

The Indian Contract Act, 1872

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INDIAN CONTRACT ACT, 1872

Introduction (C)

- There are various branches of law such as civil law, criminal law, tax law, labour law etc. Mercantile / **Business Law is that branch of law which regulates business and commercial transactions.**
- Its main objective is to ensure that expectations created by promises of parties are fulfilled and obligations created by contracts are enforced.
- This Act **comes into force w.e.f. 1-9-1872**
- This Act is not a complete law on all types of contract. It lays down the general principles of contract law.
- Indian contract act is based on **English Common Law**
- The word contract was derived from a Latin word '**contractum**'. The word 'contractum' means drawn together.

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Unit

BASICS OF CONTRACT ACT



"All Contracts are Agreements but all Agreements are not Contracts". Comment.
(ICAI STUDY MODULE)

- i. As per **section 2(e)** Agreement means, "Every promise or every set of promises, forming consideration for each other".
- ii. Agreement = Offer + Acceptance
- iii. There are two types of agreement, one which is enforceable by law and one which is not.
- iv. As per **section 2(h)**, **Agreement which is enforceable by law is contract.**
- v. Although there are other agreements which are not contracts like Domestic, Social, and Religious Agreements.
- vi. Domestic, Social or Religious agreements is not contract since **there is no intention to create legal relationship. (Balfour v. Balfour)**



- 1: A agrees with B to sell car for ` 2 lacs to B. Here A is under an obligation to give car to B and B has the right to receive the car on payment of ` 2 lacs and also B is under an obligation to pay ` 2 lacs to A and A has a right to receive ` 2 lacs.
- 2: Father promises his son to pay him pocket allowance of ` 500 every month. But he refuses to pay later. The son cannot recover the same in court of law as this is a social agreement. This is not created with an intention to create legal relationship and hence it is not a contract.

Practical Question

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

Would your answer differ if the said party had been a "Contributory 2023 New Year celebration Party" organized by Radha? **[June 2023 (4 Marks)]**

Law	As per one of the requirements of Section 10 of the Indian Contract Act, 1872, there must be an intention on the part of the parties to create legal relationship between them. Social or domestic agreements are not enforceable in court of law and hence they do not result into contracts.
Conclusion	In the instant case, Radha cannot sue her three friends for the loss incurred in the said party as the agreement between her and her ten friends was a social agreement, and the parties did not intend to create any legal relationship.

Practical Question

X invites Y (a Film Actor) to his daughter's engagement and dinner party. Y accepts the invitation and promises to attend. X made special arrangement for Y at the party but he did not, turn up. X enraged with Y's behavior, wanted to sue for loss incurred in making special arrangements. X is seeking your advice. RTP, M 05

Ref. Case Law	Balfour vs balfour
Law	As per Sec. 10 of the Indian Contract Act, 1872, a contract to be enforceable under law should contain all the elements contained in Sec. 10 and intention to create legal relationship is one of them. Hence social agreement are not enforceable by law because there is no intention to create legal relationship.
Conclusion	After applying above law to present situation, we conclude that, X did not intended to create any legal relationship by inviting Y to his daughter's engagement. Thus no contract comes into existence and X won't be able to sue Y for the loss incurred in making the special arrangement for Y.

Practical Question

A Father promised to pay his son a sum of 1 Lakh if the son passed C.A. examination in the first attempt. The son passed the examination in the first attempt, but the father failed to pay the amount as promised. The son files a suit for recovery of the amount. State whether the son can recover the amount under the Indian Contract Act, 1872. RTP, M 05

Fact of the case	Whether any Domestic Agreement can be enforced under law.
Ref. Case	Balfour vs balfour
Law	As per Sec. 10 of the Indian Contract Act, 1872, a contract to be enforceable under law should contain all the elements contained in Sec. 10 and intention to create legal relationship is one of them. Hence domestic company are not enforceable by law because there is no intension to create legal relation

Conclusion	After applying above law to present situation, we conclude that, the gift was just to motivate his son. There was no legal relationship between the father and the son thus no contract comes into existence. And the son won't succeed in his suit & he won't be able to recover the amount from his father.
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Diffence between Agreement and Contract




Basis	Agreement	Contract
Meaning	Every promise and every set of promises, forming the consideration for each other. (Promise + Consideration)	Agreement enforceable by law. (Agreement + Legal enforceability)
Scope	It's a wider term including both legal and social agreement.	It is used in a narrow sense with the specification that contract is only legally enforceable agreement.
Legal obligation	It may not create legal obligation. An agreement does not always grant rights to the parties	Necessarily creates a legal obligation. A contract always grants certain rights to every party.
Nature	All agreement are not contracts.	All contracts are agreements.

ESSENTIALS OF A VALID CONTRACT

In terms of Section 10 of the Act, “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”.

Thus, in order to create a valid contract, the following elements should be present:

1. Two Parties	A contract involves at least two parties- one party making the offer and the other party accepting it
2. Agreement	Agreement is the result of the proposal made by one party to the other party and that other party gives his acceptance thereto of course for mutual consideration.
3. Parties must intend to create legal obligations	<p>There must be an intention on the part of the parties to create legal relationship between them. Social or domestic type of agreements are not enforceable in court of law and hence they do not result into contracts.</p> <p>(Balfour v. Balfour)</p> <p>A husband agreed to pay to his wife certain amount as maintenance every month while he was abroad. Husband failed to pay the promised amount. Wife sued him for the recovery of the amount. Here, in this case, wife could not recover as it was a social agreement and the parties did not intend to create any legal relations</p>
4. Capacity of the parties	Capacity to contract means the legal ability of a person to enter into a valid contract. Section 11 of the Indian Contract Act specifies that every person is competent to contract who

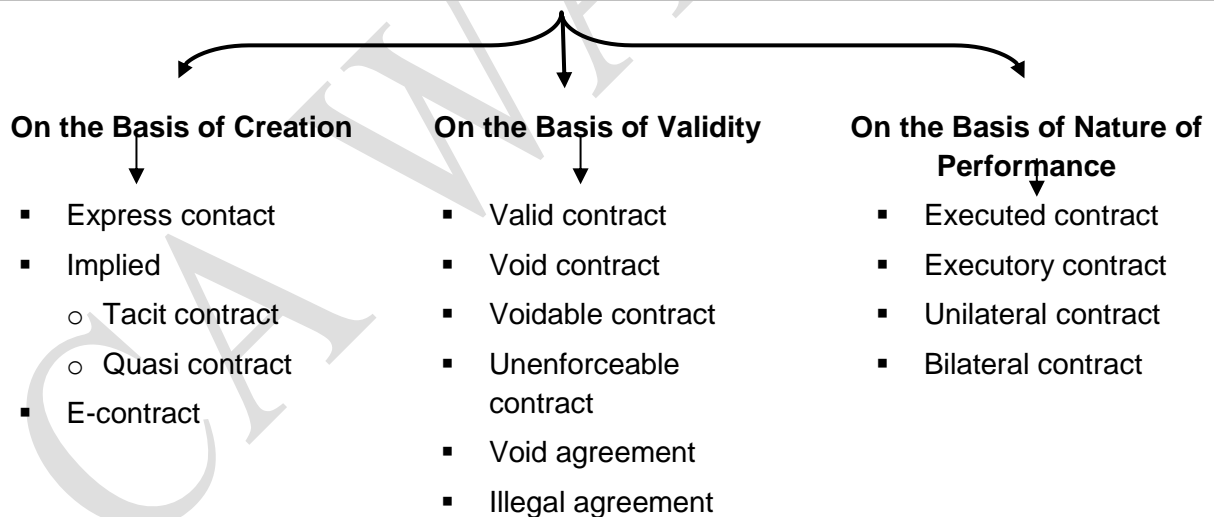
	<p>(a) is of the age of majority</p> <p>(b) is of sound mind and</p> <p>(c) is not otherwise disqualified from contracting by any law to which he is subject.</p>		
5. Consideration	It is referred to as ' quid pro quo ' i.e. ' something in return '. A valuable consideration in the sense of law may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.		
6. Free Consent	Two or more persons are said to consent when they agree upon the same thing in the same sense . This can also be understood as identity of minds in understanding the terms viz consensus ad idem. Further such consent must be free Consent would be considered as free consent if it is not caused by coercion, undue influence, fraud, misrepresentation or mistake		
7. Lawful Consideration and Object	The consideration and object of the agreement must be lawful.		
8. Not expressly declared to be void	The agreement entered into must not be which the law declares to be either illegal or void		
9. Certainty of meaning	<p>The agreement must be certain and not vague or indefinite.</p> <table border="1" data-bbox="448 1059 1434 1234"> <tr> <td data-bbox="448 1059 539 1234"></td> <td data-bbox="539 1059 1434 1234"> <p>1: A agrees to sell to B a hundred tons of oil. There is nothing certain in order to show what kind of oil was intended for.</p> <p>2: XYZ Ltd. agreed to lease the land to Mr. A for indefinite years. The contract is not valid as the period of lease is not mentioned.</p> </td> </tr> </table>		<p>1: A agrees to sell to B a hundred tons of oil. There is nothing certain in order to show what kind of oil was intended for.</p> <p>2: XYZ Ltd. agreed to lease the land to Mr. A for indefinite years. The contract is not valid as the period of lease is not mentioned.</p>
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10. Possibility of performance	The terms of agreement should be capable of performance. An agreement to do an act impossible in itself cannot be enforced		
11. Other Formalities to be complied with in certain cases	<p>In case of certain contracts some other formalities have to be complied with to make an agreement legally enforceable.</p> <p>For e.g. Contract of Insurance is not valid except as a written contract. Further, in case of certain contracts, registration of contract under the laws which is in force at the time, is essential for it to be valid, e.g. in the case of immovable property.</p>		



Practical Question




Mr. Joy owns two flats in a building. He wanted to sell flat no.101 to Mr. Roy. Mr. Joy offered to sell his flat no. 101 to Mr. Roy, but Mr. Roy thought that Mr. Joy wanted to sell flat no. 102 and said yes for the agreement. Considering the provisions of Indian Contract Act, 1872, discuss the validity of such a contract.[MTP Jun 2022(4 Marks)]

Law	
Conclusion	

What are the Different Types of contract?





On the basis of the formation of contract	
Express Contracts	A contract would be an express contract if the terms are expressed by words or in writing.
Implied Contracts	<p>Implied contracts in contrast come into existence by implication. Most often the implication is by action or conduct of parties or course of dealings between them.</p> <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;">  <p>Where 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, it is an implied contract and A must pay for the services of the coolie detailed by him.</p> </div> <p>Tacit Contracts</p> <p>Tacit contracts are those that are inferred through the conduct of parties without any words spoken or written</p> <p>E.g –</p> <ul style="list-style-type: none"> (a) A steps into bus to go to a certain location. (b) Withdrawal of cash from ATM. (c) Sale by fall of hammer at an auction sale. <p>Quasi-Contract</p> <p>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</p> <div style="border: 1px solid black; padding: 5px;">  <p>1: Obligation of finder of lost goods to return them to the true owner or liability of person to whom money is paid under mistake to repay it back 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.</p> <p>2: T, a tradesman, leaves goods at C's house by mistake. C treats the goods as his own. C is bound to pay for the goods</p> </div>
E-Contracts	When a contract is entered into by two or more parties using electronics means, such as e-mails is known as e-commerce contracts

On the basis of the validity	
Valid Contract	An agreement which is binding and enforceable is a valid contract. It contains all the essential elements of a valid contract as per Sec 10
Void agreement or Void ab-initio contract:- Section 2(g)	A agreement that does not create legal consequences i.e. void ab- initio i.e. from very beginning i.e. from the date it was made.
Void Contract [Section 2 (j)]	<p>“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</p> <div style="border: 1px solid black; padding: 5px;">  <p>1: Mr. X agrees to write a book with a publisher. Such contract is valid. But after few days, X dies in an accident. Here the contract becomes void due to the impossibility of performance of the contract. Thus, a valid contract when cannot be performed because of some uncalled happening becomes void.</p> <p>2: 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. Here the contract becomes void.</p> </div>
Voidable Contract Section 2(i)	<p>“an agreement which is enforceable by law at the option of one or more parties thereto, but not at the option of the other or others is a voidable contract”.</p> <p>Following are the situations where a contract is voidable:</p> <p>(i) When the consent of party is not free is caused by coercion, undue influence, misrepresentation or fraud.</p> <div style="border: 1px solid black; padding: 5px;">  <p>X promise to sell his scooter to Y for ` 1 Lac. However, the consent of X has been procured by Y at a gun point. X is an aggrieved party, and the contract is voidable at his option but not on 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.</p> </div> <p>(ii) When a person promises to do something for another person, but the other person prevents him from performing his promise, the contract becomes voidable at the option of first person.</p> <div style="border: 1px solid black; padding: 5px;">  <p>There is a contact between A and B to sell car of A to B for ` 2,00,000. On due date of performance, A asks B that he does not want to sell his car. Here contract is voidable at the option of B.</p> </div> <p>(iii) When a party to a contract promise to perform a work within a specified time, could not perform with in that time, the contract is voidable at the option of promisee.</p>
Illegal Contract	It is a contract which the law forbids to be made. The court will not enforce such a contract but also the connected contracts. All illegal agreements are


	void but all void agreements are not necessarily illegal. Despite this, there is similarity between them is that in both cases they are void ab initio and cannot be enforced by law
Unenforceable Contract	Where a contract is good in substance but because of some technical defect i.e. absence in writing, barred by limitation etc. one or both the parties cannot sue upon it, it is described as an unenforceable contract

On the basis of the performance of the contract	
Executed Contract	The consideration in a given contract could be an act or forbearance. When the act is done or executed or the forbearance is brought on record, then the contract is an executed contract.
Executory Contract	In an executory contract the consideration is reciprocal promise or obligation. Such consideration is to be performed in future only and therefore these contracts are described as executory contracts Unilateral or Bilateral are kinds of Executory Contracts (a) Unilateral Contract: Unilateral contract is a one sided contract in which one party has performed his duty or obligation and the other party's obligation is outstanding (b) Bilateral Contract: A Bilateral contract is one where the obligation or promise is outstanding on the part of both the parties

	<p>Explain the type of contracts in the following agreements under the Indian Contract Act, 1872: (ICAI STUDY MODULE) (RTP Sep 24)</p> <p>(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.</p> <p>(ii) Obligation of finder of lost goods to return them to the true owner.</p> <p>(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</p> <p>Solution -</p> <p>(i) It is an implied contract and A must pay for the services of the coolie detailed by him.</p> <p>(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.</p> <p>(iii) The above contract is a void contract</p>
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	<p>State whether there is any contract in following cases: (ICAI STUDY MODULE)</p> <p>(a) A engages B to do certain work and remuneration to be paid as fixed by C.</p> <p>(b) A and B promise to pay for the studies of their maid's son</p> <p>(c) A takes a seat in public bus.</p> <p>(d) A, a chartered accountant promises to help his friend to file his return.</p>
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	<p>Solution –</p> <p>(a) It is a valid express contract</p> <p>(b) It is not a contract as it is a social agreement</p> <p>(c) It is an implied contract. A is bound to pay for the bus fare.</p> <p>(d) It is a social agreement without any intention to create a legal relationship.</p>
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	<p>State which of the following agreements are valid contract under the Indian Contract Act, 1872?</p> <p>(a) A, who owns two cars is selling red car to B. B thinks he is purchasing the black car.</p> <p>(b) A threatened to shoot B if he (B) does not lend him ₹2,00,000 and B agreed to it.</p> <p>(c) A agrees to sell his house to B against 100 kgs of cocaine (drugs).</p> <p>(d) A ask B if he wants to buy his bike for ₹ 50,000. B agrees to buy bike.</p> <p>(e) Mr. X agrees to write a book with a publisher. But after few days, X dies in an accident. [RTP June 2023]</p> <p>Solution –</p> <p>(a)A, who owns two cars is selling red car to B. B thinks he is purchasing the black car. There is no consensus ad idem and hence not a valid contract.</p> <p>(b)A threatened to shoot B if he (B) does not lend him ₹2,00,000 and B agreed to it. Here the agreement is entered into under coercion and hence not a valid contract.</p> <p>(c)A agrees to sell his house to B against 100 kgs of cocaine (drugs). Such agreement is illegal as the consideration is unlawful.</p> <p>(d)A ask B if he wants to buy his bike for ₹ 50,000. B agrees to buy bike. It is agreement which is enforceable by law. Hence, it is a valid contract.</p> <p>(e)Mr. X agrees to write a book with a publisher. But after few days, X dies in an accident. Here the contract becomes void due to the impossibility of performance of the contract.</p>
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S. No.	Basis	Void Contract	Voidable Contract
1	Meaning	A Contract ceases to be enforceable by law becomes void when it ceases to be enforceable.	An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.
2	Enforceability	A void contract cannot be enforced at all.	It is enforceable only at the option of aggrieved party and not at the option of other party.
3	Cause	A contract becomes void due to change in law or change in circumstances beyond the contemplation of parties.	A contract becomes a voidable contract if the consent of a party was not free.

4	Performance of contract	A void contract cannot be performed.	If the aggrieved party does not, within reasonable time, exercise his right to avoid the contract, any party can sue the other for claiming the performance of the contract.
5	Rights	A void contract does not grant any legal remedy to any party.	The party whose consent was not free has the right to rescind the contract within a reasonable time. If so rescinded, it becomes a void contract. If it is not rescinded it becomes a valid contract.

 Distinguish between Void Contract and Voidable Contract according to the Indian Contract Act, 1872. [June 2023 (5 Marks)]

Basis of difference	Void agreement	Illegal agreement
Scope	A void agreement is not necessarily illegal.	An illegal agreement is always void.
Nature	Not forbidden under law.	Are forbidden under law.
Punishment	Parties are not liable for any punishment under the law.	Parties to illegal agreements are liable for punishment.
Collateral	It's not necessary that	Agreements collateral to
Agreement	agreements collateral to void agreements may also be void. It may be valid also.	illegal agreements are always void.

PROPOSAL / OFFER [SECTION 2(a) OF THE INDIAN CONTRACT ACT, 1872]

Definition of Offer/Proposal Section 2(a)	“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”.
Classification of offer	<p>a) General offer: It is an offer made to public at large and hence anyone can accept and do the desired act (Carlill Vs. Carbolic Smoke Ball Co.). In terms of Section 8 of the Act, anyone performing the conditions of the offer can be considered to have accepted the offer. Until the general offer is retracted or withdrawn, it can be accepted by anyone at any time as it is a continuing offer.</p> <p>Case Law: Carlill Vs. Carbolic Smoke Ball Co. (1893)</p> <p>Facts: In this famous case, Carbolic smoke Ball Co. advertised in several newspapers that a reward of £100 would be given to any person</p>

who contracted influenza after using the smoke balls produced by the Carbolic Smoke Ball Co. according to printed directions. One lady, Mrs. Carlill, used the smoke balls as per the directions of company and even then, suffered from influenza. Held, she could recover the amount as by using the smoke balls she had accepted the offer.

- b) **Special/specific offer:** When the offer is made to a **specific or an ascertained person**, it is known as a specific offer. Specific offer **can be accepted only by that specified person** to whom the offer has been made. [**Boulton Vs. Jones**]



'A' offers to sell his car to 'B' at a certain cost. This is a specific offer.

- c) **Cross offer:** When two parties exchange identical offers in ignorance at the time of each other's offer, the offers are called cross offers. There is no binding contract in such a case because offer made by a person cannot be construed as acceptance of another's offer.






If A makes a proposal to B to sell his car for ` 2 lacs and B, without knowing the proposal of A, makes an offer to purchase the same car at ` 2 lacs from A, it is not an acceptance, as B was not aware of proposal made by A. It is only cross proposal (cross offer). And when two persons make offer to each other, it cannot be treated as mutual acceptance. There is no binding contract in such a case.



- d) **Counter offer:** When the offeree offers to **qualified acceptance** of the offer **subject to modifications and variations** in the terms of original offer, he is said to have made a counter offer. Counter-offer amounts to rejection of the original offer. It is also called as **Conditional Acceptance**.



'A' offers to sell his plot to 'B' for ` 10 lakhs. 'B' agrees to buy it for ` 8 lakhs. It amounts to counter offer. It will result in the termination of the offer of 'A'. If later on 'B' agrees to buy the plot for ` 10 lakhs, 'A' may refuse.

- e) **Standing or continuing or open offer:** An offer which is allowed to **remain open for acceptance over a period of time** is known as standing or continuing or open offer.

Essential of a valid offer	
1. The offer may be express or implied	An offer may be made either by words or by conduct.
2. The offer may be either specific or general	Any offer can be made to either public at large or to the any specific person
3. It must be capable of creating legal relations	<p>Offer must be such as in law is capable of being accepted and giving rise to legal relationship. If the offer does not intend to give rise to legal consequences and creating legal relations, it is not considered as a valid offer in the eye of law. A social invitation, even if it is accepted, does not create legal relations because it is not so intended.</p> <div style="border: 1px solid black; padding: 5px;">  <p>A invited B on his birthday party. B accepted the proposal but when B reached the venue, he (B) found that A was not there. He filed the suit against A for recovery of travelling expenses incurred by him to join the birthday party. Held, such an invitation did not create a legal relationship. It is a social activity. Hence, B could not succeed.</p> </div>
4. It must be communicated to the offeree	<p>An offer, to be complete, must be communicated to the person to whom it is made, otherwise there can be no acceptance of it</p> <p>Lalman Shukla v. GauriDutt</p> <p>Facts: G (Gauridutt) sent his servant L (Lalman) to trace his missing nephew. He then announced that anybody who traced his nephew would be entitled to a certain reward. L traced the boy in ignorance of this announcement. Subsequently when he came to know of the reward, he claimed it. Held, he was not entitled to the reward, as he did not know the offer</p>
5. It must be certain, definite and not vague	<p>If the terms of an offer are vague or indefinite, its acceptance cannot create any contractual relationship.</p> <div style="border: 1px solid black; padding: 5px;">  <p>A offers to sell B 100 quintals of oil, there is nothing whatever to show what kind of oil was intended. The offer is not capable of being accepted for want of certainty</p> </div>
6. It must be made with a view to obtaining the assent of the other party	Offer must be made with a view to obtaining the assent of the other party addressed and not merely with a view to disclosing the intention of making an offer
7. It may be conditional	<p>An offer can be made subject to any terms and conditions by the offeror.</p> <div style="border: 1px solid black; padding: 5px;">  <p>Offeror may ask for payment by RTGS, NEFT etc. The offeree will have to accept all the terms of the offer otherwise the contract will be treated as invalid.</p> </div>

<p>8. Offer should not contain a term the non-compliance of which would amount to acceptance</p>	<p>One cannot say that if acceptance is not communicated by a certain time the offer would be considered as accepted.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;">  <p>A proposes B to purchase his android mobile for `5000 and if no reply by him in a week, it would be assumed that B had accepted the proposal. This would not result into contract.</p> </div>
<p>9. Offer is Different from a mere statement of intention, an invitation to offer, a mere communication of information, A prospectus and Advertisement.</p>	<p>(i) A statement of intention and announcement.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;">  <p>1: A father wrote his son about his wish of making him the owner of all his property is mere a statement of intention. 2: An announcement to give scholarships to children scoring more than 95% in 12th board is not an offer.</p> </div> <p>Offer must be distinguished from an answer to a question.</p> <p>Case Law: Harvey vs. Facie [1893] AC 552</p> <p>the plaintiffs through a telegram asked the defendants two questions namely,</p> <ol style="list-style-type: none"> a. Will you sell us Bumper Hall Pen? and b. Telegraph lowest cash price. <p>The defendants replied through telegram that the “lowest price for Bumper Hall Pen is £ 900”. The plaintiffs sent another telegram stating “we agree to buy Bumper Hall Pen at £ 900”. However, the defendants refused to sell the property at the price.</p> <p>The plaintiffs sued the defendants contending that they had made an offer to sell the property at £ 900 and therefore they are bound by the offer.</p> <p>Their Lordships held that the mere statement of the lowest price at which the vendor would sell contained no implied contract to sell to the person who had enquired about the price.</p> <div style="background-color: #e0e0e0; padding: 5px; margin-top: 10px;"> <p>An invitation to make an offer or do business.</p> </div> <p>In case of “an invitation to make an offer”, the person making the invitation does not make an offer rather invites the other party to make an offer.</p> <ul style="list-style-type: none"> ❖ Catalogue of goods. ❖ Display of goods with price ❖ A tender notice ❖ A prospectus issued by a company ❖ A menu card in a Restaurant ❖ Newspaper advertisements ❖ A Railway timetable

Practical Question

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

Law	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
Conclusion	The display of articles with a price in it in a self-service shop is merely an invitation to offer. 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

Practical Question

A mobile phone was displayed in a shop with a price tag of ₹10,000 attached to the mobile display box. As the price displayed was very less as compared to M.R.P. of the mobile phone, Y, a customer rushed to the cash counter and asked the shopkeeper to receive the payment and pack up the mobile phone. The shopkeeper refused to hand over the mobile phone to Y in consideration of the price indicated in the price tag attached to the mobile phone. Y seeks your advice whether he can sue to shopkeeper for the above cause under the Indian Contract Act, 1872. **[Dec 2023 (3 Marks)] [MTP Apr 2023(4 Marks)]**

Law	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.
Conclusion	In the instant case, the price tag with the Mobile Phone was not offer. It is merely an invitation to offer. Hence, it is Y who is making the offer and not the shopkeeper. Shopkeeper has the right to reject Y's offer. Therefore, Y cannot sue the shopkeeper for the above cause.

