

Course → B.B.A Ist Subject → Business Law. ①

[Unit-Ist] Contract Act 1872

Contract → A Contract is an exchange of promises.
It is made by two or more persons.

Contract = Agreement + Enforceability by law.

Agreement = offer + Acceptance.

Acc to Section 2(h) "A Contract is an agreement enforceable by law."

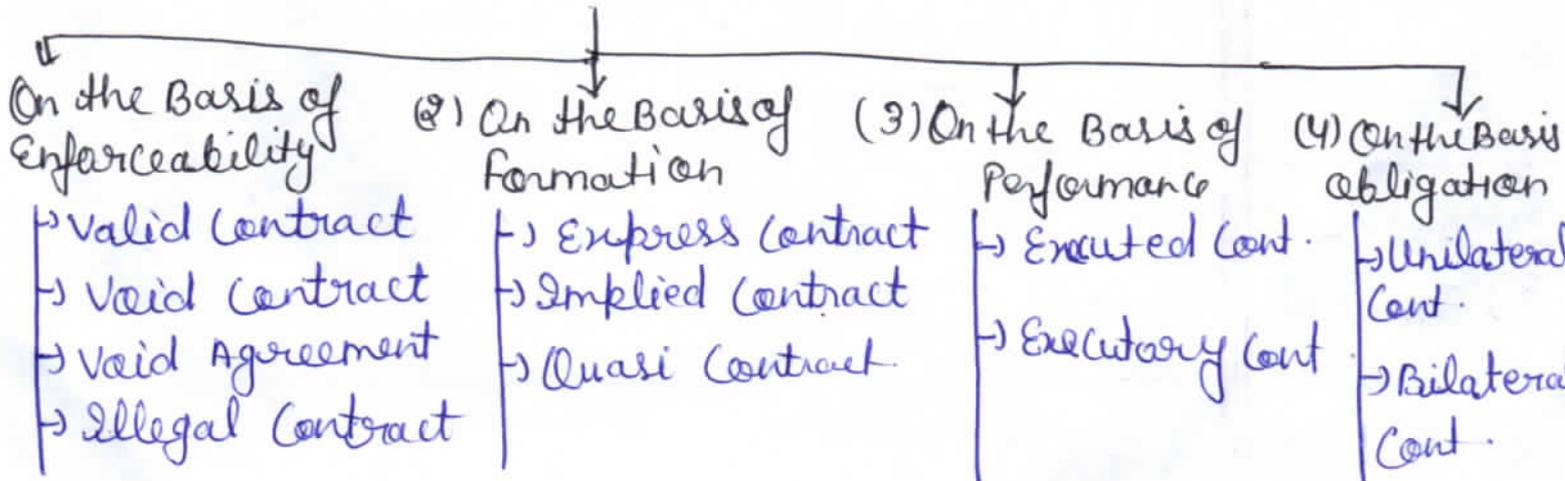
Acc to Salmond, "A Contract is an agreement creating and defining obligations b/w the parties."

Essentials of a valid Contract.

- 1) Free Consent [Section 14]
- 2) Lawful object
- 3) Lawful Consideration
- 4) Valid / Agreement
- 5) offer and Acceptance
- 6) Capacity of Parties.
- 7) writing and Registration.



Types of Contract



② Differentiate b/w An Agreement and a Contract.

Basis of Diff.	Agreement	Contract
1. Nature	Agreements may be lawful or unlawful.	Only lawful agreements become contracts enforceable in a court of law.
2. Binding	Agreement is not concluded or a binding contract.	Cont. is concluded and binding on the concerned parties.
3. Enforceability	The enforceability depend on the nature of agreement	3.) It is enforceable under the provision of the law of the country.
4.) One in other.	Every agreement need not necessarily be a contract.	4.) All contracts are necessarily creates a legal obligation.

Discharge of Contract

- 1) By Lapse of time
- 2) By Performance
- 3) By operation of law
- 4) By mutual Agreement
- 5) By impossibility of Performance.
- 6) By Breach Contract.

* Free Consent of Parties.

- 1) Coercion (Sec-15)
- 2) Undue influence (Sec-16)
- 3) Fraud (Sec-17)
- 4) misrepresentation (Sec-18)
- 5) Mistake (Sec-20)



* Capacity of Parties * (3)

Acc to section 11 of Indian Contract Act, 1872 Every person who

- 1) minor.
- 2) Contract by A person of unsound mind.
- 3) Re Persons Disqualified by law to Enter into Contract.

* offer and Acceptance *

offer → Acc to section 2 (a) of the Indian Contract Act 1872.

A Proposal or offer means, "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."

Re Legal Rules Regarding offer ⇒

- 1) offer may be expressed or implied.
- 2) offer may be specific or general.
- 3) offer must create legal obligation.
- 4) Terms of an offer must be clear, definite, complete and final.
- 5) offer must be communication.



