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**Arjun Chhabra Tutorial's**  
**Writing Practice Manual**  
**On**  
**Business Laws**  
**For CA Foundation Exams**

**CS Arjun Chhabra**  
**(CS LLB LLM)**

**Arjun Chhabra Tutorial**  
**Pune, Maharashtra**

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<b>CA Foundation Business Laws June 24 – Marathon &amp; Writing Practice</b>
<b>Starting from 1<sup>st</sup> May 2024</b>
<b>Complete Details:</b> <a href="https://youtu.be/amnLs9ZguLo?si=YmUVnHcSubOqHeiN">https://youtu.be/amnLs9ZguLo?si=YmUVnHcSubOqHeiN</a>
<b>Please fill this google form to get the marathon notes:</b> <a href="https://forms.gle/kzebBFLaYVZ5ZC8k9">https://forms.gle/kzebBFLaYVZ5ZC8k9</a>

<b>Schedule &amp; Details of Marathon – Free Live Stream on YouTube</b>			
<b>Date</b>	<b>Time</b>	<b>Lecture</b>	<b>YouTube Link</b>
1 <sup>st</sup> May 2024	04: 00 PM	The Indian Contract Act, 1872 (Unit 1 to 3)	<a href="https://youtube.com/live/3MlFu91Yjs?feature=share">https://youtube.com/live/3MlFu91Yjs?feature=share</a>
2 <sup>nd</sup> May 2024	04: 00 PM	The Indian Contract Act, 1872 (Unit 4 to 6)	<a href="https://youtube.com/live/rRrjcxmnZwU?feature=share">https://youtube.com/live/rRrjcxmnZwU?feature=share</a>
3 <sup>rd</sup> May 2024	04: 00 PM	The Indian Contract Act, 1872 (Unit 7 to 9)	<a href="https://youtube.com/live/usY6ysQNHK8?feature=share">https://youtube.com/live/usY6ysQNHK8?feature=share</a>
4 <sup>th</sup> May 2024	04: 00 PM	The Sale of Goods Act, 1930	<a href="https://youtube.com/live/zuRe8kwuRFs?feature=share">https://youtube.com/live/zuRe8kwuRFs?feature=share</a>
5 <sup>th</sup> May 2024	04: 00 PM	The Indian Partnership Act, 1932	<a href="https://youtube.com/live/6Kh1pYymTFY?feature=share">https://youtube.com/live/6Kh1pYymTFY?feature=share</a>
6 <sup>th</sup> May 2024	04: 00 PM	The Companies Act, 2013 and LLP Act, 2008	<a href="https://youtube.com/live/qa_U8l7g5fs?feature=share">https://youtube.com/live/qa_U8l7g5fs?feature=share</a>
7 <sup>th</sup> May 2024	04: 00 PM	The Negotiable Instruments Act, 1881 and Indian Regulatory Framework	<a href="https://youtube.com/live/O3Zpm5xy2vc?feature=share">https://youtube.com/live/O3Zpm5xy2vc?feature=share</a>

<b>Schedule &amp; Details of Writing Practice – Paid Batch</b>			
<b>Date</b>	<b>Time</b>	<b>Lecture</b>	<b>Platform</b>
9 <sup>th</sup> May 2024	04: 00 PM	The Indian Contract Act, 1872	ACT Private Application:
10 <sup>th</sup> May 2024	04: 00 PM	The Sale of Goods Act, 1930	
11 <sup>th</sup> May 2024	04: 00 PM	The Indian Partnership Act, 1932	
12 <sup>th</sup> May 2024	04: 00 PM	The Companies Act, 2013	
13 <sup>th</sup> May 2024	04: 00 PM	The Negotiable Instruments Act, 1881	
<b>Special Feature of this batch:</b> <ol style="list-style-type: none"><li>1. Student will get writing practice manual with all new questions which is not available in institute repository.</li><li>2. 25 hours batch (Approx).</li><li>3. Two full tests of 100 marks.</li><li>4. Live discussion video of above test.</li></ol>			
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<b>Arjun Chhabra Tutorial's Gallery</b>			
<ol style="list-style-type: none"><li>1. FULL VLOG   CA INTER MAY 24 BATCH CONCLUSION DAY   CELEBRATION   DINNER   MOVIE   WITH STUDENTS: <a href="https://youtu.be/47BxbHL_qc0?si=Impo7hsjuOcZERBY">https://youtu.be/47BxbHL_qc0?si=Impo7hsjuOcZERBY</a></li><li>2. FULL VLOG   WET &amp; JOY WATER PARK   ARJUN CHHABRA TUTORIAL   CA INTER MAY 2024: <a href="https://youtu.be/l45jh_hHVvY?si=Anyrn3AYFQX-jqvT">https://youtu.be/l45jh_hHVvY?si=Anyrn3AYFQX-jqvT</a></li></ol>			

## **The Indian Contract Act, 1872**

**Q1.** Manish, a minor, lost his parents in COVID-19 pandemic. Due to poor financial background Manish was facing difficulties in maintaining his livelihood. He approached Mr. Sohel (a grocery shopkeeper) to supply him grocery items and to wait for some period for receiving his dues. Mr. Sohel did not agree with the proposal; but when Mr. Ganesh, a local person, who is a major, agreed to provide guarantee that he would pay the dues in case Manish fails to pay the amount, Mr. Sohel supplied the required groceries to Manish. After few months when Manish failed to clear his dues, Mr. Sohel approached Mr. Ganesh and asked him to clear the dues of Manish. Mr. Ganesh refused to pay the amount on two grounds; firstly, that there was no consideration in the contract of guarantee and secondly that Manish is a minor and therefore on both the grounds the contract of guarantee is not valid.

Referring to the relevant provisions of the Indian Contract Act, 1872, decide, whether the contention of Mr. Ganesh, (the surety) is tenable? Will your answer differ in case both Manish (the principal debtor) and Mr. Ganesh (the surety) are minors?

**Q2.** Explaining the provisions of the Indian Contract Act, 1872, answer the following:  
C, the holder of an over due bill of exchange drawn by A as surety for B, and accepted by B, contracts with X to give time to B. Is A discharged from his liability?

**Q3.** 'C' advances to 'B', 2,00,000 on the guarantee of 'A'. 'C' has also taken a further security for the same borrowing by mortgage of B's furniture worth Rs. 2,00,000 without knowledge of 'A'. C cancels the mortgage. After 6 months 'B' becomes insolvent and 'C' 'sues 'A' his guarantee. Decide the liability of 'A' if the market value of furniture is worth Rs.80,000, under the Indian Contract Act, 1872.

**Q4.** Mrs. Shriya delivered her old silver jewellery to Mr. Yash a Goldsmith, for the purpose of making new a silver bowl out of it. Every evening she used to receive the unfinished good (silver bowl) to put it into box kept at Mr. Yash's shop. She kept the key of that box with herself. One night, the silver bowl was stolen from that box. Was there a contract of bailment? Whether the possession of the goods (actual or constructive) delivered, constitute contract of bailment or not?

**Q5.** Mita, a 19-year-old college student living away from her family in Kolkata, suffers from a severe mental illness that renders her incapable of managing her own affairs. Her parents, aware of her condition, are financially supporting her education and living expenses. However, due to certain circumstances, Mita's parents are unable to provide her with the necessary medical care and medication for her condition.

During this time, Mita's landlord, Mr. Das, notices her deteriorating health condition and becomes concerned. He learns about Mita's mental illness and realizes that she is not receiving the necessary medical attention. Concerned for her well-being, Mr. Das takes it upon himself to arrange for a psychiatrist consultation and purchase essential medications for Mita. He does this out of genuine concern for her health and well-being, knowing that she is incapable of managing her medical needs due to her mental illness.

However, when Mita's parents become aware of Mr. Das's actions, they refuse to reimburse him for the expenses incurred, citing financial constraints. Mr. Das, feeling that he acted in good faith to

provide Mita with necessary medical supplies she urgently needed, decides to seek legal recourse to recover his expenses. Advise Mr. Das.

**Q6.** A, the secretary of a building society, handed over to B, in the office of the society, an offer to sell a property at Rs.750. Fourteen days' time was given to B for acceptance. B was residing in a different town, and took away with him the offer to that town. The next day, at about 3.30 p.m. B sent, by post, his letter of acceptance. This letter was received at society's office at 8.30 Pm. But before that at about 1.00 p.m. the society had posted a letter revoking its offer. B received the letter of revocation at 5.30 p.m. Advise B.

**Q7.** Mrs. Radhika sold her ancestral house to Mr. Arjun on 1st January 2022 for Rs. 50 Lakhs. The sale deed included a provision stating that Mr. Arjun is entitled to use the entire property for residential purposes except for a small portion of the backyard, which should be left vacant for Mrs. Radhika's mother to maintain a small garden.

Tragically, Mrs. Radhika passed away in a car accident on 15th January 2022, leaving behind her husband and two minor children. On 20th January 2022, Mr. Arjun decided to demolish the entire house and construct a commercial building.

Subsequently, Mrs. Radhika's husband, Mr. Ramesh, intends to take legal action against Mr. Arjun to seek appropriate redress. Evaluate the situation with reference to the provisions of the Indian Contract Act, 1872, and advise Mr. Ramesh on the most suitable course of action.

**Q8.** A rented his house to B on lease for 3 years. The lease agreement is terminable on 3 month notice by either party. C, the son of A, being in need of a separate house to live, served a notice on B, without any authority, to vacate the house within a month and requested his father A to ratify his action. Examine whether it shall be valid for A to ratify the action of C taking into account the provisions of the Indian Contract Act, 1872?

**Q9.** X has made an agency agreement with Y to authorize him to purchase goods on the behalf of X for the year 2020 only. The agency agreement was signed by both and it contains all the terms and conditions for the agent. It has a condition that Y is allowed to purchase goods maximum upto the value of Rs. 10 lakhs only. In the month of April 2020, Y has purchased a single item of Rs. 12 lakhs from Z as an agent of X. The market value of the item purchased was Rs.14 lakhs but a discount of Rs.2 lakhs was given by Z. The agent Y has purchased this item due to heavy discount offered and the financially benefit to X.

After delivery of the item Z has demanded the payment from X as Y is the agent of X. But X denied to make the payment stating that Y has exceeded his authority as an agent therefore he is not liable for this purchase. Z has filed a suit against X for payment.

Decide whether Z will succeed in his suit against X for recovery of payment as per provisions of The Indian Contract Act, 1872.

<b>Q10.</b> T owes G, the following debts as per the table given below:	
<b>Amount of the Debt (in Rs.)</b>	<b>Position of Debt</b>
5000	Time barred on 01st July, 2023 as per the provisions of the Limitation Act, 1963
3000	Time barred on 01st July, 2023 as per the provisions of the Limitation Act, 1963
12,500	Due on 1st April, 2022
10,000	Due on 15th July, 2023
7,500	Due on 25th November, 2023
<p>G makes payment on 1st April, 2023 mentioned as below without any notice regarding how to appropriate the amount/ payment.</p> <p>(i) A cheque of Rs. 12,500</p> <p>(ii) A cheque of Rs. 4,000.</p> <p>In such a situation how the appropriation of the payment is done against the debts as per the provisions of the Indian Contract Act, 1872 by assuming that T also has not appropriated the amount received towards any particular debt.</p>	
<p><b>Q11.</b> X agrees to pay Y Rs. 1,00,000/-, if Y kills Z. To pay Y, X borrows Rs. 1,00,000/- from W, who is also aware of the purpose of the loan. Y kills Z but X refuses to pay. X also to repay the loan to W. Explain the validity of the contract.</p> <p>(i) Between X and Y.</p> <p>(ii) Between X and W</p>	
<p><b>Q12.</b> X threatens to kill Y if he (Y) does not sell his house to X for Rs. 1, 00,000. Y agrees. X borrows Rs. 1, 00,000 from Z who is also aware of the purpose of the loan. What is the nature of the agreement between X and Y, and X and Z?</p>	
<p><b>Q13.</b> Anita and Sonali are friends, Sonali treats Anita during Anita's illness. Sonali does not accept payment from Anita for treatment and Anita promises Sonali's daughter Tania to pay her Rs. 75,000. Anita, being in poor circumstances is unable to pay. Tania sues Anita for the money. Can Tania recover? Offer your views based on provisions of the Indian Contracts Act, 1872.</p>	
<p><b>Q14.</b> Srishti, a minor, falsely representing her age, enters into an agreement with an authorised Laptop dealer Mr. Gupta, owner of SP Laptops, for purchase of Laptop on credit amounting Rs. 60,000/- for purchasing a laptop, on 1st August 2021. She promised to pay back the outstanding amount with interest @ 16% p.a. by 31st July 2022. She told him that in case she won't be able to pay the outstanding amount, her father Mr. Ram will pay back on her behalf. After One year, when Srishti was asked to pay the outstanding amount with interest she refused to pay the amount and told the owner that she is minor and now he can't recover a single penny from her. She will be adult on 1st January 2024, only after that agreement can be ratified. Explain by which of the following way Mr. Gupta will succeed in recovering the outstanding amount with reference to the Indian Contract Act, 1872.</p> <p>(i) By filing a case against Srishti, a minor for recovery of outstanding amount with interest?</p> <p>(ii) By filing a case against Mr. Ram, father of Srishti for recovery of outstanding amount?</p> <p>(iii) By filing a case against Srishti, a minor for recovery of outstanding amount after she attains maturity?</p>	



**Q15.** An agent refused to hand over the account books of the business, at the end of his term of office, to the new agent unless the principal freed him from the liability in respect of his agency. The principal executed a release deed under which the agent was freed from liability. Advise principal.

**Q16.** X and Y were two organizations trading in wheat of 'Popular Brand' in Uttar Pradesh. X realizes that the wheat business is high yielding. To expand his business X offered Y a sum of ₹ 10 Lakhs on the condition that Y shall not sell Popular Brand' wheat in Uttar Pradesh. X failed in making the promised payment to Y. Y filed a suit against X for non-fulfillment of the promise. Is the suit maintainable? **[WP]**

**Q17.** Mr. Singhanian entered into a contract with Mr. Sonu to sing in his hotel for six weeks on every Saturday and Sunday. Mr. Singhanian promised to pay Rs. 20,000 for every performance. Mr. Sonu performed for two weeks but on third week his health condition was very bad, so he did not come to sing. Mr. Singhanian terminated the contract. State in the light of provisions of the Indian Contract Act, 1872: -

(a) Can Mr. Singhanian terminate the contract with Mr. Sonu?

(b) What would be your answer in case Mr. Sonu turns up in fourth week and Mr. Singhanian allows him to perform without saying anything?

(c) What would be your answer in case Mr. Sonu sends Mr. Mika on his place in third week and Mr. Singhanian allows him to perform without saying anything?

**Q18.** Radha invited her ten close friends to celebrate her 25th birthday party on 1st January, 2023 at 7.30 P.M. at a well-known "Hi-Fi Restaurant" at Tonk Road, Jaipur. All invited friends accepted the invitation and promised to attend the said party. On request of the hotel manager, Radha deposited \$ 5,000/- as non-refundable security for the said party. On the scheduled date and time, three among ten invited friends did not turn up for the birthday party and did not convey any prior communication to her. Radha, enraged with the behaviour of the three friends, wanted to sue them for loss incurred in the said party. Advise as per the provisions of the Indian Contract Act, 1872. Would your answer differ if the said party had been a "Contributory 2023 New Year celebration Party" organized by Radha?

**Q19.** Alpha Motor Ltd. agreed to sell a bike to Ashok under hire-purchase agreement on guarantee of Abhishek. The Terms were: hire-purchase price 96,000 payable in 24 monthly instalments of 78,000 each. Ownership to be transferred on the payment of last instalment. State whether Abhishek is discharged in each of the following alternative case under the provisions of the Indian Contract Act, 1872:

(i) Ashok paid 12 instalments but failed to pay next two instalments. Alpha Motor Ltd. sued Abhishek for the payment of arrears and Abhishek paid these two instalments i.e. 13th and 14th. Abhishek then gave a notice to Alpha Motor Ltd. to revoke his guarantee for the remaining months.

(ii) If after 15th months, Abhishek died due to COVID-19. **[WP]**

**Q20.** Mr. Chetan was appointed as Site Manager of ABC Constructions Company on a two years contract at a monthly salary of Rs. 50,000. Mr. Pawan gave a surety in respect of Mr. Chetan's conduct. After six months the company was not in position to pay Rs. 50,000 to Mr. Chetan because of financial constraints. Chetan agreed for a lower salary of Rs.30,000 from the company. This was not communicated to Mr. Pawan. Three months afterwards it was discovered that Chetan had been

doing fraud since the time of his appointment. What is the liability of Mr. Pawan during the whole duration of Chetan's Appointment?

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## **The Sale of Goods Act, 1930**

**Q1.** Alice and Bob jointly own a valuable painting. Bob agrees to sell his share of the painting to Alice for Rs. 5000. Is this transaction covered under the Sale of Goods Act, 1930? Explain.

**Q2.** ABC Corporation, a multinational conglomerate, enters into a complex international transaction with XYZ Ltd., a leading manufacturer of specialized machinery. The agreement entails the sale of a highly customized industrial-grade turbine generator, specifically tailored to meet ABC Corporation's unique operational requirements. After months of meticulous negotiations and design consultations, both parties finalize the terms of the agreement, including the specifications, price, and delivery timeline.

However, just before the scheduled delivery date, a series of unforeseen events unfold. Firstly, severe weather conditions disrupt the transportation network, causing significant delays in the shipment of critical components required for the assembly of the turbine generator. Subsequently, while the shipment is enroute to XYZ Ltd.'s facility, a maritime accident occurs, resulting in the vessel carrying the components sinking to the ocean floor.

As a result of these combined incidents, the turbine generator's components, essential for its construction, are irreparably damaged beyond salvage.

Discuss the application of the Sale of Goods Act, 1930, in the context of this intricate scenario.

**Q3.** Whether property in the goods passed in the following cases?

(a) B offers for a specific horse Rs. 20,000, the horse to be delivered on 5th January, and the price to be paid on the 1st February.

(b) B order A. a boat-builder, to make him a boat. While the boat is being built, B pays to A money from time to time on account of price.

**Q4.** Tom, an amateur photographer, visits a local electronics store to purchase a camera for capturing high-quality wildlife photographs during his upcoming safari trip. He explicitly informs the salesperson that he needs a camera with advanced zoom capabilities and rapid autofocus to capture fast-moving animals in the wild. Based on the salesperson's expertise, Tom purchases a camera recommended by the store for wildlife photography.

However, during his safari trip, Tom discovers that the camera's autofocus function is slow and unreliable, making it challenging to capture clear images of moving animals. Feeling frustrated and unable to capture the desired photographs, Tom seeks legal advice, questioning whether he has any rights under the Sale of Goods Act, 1930?

**Q5.** X, a furniture dealer, delivered furniture to Y under an agreement of sale, whereby Y had to pay the price of the furniture in three instalments. As per the terms of the agreement, the furniture will become the property of Y on payment of the last instalment. Before Y had paid the last instalment, he sold the furniture to Z, who purchased it in good faith. X brought a suit against Z for the recovery of the furniture on the ground that Z had no title to it. Decide the case on the basis of the provisions as per the Sale of Goods Act, 1930.

**Q6.** Archika went to a jewellery shop and asked the shopkeeper to show the gold bangles with white polish. The shopkeeper informed that he has gold bangles with lots of designs but not in white polish rather if Archika select gold bangles in his shop, he will arrange white polish on those gold bangles

without any extra cost. Archika select a set of designer bangles and pay for that. The shopkeeper requested Archika to come after two days for delivery of those bangles so that white polish can be done on those bangles. When Archika comes after two days to take delivery of bangles, she noticed that due to white polishing, the design of bangles has been disturbed. Now, she wants to avoid the contract and asked the shopkeeper to give her money back but shopkeeper has denied for the same.

(a) State with reasons whether Archika can recover the amount under the Sale of Goods Act, 1930.  
(b) What would be your answer if shopkeeper says that he can repair those bangles but he will charge extra cost for same?

**Q7.** Mr. T was a retail trader of fans of various kinds. Mr. M came to his shop and asked for an exhaust fan for kitchen. Mr. T showed him different brands and Mr. M approved of a particular brand and paid for it. Fan was delivered at Mr. M's house; at the time of opening the packet he found that it was a table fan. He informed Mr. T about the delivery of the wrong fan. Mr. T refused to exchange the same, saying that the contract was complete after the delivery of the fan and payment of price.

