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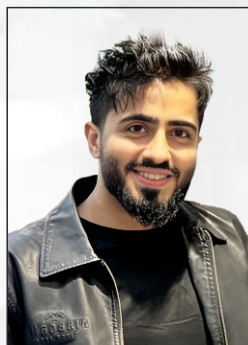
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On behalf of TEAM YES

CS VIKAS VOHRA
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CMA FOUNDATION

BUSINESS LAWS AND BUSINESS COMMUNICATION

INDEX

CHAPTER NO.	CHAPTER NAME	PAGE NO.
1.	INTRODUCTION	1.1 – 1.32
2.	THE INDIAN CONTRACT ACT, 1872	2.1 – 2.125
3.	THE SALE OF GOODS ACT, 1930	3.1 – 3.40
4.	THE NEGOTIABLE INSTRUMENTS ACT, 1881	4.1 – 4.24
5.	BUSINESS COMMUNICATION	5.1 – 5.67

CHAPTER 1 - INTRODUCTION

PART - 1

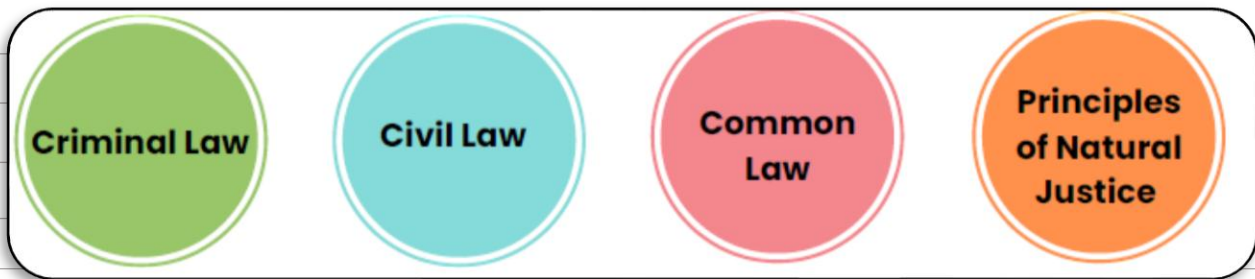
SOURCES OF LAW

WHAT IS LAW?

Law is a **set of obligations** and duties imposed by the government for securing welfare and providing justice to society.

“Law is a **set of rules...**” (for the society) - Concept of Law by **H.L.A. Hart**.

TYPES OF LAW



Criminal Law

Criminal law is concerned with laws pertaining to violations of the rule of law or **public wrongs** and punishment of the same.

Murder, rape, theft, fraud, cheating and assault are some examples of criminal offences under the law.

Civil Law

Matters of **disputes between individuals or organisations** are dealt with under Civil Law.

Civil law primarily focuses on dispute resolution rather than punishment.

Some examples of civil offences are breach of contract, non-delivery of goods, non-

payment of dues to lender or seller defamation, breach of contract, and disputes between landlord and tenant.

Common Law

A **judicial precedent** or a case law is common law. A judgment delivered by the Supreme Court will be binding upon the courts within the territory of India under Article 141 of the Indian Constitution. The doctrine of Stare Decisis is the principle supporting common law.

Principles of Natural Justice

Natural justice, often known as Jus Natural deals with certain fundamental principles of justice going beyond written law.

Nemo judex in causa sua (Literally meaning "No one should be made a judge in his own cause, and it's a Rule against Prejudice), audi alteram partem (Literally meaning "hear the other party or give the other party a fair hearing), and reasoned decision are the rules of Natural Justice.

SOURCES OF LAW

Sources of law in India can be broadly classified as the below mentioned:

- A) All statutes,
- B) Case Laws (judicial precedents) and customary law (personal laws)
- C) Ordinances, regulations and other mandates that effect us.

Statutes - The statutes are **enacted by the Parliament and State Legislatures** according to their domain, mentioned in the 7th Schedule of the Constitution of India (the Union List, The State List and the Concurrent List).

There are laws known as delegated legislation in the form of rules, and regulations,

as well as bye-laws made by Central Government, State Governments and local authorities under the authority conferred or delegated by Parliament or the concerned State Legislature.

Laws made by Parliament may extend throughout, or in any part of the territory of India and those by State Legislatures may generally apply only within the territory of the State concerned.

This is also inclusive of all the statutes which have already been enacted before the adoption of the Constitution of India, 1950 unless repealed in part or in whole.

Judicial Precedents

The Constitution of India, 1950 therefore provides for provision under Article 141 for the same, which illustrates - **Law declared by Supreme Court to be binding on all courts.**— The law declared by the Supreme Court shall be binding on all courts within the territory of India.

Although, the Supreme Court of India or the High Courts of the respective states do not legislate, they have time and again provided with the correct interpretations for our understanding, and thereby acted as a source of law.

Personal Laws

Personal Laws are mostly based on individual faith, hence mostly **guided by customs and practice.**

Example - Hindu Marriage Act, 1955, The Indian Christian Marriage Act, 1872, The Kazis Act, 1880, etc.

Ordinance/Regulations

Article 13.3 (a) on the Constitution of India, 1950 mentions law includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of

India the force of law;

Therefore, in times of these **exigencies** The President of India 123. Power of President to promulgate Ordinances during recess of Parliament. Similar powers have been provided to the Governor of a State, under Article 213 of the Constitution of India, 1950, in territorial limit of the concerned state.

The authorities (Panchayati Raj), are notified under Article 243 of the Constitution of India, 1950, have the power delegated, to frame the required regulations for governance as local rural administration along with various institutions/ organisations empowered to legislate rules/regulations.

SOURCES OF LAW AND LEGAL SYSTEM IN INDIA BEFORE INDEPENDENCE

The study of Indian legal history can primarily be divided into four periods:

- A) The Ancient Period
- B) The Medieval Period
- C) The British Administrative Period
- D) Indian Legal Period

A) Ancient Period

Covers ~1500 BCE to ~1st century CE (1500 years before/after start of Gregorian calendar).

- **Ruled by kings** with localized laws varying by territory.
- Universal texts: Vedas, Smritis (e.g., Manu-Smriti), Upanishads, Arthashastra (post-Mauryan).
- Based on **dharma** (righteousness, duty; blend of legal/religious principles).
- Jurisdiction: Scaled by dispute importance (minor: lowest court; major: king). **Higher courts overruled lower ones.**

Courts (6 categories by rank):

- Kula: Family councils
- Shreni: Trade/professional councils
- Gana: Village assembly
- Adhikrita: King-appointed court
- Sasita: King's court
- Nripa: King

Foreign invasions disrupted this system, leading to changes.

B) Medieval Period

~12th century-1707 AD (post-1192 Battle of Tarain).

- Influenced by invasions: Delhi Sultanate (Slave to Lodi Dynasty, 1206-1526); Mughals (Babur defeats Lodi; ends ~1707 after Bahadur Shah Zafar).
- Imported foreign justice/laws, overlapping with local systems.

Sultanate courts (examples):

- Diwan-i-Mazlim: Administrative/bureaucratic disputes.

Mughal courts:

- Central: Qazi-ul-Quzat (chief; heard appeals, supervised provinces); assisted by Mufti (expounded law) and Mir Adl (enforced decrees).
- Provincial: Chief Qazi (civil/criminal cases; provincial appeal forum).
- Military: Qazi-e-Askar (mobile; like modern Court Martial).

Mughal decline led to European (British) rise and modern legal systems.

C) British Administrative Period

~200 years (post-1600 Charter of Elizabeth).

- **East India Company (EIC)**: Started with trade (1600 charter gave limited legislative rights); shifted to administration post-Plassey (1757) and Dewani (1765) in Bengal.

- **Introduced British-suited systems for occupied territories;** codified abstract justice into laws.

Key reforms/institutions (still relevant):

- **Mayor's Courts:** 1726
- **Warren Hastings' Judicial Plan (Adalat System):** 1772
- **High Courts:** Indian High Courts Act, 1861 (replaced Supreme Courts in Calcutta, Madras, Bombay presidencies)
- **Government of India Act, 1935; Federal Court:** 1937

Key codified laws:

- **Indian Penal Code,** 1860
- **Indian Contract Act,** 1872
- **Indian Evidence Act,** 1872

Contract law evolution: Original Indian Contract Act split into:

- **Sale of Goods Act,** 1930
- **Indian Partnership Act,** 1932

D) Indian Legal Period (1950 - Present Day)

- **Abolition of Privy Council Jurisdiction Act, 1949:** Ended Privy Council's role as highest appeal court (since 1726, seated in England). Abolished new/pending appeals/petitions; transferred cases to Indian courts.

Constitution timeline:

- **Drafting Committee:** Formed 29 August 1947; chaired by B.R. Ambedkar.
- **Passed/adopted:** 26 November 1949 (Law Day).
- **Enforced:** 26 January 1950 (Republic Day).
- **Established sovereign judiciary with separation of powers across branches/levels.**

Supreme Court of India:

- Established: 26 January 1950.
- Under: Article 124(1), Constitution of India, 1950.

PART - 2

LEGISLATIVE PROCESS IN INDIA

The statutes enacted by the Parliament of India and/or the State Legislature is one of the most important source of law, in present day India. Therefore it becomes important to understand the process of distribution of power to legislate and structure of legislature in the Indian democracy.

The legislative process in India derives its authority from the Constitution of India, 1950.

The structure of the Indian polity is that of federal (two tier structure - Central and State Government) in nature (S.R. Bommai vs Union of India, Supreme Court of India judgment - (1994 SCC (3) 1).

However, India is a federation with a unitary bias and is referred as a quasi federal state because of its strong central machinery.

The Indian legislative process has two major law making bodies, The Parliament of India and the State Legislature.

PARLIAMENT OF INDIA AND STATE LEGISLATURE



Article 79 of the Constitution of India states that The Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States (Rajya Sabha) and the House of the People (Lok Sabha).

Article 168 of The Constitution of India, 1950 - Constitution of Legislatures in States
- For every State there shall be a Legislature which shall consist of the Governor and one House (Legislative Assembly).

In some states, there are two houses, Article 168 (2) of the Constitution of India, where there are two Houses of the Legislature of a State:

- 1) Legislative Council and
- 2) Legislative Assembly.

The legislative bodies in India, i.e. at the Central Level (the Parliament) and State Level (Legislative Assembly) derive its power to frame laws from Article 245 of the

JOURNEY FROM BILL TO ACT

In order to formulate a law, all **legislative proposals** have to be brought in the form of bills.

The process of law making begins with the introduction of a Bill in either House of Parliament.

A bill can be introduced either by a Minister or a member other than a Minister. In the former case, it is called a Government Bill and in the latter case, it is known as a Private Member's Bill.

Article 107 of the Indian Constitution, act 1950 specifies, the provisions up to introduction and passing of Bills - Subject to the provisions of Articles 109 and 117 with respect to Money Bills and other financial Bills, a Bill may originate in either House of Parliament. (a money bill is not introduced in the Council of States/Rajya

Sabha - Article 109 of The Constitution of India, 1950).

A bill undergoes readings in each House, i.e., the Lok Sabha and the Rajya Sabha, before it is submitted to the President for assent.

Therefore, as every bill goes through several rounds of debates and scrutiny before it becomes a law, therefore the time frame for the same too is one that takes time, weeks or sometimes months.

Many times, there are certain exigencies where the time and/or the circumstances do not permit for a law to be passed through the normal procedure, i.e. the legislative procedure vide the Parliament and/or the State Legislature.

Article 13.3 (a) on the Constitution of India, 1950 mentions law includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

Therefore, in times of these exigencies The President of India 123. Power of President to promulgate Ordinances during recess of Parliament - If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require. (the tenure of an ordinance can vary from six weeks to six months, depending upon the circumstance) Similar powers have been provided to the Governor of a State, under Article 213 of the Constitution of India, 1950, in territorial limit of the concerned state.

Alongwith all the power to formulate the laws, what becomes a necessity is to amend

the same over time. Article 368 of the Constitution of India, 1950 states that notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.

However, with all these powers conferred there remains a risk of introduction/deletion of certain laws, which are in contravention of the rights that are fundamental to human survival with a dignified life and enhancement of the same. The Supreme Court of India, in *Keshavananda Bharati vs State of Kerala* (AIR 1973 SC 1461), mentioned any amendment which is in contravention of the Fundamental Rights of an individual, will be unconstitutional.

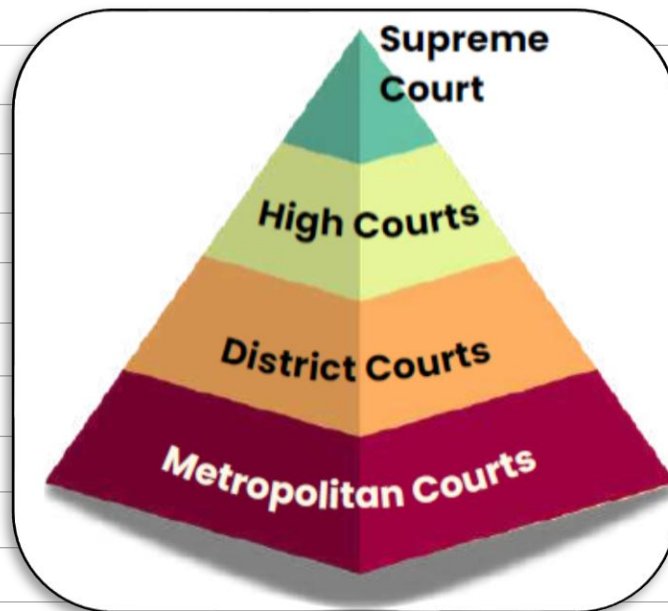
However, despite all such checks and balances, powers are transgressed, and disputes arise. In order to seek the correct understanding and validity of the law/bye law concerned, we approach the Court to address the merit in the situation, and decide accordingly.

PART - III

LEGAL METHOD AND COURT SYSTEM IN INDIA

The **judiciary** has been established under the **Constitution of India, 1950** as an institution of **last resort**, for common public, as well as all legal entities under law, inclusive of the State Governments and the Government of India.

The Supreme Court of India is the apex institution, in its hierarchy, followed by the High Courts in respective States, followed by the Sub-Ordinate Courts.



HIERARCHY OF COURTS IN INDIA

The Constitution of India, 1950 has provided us with a single integrated judicial system with a **pyramidal structure** which consists of different types of courts each having varying powers depending on their tier and jurisdiction.

The framework of the current legal system has been laid down by the Constitution of India, 1950 in:

Part V (Chapter IV-Supreme Court of India) and

Part VI (Chapter V-High Courts) and (chapter VI-Subordinate Courts).

SUPREME COURT



The Supreme Court is the **apex court** under the Indian Judicial system comprising of the **Chief Justice and other Judges appointed by the President.**

The Constitution bestows the following powers to the Supreme Court-

- a) **Original Jurisdiction** - Art 131 provides for the original jurisdiction whereby the Court can decide disputes between the Government of India and one or more states, between two or more states, between Government of India and State (s) on one side and State(s) on the other side.
- b) **Writ Jurisdiction** - Any person has the right to approach the Court against violation of his fundamental rights prescribed under Part-III, as expressly provided under **Article 32** which guarantees constitutional remedies in the form of writs.
- c) **Appellate Jurisdiction** - Being the highest court of appeal, the Supreme Court has power to hear all appeals against any order of the High Court.

- d) **Advisory Jurisdiction** - The Supreme Court can advise the President on any question of public importance etc as desired.
- e) **Punishment for Contempt** - Under Article 129 of the Constitution of India, 1950 The Supreme Court of India and the High Court of each state under Article 215 of the Constitution of India, 1950 are declared as a Court of record with the power to punish for contempt of itself.
- f) **Review Jurisdiction** - The Court under Article 137 can review its own orders or judgments.

Currently it has a strength of 34 judges (33 judges of the Supreme Court of India and 1 Chief Justice of India).

HIGH COURT

High Courts are the **second highest courts in the hierarchy**. The Constitution bestows the following powers to the High Court-

- a) **Original Jurisdiction** - The Court has original jurisdiction and can decide disputes related to enforcement of fundamental rights, settlement of disputes relating to election to the Union and State Legislatures and jurisdiction over revenue matters.
- b) **Writ Jurisdiction** - Any person has the right to approach the Court against violation of his fundamental rights as well as legal rights under **Article 226**. Thus, it has a wider scope than that with the Supreme Court.
- c) **Appellate Jurisdiction** - An appeal against orders of subordinate courts in both civil

and criminal matters lies with the High Court.

d) **Power of superintendence** - Article 227 of Constitution empowers all High Courts to practice superintendence over all the courts or tribunals within its territorial jurisdiction. Moreover, under Article 228, the High Court can transfer any case pending before a subordinate court to itself if it involves a substantial question of law.

e) **Punishment for Contempt** - Like the Supreme Court, the High Court is also declared as a Court of record with the power to punish for contempt of itself.

LOWER/SUBORDINATE COURTS

These courts are established and controlled by the High Court taking into account various factors.

The Lower/Subordinate court structure can be divided into the following two branches of the legal system-

CRIMINAL COURT STRUCTURE

a) **Court of Session** - Every State has session divisions with each of them having a Court of Sessions to be presided over by the Sessions Judge who is appointed by the High Court.

The court has power to try any criminal matter and **pass any punishment authorized by law**, but punishment of death penalty has to be confirmed by the High Court.

b) **Court of Metropolitan Magistrate** - This is a special court established by the State Government in consultation with the High Court in metropolitan areas, i.e., areas with population of more than a million. These Courts are subordinate to the Sessions Court.

Chief Metropolitan Magistrate can pass any punishment authorized by law, except death penalty, penalty of life imprisonment or imprisonment for a term of more than seven years.

c) **Court of Chief Judicial Magistrate** - The State Government in consultation with the High Court establishes number of Courts of the Judicial Magistrate- Judicial Magistrate of First Class (JMFC) and second class headed by the Chief Judicial Magistrate (CJM). These Courts can pass any punishment authorized by law, except death penalty, penalty of life imprisonment or imprisonment for a term of more than seven years.

d) **Executive Magistrates** - The functions and powers of an Executive Magistrate are more or less administrative in nature and are for maintaining law and order. They are appointed by the respective State Government. Their essential job is not as a judicial officer.

CIVIL COURT STRUCTURE

The **district court is the highest civil court in a district** and has judicial as well as administrative powers including the power of superintendence with both appellate and original jurisdiction.

According to **Article 233** of the Constitution the **appointment of district judges** that shall be **done by the Governor** in consultation with the High Court in every district or more than one district.

Following are the courts subordinate to the district courts which have jurisdiction based on subject matter, pecuniary or territorial jurisdictions-

- a) Sub-Judge
- b) Additional Sub-Judge
- c) Munsif Courts

Thus, judiciary comprising of the court system is one of the most vital organs of the state that not only acts as a watchdog of democracy but also as the guardian of the Constitution.

It is evident from the strong base and the proven efficiency of the structure of the Indian judiciary being independent and impartial that the existing system is ideal for a big country like India to ensure proper administration of justice at all levels starting from the grass root.

THE TRIBUNAL SYSTEM IN INDIA

Tribunals are institutions established for discharging judicial or quasi-judicial duties.

The objective may be to reduce case load of the judiciary or to bring in subject expertise for technical matters.

The Supreme Court has ruled that tribunals, being quasi-judicial bodies, should have the same level of independence from the executive as the judiciary.

Whereas the reasoning for setting up some tribunals was to reduce pendency of cases in courts, several tribunals are facing the issue of a large case load and pendency.

EVOLUTION OF THE TRIBUNAL SYSTEM

Tribunals are judicial or quasi-judicial institutions established by law.

Currently, tribunals have been created both as substitutes for High Courts and as subordinate to High Courts. In the former case, appeals from the decisions of Tribunals (such as the Securities Appellate Tribunal) lie directly with the Supreme Court.

In the latter case (such as the Appellate Board under the Copyright Act, 1957), appeals are heard by the corresponding High Court.



Composition of Tribunals

- **Members:** Drawn from **Central Government departments** and **other fields of expertise.**
- **Key Feature:** Combination of **Judicial Members + Technical (Expert) Members.**
- **Distinction:** Presence of **technical members** differentiates tribunals from traditional courts.
- **Judicial Members:**
 - ✓ Must have a **judicial background.**
 - ✓ Includes **High Court Judges or advocates eligible for appointment as High Court Judges.**

Appeals from Tribunals

- **General rule:** Appeal lies to the **concerned High Court.**
- **Exception:** Certain statutes provide **direct appeal to the Supreme Court.**
- **Appellate jurisdiction:** Varies by tribunal (as specified in respective laws).

Appellate courts for some Tribunals in India

Name of Tribunal	Act establishing the Tribunal	Appellate Court
Industrial Tribunal	The Industrial Disputes Act, 1947	High Court
Income-Tax Appellate Tribunal	The Income-tax Act, 1961	High Court
Customs, Excise and Service Tax Appellate Tribunal	The Customs Act, 1962	High Court
Appellate Tribunal	The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976	High Court

Central Administrative Tribunal	<i>The Administrative Tribunal Act, 1985</i>	Supreme Court
Railway Claims Tribunal	<i>The Railway Claims Tribunal Act, 1987</i>	High Court
Securities Appellate Tribunal	<i>The Securities Exchange Board of India Act, 1992</i>	Supreme Court
Debts Recovery Appellate Tribunal	<i>The Recovery of Debts Due to Banks and Financial Institutions Act, 1993</i>	High Court
Telecom Disputes Settlement and Appellate Tribunal	<i>The Telecom Regulatory Authority of India Act, 1997</i>	Supreme Court
National Company Law Appellate Tribunal	<i>The Companies Act, 2013</i>	Supreme Court
National Consumer Disputes Redressal Commission	<i>The Consumer Protection Act, 2019</i>	Supreme Court
Appellate Tribunal for Electricity	<i>The Electricity Act, 2003</i>	Supreme Court
Armed Forces Tribunal	<i>The Armed Forces Tribunal Act, 2007</i>	Supreme Court
National Green Tribunal	<i>The National Green Tribunal Act, 2010</i>	Supreme Court

ALTERNATE DISPUTE RESOLUTION (ADR)

The process by which **disputes between the parties are settled** or brought to a result **without the intervention of Judicial Institution** and without any trial is known as **Alternative Dispute Resolution**.

ADR offers to resolve all type of matters including civil, commercial, industrial and family etc., where people are not being able to start any type of negotiation and reach

the settlement.

Generally, ADR uses neutral third party who helps the parties to communicate, discuss the differences and resolve the dispute.

MODES OF ALTERNATE DISPUTE RESOLUTION(ADR)

Arbitration



The dispute is submitted to an arbitral tribunal which makes a decision (an "award") on the dispute that is mostly binding on the parties.

Except for some interim measures, there is very little scope for judicial intervention in the arbitration process.

Conciliation

A non-binding procedure in which an impartial third party, the conciliator, assists the parties to a dispute in reaching a mutually satisfactory agreed settlement of the dispute.

The parties are free to accept or reject the recommendations of the conciliator. However, if both parties accept the settlement document drawn by the conciliator, it shall be final and binding on both.

Mediation

In mediation, an impartial person called a "Mediator" helps the parties try to reach a mutually acceptable resolution of the dispute.

The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome

with the parties. This is more or less an informal way of arriving at a settlement/arrangement.

Lok Adalat



An interesting feature of the Indian legal system is the existence of voluntary agencies called Lok Adalat (**People's Court**). The Legal Services Authorities Act was passed in 1987 to encourage out-of-court settlements.

Lok Adalat or "People's Court" comprises of a forum which facilitates negotiations in the presence of a judicial officer. **The order of the Lok-Adalat is final and shall be deemed to be a decree of a civil court** and shall be binding on the parties to the dispute. The order of the Lok-Adalat is **not appealable** in a court of law.

Important Provisions Related To ADR

Law provides that opportunity to the people, if it appears to court there exist elements of settlement outside the court then court formulate the terms of the possible settlement and refer the same for: Arbitration, Conciliation, Mediation or Lok Adalat.

The Acts which deal with Alternative Dispute Resolution are

- a) **Arbitration and Conciliation Act, 1996 and,**
- b) **The Legal Services Authority Act, 1987**

Since courts in India are already burdened by a huge backlog of cases, many statutory provisions make mediation a compulsory prerequisite to filing of a suit in court.

ADVANTAGES OF ALTERNATIVE DISPUTE RESOLUTION

Less Time Consuming: People resolve their disputes in short period as compared to traditional litigation forums.

Cost effective method: ADR as a process in general is less expensive than litigation process. Also, as a platform this is a less aggressive dispute resolution process, which often leads to an amicable settlement.

REGULATORY BODIES IN INDIA

Along with Courts, Tribunals and other forums in India, we have various regulatory bodies in India, which are the part and parcel of governance in their respective sectors, a watchdog and also a guardian in case of any irregularity.

Listed below, are few of the most important one's affecting on our day to day life.

1. SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)



Role: Regulatory body for securities and commodity markets in India.

Ownership: Operates under the Ministry of Finance, Government of India.

Establishment:

- o Established on **12 April 1988** as an executive body.
- o Gained **statutory powers** through the **SEBI Act, 1992** on **30 January 1992**.

SEBI has many functions, they can be categorized as:

- a) **Protective functions:** To protect the interests of the investors and other market participants. It includes - preventing insider trading, spreading **investor education and awareness**, checking for price rigging, etc.
- b) **Regulatory functions:** These are performed to ensure the proper functioning of various activities in the markets. It includes - **formulating and implementing code of conduct and guidelines** for all types of market participants, conducting an audit of the exchanges, **registration** of intermediaries like brokers, investment bankers, levying fees, and fines against misconduct.
- c) **Development functions:** These are performed to promote the growth and development of the capital markets. It includes - Imparting training to various intermediaries, conducting research, promoting self-regulation of organizations, facilitating innovation, etc.

To perform its functions and achieve its objectives, SEBI has the following powers:

- i) To change laws relating to the functioning of the stock exchange
- ii) To access records and financial statements of the exchanges
- iii) To conduct hearing and give judgments on cases of malpractices in the markets.
- iv) To approve the listing and force delisting of companies from any exchanges.
- v) To Disciplinary actions like fines and penalties against participants who involve in malpractice.

vi) To regulate various intermediaries and middlemen like brokers.

2. RESERVE BANK OF INDIA (RBI)



The Reserve Bank of India (RBI) is India's **central bank** and was established under the **Reserve Bank of India act in 1935**.

The primary purpose of RBI is to conduct the monetary policy and regulate and supervise the financial sector, most importantly the commercial banks and the non-banking financial companies. It is **responsible to maintain price stability and the flow of credit** to different sectors of the economy.

Some of the main functions of RBI are:

- i) It **issues the license** for opening banks and authorizes bank branches.
- ii) It formulates, implements, and reviews the **prudential norms** like the Basel framework.
- iii) It maintains and **regulates the reserves** of the banking sector by stipulating reserve requirement ratios.
- iv) It **inspects the financial accounts** of the banks and keeps a track of the overall stress in the banking sector.
- v) It **oversees** the liquidation, amalgamation or **reconstruction** on financial companies.
- vi) It regulates the **payment and settlement systems** and infrastructure.
- vii) It **prints, issues and circulates the currency** throughout the country.

The RBI is the banker to the government and manages its debt issuances, and is also responsible to maintain orderly conditions in the government securities markets (G-Sec).

RBI manages the foreign exchange under the Foreign Exchange Management Act, 1999.

3. INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY OF INDIA (IRDAI)



The Insurance Regulatory and Development Authority of India (IRDAI) is an independent statutory body that was set up under the IRDA Act, 1999.

Its purpose is to protect the interests of the insurance policyholders and to **develop and regulate the insurance industry**. It issues advisories regularly to insurance companies regarding the changes in rules and regulations.

It promotes the insurance industry but also controls the various charges and rates related to insurance.

The three main objectives of IRDA are:

- a) To ensure fair treatment and protect the interests of the policyholder.
- b) To regulate the insurance companies and ensure the industry's financial soundness.
- c) To formulate standards and regulations so that there is no ambiguity.

Some important functions of IRDA are:

- i) Granting, renewing, canceling or modifying the **registration of insurance companies**.
- ii) Levying charges and fees as per the IRDA act.
- iii) **Conducting investigation**, inspection, audit, etc. of insurance companies and other organizations in the insurance industry.
- iv) Specifying the **code of conduct** and providing qualifications and training to intermediaries, insurance agents etc.
- v) Regulating and **controlling** the insurance premium rates, **terms and conditions** and other benefits offered by insurers.

vi) Provides a ***grievance redressal forum and protect the interests of the policyholder.***

4. PENSION FUNDS REGULATORY AND DEVELOPMENT AUTHORITY (PFRDA)

The Pension Fund Regulatory and Development Authority (PFRDA) is a statutory body, which was established under the PFRDA act, 2013. It is the sole regulator of the pension industry in India.

Initially, PFRDA covered only for employees in the government sector but later, its services were extended to all citizens of India including NRI's. Its major objectives are – ***to provide income security to the old aged by regulating and developing pension funds and to protect the interest of subscribers to pension schemes.***

The National Pension System (NPS) of the government is managed by the PFRDA. It is also responsible for regulating custodians and trustee banks.

The Central Record Keeping Agency (CRA's) of the PFRDA performs record keeping, accounting and provides administration and customer services to subscribers of the pension fund.

Some functions of PFRDA are:

- a) *Conducting enquiries and investigations on intermediaries and other participants.*
- b) *Increasing public awareness and training intermediaries about retirement savings, pension schemes etc.*
- c) *Settlements of disputes between intermediaries and subscribers of pension funds.*
- d) *Registering and regulating intermediaries.*
- e) *Protecting the interest of pension fund users.*
- f) *Stipulating guidelines for investment of pension funds.*
- g) *Formulating code of conduct, standards of practice, terms and norms for the pension industry.*

5. ASSOCIATION OF MUTUAL FUNDS IN INDIA (AMFI)

The Association of Mutual Funds in India (AMFI) was set up in 1995. It is a **non-profit organization** that is **self-regulatory** and works for the **development of mutual fund industry** by improving professional and ethical standards, thus aiming to make the mutual funds more accessible and transparent to the public. It provides spreads awareness vital information about mutual funds to Indian investors.

The Association of Mutual Funds in India is the regulatory body for mutual funds sector in India. It is a division of the Securities and Exchange Board of India, Ministry of Finance, Government of India. Most mutual funds firms in India are its members.

AMFI ensures smooth functioning of the mutual fund industry by implementing high ethical standard and protects the interests of both - the fund houses and investors.

Most asset management companies, brokers, fund houses, intermediaries etc in India are members of the AMFI. Registered AMC's are required to follow the code of ethics set by the AMFI. These code of ethics are - integrity, due diligence, disclosures, professional selling and investment practice.

The AMFI updates the Net Asset Value of funds on a daily basis on its website for investors and potential investors. It has also streamlined the process of searching mutual fund distributors.

6. MINISTRY OF CORPORATE AFFAIRS (MCA)



The Ministry of Corporate Affairs (MCA) is a ministry within the government of India. It **regulates the corporate sector** and is primarily concerned with the administration of the Companies Act, 2013 and other legislations. It **frames the rules and regulations** to ensure the functioning of the corporate sector according to the law.

The objective of MCA is to **protect the interest of all stakeholders**, maintain a competitive and fair environment and facilitate the growth and development of companies. The Registrar of Companies (MCA), is a body under the MCA that has the authority to register companies and ensure their functioning as per the provisions of the law. The issuance of securities by the companies also comes under the purview of the Companies Act.

7. NATIONAL HOUSING BANK (NHB)

National Housing Bank, is the apex regulatory body for overall regulation and licensing of **housing finance companies in India**. It is under the jurisdiction of Ministry of Finance, Government of India. It was set up on 9 July 1988 under the National Housing Bank Act, 1987.

The primary function of NHB is to **“operate as a principal agency to promote housing finance institutions** both at local and regional levels and to provide financial and other support to such institutions and for matters connected therewith or



incidental thereto”.

PART - IV

PRIMARY AND SUBORDINATE LEGISLATION

In modern day world, government activity influences almost every field of human behaviour, thus necessitating laws in regulating this ever-widening sphere of activity. Therefore, there is constant need to legislate, at a rapid pace, with a localized understanding, which however is cumbersome and impractical to perform, for the Union Legislature and State Legislature.

As we move towards a more dynamic society, therefore the governance of the same extends to various levels of government bodies, as according to the complexity, furthermore delegated power (subordinate legislation) to authorities and officials.

PRIMARY LEGISLATION is the law that derives its source from the enactments passed by the Parliament or the State Legislatures, the bodies empowered by the Constitution of India, 1950 by its provisions.

In addition to these the President and the Governor have limited powers to issue ordinances when the Parliament or the State Legislature are not in session.

SECONDARY LEGISLATION/SUB-ORDINATE LEGISLATION arises from the need for empowering authorities (to legislate) working at the grass-root level to counter the daily challenges to the existing laws becomes a necessity.

The provision for secondary legislation (in the form of regulations/bye laws) has been ingrained in the Constitution of India, 1950. Article 13.3 (a) of the Constitution of India, 1950 mentions law includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law; therefore

provision for such delegation (subordinate legislation) gains its prominence.

The Constitution of India, 1950 in its provisions illustrates of power delegation (if need be), Article 312- All India Services (1) Notwithstanding anything in Chapter VI of Part VI or Part XI, if the Council of States (Rajya Sabha) has declared by resolution supported by not less than two thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more all India services (including an all India judicial service) common to the Union and the States, and, subject to the other provisions of this Chapter, regulate the recruitment, and the conditions of service of persons appointed, to any such service. (the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article)

Supreme Court of India in the Gwalior Rayon Mills Mfg. (Wing.) Co. Ltd. V. Asstt. Commissioner of Sales Tax and Others (All India Reporter 1974 SC 1660 (1667)), The legislatures because of limitations imposed upon by the time factor hardly go into matters of detail. Provision is, therefore, made for delegated legislation to obtain flexibility, elasticity, expedition and opportunity for experimentation. The practice of empowering the executive to make subordinate legislation within a prescribed sphere has evolved out of practical necessity and pragmatic needs of a modern welfare state.

Subordinate legislation is the legislation made by an authority subordinate to the legislature. Subordinate legislation is that which proceeds from any authority other than the sovereign power and is, therefore, dependent for its continued existence and validity on some superior or supreme authority. Most of the enactments provide for the powers for making rules, regulations, bye-laws or other statutory instruments which are

exercised by the specified subordinate authorities. Such legislation is to be made within the framework of the powers so delegated by the legislature and is, therefore, known as delegated or subordinate legislation. The sub-ordinate legislation cannot go beyond the act or the objective of the act, or the same would be held invalid.

There are instances where pieces of subordinate legislation which tended to replace or modify the provisions of the basic law or attempted to lay down new law by themselves had been struck down as ultra vires either because of transgressing the ambit of the Act or the Act itself is inconsistent with the provisions of the Constitution of India.

LOCAL GOVERNANCE - The Constitution of India, 1950 itself provides provisions for decentralization of governance, for effective and adequate authority over a territory to look after the requirements. Part IX (Panchayat System) and Part IXA (Municipalities) of the Constitution of India, 1950 give them adequate powers and autonomy over their jurisdiction. These two bodies are one of the largest sources of sub-ordinate legislation, as regulations in these territories need to be revised very rapidly.

As, we have observed in the Covid-19 pandemic, how frequently, guidelines and regulations have been required to cater to the unprecedented circumstances we have been through. This would have been a cumbersome task for the Parliament or the State legislature to be able to analyse and react to the situation in a localized manner, taking adequate measures for the general well being and requirements of the population

CHAPTER 2 - INDIAN CONTRACT ACT 1872

PART - I

CONTRACT, ITS ESSENTIAL ELEMENTS, TYPES, OFFER AND ACCEPTANCE

INTRODUCTION:

- a) The Indian Contract Act, 1872 prescribes the **law relating to contracts** in India and is the key act regulating enforceable agreements.
- b) The Act came into force on the **first day of September, 1872**.
- c) Before enactment of Indian Contract Act, 1872, the courts in India used to apply English Common laws as suited to Indian conditions, customs and usages.
- d) Some difficulties were noticed in using English Common laws. Accordingly later the courts started deciding cases based on Hindu Personal laws and Muslim personal laws. But the same were still not found fit to address the business complexities.
- e) Accordingly, the Indian Contract Act, 1872 was framed. This **act is based on English Common law**, which is to a large extent made up of judicial precedents.
- f) The law relating to contracts is contained in the Indian Contract Act, 1872. The Act as **originally** enacted is divided into **four parts**:
- Law relating to **general principles of contract**. [Sec 1 - 75]
 - Law relating to **sale of goods**. [Sec. 76 - 123] - Repealed and the Sale of Goods Act, 1930 originated
 - Law relating to **special contracts** [Sec. 124 - 238]
 - Law relating to **Partnership Business** - Repealed and The Partnership Act, 1932, enacted.

WHAT IS CONTRACT?

Section 2(h) of the Act defines the term contract as “an agreement between two or more parties enforceable by law”.

Contract = Agreement + Enforceability by Law

An agreement and its enforceability are two essential components of a contract. If either of these two is missing there is no contract.

WHAT IS AGREEMENT?

Agreement has been defined in **section 2(e)** as “every promise and every set of promises forming consideration for each other”.

Offer + Acceptance = Promise

Promise + Consideration = Agreement

It is evident from the definition given above that an agreement is based on a promise.

WHAT IS PROMISE?

According to **Sec 2 (b)**, ‘when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted and a **proposal when accepted becomes a promise**

An agreement, therefore, comes into existence when one party makes a proposal or offer to the other party and that other party signifies his assent thereto. In nutshell, an agreement is the sum total of offer and acceptance.”.

WILL ALL AGREEMENTS GIVE RISE TO A CONTRACT?

