

# TALDA LEARNING CENTRE

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Shop No. 70, 2<sup>nd</sup> Floor, Gulshan Tower, Jaistambh Square, Amravati

M: 9730768982 Email: [amittalada@gmail.com](mailto:amittalada@gmail.com)

Website: <http://taldalearningcentre.webs.com/>

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COMMON PROFICIENCY COURSE

## MERCANTILE LAW

By

CA AMIT TALDA



Talada's Learning Centre

## 11 + 12 Commerce/CA/CS/CMA

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# INDIAN CONTRACT ACT, 1872

(1<sup>st</sup> September, 1872)

(Whole of India except J & K)

## LAW DICTIONARY

<b>Ab Initio</b>	From the very beginning
<b>Bona fide</b>	In good faith
<b>Consensus ad idem</b>	Agreement as to the same thing
<b>De facto</b>	In fact
<b>Malafide</b>	In bad faith
<b>Nexus</b>	Connection
<b>Prima Facie</b>	On the face of it
<b>Pari passu</b>	On a equal footing
<b>Pro rate</b>	In proportion
<b>Quid pro qo</b>	Consideration, something in return
<b>Modus operandi</b>	Way of operating
<b>Prima facie</b>	On the face of it, At first sight
<b>Sine qua non</b>	Something/someone indispensable
<b>Ultra vires</b>	Beyond the powers or legal authority
<b>Vice versa</b>	The other way around
<b>Uberrimae fidei</b>	Of the utmost good faith
<b>Pro rata</b>	In proportion
<b>Res judicata</b>	Thing already judged upon
<b>Revoke/Repeal/Rescind</b>	Cancel
<b>Enacted</b>	Make/put into practice
<b>Customs of trade</b>	Practice of doing business
<b>Exhaustive</b>	Comprehensive/containing every aspect
<b>Forbearance</b>	Holding back/not to do a specific thing
<b>Void</b>	Invalid/null
<b>Restraint</b>	Keeping someone in control or within limits
<b>Aggrieved party</b>	Someone who has been injured, suffered a loss.
<b>Cease</b>	Come to an end/Stop
<b>Estoppel</b>	a doctrine that prevents a person from doing or saying something that would contradict some earlier action or statement that another has relied on and the contradiction of which would hurt that other person
<b>Quantum Meruit</b>	As much as is earned
<b>Accused</b>	Someone charged with crime
<b>Adjudge</b>	To decide; to pass judgment
<b>Affirm</b>	To confirm
<b>Seize</b>	To take someone's property forcefully
<b>Illusory</b>	Not real; having a false appearance
<b>Rely</b>	Trust or depend on something
<b>Compel</b>	Force
<b>Diligence</b>	Attentiveness; care
<b>Detain</b>	Hold someone in custody forcefully
<b>Abolish</b>	To end
<b>Alien</b>	A foreigner; someone born in another country who has

	not become a citizen of his or her country of residence
<b>Allege</b>	To claim; to assert; to state in a pleading what one intends to prove at trial
<b>Ambiguity</b>	Uncertainty of meaning
<b>Apparent</b>	Obvious; evident
<b>Arbitration</b>	A form of dispute resolution in which a neutral third party renders a decision after both parties speak for themselves at a hearing.
<b>Assign</b>	To transfer legal rights or property to someone
<b>Implied</b>	Consent that is expressed indirectly through behavior and actions that make it appear that consent has been given.
<b>Fiduciary</b>	Involving trust, confidence, and good faith;
<b>Covenant</b>	A contract or formal agreement; often produced in writing and signed by all parties
<b>Quasi Contract</b>	An obligation similar to a contract imposed by the law when two parties have made no promises to one another but when one party has benefited from services provided by another in such a way that the benefited party would be unjustly enriched if the court did not find the existence of an obligation.
<b>Quasi judicial</b>	Describes the actions and powers of administrative officers and agencies that can perform some judicial tasks, although they are not in fact judges or courts.
<b>Promulgate</b>	to announce a statute or rule officially

## SECTIONS

Sections	Particulars of Section
2(a)	Proposal
2(b)	Promise
2(c)	Promisee
2(d)	Consideration
2(e)	Agreement
2(f)	Reciprocal promises
2(g)	Void Agreement
2(h)	Contract
2(i)	Voidable Contract
2(j)	Void Contract
3	Communication, acceptance and revocation of proposals
4	Communication when complete
5	Revocation of proposals and acceptance
6	Revocation how made
7	Acceptance must be absolute
8	Acceptance by performing conditions
9	Promises, express and implied
10	What agreements are contracts
11	Who are competent to contract
12	What is sound mind
13	Consent
14	Free consent
15	Coercion
16	Undue Influence
17	Fraud
18	Misrepresentation
19	Voidability of agreements without free consent
20	Mistake of fact
21	Mistake of Law
22	Unilateral mistake
23	Unlawful consideration and objects
24	Agreements, the consideration or object of which is unlawful in part
25	Agreements without consideration
26	Agreement in restraint of marriage
27	Agreement in restraint of trade
28	Agreement in restraint of legal proceedings
29	Agreements the meaning of which is uncertain
30	Wagering agreements
31	Contingent Contracts
68	Supply of necessaries to persons who are incompetent to contract
69	Payment by an interested person
70	Non-gratuitous acts
71	Finder of goods
72	Payment of money or delivery of goods by mistake or under coercion

<b>Contract</b>	An Agreement enforceable by law is a contract. AGREEMENT + ENFORCEABILITY
<b>Promise</b>	A proposal, when accepted, becomes a promise.
<b>Voidable Contract</b>	An Agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of other or others, it is a voidable contract. <i>Consent caused by Coercion, Undue Influence, Fraud, Misrepresentation are Voidable Contracts.</i>
<b>Unenforceable Contract</b>	A contract which is good in substance but cannot be enforced in a law court due to some technical defects, is said to be unenforceable contract.
<b>Express Contract</b>	A contract is express when parties state its terms and conditions and show their assent by words, oral or written.
<b>Implied Contract</b>	When the contract is made <b>otherwise than in words</b> , is said to be implied. An implied contract arises from the <u>acts and conduct</u> of the parties or by their surrounding circumstances.  <i><b>Illustrations:</b> A stops a taxi or a public bus by waving his hand and takes his seat. There is an implied contract that A will pay the prescribed fare.</i>
<b>Acceptance</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.
<b>Quasi Contract</b>	A quasi contract is not a result of agreement, express or implied. It is a contract imposed by law on the parties and give rise to obligations similar to that arising under a contract. Such a contract is <u>not intentionally</u> made by the parties. Such a contract even does not have all the essentials of a valid contract. Still it is a contract because the law presumes that there is a contract between the parties. The law presumes this on the <b>principal of equity</b> that a person shall not be allowed to enrich himself at the expense of the other.  <b>Examples:</b> (i) Supply of necessaries to persons who are incompetent to contract (ii) Payment by an interested person (iii) Finder of goods (iv) Payment of money or delivery of goods by mistake or under coercion (v) Obligation to pay for non gratuitous acts.
<b>Executed Contract</b>	A contract in which all the parties to the contract have performed their respective obligations, is known as executed contract.
<b>Executory Contract</b>	A contract in which the parties to the contract have still to perform their obligations, is known as executory contract.
<b>Bilateral Contract</b>	A bilateral contract is one in which both the parties exchange a promise to each other. One party promises to perform some act in the future in exchange for the other party's promise to perform some act. In such a

	<p>contract, obligations on the part of both the parties are outstanding at the time of formation of the contract.</p> <p><b>Illustration:</b> A enters into an agreement to sell his flat to B after construction. B agrees to pay the consideration for the flat at the time of sale. This is an bilateral executory contract as the performance is pending from both the parties at the time of agreement.</p>
<b>Unilateral Contract</b>	It is also known as one sided contract in which one party has already performed his obligation at or before the point of time when the contract comes into existence and the other party remains liable to perform his obligation after the contract comes into existence.
<b>Offer or Proposal</b>	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.
<b>Express Offer</b>	An offer made in words, written or spoken, is called as an express offer.
<b>Implied Offer</b>	An offer made otherwise than in words, is known as an Implied offer. Such an offer is inferred from the conduct of parties or circumstances of the case.
<b>Specific Offer</b>	An offer made to a specific or a particular or an ascertained person is known as specific offer. Such an offer can be accepted by the particular or specific person to whom it has been made and none else.
<b>General Offer</b>	An offer made to the public at large or to the whole world, is a general offer. Such an offer may be accepted by any person from among the public who has the knowledge of it. It does not require any prior acceptance. The performance of conditions of the offer will amount to acceptance. Moreover, a general offer is of a continuing nature. Therefore, it is open for acceptance until it is retracted or accepted by any other person.
<b>Cross Offer</b>	When two persons make identical offers to each other, without having knowledge of each other's offer are known as cross offer. They are independent and identical offers of the respective parties. Such offers do not constitute a contract even though both the parties intend to do or not to do the same thing. When one of the parties accepts the offer of the other party, contract comes into existence.
<b>Counter Offer</b>	When an offer is accepted on the terms and conditions other than set out by the offerer, it is not an acceptance but a counter offer. A counter offer is, in fact, not only a rejection of the original offer but is also a new offer by the original offeree. Once a counter offer is made by the original offeree, he cannot subsequently accept the original offer as soon as the counter offer is put forth, the original offer is treated as revoked.
<b>Standing Offer</b>	A standing offer is an offer which is open for acceptance over a period of time.

<b>Consent or Consensus ad idem</b>	Two or more persons are said to consent when they agree upon the same thing in the same sense. "Meeting of Minds"
<b>Coercion</b>	"Coercion is the committing, or threatening to commit, any act forbidden by the Indian penal code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement." (PHYSICAL COERCION) (CRIMINAL ACT is involved)
<b>Undue Influence (voidable)</b>	Undue influence is a kind of moral coercion. It is an abuse of position by a person who is in a position to dominate the will of the other so as to deprive the latter of free will. Thus, when a dominant party misuses his influence to dominate the will of a weaker party, to get unfair advantage, in a contract, the contract is said to be influenced by under influence. (MENTAL COERCION)
<b>Fraud (voidable)</b>	<p><i>Fraud is the <b>willful misrepresentation</b> or concealment of material facts of an agreement by a party to it. Such a deliberate misrepresentation is made with an intention to deceive the other party and thereby to induce him to enter into an agreement. Hence, to deceive means to induce a person to believe that a fact is true, which is otherwise false.</i></p> <p>According to Section 17, "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with an intent to deceive another party there to or his agent, or to induce him to enter into a contract:</p> <ol style="list-style-type: none"> <li>The <i>suggestion</i>, as a fact, of that which is not true, by one who does not believe it to be true.</li> <li>The <b>active concealment</b> of a fact by one having knowledge or belief of the fact;</li> <li>A <i>promise</i> made without any intention of performing it;</li> <li>Any other act fitted to deceive; and</li> <li>Any such act or <i>omission</i> as the law specially declares to be fraudulent. (INTENTIONAL MISREPRESENTATION)</li> </ol>
<b>Misrepresentation (voidable)</b>	Any innocent or <b>unintentional false statement</b> or assertion of fact made by one party to the other during the course of negotiation of a contract is called a misrepresentation. The party making the statement honestly believes in it to be true and is made in honest ignorance of its falsehood.
<b>Mistake</b>	When the consent of one or both the parties to a contract is caused by misconceptions or erroneous belief, the contract is said to be induced by mistake. Usually, mistakes does not affect the validity of contract. However, under some circumstances, a mistake may render a contract void for want of genuine consent.
<b>Consideration</b>	"When, at the desire of the promisor, the promisee or any other person has done or abstains from doing or does or abstain from doing, or promises to do or abstain from doing something, such act or abstinence or promise is called a consideration for promise." <u>Can be past, present or Future.</u>
<b>Opposed to public policy</b>	An agreement which is against the general public, is said to be an agreement opposed to public policy. And such an agreement is unlawful and void.