(i) Discuss whether Mr. T is right in refusing to exchange as per provisions of Sale of Goods Act, 1930?  
(ii) What is the remedy available to Mr. M?

**Q8.** Mr. K visited M/s Makrana Marbles for the purchase of marble and tiles for his newly built house. He asked the owner of the above shop Mr. J, to visit his house prior to supply so that he can clearly ascertain the correct mix and measurements of marble and tiles. Mr. J agreed and visited the house on the next day. He inspected the rooms in the first floor and the car parking space. Mr. K insisted him to visit the second floor as well because the construction pattern was different, Mr. J ignored the above suggestion.

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Mr. J. supplied 146 blocks of marble as per the size for the rooms and 16 boxes of tiles with a word of caution that the tiles can bear only a reasonable weight. Marble and Tiles were successfully laid except on second floor due to different sizes of the marble. The tiles fitted in the parking space also got damaged due to the weight of the vehicle came for unloading cement bags. Mr. K asked Mr. J for the replacement of marble and tiles to which Mr. J refused, taking the plea that the marble were as per the measurement and it was unsafe to fit tiles at the parking area as it cannot take heavy load. Discuss in the light of provisions of Sale of Goods Act 1930:

- (i) Can Mr. J refuse to replace the marble with reference to the doctrine of Caveat Emptor? Enlist the duties of both Mr. K. and Mr. J.
- (ii) Whether the replacement of damaged tiles be imposed on M/ s Makrana Marbles? Explain.

**Q9.** Prashant reaches a sweet shop and ask for 1 Kg of 'Burfi' if the sweets are fresh. Seller replies' "Sir, my all sweets are fresh and of good quality." Prashant agrees to buy on the condition that first he tastes one piece of 'Burfi' to check the quality. Seller gives him one piece to taste. Prashant, on finding the quality is good, ask the seller to pack. On reaching the house, Prashant finds that 'Burfi' is stale not fresh while the piece tasted was fresh. Now, Prashant wants to avoid the contract and return the 'Burfi' to seller.

- (a) State with reason whether Prashant can avoid the contract under the Sale of Goods Act, 1930?  
(b) Will your answer be different if Prashant does not taste the sweet?

**Q10.** Sohan is a trader in selling of wheat. Binod comes to his shop and ask Sohan to show him some good quality wheat. Binod is satisfied with the quality of wheat. Sohan agrees to sell 100 bags of wheat to Binod on 10th June 2021.

The delivery of wheat and the payment was to be made in next three months i.e. by 10 th September 2021 by Binod. Before the goods are delivered to Binod, Sohan gets another customer Vikram in his shop who is ready to pay higher price for the wheat. Sohan sells the goods of Binod (which were already lying in his possession even after sale) to Vikram. Vikram has no knowledge that Sohan is not the owner of goods. With reference to Sale of Goods Act,1930, discuss if such a sale made by Sohan to Vikram is a valid sale?

**Q11.** An auction sale of the certain goods was held on 7th March, 2023 by the fall of hammer in favour of the highest bidder X. The payment of auction price was made on 8th March, 2023 followed by the delivery of goods on 10th March, 2023. Based upon on the provisions of the Sale of Goods Act, 1930, decide when the auction sale is complete.

**Q12.** A entered into a contract to sell cartons in possession of a wharfinger to B and agreed with B that the price will be paid to A from the sale proceeds recovered from his customers. Now B sold goods to C and C duly paid to B. But anyhow B failed to make the payment to A. A wanted to exercise his right of lien and ordered the wharfinger not to make delivery to C. Whether A can exercise lien?

**Q13.** Mr. Jayanth sells and consigns certain Goods to Mr. Srikanth for cash and sends the Railway Receipt to him. Mr. Srikanth becomes insolvent and while the Goods are in transit, he assigns the Railway Receipt to Mr. Naveen, who does not know that Mr. Srikanth is insolvent. Mr. Jayanth being an Unpaid Seller wants to exercise his rights. Advise whether Mr. Jayanth can exercise the right of stoppage of Goods in transit.

Would your answer be different if Mr. Naveen was aware of Mr. Jayanth's insolvency before the assignment of the Railway Receipt in favour of Mr. Naveen?

**Q14.** Avyukt purchased 100 Kgs of wheat from Bhaskar at Rs. 30 per kg. Bhaskar says that wheat is in his warehouse in the custody of Kishore, the warehouse keeper. Kishore confirmed Avyukt that he can take the delivery of wheat from him and till then he is holding wheat on Avyukt's behalf. Before Avyukt picks the goods from warehouse, the whole wheat in the warehouse has flowed in flood. Now Avyukt wants his price on the contention that no delivery has been done by seller. Whether Avyukt is right with his views under the Sale of Goods Act, 1930.

**Q15.** P sold a car by auction. It was knocked down to Q who was only allowed to take it away on giving a cheque for the price and signing an agreement that ownership should not pass until the cheque was cleared. In the meanwhile, till the cheque was cleared, Q sold the car to R. Whether ownership passed to Q before cheque was clear? Whether R got good title?

## **The Indian Partnership Act, 1932**

**Q.1** A, a money-lender, gave a loan to B for establishing a cattle farm. A took very deep interest in the business and used his personal influence for obtaining the lease of the premises for the farm. Moreover, he also used to be present in the farm and was receiving parties and their demands. C supplied some building material to the farm under the impression that A was a partner. Whether A is liable to C if B fails to pay for building material?

**Q.2** A, a contractor, undertook a contract of loading and unloading railway wagons. He appointed B as his servant to manage the work. It was agreed that the servant would receive 75% of the profits as his remuneration and would bear all the losses, if any. Whether A & B are partners?

**Q.3** A and B were partners in a firm. The firm was carrying on the business of garages and repairing the cars. The partnership agreement provided that the partners shall not buy or sell the cars on behalf of the firm. A sold a second hand car to which the firm had no title. In fact, the car was for repair work. When the buyer came to know that the firm had no title to sell the car, he claimed the amount from B, the other partner. Whether Mr. B is liable?

**Q.4** A & Co. and B & Co., were two separate firms which were carrying on competing business. A, a partner of A & Co. bribed B, a clerk of 'B & Co.' and induced him to give secret information about the price and customers of 'B & Co.' Due to the supply of this information, B & Co. suffered a loss in the business. And 'B & Co.' brought an action against 'A & Co.' for the recovery of loss suffered by them. Whether A & co is liable.?

**Q.5** A, B and C were partners in a firm of bankers. D, a customer of the firm, deposited his ornaments with the firm for safe custody. A and B sold these ornaments and misappropriated the money. C, being a sleeping partner, did not know anything about this act of A and B. D filed a suit against the firm including all the three partners. Whether all three partners are liable?

**Q.6** A and B were carrying on a business of cinematographic theatre proprietors (Non-Trading Business) in partnership. The partnership deed provided that the money can be borrowed by a partner only with the consent of other partner or in the usual course of business. A borrowed a certain sum of money from C, a money-lender, without the consent of B, and misappropriated the same to his own use. C filed suit against B for the recovery of the money. Whether B is liable?

**Q.7** A advanced some money to B and C, two merchants. The merchants agreed to carry on the business subject to the control of A in several respects, and A was to receive a commission of 20% on all the profits. Whether there is partnership between A and B & C?

**Q.8** State giving reasons whether the following are partnerships as per the provisions under the Indian Partnership Act, 1932.

- (1) X, Y, and Z agree to divide the profits equally, but the loss, if any, is to be borne by X alone. Is it case of partnership?
- (2) X, a publisher, agrees to publish a book at his own expense written by Y and to pay Y, half of the net profit. Does this create a relationship of partnership between X and Y? Is liable to a paper dealer for paper supplied to X to print Y's book?
- (3) A and B purchase a tea shop and incur additional expenses for purchasing utensils etc. each contributing half of the total expense. The shop is leased out on daily rent which is divided between both. Does this arrangement constitute a partnership between A and B?

**Q.9** X, Y and Z are partners in a Partnership Firm. They were carrying their business successfully for the past several years. Due to expansion of business, they planned to hire another partner Mr A. Now the firm has 4 partners X, Y, Z and A. The business was continuing at normal pace. In one of

formal business meeting, it was observed that Mr. Y misbehaved with Mrs. A (wife of Mr. A). Mr. Y was badly drunk and also spoke rudely with Mrs. A.

Mrs. A felt very embarrassed and told her husband Mr. A about the entire incident. Mr. A got angry on the incident and started arguing and fighting with Mr. Y in the meeting place itself. Next day, in the office Mr. A convinced X and Z that they should expel Y from their partnership firm. Y was expelled from partnership without any notice from X, A and Z.

Considering the provisions of the Indian Partnership Act, 1932, state whether they can expel a partner from the firm. What are the criteria for test of good faith in such circumstances?

**Q10.** A, B and C are partners of a partnership firm carrying on the business of construction of apartments. B who himself was a wholesale dealer of iron bars was entrusted with the work of selection of iron bars after examining its quality. As a wholesaler, B is well aware of the market conditions. Current market price of iron bar for construction is Rs. 350 per Kilogram. B already had 1000 Kg of iron bars in stock which he had purchased before price hike in the market for Rs. 200 per Kg. He supplied iron bars to the firm without the firm realising the purchase cost. Is B liable to pay the firm the extra money he made, or he doesn't have to inform the firm as it is his own business and he has not taken any amount more than the current prevailing market price of Rs. 350? Assume there is no contract between the partners regarding the above.

Discuss the provisions regarding personal profits earned by a partner under the Indian Partnership Act, 1932?

**Q11.** Moni and Tony were partners in the firm M/s MOTO & Company. They admitted Sony as partner in the firm and he is actively engaged in day-to-day activities of the firm. There is a tradition in the firm that all active partners will get a monthly remuneration of ` 20,000 but no express agreement was there. After admission of Sony in the firm, Moni and Tony were continuing getting salary from the firm but no salary was given to Sony from the firm. Sony claimed his remuneration but denied by existing partners by saying that there was no express agreement for that. Whether under the Indian Partnership Act, 1932, Sony can claim remuneration from the firm?

**Q12.**

- a) A & Co. is registered as a partnership firm in 2015 with A, B and C partners. In 2016, A dies. In 2017, B and C sue X in the name and on behalf of A & Co., without fresh registration. Decide whether the suit is maintainable. Whether your answer would be same if in 2017 B and C had taken a new partner D and then filed a suit against X without fresh registration?
- b) P, X, Y and Z are partners in a registered firm A & Co. X died and P retired. Y and Z filed a suit against W in the name and on behalf of firm without notifying to the Registrar of firms about the changes in the constitution of the firm. Is the suit maintainable?
- c) A, B and C are Partners of an Unregistered Firm. D owes this Firm. ₹ 1,000 on a contract. The Firm files a suit against D. The suit is dismissed for non-registration of Firm. The Firm is registered later on. Can the Firm now successfully bring the suit against D?
- d) A & B purchased a taxi to ply in Partnership. They plied the taxi for a year when A, without the consent of B, disposed of the taxi which brought the Partnership to an end. B brought an

action to recover his share in the sale proceeds. A resisted B's claim on the ground that the Firm was not registered. Will B succeed in his claim?

- e) X, Y and Z are Partners in Unregistered Firm. X steals the property of the Firm. Y filed a suit against X. X registered Y's claim on the plea that the Firm was not registered. Will Y succeed?
- f) M/s XYZ & Company is a partnership firm. The firm is an unregistered firm. The firm has purchased some iron rods from another partnership firm M/s LMN & Company which is also an unregistered firm. M/s XYZ & Company could not pay the price within the time as decided. M/s LMN & Company has filed the suit against M/s XYZ & Company for recovery of price. State under the provisions of the Indian Partnership Act, 1932;
  - (a) Whether M/s LMN & Company can file the suit against M/s XYZ & Company?
  - (b) What would be your answer, in case M/s XYZ & Company is a registered firm while M/s LMN & Company is an unregistered firm?
  - (c) What would be your answer, in case M/s XYZ & Company is an unregistered firm while M/s LMN & Company is a registered firm?
- (g) A and B were partners in an unregistered firm. A clause in the partnership deed provided that in case of any dispute between the partners, the matter will be referred to arbitration. After some time, a dispute arose between the partners, and A appointed an arbitrator. But B did not give his consent and refused to refer the dispute to the arbitrator. A filed a suit against B that he (B) should be compelled to refer the dispute to the arbitration as there was an arbitration clause in the partnership deed. B contended that the firm was not registered, and, therefore, the suit should be dismissed. Advice?

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## The Companies Act, 2013

**Q1.** The paid-up share capital of AVS (P) Ltd. is Rs. 1 Crore, consisting of 8 lakhs equity shares of Rs. 10 each, fully paid-up and 2 lakhs cumulative preference shares of Rs. 10 each, fully paid-up. XYZ (P) Ltd. and BCL (P) Ltd. are holding 3 lakhs equity shares and 1,50,000 preference shares respectively in AVS (P) Ltd.

XYZ (P) Ltd. and BCL (P.) Ltd. are the subsidiaries of TSR (P) Ltd. With reference to the provisions of the Companies Act, 2013, examines whether AVS (P) Ltd. is a subsidiary of TSR (P) Ltd.? Would your answer be different if TSR (P) Ltd. has 8 out of total 10 directors on the Board of Directors of AVS (P) Ltd.?

**Q2.** Referring to the provisions of the Companies Act, 2013, state as to when shall a company incorporated outside India be considered as a 'foreign company' within the meaning of the Companies Act, 2013. Also examining the provisions of the Act, state whether in the following cases, the company shall be considered as a 'foreign company':

- (i) A company incorporated outside India has a representative in India, who on behalf of the company receives orders from the customers.

Company incorporated outside India holds its Board meetings and general meetings in India.

**Q3.** Q Ltd. is a company registered under the Companies Act, 2013 and 40% of its paid up capital is held by Central government and 11% is held by public institution like Life Insurance Corporation (LIC) and Unit Trust of India (UTI). Can Q Ltd. be treated as government under the provisions of Companies Act, 2013?

**Q4.** Mahesh is a creditor of an unlimited company. The company was wound-up. Mahesh, therefore, wants to sue the members of the company to recover the dues. Advise Mahesh regarding the remedy available to him.

**Q5.**

Particulars	A Ltd.	B Ltd.	C Ltd.	D Ltd.
Paid up Capital	Rs. 5 Crore	Rs. 4 Crore	Rs. 3 Crore	Rs. 2 Crore
Equity Shares of Rs. 10 each	40,00,000	30,00,000	20,00,000	10,00,000
10% Pref. Shares of Rs. 10 each	10, 00, 000	10, 00, 000	10, 00, 000	10, 00, 000

Required: State the relationship between the companies in the following cases:

**Case (a):** A Ltd. holds 10,00,000 Equity shares in B Ltd. and can appoint or remove majority of directors of B Ltd. without the consent of any other person.

**Case (b):** A Ltd. holds 15,10,000 equity shares in B Ltd. which holds 10,00,000 equity shares in C Ltd.

**Case (c):** A Ltd. holds 15,10,000 equity shares in B Ltd. which holds 10,10,000 equity shares in C Ltd.

**Case (d):** A Ltd. holds 15,10,000 equity shares in B Ltd. which holds 10,10,000 equity shares in C Ltd. which also holds 5,05,000 equity shares in D Ltd.

**Case (e):** A holds 15,10,000 equity shares in B Ltd. which holds 10, 10,000 equity shares in C Ltd. and holds 1,00,000 equity shares in D Ltd. C Ltd. holds 1,05,000 equity shares in D Ltd.

**Q6.** Jagannath Oils Limited is a public company and having 220 members of which 25 members were employee in the company during the period 1st April, 2006 to 28th June 2016. They were allotted shares in Jagannath Oils Limited first time on 1st July, 2007 which were sold by them 1st August, 2016. After some time, on 1st December, 2016, each of those 25 members acquired shares in Jagannath Oils Limited which they are holding till date. Now company wants to convert itself into a private company. State with reasons:

(I) Whether Jagannath Oils Limited is required to reduce the number of members.

(II) Would your answer be different if above 25 members were the employee in Jagannath Oils Limited for the period from 1st April, 2006 to 28th June, 2017?

**Q7.** Mr. Raja along with his family members is running successfully a trading business. He is capable of developing his ideas and participating in the market place. To achieve this, Mr. Raja formed a single person economic entity in the form of One Person Company with his brother Mr. King as its nominee. On 4th May 2020, Mr. King withdrew his consent as Nominee of the One Person Company. Can he do so under the provisions of the Companies Act, 2013?

Examine whether the following individuals are eligible for being nominated as Nominee of the One Person Company as on 5th May 2020 under the above said Act.

- (i) Mr. Shyam, son of Mr. Raja who is 15 years old as on 5th May 2020.
- (ii) Ms. Devaki an Indian Citizen, sister of Mr. Raja stays in Dubai and India. She stayed in India during the period from 2nd January 2019 to 16th August 2019. Thereafter she left for Dubai and stayed there.
- (iii) Mr. Ashok, an Indian Citizen residing in India who is presently a member of a 'One Person Company'.

**Q8.** Mr. R, a manufacturer of toys approached MNO Private Limited for supply of raw material worth Rs. 1,50,000/-. Mr. R was offered a credit period of one month. Mr. R went to the company prior to the due date and met Mr. C, an employee at the billing counter, who convinced the former that the payment can be made to him as the billing -cashier is on leave.

Mr. R paid the money and was issued a signed and sealed receipt by Mr. C. After the lapse of due date, Mr. R received a recovery notice from the company for the payment of Rs. 1,50,000/-.

Mr. R informed the company that he has already paid the above amount and being an outsider had genuine reasons to trust Mr. C who claimed to be an employee and had issued him a receipt.

The Company filed a suit against Mr. R for non-payment of dues. Discuss the fate of the suit and the liability of Mr. R towards company as on current date in consonance with the provision of the Companies Act 2013? Would your answer be different if a receipt under the company seal was not issued by Mr. C after receiving payment?

## **The Limited Liability Partnership Act, 2008**

**Q.1** M/s Vardhman Steels LLP was incorporated on 01.09.2022. On 01.01.2023, one partner of a partnership firm named M/s Vardhman Steels is registered with Indian Partnership Act, 1932 since 01.01.2000 requested ROC that as the name of LLP is nearly resembles with the name of already registered partnership firm, the name of LLP should be changed. Explain whether M/s Vardhman Steels LLP is liable to change its name under the provisions of Limited Liability Act, 2008?

**Q.2** Mr. Ankit Sharma wants to form a LLP taking him, his wife Mrs. Archika Sharma and One HUF as partners for that. Whether this LLP can be incorporated under LLP Act, 2008? Explain.

**Q.3** There is an LLP by the name Ram Infra Development LLP which has 4 partners namely Mr. Rahul, Mr. Raheem, Mr. Kartar and Mr. Albert. Mr. Rahul and Mr. Albert are non - resident while other two are resident. LLP wants to take Mr. Rahul and Mr. Raheem as Designated Partner. Explain in the light of Limited Liability Partnership Act, 2008 whether LLP can do so?

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## **The Negotiable Instruments Act, 1881**

**Q.1** X signs instruments in the following terms:

- a) I promise to pay B or order Rs. 500.
- b) I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand, for value received.
- c) Mr. B, I O U Rs. 1,000.
- d) I promise to pay B Rs. 500 and all other sums which shall be due to him.
- e) I promise to pay B Rs. 500, first deducting any money which he may owe me.
- f) I promise to pay B Rs. 500 seven days after my marriage with C.
- g) I, promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum.
- h) I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next.

**Q.2** X promises by way of a promissory note to pay Y, his partner, a sum of Rs. 1,00,000 in the event of latter's retirement from the partnership firm. Decide giving reasons for your answer whether the promissory note is valid in this case.

**Q.3** Amit, a resident of Mumbai, borrows ₹50,000 from his friend Rohit in Delhi. As evidence of the loan, Amit issues a promissory note to Rohit, promising to pay back the borrowed amount within 3 months. The promissory note is made payable in USA. Discuss whether Amit's promissory note qualifies as an inland instrument under Section 11 of the Negotiable Instruments Act.

**Q.4** 'A' signs, a blank cheque and gives it to 'B', and authorizes him to fill it for Rs. 500. 'B' fraudulently fills it up for Rs. 2,000 and endorsed to C, who has in good faith and for value receive it. Advice whether above blank cheque is inchoate instrument?

