

Course Objectives:

- Helps to acquire in depth knowledge in Indian Contract Act
- Helps the students to get more knowledge on basics of Partnership Act
- Helps to provide enough knowledge on Negotiable Instrument Act

Learning Outcome

Business law has been adequately dealt with, taking into consideration their applicability to day – to –day events in life. The study the cases is bound to sharpen the reasoning ability, arguing skill and decision making capacity of the students.

List of Practical

1. Prepare a presentation on offer and acceptance of Contract
2. A Contract is void without Consideration – Give a Presentation
3. Discuss in group on the following
 - a. unlawful agreements
 - b. Contractual Capacity
 - c. breach of contract
 - d. Remedies for Breach of Contract
 - e. Contract of sale
 - f. Conditions and Warranties
4. Design Presentation slides on the following topics
 - a. Registration of a Partnership firm
 - b. Rights and Duties of Partner
 - c. Implied Authority of partner
 - d. Mode of dissolution of Partner
 - e. Limited Liability partnership agreement
 - f. Incorporation by Registration
 - g. Incorporation Document
 - h. Partners and their relations
5. Design Slides on negotiable instruments
 - a. Essential requisites of Negotiable Instruments
 - b. Promissory Note
 - c. Bill of Exchange
 - d. Cheque
 - e. Holder in due course
 - f. Negotiation
 - g. Types of Endorsement
 - h. Crossing of Cheque

Note: Record note to be submitted and Viva-voce will be conducted.

Suggested Readings

Text Book:

1. Sreenivasan M. R, (2013), *Business Law*, [Fifth Revised and Enlarged Edition], Margham Publications, Chennai.
2. Kapoor N.D., (2014). *Elements of Mercantile Law*, S.Chand & Co, New Delhi,

Reference Books:

1. Kuchhal M C, and Vivek Kuchhal, (2013), *Business Law*, Vikas Publishing House, New Delhi.
2. Maheshwari SN and Maheshwari SK. (2011), *Business Law*, National Publishing House, New Delhi.
3. Agarwal, S K, (2015), *Business Law*, Galgotia Publishers Company, New Delhi.
4. Tulsian P C and Bharat Tulsian. (2014), *Business Law*, McGraw Hill Education, New Delhi
5. Sharma, J.P. and Sunaina Kanojia. (2011), *Business Laws*, Abe Books Pvt. Ltd., New Delhi.

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BUSINESS LAW PRACTICAL – 17CMU211

Presentation on Offer and Acceptance of Contract

Offer

- According to Section 2(a) of Indian Contract Act, 1872, an offer or proposal is defined as “when a Person signifies to another his willingness to do, or, to abstain from doing anything, with a view to obtain the assent of that other to such act, or, abstinence, he is said to make a proposal”.

Essentials of a Valid Offer

- **The offer must be Certain**
- **The offer may be Express or Implied**
- **Offer must be made with an Intention to Legally Bind each other**
- **Offer must be Communicated**
- **The Proposal must be made to a Definite Person**

How long does an Offer Remain Open

- It has been accepted or
- It has been rejected or
- It has been revoked (withdrawn) or
- It has been lapsed (passage of time)

Until when can an Offer be Accepted

- It has been revoked
- It has been lapsed

Acceptance

- According to Section 2(b) of Indian Contract Act, 1872, “when a person, to whom a proposal is made, signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise”.
- The person making the proposal is called promisor & the person accepting it is called the promisee.

Essentials of a Valid Acceptance

- **Who can accept an Offer**
- **Acceptance of an offer must be Absolute & Unconditional**
- **Acceptance must be made within a Reasonable Time**
- **Mode of Acceptance:**
 - a) express written words
 - b) express spoken words
 - c) conduct
 - d) post / telegram
 - e) prescribed manner if any

- **Mental Acceptance is No Acceptance at All**
- **Acceptance must be Communicated to the Offeror**
- **Acceptance of an Offer is Acceptance of all its Terms**
- **Act done without the knowledge of the Offer is no Acceptance**

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A CONTRACT WITHOUT CONSIDERATION IS VOID

Indian contract Act 1872 in section 2(e) says that every promise and every set of promises that form a consideration for each other is an agreement. Thus, it is clear that the formation of consideration for a promise or promises is a key ground on which promise becomes an agreement. There cannot be an agreement if there is no consideration.

