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- RTP - May' 18 to June' 23.
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- Mock test papers

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## Swiftscans – CA foundation Indian Contract Act, 1872

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**R**amaswami 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.  
**(RTP Nov' 18)**



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. This acceptance can be revoked by the acceptor before the acceptance letter reaches the proposer. However once the letter of acceptance reaches the proposer the acceptance cannot be revoked. Thus whichever he receives first shall be valid. In case he receives both together whichever he reads first shall be valid.

In the above case Ramaswami proposed to sell his house to Ramanathan. Ramanathan sent his acceptance by post. Later he sends a telegram revoking his acceptance.

- a) If the telegram is received by Ramaswami before the acceptance letter the revocation is valid.
- b) If both the letter of acceptance and the telegram of revocation reach together whichever Ramaswami reads first shall be valid. 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.



“All contracts are agreements, but all agreements are not contracts”. Comment.  
(MT)/ (MT)



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. duly enforceable by law. If an agreement is incapable of creating enforceability, 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. 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.



**X** agrees to pay Y 1,00,000/-, if Y kills Z. To pay Y, X borrows 1,00,000/- from W, who is also aware of the purpose of the loan. Y kills Z but X refuses to pay. X also to repay the loan to W. Explain the validity of the contract.

- i. Between X and Y.
- ii. Between X and W (Dec' 22)



As per the provisions of the Indian Contract Act, 1872, any agreement which is forbidden by law is illegal in nature. As per section 10 the object of any contract must be lawful. If it is unlawful it is void. Further any agreement which is collateral to an illegal agreement is also tainted with illegality and hence void.

In the above case X agreed to pay Y 1 lakh if Y kills Z. to pay this 1 lakh he borrowed from W. Y killed Z but X refuses to pay. Since the contract between X and Y is illegal Y cannot enforce it. Further the contract between X and W is collateral to an illegal agreement and hence void.

Therefore

- i. The contract between X and Y is illegal
- ii. The contract between X and W is void.

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Mr. Joy owns two flats in a building. He wanted to sell flat no.101 to Mr. Roy. Mr. Joy offered to sell his flat no. 101 to Mr. Roy, but Mr. Roy thought that Mr. Joy wanted to sell flat no. 102 and said yes for the agreement. Considering the provisions of Indian Contract Act, 1872, discuss the validity of such a contract. (MT)



As per Section 10 of Indian Contract Act, 1872 one of the essential elements of valid contract is free consent. Consent is an express willingness or giving voluntary permission or agreeing to something. Section 13 further clarify "two or more persons are said to consent when they agree upon the same thing in the same sense". When both the parties do not agree to the same thing in the same sense the contract is void ab initio.

In the present case, Mr Joy, who owns two flats, wanted to sell flat no. 101 to Mr Roy. On the other hand Mr Roy agreed to purchase thinking he will buy flat no. 102. Here both the parties have given a free consent but they are not consenting for the same thing in the same sense.

Hence, both the parties did not have mutual consent for the contract; therefore it is not a valid contract.



**Define offer. Explain the essentials of a valid offer. How an offer is different from an invitation to offer? (RTP Nov' 19)**



Offer as defined under Section 2(a) of the Indian Contract Act, 1872 “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”.

The following are essentials of an offer: -

- i. Must be capable of creating legal relation.
- ii. Must be certain, definite and not vague.
- iii. Must be communicated.
- iv. Must be made with a view to obtaining the assent of the other party
- v. May be conditional
- vi. Offer should not contain a term the non-compliance of which would amount to acceptance
- vii. May be general or specific
- viii. May be expressed or implied
- ix. A statement of price is not an offer

**Offer and an Invitation to an offer:**

1. offer means final expression of willingness by the offeror to be bound by the offer should the other party chooses to accept it. On the other hand, offers made with the intention to negotiate or offers to receive offers are known as invitation to offer.
2. Offer is made with the object of getting the consent of the offeree whereas invitation to offer is made with an intention to get the offer from the other person.
3. An offer can be accepted by the offeree. An invitation to offer cannot be accepted by the person to whom it is made.
4. Offer when accepted becomes an agreement. Invitation to offer cannot be accepted at all.



A shop-keeper displayed a pair of dress in the show room and a price tag of 2000 was attached to the dress. Ms. Lovely looked at the tag and rushed to the cash counter. Then she asked the shop keeper to receive the payment and pack up the dress. The shopkeeper refused to hand over the dress to Ms. Lovely in consideration of the price stated in the price tag attached to the dress. Ms. Lovely seeks your advice whether she can sue the shopkeeper for the above cause under the Indian Contract Act, 1872. (Nov' 18)



As per the provisions of The Indian Contract Act, 1872 a person making an invitation to offer does not make an offer rather invites the other party to make an offer. The object of invitation is to show he is willing to deal with any person who on the basis of this invitation is ready to enter into a contract. In the case of Harvey V. Facey the privy council explained the difference between an offer and invitation to offer and stated that quoting of price is not an offer. Any person acting such quotation is not accepting it but making an offer which if accepted shall result in a contract.

In the above case a dress was displayed at the shop window with a price tag of 2,000. Ms. Lovely intending to buy it makes the payment and asks the shopkeeper to pack it. The shopkeeper refuses to sell it. As the price tag on the dress was just an invitation to offer the shopkeeper was not bound to sell the dress to Ms. Lovely on her offer to buy.

Thus Ms. Lovely cannot sue the shopkeeper.



Shambhu Dayal started “self service” system in his shop. Smt. Prakash entered the shop, took a basket and after taking articles of her choice into the basket reached the cashier for payments. The cashier refuses to accept the price. Can Shambhu Dayal be compelled to sell the said articles to Smt. Prakash? Decide as per the provisions of the Indian Contract Act, 1872. (MT Mar’ 19)/ (MT)/ (MT)



As per the provisions of The Indian Contract Act, 1872 a person making an invitation to offer does not make an offer rather invites the other party to make an offer. The object of invitation is to show he is willing to deal with any person who on the basis of this invitation is ready to enter into a contract. It was held in the case of Pharmaceutical Society of Great Britain V Cash Boot Chemist that all self service shops are invitation to offer. The goods on display is not an offer rather the shop invites the public to make the offer. Anyone from the public who approaches the cashier’s desk is making the offer.

In the above case Shambhu Dayal had a self service shop. Smt. Prakash selected all the goods and approaches the desk. The cashier refuses to accept the price. As the goods on display is an invitation to offer the cashier is not bound to sell the goods.

Thus if the cashier does not accept the price, the interested buyer cannot compel him to sell.





**Mr.** Aseem is a learned advocate. His car was stolen from his house. He gave an advertisement in newspaper that he will give the reward of 10,000 who will give the information about his car. Mr. Vikram reads the advertisement and on making some efforts got the stolen car and informed Mr. Aseem. Mr. Aseem found his car but denied giving reward of 10,000 to Mr. Vikram with the words, “An advertisement in newspaper is just an invitation to make offer and not an offer. Hence, he is not liable to make the reward.” State with reasons whether under Indian Contract Act, 1872, Mr. Vikram can claim the reward of 10,000. **(RTP May’ 22)**



An invitation to offer is an act precedent to making an offer and is different from offer. Quotations, menu cards, price tags, advertisements in newspaper for sale are not offer. These are merely invitations to public to make an offer. Acceptance of an invitation to an offer does not result in the contract and only an offer emerges in the process of negotiation. However there is an exception to above provisions. When advertisement in newspaper is made for reward, it is the general offer to public.

In the above case, Mr. Aseem’s car was stolen from his house. He gave an advertisement in newspaper that he will give the reward of 10,000 who will give the information about his car. Mr. Vikram reads the advertisement and on making some efforts got the stolen car and informed Mr. Aseem. Mr. Aseem denied giving reward of 10,000 to Mr. Vikram with the words, “An advertisement in newspaper is just an invitation to make offer and not an offer. Hence, he is not liable to make the reward.” Since the advertisement is made for a reward it is a valid offer.

Therefore Mr Aseem is liable to pay 10,000 to Mr. Vikram.



Rahul goes to super market to buy a washing machine. He selects a branded washing machine having a price tag of 15000 after a discount of 3000. Rahul reaches at cash counter for making the payment, but cashier says, “Sorry sir, the discount was upto yesterday. There is no discount from today. Hence you have to pay 18000.” Rahul got angry and insists for 15000. State with reasons whether under Indian Contract Act, 1872, Rahul can enforce the cashier to sale at discounted price i.e. 15000. (MT)/ (MT)



An invitation to offer is different from offer. Quotations, menu cards, price tags, advertisements in newspaper for sale are not offer. These are merely invitations to public to make an offer. An invitation to offer is an act precedent to making an offer. Acceptance of an invitation to an offer does not result in the contract and only an offer emerges in the process of negotiation.

In the instant case, Rahul reaches to super market and selects a washing machine with a discounted price tag of 15000 but cashier denied to sale at discounted price by saying that discount is closed from today and request to make full payment. Rahul insists to buy at discounted price. On the basis of above provisions and facts, the price tag with washing machine was not offer. It is merely an invitation to offer. Hence, it is the Rahul who is making the offer not the super market. Cashier has right to reject the Rahul’s offer.

Therefore, Rahul cannot enforce cashier to sale at discounted price.



Mr Pratham applied for a job as principal of a school. The school management decided to appoint him. One member of the school management committee privately informed Mr Pratham that he was appointed but official communication was not given from the school. Later, the management of the school decided to appoint someone else as a principal. Mr Pratham filed a suit against the school for cancellation of his appointment and claimed damages for loss of salary. State with reasons, will Mr Pratham be successful in suit filed against school under the Indian Contract Act, 1872? (RTP Dec' 21)



As per the provisions of the Indian Contract Act, 1872, one of the rules of acceptance is that the acceptance should be communicated to offeror by offeree himself or his authorized agent. Communication of acceptance by third person cannot be concluded in valid acceptance.

In the instant case, Mr. Pratham applied for a job as principal of a school and one member of the school management committee privately informed Mr. Pratham that he was appointed. Later, the management of the school appointed someone else as a principal. As the communication of appointment of Mr. Pratham should be made by school management committee or any authorised agent, communication by third person i.e. a member of the school committee cannot be termed as communication of acceptance.

Therefore, no valid contract was formed between Mr. Pratham and school and Mr. Pratham cannot file a suit against the school for cancellation of his appointment.



A sends an offer to B to sell his second-car for 1,40,000 with a condition that if B does not reply within a week, he (A) shall treat the offer as accepted. Is A correct in his proposition? What shall be the position if B communicates his acceptance after one week? (RTP Nov' 19)



As per the provisions of the Indian Contract Act, 1872 an offer when made must not contain a term the non compliance of which would amount to acceptance. So the offeror cannot put a condition that if the offeree does not does not fulfill a specified condition it shall be deemed that the offeree has accepted the offer. Further acceptance to an offer cannot be implied merely from the silence of the offeree, even if it is expressly stated in the offer itself. Unless the offeree has by his previous conduct indicated that his silence amounts to acceptance, it cannot be taken as valid acceptance.

In the given case A sends an offer to B to sell his car with a condition that if B does not reply A will consider the offer accepted. As offer cannot contain such a condition B's silence cannot be treated as acceptance.

Thus B's silence does not result into a contract between A and B. even if B accepts the offer is not a valid contract as the offer is not valid.



Comment on the following statements:

- a) Acceptance must be absolute and unqualified.
- b) Acceptance must be in the prescribed mode. (RTP May' 19)



**(a) Acceptance must be absolute and unqualified:** As per section 7 of the Indian Contract Act, 1872 acceptance is valid only when it is absolute and unqualified and is also expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it must be accepted. If the proposal prescribes the manner in which it must be accepted, then it must be accepted accordingly.

Example: 'A' enquires from 'B', "Will you purchase my car for 2 lakhs?" If 'B' replies "I shall purchase your car for 2 lakhs, if you buy my motorcycle for 50000/ here 'B' cannot be considered to have accepted the proposal. If on the other hand 'B' agrees to purchase the car from 'A' as per his proposal subject to availability of valid Registration Certificate / book for the car, then the acceptance is in place though the offer contained no mention of R.C. book. This is because expecting a valid title for the car is not a condition. Therefore, the acceptance in this case is unconditional.

**(b) Acceptance must be in the prescribed mode:** Where the mode of acceptance is prescribed in the proposal, it must be accepted in that manner. But if the proposer does not insist on the proposal being accepted in the manner prescribed after it has been accepted otherwise, i.e., not in the prescribed manner, the proposer is presumed to have consented to the acceptance.

Example: If the offeror prescribes acceptance through messenger and offeree sends acceptance by email, there is no acceptance of the offer if the offeror informs the offeree that the acceptance is not according to the mode prescribed. But if the offeror fails to do so, it will be presumed that he has accepted the acceptance and a valid contract will arise.



Define the term acceptance under the Indian Contract Act, 1872. Explain the legal rules regarding a valid acceptance. (Jan' 21)



In terms of Section 2(b) of the Indian Contract Act, 1872 the term acceptance is defined as “When the person to whom the proposal is made signifies his assent thereto, proposal is said to be accepted. The proposal, when accepted, becomes a promise”.

The following are the legal Rules regarding a valid acceptance:

1. Acceptance can be given only by the person to whom offer is made. In case of a specific offer, it can be accepted only by the person to whom it is made. In case of a general offer, it can be accepted by any person who has the knowledge of the offer.
2. Acceptance must be absolute and unqualified: As per section 7 of the Act, acceptance is valid only when it is absolute and unqualified and is also expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it must be accepted. If the proposal prescribes the manner in which it must be accepted, then it must be accepted accordingly.
3. The acceptance must be communicated: To conclude a contract between the parties, the acceptance must be communicated in some perceptible form. Further when a proposal is accepted, the offeree must have the knowledge of the offer made to him. If he does not have the knowledge, there can be no acceptance. The acceptance must relate specifically to the offer made. Then only it can materialize into a contract.
4. Acceptance must be in the prescribed mode: Where the mode of acceptance is prescribed in the proposal, it must be accepted in that manner. But if the proposer does not insist on the proposal being accepted in the manner prescribed after it has been accepted otherwise, i.e., not in the prescribed manner, the proposer is presumed to have consented to the acceptance.
5. Time: Acceptance must be given within the specified time limit, if any, and if no time is stipulated, acceptance must be given within the reasonable time and before the offer lapses.
6. Mere silence is not acceptance: The acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer, unless the offeree has in any previous conduct indicated that his silence is the evidence of acceptance.
7. Acceptance by conduct/ Implied Acceptance: Section 8 of the Act lays down that “the performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, constitutes an acceptance of the proposal. This section provides the acceptance of the proposal by conduct as against other modes of acceptance i.e. verbal or written communication. Therefore, when a person performs the act intended by the proposer as the consideration for the promise offered by him, the performance of the act constitutes acceptance.