**Q.5** 'A' signs, as maker, a blank stamped paper and gives it to 'B', and authorizes him to fill it as note for Rs. 500. 'B' fraudulently fills it up as note for Rs. 2,000, and endorsed to 'C' (B's brother) as gift who received it in good faith. Decide, with reasons whether 'C' is entitled to recover the amount and if so, up to what extent? CS LLM ARJUN CHHABRA

**Q.6** 'A' signs, as maker, a blank stamped paper but B steals it and fraudulently fills it up as note for Rs. 2,000. Advice whether above blank paper is inchoate instrument?

**Q.7** Bholenath drew a cheque in favour of Surendar. After having issued the cheque; Bholenath requested Surendar not to present the cheque for payment and gave a stop payment request to the bank in respect of the cheque issued to Surendar. Decide, under the provisions of the Negotiable Instruments Act, 1881 whether the said acts of Bholenath constitute an offence?

**Q.8** Mr. X draws a cheque in favour of Mr. R for payment of his outstanding dues of Rs. 5,00,000 on 26/07/2022 with date of 1/08/2022. At the time of issuing cheque, he was having sufficient balance in his account, but on 29/07/2022 he made payment for his taxes, now his bank account is left with only Rs. 4,50,000. So, Mr. X requested Mr. R not to present the cheque for payment, but he did not accept his request. So, Mr. X instructed the bank to stop payment of cheque issued for dated 01/08/2022 in favour of Mr. R.

Decide, under the provisions of the Negotiable Instruments Act, 1881 whether the said acts of Mr. X constitute an offence?

**Q.9** Mr. Harsha donated Rs. 50,000 to an NGO by cheque for sponsoring the education of one child for one year. Later on he found that the NGO was a fraud and did not engage in philanthropic activities. He gave a "stop payment" instruction to his bankers and the cheque was not honoured by the bank as per his instruction.

The NGO has sent a demand notice and threatened to file a case against Harsha. Advise Mr. Harsha about the course of action available under the Negotiable Instruments Act, 1881.

**Q.10** Rama executes a promissory note in the following form, 'I promise to pay a sum of Rs.10,000 after three months: Decide whether the promissory note is a valid promissory note.

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## **Chapter 1 - Indian Regulatory Framework**

### **Question 1**

What are the main sources of law in India, and how do they contribute to the legal framework of the country?

### **Answer:**

The main sources of law in India are the Constitution, statutes passed by Parliament and State Assemblies, judicial precedents, and established customs and usages. India's legal system is founded on the principles of parliamentary democracy, with the Constitution serving as the fundamental basis for all laws. Parliament and State Assemblies, where elected representatives make laws, are the ultimate law-making bodies. While laws passed by Parliament apply across India, state legislatures enact laws applicable only within their respective states.

### **Question 2**

Explain the distribution of law-making powers between the Central Government and State Governments as outlined in the Indian Constitution.

### **Answer:**

The Government of India Act, 1935, was a precursor to the Indian Constitution and played a crucial role in defining the transition from a "unitary" to a "federal" system. It allocated powers between the Centre and the States to prevent conflicts. The Federal Court, established in 1937, had jurisdiction over appellate, original, and advisory matters, including civil and criminal cases. The Advisory Jurisdiction allowed the Federal Court to advise the Governor-General on public matters. The Federal Court was eventually succeeded by the Supreme Court of India. The Constitution of India, adopted in 1950, forms the cornerstone of the Indian legal system. It outlines the framework for the democratic system and the rights and responsibilities of citizens. Fundamental rights and duties are enshrined in the Constitution, providing a strong foundation for laws made for and by the people. India's legal system is a hybrid one, with interconnected laws.

The Constitution divides the law-making power between the Central Government and State Governments through three lists: the Central List, State List, and Joint List. Matters listed in each list determine whether a subject becomes the domain of Central law, State law, or both. For instance, Income Tax falls under the Central List, resulting in a single Income Tax law for the entire country, administered by the Central Government's Ministry of Finance. In contrast, issues like the levy of stamp duty are governed by both Central and State laws, exemplifying the cooperative nature of Indian law-making.

### **Question 3**

Describe the legislative process that a proposed law, also known as a Bill, undergoes in India before becoming an Act of Parliament. Explain the key stages and authorities involved in this process.

### **Answer:**

In India, the legislative process for a proposed law, known as a Bill, involves several key stages and authorities. First, the Bill is introduced in either the Lok Sabha or the Rajya Sabha, where it is subject to discussion and debate. After passing in the Lok Sabha, it proceeds to the Rajya Sabha for further consideration. Following approval in



both houses, the Bill is presented to the President of India for assent. Once the President provides assent, the law is officially notified by the Government in the Official Gazette of India. The effective date of the law is mentioned in the notification, and at this point, it becomes an Act of Parliament.

#### **Question 4**

Explain the fundamental differences between Criminal Law and Civil Law in India. Provide insights into the key legal frameworks governing each type of law and their primary objectives.

#### **Answer:**

In India, Criminal Law and Civil Law are distinct legal domains with different purposes and frameworks. Criminal Law is concerned with violations of the rule of law or public wrongs and the subsequent punishment. It is primarily governed by the Indian Penal Code, 1860, which defines crimes, their nature, and the associated penalties. The Code of Criminal Procedure, 1973 (Crpc), outlines the procedural aspects for enforcing these penalties.

Examples of criminal offenses under Indian law include murder, rape, theft, fraud, cheating, and assault. The focus in criminal cases is on punishment and societal order.

In contrast, Civil Law pertains to disputes between individuals or organizations and focuses on resolving conflicts rather than punishment. The Code of Civil Procedure, 1908 (CPC), governs the process and administration of civil law.

Civil law encompasses various areas such as Law of Contract, Family Law, Property Law, and Law of Tort. Examples of civil offenses include breach of contract, non-delivery of goods, non-payment of dues, defamation, and disputes between landlords and tenants.

#### **Question 5**

Explain the concept of Common Law and the principle of Stare Decisis in the Indian legal system. How does Stare Decisis influence judicial decisions, and what is its significance in legal proceedings?

#### **Answer:**

Common Law in India is a legal system where decisions made by courts in previous cases serve as binding precedents for future cases. The doctrine of Stare Decisis, a Latin phrase meaning "to stand by that which is decided," is fundamental to this legal framework. It mandates that courts must follow the principles or judgments established in previous cases when ruling on similar or analogous cases. This principle helps maintain consistency and predictability in the legal system.

In practical terms, when a new case presents facts and circumstances similar to a prior case with a legal precedent, the doctrine of Stare Decisis obliges the court to follow the earlier decision. This ensures that the law is applied consistently and that individuals and organizations can rely on established legal principles when navigating the legal system.

Stare Decisis is of great significance in the Indian legal system as it promotes fairness, equity, and the rule of law by ensuring that legal decisions are not arbitrary but based on established legal principles. It provides guidance to both the judiciary and legal practitioners when interpreting and applying the law to specific cases.

#### **Question 6**

Can you elaborate on the key responsibilities and functions of the Ministry of Finance within the Government of India? How does it impact the daily work of a Chartered Accountant, and why is it significant for the financial landscape of the country?

**Answer**

The Ministry of Finance, also known as Vitta Mantralaya, is a vital government department in India responsible for the nation's economy. It serves as the Treasury of India and has a wide range of responsibilities. These include taxation, the formulation and enactment of financial legislation, oversight of financial institutions, regulation of capital markets, management of both central and state finances, and the presentation of the Union Budget.

For Chartered Accountants, this ministry holds immense importance as many aspects of their daily professional activities are influenced by its policies and proclamations. It impacts their work through tax regulations, financial reporting standards, and compliance requirements. Chartered Accountants play a crucial role in helping individuals and businesses navigate these financial aspects efficiently while ensuring compliance with the Ministry's directives. The presentation of the Union Budget is a highly anticipated annual event that reveals the tax rates and budget allocations for the upcoming year. It has far-reaching effects on the financial planning and strategies of businesses, investments, and the common man. Finance professionals, including Chartered Accountants, closely monitor the Union Budget as it significantly influences financial decision-making, investment choices, and tax planning for their clients.

Given the Ministry of Finance's broad influence on the economic and financial landscape of India, it's no surprise that several ministers have opted to hold the portfolio of Finance Minister. This underscores the ministry's critical role in shaping the country's economic policies and regulations

**Question 7**

Can you describe the structure of the Indian judicial system, including its key components and their respective roles within the system?

**Answer:** The Indian judicial system is a complex and hierarchically organized system that serves as the guardian of the rule of law and justice in the country. It can be divided into multiple layers, each with its specific functions and jurisdictions.

**Supreme Court of India:** At the apex of the Indian judicial system is the Supreme Court. It acts as the highest court of appeal and is responsible for interpreting the Constitution and ensuring uniformity in the application of laws throughout the country. The Supreme Court can hear appeals from High Courts and other specialized courts, making it the ultimate authority in legal matters.

**High Courts:** India has 25 High Courts, each serving one or more states or union territories. High Courts have jurisdiction over their respective states or territories and serve as appellate courts for cases decided by lower courts. They also have the authority to issue writs and handle matters related to the violation of fundamental rights.

**District Courts:** Below the High Courts are District Courts, which are established in every district of the country. District Courts handle civil and criminal cases and are typically the first level of the judiciary that individuals encounter. These courts have the authority to try cases involving a wide range of issues.

**Subordinate Courts:** Subordinate Courts, also known as lower courts, come under the District Courts. These include various levels of courts, such as sessions courts, magistrate courts, and specialized courts (e.g., family courts, consumer courts). Subordinate Courts primarily handle cases within their specified jurisdictions, and appeals from their decisions can be made to the District Court or High Court, depending on the nature of the case

**Tribunals and Specialized Courts:** India has various tribunals and specialized courts to handle specific types of cases. These include the National Green Tribunal, Income Tax Appellate Tribunal, and others, which are designed to expedite justice and provide expertise in their respective areas of law.

**Gram Nyayalayas:** These are rural or village courts established to ensure access to justice for residents of rural areas. Gram Nyayalayas handle petty civil and criminal cases and aim to reduce the burden on higher courts.

In summary, the Indian judicial system is structured with the Supreme Court at the apex, followed by High Courts, District Courts, and Subordinate Courts. Specialized tribunals and village-level Gram Nyayalayas contribute to a comprehensive system that aims to provide access to justice for all citizens.

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## Chapter 2 - The Indian Contract Act, 1872

### Unit – I Nature of Contracts

#### Definitions under The Indian Contract Act, 1872 [Sec. 2]

1. **Proposal/ Offer [Sec.2(a)]**: A person is said to make a Proposal when he 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.
2. **Promise [Sec.2(b)]**: When the person to whom a proposal is made, signifies his assent thereto, the proposal is said to be accepted. When a proposal is accepted, it becomes a Promise.
3. **Reciprocal Promises [Sec.2(f)]**: Promises which form the consideration or part of the consideration for each other are called Reciprocal Promises.
4. **Promisor and Promisee [Sec.2(c)]**: The person making the promise is called the Promisor, and the person accepting the proposal is called the Promisee.
5. **Consideration [Sec.2(d)]**: 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 act or abstinence or promise is called a Consideration for the promise.
6. **Agreement [Sec.2(e)]**: Every promise and every set of promises, forming the Consideration for each other, is an Agreement.
7. **Contract [Sec.2(h)]**: An Agreement enforceable by law is a Contract.
8. **Voidable Contract [Sec.2(i)]**: An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a Voidable Contract.
9. **Void Agreement [Sec.2(g)]**: An Agreement not enforceable by law is void.
10. **Void Contract [Sec.2(j)]**: A Contract which ceases to be enforceable by law becomes void, when it ceases to be enforceable.

#### Essentials of a Valid Contract:

- (a) **Agreement** between two parties,
- (b) **Consensus-ad-idem - meeting of minds** - agreeing to the same thing in the same sense. [Section 13]
- (c) **Intention** to create legal relationship. No domestic and social nature,
- (d) **Consent** of parties must be free, [Section 13 & 14]
- (e) Parties should be **competent to contract**, [Section 11]
  - i. age of majority
  - ii. sound mind [Section 12]
    - able to understand the terms of Contract
    - capable of forming a rational judgment
  - iii. not disqualified from contracting

- Alien Enemy
- Foreign Sovereign and Ambassadors
- Convicts (He can enter into contracts only when the term is completed.)
- Insolvents

(f) Lawful consideration,

(g) Lawful and legal object,

(h) Not expressly declared void,

(i) Meaning of agreement must be certain or capable of being made certain,

(j) Capable of performance, and

(k) Legal formalities i.e Writing, registered & stamped. wherever required. [Sec. 1]

Related Question: “All contracts are agreements, but all agreements are not contracts.” Comment. [MTP Nov 21 – 4 Marks]

Answer:

“All Contracts are Agreements but all Agreements are not Contracts”

1. Contract = Agreement + Enforceability by law. Thus, for a Contract, there should first be an Agreement.
2. Agreements that do not give rise to legal obligations are not Contracts. Example: A invites B for his son's wedding. B accepts the invitation. This is a mere agreement, not a Contract, there being no intention to create legal obligation.
3. Agreements to do an unlawful, immoral or illegal act, like smuggling or murdering a person, cannot be enforceable by law. Such agreements cannot be considered as a Contract.
4. Also, certain Agreements are specifically declared Void or Unenforceable. Example: Agreements to bet i.e wagering Agreements, Agreements in restraint of trade, agreements to do an impossible act, etc.
5. Hence, all Agreements are not Contracts, but all contracts are in fact Agreements.

### Intention to create legal relationship

### Case Laws based on Intention to create legal relationship

Balfour Vs. Balfour (1919)

1. It was held that the characteristics of the agreement was purely and completely domestic in nature, Lord Justice Atkin held that when a husband and a wife enter into an

Merritt v Merritt [1970]

1. Mr Merritt’s appeal was unsuccessful.
2. When parties are in the process of separating, or are separated, the presumption of there being no intention to create legal relations does not apply.

Rose & Frank Co. v. Crompton Bros [1924]

1. The agreement was not enforceable by law as parties never intended to create legal relationship despite being business agreement because it was having honour clause.

<p>agreement they never intend to create a legal relationship.</p> <p>2. The agreement was outside the scope of contracts.</p>	<p>3. The arrangement was sufficiently certain to be enforceable, and the paying of the mortgage was ample consideration for Mr Merritt's promise. Mrs Merritt was entitled to the matrimonial home entirely.</p>	<p>2. Honour clause: Express statement that an agreement is intended to be binding in honour only and is therefore not legally enforceable.</p>
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**Question 1**

Mr. Ramesh promised to pay Rs. 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. (3 Marks) [Nov 18]

**Answer**

1. **Parties must intend to create legal obligations:** There must be an intention on the part of the parties to create legal relationship between them.
2. **Social or domestic type of agreements are not enforceable** in court of law and hence they do not result into contracts.

In the given question

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Mr. Ramesh promised to pay Rs. 50,000 to his wife so that she can spend the same on her birthday. However, subsequently, Mr. Ramesh failed to fulfil the promise, for which Mrs. Lali wants to file a suit against Mr. Ramesh.

Here, in the given circumstance wife will not be able to recover the amount as it was a social agreement and the parties did not intend to create any legal relations.

**Related Question:** Radha invited her ten close friends to celebrate her 25th birthday party on 1st January, 2023 at 7.30 P.M. at a well-known "Hi-Fi Restaurant" at Tonk Road, Jaipur. All invited friends accepted the invitation and promised to attend the said party. On request of the hotel manager, Radha deposited \$ 5,000/- as non-refundable security for the said party. On the scheduled date and time, three among ten invited friends did not turn up for the birthday party and did not convey any prior communication to her. Radha, enraged with the behaviour of the three friends, wanted to sue them for loss incurred in the said party. Advise as per the provisions of the Indian Contract Act, 1872. Would your answer differ if the said party had been a "Contributory 2023 New Year celebration Party" organized by Radha? (4 Marks) [June 23]

**Answer:** As per one of the requirements of Section 10 of the Indian Contract Act, 1872, there must be an intention on the part of the parties to create legal relationship between them. Social or domestic agreements are not enforceable in court of law and hence they do not result into contracts.

In the instant case, Radha cannot sue her three friends for the loss incurred in the said party as the agreement between her and her ten friends was a social agreement, and the parties did not intend to create any legal relationship.

If the said party organised by Radha had been a "Contributory 2023 New year celebration party", then Radha could have sued her three friends for the loss incurred in the said party as the agreement between her and her friends would have legal backing; on the basis of which Radha deposited the advance amount and the parties here intended to create legal relationship.

Related/Expected Question	Hint Answer
A invites B to stay with him during the winter vacation at his residence. B accept the invitation and informs A accordingly. When B reaches A's house, he finds it locked and he has to stay in a hotel. Can B claim damages from A? (3 Marks)	Mr. A invites to Mr. B to stay with him during winter vacation at his residence as it is a social contract and offer and acceptance to hospitality does not create contract.
Arjun invites Sunny to Satish's [Brother of Arjun] Birthday party. Sunny accepts the invitation and promises to attend. Arjun made special arrangement for Sunny at the party but she did not came. Arjun is upset with Sunny's behaviour, wanted to sue for loss incurred in making special arrangements. Arjun is seeking your advice.	Arjun cannot sue sunny for loss. Agreement was a kind of social nature and therefore, lacked the intention to create legal relationship.
A Father promised to pay his son a sum of ₹ 1 Lakh if the son passed C.A. examination in the first attempt. The son passed the examination in the first attempt, but the father failed to pay the amount as promised. The son files a suit for recovery of the amount. State whether the son can recover the amount under the Indian Contract Act, 1872. [Mock Test Paper Oct 18 ICAI]	The son cannot recover the amount of ₹ 1 Lakh from his father. An agreement of domestic nature cannot be considered as a valid Contract.

## Invitation to offer Vs Offer

### Question 2

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 it. Ms. Lovely seeks your advice whether she can sue the shop-keeper for the above cause under the Indian Contract Act, 1872. (3 Marks) [Nov 18]

**Answer**

1. Offer should be distinguished from an invitation to offer:

Basis of Distinction	Offer	Invitation to Offer
1. Meaning	Where a person shows his willingness to enter into a contract, it is called as an offer.	Where a person invites others to make an offer to him, it is called as an invitation to offer.
2. Purpose	An offer is made by a person with the purpose of entering into a contract.	The purpose of making an invitation to offer is to receive the offers or to negotiate the terms on which the person making the invitation is willing to contract.
3. Legal effect	An offer, if acted upon (i.e., accepted), results in a contract.	An invitation to offer, if acted upon, only results in making of an offer.

2. 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, 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.

**Related Question:** 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 March 19, 4 Marks] [MTP Nov 21 – 4 Marks] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

**Answer:**

Same as above.

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.

Related/Expected Question	Hint Answer
Ajit sees a book displayed in a shelf of a book shop with a price tag of ₹ 95. Ajit tenders ₹ 95 at the counter and asks for the book. The Bookseller refuses to sell saying that the book has already been sold to someone else and he does not have another copy of that book in the stock. Is the Bookseller bound to sell the book to Ajit?	No, Book Seller is not bound to sell the book to Ajit. Display of goods with prices marked thereon is only an invitation to offer.



**Related Question:** 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. [MTP Oct 21- 4 Marks]

**Answer:**

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 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.

**Related Question:** 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.

**Answer:**

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

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.

### **Expected question based on Invitation to offer**

**Related Question:** X, gave an advertisement in a newspaper that a sale of office furniture by auction will be held at 2 p.m. On 9th August 1997 at 'bharat Maidan, Stall No. 420, New Delhi.' Y from Mumbai reached New Delhi on the appointed date and time but X had cancelled the auction sale. Advise Y.

**Answer:**

Y cannot file a suit against X for his loss of time and expenses because the advertisement was merely an invitation to offer and not an offer to self.

## Offer [Section 2 (a)]

### Question 3

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

### Answer

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

1. When one person signifies to another his willingness to do or to abstain from doing anything
2. With a view to obtain the assent of that other to such act or abstinence
3. 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

### Question 4

Explain the modes of revocation of an offer as per the Indian Contract Act, 1872. (5 Marks) [Nov 18]  
[MTP Aug 18, 7 Marks]

### Answer

#### 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.

## Acceptance

### Question 5

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

[Back question of Module] [RTP Nov 20] [Jan 21- 7 Marks]

### Answer

As per the provisions of the Indian Contract Act, 1872, when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. The proposal, when accepted, becomes a promise. This is known as acceptance.