* Acceptance * A contract is created when an offer is accepted. Acceptance indicates the willingness to agree to the terms of the offer. [Section 2 (b)]

* Legal Rules Regarding acceptance *

- 1) Acceptance should be by the person to whom the offer is made.
- 2) Acceptance may be expressed or implied.
- 3) Acceptance must be in the mode prescribed.
- 4) Acceptance must be for an offer communicated.
- 5) offer must be accepted within fixed time.

* Consideration * ⁽⁴⁾ In the light of Contract Law the word "Consideration" has a peculiar meaning "Consideration" is the value given in return for a promise.

Acc to Cheshire and Fidoat → "Consideration is the price paid by the Plaintiff for the defendant's promise"

Acc to Blackstone "Consideration is the recompense given by the party contracting to the other."

* Essentials of a valid Consideration *

- 1) Consideration must move at the Desire of the Promisor.
- 2) Composition with Creditors.
- 3) Consideration must move at the Desire of the Promisor.
- 4) It need not be Adequate.
- 5) It may be in Past, Present or future.

* Performance of Contract *

A Contract is entered into the object that it will be performed. Performance of the promise or promises remaining to be performed in the Principal and most usual mode of discharge.

Types of Performance.

- i) Actual Performance.
- ii) Attempted Performance.

By whom Contract may be performed.

- 1) Promisor himself.
- 2) By the agent
- 3) Representative
- 4) By Third parties

(5)



Contingent Contract → A Contingent Contract means a Conditional Contract which depends on.

the happening or non-happening of an event.

Acc to Section 31 of the Act, A Contract may be an absolute Contract or a Contingent Contract.

Example: (1) A Contracts to pay B ₹ 1,00,000 if B's house is destroyed by flood.

Essential characteristics of a Contingent Contract.

- 1) Enforceability
- 2) Uncertainty
- 3) Collaterality
- 4) Existence of a Contingency.
- 5) - Enforcement of Contingent Contracts on specified event not happening within a fixed time Sec 35(2)
- 6) Agreements Contingent on impossible events section - [36]

* Quasi - Contracts → The Promisor voluntarily an obligation in favour of the Promisee.

A similar obligation may be imposed by law upon a Person for the benefits of another even in the absence of Contract.

* Features of Quasi Contract →

- 1) → It is imposed by law and does not arise from any agreement.
- 2) → The duty of a Party and not the Promisee of any Party is the basis of such Contract.
- 3) → It is a right which is available not against the entire world but against a Particular Person or Person only.



Types of Quasi Contract *

(6)

The Indian Contract Act 1872 deals with following types of Quasi-Contract' as discussed in sections 68 to 72

- 1) → Claim for necessaries supplied to a person incapable of contract.
- 2) → Right to recover money paid for another person Sec-69
- 3) → Res: onsibility of finder of goods.
- 4) → Claim on the basis of quantum meruit
- 5) →

* Implied Contract *

Contract can be either express or implied, it is a part of most of the business transactions. A contract is inferred from the conduct of parties of course of dealing b/w them or the circumstances of the particular case.

* Indemnity Contract → "A contract by which one party promises to save the

other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person, is called a contract of indemnity.

Example → A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 2000. This is a contract of indemnity.

Thus, Indemnity is protection against loss, especially in form of a promise to pay or payment for loss of money goods etc. Indemnity literally means a security against or compensation for loss to a person.



* Types of Contract of Indemnity *

- 1) Express Indemnity
- 2) Implied Indemnity

* Contract of Guarantee *

Accto Section 126 of the Indian Contract Act 1872, ^{ec} A Contract of guarantee is a Contract to Perform. The Promise or discharge the liability of a third Person in case of his default. In a Contract of guarantee the Person who gives the guarantee is called the surety the Person in respect of whose default the guarantee is given is called the Principal - Debtor and the Person to whom the guarantee is given is called the Creditor.

* Essential Features of Contract of Guarantee *

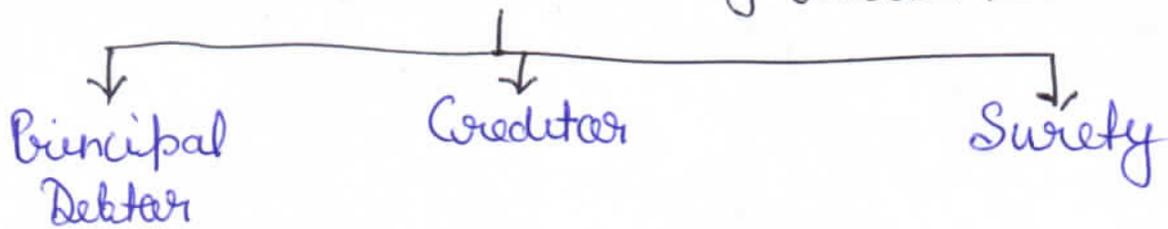
- 1) Three parties.
- 2) Consent of the surety
- 3) obligation arise in case of default.
- 4) Types of contract
- 5) Primary liability



Example :- A Takes a loan from a bank. A Promises to the bank to repay the loan. B also makes a Promise to the bank saying that if A does not repay the loan then "I will pay"

