

# **RAGHAV ACADEMY**

Dedicated to CMA

**CMA FOUNDATION**

# **LAW**

**FUNDAMENTALS OF LAW & ETHICS**

**COMPLETE COURSE DIVIDED IN**

**4**

**CHAPTERS**

BY

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# INTRODUCTION

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## CHAPTER-1A BASICS

<b>Introduction:</b>	This Act is based on English Common law, which is to a large extent made up of judicial proceedings.
<b>Components</b>	The Act as originally enacted is divided into four parts: 1. Law relating to general principles of contract. [Sec. 1 - 75] 2. Law relating to sale of goods. [Sec. 76 – 123] 3. Law relating to special contracts [Sec. 124 – 238] (Contract of Indemnity and Guarantee, Bailment, Pledge, Contract of Agency) 4. Law relating to Partnership business [Sec. 239 – 266]
<b>Applicability</b>	The Indian Contracts Act came into force on 1st September, 1872. The act is applicable to the whole of India except for the state of Jammu and Kashmir.
<b>Definition of Contract</b>	Section 2(h) of the Act defines the term contract as “an agreement between two or more parties enforceable by law”
<b>Definition of agreement</b>	Agreement has been defined in section 2(e) as “every promise and every set of promises forming consideration for each other”
<b>Definition of Promise</b>	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.
<b>Essence of agreement</b>	The essence of agreement or in turn contract is meeting of mind of the parties. The parties to an agreement must have agreed upon the subject in the same sense and at the same time. Unless there is consensus ad idem, there cannot be any contract.  <i>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.</i>
<b>Will all agreements give rise to a contract?</b>	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.
<b>Proposal / Offer</b>	Section 2 (a) Proposal/ Offer When one person signifies to another, his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal
<b>Consideration</b>	Section 2 (d) Consideration 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.
<b>Reciprocal Promises</b>	Section 2 (f) Reciprocal Promises Promises which form the consideration or part of the consideration for each other are called reciprocal promises
<b>Void Agreement</b>	Section 2 (g) Void Agreement An agreement not enforceable by law is said to be void
<b>Voidable Contract</b>	Section 2 (i) Voidable Contract An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract
<b>Void Contract</b>	Section 2 (j) Void Contract

	A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.
<b>Essential Elements of a Valid Contract:</b>	
<b>(i) Agreement:</b>	In order to constitute a contract, there must be an agreement in first place. An agreement in turn is composed of two elements-offer and acceptance. Thus there must be at least two parties-one making the offer and another accepting it.
<b>(ii) Free Consent:</b>	According to Sec 14, 'Consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake. If consent is not free, then no valid contract comes into existence.
<b>(iii) Lawful consideration:</b>	The agreement must be supported by a lawful consideration. Consideration means 'something in return'. 'Something in return' may be an act or abstinence. But it must be real and lawful.
<b>(iv) Parties are competent:</b>	The parties to an agreement must be capable of entering into a contract. A person is considered competent if he is (a) eighteen years of age (b) of sound mind (c) not disqualified from contracting by any law to which he is subject.
<b>(v) Legality of object:</b>	There must be legality of object and consideration failing which it will not be a valid contract.
<b>(vi) Legal Relationship:</b>	The parties must intend to create a legal relationship. Agreements of social or domestic nature do not contemplate legal relationship, so they are not contracts.  <i>Example: A husband promising his wife to buy her a 'necklace' on occasion of her birthday is not a contract.</i>
<b>(vii) Agreements not expressly declared to be void:</b>	The agreement not expressly declared void or illegal by law.
<b>(ix) Certain and Capable of Performance:</b>	The terms of agreement must be certain and capable of performance.  <i>Example: D agrees to sell C garments. The type, quality, value etc are not discussed. The agreement cannot be enforced as terms are uncertain. Similarly, if A promises B to bring rainfall through magic. Such agreement cannot be enforced.</i>
<b>(x) Legal formalities:</b>	Where nature of agreement is such that it requires compliance of certain formalities, such requirements should be fulfilled. A contract may require registration in addition of being in writing. However as regards to legal effects, an oral contract has same effect as a contract in writing.

### Chapter-1B CLASSIFICATION OF CONTRACT

<b>(i) Valid Contract:</b>	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.
<b>(ii) Void agreement:</b>	An agreement not enforceable by law is said to be void. A void agreement has no legal consequences.
<b>(iii) Voidable contract:</b>	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.
<b>(iv) Void contract:</b>	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.
<b>(v) Unenforceable contracts:</b>	These are the contracts which cannot be enforced in a court of law because of some technical defects, these contracts becomes fully enforceable if the technical defects are removed.
<b>(vi) Illegal Contracts:</b>	An illegal agreement is destitute of any legal effect from the very beginning. All illegal agreements are void agreements but all void agreements are not illegal.
<b>(vii) Formal contracts:</b>	This term is usually found in English laws. Validity of these contracts depends upon their form. They are valid even if they lack consideration.
<b>(viii) Simple Contract:</b>	All contracts other than formal are called simple contracts or parole contracts.
<b>(ix) Executed Contracts:</b>	An executed contract is one which has been completely completed by both the parties.
<b>(x) Executory contracts :</b>	It is a contract which is wholly unperformed. If one party has performed his part of obligation but the other party has not yet completed his obligation on the contract, the contract still remains executory contract.
<b>(xi) Unilateral contract :</b>	Under this type of contract, there is an obligation on the part of only one party when the contract is concluded.
<b>(xii) Bilateral Contract :</b>	Here there is an obligation on both the parties to the contract.
<b>(xiii) Multilateral Contract:</b>	In this type of contract more than two parties are involved. These are very complex contracts and generally take international character.
<b>(xiv) Express contract:</b>	According to section 9, in so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. Therefore the contracts entered into between the parties by words spoken or written are known as express contracts.
<b>(xv) Implied or inferred contract:</b>	As per section 9, in so far such proposal or acceptance is made otherwise than in words, the promise is said to be implied. Thus the contracts which are made by an act or conduct of the parties and not by words are termed as implied contract.
<b>(xvi) E-contract:</b>	This is a kind of contract formed in the course of E-commerce by interaction of two or more person competent to contract using electronic means, such as e-mail. This involves interaction of an individual with an electronic agent, such as computer program or interaction of at least two electronic agents that are programmed in such a way to generate contract.

### CHAPTER-1C OFFER AND ACCEPTANCE

<b>Express and Implied offer:</b>	<p>An offer may be made either by words or by conduct. An offer, which is made by words, is called express offer and the one, which is inferred from the conduct of a person or the circumstances of the case, is called an implied offer.</p> <p>An example of implied offer is “<i>Delhi Metro Rail running Metro Rail on different routes to carry passengers at the scheduled tariff rates. This is a case of implied offer by DMRC and once a person board in the DMRC train he is said to have accepted the offer by his act/conduct.</i>”</p>
<b>Offer vs. Invitation to Offer</b>	<p>In the case of invitation to offer the person sending out invitation does not make an offer but only invites the other parties to make an offer.</p> <p><i>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.</i></p> <p>The <u>main difference between an offer and an invitation to offer is that</u> in the case of former there should be expression of willingness to do or to abstain from doing with a</p>

	view to obtaining the assent of the other party, while in the later one, the party without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, he only invites the other party to make an offer on those terms.
<b>Offer can be specific or general</b>	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. A general offer on the other hand is addressed to public in large and may be accepted by anybody fulfilling the terms and conditions.
<b>Offer must give rise to legal obligation:</b>	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.
<b>Terms of an offer must be definite and certain:</b>	The terms of an offer should not be vague or indefinite.
<b>Offer must be distinguished from an invitation to offer:</b>	<p>An offer must be distinguished from an invitation to offer.</p> <p><i>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.</i></p> <p>However, if there is a specific law to sell goods at marked price then the seller will have to sell at marked price.</p> <p><i>For example, during National Emergency essential commodities like sugar etc. have to be sold at marked price.</i></p>
<b>Offer must be communicated</b>	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.
<b>Communication of Special Terms:</b>	<p>Special terms of a contract must be communicated.</p> <p>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 (a) by drawing his attention to them specifically or (b) by inferring that a man of ordinary prudence could find them by exercising ordinary prudence.</p> <p>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.</p>
<b>Offer must be made with a view to obtaining the consent of the other party to do or to abstain from doing the act:</b>	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. Sometimes a person declares that he has the intention to do something and this does not amount to an offer. Such a declaration only means that the offer will be made or invited in future.
<b>Offer should not</b>	Thus an offeror cannot say that if acceptance is not communicated by Sunday next, the

<b>impose an unnecessary obligation to communicate non acceptance:</b>	offer would be considered as accepted.
<b>Acceptance must be absolute and unqualified:</b>	In order to be effective, there must be an absolute and unqualified acceptance of all the terms of the offer.
<b>Acceptance must be communicated:</b>	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'. <i>Silence cannot be construed as acceptance.</i>
<b>Acceptance must be in a prescribed or reasonable mode</b>	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.
<b>Acceptance must be given within a reasonable time and before the offer lapses:</b>	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.
<b>Acceptance cannot precede an offer:</b>	It cannot precede an offer. Acceptance must be given after receiving the offer. It should not precede the offer.
<b>Acceptance must be given only by the person to whom the offer is made</b>	An offer can be accepted only by the person or persons to whom it is made and with whom it imports an intention to contract. It cannot be accepted by another person without the consent of the offer.
<b>Rejected offer can be accepted only on renewal:</b>	Rejected offer can be accepted only, on renewal; offer once rejected cannot be accepted again unless a fresh offer is made.
<b>Revocation of acceptance:</b>	Under English Law acceptance is revocable, whereas under Indian Law acceptance is irrevocable.

