

PERFECT PRACTICE

LAW

**INCLUDING TEXT BOOK OF
INDIAN CONTRACT
ACT, 1872**

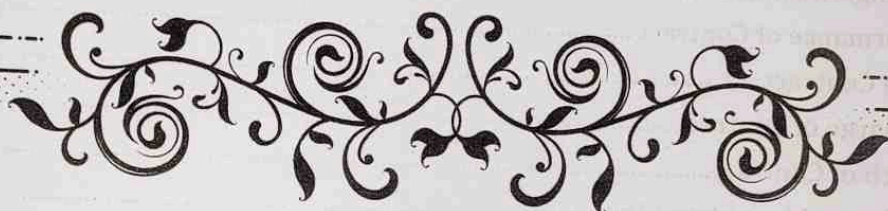


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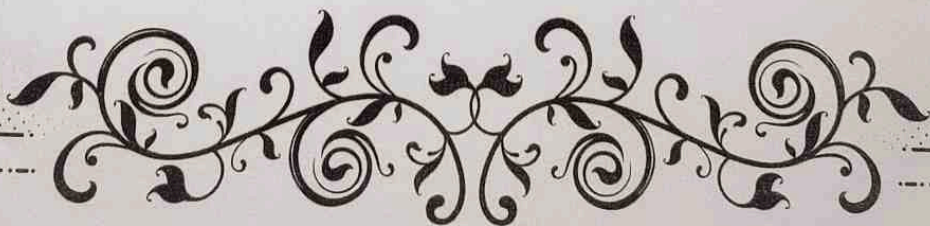
Published by:
Escholars
1629, 1st Floor, Sohan Ganj,
Delhi (India)-110007
Ph.: 8888880402
www.escholars.in

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DEDICATED TO KHATU SHYAM BABA



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Indian Contract Act, 1872 **(Applies to the whole of India)**



How to Study Indian Contract Act?

1. Watch the videos and make notes from Videos, and refer to this book simultaneously.
2. After completing the topic, you must practice the topic in writing. Key words of Act cannot be replaced with general English. However, explanation to points can be in your own words provided you have sufficient command of the English language.
3. After writing the topic, cross-check the same from the book, and mark the errors.
4. After completing the writing practice, attempt a self-assessment test paper to check your course progress.
5. It may take around 1 to 1.5 months to complete the Indian Contract Act.
6. Practice all topics of the Indian Contract Act in writing to have a strong grip on this paper.
7. Use the common copy/ register to practice all topics and mark your errors from the different pens. It will help you at the time of revision.
8. Being the new paper, it will take some time to adjust. Don't be panic. Focus on learning and writing.
9. This book includes the Indian Contract Act. The rest of the Acts will be directly discussed from ICAI modules.

For the Indian Contract Act, refer ICAI module after completing all the topics from this book and videos.

Offer

PROPOSAL/OFFER:

According to the Indian Contract Act, 1872, Section 2 (a) defines the proposal /offer as

- ✓ When one person signifies to another
- ✓ his willingness to do or
- ✓ to abstain from doing anything
- ✓ with a view to obtaining the assent of that other
- ✓ to such an act or abstinence, he is said to make a proposal.

#Signifies - to speak

#abstain - to stop

#assent -approval

#abstinence - the practice of stopping from indulging in something

Analysis of definition:

For a valid offer, the party must express his willingness to do or not to do something. However, a mere expression of willingness does not constitute an offer.

For instance, where A tells B that he desires to marry by the end of **2021**. It does not constitute an offer. But to constitute a valid offer, it must be made to obtain the assent (acceptance) of the other. Thus in the above example, 'A' further adds, "**will you marry me**" it will be an offer as this statement is made with a view to obtaining the acceptance of B

Where Mr A tells Mr B, "Not to sell your house to Mr C as I want to buy it". Now, in this case, Mr A is abstaining Mr B from selling the house to Mr C with a view to get the acceptance of Mr B so that Mr B may sell his house to Mr A".

Thus the offer may be (a) by doing an act (b) by abstaining from doing an act. Doing an act may be by **words** or by **conduct**.

Examples: -

- a) A proposes by letter to sell a house to B for ₹50 Lakhs. (**BY WORDS**)
- b) The bus standing at the bus stand with the gates open is an offer by conduct that anyone who wants to travel can sit and enjoy the journey. (**BY CONDUCT**)

Types of offer/Classification of offer:

- a) **General offer:** It is an offer made to the public at large, and anyone can accept it. The Indian Contract Act points out that the performance of the conditions of a proposal is an acceptance of the proposal. Remember that anyone can perform the conditions of the proposal, and so anyone can accept it.
- b) **Specific offer:** The specific offer is made to a specific person & can be accepted by an identified person only.
- c) **Cross offers:** When two parties exchange identical offers, but in ignorance of each other's offer, such offers are called cross offers.

For instance: Mr A mail to Mr B for selling his car at ₹1 Lakh. At the same time, Mr B also mailed to Mr A to purchase the car of Mr A for the same amount. Neither Mr B received the mail of Mr A nor Mr A receive the mail of Mr B before sending their respective letters. Now this will be considered as a cross offer. The court will not construe one as an offer and the other offer as its acceptance.

d) **Counter offer:** When the person to whom the offer is made makes the qualified (conditional) acceptance of the offer, he is said to have made a counteroffer. The counteroffer so made in rejection of the original offer.

For instance: Mr A offers to buy the car of Mr B at ₹1 Lakhs. However, Mr B said that he would sell it at ₹1.5 Lakhs. Now, in this case, the statement made by B will be considered as a counteroffer, i.e. the rejection of the original offer of Mr A.

e) **Standing, Open and Continuing offer:** An offer that is allowed to remain open for acceptance over a period of time is known as a standing offer, open offer or continuing offer. Tender for supply of goods is a kind of standing offer.

Rules as to valid offer:-

a) **The offer must be capable of creating legal relations:** A social invitation, even if it is accepted, does not create a legal relation. An offer should be such when it is accepted should result in a contract that is binding on both parties.

For instance: Mr Ram invited Mr Shyam for celebrating the birthday of Mr Ram. Now, this cannot be considered as an offer by Mr Ram as it is only a social invitation. Even if Mr Shyam accepted the invitation, it is not binding upon Mr Ram.

b) **The offer must be certain, definite and not vague:** If the terms of an offer are vague or indefinite and the person to whom it is made does not know what he has to accept, then this cannot be termed as an offer.

For Instance: A Offers to sell B 1000 tons of oil. There is nothing to show what kind of oil is intended. The offer is not capable of being accepted for reason of uncertainty. But if the offer contains a term that can make the offer clear, then the offer shall not be deemed to be vague. For example, A is a dealer in coconut oil, and he offers to sell 1000 tons of oil. It shall constitute a valid offer since the nature of A's trade provides an indication about the oil he intends to sell.

c) **The offer may be expressed or implied:** Expressed offer can be of two types: a) oral offer (by words of mouth), b) written offer (in writing). Implied offer means an offer by doing an act. For example, a bus standing at the bus stand with the gates open is an offer by conduct that anyone who wants to travel can sit and enjoy the journey. **(BY CONDUCT)**

d) **The offer must be distinguished from an invitation to offer:**

- ✓ In order to ascertain whether a particular statement amounts to an offer or an invitation to offer, the test would be the intention with such statement is made.
- ✓ The person who makes the statement intends to be bound by it as soon as it is accepted by the other person, then it is an offer.
- ✓ Where the person intends some further acts to be done before he becomes bound by it, then it is an invitation to offer.

✓ **For examples:**

- A prospectus issued by the college is an invitation to offer as the college wants that student should first fill the details contained therein and deposit the same (known as an offer by student), thereafter college will take the decision whether the student will get the admission or not.
- Goods displayed in the showroom with a price tag attached is an invitation to offer, not an offer, as the shopkeeper wants the customer to approach him and to give him an offer that he wants to buy it.

e) **The offer should not contain a term the non-compliances of which will amount to acceptance:** If the offer contains a condition that if an acceptance is not communicated by a certain time, the offer shall be deemed to be accepting, non-communication of acceptance by a particular time cannot be taken as acceptance.

f) Special terms of an offer shall be brought to the notice of the other party:

- ✓ Where special terms are included in the offer, they must be duly brought to the notice of the other party at the time when the proposal is made. If this is not done and the contract is entered into, the other party will not be bound by a specific term.
- ✓ These special terms should be so presented that a reasonable man may become aware of them before he enters into a contract.
- ✓ Certain condition is attached to a transaction like the purchase of a ticket for a journey or deposit of luggage in a cloakroom. Where ever on the face of the ticket the words for condition "see back" are printed, then the person whom the ticket issued is presumed to be aware of them, and he is bound by them. The fact that he did not read them or could not read them does not alter the position.

For instance: A deposited the bag in the waiting room of the railway station. On the face of the ticket issued to him was written "SEE BACK", one of the conditions limited the liability of the company for loss up to 10 pounds. The bag was lost, and A claimed 24 pounds as its value. It was held A was bound by the conditions written on the back of the ticket. He hasn't read them doesn't alter the position.

However, if the conditions are printed on the back of a ticket but no words drew the attention of the purchaser of the ticket, nor anybody told him about conditions on the back of the ticket, he is not bound by the condition printed.



Acceptance

Meaning: According to the Indian Contract Act 1872, section 2 (b), the person to whom the offer is made signifies his assent, the proposal is said to be accepted. A proposal, when accepted, becomes a promise. The rules regarding acceptance are as follows: -

- a) **Acceptance must be absolute and unqualified:** An acceptance to be valid should be absolute and unqualified. One should accept what is offered to him. Qualified acceptance is no acceptance; rather, it is a counteroffer.

For example, A offers to sell a cow to B, who replies that he would buy it only if he gave the calf along with it. This is not an acceptance because it is a qualified acceptance.

- b) **Acceptance must be to an offer:** An acceptance should be a response to an offer. One cannot accept what is not offered to him. For example, X cannot accept to buy Y's car without the offer being made by Y.

Case Law: Lalman Shukla vs. Gauri Dutt:

- ✓ Master sent his servant to trace his missing nephew.
- ✓ The Master did not hear anything about the missing nephew for some days.
- ✓ Ultimately, he announced a reward for anyone who may find his missing nephew.
- ✓ The servant, without the knowledge of this announcement, found out the boy.
- ✓ Subsequently, on becoming aware of the reward, he claimed the reward. The servant was not entitled to it.

- c) **Acceptance must be made in the mode prescribed:** Normally, acceptance must be in the usual and reasonable manner, but if the mode of acceptance is prescribed in the proposal, it shall be accepted in the manner prescribed.

- d) **Acceptance must be given within the time specified:** Acceptance must be given within the time specified but, if no time is specified, the acceptance must be given within reasonable time or before the offer lapses. The reasonable time depends on the facts and circumstances of each case.

- e) **Mere silence is no acceptance:** The offer cannot be made as to constitute the silence as the acceptance.

Case law: Felthouse vs. Bindley:

- ✓ A wrote to B offered to purchase his horse at 35 pounds.
- ✓ He further stated, "If I hear nothing, I shall consider the horse as mine".
- ✓ No reply was ever sent by B. On the other hand, B instructed his auctioneer not to sell the horse as it was already sold to A.
- ✓ By mistake, the auctioneer sold the horse of B to C against his direction.
- ✓ A proceeded against C, claiming that horse is mine. But, the action of A failed.
- ✓ In this case, it is not a valid offer as we have discussed earlier that for a valid offer, it should not contain a term the non-acceptance of which amounts to acceptance.
- ✓ Here A considered the mere silence as acceptance.

- f) **The acceptance must be communicated:** As per the definition of acceptance, "the person to whom the offer is made signifies his acceptance". Kindly note the word "to signify". Thus the acceptance must be communicated. The mode of communication is not specified. It may be any means which has the effect of communication.

Case Law: Brogden vs. Metropolitan Railway Company:

- ✓ In this case, A agreed to supply coal to the railway company. It made an offer to the railways.
- ✓ The manager approved the draft and put it in the drawer of his table.
- ✓ Draft so approved remained in the drawer without the approval being signified and communicated. In this case, there is no valid contract because there is no acceptance.

Acceptance by conduct:

- ✓ The assent means that acceptance has been signified either in writing or by word of mouth, or by the performance of some act. A person performs the act intended by the proposer; the performance of the act constitutes an acceptance.
- ✓ **For example**, when a trade man receives an order from a customer. The trade man executes the order by sending the goods. The customer order for goods is the offer which has been accepted by the trade man by sending the goods. It is a case of acceptance by conduct.
- ✓ According to the provision of the Indian Contract Act, 1872, the performance of the condition of the offer is an acceptance.

Acceptance should be made to who has the authority to accept: An offer can be accepted by the person who has the authority to accept.

Case Law- Powell vs. Lee:

- ✓ In this case, A applied for the post of headmaster in a school.
- ✓ Appointing authority selected him.
- ✓ One of the members of appointing committee who had no authority to communicate on behalf of the appointing authority informed A about his appointment.
- ✓ The appointing authority subsequently cancelled the appointment.
- ✓ It was held acceptance by an unauthorized person is no acceptance. Therefore, the school is not liable to appoint or compensate.

Communication & Revocation of Offer & Acceptance

When the contracting parties are face to face, there is no problem with communication. There is instant and simultaneous communication of offer and acceptance. In such a case, the question of revocation does not arise. The offer and its acceptance are made instantly. The contract is made instantly. Therefore, there is no offer left that can be revoked. There is no acceptance that can be revoked. The story is different when the contracting parties are at a distance from each other. They utilize the services of the post office or telephone. In such cases, it is relevant to know the precise time when the offer is made or when the acceptance is made or when the offer & acceptance are complete.

Communication of offer:

- ✓ The communication of an offer is complete when it comes to the knowledge of the person to whom it is made.
- ✓ A proposal is made by post now the communication will be completed when the letter containing the proposal reaches the person to whom it is made.
- ✓ **For example,** A makes the proposal to B to sell his horse for ₹2 lakhs. The letter is posted on 10th March 2021. This letter reaches B on the 12th March 2021. The offer is said to have been communicated on the 12th March 2021 when B receives the letter.

Communication of acceptance:

- ✓ The communication of acceptance is complete on two different dates on one date as against the proposer and on another date as against the acceptor.
- ✓ When a proposal is accepted by a letter sent by post, the communication of acceptance will be completed against the proposer when the letter of acceptance is posted and against the acceptor when the letter reaches the proposer.
- ✓ **Example:**
 - **As against the proposer:** Assuming the acceptance is put into the course of transmission on 15th March, now the communication of acceptance is complete against the proposer on 15th March.
 - **As against the acceptor:** When the acceptance comes to the knowledge of the proposer. Suppose, in this case, the proposer receives the letter of acceptance of 17th March. The communication of acceptance is complete against the acceptor on 17th March.

Revocation of offer and acceptance:

The communication of a revocation is complete:

- ✓ As against the person who makes it, when it is put into a course of transmission to the person to whom it is made so as to be out of the power of the person who makes it.
- ✓ As against the person to whom it is made, when it comes to his knowledge
- ✓ **For example:**
 - A revokes the offer by letter and posts it on 1st April, which reaches Mr B on 10th April. Now, for Mr A, communication of revocation of the offer is completed on 1st April when it is put into a course of transmission, and for Mr B, communication of revocation of the offer is completed on 10th April when it comes to his knowledge.
 - X revokes the acceptance by letter and posts it on 1st April, which reaches Mr Y on 10th April. Now for Mr X, communication of revocation of the acceptance is completed on 1st April when it is put into a course of transmission, and for Mr Y, communication of revocation of acceptance is completed on 10th April when it comes to his knowledge.

Note: ICAI Module interprets 'Knowledge of the person to whom it is made' as when such letter is read by the person. Kindly answer as per ICAI Module in the exam.

According to 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. An acceptance may be revoked at any time before the communication of acceptance is complete as against the acceptor.

Lapse of the offer:

As per the provision of the Indian Contract Act 1872, the offer can lapse as indicated below:-

- 1) **By notice of revocation:** The offer may revoke the offer before acceptance. He may send the notice of revocation to the other party.
- 2) **By the lapse of the time specified for the acceptance:** An offer gets lapsed if it is not accepted within a specified time. However, if no time is specified, then by the lapse of the reasonable time. The reasonable time depends on the facts and circumstances of the case.
- 3) **By the failure of the acceptor to fulfil the condition precedent to the acceptance:** Assuming that offeror while making an offer puts the condition that for the offer to be accepted, an amount of advance should be sent. The sending of the amount of advance is a condition precedent. If the condition has not been complied with, then the offer is deemed to have lapsed.
- 4) **By the death or insanity of the proposer:** Death or insanity of the proposer comes to the notice of the acceptor before he accepts the offer. It results in the revocation of the offer.
- 5) **By the communication of the counteroffer:** Communication of counteroffer results in rejection of the original offer.
- 6) **When the offer is not to be accepted in the prescribed manner:** If the acceptance is not in the prescribed manner, the offer is revoked. However, if the mode of acceptance is not prescribed, acceptance should be in the usual and reasonable manner. If the acceptance is not so, the offer is revoked.
- 7) **When the law is changed:** An offer comes to an end if the law is changed so as to make the contract contemplated by the offer illegal or incapable of performance.

Consideration

Consideration simply means something in return (quid pro quo). For a valid contract, there must be a consideration from both sides.

For instance: If Mr X agrees to sell a plot of land to Mr Y for ₹10 Lakhs, then for Mr X, ₹10 Lakhs will be considered as consideration, and for Mr Y, the plot of land will be considered as consideration.

As per the Indian Contract Act 1872, section 2(d), consideration means:

- ✓ 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 to abstain from doing something,
- ✓ such act or abstinence or promise is called a consideration for the promise”.

Legal requirements regarding consideration:

- 1) **Consideration must move at the desire of the Promisor:** The consideration must move at the desire of the promisor. An act done at the desire of a third party is not a consideration.

Case law: Durga Prasad vs. Baldeo and others:

- ✓ In this case, on the order of the collector of a town, A built certain shops in the Bazar at his own expense.
- ✓ In consideration of A having spent money in construction, B, who came to occupy the shop, promised to pay some money to A.
- ✓ Later on, B refused to pay and A sued B.
- ✓ A's action to recover the money was rejected as the shops, in this case, were not built at the desire of the promisor to the agreement, i.e. B. But they were built at the desire of the collector of town.

- 2) **Consideration may move from the promisee or any other person:** In India, the consideration may proceed from the promisee or any other person who is not a party to the contract. According to the definition, when at the desire of the promisor, the promisee or any other person does something such as an act is a consideration.

Case law: Chinnaya vs. Ramayya:

- ✓ An old lady by deed of gift transferred the certain property to B, her daughter, on the condition that daughter B was required to pay a certain sum of C (sister of A).
- ✓ On the same day, B, the daughter, executed an agreement in favour of C (sister of A), promising to pay a stipulated (fixed) sum.
- ✓ But later on, she refused to pay on the ground that no consideration has ever passed from C.
- ✓ Court held that C was entitled to recover the amount. The contract is backed by consideration. In this case, consideration was furnished by the old lady. It is not necessary that consideration should come from the promisee (sister of the lady) alone. It may come from any other person, and here, it has come from the lady. The contract, therefore, is supported by the consideration.

- 3) **Consideration may be executed and executory:**

- ✓ A consideration that consists in the performance of an act is said to be executed. When it consists of a promise, it is said to be executory.
- ✓ It simply means when the consideration for the contract has been already provided, then it is known as executed consideration, and where the consideration to the contract is promised to be provided in future, then it is known as executory consideration.

For Instance: A pays ₹5,000 to B, and B promises to deliver to him a certain quantity of wheat within a month. In this case, A pays the amount, whereas B mere by makes a promise.

Therefore, the consideration paid by A is executed, whereas the consideration promised by B is executory.

4) Consideration may be past, present or future:

- ✓ The act is done at the desire of the promisor, but before any promise is made, it is called past consideration.
- ✓ Past consideration is no consideration, and it is not accepted in England. But in India, it is accepted. See the definition 'that the person has done or abstained from doing.'

✓ **Case law: Lampleigh vs. Brathwaite:**

- In this case, A committed murder and requested B to labour and to do his best to obtain a pardon from the king.
- B did his best to obtain the king's pardon, riding and journeying at his own expense.
- Thereafter, A promised B to give 100 pounds. Later on, he refused to pay. He was held liable.
- It was held that a past act done at the request of the promisor would be a good consideration for the subsequent promise.

5) Adequacy of consideration is not necessary:

- ✓ It is necessary to have consideration, but it is not necessary that consideration should be adequate.
- ✓ If a party gets what he has contracted for and it is of some value, the court will not enquire whether it is equivalent to the promise.
- ✓ The parties to the contract cannot avoid the contract on the ground of inadequacy of consideration.

For instance: A agrees to sell a horse worth ₹1,000 for ₹100. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

- ✓ It should be noted that where consideration is inadequate on the ground of free consent of parties to contract, then only the contract will be valid; otherwise, it will be void.

6) Performance of what one is legally bound to perform is no consideration:

- ✓ The performance of an act by a person who is legally bound to perform cannot be a consideration for a contract.

✓ **Case law: Ramchandra Chintaman vs. Kalu Raju:**

- An agreement made by a client to pay his Lawyer an additional sum if the suit was successful. This additional sum was payable over and above the fees already settled.
- It was held that the promise was void for lack of consideration. The Lawyer was already under a pre-existing obligation to render the best of services under the original contract.
- However, a person promises to do more than what he is legally bound to do, and he is promised the additional payment for the extra work, then extra payment for extra work is a consideration.

7) Considerations must not be illusory and must be of some value:

- ✓ It must be competent. It must be something to which the law attaches some values.
- ✓ It should not be physically impossible. It must not be uncertain.

8) Consideration must not be unlawful, immoral or opposed to public policy:

- ✓ Only the presence of consideration is not sufficient; it must also be lawful.
- ✓ Anything which is immoral or opposed to public policy cannot be considered as a valid consideration.

Validity of an agreement without consideration:

As per the provision of the Indian Contract Act, 1872, an agreement made without consideration is void. To be valid, contract consideration ought to be present. However, there are certain exceptions to this rule. In the following cases, the agreement made without consideration shall be valid and enforceable:

1) Natural love and affection – There is no consideration, yet the contract is valid. Because it is affected by natural love and affection. In this case, the contracts shall be valid if the following conditions are complied with:

- ✓ There is an agreement in writing.
- ✓ It is registered.
- ✓ It is made on account of natural love and affection.
- ✓ It is made between parties standing in near relation to each other.

In other words, 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. Near relation means blood relation or Husband wife.

Case Law: Rajlukhy Dabee vs. Bhootnath Mookerjee:

- In this case, the husband promised to pay his wife a fixed sum of money. The contract was registered.
- The registered document contained that quarrels and disagreements between the two.
- The sum agreed was not paid to his wife.
- The wife, therefore, filed the suit before Calcutta high court.
- The court found no trace of love and affection between the parties.
- But on the contrary, their quarrels had compelled them to separate. The court did not grant the relief to the wife as the case does not meet the requirements necessary for the exception.

Case Law: Venkataswamy vs. Rangaswamy:

- An elder brother, on account of natural love and affection, promised to pay the debts of his younger brother.
- The agreement was put in writing and consequently registered.
- Later on, the elder brother refused to pay the amount. Held that agreement so made was valid and elder brother is liable to pay the amount.

2) Compensation for past voluntary services: A promise to compensate wholly or in part a person who has already voluntarily done something for the promisor is enforceable under section 25. Promise to pay for past voluntary services is binding provided the following conditions are fulfilled:

- ✓ The service should have been rendered voluntarily.
- ✓ The services must have been rendered for the promisor.
- ✓ The promisor must be in existence at the time when services were rendered.
- ✓ The promisor must have intended to compensate the promisee.

3) Promise to pay the time-barred debt:

- ✓ As per the Limitations Act, 1963, if a debt is not claimed for a period of 3 years, then it cannot be claimed thereafter.
- ✓ However, a promise to pay a time-barred debt is enforceable. The promise should be in writing signed by the person making it or by his authorized agent.
- ✓ The promise maybe for the whole or any part of the debt. Thus, a promise to pay a debt barred is valid.
- ✓ **For example,** A owes ₹10,000; the debt is barred by the law of Limitations Act. After three years, A signs a written promise to pay B ₹7,000 on account of the debt. This is a valid contract. B only recover the 7000 from A.

4) Agency:

- ✓ According to the provision of the Indian Contract Act, 1872, no consideration is necessary to create an agency.
- ✓ It means an agent can be appointed even without consideration, and the acts done by him will be very much valid.

5) Completed gift:

- ✓ A gift made does not require consideration.
- ✓ The person giving a gift cannot take the same back from the other party by taking the plea that no consideration has moved from the other party.
- ✓ In the case of gifts made, no consideration is required. It is immaterial whether or not the party stands in a near relationship.

6) Bailment of goods: Bailment of goods can be effected without consideration if so created. This will be known as gratuitous bailment.**Stranger to a contract can sue/Suit by a third party on an agreement:**

The consideration for an agreement may proceed from a third party. However, the third party cannot sue an agreement. Only a person who is a party to a contract can sue on it. **The rule of Privity of Contract means that a stranger to a contract cannot sue.** However, the above rule is subject to the following exception: -

1) A person in whose favour a charge or other interest in some specified property has been created may before enforce it though he is not a party to the contract.**Case law: Khwaja Muhammad Khan vs. Hussaini Begum:**

- ✓ In this case, A has a son. B has a daughter.
- ✓ A, the father of the son, has agreed with B, the father of the daughter, that if the daughter of B will marry the son of A, he will pay the fixed amount (Kharcha-I-Pandan) to the daughter.
- ✓ B's daughter married A's son. But A did not pay the amount.
- ✓ B's daughter sued A.
- ✓ Though she was not a party to the contract, she is a beneficiary. Therefore, the suit by the daughter of B on A is not void.

2) An agreement is made in connection with marriage, partition, or other family arrangements and provision is made for the benefit of a person. He may take advantage of that agreement, although he is not a party to it. In the case of a family arrangement, if the terms of the arrangements are in writing, the members of the family who originally had not been parties to the agreement may enforce the agreement.

For instance: A, B and C are brothers in which A and B live together, whereas C lives in the USA. The family property was distributed between the sons, and according to that, each of the brothers will get one floor in the building. Later on, after returning from the USA, C can ask for a floor from A and B as he is the beneficiary of the contract.

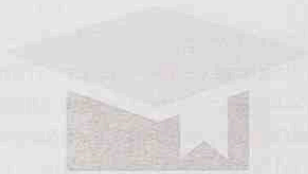
3) A female member can enforce a provision made for marriage or other expenses: This provision was made on the partition of the Hindu undivided family.

Case law: Rakhmanbai vs. Govind: A female member of HUF can sue the male members for the marriage expenses agreed upon between the male members to invest at the time of partition of HUF property.

4) In the case of estoppels (stop from denying) by acknowledgement of liability: This can be illustrated with the help of an example. L gives to M ₹2,000 to be given to N. M informs N that he is holding the money for him. Afterwards, M refuses to pay the money. N will be entitled to recover the same from M. (Here M will be estopped, i.e. stop from denying)

5) **There is a condition/covenant running with the land:**

- ✓ The person purchases land with notice that the owner of the land is bound by certain duties/conditions/ covenants affecting land. He shall be bound by such conditions/ covenants even though he is not a party to the original agreement containing those conditions or covenants.
- ✓ Thus the covenant/condition affecting the land may be enforced against him though he was not the original party to the contract.



Contractual Capacity

Who is competent to contract?

As per the provision of the Indian Contract Act, 1872:

- ✓ Every person who has attained the age of majority.
- ✓ Who is of sound mind and
- ✓ Persons disqualified by any law from contracting is competent to contract.

Age of majority:

- ✓ In India, the age of majority is regulated by the Indian Majority Act, 1875.
- ✓ Every person domiciled in Indian attains majority on the completion of 18 years of age.

Sound mind:

- ✓ As per the provision of the Indian Contract Act, 1872, a person is of sound mind if, at the time when he makes the contract, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.
- ✓ This section further lay down that a person, who is usually of unsound mind but occasionally of sound mind, may make a contract when he is a sound mind.
- ✓ A person who is usually of sound mind but occasionally of unsound cannot make a contract when he is of unsound mind.
- ✓ Idiots, lunatics and drunken persons are examples of those having an unsound mind.

Disqualified by law:

a) Alien enemy:

- ✓ Where a party to the contract belongs to the country from which war is declared, then from the date of declaration of war, such party became the alien enemy.
- ✓ Existing contracts with the alien enemy cannot be enforced.
- ✓ New contracts cannot be entered with the alien enemy.
- ✓ However, with permission from the Central Government, existing contracts can be enforced, and new contracts can be entered into.

b) Convict:

- ✓ Existing contracts with the convicts cannot be enforced.
- ✓ New contracts cannot be entered with the convicts.
- ✓ However, with the permission from central government, existing contracts can be enforced, and new contracts can be entered into.

c) Foreign diplomats:

- ✓ They can sue others.
- ✓ However, foreign diplomats can be sued only if approval of central government is obtained or he submits himself to the court.

d) Company:

- ✓ A company cannot enter into contracts that are related to the objects which fall outside the scope of its memorandum of association.

Position of Minor's agreement:

a) An agreement made with a minor is void-ab-initio:

- ✓ An agreement by a minor involves a promise on his part, and in the eyes of the law, he is incapable of giving a promise which imposes a legal obligation.
- ✓ As per the provisions of the Indian Contract Act, 1872, a promise made by the minor is not enforceable in the court of law even if the minor has obtained unnecessary advantages from such a contract.

✓ Therefore, the agreement with the minor is void ab initio.

✓ **Case law: Mohori Bibee vs. Dharmodas Ghose:**

- In this case, A, a minor, has mortgaged his house in favour of B to secure a loan of an amount.
- As part of this certain amount was advanced to minor A by B.
- Later on, B filed a suit on minor for the recovery of the amount.
- It was held that the mortgage was void and was cancelled.
- Held that the minor's agreement is void. There is no question of refunding the amount.
- In this case, B, who advanced money, was aware that A was minor. Court held that if A, the minor, is directed to refund the amount, then it tantamount to enforce an agreement that is void.

b) Minor can be a beneficiary:

- ✓ Though a minor is not competent to contract. There is nothing that prevents him from making the other party bound to the minor.
- ✓ Thus, a minor though incompetent to a contract may accept a benefit.
- ✓ A promissory note executed in favour of a minor is valid because he can be a beneficiary, whereas a promissory note executed by the minor is altogether void.
- ✓ Where the minor has performed the part of his obligation, and the other party to the contract has not performed his obligation, the minor can sue the other party.
- ✓ A minor under contract at sale delivered goods to the buyer. Minor can maintain a suit for the recovery of price.

c) Minor can always plead minority:

- ✓ A minor's agreement is void. Any money advanced to a minor on a promissory note or otherwise cannot be recovered.
- ✓ Even when a minor procure a loan by falsely representing that he is of full age, he can plead his minority in a suit intended to recover the amount from him.
- ✓ Applicability of doctrine of restitution

Case law: Khan Gul vs. Lakha Singh:

✓ Following observations are important in this connection:

- If a minor entered into an agreement by misrepresenting his age, the court might grant the relief to the other party by passing an order to restore the amount to the other party.
- Restitution (restoring) is possible to the extent the estate of the minor has benefitted from such a contract. Minor shall not be personally liable.
- The power of the court to grant relief by the order is discretionary in nature.
- The court should not grant the relief if the other party entered into the contract despite knowing the fact about the minority of the minor.

d) Ratification on attaining majority is not allowed:

- ✓ As a minor's agreement is void, he cannot validate it by ratification on attaining majority.
- ✓ **For example**, a minor borrows money and executes a promissory note. On attaining majority, he executes a fresh promissory note in substitution of the one executed as a minor. The second promissory note is void as it is without consideration.

e) Contract by a minor's guardian is valid:

- ✓ Though a minor's agreement is void, his guardian can under certain circumstances enter into a valid contract on the minor's behalf.
- ✓ Where the guardian makes a contract for the minor and which is:
 - within his (guardian) authority, and
 - which is for the benefit of the minor, such a contract is valid, and the minor can enforce such contract.

f) Liability for necessities:

- ✓ The contract with the minor for necessities is valid, and the minor's property is liable. Minor shall not be personally liable for such contract; only minor's property is liable.
- ✓ As per the provision of the Indian Contract Act, 1872, a minor is liable for necessities:
 - supplied to him or
 - to any person who is dependent on him.
- ✓ Thus any person would be entitled to reimbursement out of the minor's estate for necessities supplied to him and to whom he is bound to support. A minor cannot be held personally liable for necessities, but his property is liable.

What is a necessity?

- ✓ Necessities mean goods suitable to the condition in the life of an infant as required by him at the time of sale and delivery. It includes not only food and clothing and housing but also includes the education and the instruction needed.
- ✓ **For example**, A, a minor, bought 11 fancy coats from N. He was at that time adequately provided with clothes. Held not a single coat was a necessity. His properties could not, therefore, be attached for its payment. It is immaterial whether the other party knows this or not.



Free Consent

The word consent simply means getting assent, i.e. acceptance of another party. However, to make the contract valid, the assent should be free, i.e. it should not be influenced by any third factor. Consent may or may not be free.

According to the provision of the Indian Contract Act, 1872, the parties to the contract are said to have consented when they agree upon the same thing in the same sense (**consensus-ad-idem**).

Indian Contract Act, 1872, provides that all agreements are contracts if they are made by the free consent of parties so, free consent is necessary for the validity of a new contract. Consent is free when it is not caused by:

- ✓ Coercion
- ✓ Undue influence
- ✓ Fraud
- ✓ Misrepresentation
- ✓ Mistake

When it is caused by any of these factors, consent is not free.

Coercion:

- ✓ As per the provision of the Indian Contract Act, 1872:
 - Coercion is the committing or
 - threatening to commit any act forbidden by the Indian Penal Code
 - or the unlawful detaining or
 - threatening to detain any property to the prejudice of any person
 - with the intention of causing the other person to enter into an agreement.

For instance:

- X says to Y: "I shall kill your son, or shall not return the document of title relating to your wife property, unless you agree to sell your house to me ₹5,000".
- Y said to X, "All right, I shall sell my house to you for ₹5,000; do not kill my son or do not detain my wife's documents of title".
- X has employed coercion. A contract entered by coercion is voidable and not valid. That means it can be enforced by the party coerced (Y) but not by party using coercion (X).

✓ Special points:

- It is not necessary that where coercion is employed, IPC is applicable.
- For the application of coercion, coercion may be employed by the outsider to an outsider or by an outsider to any party of the contract.
- What is necessary is that the party making a contract must be induced by coercion.

For instance:

- A, B are on the English ship in the high sea.
- A, by the use of criminal intimidation, induced B to enter into a contract.
- This criminal intimidation is punishable in IPC though it is not an offence in the English Act.
- When A, B reached Kolkata, B filed a suit for the breach of contract against A. A has employed coercion although his act is not an offence by the law of England and although the Indian Penal Code, which makes this as the offence was not in force at the time or the place where an act was done.
- It was held that the contract was entered into by coercion, so that contract is voidable at the option of B.

✓ **The threat to commit suicide is coercion.**

Case law: Chikkam Ammiraju And Ors. vs. Chikkam Seshamma And Anr.:

- By threat of suicide, a Hindu induced his son and wife to execute a release deed in favour of his brother in respect of certain properties which they claimed as their own.
- It was held that the contract was entered into by coercion. It was held that the threat of suicide amounted to coercion, and the release deed was voidable.

✓ **Consequences of coercion:**

- The contract caused by coercion is voidable at the party whose consent was so obtained. Also, a person to whom money has been paid or anything delivered by coercion shall repay such money or return such a thing.

Undue Influence:

- ✓ As per the provision of the Indian Contract Act, 1872, a contract is said to be induced by "undue influence":

- where the relations 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 of the other party.

- ✓ A person is deemed to be in a position to dominate the will of the other when he holds **authority real or apparent over the other** or when he stands in a fiduciary relationship with the other.

For instance: A father by reason of his authority over the son can dominate the will of the son. A advanced sum to his son, B, during minority. A obtains, by misuse of parental influence, a bond from B for a greater amount when B comes of age. Here A employed undue influence.

- ✓ Again by reason of the fiduciary relationship, a solicitor can dominate the will of his client, and a trustee can dominate the will of the beneficiary. Similarly, a person whose mental capacity is affected by age, illness or distress may be dominated by undue influence.

For instance, a doctor is deemed to be in a position to dominate the will of his patient affected by illness. So, A enfeebled by disease is induced by a doctor's influence agrees to pay an unreasonable sum. Here, the doctor has employed undue influence.

✓ **Features of undue influence:**

- One of the contracting parties dominates the will of another.
- It has real or apparent authority over the other or stands in a fiduciary position to the other.
- Sometimes, the parties to an agreement are so related to each other that one of them is able to dominate the will of the other and to obtain his consent to an agreement.

For instance: A spiritual adviser induced his devotee to gift him the whole of his property to secure benefits to his soul in the next world. Such consent is said to be obtained by the undue influence of some kind of the other who do such a thing.

- The dominating party has taken an unfair advantage over the weaker party. However, if the contract is made in the ordinary course of business, it cannot be said to have been induced by undue influence.

