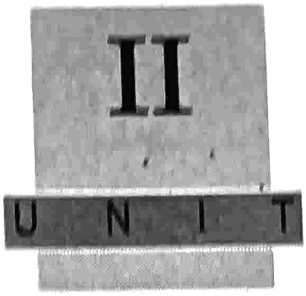


INDIAN CONTRACT ACT, 1872

CHAPTER 1

NATURE OF CONTRACT

LONG ANSWER QUESTIONS:

Q.1 All contracts are agreements but all agreements are not contracts. Comment.

Ans. As per section 2(*h*) of the Indian Contract Act, 1872, an agreement enforceable by law is a contract. Thus an agreement backed by enforceability by law *i.e.* the intention to create legal relations, is regarded as a contract. An agreement is the pre-requisite for the creation of a contract.

Every promise & every set of promises forming consideration for each other is an agreement. Thus when an offer made by a person is accepted by another, an agreement is said to be created. However an agreement is a wider term in comparison to contract. It includes even those agreements which are not enforceable since they were not created with an intention of forming legal relations, such as domestic, political or social agreements.

Thus agreement is the genus of which contract is the species & only those agreements grow into contracts which create legal relations.

Q.2 Explain briefly the essentials of a valid contract.

Ans. Section 10 provides "all agreements are contracts if they are made by the free consent of parties competent to contract for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void".

Offer and acceptance

There must be a "lawful offer" and a "lawful acceptance" of the offer, thus resulting in an agreement.

Intention to create legal relations

There must be an intention among the parties that the agreements should be attended by legal consequences and create legal obligations. Agreements of a social or domestic nature do not contemplate a contract.

Lawful consideration

Consideration means "something in return". An agreement is enforceable when each of the parties to it gives something and gets something in return. The

payment of money is a common form of consideration. But it may also consist of an act, forbearance, and a promise to do or not to do something. Consideration must be real, valuable and lawful.

Capacity of parties

The parties to an agreement must be competent to contract; otherwise it cannot be enforced by a court of law. Every person is competent to contract who is (*a*) of the age of majority, (*b*) of sound mind and (*c*) is not disqualified from contracting by any law.

Free consent

The consent of the parties must be free *i.e.* the parties should enter into contract voluntarily and free will. Section 14 lays down that consent is not free if it is caused by (*a*) coercion, (*b*) undue influence, (*c*) fraud, (*d*) misrepresentation or (*e*) mistake.

Lawful object

The object of the agreement should be lawful. It should be authorised or sanctioned by law. The object of an agreement is unlawful if it is forbidden by law or is fraudulent or is immoral or opposed to public policy.

Agreement not expressly declared void

The Indian Contract Act, 1872, has expressly declared certain agreements to be not enforceable at law, *e.g.* agreements in restraint of marriage, agreements in restraint of trade, wagering agreements etc. The parties to the agreement should ensure that their agreement do not fall in the category of these void agreements.

Certainty

The terms of the contract should be certain and definite and not vague. Section 29 states that "Agreements, the meaning of which is not certain or capable of being made certain are void."

Possibility of performance

Yet another essential feature of a valid contract is that it must be capable of performance. Section 56 lays down that "An agreement to do an act impossible in itself is void." If the act is impossible in itself, physically or legally, the agreement cannot be enforced at law.

Writing and registration

According to the Indian Contract Act, a contract may be oral or in writing. An oral contract is as much enforceable as a written contract. However, if there is a provision in any law prescribing that contracts should be in writing/registered then, this formality of writing and registration should be followed.

Q.3 "The law of contracts is not the whole law of agreements nor is it the whole law of obligations." — Comment.

Ans. Obligations may arise from different sources. The law of contract deals only with such legal obligations which arise from agreements. Obligations which

are not contractual in nature are outside the purview of the law of contract. For example, obligation to observe traffic rules does not fall within the scope of the Contract Act.

The other sources of obligations are: obligations under the trust law or the law of tort or the fundamental duties under the Constitution etc. They are outside the purview of the Contract law since they are not voluntarily created through an agreement. Salmond has rightly observed: *"The law of contracts is not the whole law of agreements, nor is the whole law of obligation. It is the law of those agreements which create obligations and those obligations, which have their source in agreements".*

SHORT QUESTIONS:

Q.4 Differentiate between:—

(*a*) Void agreements & Void Contracts

(*b*) Voidable & Void Contracts **[June 2023, 5 Marks]**

(*c*) Void Agreements & Illegal Agreements **[June 2023, 5 Marks]**

Ans. (*a*)

S.No.	Void Agreements	Void Contracts
1.	An agreement not enforceable by law is said to be void.	A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable
2.	It is void right from the beginning *i.e., ab initio*, since one or more of the essentials of a valid contract are missing.	It becomes void subsequently. On account of change is law, change in circumstances or on an account of subsequent impossibility of performance.
3.	No restitution of benefits is allowed.	Restitution may be granted when the contract is discovered to be void or becomes void.
(*b*)	**Void contracts**	**Voidable contracts**
1.	A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.	A contract 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. Thus it is enforceable at the option of the aggrieved party.
2.	It is valid at the time of formation & remains valid till an event takes place which results in the contract ceasing to be enforceable.	It may be voidable right from the beginning or voidable subsequently. It remains valid if the aggrieved party does not elect to avoid it within a reasonable time.

3.	A contract becomes *void* due to change in circumstances, change in law or subsequent impossibility of performance etc.	A contract is voidable right from the beginning if consent is caused by coercion, undue influence, fraud or misrepresentation. A contract becomes voidable subsequently on account of breach of contract or failure to perform the contract at the time fixed, if the time is of essence of the contract.
4.	Compensation is not payable.	The aggrieved party can claim damages for loss sustained by him, if any.

(c) Difference between Void & Illegal agreements

a. *Scope :* An illegal agreement is narrower in scope than a void agreement. All illegal agreements are void but all void agreements are not necessarily illegal. *E.g.* an agreement with a minor is void, but not illegal.

b. *Collateral Transactions :* When an agreement is illegal, other agreements which are incidental or collateral to it are also tainted with illegality, hence void. However agreements collateral to a void agreement are not necessarily void.

c. *Restitution:* In the case of illegal agreement, no right/remedy is available to either party. Hence money paid under an illegal agreement cannot be recovered. Under section 65 if an agreement is discovered to be void any person who has received advantage/benefit must restore it or make compensation for it.

d. *Punishment:* In case of an illegal agreement the parties may be punished under the criminal law, in case of a void agreement (which is not illegal) there is no such punishment.

Q.5 Write Short Notes on:—
(a) Unenforceable Contracts
(b) Quasi Contracts
(c) Unilateral Contracts

Ans. (*a*) Unenforceable Contract. An unenforceable contract is one, which suffers from some technical defect. It is valid in itself, but is not capable of being enforced in a court of law because of non-observance of some technical formalities such as insufficiency of stamp, want of registration, attestation etc. In some cases such contracts can be enforced if their technical defects are removed, for example, the defect of under stamping can be removed by affixing the right value of stamps.

(*b*) Quasi Contract. Quasi Contract is a contract in which there is no intention on the part of either party to make a contract but law imposes a contract upon parties. These are not actual contracts but they resemble a contract which is created by law under certain circumstances. Here, law creates legal rights and obligations when there is no real contract. For example; obligation of finder of lost goods to return them or liability of person whom money is paid by mistake to repay it back.

(*c*) In case of a *unilateral contract*, only one party has to perform his obligation and the other party has performed his obligation at the time of formation of contract or before. If A buys a railway ticket for his journey from Nagpur to Bombay. A has performed his duty under the contract by paying the fare but the railways are yet to perform their promise *i.e.* of carrying him from Nagpur to Bombay. Such contracts are also called as contracts with executed consideration or one-sided contracts.

CASE STUDIES:

Q.6 Lekhpal promises today ₹ 5 lakhs to his son if the son passes the CA exams. On passing the exams, the son claims the money. Can the son file a suit against the father?

Ans. Hint: No. Because it is a domestic agreement [no intention to create legal relations].

Q.7 X, a coolie in uniform carried Y's luggage from the railway platform to taxi without being asked by Y to do so. Y does not make any attempt to stop X from carrying the luggage. Is Y bound to make payment to X?

Ans. Hint: Yes [implied contract : implied offer & implied acceptance (silence as manifestation of acceptance)].

Q.8 Arun has two cars - one of white colour and another of red colour. He offers to sell one of the cars to Basu thinking that he is selling the car which has white colour. Basu agrees to buy the car thinking that Arun is selling the car which has red colour. Will this agreement becomes a valid contract?

Ans. Hint: No. [- since consensus idem is missing]

Q.9 Mr. W, boards a bus at a bus-stop. He travels for some distance and on arrival at his destination, he makes a move to get off the bus. The conductor stops him and asks for the fare. He denies his duty to pay saying they did not form any contract comment.

Ans. Hint: Implied contract - a contract that can be understood from the conduct of the parties - Mr. W is bound to pay the fare for availing the transportation services.

Q.10 State whether a contract is created in the following cases:—
(i) Mr. R promises to supply 4 teakwood chairs to Mr. S for a price which shall be fixed by Mr. F.
(ii) Mr. P promises to pay ₹ 10 Lacs to Mr. T, if he brings back to life Mr. P's dead wife.

(iii) A mother promises to give ₹ 500 to her son, if he accompanies her for shopping.

(iv) Mr. P promises to pay ₹ 10 Crores to Mr. N if he resigns from his party and joins Mr. P's political party.

