

**CA Foundation BUSINESS LAW**

**INDIAN CONTRACT ACT - 1872**

**- 22 MARK'S - DRS**

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**PAPER PATTERN**

**Question. 1 (a) – 4 Marks ( P.P )**

**Question. 2 (a) – 7 Marks ( D.Q )**

**Question. 3 (c) – 6 Marks ( P.P )**

**Question. 6 (a) – 5 Marks ( D.Q )**

**1. State the exceptions to the rule "An agreement without consideration is void".**

**Answer:** The general rule is that an agreement made without consideration is void (Section 25 of the Indian Contract Act, 1872). However, the Indian Contract Act contains certain exceptions to this rule. In the following cases, the agreement though made even without consideration, will be valid and enforceable.

**1. Natural Love and Affection:** Any written and registered agreement made on account of love and affection between the parties standing in near relationship to each other.

2. **Compensation for past voluntary services:** A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor.
3. **Promise to pay time barred debt:** A promise in writing signed by the person making it or by his authorized agent, made to pay a debt barred by limitation.
4. **Agency:** According to Section 185 of the Indian Contract Act, 1872, no consideration is necessary to create an agency.
5. **Completed gift:** In case of completed gifts, the rule no consideration no contract does not apply. Explanation (1) to Section 25 states “nothing in this section shall affect the validity as between the donor and donee, of any gift actually made.” Thus, gifts do not require any consideration.
6. **Bailment:** No consideration is required to effect the contract of bailment (Section 148).
7. **Charity:** If a promisee undertakes the liability on the promise of the person to contribute to charity, then the contract shall be valid.

**2. Explain what is meant by "Supervening Impossibility" as per the Indian Contract Act, 1872 and also state the situations which would not constitute grounds of impossibility.**

**Answer:**

**Supervening Impossibility –**

The idea of “supervening impossibility” is referred to as ‘Doctrine of Frustration’ in U.K. In order to decide whether a contract has been frustrated, it is necessary to consider the “intention of parties as are implied from the terms of contract”.

However, in India the ‘doctrine of frustration’ is not applicable.

Impossibility of performance must be considered only in terms of section 56 of the Act. Section 56 covers only ‘supervening impossibility and not implied terms’. This view was upheld by Supreme Court in *Satyabrata Ghose Vs Mugneeram Bangur*

Doctrine of frustration applies in the case of supervening impossibility, where the performance of the contract has become impossible and where the object of the contract has failed. This doctrine does not apply – where the performance simply becomes difficult / commercially impossible / impossibility induced by the act or the conduct of any person etc.

**Various situations as not constituting grounds of impossibility**

i. A promised to B that he would arrange for B’s marriage with his daughter. A could not persuade his daughter to marry B. B sued A who pleaded on the ground of impossibility that he is not liable to any damages. But it was held that there was no ground of impossibility. It was held that A should not have promised what he could not have

accomplished. Further A had chosen to answer for voluntary act of his daughter and he was liable.

ii. The defendant agreed to supply specified quantity of 'cotton' manufactured by a mill within a specified time to plaintiff. The defendant could not supply the material as the mill failed to make any production at that time. The defendant pleaded on the ground of impossibility which was not approved by the Privy Council and held that contract was not performed by defendant and he was responsible for the failure (Hamandrai Vs Pragdas 501A).

iii. The defendant agreed to procure cotton goods manufactured by Victoria Mills to plaintiff as soon as they were supplied to him by the mills. It was held by Supreme Court that the contract between defendant and plaintiff was not frustrated because of failure on the part of Victoria Mills to supply goods (Ganga Saran Vs Finn Rama Charan, A.I.R. 1952 S.C.9).

iv. A dock strike would not necessarily relieve a labourer from his obligation of unloading the ship within specified time.

v. Impossibility of performance that "having regard to the actual existence of war condition, the extent of the work involved and total absence of any definite period of time agreed to the parties, the contract could not be treated as falling under impossibility of performance.

### 3. List out the points of difference between Fraud and Misrepresentation.

**Answer:**

#### **Fraud and Misrepresentation: Differences ( Sections 17 and 18 of the Indian Contract Act, 1872 )**

**(1) Extent of Truth Varies:** In case of fraud the person making the representation knows it fully well that his statement is untrue and false. In case of misrepresentation, the person making the statement believes it to be true which might later out to be untrue. In spite of this difference, the end result is that the other party is misled.