Legal rules regarding valid acceptance:

**1. Acceptance can only be given by the person to whom the offer is made or who has the knowledge of the offer:** In the case of a specific offer, it can be accepted only by the person to whom it is made. In the 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:** The 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 the contract between the parties, the acceptance must be communicated in a reasonable form. Any conditional acceptance is no acceptance. If the proposal is accepted by the offeree, he must have the complete knowledge of the offer made to him.

**4. Acceptance must be in a prescribed mode:** Where the mode of acceptance is prescribed in a 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 (not in the prescribed manner), the proposer is presumed to have consented to the acceptance.

**5. Time:** Acceptance must be given within a specified time limit, and if no time is fixed, then the acceptance shall be given within a 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 the acceptance.

**7. Acceptance by conduct/Implied Acceptance:** 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.

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

**Answer:**

1. As per the rules of acceptance, the acceptance should be communicated to offeror by offeree himself or his authorized agent. **Communication of acceptance by third person cannot be concluded in valid acceptance.**
2. 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.
3. 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.

**Related Question:** 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? [Module Back Vague Question]

**Answer:**

No, Miss Shakuntala cannot claim damages. As per Section 4, communication of acceptance is complete as against proposer when it is put in the course of transmission to him.

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.

**Related Question:** A sends an offer to B to sell his second-hand-car for ₹ 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 is the position if B communicates his acceptance after one week? [RTP Nov 19]

**Answer:** When B remains silent, it does not amount to Acceptance, as acceptance cannot be implied merely from silence of offeree.

Acceptance must be made within the time limit prescribed in the offer. Hence, B's Acceptance after one week (i.e., after the time prescribed by the Offeror has elapsed), will not operate to turn the offer into a Contract.

**Communication, Acceptance and Revocation of Proposals [Sec 4, 5 & 6]****Question 6**

Ramaswamy 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, in the light of the following -

- A. The telegram of revocation of acceptance is received by Ramaswamy before the letter of acceptance (by Post).
- B. The telegram of revocation and letter of acceptance both reached together. [RTP Nov 18]

**Answer**

1. The problem is related with the communication and time of acceptance and its revocation.
2. As per Section 4 of the Indian Contract Act, 1872, the communication of an acceptance is complete as against the acceptor when it comes to the knowledge of the proposer.
3. An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

**Referring to the above provisions:**

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

**Related Question:** Mr. B makes a proposal to Mr. S by post to sell his house for Rs. 10 lakhs and posted the letter on 10<sup>th</sup> April 2020 and the letter reaches to Mr. S on 12<sup>th</sup> April 2020. He reads the letter on 13<sup>th</sup> April 2020.

Mr. S sends his letter of acceptance on 16<sup>th</sup> April 2020 and the letter reaches Mr. B on 20<sup>th</sup> April 2020. On 17<sup>th</sup> April Mr. S changed his mind and sends a telegram withdrawing his acceptance. Telegram reaches to Mr. B on 19<sup>th</sup> April 2020.

Examine with reference to the Indian Contract Act, 1872:

- (i) On which date, the offer made by Mr. B will complete?
- (ii) Discuss the validity of acceptance.
- (iii) What would be validity of acceptance if letter of revocation and letter of acceptance reached together? [Jan 21 – 6 Marks]

**Answer**

1. The problem is related with the communication of offer and time of acceptance and its revocation.
2. According to Section 4 of The Indian Contract Act, 1872
  - **Communication of a proposal when complete** - The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.
  - **Communication of an acceptance when complete** - The communication of an acceptance is complete as against the acceptor when it comes to the knowledge of the proposer.
3. An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

**Referring to the above provisions:**

1. In the Instant case, the communication of offer will complete on 13<sup>th</sup> April 2020 because S read the offer on 13<sup>th</sup> April i.e the date on which offer comes to his knowledge.
2. In the Instant case, acceptance is not valid, instead revocation of acceptance is valid because S (Acceptor) revoked his acceptance by sending a telegram withdrawing his acceptance which reaches B on 17th April before 20th April i.e., before the communication of acceptance comes to the knowledge of B (Offeror).
3. When both the letter of acceptance and revocation is reached at the same time, the validity of acceptance is determined by which is opened first, i.e., telegram or post. The revocation is sent by telegram but the acceptance is sent by post.

A rational person would normally open the telegram first, and hence the acceptance stands revoked. So, if the proposer (B) opens the telegram first and reads it, the revocation of acceptance is valid, and there is no contract.

However, if B opens the letter first and reads it, then the acceptance is complete and cannot be revoked. There is a valid contract in such a case.

Note: An alternative view is given as under -

Two communications (letter and telegram) reaching simultaneously will neutralize each other, and there is no agreement due to lack of consensus-ad-idem. [Countess of Dunmore vs Alexander]

**Expected questions based on Communication, acceptance and revocation of proposals**

**Question 7**

A, the secretary of a building society, handed over to B, in the office of the society, an offer to sell a property at £750. Fourteen days' time was given to B for acceptance. B was residing in a different town, and took away with him the offer to that town. The next day, at about 3.30 p.m. B sent, by post, his letter of acceptance. This letter was received at society's office at 8.30 Pm. But before that at about 1.00 p.m. the society had posted a letter revoking its offer. B received the letter of revocation at 5.30 p.m. Advice B.

## **Answer**

### **Revocation of Proposals (Section 5 of The Indian Contract Act, 1872)**

A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

### **Completion of communication of acceptance against proposer (Section 4 of The Indian Contract Act, 1872)**

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 the power of the acceptor.

Thus, the offeror becomes bound by the acceptance as soon as the letter of acceptance is posted by the acceptor.

The revocation was held to be ineffective [Henthorn v. Fraser]. In order that revocation to be effective, it should have been reached B before he sent his acceptance i.e. before 3.30 p.m.

## **Question 8**

A applied for shares in a company. A withdrew his offer on 26th October. His letter of withdrawal was received by the company at 11.30 a.m. on 27th October. But on 27th October at 10.00 a.m., the company had already resolved to allot the shares to A, and the letter of allotment (acceptance) was given to a peon to post, but the letter was not actually posted till 11.30 a.m. Advise A and also to company.

## **Answer**

### **Revocation of acceptance (Section 5 of The Indian Contract Act, 1872)**

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

Thus, the acceptor becomes bound by his acceptance only when it comes to the knowledge of the offeror.

### **Completion of communication of acceptance against acceptor (Section 4 of The Indian Contract Act, 1872)**

When it comes to the knowledge of the proposer.

It was held that the revocation was valid. The acceptance was too late as the letter was not actually posted till the offer had been revoked. But, if the letter of acceptance had been actually posted before the letter of revocation reached the company (i.e. before 11.30 a.m.), the acceptance would have been binding [London and Northern Bank v. Jones]. It may be noted that a revocation is effective only when it is brought to the notice of the person to whom it is made.

## Communication of special conditions of Offer/ Acceptance

- **Tacit communication and acceptance:** Sometimes there are situations where there are contracts with special conditions. These special conditions are conveyed tacitly and the acceptance of these conditions are also conveyed by the offeree again tacitly or without him even realizing it.
- **Deemed Acceptance:** In any event, the passenger is treated as having accepted the special condition the moment he bought his ticket if they are communicated to him in some reasonable manner, e.g. conditions on the reverse of a train ticket, air ticket, bill issued by service providers, etc.
- **Notice of Conditions mandatory:** The party delivering the document should have given reasonable notice of the special terms / conditions. Words like See Back for Conditions, Please Turn Over, Subject to Terms and Conditions contained in Annexure, are indicative of a reasonable notice to the Acceptor. It shall be binding even though the Acceptor did not read the same or could not understand it.
- **No Notice — Acceptor not incur/bound:**
  - Any contractual obligation, if the document is printed and delivered to him in such condition that, it does not give reasonable notice on its face that it contains certain special conditions.
  - When the conditions are contained in a document that is delivered after the Contract is complete.
  - If conditions limiting or defining his rights are not brought to his notice.

<b>CASE LAW</b>	A passenger was travelling with luggage from Dublin to Whitehaven on a ticket, on the back of which there was a term that exempted the Shipping Company from liability for loss of luggage. He never looked at the back of the ticket and there was nothing on the face of it to draw his attention to the terms on its back. He lost his luggage and sued for damages. Held, he was entitled to damages as he was not bound by something which was not communicated to him.	<b>Henderson vs Stevenson</b>
	A passenger deposited a bag in the cloakroom at a Railway Station. Acknowledgement Receipt given to him carried, on the face of it, the words "See back". One condition limited the liability of Railways for any package to £10. The bag was lost, and passenger claimed £24 being its value, pleading that he had not read conditions. Held, passenger was bound by conditions printed on the back, as the Company gave reasonable notice.	<b>Parker vs South Eastern Rly. Co.</b>
	A Transport Carrier accepted goods for transport without any conditions. Subsequently, he issued a circular to owners of goods limiting his liability for goods. Since the special conditions were not communicated prior to the date of contract for transport, these were not binding on the owners of goods.	<b>Raipur Transport Co. vs Ghanshyam</b>



	<p>T purchased a Railway Ticket, on the face of which was written - For Conditions See Back. One condition excluded liability for injury, however caused. T was illiterate and could not read. She was injured and sued for damages. Held, the Railway Company had properly communicated conditions to her who had constructive notice of conditions whether she read them or not. The Company was not bound to pay any damages.</p>	<p><b>Thompson vs LM&amp;L Rly. Co.</b></p>
	<p>A launderer had given to his customer a receipt for clothes received for washing. Special conditions for this were printed on the reverse of receipt. Held that special conditions were duly communicated to the customer who had impliedly accepted the same.</p>	<p><b>Lily White vs R.Muthuswa mi</b></p>
	<p>Persons entering into Contracts on special terms are deemed to have impliedly accepted those terms.</p>	<p><b>Mukul Datta vs Indian Airlines</b></p>

CS LLM ARJUN CHHABRA

**Void Agreements/Contract | Illegal Agreement | Types of Contract**

**Difference between Void and Illegal Agreements**

Basis	Void Agreements	Illegal Agreements
1. Enforceability by law	It is an agreement not enforceable by law, but they are not forbidden under law.	Illegal Agreements are forbidden under law.
2. Interchangeability	All Void Agreements need not be illegal.	All Illegal Agreements are void ab-initio.
3. Punishment	Void Agreements are not punishable.	Illegal agreements may be punishable with fine or imprisonment or both.
4. Other related transactions	Collateral Transactions are not affected.	Collateral Transactions are also void.
5. Example	Agreement entered into with a Minor is VOID AB INITIO (from the very beginning)	Agreement to murder a person.

**Example of Collateral Transactions in case of illegal Agreements:** X agrees to pay Y ₹ 1, 00,000 if Y kills Z. Y kills Z and claims ₹1, 00,000. Y cannot recover from X because the agreement between X and Y is illegal as its object is unlawful.

If in the above example, X borrows ₹1, 00, 000 from W who is aware of the purpose of the loan, the main agreement between X and Y is illegal and the agreement between X and W which is collateral to the main agreement is also void. Hence, W cannot recover the money from X.

**Question:** Distinguish between Void Contract and Voidable Contract according to the Indian Contract Act, 1872. (June 23 - 5 Marks)

**Answer**

S. No	Basis	Void Contract	Voidable Contract
1	Meaning	A Contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.	An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.
2	Enforceability	A void contract cannot be enforced at all.	It is enforceable only at the option of aggrieved party and not at the option of the other party.

3	Cause	A contract becomes void due to change in law or change in circumstances beyond the contemplation of parties.	A contract becomes a voidable contract if the consent of a party was not free.
4	Performance of contract	A void contract cannot be performed.	If the aggrieved party does not, within reasonable time, exercise his right to avoid the contract, any party can sue the other for claiming the performance of the contract.
5	Rights	A void contract does not grant any legal remedy to any party.	The party whose consent was not free has the right to rescind the contract within a reasonable time. If so rescinded it becomes a void contract. If it is not rescinded it becomes a valid contract.

**Question 9**

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

- (i) Between X and Y.
- (ii) Between X and W [Nov 22 - 4 Marks]

**Answer**

CS LLM ARJUN CHHABRA

- (a) **Illegal Agreement:** It is an agreement which the law forbids to be made. As an essential condition, the lawful consideration and object is must to make the agreement valid. (Section 10). As per Section 23 of the Indian Contract Act, 1872, an agreement is illegal and void, if the consideration and object is unlawful / contrary to law i.e. if forbidden by law. Such an agreement is void and is not enforceable by law. Even the connected agreements or collateral transactions to illegal agreements are also void.
- (b) In the present case,
  - (i) X agrees to give Rs. 1,00,000 to Y if Y kills Z. Thus, the agreement between X and Y is void agreement being illegal in nature.
  - (ii) X borrows Rs. 1,00,000 from W and W is also aware of the purpose of the loan. Thus, the agreement between X and W is void as the connected agreements of an illegal agreements are also void.

**Expected question based on illegal & void agreement**

**Related Question:** X threatens to kill Y if he (Y) does not sell his house to X for Rs. 1, 00,000. Y agrees. X borrows Rs. 1, 00,000 from Z who is also aware of the purpose of the loan. What is the nature of the agreement between X and Y, and X and Z?

**Answer:**

The contract between X and Y is a contract which is **voidable** at the option of Y because Y's consent is not free as it has been obtained by coercion. The contract between X and Z is a **valid** contract because the object of contract (i.e. borrowing for the purchase of a house) is lawful.

Arjun sir be like: Kyu hila dala na.?

### **Question 10**

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

### **Answer**

**Institute's answer:**

As per Section 2(j) of the Indian Contract Act, 1872 a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable. The fact of impossibility may be known or unknown to the promisor or promisee.

It may be added by clarification here that the term "contract" shall be understood as an "agreement".

Thus, when the parties agree on doing something which is obviously impossible in itself the agreement would be void.

In this case, Mr. X and Mr. Y were ignorant of the fact that the elephant was dead and therefore the performance of the contract was impossible from the very start (impossibility ab initio).

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

**Author's answer: students should right this answer in exam**

#### **Section 20 in The Indian Contract Act, 1872**

**Agreement void where both parties are under mistake as to matter of fact.** —Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement the agreement is void.

**Agreement Void [Sec. 56]:** An Agreement to do an act impossible in itself is void ab-initio (void from the very beginning). Whether the fact of impossibility was known to the parties or not is immaterial.

**Void Agreement [Sec.2(g)]:** An Agreement not enforceable by law is void.

In this case, Mr. X and Mr. Y were ignorant of the fact that the elephant was dead and therefore the performance of the contract was impossible from the very start (impossibility ab initio).

Hence, this **agreement is void** being not enforceable by law.

## Miscellaneous Questions

### Question 11

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] [MTP Nov 22 – 4 Marks]

### Answer: (i)

1. It is an implied contract and A must pay for the services of the coolie.
2. **Implied Contracts:** This implies a contract though parties never intended. Where a Proposal or Acceptance is made otherwise than in words, promise is said to be implied.

### Answer: (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 a contract in which there is no intention on part of either party to make a contract but law imposes a contract (rights and obligations) upon the parties.

### Answer: (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.

### Question 12

State whether there 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. [Module back question]

**Answer**

- (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.

**Question 13**

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

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

**Answer**

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

## **Unit– 2: Consideration**

### **Very Important Unit**

#### **Question 1**

Define consideration. What are the legal rules regarding consideration under the Indian Contract Act, 1872? [Nov 19 - 7 Marks] [RTP Nov, 2018] [MTP March 19, 5 Marks]

#### **Answer:**

**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.

**Durga Prasad vs Baldeo:** D constructed a market at the instance of District Collector. Occupants of shops promised to pay D a commission on articles sold through their shops. Held, there was no consideration because money was not spent by Plaintiff at the request of the Defendants, but at instance of a third person viz. the Collector and, thus the Contract was void.

(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.

(iv) **Consideration may be past, present or future:**

**Past Consideration:** The consideration which has already moved before the formation of agreement.

For Consideration to be treated as past it must move by a previous request.

**Example** X renders some service to Y at Y's request in the month of May. In June, Y promises to pay X Rs. 1,000 for his past services. Past services amount to past consideration. X can recover Rs. 1,000 from Y.

**Present Consideration Executed Consideration (consists in the performance):** The consideration which moves simultaneously with the promise, is called present consideration.

**Future Consideration or Executory consideration(consists in a promise):** The consideration which is to be moved after the formation of agreement is called future consideration.

(v) **Consideration need not be adequate:** Provision is given below

(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 Because a promise to do what a promisor is already bound to do adds nothing to the existing obligation.

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 that he is legally bound to do, such a promise provided it is not opposed to public policy, is a good consideration.

**Example:** X promises Y, his advocate, to pay an additional sum if the suit was successful. The suit was declared in favour of X but X refused to pay additional sum. It was held that Y could not recover additional sum because the promise to pay additional sum was void for want of consideration as Y was already bound to render his best services under the original agreement.

(vii) **Consideration must be real and not illusory:** Consideration is not valid if it is - (i) physically impossible (e.g. to discover treasure by magic), (ii) legally not permissible (e.g. to murder a person), (iii) uncertain (e.g. to pay a "reasonable" salary for services rendered), or (iv) illusory (e.g. fulfilment of a pre-existing obligation).

(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.

**Related Question:** 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? [RTP Nov 2018] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

**Answer:**

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

**In the given problem**

1. Mr. Balwant has entered into a contract with Ms. Reema, but Mr. Sawant has not given any consideration to Ms. Reema but the consideration came 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.



2. 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.

**Related Question:** “To form a valid contract, consideration must be adequate.” Comment. [Back Question of Module] [MTP Oct 19, 5 Marks] [MTP Aug 18, 5 Marks] [RTP NOV 20] [RTP May 21] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8 [RTP Nov 22 – 3 Marks]

**Answer:**

Consideration Need not be adequate:

- (a) Adequacy of consideration should be decided from the view-point of the Promisor.
- (b) Explanation to Sec.25 provides that an agreement to which consent of the party is freely given is not void merely because consideration is inadequate.
- (c) However, inadequacy of consideration may be taken into account by Court to determine whether the Promisor's consent was freely given.
- (d) Example: K promises to sell a house worth ₹ 8 Lakhs for ₹ 2 Lakhs only. The transaction is valid even if the consideration is inadequate. But, where a party pleads coercion, undue influence or fraud to avoid a transaction, inadequacy of consideration will also be taken as a piece of evidence.

### **Expected question based on adequacy of consideration**

**Related Question:** X, who was badly in need of money offered to sell his car worth Rs. 1,00,000 to Y for Rs. 10,000. Before the car was delivered, X received an offer of Rs. 20,000 and refused to carry out the contract on the ground of inadequacy of consideration. Is X liable to Y for damages? [2 Marks]

**Answer:**

Provision same as above

In the light of the above provision and facts of the case we conclude X is liable to Y for damages.

**Reason:** An agreement to which the consent of the party is freely given is not void merely because the consideration is inadequate.

### **Suit by third party to Contract (Doctrine of Privity of Contract)**

#### **Question 2**

“Only a person who is party to a contract can sue on it.” Explain this statement and describe its exceptions, if any. [RTP May 20] [7 Marks June 23] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Or

Stranger to a contract cannot sue, However in some cases even a stranger to a contract may enforce a claim. Explain [RTP May 18] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

**Answer:**

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.

**Related Question:** Mr. Sohanlal sold 10 acres of his agricultural land to Mr. Mohanlal on 25th September 2018 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, 2018, Mr. Sohanlal died leaving behind his son and wife. 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?

[4 Marks May 2019]

**Answer:**

1. 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'.
2. Consideration is one of the essential elements to make a contract valid and it can flow from the promisee or any other person.
3. As 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.
4. 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.
5. In case of the *Chinnaya Vs. Ramayya*, held that the consideration may move from a third party and it is an accepted principle of law in India.

In the given problem

1. Mr. Sohanlal has entered into a contract with Mr. Mohanlal, but Mr. Chotelal has not given any consideration to Mr. Mohanlal but the consideration came from Mr. Sohanlal to Mr. Mohanlal on the behalf of Mr. Chotelal and such consideration from third party is sufficient to enforce the promise of Mr. Mohanlal to allow Mr. Chotelal to use 1 acre of land.
2. 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 there was sufficient consideration for it.
3. 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."

Conclusion

1. In such a case, third party to a contract can file the suit although it has not moved the consideration.
2. Hence, Mr. Chotelal is entitled to file a petition against Mr. Mohanlal for execution of contract.

### **Expected question based on suit by third party to contract**

**Related Question:** A was appointed by his father as his successor. A was put in possession of the entire estate of his father. It was agreed between A and his father that he (A) would give certain sum of money and a village to B (an illegitimate son of A's father), on his attaining majority. A is refusing on attainment of majority of B. Advice B.