<b>Void Agreements</b>	An agreement not enforceable by law is said to be void.
<b>Illegal Agreements (void)</b>	Generally speaking, an agreement which is expressly or impliedly prohibited by law is an illegal agreement. The term “illegal agreement” has not been defined in the act. <b>Collateral Agreements are VOID.</b>
<b>Wagering Agreement (void)</b>	A wager is a promise to give money or money’s worth upon the determination or ascertainment of an uncertain event. Thus, it can be safely said that a wager or wagering agreement is an agreement between two persons in which one person agrees to pay a certain sum of money or money’s worth to another on the happening or non-happening of some future uncertain event. Such an agreement has been declared as void under the act. (Section 30). <b>Collateral Agreements are valid.</b>
<b>Contingent Contracts (valid)</b>	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. The contracts of indemnity, insurance and guarantee are contingent contracts.
<b>Performance of contract</b>	Means carrying out the promises made and fulfilling the mutual legal obligation created by the parties under a contract within the time and manner, if any, prescribed in the contract.
<b>Tender</b>	When a party offers performance of his obligation to the other party, it is called as a tender of performance.
<b>Assignment of contract</b>	Assignment of contract means voluntary transfer of rights, interest, benefits, title, etc in a contract of a party to a third party.
<b>Succession of contract</b>	Succession to a contract is the process by which one person succeeds in another person’s rights, interest, benefits, obligations, etc in a contract by operation of law.
<b>Novation</b>	Novation means <b>substitution of a new contract</b> in place of an existing contract. Thus, a Novation is the process by which a new contract is substituted for an existing contract. Novation may take place in either of the two forms: (i) A new contract with new terms between the same parties; (ii) A new contract between one of the existing parties and one new party on same terms.
<b>Alteration</b>	Alteration means alteration or change in <b>one or more terms</b> of a contract with the consent of all the parties to contract. A valid alteration discharges the original contract and a contract with a new terms comes into effect.
<b>Rescission of contract</b>	Rescission of a contract means cancellation of a contract.
<b>Remission of contract</b>	Remission means acceptance of a lesser performance in discharge of a whole promise made. When a party accepts lesser sum in satisfaction of a larger sum due under the contract, it is called as “ <b>Accord and Satisfaction</b> ” in the English Law.
<b>Waiver</b>	Waiver means an intentional abandonment of rights. When a party entitled to claim performance releases the other party from his obligation to



	perform, it is called as waiver. As a result of waiver the other party stands discharged from his obligation under the contract. A waiver does not require consideration because a promisee may dispense with the performance of the promise made to him for any satisfaction which he thinks fit.
<b>Merger of Rights</b>	Merger means merger of two or more rights into one contract. when an existing inferior right of party into a newly acquired superior right by the same party, it is a merger of rights. In such a case, inferior right automatically stands discharged.
<b>Initial Impossibility</b>	Initial impossibility means the impossibility which existed at the time of making the agreement. Such impossibility is only physical impossibility but not a legal impossibility. Thus, the agreement to do an existing impossible act is void.
<b>Subsequent Impossibility</b>	Subsequent impossibility is one which arises after the formation of a contract. Sometimes the performance of contract is possible when contract is made but subsequently becomes impossible or unlawful, it is said to be subsequent impossibility of performance. Such impossibility arises by reason of some event beyond the control of the promisor. In such a case, the contract becomes void when the act becomes impossible or unlawful.
<b>Anticipatory Breach of Contract</b>	Anticipatory breach of contract occurs when a party to a contract disable himself from performing or refuses to perform the contract before the time or date of the performance is due. It is a declaration by one party to a contract of his intention of not performing the contract prior to the date of performance. Such a breach is also known as “Constructive Breach of Contract”.
<b>Ordinary or Normal Damages</b>	An aggrieved party who has suffered a loss by breach of contract can claim the damages which naturally arises in usual course of things from such breach.
<b>Nominal Damages</b>	Sometimes, an aggrieved party suffers no real loss by breach of contract but the court awards him nominal damages say Rs. 1000. The court allows such nominal damages with the view to recognize that the party has proved the case and won.
<b>Punitive or Exemplary or Vindictive Damages</b>	Damages which are awarded with the sole purpose of punishing the party at default.
<b>Injunction</b>	The term literally means an order or judgment of a court by which a party to an action is required to do or refrain from doing a particular thing. In the context of contracts, it is generally negative. Thus an injunction is an order of a court prohibiting a party to a contract from doing a particular thing or from doing what he promised not to do so.

## EXAMPLES

<b>Void Agreement</b>	<ul style="list-style-type: none"> <li>(i) Agreement of trading with enemy</li> <li>(ii) Agreement for stifling prosecution: <i>“influence the witness of the case”</i></li> <li>(iii) Agreement for sale of public offices and titles</li> <li>(iv) Agreement influencing with the course of justice</li> <li>(v) Agreements in restraint of personal liberty</li> <li>(vi) Agreements to defraud creditors</li> <li>(vii) Agreements not to bid</li> <li>(viii) Agreement creating monopolies</li> <li>(ix) Agreements with unfair conditions</li> <li>(x) Agreements in restraint of trade</li> <li>(xi) Agreement in restraint of marriage</li> <li>(xii) Agreement in restraint of legal proceeding</li> <li>(xiii) Agreement for champerty</li> <li>(xiv) Agreement with Minor/Person with unsound mind/Person disqualified by law</li> <li>(xv) Wagering Agreement</li> <li>(xvi) Marriage Brokerage Contracts</li> <li>(xvii) Bilateral Mistake of Fact.</li> <li>(xviii) Mistake as to foreign law.</li> <li>(xix) Contract to do impossible things</li> </ul>
<b>Void Contract</b>	<ol style="list-style-type: none"> <li>1. Destruction of subject matter after the contract is entered into but before the performance of the contract.</li> </ol>
<b>Voidable Contract</b>	<ol style="list-style-type: none"> <li>1. Agreement in which consent is obtained by Coercion/Undue Influence/Misrepresentation/Fraud.</li> </ol>
<b>Invitation to Offer</b>	<ol style="list-style-type: none"> <li>1. <b>Catalogue or Price List:</b> A catalogue or price list of goods or services for sale is not a proposal but an invitation of proposal. Hence, no business house is bound to sell its goods for the price stated in it.</li> <li>2. <b>Menu Card:</b> Menu card of restaurant is an invitation to put an offer.</li> <li>3. <b>Price Tags:</b> Price tags attached with the goods displayed in any showcase or showroom or self service supermarket or Malls is also an invitation to proposal. If the salesman does not accept the price, the interest buyer cannot compel him to sell.</li> <li>4. <b>Sale advertisement:</b> an advertisement to sell goods at fixed price is not a proposal but an invitation to proposal.</li> <li>5. <b>Prospectus inviting</b> public to apply for shares in a company is an invitation to put an offer to buy shares.</li> <li>6. <b>Time table of a carrier:</b> Railways or roadways time table is an invitation to put an offer.</li> <li>7. <b>Notices of Tender in newspaper by government or other bodies</b></li> </ol> <p><b>What is not Invitation to Offer??</b></p> <ol style="list-style-type: none"> <li>1. Application form filled by the Student to the educational institute/ College is not an Invitation to Offer but it is an offer.</li> <li>2. Customer’s pick up articles and take them to the cashier’s desk to pay is an offer.</li> </ol>
<b>Illegal Agreement</b>	<ol style="list-style-type: none"> <li>1. Agreement to share the proceeds of robbery/murder.</li> </ol>

<b>Valid Agreement/Contract</b>	<ol style="list-style-type: none"> <li>1. Mistake as to Indian Law is valid.</li> <li>2. Contracts with Inadequate Consideration are valid.</li> <li>3. Collateral Agreement to a Wagering Agreement is valid.</li> <li>4. Contingent contracts are valid.</li> <li>5. Contracts entered into by a lunatic person during lucid intervals.</li> </ol>
<b>Undue Influence</b>	<ol style="list-style-type: none"> <li>1. Father and Son</li> <li>2. Doctor and Patient</li> <li>3. Lawyer and Client</li> <li>4. Spiritual guru and devotee</li> <li>5. Teacher and Student</li> </ol> <p><b>Exception: (No presumption of undue influence)</b></p> <ol style="list-style-type: none"> <li>a. Husband and Wife</li> <li>b. Elder brother and Younger brother</li> <li>c. Two best friends.</li> </ol>

## LATIN MAXIMS & DOCTRINES

<b>Consensus Ad Idem</b>	Two minds with one intention, Meeting of Minds
<b>Quantum Meruit</b>	As much as is earned
<b>Injunction</b>	Power to stop anyone from doing anything lawfully (order of court to stop)
<b>Specific Performance</b>	Demanding performance as per the terms of contract
<b>Doctrine of Privity of Contract</b>	Only Parties to contract can sue. Stranger to a contract cannot sue even if he has paid the consideration.
<b>Doctrine of Frustration</b>	Due to external event, the performance has become impossible before the due date of performance, it can be due to change in law or change in circumstances like ban of product, destruction of subject matter, etc.
<b>Right in Rem</b>	a right available to a person the whole world
<b>Right in Personam</b>	a right against a particular person or persons
<b>Rule of Estoppel</b>	The rule of Estoppel says that when a person by written or spoken words or by his conduct falsely represent another to believe that certain state of things exists, he will not be allowed to deny the existence of that state of things.
<b>Uberrimae Fidei</b>	Contract of utmost good faith
<b>Champterty Agreement</b>	An illegal agreement in which a person with no previous interest in a lawsuit finances it with a view to sharing the disputed property if the suit succeeds.
<b>Maintenance Agreement</b>	Where a person agrees to maintain a suit, in which he has no interest, is called maintenance agreement. There is no sharing of proceeds of suit.
<b>Ex Nudo Pacto non Oritur Actio</b>	An Agreement without consideration is void. No Consideration, No Contract.
<b>Quid Pro Quo</b>	Something in return (Consideration)
<b>Nemo dat quat non habet</b>	No one can give what he does not himself possess

## CASE STUDIES

### **Balfour vs Balfour**

Where parties to contract do not intend to create binding agreement, the agreement cannot be enforced.

The case of balfour vs balfour is a well known illustration of a domestic agreement. In this case a husband (Mr. Balfour) was working in ceylone. During the holidays, he and his wife (Mrs. Balfour) went to England to enjoy the leave. When Mr. Balfour was to return to ceylone, his wife was advised to remain in England, due to ill health. Mr. Balfour agreed to send a sum of \$930 per month for probable expense of maintenance. For some time he sent the amount but afterwards differences arose between them which resulted in their separation and the allowance fell into arrears. Mrs. Balfour suit for recovery was dismissed by Lord Atkin on the ground that parties did not intend that it will be attended by legal consequences.

### **Carlill vs. Carbolic Smoke Ball Co**

A General offer may be accepted by any person from among the public who has the knowledge of it. The performance of conditions of offer will amount to acceptance.

The case of Carlill vs. Carbolic Smoke Ball Co. is an illustration of a contract arising out of a general offer. As per the facts of the case, the company issued an advertisement in a newspaper about its product, "the smoke ball" a preventive medicine against influenza. In the advertisement, the company offered to pay a sum of \$ 1,000 as compensation to anyone who contacted influenza or a cold after having used the smoke ball according to the printed directions. The advertisement also contained that a sum of \$ 1,000 had been deposited with the Alliance bank to show the sincerity of the company. A lady, Mrs. Carlill relying on the advertisement purchased and used the smoke balls as per directions but still contacted influenza. She sued the company to claim the compensation of \$ 1,000. Held, it was a general offer and Mrs. Carlill had accepted it by her act, by performing the conditions for acceptance. She was therefore entitled to get the claim.

