



Intellectual Property Rights

Meaning, Types, and the Law of Patents

A visual study guide designed for clarity
and quick comprehension.

■ MEANING OF INTELLECTUAL PROPERTY

“

Every kind of intellectual property is in the nature of **‘intangible’** property. Intellectual property is the **creation of human intellect** (mind).

”

- ✓ Refers to knowledge, ideas, invention, innovation, creativity, research, etc.
- ✓ Product of the human mind (similar to any property).
- ✓ An **intangible** right exercisable in respect of a tangible work.
- ✓ Treated as a **movable property**.
- ✓ Can be **assigned and transferred**.
- ✓ **Absolute, exclusive, and legal right** under law.

■ MEANING OF INTELLECTUAL PROPERTY RIGHTS

According to World Trade Organisation (WTO), “**Intellectual Property Rights** are the rights given to persons over the creations of their minds. They usually give the creator an **exclusive right** over the use of his/her creation for a certain period of time.”



Exclusive Rights

Provides exclusive rights to the creator or inventor.



Encourages Investment

Encourages more people to invest time, efforts, and money in creations and innovations.



Broad Coverage

Covers all areas of technology, property, patents, trademarks, designs, copyrights, and so on.

■ ACTIVITIES COVERED BY WORLD INTELLECTUAL PROPERTY ORGANISATION (WIPO)

The following list of activities are laid down by WIPO:



Scientific discoveries.



Industrial designs.



Protection against unfair competition.



Literary, artistic, and scientific works.



Trademarks, service marks, commercial names, and designations.



Inventions in all fields of human endeavor.

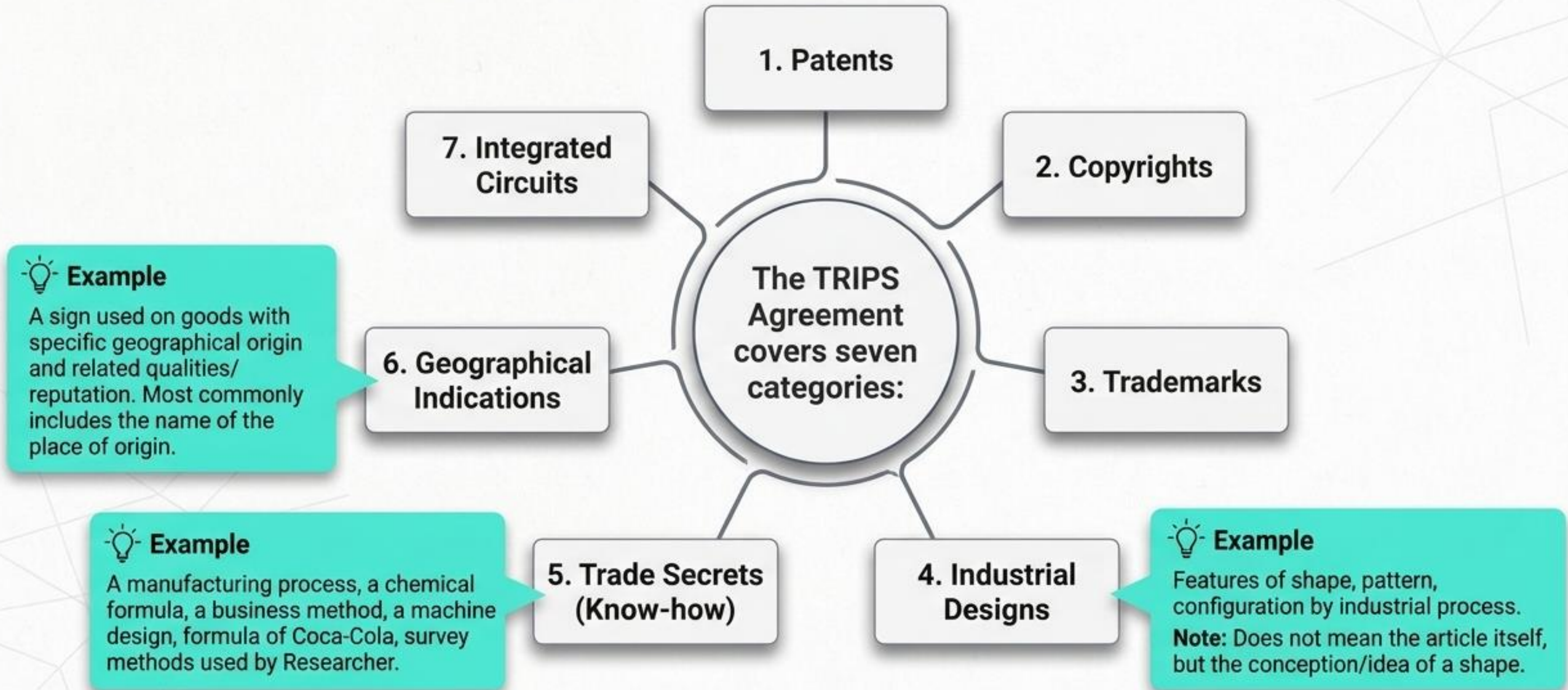


Performance of performing artists, phonograms, and broadcasts.



