

The Indian Contract Act, 1872

Q-1 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?[Sugg.-Nov'19, 4 Marks]

Ans. Provision of Law:

- ⊖ This question relates to the concept of finder of goods under Indian Contract Act,1872.
- ⊖ As per the provision of Contract Act, the person who finds the goods belonging to other is known as finder of goods.
- ⊖ Finder of goods has an authority to keep the goods with him until and unless the true owner is found and has a duty to find true owner and return him the goods.

Facts of case:

- ⊖ X found a wallet in restaurant he inquired in restaurant but true owner could not be found he handed it to manager of restaurant to keep it until true owner is found. After a week he went back to restaurant to inquire about the wallet. The manager refused to return it back to him.

Conclusion:

- ⊖ Here in this case as a finder of goods X has a right to recover the wallet from manager.

Q-2 Define consideration. What are the legal rules regarding consideration under the Indian Contract Act, 1872? [Sugg.-Nov'19, 7 Marks]

Ans. Consideration [Section 2(d) of the Indian Contract Act, 1872]: When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise.

Legal Rules Regarding Consideration

- (i) **Consideration must move at the desire of the promisor:** Consideration must be offered by the promisee or the third party at the desire or request of the promisor. This implies "return" element of consideration.
- (ii) **Consideration may move from promisee or any other person:** In India, 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.*
- (iii) **Executed and executory consideration:** A consideration which consists in the performance of an act is said to be executed. When it consists in a promise, it is said to be executory. The promise by one party may be the consideration for an act by some other party, and vice versa.
- (iv) **Consideration may be past, present or future:** It is a general principle that consideration is given and accepted in exchange for the promise. The consideration, if past, may be the motive but

cannot be the real consideration of a subsequent promise. But in the event of the services being rendered in the past at the request or the desire of the promisor, the subsequent promise is regarded as an admission that the past consideration was not gratuitous.

- (v) **Consideration need not be adequate:** Consideration need not to be of any particular value. It need not be approximately of equal value with the promise for which it is exchanged but it must be something which the law would regard as having some value.
- (vi) **Performance of what one is legally bound to perform:** The performance of an act by a person who is legally bound to perform the same cannot be consideration for a contract. Hence, a promise to pay money to a witness is void, for it is without consideration. Hence such a contract is void for want of consideration.

But where a person promises to do more than he is legally bound to do, such a promise provided it is not opposed to public policy, is a good consideration. It should not be vague or uncertain.

- (vii) **Consideration must be real and not illusory:** Consideration must be real and must not be illusory. It must be something to which the law attaches some value. If it is legally or physically impossible it is not considered valid consideration.
- (viii) **Consideration must not be unlawful, immoral, or opposed to public policy.** Only presence of consideration is not sufficient it must be lawful. Anything which is immoral or opposed to public policy also cannot be valued as valid consideration.

Q-3 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 adjust ₹ 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? **[Sugg.-Nov'19, 6 Marks]**

Ans. Provision of Law:

- ☞ This question relates to the provision of Appropriation of payment under Indian Contract Act, 1872.
- ☞ As per the provisions of Indian Contract Act when there are more than one debt due from same debtor and he makes a part payment then the amount so paid should be first appropriated in the manner determined by the debtor if he cannot decide then creditor can appropriate against any debt and if creditor also cannot decide then it should be appropriated in the time ratio i.e earlier debt will be relieved first and it can also be a time barred debt.

Facts of the case:

- ☞ In this case Mr.Sonumal provided a loan of Rs.80,000 to Mr.Datumal on 26.02.2019.Further loan of Rs.1,00,000 on 28.02.2019 and Rs.50,000 on 03.03.2019. On 10.03.2019 Mr.Datumal paid Rs.75,000 with a direction to appropriate Rs.50,000 towards the loan of 03.03.2019 and the balance against loan on 26.02.2019.Mr.Sonumal objected the same and asked borrower to adjust in accordance with time.

Conclusion:

1. As per the act the appropriation should be first according to the direction of debtor therefore contention of Mr.Sonumal is not correct in this case.
2. If the borrower does not insist on order of adjustment of repayment then Mr.Sonumal can appropriate it against any debt which he deems fit.
3. If neither Mr.Sonumal nor Mr.Datumal insist on any order of adjustment of their part then it should be appropriated in order of time i.e. earlier debt will be relieved first.

Q-4 Explain the term 'Coercion' and what are the effects of coercion under Indian Contract Act, 1872.

[RTP-May'18, Sugg.-Nov'19, 5 Marks]

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

Effects of coercion under section 19 of Indian Contract Act, 1872

- (i) Contract induced by coercion is voidable at the option of the party whose consent was so obtained.
- (ii) As to the consequences of the rescission of voidable contract, the party rescinding a void contract should, if he has received any benefit, thereunder from the other party to the contract, restore such benefit so far as may be applicable, to the person from whom it was received.
- (iii) A person to whom money has been paid or anything delivered under coercion must repay or return it.

Q-5 Mr. Sohanlal sold 10 acres of his agricultural land to Mr. Mohanlal on 25th 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 12th October, 2018, Mr. Sohanlal died leaving behind his son and life. On 15th 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?

[Sugg.-May'19, 4 Marks]

Ans. **Provision of Law:**

- ☉ This question relates to the provision of Stranger for Consideration.
- ☉ As per the provisions of this act the stranger to contract cannot sue but stranger to consideration can sue the parties to contract as the consideration may be given by promise or any other person.
- ☉ Moreover, it is provided in the law that "in case covenant running with the land, where a person purchases land with notice that the owner of the land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successor of the seller."

Facts of the case:

- ☉ Mr.Sohanlal sold the land of 10 acres to Mr.Mohanlal on 25th September,2018 for Rs.25 lacs. The property papers mentioned a condition that whoever purchases the land is free to use 9 acres as per his choice but remaining 1 acre has to be allowed to be used by Mr.Chotelal, son of seller for carrying out farming activity of their choice. On 12th October,2018 Mr.Sohanlal died leaving behind his son. Mr.Mohanlal started construction of auditorium on whole 10 acres land and denied any land to Mr.Chotelal.

Conclusion:

- ☉ Here in this case the consideration was paid to Mr.Mohanlal by Mr.Sohanlal on behalf of Mr.Chotelal and therefore Mr.Mohanlal cannot deny the land to Mr.Chotelal.

Q-6 "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?

[MTP.-March'18, MTP-April'19, RTP.-Nov'18, Sugg.-May'19, Sugg.-May'18, 7 Marks]

Ans. Mere silence is not fraud

Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

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

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

Silence is 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:

- (a) **Fiduciary Relationship:** Here, the person in whom confidence is reposed is under a duty to act with utmost good faith and make full disclosure of all material facts concerning the agreement, known to him.
- (b) **Contracts of Insurance:** In contracts of marine, fire and life insurance, there is an implied condition that full disclosure of material facts shall be made, otherwise the insurer is entitled to avoid the contract.
- (c) **Contracts of marriage:** Every material fact must be disclosed by the parties to a contract of marriage.
- (d) **Contracts of family settlement:** These contracts also require full disclosure of material facts within the knowledge of the parties.
- (e) **Share Allotment contracts:** Persons issuing 'Prospectus' at the time of public issue of shares/debentures by a joint stock company have to disclose all material facts within their knowledge.

