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Chapter 1- The Indian Contract Act, 1872

Unit 1a: Nature of Contract

INTRODUCTION

It received the assent on 25th April, 1872 and was introduced on 1st September, 1872.
It applies to the whole of India.

AGREEMENT [S 2(e)]: “Every promise and every set of promises forming consideration for each other, is an agreement.”

AGREEMENT = OFFER + ACCEPTANCE

CONTRACT [S 2(h)] = An agreement enforceable by law is a contract

CONTRACT = AGREEMENT + ENFORCEABLE BY LAW

Presumption?

No Presumption?



All Contracts are agreements, but all agreements are not contracts

ESSENTIAL ELEMENTS OF A VALID CONTRACT [S 10]



1. Two Parties

2. Proper offer and acceptance

3. Intention to create legal relationship

4. Free consent (Coercion, Undue Influence, Fraud, Misrepresentation, Mistake)

5. Capacity of parties (Section 11)

6. Lawful Consideration (Section 23)

7. Lawful Object (Section 23)

8. Agreement must not expressly be declared void

9. Certainty of Meaning (Section 29)

10. Possibility of Performance (Section 56)

11. Legal formalities

CLASSIFICATION OF CONTRACT

1. Void Contract [Section 2(j)]

2. Voidable Contract [Section 2(i)]

3. Illegal Contract [Section 23]

4. Valid Contract

5. Unenforceable contract

6. Express Contract

7. Implied Contract

8. Tacit Contract

9. Executed Contract or Unilateral Contract

10. Executory Contract or Bilateral Contract

Unit 1b: Offer and Acceptance

OFFER

DEFINITION

According to Section 2(a) of The Indian Contract Act, 1872, ‘When one person signifies to another his willingness to do or abstain from doing anything with a view to obtaining the assent of the other, he is said to have made a proposal’

Mere expression of willingness does not constitute offer

Examples:

RULES OF OFFER

1) Offer must be capable of creating legal relation

(Case Law: **Balfour v Balfour**)

2) Offer must be communicated

(Case Law: **Lalman Shukla v Gauri Dutt**)

3) Offer must be certain, definite and not vague

4) Offer may be conditional

5) Offer should not contain a term the non-compliance of which amounts to acceptance

6) Offeror must communicate special terms or standard form of contracts

7) Offer must be distinguished from invitation to offer

8) Offer may be 'express' or 'implied'

LAPSE OF OFFER

1. By Revocation

2. By Lapse of Offer

3. By death/insanity of offeror or offeree before acceptance

4. By failure to accept condition precedent

5. By counter offer

6. By not accepting it in the prescribed mode

7. By rejection of offer by the offeree

8. By subsequent illegality or destruction of subject matter of the offer



(SCAN FOR VIDEO ON
COMMUNICATION OF SPECIAL
TERMS)

TYPES OF OFFER

1. General Offer

(Case Law: *Carlill v Carbolic Smokeball Co.*)

2. Special/ Specific Offer

3. Cross Offer

4. Counter Offer

5. Standing, open or continuing offer

Example:

6. Express Offer

7. Implied Offer

Examples:

ACCEPTANCE

As per Section 2(b) of The Indian Contract Act, 1872, 'When a person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted.'

Example:

1. Acceptance must be absolute and unconditional [Section 7]
2. Acceptance must be given only by the person to whom the offer is made
3. Acceptance must be communicated
To whom: _____ By whom: _____
4. Silence cannot amount to acceptance
5. Acceptance must be in the mode specified
6. Time
7. Acceptance must be given before lapse of offer
8. Expressed Acceptance
9. Implied Acceptance

Examples:

COMMUNICATION OF OFFER AND ACCEPTANCE [Section 3 to 6]



1. Communication of offer is complete when it comes to the knowledge of offeree.
2. Communication of acceptance is complete

As against Offeror



The offeror / proposer becomes bound by the acceptance as soon as a properly addressed and stamped letter of acceptance is put in the course of transmission by the offeree.

As against Offeree



The acceptor is bound by the acceptance when it comes to the knowledge of the proposer (i.e. received by the proposer)

3. Revocation of offer

An offer or proposal may be revoked any time before the communication of its acceptance is complete as against the proposer.

4. Revocation of Acceptance

An acceptance may be revoked any time before the communication of acceptance is complete as against the acceptor.

CONTRACTS OVER TELEPHONE/TELEX/FAX/E-MAIL



In case of contracts over telephone, telex, fax or e-mail, contract will be complete only when the acceptance is received by the proposer and not when it is transmitted by the acceptor.

Unit 2: Consideration

DEFINITION

ESSENTIAL ELEMENTS OF VALID CONSIDERATION

- An agreement without consideration is void
- **Section 2(d)** of The Indian Contract Act, 1872, defines consideration as, 'When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise'

In simple words, consideration means loss to one party and gain to other party

- 1) Consideration **MUST** move at the desire of the promisor

- 2) Consideration **MAY** move from any other person

Case Law: Chinnaya v Rammaya

- 3) Consideration must be of some value

When considered?

- 4) Consideration must be real & not illusory
Real?

Illusory?

- 5) Time (Past, Present, Future)

Past: _____

Present: _____

Future: _____

- 6) Consideration must not be something that the promisor is already bound to do

- 7) Consideration must not be illegal, immoral or opposed to public policy

Illegal:

Immoral:

Opposed to public policy:



SUIT BY THIRD PARTY

RULE: Stranger to contract cannot sue.

But a stranger to consideration can sue

Exceptions to the rule “Stranger to contract cannot sue”

1) In case of a trust

2) In case of family settlement

3) In case of certain marriage contracts

4) Assignment of contract

5) Estoppel by acknowledgement of liability/part performance thereof

6) Covenant running with land

Meaning:

Binding on:

7) Contract with Agent

NO CONSIDERATION NO CONTRACT

EXCEPTIONS:

1) Agreements made on account of natural love and affection

Conditions

2) Agreement to compensate for past voluntary services

Conditions

3) Promise to pay time barred debt

Conditions

4) Contract of agency

5) Completed gift

Completed: _____

Promise: _____

6) Bailment

7) Contribution to charity

Completed: _____

Promise: _____



Scan the QR Code to watch the video on stranger to contract

Unit 3: Other Essential elements of a valid contract

CAPACITY OF PARTIES

Capacity to contract means persons entering into a contract must be competent / capable to enter into a valid contract.

FOLLOWING PERSONS ARE NOT COMPETENT TO CONTRACT

A) MINOR

Minor is a person who is below the age of eighteen years.

An agreement with a minor is **void-ab-initio**

Minor is incapable of giving a promise imposing a legal obligation

(Case law: In MohiriBibee vs. Dharmodos Ghose)

Parents/Guardians can enter into a contract on behalf of minor for his benefits.

Minor **cannot** hold parents or guardians liable by his acts.