⑧

Parties to a Contract of Guarantee



Difference b/w Contract of Indemnity and Guarantee

Basis of Difference	Contract of Indemnity	Contract of Guarantee
1) meaning	It is a Contract to make good the loss of the other Party	It is a Contract to perform the promise or discharge the liability of a third Party in case of his default.
2) Parties	There are two parties - Indemnifier and indemnity holder	There are three parties - Creditor, Principal debtor and surety.
3) Right to Sue	Indemnifier cannot sue a third party for loss suffered.	Surety can sue the Principal debtor.
4) Capacity to Contract	All the parties must be Capable of Contracting	The Principal -debtor may be a minor, In that case the surety will be liable

* Bailment * The word bailment is derived from the French word 'bailler' which means 'to deliver'. It means any kind of 'handing over' of goods from one person to another. Bailment implies voluntary change of possession from one person to another.

Acc to Section 148 "A Contract of bailment is a Contract in which one person delivers some goods to another for some purpose"

and when the purpose is accomplished the goods are returned or otherwise disposed off according to the directions of the person delivering them." (9)

The person delivering the goods is called the bailor, the person to whom the goods are delivered is called the 'bailee' and the transaction is called Bailment.

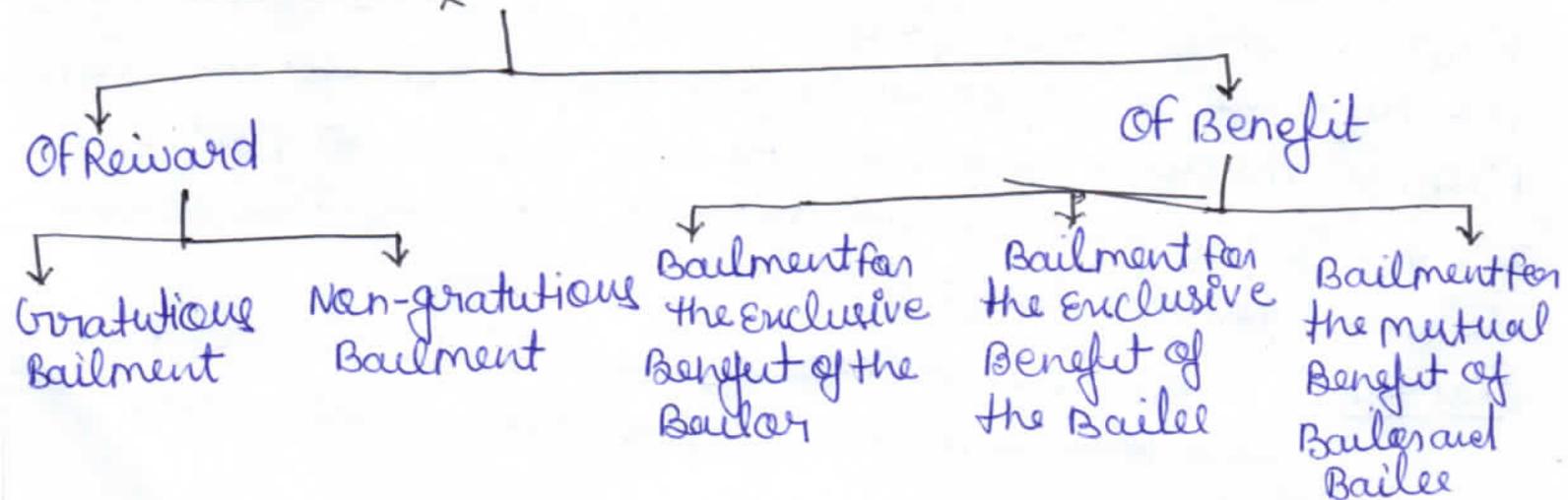
Example - when you take a furniture on hire, or give your suit to dry cleaning, or give a mobile for repairs, or give a parcel to a carrier for being transported to other place there is a bailment in each case.

* Essential features of Bailment *



- 1) There should be a contract.
- 2) Bailment is of movable goods.
- 3) Bailment involves transfer of possession of goods.
- 4) The transfer under bailment is temporary.
- 5) The goods must be delivered from one person to another person.
- 6) The goods are delivered for certain purpose.
- 7) The same goods must be returned.

* Kind of Bailment *



* Lien * A lien is a right of one person to retain property or goods which are in his possession, belonging to another person until the promise or the liability is discharged.

* Features of Lien *

- 1) Possession is essential for exercising the right of lien but not
- 2) The right of lien arises from law. not from a contract.
- 3) The right of lien is not transferable to a third person.
- 4) The possession must be rightful.
- 5) The lien terminates when the liability is met.

* Types of Lien *

- 1) Particular lien.
- 2) General lien.

* PEGNE *

Acc to Sec. 172 "The bairment of goods as security for payment of a debt or performance of a promise is called Pledge."

'Pledge' or Pawn is kind of bailment of goods with a special purpose. The goods pledged or pawned serve as security for the payment of a debt or performance of promise. The person pledging the goods is known as the pawnor or pledger and the person with whom the goods are pledged is known as the pawnee pledge.