Q-7 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 6th 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?

[Sugg.-May'19, 6 Marks]

Ans. Provision of law:

- ☉ This question relates to the concept of discharge of contract due to operation of law.
- ☉ It is provided in the act that if the contract was dependent upon personal skill or confidence and Promisor dies then such contract will be discharged due to the death of Promisor.

Facts of the case:

- Mr. Rich aspired to get a self-portrait made by an artist. He went to workshop of Mr. C an artist and asked whether he could sketch the portrait of Mr. Rich. Mr. C agreed and asked for Rs. 50,000 as full advance payment for the above creative work. The contract was to complete the painting in 10 sittings and will take 3 months. On reaching to the workshop for 6th sitting, Mr. Rich was informed that Mr. C became paralyzed and would not be able to paint for near future.

Conclusion:

- In this case the contract was depending upon personal skill of Mr. C and it will become void due to his paralysis.
 1. Mr. Rich cannot ask Mr. K to complete the artistic work in lieu of his father as it was depending upon personal skill and as per contract act if the contract is based on personal skill then it should be performed by promisor only.
 2. Mr. Rich will be able to recover the amount from Mr. K the amount already paid as the contract of portrait becomes void due to paralysis of Mr. C and as per contract act if the contract becomes void then any party who has received any benefit under a void contract is liable to return it to the other party.

Q-8 Discuss the essentials of Undue Influence as per the Indian Contract Act, 1872. [Sugg.-May'19, 5 Marks]

Ans. 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:
 - (a) **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.
 - (b) **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.
 - (c) **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.
 - (d) **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.

Q-9 Mr. X and Mr. Y entered into a contract on 1st August, 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 2nd August, 2018 and the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. X offered to supply sugar on 20th August, 2018 for which Mr. Y did not agree. On 1st September, 2018, Mr. X claimed

compensation of ₹ 10,000 from Mr. Y for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Y claimed for refund of ₹ 50,000 which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Y's contention. **[Sugg.-Nov'18, 4 Marks]**

ns. **Provision of law:**

- ☞ This question relates to the provision of Supervening Impossibility under Indian Contract Act, 1872.
- ☞ As per the provisions of Indian Contract Act, 1872 if after entering into a valid contract some event happens which makes the performance impossible then such contract becomes void due to Supervening Impossibility and any party receiving any benefit is bound to restore it to others because of Supervening Impossibility.

Facts of the case:

- ☞ Mr.X and Mr.Y entered into contract on 1st August, 2018 where Mr.X had to supply 50 tons of Sugar to Mr.Y at a certain price strictly within 10 days. Mr.Y also paid advance of Rs.50,000 as per the terms. The only mode available for transportation was damaged and could not be repaired within 15 days. Mr.X offered to supply sugar on 20-08-2018 to which Mr.Y did not agree. On 1st September Mr.X claimed Rs.10,000 from Mr.Y for refusing to accept sugar which was not in terms of contract. On the other hand Mr.Y claimed refund of Rs.50,000 paid in advance.

Conclusion:

- ☞ In this case the contract becomes void due to Supervening Impossibility as the only mode of transportation was damaged and therefore Y cannot claim damages of Rs.10,000 and he will also be under obligation to refund advance of Rs.50,000 received under void contract.

10 What is Contingent Contract? Discuss the essentials of Contingent Contract as per the Indian Contract Act, 1872. **[Sugg.-Nov'18, 7 Marks]**

ns. **According to section 31 of the Indian Contract Act, 1872, contingent contract means a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.**

Example: Contracts of Insurance, indemnity and guarantee.

Essentials of a contingent contract

- (a) **The performance of a contingent contract would depend upon the happening or non-happening of some event or condition.** The condition may be precedent or subsequent.
- (b) **The event referred to, is collateral to the contract.** The event is not part of the contract. The event should be neither performance promised nor a consideration for a promise.
- (c) **The contingent event should not be a mere 'will' of the promisor.** The event should be contingent in addition to being the will of the promisor.
- (d) **The event must be uncertain.** Where the event is certain or bound to happen, the contract is due to be performed, then it is a not contingent contract.

11 Mr. Ramesh promised to pay ₹ 50,000 to his wife Mrs. Lali so that she can spend the sum on her 30th birthday. Mrs. Lali insisted her husband to make a written agreement if he really loved her. Mr. Ramesh made a written agreement and the agreement was registered under the law. Mr. 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 Contract Act, 1872, advise whether Mrs. Lali will succeed. **[Sugg.-Nov'18, 3 Marks]**

ns. **Provision of law:**

- ☞ This question relates to the provision of Natural love and affection under Indian Contract Act, 1872.
- ☞ Usually the contract to be valid requires consideration from both the parties otherwise as per the

rule of "No Consideration no contract" the agreement will be void. But there are certain exceptions to this rule, one of such exception is Natural Love and affection.

- ☞ In case of Natural Love and affection the contract without consideration is also valid if following conditions are satisfied:
 - o It is in writing
 - o It is registered.
 - o It is between parties having immediate relation.
 - o It is out of natural love and affection.

Facts of case:

- ☞ In this case Mr.Ramesh promised to pay Rs.50,000 to his wife Mrs.Lali Mrs.Lali insisted to make the promise in writing and registered if he really loved her and accordingly the promise was made. Mr.Ramesh failed to pay the amount.

Conclusion:

- ☞ Here in this case promise made by Mr.Ramesh fulfills all the above conditions and therefore it is valid under Natural love and affection and Mrs.Lali can file a suit against Mr.Ramesh and recover the promised amount.

Q-12 A shop-keeper displayed a pair of dress in the show-room and a price tag of ₹ 2,000 was attached to the dress. Ms. Lovely looked to the tag and rushed to the cash counter. Then she asked the shop-keeper to receive the payment and pack up the dress. The shop-keeper refused to hand-over the dress to Ms. Lovely in consideration of the price stated in the price tag attached to the Ms. Lovely seeks your advice whether she can sue the shop-keeper for the above cause under the Indian Contract Act, 1872.

[Sugg.-Nov'18, 3 Marks]]

Ans. Provision of Law:

- ☞ This question relates to the topic of Invitation to offer under Indian Contract Act, 1872.
- ☞ When the goods are displayed with a price tag in a showroom it is an Invitation to offer, when a customer takes it to cash counter for purchasing the same then it will be offer and when shopkeeper accepts and makes a bill then it is an acceptance.

Facts of Case:

- ☞ A shop keeper displayed a pair of dress in show room and a price tag of Rs.2000 was attached to the dress. Ms.Lovely took the dress to the counter. The shop-keeper refused to hand over the dress to Ms.Lovely.

Conclusion:

- ☞ Here in this case the display of goods with price tag is considered as Invitation to offer when Ms.Lovely took it to counter she made an offer and contract could not be made till the shop-keeper accepts the same and therefore shopkeeper has a right to refuse the same.

