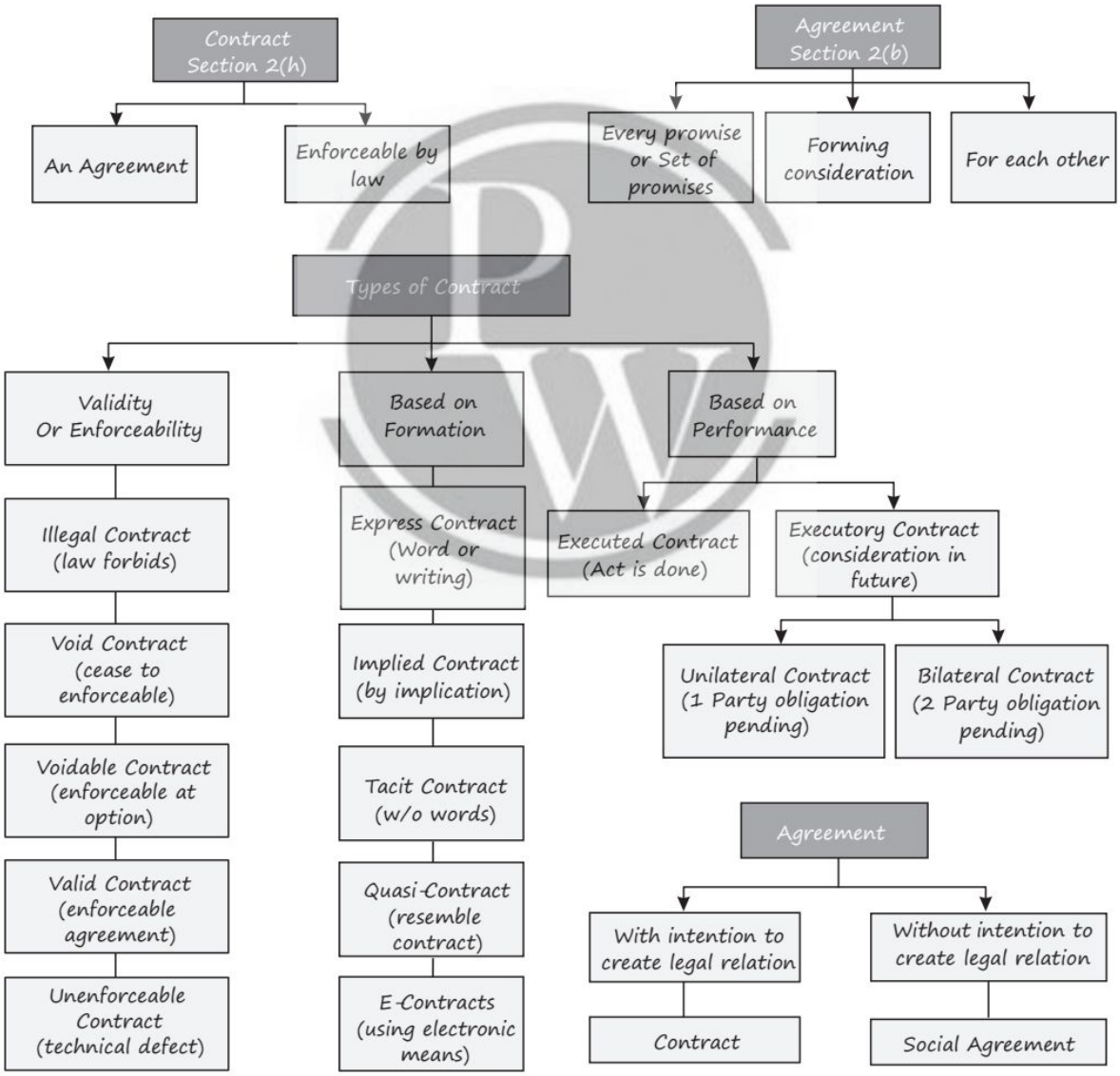
UNIT

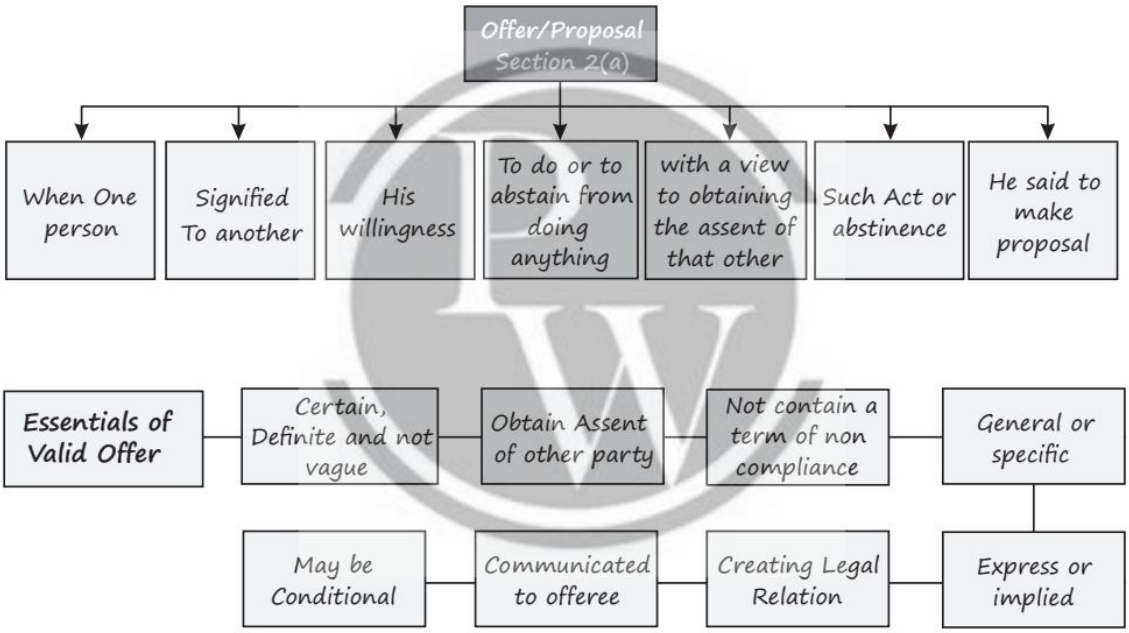
1 Nature of Contract

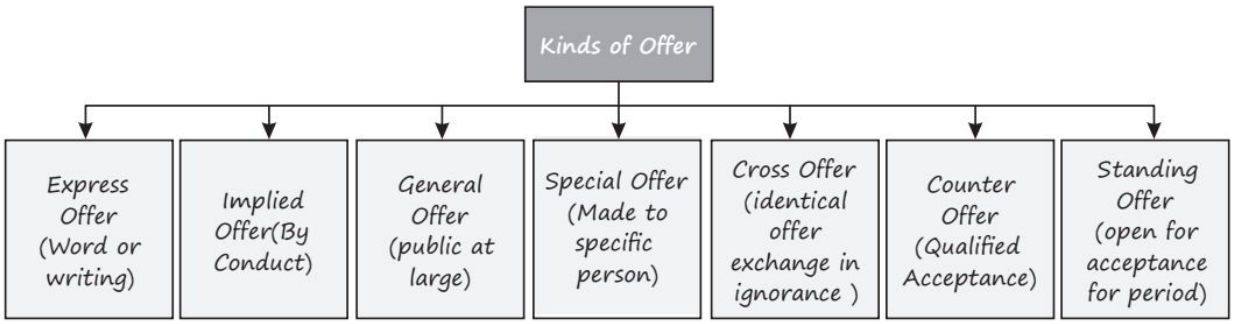
PART-A



Section 10 – Essentials of Contract (C2L2AN)	Other than Section 10 – Essentials of Contract – (COP3)
Free Consent	Certainty of meaning
Competency of the Parties	Other Formalities to be complied
Lawful Consideration	Possibility of Performance
Legal Object	Parties intend to create legal relation
Agreement	2 Parties
Not expressly declared Void	

All contracts are agreements but all agreements are not contract

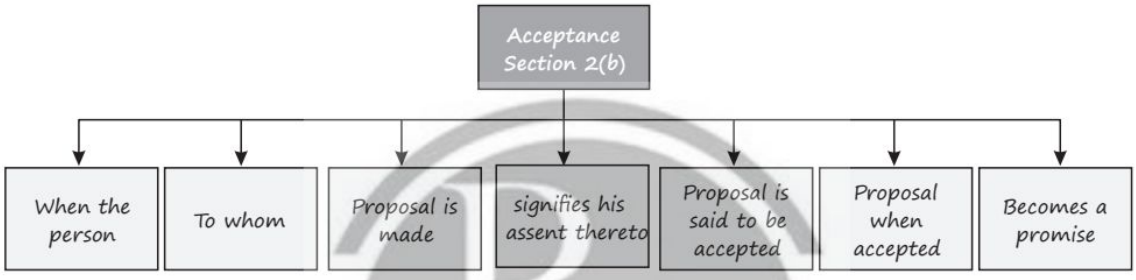


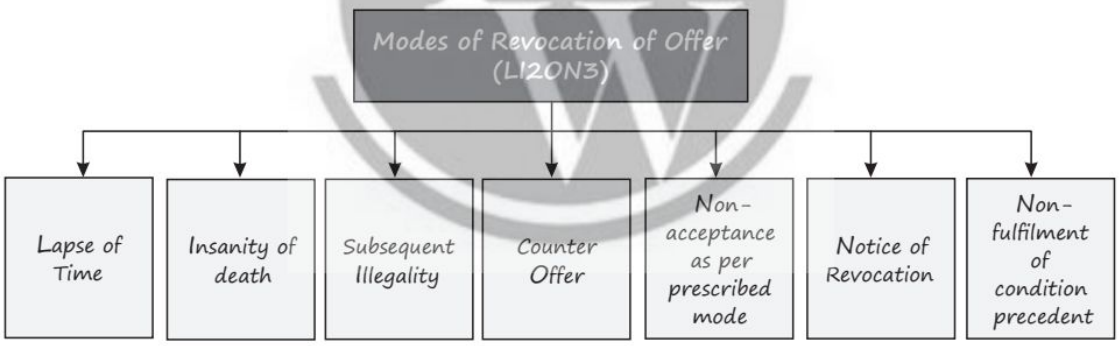


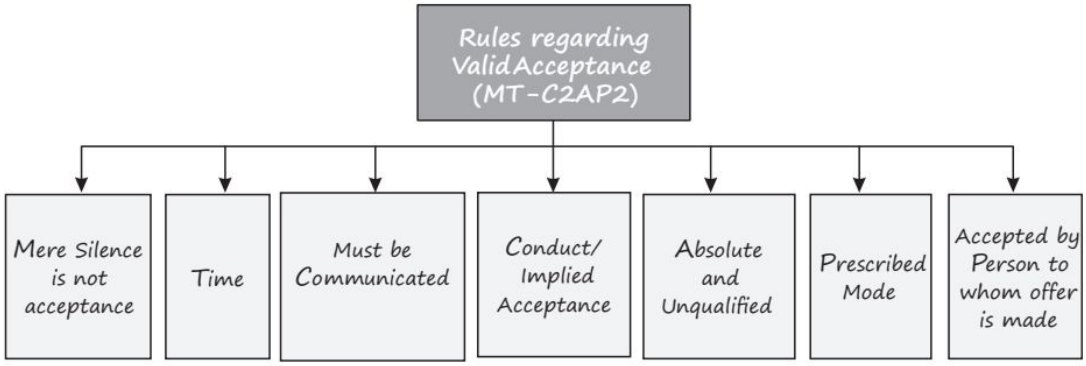
Examples of Invitation to Offer :-	Offer is different from :-
Invitation by company to public for subscribing its shares	Statement of Intention
Display of Goods for sale in shop	Statement of Price
Advertisement of Auction Sales	Statement of Announcement
Price Quotation in reply to query of price Menu card/price tags etc.	Invitation to Offer

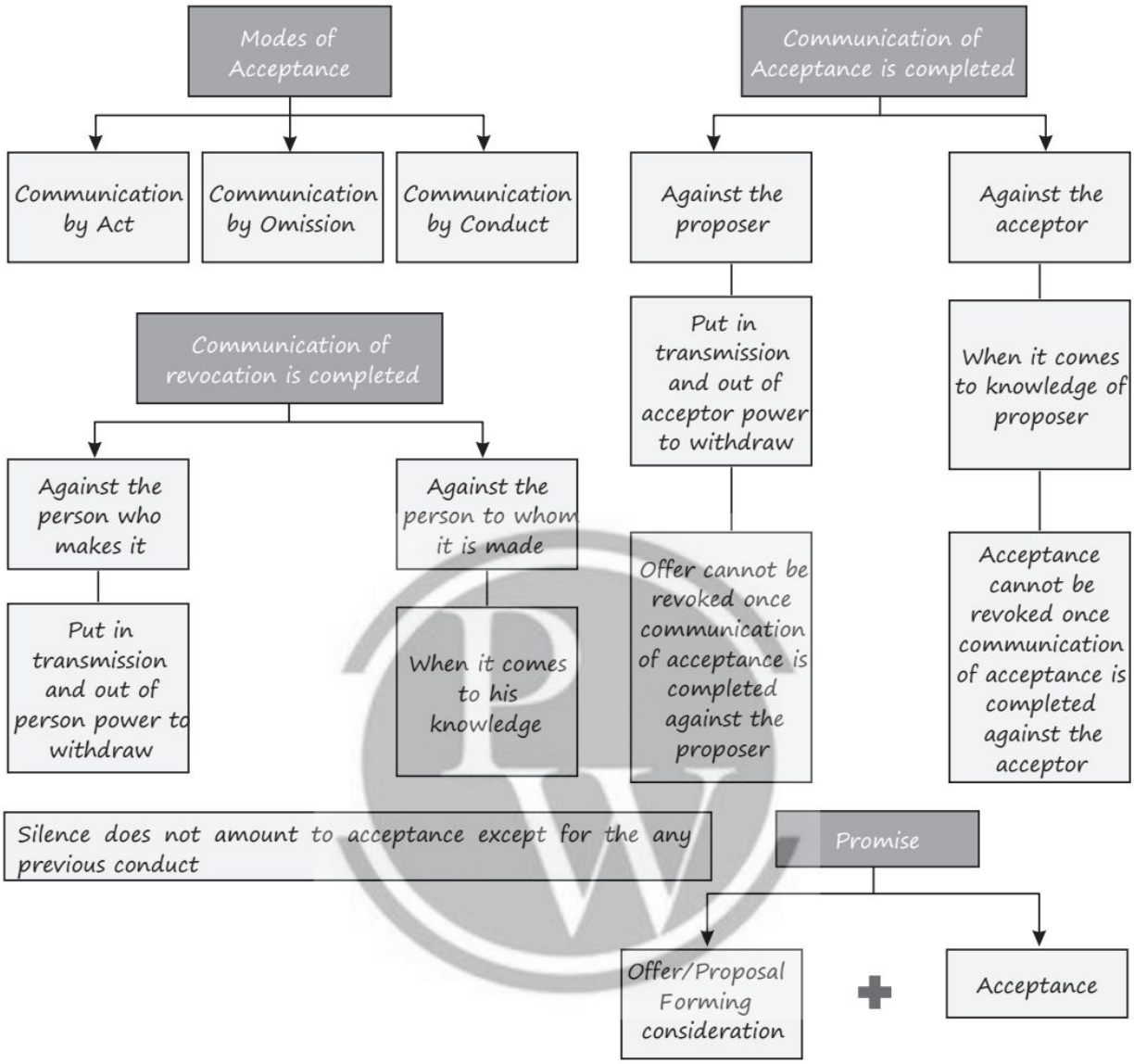
Communication of offer is complete when it comes to the knowledge of the person to whom it is made

Advertisements are Invitation to offer except it is announced in the form of reward. Then it is considered as General Offer.








Modes of Acceptance
Communication by Act
Communication by Omission
Communication by Conduct
Communication of revocation is completed
Against the person who makes it
Put in transmission and out of person power to withdraw
Against the person to whom it is made
When it comes to his knowledge
Communication of Acceptance is completed
Against the proposer
Put in transmission and out of acceptor power to withdraw
Offer cannot be revoked once communication of acceptance is completed against the proposer
Against the acceptor
When it comes to knowledge of proposer
Acceptance cannot be revoked once communication of acceptance is completed against the acceptor
Silence does not amount to acceptance except for the any previous conduct
Promise
Offer/Proposal Forming consideration
Acceptance

QUESTIONS FOR PRACTICE

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

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

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

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

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

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

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

All contracts are agreements: For a contract there must be two things

(a) an agreement and (b) enforceability by law.

Thus, existence of an agreement is a pre- requisite existence of a contract. Therefore, it is true to say that all contracts are agreements.

Thus, we can say that there can be an agreement without it becoming a contract, but we can't have a contract without an agreement.

Q2. A sends an offer to B to sell his second-car for Rs. 1,40,000 with a condition that if B does not reply within a week, he (A) shall treat the offer as accepted. Is A correct in his proposition?

Sol.

Provision

Acceptance to an offer cannot be implied merely from the silence of the offeree, even if it is expressly stated in the offer itself. Unless the offeree has by his previous conduct indicated that his silence amount to acceptance, it cannot be taken as valid acceptance.

Analysis and conclusion

So, in the given problem, **if B remains silent, it does not amount to acceptance.**

The acceptance must be made within the time limit prescribed by the offer. The **acceptance of an offer after the time prescribed by the offeror has elapsed will not avail to turn the offer into a contract.**

Q3. Explain the type of contracts in the following agreements under the Indian Contract Act, 1872:

(i) A coolie in uniform picks up the luggage of A to be carried out of the railway station without being asked by A and A allows him to do so.

(ii) Obligation of finder of lost goods to return them to the true owner.

(iii) A contracts with B (owner of the factory) for the supply of 10 tons of sugar, but before the supply is effected, the fire caught in the factory and everything was destroyed.

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

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

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

Quasi-Contract: A quasi-contract is not an actual contract but it resembles a contract. It is created by law under certain circumstances. The law creates and enforces legal rights and obligations when no real contract exists. Such obligations are known as quasi-contracts. In otherwords, it is a contract in which there is no intention on part of either party to make a contract but law imposes a contract upon the parties.

(iii) The above contract is a void contract.

Void Contract: Section 2 (j) states as follows: "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable". Thus, a void contract is one which cannot be enforced by a court of law.

Q4. Shambhu Dayal started "self service" system in his shop. Smt. Prakash entered the shop, took a basket and after taking articles of her choice into the basket reached the cashier for payments. The cashier refuses to accept the price. Can Shambhu Dayal be compelled to sell the said articles to Smt. Prakash? Decide as per the provisions of the Indian Contract Act, 1872.

Sol.

Provision

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

The display of articles with a price in it in a self-service shop is merely an invitation to offer. It is in **no sense an offer for sale, the acceptance of which constitutes a contract.**

Analysis and conclusion

In this case, Smt. Prakash by selecting some articles and approaching the cashier for payment simply made an offer to buy the articles selected by her. If **the cashier does not accept the price, the interested buyer cannot compel him to sell.**

Q5. State whether there is any contract in following cases:

(a) A engages B to do certain work and remuneration to be paid as fixed by C.

(b) A and B promise to pay for the studies of their maid's son

(c) A takes a seat in public bus.

(d) A, a chartered accountant promises to help his friend to file his return.

Sol.

(a) It is a valid express contract

(b) It is not a contract as it is a social agreement

(c) It is an implied contract. A is bound to pay for the bus fare.

(d) It is a social agreement without any intention to create a legal relationship.

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

Sol.

Provision

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

Analysis and conclusion

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

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

Sol.

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

Legal Rules regarding a valid acceptance

(1) Acceptance can be given only by the person to whom offer is made. In case of a **specific offer, it can be accepted only by the person to whom it is made. In case of a general offer, it can be accepted by any person who has the knowledge of the offer.**

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

(3) **The acceptance must be communicated:** To conclude a contract between the parties, the acceptance must be **communicated in some perceptible form.** Further when a proposal is accepted, the offeree must have the knowledge of the offer made to him. **If he does not have the knowledge, there can be no acceptance.** The acceptance must relate specifically to the offer made. Then only it can materialize into a contract.

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

(5) **Time:** Acceptance must be **given within the specified time limit**, if any, and if no time is stipulated, acceptance **must be given within the reasonable time** and before the offer lapses.

(6) **Mere silence is not acceptance:** The **acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer**, unless the offeree has in any previous conduct indicated that his silence is the evidence of acceptance.

(7) **Acceptance by conduct/ Implied Acceptance:** Section 8 of the Act lays down that "the performance of the conditions of a proposal, or the **acceptance of any consideration for a reciprocal promise which may be offered with a proposal**, constitutes an acceptance of the proposal. This section provides the acceptance of the proposal by conduct as against other modes of acceptance i.e. verbal or written communication.

Therefore, when a **person** performs the act intended by the proposer as the consideration for the promise offered by him, the performance of the act constitutes acceptance.

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

Sol.

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

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

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

Acceptance can also be made by way of conduct

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

(a) as **against the proposer, when it is put in a course of transmission to him,** so as to be out of power of the acceptor;

(b) as **against the acceptor, when it comes to the knowledge of the proposer.**

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

(1) by any act or

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

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

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

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

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

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

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

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

Q9. Mr. B makes a proposal to Mr. S by post to sell his house for Rs. 10 lakhs and posted the letter on 10th April 2020 and the letter reaches to Mr. S on 12th April 2020. He reads the letter on 13th April 2020.

Mr. S sends his letter of acceptance on 16th April 2020 and the letter reaches Mr. B on 20th April 2020. On 17th April Mr. S changed his mind and sends a telegram withdrawing his acceptance. Telegram reaches to Mr. B on 19th April2020.

Examine with reference to the Indian Contract Act, 1872:

(i) On which date, the offer made by Mr. B will complete?

(ii) Discuss the validity of acceptance.

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

Sol. (i)

Provision

According to Section 4 of the Indian Contract Act, 1872, "the communication of offer is complete when it comes to the knowledge of the person to whom it is made".

When a proposal is made by post, its communication will be complete when the letter containing the proposal reaches the person to whom it is made. Further, mere receiving of the letter is not sufficient, he must receive or read the message contained in the letter.

Analysis and conclusion

In the given question, Mr. B makes a proposal by post to Mr. S to sell his house. The letter was posted on 10th April 2020 and the letter reaches to Mr. S on 12th April 2020 but he reads the letter on 13th April 2020.

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

(ii) **Provision**

When communication of acceptance is complete: Where a proposal is acceptedby a letter sent by the post, in terms of Section 4 of the Act, the communication of acceptance will be complete as against the proposer when the letter of acceptance is posted and as against the acceptor when the letter reaches the proposer. **Revocation of Acceptance**: The acceptor can revoke his acceptance any time before the letter of acceptance reaches the offeror, if the revocation telegram arrives before or at the same time with the letter of acceptance, the revocation is absolute.

Analysis and conclusion

In the given question, when Mr. S accepts Mr. B's proposal and sends his acceptance by post on 16th April 2020, the communication of acceptance as against Mr. B is complete on 16th April 2020, when the letter is posted. As against Mr. S acceptance will be complete, when the letter reaches Mr. B i.e. 20th April 2020. Whereas, acceptor, will be bound by his acceptance only when the letter of acceptance has reached the proposer.

The telegram for revocation of acceptance reached Mr. B on 19th April 2020 i.e. before the letter of acceptance of offer (20th April 2020). Hence, the revocation is absolute. Therefore, acceptance to an offer is invalid.

(iii) It will not make any difference even if the telegram of revocation and letter of acceptance would have reached on the same day, i.e. the revocation then also would have been absolute. As per law, acceptance can be revoked anytime before the communication of acceptance is complete. Since revocation was made before the communication of acceptance was complete and communication can be considered as complete only when the letter of acceptance reaches the proposer i.e. Mr. B.

Q10. A shop-keeper displayed a pair of dress in the show-room and a price tag of Rs. 2,000 was attached to the dress. Ms. Lovely looked to the tag and rushed to the cash counter. Then she asked the shop-keeper to receive the payment and pack up the dress. The shop-keeper refused to hand-over the dress to Ms. Lovely in consideration of the price stated in the price tag attached to the Ms. Lovely seeks your advice whether she can sue the shop-keeper for the above cause under the Indian Contract Act, 1872

Sol.

Provision

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

is only a circulation of an offer, it is an attempt to induce offers and precedes a definite offer. Where a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but invites only the other party to make an offer on those terms. This is the basic distinction between offer and invitation to offer.

The display of articles with a price in it in a self-service shop is merely an invitation to offer. It is in no sense an offer for sale, the acceptance of which constitutes a contract.

Analysis and Conclusion

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

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

Sol.

Modes of revocation of Offer

(i) By notice of revocation

(ii) By lapse of time: The time for acceptance can lapse if the acceptance is not given within the specified time and where no time is specified, then within a reasonable time.

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

(iv) By death or insanity: Death or insanity of the proposer would result in automatic revocation of the proposal but only if the fact of death orinsanity comes to the knowledge of the acceptor.

(i) By counter offer

(ii) By the non- acceptance of the offer according to the prescribed or usual mode

(iii) By subsequent illegality

Q12. Comment on the following statements:

(a) Acceptance must be absolute and unqualified.

(b) Acceptance must be in the prescribed mode.

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

If the proposal prescribes the manner in which it must be accepted, then it must be accepted accordingly.

Example: 'A' enquires from 'B', "Will you purchase my car for Rs. 2 lakhs?" If 'B' replies "I shall purchase your car for Rs. 2 lakhs, if you buy my motorcyclefor Rs. 50000/-, here 'B' cannot be considered to have accepted the proposal.If on the other hand 'B' agrees to purchase the car from 'A' as per his proposal subject to availability of valid Registration Certificate / book for the car, then the acceptance is in place though the

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

Acceptance must be in the prescribed mode: Where the **mode of acceptanceis prescribed in the proposal, it must be accepted in that manner.**

But **if the proposer does not insist on the proposal being accepted in the manner prescribed** after it has been accepted otherwise, i.e., **not in the prescribedmanner, the proposer is presumed to have consented to the acceptance.**

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

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

(i) A coolie in uniform picks up the luggage of A to be carried out of the railway station without being asked by A and A allows him to do so.

(ii) Obligation of finder of lost goods to return them to the true owner

(iii) A contracts with B (owner of the factory) for the supply of 10 tons of sugar, but before the supply is effected, the fire caught in the factory and everything was destroyed.

Sol.

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

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

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

Quasi-Contract: A quasi-contract is not an actual contract but it resembles a contract.

It is created by law under certain circumstances. The law creates and enforces legal rights and obligations when no real contract exists.

Such obligations are known as quasi-contracts. In other words, it is a contract in which there is no intention on part of either party to make a contract but law imposes a contract upon the parties.

(iii) The above contract is a **void contract.**

Void Contract: Section 2 (j) of the Act states as follows: **"A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable".** Thus, a void contract is one which cannot be enforced by a court of law.

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

(i) X promise to sell his scooter to Y for Rs. 1 Lac. However, the consentof X has been procured by Y at a gun point.

(ii) A bought goods from B in 2015. But no payment was made till 2019.

(iii) G agrees to give tuitions to H, a pre-engineering student, from the nextmonth and Hin consideration promises to pay G Rs. 5,000 per month.

Sol.

(i) In the instant case, X is an aggrieved party and the **contract is voidable** at his option but not at the option of Y. It means **if X accepts the contract, the contract becomes a valid contract then Y has no option of rescinding the contract.**

(ii) **B cannot sue A** for the payment in 2019 as it has crossed three years and barred by Limitation Act. A good **debt becomes unenforceable** after the period of three years as barred by Limitation Act.

(iii) Where, G agrees to give tuitions to H, a pre-engineering student, from the next month and H in consideration **promises to pay G Rs. 5,000 per month,the contract is executory because it is yet to be carried out.**

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

Sol.

Provision

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

Analysis and conclusion

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

Q16. A coolie in uniform picks up the luggage of R to be carried out of the railway station without being asked by R and R allows him to do so. Examine whether the coolie is entitled to receive money from R under the Indian Contact Act, 1872

Sol.

Provision

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

Analysis and Conclusion

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

Q17. Define an offer. Explain the essentials of a valid offer. How an offer is different from an invitation to offer?

Sol. **Definition:** The word Proposal and offer are used interchangeably and it is defined under Section 2(a) of the Indian Contract Act, 1872 as when **one person signifies to another his willingness to do** or to abstain from doing anything **with a view to obtaining the assent of that other** to such act **or** abstinence, **he** is said to **make a proposal.**

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

(i) Must be capable of creating legal relation.

(ii) Must be certain, definite and not vague.

(iii) Must be communicated.

(iv) Must be made with a view to obtaining the assent of the other party

(v) May be conditional

(vi) Offer should not contain a term the non compliance of which would amount to acceptance

(vii) May be general or specific

(viii) May be expressed or implied

(ix) A statement of price is not an offer

Offer **and an Invitation to an offer:** In terms of Section 2(a) of the Act, an **offer is the final expression of willingness by the offeror to be bound by the offer should the other party chooses to accept it. On the other hand, offers made with the intention to negotiate or offers to receive offers are known as invitation to offer.** Thus, where a party without expressing his final willingness proposes certain terms on which he is willing to negotiate he does not make an offer, but only invites the other party to make an offer on those terms. Hence, the only thing that is required is the willingness of the offeree to abide by the terms of offer.

Q18. A sends an offer to B to sell his second-car for Rs. 1,40,000 with a condition that if B does not reply within a week, he (A) shall treat the offer as accepted. Is A correct in his proposition? What shall be the position if B communicates his acceptance after one week?

Sol.

Provision

Acceptance **to an offer cannot be implied merely from the silence of the offeree,** even if it is expressly stated in the offer itself. **Unless the offeree has by his previous conduct indicated that his silence amount to acceptance, it** cannot **be taken as valid acceptance.**

Analysis and Conclusion

So in the given problem, if **B remains silent, it does not amount to acceptance.**

The acceptance must be made within the time limit prescribed by the offer. The **acceptance of an offer after the time prescribed by the offeror has elapsed will not avail to turn the offer into a contract.**

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

Sol.

Provision

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

Analysis and Conclusion

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

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

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

Sol.

Provision

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

Analysis and Conclusion

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

Q21. Rahul goes to super market to buy a washing machine. He selects a branded washing machine having a price tag of Rs. 15000 after a discount of Rs. 3000.

Rahul reaches at cash counter for making the payment, but cashier says, "Sorry sir, the discount was upto yesterday. There is no discount from today. Hence you have to pay Rs. 18000." Rahul got angry and insists for Rs. 15000. State with reasons whether under Indian Contract Act, 1872, Rahul can enforce the cashier to sale at discounted price i.e. Rs. 15000.

Sol.

Provision

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

Analysis and Conclusion

In the instant case, Rahul reaches to super market and selects a washing machine with a discounted price tag of Rs.15000 but cashier denied to sale at discounted price by saying that discount is closed from today and request to make full payment. But Rahul insists to sale at discounted price.