Practical Question

Mr. Aseem is a learned advocate. His car was stolen from his house. He gave an advertisement in newspaper that he will give the reward of ₹ 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

<p>Mr. Aseem. Mr. Aseem found his car but denied giving reward of ₹ 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 ₹ 10,000. [RTP May 2022]</p>	
<p>Law</p>	<p>It is an offer made to public at large and hence anyone can accept and do the desired act (Carlill Vs. Carbolic Smoke Ball Co.). In terms of Section 8 of the Act, anyone performing the conditions of the offer can be considered to have accepted the offer</p>
<p>Conclusion</p>	<p>On the basis of above provisions and facts, it can be said that as advertisement made by Mr. Aseem to find lost car is an offer, he is liable to pay ₹ 10,000 to Mr. Vikram.</p>

Practical Question

"Good Girl" Soap Co., advertised that it would give a reward of ₹ 1,000 who developed skin disease after using, "Good Girl" soap of the Company for a certain period according to the printed directions. Miss Rakhi purchased the advertised "Good Girl" and developed skin disease inspite of using this soap according to the printed instructions. She claimed reward of ₹ 1,000. The Company refused the reward on the ground that offer was not made to her and that in any case she had not communicated her acceptance of the offer. Decide whether Miss Rakhi can claim the reward or not. Refer the relevant case law, if any. N08(PE II)

<p>Ref. Case Law</p>	<p>Carlill vs Carbolic Smoke Ball Co</p>
<p>Law</p>	<p>As per the provisions of the Indian Contract Act, 1872, an offer can be made to a public at large, such offer is known as general offer and can be accepted by any person satisfying the conditions required by the offeror and comply with the terms of the offer, i.e. anybody who comes forward and acts accordingly.</p>
<p>Conclusion</p>	<p>After applying above law to present situation, we conclude that, the general offer made by the "Good Girl" Soap Co. was validly accepted by Miss Rakhi, binding both of them in a valid contract. Thus Rakhi can claim the reward as promised by the company and the company has no grounds to refuse the claim of Rakhi.</p>

ACCEPTANCE

Definition Section 2(b)	“When the person to whom the proposal is made signifies his assent thereto, proposal is said to be accepted.
<p>According to Sir William Anson “Acceptance is to offer what a lighted match is to a train of gun powder”. Acceptance converts the offer into a promise and then it is too late to revoke it. This means as soon as the train of gun powder is lighted it would explode. Train of Gun powder [offer] in itself is inert, but it is the lighted match [the acceptance] which causes the gun powder to explode. The significance of this is an offer in itself cannot create any legal relationship but it is the acceptance by the offeree which creates a legal relationship. Once an offer is accepted it becomes a promise and cannot be withdrawn or revoked. An offer remains an offer so long as it is not accepted but becomes a contract as soon as it is accepted.</p>	

Legal Rules regarding a valid acceptance	
1. Acceptance must be absolute and unqualified	<p>As per section 7 of the Act, acceptance is valid only when it is absolute and unqualified</p> <p>M offered to sell his land to N for £280. N replied purporting to accept the offer but enclosed a cheque for £ 80 only. He promised to pay the balance of £ 200 by monthly instalments of £ 50 each. It was held that N could not enforce his acceptance because it was not an unqualified one. [Neale vs. Merret [1930] W. N. 189].</p>
2. Acceptance can be given only by the person to whom offer is made	<p>In case of a specific offer, it can be accepted only by the person to whom it is made</p> <p>Case Law: Boulton vs. Jones (1857)</p> <p>Facts: Boulton bought a business from Brocklehurst. Jones, who was Brocklehurst’s creditor, placed an order with Brocklehurst for the supply of certain goods. Boulton supplied the goods even though the order was not in his name. Jones refused to pay Boulton for the goods because by entering into the contract with Brocklehurst, he intended to set off his debt against Brocklehurst. Held, as the offer was not made to Boulton, therefore, there was no contract between Boulton and Jones</p>
3. The acceptance must be communicated	<p>To conclude a contract between the parties, the acceptance must be communicated in some perceptible form</p> <p>Brogden vs. Metropolitan Railway Co. (1877)</p> <p>Facts: B a supplier, sent a draft agreement relating to the supply of coal to the manager of railway Co. viz, Metropolitan railway for his acceptance. The manager wrote the word “Approved” on the same and put the draft agreement in the drawer of the table intending to send it to the company’s solicitors for a formal contract to be drawn up. By an over sight the draft</p>

	agreement remained in drawer. Held, that there was no contract as the manager had not communicated his acceptance to the supplier, B
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	<p>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</p> <p>Case Law: Felthouse vs. Bindley (1862)</p> <p>Facts: F (Uncle) offered to buy his nephew's horse for £30 saying "If I hear no more about it I shall consider the horse mine at £30." The nephew did not reply to F at all. He told his auctioneer, B to keep the particular horse out of sale of his farm stock as he intended to reserve it for his uncle. By mistake the auctioneer sold the horse. F sued him for conversion of his property. Held, F could not succeed as his nephew had not communicated the acceptance to him.</p>

	Define the term acceptance under the Indian Contract Act 1872. Explain the legal rules regarding a valid acceptance. (7 marks) Jan 21
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Communication Of Offer and Acceptance
<ol style="list-style-type: none"> 1. When the contracting parties are face-to-face, there is no problem of communication because there is instantaneous communication of offer and acceptance 2. The difficulty arises when the contracting parties are at a distance from one another and they utilise the services of the post office or telephone or email (internet) 3. Communication of offer: In terms of Section 4 of the Act, "the communication of offer is complete when it comes to the knowledge of the person to whom it is made". 4. Communication of acceptance – (sec 4) <ol style="list-style-type: none"> (i) As against the proposer, when it is put in the course of transmission to him so as to be out of the power of the acceptor to withdraw the same; (ii) As against the acceptor, when it comes to the knowledge of the proposer. <p>For instance in the above example, if 'B' accepts, A's proposal and sends his acceptance by post on 14th, the communication of acceptance as against 'A' is complete on 14th, i.e. when the letter is posted. As against 'B' acceptance will be complete, when the letter reaches 'A'. Here 'A' the proposer will be bound by B's acceptance, even if the letter of acceptance is delayed in post or lost in transit</p>

5. The golden rule is proposer becomes bound by the contract, the moment acceptor has posted the letter of acceptance. But it is necessary that the letter is correctly addressed, adequately stamped and duly posted. However, from the view point of acceptor, he will be bound by his acceptance only when the letter of acceptance has reached the proposer
6. **Acceptance over telephone or telex or fax:** When an offer is made of instantaneous communication like telex, telephone, fax or through e-mail, the contract is only complete when the acceptance is received by the offeree, and the contract is made at the place where the acceptance is received
7. **Communication of special conditions:** Sometimes there are situations where there are contracts with special conditions. These special conditions are conveyed tacitly and the acceptance of these conditions are also conveyed by the offeree again tacitly or without him even realizing it.



Where a passenger undertakes a travel, the conditions of travel are printed at the back of the tickets, sometimes these special conditions are brought to the notice of the passenger, sometimes not. In any event, the passenger is treated as having accepted the special condition the moment he bought his ticket

CASE LAW: Lilly White vs. Mannuswamy (1970)

Facts: P delivered some clothes to drycleaner for which she received a laundry receipt containing a condition that in case of loss, customer would be entitled to claim 15% of the market price of value of the article, P lost her new saree. Held, the terms were unreasonable and P was entitled to recover full value of the saree from the drycleaner. In the cases referred above, the respective documents have been accepted without a protest and hence amounted to tacit acceptance

8. Revocation of Offer and Acceptance –

- (i) as against the person who makes it when it is put into a course of transmission to the person to whom it is made so as to be out of the power of the person who makes it, and
- (ii) as against the person to whom it is made, when it comes to his knowledge

Practical Question

Mr. Parth 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. Parth that he was appointed but official communication was not given by the school. Later, the management of the school decided to appoint someone else as a principal. Mr. Parth filed a suit against the school for cancellation of his appointment and claimed damages for loss of salary. State with reasons, will Mr. Parth be successful in suit filed against school under the Indian Contract Act, 1872? **(RTP June 2024)**

Law	As per the rules of acceptance, the acceptance should be communicated to offeror by offeree himself or by his authorized agent. Communication of acceptance by third person cannot be concluded as valid acceptance.
Conclusion	On the basis of the above provisions and facts, communication of appointment of Mr. Parth should be made by the school management committee or by any authorised agent. Communication by third person cannot be termed as

	communication of acceptance. Therefore, no valid contract was formed between Mr. Parth and the school and Mr. Parth cannot file a suit against the school for cancellation of his appointment
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Modes of revocation of offer

(i) By notice of revocation:



A offered B to sell goods at Rs. 5,000 through a post but before B could accept the offer A received highest bid for the goods from C. So, A revoked the offer to B by informing B over the telephone and sold goods to C.

(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-fulfilment of condition precedent: Where the acceptor fails to fulfill a condition precedent to acceptance the proposal gets revoked. This principle is laid down in Section 6 of the Act. The offeror for instance may impose certain conditions such as executing a certain document or depositing certain amount as earnest money. Failure to satisfy any condition will result in lapse of the proposal

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

(v) By counter offer

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

(vii) By subsequent illegality.

2

Unit

CONSIDERATION

- ❖ As per Sec.10 of Contract Act both the parties should get **something in return**'
- ❖ This 'Something' is called as consideration. In Latin terms, it is also called as '**Quid Pro Quo**.'
- ❖ Contract without consideration is '**Nudum Pactum**' i.e. Nullity i.e. bare promise i.e. not enforceable by law.
- ❖ General rule is '**No Consideration, No contract**' i.e contract without consideration is Void-ab-initio.
- ❖ A valuable consideration in the sense of law may consist either in some **right, interest, profit or benefit** accruing to one party (i.e. promisor) or **forbearance, detriment, loss or responsibility given, suffered** or undertaken by the other (i.e. the promisee)."
- ❖ **Definition: -Sec 2(d)**
 - When at desire of promisor
 - Promisee or any other person
 - Has done or abstained from doing [**Past Consideration**]
 - Does or abstains from doing [**Present Consideration**]
 - Promises to do or abstain from doing something [**Future Consideration**]
 - Such act, or abstinence, or promise is called a 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. An act done at the desire of a third party is not a consideration.

In **Durga Prasad v. Baldeo**, D (defendant) promised to pay to P (plaintiff) a certain commission on articles which would be sold through their agency in a market. Market was constructed by P at the desire of the C (Collector), and not at the desire of the D. D was not bound to pay as it was without consideration and hence void.



R saves S's goods from fire without being asked to do so. R cannot demand any reward for his services, as the act being done voluntary.

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



An old lady made a gift of her property to her daughter with a direction to pay a certain sum of money to the maternal uncle by way of annuity. On the same day, the daughter executed a writing in favour of the brother agreeing to pay annuity. The daughter did not, however, pay the annuity and the uncle sued to recover it. It was held that there was sufficient consideration for the uncle to recover the money from the daughter. **[Chinnayya vs. Ramayya (1882)]**

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



A pays ₹ 5,000 to B and B promises to deliver to him a certain quantity of wheat within a month. In this case, A pays the amount, whereas B merely makes a promise. Therefore, the consideration paid by A is executed, whereas the consideration promised by B is executory.

- iv. **Consideration may be past, present or future:**

Consideration in India, can be past, present, or future.



A renders some services to B at B's request in November. In December, B promises to pay a sum of ₹ 10,000 for his service. Services of A = Past Consideration.

In a Cash Sale, goods and cash change hand to hand instantly. It is an example of present consideration

A promises B to deliver him 100 bags of sugar at a future date. B promises to pay for it on delivery. It is an example of future consideration

- v. **Consideration need not be adequate:** Consideration need not to be 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. Something in return need not be equal to something given.

But to confirm whether consent was free or not, inadequate consideration can be taken as an evidence in support of this allegation.



X promises to sell a house worth ₹ 60 lacs for ₹ 10 lacs only, the adequacy of the price in itself shall not render the transaction void, unless the party pleads that transaction takes place under coercion, undue influence or fraud.




To form a valid contract consideration must be adequate. Comment **(ICAI STUDY MODULE) .[MTP Nov 2022(3 Marks)]**

- vi. **Consideration should not be something which 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.





A promise to pay ₹ 2,000 to a doctor over the fees is invalid as it is the duty of a doctor to give a treatment for his normal fees.

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

	A man promises to discover treasure by magic, bringing the dead person to live again. This transaction can be said to be void as it is illusory.
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viii. Consideration must not be unlawful, immoral, or opposed to public policy. Only presence of consideration is not sufficient it must be lawful. Anything which is immoral or opposed to public policy also cannot be valued as valid consideration.

	ABC Ltd. promises to give job to Mr. X in a Government bank against payment of ` 50,000 is void as the promise is opposed to public policy.
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	Define consideration. State the characteristics of a valid consideration under the Indian Contract Act, 1872. [MTP Apr 2023(5 Marks)]
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Practical Question

A fire broke out in X's house. He offered to pay an amount of ` 5,000 to anyone who brought out his trapped son Y safe. A fireman brought out Y alive. Is X bound to pay?

Law	As per the rules regarding the valid consideration, consideration should not be something which a person is already bound to do.
Conclusion	After applying above law to present situation, we conclude that, fireman is already bound to extinguish the fire and also save the child, thus he cannot claim the reward declared by X. X is bound to pay the fireman.

SUIT BY A THIRD PARTY TO A CONTRACT / DOCTRINE OF PRIVACY OF CONTRACT

- Contract is a private affair between parties, rights and obligations under a contract are decided by the parties,
- So to claim those rights and obligations only other contracting party can sue.
- Only those persons, who are parties to a Contract, can sue and be sued upon the Contract. This Rule is called "Doctrine of Privity of Contract".
- A Third Party i.e **stranger to a Contract cannot sue** upon it, even though the Contract may be for his benefit

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

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

Ref case - Chinnaya Vs. Ramayya

- 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.



Two brothers X and Y agreed to pay an allowance of ` 20,000 to mother on partition of joint properties. But later they denied to abide by it. Held their mother although stranger to contract can require their sons for such allowance in the court of law.

- 3) **In the case of certain marriage contracts/arrangements**, a provision may be made for the **benefit of a person specially female**, he/she may file the suit 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** but such assignment should not involve any personal skill.



Mr. Ankit Sharma has assigned his insurance policy to his son. Now son can claim even if he was not a party to 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.



If L gives to M ` 20,000 to be given to N, and M informs N that he is holding the money for him, but afterwards M refuses to pay the money. N will be entitled to recover the same from the former i.e. M.

- 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.



One owner of the land having two land adjacent to each other. One was agricultural land. He sold the other land containing a condition that it can never be used for Industrial purpose so as to protect the other agricultural land from pollution. Such condition is attached with the land so who so ever is the successor of land has to abide by it. Such are called restrictive covenants and all successor are bind to it.

- 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.



Prashant appoints Abhinav as his agent to sell his house. Abhinav sells house to Tarun. Now Prashant has right to recover the price from Tarun.



As per the general rule, "Stranger to a contract cannot file a suit in case of breach of contract". Comment and explain the exceptions to this rule as per the provisions of the Indian Contract Act, 1872. **[June 2023 (7 Marks)]**

Practical Question

Mr. Sohanlal sold 10 acres of his agricultural land to Mr. Mohanlal on 25th September 2022 for ` 25 Lakhs. The Property papers mentioned a condition, amongst other details, that whosoever purchases the land is free to use 9 acres as per his choice but the remaining 1 acre has to be allowed to be used by Mr. Chotelal, son of the seller for carrying out farming or other activity of his choice. On 12th October, 2022, Mr. Sohanlal died leaving behind his son and life. On 15th October, 2022 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?

Law	
Conclusion	

Practical Question

X transferred his house to his daughter M by way of gift. The Gift Deed, executed by X, contained a direction that M shall pay a sum of 5,000 per month to N (the sister of the executant). Consequently M executed an instrument in favour of N agreeing to pay the said sum. Afterwards, M refused to pay the sum to N saying that she is not liable to N because no consideration had moved from her. Decide with reasons whether M is liable to pay the said sum to N.

Or

Vijay gifted the whole of his property to his Daughter on that she should pay ` 200 per month to her uncle (Father's Brother). Later, she refused to pay her uncle on the ground that she did not receive any consideration from her uncle. Is she justified?

Ref. Case Law	Chinnayya vs Ramayya
Law	1. As per doctrine of privity of contract stranger to contract cannot sue 2. However if he is beneficiary of a trust, to enforce his right he can sue.
Conclusion	After applying above law to present situation, we conclude that, since M is beneficiary of trust and a valid trust deed has been executed M shall be liable to pay the sum to N. Thus M is liable to pay the sum to N.

VALIDITY OF AN AGREEMENT WITHOUT CONSIDERATION

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

1) **Natural Love and Affection:** Conditions to be fulfilled under section 25(1)

- a. It must be made out of natural **love and affection** between the parties.
- b. Parties must stand in **near relationship** to each other.
- c. It must be in **writing**.
- d. 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.



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

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



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

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



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

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 a contract of bailment.



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)**



Mr. G promised Mr. K, the secretary of committee of temple to donate ` 1,00,000 for renovation of that temple. On the faith of his promise, secretary has incurred some cost for renovation. Now secretary can claim from Mr. G even the contract was without consideration.



Explain the following statements in the light of provisions of Indian Contract Act, 1872:

- (i) "Agreements made out of love and affection are valid agreements."
- (ii) "Promise to pay a time barred debt cannot be enforced." **[Nov. 2022 (7 Marks)]**



"The general rule is that an agreement made without consideration is void." State the exceptions of this general rule as per the Indian Contract Act, 1872. **[May 2022 (7 Marks)]**

Practical Question

Mr. Shyam Mundra was a big businessman having one son and one married daughter. He decided to gift his 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 died. Later, the daughter found the document and claimed the house on the basis of that document. Explain, whether she can get the house as gift under the Indian Contract Act, 1872? **[RTP June 2023] [MTP Nov 2022(4 Marks)] (MTP July 24)**

Law

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

Conclusion

In the given problem, the transfer of house made by Mr. Shyam Mundra 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

3

Unit

OTHER ESSENTIAL ELEMENTS OF CONTRACT

CAPACITY TO CONTRACT

Meaning: Capacity refers to the competence of the parties to make a contract. It is one of the essential elements to form a valid contract.

Who is competent to contract (Section 11) Every person is competent to contract who-

- (A) has attained the age of majority,
- (B) is of sound mind and
- (C) is not disqualified from contracting by any law to which he is subject.

A. **Age of Majority:** In India, the age of majority is regulated by the Indian Majority Act, 1875. Every person domiciled in India shall attain the age of majority on the completion of 18 years of age and not before. The age of majority being 18 years, a person less than that age even by a day would be minor for the purpose of contracting.

Law relating to Minor's agreement/Position of Minor

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

In the leading case of *Mohori Bibi vs. Dharmo Das Ghose (1903)*, "Mr. D a minor, mortgaged his house for Rs. 20,000 to money lender, but the mortgagee i.e. money lender has paid him Rs. 8,000. Subsequently the minor had filed a suit for cancellation of contract. Held the contract is void as Mr. D is minor and therefore he is not liable to pay anything to lender."

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



X, a minor makes a promissory note in favour of Y. On attaining majority, he cannot ratify it and if he makes a new promissory note in place of old one, here the new promissory note which he executed after attaining majority is also void being without consideration.

3. **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 the minor from making the other party bound to him. Thus, a promissory note duly executed in favour of a minor is not void and can be sued upon by him, because he though incompetent to contract, may yet accept a benefit.

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



A mortgage was executed in favour of a minor. Held, he can get a decree for the enforcement of the mortgage.



“Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor”. Discuss. (ICAI STUDY MODULE)

- 4. A minor can always plead minority:** A minor can always plead minority and is not stopped to do so even where he has taken any loan or entered into any contract by falsely representing that he was major. Rule of estoppel cannot be applied against a minor. It means he can be allowed to plea his minority in defence.



A, a minor has falsely induced himself as major and contracted with Mr. X for loan of ` 20,000. When Mr. X asked for the repayment A denied to pay. He pleaded that he was a minor so cannot enter into any contract. Held, A cannot be held liable for repayment of amount. However, if he has not spent the same, he may be asked to repay it but the minor shall not be liable for any amount which he has already spent even though he received the same by fraud. Thus, a minor can always plead minority and is not estopped from doing so even where he had produced a loan or entered into some other contract by falsely representing that he was of full age, when in reality he was a minor.

- 5. Liability for necessaries:** 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. A claim for necessaries supplied to a minor is enforceable by law. 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.

To render minor's estate liable for necessaries two conditions must be satisfied.

- (i) The contract must be for the goods reasonably necessary for his support in the station in life.
- (ii) The minor must not have already a sufficient supply of these necessaries.

Necessaries mean those things that are essentially needed by a minor. They cannot include luxuries or costly or unnecessary articles. Necessaries extend to all such things as reasonable persons would supply to an infant in that class of society to which the infant belongs. Expenses on minor's education, on funeral ceremonies come within the scope of the word 'necessaries'.

The whole question turns upon the minor's status in life. Utility rather than ornament is the criterion.



Shruti being a minor purchased a laptop for her online classes of ` 70,000 on credit from a shop. But her assets could pay only ` 20,000. The shop keeper could not hold Shruti personally liable and could recover only amount recoverable through her assets i.e. upto ` 20,000.

- 6. Contract by guardian - how far enforceable:** Though a minor's agreement is void, his guardian can, under certain circumstances enter into a valid contract on minor's behalf. Where the guardian makes a contract for the minor, which is within his competence and which is for the benefit of the minor, there will be valid contract which the minor can enforce.

But all contracts made by guardian on behalf of a minor are not valid. For instance, the guardian of a minor has no power to bind the minor by a contract for the purchase of immovable Property. But a contract entered into by a certified guardian (appointed by the Court) of a minor, with the sanction of the court for the sale of the minor's property, may be enforced by either party to the contract.

7. **No specific performance:** A minor's agreement being absolutely void, there can be no question of the specific performance of such an agreement.
8. **No insolvency:** A minor cannot be declared insolvent as he is incapable of contracting debts and dues are payable from the personal properties of minor and he shall never be held personally liable.
9. **Partnership:** A minor being incompetent to contract cannot be a partner in a partnership firm, but under Section 30 of the Indian Partnership Act, he can be admitted to the benefits of partnership.
10. **Minor can be an agent:** A minor can act as an agent. But he will not be liable to his principal for his acts. A minor can draw, deliver and endorse negotiable instruments without himself being liable.



A minor can have an account in the bank. He can draw a cheque for his purchases. But he shall not be liable for cheque bounces nor can he be sued under court of law for any fraud done from his account.

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



Richa a minor entered into contract of buying a scooty from the dealer and mentioned that her parents will be liable for the payment of scooty. The dealer sent a letter to her parents for money. The parents will not be liable for such payment as the contract was entered by a minor in their absence and out of their knowledge.

12. **Joint contract by minor and adult:** In such a case, the adult will be liable on the contract and not the minor. *In Sain Das vs. Ram Chand*, where there was a joint purchase by two purchasers, one of them was a minor, it was held that the vendor could enforce the contract against the major purchaser and not the minor.

13. **Surety (Guarantor) for a minor:** In a contract of guarantee when an adult stands surety for a minor then he (adult) is liable to third party as there is direct contract between the surety and the third party.



Mr. X guaranteed for the purchase of a mobile phone by Krish, a minor. In case of failure for payment by Krish, Mr. X will be liable to make the payment.

14. **Minor as Shareholder:** A minor, being incompetent to contract cannot be a shareholder of the company. If by mistake he becomes a member, the company can rescind the transaction and remove his name from register. But, a minor may, acting through his lawful guardian become a shareholder by transfer or transmission of fully paid shares to him.

15. **Liability for torts:** A tort is a civil wrong. A minor is liable in tort unless the tort in reality is a breach of contract. Thus, where a minor borrowed a horse for riding only, he was held liable when he lent

the horse to one of his friends who jumped and killed the horse. Similarly, a minor was held liable for his failure to return certain instruments which he had hired and then passed on to a friend.

Practical Question

Ishaan, aged 16 years, was studying in an engineering college. On 1st March, 2018 he took a loan of ₹ 2 lakhs from Vishal for the payment of his college fee and agreed to pay by 30th May, 2019. Ishaan possesses assets worth ₹ 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. **(ICAI STUDY MODULE**

Law	<p>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.</p> <p>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 [<i>Mohori Bibi Vs Dharmo Das Ghose 1903</i>].</p> <p>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</p>
Conclusion	<p>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.</p>

Practical Question

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

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

(i) By filing a case against Srishti, a minor for recovery of outstanding amount with interest?

<p>(ii) By filing a case against Mr. Ram, father of Srishti for recovery of outstanding amount?</p> <p>(iii) By filing a case against Srishti, a minor for recovery of outstanding amount after she attains maturity? [May 2022 (6 Marks)] [RTP Dec 2023]</p>	
Law	<p>Pursuant to Section 11, a minor is not competent to contract and any agreement with or by a minor is void from the very beginning.</p> <p>(i) By following the above provision, Mr. Gupta will not succeed in recovering the outstanding amount by filing a case against Srishti, a minor.</p> <p>(ii) Minor cannot bind parent or guardian: In the absence of authority, express or implied, a minor is not capable of binding his parent or guardian, even for necessities. The parents will be held liable only when the child is acting as an agent for parents.</p> <p>In the instant case, Mr. Gupta will not succeed in recovering the outstanding amount by filing a case against Mr. Ram, father of Srishti.</p> <p>(iii) No ratification after attaining majority: A minor cannot ratify the agreement on attaining majority as the original agreement is void ab initio and a void agreement can never be ratified.</p>
Conclusion	

Practical Question

Mr. Mukund wants to sell his car. For this purpose, he appoints Mr. Parth, a minor as his agent. Mr. Mukund instructs Mr. Parth that car should not be sold at price less than ₹ 2,00,000. Mr. Parth ignores the instruction of Mr. Mukund and sells the car to Mr. Naman for ₹ 1,50,000. Explain the legal position of contract under Indian Contract Act, 1872 whether:

- (a) Mr. Mukund can recover the loss of ₹ 50,000 from Mr. Parth?
 (b) Mr. Mukund can recover his car from Mr. Naman? **[RTP June 2023]**


Law	<p>According to the provisions of Section 11 of 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</p>
Conclusion	<p>In the instant case, Mr. Mukund appoints Mr. Parth, a minor as his agent to sale his car. Mr. Mukund clearly instructed to Mr. Parth that the minimum sale price of the car should be ₹ 2,00,000 yet Mr. Parth sold the car to Mr. Naman for ₹ 1,50,000.</p>


	<p>(a) Considering the facts, although the contract between Mr. Mukund and Mr. Parth is valid, Mr. Parth will not be liable to his principal for his acts. Hence, Mr. Mukund cannot recover the loss of ₹ 50,000.</p> <p>(b) Further, Mr. Naman purchased the car from agent of Mr. Mukund, he got good title. Hence, Mr. Mukund cannot recover his car from Mr. Naman</p>
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B. Person of sound mind: According to Section 12 of Indian Contract Act, “a person is said to be of sound mind for the purposes of making a contract if, at the time when he makes it is capable of understanding it and of forming a rational judgement as to its effect upon his interests.”

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

	A patient in a lunatic asylum, who is at intervals, of sound mind, may contract during those intervals.
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	A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgement as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.
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Position of unsound mind person making a contract: A contract by a person who is not of sound mind is void.

C. Contract by disqualified persons: Besides minors and persons of unsound mind, there are also other persons who are disqualified from contracting, partially or wholly, so that the contracts by such person are void. Incompetency to contract may arise from political status, corporate status, legal status, etc. The following persons fall in this category: Foreign Sovereigns and Ambassadors, Alien enemy, Corporations, Convicts, Insolvent etc

FREE CONSENT

1. Consent [Sec. 13]

- (a) Two or more persons are said to consent when they agree upon the same thing in the same sense. **(Consensus-ad-idem)**
- (b) Consent involves identity of minds in respect of the subject matter of the contract, i.e. the meeting of minds or consensus- ad-idem.

2. Free Consent [Sec. 14]

Free consent refers to consent of both parties on their own account without use or influence of any external factors. Consent is said to be Free when it is not caused by —

- ❖ Coercion (Section 15), or
- ❖ Undue Influence (Section 16), or
- ❖ Fraud (Section 17), or

- ❖ Misrepresentation (Section 18), or
- ❖ Mistake.(Sections 20, 21, and 22.)



If there is no consensus between parties, this is error in consensus and such contracts are void-ab-initio whereas if the consent is not free it is error in Causa and in such contracts, contracts are voidable at the option of aggrieved parties

Coercion (sec 15)

1. Meaning

(a) 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

(b) It is not necessary that Coercion must have been exercised against the Promisor only; it may be directed at any person.

2. Consequences of Coercion [Sec. 19]:

- (a) **Contract is voidable:** When consent to an agreement is obtained by coercion, the Contract is voidable at the option of the party whose consent was so obtained.
- (b) **Burden of Proof:** The burden of proof that the consent was obtained by coercion lies on the person who wants to relive himself of the consequences of coercion.
- (c) **Repayment of money or thing obtained under Coercion [Sec. 72] :**

A person to whom money has been paid or anything delivered or coercion shall repay such money or return such thing.