Ans. Hint: *(i)* A valid contract is created - the terms of contract should be certain or capable of being made certain.

(ii) No contract is created - impossibility of performance - *void ab initio*.

(iii) No contract is created - domestic agreements are mere agreements and not contracts.

(iv) No contract is created - political agreements are mere agreements and not enforceable.

Q.11 Explain the type of contracts in the following agreements under the Indian Contract Act, 1872.

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

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

(iii) A contracts with B (owner of the factory) for the supply of 10 tons of sugar, but before the supply is effected, the fire caught in the factory and everything was destroyed. [RTP May 2020]

Ans. Hint: *(i)* Implied contract. The contract can be inferred from the conduct of the parties.

(ii) Quasi contract. In case of quasi contracts, without the existence of an agreement, the law imposes obligations on parties, similar to those arising under contracts.

(iii) Void contract. A contract which is valid at the time of formation, but becomes void or ceases to be enforceable subsequently, due to change in law or change in circumstances.

Q.12 Explain the type of contracts in the following agreements under the Indian Contract Act, 1872.

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

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

(iii) G agrees to give tuitions to H, a pre-engineering students, from the next month and H in consideration promises to pay G ₹5,000 per month. [RTP May 2021]

Ans. Hint : *(i)* Voidable right from the beginning. Contracts created by coercion are voidable right from the beginning. The contract is voidable at the option of X, the aggrieved party.

(ii) The contract becomes void subsequently & ceases to be enforceable as the debt becomes time barred on expiry of 3 yrs. under law of limitation. A cannot recover the debt from B.

(iii) The contract is executory in nature, where at the time of formation of contract, performance of parties is due. However if in the given case H is a minor, then the contract shall be *void ab initio*.

Q.13 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]

Ans. According to the provisions of the Indian Contract Act, 1872, all agreements are not contracts. Domestic, social & political agreements are not contracts as they are not backed by the intention to create legal relations and hence are not enforceable by law.

In the given case, Radha invited her friends to her birthday party, in a hotel, for which she deposited non-refundable security, but few of her friends did not turn up for the party and she wishes to sue them.

Applying the above stated provisions it is evident that the given case is of a social agreement which was made without the intention of creating legal relations and as merely an agreement and not a contract. Thus Radha cannot sue her friends for the loss, resulting from their not attending her birthday party, despite having accepted the invitation.

The answer would still remain the same if the party had been a contributory New Year celebration party, since it would still remain a social agreement not intended to be made with the intent of creating legal relations and would not be enforceable by law.

2 CHAPTER OFFER & ACCEPTANCE

LONG ANSWER QUESTIONS:

Q.1 What is an offer? List the essentials of a valid offer. [RTP Nov. 2019]

Ans. Section 2(*a*) of the Indian Contract Act defines a proposal as:

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

The person who makes the offer is called the *'offeror'* or *'promisor'* and the person to whom the offer is made is called the *'offeree'* or *'promisee'*.

1. *An offer may be express or implied.*
2. *An offer may be specific or general.*
3. *An offer must be made with a view to create legal relationship.*
4. *Offer must be distinguished from an invitation to offer.*
5. *An offer must be communicated to the offeree.*
6. *The terms of offer must be certain & may include an act or an abstinence*
7. *An offer may be conditional and all special terms & conditions must be communicated along with the offer.*
8. *An offer must not be "negative" in terms. An offer should not contain a term the non-compliance of which would amount to acceptance.*
9. *An intention to make an offer in the future does not result in an offer.*

Q.2 Define acceptance. What are the essentials of a valid acceptance? [Jan. 2021, 7 Marks]

Ans. Section 2(*b*) states that "A proposal when accepted becomes a promise" and defines 'acceptance' as "When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted."

1. *Acceptance must be absolute and unqualified.*
2. *Acceptance must be given only by the person to whom the offer is made.*
3. *Acceptance may be expressed in words, spoken or written or may be given by conduct.*

4. *Acceptance must be expressed in the prescribed manner or when nothing is prescribed then in some usual and reasonable manner.*
5. *Acceptance must be communicated by the acceptor.*
6. *Acceptance must be given within a reasonable time and before the offer lapses and or is revoked.*
7. *Acceptance must succeed the offer.*
8. *Rejected offers can be accepted only, if renewed.*
9. *Generally acceptance cannot be presumed from silence.*

Q.3 Explain the modes of revocation of an offer as per the Indian Contract Act, 1872. [Nov. 2018, 5 Marks]

Ans. As per the provisions of the Indian Contract Act, 1872, the following are the modes of revocation of an offer :–

(*i*) ***By notice:*** An offer may be revoked by communication of notice to the offeree by the offeror before the communication of acceptance is completed as against him.

(*ii*) ***By Lapse of time:*** A proposal stands revoked by the lapse of time prescribed for its acceptance if communication of acceptance is not made.

(*iii*) ***By failure to fulfil condition precedent:*** Sometimes the offer may impose certain conditions, such as executing a certain document or depositing certain sum of money (earnest money), which are required to be complied with prior to acceptance. If the acceptor fails to fulfil the conditions precedent to acceptance, the offer is treated as revoked.

(*iv*) ***By death or insanity of offeror:*** An offer stands revoked if the offeror dies or becomes of unsound mind before acceptance and the fact of his death or insanity comes to the knowledge of the offeree.

(*v*) ***By counter offer:*** When acceptance is given by the offeree on terms & conditions different from the original offer then the offer stands revoked.

(*vi*) ***By death or insanity of the offeree:*** If the offer is specific the offer stands revoked when the offeree dies or becomes of unsound mind, before the acceptance of the offer.

(*vii*) ***By destruction of subject matter:*** When the subject matter of offer is destroyed prior to acceptance, then the offer stands revoked.

(*viii*) ***By change in law:*** When the offer becomes impossible due to change in law prior to acceptance, thereby making it unlawful then the offer stands revoked.

(*ix*) ***By non-acceptance of the offer as per the prescribed mode:*** When the offeree sends acceptance in a mode other than the mode prescribed by offeror, the offer may be treated as revoked.

SHORT QUESTIONS:

Q.4 Write a short note on:—
(a) Cross offer
(b) Counter Offer
(c) Invitation to make an Offer **[RTP Nov. 2019]**

Ans. (a) ***Cross Offer:*** When two persons make identical offers to each other, without having knowledge of each other's offer, then such offers are known as cross offers. These offers are independent & identical and do not constitute a contract until acceptance is given to any one of them.

(b) ***Counter Offer:*** When offer is accepted on terms or conditions different than those set out in the original offer then it amounts to counter offer. A counter offer results in rejection of the original offer and creation of a new offer. Once a counter offer is made by the original offeree, he cannot subsequently accept the original offer, since the original offer stands revoked. It is only if acceptance is given to the new offer that a contract shall be created.

(c) ***Invitation to offer or invitation to treat:*** It means supply of information so that the negotiations can start and the other person can be moved to make an offer. It is an indication that the inviter is willing to enter into negotiations but is not yet prepared to be bound. A response to invitation to treat does not lead to an agreement. In fact it generates an offer.

An invitation to offer is a statement made by a person with a view to elicit response and negotiate a deal, without expressing final willingness to contract. An invitation to offer, when responded generates an offer.

The following are few examples of invitation to make an offer:

- Catalogue of goods is not offer, but only an invitation for offer.
- Display of goods with price tags in a self-service shop is merely an invitation to offer.
- A tender notice does not amount to an offer; it is merely an invitation to contractors for making offers.
- A prospectus issued by a company to purchase its shares or debentures is an invitation to offer.
- A menu card in a hotel is an invitation to offer, etc.

Thus an offer is an expression of final willingness to do or not to do something, with a view to obtain assent of the other person. Whereas invitation to an offer only indicates broad terms for negotiating business and while an offer results in generation of acceptance in its response, an invitation to an offer results in generation of offers in its response.

Q.5 What are the exceptional cases when silence may be regarded as an acceptance to an offer?

Ans. Silence, generally does not amount to acceptance. The acceptance of an offer cannot be implied from the silence of the offeree or his failure to respond to the offer. However in the following exceptional cases, silence may be regarded as acceptance to an offer and it results in the creation of a binding contract:—

(i) Where the offeree having reasonable opportunity to reject the offered goods/services, enjoys or avails the benefits of them, then his silence will be regarded as acceptance.

(ii) Similarly, where the previous dealings show that offeree has given the offeror a reason to believe that the silence of the offeree was a manifestation of his acceptance and the offeror understands so, then silence will be regarded as acceptance of the offer.

Q.6 What are the rules for completion of communication of offer & acceptance by post? **[RTP Nov. 2020]**

Ans. The communication of offer completes when the offer comes to the knowledge of the offeree.

The communication of acceptance completes at different times for the offeror & the offeree, as under:

(i) ***As against the offeror:*** The communication of acceptance completes as against the offeror, when the letter of acceptance is put into a course of transmission by the offeree to the offeror, so as to be beyond the reach & power of the offeree. After such communication, the offeror is bound by the acceptance.

(ii) ***As against the offeree:*** The communication of acceptance is complete as against the offeree. When it comes to the knowledge of the offeror. After such communication, the offeror has a right to bind the offeree by his acceptance.

CASE STUDIES

Q.7 A shopkeeper exhibits an article in his shop window with a price tag attached to it. A customer offers to buy the article for the same price. Is the shopkeeper bound to part with the article receiving the price offered by the customer?