Q-13 Explain the modes of revocation of an offer as per the Indian Contract Act, 1872.

[Sugg.-Nov'18, 5 Marks]]

Ans. Modes of revocation of Offer

- (i) By notice of revocation
- (ii) **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.
- (iii) **By non-fulfillment of condition precedent:** Where the acceptor fails to fulfill a condition precedent to acceptance the proposal gets revoked.

- (iv) **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.
- (v) By counter offer
- (vi) By the non- acceptance of the offer according to the prescribed or usual mode
- (vii) By subsequent illegality

Q-14 State the exceptions to the rule "An agreement without consideration is void".

[Sugg.-Jan'21, MTP.-March'18, MTP.-April'19, RTP.-May'19, RTP.-Nov'19, Sugg.-May'18, 5 Marks]

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

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

Q-15 Examine with reason that the given statement is correct or incorrect "Minor is liable to pay for the necessaries supplied to him". [Sugg.-May'18, 2 Marks]

Ans. **Minor is liable to pay for the necessaries supplied to him:** This statement is incorrect. The case of necessaries 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 necessaries 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 necessaries. There is no personal liability of the minor, but only his property is liable.

Q-16 Distinguish between wagering agreement and contract of insurance. [Sugg.-May'18, 2 Marks]

Ans. **Distinction between Wagering Agreement and Contract of Insurance**

	Basis	Wagering Agreement	Contracts of Insurance
1.	Meaning	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.
2.	Consideration	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).
3.	Insurable Interest	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.

4.	Contract of Indemnity	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
5.	Enforceability	It is void and unenforceable agreement.	It is valid and enforceable
6.	Premium	No such logical calculations are required in case of wagering agreement.	Calculation of premium is based on scientific and actuarial calculation of risks.
7.	Public Welfare	They have been regarded as against the public welfare.	They are beneficial to the society.

Q-17 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. **[Sugg.-May'18, 6 Marks]**

Ans. Provision of law:

- ☉ This question relates to the provision of breach of contract and damages.
- ☉ If there is a breach of contract then aggrieved party is entitled to claim damages from defaulting parties and the damages recovered can be in the nature of ordinary damages (available as a direct loss) amounting to the difference of contract price and market price. If there are special circumstances affecting the case then aggrieved party can claim special damages too provided the aggrieved party has informed about the circumstances in advance.

Facts of the case:

- ☉ M Ltd. Contract with Shanti Traders to make and deliver certain machinery to them by 30.06.2017 for Rs.11.50 lacs. Due to labour strike, M Ltd. Could not manufacture and deliver to Shanti Traders. Later Shanti Traders procured the machinery from another manufacturer for 12.75 lacs and they were also prevented from performing a contract which it made with Zenith Traders and were also liable to pay compensation to them.

Conclusion:

- ☉ Here in this case M Ltd. Could not manufacture and deliver due to labor strike. Labor Strike cannot be considered as absolute impossibility so it will be considered as breach of contract and he will be liable to following damages.
- ☉ Ordinary damages of 1.25 lacs (12.75 lacs-11.5 lacs) and if M Ltd. was informed about the contract with Zenith Traders then Shanti Traders would also be entitled to recover the compensation paid to Zenith Limited as Special Damages.

Q-18 Explain 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]**

Ans.(i) It is an implied contract and A must pay for the services of the coolie.

Implied Contracts: Implied contracts come into existence by implication. Most often the implication is by law and or by action. Section 9 of the Indian Contract Act, 1872 contemplates such implied contracts when it lays down that in so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

(ii) Obligation of finder of lost goods to return them to the true owner cannot be said to arise out of a contract even in its remotest sense, as there is neither offer and acceptance nor consent. These are said to be quasi-contracts.

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.

(iii) The above contract is a void contract.

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". Thus, a void contract is one which cannot be enforced by a court of law.

Q-19 "Only a person who is party to a contract can sue on it". Explain this statement and describe its exceptions, if any. [RTP-May'18, RTP May '20]

Ans. Though under the Indian Contract Act, 1872, the consideration for an agreement may proceed from a third party, the third party cannot sue on contract. Only a person who is party to a contract can sue on it. Thus, the concept of stranger to consideration is valid and is different from stranger to a contract. The aforesaid rule, that **stranger to a contract cannot sue** is known as a "**doctrine of privity of contract**", 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**, a female member can enforce a provision for marriage expenses made on the partition of the Hindu Undivided Family.
- (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.

Q-20 Explain 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]

Ans. **Position to dominate the will:** A person is deemed to be in such position in the following circumstances:
(a) **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.

- (b) **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.
- (c) **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.
- (d) **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.

Q-21 What is a wagering agreement? Describe the transactions which resembles with wagering transactions but are not void. [RTP-May '20]

Ans. **Wagering agreement (Section 30 of the Indian Contract Act, 1872):** An agreement by way of a wager is void. It is an agreement involving payment of a sum of money upon the determination of an uncertain event. The essence of a wager is that each side should stand to win or lose, depending on the way an uncertain event takes place in reference to which the chance is taken and in the occurrence of which neither of the parties has legitimate interest.

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

Transactions resembling with wagering transaction but are not void

- (i) **Chit fund:** Chit fund does not come within the scope of wager (Section 30). 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 competition 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 and these contracts are different from wagering agreements.

Q-22 "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]

Ans. **Obligations of parties to contracts (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.

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

Example 1: 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.

Example 2: A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B because it involves use of personal skill.

Analysis of Section 37

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. This is the principle which is enshrined in Section 37. Thus, it is the primary duty of each party to a contract to either perform or offer to perform his promise. He is absolved from such a responsibility only when under a provision of law or an act of the other party to the contract, the performance can be dispensed with or excused.

Thus, from above it can be drawn that performance may be actual or offer to perform.

Q-23 What do you mean by Quantum Meruit and state the cases where the claim for Quantum Meruit arises? [RTP.-May '20]

Ans. **Quantum Meruit:** 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. *Quantum Meruit* i.e. as much as the party doing the service has deserved. It 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:

- (1) It is only available if the original contract has been discharged.
- (2) 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. It is but reasonable compensation awarded on implication of a contract to remunerate.

The claim for quantum meruit arises in the following cases:

- (a) when an agreement is discovered to be void or when a contract becomes void.
- (b) When something is done without any intention to do so gratuitously.
- (c) Where there is an express or implied contract to render services but there is no agreement as to remuneration.
- (d) When one party abandons or refuses to perform the contract.
- (e) Where a contract is divisible and the party not in default has enjoyed the benefit of part performance.
- (f) 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.

Q-24 Explain the meaning of 'Contingent Contracts' and state the rules relating to such contracts.

[RTP.-May'19, RTP.-May '20]

Ans. **Essential characteristics of a contingent contract:** A contract may be absolute or contingent. A contract is said to be absolute when the promisor undertakes to perform the contract in all events. A contingent contract, on the other hand "is a contract to do or not to do something, if some event, collateral to such contract does or does not happening (Section 31). It is a contract in which the performance becomes due only upon the happening of some event which may or may not happen.

