

QUESTIONS FOR PRACTICE

PART-B

Q1. All contracts are agreements, but all agreements are not contracts". Comment.

Sol. An agreement comes into existence when one party makes a proposal or offer to the other party and that other party gives his acceptance to it.

A contract is an agreement enforceable by law. It means that to become a contract an agreement must give rise to a legal obligation i.e. duty enforceable by law.

If an agreement is incapable of creating a duty enforceable by law, it is not a contract.

There can be agreements which are not enforceable by law, such as social, moral or religious agreements.

The agreement is a wider term than the contract. All agreements need not necessarily become contracts but all contracts shall always be agreements.

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

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.

Q2. A sends an offer to B to sell his second-car for Rs. 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?

Sol.

Provision

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.

Analysis and conclusion

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.

Q3. 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.

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(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 is caught in the factory and everything was destroyed.

Sol. It is an implied contract and A must pay for the services of the coolie detailed by him.

(i) **Implied Contracts:** Implied contracts come into existence by implication. Most often the implication is by law and not by action. Section 9 of the Act 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) 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.

Q4. 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.

Sol.

Provision

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.

Analysis and conclusion

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.

Q5. State whether or not is any contract in following cases:

- (a) A engages B to do certain work and remuneration to be paid as fixed by C.
- (b) A and B promise to pay for the studies of their maid's son
- (c) A takes a seat in public bus.
- (d) A, a chartered accountant promises to help his friend to file his return.

Sol.

- (a) It is a valid express contract
- (b) It is not a contract as it is a social agreement
- (c) It is an implied contract. A is bound to pay for the bus fare.
- (d) It is a social agreement without any intention to create a legal relationship.

Q6. Miss Shakuntala puts an application to be a teacher in the school. She was appointed by the trust of the school. Her friend who works in the same school informs her about her appointment informally. But later due to some internal reasons her appointment was cancelled. Can Miss Shakuntala claim for damages?

Sol.

Provision

As per Section 4, communication of acceptance is complete as against proposer when it is put in the course of transmission to him.

Analysis and conclusion

In the present case, school authorities have not put any offer letter in transmission. Her information from a third person will not form part of contract. Therefore, Miss Shakuntala cannot claim damages.

Q7. Define the term acceptance under the Indian Contract Act, 1872. Explain the legal rules regarding a valid acceptance

Sol.

- (a) **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.

Q8. Define the term "Acceptance". Discuss the legal provisions relating to communication of acceptance.

Sol.

1. According to Section 2(b), the term 'acceptance' is defined as follows:

"When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise."

An acceptance in order to be valid must be absolute, unqualified, accepted according to the mode if any prescribed within the reasonable time and communicated to offeror.

Acceptance can also be made by way of conduct

The legal provisions relating to communication of acceptance are contained in Section 4. The communication of an acceptance is complete:

- as against the proposer, when it is put in a course of transmission to him, so as to be out of power of the acceptor;
- as against the acceptor, when it comes to the knowledge of the proposer.

Section 3 of the Act prescribes, in general terms, two modes of communication, namely:

- (1) by any act or
- (2) by omission intending thereby to communicate to the other or which has the effect of communicating it to the other.

The first method would include any conduct and words whether written or oral.

Written words would include letters, telegrams, advertisements, etc. Oral words would include telephone messages.

Any conduct would include positive acts or signs so that the other person understands what the person acting or making signs means to say or convey.

Omission would exclude silence but include such conduct or forbearance on one's part that the other person takes it as his willingness or assent.

These are not the only modes of communication of the intention of the parties. There are other means as well, e.g., if you as the owner, deliver the goods to me as the buyer thereof at a certain price, this transaction will be understood by everyone, as acceptance by act or conduct, unless there is an indication to the contrary.

The phrase appearing in Section 3 "which has the effect of communicating it", clearly refers to an act or omission or conduct which may be indirect but which results in communicating an acceptance or non-acceptance.

However, a mere mental but unilateral act of assent in one's own mind does not tantamount to communication, since it cannot have the effect of communicating it to the other.

Q9. Mr. B makes a proposal to Mr. S by post to sell his house for Rs. 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.

What would be validity of acceptance if letter of revocation and letter of acceptance reached together?

Sol. (i)

Provision

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.

Analysis and conclusion

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) Provision

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.

Analysis and conclusion

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.