**Answer:**

Only those persons, who are parties to a Contract, can sue and be sued upon the contract. This Rule is called "Doctrine of Privity of Contract". A Third Party to a Contract cannot sue upon it, even though the Contract may be for his benefit.

One of the exception of such doctrine is "Trust"

The beneficiary (i.e. the person for whose benefit the trust has been created) may enforce the right under the trust, though he was not a party to the contract between the settler and the trustee.

Trust was created in favour of B for the specific amount and a village, therefore he was entitled to receive it from A.

**No Consideration No Contract**

**Question 3**

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

OR

No Consideration No Contract, Comment.

[May 2018, 5 Marks] [Jan 21- 5 Marks] [May 22 - 4 Marks] [Nov 22 - 7 Marks] [MTP April 19, 5 Marks] [MTP Oct 18, 5 Marks] [MTP March 18, 5 Marks] [RTP May 19] [RTP Nov 19] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

**Answer:**

No consideration, no contract

1. Every agreement, to be enforceable by law must be supported by valid consideration. An agreement made without any consideration is void.
2. No consideration, no contract is a general rule.
3. However, Section 25 of the Indian Contract Act, 1872 provides some exceptions to this rule, where an agreement without consideration will be valid and enforceable.
4. These exceptions are as follows:
  - (i) Agreement made on account of natural love and affection Section 25 (1): If an agreement is
    - a) in writing
    - b) registered under the law and
    - c) made on account of natural love and affection
    - d) between the parties standing in a near relation to each other

It will be enforceable at law even if there is no consideration.

Thus, where A, for natural love and affection, promises to give his son, B, ₹ 1, 00,000 in writing and registers it. This is a valid contract.

**(ii) Compensation for past voluntary services Section 25(2):**

- a) A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable.
- b) Thus, when A finds B's purse and gives it to him and B promises to give A Rs. 5,000, this is a valid contract.

**(iii) Promise to pay time-barred debts Section 25 (3):**

- a) 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 enforceable even though there is no consideration.
- b) If A owes B Rs. 1,00,000 but the debt is lapsed due to time-bar and A further makes a written promise to pay Rs. 50,000 on account of this debt, it constitutes a valid contract.

**(iv) Contract of agency (Section 185):** No consideration is necessary to create an agency.

**(v) Completed gift (Explanation 1 to Section 25):** A completed gift needs no consideration. Thus, if a person transfers some property by a duly written and registered deed as a gift, he cannot claim back the property subsequently on the ground of lack of consideration.

**(vi) Bailment (Section 148):** No consideration is required to effect the contract of bailment.

**(vii) Charity:** If a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid.

**Expected question based on natural love & affection**

**Related Question:** X, a Hindu husband executed a registered document in favour of Y, his wife, whereby he promised to pay her Rs. 1,000 per month. Later, X did not pay. Can Y recover from X (a) if this promise was made without any disagreement and quarrels between them? (b) if this promise was made after disagreement and quarrels between them? [2 Marks]

**Answer:**

The agreement though made without consideration, will be valid and enforceable in the following situation

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.

**Case (a)**

Therefore, Y could recover from X because the agreement was valid because it was made on account of natural love and affection between X and Y.

**Case (b)**

Therefore, Y could not recover from X because the agreement was void because it was not made an account of natural love and affection between X and Y.

[Leading case: *Rajlakhi Devi v. Bhoot Nath Mookherjee*]

**Related Question:** Mr. Ram Lal Birla was a big businessman of city Pune having two sons and one married daughter. He decided to gift his one house to his daughter. For this purpose, he called his lawyer at his house and made a written document for such gift. The lawyer advised him to get the transfer document properly registered. When they both were going for registration of document, they met with an accident and both of them died. Later, his daughter found the document and claimed the house on the basis of that document. Explain, whether she can get the house as gift under the Indian Contract Act, 1872? [RTP Nov 21] [RTP Nov 22] [RTP June 23]

**Answer:** 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.

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.

**Expected question based on time barred debt**

**Related Question:** X owes Y Rs. 10,000 but this debt is time barred. In a birthday party of Z, who is a friend of X and Y, X promises Y to pay this debt. Later, X refuses to Y. Can Y recover the promised amount from X? [2 Marks]

**Answer:**

**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 enforceable even though there is no consideration. In the instant case Y cannot recover anything from X because X's promise was neither in writing nor signed by him or his agent.

**Related Question:** 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? [Dec 20, 2 Marks]

**Answer:**

**Promise to pay time-barred debts Section 25 (3):**

- a) 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 enforceable even though there is no consideration.
- b) If A owes B Rs. 1,00,000 but the debt is lapsed due to time-bar and A further makes a written promise to pay Rs. 50,000 on account of this debt, it constitutes a valid contract.

**In the instant case**

G agreed to settle the full amount to Mr. Y of time barred debt. If such promise is in writing & signed by G or by his authorised agent then acceptance of such time barred debt is enforceable otherwise not enforceable.

### **Expected question based on past voluntary service**

**Related Question:** X supports Y's infant son without being asked to do so. Y promises to pay X Rs. 10,000 for doing so. Later, Y refuses to pay. Can X recover the promised amount from Y? [2 Marks]

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**Answer:**

**Compensation for past voluntary services Section 25(2):**

A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable.

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**.

**Related Question:** Anita and Sonali are friends, Sonali treats Anita during Anita's illness. Sonali does not accept payment from Anita for treatment and Anita promises Sonali's daughter Tania to pay her Rs. 75,000. Anita, being in poor circumstances is unable to pay.

Tania sues Anita for the money. Can Tania recover?

Offer your views based on provisions of the Indian Contracts Act, 1872. [5 Marks]

**Answer:**

No, Tania cannot recover the money from Anita. The agreement between Tania and Anita is not a contract in the absence of consideration. In this case, Tania's mother Sonali, voluntarily treats Anita

during her illness. Apparently it is not a valid consideration because it is voluntary whereas consideration to be valid must be given at the desire of the promisor-Section 2(d).

The question now is whether this case is covered by the exception given in Section 25(2) which provides.

"If it is a promise to compensate a person who has already voluntarily done something for the promisor"

Thus as per the exception the promise must be to compensate a person who has himself done something for the promisor and not to a person who has done nothing for the promisor.

As Sonali's daughter, Tania to whom the promise was made, did nothing for Anita, so Anita's promise is not enforceable even under the exception.

### **Expected question based on charity**

**Related Question:** X promises to donate Rs. 10,000 towards the repairs of a temple. X does not pay. Can the trustees recover the promised amount from X (a) if they have not incurred any liability on the faith of the X's promise, (b) if they have incurred any liability on the faith of this promise. [2 Marks]

**Answer:**

**Charity:** If a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid. (Kedarnath v. Gorie Mohammad)

**Case (a)**

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The trustees cannot recover the promised amount from X because the agreement is void in the absence of any consideration. [Leading case: Abdul Aziz v. Masum Ali]

**Case (b)**

The trustees can recover the promised amount from X as the agreement is valid because it was supported by consideration in the form of a detriment to the trustees who had incurred liability on the faith of the promise made by X. [Leading case: Kedar Nath v. Gorie Mohammad]

### **Expected question based on gift**

**Related Question:** X gifted Rs. 50,000 to Y his neighbour's wife by executing a registered gift deed without any consideration. There is no near relation between X and Y. Is this gift valid? [2 Marks]

**Answer:**

Section to which the given problem relates: Explanation I to Section 25. Decision: The gift is valid because a completed gift needs no consideration and need not be a result of natural love and affection or near relation.

**Related Question:** X promises to make a gift of Rs. 50,000 to Y, his neighbour's wife. Is this promise valid? [2 Marks]



**Answer:**

Section to which the given problem relates: Explanation I to Section 25 because a promise to gift is not valid.

This agreement is void for want of consideration and at the same time, there is only a promise to gift and not a completed gift.

**Miscellaneous Question**

**Question 4**

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

- (i) 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.
- (ii) A bought goods from B in 2015. But no payment was made till 2019.
- (iii) G agrees to give tuitions to H, a pre-engineering student, from the next month and H in consideration promises to pay G RS. 5,000 per month. [RTP May 21]

**Answer:**

- (i) 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.
- (ii) B cannot sue A for the payment in 2019 as it has crossed three years and barred by Limitation Act. A good debt becomes unenforceable after the period of three years as barred by Limitation Act.
- (iii) Where, G agrees to give tuitions to H, a pre-engineering student, from the next month and H in consideration promises to pay G Rs. 5,000 per month, the contract is executory because it is yet to be carried out.

## Unit – 3: Other Essential Elements of a Contract

### Agreement/Contract with minor

#### Question 1

Examine with reason that the given statement is correct or incorrect "Minor is liable to pay for the necessaries supplied to him". [May 2018, 2 Marks]

#### Answer:

1. Minor is liable to pay for the necessaries supplied to him: This statement is incorrect.
2. 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.
3. A claim for necessaries supplied to a minor is enforceable by law, only against minor's estate, if he possesses.
4. 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.

**Related Question:** Ishaan, aged 16 years, was studying in an engineering college. On 1st March, 2016 he took a loan of Rs. 2 lakhs from Vishal for the payment of his college fee and agreed to pay by 30<sup>th</sup> May, 2017. Ishaan possesses assets worth Rs.15 lakhs. On due date Ishaan fails to pay back the loan to Vishal. Vishal now wants to recover the loan from Ishaan out of his assets. Decide whether Vishal would succeed referring to the provisions of the Indian Contract Act, 1872. [MTP March 18, 4 Marks] [RTP May 2020] [MTP Oct 20- 6 Marks]

#### Answer:

1. According to Section 11 of the Indian Contract Act, 1872, every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject.
2. A person who has completed the age of 18 years is a major and otherwise he will be treated as minor. Thus, Ishaan who is a minor is incompetent to contract and any agreement with him is void [Mohori Bibi Vs Dharmo Das Ghose 1903].
3. Same as point 2, 3 & 4 Above.
4. Thus, according to the above provision, Vishal will be entitled to recover the amount of loan given to Ishaan for payment of the college fees from the property of the minor.

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

X, aged 16 years, borrowed a loan of 50,000 for his personal purposes. A few months later, he had become major and could not pay back the amount borrowed on the due date. The lender wants to file a suit against X. [Dec 21 3 Marks]

**Answer:**

1. According to **Section 11** of the Indian Contract Act, 1872, **every person is competent to contract** who is of the age of **majority** according to the law to which he is subject, and who is of **sound mind** and is **not disqualified** from contracting by any law to which he is subject.
2. A person who has completed the age of 18 years is a major and otherwise he will be treated as minor. Thus, X who is a minor is incompetent to contract and any agreement with him is void [Mohori Bibi Vs Dharmo Das Ghose 1903].
3. A claim for necessities supplied to a minor is enforceable by law, only against minor's estate, if he possesses.
4. **But a minor is not liable for any price that he may promise and never for more than the value of the necessities. There is no personal liability of the minor, but only his property is liable.**
5. **Thus, according to the above provision, lender will not be entitled to recover the amount of loan given to X.**

## **Question 2**

“Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor.” Discuss. [RTP May 18] [RTP Nov 22] [Back Question of Module]

**Answer:**

1. **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.
2. **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.
3. A mortgage was executed in favour of minor. Held, he can get a decree for the enforcement of the mortgage.
4. 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).

### **Question 3**

Rahul, a minor, falsely representing his age, enters into an agreement with a shopkeeper for a loan amount for purchasing a laptop. He gave his expensive watch as a security and took a loan of Rs. 40,000. He was very happy to get Rs. 40,000 and quickly went to the market and purchased a laptop worth Rs. 30,000. He happily spent the rest of the amount with his friends on a pleasure trip.

Later on, Rahul realized that his watch was an expensive watch and he should not have given like this to the shopkeeper. So, he went back to the shopkeeper and asked for his watch back. Also, he refused to repay the loan amount. The shopkeeper disagrees to this and files a case against minor for recovery of the loan amount. Can the shopkeeper succeed in recovering the loan amount under the Indian Contract Act, 1872? [RTP Nov 21]

### **Answer:**

1. As per Section 11 of Indian Contract Act, 1872, a minor is not competent to enter into any contract. Any agreement with minor is void-ab-initio means void from the very beginning.
2. When a person forms an agreement with minor, such an agreement is devoid of any legal consequences for the person because minor cannot be enforced by law to perform his part of performance in an agreement.
3. However, if minor obtains any property by fraudulently misrepresenting his age, he can be ordered to restore the property or goods thus obtained. Although no action can be taken against the minor, but if has any property (of other party) in his possession, court can order him to return the same.
4. Hence, in the present case, Rahul is not liable to repay Rs.40,000 that he has borrowed from the shopkeeper, but he can be ordered by the court to return the laptop (which was in his possession) to the shopkeeper.

**Related Question:** Srishti, a minor, falsely representing her age, enters into an agreement with an authorised Laptop dealer Mr. Gupta, owner of SP Laptops, for purchase of Laptop on credit amounting Rs. 60,000/- for purchasing a laptop, on 1st August 2021. She promised to pay back the outstanding amount with interest @ 16% p.a. by 31st July 2022. She told him that in case she won't be able to pay the outstanding amount, her father Mr. Ram will pay back on her behalf. After One year, when Srishti was asked to pay the outstanding amount with interest she refused to pay the amount and told the owner that she is minor and now he can't recover a single penny from her.

She will be adult on 1st January 2024, only after that agreement can be ratified. Explain by which of the following way Mr. Gupta will succeed in recovering the outstanding amount with reference to the Indian Contract Act, 1872.

- (i) By filing a case against Srishti, a minor for recovery of outstanding amount with interest?
- (ii) By filing a case against Mr. Ram, father of Srishti for recovery of outstanding amount?
- (iii) By filing a case against Srishti, a minor for recovery of outstanding amount after she attains maturity? [May 22 - 6 Marks] [RTP Dec 23]

**Answer:**

A contract made with or by a minor is void ab-initio: Pursuant to Section 11, a minor is not competent to contract and any agreement with or by a minor is void from the very beginning.

(i) **By following the above provision**, Mr. Gupta will not succeed in recovering the outstanding amount by filing a case against Srishti, a minor.

(ii) **Minor cannot bind parent or guardian:** In the absence of authority, express or implied, a minor is not capable of binding his parent or guardian, even for necessities. The parents will be held liable only when the child is acting as an agent for parents.

In the instant case, Mr. Gupta will not succeed in recovering the outstanding amount by filing a case against Mr. Ram, father of Srishti.

(iii) **No ratification after attaining majority:** A minor cannot ratify the agreement on attaining majority as the original agreement is void ab initio and a void agreement can never be ratified.

Hence, in this case also, Mr. Gupta will not succeed in recovering the outstanding amount by filing a case against Srishti, after she attains majority.

**Free Consent**

**Coercion – Section 15**

**Question 4**

Explain the term 'Coercion' and what are the effects of coercion under Indian Contract Act, 1872. [Nov 19, 5 Marks] [MTP Oct 18, 5 Marks] [RTP May 18] [MTP Oct 21, 5 Marks] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

**Answer:**

Coercion is –

Act	Intention
(a) the committing, or threatening to commit any act forbidden by the Indian Penal Code, or (b) the unlawful detaining or threatening to detain, any property, to the prejudice [harm or injury] of any person,	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.

**Expected question based on coercion**

**Related Question:** An agent refused to hand over the account books of the business, at the end of his term of office, to the new agent unless the principal freed him from the liability in respect of his agency. The principal executed a release deed under which the agent was freed from liability. Advice principal.

**Answer:**

Coercion and its effects under section 15 and 19 of The Indian Contract Act, 1872

Provision same as above

Contract **induced** by coercion is **voidable at the option** of the party whose consent was so obtained.

Release deed was voidable at the option of the principal as he was made to **execute** the release deed under coercion. In this case, the consent was obtained by unlawfully detaining the property (i.e., account books) of the principal.

**Undue Influence**

**Question 5**

Discuss the essentials of Undue Influence as per the Indian Contract Act, 1872. [May 2019, 5 Marks]

**Related Question:** 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]

**Answer:**

A Contract is said to be **induced by undue influence** where the **relations subsisting** between the parties are such that -

- (a) one of the parties is in a position to dominate the will of the other **AND**
- (b) uses that position to obtain an unfair advantage over the other. [Section 16 (1)]

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.
- (3) A person is deemed to be in such position in the following circumstances: [Section 16(2)]

Presumed	Examples of character	Case Law
1. Where a person holds a real authority over the other.	Master and servant, parent and child, Income Tax Officer and assessee, teacher and student.	X advanced Rs. 10,000 to his son Y during his minority and obtained upon Y's coming of age, a bond from Y for Rs. 1,00,000. Here, there is misuse of parental influence.

<p>2. Where <b>relation of trust and confidence (fiduciary relation)</b> exists between the parties to a contract.</p>	<p>Trustee and beneficiary, spiritual adviser (Guru) and his disciples, solicitors and client, guardian and ward</p>	<p>A devotee gifted her property to her spiritual guru to secure benefits to her soul in next world. It was held that spiritual guru was in position to dominate the will of devotee. <b>[Mannu Singh v. Umadat Pandey]</b></p>
<p>3. Where he makes a contract with with a person whose <b>mental capacity is temporarily or permanently affected</b> by reason of age, illness or mental or bodily distress.</p>	<p>Medical attendant and patient</p>	<p>X, an illiterate old man of about 90 years, physically infirm and mentally in distress, executed a gift deed of his properties in favour of Y his nearest relative who was looking after his daily needs and managing his cultivation. It was held that Y was in a position to dominate the will of X. <b>[Sher Singh v. Prithi Singh]</b></p>

(4) **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. **[Section 16(3)]**

**Example:** X was in great need of money. The market rate of interest prevailing at that time was 15% to 24%. A lender agreed to grant the loan at 30% because of stringency in the money market. This cannot be called as unconscionable transaction merely because of an unusual high rate of interest. However, if the lender agreed to grant the loan at a rate which is so high (say 75% or 100%) then the Court considers it unconscionable, and the transaction will be called unconscionable.

**Burden of proof:** The burden of proving the absence of the use of the dominant position in such a contract (**Unconscionable bargains**) to obtain the unfair advantage **will lie on the party who is in a position to dominate the will of the other.**

(5) **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.

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

**Answer:** Yes, the student can sue his teacher on the ground of undue influence under the provisions of Indian Contract Act, 1872. A contract brought as a result of coercion, undue influence, fraud or misrepresentation would be voidable at the option of the person whose consent was caused.

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

**Answer:**

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

Further, a person is deemed to be in a position to dominate the will of another—

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

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

From the facts of the case, Chandan signed the promissory note under undue influence applied by doctor. Hence, Dr. Jhunjhunwala cannot recover the amount of promissory note but can claim his normal consultation fee from Chandan.

**Related Question:** Mr. A, the employer induced his employee Mr. B to sell his one room flat to him at less than the market value to secure promotion. Mr. B sold the flat to Mr. A. Later on, Mr. B changed his mind and decided to sue Mr. A. Examine the validity of the contract as per the provisions of the Indian Contract Act, 1872. (2 Marks – June 23)

**Answer:**

According to section 16 of the Indian Contract Act, 1872, a contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and he uses that position to obtain an unfair advantage over the other.

When consent to an agreement is caused by undue influence, the contract is voidable at the option of the party, whose consent was so caused.

Hence, the contract between Mr. A and Mr. B is voidable at the option of Mr. B as it was induced by undue influence by Mr. A and therefore Mr. B can sue Mr. A.



## Fraud

### Question 6

Define Fraud. Whether "mere silence will amount to fraud" as per the Indian Contract Act, 1872? [May, 2018, 5 Marks] [MTP April 19, 5 Marks] [MTP March 18, 5 Marks] [RTP Nov 18]

### Answer

Fraud means and includes -

Commission of the following acts -	Committed by -	Intention
(b) <b>Suggestion as a Fact</b> , of something which is <b>not true</b> , by a person who does not believe it to be true, (c) <b>Active concealment</b> of a Fact by one having knowledge or belief of the fact, (d) <b>Promise</b> made without any intention of performing it, (e) <b>Any other act fitted to deceive</b> , (f) Any such act or omission as specifically declared by law to be fraudulent.	(a) A party to the Contract, or (b) By any person with the connivance of the party to the Contract, or (c) An agent of the party to the Contract.	To deceive another party to the contract, or his Agent, OR To induce another party to enter into the contract.