- a) An agreement to become a contract must give rise to a **legal obligation**.
- b) Agreement can be social obligation or legal obligation.
- c) An agreement giving rise to social obligation is not a contract. That is why it is said that the term agreement is a wide term it includes both social and legal obligations but **only those agreements which the parties intend to enforce legally** culminates into contract.
- d) An agreement is regarded as a contract when it is enforceable by law.

ESSENTIAL ELEMENTS OF VALID CONTRACT

The essentials to a valid contract are:

- a) **Two Parties:** To constitute a contract there must be at least two parties, i.e. **one party making an offer** (offerer/proposer) and the **other party accepting the offer** (offeree / proposee). The terms of the offer must be definite.
- b) **Agreement:** A contract is initially an agreement when person whom the offer has given signifies his acceptance on it there arises an agreement which is the foundation of a contract.
- c) **Consent:** There must be **consensus-ad-idem (meeting of minds)** to constitute a valid contract unity of minds i.e. consensus-ad-idem means that the parties must agree to the **same thing in the same sense** and at the **same time**. An agreement without consent is void.

Example:

A had two motor cars Maruti Alto and Maruti 800; he intends to sell Maruti 800 to B. But B thought he is selling Maruti Alto agrees to his proposal. Since there is no meeting of mind both understood the same transaction differently, there is no consensus ad idem. Accordingly there is no consent and thus there is no contract.

- d) **Intention to create legal relationship:** There must be an intention by both parties to **create legal relationship** and to legally bind themselves as a result of such agreement. Thus, agreements of social or household nature are not contracts, as the usual presumption is that the parties do not intend to create legal relationship unless otherwise agreed upon. However, in case of commercial transaction the usual presumption is that parties intend to create legal relationship.

Example: A husband promising his wife to buy her a 'necklace' on occasion of her birthday is not a contract.

Balfour vs Balfour: A husband promised to pay his wife a household allowance of ₹ 5,000 every month. Later the parties separated and the husband failed to pay the amount. The wife sued for allowance. Held, such agreements were outside the realm of Contract altogether.

- e) **Contractual Capacity:** The parties to the agreement must be capable of entering into a valid contract. According to **Section 11**, every person is **competent to contract** if he or she,
- ✓ is of the **age of majority**;
 - ✓ is of **sound mind**; and

✓ is **not disqualified** from contracting by any law to which he/she is subject.

f) **Consideration:** A valid contract must be supported by consideration. **Consideration means "something in return" (quid pro quo).** It can be cash, kind, an act or abstinence. It can be past, present or future. However, consideration must be real and lawful. An agreement **without consideration is void** however, it need not to be adequate, if parties are agreed in it.

g) **Free consent:** The parties are said to be in consent when they are agree upon the same thing in the same sense, in addition to it, to constitute a valid contract there must be **free and genuine consent of the parties** to the contract, consent is said to be free if it is not be obtained by misrepresentation, fraud, coercion, undue influence or mistake. If the **consent is not free**, the contract becomes **voidable**.

h) **Lawful object and consideration:** The object as well as consideration of the Contract must **not be unlawful**. According to Section 23, the consideration or object of an **agreement is unlawful, if**

× It is **forbidden** by law; or

× it is of such nature that, if permitted it would **defeat the provisions of any law**
or

× It is **fraudulent**; or

× it **Involves** or implies, **injury** to the person or property of another; or

× The court regards it as **immoral**

i) **Agreement not declared void:** Under the provisions of Indian Contract Act, 1872 certain agreement are **expressly declared as void**. Agreements which have been expressly declared void are not enforceable at law; hence does not constitute a valid contract.

Example: agreement of wager, agreement in **restraint of trade and marriage**.

j) **Certainty of meaning:** The terms of agreement must be certain and not vague. It must be either certain or be certain at the time of execution. If it is not possible to ascertain the meaning of the agreement, it is not enforceable at law.

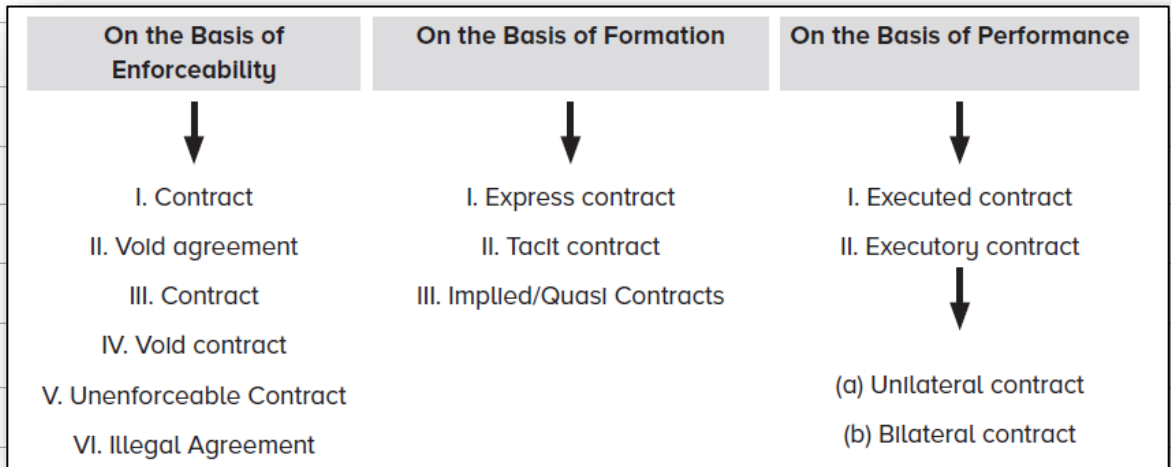
k) **Possibility to Perform:** The **promises** made under a valid contract must be **executable**. An agreement to do some impossible act is void from the beginning and never converted into contract.

l) **Legal formalities:** Although Indian contract Act does not provide any formality to enter into contract therefore a contract may be express (oral or written) or even implied (by conduct). However, where the law requires for a particular contract, it must comply with all the legal formalities such as in **writing, registration and attestation**.

Example under the provisions of Immovable Properties Act, a contract of immovable must be written, registered and duly stamped unless not enforceable by law.



TYPES OF CONTRACT:



A) Based on enforceability:

(i) **Valid Contract:** An agreement **enforceable by law** is a valid contract.

In other words it satisfies all the requirements of a valid contract as laid down in section 10.

Example: X offers Y to supply 10 bags of rice for ₹ 50,000/- Y agreed for it, it is a contract.

(ii) **Void agreement:** **Section 2(g)** says "An **agreement not enforceable by law** is said to be void". Such agreement does not confer any right to any of the parties to it. An agreement becomes void due to **absence of one or more essentials** under section 10. The agreement, in such a case, is **void-ab-initio (void from the very beginning)** and can never convert into contract. Such an agreement does not result in a contract at all.

Example: X offers Y a minor to deliver 100 bags of rice. Y agrees but further not supplied the

rice. Here X cannot sue Y as Y is minor. A void agreement has no legal consequences.

- (iii) **Voidable contract:** **Section 2(i)** says that "An agreement which is **enforceable** at the **option of one or more parties** thereto but not at the option of other or others is a voidable contract"

Example: A Threatens B to murder if he does not sell his land for ₹ 100000/- B agreed for it due to threat. It is a voidable contract which can be rejected by B.

- (iv) **Void contract:** **Section 2(J)** says that "A Contract which **ceases to be enforceable** by law becomes void when it ceases to be enforceable."

Void agreement and void contract are different. **Void agreement is void ab-initio** but **void contract is a valid contract** at the **beginning but subsequently becomes void** when it ceases to be enforceable.

Example: X a famous singer agrees to sing an album for a musical company. Unfortunately suffered from throat cancer and not allowed to sing by doctor. Here the contract becomes void contract.

- (v) **Unenforceable contracts:** These are the contracts which cannot be enforced in a court of law because of some **technical defects**, these contracts become fully enforceable if the technical defects are removed.

When the Agreement is not in written form, barred by limitation, etc. it is unenforceable. This is good in substance but suffers from some technical defect.

- (vi) **Illegal agreement:** When the object and consideration of an agreement is unlawful it is said to be illegal agreement, such an agreement is void. The object and consideration is said to be unlawful if

- * it is forbidden by law; or
- * is of such nature that, if permitted, would defeat the provisions of any law or
- * is fraudulent; or
- * involves or implies injury to a person or property of another, or
- * court regards it as immoral
- * opposed to public policy.

These agreements are **punishable by law and are void-ab-initio**.

Example: X agrees to pay Rs. 1,00,000/- to Y to murdered Z it is an illegal agreement as it is injurious to Z and forbidden under I.P.C.

“All illegal agreements are void because an illegal agreement is not enforceable by law but all void agreements are not illegal,” as it is not necessary that object and consideration of every agreement is unlawful.

B) Based on method of formation:

- (i) **Express contract:** Where the terms of the contract are expressly **agreed upon in words (written or spoken)** at the time of formation, the contract is said to be express contract.
- (ii) **Implied contract:** An implied contract is one which is inferred from the acts or **conduct of the parties** or from the circumstances of the cases. Where a proposal and acceptance is made otherwise than in words, it is said to be implied contract.
- (iii) **Tacit Contract :** It is a **situation** where a Contract has to be inferred from the conduct of parties. **Example:** Drawing cash from ATM

(iv) **Quasi contracts:** A quasi contract is **created by law on the basis of principal of equity**. There, is no intention of parties to enter into a contract. It is legal obligation which is imposed on a party and is required to perform it. A quasi contract is based on the principle on equity which states that a person shall not be allowed to enrich himself at the cost of another. A quasi contract is a contract imposed by law.

(v) **E-Contracts:**

When a contract is entered into by two or more parties **using electronics means**, such as **e-mails** is known as e-commerce contracts.

In electronic commerce, different parties/persons create networks which are linked to other net- works through EDI - Electronic Data Inter change.

This helps in doing business transactions using electronic mode. These are known as EDI contracts or Cyber contracts or mouse click contracts.

C) **Based on extent of performance:**

(i) **Executed contract:** when both of the parties to contract have **performed their contractual obligation** and nothing remains to be performed it is said to be executed. It is a contract in which both the parties have performed their respective obligation.

(ii) **Executory contract:** An executory contract is one where one or both the parties to the contract **have to perform their obligations in future**. Thus, a contract which is partially performed or wholly unperformed is termed as executory contract.

It is of two types:

➤ **Unilateral contract:** A unilateral contract is one in which **only one party has to**

perform his obligation after formation of the contract and the other party have fulfilled his obligation at the time of the contract or before the contract comes into existence.

- **Bilateral contract:** A bilateral contract is one in which the *obligation of both the parties to the contract is outstanding*. In other words when both of parties have still to perform their obligation it is known as bilateral contract. Bilateral contracts are also known as contracts with executory consideration.

MEANING AND DEFINITION OF OFFER:

For an agreement to come into force, there should be a *definite offer by one party and unqualified acceptance by the party to whom offer is made*.

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

The person making proposal or offer is called the promisor or offeror and the person to whom offer is made is called the offeree and the person accepting the offer is called the promisee or acceptor.

Types of Offer:

a) General offer:

It is an **offer made to public at large** and hence **anyone can accept** and do the desired act. In terms of Section 8 of the Act, anyone performing the conditions of the offer can be considered to have accepted the offer. Until the general offer is retracted or withdrawn, it can be accepted by anyone at any time as it is a continuing offer.

Carlill vs Carbolic Smoke Ball Co. A Company advertised that it would give a reward of £100 to anyone who contracted influenza after using its Smoke Balls for a certain period according to printed directions.

Mrs. Carlill purchased it and contracted influenza even after using it as per the printed instructions.

She claimed the reward of £100.

The Company resisted claim on the ground that Offer was not made to her and that in any case she had not communicated her acceptance to the offer.

Held: She could recover the reward as she had accepted the offer by complying with terms of the offer.

"Good Girl" Soap Co., advertised that it would give a reward of ₹1,000 who developed skin disease after using, "Good Girl" soap of the Company for a certain period according to the printed directions.

Miss Rakhi purchased the advertised "Good Girl" soap and developed skin disease inspite of using this soap according to the printed instructions.

She claimed reward of ₹ 1,000. The Company refused the reward on the ground that

offer was not made to her and that in any case she had not communicated her acceptance of the offer. Rakhi can claim the reward.

b) **Specific offer:**

An offer is said to be specific when it is **addressed to a definite person** or persons. Such offer can be accepted only by the person or persons to whom it is made.

c) **Cross Offer**

When two persons make identical offers to each other, in **ignorance of each other's offer**, it is called Cross Offer. There can be no concluded Contract in such a case because both are Offers and there is no Acceptance.

One offer cannot be taken as Offer and the other person's offer cannot be taken as its acceptance.

Example: Ram of Chennai sends a letter by post to Shyam of Hyderabad offering to sell his furniture for ₹ 15,000. The letter is posted on 1st of May. On the same day, in ignorance of Ram's offer, Shyam sends a letter to Ram offering to buy his furniture for ₹15,000. These two letters cross each other. Here, both the parties are making offer and no party has accepted the offer. Therefore there is no Contract. To enter into a valid contract, one of the parties must send his acceptance to the offer made by the other.

d) **Counter Offer**

When the Offeree offers to **qualified acceptance** of the offer subject to modifications and **variations in the terms of original offer**, he is said to have made a **Counter Offer**. Counter-offer **amounts to rejection of the original offer**. When there is a Counter Offer, the original offer terminates. It is for the Original Offerer to accept to

the terms of the Counter-Offer made by the Offeree.

Example: M offers to sell his car for ₹ 3.8 Lakhs to N. N says he would buy it for ₹ 3.5 Lakhs. This is not valid acceptance but a counter offer by N for ₹ 3.5 Lakhs which M may or may not accept.

Legal Rules Regarding Offer :

An offer to be valid must comply with the following rules:

a) **Offer may be expressed or implied:** An offer may be expressed or may be implied from the conduct of the parties or circumstances of the case.

Express Offer: An express offer is made by words spoken or written.

Implied Offer - An implied offer is not made by words spoken or written. It is implied from the conduct of the parties or from the circumstances.

b) **Offer may be specific or general:** A specific offer is one which is made to a particular person. It can be accepted by the person to whom it has been made, no one else can accept such an offer. A general offer is an offer made to the public at large.

c) **Offer must give rise to legal obligation:** An offer to be valid must create legal relationship between the parties. The very purpose of entering into an agreement is to make it enforceable at a Court of law.

d) **Terms of an offer must be definite and certain:** The terms of an offer should not be vague or indefinite.

Example: H offers to sell 10 tons of oil. Offer is ambiguous as to what oil he is offering to sell. If H deals only in sesame oil, then it cannot be construed as vague.

Taylor vs Portington : L offered to take a house on lease for 3 years at ₹ 1,00,000 per annum, if the house was “put into thorough repair and drawing rooms handsomely decorated according to the present style”. Held the agreement was too vague to result in a Contract.

e) **Offer must be distinguished from an invitation to offer** : An offer must be distinguished from an invitation to offer. The shopkeepers generally display their goods in showcases with price tags. The shopkeeper in such cases is not making an offer so that you can accept it. He is, on the other hand, inviting you to make an offer which he may or may not accept. Thus you cannot compel a shopkeeper to sell the goods displayed in the showcase at the marked price.

An advertisement for sale of goods by auction, quotations, catalogues of prices or display of goods at show room with price tag etc is invitation of offer rather than offer.

Example: Ajit sees a book displayed in a shelf of a book shop with a price tag of ₹ 95. Ajit tenders ₹ 95 at the counter and asks for the book. The Bookseller refuses to sell saying that the book has already been sold to someone else and he does not have another copy of that book in the stock. The Bookseller is not bound to sell the book to Ajit.

Pharmaceutical Society of Great Britain vs Boots Cash Chemists (Southern) Ltd.

In a self-service departmental store, customers’ pick-up articles and take them to the Cashier’s desk to pay. The Customer’s action in picking up particular goods is an Offer to buy. As soon as the Cashier accepts the payment, a Contract is entered into.

Example: Mr. D started “Self-Service” system in his shop. Mr. A entered the shop, took a basket and after taking article of his choice into the basket reached the Cashier for

payments. The Cashier refused to accept the price. Can Mr. A compel Mr. D to sell the said article. No, In self-service system, display of items constitutes invitation to offer, customer picking up the goods becomes offer and acceptance of cash by the cashier constitutes acceptance. Hence the binding contract materializes only after acceptance of cash. Hence A cannot compel D.

f) **Offer must be communicated:** An offer must be communicated to the person to whom it is made. A person can accept the offer only when he knows about it. If he does not know it, he cannot accept it.

Example: P applied for the Principalship of a College, and the Governing Body passed a Resolution appointing him. After the meeting, a member of the Governing Body privately informed P of the resolution. The Resolution was subsequently rescinded. P claims for damages. P cannot succeed as private communication is not a communication by the Governing Body

Example: J tells "M" that N has expressed his willingness to marry M. In this case, there is no contract as the essential element of communication of offer by one party and its acceptance by the other party is missing.

g) **Communication of Special Terms:** Special terms of a contract must be communicated. Generally, such cases arise in respect of general offers, like tickets or receipts for depositing luggage at the Railway Station or receipts for clothes given for dry cleaning etc. The rule in these cases is that parties are not bound unless conditions printed are properly communicated. The special terms must be brought to the customer's notice either

✓ by drawing his attention to them specifically or

✓ by inferring that a man of ordinary prudence could find them by exercising ordinary

prudence. However, if the special conditions forming part of the offer are contained in a document which is delivered after the contract is complete. Then the customer is not bound by them.

Raipur Transport Co. vs Ghanshyam A Transport Carrier accepted goods for transport without any conditions. Subsequently, he issued a circular to owners of goods limiting his liability for goods. Since the special conditions were not communicated prior to the date of contract for transport, these were not binding on the owners of goods.

Thompson vs LM&L Rly. Co. - T purchased a Railway Ticket, on the face of which was written - **For Conditions See Back**. One condition excluded liability for injury, however caused. T was illiterate and could not read. She was injured and sued for damages. Held, the Railway Company had properly communicated conditions to her who had constructive notice of conditions whether she read them or not. The Company was not bound to pay any damages.

Parker vs South Eastern Rly.Co. A passenger deposited a bag in the cloakroom at a Railway Station. Acknowledgement Receipt given to him carried, on the face of it, the words "See back". One condition limited the liability of Railways for any package to £10. The bag was lost, and passenger claimed £24 being its value, pleading that he had not read conditions.

Held, passenger was bound by conditions printed on the back, as the Company gave reasonable notice.

Henderson vs Stevenson A passenger was travelling with luggage from Dublin to Whitehaven on a ticket, on the back of which there was a term that exempted the

Shipping Company from liability for loss of luggage. He never looked at the back of the ticket and there was **nothing on the face of it to draw his attention** to the terms on its back. He lost his luggage and sued for damages. Held, he was entitled to damages as he was not bound by something which was not communicated to him.

h) **Offer must be made with a view to obtaining the consent of the other party to do or to abstain from doing the act:** The offer must be made with an intention to get the consent of the other party to do or to abstain from doing the act and not simply with a view to making known the intention of making an offer.

i) **Offer should not impose an unnecessary obligation to communicate non acceptance:** Thus an offeror cannot say that if acceptance is not communicated by Sunday next, the offer would be considered as accepted.

MEANING AND DEFINITION OF ACCEPTANCE:

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

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

An offer made to a particular person can only be accepted by him alone, on the other hand an offer made to a class of persons can be accepted by any member of that class of persons.

An offer made to the world at large can be accepted by any person whatsoever.

Essentials of a valid acceptance:

The following are the essentials of a valid acceptance. They are:

- a) **Acceptance can be given only by the person to whom offer is made:** In case of a specific offer, it can be accepted only by the person to whom it is made.

[Boulton vs. Jones (1857)]

- b) **Acceptance must be absolute and unqualified: [Sec. 7(1)]**

In order to be effective, there must be an absolute and unqualified acceptance of all the terms of the offer. **Qualified acceptance would amount to rejection of the offer.**

Example: J offers to sell his cow to K. K replies that he would buy it only if he gave the calf along with it. This is not acceptance because it is qualified.

Neale vs Merret M offered to sell his land to N for £280.

N replied purporting to accept and enclosed £80, promising to pay the balance of £200

by monthly instalments of £50 each.

Held, that N could not enforce acceptance because his acceptance was not an unqualified one.

c) Acceptance must be communicated:

For an acceptance to be valid, it must not only be made by the offeree but must also be communicated by or with the authority of the offeree to the offeror.

Acceptance must be communicated by the acceptor. In order to result in a contract it must be a 'matter of fact'. **Silence cannot be construed as acceptance.**

Fitch vs Snedaker S offered a reward to anyone who has returned his lost dog. F brought the dog to S without having heard of the offer. Held, F was not entitled to the reward.

Lalman Shukla vs Gouri Dutt S sent his servant L, to trace his missing nephew. Later, S offered a reward for anyone who found out his missing nephew. L, ignorant of the announcement, traced the boy. Subsequently, he claimed the reward, when he came to know of it. Held, L was not entitled to the reward.

Brogden vs Metropolitan Railway Co. B sent a draft agreement relating to supply of coal and coke to Manager of a Railway Company for his acceptance.

The Manager wrote "approved" on the same and put the draft in his table drawer, intending to send it to the Company's solicitors for a formal Contract to be drawn up. By oversight, the draft agreement remained in the drawer.

Held, there was no Contract as the Manager had not communicated his acceptance to Proposer.

Felthouse vs Bindley F offered by letter to buy his nephew's horse for £30, saying: "If I hear no more about it, I shall consider the horse is mine at £30."

Nephew did not reply, but he told an auctioneer who was selling his horses not to sell that particular horse as he had sold it to his uncle.

By mistake, the auctioneer sold it. F sued the auctioneer for conversion.

Held, F could not succeed as his nephew had not communicated acceptance and there was no Contract.

d) **Acceptance must be in a prescribed or reasonable mode: [Sec. 7(2)]**

It should be in a **prescribed or reasonable mode**.

If the offer or prescribes no mode of acceptance, the acceptances must be communicated according to some usual and reasonable mode.

The usual modes of communication are by words spoken or written or by conduct, it is called an implied acceptance.

Example: A tradesman receives an order from a customer and executes order by sending goods. Customer's order for goods constitutes offer which has been accepted by tradesman subsequently by sending goods. This is acceptance by conduct.

Example: A sends a letter to B, offering to sell his old carriage. He asks B to reply by telegram. B shall reply only by telegram and not otherwise. Even if B accepts otherwise, A shall insist on receiving a telegram. If A does not so insist within a reasonable time, he assents to B's acceptance in such mode as had been made by B.

e) **Acceptance must be given within a reasonable time and before the offer lapses:**

Acceptance must be given within the **specified time limit**, if any and if no time is stipulated, acceptance must be given within a **reasonable time** because an offer cannot be kept open indefinitely.

Again the acceptance must be given **before the offer is revoked or lapses** by reason of offeree's knowledge of the death or insanity of the offeror. Acceptance given to a revoked offer is not valid.

Ramsgate Victoria Hotel vs Montefiore A sends an offer to B to sell his car for ₹ 40,000 with a condition that if B does not reply within a week, A shall treat the offer as accepted. B communicates his acceptance after 1 week. It was held that Acceptance must be made within the time limit prescribed in the offer.

Hence, B's Acceptance after one week (i.e after the time prescribed by the Offeror has elapsed), will not operate to turn the offer into a Contract. A shall treat the offer as accepted.

f) Acceptance cannot precede an offer:

It cannot precede an offer. Acceptance must be given after receiving the offer. It should not precede the offer.

g) Rejected offer can be accepted only on renewal:

Rejected offer can be accepted only, on renewal; offer once rejected can't be accepted again unless a fresh offer is made.

h) Revocation of acceptance:

Under English Law acceptance is revocable, whereas under Indian Law acceptance is irrevocable.

According to Sir William Anson

"Acceptance is to offer what a lighted match is to a train of gun powder". The

effect of this observation is that what acceptance triggers cannot be recalled or undone. But there is a choice to the person who had the train to remove it before the match is applied.

COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS

The term "communication" can be explained as, the process of sending or bringing any matter to the knowledge of the person to whom it is directed. The process of sending or bringing to the notice may be by letters, fax, telegram, telephone etc.

Communication is very important in case of contract

REVOCATION OF OFFER AND ACCEPTANCE: [SEC. 5]

Revocation means taking back or **withdrawal** of offer or acceptance.

A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance, is complete against the acceptor, but not afterwards.

Example: A proposes, by a letter sent by post, to sell his house to B. B accepts the proposal by a letter sent by post. A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

Example: B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

Example: U sends a letter to Y proposing to sell his land and building. Y sends his acceptance by post. U can revoke the offer at any time before or at the moment when Y posts his letter of acceptance, but not afterwards.

Example: If Mr. A sends a telegram **revoking his offer** on 4th April and it reaches Mr. B on 6th April, then -As against Mr. A - Communication of revocation is complete on

4th April, and As against Mr. B - Communication of revocation is complete on 6th April.

Example: M agreed on Monday to sell his property to N by a written agreement which stated that "This offer to be left open until Saturday 10 a.m." In the meantime on Wednesday, M enters into a Contract to sell the property to O. N, who was sitting in the next room, hears about the deal between M and O. On Friday, N accepts the offer and delivers to M the letter of acceptance. In This case , Acceptance is made before revocation of the offer by M and well within the time specified by M in his letter of offer. Overhearing by N does not amount to a valid revocation by M. Hence, N's acceptance is valid.

Example: Ramaswamy proposed to sell his house to Ramanathan. Ramanathan sent his Acceptance by Post. Next day, Ramanathan sends a telegram withdrawing his acceptance. If The telegram of revocation of acceptance is received by Ramaswamy before the letter of acceptance by Post. In this case, The revocation of acceptance by the Ramanathan is valid, since the acceptance has been revoked within the appropriate time.

Note : The telegram of revocation and letter of acceptance both reached together The validity of acceptance is determined by which is opened first, i.e. telegram or Post.

REVOICATION:

Section 6 of the Act provides the modes for revocation of an offer or acceptance.

- a) By the communication of notice of revocation by the proposer to the other party. The offer or may revoke his proposal any time before the letter of acceptance is posted to him and not afterwards.

Similarly acceptance can be revoked any time before the letter of acceptance is received

by the offer or.

- b) By the **lapse of the time prescribed** in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;

What is a reasonable time is a question of fact in each case.

Example: A writes to B, "Will you buy my car for ₹ 2.5 Lakhs? Reply by next Sunday." B communicates his acceptance on next Monday. Offer ended on Sunday and A is not bound to B's delayed acceptance.

Ramsgate Victoria Hotel Co. vs Montefiore X offered to purchase Shares in a Company by writing a letter on 1st May of a year. The Company allotted Shares on 1st November of that year. X refused the Shares.

Held: Offer lapsed as it was not accepted within a reasonable time.

- c) By the **failure** of the acceptor to fulfill a **condition precedent** to acceptance.

Example: A proposes to B "I can sell my house to you for ₹40 Lakhs provided you lease out your land to me." When B refuses to lease out his land, offer would be terminated.

- d) By the **death or insanity of the proposer**, if the fact of the death or insanity comes to the knowledge of the acceptor before acceptance. Where an offeree writes his acceptance but dies before posting, the offer lapse and posting of the letter after his death will not create a contract.

- e) If a counter offer is made to it. Where the offer is accepted with some modification in terms of the offer or with some other condition not forming part of the offer, such qualified acceptance amounts to a counter offer.



- f) If an offer **not accepted according to prescribed or usual mode**. However, the offeror gives notice to the offeree within the reasonable time that the acceptance is not according to the prescribed or usual mode of acceptance.
- g) An offer comes to an end if the law is changed so as to make the contract contemplated by the offer illegal or incapable of performance.

PART - II

VOID AND VOIDABLE AGREEMENTS

MEANING:

An agreement becomes a contract when it fulfills all essential elements of a valid contract.

In case one or more of the essential elements of a valid contract are missing, the contract is void, voidable, illegal or unenforceable.

Let us discuss them one by one:

a) **Voidable contract [Sec. 2(i)]:** An agreement which is **enforceable by law at the option of one or more parties thereto**, but not at the option of other, is a voidable contract.

A contract becomes voidable when it is enforceable at the option of one or more party thereto but not other. How this happens? When in one of the essential elements of a valid contract, **free consent is absent**.

Example: A promise to sell his farm to B for ₹ 5.0 lakh. B was not prepared for this but A by force compelled B to sign the agreement. Here the consent of B was obtained by coercion or fraud.

Solution: The contract is voidable at the option of B.

b) **Void agreement [Sec. 2(g)]:** An **agreement not enforceable by law** is said to be a void agreement. A void agreement does not create any legal rights or obligations, hence is null and void ab initio.

c) **Void contract [Sec. 2(j)]**: A **contract which ceases to be unenforceable** by law becomes void when it ceases to be enforceable by law. Void contract is initially a perfectly valid contract but subsequent development turns it into a void contract.

The following agreements have been **expressly declared to be void** by the Indian Contract Act:

- i) Agreement by a minor or a person of **unsound mind**. [Sec(11) and Sec(12)]
- ii) Agreement of which the **consideration** or object is unlawful. [Sec(23)]
- iii) Agreement made under a **bilateral mistake** of fact material to the agreement. [Sec(20)]
- iv) Agreement of which the consideration or object is unlawful in part and the illegal part cannot be separated from the legal part. [Sec(24)]
- v) Agreement made without consideration. [Sec(25)]
- vi) **Agreement in restraint of marriage**. [Sec(26)] - Every agreement in **restraint of the marriage** of any person, other than a minor, is void.
- vii) **Agreement in restraint of trade**. [Sec(27)]- Every agreement by which anyone is **restrained from exercising a lawful profession, trade or business** of any kind, is to that extent void. The exception is an agreement not to carry on business of which goodwill is sold.
- viii) **Agreement in restraint of legal proceedings**. [Sec(28)]- Every agreement -
 - a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or
 - b) Which extinguishes the rights of any party thereto, or discharges any party thereto from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent.

- ix) **Agreements the meaning of which is uncertain.** [Sec(29)] - Agreements, the meaning of which is not certain, or capable of being made certain, are void.
- x) **Agreements by way of wager.** [Sec(30)] - Agreements by way of **wager** are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to a person to abide by the result of any game or other uncertain event on which any wager is made.
- xi) **Agreements contingent on impossible events.** [Sec(36)]
- xii) **Agreements to do impossible acts.** [Sec(56)] - According to section 56 an agreement to do impossible event is void. Impossibility may be at the time of entering into a contract or subsequent to the formation of the contract but before performance of the contract.
- xiii) In case of reciprocal promises to do things legal and also other things illegal, the second set of reciprocal promises is a void agreement [Sec(57)]

Example: Kamala promises Ramesh to lend ₹ 50,000 in lieu of consideration that Ramesh gets Kamala's marriage dissolved and himself marries with her. Void Agreement

Example: Sohan agrees with Mohan to sell his black horse. Unknown to both the parties, the horse was dead at the time of agreement. Void Agreement

Example: Ram sells the Goodwill of his shop to Shyam for ₹ 4,00,000 and promises not to carry on such business forever and anywhere in India. Void Agreement

In an agreement between Prakash and Girish, there is a condition that they will not institute legal proceeding against each other without consent. Void Agreement

PART III

CONSIDERATION

MEANING:

- a) Consideration means **something in return**.
- b) When someone promises to do or not to do something for somebody else he also in turn needs some reciprocal gesture from other party in return which in common parlance we mean consideration.
- c) It may be either some benefit conferred on one party or some detriment suffered by other.
- d) It may be an **act or abstinence or promise**.

DEFINITION:

Sec.2(d) 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 to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.'

Legal Rules Regarding Consideration:

- a) **Consideration must move at the desire of the promisor:**
It must move at the desire of the promisor. Any act or abstinence at the desire of third party is not consideration.

Durga Prasad vs Baldeo- D constructed a market at the instance of District Collector. Occupants of shops promised to pay D a commission on articles sold through their shops.

Held, there was no consideration because money was not spent by Plaintiff at the request of the Defendants, but at instance of a third person viz. the Collector and, thus the Contract was void.

b) Consideration may move from the promisee or any other person:

Consideration may be furnished even by a stranger under Indian Law. Consideration can be from any direction, **even a stranger to contract can offer consideration.**

Under English law consideration must move from promisee and no one else.

Chinnayya vs Ramayya - A by a Gift deed transferred certain property to her daughter, with a direction that daughter should pay an annuity to A's brother, as had been done by A.

On the same day, the daughter executed a writing in favour of A's brother, agreeing to pay annuity.

Afterwards, she declined to fulfil her promise saying that no Consideration had moved from her uncle.

Held that words 'promisee or any other person' in Sec. 2(d) clearly shows that the Consideration need not necessarily move from the promisee, it may move from any other person. Hence, A's brother was entitled to maintain the suit.

c) Consideration must be something of value:

One of the important things to note about consideration is that **consideration need not be adequate.** So long as the consent of the parties is free inadequacy of consideration is immaterial.

However inadequacy of consideration may be taken into account by the courts in determining the question whether the consent of the parties is free or not.

Example: K promises to sell a house worth ₹8 Lakhs for ₹2 Lakhs only. The transaction is valid even if the consideration is inadequate. But, where a party pleads coercion, undue influence or fraud to avoid a transaction, inadequacy of consideration will also be taken as a piece of evidence.

Collins vs Godfrey - Where a witness who has received summons to appear at a trial, a promise to pay him anything beyond his expenses is void for want of consideration, because the witness was bound to appear and give evidence.

d) **It may be an act, abstinence or forbearance or a return promise:**

Promise to not to smoke is a negative act (abstinence), Promise to not to refer the matter to court (abstinence).

Promise to perform at the wedding anniversary or birthday party (promise to do).

e) **It may be past, present or future which the promisor is already not bound to do:**

According to **Indian Law** Consideration may be **past, present or future**.

But under English Law consideration may be present or future. Past consideration is no consideration according to English Law.

Past Consideration:

- Past Consideration refers to **something wholly done, forborne or suffered before making of agreement**.
- For past consideration to be valid, the past act or forbearance must have been done or not done at the desire of the Promiser.
- Where the act was done or not done voluntarily, a promise made against such act or forbearance cannot be said to be supported by valid consideration.

- Under **English Law**, past consideration is **no consideration**.

Example: A renders some services to B at B's request in November. In December, B promises to pay a sum of ₹10,000 for his services. Services of A is Past Consideration.

Present Consideration: This consideration moves **simultaneously with the promise**.

Example: In a Cash Sale, goods and cash change hand to hand instantly.

Future or Executory Consideration : This consideration is to move at a future date. It takes the form of a **promise to be performed in future**.

Example: A promises B to deliver him 100 bags of sugar at a future date. B promises to pay for it on delivery.

Sindhe vs Abraham A, a Minor, was given benefit of certain services by Plaintiff. Plaintiff rendered those services, not voluntarily but at A's desire and continued even after majority at A's request, who subsequently promised to pay an annuity to Plaintiff. Held that the past consideration was a good consideration.

f) **It must not be unlawful, immoral, or opposed to public policy:**

The consideration or object of an agreement is **lawful, unless** —

- × It is **forbidden** by law;
- × or is of such a nature that, if permitted, it would **defeat the provisions of any law**;
- × or is fraudulent;
- × or **involves** or implies **injury** to the person or property of another;
- × or the Court regards it as **immoral**, or **opposed to public policy**

VALIDITY OF AN AGREEMENT WITHOUT CONSIDERATION - NO CONSIDERATION - NO CONTRACT: [SEC. 25]

The general rule is *ex-nudopacto non oritur action* - an agreement made without consideration is void (Section 25).

In every valid contract, consideration is very important. A contract may only be enforceable when consideration is there.

Example if A promises to pay B ₹ 1000 without any obligation from B. This is a void agreement for want of consideration.

However, the Indian Contract Act contains *certain exceptions to this rule*.

- a) Promise made on account of *natural love and affection*. [Sec. 25(1)]
- b) Promise to compensate for *voluntary services*. [Sec. 25(2)]
- c) Promise made to pay a *time barred debt*. [Sec. 25(3)]
- d) *Completed Gifts* [Explanation 1 to Sec. 25]
- e) Creation of *agency* [Sec. 185]
- f) Contract of *Guarantee* [Sec. 127]
- g) *Remission* [Sec. 63]

a) *Promise made out of natural love and affection:*

An agreement made without consideration is valid if it is in writing and registered and is made on account of natural love and affection between parties standing in a near relation to each other.

Thus, an agreement without consideration will be valid provided.

- ✓ It is expressed in **writing**.
- ✓ It is **registered** under the law.
- ✓ It is made on account of **natural love** and affection.
- ✓ It is between parties standing in **near relation** to each other.

Normally, these types of transfers are called gift.

Venkatswamy vs Rangaswamy-An elder brother, on account of natural love and affection, promised to pay the debts of his younger brother. Agreement was put to writing and registered. Held, agreement was valid.

Poonoo Bibi vs Fyaz Buksh- A husband, by a registered agreement promised to pay his earnings to his wife.

Held, the agreement, though without consideration, was valid.

Rajlakshmi vs Bhootnath- A Hindu husband by a registered document, after referring to quarrels and disagreements between himself and his wife, promised to pay his wife a sum of money for her maintenance and separate residence. Held that the promise was unenforceable since natural love and affection was missing.

- b) **Promise to compensate for voluntary services:** Voluntary service means **service done without any request**. An agreement made without consideration is valid if it is a promise to compensate a person who has already voluntarily done something for the promisor.

To apply this rule the following essentials must exist.

- i) The service should have been done **voluntarily**.
- ii) The service should have been **done for the promisor**.

- iii) The promisor must have been **in existence** at the time when the service was done.
- iv) The intention of promisor must have been to **compensate** the promisee.
- v) The service rendered must also be **legal**.