Example → A borrow ₹ 80000 by depositing his gold necklace with B as a security for repayment of the debt.



Difference between Bailment and Pledge

Points of Diff.	Bailment	Pledge.
1) Aim	The aim of bailment is very wide e.g. - Safe, Custody, Repair etc.	The aim of Pledge is limited repayment of a debt or performance of a promise.
2) Scope	Bailment is included in a Pledge.	Pledge is not included in bailment.
3) Right to use goods.	A bailee can use the goods if the contract so provides.	A pawnee cannot use the goods pledged.
4) Right to sell	A bailee cannot sell the goods, he can only retain the goods or sue for his charges.	A pawnee can sell the goods after giving notice if loan is not paid.

Difference b/w Bailment and Pledge

Points of Difference	Pledge	Lien.
1) Aim	The aim of Pledge is to secure repayment of a debt.	The Aim of lien is to retain some one's property to recover the remuneration.
2) Origin	Pledge arise out of an agreement.	Lien arises out of law.
3) Right to sell goods	A Pawnee can sell the goods after giving notice if the loan is not repaid.	There is no right to sell the goods only the goods can be retained.
4) Termination	A Pledge is terminated when the goods are returned to the owner.	The right of lien is lost when the possession of goods is lost.

* Contract of Agency *

The word 'Agency' refers to a legal contract b/w two parties whereby one party acquires the right to represent the other in the day to day affairs of business.

Section 182 "A agent is a person employed to do any act for another or to represent another in dealings with third person. The person for whom such act is done or who is so represented is called the Principal."

In an Agency one person (person) employs another (Agent) to represent him or to act on his behalf in dealings with third person.

* Features of Contract of Agency *

- 1) The Principal should be competent to contract (Sec. 183)
- 2) The Principal may not be competent to contract Sec 184
- 3) No consideration is necessary to create an agency Sec. 185

* Creating of Agency *

- 1) Express authority.
- 2) Implied authority.
- 3) Agency by estoppel.
- 4) Agency by holding out.
- 5) Agency by necessity.
- 6) Agency by ratification.



* Sale of Goods Act, 1930 * Sales of Various Product or
 Goods take different forms and are also processed in a
 varied manner in a highly industrialized and commercial
 Economy. Even the word goods needs considerable understand-
 ing as this word does not include any or every product
 which is actually sold in the Economy.

Acc to Sec. 4(1) of Sales of goods Act 1930, "A contract
 of sale of goods is a contract whereby the seller transfers
 or agrees to transfer the property in the goods to the buyer
 for a price."

* Essentials Features of Contract of sale *

- 1) There must be at least two parties.
- 2) The subject matter of the contract must be goods.
- 3) Price
- 4) Transfer of Property: (i) General Property.
 (ii) Special Property.

* Subject - matter of Contract of sale *

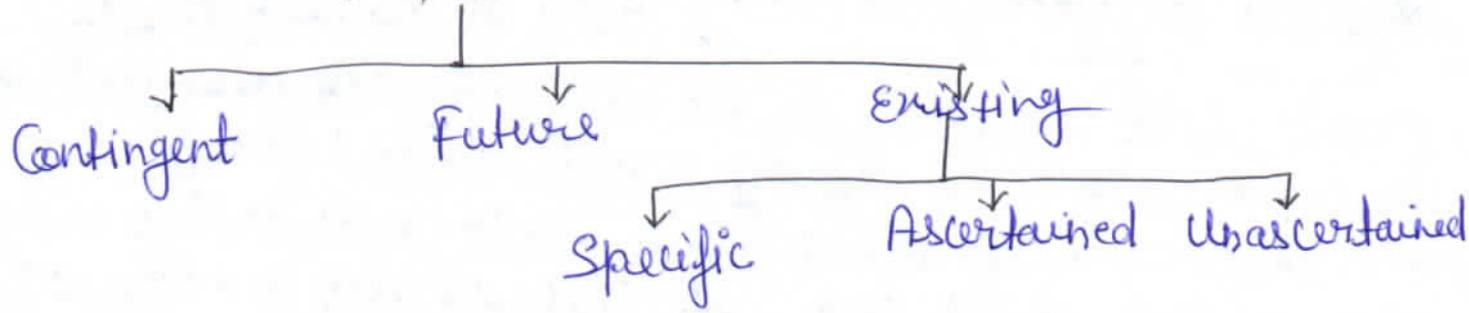
* Goods ⇒ "Goods means every kind of moveable property
 other than actionable claims and money and includes
 stock and shares, growing crops, grass and things attached
 to or forming part of land which are agreed to be severed
 before sale or under the contract of a sale" [Section 2(7)]

* Essential Features of goods *

- 1) Goods must be moveable
- 2) Actionable claims and money have been expressly excluded
- 3) Stock and shares growing crops, grass, agreed to be severed
 before sale etc → are included in goods.



Types of Goods



* Condition * A condition is a stipulation which is essential to the main purpose of the contract, the breach of which gives right to put an end to the contract and to claim damages.