For instance: A has applied for a loan to the banker. There is a shortage in the market for the money. So, the banker refused to make the loan except at a higher rate of interest. The contract was made at a higher rate of interest. It was held that the transaction was made in the ordinary course of business, and so there is no case of undue influence. The rate of interest, being very high, is the natural outcome of the shortage in the money market.

✓ **Consequences of the contract entered into by undue influence:**

- When consent to a contract is caused by undue influence, the contract is voidable at the option of the party whose consent was so obtained.
- Any such contract may be set aside either absolutely or if the party who was entitled to avoid it has received any benefit may return the benefits received.

For instance: X, money lender advances ₹1,50,000 to Y an agriculturist and by undue influence induces Y to execute a bond for ₹2,00,000 with interest at 6% per month. The court may set aside the bond, ordering Y to repay ₹1,50,000 with such interest as the court may think fit.

The distinction between Coercion and Undue Influence:

Basis	Coercion	Undue Influence
Type of force	It involves physical force or threat.	It involves moral or mental pressure.
Involvement of criminal action	It involves committing or threatening to commit an act forbidden by the Indian Penal Code or detaining or threatening to detain property unlawfully.	No such illegal act is committed, or a threat is given.
Relationship between parties	It is not necessary that there must be some sort of relationship between the parties.	Some sort of relationship between the parties is necessary.
Exercised by whom	Coercion need not proceed from the party to the contract, nor need it to be directed against the party to the contract.	Undue influence is always exercised between parties to the contract.
Enforceability	The contract is voidable at the option of the party whose consent has been obtained by the coercion.	Where the consent is induced by undue influence, the contract is voidable, and the court may set it aside on such terms and conditions as the courts think fit. On such terms and conditions as the court thinks fit.
Position of benefits received	In case of coercion where the contract is rescinded by the aggrieved party, any benefit received has to be restored to the other party.	The court has the discretion to direct the aggrieved party to return the benefit in whole or in part or to give any such direction as the court thinks fit.

Fraud:

- ✓ As per the provision of the Indian Contract Act, 1872, "Fraud" means and includes any of the following acts committed by a party to a contract:

- The suggestion as to a fact which is not true by one who does not believe it to be true.
- The active concealment (hiding) of a fact by one having knowledge or belief of the fact.
- A promise made without any intention of performing it.
- Any other act fitted to deceive.
- Any such act or omission as to law specifically declared to be fraudulent.

For instance: Mr A offered Mr B to sell the old car to him and said it is not an accidental car. However, A knows that the car is accidental. Here A is suggesting a fact which is not true, and Mr A also knows about it.

✓ **Essential of the fraud:**

- The act must be committed with the intention to cause harm (deceive).
- The statement made must be false and should relate to a material fact of agreement.
- The person who makes the statement does not believe it to be true.
- The act must be committed by the party to the contract.
- Other parties relied on the false representation.
- The party must be deceived by the fraud.

✓ **Mere silence is not a fraud:**

For instance: A sells the horse, which he knows to be unsound. He keeps silent. He does not convey the unsoundness of the horse. B bought it and found it unsound. In this case, there is no fraud.

- However, silence may become fraud in the following cases:

➤ **The duty of the person to speak and the person remains silent:**

- ❖ Duty to speak arises where one contracting party possesses **trust and confidence** in the other party.
- ❖ **For instance:** The father sells the horse to his daughter. Because of the relationship, the daughter trusts his father. Now, it is the duty of the father to disclose the fault, which he did not do. The daughter was deceived by the silence of the father. This is a case of fraud.
- ❖ The duty to speak also arises where one party **completely depends upon another party**.
- ❖ **For instance:** The insurance company knew nothing about the life and circumstances of the assured; it has to depend on the disclosures made by the assured. Therefore, it is the duty of the assured to put the insurer in possession of all the material facts affecting the risk covered.

- **Where silence is equal to speech:** The seller sells the horse. The buyer asks if you do not deny, I shall presume that horse is sound. The seller remains silent. Here his silence is equal to speech which indicates that the horse is sound. This would be a fraud if horse bought turns out to be unsound.

Misrepresentation:

- ✓ **A person suggests something which is not true, but he believes it to be true.**

For instance: Mr A said to Mr B that the car of Mr C. is not an accidental car. Mr A also believes that the car is not accidental, but actually, the car was accidental. Now Mr A made the statement which is actually not true, but he himself believes it to be true.

- ✓ **Misrepresentation made is innocent.**

- The contract entered by misrepresentation is without any intention to deceive.

- ✓ However, **the person misled can avoid the contract.**

For instance:- A makes a positive statement to B that C will be made the director of the company. A makes the statement on information derived directly from C. The statement amounts to misrepresentation. The information received by A was false. He believed it to be correct. On his positive statement, B entered into the contract. The contract was caused by misrepresentation.

- ✓ **Essentials of misrepresentation:**

- The statement made must be of material facts.
- The statement should be false.
- The person making it believes it to be true though there is no sufficient reason for his belief.
- The person who makes the false statement has no intention to deceive.
- The representation must induce the other party to contract.
- The party is misled by such a statement and enters into the agreement.

Consequences of Fraud, Misrepresentation etc.:

- ✓ If a contract is caused by coercion, fraud or misrepresentation, such a contract is voidable at the option of the party whose consent was so obtained.
- ✓ However, if the contract is caused by fraud or misrepresentation, the party may insist that the contract should be performed and that he should be put in the same position in which he would have been if the representation made had been true.

For instance: A fraudulently informs B that A's estate is free from encumbrance. B thereupon agrees to buy the estate. The estate is, however, subject to the mortgage. B may either avoid the contract or may insist on the mortgage debt redeemed.

Consent was caused by misrepresentation or silence, which amounts to fraud. The person could not avoid the contract if he had the means of discovering the truth in ordinary diligence.

For instance: A by a misrepresentation leads to B to believe erroneously that 750 tons of sugar is produced per annum at the factory of A. B examines the accounts of the factory, which should have disclosed that only 500 tons had been produced if ordinary diligence had been exercised by the buyer. B purchased the factory. In the circumstances, B cannot repudiate the contract on the ground of A's misrepresentation.

Note: The contract is voidable at the option of the party. However, in the following circumstances option to avoid the contract is lost:

- ✓ The party who is entitled to avoid the contract accepts the benefits under the contract or expressly or impliedly accepts the contract after he comes to know that the contract is voidable and he can avoid the contract.
- ✓ Before the party avoids the contract, the third party bonafide enters into the transaction.
- ✓ The party who has the right to avoid the contract does not act within a reasonable time.

The distinction between Fraud and Misrepresentation:

Basis	Fraud	Misrepresentation
Knowledge of truth	The party making the statement doesn't believe it to be true.	The party making the statement believes it to be true.
Intention	It is intentional.	It is innocent.
Purpose	The purpose is to deceive the other party with a view to obtaining an unnecessary advantage.	The purpose is not to deceive another party.
Rescission of the contract and claim for damages	Party deceived by fraud can avoid the contract and can also claim the damages (compensation).	Party affected by misrepresentation can avoid the contract but cannot claim the damages.
Concealment of facts	The active concealment of fact is considered fraud.	The unintentional concealment of fact, which was the necessary part of the contract, is a misrepresentation.

Mistake

Mistake: Mistake defines as innocent or erroneous belief which leads the party to misunderstand the others. 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.

For instance: A agrees to buy from B a certain horse. It turns out that horse was dead at the time of the bargain, though neither party was aware of the fact, then the agreement is void.

The mistake is some unintentional act, omission or error, arising from unconsciousness, ignorance or forgetfulness, imposition or misplaced confidence. It may be of two kinds:

1) Mistake by law:

a) Mistake by Indian law: A mistake of law does not render a contract void as one cannot take the excuse of ignorance of the law of his own country. Therefore, it is valid and can be enforceable by law.

b) Mistake by foreign law: A mistake of foreign law is excusable and is treated as a mistake of fact. The contract may be avoided on such a mistake.

2) Mistake by fact:

a) Unilateral mistake: Unilateral mistake is when only one party to a contract is under a mistake. The contract can be enforceable, and it is a valid contract.

b) Bilateral mistake: Bilateral mistake is when both the parties to a contract are under a mistake. Therefore, this contract is void.

For instance: A offers to sell his Ambassador Car to B, who believes that A has only Fiat Car, agrees to buy the car. Here, the two parties are thinking about the different subject matter so that there is no real consent and the agreement is void.



Lawful Object and Consideration

To make the contract valid, both the object for which the contract is made and the consideration of the contract shall be lawful. If either the consideration or object is unlawful, the contract will not be called a valid contract.

For instance:

- a) If the contract is made between A and B, where B will kill C and in return A will give the ₹10 lakhs to B now in this case, the consideration by B for A is not lawful, and also the object of the contract is unlawful.
- b) Another example where A promise to give the job to B in his office but in return demands ₹1,00,000 as a donation now in this case, the object of the contract is legal, but the consideration by B to A is not lawful.

Consideration or object of the contract is unlawful, if:

- ✓ It is forbidden by law; or
- ✓ It defeats the provision of law; or
- ✓ It is fraudulent; or
- ✓ It involves injury to the person or the property of another; or
- ✓ It is immoral or opposed to public policy.

Circumstances that make consideration, as well as an object unlawful, are discussed below:

1) Forbidden by law:

- ✓ Where the object of contract is forbidden by law, the agreement is unlawful and is void.
For instance: A was licensed to run a liquor shop. The act forbids the sale transfer of the license or the creation of a partnership to run the shop. A took B into partnership. The agreement of partnership would be void.
- ✓ However, the imposing of penalty for a particular transaction under any law cannot be the sole ground for the purpose of declaring the contract as void on the ground that it is forbidden by law.

For instance: A license to cut grass is given to X by the forest departments under the Forest Act. One of the conditions to license prescribes that the forest officer should be intimated in case the license is sold to another party; otherwise, a penalty of amount will be imposed. Please note that a fine is prescribed for the breach of the condition, but it doesn't mean that transfer of license is forbidden by the law. Therefore, the contract is very much valid.

2) The defeat of the provision of law:

- ✓ Suppose there is an agreement under which the debtor shall not plead the period of limitation.
- ✓ The object is to defeat the provisions of the Limitation Act. Therefore, the agreement is void.
For instance: Accused (person who has done something wrong) is required under the criminal procedure code to furnish a surety (Person who gives the guarantee is known as surety) for the sum of five thousand rupees for his good behaviour. He deposited the sum with B and requested him to become the surety. After the period of suretyship is over, the accused sued B for the amount. The agreement was void. Money is irrecoverable. The intention of the law in requiring a surety is that the surely shall at his own risk see to the appearance of the accused. This purpose is defeated by the above agreement.

3) Fraudulent:

- ✓ If the two parties to the contract agree to enter into a contract that results in fraud with the third party, then such contract is void.

For instance: A, an agent for a Zamindar, without the knowledge of his principal, agrees to grant lease for money to B of the land which belongs to the principal. The agreement between A and B is void.

4) Injury to the person or property of another:

- ✓ The general term "injury" means criminal or wrongful harm.

For instance: An agreement to print a book in violation of another's copyright is void as the object is to cause injury to the property of another. (It is also void as the object of the agreement is forbidden by law relating to copyright.)

- ✓ A person borrowed ₹100 and executed a bond promising to work for another person for a period of two years. In case of default, the borrower was to pay exorbitant interest, and the principal sum becomes payable at once. Here a promise to repay by manual labour is illegal as it imposes in substance slavery (Slavery is a system under which people are treated as property that can be bought and sold). The consideration involves injury to the person. The agreement is void.

5) Immoral:

- ✓ The law does not allow an agreement that includes immorality. What is immoral depends upon the standard of morality.

For instance:

- a) A landlord cannot recover the rent of a house knowingly let to prostitute who carries on her business there. Here the object is immoral, and the agreement to pay rent is void.
- b) Where P had advanced money to D, a married woman, to enable her to obtain a divorce from her husband. D had agreed to marry him as soon as she could obtain the divorce. It was held that P was not entitled to recover the amount. The agreement seeks the divorce of D from her husband, and the consequent promise of marriage was against good morals.

6) Agreement opposed to public policy: Agreement opposed to public policy means that agreement which has a tendency to injure public interest or the public welfare. Following are agreements that are opposed to public policy:

✓ **Trading with the enemy:**

- Any agreement with an alien enemy at times of war without the license of government is void.
- Here, the agreement to trade offends against the public policy as it against the interest of the country in times of war.

✓ **Stifling prosecution:**

- It is in the public interest that criminals should be prosecuted and punished. An agreement not to prosecute an offender or to withdraw a pending prosecution is void.
- You will not make a trade of a felony (serious crimes). However, the law allows compromises in respect of compoundable offences (in which settlement is allowed according to the law).

✓ **Maintenance and Champerty:**

- Where a person agrees to provide funds or otherwise to the other person to file suit and has no monetary interest of his own, this is known as maintenance.

For instance: X promises to pay Y ₹25,000 for bringing a suit against Z. X's sole motive is to ensure to sue Z to annoy him.

- Champerty is an agreement whereby one party helps/assists another in recovering money or property and, in turn, demands a share in the gains arising from such action.

For instance: X promises to pay Y ₹25,000 for bringing a suit against Z, and in turn, X will take 50% of the compensation amount that Y might receive.

✓ **Interference with the course of justice:**

- Any agreement which creates interference in the ordinary process of justice is void.
For instance: Mr A provides money to the B (a senior official) to transfer the existing Judge is against the public interest and void.
- Similarly, a promise to give money to induce a person to give false evidence is void.
For instance: X promises to give money to B if B gives the false statement before the court is void.
- However, an agreement that refers to present or future disputes to arbitration is not void. It is valid.

✓ **Marriage brokerage contracts:**

- Marriage brokerage agreements are defined as "agreements to pay a third person for negotiating, procuring or bringing about a marriage. The consideration here is marriage, which is why such agreements are against public policy. Marriage brokerage contracts are void.
For instance: If X promises to give ₹500 to Y if Y will procure the wife for X is void as it is a marriage brokerage contract.

✓ **Creation of interest which is opposed to duty:**

- If the person by an agreement agrees to do something which is against his duties, then such contracts will void-ab-initio.
For instance:
 - a) An agreement by a newspaper proprietor not to comment on the conduct of a particular person for extraneous consideration is unlawful as it is against policy.
 - b) A, who is the manager of a company, agrees to pass the tender for X if X pays to A ₹14,500 privately. The agreement is void.

✓ **Sale of public offices:**

- An agreement for interference in the government working regulations is completely void.
- It can be by way of appointing a person in a government office or by way of manipulating the files of deserving candidates to securing national awards.
For instance: An agreement to procure a public recognition like Padma Vibhushan or Padma Shri for reward is void.

✓ **Agreement for the creation of monopolies:**

- Agreement with the object of creating monopolies and thus earning abnormal profits as opposed to public policy. Therefore, it is void.

✓ **Agreement in restraint of marriage:**

- As per the provision of the Indian Contract Act, 1872, every agreement in restraint of marriage of any person other than a minor is void.
For instance: A promised to marry none else except Ms B, and in default pay her a sum of ₹1,00,000. A married someone else, and B sued A for the recovery of the sum. Held the agreement was in restraint of marriage and is void.

✓ **Agreement in Restraint of Trade:**

Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, to that extent, void.

- **To that extent-** It means that only that portion of the agreement is void which is restrictive.
- **Case Law: Madhub Chander vs. Raj Kumar:** The plaintiff and defendant were rival shopkeepers in a locality in Calcutta. The defendant agreed to pay a sum of money to the plaintiff if he would close his business in that locality. The plaintiff accordingly did so. But the defendant refused to pay. The court held the agreement was void, and so the plaintiff

cannot recover the amount from the defendant.

✓ **Restraint in the parental rights:**

- Any agreement forfeiting the parental right shall be void.

For instance: A father having two minor sons agreed to transfer their guardianship in favour of Mrs Annie Besant and agreed not to revoke it. Subsequently, he filed a suit for the recovery of boys and for a declaration that he was the rightful guardian. Yes, he had to revoke and shall get back the children.

✓ **Restraint of personal liberty:**

- Agreement unnecessarily restricting the individual is void being as it is against public policy.

For instance: X borrowed money from Y, a money lender. The borrower agreed with the lender that without his written consent, he would not leave his job, borrow, dispose of his property or change his residence. The agreement is void as it unduly restricted the freedom of the borrower.

But the rule "Agreement in restraint of trade" is subject to the exceptions:

a) **Sale of goodwill:**

- ✓ In case a person sold his business goodwill to another, then he shall not carry such business until and unless otherwise agreed.

✓ **Exceptions under Indian Partnership Act, 1932:**

- As per the provision of the Indian Partnership Act, 1932, an agreement between partners not to carry business other than that of the firm while they are partners in the firm is valid. Though it is in restraint of trade.
- As per the provision of the Indian Partnership Act, 1932, an outgoing [partner makes an agreement with the continuing partners that he will not carry on any business similar to that of the firm within specified local limits and within the specified period, such an agreement will be valid. Though restrictions are in the restraint of trade yet the agreement is valid if the restrictions imposed are reasonable.
- As per the provision of the Indian Partnership Act, 1932, upon or in anticipation of the dissolution of firm partners may agree that some or all of them will not carry on business similar to that of the firm within a specified period or local limits.
- As per the provision Indian Partnership Act, 1932, partners may agree with the buyer of goodwill after dissolution not to use the firm name or carry on the firm's business or solicit (to attract) clients of the firm.

b) **Exception in regard to service agreements:**

- ✓ An agreement of service by which an employee binds himself not to compete with his employer during the term of his agreement is not in the restraint of trade. Such an agreement is valid.

For instance: B, a physician and surgeon, employs A as an assistant for a term of three years, and A agrees not to practice as a surgeon and physician during these three years. The agreement is valid. A can be restrained by an injunction if he starts independent practice during this period.

- ✓ An agreement to restrain the person from entering into the same trade after he leaves the job is void.

For instance: An agreement restraining an employee from taking services or engaging in a similar business for a period of 5 years after the termination of his service was void.

Agreements Expressly Declared Void

Certain agreements have been expressly declared void by the Contract Act. These are void ab-initio and do not give rise to any legal consequences, and some of them have been before. They are as follows:

- ✓ Agreements with incompetent people.
- ✓ Agreements with an unlawful object or consideration.
- ✓ Agreements made under a mutual mistake of material fact.
- ✓ Agreements made without consideration.
- ✓ Agreements in restraint of marriage, trade or legal proceedings etc.

(All the above points has been already discussed in earlier topics)

Wagering Agreement:

- ✓ **According to Sir William Anson** – It is an agreement to pay money or money's worth upon the determination of an uncertain event.

For instance: There is a bet between A and B. A promises to pay B ₹1,000 if it rains. B promises an equal amount if it does not rain.

According to the Indian Contract Act 1872, agreements by way of wager are void.

Characteristics of wagering agreement:

- ✓ The event is uncertain, which means that either the event has not yet taken place or if the event has happened, the parties are unaware of the result.
For instance: Bet between A and B of ₹1,000 that yesterday in a cricket match there was rain or not. If neither A nor B knows about it, then it will be considered a wagering agreement.
- ✓ Neither party should have control over the happening or non-happening of the event. If one party has control over the event, the transaction is not wagering one.
For instance: Bet between A and B whether there will be a red signal in the next 50 seconds or not, and B has the power to control the signaling system, then it cannot be considered as a wagering agreement.
- ✓ The essence of a wager is that each side stands to win or to lose. It depends on how the uncertain event takes place. However, if either of the parties may win but cannot lose or both may lose and cannot win, it is not a wagering agreement.
- ✓ Neither party should have a legitimate interest in the occurrence or non-occurrence of the event other than the sum or stake.
For instance: If X promises to Y to pay him ₹10,000 if the truck doesn't reach on time containing the goods of Y is not a wagering agreement as Y having a legitimate interest in the goods.

Effect of Wagering Agreement:

- ✓ The wagering agreement is void.
- ✓ No suit shall be brought for recovering the amount won by the wager.

Wager and Collateral transactions – Consequences of Wagering Agreement:

- ✓ The wagering agreement is void.
- ✓ However, in Gujarat and Maharashtra, wagering is illegal.
- ✓ The only material difference between the void and illegal agreement relates to their effect upon the collateral transaction. A collateral transaction is one that is attached to the main transaction.

Wagering agreement, if it is void, then transactions collateral to wagering agreement is not void, but they are valid.

For instance:

- a) Money is given to a person to enable him to pay a wagering debt. The wagering agreement is the main transaction, and the loan is subsidiary to it. So the loan – a collateral transaction is valid, and it is enforced being the wagering agreement the main transaction is only void.
- b) Also, a broker in a wagering transaction being void can recover his brokerage.
- c) Similarly, a principal can recover from his agent the prize money received by him on account of a wagering transaction being void.

Wagering agreement being illegal, and so the collateral transaction is void.

In Gujarat and Maharashtra, wagering agreements have been declared illegal. So, the transaction collateral to such a wagering agreement is void.

Exceptions of wagering agreements:

- 1) **Sale and purchase of shares, stock and goods:** Transactions for sale and purchase of stocks shares or for sale and delivery of goods with the intention to give and take delivery are not wagers. If the intention is only to settle the price difference, the transaction is a wager, and so it is void.
- 2) **Competitions' Prize:** Prize competitions that involve the skill, **for example**, the picture puzzle crossword competition, athletic competitions, are not wagering agreements. As per the Prize Competition Act, 1955, the prize in competitions of skill are not wager provided with the prize money does not exceed ₹1,000.
 - A lottery is a game of chance, not skills, and therefore it is a wagering agreement. Similarly, a crossword puzzle in which prizes depends upon matching of competitor solution with a previously prepared solution kept with the editor of a newspaper is a lottery and so wagering transactions.
- 3) **Horse race contributions:** If any contract is made to reward a prize in kind or cash for a value of ₹500 or more is not void.
- 4) **Contract of insurance is not a wagering agreement.** Though, the payment of money by the insurer depends upon a future uncertain event.

Insurance contracts are different from wagering agreements:

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

Contingent Contract

A contingent contract is a contract:

- To do or not to do something if
- some event collateral, to such contract
- does or does not happen.

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

Contracts of insurance are contingent contracts.

Essentials of Contingent Contract:

- 1) The performance of a contingent contract is made depending on the happening or non-happening of some uncertain event.
For instance: A contract to pay a sum of money on the destruction of a premise by the fire is a contingent contract. It is a contingent contract that depends upon the happening of the event.
- 2) Contingency contemplated by the contract must be collateral to the contract. It means that the contract has already arisen, but its performance cannot be demanded unless the collateral events happen or do not happen.
- 3) Such a contract has to be distinguished from a proposal.
For example, an offer to pay a sum of money on the discovery of a missing dog is not a contract. It becomes a contract only when the dog is searched out. It is not a contingent contract. On the other hand, a contract to pay a sum of money on the loss of a ship is a contingent contract. The contract is already there, and the performance can be demanded only on the loss of the ship.

Contingent contracts in different circumstances:

- 1) **Enforcement of contracts contingent on an event happening:**
 - ✓ If the contingent contract depends upon the happening of an event, then it can be enforced only when such an event happens.
For instance: A promises to pay ₹5 lakhs to B in case the house of B is destroyed by fire. Now, in this case, B can recover the amount from A only when his house is destroyed by fire. (Here, "destroyed by fire" is an event on the happening of which amount can be recovered.)
- 2) **Contingent on the happening of specified event within fixed time:**
 - ✓ If the contingent contract depends upon the happening of an event, then it can be enforced only when such an event happens within a fixed (stipulated) time period.
For instance: A promises to pay ₹5 lakhs to B in case the house of B is destroyed by fire in the next 3 months. Now, in this case, B can recover the amount from A only when his house is destroyed by fire in 3 months only. If it destroyed after 3 months, then it cannot be enforced.
 - ✓ If the event doesn't happen in a fixed time period or it becomes impossible to perform in that time period, then the contingent contract cannot be enforced, and it will become void.
For instance: A promises to pay ₹5 lakhs to B in case B's house is destroyed by fire in the next 3 months. Now, in this case, B can recover the amount from A only when his house is destroyed by fire in 3 months only. However, if after a month, B sold the house to C or his house is destroyed by an earthquake, then it is impossible that his house will destroy by fire in the coming time period and therefore contract to pay amount will become void.
- 3) **Performance of contingent contract depends upon on the non-happening of an event:**
 - ✓ If the contingent contract depends upon the non-happening of an event, then it can be enforced only when such an event becomes impossible.

For instance: A agrees to pay B a sum of money if a certain ship does not return. The ship was sunk. The contract could be enforced as the ship sinks. Here the Event is "Return of the ship", and performance of contract depends upon the fact "ship doesn't return", i.e. non-happening of event, and it can be enforced only when it can be proved that in any case, the ship will not return, i.e. event (return of ship) becomes impossible.

4) Performance of contingent contract depends upon the non-happening of an event within a fixed time period:

- ✓ If the contingent contract depends upon the non-happening of an event within a fixed time period, then it can be enforced only when such an event becomes impossible in that fixed time.

For instance: A agrees to pay B a sum of money if a certain ship does not return in the next two weeks. On the third day, the ship was sunk. The contract could be enforced as the ship sinks in the specified time period (i.e. the impossibility of returning of ship arises within the time fixed).

5) When an event on which contract is contingent be deemed impossible if it is the future conduct of a living person:

- ✓ If the event on which contract is contingent is future conduct of a living person and that future conduct is almost impossible, the contingent contract will not be enforceable.

For instance: A agrees to pay B a sum of money if A marries C; C marries D. The marriage of A to C is now to be considered impossible, although it is possible that D may die and that C may afterwards marry A.

6) Contingent contracts on the impossible event:-

- ✓ A contingent contract to do or not to do anything of an impossible event happens is void.
- ✓ The impossibility of the event may be or may not be known to the parties at the time when they entered into their agreement.

For instance:

- X agrees to pay Y ₹1,000 if two straight lines should enclose a space. The agreement is void.
- X agrees to pay ₹1,000 to Y if he draws a tangent line that will not touch any other line. It is not possible; therefore, the agreement is void.

Wagering agreement vs. Contingent contract:

Basis	Wagering Agreement	Contingent Agreement
Meaning	A wagering agreement is a promise to give money or money's worth upon the determination or ascertainment of an uncertain event.	A contingent contract is a contract to do or not to do if some event, collateral to such contract does or does not happen.
Validity	A wagering agreement is void.	A contingent contract is valid.
Interest in the event	In the case of a wagering agreement, the parties to the contract have no interest in the event except winning or losing of the amount.	In a contingent contract, the parties to the contract have a personal interest in the event.
Insurance contracts	Insurance contracts are not wagering.	Insurance contracts are contingent.
Win and loss	In wagering, it is essential that one party will win and another will bear the loss.	In contingent, there is no question of win or loss.
Legality	Wagering agreements can be illegal.	Contingent contracts can never be illegal.

Performance of Contract

By whom a contract may be performed?

The promise under a contract may be performed by the promisor himself or by his agent or his legal representative. The following points are relevant in this regard:

1) Promisor himself:

- ✓ If it was the intention of the parties that the promise should be performed by the promisor himself, the promise must be performed by the promisor.
- ✓ Contracts that involve the exercise of personal skill or diligence of promisor must be and shall be performed by the promisor himself.

2) Agent:

- ✓ Personal consideration is not necessary for the contract except in the case where the performance of the contract requires the personal skills of the promisor.
- ✓ Promisor may employ a competent person to perform it.

3) Representatives:

- ✓ Representatives of the promisor may also perform the contract in case of death of the promisor subject to the condition the contract doesn't require the personal skills of the promisor himself.
- ✓ If the contract requires the personal skills of the promisor, then the contract will become void on the death of the promisor.

4) Third persons:

- ✓ When a promisee accepts the performance of the promise from a third person, he cannot afterwards enforce it against the promisor.
- ✓ It is not necessary that the promisor has authorized the third person to perform. The Third-person may have performed it at his own will.

For instance: A received certain goods from B promising to pay ₹14,000. Later on, A was unable to pay the amount and C, on behalf of A, paid the amount, and A was not aware of the payment. Now the intention of B is to sue A for the amount of ₹10,000. He cannot do so. B is entitled to recover only the balance amount of ₹4,000 from A.

5) Joint promisor's:

- ✓ When two or more persons have made a joint promise, then unless a contrary intention appears from the contract, then the following shall be the consequences:
 - All such persons must jointly fulfil the promise.
 - Joint promisors are jointly and severally liable.
- For example,** the creditor can claim the amount from any of the joint promisors, and in such a case, the joint promisor has the right to claim the other joint promisors. Other joint promisors are not discharged because the creditor has no claim the amount from them.
- If any of them dies, his legal representatives, jointly with the surviving promisors' must fulfil the promise.
 - If all joint promisors' die, the legal representatives of all of them must fulfil the promise jointly.

Quasi Contract

Quasi-contracts are **based on the principle of equity justice and good conscience**. Quasi-contracts intend to prevent unjust enrichment, i.e. enrichment (benefit) of one person at the cost of another.

Generally, the promisor undertakes the duty to perform the contract, or the promisor performs the contract when it is desired by the promise. However, in the case of quasi-contracts obligation to perform the contract is performed by the law upon a person for the benefit of another and even in the absence of a contract. Such cases are known as quasi-contracts.

Types of Quasi Contracts:

1) Supply of necessities:-

- ✓ Supplier is entitled to recover the price from the property of the incompetent person:
 - Where necessities are supplied to a person who is incapable of contracting or
 - to someone whom he is legally bound to support

For instance: A supplies to B necessities suited to B's status in life, A would be entitled to recover their price from B's property. He would also be able to recover the price of necessities supplied by him to his (B's) wife or minor child since B is legally bound to support them. However, if B has no property, nothing would be realizable.

- ✓ The price shall be only of necessities and not of articles of luxury which can be recovered.
- ✓ To establish his claim, the supplier must prove not only those goods were supplied to the person who was minor or a lunatic but also those that were suitable to his actual requirements at the time of the sale and delivery.
- ✓ Similarly, if money has been advanced in like circumstances for the purchase of necessities, its reimbursement can be claimed. Necessaries include services rendered.

2) Payment by the interested person:-

- ✓ A person who is interested in the payment of money pays the money which another is bound to pay, then the person who pays is entitled to be reimbursed by the other.
- ✓ Before this becomes enforceable, the following conditions shall be complied with:
 - The person must be interested in making the payment, but he should not be bound to pay.
 - The defendant should be under a legal obligation to pay.
 - Payment is made by one who is interested in payment.

For instance: B holds land in Bengal on a lease granted by A, Zamindar. The revenue payable by A to the government is in arrears. His (A) land is advertised for sale by the government. The consequences of such a sale will be the cancellation of B's lease. B, in order to prevent the sale and consequent cancellation of his own lease, pays to the government the sum due from A. A is bound to pay the amount to B which he has paid.

3) Liability to pay for non-gratuitous acts:-

- ✓ Where a person lawfully does anything for another person or delivers anything to him, not with an intention to do so gratuitously (gift), and such other person enjoys the benefit, then the person who enjoys benefit is bound to make compensation.
- ✓ The plaintiff must prove the following for a suit to succeed-
 - that he had delivered the thing lawfully;
 - that the intention was not to do so gratuitously, and
 - that the other person enjoyed the benefit.

- ✓ If a person delivers something to another or does something for another, it would be open for the other person to refuse the thing and return it or may refuse the benefit of service. In that case, liability to pay for non-gratuitous acts would not come into operation.

4) Responsibility of finder of goods:-

- ✓ A person who finds goods and takes them into his custody is subject to the same responsibility as a bailee (A person to whom goods are delivered for some purpose and shall return the goods found when the purpose is accomplished), and he is therefore required to take proper care of thing found.
- ✓ He shall not use it for his own use. When the owner is traced, he must return it to the original owner.
- ✓ He must take as much care of goods found as a man of ordinary prudence (reasonable person) would take care of his own goods.

5) Liability for money paid for things delivered by mistake or under coercion:-

- ✓ A person to whom money has been paid or anything delivered by mistake or under coercion must repay to whom money has been paid, or anything delivered by mistake or under coercion must repay or return it.

For instance:

- a) A and B jointly owe ₹1,000 to C. A pay the full amount to C. B who does not know the fact, by mistake pays ₹1,000 again to C. C is bound to pay the amount to B.
- b) A railway company refuses to deliver certain things to the consignee except upon payment of an illegal charge for the carriage. The consignee pays the sum charged in order to take delivery of goods. He is entitled to recover so much of the illegal charge paid by him.



Discharge of Contract

A contract may be discharged either by an act of the parties or by an operation of law in different bases that are set out below:

Discharge by performance:

- ✓ It takes place when the parties to the contract fulfil their obligations within the time and in the manner prescribed.
- ✓ Discharge by performance may be:
 - 1) actual performance or
 - 2) attempted performance.
- ✓ Actual performance is said to have taken place when each of the parties had done what he has agreed to do.
- ✓ However, when the promisor offers to perform his obligations, and the promisee refuses to accept the performance, it amounts to attempted performance or tender.
- ✓ In case of attempted performance, it should be noted that it is unconditional, at the proper time and place, communicated to the proper person, and it is for the whole contract where the contract is indivisible.

Discharge by mutual agreement:

- ✓ As per the Indian Contract Act, 1872, provides 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 be performed.

Discharge by the impossibility of performance:

- ✓ The impossibility may exist from the very start, or it may supervene.
- ✓ Supervening impossibility may take place due to:
 - a) an unforeseen change in the law; or
 - b) the destruction of the subject matter essential to the performance of the contract; or
 - c) the non-existence or non-occurrence of a particular state of things necessary for the contract; or
 - d) some person incapability; or
 - e) the declaration of war.

Impossibility of performance:

- ✓ It may be impossible the time when the agreement is made, or the contract becomes impossible or unlawful subsequent to the formation of the contract, and thus the contract becomes void.
- ✓ If subsequent to the formation of the contract, it becomes impossible or becomes unlawful, this is known as a subsequent impossibility. "An agreement to do an impossible act is void". A contract after the contract is made impossible or becomes unlawful the contract becomes void when the act becomes impossible or unlawful".

- 1) **Impossibility existing at the time of contract:** When the parties agree upon doing something which is impossible, the agreement would be void. The fact of impossibility may or may not be known to the parties.
 - ✓ **If known to the parties:** An agreement known to the parties is impossible of being performed. The agreement is void.

For Instance: B promise to pay A sum of ₹5,000 if he is able to swim across the Indian ocean from Bombay to Aden within a week. Both the parties are certain that the act is impossible to perform. Therefore, the agreement is impossible and is void.

- ✓ **If unknown to the parties:** Where both the promisor and the promisee are ignorant of the impossibility of performance, the agreement is void.
- ✓ **There can be another impossibility:** One party is unaware of the impossibility, whereas another party is aware of the impossibility.
For instance: A, who is already married to C, contracts to marry B, who knows nothing of A's earlier marriage. Please note that A is subject to a law which prohibits another marriage. A, therefore, must make compensation to B for the loss caused to her by the non-performance of his promise.

2) **Subsequent impossibility:** When the performance of promise becomes impossible or illegal by the happening of an event or change of circumstances, the contract becomes void. Following are the circumstances when the contract becomes void.

a) **Destruction of the subject matter:**

- ✓ When the subject matter of a contract subsequent to its formation is destroyed but without any fault of the parties to the contract, the contract is discharged.
For instance: A let a music hall to B for series of concerts for certain days. The hall was accidentally burnt down before the specified dates. The contract becomes void.

b) **Non-existence or non-occurrence of a particular state of things:**

- ✓ Sometimes a contract is entered into between two parties on the basis of the continued existence of particular state of things, and if there is a change in the state of things that formed the basis of the contract, the contract becomes void.
For instance: A hired a ship from B for witnessing a coronation procession of King Edward VII. B knew the purpose of A, but the procession was cancelled due to the illness of the king. A was excused from paying the rent as the procession was the basis of a contract. Its cancellation discharged the contract. This is often called: the frustration of the contract.

c) **Incapacity to perform a contract of personal services:**

- ✓ A party to a contract is excused from performance if that person perishes or becomes too ill to perform and when the performance of the contract depends upon the existence of a given person.

d) **Change in law:**

- ✓ Subsequently to the formation of a contract, a change of law takes place, or the government takes some power under some ordinance for a special act making it impossible for individuals to perform the contract.
For instance: A agreed to transport goods of B from one place to another subsequent to the formation of the contract. Trucks of A were requisitioned by the government under some statutory power. The contract was discharged.

e) **Government or legislative intervention:**

- ✓ A contract will be dissolved when a legislative or administrative intervention has prevented the operation of the contracts from the fulfilment of specific work.
For instance: - Vendor agrees to sell the land to B, but later on, the land of the vendor is ceased by the government. Now, in this case, the vendor would be discharged and not liable to give compensation to B.

f) **Commercial impossibility:**

- ✓ Law has to adapt itself to economic changes. So the contract is not discharged because expected higher profits are not realized.
- ✓ The marginal price rise may be ignored. But when prices escalate out of all proportion that could have been reasonably expected by the parties and make performance impossible, the law would have to declare that the contract has become impossible.

Following will never be considered as a supervening impossibility:

1) Difficulty in performance:

- ✓ Contracts are not discharged by the fact that performance has become difficult.

For instance: A sold Finland timber to B to be supplied between July and September. Before timber was supplied, war broke out in the month of August. As a result, the transport was disorganized. A could not bring the timber from Finland. Difficulty in getting the timber from Finland did not relieve A from the obligation of supplying the timber.