Example: A finds B's purse and gives it to him. B promises to give A ₹500. This is a valid Contract.

Example: X supports Y's infant son. Y promises to pay X's expenses. Is a valid Contract.

- c) **Promise to pay time-barred debt:** A promise by a debtor to pay a time-barred debt is also enforceable. But the promise must be in **writing**. It must be **signed** by the promisor or his authorised agent. The promise may be to pay the **whole or part** of the debt.

Example: A owes B ₹ 1,000 but the debt is barred by the Limitation Act. A signs a written promise to pay ₹ 500 on account of the debt.

The promise will be valid and binding without any fresh consideration.

- d) **Creation of Agency:** According to Section 185 of the Contract Act, no consideration is necessary to create an agency. Thus when a person is appointed as an agent, his appointment is valid even if there is no consideration.

- e) **Completed Gifts:** Gifts once made cannot be recovered on the ground of absence of consideration. Absence of consideration will not affect the validity of any gift already made. Thus if a person gives certain properties as gift to another according to the provisions of the Transfer of Property Act, he cannot subsequently demand the property back on the ground there was no consideration.

Example: A gave a watch as a gift to B on his birthday. Later on A cannot demand the watch back on the ground there was no consideration.

f) **Contract of guarantee:** Under section 127, no consideration is needed for a contract of guarantee. In other words, contract of guarantee needs no consideration.

g) **Remission:** Remission means **lesser performance** of the contract than what is actually to be performed.

h) **Charity:** If a person promises to contribute to charity and on this faith, the Promisee undertakes a liability to the extent not exceeding the promised subscription, the Contract shall be valid.

Kedarnath vs Gorie Mohammad- The Defendant had agreed to subscribe ₹100 towards construction of a Town Hall at Howrah. On faith of the promise, the Secretary called for plans and entrusted work to contractors and undertook liability to pay them. Held, agreement was enforceable being one supported by Consideration in the form of a detriment to the Secretary who had undertaken a liability to the contractors on the faith of the promise made by the Defendant.

Abdul Aziz vs Mazum Ali- If a person promises to contribute to charity and on this faith, the Promisee undertakes a liability to the extent not exceeding the promised subscription, the Contract shall be valid.

DOCTRINE OF PRIVACY OF CONTRACT/ STRANGER TO CONTRACT:

a) The doctrine of privities of contract means that a contract is between the parties only and **no third person can sue upon it**. It means that a stranger to contract cannot sue upon it.

b) The Supreme Court of India recognized this rule in MC Chacko v State Bank of Travancore, (1970 SCR (1) 658) "It is settled law that a person not a party to a contract cannot subject to certain well recognized exceptions, enforce the terms of the contract.

c) Under the English Common law only a person who is party to a contract can sue upon it. In India the common law doctrine of privities of contract is applicable. In the course of time, the courts have introduced a number of exceptions to rule of privities of contract.

d) **Indian Law:**

The law in India is the same as the English Law. According to the Indian Contract Act, **Consideration for an agreement may proceed from a third party, but the third party who is a stranger to the agreement cannot sue on the agreement.** A person who is a party to the contract alone can enforce the legal rights arising there from. So a stranger to contract as a rule, cannot sue upon the contract.

Example: A who is indebted to B, sells his property to C. C promises to pay off the debt to B. When C fails to pay, B has no right to sue C, because he is a Stranger to Contract.

Dunlop Pneumatic Tyre Co. vs Selfridge Co.- S bought tyres from the Dunlop Rubber Co. and sold them to D, a sub-dealer, who agreed with S not to sell below Dunlop's List Price and to pay the Dunlop Co. £ 5 as damages on every tyre D undersold. D sold two tyres at less than the list price and there upon the Dunlop Co. sued him for the breach. Held, Dunlop Co. could not maintain the suit as it was a stranger to the Contract.

Exceptions:

The following are the exceptions to the rule that a stranger to a contract cannot sue:

- a) Beneficiary of a **trust**.
- b) Provision in **marriage settlement**.
- c) Provision for **maintenance or marriage expenses** of female members under a family arrangement.
- d) **Assignee** of a contract.
- e) **Acknowledgement** of liability
- f) Agency contract.

- a) **Beneficiary of a trust:** A trust is created for the benefit of a beneficiary. Hence, the beneficiary can enforce the provisions of the trust even though he is a stranger to the contract.

MK Rapai vs John - A agrees to transfer certain properties to be held by T in trust for the benefit of B. B can enforce the agreement even though he is not a party to the agreement.

- b) **Provision in marriage settlement:** Partition and other Family Arrangements, and such agreement is reduced to writing. A stranger to the contract can sue on the contract where a provision is made for him in marriage settlement.

Shuppu Ammal vs Subramaniam - Two brothers, on partition of joint properties, agreed to invest in equal shares a certain sum of money for the maintenance of their mother. Held Mother was entitled to require her sons to make the investment.

c) **Provision for maintenance or marriage expenses of female members under a family arrangement:** In case a provision is made for the marriage or maintenance of a female member of the family on the partition of a Hindu undivided family, the female member can enforce the promise though she may be a stranger to a contract.

Gandy vs Gandy - A husband who was separated from his wife executed a separation deed by which he promised to pay to the Trustees, all the expenses for her maintenance. Held, the agreement created a trust in favour of his wife and could be enforced by her.

Rakhmanbai vs Govind - Provision of marriage expenses of female members of a Joint Hindu Family, entitles the female member to sue for such expenses on a partition between male members.

d) **Assignee of a contract:** The benefits of a contract may be assigned. The assignee of a contract can enforce the benefits of a contract though he is not a party to it.

Example: 'A' assigns his insurance policy in favour of his wife. The wife can enforce it although she is not a party to it.

e) **Acknowledgement of liability:** Where the promisor either by his conduct or acknowledgement or by part payment or by estoppel creates privity of contract between himself and the stranger, the stranger can sue.

Example: X receives money from Y for paying it to Z. X admits the receipt of that amount to Z. Z can recover the amount from X, even though the money is due from Y.

f) **Agency contract:** Contracts which are entered into by the agent on behalf of the principal can be enforced by the principal even though he is not a party to the contract.

Madhu Trading Co. vs UOI & Ors. - Beneficiary, in whose favour a Trust of other interest in some immovable property has been created can enforce it even though he is not a party to the Contract.

PAT IV

CAPACITY OF PARTIES

CAPACITY TO CONTRACT (SECTION 11)

As per **Section 11** every person is competent to contract who has attained the **age of majority** and who is **of sound mind** and is **not disqualified** from contracting by any law to which he is subject.

From the above provisions of the section it means the following types of persons are not competent to contract:

- × A person who has not attained the age of majority, i.e. minor.
- × A person of unsound mind
- × A person who is disqualified from contracting by some law.

MINOR:

As per **section 3 of the Indian Majority Act of 1875**, every person in India is a minor if he has not attained the age of **18 years of age**.

However in case of a minor of whose person or property or both a guardian has been appointed under the Guardian and Wards Act, 1890 or whose property is under the superintendence of any court of wards before he attains 18 years of age is 21 years.

The position of Minor's agreement and effect thereof is as under:

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

Mohiri Bibi vs Dharmodas Ghose- Dharmodas Ghose, a Minor, entered into a Contract

for borrowing a sum of ₹20,000 out of which lender paid him a sum of ₹ 8,000.

The Minor executed mortgage of property in favour of lender.

Subsequently, the minor sued for setting aside mortgage. Privy Council had to ascertain the validity of mortgage.

U/s 7 of Transfer of Property Act, every person competent to Contract is competent to mortgage.

The Privy Council decided that Sec. 10 and 11 of the Indian Contract Act make the minor's Contract **absolutely void**, hence any money advanced to a Minor cannot be recovered.

b) The law of estoppels does not apply against a minor. It means a **minor can always plead his minority** despite earlier misrepresenting to be a major. In other words he cannot be held liable on an agreement on the ground that since earlier he had asserted that he had attained majority.

Leslie vs Shiell - S, a Minor, by fraudulently representing himself to be a major, induced L to lend him £400. He refused to repay it and L sued him for the money. Held, that the Contract was void and S was not liable to repay the amount due.

c) **Doctrine of Restitution does not apply** against a minor and no relief can be granted.

d) **No Ratification on Attaining Majority.** Ratification means approval or confirmation. A minor cannot confirm an agreement made by him during minority on attaining majority. If he wants to ratify the agreement, a fresh agreement and fresh consideration for the new agreement is required.

Indran Ramaswamy vs Anthiappa Chettiar-A, a Minor makes a Promissory Note in

favour of B. On attaining majority, he makes out a fresh Promissory Note in lieu of the old one. Neither the original, nor the fresh Promissory Note is valid.

- e) **Contract beneficial to Minor:** A minor is entitled to enforce a contract which is of some benefit to him. Minority is a personal privilege and a minor can take advantage of it and bind other parties.

Roberts vs Gray - G, a Minor and a Professional Billiards Player, agreed with R, a leading professional player, to go on a world tour, competing against each other in matches. G was to pay a certain sum of money to R for this purpose and also for learning the game. R made all arrangements for the matches and spent money, but G refused to go. R sued G and claimed damages for breach of his Contract. Held, G was liable to pay, as the agreement was for the Minor's benefit in that he would in effect be receiving instruction.

- f) **Minor as an agent:** A **minor can be appointed an agent**, but he is **not personally liable** for any of his acts.

Example: A appoints M, a Minor, as his agent to sell his watch for cash at a price not less than ₹700. M sells it to D for ₹350. In this case A Minor can Act as an Agent and bind the Principal. But, the Minor cannot be made liable for actions which results in loss to the Principal. Hence, sale by M to D is valid. But the difference of ₹ 350 (₹700 - ₹ 350) cannot be recovered from M by A.

- g) **Minor's liability for necessities.** If somebody has supplied a minor or his dependents with necessities, minor's property is liable but a minor cannot be held personally liable.

Meaning of Necessaries:

i) Necessaries normally include **articles required to maintain a particular person in the state, degree and station in life in which he is**. They are the essentials to run a life.

Example: X, a Minor, was studying in 1st year B.Com in a college. On 1st July, he took a loan of ₹10,000 from B for payment of his College Fees and to purchase books and agreed to repay by 31st December. X possesses assets worth 2 Lakhs. On due date, X fails to pay back the loan to B. B now wants to recover the loan from X out of X's assets. In this case the Minor cannot be held personally liable for necessaries, but his property is liable.

ii) What constitutes "necessaries" depends on the circumstances of each case. What is a necessary to one person, may be luxury to another. Hence the term "**necessaries**" shall **be construed in relation to the status of life of the Minor**.

Nash vs Inman A minor who was a student, bought 11 fancy coats from N. He was, at that time, adequately provided with clothes. Held, not even a single coat was a necessity. His properties could not, therefore, be attached for its payment. It is immaterial whether the other party knows this or not.

Byrant vs Richardson - A Coat of superfine broadcloth may be a necessity for the son of a Nobleman, although it is impossible not to say that the coarse material of a ploughman's coat would be sufficient to keep the Nobleman's body warm.

iii) An item will not be considered as a "necessary", if a person already has sufficient supply of things of such kind.

- iv) In India, *besides food, clothing and shelter, education and marriage of a female have also been held to be necessities.*
- v) A *Minor's property is liable for services* rendered to him.
- vi) *Lending of money to a minor for defending a suit on behalf of a minor in which his property is in jeopardy, or for defending him in necessary prosecution, or for saving his property from sale in execution of a degree is deemed to be a service rendered to Minor.*
- vii) *Necessary services rendered to a Minor include -*
- ✓ *provision of education,*
 - ✓ *medical and legal advice,*
 - ✓ *provision of a house on rent for the purpose of living and continuing his studies.*
- h) A minor *cannot be adjudged insolvent* as he is incapable of entering into a contract.
- i) *Where a minor and an adult jointly enter into an agreement with another person the minor is not liable and the contract can be enforced against the major person.*

SOUND MIND PERSON:

Sound Mind person for the Purposes of Contracting (Section 12)

A person is said to be of sound mind for the purposes of making a contract if, at the time when he makes it, he is *capable of understanding it and of forming a rational judgment as to its effect upon his interests.*

A person who is usually of unsound mind, but occasionally of sound mind, may make

a contract when he is of sound mind.

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

Example: A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

Example: A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

Going by the spirit of the section it is clear that a person is of sound mind if he fulfills the following two conditions.

- ✓ He/she is capable of understanding the contract.
- ✓ He/she is capable of forming a rational judgment about the effects of such contract on his interest.

In both the cases the person not satisfying any of these two conditions is not treated as a person of sound mind.

OTHER DISQUALIFIED PERSONS:

The persons who are disqualified from entering into contract due to certain other reasons may be from legal status, political status or corporate status. Some of such categories of persons are given below:

- a) **Alien Enemy:** An agreement with an Alien Enemy is void. But agreement with an Alien friend is perfectly valid and enforceable. When the Government of an Alien is at war

with the Government of India, the alien is called Alien enemy who cannot enter into any contract with any Indian citizen without the permission of Government of India as the same is against the public policy.

Contract entered into with an alien before war is put into suspension during the duration of war.

- b) **Foreign Sovereign and Ambassadors:** Foreign sovereigns and their representatives enjoy certain privileges and immunities in every country. They cannot enter into contract except through their agents residing in India. They can sue the Indian citizen but an Indian citizen cannot sue them.
- c) **Convicts:** A convict cannot enter into a contract **while he is undergoing imprisonment.**
- d) **Insolvents:** An insolvent person is one who is unable to discharge his liabilities and therefore has applied for being adjudged insolvent or such proceedings have been initiated by any of his creditors. An insolvent person cannot enter into any contract relating to his property.
- e) **Company or Statutory bodies:** A contract entered into by a corporate body or statutory body will be valid only to the extent it is within its Memorandum of Association and is entered into with authorised persons.
- f) **Drunken or intoxicated** person cannot enter into valid contracts while such drunkenness lasts.

PART V

FREE CONSENT

CONSENT [SEC. 13]:

'Two or more persons are said to consent when they agree upon the **same thing in the same sense.**' - [Sec 13].

If the parties have not agreed upon the same thing in the same sense there is no real consent and hence no contract is formed.

As per section 14 of the Contract act consent is said to be free when it is **not caused by—**

- * Coercion (Sec 15), or
- * Undue influence (Sec 16), or
- * Fraud (Sec 17), or
- * Misrepresentation (Sec 18), or
- * Mistake, subject to provisions of Sec 20, 21 and 22.

COERCION: [SEC. 15]



The term coercion has been defined in **section 15** of the Act as "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.**

Explanation: It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed.

From the above definition of coercion given in section 15, consent is said to be caused by coercion when it is obtained by any one of the following;

- ✓ committing or threatening to commit any act forbidden by the Indian Penal Code;
- ✓ unlawful detaining or threatening to detain the property of another person.

Coercion may come from a party to the contract or even third person not connected with the contract directly.

Unlawful detaining also amount to coercion:

If a person unlawfully detains or give a threat to detain any property to the prejudice of any person whatever with the intention of causing any person to enter into an agreement amount to coercion.

Example: X threatens to kill A if he does not sell his house to B at a very low price.

Example: N threatens L's wife that their son M would be abducted if L did not lease out their land to him (N).

Effect of coercion :

According to **section 19** when the consent is caused by coercion, fraud, misrepresentation, **the agreement is avoidable at the option of the party whose consent was so caused.**

The aggrieved party may opt to **rescind the contract**. If the aggrieved party seeks to rescind the contract he must **restore the benefit** so obtained under the contract from other party. It should be noted that threat to commit suicide also amounts to coercion.

Ranganayakamma vs Alwar Sett R, a Hindu widow, was forced to adopt X under threat that her husband's corpse would not be allowed to be removed for cremation, unless she adopts X. The adoption is voidable as having been induced by coercion.

Muthia vs Karuppan An agent refused to hand over books of accounts of Principal unless he (Principal) released him from all liabilities concerning past transactions. Held, release so given was not binding, being the outcome of coercion.

Ammiraju vs Seshamma- A obtained a release deed from his wife and son under a threat of committing suicide, the transaction was set aside on the ground of coercion.

Some special cases which are prone to be construed cases of coercion are discussed as under:

- a) **Prosecution:** A mere threat to prosecute a man or file suit against him does not constitute a coercion. In the case of Andhra Sugar Ltd. V/s State of AP AIR 1968 SC 599 it was held that compulsion of law is not a coercion, fraud, misrepresentation, mistake or even undue-influence.
- b) **High prices and high interest Rates:** Charging high interest rate, high price etc is not a coercion as the same is not prohibited under the Indian Penal code.
- c) **A threat to commit suicide:** Consent to an agreement may at times be obtained by threatening to commit suicide.



UNDUE INFLUENCE: [SEC. 16]

Section 16 of the Indian Contract Act defines undue influence as under:

- a) A contract is said to be induced by “undue influence” where the relations subsisting between the parties are such that one of the parties is in a **position to dominate** the will of the other and uses that position to **obtain an unfair advantage over the other**.
- b) In particular and without prejudice to the generality of the forgoing principle, a person is **deemed** to be in a position to dominate the will of another—
- ✓ Where he holds a **real or apparent authority** over the other, or where he stands in a **fiduciary relation** to the other; or
 - ✓ Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.
- c) Where a person, who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Going through the definition of undue influence in section 16 we find that two elements are found in undue influence:

- ✓ The relationship subsisting between the parties is such that one is in a position to dominate the will of other and
- ✓ He uses that position to obtain an unfair advantage over the other. The person intending to avoid the contract on the ground of undue influence must prove both the above two elements.

There is **presumption of undue influence** in the following relationships:

- i) Parent and child
- ii) Guardian and ward

Inche Noriah vs Shaikh Alie Bin Omar An illiterate old woman made a Gift Deed of practically her entire property to her nephew who managed her affairs. Held, the gift should be set aside on grounds of undue influence.

Sher Singh vs Pirthi Singh A 90 year old illiterate villager executed a gift deed in favour of his relatives who looked after his daily needs and his cultivation. Held, the relatives were in a position to dominate his will.

Niko Devi vs Kripa A minor girl who lost her parents lived with her cousin brother who was in the position of her parents. She executed a gift deed in his favour. Held, there was undue influence.

- iii) Doctor and patient
- iv) Solicitor and client
- v) Trustee and beneficiary
- vi) Religious advisor and disciple

Mannu Singh vs Umadat Pandey A disciple agreeing to gift to his Spiritual Guru, his entire property, in return for attainment of salvation was held to be under undue influence.

- vii) Fiancé and fiancée

P. Saraswathi vs Lakshmikantham Mere proof of nearness of relationship is not sufficient for the Court to assume that one relation was in a position to dominate the will of another.

There is however **no presumption of undue influence** incase of relationship of —

- × landlord and tenant
- × debtor and creditor
- × husband and wife.

The wife has to be *pardanashin* for such presumption. In these relationships undue influence has to be proved.

Effect of undue influence:

Section 19A provides that when the consent is caused by undue influence, **the agreement is avoidable at the option of the party whose consent was so caused.**

The aggrieved party may opt to rescind the contract. If the aggrieved party seeks to rescind the contract he must restore the benefit so obtained under the contract from other party, upon such terms and conditions as to the court may seem just.

Example: A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note.

If B sues on this bond, the Court may set the bond aside.

Example: A, a moneylender, advances ₹ 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for ₹ 200 with interest at 6% per month.

The Court may set the bond aside; ordering B to repay ₹ 100 with such interest as may seem just.

The court has discretion to direct the aggrieved party for giving back the benefit whether in whole or in part or set aside the contract without any direction for refund of benefit.

FRAUD: [SEC. 17]

As per **section 17** of the Contract Act:

“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 **intent to deceive another party** thereto or his agent, **or to induce him to enter into the contract:**

- a) The suggestion, as a fact, of that which is not true by one who does not believe it to be true;
- b) The active concealment of a fact by one having knowledge or belief of the fact;

Peek vs Gurney Non-disclosure of the existence of liabilities of the Company amounted to fraud and anyone who purchased shares on the faith of such Prospectus can avoid the Contract, since the disclosure would have changed the impression and resultant decision of the investors.

- c) A promise made without any intention of performing it;
- d) Any other act fitted to deceive;
- e) Any such act or omission as the law specially declares to be fraudulent.

Explanation: Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech. In fraud intention of the person alleged to

have committed a fraud is important. Fraud often results into criminal liability.

Bisset vs Wilkinson - Vendor of a piece of land informed a prospective purchaser that it would hold 2000 sheep. In reality, it could only hold a number less than that. Held, there was no misrepresentation as the statement was an opinion, honestly made

Smith vs Chadwick - X bought shares in a Company on the faith of a prospectus that contained an untrue statement as to the Directorship of J. X had never heard of J and hence such statement was immaterial from his view point. X's claim for damages was dismissed on the ground that the untrue statement had not induced him to buy the shares.

Hajra Bai vs Jadav Bai Inference cannot be drawn of fraud from the mere fact of the Plaintiff being a lady, old and illiterate.

Does silence amount to fraud?

At times one of the party to a contract makes studied silence to some of the facts relating to the subject matter of contract. The matter on which silence is maintained by party may be material fact. Does this amount to passive fraud under the Indian Contract Act or not depends upon various factors.

Explanation to section 17 of the Indian Contract Act provides that **mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud** unless the circumstances of case are such that having regard to them it is the duty of the person keeping silence to speak or unless silence itself is equivalent to speech.

Example: A sells by auction to B, a horse which A knows to be unsound. B is A's daughter and has just come of age. Here the relation between the parties would make it A's duty to tell B if the horse is unsound. Where A says to B, "if you do not deny it, I shall assume that the horse is sound", and A says nothing. Here A's silence is equivalent to speech

Thus we can say that there is exception to the rule that mere silence does not amount to silence.

These **two exceptions** are provided in explanation to section 17 as under which we have already discussed above.

- i) When there is a **duty to speak**.
- ii) Where silence is **equivalent to speech**.

However, in the following two types of cases, silence amounts to fraud, as held by the courts in various cases:

- ✓ **Where there is change in circumstances:** A representation may be true when made but with the passage of time or changed circumstances it may become false. Accordingly this must be communicated to other party otherwise it amount to fraud.
- ✓ **When there is half-truth:** Thus even when a person is not bound to disclose a fact he may be held guilty of fraud if he volunteers to disclose a state of fact partly. This is so when the undisclosed part renders the disclosed part false.

Effect of Fraud:

According to section 19 when consent to an agreement is caused by coercion, fraud or misrepresentation, **the agreement is a contract voidable at the option of the party**

whose consent was so caused.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been, if the representations made had been true.

However there is one exception to the rule of voidability of contract at the option of aggrieved party. If such consent was caused by misrepresentation, or by silence, fraudulent within the meaning of section 19 the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means to discover the truth with ordinary diligence.

MISREPRESENTATION: [SEC. 18]

A statement of fact which one party makes in the course of negotiation with a view to inducing the other party to enter into a contract is known as misrepresentation. It must relate to some fact which is material to the contract. It may be expressed by words spoken or written or implied from the acts and conduct of the parties. A representation when wrongly made either innocently or unintentionally is a misrepresentation. When it is made innocently or unintentionally it is misrepresentation and when made intentionally or willfully it is fraud.

Misrepresentation has been defined in section 18 of the Act as under:

“Misrepresentation” means and includes—

- ✓ The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;*
- ✓ Any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of anyone claiming under him ;*

- ✓ Causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

From the above definition of the term Misrepresentation, the following two types of misrepresentations are noticed:

- a) **Unwarranted statements:** When a person positively asserts, makes an absolute and explicit statement of facts, that fact is true, though he has no reliable source to form this opinion, but he believes it to be true. This is one type of misrepresentation.
- b) **Breach of duty:** Any breach of duty which brings advantages to the person committing it by misleading the other to his prejudice is a misrepresentation. This is another type of misrepresentation.

Effect of Misrepresentation:

As per section 19 when consent to an agreement is caused by misrepresentation, **the agreement is a contract avoidable at the option of the party whose consent was so caused.** A party to a contract, whose consent was caused by misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been, if the representations made had been true.

Exception: If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence. This is also called 'doctrine of constructive notice'.

MISTAKE: [SEC. 20, 21 AND 22]

Mistake means an **erroneous belief about something**. It has not been defined in the Indian Contract Act.

Mistake can be -

- A) Mistake of law, or
- B) Mistake of fact

A) Mistake of law may be:

- i) Mistake of law of the country
- ii) Mistake of law of a foreign country

i) Mistake of law of the country:

When a party enters into a contract, without the knowledge of law in the country, the contract is affected by such mistake but it is not void. A contract is not voidable because it was caused by a mistake as to any law in force in India. The reason here is that ignorance of law is not an excuse at all. However if a party is induced to enter into a contract by the mistake of law then such a contract may be avoided. The principle of ignorance of law is not an excuse.

ii) Mistake of law of foreign country: Such a mistake is treated as mistake of fact and agreement in such case is void. Ignorance of foreign law may be excused.

B) Mistake of fact may be:

- i) Bilateral mistake, or
- ii) Unilateral mistake

i) Bilateral mistake

Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Explanation: An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

In order to render a contract void due to bilateral mistake the following two conditions must be met.

(a) **Mistake must be mutual:** Both the parties must misunderstand each other and should be at cross purpose.

(b) **Mistake must relate to a matter of fact essential to the agreement:** What is essential fact of an agreement depends upon the nature of promise in each case.

The various types of mistakes falling under bilateral mistakes are as under:

(i) Mistake as to subject matter covers following cases:

(a) **Mistake as to existence of subject matter:** If both the parties are at mutual mistake as to existence of the subject matter the agreement is void.

Couturier vs Hastie - A agreed to sell a cargo of corn, supposed to be in transit. Unknown to both parties, the corn had become fermented and had been sold by the Master of the Ship. Held, agreement was void.

(b) **Mistake as to identity of subject matter:** It usually happens when both the parties have different subject matter of contract in their mind. The contract is void due to mistake of identify of subject matter.

Raffles vs Wichelhaus A Contract was made for purchase of certain bales of cotton to arrive by a ship called "Peerless" from Bombay. Two ships of the same name (Peerless) were to sail from Bombay. Buyer intended to buy cargo of one ship but Seller was selling the cargo of other. The Contract was held to be void.

(c) **Mistake as to the quality of the subject matter:** If the subject matter is something essentially different from what the parties thought to be, the agreement is void.

Nicholson & Venn vs Smith Mariott -: Table napkins were sold at an auction described as "with the crest of Charles I and the authentic property of that Monarch". But napkins were only Georgian. Held, agreement was void.

(d) **Mistake as to quantity of subject matter:** Bilateral mistake as to quantity of subject matter would render the contract void.

Henkel vs Pape- : P wrote to H inquiring price of rifles suggesting that he might buy as many as 50. On receipt of information, he telegraphed, "Send three rifles". Due to telegraphic mistake, message was transmitted as "Send the rifles". H despatched 50 rifles. Held, there was no Contract. But, P could be held liable to pay for three rifles on the basis of an implied Contract

(e) **Mistake as to title of subject matter:** The agreement is void due to bilateral mistake as to title of the subject matter.

Cooper vs Phibbs A took a lease of a fishery, which unknown to either party already belonged to Held lease was void.

(f) **Mistake as to price of the subject matter:** Mutual mistake as to price of the subject matter would render the agreement void.

Webster vs Cecil - C wrote to W, offering to sell certain property for £1250. The same had been already offered for £2000 which W had refused. W knowing well that the offer is a Mistake for £2250, immediately accepted it. Held the Contract could not be enforced as it was offered by Mistake.

(ii) Mistake as to possibility of performance of Contract.

Impossibility may be:

(a) **Physical impossibility:** A contract is void if it is identified to be non-feasible due to physical factors, like time, distance, height, etc.

Griffith vs Brymer A contracted to take on rent, a property for viewing the coronation procession of the King. Unknown to the parties, the procession had already been cancelled. Held that the Contract was void.

(b) **Legal impossibility:** A contract is void if it provides that something shall be done which as a matter of law cannot be done.

ii) Unilateral Mistake as to fact:

As per section 22 a contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact. A unilateral mistake is not allowed as a defense in avoiding a contract unless the mistakes are brought about by another party's fraud or misrepresentation.

Smith vs Hughes- A sold oats to B by sample and B, thinking that they were old oats, purchased them. In fact, the oats were new. It was held that B was bound by the Contract.

Philip vs Brooks - N, came in person to a Jeweller's Shop and chose some jewels. The Jeweller was prepared to sell to him as a casual customer. N tendered payment by cheque signing name of G, a person of credit. N later took the jewels, which he pledged with B. Held, B, had a good title since the Contract between N and Jeweller is not void on ground of mistake, but voidable on grounds of Fraud.

Foster vs Mackinnon An old illiterate man was made to sign a Bill of Exchange, by means of a false representation that it was a guarantee. Held, Contract was void.

Bay vs Polla and Morris The plea of mistake will be available only when it relates to the Nature of the Contract, and not to the terms of the Contract.

Scriven vs Hindley A held an auction for the sale of some lots of tow. B thinking that hemp was being sold, bid for a lot of tow for an amount which was out of proportion to it and was only a fair price for hemp. Held, the Contract could be avoided.

Cundy vs Lindsay & Co. One Blenkarn, knowing that Blenkiron & Co were reputed customers of Lindsay & Co, placed an order with Lindsay & Co. by imitating signatures of Blenkiron. Goods were then sold to Cundy, an innocent buyer. In suit by Lindsay & Co. against Cundy for recovery of goods, held that as Lindsay never intended to Contract with Blenkarn, there was no Contract between them and as such even an innocent buyer (Cundy) did not get a good title. Hence, Cundy must return the goods or make payment of price.

Lake vs Simmons A woman, falsely misrepresenting herself to be wife of a well known Baron obtained two pearl necklaces from a firm of Jewellers on the pretext of showing them to her husband before buying. She pledged them with a broker who took them in good faith. Held that there was no Contract between Jeweller and woman and even an innocent buyer or a broker will not get a good title. Broker must return necklaces to jeweller. Jeweller intended to deal not with her but with quite a different person, i.e. wife of a Baron.

Said vs Butt S knew that on account of his criticism of plays in past, he would not be allowed entry at a theatre. The Managing Director of the theatre, gave instructions that a ticket should not be sold to S. S, however, obtained a ticket through one of his friends. On being refused admission to the theatre, he sued for damages for breach of Contract. It was held that there was no Contract with S, as the theatre Company never intended to Contract with S.

PART VI

QUASI AND CONTINGENT CONTRACTS

MEANING OF QUASI CONTRACT:

- a) Under certain circumstances, the law creates and enforces legal rights and obligations although the parties have never entered into a contract.
- b) Such obligations imposed or created by law are known as "Quasi- Contracts".
- c) Quasi-contracts are based on the principles of equity and justice.
- d) The remedy in quasi-contracts is only compensation and not damages.
- e) "Nemo debet locuplatari ex liena justua" i.e no man should grow rich at expense of other.

Example: A delivers goods to B mistaking him to be C, and B consumes them. B is bound to pay compensation to A for the value of goods. Law imposes such a duty on B. This is a quasi-contract.

Features of a Quasi Contract:

The salient features of a quasi contract are as under:

- a) It is imposed by law and does not arise by agreement.
- b) The duty of a party and not the promise of any party is the basis of such contract.
- c) The right under it is always a right to money and though not always to a liquidated sum of money.
- d) The right is available against specific persons and not the whole world.
- e) A suit for breach may be filed in the same way as in case of a complete contract.

Types of Quasi-Contracts:

The Indian Contract Act deals with the following quasi-contractual obligations. They are:

- a) Claims for necessities supplied to a person incompetent to contract. (Sec 68).
- b) Payment by an interested person. (Sec 69)
- c) Benefits of non-gratuitous act. (Sec 70)
- d) Responsibility of finder of goods. (Sec 71)
- e) Money paid by mistake or under coercion. (Sec 72)

a) Claims for necessities supplied to a person incompetent to contract:

Where **necessaries are supplied to a person who is incompetent** to contract, the supplier is entitled to **recover the price from the property of the incompetent person** under section 68 of the Indian Contract Act.

Example: A supplies B, a minor, with necessities suitable to his condition in life. A is entitled to be reimbursed from B's property.

b) Payment by an interested person:

Section 69 provides that a person who is interested in the payment of money of which another is bound by law to pay, and who therefore, pays it, is entitled to be reimbursed by the other".

In order to apply section 69, the following conditions must be satisfied.

- i) The payment made should be **bonafide** for the protection of one's interest.
- ii) The payment should **not have been made gratuitously** or voluntarily.
- iii) Another person must be **bound by law** to pay.
- iv) The **payment** must be made to a **third party** and not to himself.

c) **Benefits of non-gratuitous act:**

Section 70 deal with the obligation of a person enjoying benefit of a non-gratuitous act.

When a person lawfully does anything for another person or delivers anything to him, not intending to do so gratuitously, such person who enjoys the benefit must reimburse the former or must restore to him the thing so delivered.

For the application of section 70, the following conditions must be fulfilled.

- i) The act must have been done lawfully.
- ii) It must have been done by the person not intending to act gratuitously, i.e., without any consideration.
- iii) The person for whom the act is done must have enjoyed the benefit of that act.

d) **Responsibility of finder of goods:** A person who finds goods belonging to another and takes them into his custody is liable as a bailee. The finder of goods must try to find out the real owner of the goods and deliver the goods to him on demand. The obligations are imposed on finder of goods by Section 71 of the Indian Contract Act.

e) **Money paid by mistake or under coercion:** According to section 72, a person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it.

Example: A and B jointly owe ₹ 100 to C. A alone pays the amount to C, and B, not knowing this fact, later on also pays ₹ 100 to C. C is bound to repay the amount to B.

CONTINGENT CONTRACTS:

- a) A contract may be an absolute contract or a contingent contract. An absolute contract is one where the promisor undertakes to perform the contract in all events without any conditions. Hence, it is also known as 'unconditional contract'.
- b) A contingent contract is also called 'conditional contract'. It is a contract in which the performance becomes due, only upon the happening of some event, which may or may not happen.
- c) Contracts of insurance, indemnity and guarantee are good examples of contingent contracts.
- d) Section 31 of the Indian Contract Act, defines a contingent contract as "a contract to do or not to do something if some event, collateral to such contract, does or does not happen".

Example: A contracts to pay B ₹ 50,000 if B's house is burnt. This is a contingent contract.

Essentials of Contingent Contract:

The following are the essentials of a contingent contract. They are:

- a) There must be a contract to do or not to do something.
- b) The performance of the contract depends upon the happening or non-happening of some event in future.
- c) The event must be uncertain.
- d) The event must be collateral or incidental to the contract.

Rules regarding contingent contract:

Rules regarding contingent contracts are contained in sections 32 to 36 of the Indian Contract Act. They are as follows:

- a) Enforcement of contracts contingent on an event happening [Sec. 32]
- b) Enforcement of contracts contingent on an event not happening [Sec. 33]
- c) When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person (Sec. 34)
- d) When contracts become void which are contingent on happening of specified event within fixed time (Sec. 35)
- e) Agreements contingent on impossible events void [Sec. 36]

a) Enforcement of contracts contingent on an event happening: [Sec. 32]

Contracts, contingent upon the happening of a future uncertain event cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.

b) Enforcement of contracts contingent on an event not happening: [Sec. 33]

Contracts contingent upon the non-happening of an uncertain future event can be enforced when the happening of that event becomes impossible.

Example: A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced after the ship sinks.

c) When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person (Sec. 34)

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

Example: A agrees to pay B a sum of money if B marries C. C marries D. The marriage

of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B.

d) When contracts become void which are contingent on happening of specified event within fixed time (Sec. 35)

Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

When contracts may be enforced which are contingent on specified event not happening within fixed time —

Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired and such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen.

Example: A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.

Example: A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

e) Agreements contingent on impossible events void [Sec. 36]

Contingent agreements to do or not to do anything if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Example: A agrees to pay B ₹ 1,000 if two-straight lines should enclose a space. The

agreement is void.

Example: A agrees to pay B ₹ 1,000 if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

PART VII

PERFORMANCE OF CONTRACTS

MEANING:

Every Contract creates certain obligation on each of the parties involved in it. When **both the parties to the Contract fulfill their obligations towards each other**, the contract is said to be performed. When both the parties to the contract have performed their obligations, the contract is said to be discharged by performance.

OBLIGATION OF PARTIES TO CONTRACTS (SEC. 37)

The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisor in case of the death of such promisor before performance, unless a contrary intention appears from the contract.

Example: A promises to deliver goods to B on a certain day on payment of ₹ 1,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay ₹1,000 to A's representatives.

Example: A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

EFFECT OF REFUSAL TO ACCEPT OFFER OF PERFORMANCE (SEC. 38)

Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Every such offer must fulfill the following conditions:

- a) it must be **unconditional**
- b) it must be made at a **proper time and place**, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do.
- c) if the offer is an offer to deliver anything to the promisee, the promisee must have a **reasonable opportunity** of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

EFFECT OF REFUSAL OF PARTY TO PERFORM PROMISE WHOLLY (SEC. 39)

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

Example: A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A willfully absents herself from the theatre. B is at liberty to put an end to the contract.

PERSON BY WHOM PROMISE IS TO BE PERFORMED (SEC. 40)

If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be **performed by the promisor himself**, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a **competent person** to perform it.

Example: A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

EFFECT OF ACCEPTING PERFORMANCE FROM THIRD PERSON (SEC. 41)

When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

DEVOLUTION OF JOINT LIABILITIES (SEC. 42)

When two or more persons have made a **joint promise** then, unless a contrary intention appears by the contract, all such persons, during their joint lives, and after the death of any of them, his representative jointly with the survivor, or survivors, and after the death of the last survivor, the representatives of all jointly, must fulfill the promise.