Ans. Hint: No, there is no sale because the display of the article at the shop window is only an invitation to offer and not an offer [invitation to an offer does not result in generation of acceptance, instead gives rise to an offer].

Q.8 A railway passenger receives a ticket on the face of which is printed 'This ticket is issued subject to rules/regulations/conditions contained in the current timetable of the railways'. Comment on whether he is bound by these terms.

Ans. Hint: He shall be bound by them whether he has read them or not [if special terms and conditions are communicated alongwith the offer, then the same shall be binding on offeree]

Q.9 State when the communication will be complete in the following cases:–

(i) D proposes, by a letter, to sell his printing machine to E for ₹ 50,000.
(ii) E accepts D's proposal.
(iii) D revokes his proposal by a telegram.
(iv) E revokes his acceptance by telegram

Ans. Hint:–

(i) When E receives the letter
(ii) Against D, where E posts letter; Against E, when the letter is received by D
(iii) Against D, when he sends the telegram; Against D, when he received the telegram
(iv) Against E, when he sends the telegram; Against D, when he receives the telegram.

Q.10 "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 in spite 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.

Ans. Hint: Miss Rakhi can claim the reward, since the advertisement here is in the form of a general offer **[*Carlill* v. *Carbolic Smoke Ball Co.*]**

Q.11 Ramaswami proposed to sell his house to Ramanathan. Ramanathan sent his acceptance by post. Next day, Ramanathan sends a telegram withdrawing his acceptance. Examine the validity of the acceptance in the light of the following:—

(i) The telegram of revocation of acceptance was received by Ramaswami before the letter of acceptance.

(ii) The telegram of revocation and letter of acceptance both reached together.

Ans. Hint: (i) Revocation is valid and there is no contract as it has reached before the letter of acceptance.

(ii) Revocation is valid and there is no contract if Ramaswami opens the telegram about revocation first and reads it.

Revocation is not valid and the contract is formed - if Ramaswami opens the letter of acceptance first and reads it.

Q.12 A shop-keeper displayed a pair of dress in the show-room and a price tag of ₹ 2,000 was attached to the dress. Ms. Lovely, looked at the tag and rushed to the cash counter. Then she asked the shop-keeper to receive the payment and pack up the dress. The shop-keeper refused to hand-over the dress to Ms. Lovely in consideration of the price stated in the price tag attached to the dress. Ms. Lovely seeks your advice whether she can sue the shop-keeper for the above cause under the Indian Contract Act, 1872. [Nov. 18, 3 Marks]

Ans. An offer must be distinguished from an invitation to make an offer. An offer is the final expression of willingness by the offeror to be bound by the offer if the offeree chooses to accept it. On the other hand an invitation to make an offer is made with the intention to negotiate business on the terms specified broadly in the invitation, with any person who comes forward with an offer. Thus the offer is made with the intention of procuring acceptance whereas invitation to make an offer is made to procure offers. The acceptance of an invitation to an offer does not result in the formation of contract and only an offer emerges in the process of negotiation. A price tag attached to an article displayed for sale does not constitute an offer. It is merely an invitation to offer.

In the given case the dress displayed in the show-room with the price-tag constitutes an invitation to make an offer. The act of Ms. Lovely of picking up the dress and producing at cash counter for payment at the price mentioned in the price tag amounts to an offer. The shop-keeper is not bound to accept the offer.

Thus the shopkeeper is not bound to sell the dress as no contract exists between to sell the dress as no contract exists between Ms. Lovely and the shop-keeper and hence she cannot sue the shop-keeper.

Q.13 Shambhu Dayal started "Self service" system in his shop. Smt. Prakash entered the shop, took a basket and after taking articles of her choice into the basket reached the cashier for payments. The cashier refuses to accept the price. Can Shambhu Dayal be compelled to sell the said articles to Smt. Prakash? Decide as per the provisions of the Indian Contract Act, 1872. [MTP May 2019, MTP July 2021]

Ans. Hint: The display of goods in a self service shop is in the form of an invitation to offer; selection of goods & producing them for payment to cashier amounts to an offer by the customer to purchase the goods. It is only when the cashier accepts the price being offered and agrees to sell that contract is created.

In the given case Shambhu Dayal cannot be compelled to sell the articles to Smt. Prakash since he has rejected her offer to buy the said articles & therefore no contract is created between them.

Q.14 H sent a telegram to K asking - "Will you sell us Bumper Hall Penn? Telegraph the lowest cash price." K replied through a telegram. "The lowest cash price for Bumper Hall Penn is ₹ 50,000." H replies through a telegram. "We agree to buy Bumper Hall Penn at the price of ₹ 50,000 asked by you. Send the title deeds. "Comment on the validity of contract created between H & K.

Ans. Hint: A quotation price is merely an invitation to an offer; thus K has merely replied to H's query by sending a price quotation. Agreeing to or accepting the price quotation does not amount to acceptance. Thus no contract is created between H & K and K is not bound to sell Bumper Hall Penn.

Q.15 X purchased a steamer ticket for travelling from Dublin to Whitehaven. Terms & conditions were printed on the back of the ticket. One of the conditions prescribed that the shipping company shall not be liable in the event of loss, injury or delay to the passengers or their luggage. X did not see the back of the ticket and there was no instruction on the face of the ticket to see the back for the terms & conditions. During the journey X's luggage is lost due to negligence of the staff on board. X claims loss from the shipping company which denies its liability on the grounds that the company has expressly excluded its liability at the time of formation of contract comment whether the shipping company's stand is tenable in the context of provisions of the Indian Contract Act, 1872.

Ans. Essentials of a valid offer; the special terms & conditions must also be communicated alongwith the offer so as to bind the offeree. If the special terms & conditions are not communicated the same shall not be binding on the offeree. Further the party prescribing such special terms must make reasonable efforts to bring such special terms to the knowledge of the other party at the time of formation of contract.

Thus in this case X shall be entitled to compensation for his loss from the shipping company, despite the special term exempting the company from its liability since there was no indication on the face of the ticket to draw X's attention to the special terms printed on the back of the ticket. The company has failed to make reasonable efforts to communicate the special terms at the time of formation of contract as a consequence of which X is not bound by such term and company's contention is not tenable.

Q.16 A sends an offer to B to sell his second-car for Rs. 1,40,000 with a condition that if B does not reply within a week, he (A) shall treat the offer as accepted. Is A correct in his proposition? What shall be the position if B communicates his acceptance after one week? (RTP Nov. 2019)

Ans. Silence, generally, does not amount to acceptance. The acceptance to an offer cannot be implied from the silence of the offeree or his failure to answer or respond to the offer unless the offeree has by his previous conduct indicated that his silence implies acceptance.

Further under the provisions of the Indian Contract Act, 1872, an offer shall be regarded as invalid if it binds the other party to reply or if it contains any terms, the non-compliance of which may be assumed to amount to acceptance.

Thus the offer is invalid & A's proposition is incorrect & B's silence would not amount to acceptance.

If B communicates acceptance after 1 week then also no contract shall be created since the offer is invalid.

Q.17 B sent a draft agreement relating to supply of coal and coke to Manager of a Railway Company for his acceptance. The Manager wrote "approved" on the same and put the draft in his table drawer, intending to sent it to the company's solicitors for a formal contract to be drawn up. By oversight, the draft agreement remained in the drawer. Comment on the validity of the contract in the light of the Indian Contract Act, 1872.

Ans. A contract is created the moment an offer, made with the intention of creating legal relations, is accepted. However acceptance to be valid and binding must be communicated. Thus efforts must be made to bring the acceptance into the knowledge of the offeror, *i.e.* acceptance must be put into a course of transmission to the offeror by offeree.

In case of written communication merely writing the word 'accepted' or 'approved' on a draft agreement would not amount to acceptance for the purpose of creation of contract unless efforts are taken to bring such acceptance into knowledge of the offeror.

Thus in the given case no contract comes into existence even when the manager writes 'approved' on the draft agreement since no steps were taken to communicate the same.

Q.18 Mr. B makes a proposal to Mr. S by post to sell his house for ₹ 10 lakhs and posted the letter on 10th April 2020 and the letter reaches to Mr. S on 12th April 2020. He reads the letter on 13th April 2020. Mr. S sends his letter of acceptance on 16th April 2020 and the letter reaches Mr. B on 20th April 2020. On 17th April Mr. S changed his mind and sends a telegram withdrawing his acceptance. Telegram reaches to Mr. B on 19th April 2020. Examine with reference to the Indian Contract Act, 1872 :—

(i) On which date, the offer made by Mr. B will complete ?
(ii) Discuss the validity of acceptance.
(iii) What would be validity of acceptance if letter of revocation and letter of acceptance reached together ? [Jan. 2021, 6 Marks]

Ans. ***(i)*** *According to the provisions of the Indian Contract Act, 1872, the completion of communication of offer from the offeror to the offeree takes place when the offer comes to the knowledge of the offeree. In case of communication of offer by post, such a completion of communication shall take place when the letter of offer is received and read by the offeree.*

In the given case, the letter of offer is posted by Mr. B on 10th April, which is received by Mr. S on 12th April and is read by him on 13th April.

Thus applying the above provisions it is clear that the communication of offer sent by Mr. B - the offeror, completes on 13th April, i.e. when it comes to the knowledge of offeree - Mr. S.