### CHAPTER-1D COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS

<b>Communication</b>	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.
<b>Communication of Proposal</b>	As per section 4, the communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.  <i>Example: X sends a proposal of selling his car to Y by letter which was received by Y on 12.10.2014. The communication of offer is complete when it came to the knowledge of Y on 12.10.14.</i>
<b>Communication of Acceptance</b>	As per Para 2 of section 4, communication of an acceptance is complete as against the proposer when it is put into a course of transmission to him, so as to be out of the power of the acceptor.



	<p>Communication of acceptance as against the promisee or acceptor is complete when it comes to the knowledge of the proposer.</p> <p><i>Example: Suppose in the example given besides, Y accepts the proposal by a letter sent by post on 15.10.14 which is received by X on 18.10.14. In the instant case the communication of acceptance against X is complete as soon as Y dispatches the letter to be out of his control. So communication of acceptance is complete as against X on 15.10.2014.</i></p>
<b>Communication of Revocation</b>	<p>Para 3 of section 4 states, “the communication of a revocation is complete”- against the person (i) who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it; (ii) as against the person to whom it is made, when it comes to his knowledge.</p> <p><i>Suppose in the previous example, if X decides to revoke his proposal and send an ordinary letter to Y on 14.10.14 which is received by Y on 17.10.14. In the instant case, revocation of offer is complete as against X on 14.10.14 and as against Y on 17.10.14.</i></p>
<b>Revocation of offer and acceptance:</b>	<p>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.</p> <p>An acceptance may be revoked at any time before the communication of the acceptance, is complete as against the acceptor, but not afterwards.</p> <p><i>Illustrations: 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. B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.</i></p>
<b>How Revocation is made:</b>	<p>(i) 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 offeror.</p> <p>(ii) 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;</p> <p>(iii) By the failure of the acceptor to fulfill a condition precedent to acceptance.</p> <p>(iv) 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.</p> <p>(v) 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.</p> <p>(vi) 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.</p>

	(vii) 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
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### CHAPTER-1E VOID AND VOIDABLE AGREEMENTS

<b>Voidable contract:</b>	<p>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 become voidable when it is enforceable at the option of one or more party thereto but not other.</p> <p><i>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. The contract is voidable at the option of B.</i></p>
<b>Void agreement:</b>	An agreement not enforceable by law is said to be a void agreement. A void agreement does not create any legal rights or obligation, hence is null and void ab initio.
<b>Void contract:</b>	<p>A contract which ceases to be unenforceable by law becomes void when it ceases to be enforceable by law.</p> <p>Void contract is initially a perfectly valid contract but subsequent development turns it into a void contract.</p>
<b>Expressly declared agreements as VOID</b>	<p>(i) Agreement by a minor or a person of unsound mind. [Sec(11) and Sec(12)]</p> <p>(ii) Agreement of which the consideration or object is unlawful. [Sec(23)]</p> <p>(iii) Agreement made under a bilateral mistake of fact material to the agreement. [Sec(20)]</p> <p>(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)]</p> <p>(v) Agreement made without consideration. [Sec(25)]</p> <p>(vi) Agreement in restraint of marriage. [Sec(26)] - Every agreement in restraint of the marriage of any person, other than a minor, is void.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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</p>

	<p>entrusted to a person to abide by the result of any game or other uncertain event on which any wager is made.</p> <p>(xi) Agreements contingent on impossible events. [Sec(36)]</p> <p>(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.</p> <p>(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)]</p>
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### CHAPTER-1F CONSIDERATION, LEGALITY OF OBJECT AND CONSIDERATION

<b>Consideration</b>	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.’
<b>Consideration Compulsory</b>	<p>Section 25 of the Indian Contract Act provides that “An agreement made without consideration is void”</p> <p>An agreement without consideration is not enforceable and therefore is void. The reason why law enforces only those promises which are made for consideration is that gratuitous or voluntary promises are often made rashly and without due deliberation.</p> <p>To prevent the parties seeking legal recourse for dispute arising due to non fulfillment of such rash contractual obligations which lack consideration, it is essential to put consideration as one of the essential element in order to be construed as a binding contract.</p>
<b>Legal Rules Regarding Consideration:</b>	
<b>1. Consideration must move at the desire of the promisor:</b>	<p>It must move at the desire of the promisor. Any act or abstinence at the desire of third party is not consideration.</p> <p>Example: <i>X agrees to sell his horse to Y for ` 50,000. Here consideration for X selling horse to Y is consideration of `50,000 from Y and consideration for Y paying ` 50,000 to X, is X selling his horse. Here considerations had come at the desire of Promisor. X is a promisor for Y and similarly Y is a promisor for X.</i></p>
<b>2. Consideration may move from the promisee or any other person:</b>	<p>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.</p>
<b>3. Consideration must be something of value:</b>	<p>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.</p>
<b>4. It may be an act, abstinence or forbearance or a return promise:</b>	<p>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).</p>

<b>5. It may be past, present or future which the promisor is already not bound to do:</b>	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.
<b>6. It must not be unlawful:</b>	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
<b>Types of Consideration</b>	<p>Consideration may be present, past or future.</p> <p>(i) Past consideration is something wholly done or suffered before making the agreement.</p> <p>(ii) Present consideration is basically an act, which has been done in response to a positive promise. It is also called executed consideration.</p> <p>(iii) Executory or future consideration is when consideration is to move at a future date.</p>
<b>NO CONSIDERATION – NO CONTRACT: [Sec. 25]</b>	<p>The general rule is ex-nudopacto non oritur action i.e. an agreement made without consideration is void.</p> <p>For example <i>if A promises to pay B ` 1000 without any obligation from B. This is a void agreement for want of consideration.</i></p>
<b>Exceptions of Section 25</b>	
<b>1. Promise made out of natural love and affection: An</b>	<p>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.</p> <p>Thus, an agreement without consideration will be valid provided.</p> <ol style="list-style-type: none"> <li>It is expressed in writing.</li> <li>It is registered under the law.</li> <li>It is made on account of natural love and affection.</li> <li>It is between parties standing in near relation to each other.</li> </ol>
<b>2. Promise to compensate for voluntary services:</b>	<p>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.</p> <p>To apply this rule the following essentials must exist.</p> <ol style="list-style-type: none"> <li>The service should have been done voluntarily.</li> <li>The service should have been done for the promisor.</li> <li>The promisor must have been in existence at the time when the service was done.</li> <li>The intention of promisor must have been to compensate the promisee.</li> <li>The service rendered must also be legal.</li> </ol> <p>Example: <i>A finds B's purse and gives it to him. B promises to give A ` 50. This is a contract.</i></p>
<b>3. Promise to pay time-barred debt:</b>	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: <i>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.</i>
<b>4. Creation of Agency:</b>	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.
<b>5. Completed Gifts:</b>	<p>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.</p> <p>Example: <i>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.</i></p>
<b>6. Contract of guarantee:</b>	Under section 127, no consideration is needed for a contract of guarantee. In other words, contract of guarantee needs no consideration.
<b>7. Remission:</b>	Remission means lesser performance of the contract than what is actually to be performed.

### CHAPTER-1G STRANGER TO CONTRACT / DOCTRINE OF PRIVACY OF CONTRACT

<b>Privity</b>	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>Exceptions of this Rule</b>	
<b>1. Beneficiary of a trust:</b>	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.
<b>2. Provision in marriage settlement:</b>	A stranger to the contract can sue on the contract where a provision is made for him in marriage settlement.
<b>3. Provision for maintenance or marriage expenses of female members under a family arrangement:</b>	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.
<b>4. Assignee of a contract:</b>	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.
<b>5. Acknowledgement of liability:</b>	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: A pays B ` 500 to be given to C, B acknowledges to C that he holds that amount for him. C can recover the amount from B.

<b>6. Agency contract:</b>	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.
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### CHAPTER-1H CAPACITY OF PARTIES

<b>Capacity to Contract (Section 11)</b>	<p>As per Section 11 every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.</p> <p>From the above provisions of the section it means the following types of persons are not competent to contract:</p> <p>(a) A person who has not attained the age of majority, i.e. minor.  (b) A person of unsound mind  (c) A person who is disqualified from contracting by some law.</p>
<b>MINOR:</b>	<p>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.</p> <p>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.</p>
<b>The position of Minor's agreement</b>	<ol style="list-style-type: none"> <li>1. An agreement with a minor is void ab-initio.</li> <li>2. The law of estoppels does not apply against a minor. In other words he cannot be held liable on an agreement on the ground that earlier he had asserted that he had attained majority.</li> <li>3. Doctrine of Restitution does not apply against a minor.</li> <li>4. 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.</li> <li>5. 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.</li> <li>6. Minor as an agent: A minor can be appointed an agent, but he is not personally liable for any of his acts.</li> <li>7. 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</li> <li>8. A minor cannot be adjudged insolvent as he is incapable of entering into a contract.</li> <li>9. 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.</li> </ol>
<b>SOUND MIND</b>	A person is said to be of sound mind for the purposes of making a contract if, at the



<b>PERSON:</b>	<p>time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.</p> <p>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.</p> <p>Illustrations: (a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals. (b) 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.</p> <p>Going by the spirit of the section it is clear that a person is of sound mind if he fulfills the following two conditions.</p> <p>(i) He/she is capable of understanding the contract.</p> <p>(ii) He/she is capable of forming a rational judgment about the effects of such contract on his interest.</p>
<b>OTHER DISQUALIFIED PERSONS:</b>	
<b>1. Alien Enemy:</b>	An agreement with an Alien Enemy is void. But agreement with an Alien friend is perfectly valid and enforceable. Contract entered into with an alien before war is put into suspension during the duration of war.
<b>2. Foreign Sovereign and Ambassadors:</b>	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. <i>They can sue the Indian citizen but an Indian citizen cannot sue them.</i>
<b>3. Convicts:</b>	A convict cannot enter into a contract while he is undergoing imprisonment.
<b>4. Insolvents:</b>	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.
<b>5. Company or Statutory bodies:</b>	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.