**(2) Right of the person concerned who suffers:** Fraud not only enables the party to avoid the contract but the party is also entitled to bring action. Misrepresentation merely provides a ground for avoiding the contract and not for bringing an action in the court of law.

**(3) Action against the person making the Statement:** In order to sustain an action for deceit, there must be proof of fraud. Fraud can be proved only by showing that a false statement was made knowing it to be false or without believing it to be true or recklessly without any care of truth. One is action against deceit and the other is action for recession of the contract. In the case of misrepresentation the person may be free from blame because of his innocence but still the contract cannot stand.

**(4) Defences available to persons:** In case of misrepresentation, the fact that the plaintiff had means of discovering the truth by exercising ordinary diligence can be a good defence against the repudiation of the contract, whereas a defence cannot be set up in case of fraud other than fraudulent silence

**4. Explain the meaning of “Suit for Injunction” as per the provisions of the Indian Contract Act,1872.**

**Answer –**

**Suit For Injunction** - As per the Indian Contract Act, 1872, a suit for injunction is a remedy provided to the aggrieved party on the breach of contract. The term injunction may be defined as an order of the courts restraining a person from doing something which he promised not to do. In general, injunction is a court order by which an individual is required to perform, or is restrained from performing, a particular act. In relation to the law of contract, the injunction is a useful weapon for the purpose of encouraging performance of a contract involving personal services.

When a party makes a breach of contract, the injured party can, under certain circumstances, apply to the Court for issuing of an injunction with a view to prohibiting the party for making breach of the contract or doing something against the term of contract. The power of Court to grant injunction is discretionary. However the Courts generally grant injunctions in the following cases:

(i) **In case of clear negative stipulation:** Sometimes there is clear negative stipulation in the contract that a party will not do a particular thing. In such cases, if that party undertakes to do the same thing and makes a breach of contract, the Court may grant an injunction on the request of the aggrieved party.

(ii) **In case of inferred negative stipulation:** Where in the contract there is no clear negative stipulation but it can be inferred from it that there existed a negative stipulation, the court may also grant an injunction. But the Courts generally go by the distinct negative stipulation.

**5. Ramaswami proposed to sell his house to Ramanathan. Ramanathan sent his acceptance by post. Next day, Ramanathan sends a telegram withdrawing his acceptance. Examine the validity of the acceptance according to the Indian Contract Act, 1872 in the light of the following:**

**a. The telegram of revocation of acceptance was received by Ramaswami before the letter of acceptance.**

**b. The telegram of revocation and letter of acceptance both reached together.**

**Answer:** The problem is related with the communication and time of acceptance and its revocation. As per Section 4 of the Indian Contract Act, 1872, the communication of an acceptance is complete as against the acceptor when it comes to the knowledge of the proposer.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Referring to the above provisions:

a. Yes, the revocation of acceptance by Ramanathan (the acceptor) is valid.

b. If Ramaswami opens the telegram first (and this would be normally so in case of a rational person) and reads it, the acceptance stands revoked. If he opens the letter first and reads it, revocation of acceptance is not possible as the contract has already been concluded.

**6. "An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived". Discuss stating also the effect of anticipatory breach on contracts.**

**Answer:** An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived. When the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived, it is called Anticipatory Breach.

Section 39 of the Indian Contract Act, 1872 deals with anticipatory breach of contract and provides as follows: "When a party to a contract has refused to perform or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, but words or conduct, his acquiescence in its continuance."

Effect of anticipatory breach: The promisee is excused from performance or from further performance.

Further he gets an option:

1. To either treat the contract as "rescinded and sue the other party for damages from breach of contract immediately without waiting until the due date of performance; or
2. He may elect not to rescind but to treat the contract as still operative, and wait for the time of performance and then hold the other party responsible for the consequences of non-performance. But in this case, he will keep the contract alive for the benefit of the other party as well as his own, and the guilty party, if he so decides on re-consideration, may still perform his part of the contract and can also take advantage of any supervening impossibility which may have the effect of discharging the contract.