2) Impossibility due to failure of the third person:

- ✓ When a contract could not be performed because of the default of a third person on whose work the promisor relied, there is no discharge.

For instance: A agreed to sell to B a specified quantity of cotton to be manufactured by the particular mill for the completion of the delivery. A could not fulfil his obligation as the mill failed to produce the goods. Held B was entitled to damages.

3) Sticks lockouts and civil disturbances: Such events do not discharge a contract unless the parties had specifically agreed in this regard at a time when the contracts were made.

4) Failure of one of the objects:

- ✓ Contracts are made for several objects, and if one of the objects has failed, the contract is not discharged.

For instance: A agreed to let out a boat to B (a) for viewing a naval review on the occasion of the coronation of Edward VIII and (b) to sail around the fleet. The king fell sick, and the naval review was abandoned, but the fleet was assembled. The boat could be used to sail around the fleet. Contracts were not discharged.

5) Discharge by lapse of time:

- ✓ A contract should be performed within a period as specified and prescribed by the law of limitation.
- ✓ If it is not performed and if no action is taken by the promisee within the specified period of limitation, he is deprived of remedy at law.

For instance: If a creditor does not file a suit against the buyer within three years for the recovery of the price, the debt becomes time-barred. Consequently, it is not recoverable.

6) Discharge by operation of law:

- ✓ A contract may be discharged by operations of law which may include the death or by insolvency etc., of parties to the contract.

7) Discharge by breach of contract:

- ✓ Breach of contract may be an 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 an actual breach.
- ✓ When on the other hand, a person repudiates a contract before the time for its performance has arrived, he is deemed to have committed an anticipatory breach.
- ✓ One of the parties to a contract breaks the promise. The party injured has not only a right of action for damages, but he is entitled to take the contract as rescinded, and he is also discharged from performing his part.

Breach of Contract

Anticipatory Breach of Contract:

- ✓ When the promisor refuses his promise and signifies his unwillingness to perform the contracts before the time for performance, it is called the anticipatory breach of contract.
- ✓ A promisee has alternative rights.
 - Either the promisee may put an end to the contract; or
 - He may keep the contract alive up to the time when the contract is to be performed.
- ✓ But the amount of damages in one case may be different from the other case.

For instance: Suppose X agrees to sell to Y a certain quantity of wheat at ₹100 per quintal to be delivered on the 3rd March. On the 2nd February, X gives notice expressing his unwillingness to sell wheat. The price of wheat on the date is ₹110 per quintal. If Y treats the contracts as repudiated on 2nd February to which he is entitled to do at his option, then he would be able to recover damages at ₹10 per quintal being the difference between the market price on 2nd February ₹110 and the contract price of ₹100 instead of taking action forthwith he can keep the contract alive till the 3rd March. In the time the price increases to ₹125 per quintal on the date. Y would be able to recover damages at ₹25 per quintal.

There shall be other consequences as well. Y can keep the contract alive despite X's unwillingness, as indicated on 2nd February. In the intervening period between 2nd February to 3rd March, 'Private Sale' of wheat is prohibited by the government. The contract would become void, and Y would not be able to recover any damages whatsoever. When the promisee keeps the contracts keeps the contracts alive, he does so not only for his own benefit but also for the benefit of the promisor.

Actual breach of contract:

- ✓ An actual breach of contract is a case of refusal to perform on the scheduled date. The party who is injured by the breach of a contract may bring an action for damages.
- ✓ Damages mean monetary compensation for the loss caused to the injured party.
- ✓ Where the one party to the contract refuses to perform, the other party can take the damages
 - Which naturally arose in the usual course of things such as breach, or
 - Which the parties knew when they made the contract to be likely to result from the breach of it.
- ✓ Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach. In estimating the loss or damage, the means which existed for remedying the inconvenience caused by the non-performance of the contract must be taken into account.

As a result of the breach of the contract, the following kinds of damages are payable to the extent and in the circumstances and subject to the condition of estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by non-performance of the contract must be taken into account.

1) Ordinary Damages:

- ✓ These are damages that naturally arise in the usual course of things.
For instance: A promises to deliver 1,000 bags of rice at ₹100 per bag on 10th December. On the due date, he refuses to deliver. On the due date, the market price is ₹110, so the ordinary damages will be ₹10,000, i.e. 1,000 bags multiplied by ₹10, the difference between the market and the contract price. This damages the aggrieved party can claim and can as a matter of right. As a result of the breach of contract, ordinary damages arise in the ordinary course of business.

2) Liability for special damages:

- ✓ Special damages are for those losses which arise on account of unusual circumstances.
- ✓ They are not recoverable unless the special circumstances were brought into the knowledge of the defendant.

- ✓ So, the possibility of the special loss was in the knowledge of the parties when the contract was made.

For instance: A is a builder. He makes a contract with B and agrees to erect and furnish a house for B by 1st January 2021 so that B may take possession of the house to C with whom B has contracted to let. A was informed of the contract between B and C. A builds the house but builds so badly that it falls down before 1st Jan 2021 and has to be rebuilt by B. as a consequence, B not only loses the rent which he could have received from C but makes the payment to C by way of compensation for the breach of contract. Thus, A has to make the following payments:

- Cost of building the house.
- For the rent lost.
- Compensation paid to C.

3) Liability to pay inductive or exemplary damages:

- ✓ These damages may be awarded in two cases:
 - i) For breach of promise to marry; and
 - ii) For wrongful dishonour of customer's cheque by a banker.
- ✓ In a breach of promise to marry, exemplary damages may be awarded to the other party taking into consideration the injury caused to his or her feeling.
- ✓ The amount of damages recoverable by the drawer of cheque from his banker in case of wrongful dishonour of his cheque may be quite heavy depending upon the loss of credit and reputation suffered by the customer of the banker on that account.
- ✓ They are awarded to punish the defendant so as to prevent the defendant from committing this again and not solely with the idea of awarding compensation to the plaintiff.

4) Liability to pay nominal damages:

- ✓ Nominal damages are awarded where the plaintiff has proved that there has been a breach of contract. But he has not, in fact, suffered any real damage.
- ✓ These damages are not claimed with a view to establishing the right of a person to the breach of contract.
- ✓ The amount may be rupee or so, a very nominal amount of damages.

5) Damages for deterioration caused by delay:

- ✓ In case of deterioration is caused to goods by delay, damages can be recovered from the carrier.
- ✓ The word deterioration does not only imply physical damage to the goods, but it also means loss of profit caused as a result of loss of special opportunity for sale.

Penalty and Liquidated Damages

The parties to a contract may provide beforehand the amount of compensation payable in the case of failure to perform the contract. In such a case question arises whether the Court will accept these figures as the measure of damages.

English law:

- ✓ According to English law, the sum so fixed in the contract may be interpreted as either liquidated damages or as a penalty.

Liquidated Damages:

- ✓ If the sum fixed in the contract represents a genuine pre-estimate by the parties of the loss, which would be caused by a future breach of the contract, it is liquidated damages. It is an assessment of the amount which, in the opinion of the parties, will compensate for the breach. Such a clause is effective, and the amount is recoverable.

Penalty:

- ✓ Where the sum fixed in the contract is unreasonable and is used to force the other party to perform the contract, it is a penalty. Such a clause is disregarded, and the injured party cannot recover more than the actual loss.

Indian Law:

- ✓ Indian law makes no distinction between 'penalty and 'liquidated damages.' The Courts in India award only reasonable compensation not exceeding the sum so mentioned in the contract.
- ✓ As per the provision of the Indian Contract Act, 1872, if the parties have fixed what the damages will be, the courts will never allow more. But, the court may allow less.
- ✓ A decree is to be passed only for reasonable compensation not exceeding the sum fixed by the parties. Thus, a person complaining of breach of contract to get reasonable compensation and does not entitle to realise anything by way of penalty.

For instance: A contracts with B that if A practices as a surgeon in Kolkata, he will pay B ₹50,000. A practice as a surgeon at Kolkata, B is entitled to such compensation not exceeding ₹50,000, as the court considers reasonable.

Exception:

- ✓ Where any person gives any bond to the Central or State Government for the performance of any public duty or act in which the public is interested, on the breach of the condition of any such instrument, he shall be liable to pay the whole sum mentioned therein.

For instance: A borrows ₹10,000 from B and gives him a bond for ₹20,000 payable by five yearly instalments of ₹4,000 with a stipulation that in default of payment, the whole shall become due. This is a stipulation by way of penalty.

The distinction between Liquidated damages and penalties:

Basis	Liquidated Damages	Penalty
Meaning	Liquidated damages represent a sum fixed or ascertained by the parties to the contract in case of a loss due to breach of the contract.	The penalty means the sum mentioned in the contract at the time of its making. It is usually a high sum to ensure the performance of the contract.
Intention	The intention for liquidated damages is the recovery of damages incurred due to a breach of the contract.	The intention of the penalty is to ensure the performance of the contract. It acts as a deterrent to avoid performance.

Occurrence	Liquidated damages occur when parties to a contract conscientiously try to make a pre-estimate of the loss which might happen due to the breach of contract.	The penalty occurred when parties made no attempt to estimate the loss but with the sole object of coercing the offending party to perform the contract
Example	X contracts with Y to deliver the possession of a house under construction within a period of 6 months, failing which he would pay the monthly rental of Y. The monthly rent payable is the liquidated damage	M contracts to deliver 100 units of diesel to N on a fixed day, failing which he shall pay ₹10 Lakhs. Neither the price of diesel nor loss on failure of delivery would amount to ₹10 Lakhs. Hence, it is a penalty.

Other Remedies for Damages

Rescission of contract:

- ✓ When a contract is broken by one party, the other party may treat the contract as rescinded.
- ✓ In such a case, he is absolved of all obligations under the contract and is entitled to compensation for any damages that he might have suffered.

Suit upon Quantum Meruit:

- ✓ The phrase quantum meruit literally means "as much as earn" or according to the quantity of work done".
- ✓ The claim for Quantum meruit may arise in the following cases:
 - a) When a person has begun the work, and before he could complete it, the other party terminates the contract or does something which makes it impossible for the other party to complete the contract, he can claim the amount for the work done.
For instance: C engaged B for writing a book to be published for B. Com students. Later on, C refused to publish the book. In this case, B can recover on Quantum meruit for the work he had done under the contract.
 - b) Where the work has been done and accepted under a contract that is subsequently discovered to be void. In such a case, the person who has performed the part of the work is entitled to recover the amount for the work done. The party who receives and accepts the benefits under such a contract must make compensation to the other party.
For instance: A was appointed as a manager in XYZ Ltd. Later on, it is found that his appointment made by directors was beyond the power of directors. Now, in this case, A can recover the amount from XYZ Ltd as much as he serves.
 - c) A person does some act or delivers something to another person with the intention of receiving payments for the same [i.e. non-gratuitous act]. In such a case, the other person is bound to make the payment if he accepts such services or goods or enjoys their benefits.
For instance: Where Mr A, a tax consultant, gives consultancy services to his friend, can recover the amount of consultancy from a friend.
 - d) Where the contract is divisible and the party performs part of the contract and refuse to perform the remaining part. In such a case, the party in default may sue the other party who has enjoyed the benefits of the part performance.
 - e) Where an indivisible contract is performed but badly, in that case, the party who had performed the contract can recover the amount for the work performed, but the other party for whom the contract is performed may demand the deduction in same.
For instance: A constructed the house of B but so badly that B refused to pay the amount to A, but a deduction for poor performance in work can be made.

Suit for Special performance:

- ✓ There can be cases where damages may not be the remedy.
- ✓ In such a case, the Court, in a suit for specific performance, may direct the party who is guilty of breach of contracts to carry out his promise as per the terms and conditions of the contract. This is the remedy by way of specific performance.

For instance: where A promises to deliver the medicines to provide the same, in that case, the Court may order, A to supply medicine instead of compensating by monetary means to B.

Suit for an injunction:

- ✓ Where the party is in breach of a term of the contract and at the same time he is doing something which he has promised not to do.
- ✓ Then, the Court may issue an order of injunction which can restrain him from doing what he is promised not to do.

For instance: A agreed to sing at B's palace during a certain period and not to sing elsewhere during that period. Afterwards, A made contract with C to sing at his theatre and refused to perform the contract with B. A could be restrained by order of injunction from singing for C.

Effect of Refusal to Accept Offer of Performance

According to the provision of the Indian Contract Act, 1872, where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, then:

- the promisor is not responsible for non-performance,
- nor does he thereby lose his rights under the contract.

However, every such offer or performance by the promisor must fulfil certain conditions:

- It must be unconditional.
- It must be made at a proper time and Place: - It must be made under such circumstance that the whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do.
- If the offer is an offer to deliver anything to the promisee, then the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequence as an offer to all of them.

Effect of a refusal of the party to perform the promise

- ✓ According to the provision of the Indian Contract Act, 1872, 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 or may decide to continue with the contract.
- ✓ **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 the next two months, and B engages to pay her ₹1,00,000 for each night's performance. On the sixth night, A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

Appropriation of Payments

When a debtor has several distinct debts to one person who makes a payment that is not sufficient to discharge all the debts, the question arises as to which particular debts are to be applied. Provisions of appropriation are underlying:-

Appropriation by the debtor:

- ✓ Where a debtor who owes several distinct debts to one person makes payment to him with express intimation or under circumstances which imply that the payments to be applied to the discharge of some payment of accepted must be applied accordingly.
- ✓ **Example:** A owes B among other debts ₹1000 upon a promissory note which falls due on 1st June. He owes B no other debt of that amount. On 1st June, A pay to B ₹1000. The payment is to be applied to the discharge of the promissory note. A owes to B, among other debts, the sum of ₹567. B writes to A and demands payment of this sum. A sends to B ₹567. This payment is to be applied to the discharge of the debts of which B had demand payment.

Appropriation by the creditor:

- ✓ Where the debtor has omitted to intimate, and there is no other circumstance indicating to which debts the payment is to be applied, the creditor may apply it at his discretion to any lawful debt which is actually due and is payable to him from the debtor.
- ✓ It is not important that its recovery has been barred or has not been barred by the law of limitation of the suit.
- ✓ The essence of the section when the debtor makes payment without any appropriation, the creditor may use the payment at his discretion to wipe out any debt which is due to him.

Appropriation of payment where neither party appropriates:

- ✓ Neither party makes any appropriation. The payment shall be applied in discharge of the debts in order of time. It does not matter whether they are or are not barred by the law of the limitations of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionately.
- ✓ **Example:** There are two debts, one of ₹500 and the other of ₹700. Both debts were incurred on the same date. The debtor pays ₹600. Neither party makes the appropriation, then a sum of ₹250 should be applied in discharge of the first debt and balance of ₹350 in the discharge of the second debt.

Contracts that need not be performed

There are certain circumstances when the contract need not be performed, maybe the case of novation, rescission and alteration and remission. The essence is that parties of their own validation made contracts. Their own violation they can substitute the contract for any other contract.

If the parties to a contract agree to substitute a new contract for it or to rescind or to alter it, the original contracts need not be performed.

Effect of Novation:

- ✓ Where the parties of the contract agree to substitute the existing contract for a new contract, it is called novation. The effect of novation is that the old contract is discharged, and consequently, it need not be performed, and a new contract emerges.
- ✓ It involves the substitution of a new contract in place of the old, and the new contract should be valid and enforceable; the consideration is the discharge of the old contract. Novation can take place only by mutual agreement between the parties.
- ✓ **For example,** A owes B ₹100, B and C agree that C will pay B, and he will accept ₹100 from C in lieu of the sum due from A. A's liability shall come to an end, and the old contract between A and B will be substituted by the new contract between B and C.

Effect of Rescission:

- ✓ A contract is also discharged by rescission when the parties to a contract agree to rescind it; the contract need not be performed. However, in the case of rescinding, only the old contract is cancelled, and no new contract comes into existence, as happens in the case of novation.
- ✓ However, both in the novation and in rescission, the contract is discharged, and it is discharged by mutual agreement.

Effect of Alteration:

- ✓ Alteration of contract means the parties to a contract agree to alter it. The original contract is rescinded, and it need not be performed.
- ✓ The terms of the contract may be so altered by mutual agreement that the alteration may have the effect of substituting a contract with other conditions in place of the contract with older conditions.
- ✓ The distinction between novation and alteration is very slender. In essence, in the case of a novation, the contract is substituted. In case of alteration, conditions are substitute.

Difference between Novation and Alteration:

Basis	Novation	Alteration
Meaning	Novation is the substitution of an old contract by a new contract by mutual agreement between the parties.	Alteration means a change in terms of the existing contract by mutual agreement between the parties.
Involvement of the third party	The parties may either remain the same, or a third party may be introduced.	Parties remain the same. No third party is involved.
Performance	Novation rescinds the original contract. As a result, the original contract need not be performed.	The alteration does not rescind the original contract as the same original contract in a modified manner is performed.

Promisee may waive performance of promise:

- ✓ Every promise may dispense with or remit wholly, or in part, the performance of the promise made to him or may extend the time for such performance made to him or may extend the time for such performance or may accept instead of its any satisfaction which he thinks fit.
- ✓ **Example:**
 - a) A promise to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.
 - b) A owns B ₹5000. C pay to B ₹1000 and B accept them in satisfaction of his claim on A. the payment in discharge of the whole debts whatever may be the amount the effect of the provision is that the party who has the right to demand the performance of a contract may
 - (i) remit or dispense with it, wholly or in part, or
 - (ii) extend the time for performance. The time can be extended only for the benefit of the promisor and for the benefit of the promisee or
 - (iii) accept any other satisfaction instead of performance.
 - c) **Example:** Suppose A owns B ₹2000. B accepts ₹1000 from A at the place and time, which show that he is accepting instead of ₹2000, the debt of B ₹2000 is discharged.
- ✓ In the case of remission, no consideration has required the promise can dispose of with performance without consideration.



Meaning	Novation	Assignment
Novation is the substitution of a new contract for an old contract by a mutual agreement between the parties.	Novation is the substitution of a new contract for an old contract by a mutual agreement between the parties.	Assignment means a transfer of rights in the contract from one party to another party without the consent of the other party.
Involvement of the third party	The contract may either remain the same or a third party may be introduced.	Parties remain the same but their duties are involved.
Performance	Performance is required in novation.	The obligation does not transfer to the assignee as the original contract is modified.

Time and Place for the Performance of Promise

Case 1 - Time for the performance of the promise when no time is specified:

- ✓ Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

For instance: If the delivery of goods is offered, say after 8.30 pm, the promisee may refuse to accept delivery, for the usual business hours are over.

Case 2 - Time and Place for the performance of the promise, where no place is specified:

- ✓ When a promise is to be performed on a specific day, and the promisor has undertaken to perform it without application by the promisee, it is the duty of the promisor to ask for the place of the delivery or to fix the reasonable place.

Case 3 - When time is fixed and the application for performance to be made by the promisee:

- ✓ When a promise is to be performed on a specific day, and the promisor has not undertaken to perform it without application by the promisee, the promisee must apply for performance at a proper place and within the usual hours of business.

Case 4 - Time is fixed, but the application for the performance is not made by the promisee:

- ✓ When a promise is to be performed without application by the promisee, and no place is fixed for its performance, the promisor has to perform his obligation under the usual business hour.

For instance: A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it and must deliver it to him at such Place.

Case 5 - When the performance of the time, the place and day is fixed:

- ✓ The performance of any promise may be made in any such manner or at any time which the promisee prescribes.

Performance of Reciprocal Promises

General observations:

- ✓ A contract of an act and a promise or it may consist of two promises on being the consideration for others.

For instance: When A sells 500 quintals of rice to B, and B promise to pay the price after a month, the contract would consist of a performance by A and a promise made by B. On the other hand, if A promise to deliver 500 quintals of rice and B promises to pay the price on delivery, the contract would consist of two promisors, one made by A to B and the other given by B to A. Such promises are called reciprocal promises. Here, the promise of A is the consideration for the promise of B and vice-versa.

Simultaneously performance of the reciprocal promise:

- ✓ Reciprocal promises may have to be performed simultaneously or one after the other.
- ✓ **For example,** where A promises to deliver goods and B pays on delivery of goods, both the promise need to be performed simultaneously.

Order of performance is expressly fixed:

- ✓ When the order of performance of the reciprocal promise is expressly fixed by the contract, it must be performed in that order.

For instance: A and B contract, A shall build a house for B, and B can be called upon to pay for it. Any breach by A would relieve B of the obligation to fulfil his promise and enable B to avoid the contract.

Order of performance by implication:

- ✓ The order of performance is not indicated expressly.
- ✓ Then, the contract shall be performed in the order in which the nature of the transaction required.

Effect of one party preventing another from performing the promise:

- ✓ If one party prevents the other party from performing his promise, the contract becomes voidable at the option of the party so sustains as a result of non-performance of the contract.

For instance: In a contract for the sale of standing timber, the seller has to cut and cord it. The buyer is to take it away and pay for it. The seller cords only a part of the timber and neglects to cord the rest. The buyer may avoid the contract & claim compensation from the seller for any loss which he may have sustained for the non-performance in the contract.

Reciprocal to do certain things that are legal and also some other things that are illegal:

- ✓ Person reciprocally promises first to do a certain thing which is legal and secondly to do certain other things which is illegal the first set of promise is a contract. The second set to promise is a void agreement.

For instance: A and B agrees that A shall pay ₹1000, for which B shall afterwards deliver to A either the rice or smuggled opium. To deliver the rice is a valid contract. To deliver opium is void.

Effect of failure to perform the contract on time

Effect of failure of a contract in which time is essential:

- ✓ When a party to a contract promises to do a certain thing at or before the specified time and fails to do any such thing at or before the specified time, the contract becomes voidable at the option of the promisee.
- ✓ The promisee can either cancel the contract or accept the performance.
- ✓ If the promisee accepts the performance, he cannot claim the compensation.

Effect of failure of a contract when time is not essential:

- ✓ If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time.
- ✓ Still, the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Succession and Assignment

Succession:

- ✓ When the benefits of a contract are succeeded to by process of law, then both burden and benefits attaching to the contract may sometimes devolve on the legal heir.
- ✓ **For example**, if a son succeeds to the estate of his father after his death, he will be liable to pay the debts and liabilities of his father owed during his lifetime. But, if the debts owed by his father exceed the value of the estate, then the liability extends to the value of the property inherited by him.

Assignment:

- ✓ Assignment means the transfer of contractual rights or liability by a party to the contract to some other person who is not a party.
- ✓ **For example**, if A owes B ₹500, and B owes C a like amount, B has the right to receive from A and is under liability to pay C. B can ask A to pay directly to C, and if A accepts, that will be an assignment of B's right to C.

Nature of Contract

Contract = Agreement + Enforceable by law

Agreement: An offer, when accepted, becomes the agreement. In other words, an agreement is Offer/Proposal + Acceptance. Examples:

- A agrees with B to sell the car for ₹2 lakhs to B. Here, A is under obligation to give the car B, and B is under obligation to pay ₹2 lakhs to A.
- An obligation to maintain wife and children, an order of the Court of law etc., are status obligations and outside the scope of the Indian Contract Act, 1872.

Difference between Agreement and Contract:

Basic	Agreement	Contract
Meaning	Every promise or set of promises forming consideration for each other is known as an agreement.	An agreement that is enforceable by law is known as a contract.
Scope	The wider term includes both social and legal agreements.	The narrow term as contract includes only legally enforceable agreement.
Nature	All agreements are not contract.	All contracts are agreements.
Legal obligation	May not create a legal obligation.	Creates a legal obligation.

Enforceability of law:

- ✓ Consideration
- ✓ Free consent
- ✓ Parties shall be competent to contract
- ✓ Lawful consideration and object
- ✓ Legal possibility of performance
- ✓ Not specifically declared to be void.

Types of contract:

- ✓ On the basis of validity or enforceability.
- ✓ On the basis of formation.
- ✓ On the basis of performance.

On the basis of validity or enforceability

- 1) **Valid contract:** An agreement that is bounding and enforceable is a valid contract.
- 2) **Void contract:** An agreement that ceases to be enforceable by law becomes void when it ceases to be enforceable. In simple words, a contract cannot be enforceable by a court of law.
- 3) **Voidable contract:** An agreement that is enforceable by law at the option one or more parties thereto, but not at the option of other or others is a voidable contract.
- 4) **Illegal contract:** A contract which law forbid to be made. Contracts collateral with an illegal contract is void. All the illegal contracts are void, but all the void contracts are not illegal.
- 5) **Unenforceable contract:** Where a contract is good in substance but because of some technical defects (like absence in writing, barred by limitation etc.) cannot be sued.

On the basis of the formation

- 1) **Express contract:** A contract which is made by the words either spoken or written.
- 2) **Implied contract:** A contract that comes into existence by either the implication of law or implication of action. According to the Indian contract Act, 1872, when proposal and acceptance are made otherwise, then in word. The promise is said to be implied.

- 3) **Tacit contracts:** It falls within the scope of implied contracts. Tacit mean silent. When the contract is inferred through the conduct of parties without any words spoken or written, it is known as a tacit contract.
Example: cash withdrawn from ATM, sale of goods by fall of hammer.
- 4) **Quasi-contract:** It is created by law under certain circumstances. Example: obligation of the founder of goods to return to the true owner.
- 5) **E-contract:** When a contract enters into two or more persons using electronic means such as e-mails is known as e-contracts. It is known as mouse click contract, cyber contract and electronic data interchange contract.

On the basis of performance

- 1) **Executed contract:** If the consideration for the contract has been given by both parties.
For example: When a grocer sells sugar on cash payment, it is executed contract because both parties have done what they were to do under the contract.
- 2) **Executory contract:** If the obligation for the contract is to be performed in future, it is known as an Executory contract. It may be two types:
 - **Unilateral contract:** When one party perform his obligation, and the other party's obligation is outstanding.
 - **Bilateral contract:** When the obligation is outstanding on the part of both parties.



Perfect Practice



Indian Contract Act, 1872

Q. No.		Marks
✓ 1	State the exceptions to the rule "An agreement without consideration is void." (ICAI-SM, Jan. 2021, May 2018, RTP Nov. 2019)	6
Ans.	As per the provision of the Indian Contract Act, 1872, the agreement without consideration is not valid. But, in certain conditions, an agreement without consideration is valid and enforceable: 1) Natural love and affection: There is no consideration required if the agreement is made by <u>natural love and affection</u>. The contracts, in this case, shall be valid if: i) There is an agreement in <u>writing</u>. ii) It is <u>registered</u>. iii) It is made on account of <u>natural love and affection</u>. iv) It is made between parties standing in <u>near relation</u> to each other. 2) Compensation for past voluntary services: When the promisor promises to pay for an act done by a promisee in the <u>past</u> for the promisor, the act so performed by a promisee for the promisor shall become a consideration for the amount to promised. 3) Promise to pay the time-barred debt: As per the Limitations Act, 1963, if a debt is not claimed within three years, it cannot be recovered after that. But, a promise to pay the <u>time-barred debt</u> is enforceable. The promise should be in writing and signed by the person making it or by his authorized agent. The promise maybe for the whole or any part of the debt. 4) Agency: No consideration is necessary to create an <u>agency</u>. An agent can be appointed without consideration, and the acts are done by him shall be valid. 5) Completed gift: Gift made does not require any consideration. It is immaterial whether or not the party stands in the <u>near relationship</u>. 6) Bailment of Goods: <u>Bailment</u> of goods created required no consideration.	1/4 1/4 1/4 1/4 1 1 1 1
2	[Sufficient] "To form a valid contract, consideration must be adequate". Comment. False (ICAI-SM, RTP May 2021, RTP Nov. 2020)	2
Ans.	As per the provision of the Indian Contract Act, 1872, a contract should <u>be supported by consideration</u>. So long as consideration exists, the Courts are <u>not concerned about its adequacy</u>, provided it is of some value. The adequacy of the consideration is for the parties to consider at the time of making the agreement, not for the Court when it is sought to be enforced. Consideration must, however, be something to which the law attaches value though it <u>need not be equivalent in the value to the promise made</u>. An agreement to which the <u>consent of the promisor is freely given is not void</u> merely because the consideration is inadequate, but the inadequacy of the consideration may be taken into account by the Court in <u>determining the question of whether the consent of the promisor was freely given</u>.	1 1

3	"Mere silence is not fraud", but there are some circumstances where the "silence is a fraud". Explain the circumstances as per the provisions of the Indian Contract Act, 1872.	7
Ans.	(ICAI-SM, May 2019, May 2018) As per the provision of the Indian Contract Act, 1872, fraud means and includes any of the following acts committed by a party to the contract: - The suggestion to a fact which <u>is not true</u> by one who does not <u>believe it to be true</u>. - The <u>active concealment</u> of the fact by one having knowledge or belief of the fact. - A promise made <u>without any intention</u> of performing it. - Any other act fitted to <u>deceive</u>. - Any such act as to law specifically declared to be <u>fraudulent</u>. "Mere silence is not fraud", but there are some circumstances where the "silence is a fraud": Duty to speak, and the person remains silent: ✓ The duty to speak arises when one party <u>completely depends</u> upon another party. ✓ The duty to speak arises when one contracting party <u>possesses trust and confidence</u> in another party. Where silence is equal to speech: For example, the seller sells the article. The buyer asks if you do not deny, I shall presume the article is good. The seller remains silent. Here, silence is equal to speech which indicates that the article is good. If the article turns out to be defective, then this amounts to fraud.	1 1 1 1 1 1/2 1/2 1
4	Mr Shyam owned a motor car. He approached Mr Vikas and offered to sell his motor car for ₹3 00,000. Mr Shyam told Mr Vikas 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 Vikas agreed with the proposal of Mr Shyam and took delivery of the car by paying ₹300,000 to Mr Shyam. After ten days, Mr Vikas came back with the car and stated that the claim made by Mr Shyam 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 Vikas can rescind the contract in the above ground.	4
Ans.	(RTP Nov. 2020, RTP May 2021, ICAI-SM) As per the provision of the Indian Contract Act, 1872, when consent to an <u>agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable</u> at the option of the party whose consent was so caused. A party to the contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed and that he shall be put in the position he would have been if the <u>representation made had been true</u>. Facts of the case: Mr Shyam owned a motor car. He approached Mr Vikas and offered to sell his motor car for ₹3,00,000. Mr Shyam told Mr Vikas 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 Vikas agreed with the proposal of Mr Shyam and took delivery of the car by paying ₹3,00,000 to Mr Shyam. After ten days, Mr Vikas came back with the car and	1 1 1

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Ans.	1) As per the provision of the Indian Contract Act, 1872, when a contract consists of reciprocal promises to be simultaneously performed, no promisor needs to perform his promise unless the promisee is ready and willing to perform his reciprocal promise. If one of the <u>promises is not performed, the other too need not be performed.</u> Mr S is not bound to deliver goods to Mr R since payment was not made by him at the time of delivery of goods. 2) As per the provision of the Indian Contract Act, 1872, where there is an agreement, <u>made in writing and signed by the debtor or by his agent</u>, to pay wholly or in part a time-barred debt, the <u>agreement is valid and binding even though there is no consideration.</u> The loan given by Mr Y to Mr G has become time-barred after that, Mr G agreed to make payment of a total amount to Mr Y. Therefore, the contract is enforceable by the law. 3) Where there is a breach of contract for the supply of a unique item, mere monetary damages may <u>not be an adequate remedy for the other party.</u> In such a case, the Court may give the order for <u>specific performance and direct the party in breach to carry out his promise</u> according to the terms of the contract. In this case, the Court may direct A to supply the item to B because the refusal to supply the agreed unique item cannot be compensated through money.	1 1 1
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 of ₹10 lakhs as consideration to Mr S to induce him to retire. Mr S refused at first instance, but when he evaluated the amount offered as consideration as 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 the provision of the Indian Contract Act, 1872. (Jan. 2021, RTP May 2021)	3
Ans.	As per the provisions of the Indian Contract Act, 1872, <u>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 opposed to the public policy and hence, shall be void.</u> Facts of the case: 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 of ₹10 Lakhs as consideration to Mr S in order to induce him to retire. Mr S refused at the 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 to retire from his office. Conclusion: In the present case, the agreement between Mr S and Mr D is void as Mr D is inducing Mr S to retire from his post in order get the post for himself.	1 1 1

✓10	Distinguish between wagering agreement and contract of insurance. (Any two points)	(Nov. 2020, May 2018)	2																								
Ans.	(Any two points)		1 mark for each point (Do any two)																								
	<table border="1"><thead><tr><th>Basis</th><th>Wagering Agreement</th><th>Contracts of Insurance</th></tr></thead><tbody><tr><td>Meaning</td><td>It promises to pay money or money's worth on the happening or non-happening of an uncertain event.</td><td>It is a contract to indemnify the loss.</td></tr><tr><td>Consideration</td><td>There is no consideration between the two parties. There is just gambling for money.</td><td>The crux of an insurance contract is a mutual consideration (premium and compensation amount).</td></tr><tr><td>Insurable Interest</td><td>There is no property in case of a wagering agreement. There is betting on other's life and properties.</td><td>The insured party has an insurable interest in the life or property sought to be insured.</td></tr><tr><td>Contract of Indemnity</td><td>The loser has to pay the fixed amount on the happening or non-happening of an uncertain event.</td><td>Except for life insurance, the contract of insurance indemnifies the insured person against loss.</td></tr><tr><td>Enforceability</td><td>It is void and unenforceable agreement.</td><td>It is valid and enforceable.</td></tr><tr><td>Premium</td><td>No such logical calculations are required in the case of a wagering agreement.</td><td>Calculation of premium is based on a scientific and actuarial calculation of risks.</td></tr><tr><td>Public Welfare</td><td>They have been regarded as against the public welfare.</td><td>They are beneficial to society.</td></tr></tbody></table>	Basis	Wagering Agreement	Contracts of Insurance	Meaning	It promises 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.	Consideration	There is no consideration between the two parties. There is just gambling for money.	The crux of an insurance contract is a mutual consideration (premium and compensation amount).	Insurable Interest	There is no property in case of a wagering agreement. There is betting on other's life and properties.	The insured party has an insurable interest in the life or property sought to be insured.	Contract of Indemnity	The loser has to pay the fixed amount on the happening or non-happening of an uncertain event.	Except for life insurance, the contract of insurance indemnifies the insured person against loss.	Enforceability	It is void and unenforceable agreement.	It is valid and enforceable.	Premium	No such logical calculations are required in the case of a wagering agreement.	Calculation of premium is based on a scientific and actuarial calculation of risks.	Public Welfare	They have been regarded as against the public welfare.	They are beneficial to society.		
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11	X, a minor, was studying in M. Com in a college. On 1 st July 2019, he looks a loan of ₹ 1,00,000 from B for payment of his college fees and purchase books and agreed to repay by 31 st December 2019. X possesses assets worth ₹ 9 lakhs. On the due date, X fails to pay back the loan to B. B now wants to recover the loan from X out of his assets. Referring to the provisions of the Indian Contract Act, 1872, decide whether B would succeed.	(RTP May 2020, ICAI-SM)	3																								
Ans.	As per the provision of the Indian Contract Act, 1872, a claim for necessities supplied to a minor is enforceable by law, only against the minor's estate if he possesses. But a minor is not liable for any price that he may promise and never for more than the value of the necessities. There is no personal liability of the minor, but only his property is liable.		1																								

	Facts of the case: X, a minor, was studying in M. Com in a college. On 1st July 2019, he took a loan of ₹ 1,00,000 from B for payment of his college fees and purchase books and agreed to repay by 31st December 2019. X possesses assets worth ₹ 9 lakhs. On the due date, X fails to pay back the loan to B. Conclusion: Yes, B can <u>proceed against the assets</u> of X. Since the loan given to X is for the necessities suited to the conditions in the <u>life of the minor</u>, his assets can be sued to <u>reimburse B</u>.	1
✓ 12	What is a contingent contract? Discuss the essentials of the contingent contract with examples.	7
Ans.	(Nov. 2018) As per the provision of the Indian Contract Act, 1872, a contract <u>to do or not to do something</u>, if some event, <u>collateral to such contract</u>, does or does not happen. Example: A contract to pay B ₹1,00,000 if B's house is destroyed by fire. This is a contingent contract. Essentials of a contingent contract: 1) The performance of a contingent contract would depend upon the <u>happening or non-happening</u> 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 the first of the next month. 2) The contingency contemplated by the contract must be collateral to the contract. It means that the contract has already arisen, but its performance cannot be demanded unless the collateral events happen or do not happen. Example: A agreed to construct a swimming pool for B for Rs. 200,000. And B agreed to make the payment only on the completion of the swimming pool. It is not a contingent contract as the event is directly connected with the contract and not collateral. 3) 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: If A promises to pay B ₹1,00,000 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. 4) The event must be <u>uncertain</u>. Where the event is certain or bound to happen, the contract due to be performed is a non-contingent contract. Example: 'A' agreed to sell his agricultural land to 'B' <u>after obtaining the necessary permission from the collector</u>. As a matter of course, the permission was generally granted on the fulfilment 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.	1 1½ 1½ 1½ 1½