## CHAPTER-II FREE CONSENT

<b>Consent:</b>	‘Two or more persons are said to consent when they agree upon the same thing in the same sense.’ - [Sec 13].
<b>Free Consent</b>	As per section 14 of the Contract act consent is said to be free when it is not caused by— (1) Coercion (Sec 15), or (2) Undue influence (Sec 16), or (3) Fraud (Sec 17), or (4) Misrepresentation (Sec 18), or (5) Mistake, subject to provisions of Sec 20, 21 and 22.
<b>COERCION:</b>	<p>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 (45 of 1860), 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.</p> <p><i>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</i></p>

	with the intention of causing any person to enter into an agreement amount to coercion.
<b>Effect of coercion:</b>	<p>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.</p> <p>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.</p>
<b>Some Special Cases</b>	
<b>1. Prosecution:</b>	A mere threat to prosecute a man or file suit against him does not constitute a coercion. In the case of Andhra Sugar Lts V 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>2. High prices and high interest Rates:</b>	Charging high interest rate, high price etc is not a coercion as the same is not prohibited under the Indian Penal code.
<b>3. A threat to commit suicide:</b>	<p>Consent to an agreement may at times be obtained by threatening to commit suicide. The Madras High court has held that threat to commit suicide amounts to coercion.</p> <p><i>Suicide is not punishable by the Indian Penal Code, only the attempt to suicide is punishable.</i></p>
<b>UNDUE INFLUENCE:</b>	<p>Section 16 of the Indian Contract Act defines undue influence as under:</p> <p>(i) 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.</p> <p>(ii) 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—</p> <p>(a) Where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or</p> <p>(b) 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.</p> <p>(iii) 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.</p>
<b>Presumption of Undue Influence</b>	<p>There is <b>presumption</b> of undue influence in the following relationships:</p> <p>(i) Parent and child (ii) Guardian and ward (iii) Doctor and patient (iv) Solicitor and client (v) Trustee and beneficiary (vi) Religious advisor and disciple (vii) Fiancé and fiancée</p>



	<p>There is however <b>no presumption</b> of undue influence in case of relationship of</p> <p>(i) landlord and tenant (ii) debtor and creditor (iii) husband and wife. The wife has to be pardanashin for such presumption. In these relationships undue influence has to be proved.</p>
<b>Effect of undue influence:</b>	<p>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.</p> <p>The following illustrations are appended to the section.</p> <p><i>(a) 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.</i></p> <p><i>(b) 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 cent 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.</i></p>
<b>FRAUD:</b>	<p>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:</p> <p>(i) The suggestion, as a fact, of that which is not true by one who does not believe it to be true;</p> <p>(ii) The active concealment of a fact by one having knowledge or belief of the fact;</p> <p>(iii) A promise made without any intention of performing it;</p> <p>(iv) Any other act fitted to deceive;</p> <p>(v) Any such act or omission as the law specially declares to be fraudulent.</p>
<b>Silence</b>	<p>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.</p> <p><i>However, in the following two types of cases, silence amounts to fraud, as held by the courts in various cases:</i></p> <p><b>(a) Where there is change in circumstances:</b> A representation may be true when made but with the passage of time or changed circumstances it may</p>

	<p>become false. Accordingly this must be communicated to other party otherwise it amount to fraud.</p> <p><b>(b) When there is half-truth.</b> 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.</p>
<b>Effect of Fraud:</b>	<p>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.</p> <p>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.</p>
<b>MISREPRESENTATION:</b>	<p>Misrepresentation has been defined in section 18 of the Act as under: “Misrepresentation” means and includes—</p> <p>(1) 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;</p> <p>(2) 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 ;</p> <p>(3) 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.</p>
<b>2 Types of Misrepresentation</b>	<p><b>(a) Unwarranted statements:</b> 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 believe it to be true. This is one type of misrepresentation.</p> <p><b>(b) Breach of duty:</b> Any breach of duty which brings advantages to the person committing it by misleading the other to his prejudice is a misrepresentation.</p>
<b>Effect of Misrepresentation:</b>	<p>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.</p> <p>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.</p>
<b>MISTAKE:</b>	Mistake means an erroneous belief about something. It has not been defined in the Indian Contract Act.
<b>Types of Mistake</b>	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

<b>Mistake of law of the country:</b>	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.
<b>Mistake of law of foreign country:</b>	Such a mistake is treated as mistake of fact and agreement in such case is void.
<b>Bilateral mistake</b>	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.
<b>Unilateral Mistake as to fact:</b>	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 mistake was brought about by another party's fraud or misrepresentation.
<b>Types of Bilateral Mistakes</b>	<p>The various types of mistakes falling under bilateral mistakes are as under:</p> <p><b>(i) Mistake as to subject matter covers following cases:</b></p> <p><b>(a) Mistake as to existence of subject matter:</b> If both the parties are at mutual mistake as to existence of the subject matter the agreement is void.</p> <p><b>(b) Mistake as to identity of subject matter:</b> It usually happens when both the parties have different subject matter of contract in their mind. The contract is void due to mistake of identity of subject matter.</p> <p><b>(c) Mistake as to the quality of the subject matter:</b> If the subject matter is something essentially different from what the parties thought to be, the agreement is void.</p> <p><b>(d) Mistake as to quantity of subject matter:</b> Bilateral mistake as to quantity of subject matter would render the contract void.</p> <p><b>(e) Mistake as to title of subject matter:</b> The agreement is void due to bilateral mistake as to title of the subject matter.</p> <p><b>(f) Mistake as to price of the subject matter:</b> Mutual mistake as to price of the subject matter would render the agreement void.</p> <p><b>(ii) Mistake as to possibility of performance of Contract.</b> Impossibility may be:</p> <p><b>(a) Physical impossibility:</b> A contract is void if it is identified to be non-feasible due to physical factors, like time, distance, height, etc.</p> <p><b>(b) Legal impossibility:</b> A contract is void if it provides that something shall be done which as a matter of law cannot be done.</p>

### CHAPTER-1J QUASI & CONTINGENT CONTRACTS

<b>Quasi Contracts</b>	Under certain circumstances, the law creates and enforces legal rights and obligations although the parties have never entered into a contract. Such obligations imposed or created by law are known as "Quasi-Contracts".
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	Example: <i>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.</i>
<b>Features of a Quasi Contract:</b>	<ol style="list-style-type: none"> <li>1. It is imposed by law and does not arise by agreement.</li> <li>2. The duty of a party and not the promise of any party is the basis of such contract.</li> <li>3. The right under it is always a right to money and though not always to a liquidated sum of money.</li> <li>4. The right is available against specific persons and not the whole world.</li> <li>5. A suit for breach may be filed in the same way as in case of a complete contract.</li> </ol>
<b>TYPES OF QUASI CONTRACTS</b>	
<b>1. Claims for necessities supplied:</b>	<p>Where necessities 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.</p> <p>Example: <i>A supplies B, a minor, with necessities suitable to his condition in life. A is entitled to be reimbursed from B's property.</i></p>
<b>2. Payment by an interested person:</b>	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".
<b>3. Benefits of non-gratuitous act:</b>	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.
<b>4. Responsibility of finder of goods:</b>	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.
<b>5. Money paid by mistake or under coercion:</b>	<p>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.</p> <p>Example: <i>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.</i></p>
<b>Contingent Contracts:</b>	<p>It is a contract in which the performance becomes due, only upon the happening of some event, which may or may not happen. Contracts of insurance, indemnity and guarantee are good examples of contingent contracts.</p> <p>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".</p> <p>Example: <i>A contracts to pay B ` 50,000 if B's house is burnt. This is a contingent contract.</i></p>

<b>Enforcement of contracts contingent on an event happening:</b>	<p>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.</p> <p>Example: <i>A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.</i></p>
<b>Enforcement of contracts contingent on an event not happening:</b>	<p>Contracts contingent upon the non-happening of an uncertain future event can be enforced when the happening of that event becomes impossible.</p> <p>Example: <i>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.</i></p>
<b>When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person</b>	<p>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.</p> <p>Example: <i>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.</i></p>
<b>When contracts become void which are contingent on happening of specified event within fixed time</b>	<p>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.</p>
<b>Agreements contingent on impossible events void</b>	<p>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.</p> <p>Illustrations (a) <i>A agrees to pay B ₹1,000 if two-straight lines should enclose a space. The agreement is void. (b) 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.</i></p>

### CHAPTER-1K PERFORMANCE OF CONTRACTS

<b>Meaning</b>	<p>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.</p> <p>When both the parties to the contract have performed their obligations, the contract is said to be discharged by performance.</p>
<b>Person by whom promise is to be performed</b>	<p>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.</p> <p>Example: <i>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</i></p>

	<i>promise, or employ some proper person to do so.</i>
<b>Effect of accepting performance from third person</b>	When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.
<b>Devolution of joint Liabilities</b>	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.
<b>Time for Performance of Promise</b>	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.
<b>Place of Performance</b>	<p>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.</p> <p><i>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.</i></p>
<b>Performance of Reciprocal Promises</b>	<p>When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.</p> <p><i>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.</i></p>
<b>Order of Performance of Reciprocal Promises</b>	<p>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.</p> <p><i>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.</i></p>
<b>Reciprocal Promises to do things legal, and also other things illegal</b>	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.
<b>Time is Essence of the Contract</b>	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.
<b>Appropriation of Payments:</b>	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.