For example, A contracts to pay B ' 10,000 if he is elected President of a particular association. This is a contingent contract. The essential characteristics of a contingent contract may be listed as follows:

- (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. (Section 32).
- (2) Where a contingent contract is to be performed if a particular event does not happening performance can be enforced only when happening of that event becomes impossible (Section 33).
- (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. (Section 34 and 35).
- (4) The contingent contracts to do or not to do anything if an impossible event happens, are void whether or not the fact is known to the parties (Section 36).

Q-25 Explain the concept of 'misrepresentation' in matters of contract. 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 whether Suraj can rescind the contract?

[March'21, MTP.-May '20, RTP.-May'19, RTP.-May '20, 3 Marks]

Ans. Provision of Law:

- ⇒ This question relates to the provision of Misrepresentation under Indian Contract Act,1872.
- ⇒ As per Indian Contract Act,1872, When the contract is entered by way of Fraud or Misrepresentation then the aggrieved party has an option either to rescind the contract or to enforce the performance of the same but if the party ratifies i.e validates the contract once then afterwards he does not have an option to rescind contract.

Facts of Case:

- ⇒ In this case Sohan induced Suraj to buy his motorcycle by saying it is in very good condition , Suraj complained that there were many defects in the motorcycle then Sohan proposed to bear 40% expenses of repair which Suraj accepts. After a few days motorcycle did not work at all.

Conclusion:

- ⇒ When an aggrieved party to a voidable contract ratifies i.e. validates the transaction he cannot rescind it later on.
- ⇒ In this case Suraj accepted the repair expenses by Sohan which amounts to acceptance of voidable contract therefore he will not be able to rescind it now. At the time when Soham offered Repair expenses Suraj had an option to deny and rescind contract but not after he accepted the repair expenses.

Q-26 X, a minor was studying in M.Com. in a college. On 1st 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 31st 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. **[MTP.-March'18, RTP.-May '20, 4 Marks]**

Ans. Provision of law:

- This question relates to supply of necessities to an incapable person or persons dependent on him.
- As per Indian Contract Act normally the agreement with incapable person is void ab initio and therefore it is not enforceable but if the necessities of life is supplied to incapable person or persons dependent on him then the properties of this incapable person will be liable for the same.

Facts of the Case:

- Here X, the minor was studying in M.com in a college and on 1st July he took a loan for his college fees and to purchase books. X had assets worth Rs.2 lacs. On due date X fails to pay the loan.

Conclusion:

- Here in this case X, a minor borrowed funds for his study and books which is known as necessities of life and therefore property of minor will be liable for the same.

Q-27 Define an offer. Explain the essentials of a valid offer. How an offer is different from an invitation to offer? **[RTP.-Nov'19]**

Ans. Definition: The word Proposal and offer are used interchangeably and it is defined under Section 2(a) of the Indian Contract Act, 1872 as 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.

Essentials: The following are important essentials of an offer: -

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

Offer and an Invitation to an offer: In terms of Section 2(a) of the Act, an offer is the 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. Thus, where a party without expressing his final willingness proposes certain terms on which he is willing to negotiate he does not make an offer, but only invites the other party to make an offer on those terms. Hence, the only thing that is required is the willingness of the offeree to abide by the terms of offer.

Q-28 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]**

Ans. 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 amount to acceptance, it cannot be taken as valid acceptance.

So in the given problem, if B remains silent, it does not amount to acceptance. The acceptance must be made within the time limit prescribed by the offer. The acceptance of an offer after the time prescribed by the offeror has elapsed will not avail to turn the offer into a contract.

Q-29 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]

Ans. Section 42 of the Indian Contract Act, 1872 requires that 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. 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.

Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but "joint and several". Section 43 provides that in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise.

Section 43 deals with the contribution among joint promisors. The promisors, may compel every joint promisor to contribute equally to the performance of the promise (unless a contrary intention appears from the contract). If any one of the joint promisors makes default in such contribution the remaining joint promisors must bear the loss arising from such default in equal shares.

As per the provisions of above sections,

- (i) Y can recover the contribution from X and Z because X,Y and Z are joint promisors.
- (ii) Legal representative of X are liable to pay the contribution to Y. However, a legal representative is liable only to the extent of property of the deceased received by him.
- (iii) Y also can recover the contribution from Z's assets.

Q-30 A student was induced by his teacher to sell his brand new car to the later 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 whether the student can sue the teacher?

[RTP-May'18, RTP-Nov'19]

Ans. **Provision of Law:**

- ☞ This question relates to the concept of Undue Influence.
- ☞ As per the provisions of Indian Contract Act, 1872 if the consent of the parties is taken by the way of Undue Influence then Contract will be considered as voidable at the option of the party whose consent was so caused.
- ☞ Contract will be considered as caused due to Undue Influence when one of the parties is under a position to dominate the will of the other party and the party having such a position takes undue advantage of the position to obtain consent of other party.

Facts of the Case:

- ☞ In this case a student is induced by his teacher to sell his brand new car at a price lower than Purchase Price to secure more marks.

Conclusion:

- ☉ As per the provision of Contract Act, The contract was entered by teacher by using Undue Influence and therefore this contract is voidable at the option of Student.

Q-31 Explain the meaning of 'Quasi-Contracts'. State the circumstances which are identified as quasi contracts by the Indian Contract Act, 1872. [RTP-Nov'19]

Ans. **Quasi-Contracts:** 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" as they create some obligations as in the case of regular contracts.

Quasi-contracts are based on the principles of equity, justice and good conscience.

The salient features of quasi-contracts are:

- such a right is always a right to money and generally, though not always, to aliquated sum of money;
- does not arise from any agreement between the parties concerned but the obligation is imposed by law and;
- 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.

Circumstances Identified as Quasi-Contracts:

- Claim for necessaries supplied to persons incapable of contracting:** Any person supplying necessaries 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 necessaries, reimbursement can be claimed.
- 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.
- 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.
- 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.
- 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.

In all the above cases contractual liability arises without any agreement between the parties.

Q-32 What 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]

Ans. **Compensation on Breach of Contract:** Section 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.

- Q-33** (i) 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:
- If P says nothing about the unsoundness of the horse to Q.
 - If P says nothing about it to Q who is P's daughter who has just come of age.
 - If Q says to P "If you do not deny it, I shall assume that the horse is sound." P says nothing.
- (ii) Comment on the following statements:
- Acceptance must be absolute and unqualified.
 - Acceptance must be in the prescribed mode.

[MTP.-May '20 , MTP-March'21, RTP.-May'19, 3 Marks]

Ans (i) Provision of law:

- ☞ This question relates to the concept of Silence amounting to fraud.
- ☞ 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, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech..

Facts of Case:

- ☞ 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.

Conclusion:

- ☞ if P says nothing to Q then also the contract is valid mere silence as to the facts likely to affect the willingness of a person to enter into a contract is not fraud. Here, it is not the duty of the seller to disclose defects.
 - ☞ If P says nothing about it to Q who is P's daughter who has just come of age then it becomes P's duty to tell Q about the unsoundness of the horse because a fiduciary relationship exists between P and his daughter Q. Here, P's silence amounts to fraud. So the contract is not Valid.
 - ☞ If Q says to P "If you do not deny it, I shall assume that the horse is sound." P says nothing then P's silence is equivalent to speech and hence amounts to fraud. So the Contract is not Valid.
- (ii) (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.