✓ 13	Discuss the cases deemed as quasi-contracts.	(RTP Nov. 2019)	5
Ans.	Cases deemed as quasi-contracts: 1) Claim for necessities supplied to persons incapable of contracting: If a <u>person incapable of entering into a contract</u>, or anyone whom he is legally bound to support, is supplied by another person with <u>necessaries</u> suited to his condition in life. The person who has supplied such necessities is entitled to be <u>reimbursed from the property</u> of such incapable person. 2) Payment by an interested person: A person <u>interested in the payment of money</u> which another is bound by law to pay, and who therefore pays it, is entitled to be <u>reimbursed by the other</u>. 3) The obligation of a person enjoying benefits of the non-gratuitous act: When a person lawfully does something or delivers something to another person, not with a gratuitous behaviour, and such <u>other person enjoys benefits</u> out of that act, then such other person is bound to pay compensation in respect of the thing so done or delivered to him. 4) Responsibility of finder of goods: A person who <u>finds goods belonging to another</u> and takes them into his custody is subject to the same responsibility as if he was a <u>bailee</u>. Thus, a finder of lost goods has: - ➤ to take <u>proper care of the property</u> as a <u>man of ordinary prudence</u> would take, ➤ no right to <u>appropriate the goods</u>, and ➤ to <u>restore the goods</u> if the owner is found. 5) Money paid by mistake or under coercion: A person to whom money has been paid or anything delivered by mistake or under coercion must repay or return it.	1 1 1 1 1	
14	Explain the type of contracts in the following agreements under the Indian Contract Act, 1872:		6
	- 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. - The obligation of the finder of lost goods to return them to the true owner - A contract with B (owner of the factory) for the supply of 10 tons of sugar, but before the supply is affected, the fire caught in the factory and everything was destroyed.	(May 2020, ICAI-SM)	
Ans.	- It is an <u>implied contract</u>, and A must <u>pay for the services</u> of the coolie. Implied contract: A contract that comes into existence by either the implication of law or implication of action. According to the Indian contract Act, 1872, when proposal and acceptance are made otherwise, then in word. The promise is said to be implied. - The obligation of the <u>finder of lost goods</u> to <u>return</u> them to the <u>true owner</u> 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: it is created by law under certain circumstances. Example: obligation of the founder of goods to return to the true owner. - An above contract is a void contract as the <u>subject matter of the contract</u> is <u>destroyed</u>. Void contract: An agreement that ceases to be enforceable by law becomes void when it ceases to be enforceable. In simple words, a contract cannot be enforceable by a court of law.	2 2 2	

15	Sohan induced Suraj to buy his motorcycle, saying that it was in very good condition. After taking the motorcycle, Suraj complained that there were many defects in the motorcycle. Sohan proposed to get it repaired and promised to pay 40% cost of repairs. After a few days, the motorcycle did not work at all. Now Suraj wants to rescind the contract. Decide giving reasons whether Suraj can rescind the contract?	4
Ans.	As per the provision of the Indian Contract Act, 1872, misrepresentation is: (RTP May 2020, ICAI-SM) 1) When a person <u>positively</u> asserts that a <u>fact is true</u> when his information does not warrant it to be so, though he <u>believes it to be true</u>. 2) When there is any <u>breach of duty</u> by a person, which brings an <u>advantage to the person committing it</u> by misleading another to his prejudice. 3) When a party causes, however, <u>innocently</u>, the other party to the agreement to <u>make a mistake</u> as to the substance of the thing which is the subject of the agreement. 4) <u>Consent was caused by misrepresentation or silence, which amounts to fraud.</u> The person could not avoid the contract if he had the means of discovering the truth in ordinary diligence. Facts of the case: Sohan induced Suraj to buy his motorcycle, saying that it was in 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. Conclusion: <u>The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract. 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.</u> Accordingly, <u>in the given case, Suraj could not rescind the contract, as his acceptance of the offer of Sohan to bear 40% of the cost of repairs impliedly amount to the final acceptance of the sale.</u>	1/2 1/2 1/2 1/2 1 1/2 1/2
16	What will be right with the promisor in the following cases? Explain with reasons: a) Mr X promised to bring back Mr Y to life again. b) A agreed to sell 50kgs of apple to B. the loaded truck left for delivery on 15 th March but due to riots in between reached B on 19 th March. c) An artist promised to paint on the fixed date for a fixed amount of remuneration but met with an accident and lost both hands. d) Abhishek entered into a 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 2021, ICAI-SM)	4
Ans.	As per the provision of the Indian Contract Act, 1872, A contingent contract to do or not to do anything of an impossible event happens is void. a) The contract is void because of its initial <u>impossibility of performance</u>. As per the provision of the Indian Contract Act, 1872, When the subject matter of a contract subsequent to its formation is destroyed but without any fault of the parties to the contract, the contract is discharged. The contract is void.	1

	b) Time is the essence of this contract. By the time apples reached B, they were already rotten. The contract is discharged due to the <u>destruction of the subject matter of the contract</u>. As per the provision of the Indian Contract Act, 1872, A contract after the contract is made impossible or becomes unlawful the contract becomes void when the act becomes impossible or unlawful. c) Such contract is of personal nature and hence cannot be performed due to the occurrence of an event resulting in the <u>impossibility of performance of a contract</u>. d) As per the provision of the Indian Contract Act, 1872, Any agreement with an alien enemy at times of war without the license obtain from Central Government is void. Such contract is discharged without performance because of the subsequent <u>illegality nature of the contract</u>.	1
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17	"Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of the contract whereas Penalty, on the other hand, is an extravagant amount stipulated and is unconscionable and has no comparison to the loss suffered by the parties". Explain.	3
Ans.	Liquidated damage is a genuine pre-estimate of <u>compensation of damages</u> for a certain anticipated breach of contract. This estimate is agreed to between parties to avoid at a later date <u>detailed calculation and the necessity</u> to convince outside parties. Penalty, on the other hand, is an <u>extravagant amount stipulated</u> and is unconscionable and has <u>no comparison to the loss suffered by the parties</u>. As per the provision of the Indian Contract Act, 1872, where a <u>contract has been broken</u>, if a sum is named in the contract as the <u>amount to be paid in case of such breach</u>, or if the contract contains <u>any other stipulation by way of penalty</u>, the party complaining of the breach is entitled, whether or <u>not actual damages or loss is provided to have been caused</u> 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 stipulation for.	1
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		1
18	X entered into a contract with Y to supply him 1,000 water bottles @ ₹ 5.00 per water bottle, to be delivered at a specified time. Thereafter, X contracts with Z for the purchase of 1,000 water bottles @ ₹ 4.50 per water bottle, and at the same time told Z that he did so for the purpose of performing his contract entered into with Y. Z failed to perform his contract in due course and the market price of each water bottle on that day was ₹ 5.25 per water bottle. Consequently, X could not procure any water bottle, and Y rescinded the contract? What would be your answer if Z had not informed about Y's contract? Explain with reference to the provisions of the Indian Contract Act, 1872.	5
Ans.	(RTP Nov. 2020, ICAI-SM) As per the provision of the Indian Contract Act, 1872, provides that when a <u>contract has been broken</u>, the party who suffers by such breach is <u>entitled to receive from the party which had broken</u> the contract compensation for <u>any loss or damage caused to him, thereby which naturally</u> 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	2

the breach of it. Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach. This section provides remedy the inconvenience caused by the non-performance of the contract must be taken into account.

Facts of the case:

X entered into a contract with Y to supply him 1,000 water bottles @ ₹5.00 per water bottle, to be delivered at a specified time. Thereafter, X contracts with Z for the purchase of 1,000 water bottles @ ₹4.50 per water bottle, and at the same time told Z that he did so for the purpose of performing his contract entered into with Y. Z failed to perform his contract in due course and the market price of each water bottle on that day was ₹5.25 per water bottle.

Conclusion:

X had intimated to Z that he was purchasing water bottles from him for the purpose of performing his contract with Y. Z has the knowledge of the special circumstances. Therefore, X is entitled to claim from Z ₹500 (1000 water bottles × 0.50).

If X had not informed Z of Y contract, then the amount of damages would have been the difference between the contract price and the market price on the day of default. In other words, the amount of damages would be ₹750 (water bottle × 0.75 paise)

- 19 X, Y and Z jointly borrowed ₹ 50,000 from A. the whole amount was repaid to A by Y. decide in the light of the Indian Contract Act, 1872 whether:
- Y can recover the contribution from X and Z,
 - Legal representatives of X are liable in case of death of X,
 - Y can recover the contribution from the assets in case of Z become insolvent.

(RTP Nov. 2019, ICAI-SM)

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

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

If anyone of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Facts of the case:

X, Y and Z jointly borrowed ₹ 50,000 from A. the whole amount was repaid to A by Y. these are cases:

- Y can recover the contribution from X and Z,
- Legal representatives of X are liable in case of the death of X,
- Y can recover the contribution from the assets in case of Z become insolvent.

Conclusion:

- Y can recover the contribution from X and Z because X, Y and Z are joint promisors.
- The legal representative of X is liable to pay the contribution to Y. however, a legal representative is liable only to the extent of the property of the deceased received by him.
- Y also can recover the contribution from Z's assets.

20	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 whether the student can sue the teacher?	4
Ans.	(RTP Nov. 2019, ICAI-SM) As per the provision 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. A person is deemed to be in a position to dominate the will of another. (a) Where he holds to be <u>apparent authority over the other</u>; or (b) Where he stands in a <u>fiduciary relationship</u> to the other; or (c) Where he makes a contract with a person whose <u>mental capacity is temporarily or permanently affected because of age, illness or mental or bodily distress.</u> Fact of the case: 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. Conclusion: Yes, A can sue his teacher on the <u>ground of undue influence.</u> A contract brought as a result of <u>coercion, undue influence, fraud or misrepresentation</u> would be <u>voidable</u> at the option of the person whose <u>consent was caused.</u>	1 ½
21	Mr Rich aspired to get a self-portrait made by an artist. He went to the workshop of Mr C, an artist and asked whether he could sketch the former's portrait on oil painting canvass. Mr C agreed to the offer and asked for ₹50,000 as a full advance payment for the above creative work. Mr C clarified that the painting shall be completed in 10 sittings and shall take three months. On reaching the workshop for the 6th sitting, Mr Rich was informed that Mr C became paralyzed and would not be able to paint for the 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 a refund of money paid in advance to his father?	6
Ans.	(May 2019, ICAI-SM) As per the provision of the Indian Contract Act, 1872, a contract which involves the use of personal skill or is founded on personal <u>consideration comes to an end on the death of the promisor.</u> As regards any other contract, the <u>legal representatives of the deceased promisor are bound to perform</u> it unless a contrary intention appears from the contract. But their <u>liability under a contract is limited to the value of the property</u> they inherit from the deceased. Fact of the case: Mr Rich aspired to get a self-portrait made by an artist. He went to the workshop of Mr C, an artist and asked whether he could sketch the former's portrait on oil painting canvass. Mr C agreed to the offer and asked for ₹50,000 as a full advance payment for the above creative work. Mr C clarified that the painting shall be completed in 10 sittings and shall take three months. On reaching the workshop for the 6th sitting, Mr Rich was informed that Mr C became paralyzed and would not be able to paint for the near future. Mr C had a	2
		1

	son Mr K who was still pursuing his studies and had not taken up his father's profession yet	
	Conclusion:	
	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) 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.	2
	Hence, in this case, the agreement between Mr Rich and Mr C has become void because of the paralysis of Mr C. So, Mr Rich can ask Mr K for a <u>refund of money paid in advance to his father, Mr C.</u>	1
22	Mr Ramesh promised to pay ₹ 20,000 to his wife, Mrs Komal so that she can spend the sum on her 30 th birthday. Mrs Komal insisted on 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 Komal wants to file a suit against Mr Ramesh and recover the promised amount. Referring to the applicable provisions of the Indian Contract Act, 1872, advise whether Mrs Komal will succeed?	3
Ans.	(Nov. 2018)	
	As per the provision of the Indian Contract Act, 1872, A contract has no consideration, yet the contract is valid because it is affected by natural love and affection. In this case, the contracts shall be valid if the following conditions are complied with: ✓ There is an agreement in writing. ✓ It is registered. ✓ It is made on account of natural love and affection. ✓ It is made between parties standing in near relation to each other.	1/4 1/4 1/4 1/4
	Fact of the case:	
	Mr Ramesh promised to pay Rs. 20,000 to his wife, Mrs Komal, so that she can spend the sum on her 30 th birthday. Mrs Komal insisted on 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 Komal wants to file a suit against Mr Ramesh and recover the promised amount.	1
	Conclusion:	
	Here, Mrs Komal shall be entitled to the amount of ₹ 20,000 promised to her by her husband, Mr Ramesh. The agreement between them was written and registered and was made on account of natural love and affection. Mr Ramesh has to give the promised amount to Mrs Komal.	1
23	A shopkeeper displayed a pair of dresses in the showroom, and a price tag of ₹ 5,000 was attached to the dress. Ms Priya looked at the tag and rushed to the cash counter. Then she asked the shopkeeper to receive the payment and pack up the dress. The shopkeeper refused to hand over the dress to Ms Priya in consideration of the price stated in the price tag attached to the dress. Ms Priya seeks your advice on whether she can sue the shopkeeper for the above cause under the Indian Contract Act, 1872. (Nov. 2018)	3

Ans.	As per the provision of the Indian Contract Act, 1872, " <u>an invitation to offer</u> " means the person is <u>inviting the other person to make an offer</u> . The offeror's objective is to send out an invitation that he is willing to deal with any person who is ready to enter into a contract with him.	1
	Fact of the case: A shopkeeper displayed a pair of dresses in the showroom, and a price tag of ₹5,000 was attached to the dress. Ms Priya looked at the tag and rushed to the cash counter. Then she asked the shopkeeper to receive the payment and pack up the dress. The shopkeeper refused to hand over the dress to Ms Priya in consideration of the price stated in the price tag attached to the dress.	1
	Conclusion: Here, Ms Priya cannot sue the shopkeeper as the mere display of price tag to the dress in the showroom is an invitation to offer. This implies that it is up to the shopkeeper that he wants to sell that dress or not and to whom he wants to sell it. The shopkeeper has every right to make the decision to whom he will sell the dress.	1
24	Examine with the reason that the given statement is correct or incorrect "Minor is liable to pay for the necessities supplied to him".	2
Ans.	(May 2018) "Minor is liable to pay for the necessities supplied to him". This statement is incorrect. As per the provisions of the Indian Contract Act, 1872, a claim for necessities supplied to a minor is enforceable by law, only against the minor's estate if he possesses. But a minor is not liable for any price that he may promise and never for more than the value of the necessities. There is no personal liability of the minor, but only his property is liable.	1
25	State the legal rules regarding consideration. (Any 7 points)	7
Ans.	(Nov. 2019) As per the provision of the Indian Contract Act, 1872, the legal rules regarding consideration are: (Any 7 points) 1) Consideration must move at the desire of the promisor: An act done at the desire of a third party is not a consideration. In the decided case law of <u>Durga Prasad V. Baldev</u> , a collector of the town ordered Baldev to build certain shops in the market at his own expense. In consideration of Baldev having spent money in construction, Durga Prasad promises to pay Baldev some money after occupying a shop in the market. Later on, Durga Prasad refuses to pay Baldev and Baldev sue Durga Prasad. The Court held that the shops were built at the desire of the collector, not the promisor (Durga Prasad). 2) Consideration may move from the promisee or any other person: Consideration may proceed from the promisee or any other person who is not a party to the contract. When at the desire of the promisor, the promisee or any other person does something such as an act is a consideration. For example, the famous case law related to this is <u>Chinnaya V. Ramayya</u> . In this case, an old lady made a gift of her property to her daughter with a direction to pay a certain sum of money to her maternal aunty by way of an annuity. On the same day, the daughter executed an agreement in favour of her maternal aunty, agreeing to pay annuity. Later on, the daughter did not pay the annuity, and the aunty sued to recover it. The Court held that there was sufficient consideration from the old lady for the aunty to recover the money from the daughter. 3) Consideration may be executed and executory: When the consideration for the contract has been already provided, it is known as executed consideration, and where consideration is promised to be provided in future, then it is known as executory consideration. For example, A pays ₹ 5,000 to B and B promises to deliver a certain quantity of raw materials to A within a month. Here, the	1 1 1

	consideration paid by A is executed, and the consideration promised by B is executory.	
	4) Consideration may be past consideration: The act was done at the desire of the promisor, but <u>before any promise is made</u>, it is called past consideration. For example, X committed a murder and request Y to take his case and to do his best to obtain a pardon for him. Y did his best and obtained a pardon for him at his own expense. Afterwards, X promised Y to pay him a certain amount for his actions. But, later on, X refused to pay. Y sued X. The Court held that a past act done at the request of the promisor (X) should be a consideration for the subsequent promise. 5) Adequacy of consideration is not necessary: It is necessary to have consideration, but it is <u>not necessary that the consideration should be adequate</u>. If a party gets what he has contracted for and it is of some value, the Court will not enquire whether it is equivalent to the promise or not. The parties to the contract cannot avoid the contract on the ground of inadequacy of consideration with regard to that the consent given by the promisor should be free. 6) Performance of what one is legally bound to perform is no consideration: The performance of an act by <u>a person who is legally bound to perform cannot be a consideration for a contract</u>. For example, an agreement made by a client to pay an additional sum other than the fees to his lawyer if the suit was successful. It was held that the agreement was void for lack of consideration as the lawyer was already under a pre-existing contract of providing his best services under the original contract. 7) Consideration must not be illusory and must be of some value: The consideration must be <u>competent</u>. It must be something to which the law attaches some values. It <u>should not be physically impossible</u>. It <u>must not be uncertain</u>. For example, a man promises to discover treasure by magic. This contract is void as the consideration is illusory. 8) Consideration must not be unlawful, immoral, or opposed to public policy: Consideration <u>must be lawful</u>. Anything which is <u>immoral or opposed to public policy</u> also cannot be a valid consideration.	1 1 1 1 1
26	Evergreen Ltd. contracts with Shakti Traders to make and deliver certain machinery to them by 30th June 2019 for ₹11.50 lakhs. Due to a labour strike, Evergreen Ltd. could not manufacture and deliver the machinery to Shakti Traders. Later, Shakti Traders procured the machinery from another manufacturer for ₹12.75 lakhs. Shakti Traders was also prevented from performing a contract which it had made with Xylo Traders at the time of their contract with Evergreen Ltd. and were compelled to pay compensation for breach of contract. Advise Shakti Traders the amount of compensation which it can claim from Evergreen Ltd., referring to the legal provisions of the Indian Contract Act, 1872. (May 2018)	6
Ans.	As per the provision of the Indian Contract Act, 1872, when a contract has been broken, the <u>party who suffers</u> by such breach is entitled to <u>receive from the party which had broken the contract compensation</u> for any loss or damage caused to him, thereby which <u>naturally arose in the usual course of things</u> from such breach or which the parties knew when they made the contract, to be likely to result from the breach of it. Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach. It is further provided that in <u>estimating the loss or damage</u> from a breach of contract, the means which existed of remedying the <u>inconvenience caused by the non-performance of the contract</u> must be taken into account.	2 1

	Fact of the case: Evergreen Ltd. contracts with Shakti Traders to make and deliver certain machinery to them by 30th June 2019 for ₹11.50 lakhs. Due to a labour strike, Evergreen Ltd. could not manufacture and deliver the machinery to Shakti Traders. Later, Shakti Traders procured the machinery from another manufacturer for ₹12.75 lakhs. Shakti Traders was also prevented from performing a contract which it had made with Xylo Traders at the time of their contract with Evergreen Ltd. and were compelled to pay compensation for breach of contract.	1
	Conclusion: Here, Evergreen Ltd. is obliged to compensate for the loss of ₹1.25 lakhs (i.e. ₹12.75 - ₹11.50 = ₹1.25 lakhs), which had <u>naturally arisen</u> due to default in performing the contract by the specified date. Regarding the amount of compensation which Shakti Traders were compelled to make to Xylo Traders, it depends upon the fact whether <u>Evergreen Ltd. knew about the contract</u> of Shakti Traders for the supply of the contracted machinery to Xylo Traders on the specified date. If so, Evergreen Ltd. is also <u>obliged to reimburse</u> the compensation which Shakti Traders had to pay to Xylo Traders for breach of contract. Otherwise, Evergreen Ltd. is not liable.	2
27	Amit 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 Amit, saying that it did not belong to him. Can Amit recover it from the manager? (Nov. 2019)	4
Ans.	As per the provision of the Indian Contract Act, 1872, a finder of lost goods has: 1) To take <u>proper care of the property</u> as a <u>man of ordinary prudence</u> would take. 2) No right to <u>appropriate the goods</u>. 3) To restore the goods <u>if the owner is found</u>.	$\frac{1}{2}$ $\frac{1}{2}$ $\frac{1}{2}$
	Fact of the case: Amit found a wallet in a restaurant. He enquired of all the customers present there, but the true owner could not be found. Amit handed over the wallet 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 Amit, saying that it did not belong to Amit.	$\frac{1}{2}$
	Conclusion: Amit can <u>recover the wallet</u> from the Manager because Amit was the <u>finder of the wallet</u>, and as a finder, he has to <u>take care</u> of the wallet, as a <u>man of ordinary prudence</u> would do, till its <u>true owner is found</u>. The manager <u>must return the wallet</u> to Amit as he was <u>entitled to retain the wallet</u> found <u>against everybody except the true owner</u>.	2
(28) Review your	Sonu, a wealthy individual, provided a loan of ₹80,000 to Disha on 26th February 2019. Disha asked for a further loan of ₹1,50,000. Sonu agreed but provided the loan in parts at different dates. He provided ₹1,00,000 on 28th February 2019 and ₹50,000 on 3rd March 2019. On 10th March 2019, while paying off part ₹75,000, Disha insisted that the lender should adjust ₹50,000 towards the loan taken on 3rd March 2019 and balance as against the loan on 26th February 2019. Sonu objected to this arrangement and asked the borrower to adjust in the order of borrow of funds. Now decide: <i>Appropriation of Payment</i>	6

	i) Whether the contention of Disha is correct? ii) What would be the answer if the borrower does not insist on such an order of adjustment of payment? iii) What would be the mode of adjustment of such part payment in case neither Disha nor Sonu insists on any order of adjustment on their part?	
Ans.	As per the provision of the Indian Contract Act, 1872, where a debtor, owing to <u>several distinct debts</u> to one person, makes a payment to him either with <u>express intimation</u> or under the circumstances implying that the payment is to be applied to the <u>discharge of some particular debt</u>, the payment, if accepted, must be applied accordingly. (Nov. 2019) Fact of the case: Sonu, a wealthy individual, provided a loan of ₹80,000 to Disha on 26th February 2019. Disha asked for a further loan of ₹1,50,000. Sonu agreed but provided the loan in parts at different dates. He provided ₹1,00,000 on 28th February 2019 and ₹50,000 on 3rd March 2019. On 10th March 2019, while paying off part ₹75,000, Disha insisted that the lender should adjust ₹50,000 towards the loan taken on 3rd March 2019 and balance as against the loan on 26th February 2019. Sonu objected to this arrangement and asked the borrower to adjust in the order of borrow of funds. Conclusion: i) Here, the contention of Disha is <u>correct</u> for indicating to Sonu for appropriating the amount of ₹75,000 to the debt of ₹50,000 and ₹80,000, irrespective of the order of the debt. Sonu <u>may or may not accept the indication</u> by Disha for appropriating the payment to a specific debt. If Sonu accepted the indication of Disha, then Sonu has to <u>appropriate</u> the payment to the debts <u>specified</u> by Disha. ii) As per the provision of the Indian Contract Act, 1872, where the debtor has <u>omitted to intimate</u>, or the creditor has <u>refused the indication</u> of the debtor on such order of adjustment of repayment, the creditor may apply it at his <u>discretion</u> to any lawful debt actually due and payable to him from the debtor, where its recovery is or is <u>not barred by the law</u> in force for the time being as to the <u>limitation of suits</u>. Here, if Disha <u>does not insist</u> on such an order of adjustment of repayment, then Sonu can appropriate the payment of ₹75,000 in any <u>lawful manner</u> he chose at his <u>discretion</u>. iii) As per the provision of the Indian Contract Act, 1872, where <u>neither party makes any appropriation</u>, the payment shall be applied in <u>discharge of the debts in order of time</u>, whether they are or are <u>not barred by the law</u> in force for the time being as to the limitation of suits. If the <u>debts are of equal standing</u>, the payment shall be applied in <u>discharge of each proportionately</u>. Here, neither Sonu nor Disha insists on any order of adjustment on their part, then the appropriation of payment would be made in the <u>order of time of debts</u>. The first debt of ₹80,000 will be set off because it is the <u>first debt</u> in the order of the time. Since the amounts borrowed by Disha are <u>not equal</u>, the payment <u>cannot be set off proportionately</u>.	1 ½ 1 1 ½ 1 1

29	Explain the term 'Coercion' along with the effects of coercion.	
Ans.	(Nov. 2019) As per the provision of the Indian Contract Act, 1872, <u>coercion</u> is the <u>committing or threatening to commit</u> any act which is <u>forbidden</u> by the <u>Indian Penal Code</u> or the <u>unlawful detaining or threatening to detain</u> any property to the <u>prejudice</u> of any person with the <u>intention</u> of causing another person to enter into an agreement. If the contract is caused by coercion, it is a <u>voidable contract</u>. Effects of coercion: 1) A contract <u>induced by coercion</u> is <u>voidable at the option of the party</u> whose consent was so obtained. 2) If the party <u>rescinds a voidable contract</u> and has <u>received any benefit</u>, thereunder from the other party to the contract, <u>restore such benefit</u> to the person from whom it was received. 3) A person to whom <u>money</u> has been <u>paid or anything delivered</u> under <u>coercion</u> must repay or return it	5 2 1 1 1
30	P left his carriage on D's premises. The landlord of D seized the carriage against the rent due from D. P paid the rent got his carriage released. Can P recover the amount from D?	2
Ans.	(ICAI-SM) As per the provision of the Indian Contract Act, 1872, a person who is <u>interested in the payment of money which another person is bound by law to pay</u>, and therefore pays it, is entitled to get it reimbursed by the other. Fact of the case: P left his carriage on D's premises. The landlord of D seized the carriage against the rent due from D. P paid the rent got his carriage released. Conclusion: Yes, P can <u>recover the amount from D</u>. In the present case, D was lawfully bound to pay rent. P was interested in making the payment to D's landlord as his <u>carriage was seized</u> by him. Hence an interest party P made the <u>payment and can recover the same from D</u>.	1 ½ ½
(31)	Mr X, a business, has been fighting 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 the brief of Mr Y. Mr C agrees but, at the end of the litigation Mr X refuse to pay to Mr C. Decide whether Mr C can recover the amount promised by Mr X under the provision of Indian Contract Act, 1872?	3
Ans	(Nov. 2020) As per the provision of the Indian Contract Act, 1872, that all agreements are contracts if they are made by the <u>free consent</u> of the parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void. Another provision of this act says that <u>every agreement of which the object is unlawful is void</u>. Fact of the case: Mr X, a business, has been fighting 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 the brief of Mr Y. Mr C agrees but, at the end of the litigation Mr X refuse to pay to Mr C.	1 1

Conclusion:

This is a case of interference with the course of justice and results as opposed to public policy. This can also be called an agreement in restraint of legal proceedings. This agreement restricts one's right to enforce his legal right. Such an agreement has been expressly declared to be void. Hence, Mr C, in the given case, cannot recover the amount of Rs. 10 lakh promised by Mr X because it is a void agreement and cannot be enforced by law.

1

32 Define fraud and misrepresentation. What is the difference between fraud and misrepresentation as per the Indian Contract Act, 1872?

6

Ans. **Fraud:** - means and includes any of the followings act committed by a party to a contract. (Nov. 2020)

2

The suggestion as to a fact which is not true by one who does not believe it to be true.

- ✓ The act must be committed with an intention to cause harm
- ✓ The statement made must be false and should be related to a material fact of agreement.
- ✓ The person who makes the statement does not believe it to be true.
- ✓ The act must be committed by the party to the contract.
- ✓ Other parties relied on the false representation
- ✓ The party must be deceived by the fraud.

Misrepresentation: - A person suggests something which is not true but is believed to be true.

2

Misrepresentation made is innocent. The contract entered by misrepresentation is without any intention to deceive. However, the person so can avoid the contract.

- ✓ The statement made must be of material fact.
- ✓ The statement should be false.
- ✓ The person making it believes it to be true though there is no sufficient reason for his belief.
- ✓ The person who makes the false statement has no intention to deceive.
- ✓ The representation must induce the other party to contract.
- ✓ The party is misleading by such a statement and enters into the agreement.

Distinction Between Fraud and Misrepresentation:

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

2

33	Mr X and Mr Y entered into a contract on 1st August 2018, by which Mr X had to supply 50 tons of sugar to Mr Y at a certain price strictly within a period of 10 days of the contract. Mr Y also paid an amount of ₹50,000 towards advance as per the terms of the above contract. The mode of transportation available between their places is roadway only. A severe flood came on 2nd August 2018, and the only road connecting their places was damaged and could not be repaired within 15 days. Mr X offered to supply sugar on 20th August 2018, to which Mr Y did not agree. On 1st September 2018, Mr X claimed compensation of ₹10,000 from Mr Y for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr Y claimed a refund of ₹ 50,000, which he had paid as an 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.	3
Ans.	(Nov. 2018) As per the provision of the Indian Contract Act, 1872, When the performance of promise becomes impossible or illegal by the happening of an event or change of circumstances, the contract becomes void. Following are the circumstances when the contract becomes void. a) Destruction of the subject matter: When the subject matter of a contract subsequent to its formation is destroyed, but without any fault of the parties to the contract, the contract is discharged. b) Non-existence or non-occurrence of a particular state of things: Sometimes, a contract is entered into between two parties on the basis of the continued existence of particulars state of things, and if there is a change in the state of things that formed the basis of the contract, the contract becomes void. Fact of the case: Mr X and Mr Y entered into a contract on 1st August 2018, by which Mr X had to supply 50 tons of sugar to Mr Y at a certain price strictly within a period of 10 days of the contract. Mr Y also paid an amount of ₹50,000 towards advance as per the terms of the above contract. The mode of transportation available between their places is roadway only. A severe flood came on 2nd August 2018, and the only road connecting their places was damaged and could not be repaired within 15 days. Mr X offered to supply sugar on 20th August 2018, to which Mr Y did not agree. On 1st September 2018, Mr X claimed compensation of ₹10,000 from Mr Y for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr Y claimed a refund of ₹ 50,000, which he had paid as an advance in terms of the contract. Conclusion: Mr X and Mr Y have entered into the contract to supply 50 tons of sugar, the event of <u>flood occurred, which made it impossible to deliver the sugar</u> within the stipulated time. Thus, the promise in <u>question becomes void</u>. 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.	1
34	X, Y and Z are partners in a firm. They jointly promised to pay ₹ 3,00,000 to D. Y to 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.	2

(May 2018)

Ans.	As per the provision of the Indian Contract Act, 1872, requires that when two or more person have made a joint promise, then, unless a contrary intention appears from the contract, all such person jointly must fulfil the promise. In the event of the death of any of them, <u>his representative jointly</u> with the survivors and in the case of the death of all promisors, the <u>representatives of all jointly must fulfil the promise.</u> Fact of the case: X, Y and Z are partners in a firm. They jointly promised to pay ₹ 3,00,000 to D. Y to 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. Conclusion: X can recover the contribution from Y and Z because X, Y and Z are joint promisors. X can recover the amount of Rs. Twenty thousand from the Z's assets and 140,000 from Y.	1 1/2 1/2
35	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 ₹ 1 lac. However, the consent of X has been procured by Y at gunpoint. 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 2021)	3
Ans.	i) (i). 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 <u>no option of rescinding the contract.</u> ii) (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 <u>unenforceable after the period of three years</u> as barred by the Limitation Act. iii) (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; the contract is <u>executory</u> because it is yet to be carried out.	1 1 1
36	What is the law relating to the determination of compensation on breach of contract, contained in section 73 of the Indian Contract Act, 1872? (RTP Nov. 2019)	6
Ans.	As per the provision of the Indian Contract Act, 1872, the following kinds of damages are payable to the extent and in the circumstances and subject to the condition of estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by non-performance of the contract must be taken into account. 1) Ordinary Damages: These are damages that naturally arise in the usual course of things. For instance: A promises to deliver 1,000 bags of rice at ₹100 per bag on 10 th December. On the due date, he refuses to deliver. On the due date, the market price is ₹110, so the ordinary damages will be ₹10,000, i.e. 1,000 bags multiplied by ₹10, the difference between the market and the contract price. This damages the aggrieved party can claim and can as a matter of right. As a result of the breach of contract, ordinary damages arise in the ordinary course of business. 2) Liability for special damages: Special damages are for those losses which arise on account of unusual circumstances. They are not recoverable unless the	1 1 1

	special circumstances were brought into the knowledge of the defendant. So, the possibility of the special loss was in the knowledge of the parties when the contract was made. 3) Liability to pay inductive or exemplary damages: These damages may be awarded in two cases: i) For breach of promise to marry; and ii) For wrongful dishonour of customer's cheque by a banker. In a breach of promise to marry, exemplary damages may be awarded to the other party taking into consideration the injury caused to his or her feeling. The amount of damages recoverable by the drawer of cheque from his banker in case of wrongful dishonour of his cheque may be quite heavy depending upon the loss of credit and reputation suffered by the customer of the banker on that account. They are awarded to punish the defendant so as to prevent the defendant from committing this again and not solely with the idea of awarding compensation to the plaintiff. 4) Liability to pay nominal damages: Nominal damages are awarded where the plaintiff has proved that there has been a breach of contract. But he has not, in fact, suffered any real damage. These damages are not claimed with a view to establishing the right of a person to the breach of contract. The amount may be rupee or so, a very nominal amount of damages. 5) Damages for deterioration caused by delay: In case of deterioration is caused to goods by delay, damages can be recovered from the carrier. The word deterioration does not only imply physical damage to the goods, but it also means loss of profit caused as a result of loss of special opportunity for sale.	1
37	"Only a person who is a party to a contract can sue on it". Explain this statement and describe its exceptions, if any. (RTP May 2020)	5
Ans.	As per the provision of the Indian Contract Act, 1872, the consideration for an agreement may <u>proceed from a third party</u>, but the <u>third party cannot sue</u> on the contract. Only a person who is a party to a contract can sue on it. But, in the case of the <u>assignment of a contract</u>, a provision may be made for the <u>benefit of a person</u>. He may file a suit, though he is not a party to the contract. 1) A person in whose favour a charge or other interest in some specified property has been created may before enforce it though he is not a party to the contract. 2) An agreement is made in connection with marriage, partition, or other family arrangements and provision is made for the benefit of a person. He may take advantage of that agreement, although he is not a party to it. In the case of a family arrangement, if the terms of the arrangements are in writing, the members of the family who originally had not been parties to the agreement may enforce the agreement. 3) A female member can enforce a provision made for marriage or other expenses: This provision was made on the partition of the Hindu undivided family. 4) In the case of estoppels (stop from denying) by acknowledgement of liability: This can be illustrated with the help of an example. L gives to M ₹2,000 to be given to N. M informs N that he is holding the money for him. Afterwards, M refuses to pay the money. N will be entitled to recover the same from M. (Here M will be estopped, i.e. stop from denying)	1 1/2 1 1/2 1

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	5) There is a condition/covenant running with the land: The person purchases land with notice that the owner of the land is bound by certain duties/conditions/ covenants affecting land. He shall be bound by such conditions/ covenants even though he is not a party to the original agreement containing those conditions or covenants. Thus the covenant/condition affecting the land may be enforced against him though he was not the original party to the contract.	1
38	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.	4
Ans.	Position to dominate the will: Relation between the parties exist in such a manner that one of them is in a position to dominate the will of the other. A person is deemed to be in such a position in the following circumstances: a) Real and apparent authority: Where a person holds a real authority over the other, as in the case of master and servant, doctor and patient, etc. b) Fiduciary relationship: Where the relation of trust and confidence exists between the parties to a contract. Such type of relationship exists between father and son, solicitor and client, husband and wife, creditor and debtor, etc. c) Mental distress: An undue influence can be used against a person to get his consent on a contract where the mental capacity of the person is temporarily or permanently affected by reason of mental or bodily distress, illness or old age. d) Unconscionable bargains: Where one of the parties to a contract is in a position to dominate the will of the other and the contract is apparently unconscionable, i.e., unfair, it is presumed by law that consent must have been obtained by undue influence. Unconscionable bargains are witnessed mostly in money lending transactions and in gifts.	1 1 1 1
39	"The Basic rule is that the promisor must perform exactly what he has promised to perform". Explain stating the obligation of parties to contracts.	4
Ans.	As per the provision of the Indian Contract Act, 1872, The promise under a contract may be performed by the promisor himself or by his agent of his legal representative. The following points are relevant in this regard: 1) Promisor himself: If it was the intention of the parties that the promise should be performed by the promisor himself, the promise must be performed by the promisor. Contracts that involve the exercise of personal skill or diligence of promisor must be and shall be performed by the promisor himself. 2) Representative: Representatives of the promisor may also perform the contract in case of death of the promisor subject to the condition the contract doesn't require the personal skills of the promisor himself. 3) Agent: Personal consideration is not necessary for the contract except in the case where the performance of the contract requires the personal skills of the promisor. Promisor may employ a competent person to perform it. 4) Third-person: When a promisee accepts the performance of the promise from a third person, he cannot afterwards enforce it against the promisor. It is not necessary that the promisor has authorized the third person to perform. The Third-person may have performed it at his own will.	1 1 1 1

40	Define an offer. Explain the essentials of a valid offer. How is an offer different from an invitation to offer?	(RTP Nov. 2019)	5
Ans.	As per the provision of the Indian Contract Act, 1872, define the offer as when a person signifies to another his willingness to do or to abstain from doing anything with a view to obtain the assent of other such act or abstinence is said to make a proposal. The essentials of a valid offer: - ✓ The offer must be capable of <u>creating legal relations</u>. ✓ The offer must be <u>certain, definite, not vague</u>. ✓ The offer must be <u>distinguished from an invitation to offer</u>. ✓ The offer should not <u>contain a term the non-compliances of which will amount to acceptance</u>. ✓ Special terms of an offer shall be <u>brought to the notice of the other party</u>. ✓ The offer must be <u>expressed or implied</u>. As per the provision of the Indian Contract Act, 1872, the offer should be distinguished from an invitation to offer. An offer is the final expression of willingness by the offeror to be <u>bound by his offer</u> should the party chooses to accept it. Where a party, <u>without expressing his final willingness</u>, proposes certain terms on which he is willing to negotiate, he does not make an offer but invites only the other party to make an offer on those terms. This is the basic distinction between an offer and an invitation to offer.	1 1/2 1/2 1/2 1/2 1	
41	"An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived." Explain the statement and also the effect of anticipatory breach on contracts.	(ICAI-SM)	7
Ans.	As per the provision of the Indian Contract Act, 1872, an <u>anticipatory breach</u> of contract is a breach of contract <u>occurring before the time fixed for performance</u> has arrived. When the promisor refuses altogether to perform his promise and signifies his unwillingness before the time for performance has arrived, it is called an anticipatory breach. Effect of anticipatory breach: The promisee is excused from the performance or further performance. Further, he gets an option to either: - 1) To either treat the contract as <u>rescinded</u> and <u>sue the other party for damages</u> from breach of the contract immediately without waiting until the due date of performance; or 2) He may elect not to rescind but to treat the contract as a <u>still operative</u>, and wait for the time of performance and then hold the other party responsible for the consequences of non-performance. He also may <u>keep the contract alive</u> for the benefit of the other party as well as his own, and the guilty party, if he so decides on <u>re-consideration</u>, may still perform his part of the contract and can also <u>take advantage of any supervening impossibility</u> which may have the effect of discharging the contract.	4 1 1 1	

- 1-> When an agreement is discovered to be void or when the contract becomes void.
- 2-> When something is done without intention to do gratuitously.
- 3-> Where there is an express or implied contract to render services but but there is no contract as to the Remuneration.
- 4-> When one party abandon, or refuses to perform the contract.
- 5-> When a contract is divisible & the party not in default has enjoyed the benefits of the part performance.