Section 25: An Agreement without consideration is void.

1. It is in writing and registered and the promise has been made due to natural love and affection between the parties standing in near relation to each other.
2. It is a promise to compensate, wholly or in part, a person who has voluntarily done something for the promisor or something that the promiser was legally bound to do.
3. It is a promise to pay for a time barred debt

Exceptions

- Love & affection (section 25,i)

It should be a written and registered agreement based on mutual love & affection between parties standing in a near relation to each other.

- Compensation for voluntary services (section 25,ii)

A promise to compensate, wholly or part, a person who has already voluntarily done something for promisor.

- Promise to pay a time-barred debt(section 25,iii)
A promise by a debtor to pay a time-barred debt if it is made in writing & is signed by debtor or agent.
- Completed gift (expl.1 to section 15)
It can be a object or anything of value, & should be accepted by donee.
- Agency
Consideration is not required.

- Charitable subscription

The promisee on the strength of the promise makes commitments

- Guarantee (section 127)
- Remission (section 63)

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Unlawful Agreements

An **illegal agreement**, under the common law of contract, is one that the courts will not enforce because the purpose of the agreement is to achieve an illegal end. The illegal end must result from performance of the contract itself. The classic example of such an agreement is a contract for murder.

However, a contract that requires only legal performance on the part of each party, such as the sale of packs of cards to a known gambler, where gambling is illegal, will nonetheless be enforceable. A contract directly linked to the gambling act itself, such as paying off gambling debts (see proximate cause), however, will not meet the legal standards of enforceability. Therefore an employment contract between a blackjack dealer and a speakeasy manager, is an example of an illegal agreement and the employee has no valid claim to his anticipated wages if gambling is illegal under that jurisdiction.

Contractual Capacity

- Contractual Capacity is the ability for an individual to have the capacity to enter into a contract.
- A contract cannot be binding if a party does not have the capacity. For example, one could not enter into a contract with an infant because the infant would not have the contractual capacity to enter into a contract.
- **Minors** --In most states a minor is an individual under the age of 18.
- Minors have the option of making a contract void.
- **Disaffirmation** - Minors have the right to avoid a contract in their minority and for a limited amount of time after they reach their majority. If a minor does not disaffirm the contract within a reasonable amount of time after they reach majority, then the contract may be ratified.

Breach of Contract

- When any party to a contract, whether oral or written, fails to perform any of the contract's terms, they may be found in breach of contract.
- While there are many ways to breach a contract, common failures include failure to deliver goods or services, failure to fully complete the job, failure to pay on time, or providing inferior goods or services.
- In other words, a breach of contract is a broken promise to do or provide something.

Remedies for Breach of Contract

- When one party to the contract breaches the contract, the other party need not perform his part of the obligations.
- The aggrieved party may rescind the contract. In such cases, the injured / aggrieved party can either rescind the contract or file a suit for damages.
- In general, rescission of the contract is accompanied by a suit for damages.

The aggrieved party of the contract is entitled for monetary compensation when the contract is breached.

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- The objective of Suit for damages is to put the aggrieved / injured party in a position in which he would have been had there been performance and not breach.
- The aggrieved / injured party must be able to prove the actual loss or no damages will be awarded. Damages can be of four kinds.
- Ordinary or General Damages
- Special Damages
- Exemplary or Punitive Damages
- Nominal Damages

Contract of Sale

- Section 2(1) of the Act defines a contract of sale of goods as: a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price.
- Subsections (3) and (4) give different names to two transactions:
- (3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale.
- (4) Where under a contract of sale the transfer of the property in the goods is to take place at a future time or subject to some condition later to be fulfilled the contract is called an agreement to sell.

