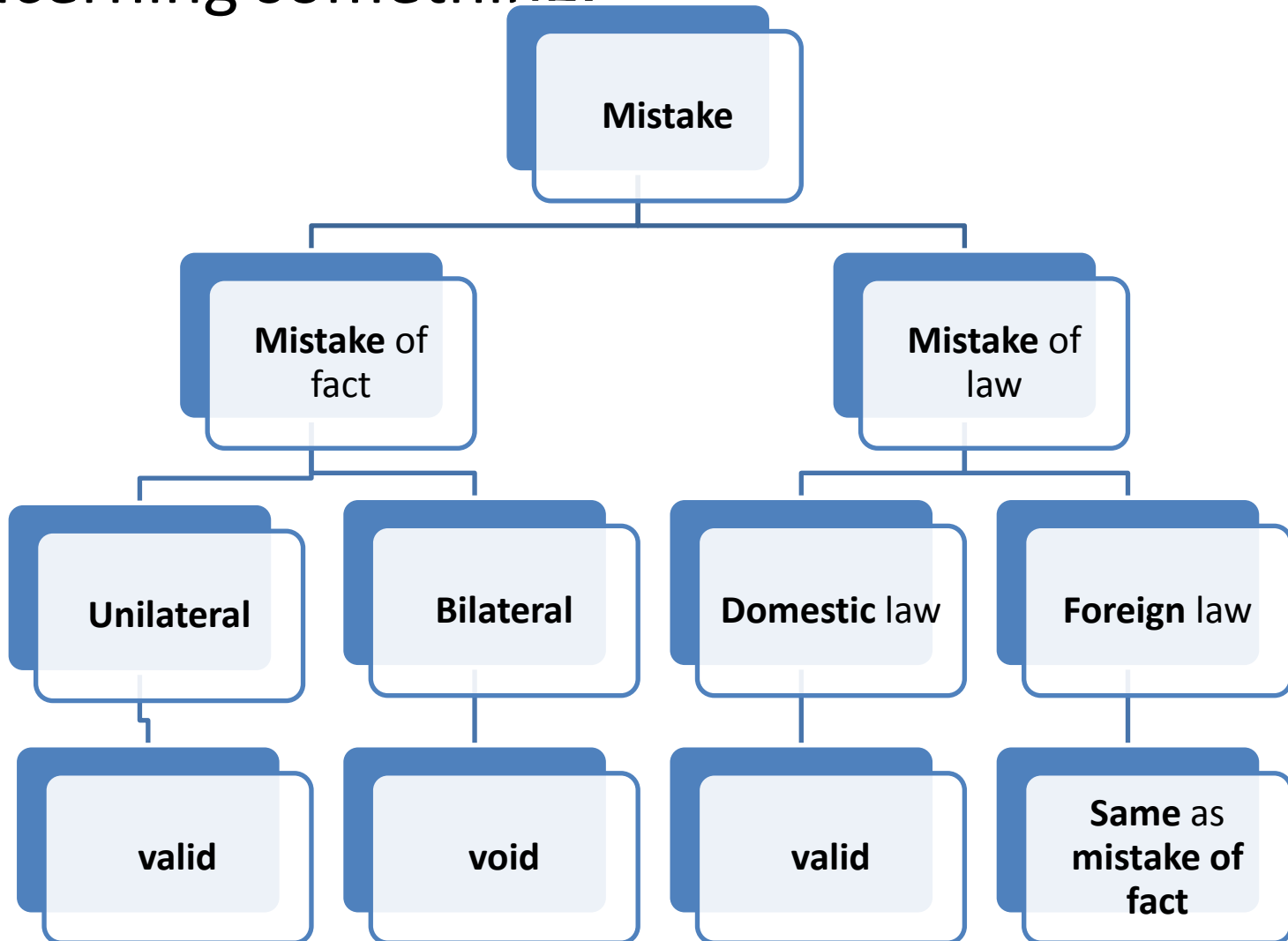
- It is wilful
- Here is an intention to deceive
- Contract can be avoided and damages can also be claimed.
- Means of discovering truth are immaterial

Misrepresentation

- It is innocent
- No such intention
- Contract alone can be avoided
- Means of discovering truth are material

Mistake

Mistake pertains to an erroneous belief concerning something.



Performance of contracts

Unit-II

Performance of contracts

- Performance of contracts takes place when the parties to the contract fulfill their obligations arising under the contract. Each party must perform or offer to perform the promise which he has made.
- Performance may be actual performance or attempted performance

Performance

Sec 37:- That the parties to a contract must **either perform or offer to perform, their respective promises** unless such performance is dispensed with or excused under the provisions of contract Act, or of any other law.

Performance: - Two types

- 1. Actual performance** – actually performed – liability of such a party comes to an end.
- 2. Attempted performance** or tender of performance refusal to accept offer of performance by promise [38]

Promisor $\xrightarrow[\text{of performance}]{\text{Offer}}$ promisee $\xrightarrow[\text{accept}]{\text{Does not}}$ attempted performance

- Promisor is not responsible for non performance and they can sue the promisee for breach of contract – nor he (promisor) thereby lose his rights under the contract.

Essential of Valid tender

```
graph TD; A[Essential of Valid tender] --- B[Unconditional]; A --- C[At a proper place]; A --- D[for whole obligation]; A --- E[Of exact amount and in legal tender money]; A --- F[At proper time]; A --- G[Reasonable opportunity to Promisee];
```

Unconditional

At a proper place

for whole obligation

Of exact amount and in legal tender money

At proper time

Reasonable opportunity to Promisee

Tender or offer of performance to be valid must satisfy the following conditions:-

(i) It must be unconditional

Ex :- 'X' offers to 'Y' the principal amount of the loan. This is not a valid tender since the whole amount of principal and interest is not offered.

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

Ex:- If the promisor wants to deliver the goods at 1 am. This is not a valid tender unless it was so agreed;

(iii) Reasonable opportunity to examine goods.

Ex:- Delivery of something to the promisee by the promisor must have reasonable opportunity of inspection.

iv) It must be for the whole obligation :- goods and amount.

Ex:- 'X' a debtor, offer's to pay 'Y' the debt due in installments and tenders the first installment. This is not a valid tender minor deviation – not invalid.

(v) It must be made to the promisee or his duly authorized agent.

Ex:- It must be person who is willing to person his part of performance.

(vi) In case of payment of money, tender must be of the exact amount due and it must be in the legal tender.

Types of tender

Tender of goods and services

When a promisor offers to delivery of goods or service to the promise, it is said to be tender of goods or services, if promisee does not accept a valid tender, It has the following effects:

- (i) The promisor is not responsible for non – performance of the contract.
 - (ii) The promisor is discharged from his obligation under the contract. Therefore, he need not offer again.
- (iii) He does not lose his right under the contract. Therefore, he can sue the promise.

Tender of money

Tender of money is an offer to make payment. In case a valid tender of money is not accepted, it will have **the following effects:**

(i) The offeror is not discharged from his obligation to pay the amount.

– (ii) The offeror is discharged from his liability for **payment of interest from the date of the tender of money.**

Unit-II

Legality of Object

Unlawful Consideration & Object

1. Immoral: Rent to Prostitute, Divorce
2. Injury to Person or Property: Beat, Printing copyrighted material, Manual labour
3. Provision of Law is Defeated: Not informing about Murder
4. Fraudulent / Cheating: Sell bogus plots of land
5. Forbidden by law: Smuggled goods, MRP
6. Defeat's rule in force: Conceal Income
7. Agreement Opposed to Public Policy

Agreement Opposed to Public Policy

- Marriage brokerage contracts
- Agreement for the creation of Monopolies
- Stifling prosecution
- Sale of public offices
- Interest against Obligation
- Champerty and maintenance
- Interference with the Course of justice
- Trading with Enemy
- Agreement in Restraint of marriage
- Agreement in Restraint of trade
- Agreement in Restraint of legal proceedings

Illegal agreements

- An agreement which is against public policy or immoral in nature is known as illegal agreement.

Void agreements

The following agreements are void under the Indian Contract Act:

1. Agreements created by incompetent persons.
2. Agreements created by 'Bilateral Mistake'
3. Agreements of illegal object or consideration
4. Agreements, the consideration or object of which is illegal, the entire agreement is void.
5. Agreements without consideration
6. Agreements opposed to public policy
7. Agreements, the meaning of which is uncertain
8. Wagering agreements
9. Agreements to do impossible acts

Void contract

- Contracts contingent upon the happening of a future uncertain event cannot be enforced unless and until that event has happened. If the event becomes impossible, the contract will become void
- In a voidable contract, the party whose consent is not free may avoid the contract. If he so avoids, the contract is not valid.
- When the performance of a contract is impossible, the contract is void.

Contingent contract

- A contingent contract is a contract to do or not to do something, if some event collateral to such contract does or does not happen
Eg: P insures his house against loss due to damage. The insurer's liability to pay will arise only if there is any damage to the house.

Essentials of contingent contract

- Dependent on a future event
- Uncertain event
- Event collateral to the contract

REMEDIES FOR THE BREACH OF CONTRACT

Unit-ii

REMEDIES FOR THE BREACH OF CONTRACT

Remedy means course of action available to an aggrieved party when other party breaches the contract.

Remedies for
Breach of contract

```
graph TD; A[Remedies for Breach of contract] --> B[1. Rescission of contract]; A --> C[2. Suit for damage]; A --> D[3. Suit for specific performance]; A --> E[4. Suit for Injunction]; A --> F[5. Quantum Meruit];
```

1.
Rescission
of contract

2. Suit for
damage

3. Suit for
specific
performance

4. Suit for
Injunction

5. Quantum
Meruit

RESCISSION OF CONTRACT – SEC 39

- It means right to party to cancel contract.
- In case of breach of contract, other party may rescind contract.

SUIT FOR DAMAGES

- It means monetary compensation allowed for loss.
- Purpose is to compensate aggrieved party and ***not to punish party as fault.***
- In India, rules relating to damages are based on English judgment .

Suit for Specific Performance

It means, demanding an order from court that promise agreed in contract shall be carried out.

⇒ **When is specific performance allowed?**

- Where actual damages arising from breach is not measurable.
- Where monetary compensation is not adequate remedy.

⇒ **When specific performance is not allowed?**

- When damages are an adequate remedy.
- Where performance of contract requires numbers of minute details and therefore not possible for court to supervise.
- Where contract is of personal in nature.
- Where contract made by company beyond its power. (ultra – vires)
- Where one party to contract is minor
- Where contract is inequitable to either party.
- **Example** : A agree to sell B, an artist painting for Rs.30,000. Later on, he refused to sell it. Here B can file suit against A for specific performance of the contract.

Suit for Injunction

- It means stay order granted by court. This order prohibits a person to do particular act.
- Where there is breach of contract by one party and order, of specific performance is not granted by court, injunction may be granted.
- Example: Film actress agreed to act exclusively for W for a year and for no one else. During the year she contracted to act for Z.

Discharge of contracts

Unit-ii

DISCHARGE OF A CONTRACT

- Discharge of a contract means termination of contractual relation between the parties to a contract
- In other words a contract is discharged when the rights and obligations created by it are extinguished (i.e. comes to an end).

Mode of discharge of contract

1. By performance
- Actual
 - Attempted

6. By impossibility of performance

4. By lapse of Time

5. By breach of contract
- Actual
 - Anticipatory

- 2. By mutual agreement**
(By implied consent)
1. Novation – Sec 62
 2. Rescission – Sec 62
 3. Alteration – Sec 62
 4. Remission – Sec 63
 5. Waiver
 6. Merger

- 3. By Operation of law**
1. Death
 2. Merger
 3. Insolvency
 4. Unauthorized alteration

Discharge by performance

Fulfillment of obligations by a party to the contract within the time and in the manner prescribed in the contract.

- (a) Actual performance – no party remains liable under the contract. Both the parties performed.
- (b) Attempted performance or tender.:- Promisor offers to perform his obligation under the contract but the promisee refuses to accept the performance. It is called as attempted performance or tender of performance
 - But the contract is not discharged.

Discharge by mutual agreement

(a) Novation – it means substitution of a new contract for an existing one

(b) Rescission:- or cancellation

Eg: a promises to supply certain goods to B six months after date. By that time, the goods go out of fashion. A and be may rescind the contract.