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42	What is a wagering agreement? Describe the transactions which resemble with wagering transaction but are not void.	4
Ans.	According to Sir William Anson - (RTP May 2020) worth upon the determination of an uncertain event. For instance: There is a bet between A and B. A promises to pay B ₹1,000 if it rains. B promises an equal amount if it does not rain. According to the Indian Contract Act 1872, agreements by way of wager are void. Transactions similar to wagering transactions are: - 1) Lottery transactions: [A lottery is a game of chance and not of skill or knowledge. Where the primary motive of the participant is gambling, the transactions amount to a wager.] Even if the lottery is sanctioned by the Government of India, it is a wagering transaction. The only effect of such a sanction is that the person responsible for running the lottery will not be punished. Otherwise, lotteries are illegal. 2) Crossword puzzles and Competitions: Crossword puzzles in which prizes depend upon the correspondence of the competitor's solution with a previously prepared solution kept with the editor of the newspaper is a lottery and, therefore, a wagering transaction. 3) Speculative transactions: An agreement or a share market transaction where the parties intend to settle the difference between the contract price and the market price of certain goods or shares on a specified day is gambling and hence a wagering transaction. 4) Horse Race transactions: A horse race competition where the prize payable to the winner is less than ₹500 is a wagering transaction.	1 1 1 1
43	Explain the concept of 'Quantum Meruit' and state the cases where the claim the quantum meruit arises?	5
Ans.	(RTP May 2020) As per the provision of the Indian Contract Act, 1872, "Quantum Meruit" literally means "as much as earned" or reasonable remuneration. It is used where a person claims reasonable remuneration for the services rendered by him when there was no express promise to pay the definite remuneration. Thus, the law implies reasonable compensation for the services rendered by a party if there are circumstances showing that these are to be paid for. - The general rule is that where a party to a contract has not fully performed what the contract demands as a condition of payment, he cannot sue for payment for that which he has done. The contract has to be indivisible, and the payment can be demanded only on the completion of the contract. - But where one party who has performed part of his contract is prevented by the other from completing it, he may sue on a quantum meruit for the value of what he has done. - The claim on a quantum meruit arises when one party abandons the contract or accepts the work done by another under a void contract. - The party in default may also sue on a "quantum meruit" for what he has done if the contract is divisible and the other party has had the benefit of the part which has been performed. But if the contract is not divisible, the party at fault cannot claim the value of what he has done.	2 1 1/2 1/2 1

44	Explain the modes of revocation of an offer as per the Indian Contract Act, 1872.	5
Ans.	As per the provision of the Indian Contract Act, 1872, modes of revocation of offer are: 1) By <u>notice of revocation</u>. 2) By <u>lapse of time</u>: The time for acceptance can <u>lapse</u> if the <u>acceptance is not given within the specified time</u> and where <u>no time is specified</u>, then <u>within a reasonable time</u>. 3) By <u>non-fulfilment of condition precedent</u>: Where the acceptor fails to fulfil a <u>condition precedent to the acceptor</u>, the proposal gets <u>revoked</u>. 4) By death or insanity: <u>Death or insanity</u> of the proposer would result in <u>automatic revocation of the proposal</u>, but only if the fact of death or insanity comes to the knowledge of the acceptor. 5) By <u>counter offer</u>. 6) By the <u>non-acceptance of the offer according to the prescribed or usual mode</u>. 7) By subsequent <u>illegality</u>.	(Nov. 2018) 1/2 1 1 1 1/2 1/2 1/2
45	Mr B makes a proposal to Mr S by post to sell his house for Rs. 10 lakhs and posted the letter on 10th April 2020 and reached the letter reaches to Mr S on 12th April 2020. He reads the letter on 13th April 2020. Mr S sends his letter of acceptance on 16th April 2020, and the letter reaches Mr B on 20th April 2020. On 17th April, Mr S changed his mind and sent a telegram withdrawing his acceptance. Telegram reaches Mr B on 19th April 2020. a) On which date, the offer made by Mr B will complete? b) Discuss the validity of acceptance. c) What would be the validity of acceptance if the letter of revocation and letter of acceptance reached together?	3
Ans.	a) As per the provision of the Indian Contract Act, 1872, The communication of an offer is complete when it comes to the knowledge of the person to whom it is made. A proposal is made by post now the communication will be completed when the letter containing the proposal reaches the person to whom it is made. Further, the receiving of the letter is sufficient. Mr B makes a proposal by post to Mr S to sell his house. The letter was posted on 10th April 2020, and the letter reaches Mr S on 12th April 2020, but he reads the letter on 13th April 2020. Thus, the offer made by Mr B will complete on the day when Mr S received the letter, i.e. 12th April 2020. b) The communication of acceptance is complete on two different dates on one date as against the proposer and on another date as against the acceptor. When a proposal is accepted by a letter sent by post, the communication of acceptance will be completed against the proposer when the letter of acceptance is posted and against the acceptor when the letter reaches the proposer. When Mr S accepts Mr B's proposal and sent his acceptance by post on 16th April 2020, when the letter is posted. As against the acceptor, so acceptance will be complete when the letter reaches Mr B, i.e. 20th April 2020. Revocation of Acceptance: the acceptor can revoke his acceptance any time before the letter of acceptance reaches the offeror; if the revocation telegram arrives before or at the same time with the letter of acceptance, the revocation is absolute. c) The telegram for the revocation of acceptance reached Mr B on 19th April 2020, i.e. before the letter of acceptance of the offer. Hence, the revocation is absolute. Therefore, acceptance of an offer is invalid.	(Jan. 2021) 1 1 1

46	Shambhu Dayal started a "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 Parkash? Decide as per the provisions of the Indian Contract Act, 1872.	3
Ans.	As per the provision of the Indian Contract Act, 1872, the offer should be distinguished from an invitation to offer. An offer is the final expression of <u>willingness by the offeror</u> to be bound by his offer should the party chooses to accept it. Where a party, <u>without expressing his final willingness</u> , proposes certain terms on which he is <u>willing to negotiate</u> , he does not make an offer but invites only the other party to make an offer on those terms. This is the basic distinction between an offer and an invitation to offer. Fact of the case: Shambhu Dayal started a "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. Conclusion: The display of articles with a price in it in a self-service shop is merely an invitation to offer. It is in <u>no sense an offer for sale</u> , the acceptance of which constitutes a contract. In this case, Smt Prakash, by selecting some articles and approaching the cashier for payment, simply made an offer to buy the articles selected by her. If the cashier does not accept the prize, the <u>interested buyer cannot compel him</u> to sell.	1 ½ ½ 1
47	State whether there is any contract in the 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 on a public bus. d) A, a chartered accountant, promises to help his friend to file his return. (ICAI-SM)	2
Ans.	a) A engages B to do certain work and remuneration to be paid as fixed by C. Hence; It is a valid express contract. b) A and B promise to pay for the studies of their maid's son. Hence it is not a contract as it is a social agreement. c) A takes a seat on a public bus. Hence, it is an implied contract. A is bound to pay for the bus fare. d) A, a chartered accountant, promises to help his friend to file his return. Hence, it is not a social agreement; it creates a legal relationship. Therefore, A can claim for the non-gratuitous act.	½ ½ ½ ½
48	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? (ICAI-SM)	3
Ans.	As per the provision of the Indian Contract Act, 1872, communication of acceptance is complete as <u>against the offeror</u> when it is put in the cause of transmission to him Fact of the case: 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.	1 1

	Conclusion: No, Miss Shakuntala <u>cannot claim damages</u> . School authorities have not put an offer letter in the transmission. Her information from a third person will not form part of the contract.	1
49	"Through a minor is not competent to contract, nothing on the Contract Act prevents him from making the other party bound to the minor". Discuss.	2
Ans.	Minor can be a beneficiary or can take benefit out of a contract: (ICAI-SM) A <u>minor is not competent</u> to contract; nothing in the Contract Act prevents him from making the other party bound to the minor. <u>A promissory note duly executed in favour of a minor is not void</u> and can be sued upon by him because he, though incompetent to contract, may yet accept a benefit. <u>A minor cannot become a partner in a partnership firm</u> . However, he may, with the consent of all the partners, be <u>admitted to the benefits of the partnership</u> .	2
50	A sends an offer to B to sell his second car for ₹ 1,40,000 with the condition that if B does not reply within a week, he (A) shall treat the offer as accepted. Is A correct in his proposition?	3
Ans.	(ICAI-SM) As per the provision of the Indian Contract Act, 1872, acceptance of an offer cannot <u>be implied merely from the silence of the offeree</u> , even if it is expressly stated in the offer itself. Unless the offeree has by his previous conduct indicated that his silence amount to acceptance. It cannot be taken as valid acceptance. Fact of the case: A sends an offer to B to sell his second car for Rs. 1,40,000 with the condition that if B does not reply within a week, he (A) shall treat the offer as accepted. Conclusion: B remains silent; it does <u>not amount to acceptance</u> . The acceptance must be made within the <u>time limit prescribed by the offer</u> . The acceptance of an offer after the time prescribed by the offeror has elapsed will <u>not avail to turn the offer into a contract</u> .	1 1 1
51	Mr Jhuth entered into an agreement with Mr Such to purchase his (Mr Such's) motor car for ₹ 5,00,000/- within a period of three months. A security amount of ₹ 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 the lapse of another three-month period. Mr Jhuth neither responded to Mr Such nor to his phone calls. After the lapse of another six months, Mr Jhuth contract Mr Such and denied purchasing the motor car. He also demanded back the security amount of ₹ 20,000/- from Mr Such. Referring to the provisions of the Indian Contract Act, 1872, state whether Mr Such is required to refund the security amount to Mr Jhuth. Also, examine the validity of the claim made by Mr Jhuth, if the motor car would have destroyed by accident within the three month's agreement period.	3
Ans.	(ICAI-SM) As per provision of the Indian Contract Act, 1872, when an agreement is <u>discovered to be void or when a contract becomes void</u> , any person who has received any advantage under such agreement or <u>contract is bound to restore it or to make compensation for it to the person from whom he received it</u> . Fact of the case: Mr Jhuth entered into an agreement with Mr Such to purchase his (Mr Such's) motor car for ₹ 5,00,000/- within a period of three months. A security amount of ₹ 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 the lapse of another three-	1 1

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52	Mr Murari owes payment of 3 bills to Mr Girdhari as of 31st March 2020. (i) ₹ 12,120, which was due in May 2016. (ii) ₹5,650, which was due in August 2018 (iii) ₹ 9,680, which was due in May 2019. Mr Murari made the payment on 1st April 2020 as below without any notice of how to appropriate them: i) A cheque of ₹ 9,680 ii) A cheque of ₹ 15,000. Advice under the provision of the Indian Contract Act, 1872. (ICAI-SM)	4
Ans.	As per the provision of the Indian Contract Act, 1872, the performance consists of payment of money, and there are several debts to be paid, the payment shall be appropriated. <u>The debtor has, at the time of payment, the right of appropriating the payment</u>. In default of the debtor, the creditor has the option of the election, and in the default of either, the law allows <u>appropriation of debts in order of time</u>. Fact of the case: Mr Murari owes payment of 3 bills to Mr Girdhari as of 31st March 2020. ₹ 12,120, which was due in May 2016, ₹5,650, which was due in August 2018 and ₹9,680, which was due in May 2019. Conclusion: A cheque of ₹9,680 can be appropriated against the debts which are due even though the same is time-barred. Hence, Mr Girdhari can appropriate the same against the debt of ₹12,120. A cheque of ₹ 15,000 can be appropriated against the debt which is due even though the same is time-barred. Hence, Mr Girdhari can appropriate the same against the debt of ₹12,120, which was due in 2016 and the balance against ₹ 5,650, which was due in August 2018.	1 1 1
53	"All contracts are agreement, but all agreements are not contract". Comment. (ICAI-SM)	3
Ans.	An agreement comes into existence when one party makes an offer to the other party, and that other party gives his acceptance to it. A contract is an agreement enforceable by law. It means that to become a contract, an agreement must give rise to a legal obligation. If an agreement is incapable of creating a duty enforceable by law, it is not a contract. All agreements are not contract: When there is an agreement between the parties and <u>do not intend to create a legal relationship</u>, it is not a contract. All contracts are agreements: For a contract, there must be two things (a) <u>an agreement</u> and (b) <u>enforceable by law</u>. Thus, the existence of an agreement is a pre-requisite existence of a contract. Therefore, it is true to say that all contracts are agreements Thus, we can say that there can be an agreement without it becoming a contract, but we <u>can't have a contract without an agreement</u>.	1 1 1

Sale of Goods Act, 1930

Q. No.		Marks												
1	What are the differences between a 'Condition' and 'Warranty' in a contract of sale? Also, explain, when shall a 'breach of condition' be treated as 'breach of warranty' under the provision of the Sale of Goods Act, 1930? (RTP May 2021, RTP Nov. 2020, Jan. 2021)	5												
Ans.	Difference between Condition and Warranty <table border="1"> <thead> <tr> <th>Basis</th><th>Condition</th><th>Warranty</th></tr> </thead> <tbody> <tr> <td>Main purpose</td><td>A condition is a stipulation <u>essential</u> to the main purpose of the contract.</td><td>A warranty is stipulation <u>collateral</u> to the main purpose of the contract.</td></tr> <tr> <td>Breach</td><td>In the breach of the condition, the <u>contract can be repudiate or the damages can be claimed or both.</u></td><td>Breach of warranty, the <u>aggrieved party can claim damages only.</u></td></tr> <tr> <td>Treat</td><td>Breach of condition may be treated as a <u>breach of warranty.</u></td><td>A breach of warranty cannot be treated as a <u>breach of condition</u></td></tr> </tbody> </table> According to the provision of the Sale of Goods Act, 1930, a breach of condition may be treated as a breach of the warranty in the following circumstances: - Where a contract of sale is subject to any condition to be fulfilled by the seller, the <u>buyer may waive the condition.</u> [taking car for loan] - Where the buyer elects to treat the breach of condition as a breach of warranty. - Where the contract of sale is non-severable, and the buyer has accepted the <u>whole goods</u> or any part thereof. <u>he can claim for remaining.</u> - Where the fulfilment of any condition or warranty is <u>excused by law by reason of impossibility</u> or otherwise. [Land will not sell for 2 months]	Basis	Condition	Warranty	Main purpose	A condition is a stipulation <u>essential</u> to the main purpose of the contract.	A warranty is stipulation <u>collateral</u> to the main purpose of the contract.	Breach	In the breach of the condition, the <u>contract can be repudiate or the damages can be claimed or both.</u>	Breach of warranty, the <u>aggrieved party can claim damages only.</u>	Treat	Breach of condition may be treated as a <u>breach of warranty.</u>	A breach of warranty cannot be treated as a <u>breach of condition</u>	1 1 1 1/2 1/2 1/2
Basis	Condition	Warranty												
Main purpose	A condition is a stipulation <u>essential</u> to the main purpose of the contract.	A warranty is stipulation <u>collateral</u> to the main purpose of the contract.												
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2	"A non-owner can convey better title to the bonafide purchaser of goods for value". Discuss the cases when a person other than the owner can transfer title in goods as per the provisions of the Sale of Goods Act, 1930? (Nov. 2020, May 2019, RTP May 2020, ICAI SM)	5												
Ans.	As per the provision of the Sale of Goods Act, 1930, "A non-owner can convey better title to the <u>bonafide purchaser</u> of goods for value" in the following case: Sale by a mercantile agent: A sale made by a <u>mercantile agent</u> of the goods for the document of title to goods would pass a good title to the buyer if: - He was in possession of the goods or documents with the <u>consent of the owner.</u> - If the sale was made by him when <u>acting in the ordinary course of business</u> as a mercantile agent. - The buyer had acted in <u>good faith</u> and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell. Sale by one of the joint owners: If one of several <u>joint owners</u> of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them from such joint owner in	1 1/2												

Car - 15 kmpl

10 kmpl

Apples
Mashie mix

	good faith and has not at the time of the contract of sale notice that the seller has no authority to sell. 3) Sale by a person in possession under voidable contract: A buyer would acquire a good title to the goods sold to him by a seller who had obtained possession of the goods under a contract voidable on the ground of <u>coercion</u>, <u>fraud</u>, <u>misrepresentation</u> or <u>undue influence</u> provided that the contract had not been rescinded until the time of the sale. 4) Sale by one who has actually sold the goods but continues in possession thereof: If a person has sold the goods but <u>continues to be in possession</u> of them or of the documents of title to them, he may sell them to a third person, and if such person obtains delivery thereof in <u>good faith</u> and without the notice of the previous sale, he would have good title to them. 5) Sale by buyer obtaining possession before the property in the goods has vested in him: Where a buyer, with the <u>consent of the seller</u>, obtains possession of the goods, he may <u>sell or pledge or dispose</u> of the goods to the third person. 6) Effect of estoppel: When the owner let the other person sell his goods, and the owner does not deny his authority to sell those goods. 7) Sale by an unpaid seller: When an unpaid seller has exercised his right of <u>lien</u> or <u>stoppage in transit</u> resells the goods, the buyer acquires a good title to the goods as against the original buyer. 8) Sale under the provisions of the other Acts: - Sale by an <u>Official Receiver</u> or <u>Liquidator</u> of the company. - Purchase of goods from a <u>finder of goods</u>. - A sale by <u>Pawnee</u> can convey a good title to the buyer.	1/2 1/2 1/2 1/2 1/2 1
3	What is the doctrine of "Caveat Emptor"? What are the exceptions to the doctrine of "Caveat Emptor"? (Nov. 2020, Nov. 2018)	6
Ans.	As per the provision of the Sale of Goods Act, 1930, the doctrine of 'Caveat Emptor' means 'Let the buyer beware'. When the seller displays their goods in the open market, it is for the buyers to make proper selection or choice of the goods. If the goods turn out to be defective, the buyer cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling. Exceptions to the rule of 'Caveat Emptor': <u>Fitness as to quality or use:</u> Where the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller's skill or judgment and the goods are of a description which is in the course of seller's business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose. <u>Goods purchased under patent or brand name:</u> In a case where the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose. <u>Goods sold by description:</u> Where the goods are sold by description, there is an implied condition that the goods shall correspond with the description. If it is not so, then the seller is responsible. <u>Goods of Merchantable Quality:</u> Where the goods are bought by description from a seller who deals in goods of that description, there is an implied condition that the goods shall be of merchantable quality. The rule of Caveat Emptor is not	2 1/2 mark for each point

	applicable. But where the buyer has examined the goods, this rule shall apply if the defects were such which ought to have not been revealed by ordinary examination. 5) <u>Sale by sample</u>: Where the goods are bought by sample, this rule of Caveat Emptor does not apply if the bulk does not correspond with the sample. 6) <u>Goods by sample as well as description</u>: Where the goods are bought by sample as well as description, the rule of Caveat Emptor is not applicable in case the goods do not correspond with both the sample and description or either of the condition. 7) <u>Trade Usage</u>: An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade, and if the seller deviates from that, this rule of Caveat Emptor is not applicable. 8) <u>Seller actively conceals a defect or is guilty of fraud</u>: Where the seller sells the goods by making some misrepresentation or fraud, and the buyer relies on it or when the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply. In such a case, the buyer has a right to avoid the contract and claim damages.	
4	Mr Amit was shopping in a self-service Supermarket. He picked up a bottle of cold drink from a shelf. While he was examining the bottle, it exploded in his hand and injured him. He files a suit for damages against the owner of the market on the ground of breach of condition. Decide under the Sale of Goods Act, 1930, whether Mr Amit would succeed in his claim? (RTP May 2020)	3
Ans.	As per the provision of the Sale of Goods Act, 1930, which states that where goods are bought by description from a seller who <u>deals in goods of that description, there is an implied condition that the goods shall be of merchantable quality</u>. Though the term 'merchantable quality' is not defined in the Act, it means that in the present case, the bottle must be properly sealed. In other words, if the goods are purchased for self-use, they should be reasonably fit for the purpose for which it is being used. Facts of the case: Mr Amit was shopping in a self-service Supermarket. He picked up a bottle of cold drink from a shelf. While <u>he was examining the bottle, it exploded in his hand and injured him</u>. He files a suit for damages against the owner of the market on the ground of breach of condition. Conclusion: On an examination of the bottle of cold drink, it exploded and injured the buyer. Mr Amit would <u>succeed in a claim for damages from the owner of the shop</u>.	2
		1/2
		1/2

5	What are the rights of the buyer against the seller if the seller commits a breach of contract under the Sale of Goods Act, 1930?	5
Ans.	If the seller commits a breach of contract, the buyer gets the following rights against the seller: (RTP May 2020) 1) Damages for non-delivery: Where the seller <u>wrongfully neglects or refuses to deliver</u> the goods to the buyer, the buyer may sue the seller for damages for non-delivery. 1/2 2) Suit for specific performance: Where the seller commits breach of the contract of sale, the buyer can appeal to the court for a specific performance. The court can order for specific performance only when the goods are <u>ascertained or specific</u>. 1 3) Suit for breach of warranty: Where there is a breach of warranty on the part of the seller, or where the buyer elects to treat a breach of condition as a breach of warranty, the buyer is <u>not entitled to reject</u> the goods only on the basis of such breach of warranty. But he may: ✓ Set up against the seller the breach of the warranty in <u>diminution or extinction</u> of the price: or 1/2 ✓ Sue the seller for <u>damages</u> for breach of warranty. 1/2 4) Repudiation of the contract before due date: where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as <u>subsisting and wait</u> till the date of delivery, or he may treat the contract as <u>rescinded and sue for damages</u> for the breach. 1 5) Suit for interest: nothing in this Act shall affect the right of the seller or the buyer to <u>recover interest or special damages</u>, in any case whereby law interest or special damages may be recoverable, or to recover the money paid where the consideration for the <u>payment of it has failed</u>. 1 In the absence of a contract to the contrary, the court may award interest at such rate as it thinks fit on the amount of the price to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller from the date on which the payment was made.	
6	Explain the term "Delivery, and it forms" under the Sale of Goods Act, 1930. (May 2018)	4
Ans.	As per the provision of the Sale of Goods Act, 1930, delivery means voluntary <u>transfer of possession</u> from one person to another. Delivery of goods may be by doing anything which has the effect of putting the goods into the possession of the buyer or any person authorized to hold them on his behalf. Forms of delivery: 1) Actual Delivery: When the goods are <u>physically delivered</u> to the buyer. 1 2) Constructive Delivery: When it is affected <u>without any change</u> in the custody or actual possession of the goods. 1 3) Symbolic Delivery: When there is a delivery of a thing in <u>token of a transfer</u> of something else, i.e., delivery of goods in the course of transit may be made by handing over the documents of title to goods like a bill of lading, railway receipt or delivery orders or the key of a warehouse containing the goods is handed over to the buyer. 1	



9	A agrees to buy a new TV from a shop keeper for ₹30,000 payable partly in cash of ₹20,000 and partly in exchange for an old TV set. Is it a valid contract of sale of goods? Give reasons for your answer.	4
Ans.	(ICAI SM) As per the provision of the Sale of Goods Act, 1930, goods should be exchanged for money. If the goods are <u>exchanged for goods</u>. It will not be called a sale. It will be considered as a barter. However, a contract for the transfer of <u>movable property for a definite price payable</u> partly in goods and partly in cash is held to be a contract of Sales of Goods. Facts of the case: The new TV set is agreed to be sold for ₹30,000 and the price is payable partly in exchange for the old TV set and partly in cash of ₹20,000. Conclusion: The new TV set is agreed to be sold for ₹ 30,000 and <u>the price is payable partly</u> in exchange for the old TV set and partly in cash of ₹ 20,000. So, in this case, it is a valid contract of sale.	1½ 1 1½
10	Mr T was a retailer trader of fans of various kinds. Mr M came to his shop and asked for an exhaust fan for the kitchen. Mr T showed him different brands, and Mr M approved of a particular brand and paid for it. A fan was delivered to 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 the price. i) Discuss whether Mr T is right in refusing to exchange as per provisions of the Sale of Goods Act, 1930? ii) What is the remedy available to Mr M? (RTP May 2021, Jan. 2021)	3
Ans.	As per the provision of the Sale of Goods Act, 1930, where the goods are <u>sold by sample</u> as well as by description, the implied condition is that the goods supplied shall correspond to both the <u>sample and the description</u>. In case the goods do not correspond to both with the sample or with the description or vice versa or both, the buyer can <u>repudiate the contract</u>. Also, when the buyer makes known to the seller the particular purpose for which the goods are required, and he relies on the judgement or skill of the seller, it is the <u>duty of the seller to supply such goods</u> as are reasonably fit for that purpose The facts in the case: Mr T was a retailer trader of fans of various kinds. Mr M came to his shop and asked for an exhaust fan for the kitchen. Mr T showed him different brands, and Mr M approved of a particular brand and paid for it. A fan was delivered to 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. Conclusion: i) In the given case, Mr M had revealed to Mr T that he wanted the exhaust fan for the kitchen. Since the table fan delivered by Mr T was <u>unfit for the purpose</u> for which Mr M wanted the fan, therefore, <u>T cannot refuse to exchange</u> the fan.	½ ½ 1 ½

	ii) In the present case, the remedy available to Mr M is that he can either rescind the contract or claim a refund of the price paid by him, or he may require <u>Mr T to replace it with the fan he wanted.</u>	1/2
11	J sold a machine to K. K gave a cheque for the payment. The cheque was dishonoured. But J handed over a delivery order to K. K sold the goods to R based on the delivery order. J wanted to exercise his right of lien on the goods. Can he do so under the provisions of the Sale of Goods Act, 1930?	4
Ans.	(ICAI SM) As per the provision of the Sale of Goods Act, 1930, The right of lien and stoppage in transit is meant to <u>protect the seller</u>. These will <u>not be affected even when the buyer</u> has made a transaction of his goods which were with the seller under the lien. But under two exceptional cases, these rights of the seller are affected- 1) When the buyer has made the transaction with the <u>consent of the seller</u>. 2) When the buyer has <u>made the transaction based</u> on documents of title such as bill of lading, railway receipt or a delivery order etc. Facts of the case: J sold a machine to K. K gave a cheque for the payment. The cheque was dishonoured. But J handed over a delivery order to K. K sold the goods to R based on the delivery order. J wanted to exercise his right of lien on the goods. Conclusion: In the present case, J is entitled to exercise the right of lien, but his <u>right of lien defects</u> because he has given the <u>document of title to the buyer</u>. The buyer has made a transaction of sale based on this document of title to the buyer, and the buyer has made a transaction of sale based on this document. So, R, who has purchased the machine from K, <u>can demand the delivery of the machine.</u>	1 1/2 1/2 1 1
12	A, who is an agent of a buyer, had obtained the goods from the Railway Authorities and loaded the goods on his truck. In the meantime, the Railway Authorities received a notice from B, the seller, for stopping the goods in transit as the buyer has become insolvent. Referring to the provisions of the Sale of Goods Act, 1930, decide whether the Railway Authorities can stop the goods in transit as instructed by the seller?	5
Ans.	(ICAI SM) As per the provision of the Sale of Goods Act, 1930, the right of stoppage of goods in transit means the right of stopping the goods after the <u>seller has parted with the goods</u>. After that, the seller regains possession of the goods. This can be exercised by an unpaid seller when he has lost his right of lien over the goods because the <u>goods are delivered to a carrier to take the goods to the buyer</u>. This right is available to the unpaid seller only when the buyer has become insolvent. The conditions necessary for exercising this right are: 1) The buyer <u>has not paid a total</u> price to the seller. 2) The seller has delivered <u>the goods to a carrier</u>, thereby losing his right of lien. 3) The buyer has become <u>insolvent</u>. 4) The <u>goods have not reached the buyer</u>; they are in the course of transit. Facts of the case: A, who is an agent of a buyer, had obtained the goods from the Railway Authorities and loaded the goods on his truck. In the meantime, the Railway Authorities received	1/2 1/2 1/2 1/2 1/2 1

	a notice from B, the seller, for stopping the goods in transit as the buyer has become insolvent. Conclusion: In the present case, the railway authorities cannot stop goods because the <u>goods are not in transit</u> . A who has loaded the goods <u>on his truck is the agent of the buyer</u> . That means railway authorities have given possession of the goods to the buyer. The transit comes to an end when <u>the buyer or his agent takes possession of the goods</u> .	1
13	Mr G sold some goods to Mr H for a certain price by the issue of an invoice, but payment in respect of the same was not received on that day. The goods were packed and lying in the godown of Mr G. The goods were inspected by H's agent and were found to be in order. Later on, the dues of the goods were settled in cash. Just after receiving cash, Mr G asked Mr H that goods should be taken away from his godown to enable him to store other goods purchased by him. After one day, since Mr H did not take delivery of the goods, Mr G kept the goods out of the godown in an open space. Due to the rain, some goods were damaged. Referring to the provisions of the Sale of Goods Act, 1930, analyse the above situation and decide who will be held responsible for the above damage. Will your answer be different if the dues were not settled in cash and are still pending? (Nov. 2018)	6
Ans.	As per the provision of the Sale of Goods Act, 1930, when the <u>seller is ready and willing to deliver the goods</u> and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any <u>loss occurred by his neglect or refusal to take delivery</u> and also for a reasonable charge for the care and custody of the goods. The property in the goods passes to the buyer at a point of time depending upon ascertainment, appropriation and delivery of goods. <u>Risk of loss of goods prima facie follows the passing of property in goods</u> . Goods remain at the seller's risk unless the property therein is transferred to the buyer, but after the transfer of property therein to the buyer, the goods are at the buyer's risk whether delivery has been made or not.	1
	In the given case, since Mr G has already intimated Mr H that he wanted to store some other goods and thus Mr H should take the delivery of goods kept in the godown of Mr G, the loss of goods damaged should be borne by Mr H.	1
	If the price of the goods would not have settled in cash and some amount would have been pending, then Mr G will be treated as an unpaid seller, and he can enforce the following rights against the goods as well as against the buyer personally:	1/2
	1) Where under a contract of sale, the <u>property in the goods has passed to the buyer</u> , and the <u>buyer wrongfully neglects or refuses to pay for the goods</u> according to the terms of the contract, the seller may sue him for the price of the goods.	1 1/2
	2) Where under a contract of sale, the <u>price is payable on a certain day</u> irrespective of delivery, and the <u>buyer wrongfully neglects or refuses to pay</u> such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract.	1 1/2

14	Explain the rules to Auction as per the Sale of Goods Act, 1930.	(Jan. 2021)	6
Ans.	As per the provision of the Sale of Goods Act, 1930, rules to regulate the sale of the auction are: - 1) Goods are sold in lots: Where goods are put up for sale in lots, each lot is prima facie deemed to be subject to a <u>separate contract of sale</u>. 2) Completion of the contract of sale: The sale is complete when the auctioneer announces <u>its completion by the fall of the hammer</u> or in any other customary manner, and until such announcement is made, any bidder may retract from his bid. 3) Right to bid may be reserved: Right to bid may be reserved expressly by or on behalf of the seller, and where such right is expressly reserved, but not otherwise, the <u>seller or anyone person on his behalf may bid at the auction</u>. 4) When the sale is not notified by the seller: When the sale is notified to be subject to a right to bid on behalf of the seller, it shall <u>not be lawful for the seller to bid himself or employ any person to bid at such sale</u>, or for the auctioneer knowingly to take any bid from the seller or any such person, and any sale contravening this rule may be treated as fraudulent by the buyer. 5) Reserved price: The sale may be notified to be <u>subject to a reserved or upset price</u>. 6) Pretended to bid: If the seller makes use of pretended <u>bidding to raise the price</u>, the sale is voidable at the option of the buyer.		1 Mark for each point
15	A agrees to sell certain goods to B on a certain date on 10 days credit. The period of 10 days expired, and goods were still in possession of A. B has also not paid the price of the goods. B becomes insolvent. A refuse to deliver the goods to exercise his right of lien on the goods. Can he do so under the Sale of Goods Act, 1930?	(ICAI SM)	5
Ans.	As per the provision of the Sale of Goods Act, 1930, provides that the unpaid seller who is <u>in possession of the goods</u> is entitled to exercise the <u>right of lien</u> in the following cases: 1) Where the goods have been sold <u>without any stipulation as to credit</u> 2) Where the goods have been sold on <u>credit but the term of credit has expired</u> 3) Where the buyer has <u>become insolvent</u> even though the period of credit has not yet expired. Facts of the case: A agrees to sell certain goods to B on a certain date on 10 days credit. The period of 10 days expired, and goods were still in possession of A. B has also not paid the price of the goods. B becomes insolvent. A refuse to deliver the goods to exercise his right of lien on the goods. Conclusion: A has agreed to sell certain goods to B on credit 10 days. The period of 10 days has expired. B has <u>neither paid the price of goods nor taken the possession of goods</u>. That means the goods are still physically in possession of A, the seller. In the meantime, B, the buyer has <u>become insolvent</u>. In this case, A is entitled to exercise the right of lien on the goods because the buyer has become insolvent and the term of credit has <u>expired without any payment of the price by the buyer</u>.		$\frac{1}{2}$ 1 1 1 $\frac{1}{2}$ 1

16	Suraj sold his car to Sohan for ₹ 75,000. After inspection and satisfaction, Sohan paid ₹ 25,000 and took possession of the car and promised to pay the remaining amount within a month; later on, Sohan refuses to give the remaining amount on the ground that the car was not in good condition. Advise Suraj as to what remedy is available to him against Sohan.	4
Ans.	(ICAI SM, RTP Nov. 2020, RTP Nov. 2019) As per the provision of the Sale of Goods Act, 1930, an unpaid seller has a <u>right to institute a suit for price against the buyer personally</u>. i) Where under a contract of sale, the property in the goods has passed to the buyer, and the <u>buyer wrongfully neglects or refuses to pay for the goods</u>, the seller may sue him for the price of the goods. ii) Where under a contract of sale, the price is payable on a <u>certain day irrespective of delivery</u>, and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price. It makes no difference even if the property in the goods has not passed and the <u>goods have not been appropriated</u> to the contract. Facts of the case: Suraj sold his car to Sohan for ₹75,000. After inspection and satisfaction, Sohan paid ₹25,000 and took possession of the car and promised to pay the remaining amount within a month; later on, Sohan refuses to give the remaining amount on the ground that the car was not in good condition. Conclusion: This problem is based on the above provisions. Hence, Suraj will succeed against Sohan for recovery of the remaining amount. Apart from this, Suraj is also entitled to: 1) Interest on the <u>remaining amount</u>. 2) Interest during the <u>pending of the suit</u>. 3) <u>Costs of the proceedings</u>.	1/2 1 1 1/2 1
17	Ram sells 200 bales of cloth to Shyam and sends 100 bales by lorry and 100 bales by Railway. Shyam receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by the railway, he becomes bankrupt. Can Ram exercise the right of stopping the goods in transit?	6
Ans.	(ICAI SM) As per the provision of the Sale of Goods Act, 1930, dealing with <u>the right of stoppage of the goods in transit</u> available to an unpaid seller, the right is <u>exercisable by the seller</u> only if the following conditions are fulfilled. i) The seller must be <u>unpaid</u> ii) He must have parted with the <u>possession of goods</u> iii) The goods must be in <u>transit</u> iv) The buyer must have become <u>insolvent</u> v) The right is <u>subject to the provisions of the act</u>. Facts of the case: Ram sells 200 bales of cloth to Shyam and sends 100 bales by lorry and 100 bales by Railway. Shyam receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by the railway, he becomes bankrupt.	1 1/2 1/2 1/2 1/2 1/2 1/2 1