Parents/Guardian cannot bind a minor in a contract to purchase immovable properties

Even if minor falsely represents his age, contract is still void-ab-initio as he can always plead minority.

Minor cannot ratify the agreement after attaining majority

If any necessities of life (food, clothing, shelter, education, health, legal advice) are supplied to a minor, he is not personally liable but only his property is liable. [Section 68]

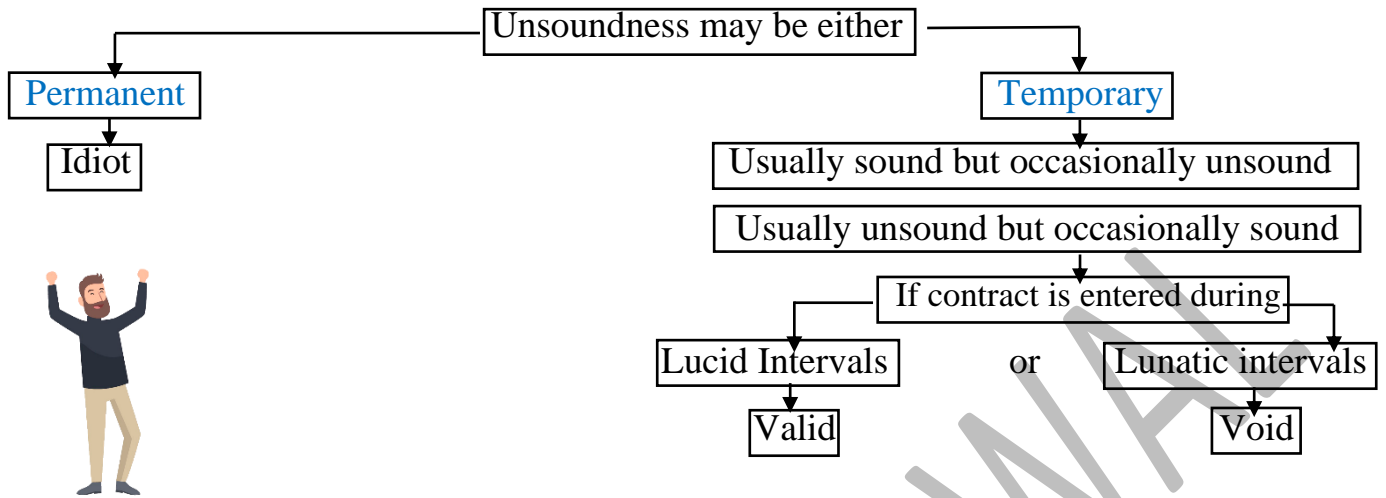
A minor can be appointed as an agent, but principal shall be liable for his acts as an agent

Minor cannot become member of a company by allotment of shares. But he may by transfer or transmission become holder of fully paid shares

Minor can be held liable for tort if the wrongful action is of a kind not contemplated by the contract.



B) CONTRACT BY PERSON OF UNSOUND MIND



C. PERSONS DISQUALIFIED BY LAW

Alien Enemy- Contracts during war:

Contracts before war:

Foreign Sovereigns, Ambassadors, Diplomatic Staff, Accredited representatives of foreign states

Convicts

In prison-

On completion of sentence / Parole-

Insolvents _____

Company or Statutory Corporations under Special Acts of Parliament

Free consent



Section 13 of the Contract Act defines 'consent' as "Two or more persons are said to have consented when they agree upon the same thing in the same sense" *i.e.* **consensus-ad-idem**

CONSENT IS NOT FREE WHEN IT IS CAUSED BY

COERCION [S 15]

- ✓ Coercion means
 - committing or
 - threatening to commit any act **forbidden by the Indian Penal Code**
- or - unlawful detaining or
 - threatening to detain any **property**, to the prejudice of any person, with the intention of causing any person to enter into an agreement
- ✓ Coercion involves **physical force**
- ✓ These acts are **forbidden by the Indian Penal Code**
- ✓ The act constituting coercion may proceed from any person, and may be directed against any person, even a stranger.
- ✓ This means that **no relationship is required** to exercising coercion
- ✓ **Threat to commit suicide amounts to coercion.**
- ✓ A contract brought about by coercion is **voidable** at the option of the party whose consent was so obtained.

UNDUE INFLUENCE [S 16]

- Contract is said to be induced by undue influence
- a) Where the **relations** subsisting between the parties are such that one of the parties is in a position to **dominate the will** of the other, and
 - b) he uses that position to obtain **unfair advantage** over the other.
- ✓ **Moral or Mental Pressure** is involved
 - ✓ These acts are **not forbidden by the Indian Penal Code**
 - ✓ **Fiduciary relationship** is required
 - ✓ The following relationships are said to raise the **presumption** of undue influence
 - a) Solicitor- Client
 - b) Doctor- Patient
 - c) Spiritual Advisor- Devotee
 - d) Parent- Child
 - e) Guardian- Ward
 - f) Trustee- Beneficiary
 - ✓ When consent to an agreement is caused by undue influence, the agreement is a contract **voidable** at the option of the party whose consent was caused.

FRAUD [S 17]

- Fraud means **false representation** of facts made willfully with an **intention to cheat or deceive** the other party.
- Fraud means & includes the following acts committed
- a) by party to the contract or
 - b) with his connivance (support) or
 - c) by his agent with the intent to deceive the other party or his agent or to induce him to enter into a contract
- ✓ There is **intentional false representation of facts**, hence it is forbidden by the Indian Penal Code

Following acts amount to fraud

- i) The suggestion, as to a fact, of that which is not true, by one who does not believe it to be true **Knowingly?**
- ii) Active concealment of fact by one having knowledge or belief of the fact **Mere concealment?**
- iii) A promise made without any intention of performing it
- iv) Any other act fitted to deceive
- v) Any such act/omission as the law specially declares to be fraudulent

MISREPRESENTATION [S 18]

- ✓ Misrepresentation is **false representation** of facts made **innocently**
- ✓ It is an **unintentional** misrepresentation of facts
- ✓ Since there is no intention to cheat, it is **not forbidden by Indian Penal Code**
- ✓ The person making the statement, **believes it to be true.**

Effects of misrepresentation

- 1) Right to **rescind** the contract
- 2) Right to **insist upon Performance**

Damages?

MISTAKE [S 20,21,22]

Mistake means an erroneous belief concerning something.

Mistake may be of two kinds:

(A) Mistake of Fact

i) Bilateral Mistake [S20]- means when both parties to the agreement are mistaken as to the matter essential to the agreement. **Such agreements are void-ab-initio.**

ii) Unilateral Mistake [S 22]- Unilateral mistake means a mistake in which only one of the parties to an agreement is at mistake about the fact essential to the agreement. **Generally, a unilateral mistake does not render the agreement void.**

(B) Mistake of Law

i) Mistake of Indian Law [S 21]- Contract is **not voidable**, as one is expected to know law of own country. In other words, the contract remains valid.

ii) Mistake of Foreign Law- Contract is void if **both** parties are under **mistake** as to foreign law

UNLAWFUL OBJECT AND UNLAWFUL CONSIDERATION

Circumstances under which the object or consideration is deemed to be unlawful:

1. Agreement forbidden by law
2. Agreement defeating the provisions of law
3. Agreement which has fraudulent object
4. Agreement causing injury to a person or loss of property.
5. Where consideration is immoral.