ANY ONE OF JOINT PROMISORS MAY BE COMPELLED TO PERFORM (SEC. 43)

When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

Each promisor may compel contribution— Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Sharing of loss by default in contribution— If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss

arising from such default in equal shares.

Explanation : Nothing in this section shall prevent a surety from recovering from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

Example: A, B and C jointly promise to pay D ₹ 3,000. D may compel either A or B or C to pay him ₹ 3,000.

EFFECT TO RELEASE OF ONE JOINT PROMISOR (SEC. 44)

Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.

DEVOLUTION OF JOINT RIGHTS (SEC. 45)

When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.

Example: A, in consideration of ₹ 5,000, lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and after

the death of C with the representatives of B and C jointly.

TIME AND PLACE OF PERFORMANCE [SEC. 46 - 50]

The time and place of performance of a contract are **determined by an agreement** between the parties.

The rules regarding time and place of performance are summarized below :

Time for performance of promise, where no application is to be made and no time is specified (sec. 46)

Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a **reasonable time**. Reasonable time would depend on the nature of contract. In case of dispute, court will decide reasonable time.

Time and place for performance of promise, where time is specified and no application to be made (sec. 47)

When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during **the usual hours of business** on such day and **at the place at which the promise ought to be performed**.

Example: A promises to deliver goods at B's warehouse on the 1st January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

Application for performance on certain day to be at proper time and place (sec. 48)

When a promise is to be performed on a certain day, and the promisor has not to perform it without application by the promisee, it is the duty of the promisee to **apply for performance at a proper place and within the usual hours of business.**

Place for performance of promise, where no application to be made and no place fixed for performance (sec. 49)

When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

Example: A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

Performance in manner or at time prescribed or sanctioned by promisee (sec. 50)

The performance of any promise may be made in any manner, or at any time which the promise prescribes or sanctions.

Example: B owes A ₹ 2,000. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C.

Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

PERFORMANCE OF RECIPROCAL PROMISES [SEC. 51 - 54 AND 57]

There are situations where in a single contract there may be **multiple promises** and both the parties need to perform with a **sequence**.

Promisor is not bound to perform unless reciprocal promisee is ready and willing to perform (section 51)

When a contract consists of reciprocal promises to be simultaneously performed, no promisor need to perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Example: A and B contract that A shall deliver goods to B to be paid for by B on delivery. A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery. B need not pay for the goods, unless A is ready and willing to deliver them on payment.

Order of performance of reciprocal promises (sec. 52)

Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they **shall be performed in that order**; and, where the order is not expressly fixed by the contract, they shall be performed in that order **which the nature of the transaction requires**.

Example: A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

Liability of party preventing event on which the contract is to take effect (sec. 53)

When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes **voidable at the option**

of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

Example: *A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B; and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.*

Effect of default as to that promise which should be first performed, in contract consisting of Reciprocal

PROMISES (SEC. 54)

When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promiser of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

Example: *A contract with B to execute certain builder's work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.*

RECIPROCAL PROMISES TO DO THINGS LEGAL, AND ALSO OTHER THINGS ILLEGAL (SEC. 57)

Where persons reciprocally promise, firstly, to do certain things which are legal, and, secondly, underspecified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

TIME IS ESSENCE OF THE CONTRACT (SEC. 55)

When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

Effect of such failure when time is not essential — If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other than that agreed upon — If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.

APPROPRIATION OF PAYMENTS:

Application of payment where debt to be discharged is indicated (sec. 59)

Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some **particular debt**, the payment, if accepted, must be **applied accordingly**.

Example: A owes B, among other debts, ₹ 1,000 upon a promissory note which falls due on the first June. He owes B no other debt of that amount. On the first June A pays to B ₹ 1,000. The payment is to be applied to the discharge of the promissory note.

Example: A owes to B, among other debts, the sum of ₹ 567. B writes to A and demands payment of this sum. A sends to B ₹ 567. This payment is to be applied to the discharge of the debt of which B had demanded payment.

Application of payment where debt to be discharged is not indicated (sec. 60)

Where the debtor has **omitted to intimate** and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to **any lawful debt actually due and payable** to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

Application of payment where neither party appropriates (sec. 61)

Where neither party makes any appropriation the payment shall be applied in discharge of the debts **in order of time**, whether they are or are not barred by the law in force

for the time being as to the limitation of suits. If the debts are of **equal standing**, the payment shall be applied in discharge of each **proportionately**.

PART VIII

CONTRACT OF INDEMNITY & GUARANTEE

CONTRACT OF INDEMNITY

- a) Contract of indemnity is a special kind of contract.
- b) The term 'indemnity' literally means "security or protection against a loss" or compensation.
- c) According to Section 124 of the Indian Contract Act, 1872 "A contract by which one party promises to save the other from loss caused to him
 - ✓ by the conduct of the promisor himself, or
 - ✓ by the conduct of any other person
 is called a contract of indemnity."

Example: P contracts to indemnify Q against the consequences of any proceedings which R may take against Q in respect of a certain sum of money.

Objective of Contract of Indemnity

The objective of entering into a contract of indemnity is to protect the **promisee against unanticipated losses.**

Parties to the Contract of Indemnity

A contract of indemnity has two parties.

- ✓ The promisor or indemnifier
- ✓ The promisee or the indemnified or indemnity-holder.

The promisor or indemnifier: He is the person who promises to bear the loss.

The promisee or the indemnified or indemnity-holder: He is the person whose loss is covered or who are compensated.

Example: P is the indemnifier or promisor as he promises to bear the loss of Q. Q is the promisee or the indemnified or indemnity-holder as his loss is covered by P.

Essentials of Contract of Indemnity

- a) **Parties to a Contract:** There must be two parties, namely, promisor or indemnifier and the promisee or indemnified or indemnity-holder.
- b) **Protection of loss:** A contract of indemnity is entered into for the purpose of protecting the promisee from the loss. The loss may be caused due to the conduct of the promisor or any other person.
- c) **Express or implied:** The contract of indemnity may be expressed (i.e. made by words spoken or written) or implied (i.e. inferred from the conduct of the parties or circumstances of the particular case).
- d) **Essentials of a valid contract:** A contract of indemnity is a special kind of contract. The principles of the general law of contract contained in Sections 1 to 75 of the Indian Contract Act, 1872 are applicable to them. Therefore, it must possess all the essentials of a valid contract.
- e) **Number of contracts:** In a contract of Indemnity, there is only one contract that is between the Indemnifier and the Indemnified.

Rights of promisee/ the indemnified/ indemnity holder

As per Section 125 of the Indian Contract Act, 1872 the following rights are available to the promisee/ the indemnified/ indemnity holder against the promisor/ indemnifier, provided he has acted within the scope of his authority.

- a) **Right to recover damages paid in a suit [section 125(1)]:** An indemnity-holder has the right to recover from the indemnifier all damages which he may be compelled to pay in any suit in respect of any matter to which the contract of indemnity applies.
- b) **Right to recover costs incurred in defending a suit [section 125(2)]:** An indemnity-holder has the right to recover from the indemnifier all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit.
- c) **Right to recover sums paid under compromise [section 125(3)]:** An indemnity-holder also has the right to recover from the indemnifier all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit
- d) **Right to sue for specific performance-** The indemnity holder is entitled to sue for specific performance if he has incurred absolute liability and the contract covers such liability.

COMMENCEMENT OF LIABILITY OF PROMISOR/ INDEMNIFIER

Indian Contract Act, 1872 does not provide the time of the commencement of the indemnifier's liability under the contract of indemnity.

But different High Courts in India have held the following rules in this regard:

- Indemnifier is not liable until the indemnified has suffered the loss.
- Indemnified can compel the indemnifier to make good his loss although he has not discharged his liability.
- In the leading case of Gajanan Moreswar vs. Moreswar Madan(1942), an observation was made by the judge that " If the indemnified has incurred a liability and the liability is absolute, he is entitled to call upon the indemnifier to save him from the liability and pay it off".

CONTRACT OF GUARANTEE

Contract of Guarantee means a contract to **perform the promises** made or discharge the liabilities of the **third person** in case of **his failure to discharge** such liabilities.

As per section 126 of the Indian Contract Act, 1872, a contract of guarantee has three parties:

- **Surety:** A surety is a person **giving a guarantee** in a contract of guarantee. A person who takes responsibility to pay a sum of money, perform any duty for another person in case that person fails to perform such work.
- **Principal Debtor:** A principal debtor is a person **for whom the guarantee is given** in a contract of guarantee.
- **Creditor:** The person **to whom the guarantee is given** is known as the creditor.

For example, Mr. X advances a loan of ₹25,000 to Mr. Y and Mr. Z promises that in case Mr. Y fails to repay the loan, then he will repay the same. In this case of a contract of guarantee, Mr. X is a Creditor, Mr. Y is a principal debtor and Mr. Z is a Surety.

Essential Features of valid Guarantee:

a) Existence of Recoverable Debt or Liability:

There must be an enforceable obligation or **liability** for the guarantee to be valid.

b) Consideration:

Consideration is essential, but it **need not be direct between the surety and the creditor**. Consideration given to the principal debtor is sufficient.

Example: B requests A to sell goods to him on credit. C guarantees B's payment. This is valid consideration.

Example: If C agrees to guarantee a past debt of B without consideration, the guarantee is void.

c) No Misrepresentation or Concealment:

Section 142: A guarantee obtained by **misrepresentation** of a material fact by the creditor **is invalid**.

Section 143: A guarantee obtained by concealing material circumstances is invalid.

Example: A does not inform C about B's previous defaults. C's guarantee is invalid.

Example: A is not liable as a surety if the creditor conceals a private agreement with the debtor.

d) Oral or Written Agreement:

A guarantee can be **oral or written** as per Section 126.

e) Co-Surety Requirement (Section 144):

If a guarantee is conditional upon another person joining as a co-surety, the guarantee is **invalid unless the co-surety joins**.

Kinds of guarantee

- ✓ Retrospective or prospective
- ✓ Specific or continuing:
- ✓ Entire or partial debt

Revocation of continuing guarantee

- ✓ By notice
- ✓ By death of surety

Nature and extent of surety's liability

a) Co-Extensive Liability:

The **surety's liability** is co-extensive with that of the principal debtor unless specified otherwise in the contract.

Example: A guarantees B the payment of a bill of exchange by C. When C dishonors the bill, A is liable not only for the amount but also for any accrued interest and charges.

b) Secondary Liability:

The surety is liable **only upon default** by the principal debtor.

c) Ceases with Principal Debtor's Non-Liability:

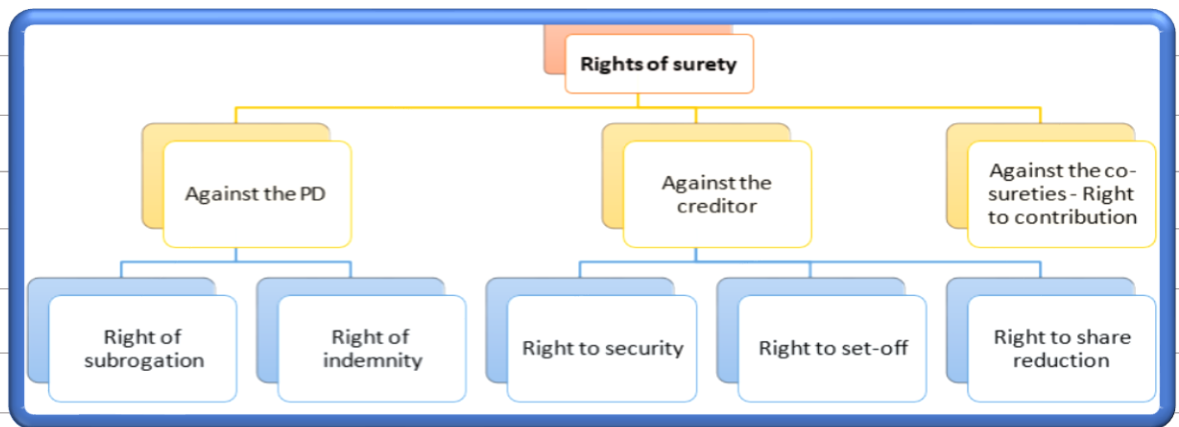
If the principal debtor cannot be held liable due to a defect in the agreement or

document, the surety's liability also ceases.

d) **Creditor May Proceed Against Surety First:**

A creditor can choose to directly sue the surety without pursuing the principal debtor first, unless the contract specifies otherwise.

Rights of surety



a) **Against the principal debtor**

- ✓ Right of subrogation
- ✓ Right of indemnity

b) **Against the creditor**

- ✓ Right of set off
- ✓ Right to benefit of creditor's securities
- ✓ Right to share reduction

c) Against co-sureties

- ✓ When liable to contribute equally
- ✓ Bound to pay in different sums
- ✓ Right to share benefits of securities
- ✓ Effect of release of surety

Discharge of surety**a) By revocation**

- ✓ By notice
- ✓ By death of surety
- ✓ By novation

b) By act or conduct of creditor

- ✓ Variation in the terms of the contract
- ✓ Release or discharge of principal debtor
- ✓ Compounding with or giving time to the principal debtor
- ✓ Creditors act or omission impairing surety eventual remedy
- ✓ Loss of security

c) By invalidation of contract of guarantee

- ✓ Obtained by misrepresentation
- ✓ Obtained by concealment
- ✓ Co-sureties does not join
- ✓ Lacks essential element of a valid contract.

Exceptions

- ✓ Agreement made with third person
- ✓ Mere forbearance to sue
- ✓ Release of one co-surety
- ✓ Death or insolvency of principal debtor

PART IX

BAILMENT & PLEDGE

BAILMENT:

Bailment is defined under **Section 148** of the Indian Contract Act, 1872, as the **delivery of goods** by one person (bailor) to another (bailee) for a **specific purpose** under a contract, with the agreement that the goods shall be returned or disposed of as per the instructions of the bailor after the purpose is accomplished.

Parties:

- a) **Bailor:** The person delivering the goods.
- b) **Bailee:** The person receiving the goods.

Example: X delivers his car to Y for repairs. X is the bailor, and Y is the bailee.

Example: X gives fabric to Y, a tailor, to stitch a suit.

Essentials of a contract of Bailment:**a) Contract:**

Bailment is based on a contract (express or implied). Consideration is not necessary for bailment.

b) Delivery of Goods:

Bailment involves the transfer of possession (not ownership) of movable goods. Delivery can be:

Actual Delivery: Physical handover of goods (e.g., handing over a car for repairs).

Constructive Delivery: Delivery through symbolic actions (e.g., handing over car keys to a workshop for repairs).

c) **Purpose:**

Goods are delivered for a specific purpose, which may be express or implied.

d) **Possession:**

Possession changes from the bailor to the bailee, **but ownership remains with the bailor.**

Example: A servant holding goods for their employer does not become a bailee.

Example: Depositing ornaments in a bank locker is not bailment since the owner retains possession.

e) **Return of Goods:**

The bailee must return the goods in the same form or as per the bailor's instructions.

Exchange or substitution of goods is not allowed.

Example: Depositing money in a bank is not bailment as identical notes are not returned.

PLEDGE:

A **bailment of goods as security for payment of a debt** or performance of a promise.

Parties:

a) **Pawnor:** The person who delivers the goods.

b) **Pawnee:** The person to whom the goods are delivered.

Essentials of a contract of pledge

a) Bailment for **security against payment** or performance of a promise.

b) Goods as subject matter: Only **movable goods** can be pledged.

c) **Goods must exist** at the time of the pledge.

d) **Delivery** of goods from the pawnor to the pawnee.

Example: A lends money to B against the security of jewellery deposited by B. This bailment of jewellery is a pledge. B is the pawnor, and A is the pawnee.

Duties of Pawnor and Pawnee

Duties of Pawnor	Duties of Pawnee
Repay debt or perform promise.	Take reasonable care of pledged goods.
Compensate for extraordinary expenses.	Return goods after debt repayment.
Disclose defects in goods.	Not use goods without authorization.
Indemnify for loss due to faulty title.	Not mix pledged goods with personal goods.
Pay deficit if goods sold due to default.	Return any accretion to the pledged goods.

ENFORCEMENT OF PAWNEE'S DUTIES RIGHT TO REDEEM [SEC. 177]:

If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay, in addition, any expenses which have arisen from his default.

PLEDGE BY NON-OWNERS

Ordinarily, it is the owner of the goods, or any person authorized by him in that behalf, who can pledge the goods. But in order to facilitate mercantile transactions, the law has recognised certain exceptions. These exceptions are for bonafide pledges made by those persons who are not the actual owners of the goods, but in whose possession the goods have been left.

PLEDGE BY MERCANTILE AGENT [SEC. 178]

Where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the pawnee acts in good faith and has not at the time of the pledge notice that the Pawnor has no authority to pledge.

PART X

AGENCY

CONTRACT OF AGENCY:

- a) According to **Section 182** of the Contract Act: 'Agent' is a person employed to do any act for another or to represent another in dealings with third persons.
- b) The person for whom such act is done, or who is so represented, is called the 'principal'.
- c) Thus, It is clear from the definition, that an agent is a connecting link between his principal and third parties.

TEST OF AGENCY

Capacity to Bind: The agent must be able to bind the principal to third-party contracts.

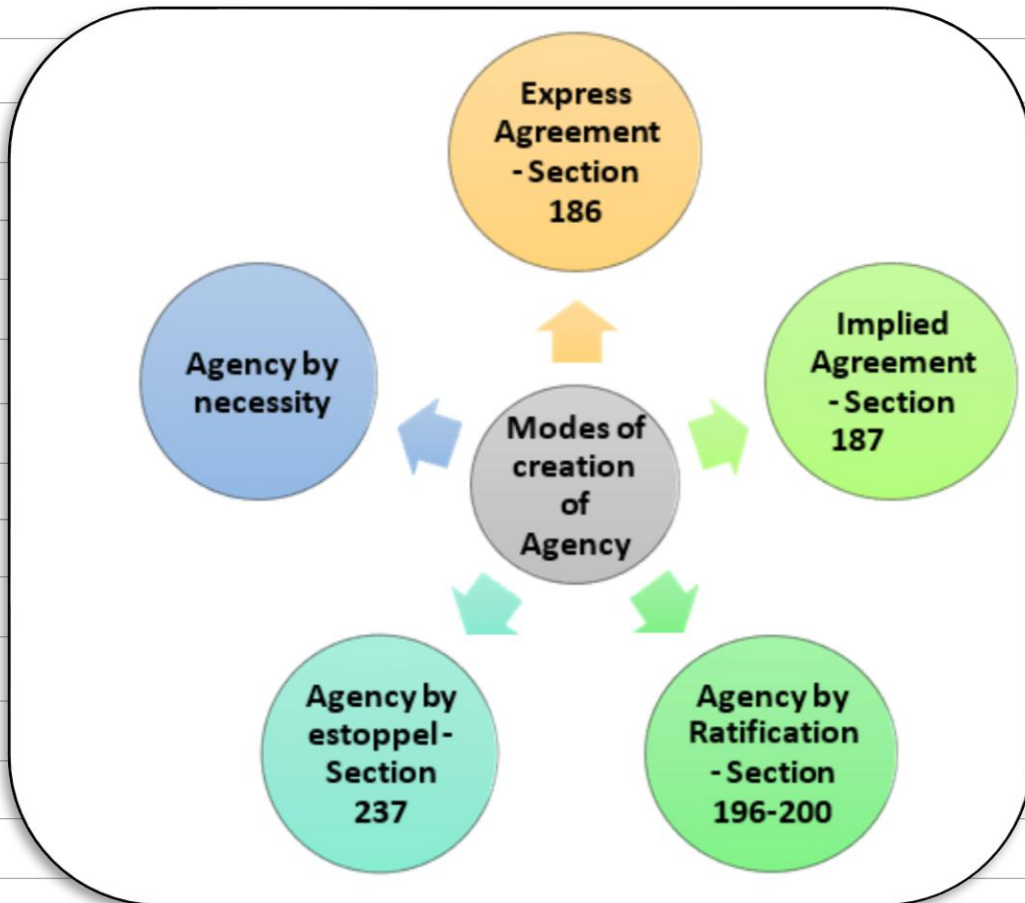
Privity of Contract: The agent must establish a legal relationship between the principal and third parties.

Maxim: *Qui facit per alium, facit per se* (He who acts through another, acts himself).

Essential features of contract of agency (Sec. 226):

- a) Agreement between agency and principal
- b) Competency of principal
- c) Competency not required for an agent
- d) Contractual relationship
- e) Creation of legal relations
- f) Consideration not required
- g) Intention of the person to act Creation of Agency

CREATION OF AGENCY:



1. By Express Agreement (Sec. 186)

According to section 186 of the Indian Contract Act, 1872, the contract of agency may be express or implied. Express in the sense, it may be oral or in writing. It is a practice in many cases, to appoint agents by using the power of attorney on a stamped paper.

Example: A authorizes B through a power of attorney to manage a property in Kolkata. (Express authority by agreement).

2. By Implied Agreement (Sec. 187)

Section 187 defines express and implied authority as follows. An authority is said to be

expressed when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.”

An Implied Agency may be created from the conduct, situation or relationship of the parties. It may be inferred from the circumstances of the case.

Example: A shop assistant ordering goods on behalf of the shop owner (customary practice).

Implied agency includes:

a. Agency by Estoppel

It is based on the ‘**Doctrine of Estoppel**’.

If the principal by his conduct or statement leads another person to believe that a person is his agent, he cannot deny him as his agent later.

Example: ‘A’ says ‘B’ in the presence of ‘C’ that he is the agent of ‘C’. If ‘C’ does not deny the statement, he cannot deny ‘A’ as his agent later.

b. Agency by Holding Out

It is branch of the Agency by Estoppel. If one person knowingly admits another to act on his behalf and allows him to do so, later he cannot deny the act of that person. If he does not want to do so he should express his objection to that act immediately.

Example: ‘A’ allowed his wife ‘B’ to manage his property and to mortgage it. A is bound by her acts.

c. Agency by necessity

Agency of necessity is created in case of emergencies.

In these cases, the persons who perform their services as agents do not seek prior permission or appointment from the principals. The principals are also in certain difficult situations and they could not give their assent or refusal, but accept the services rendered by such persons. Therefore, law confers authority on a person to act as an agent for another, without the consent of that person (principal). Such an agency is called 'Agency by Necessity'.

Cases where agency by necessity may arise:

- i) When an agent exceeds his authority in an emergency (Sec. 189)
- ii) Relationship between husband and wife-
- iii) Living together
- iv) Living separately
- v) Carrier of goods acting as Bailee does anything to protect or preserve the goods

3. By ratification

When an agent acts without prior authority, the principal can later approve the act, making it binding as if initially authorized. This is known as ratification.

Essentials of Ratification (Sec.196-200)

- a. **Express or Implied (Sec 197):** Ratification can be explicit (verbal or written) or implied through conduct.

Examples:

B sells goods for A without authority. A later sells the same goods, implying ratification.

B lends A's money to C without permission. A accepts interest payments, implying ratification.

b. **Full Knowledge Required (Sec 198):** Ratification is valid only if the principal knows all material facts.

Example: P accepts a purchase made by A without knowing A sold P's own goods. The ratification is invalid.

c. **Entire Transaction (Sec 199):** The principal must ratify the whole transaction, not just favorable parts.

Example: B cannot accept only profitable terms of a sale and reject the rest.

d. **No Injury to Third Parties (Sec 200):** Ratification cannot adversely affect third-party rights.

Example: C's refusal to deliver goods cannot be penalized through subsequent ratification by B.

A lease cannot be terminated retroactively through ratification.

e. **Timeliness:** Ratification must occur within a reasonable time.

f. **Communication of Ratification:** The principal must inform the third party about the ratification.

g. **Act Must Be Legal:** Ratification cannot validate illegal acts, such as forgery or criminal acts.

4. **By Operation of law-** Agency by operation of law arises where the law treats one person as an agent of another. Certain relationships, such as partnerships, inherently include an agency relationship.

Example: A partner acts as an agent of the firm.

SUB AGENT [SEC. 191]

A "sub-agent" is a person **employed by**, and acting under the control of, the original **agent** in the business of the agency. Relationship between sub agent and principal.

Sec. 192 - Where a sub-agent is properly appointed,

- a) The principal is, so far as regards third person, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal.
- b) **Agent's responsibility for sub-agent:** The agent is responsible to the principal for the acts of the subagent.
- c) **Sub-agent's responsibility:** The sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or wilful wrong.

Sec. 193 - Where a sub-agent is improperly appointed, Where an agent, without having authority to do so, has appointed a person to act as a sub-agent,

- a) the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons;
- b) The principal is not represented by or responsible for the acts of the person so employed,
- c) The sub agent is not responsible to the principal.

SUBSTITUTED AGENT [SEC. 194]

Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the

business of the agency as is entrusted to him.

Example: A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

Example: A authorizes B, a merchant in Calcutta, to recover the money due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co. for the recovery of the money. D is not a sub-agent, but is solicitor for A.

Agent's duty in naming such person Sec. 195:

In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Example: A instructs B, a merchant, to buy a ship for him. B employs a ship surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A.

DUTIES AND OBLIGATIONS OF AN AGENT

a) **Duty to Follow Instructions or Customs (Section 211)**

The agent must conduct the business as per the **directions of the principal** or, in their absence, as per prevailing customs.

Any deviation resulting in a loss must be indemnified by the agent. Conversely, any profit made must be accounted for.

Example: A manages B's business where it is customary to invest idle funds for interest. If A fails to invest, he must compensate B for the lost interest.

Example: B, a broker, sells goods on credit contrary to business custom. If the buyer defaults, B must indemnify A for the loss.

b) **Duty of Reasonable Care and Skill (Section 212)**

The agent must conduct the business with **reasonable diligence** and skill typical of others in similar roles.

Neglect, lack of skill, or misconduct that causes direct loss must be compensated. Indirect or remote losses are not compensable.

Example: B in London delays remitting money received for A in Kolkata. B is liable for the loss and interest.

Example: A, an agent authorized to sell on credit, fails to check the buyer's solvency and sells goods to an insolvent buyer. A must compensate the principal.

Example: A broker omits important clauses in an insurance policy, causing a loss to the principal. The agent must compensate.

Example: B fails to send cotton to A in time, resulting in a missed profit opportunity. B is liable for the missed profit at the time the shipment arrived, but not for subsequent price increases.

c) **Duty to Render Proper Accounts (Section 213)**

The agent must **provide accurate accounts** with supporting vouchers upon the principal's demand.

d) **Duty to Communicate with Principal (Section 214)**

In case of difficulties, the agent must use reasonable diligence to communicate with the principal and seek instructions.

e) Duty Not to Deal on Own Account (Sections 215 & 216)

An agent must not act on his own account in transactions without the principal's consent. The principal may:

- *Repudiate the transaction, or*
- *Claim any benefit derived from the transaction.*

Example: *B buys A's estate for himself using a third party's name. A may repudiate the transaction if B concealed material facts.*

Example: *B discovers a mine on A's estate, conceals this fact, and buys the estate. A can repudiate or accept the transaction.*

Example: *B falsely informs A that a house cannot be bought, then buys it for himself. A can compel B to sell the house to him at the purchase price.*

f) Duty Not to Make Secret Profits

The agent must not make undisclosed profits beyond the agreed remuneration. Any secret profit must be surrendered to the principal.

g) Duty Not to Delegate (Section 190)

The agent cannot delegate their duties unless:

- *It is customary in the trade.*
- *The nature of the agency requires it.*
- *An emergency arises.*

h) **Duty to Pay Sums Received for Principal (Section 218)**

The agent must remit all sums received on behalf of the principal after deducting any agreed expenses or remuneration.

i) **Duty Not to Use Confidential Information**

The agent must not misuse any confidential information received during the course of the agency to the detriment of the principal.

RIGHTS OF AGENT

- a) **Right of Retainer:** Retain amounts received for principal's debts or expenses.
- b) **Right to Remuneration:** Entitled to agreed or customary remuneration unless guilty of misconduct.
- c) **Right of Lien:** Retain principal's property until dues are paid.
- d) **Right to Indemnification:** Indemnified for lawful acts and acts done in good faith.
- e) **Right to Compensation:** Compensation for injuries caused by the principal's negligence.

PERSONAL LIABILITY OF AGENT

Circumstances	Explanation
Foreign Principal	Agent contracts on behalf of a foreign principal; presumed personally liable.
Undisclosed Principal	Agent does not disclose the principal's identity; presumed personally liable.
Principal Incompetent	Principal is a minor or of unsound mind; agent becomes liable.
Pretended	Acts as an agent without authority; personally liable for breach of

Agent	warranty of authority.
Acts Beyond Authority	Agent exceeds their authority, misleading the third party.

TERMINATION OF AGENCY

Mode of Termination	Explanation
Revocation	Principal revokes authority before it is exercised; cannot revoke after partial exercise.
Renunciation by Agent	Agent gives up the agency relationship.
Completion of Business	Agency ends upon fulfillment of the assigned task.
Death or Insanity	Ends upon the death or insanity of the principal or agent.
Principal's Insolvency	Ends if the principal is adjudicated insolvent.
Expiry of Time	Ends upon the lapse of a fixed term.

Special Case: Irrevocable Agency

Agency becomes irrevocable when the agent has a personal interest in the subject matter.

Example: Agent authorized to sell goods and recover their advance cannot have their authority revoked.

EFFECTS OF TERMINATION

- a) **As to Agent:** Termination is effective once the agent knows about it.
- b) **As to Third Parties:** Termination is effective only after third parties become aware of it.
- c) **Duties Post-Termination:** Agent must take steps to protect the principal's interests if the termination is due to death or insanity.

PART XI

E-CONTRACTS AND E-SIGNATURE

MEANING:

- a) E-contracts are contracts that are not paper based and are **electronic in nature**.
- b) These e-contracts are generally made for speedy entering into a contract or for the convenience of the parties and are best made between parties who live in 2 different parts of the world and have to enter into an agreement.
- c) A **digital signature is all they need** to enter into a contract as a party even though both the parties to the contract are sitting miles away from each other.
- d) In this proliferating world, it is the most convenient method to enter into a contract without being physically exhausted.
- e) **Section 10A. Of the Information Technology Act, 2008** states that:

Validity of contracts formed through electronic means.—Where in a contract formation:

- ✓ the communication of proposals,
- ✓ the acceptance of proposals,
- ✓ the revocation of proposals and acceptances, as the case may be,

are expressed in electronic form or by means of an electronic record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose.

- f) An **electronic signature** is defined by the Information Technology Act, section 2(p) as the **authentication of any electronic record by a subscriber by means of the electronic technique** specified in the second schedule and it includes a digital signature (Further illustrated in Section 3 & 3A of the Information Technology Act.
- g) Further, Section 5 of the Information Technology Act says that where any law requires

that information or any other matter be authenticated by affixing a signature or any document signed by or bearing the signature of any person, then such requirement shall be deemed to have been satisfied.

- h) **Electronic signature serves the same purpose as a handwritten signature.**
- i) Section 85 c of The Indian Evidence Act states that as far as a digital signature is concerned, the courts presume that the information provided in that certificate is true and correct.

PARTIES TO AN E-CONTRACT

“Originator” according to the Sec 2 (za), Information Technology Act, 2008 is a person, who sends, generates, stores or transmits any electronic message to be sent, generated, stored or transmitted to any other person and does not include an Intermediary. (In the present context, the person who initiates the process of making an e-contract to send it to the other party.)

An **“Addressee”** according to the Sec 2 (b) of Information Technology Act, 2008 is a person, who is intended by the originator to receive the electronic record but does not include any Intermediary. (In the present context, the party which receives the e-contract made by the other party.)

TYPES OF E-CONTRACTS

Three common kinds of electronic contracts are browse wrap, shrink wrap and click wrap contracts.

- a) A **browse wrap agreement** is intended to be binding on the contracting party by the

use of the website. Such contracts are usually used by websites wherein the continued use of a website by a user is deemed to be acceptance of its revised terms of use and other policies.

b) A **shrink wrap contract** is a license agreement where the terms and conditions of the contract are enforced upon the consumer as soon as he opens the package. Such contracts can be generally observed in the case of buying of software products. The license agreement indemnifies the user for any copyright or intellectual property rights violation of the manufacturer as soon as the buyer opens the pack (containing the software product).

c) **Click wrap** click through agreements require the user to manifest his consent or assent to the terms and conditions governing the licensed usage of the software by clicking "ok" or "I agree" button on the dialogue box. A user may choose to disagree or reject the terms by clicking cancel or closing the window. Such a user will not be able to buy or use the service upon rejection. One regularly comes across such a type of contract during online transactions, while downloading software or creating an e-mail account. Unlike the shrink wrap agreements where the terms of the agreement are hidden inside the box, in case of click wrap agreements, all the terms and conditions are accessible prior to acceptance, either in the same window or through a hyperlink.

VALIDITY OF E-CONTRACTS

Along with traditional agreements the Indian Contract Act, 1872 has also accorded recognition to oral contracts provided they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void. Thus, nothing in the Indian Contract Act prohibits



the enforceability of electronic agreements if such agreements possess all the essentials of a valid contract.

Free consent is an essential characteristic of a valid contract. Generally there is no scope for negotiations on E-Contracts and it is usually a 'take it or leave it' transaction. Indian courts have dealt with instances where the terms of contract were negotiated between parties wherein one party to the contract was in an unfair dominant position and have held unfair contracts as void.

In the case of LIC India v. Consumer Education and Research Center, the Supreme Court held that "In dotted line contracts there would be no occasion for a weaker party to bargain as to assume to have equal bargaining power. He has either to accept or leave the service or goods in terms of the dotted line contract. His option would be either to accept the unreasonable or unfair terms or forgo the service forever."

PART XII

BREACH OF CONTRACT AND ITS REMEDIES

BREACH OF CONTRACT

- a) Parties to a contract are bound to perform their respective obligations.
- b) If any party fails to perform the obligation imposed upon him, he is said to have committed breach of contract.
- c) Thus breach means “**failure or refusal of a party to perform his obligation under a contract without any lawful excuse**”.
- d) The breach of contract may be:
 - ✓ Actual breach of Contract
 - ✓ Anticipatory breach of Contract.

TYPES OF BREACH

Actual Breach of Contract:

- a) It is also called “**Present breach**”. Actual breach of contract occurs:
 - ✗ when during the performance of the contract, or
 - ✗ at the time of performance is due, one party fails or refuses or neglects to perform his obligation under the contract.
- b) Actual breach discharges the contract.
- c) It gives right to the aggrieved party to sue the party at fault for damages for breach of contract.

Example: A agrees to deliver to B, 5 tons of sugar on 5th July. He fails to do so on 5th July. There is a breach of contract by A.

Anticipatory breach of contract:

It is also called "constructive breach". Anticipatory breach of contract occurs:

- * When a party repudiates his liability under the contract **before the time** for performance is due, or
- * When a party by his own act conduct **disables himself** from performing the contract.

Example: X enters into a contract to supply Y with certain articles on the 1st of June. Before 1st June, X informs Y that he will not be able to supply the articles. The breach committed by X here is anticipatory breach of contract.

Anticipatory breach of contract does not by itself discharge the contract.

The contract is discharged only when the aggrieved party accepts the repudiation of the contract. If he does not accept the repudiation, the contract continues to exist and may be performed by the other party, if possible.

Effect of anticipatory breach:

The **promisee is excused from performance** or from further performance. Further he gets an **option:**

- To either treat the contract as **rescinded and sue** the other party for damages from breach of contract immediately without waiting until the due date of performance; or
- He may elect **not to rescind but to treat the contract as still operative**, and wait for the time of performance and then hold the other party responsible for the consequences of non-performance. But in this case, he will keep the contract alive for the benefit of the other party as well as his own, and the guilty party, if he so decides on re-consideration, may still perform his part of the contract and can also take

advantage of any supervening impossibility which may have the effect of discharging the contract.

CONSEQUENCES OF BREACH OF CONTRACT [SECTION 73]:

Compensation for loss or damage caused by breach of contract.

- a) When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.
- b) Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract.

When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation.

In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Example: A hires B's ship to go to Bombay, and there take on board, on the first of January, a cargo, which A is to provide, and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

Example: A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur, for sale at that place, starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

COMPENSATION FOR BREACH OF CONTRACT WHERE PENALTY STIPULATED FOR.

(SEC. 74):

When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation.

A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

Exception.

When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the 2 [Central Government] or of any 3 [State Government], gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.

A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

Example: *A contracts with B to pay B ₹1,000, if he fails to pay B ₹500 on a given day. A fails to pay B ₹500 on that day. B is entitled to recover from A such compensation, not exceeding ₹1,000, as the Court considers reasonable.*

Example: *A contracts with B that, if A practises as a surgeon within Calcutta, he will pay B ₹5,000. A practises as a surgeon in Calcutta. B is entitled to such compensation; not exceeding ₹5,000, as the Court considers reasonable.*

PARTY RIGHTFULLY RESCINDING CONTRACT, ENTITLED TO COMPENSATION (SEC. 75):

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

REMEDIES FOR BREACH OF CONTRACT:

When there is breach of contract, the aggrieved party has one or more of the following remedies.

- a) Suit for Rescission of the contract.
- b) Suit for damages
- c) Suit upon Quantum meruit
- d) Suit for specific performance of the contract.
- e) Suit for Injunction.

a) Suit for Rescission of the contract:

Rescission means the **cancellation of a contract**. When there is a breach of contract by one party, the other party may sue to treat the contract as rescinded. When the court grants rescission, the aggrieved party is free from all his obligations under the contract. He becomes **entitled to compensation for any damage which he suffered**

Example: X promises to deliver a book on 5th January and Y agrees to pay its price on receipt of the book. X fails to deliver the book for no valid reason. Y may repudiate and may refuse to pay the price.

b) Suit for damages:

Remedy by way of damages is the most common remedy available to the injured party.