Q-34(i) 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.

(ii) 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]

Ans.(i) In the instant case, the aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract [Section 19, Indian Contract Act, 1872]. The aggrieved party loses the right to rescind the contract if he, after becoming aware of the misrepresentation, takes a benefit under the contract or in some way affirms it. Accordingly, in the given case, Suraj could not rescind the contract, as his acceptance to the offer of Sohan to bear 40% of the cost of repairs impliedly amount to final acceptance of the sale.

(ii) 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. Therefore, in the instant case, Y can sue X only for the balance amount i.e. ₹ 20,000 and not for the whole amount.

Q-35 (i) Ramaswami proposed to sell his house to Ramanathan. Ramanathan sent his acceptance by post. Next day, Ramanathan sends a telegram withdrawing his acceptance. Examine the validity of the acceptance according to the Indian Contract Act, 1872 in the light of the following:

- (a) The telegram of revocation of acceptance was received by Ramaswami before the letter of acceptance.
- (b) The telegram of revocation and letter of acceptance both reached together.
- (ii) "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.
- (ii) Anticipatory Breach & its effects.

[MTP-April'21, MTP-March'19, MTP-Oct'19, RTP-Nov'18, 7 Marks]

Ans. (i) Provision of law:

- ☉ This question relates to Communication of Acceptance and Revocation under The Indian Contract Act,1872
- ☉ Acceptance can be revoked at anytime before communication of acceptance is complete as against acceptor but not afterwards

Facts:

- (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.

Conclusion:

- ☉ In this case the telegram is posted before letter of acceptance is received so, revocation is valid.
- ☉ In Second case also telegram is posted before letter of acceptance is received so, revocation is valid.

(ii) 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, his acquiescence in its continuance.

" **Effect of anticipatory breach:** The promisee is excused from performance or from further performance. Further he gets an option:

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

Q-36 (i) Mr. Balwant, an old man, by a registered deed of gift, granted certain landed property to Ms. Reema, his daughter. By the terms of the deed, it was stipulated that an annuity of ₹ 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?

- (ii) 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]

Ans. (i) Provision of law:

- ⊖ This question relates to the concept of Stranger to Consideration under Indian Contract Act, 1872.
- ⊖ As per the provisions of Indian Contract Act Consideration may move from promisee or any other person that means Stranger to Consideration can enforce the rights under contract.

Facts of case:

- ⊖ In this case Mr. Balwant by a gift deed transferred his property to his daughter Ms. Reema. Ms. Reema agreed to pay Rs. 20000 every year to Mr. Sawant, brother of Mr. Balwant. Ms. Reema failed to pay the amount and claimed that she is not liable to pay the amount as there was no consideration from side of Mr. Sawant.

Conclusion:

- ⊖ As per the provision consideration may move from promisee or any other person.
- ⊖ Here in this case too consideration has been furnished to Ms. Reema by Mr. Balwant on behalf of his brother Mr. Sawant. Therefore in this case Ms. Reema is bound to pay.]

(ii) **Provision of law:**

- ⊖ Contract can be created by express words or it can be implied from conduct of the parties and contract created by conduct is also considered as valid.

Fact of the case:

- ⊖ In this case coolie picks up the luggage of R without being asked to do so but still R allowed the act.

Conclusion:

- ⊖ Here in this case Coolie by his behavior made an offer and R allowed him to do so. In this way there is an implied contract between coolie and R and R is bound to pay.

Q-37 (i) Point 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.
- (ii) 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.

[Sugg.-May-18, MTP-April'19, March'21, RTP-Nov'18, 4 Marks]

Ans. (i) Validity of agreements

- (a) Void Agreement: 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) 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.
- (c) 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.
- (d) Void Agreement: An agreement in restraint of legal proceedings is void as per Section 28 of the Indian Contract Act, 1872.
- (e) Valid Agreement: An agreement with alien friend is valid, but an agreement with alien enemy is void.

(ii) **Provision of Law:**

- ☉ This question relates to rights and liabilities of Joint Promisors.
- ☉ It is provided under the act that liability of Joint promisors is joint as well as several and in case of insolvency of one of the joint promisors the loss due to such insolvency will be borne by remaining Joint Promisors in equal shares.

Facts of case:

- ☉ In this case Ajay, Vijay and Sanjay jointly promised to pay Rs.600000 to Kartik. Over a period of time Vijay became insolvent and his assets are sufficient to pay only one fourth of his debts. Sanjay is required to pay whole debt.

Conclusion:

- ☉ Here in this case Sanjay being a joint promisor is liable to pay the whole amount to Kartik but he will after paying Sanjay will be able to recover from other too joint promisors and loss due to Vijay's insolvency will be borne equally by Ajay and Sanjay.

Q-38 Define consideration. State the characteristics of a valid consideration.

[MTP-April'21, MTP-March'19, RTP-Nov'18, 5 Marks]

Ans. Definition of Consideration- Section 2((d) of the Indian Contract Act, 1872

"When at the desire of the promisor, the promisee or any other person has done, or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or

abstinence or promise is called consideration for the promise.”

The essential characteristics of a valid consideration are as follows:

- (1) Consideration must move at the desire of the promisor (Durga Prasad v. Baldeo)
- (2) It may proceed from the promisee or any other person on his behalf.
- (3) It may be executed or executory.
- (4) It may be past, present or future.
- (5) Consideration need not be adequate
- (6) Performance of what one is legally bound to perform
- (7) Consideration must be real and not illusory

Q-39 '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]**

Ans. Provision of law:

- ⊖ This question relates to the topic of restraint of trade under Indian Contract Act, 1872
- ⊖ Agreement where the person is restricted from any lawful trade, occupation or profession then such restraint is opposed to public policy and void.
- ⊖ There are certain exceptions to this rule like a restraint can be made in case of sale of goodwill, restraint can be made in case of partnership and restraint can be made in terms of employment subject to they are reasonable.

Facts of the case:

- ⊖ In this case X was appointed as an assistant for 2 years to Y who was practicing Chartered Accountant at Jodhpur. It was agreed in terms of the terms of agreement that during the term of employment X will not practice as a Chartered Accountant within 20 kms of Y's office. At the end of the year X left the job and started practice of his own within area of 20 kms of Y's office.

Conclusion:

- ⊖ As per the contract Act restraint on trade can be valid during an employment.
- ⊖ Here the X has left the employment and therefore the restraint on him will also not be valid. Therefore, X cannot be restrained.

Q-40 PM Ltd., contracts with Gupta Traders to make and deliver certain machinery to them by 30th 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]**

Ans. (i) Provision of law:

- ⊖ This question relates to the provision of breach of contract under Indian Contract Act, 1872.
- ⊖ As per the Contract Act in case there is a breach of contract the aggrieved party can claim for damages. Ordinary damages can be recovered in case of normal circumstances and Special damages can be recovered in case when the other party has the notice about special circumstances.