(C) Alteration

Any alteration to the terms of contract will discharge the contract

(d) Remission :- Remission means accepting a lesser consideration than agreed in the contract. No consideration is necessary for remission.

(e) Waiver:- it means voluntary giving up of a right by a party to the contract.

(f) Merger: where an inferior right of a person coincides with a superior right of the same person

Discharge by operation of law

- (a) **Death** :- involving the personal skill or ability, knowledge of the deceased party one discharged automatically. In other contract the rights and liability passed to legal represent.
- (b) **Insolvency**:- when a person is declared insolvent. He is discharged from his liability up to the date of insolvency.
- (c) **By unauthorized material alteration** – without the approval of other party – comes to an end – nature of contract substance or legal effect.
- (d) **Merger**: When an inferior right accruing to a party in a contract merges into a superior right accruing to the same party, then the contract conferring inferior right is discharged.

Discharge by Lapse of time

Where a party fails to take action against the other party within the time prescribe under the limitation Act, 1963. All his rights to come end.
Recover a debt – 3 Years recover an immovable property – 12 years

Ex.:- On 1st July 20X1 X sold goods to Y to Rs 1,00,000 and Y had made no payment till August 20X4. state the legal position on 1st Aug 20X4

- (a) If no. credit period allowed
- (b) If 2 month credit period allowed.

Discharge by Breach of contract

Failure of a party to perform his part of contract

(a) Anticipatory Breach of contract :-

Anticipatory breach of contract occurs when the party declares his intention of not performing the contract before the performance is due .

(b) Actual Breach of contract :- If party fails or neglects or refuses to perform his obligation on the due date of performance or during performance. It is called as actual breach.

Discharge by Impossibility performance

- By destruction of the subject-matter of the contract
- By death or disablement of the parties
- By subsequent illegality
- By declaration of war
- By Non-existence or Non-occurrence of a particular state of things
 - difficulty in performance
 - commercial impossibility
 - non-performance by the third person or party
 - strikes, lockouts or civil disturbances
 - failure of one of the several objects

QUASI CONTRACT

Unit-ii

QUASI CONTRACT

- It means a contract which lacks one or more of the essentials of a contract.
- Quasi contract are declared by law as valid contracts on the basis of principles of equity i.e. no person shall be allowed to enrich himself at the expense of another the legal obligations of parties remains same.

Nature of Quasi contracts

- (a) A quasi contract does not arise from any formal agreement but is imposed by law.
- (b) Every quasi contract based upon the principle of equity and good conscience.
- (c) A quasi contract is always a right to money and generally though not always to a liquidated sum of money.
- (d) A suit for its breach may be filed in the same way as in case of a complete contract.
- (e) The right granted to a party under a quasi contract is not available to him against the whole world but against particular person(s) only.
- (f) A suit for breach of a quasi contract may be filed in the same way as in case of an ordinary contract
- (g) Although there is no contract between the parties under a quasi contracts, yet they are put in the same position as if he were a contract between them .

TYPES OF QUASI CONTRACTS

Sec. 68 Supply of Necessaries	Sec. 69 Reimbursement of money due	Sec. 70 Obligation to pay for benefit out of non – gratuitous act	Sec. 71 Responsibility of Finder of Goods	Sec.72 Person receiving goods are money by mistake
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Supply of Necessaries

Sec. 68: If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person, with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

1. Meaning of Necessaries:

- (a) Necessaries normally include articles required to maintain a particular person in the state, degree and station in life in which he is.
- (b) They are essentials to run a life.
- (c) An item will not be considered necessary, if a person already has sufficient supply of things of such kind.
- (d) Necessaries include Services rendered to a person.
- (e) What constitutes necessaries depends on the circumstances of each case.

Payment By a person who is interested in a transaction [69]

Sec. 69; A person, who is interested in the payment of money and pays such money, which another is bound by law to pay, is entitled to be reimbursed by the other.

- (a) one party is legally bound to make a payment
- (b) Some other persons make such payment
- (c) The person making such payment is not legally bound to make such payment
- (d) The person making such payment is interested in paying such amount

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

Sec.70 : Where a person, lawfully does anything for another person, or delivers anything to him; not intending to do so gratuitously, and such other person enjoys the benefits thereof, then he is bound to make compensation to the other in respect of, or to restore the thing so done or delivered.

- (a) A person has lawfully done something for another person or delivered something to another person.
- (b) Such person must have acted voluntarily and non – gratuitously.
- (c) The other person has enjoyed the benefit of the act done for him or the thing delivered to him.

- **Finder of Goods [71]**

A person who finds goods belonging to another and takes them into custody, is subject to the same responsibility as a **Bailee**.

- A finder of goods has same rights and duties at that of **bailee**.
- Duty to take reasonable care of the goods
- Duty not to use the goods for his own purpose.
- Duty not to mix the goods with own goods
- Right to recover expenses, reward, sell the goods

- **Money paid under a mistake or conversion [72]**

Sec. 72: A person to whom money has been paid, or anything delivered by mistake or under coercion, must repay or return it.

(a) A person has (i) paid money to another person or

(ii) Delivered something to another person

(b) Such person must have acted

- Under a mistake or under coercion.

Law of Agency

Unit-III

Meaning of 'agent'

- Sec.182

An 'agent' is defined as a person employed to –

- Do any act for another; or
- To represent another in dealings with third persons.

Meaning of 'principal'

'Principal' is the person –

- For whom an act is done by the agent; or
- Who is represented by the agent in respect of dealing with third persons.

Agency

- Is a relation based upon an express or implied agreement whereby one person, the agent, is authorized to act for another, his principal, in transactions with third persons.

SALIENT FEATURES OF AGENCY

- **Principal is liable for the acts of agent**
- The principal is liable for all the acts of an agent which are lawful and within the scope of agent's authority.
- The contracts entered into by the agent on behalf of the principal have the same legal consequences as if these contracts were made by the principal himself.

Who may employ an agent?

- Any person may employ an agent if –
- He is of the age of majority; and
- He is of sound mind.

Who can be an agent?

- Any person may become an agent.
- Even a minor or a person of unsound mind can become an agent

Liability of agent

- Generally an agent is liable to the principal
- An agent is not liable to the principal if he is a minor or is of unsound mind.

Requirement of consideration

- No consideration is necessary for creating an agency

CREATION OF AGENCY

```
graph TD; A[CREATION OF AGENCY] --> B[By Operation of Law]; A --> C[By Express Agreement]; A --> D["By Implied Agreement  
(a) Estoppel, (b) Holding Out,  
(c) Necessity"]; A --> E[By Ratification of acts];
```

By Operation
of Law

By Express
Agreement

By Implied Agreement
(a) Estoppel, (b) Holding Out,
(c) Necessity

By Ratification of acts

- **Agency by operation of law**
- Agency by operation of law arises where the law treats one person as an agent of another.
- **Express agreement**
- A person may employ another person as his agent by entering into an express agreement with him.
- The agreement may be either oral or written.

Implied agreement

- *Agency by estoppel*

If –

- a person makes a representation (by his words or conduct) to a third person that a certain person is his agent; and
- the third party believing such representation to be true, enters into a contract with the pretended agent.

Then –

- the person making the representation is prevented from denying the truth of agency. He may be held liable as a principal by such third party.

Agency of holding out

- Such an agency comes into existence when a person by his affirmative or positive conduct leads third persons to believe that person doing some act on his behalf is doing with authority.

Agency by necessity – Conditions

- (i) There was an actual and definite necessity for acting on behalf of the principal.
- (ii) The agent was not in a position to communicate with the principal.
- (iii) The act was done for the purpose of protecting the interest of his principal.
- (iv) The agent has exercised such reasonable care as a man of ordinary prudence would have exercised in his own case.
- (v) The act was done bonafide.

Agency by ratification

Meaning

If –

- a person (viz., pretended agent) acts on behalf of another person (viz, the principal)
- the pretended agent acts without the knowledge or consent of the principal; and
- Afterwards, the principal accepts such act.

Then –

- Agency by ratification comes into existence.

ESSENTIALS OF A VALID RATIFICATION

- Full Knowledge
- Whole transaction
- Act on behalf of another person
- By the principal
- Existence of principal
- Contractual capacity
- Lawful acts
- Acts within principal's power
- Communication
- Within reasonable time

KINDS OF AGENTS

A. Based on Authority

1. Special Agent	2. General Agent	3. Universal Agent
<p>(a) Appointed to perform a particular transaction, e.g. sale of a house property.</p> <p>(b) Agent has limited authority</p> <p>(c) Agent cannot bind Principal for acts other</p>	<p>(a) Appointed to do all acts connected with a particular trade, business or employment.</p> <p>(b) Authority is wide and continues till agency is terminated.</p>	<p>(a) Appointed to do all acts for the Principal.</p> <p>(b) Authority is unlimited</p> <p>(c) All acts of Agent bind his Principal provided that his acts are legal and agreeable as per law of land.</p>
<p>than for which he is employed.</p>	<p>(c) Principal may limit his authority.</p> <p>(d) Principal is bound by all acts unless it is beyond authority of Agent.</p>	

B. Based on Nature of work

1. Commercial or Mercantile Agents	2. Non – Mercantile Agents.
<p>(a) One who is authorised to sell goods or consign goods for the purpose of sale or to buy goods or to raise money on the security of goods.</p> <p>(b) Includes Banker, Factor, Auctioneer, Broker, Commission Agent, & Del Credere Agent.</p>	<p>(a) Not engaged in business of selling or buying goods, but act in their respective professional capacities. i.e. render professional services for their Principal</p> <p>(b) Includes Solicitors, Attorneys, C & F Agents, Insurance Agents, etc.</p>

DUTIES OF AN AGENT

- Follow principals instructions
- Duty to conduct the business with skill and care
- Duty to render proper accounts
- Communicate with principal
- Duty not to deal on his own account
- Duty not to make secret profit
- Duty to pay sums received
- Not to delegate authority

- Duty to protect and preserve the principals interests
- Adverse title
- Naming an agent for principal
- Duty Liable for acts of sub-agent

RIGHTS OF AN AGENT

- Retainer
- Remuneration
- Lien
- Indemnity
- Compensation
- Stoppage of goods in transit
- To do lawful acts
- In emergency

Duties of the principal to agent

- Consequences of all lawful acts
- Consequences of acts done in good faith
- Compensation to agent of injury
- Pay the agent commission or remuneration
- Criminal act, the employer is not liable to the agent

Rights of principal

- To recover damages
- Recover secret profits made by the agent
- To enforce all the duties of the agent
- Repudiate the transaction
- Demand proper accounts
- Refuse remuneration
- Revoke the authority given
- Give instructions

Delegation of agent's authority

1. **sub-agent:** a sub-agent is a person employed by and acting under the control of, the original agent in the business of the agency

An agent can appoint a sub-agent

1. Custom of trade
2. Nature of work
3. Purely ministerial
4. Principals authorizes the appointment of such a sub-agent expressly or impliedly
5. Unforeseen emergency has arisen
6. Principal does not object to such an appointment

Relations of the sub-agent to the principal

- **Where the sub-agent is properly appointed**
 - a. The principal is bound by the act of the sub-agent
 - b. The agent is liable to the principal for the acts of the subagent
 - c. Sub-agent is responsible for the acts to the original agent. However, he is responsible to the principal for his acts only in case of fraud or willful wrong.

Relations of the sub-agent to the principal

- **Where the sub-agent is improperly appointed**
 - a. The principal is not bound by the act of the sub-agent
 - b. The original agent is liable for the acts of the sub-agent to the principal and the third parties
 - c. Sub-agent is not responsible to the principal for his acts.

Substituted agent

- Substituted agent is the agent appointed by the original agent to act for the principal. Such agents act, under the direct control of the principal and not under the original agent.

TERMINATION OF AGENCY

A. By the acts of parties

- Mutual agreement
- Revocation by the principal
- Revocation by the agent

B. By operation of law

- Performance of the contract
- Expiry of time
- Death or insanity of either party
- Insolvency of the principal
- Destruction of subject matter
- Principal becoming an alien enemy
- Dissolution of a company
- Termination of sub-agents authority

- The principal cannot revoke the authority given to his agent after the authority has been partly exercised.
- When agency is for a fixed period, the principal must make compensation to the agent for premature revocation of agency without sufficient cause.
- Revocation may be expressed or implied from the conduct of the principal

By the agent renouncing the business of agency

- Renunciation may be expressed or implied from the conduct of the agent.
- When agency is for fixed period, the agent must make compensation to the principal for premature renunciation of agency without sufficient cause.