### **Lalman Shukla vs. Gauri dutt**

Offer must be communicated- in this case, Gauri Dutt sent his servant, Lalman to search his missing nephew. After L had left in search of the boy, G issued hand bills announcing a reward of Rs. 5000 to anyone who might find out the boy. L who was ignorant of such reward, he claimed the reward. Held, L was not entitled for reaward since he was ignorant of it i.e proposal.

### **Mohori Bibee vs. Dharmodas Ghose**

In this case, a minor (dharmodas) mortgaged his house for Rs. 20,000 and received Rs. 10,500 from the mortgage. Subsequently, the mortgagor sued for setting aside the mortgage on the ground of his minority at the time of execution of mortgage deed. The privy council held that according to Section 11, a minor is incompetent to contract and therefore, minor's agreement was absolutely void, not merely voidable. Hence, mortgage was cancelled. Moreover, the morgagee's request for refund of Rs. 10,500 was also turned down on the ground that minor's agreement was void from the beginning and therefore, morgagee has not right of restitution.

### **Nash vs Inman**

A, a minor, purchased 11 fancy waist coats and other clothes while he was already having sufficient clothes to wear. Held, the 11 waist coats and other clothes purchased were not necessities and the price was irrecoverable.

### **Chinnaya vs. Ramaya**

A, an old lady, by a deed of gift, granted certain property to her daughter ®. The terms of the deed stipulated that R will pay an annuity of Rs. 653 to A's sister ©. On the same day, R entered into an

agreement with C to pay her the sum directed by A. the stipulated sum was however not paid and C sued to recover it. R contended that no consideration was moved by C to him. Madras high court held, the consideration furnished by C's sister was enough to enforce the agreement between C and R.

#### **Rose and Frank Co vs. J R Compton**

It is a glaring example of a business deal in which the parties did not intend to create legal relations. As per the facts of the case, an agreement was drawn between the American and English firms. The agreement mentioned that "this agreement is not entered into as a formal legal agreement and shall not be subject to legal jurisdiction of law courts." The agreement was terminated by one of the parties and other party brought an action for breach of contract. Held, the agreement was not a binding contract as there was no intention to create legal relations.

#### **Kedar Nath vs. Gorie Mohamed**

In order to construct a town hall at howrah, the commissioner of Howrah Municipality started to obtain necessary fund by public subscription. A also promised to subscribed Rs. 1000 to fund by signing his name in the subscription book for the purpose. On the faith of the promised subscriptions, the secretary of the town hall construction committee engaged a contractor for construction of town hall and thus, incurred liability. A refused to pay his subscription. Held, engaging a contractor and starting the construction work on the faith of the promise to subscribe was sufficient consideration. Hence, A was liable to pay the amount to the extent of the liability incurred by the promise.

#### **Damodar Murlidhar vs. Secretary of State of India**

The government repaired a certain tank, which had irrigated lands belonging to the government itself and zamindars. The government did not undertake the repairs gratuitously for the zamindars. Zamindars enjoyed the benefit of the repaired tank. Held, zamindars were liable to contribute to the cost of repairs.

#### **Dunlop Pneumatic Tyre Co Ltd vs. Selfridge & Co**

The doctrine of privity of contract can be best illustrated by an English case Dunlop Pneumatic Tyre Co Ltd vs Selfridge & Co. As per the facts of the case, Dunlop & Co sold some tyre to one dew & co with an agreement that these tyres will not be sold below the list price. Dew & Co in turn sold some of the tyres to selfridge & co with an agreement that they will observe conditions as to the Price and They also promised that they will pay to the Dunlop & Co a sum of Rs. 500 for every tyre sold below the list price. Selfridge sold some tyres below the list price and the Dunlop & Co brought an action to recover the damages for the same. Held that Dunlop & Co cannot bring an action against Selfridge because there was not contract between the two.

## DIFFERENT SITUATIONS

<b>Time Place and Manner of Performance</b>	
When No time of performance is fixed by the parties	Within reasonable Time (what is reasonable time is a question of fact which will be decided case on case basis)
When day of performance is specified but no time is specified and no application is to be made	At any time during usual hours of business on that specified day.
Time is fixed but no place is specified	It is the duty of Promisor to apply to promisee to fix a reasonable place for performance.
Where Time, Place and Manner is specified in the contract itself	It should be performed as specified in the contract.
<b>Appropriation of Payments</b>	
If debtor has given specific instruction as to which debt the payment relates to	As per the specific instructions of debtor
When Debtor does not specify as which debt the payment relates to	As debtor has not specified, Creditor may appropriate as per the implying circumstances. If there are no implying circumstances, Creditor can appropriate the same as per his discretion against any lawful debt actually due and outstanding. (it can be adjusted against time barred debt also)
Where Debtor has not specified nor creditor has made any appropriation	In such a case, appropriation shall be made in chronological manner against any lawful debt including time barred debt. If two debts are of equal standing (i.e same date and same amount), the payment shall be appropriated proportionately to each such debt.
In case, Interest is also due along with principle amount	Payment shall be first applied to Whole Interest due and then against principle in a chronological manner.
<b>Devolution of Joint Rights &amp; Liabilities</b>	
<b>If promise is of personal nature or involves personal skill or experience, it shall be discharged on the death of the joint promisor.</b>	
All Joint Promisor's are alive	All Joint Promisor's should jointly fulfill the promise
When one or more promisor is not alive	All Joint Promisor's alive along with the legal representative of deceased Promisor shall fulfill the promise.
All Joint Promisor's are dead	Legal Representation of all joint promisor's shall jointly fulfill the promise.
<b>Valid Tender of Performance</b>	
If the tender of performance is given in installments which was not agreed upon at the time of contract. (part performance)	Invalid Tender; Tender should be for the quantity agreed for (Whole obligation) at the time of contract.
If the tender of performance is made before or after the usual business hours or on a public holiday.	Invalid Tender; Tender should be made in usual business hours only.
If no place is specified in the contract	The Tender must be made at a place fixed by Promisee.

for performance then at which place tender of performance should be made	
<b>Minor (18 years as per Indian Majority Act)</b>	
Is minor capable to contract?	No, Minor's agreement is void ab Initio.
Does Rule of Estoppel apply to minor?	No, Rule of Estoppel cannot be applied to a minor.
Can minor be a shareholder in a company?	No, Minor cannot apply for allotment of shares in a company. However, he can buy the shares in the name of his guardian.
Can Minor be a partner in a firm?	No, Minor cannot become a partner in a firm. However, he can be admitted to the benefits of the firm.
Can Minor be an Agent?	Yes, A minor can act as an agent but cannot appoint an agent under him.
Can Minor be an adjudged Insolvent?	No, As minor cannot create any personal liability, he cannot be an adjudged insolvent.
Can restitution is available against minor?	No, minor is not liable to restore any benefit he has received under a void agreement. However, In cases of fraud by minor, court have forced the minor to restore the benefit.
Can minor give guarantee?	No, Minor cannot give any guarantee in favor of other person as he cannot take personal liability. However, Other persons can give guarantee in favor of minor.
Is minor liable for necessaries supplied to him?	Yes, minor is liable to compensate the person who has supplied necessaries to him. However, he is liable only to the extent of his property only. He cannot be held liable personally.
Can minor enforce any contract if he is a beneficiary in that contract?	Yes, if he is beneficiary under an agreement, he can enforce the same.
<b>Contingent Contracts (valid contract)</b>	
<b>Happening of an Event</b>	<b>Non Happening of an Event</b>
Valid: when events happens Void: event become impossible	Valid: When event become impossible Void: Event happens or does not become impossible
<b>Happening within fixed time</b>	<b>Non Happening within fixed time</b>
Valid: Happens within fixed time Void: Does not happen within fixed time or becomes impossible before fixed time expires	Valid: does not happened within fixed time or becomes impossible Void: Event happens within fixed time



## EXCEPTIONS TO GENERAL RULES

<b>Fraud</b>	<ul style="list-style-type: none"> <li>• Availability of means for discovering the truth</li> <li>• Consent not obtained by fraud.</li> <li>• Ratification by the party after knowing the fraud.</li> <li>• Lapse of time</li> </ul>
<b>Doctrine of privity of contract</b>	<ul style="list-style-type: none"> <li>• Trust or charge</li> <li>• Minor's Marriage contract</li> <li>• Family arrangement for marriage expense, maintenance of members, etc</li> <li>• Assignment of contract</li> <li>• Conditions running with the land</li> <li>• Acknowledgement</li> </ul>
<b>No Consideration, No Contract</b>	<ul style="list-style-type: none"> <li>• Agreement on account of Natural Love and Affection</li> <li>• Promise to compensation past voluntary services</li> <li>• Promise to pay time barred debt</li> <li>• Gifts</li> <li>• Promise to charity or Agency</li> </ul>
<b>Agreements in restraint of Trade</b>	<ul style="list-style-type: none"> <li>• Sale of goodwill of business -</li> <li>• Restraint on continuing partners</li> <li>• Restraint on outgoing partners</li> <li>• Restrain in case of dissolution of the firm</li> <li>• Restrain by trade combinations</li> <li>• Restrain by Service Agreements</li> <li>• Restrain by Solus Agreements</li> <li>•</li> </ul>
<b>Wagering Agreements</b>	<ul style="list-style-type: none"> <li>• Commerical Transactions</li> <li>• Option Dealing</li> <li>• Authorised lotteries</li> <li>• Crossword or literary competitions</li> <li>• Athletic Competitions</li> <li>• Chit Fund scheme</li> <li>• Horse Race</li> <li>• Contract of Insurance</li> </ul>

## DISTINGUISH BETWEEN

Basis	Contingent Contract	Wagering Agreement
<b>Meaning</b>	A contingent contract is contract in which the promisor undertakes to perform the contract upon the happening or non happening of an event, which is collateral to the contract	A wagering agreement is one in which one person agrees to pay certain amount of money to the other on happening or non happening of a specified event.
<b>Nature</b>	The event is collateral to the contract	Event is the sole determining factor
<b>Validity</b>	Valid contract	Void agreement
<b>Interest</b>	Parties are interested in subject matter of such contracts	The parties to wagering agreement have no other interest in the subject matter of the agreement except the winning or losing.

Basis	Quasi Contracts	Contract
Formation	It is not intentionally formed by the parties but law imposes upon the parties.	It is intentionally formed by parties.
Essentials of contract	A quasi contract does not possess the essentials of a valid contract	A contract possess all the essentials of a valid contract
Obligations	Obligations are thrust upon the law.	Obligations are mutually created by the parties.
Foundation	It is founded upon the principle of equity.	It is founded upon general principles of laws of contract
Objective	It is imposed by law for bringing about justice.	It is entered into with an object to create mutual rights and obligations.

Point of Distinction	Void Agreement	Void Contract
Definition	An agreement not enforceable by law is said to be Void	A Contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.
Time when becomes Void	It is void from the beginning	It becomes void subsequently due to change in law or change in circumstances.
Restitution	Generally, no restitution is granted. However, the court may on equitable grounds grant restitution in case of fraud or misrepresentation by minors.	Restitution may be granted when the contract is discovered to be void or becomes void.

Basis	Assignment	Succession
Meaning	Assignment means transfer of rights, interest, title, etc of a person under a contract to a third party.	Succession is the process by which one person succeeds rights, interests, benefits and obligations to another person.
Means	Assignment takes place by the acts of parties	Succession takes place by operation of law

Rights and Obligations	Assignment generally involve transfer of rights only.	Succession generally involves succeeding both rights and obligations.
Persons	Assignment can be made to any person natural or artificial persons.	Only successors succeeds who are natural persons
Scope	Assignment does not include succession	Succession includes assignment
Governing law	Assignment is governed by the law governing the benefit or interest to be assigned	Succession is governed by succession law.



## INDIAN PARTNERSHIP ACT, 1932

Whole of India except J & K

1<sup>st</sup> Day of October 1932

Prior to this act, the law of partnership was dealt with in chapter XI of Indian Contract Act, 1872.