**7. Mr. Balwant, an old man, by a registered deed of gift, granted certain landed property to Ms. Reema, his daughter. By the terms of the deed, it was stipulated that an annuity of Rs 20, 000 should be paid every year to Mr. Sawant, who was the brother of Mr. Balwant. On the same day Ms. Reema made a promise to Mr. Sawant and executed in his favour an agreement to give effect to the stipulation. Ms. Reema failed to pay the stipulated sum. In an action against her by Mr. Sawant, she contended that since Mr. Sawant had not furnished any consideration, he has no right of action. Examining the provisions of the Indian Contract Act, 1872, decide, whether the contention of Ms. Reema is valid?**

**Answer:** In India, consideration may proceed from the promisee or any other person who is not a party to the contract. The definition of consideration as given in section 2(d) makes that proposition clear. According to the definition, when at the desire of the promisor, the promisee or any other person does something such an act is consideration. In other words, there can be a stranger to a consideration but not stranger to a contract.

In the given problem, Mr. Balwant has entered into a contract with Ms. Reema, but Mr. Sawant has not given any consideration to Ms. Reema but the consideration did flow from Mr. Balwant to Ms. Reema and such consideration from third party is sufficient to the enforce the promise of Ms. Reema, the daughter, to pay an annuity to Mr. Sawant. Further the deed of gift and the promise made by Ms. Reema to Mr. Sawant to pay the annuity were executed simultaneously and therefore they should be regarded as one transaction and there was sufficient consideration for it.

Thus, a stranger to the contract cannot enforce the contract but a stranger to the consideration may enforce it. Hence, the contention of Ms. Reema is not valid.

**8. Ajay, Vijay and Sanjay are partners of software business and jointly promises to pay Rs 6,00, 000 to Kartik. Over a period of time Vijay became insolvent, but his assets are sufficient to pay one-fourth of his debts. Sanjay is compelled to pay the whole. Decide whether Sanjay is required to pay whole amount himself to Kartik in discharging joint promise under the Indian Contract Act, 1872.**

**Answer:** As per section 43 of the Indian Contract Act, 1872, when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares. Therefore, in the instant case, Sanjay is entitled to receive Rs 50,000 from Vijay's assets and Rs 2,75,000 from Ajay.

**9. Define consideration. State the characteristics of a valid consideration.**

**Answer:** "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 abstain from doing something, such an act or abstinence or promise is called consideration for the promise."

**The essential characteristics of a valid consideration are as follows:**

1. Consideration must move at the desire of the promisor (Durga Prasad v. Baldeo)
2. It may proceed from the promisee or any other person on his behalf.



3. It may be executed or executory.
4. It may be past, present or future.
5. Consideration need not be adequate
6. Performance of what one is legally bound to perform
7. Consideration must be real and not illusory

**10. “Mere silence does not amount to fraud”. Discuss.**

**Answer:** Mere silence not amounting to fraud: Mere silence as to facts likely to affect the willingness of a person to enter into a contract is no fraud; but where it is the duty of a person to speak, or his silence is equivalent to speech, silence amounts to fraud.

It is a rule of law that mere silence does not amount to fraud. A contracting party is not duty bound to disclose the whole truth to the other party or to give him the whole information in his possession affecting the subject matter of the contract.

The rule is contained in explanation to Section 17 of the Indian Contract Act, 1872 which clearly states the position that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud.

**Exceptions to this rule:**

1. Where the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak. Duty to speak arises when one contracting party reposes trust and confidence in the other or where one party has to depend upon the good sense of the other (e.g. Insurance Contract).
2. Where the silence is, in itself, equivalent to speech.

**11. M Ltd., contract with Shanti Traders to make and deliver certain machinery to them by 30.6.2017 for Rs 11.50 lakhs. Due to labour strike, M Ltd. could not manufacture and deliver the machinery to Shanti Traders. Later, Shanti Traders procured the machinery from another manufacturer for Rs 12.75 lakhs. Due to this Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation which it can claim from M Ltd., referring to the legal provisions of the Indian Contract Act, 1872.**

**Answer:** Section 73 of the Indian Contract Act, 1872 provides for consequences of breach of contract. According to it, when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for

any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract, to be likely to result from the breach of it. Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach. It is further provided in the explanation to the section that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non - performance of the contract must be taken into account.