On the basis of above provisions and facts, the price tag with washingmachine was not offer. **It is merely an invitation to offer. Hence, it is the Rahul who is making the offer not the super market. Cashier has right to reject the Rahul's offer. Therefore, Rahul cannot enforce cashier to sale at discounted price.**

❑❑❑

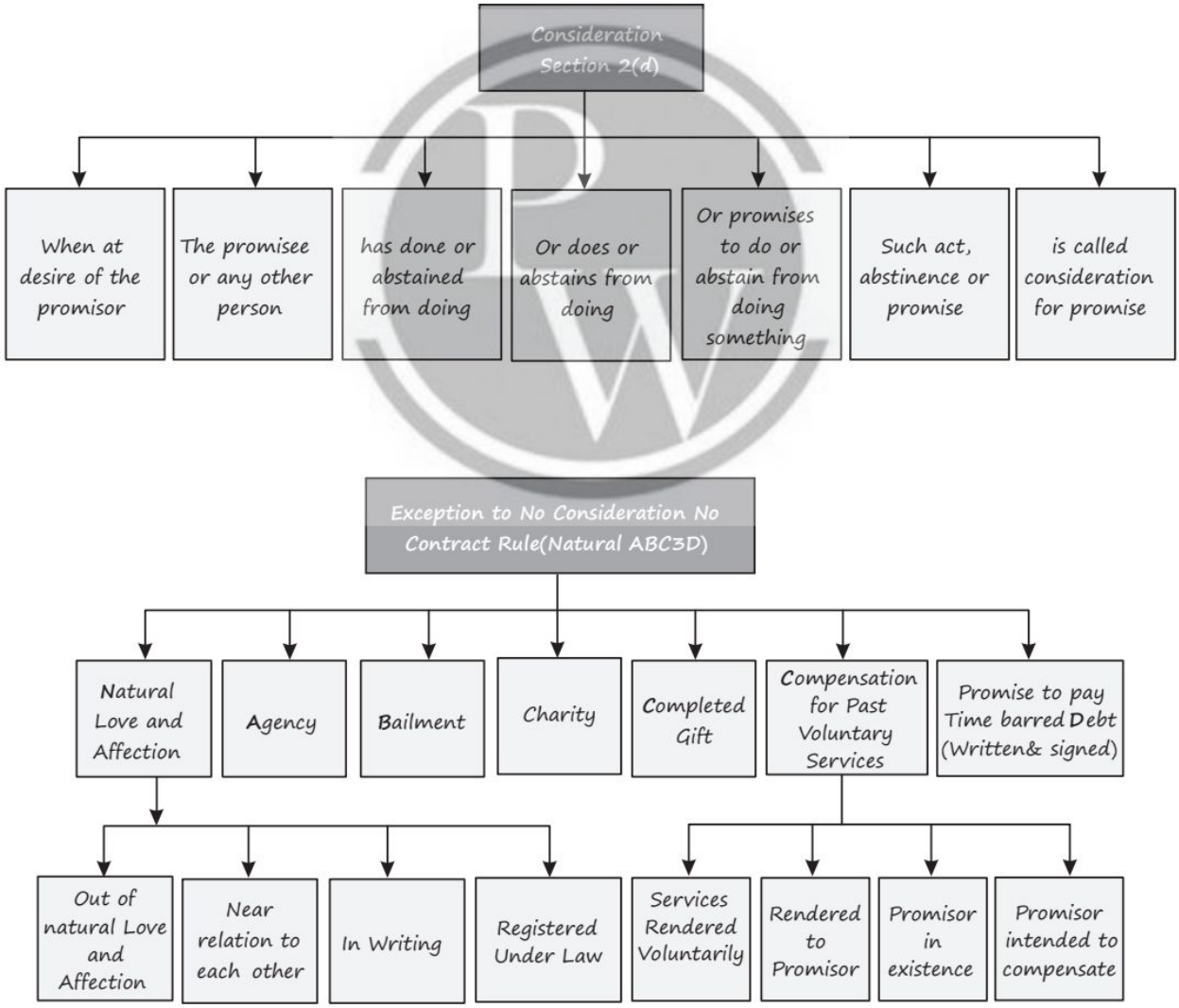
UNIT

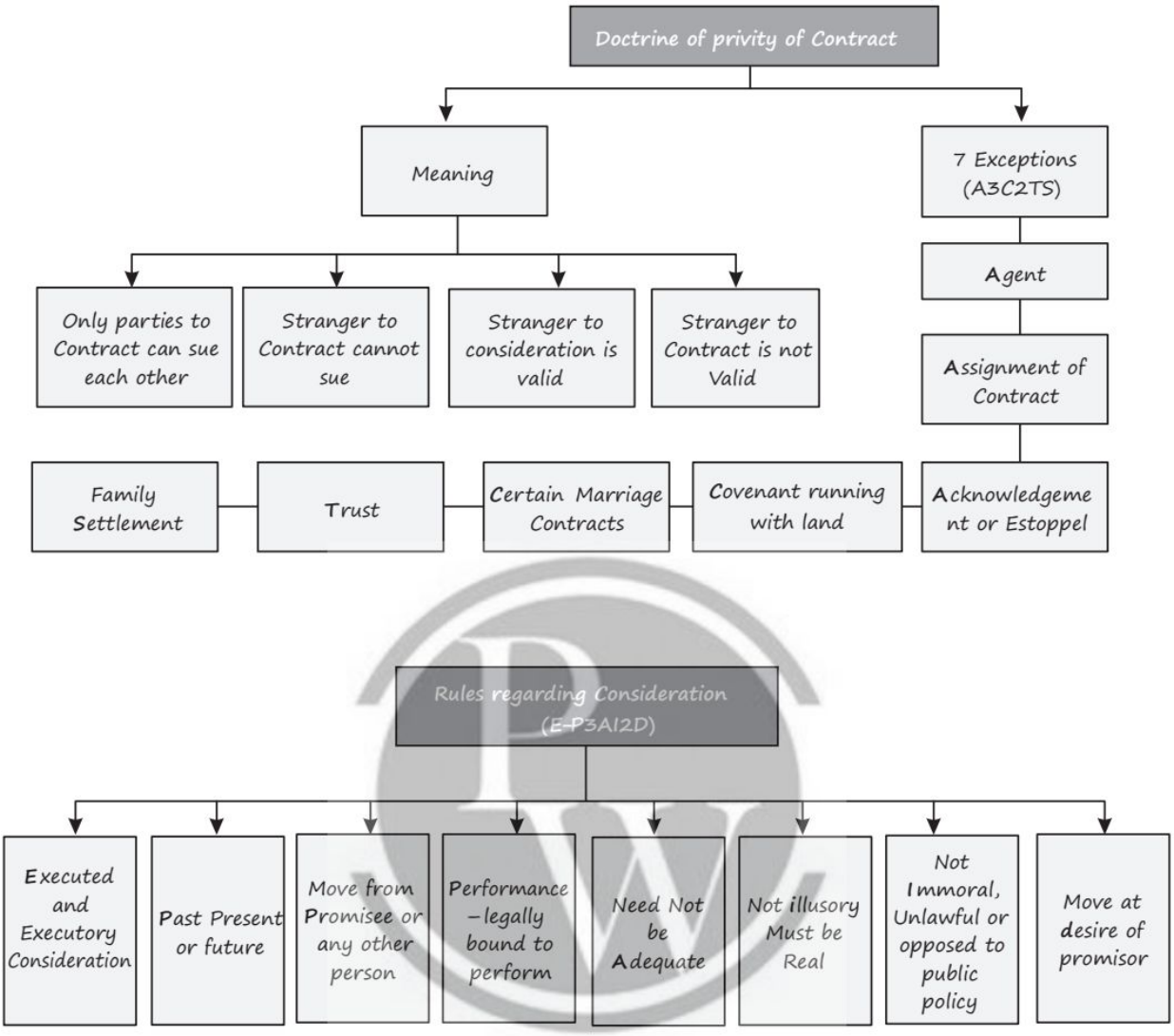
2

Consideration

THE INDIAN CONTRACT ACT 1872

PART-A




Doctrine of privity of Contract
Meaning
7 Exceptions (A3C2TS)
Only parties to Contract can sue each other
Stranger to Contract cannot sue
Stranger to consideration is valid
Stranger to Contract is not Valid
Agent
Assignment of Contract
Family Settlement
Trust
Certain Marriage Contracts
Covenant running with land
Acknowledgement or Estoppel
Rules regarding Consideration (E-P3AI2D)
Executed and Executory Consideration
Past Present or future
Move from Promisee or any other person
Performance – legally bound to perform
Need Not be Adequate
Not illusory Must be Real
Not Immoral, Unlawful or opposed to public policy
Move at desire of promisor

QUESTIONS FOR PRACTICE

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

Sol. The law provides that a **contract should be supported by consideration.** So long as consideration exists, the Courts are not concerned to its adequacy, provided it is of some value.

The adequacy of the consideration is for the parties to consider at the time of making the agreement, not for the Court when it is sought to be enforced (Bolton v. Modden).

Consideration must however, be something to which the law attaches value though it need not be equivalent in value to the promise made.

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

Q2. Mr. Sohanlal sold 10 acres of his agricultural land to Mr. Mohanlal on 25th September 2020 for Rs. 25 Lakhs. The Property papers mentioned a condition, amongst other details, that whosoever purchases the land is free to use 9 acres as per his choice but the remaining 1 acre has to be allowed to be used by Mr. Chotelal, son of the seller for carrying out farming or other activity of his choice. On 12th October, 2020, Mr. Sohanlal died leaving behind his son and life. On 15th October, 2020 purchaser started construction of an auditorium on the whole 10 acres of land and denied any land to the son. Now Mr. Chotelal wants to file a case against the purchaser and get a suitable redressal. Discuss the above in light of provisions of Indian Contract Act, 1872 and decide upon Mr. Chotelal's plan of action?

Sol.

Provision

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

The leading authority in the decision of the Chinnaya Vs. Ramayya, held that the consideration can legitimately move from a third party and it is an accepted principle of law in India.

Analysis and conclusion

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

did flow from Mr. Sohanlal to Mr. Mohanlal on the behalf of Mr. Chotelal and such consideration from third party is sufficient to enforce the promise of Mr. Mohanlal to allow Mr. Chotelal to use 1 acre of land. **Further the deed of sale and the promise made by Mr. Mohanlal to Mr. Chotelal to allow the use of 1 acre of land were executed simultaneously** and therefore they should be regarded as one transaction and there was sufficient consideration for it.

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

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

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

Or

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

Or

"No consideration, no contract" Comment.

Or

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

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

Exception to general Rule:

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

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

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

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

2. **Compensation for past voluntary services:** A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable under Section 25(2). In order that a promise to pay for the past voluntary services be binding, **the following essential factors must exist:**

   (i) **The services should have been rendered voluntarily.**

   (ii) **The services must have been rendered for the promisor.**

   (iii) **The promisor must be in existence at the time when services were rendered.**

   (iv) **The promisor must have intended to compensate the promisee.**

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

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

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

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

4. **Agency:** According to Section 185 of the Indian Contract Act, 1872, **no consideration is necessary to create an agency.**

5. **Completed gift:** In case of **completed gifts, the rule no consideration no contract does not apply.** Explanation (1) to Section 25 states "nothing in this section shall affect the validity as between the donor and donee, of any **gift actually made**." Thus, gifts do not require any consideration.

6. **Bailment: No consideration is required to affect the contract of bailment.**

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

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

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

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

Or

Define consideration. State the characteristics of a valid consideration.

Sol.

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

Legal Rules Regarding Consideration

(i) **Consideration must move at the desire of the promisor:** Consideration must be offered by the promisee or the third party at the desire or request of the promisor. This implies "return" element of consideration.

(i) **Consideration may move from promisee or any other person**: In India, consideration may proceed from the promisee or any other person who is not a party to the contract. In other words, **there can be a stranger to a consideration but not stranger to a contract.**

(ii) **Executed and executory consideration:** A consideration which consists in the performance of an act is said to be executed. When it consists in a promise, it is said to be executory. The promise by one party may be the consideration for an act by some other party, and vice versa.

(iii) **Consideration may be past, present or future:** It is a general principle that consideration is given and accepted in exchange for the promise. The consideration, if past, may be the motive but cannot be the real consideration of a subsequent promise. But in the event of the services being rendered in the past at the request or the desire of the promisor, the subsequent promise is regarded as an admission that the past consideration was not gratuitous.

(iv) **Consideration need not be adequate:** Consideration need not to be of any particular value. It need not be approximately of equal value with the promise for which it is exchanged but it must be something which the law would regard as having some value.

(v) **Performance of what one is legally bound to perform:** The performance of an act by a person who is legally bound to perform the same cannot be consideration for a contract. Hence, a promise to pay money to a witness

is void,for it is without consideration. Hence such a contract is void for want of consideration. But where a person promises to do more that he is legally bound to do, such a promise provided it is not opposed to public policy, is a good consideration. Itshould not be vague or uncertain.

(vi) **Consideration must be real and not illusory:** Consideration must be realand must not be illusory. It must be something to which the law attaches some value. If it is legally or physically impossible it is not considered valid consideration.

(vii) **Consideration must not be unlawful, immoral, or opposed to public policy.** Only presence of consideration is not sufficient it must be lawful. Anything which is immoral or opposed to public policy also cannot be valued as valid consideration.

Q5. Mr. Y given loan to Mr. G of INR 30,00,000. Mr. G defaulted the loan on due date and debt became time barred. After the time barred debt, Mr. G agreed to settle the full amount to Mr. Y. Whether acceptance of time barred debt Contract is enforceable in law?

Sol.

Provision

Promise to pay time-barred debts - Section 25 (3): Where there is an agreement, made in writing and signed by the debtor or by his agent, to pay wholly or in part a time barred debt, the agreement is valid and binding even though there is no consideration.

Analysis and conclusion

In the given case, the loan given by Mr. Y to Mr. G has become time barred. Thereafter, Mr. G agreed to make payment of full amount to Mr. Y.

Referring to above provisions of the Indian Contract Act, 1872 contract entered between parties post time barred debt is valid so, **Mr. G is bound to pay the agreed amount to Mr. Y provided the above mentioned conditions of section 25** (3) are fulfilled.

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

Or

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

Sol. Though under the Indian Contract Act, 1872, the consideration for an agreement may proceed from a third party, the third party cannot sue on contract. Only a person who is party to a contract can sue on it.

Thus, the concept of stranger to consideration is valid and is different from stranger to a contract.

The aforesaid rule, that **stranger to a contract cannot sue is known as a "doctrine of privity of contract"**, is however, subject to certain exceptions.

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

(1) **In the case of trust, a beneficiary can enforce his right under the trust,** though he was not a party to the contract between the settler and the trustee.

(2) **In the case of a family settlement, if the terms of the settlement are reduced into writing, the members of family who originally had not been parties** to the settlement may enforce the agreement.

(3) **In the case of certain marriage contracts, or arrangements**, a **provision may be made for the benefit of a person**. The person may enforce the agreement though he is not a party to the agreement.

(4) **In the case of** assignment of **a contract,** when the **benefit under a contract has been assigned,** the assignee **can enforce the** contract.

(5) **Acknowledgement or estoppel – where the promisor** by **his conduct acknowledges himself as an** agent **of the** third party, **it would** result **into a binding obligation towards third** party.

(6) **In the case of** covenant **running with the land,** the person **who purchases land with notice that** the **owner of land is bound by certain duties affecting land, the covenant affecting the land may be enforced by** the **successor of the seller.**

(7) **Contracts entered into through an agent:** The principal can enforce the contracts entered by his agent **where the agent has acted within the scope of his authority and in the name** of the **principal**.

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

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

Sol.

Provision

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

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

Analysis and conclusion

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

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

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

Sol.

Provision

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

Analysis and conclusion

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

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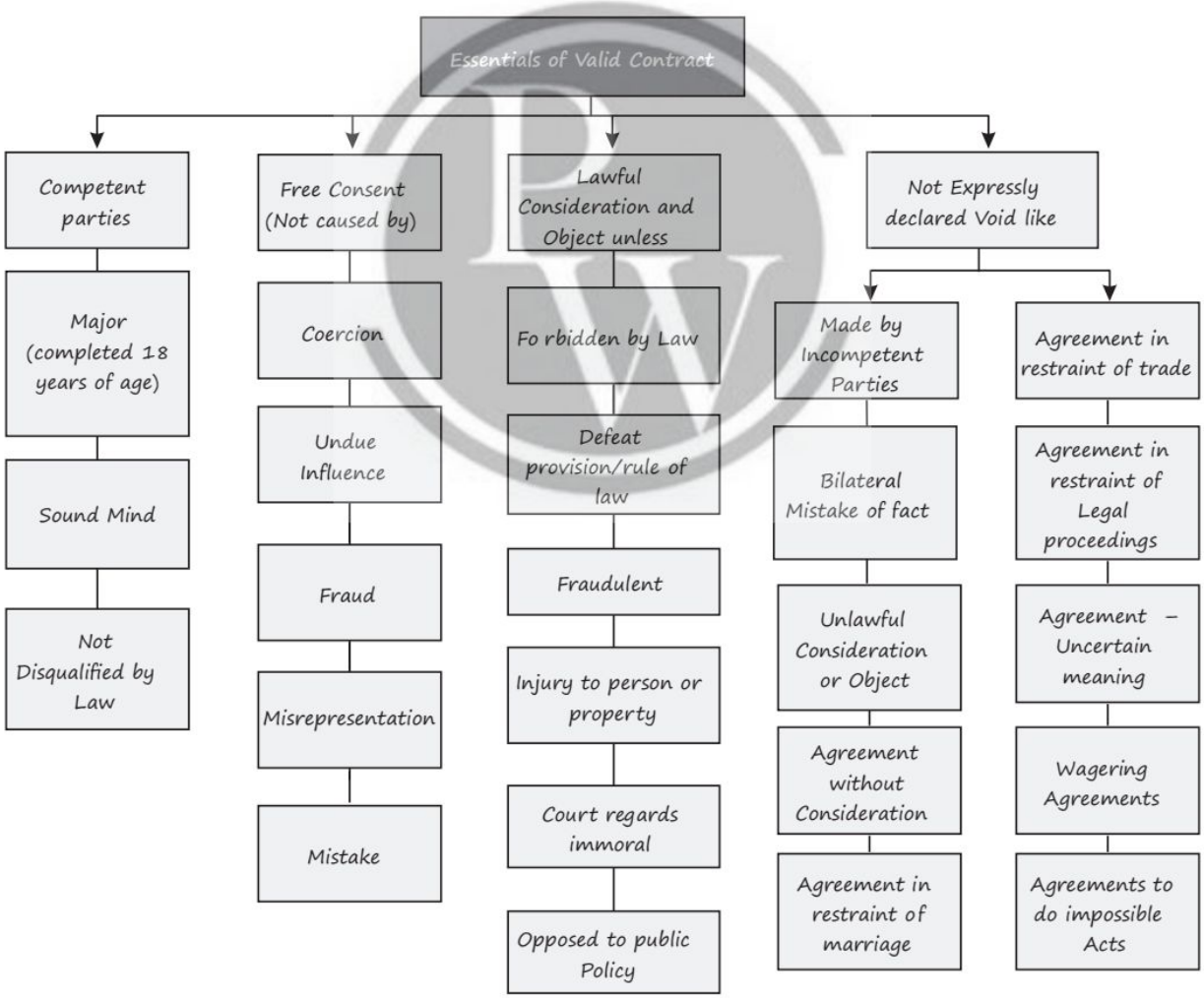
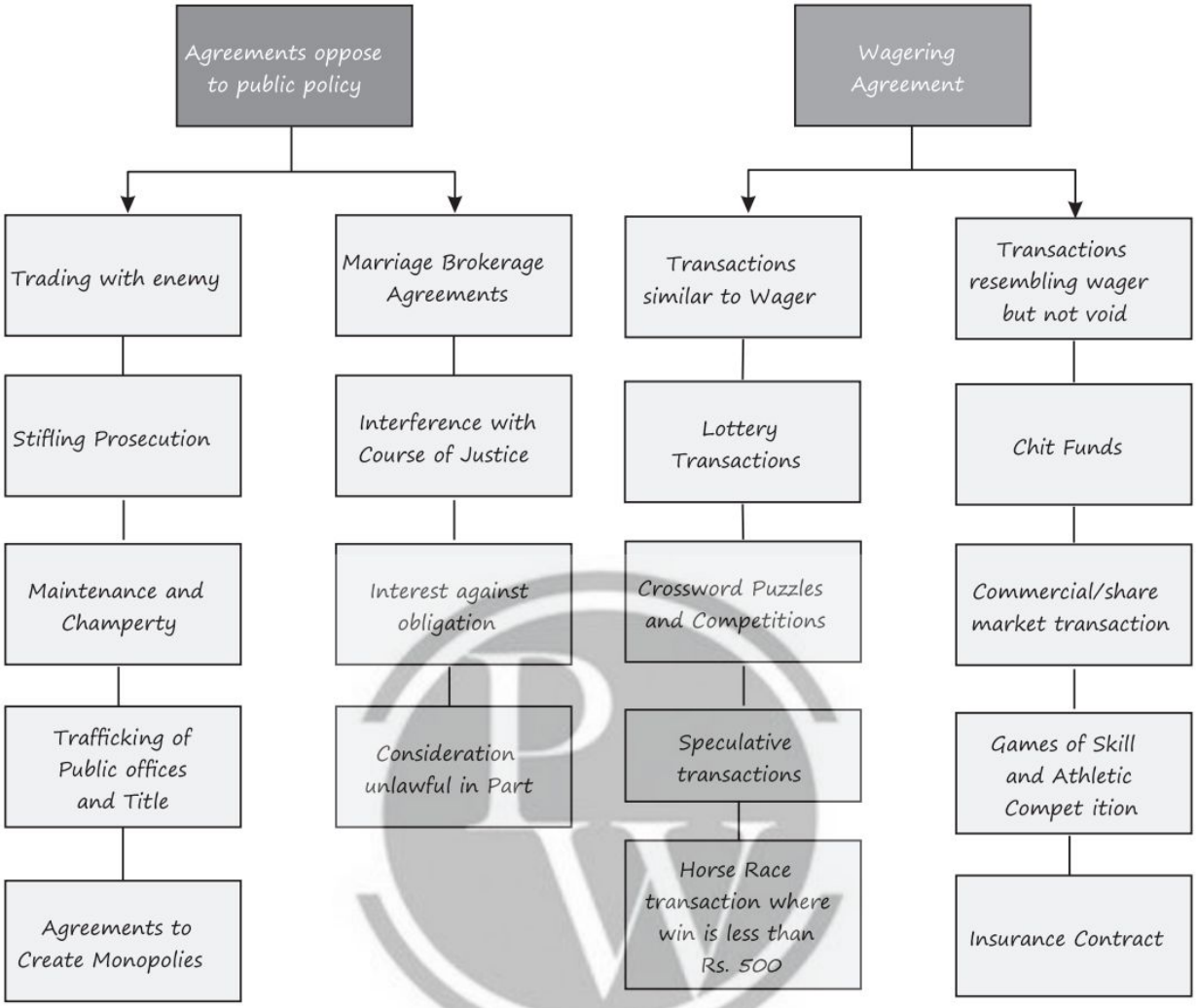
UNIT

3

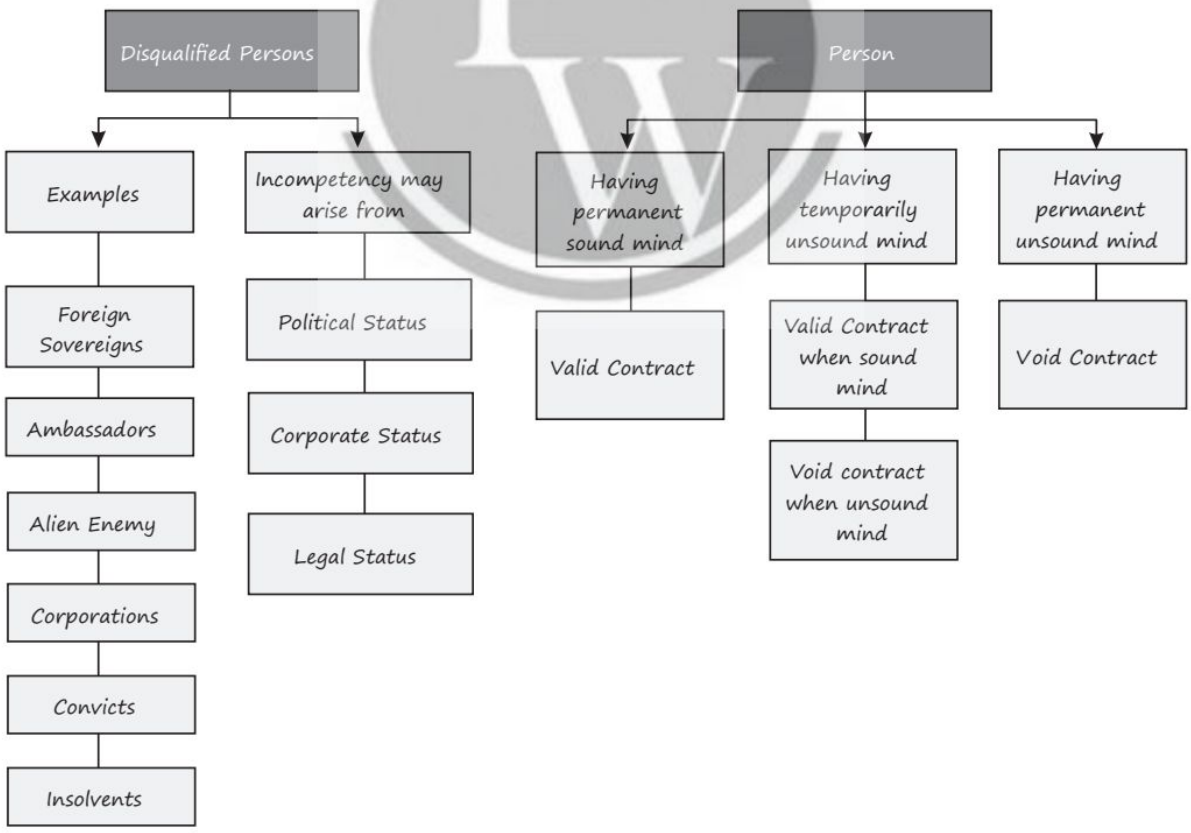
Other Essential Elements of a Contract

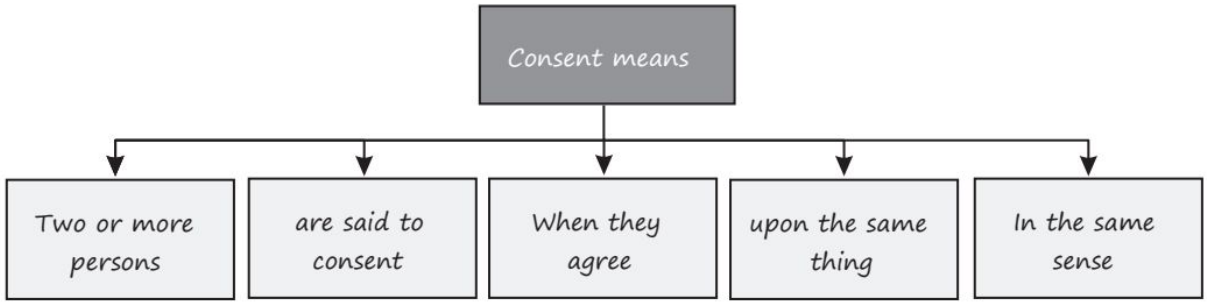
PART-A



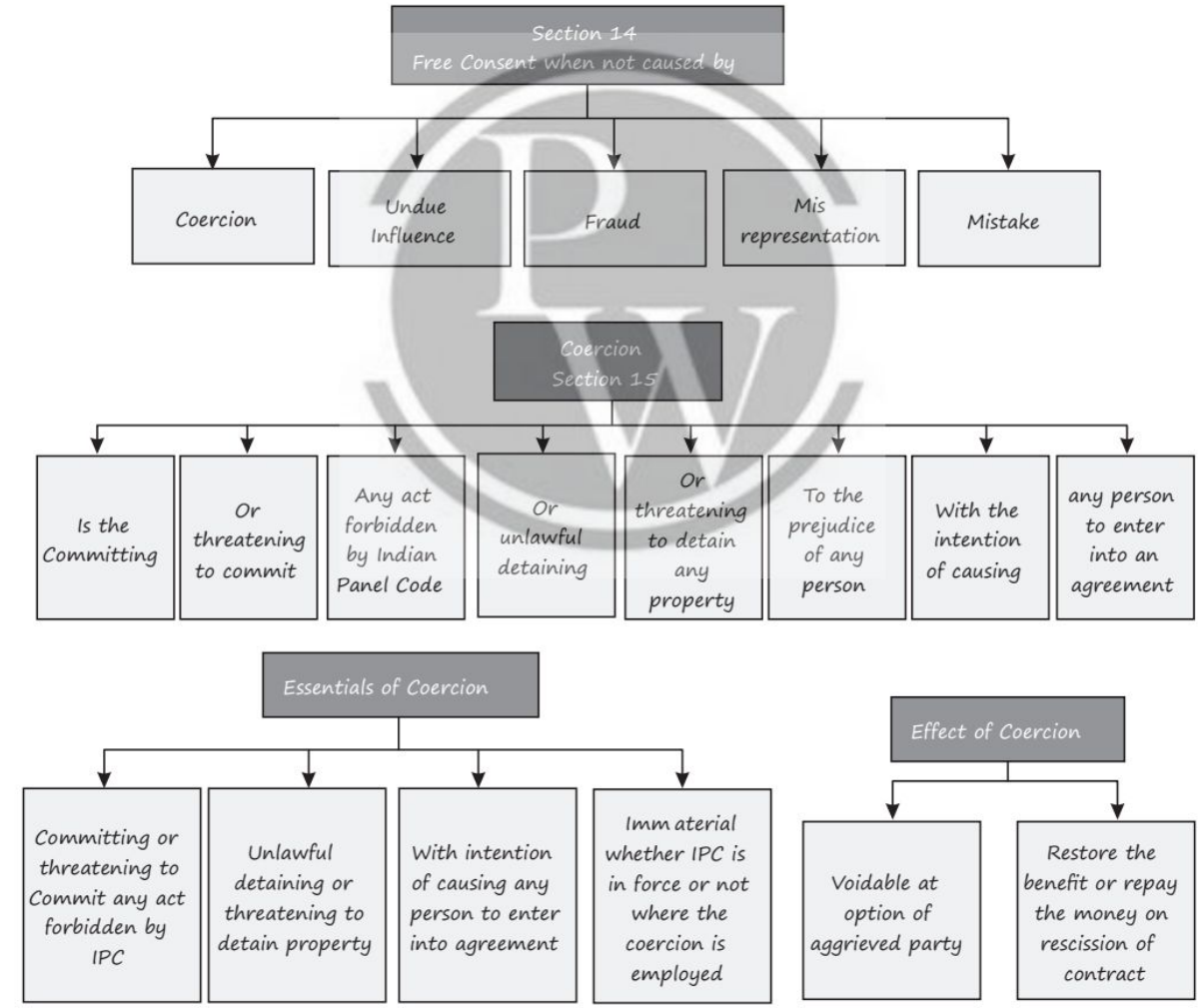

Agreements oppose to public policy
Trading with enemy
Stifling Prosecution
Maintenance and Champerty
Trafficking of Public offices and Title
Agreements to Create Monopolies
Marriage Brokerage Agreements
Interference with Course of Justice
Interest against obligation
Consideration unlawful in Part
Wagering Agreement
Transactions similar to Wager
Lottery Transactions
Crossword Puzzles and Competitions
Speculative transactions
Horse Race transaction where win is less than Rs. 500
Transactions resembling wager but not void
Chit Funds
Commercial/share market transaction
Games of Skill and Athletic Compet ition
Insurance Contract

Minor – Age of majority is regulated by Indian Majority Act, 1875	Every person domiciled in India who not completed as 18 years of age will be termed as minor
Contract with Minor is Void ab initio	Guardian can enter into contract for benefit of minor
No ratification after attaining majority	Minor is not liable for specific performance
Minor can be beneficiary or take benefit out of contract	Minor cannot become a partner in partnership
Promissory note can be made in favour of Minor	Minor can be admitted to benefits of partnership with consent of all partners
Minor is liable for torts (civil wrong)	Minor cannot be declared insolvent
For Necessaries, Minor's estate is liable but he is not personally liable	Minor can become agent but not liable to principal
Minor cannot bind guardian or parent	Adult will be liable in case of joint promise by Minor and adult
Minor cannot become shareholder of the Company. However through legal guardian can become shareholder of fully paid shares by transfer or transmission.	Surety (adult) of minor is directly liable to third party
Company will remove name of minor from member register if he mistakenly becomes a member	Minor can always plead minority even when earlier he falsely represent himself as major