<b>Essential of Partnership</b>	
<b>At least 2 persons</b>	There must be <i>at least two persons</i> to form a partnership. All of them must be competent to contract. If at any time the number of partners in a firm gets reduced to one (whether by death or insolvency) the firm is dissolved automatically.
<b>Maximum Number of partners</b>	<ul style="list-style-type: none"> <li>• The partnership act does not prescribe the maximum number of partners in a firm.</li> <li>• However, <u>SECTION 11 OF COMPANIES ACT</u> states that partners in a firm carrying on banking business must not exceed 10 and in a firm carrying on any other business for gain must not exceed 20.</li> <li>• If the number exceeds this limit, it will become <b>illegal partnership/Association</b> unless it is registered under the companies act.</li> </ul>
<b>Valid Agreement</b>	Where there is no agreement, there cannot be a partnership because the relation of partnership <i>arises from a contract and not from status</i> . Therefore, the members of HUF carrying on a family business as such are not partners in such business. Partnership even does not arise from operation of law or from inheritance. <b>Partnership Agreement can be oral or written.</b>
<b>Lawful Business</b>	A partnership can be formed for the purpose of carrying on business and business alone. Where there is no business, there exists no partnership. The term business includes every trade, occupation and profession. The business must be lawful. A partnership would be void if its business is unlawful.
<b>Sharing of Profits</b>	Sharing of profits of the partnership business among the partners is a must but sharing of losses of all the partners is not essential. Thus, if any partner does not get a share of profits in the firm, he is not a partner. But if nothing is expressly agreed upon by the partners, it is implied that the profit and losses will be shared equally.
<b>Mutual Agency (TRUE TEST OF PARTNERSHIP)</b>	To constitute a partnership, there must be a relation of mutual agency between the partners. Section 4 states that the partnership business must be carried on by all or any of them acting for all. Therefore, every partner can carry on business on behalf of all the partners and can, by his actions, bind all the partners of the firm.
<b>Partnership Deed</b>	<ul style="list-style-type: none"> <li>• The document which contains the terms of contract of partnership is called as deed of partnership.</li> <li>• It must be elaborate, <i>clear and unambiguous</i> about every aspect of the contract of partnership business.</li> <li>• It must clearly lay down rights and duties of partners.</li> <li>• However, the deed must not contain any provisions in contravention of Indian partnership act. Moreover, the terms must <i>not be unlawful</i>.</li> <li>• The deed must be <i>signed by all the partners</i> and duly stamped as</li> </ul>

	<p>required by Indian stamp act.</p> <ul style="list-style-type: none"> <li>• If the firm is a registered one, every deed and alteration modification in the deed must be registered with registrar of firms.</li> </ul>
<b>Who can be a partner</b>	<p>As per Section 11 of <b>INDIAN CONTRACT ACT</b>, every person is competent to contract <b>except</b> the following:</p> <ol style="list-style-type: none"> <li>1. A minor cannot be a partner in a partnership firm. But he can be admitted to the benefits of the firm.</li> <li>2. A person of unsound mind cannot become a partner in a firm.</li> <li>3. an alien enemy cannot form a partnership with any Indian citizen.</li> </ol> <p><u>Eligibility of other persons:</u></p> <ol style="list-style-type: none"> <li>1. A married women can become a partner in a firm. A married women can even be a partner of her husband. Her husband and his property will not be liable for any liability arising out of such partnership.</li> <li>2. Artificial persons like a company are competent to contract and hence they can become a partner in a partnership firm.</li> <li>3. A firm is not a person. It is not a separate entity from its partners. Therefore, two or more firms cannot enter into a contract of a partnership</li> <li>4. Two or more HUF represented by their karta's can also enter into partnership if the number of adult members of all the joint families does not exceed 10 or 20 as the case may be.</li> </ol>

<b>Basis</b>	<b>Partnership</b>	<b>Co-ownership</b>
<b>Creation</b>	Partnership arises from a contract	Co-ownership arises from status or from a contract.
<b>Business</b>	Business is necessary for the existence of partnership.	Co-ownership can exist even without a business.
<b>Objective</b>	Partnership is formed with an objective to earn and share profits of a business.	Its objective is to share property in joint ownership.
<b>Mutual agency</b>	Partners are mutual agents.	Co-owners are not mutual agents.
<b>Nature of interest</b>	There is a common interest of partners in the business and property of the firm.	There may or may not be such common interest in the property of co-ownership. A co-owner has only a limited interest in the property.
<b>Sale or transfer of interest</b>	A partner cannot sale or transfer his interest in firm without consent of all the partners.	A co-owner can sale or transfer his interest in the property without the consent of others
<b>Partition and dissolution</b>	A partner can sue his co partners for dissolution and accounts of the firm cannot demand partition of property.	A co-owner can sue for partition of the property.
<b>Lien on property</b>	A partner has lien on the property of the firm for expenses incurred by him on behalf of the firm.	A co-owner does not have such lien.
<b>Name of parties</b>	The parties in partnership are known as partners	The parties in co-ownership are known as co-owners or joint owners.
<b>Limit on</b>	There is a limit on maximum	There is no limit on number of co-

<b>members</b>	member. It is 10 in case of banking business and 20 in case of any other business.	owners.
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<b>Basis</b>	<b>Partnership</b>	<b>Joint stock company</b>
<b>Meaning</b>	A partnership is a relation between person who have agreed to share profits of a business carried on by all or any of them acting for all.	A joint stock company is an artificial person created by law having perpetual succession and a common seal
<b>Creation</b>	It is created by a contract between two or more persons	It is created by following a procedure laid down by the law
<b>Registration</b>	Registration of partnership firm is not compulsory	Registration of a joint stock company is compulsory
<b>Separate existence</b>	Partnership firm has not separate legal existence	A company has a separate legal existence apart from the members forming it.
<b>Limit on membership</b>	There is a limit on maximum member. It is 10 in case of banking business and 20 in case of any other business	There is no limit on maximum number of members in a public company. In case of a private company the maximum number is 50.
<b>Liability</b>	Liability of partners is unlimited. Their personal estate is liable for the debts of the firm	Liability of every member of a company is limited to the extent of face value of shares held by him or guarantee given by him
<b>Transfer of shares</b>	A partner cannot transfer his share without the consent of all the partners	A member of a company can transfer his shares without consent of all the members.
<b>Rights on property</b>	The property of the firm is joint property of all the partners. All the partners can divide the property among them.	The property of the company is the property of the company. Therefore, all the members of the company cannot divide it among themselves.
<b>Management</b>	A partnership is managed by all or any one of the partner on behalf of all	A company is managed by a board of directors elected by the members of the company
<b>Perpetual succession</b>	A partnership has no perpetual succession. A partnership is automatically dissolved on death or insolvency of any partner subject to a contract to contrary.	A company has perpetual succession. Death or insolvency of a member does not affect the existence of the company
<b>Mutual agents</b>	Every partner is an agent of another partner. They are mutual agents	The members of a company are not mutual agents. A member cannot bind by his acts the other members of the company
<b>Dissolution</b>	Partnership can be dissolved by partners at any moment	A company can be dissolved by following a legal process
<b>Statutory obligations</b>	A partnership has only a few statutory obligations	A company has many statutory obligations regarding formation, management, meetings, capital, accounts, audit, etc

<b>Registration of a Firm (Section 59)</b>	<ul style="list-style-type: none"> <li>• A firm can be registered with the <i>registrar of firms</i>.</li> <li>• Registrar of firms is appointed by <i>State Government</i>.</li> <li>• The registration of a firm is <i>not compulsory</i>. Under the partnership act, it is optional for the partners. (Sec 58)</li> <li>• The registration of a firm may be affected <i>at any time</i>, before or after its formation.</li> <li>• The firm name <b>shall not contain</b> any of the following words: Crown, emperor, empress, empire, imperial, king, queen, or words expressing or implying sanction, approval or patronage of government, except when the government signifies its consent to the use of the words as part of the firm name by order in writing.</li> <li>• However, following words are permissible (i) Associates, (ii) Management consultants, (iii) Brothers, etc</li> <li>• The following details <b>are to be given</b> in application for registration of firm: (i) Firm Name (ii) Principal place of business (iii) any other place of business (iv) date when partners joined the firm (v) name and place of each partner of firm (vi) duration of the firm</li> <li>• The following details <b>are not to be given</b> in the application: (i) Capital contribution of each partner, (ii) Bank accounts of the firm (iii) Goodwill of the firm, (iv) PAN number of the firm, (v) details of the auditor of the firm.</li> </ul>																	
<b>Noting of Alterations in registrations</b>	<table border="1"> <thead> <tr> <th data-bbox="386 953 906 982">Event/Change in</th> <th data-bbox="914 953 1430 982">Application to be made by</th> </tr> </thead> <tbody> <tr> <td data-bbox="386 989 906 1018">Firm Name</td> <td data-bbox="914 989 1430 1018">All the partner or their agents</td> </tr> <tr> <td data-bbox="386 1024 906 1054">Principal Place of business</td> <td data-bbox="914 1024 1430 1054">All the partner or their agents</td> </tr> <tr> <td data-bbox="386 1060 906 1089">Other place of business</td> <td data-bbox="914 1060 1430 1089">All the partner or their agents</td> </tr> <tr> <td data-bbox="386 1096 906 1125">Name &amp; Address of Partners</td> <td data-bbox="914 1096 1430 1125">Any one partner or his agent</td> </tr> <tr> <td data-bbox="386 1131 906 1224">Change in the constitution of firm like admission, retirement, etc</td> <td data-bbox="914 1131 1430 1224">Any one partner or his agent or person specially authorized in this behalf</td> </tr> <tr> <td data-bbox="386 1230 906 1323">Decision of minor to continue in the firm or not on attaining majority</td> <td data-bbox="914 1230 1430 1323">Minor or his authorised Agent</td> </tr> <tr> <td data-bbox="386 1329 906 1398">Rectification of mistake by registrar</td> <td data-bbox="914 1329 1430 1398">All the partner or their agents</td> </tr> </tbody> </table>		Event/Change in	Application to be made by	Firm Name	All the partner or their agents	Principal Place of business	All the partner or their agents	Other place of business	All the partner or their agents	Name & Address of Partners	Any one partner or his agent	Change in the constitution of firm like admission, retirement, etc	Any one partner or his agent or person specially authorized in this behalf	Decision of minor to continue in the firm or not on attaining majority	Minor or his authorised Agent	Rectification of mistake by registrar	All the partner or their agents
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<b>Effects on non registration</b>	<ul style="list-style-type: none"> <li>• No Suit by a partner against the firm.</li> <li>• No Suit by one partner against any other partner of the firm.</li> <li>• No suit by firm against third party. (above Rs. 100)</li> <li>• No suit by a partner of unregistered partner against third party.</li> <li>• However, third party can sue against the partners as well as firm</li> </ul>																	
<b>Exceptions to above</b>	<ul style="list-style-type: none"> <li>• A partner of unregistered firm can sue for dissolution of the firm.</li> <li>• A partner can sue for accounts of the dissolved firm.</li> <li>• A partner can sue for realizing the property of a dissolved firm.</li> <li>• An official assignee or receiver or court can realize the property of an insolvent partner.</li> <li>• Rights of firm or partner in a firm having no place of business in India are not affected.</li> <li>• A third party can always sue against unregistered firm and partners in the</li> </ul>																	