When a contract is breached, the injured party is entitled to file a **suit for damages**. Damages are a **monetary compensation** allowed to the injured party by the court for the loss or injury suffered by him. The fundamental principle underlying damages is not punishment but compensation.

c) **Suit upon Quantum meruit:**

Quantum meruit means as much as is merited or as much as earned. In other words, it means **payment in proportion to the amount of work done**.

A right to sue on a quantum meruit arises where a contract partly performed by one party has become discharged by the breach of the other party.

The claim on quantum arises in the following cases.

- * where the contract is discovered to be void.
- * When something has been done without any intention to do so gratuitously.
- * Where one party refuses to perform the contract.

d) **Suit for specific performance of the contract:**

In certain special cases of breach of contract, **damages are not an adequate remedy**.

The **court may, in such cases, order specific performance of the contract**. The defaulting party will be forced to perform the act promised under the contract.

It is granted only in the following cases:

- * Where compensation in money is not an adequate relief.
- * Where there is no standard for ascertaining the actual damage caused by the non-performance.
- * Where compensation in money cannot be obtained.

e) **Suit for Injunction:**

Injunction is an **order of the court restraining a person from doing a particular act.**

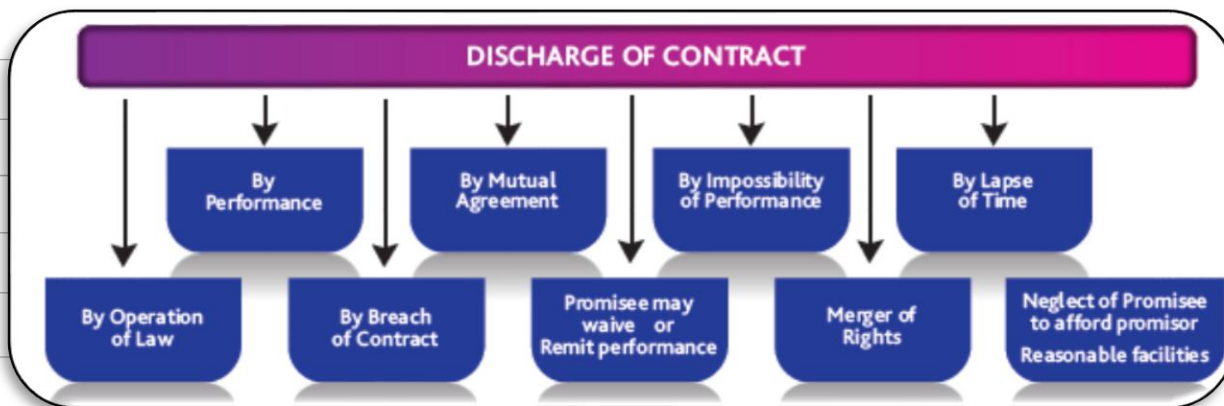
The court, by issuing injunction restrains a person from doing what he has promised not to do. Injunction may be temporary or permanent. It is a **preventive relief granted at the discretion of the court.**

PART XIII

DISCHARGE OF CONTRACTS

MEANING:

When the **rights and obligations** created by a contract **come to an end**, the contract is said to be discharged or terminated. In other words, discharge of contract means **termination of contractual relationship** between the parties.



MODES:

a) Discharge by performance:

Performance is the usual mode of discharge of a contract. Performance may be:

- ✓ actual performance
- ✓ attempted performance.

Actual performance is the **fulfillment of the obligations** arising from a contract by the parties to it, in accordance with the terms of the contract.

Offer of performance is also known as **attempted performance** or tender of performance. A valid tender of performance is equivalent to performance.

b) Discharge by agreement:

The parties may agree to terminate the existence of the contract in any of the following ways:

✓ Novation (Sec. 62)

✓ Alteration (Sec. 62)

✓ Rescission (Sec. 62)

Remission (Sec. 63)

✓ Waiver (Sec. 63)

i) **Novation:** *Substitution of a new contract in place of the existing contract* is known as "Novation of Contract". It discharges the original contract. The new contract may be between the same parties or between different parties. Novation can take place only with the consent of all the parties.

Example: A owes money to B under a contract. It is agreed between A, B and C that B should accept C as his debtor, instead of A. The old debt of A and B is at an end and a new debt from C to B has been contracted. There is novation involving change of parties.

ii) **Alteration:** Alteration means *change in one or more of the terms of the contract*. In case of novation there may be a change of the parties, while in the case of alteration, the parties remain the same. But there is a change in the terms of the contract.

iii) **Rescission:** Rescission means "*cancellation*". All or some of the terms of a contract may be cancelled. Rescission results in the discharge of the contract.

iv) **Remission:** Remission means *acceptance of a lesser performance* than what is actually

due under the contract.

There is no need of any consideration for remission.

v) **Waiver:** Waiver means **giving up or foregoing certain rights**. When a party agrees to give up its rights, the contract is discharged.

Example: A promises to paint a picture of B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

c) **Discharge by lapse of time:** Every contract must be performed within a fixed or reasonable period. Lapse of time discharges the contract. The Indian Limitation Act has prescribed the period within which the existing rights can be enforced in courts of law.

Example: If a creditor does not file a suit within three years of debt, the debt becomes time barred. He is deprived of his legal remedy.

d) **Discharge by operation of law:** A contract may be discharged by operation of law in the following cases.

✓ Death

✓ Insolvency

✓ Unauthorized material alteration.

✓ Merger

i) **Death:** In contracts **involving personal skill or ability**, death terminates the contracts. In other cases, the rights and liabilities of the deceased person will pass on to his legal representatives.

- ii) **Insolvency:** The insolvency of the promisor discharges the contract. The promisor is discharged from all liabilities incurred prior to his adjudication.
- iii) **Unauthorized material alteration:** Material **alteration** in the terms of the contract **without the consent of the other party** discharges the contract. Change in the amount of money to be paid, date of payment, place of payment etc. are examples of material alteration.
- iv) **Merger:** When inferior rights of a person under a contract merge with superior rights under a new contract, the contract with inferior rights will come to an end.
Example: Where a part-time lecturer is made full-time lecturer, merger discharges the contract of part-time lecturer ship.
- e) **Discharge by breach of contract:** Breach means **failure of a party to perform his obligations** under a contract. Breach brings an end to the obligations created by a contract.
- f) **Discharge by impossibility of performance:** Impossibility of performance results in the discharge of the contract. An agreement which is **impossible is void**, because law does not compel to do impossible things.
Example: A and B wanted to marry each other. Before the time fixed for marriage, A goes mad. The contract becomes void.

SALE OF GOODS ACT 1930

PART - I

INTRODUCTION

HISTORY OF ACT

- a) The sale of goods Act 1930 deals with laws relating to sale of goods in India.
- b) Before the enactment of The Sale of Goods Act, 1930 the relating to sale and purchase of goods were regulated by the Indian Contract Act, 1872.
- c) In 1930, Sections 76 to 123 of the Indian Contract Act, 1872 were repealed and a separate Act called "The Indian Sale of Goods Act, 1930" was passed.
- d) It came into force on 1st July, 1930.
- e) With effect from 22nd September, 1963 the word 'Indian' was also removed, now the present Act is called 'The Sale of Goods Act, 1930.
- f) This act extends to the whole of India

DEFINITION - BASIC CONCEPTS:

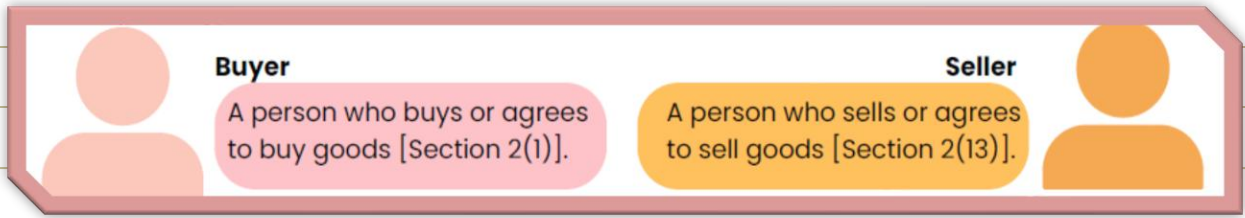
Section 2 of the Act defines various terms used in the Act. They are:

1. Buyer [Sec. 2(1)]

Buyer means a person who buys or agrees to buy goods.

2. Seller [Sec. 2(13)]

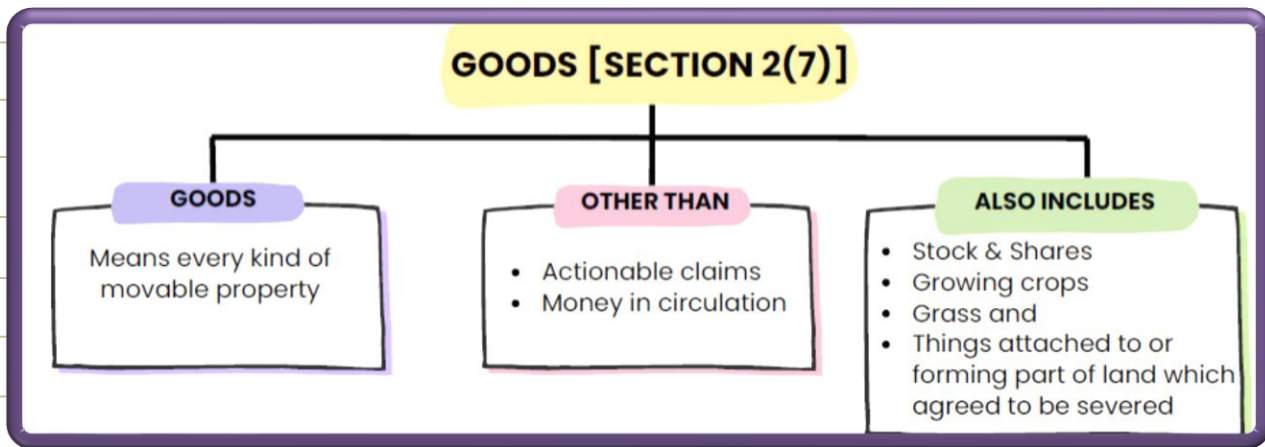
Seller means a person who sells or agrees to sell goods.



3. **Delivery [Sec. 2(2)]:**

Delivery means **voluntary transfer of possession** from one person to another.

4. **Goods [Sec. 2(7)]:**



Goods means **every kind of movable property** other than actionable claims and 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.

Money means current money and it includes rare and old coins

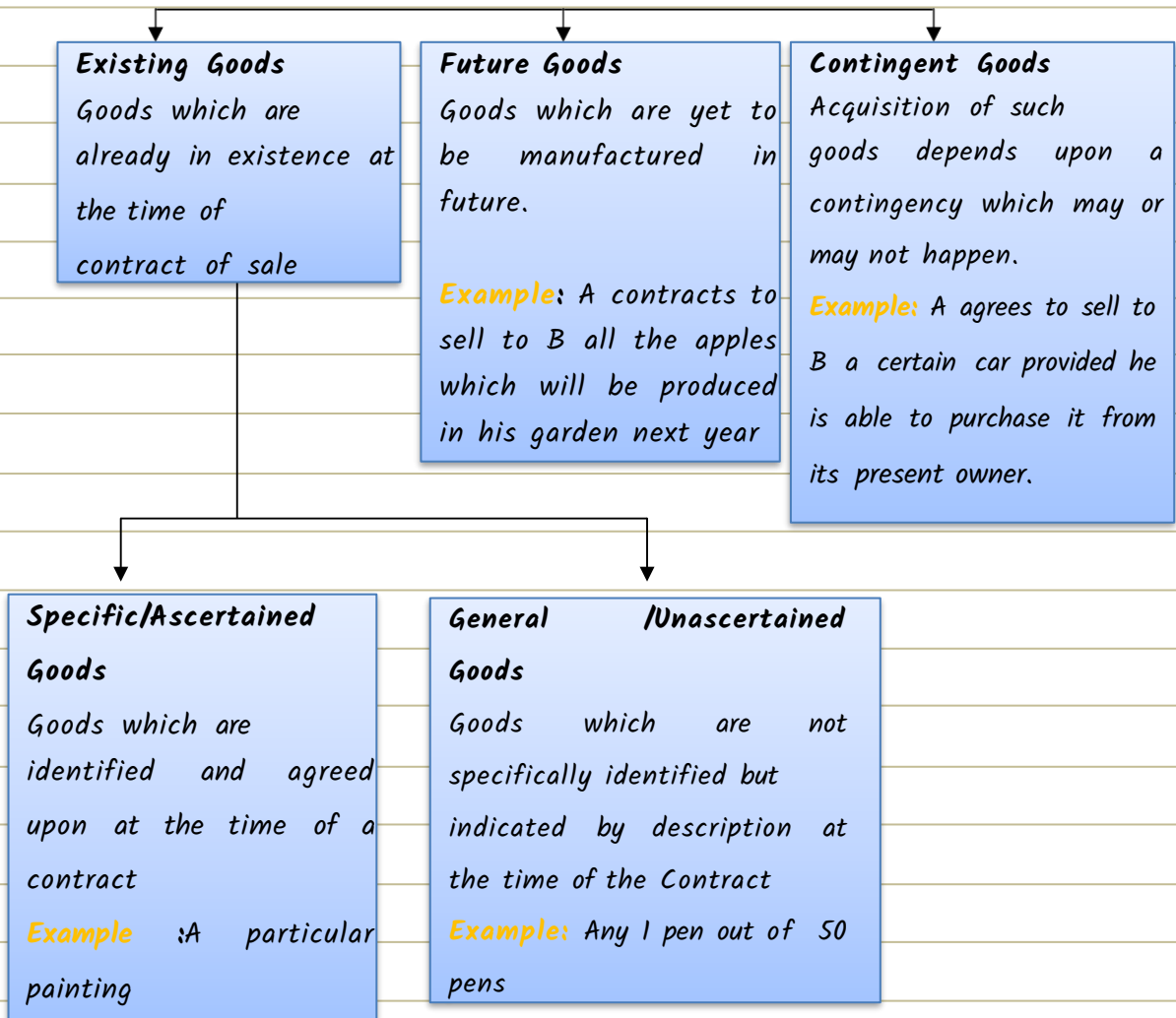
An **actionable claim** is a claim to any debt (Claims which can be enforced only by



an action or suit in court of law). For example: a money debt, book debts, etc.

Actionable claims **cannot be sold or purchased like goods**, they can only be assigned, as per provisions of Transfer of property Act

CLASSIFICATION OF GOODS:



5. **Document of Title to Goods [Sec. 2(4)]:**

It includes bill of lading, dock warrant, warehouse keeper's certificate, wharfinger's



certificate, railway receipt, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods.

It is a document which shows the ownership of goods.
It includes share certificate, RC book of car, etc

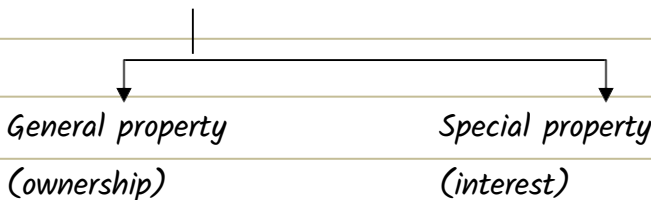
It is a document which is used as proof of the possession or control of goods.
It includes a Bill of lading, Dock-warrant, Warehouse keeper's Certificate, Wharfinger Certificate, Railway Receipt

6. **Price: [Sec. 2(10)]**

Price means the **money consideration** for a sale of goods.

7. **Property: [Sec. 2(11)]**

Property means the **general property** in goods and not merely a special property.



DEFINITION OF CONTRACT OF SALE: [SEC. 4(1)]

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

Contract of Sale is a generic term which includes both sales as well as an agreement to sell:

CONTRACT OF SALE [SEC. 4(1)]

Sale [Sec. 4(3)]

Agreement to Sell [Sec. 4(3)]

"Where under a contract of sale the property in the **goods is transferred** from the seller to the buyer, the contract is called a sale" - [Sec. 4(3) of The Sale of Goods Act, 1930]. Also called agreement of sale.

"Where the **property in the goods (legal ownership of goods) is to be transferred** to the buyer at some future date or on the fulfillment of a certain conditions, the contract of sale is called an agreement to sell" - [Sec. 4(3) of The Sale of Goods Act, 1930].

Agreement to sell is called as Conditional Sale.

"Where an agreement to sell provides that the ownership of the goods shall be transferred at some future date, it becomes sale when that date arrives. If the ownership is to be transferred on the fulfillment of some conditions the agreement to sell becomes a sale when those conditions are fulfilled" - [Sec. 4(3) of The Sale of Goods Act, 1930].

In sale, both ownership and possession have to be transferred.

DIFFERENCES BETWEEN SALE AND AGREEMENT TO SELL:

The following are the differences between Sale and Agreement to Sell:

Basis	SALE	AGREEMENT TO SELL
Transfer of property	Property in goods passes to buyer immediately.	Property in goods passes to buyer on future date or on fulfilment of some condition.
Risk	Risk of loss is that of buyer since risk follows ownership.	Risk of loss is that of seller. Since property in goods does not pass to buyer, risk also does not pass to him.
Nature of Contract	It is an executed contract, i.e. contract for which consideration has been paid.	It is an executory contract, i.e. contract for which consideration is to be paid at future date.
Remedies for breach	Seller can sue buyer for price of goods because property has passed to buyer.	Aggrieved party can sue for damages only & not for price, unless price was payable at a stated date.
Liabilities of party	Subsequent loss or destruction of goods is liability of the buyer.	Such loss or destruction is the liability of seller.
Rights	Creates Jus in rem	Creates Jus in personam
Resale	Seller cannot resell goods.	Seller may sell goods since ownership is with seller

DOCTRINE OF CAVEAT EMPTOR

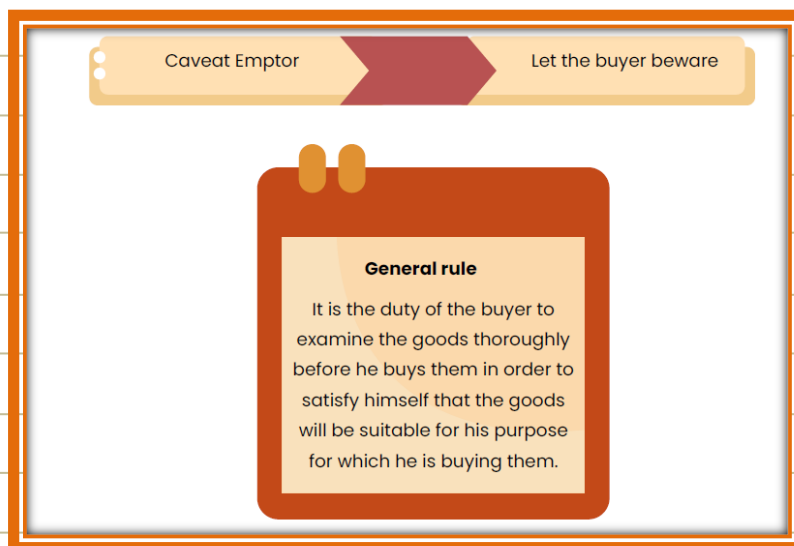
The term Caveat Emptor is a **Latin word** which means 'let buyer be aware'.

This principle underlines the concept that it is for the buyer to satisfy himself that the goods which he is purchasing are of the quality required by him.

It is a fundamental principle of law of sale of goods and implies that the **seller is under no obligation to point out the defects in his own goods.**

The buyer must take care while purchasing the goods and if he makes a wrong selection he cannot blame the seller if the goods turn out to be defective or do not serve his purpose.

However the doctrine of Caveat Emptor does not mean that the buyer must take a chance, it only means he must take care.



However this rule is not without any exception. With the passage of time this doctrine has been considered to be too unreasonable to the buyers. Hence the law in section 16 recognized **certain exceptions to the rule.**

a) Where the **buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required and relied upon the skill and judgment of the seller** and the goods are of description which it is the course of the seller's business to supply, there is an implied condition that the goods shall be reasonably fit for such purpose. Accordingly the seller cannot get any immunity on the ground of Caveat Emptor

Example: P, a draper, purchased a hot water bottle from a retail chemist, P asked chemist if it would stand boiling water. The Chemist told him that bottle was meant to hold hot water. The bottle burst when water was poured into it and injured his wife. It was held that chemist shall be liable to pay damages to P, as he knew that bottle was purchased for purpose of being used as a hot water bottle. **[Priest vs. Last]**

b) Implied condition as to salability where the goods are **bought by description** from the seller in goods of that description.

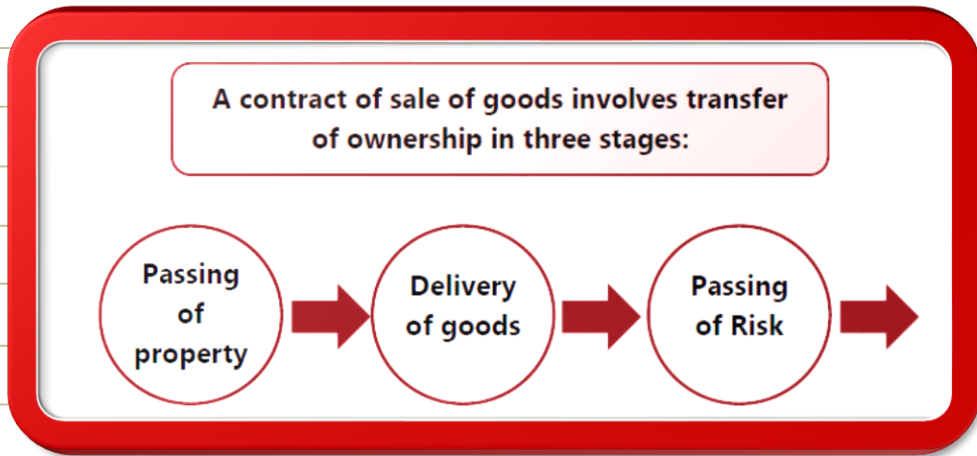
c) Condition as to **Wholesomeness** in case of foodstuffs and other goods meant for human consumption.

d) When the seller commits **fraud**.

e) When there is a **usage of trade**.

PART -II

TRANSFER OF SHARES



A Sale is defined as **transfer of ownership** of the goods from the seller to the buyer for a price.

Therefore what is important in a transaction of sale is the transfer of the ownership. It is essential to determine the exact point of time at which the Property in the goods is transferred in favor of the buyer.

The term **Property in goods means the ownership of the goods.**

The term transfer of property means the transfer of ownership from seller to buyer so as to constitute the buyer the real owner of the goods.

When the ownership of the goods is transferred to the buyer, he becomes the real owner of the goods and the seller ceases to be the owner from that point of time.

This ultimately determines the various rights and liabilities of the buyers and

sellers in respect of the goods sold. Sections 18 to 25 of the Sale of Goods Act, determine when the property passes from the seller to the buyer.

PASSING OF PROPERTY

The primary rules for ascertaining when the property in goods passes from seller to buyer may be summarized as follows:

a) Goods must be ascertained

As per section 18 in a contract for sale of unascertained goods, the property in the goods does not pass to the buyer unless and until the goods are ascertained.

Example: Under a contract B was entitled to cut teak trees of more than 12 inches girth. The stumps of trees after cutting had to be 3 inches high. It was held that property in the timber that was cut could pass to B when the trees were felled. Till the trees were felled, they were not ascertained.

b) Intention of the parties for such transfer

As per section 19(2) in a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intended to be transferred.

The intention of the parties is ascertained from the terms of the contract, the conduct of the parties and the circumstances of the case. When intention of the parties cannot be ascertained, rules contained in sections 20-24 are required to be applied for ascertaining the time of transfer of property which are discussed hereunder :

A) Specific goods

a) Specific goods in a deliverable state

In an unconditional contract for the sale of specific goods in a **deliverable state**, the property in the goods passes to the buyer when the contract is made, and **it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.** (Sec 20).

Goods are said to be in deliverable state when they are in such a state that the buyer would under the contract is bound to take delivery thereof.

Example: X selected some party wears in a retail show room. He agreed to take the delivery next day agree to pay next week. The party wears are destroyed by fire that took place same day. The property in goods has passed on to the buyer and he is liable to pay for it whether delivery is taken or not or paid or not.

b) Specific goods to be put into a deliverable state

Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof (Sec 21).

Example: There was a contract for sale of timber from oak trees. The buyer marked out the selected parts of the tree. As per trade practice the seller was required to remove the rejected portion from the trees. But before he could do so, he was declared bankrupt. It was held that the property in goods has not passed on to the buyer so he cannot take away the timber. Until the seller had severed the rejected portion, the goods cannot be said to be in a deliverable conditions to enable transfer

of property therein. Unless otherwise agreed, delivery to buyer's premises is not to be made by seller.

Goods are supposed to be sold "as is where is".

c) Specific goods in a deliverable state, when the seller has to do something thereto in order to ascertain price

If there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof. (Sec 22)

Example: A makes a contract to sell 200 books to Q. The books are stored in racks and P has to select the titles and separate them before they can be delivered. If there is fire and books are destroyed the loss will be A's as ownership is yet to be transferred.

B) Unascertained goods (Sec 23)

Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer.

Such assent may be expressed or implied, and may be given either before or after the appropriation is made.

In case of transfer of property from buyer to seller when the goods are unascertained, their ascertainment and unconditional appropriation to the contract are two pre-

conditions.

Ascertainment is the process by which the goods answering the description to the contract are identified and set apart. Ascertainment is the unilateral act of seller; appropriation involves selection of goods with the intention of using them in the performance of the contract and with the mutual consent of the seller and buyer.

Example: In a sale of 20 hogsheads of sugar out of a larger quantity, 4 were filled and taken away by the buyer. The remaining 16 hogsheads were subsequently filled and the buyer was informed of the same. The buyer promised to take them away, but before he could do so, the goods were lost. Held the property had passed to the buyer at the time of the loss.

Delivery to carrier: Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer and does not reserve the right of disposal, he is deemed to have appropriated the goods for the purpose of the contract.

C) Goods on approval or 'on sale or return' (Sec 24)

In order to push up the sales generally there is a practice of sending goods to the customer with the clear cut understanding that he has **option to approve or return the goods within a given period.**

This type of sales is known as "approval on sale or return".

In such cases the transaction does not culminate into sale until the goods are approved by the customer and the property in goods still remains with the seller.

When goods are delivered to the buyer on approval or on sale or return or other similar terms, the property therein passes to the buyer:

a) **When he signifies his approval or acceptance to the seller**

Example: A sends 3 dozen of Silk Saris to B on approval on sale or return basis with an option to return the same within 21 days. B send a letter of approval of goods to A within 15 days. Sales has taken place after 15 days and the property in goods get transferred to B.

b) **When he does any other act adopting the transaction.**

Example 1: A send 25 tons of cement to B on approval on sale or return basis, with the option to return the goods within 30 days receipt if not acceptable to him. B used the cement in his project. Since B has appropriated the goods, the sale has crystallized, property in goods stands transferred to B.

Example 2: A send 20 bales of cotton to B on approval on sale or return basis. B has a choice to return the goods within 3 weeks. However, B instead of conveying his approval or rejection of the goods sold the same to C. Here also B by his act has signified his approval, the sale is complete and property in goods passes on to B.

c) **If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.**

Example 3: A horse was delivered to B on the condition of sale or return within 8 days. The horse died within 8 days. It was held that the loss would fall on the seller as the property in goods has not been passed on to the buyer. **[Elphick v Barnes (1880)]**

Example 4: A delivered some jewellery to B on sale for cash only or return. Before B paid price, he pledged the jewellery with C. Held the pledge was not valid and A could recover jewellery from C.

Example 5: S Ltd agreed to sell a tractor to HC Municipality on the condition that if the latter was not satisfied, it could reject the tractor. The municipality used the tractor for a month and a half and then wanted to reject. Held a reasonable time to reject having elapsed, the property in the tractor had passed to the municipality and therefore it could not reject

RISK PRIMA FACIE PASSES WITH PROPERTY (SEC 26)

Unless otherwise agreed, **the goods remain at the seller's risk until the property therein is transferred to the buyer**, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.

EFFECT OF DESTRUCTION OF GOODS

Goods perishing before making of contract (Sec 7) - Where there is a contract for the sale of specific goods, the **contract is void** if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract.

Goods perishing before sale but after agreement to sell (Sec 8) - Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, **the**

agreement is thereby void.

Sec (7 & 8) are applicable only in case of specific goods and not uncertain/generic goods.

Example: In *Demby Hamiltan & Co V Barden Engineering Works Ltd 1949 ALL ER 435*, A contracted to purchase 30 tones of apple juice from B. Deliveries were to be made in weekly truckload. B crushed the apples and put the juice in casks for delivery. A delayed the taking of delivery as a result juice got deteriorated in quality. It was held that the property in goods has passed on to A. Accordingly the loss will be borne by A only.

Example: B of Benaras writes C of Chennai to send him 50 pieces of wrist watches by post parcel. C sends the 50 pieces of wrist watches by parcel post with correct address of B. However, the parcel was misplaced in the post and never reached B. This loss will be borne by B as the property in goods has passed on to the buyer the moment the parcel is delivered to the post office with correct address.

Example: A of Delhi agreed to purchase 500 lts of Engine oil from B. As per the terms of agreement, delivery was to be made in special pouches of 500 ML supplied by A. While B was making filling 500 ml pouches for delivery to A, the store got fire as a result the entire quantity of Engine oil lying therein lost in fire. As per section 26 the risk and property in the goods still remained with the seller and the entire loss will be borne by B the seller only.

It may further be noted that if the seller was aware of the destruction of goods and still enters into a contract. He is stopped from disputing the contract. In such case

the buyer can sue him for breach of contractual obligations and claim damages.

SALE BY PERSON NOT THE OWNER (OR) NEMO DAT QUOD NON HABET

In normal course, a buyer may assure that the seller is the owner of the goods or having authority from the owners to sell the goods. Where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by conduct precluded from denying the seller's authority to sell.

Generally **the owner alone can transfer property in goods** "Nemo dat quod non habet" means that no one can give what he himself does not have.

It means a non owner cannot make valid transfer of property in goods.

If the title of the seller is defective, the buyer's title will also be subject to same defect. If the seller has no title, the buyer does not acquire any title although he might have acted honestly and might have acquired the goods after due payment. This rule is to **protect the real owner of the goods.**

Though this doctrine seeks to protect the interest of real owners, but in the interest of the trade and commerce there must be some safeguard available to a person who acquired such goods in good faith for value; accordingly the Act provides the following **exceptions to this doctrine** which seeks to protect the interest of bonafide buyers.

Sale by mercantile agent (Sec. 27)

Where a **mercantile agent is with the consent of the owner**, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorized by the owner of the goods to make the same, provided that the buyer's act is in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

Example: F the owner of a car, deliver it to H, a mercantile agent for sale at not less than `20,000. H sold the car for `15,000 to K who bought it in good faith and without notice of any fraud. H misappropriated the money. F sued to recover the car from K. Held as H was in possession of the Car with F's consent for the purpose of sale, K obtained a good title to the Car.

Sale by one of joint owners (Sec. 28)

If one of several joint owners of goods has the sole possession of them by permission of **the co-owners**, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell. Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained.

Example: A, B and C are three joint owner of a car which is with B with the consent of A and C. B wrongfully sold the car to D without any knowledge and authority of remaining partner. D in good faith purchased the car and paid the price there of after taking the delivery. The property in goods stand transferred to D despite that B is not the owner of the car.

Sale by person in possession under voidable contract (Sec. 29)

When the seller of goods has obtained possession thereof under a contract voidable under Section 19 or Section 19A of the Indian Contract Act, 1872, but the contract has not rescinded at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

Example: A purchased a mobile set from B by fraud. A has avoidable title to the mobile set at the option of B. Before B could rescind the contract, A sold the same to C who purchased it from A in good faith and without knowledge of fraud by A and paid for it. C had a good title to the goods.

Seller or buyer in possession after sale (Sec. 30)

Explanation (a): Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same.

Example: A sells his blackberry mobile to B. He promised to deliver the same after one week. However, A instead of delivering to B sold it to C who purchased it from A in good faith and paid the price. C gets a good title to it.

Explanation (b): Where a person, having bought or agreed to buy goods, obtains with the consent of the seller, possession of the goods or the documents of title to the

goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods sell have effect as if such lien or right did not exist.

Sale by estoppel (Sec. 27)

Where the owner by his **conduct or omission**, leads the buyer to believe that the seller has authority to sell, he is stopped from denying the fact afterwards. The buyer thus gets a better title than the seller.

Example: A tells B in the presence of C that A is agent of C. C maintains silence instead of denying it.

Later if A sells C's goods to B, C cannot dispute B's title to the goods.

Sale by a finder of goods: Under section 169 of the Contract Act, if a finder of lost goods could not reasonably find the true owner or the **true owner refuses to pay the lawful charges** of the finder of lost goods, the finder of lost goods can sell the goods when the goods are perishable in nature or when the lawful charges of the finder of lost goods amount to **2/3rd of its value**.

Sale by official receiver or assignee: In case of **insolvency** of any individual his official receiver or liquidator of a company can sell the goods and buyer thereof gets good title to it.

PART -III

ESSENTIAL ELEMENTS OF SALE

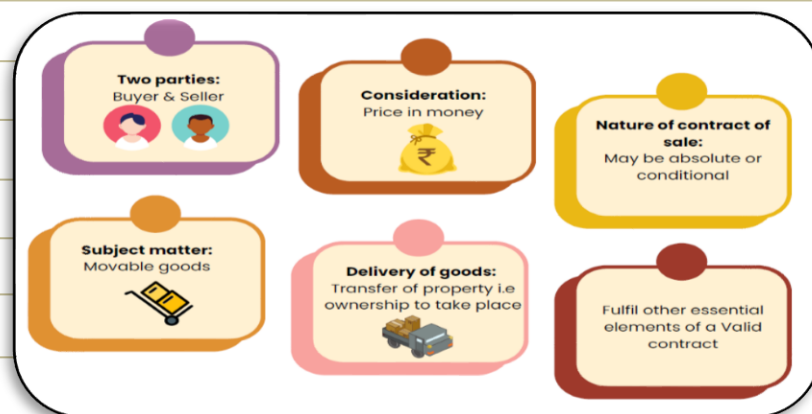
DEFINITION OF CONTRACT OF SALE:

As per **Sec 4 (1)** of the Sale of Goods Act, 1930-Contract of sale of Goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.

ESSENTIAL ELEMENTS OF CONTRACT OF SALE:

Following are the essential elements of a valid contract of sale. They are:

- a) **Two parties.** - Seller and Buyer
- b) **Subject matter.** - Goods (Movable property)
- c) **Transfer of Property** - Transfer of ownership rights i.e. absolute ownership (General Property)
- d) **Delivery** - Immediate, Delivery in installments, Delivery at a future date.
- e) **Price** - It means money consideration for sale of goods.
- f) A contract of sale may be **absolute or conditional**.
- g) **Essential elements of a valid contract** (e.g., free consent, consideration, competency of the parties, lawful object and consideration.)





PART -IV

CONDITIONS AND WARRANTIES

In every contract of sale of goods there are certain stipulations made with reference to goods which are the subject-matter thereof.

Such stipulations differ in character and importance. The clause divides stipulations into conditions and warranties

Condition:	Warranty:
<p>"A condition is a stipulation essential to the main purpose of the contract, that breach of which gives a right to treat the contract as repudiated."</p>	<p>"A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not a right to reject the goods and treat the contract as repudiated".</p>
<p>Example: P wants a bike which will give mileage of 80 km/litre. B, a bike dealer states that a particular bike will give required mileage. A believing on representation of B buy that bike. Later on, bike gave mileage of only 55 km/litre. In this case, there is a breach of condition as mileage of bike formed basis of contract & hence A is entitled to repudiate contract & claim damages.</p>	<p>Example: I went to a showroom & ask seller for a good bike. He showed me one & said that this will give mileage of 80 km/litre. I bought bike. Later on, it gave mileage of 55 km/litre only. In this case, there is a breach of warranty as mileage was only a collateral stipulation & i am entitled only to claim damages.</p>



DISTINCTION BETWEEN A CONDITION AND A WARRANTY

Basis	Condition	Warranty
Meaning	Essential to main purpose of contract.	Collateral to main purpose of contract.
Right in case of breach	Aggrieved party can repudiate contract or claim damages or both	Aggrieved party can claim only damages; It cannot repudiate contract.
Conversion of stipulations	Breach of condition may be treated as a breach of warranty.	Breach of warranty cannot be treated as a breach of condition.

Conditions and Warranties may be either expressed or implied

When terms of **contract expressly provide** for them, they are known as express conditions or warranties.

Implied conditions and warranties are **incorporated in every contract** of sale unless the circumstances show a different intention.

Express conditions:	Express	Implied Conditions:
Express conditions are those, which are agreed upon between the parties at the time of contract and are expressly provided in the contract.		i) It is a condition, which the law implies into the contract of sale. The law presumes that the parties have incorporated it into their contract. ii) The implied conditions are read into every contract of sale unless they are expressly excluded by the parties.

	iii) In case of conflict between the express and implied conditions, the express term shall prevail and the implied terms shall not be considered.
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TYPES OF IMPLIED CONDITIONS AND IMPLIED WARRANTIES:

Implied Conditions:

Implied conditions are those that the law incorporates into the contract unless the parties agree to the contrary. Sections 14 to 17 of the Sale of Goods Act lay down implied conditions. They are as follows, Condition as to:

- i) Condition as to title
- ii) Condition as to description
- iii) Condition as to sample
- iv) Condition as to description and sample
- v) Condition as to fitness or quality
- vi) Condition as to merchantability
- vii) Condition as to wholesomeness

i) Condition as to title:

In every contract of sale, there is an implied condition that the seller has the right to sell the goods. This condition is called "condition as to title".

If a person sells goods without having title to it, the buyer is entitled to reject the goods and can recover the purchase price from the seller.