3. IPC not in force at place of Coercion:

1. It is immaterial whether or not the Indian Penal Code is in force in the place where Coercion is being employed.
2. Coercion, if employed at any place, does not amount to free consent, irrespective of whether the provisions of IPC could be applied to that place.



A and B were travelling in a ship in the England ocean where A threatened B to enter into a contract with him. Afterwards, A sues B for breach of contract at Calcutta. It is held that A has employed coercion, even though it is not an offence at the place where ship was there.

4. Threat to Commit Suicide:

Sec. 15 declares that committing or threatening to commit any act forbidden by the India Penal Code is coercion. So, a threat to commit suicide should also be regarded as amounting to coercion.

What is meant by Undue Influence?

1. Meaning:

Undue Influence means improper or unfair use of one's superior power in order to obtain the consent of a person who is in a weaker position.

2. Definition [Sec. 16]:

1. A contract is said to be induced by undue influence where the relations subsisting between the parties are such that—
 - (a) One of the parties is in a **position to dominate the will** of the other and
 - (b) Uses that position to obtain **an unfair advantage** to enter into contract.

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.



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.



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




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.




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.

	A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence
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	A applies to a banker for a loan at a time when there is a stringency in money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.
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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.

	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.
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4. **Burden of proof:** When a party to contract decides to avoid the contract on the ground of undue influence, he has to prove that-
- a. The other party is in position to dominate his will,
 - b. the other party actually used his position to obtain his consent,
 - c. transaction is unfair or unconscionable.

Effect of undue influence- (Section 19A)

- i. 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.
- ii. 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.


	A, a money lender advances ` 1,00,000 to B, an agriculturist, and by undue influence induces B to execute a bond for ` 2,00,000 with interest at 6 percent per month. The court may set aside the bond, ordering B to repay ` 1,00,000 with such interest as may seem just
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3. Dominating position:

A person is deemed to be in a position to dominate the will of another if —

- (a) He holds a **real or apparent authority** (*Master & Servant, Parent & Child, Income Tax Officer & Assessee, Principal & a temporary teacher, Doctor & Patient*) over the other, or
- (b) He stands in a **fiduciary relation** to the other (*Trustee & Beneficiary, spiritual adviser and his disciples, solicitor and client, guardian and ward, creditor and debtor, father and son, husband and wife etc*), or

- (c) 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.


	<p>(a) A having advanced money to his son B during his minority, upon B's coming of age, obtains by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.</p> <p>(b) V, a man enfeebled by disease or age, is induced by C's influence over him as his medical attendant, to agree to pay C, an unreasonable sum for his professional services. C employs undue influence.</p> <p>(c) A, a police officer purchased a property worth ` 1 lac for ` 5,000 from B, an accused under his custody. Later on, B wanted to cancel the sale on the ground of undue influence. Here, A, the police officer is in a position to dominate the will of B</p>
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4. Consequences of Undue Influence [Sec. 19 & 19A]:

- (a) When consent to agreement is obtained by undue influence, the agreement is a contract voidable at the option of the party whose consent was so obtained.

5. Burden of Proof:

The burden of proving the absence of the use of the dominant position to obtain the unfair advantage will lie on the party who is in a position to dominate the will of the other. (defendant party)

	<p>NO Undue Influence in case of Ordinary Course of Business:</p> <p>(a) Where some transaction is entered into in the ordinary course of business, but due to certain contingencies, one party is able to make the other party agree to certain terms and conditions, then it is not undue influence.</p> <p>(b) S applies to a Banker for a loan when the money market is very stringent. Banker says that loan could be provided only at a very high rate of interest. S accepts to such high interest. S's consent is not obtained by undue influence.</p>
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Basis of difference	Coercion	Undue Influence
Nature of action	It involves the physical force or threat. The aggrieved party is compelled to make the contract against its will.	It involves moral or mental pressure.
Involvement of criminal action	It involves committing or threatening to commit and act forbidden by Indian Penal Code or detaining or threatening to detain property unlawfully.	No such illegal act is committed or a threat is given.
Relationship between parties	It is not necessary that there must be some sort of relationship between the parties.	Some sort of relationship between the parties is absolutely necessary.
Exercised by whom	Coercion need not proceed from the promisor nor need it be the directed against the promisor. It	Undue influence is always exercised between parties to the contract.

	can be used even by a stranger to the contract.	
Enforceability	The contract is voidable at the option of the party whose consent has been obtained by the coercion.	Where the consent is induced by undue influence, the contract is either voidable or the court may set it aside or enforce it in a modified form.
Position of benefits received	In case of coercion where the contract is rescinded by the aggrieved party, as per Section 64, any benefit received has to be restored back to the other party.	The court has the discretion to direct the aggrieved party to return the benefit in whole or in part or not to give any such directions.

Practical Question

A student was induced by his teacher to sell his brand new car to the latter at less than the Purchase Price to secure more marks in the examination. Accordingly, the car was sold. However, the father of the student persuaded to sue his teacher. State whether the student can sue the teacher.(ICAI)

Law	As per Sec. 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— <ul style="list-style-type: none"> (i) One of the parties is in a position to dominate the will of the other and (ii) Uses that position to obtain an unfair advantage over the other. When consent to agreement is obtained by undue influence, the agreement is a contract voidable at the option of the party whose consent was so obtained.
Conclusion	After applying above law to present situation, we conclude that, teacher is a person who has a dominating position over his student, thus the above case is of undue influence and shall be voidable at the option of the student. Therefore such student may file a suit against his teacher.

Practical Question

Mr. A, the employer induced his employee Mr. B to sell his one room flat to him at less than the market value to secure promotion. Mr. B sold the flat to Mr. A. Later on, Mr. B changed his mind and decided to sue Mr. A. Examine the validity of the contract as per the provisions of the Indian Contract Act, 1872. **[June 2023 (2 Marks)]**

Law	As per Sec. 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— <ul style="list-style-type: none"> (i) One of the parties is in a position to dominate the will of the other and
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	(ii) Uses that position to obtain an unfair advantage over the other. When consent to agreement is obtained by undue influence, the agreement is a contract voidable at the option of the party whose consent was so obtained.
Conclusion	Hence, the contract between Mr. A and Mr. B is voidable at the option of Mr. B as it was induced by undue influence by Mr. A and therefore Mr. B can sue Mr. A

What is Fraud? (Sec.17)

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.


The following are the essential elements of the fraud:


- 1) There must be a representation or assertion and it must be false. **However, silence may amount to fraud or an active concealment may amount to fraud.**

Whether Silence is fraud or not?


As per explanation of section 17, silence is fraud in following situations:

- a. There is duty to speak.


	A sell, by auction, to B, a horse which A knows to be unsound, A says nothing to B about the unsoundness of the horse. This is not fraud by A.
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	In the above example, B is A's daughter. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.
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- b. When silence is equal to speech.


	B says to A –“If you do not deny it, I shall assume that the horse is sound”. A says nothing. Here A's silence is equivalent to speech.
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- 2) The representation must be related to a fact.

	'A' who is about to sell goods says that goods cost him Rs. 50,000. This is statement of fact. But if he says the goods are worth Rs. 50,000, it is a statement of opinion.
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- 3) The representation should be made before the conclusion of the contract with the intention to induce the other party to act upon it.

- 4) The representation or statement should be made with a knowledge of its falsity or without belief in its truth or recklessly not caring whether it is true or false.
- 5) The other party must have been induced to act upon the representation or assertion.

	'A' bought shares in a company on the faith of a prospectus which contained an untrue statement that 'B' was a director of the company. 'A' had never heard of 'B' and, therefore, the statement was immaterial from his point of view. A's claim for damages in this case was dismissed because the untrue statement had not induced 'A' to buy the shares.
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- 6) The other party must have relied upon the representation and must have been deceived.
- 7) The other party acting on the representation must have consequently suffered a loss.

Effect of Fraud upon validity of a contract: When the consent to an agreement is caused by the fraud, the contract is voidable at option of the party defrauded and he has the following remedies:

1. He can rescind the contract within a reasonable time.
2. He can sue for damages.
3. He can insist on the performance of the contract on the condition that he shall be put in the position in which he would have been had the representation made been true.

Exception: In the following cases, contract is not voidable:

- (i) If the party whose consent was caused by silence which amounting to fraud, had the means of discovering the truth with ordinary diligence.
- (ii) A fraud which did not cause the consent of the party to agreement.

	"Mere silence does not amount to fraud". Explain the statement as per the provisions contained in the Indian Contract Act, 1872. [Dec 2023(5 Marks)]
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Practical Question

Karan agreed to purchase wooden table for his study room from Mr. X. Table was in good condition and was examined by Karan before purchasing. He found no defects in it and paid ₹ 20,000 for that table. Later on, it was found that one leg of table is broken, and Mr. X has pasted the wood and tried to hide the defects in the table. Can Karan return the table and claim the amount back? Discuss the same with reference to Indian Contract Act, 1872. **[RTP Nov 2022]**


Law	As per Section 17 of Indian Contract Act, 1872, "A false representation of material facts when made intentionally to deceive the other party to induce him to enter into a contract is termed as a fraud." Section 17(2) further states about active concealment. When a party intentionally conceals or hides some material facts from the other party and makes sure that the other party is not able to know the truth, in fact makes the other party believe something which is false, then a fraud is committed. In case a fraud is committed, the aggrieved party gets the right to rescind the contract. (Section 19).
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Conclusion	In the present case, Karan has examined the study table before purchasing it from Mr. X and could not find any defect in the table as it was concealed by Mr. X. On the basis of above provisions and facts of the case, Karan can rescind the contract and claim compensation for the loss suffered due to fraud done by Mr. X
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Mis-representation [Sec. 18]


According to Section 18, there is misrepresentation:

- (1) Statement of fact, which of false, would constitute misrepresentation if the maker believes it to be true but which is not justified by the information he possesses;
- (2) When there is a breach of duty by a person without any intention to deceive which brings an advantage to him;
- (3) When a party causes, even though done innocently, the other party to the agreement to make a mistake as to the subject matter.

	A makes a positive statement to B that C will be made the director of a company. A makes the statement on information derived, not directly from C but from M. B applies for shares on the faith of the statement which turns out to be false. The statement amounts to misrepresentation, because the information received second-hand did not warrant A to make the positive statement to B.
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	'A' without getting it checked in a workshop, told to 'B' that the motor cycle was in excellent condition. On this statement, 'B' bought the motor cycle, whose engine proved to be defective. Here, 'A's statement is misrepresentation as the statement turns out to be false.
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	A while selling his mare to B, tells him that the mare is thoroughly sound. A genuinely believes the mare to be sound although he has no sufficient ground for the belief. Later on, B finds the mare to be unsound. The representation made by A is a misrepresentation.
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	A buy an article thinking that it is worth ` 1000 when in fact it is worth only ` 500. There has been no misrepresentation on the part of the seller. The contract is valid.
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Consequences of Mis-statements

- Contract is voidable at option of aggrieved party
- Party can insist on specific performance to change contract such that mistake is rectified but cannot sue for damages

Basis of difference	Fraud	Misrepresentation
Intention	To deceive the other party by hiding the truth.	There is no such intention to deceive the other party.

Knowledge of truth	The person making the suggestion believes that the statement as untrue.	The person making the statement believes it to be true, although it is not true.
Rescission of the contract and claim for damages	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.
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.

Practical Question

Explain the concept of 'misrepresentation' in matters of contract. Sohan induced Suraj to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, Suraj complained that there were many defects in the motorcycle. Sohan proposed to get it repaired and promised to pay 40% cost of repairs. After few days, the motorcycle did not work at all. Now Suraj wants to rescind the contract. Decide giving reasons whether Suraj can rescind the contract? (**ICAI STUDY MODULE**)

Law	<p>According to Section 18 of the Indian Contract Act, 1872, misrepresentation is:</p> <ol style="list-style-type: none"> 1. When a person positively asserts that a fact is true when his information does not warrant it to be so, though he believes it to be true. 2. When there is any breach of duty by a person, which brings an advantage to the person committing it by misleading another to his prejudice. 3. When a party causes, however, innocently, the other party to the agreement to make a mistake as to the substance of the thing which is the subject of the agreement. <p>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.</p>
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.

Practical Question

Mr. SAMANT owned a motor car. He approached Mr. CHHOTU and offered to sell his motor car for ₹ 3,00,000. Mr. SAMANT told Mr. CHHOTU that the motor car is running at the rate of 30 KMs per litre of petrol. Both the fuel meter and the speed meter of the car were working perfectly. Mr. CHHOTU agreed with the proposal of Mr. SAMANT and took delivery of the car by paying ₹

3,00,000/- to Mr. SAMANT. After 10 days, Mr. CHHOTU came back with the car and stated that the claim made by Mr. SAMANT regarding fuel efficiency was not correct and therefore there was a case of misrepresentation. Referring to the provisions of the Indian Contract Act, 1872, decide and write whether Mr. CHHOTU can rescind the contract in the above ground. (ICAI STUDY MODULE

Law	<p>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.</p> <p>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.</p> <p>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</p>
Conclusion	<p>In the situation given in the question, both the fuel meter and the speed meter of the car were working perfectly, Mr. CHHOTU had the means of discovering the truth with ordinary diligence. Therefore, the contract is not voidable. Hence, Mr. CHHOTU cannot rescind the contract in the above ground</p>

Mistake

Mistake may be defined as innocent or erroneous belief which leads the party to misunderstand the others. Mistake may be either mistake of law or mistake of fact.

Mistake of Law: Mistake of law is further classified as mistake of Indian law or mistake of foreign law.

(i) Mistake of Indian Law: A person cannot be allowed to get any relief on the ground that it had done a particular act in ignorance of law.



A and B enter into a contract on the erroneous belief that a particular debt is barred by the Indian Law of Limitation. This contract is not voidable.

(ii) Mistake of foreign law: Such a mistake is treated as mistake of fact and the agreement in such a case is void.

Mistake of fact: Mistake of fact are of two types – (i) Bilateral Mistake, (ii) Unilateral Mistake

(i) Bilateral mistake: Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, there is a bilateral mistake. In such a case, the agreement is void (Section 20).

Cases of Bilateral Mistakes

- (i) Mistake as to the quality of the subject-matter.
- (ii) Mistake as to the existence of the subject-matter.
- (iii) Mistake as to the identity of the subject-matter.

- (iv) Mistake as to the title of the subject-matter.
- (v) Mistake as to the price of the subject-matter.
- (vi) Mistake as to the quantity of the subject-matter.

(ii) Unilateral Mistake: According to Section 22, a contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact

LEGALITY OF OBJECT AND CONSIDERATION

Which considerations and objects are lawful, and those which are not (Section 23):

Under Section 23 of the Indian Contract Act, in each of the following cases the consideration or object of an agreement is said to be unlawful:

- i. **When consideration or object is forbidden by law:** Acts forbidden by law are those which are punishable under any statute as well as those prohibited by regulations or orders made in exercise of the authority conferred by the legislature.



A father had arranged for marriage of his 17 years boy and took dowry from the girl's parents. Such marriage contract cannot take place as in India the minimum age for boy marriage is 21 years and dowry is not permissible in Indian law. Such is not a valid contract as the consideration and object both are forbidden by law.

- ii. **When consideration or object are of such a nature that if permitted it would defeats the provisions of law:**

If the consideration or the object of an agreement is of such a nature that not directly but indirectly, it would defeat the provisions of the law, the agreement is void.



A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

- iii. **When it is fraudulent:** Agreements which are entered into to promote fraud are void.



A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object, viz., acquisition of gains by fraud is unlawful.

- iv. The general term "injury" means criminal or wrongful harm. In the following examples, the object or consideration is unlawful as it involves injury to the person or property of another.



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



A promises to repay his debt by doing manual labour daily for a special period and agrees to pay interest at an exorbitant rate in case of default. Here A's promise to repay by manual labour is the consideration for the loan, and this consideration is illegal as it imposes what,

in substance, amounts to slavery on the part of A. In other words, as the consideration involves injury to the person A, the consideration is illegal. Here, the object too is illegal, as it seeks to impose slavery which is opposed to public policy. Hence, the agreement is void.

- v. **When consideration is immoral:** The following are the examples of agreements where the object or consideration is unlawful, being immoral.



Where P had advanced money to D, a married woman to enable her to obtain a divorce from her husband and D had agreed to marry her as soon as she could obtain the divorce, it was held that P was not entitled to recover the amount, since the agreement had for its object the divorce of D from her husband and the promise of marriage given under these circumstances was against good morals.



A asks B, "If you arrange a girl for marriage with me, I will give Rs. 50,000." Here contract is void as it is immoral.

- vi. **When consideration is opposed to public policy:** The expression 'public policy' can be interpreted either in a wide or in a narrow sense. The freedom to contract may become illusory, unless the scope of 'public policy' is restricted. In the name of public policy, freedom of contract is restricted by law only for the good for the community.

Some of the agreements which are held to be opposed to public policy are-

1. **Trading with enemy:** Any trade with person owing allegiance to a Government at war with India without the licence of the Government of India is void, as the object is opposed to public policy. Here, the agreement to trade offends against the public policy by tending to prejudice the interest of the State in times of war.



India entered in war like situation with China. Mr. A from India entered into contract with China for import of toys. Such contract is void as China is alien enemy of India. The contract if made before such war like situation may be suspended or dissolved. Like India felt apps like tik tok and PUBG will provide some internal information of the country, hence such apps were banned and any contract with them were dissolved.

2. **Stifling Prosecution:** An agreement to stifle prosecution i.e. "an agreement to prevent proceedings already instituted from running their normal course using force" tends to be a perversion or an abuse of justice; therefore, such an agreement is void. The principle is that one should not make a trade of felony. The compromise of any public offence is generally illegal.

Under the Indian Criminal Procedure Code, there is, however, a statutory list of compoundable offences and an agreement to drop proceeding relating to such offences with or without the permission of the Court, as the case may be, in consideration the accused promising to do something for the complainant, is not opposed to public policy. Thus, where A agrees to sell certain land to B in consideration of B abstaining from taking criminal proceeding against A with

respect to an offence which is compoundable, the agreement is not opposed to public policy. But, it is otherwise, if the offence is uncompoundable.

3. Maintenance and Champerty: *Maintenance* is an agreement in which a person promises to maintain suit in which he has no interest.



A offers B ₹ 2000, if he sues C for a case which they could have settled mutually under provisions of law, just to annoy C. Such agreement is maintenance agreement.

Champerty is an agreement in which a person agrees to assist another in litigation in-exchange of a promise to hand over a portion of the proceeds of the action.



A agrees to pay expenses to B if he sues C and B agrees to pay half of the amount received from result of such suit. This is an agreement of champerty. The agreement for supplying funds by way of Maintenance or Champerty is valid unless

- a) It is unreasonable so as to be unjust to other party or
- b) It is made by a malicious motive like that of gambling in litigation or oppressing other party by encouraging unrighteous suits and not with the bonafide object of assisting a claim believed to be just.

4. Trafficking relating to Public Offices and titles: An agreement to trafficking in public office is opposed to public policy, as it interferes with the appointment of a person best qualified for the service of the public. Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested. The following are the examples of agreements that are void; since they are tantamount to sale of public offices.

- (1) An agreement to pay money to a public servant in order to induce him to retire from his office so that another person may secure the appointment is void.
- (2) An agreement to procure a public recognition like Padma Vibhushan for reward is void.



Harish paid ₹ 15000 to the officer to give his son the job in the Forest department of India. On failure by officer he couldn't recover the amount as such contract amounts to trafficking in public office which is opposed to public policy.

5. Agreements tending to create monopolies: Agreements having for their object the establishment of monopolies are opposed to public policy and therefore void.



XYZ and ABC were only the manufactures of oxygen cylinders in West Bengal. They both entered into contract of supplying the same at very high rates and enjoy the monopoly rates during the covid period in the country. Such contract is opposed to public policy as they intended to create monopolies.

6. Marriage brokerage agreements: An agreement to negotiate marriage for reward, which is known as a marriage brokerage contract, is void, as it is opposed to public policy. For instance, an agreement to pay money to a person hired to procure a wife is opposed to public policy and therefore void.



Marriage bureau only provides information and doesn't negotiate marriage for reward, therefore, it is not covered under this point.

7. **Interference with the course of justice:** An agreement whose object is to induce any judicial officer of the State to act partially or corruptly is void, as it is opposed to public policy; so also is an agreement by A to reward B, who is an intended witness in a suit against A in consideration of B's absention himself from the trial. For the same reasons, an agreement which contemplates the use of under-hand means to influence legislation is void.
8. **Interest against obligation:** The following are examples of agreement that are void as they tend to create an interest against obligation. The object of such agreements is opposed to public policy.
- (1) An agreement by an agent to receive without his principal's consent compensation from another for the performance of his agency is invalid.
 - (2) A, who is the manager of a firm, agrees to pass a contract to X if X pays to A ` 200,000 privately; the agreement is void.
9. **Consideration Unlawful in Part:** By virtue of Section 24, if any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void."

This section is an obvious consequence of the general principle of Section 23. There is no promise for a lawful consideration if there is anything illegal in a consideration which must be taken as a whole. The general rule is that where the legal part of a contract can be severed from the illegal part, the bad part may be rejected and the good one can be retained. But where the illegal part cannot be severed, the contract is altogether void.

Practical Question

Mr. Shyam aged 58 years, was employed in a government department. He was going to retire after two years. Mr. Dev made a proposal to Mr. Shyam, to apply for voluntary retirement from his post so that Mr. Dev can be appointed in his place. Mr. Dev offered a sum of ` 10 Lakhs as consideration to Mr. Shyam to induce him to retire.

Mr. Shyam 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 the Indian Contract Act, 1872? **(RTP Sep 24)**

Law	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 sale of 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
Conclusion	Here, Mr. Shyam's promise to sale for Mr. Dev, an employment in the public services is the consideration for Mr. Dev's promise to pay ` 10 lakh. Therefore, in

	terms of the above provisions of the Indian Contract Act, the said agreement is not valid. It is void, as the consideration being opposed to public policy, is unlawful
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Practical Question

Mukesh is running a grocery store in Delhi. He sells his grocery business, including goodwill worth ₹1,00,000 to Rohit for a sum of ₹ 5,00,000. After the sale of goodwill, Rohit made an agreement with Mukesh. As per this agreement, Mukesh cannot open another grocery store (similar kind of business) in the whole of India for next ten years. However, Mukesh opens another store in the same city two months later. What are the rights available with Rohit regarding the restriction imposed on Mukesh with reference to Indian Contract Act, 1872? **[RTP June 2023]**

Law	<p>According to Section 27 of the Indian Contract Act, 1872, any agreement that restrains a person from carrying on a lawful trade, profession or business is a 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 -</p> <p>(i) Where the restraint is to refrain from carrying on a similar business,</p> <p>(ii) The restraint should be within the specified local limits,</p> <p>(iii) The restraint should be not to carry on the similar business after sale of goodwill to the buyer for a price,</p> <p>(iv) The restriction should be reasonable. Reasonableness of restriction will depend upon number of factors as considered by court</p>
Conclusion	<p>In the given case, Mukesh has sold the goodwill and there is restraint for not carrying on the same business of grocery store. However, the restriction imposed on Mukesh is unreasonable as he cannot carry similar business in whole of India for next 10 years. The restriction on restraint to similar kind of trade should be reasonable to make it a valid agreement. Hence, Rohit cannot take any legal action against Mukesh as the restriction is unreasonable as per Section 27 of Indian Contract Act, 1872. Hence, the agreement made between in restraint of trade between Mukesh and Rohit is void agreement</p>

VOID AGREEMENTS

Expressly declared 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.	Wagering Agreement (Section 30)
	[Refer Unit 2]	11.	Agreements to do impossible Acts (Section 56)

1. **Agreement in restraint of marriage (Section 26):** Every agreement in restraint of marriage of any person **other than a minor**, is void.
2. **Agreement in restraint of trade (Section 27):** 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 this rule is subject to the following exceptions, namely,

- i. where a person **sells the goodwill** of a business and agrees with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer or his successor in interest carries on a like business therein, such an agreement is valid (goodwill is the advantage enjoyed by a business on account of public patronage and encouragement from habitual customers). The local limits within which the seller of the goodwill agrees not to carry on similar business must be reasonable.
- ii. Under Section 36 of the **Indian Partnership Act**, 1932 if an outgoing partner makes an agreement with the continuing partners that he will not carry on any business similar to that of the firm within a specified period or within specified local limits, such an agreement, thought in restraint of trade, will be valid, if the restrictions imposed are reasonable. Similarly, under Section 11 of that Act an agreement between partners not to carry on competing business during the continuance of partnership is valid.
- iii. But an **agreement of service** by which an employee binds himself, during the term of his agreement, not to compete with his employer is not in restraint of trade.


	B, a physician and surgeon, employs A as an assistant for a term of three years and A agrees not to practice as a surgeon and physician during these three years. The agreement is valid and A can be restrained by an injunction if he starts independent practice during this period.
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3. **Agreement in restraint of legal proceedings (Section 28):** An agreement in restraint of legal proceeding is the one by which any party thereto is restricted **absolutely** from enforcing his rights under a contract through a Court or which abridges the usual period for starting legal proceedings. A contract of this nature is void.

However, there are certain exceptions to the above rule:

- (i) A contract by which the parties agree that any dispute between them in respect of any subject shall be referred to **arbitration** and that only the amount awarded in such arbitration shall be recoverable is a valid contract.
- (ii) Similarly, a contract by which the parties agree to refer to **arbitration** any question between them which has already arisen or which may arise in future, is valid; but such a contract must be in writing.


4. **Agreement - the meaning of which is uncertain (Section 29):** 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.