6. Where consideration is opposed to public policy.
 - a) Trading with an enemy
 - b) Stifling Prosecution
 - c) Marriage brokerage contracts
 - d) Agreement interfering with course of law and justice
 - e) Interest against obligation
 - f) Trafficking in public offices
 - g) Agreement for the creation of monopolies
 - h) Champerty and Maintenance

AGREEMENTS EXPRESSLY DECLARED AS VOID

Consideration is unlawful in parts [Section 24]

(1) If illegal part cannot be separated from legal part

(2) If illegal part can be separated from legal part

Agreement in restraint of marriage [Section 26]

Every agreement in restraint of marriage is void

Exceptions:

Restricting marriage of a minor is valid

Agreement in restraint of trade [Section 27]

Exceptions:

(1) When goodwill of the business is sold, the seller may be restrained from carrying on a similar business within specified local limits.

(2) An agreement through which an outgoing partner will not carry on the business of the firm for a reasonable time will be valid, though it is in restraint of trade

(3) An agreement of service through which an employee commits not to compete with his employer is not in restraint of trade

AGREEMENT THE MEANING OF WHICH IS UNCERTAIN IS VOID [Section 29]

Examples:

**AGREEMENTS IN RESTRAINT
OF LEGAL PROCEEDINGS
[SECTION 28]**

An agreement by which any party is restricted absolutely from enforcing his legal rights under or in respect of any contract is void

Exceptions:

a) A contract by which the parties agree that any dispute between them shall be referred to arbitration and will not be taken to the court is a valid contract.

Arbitration?

Example?

(b) Contracts specifying the courts

**WAGERING AGREEMENT
[SECTION 30]**

1. Meaning: Payment of money or money's worth upon ascertainment of future uncertain event is known as wagering.

2. Wagering agreements are void but collateral to wagering are valid.

3. Wagering agreements are _____ in Maharashtra and Gujarat

Hence, collateral are _____

4. Agreements involving skill are _____

Agreements involving chance are _____

5. In Horse races, if amount is less than ₹500 _____

If the amount is more than or equal to ₹500 _____

6. Is Lottery wager? _____ Agreement is _____

7. Speculative transactions are _____ as they involve

Unit 4: Performance of a Contract

[Section 51 – 54]

RECIPROCAL PROMISE

WHO CAN PERFORM?

JOINT PROMISE

1. Promisor himself
2. Agent
3. Legal Representative
However, if the contract involves personal skills and if the promisor dies, the contract becomes void.
4. Third person, if promisee permits
5. Joint promisor

1. Joint and several liability of joint promisor [S 43]
2. Right to claim contribution [S 43]
3. Sharing of loss by default in contribution [S 43]
4. Effect of release of one joint promisor [S 44]

Meaning: Promises which form the consideration for each other are called reciprocal promises

- 1) Mutual and concurrent
- 2) Mutual and dependent
- 3) Mutual and Independent

IMP: Where one party to a reciprocal promise prevents the other party from performing his promise, the contract becomes voidable at the option of the party who is so prevented. And the aggrieved party can also recover compensation.

TIME IS ESSENCE [Section 55]

Where time is essence of contract Failure to perform on time	Where time is not an essence of contract Failure to perform on time
Promisee (Aggrieved party can)	Promisee (Aggrieved party can)
_____	_____
_____	_____

Legal and Illegal Reciprocal Promises

Legal Part	Illegal Part
Valid	Void
But if the things are inseparable then the entire agreement is void	

APPROPRIATION OF PAYMENT [Section 59 to 61]

Meaning: In case there are several debts owing by one person to another, and certain payment is made which is insufficient to discharge all the debts, then the order in which debts are to be satisfied is called 'appropriation of payment'.

Debtor expressly intimates	Circumstances imply	Debtor does not intimate	Neither party appropriates
			Same day Debt?
		(Even time barred debt can be adjusted)	

Discharge of Contract

M	O	B	I	L	E
Novation	Death of Promisor	Actual Breach?	Initial	Law of Limitation?	Performance Actual:
Rescission	Insolvency	Anticipatory Breach?	Supervening		Attempted:
Alteration	Unauthorized Material Alteration				
Remission	Same identity of promisor and promisee				
Waiver					



Unit 5: Breach of Contract

DAMAGES FOR BREACH OF CONTRACT

1) Ordinary/ Usual damages:

Breach by Seller: _____

Breach by Buyer: _____

2) Liquidated damages:

_____ damages which shall arise in ordinary breach circumstances.

3) Special damages:

Claimed for _____

Only when _____

4) Exemplary/ Vindictive/ Punitive damages:

Here intention of the party is not to recover loss but to punish the other party. It can be claimed in following cases:

a) _____

b) _____

5) Nominal damages:

Here intention of the parties to establish a right to sue. Such damages are awarded by court. Such damages are for nominal amounts like ten rupees or even ten paise.

6) Damages for deterioration caused by delay in transit:

Such damages are recovered for damages or 'deterioration' caused to goods on account of delay by carriers

7) Remote or indirect damages:

Are they recoverable?

Example:

OTHER REMEDIES FOR BREACH OF CONTRACT

Apart from claiming damages, following remedies are available in case of breach of contract:-

1. Rescission of contract

2. Suit for Specific Performance:

Where

(i) The damages are not an adequate remedy or

(ii) The damages cannot be estimated or

(iii) The subject matter of contract is unique in nature,

Then the aggrieved party can file a suit for specific performance in the court.

However, it is at the discretion of the court.



3. Suit for Quantum Meruit

(Scan for detailed video on quantum meruit)

4. Suit for Injunction

Injunction is an order of the courts restraining a person from doing something which he promised not to do.