Example: A purchased a tractor from B who had no title to it. After 2 months, true owner spotted tractor and demanded it from A. Held that A was bound to hand over tractor to its true owner and that A could sue B, seller without title, for recovery of

purchase price.

ii) **Condition as to description:**

Where goods are sold by description, there is an implied condition that the goods shall correspond with the description. If they are not, the buyer may reject them or accept them and claim damages.

Example:

A wants to sell his type-writer. He says to B an intending buyer who has not seen the machine, that it is a brand new machine. B agrees to purchase it. On delivery B finds that the machine is old and repaired. B can repudiate the contract and return the machine to A and claim damages.

iii) **Condition as to sample:**

Where goods are sold by sample, there is an implied condition:

- a) that the bulk of the goods shall correspond with the sample in quality.
- b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, and
- c) that the goods shall be free from latent defects. Defects which are not discoverable on reasonable examination.

Example: I went to grocer shop to purchase wheat. The grocer showed me sample. I purchased that wheat. But wheat was found to contain a defect which was not discoverable by ordinary examination. The buyer was liable to refund me price & give damages.

iv) **Condition as to description and sample:**

Where the goods are sold by sample as well as by description, there is an implied

condition that the goods shall correspond both with the sample and with the description. If the goods supplied correspond only with the sample and not with the description or vice versa, the buyer is entitled to reject the goods.

Example:

A seller undertakes to supply 100 tons of Java sugar warranted to be equal to the sample. The sugar when supplied corresponds to the sample but is not Java sugar. The buyer can repudiate the contract.

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

v) **Condition as to fitness or quality:**

As a general rule in a contract of sale, there is no implied condition as to quality, or fitness of the article for any particular purpose. It is the buyer's duty to select the goods of his requirement. If subsequently the goods are found unsuitable for his purpose, the seller will not be responsible.

But there is implied condition as to quality or fitness of goods for the purpose of the buyer under the following conditions:

- a) Where the buyer has made known to the seller the particular purpose for which he needs the goods.
- b) The buyer should rely on the skill and judgement of the seller.
- c) Where the consent of buyer was obtained by the seller by fraud or misrepresentation.



vi) **Conditions as to merchantability:**

Merchantability means **“acceptability in the market”**. In a contract of sale, there is an implied condition that the goods purchased are of merchantable quality. A watch that will not keep time and a pen that will not write cannot be regarded as merchantable.

vii) **Condition as to wholesomeness:**

This condition is implied only in a contract of sale of eatables and provisions. In such cases, the goods supplied must not only answer to description and be merchantable but also be wholesome. In other words, the goods must be free from any defect which makes them unfit for human consumption.

Implied Conditions

Implied Warranties

- | | |
|--|---|
| i) Condition as to title | i) Warranty of quiet possession. |
| ii) Condition as to description | ii) Warranty of freedom from encumbrances |
| iii) Condition as to sample | iii) Warranty as to fitness. |
| iv) Condition as to sample and description | iv) Warranty of disclosing the dangerous nature of goods to the ignorant buyer. |
| v) Condition as to fitness or quality | |
| vi) Condition as to merchantability | |
| vii) Condition as to wholesomeness | |

Implied Warranties:

In the absence of a contract to the contrary, the following warranties are implied in every contract of sale. They are:

- i) Warranty of quiet possession
- ii) Warranty of freedom from encumbrances

iii) *Warranty of disclosing the dangerous nature of goods to the ignorant buyer.*

iv) *Warranty as to fitness*

i) ***Warranty of quiet possession:***

In a contract of sale, there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. In case the buyer is in any way disturbed, he has a right to sue the seller for damages. Such a situation arises when the seller's title to goods is defective.

ii) ***Warranty of freedom from encumbrances:***

There is an implied warranty on the part of the seller that goods shall be free from any charge or encumbrance in favour of any third party. Where there is a breach of this implied warranty, the remedy of the buyer is to sue for damages.

iii) ***Warranty as to fitness:***

An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

iv) ***Warranty of disclosing the dangerous nature of goods to the ignorant buyer:***

The third implied warranty on the part of the seller is that in case the goods sold are of dangerous in nature, he must warn the ignorant buyer of the probable danger. If there is a breach of this warranty, the buyer is entitled to claim compensation for the injuries caused to him.

PART -V

PERFORMANCE OF CONTRACT OF SALE

Performance of the contract of sales means **due discharge of the contractual obligations by both the parties to the contract** i.e., Buyer and Seller.

The obligation of the seller is to deliver the goods in accordance with the terms of the contract as to time and place and obligation of the buyer is to accept the goods and pay the price agreed upon.

As per section 31 performance of a contract of sale means as regards the seller, delivery of the goods to the buyer, and as regards the buyer, acceptance of the delivery of the goods and payment for them, in accordance with the terms of sale.

Delivery of goods and payment for thereof are concurrent conditions, however the parties may agree otherwise also. In order to discharge the contractual obligations the seller must be ready and willing to deliver the goods. However, unless otherwise provided in the contract, seller cannot demand payment in advance of delivery.

Refusal to deliver the goods unless agreed price is paid in advance is breach of contract. But the **buyer is required to apply for delivery**.

Performance of a contract **involves two things timely delivery on the part of the seller and payment of the price** as per the terms of contract **by the buyer**. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of

the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

DELIVERY:

Delivery means “**Voluntary transfer of possession** of goods from one person to another”.

Modes of delivery:

Delivery defined in Sec 2(2) of the Sale of Good Act and Delivery of goods may be in three different ways.

- a) Actual delivery
- b) Symbolic delivery
- c) Constructive delivery

a) **Actual delivery:**

It is also called “**Physical delivery**”. Where the goods are physically handed over by the seller to the buyer or his agent, the delivery is said to be actual delivery.

Example: The seller of a car hands over the car to the buyer.

b) **Symbolic delivery:**

Where the goods are bulky and incapable of actual delivery “**the means of obtaining possession**” of the goods **are delivered** by the seller to the buyer. Such delivery is said to be “Symbolic”.

Example: Handing over the key of a ware-house to the buyer is symbolic delivery.

c) Constructive delivery:

Where the **third party**, who is in possession of goods of the seller at the time of sale, **acknowledges** to the buyer that he holds goods on his behalf, the delivery is constructive delivery.

Example: A sells to B 50 bags of wheat lying in C's godown. A gives an order to C, asking him to transfer the goods to B. C assents to such order and transfers the goods in his books to B. A then hands over the order to B. This is a constructive delivery.

Rules regarding delivery of goods:

Sections 31 to 44 provide certain rules with regard to delivery of goods. They are as follows:

a) Mode of Delivery

The mode of delivery of goods is provided in section 33 which says that, delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf.

Delivery as contemplated in the Act may be actual, symbolic or constructive.

b) Delivery of goods and payment of price

Delivery of goods and payment of price are concurrent conditions unless otherwise agreed upon. In other words seller must be ready and willing to make delivery and buyer must also be willing to take delivery and willing and ready to pay the price (Sec 32).

Example: A agrees and delivers his car to B and B in turn pays price for it.

c) Effect of part delivery

As per section 34, a delivery of part of goods, in progress of the delivery of the whole has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole, but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

Example: A directed the wharfinger to deliver his goods lying at the wharf to B to whom these goods had been sold. B weighed the goods and took away a part of them. Held, the delivery of a part of the goods had taken place which has the effect as delivery of the whole.

d) Buyer to apply for delivery

Apart from any express contract, **the seller of goods is not bound to deliver them until the buyer applies for delivery.** (Section 35) It may also happen that the goods are subsequently acquired by the seller, he is to intimate the buyer and the buyer then should apply for delivery. Buyer has no cause of action against the seller if he does not apply for delivery, unless otherwise agreed upon.

Example: S agreed to sell his old car to T and T agreed to take delivery thereof on the auspicious day of Deepawali, S kept the car ready for delivery to T but T did not approach him for delivery. T has no reason to take any action against S if delivery of car did not take place on that day.

e) Place of delivery

As per section 36(1), Goods must be delivered at the place and time **specified in the contract.** Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, goods sold are

to be delivered at the place at which they are the time of the sale, and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell, if not then in existence, at the place at which they are manufactured or produced.

Goods are supposed to be taken by the buyer on "as is where is" basis, unless agreed otherwise.

f) **Time of delivery**

Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a **reasonable time**. If demand or tender of delivery is not at reasonable time tender of delivery may be treated as ineffectual.

What is a **reasonable hour** is a **question of fact** which has to be decided taking into consideration various factors. [Sec 36(2)]

g) **Goods in possession of a third person**

Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf. [Sec 36(3)]

Example: X sold 50 ton of rice to Y, the goods are lying in the godown of Z. X ask Y to take delivery from the godown of Z. Delivery shall not be treated as completed unless Z acknowledges to Y that he holds the goods on his behalf.

h) **Cost of delivery**

Unless otherwise agreed, the expense of and incidental **to putting the goods into a deliverable state** are borne by the seller. [Sec 36(5)] Similarly all the expenses

relating to **taking possession the goods must be borne the buyer.**

Example: S agrees to sell 50 ton of Basmati Rice to B at Delhi. All the expenses for delivering the goods up to Delhi will be borne by S. Subsequent expenses from Delhi Railway station to office of B will be borne by B himself.

i) **Delivery of wrong quantity [Sec. 37]**

a) It is not necessary that the delivered quantity always confirm to the ordered quantity. If **less than contracted quantity** is supplied, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate. [Sec 37(1)]

Example: A sells to B 2000 gross of 200 yards reels of swing cotton. After taking delivery B finds that the length of the cotton per reel is less than 200 yards, the average being shortage of about 6%. B may reject the goods. If he waives the right of rejection, he is liable to pay the price of the goods at the contract price.

b) Similarly if a quantity of goods **larger than contracted** to sell is delivered, the buyer may accept the goods included in the contact and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate. [Sec 37(2)]

c) If the goods agreed to be supplied are delivered with **goods mixed** with goods of a **different description** not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole. [Sec 37(3)]

Example: A buyer inspected certain timber and branded by hammer marks those which he accepted. When the timber arrived, it contained a large quantity of unbranded

timber. Held, the buyer could reject the whole consignment. The above provisions are subject to any usage of trade, special agreement or course of dealing between the parties.

j) Installment delivery [Sec. 38]

Buyer is not bound to accept installment unless agreed by the parties. If the contract provide for installment delivery which are to be separately paid for, and the seller makes no delivery or defective delivery in respect of one or more installments, or the buyer neglects or refuses to take delivery of or pay for one or more installments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract, or whether it is a severable breach giving rise to a claim for compensation, but not a right to treat the whole contract as repudiated.

Example: X brought from Y 25 tonnes of pepper Oct-Nov shipment. Y shipped 20 tonnes in November and 5 tonnes in December. Since the goods have not delivered as per the contractual provisions, X is not bound to accept installment delivery unless they had already agreed for it. X could reject the whole lot.

k) Delivery to carrier or wharfinger [Sec. 39]

If, in pursuance of a contract of sale, the goods are delivered to a carrier for transmission to the buyer or to a wharfinger for safe custody, delivery of goods to them is prima facie deemed to be delivery of goods to the buyer. In such a case the seller must enter into a reasonable contract with the carrier or wharfinger on behalf of the buyer for same transmission or custody of goods. Failure to do so coupled with loss of goods in transit, buyer may reject delivery to carrier/wharfinger as delivery to himself and may hold the seller responsible for such loss. Unless otherwise agreed, if

goods are sent by the seller to the buyer by a route involving sea transit, in circumstances in which it is usual to insure, the seller is required to give such notice to the buyer as may enable him to insure them during their sea transit and if the seller fails so to do, the goods are deemed to be at his risk during such sea transit.

l) **Risk where goods are delivered at distant place**

It is quite possible sometimes for the buyer ask the seller to deliver the goods at the place they were agreed to be delivered. If the seller agrees to deliver the goods at the risk of the buyer at place other than that where they are when sold, the buyer shall, nevertheless, unless otherwise agreed, buyer take any risk of deterioration in the goods necessarily incident to the course of transit.

m) **Buyer's right of examination of the goods**

Section 41 gives the buyer right to examine the goods which are delivered to him which he has not previously examined. He is not deemed to have accepted them unless and until he has a **reasonable opportunity of examining them** for the purpose of ascertaining whether they are in conformity with the contract.



PART -VI
UNPAID SELLER

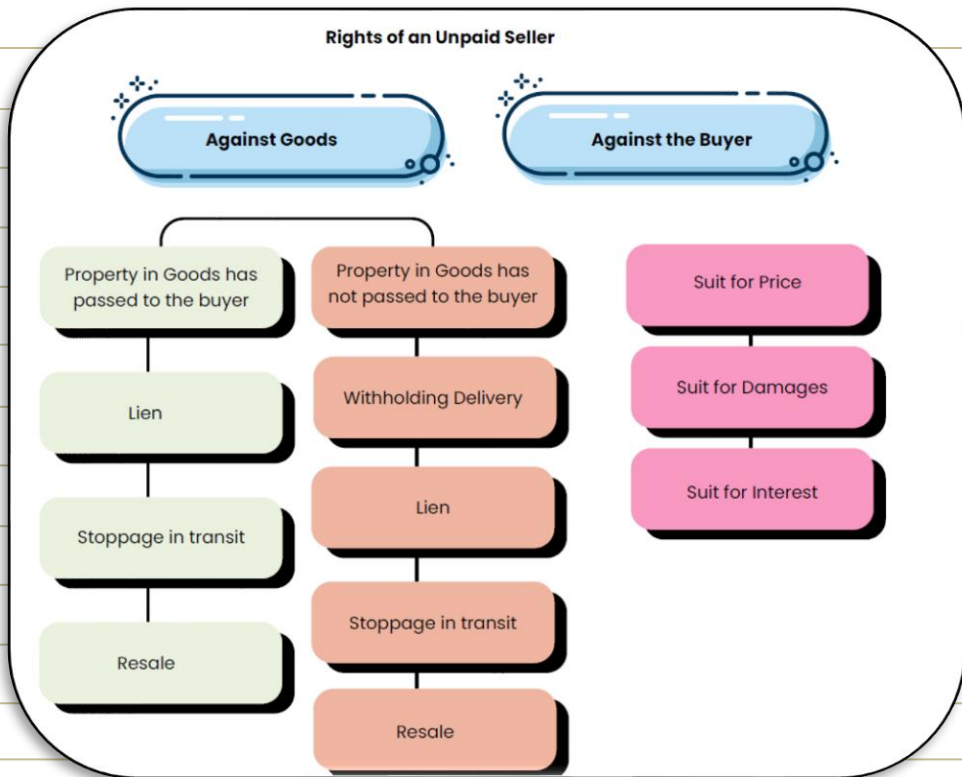
UNPAID SELLER:

The seller who has *not received the whole of the price of the goods sold* is called an "unpaid seller".

According to Section 45, the seller of goods is deemed to be an unpaid seller:

- a) When the whole of the price has not been paid, or
- b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the same has been dishonoured.

A seller who has been partly paid is also an unpaid seller.



Rights of an unpaid seller:

According to the Sale of Goods Act the unpaid seller has the following rights. They are:

- A) Rights against the goods
- B) Rights against the buyer

A) Rights against the goods:

An unpaid seller has some rights against the goods sold when the property in the goods has not passed to the buyer. They are as follows:

- a) Right of Lien
- b) Right of stoppage of goods in transit
- c) Right of Re-sale
- d) Right of withholding delivery

a) Right of Lien: [Sec. 47]

Lien is a right to **retain possession** of goods until payment of price. According to section 47(1) an unpaid seller can exercise the right of lien in the following cases:

- i) Where the goods have been sold without any stipulation as to credit.
- ii) Where the goods have been sold on credit, but the period of credit has expired.
- iii) Where the buyer becomes insolvent.

Conditions for the exercise of lien:

The following are the conditions precedent to the exercise of the lien.

- i) The ownership must have passed to the buyer.
- ii) The goods must be in the possession of the seller.
- iii) The whole or part of the price must remain unpaid.

b) Right of stoppage of goods in transit: [Sec. 50]

The right of stoppage in transit is a **right of stopping the goods, while they are in transit and retaining the possession until payment of the price**. This right is conferred on the seller by Section 50 of the Act.

This right can be exercised under the following cases:

- i) the seller must be an unpaid seller.
- ii) the goods must be in-transit
- iii) the buyer must have become insolvent.
- iv) the property in the goods must have passed from the seller to the buyer.

c) Right of Re-sale: [Sec. 54]

An unpaid seller who has exercised either the **right of lien or the right of stoppage-in-transit can resell such goods**. The right to resell the goods is called 'right of resale'. This right is conferred by section 54. An unpaid seller can exercise the right of resale in the following cases:

- i) where the goods are of a perishable nature,
- ii) where the seller expressly reserves the right of resale in case the buyer makes a default in the payment of price.
- iii) where the seller has exercised his right of lien or stoppage in transit, and gives notice to the buyer of his intention to resell the goods.

B) Rights against the buyer personally:

An unpaid seller in **addition to his rights against the goods**, has the following rights against the buyer personally.

a) **Suit for price: [Sec. 55]**

Where the property in goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay the price, the seller can **sue the buyer for price**.

b) **Suit for damages for non-acceptance: [Sec. 56]**

Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller can **sue him for damages** for non-acceptance of the goods.

c) **Suit for repudiation:**

Where the buyer repudiates the contract before the date of delivery, the seller may wait till the date of delivery or **may treat the contract as cancelled** and sue for damages for breach.

d) **Suit for interest: [Sec. 61]**

Where there is specific agreement between the seller and the buyer regarding interest on the price of goods, the seller may claim it from the date when payment becomes due. If there is no specific agreement, the **interest is payable** from the date notified by the seller to the buyer.

NEGOTIABLE INSTRUMENTS ACT 1881

PART I

CHARACTERISTICS OF NEGOTIABLE INSTRUMENTS

INTRODUCTION:

- a) An instrument is a **document by which right and liability** of any person is **created**, modified, satisfied, transferred or documented.
- b) Negotiable Instrument Act, 1881 primarily contains the law relating to negotiable instruments. The Act came into force on **March 1, 1882**.
- c) The term '**negotiable**' means **transferable** and the term 'instrument' means 'any written document creating a right in favour of some person.'
- d) Thus by negotiable instrument we mean a written document by which a right is given to a person and which is transferable in accordance with provisions of Negotiable Instrument Act, 1881.

WHAT IS NEGOTIABLE INSTRUMENT?

- a) A Negotiable Instrument:
 - ✓ Is a **document** freely transferable from one person to another.
 - ✓ The property in such an instrument passes to a **bona fide transferee for value**.
- b) **Section 13** specifies three negotiable instruments:
 - ✓ Bills of Exchange
 - ✓ Promissory Notes
 - ✓ Cheques (payable to order or bearer).

Characteristics of a Negotiable Instrument

- a) It is necessarily in **writing**.
- b) It should be **signed**.
- c) It is **freely transferable** ((i) Delivery, or (ii) by Endorsement and Delivery) from one person to another.
- d) Holder's title is **free from defects**.
- e) It can be **transferred any number of times** till its satisfaction (*ad infinitum*, i.e. transferred any number of times till its satisfaction)
- f) Every negotiable instrument must contain an **unconditional promise or order** to pay money. The promise or order to pay must consist of **money only**.
- g) The sum payable, the time of payment, the payee, must be **certain**.
- h) The instrument should be **delivered**. Mere drawing of instrument does not create liability.

TYPES OF NEGOTIABLE INSTRUMENTS

Negotiable Instruments are of two types:

- a) **Negotiable by statute** - Section 13 of the Act, provides that a negotiable Instrument includes promissory note, bill of exchange and cheque, whether payable to bearer or order.
- b) **Negotiable by custom or usage** - Though the Act speaks of only three types of Negotiable Instrument, but it does consider other kinds of instruments from being treated as a negotiable instrument provided they possess the characteristics of a negotiable instruments. Accordingly certain other instruments take the character of negotiable instruments by custom or usage. Dividend warrant, circular notes, bearer

debentures are some of them though they are not specifically mentioned in the Act as negotiable instrument.

CLASSIFICATION OF NEGOTIABLE INSTRUMENTS

a) Bearer and order instruments

Bearer Instrument:

- ✓ Instrument where **payee's name** is blank or includes the words "or bearer" or has a blank endorsement.
- ✓ Such instruments are **negotiated by mere delivery**.

Order Instrument:

- ✓ Instrument which is **payable to a specific person**, their order, or the order of a named individual.
- ✓ Requires **endorsement and delivery** for negotiation.

b) Inland and foreign instruments

Inland instrument:

- ✓ Instruments drawn or made in India.
- ✓ Payable in India or drawn on a person resident in India.

Examples:

- a) A promissory note made in Kolkata and payable in Mumbai.
- b) A bill drawn in Varanasi on a person resident in Jodhpur (although it is stated to be payable in Singapore)
- c) A, a resident of Agra, drew (i.e., made) a bill of exchange in Agra on B, a merchant in



New York. And B accepted the bill of exchange as payable in Delhi. It is an inland bill of exchange. In this case, the bill of exchange was drawn in India and also payable in India.

d) A, resident of Mumbai, drew a bill of exchange in Mumbai on B, a merchant in Mathura. And B accepted the bill of exchange as payable in London. It is also an inland bill of exchange. In this case, the bill of exchange was drawn in India on a person resident in India. It is immaterial that the amount is payable in London.

An inland instrument remains inland even if it has been endorsed in a foreign country.

e) If the bills of exchange mentioned in above two examples, are endorsed in France, they will remain inland bills.

Foreign instrument:

✓ Instrument which is not an inland instrument

Examples:

- a) A bill drawn in the USA, payable in India.
- b) A promissory note made in London, payable in Delhi.

Place where bill is drawn	Residence of Person on whom drawn and place where made payable	Nature of Instrument
P/N, BOE, C drawn/made outside India	on a person resident in or outside India + made payable in India	are foreign bills.
	on a person residing outside India + payable outside India.	
	on a person residing in India + payable outside India	

c) **Demand and time instruments**

An instrument is **payable on demand** when it is expressed to be so payable or when no time is specified on it.

A cheque is always payable on demand.

A note or bill if **payable after a specified period** or happening of a specified event which is **certain**, it is a time instrument. If a promissory note or bill of exchange bears the expression "at sight" and "on presentation" means on demand (section 21). The words "on demand" are usually found in a promissory note, whereas the words "at sight" are found in a bill of exchange.

d) **Genuine, accommodation and fictitious bill**

When a bill is drawn, accepted, or endorsed **for consideration** it is a **genuine bill**.

When it is drawn, accepted, or endorsed **without consideration** it is **accommodation bill**.

When **drawer or payee or both are fictitious** the bill is called fictitious bill. If both drawer and payee of a bill are fictitious person, the acceptor is liable to a holder in due course, if the holder in due course can show that the signature of the supposed drawer and that of first payee are in the same handwriting.

e) **Clean and documentary bill**

When **no documents** relating to goods are annexed to the bill, it is **clean bill**.

When **documents** of title or other documents relating to goods are attached, it is **documentary bill**.

f) **Ambiguous instrument**

When an instrument due to **faulty drafting** may be interpreted either as bill or note, it is an ambiguous instrument. It is for holder to decide how he wants the bill to be treated. Ambiguity may also arise when the amount is stated differently in words and figures. In such case the amount stated in words will be taken into account.

g) **Inchoate instrument**

An instrument **incomplete** in some respect is known as inchoate instrument.

When a person signs and delivers to another a blank or incomplete stamped paper, he authorizes the other person to make or complete upon it a negotiable instrument for any amount not exceeding the amount covered by the stamp.

The effect of such signing is that the person signing the instrument is liable upon such instrument in the capacity in which he signed it to holder in due course of the instrument.

h) **Escrow Instrument**

When an instrument is **drawn conditionally** or for a **special purpose** as a collateral security and not for the purpose of transferring property therein, it is called Escrow instrument.

The liability to pay in case of an Escrow instrument does not arise if the conditions agreed upon are not fulfilled or the purpose for which the instrument was delivered is not achieved.

CAPACITY TO BECOME A PARTY TO A NEGOTIABLE INSTRUMENT

A person competent to contract can become a party to a negotiable instrument. If a party who makes, draws, endorses, or negotiates a negotiable instrument is incompetent to do so, the agreement is void as against him. But the contract is still valid against the other parties competent to contract. The manner or conditions under which certain categories of person like a Minor, Corporate body, Agent and Legal representatives can be a party to a negotiable instrument are as under:

- a) **Minor** - A minor person is **not competent** to contract; therefore he cannot bind himself by becoming a party to a negotiable instrument. But mere presence of a minor as one of the party in a negotiable instrument does not make it invalid. A minor can draw, indorse, deliver and negotiate an instrument so as to bind all parties except himself.

Example: A, B and C, a minor executed a promissory note in favor of P. Held, C's immunity from liability did not absolve A and B, other joint promisors, from liability.

A minor is not personally liable on a bill or note given by him for necessaries supplied to him. It is only his estate which is liable for such a bill or note.

- b) **Corporation** - Corporation can be a party to a negotiable instrument **if authorized** by its Article of Association, otherwise it is ultra vires.

- c) **Agent** - As per section 27 an agent can bind his principal by acting on his behalf only in the manner in which **he is duly authorized** to be become a party to a negotiable instrument. The agent is required to make it clear that he is acting in **representative capacity** which must be evidenced by the manner he sign such document. The form of

signature must show that he does not intend to incur personal liability. Otherwise he becomes personally liable.

Example:

A manager of ABC Ltd accepted a bill of exchange and signed A as manager. It was held that A was personally liable.

Example:

A manager of ABC Ltd accepted a bill of exchange and signed as for ABC Ltd. It was held that A was not personally liable.

- d) **Legal Representative** - As per section 30 a legal representative of a deceased person who signs his name to a negotiable instrument incurs personal liability unless by clear words he limits his liability to the extent of the assets of the deceased received by him as legal representative.

PART II

 DEFINITIONS OF PROMISSORY NOTE,
BILL OF EXCHANGE AND CHEQUE
PROMISSORY NOTE:

Section 4 of the Negotiable Instruments act, 1881 defines "Promissory Note":

A Promissory note is an **instrument in writing** (not being a bank note or a currency note) containing an **unconditional undertaking**, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Parties:


Maker

The person who makes the promise to pay is called the Maker. He is the debtor and must sign the instrument.

Payee

Payee is the person to whom the amount on the note is payable.

Requisites of a Promissory Note:

- a) The promissory note must be in **writing**.
- b) It must contain an **undertaking to pay**. There must be an express promise to pay.
- c) The promise to pay should be **unconditional**.
- d) The promissory note must be **signed by the maker**.
- e) The **sum** payable must be **certain**.

- f) The instrument must contain a **promise to pay money** and money only.
- g) The **maker and payee** must be **certain**.
- h) **Stamping** of Promissory Note is essential under The Indian Stamp Act, 1899. An unstamped promissory note is not admissible in evidence and no suit can be maintained.
- i) It must contain **date**.
- j) The limitation period for a promissory note to file a suit is three years from the date of execution or from the date of acknowledgement.

BILL OF EXCHANGE:

Section 5 of the Negotiable Instruments act, 1881 defines "Bill of Exchange":

"A bill of exchange is an instrument in writing containing an **unconditional order**, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument".

Parties:

Drawer: The maker of a bill of exchange.

Drawee: The person directed by the drawer to pay is called the 'drawee'. He is the person on whom the bill is drawn. On acceptance of the bill, he is called an acceptor and is liable for the payment of the bill. His liability is primary and unconditional.

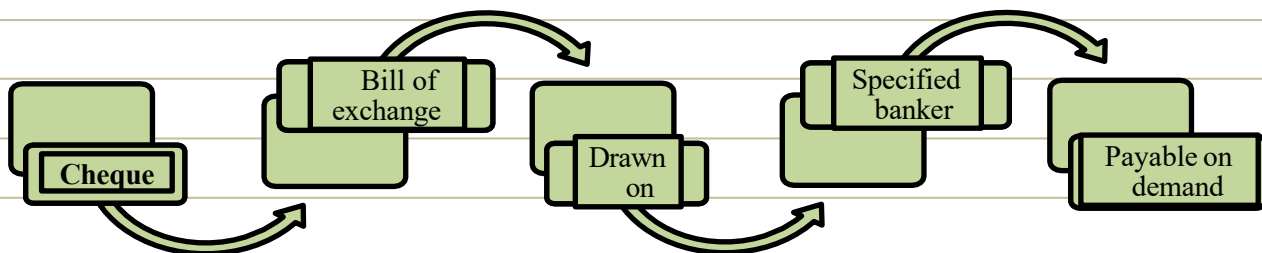
Payee: The person named in the instrument, to whom or to whose order the money is, by the instrument, directed to be paid.

Requisites of a Bill of Exchange:

- a) A bill of Exchange must be **drawn unconditionally**, though the acceptor, or the indorser may make his liability conditional, direction of payment by the drawer must not be made to depend upon a contingency. Therefore, it is the essence of a bill of exchange that it should be payable at all events and it must appear so on its face.
- b) The consideration of a bill of exchange should be paid only by way of money only.
- c) The **amount** to be paid should be **certain**.
- d) The **time** of payment must be indicated in the bill with **certainty**.
- e) **Order to pay**. Order in this section does not mean a command, but a request or a direction.
- f) It is essential that a bill of exchange should point out with **certainty the party** who enters into the contract imported by its terms. Thus, the signature of the drawer is necessary and there cannot be a bill, even if the instrument is accepted without the signature of the drawer.
- g) It must indicate a drawee who should be called on to accept or pay it. The drawee must be named or otherwise indicated in the bill with reasonable certainty.
- h) It should specifically **mention the date and place** of the payment or the place where it is drawn.
- i) Every Bill of Exchange must be **stamped** according to the provisions of The Indian Stamp Act, 1899.

CHEQUE:

Section 6 of the Negotiable Instruments Act, 1881 defines “Cheque”:



“A cheque is a **bill of exchange drawn upon a specified banker** and **payable on demand** and it **includes** the **electronic image** of a truncated cheque and a cheque in the **electronic form.**”

A cheque in the electronic form means “cheque which contains the exact mirror image of a proper cheque, and is generated, written and signed in a secure system ensuring the minimum safety standards with the use of digital signature and asymmetric crypto system.”

A truncated cheque means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

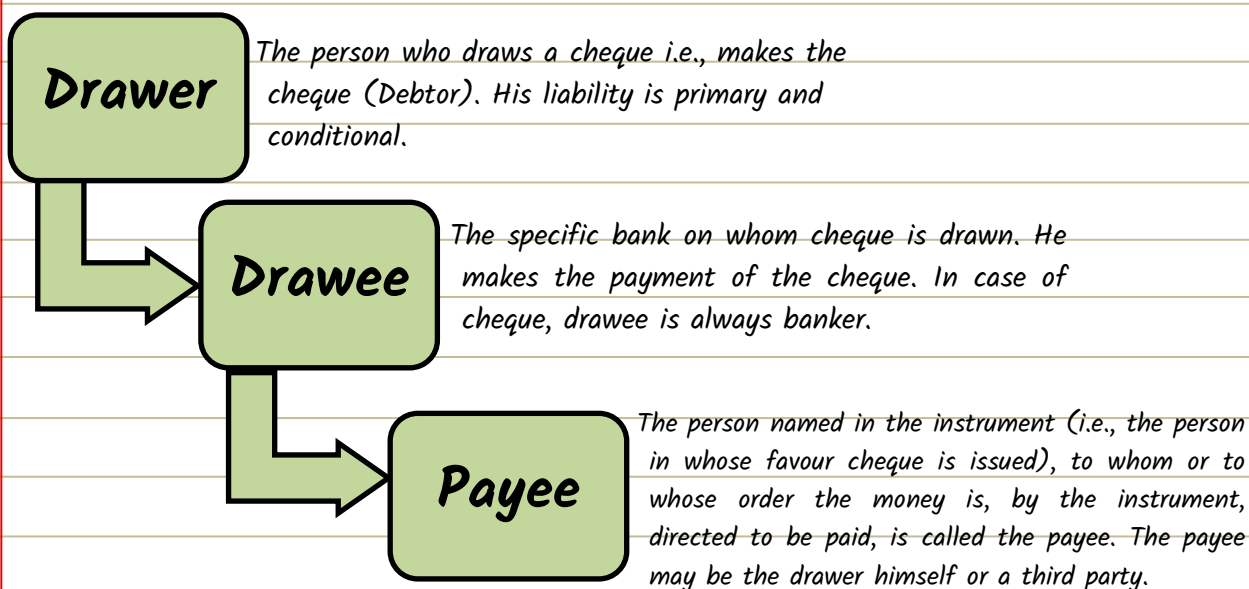
‘Clearing House’ means the clearing house managed by the Reserve Bank of India or a clearing house recognized as such by the Reserve Bank of India [Sec. 6 as substituted by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002].

A cheque is a species of a bill of exchange; but it has the following two additional

qualifications:

- a) It is always **drawn on a specified banker**, and
- b) It is always **payable on demand**.

Parties:



Requisites of a Cheque:

- a) A cheque must be an **order in writing**.
- b) It must contain an **unconditional** order.
- c) A cheque must be **signed** by the maker.
- d) The **amount** must be specifically mentioned in **figures and words**.
- e) A cheque may be drawn **payable to order or bearer**. There are two kinds of cheques prevailing now a days. They are:
 - a. it may be a bearer or order cheque; and

b. it may be a self cheque.

f) The cheque must contain the **date**.

g) **Payee** to be **certain**.

DIFFERENCE BETWEEN PROMISSORY NOTE, BILL OF EXCHANGE AND CHEQUE

Point of Difference	Promissory Note	Bill of Exchange	Cheque
Parties	2 Parties - maker & payee	3 parties - drawer, drawee and Payee	3 parties - drawer, banker and payee
Nature	Contains an unconditional promise by maker to pay the payee	Contains an unconditional order to the drawee to pay the payee	Drawn on specified banker to pay on demand.
Acceptance	Not necessary	Necessary if the bill is payable after sight.	Not necessary.
Liability	Liability of maker is primary and absolute.	Liability of drawer is conditional and secondary upon nonpayment by drawee.	Liability of drawer is conditional and secondary upon nonpayment by banker
Notice of dishonor	Not necessary	Necessary	Not necessary
Payable	On demand or after a specified time. Cannot be made payable to bearer on demand or even after certain period.	On demand or after a specified time. Cannot be made payable to bearer on demand.	On demand even to bearer if so made.
Crossing	Not possible	Not possible	Can be crossed.
Noting and	Not required	Required to establish	Not required

protesting in case of dishonour		<i>the fact of dishonour.</i>	
Grace period	<i>Available if payable after specified time</i>	<i>Available if payable after specified time (usance bill)</i>	<i>Not available.</i>
Other features	<i>Number, date, place not essential. Must be stamped.</i>	<i>Number, date, place not essential. Must be stamped.</i>	<i>Number, date, place, essential. Need not be stamped.</i>

PART III

CROSSING – MEANING, DEFINITION AND TYPES OF CROSSING

INTRODUCTION:

- a) Section 123 to 131-A of the Negotiable Instruments act, 1881 explain about “Crossing”.
- b) A cheque may be an ‘open cheque’ or a ‘crossed cheque’.
- c) The former may be presented across, the counter for payment; the later will have to be presented through another banker.
- d) While, in the case of an **open cheque**, payment may be obtained in **cash**, in the case of a **crossed cheque**, the amount will be **credited to the account** of the customer of a bank.

MEANING OF CROSSING:

The act of drawing **two diagonal or transverse parallel lines** on the face of a cheque is called “crossing of the cheque”. In other words, a crossed cheque is one which has two transverse parallel lines.

Crossing is a **direction to the banker not to pay the money across the counter**. It means the banker should pay the money only through banker.

OBJECT OF CROSSING:

The main object of crossing is to give **protection and safeguard to the owner** of the cheque. The crossed cheque cannot be paid across the counter but it should be paid only through an account with a bank, who may be either the drawee banker or a different one. If it is mis-utilised, it can be traced very easily and the fraudulent person can easily be detected.

KINDS OF CROSSING:

There are different kinds of crossing:

General crossing.

Special crossing.

1. General Crossing: [Sec. 123]

Where a cheque bears across its face an addition of the words “and company” or any **abbreviation** thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words “**Not negotiable**” that addition shall be deemed a crossing, and the cheque shall be deemed to be **crossed generally**.

- a) Two transverse lines are the essentials of general crossing.
- b) The lines should not occupy printed letters or numbers or any such written matters.
- c) The lines are generally drawn on the left hand side.
- d) The words ‘and company’ / ‘& co.’ may be written between transverse lines. But these words are not compulsory. The crossing itself is sufficient. However, it is the practice of the people to write those words.
- e) The words ‘**Not negotiable**’ may be added to a crossing. But they themselves do not constitute crossing.

Effect of General Crossing:

- a) It gives a direction to the paying banker.
- b) Sec. 126 of the NI Act, 1881 lays down that when a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker. Therefore, this type of cheque cannot be paid at counter. The payment should be made through an account only. Thus the General crossing gives protection and avoids fraudulent

withdrawals.

- c) It is the liability of the **paying banker to verify proper payment in proper account**. The payment does not constitute "Payment in due course". The banker is answerable to his customer, if he pays the money to a third person without the direction of his customer. He should not make any contract with third party concerning the cheque generally crossed.

2. Special Crossing: [Sec. 124]

Where a cheque bears across its face an addition of the name of a banker, either with or without the words "Not Negotiable", that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially and to be crossed to that banker.

- a) Two parallel transverse lines are not essential.
- b) The name of the bank should be mentioned with or without crossing. The name of the bank itself constitutes special crossing.
- c) The name of the bank should be written on the left side of cheque.
- d) The name of the bank and the words "Not Negotiable" or "A/c Payee" or "Not Negotiable" or "A/c Payee Only", may also be mentioned.