	<p>State with reason(s) whether the following agreements are valid or void as per the Indian Contract Act, 1872:</p> <p>(i) 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.</p> <p>(ii) X offers to sell his Maruti car to Y. Y believes that X has only Wagon R Car but agrees to buy it.</p> <p>(iii) X, a physician and surgeon, employs Y as an assistant on a salary of ₹ 75,000 per month for a term of two years and Y agrees not to practice as a surgeon and physician during these two years. [RTP Dec 2023]</p>
	<p>Sol.(i)The given agreement is valid.</p> <p>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 (Section 28 of the Indian Contract Act, 1872). 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.</p> <p>(ii)The said agreement is void.</p> <p>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.</p> <p>(iii)The said agreement is valid.</p> <p>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 (Section 27). But, as an exception, agreement of service by which an employee binds himself, during the term of his agreement, not to compete with his employer is not in restraint of trade</p>

Practical Question	
<p>Mr. Seth (an industrialist) has been fighting a long-drawn litigation with Mr. Raman (another industrialist). To support his legal campaign, Mr. Seth enlists the services of Mr. X, a legal expert stating that an amount of ₹ 5 lakhs would be paid, if Mr. X does not take up the case of Mr. Raman. Mr. X agrees, but at the end of the litigation, Mr. Seth refused to pay. Decide whether Mr. X can recover the amount promised by Mr. Seth under the provisions of the Indian Contract Act, 1872. [RTP Dec 2023]</p>	
Law	Sol. According to Section 27 of Indian Contract Act, 1872 an agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void
Conclusion	<p>In the instant case, Mr. Seth is in litigation with Mr. Raman since long. Mr. Seth enlists the services of Mr. X a legal expert stating that an amount of ₹ 5 lakhs would be paid, if Mr. X does not take up the case of Mr. Raman. Mr. X agrees, but at the end of the litigation, Mr. Seth refused to pay.</p> <p>As section 27 makes the contracts in restraint of trade, void, the contract between</p>

	Mr. Seth and Mr. X is also void. Hence, Mr. X cannot recover the amount promised by Mr. Seth
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Wagering agreement (Section 30):

Meaning	<p>It is an agreement involving payment of a sum of money upon the determination of an uncertain event</p> <p>The essence of a wager is that each side should stand to win or lose, depending on the way an uncertain event</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;">  <p>A agrees to pay ` 50,000 to B if it rains, and B promises to pay a like amount to A if it does not rain, the agreement will be by way of wager. But if one of the parties has control over the event, agreement is not a wager</p> </div>
Enforceability	An agreement by way of a wager is void
Essentials	<ol style="list-style-type: none"> 1. There must be a promise to pay money or money's worth. 2. Promise must be conditional on an event happening or not happening. 3. There must be uncertainty of event. 4. There must be two parties, each party must stand to win or lose. 5. There must be common intention to bet at the timing of making such agreement. 6. Parties should have no interest in the event except for stake.
Where valid	<p>(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.</p> <p>(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.</p> <p>(iii) Games of skill and Athletic Competition: Crossword puzzles, picture competitions and athletic competitions where prizes are awarded on the basis of skill and intelligence are the games of skill and hence such competition are valid. According to the Prize Competition Act, 1955 prize competition in games of skill are not wagers provided the prize money does not exceed ` 1,000.</p> <p>(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.</p>
Where void	<p>(i) Lottery transactions: A lottery is a game of chance and not of skill or knowledge. Where the prime motive of participant is gambling, the transaction amounts to a wager. Even if the lottery is sanctioned by the Government of India it is a wagering transaction. The only effect of such sanction is that the person responsible for running the lottery will not be punished under the Indian Penal Code. Lotteries are illegal and even collateral transactions to it are tainted with illegality (Section 294A of Indian Penal Code).</p>

	<p>(ii) Crossword Puzzles and Competitions: Crossword puzzles in which prizes depend upon the correspondence of the competitor's solution with a previously prepared solution kept with the editor of a newspaper is a lottery and therefore, a wagering transaction.</p> <p>Case Law: State of Bombay vs. R.M.D. Chamarbangwala AIR (1957)</p> <p>Facts: A crossword puzzle was given in magazine. Abovementioned clause was stated in the magazine. A solved his crossword puzzle and his solution corresponded with previously prepared solution kept with the editor. Held, this was a game of chance and therefore a lottery (wagering transaction).</p> <p>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 competitions are valid. According to the Prize Competition Act, 1955 prize competitions in games of skill are not wagers provided the prize money does not exceed ` 1,000.</p> <p>(iii) Speculative transactions: an agreement or a share market transaction where the parties intend to settle the difference between the contract price and the market price of certain goods or shares on a specified day, is a gambling and hence void.</p> <p>(iv) Horse Race Transactions: A horse race competition where prize payable to the bet winner is less than ` 500, is a wager.</p>
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Practical Question

A enters into a contract with B that he (A) sells his house for ₹ 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 ₹ 50,000 for it. B agreed to this, however after a year of sale, B started gambling business in that house. Can A claim ₹ 50,000 from B? Discuss with reference to the provisions of Indian Contract Act, 1872. [RTP May 2022]

Law	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
Conclusion	<p>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. ₹ 10,00,000 is valid and enforceable. However, the agreement to pay ₹ 50,000 for gambling done in the house is illegal and thus void.</p> <p>Hence, in the instant case, sale of house agreement is valid agreement and gambling agreement is illegal and not enforceable by law</p>

EXTRA QUESTIONS FOR PRACTISE



Chandan was suffering from some disease and was in great pain. He went to Dr. Jhunjhunwala whose consultation fee was ₹ 300. The doctor agreed to treat him but on the condition that Chandan had to sign a promissory note of ₹ 5000 payable to doctor. Chandan signed the promissory note and gave it to doctor. On recovering from the disease, Chandan refused to honour the promissory note. State with reasons, can doctor recover the amount of promissory note under the provisions of the Indian Contract Act, 1872? [RTP May 2022]

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

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

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

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

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



Rohan is running a grocery store in Delhi. He sells his grocery business, including goodwill worth ₹ 1,00,000 to Rohit for a sum of ₹ 5,00,000. After the sale of goodwill, Rohit made an agreement with Rohan. As per this agreement, Rohan is not to open another grocery store (similar kind of business) in the whole of India for next ten years. However, Rohan opens another store in the same city two months later. What are the rights available with Rohit regarding the restriction imposed on Rohan with reference to Indian Contract Act, 1872? [MTP Jun 2022(3 Marks)]

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

- (i) Where the restraint is to refrain from carrying on a similar business
- (ii) The restraint should be within the specified local limits
- (iii) The restraint should be not to carry on the similar business after sale of goodwill to the buyer for a price.

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

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



Sahil sells by auction to Rohan a horse which Sahil knows to be unsound. The horse appears to be sound, but Sahil knows about the unsoundness of the horse. Is this contract valid in the following circumstances under the Indian Contract Act, 1872:

(A) If Sahil says nothing about the unsoundness of the horse to Rohan.

(B) If Sahil says nothing about it to Rohan who is Sahil's son.

(C) If Rohan says to Sahil "If you do not deny it, I shall assume that the horse is sound." Sahil says nothing. **(3 Marks) (MTP July 24)**

Hint : 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 Sahil's duty to tell Rohan about the unsoundness of the horse because a fiduciary relationship exists between Sahil and his son Rohan. Here, Sahil's silence is equivalent to speech and hence amounts to fraud.

This contract is not valid since as per section 17, Sahil's silence is equivalent to speech and hence amounts to fraud

4

Unit PERFORMANCE OF CONTRACT

PERFORMANCE OF CONTRACT

Meaning: "Performance of Contract" means **fulfilment of obligations** to the contract.

According to Section 37, 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.

Types: On the basis of Section 37, "Performance of Contract" may be actual or attempted.

- a) **Actual Performance:** Where a party to a contract has done what he had undertaken to do or either of the parties has fulfilled their obligations under the contract within the time and in the manner prescribed.
- b) **Offer to perform or attempted performance or tender of performance:** It may happen sometimes, when the performance becomes due, the promisor offers to perform his obligation but the promisee refuses to accept the performance.



A promises to deliver certain goods to B. A takes the goods to the appointed place during business hours but B refuses to take the delivery of goods. This is an attempted performance as A the promisor has done what he was required to do under the contract.

Types of Tender:

1. **Tender of goods or services:** Where promisor offers to deliver the goods or services but promisee refuses to accept the delivery, then
 - (a) Goods or services need not be offered again.
 - (b) Promisor may sue the promisee for nonperformance.
 - (c) Promisor is discharged from his liability.
2. **Tender of money:** Where promisor offers to pay the amount but promisee refuses to accept the same, then
 - (a) Promisor is not discharged from his liability to pay the amount.
 - (b) Promisor will not be liable pay interest from the date of valid tender



What are the obligations of the parties to a Contract as regards Performance? [Sec.37]
Write short notes on "Offer to Perform" or "Tender of Performance".

CONDITIONS TO BE SATISFIED FOR A VALID TENDER OR ATTEMPTED PERFORMANCE

(i) It must be unconditional.



A offers to B to repay only the principal amount of the loan. This is not a valid tender since the whole amount of principal and interest is not offered.

(ii) It must be made at proper time and place.



If the promisor wants to deliver the goods at 2 a.m., this is not a valid tender unless it was so agreed.

(iii) Reasonable opportunity to examine goods.

Promisee should be given a reasonable opportunity for ascertaining whether goods delivered are, as per the agreement or not.



A contract's to deliver B at his warehouse 1000 Kgs of wheat on certain date. A must bring the wheat to B's warehouse on the appointed day, under such circumstances that B may have reasonable opportunity of satisfying himself that the thing offered is wheat of the quality contracted for, and that there are 1000 Kgs.

(iv) It must be for whole obligation.



A promises to deliver 100 bales of cotton on a certain day. On the agreed day and place 'A' offers to deliver 80 bales only. This is not a valid tender.

Effect of Refusal of Performance (Sec. 39) (P/Q)

When the promisor refuses or disables himself from performing his promise in its entirety, the promisee has the following two options:

- He may put an end to the contract.
- He can continue the contract by giving his consent, either by words or by conduct, to its continuance.




Once the promisor gives the consent to the continuation of the contract, he cannot put an end to it. However, he can claim compensation for the damages sustained for non-performance.



- X, a singer enters into a contract with Y, the manager of a theatre to sing at his theatre two nights in every week during the next two months, and Y engages to pay her ` 1000 for each nights performance. On the sixth night X willfully absent herself form the theatre. Y is independent to put an end to the contract.

	(b) If in the above illustration, with the assent of Y, X sings on the seventh night, Y is presumed to have signified his acquiescence in the continuance of the contract and cannot put an end to it; but is entitled to compensation for the damages sustained by him through X's failure to sing on the sixth night.
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	Discuss the effects of non-performance / part performance and non-acceptance of performance. M 01, N 00
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Practical Question

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

- (i) Whether the management of Shital Vidya Mandir has right to terminate the contract?
- (ii) If the management of Shital Vidya Mandir informed Sheena about its continuance, can the management still rescind the contract after a month on this ground subsequently?
- (iii) Can the Shital Vidya Mandir claim damages that it has suffered because of this breach in any of the above cases? **[May 2022 (4 Marks)] [RTP Dec 2023]**

Law	<p>Section 39 provides that when a party to a contract has refused to perform or disabled himself from performing his promise in its entirety the promisee may put an end to the contract unless he had signified, by words or conduct his acquiescence in its continuance. Further, in term of Section 40, the promisee shall be required to perform personally, if there is such an apparent intention of the parties.</p> <p>Also, as per Section 75 of the Act, a person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through non-fulfilment of the contract.</p>
Conclusion	<p>Therefore, in the instant case,</p> <p>(i) Since, Sheena could not perform as per the terms of contract, Shital Vidya Mandir can terminate the contract.</p> <p>(ii) In the second situation, the management of Shital Vidya Mandir informed Sheena about the continuance of the contract. Hence, the management cannot now rescind the contract after a month on this ground subsequently.</p> <p>(iii) As per Section 75, Shital Vidya Mandir can claim damages that it has suffered because of this breach in part (i).</p>

Practical Question

Mr. Singhania entered into a contract with Mr. Sonu to sing in his hotel for six weeks on every Saturday and Sunday. Mr. Singhania promised to pay ₹ 20,000 for every performance. Mr. Sonu performed for two weeks but on third week his health condition was very bad, so he did not come

to sing. Mr. Singhania terminated the contract. State in the light of provisions of the Indian Contract Act, 1872:-

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

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


(c) What would be your answer in case Mr. Sonu sends Mr. Mika on his place in third week and Mr. Singhania allows him to perform without saying anything? [RTP May 2022]

Law	According to Section 40 of the Indian Contract Act, 1872, if it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. Section 41 provides that when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.
Conclusion	Therefore, in the instant case, <p>(a) As Mr. Sonu could not perform as per the contract, Mr. Singhania can repudiate the contract.</p> <p>(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.</p> <p>(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</p>

BY WHOM A CONTRACT MAY BE PERFORMED (SECTION 40, 41 AND 42)


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.


1. **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.

	A promises to paint a picture for B and this must be performed by the promisor himself.
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2. **Agent:** Where personal consideration is not the foundation of a contract, the promisor or his representative may employ a competent person to perform it.

3. 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 (Section 37, para 2). But their liability under a contract is limited to the value of the property they inherit from the deceased.


	A promises to B to pay ₹ 100,000 on delivery of certain goods. A may perform this promise either himself or causing someone else to pay the money to B. If A dies before the time appointed for payment, his representative must pay the money or employ some other person to pay the money. If B dies before the time appointed for the delivery of goods, B's representative shall be bound to deliver the goods to A and A is bound to pay ₹ 100,000 to B's representative.
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	A promises to paint a picture for B for a certain price. A is bound to perform the promise himself. He cannot ask some other painter to paint the picture on his behalf. If A dies before painting the picture, the contract cannot be enforced either by A's representative or by B.
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4. Third persons: Effect of accepting performance from third person- Section 41: 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, if accepted by the promisee, this results in discharging the promisor, although the latter has neither authorised nor ratified the act of the third party.

	A received certain goods from B promising to pay ₹ 100,000/-. Later on, A expressed his inability to make payment. C, who is known to A, pays ₹ 60,000/- to B on behalf of A. However, A was not aware of the payment. Now B is intending to sue A for the amount of ₹ 100,000/-. Therefore, in the present instance, B can sue only for the balance amount i.e., ₹ 40,000/- and not for the whole amount.
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5. Joint promisors (Section 42): 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. If any of them dies, his legal representatives must, jointly with the surviving promisors, fulfil the promise. If all of them die, the legal representatives of all of them must fulfil the promise jointly.

	'A', 'B' and 'C' jointly promised to pay ₹ 6,00,000 to 'D'. Here 'A', 'B' and 'C' must jointly perform the promise. If 'A' dies before performance, then his legal representatives must jointly with 'B' and 'C' perform the promise, and so on. And if all the three (i.e. 'A', 'B' and 'C') die before performance, then the legal representatives of all must jointly perform the promise.
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Practical Question

Mr. Rich aspired to get a self-portrait made by an artist. He went to the workshop of Mr. C an artist and asked whether he could sketch the former's portrait on oil painting canvass. Mr. C agreed to the offer and asked for ₹ 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?

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

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

(6 Marks) (May 19)

Law	<p>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.</p> <p>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.</p>
Conclusion	<p>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.</p> <p>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</p>

Practical Question

Mr. S promises Mr. M to paint a family picture for ₹ 20,000 and assures to complete his assignment by 15th March, 2023. Unfortunately, Mr. S died in a road accident on 1st March, 2023 and his assignment remains undone. Can Mr. M bind the legal representative of Mr. S for the promise made by Mr. S? Suppose Mr. S had promised to deliver some photographs to Mr. M on 15th March, 2023 against a payment of ₹ 10,000 but he dies before that day. Will his representative be bound to deliver the photographs in this situation?

Decide as per the provisions of the Indian Contract Act, 1872. **[June 2023 (4 Marks)]**


Law	<p>The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.</p> <p>Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract. (Section 37 of the Indian Contract Act, 1872).</p>
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	As per the provisions of Section 40 of the Indian Contract Act, 1872, if it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representative may employ a competent person to perform it.
Conclusion	<p>In terms of the provisions of Section 40 stated above, in case where Mr. S has to paint a family picture for Mr. M, Mr. M cannot ask the legal representative of Mr. S to complete the painting work on Mr. S's death, since painting involves the use of personal skill.</p> <p>In terms of the provisions of Section 37 stated above, in case where Mr. S had promised to deliver some photographs to Mr. M, the legal representatives of Mr. S shall be bound to deliver the photographs in this situation.</p>

LIABILITY OF JOINT PROMISOR & PROMISEE

Devolution of joint liabilities (Section 42)

If two or more persons have made a joint promise, ordinarily all of them during their lifetime must jointly fulfil the promise. After death of any one of them, his legal representative jointly with the survivor or survivors should do so. After the death of the last survivor the legal representatives of all the original co-promisors must fulfil the promise.

	X, Y and Z who had jointly borrowed money must, during their life-time jointly repay the debt. Upon the death of X his representative, say, S along with Y and Z should jointly repay the debt and so on. If in an accident all the borrowers X, Y and Z dies then their legal representatives must fulfil the promise and repay the borrowed amount. This rule is applicable only if the contract reveals no contrary intention.
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Any one of joint promisors may be compelled to perform – Section 43

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 promisor may compel contribution – 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.

In other words, if one of the joint promisors is made to perform the whole contract, he can call for a contribution from others.

Sharing of loss by default in contribution – 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.

Explanation to Section 43

Nothing in this section shall prevent a surety from recovering, from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payment made by the principal.



A, B and C jointly promise to pay D ₹ 3,00,000. D may compel either A or B or C to pay him ₹ 3,00,000.



A, B and C are under a joint promise to pay D ₹ 3,00,000. C is unable to pay anything A is compelled to pay the whole. A is entitled to receive ₹ 1,50,000 from B.



X, Y and Z jointly promise to pay ₹ 6,000 to A. A may compel either X or Y or Z to pay the amount. If Z is compelled to pay the whole amount; X is insolvent but his assets are sufficient to pay one-half of his debts. Z is entitled to receive ₹ 1,000 from X's estate and ₹ 2,500 from Y.

We thus observe that the effect of Section 43 is to make the liability in the event of a joint contract, both **joint & several**, in so far as the promisee may, in the absence of a contract to the contrary, compel anyone or more of the joint promisors to perform the whole of the promise.

Effect of release of one joint promisor- 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.



'A', 'B' and 'C' jointly promised to pay ₹ 9,00,000 to 'D'. 'D' released 'A' from liability. In this case, the release of 'A' does not discharge 'B' and 'C' from their liability. They remain liable to pay the entire amount of ₹ 9,00,000 to 'D'. And though 'A' is not liable to pay to 'D', but he remains liable to pay to 'B' and 'C' i.e. he is liable to make the contribution to the other joint promisors.

Rights of Joint Promisees

The law relating to Devolution of joint rights is contained in Section 45 which is reproduced below:

"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".



A, in consideration of ₹ 5,00,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a specified day but B dies. In such a case right to demand payment shall rest with B's legal representatives, jointly with C during C's life-time, and after the death of C, with the legal representatives of B and C jointly.

Practical Question

X, V and Z jointly borrowed ₹ 50,000 from A. The whole amount was repaid to A by V.

Decide in the light of the Indian Contract Act, 1872 whether:

- V can recover the contribution from X and Z,
- Legal representatives of X are liable in case of death of X,
- V can recover the contribution from the assets, in case Z becomes insolvent. **(ICAI module**

Questions)	
Law	<p>As per the provisions of the Indian contract Act,</p> <ul style="list-style-type: none"> (i) The liability of joint promisors towards the promisee is joint and several. (ii) In the absence of an express agreement to the contrary, the promisee may compel any one or more of such joint promisors to perform the whole of the promise. (iii) If one of the joint promisors has actually paid the total amount due to the promisee, such a joint promisor would be entitled to recover a suitable contribution from the other joint promisors towards the total liability. (iv) A joint promisor may fail to make his contribution i.e. becomes insolvent, in such a case, the other joint promisors will have to share this loss equally even if there was a ratio to divide the main liability.
Conclusion	<p>As per the provisions of above sections,</p> <ul style="list-style-type: none"> a. Y can recover the contribution from X and Z because X, Y and Z are joint promisors. b. 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. c. Y also can recover the contribution from Z's assets.

Practical Question

X, Y and Z jointly sells goods to D for ₹ 18,000. After a week, D pays the total amount to Y alone. Is D discharged from liability?

Law	As per the rules related to joint promisors, the right to demand the performance lies with the joint Promisees jointly, unless agreed otherwise.
Conclusion	After applying above law to present situation, we conclude that, D is not discharged from his liability unless X & Z are settled with their dues.

TIME AND PLACE FOR PERFORMANCE OF THE PROMISE

The law on the subject is contained in Sections 46 to 50 explained below:

i. Time for performance of promise, where no application is to be made and no time is specified - Section 46

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

Explanation to Section 46 - The expression reasonable time is to be interpreted having regard to the facts and circumstances of a particular case.

ii. Time and place for performance of promise, where time is specified and no application to be made – Section 47

When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business, on such day and the place at which the promise ought to be performed.



If the delivery of goods is offered say after 8.30 pm, the promisee may refuse to accept delivery, for the usual business hours are over. Moreover, the delivery must be made at the usual place of business.

iii. Application for performance on certain day to be at proper time and place – Section 48

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

Explanation to Section 48 states that the question “what is a proper time and place” is, in each particular case, a question of fact.

iv. Place for the performance of promise, where no application to be made and no place fixed for performance - Section 49

When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such a place.



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

v. Performance in manner or at time prescribed or sanctioned by promisee - Section 50

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

PERFORMANCE OF RECIPROCAL PROMISE

The law on the subject is contained in Sections 51 to 58. The provisions thereof are summarized below:

i. Promisor not bound to perform, unless reciprocal promisee ready and willing to perform- Section 51

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.



A and B contract that A shall deliver the goods to B to be paid for by B on delivery. A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery.

ii. Order of performance of reciprocal promises- Section 52

When the order of performance of the reciprocal promises is expressly fixed by the contract, they shall be performed in that order; and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.



A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

iii. Liability of party preventing event on which the contract is to take effect – Section 53

When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss he may sustain in consequence of the non- performance of the contract.



A and B contract that B shall execute some work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B; and if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.



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

iv. Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises (Section 54)

Section 54 applies when the promises are reciprocal and dependent. If the promisor who has to perform his promise before the performance of the other's promise fails to perform it, he cannot claim performance of the other's promise, and is also liable for compensation for his non-performance.



A hires B's ship to take in and convey, from Kolkata to the Mauritius, a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise, and must make compensation to B for the loss which B sustains by the nonperformance of the contract.



A hires B to make a shoe rack. A will supply the plywood, fevicol and other items required for making the shoe rack. B arrived on the appointed day and time but A could not arrange for the required materials. A cannot claim the performance of B's promise, and must make compensation to B for the loss which B sustains by the non-performance of the contract.

v. Effects of Failure to Perform at a Time Fixed in a Contract in which Time is Essential (Section 55)

The phrase 'time as the essence of a contract' means that the time is an essential element in the contract, and the concerned parties must perform their respective promises within the specified time.

Cases Where Time is Considered to be the Essence of a Contract

In the following cases, time is usually considered to be the essence of the contract:

- (a) When the parties have expressly agreed to treat time as the essence of the contract
- (b) When the non-performance at the specified time operates as an injury to the other party
- (c) When the nature and necessity of the contract require the performance of the contract within the specified time.



In case of mercantile contracts, the time fixed for the delivery of goods is considered to be the essence of a contract and not the time fixed for the payment of the price. In contracts for the purchase of land, usually time is not of the essence of the contract because land values do not frequently fluctuate.

Effects of Failure to Perform Within the Stipulated Time

When time is the essence of a contract:

- (a) The contract is voidable at the option of the promisee.
- (b) If the promisee accepts the performance beyond the specified time, he cannot claim compensation for non-performance unless he had given a notice for compensation at the time of acceptance.

When time is not the essence of a contract:

- (a) The contract is not voidable.
- (b) The promisee is entitled to claim compensation for any loss suffered by him due to non-performance.



What is the effect of failure to perform a promise at a fixed time, when time is the essence of such contract? RIP, N 99

vi. Agreement to do Impossible Act (Section 56)


The impossibility of performance may be of the two types, namely (a) initial impossibility, and (b) subsequent impossibility.

- a) **Initial Impossibility (Impossibility existing at the time of contract):** When the parties agree upon doing of something which is obviously impossible in itself the agreement would be void. Impossible in itself means impossible in the nature of things. The fact of impossibility may be and may not be known to the parties.




'A', a Hindu, who was already married, contracted to marry 'B', a Hindu girl. According to law, 'A' being married, could not marry 'B'. In this case, 'A' must make compensation to 'B' for the loss caused to her by the non-performance of the contract.

- 1) **If known to the parties:** It would be observed that an agreement constituted, quite unknown to the parties, may be impossible of being performed and hence void.


	B promises to pay a sum of ` 5,00,000 if he is able to swim across the Indian Ocean from Mumbai to Aden within a week. In this case, there is no real agreement, since both the parties are quite certain in their mind that the act is impossible of achievement. Therefore, the agreement, being impossible in itself, is void.
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- 2) **If unknown to the parties:** Where both the promisor and the promisee are ignorant of the impossibility of performance, the contract is void.

	A contracted B to sell his brown horse for ` 2,50,000 both unaware that the horse was dead a day before the agreement
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- 3) **If known to the promisor only:** Where at the time of entering into a contract, the promisor alone knows about the impossibility of performance, or even if he does not know though he should have known it with reasonable diligence, the promisee is entitled to claim compensation for any loss he suffered on account of nonperformance.

- b) **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. 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.** The effect of such impossibility is that it makes the contract void, and the parties are discharged from further performance of the contract.

	'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.
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vii. **Reciprocal promise to do certain things that are legal, and also some other things that are illegal- Section 57**

Where persons reciprocally promise, first to do certain things which are legal and secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a valid contract, but the second is a void agreement.

	A and B agree that A will sell a house to B for ` 50,00,000 and also that if B uses it as a gambling house, he will pay a further sum of ` 75,00,000. The first set of reciprocal promises, i.e. to sell the house and to pay ` 50,00,000 for it, constitutes a valid contract. But the object of the second, being unlawful, is void.
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viii. **'Alternative promise' one branch being illegal- Section 58**

The law on this point is contained in Section 58 which says that “In the case of the alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced”.

	A and B agree that A shall pay B ₹ 1,00,000, for which B shall afterwards deliver to A either rice or smuggled opium.
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This is a valid contract to deliver rice, and a void agreement as to the opium.

Practical Question

Mr. Gaurav and Mr. Vikas entered into a contract on 1st July, 2022, according to which Mr. Gaurav had to supply 100 tons of sugar to Mr. Vikas at a certain price strictly within a period of 10 days of the contract. Mr. Vikas also paid an amount of ₹ 70,000 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 July, 2022 and the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. Gaurav offered to supply sugar on 20th July, 2022 for which Mr. Vikas did not agree. On 1st August, 2022, Mr. Gaurav claimed compensation of ₹ 20,000 from Mr. Vikas for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Vikas claimed for refund of ₹ 70,000, 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 Mr. Vikas contention. **[MTP Apr 2023(6 Marks)]**

Law	<p>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.</p> <p>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.</p>
Conclusion	<p>In the given question, after Mr. Gaurav and Mr. Vikas have entered into the contract to supply 100 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. Gaurav has to pay back the amount of ₹ 70,000 that he received from Mr. Vikas as an advance for the supply of sugar within the stipulated time. Hence, the contention of Mr. Vikas is correct.</p>

APPROPRIATION OF PAYMENTS

Sometimes, a debtor owes several debts to the same creditor and makes payment, which is not sufficient to discharge all the debts. In such cases, the payment is appropriated (i.e. adjusted against the debts) as per **Section 59 to 61** of the Indian Contract Act.

- i. **Application of payment where debt to be discharged is indicated (Section 59):** 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.

- ii. **Application of payment where debt to be discharged is not indicated (Section 60):** 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. However, he cannot apply the payment to the disputed debt.
- iii. **Application of payment where neither party appropriates (Section 61):** 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 discharge of each proportionately.