State the various modes of revocation of offer under the Indian Contract Act, 1872.  
(MT 1)

OR

Explain the modes of revocation of an offer as per the Indian Contract Act, 1872  
(Nov' 18)



Section 6 of the Indian Contract Act, 1872 deals with various modes of revocation of offer. An offer may be revoked in any of the following ways:-

- a) **By notice of revocation:** if the offeror after making the offer gives a notice of the revocation of the same before it is accepted by the offeree, the offer shall stand revoked.
- b) **By lapse of time:** The time for acceptance can lapse if the acceptance is not given within the specified time and where no time is specified, then within a reasonable time. This is for the reason that proposer should not be made to wait indefinitely. It was held in *Ramsgate Victoria Hotel Co Vs Montefiore*, that a person who applied for shares in June was not bound by an allotment made in November. This decision was also followed in *India Cooperative Navigation and Trading Co. Ltd. Vs Padamsey Premji*. However these decisions now will have no relevance in the context of allotment of shares since the Companies Act, 2013 has several provisions specifically covering these issues.
- c) **By non fulfillment of condition precedent:** in case the offer is conditional and the acceptor fails to fulfill a condition precedent to acceptance the proposal gets revoked. This principle is laid down in Section 6 of the Act. The offeror for instance may impose certain conditions such as executing a certain document or depositing certain amount as earnest money. Failure to satisfy any condition will result in lapse of the proposal. As stated earlier 'condition precedent' to acceptance prevents an obligation from coming into existence until the condition is satisfied. Suppose where 'A' proposes to sell his house to be 'B' for 5 lakhs provided 'B' leases his land to 'A'. If 'B' refuses to lease the land, the offer of 'A' is revoked automatically.
- d) **By death or insanity:** Death or insanity of the proposer would result in automatic revocation of the proposal but only if the fact of death or insanity comes to the knowledge of the acceptor.

- e) **By counter offer:** when the offeree accepts the offer but with certain modification it is a counter. Such counter offer shall result in the lapse of the original offer. Say A agrees to sell his bike to B for 40,000. B replies that he is willing to buy it but only for 35,000. The reply of B amounts to a counter offer resulting in the lapse of the offer made by A.
- f) **By the non acceptance of the offer according to the prescribed or usual mode:** Where the mode of acceptance is prescribed in the proposal, it must be accepted in that manner. Non acceptance of the offer in the prescribed mode is not a valid acceptance resulting in the lapse of the offer. If the offeror prescribes acceptance through messenger and offeree sends acceptance by email, there is no acceptance of the offer
- g) **By subsequent illegality**





Mr B makes a proposal to Mr S by post to sell his house for 10 lakhs and posted the letter on 10<sup>th</sup> April 2020 and the letter reaches to Mr S on 12<sup>th</sup> April 2020. He reads the letter on 13<sup>th</sup> April 2020. Mr S sends his letter of acceptance on 16<sup>th</sup> April 2020 and the letter reaches Mr B on 20<sup>th</sup> April 2020. On 17<sup>th</sup> April Mr S changed his mind and sends a telegram withdrawing his acceptance. Telegram reaches to Mr B on 19<sup>th</sup> April 2020. Examine with reference to the Indian Contract Act, 1872:

- i. On which date, the offer made by Mr B will complete?
- ii. Discuss the validity of acceptance.
- iii. What would be validity of acceptance if letter of revocation and letter of acceptance reached together?(Jan' 21)



According to Section 4 of the Indian Contract Act, 1872, “the communication of offer is complete when it comes to the knowledge of the person to whom it is made”. When a proposal is made by post, its communication will be complete when the letter containing the proposal reaches the person to whom it is made. Further, mere receiving of the letter is not sufficient, he must receive or read the message contained in the letter.

Where a proposal is accepted by a letter sent by the post, in terms of Section 4 of the Act, the communication of acceptance will be complete as against the proposer when the letter of acceptance is posted and as against the acceptor when the letter reaches the proposer.

The acceptor can revoke his acceptance any time before the letter of acceptance reaches the offeror, if the revocation telegram arrives before or at the same time with the letter of acceptance, the revocation is absolute.

In the given question, Mr B makes a proposal by post to Mr S to sell his house. The letter was posted on 10<sup>th</sup> April 2020 and the letter reaches to Mr S on 12<sup>th</sup> April 2020 but he reads the letter on 13<sup>th</sup> April 2020. Mr S sends his letter of acceptance on 16<sup>th</sup> April 2020 and the letter reaches Mr B on 20<sup>th</sup> April 2020. On 17<sup>th</sup> April Mr S changed his mind and sends a telegram withdrawing his acceptance. Telegram reaches to Mr B on 19<sup>th</sup> April 2020.

Thus,

- i. The offer made by Mr B will complete on the day when Mr S reads the letter, i.e. 13th April 2020.
- ii. The communication of acceptance as against Mr B is complete on 16<sup>th</sup> April 2020, when the letter is posted. As against Mr S acceptance will be complete, when the letter reaches Mr B i.e. 20<sup>th</sup> April 2020. The acceptor, will be bound by his acceptance only when the letter of acceptance has reached the proposer. The telegram for revocation of acceptance reached Mr B on 19<sup>th</sup> April 2020 i.e. before the letter of acceptance of offer (20<sup>th</sup> April 2020). Hence, the revocation is absolute. Therefore, acceptance to an offer is invalid.
- iii. It will not make any difference even if the telegram of revocation and letter of acceptance would have reached on the same day, i.e. the revocation then also would have been absolute. As per law, acceptance can be revoked anytime before the communication of acceptance is complete. Since revocation was made before the communication of acceptance was complete and communication can be considered as complete only when the letter of acceptance reaches the proposer i.e. Mr B.



Define consideration. State the characteristics of a valid consideration. (RTP Nov' 18)/ MT Mar' 19)/ Nov' 19)/ (MT)/ (MT)



As per section 2(d) of the Indian Contract Act, 1872 consideration has been defined as “When at the desire of the promisor, the promisee or any other person has done, or does or abstains from doing of 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: Consideration must be offered by the promisee or any other third party at the request of the promisor. Any act done at the desire of the third party is not a consideration. A saves S's goods from fire without being asked by S. He cannot claim remuneration from S for saving the goods.
2. It may proceed from the promisee or any other person on his behalf: The definition of consideration makes it clear that consideration may move from the promisee or any other party. When at the desire of the promisor the promisee or any other party does any act it is valid. Thus there can be a stranger to consideration but not a stranger to a contract.
3. It may be executed or executory: consideration which consists of an act which is already performed it is called as executed consideration. When the consideration consists of only mutual exchange of promises it is executory.
4. It may be past, present or future: the definition recognizes past consideration to be a valid consideration. Past consideration must move by a previous request. General principle of consideration is given and accepted in exchange and hence a subsequent promise can never be the real consideration of a subsequent promise. However in case of services rendered in the past at the request of the promisor then a subsequent promise for such act shall be a valid consideration. A does the work for B at B's desire. After 10 days B makes a promise to A to compensate A for the services rendered such past consideration shall be valid and A can sue B if B does not get the consideration.
5. Consideration need not be adequate: Consideration need not be of any particular value nor an approximate value with the promise for which it is exchanged. It should however be of some value. Something in return need not be equal to something given.
6. Performance of what one is legally bound to perform: the performance of act by a person which he is already legally bound to do cannot be consideration of the contract. So promise to pay a witness is void. However if a person is not legally bound to do something and agrees to do it then consideration paid for it shall be valid.
7. Consideration must be real and not illusory:



“To form a valid contract, consideration must be adequate”. Comment. (MT 1 MT Nov’ 19)/ (RTP May’ 21)/ (MT)



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.

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.



**M**r. 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 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? **(RTP Nov' 18)**



**C**onsideration as defined u/s 2(d) means “when at the desire of the promisor, the promisee or any other person does something such an act is consideration.” In light of the definition consideration may proceed from the promisee or any other person who is not a party to the contract. In other words, there can be a stranger to a consideration but not stranger to a contract.

In the given problem, Mr. Balwant has made a registered gift deed in favour of Ms. Reema for some property on the condition that she would pay annuity to Mr. Sawant. Mr. Sawant has not given any consideration to Ms. Reema but the consideration did flow from Mr. Balwant to Ms. Reema. Such consideration from third party is sufficient to enforce the promise of Ms. Reema, to pay an annuity to Mr. Sawant.

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



A stranger to a contract cannot sue, however in some cases even a stranger to contract may enforce a claim. Explain. (RTP May' 18)

Or

“Only a person who is party to a contract can sue on it”. Explain this statement and describe its exceptions, if any. (RTP May' 20)



**D**octrine of privity of contract states that only the party to the contract can sue and be sued, third party cannot sue. If a contract is entered between two parties which is later breached the other party to the contract has a right to enforce this contract that is sue the other party but a third party cannot enforce the same 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 be enforced by the successor of the seller.
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.



Mr. Sohanlal sold 10 acres of his agricultural land to Mr. Mohanlal on 25<sup>th</sup> September 2018 for 25 Lakhs. The Property papers mentioned a condition, amongst other details, that whosoever purchases the land is free to use 9 acres as per his choice but the remaining 1 acre has to be allowed to be used by Mr. Chotelal, son of the seller for carrying out farming or other activity of his choice. On 12<sup>th</sup> October, 2018, Mr. Sohanlal died leaving behind his son and life. On 15<sup>th</sup> October, 2018 purchaser started construction of an auditorium on the whole 10 acres of land and denied any land to the son. Now Mr. Chotelal wants to file a case against the purchaser and get a suitable redressed. Discuss the above in light of provisions of Indian Contract Act, 1872 and decide upon Mr. Chotelal's plan of action? (N' 19)/ (MT May' 20)



As per the provisions of the Indian Contract Act, 1872 a contract can be enforced by the parties to the contract and a third party cannot enforce such a contract. Though consideration can be provided by a third party, a third party cannot enforce the contract. However there are certain exceptions to this rule. One such exception is in case of covenants running with the land. In such a case if a buyer purchases a land which he knows is subject to certain conditions, the successor of the seller can enforce such a contract.

In the above case, Mr. Sohanlal sold his land to Mr. Mohanlal. The contract had a condition that Mohanlal could use 9 acres of land for any purpose but remaining 1 acre of land shall be used by the seller's (Sohanlal) son. Mohanlal used the entire land for construction of an auditorium and refused the land to the son Chotelal. As this is a covenant running with the land, Chotelal being the successor can enforce the contract and get the land even though he had no contract with Mohanlal.

Hence, Mr. Chotelal is entitled to file a petition against Mr. Mohanlal for execution of contract.



**E**xplain the following statements in the light of provisions of Indian Contract Act, 1872:

- i. "Agreements made out of love and affection are valid agreements."
- ii. "Promise to pay a time barred debt cannot be enforced." (**Dec' 22**)



**A**greements made out of love and affection are valid agreements: A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g., husband and wife) to each other is enforceable even without consideration. The various conditions to be fulfilled as per Section 25(1) of the Indian Contract Act, 1872:

- a) It must be made out of natural love and affection between the parties.
- b) Parties must stand in near relationship to each other.
- c) It must be in writing.
- d) It must also be registered under the law.

Hence, the agreements made out of love and affection, without consideration, shall be valid, if the above conditions are fulfilled.

**Promise to pay a time barred debt cannot be enforced:** According to Section 25(3) of the Indian Contract Act, 1872, where a promise in writing signed by the person making it or by his authorised agent, is made to pay a debt barred by limitation is valid without consideration. Hence, this statement is not correct.

**Note:** The above statement can be correct also on the basis of the "Discharge of Contract by Lapse of time" as per Limitation Act, 1963, and accordingly it can be mentioned that contract should be performed within a specified period as prescribed by the Limitation Act, 1963 and if no action is taken by the promisee within the specified period of limitation, he is deprived of remedy at law.





“No consideration, no contract” Comment. (RTP May’ 19)/ (MT 2)

OR

State the exceptions to the rule “an agreement without consideration is void”. (May’ 18)/ (May’ 22)

OR

What do you understand by the term 'Consideration'? Are there any circumstances under which a contract, under the provisions of the Indian Contract Act, 1872, without consideration is valid? Explain. (RTP Nov’ 19)/ (Jan’ 21)



**No consideration, no contract:** Every agreement, to be enforceable by law must be supported by valid consideration. An agreement made without any consideration is void. A gratuitous promise may form a subject of a moral obligation and may be binding in honour but it does not cause a legal responsibility. No consideration, no contract is a general rule. However, Section 25 of the Indian Contract Act, 1872 provides some exceptions to this rule, where an agreement without consideration will be valid and binding. These exceptions are as follows:

- a) **Agreement made on account of natural love and affection:** Section 25 (1) provides that if an agreement is (i) in writing (ii) registered under the law and (iii) made on account of natural love and affection (iv) between the parties standing in a near relation to each other, it will be enforceable at law even if there is no consideration. Thus, where A, for natural love and affection, promises to give his son, B, ₹ 10,000 in writing and registers it. This is a valid contract.
- b) **Compensation for services voluntarily rendered:** A promise to compensate, wholly or in part, a person who has already voluntarily done something for the Promisor is a valid contract. The following essential factors must exist for such promise: i. Services should be rendered voluntarily ii. Services have been rendered for the Promisor iii. Promisor was in existence when the services were rendered iv. Promisor intended to compensate Thus when A finds B's purse and gives it to him and B promises to give A ₹ 50, this is a valid contract.
- c) **Promise to pay time-barred debts [Section 25 (3)]:** Where there is an agreement, made in writing and signed by the debtor or by his agent, to pay wholly or in part a time barred debt, the agreement is valid and binding even though there is no consideration. If A owes B ₹ 1,000 but the debt is lapsed due to time-bar and A further makes a written promise to pay ₹ 500 on account of this debt, it constitutes a valid contract.
- d) **Contract of agency (Section 185):** No consideration is necessary to create an agency.
- e) **Completed gift (Explanation 1 to Section 25):** A completed gift needs no consideration. Thus, if a person transfers some property by a duly written and registered deed as a gift he cannot claim back the property subsequently on the ground of lack of consideration.
- f) **Bailment (Section 148):** No consideration is required to effect the contract of bailment.



Father promised to pay his son a sum of rupee one lakh if the son passed C.A. examination in the first attempt. The son passed the examination in the first attempt, but father failed to pay the amount as promised. Son files a suit for recovery of the amount. State along with reasons whether son can recover the amount under the Indian Contract Act, 1872. **(MT 2)**



According to section 10 to form a valid contract there should be an intention to create legal relationship between the parties. Agreements of a social nature or domestic nature do not contemplate legal relationship and as such are not contracts, which can be enforced. This principle has been laid down in the case of *Balfour v. Balfour*. Further to create a contract it must be supported by some consideration. A contract without consideration is void ab initio.

In the above case the father promised to pay a sum of 1,00,000 to his son if he passed his CA exams in the first attempt. The son passed the exams but the father failed to pay his the money. In this contract there was no legal relation between the father and son as it was a domestic agreement. Also there is no consideration from the son to his father and so the contract also lacks consideration.

Accordingly, applying the above provisions and the case decision, in this case son cannot recover the amount of Rs. 1 lakh from father.



Mr. Ramesh promised to pay 50,000 to his wife Mrs. Lali so that she can spend the sum on her 30<sup>th</sup> birthday. Mrs. Lali insisted her husband to make a written agreement and the agreement was registered under the law. Mrs. Ramesh failed to pay the specified amount to his wife Mrs. Lali. Mrs. Lali wants to file a suit against Mr. Ramesh and recover the promised amount. Referring to the applicable provisions of the Indian Contract Act, 1872. Advice whether Mrs. Lali will succeed.



As per the provisions of the Indian Contract Act, 1872 to make a valid contract it must be supported by consideration and must intend to create a legal relationship. The court in the case of Balfour V. Balfour held that a domestic or a social agreement do not create a legal relationship. Further a contract which is not supported by consideration is void ab intio. However section 25 lays down the cases where a contract without consideration may be formed and shall be binding on the parties. In this case where a contract:

- i. Is in writing
  - ii. registered under the law
  - iii. made on account of natural love and affection and
  - iv. between the parties standing in a near relation to each other,
- it will be enforceable at law even if there is no consideration.