Applying the above principle of law to the given case, M Ltd. is obliged to compensate for the loss of Rs 1.25 lakh (i.e. Rs 12.75 minus Rs 11.50 = Rs 1.25 lakh) which had naturally arisen due to default in performing the contract by the specified date.

Regarding the amount of compensation which Shanti Traders were compelled to make to Zenith Traders, it depends upon the fact whether M Ltd., knew about the contract of Shanti Traders for supply of the contracted machinery to Zenith Traders on the specified date. If so, M Ltd is also obliged to reimburse the compensation which Shanti Traders had to pay to Zenith Traders for breach of contract. Otherwise M Ltd is not liable.

**12. A stranger to a contract cannot sue, however in some cases even a stranger to contract may enforce a claim. Explain.**

**Answer:** Stranger to a contract cannot sue is known as a “doctrine of privity of contract”. This rule is however, subject to certain exceptions. In other words, even a stranger to a contract may enforce a claim in the following cases:

- 1. In the case of trust**, a beneficiary can enforce his right under the trust, though he was not a party to the contract between the settler and the trustee.
- 2. In the case of a family settlement**, if the terms of the settlement are reduced into writing, the members of family who originally had not been parties to the settlement may enforce the agreement.
- 3. In the case of certain marriage contracts, or arrangements**, a provision may be made for the benefit of a person. The person may enforce the agreement though he is not a party to the agreement.
- 4. In the case of assignment of a contract**, when the benefit under a contract has been assigned, the assignee can enforce the contract.
- 5. Acknowledgement or estoppel** –where the promisor by his conduct acknowledges himself as an agent of the third party, it would result into a binding obligation towards third party.



**6. In the case of covenant running with the land**, the person who purchases land with notice that the owner of land is bound by certain duties affecting land, the covenant affecting the land may

**7. Contracts entered into through an agent:** The principal can enforce the contracts entered by his agent where the agent has acted within the scope of his authority and in the name of the principal.

**13. Explain the term "coercion" and describe its effect on the validity of a contract?**

**Answer:** "Coercion" is the committing or threatening to commit any act forbidden by the Indian Penal Code 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. (Section 15 of the Indian Contract Act, 1872).

It is also important to note that it is immaterial whether the Indian Penal Code, 1860 is or is not in force at the place where the coercion is employed.

**Effects on validity:** According to section 19 of the Act, when consent to an agreement is caused by coercion, the contract is voidable at the option of the party, whose consent was so caused. The aggrieved party, whose consent was so caused can enforce the agreement or treat it as void and rescind it. It is seen that in all these cases though the agreement amounts to a contract, it is voidable. The injured party might insist on being placed in the same position in which he might have been had the vitiating circumstances not been present.

Where a contract is voidable and the party entitled to avoid it decides to do so by rescinding it, he must restore any benefit which he might have received from the other party. He cannot avoid the contract and at the same time enjoy the benefit under the rescinded/avoided contract. (Section 64)

**14. Ishaan, aged 16 years, was studying in an engineering college. On 1st March, 2016 he took a loan of Rs 2 lakhs from Vishal for the payment of his college fee and agreed to pay by 30th May, 2017. Ishaan possesses assets worth Rs 15 lakhs. On due date Ishaan fails to pay back the loan to Vishal. Vishal now wants to recover the loan from Ishaan out of his assets. Decide whether Vishal would succeed referring to the provisions of the Indian Contract Act, 1872**

**Answer:** According to Section 11 of the Indian Contract Act, 1872, 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.

A person who has completed the age of 18 years is a major and otherwise he will be treated as minor. Thus, Ishaan who is a minor is incompetent to contract and any agreement with him is void [**Mohori Bibi Vs Dharmo Das Ghose 1903**].

Section 68 of the Indian Contract Act, 1872 however, prescribes the liability of a minor for the supply of the things which are the necessities of life to him. It says that though minor is not personally liable to pay the price of necessities supplied to him or money lent for the purpose, the supplier or lender will be entitled to claim the money/price of goods or services which are necessities suited to his condition of life provided that the minor has a property. The liability of minor is only to the extent of the minor's property. Thus, according to the above provision, Vishal will be entitled to recover the amount of loan given to Ishaan for payment of the college fees from the property of the minor.