Unit 6: Contingent and Quasi Contract

MEANING [S 31]

“Contingent contract is a contract to do/not to do something, if some event collateral to such contract does or does not happen”

Example:

ESSENTIAL ELEMENTS

1. The performance of the contract must be conditional
↓

2. The event must be uncertain
↓

3. The uncertain event must be collateral to the contract

4. Contingent contract must not be the mere will of the promisor

RULES REGARDING ENFORCEMENT

1. Contingent Contracts Dependent on the ‘Happening’ of Future Uncertain Event [S 32]
If event happens- Contract is _____
If the event does not happen/ becomes impossible
Contract is _____
2. Contingent Contracts Dependent on the ‘Non-Happening’ of Future Uncertain Event [S 33]
If event happens- Contract is _____
If the event does not happen/ becomes impossible
Contract is _____
3. Contingent Contracts Dependent on future conduct of a living person [S 34]
If person acts accordingly- Contract is _____
If person acts otherwise, Contract is _____
4. Contingent Contracts Dependent on the Happening or Non-Happening of Specified Uncertain Event Within Fixed Time [S 35]

5. Contingent Contracts Dependent on impossible event

Quasi Contract

MEANING

- It is an implied contract.
- It is based on the principle of “Prevention of unjust enrichment at the expense of other”

TYPES OF QUASI CONTRACT

1. Supply of Necessaries to incompetent persons [S 68]
2. Right to recover money paid for another person [S 69]
Conditions:
3. Claim for benefit received under a non-gratuitous act [S 70]

4. Responsibility of Finder of Goods [S 71]
Rights:
a)
b)
c)
5. Payment of Money or Delivery of Goods by Mistake or under Coercion [S 72]

Chapter 2- The Indian Partnership Act, 1932



Unit 1: General Nature of Partnership

INTRODUCTION:

- Introduced on _____
- Applicable to _____
- Earlier a part of _____

DEFINITION OF PARTNERSHIP [S 4]

Partnership is the relation between persons who have agreed to share the profits of the business carried on by all or any one of them acting for all'.

Min: _____

Max: _____

Profit or Non-profit business?

DURATION OF PARTNERSHIP

PARTNERSHIP AT WILL [S 7]

Duration: _____

Dissolution: _____

Notice to: _____

PARTICULAR PARTNERSHIP [S 8]

Formed for: _____ or _____

Duration: _____ or _____

What if Continued afterwards? _____

Dissolution: _____

TYPES OF PARTNERS

ACTIVE PARTNER

Meaning: _____

Liability?

SLEEPING PARTNER

Meaning: _____

Liability?

NOMINAL PARTNER

Meaning: _____

Liability?

PARTNER IN PROFIT ONLY

Meaning: _____

Liability?

SUB PARTNER

Meaning: _____

Liability? _____

PARTNER BY ESTOPPEL / HOLDING OUT

Meaning: _____ or _____

Liability? _____

MINOR AS A PARTNER

CONDITIONS FOR ADMISSION

a) _____

b) _____

c) _____

RIGHTS AND LIABILITIES BEFORE MAJORITY

SP (B) FS

1) SP- _____

2) B- _____

3) FS- _____

Only when _____

RIGHTS AND LIABILITIES AFTER MAJORITY

WHEN MINOR ELECTS TO BECOME A PARTNER	WHEN MINOR ELECTS NOT TO BECOME A PARTNER
1) Rights and Liabilities	
2) His Liability??	
3) Share in Profit and Property	



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Unit 2: Relation of Partners

RIGHTS OF PARTNERS

- 1) Right to take active part in conduct of the business
- 2) Right to be consulted
Fundamental Matters _____
Ordinary Matters _____
- 3) Right to remuneration

- 4) Right of access to books
- 5) Right to share profit
_____ ; _____
- 6) Interest on capital

- 7) Interest on advances _____
- 8) Right to be indemnified

- 9) Right to stop admission of a new partner

- 10) Right to retire, dissolve the firm
Partnership at will _____
Particular Partnership _____
- 11) Right not to be expelled [Section 33]

- 12) Right of outgoing partner
[Section 36] _____

- [Section 37] _____
If settlement is not done then?

DUTIES OF PARTNERS

- 1) Duty of good faith
- 2) Duty to carry on the firm business to the greatest common advantage
- 3) Duty to render true, accounts
- 4) Duty to give full information
- 5) Duty to indemnify for loss caused by fraud
- 6) Duty to attend diligently
- 7) Duty to share losses
- 8) Duty to account for personal profits
 - (a) Personal profits from any transaction of the firm.
 - (b) Personal profits from the use of the property of the firm.
 - (c) Personal profits from the business connection of the firm.
 - (d) Personal profits from the use of the name of the firm.However, the above duty is subject to a contract between the partners
- 9) Duty to account for profits of a competing business
- 10) Duty to use firm's property exclusively for firm.

PARTNERSHIP
PROPERTY

(Scan the QR Code to watch a video on partnership property)

RELATION OF PARTNERS WITH THIRD PARTIES [S 18]

The relation is governed by _____

But this is only for transactions with _____
and not for transactions _____

NOTICE TO ACTING PARTNER [S 24]

Notice to acting partner = _____

Except, in case of _____

IMPLIED AUTHORITY

(Authority means the right of a partner to bind the firm by his own acts.)

EXPRESS AUTHORITY**IMPLIED AUTHORITY [Section 19]**

The authority which is expressly given to a partner by the agreement of partnership is called "Express authority".

Meaning: Authority arising by implication of law

Acts within the implied authority

- 1) To purchase goods of the kind used in business of the firm;
- 2) To sell the goods of the firm;
- 3) To settle accounts with the persons dealing with the firm;
- 4) To receive payments of debts due to the firm and issue receipts for the same;
- 5) To engage servants for the business of the firm;
- 6) To engage a lawyer to defend an action against the firm;
- 7) To borrow money for the business;
- 8) To pledge movable property of the firm;
- 9) To draw, accept, endorse BOE and other negotiable instruments.

Restriction on implied authority of partners

Restriction may be a) statutory b) imposed by mutual agreement

Statutory restrictions

Implied authority of a partner does not empower him to the following acts, namely-

- 1) To submit a dispute to arbitration relating to the business of the firm
- 2) To open a bank account on behalf of the firm in partner's own name
- 3) To compromise or relinquish a claim or portion of the claim by the firm
- 4) To withdraw a suit/proceedings filed on behalf of the firm
- 5) To admit any liability in a suit/proceedings filed against the firm
- 6) To acquire immovable property on behalf of the firm
- 7) To transfer immovable property belonging to the firm
- 8) To enter into a partnership on behalf of the firm

Is the Firm Liable? _____

What if Third party was not aware of the restriction?

Restrictions imposed by mutual agreement?

What if third party is not aware of the restriction?

Firm is _____

What if third party is aware of the restriction?

Firm is _____

LIABILITY OF A FIRM AND ITS PARTNERS TO A THIRD PARTY

CONTRACTUAL LIABILITY

LIABILITY FOR WRONGFUL ACTS OF A PARTNER

1) For the acts of the firm
(i.e acts of partners)

Firm is always liable for all the acts of partners which are within their authority

Wrongful Act of partner within his authority

Wrongful Act of partner is beyond his authority and other partner have ratified it

Wrongful Act of partner is beyond his authority

Who is liable?

Who is liable?