In the above case Mr. Ramesh promised to give his wife a sum of 30,000 for his birthday. The wife Mrs. Lali got the promise in writing and got it registered. The contract though not supported by consideration was made on account of love and affection and was written and registered. Hence the contract between Mr. Ramesh and his wife Mrs. Lali is valid and enforceable.

Thus if Mrs. Lali will sue Mr. Ramesh she will succeed.



**Mr** Ram Lal Birla was a big businessman of city Pune having two sons and one married daughter. He decided to gift his one house to his daughter. For this purpose, he called his lawyer at his house and made a written document for such gift. The lawyer advised him to get the transfer document properly registered. When they both were going for registration of document, they met with an accident and both of them died. Later, his daughter found the document and claimed the house on the basis of that document. Explain, whether she can get the house as gift under the Indian Contract Act, 1872? **(RTP Dec' 21)/ (MT)/ (RTP June' 23)**



Section 25 of Indian Contract Act, 1872 provides that an agreement made without consideration is valid if

- i. it is expressed in writing and registered under the law for the time being in force for the registration of documents and
- ii. is made on account of natural love and affection
- iii. between parties standing in a near relation to each other.

In the instant case, Mr Ram Lal Birla decided to gift his one house to his daughter. He had made a written document for that purpose but while going for registration of document, they met with an accident and both of them died. Later, his daughter found the document and claimed the house on the basis of that document. Though the transfer of house was made on account of natural love and affection between the parties standing in near relation to each other is written but not registered.

Hence, this transfer is not enforceable and his daughter cannot get the house as gift.



Examine with reasons the given statement is correct or incorrect “Minor is liable to pay for the necessities supplied to him” (May’ 18)



Minor is liable to pay for the necessities supplied to him: This statement is incorrect. The case of necessities supplied to a minor or to any other person whom such minor is legally bound to support is governed by section 68 of the Indian Contract Act, 1872. A claim for necessities supplied to a minor is enforceable by law, only against minor’s estate, if he possesses. But a minor is not liable for any price that he may promise and never for more than the value of the necessities. There is no personal liability of the minor, but only his property is liable.



Mr. Shekhar wants to sell his car. For this purpose, he appoints Mr. Nadan, a minor as his agent. Mr. Shekhar instructs Mr. Nadan that car should not be sold at price less than Rs. 1,00,000. Mr. Nadan ignores the instruction of Mr. Shekhar and sells the car to Mr. Masoom for Rs. 80,000. Explain the legal position of contract under the Indian Contract Act, 1872 whether:

- i. Mr. Shekhar can recover the loss of Rs. 20,000 from Mr. Nadan?
- ii. Mr. Shekhar can recover his car from Mr. Masoom? **(MT)/ (RTP June' 23)**



According to the provisions of Section 11 of the Indian Contract Act, 1872, a minor is disqualified from contracting. A contract with minor is void-ab-initio. However a minor can act as an agent. When the minor acts as an agent he shall bind the principal by his act as but he will not be liable to his principal for his acts.

In the instant case, Mr Shekhar appoints Mr Nadan, a minor as his agent to sell his car. Mr Shekhar clearly instructed to Mr Nadan that the minimum sale price of the car should be Rs 1,00,000 yet Mr Nadan sold the car to Mr Masoom for Rs 80,000. Since Mr Nadan, a minor, was the agent he will bind Mr Shekhar, the principal by his acts but he shall not be liable to Mr Shekhar.

Thus

- i. Mr Shekhar cannot recover the loss of Rs. 20,000.
- ii. Mr Shekhar cannot recover his car from Mr. Masoom.



**R**ahul, a minor, falsely representing his age, enters into an agreement with a shopkeeper for a loan amount for purchasing a laptop. He gave his expensive watch as a security and took a loan of 40,000. He was very happy to get 40,000 and quickly went to the market and purchased a laptop worth 30,000. He happily spent the rest of the amount with his friends on a pleasure trip. Later on, Rahul realized that his watch was an expensive watch and he should not have given like this to the shopkeeper. So, he went back to the shopkeeper and asked for his watch back. Also, he refused to repay the loan amount. The shopkeeper disagrees to this and files a case against minor for recovery of the loan amount. Can the shopkeeper succeed in recovering the loan amount under the Indian Contract Act, 1872? **(RTP Dec' 21)**



As per Section 11 of Indian Contract Act, 1872, a minor is not competent to enter into any contract. Any agreement with minor is void-ab-initio means void from the very beginning. When a person forms an agreement with minor, such an agreement is devoid of any legal consequences for the person because minor cannot be enforced by law to perform his part of performance in an agreement. When a minor fraudulently enters into a contract and the contract is cancelled he can prove the fact that he is a minor and the contract is discharged on the grounds that it is void. However, if the minor intends to cheat he may have to compensate. If a minor obtains any property by fraudulently misrepresenting his age, he can be ordered to restore the property or goods thus obtained. Although no action can be taken against the minor, but if has any property (of other party) in his possession, court can order him to return the same.

In the above case, Rahul, a minor, falsely representing his age, enters into an agreement with a shopkeeper for a loan amount for purchasing a laptop. He gave his expensive watch as a security and took a loan of 40,000. He spent the rest of the amount on a pleasure trip. Later he went back to the shopkeeper and asked for his watch back and refused to repay the loan amount. Since he was minor he may prove his minority but he will have to compensate the other party.

Hence, in the present case, Rahul is not liable to repay 40,000 that he has borrowed from the shopkeeper, but he can be ordered by the court to return the laptop (which was in his possession) to the shopkeeper.



“Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor”. Discuss. (RTP May’ 18)/ (RTP Nov’ 22)



A contract with a minor is void ab initio as was held in the case of *Mohiri Bibi V. Dharmodas Ghosh*. Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor.

For example: A promissory note duly executed in favour of a minor is not void and can be sued upon by him, because he though incompetent to contract, may yet accept a benefit. As per section 30 of the Indian Partnership Act, 1932 a minor cannot become partner in a partnership firm. However, he may with the consent of all the partners, be admitted to the benefits of partnership.





Srishti, a minor, falsely representing her age, enters into an agreement with an authorised Laptop dealer Mr. Gupta, owner of SP Laptops, for purchase of Laptop on credit amounting 60,000/- for purchasing a laptop, on 1<sup>st</sup> August 2021. She promised to pay back the outstanding amount with interest @ 16% p.a. by 31<sup>st</sup> July 2022. She told him that in case she won't be able to pay the outstanding amount, her father Mr. Ram will pay back on her behalf. After One year, when Srishti was asked to pay the outstanding amount with interest she refused to pay the amount and told the owner that she is minor and now he can't recover a single penny from her. She will be adult on 1<sup>st</sup> January 2024, only after that agreement can be ratified. Explain by which of the following way Mr. Gupta will succeed in recovering the outstanding amount with reference to the Indian Contract Act, 1872.

- i. By filing a case against Srishti, a minor for recovery of outstanding amount with interest?
- ii. By filing a case against Mr. Ram, father of Srishti for recovery of outstanding amount?
- iii. By filing a case against Srishti, a minor for recovery of outstanding amount after she attains maturity? **(May' 22)**



As per Section 11 of Indian Contract Act, 1872, a minor is not competent to enter into any contract. Any agreement with minor is void-ab-initio means void from the very beginning. When a person forms an agreement with minor, such an agreement is devoid of any legal consequences for the person because minor cannot be enforced by law to perform his part of performance in an agreement.

Further a minor cannot bind the parent or guardian for any acts in the absence of any authority express or implied. The parent is liable only when the child is acting as an agent for the parent. The Act also states that a minor cannot ratify the agreement on attaining majority as the original agreement is void ab initio and a void agreement can never be ratified.

In the above case Srishti, a minor, falsely representing her age, enters into an agreement for purchase of Laptop on credit amounting 60,000/- on 1<sup>st</sup> August 2021. She promised to pay back the outstanding amount with interest @ 16% p.a. by 31<sup>st</sup> July 2022. She told him that in case she won't be able to pay the outstanding amount, her father Mr. Ram will pay back on her behalf. After One year, when Srishti was asked to pay the outstanding amount with interest she refused to pay the amount and told the owner that she is minor and now he can't recover a single penny from her. She will be adult on 1<sup>st</sup> January 2024, only after that agreement can be ratified.

Therefore

- i. Mr. Gupta will not succeed in recovering the outstanding amount by filing a case against Srishti, a minor.
- ii. Mr. Gupta will not succeed in recovering the outstanding amount by filing a case against Mr. Ram, father of Srishti as he never authorised the purchase.
- iii. Gupta will not succeed in recovering the outstanding amount by filing a case against Srishti, after she attains majority as minor's act cannot be ratified.



**X**, a minor was studying in M.Com. in a college. On 1<sup>st</sup> July, 2019 he took a loan of 1,00,000 from B for payment of his college fees and to purchase books and agreed to repay by 31<sup>st</sup> December, 2019. X possesses assets worth 9 lakhs. On due date, X fails to pay back the loan to B. B now wants to recover the loan from X out of his (X's) assets. Referring to the provisions of Indian Contract Act, 1872 decide whether B would succeed. **(RTP May' 20)**



According to section 68 of Indian Contract Act, 1872, if a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

In the above case X, a minor, took a loan of 1,00,000 from B for payment of his college fees and to purchase books. On due date, X fails to pay back the loan to B. Since the loan given to X is for the necessaries suited to the conditions in life of the minor, his assets can be sued to reimburse B.

Thus B would succeed.



A student was induced by his teacher to sell his brand new car to the latter at less than the purchase price to secure more marks in the examination. Accordingly the car was sold. However, the father of the student persuaded him to sue his teacher. State on what ground the student can sue the teacher? (RTP May' 18)/ (RTP Nov' 19)/ (RTP Nov' 22)



As per section 16 of the Indian Contract Act, 1872 a contract is said to be induced by undue influence where the relation subsisting between the parties are such that one party is in a position to dominate the will of the other and uses it to obtain an unfair advantage over the other. A person has a domination position over the other when there is a real, apparent or fiduciary relation between them. A contract induced by undue influence is voidable and can be terminated by the aggrieved party.

In the above the teacher induced the student to sell his new car at a price lesser than the purchase price to secure good marks. Here the teacher and student are in a fiduciary relation and the teacher having the dominating position is forcing the student to contract. The contract is thus induced by undue influence.

Hence the student can sue his teacher on the ground of undue influence.



Discuss the essentials of Undue Influence as per the Indian Contract Act, 1872. (N<sup>o</sup> 19)



The essentials of Undue Influence as per the Indian Contract Act, 1872 are the following:

1. **Relation between the parties:** A person can be influenced by the other when a near relation between the two exists.
2. **Position to dominate the will:** Relation between the parties exist in such a manner that one of them is in a position to dominate the will of the other. A person is deemed to be in such position in the following circumstances:
  - i. **Real and apparent authority:** Where a person holds a real authority over the other as in the case of master and servant, doctor and patient and etc.
  - ii. **Fiduciary relationship:** Where relation of trust and confidence exists between the parties to a contract. Such type of relationship exists between father and son, solicitor and client, husband and wife, creditor and debtor, etc.
  - iii. **Mental distress:** An undue influence can be used against a person to get his consent on a contract where the mental capacity of the person is temporarily or permanently affected by the reason of mental or bodily distress, illness or of old age.
  - iv. **Unconscionable bargains:** Where one of the parties to a contract is in a position to dominate the will of the other and the contract is apparently unconscionable i.e., unfair, it is presumed by law that consent must have been obtained by undue influence. Unconscionable bargains are witnessed mostly in money lending transactions and in gifts.
3. **The object must be to take undue advantage:** Where the person is in a position to influence the will of the other in getting consent, must have the object to take advantage of the other.
4. **Burden of proof:** The burden of proving the absence of the use of the dominant position to obtain the unfair advantage will lie on the party who is in a position to dominate the will of the other.



Explain the term "coercion" and describe its effect on the validity of a contract? (RTP May' 18)/ (MT 2)/ (Nov' 19)/ (MT)



As per section 15 of the Indian Contract Act, 1872 "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. It is immaterial whether the Indian Penal Code is or is not in force at the place where the coercion is employed.

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. 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.

As per section 64 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.



**E**xplain the circumstances in which the person is deemed to be in a position to dominate the will of the other person under the Indian Contract Act, 1872. (RTP May' 20)



A person is deemed to be in such position in the following circumstances:

- i. **Real and apparent authority:** Where a person holds a real authority over the other as in the case of master and servant, doctor and patient and etc.
- ii. **Fiduciary relationship:** where relation of trust and confidence exists between the parties to a contract. Such type of relationship exists between father and son, solicitor and client etc.
- iii. **Mental distress:** An undue influence can be used against a person to get his consent on a contract where the mental capacity of the person is temporarily or permanently affected by the reason of mental or bodily distress, illness or of old age.
- iv. **Unconscionable bargains:** Where one of the parties to a contract is in a position to dominate the will of the other and the contract is apparently unconscionable i.e., unfair, it is presumed by law that consent must have been obtained by undue influence. Unconscionable bargains are witnessed mostly in money-lending transactions and in gifts.



Define Fraud. Whether "mere silence will amount to fraud" as per the Indian Contract Act, 1872?

OR

“Mere silence does not amount to fraud”. Discuss. (RTP Nov’ 18)

OR

"Mere silence is not fraud" but there are some circumstances where the "silence is fraud". Explain the circumstances as per the provision of Indian Contract Act, 1872? (N’ 19)



U/S 17 of the Indian Contract Act 'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with an intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

- i. the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- ii. the active concealment of a fact by one having knowledge or belief of the fact;
- iii. a promise made without any intention of performing it;
- iv. any other act fitted to deceive;
- v. any such act or omission as the law specially declares to be fraudulent.

Under the Indian Contract Act mere silence is not fraud. A party to the contract is under no obligation to disclose the whole truth to the other party. ‘Caveat Emptor’ i.e. let the purchaser beware is the rule applicable to contracts. There is no duty to speak in such cases and silence does not amount to fraud. Similarly, there is no duty to disclose facts which are within the knowledge of both the parties. However there are cases where silence shall be treated as fraud:

1. **Duty of person to speak:** Where the circumstances of the case are such that it is the duty of the person observing silence to speak. Following contracts come within this category:
  - i. **Fiduciary Relationship:**
  - ii. **Contracts of Insurance:**
  - iii. **Contracts of marriage:**
  - iv. **Contracts of family settlement:**
  - v. **Share Allotment contracts:**
2. **Where the silence itself is equivalent to speech:** For example, A says to B “If you do not deny it, I shall assume that the horse is sound.” A says nothing. His silence amounts to speech.





**K**aran agreed to purchase wooden table for his study room from Mr. X. Table was in good condition and was examined by Karan before purchasing. He found no defects in it and paid Rs. 20,000 for that table. Later on, it was found that one leg of table is broken and Mr. X has pasted the wood and tried to hide the defects in the table. Can Karan return the table and claim the amount back? Discuss the same with reference to Indian Contract Act, 1872? (MT)/ (RTP Nov' 22)



As per Section 17 of Indian Contract Act, 1872, a false representation of material facts when made intentionally to deceive the other party to induce him to enter into a contract is termed as a fraud. When a party intentionally conceals or hides some material facts from the other party and makes sure that the other party is not able to know the truth, in fact makes the other party believe something which is false, then a fraud is committed. In case of fraud the aggrieved party has a right to cancel the contract as well as claim the losses if he has suffered any. If the aggrieved party has obtained some benefits in such a contract (caused by fraud), then all such benefits should be restored or returned back.