B. By operation of law

1. Completion of business of agency
2. Death or insanity of the principal or agent
3. Where the principal or the agent, being a company is dissolved
4. Destruction of subject matter of agency
5. Principal becoming insolvent
6. Expiration of period where agency was for a fixed period.

Sale of goods Act 1930

Introduction

- Formation of the contract of sale
- Conditions and warranties
- Transfer of ownership & delivery of goods
- Unpaid seller

Formation of the contract of sale

- Contract of sale

“ A contract of a sale of goods is a **contract** where by the **seller transfer or agrees to transfer the property** in the **goods** to the buyer for a **price**.

Essentials contract of sale

- At least two parties
- Goods
- Money(not in kind- no barter)
- Transfer of property
- Absolute or conditional
- Other elements of valid contract

What are goods

- Obvious: mobiles, planes, TV , books, cars, bicycle, computer, etc.,
- Not so obvious
 - Intangible assets-copy rights(Ilayaraja songs)
 - Good will-reputation
 - Shares- electronic form
 - Attached to ground but detachable- grass, tree crops, wood, minerals

Which can sell it, Movable that means goods

What are not goods

- **Cannot be moved-buildings**, shops, flats(come under transfer of property act)
- **Money**(currency notes, coins existing currency though it is movable)(exemption for outdated coins, notes which come under antique goods)
- **Actionable claim-** debt, case of damage worth of money
- An actionable claim are claim which can be enforced only in court according to law

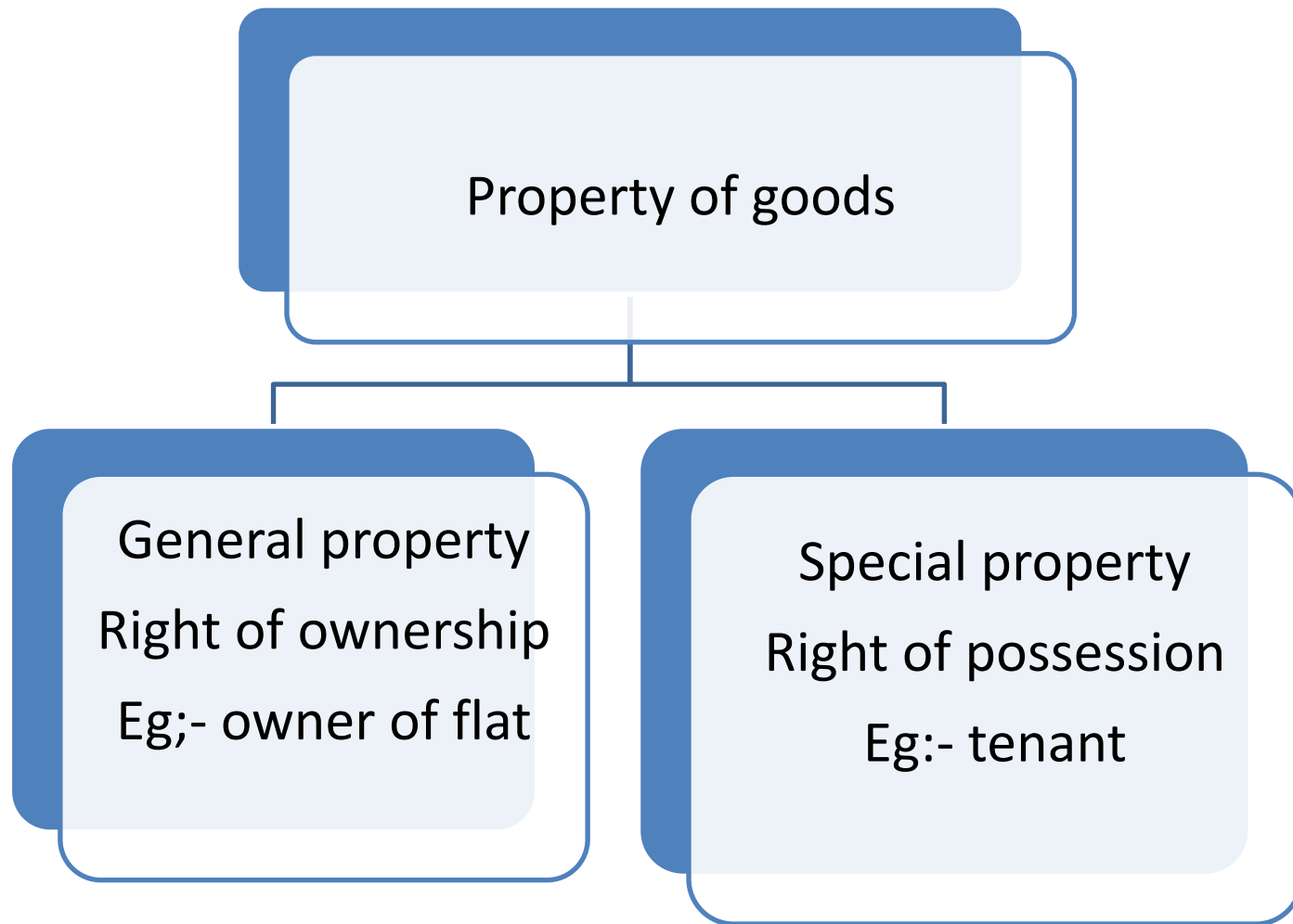
Types of goods

- **Existing goods**: goods which are in existence at the time of sale
 - **Specific**:- separately identified at the time of sale
 - **Ascertained goods**:- separately identified after the sale transaction
 - **Unascertained goods**:- not separately identified
- **Future goods** : goods which come into existence at a future date. They do not exist at the time of sale
- Eg:- crops

- **Contingent goods**: goods where existence depends on some contingency event. If goods come into existence at the sale transaction
Eg: goods from port which depend on future uncertain event

BUYER & SELLER

- **Buyer** means a person who buys or agrees to buy goods
- **Seller** means a person who sells or agrees to sell goods



Property of goods means general property and not merely a special property

Sale Vs agreement to sell

Transfer of ownership at the time of contract

Basis	sale
Ownership	Buyer
Subsequent loss	Buyer
Nature of contract	Executed
Sellers breach	Goods+damages
Buyers breach	Claim price from seller

Transfer of ownership at a future date

Basis	Agreement to sell
Ownership	Seller
Subsequent loss	Seller
Nature of contract	Executory
Sellers breach	damages
Buyers breach	damages

Formalities of contract of sale

- Immediate delivery; or
- Immediate payment of price, delivery at future date; or
- Immediate delivery & immediate payment of price; or
- Delivery or payment or both in installments; or
- Delivery or payment or both at some future date

Subject matter of contract of sale

- Must always be goods
- May be contingent contracts
- Sale of future goods= agreement to sell & not sale

Destruction of goods

- Destroyed **before** the contract of sale- **void** contract- risk with seller on the ground of impossibility
- Destroyed **after** the contract of sale- **valid** contract- risk with buyer

Price of goods (monetary consideration-not barter)

- Price may be fixed
 - Mutually by the parties
 - As per manner provided in contract
 - By third party-valuer
 - Trade usage or course of dealing

Notes:-

- when not fixed-reasonable price(fact)
- third party fails to determine the value- contract becomes void on the ground of uncertainty
- third party is prevented –default party(Buyer)- party liable for damages

Time in sale of goods

- Stipulation of time can be
 - payment of price(not that much important, contract is not voidable)
 - Delivery of goods(deemed essence, contract voidable at the option of aggrieved party)

Exception

Expressly mentioned payment not made on time,
the contract becomes void

Delivery of goods transfer of possession

- Putting the goods in possession of buyer
- Voluntary transfer of possession by one person to another
- Mode of delivery
 - Actual delivery-physical delivery-car
 - Symbolic delivery-symbol-car keys
 - Constructive delivery or delivery by acknowledgement- car in warehouse- informing buyer to take it and acknowledging it to the warehouse man

Document of title of goods

- Document means which entitle the holder of ownership
- Bill of lading, goods receipt, bill etc
- Give right of ownership(who ever holds the bill)
- Document of showing title: share certificate, FD receipt- not transferable by delivery

Conditions & warranties

- Stipulation: terms of purchase are stipulation of contract
- Two types
 - Conditions-essential to main contract(major)
 - Warranty- collateral to main contract(minor)
 - Eg:- car feature Vs car mileage

Condition Vs warranty

Importance	Main	Minor
Breach	Reject the goods + damages	damages
May be treated in breach	warranty	Not condition

Express and implied

- Express- agreed upon at the time of contract
- Implied- presumed to be present by law

Implied conditions

- Condition as to title
- Sale by sample
- Sale by description
- Sale by both sample as well as description
- Condition as to merchantable quality
- Condition as to wholesomeness
- Condition as to quality or fitness for particular purpose

- **Condition as to title**
 - Existing goods-has right to sell
 - Future goods-will have right to sell
 - Remedies-return goods and recover price
- **Sale by sample**
 - Bulk as per sample, bulk should correspond to sample
 - Buyer should get opportunity to compare
 - No latent(hidden) defect- free from defects which makes product unsalable, such defects could not be discovered by ordinary examination
- **Sale by description**
 - Should be as per description
 - Goods should correspond to description

- **Sale by both sample & description**
 - Should be as per sample **and** description
 - Goods should correspond to sample & description
 - Cases
 - 1. goods correspond only to sample but not to description- contract is void
 - 2. goods correspond only to description but not to sample – contract is void
 - 3. goods correspond to both, sample & description =contract is valid

- **Conditions to merchantable quality**

- Quality and condition of goods- man of ordinary prudence(can use them)
- **Conditions:**
 - A. that the goods are free from latent defects
 - B. that the goods are marketable at their full value
 - C. that the goods can be used for the purpose for which they are bought by prudent persons
 - Eg:- clock late by 5 min every hour

- **Wholesomeness**-complete
- Fit for human consumption
- Eg:- split milk, contaminated water, overripe oranges etc
- **Quality or fitness of purpose**
- Particular purpose- fit for purpose
- Implied conditions if
 1. buyer has informed the specific purpose
 2. seller has been dealing in that specific goods
 3. buyer has relied upon seller

Implied warranty

1. Warranty as to undisturbed(quiet) possession
2. Warranty as to non-existence of encumbrances(like pledge, hypothecation)
3. Disclosure of dangerous nature of goods
Eg: medicines, drugs, etc
1. Warranty as to quality or fitness by usage of trade-ripe

Breach-suit for damages

Diminution or extinction of price, refusal to pay the price of goods, suit for loss exceeding price of goods

Condition becoming warranty

- Buyer waives the performance of condition
- Buyer treats breach of condition as warranty
- Contract not separable, buyer accepted whole or part of goods
- Excused by law for impossibility

Caveat emptor

- Buyer is responsible for wrong selection
- “Let the buyer beware”
- Seller is not bound to disclose the defect in goods
- Effect: buyer is liable

Exception to caveat emptor

- Buyer is not responsible-seller is responsible
 1. Buyer relies on seller's judgment
 2. Sale as per sample
 3. Sale by description
 4. Sale by both sample as well as description
 5. Quality or fitness by usage of trade
 6. Sale of branded products
 7. Sale by fraud or misrepresentation

Transfer of ownership & delivery

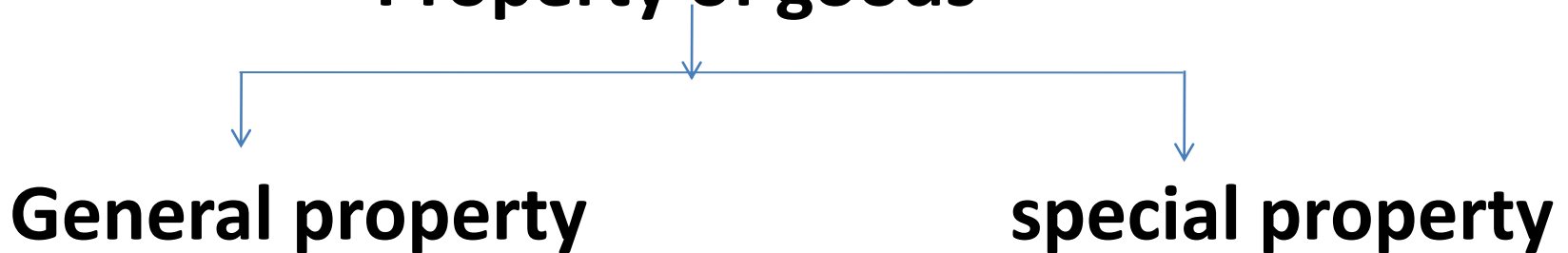
- Importance of ownership
- Passing of property
- Passing of risk
- Sale by non owner
- Delivery of goods