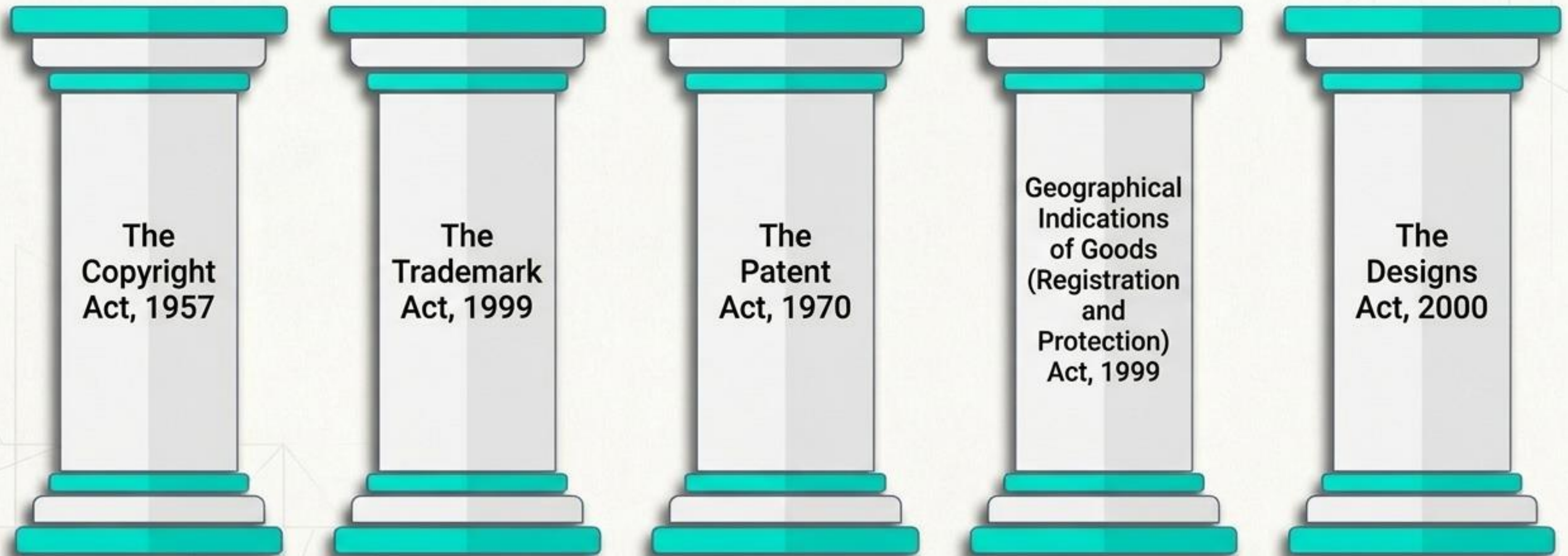
All other rights resulting from intellectual activity in the industrial, scientific, literary, or artistic fields.

■ TYPES [CATEGORIES] OF INTELLECTUAL PROPERTY RIGHTS



■ INTELLECTUAL PROPERTY RIGHTS IN INDIA

Protecting and managing intellectual property rights is the first step for any business seeking to establish its presence in India. Protected under separate laws:



■ PATENTS [GOVERNMENT LICENSE]

Origin: Latin word 'patere' meaning 'to lay open' or 'available for public usage'.