	<p>firm.</p> <ul style="list-style-type: none"> <li>• A firm or any partner of the firm can sue for damages for misconduct against a partner.</li> </ul>
<b>TYPES OF PARTNERS</b>	
<b>Active Partner</b>	<ul style="list-style-type: none"> <li>• AP is actively engaged in the conduct of business in a usual way and acts as an agent of the firm.</li> <li>• AP becomes partner by agreement and is known to all third parties.</li> <li>• As he acts as an agent, he binds himself and all his co-partners by his acts done in usual course of business.</li> <li>• His liability is unlimited towards third party for debts of firm.</li> <li>• When an AP retires or is expelled, he should give a public notice of the same, in order to limit his liability after retirement or expulsion.</li> </ul>
<b>Sleeping or Dormant Partner</b>	<ul style="list-style-type: none"> <li>• SP becomes partner by agreement and contributes capital but does not take part in the conduct of the business.</li> <li>• His existence as a partner is not known to public as he does not participate in the business.</li> <li>• <u>SP cannot bind other partners by mutual agency.</u></li> <li>• However, his liability is unlimited towards third party towards debts of the firm.</li> <li>• As his existence is not known to public, he need not give public notice of his retirement or expulsion.</li> <li>• But if his existence as partner is known to some persons dealing with the firm, notice of his retirement must be given at least to them.</li> </ul>
<b>Nominal Partner</b>	<ul style="list-style-type: none"> <li>• NP lends his name to the firm, he neither invests money in the firm nor does he share the profits of the firm.</li> <li>• But, he is liable like an actual partner of the firm to third parties for all the debts of the firm because of the mutual agency.</li> </ul>
<b>Partner in profits only</b>	<ul style="list-style-type: none"> <li>• A partner who only shares the profits of the firm but not the losses of the firm is called partner in profits only.</li> <li>• However, he is liable to third party for all the debts of the firm.</li> </ul>
<b>Sub Partner</b>	<ul style="list-style-type: none"> <li>• A sub partner is a partner of a partner.</li> <li>• A sub partner is not directly connected with the firm and does not have mutual agency with any partner of the firm.</li> <li>• He does neither enjoy any right against the firm nor does he carry any duties for the business of firm.</li> </ul>
<b>Partner of Estoppel</b>	<ul style="list-style-type: none"> <li>• A person held liable as a partner by Estoppel when: <ol style="list-style-type: none"> <li>a. He by spoken or written words or by conduct represents himself to be a partner in a firm; or he knowingly permits himself to be represented as a partner in a firm; and</li> <li>b. Any other person having faith on such representation given credit to the firm;</li> </ol> </li> <li>• A partner by Estoppel becomes liable jointly and severally only to the person who have given the credit to the firm on the faith of its representation.</li> <li>• At the same time he is not liable to the partners of the firm.</li> <li>• A retiring person also becomes a partner by Estoppel if he does not give a public notice of his retirement and the continuing partner use his name as</li> </ul>

	<p>a partner.</p> <ul style="list-style-type: none"> <li>• However, Rule of Estoppel does not apply in the case of Death or Insolvency of a partner.</li> </ul>
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### MINOR AS PARTNER IN BENEFITS

<b>Rights of a minor</b>	<ul style="list-style-type: none"> <li>• To share profits</li> <li>• To share property of the firm</li> <li>• To inspect the books of the firm</li> <li>• To copy account of the firm</li> <li>• To Sue partner for profits and property</li> <li>• To decide to become or not to become a partner of the firm on attaining majority.</li> </ul>
<b>Liability of a minor</b>	<ul style="list-style-type: none"> <li>• Minor is not personally liable for acts done.</li> <li>• Liability of a minor is <u>limited his share in the profits</u> and property of the firm.</li> <li>• It is the liability of the minor to give public notice of his decision to become or not to become a partner on attaining majority. <b>if he fails to give such a notice, he shall be liable as full fledged partner in the firm.</b></li> </ul>
<b>Position on attaining majority</b>	<p><u>Options available:</u></p> <ol style="list-style-type: none"> <li>To become partner in the firm' or</li> <li>Not to become partner in the firm.</li> </ol> <p><u>Time Available:</u> He may give notice at any time within:</p> <ul style="list-style-type: none"> <li>- 6 months of his attaining majority or</li> <li>- of his obtaining knowledge that he had been admitted to the benefits of partnership, <u>whichever is later.</u></li> </ul> <p><u>Consequences of failure to give notice:</u> In case, he fails to give a notice, he shall become partner in the firm on the expiry of the said <u>6 months</u> and will be liable as an active partner.</p>

### RELATIONS BETWEEN PARTNERS

<b>Rights of Partners</b>	<ul style="list-style-type: none"> <li>• Right to take part in business</li> <li>• Right to be <b>CONSULTED</b></li> <li>• Right to access the books</li> <li>• Right to remuneration if authorised by partnership deed.</li> <li>• Right to share profits</li> <li>• Right in emergency</li> <li>• Right to be indemnified</li> <li>• Right to retire</li> <li>• Right of outgoing partner to carry on competing business</li> <li>• Right to dissolve the firm</li> </ul>
<b>Duties of Partners</b>	<ul style="list-style-type: none"> <li>• To be just and faithful</li> <li>• To render true account</li> <li>• To carry on business to the greatest common advantage</li> <li>• To give full information</li> <li>• To indemnify for fraud</li> </ul>

	<ul style="list-style-type: none"> <li>• To attend <b>DILIGENTLY</b></li> <li>• Duty to share losses</li> <li>• To account for private profits</li> <li>• To act within authority</li> <li>• To be liable for the acts of the firm.</li> </ul>
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### IMPLIED AUTHORITY OF PARTNERS

<b>Scope of implied authority</b>	<p>If any partner does any act within the scope of his implied authority, he will bind firm with his acts. However, the scope of implied authority is subject to following conditions:</p> <ol style="list-style-type: none"> <li>1. The act must be done in the capacity of partner</li> <li>2. Act must relate to the normal business of the firm</li> <li>3. Act must be done in the <b>USUAL WAY</b></li> <li>4. The act must be done in the name of the firm</li> </ol>
<b>Acts within implied authority</b>	<ol style="list-style-type: none"> <li>1. To buy goods of the kind dealt/used in the business of the firm.</li> <li>2. To sell the goods of the firm</li> <li>3. To buy things necessary (incidentally or consequently) for carrying on the business of the firm.</li> <li>4. To accept payments of the debts due to the firm and issue receipt for the same.</li> <li>5. To employ servant for the business of the firm.</li> <li>6. To acknowledge the sustaining debts.</li> <li>7. To borrow money on credit of the firm.</li> <li>8. To pledge goods for borrowing money on behalf of the firm.</li> <li>9. To create equitable mortgage by depositing title deed of the property against the money borrowed.</li> <li>10. To settle accounts with person dealing with the firm.</li> <li>11. To render account to the creditor of the firm.</li> <li>12. To defend an action brought against the firm and to engage the lawyer for the purpose.</li> </ol>
<b>Restriction on implied authority</b>	<p><b>Statutory restrictions.</b> In the absence of any usage or custom or trade to the contrary, the implied authority of a partner does not empower him to do the following acts:</p> <ol style="list-style-type: none"> <li>i. To submit a dispute relating to the business of the firm to arbitration.</li> <li>ii. To open a bank account on behalf of the firm in his own name.</li> <li>iii. To compromise or relinquish any claim or portion of a claim by the firm.</li> <li>iv. To withdraw a suit or proceeding filed on behalf of the firm.</li> <li>v. To admit any liability or proceeding against the firm.</li> <li>vi. To acquire immovable property on behalf of the firm.</li> <li>vii. To transfer immovable property belonging to the firm.</li> <li>viii. To enter into partnership on behalf of the firm.</li> </ol> <p>These statutory restriction are effective against the whole world whether a particular person contracting with the firm knows about them or not. Therefore, the firm will not be liable to any third parties for any of the above acts of a partner.</p> <p>A partner can bind any of these acts only when he is expressly authorised to do the acts or the usage or custom or trade allows him to do the act.</p>

	<p><b>2. Restriction by contract.</b> Partner may by contract between all the partners restrict the implied authority of any partner. Therefore any restriction imposed on implied authority of a partner by a contract between all the partners will be effective provided the third party with whom the partner deals knows of such restriction. (Sec. 20)</p>
<p><b>Liability Of A Firm In Certain Cases</b></p>	<p><b>1. Liability for extension and restriction of partner's implied authority -</b> Any restriction imposed on the implied authority of any partner will have no effect against third party unless the party with whom the partner is dealing has notice of such restriction or the party does not know or believe that he is dealing with a partner in a firm.</p> <p><b>2. Liability of acts done in an emergency-</b> When a partner does some act beyond his authority in an emergency the firm is liable for such act subjected to the following conditions:  (i) The act must have been done to protect the firm from loss threatened by the emergency.  (ii) The partner must act as a prudent person would act under similar circumstances in his own case (Sec. 21)</p> <p><b>3. Liability for act done in the name of the firm-</b> The firm is liable for the same.</p> <p><b>4. Liability for representations by a partner-</b> if representations are made within the authority and in the normal course of business, then firm will be bound by it.</p> <p><b>5. Liability for the notice to a partner-</b> Notice to a partner operates as notice to the firm provided the following conditions are satisfied:  i. When the notice is given to a partner who habitually acts in the business of the firm, i.e. to an active or working partner.  ii. The notice must of any matter relating to the affair of the firm.  iii. There must not be any fraud committed on the firm with the consent of that partner. If the fraud is committed regarding that matter of the notice, it is not deemed to be a notice to the firm.</p> <p><b>6. Liability for wrongful act of a partner-</b> The firm is liable for the wrongful acts or omission of the partner subject to the following conditions:  i. When the wrongful acts are done while acting in ordinary course of business of the firm or with the authority of his co-partners.  ii. Such acts cause loss or injury to any other party or any penalties is incurred.</p> <p><b>7. Liability of misapplication of money-</b> The firm is liable to make good the loss caused to a third party due to misapplication of his money or property by a partner in the following cases:  i. Where the partner acting within his apparent authority receives money or property from third parties and misapplies it.  ii. Where firms in the course of its business receive money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm.</p>

## RECONSTITUTION OF A FIRM

The reconstitution of the firm takes place in any of the following ways:

- i. By introduction of a partner. (Sec. 31)
- ii. By retirement of a partner. (Sec. 22)
- iii. By expulsion of a partner. (Sec. 33)
- iv. By insolvency of a partner. (Sec. 34)
- v. By death of a partner. (Sec. 35)
- vi. By transfer of partner's interest. (Sec. 29)

<b>Admission of a Partner</b>	<p>1. Generally, Liability of a new partner commences from the date of his admission.</p> <p>2. Generally, New partner cannot be held liable for the acts of the firm done before the date of admission. (No Mutual Agency)</p> <p>3. However, he can agree to be liable for the pre-existing debts of the firm. However, he shall be liable only to the other partners of the firm. Third party cannot bind the new partner of the firm.</p> <p>4. New partner becomes liable to firm as well as creditor of the firm if:</p> <ol style="list-style-type: none"> <li>a. New firm agrees to take over the liability of the old firm.</li> <li>b. Creditors agree to discharge the liability of old firm and agree to accept the new firm as their debtor. (NOVATION)</li> </ol>
<b>Retirement of a partner</b>	<p><u>Modes of Retirement:</u></p> <ul style="list-style-type: none"> <li>• With a consent of ALL the other partners.</li> <li>• In accordance with an express agreement by the partner,</li> <li>• Where the partnership is at will, by giving the notice in writing to ALL THE OTHER PARTNERS of his intention to retire.</li> </ul> <ol style="list-style-type: none"> <li>1. As between the partners, the retirement becomes effective from the date mentioned in the notice.</li> <li>2. In case no date is mentioned, from the date of communication of notice. But the date of retirement cannot be prior to the date of notice.</li> <li>3. <u>As to the third parties, the retirement is effective from the date of public notice.</u></li> <li>4. Retiring partner is liable to third party for acts done by firm after retirement but before public notice of retirement is given.</li> <li>5. Public notice may be given by retiring partner or any other partner of reconstituted firm.</li> </ol> <p><u>Rights of Retiring Partner:</u></p> <ol style="list-style-type: none"> <li>i) To carry on Competing Business and Advertise such business.</li> <li>ii) To share profit (in capital ratio) or Interest (6%p.a.) on unpaid capital.</li> </ol> <p><u>However, he cannot do the following act:</u></p> <ol style="list-style-type: none"> <li>a. He cannot use firm name.</li> </ol>