* Warranty * A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not a right to reject the goods and treat the contract as repudiated Section 12 (3)

Difference between a Condition and a warranty.

Basis	Condition	warranty
1) As to Purpose	A condition is essential to the main purpose of the contract.	1) A warranty is only collateral to the main purpose of the contract.
2) As to treatment	A breach of condition may be treated as a breach of warranty.	A breach of warranty cannot be treated as a breach of condition.
3) As to breach	The aggrieved party can repudiate the contract or claim damages or both in the case of breach of condition.	3) A breach of warranty gives a right to claim damages and a right to repudiate the contract.

* Transfer of ownership *

(15)

The main purpose of a contract of sale is to transfer property. transfer of property implies transfer of ownership. this property or ownership should be distinguished from possession of the goods.

Example → A leave his computer for repair with a machine. A is the owner of the computer, while the machine is in possession of the computer.

It is necessary to know the precise moment of time of passing of the property from the seller to the buyer for the following reasons! —

- 1) For ascertaining risk or loss.
- 2) For ascertaining right of action against the wrong doer.
- 3) For ascertaining right in insolvency of the seller or the buyer.



* Delivery of goods * The seller should be ready and willing to deliver the goods to the buyer as per the terms of the contract. the term delivery of goods has been define as the voluntary transfer of possession by one person to another (Section 2(21))

* Mode of Delivery of goods *

- 1) Actual delivery
- 2) Symbolic delivery
- 3) Constructive delivery.

* Unpaid Seller *

Acc to Sec. 45(a) of the sale of goods Act 1930 'the Seller of goods is deemed to be an unpaid seller' when

- 1) The whole of the Price has not been paid
- 2) when a Conditional Payment was made by a through bill of exchange or other negotiable instrument but the same has been dishonoured.

* Rights of an unpaid Seller *

- 1) Right of lien [Sec-47]
- 2) Right of stoppage in transit [Sec-50]
- 3) Right to re-sale [Sec-54]
- 4) Right to withheld delivery



* Rights of unpaid seller against the Buyer *

- 1) Suit For Price (Sec-55)
 - i) where Property in the goods passed to the buyer.
 - ii) where Property has not passed under.
- 2) Suit for damages for non-acceptance. [Sec-56]
- 3) Repudiation of Contract before due date [Sec-60]
- 4) Suit for Interest (Sec-61(2)(d))

* Indian Partnership Act 1932 *

The Indian Partnership Act 1932, contains the law of Partnership came into force on 1st October, 1932, except Section 69 (dealing with effect of non-registration of firms)

As to Section 4 of Indian Partnership Act 1932, Partnership is the relation b/w persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

* Partnership and firm * Partnership is merely an abstract legal relation b/w the partners, it is in other words, an abstract thing, A firm is a collective name for all the partners.

* Essential Features of Partnership *

- 1) Sharing of Profits
- 2) Agreement b/w the partners
- 3) Association of two or more persons.
- 4) Unlimited liability
- 5) Carrying-On Business
- 6) Mutual agency



* Types of Partnership *

- 1) Partnership for a fixed term
- 2) Partnership at will.
- 3) Particular Partnership

* Advantages of Partnership *

- 1) Sharing Risks
- 2) Protection of Interest of Each Partner.
- 3) Large financial resources
- 4) Flexibility in operations.
- 5) Better Decisions
- 6) Benefits of specialization.
- 7) Easy to Form.

* Disadvantages of Partnership *

- 1) Limited Capital
- 2) Lack of Harmony
- 3) No Transfer-ability of share
- 4) Uncertain life
- 5) Unlimited liability

* Types of Partners *

- | | |
|------------------------|-----------------------------------|
| 1) Nominal Partner. | (6) Sleeping or Dormant Partner |
| 2) Working Partners | (7) Actual or Ostensible Partner |
| 3) Incoming Partners. | 8) Partnership for a fixed period |
| 4) Limited Partnership | (9) Partners in Profit only. |
| 5) Sub-Partners | |

* Contents of the Partnership Deed *

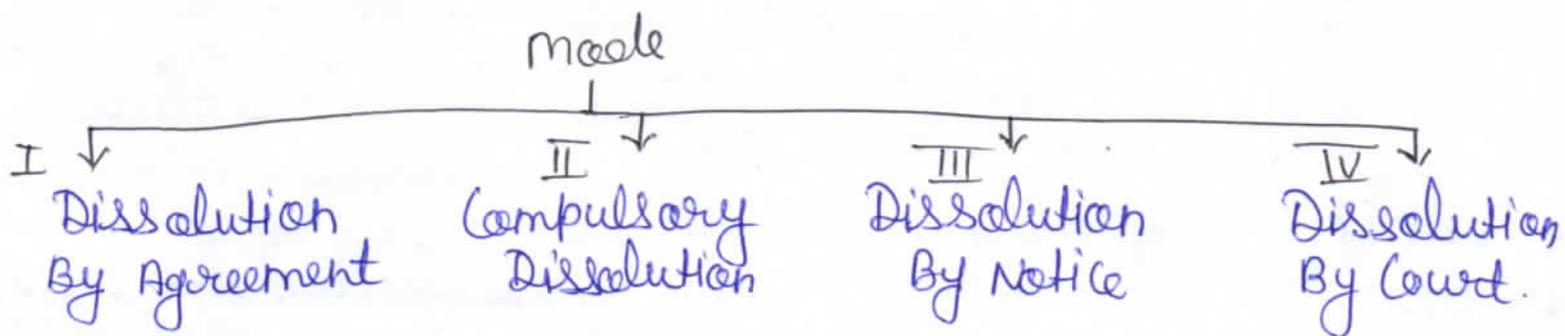
- 1) Audit of Books of Accounts.
- 2) Commission and salary of Partners.
- 3) Name and Address of the firm.
- 4) Death of a Partner and his succession.
- 5) Duration of Partnership
- 6) Dissolution of Partnership