Q10. A shop-keeper displayed a pair of dress in the show-room and a price tag of Rs. 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

Provision

The offer should be distinguished from an invitation to offer. An offer is definite and capable of converting an intention in to a contract. Whereas an invitation to an offer

a circulation of an offer, it is an attempt to induce offers and precedes a definite offer. 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.

Analysis and Conclusion

In this case, Ms. Lovely by selecting the dress and approaching the shopkeeper for payment simply made an offer to buy the dress selected by her. If the shopkeeper does not accept the price, the interested buyer cannot compel him to sell.

Q11. Explain the modes of revocation of an offer as per the Indian Contract Act, 1872.

Sol.

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

Q12. Comment on the following statements:

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

Sol. 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 Rs. 2 lakhs?" If 'B' replies "I shall purchase your car for Rs. 2 lakhs, if you buy my motorcycle for Rs. 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

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offer contained no mention of R.C. book. This is because expecting a valid title is not a condition. Therefore, the acceptance in this case is unconditional.

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 mode prescribed after it has been accepted otherwise, i.e., not in the prescribed mode, the proposer is presumed to have consented to the acceptance.

Example: If the offeror prescribes acceptance through messenger and offers 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 does not do so, it will be presumed that he has accepted the acceptance and a valid contract will arise.

Q13. Explain the type of contracts in the following agreements under the Indian Contract Act, 1872:

- 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.
- Obligation of finder of lost goods to return them to the true owner
- A contracts with B (owner of the factory) for the supply of 10 tons of sugar. Before the supply is effected, the fire caught in the factory and everything is destroyed.

Sol.

- It is an implied contract and A must pay for the services of the coolie.

Implied Contracts: Implied contracts come into existence by implication. Mostly 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 to be implied.

- 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 nor 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 which there is no intention on part of either party to make a contract but it imposes a contract upon the parties.

- 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.

Q14. Explain the type of contracts in the following agreements under the Indian Contract Act, 1872:

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

Sol.

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

Q15. Mr. Aseem is a learned advocate. His car was stolen from his house. He gave an advertisement in newspaper that he will give the reward of Rs. 10,000 who will give the information about his car. Mr. Vikram reads the advertisement and on making some efforts got the stolen car and informed Mr. Aseem. Mr. Aseem found his car but denied giving reward of Rs. 10,000 to Mr. Vikram with the words, "An advertisement in newspaper is just an invitation to make offer and not an offer. Hence, he is not liable to make the reward." State with reasons whether under Indian Contract Act, 1872, Mr. Vikram can claim the reward of Rs. 10,000.

Sol.

Provision

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 publish 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. But there is an exception to above provision. When advertisement in newspaper is made for reward, it is the general offer to publish.

Analysis and conclusion

On the basis of above provisions and facts, it can be said that as advertisement made by Mr. Aseem to find lost car is an offer, he is liable to pay Rs. 10,000 to Mr. Vikram.

Q16. 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

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Provision

Implied Contracts: Implied contracts come into existence by implication. Most often, 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 promise or acceptance is made otherwise than in words, the promise is said to be implied.

Analysis and Conclusion

In the present case, it is an implied contract and R must pay for the services of coolie.

Define an offer. Explain the essentials of a valid offer. How an offer is different from an invitation to offer?

Definition: The word Proposal and offer are used interchangeably and it is defined in 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:

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

Offer and an Invitation to an offer: 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, when 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.

A sends an offer to B to sell his second-car for Rs. 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?

Sol.

Provision

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.

Analysis and Conclusion

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.

Q19. Mr. Pratham applied for a job as principal of a school. The school management decided to appoint him. One member of the school management committee privately informed Mr. Pratham that he was appointed but official communication was not given from the school. Later, the management of the school decided to appoint someone else as a principal. Mr. Pratham filed a suit against the school for cancellation of his appointment and claimed damages for loss of salary. State with reasons, will Mr. Pratham be successful in suit filed against school under the Indian Contract Act, 1872?

Sol.

Provision

As per the rules of acceptance, the acceptance should be communicated to offeror by offerer himself or his authorized agent. Communication of acceptance by third person cannot be concluded in valid acceptance.

Analysis and Conclusion

In the instant case, Mr. Pratham applied for a job as principal of a school and one member of the school management committee privately informed Mr. Pratham that he was appointed. Later, the management of the school appointed someone else as a principal.

On the basis of above provisions and facts, communication of appointment of Mr. Pratham should be made by school management committee or any authorised agent. The communication by third person cannot be termed as communication of acceptance. Therefore, no valid contract was formed between Mr. Pratham and school and Mr. Pratham cannot file a suit against the school for cancellation of his appointment.