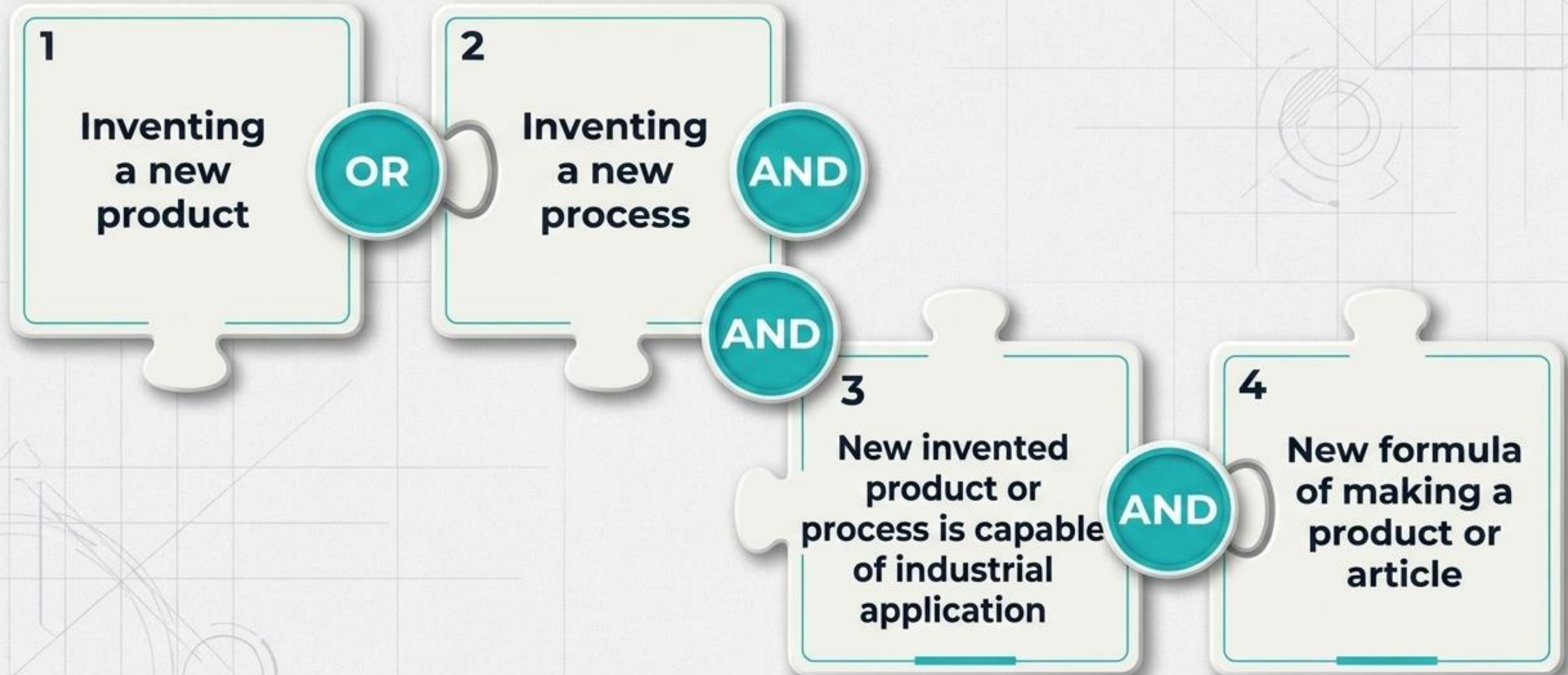
Core Concept

"Patent System is a **contract** between the inventor and authority (Government) whereby the inventor gets **exclusive rights** for a **limited period** (in India for a period of 20 years) in return for **disclosing full details** of the **invention**."

Legal Definition

'Patent' means a patent for any **invention** granted under the Act. [Section 2(m) of the Patents Act, 1970]

■ PATENT IS GRANTED FOR



■ SALIENT FEATURES OF A PATENT (Nature of Invention)

In respect of Invention

Must be in respect of invention or creation and not a discovery.

Means to create or design something new.

Case Law Example

Application of an established technique to a new target is not an inventive step (Schomberger vs. Electromagnetic 2009 RPC 571). It must involve an inventive step.

For Respective (Particular) Invention

Every single invention has its own single patent.

In respect of one single invention, there must be one single patent.

For Substance or Process

Patent may be in respect of a substance (i.e. article) or in respect of a process.

(Product or process).

Clear specifications and claims

Specifications and claims must be clearly and distinctly mentioned for obtaining a patent.

■ SALIENT FEATURES OF A PATENT (Rights & Ownership)



Exclusive right to the Inventor

Grants exclusive right for a limited period. Generally **20 years** from date of patent. (Exception: Inventions relating to manufacturing of food, drugs or medicine, it is for **7 years**).



Filed Individually or Jointly

Patent registration can be filed individually or jointly. If applied jointly by more than two persons, both will own the patent separately.



Is Property Right

A patent in the law is a property right. Hence, it can be gifted, inherited, assigned, sold or licensed.

■ GENERAL PRINCIPLES APPLICABLE TO WORKING OF PATENTED INVENTIONS

Granted to encourage inventions and secure working on a **commercial scale**.



Protection of rights contribute to the promotion of technological innovation and **transfer of technology**.



Inventor Benefits



Public Good



Not granted merely to enable patentees (patent holders) to enjoy a **monopoly** for the importation of the patented article.



Does not prohibit Central Government from taking measures to protect **public health**.



Granted to make the benefit of the patented invention available at **reasonably affordable prices** to the public.

■ INFRINGEMENT OF PATENT



Certain rights over the patented invention are violated or a third party uses such rights without the permission of the patentee (patent holder). Court considers whether it is a product or a process.

Infringement can occur in the following manners:

1. Copying the entire patented invention with minor modification / colourable variation. 
2. Using the essential ingredient of the process of the patented invention. 
3. Merely using a substitute in the invention / mechanical equivalent. 
4. Adopting essential features of an invention. 

■ REMEDIES ARE AVAILABLE AGAINST PATENT INFRINGEMENT

Penal provisions are provided to prevent infringement.

Administrative Remedy



- If infringing goods are imported into Indian Territory, approach the Collector of Customs.