LIABILITY FOR MISAPPLICATION OF MONEY OR PROPERTY BY A PARTNER

Where money or property is received by a partner and then misapplied by the same partner.
Example:

Where money or property is received by the firm and then misapplied by any of the partners.
Example:

Who is liable?

let's study few other provisions

ADMISSION OF PARTNER

- With consent of? _____
- Liability?
 - a) Acts before admission _____

 - b) Acts after admission _____

INSOLVENCY OF PARTNER

Effects?

C - _____

D - _____

Liability?

Partner's _____

Firm's _____

Public Notice Required? _____

EXPULSION OF PARTNER

Conditions?

Good Faith?

Example?

Is Public Notice Required?

DEATH OF A PARTNER

Dissolution? Yes / No

If agreed not to dissolve, then will the firm be dissolved upon death?
Yes / No

Will the estate of deceased partner be liable for firm's acts after death?
Yes / No

EFFECT OF CHANGE IN CONSTITUTION OF FIRM ON CONTINUING GUARANTEE [SECTION 38]



(Scan this QR Code for Video on continuing guarantee)

Effect of change in change in the constitution of the firm on continuing guarantee

Example:

Unit 3: Registration of Firm

Registration means getting the partnership firm registered with the Registrar of Firm of the area in which the place of business of the firm is situated or proposed to be situated.

Is registration compulsory? _____ Is there any penalty for non-registration? _____

When can firm be registered? _____ Then? _____

CONSEQUENCES OF NON-REGISTRATION [S 69] NON-REGISTRATION DOES NOT AFFECT

- 1) No suit by partner against the firm or other partners
- 2) No suit by firm against third parties
- 3) No right to claim set off in excess of ₹100

Example:

- 1) The right of third parties to sue the firm or any partner
- 2) The right of partners to sue for the dissolution of the firm for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm.
- 3) The power of an Official Assignees, Receiver of Court to release the property of the insolvent partner and to bring an action.
- 4) The right to sue or claim a set-off if the value of suit does not exceed ₹100 in value.

Dissolution of Firm

DISSOLUTION OF PARTNERSHIP

- Change in the existing relations of the partners
- Old partnership _____
New partnership _____
- Does business continue? Yes / No

DISSOLUTION OF FIRM

- Means dissolution of partnership between all the partners of the firm
- Old partnership _____
New partnership _____
- Does business continue? Yes / No

MODES OF DISSOLUTION OF THE FIRM

Without order of court	By order of court
- By mutual agreement	- Insanity of a partner
- Compulsory dissolution	- Permanent incapacity
- On happening of certain contingencies	- Misconduct
- By notice	- Persistent breach of contract
	- Perpetual losses
	- Transfer of whole interest in partnership
	- Any other just and equitable ground

RETURN OF PREMIUM ON PRE-MATURE DISSOLUTION [S 51]**LIABILITIES FOR THE ACTS DONE AFTER DISSOLUTION:**

On the dissolution of a firm, partners have to give a public notice of the dissolution. If it is not given, the partners shall remain liable to the third party for their acts done even after the dissolution of the firm

SETTLEMENT OF ACCOUNTS [SECTION 48, 49 and 55]

a) Treatment of losses

First out of _____, Then out of _____ and lastly out of _____

b) Application of assets

Firstly pay _____, then _____, then _____ and lastly _____

MODE OF GIVING PUBLIC NOTICE [S 72]**REGISTERED FIRM**

- 1) _____
- 2) _____
- 3) _____

UNREGISTERED FIRM

- 1) _____
- 2) _____

PUBLIC NOTICE**REQUIRED**

- 1) _____
- 2) _____
- 3) _____

NOT REQUIRED

- 1) _____
- 2) _____

Chapter 3- Sale of Goods Act, 1930

Unit 1: Formation of Contract of Sale

- The Sale of Goods Act came into force on 1st July, 1930
- This act extends to whole of India
- This law was previously part of Indian Contract Act, 1872
- Where the Sale of Goods Act is silent on any point, the Indian Contract Act is applicable

DEFINITION [Section 4(1)]

Contract of sale of goods is a contract whereby seller transfers or agrees to transfer the property in goods to the buyer for a price

ESSENTIAL ELEMENTS OF CONTRACT OF SALE

1) Essentials of a Valid Contract

2) Seller and Buyer

3) Transfer of Property

Meaning of Property: _____

Sale: _____

Agreement to sell: _____

4) Goods

Movable Property / Immovable Property?

Includes

Does not Include

5) Price

Meaning: _____

Goods for Goods: _____

No consideration: _____

Partly goods, partly money: _____

6) No formalities to be observed

Writing / Oral / Partly oral, Partly Written?