Practical Question

Mr. Murari owes payment of 3 bills to Mr. Girdhari as on 31st March, 2022. (i) 12,120 which was due in May 2018. (ii) ₹ 5,650 which was due in August 2020 (iii) ₹ 9,680 which was due in May 2021. Mr. Murari made payment on 1st April 2022 as below without any notice of how to appropriate them: **(ICAI module questions)**

- a) A cheque of ₹ 9,680
- b) A cheque of ₹ 15,000

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

Law	If the performance consists of payment of money and there are several debts to be paid, the payment shall be appropriated as per provisions of Sections 59, 60 and 61. The debtor has, at the time of payment, the right of appropriating the payment. In default of debtor, the creditor has option of election and in default of either the law will allow appropriation of debts in order of time.
Conclusion	<p>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 ₹ 9,680 will be appropriated against the bill of ₹ 9,680 which was due in May 2019.</p> <p>Cheque of ₹ 15000 can be appropriated against any lawful debt which is due even though the same is time-barred.</p> <p>Hence, Mr. Girdhari can appropriate the same against the debt of ₹ 12,120 which was due in 2016 and balance against ₹ 5650 which was due in August 2018.</p>

Practical Question

Mr. Sohan, a wealthy individual provided a loan of ₹ 80,000 to Mr. Mukesh on 26th February, 2021. The borrower, Mr. Mukesh asked for a further loan of ₹ 1,50,000. Mr. Sohan agreed but provided the loan in parts on different dates. He provided ₹ 1,00,000 on 28th February, 2021 and remaining ₹ 50,000 on 3rd March, 2021.

On 10th March, 2021 Mr. Mukesh while paying off part ₹ 75,000 to Mr. Sohan insisted that the lender should adjusted ₹ 50,000 towards the loan taken on 3rd March, 2021 and balance as against the loan on 26th February, 2021.

Mr. Sohan 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. Mukesh 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 be the mode of adjustment/appropriation of such part payment in case neither Mr. Sohan nor Mr. Mukesh insist any order of adjustment on their part? [RTP Dec 2023]

Hint

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.

Conclusion

(i) 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.

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

(ii) 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.

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

(iii) 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

	<p>the limitation of suits. If the debts are of equal standing, the payments shall be applied in discharge of each proportionately.</p> <p>Hence in case where neither Mr. Mukesh nor Mr. Sohan specifies the manner of appropriation of debt on part repayment, the appropriation can be made in proportion of debts</p>
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Practical Question

Mr. Harish owes payment of 3 bills to Mr. Ashish as on 31st March, 2022. (i) ₹ 12,120 which was due in May 2018. (ii) ₹ 5,650 which was due in August 2020 (iii) ₹ 9,680 which was due in May 2021. Mr. Harish made payment on 1st April 2022 as below without any notice of how to appropriate them:

- (i) A cheque of ₹ 9,680
- (ii) A cheque of ₹ 15,000

Advice under the provisions of the Indian Contract Act, 1872. [RTP June 2023]

Law	<p>If the performance consists of payment of money and there are several debts to be paid, the payment shall be appropriated as per provisions of Sections 59, 60 and 61 of the Indian Contract Act, 1872. The debtor has, at the time of payment, the right of appropriating the payment. In default of debtor, the creditor has option of election and in default of either, the law will allow appropriation of debts in order of time.</p>
Conclusion	<p>In the present case, Mr. Harish 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. Harish that it will be against the bill of exact amount. Hence cheque of ₹9,680 will be appropriated against the bill of ₹ 9,680 which was due in May 2021.</p> <p>Cheque of ₹ 15000 can be appropriated against any lawful debt which is due even though the same is time-barred.</p> <p>Hence, Mr. Ashish can appropriate the same against the debt of ₹12,120 which was due in 2018 and balance against ₹ 5650 which was due in August 2020</p>

CONTRACTS, WHICH NEED NOT BE PERFORMED –WITH THE CONSENT OF BOTH THE PARTIES

Under this heading, we shall discuss the principles of Novation, Rescission and Alteration. The law is contained in Sections 62 to 67 of the Contract Act.

i. Effect of novation, rescission, and alteration of contract (Section 62)

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

Analysis of Section 62

- a) **Effect of novation:** The parties to a contract may substitute a new contract for the old. If they do so, it will be a case of novation. On novation, the old contract is discharged and consequently it need not be performed. Thus, it is a case where there being a contract in existence some new contract is substituted for it 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.



A owes B ₹ 100,000. A, B and C agree that C will pay B and he will accept ₹ 100,000 from C in lieu of the sum due from A. A's liability thereby shall come to an end, and the old contract between A and B will be substituted by the new contract between B and C.

- b) **Effect of rescission:** A contract is also discharged by rescission. When the parties to a contract agree to rescind it, the contract need not be performed. In the case of rescission, only the old contract is cancelled and no new contract comes to exist in its place. It is needless to point out that novation also involves rescission. Both in novation and in rescission, the contract is discharged by mutual agreement.
- c) **Effect of alteration of contract:** As in the case of novation and rescission, so also in a case where the parties to a contract agree to alter it, the original contract is rescinded, with the result that it need not be performed. In other words, a contract is also discharged by alteration. The terms of contract may be so altered by mutual agreement that the alteration may have the effect of substituting a new contract for the old one. In other words, the distinction between novation and alteration is very slender.

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

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

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



A owes B ₹ 5,00,000. A pays to B, and B accepts, in satisfaction of the whole debt, ₹ 2,00,000 paid at the time and place at which the ₹ 5,00,000 were payable. The whole debt is discharged.

- iii. **Restoration of Benefit under a Voidable Contract (Section 64)**

The law on the subject is “When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor. The party rescinding avoidable contract shall, if he has received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received”.

Analysis of Section 64

Such a contract can be terminated at the option of the party who is empowered to do so. If he has received any benefit under the contract, he must restore such benefit to the person from whom he has received it.



An insurance company may rescind a policy on the ground that material fact has not been disclosed. When it does so, the premium collected by it in respect of the policy reduced by the amount of expenses incurred by it in this connection must be repaid to the policy holder.

iv. Obligations of Person who has Received Advantage under Void Agreement or contract that becomes void (Section 65)

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

Analysis of Section 65

From the language of the Section, it is clear that in such a case either the advantage received must be restored back or a compensation, sufficient to put the position prior to contract, should be paid.



A pays B ` 1,00,000, in consideration of B’s promising to marry C, A’s daughter. C is dead at the time of the promise. The agreement is void, but B must repay A ` 1,00,000.


In a case, the plaintiff hired a godown from the defendant for twelve months and paid the whole of the rent in advance. After about seven months the godown was destroyed by fire, without any fault or negligence on the part of the plaintiff and the plaintiff claimed a refund of a proportionate amount of the rent. Held, the plaintiff was entitled to recover the rent for the unexpired term, of the contract.


The Act requires that a party must give back whatever he has received under the contract. The benefit to be restored under this section must be benefit received under the contract (and not any other amount). A agrees to sell land to B for ` 400,000. B pays to A ` 40,000 as a deposit at the time of the contract, the amount to be forfeited by A if B does not complete the sale within a specified period. B fails to complete the sale within the specified period, nor is he ready and willing to complete the sale within a reasonable time after the expiry of that period. A is entitled to rescind the contract and to retain the deposit. The deposit is not a benefit received under the contract, it is a security that the purchaser would fulfil his contract and is ancillary to the contract for the sale of the land.


v. Communication of rescission (Section 66): You have noticed that a contract voidable at the option of one of the parties can be rescinded; but rescission must be communicated to the other

party in the same manner as a proposal is communicated under Section 4 of the Contract Act. Similarly, a rescission may be revoked in the same manner as a proposal is revoked.

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

	If an apprentice refuses to learn, the teacher cannot be held liable for not teaching.
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	A contracts with B to repair B's house. B neglects or refuses to appoint out to A the places in which his house requires repair. A is excused for the nonperformance of the contract, if it is caused by such neglect or refusal.
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	Explain any five circumstances under which contracts need not be performed with the consent of both the parties. (RTP Sep 24)
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Practical Question

Mr. JHUTH entered into an agreement with Mr. SUCH to purchase his (Mr. SUCH's) motor car for ₹ 5,00,000/- within a period of three months. A security amount of ₹ 20,000/- was also paid by Mr. JHUTH to Mr. SUCH in terms of the agreement. After completion of three months of entering into the agreement, Mr. SUCH tried to contract Mr. JHUTH to purchase the car in terms of the agreement. Even after lapse of another three month period, Mr. JHUTH neither responded to Mr. SUCH, nor to his phone calls. After lapse of another period of six months. Mr. JHUTH contracted Mr. SUCH and denied to purchase the motor car. He also demanded back the security amount of ₹ 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. (ICAI module questions)

Law	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.
Conclusion	Referring to the above provision, we can analyse the situation as under. The contract is not a void contract. Mr. SUCH is not responsible for Mr. JHUTH's negligence. Therefore, Mr. SUCH can rescind the contract and retain the security amount since the security is not a benefit received under the contract, it is a security that the purchaser would fulfil 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
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DISCHARGE OF A CONTRACT

A contract is discharged when the obligations created by it come to an end. 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
 - (a) Actual performance; or
 - (b) Attempted performance.
- ii. 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.



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.



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.

- iii. **Discharge by mutual agreement:** Section 62 of the Indian Contract Act provides 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.




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





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


- iv. **Discharge by impossibility of performance:** The impossibility may exist from the very start. In that case, it would be impossibility ab initio. Alternatively, it may supervene. Supervening impossibility may take place owing to:
 - (a) an unforeseen change in law;
 - (b) the destruction of the subject-matter essential to that performance;

- (c) 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;
- (d) the declaration of a war (Section 56).


	A agrees with B to discover a treasure by magic. The agreement is void due to initial impossibility.
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	A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.
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	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.
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	X agrees to sell his horse to Y for ` 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.
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- v. **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.

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

- vii. **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.


	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.
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- viii. **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)


	A owes B ₹ 5,00,000. C pays to B ₹ 1,00,000 and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.
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- ix. Effects of neglect of promisee to afford promisor reasonable facilities for performance:** 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)
- x. 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.
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How is a contract is discharged under the Indian Contract Act, 1872 and what are the different ways in which the obligations created by a contract can come to an end? **(6 Marks) (MTP July 24)**

Practical Question	
<p>Mr. Y is a devotee and wants to donate an elephant to the temple as a core part of ritual worship. He contacted Mr. X who wanted to sell his elephant. Mr. X contracted with Mr. Y to sell his elephant for ₹ 20 Lakhs. Both were unaware that the elephant was dead a day before the agreement. Referring to the provisions of the Indian Contract Act, 1872, explain whether it is a void, voidable or a valid contract. [RTP Nov 2022]</p>	
Law	<p>As per Section 2(j) of the Indian Contract Act, 1872 a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable. The fact of impossibility may be known or unknown to the promisor or promisee.</p> <p>It may be added by clarification here that the term “contract” shall be understood as an “agreement”.</p> <p>Thus, when the parties agree on doing something which is obviously impossible in itself the agreement would be void.</p>
Conclusion	<p>In this case, Mr. X and Mr. Y were ignorant of the fact that the elephant was dead and therefore the performance of the contract was impossible from the very start (impossibility ab initio).</p> <p>Hence, this contract is void being not enforceable by law</p>

	<i>What will be rights with the promisor in following cases? Explain with reasons: (ICAI module questions) (RTP Sep 24)</i>
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- a) *Mr. X promised to bring back Mr. V to life again.*
- b) *A agreed to sell 50 kgs of apple to B. The loaded truck left for delivery on 15th March but due to riots in between reached A 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.*

Hint

- (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

5

Unit

DISCHARGE OF CONTRACT

DISCHARGE BY BREACH OF CONTRACT

Breach means failure of a party to perform his or her obligation under a contract. Breach of contract may arise in two ways:

- (1) Actual breach of contract
- (2) Anticipatory breach of contract

ANTICIPATORY BREACH OF CONTRACT

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.

Anticipatory breach of a contract may take either of the following two ways:

- (a) Expressly by words spoken or written, and
- (b) Impliedly by the conduct of one of the parties.



Where A contracts with B on 15th July, 2022 to supply 10 bales of cotton for a specified sum on 14th August, 2022 and on 30th July informs B, that he will not be able to supply the said cotton on 14th August, 2022, there is an express rejection of the contract.



Where A agrees to sell his white horse to B for ₹ 50,000/- on 10th of August, 2022, but he sells this horse to C on 1st of August, 2022, the anticipatory breach has occurred by the conduct of the promisor.

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, by words or conduct, his acquiescence in its continuance.”

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

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

ACTUAL BREACH OF CONTRACT

In contrast to anticipatory breach, it is a case of refusal to perform the promise on the scheduled date. The parties to a lawful contract are bound to perform their respective promises. But when one of the parties breaks the contract by refusing to perform his promise, he is said to have committed a breach. In that case, the other party to the contract obtains a right of action against the one who has refused to perform his promise.

Actual breach of contract may be committed-

(a) At the time when the performance of the contract is due.



A agrees to deliver 100 bags of sugar to B on 1st February 2022. On the said day, he failed to supply 100 bags of sugar to B. This is actual breach of contract. The breach has been committed by A at the time when the performance becomes due.

(b) During the performance of the contract: Actual breach of contract also occurs when during the performance of the contract, one party fails or refuses to perform his obligation under it by express or implied act.

Practical Question

A appointed B to accompany him on a tour for three months from 1st July at a certain Salary. Before 1st July, A told B that B was no more required by him. Can B sue A?

Law

There are two types of breach as per the Indian contract Act,

(a) Actual breach

(b) Anticipatory breach

- When the party declares his intention of not performing the contract before the performance is due it is termed as anticipatory breach of contract.
- It may take place by (expressly or impliedly)-
 - (a) Refusing to perform his promise under the Contract, or
 - (b) By his act disabling himself from performing the promise before due date of performance.

	<ul style="list-style-type: none"> Remedies under Anticipatory Breach: <ol style="list-style-type: none"> Put an end to the contract and treat the anticipatory breach as actual breach of contract. Choose to keep the contract alive till the date of performance.
Conclusion	After applying above law to present situation, we conclude that, there was an anticipatory breach of contract by A, thereafter B has to options either to consider such anticipatory breach as an actual breach and sue A or to keep the contract alive until the date of actual performance waiting for A to fulfill his promise.

Remedies for Breach of Contract

SUIT FOR DAMAGES (Section 73)

On the breach of the contract, the party who suffers from such a breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him by breach.

- i. **Ordinary damages:** 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 cause to him thereby, which naturally arose in the usual course of things from such breach, or which the parties know, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reasons of the breach. (**Section 73 of the Contract Act and the rule in Hadley vs. Baxendale**).

HADLEY vs. BAXENDALE- Facts

The crankshaft of P's flour mill had broken. He gives it to D, a common carrier who promised to deliver it to the foundry in 2 days where the new shaft was to be made. The mill stopped working, D delayed the delivery of the crankshaft so the mill remained idle for another 5 days. P received the repaired crankshaft 7 days later than he would have otherwise received. Consequently, P sued D for damages not only for the delay in the delivering the broken part but also for loss of profits suffered by the mill for not having been worked. The count held that P was entitled only to ordinary damages and D was not liable for the loss of profits because the only information given by P to D was that the article to be carried was the broken shaft of a mill and it was not made known to them that the delay would result in loss of profits.



A agrees to sell to B bags of rice at ` 5,000 per bag, delivery to be given after two months. On the date of delivery, the price of rice goes up to ` 5,500 per bag. A refuse to deliver the bags to B. B can claim from A ` 500 as ordinary damages arising directly from the breach.

- ii. **Special damages:** Where a party to a contract receives a notice of special circumstances affecting the contract, he will be liable not only for damages arising naturally and directly from the breach but also for special damages.



'A' delivered a machine to 'B', a common carrier, to be conveyed to 'A's mill without delay. 'A' also informed 'B' that his mill was stopped for want of the machine. 'B' unreasonably delayed the delivery of the machine, and in consequence 'A' lost a profitable contract with the Government. In this case, 'A' is entitled to receive from 'B', by way of compensation, the average amount of profit, which would have been made by running the mill during the period of delay. But he cannot recover the loss sustained due to the loss of the Government contract, as 'A's contract with the Government was not brought to the notice of 'B'.

iii. Vindictive or Exemplary damages

These damages may be awarded only in two cases -

- (a) for breach of promise to marry because it causes injury to his or her feelings; and
- (b) for wrongful dishonour by a banker of his customer's cheque because in this case the injury due to wrongful dishonour to the drawer of cheque is so heavy that it causes loss of credit and reputation to him. A business man whose credit has suffered will get exemplary damages even if he has sustained no pecuniary loss. But a non-trader cannot get heavy damages in the like circumstances, unless the damages are alleged and proved as special damages. (***Gibbons v West Minister Bank***)



Give the circumstances as to when "Vindictive or Exemplary Damages" may be awarded for breach of a contract. [RTP Nov 2022]

- iv. **Nominal damages:** Nominal damages are awarded where the plaintiff has proved that there has been a breach of contract but he has not in fact suffered any real damage. It is awarded just to establish the right to decree for the breach of contract. The amount may be a rupee or even 10 paise.
- v. **Damages for deterioration caused by delay:** In the case of deterioration caused to goods by delay, damages can be recovered from carrier even without notice. The word 'deterioration' not only implies physical damages to the goods but it may also mean loss of special opportunity for sale.
- vi. **Pre-fixed damages:** Sometimes, parties to a contract stipulate at the time of its formation that on a breach of contract by any of them, a certain amount will be payable as damage. It may amount to either liquidated damages (i.e., a reasonable estimate of the likely loss in case of breach) or a penalty (i.e., an amount arbitrarily fixed as the damages payable). Section 74 provides that if a sum is named in a contract as the amount to be paid in case of a breach, the aggrieved party is entitled to receive from the party at fault a reasonable compensation not exceeding the amount so named (Section 74).



If the penalty provided by the contract is ` 1,00,000 and the actual loss because of breach is ` 70,000, only ` 70,000 shall be available as damages, i.e., the amount of actual loss and not the amount stipulated. But if the loss is, say, ` 1,50,000, then only, ` 1,00,000 shall be recoverable.



X promised Y, a priest, to pay ₹ 10,000 as charity. The priest on X's promise incurred certain liabilities towards the repairing of the temple to the extent of Rs. 7,500. Y, the priest, can recover from X ₹ 7,500.

Practical Question

X entered into a contract with V to supply him 1,000 water bottles @ ₹ 5.00 per water bottle, to be delivered at a specified time. Thereafter, X contracts with Z for the purchase of 1,000 water bottles @ ₹ 4.50 per water bottle, and at the same time told Z that he did so for the purpose of performing his contract entered into with Y. Z failed to perform his contract in due course and market price of each water bottle on that day was ₹ 5.25 per water bottle. Consequently, X could not procure any water bottle and Y rescinded the contract. 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.

Law

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 vs. 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

Conclusion

The problem asked in this question is based on the provisions of Section 73 of the Indian Contract Act, 1872. 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 ₹ 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 ₹ 750/- (i.e. 1000 water bottles x 0.75 paise).

Practical Question

X contracted to sell 100 kg of Sugar to Y at ` 15 per kg on a certain date. In anticipation X contracted to purchase from Z the same quantity at ` 8 per kg. Z does not deliver the Sugar to X. X suffers from loss of ` 7 per kg. Can he recover this loss from Z?

Law

As per Sec. 73, in case breach of contract is resulting into loss to aggrieved party, such can claim damages of an amount equal to loss suffered.
Loss shall be market price on the date of breach reduced by contract price.
Special damages are recoverable only if the parties knew about them.

Conclusion

After applying above law to present situation, we conclude that, as Z was unable to supply the goods to X and due to which X failed to perform his promise with Y, the damage to X is a special damage, which was not communicated by X to Z, thus cannot be recovered.

Practical Question

A contracted with B to supply him (B) 500 tons of iron-steel at ` 5,000 per ton, to be delivered at a specified time. Thereafter, A contracts with C for the purchase of 500 tons of iron-steel at ` 4,800 per ton, and at the same time told C that he did so for the purpose of performing his contract entered into with B. C failed to perform his Contract in due course. Consequently, A could not procure any iron-steel and B rescinded the Contract. What would be the amount of damages which A could claim from C in the circumstances? M 07

Law

As per Sec. 73, in case breach of contract is resulting into loss to aggrieved party, such can claim damages of an amount equal to loss suffered.
Loss shall be market price on the date of breach reduced by contract price.
Special damages are recoverable only if the parties knew about them.

Conclusion

After applying above law to present situation, we conclude that, A can recover both ordinary as well as special damages as he stated in the contract that his failure shall result into loss to A i.e. ordinary damages @ 200*500 tonnes= 100000 And also special damages as per the contract.



Seema was running a boutique in New Delhi. She has to deliver some cloth to her friend Kiran who was putting up an exhibition in 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 to the place after the conclusion of the exhibition. On account of such breach of contract by railways authorities, can Seema recover the loss of profits under the Indian Contract Act, 1872? (RTP Sep 24) [RTP May 2022]

Hint

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 a breach is committed by a party, the defendant shall be held liable for all such losses that naturally arise in the usual course of business. Such damages are called ordinary damages. However, special damages are those which arise in unusual circumstances affecting the aggrieved party and such damages are recoverable only when the special circumstances were brought to the knowledge of the defendant. If no special notice is given, then the aggrieved party can only claim the ordinary damages.

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



Mr. Chetan was travelling to Manali with his wife by bus of Himalayan 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. The driver advised the passengers to get to the shelter in the nearest hotel which was at a distance of only one kilometer from that place.

The wife of Mr. Chetan caught cold and fell ill due to being asked to get down and she had to walk in cold night to reach hotel. Mr. Chetan filed the suit against Himalayan Travels Pvt. Ltd. For damages for the personal inconvenience, hotel charges and medical treatment for his wife. Explain, whether Mr. Chetan would get compensation for which he filed the suit under the Indian Contract Act, 1872? **(4 Marks) (MTP July 24)**

Hint:

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

In the instant case, Mr. Chetan filed the suit against Himalayan 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. Chetan 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.



M Ltd. contract with Shanti Traders to make and deliver certain machinery to them by 30th June 2023 for ₹ 11.50 lakhs. Due to labour strike, M Ltd. could not manufacture and deliver the machinery to Shanti Traders. Later, Shanti Traders procured the machinery from another manufacturer for ₹ 12.75 lakhs. Due to this, Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation which it can claim from M Ltd., referring to the legal provisions of the Indian Contract Act, 1872. **(MTP May 24) (7 Marks)**

Hint

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

Applying the above principle of law to the given case, M Ltd. is obliged to compensate for the loss of ₹ 1.25 lakh (i.e. ₹ 12.75 minus ₹ 11.50 = ₹ 1.25 lakh) 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

PENALTY AND LIQUIDATED DAMAGES (SECTION 74)

The parties to a contract may provide before hand, the amount of compensation payable in case of failure to perform the contract. In such cases, the question arises whether the courts will accept this figure as the measure of damage.


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


If the sum fixed in the contract represents a genuine pre-estimate by the parties of the loss, which would be caused by a future breach of the contract it is liquidated damages. It is an assessment of the amount which in the opinion of the parties will compensate for the breach. Such a clause is effective and the amount is recoverable. But where the sum fixed in the contract is unreasonable and is used to force the other party to perform the contract; it is penalty. Such a clause is disregarded and the injured party cannot recover more than the actual loss.


Indian Law: Indian law makes no distinction between 'penalty' and liquidated damages'. The Courts in India award only a reasonable compensation not exceeding the sum so mentioned in the contract. Section 74 of the Contract Act lays down if the parties have fixed what the damages will be, the courts

will never allow more. But the court may allow less. A decree is to be passed only for reasonable compensation not exceeding the sum named by the parties. Thus, Section 74 entitles a person complaining of breach of contract to get reasonable compensation and does not entitle him to realise anything by way of penalty.

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

	A contracts with B, that if A practices as a surgeon in Kolkata, he will pay B ` 50,000. A practice as a surgeon at Kolkata, B is entitled to such compensation not exceeding ` 50,000 as the court considers reasonable.
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	A borrows ` 10,000 from B and gives him a bond for ` 20,000 payable by five yearly instalments of ` 4,000 with a stipulation that in default of payment, the whole shall become due. This is a stipulation by way of penalty.
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	A undertakes to repay B, a loan of ` 10,000 by five equal monthly instalments with a stipulation that in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty and the contract may be enforced according to its terms.
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Distinction between liquidated damages and penalty

Penalty and liquidated damages have one thing in common that both are payable on the occurrence of a breach of contract. It is very difficult to draw a clear line of distinction between the two but certain principles as laid down below may be helpful.

1. If the sum payable is so large as to be far in excess of the probable damage on breach, it is certainly a penalty.
2. Where a sum is expressed to be payable on a certain date and a further sum in the event of default being made, the latter sum is a penalty because mere delay in payment is unlikely to cause damage.
3. The expression used by the parties is not final. The court must find out whether the sum fixed in the contract is in truth a penalty or liquidated damages. If the sum fixed is extravagant or exorbitant, the court will regard it as a penalty even if, it is termed as liquidated damages in the contract.
4. The essence of a penalty is payment of money stipulated as a *terrorem* of the offending party. The essence of liquidated damages is a genuine pre-estimate of the damage.
5. English law makes a distinction between liquidated damages and penalty, but no

such distinction is followed in India. The courts in India must ascertain the actual loss and award the same which amount must not, however exceed the sum so fixed in the contract. The courts have not to bother about the distinction but to award reasonable compensation not exceeding the sum so fixed.

	"Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of contract whereas Penalty on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the
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parties". Explain the statement by differentiating between liquidated damages and penalty with reference to provisions of the Indian Contract Act, 1872. [May 2022 (5 Marks)]

Besides claiming damages as a remedy for the breach of contract, the following remedies are also available:

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



A promises B to deliver 50 bags of cement on a certain day. B agrees to pay the amount on receipt of the goods. A failed to deliver the cement on the appointed day. B is discharged from his liability to pay the price.

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

- (a) It is only available if the original contract has been discharged.
- (b) 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 merit is restitutory. It is but reasonable compensation awarded on implication of a contract to remunerate. Where a person orders only 12 bottles of a whiskey from a wine merchant but also receives 2 bottles of brandy, and the purchaser accepts them, the purchaser must pay a reasonable price for the brandy.

The claim for quantum meruit arises in the following cases:

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



X wrongfully revoked Y's (his agent) authority before Y could complete his duties. Held, Y could recover, as a quantum meruit, for the work he had done and the expenses he had incurred in the course of his duties as an agent.



A agrees to deliver 100 bales of cottons to B at a price of ₹ 1000 per bale. The cotton bales were to be delivered in two instalments of 50 each. A delivered the first instalment but failed to supply the second. B must pay for 50 bags.



What do you mean by Quantum Meruit and state the cases where the claim for Quantum Meruit arises? **(MTP May 24) (6 Marks)**

Practical Question

A was appointed as a MD by a Company. Later on it was found that appointment was invalid because the Director appointed him were not eligible. Can A claim Salary for the time he worked?

Conclusion

After applying above law to present situation, we conclude that, A is entitled to remuneration for the services rendered on Quantum Meruit basis, as only his appointment is held invalid but he has worked for the organisation and he is not at default for the termination of the contract.

- iii. **Suit for specific performance:** Where damages are not an adequate remedy in the case of breach of contract, the court may in its discretion on a suit for specific performance direct party in breach, to carry out his promise according to the terms of the contract.
- iv. **Suit for injunction:** Where a party to a contract is negating the terms of a contract, the court may by issuing an 'injunction orders', restrain him from doing what he promised not to do.



N, a film star, agreed to act exclusively for a particular producer, for one year. During the year she contracted to act for some other producer. Held, she could be restrained by an injunction.



A, a singer, agreed with B to perform at his theatre for two months, on a condition that during that period, he would not perform anywhere. In this case, B could move to the Court for grant of injunction restraining A from performing in other places.