(ii) *According to the rules for completion of communication of offer an acceptance under the Indian Contract Act, 1872, acceptance completes at different times for the offeror and the offeree. Acceptance completes as against the offeror, the moment the letter of acceptance is put into a course of transmission to the offeror by the offeree so as to be beyond the reach of the offeree. Thus in case of acceptance by post, the liability of the offeror under the contract is created the moment the letter of acceptance is posted by the offeree and is out of his reach.*

Further acceptance completes as against the offeree when it comes to the knowledge of the offeror. Thus in case of acceptance by post, the liability of the offeree under the contract shall be created when the letter of acceptance is received and read by the offeror. If the offeree desires to revoke his acceptance validly, he must do so before his liability under the contract is created i.e. before the acceptance comes to the knowledge of the offeror.

In the given case, Mr. S, the offeree sends his acceptance by post on 16th April which reaches Mr. B, the offeror, by 20th April. However after posting the letter of acceptance, Mr. S revokes the same by sending a telegram for revocation on 17th April.

Thus applying the above stated provisions it is evident that since the revocation of acceptance has been made by Mr. S before the completion of communication of acceptance as against him, the acceptance stands validly revoked and cannot be enforced.

(iii) *According to the provisions of the Indian Contract Act, 1872, in the event of both the letter of acceptance and telegram of revocation reaching the offeror together, whichever is read first is treated as effective. However it is because*

of this reason that revocation is made by a faster means of communication and a telegram is more likely to be read before the letter of acceptance.

Thus if in the given case both the letter of acceptance and telegram of revocation, reach Mr. B together, then he shall most likely read the telegram which will result in revocation of acceptance for him as well.

3 CHAPTER CAPACITY TO CONTRACT

LONG ANSWER QUESTIONS :

Q.1 What is the law relating to minor's agreements?

OR

Explain the minor's position in an agreement.

Ans. The law regarding minor's agreements may be summed up as under:

1. *An agreement with a minor is void ab initio:* An agreement with a minor is absolutely void and inoperative.
2. *No restitution :* Restitution means 'restoring' (*i.e.* giving back) of something to its proper owner. A minor cannot be directed to return benefit obtained under a void agreement (because sections 64 & 65 which deal with restitution do not apply to a minor). However, according to the **doctrine of equitable restitution**, the goods and property which are still in possession of minor can be recovered from him, if so required with the condition that it does not involve any personal liability of the minor.
3. *Minor can be a beneficiary* : The Court protects the rights of minors. Accordingly, any contract, which is of some benefit to the minor and under which he is required to bear no obligation, is valid. In other words, a minor can be a beneficiary *e.g.*, a payee, an endorsee or a promisee under a contract. Thus, money advanced by a minor can be recovered by him by a suit because he can take benefit under a contract.
4. *No ratification* : A minor's agreement being a nullity and *void ab initio* has no existence in the eye of law. It cannot be ratified by the minor on attaining the age of majority, for, an agreement *void ab initio* cannot be made valid by subsequent ratification.
5. *The rule of estoppel does not apply to a minor* : *i.e.*, a minor is not estopped from pleading his minority in order to avoid a contract, even if he has entered into an agreement by falsely representing that he was of full age. In other words, where an minor represents fraudulently or otherwise that he is of age majority and thereby induces another to enter into a contract with him, then in an action founded on the contract, the minor is not estopped from setting up minority.

6. *Minor's liability for necessaries* : A minor is not personally liable for the necessaries supplied to him but his property is liable for payment to the other person.
   Necessaries would include such items as food, clothing, accommodation, expenses on education, medical treatment, etc. and not items of comfort or luxury. It would depend on socio-cultural status of the minor.
7. *Specific performance* : Since an agreement by a minor is absolutely void, the court will never direct 'specific performance' of such an agreement by him.
8. *Minor Partner* : 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' by an agreement executed by his guardian on his behalf, with the consent of all the partners.
9. *Minor Agent* : A minor can be an agent (Sec. 184). He shall bind the principal by his acts done in the course of such an agency, but he cannot be held personally liable for negligence or breach of duty.
10. *Minor and insolvency* : A minor cannot be adjudicated an insolvent, as he is incapable of contracting debts. Even for necessaries supplied to him, he is not personally liable, only his property is liable (Sec. 68).
11. *Minor as a shareholder* : A minor can become a shareholder of fully paid of shares through transfer, if he applies for registration of transfer through his guardian. However, if a minor makes application for shares, the company will refuse to allot him shares because being incompetent, he will have no liability to pay the amounts due on the shares.
12. *No liability of parents or guardians:* The parents or guardians of the minor are not liable for the contracts entered into by the minor. However, in certain cases the parents or guardians of the minor may enter into contracts on behalf of the minor for his benefit. In such cases the parents or guardians shall be liable to the contracting party.
13. *Liability for torts:* A minor is liable for a tort (civil wrong), provided the tort is independent of a contract.

SHORT QUESTIONS:

Q.2 Write Short Notes on the following:—

(*i*) Minor's liability with respect to necessaries of life
(*ii*) Alien Enemies
(*iii*) Foreign Sovereigns & Diplomats
(*iv*) Company as a person incompetent to contract

[May 2018, 2 Marks]

Ans. (*i*) According to the provisions of Section 68 of the Indian Contract Act, 1872, in the event of necessaries of life supplied to an incompetent person

or to his dependent by another person, that other person is entitled to claim reimbursement from the properties of the incompetent person, if any.

Thus in case necessaries of life are supplied by a person to a minor, then person providing the same can recover the reimbursement for his expenses from the properties of the minor, if any. Minor shall not incur any personal liability for the expenses, since he cannot be held personally liable.

Further the estate of the minor shall be held liable for the necessaries supplied, provided the goods and services supplied by the person to the minor should be regarded as 'necessaries' *i.e.* reasonably required to support his standard of living and the minor must not already be in adequate possession of the same.

(ii) A contract with an alien friend is valid subject to the law of our country. However when an alien friend is declared as an alien enemy, due to declaration of war between his country and Republic of India, then he is disqualified from entering into contract with any national of India so long as the war or the declaration continues.

Any contract with an alien enemy is not only *void ab initio* on account of the incompetence of the contracting party, but it also treated as illegal.

Further any contract formed prior to declaration of war in respect of which performance is still outstanding becomes void subsequently due to change in circumstances.

(iii) ***Foreign sovereigns and ambassadors*** **:** One has to be cautious while entering into contracts with foreign sovereigns and ambassadors, because whereas they can sue others to enforce the contracts, they cannot be sued in the Indian Courts, except in the following two cases :

(*a*) Where they voluntarily submit themselves to the Court.

(*b*) Where the person intending to sue them obtains the approval of the Central Government.

Thus they are in privileged position and are ordinarily considered incompetent to contract.

(iv) ***Joint-stock company and corporation incorporated under a Special Act (Like LIC, RBI, etc.)*** : A company/Corporation is an artificial person created by law. It cannot enter into contracts outside the powers conferred upon it by its Memorandum of Association or by the provisions of its special Act, as the case may be. Again, being an artificial person (and not a natural person) it cannot enter into contracts of strictly personal nature *e.g.*, marriage.

Q.3 "A person who is usually of unsound mind but occasionally of sound mind may enter into a valid contract when he is of sound mind", Explain.

Ans. As per section 11 of the Contract Act, for a valid contract, it is necessary that each party to contract must have a 'sound mind'.

What is a 'sound mind'? Section 12 of the Contract Act defines the term 'sound mind' as follows. *"A person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effects upon his interest."*

According to this Section, therefore, the person entering into the contract must be a person who understands what he is doing and is able to form a rational judgment as to what he is about to do, is to his interest or not.

Section 12 further states that:—

(*i*) *"A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind."* Thus a patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

Q.4 "Though minor is not competent to contract nothing in the Contract Act prevents him from making the other party bound to the minor". Discuss. [RTP May 2018]

Ans. According to the provisions of section 11 of the Indian Contract Act, 1872, a minor is incompetent to contract and any contract made with a minor is *void ab initio*. A minor can never be held personally liable for the contracts entered into by him. Thus no person can enforce any contract against a minor and can nor claim any restoration of benefits or compensation against the minor. However the courts, with an intention to protect the interest and the rights of the minor, allow minors to enforce contracts where he is a party as a beneficiary and no personal obligation is to be borne by him. Thus in respect of contracts where the minor is entitled to benefits, rights and interest (without any subsisting legal obligations), the enforcement of such contracts shall be permitted to the minor. Therefore in cases where minor is a payee, endorsee or promise to a contract or a negotiable instrument, he can seek its enforcement in the court of law.

CASE STUDIES:

Q.5 Ishaan, aged 16 years was studying in an engineering college. On 1st March, 2016 he took a loan of ₹ 2 lakhs from Vishal for the payment of his fees and agreed to pay by 30th May, 2017. 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 will succeed referring to the provisions of the Indian Contract Act, 1872. [MTP May 2018]

Ans. Hint: Claim for necessaries of life supplied to a minor can be made from the properties of the minor if any; education expenses amount to necessaries of life; Vishal can recover the amount of loan of ₹ 2 lakhs from the properties of the minor Ishaan.

Q.6 A minor fraudulently misrepresents is age to Mr. X, a money lender and executes a mortgage deed for ₹ 20,000. The minor subsequently denies his liability on the deed. Comment.