### DOES SILENCE AMOUNT TO FRAUD?

Silence Not Fraud [Explanation to Section 17]	Exceptions i.e., Silence = Fraud
Mere silence as to facts, likely to affect the willingness of a person to enter into a Contract is not Fraud. <b>Caveat Emptor'</b> i.e., let the purchaser beware is the rule applicable to contracts.  <b>Example:</b> A sells, by auction, to B a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud by A.	a) Having regard to the circumstances, if it is the <b>duty of the person (keeping silence) to speak</b> , b) Silence by itself is equivalent to Speech.

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

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

**Answer: Provision Same as above table DOES SILENCE AMOUNT TO FRAUD?**

- (a) This contract is valid since as per section 17 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.
- (b) This contract is not valid since as per section 17 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 is equivalent to speech and hence amounts to fraud.
- (c) This contract is not valid since as per section 17, P's silence is equivalent to speech and hence amounts to fraud.

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

**Answer:**

As per Section 17 of Indian Contract Act, 1872, "A false representation of material facts when made intentionally to deceive the other party to induce him to enter into a contract is termed as a fraud." Section 17(2) further states about active concealment. When a party intentionally conceals or hides some material facts from the other party and makes sure that the other party is not able to know the truth, in fact makes the other party believe something which is false, then a fraud is committed.

In case a fraud is committed, the aggrieved party gets the right to rescind the contract. (Section 19). In the present case, Karan has examined the study table before purchasing it from Mr. X and could not find any defect in the table as it was concealed by Mr. X.

On the basis of above provisions and facts of the case, Karan can rescind the contract and claim compensation for the loss suffered due to fraud done by Mr. X.

**Related Question:** 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? [RTP May 22 - 6 Marks]

**Answer:**

Provisions same as answer 6 above

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.

## Misrepresentation

### Question 7

(a) Explain the concept of ‘misrepresentation’ in matters of contract.

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

**Answer:** Misrepresentation means and INCLUDES –

Positive Assertion	<ul style="list-style-type: none"> <li>• of such fact, which is not true, though he believes it to be true,</li> <li>• made in a manner not warranted by the information of the person making it.</li> </ul>
Any Breach of Duty	<ul style="list-style-type: none"> <li>• made without an intent to deceive,</li> <li>• but bringing gains and advantage to the person committing it, or to any one claiming under him,</li> <li>• by misleading another to his prejudice, or to the prejudice of anyone claiming under him.</li> </ul>
Causing the other party to make mistake	<ul style="list-style-type: none"> <li>• as to the substance of the subject matter of the agreement.</li> </ul>

In simple words misrepresentation means:

1. Positive false statement made without any basis for info
2. a beach of duty which brings advantage to person committing it
3. inducement of mistake about subject matter

In the instant case

1. The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract [Section 19, Indian Contract Act, 1872].
2. 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.

**Related Question:** Mr. SAMANT owned a motor car. He approached Mr. CHHOTU and offered to sale his motor car for Rs. 3, 00,000. Mr. SAMANT told Mr. CHHOTU that the motor car is running at the rate of 30 KMs per litre of petrol. Both the fuel meter and the speed meter of the car were working perfectly. Mr. CHHOTU agreed with the proposal of Mr. SAMANT and took delivery of the car by paying Rs. 3, 00,000/- to Mr. SAMANT. After 10 days, Mr. CHHOTU came back with the car and stated that the claim made by Mr. SAMANT regarding fuel efficiency was not correct and therefore there was a case of misrepresentation. Referring to the provisions of the Indian Contract Act, 1872, decide and write whether Mr. CHHOTU can rescind the contract in the above ground. [MTP Aug 18, 6 Marks] [RTP NOV 20] [RTP May 21]

**Answer:**

1. As per the provisions of Section 19 of the Indian Contract Act, 1872, when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.
2. A party to contract, whose consent was caused by fraud or misrepresentation, may, if he think fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.
3. **Exception-** If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is **not voidable if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.**

In the situation given in the question, BOTH THE FUEL METER AND THE SPEED METER OF THE CAR WERE WORKING PERFECTLY, Mr. CHHOTU had the means of discovering the truth with ordinary diligence. Therefore, the contract is not voidable. Hence, Mr. CHHOTU cannot rescind the contract on the above ground.

### Expected question based on misrepresentation

**Related Question:** X bought Shares in a Company on the faith of a Prospectus which contained an untrue statement that one Z was a Director of the Company. X had never heard of Z and the untrue statement of Z being a Director was immaterial from his point of view. Can X claim damages on grounds of fraud?

**Answer:**

Though the Prospectus contains an untrue statement, that untrue statement was not the one that induced X to purchase the Shares. Hence X cannot claim damages. (Smith vs Chadwick)

**Related Question:** The Vendor of a piece of land told a prospective purchaser that, in his opinion, the land can support 2000 heads of sheep whereas, in truth, the land could support only 1500 sheep. Does it amount to Fraud?

**Answer:**

The Vendor says that in his opinion the land could support 2000 heads of sheep. This statement is only an opinion and not a representation and hence cannot amount to fraud. (Bisset Vs Winkinson)

**Related Question:** Define Misrepresentation and Fraud. Explain the difference between Fraud and Misrepresentation as per the Indian Contract Act, 1872. [Dec 20 - 7 Marks]

**Answer:**

**Definition:** Same as given in answer of Q6 & Q7

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

CS LLM Arjun Chhabra **Mistake**

**Mistake:** Mistake may be defined as innocent or erroneous belief which leads the party to misunderstand the others.

Mistake of Law		Mistake of Fact	
Law of Own Country	Foreign Law	Unilateral	Bilateral
(a) One cannot take excuse of ignorance of the law of his own country. (Ignorantia juris non excusat) (b) Such Mistake will not affect the validity of the Contract. (c) Sec.21: Contract is not voidable.	(a) Treated as mistake of fact. (b) Agreement is void if both the parties are under a mistake as to a foreign law because one cannot be expected to know the law of other country.	(a) Sec 22: If one of the parties is under a mistake the contract remains valid. (b) Exceptions: (i) Mistake as to Identity of the party (ii) Mistake as to Nature of the contract	(a) Sec 20: "Where both the parties to an agreement are under a mistake as to a matter of fact (but not of law) essential to the agreement, the agreement is void" (b) There is no agreement as there is absence of consensus. Hence, the agreement is void.

A and B make a Contract on erroneous belief that a particular debt is time- barred by Indian Law of Limitation. Contract is valid & not voidable. [Sec.21]

But if the mistake of law is caused through the inducement of another, the contract may be avoided. [Sec.21]

### **Agreements expressly declared void by the Indian Contract Act**

1. Agreement to enter into an agreement in future.
2. Agreement that gives rise to social obligations.
3. Sec.11: Agreements entered into by incompetent parties.
4. Sec.20: Agreements entered into through a mutual mistake of fact between the parties.
5. Sec.23: Agreements, the object or consideration of which is unlawful.
6. Sec.24: Agreements, part of the consideration or object of which is unlawful and the unlawful object, cannot be separated from the lawful objects.
7. Sec.25: Agreements, made without consideration.
8. Sec.26: Agreements in restraint of marriage.
9. Sec.27: Agreements in restraint of trade.
10. Sec.28: Agreements in restraint of legal proceedings.
11. Sec.29: Uncertain Agreements.
12. Sec.30: Wagering Agreements.
13. Sec.36: Agreements contingent upon impossible events.
14. Sec.56: Agreements to do impossible acts.
15. Sec.57: Agreements to do reciprocal promises, one set of which is legal, and the other set is illegal.

### **Agreements, the object or consideration of which is unlawful & oppose to public policy [Section 23]**

#### **Question 8**

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 Rs. 10 lakhs would be paid to him if he does not take up 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?

[Dec 20 4 Marks] [RTP Dec 23]

**Answer:**

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 RS. 10 lakhs promised by Mr. X because it is a void agreement and cannot be enforced by law.

**Question 9**

Mr. S, aged 58 years was employed in a Govt. 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 Rs. 10 Lakhs as consideration to Mr. S in order to induce him to retire.

Mr. S refused at first instance but when he evaluated the amount offered as consideration is just double of his cumulative remuneration to be received during the tenure of two years of employment, he agreed to receive the consideration and accepted the above agreement to receive money to retire from his office.

Whether the above agreement is valid? Explain with reference to provision of Indian Contract Act, 1872. [Jan 21 – 4 Marks] [RTP May 21]

**Answer:**

Trafficking relating to Public Offices and titles (Section 23 of The Indian Contract Act,1872)

An agreement to trafficking in public office is opposed to public policy, as it interferes with the appointment of a person best qualified for the service of the public. Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested.

In the instant case

Mr. S (Public Servant) agreed to receive the consideration to apply for voluntary retirement from his post so that Mr. D can be appointed in his place is opposed to public policy and hence void.

An agreement to pay money to a public servant in order to induce him to retire from his office so that another person may secure the appointment is void.

**Agreements, part of the consideration or object of which is unlawful and the unlawful object, cannot be separated from the lawful objects**  
**[Sec 24]**

**Question 10**

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

[RTP May 22]

**Answer:**

According to Section 24 of the Indian Contract Act, 1872, in an agreement, where some part of the object is legal and the other part is illegal, the question arises about the validity and enforceability of such agreements. Where the legal and illegal part can be severed and divided, and separated, lawful part of object is enforceable, and the unlawful part of the object is void.

In the given case, A sells the house to B, is a valid transaction as the sale of house and consideration paid for the same i.e. Rs.10,00,000 is valid and enforceable. However, the agreement to pay Rs. 50,000 for gambling done in the house is illegal and thus void.

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



### **Agreements in restraint of marriage [Sec 26]**

**Expected case study:** A husband and his wife entered into an agreement that upon the husband marrying a second wife, the first wife would get the right to divorce him. It was held that the agreement was not void as the husband was not restrained from marrying. Simply a penalty was imposed if he married the second time. [**Badu v. Badarnessa (1919)**]

**Expected case study:** Two co-widows entered into an agreement that if anyone of them remarried she would forfeit her right to her share in the deceased husband's property. It was held that the agreement was not void as no restraint was imposed upon either of the two widows from remarrying. Similarly, an agreement that upon remarrying, the widow would lose the right to maintenance was not held void.

### **Agreements in restraint of trade [Sec 27]**

**Question 11** Rohan is running a grocery store in Delhi. He sells his grocery business, including goodwill worth Rs. 1,00,000 to Rohit for a sum of Rs. 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**] [**RTP June 23**]

**Answer:**

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.

### **Expected question based on restrained in trade & opposed to public policy [Sec 27]**

**Related Question:** X and Y were two organizations trading in wheat of 'Popular Brand' in Uttar Pradesh. X realizes that the wheat business is high yielding. To expand his business X offered Y a sum of ₹ 10 Lakhs on the condition that Y shall not sell Popular Brand' wheat in Uttar Pradesh. X failed in making the promised payment to Y. Y filed a suit against

X for non-fulfillment of the promise. Is the suit maintainable? [4 Marks]

**Answer:**

An agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. [Section 27]

**Exceptions, i.e., where Restraint of Trade is valid:**

The following are valid agreements, even if they are in restraint of trade - (These are explained in detail below)

- (a) Agreement with Buyer of Goodwill - as per explanation to Sec.27.
- (b) Trade Combinations, to the extent they do not create monopoly or opposed to public policy.
- (c) Service Agreements with employees.
- (d) Agreements under the Partnership Act, 1932. Conclusion

In the light of the above provision & facts of the case we conclude that a Combination which create monopoly, or when two Firms enter into an Agreement to avoid competition, they are against public policy and hence void.

**Therefore,** the suit is not maintainable.

**Expected case study:** A, a businessman sold the goodwill of his trade to B. Both of them agreed that A will not practice the same trade for 3 years, and also that A will not carry on any business competing in any way with the business of B. Here, the **agreement being divisible**, the **first part** was held to be **valid** as necessary to protect the interest of the purchaser of goodwill The **second part** was held to be **void** as it prevented A from carrying on any business.

**Related Question:** '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. [RTP May 18]

**Answer:**

**Agreement in Restraint of Trade**

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

**In the instant case**

Agreement entered by 'X' with 'Y' is reasonable, and do not amount to restraint of trade and hence enforceable.

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

**Expected question based on restraint of legal proceedings [Sec 28]**

**Question 12**

A clause in a life insurance policy was that "no suit to recover under the policy shall be brought after one year from the date of death of assured." X died and his legal representatives filed a suit to recover the assured sum after two and half years. Is this suit maintainable? [2 Marks]

**Answer:**

**Agreement in restraint of legal proceedings (Section 28):**

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 or which abridges the usual period for starting legal proceedings. A contract of this nature is void.

In the instant case the suit is not maintainable because the clause in policy is void because it curtailed the prescribed period of limitation (which is 3 years) according to Law of Limitation Act.

## Uncertain Agreements Sec.29

### Question 13

“An agreement, the meaning of which is not certain, is void.” Discuss. [RTP Nov 21]

### Answer:

Agreement - the meaning of which is uncertain (Section 29 of the Indian Contract Act, 1872): An agreement, the meaning of which is not certain, is void, but where the meaning thereof is capable of being made certain, the agreement is valid.

For example, A agrees to sell B “a hundred tons of oil”. There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty. But the agreement would be valid if A was dealer only in coconut oil because in such a case its meaning would be capable of being made certain.

## Wagering Agreements Sec.30

### Question 14

What is a wagering agreement? Describe the transactions which resembles with wagering transactions but are not void. [RTP May 20] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

### Answer:

Wagering agreement (Section 30 of the Indian Contract Act, 1872)

1. 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.
2. 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.
3. **For example**, A agrees to pay Rs. 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 Rs. 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.

### Question 15

Distinguish between wagering agreement and contract of insurance. [May 2018, 2 Marks] [Dec 20 – 5 Marks]

### Answer:

	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.

## Miscellaneous Questions

### Question 16

State with the reason(s) whether the following agreements are valid or void: [July 21- 1 Mark each]  
[RTP Dec 23]

- I. A clause in a contract provided that no action should be brought upon in case of a 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.

### Answer:

#### I. Agreement in restraint of legal proceedings (Section 28):

An agreement in restraint of legal proceeding is the one:

1. by which any party thereto is **restricted absolutely** from enforcing his rights under a contract through a Court

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2. which **abridges the usual period** for starting legal proceedings.

A contract of this nature is **void**.

#### In the instant case

A clause in a contract provided that no action should be brought upon in case of a breach is void because such clause is restricting the parties to enforce their right in case of breach.

#### II. Agreement in restraint of legal proceedings (Section 28):

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.

#### In the instant case

An agreement between the parties that the suit should be filed in one of those courts alone and not in the other is **partial restriction and not an absolute one**. Hence, the agreement between the parties is valid.

#### III. Contract caused by mistake of one party as to matter of fact (Section 22):

- Unilateral mistake is when only one party to the contract is under a mistake.
- If one of the parties is under a mistake the contract remains valid.

**IV. Exception to section 27 i.e., Agreement in Restraint of Trade**

1. In the case of the service agreements restraint of trade is valid: In an agreement of service by which a person binds himself during the term of agreement not to take service with anyone else directly or indirectly to promote any business in direct competition with that of his employer is not in restraint of trade, so it is a valid contract.
2. Therefore, in the instant case the agreement between x and y is valid.

**Question 17** 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 Rs. 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 Rs. 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]

**Answer (i)**

1. As per Section 20 of the Indian Contract Act, 1872 an agreement under by mistake of fact are void.
2. 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.
3. Therefore, it is a void agreement.

**Answer (ii)**

1. As per Section 27 of the Indian Contract Act, 1872 an agreement in restraint of trade is void.
2. 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.
3. Since in the given case, restraint to carry on business was forever and anywhere in India, so the agreement in question is void.

**Answer (iii)**

1. As per section 2(j) of the Contract Act, 1872 “A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable”.
2. In the present case, Mr. X agrees to write a book with a publisher.
3. After few days, X dies in an accident. Here the contract becomes void due to the impossibility of performance of the contract.

### **Question 18**

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

- (a) Kamala promises Ramesh to lend Rs 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 Rs 4,00,000 and promises not to carry on such business forever and anywhere in India.
- (d) In an agreement between Prakash and Girish, there is a condition that they will not institute legal proceedings against each other without consent.
- (e) Ramamurthy, who is a citizen of India, enters into an agreement with an alien friend. [RTP Nov 18]  
[MTP Oct 19]

### **Answer:**

- (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.



## Unit – 4: Performance of Contract

### Obligation of parties to contracts [Sec 37]

#### Question 1

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

#### Answers:

##### Obligations of parties to contracts (Section 37 of the Indian Contract Act, 1872)

1. 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.
2. 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 Rs. 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 Rs. 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

1. 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.
2. 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.
3. 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.
4. Thus, from above it can be drawn that performance may be actual or offer to perform.

## Person by whom promise is to be performed [Sec 40]

### Question 2

Enumerate the persons by whom a contract may be performed under the provisions of the Indian Contract Act, 1872. [MTP Oct 18, 7 Marks] CS LLM Arjun Chhabra (Law Maven) Mo: 626261438

### Answer:

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

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

## Effect of accepting performance from third person [Sec 41]

### Question 3

X received certain goods from Y and promised to pay Rs. 60,000. Later on, X expressed his inability to make payment. Z, who is known to X, pays Rs. 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 Rs. 60,000. Can Y do so? Advise. [RTP May 19] [RTP May 18]

**Related Question:** Discuss the effect of accepting performance from third person. [Module]

**Answers:** Answer for Both Practical and Direct Question is same

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., Rs. 20,000 and not for the whole amount.

### **Effect of refusal of party to perform promise wholly [Sec 39]**

#### **Question 4**

“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. [Module]

**Answer:**

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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 (acceptance of something without protest) in its continuance.

**Example:** A, singer, enters into a contract with B, the Manager of a theatre, to sing at his theatre two nights in every week during next two months, and B engages to pay her Rs.10000 for each night's performance. On the sixth night, A willfully absents herself from the theatre. B is at liberty to put an end to the contract.

Analysis of Section 39

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.

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

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

**Answer:**

By analyzing Section 39 of the Indian Contract Act 1872, it is understood that when a party to a contract has refused to perform or disabled himself from performing his promise entirely, the following two rights accrue to the aggrieved party (promisee)

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

In either of the two cases, the promisee would be able to claim damages that he suffers. In the given case,

- (i) Yes, the hotel has the right to end the contract with Mr. X, the DJ.
- (ii) The hotel has the right to continue the contract with X. But once this right is exercised, they cannot subsequently rescind the contract on this ground subsequently.
- (iii) In both the cases, the hotel (promisee) is entitled to claim damages that has been suffered as a result of breach.

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

- (i) Whether the management of Shital Vidya Mandir has right to terminate the contract?
- (ii) If the management of Shital Vidya Mandir informed Sheena about its continuance, can the management still rescind the contract after a month on this ground subsequently?
- (iii) Can the Shital Vidya Mandir claim damages that it has suffered because of this breach in any of the above cases? [May 22 - 4 Marks] RTP Dec 23

**Answer:**

Section 39 provides that 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 had signified, by words or conduct his acquiescence in its continuance.

Further, in term of Section 40, the promisee shall be required to perform personally, if there is such an apparent intention of the parties.

Also, as per Section 75 of the Act, a person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through non-fulfilment of the contract.

Therefore, in the instant case,

(i) Since, Sheena could not perform as per the terms of contract, Shital Vidya Mandir can terminate the contract.

(ii) In the second situation, the management of Shital Vidya Mandir informed Sheena about the continuance of the contract. Hence, the management cannot now rescind the contract after a month on this ground subsequently.

(iii) As per Section 75, Shital Vidya Mandir can claim damages that it has suffered because of this breach in part (i).

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

(a) Can Mr. Singhania terminate the contract with Mr. Sonu?

(b) What would be your answer in case Mr. Sonu turns up in fourth week and Mr. Singhania allows him to perform without saying anything?

(c) What would be your answer in case Mr. Sonu sends Mr. Mika on his place in third week and Mr. Singhania allows him to perform without saying anything? [RTP May 22]

**Answer:**

According to Section 40 of the Indian Contract Act, 1872, if it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor.

Section 41 provides that when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Therefore, in the instant case,

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

**Section 42: Devolution of joint liabilities | Section 43: Any one of joint promisors may be compelled to perform | Each promisor may compel contribution | Sharing of loss by default in contribution | Section 44: Effect of release of one joint promisor.**

### Question 5

X, Y and Z jointly borrowed Rs. 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]  
[MTP Oct 19- 4 Marks]

### Answer:

As per Section 42 of the Indian Contract Act, 1872

1. When two or more persons have made a joint promise, then, unless otherwise agreed, all such persons jointly must fulfill the promise.
2. 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.