- **Action:** Prevent entry into the Indian Market (must provide exporter name, consignee, port, ship name).

Civil Remedy (Injunctions)



- Requires paying court fee on damages claimed.



- **Interim Injunctions:** Granted during the pendency of the case (before full trial).



- **Permanent Injunctions:** Granted after a full-fledged trial. Stops infringement during pendency. Court may order seized, forfeited, or destroyed goods without compensation.

■ CIVIL REMEDIES: DAMAGES, PROFITS & PROVISION

Damages

-  Claim in the form of **monetary amount**.
-  Accounts for loss in money terms suffered by patent owner.
-  Loss must be natural and direct consequence of defendant's unlawful sale.

Accounts of Profits

-  Seeks account of **net profits** earned by the infringer (defendant).
-  Requires ascertaining how much of invention was actually appropriated.

Otherwise (General Provision)

-  Court may grant other reliefs it deems necessary.
-  (e.g., infringing goods/materials shall be **seized, forfeited or destroyed**).

 **WARNING:** Damages and accounts are alternative remedies. The patent owner can choose only one of them, not both. ('Accounts' is not a remedy if there are no profits).

■ BURDEN OF PROOF

General Rule (On the Patentee)

Where there is an alleged infringement of a patented invention (in the form of a product), the burden of establishing that an infringement has occurred lies on the patentee.



The Exception (Shift to Infringer)

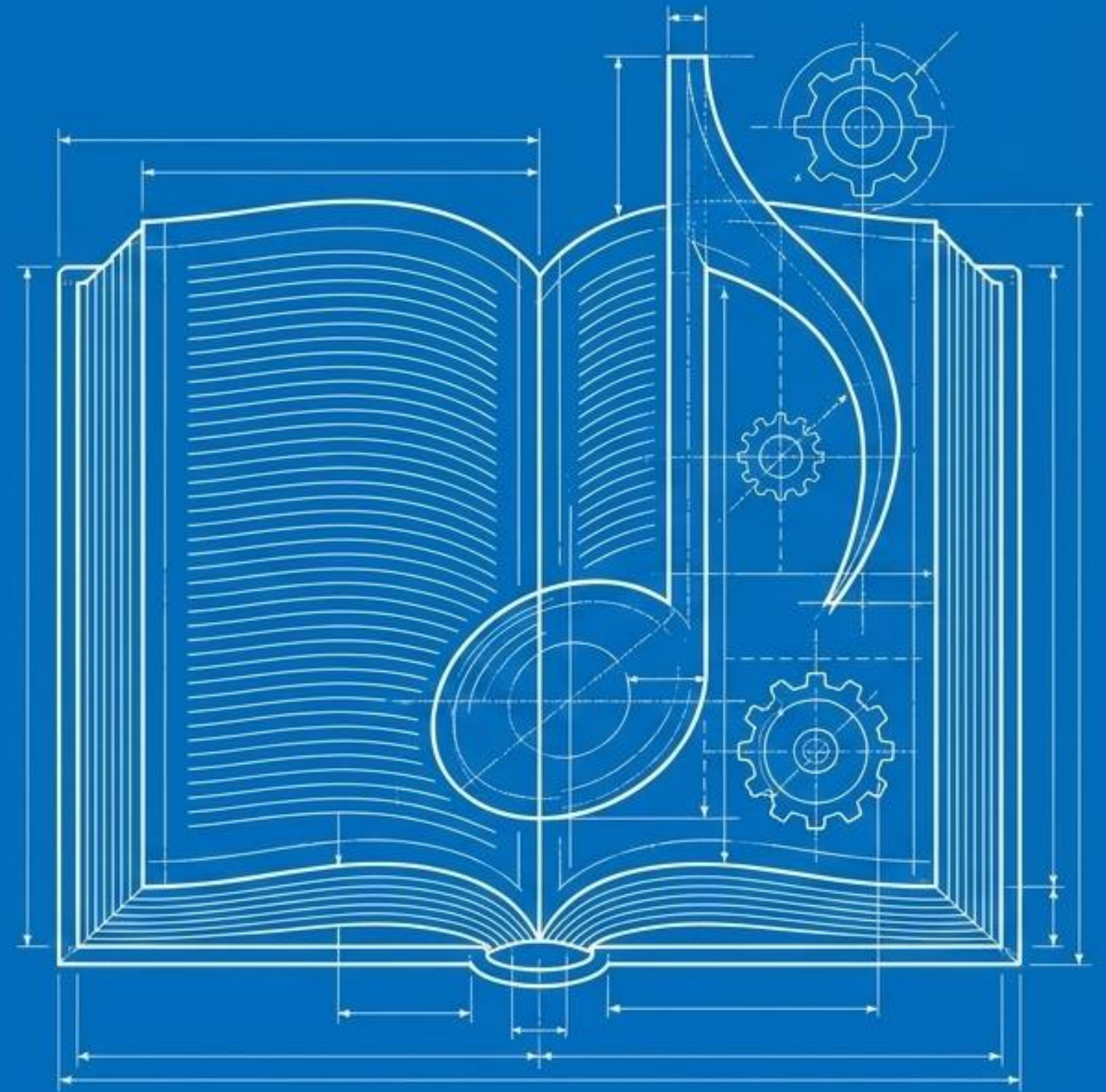
In the case of a process patent, the burden may shift to the infringer (defendant).