	Conclusion: In the present case, Ram being still unpaid, can stop the 100 bales of cloth sent by railway as these goods are still in transit.	1
18	State the various essential elements involved in the sale of unascertained goods and their appropriation.	4
Ans.	(Nov. 2019, May 2018) As per the provision of the Sale of Goods Act, 1930, appropriation of goods involves the <u>selection of goods</u> with the intention of <u>using them in the performance of the contract</u> and with the <u>mutual consent of the buyer and seller</u>. The essentials are: 1) There is a contract for the sale of <u>unascertained or future goods</u>. 2) The goods should conform to the <u>description and quality stated in the contract</u>. 3) The goods must be in a <u>deliverable state</u>. 4) The goods must be <u>unconditionally</u> (as distinguished from an intention to appropriate) <u>appropriated</u> to the contract either by delivery to the buyer or his agent or the carrier. 5) The appropriation must be made by: i. the seller with the <u>assent of the buyer</u>, or ii. the buyer with the <u>assent of the seller</u>. 6) The assent may be <u>express or implied</u>. 7) The assent may be given either <u>before or after appropriation</u>.	1/2 1/2 1/2 1/2 1/2 1/2 1/2
19	State the essential elements of a contract of sale under the Sale of Goods Act, 1930 briefly.	3
Ans.	(RTP May 2021, RTP May 2020) As per the provision of the Sale of Goods Act, 1930, the following elements must co-exist so as to constitute a contract of sale of goods: - 1) There must be <u>at least two parties</u>. 2) The subject matter of the contract must <u>necessarily be goods</u>. 3) A price in money (not in-kind) should be <u>paid or promised</u>. 4) A <u>transfer of property</u> in goods from the seller to the buyer must take place. 5) A contract of sale must be <u>absolute or conditional</u>. 6) All other <u>essential elements of a valid contract</u> must be present in the contract of sale.	1/2 1/2 1/2 1/2 1/2 1/2
20	What are the rights of an unpaid seller against goods under the Sale of Goods Act, 1930?	6
Ans.	(Nov. 2019) As per the provision of the Sale of Goods Act, 1930, the unpaid seller has the following rights against the goods: - 1) Seller's Lien: Subject to the provisions of this act, the <u>unpaid seller</u> of goods who is in possession of them is entitled to <u>retain possession</u> of them <u>until payment or tender of the price</u> in the following cases- i) where the goods have been <u>sold without any stipulation as to credit</u>; ii) where the goods have been <u>sold on credit</u>, but the <u>term of credit has expired</u>; iii) where the <u>buyer becomes insolvent</u>.	1/2 1/2 1/2 1/2

Same as 12 ans	iv) The seller may exercise his right of lien, <u>notwithstanding</u> that he in possession of the goods as an <u>agent</u> or <u>bailee</u> for the buyer. 2) Right of Stoppage in Transit: Subject to the provisions of this act, when the <u>buyer of goods become insolvent</u>, the unpaid seller who has <u>parted with the possession</u> of the goods has the <u>right of stopping them in transit</u>. He may <u>resume possession</u> of the goods as long as they are in the <u>course of transit</u> and may <u>retain</u> them until <u>paid or tendered</u> the price of the goods. The right of stoppage in transit is the <u>extension of the right of lien</u> because it entitles the buyer to <u>regain possession</u> even when the seller has <u>parted with the possession</u> of the goods. The right of stoppage in transit is exercised in the following conditions only- i) The seller must be <u>unpaid</u>. ii) He must have <u>parted with the possession</u> of the goods. iii) The goods are <u>in transit</u>. iv) The buyer has become <u>insolvent</u>.	1/2 1 1/2 1/2 1/2 1/2
21	Ms Geeta went to local rice and wheat wholesale shop and asked for 100 Kgs of Basmati Rice. The shopkeeper quoted the price of the same as ₹125 per Kg, to which she agreed. Ms Geeta insisted that she would like to see the sample of what will be provided to her by the shopkeeper before she agreed upon the purchase. The shopkeeper showed her a bowl of rice as a sample. The sample exactly corresponded to the entire lot. The buyer examined the sample casually without noticing the fact that even though the sample was that of Basmati Rice, but it contained a mix of long and short grains. The cook, on opening the bags, complained that if the dish is prepared with these rice would not taste the same as the quality of rice was not as per the requirement of the dish. Now, Ms Geeta wants to file a suit of fraud against the seller, alleging he of selling a mix of the good and cheap quality of rice. Will she be successful? Decide the fate of the case and options open to the buyer for grievance redressal. What would be your answer in case Ms Geeta specified her exact requirement as to the length of rice? (Nov. 2019, ICAI SM)	6
Ans.	As per the provision of the Sale of Goods Act, 1930, in a contract of sale by sample, there is an <u>implied condition</u>: - the bulk shall <u>correspond with the sample in the quality</u>; - the buyer shall have a <u>reasonable opportunity of comparing</u> the bulk with the sample. Also, the goods shall be <u>free from any defect</u> rendering them un-merchantable, which would not be apparent on a <u>reasonable examination</u> of the sample. This condition is applicable only with regard to defects that <u>could not be discovered</u> by an ordinary examination of the goods. But, if the defects are <u>latent</u>, then the buyer can <u>avoid the contract</u>.	1 1 1

iii) When the seller waived the right of per-

23	A delivered a horse to B on a sale and return basis. The agreement provided that B should try the horse for 8 days and return if he did not like the horse. On the third day, the horse died without the fault of B. A files a suit against B for the recovery of price. Can he recover the price?	3
Ans.	As per the provision of the Sale of Goods Act, 1930, <u>the risk follows the ownership</u> . Under the sale on an approval basis, goods custody transfer, but ownership is not transferred. Facts of the case: A delivered the horse to B on a sale or return basis. It was decided between them that B will try the horse for eight days, and in case he does not like it, he will return the horse to owner A. But on the third day, the horse died without any fault of B. the time given by seller A to buyer B has not expired yet. Conclusion: In the present case, the ownership of the horse still belongs to seller A. B will be considered as the owner of the horse only when B does not return the horse to A within the stipulated time of 8 days. The <u>suit filed by A for the recovery of price</u> from B is invalid, and <u>he cannot recover the price from B</u> .	1 1 1
24	The buyer took delivery of 20 tables from the seller on a sale or return basis without examining them. Subsequently, he sold 5 tables to his customers. The customer lodged a complaint of some defect in the tables. The buyer sought to return tables to the seller. Was the buyer entitled to return the tables to the seller under the provisions of the Sale of Goods Act, 1930?	4
Ans.	As per the provision of the Sale of Goods Act, 1930, in case of <u>goods on an approval basis</u> , the property in goods passes from the <u>seller to the buyer</u> i) When the person to whom the goods are given either accepts them or does an act that <u>implies adopting the transaction</u> . ii) When the person to whom the goods are given retains the goods without giving his approval or giving notice of rejection beyond the time fixed for the return of goods and in <u>case no time is fixed after the lapse of reasonable time</u> . Facts of the case: The buyer took delivery of 20 tables from the seller on a sale or return basis without examining them. Subsequently, he sold 5 tables to his customers. The customer lodged a complaint of some defect in the tables. The buyer <u>sought to return tables</u> to the seller. Conclusion: In the present case, the buyer is entitled to return only 15 tables to the seller and <u>not those 5 tables which he has already sold</u> to his customer. These tables are already accepted by him, so <u>the buyer becomes liable under the doctrine of Caveat Emptor</u> .	1 1 1 1

25	X agreed to purchase 300 tons of wheat from Y out of a larger stock. X sent his men with the sack, and 150 tons of wheat were put into the sacks. Then there was a sudden fire, and the entire stock was gutted. Who will bear the loss and why?	4
Ans.	As per the provision of the sale of Goods Act, 1930, if the goods are not in a deliverable state and the contract is for the sale of specific goods, the property does not pass to the buyer unless: i) The seller has done his act of putting the goods in a deliverable state ii) The buyer has knowledge of it. Sometimes the seller is required to do certain acts so as to put the goods are not in a deliverable state like packing, filling in containers etc. No property in goods passes unless such an act is done and the buyer knows about it. Facts of the case: X agreed to purchase 300 tons of wheat from Y out of a larger stock. X sent his men with the sack, and 150 tons of wheat were put into the sacks. Then there was a sudden fire, and the entire stock was gutted. Conclusion: In the present case, 150 tons sale has taken place. So, buyer X will be responsible for bearing the loss. The loss of the rest of the wheat will be that of seller Y. The wheat which was put in the sacks fulfils both the conditions that are: 1) The wheat is put in a deliverable state in the sacks. 2) The buyer is presumed to have knowledge of it because the men who put the wheat in the sacks are that of the buyer.	(ICAI SM) 1 ½ ½ ½ ½ 1
26	Mr D sold some goods to Mr E for ₹5,00,000 on 15 days credit. Mr D delivered the goods. On the due date, Mr E refused to pay for it. State the position and rights of Mr D as per the Sale of Goods Act, 1930.	6
Ans.	As per the provision of the Sale of Goods Act, 1930, the seller of goods is deemed to be an 'Unpaid Seller' when the whole of the price has not been paid or tendered, and the seller had an immediate right of action for the price. Facts of the case: Mr D sold some goods to Mr E for ₹5,00,000 on 15 days credit. Mr D delivered the goods. On the due date, Mr E refused to pay for it. Conclusion: Position of Mr D: Mr D sold some goods to Mr E for ₹5,00,000 on 15 days credit. Mr D delivered the goods. On the due date, Mr E refused to pay for it. So, Mr D is an unpaid seller. Rights of Mr D: As the goods have parted away from Mr D, therefore, Mr D cannot exercise the right against the goods; he can only exercise his rights against the buyer, i.e., Mr E, which are as under: Suit for a price: In the mentioned contract of sale, the price is payable after 15 days, and Mr E refuses to pay such price; Mr D may sue Mr E for the price. Suit for damages for non-acceptance: Mr D may sue Mr E for damages for non-acceptance if Mr E wrongfully neglects or refuses to accept and pay for the goods. Suit for interest: If there is no specific agreement between Mr D and Mr E as to interest on the price of the goods from the date on which payment becomes	(May 2018, ICAI SM) 1 ½ ½ 1 1 1 1

	due, Mr D may <u>charge interest on the price</u> when it becomes <u>due</u> from such day as he may <u>notify</u> to Mr E.	
27	Define Ascertained and Unascertained Goods with an example each. (Nov. 2018)	4
Ans.	Ascertained Goods are those goods that are <u>identified</u> in accordance with the <u>agreement</u> after the <u>contract of sale</u> is made. In actual practice, the term '<u>ascertained goods</u>' is used in the same sense as '<u>specific goods</u>.' When from a large number of <u>unascertained goods</u>, the number or quantity contracted for is <u>identified</u>, such identified goods are called <u>ascertained goods</u>. Example: A person goes to a vegetable market and demand 2kgs of tomatoes. When the seller <u>appropriates</u> 2kgs of tomatoes in accordance with the agreement, the goods become <u>ascertained</u>. Unascertained goods: The goods which are <u>not specifically identified</u> or <u>ascertained</u> at the time of the making of the contract are known as '<u>unascertained goods</u>'. They are indicated or defined only by <u>description</u> or <u>sample</u>. Example: X agrees to sell Y one bag of wheat out of hundreds of bags placed in his/her godown, which is the sale of <u>unascertained goods</u> because it is <u>not known</u> which bag is to be delivered.	1 1 1 1
28	A B and C was joint owner of a truck, and the possession of the said truck was with B. X purchased the truck from B without knowing that A and C were also owners of the truck. Decide in the light of provisions of Sale of Goods Act, 1930. Whether the sale between B and X is valid or not? (ICAI SM)	4
Ans.	As per the provision of the sale of Goods Act, 1930, sale by one of the <u>several joint</u> owners is valid if the following conditions are satisfied: Same as 2 (ii) i) One of the several joint owners <u>has sole possession</u> of them. ii) Possession of the goods is by the <u>permission of the co-owners</u>. iii) The buyer buys them in good faith and has not at the time of contract of sale knowledge that the seller <u>has no authority to sell</u>. Facts of the case: A B and C was joint owner of a truck, and the possession of the said truck was with B. X purchased the truck from B without knowing that A and C were also owners of the truck. Conclusion: The sale between B and X is perfectly valid. In case one of the several joint owners has the possession of the goods by the permission of the co-owner. If the buyer buys them in <u>good faith without the knowledge</u> of the fact that the seller has <u>no authority to sell</u>, it will give rise to a <u>valid contract of sale</u>.	1/2 1/2 1/2 1/2 2
29	What are the implied conditions under a sale by sample? (RTP Nov. 2019)	3
Ans.	As per the provisions of the Sale of Goods Act, 1930, implied conditions under a sale by the sample are: i) there is an <u>implied condition</u> that the <u>bulk shall correspond with the sample</u> in quality; ii) there is another <u>implied condition</u> that the buyer shall have a <u>reasonable</u>	1 1

	opportunity of comparing the bulk with the sample; iii) it is further an <u>implied condition of merchantability</u> , as regards <u>latent or hidden defects</u> in the goods which would <u>not be apparent on a reasonable examination of the sample</u> .	1
30	Ms Preeti owned a motor car which she handed over to Mr Joshi on a sale or return basis. After a week, Mr Joshi pledged the motor car to Mr Ganesh. Ms Preeti now claims back the motor car from Mr Ganesh, will she succeed? Referring to the provisions of the Sale of Goods Act, 1930, decide and examine what recourse is available to Ms Preeti.	5
Ans.	(ICAI SM, Nov. 2020, RTP May 2021) As per the provision of the sale of Goods Act, 1930, when goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer: i) When the buyer signifies his approval or acceptance to the seller or does any <u>other act adopting the transaction</u> ii) If he does not signify his approval or acceptance to the seller but retains the goods without giving notice to rejection, then if a <u>time has been fixed for the return of the goods on the expiration of such time</u> , and, if no time has been fixed, on the expiration of a reasonable time or iii) He does something for the good, which is <u>equivalent to accepting the goods</u> , e.g., he pledges or sells the goods.	½ 1 1 1
	Facts of the case: Ms Preeti owned a motor car which she handed over to Mr Joshi on a sale or return basis. After a week, Mr Joshi pledged the motor car to Mr Ganesh. Ms Preeti now claims back the motor car from Mr Ganesh.	½
	Conclusion: Mr Joshi, who had taken delivery of the Motor car on a Sale or Return basis and <u>pledged the motor car to Mr Ganesh</u> , has attracted the third condition that he has done something to the good, which is <u>equivalent to accepting the goods</u> , e.g., he pledges or sells the goods. Therefore, the <u>property therein passes to Mr Joshi</u> . Now in this situation, <u>Ms Preeti cannot claim back her Motor Car from Mr Ganesh</u> , but she can claim the price of the motor car from <u>Mr Joshi only</u> .	1
31	Mr S agreed to purchase 100 bales of cotton from V out of his large stock and send his men to take delivery of the goods. They could pack only 60 bales. Later on, there was an accidental fire, and the entire stock was destroyed, including 60 bales that were already packed. Referring to the provision of the Sale of Goods Act, 1930, explain as to who will bear the loss and to what extent?	5
Ans.	(ICAI SM, RTP May 2020) As per the provision of the sale of Goods Act, 1930, provides that unless otherwise agreed, the goods remain at the seller's risk until the <u>property therein is transferred to the buyer</u> , but when the property therein is transferred to the buyer, the <u>goods are at buyer's risk whether delivery has been made or not</u> .	1
	Facts of the case: Mr S agreed to purchase 100 bales of cotton from V out of his large stock and send his men to take delivery of the goods. They could pack only 60 bales. Later on, there was	1

an accidental fire, and the entire stock was destroyed, including 60 bales that were already packed.

Conclusion:

It is clear that Mr S has the right to select the goods out of the bulk, and he has sent his men for the same purpose. The problem can be answered based on the following two assumptions, and the answer will vary accordingly.

- 1) In this case, the property in the 60 bales has been transferred to the buyer, and goods have been appropriated to the contract. Thus, loss arising due to fire in the case of 60 bales would be borne by Mr S, as regards 40 bales; the loss would be borne by Mr V since the goods have not been identified and appropriated.
- 2) The property in the goods has been transferred at all, and hence the loss of 100 bales would be borne by Mr V completely.

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32

M/s Woodworth & Associates, a firm is dealing with the wholesale and retail buying and selling of various kinds of wooden logs, customized as per the requirement of the customers. They dealt with Rosewood, Mango wood, Teakwood, Burma, wood etc. Mr Das, a customer, came to the shop and asked for wooden logs measuring 4 inches broad and 8 feet long as required by the carpenter. Mr Das specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames. The Shop owner agreed and arranged the wooden pieces cut into as per the buyer's requirements. The carpenter visited Mr Das's house the next day, and he found that the seller has supplied Mango Tree wood which would be most unsuitable for the purpose. The carpenter asked Mr Das to return the wooden logs as they would not meet his requirements.

The Shop owner refused to return the wooden logs on the plea that logs were cut to specific requirements of Mr Das and hence could not be resold.

- i) Explain the duty of the buyer and seller according to the doctrine of "Caveat Emptor".
- ii) Whether Mr Das would be able to get the money back or the right kind of wood as required serving his purpose?

(May 2019, ICAI SM)

6

Ans.

- i) As per the provision of the Sale of Goods Act, 1930, the doctrine 'Caveat Emptor' means 'let the buyer beware'. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective, he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling.

Duty of the seller according to the doctrine of "Caveat Emptor": The following exceptions to the Caveat Emptor are the duties of the seller:

- 1) Fitness as to the quality or use.
- 2) Goods purchased under patent or brand name.
- 3) Goods sold by description.
- 4) Goods of Merchantable Quality.
- 5) Sale by sample.
- 6) Goods by sample as well as a description.
- 7) Trade usage.
- 8) Seller actively conceals a defect or is guilty of fraud.

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Destruction of subject matter without any fault to parties to a contract
Contract become void

Facts of the case: X and Y have entered into a contract for the sale of the car, but they did not fix the price of the car. X refused to sell the car to Y on this ground.		1/2
Conclusion: X and Y have entered into a contract for the sale of the car, but they did not fix the price of the car. X refused to sell the car to Y on this ground. Y can legally demand the car from X, and X can <u>recover</u> a reasonable price of the car from Y.		1/2
35	Classify the following transaction according to the types of goods they are: 1) A wholesaler of cotton has 100 bales in the godown. He agrees to sell 50 bales, and these bales were selected and set aside. 2) A agrees to sell to B one packet of sugar out of the one hundred packets lying in his shop. 3) T agrees to sell to S all the apples which will be produced in his garden this year. (ICAI SM, RTP Nov. 2019)	3
Ans.	1) A wholesaler of cotton has 100 bales in his godown. So, the goods are existing goods. He agrees to sell 50 bales, and these bales were selected and set aside. On selection, the goods become ascertained. In this case, <u>the contract is for the sale of ascertained goods, as the cotton bales to be sold are identified</u> and agreed upon after the formation of the contract.	1
	2) If A agrees to sell to B one packet of sugar out of the lot of one hundred packets lying in his shop, <u>it is a sale of existing but unascertained goods because it is not known which packet is to be delivered.</u>	1
	3) T agrees to sell S all the apples which will be produced in his garden this year. It is a contract of sale of <u>future goods, amounting to 'an agreement to sell.</u>	1
36	X consults Y, a motor-car dealer for a car suitable for touring purposes to promote the sale of his product. Y suggests 'Santro', and X accordingly buys it from Y. the car turns out to be unfit for turning purposes. What remedy X is having now under the Sale of Goods Act. 1930? (ICAI SM)	3
Ans.	As per the provision of the Sale of Goods Act, 1930, A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty, a condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to <u>treat the contract as repudiated.</u>	1
	Facts of the case: X consults Y, a motor-car dealer for a car suitable for touring purposes to promote the sale of his product. Y <u>suggests 'Santro'</u> , and X accordingly buys it from Y. the car turns out <u>to be unfit</u> for turning purposes.	1
	Conclusion: In this case, the term that the car should be suitable for touring purposes is a condition of the contract. It is so vital that its non-fulfilment defeats the very purpose for which X purchases the car. X is therefore entitled to <u>reject the car and have a refund</u> of the price.	1

37	Mrs G bought a tweed coat from P. When she used the coat, she got rashes on her shin as her skin was abnormally sensitive. But she did not make this fact known to the seller, i.e., P. Mrs G filled a case against the seller to recover damages. Can she recover damages under the Sale of Goods Act, 1930?	3
Ans.	(ICAI SM, RTP May 2021) As per the provision of the Sale of Goods Act, 1930, A contract of sale, there is <u>no implied condition or warranty as to quality or fitness</u> for any particular purpose of goods supplied. The general rule is that of "Caveat Emptor", that is "let the buyer beware". But where the buyer expressly or impliedly makes known to the seller the particular purpose for which the goods are required and also relies on the seller's skill and judgement and that this is the business of the seller to sell such goods in the <u>ordinary course of his business</u>, the buyer can make the seller responsible. Facts of the case: Mrs G bought a tweed coat from P. When she used the coat, she got rashes on her shin as her skin was abnormally sensitive. But <u>she did not make this fact known to the seller</u>, i.e., P. Mrs G filled a case against the seller to recover damages. Conclusion: Mrs G purchased the tweed coat without informing the seller, i.e., P, about the sensitive nature of her skin. Therefore, she cannot make the seller responsible on the ground that the tweed coat was not suitable for her skin. <u>Mrs G cannot treat it as a breach of implied condition as to fitness and quality</u> and has no right to recover damages from the seller.	1 1 1
38	Certain goods were sold by sample by A to B, who in turn sold the same goods by sample to C and C by sample sold the goods to D. the goods were not according to the sample. Therefore, D, who found the deviation of the goods from the sample, rejected the goods and gave notice to C. C sued B and B sued A. Advice B and C the Sale of Goods Act, 1930?	4
Ans.	(ICAI SM) As per the provision of the Sale of Goods Act, 1930, Where a contract of sale is not severable, and the buyer has accepted the goods or part thereof, the breach of any <u>condition to be fulfilled by the seller can only be treated as a breach of warranty</u> and not as a ground for <u>rejecting the goods</u> and treating the <u>contract as repudiated</u> Facts of the case: Certain goods were sold by sample by A to B, who sold the same goods by sample to C and C by sample sold the goods to D. the goods were not according to the sample. Therefore, D, who found the deviation of the goods from the sample, rejected the goods and gave notice to C. C sued B, and B sued A. Conclusion: D Who noticed the deviation of goods from the sample could reject the goods and treat it as a <u>breach of implied condition</u> as to sample which provides that goods are sold by sample the goods must <u>correspond to the sample in quality</u>. The buyer should be given reasonable time and <u>opportunity of comparing the bulk with the sample</u>. Whereas C can recover only damages from B and B can recover damage from A. For C and B, it will not be <u>treated as a breach of implied condition</u> as to sample as they have accepted and sold the goods according.	1½ 1 1½

39	A person purchased bread from a baker's shop. The piece of bread contained a stone in it which broke the buyer's tooth while eating. What are the rights available to the buyer against the seller under the Sale of Goods Act, 1930?	3
Ans.	(ICAI SM) As per the provision of the Sale of Goods Act, 1930 related to implied condition as to <u>wholesomeness</u> which provides that the eatables and provisions must be wholesome, that is, it must be fit for human consumption. Facts of the case: A person purchased bread from a baker's shop. The piece of bread contained a stone in it which broke the buyer's tooth while eating. Conclusion: The piece of bread contained a stone that broke the buyer's tooth while eating, thereby considered unfit for consumption. Hence, the buyer can treat it as <u>a breach of implied condition</u> as to wholesomeness and <u>can also claim damages</u> from the seller.	1 1 1
40	J, the owner of a Fiat car, wants to sell his car. For this purpose, he hands over the car to P, a mercantile agent for sale at a price not less than ₹ 50,000. The agent sells the car for 40,000 to A, who buys the car in good faith and without notice of any fraud. P misappropriated the money also. J sues A to recover the car. Decide giving reasons whether J would succeed.	5
Ans.	(ICAI SM, RTP Nov. 2020, RTP Nov. 2019) As per the provision of the Sale of Goods Act, 1930, provides that a mercantile agent is one who in the customary course of his business, has, as such agent, authority either to sell goods or to consign goods, for the purpose of sale, or to buy goods, or to raise money on the security of goods. The <u>buyer of goods from a mercantile agent</u>, who has no authority from the principal to sell, gets a <u>good title of the goods</u> of the following <u>conditions</u> are satisfied: 1) The agent should be in possession of the goods or documents of title to the goods <u>with the consent of the owner</u>. 2) The agent should sell the goods while acting in the <u>ordinary course of business</u> of a mercantile agent. 3) The buyer should <u>act in good faith</u>. 4) The buyer should not have at the time of the contract of sale notice that the <u>agent has no authority to sell</u>. Facts of the case: J, the <u>owner of a Fiat car</u>, wants to sell his car. For this purpose, he <u>hands over the car to P</u>, a mercantile agent for sale at a <u>price not less than ₹50,000</u>. The <u>agent sells the car for ₹ 40,000</u> to A, who buys the car in good faith and without notice of any fraud. P misappropriated the money also. J sues A to recover the car. Conclusion: P, the agent, was in possession of the car with J's consent for the purpose of sale. The buyer, therefore, obtained a good title to the car. Hence, J, in this case, <u>cannot recover the car from A</u>.	1 ½ ½ ½ ½ 1 1

Indian Partnership Act, 1932

Q. No.		Marks
1	Is the registration of a partnership firm compulsory? Explain. Discuss the various disadvantages that a non-registered partnership firm can face in brief? (ICAI SM, Nov. 2020, May 2019, RTP May 2021, May 2018)	5
Ans.	As per the Indian Partnership Act, 1932, the registration of a partnership firm is <u>not mandatory</u> . An Indian partnership firm need not be registered from the beginning but can be <u>registered during continuation</u> also. But, if a partnership firm is not registered, it has to face some consequences: 1) No suit in a civil court by the firm or other co-partners against the third party: The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm. 2) No relief to partners for set-off of claim: If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off if the suit is valued for more than ₹100 or pursue other proceedings to enforce the rights arising from any contract. 3) An aggrieved partner cannot bring legal action against other partners or the firm: A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved. 4) Third-party can sue the firm: In case of an unregistered firm, an action can be brought against the firm by a third party.	1 1 1 1
2	Explain the following kinds of partnership under the Indian Partnership Act, 1932: 1) Partnership at will 2) Particular partnership (Jan. 2021, RTP May 2020, Nov. 2020, RTP Nov. 2019)	4
Ans.	1) Partnership at will: As per the provision of the Indian Partnership Act, 1932, partnership at will is a partnership when: i) <u>no fixed period</u> has been agreed upon for the <u>duration</u> of the partnership, and ii) there is <u>no provision</u> made as to the <u>determination</u> of the partnership. These two conditions must be satisfied before a partnership can be regarded as a <u>partnership at will</u> . A partnership at will may be <u>dissolved by any partner by giving notice</u> in writing to all the other partners of his <u>intention</u> to dissolve the same. Where a partnership entered into for a fixed term is continued after the expiry of such term, it is treated as having become a partnership at will.	½ ½ 1

	2) Particular Partnership: A partnership may be organized for the prosecution of a <u>single adventure</u> as well as for the <u>conduct of continuous business</u>. Where a person becomes a partner with another person in any <u>particular</u> adventure or undertaking, the partnership is called '<u>particular partnership</u>'. A <u>particular partnership</u> is, subject to any agreement, dissolved by the <u>completion</u> of the adventure or purpose for which it was formed.	1 1
3	X was minor introduced to the benefits of the Partnership of ABC & Co. with the consent of all partners. After attaining majority, more than six months elapsed, and he failed to give public notice as to whether he elected to become or not to become a partner in the firm. Later on, L, a supplier of material to ABC & Co., filed a suit against ABC & Co. for the recovery of the debt due. Explain: 1) To what extent X will be liable? 2) Can L recover his debt from X? (Nov. 2019, ICAI SM, RTP Nov. 2020)	6
Ans.	As per the provision of the Indian Partnership Act, 1932, a minor <u>cannot be admitted to a partnership firm</u>, but, with the <u>consent of all the partners</u>, for the time being, he may be <u>admitted to the benefits</u> of the partnership. But, at any time within <u>six months</u> of his attaining <u>majority</u>, or of his <u>obtaining knowledge</u> that he had been admitted to the benefits of partnership, whichever date is later, such person may give <u>public notice</u> that he has elected to become or that he has elected not to become a <u>partner</u> in the firm, and such notice shall determine his <u>position</u> as regards the firm. Provided that, if he <u>fails to give such notice</u>, he shall become a partner in the firm on the <u>expiry</u> of said six months. Fact of the case: X was introduced to the benefits of the Partnership of ABC & Co. with the consent of all partners. After attaining majority, more than six months elapsed, and he failed to give public notice as to whether he elected to become or not to become a partner in the firm. Later on, L, a supplier of material to ABC & Co., filed a suit against ABC & Co. for the recovery of the debt due. Conclusion: 1. Since X <u>failed to give the public notice</u> after attaining the majority, he should <u>become a partner</u> in the firm on the <u>expiry of six months</u> after attaining the majority. After becoming the partner of the firm, his <u>rights and liabilities</u> as a major partner on the <u>date on which he becomes a partner</u>, but he also becomes <u>personally liable to third parties</u> for all acts of the firm done since he was admitted to the benefits of the partnership. 2. Yes, L can <u>recover</u> his debt from X because now X has attained majority and is <u>liable to third parties</u> for all acts of the firm.	½ 1½ ½ ½ 2 1

④	Explain in detail the circumstances which lead to liability of firm for misapplication by partners as per provisions of the Indian Partnership Act, 1932.	4
Ans.	(Nov. 2020, RTP May 2021) Liability of Firm for Misapplication by Partners: a) A partner acting within his apparent authority receives money or property from a third party and misapplies it, or b) A firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm; the firm is liable to make good the loss. Analysis: It may be observed that the working of the two clauses is designed to bring out clearly an important point of distinction between the two categories of cases of misapplication of money by partners. a) Where a partner acts within his authority and due to his authority as a partner, he receives money or property belonging to a third party and misapplies that money or property. For this provision to be attracted, it is not necessary that the money should have actually come into the custody of the firm. b) When such money or property has come into the custody of the firm, and it is misapplied by any of the partners. <u>The firm would be liable in both cases.</u>	$\frac{1}{2}$ 1 $\frac{1}{2}$ 1 1
5	Mr XU and Mr YU are partners in a partnership firm. Mr XU introduced MU (an employee) as his partner to ZU. MU remained silent. ZU, a trader is believing MU as a partner, supplied 50 laptops to the firm on credit. After the expiry of the credit period. ZU did not get the amount of laptops sold to the partnership firm. ZU filed a suit against XU and MU for the recovery of the price. Does MU is liable for such a purpose?	3
Ans.	(ICAI SM, RTP Nov. 2019) As per the provision of the Indian Partnership Act, 1932, partnership by holding out mean <u>when a man holds himself out as a partner or allows others to do it</u>, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted. A person may himself, by his words or conduct, have induced others to believe that <u>he is a partner, or he may have allowed others to represent him as a partner</u>. The result in both cases is identical. Facts of the case: Mr XU and Mr YU are partners in a partnership firm. Mr XU introduced MU (an employee) as his partner to ZU. MU remained silent. ZU, a trader is believing MU as a partner, supplied 50 laptops to the firm on credit. After the expiry of the credit period. ZU did not get the amount of laptops sold to the partnership firm. ZU filed a suit against XU and MU for the recovery of the price. Conclusion: In the present case, MU (an employee) is also <u>liable for the price because it becomes a partner by holding out.</u>	2 $\frac{1}{2}$ $\frac{1}{2}$

6	When does the dissolution of a partnership firm take place?	4
Ans.	As per the provision of the Indian Partnership Act, 1932, the dissolution of a partnership firm takes place in the following cases: i) Dissolution <u>without the order of the Court</u> or <u>voluntary dissolution</u>. ii) Dissolution <u>by order of the Court</u>. 1. Dissolution without the order of the Court or voluntary dissolution: i) Dissolution <u>by agreement between the partners</u>. ii) By <u>adjudication</u> of all or any partner as <u>insolvent</u>. iii) On the happening of certain <u>contingencies</u> between partners like expiry of the time period of partnership. ^{event} iv) Business of the firm becoming <u>unlawful</u>. v) By giving <u>notice of dissolution</u> by all the partners. 2. Dissolution by order of the Court: i) Partner becoming of <u>unsound mind</u>. ii) <u>Permanent incapacity</u> of the partner to perform his duties. iii) <u>Misconduct</u> of partner affecting the business. iv) <u>Willful breaches</u> by a partner. v) <u>Transfer or sale of the whole interest</u> of a partner. vi) <u>Continuous losses</u> incurred by the firm. vii) The Court is satisfied on <u>just and equitable grounds</u> for the dissolution of the firm.	1 1½ 1½
7	Amar, Aman and Amaan are partners in a firm. As per the terms of the partnership deed, Amaan is entitled to 20% of the partnership property and profits. Amaan retires from the firm and dies after 10 days. Amar and Aman continue the business of the firm without settling the accounts. Explain the rights of Amaan's legal representatives against the firm under the Indian Partnership Act, 1932. (ICAI SM, RTP May 2020)	4
Ans.	As per the provision of the Indian Partnership Act, 1932, where any partner of a firm has died or is ceased to be a partner, and the surviving partners continue the business without settling the accounts of the firm between the surviving partners and deceased or outgoing partner, in the absence of a contract to the contrary, legal representatives of the deceased partner or the outgoing partner are entitled to: - Interest at 6% p.a. on amount of his share in the property, or Profit earned after the death or retirement of the partner in the capital ratio of partners, whichever is higher. Fact of the case: Amar, Aman and Amaan are partners in a firm. As per the terms of the partnership deed, Amaan is entitled to 20% of the partnership property and profits. Amaan retires from the firm and dies after 10 days. Amar and Aman continue the business of the firm without settling the accounts. Conclusion: In the present case, Amaan's legal representatives shall be entitled to the 20% partnership property and the profits made during Amaan's Partnership. Amar	2 1 1

	and Aman cannot continue the business without settling the accounts with Amann's legal representatives.	
8	M/s XYZ & Associates, a partnership firm with X, Y, Z as senior partners, were engaged in the business of carpet manufacturing and exporting to foreign countries. On 25th August 2019, they inducted Mr G, an expert in the field of carpet manufacturing, as their partner. On 10th January 2020, Mr G was blamed for unauthorized activities and <u>thus expelled from the partnership by the united approval of the rest of the partners.</u> i) Examine whether action by the partners was justified or not? ii) What should have the factors to be kept in mind prior to expelling a partner from the firm by other partners according to the provisions of the Indian Partnership Act, 1932? (ICAI SM, May 2019)	6
Ans.	As per the provision of the Indian Partnership Act, 1932, a partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. The test of good faith includes three things: <i>[Protect the interest of Partnership firm]</i> 1) The expulsion must be in the interest of the partnership. $\frac{1}{2}$ 2) The partner to be expelled is served with a notice. $\frac{1}{2}$ 3) He is given an opportunity of being heard. <i>[Dene karne ka meeka]</i> $\frac{1}{2}$ If a partner is otherwise expelled, the expulsion is null and void. Fact of the case: M/s XYZ & Associates, a partnership firm with X, Y, Z as senior partners, were engaged in the business of carpet manufacturing and exporting to foreign countries. On 25th August 2019, they inducted Mr G, an expert in the field of carpet manufacturing, as their partner. On 10th January 2020, Mr G was blamed for unauthorized activities and thus expelled from the partnership by the united approval of the rest of the partners. Conclusion: i) Action by the partners of M/s XYZ & Associates, a partnership firm, to expel Mr G from the partnership was justified as he was expelled by united approval of the partners <u>exercised in good faith to protect the interest of the partnership against the unauthorized activities charged against Mr G. A proper notice and opportunity of being heard has to be given to Mr G.</u> ii) The following are the factors to be kept in mind prior to expelling a partner from the firm by other partners: a) the power of expulsion must have existed in a contract between the partners; b) the power has been exercised by a majority of the partners; and c) it has been exercised in good faith.	1 1 1½