As per Section 43 of the Indian Contract Act, 1872

1. When two or more persons make a joint promise, the promisee may, unless otherwise agreed, compel any one or more of such joint promisors to perform the whole of the promise.
2. The liability of the joint promisors has thus been made not only joint but "joint and several".

Section 43 deals with the contribution among joint promisors

1. The promisors, may compel every joint promisor to contribute equally to the performance of the promise unless otherwise agreed.

2. 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.

Conclusion

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 is 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.

**Related Question:** X, Y and Z are partners in a firm. They jointly promised to pay Rs. 3, 00,000 to D. Y become insolvent and his private assets are sufficient to pay 1/5 of his share of debts. X is compelled to pay the whole amount to D. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which X can recover the amount from Z. [May 18, 4 Marks] [MTP April 19, 4 Marks] [RTP Nov 18] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

**Answer:**

Provisions same as above

In the instant case

X, Y and Z jointly promised to pay Rs. 3, 00,000. Y become insolvent and his private assets are sufficient to pay 1/5 of his share of debts. X is compelled to pay the whole amount. X is entitled to receive Rs. 20,000 from Y's estate, and Rs. 1,40,000 from Z.

**Related Question:** A, B, C and D are the four partners in a firm. They jointly promised to pay 6,00,000 to F. B and C have become insolvent B was unable to pay any amount, and C could pay only 50,000. A is compelled to pay the whole amount to F. Decide the extent to which A can recover the amount from D with reference to the provisions of the Indian Contract Act 1872. [Dec 21, 4 Marks]

**Answer:**

Provisions same as above

In the instant case

A, B, C and D jointly promised to pay Rs. 6, 00,000. 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. A is entitled to receive Rs. 50,000 from C, and Rs. 2,75,000 [150000 of his own (d) + (150000 of B + 100000 of C /2)] from D.

**Related Question:** 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? [July 21 – 4 Marks]

**Answer:**

Same provision as given above under section 42 & 43.

**Release of Joint Promisor [Sec. 44]:**

(a) In case of a Joint Promise, release of one of Joint Promisors by the Promisee does not discharge the other Joint Promisor(s).

(b) Such discharge does not free such Promisor from responsibility to the other Joint Promisor(s).

In the light of the above provision and facts of the case the following are the answers to the questions

- i. L can compel only Y to pay the entire loan of ₹ 90,000. (Section 43)
- ii. L may compel legal representatives of all the joint promisors i.e., X, Y & Z but L cannot compel the legal representative of Y alone. However, a legal representative is liable only to the extent of property of the deceased received by him. (Section 42)
- iii. If L releases X from his liability and sues Y and Z for payment, it does not discharge Y and Z from their liability and such release by L does not free X from his responsibility to Y and Z. (Section 44)

### **Expected question based on section 42 43 & 44**

**Related Question:** X, Y and Z jointly borrowed Rs. 60,000 from L. Decide in the light of The Indian Contract Act, 1872:

- (i) Whether L can compel only Y to pay the entire loan of Rs. 60,000.
- (ii) If X, Y and Z died, whether L can compel only the Legal representatives of X to pay the loan of Rs. 60,000.
- (iii) If the whole amount was repaid to L by Y. How much Y can recover from X and Z?
- (iv) If the whole amount was repaid to L by Y and Z became insolvent and his private assets are sufficient to pay only 1/5 of his share of debts. How much Y can recover from X and Z?
- (v) If the whole amount was repaid to L by Y, Z became insolvent and his private assets are sufficient to pay only 1/5 of his share of debts and X died and his son W inherited the assets of Rs. 17000. How much Y can recover from X and Z?



(vi) If L releases X from his liability and sues Y and Z for payment, whether Y and Z are also released from their liability to L and X is released from his liability to Y and Z for contribution.

[6 Marks]

Answer:

Section to which the given problem relates: Section 42 to 45 Decision:

- (i) Yes. L can compel only Y to pay Rs. 60,000 since as per Sec. 43 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) No. L can compel the Legal representatives of X, Y and Z jointly to pay the loan of Rs. 60,000, since as per Sec. 45 unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly, with the survivor or survivors and after the death of the last survivor, with the representatives of all jointly.
- (iii) Y can recover the contribution of Rs. 20,000 each from X and Z since as per Sec. 43 in the absence of express agreement to the contrary, the promisors, may compel every joint promisor to contribute equally to the performance of the promise (unless a contrary intention appears from the contract).
- (iv) Y can recover the contribution of Rs. 28,000 (i.e.  $\text{Rs.}60,000 \times 1/3$ ) +  $(16,000 \times 1/2)$  from X and Rs. 4,000 (i.e.  $\text{Rs.} 60,000 \times 1/3 \times 1/5$ ) from Z since as per Sec. 43 in the absence of express agreement to the contrary, 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.
- (v) Y can recover the contribution of Rs. 17,000 from X and Rs. 4,300 [i.e.  $(\text{Rs.}60,000 \times 1/3) + (3,000 \times 1/2)] \times 1/5$  from Z since as per Sec. 43 in the absence of express agreement to the contrary, 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.

Note: A legal representative is liable only to the extent of property of the deceased received by him as per Sec. 42.

- (vi) If L releases X from his liability and sues Y and Z for payment neither Y and Z are released from their liability to L nor X is released from his liability to Y and Z for contribution since as per Sec. 44 a release of one of such joint promisors by the promisee, does not discharge the other joint promisors neither does it free the joint promisor so released from responsibility to the other joint promisors.

## Performance of reciprocal promises [Sec 51]

### Question 6

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

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? [Dec 20, 2 Marks] [RTP May 21]

### Answer:

According to section 51 of 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 & willing to perform his reciprocal promise.

Such promises constitute concurrent conditions & the performance of one of the promises is conditional on the performance of the other. If one of the promises is not performed the other too need not to be performed.

Example: A and B contract for delivery of goods by A on a certain day, and payment by B upon such delivery. A need not deliver unless B is ready and willing to pay, and B need not pay unless A is willing and ready to deliver.

In the light of the above provision and example in the instant case also, S is not bound to fulfil his promise at the the time of delivery because on the delivery date Mr. R didn't pay the agreed price. i.e., promisee is not ready & willing to perform his reciprocal promise.

## Appropriation of payments [Sec 59, 60 & 61]

### Question 7

Mr. Sonumal a wealthy individual provided a loan of Rs 80,000 to Mr. Datumal on 26.02.2019. The borrower Mr. Datumal asked for a further loan of Rs 1, 50,000. Mr. Sonumal agreed but provided the loan in parts at different dates. He provided Rs. 1, 00,000 on 28.02.2019 and remaining Rs. 50,000 on 03.03.2019.

On 10.03.2019 Mr. Datumal while paying off part Rs. 75,000 to Mr. Sonumal insisted that the lender should adjusted Rs 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? [November 19, 6 Marks]  
RTP Dec 23

**Answer:**

Appropriation of payments made by the Debtor to the Creditor

1. Meaning: Appropriation of Payment = Application of Payment.
2. Rules as to Appropriation of Payments:

**Situation:** A Debtor owes several distinct debts to one Creditor and makes a payment to that Creditor

Situation 1	Situation 2	Situation 3
Appropriation by Debtor [Sec.59] Debt to be discharged is indicated	Appropriation by Creditor [Sec.60] Debt to be discharged is NOT indicated	Neither party Appropriates [Sec. 61]
(a) The payment is made with - <ul style="list-style-type: none"> <li>• Express intimation, or under circumstances implying that,</li> <li>• Payment is to be applied to discharge off some particular debt.</li> </ul> (b) Payment, if accepted by the Creditor, should be applied to the debt, which is intimated to be discharged.	(a) Debtor has - <ul style="list-style-type: none"> <li>• Omitted to intimate, and</li> <li>• There are no other circumstances indicating to which debt the payment is to be applied.</li> </ul> (b) Payment accepted by Creditor may be applied at his discretion to any lawful debt actually due and payable to him, irrespective of whether the recovery is barred by limitation.	(a) When neither party makes any appropriation, the payment shall be applied in the order of time, whether or not they are barred by limitation. (b) When debts are of equal standing, payment shall be applied in discharge of each proportionally. (c) Where moneys are received by Creditor without any definite appropriation, money

	<p>(c) But, it cannot be applied to a disputed debt.</p>	<p>received must first be applied in payment of interest &amp; then towards Principal.</p> <p>Conclusion: Hence in case where neither Mr. Datumal nor Mr. Sonumal specifies the manner of appropriation of debt on part repayment, the appropriation can be made in proportion of debts.</p>
<p><u>Example:</u></p> <ol style="list-style-type: none"> <li>1. A owes B totally ₹ 25,000. He sends a cheque for ₹ 10,000 stating that it shall be appropriated towards the first sum of ₹ 10,000 he took from B. B shall appropriate it towards that amount only.</li> <li>2. A owes B among other debts, a sum of ₹ 2,360. B writes to A demanding payment of this sum. A sends ₹ 2,360. Payment should be applied to discharge debt which B demanded.</li> </ol>	<p><u>Example:</u></p> <p>A obtains two loans of ₹ 20,000 &amp; ₹ 10,000 from a Bank. Loan of ₹ 20,000 is guaranteed by B. A sends the Bank ₹ 5,000 but does not intimate the appropriation. Bank appropriates whole of ₹ 5,000 to loan of ₹ 10,000 (which is not guaranteed). Appropriation is valid and cannot be questioned either by A or B.</p>	<p><u>Example:</u></p> <p>A Trustee deposits ₹ 10,000 trust money with a bank. Later he deposits ₹ 50,000 his own money in the same account. Then, he withdraws ₹ 10,000 and misappropriates it. Withdrawal will not be appropriated against Trust amount, but against his own funds, leaving Trust Funds intact.</p>

**Related Question:** Mr. Murari owes payment of 3 bills to Mr. Girdhari as on 31st March, 2020. (i) Rs. 12,120 which was due in May 2016. (ii) Rs. 5,650 which was due in August 2018 (iii) Rs. 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 Rs. 9,680
- (ii) A cheque of Rs. 15000

Advice under the provisions of the Indian Contract Act, 1872. [MTP Nov 21 – 6 Marks] [Module Back Question] [RTP June 23]

**Answer:**

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. 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 Rs 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.

**Agreement to do impossible act [Sec 56]**

**Question 8**

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

J contracts to take in cargo for K at a foreign port. J's government afterwards declared war against the country in which the port is situated, and therefore the contract could not be fulfilled. K wants to file a suit against J. [Dec 21 – 3 Marks]

**Answer:**

**Contract becomes Void [Sec. 56]:** When the Contract was capable of performance at the time of making it, but subsequently due to some event beyond the control of the Promisor, performance becomes impossible or unlawful, the Contract becomes Void i.e. subsequently rendered void. The parties are discharged from their obligations. In England, it is called 'Doctrine of Frustration'.

In the instant case the contract between J and K was capable of performance until the declaration of war. However subsequently due to declaration of war performance of such contract becomes impossible or unlawful and the contract becomes void. Therefore, k will not be successful in filing a suit against J.

**Contracts which need not be performed [Sec 62 – 67]**

**Question 9**

Explain any five circumstances under which contracts need not be performed with the consent of both parties. [Dec 21 7 Marks]

**Answer:**

**1. Discharge by Mutual Agreement**

**(a) Novation:**

- (a) Novation means substitution of a new Contract in the place of the original contract.
- (b) This may happen either between - (i) the same parties, or (ii) different parties.
- (c) Novation implies that a New Contract comes into existence. So, there must be mutual consent of all the parties to the Original Contract.
- (d) Sec. 62: When the parties agree to substitute a new Contract, the original Contract need not be performed.

**(b) Rescission:**

- (a) A contract is also discharged by rescission. when the parties to a contract agree to rescind it, the contract need not be performed.
- (b) In the case of rescission, only the old contract is cancelled and no new contract comes to exist in its place. It is needless to point out that novation also involves rescission. Both in novation and in rescission, the contract is discharged by mutual agreement.

**(c) Alteration:**

- (a) As in the case of novation and rescission, so also in a case where the parties to a contract agree to alter it, the original contract is rescinded, with the result that it need not be performed.
- (b) In other words, a contract is also discharged by alteration. The terms of contract may be so altered by mutual agreement that the alteration may have the effect of substituting a new contract for the old one. In other words, the distinction between novation and alteration is very slender.

2. **Promisee may waive or remit performance of promise (Section 63):** "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 may be discharged by remission.
3. **Restoration of Benefit under a Voidable Contract (Section 64):** The law on the subject is "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. The party rescinding a voidable contract shall, if he has received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received".
4. **Obligations of Person who has Received Advantage under Void Agreement or contract that becomes void (Section 65):** When an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it."
5. **Effects of neglect of promisee to afford promisor reasonable facilities for performance (Section 67):** 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.

**Related Question:** Differentiate between Novation and Alteration as per the Indian Contract Act, 1872. [Nov 22 - 5 Marks]

**Answer:**

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

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

**Obligation of person who has received advantage under void agreement, or contract that becomes void. [Sec 65]**

**Related Question:** 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? [July 21 – 5 Marks] [RTP May 22 – 5 Marks]

**Answer:**

Subsequent or Supervening impossibility (Becomes impossible after entering into contract)

1. 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.
2. 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.
3. It is also called the post-contractual impossibility.
4. The effect of such impossibility is that it makes the contract void, and the parties are discharged from further performance of the contract.

Obligation of person who has received advantage under void agreement, or contract that becomes void – Section 65 in The Indian Contract Act, 1872

When an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

**Related Question:** 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 Rs. 50,000 as full advance payment for the above creative work. Mr. C clarified that the painting shall be completed in 10 sittings and shall take 3 months.

On reaching to the workshop for the 6<sup>th</sup> 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? [May 19, 6 marks]

**Answer:**

A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death of the promisor. As regards any other contract the legal representatives of the deceased promisor are bound to perform it unless a contrary intention appears from the contract (Section 37 of the Indian Contract Act, 1872). But their liability under a contract is limited to the value of the property they inherit from the deceased.

- (i) In the instant case, since painting involves the use of personal skill and on becoming Mr. C paralyzed, Mr. Rich cannot ask Mr. K to complete the artistic work in lieu of his father Mr. C.
- (ii) According to section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

Hence, in the instant case, the agreement between Mr. Rich and Mr. C has become void because of paralysis to Mr. C. So, Mr. Rich can ask Mr. K for refund of money paid in advance to his father, Mr. C.

**Related Question:** Mr. S promises Mr. M to paint a family picture for 20,000 and assures to complete his assignment by 15th March, 2023. Unfortunately, Mr. S died in a road accident on 1st March, 2023 and his assignment remains undone. Can Mr. M bind the legal representative of Mr. S for the promise made by Mr. S? Suppose Mr. S had promised to deliver some photographs to Mr. M on 15th March, 2023 against a payment of Rs. 10,000 but he dies before that day. Will his representative be bound to deliver the photographs in this situation? Decide as per the provisions of the Indian Contract Act, 1872. (4 Marks June 23)



**Answer:**

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 this Act, or of any other law.

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract. (Section 37 of the Indian Contract Act, 1872).

As per the provisions of Section 40 of the Indian Contract Act, 1872, if it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representative may employ a competent person to perform it.

In terms of the provisions of Section 40 stated above, in case where Mr. S has to paint a family picture for Mr. M, Mr. M cannot ask the legal representative of Mr. S to complete the painting work on Mr. S's death, since painting involves the use of personal skill.

In terms of the provisions of Section 37 stated above, in case where Mr. S had promised to deliver some photographs to Mr. M, the legal representatives of Mr. S shall be bound to deliver the photographs in this situation.

**Related Question:** 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 2<sup>nd</sup> 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 20<sup>th</sup> 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.

[Nov 18, 4 Marks] [MTP March 19, 6 Marks] CS LLM Arjun Chhabra (Law Maven) Mo: 6262621438

**Answer:**

1. **Subsequent or Supervening impossibility (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.
2. **Also, according to section 65 of the Indian Contract Act, 1872,** when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

In the given question

After Mr. X and Mr. Y have entered into the contract to supply 50 tons of sugar, the event of flood occurred which made it impossible to deliver the sugar within the stipulated time. Thus, the promise in question became void. Further, Mr. X has to pay back the amount of ₹ 50,000 that he received from Mr. Y as an advance for the supply of sugar within the stipulated time. Hence, the contention of Mr. Y is correct.

**Related Question:** Mr. JHUTH entered into an agreement with Mr. SUCH to purchase his (Mr. SUCH's) motor car for Rs. 5, 00,000/- within a period of three months. A security amount of Rs. 20,000/- was also paid by Mr. JHUTH to Mr. SUCH in terms of the agreement. After completion of three months of entering into the agreement, Mr. SUCH tried to contract Mr. JHUTH to purchase the car in terms of the agreement. Even after lapse of another three-month period, Mr. JHUTH neither responded to Mr. SUCH, nor to his phone calls. After lapse of another period of six months. Mr. JHUTH contracted Mr. SUCH and denied to purchase the motor car. He also demanded back the security amount of Rs. 20,000/- from Mr. SUCH. Referring to the provisions of the Indian Contract Act, 1872, state whether Mr. SUCH is required to refund the security amount to Mr. JHUTH. Also examine the validity of the claim made by Mr. JHUTH, if the motor car would have been destroyed by an accident within the three month's agreement period. [MTP Aug 18, 4 Marks]

**Answer:** In terms of the provisions of Section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage **under such agreement or contract** is bound to restore it, or to make compensation for it to the person from whom he received it.

Referring to the above provision, we can analyse the situation as under.

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

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

## **Discharge of Contract**

### **Question 10**

Grounds to Discharge Contract. [MTP April 19, 7 Marks] [MTP March 18, 7 Marks]

**Answer:**

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

- (1) **Discharge by performance** which may be actual performance or attempted performance. Actual performance is said to have taken place, when each of the parties has done what he had agreed to do under the agreement. When the promisor offers to perform his obligation, but the promisee refuses to accept the performance, it amounts to attempted performance or tender.
- (2) **Discharge by mutual agreement:** Section 62 of the Indian Contract Act, 1872 provides that if the parties to a contract agree to substitute a new contract for it or to refund or remit or alter it, the original contract need not to be performed. Novation, Rescission, Alteration and Remission are also the same ground of this nature.
- (3) **Discharge by impossibility of performance:** The impossibility may exist from its initiation. Alternatively, it may be supervening impossibility which may take place owing to (a) unforeseen change in law (b) The destruction of subject matter (c) The non-existence or non- occurrence of particular state of things (d) the declaration of war (Section 56).
- (4) **Discharge by lapse of time:** A contract should be performed within a specific period as prescribed in the Law of Limitation Act., 1963. If it is not performed the party is deprived of remedy at law.
- (5) **Discharge by operation of law:** It may occur by death of the promisor, by insolvency etc.
- (6) **Discharge by breach of contract:** Breach of contract may be actual breach of contract or anticipatory breach of contract. If one party defaults in performing his part of the contract on the due date, he is said to have committed breach thereof. When on the other hand, a person repudiates a contract before the stipulated time for its performance has arrived, he is deemed to have committed anticipatory breach. If one of the parties to a contract breaks the promise the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract (Section 64).
- (7) A promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance or may accept instead of it any satisfaction he thinks fit. In other words, a contract may be discharged by remission. (Section 63).
- (8) When a promisee neglects or refuses to afford the promisor reasonable facilities for the performance of the promise, the promisor is excused by such neglect or refusal (Section 67).

### **Miscellaneous Question**

#### **Question 11**

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

- (a) Mr. X promised to bring back Mr. Y to life again.
- (b) A agreed to sell 50 kgs of apple to B. The loaded truck left for delivery on 15<sup>th</sup> March but due to riots in between reached A on 19<sup>th</sup> March.
- (c) An artist promised to paint on the fixed date for a fixed amount of remuneration but met with an accident and lost his both hands.

(d) Abhishek entered into contract of import of toys from China. But due to disturbance in the relation of both the countries, the imports from China were banned. [RTP May 21] [RTP Nov 22]

**Answer:**

- (a) The contract is void because of its initial impossibility of performance.
- (b) Time is essence of this contract. As by the time apples reached B they were already rotten. The contract is discharged due to destruction of subject matter of contract.
- (c) Such contract is of personal nature and hence cannot be performed due to occurrence of an event resulting in impossibility of performance of contract.
- (d) Such contract is discharged without performance because of subsequent illegality nature of the contract.