	<p>Illustrations</p> <p>(a) 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.</p> <p>(b) 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.</p> <p>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.</p> <p>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</p>
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### CHAPTER-1L DISCHARGE OF CONTRACTS

<b>Meaning</b>	When the rights and obligations created by a contract come to an end, the contract is said to be discharged or terminated.
<b>Modes of discharge:</b>	1. Discharge by performance 2. Discharge by agreement 3. Discharge by lapse of time 4. Discharge by operation of law 5. Discharge by impossibility of performance 6. Discharge by breach of contract
<b>1. Discharge by performance:</b>	Performance is the usual mode of discharge of a contract. Performance may be: (a) actual performance (b) attempted performance.
<b>2. Discharge by agreement:</b>	<p><b>a. Novation:</b> 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.</p> <p>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.</p> <p><b>b. Alteration:</b> 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.</p> <p><b>c. Rescission:</b> Rescission means “cancellation”. All or some of the terms of a contract may be cancelled. Rescission results in the discharge of the contract.</p> <p><b>d. Remission:</b> Remission means acceptance of a lesser performance than what is actually due under the contract. There is no need of any consideration for remission.</p>

	Example: <i>A has borrowed ₹ 500 from B. A agrees to accept ₹ 250 from B in satisfaction of the whole debt. The whole debt is discharged. e. 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.</i>
<b>3. Discharge by lapse of time:</b>	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: <i>If a creditor does not file a suit within three years of debt, the debt becomes timebarred. He is deprived of his legal remedy.</i>
<b>4. Discharge by operation of law:</b>	a. Death b. Insolvency c. Unauthorized material alteration. d. Merger
<b>5. Discharge by breach of contract:</b>	Breach means failure of a party to perform his obligations under a contract. Breach brings an end to the obligations created by a contract.
<b>6. Discharge by impossibility of performance:</b>	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: <i>A and B wanted to marry each other. Before the time fixed for marriage, A goes mad. The contract becomes void.</i>

### CHAPTER-1M BREACH OF CONTRACT AND REMEDIES FOR BREACH OF CONTRACT

<b>Breach of Contract:</b>	If any party fails to perform the obligation imposed upon him, he is said to have committed breach of contract. Thus breach means “failure or refusal of a party to perform his obligation under a contract without any lawful excuse”.
<b>Types of Breach</b>	The breach of contract may be: a) Actual breach of Contract b) Anticipatory breach of Contract..
<b>Actual Breach of Contract:</b>	It is also called “Present breach”. Actual breach of contract occurs: a. when during the performance of the contract, or b. at the time of performance is due, one party fails or refuses or neglects to perform his obligation under the contract.  Example: <i>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.</i>
<b>Anticipatory breach of contract:</b>	It is also called “constructive breach”. Anticipatory breach of contract occurs: (a) When a party repudiates his liability under the contract before the time for performance is due, or (b) When a party by his own act conduct disables himself from performing the contract.  Example:  <i>1. A agrees to marry B. Before the agreed date of marriage, he marries X. The marriage contract has been repudiated by A by his conduct before the due date of its performance. The breach here is anticipatory breach.</i>  <i>2. 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</i>



	<i>committed by X here is anticipatory breach of contract.</i>
<b>Remedies</b>	<ol style="list-style-type: none"> <li>1. Suit for Rescission of the contract.</li> <li>2. Suit for damages</li> <li>3. Suit upon Quantum meruit</li> <li>4. Suit for specific performance of the contract.</li> <li>5. Suit for Injunction.</li> </ol>
<b>1. Suit for Rescission of the contract:</b>	<p>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</p> <p><i>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 treat the contract as repudiated and may refuse to pay the price</i></p>
<b>2. Suit for damages:</b>	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.
<b>3. Suit upon Quantum meruit:</b>	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.
<b>4. Suit for specific performance of the contract:</b>	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.
<b>5. Suit for Injunction:</b>	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.

<b>Applicability</b>	<p>It came into force on 1st July, 1930.</p> <p>With effect from 22nd September, 1963 the word 'Indian' was also removed.</p> <p>Now the present Act is called 'The Sale of Goods Act, 1930.</p> <p>This act extends to the whole of India except the State of Jammu and Kashmir.</p>
<b>Buyer:</b> [Sec. 2(1)]	Buyer means a person who buys or agrees to buy goods.
<b>Seller:</b> [Sec. 2(13)]	Seller means a person who sells or agrees to sell goods.
<b>Delivery:</b> [Sec. 2(2)]	Delivery means voluntary transfer of possession from one person to another.
<b>Goods:</b> [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.
<b>Document of Title to goods:</b> [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.
<b>Future goods:</b> [Sec. 2(6)]	Future goods means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale.
<b>Price:</b> [Sec. 2(10)]	Price means the money consideration for a sale of goods.
<b>Property:</b> [Sec. 2(11)]	Property means the general property in goods and not merely a special property.
<b>Specific Goods:</b> [Sec. 2(14)]	It means goods identified and agreed upon at the time a contract of sale is made.
<b>Definition of Contract of Sale :</b>	"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"- [Sec. 4(1)] of The Sale of Goods Act, 1930.
<b>Essential Elements of Contract of Sale:</b>	<p>They are:</p> <ol style="list-style-type: none"> <li>1. Two parties. - Seller and Buyer</li> <li>2. Subject matter - Goods (Movable property)</li> <li>3. Transfer of Property - Transfer of ownership rights i.e. absolute ownership (General Property)</li> <li>4. Delivery - Immediate, Delivery in installments, Delivery at a future date.</li> <li>5. Price - It means money consideration for sale of goods.</li> <li>6. A contract of sale may be absolute or conditional.</li> </ol>
<b>Types of Goods:</b>	1. Existing goods. 2. Future goods. 3. Contingent goods.
<b>1. Existing goods:</b>	<p>Goods owned and possessed by the seller at the time of the making of the contract of sale are called existing goods. Sometimes the seller may be in possession but may not be the owner of the goods.</p> <p>Example: Mercantile Agent.</p> <p>The existing goods can be further classified as under: (a) Specific goods. (b) Ascertained goods. (c) Unascertained goods.</p>

<b>(a) Specific goods:</b>	<p>“Specific goods” are those goods which are identified and agreed upon at the time of contract of sale is made. It is essential that the goods are identified and separated from the other goods.</p> <p>Example: <i>In the case of sale of one table out of 25 tables, goods shall be specific if the table is selected before the contract of sale is made.</i></p>
<b>(b) Ascertained goods:</b>	Ascertained goods are identified after the contract of sale as per the terms decided.
<b>(c) Unascertained goods:</b>	<p>When the goods are not separately identified or ascertained at the time of making a contract of sale, are known as unascertained goods. When the buyer does not select the goods for him from a lot of goods, but are defined or indicated only by description, we call them unascertained goods.</p> <p>Example: <i>Sale of 25 chairs for an office out of a lot of 200 such chairs of the same design and quality, the goods are unascertained till 25 particular chairs are selected. When the required 25 chairs are selected out of the lot, the goods are said to be ascertained goods for the contract of sale.</i></p>
<b>2. Future Goods:</b>	<p>It means goods to be manufactured or produced or acquired by the seller after making of the contract of sale. A contract to sell oil not yet pressed from seeds in his possession is a contract for the sale of future goods.</p> <p>Example: X agrees to sell to Y all the apples which will be produced in his garden next year. This is an agreement for the sale of future goods.</p>
<b>3. Contingent Goods:</b>	These are a type of future goods, the acquisition of which by the seller depends upon a contingency which may or may not happen. Goods which might be expected to come into existence, as (a) goods to arrive (b) future crops (c) the eggs.
<b>Doctrine of Caveat Emptor</b>	<p>The term Caveat Emptor is a Latin word which means ‘let buyer be aware’.</p> <p>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.</p> <p>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.</p>
<b>Exceptions</b>	<p>(i) 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 sellers 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 grab of Caveat Emptor.</p> <p>(ii) Implied condition as to Merchantability where the goods are bought by description from the seller in goods of that description.</p> <p>(iii) Condition as to Wholesomeness in case of foodstuffs and other goods meant for human consumption.</p> <p>(iv) When the seller commits fraud.</p>

	(v) When there is a usage of trade.
<b>Transfer of Ownership</b>	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.
<b>Passing of Property</b>	The primary rules for ascertaining when the property in goods passes from seller to buyer may be summarized as follows:
<b>(A) Goods must be ascertained</b>	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.  <i>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.</i>
<b>(B) Intention of the parties for such transfer</b>	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.
<b>Delivery to carrier:</b>	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.
<b>Goods on approval or 'on sale or return'</b>	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  <i>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.</i>  (b) When he does any other act adopting the transaction.  <i>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.</i>  <i>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.</i>  (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.  <i>Example 1: 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</i>

	<p><i>property in goods has not passed on to the buyer. [Elphick v Barnes (1880)5cpd321]</i></p> <p><i>Example 2: 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.</i></p> <p><i>Example 3: 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</i></p>
<b>Risk prima facie passes with property</b>	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.
<b>Sale by person not the owner (or) Nemo dat qui habet</b>	<p>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.</p> <p>Generally the owner alone can transfer property in goods "Nemo dat qui 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.</p>
<b>Exceptions</b>	
<b>Sale by mercantile agent (Sec. 27)</b>	<p>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.</p> <p><i>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</i></p>
<b>Sale by one of joint owners (Sec. 28)</b>	<p>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 sanctioned.</p> <p><i>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.</i></p>
<b>Sale by person in possession under voidable contract (Sec. 29)</b>	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.