In the above case, Karan agreed to purchase wooden table from Mr. X. Table was in good condition and when examined by Karan he found no defects. Later it was found that one leg of table is broken and Mr. X has pasted the wood and tried to hide the defects in the table. Mr X has committed fraud so the contract becomes voidable at the option of the aggrieved party.

Hence, Karan can rescind the contract and claim compensation for the loss suffered due to fraud done by Mr. X.



**P** sells by auction to **Q** a horse which **P** knows to be unsound. The horse appears to be sound but **P** knows about the unsoundness of the horse. Is this contract valid in the following circumstances?

- a) If **P** says nothing about the unsoundness of the horse to **Q**.
- b) If **P** says nothing about it to **Q** who is **P**'s daughter who has just come of age.
- c) If **Q** says to **P** "If you do not deny it, I shall assume that the horse is sound." **P** says nothing. **(RTP May' 19)/ (MT May' 20)/ (MT)/ (MT)**



According to section 17 of the Indian Contract Act, 1872, mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud. However in the following cases silence as to the fact of the subject matter shall be considered as fraud:

- i. If the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silent to speak, or
- ii. Where his silence equals to his speech

In the above case **P** auctions an horse and sells it to **Q**. **P** knows that the horse is unsound even though it looks it is sound. **P** fails to disclose the fact to **Q**. As already stated above it is not the duty of the party to disclose any fact about the subject matter. Hence **P** was under no obligation to disclose the unsoundness of the horse to **Q**.

- a) Thus this contract is valid as silence is not fraud.
- b) If **Q** is **P**'s daughter it is his duty to disclose the defects in the goods to **Q** and if he fails to do so it amounts to fraud. Thus this contract is not valid.
- c) In this case **P**'s silence shows that he agrees to the fact that the horse is sound. So his silence equals to his speech and hence the contract is not valid.



Sohan induced Suraj to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, Suraj complained that there were many defects in the motorcycle. Sohan proposed to get it repaired and promised to pay 40% cost of repairs. After a few days, the motorcycle did not work at all. Now Suraj wants to rescind the contract. Decide giving reasons. **(RTP May' 19)/ (RTP May' 20)/ (MT May' 20)/ (MT)/ (MT)**



As per the provisions of the Indian Contract Act, 1872 a contract is made based on any wrong statement given by one party shall be affected by fraud. In case the contract is induced by fraud u/s 19 the aggrieved party can avoid or rescind the contract. On the other hand the aggrieved party after becoming aware of fraud takes a benefit under the contract or affirms the party loses the right to rescind and the contract is valid.

In the given case, Sohan induced Suraj to buy his motorcycle saying that it was in a very good condition where in fact it had many defects. Sohan had defrauded Suraj in selling this motorcycle. Suraj being the aggrieved party had a right to cancel this contract but he accepted the cost of repairs from Sohan thus affirming the contract. On such affirmation by Suraj the contract is now valid.

Thus Suraj is bound by the contract and cannot return the motorcycle.



**K**apil went to a departmental store to purchase a steel pan. He asked the salesman about the area in departmental store where steel pans are kept. The salesman indicated him the area with instructions that with steel pans, other metal's pans were also kept. Kapil wrongfully picked an aluminium pan in place of steel pan. The salesman watched but said nothing to Kapil. Kapil reached his house and found that pan was not a steel pan but actually an aluminium pan. Kapil filed a suit against departmental store for fraud. Discuss, whether Kapil was eligible to file suit for fraud against departmental store under Indian Contract Act, 1872? (MT)



Section 17 of Indian Contract Act, 1872 defines 'Fraud'. According to section, "Fraud" means and includes any of the following acts committed by a party to a contract or by his agent with intent to deceive or to induce a person to enter into the contract:

- i. the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- ii. the active concealment of a fact by one having knowledge or belief of the fact;
- iii. a promise made without any intention of performing it;
- iv. any other act fitted to deceive;
- v. any such act or omission as the law specially declares to be fraudulent.

Mere silence is not fraud. Silence amounts to fraud where

- a) there is a duty to speak or
- b) where silence is equivalent to speech.

In the above case Kapil went to a departmental store to purchase a steel pan. He asked the salesman about the area in departmental store where steel pans are kept. The salesman indicated him the area with instructions that with steel pans, other metal's pans were also kept. Kapil wrongfully picked an aluminium pan in place of steel pan but the salesman did not say anything to him. Later Kapil found that pan was not a steel pan but actually an aluminium pan. Since it was not the duty of salesman to inform Mr Kapil about his mistake he will not have any remedies against the salesman.

Hence, there was no fraud and Kapil was not eligible to file suit for fraud against departmental store.



**Mr X** a businessman has been fighting a long drawn litigation with **Mr Y** an industrialist. To support his legal campaign he enlists the services of **Mr C** a Judicial officer stating that the amount of 10 lakhs would be paid to him if he does not take up the brief of **Mr Y**. **Mr C** agrees but, at the end of the litigation **Mr X** refuses to pay to **Mr C**. Decide whether **Mr C** can recover the amount promised by **Mr X** under the provisions of the Indian Contract Act, 1872? **(Nov' 20)**



As per section 10 of the Indian Contract Act, 1872, all agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void. Further, Section 23 also states that every agreement of which the object is unlawful is void. Accordingly, one of the essential elements of a valid contract in the light of the said provision is that the agreement entered into must not be which the law declares to be either illegal or void. An illegal agreement is an agreement expressly or impliedly prohibited by law. A void agreement is one without any legal effects.

In the given case, **Mr X** a businessman has been fighting a long drawn litigation with **Mr Y** an industrialist. He enlists the services of **Mr C** a Judicial officer stating that the amount of 10 lakhs would be paid to him if he does not take up the brief of **Mr Y**. **Mr C** agrees but, at the end of the litigation **Mr X** refuses to pay to **Mr C**. such an agreement is interference with the course of justice and results as opposed to public policy. This can also be called as an agreement in restraint of legal proceedings. This agreement restricts one's right to enforce his legal rights. Such an agreement has been expressly declared to be void under section 28 of the Indian Contract Act, 1872.

Hence, **Mr C** in the given case cannot recover the amount of 10 lakh promised by **Mr X** because it is a void agreement and cannot be enforced by law.



**Define Misrepresentation and Fraud. Explain the difference between Fraud and Misrepresentation as per the Indian Contract Act, 1872. (Nov' 20)**



Under Section 17 of the Indian Contract Act, 1872, 'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with an intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

1. the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
2. the active concealment of a fact by one having knowledge or belief of the fact ;
3. a promise made without any intention of performing it;
4. any other act fitted to deceive;
5. any such act or omission as the law specially declares to be fraudulent. As per Section 18 of the Indian Contract Act, 1872,

misrepresentation means and includes-

1. the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
2. any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or anyone claiming under him; by misleading another to his prejudice or to the prejudice of anyone claiming under him;
3. causing, however, innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

### **Distinction between fraud and misrepresentation:**

Basis of difference	Fraud	Misrepresentation
Intention	To deceive the other party by hiding the truth.	There is no such intention to deceive the other party.
Knowledge of truth	The person making the suggestion believes that the statement as untrue.	The person making the statement believes it to be true, although it is not true.
Rescission of the contract and claim for damages	The injured party can repudiate the contract and claim damages.	The injured party is entitled to repudiate the contract or sue for restitution but cannot claim the damages.
Means to discover the truth	The party using the fraudulent act cannot secure or protect himself by saying that the injured party had means to discover the truth.	Party can always plead that the injured party had the means to discover the truth.



Explain the concept of 'misrepresentation' in matters of contract. (RTP May' 19)/  
(RTP May' 20)



**M**isrepresentation: According to Section 18 of the Indian Contract Act, 1872, misrepresentation means and includes-

- i. the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
- ii. any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him; by misleading another to his prejudice or to the prejudice of any one claiming under him;
- iii. causing, however, innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.





Chandan was suffering from some disease and was in great pain. He went to Dr. Jhunjhunwala whose consultation fee was 300. The doctor agreed to treat him but on the condition that Chandan had to sign a promissory note of 5000 payable to doctor. Chandan signed the promissory note and gave it to doctor. On recovering from the disease, Chandan refused to honour the promissory note. State with reasons, can doctor recover the amount of promissory note under the provisions of the Indian Contract Act, 1872? (RTP May' 22)



Section 16 of Indian Contract Act, 1872 provides that a contract is said to be induced by “undue influence” where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. Further, a person is deemed to be in a position to dominate the will of another—

- a) where he holds a real or apparent authority over the other, or
- b) where he stands in a fiduciary relation to the other; or
- c) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

Section 19A provides that when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

In the above case, Chandan was suffering from some disease and went to Dr. Jhunjhunwala whose consultation fee was 300. The doctor agreed to treat him but on the condition that Chandan had to sign a promissory note of 5000 payable to doctor. Chandan signed the promissory note under undue influence applied by doctor.

Hence, Dr. Jhunjhunwala cannot recover the amount of promissory note but can claim his normal consultation fee from Chandan



Mr. Y is a devotee and wants to donate an elephant to the temple as a core part of ritual worship. He contacted Mr. X who wanted to sell his elephant. Mr. X contracted with Mr. Y to sell his elephant for 20 Lakhs. Both were unaware that the elephant was dead a day before the agreement. Referring to the provisions of the Indian Contract Act, 1872, explain whether it is a void, voidable or a valid contract. (RTP Nov' 22)



As per the Indian Contract Act, 1872 mistake may be defined as an erroneous belief. If the parties to the contract are mistaken about the existence or quantity or quality of the subject matter it is a mistake of fact. Fact means the essential facts of the contract. When both the parties under the contract are mistaken about the essential facts of the contract it is a bilateral mistake. In case of bilateral mistake the contract is void ab initio. Also when at the time of making the contract, unknown to both the parties the contract is impossible to perform, such contract shall be void ab initio. The term contract here implies an agreement.

In this case, Mr. Y contacted with Mr. X to buy his elephant for 20 Lakhs. Both were unaware that the elephant was dead a day before the agreement. As both were ignorant of the fact that the elephant was dead therefore the performance of the contract was impossible from the very start (impossibility ab initio).

Hence, this contract is void being not enforceable by law.



Mr. SAMANT owned a motor car. He approached Mr. CHHOTU and offered to sale his motor car for Rs. 3,00,000. Mr. SAMANT told Mr. CHHOTU that the motor car is running at the rate of 30 KMs per litre of petrol. Both the fuel meter and the speed meter of the car were working perfectly.

Mr. CHHOTU agreed with the proposal of Mr. SAMANT and took delivery of the car by paying Rs. 3,00,000/- to Mr. SAMANT. After 10 days, Mr. CHHOTU came back with the car and stated that the claim made by Mr. SAMANT regarding fuel efficiency was not correct and therefore there was a case of misrepresentation. Referring to the provisions of the Indian Contract Act, 1872, decide and write whether Mr. CHHOTU can rescind the contract in the above ground. **(MT 1)/ (RTP May' 21)**



As per the provisions of Section 19 of the Indian Contract Act, 1872, when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. A party to contract, whose consent was caused by fraud or misrepresentation, may, if he think fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

However if one party tries to use fraud or misrepresentation to induce the other party to contract but the other party if he would have used his diligence would have come to know the facts the contract shall be valid and the aggrieved party sha;; have no remedies against the other party.

In the above case Samant sold his car to Chhotu by making a false statement that the car was running at the rate of 30 KMs per ltr. Both the fuel meter and the speed meter was working properly and if Chhotu would have checked he would have come to know about the fact. Though Samant tries to defraud Chhotu, Chhotu if he would have used his diligence would have come to know the facts.

Therefore, the contract is not voidable. Hence, Mr. Chhotu cannot rescind the contract on the above ground.



'X' agreed to become an assistant for 2 years to 'Y' who was practicing Chartered Accountant at Jodhpur. It was also agreed that during the term of agreement 'X' will not practice as a Chartered Accountant on his own account within 20 kms of the office of 'Y' at Jodhpur. At the end of one year, 'X' left the assistantship of 'Y' and started practice on his own account within the said area of 20 kms. Referring to the provisions of the Indian Contract Act, 1872, decide whether 'X' could be restrained from doing so? **(RTP May' 18)**



As per Section 27 of the Indian Contract Act, 1872 every agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. However, in the case of the service agreements restraint of trade is valid. In an agreement of service by which a person binds himself during the term of agreement not to take service with anyone else directly or indirectly to promote any business in direct competition with that of his employer is not in restraint of trade, so it is a valid contract.

In the instant case, X agreed to become an assistant of Y for 2 years. The terms of the agreement were that during this term X will not practice as a CA within 20 KMs of the office of Y. After one year X left the service of Y and started his own practice within the said 20 KMs. As the contract between X and Y though in restraint of trade was absolutely valid, X's practice was a breach of contract.

Therefore, 'X' can be restrained by an injunction from practicing on his own account in within the said area of 20 Kms for another one year.



“An agreement, the meaning of which is not certain, is void”. Discuss. (RTP Dec’ 21)



**A**greement the meaning of which is uncertain (Section 29 of the Indian Contract Act, 1872): An agreement, the meaning of which is not certain, is void, but where the meaning thereof is capable of being made certain, the agreement is valid. For example, A agrees to sell B “a hundred tons of oil”. There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty. But the agreement would be valid if A was dealer only in coconut oil because in such a case its meaning would be capable of being made certain.



A enters into a contract with B that he (A) sells his house for 10,00,000 to B. Further they both signed an agreement that if B uses the house for gambling purposes, then B shall pay A 50,000 for it. B agreed to this, however after a year of sale, B started gambling business in that house. Can A claim 50,000 from B? Discuss with reference to the provisions of Indian Contract Act, 1872. (RTP May' 22)



According to Section 24 of the Indian Contract Act, 1872, where an agreement consists of two parts, where some part of the object is legal and the other part is illegal, then

- Where the legal and illegal part can be severed and divided, and separated, lawful part of object is enforceable, and the unlawful part of the object is void.
- Whereas if both the parts are not separable the contract is altogether void.

In the given case, A enters into a contract with B to sell his house for 10,00,000 to B. Further they both signed an agreement that if B uses the house for gambling purposes, then B shall pay A 50,000 for it. B agreed to this, however after a year of sale, B started gambling business in that house. The sale of house and consideration paid for the same i.e. 10,00,000 is valid and enforceable. However, the agreement to pay 50,000 for gambling done in the house is illegal and thus void.

Hence, in the instant case, sale of house agreement is valid agreement and gambling agreement is illegal and not enforceable by law.



State with reason(s) whether the following agreements are valid or void:

- i. A clause in a contract provided that no action should be brought upon in case of breach.
- ii. Where two courts have jurisdiction to try a suit, an agreement between the parties that the suit should be filed in one of those courts alone and not in the other.
- iii. X offers to sell his Maruti car to Y. Y believes that X has only Wagon R Car but agrees to buy it.
- iv. X, a physician and surgeon, employs Y as an assistant on a salary of 75,000 per month for a term of two years and Y agrees not to practice as a surgeon and physician during these two years. **(July' 21)**



- i. The given agreement is void.