	<p>b. He cannot represent himself as carrying on business of firm;  c. He cannot solicit the customers of the firm</p>
<b>Expulsion of a partner</b>	<p>Following conditions must be satisfied:  a. Expulsion must be as per the terms of contract;  b. power must be exercised by any majority of partners;  c. it must be in good faith.</p> <p>If above mentioned conditions are not fulfilled, the expulsion will be termed as Irregular expulsion. Then expelled partner shall have following remedies:</p> <ul style="list-style-type: none"> <li>• He can claim <i>reinstatement</i> as a partner in the firm.</li> <li>• Alternatively, he can claim for <i>refund of his share</i> in the capital.</li> <li>• He can carry on any competing business with that of the firm subject to a contract to the contrary.</li> </ul>
<b>Insolvency of partner</b>	<p>1. A partner, who is adjudicating as an insolvent, ceases to be a partner in the firm <i>from the date of order</i>.</p> <p>2. if the firm carries on the business, the estate of the insolvent partner is <i>not liable</i> for any act of the firm done <i>after</i> the date of the order of adjudication.</p> <p>3. No public notice is required to be given on insolvency of a partner</p> <p>4. In case the firm is not dissolved, the share of property and profit of the insolvent partner will vests in the official Assignee or Receiver.</p>
<b>Death of a partner</b>	<p>1. A firm is dissolved by the death of a partner in the absence of any contract to the contrary.</p> <p>2. The estate of deceased partner is liable for any act done by firm before his death.</p> <p>3. But he will not be liable for goods ordered before his death but actually received after his death and Any money borrowed by partners after his death.</p> <p>4. No public notice is required on the death of the partner.</p>
<b>Transfer of Partners Interest</b>	<p>1. Any partner cannot transfer his share in the partnership to any third partner without consent of all other partners.</p> <p>2. A partner may transfer his interest in firm by Sale, Mortgage or by creating a charge on such interest.</p> <p>3. Transferee will NOT be entitled to following rights:  To interfere in the conduct of the business of the firm.  To require accounts of the firm.  To inspect the books of the firm.  To challenge the accounts of profit agreed to by the partner</p>

## PUBLIC NOTICE:

### When public notice is to be given?

A public notice is required to be given in following cases:

1. On retirement of a partner – by retiring partner or any other partner.
2. On expulsion of a partner – by expelled partner or any other partner.
3. On dissolution of firm – by any partner
4. On election to become or not to become a partner in a registered firm on attaining majority by the person who was admitted as a minor to the benefits of partnership – by minor himself or his agent.

### When notice is not required?

No public notice is required to be given in the following cases:

- a. On death of the partner.
- b. On the insolvency of the partner.
- c. **On admission of the partner.**

## DISSOLUTION OF FIRM

<b>Without the order of court</b>	<p><u>1. Dissolution by Agreement:</u> Unless otherwise agreed, a firm can be dissolved with the consent of ALL THE PARTNERS. However, partners may provide in the agreement that firm can be dissolved by majority of partners.</p> <p><u>2. Compulsory Dissolution:</u> a. When All the partners or All partners except one are adjudged as insolvent. b. When the business of firm becomes unlawful.</p> <p><u>3. Dissolution by happening of contingencies:</u> a. Expiry of Fixed Term b. Completion of adventure for which it was formed. c. Death of a partner; d. Insolvency of a partner when there are only 2 partners; e. Dissolution by Notice</p>
<b>Dissolution by order of Court</b>	<p><u>1. Insanity:</u> a. Such a suit can be filed by <u>any other partner</u> or <u>by the next friend of the partner of unsound mind.</u></p> <p>b. It should be noted that insanity of a partner does not automatically dissolve the firm. It can be dissolved by the order of the court only.</p> <p><u>2. Permanent Incapacity:</u> a. Such suit may be filed only by any other partner. b. Incapacity of a partner must be permanent. It may be physical or mental. c. but incapacity of a dormant partner cannot be the ground for order of dissolution of the firm.</p> <p><u>3. Misconduct:</u> a. Such suit may be filed by a partner other than the guilty partner. b. Misconduct need not be directly connected with the business of the firm.</p>

	<p>c. Following acts have been held to be misconduct of a partner.</p> <ul style="list-style-type: none"> <li>• Guilty for breach of trust by a partner.</li> <li>• Gambling or speculation by a partner.</li> <li>• Persistent neglect or refusal by a partner to participate in the conduct of the business of the firm</li> <li>• Embezzlement of funds of client received on behalf of the firm</li> <li>• Theft of firm's accounts book.</li> </ul> <p><u>4. Persistent Breach of Agreement:</u></p> <p>A <i>willful or persistent</i> breach of agreement must be related to any of the following:</p> <ol style="list-style-type: none"> <li>(i) Management of the affairs of the firm</li> <li>(ii) The conduct of the business of the firm</li> </ol> <p><u>5. Perpetual Losses:</u></p> <p>When the business of the firm cannot be carried on except at a loss the court may dissolve the firm on an application by any partner.</p> <p><u>6. Any Other just and Equitable Reason:</u></p> <p>When any partner makes an application for dissolution of the firm on any other ground and court thinks it just and equitable that the firm should be dissolved.</p>
<p><b>Rights of partners on dissolution</b></p>	<ol style="list-style-type: none"> <li>1. Right to claim refund of Goodwill on premature dissolution.</li> <li>2. Right to use the firm name if he has purchased the goodwill of the firm.</li> <li>3. Following rights in case of fraud or misrepresentation: <ol style="list-style-type: none"> <li>a. Right of lien on surplus assets</li> <li>b. Right to be indemnified</li> </ol> </li> <li>4. Right to enforce winding up</li> </ol>
<p><b>Liabilities of partners</b></p>	<ol style="list-style-type: none"> <li>1. All the partners continue to be liable to the third parties for any act done by any of them after dissolution but before public notice of dissolution is given.</li> <li>2. After the dissolution of a firm, the authority of each partner to bind the firm as well as mutual rights and obligations of the partners continue, so far as may be necessary for the following two purpose only: <ol style="list-style-type: none"> <li>(i) For the winding up of the affairs of the firm</li> <li>(ii) For completing the unfinished transactions at the time of dissolution.</li> </ol> </li> </ol>
<p><b>Settlement of Accounts</b></p>	<ol style="list-style-type: none"> <li>1. <u>Losses including deficiency of capital</u>, shall be paid in the following sequence: <ol style="list-style-type: none"> <li>(i) First, out of profits</li> <li>(ii) Next, out of capital</li> <li>(iii) Lastly, if necessary, by the partners individually in their profit sharing ratio.</li> </ol> </li> <li>2. The assets of the firm shall be applied in the following manner and order: <ol style="list-style-type: none"> <li>(i) In paying the debts of the firm to third parties;</li> <li>(ii) In paying to each partner ratably what is due to him from the firm for advances as distinguished from capital;</li> <li>(iii) In paying to each partner ratably what is due to him on account of</li> </ol> </li> </ol>



	<p>capital; and</p> <p>(iv) The residue if any shall be divided among the partners in their profit sharing ratio.</p> <p>3. Loss arising due to insolvency of a partner is to be beared in Capital Ratio as per Garner Vs Murray. It was held that the <u>solvent partners</u> should bear the loss of <u>deficiency of capital of insolvent partner</u> in the ratio of their <u>agreed capital</u>.</p> <p>4. Goodwill is the <u>asset of the firm</u>. It can be sold either individually or along with the other assets of the firm.</p> <p>5. Property of firm should be firm applied to pay off the firm liabilities and then partner’s personal liabilities.</p> <p>6. Partner’s personal property shall first be applied to pay off Partners personal liabilities and then the surplus can be applied to pay off firm’s liabilities.</p>
<p><b>Mode of Public Notice</b></p>	<p>a. In case of registered firm, the public notice must be given as under:</p> <p>(i) Notice to the registrar of firms</p> <p>(ii) By publication of notice in the official gazette; and</p> <p>(iii) By publication of notice in at least one vernacular newspaper. Such newspaper must be circulated in the district where the firm to which notice relates has its place or principal place of business.</p> <p>b. In any other case, that is in case of unregistered firm, public notice must be given in the following manner:</p> <p>(i) By publication of notice in the official gazette; and</p> <p>(ii) By publication of notice in at least one vernacular newspaper. Such newspaper must be circulated in the district where the firm to which notice relates has its place or principal place of business.</p>



**SALE OF GOODS ACT, 1930**☆ 1<sup>st</sup> July 1930 ☆ Whole of India Except J & K ☆ Not Exhaustive**Distinction between Sale and Agreement to sell**

<b>Basis of distinction</b>	<b>Sale</b>	<b>Agreement to sell</b>
<b>1. Nature</b>	It is an executed contract.	It is an Executory contract.
<b>2. Transfer of ownership</b>	In sale, the ownership of the goods is transferred immediately.	Transfer of ownership takes place at a future time or on fulfillment of conditions of agreement to sell.
<b>3. Conveyance of property</b>	A sale implies a contract plus conveyance of property. Therefore, a buyer gets a right in rem. He can enjoy the goods against the whole world.	In agreement to sell, there is no conveyance of property. It gives buyer the rights against the seller only.
<b>4. Type of goods</b>	Only the existing and specific goods can be the subject matter of sale.	In case of agreement to sell, the goods are usually the future or contingent. Sometimes, it is unascertained existing goods.
<b>5. Risk of loss</b>	In sale, risk passes with the ownership. Hence, if goods are destroyed, the buyer is to bear the loss even though the goods are with the seller.	In this case, the seller is to bear the risk of loss even though the goods are in possession of the buyer.
<b>6. Rights of seller</b>	In sale, if seller is an unpaid seller, he can sue the buyer for price. If goods are in his possession he can also exercise his rights against the goods, i.e. (a) lien (b) stoppage of goods in transit and (c) resell the goods.	In case of agreement to sell if the buyer makes the breach of contract the seller can sue the buyer for damages even though the goods are in his possession.
<b>7. Rights of buyer</b>	In a sale, if the seller makes a breach of contract, the buyer can sue for damages. If the seller resells the goods, the buyer can even sue the third party for recovery.	In an agreement to sell, the buyer can sue the seller for damages on breach of contract.
<b>8. Insolvency of the buyer</b>	In case a sale, if the buyer becomes insolvent, the official assignee/receiver can claim the goods because the buyer is the owner of goods. The seller is entitled to ratable dividend for the price only.	In agreement to sell, the seller is not bound to deliver the goods unless the full price of the goods is paid to him because the ownership of the goods is still with the seller.
<b>9. Insolvency of the seller</b>	If the seller becomes insolvent after sale, the buyer can claim the goods from official assignee/receiver. It is because ownership of the goods is with the buyer.	If the seller becomes insolvent after agreement to sale, the buyer can claim ratable dividend for the price of the goods if he has already paid.

### Distinction between Sale and Hire-purchase agreement

Basis of distinction	Sale	Hire-purchase Agreement
<b>1. Transfer of ownership</b>	In sale, the ownership of the goods is transferred immediately.	In hire purchase agreements, the ownership of goods passes to the hirer when he pays all the installments of hire
<b>2. Number of contracts</b>	There is only one contract of sale.	There are two contract within this agreement: (i) the contract of bailment for hire, and (ii) agreement to sale subject to the payment of installments
<b>3. Position of goods</b>	In sale, the possession of goods may remains with the seller.	The possession of goods must pass on to the hirer.
<b>4. Position of parties</b>	The buyer is in the position of an owner of goods.	The hirer is in the position of bailee.
<b>5. Termination of contract</b>	A seller or buyers cannot terminate the contract. If anyone dose so, he is liable to pay damages.	A hirer has an option to terminate the contract of hirer at any time. But in such a case, the owner can retain the installments paid and claim the arrears of installments dues.
<b>6. Treatment of installments</b>	In sale, the payment made in installments is treated as payment towards the price of goods.	Payments of installments is treated as hire charges for the use of goods until all the installments are paid and option to buy is exercised by the hirer.
<b>7. Right to regain the possession</b>	In sale, once possession of the goods transferred to the buyer, it cannot be regained by the seller.	The owner can regain the possession of goods if the hirer makes a default in payment of installments or dose something against the term of the agreements
<b>8. Transfer of title to third parties</b>	In sale, the buyer can transfer the good title to the goods to a third party.	The hirer cannot transfer the good title to the goods held on hire to any third parties without the consent of the hirer.
<b>9. Written contracts</b>	The sale may be by word of mouth or by a written contract.	The hire-purchase contract must be in writing and signed by all the parties
<b>10. Regulati ng act</b>	This is regulated by the Sale of goods Act, 1930.	This is regulated by the Hire-purchase Act, 1972.