29)	<p>Example: <i>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.</i></p>
<b>Seller or buyer in possession after sale (Sec. 30)</b>	<p>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.</p> <p>Example: <i>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.</i></p> <p>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 shall have effect as if such lien or right did not exist.</p>
<b>Sale by estoppel (Sec. 27)</b>	<p>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.</p> <p>Example: <i>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.</i></p>
<b>Sale by a finder of goods:</b>	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 amounts to 2/3rd of its value.
<b>Sale by official receiver or assignee:</b>	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.
<b>Conditions and Warranties</b>	A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.
<b>Condition</b>	A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to right to treat the contract as repudiated.
<b>Warranty</b>	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 to a right to reject the goods and treat the contract as repudiated.
<b>Implied Conditions</b>	<ol style="list-style-type: none"> <li>1. Condition as to title</li> <li>2. Condition as to description</li> <li>3. Condition as to sample</li> <li>4. Condition as to description and sample</li> </ol>



	5. Condition as to fitness or quality 6. Condition as to merchantability 7. Condition as to wholesomeness
<b>1. Condition as to title:</b>	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.
<b>2. Condition as to description:</b>	<p>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.</p> <p><i>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.</i></p>
<b>3. Condition as to sample:</b>	<p>Where goods are sold by sample, there is an implied condition:</p> <ol style="list-style-type: none"> <li>that the bulk of the goods shall correspond with the sample in quality.</li> <li>that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, and</li> <li>that the goods shall be free from latent defects.</li> </ol>
<b>4. Condition as to description and sample:</b>	<p>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.</p> <p><i>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.</i></p>
<b>5. Condition as to fitness or quality:</b>	<p>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.</p> <p>But there is implied condition as to quality or fitness of goods for the purpose of the buyer under the following conditions:</p> <ol style="list-style-type: none"> <li>Where the buyer has made known to the seller the particular purpose for which he needs the goods.</li> <li>The buyer should rely on the skill and judgement of the seller.</li> <li>Where the consent of buyer was obtained by the seller by fraud or misrepresentation.</li> </ol>
<b>6. Conditions as to merchantability:</b>	<p>Merchantability means "acceptability in the market". In a contract of sale, there is an implied condition that the goods purchased are of merchantable quality.</p> <p>A watch that will not keep time and a pen that will not write cannot be regarded as merchantable.</p>
<b>7. Condition as to wholesomeness:</b>	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. <i>In other words, the goods must be free from any defect which makes them unfit for human consumption.</i>
<b>Implied</b>	They are: 1. Warranty of quiet possession 2. Warranty of freedom from encumbrances

<b>Warranties:</b>	3. Warranty of disclosing the dangerous nature of goods to the ignorant buyer. 4. Warranty as to fitness
<b>1. Warranty of quiet possession:</b>	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.
<b>2. Warranty of freedom from encumbrances:</b>	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.
<b>3. Warranty as to fitness:</b>	An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.
<b>4. Warranty of disclosing the dangerous nature of goods to the ignorant buyer:</b>	The third implied warranty on the part of the seller is that in case the goods sold are of dangerous 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.
<b>Delivery</b>	Delivery means "Voluntary transfer of possession of goods from one person to another". Modes of delivery: Delivery of goods may be in three different ways. 1. Actual delivery 2. Symbolic delivery 3. Constructive delivery
<b>1. Actual delivery:</b>	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>2. Symbolic delivery:</b>	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: <i>Handing over the key of a ware-house to the buyer is symbolic delivery.</i>
<b>3. Constructive delivery:</b>	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: <i>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.</i>
<b>Mode of Delivery</b>	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</b>	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.  Example: <i>A agrees and delivers his car to B and B in turn pays price for it. 3. Effect of part delivery As per section 34, a delivery of part of goods, in progress of the delivery</i>



	<p><i>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.</i></p> <p><i>Example: A directed the wharfinger to deliver his goods lying at the wharf to B to whom these goods had been sold. B weighted 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.</i></p>
<b>Goods in possession of a third person</b>	<p>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 acknowledge to the buyer that he holds the goods on his behalf. [Sec 36(3)]</p> <p><i>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 acknowledge to Y that he hold the goods on his behalf.</i></p>
<b>Cost of delivery</b>	<p>Unless otherwise agreed, the expense of and incidental to putting the goods into a deliverable state are borne by the seller.</p> <p>All the expenses incurred for putting the goods into a deliverable state are to be borne by the seller. Similarly all the expenses relating to taking possession the goods must be borne the buyer.</p> <p><i>Example: S agrees to sell 50 ton of Basmati Rice to B at FOR 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></p>
<b>Installment delivery</b>	<p>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.</p> <p><i>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.</i></p>
<b>Unpaid Seller</b>	<p>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:</p> <p>(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.</p>
<b>Rights of Unpaid seller-I</b>	<p>Rights against the goods:</p> <p>An unpaid seller has some rights against the goods sold when the property in the goods has passed to the buyer.</p> <p>They are as follows:</p>

	<ol style="list-style-type: none"> <li>1. Right of Lien</li> <li>2. Right of stoppage of goods in transit</li> <li>3. Right of Re-sale</li> <li>4. Right of withholding delivery</li> </ol>
<b>1. Right of Lien:</b>	Lien is a right to retain possession of goods until payment of price.
<b>2. Right of stoppage of goods in transit:</b>	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.
<b>3. Right of Re-sale:</b>	<p>An unpaid seller can exercise the right of resale in the following cases:</p> <ol style="list-style-type: none"> <li>i. where the goods are of a perishable nature,</li> <li>ii. where the seller expressly reserves the right of resale in case the buyer makes a default in the payment of price.</li> <li>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.</li> </ol>
<b>Rights of Unpaid seller-II</b>	<p>Rights against the buyer personally:</p> <p>An unpaid seller in addition to his rights against the goods, has the following rights against the buyer personally.</p> <ol style="list-style-type: none"> <li><b>1. Suit for price:</b> [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.</li> <li><b>2. Suit for damages for non-acceptance:</b> [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.</li> <li><b>3. Suit for repudiation:</b> 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.</li> <li><b>4. Suit for interest:</b> [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.</li> </ol>
<b>Auction Sale</b>	<p>Auction sale is a model of selling property by inviting bids publicly and the property is sold to the highest bidder.</p> <p>In an Auction sale, the auctioneer warrants the following:</p> <ol style="list-style-type: none"> <li>(a) The auctioneer warrants his authority to sell.</li> <li>(b) He warrants that he has no knowledge of any defect in his principal's title.</li> <li>(c) He warrants to give quiet possession of the goods to the buyer against payment of price.</li> </ol>
<b>Rules</b>	<ol style="list-style-type: none"> <li>(a) Where goods are put up for sale in lots, each lot is prima facie deemed to be the subject of a separate contract of sale. [Sec 64(1)]</li> <li>(b) The sale is complete when the auctioneer announces its completion by the fall of</li> </ol>

	<p>the hammer or in other customary manner, and, until such announcement is made, any bidder may retract his bid. [Sec 64(2)]</p> <p>(c) A right to bid may be reserved expressly by or on behalf of the seller and, where such rights is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bid at the auction, [Sec 64(3)]</p> <p>(d) Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person, and any such person, and any sale contravening this rule may be treated as fraudulent by the buyer. [Sec 64(4)]</p> <p>(e) The sale may be notified to be subject to a reserved or upset price.</p> <p>(f) If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.</p>
<b>Knockout Agreement:</b>	It is sort of tacit understanding/agreement among the intending bidders to stifle competition by not bidding against each other in an auction sale. Such agreements are illegal and the seller can protect his interest against such agreement by reserving his right to bid at the auction or by fixing a reserve price.
<b>Damping:</b>	Damping is an act to dissuade the intending buyer from bidding or from raising the price by pointing out defects in the goods or by doing some other acts which prevent persons from forming a fair estimate of the price of the goods. Damping is illegal and the auctioneer can withdraw the goods from auction.
<b>Puffers:</b>	Puffer is a person who is employed by the seller to raise the price by fictitious bids.
<b>Pretended bidding:</b>	<p>A bid once made can be withdrawn before the fall of hammer even if expressly prohibit. The seller can bid at an auction sale if the bidders are informed of the fact (Pretended bidding).</p> <p>If the seller makes use of the pretended bidding to raise the price, the sale is voidable at the option of the buyer. The bid is said to be pretended when it is made by the seller or someone on his behalf.</p>

