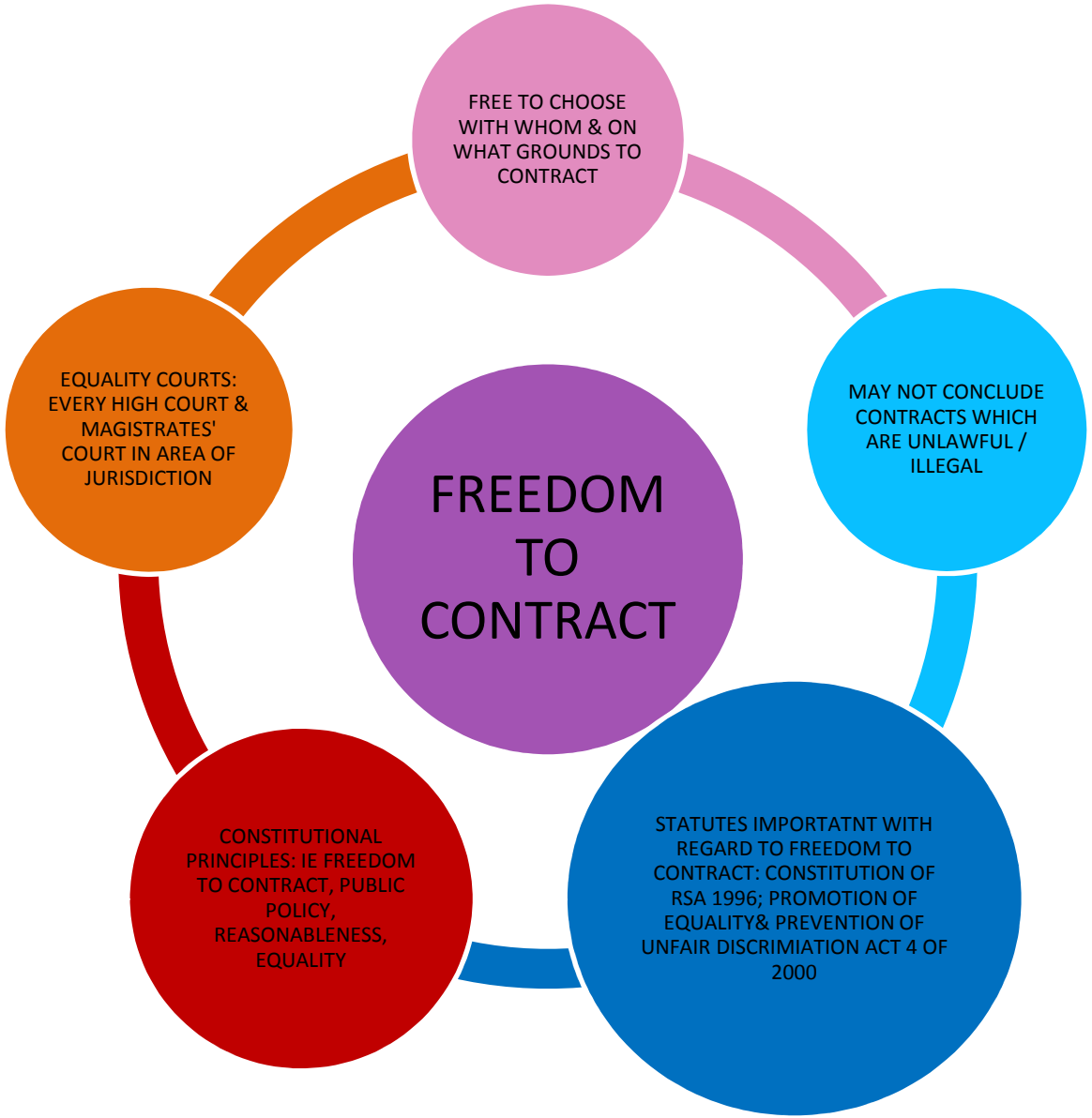
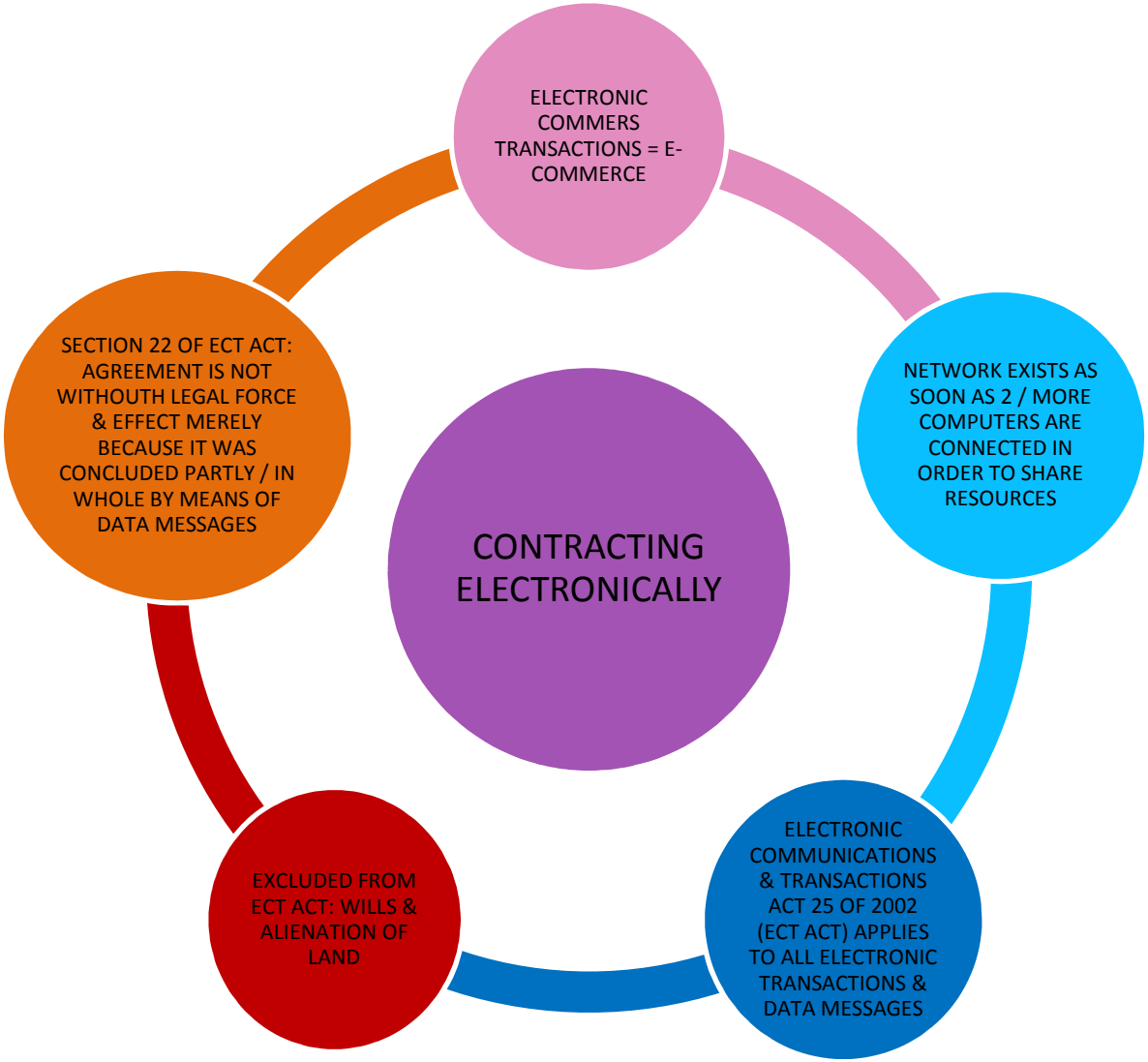
CHAPTER 3

CONTRACT AS SOURCE OF OBLIGATIONS
CONTRACT DEFINITION: AN AGREEMENT CONCLUDED BY 2 / MORE PERSONS WITH THE SERIOUS INTENTION OF CREATING LEGALLY ENFORCEABLE OBLIGATIONS
OBLIGATION: LEGAL RELATIONSHIP THAT EXITS BETWEEN PARTIES TO AN AGREEMENT WHEN THEY ACQUIRE PERSONAL RIGHTS AGAINST EACH OTHER THAT EITHER ENTITLE THEM TO PERFORMANCE &/ OBLIGE THEM TO PERFORM
CONCLUSION OF CONTRACT = EVENT GIVING RISE TO OBLIGATIONS
SPECIAL TYPE OF AGREEMENT: NOT ALL AGREEMENTS ARE CONTRACTS & NOT ALL AGREEMENTS CREATE OBLIGATIONS
DIFFERENCE BETWEEN CONTRACT & AGREEMENT LIES IN INTENTION OF PARTIES & IN DIFFERENT CONSEQUENCES ATTACHED TO AGREEMENT
2 / MORE PARTIES: PERSON CANNOT CONTRACT WITH HIMSELF UNLESS ACTS IN DIFFERENT CAPACITY ON EACH SIDE OF CONTRACT