**SALE VS. BAILMENT:** A sale and bailment is different on the following grounds:

**(i) Ownership:** In sale, goods is transferred to the buyer whereas no change in ownership takes place in bailment. There is only a transfer of possession of goods from bailor to a bailee.

**(ii) Use of Goods:** a buyer may use the goods he like but a bailee can use goods only if the terms of bailment allow and in accordance with the terms of bailment.

**(iii) Return of Goods:** In sale, goods are not to be returned to the seller by the buyer. But in case of bailment, bailee is bound to return the goods to the bailor or dispose of according to his directions when the purpose of bailment is accomplished.

**(iv) Price:** A price is paid in money as consideration for a sale but a bailment may be without any consideration i.e gratuitous bailment.

**When condition to be treated as warranty?**

A buyer may treat breach of condition as breach of warranty in following cases:

(i) Voluntary Waiver: Once a buyer waives any condition, he cannot afterwards insist on its fulfillment. Waiver may be express or implied.

(ii) Voluntary election: A buyer also has an option to elect the breach of a condition as breach of warranty. If the buyer elects this option, he can claim only damages and loses his right to treat the contract as repudiated.

(iii) Compulsory treatment by acceptance of goods: where the contract is not severable and the buyer has accepted whole or any part of the goods, the breach of any condition of such contract can only be treated as breach of warranty. The buyer has no option to repudiate the contract but can claim damages unless there is term of the contract to that effect.

**Distinction between condition and warranty:**

<b>Distinction</b>	<b>Condition</b>	<b>Warranty</b>
Nature	A condition is stipulation which is essential to the main purpose of the contract.	A warranty is a stipulation which is collateral to the main purpose of the contract
Significance	It is essential to the very purpose of the contract that it's non performance may be considered as failure to perform the contract.	It is not so essential that a failure to perform it cannot be considered as failure to perform the contract
Consequence of breach	The aggrieved party may treat the contract as repudiated	The aggrieved party cannot repudiate the contract but can claim damages
Treatment	A breach of condition may be treated as breach of warranty	A breach of warranty cannot be treated as breach of condition

## GOODS [Section 2(7)]

“Goods” means every kind of movable property

**other than** actionable claims (Rights that can be claimed through court) and money (Currency of money); and

**includes** stock and shares, growing crops, Grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

However, various courts have held the following are also covered under the definition of goods:

- (i) Metal and Stone
- (ii) Interest of Partner in a partnership firm is goods.
- (iii) Emblements such as vegetables, fruits, etc are included in the term goods.
- (iv) Shares before allotment are also goods.
- (v) Foreign Currency
- (vi) Goodwill, copyright, patents are goods
- (vii) water, gas and electricity are goods.

<b>Existing Goods</b>	<p>Goods owned and possessed by the seller at the time of contract of sale are called as existing goods.</p> <p>Existing goods can be further classified as:</p> <ol style="list-style-type: none"> <li>1. <b>Specific Goods:</b> Goods <b>identified and agreed upon</b> at the time of contract of sale.</li> </ol> <p><b>Example:</b> A customer went to the showroom of 2 wheeler and pointed out to a “Red Colored Yamaha Fazer” bike and said I want to buy <u>this</u> bike. Here the subject matter of contract is specific goods.</p> <ol style="list-style-type: none"> <li>2. <b>Ascertained Goods:</b> Goods are identified in a <b>lot of goods</b> and agreed upon at the time of contract of sale; exact goods are known after the contract of sale.</li> </ol> <p>Example: A customer went to the showroom of 2 wheeler and point out to a “lot of 4 Red colored Yamaha Fazer” bike and said I want to buy a red colored Yahama Fazer Bike. Here the subject matter of contract is ascertained goods.</p> <ol style="list-style-type: none"> <li>3. <b>Unascertained Goods:</b> These are not identified and agreed upon at the time of contract of sale. These goods are bought by description of goods which may be a brand name, quality, grade, etc.</li> </ol>
<b>Future Goods</b>	<p>These goods are not in existence at the time of contract of sale. Only an agreement to sell can be made in respect of future goods. Property in the goods is transferred at a future date as per the conditions mentioned in the agreement to sell.</p>
<b>Contingent Goods</b>	<p>Contingent goods are the goods, the acquisition of which depends upon the happening or non happening of a contingency i.e contingent event.</p>

<p><b>Existing goods vs Future Goods</b></p>	<p><b>Distinction:</b></p> <ul style="list-style-type: none"> <li>(i) existing goods exists at the time of contract of sale where as the future goods do not.</li> <li>(ii) existing goods are owned or possessed by the seller at the time of sale but future goods neither exists nor owned or possessed by the seller.</li> <li>(iii) there can be Sale or Agreement to Sell of Existing goods but no sale can take place for future goods.</li> </ul>
<p><b>Future goods vs Contingent goods</b></p>	<p><b>Distinction:</b></p> <ul style="list-style-type: none"> <li>(i) Acquisition or production of future goods does not depend upon any contingency where the acquisition of contingent goods depends upon happening or non happening of a contingency.</li> <li>(ii) Non Acquisition or non production of future goods does not discharge the contract by impossibility where the non acquisition of contingent goods discharges the contract by impossibility of performance.</li> </ul>

<p><b>IMPLIED CONDITIONS</b> (if implied condition is breached, buyer has a right to reject the goods)</p>	<p><b>1. Condition as to Title:</b> (i) in case of sale, he has a right to sell the goods; and (ii) in case of agreement to sell, he will have a right to sell the goods at the time when the property is to pass.</p> <p><b>2. Condition as to description of goods:</b> Where there is a contract for sale of goods by description, there is an implied condition that the goods shall correspond with the description.  The description may include physical characteristics, class or grade, trade marks, brand name label, model, mode of packing, etc of the goods.  For example, “Basmati rice”, ”Colgate”, “ponds”, “Maruti 800 Model”, etc are the description of goods.</p> <p><b>3. Condition as to Sample:</b> (i) the bulk shall correspond with the sample in quality. (ii) the buyer shall have a reasonable opportunity of comparing the bulk with the sample. (iii) the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.  If the defect is patent not latent, i.e visible and can be discovered on inspection, the seller cannot be held liable for the same.</p> <p><b>4. Condition as to sample as well as description:</b> Where the goods are sold by sample as well as description, the implied condition is that the goods must correspond with both. If not, the buyer can reject the goods.</p> <p><b>5. Condition as to quality or fitness:</b> <u>When Seller shall be liable:</u> (i) The buyer expressly or by implication make known to the seller the particular purpose for which the goods are required. (ii) The buyer relies on the seller’s skill and judgment. (iii) The seller deals in the goods in his usual course of business.  But where the goods can be used only for a particular purpose, the buyer need not expressly disclose the purpose. The seller is bound by the implied condition as to quality and fitness as he is deemed to have made known the seller the purpose by implication.  <u>When buyer shall be liable:</u> (i) Where the goods sold is a specified article under its patent or other trademark. This exception is applicable only when the buyer does not rely on the seller’s skill and judgment.  (ii) Where the product is used only for a particular purpose but buyer fails to disclose his abnormal circumstances.</p>
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	<p>(iii) Where the goods can be used for more than one purpose and buyer fails to make known to the seller the purpose of his buying, the seller is not liable.</p> <p><b>6. Conditions as to merchantable quality:</b> The expression “Merchantable quality of goods” means the goods fit in terms of their quality and condition for the purpose for which they are bought by prudent person, or the goods which are marketable at their full value.</p> <p>It should be noted that implied condition of merchantable quality applied in following cases: (i) Where the goods are bought by description. (ii) Where the goods are bought from a person who deals in the goods of that description whether he is a manufacturer or producer or not. (iii) Whether or not the buyer relies on the skill and judgment of the seller. (iv) Whether or not the goods are sold under a patent or trademark.</p>
<p><b>IMPLIED WARRANTIES</b> (if implied warranties are not fulfilled, buyer can claim damages only)</p>	<ol style="list-style-type: none"> <li>1. <b>Warranty as quit possession of goods</b> – No disturbance from any third party</li> <li>2. <b>Warranty as to freedom from charge or encumbrance</b> – shall be free from charge or encumbrance of any third party</li> <li>3. <b>Warranty to disclose dangerous nature of goods</b> – seller must warn the buyer of any dangerous nature of goods at the time of sale.</li> </ol>
<p><b>Doctrine of Caveat Emptor (Section 16) “Let the Buyer be aware”</b></p>	<ul style="list-style-type: none"> <li>• The doctrine of caveat emptor lays down that ordinarily every buyer must take care of his own interest while buying the goods. If he fails to do so, he cannot blame the seller because the seller is not bound to supply goods of a particular quality suitable for the buyer’s purpose.</li> <li>• It is the buyer’s duty to select goods suitable for his needs or purpose.</li> </ul> <p><b>Exceptions: (when seller shall be responsible)</b></p> <ol style="list-style-type: none"> <li>1. <u>when purpose of buying is made known to the seller:</u> <ol style="list-style-type: none"> <li>(i) The buyer makes known to the seller the particular purpose for which the goods are required.</li> <li>(ii) The buyer relies on the seller’s skill and judgment.</li> <li>(iii) The goods are of a description dealt in by the seller, whether he is the manufacturer or producer or not.</li> </ol> </li> <li>2. <u>When the goods are bought by description: (found unmerchantable)</u> <ol style="list-style-type: none"> <li>(i) The goods are bought by description.</li> <li>(ii) The goods are bought from a seller who deals in the goods of that description, whether he is the manufacturer or producer or not.</li> <li>(iii) The defect, if any, in the goods is latent but not patent or visible.</li> </ol> </li> <li>3. <u>When goods have latent defect:</u> where the goods sold have latent defect which cannot be revealed by simple examination, the seller is bound to compensate the buyer for the damages caused by such defect.</li> <li>4. <u>When contract is induced by Fraud:</u> Active Concealment of facts.</li> </ol>

## TRANSFER OF PROPERTY

### SPECIFIC GOODS:

<b>When there is an unconditional contract for sale of specific goods in a deliverable state</b>	When the contract is made
<b>When there is a contract for sale of specific goods not in a deliverable state at the time of contract</b>	When the goods are put into a deliverable state and the buyer has notice thereof.
<b>Where there is a contract for sale of specific goods in a deliverable state but the seller has to do some act to ascertain the price</b>	When the seller has done that act to ascertain the price and the buyer has notice thereof.

### UNASCERTAINED OR FUTURE GOODS:

Ownership of unascertained goods is transferred to the buyer when the following two conditions are fulfilled:

- a. The goods must have been *ascertained*.
- b. The goods must have been unconditionally *appropriated* by the seller or the buyer with the consent of the other.

#### Rules of Valid Appropriation of Goods:

- i) Appropriation means an act involving the selection of goods with the intention of using the goods in performance of contract.
- ii) The consent of the seller or the buyer as to appropriation may be *express or implied* and may be given *before or after* the appropriation is made.
- iii) when the seller deliver the goods to buyer or to a carrier or a bailee for the purpose of transmission to the buyer and seller does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

### “GOODS SENT ON APPROVAL BASIS” OR “SALE OR RETURN BASIS”:

<b>When the buyer signifies his approval or acceptance</b>	When the approval or acceptance is communicated to the seller
<b>When the buyer does some act adopting the goods</b>	When the act of adoption is done
<b>When the buyer fails to return the goods</b>	On the expiry of time fixed or where no time is fixed, on the expiry of reasonable time.