Reason: As per Section 28 of the Indian Contract Act, 1872, this clause is in restraint of legal proceedings because it restricts both the parties from enforcing their legal rights. Note: Alternatively, as per Section 23 of the Indian Contract Act, 1872, this clause in the agreement defeats the provision of law and therefore, being unlawful, is treated as void.

- ii. The given agreement is valid.

Reason: An agreement in restraint of legal proceeding is the one by which any party thereto is restricted absolutely from enforcing his rights under a contract through a Court. A contract of this nature is void. However, in the given statement, no absolute restriction is marked on parties on filing of suit. As per the agreement suit may be filed in one of the courts having jurisdiction.

- iii. The said agreement is void.

Reason: This agreement is void as the two parties are thinking about different subject matters so that there is no real consent and the agreement may be treated as void because of mistake of fact as well as absence of consensus.

- iv. The said agreement is valid.

Reason: An agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. But, as an exception, agreement of service by which an employee binds himself, during the term of his



Rohan is running a grocery store in Delhi. He sells his grocery business, including goodwill worth 1,00,000 to Rohit for a sum of 5,00,000. After the sale of goodwill, Rohit made an agreement with Rohan. As per this agreement, Rohan is not to open another grocery store (similar kind of business) in the whole of India for next ten years. However, Rohan opens another store in the same city two months later. What are the rights available with Rohit regarding the restriction imposed on Rohan with reference to Indian Contract Act, 1872? (MT)/ (MT)/ (RTP June' 23)



Section 27 of the Indian Contract Act, 1872 provides that any agreement that restrains a person from carrying on a lawful trade, profession or business is void agreement. However, there are certain exceptions to this rule. One of the statutory exceptions includes sale of Goodwill. The restraint as to sale of goodwill would be a valid restraint provided-

- i. Where the restraint is to refrain from carrying on a similar business
- ii. The restraint should be within the specified local limits
- iii. The restraint should be not to carry on the similar business after sale of goodwill to the buyer for a price
- iv. The restriction should be reasonable.

Reasonableness of restriction will depend upon number of factors as considered by court.

In the given case, Rohan has sold the goodwill and there is restraint for not carrying on the same business of grocery store. However the restriction imposed on Rohan is unreasonable as he cannot carry similar business in whole of India for next 10 years. The restriction on restraint to similar kind of trade should be reasonable to make it a valid agreement. Therefore, Rohit cannot take any legal action against Rohan as the restriction is unreasonable as per Section 27 of Indian Contract Act, 1872.





Mr S aged 58 years was employed in a Government Department. He was going to retire after two years. Mr D made a proposal to Mr S to apply for voluntary retirement from his post so that Mr D can be appointed in his place. Mr D offered a sum of 10 Lakhs as consideration to Mr S in order to induce him to retire. Mr S refused at first instance but when he evaluated the amount offered as consideration is just double of his cumulative remuneration to be received during the tenure of two years of employment, he agreed to receive the consideration and accepted the above agreement to receive money to retire from his office. Whether the above agreement is valid? Explain with reference to provision of Indian Contract Act, 1872. **(Jan' 21)/ (RTP May' 21)**



Section 10 of the Indian Contract Act, 1872 provides for the legality of consideration and objects thereto. Section 23 of the said Act also states that every agreement of which the object or consideration is unlawful is void. Any agreement which is relating to trafficking in public offices is opposed to public policy and hence is void. Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested. Such consideration paid, being opposed to public policy, is unlawful.

In the given case, Mr S, who was going to be retired after two years was proposed by Mr D, to apply for voluntary retirement from his post, in order that he can be appointed in his place. In lieu of that Mr D offered Mr S a sum of 10 lakh as consideration. Mr S refused initially but later accepted the said offer to receive money to retire from his office. Here, Mr S's promise of sale for Mr D, an employment in the public services is the consideration for Mr D's promise to pay 10 lakh.

Therefore, in terms of the above provisions of the Indian Contract Act, the said agreement is not valid. It is void, as the consideration being opposed to public policy, is unlawful.



**W**hat is a wagering agreement? Describe the transactions which resembles with wagering transactions but are not void. (RTP May' 20)



As per section 30 of the Indian Contract Act, 1872 wager is an agreement to give money or money's worth on the happening or non happening of a future uncertain event. An agreement by way of wager is void. The essence of a wager is that each side should stand to win or lose.

For example, A agrees to pay 50,000 to B if it rains, and B promises to pay a like amount to A if it does not rain, the agreement will be by way of wager.

However if one of the parties has control over the event, agreement is not a wager.

The Act gives a few cases which resemble a wager but are not void:

- i. **Chit fund:** In case of a chit fund, a certain number of persons decide to contribute a fixed sum for a specified period and at the end of a month, the amount so contributed is paid to the lucky winner of the lucky draw.
- ii. **Commercial transactions or share market transactions:** In these transactions in which delivery of goods or shares is intended to be given or taken, do not amount to wagers.
- iii. **Games of skill and Athletic Competition:** Crossword puzzles, picture competitions and athletic competitions where prizes are awarded on the basis of skill and intelligence are the games of skill and hence such competitions are valid. According to the Prize Competition Act, 1955 prize competition in games of skill are not wagers provided the prize money does not exceed 1,000.
- iv. **A contract of insurance:** A contract of insurance is a type of contingent contract and is valid under law.



Distinguish between wagering agreement and contract of insurance (May' 18)/  
(Nov'20)



The following are the differences between a wagering agreement and an insurance contract:

<b>Wagering Agreement</b>	<b>Contracts of Insurance</b>
It is a promise to pay money or money's worth on the happening or non happening of an uncertain event.	It is a contract to indemnify the loss.
There is no consideration between the two parties. There is just gambling for money.	The crux of insurance contract is the mutual consideration (premium and compensation amount).
There is no property in case of wagering agreement. There is betting on other's life and properties.	Insured party has insurable interest in the life or property sought to be insured.
Loser has to pay the fixed amount on the happening of uncertain event.	Except life insurance, the contract of insurance indemnifies the insured person against loss
It is void and unenforceable agreement.	It is valid and enforceable
No such logical calculations are required in case of wagering agreement.	Calculation of premium is based on scientific and actuarial calculation of risks.
They have been regarded as against the public welfare.	They are beneficial to the society.



**E**xplain the type of contracts in the following agreements under the Indian Contract Act, 1872:

- i. X promise to sell his scooter to Y for 1 Lac. However, the consent of X has been procured by Y at a gun point.
- ii. A bought goods from B in 2015. But no payment was made till 2019.
- iii. G agrees to give tuitions to H, a pre-engineering student, from the next month and H in consideration promises to pay G 5,000 per month. **(RTP May' 21)**



- i. **T**he contract is voidable. X is an aggrieved party and the contract is voidable at his option but not at the option of Y. It means if X accepts the contract, the contract becomes a valid contract then Y has no option of rescinding the contract.
- ii. The contract is unenforceable. B cannot sue A for the payment in 2019 as it has crossed three years and barred by Limitation Act. A good debt becomes unenforceable after the period of three years as barred by Limitation Act.
- iii. Where, G agrees to give tuitions to H, a pre-engineering student, from the next month and H in consideration promises to pay G 5,000 per month, the contract is executory because it is yet to be carried out.



Sheena was a classical dancer. She entered into an agreement with Shital Vidya Mandir for 60 dance performances. As per the contract, she was supposed to perform every weekend and she will be paid 10,000/- per performance. However, after a month, she was absent without informing, due to her personal reasons. Answer the following questions as per the Indian Contract Act, 1872.

- i. Whether the management of Shital Vidya Mandir has right to terminate the contract?
- ii. If the management of Shital Vidya Mandir informed Sheena about its continuance, can the management still rescind the contract after a month on this ground subsequently?
- iii. Can the Shital Vidya Mandir claim damages that it has suffered because of this breach in any of the above cases? (May' 22)



As per the provisions of the Indian Contract Act 1872, when a party to a contract has refused to perform or disabled himself from performing his promise entirely, the following two rights accrue to the aggrieved party (promisee)

- a) To terminate the contract
- b) To indicate by words or by conduct that he is interested in its continuance.

In case he rightfully rescinds the contract he shall also have a right to claim damages. On the other hand if he accepts the contract he can claim damages if specified. Either of the two cases, the promisee would be able to claim damages that he suffers.

Sheena was a classical dancer. She entered into an agreement with Shital Vidya Mandir for 60 dance performances. As per the contract, she was supposed to perform every weekend and she will be paid 10,000/- per performance. However, after a month, she was absent without informing, due to her personal reasons.

Therefore

- i. Yes, the management of Shital Vidya Mandir has right to terminate the contract.
- ii. Shital Vidya Mandir has the right to continue the contract with Sheena. But once this right is exercised, they cannot subsequently rescind the contract on this ground.
- iii. In case Shital Vidya Mandir puts an end to the contract they can even claim the damages. On the other hand if they accept the performance they can claim the damages if it is mentioned.



“**W**hen 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”. Explain. (MT May’ 20)/ (MT)



According to Section 39, 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, by words or conduct, his acquiescence in its continuance. In this case the following two rights accrue to the aggrieved party, namely,

- i. to terminate the contract;
- ii. to indicate by words or by conduct that he is interested in its continuance.

In case the promisee decides to continue the contract, he would not be entitled to put an end to the contract on this ground subsequently. In either case, the promisee would be able to claim damages that he suffers as a result on the breach.



Mr X was a Disk Jockey at a five star hotel bar. As per the contract, he is supposed to perform every weekend (i.e. twice a week). Mr X will be paid 1500 per day. However, after a month, Mr X wilfully absents himself from the performance.

- i. Does the hotel have the right to end the contract?
- ii. If the hotel sends out a mail to X that they are interested to continue the contract and X accepts, can the hotel rescind the contract after a month on this ground subsequently?
- iii. In which of the cases – (termination of contract or continuance of contract) can the hotel claim damages that it has suffered as a result of this breach?  
**(RTP Dec' 21)**



As per the provisions of the Indian Contract Act 1872, when a party to a contract has refused to perform or disabled himself from performing his promise entirely, the following two rights accrue to the aggrieved party (promisee)

- c) To terminate the contract
- d) To indicate by words or by conduct that he is interested in its continuance.

In case he rightfully rescinds the contract he shall also have a right to claim damages. On the other hand if he accepts the contract he can claim damages if specified. either of the two cases, the promisee would be able to claim damages that he suffers.

In the given case, Mr X was a Disk Jockey at a five star hotel bar. He is supposed to perform every weekend (i.e. twice a week) and would be paid 1500 per day. However, after a month, Mr X wilfully absents himself from the performance.

Therefore

- iv. Yes, the hotel has the right to end the contract with Mr. X, the DJ.
- v. The hotel has the right to continue the contract with X. But once this right is exercised, they cannot subsequently rescind the contract on this ground.
- vi. In case the hotel puts an end to the contract they can even claim the damages. On the other hand if they accept the performance they can claim the damages if it is mentioned.



“The basic rule is that the promisor must perform exactly what he has promised to perform.” Explain stating the obligation of parties to contracts. (RTP May’ 20)



As per section 37 of the Indian Contract Act, 1872, the parties to a contract must either perform, or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of the Contract Act or of any other law. A contract being an agreement enforceable by law, creates a legal obligation, which subsists until discharged. Performance of the promise or promises remaining to be performed is the principal and most usual mode of discharge. The basic rule is that the promisor must perform exactly what he has promised to perform. The obligation to perform is absolute. Thus, it may be noted that it is necessary for a party who wants to enforce the promise made to him, to perform his promise for himself or offer to perform his promise. Only after that he can ask the other party to carry out his promise.

Promises bind the representatives of the promisor in case of death of such promisor before performance, unless a contrary intention appears from the contract.

For example A promises to deliver goods to B on a certain day on payment of 1,00,000. A dies before that day. A’s representatives are bound to deliver the goods to B, and B is bound to pay 1,00,000 to A’s representatives.

On the other hand, A promises to paint a picture for B by a certain day, at a certain price. A dies before that day. The contract cannot be enforced either by A’s representatives or by B because it involves use of personal skill.





**A** received certain goods from B promising to pay 1,00,000. Later on, A expressed his inability to make payment. C, who is known to A, pays 60,000 to B on behalf of A. However, A was not aware of the payment. Now B is intending to sue A for the amount of 1,00,000. Discuss whether the contention of B is right? **(RTP May' 18)**

**OR**

X received certain goods from Y and promised to pay 60,000. Later on, X expressed his inability to make payment. Z, who is known to X, pays 40,000 to Y on behalf of X. However, X was not aware of the payment. Now Y is intending to sue X for the amount of 60,000. Can Y do so? Advise. **(RTP May' 19)**



**A** contract may be performed by the promisor himself or it may also be performed by a third party. As per Section 41 of the Indian Contract Act, 1872, when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is, performance by a stranger, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorized nor ratified the act of the third party.

In the above case A had promised to pay B 1,00,000 for goods received by A from B. Later A refuses to pay. C who knows A makes a part payment of 60,000 to B which B accepts on behalf of A. Acceptance of payment from C on behalf of A discharges A from his obligation to make the payment.

Therefore, B can sue only for the balance amount i.e. 40,000 and not for the whole amount.



**D**ecide with reasons whether the following agreements are valid or void under the provisions of the Indian Contract Act, 1872:

- i. Vijay agrees with Saini to sell his black horse for 3,00,000. Unknown to both the Parties, the horse was dead at the time of the agreement.
- ii. Sarvesh sells the goodwill of his shop to Vikas for 10,00,000 and promises not to carry on such business forever and anywhere in India.
- iii. Mr. X agrees to write a book with a publisher. After few days, X dies in an accident. **(RTP May' 18)**



- i. **T**he contract is void ab initio. As per Section 20 of the Indian Contract Act, 1872, an agreement under by mistake of fact is void. In this case, there is mistake of fact as to the existence of the subject matter, i.e., with respect to the selling of horse which was dead at the time of the agreement, it is unknown to both the parties.
- ii. The agreement is void. As per Section 27 of the Indian Contract Act, 1872, an agreement in restraint of trade is void. However, a buyer can put such a condition on the seller of goodwill, not to carry on same business, provided that the conditions must be reasonable regarding the duration and place of the business. Since in the given case, restraint to carry on business was forever and anywhere in India, the terms being unreasonable the agreement in question is void.
- iii. The contract is void. As per section 2(j) of the Contract Act, "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable". In the present case, Mr. X agrees to write a book with a publisher. After few days, X dies in an accident. As the contract is of personal skill the death of the writes results in discharge of the contract due to supervening impossibility. Here the contract becomes void due to the impossibility of performance of the contract.



State the grounds upon which a contract may be discharged under the provisions of the Indian Contract Act, 1872. (MT May' 20)



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.
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.
7. A promisee 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.
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.



“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. (RTP Nov’ 18)/ (MT Mar’ 19)/ (MT Nov’ 19)/ (MT)/ (RTP May’ 22)



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 disable himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, to continue the contract. Effect of anticipatory breach:

The promisee is excused from performance or from further performance. Further he gets an option:

- i. 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
- ii. 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.