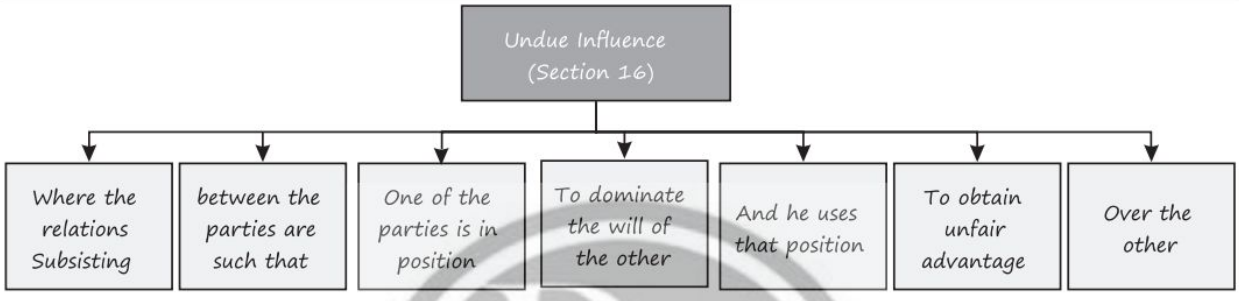


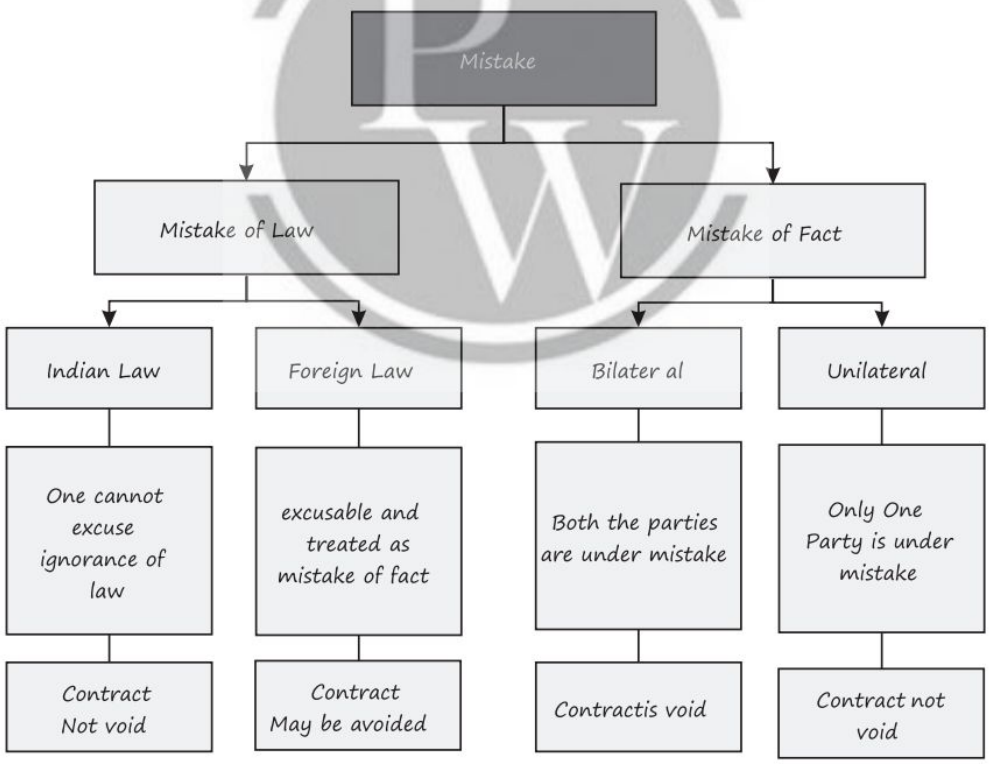


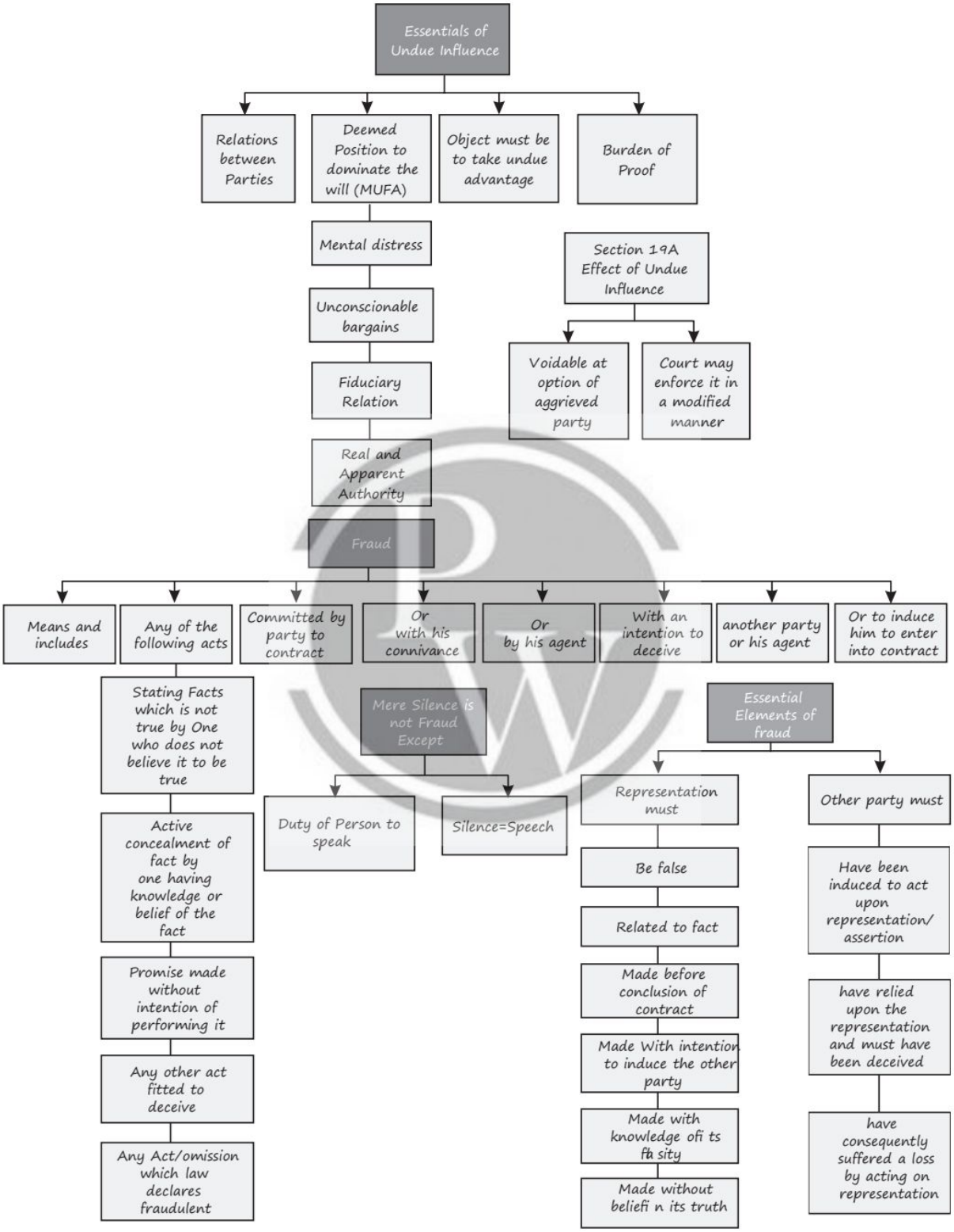
In case of Coercion, fraud, misrepresentation, or undue influence, the contract is voidable

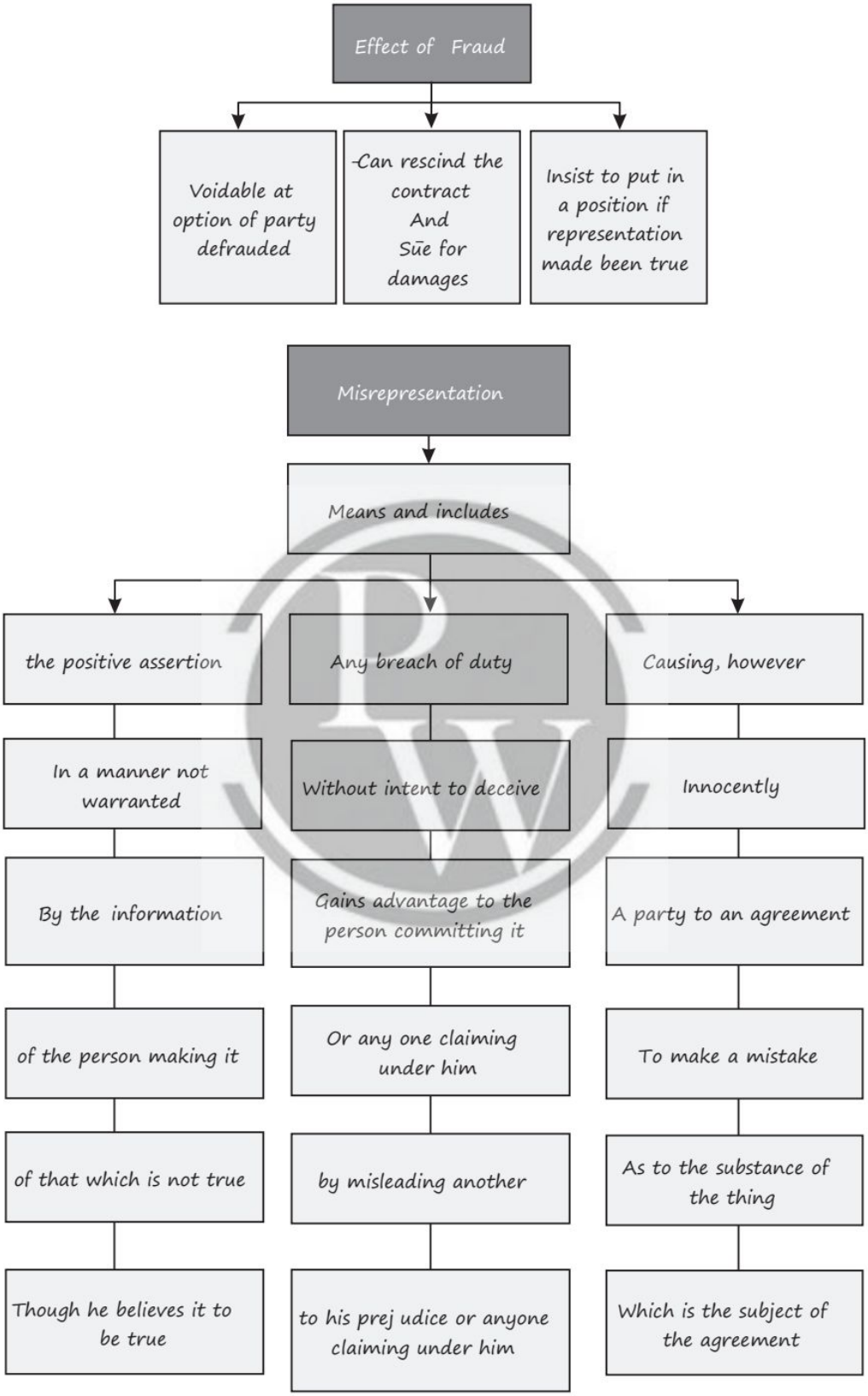


List of Voidable Contracts	
	Where consent is not Free due to (a) Coercion (b) Fraud (c) Misrepresentation (d) Undue influence
	Party preventing event on which the contract is to take effect (Sec 53)
	Effect of failure to perform at fixed time, in which time is essential (Section 55)



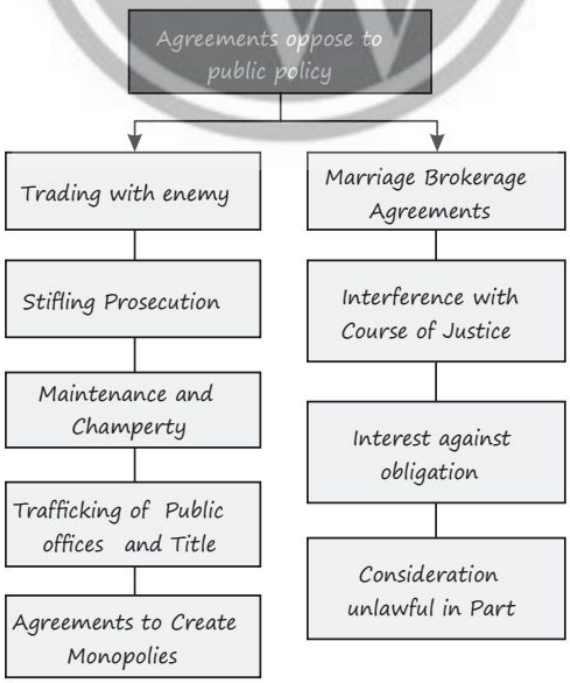


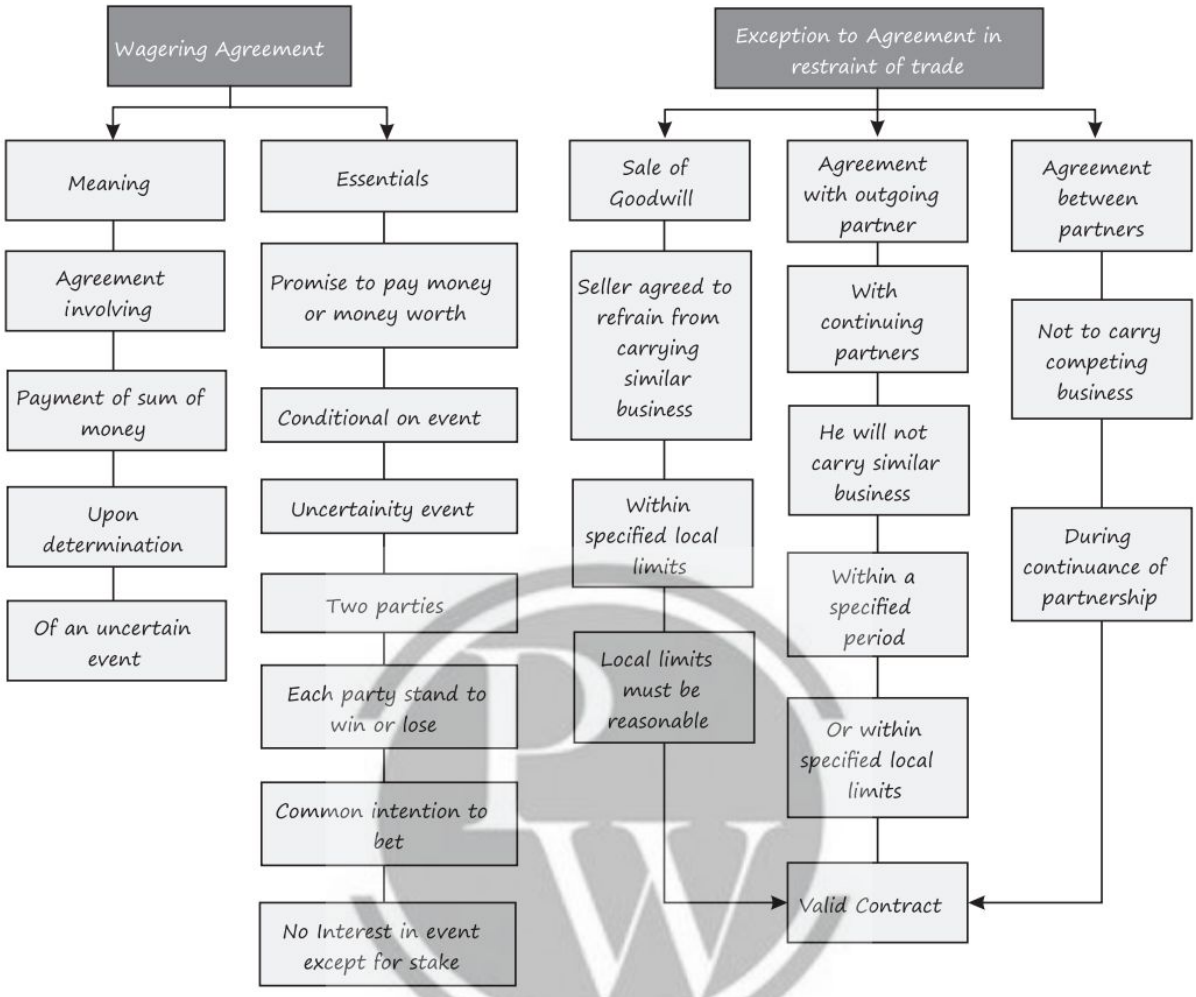

Essentials of Undue Influence
Relations between Parties
Deemed Position to dominate the will (MUFA)
Object must be to take undue advantage
Burden of Proof
Mental distress
Unconscionable bargains
Fiduciary Relation
Real and Apparent Authority
Section 19A Effect of Undue Influence
Voidable at option of aggrieved party
Court may enforce it in a modified manner
Fraud
Means and includes
Any of the following acts
Committed by party to contract
Or with his connivance
Or by his agent
With an intention to deceive
another party or his agent
Or to induce him to enter into contract
Stating Facts which is not true by One who does not believe it to be true
Active concealment of fact by one having knowledge or belief of the fact
Promise made without intention of performing it
Any other act fitted to deceive
Any Act/omission which law declares fraudulent
Mere Silence is not Fraud Except
Duty of Person to speak
Silence=Speech
Essential Elements of fraud
Representation must
Be false
Related to fact
Made before conclusion of contract
Made With intention to induce the other party
Made with knowledge ofi ts fh sity
Made without beliefi n its truth
Other party must
Have been induced to act upon representation/ assertion
have relied upon the representation and must have been deceived
have consequently suffered a loss by acting on representation


Effect of Fraud
Voidable at option of party defrauded
-Can rescind the contract And Sūe for damages
Insist to put in a position if representation made been true
Misrepresentation
Means and includes
the positive assertion
In a manner not warranted
By the information
of the person making it
of that which is not true
Though he believes it to be true
Any breach of duty
Without intent to deceive
Gains advantage to the person committing it
Or any one claiming under him
by misleading another
to his prej udice or anyone claiming under him
Causing, however
Innocently
A party to an agreement
To make a mistake
As to the substance of the thing
Which is the subject of the agreement

List of Agreements where consideration or object is unlawful	
1.	Forbidden by Law
2.	Defeat the provisions of Law
3.	Fraudulent
4.	Involves injury to the person or property of another
5.	Court regards it as immoral
6.	Opposed to Public Policy (9 cases)

List of Void Agreements			
1.	Made by incompetent parties (Section 11)	6.	Agreement in restraint of marriage (Section 26)
2.	Agreements made under Bilateral mistake of fact (Section 20)	7.	Agreements in restraint of trade (Section 27)
3.	Agreements the consideration or object of which is unlawful (Section 23)	8.	Agreement in restraint of legal proceedings (Section 28)
4.	Agreement the consideration or object of which is unlawful in parts (Section 24)	9.	Agreement the meaning of which is uncertain (Section 29)
5.	Agreements made without consideration (Section 25)	10.	Agreements to do impossible Acts (Section 56)
		11.	Wagering Agreement




Wagering Agreement
Meaning
Agreement involving
Payment of sum of money
Upon determination
Of an uncertain event
Essentials
Promise to pay money or money worth
Conditional on event
Uncertainity event
Two parties
Each party stand to win or lose
Common intention to bet
No Interest in event except for stake
Exception to Agreement in restraint of trade
Sale of Goodwill
Seller agreed to refrain from carrying similar business
Within specified local limits
Local limits must be reasonable
Agreement with outgoing partner
With continuing partners
He will not carry similar business
Within a specified period
Or within specified local limits
Agreement between partners
Not to carry competing business
During continuance of partnership
Valid Contract

QUESTIONS FOR PRACTICE

Q1. Examine the validity of the following contracts as per the Indian Contract Act, 1872 giving reasons :-

(a) X aged 16 years borrowed a loan of Rs. 50,000 for his personal purposes. Few months later he had become major and could not pay back the amount borrowed, on due date. The lender wants to file a suit against X.

(b) J contracts to take in cargo for K at a foreign port. J's government afterwards declares war against the country in which the port is situated and therefore the contract could not be fulfilled. K wants to file a suit against J.

Sol.

(a) Provision

According to Section 11 of the Indian Contract Act, 1872, **every person is competent to contract who is of the age of majority according to the law to which he is subject and therefore, a minor is not competent to contract and any agreement with or by a minor is void from the very beginning.** A minor cannot ratify it on attaining the majority as the original agreement is void ab initio.

According to Section 68 of the Act, a claim for necessaries supplied to a minor is enforceable by law.

Necessaries mean those things that are essentially needed by a minor.They cannot include luxuries or costly or unnecessary articles.

Analysis and Conclusion

In the present case, X, **the borrower, was minor at the time of taking the loan, therefore, the agreement was void ab initio. Attaining majority thereafter will not validate the contract** nor X can ratify it. The **loan was for personal purposes and not for necessaries supplied to him.** Hence, the **lender cannot file a suit against X for recovery of the loan** as it is not enforceable by law.

(b) Provision

As per Section 56 of the Indian Contract Act, 1872 the **subsequent or supervening impossibility renders the contract void.** Supervening impossibility may take place owing to various circumstances as contemplated under that section, one of which is the declaration of warsubsequent to the contract made.

Analysis and Conclusion

In **the instant case the contract whenmade between J and K was valid but afterwards J's government declares war against the country in which the port is situated as a result of whichthe contract becomes void. Hence, K cannot file a suit against J** for performance of the contract.

Q2. Mr. S aged 58 years was employed in a Government Department. He was going to retire after two years. Mr. D made a proposal to Mr. S to apply for voluntary retirement from his post so that Mr. D can be appointed in his place. Mr. D offered a sum of Rs.10 Lakhs as consideration to Mr. S in order to induce him to retire.

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

Whether the above agreement is valid? Explain with reference to provision of Indian Contract Act, 1872.

Sol.

Provison

Section 10 of the Indian Contract Act, 1872 **provides for the legality of consideration and objects thereto.**

Section 23 of the said Act also states that **every agreement of which the object or consideration is unlawful is void.**

The given **problem talks about entering into an agreement for traffic relating to public office, which is opposed to public policy.** Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested. Such **consideration paid, being opposed to public policy, is unlawful.**

Analysis and Conclusion

In the given case, Mr. S, who was going to be retired after two years was proposed by Mr. D, to apply for voluntary retirement from his post, in order that he can be appointed in his place. In lieu of that Mr. D offered Mr. S a sum of Rs. 10 lakh as consideration. Mr. S refused initially but later accepted the said offerto receive money to retire from his office.

Here, Mr. S's promise of sale for Mr. D, an employment in the public services is the consideration for Mr. D's promise to pay Rs.10 lakh. Therefore, **in terms of the above provisions of the Indian Contract Act, the said agreement is not valid.It is void, as the consideration being** opposed to public policy, is unlawful.

Q3. State with reason(s) whether the following agreements are valid or void:

(i) A clause in a contract provided that no action should be brought upon in case of breach.

(ii) Where two courts have jurisdiction to try a suit, an agreement between the parties that the suit should be filed in one of those courts alone and not in the other.

(iii) X offers to sell his Maruti car to Y. Y believes that X has only Wagon R Car but agrees to buy it.

(iv) X, a physician and surgeon, employs Y as an assistant on a salary of Rs. 75,000 per month for a term of two years and Y agrees not to practice as a surgeon and physician during these two years.

(i) The given agreement is void.

Sol. **Reason:** As per Section 28 of the Indian Contract Act, 1872, this **clause isin restraint of legal proceedings because it restricts both the parties from enforcing their legal rights.**

Note: Alternatively, as per Section 23 of the Indian Contract Act, 1872, this clause in the agreement defeats the provision of law and therefore, being unlawful, is treated as void.

(ii) The given agreement is valid.

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

(iii) The said agreement is void.

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

(iv) The said agreement is valid.

Reason: An **agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. But, as an exception, agreement of service by which an employee binds himself, duringthe term of his agreement, not** to **compete with his employer is not in restraint of trade.**

Q4. Distinguish between wagering agreement and contract of insurance.

Or

Enumerate the differences between 'Wagering Agreements' and 'Contract ofInsurance' with reference to provision of the Indian Contract Act, 1872.

Sol.

Basis of differences	Contracts of Insurance	Wagering Agreement
Meaning	It is a contract to indemnify theloss.	It is a promise to pay money or money's worth on the happening or non-happening of an uncertain event.
Consideration	The crux of insurance contract is the mutual consideration (premium and compensation amount).	There is no consideration between the two parties. There is just gambling for money.
Insurable Interest	Insured party has insurable interest in the life or property sought to beinsured.	There is no property in case of wageringagreement. There is betting on other's life andproperties.

Contract of Indemnity	Except life insurance, the contract of insurance indemnifies the insured person against loss.	Loser has to pay the fixed amount on the happening of uncertain event.
Enforceability	It is valid and enforceable	It is void and unenforceable agreement.
Premium	Calculation of premium is based on scientific and actuarial calculation of risks.	No such logical calculations are required in case of wagering agreement.
Public Welfare	They are beneficial to the society	They have been regarded as against the public welfare.

Q5. Examine with reason that the given statement is correct or incorrect "Minor is liable to pay for the necessaries supplied to him".

Sol. **Minor is liable to pay for the necessaries supplied to him: This statement is incorrect.** The case of necessaries supplied to a minor or to any other person whom such minor is legally bound to support is governed by section 68 of the Indian Contract Act, 1872.

A **claim for necessaries supplied to a minor is enforceable by law, only against minor's estate, if he possesses.** But a minor is not liable for any price that he may promise and never for more than the value of the necessaries.

There is **no personal liability of the minor, but only his property is liable.**

Q6. Define Fraud. Whether "**mere silence will amount to fraud**" as per the Indian Contract Act, 1872?

Sol. Definition **of Fraud under Section 17: 'Fraud' means and includes** any of the following acts committed by a party to a contract, or with his connivance, or by his agent, **with an intent to deceive** another party thereto or his agent, or to **induce him to enter into the contract:**

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

Mere **silence will amount to fraud:** This statement is incorrect as per the Indian Contract Act, 1872. A party to the contract is under no obligation to disclose the whole truth to the other party.

'Caveat **Emptor' i.e. let the purchaser beware** is the rule applicable to contracts. There is no duty to speak in such cases and silence does not amount to fraud. Similarly, there is no duty to disclose facts which are within the knowledge of both the parties.

Q7. Explain the term 'Coercion'' and what are the effects of coercion under Indian Contract Act, 1872.

Sol.

(a) Coercion **(Section 15 of the Indian Contract Act, 1872): "Coercion' is the committing,or threatening to commit, any act forbidden by the Indian Penal Code or the unlawful detaining, or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement."**

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

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

(ii) As to the consequences of the rescission of voidable contract, **the party rescinding a void contract should, if he has received any benefit,** thereunder from the other party to the contract, **restore such benefit so far as may be applicable,** to the person from whom it was received.

(iii) A **person to whom money has been paid or anything delivered under coercion must repay or return it.**

Q8. Mr. X a businessman has been fighting a long drawn litigation with Mr. Y an industrialist. To support his legal campaign he enlists the services of Mr. C a Judicial officer stating that the amount of 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 refuses to pay to Mr. C. Decide whether Mr. C can recover the amount promised by Mr. X under the provisions of the Indian Contract Act, 1872?

Sol.

Provision

The problem as asked in the question is based on Section 10 of the Indian Contract Act, 1872. This Section says that all agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void. Further, Section 23 also states that **every agreement of which the object is unlawful is void.**

Accordingly, **one of the essential elements of a valid contract in the light of the said provision is that the agreement entered into must not be which the law declares to be either illegal or void**. An illegal agreement is an agreement expressly or impliedly prohibited by law. A void agreement is one without any legal effects.

Analysis and conclusion

The given instance is a **case of interference with the course of justice and results as opposed to public policy. This can also be called as an agreement in restraint of legal**

proceedings. This agreement restricts one's right to enforce his legal rights. Such an agreement has been expressly declared to be void under section 28 of the Indian Contract Act, 1872. Hence, Mr. C in the given case cannot recover the amount of Rs. 10 lakh promised by Mr. X because it is a void agreement and cannot be enforced by law.

Q9. Define Misrepresentation and Fraud.

Sol. Definition of Fraud under Section 17 of the Indian Contract Act, 1872:

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

(1) the suggestion, as a fact, of that which is not true, by one who does notbelieve it tobe true;

(2) the active concealment of a fact by one having knowledge or belief of thefact ;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

As per Section 18 of the Indian Contract Act, 1872, misrepresentation meansand includes-

(1) the positive assertion, in a manner not warranted by the information of theperson making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or anyone claiming under him; by misleading another to his prejudice or to the prejudice of anyone claiming under him;

(3) causing, however, innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Q10. Distinction between fraud and misrepresentation.

Sol.

Basis of difference	Fraud	Misrepresentation
Intention	To deceive the other party byhiding the truth.	There is no such intention to deceive theother party.
Knowledge of truth	The person making the suggestion believes that the statement asuntrue.	The person making the statement believes it to be true, although it is not true.
Rescission of the contract and claim fordamages	The injured party can repudiate the contract and claim damages.	The injured party is entitled to repudiate the contract or sue for restitution but cannot claim the damages.

Basis of difference	Fraud	Misrepresentation
Means to discover the truth	The party using the fraudulent act cannot secure or protect himself by saying that the injured party had means to discover the truth.	Party can always plead that the injured party had the means to discover the truth.

Q11. 'X' agreed to become an assistant for 2 years to 'Y' who was practicing Chartered Accountant at Jodhpur. It was also agreed that during the term of agreement 'X' will not practice as a Chartered Accountant on his own account within 20 kms of the office of 'Y' at Jodhpur. At the end of one year, 'X' left the assistantship of 'Y' and started practice on his own account within the said area of 20 kms.

Referring to the provisions of the Indian Contract Act, 1872, decide whether 'X' could be restrained from doing so?

Sol.

Provision

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

Analysis and Conclusion

In the instant case, agreement entered by 'X' with 'Y' is reasonable, and do not amount to restraint of trade and hence enforceable.

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

Q12. A student was induced by his teacher to sell his brand new car to the latter at less than the purchase price to secure more marks in the examination. Accordingly the car was sold. However, the father of the student persuaded him to sue his teacher. State on what ground the student can sue the teacher?

Sol.

Provision

A contract brought as a result of coercion, undue influence, fraud or misrepresentation would be **voidable at the option of the person whose consent was caused.**

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

A person is deemed to be in position to dominate the will of another:

(a) Where he holds a real or apparent authority over the other; or

(b) Where he stands in a fiduciary relationship to the other; or

(c) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress for example, an old illiterate person.

Analysis and conclusion

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

Q13. Explain the term "coercion" and describe its effect on the validity of a contract?

Sol. "Coercion" **is the committing or threatening to commit any act forbidden by the Indian Penal Code 1860, or the unlawful detaining or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. (Section 15 of the Indian Contract Act, 1872).**

It is also important to note that it **is immaterial whether the Indian Penal Code, 1860 is or is not in force at the place where the coercion is employed.**

Effects **on validity:** According to section 19 of the Act, when consent to an agreement is caused by coercion, **the contract is voidable at the option of the party, whose consent was so caused.** The aggrieved party, whose consent was so caused can enforce the agreement or treat it as void and rescind it. It is seen that in all these cases though the agreement amounts to a contract, it is voidable. **The injured party might insist on being placed in the same position in which he might have been had the vitiating circumstances not been present.**

Where a contract is voidable and the party entitled to avoid it decides to do so by rescinding it, **he must restore any benefit which he might have received from the other party. He cannot avoid the contract and at the same time enjoy the benefit under the rescinded/avoided contract.** (Section 64)

Q14. "Though a minor is not competent to contract, nothing in the Contract Actprevents him from making the other party bound to the minor". Discuss.

Sol. Minor **can be a beneficiary or can take benefit out of a contract : Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor.**

For example: A **promissory note duly executed in favour of a minor is not void** and can be sued upon by him, because he though incompetent to contract, may yet accept a benefit.

A **minor cannot become partner in a partnership firm. However, he maywith the consent of all the partners, be admitted to the benefits of partnership** (Section 30 of the Indian Partnership Act, 1932).

Q15. P sells by auction to Q a horse which P knows to be unsound. The horse appears to be sound but P knows about the unsoundness of the horse. Is this contract valid in the following circumstances:

(a) If P says nothing about the unsoundness of the horse to Q.

(b) If P says nothing about it to Q who is P's daughter who has just come of age.

(c) If Q says to P "If you do not deny it, I shall assume that the horse is sound." P says nothing

Sol. According to section 17 of the Indian Contract Act, 1872, mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech. Hence, in the instant case,

(a) This **contract is valid** since as per section 17 **mere silence** as to the facts likely to affect the willingness of a person to enter into a contract **is not fraud. Here, it is not the duty of the seller to disclose defects.**

(b) This **contract is** not valid since as per section 17 it becomes P's duty to tell Q about the unsoundness of the horse **because** a **fiduciary relationship exists between P and his daughter Q.** Here, P's silence is equivalent to speech and hence amounts to fraud.

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

Q16. Explain the concept of 'misrepresentation' in matters of contract.

Sol. Misrepresentation: According to Section 18 of the Indian Contract Act, 1872, misrepresentation means and includes–

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him; by misleading another to his prejudice or to the prejudice of any one claiming under him;

(3) causing, however, innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Q17. Sohan induced Suraj to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, Suraj complained that there were many defects in the motorcycle. Sohan proposed to get it repaired and promised to pay 40% cost of repairs. After a few days, the motorcycle did not work at all. Now Suraj wants to rescind the contract. Decide giving reasons.

Sol.

Provision

The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract [Section 19, Indian Contract

Act, 1872]. **The aggrieved party loses the right to rescind the contract if he, after becoming aware of the misrepresentation, takes a benefit under the contract or in some way affirms it.**

Analysis and Conclusion

Accordingly, in the given case, Suraj could not rescind the contract, as his acceptance to the offer of **Sohan to bear 40% of the cost of repairs impliedly amount to final acceptance of the sale.**

Q18. Discuss the essentials of Undue Influence as per the Indian Contract Act, 1872

Or

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.

Sol. The essential ingredients under this provision are:

(1) **Relation between the parties:** A person can be influenced by the other when a **near relation between the two exists.**

(2) **Position to dominate the will:** Relation between the parties exist in such a manner that one of them is in a position to dominate the will of the other. A person is deemed to be in such position in the following circumstances:

(a) **Real and apparent authority:** Where a person holds a real authority over the other as in the case of master and servant, doctor and patient and etc.

Example: A father, by reason of his authority over the son can dominate the will of the son.

(b) **Fiduciary relationship:** Where **relation of trust** and **confidence exists between the parties** to a contract. Such type of relationship exists between **father and son, solicitor** and client, **husband and** wife, **creditor and debtor, etc.**

Example: By reason of fiduciary relationship, a solicitor can dominate the will of his client and a trustee can dominate the will of the beneficiary.

Example: A spiritual guru induced his devotee to gift to him the whole of his property in return of a promise of salvation of the devotee. Held, the consent of the devotee was given under undue influence. Here, the relationship was fiduciary relationship between Guru and devotee and Guru was in a position to dominate the will of devotee.

(c) **Mental distress:** An undue influence can be used against a person to get his consent on a contract **where the mental capacity of the person is temporarily or permanently affected by the reason of mental or bodily distress, illness or of old age.**

Example: A doctor is deemed to be in a position to dominate the will of his patient enfeebled by protracted illness.

(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.**

Example: A youth of 18 years of age, spend thrift and a drunkard, borrowed Rs. 90,000 on a bond bearing compound interest at 2% per mensem (p.m.). It was held by the court that the transaction is unconscionable, the rate of interest charged being so exorbitant [Kirpa Ram vs. Sami-Ud-din Ad. Khan (1903)]

(3) **The object must be to take undue advantage: Where the person is in a position to influence the will of the other in getting consent, must have the object to take advantage of the other.**

Example: A teacher asks her daughter to get marry to one of his brilliant students. Both the girl and boy were smart, settled and intelligent. Here the teacher had a relation which can have influence on both of them. But as no undue advantage of such influence was taken such contract of marriage is said to be made by free consent.

Q19. What is a wagering agreement? Describe the transactions which resembles with wagering transactions but are not void.

Sol. Wagering **agreement (Section 30 of the Indian Contract Act, 1872):** An agreement by way of a wager is void. It is an agreement involving payment of a sum of money upon the determination of an uncertain event.

The essence of a wager is that each side should stand to **win or lose, depending on the way an uncertain event** takes place in reference to which the chance is taken and in the occurrence of which neither of the parties has legitimate interest.

For example, A agrees to pay Rs. 50,000 to B if it rains, and B promises to pay a like amount to A if it does not rain, the agreement will be by way of wager. But if one of the parties has control over the event, agreement is not a wager.