Party rightfully rescinding contract, entitled to compensation (Section 75)

A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through non-fulfilment of the contract.



A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her ₹ 10000 for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.



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

- i. Mr. S and Mr. R made contract wherein Mr. S agreed to deliver paper cup manufacture machine to Mr. R and to receive payment on delivery. On the delivery date, Mr. R did not pay the agreed price. Decide whether Mr. S is bound to fulfil his promise at the time of delivery?
- ii. Mr. Y has given loan to Mr. G of ` 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 as per the Indian Contract Act, 1872?
- iii. A & B entered into a contract to supply unique item, alternate of which is not available in the market. A refused to supply the agreed unique item to B. What directions could be given by the court for breach of such contract? **(MTP May 24) (7 Marks)**

Hint

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

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

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

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

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

(iii) Where there is a breach of contract for supply of a unique item, mere monetary damages may not be an adequate remedy for the other party. In such a case, the court may give order for specific performance and direct the party in breach to carry out his promise according to the terms of contract. Here, in this case, the court may direct A to supply the item to B because the refusal to supply the agreed unique item cannot be compensated through money

6

Unit

CONTINGENT AND QUASI CONTRACTS

INTRODUCTION

1. A contingent contract is a contract to do or not to do something, if some **event, collateral to such contract, does or does not happen**"- (Section 31).
2. Contracts of insurance, indemnity and guarantee are examples of contingent contract.
3. According to Pollock and Mulla, collateral event means an event which is, "**neither a performance directly promised as part of the contract, nor the whole of the consideration for a promise**".



A contracts to pay B ` 1,00,000 if B's house is burnt. This is a contingent contract, because the burning of B's house is neither a performance promised as part of the contract nor its is the consideration obtained from B. the liability of A arise only on the happening of a collateral event which is an dependent event but collateral to the main contract.

4. **A contract can also be contingent if it depends on act of a party to the contract or that of a third person.** For example, A entered into a contract for the supply of timber to the Govt. one of the terms of the contract was that timber would be rejected if it not approved by the Superintendent of the Gun Carriage factory for which the timber was required. The timber supplied was rejected. A filed a suit for breach of contract. Will he succeed?
5. **However, if the contingent event depends on the mere will and pleasure of one of the parties to the contract, it would not be valid.** Thus, in a contract of service to pay as the employer pleases is not promise.
6. **The collateral event should not be a part of the reciprocal promises forming the contract.** Thus, A agrees to construct a swimming pool for B for ` 80,000. The payment is to be made by B only on the completion of the pool. It is not a contingent contract, because these are mutual promises forming part of the contract.
 - ❖ Where a contract provides that the goods would be delivered as and when they arrive, is not a contingent contract but it merely provides particular mode of performance.


Essentials of contingent contracts

- (a) The performance of such contracts depends on a **contingency** i.e., on the happening or non-happening of the future event.
- (b) The event must be **collateral** i.e., incidental to the contract.
- (c) The event must be **uncertain**. If the event is bound to happen the contract is due to be performed in any case then it is not a contingent contract.
- (d) The contingent event should not be the mere will of the promisor.

RULES REGARDING CONTINGENT CONTRACTS

Cases	Enforceable (Valid)	Void	Examples
Dependent on the happening a future uncertain event. (Sec. 32)	when that event happens	If the event does not happen or happening becomes impossible	Illustration: 1. A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's lifetime. Illustration: 2. A contracts to pay B a sum of money when B marries C. C dies without being married to B. the contract becomes void.
Dependent on non-happening of an uncertain future event. (Sec. 33)	If the event does not happen or happening becomes impossible	when that event happens	Illustration: 1. A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks. Illustration: 2. A agrees to pay sum of money to B if a certain ship does not return. The ship returns back. The contract has become void.
Dependent on the happening of an event within a fixed time. (Sec. 35(1))	If the event happens within that time	If at the expiration of the fixed time, such event has not happened or if, before the time fixed, such event becomes impossible	Illustration: 1 A promises to pay B a sum of money if a certain ship return within a year. The contract may be enforced if the ship return within a year, and becomes void if the ship is burnt within a year (since the event become impossible)
Dependent on the non-happening of an event within a fixed time. (Sec. 35(2))	if the event does not happen or becomes impossible within that time	if the event happens within that time	Illustration: 1 A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within a year.

Dependent on the future conduct of a person acting in a particular way. (Sec, 34)	if that person acts in that way	if that person does something which makes it impossible to perform in the given circumstances	S sells goods to B and B promises to pay the price after C has fixed it. If c refuses to fix the price or if he dies before fixing it, the agreement becomes void.
Dependent on an impossible event. (Sec. 36)	Never enforceable	Void-ab-initio	Illustration: 1. A agrees to pay B ` 1,000 if two straight lines should enclose a space. The agreement is void.

	What constitutes a contingent contract under the Indian Contract Act, 1872, and what are its essential elements? (6 Marks) (MTP July 24)
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Practical Question	
A promises to sell his bike to Z for 75,000 if he feels like selling it after having a new bike. Is it a Contingent Contract?	
Law	As per Sec. 31 A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen”.
Conclusion	After applying above law to present situation, we conclude that,



Practical Question	
A agrees to make a furniture for B for 1 Lakh on the term that payment will be made after the completion of the work. Is it a Contingent Contract?	
Law	As per Sec. 31 A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen”.
Conclusion	After applying above law to present situation, we conclude that, the event of payment is not collateral to the main contract, but is the condition attached to the main contract i.e. consideration shall be enforced on after completion of consideration from part of A, thus it is not a contingent event.

WHAT IS QUASI CONTRACT?

Introduction

1. The terms 'Quasi' means 'as if' or '**similar to**'.
2. Just like a contract it also creates legal obligations. But the legal obligations created by quasi contract do not rest on any agreement but are imposed by law.
3. It is therefore, contractual in law, but not in fact.
4. In reality it is not a contract since **the essential elements of contract** like offer and acceptance, lawful consideration etc. are **not present**.
5. The Indian Contract Act describes quasi-contract as '**certain relations resembling those created by contracts**'.
6. Quasi contracts are **based on principles of equity, justice and goods conscience**. They aim at prevention of "**unjust enrichment**" i.e. **no man shall be allowed to enrich himself at the cost of another**.
7. Another theory regarding the judicial basis of such contract is that it is **implied, notional or fictional contract imputed by law** out of equitable considerations.
8. In the first place, such a right is **always a right to money**, and generally, though not always, to a liquidated sum of money.
9. Damages can be claimed for breach of quasi-contractual right

TYPES OF QUASI-CONTRACTS [Sections 68 to 72]

Cases	Explanation	
(1) Claim for necessaries supplied to persons incapable of contracting (Section 68)	<ul style="list-style-type: none"> • If necessaries are supplied to a person who is incapable of contracting, <div style="border: 1px solid black; padding: 5px; width: fit-content;">  a minor or a person of unsound mind, the supplier is entitled to claim their price from the property of such a person. </div>	A Supplies to B, a lunatic, necessaries suited to B's status in life, A would be entitled to recover their price from B's property. He would also be able to recover the price for necessaries supplied by him to his (B's) wife or minor child since B is legally bound to support them.
(2) Right to recover money paid for another person (Section 69)	<p>A person who has paid a sum of money which another is obliged to pay, is entitled to be reimbursed by that other person</p> <p>Conditions:</p> <ul style="list-style-type: none"> • The payment made should be bona fide for the protection of one's interest. • The payment should not be a voluntary one. • The payment must be such as the other party was bound by law(or contract) to pay 	B holds land in Bengal, on a lease granted by A, the Zamindar. The revenue payable by A to the Government being in arrears his land is advertised for sale by the Government. Under the revenue law the consequences of such sale will be annulment of B's lease. B to prevent the sale and the consequent annulment of his own lease pays to the Government the sum due from A. A is bound to

		make goods to B the amount so paid
(3) Obligation of a person enjoying benefits of non-gratuitous act (Section 70):	<ul style="list-style-type: none"> ◆ Where a person lawfully does anything for another person, or delivers anything to him ◆ not intending to do so gratuitously, and ◆ such other person enjoys the benefit thereof, ◆ The latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered”. 	<p>(1) A, a tradesman, leaves goods at B’s house by mistake. B treats the goods as his own. He is bound to pay for them to A.</p> <p>(2) A saves B’s property from fire. A is not entitled to compensation from B, if intended to act gratuitously.</p>
(4) Responsibility of a finder of goods (Section 71)	<ol style="list-style-type: none"> 1. A person who finds goods and takes possession of it is responsible as a bailee. 2. That is, he is liable- <ul style="list-style-type: none"> ▪ To try and find out the true owner and ▪ To take due care of the property 3. Finder is entitled to a lien until paid compensation, but cannot file a suit to recover such compensation. 4. Finder is entitled to possession against all except the true owner. 5. When owner declares reward, finder can sue for reward. 6. Right of re-sale: If the owner is not found or if he refuses to pay lawful charges, the finder may sell- <ul style="list-style-type: none"> ▪ When the thing is in danger of perishing or losing the greater part of its value. ▪ When the lawful charges amount to two-thirds of its value. 	
(5) Liability for money paid or thing delivered by mistake or under coercion (Section 72)	<p>“A person to whom money has been paid, or anything delivered by mistake or under coercion must repay or return it (Sec. 72)”.</p>	<p>(1) A pays some money to B by mistake. It is really due to C. B must refund the money to A. C, however cannot recover the amount from B as there is no privity of contract between B and C.</p> <p>(2) A, a tradesman, leaves goods at B’s house by mistake. B treats the goods as his own. He is bound to pay A for them.</p> <p>(3) A and B jointly owe `100 to C, A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount of `100 to B.</p>

Practical Question

M found a purse in his mall. He deposited the purse to the Manager of the mall, so that the true owner can claim it back. However, no one claimed the purse. M wants the purse back. Can he succeed?

Law	<p>As per Sec. 71, of the Indian Contract Act, 1872, A person who finds goods and takes possession of it is responsible as a bailee i.e. he is liable-</p> <ul style="list-style-type: none">• To try and find out the true owner and• To take due care of the property <p>Also such finder is entitled to possession against all except the true owner.</p>
Conclusion	<p>After applying above law to present situation, we conclude that, M i.e. the finder of a lost goods is the bailee and has all rights and duties thereto, as M was unable to find the true owner, he has all the right to possess such goods against everyone i.e. Manager of the mall except the true owner. Thus M shall succeed in his suit and will get back the purse. i.e. he has right in rem</p>



Amit, a minor was studying in a college. On 1st July, 2023 he took a loan of ` 1,00,000 from Bhavesh for payment of his college fees and to purchase books and agreed to repay by 31st December, 2023. Amit possesses assets worth ` 9 lakhs. On due date, Amit fails to pay back the loan to Bhavesh. Bhavesh now wants to recover the loan from Amit out of his (Amit's) assets. Referring to the provisions of Indian Contract Act, 1872 decide whether Bhavesh would succeed. **(RTP Sep 24)**

Hint

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 person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.


In the instant case, since the loan given to Amit is for the necessaries suited to the conditions in life of the minor, his assets can be sued to reimburse Bhavesh.\

Hence, Bhavesh can proceed against the assets of Amit.



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

	<p>Now, you are to decide upon based on the provisions of the Indian Contract Act, 1872:</p> <ol style="list-style-type: none"> i. Will Mr. M succeed in filing the suit to recover money? Elaborate the related provisions? ii. What is the maximum amount- of money that can be recovered by Mr. M? iii. Shall the provisions of the above act also apply to the medical treatment given to the grandmother?[Nov. 2022 (6 Marks)] <p>Hint</p> <ol style="list-style-type: none"> i. Claim for necessaries supplied to persons incapable of contracting (Section 68 of the Indian Contract Act, 1872): If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person. In the instant case, Mr. M supplied the food and other necessaries to Mr. Y (who lost his mental balance) and Mr. Y's grandmother (incapable of walking and dependent upon Mr. Y), hence, Mr. M will succeed in filing the suit to recover money. ii. Supplier is entitled to be reimbursed from the property of such incapable person. Hence, the maximum amount of money that can be recovered by Mr. M is ₹ 15 Lakhs and this amount can be recovered from Mr. Y's parent's jewellery amounting to ₹ 4 Lakhs and rest from the house of Y's Parents. (Assumption: Y has inherited the house property on the death of his parents) iii. Necessaries will include the emergency medical treatment. Hence, the above provisions will also apply to the medical treatment given to the grandmother as Y is legally bound to support his grandmother.
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	<p>Rohan found a wallet in a restaurant. He enquired 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 the wallet till the true owner is found. After a week, Rohan went back to the restaurant to enquire about the wallet. The manager refused to return it to Rohan, saying that it did not belong to him. In the light of the Indian Contract Act, 1872, can Rohan recover the wallet from the Manager? [RTP Dec 2023]</p> <p>Hint : Responsibility of finder of goods (Section 71 of the Indian Contract Act, 1872): A person who find goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee.</p> <p>Thus, a finder of lost goods has:</p> <ol style="list-style-type: none"> (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. <p>In the light of the above provisions, the manager must return the wallet to Rohan, since Rohan is entitled to retain the wallet found against everybody except the true owner</p>
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7

Unit

CONTRACT OF INDEMNITY AND GUARANTEE

CONTRACT OF INDEMNITY

The term “Indemnity” literally means “Security against loss” or “to make good the loss” or “to compensate the party who has suffered some loss”.

The term “Contract of Indemnity” is defined under Section 124 of the Indian Contract Act, 1872. It is “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.”



Mr. X contracts with the Government to return to India after completing his studies (which were funded by the Government) at University of Cambridge and to serve the Government for a period of 5 years. If Mr. X fails to return to India, he will have to reimburse the Government. It is a contract of indemnity.

Parties:

- The party who promises to indemnify/ save the other party from loss- “indemnifier”,
- The party who is promised to be saved against the loss- “indemnified” or “indemnity holder”.



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.



X may agree to indemnify Y for any loss or damage that may occur if a tree on Y's neighboring property blows over. If the tree then blows over and damages Y's fence, X will be liable for the cost of fixing the fence.

However, the above definition of indemnity restricts the scope of contracts of indemnity in as much as it covers only the loss caused by:

- the conduct of the promisor himself, or
- the conduct of any other person.


Thus, loss occasioned by an accident not caused by any person, or an act of God/ natural event, is not covered.

In case of **Gajanan Moreshwar v/s Moreshwar Madan (1942)**, decision is taken on the basis of English Law. As per English Law, Indemnity means promise to save another harmless from the loss. Here it covers every loss whether due to negligence of promisee or by natural calamity or by accident.

Mode of contract of indemnity: A contract of indemnity like any other contract may be **express or implied**.

- a) A contract of indemnity is said to be express when a person expressly promises to compensate the other from loss.
- b) A contract of indemnity is said to be implied when it is to be inferred from the conduct of the parties or from the circumstances of the case.

A contract of indemnity is like any other contract and must fulfil all the essentials of a valid contract.


	<p>A asks B to beat C promising to indemnify him against the consequences. The promise of A cannot be enforced. Suppose, B beats C and is fined ` 1000, B cannot claim this amount from A because the object of the agreement is unlawful.</p> <p>A contract of Fire Insurance or Marine Insurance is always a contract of indemnity. But there is no contract of indemnity in case of contract of Life Insurance.</p>
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Rights of Indemnity-holder when sued (Section 125): The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor/indemnifier—

- a) all damages which he may be compelled to pay in any suit
- b) all costs which he may have been compelled to pay in bringing/ defending the suit and
- c) all sums which he may have paid under the terms of any compromise of suit.

When does the liability of an indemnifier commence?

Although the Indian Contract Act, 1872, is silent on the time of commencement of liability of indemnifier, however, on the basis of judicial pronouncements it can be stated that the liability of an indemnifier commences as soon as the liability of the indemnity-holder becomes absolute and certain. This principle has been followed by the courts in several cases.

	<p>A promises to compensate X for any loss that he may suffer by filling a suit against Y. The court orders X to pay Y damages of ` 10000. As the loss has become certain, X may claim the amount of loss from A and pass it to Y.</p>
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Contract of guarantee: 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.


CONTRACT OF GUARANTEE

“Contract of guarantee”, “surety”, “principal debtor” and “creditor” [Section 126]

Contract of guarantee: 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

	When A requests B to lend ` 10,000 to C and guarantees that C will repay the amount within the agreed time and that on C falling to do so, he (A) will himself pay to B, there is a contract of guarantee. Here, B is the creditor, C the principal debtor and A the surety.
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	<p>X and Y go into a car showroom where X says to the dealer to supply latest model of Wagon R to Y, and agrees that if Y fails to pay he will. In case of Y's failure to pay, the car showroom will recover its money from X.</p> <p>This is a contract of guarantee because X promises to discharge the liability of Y in case of his defaults.</p> <p>A contract of guarantee is a tripartite agreement between principal debtor, creditor and surety. There are, in effect three contracts</p> <ol style="list-style-type: none"> (i) A principal contract between the principal debtor and the creditor. (ii) A secondary contract between the creditor and the surety. (iii) An implied contract between the surety and the principal debtor whereby principal debtor is under an obligation to indemnify the surety; if the surety is made to pay or perform. <p>The right of surety is not affected by the fact that the creditor has refused to sue the principal debtor or that he has not demanded the sum due from him.</p>
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ESSENTIAL FEATURES OF A GUARANTEE

The following are the requisites of a valid guarantee:-

1. **Purpose:** The purpose of a guarantee being to secure the payment of a debt, the existence of recoverable debt is necessary. If there is no principal debt, there can be no valid guarantee.
2. **Consideration:** Like every other contract, a contract of guarantee should also be supported by some consideration. A guarantee without consideration is void, but there is no need for a direct consideration between the surety and the creditor.

As per Section 127 consideration received by the principal debtor is sufficient consideration to the surety for giving the guarantee, but past consideration is no consideration for the contract of guarantee. Even if the principal debtor is incompetent to contract, the guarantee is valid. But, if surety is incompetent to contract, the guarantee is void.



B requests A to sell and deliver to him goods on credit. A agrees to do so provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A 's promise to deliver the goods. As per Section 127, there is a sufficient consideration for C's promise. Therefore, the guarantee is valid.



A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

3. Existence of a liability: There must be an existing liability or a promise whose performance is guaranteed. Such liability or promise must be enforceable by law. The liability must be legally enforceable and not time barred.

4. No misrepresentation or concealment (section 142 and 143): Any guarantee which has been obtained by the means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid (section 142)

Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances, is invalid (section 143).



A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C, with his previous conduct. B afterwards make default. The guarantee is invalid.



A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay rupee five per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.


5. Writing not necessary: Section 126 expressly declares that a guarantee may be either oral or written.

6. Joining of the other co-sureties (Section 144): Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join. That implies, the guarantee by a surety is not valid if a condition is imposed by a surety that some other person must also join as a co-surety, but such other person does not join as a co-surety.

TYPES OF GUARANTEES


Guarantee may be classified under two categories:


- A. **Specific Guarantee-** A guarantee which extends to a single debt/ specific transaction is called a specific guarantee. The surety's liability comes to an end when the guaranteed debt is duly discharged or the promise is duly performed.

	A guarantees payment to B of the price of the five bags of rice to be delivered by B to C and to be paid for in a month. B delivers five bags to C. C pays for them. This is a contract for specific guarantee because A intended to guarantee only for the payment of price of the first five bags of rice to be delivered one time [<i>Kay v Groves</i>]
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- B. **Continuing Guarantee [Section 129]** - A guarantee which extends to a series of transaction is called a continuing guarantee. A surety's liability continues until the revocation of the guarantee.

- C. The essence of continuing guarantee is that it applies not to a specific number of transactions but to any number of transactions and makes the surety liable for the unpaid balance at the end of the guarantee.

	On A's recommendation B, a wealthy landlord employs C as his estate manager. It was the duty of C to collect rent on 1st of every month from the tenant of B and remit the same to B before 5th of every month. A, guarantee this arrangement and promises to make good any default made by C. This is a contract of continuing guarantee.
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	A guarantees payment to B, a tea-dealer, to the amount of ` 10,000, for any tea he may from time-to-time supply to C. B supplies C with tea to above the value of ` 10,000, and C pays B for it. Afterwards B supplies C with tea to the value of ` 20,000. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of ` 10,000.
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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.


NATURE AND EXTENT OF SURETY'S LIABILITY [SECTION 128]

- (i) The liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract. [Section 128]
- (ii) Liability of surety is of secondary nature as he is liable only on default of principal debtor.
- (iii) Where a debtor cannot be held liable on account of any defect in the document, the liability of the surety also ceases.
- (iv) A creditor may choose to proceed against a surety first, unless there is an agreement to the contrary.

	A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable not only for the amount of the bill but also for any interest and charges which may have become due on it.
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LIABILITY OF TWO PERSONS, PRIMARILY LIABLE, NOT AFFECTED BY ARRANGEMENT BETWEEN THEM THAT ONE SHALL BE SURETY ON OTHER'S DEFAULT

Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence. (Section 132)

	A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.
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DISCHARGE OF A SURETY

A surety is said to be discharged when his liability as surety comes to an end. The various modes of discharge of surety are discussed below:

- (i) By revocation of the contract of guarantee.
- (ii) By the conduct of the creditor, or
- (iii) By the invalidation of the contract of guarantee.

By revocation of the Contract of Guarantee

- a) **Revocation of continuing guarantee by Notice (Section 130):** The continuing guarantee may at any time be revoked by the surety as to future transactions by notice to the creditors. Once the guarantee is revoked, the surety is not liable for any future transaction however he is liable for all the transactions that happened before the notice was given.

A specific guarantee can be revoked only if liability to principal debtor has not accrued.



Arun promises to pay Rama for all groceries bought by Carol for a period of 12 months if Carol fails to pay. In the next three months, Carol buys ₹ 2000/- worth of groceries. After 3 months, Arun revokes the guarantee by giving a notice to Rama. Carol further purchases ₹ 1000 of groceries. Carol fails to pay. Arun is not liable for ₹ 1000/- of purchase that was made after the notice but he is liable for ₹ 2000/- of purchase made before the notice.

Sandeep guarantees for Gaurav, 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 Gaurav during the next 3 months.

After 1 month, Sandeep 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 Sandeep is discharged from all the liabilities to Sharma for any subsequent credit supply. What would be your answer in case Gaurav makes default in paying back Sharma for the goods already supplied on credit i.e. ₹ 40,000? (RTP NOV 2020) (MAY 2019)


Ans:-

Law - 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.


Conclusion - As per the above provisions, liability of Sandeep 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 Sandeep 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

b) Revocation of continuing guarantee by surety's death (Section 131): In the absence of any contract to the contrary, the death of surety operates as a revocation of a continuing guarantee as to the future transactions taking place after the death of surety. However, the surety's estate remains liable for the past transactions which have already taken place before the death of the surety.


	'S' guarantees 'C' for the transaction to be done between 'C' & 'P' for next month. After 5 days 'S' died. Now guarantee is revoked for future transactions but 'S's estate is still liable for transactions done during previous five days.
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c) By novation [Section 62]: The surety under original contract is discharged if a fresh contract is entered into either between the same parties or between the other parties, the consideration being the mutual discharge of the old contract.

	'S' guarantees 'C' for the payment of the supply of wheat to be done by 'C' & 'P' for next month. After 5 days, the contract is changed. Now 'S' guarantees 'C' for the payment of the supply of rice to be done by 'C' & 'P' for rest of next month. Here, guarantee is revoked for supply of wheat. But 'S' is still liable for supply of wheat done during previous five days.
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By conduct of the creditor

a) By variance in terms of contract (Section 133): 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.

	A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent and is not liable to make good this loss.
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Mr. Anand, is employed as a cashier on a monthly salary of ₹ 2,000 by ABC bank for a period of three years. X gave surety for Mr. Anand's good conduct. After nine months, the financial position of the bank deteriorates. Then Mr. Anand agrees to accept a lower salary of ₹ 1,500/- per month from Bank. Two months later, it was found that Mr. Anand has misappropriated cash since the time of his appointment. What is the liability of X? (RTP Nov 2016) (RTP Nov 2014) (RTP NOV 2019) (MTP MAY 2018) (NOV 2018)


Law- 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. [Section 133, Indian Contract Act, 1872].

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

- b) **By release or discharge of principal debtor (Section 134):** The surety is discharged if the creditor:
- (i) enters into a fresh/ new contract with principal debtor; by which the principal debtor is released, or
 - (ii) does any act or omission, the legal consequence of which is the discharge of the principal debtor.

	A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.
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	A gives a guarantee to C for goods to be delivered to B. Later on, B contracts with C to assign his property to C in lieu of the debt. B is discharged of his liability and A is discharged of his liability.
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- c) **Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor [Sector 135]:** A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or promises not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.
- (i) *Composition:* If the creditor makes a composition with the principal debtor, without consulting the surety, the latter is discharged. Composition inevitably involves variation of the original contract, and, therefore, the surety is discharged.
 - (ii) *Promise to give time:* When the time for the payment of the guaranteed debt comes, the surety has the right to require the principal debtor to pay off the debt. Accordingly, it is one of the duties of the creditor towards the surety not to allow the principal debtor more time for payment.
 - (iii) *Promise not to sue:* If the creditor under an agreement with the principal debtor promises not to sue him, the surety is discharged. The main reason is that the surety is entitled at any time to require the creditor to call upon the principal debtor to pay off the debt when it is due and this right is positively violated when the creditor promises not to sue the principal debtor.

Cases where surety not discharged

- (i) **Surety not discharged when agreement made with third person to give time to principal debtor [Section 136]:** 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.



C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

(ii) Creditor's forbearance to sue does not discharge surety [Section 137]:

Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not in the absence of any provision in the guarantee to the contrary, discharge the surety.



B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

B owes C a debt guaranteed by A. C does not sue B for a year after the debt has become payable. In the meantime, B becomes insolvent. Is A discharged? Decide with reference to the provisions of the Indian Contract Act, 1872. (RTP Nov 2014)

Ans:-

Law- The problem is based on the provisions of section 137 of the Indian Contract Act, 1872 relating to discharge of surety. The section states that mere forbearance on the part of the creditor to sue the principal debtor and/or to enforce any other remedy against him would not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Conclusion - In view of these provisions, A is not discharged from his liability as a surety.

d) Discharge of surety by creditor's act or omission impairing surety's eventual remedy

[Section 139]: If the creditor does any act which is inconsistent with the rights of the surety or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

In a case before the Supreme Court of India, "A bank granted a loan on the security of the stock in the godown. The loan was also guaranteed by the surety. The goods were lost from the godown on account of the negligence of the bank officials. The surety was discharged to the extent of the value of the stock so lost." [*State bank of Saurashtra V Chitranjan Rangnath Raja (1980) 4 SCC 516*]



A puts M as apprentice to B and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see that M make up the cash. B omits to see this done as promised, and M embezzles. A is not liable to B on his guarantee.

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? (RTP NOV 2018) (MTP MAY 2019)

Law - 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.

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

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? (RTP NOV 2018) (MTP MAY 2020)

Law - 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.

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.

By the invalidation of the contract of guarantee

a) **Guarantee obtained by misrepresentation [Section 142]:** Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.




'C' sells AC to 'P' on misrepresenting that it is made of copper while it is made of aluminum. 'S' guarantees for the same as surety without the knowledge of fact that it is made of aluminum. Here, 'S' will not be liable.

b) **Guarantee obtained by concealment [Section 143]:** Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.