* Dissolution of Partnership *

Dissolution of Partnership means, the termination of the connections with the firm by some of the partners, of the firm, and the remaining partners of the firm continuing the business of the firm under the considered dissolution of Partnership, Admission, retirement, and death of the partners.

* Mode of Dissolution of firm *



* Rights of A Partner on Dissolution *

- 1) Right to have business wound up [Sec-46]
- 2) Right to have the debts of the firm settle of the Property of the firm.
- 3) Right to Personal Profits earned after dissolution [Sec-50]
- 4) Right to Return of Premium on Premature dissolution [Sec-51]
- 5) Right where Partnership Contract is rescinded for Fraud or misrepresentation [Sec-52]

* Liabilities of A Partner on dissolution *

- 1) Liability for acts of Partners done after dissolution [Sec-45]
- 2) Continuing authority of Partners for Purpose of winding up [Sec-47]



* The Distinction b/w Partnership and Company *

Basis of Difference	Partnership	Company
1) Registration	1) A Partnership firm may or may not be registered.	A Company Registration is essential.
2. Management	2) All the Partners of a firm are entitled to take part in the mgmt of the business.	The right to control and manage the busi. is vested in the Board of directors. Elected by the shareholders.
3. Distribution of Profits.	Profits are distributed among Partners as Per the Partnership deed.	There is no such compulsion that Profits must be distributed only when dividends are declared that the members get a share of profit.



* Difference b/w Dissolution of Partnership and Dissolution of firm *

Basis of diff.	Dissolution of Partnership	Dissolution of firm
1) Meaning	It means to a change in the existing agreement b/w the Partners	It means to the dissolution of partnership b/w all the Partners of the firm.
2) Type	It is Voluntary	It may be both voluntary and Compulsory.
3) Closure of books of A/c	In this case books of Accounts may not be closed	Books of accounts are closed.
4) Termination of the Busi.	No, the busi. of the firm is continues	The busi. of the firm is closed down.

[Unit-V^M]

* Negotiable Instrument Act, 1881 *

Negotiable means transferable by delivery and instrument is a written document which creates a right in favour of any person. So a Negotiable instrument is a written document which creates a right in favour of any person and which is transferable by delivery.

Acc to Section 13 "Negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to the bearer."

* Characteristics of Negotiable Instrument *

- 1) Written document.
- 2) Easy transferability.
- 3) Holder can sue to his own name.
- 4) Notice of transfer
- 5) Transferee's title free from all defects.
- 6) Consideration
- 7) Just like money.
- 8) Simplest mode.

Examples of Negotiable Instruments and Non-Negotiable

Negotiable Instrument

- Hundis
- Dividend warrants
- Share warrants
- Railway bonds payable to bearer.
- Bill of exchange
- Treasury bills
- Government promissory notes etc