Account Payee Crossing:

In the present day transactions, we find the terms "**A/c Payee**", "**Account Payee**", "**Account Payee Only**", on the cheques. It has developed in the trade and in common to use these terms on the left side of the cheque between the two transverse lines. But there is no law mentioned about this type of crossing either in "**The Bills of Exchange Act**" of Great Britain or in "**The Negotiable Instruments Act, 1881**" of India. The terms mean that the amount should not be paid at counter, but should be credited into the account of the payee only. However, the meaning of other crossings is also the same.

This type of crossing only gives **additional protection** to the cheque.

Double Crossing/Second Special Crossing: [Sec. 125]

“Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent for collection” is called Double Crossing.

There a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker his agent, for collection.

This is the only case where a second special crossing is allowed by the Act, and that can be done only for the purpose of collection and that too by a banker. Therefore, it is called “Double Crossing” or “Second Special Crossing”. The private parties are not allowed to utilize double crossing.

Effect:

- a) **Double crossing is not permitted to general public.** It is practiced only in case of transactions between the bankers. Others are not allowed to use double crossing.
- b) It is in practice to cross on the face of the cheque at left side. But in case of Double crossing it is the regular practice to cross at the back side of the cheque, where sufficient space is available.
- c) Sec. 127 lays down that where a cheque is crossed specially to more than one banker except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.
- d) According to Sec. 127, it means that it is necessary, in all cases, to specify in the second special crossing
- e) that the banker in whose favour it is made is an agent of the first banker for collection.

WHO CAN CROSS A CHEQUE:

Generally the maker of the cheque makes the crossing. If he does not cross, the holder of the cheque can cross it, or in certain occasions the banker may also cross it. Sec. 125 states about crossing after issue.

According to Sec. 125 where a cheque is uncrossed, the holder may cross it generally or specially.

- a) Where a cheque is crossed generally, the holder may cross it specially.
- b) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable".
- c) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

PART IV

DISHONOUR OF CHEQUES (SECTION 138)

INTRODUCTION:

A cheque is said to be **honoured** if the banks give the **amount to the payee**.



While, if the **bank refuses to pay** the amount to the payee, the cheque is said to be **dishonoured**.

In other words, dishonour of cheque is a condition in which the bank refuses to pay the amount of the cheque to the payee.

Whenever the cheque is dishonoured, the **drawee bank** instantly issues a '**Cheque Return Memo**' to the payee banker **specifying the reasons for dishonour**. The payee banker provides the memo and the dishonoured cheque to the payee.

DISHONOR OF CHEQUE FOR INSUFFICIENCY, ETC., OF FUNDS IN THE ACCOUNTS [SECTION 138]

Where any cheque drawn by a person on an account maintained by him with a banker—

- a) for payment of any amount of money
- b) to another person from that account

- c) for the discharge, in whole or in part, of any debt or other liability,
 [A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section]
- d) is returned by the bank unpaid,
- e) either because of the—
- × Insufficient funds, or
 - × Amount exceeding the arrangement with bank

Penalty:

- ✓ Imprisonment up to 2 years, or
- ✓ Fine up to twice the cheque amount, or
- ✓ Both.

When section 138 shall be not apply: unless the below given conditions are complied with—

Condition 1 - Cheque presented within validity period: The cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier.

Condition 2 - Demand for the payment through the notice: the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and

Condition 3- Failure of drawer to make payment: the drawer of such cheque **fails to make the payment** of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, **within fifteen days of the receipt of the said notice.**

Explanation: For the purpose of this section, "debt or other liability" means a legally enforceable debt or other liability.

Therefore, we may conclude that **compliant can be filed after 45 days of dishonor** of the cheque i.e., 30 days of notice period +15 days of the receipt of the said notice

In Rakesh Nemkumar Porwal vs. Narayan Dhondu Joglekar - Citation-(1993), the Honourable Bombay High Court held that "Any reason for dishonour is an offence."

In J. Veeraraghavan v. Lalith Kumar (1995), the Honourable Madras High Court held that "Any reason for dishonour is an offence. Section 138 of the NI Act Marginal Note stating "Dishonour of cheque for insufficiency etc. of funds in accounts" addition of word "etc." cannot be considered to be an accident."

BUSINESS COMMUNICATION

PART I

INTRODUCTION

COMMUNICATION



Communication is an integral activity of human beings. Communication in its simplest form means **transferring of information from one person to the other**. The word communication has been derived from the **Latin word 'communicare'** which means **'to share'**.

Hence, it can be defined as the **process of transferring, sharing, exchanging or transmitting, ideas, facts, feelings, data, information and experience** from one entity to other through a medium.

The basic aim of communication is to share, listen and understand the message being exchanged by the parties involved.

INTRODUCTION TO BUSINESS COMMUNICATION

Business communication is the process of sharing/exchanging information between people within and outside the organisation in order to accomplish organizational goals and have mutual understanding of the commercial benefit of the organization.

For example- inter and intra departmental communication within organization, stakeholders, etc.

No entity can function solely in absence of communication. The exchange of ideas, information and instructions internally and externally is a fundamental feature of an entity is necessary for its working. The purpose of business communication is to clearly understand the business processes effectively.

SIGNIFICANCE OF BUSINESS COMMUNICATION

The significance of business communication can be summarised in the following points:

- a) **Managerial efficiency:** Communication helps in the smooth operation of management. An organisation **must communicate its goals in a way** so that **all parties involved are on the same page** and can carry out the tasks required to achieve those goals.
- b) **Building a dedicated and loyal employee base:** Effective communication emphasizes the employee's participation in management. It creates a positive environment where an employee can flourish. It helps to build the employees morale and cordial industrial relations between management and employees.

- c) **Effective leadership:** Effective leadership depends on effective communication. A leader must **communicate and listen to views and share feedback** to his/her subordinates for smooth functioning of tasks.
- d) **Mutual trust and confidence:** Mutual trust and confidence between workers and management is essential for the effective functioning of the organization because it helps to **reduce misunderstandings and resolve conflicts**.
- e) **Better decision making with informed judgement:** If the data, information and goals are not effectively communicated, it hampers the decision-making process and could even have adverse impacts on the organization's profitability. So, effective communication is needed in making proper and prompt business decisions.
- f) **Human resources management:** Effective communication helps in the proper human resource management of the company in form of **selection, placement, socialization, promotion, and transfer**. Communication also plays a major role in teaching and training employees.
- g) **Managerial functions:** All managerial functions such as planning, organizing, directing, controlling, etc cannot be conducted without communication.
- h) **Improving customer service:** Effective communication with customers by **answering questions and providing solutions** helps to improve the business' reputation and enhance customers' satisfaction.

USES OF BUSINESS COMMUNICATION

Business communication extends beyond organizations to **everyday professional scenarios like interviews, public speaking, and reporting**. Key applications include:

a) Group Discussion (GD)



GD involves grouping individuals to discuss a topic, problem, or question, sharing ideas and solutions. It's increasingly used in interviews to assess leadership, communication, listening, awareness, social skills, and initiative.

Rules for Effective GD

- Be clear, confident, and concise in content.
- Prepare the topic thoroughly beforehand.
- Introduce yourself before sharing views.
- Maintain positive body language and attitude.
- Avoid vague or false statements.
- Stay professional; avoid casualness.
- Disagree respectfully without arguing.
- Stick to your expertise domain.
- Take leadership initiative when appropriate.

b) Speeches and Debates



Speeches are performative (e.g., public addresses, radio broadcasts, drama, poetry, extempore, oratory), while debates involve in-depth research on current issues, arguing for or against a motion. Both demand strong business communication skills for effective delivery.

c) Presentations

Presentations convey information to audiences for introduction, persuasion, inspiration, or detailed reporting. Widely used in business and education, they save time and offer a holistic overview. Note: Not all require PowerPoint or visuals; the term isn't synonymous with slides.

Illustration: Michael Hill International Limited

Michael Hill International Limited, an Australian-headquartered specialty retail jeweler, operates over 300 stores across North America, New Zealand, and Canada, employing 2000+ staff and serving millions of customers. The head office faces challenges like employee-management misunderstandings, lack of trust, and poor customer feedback mechanisms.

Owner's Query: Why is handling branches difficult compared to competitors with more branches running smoothly?

Suggested Response: Poor business communication causes these issues—misaligned goals lead to misunderstandings, erode trust, and weaken feedback loops. Competitors succeed via clear channels (e.g., regular updates, GD-style team huddles, structured presentations), enhancing coordination, loyalty, and service. Implement training in GD rules, speeches for leadership updates, and presentations for branch reports to align operations and boost efficiency.

ROLE OF BUSINESS COMMUNICATION IN FUNCTIONAL AREAS OF AN ORGANISATION

Business communication ensures smooth coordination across organizational departments like marketing. Here's a simplified breakdown with practical examples.

Communication in Marketing

Marketing means creating, sharing, delivering, and exchanging products/services for customers and society. Communication is its backbone—marketers use it to promote products and connect with audiences.

Key Benefits:

- a) **Building Relationships:** Good interpersonal skills create emotional bonds.
Example: A salesperson listens empathetically to a client's needs, turning a one-time buyer into a loyal partner.
- b) **Facilitating Innovation:** Clear communication sparks creativity to beat competitors.
Example: A team pitches a new eco-friendly packaging idea in a meeting, leading to a viral product launch.
- c) **Enhancing Transparency:** Open talk builds trust as brand ambassadors.

Example: A company shares honest product updates on social media, reassuring customers their feedback shapes improvements.

d) **Overcoming Obstacles:** In VUCAFU world (Volatility, Uncertainty, Complexity, Ambiguity, Fear of Unknown, Unprecedentedness), it breaks barriers like culture/language.

Example: A global brand adapts messages for local dialects, winning over diverse markets despite legal hurdles.

e) **Establishing Professionalism:** Professional language maintains client respect.

Example: Using polite emails instead of slang in negotiations secures a major contract.

MAJOR MODES OF COMMUNICATION IN MARKETING

a) **Advertising** - Advertising is an **impersonal form of communication** which is persuasive in nature. The main aim of advertising is **to target the mass audience**. It is viewed as the **cheapest way of reaching out to the customer**. Communication in advertisement plays **four objectives i.e. to inform, persuade, differentiate and remind**.

b) **Direct marketing** - Direct marketing involves **communicating directly with the target customers using telephone, mail or any other electronic means**. Direct marketing allows a company to focus precisely on a segment of customers and prospects with a sales message tailored to their specific needs and characteristics.

c) **Sales promotion** - Sales promotion is done in order to **accelerate the product's movement from the producer to the consumer**. Consumer promotions includes

techniques of non-verbal communication such as coupons, samples, premiums, and negotiating discounts.

- d) **Personal selling** - Personal selling basically means **face to face interaction** with the customer with the purpose of introducing a product and persuading the customer or potential customer about the product and closing the sale. Being an interpersonal form of verbal communication, and it is also the **most effective tool of communication** as it **provides immediate feedback**.

In marketing, communication is an important player. Consumers rely on the information available from marketing communication to make purchase decisions. Businesses, ranging from global MNC's to small retailers, all rely upon marketing communication to sell their goods and services. Communication helps to move products, services, and ideas from manufacturers to end users and builds and maintains relationships with customers, and other important stakeholders in the company. Communication is vital to marketing because it brings everyone on the same page.

REQUISITE SKILLS FOR AN EFFECTIVE COMMUNICATION

Effective communication is said to have taken place when the **sender and receiver of the message assign similar interpretations to the message**, when the **receiver listens closely to what has been said and makes the sender feel heard and understood**. In order to make a communication effective both the parties must possess the following skills:

- a) Inform the listener about the **topic prior to the conversation** or at the beginning of the conversation thus giving the listener time to form an opinion or get an idea on the topic.

- b) The speaker must **deliver the message** in a concrete and **clear manner** to avoid miscommunications.
- c) Both the parties must be **empathic towards each other**.
- d) The message should be **complete**.
- e) The speaker must try and **use non-verbal forms** of communication **as well** while delivering the message
- f) The listener must be **attentive and alert**.
- g) Both the listener and speaker must have an **open mind** towards each other's opinions.
- h) It is the responsibility of the listener to provide **feedback** to the speaker and also the responsibility of the speaker to seek a response from the listener.

Active listening is paying attention to a speaker, comprehending what they're saying, responding and reflecting on what they're saying, and storing the information for later use.

This retains both the listener and the speaker in the discourse.

People often overlook the importance of listening. People frequently hear what is being said, although hearing differs significantly from listening.

To listen, we must make a conscious effort to not just hear but also absorb, digest, and comprehend what others are saying. **Listening is important because:**

- a) It helps improve problem-solving abilities
- b) It helps improve social skills
- c) It helps to empathise with others
- d) It helps to absorb information better
- e) It helps to learn and grasp things better in a social and professional setting
- f) It helps to build stronger relationships and by making people feel appreciated.

PART II

FEATURES OF EFFECTIVE BUSINESS COMMUNICATION

INTRODUCTION:

Communication is vital in businesses. Communication helps in establishing relationships, negotiating deals, selling, delivering presentations, problem solving, decision making and many other aspects of an employee, manager and executives' role.

Whilst effective practical training is an invaluable aid in improving business communication skills, the best communicators on their part must exhibit certain characteristics which enable them to maximise their abilities. Some of them include:

- a) **Good listening skills** - In order for a communication to be effective it is essential to develop a good listening skill rather than speaking skills. It is important to hear the other person **in order to avoid premature evaluation and verbal conflicts**.
- b) **Open Minded** - While communicating people must keep an open mind and **accept that they too could be wrong**. Hence it is essential to keep an open mind and **learn from others**.
- c) **Being attentive** - During communication it is essential to be attentive and listen to the communicator patiently **without fidgeting or being distracted**
- d) **Participating** - Just like being a good listener is essential it is also necessary to participate and **show interest in** the discussion.

EIGHT CS OF EFFECTIVE COMMUNICATION

Effective communication drives organizational success by boosting engagement, productivity, and retention. It follows the 8 Cs to ensure messages are accurately received.

a) **Clarity:** Use precise language to avoid assumptions.

Example:

Incorrect: "The company has received a new manufacturing order of tyres from a new client."

Correct: "The company has received a manufacturing order of 150 units of tyres from JVC Ltd."

b) **Conciseness:** Keep messages short, direct; avoid wordiness.

Example:

Incorrect: "We are attempting to create a meticulous proposal of expanding our business operations..."

Correct: "We're planning to open a new branch in Kolkata."

c) **Courtesy:** Maintain respect to build healthy relationships; avoid harsh tones.

Example:

Incorrect: "I don't appreciate how your team ignores our requests... Your work is less vital."

Correct: "I understand your team is busy... I'd appreciate quicker collaboration on this urgent project."

d) **Correctness:** Ensure proper grammar and facts for credibility.

Example:

Incorrect: "This weak expenses have increased by 6.5%."

Correct: "This week's expenses have increased by 6.5%."

e) **Completeness:** Include all details for action; avoid follow-ups.

Example:

Incorrect: "There is marketing department meeting tomorrow at 7..."

Correct: "There is a marketing department meeting tomorrow at 7:00 pm in conference room no. 5 for our new soap product strategies."

f) **Concreteness:** Be specific and vivid; avoid vagueness.

Example:

Incorrect: "Manufacturing costs have increased. They need to be reduced."

Correct: "Manufacturing costs have increased by 30%. They need to be reduced by at least 15%."

g) **Consideration:** Empathize with the receiver's perspective.

Example:

Incorrect: "Your presentation looks awful. Why can't you improve?"

Correct: "I noticed some mistakes in your presentation. Let's meet to work on it."

h) **Coherence:** Ensure logical flow and relevance for easy understanding.

Example:

Incorrect: Jumbled project due date and meeting info.

Correct: "Arex Ltd. wants to discuss product issues this Saturday, so the project due date is extended to next month."

Mastering these Cs equips managers, leaders, and salespeople for success across verbal, written, and digital channels.

PART III

PROCESS OF COMMUNICATION

As a concept, communication might sound simple.

However, there are a lot of hidden elements and an entire chain of events or stages that are going on while we communicate even though we are unaware of it.

The communication process is a **dynamic framework** that explains the transmission of message between a sender and receiver using various communication channels.

KEY ELEMENTS OF COMMUNICATION:

Element	Definition	Example
Sender	Idea originator	Manager planning meeting atlas+I
Encoding	Translate to words/signs	Writing email
Message	Info sent	"Meeting at 3 PM"
Channel	Delivery method	Email/Zoom
Receiver	Target person/group	Team members
Decoding	Interpret message	Reading/understanding
Feedback	Receiver response	"Got it, see you!" atlas

PROCESS OF COMMUNICATION

- a) **Idea Development** - What to say?
- b) **Encoding** - Words/symbols
- c) **Transmission** - Send via channel
- d) **Receipt** - Receiver gets it
- e) **Decoding** - Understand meaning

f) **Feedback** - Confirm understanding

Essence of Feedback

After the communicator is done with his role of communicating the message via the appropriate medium, he must ensure that the recipient has understood the message in the way he was supposed to.

Hence, the communicator must take feedback from the recipient.

According to **Kevin Eujeberry**, the feedback that the communicator receives is broadly classified into **four categories**:

- a) **Positive Feedforward** - It basically means affirming comments with regard to future behaviour.
- b) **Negative Feedforward** - It is the opposite of a positive feedforward it includes corrective comments with regard to future behaviour.
- c) **Positive Feedback** - Positive feedback means affirming comments with regard to past behaviour.
- d) **Negative Feedback** - Negative feedback is the opposite of a positive feedback it includes corrective comments with regard to past behaviour.

MODELS IN THE COMMUNICATION PROCESS

- a) **One-way process** - A one way communication process is a simple communication process wherein the **communication is one sided**. It begins when the sender selects a



message to deliver to the receiver, followed by the encoding stage. The message is transmitted to the receiver via a medium, followed by which the receiver decodes the message.

- b) **Two-way process** - The two-way communication process is an **improved version of the one-way process**. It is more **contemporary in nature**. In the one-way communication model, the sender continues to remain in a dilemma if the receiver has correctly interpreted the message. However, in the two-way process follows the same steps only here the receiver gives the sender feedback and can also clarify his / her doubts or even share his / her perspective on the proposed topic of discussion.

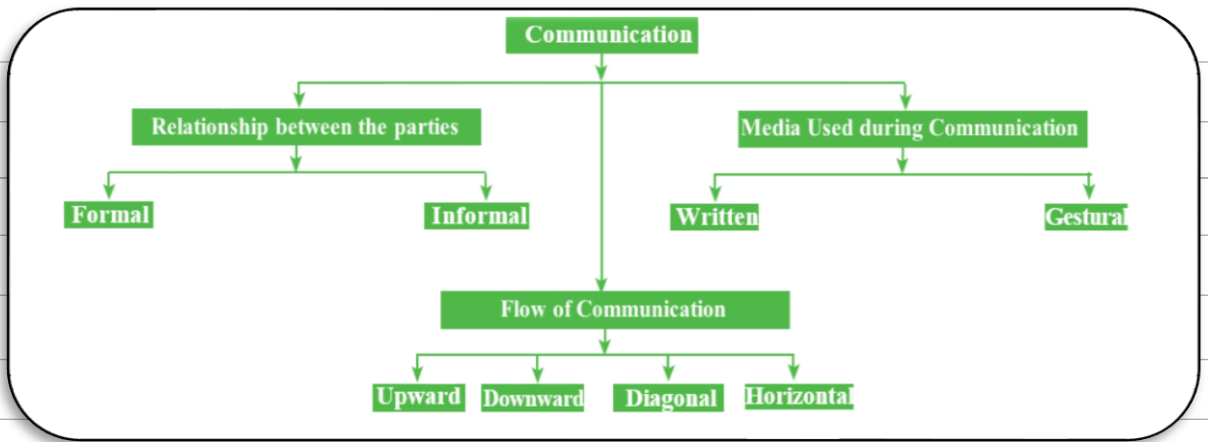
The differences between a one-way and two-way communication process include the following:

Basis	One-way Communication Process	Two-way Communication Process
Model Type	One-way communication is a linear	Two-way communication is a cyclic model.
Perceiving	The sender is unaware if the receiver has correctly perceived and interpreted the message.	The sender is aware if the receiver has correctly perceived and interpreted the message.
Feedback	One-way communication eliminates the concept and significance of feedback.	Two-way communication includes the concept and significance of feedback.
Nature	One-way communication is a monologue	Two-way communication is a dialogue by nature.
Examples	Watching a video, listening to music	Communicating with a friend, interviews

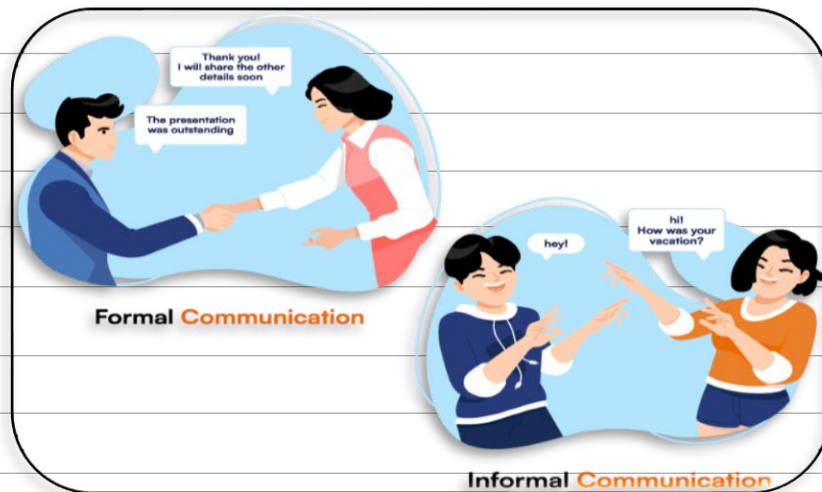
TYPES OF BUSINESS COMMUNICATION

Business Communication can be classified into different categories depending upon the nature of communication, origin of the communication and the relationship between the parties involved in the communication process.

Communication can be broadly classified under the following heads on the basis of:



FORMAL AND INFORMAL COMMUNICATION



Formal Communication

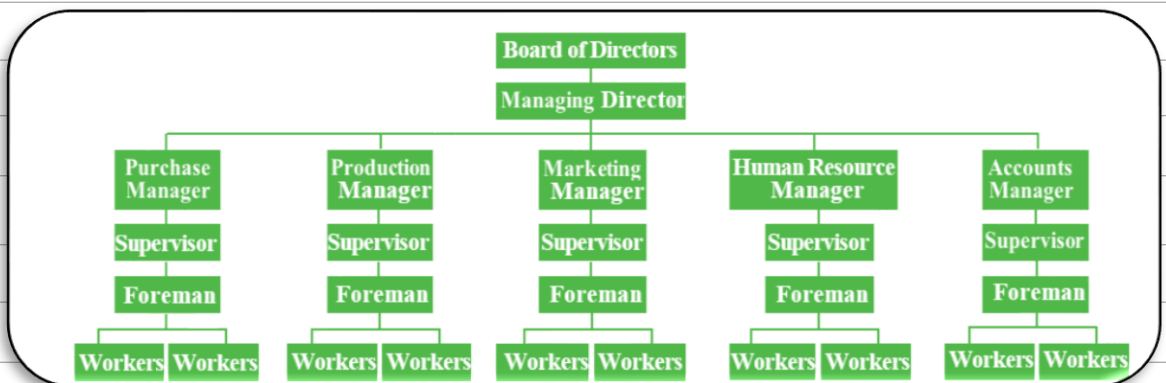
Formal communication also known as **official communication** is designed by organizations to ensure the flow of official information through **proper, predefined channels and routes**. Employees are bound to follow formal communication channels while performing their duties. The flow of information is controlled. It also ensures that deliberate effort to be properly communicated.

Advantages of Formal Communication include:

- It is considered effective as it is a timely and **systematic flow of communication**.
- It is **more reliable** than informal communication.
- Documentary evidence** is present.
- Full **secrecy** is maintained.
- It follows a **hierarchical structure** and chain of command.

Disadvantages of Formal Communication include:

- The structure is typically **top down**.
- It is **slower than informal communication** because it is time consuming to follow communication through a long chain of command.
- It also tends to **cause a lot of distortions**.



Informal Communication

In this kind of communication, the communication is **multidimensional**. It moves **freely within the organization**. It is **not bound by pre-defined channels** and communication routes and is particularly quick. Neither does not have a paper trail. It is also known as grapevine communication and generally begins with employees through social relations.

Informal communications can turn to formal communication if they are added into the formal communication information flow of a company. Informal communication is considered effective as employees can discuss work-related issues which saves the organization time and money. It also helps to build more productive and healthy relationships in the workforce.

Advantages of Informal Communication includes:

- a) It is **faster** than formal communication.
- b) It is **rapid and quick**.
- c) It **boosts employee morale**.
- d) It **increases trust** and develops a better employee relations and coordination.

Disadvantages of Informal communication includes:

- a) Informal communication is less reliable than formal communication.
- b) It propagates the spread of rumours.
- c) It is difficult to maintain secrecy.

The following are the different types of communication structures in informal communication:

- a) **Single Strand Chain:** The communication in which one person tells something to another, who again says something to some other person and the process goes on.
- b) **Cluster Chain:** The communication in which one person tells something to some of its most trusted people, and then they tell them to their trustworthy friends and the communication continues.
- c) **Probability Chain:** The communication happens when a person randomly chooses some persons to pass on the information which is of little interest but not important.
- d) **Gossip Chain:** The communication starts when a person tells something to a group of people, and then they pass on the information to some more people and in this way the information is passed on to everyone.

VERBAL, NON-VERBAL AND WRITTEN COMMUNICATION

Verbal Communication

It **uses spoken words to communicate** a message. It is the most effective form of communication. It leads to the rapid interchange of information and feedback. There are fewer chances of misunderstanding as the communication between parties is clear. But in this communication, **listening is crucial**.

Non-Verbal Communication

It is **based on the understanding of the parties**. It uses signs. Communication succeeds only when the receiver understands the message completely and proper feedback is given afterwards. It complements the verbal communication.

The types of Non-verbal communication are as under:

- a) **Chronemics:** The use of time in communication is chronemics, which speaks about the **personality** of the sender/ receiver like punctuality, the speed of speech, etc.
- b) **Vocalics or Paralanguage:** The **volume, tone of voice** and pitch used by the sender in communication.
- c) **Haptics:** The use of **touch** in communication.
- d) **Kinesics:** It studies **the body language** of a person.
- e) **Proxemics:** The **distance maintained** by a person while communicating with others.
- f) **Artifacts:** The study of the **appearance** of a person.
- g) **Sign Language**
“**Action speaks louder than words**”, non-verbal communication often depends on the uses of gestures and signs to express oneself. Language in itself is a combination of a set of sophisticated signs and symbols. For example, two friends making gestures towards each other to communicate in front of strangers or when they are uncomfortable to speak in front of a third party. These signs are usually of two kinds visual signs and audio or sound signs.
- i) **Visual Signs** - These are commonly seen and used in and around us. We come across multiple visual signs in our daily life. For example:

- ✓ The traffic signs that we see on the road are an essential form of visual signs for drivers which help prevent accidents and mishaps on the road.
- ✓ The use of posters in advertising to communicate messages to potential buyers or buyers to keep them informed about products or details.
- ✓ The shade-card we receive from painters or interior decorators when we are renovating or painting.
- ✓ Maps and e-maps that help us to navigate to and across places.

ii) **Audio Signs** - Audio signs are another common form of non-verbal communication.

Some examples of audio signs we come across in our daily life include:

- ✓ Sirens on the ambulance which act as audio signs telling the driver in front to let the ambulance pass.
- ✓ Car horns are ways drivers communicate to each other while driving.
- ✓ Parade drums which alarm the passing of a parade.
- ✓ Warning signals and alarms telling people to vacate in case of a building fire.

Advantages of sign language includes:

- a) Posters and paintings have an educational value.
- b) People perceive and remember the visual signs that are attractive.
- c) It is an effective means of communication if properly used.
- d) Pictures and drawings can also lead to mental motivation for many people.
- e) It promotes creativity and uniqueness. Disadvantages of sign language includes:
- f) Sometimes sign language might not be effective enough to convey a message.
- g) If the receiver does not understand sign language communication might become difficult.
- h) It is not used properly sign languages can create huge misunderstandings between the parties.

Modern methods of Non Verbal Communication

a) **Jingle** - A jingle is a **short piece of music with one or more hooks** and meanings that promote a product or service being sold, usually through the use of one or more advertising slogans. Jingles are utilised by ad buyers in radio and television ads, but they can also be employed to develop or maintain a brand image in non-advertising circumstances. Many jingles are made from snatches of popular songs, with the lyrics changed to better sell the product or service.

For example: McDonald's jingles is "I'm Lovin' It".

b) **Music** - Music is an **excellent and powerful medium** for conveying information. It allows people to exchange feelings, intents, and meanings even if their spoken languages are incomprehensible to each other. It can also be a lifeline for those with special needs who find it challenging to communicate through other means. Music has the ability to have **significant bodily impacts, to elicit deep and profound emotions in us**, and to be exploited by great composers and performers to achieve infinitely tiny variations of expressiveness.

c) **Cartoon** - A cartoon can express a lot of information with very few or no words. The cartoons' philosophy, logic, and objectives are genuine, and they educate the general audience. It makes **severe depictions on occasion, but always with a sense of humour**, and shines a light on the dark parts of society or political goals. Social media has reshaped and improved communication using cartoons, particularly during times of crisis. Cartoons are an excellent way to reach a large audience.

Written communication

Written communication refers to **sending of messages, orders or instructions in writing through letters, circulars, manuals, reports, telegrams, office memos, bulletins, etc.**

It is a formal method of communication. It is less flexible.

It can also be used as **legal evidence**. It is time-consuming, costly and unsuitable for confidential and emergent communication.

In order to be effective communication should be clear, complete, concise, correct, and courteous. This kind of communication is suitable for long distance communication and repetitive standing orders.

The advantages of written communication include:

- a) It creates permanent record of evidence.
- b) It can be used for future reference.
- c) It gives the receiver sufficient time to think, act and react.
- d) It can be sent to multiple persons at a time.
- e) It is suitable for sending statistical data, charts, diagrams, pictures, etc.
- f) Good written communication can create goodwill and promote business.

The disadvantages of written Communication include:

- a) Feedback process also is not instant.
- b) It is expensive.
- c) There is no scope for immediate clarification.
- d) It is less flexible.
- e) It is not effective in case of emergency.

Steps in Written Communication

In order for a written business communication to be effective the communicator must follow the following steps:

Step 1 - Preparing the message - The communicator at this stage should focus more on the what he wants to communicate that is the idea.

Step 2 - First Draft - After the message is prepared it should be expressed properly. He must draft it properly on paper. After drafting the message, he should check properly for any errors or mistakes. He can avoid spelling and grammar checks at this stage.

Step 3 - Revising and editing - At this stage, the communicator focuses on correcting the grammar, spellings and punctuations. While editing he must ensure the message is brief and to the point and that there is no unnecessary information.

Step 4 - Proof Reading - During proof reading, the communicator must check the context, accuracy, form and appearance of the message before he sends it out to people.

VERTICAL, HORIZONTAL AND DIAGONAL COMMUNICATION

Vertical Communication

Vertical **communication takes place among seniors and subordinates** or between two people at different levels of the organizational hierarchy. It is generally used when a senior has to assign tasks or delegate authority among subordinates. It is also used when the subordinate is responsible and accountable for a certain task for which he must report to his senior. The flow of communication is either upward, when the

communication is from a subordinate to his senior or downward when the senior communicates to the subordinate.

Horizontal Communication

Horizontal Communication is the communication that takes place among employees on the same organizational level. It is also known as lateral communication. This form of communication is more timely, direct, and efficient than up or down communication. It produces a higher quality of information exchange since it occurs directly between people working in the same environment. Horizontal communication generally occurs formally in meetings, presentations, and formal electronic communication, and informally in other, more casual exchanges within the office. However, there are a few barriers to horizontal communication such as differences in style, personality, or roles amongst co-workers. Problems can occur because of territoriality, rivalry, specialization, and simple lack of motivation.

Diagonal Communication

Diagonal communication is said to take place when people working at the same level interact with those working at a higher or lower-level of organizational hierarchy and across the boundaries of their reporting relationship. It is also known as crosswise communication. It promotes inter departmental coordination and is more practical. Diagonal communication also plays a vital role to boost workers' morale. It makes the superior feel like he has been by passed in the communication process. However, superiors may refuse to implement the suggestion as he has not been consulted. As a result, it may lead to internal anarchy and external animosity.

UPWARD AND DOWNWARD COMMUNICATION

Downward Communication

In downward or downstream communication people working at **higher levels** have the authority to communicate **to the people working at lower levels**. It strengthens the authoritarian structure of the organization. However, it is time-consuming and, in the process, managers may withhold some valuable information from the employees.

Upward Communication

Upward or upstream communication is useful in sending information, suggestions, complaints and grievances of the **lower-level workers to the managers** above. It is more participative in nature. Modern managers encourage upward communication. It is the direct result of increasing democratization. Here, psychological problem may come up as managers do not like being told by their subordinates.

One of the **major problems** that most modern businesses face is the **communication gap that exists between the top management and the lower-level employees**. This communication gap often leads to increase in conflicts, misunderstandings and misinterpretation of company policies, in order to eliminate these conflicts arising out of the communication gap many organizations are adapting to the concept of an ombudsperson. An ombudsperson is a person hired by the organization who acts as a liaison between the top management and the employees. The ombudsperson promotes upward communication by discussing the employees concerns and grievances with the top management.

Lateral communication

Lateral communication refers to interactions between individuals and groups on the same organisational level.

In contrast to other, less formal situations, lateral communication in the workplace suggests a more defined goal. The following are some of the benefits of lateral communication:

- a) It saves time.
- b) It makes task co-ordination easier.
- c) It makes it easier for team members to work together.
- d) It offers emotional and social support to the members of the organisation.
- e) It aids in the resolution of a variety of organisational issues.
- f) It is a method of exchanging information.
- g) It can also be utilised to resolve departmental disagreements with other departments as well as internal departmental conflicts.

However, there are some drawbacks to lateral communication. As lateral communication grows, management may have a harder time maintaining control. This is partly because controlling the flow of information allows management to exert a great deal of control and authority. Lateral communication can also lead to conflict among employees who are exposed to each other as a result of the procedure. Through lateral communication or to ratify decisions taken during horizontal communication. Finally, if stringent communication procedural standards are not enforced and followed, it may result in a lack of discipline.

PART IV

INTERNET BASED BUSINESS COMMUNICATION

INTRODUCTION:

- a) Over the years, the concept of e-communication has gained significant importance in the business world.
- b) While the internet makes doing business online easier, communication can prove tricky.
- c) **However, online communication, can create hindrances for businesses if it is not done properly.** Hence, businesses must conduct proper research and consider the different areas of internet communication that would suit the business and also provide their clients with the best service available.
- d) The way personal communication has changed in the era of the internet is truly commendable. It affects everything beginning from purchasing groceries to holding conferences and meetings with overseas stakeholders.
- e) The internet has truly helped businesses grow and become more productive by helping them seek multiple new opportunities.

The ways to make internet based business communication more effective are as follows:

a) **Customer Interaction**

Online businesses do not have in-person communication like telephone services either. To **make interaction easier**, they should provide a **more personal touch** and make business between a customer and the company easier. Businesses should have **instant messaging services** for customers and online forums as well to discuss the product and offer tips and reviews.

b) Support Options

Customer support is a **crucial part** of doing business online. It indicates that the company is making efforts to show customers that it **takes their concerns seriously and are willing to resolve it as soon as possible**. Posting and following turnaround policies for answering customer questions makes the customer feel valued. Also, providing customers with a **Frequently Asked Questions (FAQs)** section on the main page of the website helps a lot. Questions can be answered and the customers' time is saved.

c) The Personal Touch

Since online business communications are mostly faceless, it helps to make the customers feel like they are talking to people rather than computers. Moreover, sending **personal messages in response to emails** can make the customer feel like the company cares about them and their views. Entities can delegate this task or create separate department.

d) Professional Presentation

While it is important for business to make customers feel like they are talking to real people, it is also necessary to maintain a **professional presentation**. By projecting themselves as professional, companies ensure about its reliability to customers. Companies can use a certain professional email template or include a letterhead along with some professional information to make the customer feel secure about the business.

TYPES OF INTERNET BASED BUSINESS COMMUNICATION

Type	What	Business Benefit	Example
Email	Dept emails, anti-spam	Direct queries	sales@company.com
Cloud Computing	Online storage/ access	Remote work, save costs	Google Drive for files
E-Commerce	Online sales	Global reach, no geo limits	Flipkart/Amazon
VoIP/ Video Conf	Internet calls/meetings	Cheap global talks	Zoom, Skype calls telechooiceinc

Illustration: ABC Ltd Case Solution

Problem: 23 branches, 10,900 staff → communication gaps → losses, turnover.

Recommendations:

- VoIP/Video: Global meetings without travel
- Cloud: Shared docs across branches
- Email/Slack: Instant updates
- E-Commerce Portal: Customer grievance tracking

Result: Fixed delays, reduced complaints

BUSINESS AND SOCIAL ETIQUETTE

Etiquette is a **set of guidelines and rules for manners and behaviour that is acceptable** in a professional conduct.

In a corporate world, good business etiquette means a **person acts professionally and behaves properly with socially acceptable manners** when interacting with others in his/her profession.

Good business etiquette is a valuable skill- set that can make a person stand out from others, enhance the person's individual success rate in the organisation.

A basic example of business etiquette is using simple greetings while acknowledging someone. Instead of saying "Hey, how can I help you?", say "Good morning, Mr. Alok, tell me how can I help you?". The second sentence looks more engaging. The person addressed feels respected and as a result trust is built.