9	Distinguish between 'Dissolution of Firm' and 'Dissolution of Partnership'. (Any 4 points)	4																		
Ans.	(Any 4 points) (Nov. 2019, May 2018)																			
	<table border="1"> <thead> <tr> <th>Basis</th><th>Dissolution of Firm</th><th>Dissolution of Partnership</th></tr> </thead> <tbody> <tr> <td>Continuation of Business</td><td>It involves <u>discontinuation of business</u> in partnership.</td><td>It does not affect the continuation of the business. It involves only the <u>reconstitution</u> of the firm.</td></tr> <tr> <td>Winding-up</td><td>It involves the winding up of the firm and requires the <u>realization of assets</u> and <u>settlement of liabilities</u>.</td><td>It involves only <u>reconstitution</u> and requires the only <u>revaluation of the assets and liabilities of the firm</u>.</td></tr> <tr> <td>Order of Court</td><td>A firm may be dissolved by <u>order of the Court</u>.</td><td>Dissolution of Partnership is <u>not ordered by the Court</u>.</td></tr> <tr> <td>Scope</td><td>It necessarily involves the <u>dissolution of the partnership</u>.</td><td>It may or <u>may not involve the dissolution of the firm</u>.</td></tr> <tr> <td>Final closure of books</td><td>It involves the <u>final closure of the books</u> of the firm.</td><td>It does <u>not involve the final closure of books of the firm</u>.</td></tr> </tbody> </table>	Basis	Dissolution of Firm	Dissolution of Partnership	Continuation of Business	It involves <u>discontinuation of business</u> in partnership.	It does not affect the continuation of the business. It involves only the <u>reconstitution</u> of the firm.	Winding-up	It involves the winding up of the firm and requires the <u>realization of assets</u> and <u>settlement of liabilities</u> .	It involves only <u>reconstitution</u> and requires the only <u>revaluation of the assets and liabilities of the firm</u> .	Order of Court	A firm may be dissolved by <u>order of the Court</u> .	Dissolution of Partnership is <u>not ordered by the Court</u> .	Scope	It necessarily involves the <u>dissolution of the partnership</u> .	It may or <u>may not involve the dissolution of the firm</u> .	Final closure of books	It involves the <u>final closure of the books</u> of the firm.	It does <u>not involve the final closure of books of the firm</u> .	1 1 1 1 1
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10	State any four grounds on which Court may dissolve a partnership firm in case any partner files a suit for the same. (Nov. 2018, RTP May 2020)	4																		
	As per the provision of the Indian Partnership Act, 1932, the Court may, at the suit of the partner, dissolve a firm on any of the following ground: (Any four points) Insanity/unsound mind: Where a partner (not a sleeping partner) has become of <u>unsound mind</u>, the Court may <u>dissolve the firm</u> on a suit of the other partners or by the next friend of the insane partner. 1) Permanent incapacity: When a partner, other than the partner suing, has become in any way <u>permanently incapable</u> of performing his duties as a partner, then the Court may <u>dissolve the firm</u>. Such <u>permanent incapacity</u> may result from physical disability or illness etc. 2) Misconduct: Where a partner, other than the partner suing, is <u>guilty of conduct which is likely to affect the business</u>, the Court may order for <u>dissolution of the firm</u> by giving regard to the nature of business. 3) Persistent breach of agreement: Where a partner other than the partner suing, <u>willfully or persistently commits a breach of agreements</u> relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conduct himself in matters relating to the business that it is not reasonably practicable for other partners to carry on the business in partnership with him, then the Court may dissolve the firm at the instance of any of the partners. The following comes into the category of breach of contract:	1 mark for each point																		

	i) <u>Embezzlement</u>, ii) Keeping <u>erroneous accounts</u> iii) <u>Holding more cash than allowed</u> <u>Refusal to show accounts</u> despite repeated requests etc. 4) Transfer of interest: Where a partner other than the partner suing has <u>transferred the whole of his interest in the firm to a third party</u> or has allowed his share to be charged or sold by the Court, in the recovery of arrears of land revenue, the Court may <u>dissolve the firm</u> at the instance of any other partner. 5) Continuous/Perpetual losses: Where the business of the firm <u>cannot be carried on</u> except at a <u>loss</u> in future also, the Court may order for its <u>dissolution</u>. 6) Just and equitable grounds: Where the Court considers any other ground to be <u>just and equitable</u> for the <u>dissolution of the firm</u>, it may dissolve a firm. The following are the cases for just and equitable grounds- i) <u>Deadlock</u> in the management. ii) Where the <u>partners are not on talking terms</u>. iii) Loss of <u>substratum</u>. iv) <u>Gambling by a partner</u> on a stock exchange.	
11	"Mutual Agency is the cardinal principle of the partnership law". Discuss. (Jan. 2021, RTP May 2020)	3
Ans.	1) As per the Indian Partnership Act, 1932, the existence of <u>mutual agency</u> is the <u>cardinal principle</u> of partnership law. It is also known as the <u>true test of partnership</u>. 2) Each partner carrying on the business is the <u>principal</u> as well as an <u>agent</u> of other partners. So, the act of one partner done on behalf of the firm <u>bind all the partners</u>. 3) If the elements of a mutual agency relationship exist between the parties constituting a group formed with a view to earning profits by running a business, a partnership may be deemed to exist.	1 1 1
12	M, N and P were partners in a firm. The firm ordered JR Limited to supply the furniture. P dies, and M and N continue the business in the firm's name. The firm did not give any notice about P's death to the public or the persons dealing with the firm. The furniture was delivered to the firm after P's death; the fact about his death was known to them at the time of delivery. Afterwards, the firm becomes insolvent and failed to pay the price of furniture to JR Limited. Explain with reasons: 1) Whether P's private estate is liable for the price of furniture purchased by the firm? 2) Whether does it make any difference if JR Limited supplied the furniture to the firm, believing that all the three partners are alive? (RTP May 2021, Jan. 2021)	4
Ans.	As per the provision of the Indian Partnership Act, 1932, A contract between the partners the <u>firm is not dissolved by the death of a partner</u> , <u>the estate of a deceased partner is not liable for any act of the firm done after his death</u> . It is <u>not necessary to give any notice either to the public or the person having dealt with the firm</u> .	1

1

14	What is the conclusive evidence of partnership? State the circumstances when the partnership is not considered between two or more parties. (May 2018)	5
Ans.	As per the provision of the Indian Partnership Act, 1932, the existence of <u>Mutual Agency</u>, which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion with respect to the determination of the existence of the partnership. Each partner carrying on the business is the <u>principal as well as an agent of other partners</u>. So, the act of one partner done on behalf of the firm binds all the partners. If the element of mutual agency relationship exists between the parties constituting a group formed with a view to <u>earning profits</u> by running a business, a partnership may be deemed to exist. Circumstances when a partnership is not considered between two or more parties: Various judicial pronouncements have laid to the following factors leading to no partnership between the parties: 1) Parties have <u>not retained any record of the terms and conditions</u> of the partnership. 2) Partnership business has <u>maintained no accounts</u> of its own, which would be open to inspection by both parties 3) <u>No account</u> of the partnership was opened with any <u>bank</u>. 4) <u>No written intimation</u> was conveyed to the <u>Deputy Director of Procurement</u> with respect to the newly created partnership.	3 1/2 1/2 1/2 1/2
15	"Whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm". Explain the mode of determining the existence of partnership as per the Indian Partnership Act, 1932? (May 2019)	4
Ans.	As per the provision of the Indian Partnership Act, 1932, in determining whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together. For determining the existence of a partnership, the following things must be present: 1) Agreement: Partnership is created by agreement and not by status. The relation of partnership arises from the contract and not from status. 2) Sharing of Profit: Sharing of profit is an essential element to constitute a partnership. But, it is only prima facie evidence and not conclusive evidence in that regard. The sharing of profits or of gross returns accruing from the property by persons holding a joint or common interest in the property would not by itself make such person partners. 3) Agency: The existence of Mutual Agency which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion in this regard. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of the firm binds all the partners. If the elements of a mutual agency	1 1 1

	relationship exist between the parties constituting a group formed with a view to earning profits by running a business, a partnership may be deemed to exist.	
16	Explain different types of partners.	7
Ans.	Types of partners: (Jan. 2021) 1) Active or Actual or Ostensible Partner: A person who has become a partner <u>by agreement</u> and <u>actively participates</u> in the conduct of the partnership business is known as an actual or active or ostensible partner. In the event of <u>retirement</u>, he had to give <u>public notice</u> in order to <u>relieve himself</u> of all liabilities for acts of other partners done after the retirement. 2) Sleeping or Dormant Partner: A person who is a partner by agreement and who does <u>not actively take part in the conduct of the partnership business</u>. A sleeping partner <u>share profits</u> and is also <u>liable to the third parties</u> for all acts of the firm. Public notice is not required in the event of retirement. 3) Nominal Partner: A person who <u>lends his name to the firm</u> without having any real interest in it is called a nominal partner. He is <u>not entitled to share the profits</u> of the firm. Neither he invests in the firm nor takes part in the conduct of the business. However, a nominal partner is <u>liable to third parties</u> for all acts of the firm. 4) Partner in profits only: A partner who is entitled to <u>share profits only</u> without being liable for the losses is known as the partner for profits only and is also <u>liable to the third parties</u> for all the acts of the firm. 5) Incoming Partner: A person who is <u>admitted as a partner</u> into an already <u>existing firm</u> with the <u>consent of all the existing partners</u> is called an incoming partner. Such a partner is <u>not liable for any act</u> of the firm done <u>before his admission as a partner</u>. 6) Outgoing Partner: A partner who <u>leaves the firm</u> in which the rest of the partners continue to carry on business is called a retiring or outgoing partner. Such a partner <u>remains liable to third parties for all acts</u> of the firm until <u>public notice</u> is given of his retirement. 7) Partner by Estoppel: When a person, who is <u>not a partner</u> in the firm, <u>represents himself as a partner</u> in a firm, he is liable to anyone who, on the <u>faith of such representation</u>, has given credit to the firm.	1 1 1 1 1 1 1
17	Ms Lucy, while drafting the partnership deed to take care of few important points. What are those points? She wants to know the list of information which must be part of the partnership deed drafted by her. Also, give a list of information to be included in the partnership deed? (ICAI SM)	6
Ans.	As per the provision of the Indian Partnership Act, 1932, a document which contains various <u>terms and conditions</u> related to the <u>relationship of partners</u> to each other is called a partnership deed. The information contained in a partnership deed is as follows: 1) Name of the <u>partnership firm</u>. 2) Name of all the <u>partners</u>. 3) Nature and place of the <u>business of the firm</u>.	1 $\frac{1}{4}$ $\frac{1}{4}$ $\frac{1}{4}$

	4) Date of <u>commencement of partnership</u>. 5) <u>Duration</u> of the partnership firm. 6) <u>Capital contribution</u> of each partner. 7) <u>The profit-sharing ratio</u> of the partners. 8) <u>Admission and retirement</u> of a partner. 9) <u>Rates of Interest</u> on Capital, Drawings and Loans. 10) Provisions for <u>settlement of accounts</u> in the case of <u>dissolution of the firm</u>. 11) Provisions for <u>salaries or commissions payable</u> to the partners, If any. 12) Provisions for the <u>expulsion of a partner</u> in case of <u>breach of duty or fraud</u>	$\frac{1}{4}$ $\frac{1}{4}$ $\frac{1}{4}$ $\frac{1}{4}$ $\frac{1}{4}$ $\frac{1}{4}$ $\frac{1}{4}$ $\frac{1}{4}$
	Ms Lucy, while drafting the partnership deed to take care of few important points.	
	i) The partnership agreement must be in writing. An oral partnership agreement is not a partnership deed.	$\frac{1}{2}$
	ii) The partnership deed contains various terms & conditions as to the relationship of the partners to each other.	$\frac{1}{2}$
	iii) The partnership comprises of immovable property, then the partnership deed must be in Writing, stamped & registered under Registration Act	$\frac{1}{2}$
	iv) If the partnership comprises of no immovable property, then the partnership deed must be writing and Stamped according to the provisions of Stamp Act, 1899.	$\frac{1}{2}$
18	What are the rights of a transferee of a partner's interest?	4
Ans.	(ICAI SM) As per the provision of the Indian Partnership Act, 1932, a share in a partnership is transferable like any other property, but as the partnership is based on a mutual agency, the transferee of a partner's interest by sale, mortgage or otherwise, cannot enjoy the same rights and privileges as the original partner. The rights of a transferee are a follows: - 1) During the continuation of the partnership, such transferee is not entitled to interfere with the conduct of the business, to require accounts or to inspect the books of the firm. 2) He is entitled to receive a share of the profits of the transferring partner and is bound to accept the profits as agreed by the partners. 3) On dissolution of the firm or on the retirement of the transferring partner, the transferee partner is entitled to receive the share of assets of the firm to which the transferring partner was entitled and for the purpose of ascertaining the share, he is entitled to an account from the date of the dissolution.	2 $\frac{1}{2}$ $\frac{1}{2}$ 1

19	When can the continuing guarantee be revoked under the Indian Partnership Act, 1932?	2
Ans.	(Nov. 2019) As per the provision of the Indian Partnership Act, 1932, a <u>continuing guarantee</u> given to a firm or to the third party in respect of the transaction of a firm is, in the absence of an agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm. Mere <u>changes in the constitution of the firm</u> operate to revoke the guarantee as to all future transactions. Such change may occur by the <u>death or retirement</u> of a partner or by the <u>introduction of a new partner</u>.	1 1
20	Explain the various effects of insolvency of a partner as per the Indian Partnership Act, 1932.	4
Ans.	(Nov. 2019) As per the Indian Partnership Act, 1932, where a partner in a firm is <u>adjudicated insolvent</u>, he <u>ceases to be a partner</u> on the date on which the order of adjudication is made, whether or not the firm is dissolved. Effects of insolvency of a partner: 1) The insolvent partner <u>cannot be continued</u> as a partner. $\frac{1}{2}$ 2) He will be <u>ceased to be a partner</u> from the very date on which the order of adjudication is made. $\frac{1}{2}$ 3) The <u>estate</u> of the insolvent partner is <u>not liable for the acts of the firm</u> done after the date of order of adjudication. $\frac{1}{2}$ 4) The <u>firm is also not liable</u> for any act of the insolvent partner after the date of the order of the adjudication. $\frac{1}{2}$ 5) Ordinarily but not invariably, the insolvency of a partner results in the <u>dissolution of the firm</u>, but the partners are competent to agree among themselves that the <u>adjudication</u> of a partner as an insolvent will <u>not give rise to dissolution of the firm</u>. 1	1 $\frac{1}{2}$ $\frac{1}{2}$ $\frac{1}{2}$ 1
21	Define 'Goodwill' as per the Indian Partnership Act, 1932. Also, explain the rights of the buyer and seller of goodwill as per the Indian Partnership Act, 1932.	6
Ans.	(Nov. 2019) As per the provision of the Indian Partnership Act, 1932, '<u>goodwill</u>' is a <u>partnership asset</u> which means the <u>benefits arising from a firm's business' connections or reputation</u>. It is the advantage which is acquired by a business beyond the mere value of the capital, stock fund and property. Though an <u>intangible asset</u>, it has <u>value</u>, and unless otherwise agreed in the <u>partnership agreement</u> and upon dissolution, it must be sold and the proceeds of sale distributed as <u>capital</u>. Where dissolution is caused by death, the estate of the <u>deceased partner</u> is entitled to <u>share</u> in the proceeds of the sale. Rights of buyer and seller of goodwill: 1) Buyer's rights: On the sale of goodwill, the <u>buyer</u> may, unless the terms in the contract of sale provide otherwise: a) <u>represent himself</u> in continuing the business, 1 b) <u>maintain his exclusive rights</u> to the use of the firm name, and 1	1 1 1 1

Ans.	1) As per the provision of the Indian Partnership Act, 1932, rights which can be enjoyed by a minor partner are: a) A minor partner has a right to his agreed <u>share of the profits</u> and of the firm. 1 b) He can have access to, <u>inspect and copy the accounts</u> of the firm. 1 c) He can <u>sue the partners for accounts or for payment of his share</u> but only when severing his connection with the firm and not otherwise. 1 d) On <u>attaining majority</u>, he may <u>within 6 months</u> elect to become a partner or not to become a partner. If he elects to <u>become a partner</u>, then he is entitled to the <u>share</u> to which he was entitled as a minor. If he <u>does not</u>, then he is <u>not liable</u> for any acts of the firm <u>after the date of the public notice</u> served to that effect. 1 2) Liabilities of a minor partner before attaining majority: a) The liability of the minor is confined only to the <u>extent of his share</u> in the <u>profits and the property of the firm</u>. 1 b) Minor has <u>no personal liability</u> for the debts of the firm incurred during his minority. c) Minor <u>cannot be declared insolvent</u>, but if the firm is declared insolvent, his share in the firm vests in the Official Receiver/ Assignee. 3) Liabilities of a minor partner after attaining majority: a) <u>Within 6 months</u> of his <u>attaining majority</u> or on his <u>obtaining knowledge</u> that he had been admitted to the <u>benefits of partnership</u>, whichever date is later, the minor partner has to decide whether he shall remain a partner or leave the firm. 1 b) Where he has elected not to become a partner, he may give <u>public notice</u> that he has elected not to become a partner, and such notice shall <u>determine</u> his position as regards the firm. If he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.	
24	What is the provision related to the effect of notice to an acting partner of the firm as per the Indian Partnership Act, 1932? (May 2019)	2
Ans.	As per the provision of the Indian Partnership Act, 1932, notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner. Thus, the notice to one is equivalent to the notice to the rest of the partners of the firm, just as a notice to an agent is a notice to his principal. This notice must be actual and not constructive. It must further relate to the firm's business. Only then it would constitute notice to the firm.	1 1
25	Whether a minor may be admitted in the business of a partnership firm? Explain. (ICAI SM)	3
Ans.	As per the provision of the Indian Partnership Act, 1932, with the consent of all the partners, for the time being, a minor can be admitted into the benefits of the partnership. 1) A minor partner has the <u>right to agreed profits share of the firm</u>. 1/2 2) He can have <u>access to, inspect and copy the accounts of the firm</u>. 1/2	1/2 1/2 1/2

	3) He can <u>sue the partners</u> for accounts or for payment of his share but only when severing his connection with the firm.	1/2
	4) On attaining majority, he may <u>within 6 months</u> elect to become a partner or not. In both cases, a public notice shall be issued by the firm.	1/2
	5) A minor shall <u>not be held personally liable</u> for the debts of the firm. He is only liable to the extent of his share in the profits and property of the firm.	
26	What is the procedure of registration of a partnership firm under the Indian Partnership Act, 1932?	4
	(ICAI SM)	
Ans.	As per the provision of the Indian Partnership Act, 1932, the following is the procedure for the registration of a partnership firm:	
	1) It is <u>optional</u> , not mandatory	1/2
	2) The firm <u>need not be registered from the beginning</u> ; it can be registered during continuation also.	1/2
	3) For registration, <u>apply to the registrar</u> with the prescribed form and the prescribed fee, stating.	1
	✓ The <u>firm's name</u> .	
	✓ The <u>place or principal place of the business</u> of the firm.	
	✓ The <u>names of any other places</u> where the firm carries on business.	
	✓ The <u>date when each partner joined the firm</u> .	
	✓ The <u>name in full and permanent addresses</u> of the partners.	
	✓ The <u>duration</u> of the firm.	
	4) The <u>statement</u> shall be <u>signed by all the partners</u> or by their agents specially authorized on this behalf. Each person signing the statement also verify it in the manner prescribed.	1/2
	5) A firm <u>shall not contain</u> any of the following words, namely, <u>Crown, Emperor, Empress, Empire, Imperial, King, Queen, Royal</u> , etc.	1/2
	6) Registration is <u>effective from the date when all documents with prescribed form and prescribed fees as delivered to the registrar</u> , the date on which the Registrar makes an entry in the register of the firms is immaterial.	1/2
	7) In <u>English law</u> , the registration of the firm is mandatory, and there is a penalty for non-registration.	1/2
27	Discuss the liability of a partner for the act of the firm and liability of the firm for the act of a partner to third parties as per the Indian Partnership Act, 1932.	4
	(Jan. 2021)	
Ans.	The question of liability of partners to third parties may be considered under different heads. These are as follows:	
	1) Liability of a partner for acts of the firm: Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.	2
	2) Liability of the firm for wrongful acts of a partner: Where the wrongful act or omission of a partner in the ordinary course of the business of a firm or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefore to the same extent as the partner.	2

28	Comment on 'the right to expel partner must be exercised in good faith' under the Indian Partnership Act, 1932?	3
Ans.	(Nov. 2020) As per the provision of the Indian Partnership Act, 1932, a partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. The test of good faith includes three things: ✓ The expulsion must be in the interest of the partnership. ✓ The partner to be expelled is served with a notice. ✓ He is given an opportunity of being heard. If a partner is otherwise expelled, the expulsion is null and void.	1 1/2 1/2 1/2 1/2
29	What are the rights which won't be affected by the Non-Registration of Partnership firm?	4
Ans.	(Nov. 2020) As per the provision of the Indian Partnership Act, 1932, non-registration of a firm does not affect the following rights: 1) Right of third parties to sue the firm or any other party. 2) Right of partners to sue: ✓ for the dissolution of the firm, or ✓ for the settlement of accounts of the dissolved firm, or ✓ for the realization of the property of the dissolved firm. 3) Power an Official Assignee of Court to release the property of the insolvent partner and to bring an action. 4) Right to use or claim a set-off if the value of suit does not exceed ₹100 in value.	1 1 1 1
30	P, Q, R and S are the partners in M/S PQRS & Co., a partnership firm which deals in the trading of washing Machines of various brands. Due to the conflict of views between partners, P & Q decided to leave the partnership firm and started competitive business on 31st July 2019, in the name of M/S PQ & Co. Meanwhile, R & S Have continued using the property in the name of M/S PQRS & Co., in which P & Q also has a share. Based on the above facts, explain in detail the rights of outgoing partners as per the Indian Partnership Act, 1932 and comment on the following: 1) Rights P & Q to start a competitive business. 2) Rights of P & Q regarding their share in the property of M/S PQRS & Co. (Nov. 2020)	6
Ans.	As per the provision of the Indian Partnership Act, 1932, the right of outgoing partner may carry the business on competing for business with that of the firm, and he may advertise such business, but subject to contract to the contrary, he may not: - a) <u>Use the firm name.</u> b) <u>Represent himself as carrying on the business of the firm or</u> c) <u>Solicit the custom of persons who were dealing with the firm before he ceased to be a partner.</u>	2

	However, the partner may agree with his partners that on his ceasing to be so, he will not carry on a business similar to that of <u>the firm within a specified period or within specified local limits. Such as agreement will not be in restraint of trade if the restraint is reasonable.</u>	2
	As per the provision of the Indian Partnership Act, 1932, any member of a firm has died or otherwise ceased to be a partner, and the continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing, then, <u>in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be an interest at the rate of six per cent per annum on the amount of his share in the property of the firm.</u> Facts of the case: P, Q, R and S are the partners in M/S PQRS & Co., a partnership firm which deals in the trading of washing Machines of various brands. Due to the conflict of views between partners, P & Q decided to leave the partnership firm and started competitive business on 31st July 2019, in the name of M/S PQ & Co. Meanwhile, R & S Have continued using the property in the name of M/S PQRS & Co., in which P & Q also has a share. Conclusion: 1) P & Q can start a competitive business in the name of M/S PQ & Co. after following the above conditions in the absence of any agreement. 2) P & Q can share in the property of M/s PQRS & Co.	1 1
31	Discuss the provision regarding personal profits earned by a partner under the Indian Partnership Act, 1932?	2
	(May 2019)	
Ans.	As per the provision of the Indian Contract Act, 1932, it is provided that if any personal profits earned after dissolution but before the partnership completely wound up, then it <u>must be accounted as the firm's profit.</u>	2
32	State the legal position of a minor partner after attaining majority:	4
	1) When he opts to become a partner of the same firm. 2) When he decides not to become a partner.	
	(Nov. 2018)	
Ans.	1) Where such person becomes a partner: a) His right and liabilities as a minor continue up to the date on which he becomes a partner, but he also becomes personally of partnership, and b) His share in the property and profits of a firm shall be the share to which he was entitled as a minor. 2) When such person elects not to become a partner: a) His right and liabilities as a minor continue to be those of a minor under this section up to the date on which he gives public notice. b) His share shall not be liable for any acts of the firm done after the date of the notice. c) He shall be entitled to sue the partners for his share of the property and the profit.	2 2

33	A B and C were partners in a partnership firm M/s ABC & Co., which is engaged in the business of trading branded furniture. The name of the partners was clearly written along with the firm named in front of the head office of the firm as well as on the letterhead of the firm. On 1st October 2018, C passed away. His name was neither removed from the list of partners as stated in front of the head office nor from the letterheads of the firm. As per the terms of the partnership, the firm continued its operations with A and B as partners. The accounts of the firm were settled, and the amount due to the legal heirs of C was also determined on 10th October 2018. But the same was not paid to the legal heirs of C. on 16th October 2018, X, a supplier, supplied furniture worth ₹20,00,000 to M/s ABC & Co. M/s ABC & Co. could not repay the amount not only from M/s ABC & Co. but also from the legal heirs of C. Analyses the above situation in terms of the provisions of the Indian Partnership Act, 1932 and decide whether the legal heirs of Mr C can also be liable for the due towards Mr X.	4
Ans.	(Nov. 2018) As per the provision of the Indian Partnership Act, 1932, A contract between the partners the <u>firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death. It is not necessary to give any notice either to the public or the person having dealt with the firm.</u>	2
	<u>Facts of the case:</u> A B and C were partners in a partnership firm M/s ABC & Co., which is engaged in the business of trading branded furniture. The name of the partners was clearly written along with the firm named in front of the head office of the firm as well as on the letterhead of the firm. On 1st October 2018, C passed away. His name was neither removed from the list of partners as stated in front of the head office nor from the letterheads of the firm. As per the terms of the partnership, the firm continued its operations with A and B as partners. The accounts of the firm were settled, and the amount due to the legal heirs of C was also determined on 10th October 2018. But the same was not paid to the legal heirs of C. on 16th October 2018, X, a supplier, supplied furniture worth ₹20,00,000 to M/s ABC & Co. M/s ABC & Co. could not repay the amount not only from M/s ABC & Co. but also from the legal heirs of C.	1
	<u>Conclusion:</u> The delivery of the furniture was made after C's death; his estate would not be liable for the debt of the firm. A suit for goods sold and delivered would not lie against the representative of the deceased partner. This is because there was no debt due with respect if the goods in C's lifetime.	1

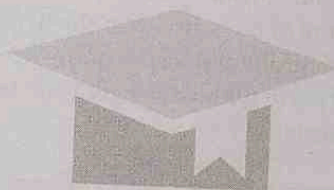
34	M, N and P were partners in a firm which was dealing in refrigerators. On 1st October 2018, P retired from the partnership but failed to give public notice of his retirement. After his retirement, M, N and P visited a trade fair and enquired about some refrigerators with the latest techniques. X, who was exhibiting his refrigerators with the new techniques, was impressed with the interactions of P and requested the visiting card of the firm. The visiting card also included the name of P as a partner even though he had already retired. X supplied some refrigerators to the firm and could not recover the dues not only from the firm but also from P. Analyses the above case in terms of the provisions of the Indian Partnership Act, 1932 and decide whether P is liable in this situation. (Nov. 2018)	3
Ans.	As per the provision of the Indian Partnership Act, 1932, partnership by holding out mean <u>when a man holds himself out as a partner or allows others to do it</u>, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted. A person may himself, by his words or conduct, have induced others to believe that <u>he is a partner, or he may have allowed others to represent him as a partner</u>. The result in both cases is identical. Facts of the case: M, N and P were partners in a firm which was dealing in refrigerators. On 1st October 2018, P retired from the partnership but failed to give public notice of his retirement. After his retirement, M, N and P visited a trade fair and enquired about some refrigerators with the latest techniques. X, who was exhibiting his refrigerators with the new techniques, was impressed with the interactions of P and requested the visiting card of the firm. The visiting card also included the name of P as a partner even though he had already retired. X supplied some refrigerators to the firm and could not recover the dues not only from the firm but also from P. Conclusion: P is also <u>liable for the price because he becomes a partner by holding out</u>.	1
35	Ram, Laxman and Bharat are partners of a partnership firm RLB Furniture's & Co. The firm is a dealer in office furniture. <u>Ram was in charge of purchase and sale, Laxman was in charge of maintenance of accounts of the firm, and Bharat was in charge of handling all legal matters.</u> Recently through an agreement among them, it was decided that <u>Ram will be in charge of maintenance of accounts and Laxman will be in charge of purchase and sale.</u> Being ignorant about such an agreement, Shyam, a supplier, supplied some furniture to Ram, who ultimately sold them to a third party at a profit. Referring to the provisions of the Partnership Act, 1932, advise whether Ram's actions were correct or not? (Jan. 2021)	6
Ans.	As per the provision of the Indian Partnership Act, 1932, it is the duty of the partner to <u>act within the scope of his actual authority</u>. If he <u>exceeds his authority</u>, he shall <u>compensate the other partners for loss</u> unless they ratify his act. Also, a partner must not make any <u>secret profits</u>.	2

	Facts of the case: Ram, Laxman and Bharat are partners of a partnership firm RLB Furnitures & Co. The firm is a dealer in office furniture. Ram was in charge of purchase and sale, Laxman was in charge of maintenance of accounts of the firm, and Bharat was in charge of handling all legal matters. Recently through an agreement among them, it was decided that Ram will be in charge of maintenance of accounts and Laxman will be in charge of purchase and sale. Being ignorant about such an agreement, Shyam, a supplier, supplied some furniture to Ram, who ultimately sold them to a third party at a profit. Conclusion: Here, Ram has to compensate the other partners and the firm as Ram had <u>acted outside his actual authority</u> and made an agreement with Shyam for the purchase of furniture, which was <u>not within the scope of his duties</u>. Ram's duty was the maintenance of accounts of the firm, not sale and purchase of the furniture. Also, the <u>profit</u> which Ram has made from selling the furniture shall be <u>claimed by the firm</u>.	2
36	Explain the provision of the Indian Partnership Act, 1932 relating to the creation of partnership by holding out. (RTP Nov. 2020)	2
Ans.	Partnership by Holding out: Partnership by holding out means "to represent", strangers who hold themselves out or represents to be partners in the firm. ✓ No entitled to share profit and losses of the firm. ✓ Liable to the third party with which contract is entered into becoming of such representation.	2
37	State the legal consequence of the following as per the provisions of the Indian Partnership Act, 1932: 1) Retirement of a partner 2) Insolvency of a partner (RTP Nov. 2019)	4
Ans.	1) Retirement of a partner a) A partner may retire: ✓ with the consent of all the other partners; ✓ in accordance with an express agreement by the partners; ✓ where the partnership is a will, by giving notice in writing to all the other partners of his intention to retire. b) A retiring partner may be <u>discharged from any liability to any third party for acts of the firm done before his retirement</u> by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between the third party and the reconstituted firm after he had knowledge of the retirement. c) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be <u>liable as a partner to third parties for any act done by any of them</u>. d) Notice may be given by <u>the retired partner or by any partner of the reconstituted firm</u>	2

2) Insolvency of a partner

- a) The insolvent partner cannot be continued as a partner.
- b) He will be ceased to be a partner from the very date on which the order of adjudication is made.
- c) The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.
- d) The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication.
- e) Ordinarily but not invariably, the insolvency of a partner results in the dissolution of a firm, but the partners are competent to agree among themselves that the adjudication of a partner as an insolvent will not give rise to dissolution of the firm.

2



The Companies Act, 2013

Q. No.		Marks
1	Explain clearly the doctrine of 'Indoor Management' as applicable in cases of companies registered under the Companies Act, 2013. Explain the circumstances in which an outsider dealing with the company claim any relief on the ground of 'Indoor Management'.	6
Ans.	(Jan. 2021, ICAI SM, May 2018, RTP Nov. 2020, RTP Nov. 2019) Doctrine of Indoor Management: according to the "doctrine of indoor management", the outsiders dealing with the company though are supposed to have satisfied themselves regarding the competence of the company through is supposed to have satisfied themselves regarding the competence of the company to enter into the proposed contracts are also entitled to assume that as far as the <u>internal compliance to procedures and regulations</u> by the company is concerned, <u>everything has been done properly</u>. They are bound to examine the registered documents of the company and ensure that the proposed dealing is not inconsistent therewith, but they are not bound to do more. They are fully entitled to presume regularity and compliance by the company with the internal procedures as required by the Memorandum and the Articles. This doctrine is a <u>limitation of the doctrine of "constructive notice"</u> and properly known as the rule laid down in the celebrated case of Royal British Bank vs Turquand. Thus, the doctrine of indoor management aims to protect outsiders against the company. The above-mentioned doctrine of Indoor management or Turquand Rule has limitations of its own. That is to say; it is inapplicable to the following cases, namely: a) Actual or constructive knowledge of irregularity: The rule does not protect <u>any person when the person dealing with the company has noticed</u>, whether actual or constructive, of the irregularity. 1 b) Suspicion of Irregularity: the doctrine in <u>no way</u> rewards those who behave <u>negligently</u>. Where the person dealing with the company is put upon an inquiry, for example <u>where the transaction is unusual or not in the ordinary course of business, it is the duty of the outsider to make the necessary enquiry.</u> 1 c) Forgery: The doctrine of indoor management applies only to <u>irregularities which might otherwise affect a transaction</u>, but it cannot apply to <u>forgery, which must be regarded as a nullity</u>. Forgery may in circumstances exclude the "Turquand Rule". 1	3
2	SK Infrastructure limited has a paid-up share capital divided into 600000 equity shares of ₹100 each. 2,00,000 equity shares of the company are held by the Central government, and 1,20,000 equity shares are held by the Government of Maharashtra. Explain with reference to relevant provisions of the Companies Act, 2013 whether SK Infrastructure Limited can be treated as a Government Company.	3
Ans.	(Jan. 2021, RTP May 2021) As per the Companies Act, 2013, Any company in which <u>not less than 51% of the paid-up share capital is held by Central Government or State government</u>, partly by the Central government and partly by one or more state government and the section include a company which is a subsidiary company of such a government. Facts of the case:	1

	SK Infrastructure limited has a paid-up share capital divided into 600000 equity shares of ₹100 each. 2,00,000 equity shares of the company are held by the Central government, and 1,20,000 equity shares are held by the Government of Maharashtra. Conclusion: In the present case, 2,00,000 equity shares of the company are held by the Central government, and 1,20,000 equity shares are held by the Government of Maharashtra out of the 6,00,000 equity shares. <u>Which is 53.33%, which is more than 51% of paid-up share capital. Hence SK Infrastructure Limited will be treated as a Government Company.</u>	1
		1
3	Naveen Incorporated a "One Person Company", making his sister Navita as the nominee. Navita is leaving India permanently due to her marriage abroad. Due to this fact, she is withdrawing her consent of nomination in the said One Person Company. Taking into consideration the provisions of the Companies Act, 2013, answer the question given below. a) If Navita is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company? b) If Navita maintained the status of Resident of India after her marriage, then can she continue her nomination in the said One Person Company? (ICAI SM, RTP May 2020)	4
Ans.	As per the provision of the Companies Act, 2013, only a natural person who is an <u>Indian citizen whether resident in India or otherwise and has stayed in India for not less than 120 days during the immediately preceding financial year.</u>	1
	Facts of the case: Naveen Incorporated a "One Person Company", making his sister Navita as the nominee. Navita is leaving India permanently due to her marriage abroad. Due to this fact, she is withdrawing her consent of nomination in the said One Person Company.	1
	Conclusion: a) No, it is not mandatory for Navita to withdraw her nomination in the said OPC as she is already an <u>Indian citizen. It is not mandatory for her to be a resident in India.</u> b) Navita can continue her nomination in the said OPC if she <u>stays in India for a period of not less than 120 days during the immediately preceding financial year.</u> It is not mandatory for Navita to be a resident in India.	1
		1
4	Sound Syndicate Ltd., a public company, its articles of Association empowers the managing agents to borrow both short and long term loans on behalf of the company. Mr Liddle, the director of the company, approached Easy Finance Ltd., a non-banking finance company for a loan of Rs. 25,00,000 in the name of the company. The Lender agreed and provided the above-said loan. Later on, Sound Syndicate Ltd. Refused to repay the money borrowed on the pretext that no resolution authorizing such loan has been actually passed by the company, and the lender should have enquired about the same prior to providing such loan; hence the company not liable to pay such loan. Analyse the above situation in terms of the provision of Doctrine of Indoor Management under the Companies act, 2013 and examine whether the contention of Sound Syndicate Ltd. is correct or not? (May 2019, ICAI SM)	5