## **SALE BY NON OWNERS “Nemo dat quod non habet”**

<b>Sale by Mercantile Agent</b>	<ul style="list-style-type: none"> <li>i) Agent must be in possession of goods or document of title to goods with the consent of the owner.</li> <li>ii) The agent must have sold the goods in the ordinary course of business as a mercantile agent.</li> <li>iii) The buyer must have acted in good faith.</li> <li>iv) The buyer must have no knowledge that the seller has no authority to sell.</li> </ul>
<b>Sale by one of the Joint Owner</b>	<ul style="list-style-type: none"> <li>i) The joint owner must be in the sole possession of goods with the consent of the other joint owners.</li> <li>ii) The buyer must have bought the goods in good faith.</li> <li>iii) The buyer must have no knowledge that the seller has no authority to sell.</li> </ul>
<b>Sale by a person in possession under a voidable contract</b>	<ul style="list-style-type: none"> <li>i) The seller by in possession of goods under a voidable contract on the ground of coercion, undue influence, fraud, misrepresentation.</li> <li>ii) The goods must have been sold before the contract is rescinded by the aggrieved party.</li> <li>iii) The buyer must have bought the goods in good faith.</li> <li>iv) The buyer must have no knowledge about the previous sale.</li> </ul>
<b>Sale by seller in possession of goods AFTER Sale</b>	<ul style="list-style-type: none"> <li>i) The Seller must be in possession of goods or document of title to goods in capacity as seller and not in any other capacity such as bailee.</li> <li>ii) The buyer must have bought the goods in good faith.</li> <li>iii) The buyer must have no knowledge about the previous sale.</li> </ul>
<b>Sale by a buyer in possession BEFORE transfer of Ownership</b>	<ul style="list-style-type: none"> <li>i) The buyer must in possession of goods or document of title to goods, with the consent of original seller and must have bought or agreed to buy the goods.</li> <li>ii) The new buyer must have bought the goods in good faith.</li> <li>iii) The new buyer must have no knowledge about any lien or other right of original seller in respect of such goods.</li> </ul>
<b>Sale by Unpaid Seller</b>	An unpaid seller must have exercised his right of lien or stoppage in transit.
<b>Sale by Finder of goods</b>	<ul style="list-style-type: none"> <li>i) Owner cannot be found with reasonable diligence;</li> <li>ii) the owner, if found refuses to pay the lawful charges to finder;</li> <li>iii) The goods are in danger of perishing;</li> </ul>
<b>Sale by a Pawnee</b>	<ul style="list-style-type: none"> <li>i) The pawnor must have made a default in payment of debt.</li> <li>ii) The pawnee must have given a reasonable notice to the pawnor.</li> </ul>
<b>Sale by Official Receiver</b>	The right is obtained through order of court.
<b>Sale by Owner by Estoppel</b>	The owner of goods by his statement or conduct must have lead the buyer to believe that the seller has the authority to sell.

## DELIVERY OF GOODS:

<b>Definition Section 2(2)</b>	Delivery means <u>Voluntary</u> transfer of <u>possession</u> from one person to another.
<b>Types of deliver</b>	<p>i) <u>Actual Delivery</u>: Delivery is said to be actual where the goods are physically handed over to the buyer or his authorised agent.</p> <p>ii) <u>Symbolic Delivery</u>: Delivery is said to be symbolic where some symbol of the real possession or control over goods is handed over to the buyer.</p> <p>iii) <u>Constructive Delivery</u>: Delivery is said to be constructive where a person who is in possession of the goods, acknowledges to hold the goods on behalf of the buyer.</p>
<b>Rules as to Delivery</b>	<p>i) <u>Payment and Delivery are concurrent conditions</u>: The seller must be ready and willing to give the possession of goods to the buyer and the buyer must be ready and willing to pay the price.</p> <p>ii) <u>Effect of Part Delivery</u>: A delivery of part of goods <u>with an intention</u> of giving the delivery of the whole amounts to the delivery of whole. However, a delivery of a part goods with an intention of separating it from the whole lot does not amount to delivery of the whole goods.</p> <p>iii) <u>Buyer to Apply for delivery</u>: It's the duty of buyer to apply for the delivery of the goods to the seller.</p> <p>iv) <u>Place of Delivery</u>:</p> <ul style="list-style-type: none"><li>• if mentioned in contract: then Agreed Place</li><li>• if not mentioned in contract of Sale: At the place at the which goods are at the time of sale.</li><li>• If not mentioned in Agreement to sell of existing goods: At the place at which the goods are at the time of agreement to sell.</li><li>• If not mentioned in Agreement to sell of Future goods: At the place at which goods are manufactured or produced.</li></ul> <p>v) <u>Time of Delivery</u>: if mentioned, then within the time agreed. If not mentioned, then <u>within reasonable time</u>.</p> <p>vi) <u>Short Delivery</u>: Buyer has two options: Buyer may accept the goods so delivered or he may reject the goods.</p> <p>vi) <u>Excess Delivery</u>: Buyer has three option: Buyer may accept the whole goods so delivered, or buyer may reject the whole goods, or Buyer may accept the contracted goods and may reject only the excess.</p> <p>vii) <u>Mixed Delivery</u>: Buyer may reject the whole goods or may accept the goods in accordance with the contract and may reject the rest.</p>

	<p>viii) <u>Delivery by Installments</u>: Unless otherwise agreed, the buyer of goods is not bound to accept the delivery of goods by installments.</p> <p>Whether the buyer can repudiate the whole contract or not depends on terms of contract and circumstances of each case:</p> <ol style="list-style-type: none"> <li>a. The goods are to be delivered in installments;</li> <li>b. The installments are to be separately paid for;</li> <li>c. The seller makes no delivery or defective delivery in respect of one or more installments, or buyer neglects or refuses to take delivery of or pay for one or more installments.</li> </ol> <p>ix) <u>Delivery to Carrier or wharfinger</u>: the seller must fulfill two conditions:</p> <ol style="list-style-type: none"> <li>a. To make a reasonable contract with the carrier or wharfinger.</li> <li>b. To give notice to the buyer to enable to insure the goods involving sea transit.</li> </ol>
<b>Rights of buyer</b>	<ol style="list-style-type: none"> <li>i) Right to have delivery of the goods in accordance with the terms of contract.</li> <li>(ii) Right to treat the delivery of goods and payment of price as concurrent condition of sale, unless otherwise stated.</li> <li>(iii) Right to return the goods sent on approval.</li> <li>(iv) Right to exercise ownership of goods.</li> <li>(v) Right to reject the goods if the goods are in smaller or larger quantity than the ordered quantity or goods mixed with other quality of goods.</li> <li>(vi) Right to reject the goods if delivered in installments.</li> <li>(vii) Right to treat the breach of conditions as a breach of warranty.</li> <li>(viii) Right to examine the goods before accepting delivery.</li> </ol> <p>(ix) Rights in case of breach of contract by seller.</p> <ol style="list-style-type: none"> <li>a. suit for damages for non delivery.</li> <li>b. suit for specific performance</li> <li>c. suit for breach of warranty.</li> <li>d. suit for repudiation of contract before due date</li> <li>e. suit for refund of the price paid in advance</li> <li>f. suit for interest.</li> </ol>
<b>Duties of buyer</b>	<ol style="list-style-type: none"> <li>(i) Duty to accept goods and take delivery.</li> <li>(ii) Duty to make payment</li> <li>(iii) Duty to apply for delivery of goods</li> <li>(iv) Duty to intimate the seller when he reject the goods.</li> </ol>

## UNPAID SELLER

An unpaid seller is a seller whose price is unpaid either wholly or partly.  
The rights of an unpaid seller can be classified under two categories:

- a. Right against the goods and
- b. Right against the buyer personally.

### AGAINST THE GOODS

RIGHT OF LIEN	RIGHT OF STOPPAGE IN TRANSIT	RIGHT OF RESALE
<ul style="list-style-type: none"> <li>• Right to Retain the possession</li> </ul>	<ul style="list-style-type: none"> <li>• Right to regain the possession</li> </ul>	<ul style="list-style-type: none"> <li>• Goods must be of perishable nature</li> </ul>
<ul style="list-style-type: none"> <li>• Seller must be in the possession of goods</li> </ul>	<ul style="list-style-type: none"> <li>• Goods must be in transit</li> </ul>	<ul style="list-style-type: none"> <li>• Notice of intention to sell is given, but buyer does not pay the price due.</li> </ul>
<ul style="list-style-type: none"> <li>• Seller must not have expressly or impliedly waived the right of lien</li> </ul>	<ul style="list-style-type: none"> <li>• Goods must in the possession of a carrier</li> </ul>	<ul style="list-style-type: none"> <li>• Seller may have expressly reserved the right of resale</li> </ul>
<ul style="list-style-type: none"> <li>• Goods must not be sold on credit or cash.</li> </ul>	<ul style="list-style-type: none"> <li>• If buyer is deemed to be insolvent, then also right of stoppage in transit can be used.</li> </ul>	<ul style="list-style-type: none"> <li>• If notice of resale is given, then any loss arising thereon can be claimed from buyer.</li> </ul>
<ul style="list-style-type: none"> <li>• If goods are sold on credit, then the period of credit must have expired</li> </ul>	<ul style="list-style-type: none"> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• If notice of resale is not given, then any loss arising thereon cannot be claimed from original buyer.</li> </ul>

## AUCTION SALE

Auction sale is a public sale, where goods are offered to be taken by the highest bidder from among the public.

### Rules of Auction:

**1. Completion of sale:** In auction sale, the sale is complete when the auctioneer announces its completion by the fall of the hammer. Thus, the sale is complete at the fall of hammer.

**2. Passing of property:** In an unconditional sale by auction of specific goods in a deliverable state, the property in the goods passes to the buyer by the fall of the hammer.

### 3. Seller's Right to bid:

- In sale by auction, a right to bid may be reserved expressly by or on behalf of the seller.
- Where such right is expressly so reserved, the seller or any one person on his behalf may bid at the auction. No seller can bid at the auction unless he has expressly reserved his right.
- The one person who is notified to make bids on seller's behalf is a "puffer". He is also known as "White Bonnet", "by Bidder" or "Decoy Duck".
- The notified one puffer can make bid on behalf of the seller.
- But the employment of secret or unnotified puffer or more than one puffer will have no right to bid. If they bid, it will amount to fraud and the sale would be voidable at the option of the buyer.

#### **4. Reserve price or upset price:**

- The sale by auction may be notified to be subject to a reserve price or upset price.
- The auctioneer is *not authorized* to sell *below* a notified reserve price.
- In case, auctioneer by mistake knocks down a lot for less than the reserve price, the buyer has no remedy against the auctioneer.
- It is immaterial whether the bidder knows the actual reserve priced or not.

**5. Retracting the bid:** A bidder may retract his bid at any time before the completion of sale. Any condition in an auction sale which forbids the bidder to retract his bid is void. It should be noted that every bid is only an offer. It may, therefore, be retracted at any time before his acceptance by the fall of hammer.

**6. Security:** Sometimes, the conditions of sale by auction requires the deposit of security amount by the bidders. In such a case, every bidder is bound to deposit the security before he makes a bid in the auction. If the bidder retracts his bid before completion of bid, he is entitled to refund of the security. If the highest bidder withdraws his bid after the fall of the hammer, the security deposit may be forfeited.

**7. Conditional or Unconditional:** Auction sale could be conditional or unconditional. If the auction sale is conditional, the sale is not complete until the condition is satisfied. For instance, where auction sale is subject to the approval of some authority, the sale is complete only after approval by such authority.

In case of unconditional sale, the sale is complete with the fall of hammer.