Facts of the case:

- ☉ Here in this case PM Ltd entered into contract with Gupta Traders to make and deliver certain machinery to them by 30th June, 2017. Due to labour strike, PM limited could not manufacture and deliver the machinery to Gupta Traders. Gupta Traders purchased it from market at a higher price and they were also prevented from performing a contract which they entered with Zenith Traders.

Conclusion:

- ☉ Here in this case Gupta Traders will be able to recover the damages of 1.25 lacs (22.75 lacs Market Price – 21.5 lacs Contract Price) from PM Limited for breach of contract as labour strike cannot be considered as Supervening impossibility
- ☉ Secondly Gupta Traders will not be able to claim compensation paid to Zenith Traders as it was not communicated to PM Ltd at the time of making contracts.

Q-41(ii) "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]**

Ans.(ii) Minor can be a beneficiary or can take benefit out of a contract: 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.

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 (Section 30 of the Indian Partnership Act, 1932).

Q-42 Decide 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]**

Ans (i) As per Section 20 of the Indian Contract Act, 1872, an agreement under by mistake of fact are 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. Therefore, **it is a void agreement.**

(ii) 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, so **the agreement in question is void.**

(iii) 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. Here **the contract becomes void** due to the impossibility of performance of the contract.

Q-43 Mr. Sooraj sold 10 acres of his agricultural land to Mr. Murli on 25th September 2019 for Rs. 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. Chander, son of the seller for carrying out farming or other activity of his choice. On 12th October, 2019, Mr. Sooraj died leaving behind his son and wife. On 15th October, 2019 Mr. Murli started construction of an auditorium on the whole 10 acres of land and denied any land to Mr. Chander.

Now Mr. Chander wants to file a case against Mr. Murli and get a suitable remedy. Discuss the above in light of provisions of Indian Contract Act, 1872 and decide upon Mr. Chander's plan of action?

[MTP-May '20, 4 Marks]

Ans. Problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 2(d) and on the principle 'privity of consideration'. Consideration is one of the essential elements to make a contract valid and it can flow from the promisee or any other person. In view of the clear language used in definition of 'consideration' in Section 2(d), it is not necessary that consideration should be furnished by the promisee only. A promise is enforceable if there is some consideration for it and it is quite immaterial whether it moves from the promisee or any other person. The leading authority in the decision of the *Chinnaya Vs. Ramayya*, held that the consideration can legitimately move from a third party and it is an accepted principle of law in India.

In the given problem, Mr. Sooraj has entered into a contract with Mr. Murli, but Mr. Chander has not given any consideration to Mr. Murli but the consideration did flow from Mr. Sooraj to Mr. Murli on the behalf of Mr. Chander and such consideration from third party is sufficient to enforce the promise of Mr. Murli to allow Mr. Chander to use 1 acre of land. Further the deed of sale and the promise made by Mr. Murli to Mr. Chander to allow the use of 1 acre of land were executed simultaneously and therefore they should be regarded as one transaction and there was sufficient consideration for it.

Moreover, it is provided in the law that "in case covenant running with the land, where a person purchases land with notice that the owner of the land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successor of the seller."

In such a case, third party to a contract can file the suit although it has not moved the consideration.

Hence, Mr. Chander is entitled to file a petition against Mr. Murli for execution of contract.

Q-44 State the grounds upon which a contract may be discharged under the provisions of the Indian Contract Act, 1872. [MTP-April'19, MTP-May '20, MTP-March'21, 7 Marks]

Ans. **Discharge of a Contract:** 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.

Q-45 "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". Explain. [March'21, MTP-May '20, 5 Marks]

Ans. **Effect of a Refusal of Party to Perform Promise: 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.

From language of Section 39, it is clear that in the case under consideration, the following two rights accrue to the aggrieved party, namely, (a) to terminate the contract; (b) 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.

Q-46 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. [MTP-Oct'19, 4 Marks]

Ans. **Validity of agreements**

- (i) **Void Agreement:** As per Section 23 of the Indian Contract Act, 1872, an agreement is void if the object or consideration is against the public policy.
- (ii) **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) **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) **Void Agreement:** An agreement in restraint of legal proceedings is void as per Section 28 of the Indian Contract Act, 1872.

Q-47 Evergreen Ltd., contracts with Shakti Traders to make and deliver certain machinery to them by 30th June, 2004 for Rs. 11.50 lakhs. Due to labour strike, Evergreen Ltd. could not manufacture and deliver the machinery to Shakti Traders. Later, Shakti Traders procured the machinery from another manufacturer for Rs.12.75 lakhs. Shakti Traders was also prevented from performing a contract which it had made with Xylo Traders at the time of their contract with Evergreen Ltd. and were compelled to pay compensation for breach of contract. Advise Shakti Traders the amount of compensation which it can claim from Evergreen Ltd., referring to the legal provisions of the Indian Contract Act, 1872.

[MTP Oct'19, 6 Marks]

Ans. Section 73 of the Indian Contract Act, 1872 provides for consequences of breach of contract. According to it, when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract, to be likely to result from the breach of it. Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach. It is further provided in the explanation to the section that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

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

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

Q-48 "To form a valid contract, consideration must be adequate". Comment. **[MTP -Oct'19, 5 Marks]**

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

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

Q-49 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.

[MTP-April'21, MTP.-March'19, 4 Marks]

Ans. Provision of law:

- This question relates to the provision of Invitation to offer under Indian Contract Act,1872.
- When a party without expressing final willingness proposes certain terms on which he is willing to negotiate then it is known as Invitation to offer and in case of Invitation to Offer no contract is framed until the offer comes from the other party and the party making Invitation have accepted the same.
- When the Goods are displayed in self service store it is known as Invitation to offer when customer picks up the goods and take it to counter it is known as offer and when cashier accepts the goods and makes bill it will be known as acceptance.

Facts of case:

- Shambhu Dayal started a self service store. Smt.Prakash entered the shop and took a basket and after taking articles of her choice into the basket reached the cashier for payments. Cashier refused to accept the price.

Conclusion:

- ☞ When goods are displayed its just an invitation to offer when customer selects its an offer and the shop keeper has an authority to reject the same.
- ☞ In this case also Shabhu Dayal can not be comp

Q-50 Mr. X and Mr. Y entered into a contract on 1st August, 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 Rs. 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 2nd August, 2018 and the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. X offered to supply sugar on 20th August, 2018 for which Mr. Y did not agree. On 1st September, 2018, Mr. X claimed compensation of Rs. 10,000 from Mr. Y for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Y claimed for refund of Rs. 50,000, which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Y's contention.

[MTP-April'21, MTP-March'19, 6 Marks]

Ans. Provision of law:

- ☞ This question relates to the provision of Supervening Impossibility under Indian Contract Act, 1872.
- ☞ As per the provisions of Indian Contract Act,1872 if after entering into a valid contract some event happens which makes the performance impossible then such contract becomes void due to Supervening Impossibility and any party receiving any benefit is bound to restore it to others because of Supervening Impossibility.