Q20. Father promised to pay his son a sum of rupee one lakh if the son passed C.A. examination in the first attempt. The son passed the examination in the first attempt, but father failed to pay the amount as promised. Son files a suit for recovery of the amount. State along with reasons whether son can recover the amount under the Indian Contract Act, 1872.

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Sol.

Provision

Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 10. According to the provisions there should be an intention to create legal relationship between the parties. Agreements of a social nature or domestic nature do not contemplate legal relationship and as such are not contracts, which can be enforced. This principle has been laid down in the case of Balfour v. Balfour. Accordingly, applying the above provisions and the case decision,

Analysis and Conclusion

After applying provision to the present case we can conclude that the son cannot recover the amount of Rs. 1 lakh from father

Q21. Rahul goes to super market to buy a washing machine. He selects a branded washing machine having a price tag of Rs. 15000 after a discount of Rs. 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 Rs. 18000." Rahul got angry and insists for Rs. 15000. State with reasons whether under Indian Contract Act, 1872, Rahul can enforce the cashier to sale at discounted price i.e. Rs. 15000.

Sol.

Provision

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.

Analysis and Conclusion

In the instant case, Rahul reaches to super market and selects a washing machine with a discounted price tag of Rs. 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.

□□□

QUESTIONS FOR PRACTICE

PART-B

Q1. "To form a valid contract, consideration must be adequate". Comment.

Sol. 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.

Q2. Mr. Sohanlal sold 10 acres of his agricultural land to Mr. Mohanlal on 25th September 2020 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. Chotelal, son of the seller for carrying out farming or other activity of his choice. On 12th October, 2020, Mr. Sohanlal died leaving behind his son and wife. On 15th October, 2020 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 redressal. Discuss the above in light of provisions of Indian Contract Act, 1872 and decide upon Mr. Chotelal's plan of action?

Sol.

Provision

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.

Analysis and conclusion

In the given problem, Mr. Sohanlal has entered into a contract with Mr. Mohanlal, but Mr. Chotelal has not given any consideration to Mr. Mohanlal but the consideration

consideration from third party is sufficient to enforce the promise of Mr. Chotelal and to allow Mr. Chotelal to use 1 acre of land. Further the deed of sale and the promise made by Mr. Mohanlal to Mr. Chotelal to allow the use of 1 acre of land were executed simultaneously and therefore they should be regarded as one transaction and the promise 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. Chotelal is entitled to file a petition against Mr. Mohanlal for execution of contract.

Q3] The general rule is that an agreement without consideration is void. Discuss the exceptions where the agreement though made without consideration will be valid and enforceable as per Indian Contract Act, 1872.

Or

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

Or

"No consideration, no contract" Comment.

Or

Are there any circumstances under which a contract, under the provisions of the Indian Contract Act, 1872, without consideration is valid? Explain.

Sol. The general rule is that an agreement made without consideration is void (Section 25). In every valid contract, consideration is very important. A contract may only be enforceable when consideration is there.

Exception to general Rule:

1. Natural Love and Affection: Conditions to be fulfilled under section 25(1)
 - (i) It must be made out of natural love and affection between the parties.
 - (ii) Parties must stand in near relationship to each other.
 - (iii) It must be in writing.
 - (iv) It must also be registered under the law.

A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g., husband and wife) to each other is enforceable even without consideration

Example: A husband, by a registered agreement promised to pay his earnings to his wife. Held the agreement though without consideration, was valid.

Example: A out of natural love and affection promises to give his newly wedded daughter-in-law a golden necklace worth Rs. 5,00,000. 'A' made the promise in writing and signed it and registered. The agreement is valid.

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, is enforceable under Section 25(2). In order that a promise to pay for the past voluntary services be binding, the following essential factors must exist:

- (i) The services should have been rendered voluntarily.
- (ii) The services must have been rendered for the promisor.
- (iii) The promisor must be in existence at the time when services were rendered.
- (iv) The promisor must have intended to compensate the promisee.

Example: P finds R's wallet and gives it to him. R promises to give PRs.10,000. This is a valid contract.

Example: Mr. X had helped his nephew Mr. Y to fight a case in the court of law using his knowledge and intellect. After Mr. Y won the case, he promised Mr. X to pay Rs. 10,000. Held, this is a valid contract as it is compensation to past services.