Conditions and Warranties

- A warranty is an express or implied statement of something which the party undertakes shall be part of a contract; and, though part of the Contract, yet collateral to the express object of it. A "condition" is not defined in the statute.
- A condition is a term which is "of the essence" of the contract or, in other words, which is “ regarded by the parties as a vital term going to the root of the contract."

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Registration of a Partnership Firm

A partnership firm can be registered whether at the time of its formation or even subsequently. You need to file an application with the Registrar of Firms of the area in which your business is located.

- Application for partnership registration should include the following information:

1. Name of your firm
2. Name of the place where business is carried on
3. Names of any other place where business is carried on
4. Date of partners joining the firm
5. Full name and permanent address of partners.
6. Duration of the firm

- Every partner needs to verify and sign the application
- Ensure that the following documents and prescribed fees are enclosed with the registration application :

1. Application for Registration in the prescribed Form – I
2. Duly filled Specimen of Affidavit
3. Certified copy of the Partnership deed

Proof of ownership of the place of business or the rental/lease agreement
there of

- It may be noted here that the name of your partnership firm should not “contain any words which may express or imply the approval or patronage of the government except where the government has given its written consent for the use of such words as part of the firm’s name”.
- Once the Registrar of Firms is satisfied that the application procedure has been duly complied with, he shall record an entry of the statement in the Register of Firms and issue a Certificate of Registration.

Rights and Duties of partner

Rights of Partners:

- (a) Every partner has a right to take part in the conduct and management of business.
- (b) Every partner has a right to be consulted and heard in all matters affecting the business of the partnership.
- (c) Every partner has a right of free access to all records, books and accounts of the business, and also to examine and copy them.
- (d) Every partner is entitled to share the profits equally.
- (e) A partner who has contributed more than the agreed share of capital is entitled to interest at the rate of 6 per cent per annum. But no interest can be claimed on capital.
- (f) Every partner is, as a rule, joint owner of the partnership property. He is entitled to have the partnership property used exclusively for the purposes of the partnership.
- (g) A partner has power to act in an emergency for protecting the firm from loss, but he must act reasonably.

Duties of Partners:

- (a) Every partner is bound to diligently carry on the business of the firm to the greatest common advantage. Unless the agreement provides, there is no salary.**
- (b) Every partner must be just and faithful to the other partners.**
- (c) A partner is bound to keep and render true, proper, and correct accounts of the partnership and must permit other partners to inspect and copy such accounts.**
- (d) Every partner is bound to indemnify the firm for any loss caused by his willful neglect or fraud in the conduct of the business.**
- (e) A partner must not carry on competing business, nor use the property of the firm for his private purposes. In both cases, he must hand over to the firm any profit or gain made by him but he must himself suffer any loss that might have occurred.**
- (f) Every partner is bound to share the losses equally with the others.**
- (g) A partner is bound to act within the scope of his authority.**

Implied Authority of Partner

A partner has the implied authority to do the following acts on behalf of his firm.

- To buy, sell and pledge goods on behalf of the firm.
- To raise loans on the security of such assets.
- To receive payments of debts due to the firm.
- To accept, make an issue bills of exchange, promissory notes, etc., on behalf of the firm.
- To engage servants for the firm's business.
- To take on lease a premises on behalf of the firm.

Mode of Dissolution of Partner

- 1. By agreement (Sec. 40)**
- 2. By notice (Sec. 43)**
- 3. On the happening of certain contingencies (Sec. 42)**
- 4. Compulsory dissolution (Sec. 41)**
- 5. Dissolution by the Court (Sec. 44)**
 - (a) Insanity**
 - (b) Permanent incapacity**
 - (c) Misconduct**
 - (d) Persistent breach of agreement**
 - (e) Transfer of interest**
 - (f) Continuous losses**
 - (g) Just and equitable**

Limited Liability of Partnership agreement

- Limited Liability Partnership enterprise, the world wide recognized form of business organization, has now been introduced in India by enacting the Limited Liability Partnership Act, 2008. LLP Act was notified on 31.03.2009.
- A Limited Liability Partnership, popularly known as LLP combines the advantages of both the Company and Partnership into a single form of organization. Limited Liability Partnership (LLP) is a new corporate form that enables professional knowledge and entrepreneurial skill to combine, organize and operate in an innovative and proficient manner.
- It provides an alternative to the traditional partnership firm with unlimited liability. By incorporating an LLP, its members can avail the benefit of limited liability and the flexibility of organizing their internal management on the basis of a mutually-arrived agreement, as is the case in a partnership firm.