Condition: The patentee must prove to the court that through reasonable efforts he has not been able to determine the process which has been used by the defendant or infringer.

MODULE A

• COPYRIGHT

The Copyright Act, 1957



• Meaning of Copyright

Oxford Dictionary

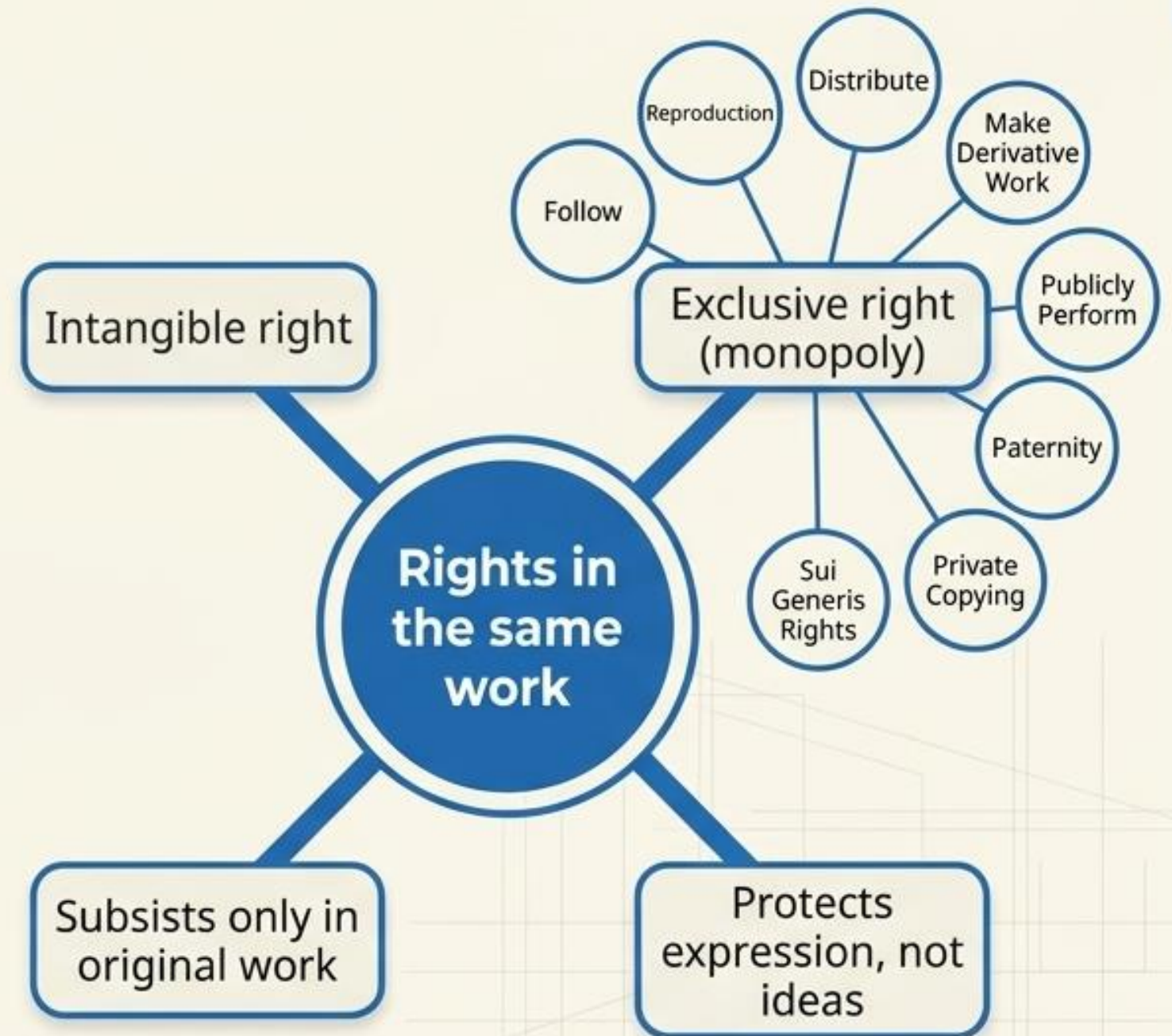
The exclusive right to publish or record a work.

Section 14

The exclusive right to do or authorise others to do certain acts in relation to:
(i) literary, dramatic or music work,
(ii) artistic work,
(iii) cinematograph film, and (iv) sound recording.

Core Concept
Intangible right granted to multiply copies and publish.