**P**oint out with reason whether the following agreements are valid or void:

- a) Kamala promises Ramesh to lend 500,000 in lieu of consideration that Ramesh gets Kamala's marriage dissolved and he himself marries her.
- b) Sohan agrees with Mohan to sell his black horse. Unknown to both the parties, the horse was dead at the time of agreement.
- c) Ram sells the goodwill of his shop to Shyam for 4,00,000 and promises not to carry on such business forever and anywhere in India.
- d) In an agreement between Prakash and Girish, there is a condition that they will not institute legal proceedings against each other without consent.
- e) Ramamurthy, who is a citizen of India, enters into an agreement with an alien friend. **(RTP Nov'18)**



- a) **T**he agreement is void. As per Section 23 of the Indian Contract Act, 1872, an agreement is void if the object or consideration is against the public policy.
- b) The agreement is void. As per Section 20 of the Indian Contract Act, 1872 the contracts caused by mistake of fact are void. There is mistake of fact as to the existence of subject-matter.
- c) The agreement is void. As per Section 27 of the Indian Contract Act, 1872 an agreement in restraint of trade is void. However, a buyer can put such a condition on the seller of good will, not to carry on same business. However, the conditions must be reasonable regarding the duration and the place of the business. In the above case the condition is not reasonable.
- d) The agreement is void. An agreement in restraint of legal proceedings is void as per Section 28 of the Indian Contract Act, 1872.
- e) The agreement is valid. An agreement with alien friend is valid, but an agreement with alien enemy is void.



In light of provisions of the Indian Contract Act, 1872 answer the following:

- i. Mr S and Mr R made contract wherein Mr S agreed to deliver paper cup manufacture machine to Mr R and to receive payment on delivery. On the delivery date, Mr R didn't pay the agreed price. Decide whether Mr S is bound to fulfil his promise at the time of delivery?
- ii. Mr Y given loan to Mr G of INR 30,00,000. Mr G defaulted the loan on due date and debt became time barred. After the time barred debt, Mr G agreed to settle the full amount to Mr Y. Whether acceptance of time barred debt Contract is enforceable in law?
- iii. A & B entered into a contract to supply unique item, alternate of which is not available in the market. A refused to supply the agreed unique item to B. What directions could be given by the court for breach of such contract? (Nov' 20)/ (RTP May' 21)



As per Section 51 of the Indian Contract Act, 1872, when a contract consists of reciprocal promises to be simultaneously performed, promisor need not perform his promise unless the promisee is ready and willing to perform his reciprocal promise. Such promises constitute concurrent conditions and the performance of one of the promise is conditional on the performance of the other. If one of the promises is not performed, the other too need not be performed. Referring to the above provisions, in the given case, Mr S is not bound to deliver goods to Mr R since payment was not made by him at the time of delivery of goods.

Promise to pay time-barred debts - Section 25 (3): Where there is an agreement, made in writing and signed by the debtor or by his agent, to pay wholly or in part a time barred debt, the agreement is valid and binding even though there is no consideration. In the given case, the loan given by Mr Y to Mr G has become time barred. Thereafter, Mr. G agreed to make payment of full amount to Mr Y. Referring to above provisions of the Indian Contract Act, 1872 contract entered between parties post time barred debt is valid so, MrG is bound to pay the agreed amount to Mr Y provided the above mentioned conditions of section 25 (3) are fulfilled.

Where there is a breach of contract for supply of a unique item, mere monetary damages may not be an adequate remedy for the other party. In such a case, the court may give order for specific performance and direct the party in breach to carry out his promise according to the terms of contract. Here, in this case, the court may direct A to supply the item to B because the refusal to supply the agreed unique item cannot be compensated through money.



What will be rights with the promisor in following cases? Explain with reasons:

- i. Mr. X promised to bring back Mr. Y to life again.
- ii. A agreed to sell 50 kgs of apple to B. The loaded truck left for delivery on 15 th March but due to riots in between reached B on 19th March.
- iii. An artist promised to paint on the fixed date for a fixed amount of remuneration but met with an accident and lost his both hands.
- iv. Abhishek entered into contract of import of toys from China. But due to disturbance in the relation of both the countries, the imports from China were banned. (RTP May' 21)/ (RTP Nov' 22)



- i. The contract is void because of its initial impossibility of performance. When known to both the parties the contract is impossible to perform the contract is discharged.
- ii. Time is essence of this contract. As by the time apples reached B, they were already rotten. The contract is discharged due to destruction of subject matter of contract.
- iii. Such contract is of personal nature and hence cannot be performed due to occurrence of an event resulting in impossibility of performance of contract.
- iv. Such contract is discharged without performance because of subsequent illegality nature of the contract.



Point out with reason whether the following agreements are valid or void:

- i. Riya promises Samarth to lend Rs. 500,000 in lieu of consideration that Samarth gets Riya's marriage dissolved and he himself marries her.
- ii. Aryan agrees with Mathew to sell his black horse. Unknown to both the parties, the horse was dead at the time of agreement.
- iii. Ravi sells the goodwill of his shop to Shyam for Rs. 4,00,000 and promises not to carry on such business forever and anywhere in India.
- iv. In an agreement between Prakash and Girish, there is a condition that they will not institute legal proceedings against each other without consent. (MT Nov' 19)



- i. This is a Void Agreement: As per Section 23 of the Indian Contract Act, 1872, an agreement is void if the object or consideration is immoral.
- ii. This is a Void Agreement: As per Section 20 of the Indian Contract Act, 1872 the contracts caused by mistake of fact are void. There is mistake of fact as to the existence of subject matter.
- iii. This is a Void Agreement: As per Section 27 of the Indian Contract Act, 1872 an agreement in restraint of trade is void. However, a buyer can put such a condition on the seller of good will, not to carry on same business. However, the conditions must be reasonable regarding the duration and the place of the business.
- iv. This is a Void Agreement: An agreement in restraint of legal proceedings is void as per Section 28 of the Indian Contract Act, 1872.





A, B, C and D are the four partners in a firm. They jointly promised to pay 6,00,000 to F. B and C have become insolvent. B was unable to pay any amount and C could pay only 50,000. A is compelled to pay the whole amount to F. Decide the extent to which A can recover the amount from D with reference to the provisions of the Indian Contract Act, 1872. **(Dec' 21)/(MT)**



As per the provisions of the Indian Contract Act, 1872, when two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons must jointly fulfil the promise. As per Section 43 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. 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.

In the instant case, A, B, C and D have jointly promised to pay 6,00,000 to F. So each of them is liable to contribute 1,50,000. B and C become insolvent. B was unable to pay any amount and C could pay only 50,000. A is compelled to pay the whole amount to F. since A paid the whole amount he can recover from the 50,000 which he is able to pay. The loss of B (1,50,000) shall be borne by A and D in their proportion i.e., 75,000 each. The loss of C i.e., 1,00,000 (1,50,000 – 50,000) shall be borne by A and D in their proportion i.e., 50,000 each. So D is liable to contribute to A his own share of 1,50,000, B's loss of 75,000 and C's loss of 50,000.

Hence, A is entitled to receive 50,000 from C and 2,75,000 from D.



X, Y and Z jointly borrowed 50,000 from A. The whole amount was repaid to A by Y. Decide in the light of the Indian Contract Act, 1872 whether:

- i. Y can recover the contribution from X and Z,
- ii. Legal representatives of X are liable in case of death of X.
- iii. Y can recover the contribution from the assets, in case Z becomes insolvent. (RTP Nov' 19)



As per the provisions of the Indian Contract Act, 1872 when two or more persons have made a joint promise, then, unless a contrary intention appears from the contract all such persons jointly must fulfill the promise. However the liability of joint promisors is joint as well as severe. If any one of the joint promisors makes the payment on behalf of the other, he can recover from the other their contribution.

If any one of the joint promisors makes default in such contribution or is unable to pay the remaining joint promisors must bear the loss arising from such default in equal shares. In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promisors, the representatives of all jointly must fulfill the promise.

In the above case X, Y and Z jointly borrowed 50,000 from A. Y repaid the entire amount.

Thus

- i. Y can recover from X and Z their contribution.
- ii. In case of death the legal representative shall pay X's share. However the liability of legal representative is only upto the asset of X received by him.
- iii. In case Z becomes insolvent the amount can be recovered from his assets. If the asset does not cover the entire amount the loss shall be borne by X and Y.



Ajay, Vijay and Sanjay are partners of software business and jointly promises to pay 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. **(RTP Nov' 18)**

**OR**

X, Y and Z are partners in a firm. They jointly promised to pay 3,00,000 to D. Y became insolvent and his private assets are sufficient to pay  $1/5^{\text{th}}$  of his share of debts. X is compelled to pay the whole amount to D. examining the provisions of the Indian Contract Act, 1872, decide the extent to which X can recover the amount from Z. **(May' 18)/ (MT)**



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. One joint promisor may compel the other joint promisors 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.

In the above case X, Y and Z are partners in a firm. They jointly promised to pay 3,00,000 to D. Y had become insolvent and his property was sufficient to pay only  $1/5^{\text{th}}$  of his total debts. X paid the entire amount to D. since X had paid the shares of Y and Z he has a right to recover their share of contribution from them. As Y was insolvent and he would only contribute  $1/5^{\text{th}}$  of his total share ( $1/5^{\text{th}}$  of 1,00,000), X can recover 20,000 from y.

Therefore in the above case X can recover 20,000 from Y.



Mr. Sonumal a wealthy individual provided a loan of 80,000 to Mr. Datumal on 26.02.2019. The borrower Mr. Datumal asked for a further loan of 1,50,000. Mr. Sonumal agreed but provided the loan in parts at different dates. He provided 1,00,000 on 28.02.2019 and remaining 50,000 on 03.03.2019. On 10.03.2019 Mr. Datumal while paying off part 75,000 to Mr. Sonumal insisted that the lender should adjusted 50,000 towards the loan taken on 03.03.2019 and balance as against the loan on 26.02.2019. Mr. Sonumal objected to this arrangement and asked the borrower to adjust in the order of date of borrowal of funds.

Now you decide:

- i. Whether the contention of Mr. Datumal correct or otherwise as per the provisions of the Indian Contract Act, 1872?
- ii. What would be the answer in case the borrower does not insist on such order of adjustment of repayment?
- iii. What would the mode of adjustment/appropriation of such part payment in case neither Mr. Sonumal nor Mr. Datumal insist any order of adjustment on their part? (Nov'19)



In case where a debtor owes several debts to the same creditor and makes payment which is not sufficient to discharge all the debts, the payment shall be appropriated (i.e. adjusted against the debts) as per the provisions of Section 59 to 61 of the Indian Contract Act, 1872.

U/s 59 of the Act, where a debtor owing several distinct debts to one person, makes a payment to him either with express intimation or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

U/s 60 of the Act, where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, including a time bared debt.

U/s 61 of the Act, where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payments shall be applied in discharge of each proportionately.

In the above case Mr. Datumal had taken various loans from Mr. Sonumal on various dates. Mr. Datumal pays a part of the debt specifying the debt to be set off. Mr. Sonumal objected and asked the borrower to adjust in the order of date of borrowal of funds. Since the debtor has specified the order of settlement the creditor has to accept it.

Thus

- i. The contention of Mr. Datumal is correct and he can specify the manner of appropriation of repayment of debt.
- ii. In case where Mr. Datumal fails to specify the manner of appropriation of debt on part repayment, Mr. Sonumal the creditor, can appropriate the payment as per his choice.
- iii. In case where neither Mr. Datumal nor Mr. Sonumal specifies the manner of appropriation of debt on part repayment, the appropriation shall be made in order of time in proportion to the debts.



Mr. Murari owes payment of 3 bills to Mr. Girdhari as on 31<sup>st</sup> March, 2020.

- i. 12,120 which was due in May 2016.
- ii. 5,650 which was due in August 2018
- iii. 9,680 which was due in May 2019.

Mr. Murari made payment on 1<sup>st</sup> April 2020 as below without any notice of how to appropriate them:

- i. A cheque of 9,680
- ii. A cheque of 15,000

Advice under the provisions of the Indian Contract Act, 1872. **(MT)/ (RTP June'23)**



If the performance consists of payment of money and there are several debts to be paid, the payment shall be appropriated as per provisions of Sections 59, 60 and 61 of the Indian Contract Act, 1872. The debtor has, at the time of payment, the right of appropriating the payment. In default of debtor, the creditor has option of election and in default of either the law will allow appropriation of debts in order of time.

In the present case, Mr. Murari had made two payments by way of two cheques. One cheque was exactly the amount of the bill drawn. It would be understood even though not specifically appropriated by Mr. Murari that it will be against the bill of exact amount. Hence cheque of Rs. 9,680 will be appropriated against the bill of 9,680 which was due in May 2019. Cheque of Rs. 15000 can be appropriated against any lawful debt which is due even though the same is time-barred.

Hence, Mr. Girdhari can appropriate the same against the debt of Rs. 12,120 which was due in 2016 and balance against Rs. 5650 which was due in August 2018.



Mr. JHUTH entered into an agreement with Mr. SUCH to purchase his (Mr. SUCH's) motor car for Rs. 5,00,000/- within a period of three months. A security amount of Rs. 20,000/- was also paid by Mr. JHUTH to Mr. SUCH in terms of the agreement. After completion of three months of entering into the agreement, Mr. SUCH tried to contract Mr. JHUTH to purchase the car in terms of the agreement. Even after lapse of another three month period, Mr. JHUTH neither responded to Mr. SUCH, nor to his phone calls. After lapse of another period of six months Mr. JHUTH contracted Mr. SUCH and denied to purchase the motor car. He also demanded back the security amount of Rs. 20,000/- from Mr. SUCH. Referring to the provisions of the Indian Contract Act, 1872, state whether Mr. SUCH is required to refund the security amount to Mr. JHUTH. Also examine the validity of the claim made by Mr. JHUTH, if the motor car would have destroyed by an accident within the three month's agreement period. (MT 1)



As per the provisions of Section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it. However if the amount received under a contract is a security for the performance of the contract then such security is not a benefit derived and if the party giving the security fails to perform the contract he will not get back the security amount. However if the subject matter is destroyed before the contract is performed the contract becomes void and the party can claim back the security money.

In the above case Mr Jhuth contracted to purchase Mr. Such's car for a sum of 5,00,000. He also gave a security amount of 20,000 for the contract. The purchase of the car was to be made in three months. After the lapse of the three months Mr. Such tried to contact Mr. Jhuth but he did not respond. Later he refused to purchase the car and asked for the return of the security money. The contract is not a void contract. Mr. SUCH is not responsible for Mr. JHUTH's negligence.

Therefore, Mr. SUCH can rescind the contract and retain the security amount since the security is not a benefit received under the contract, it is a security that the purchaser would fulfill his contract and is ancillary to the contract for the sale of the Motor Car.

Regarding the second situation the agreement becomes void due to the destruction of the Motor car, which is the subject matter of the agreement here. Therefore, the security amount received by Mr. SUCH is required to be refunded back to Mr. JHUTH.



Enumerate the persons by whom a contract may be performed under the provisions of the Indian Contract Act, 1872. (MT 2)



As per section 40 of the Indian Contract Act, 1872, the promise under a contract may be performed, as the circumstances may permit, by the promisor himself, or by his agent or his legal representative.