Incorporation by Registration

1. When the requirements imposed by clauses (b) and (c) of sub-section (1) of section 11 have been complied with, the Registrar shall retain the incorporation document and, unless the requirement imposed by clause (a) of that sub-section has not been complied with, he shall, within a period of fourteen days—
 - a. register the incorporation document; and b. give a certificate that the limited liability partnership is incorporated by the name specified therein.
2. The Registrar may accept the statement delivered under clause (c) of sub-section (1) of section 11 as sufficient evidence that the requirement imposed by clause (a) of that sub-section has been complied with.
3. The certificate issued under clause (b) of sub-section (1) shall be signed by the Registrar and authenticated by his official seal.
4. The certificate shall be conclusive evidence that the limited liability partnership is incorporated by the name specified therein.

Incorporation Document

Section 11 - Incorporation document

1. For a limited liability partnership to be incorporated,--
 - a. two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;
 - b. the incorporation document shall be filed in such manner and with such fees, as may be prescribed with the Registrar of the State in which the registered office of the limited liability partnership is to be situated; and
 - c. there shall be filed along with the incorporation document, a statement in the prescribed form, made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the limited liability partnership and by anyone who subscribed his name to the incorporation document, that all the requirements of this Act and the rules made there under have been complied with, in respect of incorporation and matters precedent and incidental thereto.

2. The incorporation document shall--
 - a. be in a form as may be prescribed;
 - b. state the name of the limited liability partnership;
 - c. state the proposed business of the limited liability partnership;
 - d. state the address of the registered office of the limited liability partnership;
 - e. state the name and address of each of the persons who are to be partners of the limited liability partnership on incorporation;
 - f. state the name and address of the persons who are to be designated partners of the limited liability partnership on incorporation;
 - g. contain such other information concerning the proposed limited liability partnership as may be prescribed.
3. If a person makes a statement under clause (c) of sub-section (1) which he--
 - a. knows to be false; or
 - b. does not believe to be true, shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees.

Partners and their Relations

- Section 23 of the LLP Act seeks to provide that the mutual rights and duties of the partners of the LLP inter se and that of the LLP and its partners shall be governed by the LLP agreement and in absence of any such agreement, such mutual rights and duties shall be determined as set out in the First Schedule of the Act. It also seeks to empower the Central Government to prescribe, by rules, the form, manner and fees for filing the LLP agreement and informing changes therein. This clause further seeks to provide that any agreement, made before the incorporation of LLP, between the partners who subscribe their names to the incorporation document may impose obligation on LLP, if ratified by all the partners after its incorporation.