Payment

Delivery

SALE

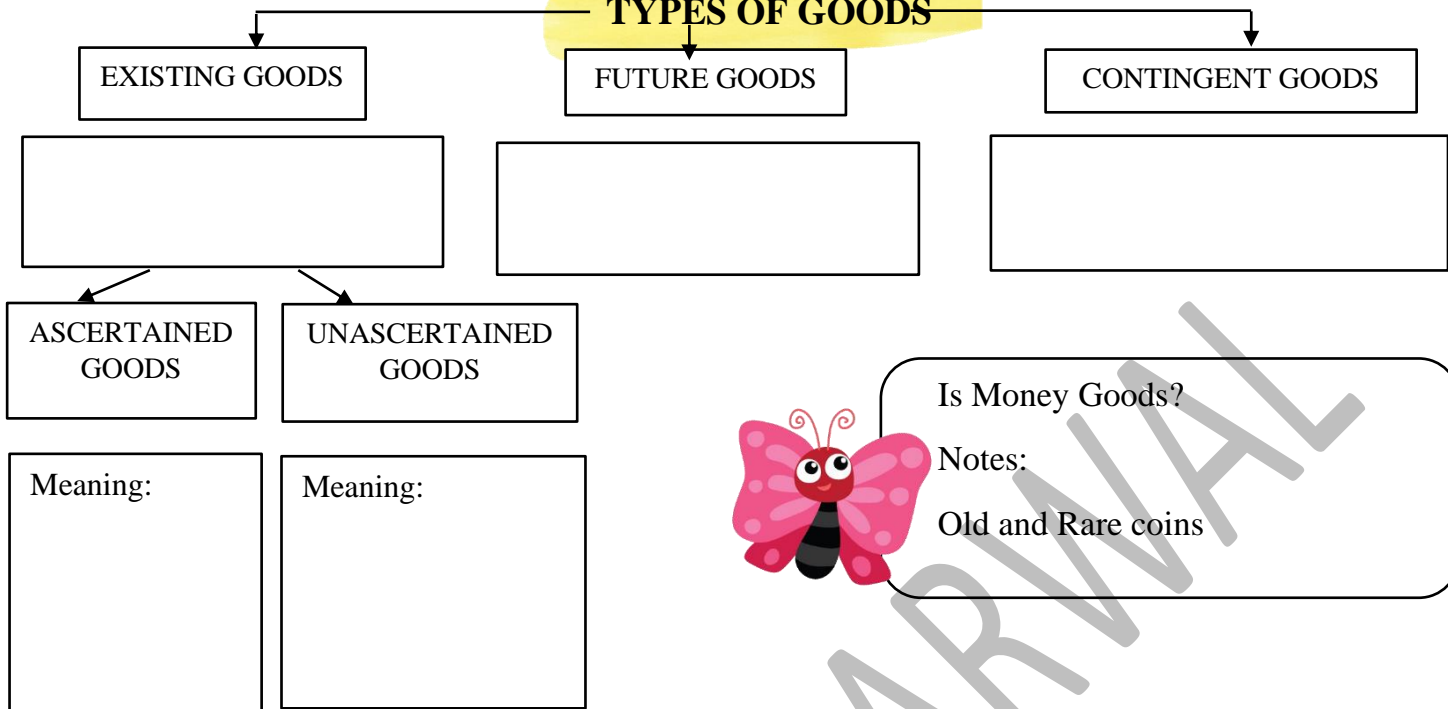
Ownership is transferred

AGREEMENT TO SALE

Ownership is transferred _____ or

Example:

TYPES OF GOODS



Is Money Goods?
Notes:
Old and Rare coins

EFFECT OF DESTRUCTION OR PERISHING OF GOODS

IN CASE OF CONTRACT OF SALE [SECTION 7]
 Goods perished _____ contract of sale
 Contract is _____
 Conditions:
 a) _____
 b) _____
 c) _____

IN CASE OF AGREEMENT TO SELL [SECTION 8]
 Goods perish _____ but before _____
 a) Perishing of Specific Goods- Agreement is _____
 b) Perishing of Future Goods- Agreement is _____
 c) Perishing of Unascertained Goods _____

PRICE OF GOODS [S 9 and 10]
 1) It may be fixed by the parties to the contract.
 2) The price may be fixed in a manner provided in the contract of sale.
 3) It may be determined by the course of dealing between the parties
 4) Fixation of price by a third party

Unit 2: Conditions and Warranties

CONDITIONS [S 12(2)]

Meaning: _____

Breach: _____

WARRANTY [S 12(3)]

Meaning: _____

Breach: _____

IMPLIED CONDITIONS

1) Condition as to Title

Assumption: _____

2) Condition in sale by description

Assumption: _____

3) Condition in sale by sample

Assumption: _____

4) Sale by Sample as well as by description

Assumption: _____

5) Condition as to quality or fitness

Assumption: _____

Exceptions:

a) _____

b) _____

c) _____

6) Condition as to merchantability

Meaning: _____

Assumption: _____

7) Condition as to wholesomeness

Meaning: _____

8) Condition implied by Custom

IMPLIED WARRANTIES

1) Warranty as to quiet possession

Assumption: _____

2) Warranty as to free from encumbrance

Meaning: _____

3) Disclosure of dangerous nature of goods

Meaning: _____

4) Warranty as to quality or fitness by usage of trade

CAVEAT EMPTOR

Meaning: _____

Exceptions:

1) Buyer makes purpose known to seller and relies upon skill and judgement of seller

2) Contract of sale by description

3) Contract of sale by sample

4) Goods bought both by sample as well as by description

5) Sale by merchantable quality

6) Active concealment of defect by seller

7) Condition or warranty implied by usage of trade

8) Goods purchased under brand name

Unit 3: Transfer of Ownership and Delivery of Goods

Transfer of Ownership

Meaning:

Importance of ownership:

RULES:

Transfer of ownership of specific or ascertained goods [Section 20]

Ownership is transferred at the time of making contract

Conditions:

Ownership is transferred at some other time

a) Where goods are to be put in deliverable state by the seller

b) Where goods are in deliverable state but are to be weighed or measured by the seller

Transfer of ownership of unascertained and future goods [S 18 and 23]

Meaning:

When is ownership transferred:

Ascertainment of goods:

Appropriation of goods:

RESERVATION OF RIGHT OF DISPOSAL [S 25]

The seller may like to retain the ownership of the goods until some later date, e.g., until the price is paid or some conditions are fulfilled. The seller may do so by reserving his right of disposal.

Assumption as to right of disposal

In the following two circumstances the seller is presumed to have reserved the right of disposal :

- 1) By taking the documents showing title in his own name or his agent's name
- 2) By sending the bill of exchange for the price, to the buyer, along with the documents of title

RISK PASSES WITH THE OWNERSHIP [S 26]

The risk and the ownership of the goods go together. In other words, the goods are at the risk of the party who has the ownership of the goods.

Exceptions:

- a) Agreement between the parties: The risk and the ownership may be separated by an agreement between the seller and the buyer.
- b) Goods are at the risk of the party in default of delay
- c) Trade customs : The risk and the ownership may also be separated by the trade customs

TRANSFER OF TITLE [SECTION 27-30]

“Nemodat quod non-habet”:

EXCEPTIONS

- 1) Sale by Mercantile Agent
- 2) Sale by owner by estoppel
- 3) Sale by one of the joint owners
- 4) Sale by person in possession under voidable contract
- 5) Sale by seller in possession after sale
- 6) Sale by buyer obtaining possession before property in goods has vested in him
- 7) Sale by unpaid seller
- 8) Sale by an official receiver or liquidator of the company will give the purchaser a valid title.
- 9) Purchase of goods from finder of goods will get a valid title under certain circumstances.
- 10) Sale by pawnee or pledgee under certain circumstances

DELIVERY OF GOODS

Meaning: Delivery means _____ transfer of _____ by one person to another.

Delivery may be of three kinds:

- a) Actual Delivery - _____
- b) Constructive Delivery - _____
- c) Symbolic Delivery- _____

RULES OF DELIVERY

1) Effect of part delivery

Intention Delivery of whole _____
 Delivery of part _____

2) Buyer to apply for delivery

3) Place of Delivery

- a) Place is specified- _____
- b) Place is not specified- _____

4) Time of delivery

- a) Time is specified- _____
- b) Time is not specified- _____

5) Goods in possession of third party

- a) Third party acknowledges- _____
- b) Document of title- _____

6) Expenses of delivery

Expenses of putting goods in deliverable place shall be borne by _____

7) Delivery of wrong quantity

- Short delivery - _____
- Excess delivery- _____
- Mixed delivery- _____

NOTE: If buyer rejects the whole quantity of goods delivered, the contract is

8) Instalment delivery - _____

9) Delivery to carrier- _____

10) Deterioration in transit- _____

Unit 4 - Unpaid Seller

Meaning: _____

RIGHTS OF UNPAID SELLER

RIGHT AGAINST THE GOODS

1) Right of lien [Section 47 – 49]

Meaning: _____

[Section 56]

Conditions:
contract

Lien is lost when:

2) Right of stoppage in transit [Section 50 to 52]

Conditions:

Transit comes to an end:

3) Right of resale

Conditions:

RIGHT AGAINST THE BUYER PERSONALLY

1) Suit for price [Section 55]

2) Suit for damages for non-acceptance

3) Suit for damages for repudiation of [Section 60]

4) Suit for Interest [Section 61]

AUCTION SALE

Meaning: _____

Person who sells goods on behalf of owner is known as _____

Relationship between owner and _____ is that of _____ and _____

Advertisement for auction is _____ Offer? _____

Acceptance? _____

RULES REGARDING SALE BY AUCTION1) Sale by Lots
_____2) Completion of sale
_____3) Reservation of Right to bid

4) Reserve Price

aka _____

5) Knock-Out Agreement
_____**INCLUSION OF INCREASED OR DECREASED TAXES IN CONTRACT OF SALE**

Before performance of contract, in absence of an agreement to the contrary

Taxes Increase, Then Price will _____

Taxes Decrease, Then Price will _____

Chapter 4- The Companies Act, 2013

Unit 1: Introduction

- The Companies Act, 2013 came into force from 30th August, 2013
- The Companies Act, 2013 extends to the whole of India.
- As per **Section 2(20)** of the Companies Act, 2013 “Company” means a company incorporated under this Act or under any previous company law.

CHARACTERISTICS OF A COMPANY

1) Artificial person created by law

2) Separate Legal Entity

Meaning: _____

Case Law: _____

Doctrine: _____



(Scan for Video Lectures on Companies Act)

3) Perpetual succession

Death: _____

Insolvency: _____

Insanity: _____

4) Common Seal

Meaning: _____

Is it mandatory? _____

If common seal is not affixed then? _____

5) Limited Liability

6) Free Transferability of shares

Private Company? _____

Public Company? _____

7) Management

Ownership _____

Management _____

Lifting of corporate veil

Introduction Key Words:

Circumstances where corporate veil is lifted

1) Failure to return application money [Section 39]

Minimum amount of subscription is _____ and _____
is not received within ___ days, then the amount shall be returned within ___ days from
closure of the issue, else it shall be returned along with interest @ _____

2) Misdescription of Name [Section 12]

Name is not mentioned

Name is not properly mentioned

3) For determining character of the company

Case Law: Daimler Co Ltd. v Continental Tyres and Rubber Co.

4) Arrears of tax

Who is liable to pay tax? _____

Case Law: Sir Dinshaw Manekjee Petit

5) When a company is formed to avoid welfare laws

Case Law: Workmen Employed in Associated Rubber Industries Ltd., Bhavnagar vs. The
Associated Rubber Industries Ltd., Bhavnagar

6) Ultra Vires Act

Who is liable? _____

7) Where company is a sham or Hoax

Case Law: Gilford Motors CO Ltd., v Horne

8) Where company is formed to act as an agent of its members

Principal?

Agent?

Unit 2: Types of Companies

I) Classification on the basis of members

1) One Person Company

- It has only one person as a member who will act in the capacity of a director as well as a shareholder.

Qualification of Member and Nominee

- _____, _____, _____
- No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
 - Nominee's name should be mentioned in the MOA.
 - OPC should get itself converted into a Private Company or Public Company within 6 months if:
 - (i) Paid up capital exceeds _____; *or*
 - (ii) Where the average annual turnover during the relevant period exceeds _____

Voluntary Conversion: _____

2) Private Company [Section 2(68)]

Restrictions:

- a) _____
- b) _____
- c) _____

No restrictions then? _____

Minimum Members: _____ Maximum Member: _____

Minimum Directors: _____

3) Public Company [Section 2(71)]

- A public company means a company which is not a private company
- What about private subsidiary of a public company? _____
- Minimum Members: _____, Minimum directors: _____, Maximum Members: _____

II) Classification on the basis of Liability

1) Company Limited by Shares [Section 2(22)]

A company limited by shares is a company in which the liability of its members is limited by its *Memorandum* to the amount (if any) unpaid on shares.

2) Company Limited by Guarantee [Section 2(21)]

3) Unlimited Company [Section 2(29)]

It is a company in which the liability of the members is not limited by its memorandum.

III) Classification on the basis of control

1) Government Company [Section 2(45)]

A government company means any company in which **at least 51%** of the paid-up share capital is held by

Central Government, or by

any State Government or Governments, or

partly by the Central Government and partly by one or more State Governments,

and includes a company which is a subsidiary company of such a Government company.

2) Foreign Company [Section 2(42)]

Foreign company means any company or body corporate incorporated outside India which—

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

3) Holding [Section 2(46)] and Subsidiary Company [Section 2(87)]

In relation to any other company (i.e. holding company) a subsidiary company means a company in which the holding company-

(i) controls the composition of board of directors or

(ii) exercises or controls more than half of the total *voting power* either on its own or together with one or more of its subsidiary companies.

IMP: A company shall be deemed to be a subsidiary company of the holding company even if the control is of another subsidiary company of the holding company.

Associate Company [Section 2(6)]

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

“Significant influence” means control of at least 20% of the voting power or control or participation in business decisions under an agreement.

IV) Other Types of Companies

1) Licensed company or Association not for profit [Section 8]

Purpose

2) Small company [Section 2(85)]

Small company means a company, other than a public company,

- a) whose paid-up capital does not exceed _____; and
b) whose turnover as per profit and loss account for the immediately preceding financial year does not exceed _____

Exception: This section shall not apply to

- i) _____
ii) _____
iii) _____

Unit 3: Formation of a Company

PROMOTERS

As per *Section 2(69)*, of the Companies Act, 2013, Promoter means a person who

- (a) has been named as such in a prospectus or is identified by the company in the annual return
(b) has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.

FORMATION OF A COMPANY [Section 3]

Number of persons required to form:

Private company: _____ Public Company: _____ OPC _____

Section 3A:

MODE OF REGISTRATION / INCORPORATION OF COMPANY

- 1) Reservation of Name
- 2) MOA and AOA
- 3) Other Documents to be filed
 - declaration by persons engaged in the formation and by persons named in the AOA
 - Address for correspondence
 - A declaration from each of the subscribers to the memorandum and the first directors
 - Details of Subscribers and Directors
- 4) Certificate of Incorporation
- 5) Allotment of Corporate Identification Number (CIN)

Furnishing of false or incorrect information or suppression of material fact at the time of incorporation (i.e. at the time of Incorporation)

- If any person
 - furnishes any false or incorrect particulars of any information or
 - suppresses any material information, of which he is aware in any of the registration documents filed with the Registrar,
- he shall be liable for action for fraud under **Section 447**.

Company already incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact (i.e. post Incorporation)

- Where, at any time after the incorporation of a company, it is proved that
 - the company has been incorporated by furnishing any false or incorrect information or
 - representation or by suppressing any material fact or information in any of the documents or declaration filedor made for incorporating such company, or
 - by any fraudulent action,then the promoters, the first directors of the company and the persons making declaration under this section shall each be liable for action for fraud under **Section 447**.