Ans.	As per the provision of the Companies Act, 2013, persons dealing with the company need <u>not inquire whether internal proceedings relating to the contract are followed correctly</u> once they are satisfied that the transaction is in accordance with the memorandum and articles of association. Stakeholders need not enquire whether the <u>necessary meeting was convened and held properly</u> or whether the necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.	1 ½ ½
	The doctrine helps protect external members from the company and states that the people are entitled to <u>presume that internal proceedings are as per documents submitted with the Registrar of Companies.</u>	½
	1) What happens <u>internal to a company is not a matter of public knowledge</u> . An outsider can only presume the intentions of a company but do not know the information he/she is not privy to.	½
	2) If not for the doctrine, the company could escape <u>creditors by denying the authorizing of officials to act on its behalf.</u>	½
	Facts of the case: Sound Syndicate Ltd., a public company, its articles of Association empowers the managing agents to borrow both short and long term loans on behalf of the company. Mr Liddle, the director of the company, approached Easy Finance Ltd., a non-banking finance company, for a loan of Rs. 25,00,000 in the name of the company. <u>The lender agreed and Provided the above-said loan.</u> Later on, <u>Sound Syndicate Ltd. Refused to repay the money borrowed on the pretext</u> that no resolution authorizing such loan has been actually passed by the company, and the lender should have enquired about the same prior to providing such loan; hence the company not liable to pay such loan.	1
	Conclusion: Easy Finance Ltd. Being external to the company, need not enquire whether the <u>necessary resolution was passed properly</u> . Even if the company <u>claim that no resolution authorizing the loan was passed</u> , the company is bound to pay the loan to Easy Finance Ltd.	1
	Briefly explain the doctrine of "ultra-vires" under the Companies Act, 2013. What are the consequences of ultra-vires acts of the company? (ICAI SM, RTP May 2020)	6
	Doctrine of ultra-vires: the meaning of the term ultra-vires is simply "beyond (their) power". The legal phrase "ultra-vires" is applicable only to <u>acts done in excess of the legal powers of the doers</u> . This presupposes that the powers are in their nature limited. To an ordinary citizen, the <u>law permits whatever does the law not expressly forbid.</u>	1
	It is a fundamental rule of company law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act – thus far and no further [Ashbury Railway Company Ltd. Vs. Riche] . In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the <u>company wholly void and inoperative in law</u> and is therefore not binding on the company. On this account, <u>a company can be restrained from employing its fund for purposes</u> other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorised to carry on.	1½

	The impact of the doctrine of ultra vires is that a company can <u>neither be sued on an ultra vires transaction nor can it sue on it</u>. Since the memorandum is a "public document", it is <u>open to public inspection</u>. Therefore, when one deals with a company, one is deemed to know about the power of the company. If, in spite of this, you enter into a transaction which is ultra vires the company, you cannot enforce it against the company. For example, if you have supplied goods or performed service on such a contract or lent money, you cannot obtain payment or recover the money lent. But if the money advanced to the company has not been expended, the lender may stop the company from parting with it by means of an injunction; this is because the company does not become the owner, he can take back the property in species. If the ultra vires loan has been utilised in meeting the lawful debt of the company, then the lender steps into the shoes of the debtors paid off, and consequently, he would be entitled to recover his loan to that extent from the company. An act which is ultra vires the company being void cannot be ratified by the shareholders of the company. Sometimes, an act which is ultra vires can be regularised by ratifying it subsequently. For instance, if the act is ultra vires the power of the directors, the shareholders can ratify it; if it is ultra vires, the articles of the company, the company can alter the article; if the act is within the power of the company but is done irregularly, the shareholder can validate it.	2 1½
6	What do you mean by "Companies with a charitable purpose" under the Companies Act, 2013? Mention the conditions of the issue and revocation of the licence of such a company by the government.	6
	(May 2019, Nov. 2020)	
Ans.	As per the provision of the Companies Act, 2013, Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed <u>to promote the charitable objects</u> of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc. Such a company intends to apply its profit in ✓ <u>promoting its objects and</u> ✓ <u>prohibiting the payment</u> of any dividend to its members. Examples of section 8 companies are FICCI, ASSOCHAM, National Sports Club of India, CII etc.	1 ½ ½
	Power of Central Government to issue the license:	
	i) Section 8 allows the Central Government to register such person or association of persons as a company with limited liability without the addition of words 'Limited' or 'Private Limited' to its <u>name by issuing licence on such conditions as it deems fit</u>.	1
	ii) The registrar shall on <u>application register such person or association of persons</u> as a company under this section.	½
	iii) On registration, the company shall <u>enjoy the same privileges and obligations as a limited company</u>.	½
	Revocation of license: The Central Government may by order <u>revoke the licence of the company where the company contravenes any of the requirements</u> or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently or violative of the objects of the company or prejudicial to the public interest, and on revocation, the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such <u>revocation, the Central Government must give it written notice of its intention to revoke the licence</u> and opportunity to be heard in the matter.	2

7	Examine the following whether they are correct or incorrect, along with reason: a) A company is an artificial person, cannot own property and cannot sue or be sued. b) A private limited company must have a minimum of two members, while a public limited company must have at least seven members.	4
Ans.	a) A company being an artificial person, cannot own property and cannot sue or be sued. (ICAI SM, RTP May 2020) Incorrect: A company is an artificial person as it is created by a process other than natural birth. It is legal or judicial as it is created by law. It is a person since it is clothed with all the rights of an individual. Further, the company being a separate legal entity, <u>can own property, have a banking account, raise loans. Incur liabilities and enter into contracts.</u> Even members can contract with the company, acquire right against it or incur liability to it. It can <u>sue and be sued in its own name.</u> It can do everything which any natural person can do except to be sent to jail, take an oath, marry or practice a learned profession. Hence, it is a <u>legal person in its own sense.</u> b) A private limited company must have a minimum of two members, while a public limited company must have at least seven members. Correct: As the provision of the Companies Act, 2013 deals with the basic requirement with respect to the constitution. In the case of a <u>public company, any 7 or more people can form for any lawful purpose</u> by subscribing their names to the memorandum and complying with the requirements of this Act in respect of registration. In exactly the same way, <u>two or more people can form a private company.</u>	2
8	ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ₹15 crores and issued Non-Convertible Debentures worth ₹40 Crores during the Financial Year 2019-20. After that total Paid-up Equity Share Capital of the company is ₹100 Crores and Non-convertible Debentures stands at ₹120 Crores. Define the meaning of Associate company and comment on whether ABC Limited and XYZ Limited would be called Associated company as per the provisions of the Companies Act, 2013? (Nov. 2020, RTP May 2021)	4
Ans.	As per the provision of the Companies Act, 2013, An associated Company in relation to another company means a company in which <u>that other company has a significant influence</u>, but which is not a subsidiary company of the company having such influence and includes a joint venture company. The term "significant influence" means <u>control of at least 20% of total share capital</u> or control of business decisions under an agreement. The term "Total Share Capital" means the aggregate of the- a) <u>Paid-up equity share capital; and</u> b) <u>Convertible preference share capital.</u> Facts of the case: ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ₹15 crores and issued Non-Convertible Debentures worth ₹40 Crores during the Financial Year 2019-20. After that total Paid-up Equity Share Capital of the company is ₹100 Crores and Non-convertible Debentures stands at ₹120 Crores.	1 ½ ½ ½

	Conclusion: ABC Ltd. Has allotted equity shares with a voting right to XYZ Ltd. of ₹15 crores, which is less than requisite control of 20% of total share capital (i.e., ₹100 crores) to have a significant influence on XYZ Ltd. Since the said requirement does not comply, therefore ABC Ltd. and XYZ Ltd. are not associate companies. Holding/allotment of non-convertible debenture has no relevance for ascertaining significant influence.	1
9	Ram, an assessee, had a large income in the form of dividends and interest. In order to reduce his tax liability, he formed four private limited companies and transferred his investments to them in exchange for their shares. The income earned by companies was taken back by him as pretended loan. Can Ram be regarded as separate from the private limited companies he formed?	3
Ans.	(Nov. 2019, ICAI SM) As per the provision of the Companies Act, 2013, where the incorporation of the company is adopted for some <u>illegal or improper purpose</u> to defeat or circumvent the law, to <u>defraud creditors</u> or to <u>avoid legal obligations</u>, etc., the <u>corporate identity shall be lifted</u> to see the <u>real transaction</u> behind it. Facts of the case: Ram, an assessee, had a large income in the form of dividends and interest. In order to reduce his tax liability, he formed four private limited companies and transferred his investments to them in exchange for their shares. The income earned by companies was taken back by him as pretended loan. Conclusion: Here, Ram formed four private limited companies in order to <u>reduce his tax liability</u>. The purpose of incorporating companies was to reduce the tax liability of Ram and to <u>avoid legal obligations</u> of paying income tax. The <u>purpose is illegal</u>. So, Ram cannot be regarded as <u>separate from the private limited companies</u> he formed.	1 1 1
10	A company registered under section 8 of the Companies Act, 2013 earned huge profit during the financial year ended on 31st March 2019 due to some favourable policies declared by the Government of India and implemented by the company. Considering the development, some members of the company wanted the company to distribute dividends to the members of the company. They approached you to advise them about the maximum amount of dividend that can be declared by the company as per the provisions of the Companies Act, 2013.	4
Ans.	(Nov. 2018) As per the provision of the Companies Act, 2013, Section 8 deals with the formation of companies that are formed to <u>promote the charitable objects</u> of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of the environment etc. Such a company intends to apply its profit in: - ✓ <u>promoting its objects</u> and ✓ <u>prohibiting the payment of any dividend</u> to its members. Facts of the case: A company registered under section 8 of the Companies Act, 2013 earned huge profit during the financial year ended on 31st March 2019 due to some favourable policies declared by the Government of India and implemented by the company. Considering the development, some members of the company wanted the company to distribute dividends to the members of the company.	1 ½ ½ 1

	Conclusion: Hence, a company that is registered as a section 8 company is <u>prohibited from the payment of any dividend</u> to its members. In the present case, the company in question is a section 8 company, and hence it <u>cannot declare the dividend</u>. Thus, the <u>contention of members is incorrect</u>.	1
11	Mr X had purchased some goods from M/s ABC Limited on credit. A credit period of one month was allowed to Mr X. Before the due date, Mr X went to the company and wanted to repay the amount due to him. He found only Mr Z there, who was the factory supervisor of the company. Mr Z told Mr X that the accountant and the cashier were on leave, he is in charge of receiving money, and he may pay the amount to him. Mr Z issued a money receipt under his signature. After two months, M/s ABC Limited issued a notice to Mr X for non-payment of the dues within the stipulated period. Mr X informed the company that he had already cleared the dues, and he is no more responsible for the same. He also contended that Mr Z is an employee of the company to whom he had made the payment, and being an outsider, he trusted the words of Mr Z as duty distribution is a job of the internal management of the company. Analyze the situation and decide whether Mr X is free from his liability. (Nov. 2018)	3
Ans.	As per the provision of the Companies Act, 2013, the doctrine of indoor management is an <u>exception to the doctrine of constructive notice</u>. The doctrine of constructive notice means that <u>outsiders are not deemed to have knowledge of the internal affairs of the company</u>. If an act is authorised by the articles or memorandum, an outsider is entitled to <u>assume</u> that all the detailed formalities for doing that act have been observed. The doctrine of Indoor Management is important to persons dealing with a company through its directors or other persons. They are entitled to <u>assume</u> that the acts of the directors or other officers of the company are <u>validly performed</u> if they are within the scope of their apparent authority. So long as an act is <u>valid under the articles</u>, if done in a particular manner, an outsider dealing with the company is entitled to <u>assume</u> that it has been done in the manner required. Facts of the case: Mr X had purchased some goods from M/s ABC Limited on credit. A credit period of one month was allowed to Mr X. Before the due date, Mr X went to the company and wanted to repay the amount due to him. He found only Mr Z there, who was the factory supervisor of the company. Mr Z told Mr X that the accountant and the cashier were on leave, he is in charge of receiving money, and he may pay the amount to him. Mr Z issued a money receipt under his signature. After two months, M/s ABC Limited issued a notice to Mr X for non-payment of the dues within the stipulated period. Mr X informed the company that he had already cleared the dues, and he is no more responsible for the same. He also contended that Mr Z is an employee of the company to whom he had made the payment, and being an outsider, he trusted the words of Mr Z as duty distribution is a job of the internal management of the company. Conclusion: In the given case, Mr X has made payment to Mr Z, and Mr Z gave the receipt of the same to Mr X. Thus, it will be rightful on the part of Mr X to assume that Mr Z was also	1 ½ ½ 1

	authorised to receive money on behalf of the company. Hence, Mr X will be <u>free from liability</u> for the payment of goods purchased from M/s ABC Limited, as he has paid the <u>amount due to an employee of the company</u> .	
✓ 12	Mike Limited company incorporated in India having a Liaison office in Singapore. Explain in the detailed meaning of Foreign Company and analysis. on whether Mike Limited would be called a Foreign Company as it established a Liaison office in Singapore as per the provisions of the Companies Act, 2013? (Nov. 2020)	3
Ans.	As per the provision of the Companies Act, 2013, the foreign company means <u>any company or body corporate incorporated outside India</u> which: ✓ Has a place of business in India <u>whether by itself or through an agent, physically or through electronic mode</u> ; and ✓ Conducts any business activity in India in <u>any other manner</u> .	1/2 1/2 1/2
	<u>Facts of the case:</u> Mike Limited company incorporated in India having a Liaison office in Singapore. Mike Limited would be called a Foreign Company as it established a Liaison office in Singapore. <u>Conclusion:</u> Mike Limited is a company incorporated in India; hence, it cannot be called a foreign company. Even though Liaison was officially established in Singapore, <u>it would not be called a foreign company</u> .	1/2 1
13	"The Memorandum of Association is the charter of the company". Discuss. Also, explain in brief the contents of the Memorandum of Association. (Nov. 2019)	6
Ans.	As per the provision of the Companies Act, 2013, the Memorandum of Association is the <u>Charter</u> of a company. It defines its <u>constitution and the scope of the powers of the company</u> with which it has been established under the Act. It is the very foundation on which the whole edifice of the company is built. Content of Memorandum of Association: 1) Name Clause: The name of the company with the last word ' <u>Limited</u> ' in the case of a <u>public limited company</u> and or the last words ' <u>Private Limited</u> ' in the case of a <u>private limited company</u> . 2) Registered Office Clause: The state in which the <u>registered office</u> of the company is to be situated. 3) Object Clause: The objects for which the company is <u>proposed to be incorporated</u> and <u>any matter considered necessary</u> in furtherance thereof. 4) Liability Clause: The <u>liability of members</u> of the company, whether <u>limited</u> or <u>unlimited</u> and also state- i) In the case of a company <u>limited by shares</u> : The liability of members is limited to the <u>amount unpaid on the shares</u> held by them. ii) In case of a company <u>limited by guarantee</u> : The amount up to which each member undertakes to <u>contribute</u> :	1 1/2 1/2 1/2 2

	✓ to the <u>assets of the company</u> in the event of its being <u>wound up</u> while he is a member or within one year after he ceases to be a member, for <u>payment of the debts and liabilities</u> of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be; ✓ to the <u>costs, charges and expenses</u> of winding up and for adjustment of the <u>rights of the contributories</u> among themselves. 5) Capital Clause: The amount of <u>authorised capital</u> divided into shares of a fixed amount and the number of shares with the <u>subscribers to the memorandum</u> have agreed to take which shall <u>not be less than one share</u>. A company not having share capital need not have this clause. 6) Association Clause: Every <u>subscriber to the memorandum</u> shall take <u>at least one share</u>, and shall <u>write against his name</u>, the <u>number of shares</u> taken by him.	1/2 1/2
✓ 14	Define OPC and state the rules regarding its membership. Can it be converted into a Section 8 or Private Company?	6
	(May 2018)	
Ans.	As per the provision of the Companies Act, 2013, a One Person Company (OPC) is a company that has only one person as a member. Rules regarding its membership: 1) Only <u>one person</u> as a member. 2) The memorandum of OPC shall indicate the <u>name of the other person</u>, who shall, in the event of the <u>subscriber's death</u> or his <u>incapacity</u> to contract, become a <u>member</u> of the company. 3) The other person, whose name is given in the memorandum, shall give his <u>prior written consent</u> in the prescribed form, and the same shall be <u>filed</u> with the Registrar of companies <u>at the time of incorporation</u>. 4) Such other person may be given the <u>right to withdraw</u> his consent. 5) The member of OPC may, at any time, <u>change the name</u> of such other person by <u>giving notice</u> to the company, and the company shall intimate the same to the Registrar. 6) Any such change in the name of the person <u>shall not be deemed to be an alteration of the memorandum</u>. 7) Only a natural person, who is an <u>Indian citizen</u> whether <u>resident in India</u> or otherwise and has stayed in India for a period <u>not less than 120 days</u> during the <u>immediately preceding financial year</u>: - I. shall be <u>eligible to incorporate</u> OPC; II. shall be a <u>nominee</u> for the sole member of OPC. 8) No person shall be eligible to incorporate <u>more than one OPC</u> or become a nominee in <u>more than one such company</u>. 9) No <u>minor</u> shall become a member or nominee of the OPC or can hold a share with beneficial interest.	1/2 1/2 1/2 1/2 1/2 1 1/2 1/2 1/2

17	X Limited was registered as a public company. There are 220 members in the company, as noted below: i) Directors and their relatives - 190 ii) Employees - 10 iii) Ex-employees (shares were allotted when they were employees) - 5 iv) 5 couples holding shares jointly in the name of husband and wife (5×2) - 10 v) Others - 5 The Board of Directors of the company propose to convert it into a private company. Also, advise whether a reduction in the number of members is necessary.	4
Ans.	As per the provision of the Companies Act, 2013, a private company can have a maximum of 200 members excluding: 1) those who are in the <u>employment of the company</u> and 2) those who <u>were members</u> of the company <u>while in the employment</u> and have <u>continued to be members</u> after their employment ceased. Also, two persons <u>holding one or more shares jointly</u> in a company shall be treated as a <u>single member</u>. Facts of the case: X Limited was registered as a public company. There are 220 members in the company, as noted below: i) Directors and their relatives - 190 ii) Employees - 10 iii) Ex-employees (shares were allotted when they were employees) - 5 iv) 5 couples holding shares jointly in the name of husband and wife (5×2) - 10 v) Others - 5 Conclusion: Here, the Board of Directors of the company can convert it into a private company because there is a maximum of 200 members in the firm. a) Directors and their relatives - 190 b) 5 couples holding shares jointly in the name of husband and wife (5×1) - 5 c) Others - 5 Total Members = 190 + 5 + 5 = 200 members	(Jan. 2021) ½ ½ ½ ½ ½ ½ ¼ ¼ ¼ ¼
18	Popular Products Ltd. is a company incorporated in India, having a total Share Capital of ₹20 Crores. The Share capital comprises 12 Lakh equity shares of ₹100 each and 8 Lakhs Preference Shares of ₹100 each. Delight Products Ltd. and Happy Products Ltd. hold 2,50,000 and 3,50,000 shares, respectively, in Popular Products Ltd. Another company Cheerful Products Ltd., holds 2,50,000 shares in Popular Products Ltd. Jovial Ltd. is the holding company for all the above three companies, namely Delight Products Ltd; Happy Products Ltd.; Cheerful Products Ltd. Can Jovial Ltd. be termed as a subsidiary company of Popular Products Ltd. if it controls the composition of directors of Popular Products Ltd.? State the related provision in favour of your answer.	6

(May 2019)

Ans.	As per the provision of the Companies Act, 2013, a subsidiary company means a company in which a holding company: 1) <u>Controls the composition of the Board of Directors</u>, or 2) Exercises or <u>controls more than one-half of the total voting power</u> either on its own or together with one or more of its subsidiary companies. Facts of the case: Popular Products Ltd. is a company incorporated in India, having a total Share Capital of ₹20 Crores. The Share capital comprises 12 Lakh equity shares of ₹100 each and 8 Lakhs Preference Shares of ₹100 each. Delight Products Ltd. and Happy Products Ltd. hold 2,50,000 and 3,50,000 shares, respectively, in Popular Products Ltd. Another company Cheerful Products Ltd. holds 2,50,000 shares in Popular Products Ltd. Jovial Ltd. is the holding company for all the above three companies, namely Delight Products Ltd.; Happy Products Ltd.; Cheerful Products Ltd. Conclusion: In the present case, the total share capital of Popular Products Ltd. is ₹20 crores, comprised of 12 Lakh equity shares and 8 Lakh preference shares. Delight Products Ltd., Happy Products Ltd. and Cheerful Products Ltd. together hold 8,50,000 shares (2,50,000+3,50,000+2,50,000) in Popular Products Ltd. Jovial Ltd. is the holding company of all above three companies. So, Jovial Ltd., along with its subsidiaries, holds 8,50,000 shares in Popular Products Ltd., which amounts to <u>less than one-half of its total share capital</u>. Hence, Jovial Ltd., by virtue of shareholding, <u>is not a holding company of Popular Products Ltd.</u> Secondly, it is given that Jovial Ltd. <u>controls the composition of directors of Popular Products Ltd.</u> Hence, Jovial Ltd. is a holding company of Popular Products Ltd. and not a subsidiary company.	1 1
19	What is meant by a Guarantee Company? State the similarities and dissimilarities between a Guarantee Company and a Company Share Capital.	4
Ans.	Company Limited by Guarantee: As per the provision of the Companies Act, 2013 define it as the company having the <u>liability of its members limited</u> by the memorandum to such amount as the members may respectively undertake by the <u>memorandum to contribute to the assets of the company it's being wound up</u>. Thus, the liability of the member of a guarantee company is limited up to a stipulated sum mentioned in the memorandum. Members cannot be called upon to <u>contribute beyond that stipulated sum</u>. Similarities and dissimilarities between the Guarantee company and the company having a share capital: The common features between a 'guarantee company' and 'share company' are legal personality and limited liability. In the latter case, the <u>member's liability is limited</u> by the amount remaining unpaid on the share, which each member holds. Both of them have to <u>state in their memorandum that the members' liability is limited</u>. However, the point of distinction between these two types of companies is that in the former case, the members may be called upon to <u>discharge their liability only after the commencement of the winding-up</u> and only subject to certain conditions; but in the latter case, they may be called upon to do so at any time, either during the <u>company's lifetime or during its winding up</u>.	(ICAI SM) 2 2

✓ 20	Can a non-profit organization be registered as a company under the Companies Act, 2013? If so, what procedure does it have to adopt?	4
Ans.	(ICAI SM) As per the provision of the Companies Act, 2013, a non-profit organization can be registered as a company under the Companies Act, 2013 by following the provision of section 8 of the companies Act, 2013. ✓ <u>Promote the charitable objects</u> of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of the environment etc. Such company intends to apply its profit in ✓ <u>Promoting its objects</u> and ✓ <u>Prohibiting the payment</u> of any dividend to its members. The central government has the power to issue a license for registering of section 8 company. i) Section 8 allows the Central government to register such person or association of persons as a company with limited liability without the addition of word 'Limited' or Private limited' to its name by <u>issuing licence on such conditions as it deems fit</u>. ii) The registrar shall on <u>application register such person or association of persons as a company</u> under this section. iii) On registration, the company shall <u>enjoy the same privileges and obligations as of a limited company</u>.	1/2 1/2 1/2 1/2 1 1/2 1/2
✓ 21	Explain the meaning of the corporate veil and when the promoters can be made personally liable for the debts of the company.	5
Ans.	(RTP Nov 2019) Corporate Veil: Corporate Veil refers to a legal concept whereby the company is <u>identified separately from the members</u> of the company. The term Corporate Veil refers to the concept that members of a company are shielded from liability connected to the company's actions. If the company incurs any debts or contravenes any laws, the corporate veil concept <u>implies that members should not be liable for those errors</u>. In other words, they enjoy corporate insulation. Thus, the <u>shareholders are protected from the acts of the company</u>. However, under certain exceptional circumstances, the courts lift or pierce the corporate veil by ignoring the separate entity of the company and the promoters and <u>other persons who have managed and controlled the affairs of the company</u>. Thus when the corporate veil is lifted by the courts, the promoters and persons exercising control over the affairs of the company are <u>held personally liable for the acts and debts of the company</u>. The following are the cases where <u>company law disregards the principle of corporate personality</u>: i) To determine the character of the company, i.e., to find out whether co-enemy or friend. ii) To protect revenue/tax. iii) To avoid a legal obligation. iv) Formation of subsidiaries to act as agents. v) Company formed for fraud/improper conductor to defeat the law.	1/2 1 1 1/2 1/2 1/2 1/2

Limited Liability Partnership Act, 2008

Q. No.		Marks
1	What do you mean by Designated Partner? Whether it is mandatory to appoint a designated partner in an LLP? (ICAI SM, RTP May 2021, RTP Nov. 2020)	3
Ans.	As per the provision of the Limited Liability Partnership Act, 2008: - 1) Every LLP shall have <u>at least two designated partners</u> who are individuals, and at least one of them shall be a <u>resident in India</u> . 2) If in LLP, all the partners are <u>body corporates</u> or in which one or more partners are <u>individuals</u> and <u>body corporates</u> , at least <u>two individuals</u> who are partners of such LLP or <u>nominees</u> of such body corporates shall act as <u>designated partners</u> . 3) Resident in India means a person who has stayed in India for a period of <u>not less than 182 days</u> during the <u>immediately preceding one year</u> .	1 1 1
2	State the circumstances in which the Tribunal may order for the winding up of an LLP. (ICAI SM, Nov. 2020, RTP May 2020)	6
Ans.	As per the provision of the Limited Liability Partnership Act, 2008, circumstances in which the Tribunal may order for the winding up of an LLP are: - 1) If the <u>LLP decides</u> that LLP be wound up by the Tribunal; 2) If, for a period of <u>more than six months</u> , the <u>number of partners</u> of the LLP is <u>reduced below two</u> ; 3) If the LLP is <u>unable to pay its debts</u> ; 4) If the LLP has <u>acted against the interests</u> of the <u>sovereignty</u> and <u>integrity</u> of India, the <u>security</u> of the State or public order; 5) LLP has made a <u>default in filing with the Registrar</u> the Statement of Accounts & Solvency or annual return for any five consecutive financial years; 6) If the Tribunal is of the opinion that it is <u>just and equitable</u> that the LLP be wound up.	1 1 1 1 1 1
3	Explain the essential elements to incorporate an LLP under the Limited Liability Partnership Act, 2008. (ICAI SM, May 2018)	6
Ans.	As per the provision of the Limited Liability Partnership Act, 2008, the following elements are essential to forming an LLP in India: 1) To complete and submit incorporation <u>documents in the form prescribed with the Registrar electronically</u> . 2) To have <u>at least two partners for the incorporation of LLP</u> [Individual or Body Corporate]. 3) To have a <u>registered office in India</u> to which all communications will be made and received. 4) To appoint a <u>minimum of two individuals</u> as <u>designated partners</u> who will be responsible for a number of duties, including doing all acts, matters and things as are required to be done by the LLP. <u>At least one of them should be resident in India</u> . 5) A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a <u>Designated Partner Identification Number (DPIN)</u> allotted by MCA (Ministry of Corporate Affairs).	1 1 1 1 1 1

	6) To <u>execute a partnership agreement</u> between the partners or between the LLP and its partners. <u>In the absence of any agreement, the provisions as set out in the First Schedule of LLP Act, 2008 will be applied.</u>	
4	What are the effects of registration of LLP? (ICAI SM, RTP Nov. 2019)	4
Ans.	Effect of registration: On registration, an LLP shall, by its name, be capable of- a) Suing and being sued b) Acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible c) Having a common seal, if it decides to have one, and d) Doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.	1 1 1 1
5	"LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain. (ICAI SM, May 2019)	5
Ans.	As per the provision of the Limited Liability Partnership Act, 2008, LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership Limited Liability: <u>Every partner of an LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners. The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.</u> The flexibility of a partnership: The LLP allows its <u>members the flexibility of organizing their internal structure</u> as a partnership based on a <u>mutually arrived agreement</u> . The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in <u>scientific and technical disciplines to form commercially efficient vehicles</u> suited to their requirements. Owing to flexibility in its structure and operation, the <u>LLP is a suitable vehicle for small enterprises and for investment by venture capital.</u>	1 2 2
6	What are the steps for incorporating an LLP? (Nov. 2018)	6
Ans.	As per the provision of the Limited Liability Partnership Act, 2008, steps for incorporating LLP: 1) Deciding partners and designated partners: <u>Minimum of two designated partners</u> should be chosen to form LLP, one of whom shall be a <u>resident of India</u> . The person appointed as a designated partner should hold a <u>Designated Partner Identification Number (DPIN)</u> and <u>Digital Signature Certificate (DSC)</u> . 2) Name availability: <u>Six names should be reserved</u> for the name of the LLP. One of the names shall be <u>chosen by the Registrar</u> after scrutinizing the names. Application has to be filed in <u>e-form 1</u> for ascertaining availability and reservation of the name of LLP business with prescribed fees. 3) Drafting of LLP Agreement: An agreement shall be draft for the LLP that should specify: - a) <u>Name of the LLP.</u> b) <u>Name and address of partners and designated partners.</u> c) <u>Form of contribution and interest on contribution.</u> d) <u>Profit-Sharing Ratio</u> of partners. e) <u>Remuneration</u> of partners. f) <u>Proposed business</u> for which LLP is incorporated.	1 1 2

	g) <u>Rules for governing LLP.</u> h) <u>Details of registered office in India</u> to which all communications will be made and received. 4) Filing of E-forms: <u>E-forms</u> filed with the Registrar shall contain details regarding: - a) <u>LLP proposed to be incorporated.</u> b) <u>Details of partners and designated partners.</u> c) <u>Consent letter of partners and designated partners</u> to act as a partner and designated partner. d) <u>E-Form 3 containing LLP agreement</u> shall be <u>filed within thirty days of incorporation</u> of LLP. 5) Registrar of LLP will issue the <u>certificate of incorporation</u> along with <u>LLPIN (Limited Liability Partner Identification Number)</u> after satisfying that all <u>legal formalities</u> required have been completed.	1
7	Who is the individual who shall not be capable of becoming a partner of an LLP?	3
	Ans. Any individual or body corporate may be a partner in an LLP. However, an not be capable of becoming a partner of an LLP if: -	
	a) He has been found to be of <u>unsound mind</u> by a court of competent jurisdiction, and the finding is in force;	1
	b) He is an <u>undischarged insolvent</u> ; or	1
	c) He has applied to be <u>adjudicated as insolvent</u> , and his application is pending.	1
8	Discuss the conditions under which an LLP shall be liable for the acts of the partner.	5
	Ans. As per the provision of the Limited Liability Partnership Act, 2008: -	
	1) The LLP is <u>not bound</u> by anything done by a partner in dealing with a person if:	2
	a) the partner, in fact, has <u>no authority to act for the LLP</u> in doing a particular act; and	
	b) the person knows that he has no authority or does not know or believe him to be a partner of the LLP.	
	2) The LLP is liable if a partner of the LLP is <u>liable to any person as a result of a wrongful act or omission</u> on his part <u>in the course of the business</u> of the LLP or with its authority.	1
	3) An obligation of the LLP, whether arising in contract or otherwise, shall be solely the <u>obligation of the LLP</u> .	1
	4) The liabilities of the LLP shall be met out of the <u>property of the LLP</u> .	
9	Explain any four features of a Limited Liability Partnership.	1
	Ans. As per the provision of the Limited Liability Partnership Act, 2008, features of LLP are: - (Any four features)	4
	1) LLP is a body corporate: LLP is a <u>separate legal entity</u> , and all assets and liabilities of LLP <u>belong to LLP</u> , not to its partners.	1 Mark for each point (Any four)
	2) Perpetual Succession: LLP is created by the <u>process of law</u> , and it can be destroyed by the process of law only. <u>Death, insanity</u> , etc., of its partners <u>cannot affect the existence or continuity</u> of LLP.	
	3) Mutual Agency: Partners of LLP are the <u>agents of LLP</u> only, <u>not of other partners</u> . Acts done by partners are <u>bounded on LLP</u> only, <u>not on other partners</u> directly.	

	4) Formation of Agreement: Agreement between partners under LLP Act decides <u>mutual rights and duties</u> of the partners. In the absence of agreement, mutual rights and duties shall be governed by provisions of the <u>Limited Liability Partnership Act, 2008</u>. 5) Common Seal: It is <u>not mandatory</u> for a company to have a common seal. If there is a common seal of LLP, it shall be under the <u>custody of some responsible officer</u>. The common seal shall be affixed in the presence of <u>at least two designated partners</u> of LLP. 6) Limited Liability: Since <u>every partner is an agent of LLP</u> only, the liability of partners shall be limited to their <u>agreed contribution</u> in LLP. 7) Management of Business: Partners of LLP are <u>entitled to manage the business</u>. Only <u>designated partners</u> are <u>responsible for legal compliances</u>. 8) Minimum and Maximum number of Partners: <u>Minimum number of designated partners</u> should be 2, one of whom must be a <u>resident of India</u>. There is <u>no limit</u> to the maximum number of partners in LLP. 9) Business for profits only: While forming LLP, the intention should be to <u>earn profits</u>. LLP <u>cannot</u> be formed for <u>charitable</u> or <u>non-economic</u> purposes. 10) Investigation: The <u>Central Government</u> has the powers to <u>order the investigation</u> on LLP and its affairs by appointing a <u>competent authority</u>. 11) Compromises or Arrangements: Any <u>compromises or arrangements</u>, including <u>merger and amalgamation</u>, shall be in accordance with the provisions of the <u>LLP Act, 2008</u>. 12) Conversion into LLP: A firm, <u>private</u> or an <u>unlisted public company</u> would be allowed to be <u>converted</u> into LLP in accordance with the provisions of the <u>LLP Act, 2008</u>. 13) E-filing of Documents: Every form or application, or document needed to be filed, shall be filed in a <u>computer-readable</u> electronic form on the website <u>www.mca.gov.in</u>. The documents filed must be <u>authenticated</u> by a partner or designated partner of LLP by the use of the <u>electronic</u> or <u>digital signature</u>. 14) Foreign LLP: <u>Foreign LLP</u> is LLP <u>incorporated outside India</u>, which established a <u>place of business within India</u>. It can become a partner in an Indian LLP.	
10	State the circumstances under which an LLP and its partners may face unlimited liability under the Limited liability Partnership Act, 2008. (Jan. 2021)	4
Ans.	As per the provision of the LLP Act, 2008, in the case of fraud: 1) An act done by the partners of LLP or LLP with the intention to defraud creditors of LLP, the liability of the partners shall be unlimited. A penalty imposed not less than ₹50,000, and it extends to ₹5,00,000 and imprisonment up to two years. However, in case any such act is carried out by a partner, the LLP is liable to the same extent as the partner unless it is established by the LLP that such an act was <u>without the knowledge authority of LLP</u>. 2) Where an <u>LLP or any partner or designated partner or employee</u> of such LLP has conducted the <u>affair of the LLP in a fraudulent manner</u>, they shall be <u>liable to pay compensation</u> to any person who has suffered any loss or damage by reason of such conduct. However, such <u>LLP not be liable if any such partner or designated partner</u>	1 1 1 1

	or employee has acted fraudulently <u>without knowledge</u> of LLP.	
11	What is the procedure for changing the name of Limited Liability Partnership under the LLP Act, 2008? (RTP May 2020)	4
Ans.	As per the provision of the Limited Liability Partnership Act, 2008, if the Central Government has been satisfied that the LLP has been registered under a name which: i) is <u>undesirable</u>, or ii) <u>identical or too nearly resembles</u> that of any other partnership or LLP or body corporate or a registered trademark or a trademark which is a subject matter of an application for registration of any other person under the Trade Marks Act, 1999, The Central Government may <u>direct such LLP to change its name</u> , and the LLP shall comply with the direction <u>within 3 months from the date of the directions</u> or any such longer period which the Central Government may allow. If an LLP fails to comply with the directions of the Central Government, the <u>LLP</u> shall be punishable, which <u>shall not be less than ₹10,000</u> but which may extend to <u>₹5,00,000</u> . The <u>designated partner</u> of such LLP shall be punishable with a fine which <u>shall not be less than ₹10,000</u> but which may extend to <u>₹1,00,000</u> .	1/2 1/2 1/2 1/2 2
12	Examine the Concept of LLP. (ICAI SM)	5
Ans.	LLP is a new form of legal business entity with limited liability. It is an alternative corporate business vehicle that gives the benefits of limited liability but allows its partners the flexibility of organizing their internal structure as a traditional partnership. The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited. Concept of the limited liability partnership: ✓ The LLP can continue its existence irrespective of changes in partners. It is capable of entering into a contract and holding property in its own name. ✓ The LLP is a separate legal entity, is liable to the full extent of its assets, but the liability of the partners is limited to the agreed contribution in the LLP. ✓ Further, no partner is liable on account of the independent or unauthorized actions of other partners; thus, individual partners are shielded from joint liability created by another partner's wrongful business decision. ✓ Mutual rights and duties of the partners within an LLP are governed by an agreement between the partners. ✓ Since LLP contains elements of both 'a corporate structure' as well as a partnership firm structure' LLP is called a hybrid between a company and a partnership.	2 1/2 1/2 1/2 1/2 1

LLP is a hybrid form of business which provides a benefit of Partnership as well as company. LLP is a separate legal entity in the eye of law. All assets & liability belongs to LLP not the partners of LLP. The assets of the LLP is disposed to pay off the liability of the LLP. Partner assets is not used for pay of the liability.

then Benefits [Features]

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CA INTERMEDIATE

AIR 19



MAYANK SHARMA
UTTARAKHAND

586
MARKS



HARIOM SAHU
RAJASTHAN

594
MARKS



HRITHIK BHATT
DELHI

612
MARKS



PRANJUL AGGARWAL
HARYANA

324
MARKS



ROHIT BHATT
DELHI

320
MARKS



SAYALI MILIND
MAHARASHTRA

320
MARKS

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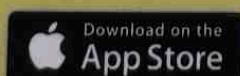
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