Facts of the case:

- ☞ Mr.X and Mr.Y entered into contract on 1st August,2018 where Mr.X had to supply 50 tons of Sugar to Mr.Y at a certain price strictly within 10 days. Mr.Y also paid advance of Rs.50,000 as per the terms. The only mode available for transportation was damaged and could not be repaired within 15 days. Mr.X offered to supply sugar on 20-08-2018 to which Mr.Y did not agree. On 1st September Mr.X claimed Rs.10000 from Mr.Y for refusing to accept sugar which was not in terms of contract. On the other hand Mr.Y claimed refund of Rs.50000 paid in advance.

Conclusion:

- ☞ In this case the contract becomes void due to Supervening Impossibility as the only mode of transportation was damaged and therefore X cannot claim damages of Rs.10,000 and he will also be under obligation to refund advance of Rs.50000 received under void contract.
- ☞ So, Y Can Claim Refund of ₹ 50,000 from X.

Q-51 'X' entered into a contract with 'Y' to supply him 1,000 water bottles @ Rs. 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 @ Rs. 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 Rs. 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.

[MTP-March'18, MTP-April'19, 6 Marks]

Ans. Provision of law:

- ☞ This question relates to the provision of breach of contract.
- ☞ As per the Contract Act in case there is a breach of contract the aggrieved party can claim for damages. Ordinary damages can be recovered in case of normal circumstances and Special damages can be recovered in case when the other party has the notice about special circumstances.

Facts of the case:

- ☉ X entered into a contract with Y to supply 1000 bottles to be delivered at a specified time. Thereafter X contracts with Z for purchase of the same. Consequently X could not procure any water bottle and Y rescinded the contract.

Conclusion:

- ☉ In this case X will be able to claim 0.75 per bottle (Ordinary Damages - 0.25 {5.25-5} + Special damages - 0.5{5-4.5})
- ☉ In case Z was not informed about the contract with Y then X will be able to claim Ordinary damages only.

Q-52 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. [Sugg-Jan'21, 4 Marks]

Ans 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.

The given problem talks about entering into an agreement for traffic relating to public office, which is opposed to public policy. 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.

Q-53 Define the term acceptance under the Indian Contract Act, 1872. Explain the legal rules regarding a valid acceptance. [Sugg-Jan'21, 7 Marks]

Ans. **Definition of Acceptance:** 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".

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.

Q-54 Mr. B makes a proposal to Mr. S by post to sell his house for ' 10 lakhs and posted the letter on 10th April 2020 and the letter reaches to Mr. S on 12th April 2020. He reads the letter on 13th April 2020.

Mr. S sends his letter of acceptance on 16th April 2020 and the letter reaches Mr. B on 20th April 2020. On 17th April Mr. S changed his mind and sends a telegram withdrawing his acceptance. Telegram reaches to Mr. B on 19th 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? **[Sugg.-Jan'21, 6 Marks]**

Ans.(i) 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.

In the given question, Mr. B makes a proposal by post to Mr. S to sell his house.

The letter was posted on 10th April 2020 and the letter reaches to Mr. S on 12th April 2020 but he reads the letter on 13th April 2020.

Thus, the offer made by Mr. B will complete on the day when Mr. S reads the letter, i.e. 13th April 2020.

- (ii) **When communication of acceptance is complete:** 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.

Revocation of Acceptance: 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, when Mr. S accepts Mr. B's proposal and sends his acceptance by post on 16th April 2020, the communication of acceptance as against Mr. B is complete on 16th April 2020, when the letter is posted. As against Mr. S acceptance will be complete, when the letter reaches Mr. B i.e. 20th April 2020.

Whereas, 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 19th April 2020 i.e. before the letter of acceptance of offer (20th 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.

Q-55 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?

[Sugg.-Nov'20, 4 Marks]

Ans. The problem as asked in the question is based on Section 10 of the Indian Contract Act, 1872. This Section says that 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.

The given instance is a case of 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.

Q-56 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?

[Sugg.-Nov'20, 6 Marks]

Ans.(i) As per Section 51 of the Indian Contract Act, 1872, when a contract consists of reciprocal promises to be simultaneously performed, no promisor needs to 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.

(ii) 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, Mr. G is bound to pay the agreed amount to Mr. Y provided the above mentioned conditions of section 25 (3) are fulfilled.

(iii) 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.

Q-57 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? **(MTP-Nov'21, 4 Marks)**

Ans. 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* but minor can act as an agent. 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 sale 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.

(i) Considering the facts, although the contract between Mr. Shekhar and Mr. Nadan is valid, Mr. Nadan will not be liable to his principal for his acts. Hence, Mr. Shekhar cannot recover the loss of Rs. 20,000.

(ii) Further, Mr. Masoom purchased the car from agent of Mr. Shekhar, he got good title. Hence, Mr. Shekhar cannot recover his car from Mr. Masoom.

Q-58 "All contracts are agreements, but all agreements are not contracts". Comment.

(MTP-Nov'21, 4 Marks)

Ans. 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 a duly enforceable by law, it is not a contract. There can be agreements which are not enforceable by law, such as social, moral or religious agreements. The agreement is a wider term than the contract. All agreements need not necessarily become contracts but all contracts shall always be agreements.

All agreements are not contracts: When there is an agreement between the parties and they do not intend to create a legal relationship, it is not a contract.

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.

Q-59 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. **(MTP-Nov'21, 3 Marks)**

Ans. **Invitation to offer:** The offer should be distinguished from an invitation to offer. An offer is the final expression of willingness by the offeror to be bound by his offer should the party chooses to accept it. Where a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but invites only the other party to make an offer on those terms. This is the basic distinction between offer and invitation to offer.

The display of articles with a price in it in a self-service shop is merely an invitation to offer. It is in no sense an offer for sale, the acceptance of which constitutes a contract. In this case, Smt. Prakash by selecting some articles and approaching the cashier for payment simply made an offer to buy the articles selected by her. If the cashier does not accept the price, the interested buyer cannot compel him to sell.

Q-60 Mr. Murari owes payment of 3 bills to Mr. Girdhari as on 31st 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 1st 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. **(MTP-Nov'21, 6 Marks)**

Ans. 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.

Q-61 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.

[MTP-Oct'21](4 Marks)

Ans. 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. But Rahul insists to sale 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.

Q-62 "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.

Ans. 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. The law in this regard has very well summed up in *Frost v. Knight and Hochster v. DelaTour*. (MTP-Oct'21, 7 Marks)

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:

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

Q-63 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? (MTP-Oct'21, 6 Marks)

Ans. 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. Hence, the agreement made between Rohan and Rohit in restraint of trade is void agreement.

Q-64 Explain the term “Coercion” and what are the effects of coercion under Indian Contract Act, 1872.

(MTP-Oct’21, 5 Marks)

Ans. Coercion (Section 15)

“Coercion’ is the committing, or threatening to commit, any act forbidden by the Indian Penal Code 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.”

Effects of coercion under section 19 of Indian Contract Act, 1872

- (i) Contract induced by coercion is voidable at the option of the party whose consent was so obtained.
- (ii) As to the consequences of the rescission of voidable contract, the party rescinding a void contract should, if he has received any benefit, thereunder from the other party to the contract, restore such benefit so far as may be applicable, to the person from whom it was received.
- (iii) A person to whom money has been paid or anything delivered under coercion must repay or return it. (Section 72)

Q-65 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.