A engages B as a clerk to collect money for him, B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives

	his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.
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	A guarantees to C payment for iron to be supplied by him to B for the amount of ` 2,00,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.
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c) Guarantee on contract that creditor shall not act on it until co-surety joins (Section 144):

Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

	'S1' guarantees 'C' for payment to be done by 'P' to 'C' on the condition that 'S1' will be liable only if 'S2' joins him for such guarantee. 'S2' does not give his consent. Here, 'S1' will not be liable.
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RIGHTS OF A SURETY


The surety enjoys the following rights against the creditor:

- Rights against the creditor,
- Rights against the principal debtor,
- Rights against co-sureties.

Right against the principal debtor

- Rights of subrogation [Section 140]:** Where, a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

This right is known as right of subrogation. It means that on payment of the guaranteed debt, or performance of the guaranteed duty, the surety steps into the shoes of the creditor.

	'Raju' has taken a housing loan from Canara Bank. 'Pappu' has given guarantee for repayment of such loan. Besides, there was a condition that if 'Raju' does not repay the loan within time, the bank can auction his property by giving 15 days notice to 'Raju'. On due date 'Raju' does not repay, hence Pappu being a surety has to repay the loan. Now 'Pappu' can take the house from bank and has a right to auction the house by giving 15 days notice to 'Raju'.
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- Implied promise to indemnify surety [Section 145]:** In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety. The surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but not sums which he paid wrongfully.



B is indebted to C and A is surety for the debt. Upon default, C sues A. A defends the suit on reasonable grounds but is compelled to pay the amount. A is entitled to recover from B the cost as well as the principal debt.

In the same case above, if A did not have reasonable grounds for defence, A would still be entitled to recover principal debt from B but not any other costs.

Right against the Creditor

- a) **Surety's right to benefit of creditor's securities [Section 141]:** 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.



C advances to B, his tenant, 2,00,000 rupees on the guarantee of A. C has also a further security for the 2,00,000 rupees by a mortgage of B's furniture. 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.

- b) **Right to set off:** If the creditor sues the surety, for payment of principal debtor's liability, the surety may have the benefit of the set off, if any, that the principal debtor had against the creditor



'X' took a loan of ` 50,000 from 'Y' which was guaranteed by 'Z'. There was one another contract between 'X' and 'Y' in which 'Y' had to pay ` 10,000 to 'X'. On default by 'X', 'Y' filed suit against 'Z'. Now 'Z' is liable to pay ` 40,000 ($\text{` } 50,000 - \text{` } 10,000$).

- c) **Right to share reduction:** The surety has right to claim proportionate reduction in his liability if the principal debtor becomes insolvent.



'X' took a loan of ` 50,000 from 'Y' which was Guaranteed by 'Z'. 'X' became insolvent and only 25% is realised from his property against liabilities. Now 'Y' will receive ` 12,500 from 'X' and Now 'Z' is liable to pay ` 37,500 ($\text{` } 50,000 - \text{` } 12,500$).

Rights against co-sureties

"Co-sureties (meaning)- When the same debt or duty is guaranteed by two or more persons, such persons are called co-sureties"

- a) **Co-sureties liable to contribute equally (Section 146):** Unless otherwise agreed, each surety is liable to contribute equally for discharge of whole debt or part of the debt remains unpaid by debtor.



A, B and C are sureties to D for the sum of 3,00,000 rupees lent to E. E makes default in payment. A, B and C are liable, as between themselves, to pay 1,00,000 rupees each.



A, B and C are sureties to D for the sum of 1,00,000 rupees lent to E, and there is a contract between A, B and C that A is to be responsible to the extent of one-quarter, B to the extent of one-quarter, and C to the extent of one-half. E makes default in payment. As between the sureties, A is liable to pay 25,000 rupees, B 25,000 rupees, and C 50,000 rupees.

b) Liability of co-sureties bound in different sums (Section 147): The principal of equal contribution is, however, subject to the maximum limit fixed by a surety to his liability. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.



A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 1,00,000 rupees, B in that of 2,00,000 rupees, C in that of 4,00,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 3,00,000 rupees. A, B and C are each liable to pay 1,00,000 rupees.



A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 1,00,000 rupees, B in that of 2,00,000 rupees, C in that of 4,00,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 4,00,000 rupees; A is liable to pay 1,00,000 rupees, and B and C 1,50,000 rupees each.



A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 1,00,000 rupees, B in that of 2,00,000 rupees, C in that of 4,00,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 7,00,000 rupees. A, B and C have to pay each the full penalty of his bond.

Mr. D was in urgent need of money amounting Rs. 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?(MTP MAY 2019) (MTP NOV 2020) (MAY 2018)

Law- 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".

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.

CA WALLAH

8

Unit

BAILMENT AND PLEDGE

WHAT IS BAILMENT?

The word “Bailment” has been derived from the **French word “ballier”** which means “to deliver”. Bailment etymologically means ‘handing over’ or ‘change of possession’.

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.

Parties to bailment:

- a. **Bailor:** The person delivering the goods.
- b. **Bailee:** The person to whom the goods are delivered.



1. Where ‘X’ delivers his car for repair to ‘Y’, ‘X’ is the bailor and ‘Y’ is the bailee.
2. X delivers a piece of cloth to Y, a tailor, to be stitched into a suit. It is contract for bailment.
3. Goods given to a friend for his own use, without any charge.
4. X delivers goods to blue dart for carriage.

Essential Elements:

The **essential elements** of a contract of bailment are—

- a) **Contract:** Bailment is based upon a contract. The contract may be express or implied. No consideration is necessary to create a valid contract of bailment.
- b) **Delivery of goods:** It involves the delivery of goods from one person to another for some purposes. Bailment is only for moveable goods and never for immovable goods or money. The delivery of the possession of goods is of the following kinds:
 - (i) **Actual Delivery:** When goods are physically handed over to the bailee by the bailor. Eg: delivery of a car for repair to workshop
 - (ii) **Constructive Delivery:** Where delivery is made by doing anything that has the effect of putting goods in the possession of the bailee or of any person authorized to hold them on his behalf. Eg: Delivery of the key of car to a workshop dealer for repair of the car.
- c) **Purpose:** The goods are delivered for some purpose. The purpose may be express or implied.
- d) **Possession:** In bailment, possession of goods changes. Change of possession can happen by physical delivery or by any action which has the effect of placing the goods in the possession of

bailee. The change of possession does not lead to change of ownership. In bailment, bailor continues to be the owner of goods. Where a person is in custody without possession he does not become a bailee.

For **example**, servant of a master who is in custody of goods of the master does not become a bailee.

Similarly, depositing ornaments in a bank locker is not bailment, because ornaments are kept in a locker whose key are still with the owner and not with the bank. The ornaments are in possession of the owner though kept in a locker at the bank.

- e) **Return of goods:** Bailee is obliged to return the goods physically to the bailor. The goods should be returned in the same form as given or may be altered as per bailor's direction. It should be noted that exchange of goods should not be allowed. The bailee cannot deliver some other goods, even not those of higher value.

Deposit of money in a bank is not bailment since the money returned by the bank would not be identical currency notes.

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?(MTP MAY 2020) (4 Marks) (MTP M 21)

Law-

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.

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

Types of bailment

1. **On the basis of benefit, bailment can be classified into three types:**

a) ***For the exclusive benefit of bailor:***



The delivery of some valuables to a neighbour for safe custody, without charge.

b) ***For the exclusive benefit of bailee:***



The lending of a bicycle to a friend for his use, without charge.

c) ***For mutual benefit of bailor and bailee:***



Giving of a watch for repair.

2. **On the basis of reward, bailment can be classified into two types:**

a) ***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.

b) ***Non-Gratuitous Bailment:*** Non gratuitous bailment means where both the parties get some benefit i.e. bailment for the benefit of both bailor & bailee

DUTIES OF A BAILOR

Duties of Bailor: The duties of bailor are spelt out in a number of Sections [Section 150, 158, 159, 164]. These are categorized under the following headings:

These are enumerated hereunder:

(i) **Bailor's duty to disclose faults in goods bailed [Section 150]:**

a. **In case of gratuitous bailment:** The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.



A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

b. **In case of non- gratuitous bailment:** 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.



A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

In *Hyman & Wife v. Nye & Sons (1881)*, A hired from B a carriage along with a pair of horses and a driver for a specific journey. During the journey a bolt in the under-part of the carriage broke away. As a result of this, the carriage became upset and A was injured. *It*

was held that B was liable to pay damages to A for the injury sustained by him. The court observed that it was the bailor's duty to supply a carriage fit for the purpose for which it was hired.

Sometimes, the goods bailed are of dangerous nature (e.g., explosives). In such cases it is the duty of the bailor to disclose the nature of goods. [Great Northern Ry' case (1932)]

(ii) Duty to pay necessary expenses [Section 158]:

- a. **In case of Gratuitous bailment:** Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration (gratuitous bailment), the bailor shall repay to the bailee the necessary expenses incurred by him and any extraordinary expenses incurred by him for the purpose of the bailment.
- b. **In case of non-gratuitous bailment** the bailor is liable to pay the extraordinary expenses incurred by the bailee.



A hired a taxi from B for the purpose of going to Gurgaon from Noida. During the journey, a major defect occurred in the engine. A had to pay ₹ 5000 as repair charges. These are the extraordinary expenses and it is the bailor's duty to bear such expenses. However, the usual and ordinary expenses for petrol, toll tax etc. are to be borne by the bailee itself.

(iii) Duty to indemnify the Bailee for premature termination [Section 159]: The bailor must compensate the bailee for the loss or damage suffered by the bailee that is in excess of the benefit received, where he had lent the goods gratuitously and decides to terminate the bailment before the expiry of the period of bailment.

(iv) Bailor's responsibility to bailee [Section 164]: The bailor is responsible to the bailee for the following:

- a. **Indemnify for any loss** which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods or to give directions, respecting them (defective title in goods).
- b. It is the duty of the bailor **to receive back the goods** when the bailee returns them after the time of bailment has expired or the purpose of bailment has been accomplished. If the bailor refuses to take delivery of goods when it is offered at the proper time the bailee can claim compensation for all necessary expenses incurred for the safe custody.



X delivered his car to S for five days for safe keeping. However, X did not take back the car for one month. In this case, S can claim the necessary expenses incurred by him for the custody of the car.

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. (RTP MAY 2018)

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.

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.

DUTIES OF A BAILEE

1. **Take reasonable care of the goods (Section 151 & 152):** 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 care of his own goods of the same bulk, quality and value, as the goods bailed.



If X bails his ornaments to 'Y' and 'Y' keeps these ornaments in his own locker at his house along with his own ornaments and if all the ornaments are lost/stolen in a riot 'Y' will not be responsible for the loss to 'X'. If on the other hand 'X' specifically instructs 'Y' to keep them in a bank, but 'Y' keeps them at his residence, then 'Y' would be responsible for the loss caused on account of riot.



A deposited his goods in B's warehouse. On account of unprecedented floods, a part of the goods were damaged. It was held that, B is not liable for the loss (*Shanti Lal V. Takechand*).

Exception: Bailee when not liable for loss, etc., of thing bailed [Section 152]: 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 reasonable care as required under section 151.

2. **Not to make inconsistent use of goods (section 153 & 154):** As per Section 154, if the bailee makes any use of the goods bailed, which is not according to the terms and conditions of the bailment, he is liable to compensate the bailor for any loss or destruction of goods.



A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.



'A' hires a horse in Kolkata from B expressly to march to Varanasi. 'A' rides with due care, but marches to Cuttack instead. The horse accidentally falls and is injured. 'A' is liable to make compensation to B for the injury to the horse.

As per Section 153, a contract of bailment is voidable at the option of the bailor, if the bailee does not use the goods according to the terms and conditions of bailment.



A lends to B, a horse for his own riding. B gives the horse to C for riding. This contract is voidable at the option of A, bailor.

3. Not to mix the goods (Section 155, 156 and 157):

- (a) If the Bailee, mixes the goods bailed with his own goods, with the consent of the bailor, both the parties shall have an interest in proportion to their respective shares in the mixture thus produced (Section 155).
- (b) If the bailee, without the consent of the bailor, mixes the goods bailed with his own goods and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division and any damage arising from the mixture (Section 156).



A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark; A is entitled to have his 100 bales returned, and B is bound to bear all the expenses incurred in the separation of the bales, and any other incidental damage.

- (c) 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 to deliver them back, the bailor is entitled to be compensated by the bailee for loss of the goods (Section 157).



A bails a barrel of Cape flour worth ` 4500 to B. B, without A's consent, mixes the flour with country flour of his own, worth only ` 2500 a barrel. B must compensate A for the loss of his flour.

4. Return the goods (Section 160 & 161):

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]

If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time. [Section 161]



X delivered books to Y to be bound. Y promised to return the books within a reasonable time. X pressed for the return of the book. But Y, failed to deliver them back even after the expiry of reasonable time. Subsequently the books were burnt in an accidental fire at the premises of Y. In this case Y was held liable for the loss.

5. Return an accretion from the Goods [Section 163]:

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.



A leaves a cow in the custody of B. The cow gives birth to a calf. B is bound to deliver the calf along with the cow, to A.

6. Not to setup Adverse Title: Bailee must not set up a title adverse to that of the bailor. He must hold the goods on behalf of and for the bailor. He cannot deny the title of the bailor.

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 accidentally 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? (RTP NOV 2020)

Ans:-

Law- 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 the bailor for any loss, destruction or deterioration of the goods from that time. [Section 161]

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.

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 Ashley will succeed. (MTP NOV 2018)

Law-

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.

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.

Thus, in the instant case the notice cannot be ratified by Navin, so as to be binding on Susie

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?(MTP NOV 2020) (NOV 2018)

Law-

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.

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

Megha lends a sum of Rs. 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 Rs. 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, 1872.4 Marks) (MTP M 21)

Ans:

Law- 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."

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).

RIGHTS OF A BAILOR

Rights of Bailor: The following are the rights of bailor:-

- (i) **Right to terminate the bailment [Section 153]:** A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.
- (ii) **Termination of bailment** has been discussed in next pages.
- (iii) **Right to demand back the goods (Section 159):** When the goods are lent gratuitously, the bailor can demand back the goods at any time even before the expiry of the time fixed or the achievement of the object.



A, while going out of station delivered his ornaments to B for safe custody for one month. But A returned to station after one week. He may demand the return of his ornaments even though the time of one month has not expired.

However, due to the premature return of the goods, if the bailee suffers any loss, which is more than the benefit actually obtained by him from the use of the goods bailed, the bailor has to compensate the bailee.

- (iv) **Right to file a suit against a wrong doer** [Section 180 and section 181] (discussed in next pages)
- (v) **Right to sue the bailee:** The bailor has a right to sue the bailee for enforcing all the liabilities and duties of him.
- (vi) **Right to compensation:** If any damage is caused to the goods bailed because of the unauthorized use of the goods or unauthorized mixing of the goods, the bailor has a right to claim compensation for the same.

RIGHTS OF A BAILEE

Rights of bailee: The following are the rights of the bailee:-

1. **Right to Deliver the Goods to any one of the joint bailors [Section 165]**

If several joint owners bailed the goods, the bailee has a right to deliver them to any one of the joint owners unless there was a contract to the contrary.



A, B and C are the joint owners of a harvesting combine. They delivered it on hire to D for one month. After the expiry of one month, D may return the “combine” to any one of the joint owners namely, A, B or C.

2. **Right to indemnity (Section 166):** Bailee is entitled to be indemnified by the bailor for any loss arising to him by reasons that the bailor was not entitled to make the bailment or to receive back the goods or to give directions in respect to them. If the bailor has no title to the goods, and the bailee in good faith, delivers them back to, or according to the directions of the bailor, the bailee shall not be responsible to the owner in respect of such delivery. Bailee can also claim all the necessary expenses incurred by him for the purpose of gratuitous bailment.
3. **Right to claim compensation in case of faulty goods (Section 150):** A bailee is entitled to receive compensation from the bailor or any loss caused to him due to the failure of the bailor to disclose any faults in the goods known to him. If the bailment is for hire, the bailor will be liable to compensate even though he was not aware of the existence of such faults.
4. **Right to claim necessary expenses (Section 158):** In case of gratuitous bailment, the bailor shall repay to the bailee the necessary expenses incurred by him and any extraordinary expenses incurred by him for the purpose of the bailment.
5. **Right to Apply to Court to Decide the Title to the Goods [Section 167]:** If the goods bailed are claimed by the person other than the bailor, the bailee may apply to the court to stop its delivery and to decide the title to the goods.



A, a dealer in T.V. delivered a T.V. to B for using in summer vacation. Subsequently, C claimed that the T.V. belonged to him as it was delivered only for repairs, to A and thus, B should deliver it to him. In this case, B may apply to the Court to decide the question of ownership of the T.V. so that he may deliver it to the right owner.

6. **Right of particular lien for payment of services [Section 170]:** (Discussed in next pages)
7. **Right of general lien (Sec. 171):** (Discussed in next pages)

RIGHTS OF BAILOR AND BAILEE AGAINST ANY WRONG DOER (THIRD PARTY)

Suit by bailor & bailee against wrong doers [Section 180]: If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

Apportionment of relief or compensation obtained by such suits [Section 181]: Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

TERMINATION OF BAILMENT

A contract of bailment shall terminate in the following circumstances:

1. **On expiry of stipulated period:** If the goods were given for a stipulated period, the contract of bailment shall terminate after the expiry of such period.



X gives his motorcycle to Y for a month. The bailment terminates after 1 month.

2. **On fulfillment of the purpose:** If the goods were delivered for a specific purpose, a bailment shall terminate on the fulfillment of that purpose.



X hires certain tents and crockery on marriage of his daughter. The bailment terminates after marriage.

3. By Notice:

- (a) Where the bailee acts in a manner which is inconsistent with the terms of the bailment, the bailor can always terminate the contract of bailment by giving a notice to the bailee.
 - (b) A gratuitous bailment can be terminated by the bailor at any time by giving a notice to the bailee. However, the termination should not cause loss to the bailee in excess of the benefit derived by him. In case the loss exceeds the benefit derived by the bailee, the bailor must compensate the bailee for such a loss (Sec. 159).
4. **By death:** A gratuitous bailment terminates upon the death of either the bailor or the bailee.
 5. **Destruction of the subject matter:** A bailment is terminated if the subject matter of the bailment is destroyed or there is a change in the nature of goods which makes it impossible to be used for the purpose of bailment.



X gives his cycle to Y on hire. Cycle damaged beyond repairs. Bailment ends

FINDER OF LOST GOODS

Right of finder of lost goods- may sue for specific reward offered [Section 168]: A person who finds some goods which do not belong to him, is called the finder of the goods. It is the duty of the finder of goods to find the true owner and surrender the goods to him. However, the finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him in finding the owner and preserving the goods found. But he has a right to retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward on the lost goods, the finder may sue the owner for such reward, and may retain the goods until then.

When finder of thing commonly on sale may sell it [Section 169]: When a thing which is commonly the subject of sale if lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—

1. when the thing is in danger of perishing or of losing the greater part of its value, or
2. when the lawful charges of the finder in respect of the thing found amount to two-thirds of its value.

RIGHT OF LIEN

Lien is the right of a person




- to retain the goods belonging to another
- until his claim is satisfied or
- some debt due to him is repaid.

Types of Lien: Lien may be of two types:


- Particular Lien
- General Lien

Particular Lien: It is a right to retain only the particular goods in respect of which the claim is due.

Section 170 provides, 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.

	'A' gives cloth to 'B', a tailor, to make into a coat. 'B' is entitled to retain the coat until he is paid.
	If in the above example, 'B' takes 15 days time to make the coat, right of lien will be applicable after 15 days.
	A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

General Lien: It is a right to retain the goods not only for demands arising out of the goods retained but for a general balance of account in favour of certain persons (in the absence of a contract to the contrary). Section 171 provides this right is available to Bankers, factors, wharfingers, policy brokers and attorneys of law.

	<p>'A' borrows ` 500/- from the bank without security and subsequently again borrows another ` 1000/- but with security of say certain jewellery. In this illustration, even where 'A' has returned ` 1000/- being the second loan, the banker can retain the jewellery given as security to the second loan towards the first loan which is yet to be repaid.</p> <p>Under the right of general lien the goods cannot be sold but can only be retained for dues. The right of lien can be waived through a contract.</p>
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Difference between Bailee's General and Particular Lien


General lien	Particular lien
Section 171 of the Indian Contract Act, 1872 confer on Bailee the right of General Lien.	Section 170 of the Indian Contract Act, 1872 confers on the Bailee, the right of particular lien.

General lien alludes to the right to keep possession of goods belonging to other against general balance of account.	Particular lien implies a right of the bailee to retain specific goods bailed for non-payment of amount.
A general lien is not automatic but is recognized through on agreement. It is exercised by the bailee only by name.	It is automatic.
It can be exercised against goods even without involvement of labor or skill.	It comes into play only when some labor or skill is involved has been expended on the goods, resulting in an increase in value of goods.
Only such persons as are specified under section 171, e.g., Bankers, factors, wharfingers, policy brokers etc. are entitled to general lien.	Bailee, finder of goods, pledgee, unpaid seller, agent, partner etc. are entitled to particular lien.

PLEDGE

“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”**.


Section 172 to 182 of the Indian Contract Act, 1872 deal with the contract of pledge.

	A lends money to B against the security of jewellery deposited by B with him. This bailment of jewellery is a pledge as security for lending the money. B is a pawnor/ pledger and A is a pawnee/ pledgee.
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ESSENTIALS OF CONTRACT OF PLEDGE: Since pledge is a special kind of bailment, therefore all the essentials of bailment are also the essentials of the pledge. Apart from that, the other essentials of the pledge are:

RIGHTS OF A PAWNEE/ PLEDGEE: Rights of Pawnee can be classified as under the following headings:

- a) **Right to retain the pledged goods [Section 173]:** 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.

	Where ‘M’ pledges stock of goods for certain loan from a bank, the bank has a right to retain the stock not only for adjustment of the loan but also for payment of interest.
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- b) **Right to retention of subsequent debts [Section 174]:** The Pawnee can retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged. But he can exercise this right only when there is a contract to this effect. i.e. a right to retain goods for subsequent debts can be exercised only when it has been provided for in a contract to this effect.

c) Pawnee's right to extraordinary expenses incurred [Section 175]: The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged. For such expenses, however, he does not have the right to retain the goods, but he can sue the pawnor for such expenses.

d) Pawnee's right where pawnor makes default [Section 176]: If the pawnor makes default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee has the following rights:

- (i) the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or
- (ii) he may sell the thing pledged on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

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.(RTP NOV 2018)

Law - 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.

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

Rights of a pawnor

As the bailor of goods, pawnor has all the rights of the bailor. Along with that he also has the right of redemption to the pledged goods which is enumerated under section 177 of the Act.

Right to redeem [Section 177]: If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay, in addition, any expenses which have arisen from his default.

Note: Redemption means to recover back the goods by making of the payment of debt or performance of promise.

Duties of the Pawnee

Pawnee has the following duties:

- a) Duty to take reasonable care of the pledged goods.
- b) Duty not to make unauthorized use of pledged goods.
- c) Duty to return the goods when the debt has been repaid or the promise has been performed.
- d) Duty not to mix his own goods with goods pledged.
- e) Duty not to do any act which is inconsistent with the terms of the pledge.
- f) Duty to return accretion to the goods, if any.

Duties of a Pawnor

Pawnor has the following duties:

- a) The pawnor is liable to pay the debt or perform the promise as the case may be.
- b) It is the duty of the pawnor to compensate the pawnee for any extraordinary expenses incurred by him for preserving the goods pawned.
- c) It is the duty of the pawnor to disclose all the faults which may put the pawnee under extraordinary risks.
- d) If loss occurs to the pawnee due to defect in pawnor's title to the goods, the pawnor must indemnify the pawnee.
- e) If the pawnee sells the good due to default by the pawnor, the pawnor must pay the deficit.

PLEDGE BY NON-OWNERS

Ordinarily, it is the owner of the goods, or any person authorized by him in that behalf, who can pledge the goods. But in order to facilitate mercantile transactions, the law has recognised certain exceptions. These exceptions are for bonafide pledges made by those persons who are not the actual owners of the goods, but in whose possession the goods have been left.

a) Pledge by mercantile agent [Section 178]:

A mercantile agent, who is in the possession of goods or document of title, with the consent of owner, can pledge them while acting in the ordinary course of business as a Mercantile Agent.

Such Pledge shall be valid as if were made with the authority of the owner of goods. Provided, Pawnee acted in good faith and had no notice that Pawnor has no authority to pledge.

b) Pledge by person in possession under voidable contract [Section 178A]: When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A (contracts where consent has been obtained by fraud, coercion, misrepresentation, undue influence), 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.

c) Pledge where pawnor has only a limited interest [Section 179]: Where a person pledges goods in which he has only a limited interest i.e. pawnor is not the absolute owner of goods, the pledge is valid to the extent of that interest.



Mr. X finds a defective mobile phone lying on the road. He picks it up, gets it repaired for ₹ 5000. He later pledges the mobile phone for ₹ 2,000. The true owner can recover the mobile phone only on paying ₹ 5,000.



'A' pledges his jewellery worth ₹ 1,00,000 with 'B' for an advance of ₹ 70,000. 'B' pledges the same for ₹ 90,000 with 'C'. Now this pledge is valid upto ₹ 70,000 plus interest due thereon.

- d) **Pledge by a co-owner in possession:** Where the goods are owned by many persons and with the consent of other owners, the goods are left in the possession of one of the co-owners. Such a co-owner may make a valid pledge of the goods in his possession.
- e) **Pledge by seller or buyer in possession:** A seller, in whose possession, the goods have been left after sale or a buyer who with the consent of the seller, obtains possession of the goods, before sale, can make a valid pledge, provided the pawnee acts in good faith and he has no knowledge of the defect in title of the pawnor.



A buys a cycle from B. But leaves the cycle with the seller. B then pledges the cycle with C, who does not know of sale to A, and acted in good faith. This is a valid pledge.

Srushti acquired a 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/(NOV 2019)

Ans:-

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.

Therefore, the pledge of diamond by Srushti with Mr. VK is valid.

DISTINCTION BETWEEN BAILMENT AND PLEDGE

Basis of Distinction	Bailment	Pledge
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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 called 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 any 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 bailment 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 pawnor 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.

9

Unit AGENCY

A relationship of agency is established when one party (agent) is authorized by another party (principal) to act on his/ her behalf. Such relationships are initiated when one party desires to extend his/her activities beyond his/her present limits or capacity. In modern life, it would be impossible for a man to do everything by himself. Thus, he needs agents, to perform activities. A relationship of agency is commonly visible in all business transactions. These include hiring employees or retaining the services of other professionals such as an attorney, design professional, software developer etc. An agent has the potential to form contracts on behalf of the principal and in doing so, will bind the principal. As a result, the relationship of agency is one of trust and confidence and an agent must perform his/her activities in a capable and conscientious manner. The law of agency is contained in sections 182 to 238 of the Indian Contract Act, 1872.

WHAT IS AGENCY?

The Indian Contract Act, 1872 does not define the word 'Agency'. However, section 182 of the Indian Contract Act, 1872 defines Agent and Principal as:

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. **Test of Agency**

- a) Whether the person has the capacity to bind the principal and make him answerable to the third party.
- b) Whether he can establish privity of contract between the principal and third parties. If the answer to these questions is in affirmative (Yes), then there is a relationship of agency.