Importance of business and social etiquette

- a) Building positive relationships
- b) Makes a workplace productive
- c) Rewarding in nature

Professional conduct in a business setting

Professional behaviour in the workplace is a set of guidelines that demands professionally acceptable attitude, appearance and manners.

It involves the way a person speaks, looks, behaves and make decisions.

Here are some of the ways an employee can exhibit business etiquette in workplace.

- ✓ **Honesty** - No leaks
- ✓ **Respect** - No temper
- ✓ **Meetings** - On time, contribute
- ✓ **Communication** - Clear, polite
- ✓ **Integrity** - Ethical calls
- ✓ **Company Goals** - Know your role
- ✓ **Dress Code** - Follow rules
- ✓ **Accountability** - Own mistakes

- ✓ **Teamwork** - Ignore differences
- ✓ **Commitment** - Positive attitude

Workplace Hierarchy (Chain of Command)

In a business organization, a chain of command refers to **levels of authority** starting from **top level like CEO to bottom level like supervisors**.

Companies institute a chain of command to provide all the members at all levels with a supervisor to whom they may ask their queries or report grievances.

The chain of command involves moving to the next level of authority.

For instance, a plant worker will report issues to his immediate supervisor and the supervisor will report them to a manager.

It is the duty of business leaders to educate their employees about the chain of command. It is usually desirable that a problem stays at the lowest possible chain in the hierarchy unless it is necessary to move up to the higher level of organization.

Employees should study the organization's chain of command and respect it as much as possible.

In some cases, in order to **voice his opinion immediately**, an employee can break the chain of command. Instead of reporting to the immediate supervisor, **he may approach the manager directly.**

BUSINESS MEETING ETIQUETTE

A business meeting is generally of two types **internal and external meeting**.

An **internal meeting** is one wherein the members and **hosts are from within the organisation and no external member** is allowed to participate in the meeting without the permission of the host.

On the contrary, an **external meeting** is one wherein the **attendees of the meeting are the external stakeholders** of the company such as the general public, government, media houses, etc.

- ✓ Invite only people who are essential to the meeting or have a role to play in the meeting.
- ✓ Choose the right time and proper place to conduct the meeting.
- ✓ Every meeting should have a proper and well-defined agenda that the attendees must be aware of.
- ✓ All the attendees and host of the meeting should be well prepared with the documents or presentations that might be required for the meeting to avoid delay and disturbances during the meeting.
- ✓ The host and attendees must be on time for the meeting to avoid delay.
- ✓ A note taker should be assigned for a meeting to keep track of the minutes of the meeting.

Telephone etiquette

There are some certain basic manners and rules that everyone in the business should follow while representing the organisation while communicating.

Some common telephone etiquettes are:

- ✓ Person communicating should keep maintaining a **calm tone** while communicating.
- ✓ **Warm wishes** like good morning, thank you, have a nice day etc should be used.

- ✓ It's important to **know who you are speaking** to set the tone and use relatable language with them.
- ✓ A person should **never call any client at odd hours** because it will be considered rude to disturb them while the client is busy.
- ✓ Make sure that the **content is short and concise** before calling any client.
- ✓ It is always appreciated to be a **good listener** and ask for feedback.
- ✓ It is important to **never put** another party **on hold** for too long.
- ✓ It is one of the important telephone etiquettes is to **not take too long to pick up** a call.
- ✓ In case of network issues between a call, it is advisable to deal with **patience** and wisely.
- ✓ At the end of the conversation, the final etiquette is to ensure that everyone is on the **same page**.

Meal etiquette

The way a person behaves in a business meal reflects his/her personality and the level of professionalism. A person needs to demonstrate social skills by following some etiquette rules.

- ✓ A person should dress appropriately as per the occasion.
- ✓ **Arrive few minutes earlier** because showing up earlier is **respectful to the host and guests**.
- ✓ It is desirable to make **light and mindful conversations** with others.
- ✓ Direct the **conversation** slightly towards the agenda of the invitation.
- ✓ Make an effort to maintain **good posture** on the chair throughout the meal.
- ✓ It is **polite to wait** until everyone at the table has received their meal.
- ✓ Remember to be kind and **gentle** toward the **server**.

- ✓ Always follow the host's lead in these get together meals.
- ✓ Exhibit politeness in actions like offering others to **fill up their glass** and so on.
- ✓ At the end of the meal, **express gratitude** to the host for inviting.

EMAIL ETIQUETTE DO'S AND DONT'S:

Do's

- a) Use a Clear Subject Line
- b) Start with a Proper Greeting
- c) Be Concise and to the Point
- d) Use Professional Language
- e) Proofread Before Sending
- f) Use Proper Formatting
- g) Include a Clear Call to Action
- h) Add a Signature
- i) Be Respectful and Courteous
- j) Respond Promptly

Don'ts

- a) Don't Use All Caps
- b) Avoid Overuse of Exclamation Marks
- c) Don't Use Emojis in Professional Emails
- d) Avoid Informal Language and Abbreviations
- e) Don't Attach Large Files
- f) Don't Send Emails When Angry
- g) Avoid Forwarding Chain Emails or Spam
- h) Don't Assume Privacy

- i) Don't Ignore Email Threads
- j) Don't Overuse High Importance

BUSINESS ATTIRE

Business attire refers to **clothing worn in a professional setting**. Business attire varies from business casual to business formal.

Gender	Casual	Formal
Men	Slacks + shirt	Suit + tie
Women	Patterned + flats	Dress/skirt + blazer

Proper way to make introductions:

- a) Rank first (junior to senior)
- b) Client > Boss
- c) Smile, handshake, full name
- d) Stand up, correct pronunciation

Courtesy at workplace

- a) Greet, introduce, no interruptions
- b) On time, appropriate dress
- c) Hold doors, respect privacy

BUSINESS COMMUNICATION AND PUBLIC RELATIONS

In today's information driven world, it is a well-established fact that the communication is as crucial as other basic necessities of life. Business communication is an important tool for all organisations. It involves managing and orchestrating all internal and external communications which are beneficial for the organisation.

Public plays a significant role in carrying out the success for any organisation. In this cut-throat competition, where every organization strives hard to work toward its brand image, public relations has become the need of the hour. It is essential for every organization to communicate well with its target audience. The perception of the public, competitors, employees and other stakeholders define the organisation's reputation, respect and success.

Concept of Public Relations

Public relations can be defined as **maintaining and sustaining a healthy relationship between the organization and public/employees/stakeholders/investors**. Public relation includes activities to ensure the **correct flow of information between the organization and its target audience**. It helps in maintaining the brand image of an organization in the eyes of its audience impactfully for a long period of time.

Target audience refers to the parties to whom the organisation wants to deliver its information to create and maintain relationship.

Example- For hospitals, the target audience would be patients and their families/guardians and for retailers, the target audience would be customers.

In the above examples, Public Relations ensures a smooth two-way communication between the hospital management and its target audiences (patients and their families). Retailers must respond to their customers well for a positive word of mouth and a strong brand positioning.

Functions of Public Relations

The main aim of PR is to create a positive and favourable public relations. Some basic functions of Public Relations are:

- a) **Public Relations Policy:** Develop and recommend corporate public relations policy and share it with top management and all departments.
- b) **Statements and Press Releases:** Preparation of corporate statements, speeches for executives and press releases are to be prepared by the PR personnel to articulate and project positive image of the company or product or policies.
- c) **Publicity:** Making announcements of company activities and products to media to reach to the general public and other stakeholders. It includes planning promotional campaigns for the business and answering inquiries from press and people at large.
- d) **Maintaining Relations:** The PR is intended to maintain good and cordial relations with Government units at local, national and international levels as well as with the community. This includes compliance with environmental protection standards, giving employment opportunities to locals, and cooperating and participating in locality development programmes.

e) **Publications:** Preparing and publishing in-house magazines is also the function of PR.

Major areas of public relations activity are as follows:

- ✓ Press conferences
- ✓ Advertisements
- ✓ Publications
- ✓ Media interactions
- ✓ Relations with constituents like local community, banks and financial institutions, investors, shareholders, customers and employees

Principles of public relations

Arthur W Page has established 7 principles of public relations management. They are:

- i) Tell the accurate picture of the organisation to the public.
- ii) Focus on actions instead of words to appeal to the public.
- iii) Understand the wants and respond clearly to the public.
- iv) Anticipate public relations and eliminate practices that may hinder the goodwill.
- v) Adopt the corporate strategy keeping in mind the interests of the public.
- vi) Realise that the success of the organisation lies in the hands of the public.
- vii) Remain calm, composed, dignified and peaceful.

Effective PR = Awareness → Acceptance → Action

Negative PR: Fix bad image fast (dirty tricks harm).

Examples:

- Uber: "Thank you for NOT riding" + free rides
- Vicks: Transgender mom story (4M views)

ADVERTISEMENT AND BUSINESS COMMUNICATION

Right from buying groceries to all kind of dresses, finding a resort for vacation to watching a movie, selecting restaurant for dinner to booking a banquet hall for special events, and searching schools and colleges to finding jobs, **almost every activity is guided by advertisements.**

Advertising is derived from a **Latin word 'Advertere'** which means **'turn the minds of someone towards something'**. It can be defined as non-personal presentation and promotion of ideas, goods and services paid by an identified sponsor.

It is a paid non- personal mass communication wherein business information is made available to an audience.

The aim of advertisement is to promote the business. The objectives of the advertisement are as follows:

- ✓ To **promote newly launched products** among the potential customers.
- ✓ To **promote unique selling point** of an organisation.
- ✓ To **create awareness** among the general public.
- ✓ To **tap into untapped** market segment.
- ✓ To **enhance the goodwill** and build credibility.

Importance of advertising

- ✓ Introducing new product.
- ✓ Amplifying sales
- ✓ Steady demand
- ✓ Stay in competition
- ✓ Public awareness

Mediums of advertising:

- ✓ Print media advertising
- ✓ Broadcast advertising
- ✓ Outdoor advertising
- ✓ Digital advertising

Relationship between Advertisement and Communication

- a) **Audience** - Target right people
- b) **Message** - Persuade softly
- c) **Methods** - Multi-channel
- d) **Customer Service** - Follow-up loyalty

Examples:

Maggi: 2-min noodles revolutionized India **Amul Girl:** Topical ads capture emotions



PART V

DO'S AND DON'TS OF COMMUNICATION THROUGH SOCIAL MEDIA

INTRODUCTION:

- a) The evolution of social networking sites and platforms has a tremendous impact on the everyday life of people.
- b) Over the last couple of years, social media has changed the ways we conduct business.
- c) The traditional business was governed by 3B's the building, the boss and the boundaries.
- d) Social media has eliminated the dependency of businesses on these 3B's.
- e) Today we can start our own businesses whilst sitting at a sofa in our home and pressing a few buttons.
- f) However, even though we use informal channels to conduct our business knowing the art of business communication while communicating over social media is essential.
- g) It is important to be able to communicate effectively through social media because it is omnipresent and can prove to be highly productive.
- h) From advertising to lead generation to conversions, businesses can easily multifold their returns via Social Channels, and in the same very manner, candidates can impress hiring managers, and get the best-suited jobs.
- i) Paying proper heed upon the Social Media Do's and Don'ts is very important to productively use these highly fruitful platforms.

DO'S OF SOCIAL MEDIA COMMUNICATION

- a) **Complete and Active Profiles:** Fully filled profiles build credibility and ease connections.
Example: Include photo, bio, and links on LinkedIn for instant trust.

- b) **Consistent Business Content:** Post relevant, business-aligned content regularly.
Example: A café shares daily specials consistently to retain followers.
- c) **Unique and Engaging Shares:** Represent your brand uniquely, spark discussions without spamming.
Example: Pose questions like "What's your favourite coffee blend?" to encourage comments.
- d) **Build Relationships:** Nurture existing ties before new ones; use for real-world meets while separating personal/business.
Example: Respond to a client's comment, then invite for coffee.
- e) **Prioritize Right Networks:** Match platforms to audience—LinkedIn (B2B), Instagram/Facebook/Twitter (B2C/B2B). Tailor content per network.
Example: Use visuals on Instagram, articles on LinkedIn.
- f) **Regular Audience Interaction:** Reply friendly to queries, seek recommendations; handle criticism gracefully.
Example: "Thanks for the feedback—here's how we're improving!"
- g) **Entertain and Inform:** Mix fun, informative posts over constant sales; spread positivity.
Example: Share a recipe video alongside product promo for organic growth.

DON'TS OF SOCIAL MEDIA COMMUNICATION

a) **Avoid Neediness:** Don't beg likes/retweets; prioritize quality followers; stay authentic; focus on relationships over time-wasting.

Example: Build genuine engagement instead of "Please like!"

b) **No Over-Sharing:** Avoid repetitive promos, group spamming, oversharing, or identical automated posts.

Example: Customize messages per platform to retain followers.

c) **Proper Grammar/Spelling:** Skip errors, all-caps (offensive), excess hashtags—they erode credibility.

Example: "SALE TODAY!" vs. "Sale today—limited stock!"

d) **Limit Automated DMs:** Customize messages per network/audience; avoid generic bots.

Example: Personalize "Welcome! What's your business challenge?" on LinkedIn.

e) **Verify Information:** Cross-check before sharing to avoid misinformation.

Example: Fact-check viral trends before posting.

f) **Don't Act Know-It-All:** Avoid arrogance; stay humble.

Example: "Here's what worked for us—curious about your experience?"

g) **No Complaining:** Skip negativity to remain professional.

Example: Turn "Bad day" into "Excited for tomorrow's improvements!"

PART VI

WRITING AND DRAFTING FOR BUSINESS AUDIENCES

Every business must satisfy its audiences (customers/clients) who want personal updates on products, discounts. Businesses use letters, emails, social media for this.

TYPES OF BUSINESS AUDIENCES

There are mainly 4 types of business audiences:

Audience Type	Characteristics	Communication Strategy
Friendly	Already supportive	Reinforce their beliefs (e.g., "Thank you for your loyalty!")
Uninformed	Don't know your business	Educate them (e.g., "Here's what we offer...")
Apathetic	Not interested	Prove value first (e.g., "Save 20% instantly!")
Hostile	Disagree from start	Address objections (e.g., "I understand your concern...")

REASONS FOR WRITING AND DRAFTING FOR BUSINESS AUDIENCES:

Some of the reasons businesses write and draft for their audiences are:

- a) **Inform** - It is the duty of every business to inform its audiences and stakeholders about relevant information about corporate policies, decisions, upcoming offers and discounts. Laws have also been created under the constitution such as the Right to Information so as to protect the rights of the business audiences.

- b) **Persuade** - These days PR and marketing have become one of the top priorities of businesses. While PRs try to pursue and develop the company name and reputation through communications with potential audiences, the marketing department tries to pursue potential consumers about the company, brand name and the product and services offered by the business. Apart from these, there are several other stakeholders that a business needs to pursue to help build trust of the stakeholders and company reputation.
- c) **Create Goodwill** - Goodwill is an immeasurable and intangible asset however it is the aim of every business to create as much as goodwill as they can. In order to create and maintain the goodwill, business communication plays a significant role.

KEY WRITTEN COMMUNICATION TOOLS

a) Business letters

Business letters illustrate commitment to the objective at hand.

A letter must be in the desired format, expressing ideas, dedication to the requirements, and an understanding that words and letters can make a difference in the lives of others.

Business letters can be informational, persuasive, motivational, or promotional by nature.

It can be for various purposes such as sending order, sending offer details, communicating to vendors, etc.

Types of business letters:

Type	Purpose	Example
Enquiry	Ask product details	"What's your laptop price & warranty?"
Quotation	Reply with pricing	"Laptop: ₹45,000, 1-year warranty"

Order	Place purchase	"Order 50 laptops @ ₹45,000 each"
Complaint	Report issues	"10 laptops defective - replace please"
Recovery	Collect payment	"Invoice #123 due in 7 days"

b) Report - Formal and Informal

A report is written to pass on specific information with a clear purpose to a particular audience. The information is clearly structured making use of sections and headings so that the information is easy to locate and follow.

A report can outline the purpose, audience and problem or issue, together with any specific requirements for format.

Types of Reports

- i) **Information Reports** - Information reports present facts about a certain given activity in detail without any note or suggestions.
- ii) **Analytical Reports** - Analytical reports contain facts and analytical explanations offered by the reporter himself or may be asked for by the one who seeks the report.
- iii) **Research Reports** - Research reports are usually based on research work conducted by an individual or by a group of individuals on a given problem statement.
- iv) **Statutory and Non - Statutory Reports** - Statutory reports are made to be presented according to the legal requirements of a rule or a custom now has become a rule. Non-statutory reports are not legal requirements or rules wants.

- v) **Routine Reports** - Routine reports are required to be prepared and submitted periodically on matters required by the organization.
- vi) **Special Reports** - Special report is specially required to be prepared to be submitted on matters of special nature.

Feature	Formal Report	Informal Report
Structure	Strict format	Flexible
Purpose	Strategic decisions	Daily operations
Length	Long	Short
Audience	Top mgmt + outsiders	Internal teams
Frequency	Rare	Daily/weekly
Visuals	Charts, graphs	Minimal
Style	Impersonal	Personal

c) **Business Report Writing**

A formal business document is an official document that provides statistics, research, information, and other pertinent elements to assist decision-makers in developing strategies and objectives to benefit the organisation.

A formal business report could be several pages lengthy and feature a lot of data and information, depending on the topic.

Elements of a business reports

- ✓ **Cover Page** - Title + Author
- ✓ **Contents** - Topic index
- ✓ **Executive Summary** - ½ page key findings

✓ **Sections** - Main content

✓ **Appendix** - Data, charts

d) **Business Proposal**

A business proposal is a written document sent to prospective clients to obtain a specific job.

A business proposal is a written proposal presented from a business that intends to elicit business from a prospective buyer.

It is unique because it contains a lot of figures and statistics represented by pie charts and graphs.

Characteristics of a Business Proposal

- i) **Solutions** - After writing a lead paragraph on the company's problems, follow up with a solid presentation of how your business can provide solutions.
- ii) **Benefits** - Business proposals, clearly outline for the company the benefits to be gained from doing business with a firm.
- iii) **Credibility** - This is often the overlooked portion of a business proposal but all proposals glow with credibility.
- iv) **Samples** - Business proposals with samples and evidence of one's ability to deliver is vital to gain the winning bid.
- v) **Targeted** - Business proposal is all about communication. Speak in a language spoken by the intended audience.



ENHANCEMENT OF WRITING SKILLS

Why Important?

- ✓ Clear communication
- ✓ Boosts creativity
- ✓ Problem-solving
- ✓ Reach mass audience
- ✓ Job advantage

Improvement Tips:

- ✓ Organize thoughts first
- ✓ Outline key points
- ✓ Read widely (vocabulary + styles)
- ✓ Simple words (avoid jargon)
- ✓ Practice daily
- ✓ Know audience
- ✓ Proofread before sending
- ✓ Get feedback

PART VII

INTERCULTURAL AND INTERNATIONAL BUSINESS COMMUNICATION

INTRODUCTION



- a) Since the onset of globalization and the industrial revolution businesses have sought to expand their activities across various cities and countries around the globe.
- b) However, before commencing operations in a new region **it is essential for the business to understand the culture, language and lifestyle of the people living that region in order for it to be a successful venture.**
- c) These days it has become important to understand the diverse cultures.
- d) Cultures vary from place to place and it is essential for businesses to be sensitive to the diverse cultures as they expand. When a business expands to a new city or country

it depends upon that place for its suppliers, employees, customers and other forms of stakeholders.

During international or intercultural communications an organization must keep the following points in mind:

- a) **Display respect**, patience and empathy towards the others culture.
- b) Sometimes in order to adapt to a particular culture a business firm might have to tweak its rules and regulations, habits and business methodology. Hence it is essential to remain open minded during an intercultural or international communication.
- c) **Search for similarities instead of differences in culture**. This will help both the parties connect and communicate more smoothly and effectively.
- d) **Use gestural communication** as much as possible. When people belonging to different cultures or languages communicate, they tend to follow each other's gestures and reactions.
- e) **Be attentive** and avoid any form of distractions.

STAGES OF INTERCULTURAL SENSITIVITY

Cultural sensitivity is defined as recognizing the different types of cultures, the similarities and differences between them, without being judgemental or prejudicial and thereby accepting the culture. **Sir Milton Bennett** had described **six stages intercultural sensitivities**. It is discuss as follows:

Stage I Denial - The denial stage is the first stage in intercultural sensitivity. At this stage, the **members are completely unaware about the cultural differences that exist among their respective cultures**, It, is essential that the members recognize and

understand the differences among the cultures to avoid any form of intercultural disputes.

Stage 2 Defence - In the second stage, **once the members have spotted the differences in their cultures and they look upon these differences as negatives.** They uphold the values of their own culture as "rightness" and criticize the beliefs and practices of other culture. At this stage each member of one culture must be taught to be tolerant towards the other culture(s).

Stage 3 Minimization - In this stage, the **members recognize and even appreciate the differences in the cultures.** The members focus their attention on studying more about their own culture and avoid projecting their cultural values upon others.

Stage 4 Acceptance - This stage, is a reasonable goal that every organization must seek to achieve while expanding across cultures and countries. At this stage the **members learn to accept each other's culture** however they still remain devoted to their own respective cultures.

Stage 5 Adaptation - In the fifth stage, of the intercultural sensitivity the members function in a bi-cultural capacity is that they **learn more about the other culture(s) and mentally shift, adapt, adjust and operate** within the other culture after understanding both the cultures.

Stage 6 Integration - In the final stage, the members have complete in depth knowledge and adapt to the different cultures and the ability shift easily among cultures.

At this stage the *members integrate both the cultures and cultural flexibility* emerges as a result of the integration.

ETHNOCENTRISM

When a *person(s)* believes that his or her culture is superior compared to the culture of other people, this belief is called *ethnocentrism*. It is a type of psychological barrier that obstructs communication among people belonging to different cultures. The three ways to avoid ethnocentrism are as follows:

- a) Avoid assuming details. One must not assume that the other will possess the same ideas, notions as himself.
- b) Avoid premature evaluations. Avoid judging and evaluating people without completely understanding or gaining proper knowledge about the other person's culture.
- c) Recognize the differences in culture. One must keep an open mind in order to understand and accept the differences among the cultures.

PART VIII

BARRIERS TO BUSINESS COMMUNICATION

- a) There is an old saying that “**Good fences make good neighbors**” that express the need to have clear boundaries or barriers to prevent misunderstandings and divisions among the people.
- b) While communication is an effective tool in expressing oneself, an improper communication can lead to the creation of barriers and obstructions, that might disrupt smooth functioning.
- c) There are multiple kinds of barriers that effect a smooth flow of communication. These barriers are often caused by misinterpretations of various kinds and lead to misunderstandings between the parties.
- d) The barriers in communication simply refer to the **obstructions that affect the smooth transmission of messages and can be of various forms for example noise, improper medium, languages community, region and many others.**
- e) One of the best ways to understand the barriers that exist in communication is through the popular **childhood game of Chinese Whisper.**
- f) The players stand in a straight line or in a circle and the first person comes up with a sentence. He then whispers this sentence into the second player’s ears, and the second player whispers it on to the third, and so on until the last player in the line or circle has received the message. He then says the sentence out aloud and the first person checks to see if he calls out the exact same message that he had circulated at the start. In majority cases the final player either partially or totally deviates from the original message.

TYPES OF COMMUNICATION BARRIERS:

Physical Barriers - Physical barriers are created mainly due to disturbances in the surroundings or environment of either party or both parties involved in the communication process. A physical barrier can be natural or artificial and can easily be spotted.

Physical barriers can be of many types. Firstly, disturbances in the background in the form of noise. Secondly, inappropriate communication medium. Thirdly, when either party (listener or speaker) is disturbed or inattentive or suffers some physiological defect like shortness of hearing or stammering. Lastly, disturbances in the environment or surroundings.

Cause	Example
Distance	Zoom call drops in video meeting
Noise	Traffic sound during phone call
Weather	Rain during outdoor client talk
Tech Fault	Printer jam, laptop crash
Wrong Medium	Email for URGENT fire alarm
Time Zone	India-US teams can't talk live

Semantic Barriers - Semantic barriers or language barriers arise when both the parties speak two different languages and most of the essence of the message is lost in the translation process. Even when both the parties speak the same language the essence could be lost when either of them uses jargons, dual meaning words.

Here are some of the common language features and phrases that can cause communication problems arising out of semantic barriers:

Problem	Example
Same sound words	"Right decision" OR "Write report"?
Office jargon	"KPI target" to new employee
Idioms	"On pins & needles" = anxious (not painful!)
Jokes	Boss joke offends junior

Psychological Barriers - Communication is a form of expressing one's thoughts using a verbal or non-verbal medium. The origin of communication is in one's mind and hence involves the concept of psychology. However, the mind too can create barriers in communication that prevents a person from properly expressing himself or understanding the other person.

Psychological barriers are of various types some of the most popular types include:

Problem	Example
Emotions	Angry boss rejects good idea
Halo Effect	"Good looking = Must be smart"
Too Much Info	20 slides in 5 mins = listener lost
Impatience	Fast talker → slow listener misses

Organizational Barriers - Sometimes communication barriers could be created within an organization due to inter and intra departmental conflicts or complexities within the organizational structure, organization policies and politics can all be different kinds of

obstructions that prevent proper communication among the individuals in the organization.

Problem	Example
Strict Rules	"Email boss only" = delays
Boss Fear	Junior hides mistake (scared of yell)
Dept Silos	Marketing won't talk to Accounts

OVERCOMING THE COMMUNICATION BARRIERS

It is essential to overcome the various barriers in communication to ensure that there is no misunderstanding or conflict arising among the parties due to a communication gap.

Some of the ways to overcome these barriers include:

- a) **Choose a proper medium of communication** - The communicator must ensure that a **proper medium or channel is selected** for the communication. While choosing the correct medium the communicator must consider the length, importance, time and environment.
- b) **Proper focused communication** - The sender must make sure to **keep his / her point precise and to the point** and avoid unnecessarily beating around the bush. Meaningless small talk must be avoided while passing on an important message.
- c) **Avoiding the use of jargons and dual meaning words and using translators** - In order to avoid semantic barriers, the communicator must **avoid using jargons or dual meaning words** which the listener or perceiver might be unfamiliar with. Also, in case both the parties do not speak each other's language a translator should be arranged for.

- d) **Open Mindedness and attentiveness** - Both the parties must try to keep an open mind and be attentive during communication to prevent any sort of psychological barriers such as halo effect or allowing emotions to affect the communication process.
- e) **Feedback and Follow-ups** - In businesses it is essential to **ensure that the listener has understood the message in the exact same way as the communicator wanted him to understand** it hence it is always essential to ask for feedbacks and opinions in this matter. Also, organizations have to talk to multiple stakeholders and there could be instances of forgetting or missing out on details hence taking regular and timely follow-ups are essential.
- f) **Fostering Strong Relationships** - In order to avoid or reduce organizational conflicts arising due to communication gaps an organization must try and foster a strong relationship between the business and its various stakeholders and employees.
- g) **Organizational Policies** - While formulating policies an organization must be considerate and flexible. The goals of the organization must be clear and every employee irrespective of his / her position in the organizational hierarchy should have proper opportunities in the organizational communication process. The policies should be framed in a way that eliminates organizational communication barriers to the least.
- h) **Division of labour** - There must be a proper division of labour intra and inter departmentally to reduce information overload and prevent delays in organizational communication.

PART IX

LEGAL ASPECTS OF BUSINESS COMMUNICATION



It is essential for entrepreneurs, businessmen, managers, executives and other front-line employees to understand the legal aspects of business communication.

Business communication in certain cases could be regulated by the law or could even lead to **serious civil litigations**.

In this case a legal aspect refers to **selection of words used during a business communication to ensure that it is in conformity with the laws and regulations that govern a country's business or corporate law and failure to abide by it could lead to serious legal actions** against the individual(s) or the organization as a whole.

There are various cases where business communication is essential, and its non-compliance could have serious legal impacts such as:

- a) **Product Disclaimer** - Product disclaimers are a form of written or oral communications wherein the **seller warns the buyers in case of any harmful side effect or dangers** in using or consuming a certain product. If the seller fails to inform the buyer or hides details from the buyer, the buyer possesses the right to sue the seller for damages.
For Example: Warnings on cigarette packets.
- b) **Legal Disclosures** - Disclosures are similar to disclaimers but are less specific in nature.
For Example: When an organization wants to protect its property or intellectual rights and prevent employees from disclosing such facts to outsiders a non-disclosure agreement is signed which is legally enforceable in a court of law in case of a breach of the terms and conditions.
- c) **Financial Reporting** - This is the most essential form of written communication which **presents the actual financial status of the company**. Every organization must mandatorily maintain books of accounts which it presents to its stakeholders and any window dressing or fraudulent accounting can be legally enforceable in a court of law.
For Example: Falsified balance sheets invite audits/prosecutions.
- d) **Contracts and Internal Communications** - Businesses enter into new contracts and hold meetings every second day with its stakeholders and it is essential for businesses to maintain a record of the **minutes of the meetings, reports and contracts** entered into **not only for recording purposes but also to meet legal compliances**.
For Example: Meeting notes prove agreements in disputes
- e) **Marketing Communications** - The techniques of sales, promotion and marketing involves a lot of communications of various types - written, oral, gestural, direct and indirect.

However, the salesman or person marketing the product on behalf of the business must be clever in his word usage, presentation. He must be **tactful in describing the commodity such that he does not violate the laws of business communication in the process.**

For Example: Avoid exaggerated claims like "Guaranteed 100% cure" for health products.

How do we prevent the threats of legal aspects of Business Communication?

Law suits against an organization can sometimes be a huge threat to the reputation, brand name, profitability and trustworthiness. In order to avoid these, an organization must follow the following points:

- a) It must **maintain proper records**, documentation, letters, contracts, books of accounts and vouchers audited or unaudited as the case may be.
- b) **Avoid copying** copyrighted documents and documents prohibited from photocopying or copying in any form **without proper consent** of the involved parties.
- c) Use a **proper tone and avoid inappropriate language** or behaviour while dealing with employees and other stakeholders.
- d) **Avoid window dressing** of balance sheet and other financial documents.
- e) Ensure that all **license and legal documents are always updated** and all changes are made note of.
- b) Keep **confidential documents at a safe place** where it can only be accessed by authorized personnel to avoid fraudulent behaviour and misplacing documents.
- a) **Seal confidential documents** and mark them as confidential so that others are aware.
- b) Sales promoters and company representatives must be **well trained and groomed about business communication**, its types, significance and legal aspects.

PART X

USE OF GRAPHICS AND REFERENCES FOR BUSINESS COMMUNICATION

INTRODUCTION:

Suppose you are the director of an MNC having branches in different cities and have to go through sales data, financial data, HR records and other documents on a regular basis. Now, if the data is given in text and paragraphs, it would take forever to go through all this data. On the contrary, if these were presented in the form of charts, graphs and presentations it would be much easier and faster to review all these documents.

Using graphic elements provides a bird's view over documents and reports thereby allowing us to scan through and get an overall summary of the entire data. There are various types of graphical elements that are used in business communication. Some of them include:

Graphics = Visual data representation → Faster understanding + Professional reports.

Type	Purpose	Example	Pro	Con
Flowcharts	Step-by-step processes	Hiring process diagram	Easy to follow decisions	Lengthy = confusing
Presentations	Summarize + explain	PowerPoint sales deck	Universal skill	Prep time
Colour Coding	Priority marking	Red=Urgent, Green=Good	Quick scan	Subjective

Tables/Graphs	Data summary	Plant expenses (Finance ₹55L vs ₹48L)	Calculations easy	Data overload
Motion Graphics	Training/Product launch	Animated safety video	Attention-grabbing	Expensive

Advantages of Graphics

- Excel calculations + auto-reports
- Easy explain/understand
- Time-saving
- Attention via animation
- Colourful/presentable
- Universal language

Disadvantages of Graphics

- Complex flowcharts confuse
- Tech-phobia barrier
- Video design = time sink
- Theory can't graph easily
- Expensive tools
- Specialized skills needed

REFERENCING

As businesses diversify and expand operations it becomes essential for businesses to provide continuous reports to their stakeholders. These reports could be in the form of journals, press release statements, bi-monthly or quarterly magazines. Hence, it is

essential to ensure that the reports presented to the stakeholders of the organization are true and are not plagiarised or window dressed. As a result, the concept of referencing becomes essential. Referencing will help provide a trail to the original source document and act as supporting evidence to the report.

Features of Referencing

- a) Referencing helps to avoid plagiarism by making it clear which ideas are original and which belong to someone else.
- b) Proper referencing shows your understanding of the topic
- c) Referencing provides supporting evidence for ideas, arguments and opinions
- d) Allows third parties to identify the sources that were have used while drafting the document.

Advantages of Referencing

The advantages of referencing include the following:

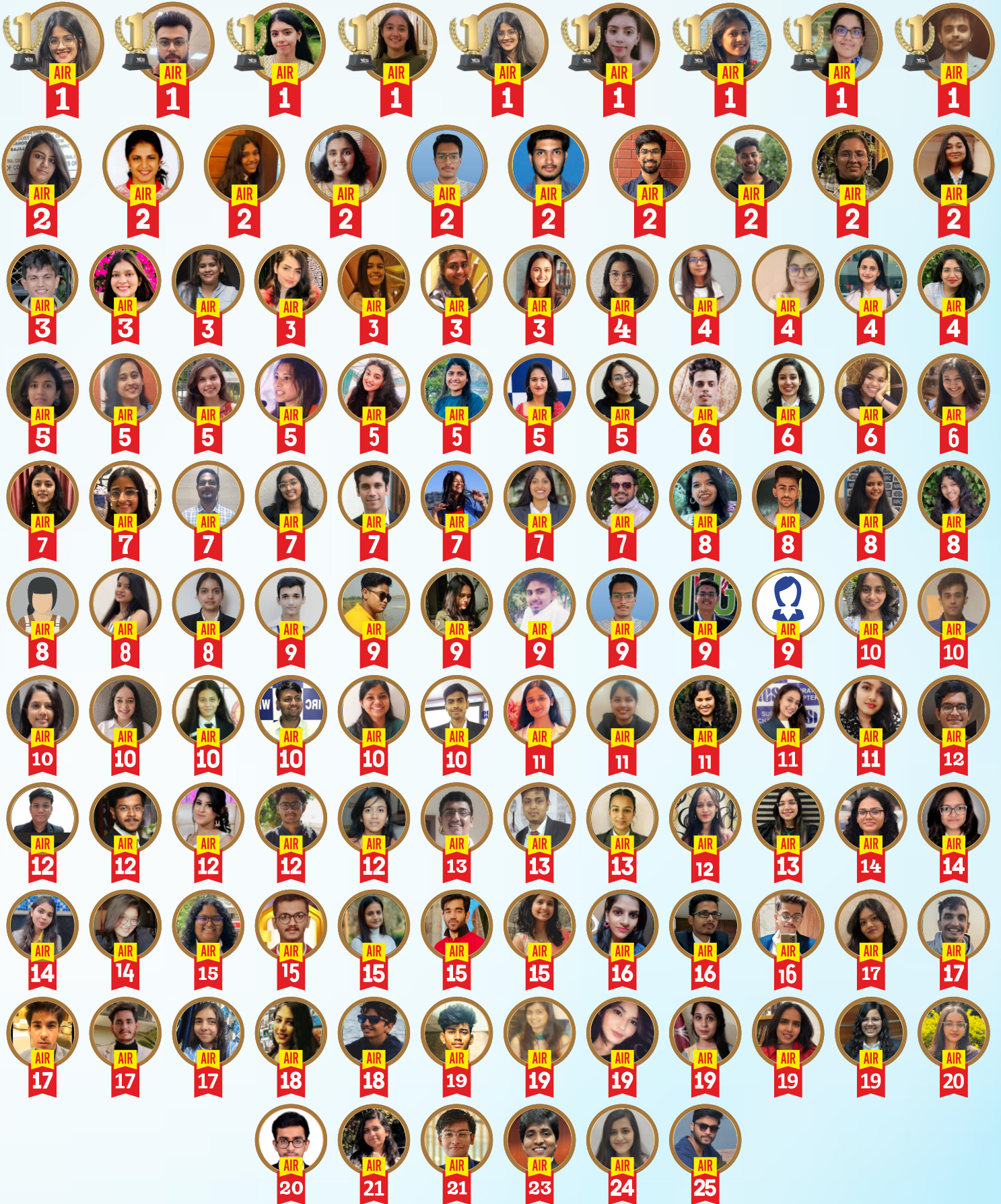
- a) Using good references improves the quality of work. Often editors and publishers determine the quality of write-ups and research papers depending upon the references used and the quality of the bibliography.
- b) Writers often can get new ideas and learn about the short-comings that they might encounter while proceeding with their topics or ideas and hence it is a time saving process.
- c) It is the basis of research using secondary data.
- d) It acts as a protection of the authors right of copywriting and protection against plagiarism.

Disadvantages of Referencing

- a) *References sometimes leads to misleading or inadequate information*
- b) *Sometimes the referencing styles and techniques might be complicated to understand and interpret.*
- c) *Too much referencing can lead to lack of originality.*
- d) *It brings about rigidity in research and is time consuming process.*

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CS Vasudev Gyanchandani

As a committed professional and educator, he strongly believes that effective learning is achieved when theoretical knowledge is seamlessly integrated with practical application. His teaching philosophy focuses on building a strong understanding of corporate governance, legal compliance, and commercial awareness, enabling students to connect academic concepts with real-world practice.

With extensive experience across corporate, legal, and academic domains, he has worked with reputed organizations, including Tata Group entities and leading corporate law firms, handling a wide range of legal, secretarial, and treasury compliances. His industry exposure brings valuable practical insights into the classroom, enriching students' overall learning experience.



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