## Chapter-3 NEGOTIABLE INSTRUMENTS ACT, 1881

<b>Introduction</b>	The term 'negotiable' means transferable and the term 'instrument' means 'any written document creating a right in favour of some person.' 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.
<b>Applicability</b>	The Act came into force from 1st March, 1882 and extends to the whole of India.
<b>What is Negotiable Instrument?</b>	In common parlance a negotiable instrument can be understood as a piece of paper which entitles to a sum of money and which is transferable from one person to another merely by delivery or by endorsement and delivery.
<b>Definition</b>	Sec. 13 of the Act defines a negotiable instrument as 'a promissory note, bill of exchange or cheque payable either to order or to bearer.' Thus, a Negotiable Instrument means an instrument, the property in which is acquired by anyone who takes a bona fide and for value, notwithstanding any defect in the title of the Transferor. It need not necessarily be a promissory note, bill of exchange or a cheque.
<b>Explanation</b>	(i) A promissory note, bill of exchange or cheque is payable to the order, to which it is expressed to be payable or which is expressed to be payable to a particular person, and does not contain words, prohibiting transfer or indicating an intention that it shall not be transferable.  (ii) A promissory note, bill of exchange or a cheque either originally which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank.  (iii) Where a promissory note, bill of exchange or cheque, either originally or by endorsement, is expressed to be payable to the order of a specified person and not to him or his order, it is nevertheless payable to him or his order at his option.
<b>Presumptions</b>	Until the contrary is provide, the following aspects are presumed in respect of Negotiable Instruments –
<b>Consideration</b>	• Every Negotiable Instruments was made or drawn for consideration, and • Such Negotiable Instrument was accepted, Endorsed, negotiated or transferred for consideration.
<b>Date</b>	Every Negotiable Instrument bearing a date was made or drawn on that date.
<b>Time of Acceptance</b>	Every Bill of Exchange was accepted within a reasonable time after the date mentioned therein but before the date of its maturity.
<b>Time of Transfer</b>	Every transfer of a Negotiable Instrument was made before its maturity.
<b>Order of Endorsements</b>	Endorsements appearing on a Negotiable Instrument were made in the order in which they appear thereon.
<b>Stamp</b>	That a lost Promissory Note, Bill of Exchange or Cheque was duly stamped.
<b>Holder in due course</b>	That the holder of a Negotiable Instruments is a holder in due course
<b>Fact of Dishonour [Sec.119]</b>	In a suit for the dishonour of a Negotiable Instrument, the Court shall, on proof of protest, presume the fact of dishonour, unless and until it is disproved.
<b>Types of Negotiable Instrument</b>	Negotiable Instruments are of two types:
<b>(i) Negotiable by statute</b>	Section 13 of the Act, provides that a negotiable Instrument include promissory note, bill of exchange and cheque, whether payable to bearer or order.
<b>(ii) Negotiable by custom or usage</b>	Though the Act speaks of only three types of Negotiable Instrument, but it does not bar 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.
<b>Bearer and order instrumentsc</b>	<p>A negotiable instrument is said to be payable to bearer when (i) It is expressed to be so payable (ii) Only or last endorsement is a blank endorsement.</p> <p>A negotiable instrument is said to be payable to order when (i) It is expressed to be so payable (ii) Expressed to be payable to a particular person with restricting its transferability.</p>
<b>Inland and foreign instruments</b>	<p>A bill, promissory note or cheque if both drawn and payable in India or drawn on a person resident in India is said to be an inland bill.</p> <p>A bill which is not an inland bill is deemed to be a foreign bill.</p>
<b>Demand and time instruments</b>	<p>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.</p> <p>If a promissory note or bill of exchange bears the expression “at sight” and “on presentation” means on demand (section 21).</p> <p>The words “on demand” are usually found in a promissory note, where the words “at sight” are found in a bill of exchange.</p>
<b>Genuine, accommodation and fictitious bill</b>	<p>When a bill is drawn, accepted, or endorsed for consideration it is a genuine bill.</p> <p>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.</p> <p>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.</p>
<b>Clean and documentary bill</b>	<p>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.</p>
<b>Ambiguous instrument</b>	<p>When an instrument due to faulty drafting may be interpreted either as bill or note, it is an ambiguous instrument.</p> <p>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.</p>
<b>Inchoate instrument</b>	<p>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.</p>
<b>Escrow Instrument</b>	<p>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</p>

	instrument.
Parties to a Negotiable Instrument:	
<b>Drawer</b>	The Maker of a Promissory Note, Bill of Exchange or Cheque.
<b>Drawee</b>	The person on whom the instrument is drawn and thereby directed to pay.
<b>Drawee in case of need</b>	<ul style="list-style-type: none"> <li>• Meaning: The person whose name is given in the bill or on any Endorsement thereof, in addition to the name of the Drawee, who should be resorted to in case of need.</li> <li>• Where a Drawee in case of need is named in a B/E or any endorsement thereon, the B/E is not dishonoured, unless it has been dishonoured by such Drawee. [Sec.115]</li> <li>• A Drawee in case of need may accept and pay the B/E, without previous protest. [Sec.116]</li> </ul>
<b>Acceptor</b>	When the Drawee signs his assent upon the Bill, and delivers the same to the holder or some other person on his behalf, he becomes the "Acceptor".
<b>Acceptor for honour</b>	<ul style="list-style-type: none"> <li>• Meaning: Person accepting a B/E (which has been noted or protested for non acceptance or for better security) supra protest for honour of the Drawer or of any one of endorser.</li> <li>• Acceptor for Honour must specify as to whose honour he is accepting the B/E. Otherwise, it shall be deemed to be made for the honour of the Drawer.</li> </ul>
<b>Payee</b>	Payee is the person to whom the amount is payable, which may be the Drawer himself or any other person.
<b>Holder</b>	<ul style="list-style-type: none"> <li>• Meaning: Any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.</li> <li>• Where the instrument is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction. [Sec.8]</li> </ul>
<b>Holder in due course</b>	A Holder in due course is a person who becomes the possessor of the instrument (a) for consideration, (b) before maturity, and (c) without any notice as to the defect in title of the Transferor.[Sec.9]
<b>Endorser</b>	Endorser is the person who endorses a Bill.
<b>Endorsee</b>	Endorsee is the person to whom the Bill is negotiated by endorsement.
<b>Capacity to become a party to a Negotiable Instrument</b>	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.
<b>Minor</b>	<p>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.</p> <p><i>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.</i></p> <p>A minor is not personally liable on a bill or note given by him for necessities supplied to him. It is only his estate which is liable for such a bill or note.</p>
<b>Corporation</b>	Corporation can be a party to a negotiable instrument if authorized by its Article of Association, otherwise it is ultra vires.
<b>Agent</b>	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.



	<p>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. <i>The form of signature must show that he does not intend to incur personal liability. Otherwise he becomes personally liable.</i></p> <p>Example 1: A manger of ABC ltd accepted a bill of exchange and signed A as manager. It was held that A was personally liable.</p> <p>Example 2: A manger of ABC ltd accepted a bill of exchange and signed as for ABC ltd. It was held that A was not personally liable.</p>
<b>Legal Representative</b>	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.
<b>Promissory Note:</b>	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”.
<b>Parties:</b>	<p>1. Maker: The person who makes the promissory note and promises to pay is called the maker.</p> <p>2. Payee: The person to whom the payment is to be made is called the payee.</p>
<b>Requisites of a Promissory Note:</b>	<ol style="list-style-type: none"> <li>1. The promissory note must be in writing.</li> <li>2. It must contain an undertaking to pay. There must be an express promise to pay.</li> <li>3. The promise to pay should be unconditional.</li> <li>4. The promissory note must be signed by the maker.</li> <li>5. The sum payable must be certain.</li> <li>6. The instrument must contain a promise to pay money and money only.</li> <li>7. The maker and payee must be certain.</li> <li>8. 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.</li> <li>9. It must contain date.</li> <li>10. 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.</li> </ol>
<b>Illustrations:</b>	<p>A signs instruments in the following terms:</p> <p>(a) “I promise to pay B or order ` 500/-“.</p> <p>(b) “I acknowledge myself to be indebted to B in ` 1,000/- to be paid on demand, for value, received”.</p> <p>(c) “Mr. B. I.O.U ` 1,000/-”</p> <p>(d) “I promise to pay B ` 500 and all other sums which shall be due to him”</p> <p>(e) “I promise to pay B ` 500 first deducting thereout any money, which he may owe me”.</p> <p>(f) “I promise to pay B ` 500 seven days after my marriage with C”.</p> <p>(g) “I promise to pay B ` 500, on D’s death, provided D leaves me enough to pay that sum”.</p> <p>(h) “I promise to pay B ` 500 and to deliver to him by white horse on 1st January next”.</p> <p>The instruments respectively marked (a) and (b) are Promissory Notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not Promissory Notes.</p>

<b>Bills of Exchange:</b>	<p>Section 5 of the Negotiable Instruments act, 1881 defines “Bill of Exchange”:</p> <p>“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”.</p>
<b>Parties:</b>	<ol style="list-style-type: none"> <li>1. The drawer: The person who gives the order to pay or who makes the bill is called the drawer.</li> <li>2. The drawee: The person who is directed to pay is called the drawee. When the drawee accepts the bill, he is called the acceptor.</li> <li>3. The Payee: The person to whom the payment is to be made is called the payee.</li> </ol>
<b>Requisites of a Bill of Exchange:</b>	<ol style="list-style-type: none"> <li>(1) 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.</li> <li>(2) The consideration of a bill of exchange should be paid only by way of money only.</li> <li>(3) The amount to be paid should be certain.</li> <li>(4) The time of payment must be indicated in the bill with certainty.</li> <li>(5) Order to pay. Order in this section does not mean a command, but a request or a direction.</li> <li>(6) 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.</li> <li>(7) 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.</li> <li>(8) It should specifically mention the date and place the payment or the place where it is drawn.</li> <li>(9) Every Bill of Exchange must be stamped according to the provisions of The Indian Stamp Act, 1899.</li> </ol>
<b>Cheque:</b>	<p>Section 6 of the Negotiable Instruments act, 1881 defines “Cheque”:</p> <p>“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”.</p>
<b>Parties:</b>	<ol style="list-style-type: none"> <li>1. The drawer: The customer who signs the cheque is called “drawer”.</li> <li>2. The drawee: The bank on whom the cheque is drawn is called “drawee”.</li> <li>3. The Payee: The person to whom the payment is to be made is called the payee.</li> </ol>
<b>Requisites of a Cheque:</b>	<ol style="list-style-type: none"> <li>(1) A cheque must be an order in writing.</li> <li>(2) It must contain an unconditional order.</li> <li>(3) A cheque must be signed by the maker.</li> <li>(4) The amount must be specifically mentioned in figures and words.</li> <li>(5) 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</li> </ol>