Transactions resembling with wagering transaction but are not void

(i) **Chit fund: Chit fund does not come within the scope of wager (Section 30). In case of a chit fund, a certain number of persons decide to contribute a fixed sum for a specified period and at the end of a month, the amount so contributed is paid to the lucky winner of the lucky draw.**

(ii) **Commercial transactions or share market transactions: In these transactions in which delivery of goods or shares is intended to be given or taken, do not amount to wagers.**

(iii) **Games of skill and Athletic Competition: Crossword puzzles, picture competitions and athletic competitions where prizes are awarded on the basis of skill and intelligence are the games of skill and hence such competition are valid. According to the Prize Competition Act, 1955 prize competition in games of skill are not wagers provided the prize money does not exceed Rs. 1,000.**

(iv) **A contract of insurance: A contract of insurance is a type of contingent contract and is valid under law and these contracts are different from wagering agreements.**

Q20. Mr. SHYAM owned a motor car. He approached Mr. HARISH and offered to sell his motor car for Rs. 3,00,000. Mr. SHYAM told Mr. HARISH that the motor car is running at the rate of 20 KMs per litre of petrol. Both the fuel meter and the speed meter of the car were working perfectly. Mr. HARISH agreed with the proposal of Mr. SHYAM and took delivery of the car by paying Rs. 3,00,000/- to Mr. SHYAM. After 10 days, Mr. HARISH 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. HARISH can rescind the contract on the above ground.

Sol.

Provision

As per the provisions of Section 19 of the Indian Contract Act, 1872, when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A **party to contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.**

Exception: If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Analysis and Conclusion

In the situation given in the question, both the fuel meter and the speed meter of the car were working perfectly, **Mr. HARISH had the means of discovering the truth with ordinary diligence. Therefore, the contract is not voidable. Hence, Mr. HARISH cannot rescind the contract** on the above ground.

Q21. Chandan was suffering from some disease and was in great pain. He went to Dr. Jhunjhunwala whose consultation fee was Rs. 300. The doctor agreed to treat him but on the condition that Chandan had to sign a promissory note of Rs. 5000 payable to doctor. Chandan signed the promissory note and gave it to doctor. On recovering from the disease, Chandan refused to honour the promissory note. State with reasons, can doctor recover the amount of promissory note under the provisions of the Indian Contract Act, 1872?

Sol.

Provision

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

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

(i) where he holds a real or apparent authority over the other, or

(ii) where he stands in a fiduciary relation to the other; or

(iii) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

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

Analysis and Conclusion

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

Q22. Point out with reason whether the following agreements are valid or void:

(a) Kamala promises Ramesh to lend Rs. 500,000 in lieu of consideration that Ramesh gets Kamala's marriage dissolved and he himself marries her.

(b) Sohan agrees with Mohan to sell his black horse. Unknown to both the parties, the horse was dead at the time of agreement.

(c) Ram sells the goodwill of his shop to Shyam for Rs. 4,00,000 and promises not to carry on such business forever and anywhere in India.

(d) In an agreement between Prakash and Girish, there is a condition that they will not institute legal proceedings against each other without consent.

(e) Ramamurthy, who is a citizen of India, enters into an agreement with an alien friend.

Sol. Validity of agreements

(a) Void Agreement: As per Section 23 of the Indian Contract Act, 1872, an agreement is void if the object or consideration is against the public policy.

(b) Void Agreement: As per Section 20 of the Indian Contract Act, 1872 the contracts caused by mistake of fact are void. There is mistake of fact asto the existence of subject-matter.

(c) **Void Agreement:** As per Section 27 of the Indian Contract Act, 1872 an agreement in restraint of trade is void. However, a buyer can put such a condition on the seller of good will, not to carry on same business. However, the conditions must be reasonable regarding the duration and the place of the business.

(d) **Void Agreement:** An agreement in restraint of legal proceedings is void as per Section 28 of the Indian Contract Act, 1872.

(e) **Valid Agreement:** An agreement with alien friend is valid, but an agreement with alien enemy is void.

Q23. Rahul, a minor, falsely representing his age, enters into an agreement with a shopkeeper for a loan amount for purchasing a laptop. He gave his expensive watch as a security and took a loan of Rs. 40,000. He was very happy to get Rs. 40,000 and quickly went to the market and purchased a laptop worth Rs. 30,000. He happily spent the rest of the amount with his friends on a pleasure trip.

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

Sol.

Provision

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

However, **if minor obtains any property by fraudulently misrepresenting his age, he can be ordered to restore the property or goods thus obtained. Although no action can be taken against the minor, but if has any property (of other party) in his possession, court can order him to return the same.**

Analysis and Conclusion

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

Q24. "An agreement, the meaning of which is not certain, is void". Discuss.

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

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

Q25. Ishaan, aged 16 years, was studying in an engineering college. On 1st March, 2016 he took a loan of Rs. 2 lakhs from Vishal for the payment of his college fee and agreed to pay by 30th May, 2017. Ishaan possesses assets worth Rs. 15 lakhs. On due date Ishaan fails to pay back the loan to Vishal. Vishal now wants to recover the loan from Ishaan out of his assets. Decide whether Vishal would succeed referring to the provisions of the Indian Contract Act, 1872.

Sol.

Provision

According to Section 11 of the Indian Contract Act, 1872, every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

A **person who has completed the age of 18 years is a major and otherwise he will be treated as minor. Thus, Ishaan who is a minor is incompetent to contract and any agreement with him is void [Mohori Bibi Vs Dharmo Das Ghose 1903].**

Section 68 of the Indian Contract Act, 1872 however, prescribes **the liability of a minor for the supply of the things which are the necessaries of life to him. It says that though minor is not personally liable to pay the price of necessaries supplied to him or money lent for the purpose, the supplier or lender will be entitled to claim the money/price of goods or services which are necessaries suited to his condition of life provided that the minor has a property.** The liability of minor is only to the extent of the minor's property.

Analysis and conclusion

Thus, according to the above provision, **Vishal will be entitled to recover the amount of loan given to Ishaan for payment of the college fees from the property of the minor.**

Q26. Mr. Shekhar wants to sell his car. For this purpose, he appoints Mr. Nadan, a minor as his agent. Mr. Shekhar instructs Mr. Nadan that car should not be sold at price less than Rs. 1,00,000. Mr. Nadan ignores the instruction of Mr. Shekhar and sells the car to Mr. Masoom for Rs. 80,000. Explain the legal position of contract under the Indian Contract Act, 1872 whether:

(i) Mr. Shekhar can recover the loss of Rs. 20,000 from Mr. Nadan?

(ii) Mr. Shekhar can recover his car from Mr. Masoom?

Sol.

Provision

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

Analysis and Conclusion

In the instant case, Mr. Shekhar appoints **Mr. Nadan, a minor as his agent to sale his car.** Mr. Shekhar clearly instructed to Mr. Nadan that the minimum sale price of the car should be Rs. 1,00,000 yet **Mr. Nadan sold the car to Mr. Masoom for Rs. 80,000.**

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

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

Q27. Rohan is running a grocery store in Delhi. He sells his grocery business, including goodwill worth Rs. 1,00,000 to Rohit for a sum of Rs. 5,00,000. After the sale of goodwill, Rohit made an agreement with Rohan. As per this agreement, Rohan is not to open another grocery store (similar kind of business) in the whole of India for next ten years. However, Rohan opens another store in the same city two months later. What are the rights available with Rohit regarding the restriction imposed on Rohan with reference to Indian Contract Act, 1872?

Sol.

Provision

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

(i) Where the restraint is to refrain from carrying on a similar business

(ii) The restrain should be within the specified local limits

(iii) The restraint should be not to carry on the similar business after sale of goodwill to the buyer for a price

(iv) The restriction should be reasonable. Reasonableness of restriction will depend upon number of factors as considered by court.

Analysis and conclusion

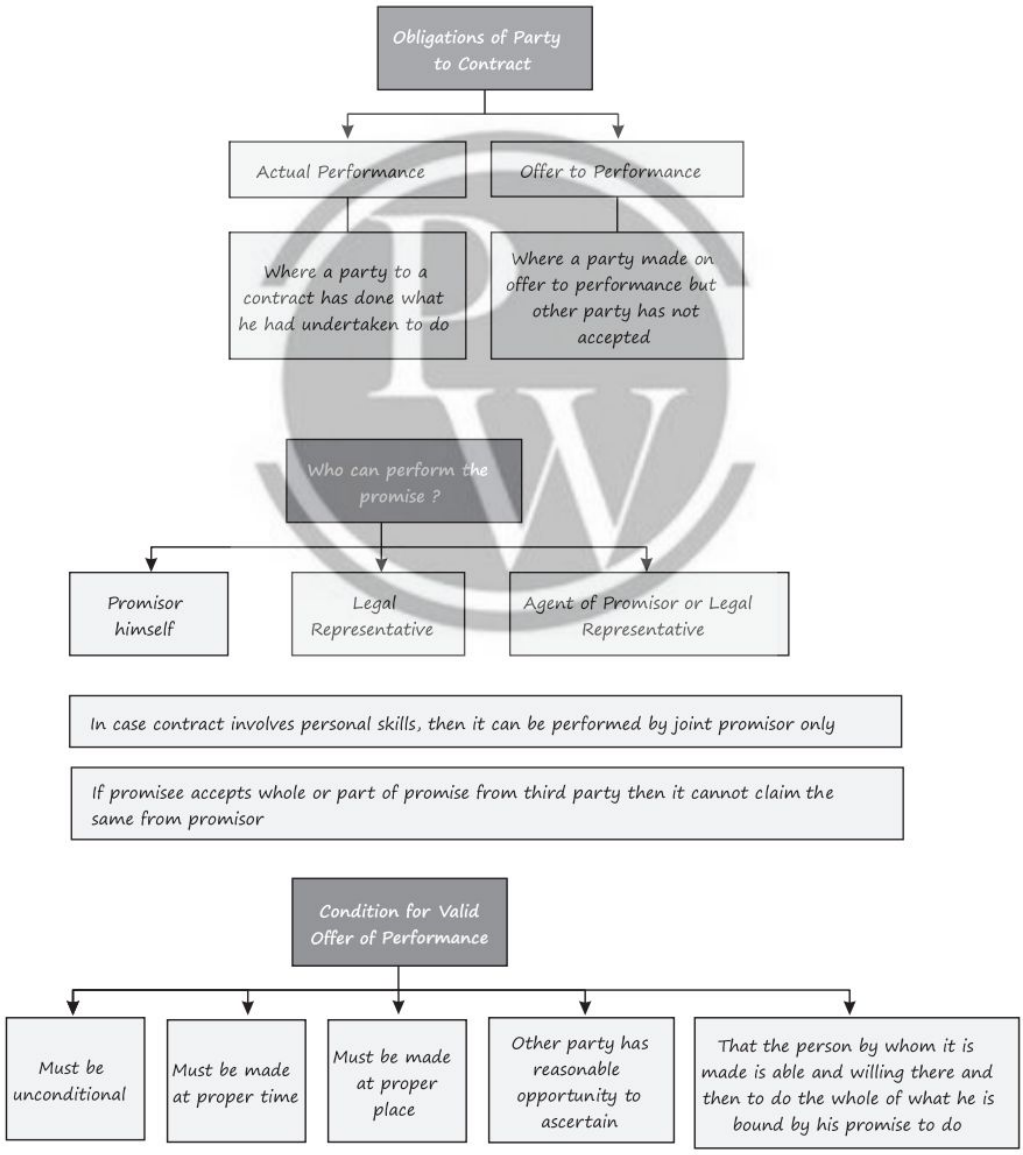
In the given case, **Rohan has sold the goodwill and there is restraint for not carrying on the same business of grocery store. However the restriction imposed on Rohan is unreasonable as he cannot carry similar business in whole of India for next 10 years**. The restriction on restraint to similar kind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

❑❑❑

UNIT

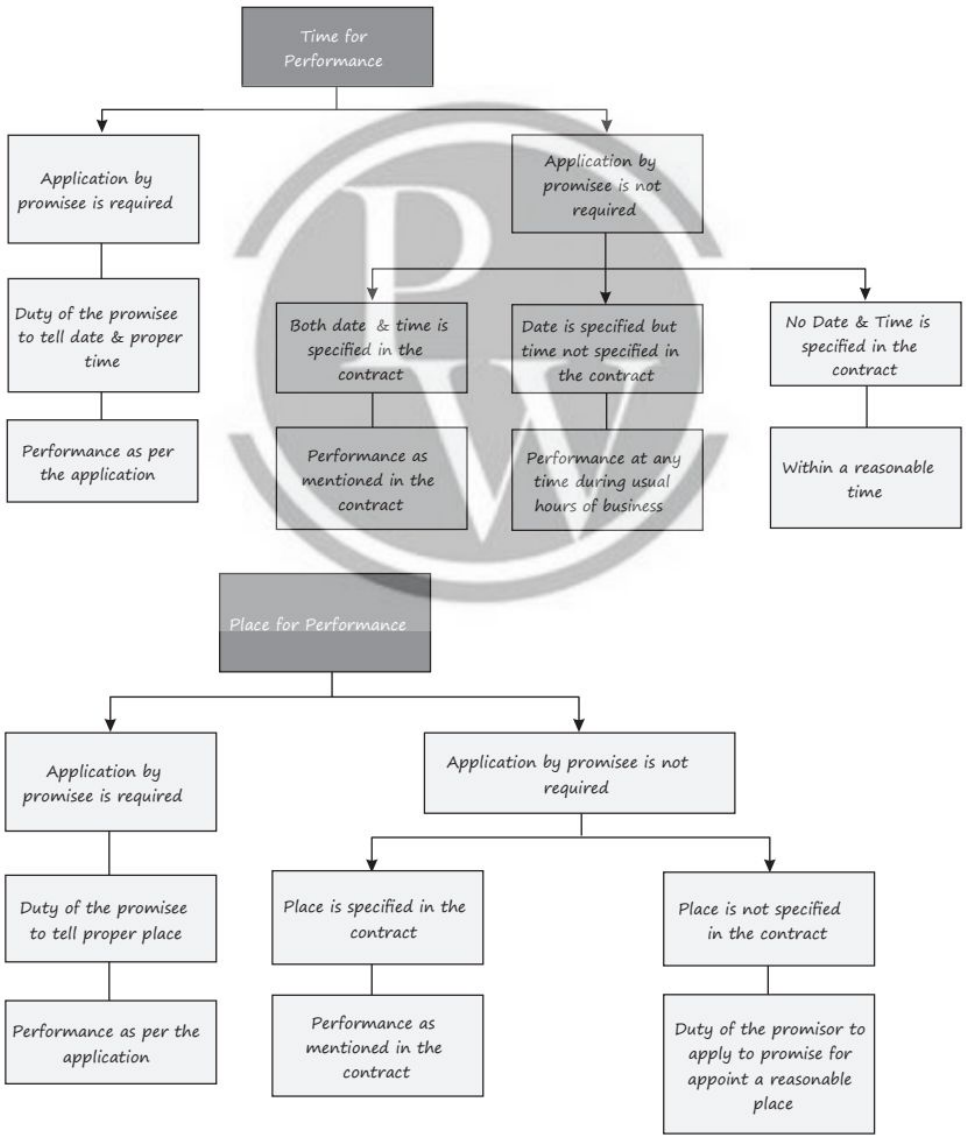
4 Performance of Contract

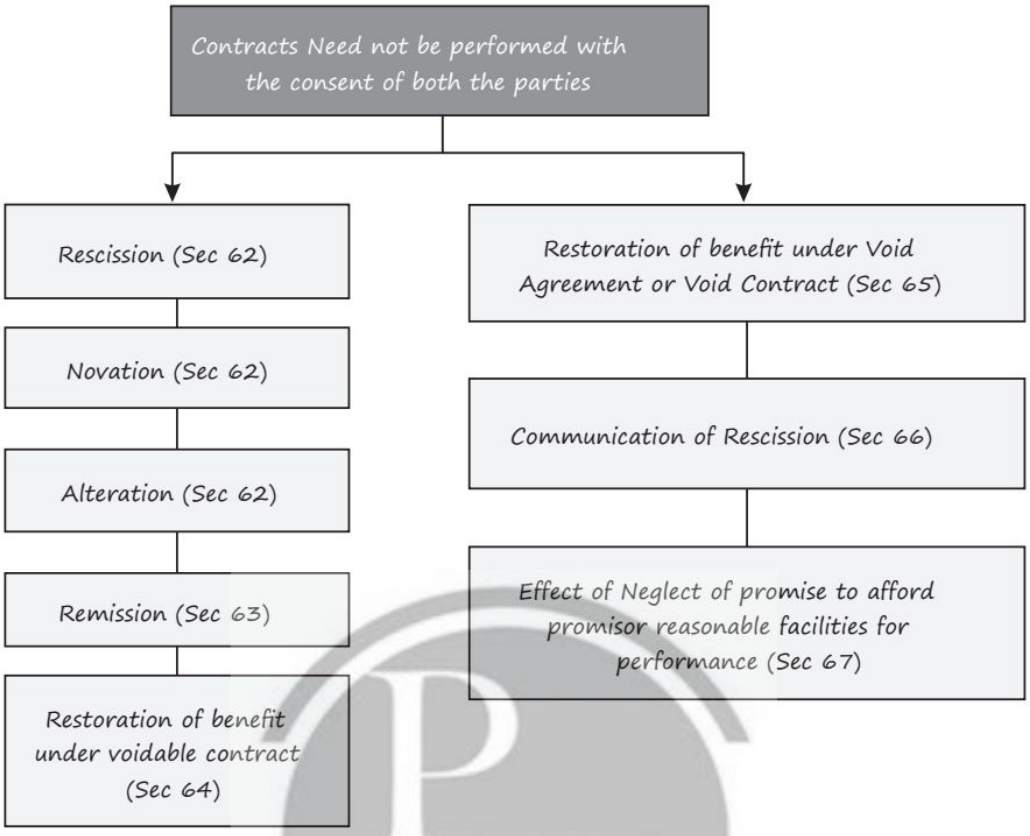
PART-A



Succession	Assignment
Succeeded by law	Voluntarily
Both Burden and benefits get devolve on legal heir	Only benefits can get assigned to assignee and not the liabilities thereunder
Ex :- A son becomes owner of estate of his father after his death	Ex :- Creditors assigns the benefit of a promise, he thereby entitles the assignee to realise the debt from the debtor
Liability of son is limited to the extent of the property inherited by him	In case of personal consideration, benefit cannot be assigned.

TIME FOR PERFORMANCE OF THE CONTRACT (SEC 46 TO 50)





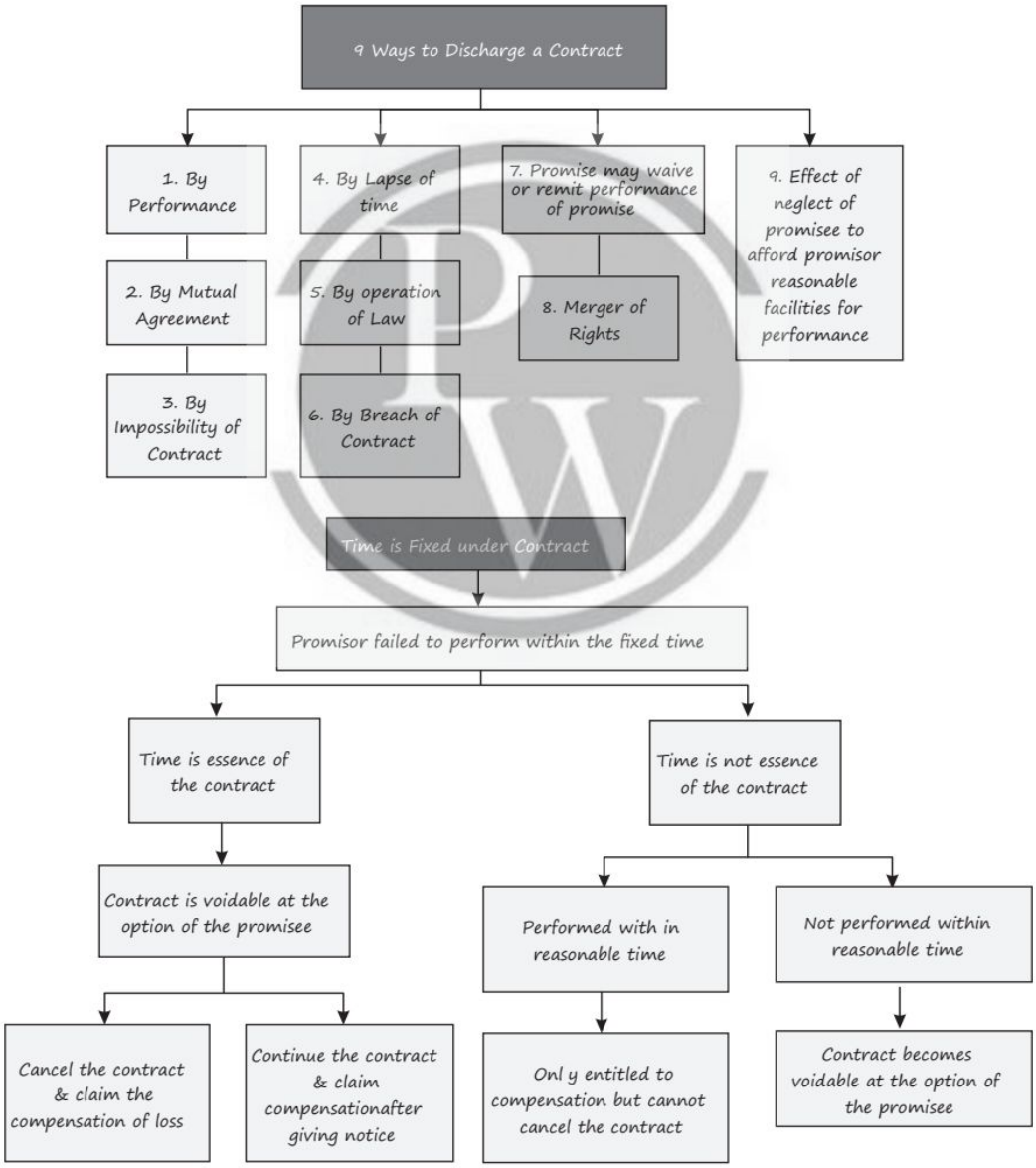
Joint Promisors

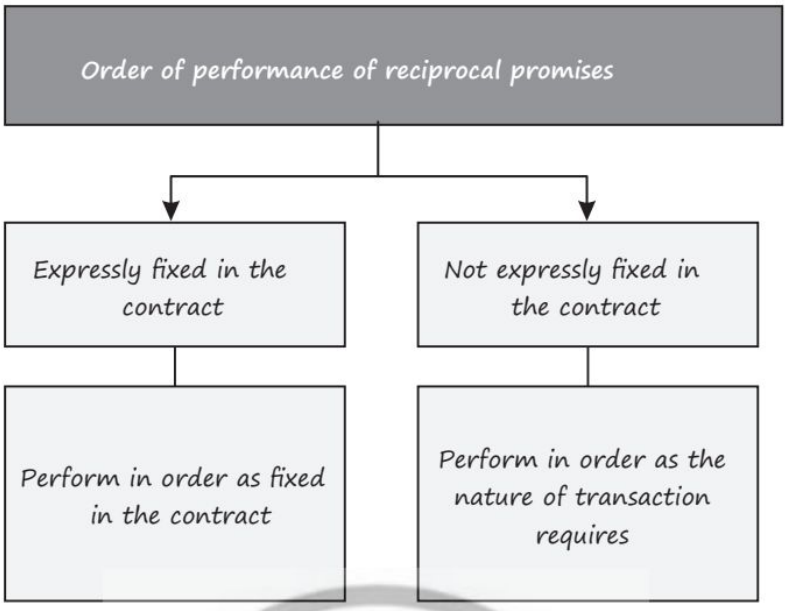
Devolution of Join Liabilities	Devolution of Joint Rights
When two or more persons have made a joint promise, then all such persons during lives, must jointly perform the promise	When a person has made a promise to two or more persons jointly, then unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and after the death of the last survivor, with the representatives of all jointly
After the death of any of joint promisor, then legal representative jointly with the survivors must fulfil the promise	
In case of death of all the joint promisors, then legal representative of all joint promisors jointly must fulfil the promise	
Promise may any one or more of joint promisors to perform the whole of promise	
If one of the joint promisors is made to perform the whole contract, then Joint Promisor may compel other joint promisors to compel equally	
A release of one of such joint promisors by the promisee does not discharge the other joint promisors neither it does free the joint promisor from responsibility to the other joint promisors	

Devolution of Join Liabilities	Devolution of Joint Rights
In case of default in contribution by the joint promisor(s), remaining joint promisors must bear the loss arising from such default in equal shares	

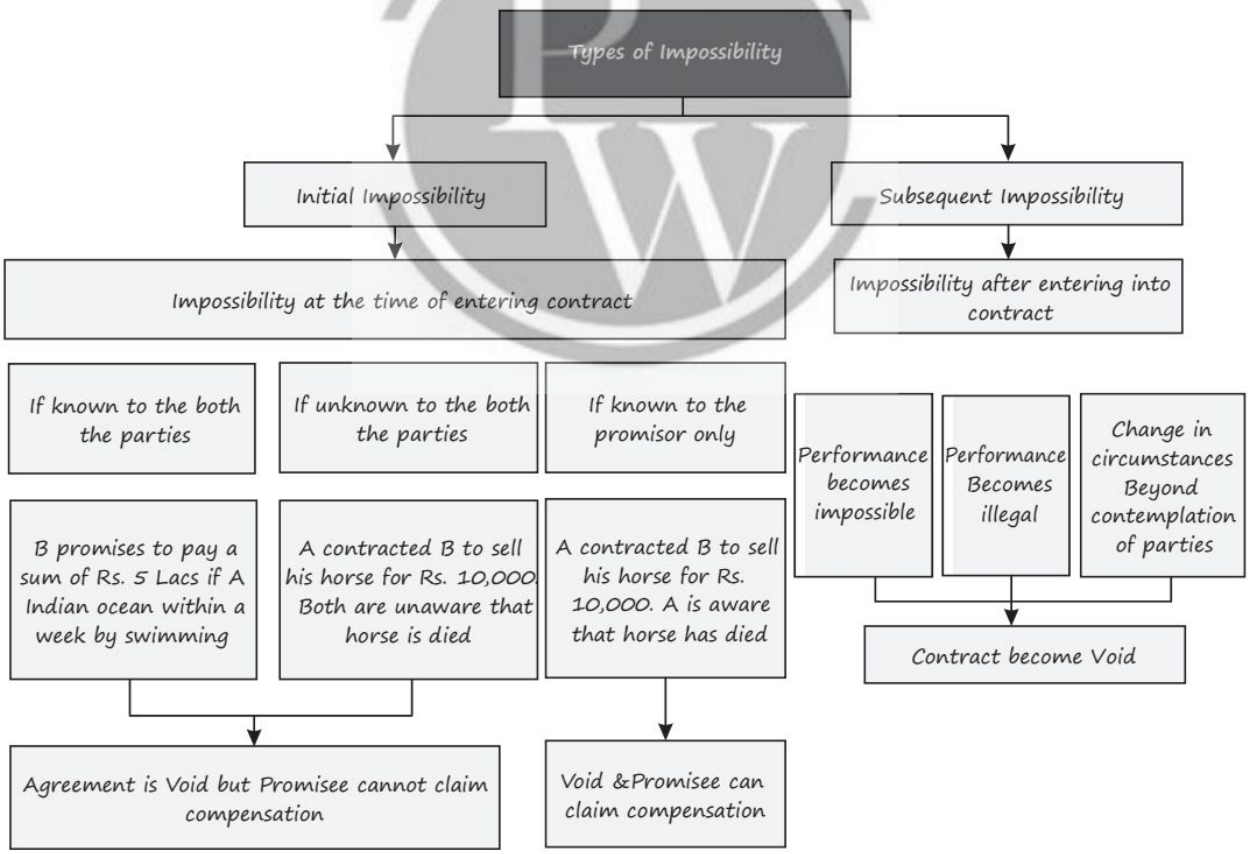
Sequence for Appropriation of Payments

- **Section 59:** Debtor expressly or impliedly intimated against which debt to be applied against particular Debt.
- **Section 60:** If debtor does not intimate expressly or impliedly, then Creditor may apply as per his wish against any debt sue & payable including time barred debt but excluding disputed debts.
- **Section 61:** Neither Debtor nor Creditor appropriated, then as per law ,apply payment in order of time of debts including time barred debts. If the debt are of same date then then apply proportionately.





AGREEMENT TO DO IMPOSSIBLE ACT IS VOID (SECTION 56)



QUESTIONS FOR PRACTICE

Q1. A, B, C and D are the four partners in a firm. They jointly promised to pay Rs. 6,00,000 to F. B and C have become insolvent. B was unable to pay any amount and C could pay only Rs. 50,000. A is compelled to pay the whole amount to F. Decide the extent to which A can recover the amount from D with reference to the provisions of the Indian Contract Act, 1872.

Sol.

Provison

Joint promisors (Section 42 of the Indian Contract Act, 1872)

When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, **all such persons must jointly fulfil the promise.**

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

As per Section 43 of the Indian Contract Act, 1872, **when two or more persons make a joint promise,** the promisee may, in the absence of express agreement to the contrary, **compel any one or** more of **such joint promisors** to perform **the whole ofthe promise.**

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

Analysis and Conclusion

In the instant case, A, B, C and D have jointly promised to pay Rs. 6,00,000 to F. B and C become insolvent. B was unable to pay any amount and C could pay only Rs. 50,000. A is compelled to pay the whole amount to F.

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

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

From D Rs. 2,75,000= (D's Liability Rs.1,50,000+1/2 of liability of B (Loss) (1,50,000*1/2) i.e.

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

Q2. Explain any five circumstances under which contracts need not be performed with the consent of both the parties

Sol. Under following circumstances, the contracts need not be performed with the consent of both the parties:

(i) **Novation:** Where the **parties to a contract substitute a new contract for the old, it is called novation.** A contract in existence may be substituted by a new contract either between the same parties or between different parties the consideration mutually being the discharge of old contract. Novation can take place **only by**

mutual agreement between the parties. On novation, **the old contract is discharged and consequently it need not be performed.** (Section 62 of the Indian Contract Act, 1872)

(ii) **Rescission:** A **contract is also discharged by recission**. When the parties to a contract agree to rescind it, the contract need not be performed. (Section 62)

(iii) **Alteration:** Where the **parties to a contract agree to alter it, the original contract is rescinded,** with the result that it need not be performed. In other words, a contract is also discharged by alteration. (Section 62)

(iv) **Remission:** Every **promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance or may accept instead of it any satisfaction which he thinks fit. In other words, a contract is discharged by remission. (Section 63)**

(v) **Rescinds voidable contract:** When a **person at whose option a contract is voidable rescinds it, the** other party **thereto** need **not** perform any **promise** therein contained in which he is the promisor.

Q3. X, Y and Z jointly borrowed Rs. 90,000 from L. Decide each of the following in the light of the Indian Contract Act, 1872:

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

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

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

Sol.

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

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

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

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

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

Q4. Explain what is meant by 'Supervening Impossibility' as per the Indian Contract Act, 1872 with the help of an example. What is the effect of such impossibility?

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

Subsequent impossibility is also known as Supervening impossibility i.e. becomes impossible after entering into contract. **When** performance of promise **become impossible or illegal by occurrence** of an **unexpected event or** a change of **circumstances beyond the contemplation of parties, the contract becomes void** e.g. change in law etc. In other words, sometimes, the performance of a contract is quite possible when it is made. But subsequently, some event happens which renders the performance impossible or unlawful. **Such impossibility is called the subsequent or supervening. It is also called the post-contractual impossibility.**

Example: 'A' and 'B' contracted to marry each other. Before the time fixed for the marriage, 'A' became mad. In this case, the contract becomes void due to subsequent impossibility, and thus discharged.

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

Q5. X, Y and Z are partners in a firm. They jointly promised to pay Rs. 3,00,000 to D. Y become insolvent and his private assets are sufficient to pay 1/5 of his share of debts. X is compelled to pay the whole amount to D. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which X can recover the amount from Z.

Sol.

Provision

As per section 43 of the Indian Contract Act, 1872, when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

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

Analysis and conclusion

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

Q6. Mr. Rich aspired to get a self-portrait made by an artist. He went to the workshop of Mr. C an artist and asked whether he could sketch the former's portrait on oil painting canvass. Mr. C agreed to the offer and asked for Rs. 50,000 as full advance payment for the above creative work. Mr. C clarified that the painting shall be completed in 10 sittings and shall take 3 months.

On reaching to the workshop for the 6th sitting, Mr. Rich was informed that Mr. C became paralyzed and would not be able to paint for near future. Mr. C had a son Mr. K who was still pursuing his studies and had not taken up his father's profession yet?

Discuss in light of the Indian Contract Act, 1872?

(i) Can Mr. Rich ask Mr. K to complete the artistic work in lieu of his father?

(ii) Could Mr. Rich ask Mr. K for refund of money paid in advance to his father?

Sol.

Provision

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

Analysis and 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) According to section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, **any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person** from whom he received it.

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

Q7. Mr. X and Mr. Y entered into a contract on 1st August, 2018, by which. Mr. X had to supply 50 tons of sugar to Mr. Y at a certain price strictly within a period of 10 days of the contract. Mr. Y also paid an amount of Rs. 50,000 towards advance as per the terms of the above contract. The mode of transportation available between their

places is roadway only. Severe flood came on 2nd August, 2018 and the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. X offered to supply sugar on 20th August, 2018 for which Mr. Y did not agree. On 1st September, 2018, Mr. X claimed compensation of Rs. 10,000 from Mr. Y for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Y claimed for refund of Rs. 50.000 which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Y's contention.

Sol.

Provision

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

When performance of promise become impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, the contract becomes void e.g. change in law etc. Also, according to section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, **any person who has received any advantage under such agreement or contract is bound to restore** it, or **to make compensation for it** to **the person from whom he received it.**

Analysis and conclusion

In the given question, after Mr. X and Mr. Y have entered into the contract to supply 50 tons of sugar, **the event of flood occurred which made it impossible to deliver the sugar within the stipulated time. Thus, the promise in question became void. Further, Mr. X has to pay back the amount of Rs. 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.