Importance of ownership

- Risk
- Seller can claim price
- Action against third party
- Insolvency of buyer

Passing of property

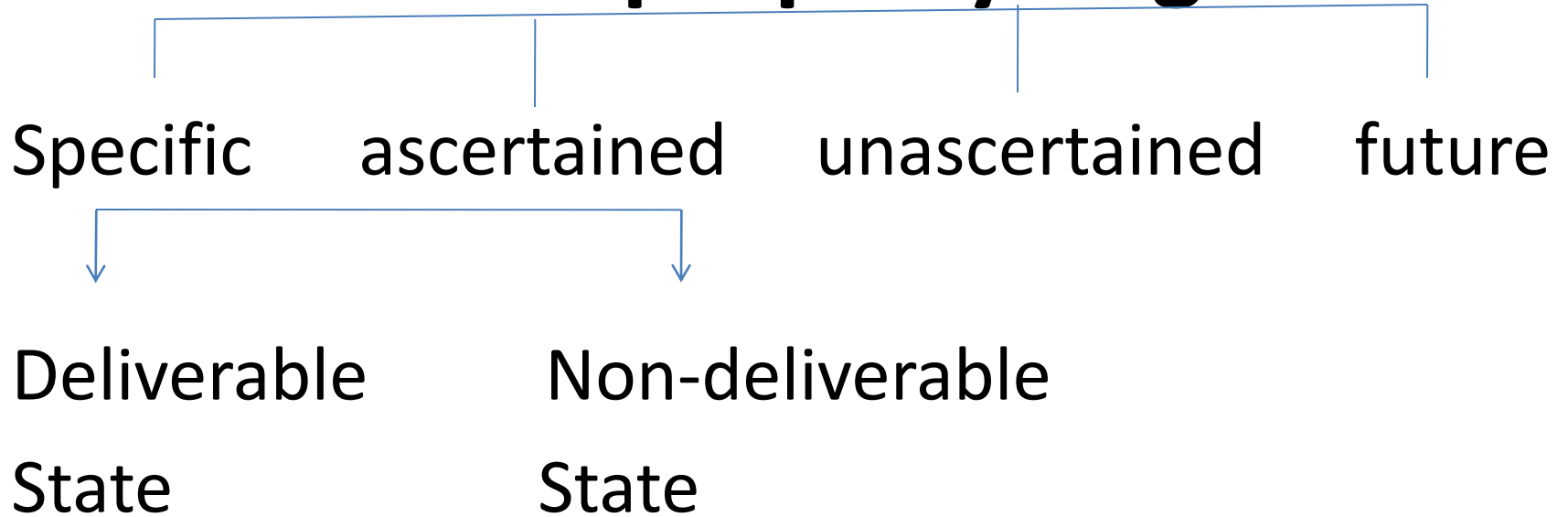
Property of goods



Passing of property in goods

Property passes when the parties **intend** it to pass

Transfer of property of goods



Deliverable state

- State of goods such that the buyer cannot refuse the delivery/acceptance of goods
- Time of contract/on the spot immediately
- Something to be done to **ascertain** price- ascertain meaning measuring, weighting etc
- Notice to buyer

Non-Deliverable State

- Some work relating to goods is pending like cutting, packaging etc
- Put them in deliverable state
- Notice to buyer

Unascertained

- Not separately identified from the bulk
- Ascertain separately identify
- Unconditional appropriation

Future

- When they are produced or manufactured

Passing of risk

- Risk means the liability to bear the loss
- Rule- risk follows ownership
- Exception
 1. Agreement to contrary
 2. Delay delivery -party at fault

Nemo dat quod non habet

- No one can give who himself does not have
- Sale by non-owner
- If you do not having it, can you sell it- No

Exception for sale by non-owner

- Sale by a mercantile agent
- Sale by one of the joint owner
- Sale by person under a voidable contract
- Sale by seller in possession after sale
- Sale by buyer in possession before transfer of ownership
- Effect of estoppel
- Sale by an unpaid seller
- Sale under the prov. of ther act

Sale by mercantile agent

- Possession with consent of principal
- Acting in ordinary course of business
- Buyer acted in good faith
- No notice of no authority to sell

Sale by joint owner

- Sole possession with others consent
- Buyer acted in good faith
- No notice of no authority to sell

Sale by person under voidable contract

- Possession under voidable contract
- Goods sold before contract is cancelled
- Buyer acted in good faith

Sale by seller in possession after sale

- Continues to be in possession of goods
- Buyer has no knowledge of previous sale
- Buyer acted in good faith

Sale by buyer before transfer of ownership

- Buyer possession with the consent of seller
- New buyer no knowledge of other right or lien
- Buyer acted in good faith

- **Estoppel**
- Statement or conduct led the buyer to believe that the seller has authority
- **Unpaid seller**
- Exercised right to lien or stoppage in transit
- **Other prov. of act**
- Official receiver or liquidator
- Finder of goods
- Sale by pawnee under pledge

Unpaid seller

Who is an unpaid seller?

1. Whole of the price not paid
2. Conditional payment-BOE or cheque dishonored

Note:

- Part payment left Rs. 100, Rs.1 not paid
- Not unpaid seller before credit period unless insolvent

Examples for unpaid seller

- A sold goods to B for Rs. 1000, B paid only Rs.90 but failed to pay the balance
- A sold goods to B for Rs. 1000, received cheque, cheque dishonoured
- A sold goods to B for Rs. 1000, on one month credit. One month has not expired
- A sold goods to B for Rs. 1000, on one month credit. One month has expired
- A sold goods to B for Rs. 1000, B became insolvent

Rights of an unpaid seller

Against goods
(Jus in Rem)

Sale agreement to sale

-Lien + with
-Stoppage in holding
transit delivery
-Resale

Against buyer
(Jus in personam)

-suit for price
-sue for damages
-sue for interest

Rights and duties of a seller

Rights

The seller has the right to refuse the delivery of goods or to sue for the recovery of price if the buyer has not paid the price.

Duties

1. He must prepare the invoice
2. He must deliver the goods at the place and time fixed by the contract
3. He must get the goods insured when they are delivered to a carrier

Rights and duties of a buyer

Rights

1. He can demand the delivery of goods as per the terms of the contract
2. He can repudiate the contract and claim damages in case of breach of condition by the seller
3. He can examine the goods before he accepts them.

Duties

1. He must apply for the delivery of the goods
2. He must accept the goods and pay the price
3. He must reject or refuse the goods not ordered

Buyer's Remedies against Seller For Breach of Contract

1. Suit for Damages for Non-Delivery
2. Suit for price
3. Suit for specific performance
4. Suit for Breach of Warranty
5. Suit for Damages for Repudiation of contract before Due date
6. Suit for interest

Auction sale

- Selling property by inviting bids publicly
- Sold to highest bidder
- Auctioneer is an agent of seller



NEGOTIABLE INSTRUMENTS

ACT 1881

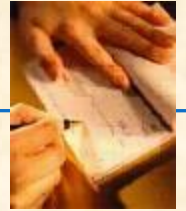
INTRODUCTION

- × ‘Instrument ‘ means any written document by which a right is created in favour of some person.
- × “negotiable” – means whereby rights in an instrument can be transferred by one person to another

CONTD-

- × Thus, a negotiable instrument is a document by which rights vested in a person can be transferred to another person in accordance with the provisions of the Negotiable instruments Act 1881.

NEGOTIABLE INSTRUMENTS



ORIGIN : In the year 1881

SCOPE : Applicable in entire India except the State of Jammu & Kashmir

Applicability: Deals with law relating to three specific instruments, viz. Promissory note, Bill of exchange and cheque

DEFINITION

According to Section 13(i) “ a negotiable instrument means **a promissory note, bill of exchange or cheque payable either on order or to bearer**”.

It is an instrument- which is transferable (**Indefinite times**) by delivery, like cash, and is also capable of being sued upon by the person holding for the time being.

Characteristics

- It is **freely transferable**
- **Better title** (even though title of Transferor is defective)
- Right to **sue**
- A negotiable instrument can be transferred **any number of times** till its maturity
- **Written & Signed**
- NI can be made in favour of **one payee or more than one** either singly or jointly.

Presumptions

1. **Consideration** : Every negotiable instrument is deemed to have been ***drawn and accepted , endorsed, negotiated, or transferred for consideration***
2. **Date** : Every negotiable instrument must bear the ***date on*** which it is made or drawn
3. **Acceptance** : Every Bill of exchange was accepted within a reasonable time after the date mentioned therein and **before the date of its maturity**
4. **Transfer** : Every transfer should be made **before the expiry.**
5. A Lost NI is assumed to be **dully signed and stamped.**
6. **Sequence/order of endorsements** should be noted.