REQUIREMENTS FOR FORMATION OF VALID CONTRACT
(A) MUST BE CONSENSUS BETWEEN PARTIES
PARTIES MUST AGREE ON OBJECTIVES OF CONTRACT. REFERRED TO AS 'TRUE AGREEMENT' / 'MEETING OF MINDS"
EACH PARTY MUST HAVE SERIOUS INTENTION TO CREATE RIGHTS & DUTIES TO WHICH EACH OF THEM WILL BE LEGALLY BOUND, THAT PARTIES MUST HAVE CORRESPONDING INTENTION, & THAT PARTIES MUST MAKE INTENTION KNOWN TO EACH OTHER
(B) EACH PARTY TO CONTRACT MUST HAVE CAPACITY TO ACT
(C) MUST BE LEGALLY POSSIBLE
(D) MUST BE PHYSICALLY POSSIBLE
POSSIBLE TO PERFORM & PERFORMANCE MUST BE CERTAIN / ASCERTAINABLE
(E) IF FORMALITIES ARE PRESCRIBED FOR FORMATION OF CONTRACT, MUST BE OBSERVED
IF REQUIREMENTS NOT MET - AGREEMENT, BUT NOT CONTRACT


FREE TO CHOOSE WITH WHOM & ON WHAT GROUNDS TO CONTRACT
MAY NOT CONCLUDE CONTRACTS WHICH ARE UNLAWFUL / ILLEGAL