Q8. Mr. Sonumal a wealthy individual provided a loan of Rs. 80,000 to Mr. Datumal on 26.02.2019. The borrower Mr. Datumal asked for a further loan of Rs. 1,50,000. Mr. Sonumal agreed but provided the loan in parts at different dates. He provided Rs. 1,00,000 on 28.02.2019 and remaining Rs. 50,000 on 03.03.2019. On 10.03.2019 Mr. Datumal while paying off part Rs. 75,000 to Mr. Sonumal insisted that the lender should adjusted Rs. 50,000 towards the loan taken on 03.03.2019 and balance as against the loan on 26.02.2019. Mr. Sonumal objected to this arrangement and asked the borrower to adjust in the order of date of borrowal of funds.

Now you decide:

(i) Whether the contention of Mr. Datumal correct or otherwise as per the provisions of the Indian Contract Act, 1872?

(ii) What would be the answer in case the borrower does not insist on such order of adjustment of repayment?

(iii) What would the mode of adjustment/appropriation of such part payment in case neither Mr. Sonumal nor Mr. Datumal insist any order of adjustment on their part?

Sol.

Provision

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

(i) Perovision

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

Analysis and conclusion

Therefore, the **contention of Mr. Datumal is correct and he can specify the manner of appropriation of** repayment of **debt.**

(ii) Provision

As per the provisions of 60 of the Act, **where the debtor** has **omitted to intimate and there are no other circumstances indicating to which debt** the **payment is to be applied, the creditor may apply it at his discretion to any lawful** debt actually due and payable to him from the debtor, **where its recovery is or is not barred by the law in force for the time being as to** the **limitation of suits.**

Aanlysis and conclusion

Hence in case where Mr. Datumal **fails to** specify the manner of appropriation of debt on part repayment, **Mr. Sonumal the creditor, can appropriate the payment as per his choice.**

(iii) Provision

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

Aanlysis and conclusion

Hence in case where neither **Mr. Datumal nor Mr. Sonumal specifies the manner of appropriation of debt on part repayment, the appropriation can be made in proportion of debts.**

Q9. Mr. S and Mr. R made contract wherein Mr. S agreed to deliver paper cup manufacture machine to Mr. R and to receive payment on delivery. On the delivery date, Mr. R didn't pay the agreed price. Decide whether Mr. S is bound to fulfil his promise at the time of delivery?

Sol.

Provision

As per Section 51 of the Indian Contract Act, 1872, when a contract consists of reciprocal promises to be simultaneously performed, no promisor needs to perform his promise unless the promisee is ready and willing to perform his reciprocal promise. **Such promises constitute concurrent conditions and the performance of one of the promise is conditional on the performance of the other.** If one of the promises is not performed, the other too need not be performed.

Analysis and conclusion

Referring to the above provisions, in the given case, **Mr. S is not bound to deliver goods to Mr. R since payment was not made by him at the time of delivery of goods**

Q10. A received certain goods from B promising to pay Rs. 1,00,000. Later on, A expressed his inability to make payment. C, who is known to A, pays Rs. 60,000 to B on behalf of However, A was not aware of the payment. Now B is intending to sue A for the amount of Rs. 1,00,000. Discuss whether the contention of B is right?

Sol.

Provision

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

Analysis and Conclusion

Therefore, in the present instance, **B can sue only for the balance amount i.e. Rs. 40,000 and not for the whole amount.**

Q11. Decide with reasons whether the following agreements are valid or void under the provisions of the Indian Contract Act, 1872:

(i) Vijay agrees with Saini to sell his black horse for Rs. 3,00,000. Unknown toboth the Parties, the horse was dead at the time of the agreement.

(ii) Sarvesh sells the goodwill of his shop to Vikas for Rs. 10,00,000 and promisesnot to carry on such business forever and anywhere in India.

(iii) Mr. X agrees to write a book with a publisher. After few days, X dies in an accident.

(i) As per Section 20 of the Indian Contract Act, 1872, **an agreement under by mistake of fact are void.** In this case, there is **mistake of fact as to the existence**

of the subject- matter, i.e., with respect to the selling of **horse which was dead at the time of the agreement. It is unknown to both the parties. Therefore, it is a void agreement.**

(ii) As per Section 27 of the Indian Contract Act, 1872, an agreement in restraint of trade is void. However, a buyer can put such a condition on the seller of goodwill, **not to carry on same business, provided that the conditions must be reasonable regarding the duration and place of the business.** Since in the given **case, restraint to carry on business was forever and anywhere in India, so the agreement in question is void.**

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

Q12. "The basic rule is that the promisor must perform exactly what he has promised to perform." Explain stating the obligation of parties to contracts.

Sol. Obligations of parties to contracts (Section 37 of the Indian Contract Act, 1872) The parties to a contract must either perform, or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of the Contract Act or of any other law.

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

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

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

Analysis of Section 37

A contract being an agreement enforceable by law, creates a legal obligation, which subsists until discharged. **Performance of the promise or promises remaining to be performed is the principal and most usual mode of discharge.**

The basic rule is that the promisor must perform exactly what he has promised to perform. The **obligation to perform is absolute**.

Thus, it may be noted that it is necessary for a party who wants to enforce the promise made to him, to perform his promise for himself or offer to perform his promise. Only after that he can ask the other party to carry out his promise.

This is the principle which is enshrined in Section 37. Thus, it is the **primary duty of each party to a contract to either perform or offer to perform his promise. He is**

absolved from such a responsibility only when under a provision of law or an act of the other party to the contract, the performance can be dispensed with or excused.

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

Q13. What will be rights with the promisor in following cases? Explain with reasons:

(a) Mr. X promised to bring back Mr. Y to life again.

(b) A agreed to sell 50 kgs of apple to B. The loaded truck left for delivery on 15 th March but due to riots in between reached B on 19th March.

(c) An artist promised to paint on the fixed date for a fixed amount of remuneration but met with an accident and lost his both hands.

(d) Abhishek entered into contract of import of toys from China. But due to disturbance in the relation of both the countries, the imports from China were banned.

Sol.

(a) The contract is **void because of its initial impossibility** of performance.

(b) **Time is essence** of this contract. As by the time apples reached B, they were already rotten. The **contract is discharged due to destruction of subject matter of contract.**

(c) Such **contract is of personal nature and hence cannot be performed due to occurrence of an event resulting in impossibility of performance of contract.**

(d) Such contract is **discharged without performance because of subsequent illegality** nature of the contract.

Q14. A enters into a contract with B that he (A) sells his house for Rs. 10,00,000 to B. Further they both signed an agreement that if B uses the house for gambling purposes, then B shall pay A Rs. 50,000 for it. B agreed to this, however after a year of sale, B started gambling business in that house. Can A claim Rs. 50,000 from B? Discuss with reference to the provisions of Indian Contract Act, 1872.

Sol.

Provision

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

Analysis and conclusion

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

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

Q15. Mr. Singhania entered into a contract with Mr. Sonu to sing in his hotel for six weeks on every Saturday and Sunday. Mr. Singhania promised to pay Rs. 20,000 for every performance. Mr. Sonu performed for two weeks but on third week his health condition was very bad, so he did not come to sing. Mr. Singhania terminated the contract. State in the light of provisions of the Indian Contract Act, 1872:-

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

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

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

Sol.

Provision

According to Section 40 of the Indian Contract Act, 1872, **if it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained** in it should be **performed** by the **promisor himself, such promise must be performed** by the **promisor.** Section 41 provides that when a **promisee accepts performance of the** promise **from a third person, he cannot afterwardsenforce it against the promisor.**

Analysis and Conclusion

Therefore, in the instant case,

(a) As Mr. Sonu could not perform as per the contract, **Mr. Singhania can repudiate the contract.**

(b) In the second situation, as Mr. Singhania allowed Mr. Sonu to perform in the fourth week without saying anything, by conduct, Mr. Singhania **had given his assent to continue the contract. Mr. Singhania cannot terminate the contract however he can claim damages from Mr. Sonu.**

(c) In case Mr. Singhania allows Mr. Mika to perform in the third week without saying anything, by conduct, Mr. Singhania had given his assent for performance by third party. Now Mr. Singhania **cannot terminate the contract nor can claim any damages from Mr. Sonu.**

Q16. Ajay, Vijay and Sanjay are partners of software business and jointly promises to pay Rs. 6,00, 000 to Kartik. Over a period of time Vijay became insolvent, but his assets are sufficient to pay one-fourth of his debts. Sanjay is compelled to pay the whole. Decide whether Sanjay is required to pay whole amount himself to Kartik in discharging joint promise under the Indian Contract Act, 1872.

Sol.

Provision

As per section 43 of the Indian Contract Act, 1872, when two or more persons make a joint promise, the promisee may, in the absence of express agreement to thecontrary, compel any one or more of such joint promisors to perform the whole ofthe promise.

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

Analysis and conclusion

Therefore, in the instant case, Sanjay is entitled to receive Rs. 50,000 from Vijay's assets and Rs. 2,75,000 from Ajay.

Q17. X, Y and Z jointly borrowed Rs. 50,000 from A. The whole amount was repaid to A by Y. Decide in the light of the Indian Contract Act, 1872 whether:

(i) Y can recover the contribution from X and Z,

(ii) Legal representatives of X are liable in case of death of X,

(iii) Y can recover the contribution from the assets, in case Z becomes insolvent.

Sol.

Provision

Section 42 of the Indian Contract Act, 1872 requires that **when two or more persons have made a joint promise**, then, unless a contrary intention appears from the contract, all such persons jointly must fulfill the promise. **In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promisors, the representatives of all jointly must fulfill the promise.**

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

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

Analysis and conclusion

As per the provisions of above sections,

(i) Y can recover the contribution from X and Z because X,Y and Z are joint promisors.

(ii) **Legal representative of X are liable to pay the contribution to Y. However, a legal representative is liable only to the extent of property of the deceased received by him.**

(iii) **Y also can recover the contribution from Z's assets.**

Q18. State the grounds upon which a contract may be discharged under the provisions of the Indian Contract Act, 1872.

Sol. Discharge of a Contract:

A contract may be discharged in any one of the following ways:

(i) **Discharge by performance:** It takes place when the parties to the contract fulfil their obligations arising under the contract 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 has done what he had agreed to do under the agreement.

When the promisor offers to perform his obligation, but the promisee refuses to accept the performance, it amounts to attempted performance or tender.

Example: A contracts to sell his car to B on the agreed price. As soon as the car is delivered to B and B pays the agreed price for it, the contract comes to an end by performance.

Example: A contracted to supply certain quantity of timber to B. B made the supply of timber at appointed time and place but A refused to accept the delivery. This is called as attempted performance

(ii) **Discharge by mutual agreement**: Section 62 of the Indian Contract Actprovides **if the parties to a contract agree to substitute a new contract for it, or to rescind or remit or alter** it, the original contract need not be performed.

The principles of Novation, Rescission, Alteration and Remission are already discussed.

Example: A owes B Rs. 1,00,000. A enters into an agreement with B and mortgage his (A's), estates for Rs. 50,000 in place of the debt of Rs. 1,00,000. This is a new contract and extinguishes the old.

Example: A owes B Rs. 5,00,000. A pays to B Rs. 3,00,000 who accepts it in full satisfaction of the debt. The whole is discharged.

(iii) **Discharge by impossibility of performance:** The impossibility may exist from the very start. In that case, it would be **impossibility ab initio/Initial impossibility**. Alternatively, it may **supervene.**

Supervening impossibility/Post Contractual impossibility may take place owing to:

(e) an unforeseen change in law;

(f) the destruction of the subject-matter essential to that performance;

(g) the non-existence or non-occurrence of particular state of things, which was naturally contemplated for performing the contract, as a result of some personal incapacity like dangerous malady;

(h) the declaration of a war (Section 56).

Example : A agrees with B to discover a treasure by magic. The agreement is void due to initial impossibility.

Example : A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

Example : A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

Example: X agrees to sell his horse to Y for Rs. 5,000 but the horse died in an accident. Here, it become impossible to perform the contract due to destruction of the subject. Thus, a valid contract changes into void contract because of impossibility of performance

(iv) **Discharge by lapse of time: A contract should be performed within a specified period** as prescribed by the Limitation Act, 1963. **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.**

Example : If a creditor does not file a suit against the buyer for recovery of the price within three years, the debt becomes time-barred and hence irrecoverable.

(v) **Discharge by operation of law: A contract may be discharged by operation of law which includes by death of the promisor, by insolvency** etc.

(vi) **Discharge by breach of contract**: Breach of contract may be actual breach of contract or anticipatory breach of contract. If one party defaults in performing his part of the contract on the due date, he is said to have committed breach thereof.

When on the other hand, a person repudiates a contract before the stipulated time for its performance has arrived, he is deemed to have committed anticipatory breach. **If one of the parties to a contract breaks the promise the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract.**

Example : A contracted with B to supply 100 kgs of rice on 1st June. But A failed to deliver the same on said date. This is actual breach of contract. If time is not essential essence of contract B can give him another date for supply of goods and he will not be liable to claim for any damages if prior notice for the same is not given to A while giving another date.

(vii) **Promisee may waive or remit performance of promise**: Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance or may accept instead of it any satisfaction which he thinks fit.

In other words, **a contract may be discharged by remission.** (Section 63)

Example : A owes B Rs. 5,00,000. C pays to B Rs.1,00,000 and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.

(viii) **Effects of neglect of promisee to afford promisor reasonable facilities forperformance**: **If any promisee neglects or refuses to afford the promisor reasonable facilities** for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby. (Section 67)

(ix) **Merger of rights:** Sometimes, the inferior rights and the superior rights coincide and meet in one and the same person.

In such cases, the inferior rights merge into the superior rights. On merger, the inferior rights vanish and are not required to be enforced.

A took a land on lease from B. Subsequently, A purchases that very land.Now, A becomes the owner of the land and the ownership rights being superior to rights of a lessee, the earlier contract of lease stands terminated.

Example: A took a land on lease from B. Subsequently, A purchases that very land. Now, A becomes the owner of the land and the ownership rights being superior to rights of a lessee, the earlier contract of lease stands terminated.

Q19. Mr. Murari owes payment of 3 bills to Mr. Girdhari as on 31st March, 2020. (i) Rs. 12,120 which was due in May 2016. (ii) Rs. 5,650 which was due in August 2018

(iii) Rs. 9,680 which was due in May 2019. Mr. Murari made payment on 1st April 2020 as below without any notice of how to appropriate them:

(i) A cheque of Rs. 9,680

(ii) A cheque of Rs. 15,000

Advice under the provisions of the Indian Contract Act, 1872.

Sol.

Provision

If the performance consists of payment of money and there are several debts to be paid, the payment shall be appropriated as per provisions of Sections 59, 60 and 61 of the Indian Contract Act, 1872.

(a) **The debtor has, at the time of payment, the right of appropriating the payment.**

(b) **In default of debtor, the creditor has option of election and**

(c) **in default of either the law will allow appropriation of debts in order of time.**

Analysis and Conclusion

In the present case, Mr. Murari had made two payments by way of two cheques. One cheque was exactly the amount of the bill drawn. It would be understood even though not specifically appropriated by Mr. Murari that it will be against the bill of exact amount. Hence **cheque of Rs. 9,680 will be appropriated against the bill of Rs. 9,680 which was due in May 2019.**

Cheque of Rs. 15000 can be appropriated against any lawful debt which is due even though the same is time-barred.

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

Q20. Enumerate the persons by whom a contract may be performed under the provisions of the Indian Contract Act, 1872.

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

(i) **Promisor himself:** If there is something in the contract to show that it was the intention of the parties that the promise should be performed by the promisor himself, such promise must be performed by the promisor.

This means contracts which involve the exercise of personal skill or diligence, or which are founded on personal confidence between the parties must be performed by the promisor himself.

(ii) **Agent:** Where personal consideration is not the foundation of a contract, the promisor or his representative may employ a competent person to perform it.

(iii) **Legal Representatives:** A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death of the promisor.

As regards any other contract the legal representatives of the deceased promisor are bound to perform it unless a contrary intention appears from the contract. But their liability under a contract is limited to the value of the property they inherit from the deceased.

(iv) **Third persons:** As per Section 41 of the Indian Contract Act, 1872, when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

That is, performance by a stranger, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorised nor ratified the act of the third party.

(v) **Joint promisors:** When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons must jointly fulfill the promise.

If any of them dies, his legal representatives must, jointly with the surviving promisors, fulfill the promise. If all of them die, the legal representatives of all of them must fulfill the promise jointly

Q21. Mr. JHUTH entered into an agreement with Mr. SUCH to purchase his (Mr. SUCH's) motor car for Rs. 5,00,000/- within a period of three months. A security amount of Rs. 20,000/- was also paid by Mr. JHUTH to Mr. SUCH in terms of the agreement.

After completion of three months of entering into the agreement, Mr. SUCH tried to contract Mr. JHUTH to purchase the car in terms of the agreement. Even after lapse of another three-month period, Mr. JHUTH neither responded to Mr. SUCH, nor to his phone calls. After lapse of another period of six months. Mr. JHUTH contracted Mr. SUCH and denied to purchase the motor car. He also demanded backthe security amount of Rs. 20,000/- from Mr. SUCH. Referring to the provisions of the Indian Contract Act, 1872, state whether Mr. SUCH is required to refund the security amount to Mr. JHUTH.

Also examine the validity of the claim made by Mr. JHUTH, if the motor car would have destroyed by an accident within the three month's agreement period.

Sol.

Provision

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

Analysis and Conclusion

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

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

❑❑❑

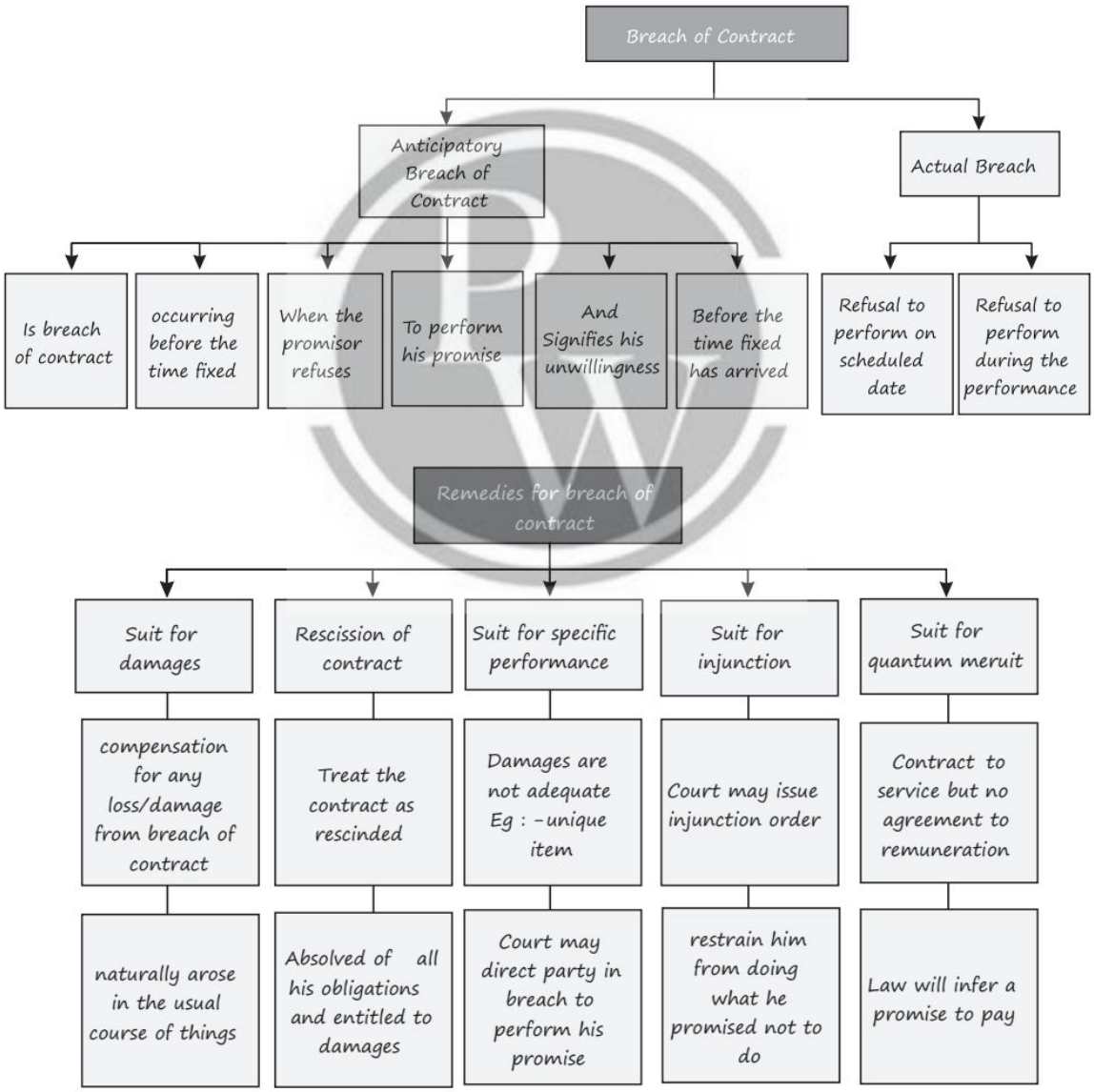
CHAPTER

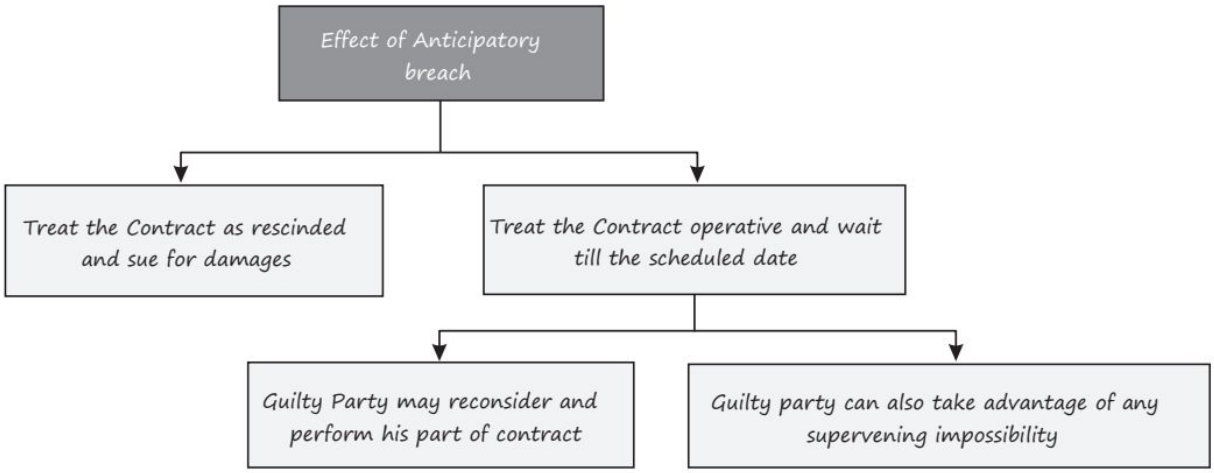
5

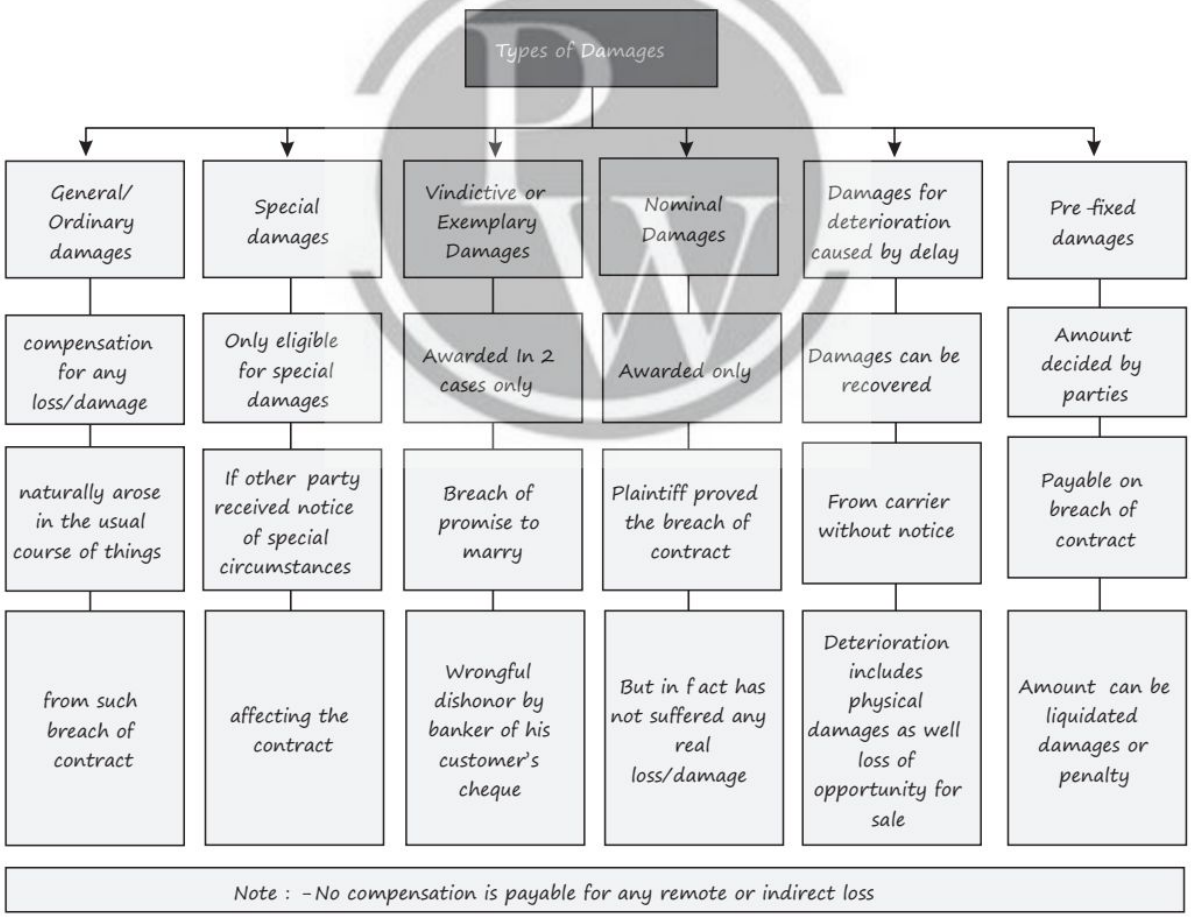
The Indian Contract Act, 1872

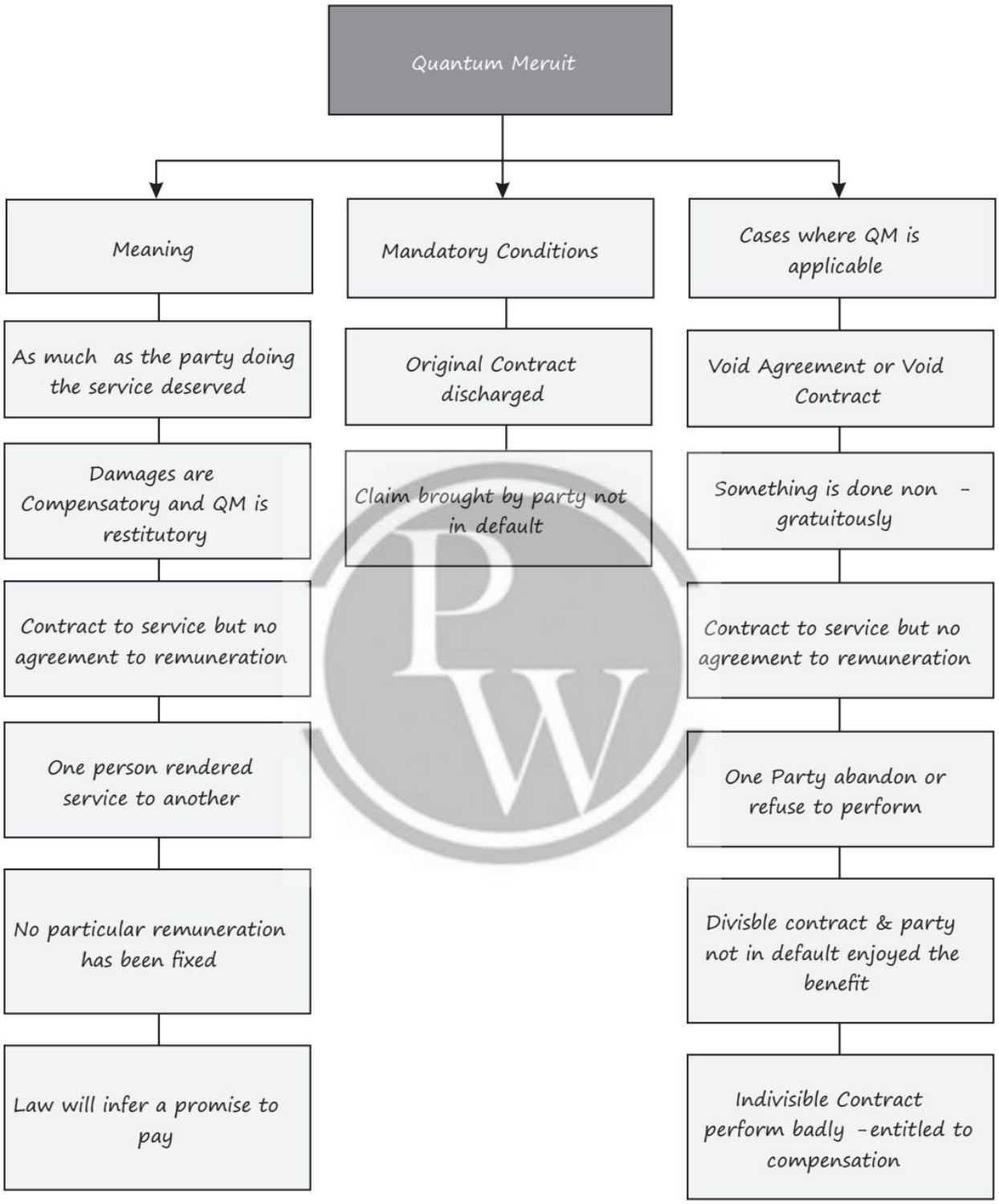
Unit-5: Breach of Contract and its Remedies

PART-A

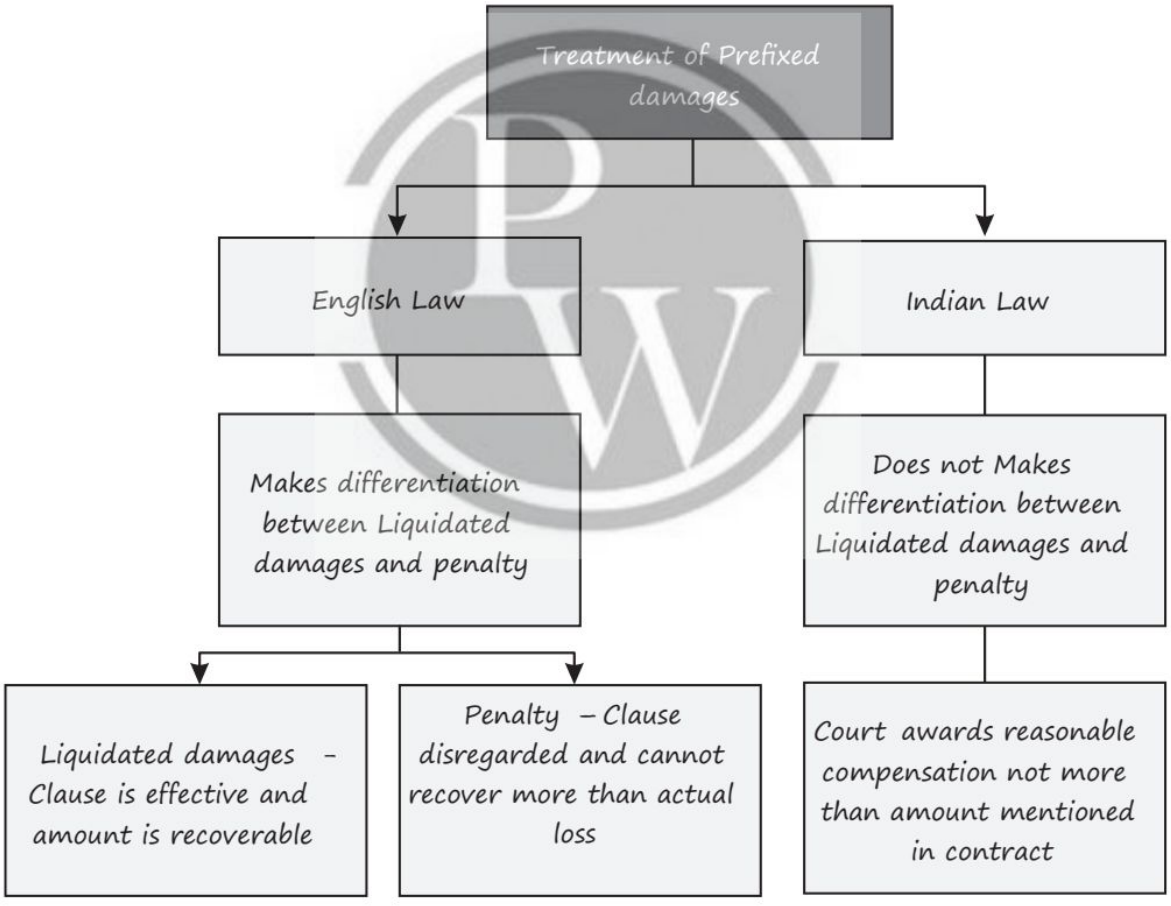



Effect of Anticipatory breach
Treat the Contract as rescinded and sue for damages
Treat the Contract operative and wait till the scheduled date
Guilty Party may reconsider and perform his part of contract
Guilty party can also take advantage of any supervening impossibility


Types of Damages
General/ Ordinary damages
Special damages
Vindictive or Exemplary Damages
Nominal Damages
Damages for deterioration caused by delay
Pre-fixed damages
compensation for any loss/damage
Only eligible for special damages
Awarded In 2 cases only
Awarded only
Damages can be recovered
Amount decided by parties
naturally arose in the usual course of things
If other party received notice of special circumstances
Breach of promise to marry
Plaintiff proved the breach of contract
From carrier without notice
Payable on breach of contract
from such breach of contract
affecting the contract
Wrongful dishonor by banker of his customer's cheque
But in fact has not suffered any real loss/damage
Deterioration includes physical damages as well loss of opportunity for sale
Amount can be liquidated damages or penalty
Note : -No compensation is payable for any remote or indirect loss


Quantum Meruit
Meaning
As much as the party doing the service deserved
Damages are Compensatory and QM is restitutory
Contract to service but no agreement to remuneration
One person rendered service to another
No particular remuneration has been fixed
Law will infer a promise to pay
Mandatory Conditions
Original Contract discharged
Claim brought by party not in default
Cases where QM is applicable
Void Agreement or Void Contract
Something is done non - gratuitously
Contract to service but no agreement to remuneration
One Party abandon or refuse to perform
Divisble contract & party not in default enjoyed the benefit
Indivisible Contract perform badly - entitled to compensation

Pre-Fixed Damage	
Liquidated Damages	Penalty
Reasonable estimate of likely loss in case of breach	An amount arbitrarily fixed as the damages payable
Sum payable is approx. to the probable damage	Sum payable is so large as to be far in excess of probable damages
Liquidated damages is a genuine pre-estimate of the damage	Penalty is amount stipulated as terrorem of the offending party



QUESTIONS FOR PRACTICE

Q1. "An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived". Discuss stating also the effect of anticipatory breach on contracts.