3. Promise to pay time barred debt: Where a promise in writing signed by the person making it or by his authorised agent, is made to pay a debt barred by limitation it is valid without consideration [Section 25(3)].

Example: A is indebted to C for Rs.60,000 but the debt is barred by the Limitation Act. A sign a written promise now to pay Rs.50,000 in final settlement of the debt. This is a contract without consideration, but enforceable.

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 affect the contract of bailment.

Meaning of bailment :- Section 148 of the Indian Contract Act, 1872, defines bailment as the delivery of goods from one person to another for some purpose. This delivery is made upon a contract that post accomplishment of the purpose, the goods will either be returned or disposed of, according to the directions of the person delivering them.

Example: Mr. A hand over the keys of his godown to Mr. Y as Mr. Y had deposited his goods in the same. Mr. Y gets possession of godown but not the ownership. As soon as Mr. Y lifts his goods from godown he is liable to hand over the keys back to Mr. A.

7. Charity: If a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid. (Kadarnath v. Gopal Mohamad)

Q4. Define consideration. What are the legal rules regarding consideration under the Indian Contract Act, 1872?

Or

Define consideration. State the characteristics of a valid consideration.

Sol.

(a) 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

► 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.

(i) 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.

(ii) 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.

(iii) 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.

(iv) Consideration need not be adequate: Consideration need not 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.

(v) 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.

(vi) 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.

(vii) 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.

Q5. 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?

Sol.

Provision

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.

Analysis and conclusion

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.

Q6. A stranger to a contract cannot sue, however in some cases even a stranger to contract may enforce a claim. Explain.

Or

"Only a person who is party to a contract can sue on it!" Explain this statement and describe its exceptions, if any.

Sol. 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 Indian Contract Act, 1872

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.

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

- (1) In the case of trust, a beneficiary can enforce his right under the trust, though he was not a party to the contract between the settler and the trustee.
- (2) In the case of a family settlement, if the terms of the settlement are reduced in writing, the members of family who originally had not been parties to the settlement may enforce the agreement.
- (3) In the case of certain marriage contracts, or arrangements, a provision may be made for the benefit of a person. The person may enforce the agreement though he is not a party to the agreement.
- (4) In the case of assignment of a contract, when the benefit under a contract has been assigned, the assignee can enforce the contract.
- (5) Acknowledgement or estoppel - where the promisor by his conduct acknowledges himself as an agent of the third party, it would result into a binding obligation towards third party.
- (6) In the case of covenant running with the land, the person who purchases land with notice that the owner of land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successor of the seller.
- (7) Contracts entered into through an agent: The principal can enforce the contract entered by his agent where the agent has acted within the scope of his authority and in the name of the principal.

Q7. Mr. Balwant, an old man, by a registered deed of gift, granted certain landed property to Ms. Reema, his daughter. By the terms of the deed, it was stipulated that an annuity of Rs. 20,000 should be paid every year to Mr. Sawant, who was the brother of Mr. Balwant. On the same day Ms. Reema made a promise to Mr. Sawant and executed in his favour an agreement to give effect to the stipulation. Ms. Reema failed to pay the stipulated sum. In an action against her by Mr. Sawant, she contended that since Mr. Sawant had not furnished any consideration, he has no right of action.

Examining the provisions of the Indian Contract Act, 1872, decide, whether the contention of Ms. Reema is valid?

Provision

In India, consideration may proceed from the promise or any other person who is not a party to the contract. The definition of consideration as given in section 2(d) makes

that proposition clear. According to the definition, when at the desire of the promisor the promisee or any other person does something such an act is consideration. In other words, there can be a stranger to a consideration but not stranger to a contract.

Analysis and conclusion

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

- Q8. Mr. Ram Lal Birla was a big businessman of city Pune having two sons and one married daughter. He decided to gift his one house to his daughter. For this purpose, he called his lawyer at his house and made a written document for such gift. The lawyer advised him to get the transfer document properly registered. When they both were going for registration of document, they met with an accident and both of them died. Later, his daughter found the document and claimed the house on the basis of that document. Explain, whether she can get the house as gift under the Indian Contract Act, 1872?

Sol.

Provision

Section 25 of Indian Contract Act, 1872 provides that an agreement made without consideration is valid if it is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other.

Analysis and conclusion

In the instant case, the transfer of house made by Mr. Ram Lal Birla on account of natural love and affection between the parties standing in near relation to each other is written but not registered. Hence, this transfer is not enforceable and his daughter cannot get the house as gift under the Indian Contract Act, 1872.