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## Unit– 5: Breach of Contract and its Remedies

### Question 1

“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. [MTP March 19, 7 Marks] [Module Back Question] [MTP Oct 19, 7 Marks] [RTP Nov 18] [MTP Oct 20-7 Marks] [MTP Oct 21 – 7 Marks] [RTP May 22] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

### Answer:

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

Section 39 of the Indian Contract Act, 1872 deals with anticipatory breach of contract and provides as follows: "When a party to a contract has refused to perform or 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.

## Compensation for loss or damage caused by breach of contract [Sec 73]

### Question 2

“When a contract has been broken, the party who suffers by such a breach is entitled to receive compensation for any loss or damage caused to him.” Discuss. [Module Back Question]

**Related Question:** 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]

**Related Question:** M Ltd., contract with Shanti Traders to make and deliver certain machinery to them by 30.6.2017 for Rs. 11.50 lakhs. Due to labour strike, M Ltd. Could not manufacture and deliver the machinery to Shanti Traders. Later, Shanti Traders procured the machinery from another manufacturer for Rs. 12.75 lakhs. Due to this Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation which it can claim from M Ltd., referring to the legal provisions of the Indian Contract Act, 1872. [May 18, 6 Marks] [MTP Aug 18 Direct Question 5 marks] [RTP May 18] [MTP Oct 19, 6 Marks] [RTP Nov 19 Direct Question] [MTP March 18, 6 Marks] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

**Answer:**

1. Section 73 of the Indian Contract Act, 1872 provides for consequences of breach of contract.
2. 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.

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**Note:** Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach.

3. 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.

### Conclusion

- a. Applying the above principle of law to the given case, M Ltd. is obliged to compensate for the loss of Rs. 1.25 lakh (i.e., Rs. 12.75 minus Rs. 11.50 = Rs. 1.25 lakh) which had naturally arisen due to default in performing the contract by the specified date.
- b. Regarding the amount of compensation which Shanti Traders were compelled to make to Zenith Traders, it depends upon the fact whether M Ltd., knew about the contract of Shanti Traders for supply of the contracted machinery to Zenith Traders on the specified date. If so, M Ltd is also obliged to reimburse the compensation which Shanti Traders had to pay to Zenith Traders for breach of contract. Otherwise, M Ltd is not liable.

**Related Question:** '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 Oct 2018, 6 Marks - Based on Bottles] [MTP March 18, 6 Marks- Based on Bottles] [MTP April 19] [MTP April 19, 6 marks] [RTP Nov 20] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

**Answer:**

Provision same as above i.e., Point 1 and Point 2.

The leading case on this point is "**Hadley v. Baxendale**" in which it was decided by the Court that the special circumstances under which the contract was actually made were communicated by the plaintiff to the defendant, and thus known to both the parties to the contract, the damages resulting from the breach of such contract which they would reasonably contemplate, would be the amount of injury which would ordinarily follow from the breach of contract under these special circumstances so known and communicated.

In the instant case

'X' had intimated to 'Z' that he was purchasing water bottles from him for the purpose of performing his contract with 'Y'. Thus, 'Z' had the knowledge of the special circumstances. Therefore, 'X' is entitled to claim from 'Z' Rs. 500/- at the rate of 0.50 paise i.e., 1000 water bottles x 0.50 paise (difference between the procuring price of water bottles (Rs4.50) and contracted selling price to 'Y' i.e (Rs.5) being the amount of profit 'X' would have made by the performance of his contract with 'Y'.

If 'X' had not informed 'Z' of 'Y's contract

Then the amount of damages would have been the difference between the contract price (Rs. 4.50) and the market price (Rs. 5.25) on the day of default. In other words, the amount of damages would be Rs. 750/- (i.e. 1000 water bottles x 0.75 paise).

**Related Question:** Seema was running a boutique in New Delhi. She has to deliver some cloth to her friend Kiran who was putting up an exhibition at Mumbai. Seema delivered the sewing machine and some cloth to a railway company to be delivered at a place where the exhibition was to be held. Seema expected to earn an exceptional profit from the sales made at this exhibition however she did not bring this fact to the notice of the railway's authorities. The goods were delivered at the place after the conclusion of the exhibition. On account of such breach of contract by railways authorities, can Seema recover the loss of profits under the Indian Contract Act, 1872? [RTP May 22] [MTP Nov 22 – 6 Marks]

**Answer:**

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

In the given case, Seema was to earn an exceptional profit out of the sales made at the exhibition, however she never informed about it to the railway authorities. Since the goods were delivered after the conclusion of the exhibition, therefore Seema can recover only the losses arising in the ordinary course of business. Since no notice about special circumstances was given to railways authorities, she could not recover the loss of profits.

**Related Question:** 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 May 22 - 4 Marks]

**Answer:**

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.



## Expected case study on Compensation for loss or damage caused by breach of contract

Photographer's failure to appear at wedding: A photographer who had agreed to take photographs at a wedding, failed in breach of his contract to appear there. As a result the bride had no photographs of her wedding. She was allowed damages for resulting injury to her feelings.

Refusal to provide motel booked for wedding reception: Where a motel cancelled the wedding reception on booking 48 hours before the marriage, the plaintiffs had to suffer because the alternative agreement was very bad, the court held that marriage of an only daughter's wedding is a unique event for a parent and general damages of £750 were awarded for inconvenience and disappointment plus £265 special damages for the cancellation fee of the band and telephone calls to notify guests of the changed venue.

## Quantum Meruit

### Question 3

What do you mean by quantum Meruit and state the rules relating to such contracts. [RTP May 20]

**Answer:**

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1. Meaning: Quantum Meruit means as much as is merited (earned).
2. Quantum Meruit - Exception to Normal Rule:
  - (a) Unless a party has performed his promise in full, he cannot claim performance from the other party.
  - (b) To this rule, there are certain exceptions based on "Quantum Meruit".
  - (c) When a person has done some work under a contract, and other party either - (i) repudiates the Contract, or (ii) some unexpected event happens making further performance of contract impossible, then the party who performed the work, can claim remuneration for work done.
3. When and to whom right arises?
  - (a) The Original Contract must have been discharged, by the breach of a party by non-performance. If the Original Contract exists, the aggrieved party can resort to damages, he cannot claim quantum meruit remedy.
  - (b) The Right to sue on Quantum Meruit lies with the party who is not at fault, i.e. who has performed his part of the Contract.

4. 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

### **Compensation for breach of contract where penalty stipulated for [Sec.74]**

#### **Question 4**

“Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of contract whereas Penalty on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties”. Explain the statement by differentiating between liquidated damages and penalty with reference to provisions of the Indian Contract Act, 1872. [Module Back question] [RTP May 21] [May 22 – 6 Marks]

#### **Answer:**

Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of contract. This estimate is agreed to between parties to avoid at a later date detailed calculation and the necessity to convince outside parties.

Penalty on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties.

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

#### Explanation to Section 74

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

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

Sri Chunni Lal vs. Mehta & Sons Ltd (Supreme Court)

Supreme Court laid down the ratio that the aggrieved party should not be allowed to claim a sum greater than what is specific in the written agreement. But even then the court has powers to reduce the amount if it considers it reasonable to reduce.

**Difference between ‘Liquidated Damages’ and ‘Penalty’**

Basis	Liquidated Damages	Penalty
1. Meaning	It represents a sum fixed or ascertained by the parties to the Contract, being a <b>fair and genuine estimate</b> of the probable loss that may arise due to breach.	It is the sum mentioned in the contract at the time of its making, being <b>disproportionate</b> to, i.e. <b>very high</b> than the loss that might arise as a result of breach. It is usually a very high sum, to ensure performance of the contract.
2. Intention	The intention for liquidated damages is the <b>recovery of damages</b> that might arise due to breach.	The intention for penalty is <b>to ensure performance</b> of a Contract. Performance is better than paying penalty. It acts as a deterrent to avoid performance.
3. Basis for Classification	An amount becomes Liquidated Damages, if it is found that the parties to Contract conscientiously tried to make a <b>pre-estimate</b> of loss which might happen to them if there is a <b>Breach of contract</b> .	An amount becomes penalty, if parties made <b>no attempt</b> to estimate the loss, but with the sole object of coercing the offending party to perform the Contract, which is not in proportion to the loss.
4. Example	A contracts with B to deliver possession of a house under construction within a period of 6 months, failing which he would pay the monthly rental of B. The monthly rental payable by B for A partakes the character of liquidated damages.	P contracts to deliver 50 Units of a Petrol Engine to Q on a stipulated day, failing which he shall pay ₹ 5 Lakhs. Neither the price of Engine nor loss on failure of delivery would amount to ₹ 5 Lakh. Hence it is a penalty.

**Specific Performance**

**Question 5**

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? [Dec 20, 2 Marks] [RTP May 21]

**Answer:**

Specific Performance:

(a) For breach of certain contracts, monetary compensation by way of damages may not constitute adequate remedy. The aggrieved party may not be interested in monetary compensation.

(b) The Court may, in such cases, direct the defaulting party to carry out the promise according to the terms of the Contract. This is called "Specific Performance" of the Contract.

Example: X agreed to sell an old painting to Y for 50,000. Subsequently, X refused to sell the painting. Here, Y may file a suit against X for the specific performance of the contract.

In the instant case

A refused to supply the agreed unique item to B, alternate of which is not available in the market. Therefore here, B may file a suit against A for the specific performance of the contract.

## **Vindictive or Exemplary damages**

**Question 6** Give the circumstances as to when "Vindictive or Exemplary Damages" may be awarded for breach of a contract. [RTP – Nov 22]

**Answer:**

Vindictive or Exemplary damages

These damages may be awarded only in two cases:

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

## **Unit – 6: Contingent and Quasi Contracts**

### **Contingent Contracts [Sec 31–36]**

#### **Question 1**

What is Contingent Contract? Discuss the essentials of Contingent Contract as per the Indian Contract Act, 1872. [Nov 18, 7 Marks] [RTP May 19] [RTP May 20] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

#### **Answer:**

**Contingent Contracts [Sec. 31]:** A Contingent Contract is a Contract -

- (a) to do, or not to do something,
- (b) if some event, collateral to such Contract, does or does not happen.

**Example:** A contracts to pay B ₹ 10,000 if B's house is burnt. This is a Contingent Contract.

**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.  
**Example:** 'A' promises to pay ₹ 50,000 to 'B' if it rains on first of the next month.
- (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.

**Example 1:** If A promises to pay B Rs. 100,000, if he so chooses, it is not a contingent contract. (In fact, it is not a contract at all). However, where the event is within the promisor's will but not merely his will, it may be contingent contract.

**Example 2:** If A promises to pay B Rs. 100,000 if A left Delhi for Mumbai on a particular day, it is a contingent contract, because going to Mumbai is an event no doubt within A's will, but is not merely his will.

- (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.

**Example:** 'A' agreed to sell his agricultural land to 'B' after obtaining the necessary permission from the collector. As a matter of course, the permission was generally granted on the fulfillment of certain formalities. It was held that the contract was not a contingent contract as the grant of permission by the collector was almost a certainty.

**Related Question:** Explain the meaning of 'Contingent Contracts' and state the rules relating to such contracts. [MTP Oct 20 – 5 Marks] [July 21 – 7 Marks] [RTP May 22 – 7 Marks]

Answer:  
 Meaning: Same as above  
 Rules as to Enforcement of Contingent Contracts:

Contingent upon					
Happening of Uncertain Future Event [Sec. 32]	Non-Happening of Uncertain Future Event [Sec. 33]	Future Conduct of a living person [Sec. 34]	Happening of Specified Uncertain Event within Fixed Time [Sec. 35]	Non-Happening of Specified Uncertain Event within Fixed Time [Sec. 35]	Impossible Events [Sec. 36]

These rules are explained below

Contingency	Enforcement	Example
<p>Happening of an Uncertain Future Event [Sec.32]</p>	<ul style="list-style-type: none"> <li>Cannot be enforced by law unless and until such an event has happened.</li> <li>Where the event becomes impossible, such contracts become void.</li> </ul>	<ul style="list-style-type: none"> <li>A makes a contract with B to buy B's horse if A survives C. This cannot be enforced by law unless and until C dies in A's life-time.</li> <li>A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse had been earlier offered, refuses to buy. Contract cannot be enforced by law, unless &amp; until C refuses to buy the horse.</li> <li>A contracts to pay B a sum of money when B marries C. C dies without being married to B. Contract becomes void.</li> </ul>
<p>Non-Happening of an Uncertain Future Event [Sec.33]</p>	<p>Can be enforced when the happening of that event becomes impossible, and not before.</p>	<p>A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. Contract can be enforced when the ship sinks.</p>
<p>Happening of a Specified Uncertain Event within a fixed time [Sec.35]</p>	<p>Becomes void if -</p> <ul style="list-style-type: none"> <li>at the expiry of time fixed, such event has not happened, or</li> <li>before the time fixed, such event becomes impossible.</li> </ul>	<p>A promises to pay B a sum of money if a certain ship returns within a year. The Contract may be enforced if the ship returns within the year, and becomes void, if the ship is burnt within the year.</p>
<p>Non-happening of a Specified Uncertain</p>	<p>Can be enforced by law -</p> <ul style="list-style-type: none"> <li>when time fixed has expired and such event has not happened, or</li> </ul>	<p>A promises to pay B a sum of money if a certain ship does not return within a year. The Contract may be enforced if the ship does not</p>

<p>Event within a fixed time [Sec.35]</p>	<ul style="list-style-type: none"> <li>before expiry of the time fixed, it becomes certain that such event will not happen.</li> </ul>	<p>return within the year, or is burnt within the year.</p>
<p>Behaviour of a person at an unspecified time of future [Sec.34]</p>	<p>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.</p>	<p>A agrees to pay B a sum of money if B marries C. But C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B.</p>
<p>Impossible Event [Sec.36]</p>	<p>Void, irrespective of whether or not the parties know of the impossibility of the event, at the time of entering into the agreement.</p>	<ul style="list-style-type: none"> <li>A agrees to pay B ₹ 1,000 if two parallel straight lines should enclose a space. Agreement is void.</li> <li>A agrees to pay B ₹ 1,000 if B will marry A's daughter C and C was dead at the time of the agreement. Agreement is void.</li> </ul>

**Related Question:** PQR, a hospital in Delhi, recruits Dr. A, on contract basis for a period of 3 months. The hospital management promises to pay Dr. A, a lumpsum amount of Rs. 1,00,000 if Dr. A test positive for noval corona virus (Covid 19) during the contract period of 3 months.

Identify the type of contract and highlight the rule of enforcement. Also, what will happen if Dr. A does not contract Covid 19. [RTP Nov 21]

**Answer:**

- Section 31 of the Indian Contract Act, 1872 provides that “A contract to do or not to do something, if some event, collateral to such contract, does or does not happen” is a Contingent Contract.
- Section 35 says that Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, becomes void if, at the expiration of time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.
- In the instant case, the contract between PQR hospital & Dr. A is a Contingent Contract because the promisor, PQR hospital need to perform his obligation of paying Dr. A, the lumpsum amount of ₹ 1,00,000, only if he contracts with Covid 19 within a span of 3 months.
- In Case, if Dr. A does not contract Covid 19, then the contract stands void automatically.

## **Quasi Contract/Deemed Quasi Contract**

### **Question 2**

Explain the term 'Quasi Contracts' and state their Characteristics. [Back Question of Module] [RTP Nov 20] [MTP Nov 21 – 5 Marks] [MTP Nov 22 – 5 Marks]

### **Answer:**

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

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

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**Related Question:** Explain the meaning of 'Quasi-Contracts.' State the circumstances which are identified as quasi contracts by the Indian Contract Act, 1872. [RTP Nov 19] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

### **Answers:**

**Meaning of Quasi Contract:** Same as above

Circumstances which are identified as quasi contracts by the Indian Contract Act, 1872:

**(a) Claim for necessaries supplied to persons incapable of contracting (Section 68):** If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

**Example:** A supplies B, a lunatic, or a minor, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

**(b) Payment by an interested person (Section 69):** A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

**(c) Obligations of a person enjoying benefits under non-gratuitous act (Section 70):** 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 benefits thereof, then he is bound to make compensation to the other in respect of, or to restore the thing so done or delivered.

**Example:** A, a tradesman, leaves goods at B's house by mistake. B treats the goods his own. He is bound to pay for them.

**(d) Responsibility of finder of goods (Section 71 of the Indian Contract Act, 1872):** Responsibility of finder of goods (Section 71 of the Indian Contract Act, 1872): A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee.

Thus, a finder of lost goods has:

- (i) to take proper care of the property as man of ordinary prudence would take
- (ii) no right to appropriate the goods and
- (iii) to restore the goods if the owner is found.

**(e) Money paid by mistake or under coercion (Section 72):** "A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it".

**Example:** A and B jointly owe ₹ 1,000 to C. A alone pays the full amount to C and B not knowing this fact, pays ₹ 1,000 again to C. C is bound to repay the amount to B. (ii) A Railway Company refuses to deliver certain goods to the Consignee except upon payment of an illegal charge for carriage. The Consignee pays the sum charged in order to take delivery of goods. He is entitled to recover so much of the charge as was illegally excessive.

**Related Question:** What is meant by Quasi-Contract? State any three salient features of a quasi- contract as per the Indian Contract Act. 1872. [Dec 21 – 5 Marks]

Answer:

**Meaning of Quasi Contract:** Same as above

**Salient features of quasi contracts:**

- (a) In the first place, such a right is always a right to money and generally, though not always, to a liquidated sum of money.
- (b) Secondly, it does not arise from any agreement of the parties concerned, but is imposed by the law, and
- (c) Thirdly, 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.

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

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

- (i) Will Mr. M succeed in filing the suit to recover money? Elaborate the related provisions?
- (ii) What is the maximum amount- of money that can be recovered by Mr. M?
- (iii) Shall the provisions of the above act also apply to the medical treatment given to the grandmother? [Nov 22 - 6 Marks]

**Answer:**

**(i) Claim for necessities supplied to persons incapable of contracting (Section 68 of the Indian Contract Act, 1872):** If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

In the instant case, Mr. M supplied the food and other necessities to Mr. Y (who lost his mental balance) and Mr. Y's grandmother (incapable of walking and dependent upon Mr. Y), hence, Mr. M will succeed in filing the suit to recover money.

**(ii)** Supplier is entitled to be reimbursed from the property of such incapable person. Hence, the maximum amount of money that can be recovered by Mr. M is Rs. 15 Lakhs and this amount can be recovered from Mr. Y's parent's jewellery amounting to Rs. 4 Lakhs and rest from the house of Y's Parents. (Assumption: Y has inherited the house property on the death of his parents)

**(iii)** Necessaries will include the emergency medical treatment. Hence, the above provisions will also apply to the medical treatment given to the grandmother as Y is legally bound to support his grandmother.

**Related Question:** P left his carriage on D's premises. Landlord of D seized the carriage against the rent due from D. P paid the rent and got his carriage released. Can P recover the amount from D? [Back question of module] [RTP June 23]

**Answer:**

Yes, P can recover the amount from D. Section 69 states a person who is interested in the payment of money which another person is bound by law to pay, and who therefore pays it, is entitled to get it reimbursed by the other.

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

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

In the light of the Indian Contract Act, 1872, can X recover it from the Manager? [Nov 19, 4 Marks] [RTP Dec 23]

**Answer:**

Provisions same as above as given under section 71

In the light of the above provisions, the manager must return the wallet to X, since X is entitled to retain the wallet found against everybody except the true owner.

**Related Question:** A, a gold dealer, regularly pays sales tax as per law. Subsequently, the government lowers down the tax rate. Without knowing this new law, A continues to pay the sales tax on higher rates. On becoming aware that the rate has been lowered down, he claims the excess payment from the government.

**Answer:**

Deemed Quasi Contract

**Money paid by mistake or under coercion (Section 72):** "A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it".

In this case, A can claim the recovery of excess payment under Section 72 of the Indian Contract Act.

**Related Question:** A insured his goods with an insurance company against the risk of fire only. After sometimes, the goods were stolen from the godown, and A claimed the amount from the insurance company. The insurance company paid the amount under the mistake that goods had been destroyed by a peril insured against. On knowing that the goods were not insured against theft', the insurance company claimed the refund of money from A.

**Answer:**

Deemed Quasi Contract

**Money paid by mistake or under coercion (Section 72):** "A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it".

In this case, the money Could be recovered by the insurance company under Section 72.