Kinds of negotiable instrument

```
graph TD; A["Kinds of negotiable instrument"] --> B["Negotiable instrument  
By STATUTE ."]; A --> C["Negotiable instrument  
By custom or usage"]; B --> B1["1) Promissory note."]; B --> B2["2) Bill of exchange."]; B --> B3["3) Cheque."]; C --> C1["1) Bank draft."]; C --> C2["2) Pay orders."]; C --> C3["3) Hundies."]; C --> C4["4) Delivery order"]; D["Not negotiable instruments: Share certificate, bill of lading, postal order"]
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Negotiable instrument

By STATUTE .

- 1) Promissory note.
- 2) Bill of exchange.
- 3) Cheque.

Negotiable instrument

By custom or usage

- 1) Bank draft.
- 2) Pay orders.
- 3) Hundies.
- 4) Delivery order

Not negotiable instruments: Share certificate, bill of lading, postal order

Promissory Note

Definition- “ A promissory note is an instrument in writing (not being a bank note or currency note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to , or to order of a certain person, or to the bearer of the instrument.” -----Sec. 4

The person who makes the promise to pay is called the **Maker**. He is **the debtor** and must sign the instrument. The person who will get the money (**the creditor**) is called **Payee**.

Essentials Promissory Note

- 1 • It must be in writing
- 2 • Promise to pay
- 3 • Unconditional Promise
- 4 • It must be signed & Stamped
- 5 • Certainty about maker & amount
- 6 • Payee must be certain.
- 7 • The payment must be in legal money

FORMAT OF PROMISSORY NOTE

Specimen of a Promissory Note

₹ 1,00,000/- only

Mohan

15, Gariahat Road, Kolkata
1st Jan, 2000

Three months after date I promise to pay Sohan or his order the sum of ₹ One lakh only,
for value received

To,
Sohan
23A Hazara Road, Kolkata



(Mohan)

Payee

Maker

Bill of Exchange

“ A Bill of Exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument.” ----Sec. 5

Parties to bill of exchange :

Drawer – The person who **makes/orders** to pay bill of exchange.

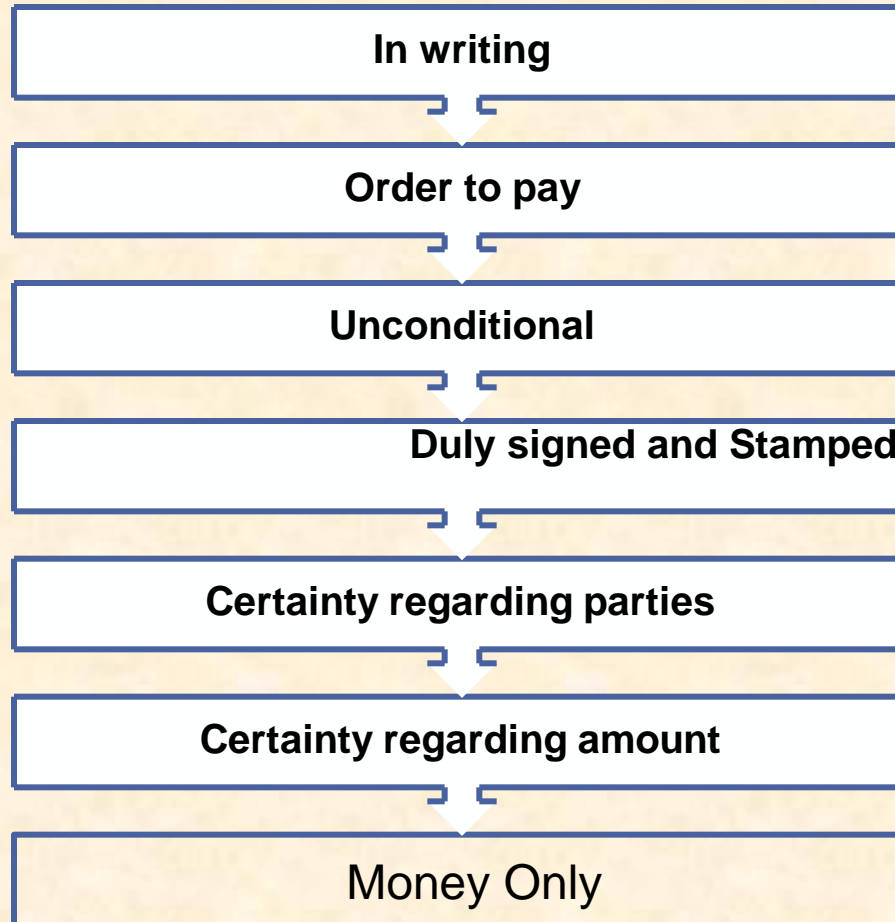
Drawee – The person who is **directed to pay on bill.** On **acceptance** he becomes acceptor.

Payee – The person to **whom the payment is to be made.**

Drawer & Payee can be the same person.

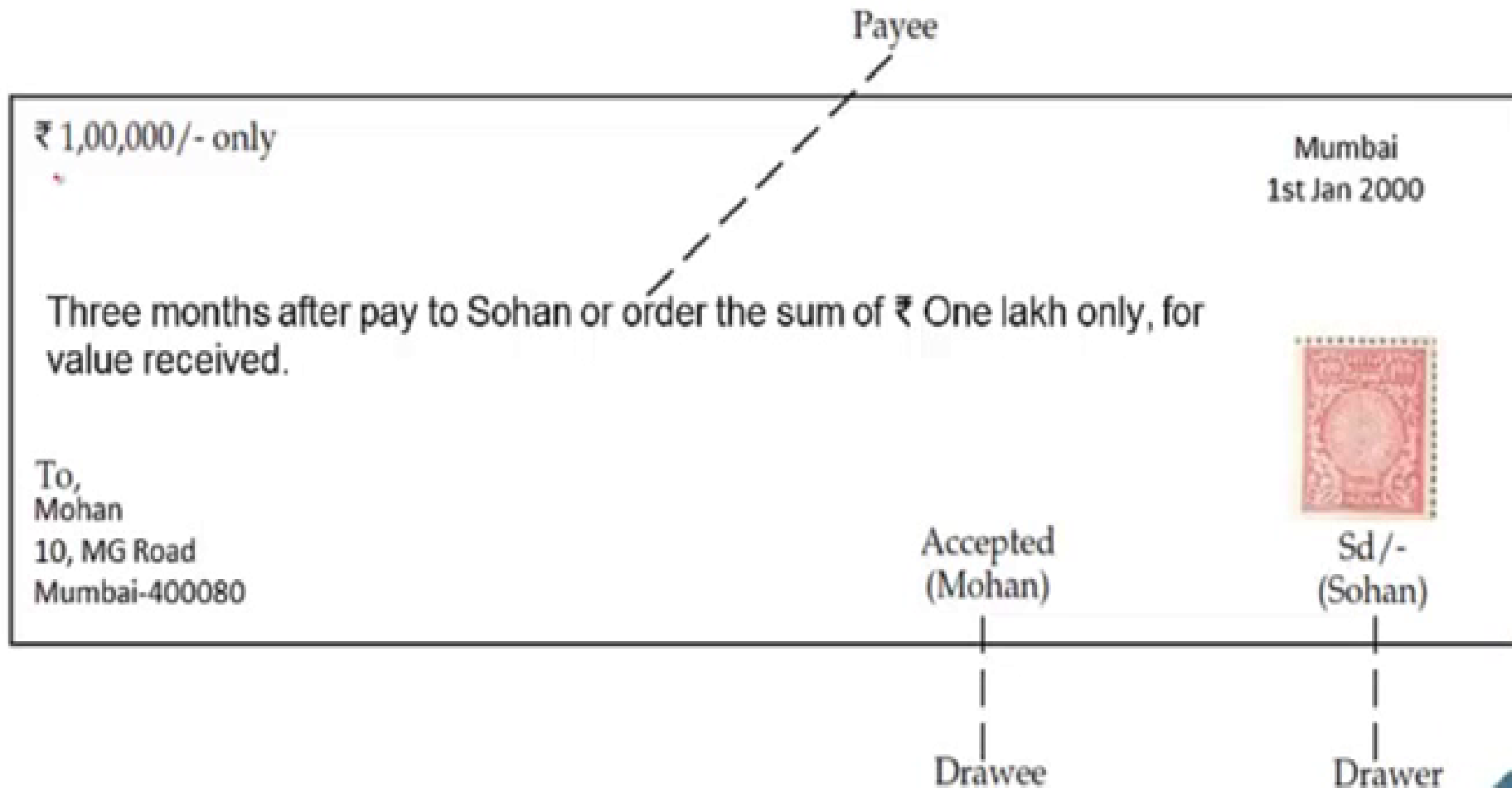
X sells goods worth Rs. 2000 to Y & allow him 3 months time to pay the price. X then draws a bill on Y “ Three months after date, pay to my order the sum of Rs. 2000 for value received”. X is drawer . Y is Drawee.

Essentials of a Bill of Exchange



It should be noted that neither a PN nor a BE can be made payable to Bearer on demand

Specimen of a Bill of Exchange



Bill of Exchange vs Promissory Note

Basis	Bills of Exchange	Promissory Note
Drawn By	Creditors / <i>Seller</i>	Debtors / <i>Buyer</i>
Contains	Order to pay	Promise to pay
Acceptance	Required <i>✓</i>	Not Required <i>✓</i>
Bearer	Payable to bearer	Not payable to bearer
Payee	Drawer & payee may be same	Drawer & payee cannot be same
Number of parties	Can be three	Only two
Notice on dishonour	Required	Not Required

Cheque

Section 6, defines it as “ A cheque is a bill of exchange drawn on a specified banker & not expressed to be payable otherwise than on demand”.

- It is always drawn on a bank
- It is payable to bearer on demand


Parties To Cheque:

1. Drawer – who makes the cheque
2. Payee – to whom payment is to be made
3. Drawee – Bank .

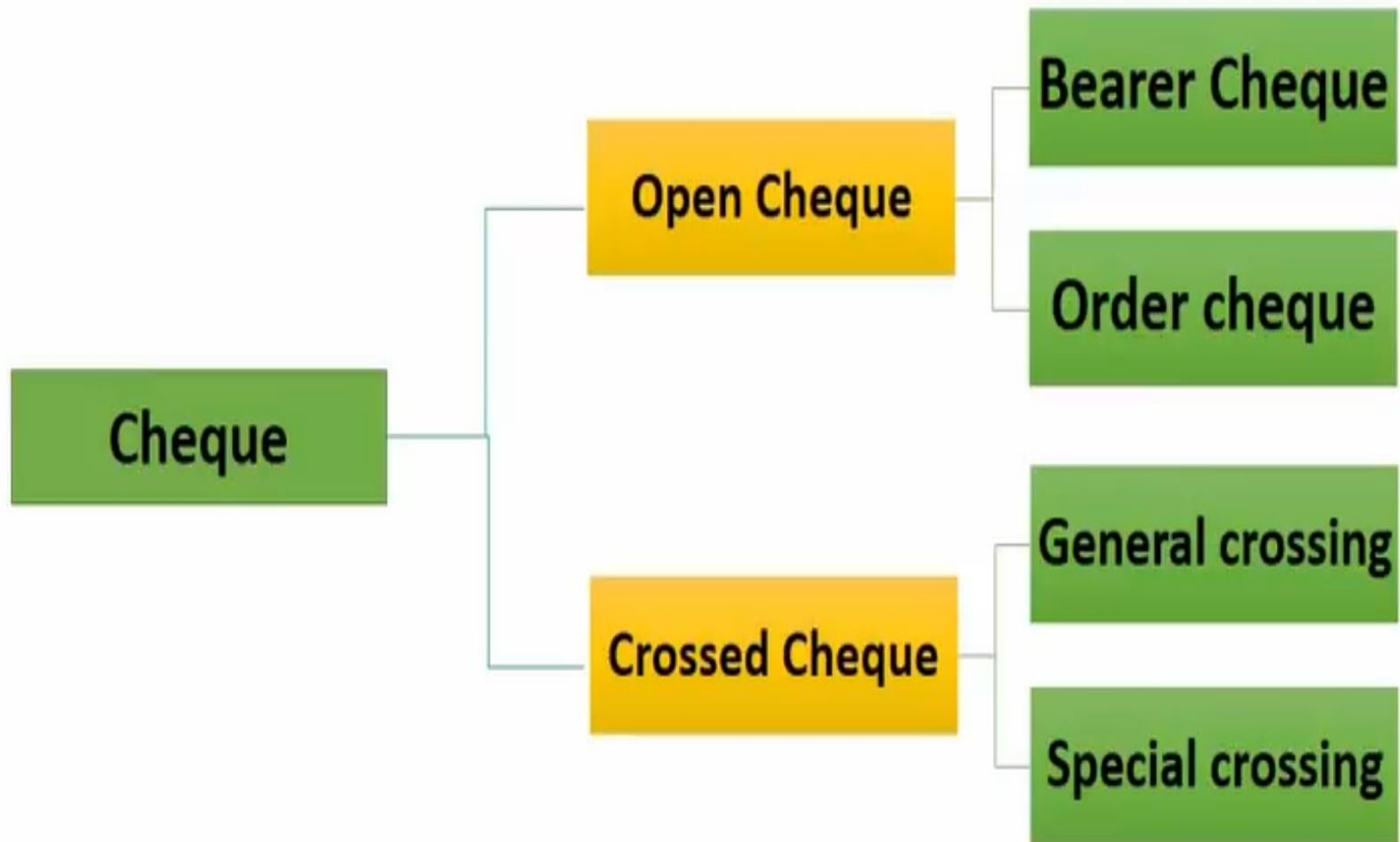
Essentials

- Writing
- Express Order To Pay
- Definite & Unconditional
- Signed
- Sum must be Certain
- Parties must be Certain,
- Always drawn on bank
- Payable on Demand

FORMAT OF CHEQUE

	बीक ऑफ बरोडा Bank of Baroda	CBS चालू खाता CURRENT ACCOUNT	दिनांक 31/3/... Date
अदा करे Pay	BRIS SINGH	या धारक को Or Bearer	
रुपये Rupees	Five thousand only		
			₹ 5000/-
ख. नं. AC. No.			
मालाद ईस्ट शाखा 14 प्रजापति सी.एस.एल.डी. जंक्शन रोड, मालाद ईस्ट, मुंबई 400097		MALAD (E) Branch 14 Prapatti C.H.S.LTD. Junction Of Dattary Road Malad (E) Mumbai 400097	
RTGS / NEFT IFSC CODE: BARB0MALEAS			
भारत की सभी शाखाओं में देय Payable at all branches of India			

Handwritten signature: [Signature]



❖ Bearer Cheque or open Cheque

These running lines will ensure nothing can be added after the name or the amount

HDFC BANK
RTGS / NEFT / IFSC : HDFCXXXXXX

Pay **ANKIT SHARMA** _____ Or Bearer
Rupees रुपये **Thirty Seven Thousand Only /-** _____ या धारक को
अदा करें ₹ **37,000/-**

For XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

A/c No. XXXXXXXXXXXXXXXX SB AC

Payable at par through clearing/transfer at all branches of HDFC BANK LTD

Authorized Signatory
Please sign above / यहाँ पर हस्ताक्षर करें

दिनांक Date _____ Valid for 3 months Only
D D M M Y Y Y Y

555944540 / CTS-2010 118113

❖ Order Cheque

These running lines will ensure nothing can be added after the name or the amount

HDFC BANK
XXXX
XXXXXXXXXXXXXXXXXXXX
RTGS / NEFT / SC : HDFCXXXXXX

दिनांक
Date

D	D	M	M	Y	Y	Y	Y

Valid for 3 months Only

Pay **ANKIT SHARMA** _____ ~~Or Payee~~

Rupees रुपये **Thirty Seven Thousand Only /-** _____ या धारक को

अदा करें **₹ 37,000/-**

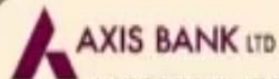
For XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

A/c No. XXXXXXXXXXXXXXXX SB AC

Payable at par through clearing/transfer at all branches of HDFC BANK LTD

Authorized Signatory
Please sign above / यहाँ पर हस्ताक्षर करें

❖ Crossed Cheque: A/c payee



AXIS BANK LTD

J V P D SCHEME, VILE PARLE (W), MUMBAI 50
IFS CODE: UTIB000242

NEW ACCOUNT

DATE
दिनांक

18 10 20 13

PAY Yukti Gupta

OR-BEARER/या धारक को

RUPEES /रुपये Five Thousand only.

अथवा करें ₹ 5000 /-

Amit Sharma

A. Sharma

A/C NO. 242 0102 0000 5999

V O I D

AUTHORISED SIGNATORY

Please Sign Above

⑈026101⑈ 0002110001: 242400⑈ 29

& CO

And Company

A/C payee

Not Negotiable

General crossing

Axis bank ltd

Axis Bank ltd
A/C payee

Axis Bank ltd
Not Negotiable

Special crossing

DD M M Y Y Y Y

Pay Mr. India OR ORDER

Rupees Fifty thousand rupees only

₹ 50000/-

A/c No.

FOR

CABUS CBS
BUSINESS BANKING : CURRENT ACCOUNT
Payable at par at all branches of ICICI Bank Limited in India

Zoni
AUTHORISED SIGNATORIES
Please sign above

1. If cheque bearer
2. Can be paid at counter
3. Can be endorsed to any body
4. Payment will in cash

- × **Anti-dated cheque-** A cheque dated prior to the **date** of issue is called **ante-dated cheque**. For **example**, you are issuing a **cheque** to someone on 01.01.2018, but in the **cheque** you are mentioning 31.12.2017. So you have **ante-dated cheque**.
- × **Stale cheque-** cheque is outdated or cheque is out of date
- × **Post-dated cheque:** a cheque bearing a date, which case, it can be paid only on or after the date written thereon.

Types of Negotiable Instrument

Time Instruments

An instrument payable after **a fixed time** or on **specified date** is termed as time instrument. An instrument payable **after happening of a certain event** is also called as time instrument. E.g payable on 10th Dec' 2017 or 13 months from now

Demand (at sight) Instruments

When **no time** of payment specified, it is payable on demand. When it is **expressed** to be payable on demand or at a sight or presentation. For e.g Cheque is always payable on demand

Order Instrument

When it is expressed to payable to a particular person **or** on his order to a particular person **or** payable to particular person on his order.

Bearer Instruments

An NI is said to be a bearer instrument if it is **expressed to be so payable**; or
When the only or **last endorsement** is in **blank**.

Least but thing to remember

A minor can be a party to a Negotiable Instrument but his Liability will be NIL

While determining the maturity date for BOE, add 3 days as Grace period. If after adding 3 days the day falls on public day then preceding day and if falls on day which is holiday then Succeeding day . For eg. if it falls on Gandhi jayanti then consider maturity date as 1-oct and if it falls on 10th jan and maturity date will be 1 day succeeding that is 11th Jan.

Inland Instrument-

Instrument which is drawn in India **and** is payable to a citizen in India. Other than this Instrument every Instrument is Foreign Instrument.

Inchoate Instrument

It is an instrument that is **signed and duly stamped** but **otherwise wholly or partially blank.**

The person signing such Document delivers it to another person.

Impact of this Instrument- Only Holder in Due Course can recover anything in excess that intended to be not exceeding the amount covered by Stamp.

Example of Inchoate Stamped Instrument

Mr. X signs his name on a blank and stamped instrument and gives to Y with an authority to fill up as a note for a sum of Rs 2000 only.



But Y fills it for Rs 20000 and then transfers it to Z for a consideration of Rs 20000 who takes it in good faith.