Non-Negotiable Instruments

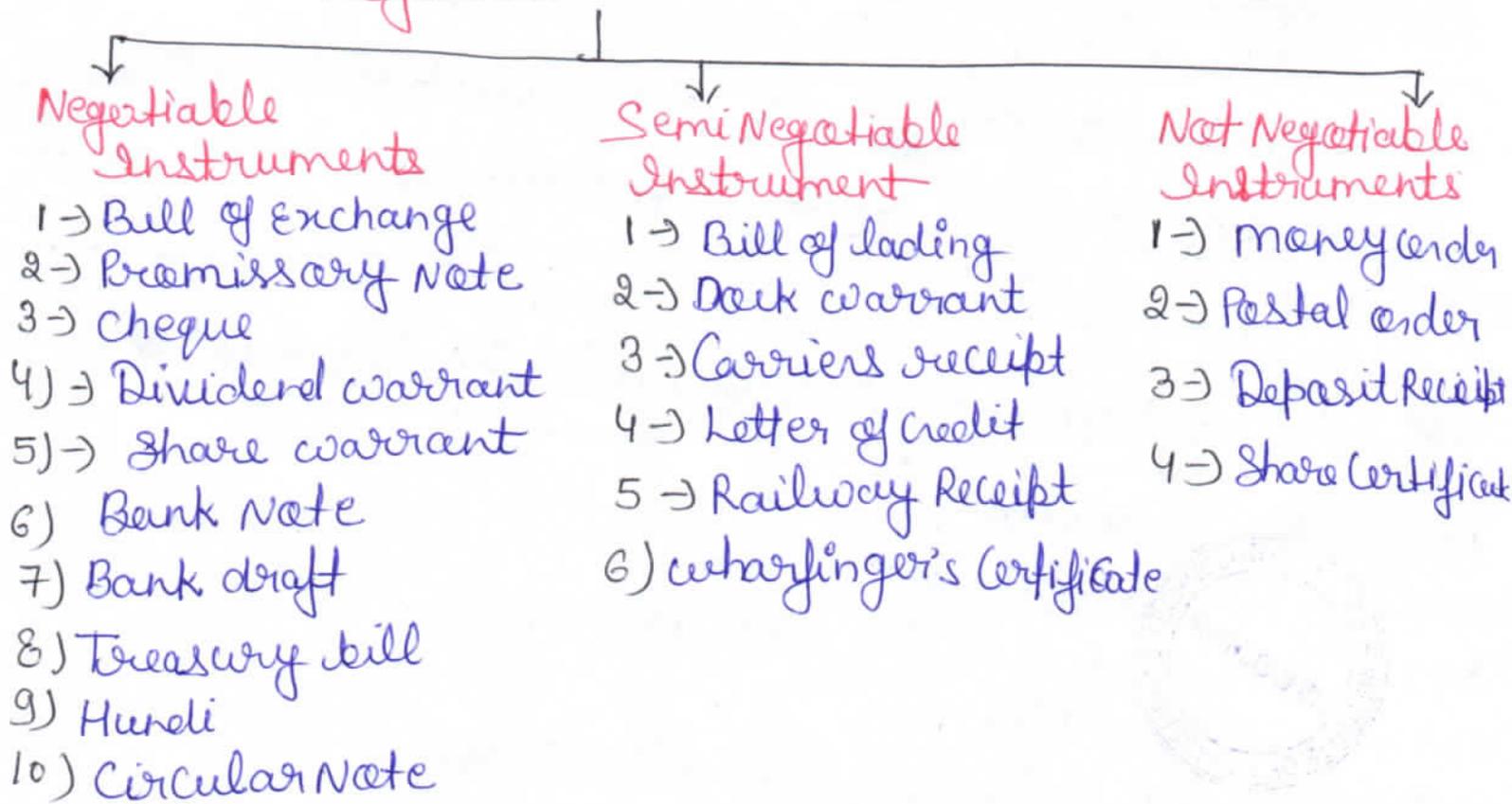
- Letters of credits
- Share certificates
- Postal orders
- Money order.
- Fixed deposit receipts.



- Cheques
- Promissory Notes.

* Types of Negotiable Instruments *

* Negotiable Instrument *



* Promissory NOTE * Ac to Sec. 4 of Indian Negotiable Inst

Act 1881 ee A Promissory Note is an Instrument in writing containing unconditional ~~de~~ undertaking signed by the maker, to pay a certain sum of money to or the order of a certain person. Example. → I Promise to pay B on order ₹ 1000/-

* Characteristics of Promissory Note →

- | | |
|-------------------|--------------------------------|
| 1) Writing | (4) Signature |
| 2) Promise to pay | (5) Certain Amount |
| 3) Unconditional. | (6) Bank Note, or Current Note |
| | (7) Certain Parties. |

* Format of Promissory Note *

₹ 6,0000

Stamp

Mumbai
2nd December, 2020

On demand (or three months after date) I Promise to Pay Dr. Vikas Agarwal or his order a sum of rupee sixty thousand with interest @ 12% P.a. for value received.

To,

Dr. Vikas Agarwal
116 Dayand Nagar
Lucknow (up)

Signature
(Om Parkash)

* Bill of Exchange *

Acc to the Negotiable Instrument Act 1881

A bill of exchange is an instrument in writing containing unconditional order signed by the maker directing a certain person to pay a certain sum of money only to or to the order of a certain person or to the bearer of the instrument.

* Parties to the Bill of Exchange *

- 1) Drawer
- 2) Drawee
- 3) Payee.

* Characteristics of a Bill Exchange *

- 1) Written
- 2) Unconditional
- 3) Order
- 4) Signature
- 5) Certain amount
- 6) Payment
- 7) Fixed date of Payment



8) Stamped

* Format of Bills of Exchange *

₹ 8,000

Stamp

Chennai

October 1, 2008

Three months after date Pay to me or my order a sum of rupee eight thousand only for value received.

To, Vimal Jain
10, Sambudass Street,
Chennai - 600001

Amar Nath
147, Mahatma Gandhi Road
Kolkata - 7

* Difference b/w A Bill of Exchange and A Promissory Note *

Point of difference	Bills of exchange	Promissory Note
No. of Parties	There are three parties namely the drawer, the drawee and the payee.	There are two parties, the maker and the payee.
2. Status	It is drawn by a creditor on a debtor.	It is made by the debtor himself and given to the creditor.
3. Order/Promise	It is an order to pay.	It is a promise to pay.
4. Payee	Drawer can be payee also.	Maker of promissory note can never be payee.
5. Noting	Noting of bill is required at the time of dishonour of a bill.	Noting of a promissory note is not required at the time of its dishonour.
6. Stamp	Stamp is required except on demand bill.	Stamp is required on a promissory note.