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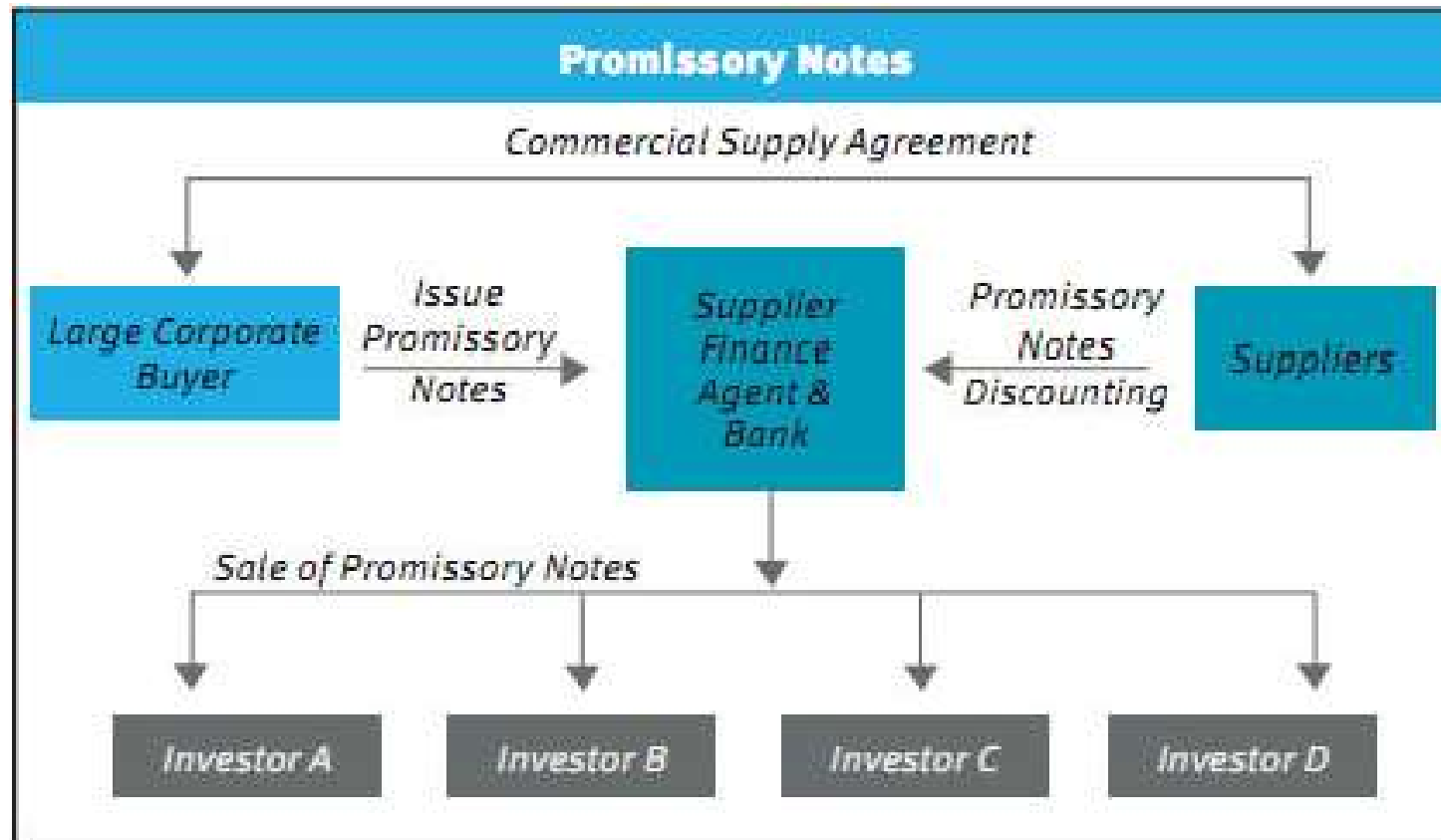
Essentials Requisites of Negotiable Instruments

A document that promises payment to a specified person or the assignee. The payee (the person who receives the payment) must be named or otherwise indicated on the instrument. A check is considered a negotiable instrument. This type of instrument is a transferable, signed document that promises to pay the bearer a sum of money at a future date or on demand. Examples also include bills of exchange, promissory notes, drafts and certificates of deposit.

Examples of negotiable instruments

- (a) Negotiable instruments recognized by statute:
 - i) Bills of exchange
 - ii) Promissory notes.
 - iii) Cheques.
- (b) Negotiable instruments recognized by usage or custom :
 - i) Hundis.
 - ii) Share warrants.
 - iii) Dividend warrants.
 - iv) Banker's drafts.
 - v) Circular notes.
 - vi) Bearer debentures.
 - vii) Debentures of Bombay port trust.
 - viii) Railway receipts.
 - ix) Delivery orders.