• The features of Copyright are as follows :



• Classes of Works for which Copyright Protection is Available in India (What works are protected ?)

Literary Work

Any work in written/printed manner. Includes computer programmes, tables, databases.

Example Examination Question Paper. **Univ of London Press** case → Person who sets paper with labour and skill is author.

Dramatic & Musical Work

Dramatic includes recitation, choreographic. Musical includes graphical notation, does NOT include words/action.

Example Film **Oh My God** adapted from a Gujarati play (Dramatic).

Example **BEKHAYALI** (Kabir Singh). Lyrics belong to Irshad Kamil (Literary); Musical composition to Sachet-Parampara (Composer).

Original Artistic Work

Painting, Sculpture (wood, stone, casts), Drawing (diagram, map, chart, plan), Engraving (lithographs, wood-cuts), Architecture, Artistic Craftsmanship.

Cinematograph Film & Sound Recording

Visual/sound recording. Includes video/television. Owner is the Producer.

Computer Programme

Set of instructions (words, codes, schemes). Protects source code, design, structure.

• Ownership of Copyright : [Who owes the Copyrights ?]

The ownership of Copyright vests with the Author.

Work		First Owner
Literary/Dramatic Work	→	Author of the work (Note: if under employment, proprietor is owner)
Musical Work	→	The Composer
Artistic Work	→	The Artist
Photograph	→	The person taking the Photograph
Cinematograph/Sound Recording	→	The Producer
Collective Work (books, dictionary, newspaper)	→	The person who has collected and edited the work
Computer Programme	→	Computer Programmer (Creator)
Examination Paper	→	The Paper Setter (or Board of Examination if contracted)
Government Work / Intl. Org	→	Government / International Organisation

• Duration/Terms of Copyright :

Lifetime + 60 Years

Lifetime of the author until 60 years from the beginning of the calendar year next following the year in which the author dies.

Published literary, dramatic, musical and artistic work.

Flat 60 Years (from year of publication)

Anonymous and pseudonymous works

Posthumous work

Cinematograph films

Records (Sound recording)

Government Work

Works of Public Undertakings

Works of International Organisations



Note on Photograph: By the virtue of 2012 Amendment, Section 25, Term of Copyright in photograph has been deleted.

- **Meaning of Fair Use (Fair Dealing) :**

Fair use means reasonable use. Use of copyright of another by any person for specific purpose such as research, criticism, review, reporting of current events, current affairs, lectures in public, etc.

**The nature,
extent and
quantum of
use.**

**The purpose
(commercial
or non-
commercial).**

**The likelihood
of competition
between two
works.**

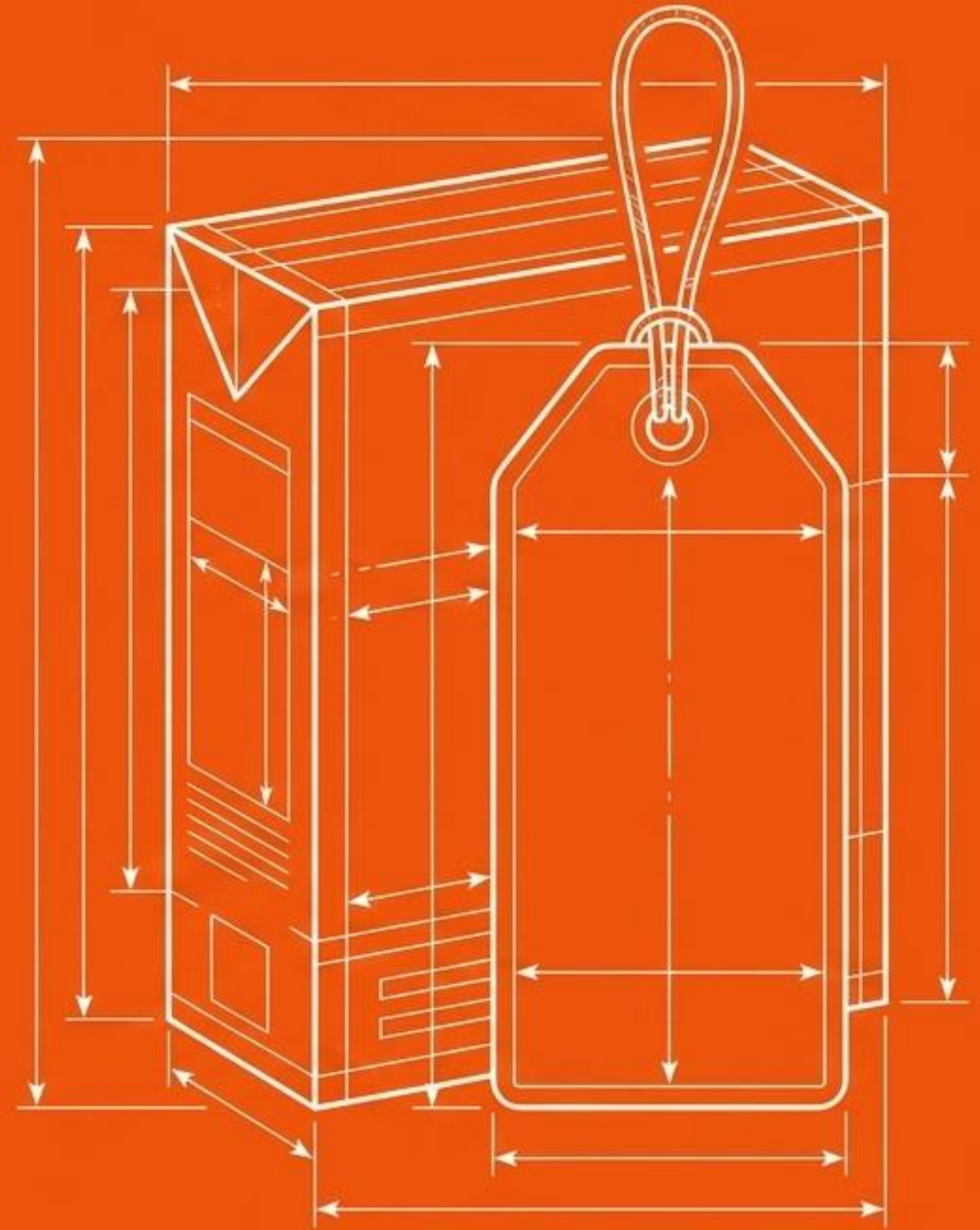
**The effect of
use upon the
potential
market value.**