	<p>be a self cheque.</p> <p>(6) The cheque must contain the date.</p> <p>(7) Payee to be certain.</p>
<b>Due Date of a Bill or Note</b>	<p>Every instrument payable, otherwise, than on demand is entitled to three days of grace. Instruments not entitled to 'period of grace' are: (i) a cheque (ii) a bill or note payable on demand, (iii) a bill or note in which no time is mentioned.</p> <p>Instruments entitled to 'period of grace' are: (i) a bill or note payable on a specified day, (ii) a bill or note payable 'after sight', (iii) a bill or note payable at a certain period on happening of a certain event.</p> <p>Examples:</p> <p>(i) A bill dated 6th February, 2016 is made payable 90 days after date. It's due date is 9th May, 2016.</p> <p>(ii) A bill dated 1st January, 2016 is made payable one month after date. It falls due on 3rd March, 2016.</p> <p>(iii) A bill falls due on 9th May, 2016 which happens to be a Sunday. Then due date becomes 8th May, 2016.</p>
<b>Payment in Due course</b>	<p>Payment in due course results in discharge of the instrument. A payment is said to be 'payment in due course' if it satisfies the following conditions:</p> <p>(i) It is in accordance with apparent tenor of the instrument. A payment before the maturity date is not a payment according to the apparent tenor of the instrument.</p> <p>(ii) It is made on behalf of drawee or acceptor. It must be made in money term only which includes cheque and currency notes. The holder of a negotiable instrument cannot be forced to accept payment in any other mode except with his consent.</p> <p>(iii) It is made to the person in possession of the instrument and also entitled to payment.</p> <p>(iv) It is made in good faith, without negligence and under bonafide circumstances. If a cheque bears forged signature of the drawer, the payment will not be payment in due course if the banker fails to exercise the necessary care.</p> <p>(v) There is no ground for believing that possessor is not entitled to receive payment.</p>
<b>Crossing Meaning, Definition and Types of Crossing</b>	<p>– A cheque may be a 'open cheque' or a 'crossed cheque'. The former may be presented across, the counter for payment; the later will have to be presented through another banker.</p> <p>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.</p>
<b>Meaning of Crossing:</b>	<p>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.</p>
<b>Kinds of Crossing:</b>	<p>There are different kinds of crossing: 1. General crossing. 2. Special crossing.</p>
<b>General Crossing: [Sec. 123]</b>	<p>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</p>

	<p>deemed a crossing, and the cheque shall be deemed to be crossed generally.</p> <p>(a) Two transverse lines are the essentials of general crossing.</p> <p>(b) The lines should not occupy printed letters or numbers or any such written matters.</p> <p>(c) The lines are generally drawn on the left hand side.</p> <p>(d) The words 'and company' / '&amp; co.' may be written between transverse lines. But these words are not compulsory. The crossing itself sufficient. However, it is the practice of the people to write those words.</p> <p>(e) The words 'Not negotiable' may be added to a crossing. But they themselves do not constitute crossing.</p>
<b>Special Crossing:</b> [Sec. 124]	<p>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.</p> <p>(a) Two parallel transverse lines are not essential.</p> <p>(b) The name of the bank should be mentioned with or without crossing. The name of the bank itself constitutes special crossing.</p> <p>(c) The name of the bank should be written on the left side of cheque.</p> <p>(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.</p>
<b>Other Crossings</b>	Other type of crossing which is not defined in the Act but present is usage is Restrictive Crossing or Account Payee Crossing.
<b>Account Payee Crossing:</b>	<ul style="list-style-type: none"> <li>• It is merely in the form of direction to the receiving bank that the drawer desires to pay the particular cheque into bank which keeps the account of the payee.</li> <li>• A/c Payee crossing cheque can also be transferable like other cheques.</li> <li>• It gives further protection to the payee. The collecting banker should credit the cheque only to the mentioned account of the payee.</li> <li>• If the banker credits the cheque to another's account and not to the account of the payee, the banker shall be held responsible for his negligence, and shall be held liable to pay the compensation.</li> <li>• The safest method is to cross the cheque with the terms of 'Not Negotiable' and 'A/c Payee only'.</li> </ul>
<b>Not Negotiable Crossing:</b> [Sec. 130]	<p>Sections 123 and 124 of the Act permit the use of the words "Not Negotiable" in the crossing. Section 130 of the Act clarifies the position.</p> <p>Section 130: A person taking a cheque crossed generally or specially, bearing in either case the words not negotiable shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.</p> <ul style="list-style-type: none"> <li>• It gives more protection and safe to the holder of the cheque.</li> <li>• A third person cannot cash it so easily.</li> <li>• It can be transferred like any other cheque.</li> <li>• If the banker is negligent and transfers the amount of that cheque to another account, he will be held responsible and he will be liable to make the compensation to the</li> </ul>

	sufferer.
<b>Double Crossing/Second Special Crossing: [Sec. 125]</b>	<p>“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.</p> <p>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.</p>
<b>Effect of Double Crossing</b>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> <li>• According to Sec. 127, it means that it is necessary, in all cases, to specify in the second special crossing that the banker in whose favour it is made is an agent of the first banker for collection.</li> </ul>
<b>Who can cross a Cheque:</b>	<p>A cheque may be crossed by any of the following persons;—</p> <p>(a) The drawer of a cheque.</p> <p>(b) The holder of a cheque. Where a cheque is issued uncrossed it may be crossed by the holder generally or specially.</p> <p>(c) The banker in whose favour the cheque has been crossed specially may again cross it specially in favour of another banker. The later bank in such a case acts as the agent of the former.</p>

## Chapter-4 ETHICS

**CONCEPT 1: MEANING AND FEATURES OF ETHICS**

- ✶ The study of ethics is a systematic science.
- ✶ Its scope encompasses all human relationships in a society.
- ✶ Ethics also known as moral philosophy is a branch of philosophy that involves systematizing, defending and recommending concepts of right and wrong conduct.
- ✶ The study of ethics can be divided into four operational areas namely – meta ethics, normative ethics, descriptive ethics and applied ethics.
- ✶ Ethics fundamentally comprises of two elements: Firstly, ethics refers to well founded standards of right and wrong that describe what humans ought to do in terms of rights, obligations, benefits to society, etc. Secondly, ethics refers to the study and development of one's ethical standards. So, it is necessary to constantly examine one's standards to ensure that they are reasonable and well founded.

**CONCEPT 2: ETHICS & MORALS**

Both 'ethics' and 'morals' deal with right and wrong conduct. But they are not same. Ethics deals with individual character which is a personal attribute. Ethics is the response of individual to a specific situation e.g. whether in this situation, it is ethical to state the truth. Morals deal with customs set by groups or some authority like religion. Morals are general principles e.g. you should speak truth.

**Moral vs. Ethics:** Following are the points of difference between Ethics and Moral :

- (i) The word 'Ethics' is derived from Ancient Greek 'éthikos' meaning 'character'. The word 'moral' is derived from Latin 'mos' meaning 'custom'.
- (ii) Character is the essence of values and habits of a person or group. It involves the analysis and employment of concepts such as right and wrong, good and evil and acting with responsibility. Moral is defined as relating to principles of right and wrong.
- (iii) Character is a personal attitude, while custom is defined by a group over a period of time. For example People have character, Societies have custom.
- (iv) Morals are accepted from an authority (such as cultural, religious etc.) while ethics are accepted because they follow from personally accepted principles. An ethical view might be based on an idea of personal property that should not be taken without social consent. Moral norms can usually be expressed as general rules and statements such as 'always tell the truth'.
- (v) Morals work on smaller scale than ethics, more reliably, but by addressing human needs for belonging and emulation, while ethics has a much wider scope.

**CONCEPT 3: EVOLUTION OF ETHICS**

- ✶ When your elders tell you 'Do not cheat', they are referring to a social code of conduct.
- ✶ Social conduct has developed in society over hundreds of years.

- ✘ The codes of conduct have been passed down from generation to generation, and there is a pattern to the evolution of such codes.
- ✘ Acceptable behaviour is promoted and elevated as a social value, and unacceptable behaviour is rejected and condemned.
- ✘ In ancient India, there was no moral problem with the custom of sati-immolating the wife on the funeral pyre or the deceased husband.
- ✘ But society has evolved humanely and has condemned the act as unacceptable and morally reprehensible.
- ✘ The laws of a country are based on the customs or moral codes of its society.
- ✘ Penalties are prescribed for bad actions, actions that contradict the established laws.
- ✘ The laws are a measure against those people who cross the limits of the code of social conduct, and ensure that good citizens are protected from the negative consequences of the law-breakers.
- ✘ The object of the social codes of conduct is to maintain, promote, and elevate harmonious relationships.
- ✘ 'Honour your parents' is one such code.
- ✘ It maintains a peaceful relationship between parents and children and promotes respect for each other in the family.
- ✘ It is because of its salutary effects, it is considered as one of the fundamental values to be cultivated.