Here Z is entitled to recover full amount of the instrument because he is HDC. But Y, being a holder, can not recover the amount because he filled in the amount in excess of his authority

Negotiation Sec- 14

Negotiation is **a transfer** of an instrument from one person to another in such a manner as to **express title** & to **represent the transferee** the holder thereof. In simple words Negotiation means transfer of a NI by one person to another in order to make the **transferee the holder of the instrument.**

Negotiation by delivery- Transfer of **Bearer** Negotiable Instrument by **delivery** which should be **Voluntary.**

Negotiation by Endorsement & Delivery- An **Order** instrument can be negotiated only by way of **Endorsement & Delivery.**

After Effect of Endorsement-

1. Property **is transferred** to the endorsee
2. Endorsee get right to **negotiate the instrument**, **sue** on instrument

Endorsement Sec- 15

When a **maker or holder** writes the **person's name** on the **face or back** of the instrument or on the **slip of the paper** annexed to NI

&

puts his **signatures thereto** for the purpose of negotiation, it is called 'endorsement'.

For eg- When an employer signs a check, they are endorsing the transfer of money from the business accounts to the account of the employee.

Essentials of valid endorsement

1. On the back or face of the instrument. ***i.e Writing***
2. Must be made by maker or holder. ***i.e Prepared by Holder***
3. Must be properly signed by the endorser. ***i.e Signed***

Negotiation Back- sec 90

If a NI is negotiated by the Holder but the Endorser again **becomes the holder of Such Negotiable Instrument again** then it called Negotiation Back. **For e.g**

A → B B → C C → D D → B

Here B is the person who is the prior party to the Instrument.

The Holder **cannot enforce payment against an Intermediary party to whom he was previously liable** thus B can not sue C or D but it can sue A

Assignment

Assignment of a NI means transfer of ownership of the instrument from one person to another (assignor to assignee).

Holder-sec 8

A person is called holder of a negotiable instrument if he satisfies the following two conditions:



- He must be entitled to the possession of the instrument in his own name; and
- He must be entitled to receive/recover the amount due on the instrument from the parties liable under the instrument.

EXAMPLES FOR HOLDER

- × 1. Mr. X gave a salary cheque to his employee Mr. Y an amount of Rs. 12,500/-
- × 2. Assume Mr. Y lost the cheque and Mr. Z found the cheque on road

Holder in Due Course-sec 9



- He must be a holder.
- He must have become, for consideration. Such consideration must not be unlawful and need not be adequate.
- He must have obtained the instrument before its maturity.
- He must have obtained the instrument in good faith, i.e. without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

EXAMPLES FOR A HOLDER IN DUE COURSE

- × On 13th November 2018, Mr.X gave a salary cheque for the month of October 2018.
- × To his employee Mr.Y an amount of Rs.25,000/-
- × 1.Note: date on the cheque is 13th November 2018.
- × 2.Note: date on the cheque is 13th August 2018.

Material Alteration- sec 87

The term '**material alteration**' indicates alteration or change in the material parts of the instrument. It may be defined as any change, which alters the very nature of the instrument. Thus, it is the alteration, which **changes and destroys the legal identity of the original instrument** and causes it to speak a different language in legal effect from that which it originally spoke.

Alteration can be-

- Crossing of Cheque
- Filling Blanks of Inchoate Instrument
- Conversion of Blank Endorsement into Full.
- Conversion of Bearer Instrument into Order Instrument.
- Conversion of General Crossing into Special Crossing.

Effects-

All parties to the NI not consenting to the material alterations are discharged

For eg- A bill payable to Mr A was converted to Payable to Mr A & Mr. B

The Holder of Bearer Cheque convert it into A/c Payee Cheque

Note: Material alteration makes the instrument void, i.e., inoperative and affects the rights and obligations of the parties to the instrument.

Acceptance- sec 7

When Drawee **draws a bill** and the Drawee delivers it to the **holder** of the bill or gives **notice of acceptance** to the holder of the bill then it is termed as Acceptance.

It should be

- Written
- Signed
- Delivery or Intimation to the holder that the bill has been accepted.

General
Acceptance:

- When the drawee, while accepting the bill, **does not attach any condition** or qualification to it, it is called general acceptance.

Qualified
Acceptance

- The acceptance is qualified when it is given **subject to some conditions** or qualifications

∴
The Holder of the bill may object to the Qualified Acceptance resulting in Automatic Dishonour of Bill due to Non Acceptance.

If he give his consent to Qualified acceptance then all prior parties not giving consent will be discharged.

Dishonour by Non Acceptance- sec 91

Only **Bills of Exchange can be dishonoured by Non Acceptance** as BOE only required Acceptance. Dishonour by Non acceptance means a case where **Bill is presented for acceptance** but the **same is not accepted**. The reasons for the same can be as follows-

Not accepted by drawee within 48 hours of presentation;

If the bill is not accepted by all the drawees .

Drawee is incompetent to contract.

Drawee is Fictitious Person

Drawee cannot be found even after Reasonable Search

Drawee gives Qualified acceptance but holder does not give.

If any of the above Instances is satisfied then the **holder gets an Immediate right to Sue all the prior parties before maturity of the bill.**

Acceptance For Honour sec 108

Acceptance for honour means the acceptance given by **some stranger** when the **original drawee refuses to accept** or to give **better security when** demanded by a notary. The stranger may accept the **bill of the honour of any party** already liable thereto. Such stranger is called an **acceptor for honour** or **acceptor supra protest**

Conditions-

That the bill has **been noted or protested for non acceptance or better security,**

Acceptance has been **made with the consent of holder,**

The **acceptor for honour is not** already liable on the bill,

that the acceptance is for the honour of any party already liable on the bill, and

that the acceptance is by **writing on the bill.**

The party who accept the bill for honour will be liable to pay the amount if the person on whose behalf he accepts the bill and he can recover the same from that party.

Payment For Honour sec 108

Just as a bill may **be accepted for the honour** of a party to bill, it may also be **paid for the honour of a party** liable to pay the bill. After payments **he can recover** from that person or any party prior to him.

Notice Of Dishonour Sec 93

Notice Of Dishonour need to be given by the **holder** or **any of the parties** to the instrument. Any party receiving notice **must also transmit** the same to all prior parties. **Otherwise he can not sue any prior party, if notice** has not transmitted.

Dispensed with by an **express waiver**,

Party charged would not **suffer damage**

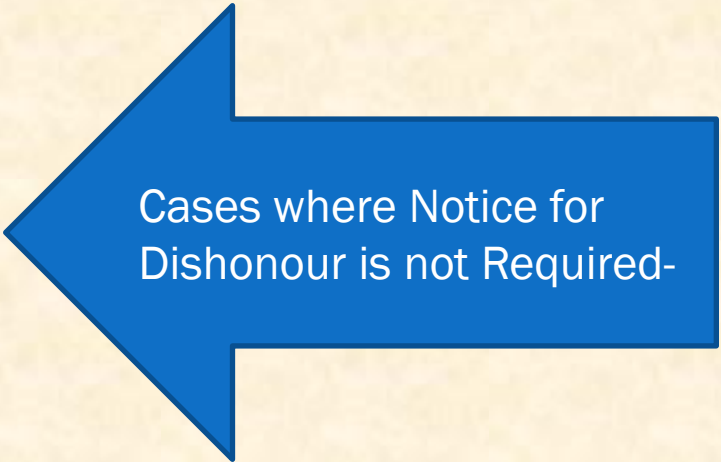
Party not found **after due search**,

When **drawer is acceptor**,

Accidental omission,

In the case of a **PN which is not negotiable**,

Party promises to **pay unconditionally**.



Cases where Notice for Dishonour is not Required-

Notice to Be Given to

- **To all parties** (other than the maker of a note, acceptor of a bill, or drawee of a cheque) to whom the holder seeks to make liable or to their duly authorized agents
- Where there are two or more persons jointly liable as drawer or endorsers, notice to **any one of them is sufficient.**
- In case of death of person, to **legal representative** and to **official assignee** in case of insolvency (Sec 97).

Noting

Noting is the **process of recording the fact and reasons** of dishonour of a NI by the notary public. It should be done **within Reasonable time** after dishonour of NI. It is not mandatory.

The Dishonoured Bill is **presented to Notary Official** who in Turn again represent it for **acceptance/payment**. If the party again **refuses then Notary Public** records the fact of Dishonour.

Protesting

Protest is a **formal certificate of dishonour** issued by **the notary public** to the holder of a bill or note on his demand.

Difference between Noting & Protesting is that noting consists of **recording the fact and reasons of dishonor** of NI upon the instrument; whereas Protest is the **certificate as to the fact that instrument has been dishonoured.**

Discharge of Negotiable Instrument