Ans. Hint: Contracts with minor are *void ab initio*; no personal liability of the minor; rule of estoppel does not apply against a minor and he can plead minority in his defense. The mortgage deed is *void ab initio* and the money lender has no right of action against the minor. **[Mohori Bibi vs. Dharmo Das Ghose]**

Q.7 A executes a promissory note in favour of Mr. X during his minority. The promissory note is later on renewed by A on his attainment of his majority. Mr. X wants to bring a suit for the recovery of his amount due on the basis of the second note. Comment.

Ans. Hint: A minor cannot ratify the contracts made by him during his minority; the contract made during minority shall be void ab initio inspite of the subsequent approval given on the attainment of majority; Mr. X cannot recover any sum even on the second note since ratification is not possible.

Q.8 Mr. R. a French ambassador, deputed in New Delhi, contracts to but an expensive perfume worth ₹60,000 from Mr. M, a perfume dealer. Mr. M. agrees to supply the same without taking any advance payment assuming that he will be surely paid. After delivery of perfume, Mr. R, refuses to pay. Advise Mr. M about the remedies that can be sought by him under the Indian Contract Act ?

Ans. According to the provisions of the Indian Contract Act, 1872, foreign sovereigns & Diplomats are expressly declared as disqualified by law to enter into contracts. Since they enjoy immunity & cannot be generally sued in Indian Courts, they are ordinarily considered as incompetent to contract. They can be sued only if they voluntarily submit themselves to the court or if the approval of Central Government is obtained.

In the given case Mr. M, has entered into a contract with Mr. R, a French ambassador and has supplied goods worth ₹ 60,000 after which the diplomat refuses to pay.

Applying the above stated provisions, it is evident that Mr. M, cannot sue Mr. R, a foreign diplomat as he is disqualified by law & therefore incompetent to contract. The contract is *void ab initio* & therefore neither restitution, nor compensation can be granted to Mr. M.

Q.9 X aged 16 years borrowed a loan of ₹ 50,000 for his personal purposes. Few months later he had become major and could not pay back the amount borrowed on due date. The lender wants to file a suit against X. Examine the validity of Contract as per the Indian Contract Act, 1872. [Dec. 2021; 3 Marks]

Ans. The contract is not valid. According to the provisions of the Indian Contract Act, 1872, any contract made with a minor is *void ab initio* & any contract made by a minor during minority cannot be ratified by him even on attaining majority.

In the given case, X, a minor, borrows a loan of ₹ 50,000 & fails to pay the same on due date on attaining majority. The lender wants to sue X.

Thus the lender cannot sue X for the loan, since the loan was borrowed during minority, and even on attainment of majority the same cannot be ratified.

Q.10 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?

(*ii*) By filing a case against Mr. Ram, father of Srishti for recovery of outstanding amount?

(*iii*) By filing a case against Srishti, a minor for recovery of outstanding amount after she attains maturity? [June 2022, 6 Marks]

Ans. (*i*) According to the provisions of the Indian Contract Act, 1872, an agreement made with a minor is *void ab initio* and cannot be enforced. Further a minor can never be held personally liable on any agreement entered into by him.

Thus, applying the above stated provisions to the given case, it can be concluded that Mr. Gupta cannot file a suit against Srishti, a minor, for the recovery of outstanding amount along with interest.

(*ii*) According to the provisions of the Indian Contract Act, 1872, the parents (guardians) of a minor cannot be held liable for the agreements made by their minor ward. Thus, the contracts/agreements entered into by a minor cannot be enforced against their parents by the third parties.

Thus, applying the above stated provisions to the given case, it can be concluded that Mr. Ram, the father of Srishti, a minor cannot be held liable by Mr. Gupta for the outstanding amount.

(iii) According to the provisions of the Indian Contract Act, 1872, an agreement by a minor being a nullity in the eyes of law is *void ab initio* and as such cannot be ratified by him even on attainment of majority. One of the basic rules of ratification is that it can be done only in respect of valid acts. Thus a minor's agreement which is void right from the beginning cannot be ratified subsequently.

Therefore, applying the above stated provisions, it is evident that Srishti, a minor cannot be used for the outstanding amount even after attaining majority, since ratification is not possible.

4 CHAPTER CONSIDERATION

LONG ANSWER QUESTIONS:

Q.1 Define consideration. What are the legal rules/essentials regarding consideration? [MTP May 2019, MTP July 2021], [Nov. 2019, 7 Marks]

Ans. Section 2(*d*) of the Contract Act define consideration as follows:—

(*a*) *"When, at the desire of the promisor,*

(*b*) *the promisee or any other person,*

(*c*) *has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something,*

(*d*) *such act or abstinence or promise is called a consideration for the promise."*

1. ***Consideration must move at the desire of the promisor***

   The act or abstinence must be done at the desire of the promisor. If it is done at the instance of a third party or without the desire of the promisor, it is no consideration.

   However, consideration need not be to the benefit of the promisor.

2. ***Consideration may move from the promisee or any other person***

   Consideration may be supplied by the promisee or any other person.

3. ***Consideration may be an act or abstinence***

   A person may promise to do something or not to do something for a promise. To do or not to do something in return is consideration.

4. ***Consideration may be past, present or future***

   When the consideration of one party was given before the date of the promise, it is said to be past. Past consideration means the consideration for a promise given by a party before the promise is made. Such a consideration given by a party must be at the desire of the promisor.

   Consideration which moves simultaneously with the promise is called present or executed consideration.

   When the consideration is to move at a future date, it is called future or executory consideration.

5. ***Consideration need not be adequate***
Consideration need not be adequate nor equivalent to promise.

6. ***Consideration must be real and not illusory***
Consideration must be real or of some value in the eyes of law. It should not be physically impossible or illegal or illusory.

7. ***Consideration must be lawful***
Consideration given for an agreement must be lawful one. Consideration must not be illegal, immoral or opposed to public policy.

8. ***Consideration must not be a pre-existing obligation or duty.***
Consideration must not be something, which a person is already bound by law to do. Discharging of pre-existing obligation is no consideration.

Q.2 State exceptions to the rule "An agreement without consideration is void." [May 2018, 5 Marks]

OR

What are the exceptions to the rule "No consideration no contract"?

OR

"No consideration No contract". Discuss [MTP May 2018] [RTP Nov. 2019]

The general rule is that an agreement without consideration is void. Discuss the cases where the agreement though made without consideration will be valid and enforceable as per Indian Contract Act, 1872. [Jan. 2021, 5 Marks]

OR

"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. [June 2022, 7 Marks, Dec. 2022, 7 Marks]

Ans. The general rule is "an agreement made without consideration is void". However, Sec. 25 also mentions some exceptions to the general rule. These exceptions are given below:—

1. *Agreement made on account of natural love and affection [Sec. 25(1)]*

An agreement made without consideration is enforceable if it is:—

(*i*) made on account of natural love and affection,
(*ii*) between parties standing in a near relation to each other,
(*iii*) expressed in writing, and
(*iv*) registered under the law.

2. *Agreement to compensate for past voluntary service [Sec. 25(2)]*

A promise made without consideration is also valid, if it is a promise to compensate, wholly or in part, a person who has already voluntarily done

something for the promisor, or done something which the promisor was legally compellable to do. The following two situations are covered by this section:—

(A) *Voluntary Services:* When there is a voluntary act by one party and there is a subsequent promise to pay compensation to the former. *E.g.* A finds B's purse. B promises to give him ₹ 500 this promise is enforceable.

(B) *Legally Compellable Duty:* Another situation covered by the exception is where the promisee has done something for the promisor, "which the promisor was legally compellable to do". A subsequent promise to pay for such an act is enforceable.

3. *Agreement to pay a time-barred debt [Sec. 25(3)]*

Where there is an agreement;—

(*a*) made in writing and
(*b*) signed by the debtor, or by his authorised agent,
(*c*) to pay wholly or in part a debt barred by the law of limitation, the agreement is valid even though it is not supported by any consideration.

4. *Completed Gift*

Gift is transfer of property without consideration. In order to be valid a gift does not require consideration.

Promise for a donation is not a gift. As such a promise for a donation is invalid for want of consideration.

5. *Contract of Agency*

Sec. 185 of the Contract Act lays down that no consideration is necessary to create an agency.

6. *Bailment*

Sec. 148 of the Contract Act lays down that no consideration is necessary in case of a gratuitous bailment.

7. *Remission*

Sec. 63 of the Contract Act lays down that where a person agrees to receive less than what is due to him, such an agreement is said to be an agreement of remission. No consideration is required for a contract of remission.

8. *Guarantee*

Sec. 127 of the Contract Act lays down that under the contract of guarantee, no consideration is received by the surety, even then the contract of guarantee is valid.

9. *Charity*

If the promise undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid as held in *Kedarnath* v. *Gorie Mohammad*.

Q.3 Explain the doctrine of privity of contract. What are the exceptions to this rule?

OR

A stranger to contract cannot sue. However in certain cases a stranger to contract may even enforce a claim. Explain.
[RTP May 2018, RTP May 2020]

OR

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]

Ans. The doctrine of *Privity of Contract:* According to the doctrine of privity of contract only a party to a contract is entitled to enforce a right created by the contract. No one is entitled to or bound by the terms of a contract to which he is not an original party. A third party (stranger to contract) has no *locus standi* in a contract, he is debarred from interfering with the contractual rights or obligations of the parties. Only a person who is a party to a contract can sue on it. The doctrine of privity of contract prevent imposition of contractual obligations upon a person without his consent.