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

The law in this regard has very well summed up in **Frost v. Knight and Hochster v. DelaTour:**

Section 39 of the Indian Contract Act deals with anticipatory breach of contract and provides as follows: "When a party to a contract has refused to perform or disable himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, but words or conduct, his acquiescence in its continuance."

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

- **To either treat the contract as "rescinded and sue the other party for damages** from breach of contract immediately without waiting until the due date of performance; or
- **He may elect not to rescind but to treat the contract as still operative, and wait for the time of performance** and then hold the other party responsible for the consequences of non- performance.

But in this case, **he will keep the contract alive for the benefit of the other party as well as his own, and the guilty party, if he so decides on re-consideration, may still perform his part of the, contract** and can also **take advantage** of any **supervening impossibility** which may have the effect of discharging the contract.

Q2. "Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of contract whereas Penalty on the other hand is anextravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties". Explain.

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

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

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

compensation not exceeding the amount so named, or as the case may be the penalty stipulated for.

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

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

Sri ChunniLal vs. Mehta & Sons Ltd (Supreme Court)

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

Q3. 'X' entered into a contract with 'Y' to supply him 1,000 water bottles @ Rs. 5.00 per water bottle, to be delivered at a specified time. Thereafter, 'X' contracts with 'Z' for the purchase of 1,000 water bottles @ Rs. 4.50 per water bottle, and at the same time told 'Z' that he did so for the purpose of performing his contract entered into with 'Y'. 'Z' failed to perform his contract in due course and market price of each water bottle on that day was Rs. 5.25 per water bottle. Consequently, 'X' could not procure any water bottle and 'Y' rescinded the contract. Calculate the amount of damages which 'X' could claim from 'Z' in the circumstances? What would be your answer if 'Z' had not informed about the 'Y's contract? Explain with reference to the provisions of the Indian Contract Act, 1872.

Sol.

Provision

The problem asked in this question is based on the provisions of Section 73 of the Indian Contract Act, 1872.

Breach of Contract-Damages: Section 73 of the Indian Contract Act, 1872 lays down that **when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract to be likely to result from the breach of it.**

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

Analysis and conclusion

In the instant case 'X' had intimated to 'Z' that he was purchasing water bottles from him for the purpose of performing his contract with 'Y'. Thus, 'Z' had the knowledge

of the special circumstances. Therefore, 'X' is entitled to claim from 'Z' Rs. 500/- at the rate of 0.50 paise i.e. 1000 water bottles x 0.50 paise (difference between the procuring price of water bottles and contracted selling price to 'Y') being the amount of profit 'X' would have made by the performance of his contract with 'Y'.

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

Q4. M Ltd., contract with Shanti Traders to make and deliver certain machinery to them by 30.6.2017 for Rs. 11.50 lakhs. Due to labour strike, M Ltd. could not manufacture and deliver the machinery to Shanti Traders. Later, Shanti Traders procured the machinery from another manufacturer for Rs. 12.75 lakhs. Due to this Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation which it can claim from M Ltd., referring to the legal provisions of the Indian Contract Act, 1872.

Sol.

Provision

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

Analysis and comclusion

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

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

Q5. A & B entered into a contract to supply unique item, alternate of which is not available in the market. A refused to supply the agreed unique item to B. What directions could be given by the court for breach of such contract.

Sol.

Provision

Where there is **a breach of contract for supply of a unique item,** mere monetary damages may not be an adequate remedy for the other party. In such a case, the court may give order for specific performance and direct the party in breach to carry out his promise according to the terms of contract.

Analysis and conclusion

Here, in this case, the **court may direct A to supply the item to B because the refusal to supply the agreed unique item cannot be compensated through money.**

Q6. Seema was running a boutique in New Delhi. She has to deliver some cloth to her friend Kiran who was putting up an exhibition at Mumbai. Seema delivered the sewing machine and some cloth to a railway company to be delivered at a place where the exhibition was to be held. Seema expected to earn an exceptional profit from the sales made at this exhibition however she did not bring this fact to the notice of the railway's authorities. The goods were delivered at the place after the conclusion of the exhibition. On account of such breach of contract by railways authorities, can Seema recover the loss of profits under the Indian Contract Act, 1872?

Sol.

Provision

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

Analysis and conclusion

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

Q7. What is the law relating to determination of compensation, on breach of contract, contained in section 73 of the Indian Contract Act, 1872?

Sol. Compensation on Breach of Contract: Section 73 of the Indian Contract Act, 1872 provides that when a contract has been broken, **the party who suffers by such breach is entitled to receive** from the party who has broken the contract, **compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach** or which the parties knew when they made the contract, to be likely to result from the breach of it.

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

The explanation to the section further provides that in estimating the loss or damage from a breach of contract, the **means which existed of remedying the inconvenience caused by the non- performance of the contract must be taken into account.**

Q8. Mr. X was a Disk Jockey at a five star hotel bar. As per the contract, he is supposed to perform every weekend (i.e. twice a week). Mr. X will be paid Rs. 1500 per day. However, after a month, Mr. X willfully absents himself from the performance.

(i) Does the hotel have the right to end the contract?

(ii) If the hotel sends out a mail to X that they are interested to continue the contract and X accepts, can the hotel rescind the contract after a month on this ground subsequently?

(iii) In which of the cases – (termination of contract or continuance of contract) can the hotel claim damages that it has suffered as a result of this breach?

Sol.

Provision

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

(a) **To terminate the contract**

(b) **To indicate by words or by conduct that he is interested in its continuance.**

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

Analysis and Conclusion

In the given case,

(i) Yes, the hotel has the right to end the contract with Mr. X, the DJ.

(ii) The hotel has the right to continue the contract with X. But once this right is exercised, they cannot subsequently rescind the contract on this ground subsequently.

(iii) In both the cases, the hotel (promisee) is entitled to claim damages that has been suffered as a result of breach.

Q9. Mr. Murti was travelling to Manali with his wife by bus of Himalya Travels Pvt. Ltd. Due to some technical default in the bus, the driver has to stop the bus in a mid way in cold night. Driver advised the passenger to get the shelter in nearest hotel which was at a distance of only one kilometre from that place. The wife of Mr. Murti caught cold and fell ill due to being asked to get down and she had to walk in cold night to reach hotel. Mr. Murti filed the suit against Himalya Travels Pvt. Ltd. for damages for the personal inconvenience, hotel charges and medical treatment for his wife. Explain, whether Mr. Murti would get compensation for which he filed the suit?

Sol.

Provision

Section 73 of Indian Contract Act, 1872 provides that when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, **which naturally arose in the usual course of things from such breach**, or which the parties knew, when they made the contract, to be likely to result from the breach of it. But **such compensation is not to be given for any remote and indirect loss or damage sustained by reason** of the **breach.**

Analysis and conclusion

In the instant case, Mr. Murti filed the suit against Himalya Travels Pvt. Ltd. for damages for the personal inconvenience, hotel charges and medical treatment for his wife.

On the basis of above provisions and facts of the case, it can be said that Mr. Murti **can claim damages for the personal inconvenience and hotel charges but not for medical treatment for his wife because it is a remote or indirect** loss.

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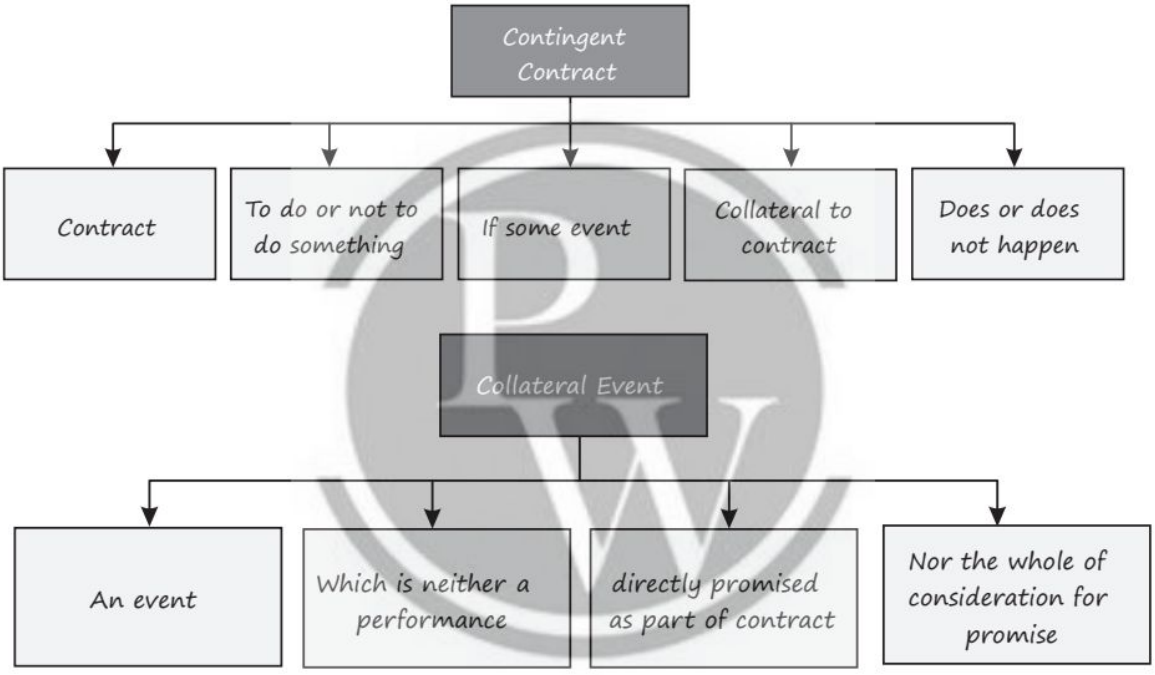
CHAPTER

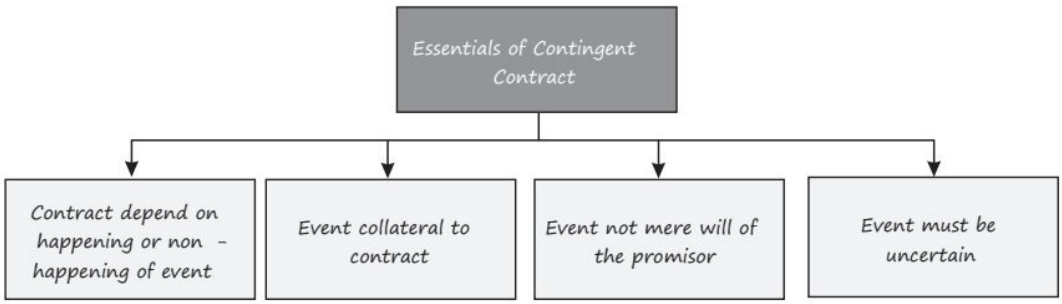
2

The Indian Contract Act 1872

Unit-6: Contingent and Quasi

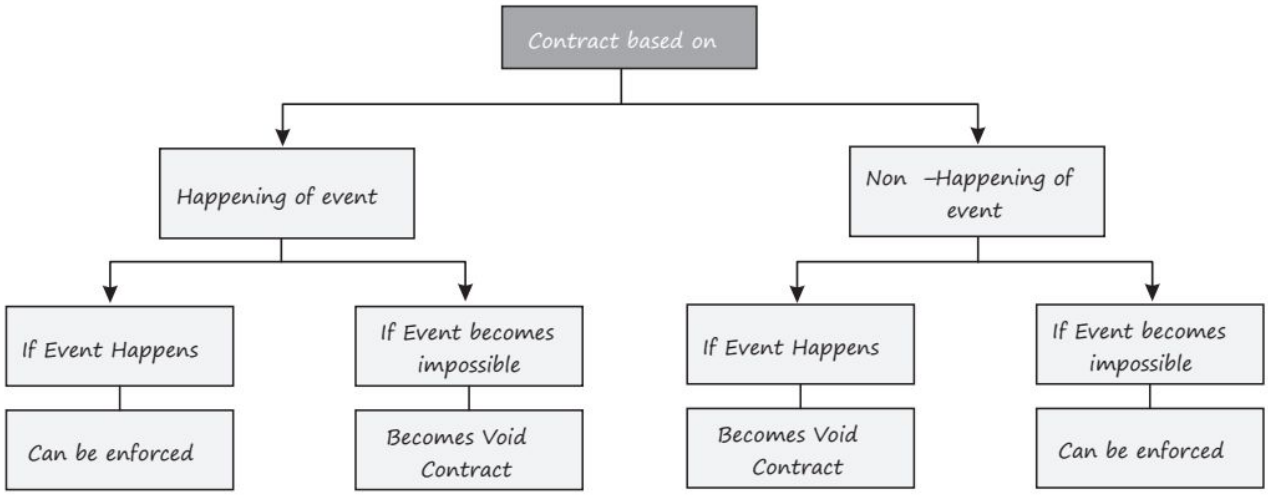
PART-A

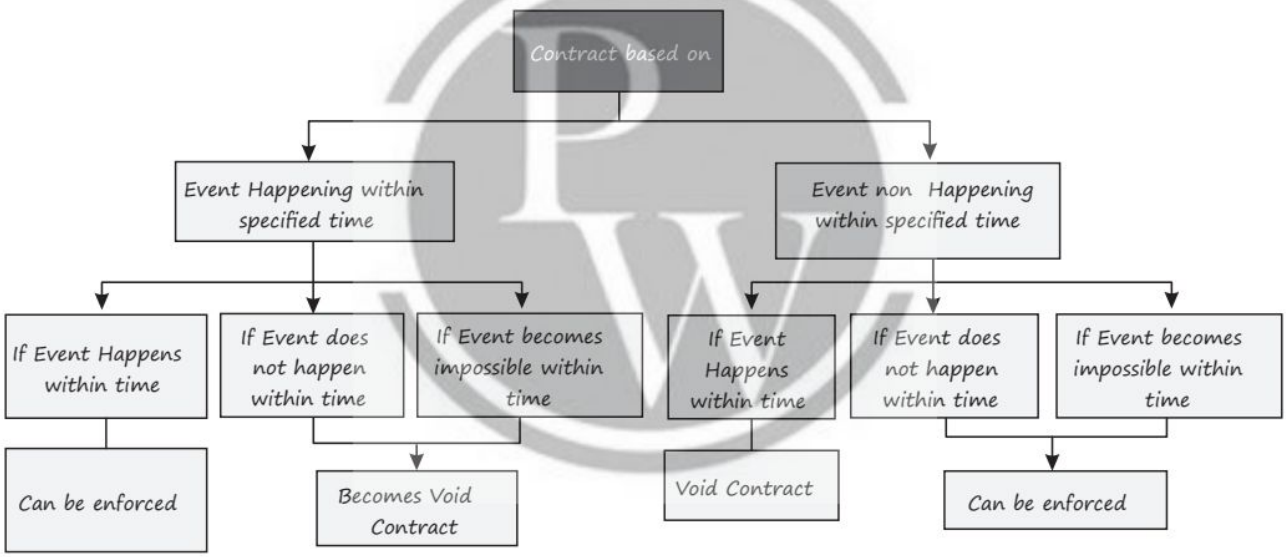


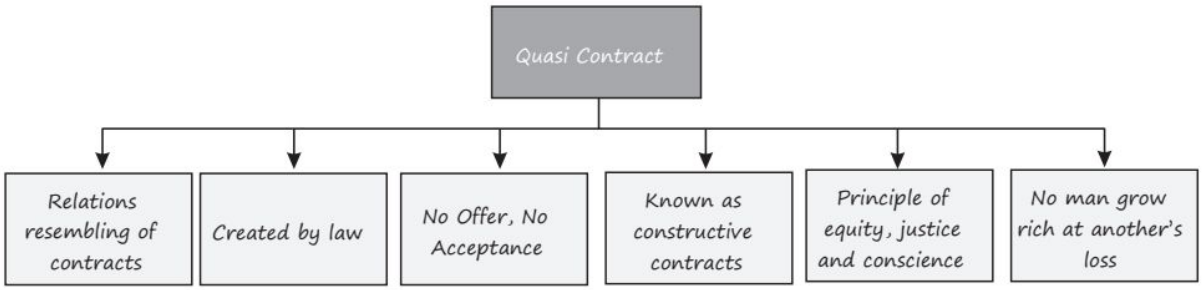


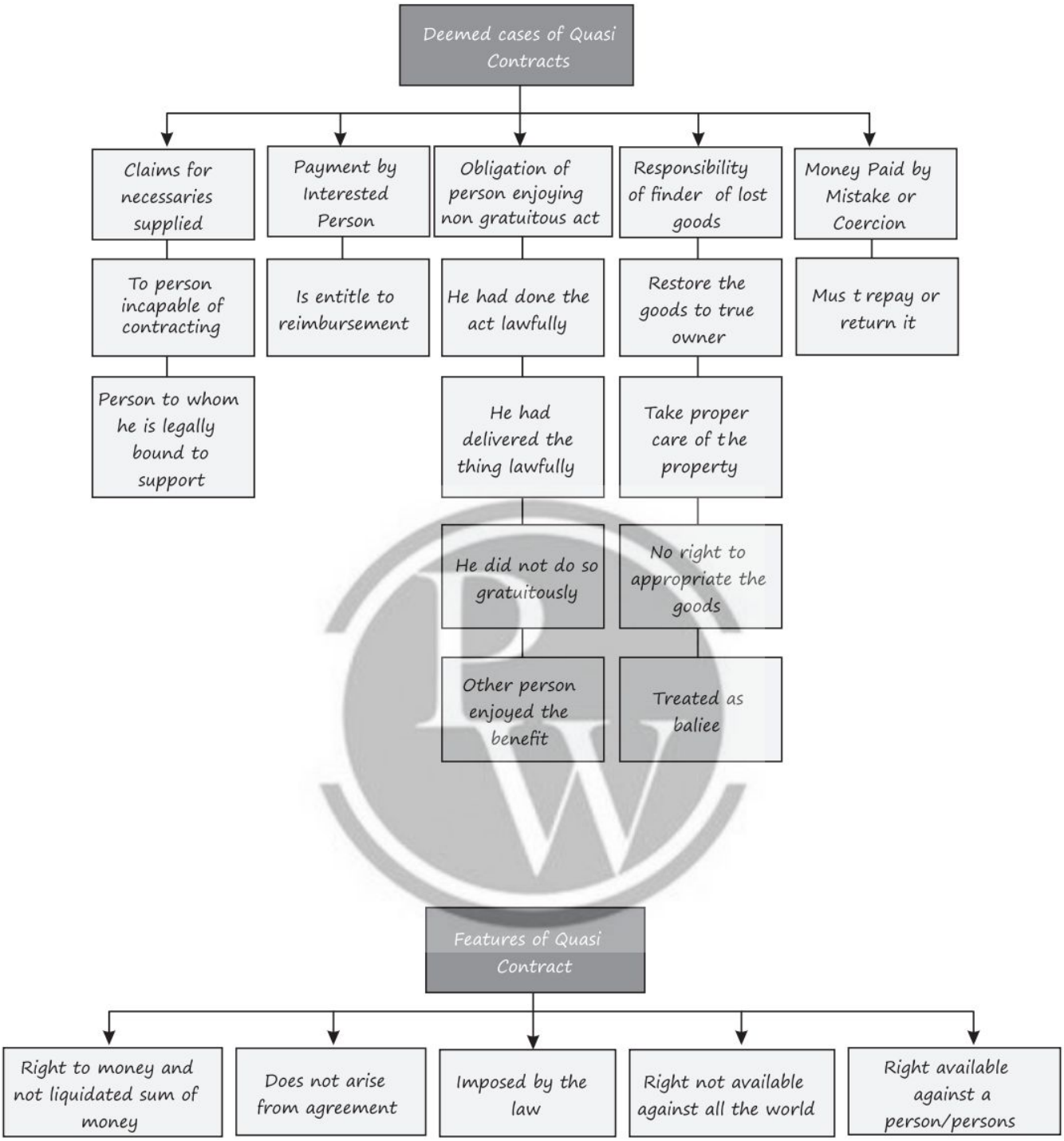
Contracts contingent on happening of an impossible event is void

Contingent Contract based on happening of conduct of living person is unenforceable if living person does something to make event impossible


Contract based on
Happening of event
Non –Happening of event
If Event Happens
If Event becomes impossible
If Event Happens
If Event becomes impossible
Can be enforced
Becomes Void Contract
Becomes Void Contract
Can be enforced


Contract based on
Event Happening within specified time
Event non Happening within specified time
If Event Happens within time
If Event does not happen within time
If Event becomes impossible within time
If Event Happens within time
If Event does not happen within time
If Event becomes impossible within time
Can be enforced
Becomes Void Contract
Void Contract
Can be enforced


Quasi Contract
Relations resembling of contracts
Created by law
No Offer, No Acceptance
Known as constructive contracts
Principle of equity, justice and conscience
No man grow rich at another's loss


Deemed cases of Quasi Contracts
Claims for necessaries supplied
Payment by Interested Person
Obligation of person enjoying non gratuitous act
Responsibility of finder of lost goods
Money Paid by Mistake or Coercion
To person incapable of contracting
Is entitle to reimbursement
He had done the act lawfully
Restore the goods to true owner
Mus t repay or return it
Person to whom he is legally bound to support
He had delivered the thing lawfully
Take proper care of the property
He did not do so gratuitously
No right to appropriate the goods
Other person enjoyed the benefit
Treated as baliee
Features of Quasi Contract
Right to money and not liquidated sum of money
Does not arise from agreement
Imposed by the law
Right not available against all the world
Right available against a person/persons

QUESTIONS FOR PRACTICE

Q1. Explain the-term 'Quasi Contracts' and state their characteristics.

Or

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

Sol.

(a) **Meaning of 'Quasi Contract'**: Under certain special circumstances **obligation resembling those created by a contract is imposed by law although the parties have never entered into a contract. Such obligations imposed by law are referred to as 'Quasi Contracts'**.

Such a contract resembles with a contract so far asresult or effect is concerned but it has little or no affinity with a contract in respectof mode of creation.

These contracts are based on the doctrine that a person shall not be allowed to enrich himself unjustly at the expense of another.

The salient features of Quasi-contract:

1. It **does not arise from any agreement** of the parties concerned but it isimposed by law.
2. The right under it is **always a right to money** and generally though not always to aliquidated sum of money.
3. It is a right which is **available not against all the world, but against a particular person** or persons only, so that in this respect it resembles a contractual right.
4. **It is a duty and not promise** is the basis of such contract.
5. A **suit for its breach may be filed in the same way as in case of a complete contract.**

Q2. X, a minor was studying in M.Com. in a college. On 1st July, 2019 he took a loan of ` 1,00,000 from B for payment of his college fees and to purchase books and agreed to repay by 31st December, 2019. X possesses assets worth ` 9 lakhs. On due date, X fails to pay back the loan to B. B now wants to recover the loan from X out of his (X's) assets. Referring to the provisions of Indian Contract Act, 1872decide whether B would succeed.

Sol.

Provision

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

Analysis and conclusion

Since the loan given to X is for the necessaries suited to the conditions in life of the minor, his assets can be sued to reimburse B. Yes, B can proceed against the assets of X.

Q3. P left his carriage on D's premises. Landlord of D seized the carriage against the rent due from D. P paid the rent and got his carriage released. Can P recover the amount from D?

Sol.

Provison

Section 69 states a person who is interested in the payment of money which another person is bound by law topay, and who therefore pays it, is entitled to get it reimbursed by the other.

Analysis and Conclusion

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

Q4. Explain the term Contingent Contract with reference to the Indian Contract Act, 1872 with the help of an example. Also discuss the rules relating to enforcement of a contingent contract.

Sol.

Or

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

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

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

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

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

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

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

(d) **Contingent on happening of specified event within the fixed time:** Section 35 says that Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, becomes void if, at the expiration of time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

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

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

Q5. What is Contingent Contract? Discuss the essentials of Contingent Contract as per the Indian Contract Act, 1872

Sol.

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

Example: Contracts of Insurance, indemnity and guarantee.

Essentials of a contingent contract

(a) **The performance of a contingent contract would depend upon the happening or non-happening of some event or condition.** The condition may be precedent or subsequent.

(b) **The event referred to, is collateral to the contract.** The event is not part of the contract. The event should be neither performance promised nor a consideration for a promise.

(c) The **contingent event should not be a mere 'will' of the promisor.** The event should be contingent in addition to being the will of the promisor.

(d) The **event must be uncertain.** Where the event is certain or bound to happen, the contract is due to be performed, then it is a not contingent contract.

Q6. X found a wallet in a restaurant. He enquired of all the customers present there but the true owner could not be found. He handed over the same to the manager of the restaurant to keep till the true owner is found. After a week he went back to the restaurant to enquire about the wallet. The manager refused to return it back to X, saying that it did not belong to him.

In the light of the Indian Contract Act, 1872, can X recover it from the Manager?

Sol.

Provision

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

Thus, a finder of lost goods has:

(i) to take proper care of the property as man of ordinary prudence would take

(ii) no right to appropriate the goods and

(iii) to restore the goods if the owner is found.

Analysis and conclusion

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

Q7. What do you mean by Quantum Meruit and state the cases where the claim for Quantum Meruit arises?

1. **Quantum Meruit**: Where **one person has rendered** service to **another in circumstances which indicate** an **understanding between them** that it **is to bepaid for although no particular remuneration has been fixed, the law will infera promise to pay. Quantum Meruit i.e. as much as the party doing the service has deserved.** It covers a case where the party injured by the breach had at time of breach done part but not all of the work which he is bound todo under the contract and seeks to be compensated for the value of the work done. For the application of this doctrine, two conditions must be fulfill ed:

   (1) It is only available if the original contract has been discharged.

   (2) The claim must be brought by a party not in default.

   The object of allowing a claim on **quantum meruit** is to recompensate the party or person for value of work which he has done. Damages are compensatory in nature while quantum meruit is restitutory. It is but reasonable compensation awarded on implication of a contract to remunerate.

The claim for quantum meruit arises in the following cases:

(a) when an **agreement is discovered to be void or when a contract becomes void.**

(b) When **something is done without any intention to do so gratuitously.**

(c) Where there is an **express or implied contract to render services** but there is no agreement as to remuneration.

(d) When one **party abandons or refuses to perform the contract.**

(e) Where a **contract is divisible and the party not in default has enjoyed thebenefit** of part performance.

(f) When an **indivisible contract for a lump sum is completely performed but badly the person who has performed the contract can claim the lump sum, but the** other party can make a deduction for bad work.

Q8. Explain the meaning of 'Quasi-Contracts'. State the circumstances which areidentified as quasi contracts by the Indian Contract Act, 1872.

1. **Quasi-Contracts: Even in the absence of a contract, certain social relationships give rise to certain specific obligations to be performed by certain persons. These are known as "quasi-contracts" as they create some obligations as in the case of regular contracts.** Quasi-contracts are based on the principles of equity, justice and good conscience.

The salient features of quasi-contracts are:

(i) **such a right is always a right to money and generally, though not always, to aliquidated sum of money;**

(ii) **does not arise from any agreement between the parties concerned but the obligation is imposed by law and;**

(iii) **the rights available are not against all the world but against a particularperson orpersons only, so in this respect it resembles to a contractual right.**

Circumstances Identified as Quasi-Contracts:

1. **Claim for necessaries supplied to persons incapable of contracting: Any person supplying necessaries of life to persons who are incapable of contracting is entitled to claim the price from the other person's property.** Similarly, where money is paid to such persons for purchase of necessaries, reimbursement can be claimed.
2. **Payment by an interested person: A person who has paid a sum of money which another person is obliged to pay, is entitled to be reimbursed** by that other person provided that **the payment has been made by him to protect his own interest.**
3. **Obligation of person enjoying benefits of non-gratuitous act: Where a person lawfully does anything for another person, or delivers anything to himnot intending to do so gratuitously and such other person enjoys the benefit thereof,** the latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered.
4. **Responsibility of finder of goods: A person who finds goods belonging to another person and takes them into his custody is subject to same responsibility as if he were a bailee.**
5. **Liability for money paid or thing delivered by mistake or by coercion :A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it.**

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

Q9. PQR, a hospital in Delhi, recruits Dr. A, on contract basis for a period of 3 months. The hospital management promises to pay Dr. A, a lumpsum amount of Rs. 1,00,000 if Dr. A test positive for noval corona virus (Covid 19) during the contract period of 3 months.

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

Sol.

Provision

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

Analaysis and conclusion

In the instant case, the **contract between PQR hospital & Dr. A is a Contingent Contract** because the promisor, PQR hospital need to perform his obligation of paying Dr. A, the lumpsum amount of Rs. 1,00,000, only if he contracts with Covid 19 within a span of 3 months.

In Case, if Dr. A does not contract Covid 19, **then the** contract **stands void automatically**

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CHAPTER

2

The Indian Contract Act, 1872

Unit-7: Contract of Indemnity and Guarantee

PART-A

CONTRACT OF INDEMNITY

'Indemnify' meaning: To make good the loss incurred by another person.

Sec.124 covers the losses caused:

(i) By the conduct of promisor himself or

(ii) By the conduct of any other person.

But as per decision taken in case of Gajanan Moreshwar v/s Moreshwar Madan (1942), losses by conduct of promisee, or accident, or act of God.

Parties to Contract of Indemnity

Indemnifier' - who promises to compensate for the loss,

'Indemnity **Holder'** or **the 'Indemnified'** - whose loss is to be made good

Rights of Indemnity Holder Right to recover

- ❑ all damages,
- ❑ costs of suit,
- ❑ other sums.

CONTRACT OF GUARANTEE

'Guarantee'' meaning:

Contract to perform the promise, or discharge the liability, of a third person in case of his. default.