**15. State the grounds upon which a contract may be discharged under the provisions of the Indian Contract Act, 1872.**

**Answer:** A Contract may be discharged either by an act of parties or by an operation of law which may be enumerated as follows:

**1. Discharge by performance which may be actual performance or attempted performance.** Actual performance is said to have taken place, when each of the parties has done what he had agreed to do under the agreement. When the promisor offers to perform his obligation, but the promisee refuses to accept the performance, it amounts to attempted performance or tender.

**2. Discharge by mutual agreement:** Section 62 of the Indian Contract Act, 1872 provides that if the parties to a contract agree to substitute a new contract for it or to refund or remit or alter it, the original contract need not to be performed. Novation, Rescission, Alteration and Remission are also the same ground of this nature.

**3. Discharge by impossibility of performance:** The impossibility may exist from its initiation. Alternatively, it may be supervening impossibility which may take place owing to (a) unforeseen change in law (b) The destruction of subject matter (c) The non-existence or non- occurrence of particular state of things (d) the declaration of war (Section 56).

**4. Discharge by lapse of time:** A contract should be performed within a specific period as prescribed in the Law of Limitation Act., 1963. If it is not performed the party is deprived of remedy at law.

**5. Discharge by operation of law:** It may occur by death of the promisor, by insolvency etc.

**6. Discharge by breach of contract:** Breach of contract may be actual breach of contract or anticipatory breach of contract. If one party defaults in performing his part of the contract on the due date, he is said to have committed breach thereof. When on the other hand, a person repudiates a contract before the stipulated time for its performance has arrived, he is deemed to have committed anticipatory breach. If one of the parties to a

contract breaks the promise the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract (Section 64).

7. A promise may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance or may accept instead of it any satisfaction he thinks fit. In other words, a contract may be discharged by remission. (Section 63).

8. When a promisee neglects or refuses to afford the promisor reasonable facilities for the performance of the promise, the promisor is excused by such neglect or refusal (Section 67).

### 16. “All contracts are agreements, but all agreements are not contracts”. Comment.

**Answer:** An agreement comes into existence when one party makes a proposal or offer to the other party and that other party gives his acceptance to it. A contract is an agreement enforceable by law. It means that to become a contract an agreement must give rise to a legal obligation i.e. duty enforceable by law. If an agreement is incapable of creating a duty enforceable by law, it is not a contract. There can be agreements which are not enforceable by law, such as social, moral or religious agreements. The agreement is a wider term than the contract. All agreements need not necessarily become contracts but all contracts shall always be agreements.

All agreements are not contracts: When there is an agreement between the parties and they do not intend to create a legal relationship, it is not a contract. For example, A invites B to see a football match and B agrees. But A could not manage to get the tickets for the match, now B cannot enforce this promise against A i.e., no compensation can be claimed because this was a social agreement where there was no intention to create a legal relationship.

All contracts are agreements: For a contract there must be two things (a) an agreement and (b) enforceability by law. Thus, existence of an agreement is a pre-requisite existence of a contract. Therefore, it is true to say that all contracts are agreements.

Thus, we can say that there can be an agreement without it becoming a contract, but we can't have a contract without an agreement.

### 17. Distinction between Void and Illegal Agreements.

**Answer:** Void and Illegal Agreements: According to Section 2(g) of the Indian Contract Act, an agreement not enforceable by law is void. The Act has specified various factors due to which an agreement may be considered as void agreement. One of these factors is unlawfulness of object and consideration of the contract i.e. illegality of the contract which makes it void. Despite the similarity between an illegal and a void agreement that in either

case the agreement is void and cannot be enforced by law, the two differ from each other in the following respects:

**1. Scope:** An illegal agreement is always void while a void agreement may not be illegal being void due to some other factors e.g. an agreement the terms of which are uncertain is void but not illegal.

**2. Effect on collateral transaction:** If an agreement is merely void and not illegal, the collateral transactions to the agreement may be enforced for execution but collateral transaction to an illegal agreement also becomes illegal and hence cannot be enforced.