Effects of Registration

- 1) Body corporate
- 2) Perpetual succession
- 3) Limited Liability
- 4) MOA and AOA when registered shall bind the company and its members

- 5) Property of the company is _____
- 6) Any liability of the company is _____
- 7) Management _____

SHARES

- As per **Section 43**, the share capital of a company limited by shares shall be two kinds only:
 - a) Equity share capital-
 - i) with uniform voting rights, or
 - ii) with differential rights as to dividend, voting, or otherwise in accordance with such rules and subject to such conditions as may be prescribed
 - b) Preference share capital

Unit 4: Memorandum and Articles of Association

MEANING of Memorandum

- Memorandum of a company is its charter; it defines its constitution and the scope of powers with which it has been established under the Act.
- The Memorandum of Association is a public document which is open for inspection by any member of public on payment of prescribed fees [**Section 399**]
- Therefore, every person entering into contract with the company is presumed to have knowledge of the contents of Memorandum.

(_____)

PURPOSE OF MEMORANDUM

Risk Oriented _____

Object Oriented _____

CONTENTS OF MEMORANDUM

1) Name Clause

Private Company _____

Public Company _____

OPC _____

2) Registered Office Clause

Purpose: _____

State or Exact Address?
_____**3) Objects Clause**

- The company shall state in this clause the objects for which the company is proposed to be incorporated and any matter considered necessary.

4) Liability Clause

Limited _____ or Unlimited

5) Capital Clause
_____**6) Association Clause**
_____**7) Name of Nominee in case of OPC****DOCTRINE OF ULTRA VIRES**

Meaning: _____

Case Law: **Ashbury Railway Carriage and Iron Company Limited v Riche**

Impact of ultra vires transaction

- _____
- _____
- _____

ARTICLES OF ASSOCIATION

Key Words:

- Rules and regulations
- Regulate the internal management
- Bye Laws of the Company

DOCTRINE OF INDOOR MANAGEMENT

Key words:

- a) Exception to _____
- b) This doctrine protects _____
- c) The doctrine of indoor management is also known as _____

Case Law: **Royal British Bank vs Turquand**



(Scan to watch a video on Indoor Management)

Exceptions to the doctrine of indoor management

1) Knowledge of irregularity



Case Law: **Howard v. Patent Ivory Manufacturing Co., Morris v Kanssen**

2) Suspicion of irregularity



Key words: Transaction is _____ or _____

Case Law: **Haughton & co v. Nothard, Lowe & Wills Ltd**
Anand Bihari Lal v Dinshaw & Co.,

3) Forgery



Case Law: **Ruben v Great Fingall Consolidated**

(Scan for Video Lectures on Companies Act- Covers all Case Laws in detail)

Chapter 5- Limited Liability Partnership

INTRODUCTION

- Limited Liability Partnership (LLP) is an incorporated partnership formed and registered under the Limited Liability Partnership Act 2008 with limited liability and perpetual succession.
- The Act came into force on 31st March 2009.
- **Key words:**
 - Body corporate
 - Legal entity separate from its partners
 - Indian Partnership Act, 1932 does not apply

Minimum and Maximum number of partners	Minimum-_____ Maximum-_____
Designated Partner	Minimum- _____ of which at least one shall be _____ Major duties of Designated Partner <ul style="list-style-type: none"> - Notify any changes in the LLP's to Registrar of Companies. - Notify any changes in the Partners names & residential addresses to Registrar of Companies. - Notify any change in Registered Office Address to Registrar of Companies. - Filing of any Annual return, Statement of Accounts and other documents specified under the provisions of LLP Act with the Registrar of Companies. - Statement of Accounts & Solvency to be signed by the Designated Partners of the Company. - To preserve and to produce before an inspector or any person authorized by him in this behalf with the previous approval of the Central Government, all books and papers of, or relating to, the limited liability partnership or, as the case may be, the other entity, which are in their custody or power - Responsible for signing all the e-forms filed with the Registrar of Companies.

	-Stringent financial penalties are provided in LLP act for procedural non compliances.	
Relation of Partners [Section 23]	- Shall be governed by LLP Agreement - Change shall be filed with ROC. - If there is no agreement then First Schedule shall apply	
Cessation of partnership interest [Section 24]	- by agreement - by 30 days notice in writing to other partners - he shall continue to remain liable till notice is given to third party	
Registration of changes in partners [Section 25]	Partner- shall inform LLP of any change in his name or address within a period of 15 days of such change.	
	LLP	inform Registrar
	a) Person becomes or ceases to be a partner b) Change in name or address of partner	within 30 days of change within 30 days of change
Partner by Holding out [Section 29]	Where any credit is given to the LLP as a result of a person's representation as a partner, the LLP be liable to the extent of credit received by it or any financial benefit derived thereon.	

FEATURES OF LLP

- 1) Body Corporate
- 2) Perpetual Succession
- 3) Separate Legal Status
- 4) Limited Liability
- 5) Artificial Person
- 6) Common seal
- 7) No Mutual Agency
- 8) Accounts of LLP
- 9) E-filing of documents

10) Conversion of LLP

11) **Foreign LLP's:** Section 2(1)(m) defines foreign limited liability partnership “as a limited liability partnership formed, incorporated, or registered outside India which established a place of business within India”. Foreign LLP can become a partner in an Indian LLP.

ADVANTAGES OF LLP

- 1) **Organized** ↑
- 2) **Flexibility** ↑
- 3) **Formation** - Easy
- 4) **Liability**- Limited
- 5) **Dissolution** – Easy

INCORPORATION OF LLP

1) Name [Section 15]

Application shall be made to _____

Name shall end with _____

Name shall not be _____ or _____

If it is then then the Central Government may direct such LLP to change its name and the LLP shall comply with the said direction within _____ months after the date of the direction or such longer period as the Central Government may allow.

2) LLP Agreement

Contents of LLP Agreement

- i) Name of LLP
- ii) Name and address of Partners & Designated Partners
- iii) Proposed Business
- iv) Form of contribution & interest on contribution
- v) Profit sharing ratio
- vi) Remuneration of partners
- vii) Rights & duties of partners
- viii) Rules of governing LLP

3) A statement made by either an advocate, or a Company Secretary or a Chartered Accountant, who is engaged in the formation of the LLP and by one who subscribed his name to the incorporation document that all the requirements of the Act and rules in respect of incorporation have been complied with shall be filed with the Registrar

4) If a person makes a statement as discussed above which he

(a) knows to be false; or does not believe to be true, shall be punishable with imprisonment for a term which may extend to 2 years and with fine which shall not be less than ₹10,000 but which may extend to ₹5 Lakhs.

WINDING UP AND DISSOLUTION [SECTION 63]

The winding up of a LLP may be either voluntary or by the Tribunal

Circumstances in which LLP may be wound up by Tribunal (Section 64)

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