Exceptions - There are certain exceptions to the rule that a stranger to the contract cannot sue upon it. They are as follows:—

1. ***Beneficiaries in the case of trust***
   An agreement to create a trust can be enforced by the beneficiary even though he was not a party to the contract between the settlor and the trustee.
2. ***Family settlement***
   When family disputes are settled by mutual agreement and the terms of settlement are written down in a document it is called a Family Settlement. Such agreements can be enforced by members of the family who were not originally parties to the settlement.
3. ***Assignee of contract***
   In case of assignment of a contract, when the benefit under a contract has been assigned, the assignee can enforce the contract.
4. ***Provision for marriage or maintenance***
   At the time of partition of property of a joint family, the male members may agree that a certain portion of property shall be kept aside for the benefit of, for example, some elderly person or the education and marriage of a female child. Such beneficiaries may not be party to the arrangement. But, they have been held entitled to enforce the agreement for their benefit.

5. ***Contracts entered into through an agent***
   The principal can enforce the contracts entered into by his agent provided the agent acts within the scope of his authority and in the name of the principal.
6. ***Acknowledgement***
   The person who becomes an agent of third party by acknowledgement or otherwise, can be sued by such third party. If the promisor acknowledges his liability to the third person, then such a third person can file a suit to recover the benefit.
7. ***Covenants attached with the land***
   In case of covenant running with the land, the person who purchases land with the notice that the owner of the land is bound by certain duties affecting the land, the covenant affecting the land may be enforced by the successor of the seller.

SHORT QUESTIONS:

Q.4 "A stranger to contract cannot sue but a stranger to consideration can sue". Comment.

Ans. According to the doctrine of privity of contract, a contract is a private matter only between the contracting parties and therefore only the parties to contract can sue each other to enforce their respective rights under the contract. Thus generally only contracting parties can sue & enforce the contract & a stranger to contract cannot sue.

Under the Law of Contracts, consideration can be furnished by the promisee or any other person, provided it is at the desire of the promisor. Thus a person who has not furnished consideration himself, under a contract, can also sue on the contract & enforce his rights provided he is a party to contract. Therefore a stranger to consideration can sue provided he is a contracting party.

For Example : A contract between P & Q cannot be enforced by R, who is a stranger to contract. On the other hand where for a contract between P & Q, R agrees to pays money to Q for delivering goods to P, can be enforced by P, although he did not pay any part of the consideration. Thus stranger to consideration can sue to enforce it provided he is a party to the contract.

Q.5 "To form a valid contract, consideration must be adequate." Comment.
[MTP Nov. 2019, RTP Nov. 2020 & RTP July 2021]

Ans. According to the provisions of section 10 of the Indian Contract Act, 1872. One of the essentials of a valid contract is that it must be supported by lawful consideration. Thus for a contract to be valid, presence of consideration is necessarily required. Further consideration must be as per the desire of the promisor & lawful. It may be an act or an abstinence & may be past, present or future. It may even move from the promisee or any other person. It must be real & not illusory & must have some monetary value but it may or may not

be adequate. So long as consideration is present, the law is not concerned as regards its adequacy, provided it has some monetary value. The adequacy of consideration is for the parties to consider at the time of formation of contract & not for the Court, when it is sought to be enforced.

Thus while consideration of some monetary value must be present but it need not necessarily be equivalent to the value of the promise. However sometimes, the courts may take into account the inadequacy of consideration to determine whether the consent of the promisor was given freely or not.

CASE STUDIES:

Q.6 X transferred his house to his daughter M by way to 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 under the provisions of the Indian Contract Act, 1872 whether M is liable to pay the said sum to N.

Ans. Hint: *Yes, There can be stranger to consideration, consideration may be supplied by the promisee or any other person* ***[Chinnaya v. Rammaya].***

Q.7 S bought tyres from Dunlop Rubber Co. Ltd. and sold them to D, a sub-dealer, who agreed not to sell them below Dunlop's list price & to pay the Dunlop Co. $5 as damages on every tyre D undersold. D sold two tyres at less than the list price and thereupon Dunlop Co. Ltd. sued him for the breach.

Ans. Hint: Stranger to contract cannot sue. Dunlop Co. is not entitled to sue and therefore cannot claim any damages from D, the sub-dealer, since it is not a party to contract between S & D.

Q.8 Mr. X was in need of money & offered to sell his casio to Z for ₹ 6000. Z refused to buy the same at the stated price. X gradually reduced the quoted price until ₹ 2000 was reached, which Z accepted. Before the casio was delivered, X received an offer from Mr. A for the purchase of his casio for ₹ 4500 and X refused to carry out his contract with Z on the grounds that the consideration was inadequate. Is Mr. X liable to pay damages to Mr. Z for the failure to perform the contract?

Ans. Hint: Consideration may or may not be adequate. Thus,inadequacy of the consideration has no effect on the validity of the contract. Mr. X is liable under the contract to Mr. Z.

Q.9 R & S two brothers entered into a contract for the division of the family property between them and agreed to contribute ₹ 20000 each, per month towards the maintenance of their mother. Can the mother enforce the contribution under the contract?

Ans. Hint: Generally stranger to contract cannot sue. However in certain exceptional cases such as in case of contract for marriage settlement, partition of property of family arrangements, the beneficiaries under the contract are entitled to use and enforce the contract. Thus the mother is entitled to sue on the contract and enforce her rights against R & S.

Q.10 A received certain goods from B promising to pay ₹ 1,00,000. Later on A, expressed his inability to make payment. C, who is known to A, makes payment of ₹ 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 ₹ 1,00,000. Discuss whether the contention of B is right? [RTP May 2018]

Ans. Hint: Consideration can even proceed from a stranger to contract. When the promisee for consideration receives & accepts the same, from a third party *i.e.* a person other than the promisor, then it shall discharge the promisor from his obligation to furnish the consideration irrespective of the fact whether the promisor has authorized or ratified the act of the third party or not. Thus A is discharged from his obligation to pay ₹ 60,000 and is now liable to B only for ₹ 40,000. A shall however be bound to compensate C for his past voluntary payment which was the legal obligation of A.

Q.11 Mr. Ramesh promised to pay ₹ 50,000 to his wife Mrs. Lali so that she can spend the sum on her 30th birthday. Mrs. Lali insisted her husband to make a written agreement if he really loved her. Mr. Ramesh made a written agreement and the agreement was registered under the law. Mr. Ramesh failed to pay the specified amount to his wife Mrs. Lali, Mrs. Lali wants to file a suit against Mr. Ramesh and recover the promised amount. Referring to the applicable provisions of the Indian Contract Act, 1872, advise whether Mrs. Lali will succeed. [Nov. 2018, 3 Marks]

Ans. Generally an agreement made without consideration is void. A contract is enforceable only when consideration is present. However, the Indian Contract Act, 1872 provides for certain exceptions to this rule. One of the exceptional cases where a contract/agreement though made without consideration is valid and enforceable, is when an agreement is made out of natural love affection. The act expressly provides that an agreement without consideration shall be legally enforceable provided the following conditions are duly complied :—

(*i*) The agreement must be made on grounds of natural love and affection.
(*ii*) Parties must be standing in near relation to each other.
(*iii*) It must in writing &
(*iv*) It must be registered under the Law.

Thus a written and registered agreement based on natural love and affection between the parties standing in near relation (*e.g.* husband & wife) to each other, shall be enforceable even without consideration.

In the give case a written agreement is executed and registered by Mr. Ramesh, the husband, in favour of Mrs. Lali, the wife. Since all the abovementioned conditions are complied, the agreement is legally enforceable even without consideration.

Thus Mrs. Lali can successfully enforce the said agreement against Mr. Ramesh.

Q.12 Mr. Sohanlal sold 10 acres of his agricultural land to Mr. Mohanlal on 25th September 2018 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 Oct. 2018, Mr. Sohanlal died leaving behind his son and wife. On 15th Oct. 2018 purchaser started construction of an auditorium on the whole 10 acres of land and denied any land to the son. Now Mr. Chotelal wants to file a case against the purchaser and get a suitable redressal. Discuss the above in light of provision of Indian Contract Act, 1872 and decide upon Mr. Chotelal's plan of action? [May 2019, 4 Marks]

Ans. According to the Doctrine of Privity of Contract under the provisions of the Indian Contract Act, 1872, a contract is a private matter between the contracting parties and can be enforced only by them against each other. However in certain exceptional cases, the law permits enforcement of a contract even by a stranger.

Where a contract creates a trust or charge on a specific property in favour of a beneficiary, then the same can be enforced by him under the contract even though he is not a party to contract. However the beneficiary must be clearly mentioned in the agreement and the charge must be created on a specific property in his favour.

In the given case Sohanlal sold his agricultural land to Mohanlal under a contract, which specified that 1 acre of the land was to be left out of the total area of 10 acre for the purpose if commercial activity by Chotelal, son of the seller. Mohanlal subsequently denies the right to any land to the son, after the death of Sohanlal.

Thus applying the above stated provisions, it can be concluded that Chotelal being a beneficiary under the contract can sue Mohanlal for his right to use of the land of 1 acre.

Q.13 Mr. Y given loan to Mr. G of INR 30,00,000. Mr. G defaulted the loan on due date and debt became time barred. After the time barred debt, Mr. G agreed to settle the full amount to Mr. Y. Whether acceptance of time barred debt Contract is enforceable in law ? [Nov. 2020, 2 Marks]

Ans. According to the provisions of section 25(3) of the Indian Contract Act, 1872, a promise to pay a time-barred debt is generally not enforceable, since it is without consideration. However if the following conditions are fulfilled the same shall be validly enforceable:—

- Such a promise is made by the debtor in writing
- In respect of a debt which has become time barred by law of limitations
  &
- The promise is signed by the debtor or his authorized agent.