The factors which determine fair use are :

MODULE B

• TRADEMARK

The Trademark Act, 1999



- **Meaning of Trademark**
- **Elements/Characteristics of a Trademark**

Meaning

Distinctive symbol that identifies products of a trader... consists of device, words, or combination.

Example: "Rexona" and "Lux" (distinguished by names for similar soap products).

Graphically Represented

Capable of graphical representation (includes shape of goods, packaging, color combinations).

Mark

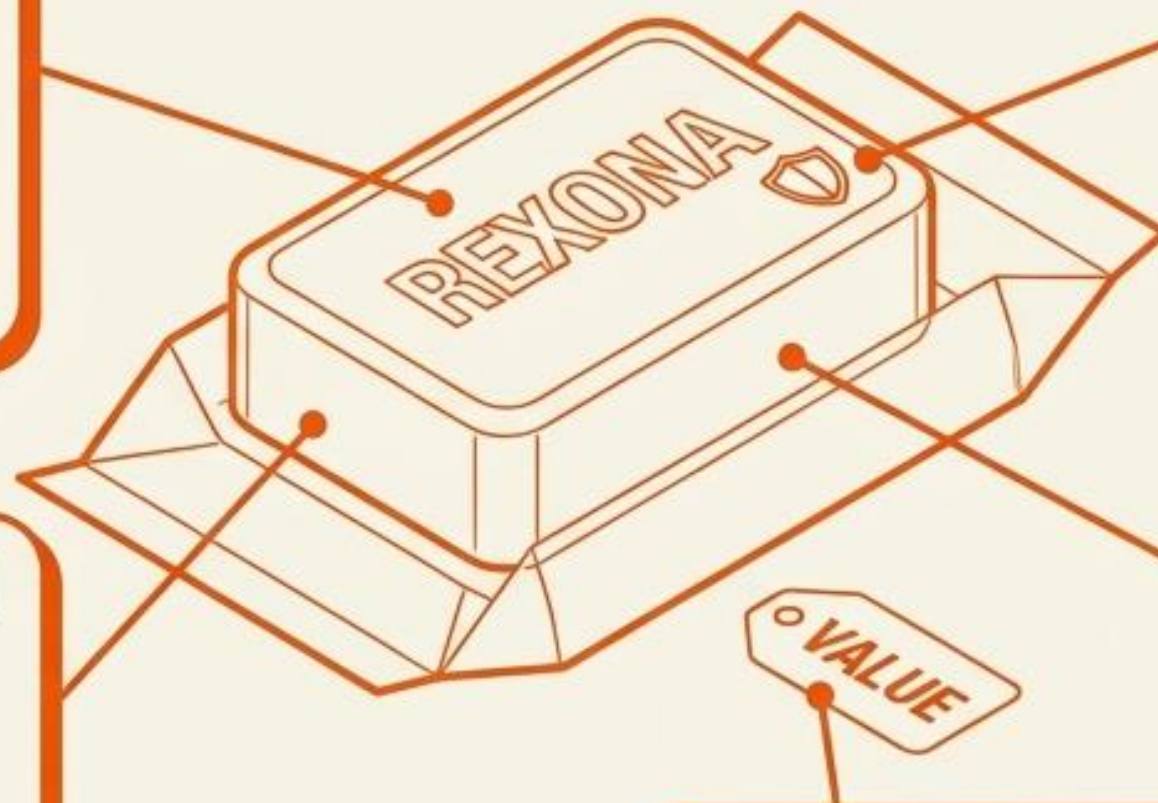
Must be a label, signature, number, letter. Preferably an invented word.