When the party makes the **payment in due course** at or after maturity (u/s78)

When the **holder cancels the instrument** with intention to release the party.

If it becomes **Time Barred-** it is Discharged by operation of Law

In the case of **Negotiation Back**

When the holder **releases or renounces his right** against the party primarily on the NI.

Discharge of One Or More Parties

By cancellation

By release

By allowing drawee more than 48 hours to accept (Sec 83)

By taking qualified acceptance (Sec 86)

By not giving notice of dishonour

By not presentment for acceptance of bill (Sec 61)

By delay in presenting cheque (Sec 84)

By negotiating back of a bill

CONSUMER PROTECTION ACT 1986

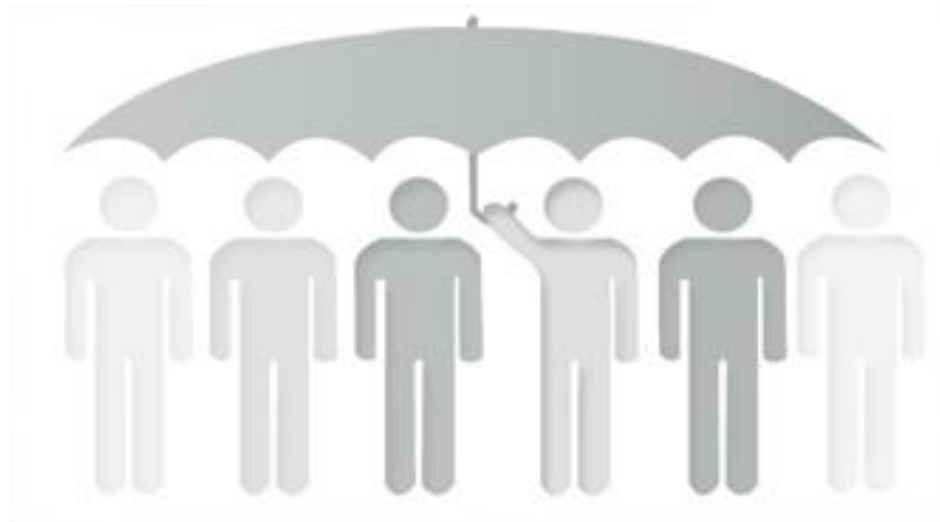
Consumer Protection Act, 1986

- In order to provide for better protection of the interests of the consumer the Consumer Protection Bill, 1986 was introduced in the Lok Sabha on 5th December, 1986.
- The Consumer Protection Act 1986 is a social welfare legislation which was enacted as a result of widespread consumer protection movement.



Objective

- The main objective of CPA is to provide speedy and simple redressal to consumer disputes.
- It is one of the benevolent pieces of legislation intended to protect the consumers at large from exploitation



Who is a Consumer?

Any person who:

- Buys any goods for a consideration which has been paid or will be paid.
- Hires or avails any service for a consideration which has been paid or will be paid.
- It does not include a person who obtains goods for resale or any commercial purpose

Goods

Goods means every kind of movable property other than actionable claims and money and includes stocks and shares, growing crops, grass and things attached forming apart of the land which are agreed to be served before sale or under the contract of sale”

Service

It means service of any description which is made available to potential users. It includes the financing, insurance, transport, processing, supply of electrical or other energy, boarding or lodging or both, housing, entertainment, amusement or purveying a news or other information. But service not included the rendering of any service free of charge or under a contract of personal service”

"complaint" means any allegation in writing made by a complainant

"complainant" means-

- (i) a consumer; or
- (ii) any voluntary consumer association registered under the Companies Act, 1956 or under any other law for the time being in force; or
- (iii) the Central Government or any State Government;
- (iv) one or more consumers, where there are numerous consumers having the same interest;]
- (v) in case of death of a consumer, his legal heir or representative ;who or which makes a complaint;

"**defect**" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or as is claimed by the trader in any manner whatsoever in relation to any goods;

"**deficiency**" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

Consumer disputes

A dispute where a person against whom a complaint has been made denies or disputes the allegation contained in the complaint

Unfair trade practices

Unfair trade practice which for the purpose of promoting the sale use or supply of any goods or for the provision of any service, adopts any unfair method or unfair deceptive practice

Redressal Agency

The aims and objectives of the Act are achieved by

District Forum

State Commission

National Commission

District Forum

- It shall consist of a person who is or has been or is qualified to be a District Judge as its President, 2 other members, one of whom shall be a woman
- Every member of the District Forum shall hold office for a term of 5 years or up to the age of 65 years whichever is earlier
- It shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed Rs.20 Lacs.

A District Forum shall have the powers

- I. To remove the defect pointed out by the appropriate laboratory from the goods in question
- II. To **replace the goods** with new goods of similar description which shall be free from any defect
- III. To return to the complainant **the price**, or as the case may be, the charges paid by the complainant
- IV. To pay such amount as may be awarded by it as **compensation to the consumer** for any loss or injury suffered by the consumer due to the negligence of the opposite party

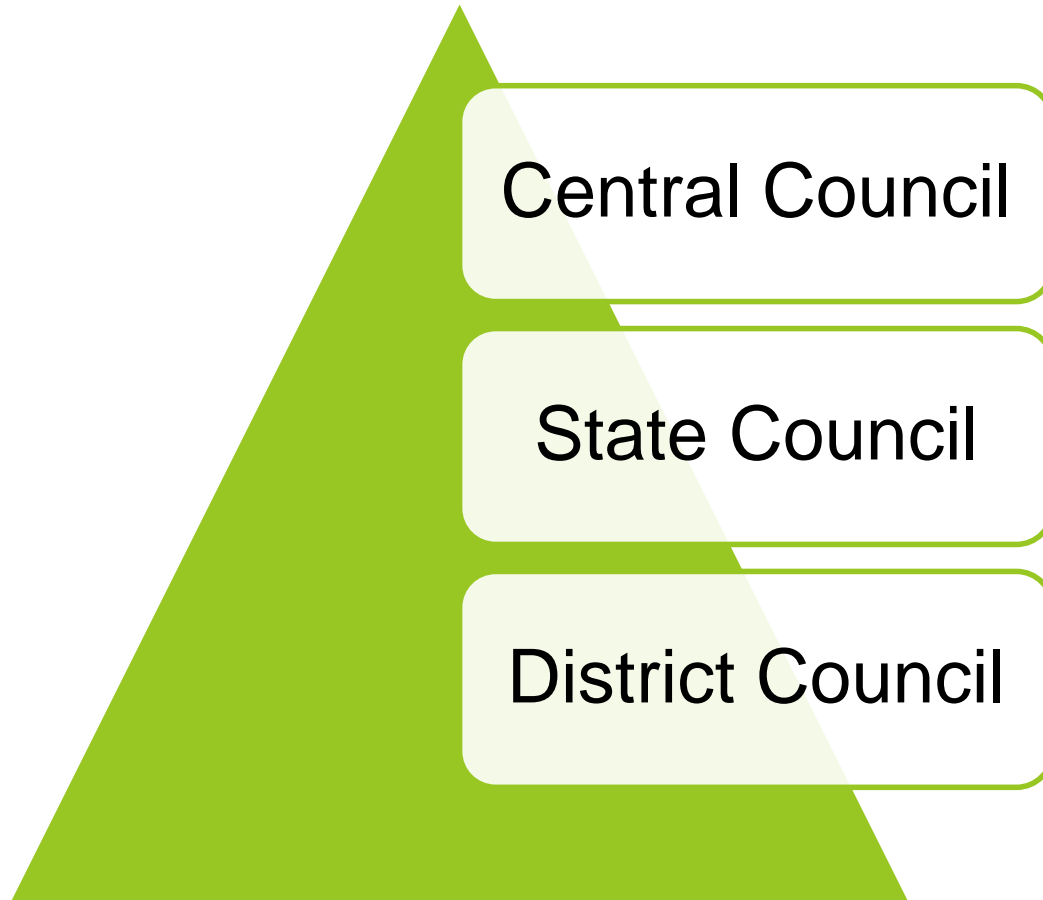
State Commission

- It is established by SG by notification
- It shall have jurisdiction to entertain complaints where the value of the goods or services and compensation, if any, claimed exceeds Rs. 20 Lacs but does not exceed Rs.1 Crore and appeals against the orders of any District Forum within the State.

National Commission

- It shall consist of a person who is or has been a Judge of the Supreme Court, as its President. Not less than 4 and not more than such number of members as may be prescribed and one of whom shall be a woman
- Every member of the National commission shall hold office for a term of 5 years or up to the age of 70 years which ever is earlier.
- It shall have jurisdiction to entertain complaints where the value of the goods or services and compensation, if any, the claim exceeds Rs. 1 Crore and appeals against the orders of any State Commission.

Councils



The District Consumer Protection Council

- It shall consist of the following members, namely:-
 - (a) the Collector of the district (by whatever name called), as its Chairman; and
 - (b) such number of other official and non-official members as may be prescribed by the SG
- The District Council shall meet at least twice in an year.
- The procedure will be set by SG

The State Consumer Protection Council

- It shall consist of the following members, namely:
 - (a) the Minister in-charge of consumer affairs in the SG as its Chairman;
 - (b) such number of other official or non-official members as may be prescribed by the State Government.
- The State Council shall meet at least twice in an year.
- The procedure will be prescribed by the SG

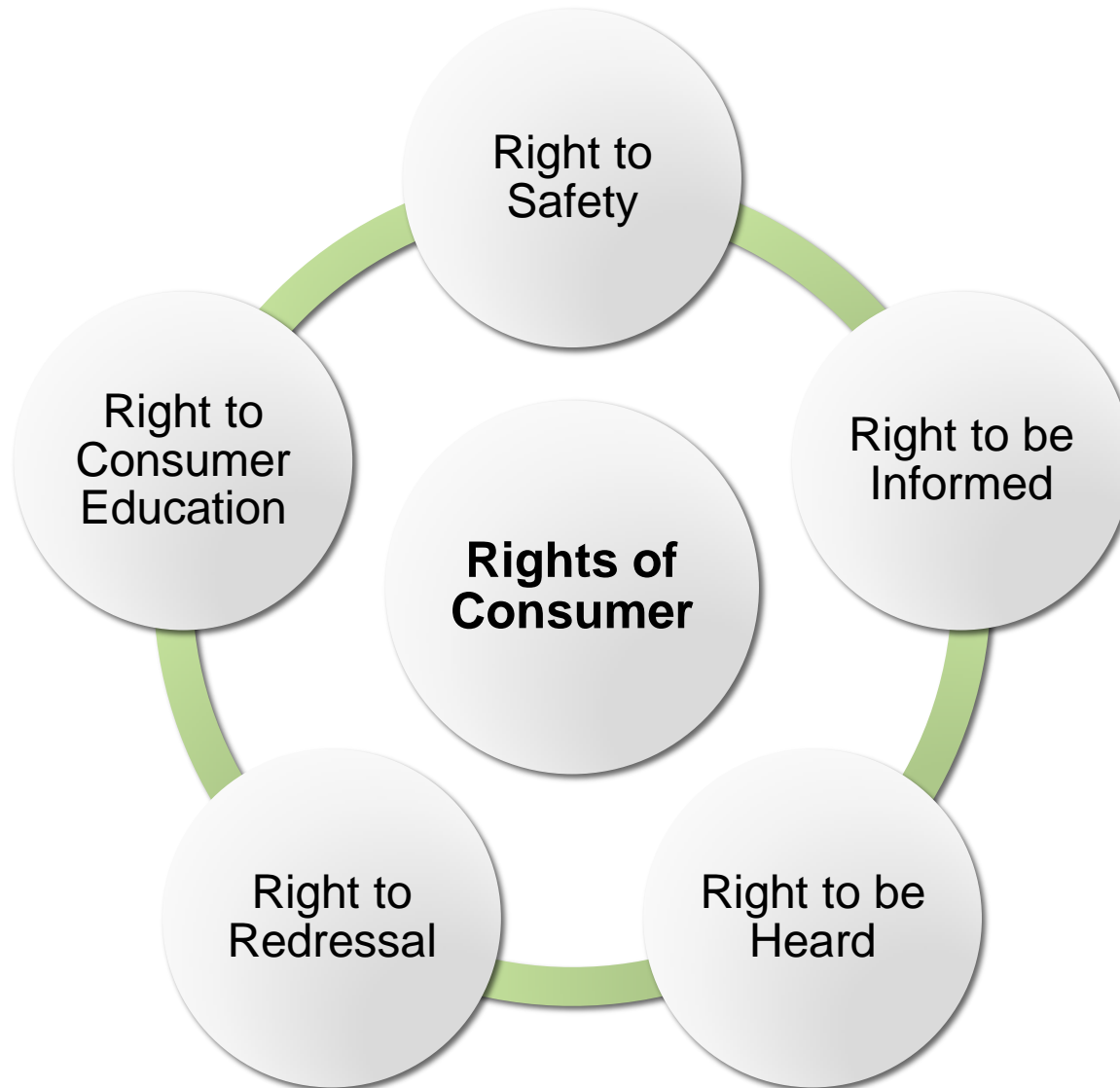
The Central Consumer Protection Council

- It shall consist of the following members, namely
 - (a) the Minister in charge of Consumer Affairs in the CG as its Chairman, and
 - (b) such number of other official or non-official members as may be prescribed.
- The Council shall meet at least once an year.

Objects of the Central, state and district Council

- (a) the **right to be protected** against the marketing of goods [and services] which are hazardous to life and property;
- (b) the **right to be informed** about the quality, quantity, potency, purity, standard and price of goods[or services] so as to protect the consumer against, unfair trade practices;
- (c) the **right to be 'assured'**, wherever possible, access to a variety of goods [and services] at competitive prices;
- (d) the **right to be heard** and to be assured that consumer's interests will receive due consideration at appropriate Forum;
- (e) the **right to seek redressal** against unfair trade practices 3[or restrictive trade practices] or unscrupulous exploitation of consumers; and
- (f) the **right to consumer education**

Rights of Consumer



Case Studies

CASE I

- Chetanprakash vs. MET Institute of computer Science

CASE II

- Krishnan Kumar Bajaj vs. PepsiCo.

CASE III

- Dharamdas Pritiani vs. HDFC Ergo General Insurance Company Ltd.

Chetan Prakash
vs.
MET Institute of computer Science



- Prakash was in final year of BSc when he sought admission in the institute for MCS
- The institute had stipulated that in order to pursue the MCS course, student has to clear III year exams
- He deposited the fees before declaration of result
- Seeing that he had failed in exams, he tried to withdraw the admission and requested for a refund, to which the institute did not responded
- Finally, he sent a legal notice to the institute, and then lodged a complaint in the consumer forum.

Judgement

- The institute had to pay the complainant, Chetan Prakash, Rs 32,000 as compensation for harassment along with the course fee of Rs.62,200.



Krishnan Kumar Bajaj Vs. PepsiCo.



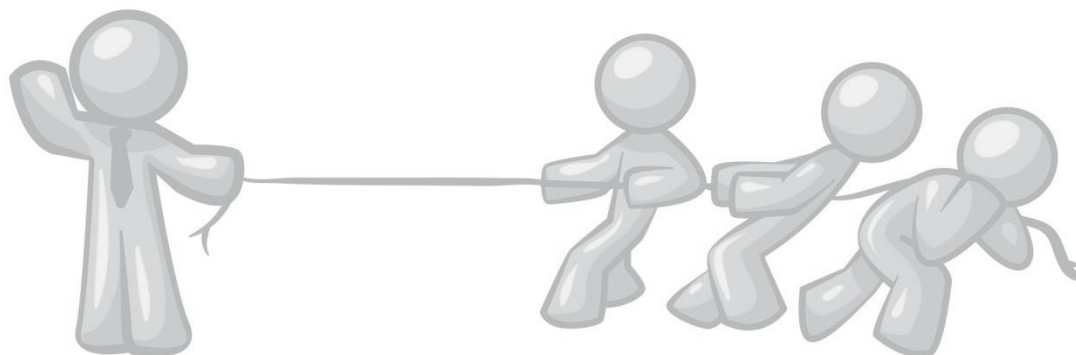
PEPSICO

- Bajaj, a resident of Ahmedabad, had purchased a Lay's packet on 28 June 2010 and sensed its being underweight.
- He wrote twice to the manufacturer. While the first letter got no response, in reply to the second, it offered Bajaj gifts hamper which he refused.
- Bajaj approached CERS(Consumer Education and Research Society (CERS), who wrote to PepsiCo.

- Company refused to accept their fault and gave several unsatisfactory clarifications
- CERS took the issue to the Consumer Disputes Redressal Forum, which also gave a favourable ruling
- The company asked for the bill of purchase which Bajaj could not produce