In the given case Mr. G agrees to settle the amount of the time barred debt of Rs. 30,00,000, owed by him to Mr. Y.

Applying the above stated provisions it can be concluded that if the promise to pay the time barred debt by Mr. G, is not in writing and is not signed by him or his duly authorized agent, the same cannot be enforced by Mr. Y.

5 CHAPTER

FREE CONSENT

LONG ANSWER QUESTIONS:

Q.1 Define Fraud. What are the essential elements of Fraud?

Ans. According to Section 17 of the Indian Contract Act, 1872, Fraud means and includes any of the following acts, committed by a party to contract, or with his connivance or by his agent, with intent to deceive another party or his agent, to induce him to enter into the contract:—

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

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

(*iii*) a promise made without the intention of performing it;

(*iv*) any other act fitted to deceive;

(*v*) any such act or omission as the law specifically 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. Active concealment may also amount to fraud.

(2) The representation must be regarding a material fact of a contract.

(3) The representation must be made before the conclusion of the contract.

(4) The representation or assertion or concealment must be done with the positive knowledge of falsehood or recklessly not caring whether it is true or false.

(5) The misrepresentation or concealment of fact must be done with the intention to deceive the other party and to cause him to enter into a contract.

(6) The other party must have relied on the misrepresentation or assertion.

(7) The other party relying on the misrepresentation must have suffered loss consequently.

Q.2 "Mere silence as to facts is no fraud". What are the exceptions to this statement?

OR

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

[May 2018, 5 Marks]

[May 2019, 7 Marks]

Ans. As a general rule silence as to material facts regarding the contract does not amount to fraud, since, the contracting party is under no obligation to give full disclosure to the other party on account of the Rule of Caveat Emptor. However he must refrain from active concealment of the facts relating to the contract. Thus mere silence is no fraud.

There are however 2 statutory exceptions to the above rule:—

(1) ***When the party is under a duty to speak:*** Where the circumstances of the case are such that it is the obligation of the contracting party to speak and give full disclosure irrespective of whether or not it had been demanded by the other party. Examples of such contracts are:—

(*i*) In case of contracts made between parties in fiduciary relation with each other the parties are under a duty to speak on account of utmost good faith present between them

(*ii*) In case of contracts of insurance, the insured is under an obligation to give full disclosure of all material facts to the insurer

(*iii*) In case of contracts of marriage the parties are under a duty to speak and give disclosure of all the material facts

(*iv*) In case of contracts of family settlements also full disclosure is required to be made by the parties at the time of formation of contract

(*v*) In case of contract of partnership, since the relation is founded on mutual trust the partners are under a duty to speak

(*vi*) In case of contract of guarantee, the creditor is under a duty to disclose all the material facts which are likely to affect the decision of the surety to extend guarantee

(*vii*) In case of change in material facts after the formation of contracts but before the conclusion of contract, the party is under a duty to speak

(*viii*) In case of any latent defect present in the goods being offered for sale, the seller in under a duty to speak

(*ix*) In case of allotment of shares by a company, its officers are under a duty to disclose all the material facts within in their knowledge, by way of statements in prospectus, when the public is being invited to subscribe to the shares of the company.

(2) ***When silence is equivalent to speech:*** For example where A says to B "if you do not deny it I will assume that the horse is sound and fit for purchase." A says nothing. Here his silence shall amount to speech and hence it shall amount to fraud.

Q.3 Discuss the law relating to the effect of mistake on contracts.

Ans. A contract is said to be created under mistake when the party/parties to contract are under an erroneous belief, misconception or misimpression as to the laws applicable or the facts essential, to the contract.

The mistake can either be:—

(*i*) ***Mistake of Law:*** If a contract is created under a mistake of Law of the Land, the contract shall be treated as valid and enforceable since ignorance of law of own country cannot be excusable to any party (*ignorantia juris non excusat*).

However, if the mistake relates to the law of a foreign country, then the same shall be treated as excusable and the agreement shall be treated as void.

(*ii*) ***Mistake of fact:*** It can be of two types:—

(*a*) *Bilateral Mistake :* When both the contracting parties are under a mistake as to the facts essential to the contract such as regarding the quality, existence, quantity, price, etc. of the subject matter or regarding the possibility of performance of the contract, then the agreement is said to be void due to bilateral mistake.

(*b*) *Unilateral Mistake:* When only one of the contracting parties is under a mistake as to the facts of a contract, the contract is said to be created under unilateral mistake. Generally a contract created under unilateral mistake is said to be valid. However, if the unilateral mistake is regarding the:—

(*i*) identity of the contracting party

(*ii*) the nature of contract

(*iii*) the quality of promise, then the same shall be regarded as void.

SHORT QUESTIONS:

Q.4 (*a*) Define Coercion. What are its elements?
(*b*) What are the effects of coercion on the validity of a contract?
[RTP May 2018]
[Nov. 2019, 5 Marks]

Ans. (*a*) According to section 15 of the Indian Contract Act, 1872, "Coercion is the committing or threatening to committing or threatening to commit any act forbidden by the Indian Penal Code, or unlawful detention 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."

The following are the elements of coercion:

(*i*) Committing or threatening to commit any act forbidden by the Indian Penal Code

(*ii*) Unlawful Detention of any property or threatening to detain any property

(*iii*) Any of the above acts are done with the intention of causing that person to enter into an agreement

(*iv*) Coercion may proceed either from the party or from a stranger

(*v*) Coercion may be directed against a party or stranger to contract

(*vi*) Threat to commit suicide may also amount to coercion

(*vii*) The place of coercion is immaterial

(*b*) Effects of coercion are as follows:—

(*i*) A contract created by coercion is voidable at the option of the aggrieved party.

(*ii*) When the aggrieved party exercises its option to rescind the contract, restitution of the benefits shall be done by the party who has received any benefit under the contract to the party who had provided the same.

(*iii*) Further in the event of any damage having been sustained by the aggrieved party, he shall be entitled to claim compensation from the defaulting party.

Q.5 What are the instances when a contract created by fraud is not treated as voidable?

Ans. In the following instances a contract created by fraud is not treated as voidable:—

(*i*) If the aggrieved party had means available of discovering the truth, with ordinary diligence, then the contract shall not be voidable at his option.

(*ii*) A fraud, which does not cause the consent of the party to enter into contract, does not render the contract voidable.

(*iii*) When the aggrieved party after becoming aware of the fraud, affirms or ratifies the contract, then he loses his right to subsequently rescind or avoid the contract.

(*iv*) The right of rescission can be claimed by the aggrieved party within a reasonable time of discovery of fraud. Thus on the lapse of reasonable time after the discovery of fraud the contract shall not be treated as voidable.

(*v*) The right of rescission of contract is lost, when a third party acquires rights in the subject matter of the contract created by fraud, in good faith and for value, provided such acquisition of rights by the third party takes place before the aggrieved party rescinds the contract created by fraud.

(vi) When the contracting parties cannot be restored the same position in which they were before the formation of contract, then the contract created by fraud, shall not be treated as voidable.

Q.6 When is a party said to be in a position to influence the will of the other so as to cause him to enter into a contract? [RTP May 2020]

Ans. Section 16(2) provides that a person is **deemed to be in a position to dominate the will** of another where.

1. Where he holds a **real or apparent authority** over the other (For ex-master & servant, ITO & Assessee)
2. Where he stands in a **fiduciary relationship** to the other. Fiduciary relationship means a relationship of mutual trust and confidence. Such a relationship is supposed to exist in the following cases - father and son; guardian and ward; solicitor and client; doctor and patient; preceptor and disciple; trustee and beneficiary etc.
3. Where a party makes a contract with a person whose **mental capacity** is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

Q.7 Discuss the essentials of undue influence as per the Indian Contract Act, 1872. [May 2019, 5 Marks]

Ans. The following are the essential elements of under influence, under section 16 of the Indian Contract Act, 1872:—

(i) *The relation between the parties* - Undue influence can be exerted only where a prior relation is subsisting between the parties at the time of formation of contract.

(ii) *Position of dominate the will* - The relation subsisting between the parties must be such that one of the parties is in a superior position *i.e.* in a position to dominate the will of the other party. A party is deemed to be in a dominant position where:—

- he holds real/apparent authority or
- he stands in a fiduciary relation with the other party or
- he makes a contract with a person whose mental capacity is affected by reason of age or mental/bodily stress.

(iii) *Use of dominant position to obtain unfair advantage* - Consent is said to be caused by undue influence only when dominant party uses his position to influence the free will of the weaker party, with a view to obtain an unfair advantage over the other (weaker party) in the contract.

Thus 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 in a contract.

Q.8. Define Misrepresentation [Nov. 2020, 2 Marks]

Ans. Misrepresentation:

According to the provisions of section 18 of the Indian Contract Act, 1872, misrepresentation means and includes:—

- positive assertion of such fact, which is not true, in a manner not warranted by the information of the person making it, though he believes it to be true;
- any breach of duty, which without any intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of anyone claiming under him;
- causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Thus misrepresentation is an innocent and unintentional false/wrong statement made without the positive knowledge of falsehood by a person who himself believes it to be true and makes such representations without any intent to deceive.