Promissory Note



A **promissory note**, sometimes referred to as a **note payable**, is a legal instrument (more particularly, a financial instrument, and more specifically a debt instrument), in which one party (the *maker* or *issuer*) promises in writing to pay a determinate sum of money to the other (the *payee*), either at a fixed or determinable future time or on demand of the payee, under specific terms. If the promissory note is unconditional and readily saleable, it is called a negotiable instrument.

Bill of Exchange

- Section 5 of Negotiable Instruments Act, 1881 defines a bill of exchange as “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.” A bill of exchange contains an unconditional order as opposed to unconditional promise in a promissory note. The bill must be signed by the maker, usually a creditor, who directs the debtor, to make the payment at a specified future date.

Bill of Exchange

London, 31 January 2000

Amount US\$ 250,000

At 60 days after sight

pay against this Sole Bill of Exchange

to the order of Ourselves

the sum of US Dollars Two hundred and fifty thousand

for value Received

To:

Singapore Import Banking Company
Bank Street
Singapore

Drawn under UK Export Banking
Company Ltd, Documentary Credit
Nº 12345, Dated 29 September 1999

For and on behalf of:

UK Export Company Ltd

James Smith

James Smith, Director

Drawer: The person, who draws or writes the bill, is called the drawer.

Drawee or Acceptor: The person, on whom the bill is drawn, is called the drawee.

Payee: The person, to whom the bill will be paid, is called the payee.

Cheque

- The cheque has been defined by Section 6 of Negotiable Instrument Act as “a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.”

Drawer:

- The person who draws the cheque is called the drawer of the cheque. The drawer is the accountholder of the bank.

Drawee:

- The bank on whom the cheque is drawn is called the drawee. In case of cheques, the drawee is always a bank.

Payee: The person on whom the cheque is payable is called the payee.

The diagram shows a check form with the following fields and numbered boxes pointing to them:

- Box 1:** Points to the **Date:** field.
- Box 2:** Points to the **PAY TO THE ORDER OF** field.
- Box 3:** Points to the **\$** (dollar) field.
- Box 4:** Points to the **Dollars** field.
- Box 5:** Points to the **Memo** field.
- Box 6:** Points to the **Financial Institution** field.

The check form includes the following text and fields:

YOUR NAME
YOUR ADDRESS
YOUR PHONE NUMBER

Date: _____

105

00-6879
770

PAY TO THE ORDER OF _____ **\$** _____

_____ **Dollars**

FINANCIAL INSTITUTION
 Your City, State, Zip Code

Memo _____

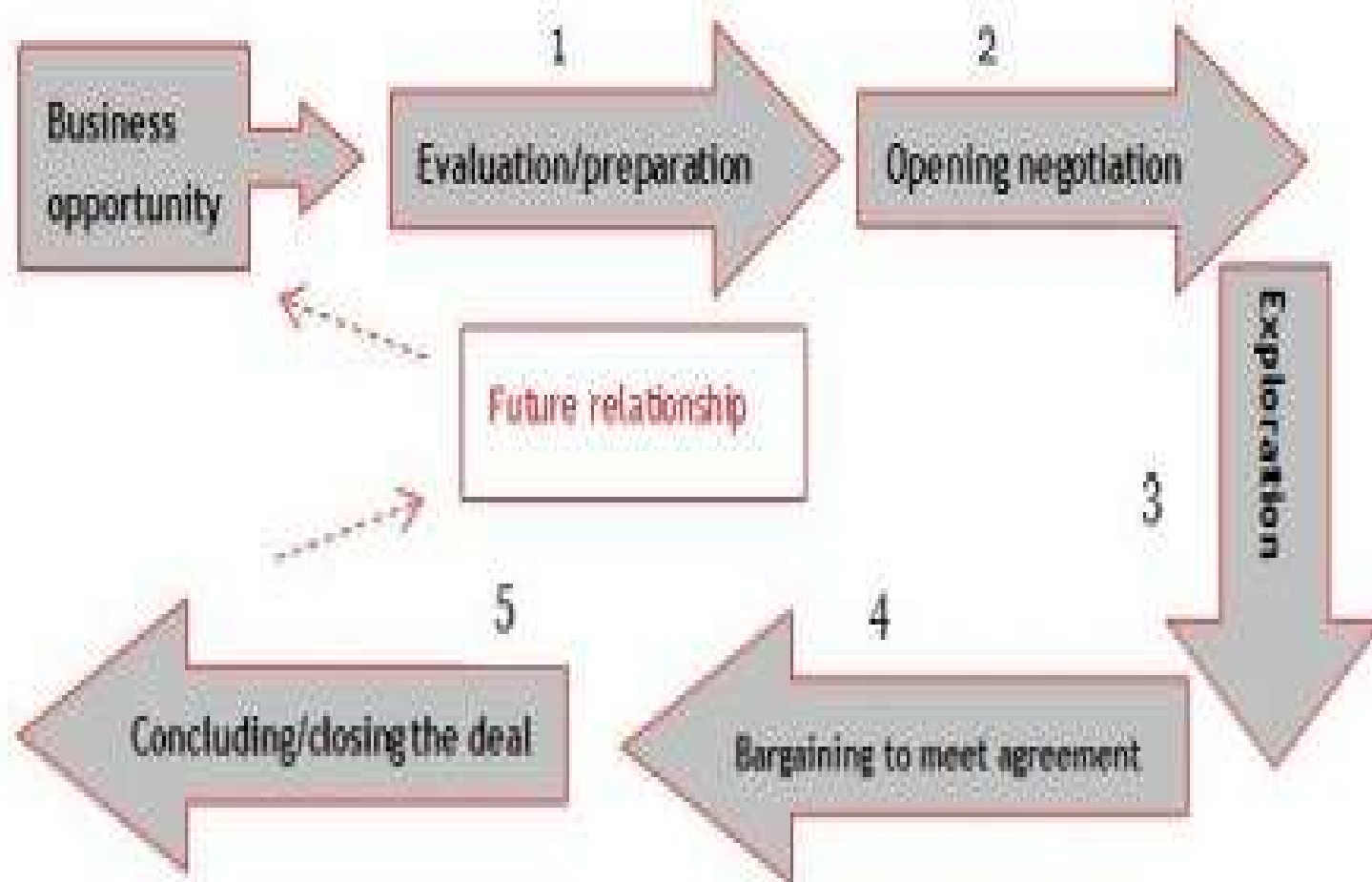
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Holder in due Course

- Holder in Due Course Holder in due course means a person who must have the possession of the instrument. This is the basic difference between the Holder and Holder in Due course. Holder in Due course must obtain the instrument in Good Faith. If the instrument bears not-negotiable crossing, then the NO person can be a holder in due course. If the instrument bears A/C payee crossing and restricted endorsement then NO person can be a holder in due course. Forgery / theft / deceit do not convey any title.