Parties to Contract of Guarantee

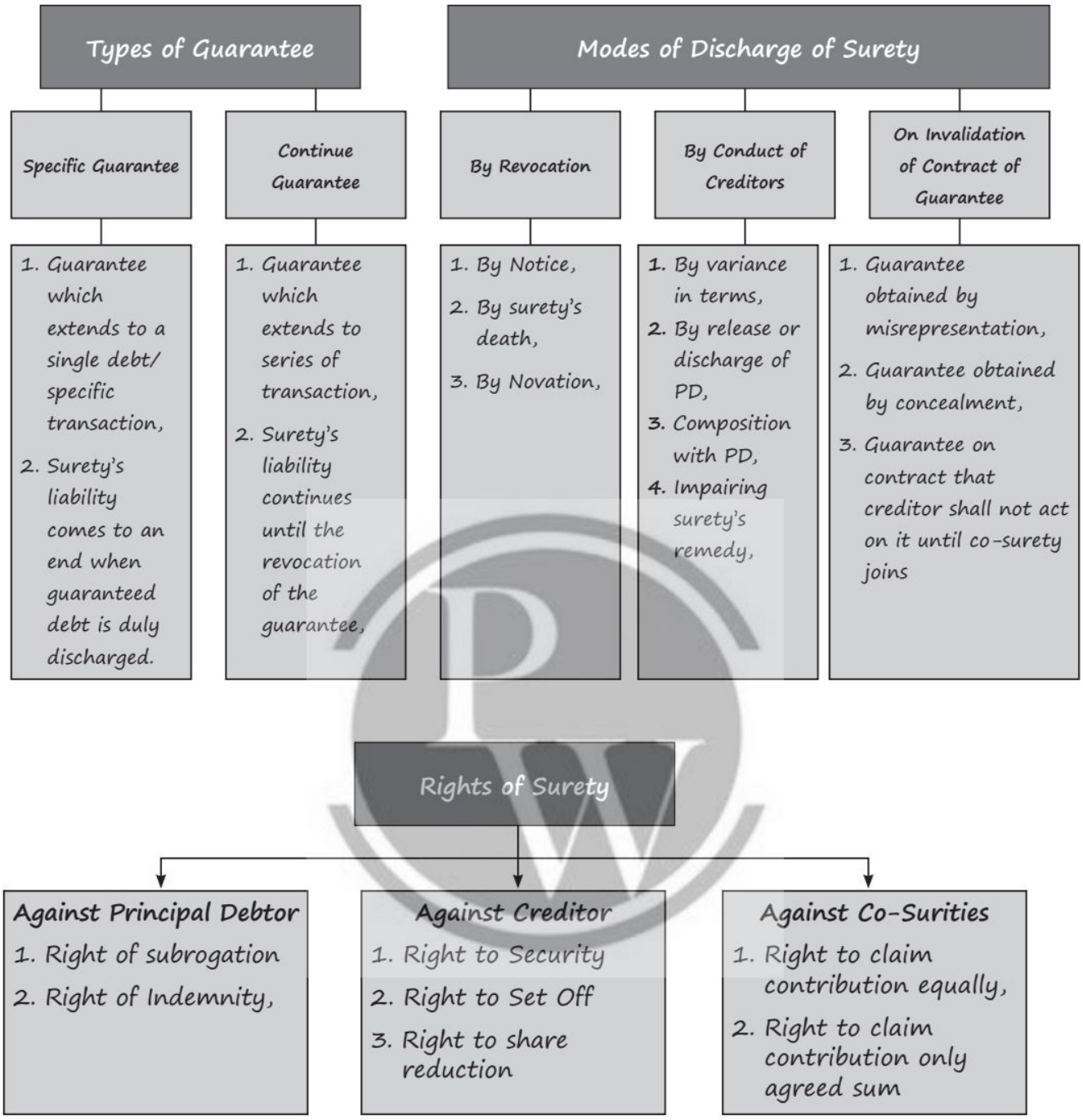
Surety: Who gives the guarantee,

Principal Debtor: In respect of whose default the guarantee is given,

Creditor: To whom the guarantee is given

Essential Features

1. **Purpose:** To secure the payment of a debt
2. **Consideration:** Must be there, may be direct or indirect
3. **Existence of liability:** Liability must be legally enforceable, not time barred.
4. No misrepresentation or concealment
5. May be oral or written.
6. Joining of co-sureties must be if provided in contract.


Types of Guarantee
Modes of Discharge of Surety
Specific Guarantee
Continue Guarantee
By Revocation
By Conduct of Creditors
On Invalidation of Contract of Guarantee
1. Guarantee which extends to a single debt/ specific transaction,
2. Surety's liability comes to an end when guaranteed debt is duly discharged.
1. Guarantee which extends to series of transaction,
2. Surety's liability continues until the revocation of the guarantee,
1. By Notice,
2. By surety's death,
3. By Novation,
1. By variance in terms,
2. By release or discharge of PD,
3. Composition with PD,
4. Impairing surety's remedy,
1. Guarantee obtained by misrepresentation,
2. Guarantee obtained by concealment,
3. Guarantee on contract that creditor shall not act on it until co-surety joins
Rights of Surety
Against Principal Debtor
1. Right of subrogation
2. Right of Indemnity,
Against Creditor
1. Right to Security
2. Right to Set Off
3. Right to share reduction
Against Co-Surities
1. Right to claim contribution equally,
2. Right to claim contribution only agreed sum

DISTINCTION BETWEEN A CONTRACT OF INDEMNITY AND A CONTRACT OF GUARANTEE

Point of distinction	Contract of Indemnity	Contract of Guarantee
Number of party/ parties to the contract	There are only **two parties** namely the indemnifier [promisor] and the indemnified Promisee.	There are **three parties**- creditor, principal debtor and surety.
Nature of liability	The liability of the indemnifier is primary and unconditional.	The liability of the surety is secondary and conditional as the primary liability is that of the principal debtor.
Time of liability	The liability of the indemnifier arises only on the happening of a contingency.	The liability arises only on the non-performance of an existing promise or non-payment of an existing debt
Time to Act	The indemnifier need not act at the request of indemnity holder.	The surety acts at the request of principal debtor.
Right to sue third party	Indemnifier cannot sue a third party for loss in his own name as there is no privity of contract. Such a right would arise only if there is an assignment in his favour.	Surety can proceed against principal debtor in his own right because he gets all the right of a creditor after discharging the debts.
Purpose	Reimbursement of loss	For the security of the creditor
Competency to contract	All parties must be competent to contract.	In the case of a contract of guarantee, where a minor is a principal debtor, the contract is still valid.

QUESTIONS FOR PRACTICE

PART-B

Q1. S asks R to beat T and promises to indemnify R against the consequences. R beats T and is fined ₹ 50,000. Can R claim ₹ 50,000 from S.

Sol.

Provision

A contract of indemnity to be valid must fulfil all the **essentials of a valid contract** which includes:

(a) Offer and acceptance

(b) Intention to create legal obligation

(c) Consideration

(d) Competency to contract

(e) Free consent

(f) Lawful object

(g) The agreement must not be expressly declared to be void. Eg: Agreement in restraint of trade

(h) The terms of the agreement must not be vague or uncertain

(i) The agreement must be capable of performance - An agreement to do an impossible act is void.

(j) Legal formalities

Abalysis and conclusion

R cannot claim ₹50,000 from S because the object of the agreement was unlawful.

Q2. State the rights of the indemnity-holder when sued?

Sol. According to the Section 125 of the Indian Contract Act,1872 the indemnity holder i.e., **promisee** in a **contract of indemnity**, acting within the scope of his authority, is entitled to **recover from the promisor**:

(i) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies.

(ii) all costs which he may be compelled to pay in any such suit, if in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorised him to bring or defend the suit.

(iii) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

Section 125 is by no means exhaustive, which deals only with his rights in the event of his being sued. The indemnity holder has other rights besides those mentioned above. If he has incurred a liability and that liability is absolute, he is entitled to call upon his indemnifier to save him from that liability and to pay it off.

Q3. Define 'Contract of Indemnity' as per the Indian Contract Act, 1872. What are the parties to a contract of indemnity? Give an example to explain the contract of indemnity.

Sol. According to section 124 of the Indian Contract Act, 1872, a contract by which **one party promises to save the other from loss caused to him** by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity."

There are **two parties in this form of contract**. The party who promises to indemnify/ save the other party from loss is known as 'indemnifier, whereas the party who is promised to be saved against the loss is known as 'indemnified' or indemnity holder.

Example: A may contract to indemnify B against the consequences of any proceedings which C may take against B in respect of a sum of ₹5000/- advanced by C to B. In consequence, when B who is called upon to pay the sum of money to C fails to do so, C would be able to recover the amount from A as provided in Section 124.

Q4. Define contract of indemnity and contract of guarantee and state the conditions when guarantee is considered invalid?

Sol. Section 124 of the Indian Contract Act, 1872 says that "A contract by which **one party promises to save the other from loss** caused to him by the conduct of the promisor himself, or the conduct of any person", is called a **"contract of indemnity"**.

Section 126 of the Indian Contract Act says that "A contract to perform the promise made or discharge liability incurred by a third person in case of his default." is called as **"contract of guarantee"**.

The conditions under which the guarantee is invalid or void are stated in section 142,143 and 144 of the Indian Contract Act are:

(i) Guarantee obtained by means of misrepresentation.

(ii) Creditor obtained any guarantee by means of keeping silence as to material circumstances.

(iii) When contract of guarantee is entered into on the condition that the creditor shall not act upon it until another person has joined in it as co-surety and that other party fails to join as such.

Q5. Distinguish between a contract of Indemnity and a contract of Guarantee as per The Indian Contract Act, 1872.

Sol.

1 Point of distinction	Contract of Indemnity	Contract of Guarantee
Number of party/Parties to the contract	There are only two parties namely the indemnifier [promisor] and the indemnified [promisee]	There are three parties creditor, principal debtor and surety.
Nature of liability	The liability of the indemnifier is primary and unconditional.	The liability of the surety is secondary and conditional as the primary liability is that of the principal debtor.
Time of liability	The liability of the indemnifier arises only on the happening of a contingency.	The liability arises only on the non performance of an existing promise or non- payment of an existing debt.
Time to act	The indemnifier need not act at the Request of indemnity holder	The surety acts at the request of principal debtor.
Right to sue third party	Indemnifier cannot sue a third party for loss in his own name as there is no privity of contract. Such a right would arise only if there is an assignment in his favour.	Surety can proceed against principal debtor in his own right because he gets all the right of a creditor after discharging the debts.
Purpose	Reimbursement of loss	For the security of the creditor

Q6. Paul (minor) purchased a smart phone on credit from a mobile dealer on the surety given by Mr. Jack, (a major). Paul did not pay for the mobile. The mobile dealer demanded the payment from Mr. Jack because the contract entered with Paul (minor) is void. Mr. Jack argued that he is not liable to pay the amount since Paul (Principal Debtor) is not liable. Whether the argument is correct under the Indian Contract Act, 1872? What will be your answer if Jack and Paul both are minor?

Sol. In the case of a contract of guarantee, **where a minor is a principal debtor, the contract is still valid.** In the given question, the contract is a valid contract and Jack (major) shall be liable to pay the amount even if Paul (Principal debtor) is not liable (as Paul i s minor). If both Jack and Paul are minors then the agreement of guarantee is void because the surety as well as the principal debtor are incompetent to contract.

Q7. 'Surendra' guarantees 'Virendra' for the transactions to be done between 'Virendra' & 'Jitendra' during the month of March, 2021. 'Virendra' supplied goods of ₹30,000 on 01.03.2021 and of ₹20,000 on 03.03.2021 to 'Jitendra'. On 05.03.2021, 'Surendra' died in a road accident. On 10.03.2021, being ignorant of the death of 'Surendra', 'Virendra' further supplied goods of ₹40,000. On default in payment by 'Jitendra' on due date, 'Virendra' sued on legal heirs of 'Surendra' for recovery of ₹90,000. Describe, whether legal heirs of 'Surendra' are liable to pay ₹90,000 under provisions of Indian Contract Act 1872. What would be your answer, if the estate of 'Surendra' is worth of ₹45,000 only?

Sol.

Provision

According to section 131 of Indian Contract Act 1872, in the absence of a contract to contrary, a continuing **guarantee is revoked by the death** of the surety as to the future transactions. The **estate of deceased** surety, however, **liable for those transactions which had already taken place during the lifetime** of deceased. Surety's estate will **not be liable** for the **transactions taken place after the death** of surety even if the creditor had no knowledge of surety's death.

Analysis and conclusion

In this question, 'Surendra' was surety for the transactions to be done between 'Virendra' & 'Jitendra' during the month of March' 2021. 'Virendra' supplied goods of ₹30,000, ₹20,000 and of ₹40,000 on 01.03.2021, 03.03.2021 and 10.03.02021 respectively. 'Surendra' died in a road accident but this was not in the knowledge of 'Virendra'. When 'Jitendra' defaulted in payment, 'Virendra' filed suit against legal heirs of 'Surendra' for recovery of full amount i.e. ₹90,000.

On the basis of above, it can be said in case of death of surety ('Surendra'), his legal heirs are liable only for those transactions which were entered before 05.03.2021 i.e. for ₹50,000. They are not liable for the transaction done on 10.03.2021 even though Virendra had no knowledge of death of Surendra.

Further, if the worth of the estate of deceased is only ₹45,000, the legal heirs are liable for this amount only.

Q8. Megha advances to Nisha ₹5,000 on the guarantee of Prem. The loan carries interest at ten percent per annum. Subsequently, Nisha becomes financially embarrassed. On Nisha's request, Megha reduces the interest to six per cent per annum and does not sue Nisha for one year after the loan becomes due. Nisha becomes insolvent. Can Megha sue Prem?

Decide your answer in reference to the provisions of the Contract Act, 1872.

Sol.

Provision

According to section 133 of the Indian Contract Act, 1872, where there is **any variance in the terms** of contract between the principal debtor and creditor **without surety's consent**, it would **discharge the surety** in respect **of all transactions** taking place **subsequent to such variance**.

Analysis and Conclusion

Here, in the given situation, Megha cannot sue Prem, because a surety is discharged from liability when, without his consent, the creditor makes any change in the terms of his contract with the principal debtor, no matter whether the variation is beneficial to the surety or does not materially affect the position of the surety.

Q9. Mr. Shashank, is employed as a cashier on a monthly salary of ₹10,000 by XYZ bank for a period of three years. Yash gave surety for Shashank's good conduct. After nine months, the financial position of the bank deteriorates. Then Shashank agrees to accept a lower salary of ₹5,000/- per month from Bank. Two months later, it was found that Shashank has misappropriated cash since the time of his appointment. What is the liability of Yash? Decide your answer in reference to the provisions of the Contract Act, 1872.

Sol.

Provision

According to section 133 of the Indian Contract Act, 1872, where there is any **variance** in the terms of contract between the principal debtor and creditor **without surety's consent**, it would **discharge the surety** in respect of all transactions taking place subsequent to such variance.

Thus, if the creditor makes any variance (i.e. change in terms) without the consent of the surety, then surety is discharged as to the transactions subsequent to the change.

Analysis and Conclusion

In the instant case Yash is liable as a surety for the loss suffered by the bank due to misappropriation of cash by Shashank during the first nine months but not for misappropriations committed after the reduction in salary.

Q10. A contracts with B for a fixed price to construct a house for B within a stipulated time. B would supply the necessary material to be used in the construction. C guarantees A's performance of the contract. B does not supply the material as per the agreement. Is C discharged from his liability?

Sol.

Provision

According to section 134 of the Indian Contract Act, 1872, the **surety is discharged** by any contract between the creditor and the principal debtor, **by which the principal debtor is released** or **by any act** or **omission of the creditor**, the **legal consequence** of which is the **discharge of the principal debtor**.

Analysis and Conclusion

In the given case, B does not supply the necessary material as per the agreement. Hence, C is discharged from his liability.

Q11. Mr. Chetan was appointed as Site Manager of ABC Constructions Company on a two years contract at a monthly salary of ₹50,000. Mr. Pawan gave a surety in respect of Mr. Chetan's conduct. After six months the company was not in position to pay ₹50,000 to Mr. Chetan because of financial constraints. Chetan agreed for a lower salary of ₹30,000 from the company. This was not communicated to Mr. Pawan. Three months afterwards it was discovered that Chetan had been doing fraud since the time of his appointment. What is the liability of Mr. Pawan during the whole duration of Chetan's Appointment.

Sol.

Provision

As per the provisions of Section 133 of the Indian Contract Act, 1872, if the **creditor makes any variance** (i.e. change in terms) **without the consent of the surety**, then **surety is discharged** as to the transactions subsequent to the change.

Analysis and conclusion

In the instant case, Mr. Pawan is liable as a surety for the loss suffered by ABC Constructions company due to misappropriation of cash by Mr. Chetan during the first six months but not for misappropriations committed after the reduction in salary.

Hence, Mr. Pawan, will be liable as a surety for the act of Mr. Chetan before the change in the terms of the contract i.e., during the first six months. Variation in the terms of the contract (as to the reduction of salary) without consent of Mr. Pawan, will discharge Mr. Pawan from all the liabilities towards the act of the Mr. Chetan after such variation

Q12. Manoj guarantees for Ranjan, a retail textile merchant, for an amount of ₹1,00,000, for which Sharma, the supplier may from time to time supply goods on credit basis to Ranjan during the next 3 months.

After 1 month, Manoj revokes the guarantee, when Sharma had supplied goods on credit for ₹40,000. Referring to the provisions of the Indian Contract Act, 1872, decide whether Manoj is discharged from all the liabilities to Sharma for any subsequent credit supply. What would be your answer in case Ranjan makes default in paying back Sharma for the goods already supplied on credit i.e. ₹40,000?

Sol.

Provision

Discharge **of Surety** by Revocation: As per section 130 of the Indian Contract Act, 1872 a specific **guarantee cannot be revoked by the surety if the liability has already accrued**. A **continuing guarantee** may, at any time, be **revoked** by the surety, as to future transactions, by notice to the creditor, but the surety remains liable for transactions already entered into.

Analysis and conclusion

As per the above provisions, liability of Manoj is discharged with relation to all subsequent credit supplies made by Sharma after revocation of guarantee, because it is a case of continuing guarantee.

However, liability of Manoj for previous transactions (before revocation) i.e. for ₹40,000 remains. He is liable for payment of ₹40,000 to Sharma because the transaction was already entered into before revocation of guarantee.

Q13. C, the holder of an over due bill of exchange drawn by A as surety for B, and accepted by B, contracts with X to give time to B. Is A discharged from his liability?

Sol.

Provision

According to Section 136 of the Indian Contract Act, 1872, where a **contract to give time** to the principal debtor is **made by the creditor with a third person** and not with the principal debtor, the **surety is not discharged**.

Analysis and conclusion

In the given question the contract to give time to the principal debtor is made by the creditor with X who is a third person. X is not the principal debtor. Hence, A is not discharged.

Q14. 'A' gives to 'M' a continuing guarantee to the extent of ₹8,000 for the fruits to be supplied by 'M' to 'S' from time to time on credit. Afterwards 'S' became embarrassed and without the knowledge of 'A', 'M' and 'S' contract that 'M' shall continue to supply 'S' with fruits for ready money and that payments shall be applied to the then existing debts between 'S' and 'M'. Examining the provision of the Indian Contract Act, 1872, decide whether 'A' is liable on his guarantee given to M.

Sol.

Provision

Discharge **of surety by variance in terms of contract:** The problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 133. The section provides that any **variance made without the surety's consent** in the terms of the contract between the principal debtor and the creditor, **discharges the surety as to transactions subsequent to the variance**.

Analysis and conclusion

In the given problem, 'M' and 'S' entered into arrangement by entering into a new contract without knowledge of the Surety 'A'. Since, the variance made in the contract is without the surety's consent in the existing contract, as per the provision, 'A' is not liable on his guarantee for the fruits supplied after this new arrangement. The reason for such a discharge is that the surety agreed to be liable for a contract which is no more there now and he is not liable on the altered contract because it is different from the contract made by him.

Q15. Mr. Ram was employed as financer in "Swaraj Ltd" on the surety of his good conduct, given by Mr. Janak, a good friend of the director of the company. Mr. Ram was kept on the salary of ₹45,000 per month. After 3 years, the company went into losses and so company decided for the cost cutting by retrenching of many employees and reducing the salaries of the employees. Mr. Ram was also proposed either to quit the job or continued with the lower salary of ₹35,000 per month. He accepted and continued with the job. After few months, it was reported by accounts department of the company that Mr. Ram manipulated with the funds of the company.

As per the provisions of the Indian Contract Act, 1872, analyse the legal positions of Mr. Janak, in the given situations:

(i) Mr. Ram has manipulated the funds of the company since the time of his appointment.

(ii) Mr. Ram has manipulated the funds of the company since from few months before when he accepted to continue the job on lower salary.

Sol.

Provision

Section 133 of the Indian Contract Act, 1872 deals with the provision related to the **discharge of the surety**. Provisions states that where there is any **variance in the terms** of contract between the principal debtor and creditor **without surety's consent** it would discharge the surety in respect of all transactions taking place subsequent to such variance.

Analysis and conclusion

Following is the answer in the light of the above provision:

(i) In case where, Mr. Ram has manipulated the funds of the company since the time of his appointment. In this case Mr. Janak is liable as a surety for the loss suffered by the Swaraj Company due to manipulation of the funds by Mr. Ram during the three years of his service.

(ii) In case where, Mr. Ram has manipulated the funds of the company since from few months before when he accepted to continue the job on lower salary. In this case, variance in the terms of the contract (i.e., to work on lower salary) was made without surety's consent. For all the transactions taking place subsequent to such variance, shall discharge the surety for the loss suffered by the Swaraj company.

Q16. Mr. CB was invited to guarantee an employee Mr. BD who was previously dismissed for dishonesty by the same employer. This fact was not told to Mr. CB. Later on, the employee embezzled funds. Whether CB is liable for the financial loss as surety under the provisions of the Indian Contract Act, 1872?

Mr. X agreed to give a loan to Mr. Y on the security of four properties. Mr. A gave guarantee against the loan. Actually Mr. X gave a loan of smaller amount on the security of three properties. Whether Mr. A is liable as surety in case Mr. Y failed to repay the loan?

Sol.

Provision

(i) As per section 143 of the Indian Contract Act, 1872, any **guarantee** which the creditor has obtained by **means of keeping silence as to material circumstances, is invalid**.

Analysis and conclusion

In the given instance, Mr. CB was invited to give guarantee of an employee Mr. BD to the same employer who previously dismissed Mr. BD for dishonesty. This fact was not told to Mr. CB. Here, keeping silence as to previous dismissal of Mr. BD for dishonesty is a material fact and if Mr. BD later embezzled the funds of the employer, Mr. CB will not be held liable for the financial loss as surety since such a contract of guarantee entered is invalid in terms of the above provisions.

Provision

(ii) As per the provisions of section 133 of the Indian Contract Act, 1872, **any variance**, made **without the surety's consent**, in the terms of the contract between the principal [debtor] and the creditor, **discharges the surety** as to transactions **subsequent to the variance**.

Analysis and conclusion

In the given instance, the actual transaction was not in terms of the guarantee given by Mr. A. The loan amount as well as the securities were reduced without the knowledge of the surety.

So, accordingly, Mr. A is not liable as a surety in case Y failed to repay the loan

Q17. Satya has given his residential property on rent amounting to ₹25,000 per month to Tushar. Amit became the surety for payment of rent by Tushar. Subsequently, without Amit's consent, Tushar agreed to pay higher rent to Satya. After a few months of this, Tushar defaulted in paying the rent.

Explain the meaning of contract of guarantee according to the provisions of the Indian Contract Act, 1872. State the position of Amit in this regard.

Sol.

(i) Contract of guarantee: As per the provisions of section 126 of the Indian Contract Act, 1872, a contract of guarantee is a contract **to perform the promise made or discharge the liability, of a third person in case of his default.**

Three parties are involved in a contract of guarantee:

- Surety- person who gives the guarantee,
- Principal debtor- person in respect of whose default the guarantee is given,
- Creditor- person to whom the guarantee is given

(ii)

Provision

According to the provisions of section 133 of the Indian Contract Act, 1872, where there is **any variance** in the terms of contract between the principal debtor and creditor **without surety's consent**, it would **discharge the surety** in respect **of all transactions** taking place **subsequent to such variance.**

Analysis and conclusion

In the instant case, Satya (Creditor) cannot sue Amit (Surety), because Amit is discharged from liability when, without his consent, Tushar (Principal debtor) has changed the terms of his contract with Satya (creditor). It is immaterial whether the variation is beneficial to the surety or does not materially affect the position of the surety.

Q18. Mr. D was in urgent need of money amounting to ₹5,00,000. He asked Mr. K for the money. Mr. K lent the money on the sureties of A, B and N without any contract between them in case of default in repayment of money by D to K. D makes default in payment. B refused to contribute, examine whether B can escape liability under the Indian Contract Act, 1872?

Sol.

Provision

Co-sureties **liable to contribute equally** (Section 146 of the Indian Contract act, 1872): Equality of burden is the basis of Co-suretyship. This is contained in section 146 which states that "**when two or more persons are co-sureties for the same debt**, or duty, either **jointly, or severally** and whether under the **same or different contracts** and whether with or without the knowledge of each other, the co-sureties **in the absence of any contract to the contrary**, are **liable**, as between themselves, **to pay** each an **equal share** of the whole debt, or of that part of it which remains unpaid by the principal debtor".

Analysis and conclusion

Accordingly, on the default of D in payment, B cannot escape from his liability. All the three sureties A, B and N are liable to pay equally, in absence of any contract between them.

Q19. 'C' advances to 'B', ₹2,00,000 on the guarantee of 'A'. 'C' has also taken a further security for the same borrowing by mortgage of B's furniture worth ₹2,00,000 without knowledge of 'A'. C' cancels the mortgage. After 6 months 'B' becomes insolvent and 'C' 'sues 'A' his guarantee. Decide the liability of 'A' if the market value of furniture is worth ₹80,000, under the Indian Contract Act, 1872.

Sol.

Provision

Surety's **right to benefit of creditor's securities:** According to section 141 of the Indian Contract Act, 1872, a **surety is entitled to the benefit of every security** which the creditor has against the principal debtor **at the time when the contract** of suretyship is entered into, whether the surety knows of the existence of such security or not; and, **if the creditor loses**, or, **without the consent of the surety**, parts with such security, **the surety is discharged** to the **extent of the value of the security**.

Analysis and conclusion

In the instant case, C advances to B, ₹2,00,000 rupees on the guarantee of A. C has also taken a further security for ₹2,00,000 by mortgage of B's furniture without knowledge of A. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture i.e. ₹80,000 and will remain liable for balance ₹1,20,000.

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CHAPTER

2

The Indian Contract Act, 1872

Unit-8: Bailment and Pledge

PART-A

BAILMENT (SECTION 148-171)

Meaning: Delivery of goods, by one person to another, for some purpose, upon a contract, that they shall, when the purpose is accomplished, be returned or otherwise disposed, according to the directions of the person delivering them.

Parties
- **Bailor:** Who delivers;
- **Bailee:** Who receives

Essentials
1. Agreement,
2. Delivery of goods,
3. For some purpose,
4. Return of goods

Kinds of Bailment

On the basis of benefit
1. For the benefit of Bailor
2. For the benefit of Bailee
3. For the benefit of both

On the basis of consideration
1. Gratuitous-No consideration
2. Non-Gratuitous-For consideration

Gratuitous Bailment: without Consideration, Bailor is liable for known faults Only. All expenses born by Bailor.
Non-Gratuitous Bailment: With Consideration, Bailor is liable for all faults, Extra Ordinary expenses born by Bailor

Duties & Rights

Duties of Bailor
1. Disclose known faults,
2. Bear expenses,
3. Indemnity Bailee,
4. Receive goods. back

Rights of Bailor
1. Terminate bailment,
2. Demand return of goods any time,
3. Claim accretion,
4. Right against third party.

Duties of Bailee
1. Take care of the goods bailed,
2. No unauthorized use of goods,
3. Not mix goods with own goods,
4. Return the goods,
5. Return accretions to goods,
6. Not to set up adverse title

Rights of Bailee
1. Delivery to any of joint bailors,
2. Right to compensation,
3. Claim necessary expenses,
4. Action for wrongful deprivation of goods,
5. Right of lien

Termination of Bailment

1. On expiry of stipulated period,
2. Accomplishment of Specified purpose,
3. Doing anything inconsistent with conditions,
4. Gratuitous Bailment (Any time),
5. By Death,
6. Destruction of subject-matter.

Finder of Lost Good

Duties: Same as of Bailee,
Rights: Lien, Sue for Reward, Sale of Goods.

Lien

Meaning: To retain the goods belonging to another until his claim is satisfied or some debt due to him is repaid,
General Lien: Right to retain any goods in respect of any debt.
Particular Lien: Right to retain any goods in respect of concerned debt only.

PLEDGE (SECTION 171-181)

Meaning: Bailment of goods as security for payment of a debt or performance of a promise.
Parties: Bailor-Pawnor, Bailee-Pawnee

Rights and Duties

Duties of Pawnor

1. Pay Debt,
2. Indemnify Pawnee,
3. Disclose all the faults,
4. Pay extra ordinary expenses,
5. Pay deficit if Pawnee sells goods due to default by Pawnor

Rights of Pawnor

Same as that of Bailor alongwith right of redemption (to recover back the goods by making of the payment of debt)

Duties of Pawnee

1. Take care of the goods bailed,
2. No unauthorized use of goods,
3. Not mix goods with own goods,
4. Return the goods,
5. Return accretions to the goods,
6. Not to set up adverse title

Rights of Pawnee

1. Retain the Pledged Goods,
2. Retention for Subsequent Debts,
3. Recover Extraordinary Expenses,
4. Right on Default by Pawnor

Pledge by Non-owner

1. Pledge by Mercantile Agent,
2. Pledge by Person in Possession under voidable contract,
3. Pledge where Pawnor has only a Limited Interest,
4. Pledge by co-owner in possession,
5. Pledge by buyer or seller in possession

DISTINCTION BETWEEN BAILMENT AND PLEDGE

Basis of Distinction	Bailment	Pledge
Meaning	Transfer of goods by one person to another for some specific purpose is known as bailment.	Transfer of goods from one person to another as security for repayment of debt is known as the pledge.
Parties	The person delivering the goods under a contract of bailment is called as "Bailor". The person to whom the goods are delivered under a contract of bailment is caled as "Bailee".	The person who delivers the good as security is called the "Pawnor". The person to whom the goods are delivered as security is called the "pawnee".
Purpose	Bailment may be made for ary purpose (as specified in the contract of bailment, eg. for safe custody. for repairs, for processing of goods).	Pledge is made for the purpose of delivering the goods as security for payment of a debt or performance of a promise.
Consideration	The bailment may be made for consideration or without consideration.	Pledge is always made for a consideration.
Right to sell the goods	The bailee has no right to sell the goods even if the charges of baiment are not paid to him. The bailee's rights are limited to suing the bailor for his dues or to exercise lien on the goods bailed.	The pawnee has right to sell the goods if the pawnof fails to redeem the goods.
Right to use of goods	Bailee can use the goods only for a purpose specified in the contract of bailment and not otherwise.	Pledgee or Pawnee cannot use the goods pledged.

QUESTIONS FOR PRACTICE

PART-B

Q1. State the essential elements of a contract of bailment.

Sol. Essential elements of a contract of bailment: Section 148 of the Indian Contract Act, 1872 defines the term 'Bailment'. A 'bailment' the pledges are the delivery of goods by one person to another for some purpose upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

The essential elements of the contract of the bailment are:

1. Delivery of goods: The essence of bailment is delivery of goods by one person to another.
2. Bailment is a contract: In bailment, the delivery of goods is upon a contract that when the purpose is accomplished, the goods shall be returned to the bailor.
3. Return of goods in specific: The goods are delivered for some purpose and it is agreed that the specific goods shall be returned.
4. Ownership of goods: In a bailment, it is only the possession of goods which is transferred and the bailor continues to be the owner of the goods.
5. Property must be movable: Bailment is only for movable goods and never for immovable goods or money.

Q2. Examine whether the following constitute a contract of 'Bailment' under the provisions of the Indian Contract Act, 1872:

(i) V parks his car at a parking lot, locks it, and keeps the keys with himself.

(ii) Seizure of goods by customs authorities.

Sol.

Provision

As per Section 148 of the Act, bailment is the delivery of goods by one person to another for some purpose, upon a contract, that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

For a bailment to exist the bailor must give possession of the bailed property and the bailee must accept it. There must be a transfer in ownership of the goods.

Analysis and conclusion

(i) No. Mere custody of goods does not mean possession. In the given case, since the keys of the car are with V, Section 148, of the Indian Contract Act, 1872 shall not applicable.

(ii) Yes, the possession of the goods is transferred to the custom authorities. Therefore, bailment exists and section 148 is applicable.

Q3. Mrs. Shivani delivered her old silver jewellery to Mr. Y a Goldsmith, for the purpose of making anklet out of it. Every evening she used to receive the unfinished good (anklet) to put it into box kept at Mr. Y's Shop. She kept the key of that box with herself. One night, the anklet was stolen from that box. Was there a contract of bailment? Whether the possession of the goods (actual or constructive) delivered, constitute contract of bailment or not? Give your answer as per the provisions of the Indian Contract Act, 1872.

Sol.

Provision

Section 148 of Indian Contract Act 1872 defines 'Bailment' as the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the direction of the person delivering them.

According to Section 149 of the Indian Contract Act, 1872, the delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf. Thus, delivery is necessary to constitute bailment.

Analysis and conclusion

Thus, the mere keeping of the box at Y's shop, when Mrs. Shivani herself took away the key cannot amount to delivery as per the meaning of delivery given in the provision in section 149.

Therefore, in this case there is no contract of bailment as Mrs. Shivani did not deliver the complete possession of the good by keeping the keys with herself.

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

Sol.

Provision

Section 148 of Indian Contract Act 1872 defines 'Bailment' as the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the direction of the person delivering them.

According to Section 149 of the Indian Contract Act, 1872, the delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf. Thus, delivery is necessary to constitute bailment.

Analysis and conclusion

Thus, the mere keeping of the box at Y's shop when Mrs. A herself took away the key cannot amount to delivery as per the meaning of delivery given in the provision in section 149. Therefore, in this case there is no contract of bailment as Mrs. A did not deliver the complete possession of the good by keeping the keys with herself.

Q5. On the basis of reward, what are various categories of bailment?

Sol. On the basis of reward, bailment can be classified into two types:

(i) Gratuitous Bailment: The word gratuitous means free of charge. So, a gratuitous bailment is one when the provider of service does it gratuitously i.e. free of charge. Such bailment would be either for the exclusive benefits of bailor or bailee.

(ii) Non-Gratuitous Bailment: Non gratuitous bailment means where both the parties get some benefit i.e. bailment for the benefit of both bailor & bailee

Q6. Ramesh hires a carriage of Suresh and agrees to pay ₹1500 as hire charges. The carriage is unsafe, though Suresh is unaware of it. Ramesh is injured and claims compensation for injuries suffered by him. Suresh refuses to pay. Discuss the liability of Suresh.

Sol.

Provision

Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 150.

The section provides that if the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Analysis and conclusion

Accordingly, applying the above provisions in the given case Suresh is responsible to compensate Ramesh for the injuries sustained even if he was not aware of the defect in the carriage.

Q7. Ashley bails his jewelry with Barn on the condition to safeguard in bank's safe locker. However, Barn kept it in safe locker at his residence, where he usually keeps his own jewelry. After a month all jewelry was lost in a religious riot. Ashley filed a suit against Barn for recovery. Referring to provisions of the Indian Contract Act, 1872, state whether Ashely will succeed.

Sol.