Judgement

- The Court overruled the argument of his not having a bill
- CERS requested the court to direct PepsiCo to deposit Rs.2,00,000 in the Consumer Welfare Fund and award Rs.2,75,250 as punitive(corrective) damages.
- And also to give Rs.75,000 as costs of litigation (law suit)



Dharamdas Pritiani

VS.

HDFC Ergo General Insurance Company Ltd.



- Complainant was advised by the doctors to undergo treatment upon suffering from a heart complaint in 2008-09.
- He then underwent a rare treatment called Enhanced External Counter Pulsation (EECP).
- The treatment was completed in 45 sittings, cost Rs 118,000.
- HDFC Ergo rejected the complainant's claim saying the treatment was experimental and not recognized by the insurer.

- The insurance company also claimed that a policy holder must be hospitalized for at least 24 hours for reimbursement.
- The complainant claimed that the treatment was recognized by the United States, and 40 hospitals in India use EECPP method to treat heart patients.
- The forum said the documents furnished by Pritiani support his claim. Complainant was a heart patient, who underwent a treatment, which did not require hospitalization, thus he should be reimbursed Rs 118,000.

Judgement

- Consumer redressal forum of India's financial capital Mumbai has directed HDFC Ergo General Insurance Company Ltd to pay Rs 118,000 towards compensation for refuting a policyholder's claim.
- The forum has also directed the insurer to pay an additional compensation of Rs 5,000 for mental agony.

Insurance

**THE INSURANCE ACT, 1938
[AS AMENDED BY INSURANCE (AMENDMENT) ACT, 2002]**

Insurance

- Insurance is a contract between two parties by which one of them, called the insurer agrees to indemnify the other, called the insured or assured against a loss which may be caused by the happening of a certain event.
- The contract is embodied in a document known as the policy.
- The insured for a consideration in the form of money called the premium
- The contingency insured against is called the “risk”

Basic principles of insurance

- **Utmost good faith**:- it implies that the parties should exchange information accurately on all aspects relating to the risks to be covered.
- **Indemnity** means security against damage or loss.
- **Insurable interest**: monetary interest in the subject matter of the insurance.

Eg: In respect of goods or property, It means that the insured must be put to loss if the goods are lost in transit or destroyed by fire etc.

Types of Insurance

- Insurance contract is based on the subject matter or the risk, which are covered.
- Life insurance
- Marine insurance
- Fire insurance

Life Insurance

- It is a contract whereby the insurer, in consideration of a periodical payment known as premium, undertakes to pay the insured a certain amount of money to him on his reaching a certain age or his assignees or nominees in the event of his death whichever is earlier.

- Life insurance is different from other kinds of insurance like fire and marine
- In those cases, a single premium is paid, whereas in life insurance the premium is paid periodically.
- The premium paid under general insurance is not returnable to the insured after the expiry of the period.
- on the other hand, the whole of the premiums should be returned in case of life insurance either on the maturity of the policy or on the death of the insured whichever is earlier.

Life insurance business in India

By the Life insurance ordinance of 1956, the management and control of all the life insurance companies vested with immediate effect in the central government.

Later, a comprehensive legislation known as the life insurance corporation of India act, 1956 was passed and the LIC was set up as a public corporation under the act.

Kinds of life policies

1. Endowment policy
2. Whole time life policy
3. Joint life policy

Endowment policy

- This type of policy, the sum assured is to be paid to the assured on his reaching a specified age or if he dies earlier, the amount is to be paid to his heirs or his nominee.
- The premiums on such policies are to be paid until the assured reaches the specified age or until his death if it occurs earlier.
- The rate of premium on this policy is however, higher than whole time policies
- The type of policy is saving, investment and risk bearing.

Whole Life Policy

- The insured sum becomes due for payment to the beneficiary only after the death of the assured.
- The premiums on such a policy may be spread over one's whole life or they may be made payable for a fixed number of years.
- The policy does not mature until the death of the assured.
- The benefit of the policy is available only to the nominee or legal heirs of the assured after his death.

Joint Life Policy

- A policy covering more than one life is called JLP.
- The assured amount becomes payable on the death of any of the insured under the policy.
- It is payable to the survivors
- A joint life policy is usually taken on the lives of husband and wife.

Joint Life Policy

- The partners of a firm may also take out a joint life policy on their lives
- The surviving partners usually receive the assured sum and they can use it to pay off the share of the deceased partners in the capital of the partnership firm without affecting the financial position of the firm.

Technical terms used in life assurance

- Premium
- Surrender value of the policy
- Nomination
- Assignment
- Claim- succession certificate
- Loan against life policy

Fire Insurance

- Fire insurance is a contract, under which the insurer, in return for the premium paid by the insured undertakes to pay or make good the loss suffered by the insured due to fire or lightning during a specified period and up to the amount specified in the contract.
- It may be paid in the form of cash or replacement, or repair of the property damaged by fire.
- Indemnity is the main mark of this insurance.
- The contract is embodied in a document called the “ Policy of Insurance.”

Kinds of Fire Policies

- **Specific policy-** the loss actually suffered or the amount insured under the policy, whichever is less is payable to the insured
- **Average policy-** on the basis of the ratio b/n the sum assured and the value of the property concerned. Rs.60,000-40,000-12000-2/3-8000
- **Floating policy-** goods lying in various places, docks warehouses etc.

- **Valued policy**-company undertakes to pay the insured an agreed value for his goods in the event of their total loss, irrespective of the real value of the property at the time of their loss.
- Changes or alterations in the insured property
- Procedure for making a claim and settlement

Marine Insurance

- It is a contract where by the insurer or the underwriter agrees to compensate the owner of a ship or cargo for a partial or total loss due to destruction at sea.
- It is a contract of indemnity providing protection to ship or cargo against risks incidental to marine voyage.
- The risks against which the insurance is made are called “ perils of the sea” such as storm, collision of ships, accidents, damage of cargo due to sea water, sinking of the ship etc.

- Now a days, cover perils of both land and sea, conveyances from the warehouse at the point of origin to the warehouse at the point of destination.
- The policy contains the terms and conditions regarding the rights and liabilities of the parties, risks covered, particulars of the property covered, the period, the rate of premium etc.
- The amount of premium also varies according to the nature of the voyage, season, character of the ship, the type of cargo etc.

- It is not necessary that the insured must have insurable interest at the time of insurance.
- It is sufficient if he acquires such an interest during the currency of the policy and he should have such interest at the time of loss.
- Marine policy can be passed on to a person who had no insurable interest when the policy was taken out.

Peculiarities of marine insurance

- A marine policy is valid for a specific period or voyage only.
- A marine insurance policy is issued upon the following understanding that
 1. the ship is sea-worthy, and
 2. it is going on a legally unobjectionable voyage
 3. certain areas of the sea that are so dangerous that the insurance companies refuse to undertake the risk of insured goods passing through them.Technically called as warranties

Kinds of marine policies

- Voyage policy
- Time policy
- Mixed policy
- Floating policy
- Valued policy
- Unvalued policy
- Open policy

Kinds of marine losses

- Two kinds namely
- 1. Total loss
 1. actual total loss
 2. constructive total loss
- 2. Partial loss
 1. general average
 2. particular average

Marine Insurance Business in India & Abroad

1. Lloyd's Underwriters
2. Marine Insurance Companies