Thus, 'Agency' is a comprehensive word used to describe the relationship between one person and another, where the first mentioned person brings the second mentioned person into legal relation with others.


The Rule of Agency is based on the maxim "Qui facit per alium, facit per se" i.e., he who acts through an agent is himself acting.

APPOINTMENT AND AUTHORITY OF AGENTS

Who may employ an agent: According to Section 183, "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.

Who may be an agent:

According to Section 184 of the Act any person may become an agent i.e. even a minor or a person of unsound mind may become an agent and the principal shall be bound by his acts. But as a rule of caution, a minor or a person of unsound mind should not be appointed as an agent because he is incompetent to contract and in case of his misconduct or negligence, the principal shall not be able to proceed against him.

	P appoints Q, a minor, to sell his car for not less than ₹ 2,50,000. Q sells it for ₹ 2,00,000. P will be held bound by the transaction and further shall have no right against Q for claiming the compensation for having not obeyed the instructions, since Q is a minor and a contract with a minor is 'void-ab-initio'.
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Consideration not necessary: According to Section 185, no consideration is necessary to create an agency. The acceptance of the office of an agent is regarded as a sufficient consideration for the appointment.

CREATION OF AGENCY


In the words of Desai J, of the Supreme Court of India "The relation of agency arises whenever one person called the agent has the authority to act on behalf of another called the principal and consents to act. The relationship has genesis in a contract".


The relationship of the principal and the agent may be created in any of the following ways —

The authority may be express or implied: According to Section 186, the authority of an agent may be express or implied.

1. Definitions of express and implied authority [Section 187]


Express Authority: An authority is said to be express when it is given by words, spoken or written.

	A is residing in Delhi and he has a house in Kolkata. A authorizes B under a power of attorney, as caretaker of his house. Agency is created by express agreement.
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	If a customer of a bank wishes to transact his banking business through an agent, the bank will require written evidence of the appointment of the agent and will normally ask to see the registered power of attorney appointing the agent.
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2. **Implied Authority:** An authority is said to be implied when it is to be inferred from the circumstances of the case, conduct of the parties and things spoken or written, or in the ordinary course of dealing, may be accounted from the circumstances of the case.

If a person realises rent and gives it to the landlord, he impliedly acts for the landlord as an agent.

	A owns a shop in Selampur, living himself in Kolkata and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.
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A owns a shop in Serampore, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. Discuss in the light of the provisions of the Indian Contract Act, 1872, whether B is authorised to conduct the business in the name of A. (RTP May 2015)

Law - According to the section 187 of the Indian Contract Act, 1872, an authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

Conclusion - In the given instance, the shop of A was managed by B and the conduct of business as to the ordering of goods from C and transaction related to that was made from the A's fund and with A's knowledge. This reflects according to the above provision that B has an implied authority from A to order goods from C in the name of A for the purposes of the shop

Implied Agency includes:-

a) **Agency by Estoppel [Section 237]:** Where the principal by his conduct or statement willfully induces another person to believe that a certain person is his agent, he is subsequently prevented or estopped from denying the fact of agency.

According to section 237 of the Contract Act, an agency by estoppel may be created when following essentials are fulfilled:

- 1) the principal must have made a representation;
- 2) the representation may be express or implied;
- 3) The representation must state that the agent has an authority to do certain act although really he has no authority;
- 4) The principal must have induced the third person by such representation; and
- 5) The third person must have believed the representation and made the contract on the belief of such representation.



A consigns goods to B for sale and gives him instructions not to sell below a fixed price. C being ignorant of B's instruction enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract. A cannot plead that he had given instructions to B to not sell the goods below certain price. An agency by estoppel is, consequently, deemed between A and B.



If Piyal (the principal) has for several months permitted Sunil to buy goods on credit from Prasad and has paid for the goods bought by Sunil, Piyal cannot later refuse to pay Prasad who had supplied goods on credit to Sunil in the belief that he was Piyal's agent and was buying the goods on behalf of Piyal. Piyal is estopped from now asserting that Sunil is not his agent because on earlier occasions he permitted Prasad to believe that Sunil was his agent and Prasad had acted in that belief.

- b) **Agency by Necessity:** An agency of necessity arises due to some emergent circumstances. In emergency a person is authorised to do what he cannot do in ordinary circumstances. Thus, where an agent is authorised to do certain act, and while doing such an act, an emergency arises, he acquires an extra-ordinary or special authority to prevent his principal from loss.



Raja has a large farm on which Shyam is the caretaker. When Raja is in Canada, there is a huge fire on the farm. Shyam becomes an agent of necessity for Raja so as to save the property from being destroyed by fire. Raja (the principal) will be liable for any expenses, Shyam (his agent of necessity) incurred to put out the fire and save the farm from destruction during Raja's absence from the country.

3. **Agency by Operation of Law:** When law treats one person as an agent of other. For example, a partner is the agent of the firm for the purposes of the business of the firm.
4. **Rights of person as to acts done for him without his authority, Effect of ratification [Section 196]:** Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority. In simple words, "Ratification" means approving a previous act or transaction. Ratification may be express or implied by the conduct of the person on whose behalf the act was done.



X who is Y's agent has on 10th January 2022 purchases goods from Z on credit without Y's permission. After the purchase, on 20th January 2022, Y tells X that he will accept responsibility to pay for the purchases although at the time of purchase the agent had no authority to buy on credit. Y's subsequent statement on 20th January 2022 amounts to a ratification of the agent's (X's) purchase of goods on 10th January 2022.

Essentials of a valid Ratification

- a) **Ratification may be expressed or Implied [Section 197]:** Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.



A, without authority, buys goods for B. Afterwards B sells them to C on his own account; B's conduct implies a ratification of the purchase made for him by A.



A, without B's authority, lends B's money to C. Afterwards B accepts interests on the money from C. B's conduct implies a ratification of the loan.

- b) **Knowledge requisite for valid ratification [Section 198]:** No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.



A has an authority from P to buy certain goods at the market rate. He buys at a higher rate but P accepts the purchase. Afterwards P comes to know that the goods purchased by A for P belonged to A himself. The ratification is not binding on P.

- c) The whole transaction must be ratified [Section 199]:** There can be ratification of an act in entirety or its rejection in entirety. The principal cannot ratify a part of the transaction which is beneficial to him and reject the rest.
- d) Ratification cannot injure third person [Section 200]:** 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.



A, not being authorized thereto by B, demands on behalf of B, the delivery of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.



A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A.

- e) Ratification within reasonable time:** Ratification must be made within a reasonable period of time.
- f) Communication of Ratification:** Ratification must be communicated to the other party.
- g) Act to be ratified must be valid:** Act to be ratified should not be void or illegal, for e.g. payment of dividend out of capital, forgery of signatures, any other criminal offence, or anything which is not permitted under law.

EXTENT OF AGENT'S AUTHORITY

The agent's authority is governed by two principles, namely (a) in normal circumstances and (b) in emergency.

- a) Agent's authority in normal circumstances [Section 188]:** 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.

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.



A is employed by B, residing in London, to recover at Mumbai a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt and may give a valid discharge for the same.



A constitutes B as his agent to carry on his business of a shipbuilder. B may purchase timber and other materials, and hire workmen, for the purposes of carrying on the business.

b) Agent's authority in an emergency [Section 189]: 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 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 the circumstances, and
- (v) the agent must have been in possession of the goods belonging to his principal and which are the subject of contract.

R instructed S, a transporter, to send a consignment of apples to Chennai. After covering half the distance, Suresh found that the apples will perish before reaching Chennai. He sold the same at half the market price. R sued S. Decide will he succeed?(RTP MAY 2018) (MTP NOV 2019) (MAY 2018) (4 Marks) (MTP M 21)

Law- An agent has the authority in an emergency to do all such acts as a man of ordinary prudence would do for protecting his principal from losses which the principal would have done under similar circumstances.

Conclusion - A typical case is where the 'agent' handling perishable goods like 'apples' can decide the time, date and place of sale, not necessarily as per instructions of the principal, with the intention of protecting the principal from losses. Here, the agent acts in an emergency and acts as a man of ordinary prudence. In the given case S had acted in an emergency situation and hence, R will not succeed against him.



An agent who has authority for sale of goods may repair it if necessary.



A consigns perishable goods to B at Srinagar, with directions to send them immediately to C at Tamandu. B may sell the good if they begin to perish before reaching its destination.

SUB-AGENTS

When agent cannot delegate [Section 190]: An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or from the nature of the agency, a subagent must, be employed.

“Sub-agent” defined [Section 191]: A “Sub-agent” is a person employed by, and acting under the control of, the original agent in the business of the agency.

Analysis: Sub agency refers to case where an agent appoints another agent. The appointment of sub agent is not lawful, because the agent is a delegatee and a delegatee cannot further delegate. This is based on the Latin principle **“delegatus non potest delegare”**.

A contract of agency is of a fiduciary character. It is based on the confidence reposed by the principal in the agent and that is why a delegatee cannot further delegate.

Exception where an agent can appoint Sub-agent:

- 1) The appointment of a sub agent would be valid if the terms of appointment originally contemplated it.
- 2) Sometimes **customs of the trade** may provide for appointment of sub agents. *In both these cases the sub agent would be treated as the agent of the principal.*
- 3) Where in the course of the agent’s employment, **unforeseen emergency** arise making it necessary for him to delegate the authority that was given to him by the principal.

Representation of principal by sub-agent properly appointed [Section 192]: Where a sub-agent is properly appointed,

- 1) Principal is liable to third parties for the acts of the sub-agent.
- 2) **Agents responsibility for sub agents:** The agent is responsible to the principal for the acts of the sub-agent.
- 3) **Sub-agents liability to principal:** The sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or willful wrong.

Agent’s responsibility for sub-agent appointed without authority [Section 193]: Where an agent, without having authority to do so, has appointed a person to act as a sub-agent,

- 1) the agent is responsible for his acts both to the principal and to third persons;
- 2) the principal is responsible for the acts of the sub agent,
- 3) the sub agent is not responsible to the principal at all. He is answerable only to the agent.




A, a carrier, agreed to carry 60 bags of cotton waste from Morvi to Bhavnagar by a truck. A asked B, another carrier, to carry the goods. The goods were damaged in transit. Held, A was liable even though it was proved that B was the carrier.


SUBSTITUTED AGENT

Substituted Agent is a person appointed by the agent to act for the principal, in the business of agency, with the knowledge and consent of the principal. Substituted agents are not sub agents. They are agents of the principal.


Relation between principal and person duly appointed by agent to act in business of agency [Section 194]: 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.

 A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a subagent, but is A's agent for the conduct of the sale.

 A authorizes B, a merchant in Kolkata, to recover the moneys due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co. for the recovery of the money. D is not a sub-agent, but is a solicitor for A.

Agent's duty in naming such person [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.

 A instructs B, a merchant, to buy a ship for him. B employs a ship surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A.

 A consigns goods to B, a merchant, for sale. B in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

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
1)	A sub-agent does his work under the control and directions of agent.	A substituted agent works under the instructions of the principal.
2)	The agent not only appoints a sub- agent but also delegates to him a part of his own duties.	The agent does not delegate any part of his task to a substituted agent.
3)	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.
4)	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
5)	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.

6)	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.
7)	Sub-agents may be improperly appointed.	Substituted agents can never be improperly appointed.
8)	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.

DUTIES AND OBLIGATIONS OF AN AGENT


(i) Duty to follow instructions or customs: According to Section 211 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 customs which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise and any loss is sustained by the Principal, he must indemnify him, and, if any profit accrues, he must account for it.


	A, an agent is engaged for managing the business of B, in which it is a custom to invest money at hand for interest. If A omits to make such investment he must indemnify B for the losses i.e. for the interest B would have obtained for such investment.
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	B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C. C, before payment, becomes insolvent. B will have to indemnify A for the losses.
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(ii) Duty of reasonable care and skill: According to section 212, an agent is bound to conduct the business of the principal with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill.

The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss of damage which are indirectly or remotely caused by such neglect, want of skill or misconduct.

	A, a merchant in Kolkata, has an agent, B, in London, to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss- e.g. by variation of rate of exchange-but not further.
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	A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale is insolvent. A must compensate his principal for the loss sustained by him.
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A, an insurance-broker, employed by B to effect an insurance on a ship, omits to see that the “usual clauses” are inserted in the policy. The ship is afterwards lost. In consequence of the omission nothing can be recovered from the underwriters. A is bound to make good the loss to B.



A, a merchant in England, directs B, his agent at Mumbai, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

(iii) Duty to render proper accounts [Section 213]: An agent is bound to render proper accounts to his principal on demand. Rendering accounts does not mean showing the accounts but the accounts supported by vouchers. (*Anandprasad vs. Dwarkanath*)

(iv) Agent’s duty to communicate with principal [Section 214]: It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

(v) Duty not to deal on his own account: Agent should not deal on his own account without first obtaining the consent of the principal, otherwise the principal may—

- a. repudiate the transaction, (Section 215)
- b. claim from the agent any benefit which may have resulted to him from the transaction. (Section 216)



A directs B to sell A’s estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.



A directs B to sell A’s estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allow B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or accept the sale at his option.



A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

(vi) Duty not to make secret profits: It is the duty of an agent not to make any secret profit in the business of agency. His relationship with the principal is of fiduciary nature and this requires absolute good faith in the conduct of agency.

Secret Profit means any advantage obtained by the agent over and above his agreed remuneration and which he would not have been able to make but for his position as agent.

Mr. Yadav of Delhi engaged Mr. Shekhawat as his agent to buy a house in West Extension area. Mr. Shekhawat bought a house for ` 50 lakhs in the name of a nominee and then purchased it himself for ` 60 lakhs. He then sold the same house to Mr. Yadav for ` 62 lakhs. Mr. Yadav later comes to know the mischief of Mr. Shekhawat and tries to recover the excess amount paid to Mr. Shekhawat. Is he entitled to recover any amount from Mr. Shekhawat? If so, how much? Explain. (RTP May 2016) (RTP MAY 2018) (MTP NOV 2017) (MTP MAY 2019) (MTP NOV 2020) (MAY 2016)

Law - 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: 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 can Claim from the agent any benefit, which may have resulted to him from the transaction.

Conclusion - Therefore, based on the above provisions, Mr. Yadav is entitled to recover ` 12 lakhs from Mr. Shekhawat being the amount of profit earned by Mr. Shekhawat out of the transaction.

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? (RTP NOV 2020)

Law- 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.

Conclusion –

- (i) 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.
- (ii) 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, Pankaj cannot claim any benefit from Shruti as he had knowledge that Shruti was acting on her own account in the business of the agency.
- (vii) **Duty not to delegate:** According to section 190, an agent cannot lawfully employ to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of agency, a sub-agent, must be employed.
- (viii) **Agent's duty to pay sums received for principal [Section 218]:** Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.
- (ix) **Duty not to use any confidential information received in the course of agency against the principal.**

RIGHTS OF AN AGENT

- (i) **Right of retain out of sums received on principal's account [Section 217]:** This section empowers the agent to retain, out of any sums received on account of the principal in the business of the agency for the following payments:
 - a) all moneys due to himself in respect of advances made
 - b) in respect of expenses properly incurred by him in conducting such business
 - c) such remuneration as may be payable to him for acting as agent.The right can be exercised on any sums received on account of the principal in the business of agency.
- (ii) **Right to remuneration [Section 219]:** The agent in the normal course is entitled for remuneration as per the contract. In the absence of any agreed amount of remuneration, he is entitled for usual remuneration which is customary in the business. However, an agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business which he has misconducted [Section 220].



A employs B to recover ₹ 1,00,000 from C, and invest it in securities that give good returns. B recovers the amount and lays out ₹ 90,000 on good securities but lays out ₹ 10,000 on securities which he ought to provide poor returns, whereby A loses ₹ 2,000. B is entitled to remuneration for recovering the ₹ 1,00,000 and for investing the ₹ 90,000. He is not entitled to any remuneration for investing the ₹ 10,000, and he must indemnify A for ₹ 2000.



A employs B to recover ₹ 1,00,000 from C. Because of B's misconduct the money is not recovered. B is entitled to no remuneration for his services and must make good the loss.

- (iii) **Agent's lien on principal's property [Section 221]:** In the absence of any contract to the contrary, an agent is entitled to retain the goods, papers and other property, whether movable or immovable, of the principal received by him, until the amount due to himself for commission, disbursement and services in respect of the same has been paid or accounted for him.

The conditions of this right are:

- a. The agent should be lawfully entitled to receive from the principal a sum of money by way of commission earned or disbursement made or services rendered in the proper execution of the business of agency.
- b. The property over which the lien is to be exercised should belong to the principal and it should have been received by the agent in his capacity and during the course of his ordinary duties as an agent. If the agent obtains possession of the property by unlawful means, he cannot exercise particular lien.

The agent's right to lien is lost in the following cases:

- a) When the possession of the property is lost.
- b) When the agent waives his right. Waiver may arise out of agreement express or implied.
- c) The agent's lien is subject to a contract to the contrary.

(iv) **Right to indemnity:**

- a) **Right of indemnification for lawful acts [Section 222]:** The principal is bound to indemnify the agent against all consequences of lawful acts done in exercise of his authority.



'A' residing in Delhi appoints 'B' from Mumbai as an agent to sell his merchandise. As a result 'B' contracts to deliver the merchandise to various parties. But A fails to send the merchandise to B and B faces litigations for non-performance. Here, A is bound to protect B against the litigations and all costs, expenses arising of that.


- b) **Right of indemnification against acts done in good faith [Section 223]:** Where the agent acts in good faith on the instruction of principal, agent is entitled for indemnification of any loss or damage from the principal.




Where P appoints A as his agent and directs him to sell certain goods which in fact turned out to be not those belonging to P and if third parties sue A for this act, A is entitled for reimbursement and indemnification for such act done in good faith.

However, the agent cannot claim any reimbursement or indemnification for any loss etc. arising out of acts done by him in violation of any penal laws of the country.


- c) Non-liability of employer of agent to do a criminal act:** According to section 224, where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

	A employs B to beat C and agrees to indemnify him against all consequences of the act. B thereupon beats C and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.
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	B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all costs and damages of any action in respect thereof. B is sued by C and has to pay damages, and also incurs expenses. A is not liable to indemnify B.
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(v) Right to compensation for injury caused by principal's neglect [Section 225]:


Section 225 provides that the principal must compensate his agent in respect of injury caused to such agent due to principal's neglect or want of skill. Thus, every principal owes to his agent the duty of care, and not to expose him to unreasonable risks.


	A employs B as a bricklayer in building a house and puts up the scaffolding himself. The scaffolding is unskillfully put up, and B is in consequence hurt. A must compensate B.
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PRINCIPAL'S LIABILITY TO THIRD PARTIES


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. This is because there is no privity of contract and passing of consideration between the agent and third party. An agent also cannot personally enforce contracts entered into by him on behalf of the principal.

- i. Principal's liability for the Acts of the Agent [Section 226]:** Principal liable for the acts of agents which are within the scope of his authority.

	A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set off against that claim a debt due to himself from B.
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	A, being B's agent with authority to receive money on his behalf, receives from C, a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.
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- ii. Principal's liability when agent exceeds authority [Section 227]:** When an agent does more than he is authorised to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

	A, being owner of a ship and cargo, authorizes B to procure an insurance for ` 4,00,000 on the ship. B procures a policy for ` 4,00,000 on the ship, and another for the like sum on
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	the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.
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- iii. **Principal not bound when excess of agent's authority is not separable [Section 228]:** Where an agent does more than he is authorized 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.



A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of ₹ 6,00,000. A may repudiate the whole transaction.



A authorizes B to draw bills to the extent ₹ 200 each. B draws bills in the name of A for ₹ 1,000 each. A may repudiate the whole transaction.
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- iv. **Exception: Liability of principal inducing belief that agent's unauthorized acts were authorized [Section 237]:** 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.



A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.



A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.
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- v. **Consequences of notice given to agent [Section 229]:** Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.



A is employed by B to buy from C certain goods of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set off a debt owing to him from C against the price of the goods. Thus, the knowledge of the agent is treated as the knowledge of the principal.
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- vi. **Principal's liability for the agent's fraud, misrepresentation or torts [Section 238]:** Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made, or committed, by the principals; but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals.



A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorized by B to make. The contract is voidable, as between B and C, at the option of C.



A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignee.

PERSONAL LIABILITY OF AGENT TO THIRD PARTIES

Agent cannot personally enforce, nor be bound by, contracts on behalf of principal [Section 230]: 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. He can neither sue nor be sued on contracts made by him on his principal's behalf.

EXCEPTIONS: In the following exceptional cases, the agent is presumed to have agreed to be personally bound:

- 1) Where the contract is made by an agent for the sale or purchase of goods for a **merchant resident abroad/foreign principal**: – When an agent has entered into a contract for the sale or purchase of goods on behalf of a principal resident abroad, the presumption is that the agent undertakes to be personally liable for the performances of such contract.
- 2) Where the agent **does not disclose the name of his principal or undisclosed principal**; (Principal unnamed): when the agent does not disclose the name of the principal then there arises a presumption that he himself undertakes to be personally liable.
- 3) **Non-existent or incompetent principal**: Where the principal, though disclosed, cannot be sued, the agent is presumed to be personally liable.



An agent who contracts for a minor, the minor being not liable, the agent becomes personally liable. This result, may not, however, follow where the other party already knows that the principal is a minor.

- 4) **Pretended agent** – if the agent pretends but is not an actual agent, and the principal does not rectify the act but disowns it, the pretended agent will be himself liable (Section 235).
- 5) **When agent exceeds authority**- When the agent exceeds his authority, misleads the third person in believing that the agent he has the requisite authority in doing the act, then the agent can be made liable personally for the breach of warranty of authority.

RIGHTS OF THIRD PARTIES

- i. **Rights of parties to a contract made by undisclosed agent [Section 231]:** If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same right as he would have had as against the agent if the agent had been the principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfill the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.



SS bought for himself a ticket of IPL match at Wankahde Stadium through AB because on personal grounds Stadium management would not have issued the ticket to SS. Stadium management may repudiate the contract and refuse SS to enter the stadium.

- ii. **Performance of contract with agent supposed to be principal [Section 232]:** When agent does not disclosed that he is acting as an agent and the principal requires the performance of the contract then the principal can obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.



A, who owes 50,000 rupees to B, sells 1,00,000 rupees worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set off A's debt.

- iii. **Option to Third Person- sue the Agent or the Principal:**

- a) **Right of person dealing with agent personally liable [Section 233]:** In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.



A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

- b) **Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable [Section 234]:** When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

REVOCATION OF AUTHORITY

Termination of agency [Section 201]


Termination of agency means putting an end to the legal relationship between principal and agent. Section 201 provides for the following modes of termination:

- a) **Revocation:** An agency may be terminated by the principal revoking the authority of the agent. Principal may revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal [Section 203]. However, the principal cannot revoke the authority given to his agent after the authority has been partly exercised so far as regards such acts and obligations as arise for acts already done in the agency. [Section 204]



A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to


	make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.
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	A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in A's name, and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.
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Compensation for revocation by principal [Section 205]: If there is premature revocation of agency without sufficient cause, the principal must compensate the agent, for such revocation.

Notice of revocation [Section 206]: When the principal, having justification to do so, revokes the authority, he must give reasonable notice of such revocation to the agent, otherwise, he can be liable to pay compensation for any damage caused to the agent (Section 206).

Revocation and renunciation may be expressed or implied [Section 207]: Revocation of agency may be expressed or implied in the conduct of the principal.

	A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.
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- b) Renunciation by agent [Section 206]:** An agent may renounce the business of agency in the same manner in which the principal has the right of revocation. In the first place, if the agency is for a fixed period, the agent would have to compensate the principal for any premature renunciation without sufficient cause. [Section 205] Secondly, a reasonable notice of renunciation is necessary. Length of notice (time period of notice) is to be determined by the same principles which apply to revocation by the principal. If the agent renounces without proper notice, he shall have to make good any damage thereby resulting to the principal. [Section 206]
- c) Completion of business:** An agency is automatically and by operation of law terminated when its business is completed. Thus, for example, the authority of an agent appointed to sell goods ceases to be exercisable when the sale is completed.
- d) Death or insanity:** An agency is determined automatically on the death or insanity of the principal or the agent. Winding up of a company or dissolution of partnership has the same effect. Act done by agent before death would remain binding.
- e) Principal's insolvency:** An agency ends on the principal being adjudicated insolvent.
- f) On expiry of time:** Where an agent has been appointed for a fixed term, the expiration of the term puts an end to the agency, whether the purpose of agency has been accomplished or not. An agency comes to an automatic end on expiry of its term.

When the agency is irrevocable?

When the agent is personally interested in the subject matter of agency the agency becomes irrevocable. **Section 202** states that "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."



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. A cannot revoke this authority, nor can it be terminated by his insanity or death.



A consigns 1000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself, out of the price, the amount of his own advances. A cannot revoke this authority, nor it is terminated by his insanity or death.

Effects of Termination [Section 208]

When termination of agent's authority takes effect as to agent, and as to third persons [Section 208]: The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.



A directs B to sell goods for him and agrees to give B five per cent commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B, after the letter is sent, but before he receives it sells the goods for ` 1,00,000. The sale is binding on A, and B is entitled to ` 5,000 as his commission.



A, at Chennai, by letter directs B to sell for him some cotton lying in a warehouse in Mumbai, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Chennai. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.



A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

Agent's duty on termination of agency by principal's death or insanity [Section 209]: When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

Termination of sub-agent's authority [Section 210]

The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

A appoints M, a minor, as his agent to sell his watch for cash at a price not less than Rs. 700. M sells it to D for Rs. 350. Is the sale valid? Explain the legal position of M and D, referring to the provisions of the Indian Contract Act, 1872.

(MTP MAY 2019)

Law-

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.

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.

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.

(MTP MAY 2019)

Ans:-

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 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 the circumstances, and
- (v) The agent must have been in possession of the goods belonging to his principal and which are the subject of contract.

Comment on the following 'Principal is not always bound by the acts of a sub-agent:

(MTP MAY 2020)

- (i) 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.
- (ii) 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.
- (iii) 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.

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?

(MAY 2018)

Ans:-

Law- (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.

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.

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.

(NOV 2018)

Ans:-

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.

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.

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?

(MAY 2019)

Ans:-

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 necessities. But the legal presumption can be rebutted in the following cases:

Where the goods purchased on credit are not necessities.

Where the wife is given sufficient money for purchasing necessities.

Where the wife is forbidden from purchasing anything on credit or contracting debts.

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 necessities. This legal presumption can be rebutted only in cases (iii) and (iv) above.

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 necessities for her.

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.

(4 Marks)(MTP M 21)

Ans:

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.

Ramesh instructed Suresh, a transporter, to send a consignment of apples to Mumbai.

After covering half the distance, Suresh found that the apples will perish before reaching Mumbai. He sold the same at half the market price. Ramesh sued Suresh. Will he succeed? Give your answer as per the provisions of the Indian Contract Act, 1872.

ANS:

According to 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.

In the given question the 'agent' is handling perishable goods like 'apples' and thus can decide the time, date and place of sale, not necessarily as per instructions of the principal, with the intention of protecting the principal from losses. Here, the agent acts in an emergency and acts as a man of ordinary prudence.

Thus, in the given case Suresh had acted in an emergency situation and Ramesh will not succeed against him.