- i. **Promisor himself:** If there is something in the contract to show that it was the intention of the parties that the promise should be performed by the promisor himself, such promise must be performed by the promisor. This means contracts which involve the exercise of personal skill or diligence, or which are founded on personal confidence between the parties must be performed by the promisor himself.
- ii. **Agent:** Where personal consideration is not the foundation of a contract, the promisor or his representative may employ a competent person to perform it.
- iii. **Legal Representatives:** A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death of the promisor. As regards any other contract the legal representatives of the deceased promisor are bound to perform it unless a contrary intention appears from the contract. But their liability under a contract is limited to the value of the property they inherit from the deceased.
- iv. **Third persons:** As per Section 41 of the Indian Contract Act, 1872, when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is, performance by a stranger, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorised nor ratified the act of the third party.
- v. **Joint promisors:** When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons must jointly fulfill the promise. If any of them dies, his legal representatives must, jointly with the surviving promisors, fulfill the promise. If all of them die, the legal representatives of all of them must fulfill the promise jointly





Mr. Singhania entered into a contract with Mr. Sonu to sing in his hotel for six weeks on every Saturday and Sunday. Mr. Singhania promised to pay 20,000 for every performance. Mr. Sonu performed for two weeks but on third week his health condition was very bad, so he did not come to sing. Mr. Singhania terminated the contract. State in the light of provisions of the Indian Contract Act, 1872:-

- a) Can Mr. Singhania terminate the contract with Mr. Sonu?
- b) What would be your answer in case Mr. Sonu turns up in fourth week and Mr. Singhania allows him to perform without saying anything?
- c) What would be your answer in case Mr. Sonu sends Mr. Mika on his place in third week and Mr. Singhania allows him to perform without saying anything? (RTP May' 22)



According to Section 40 of the Indian Contract Act, 1872, if it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. Section 41 provides that when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. Further, where in a contract the time is of essence and the promisor fails to perform the contract within the specified time the contract becomes voidable at the option of the promisee. In such a case if the promisee accepts the contract after the time he cannot later cancel the contract.

In the above case Mr. Singhania entered into a contract with Mr. Sonu to sing in his hotel for six weeks on every Saturday and Sunday. Mr. Singhania promised to pay 20,000 for every performance. Mr. Sonu performed for two weeks but on third week his health condition was very bad, so he did not come to sing. As time is of essence the contract shall be voidable.

Therefore, in the instant case,

- a) As Mr. Sonu could not perform as per the contract, Mr. Singhania can repudiate the contract.
- b) If Mr. Singhania allowed Mr. Sonu to perform in the fourth week without saying anything, by conduct, Mr. Singhania had given his assent to continue the contract. Mr. Singhania cannot terminate the contract however he can claim damages from Mr. Sonu.
- c) In case Mr. Singhania allows Mr. Mika to perform in the third week without saying anything, by conduct, Mr. Singhania had given his assent for performance by third party. Now Mr. Singhania cannot terminate the contract nor can claim any damages from Mr. Sonu.



## Differentiate between Novation and Alteration as per the Indian Contract Act, 1872. (Dec' 22)



The law pertaining to novation and alteration is contained in Sections 62 to 67 of the Indian Contract Act, 1872. In both these cases, the original contract need not be performed. The following are the difference between the two:

1. **Meaning:** Novation means substitution of an existing contract with a new one. But in case of alteration the terms of the contract may be altered by mutual agreement by the contracting parties.
2. **Change in terms and conditions and parties:** Novation may be made by changing in the terms of the contract or there may be a change in the contracting parties. But in case of alteration the terms of the contract may be altered by mutual agreement by the contracting parties but the parties to the contract will remain the same.
3. **Substitution of new contract:** In case of novation, there is altogether a substitution of new contract in place of the old contract. But in case of alteration, it is not essential to substitute a new contract in place of the old contract. In alteration, there may be a change in some of the terms and conditions of the original agreement.



**E**xplain any five circumstances under which contracts need not be performed with the consent of both the parties. (Dec' 21)/(MT)



**U**nder following circumstances, the contracts need not be performed with the consent of both the parties:

- i. **Novation:** Where the parties to a contract substitute a new contract for the old, it is called novation. A contract in existence may be substituted by a new contract either between the same parties or between different parties the consideration mutually being the discharge of old contract. Novation can take place only by mutual agreement between the parties. On novation, the old contract is discharged and consequently it need not be performed. (Section 62 of the Indian Contract Act, 1872)
- ii. **Rescission:** A contract is also discharged by rescission. When the parties to a contract agree to rescind it, the contract need not be performed. (Section 62)
- iii. **Alteration:** Where the parties to a contract agree to alter it, the original contract is rescinded, with the result that it need not be performed. In other words, a contract is also discharged by alteration. (Section 62)
- iv. **Remission:** Every promisee 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 which he thinks fit. In other words, a contract is discharged by remission. (Section 63)
- v. **Rescinds voidable contract:** When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor.
- vi. **Neglect of promisee:** If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby. (Section 67)



**S**tate the grounds upon which a contract may be discharged under the provisions of the Indian Contract Act, 1872.(MT)



**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 promisee 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).



**E**xplain what is meant by 'Supervening Impossibility' as per the Indian Contract Act, 1872 with the help of an example. What is the effect of such impossibility? (July' 21)/ (MT)/ (MT)/ (MT)



According to Section 56 of the Indian Contract Act, 1872, the impossibility of performance may be of the two types:

- initial impossibility, and
- subsequent impossibility.

Subsequent impossibility is also known as Supervening impossibility i.e. becomes impossible after entering into contract. When performance of promise become impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, the contract becomes void e.g. change in law etc. In other words, sometimes, the performance of a contract is quite possible when it is made. But subsequently, some event happens which renders the performance impossible or unlawful. Such impossibility is called the subsequent or supervening. It is also called the post-contractual impossibility. Example: 'A' and 'B' contracted to marry each other. Before the time fixed for the marriage, 'A' became mad. In this case, the contract becomes void due to subsequent impossibility, and thus discharged.

**Effect of impossibility:** The effect of such impossibility is that it makes the contract void, and the parties are discharged from further performance of the contract.



Examine the validity of the following contracts as per the Indian Contract Act, 1872 giving reasons.

- i. X aged 16 years borrowed a loan of 50,000 for his personal purposes. Few months later he had become major and could not pay back the amount borrowed, on due date. The lender wants to file a suit against X.
- ii. J contracts to take in cargo for K at a foreign port. J's government afterwards declares war against the country in which the port is situated and therefore the contract could not be fulfilled. K wants to file a suit against J. **(Dec' 21)/(MT)**



- i. 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. So, a minor is not competent to contract and any agreement with or by a minor is void from the very beginning. A minor cannot ratify it on attaining majority as the original agreement is void ab initio. According to Section 68 of the Act, a claim for necessities supplied to a minor is enforceable by law against the minor's property. Necessaries mean those things that are essentially needed by a minor. They cannot include luxuries or costly or unnecessary articles.

In the present case, X, the borrower, was minor at the time of taking the loan, so the agreement was void ab initio. Attaining majority thereafter will not validate the contract nor X can ratify it. The loan was for personal purposes and not for necessities supplied to him.

Hence, the lender cannot file a suit against X for recovery of the loan as it is not enforceable by law.

- ii. As per Section 56 of the Indian Contract Act, 1872 any subsequent or supervening impossibility renders the contract void. Supervening impossibility may take place owing to various circumstances as contemplated under the Act, one of which is the declaration of war subsequent to the contract made.
- In the instant case the contract when made between J and K was valid but afterwards J's government declares war against the country in which the port is situated as a result of which the contract becomes void.
- Hence, K cannot file a suit against J for performance of the contract.





“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. (MT)/ (MT)



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 deals with anticipatory breach of contract and provides as follows: “When a party to a contract has refused to perform or disable 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:

- i. 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
- ii. 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.



State which of the following agreements are valid contract under the Indian Contract Act, 1872?

- a) A, who owns two cars is selling red car to B. B thinks he is purchasing the black car.
- b) A threatened to shoot B if he (B) does not lend him 2,00,000 and B agreed to it.
- c) A agrees to sell his house to B against 100 kgs of cocaine (drugs).
- d) A ask B if he wants to buy his bike for 50,000. B agrees to buy bike.
- e) Mr. X agrees to write a book with a publisher. But after few days, X dies in an accident. **(RTP June' 23)**



- a) **A**, who owns two cars is selling red car to B. B thinks he is purchasing the black car. There is no consensus ad idem and hence not a valid contract.
- b) A threatened to shoot B if he (B) does not lend him 2,00,000 and B agreed to it. Here the agreement is entered into under coercion and hence not a valid contract.
- c) A agrees to sell his house to B against 100 kgs of cocaine (drugs). Such agreement is illegal as the consideration is unlawful. Hence this agreement is not valid.
- d) A asks B if he wants to buy his bike for 50,000. B agrees to buy bike. It is agreement which is enforceable by law. Hence, it is a valid contract.
- e) Mr. X agrees to write a book with a publisher. But after few days, X dies in an accident. Here the contract becomes void due to the impossibility of performance of the contract.



**Mr.** Rich aspired to get a self-portrait made by an artist. He went to the workshop of Mr. C an artist and asked whether he could sketch the former's portrait on oil painting canvass. Mr. C agreed to the offer and asked for 50,000 as full advance payment for the above creative work. Mr. C clarified that the painting shall be completed in 10 sittings and shall take 3 months. On reaching to the workshop for the 6 sitting, Mr. Rich was informed that Mr. C became paralyzed and would not be able to paint for near future. Mr. C had a son Mr. K who was still pursuing his studies and had not taken up his father's profession yet?

Discuss in light of the Indian Contract Act, 1872?

- i. Can Mr. Rich ask Mr. K to complete the artistic work in lieu of his father?
- ii. Could Mr. Rich ask Mr. K for refund of money paid in advance to his father?

**(Nov' 19)**



As per the provisions of The Indian Contract Act, 1872 a contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death or inability of the promisor. Generally on the death or inability of the promisor his legal representatives are bound to perform the contract unless a contrary intention appears from the contract. But their liability under a contract is limited to the value of the property they inherit from the deceased. Further when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it. In the above case Mr. Rich asks Mr. C to sketch his portrait and pays him the money in advance. The sketch was to complete in 10 sittings. On the 6<sup>th</sup> sitting Mr. Rich was informed that Mr. C was paralyzed. As the contract is of personal skill he cannot ask Mr. C's son to perform the contact.

Thus.

- i. Mr. Rich cannot ask Mr. K to complete the artistic work in lieu of his father Mr. C.
- ii. Mr. Rich can ask Mr. K for refund of money paid in advance to his father, Mr. C.



**W**hat is the law relating to determination of compensation, on breach of contract, contained in section 73 of the Indian Contract Act, 1872? (RTP Nov' 19)/ (MT Nov' 19)



**S**ection 73 of the Indian Contract Act, 1872 provides that 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. The explanation to the section further provides 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.



In the light of the provisions of the Indian Contract Act, 1872, give the circumstances as to when “Vindictive or Exemplary Damages” may be awarded for breach of a contract. (RTP Nov’ 22)



Vindictive or Exemplary damages These damages may be awarded only in two cases:

- a) for breach of promise to marry because it causes injury to his or her feelings; and
- b) for wrongful dishonour by a banker of his customer’s cheque because in this case the injury due to wrongful dishonour to the drawer of cheque is so heavy that it causes loss of credit and reputation to him.

A business man whose credit has suffered will get exemplary damages even if he has sustained no pecuniary loss. But a non-trader cannot get heavy damages in the like circumstances, unless the damages are alleged and proved as special damages. (Gibbons v West Minister Bank)



“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.(RTP May’ 21)/ (May’ 22)



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 calculation 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 Chunni Lal vs. Mehta & Sons Ltd (Supreme Court) Supreme Court laid down 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.



Mr. X and Mr. Y entered into a contract on 1<sup>st</sup> Aug, 2018, by which Mr. X had to supply 50 tons of sugar to Mr. Y at a certain price strictly within a period of 10 days of the contract. Mr. Y also paid an amount of 50,000 towards advance as per the terms of the above contract. The mode of transportation available between their places is roadway only. Severe flood came on 2<sup>nd</sup> August, 2018 and the only road connecting their place was damaged and could not be repaired. Within 15 days. Mr. X offered to supply sugar on 20<sup>th</sup> August, 2018 for which Mr. Y did not agree. On 1<sup>st</sup> Sept, 2018 Mr. X claimed compensation of 10,000 from Mr. Y for refusing to accept the supply of goods which was not there within the purview of the contract. On the other hand Mr. Y claimed the refund of 50,000 which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provision of the Indian Contract Act, 1872 and decide on Y's contention. (Nov' 18)/ (MT Mar' 19)/ (MT)/ (MT)



As per the provisions of the Indian Contract Act, 1872 where the performance of the contract becomes impossible by occurrence of an unexpected event or a change of circumstance beyond the contemplation of the parties the contract becomes void. In such a case the parties are under no obligation to perform the contract and the aggrieved party cannot claim any damage from the other party. However if the parties have received any advance or benefit and the contract is subsequently cancelled such benefit has to be returned back.

In the above case Mr. X contracted to supply 50 tons of sugar to Mr. Y within 10 days and had paid an advance of 50,000. Due to severe flood the only road was blocked and so Mr. X was unable to supply the sugar. The contract here was discharged due to impossibility of performance. After the lapse of time he agreed to supply the goods which Mr. Y refused to accept. Mr X claimed compensation of 10,000 from Mr. Y as he refused to accept. As the time had already lapsed and the contract has become void Mr. Y is not bound to accept the goods after time and his refusal shall not give Mr. X any right to claim compensation. Mr. Y on the other hand claimed the refund of the advance of 50,000. Mr. Y will get it back as the contract has become void.

Thus Mr. X will not get the compensation of 10,000 and he will have to refund the advance of 50,000 to Mr. Y.



PM Ltd., contracts with Gupta Traders to make and deliver certain machinery to them by 30<sup>th</sup> June 2017 for 21.50 Lakhs. Due to labour strike, PM Ltd. could not manufacture and deliver the machinery to Gupta Traders. Later Gupta Traders procured the machinery from another manufacturer for 22.75 lakhs. Gupta Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with PM Ltd. and were compelled to pay compensation for breach of contract. Calculate the amount of compensation which Gupta Traders can claim from PM Ltd., referring to the legal provisions of the Indian Contract Act, 1872. **(RTP May' 18)**

**OR**

M Ltd., contract with Shanti Traders to make and deliver certain machinery to them by 30.6.2017 for ` 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 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. **(MT Nov' 19)**



As per Section 73 of the Indian Contract Act, 1872 when a contract has been breached, the party who suffers by such a breach is entitled to receive from the other party compensation for any loss or damage caused to him in the usual course 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 to be given for any remote and indirect loss or damage sustained by reason of the breach. 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. In case of special damages they are recoverable if the other party had notice of it.



In the above case PM Ltd. had contracted and delivers machinery to Gupta Traders. Due to labour strike it was unable to deliver the machinery to Gupta Traders. As PM Ltd. has breached the contract it is liable to compensate Gupta Traders for the loss of 1.25 lakhs (i.e. 22.75 lakhs – 21.50 lakhs) which had naturally arisen due to default in performing the contract by the specified date. Regarding the amount of compensation which Gupta Traders were compelled to make to Zenith Traders, it depends upon the fact whether PM Ltd. knew about the contract of Gupta Traders for supply of the contracted machinery to Zenith Traders on the specified date. If so, PM Ltd. is also obliged to reimburse the compensation which Gupta Traders had to pay to Zenith Traders for breach of contract. Otherwise PM Ltd. is not liable for that.

Thus Gupta Traders can recover 1,25,000 as loss. The compensation they paid to Zenith Traders could be recovered if the notice of the same was given to PM Ltd.