* Cheque *

As to Sec. 6 of Indian Negotiable Instrument Act 1881, "A cheque is a bill of exchange drawn on a specified banker, expressed to be payable only on demand."

* Characteristics of a cheque *

- 1) A Cheque is always Payable on demand.
- 2) A cheque is signed by the drawer.
- 3) A cheque is an unconditional order to pay certain amount of money.
- 4) A cheque is always drawn upon specified banker with whom the drawer has deposited the money.
- 5) A cheque must be dated (it can be post dated)

* Specimen of cheque *

		दिनांक Date
Pay		
Rupees		या धारक को BEARER
		अदा करें ₹-₹
खाता सं A/C No	ब.प.स Lfn.	हस्ताक्षर INITIALS
PUNJAB NATIONAL BANK NOCA01-929303		

* Types of cheque *

Cheques may be of two types -

- 1) Open cheques
 - (i) Payable to Bearer
 - (ii) Payable to Order.

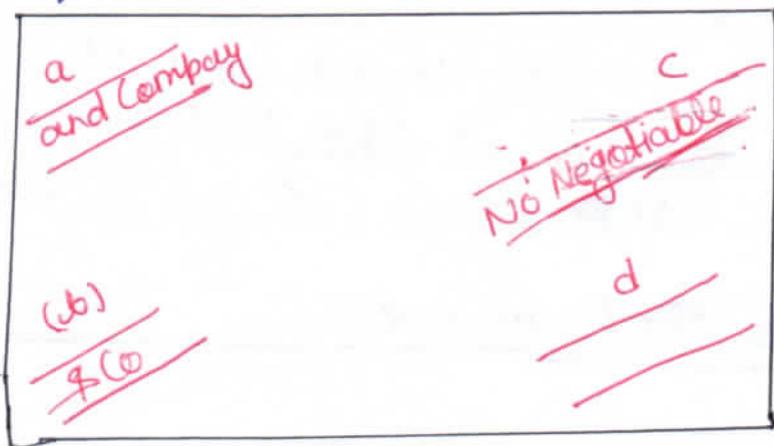
- 2) Cross cheques



* Types of Crossing

- 1) General Crossing
- 2) Special Crossing
- 3) Restrictive Crossing
- 4) Not Negotiable Crossing.

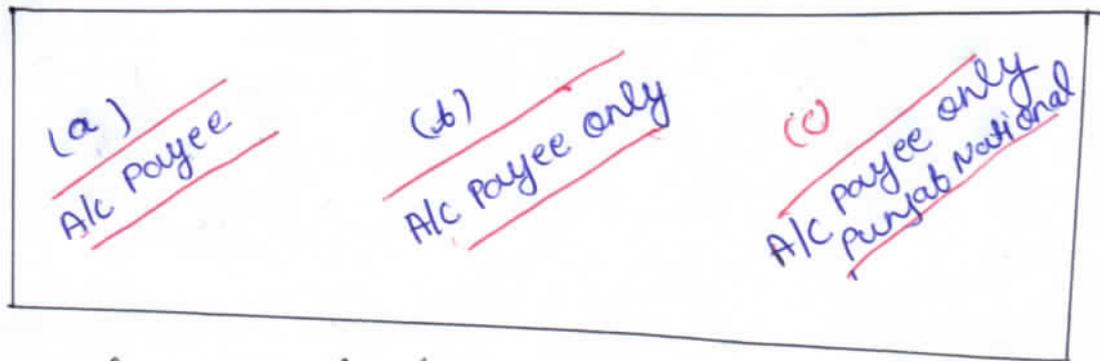
1) General Crossing → In a general crossing simply two parallel transverse lines are drawn on the face of the cheque and the words and Company or & Co.



2) Special Crossing * when in b/w two parallel transverse lines on the face of the cheque, the name of any specific bank



3) Restrictive Crossing * This types of crossing has been recognised by usage and custom of the trade besides the two statutory types of crossing discussed above.



* Not Negotiable Crossing (Sec-130) → A Person taking a cheque crossed generally or specially bearing in either case the words, not negotiable shall not be able to give a better title to the holder than other person.

* Difference between General and Special Crossing

Basis of Difference	General Crossing	Special Crossing
1) Use of word	In General crossing the use of words between the two parallel lines is optional.	In special crossing the mention of name of a specific bank between the two lines is essential.
2) objective	The objective of General Crossing is to make the cheque secure.	The objective of special Crossing is to provide a greater degree of security to the cheque.
3) Payment	In case of general crossing the payment for the cheque may be received through any bank.	In case of special crossing, payment for the cheque can be received from the bank in whose name the cheque has been crossed.