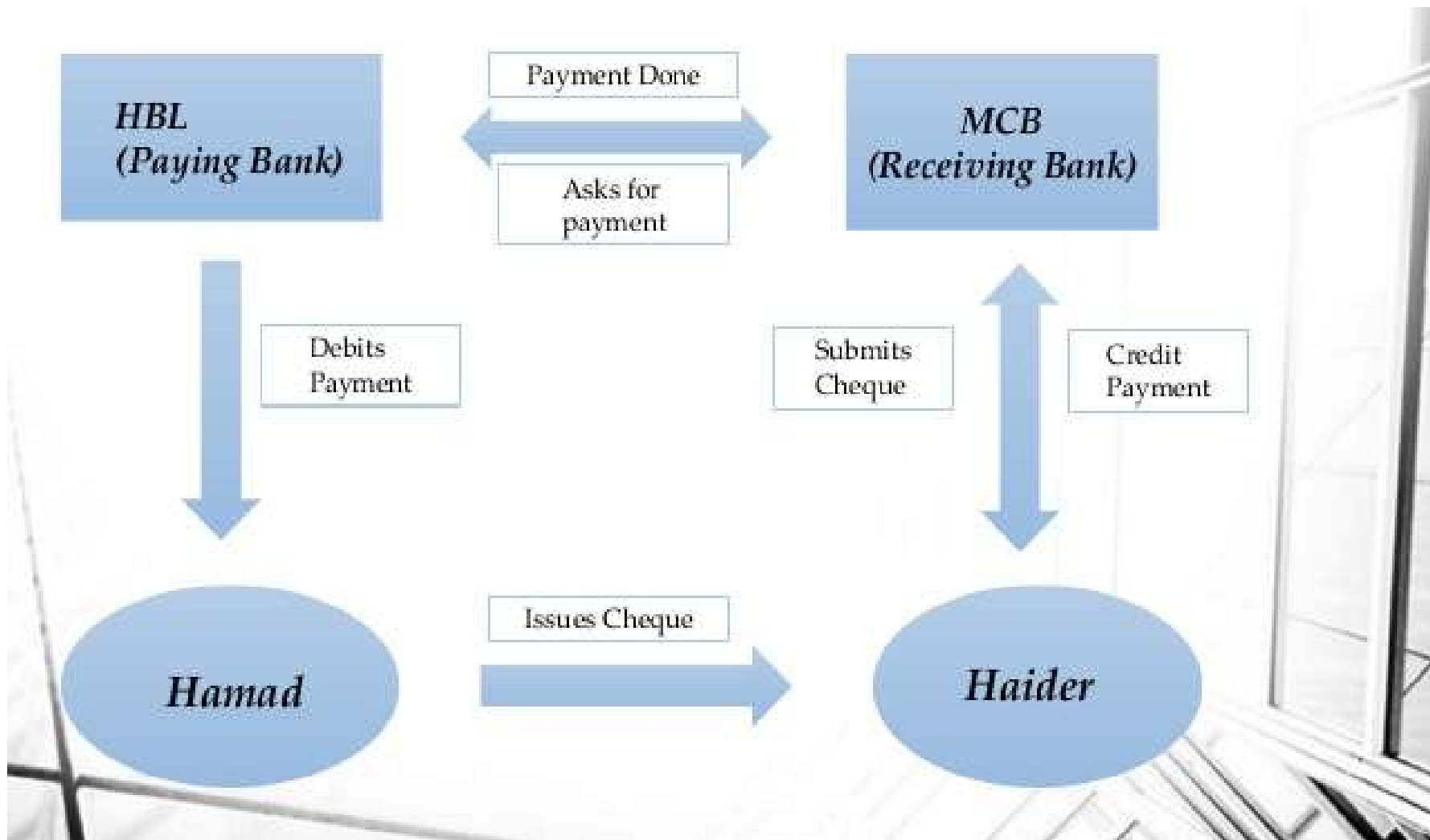
Negotiation

- The first and the most important step is the selection of the negotiating team. The outcome would be highly influenced by the members and their attitudes and approach towards the negotiation. As happens in any competitive game, the positive mind setup, collectively, is the first step towards successful negotiation.
- The team members have to act as one body, supporting each other and trusting the leader. The leader to behave authoritatively and in the best interests of the team and the organization. The team must have members selected on their past performance and knowledge in given field (technical, commercial, legal, data, etc.).



Types of Endorsement

- **Blank or genera endorsement**
- **Endorsement in full or special endorsement**
- **Partial Endorsement**
- **Restrictive endorsement**
- **Conditional endorsement**
- **Sans recourse endorsement (Sec. 52)**
- **Facultative endorsement**



Crossing of Cheque

- A cheque is a negotiable instrument. During the process of circulation, a cheque may be lost, stolen or the signature of payee may be done by some other person for endorsing it. Under these circumstances the cheque may go into wrong hands.

No. 134869	Date <u>19th August, 1986</u>
KENYA COMMERCIAL BANK	
MOI AVENUE - NAIROBI	
PAY J. Simuvu	OR ORDER SHILLINGS---
One thousand only	Sh. 1000. <u>00</u>
	100
<i>Ac/payee only not negotiable</i>	Sign W.K. Omuka