**Mr.** Murti was travelling to Manali with his wife by bus of Himalya Travels Pvt. Ltd. Due to some technical default in the bus, the driver has to stop the bus in a mid-way in cold night. Driver advised the passenger to get the shelter in nearest hotel which was at a distance of only one kilometre from that place. The wife of Mr. Murti caught cold and fell ill due to being asked to get down and she had to walk in cold night to reach hotel. Mr. Murti filed the suit against Himalya Travels Pvt. Ltd. for damages for the personal inconvenience, hotel charges and medical treatment for his wife. Explain, whether Mr. Murti would get compensation for which he filed the suit? **(MT)/ (MT)**



**Section 73** of Indian Contract Act, 1872 provides that 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. However such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

In the instant case, Mr. Murti filed the suit against Himalya Travels Pvt. Ltd. for damages for the personal inconvenience, hotel charges and medical treatment for his wife. On the basis of above provisions and facts of the case, it can be said that Mr. Murti can claim damages for the personal inconvenience and hotel charges but not for medical treatment for his wife because it is a remote or indirect loss.

Therefore Mr Murti can claim the damages except for the medical treatment for his wife.



Seema was running a boutique in New Delhi. She has to deliver some cloth to her friend Kiran who was putting up an exhibition at Mumbai. Seema delivered the sewing machine and some cloth to a railway company to be delivered at a place where the exhibition was to be held. Seema expected to earn an exceptional profit from the sales made at this exhibition however she did not bring this fact to the notice of the railway's authorities. The goods were delivered at the place after the conclusion of the exhibition. On account of such breach of contract by railways authorities, can Seema recover the loss of profits under the Indian Contract Act, 1872? (RTP May' 22)/ (MT)



As per Section 73 to 75 of Indian Contract Act, 1872, Damage means a sum of money claimed or awarded in compensation for a loss or an injury. Whenever a party commits a breach, the aggrieved party can claim the compensation for the loss so suffered by him. General damages are those which arise naturally in the usual course of things from the breach itself. (Hadley Vs Baxendale). Therefore, when breach is committed by a party, the defendant shall be held liable for all such losses that naturally arise in the usual course of business. Such damages are called ordinary damages. However, special damages are those which arise in unusual circumstances affecting the aggrieved party and such damages are recoverable only when the special circumstances were brought to the knowledge of the defendant. If no special notice is given, then the aggrieved party can only claim the ordinary damages.

In the given case, Seema had to deliver some cloth to her friend Kiran who was putting up an exhibition at Mumbai. Seema delivered the sewing machine and some cloth to a railway company to be delivered at a place where the exhibition was to be held. Seema expected to earn an exceptional profit from the sales made at this exhibition however she did not bring this fact to the notice of the railway's authorities. The goods were delivered after the conclusion of the exhibition.

Therefore Seema can recover only the losses arising in the ordinary course of business, since no notice about special circumstances was given to railways authorities, she could not recover the loss of profits.



‘X’ entered into a contract with ‘Y’ to supply him 1,000 water bottles @ 5.00 per water bottle, to be delivered at a specified time. Thereafter, ‘X’ contracts with ‘Z’ for the purchase of 1,000 water bottles @ ` 4.50 per water bottle, and at the same time told ‘Z’ that he did so for the purpose of performing his contract entered into with ‘Y’. ‘Z’ failed to perform his contract in due course and market price of each water bottle on that day was ` 5.25 per water bottle. Consequently, ‘X’ could not procure any water bottle and ‘Y’ rescinded the contract. Calculate the amount of damages which ‘X’ could claim from ‘Z’ in the circumstances? What would be your answer if ‘Z’ had not informed about the ‘Y’ s contract? Explain with reference to the provisions of the Indian Contract Act. 1872. (MT 2)



As per section 73 of the Indian Contract Act, 1872 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.

The leading case on this point is “Hadley v. Baxendale” in which it was decided by the Court that if the special circumstances under which the contract was communicated by one party to the other the damages resulting from the breach of such contract would be the amount of injury which would ordinarily follow from the breach of contract under these special circumstances so known and communicated.

In the above case X contracted to sell bottles to Y. He contracted to buy these bottles from Z and had informed Z that he was purchasing water bottles from him for the purpose of performing his contract with Y. Z thus had the knowledge of the contract between X and Y. X will be entitled to claim from Z Rs. 500/- at the rate of 0.50 paise i.e. 1000 water bottles (0.5 p being the difference between the procuring price of water bottles and contracted selling price to Y) being the amount of profit X would have made by the performance of his contract with Y.

Thus X will claim 500 from Z.

If X had not informed Z of Y’s contract, then the amount of damages would have been the difference between the contract price and the market price on the day of default. The amount of damages would be Rs. 750/- (i.e. 1000 water bottles x 0.75 paise).



What do you mean by Quantum Meruit and state the cases where the claim for Quantum Meruit arises? (RTP May' 20)



The term quantum meruit means as much as is earned or as much as is merited. Where one person has rendered service to another in circumstances which indicate an understanding between them that it is to be paid for although no particular remuneration has been fixed, the law will infer a promise to pay. It also covers a case where the party injured by the breach had at time of breach done part but not all of the work which he is bound to do under the contract and seeks to be compensated for the value of the work done. For the application of this doctrine, two conditions must be fulfilled:

- i. It is only available if the original contract has been discharged.
- ii. The claim must be brought by a party not in default.

The object of allowing a claim on quantum meruit is to recompensate the party or person for value of work which he has done. Damages are compensatory in nature while quantum meruit is restitutory.

The claim for quantum meruit arises in the following cases:

- i. when an agreement is discovered to be void or when a contract becomes void.
- ii. When something is done without any intention to do so gratuitously.
- iii. Where there is an express or implied contract to render services but there is no agreement as to remuneration.
- iv. When one party abandons or refuses to perform the contract.
- v. Where a contract is divisible and the party not in default has enjoyed the benefit of part performance.
- vi. When an indivisible contract for a lump sum is completely performed but badly the person who has performed the contract can claim the lump sum, but the other party can make a deduction for bad work.



A coolie in uniform picks up the luggage of R to be carried out of the railway station without being asked by R and R allows him to do so. Examine whether the coolie is entitled to receive money from R under the Indian Contract Act, 1872. **(RTP Nov' 18)**



Implied contracts are those contracts where the obligation between the parties is not created by an agreement but by the imposition. The imposition may be by law or by actions. The purpose of this contract is to prevent the unjust enrichment of one at the expense of the other. Here even though there is no contract between the parties by implication a contract is made and it carries the same obligation as that of the contract.

In the above case a coolie picks the luggage of R without R asking him to do so. As R had not asked for the services the contract is not created but R not stopping the coolie shows that he has accepted the work done by him and such acceptance amounts to an implied contract between R and the coolie.

Hence R is liable to pay the coolie the charges for the work done.



Explain the meaning of 'Quasi -Contracts'. State the circumstances which are identified as quasi contracts by the Indian Contract Act, 1872. (RTP Nov' 19)/ (MT)/ (MT)



Even in the absence of a contract, certain social relationships give rise to certain specific obligations to be performed by certain persons. These are known as quasi –contracts. Such contracts create same obligations as in the case of regular contracts. Quasi contracts are contracts which are not made between the parties but are imposed by law to prevent the unjust enrichment of one at the expense of the other. Quasi-contracts are based on the principles of equity, justice and good conscience.

The salient features of quasi-contracts are:

- i. such a right is always a right to money and generally, though not always, to a liquidated sum of money;
- ii. does not arise from any agreement between the parties concerned but the obligation is imposed by law and;
- iii. the rights available are not against all the world but against a particular person or persons only, so in this respect it resembles to a contractual right.

The following are the quasi contracts as identified under the Indian Contract Act:

1. **Claim for necessities supplied to persons incapable of contracting:** Any person supplying necessities of life to persons who are incapable of contracting is entitled to claim the price from the other person's property. Similarly, where money is paid to such persons for purchase of necessities, reimbursement can be claimed.

2. **Payment by an interested person:** A person who has paid a sum of money which another person is obliged to pay, is entitled to be reimbursed by that other person provided that the payment has been made by him to protect his own interest. 3.
3. **Obligation of person enjoying benefits of non-gratuitous act:** Where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered.
4. **Responsibility of finder of goods:** A person who finds goods belonging to another person and takes them into his custody is subject to same responsibility as if he were a bailee.
5. **Liability for money paid or thing delivered by mistake or by coercion:** A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it.





What is meant by 'Quasi-Contract'? State any three salient features of a quasi-contract as per the Indian Contract Act, 1872. (Dec' 21)/ (MT)



Under certain special circumstances obligation resembling those created by a contract is 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 Quasi-contract:

1. It does not arise from any agreement of the parties concerned but it is imposed by law.
2. The right under it is always a right to money and generally though not always to a liquidated sum of money.
3. It is a right which is available not against all the world, but against a particular person or persons only, so that in this respect it resembles a contractual right.



**E**xplain the type of contracts in the following agreements under the Indian Contract Act, 1872:

- i. A coolie in uniform picks up the luggage of A to be carried out of the railway station without being asked by A and A allows him to do so.
- ii. Obligation of finder of lost goods to return them to the true owner.
- iii. A contracts with B (owner of the factory) for the supply of 10 tons of sugar, but before the supply is effected, the fire caught in the factory and everything was destroyed. **(RTP May' 20)/ (MT)**



- i. It is an implied contract or quasi contract and A must pay for the services of the coolie.  
**Implied Contracts:** Implied contracts come into existence by implication. The implication is by law and or by action. Section 9 of the Indian Contract Act, states that in so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.  
**Quasi-Contract:** A quasi-contract is not an actual contract but it resembles a contract. It is created by law under certain circumstances. The law creates and enforces legal rights and obligations when no real contract exists. Such obligations are known as quasi-contracts. In other words, it is a contract in which there is no intention on part of either party to make a contract but law imposes a contract upon the parties.
- ii. It is an implied contract or quasi contract whereby the finder of the goods must trace the true owner and return the goods back to him.
- iii. The above contract is a void contract. In the above case the contract was made however before the contract could be performed the goods are destroyed making the contract unenforceable.  
**Void Contract:** Section 2 (j) of the Act states as follows: "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable".



**P** left his carriage on D's premises. Landlord of D seized the carriage against the rent due from D. P paid the rent and got his carriage released. Can P recover the amount from D? (RTP June' 23)



Section 69 of the Indian Contract Act, 1872 states that a person who is interested in the payment of money which another person is bound by law to pay, and who therefore pays it, is entitled to get it reimbursed by the other. This obligation is created on the grounds of a quasi contract.

In the present case, D was lawfully bound to pay rent. P was interested in making the payment to D's landlord as his carriage was seized by him. Being an interested party, P made the payment and can recover the same from D.

Hence P can recover the amount from D.



**X** found a wallet in a restaurant. He enquired of all the customers present there but the true owner could not be found. He handed over the same to the manager of the restaurant to keep till the true owner is found. After a week he went back to the restaurant to enquire about the wallet. The manager refused to return it back to X, saying that it did not belong to him.

In the light of the Indian Contract Act, 1872, can X recover it from the Manager?  
(Nov'19)



As per section 71 of the Indian Contract Act, 1872, a person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee.

Thus, a finder of lost goods has:

- i. to take proper care of the property as man of ordinary prudence would take
- ii. no right to appropriate the goods and
- iii. to restore the goods if the owner is found.
- iv. Right of ownership against the whole world except the owner.

In the above case X found a wallet in a restaurant and handed it over to the manager. The manager later refused to return the wallet back to X. As X is entitled to retain the wallet found against everybody except the true owner, the manager must return the wallet to X.



Mr. Y aged 21 years, lost his mental balance after the death of his parents in an accident. He was left with his grandmother aged 85 years, incapable of walking and dependent upon him. Mr. M their neighbour, out of pity, started supplying food and other necessities to both of them. Mr. Y and his grandmother used to live in the house built by his parents. Mr. M also provided grandmother some financial assistance for her emergency medical treatment. After supplying necessities to Mr. Y for four years, Mr. M approached the former asking him to payback 15 Lakhs inclusive of 7 Lakhs incurred for the medical treatment of the lady (grandmother). Mr. Y pleaded that he has got his parent's jewellery to sell to a maximum value of 4 Lakhs, which may be adjusted against the dues. Mr. M refused and threatened Mr. Y of legal suit to be brought against for recovering the money.

Now, you are to decide upon based on the provisions of the Indian Contract Act, 1872:

- i. Will Mr. M succeed in filing the suit to recover money? Elaborate the related provisions?
- ii. What is the maximum amount- of money that can be recovered by Mr. M?
- iii. Shall the provisions of the above act also apply to the medical treatment given to the grandmother? **(Dec' 22)**



As per section 68 of the Indian Contract Act, 1872, if a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

In the instant case, Mr. M supplied the food and other necessaries to Mr. Y (who lost his mental balance) and Mr. Y's grandmother (incapable of walking and dependent upon Mr. Y). Mr. Y had jewellery worth 4 lakh and also a house built by his parents where he and his grandmother lived. As Mr. M had supplied necessaries to Mr. M and his dependant grandmother he can recover the money from Mr. M's preoperty.

Hence

- i. Mr. M will succeed in filing the suit to recover money.
- ii. Supplier is entitled to be reimbursed from the property of such incapable person. Hence, the maximum amount of money that can be recovered by Mr. M is 15 Lakhs and this amount can be recovered from Mr. Y's parent's jewellery amounting to 4 Lakhs and rest from the house of Y's Parents. (Assumption: Y has inherited the house property on the death of his parents)
- iii. Necessaries will include the emergency medical treatment. Hence, the above provisions will also apply to the medical treatment given to the grandmother as Y is legally bound to support his grandmother.



**PQR**, a hospital in Delhi, recruits Dr A, on contract basis for a period of 3 months. The hospital management promises to pay Dr A, a lump sum amount of 1,00,000 if Dr A tests positive for novel corona virus (Covid 19) during the contract period of 3 months. Identify the type of contract and highlight the rule of enforcement. Also, what will happen if Dr A does not contract Covid 19. (RTP Dec' 21)



Section 31 of the Indian Contract Act, 1872 provides that “A contract to do or not to do something, if some event, collateral to such contract, does or does not happen” is a Contingent Contract. Section 35 says that Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, becomes void if, at the expiration of time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

In the instant case, PQR, a hospital in Delhi, recruits Dr A, on contract basis for a period of 3 months. The hospital management promises to pay Dr A, a lump sum amount of 1,00,000 if Dr A tests positive for novel corona virus (Covid 19) during the contract period of 3 months. The contract between PQR hospital & Dr. A is a Contingent Contract. In Case, if Dr. A does not contract Covid 19, then the contract stands void automatically.



**E**xplain the meaning of 'Contingent Contracts' and state the rules relating to such contracts. (RTP May' 19)/ (RTP May' 20)/ (July' 21)/ (MT)/ (MT)

**OR**

What is contingent contract? Discuss the essentials of contingent contract as per the Indian Contract Act, 1872. (Nov' 18)



A contract may be absolute or contingent. As per section 31 a contingent contract "is a contract to do or not to do something, if some event, collateral to such contract does or does not happen. 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 10,000 if he is elected President of a particular association. This is a contingent contract. The essential characteristics of a contingent contract are:

- i. There must be a contract to do or not to do something,
- ii. The performance of the contract must depend upon the happening or non happening of some event.
- iii. The happening of the event is uncertain.
- iv. 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.
- v. 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 event has happened. If the event becomes impossible, such contracts become void.
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 event becomes impossible.
3. If a contract is contingent upon, how a person will act at an unspecified time the event 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.
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.