STATUTES IMPORTATNT WITH REGARD TO FREEDOM TO CONTRACT: CONSTITUTION OF RSA 1996; PROMOTION OF EQUALITY& PREVENTION OF UNFAIR DISCRIMIATION ACT 4 OF 2000
CONSTITUTIONAL PRINCIPLES: IE FREEDOM TO CONTRACT, PUBLIC POLICY, REASONABLENESS, EQUALITY
EQUALITY COURTS: EVERY HIGH COURT & MAGISTRATES' COURT IN AREA OF JURISDICTION
FREEDOM TO CONTRACT


CONTRACTING ELECTRONICALLY
ELECTRONIC COMMERS TRANSACTIONS = E-COMMERCE
NETWORK EXISTS AS SOON AS 2 / MORE COMPUTERS ARE CONNECTED IN ORDER TO SHARE RESOURCES
ELECTRONIC COMMUNICATIONS & TRANSACTIONS ACT 25 OF 2002 (ECT ACT) APPLIES TO ALL ELECTRONIC TRANSACTIONS & DATA MESSAGES
EXCLUDED FROM ECT ACT: WILLS & ALIENATION OF LAND
SECTION 22 OF ECT ACT: AGREEMENT IS NOT WITHOUTH LEGAL FORCE & EFFECT MERELY BECAUSE IT WAS CONCLUDED PARTLY / IN WHOLE BY MEANS OF DATA MESSAGES