(Sugg-July’21, 4 Marks)

Ans. (a) (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 agreement, not to compete with his employer is not in restraint of trade.

Q-66 Explain the term Contingent Contract with reference to the Indian Contract Act, 1872 with the help of an example. Also discuss the rules relating to enforcement of a contingent contract.

(Sugg-July'21, 7 Marks)

Ans. (a) Definition of 'Contingent Contract' (Section 31 of the Indian Contract Act, 1872): A contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Example: A contracts to pay B ₹ 1,00,000 if B's house is burnt. This is a contingent contract.

Rules Relating to Enforcement: The rules relating to enforcement of a contingent contract are laid down in sections 32, 33, 34, 35 and 36 of the Act.

(a) Enforcement of contracts contingent on an event happening: Where a contract identifies happening of a future contingent event, the contract cannot be enforced until and unless the event 'happens'. If the happening of the event becomes impossible, then the contingent contract is void.

(b) Enforcement of contracts contingent on an event not happening: Where a contingent contract is made contingent on non-happening of an event, it can be enforced only when its happening becomes impossible.

(c) A contract would cease to be enforceable if it is contingent upon the conduct of a living person when that living person does something to make the 'event' or 'conduct' as impossible of happening.

(d) Contingent on happening of specified event within the fixed time: 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.

(e) Contingent on specified event not happening within fixed time: Section 35 also says that - "Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired, and such event has not happened or before the time fixed has expired, if it becomes certain that such event will not happen".

(f) Contingent on an impossible event (Section 36): Contingent agreements to do or not to do anything, if an impossible event happens are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Q-67 X, Y and Z jointly borrowed ₹ 90,000 from L. Decide each of the following in the light of the Indian Contract Act, 1872:

(i) Whether L can compel only Y to pay the entire loan of ₹ 90,000?

(ii) Whether L can compel only the legal representatives of Y to pay the loan of ₹ 90,000, if X, Y and Z died?

(iii) Whether Y and Z are released from their liability to L and X is released from his liability to Y and Z for contribution, if L releases X from his liability and sues Y and Z for payment?

(Sugg-July'21, 6 Marks)

Ans. (i) Yes, L can compel only Y to pay ₹ 90,000/- since as per Section 43 of the Indian Contract Act, 1872, in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise.

(ii) As per Section 42, when two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives and after the death of any of them, his representative jointly with the survivor or survivors and after the death of last survivor, the representatives of all jointly must fulfill the promise.

In the instant case, if X, Y and Z died then the legal representatives of all (i.e. X, Y and Z) shall be liable to pay the loan jointly. L cannot compel only the legal representatives of Y to pay the loan of ₹ 90,000.

(iii) According to Section 44, where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors, neither does it free the joint promisors so released from responsibility to the other joint promisor or promisors.

In this case, the release of X does not discharge Y and Z from their liability. Y and Z remain liable to pay the entire amount of ₹ 90,000 to L. And though X is not liable to pay to L, but he remains liable to pay to Y and Z i.e. he is liable to make the contribution to the other joint promisors.

Q-69 Explain 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? **(Sugg-July'21, 5 Marks)**

Ans. According to Section 56 of the Indian Contract Act, 1872, the impossibility of performance may be of the two types, namely (a) initial impossibility, and (b) 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.

Q-70 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? **(MTP March '22, 4 Marks)**

Ans. 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. But 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.

Q-71 Explain the term Contingent Contract with reference to the Indian Contract Act, 1872 with the help of an example. Also discuss the rules relating to enforcement of a contingent contract.

(MTP March '22, 7 Marks)

Ans. **Definition of 'Contingent Contract' (Section 31 of the Indian Contract Act, 1872):** A contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Example: A contracts to pay B Rs. 1,00,000 if B's house is burnt. This is a contingent contract.

Rules Relating to Enforcement: The rules relating to enforcement of a contingent contract are laid down in sections 32, 33, 34, 35 and 36 of the Act.

- (i) **Enforcement of contracts contingent on an event happening:** Where a contract identifies happening of a future contingent event, the contract cannot be enforced until and unless the event 'happens'. If the happening of the event becomes impossible, then the contingent contract is void.
- (ii) **Enforcement of contracts contingent on an event not happening:** Where a contingent contract is made contingent on non-happening of an event, it can be enforced only when its happening becomes impossible.
- (iii) **A contract would cease to be enforceable if it is contingent upon the conduct of a living person when that living person does something to make the 'event' or 'conduct' as impossible of happening.**
- (iv) **Contingent on happening of specified event within the fixed time:** 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.
- (v) **Contingent on specified event not happening within fixed time:** Section 35 also says that "Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired, and such event has not happened or before the time fixed has expired, if it becomes certain that such event will not happen".
- (vi) **Contingent on an impossible event (Section 36):** Contingent agreements to do or not to do anything, if an impossible event happens are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Q-72 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. 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?

(MTP March '22, 6 Marks)

Ans. 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.

It was also explained that 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.

On the basis of provisions of Section 17 and the facts given above, it was not the duty of salesman to inform Mr. Kapil about his mistake. Hence, there was no fraud and Kapil was not eligible to file suit for fraud against departmental store under Indian Contract Act, 1872.

Q-73 Explain 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? **(MTP March '22, 5 Marks)**

Ans. According to Section 56 of the Indian Contract Act, 1872, the impossibility of performance may be of the two types, namely (a) initial impossibility, and (b) 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.

Q-74 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. **(Sugg-Dec'21, 4 Marks)**

Ans. Joint promisors (Section 42 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.

Any one of joint promisors may be compelled to perform (Section 43)

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.

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. 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.

Hence, A is entitled to receive ₹ 50,000 from C and ₹ 2,75,000 from D, as worked out below:

From C ₹ 50,000= (C's Liability ₹ 1,50,000 Less: Amount he could not pay ₹ 1,00,000).

From D ₹ 2,75,000= (D's Liability ₹1,50,000+1/2 of liability of B (Loss) (1,50,000*1/2) i.e. ₹ 75,000+1/2 of C's liability (Loss) (1,00,000*1/2) i.e., ₹50,000) In other words, equal proportion i.e., ₹ 5,50,000 (i.e.'6,00,000-'50,000) / 2.

Thus, total amount A can receive from C and D comes to ₹3,25,000 (50,000+2,75,000)

Q-75 Explain any five circumstances under which contracts need not be performed with the consent of both the parties. **(Sugg-Dec'21, 7 Marks)**

Ans. Under 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)

Q-76 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. **(Sugg-Dec'21, 6 Marks)**

Ans. (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 and therefore, 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 the 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. 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, therefore, 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 the subsequent or supervening impossibility renders the contract void. Supervening impossibility may take place owing to various circumstances as contemplated under that section, 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.

Q-77 What is meant by 'Quasi-Contract'? State any three salient features of a quasi-contract as per the Indian Contract Act, 1872. **(Sugg-Dec'21, 5 Marks)**

Ans. **Meaning of 'Quasi Contract':** 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.