Provision

According to section 151 of the Indian Contract Act, 1872, in all cases of bailment, the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

According to section 152 of the Indian Contract Act, 1872, the bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.

Analysis and conclusion

Thus, Barn is liable to compensate Ashley for his negligence to keep jewelry at his residence. Here, Ashley and Barn agreed to keep the jewelry at the Bank's safe locker and not at the latter's residence.

Q8. Amit lends a horse to Bimal for his own riding only. However, Bimal allows Chinku, a member of his family to ride the horse. Chinku rides the horse with care, but the horse falls and is injured.

As per the provisions of the Indian Contract Act, 1872, analyse the liability of Bimal in the given situation.

Sol.

Provision

According to section 154 of the Indian Contract Act, 1872, if the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Analysis and conclusion

Hence, Bimal is liable to make compensation to Amit for the injury done to the horse.

Q9. Amar bailed 50 kg of high quality sugar to Srijith, who owned a kirana shop, promising to give ₹200 at the time of taking back the bailed goods. Srijith's employee, unaware of this, mixed the 50 kg of sugar belonging to Amar with the sugar in the shop and packaged it for sale when Srijith was away. This came to light only when Amar came asking for the sugar he had bailed with Srijith, as the price of the specific quality of sugar had trebled. What is the remedy available to Amar under the Indian Contract Act, 1872?

Sol.

Provision

According to Section 157 of the Indian Contract Act, 1872, if the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Analysis and conclusion

In the given question, Srijith's employee mixed high quality sugar bailed by Amar and then packaged it for sale. The sugar when mixed cannot be separated. As Srijith's employee has mixed the two kinds of sugar, he (Srijith) must compensate Amar for the loss of his sugar.

Q10. What is the liability of a bailee making unauthorized use of goods bailed?

Sol. **Liability of bailee making unauthorised use of goods bailed: According to section 154 of the Indian Contract Act, 1872**, if the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Q11. Mr. Dhannaseth delivers a rough blue sapphire to a jeweler, to be cut and polished. The jeweler carries out the job accordingly. However, now Mr. Dhannaseth refuses to make the payment and wants his blue sapphire back. The jeweler denies the delivery of goods without payment. Examine

Sol.

Provision

According to section 170 of the Indian Contract Act, 1872, where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Thus, in accordance with the purpose of bailment if the bailee by his skill or labour improves the goods bailed, he is entitled for remuneration for such services. Towards such remuneration, the bailee can retain the goods bailed if the bailor refuses to pay the remuneration. Such a right to retain the goods bailed is the right of particular lien. He however does not have the right to sue.

Where the bailee delivers the goods without receiving his remuneration, he has a right to sue the bailor.

Analysis and conclusion

In such a case the particular lien may be waived. The particular lien is also lost if the bailee does not complete the work within the time agreed.

Hence, in the given situation the jeweller is entitled to retain the stone till he is paid for the services he has rendered.

Q12. Raj gives his umbrella to Manoj during raining season to be used for two days during Examinations. Manoj keeps the umbrella for a week. While going to Raj's house to return the umbrella, Manoj accidently slips and the umbrella is badly damaged. Taking into account the provisions of the Indian Contract Act, 1872, who will bear the loss and why?

Sol.

Provision

It is the duty of bailee to return, or deliver according to the bailor's directions, the goods bailed without demand, as soon as the time for which they were bailed, has expired, or the purpose for which they were bailed has been accomplished. [Section 160 of the Indian Contract Act, 1872]

If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to bailor for any loss, destruction or deterioration of goods from that time. [Section 161]

Analysis and conclusion

In the instant case, Manoj shall have to bear the loss since he failed to return the umbrella within the stipulated time and Section 161 clearly says that where a bailee fails to return the goods within the agreed time, he shall be responsible to the bailor for any loss, destruction or deterioration of the goods from that time notwithstanding the exercise of reasonable care on his part.

Q13. Megha lends a sum of ₹20,000 to Bhim, on the security of two shares of a Prema Limited on 1st April 2019. On 15th June, 2019, the company issued two bonus shares. Bhim returns the loan amount of ₹20,000 with interest but Megha returns only two shares which were pledged and refuses to give the two bonus shares. Advise Bhim in the light of the provisions of the Indian Contract Act, 1872.

Sol.

Provision

Bailee's Duties and Liabilities: The problem as asked in the question is based on the provisions of Section 163(4) of the Indian Contract Act, 1872. As per the section, "in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, any increase or profit which may have accrued from the goods bailed."

Analysis and conclusion

In the given question, Megha received 2 bonus shares on the 2 pledged shares of Prema Limited. Applying the provisions of the Indian Contract Act, 1872, to the given case, the bonus shares are an increase on the shares pledged by Bhim to Megha. So, Megha is liable to return the shares along with the bonus shares.

Hence Bhim the bailor, is entitled to receive the original shares as well as bonus shares (after he has repaid the loan amount).

Q14. What are the rights available to the finder of lost goods under Section 168 and Section 169 of the Indian Contract Act, 1872.

Sol. As per the provisions of section 168 and 169 of the Indian Contract Act, 1872, the finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner.

But 'finder of lost goods' can ask for reimbursement for expenditure incurred for preserving the goods and also for searching the true owner. If the real owner refuses to pay compensation, the 'finder' cannot sue but retain the goods so found.

Further, where the real owner has announced any reward, the finder is entitled to receive the reward. The right to collect the reward is a primary and a superior right even more than the right to seek reimbursement of expenditure.

The finder though has no right to sell the goods found in the normal course; he may sell the goods if the real owner cannot be found with reasonable efforts or if the owner refuses to pay the lawful charges subject to the following conditions:

(i) when the article is in danger of perishing and losing the greater part of the value or

(ii) when the lawful charges of the finder amounts to two-third or more of the value of the article found.

Q15. Mr. Stefen owns a chicken firm near Gurgaon, where he breeds them and sells eggs and live chicken to retail shops in Gurgaon. Mr. Flemming also owns a similar firm near Gurgaon, doing the same business. Mr. Flemming had to go back to his native place in Australia for one year. He needed money for travel so he had pledged his firm to Mr. Stefen for one year and received a deposit of ₹25 lakhs and went away. At that point of time, stock of live birds were 100,000 and eggs 10,000. The condition was that when Flemming returns, he will repay the deposit and take possession of his firm with live birds and eggs.

After one year Flemming came back and returned the deposit. At that time there were 109,000 live birds (increase is due to hatching of eggs out of 10,000 eggs he had left), and 15,000 eggs.

Mr. Stefen agreed to return 100,000 live birds and 10,000 eggs only.

State the duties of Mr. Stefen as Pawnee and advise Mr. Flemming about his rights in the given case.

Sol.

Provision

According to section 163 of the Indian Contract Act, 1872, in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

Analysis and conclusion

In the given question, when Mr. Flemming returned from Australia there were 1,09,000 live birds and 15,000 eggs (1,00,000 birds and 10,000 eggs were originally deposited by Mr. Flemming). Mr. Stefen agreed to return 1,00,000 live birds and 10,000 eggs only and not the increased number of live birds and eggs.

In the light of the provision of law and facts of the question, following are the answers:

Duties of Mr. Stefen: Mr. Stefen (pawnee) is bound to deliver to Mr. Flemming (pawnor), any increase or profit (9,000 live birds and 5,000 eggs) which has occurred from the goods bailed (i.e the live birds and eggs).

Right of Mr. Flemmimg: Mr. Flemming is entitled to recover from Pawnee any increase in goods so pledged

Q16. Radheshyam borrowed a sum of ₹50,000 from a Bank on the security of gold on 1.07.2019 under an agreement which contains a clause that the bank shall have a right of particular lien on the gold pledged with it. Radheshyam thereafter took an unsecured loan of ₹20,000 from the same bank on 1.08.2019 for three months. On 30.09.2019 he repaid entire secured loan of ₹50,000 and requested the bank to release the gold pledged with it. The Bank decided to continue the lien on the gold until the unsecured loan is fully repaid by Radheshyam. Decide whether the decision of the Bank is valid within the provisions of the Indian Contract Act, 1872 ?

Sol.

Provision

General lien of bankers: According to section 171 of the Indian Contract Act, 1872, bankers, factors, wharfingers, attorneys of a High Court and policy brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to the effect.

Section 171 empowers the banker with general right of lien in absence of a contract whereby it is entitled to retain the goods belonging to another party, until all the dues are discharged.

Analysis and conclusion

Here, in the first instance, the banker under an agreement has a right of particular lien on the gold pledged with it against the first secured loan of ₹50,000/-, which has already been fully repaid by Radheshyam.

Accordingly, Bank's decision to continue the lien on the gold until the unsecured loan of ₹20,000/- (which is the second loan) is not valid.

Q17. Mr. Avinash wanted a loan for expanding his business, from ABC Bank. Mr. Avinash has pledged the stock of his business to obtain the loan from bank. However, the expansion of business did not reap the desired results and Mr. Avinash was not able to repay the loan. Now, ABC bank wants to retain the stock for adjustment of their loan. Advise, ABC Bank whether they can retain the stock for the adjustment of their loan and also for payment of interest. Give your answer as per the provisions of the Contract Act, 1872.

Sol.

Provision

According to section 173 of the Indian Contract Act, 1872, the pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest, of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

Analysis and conclusion

Hence, ABC Bank can retain the stock of business of Mr. Avinash, not only for adjustment of the loan but also for payment of interest.

Q18. Give four differences between Bailment and Pledge

Sol. Distinction between bailment and pledge: The following are the distinction between bailment and pledge:

1. **As to purpose:** Pledge is a variety of bailment. Under pledge goods are bailed as a security for a loan or a performance of a promise. In regular bailment the goods are bailed for other purpose than the two referred above. The bailee takes them for repairs, safe custody etc.
2. **As to right of sale:** The pledgee enjoys the right to sell only on default by the pledgor to repay the debt or perform his promise, that too only after giving due notice. In bailment the bailee, generally, cannot sell the goods. He can either retain or sue for non-payment of dues.
3. **As to right of using goods:** Pledgee has no right to use goods. A bailee can, if the terms so provide, use the goods.
4. **Consideration:** In pledge there is always a consideration whereas in a bailment there may or may not be consideration.
5. **Discharge of contract:** Pledge is discharged on the payment of debt or performance of promise whereas bailment is discharged as the purpose is accomplished or after specified time.

Q19. (i) Srushti acquired valuable diamond at a very low price by a voidable contract under the provisions of the Indian Contract Act, 1872. The voidable contract was not rescinded. Srushti pledged the diamond with Mr. VK. Is this a valid pledge under the Indian Contract Act, 1872?

(ii) Whether a Pawnee has a right to retain the goods pledged.

Sol.

Provision

(i) Pledge by person in possession under voidable contract [Section 178A of the Indian Contract Act, 1872]: When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A, but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

Analysis and conclusion

Therefore, the pledge of diamond by Srushti with Mr. VK is valid.

(ii) Right of retainer [Section 173 of the Indian Contract Act, 1872]: Yes, the pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest, of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

Q20. As per the Indian Contract Act, 1872, answer the following:

(i) Definition of Pledge, pawnor and pawnee

(ii) Essential characteristics of contract of pledge

Sol.

(i) "Pledge", "pawnor" and "pawnee" defined [Section 172]:

The bailment of goods as security for payment of a debt or performance of a promise is called "pledge". The bailor is in this case called the "pawnor". The bailee is called the "pawnee".

(ii) Since Pledge is a special kind of bailment, all the essential of bailment are also essentials of Pledge. Apart from that, the characteristics of the pledge are:

(a) There shall be a bailment of security against payment or performance of the promise.

(b) The subject matter of pledge is goods.

(c) Goods pledged for shall be in existence

(d) There shall be delivery of goods from pledger to pledgee.

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CHAPTER

2

The Indian Contract Act, 1872

Unit-9: Agency

PART-A

AGENCY (SECTION 172-238)

Agency : Relation between an agent and his principal created by an express/ implied agreement authorising an agent by his principal to create contractual relations with third parties.

Agent: Person employed to do any act for another, or to represent another.

Principal: person for whom such act is done or who is so represented.

Who can be Agent: ary person including minor, Person of Unsound mind

Who can appoint an Agent: Major, Person of sound mind

Modes of creation of Agency

- By Operation of Law
- **By Implied Agreement**
  a. Agency by Estoppel or holding out,
  b. By Necessity
- By Express Agreement
- By Ratification
  - Essentials for Valid Ratification
    a. May be express or implied;
    b. Full knowledge of facts;
    c. Whole transaction must be ratified,
    d. Ratification not put a third party to damages;
    e. Within reasonable time;
    f. Communication;
    g. Act to be ratified must be valid

Extent of Agent's Authority

1. An agent, having an authority to do an act, has authority to do every lawful thing which is necessary in order to do such act.
2. An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course, of conducting such business.
3. In emergency, an agent has authority to do all such acts for the purpose of protecting his principal from loss.

Sub-Agent

A person who is appointed by and acts under the control and direction of original agent.

Rules of Sub-Agent

1. Work under control and directions of agent.
2. Agent delegates a part of his own duties to Sub Agent.
3. No privity of contract between principal and sub-agent.
4. Sub-agent is responsible to the agent only.
5. Agent is responsible to the principal for the acts of the sub- agent.
6. Sub-agent has no right of action against the principal for remuneration due to him.

Substituted Agent

A person appointed by agent to act for principal with knowledge and consent of principal.

Rules of Substituted Agent

1. Works under the instructions of the principal.
2. Agent does not delegate any part of his task to a substituted agent.
3. Privity of contract exists between a principal and a substituted agent.
4. Responsible to the principal.
5. Agent is not responsible to the principal for the acts of the substituted agent
6. Substitutec agent can sue the principal for remuneration due to him.

THE INDIAN CONTRACT ACT, 1872

Rights and Duties

Personal Liability of Agent

1. Foreign principal,
2. Undisclosed principal,
3. Principal incompetent
4. Pretended Agent.
5. Acts beyond his authority

Duties of Agent

1. To act according to Principal,
2. Reasonable care,
3. Present proper accounts,
4. Communicate with principal,
5. Not to deal on his own account,
6. Not to make secret profit,
7. Not to delegate authority.
8. Pay sums received,
9. Not to Mis-use information obtained

Rights of Agent

1. Right of Retainer,
2. To receive agreed remuneration,
3. Right of lien,
4. Right of indemnification,
5. Right of compensation for injuries.

Termination of Agency

1. By Revocation
2. By Renunciation by agent
1. On completion of business.
4. On death or insanity of Principal or Agent
5. Principal's insolvency
6. On expiry of time

DIFFERENCE BETWEEN A SUB-AGENT AND A SUBSTITUTED AGENT

Both a sub-agent and a substituted agent are appointed by the agent, But, however, the following are the points of distinction between the two.

S.no	Sub Agent	Substituted Agent
(i)	A sub-agent does his work under the control and directions of agent.	A substituted agent works under the instructions of the principal.
(ii)	The agent not only appoints a sub-agent but also delegates to him a a part of his own duties.	The agent does not delegate any part of his task to a substituted agent.
(iii)	There is no privity of contract between the principal and the sub- agent.	Privity of contract is established between a principal and a substituted agent.
(iv)	The sub-agent is responsible to the agent alone and is not generally responsible to the principal.	A substituted agent is responsible to the principal and not to the original agent who appointed him
(v)	The agent is responsible to the principal for the acts of the sub- agent.	The agent is not responsible to the principal for the acts of the substituted agent.
(vi)	The sub-agent has no right of action against the principal for remuneration due to him.	The substituted agent can sue the principal for remuneration due to him.
(vii)	Sub-agents may be improperly appointed.	Substituted agents can never be improperly appointed.
(viii)	The agent remains liable for the acts of the sub-agent as long as the sub-agency continues.	The agent's duty ends once he has named the substituted agent.

QUESTIONS FOR PRACTICE

PART-B

Q1. A appoints M, a minor, as his agent to sell his watch for cash at a price not less than ₹700. M sells it to D for ₹350. Is the sale valid? Explain the legal position of M and D, referring to the provisions of the Indian Contract Act, 1872.

Sol.

Provision

According to the provisions of Section 184 of the Indian Contract Act, 1872, as between the principal and a third person, any person, even a minor may become an agent. But no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal. Thus, if a person who is not competent to contract is appointed as an agent, the principal is liable to the third party for the acts of the agent.

Analysis and conclusion

Thus, in the given case, D gets a good title to the watch. M is not liable to A for his negligence in the performance of his duties.

Q2. Explain the following as per the provisions of the Indian Contract Act, 1872

(i) What is the meaning of 'Agent' and 'Principal'?

(ii) Who can appoint an agent.

Sol.

(i) **Agent:** means a person employed to do any act for another or to represent another in dealing with the third persons and

The principal: means a person for whom such act is done or who is so represented.

(ii) **Who may employ an agent:** According to section 183 of the Indian Contract Act, 1872, "any person who has attained majority according to the law to which he is subject, and who is of sound mind, may employ an agent." Thus, a minor or a person of unsound mind cannot appoint an agent.

Q3. State with reason whether the following statement is correct or incorrect: Ratification of agency is valid even if knowledge of the principal is materially defective

Sol. **Incorrect:** Section 198 of the Indian Contract Act, 1872 provides that for a valid ratification, the person who ratifies the already performed act must be without defect and have clear knowledge of the facts of the case. If the principal's knowledge is materially defective, the ratification is not valid and hence no agency.

Q4. Mr. Navin owns a big car and has leased his car to Mrs. Susie. The lease agreement is terminable on three month's notice. Mr. Bhalla, not being authorised by Mr. Navin, demands on behalf of Mr. Navin, the delivery of the car and gives a notice of termination of lease agreement to Mrs. Susie who was in possession of the car at that time. Examine whether Mr. Navin can ratify the notice sent by Mr. Bhalla. Give your answer as per the provisions of the Contract Act, 1872.

Sol.

Provision

According to section 200 of the Indian Contract Act, 1872, an act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

Analysis and conclusion

In other words, when the interest of third parties is affected, the principle of ratification does not apply. Ratification cannot relate back to the date of contract if third party has in the intervening time acquired rights. Thus, in the instant case the notice cannot be ratified by Navin, so as to be binding on Susie.

Q5. What is the meaning of 'Agency by estoppel'? What are the essential conditions for creation of an agency by estoppel? Give your answer with respect to the provisions the Indian Contract Act, 1872.

Sol. An agency by estoppel is based on the principle of estoppel. The principle of estoppel lays down that "when one person by declaration (representation), act or omission has intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, he shall not be allowed to deny his previous statement or he shall be stopped to deny his previous statement or conduct".

The agency by Estoppel is provided under section 237 of the Indian Contract Act. Section 237 states: "When an agent has without authority done acts or incurred obligations to third persons on behalf of his principal the principal is bound by such acts or obligations if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority".

According to section 237 of the Contract Act, an agency by estoppel may be created when following essentials are fulfilled:

(i) the principal must have made a representation;

(ii) the representation may be express or implied;

(iii) The representation must state that the agent has an authority to do certain act although really he has no authority;

(iv) The principal must have induced the third person by such representation; and

(v) The third person must have believed the representation and made the contract on the belief of such representation.

Q6. A rented his house to B on lease for 3 years. The lease agreement is terminable on 3 month notice by either party.

C, the son of A, being in need of a separate house to live, served a notice on B, without any authority, to vacate the house within a month and requested his father A to ratify his action. Examine whether it shall be valid for A to ratify the action of C taking into account the provisions of the Indian Contract Act, 1872?

Sol.

Provision

As per section 200 of the Indian contract Act, 1872, an act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

Analysis and conclusion

In the given instance, A rented his house to B on lease for 3 years. The lease agreement was terminable on three months' notice. C, son of A, gives notice of termination to B, without any authority, to vacate the house within a month. Also requested A to ratify his action. Here by the act of C, the interest of B is affected, therefore the principle of ratification does not apply.

Hence, it's not valid for A to ratify the action of C, thereby causing the notice to be binding on B.

Q7. Rahul, a transporter was entrusted with the duty of transporting tomatoes from a rural farm to a city by Aswin. Due to heavy rains, Rahul was stranded for more than two days. Rahul sold the tomatoes below the market rate in the nearby market where he was stranded fearing that the tomatoes may perish. Can Aswin recover the loss from Rahul on the ground that Rahul had acted beyond his authority?

Sol.

Provision

Agent's authority in an emergency (Section 189 of the Indian Contract Act, 1872): An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

Analysis and conclusion

In the instant case, Rahul, the agent, was handling perishable goods like 'tomatoes' and can decide the time, date and place of sale, not necessarily as per instructions of the Aswin, the principal, with the intention of protecting Aswin from losses. Here, Rahul acts in an emergency as a man of ordinary prudence, so Aswin will not succeed against him for recovering the loss.

Q8. Aarthi is the wife of Naresh. She purchased some sarees on credit from M/s Rainbow Silks, Jaipur.

M/s Rainbow Silks, Jaipur demanded the amount from Naresh. Naresh refused. M/s Rainbow Silks, Jaipur filed a suit against Naresh for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether M/s Rainbow Silks, Jaipur would succeed?

Sol.

Provision

The situation asked in the question is based on the provisions related with the modes of creation of agency relationship under the Indian Contract Act, 1872.

Agency may be created by a legal presumption; in a case of cohabitation by a married woman (i.e. wife is considered as an implied agent of her husband). If wife lives with her husband, there is a legal presumption that a wife has authority to pledge her husband's credit for necessaries.

But the legal presumption can be rebutted in the following cases:

(i) Where the goods purchased on credit are not necessaries.

(ii) Where the wife is given sufficient money for purchasing necessaries.

(iii) Where the wife is forbidden from purchasing anything on credit or contracting debts.

(iv) Where the trader has been expressly warned not to give credit to his wife.

If the wife lives apart for no fault on her part, wife has authority to pledge her husband's credit for necessaries. This legal presumption can be rebutted only in cases (iii) and (iv) above.

Analysis and conclusion

Applying the above conditions in the given case M/s Rainbow Silks will succeed. It can recover the said amount from Naresh if sarees purchased by Aarthi are necessaries for her.

Q9. What is agent's authority in case of an emergency. What are the essential conditions to be satisfied to constitute a valid emergency. Give your answer as per the provisions of the Indian Contract Act, 1872.

Sol. An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

To constitute a valid agency in an emergency, following conditions must be satisfied.

(i) Agent should not be a in a position or have any opportunity to communicate with his principal within the time available.

(ii) There should have been actual and definite commercial necessity for the agent to act promptly.

(iii) The agent should have acted bonafide and for the benefit of the principal.

(iv) The agent should have adopted the most reasonable and practicable course under circumstances, and

(v) The agent must have been in possession of the goods belonging to his principal and which are the subject of contract.

Q10. Comment on the following 'Principal is not always bound by the acts of a sub-agent.'

Sol. The statement is correct. Normally, a sub-agent is not appointed, since it is a delegation of power by an agent given to him by his principal. The governing principle is, a delegate cannot delegate.' (Latin version of this principle is, "delegates non potest delegare"). However, there are certain circumstances where an agent can appoint sub-agent. In case of proper appointment of a sub-agent, by virtue of Section 192 of the Indian Contract Act, 1872 the principal is bound by and is held responsible for the acts of the sub-agent. Their relationship is treated to be as if the sub-agent is appointed by the principal himself.

However, if a sub-agent is not properly appointed, the principal shall not be bound by the acts of the sub- agent. Under the circumstances the agent appointing the sub-agent shall be bound by these acts and he (the agent) shall be bound to the principal for the acts of the sub-agent.

Q11. Mr. Bhalla instructs Aman, a merchant, to buy a ship for him. Aman employs a ship surveyor of good reputation to choose a ship for Mr. Bhalla. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. Now, Mr. Bhalla holds Aman responsible for the same. Examine as per the provisions of the Contract Act, 1872, whether Aman is responsible to Mr. Bhalla.

Sol.

Provision

According to section 194 of the Indian Contract Act, 1872, where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Further, as per section 195, in selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Analysis and conclusion

Thus, in the present case, Aman is not, but the surveyor is, responsible to Mr. Bhalla.

Q12. Azar consigned electronic goods for sale to Aziz. Aziz employed Rahim a reputed auctioneer to sell the goods consigned to him through auction. Aziz authorized Rahim to receive the proceeds and transfer those proceeds once in 45 days. Rahim sold goods on auction for ₹2,00,000 but before transferring the proceeds of the auction, became insolvent. Assess the liability of Aziz according to the provisions of the Indian Contract Act, 1872.

Sol.

Provision

According to section 195 of the Contract Act, 1872, in selecting an agent (substituted) for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Thus, while selecting a "substituted agent" the agent is bound to exercise same amount of diligence as a man of ordinary prudence and if he does so he will not be responsible for acts or negligence of the substituted agent.

Analysis and conclusion

Hence, if Aziz has exercised same amount of diligence as a man of ordinary prudence would, he shall not be responsible to Azar for the proceeds of the auction.

Q13. Mr. Ahuja of Delhi engaged Mr. Singh as his agent to buy a house in West Extension area. Mr. Singh bought a house for ₹20 lakhs in the name of a nominee and then purchased it himself for ₹24 lakhs. He then sold the same house to Mr. Ahuja for ₹26 lakhs. Mr. Ahuja later comes to know the mischief of Mr. Singh and tries to recover the excess amount paid to Mr. Singh. Is he entitled to recover any amount from Mr. Singh? If so, how much? Explain.

Sol.

Provision

The problem in this case, is based on the provisions of the Indian Contract Act, 1872 as contained in Section 215 read with Section 216. The two sections provide that where an agent without the knowledge of the principal, deals in the business of agency on his own account, the principal may:

(i) repudiate the transaction, if the case shows, either that the agent has dishonestly concealed any material fact from him, or that the dealings of the agent have been disadvantageous to him.

(ii) claim from the agent any benefit, which may have resulted to him from the transaction.

Analysis and conclusion

Therefore, based on the above provisions, Mr. Ahuja is entitled to recover ₹6 lakhs from Mr. Singh being the amount of profit earned by Mr. Singh out of the transaction.

Q14. ABC Ltd. sells its products through some agents and it is not the custom in their business to sell the products on credit. Mr. Pintu, one of the agents sold goods of ABC Ltd. to M/s. Parul Pvt. Ltd. (on credit) which was insolvent at the time of such sale. ABC Ltd. sued Mr. Pintu for compensation towards the loss caused due to sale of products to M/s. Parul Pvt. Ltd. Will ABC Ltd. succeed in its claim?

Sol.

Provision

To conduct the business of agency according to the principal's directions (Section 211 of the Indian Contract Act, 1872): An agent is bound to conduct the business of his principal according to the direction given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

Analysis and conclusion

In the present case, Mr. Pintu, one of the agents, sold goods of ABC Ltd. to M/s Parul Pvt. Ltd. (on credit) which was insolvent at the time of such sale. Also, it is not the custom in ABC Ltd. to sell the products on credit.

Hence, Mr. Pintu must make good the loss to ABC Ltd.

Q15. Pankaj appoints Shruti as his agent to sell his estate. Shruti, on looking over the estate before selling it, finds the existence of a good quality Granite-Mine on the estate, which is unknown to Pankaj. Shruti buys the estate herself after informing Pankaj that she (Shruti) wishes to buy the estate for herself but conceals the existence of Granite- Mine. Pankaj allows Shruti to buy the estate, in ignorance of the existence of Mine. State giving reasons in brief the rights of Pankaj, the principal, against Shruti, the agent. Give your answer as per the provisions of the Contract Act, 1872.

What would be your answer if Shruti had informed Pankaj about the existence of Mine before she purchased the estate, but after two months, she sold the estate at a profit of ₹10 lac?

Sol.

Provision

Agent's duty to disclose all material circumstances & his duty not to deal on his own account without principal's consent. The problem is based on Sections 215 & 216 of the Indian Contract Act, 1872. According to Section 215, if an agent deals on his own account in the business of the agency, without obtaining the consent of his principal and without acquainting him with all material circumstances, then the principal may repudiate the transaction.

On the other hand, section 216 provides that, if an agent, without the knowledge of his principal, acts on his own account in the business of the agency, then the principal may claim any benefit which may have accrued to the agent from such a transaction.

Analysis and conclusion

Hence in the first instance, though Pankaj had given his consent to Shruti permitting the latter to act on his own account in the business of agency, Pankaj may still repudiate the sale as the existence of the mine, a material circumstance, had not been disclosed to him.

In the second instance, Pankaj had knowledge that Shruti was acting on her own account and also that the mine was in existence; hence, Pankaj cannot repudiate the transaction under section 215. Also, under Section 216, he cannot claim any benefit from Shruti as he had knowledge that Shruti was acting on her own account in the business of the agency.

Q16. An agent is neither personally liable nor can he personally enforce the contract on behalf of the principal.'' Comment.

Sol. According to section 230 of the Indian Contract Act, 1872, in the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them. Thus, an agent cannot personally enforce, nor be bound by, contracts on behalf of principal.

Presumption of contract to the contrary: But such a contract shall be presumed to exist in the following cases:

(i) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad/foreign principal.

(ii) Where the agent does not disclose the name of his principal or undisclosed principal; and

(iii) Where the principal, though disclosed, cannot be sued.

Q17. X has made an agency agreement with Y to authorize him to purchase goods on the behalf of X for the year 2020 only. The agency agreement was signed by both and it contains all the terms and conditions for the agent. It has a condition that Y is allowed to purchase goods maximum upto the value of ₹10 lakhs only. In the month of April 2020, Y has purchased a single item of ₹12 lakhs from Z as an agent of X. The market value of the item purchased was ₹14 lakhs but a discount of ₹2 lakhs was given by Z. The agent Y has purchased this item due to heavy discount offered and the financially benefit to X.

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

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

Sol.

Provision

An agent does all acts on behalf of the principal but incurs no personal liability. The liability remains that of the principal unless there is a contract to the contrary. An

agent also cannot personally enforce contracts entered into by him on behalf of the principal. In the light of section 226 of the Indian Contract Act, 1872, Principal is considered to be liable for the acts of agents which are within the scope of his authority.

Further section 228 of the Indian Contract Act, 1872 states that where an agent does more than he is authorised to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

Analysis and conclusion

In the given case, the agency agreement was signed between X and Y, authorizing Y to purchase goods maximum upto the value of ₹10 lakh. But Y purchased a single item of ₹12 lakh from Z as an agent of X at a discounted rate to financially benefit to X. On demand of payment by Z, X denied saying that Y has exceeded his authority therefore he is not liable for such purchase. Z filed a suit against X for payment.

As said above, liability remains that of the principal unless there is a contract to the contrary. The agency agreement clearly specifies the scope of authority of Y for the purchase of goods, however he exceeded his authority as an agent. Therefore, in the light of section 228 as stated above, since the transaction is not separable, X is not bound to recognize the transaction entered between Z and Y, and therefore may repudiate the whole transaction. Hence, Z will not succeed in his suit against X for recovery of payment.

Q18. Bhupendra borrowed a sum of ₹3 lacs from Atul. Bhupendra appointed Atul as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds. Afterward, Bhupendra revoked the agency.

Decide under the provisions of the Indian Contract Act, 1872 whether the revocation of the said agency by Bhupendra is lawful.

Sol.

Provision

According to Section 202 of the Indian Contract Act, 1872 an agency becomes irrevocable where the agent has himself an interest in the property which forms the subject-matter of the agency, and such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice of such interest.

Analysis and conclusion

In the instant case, the rule of agency coupled with interest applies and does not come to an end even on death, insanity or the insolvency of the principal.

Thus, when Bhupendra appointed Atul as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds, interest was created in favour of Atul and the said agency is not revocable. The revocation of agency by Bhupendra is not lawful.

Q19. Akash is a famous manufacturer of leather goods. He appoints Prashant as his agent. Prashant is entrusted with the work of recovering money from various traders to whom Akash sells leather goods. Prashant is paid a monthly remuneration of ₹15,000. Prashant during a particular month recovers ₹40,000 from traders on account of Akash. Prashant gives back ₹25,000 to Akash, after deducting his salary.

Examine with reference to relevant provisions of the Indian Contract Act, 1872, whether act of Prashant is valid.

Sol.

Provision

The given problem is based on the provision related to 'agency coupled with interest'. According to Section 202 of the Indian Contract Act, 1872 an agency becomes irrevocable where the agent has himself an interest in the property which forms the subject-matter of the agency, and such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice of such interest.

Analysis and conclusion

In the given instance, Akash appointed Prashant as his agent to recover money from various traders to whom Akash sold his leather goods, on a monthly remuneration of ₹15,000. Prashant during a month recovers ₹40,000 from traders on account of Akash. Prashant after deducting his salary give the rest amount to Akash.

In the said case, interest was created in favour of Prashant and the said agency is not revocable, therefore, the act of Prashant is valid.

Q20. Explain whether the agency shall be terminated in the following cases under the provisions of the Indian Contract Act, 1872:

(i) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. Afterwards, A becomes insane.

(ii) A appoints B as A's agent to sell A's land. B, under the authority of A, appoints C as agent of B. Afterwards, A revokes the authority of B but not of C. What is the status of agency of C ?

Sol.

(i) **Provision**

According to section 202 of the Indian Contract Act, 1872, where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

In other words, when the agent is personally interested in the subject matter of agency, the agency becomes irrevocable.

Analysis and conclusion

In the given question, A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. As per the facts of the question and provision of law, A cannot revoke this authority, nor it can be terminated by his insanity.

(ii) **Provision**

According to section 191 of the Indian Contract Act, 1872, a "Sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency. Section 210 provides that, the termination of the authority of an agent causes the termination (subject to the rules regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

Analysis and conclusion

In the given question, B is the agent of A, and C is the agent of B. Hence, C becomes a sub- agent.

Thus, when A revokes the authority of B (agent), it results in termination of authority of sub-agent appointed by B i.e. C (sub-agent).

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