Relation to Goods

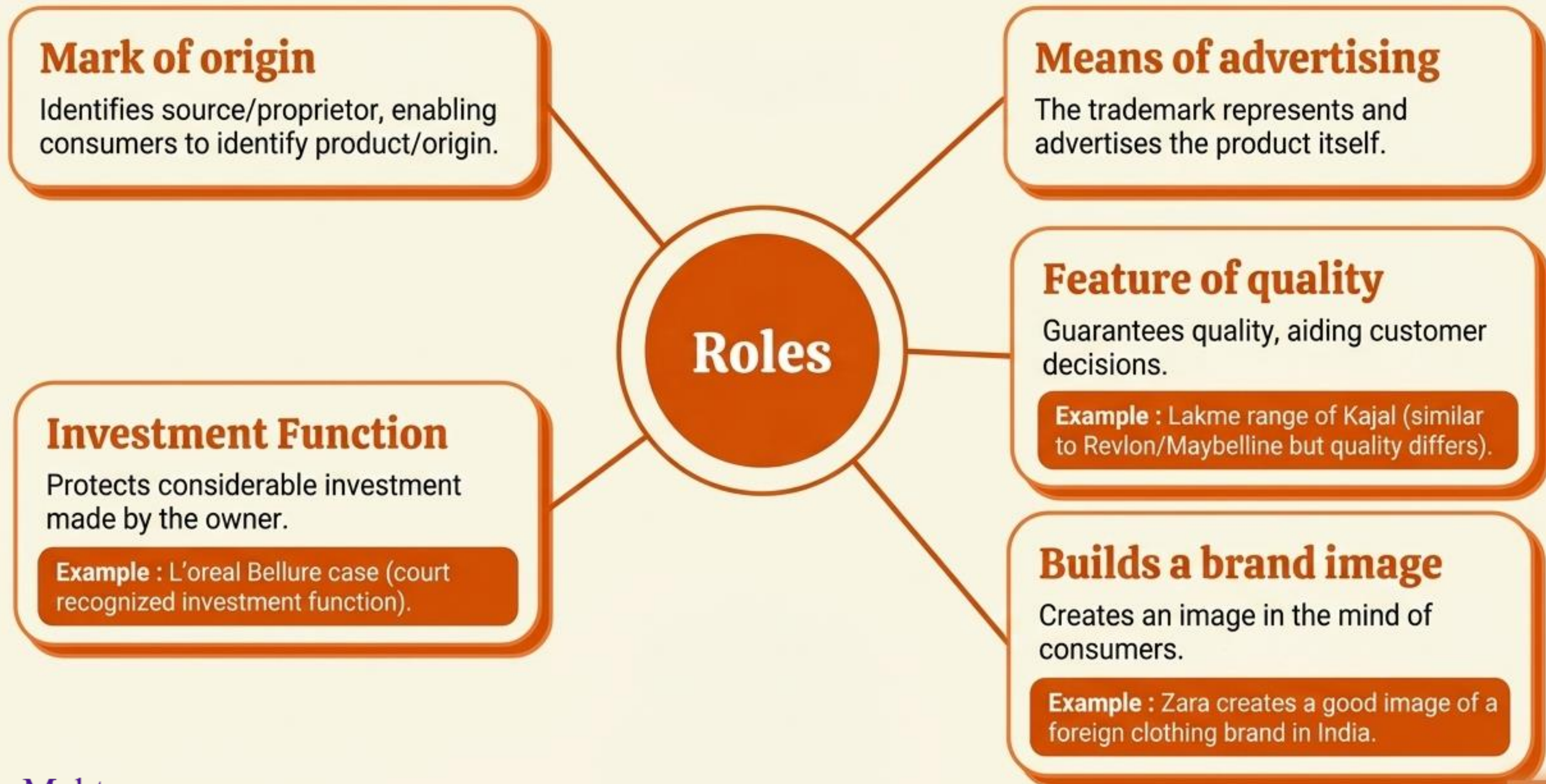
Used in relation to goods/services to show nexus.

Valuable Property

Commercial asset. Can be transferred, sold, or licensed. Protected against misuse.



• Functions of Trademark [Roles of Trademark] :



• Trademark Act 1999 :

It is a special Act. It aims to protect trademarks from misuse, deception and confusion.

Some of the features of the Trademarks Act, 1999 are :

Registration for **services** besides goods.

Does not permit **imitations**.

Factors for defining a **well known** trademark.

Simplifying procedure
(single register, simple application for >1 class).

Enlarging scope of **permitted use**.

Enhanced punishments for offences.

Providing for **Appellate Board**.

• Trademark Registration Procedure :