**3. Punishment:** Unlike illegal agreements, there is no punishment to the parties to a void agreement.

**4. Void ab-initio:** Illegal agreements are void from the very beginning but sometimes valid contracts may subsequently become void.

**18. “To form a valid contract, consideration must be adequate”. Comment.**

**Answer:** The law provides that a contract should be supported by consideration. So long as consideration exists, the Courts are not concerned to its adequacy, provided it is of some value. The adequacy of the consideration is for the parties to consider at the time of making the agreement, not for the Court when it is sought to be enforced (*Bolton v. Modden*). Consideration must however, be something to which the law attaches value though it need not be equivalent in value to the promise made.

According to Explanation 2 to Section 25 of the Indian Contract Act, 1872, an agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

**19. “Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of contract whereas Penalty on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties”. Explain.**

**Answer:** Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of contract. This estimate is agreed to between parties to avoid at a later date detailed calculations and the necessity to convince outside parties. Penalty on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties.

In terms of Section 74 of the Act “where a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damages or loss is proved to have been caused thereby, to receive from the other party who has broken the contract, a reasonable compensation not exceeding the amount so named, or as the case may be the penalty stipulated for.

**Explanation to Section 74**

A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

In terms of Section 74, courts are empowered to reduce the sum payable on breach whether it is ‘penalty’ or “liquidated damages” provided the sum appears to be unreasonably high.

**Sri Chunnilal vs. Mehta & Sons Ltd (Supreme Court):** Supreme Court laid down the ratio that the aggrieved party should not be allowed to claim a sum greater than what is specific in the written agreement. But even then the court has powers to reduce the amount if it considers it reasonable to reduce.

**20. Explain the meaning of ‘Contingent Contracts’ and state the rules relating to such contracts.**

**Answer:** Essential characteristics of a contingent contract: A contract may be absolute or contingent. A contract is said to be absolute when the promisor undertakes to perform the contract in all events. A contingent contract, on the other hand “is a contract to do or not to do something, if some event, collateral to such contract does or does not happen (Section 31). It is a contract in which the performance becomes due only upon the happening of some event which may or may not happen. For example, A contracts to pay B Rs10,000 if he is elected President of a particular association. This is a contingent contract. The essential characteristics of a contingent contract may be listed as follows:

1. There must be a contract to do or not to do something,
2. The performance of the contract must depend upon the happening or non-happening of some event.
3. The happening of the event is uncertain.
4. The event on which the performance is made to depend upon is an event collateral to the contract i.e. it does not form part of the reciprocal promises which constitute the contract. The event should neither be a performance promised, nor the consideration for the promise.
5. The contingent event should not be the mere will of the promisor. However, where the event is within the promisor’s will, but not merely his will, it may be a contingent contract.

**The rules regarding the contingent contract are as follows”**

1. Contingent contract dependent on the happening of an uncertain future cannot be enforced until the even has happened. If the even becomes impossible, such contracts become void. (Sec.32).
2. Where a contingent contract is to be performed if a particular event does not happening performance can be enforced only when happening of that even becomes impossible (Sec. 33).
3. If a contract is contingent upon, how a person will act at an unspecified time the even 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. (Section 34,35).
4. The contingent contracts to do or not to do anything if an impossible event happens, are void whether or not the fact is known to the parties (Section 36).

**21. Explain the-term ‘Quasi Contracts’ and state their characteristics.**

**Answer:** Under certain special circumstances obligation resembling those created by a contract are imposed by law although the parties have never entered into a contract. Such obligations imposed by law are referred to as ‘Quasi-contracts’. Such a contract resembles with a contract so far as result or effect is concerned but it has little or no affinity with a contract in respect of mode of creation. These contracts are based on the doctrine that a person shall not be allowed to enrich himself unjustly at the expense of another. The salient features of a quasi-contract are :

1. It does not arise from any agreement of the parties concerned but is imposed by law.
2. Duty and not promise is the basis of such contract.
3. The right under it is always a right to money and generally though not always to a liquidated sum of money.
4. Such a right is available against specific person(s) and not against the whole world.
5. A suit for its breach may be filed in the same way as in case of a complete contract.

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