#### CONCEPT 4: APPLICATION OF ETHICS

- ✘ Just as when we study the theory of relativity in physics, we ensure that the laws or principles of relativity are applied to the factors and elements being considered, so too in our study of ethics.
- ✘ We have to abandon the absolutism of universal principles.
- ✘ For instance, killing a man is wrong. But we approve the killing of the enemy in a war and the government honours the act with medals for bravery.
- ✘ This is due to the fact that such an act has served a higher principle, that is, the protection of countrymen.
- ✘ Ethics, in the practical sense, is also known as moral action and is an applied discipline that deals with a particular human action and also assesses to what extent it is compatible with the general principles.

#### CONCEPT 5: PHILOSOPHIES AND PHILOSOPHERS

WHO SAID IT?	WHAT HE SAID?
ANITA RODDICK	Being Good is Good Business
HENRY FORD	A Business that makes nothing but money is a poor kind of business.
ADAM SMITH	Business is for profit; the just reward for doing business lies in the excess returns received on the investment.
MAHATMA GANDHI	It is difficult but not impossible to conduct strictly honest business.
RUSSIAN PROVERB	'There are two fools in every market: one asks too little, one asks too much,' so says a Russian proverb. Is there a concept called <i>balanced profit</i> ?
ARABIC PROVERB	Live like Brothers and Do business like strangers.

#### CONCEPT 6: NEED OF BUSINESS ETHICS

- **Stop business malpractices** : Some unscrupulous businessmen do business malpractices by indulging in unfair trade practices like black-marketing, artificial high pricing, adulteration, cheating in weights and measures, selling of duplicate and harmful products, hoarding, false claims or representations about their products etc. These business malpractices are harmful to the consumers. Business ethics help to stop these business malpractices.
- **Improve customers' confidence** : Business ethics are needed to improve the customers' confidence about the quality, quantity, price, etc. of the products. The customers have more trust and confidence in the businessmen who follow ethical rules. They feel that such businessmen will not cheat them.

- **Survival of business** : Business ethics are mandatory for the survival of business. The businessmen who do not follow it will have short-term success, but they will fail in the long run. This is because they can cheat a consumer only once. After that, the consumer will not buy goods from that businessman. He will also tell others not to buy from that businessman. So this will defame his image and provoke a negative publicity. This will result in failure of the business. Therefore, if the businessmen do not follow ethical rules, he will fail in the market. So, it is always better to follow appropriate code of conduct to survive in the market.
- **Safeguarding consumers' rights** : Consumer sovereignty cannot be either ruled out or denied. Business can survive so long it enjoys the patronage of consumer. The consumer has many rights such as right to health and safety, right to be informed, right to choose, right to be heard, right to redress, etc. But many businessmen do not respect and protect these rights. Business ethics are must to safeguard these rights of the consumers.
- **Protecting employees and shareholders** : Business ethics are required to protect the interest of employees, shareholders, competitors, dealers, suppliers, etc. It protects them from exploitation through unfair trade practices.
- **Develops good relations** : Business ethics are important to develop good and friendly relations between business and society. This will result in a regular supply of good quality goods and services at low prices to the society. It will also result in profits for the businesses thereby resulting in growth of economy.
- **Creates good image** : Business ethics create a good image for the business and businessmen. If the businessmen follow all ethical rules, then they will be fully accepted and not criticised by the society. The society will always support those businessmen who follow this necessary code of conduct.
- **Smooth functioning** : If the business follows all the business ethics, then the employees, shareholders, consumers, dealers and suppliers will all be happy. So they will give full cooperation to the business. This will result in smooth functioning of the business. So, the business will grow, expand and diversify easily and quickly. It will have more sales and more profits.
- **Consumer movement** : Business ethics are gaining importance because of the growth of the consumer movement. Gone are the days when the consumer can be taken for ride by the unscrupulous business by their false propaganda and false claims, unfair trade practices. Today, the consumers are aware of their rights and well informed as well as well organised. Now they are more organised and hence cannot be cheated easily. They take actions against those businessmen who indulge in bad business practices. They boycott poor quality, harmful, high priced and counterfeit (duplicate) goods. Therefore, the only way to survive in business is to be honest and fair. Consumer forums and Consumer Associations are more active and vocal now.
- **Consumer satisfaction** : Today, the consumer is the king of the market. Any business simply cannot survive without the consumers. Therefore, the main aim or objective of business is consumer satisfaction. If the consumer is not satisfied, then there will be no sales and thus no profits too. Consumer will be satisfied only if the business follows all the business ethics, and hence are highly needed.
- **Importance of labour** : Labour, i.e. employees or workers play a very crucial role in the success of a business. Therefore, business must use business ethics while dealing with the employees. The business must give them proper wages and salaries and provide them with better working conditions. There must be good relations between employer and employees. The employees must also be given proper welfare facilities.
- **Healthy competition** : The business must use business ethics while dealing with the competitors. They must have healthy competition with the competitors. Healthy competition brings about efficiency and leads to optimal utilization of scarce resources, hence is always welcome. They must not do cut-throat competition. Similarly, they must give equal opportunities to small-scale business. They must avoid monopoly. This is because a monopoly is harmful to the consumers.

## CONCEPT 7: VALUE FREE ETHICS

An ancient Arabic wisdom states, 'Live together like brothers and do business like strangers.' Business should



be kept free from other social relationships and obligations. The only successful relationship that exists in business is that of a vendor and a customer. It is also said that 'for the merchant, even honesty is a financial speculation.' Indeed, for a businessman every factor in the business is measured in terms of money. The volatility that we see in the stock market is a clear example of the speculative nature of business, which is directly proportional to the prevailing attitude of the people.

### CONCEPT 8: SEVEN PRINCIPLES OF PUBLIC LIFE

Business ethics is not a pure science but a professional practice, and society expects businessmen to abide by the principles of a civil society, just as it expects professionals from other areas such as medicine, bureaucracy, politics and sports to do so. Thus, instead of a value-free business ethics, we have a value-loaded or value-based business practice.

*Below mentioned are the Seven Principles of Public Life:*

#### **Selflessness**

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

#### **Integrity**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance of their official duties.

#### **Objectivity**

In carrying out public business including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

#### **Accountability**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

#### **Openness**

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

#### **Honesty**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

#### **Leadership**

Holders of public office should promote and support these principles by sound leadership and prove to be an example in whatever they perform.

### CONCEPT 9: SEVEN SOCIAL SINS PRESCRIBED MAHATMA GANDHI

*Seven Social Sins*, sometimes called the *Seven Blunders of the World*, is a list that Mohandas Karamchand Gandhi published in his weekly newspaper *Young India* on October 22, 1925. Later he gave this same list to his grandson, Arun Gandhi, written on a piece of paper on their final day together shortly before his assassination. The Seven Sins are:

1. Wealth without work.
2. Pleasure without conscience.
3. Knowledge without character.
4. Commerce without morality.
5. Science without humanity.
6. Worship without sacrifice.
7. Politics without principle.

### CONCEPT 10: RELATION BETWEEN ETHICS AND LAW



Law is essentially an institutionalization or codification of ethics into specific social rules, regulations and prescriptions. Thus, in one sense, business ethics can be said to begin where law ends. Business ethics is primarily concerned with those issues not completely covered by law, or where there is no definite consensus on whether something is right or wrong. Hence, it is often remarked, that business ethics is about the “grey areas” of business where values are in conflict.

### CONCEPT 11: ETHICAL CONFLICT

- ✎ An Ethical conflict is a complex situation that often involves an apparent mental conflict between moral imperatives, in which to obey one would result in transgressing another. This is also called an ethical paradox.
- ✎ Ethical conflicts arise when someone has to make a choice between violating or abiding by one or more of their moral principles, leading to a paradox where neither choice leaves the individual satisfied.
- ✎ For example, ethical conflict lies at the heart of situations in which a father steals food to feed his starving family or an employee keeps quiet about someone else’s misconduct in the workplace in order to save his own job.
- ✎ There are many types of ethical conflicts in the workplace; however conflicts usually deal with the following categories: *fraud, confidentiality, finance and honesty*.

### CONCEPT 12: HOW TO CREATE ETHICAL ACCOUNTING ENVIRONMENT

**A. Employee Awareness:** It should be noted and ensured that employees are aware of their legal and ethical responsibilities. Organization should train and motivate employees toward ethical behavior. Top management should initiate steps in developing such an ethical environment.

**B. Encouraging communication:** Ethical organization need to provide channels through which employees could communicate with concerned Managers, for reporting frauds, mismanagement or any other form of detrimental behavior.

**C. Ensuring fair treatment to Whistle Blowers:** A person or an employee who reports fraud, mismanagement or any other detrimental practices to the concerned Managers is called Whistle Blower. Organization should ensure protection and fair treatment to Whistle Blowers to reduce fraud.

### CONCEPT 13: WHY PEOPLE BEHAVE UNETHICALLY?

**A. Over Emphasis on Short Term Profitability:** Manipulating accounting entries to show better profitability (window dressing) to raise further capital from the market.

**B. Ignoring small unethical issues:** Companies need to develop an environment where small ethical lapses are taken seriously so that they do not recur in the future.

**C. Economic cycles:** when the company is doing well, no one is bothered to understand its actual financial position. However, when the economy takes a downward turn, finance and accounting managers may take decisions by compromising over the established principles. To prevent disclosure of unethical problems in times of depression, companies need to be careful and vigilant also during prosperous time periods.

**D. Market complexity:** In the era of globalization and massive cross border flow of capital, accounting rules have become more complex. The complexity of principles and rules and the difficulty associated with identifying abuse are reasons which may promote unethical behavior.

**E. Money - Mindedness:** Most business organizations try to display better financial condition by window dressing. Following such a principle towards “showing profits” rather than “earning profits” leads to unethical accounting and financial practices.