DIFFERENCES:

Q.9 (a) Coercion & Undue Influence
(b) Misrepresentation & Fraud [Nov. 2020, 5 Marks]

Ans. (a)

Coercion	Undue influence
1. Type of force: Coercion involves use of physical force.	Undue influence involves use of mental pressure.
2. Relationship: In case of coercion, there is no relationship between the parties to the contract.	Whereas in case of undue influence some sort of relationship generally exists between the two parties.
3. Third Party: Coercion may be employed either against the party to the contract or against any third person who is not a party to the contract.	Undue influence is exercised against a person who is a party to the contract. No third party is involved in creating undue influence.
4. Presumption: The Court cannot draw the presumption of coercion.	The Court may draw the presumption of undue influence if the circumstances so warrant it.
5. Voidable: The contract is voidable at the option of one of the parties of the contract.	The contract is either voidable or the Court may enforce it in a modified form.

(b)

Points of Difference	Misrepresentation	Fraud
1. ***Different Intention***	In misrepresentation there is no intention to deceive.	Fraud implies an intention to deceive.

Points of Difference	Misrepresentation	Fraud
2. *Different Belief*	The person making misrepresentation believes it to be true.	The party making the false statement believes that it is not true.
3. *Different Rights*	In case of misrepresentation the only remedy is rescission. There can be no suit for damages.	In case of fraud the aggrieved party can rescind the contract. He can also sue for damages.
4. *Different Defence*	The aggrieved party cannot avoid the contract if he had the means to discover the truth with ordinary diligence.	But in case of fraud excepting fraud by silence, the contract is voidable even though the party defrauded had the means of discovering the truth with ordinary diligence.
5. *Section*	Fraud is defined under section 17 of Indian Contract Act, 1872.	Misrepresentation is defined under section 18 of Indian Contract Act, 1872.

CASE STUDIES:

Q.10 In *Shrikrishan v. Kurukshetra University*, Shrikrishan, a candidate for the LL.B. Part I exam, who was short of attendance, did not mention that fact himself in the admission form for the examination. Neither the Head of the Law Department nor the university authorities made proper scrutiny to discover the truth. It was held by the Supreme Court that:

(*a*) There was fraud by the candidate
(*b*) There was no fraud by the candidate
(*c*) There was misrepresentation by the candidate
(*d*) There was mistake on the part of the candidate

Ans. Hint: There was no fraud, since the head of the department failed to conduct reasonable scrutiny. Thus since means were available for discovering the truth, the contract cannot be treated as voidable on the grounds of fraud, since it is a case of fraudulent silence.

Q.11 'A' is in dire need of ₹ 1,00,000 but was unable to get any loan from banks as he had to security to offer. 'A' approached his friend 'B' who knowing the helpless position of 'A' lent money at a very high rate of interest, saying that he had himself borrowed money from 'C'. The contract is:

(*a*) Vitiated by undue influence that 'B' had exercised over 'A' due to his close friendship
(*b*) Void as the rate of interest being very high was unconscionable

(*c*) Not valid as 'B' had wrongly misled 'A' that he had borrowed money from 'C'
(*d*) Valid as a friend could not be supposed to have wielded undue influence only because the money lent carried a higher rate of interest

Ans. Hint: The contract is valid; no undue influence; since B was not in a dominant position so as to influence the will of A, to cause him to enter in to a contract at terms of high rates of interest.

Q.12 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 examination. Accordingly the car was sold. However the father of the student persuaded him to sue his teacher. State on what grounds can the student sue the teacher? [RTP May 2018, RTP Nov. 2019]

Ans. Hint: The contract can be avoided by the aggrieved party *i.e.* the student, on the grounds of undue influence, since the teacher stood in a dominant position and used the same to obtain an unfair advantage over the student in a contract; teacher stands in a fiduciary relation with the student and is in a position to influence him.

Q.13 A threatened his wife and son to commit suicide if they did not agree to transfer A's house to his brother. Thereupon his wife and son agreed to transfer the house. Subsequently, his wife and son filed a suit to set aside the transfer. Will they succeed?

Ans. Hint: The contract is voidable by the wife and son on the grounds of coercion; threat to suicide amounts to coercion.

Q.14 C offers to sell a painting to D, which C knows is a master copy of the original painting. D thinking that the painting is the original, immediately accepts the offer. Comment on the validity of the contract.

Ans. Hint: The contract is valid even though it is created under a unilateral mistake of fact. D has the erroneous belief that the painting is an original one; C is under no duty to speak.

Q.15 A, advances money to his son B during his minority. Upon B's coming of age, A obtains by parental influence, a bond from his son B for an amount higher than the sum due in respect of the money advanced. Is B bound by the bond?

Ans. Hint: The contract is voidable on the grounds of undue influence and therefore B is not bound by the bond.

Q.16 A, honestly believing that his watch is made in Switzerland agreed to sell it to B by representing that the watch is made in Switzerland. Subsequently, it is discovered that the watch is made in India. What is the remedy of B? Will your answer be different had A known that his watch was made in India.

Ans. Hint: The contract is voidable on the grounds of misrepresentation, since untrue statement was made by A, in honest ignorance of its falsehood and therefore the only remedy available to B is to rescind the contract; no damages shall be granted.

However if A, knew that the watch was actually made in India, it will amount to fraud and the contract shall be not only voidable at the option of B but damages shall also be awarded to him for his loss.

Q.17 A agreed to sell rice to B. Both A and B believed that the rice is old basmati and a very high price is settled. Subsequently, it is discovered that rice is new one. Can B get back his price? Will your answer be different if B alone purchased the rice thinking it to be old basmati?

Ans. Hint: The contract is void on the grounds of bilateral mistake as to the quality of subject matter; B is entitled to get back his price. However if B is alone mistaken as to the quality of subject matter, it amounts to unilateral mistake, and the contract shall be treated as valid and enforceable.

Q.18 Shyam induced Ram to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, Ram complained that there were many defects in the motorcycle. Shyam proposed to get it repaired and promised to pay 45% cost of repairs. After a few days, the motorcycle did not work at all. Now Ram wants to rescind the contract. Decide giving reasons. [RTP May 2020, MTP July 2021]

Ans. Hint: When the aggrieved party, on discovery of fraud, affirms or ratifies the same (either by accepting benefits or damages), then he loses his right to subsequently rescind the contract.

In the given case, on discovery of fraud, instead of rescinding the contract, Ram, the aggrieved party agrees to accept 45% of cost of repairs as promised by Shyam, the defaulting party. By accepting the cost of repairs, Ram has ratified the fraud and now he loses his right to subsequently rescind the contract.

Q.19 Mr. Shyam owned a motor car. He approached Mr. Harish and offered to sell his motor car for ₹3,00,000. Mr. Shyam told Mr. Harish that the motor car is running at the rate of 20 Kms per litre of petrol. Both the fuel meter and the speed meter of the car were working perfectly. Mr. Harish agreed with the proposal of Mr. Shyam and took delivery of the car by paying ₹3,00,000 to Mr. Shyam. After 10 days, Mr. Harish

came back with the car and stated that the claim made by Mr. Shyam regarding fuel efficiency was not correct and therefore there was a case of misrepresentation. Referring to the provisions of the Indian Contract Act, 1872, decide and write whether Mr. Harish can rescind the contract on the above ground. [RTP Nov. 2020, RTP July 2021]

Ans. Hint: Generally a contract created by misrepresentation is voidable at the option of the aggrieved party. However if the aggrieved party whose consent was so caused, had the means available of discovering the truth with ordinary diligence but fails to do so, then the contract shall not be treated as voidable.

In the given case Harish had the means to discover the veracity of Shyam's claims by checking the fuel & speed meter at the time of formation of contract. But he contracts on the basis of Shyam's claims which turn out to be misrepresentations.

Thus applying the above stated provision, it is evident that Harish cannot rescind the contract on the grounds of misrepresentation.

Q.20 P sells by auction to Q a horse which P knows to be unsound. The horse appears to be sound but P knows about the unsoundness of the horse. Is the contract valid in the following circumstances under the Indian Contract Act, 1872.

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

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

(*c*) If Q says to P "If you do not deny it, I shall assume that the horse is sound." P says nothing. [MTP July, 2021]

Ans. Hint: Generally silence is not fraud however incase where silence is equivalent to speech or the person keeping silent is under a duty to speak, then silence shall be treated as fraudulent.

(*a*) Contract is valid. A mere silence as to the facts likely to affect the willingness of a person to enter into contract is not fraud generally. Thus P is not under a duty to speak and disclose the defects to Q.

(*b*) The contract is voidable. Silence will be treated as fraudulent in this case as P is under a duty to speak to Q who is his daughter & a fiduciary relation exists between them.

(*c*) The contract is voidable silence will be treated as fraud as here silence is equivalent to speech.

Q.21 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]

Ans. According to the provisions of the Indian Contract Act, 1872, a contract is said to be induced by Undue Influence, where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other in a contract.

In the given case, Mr. A the employer induces his employee Mr. B to sell him, his flat at less than the market value to secure promotion. Later on Mr. B changes his mind and decides to sue Mr. A.

Thus applying the above provisions it is evident that Mr. A, the employer, by virtue of his being in a dominant position is able to wrongfully induce the employee, Mr. B, to enter into a contract for the sale of his house at less than the market price and get an unfair advantage. Therefore the contract is voidable on grounds on undue influence. Mr. B can sue Mr. A and rescind the contract and can claim damages, if any, provided the contract has not yet been concluded.

6 CHAPTER LEGALITY OF OBJECT & CONSIDERATION

LONG ANSWER QUESTIONS:

Q.1 Under the provisions of the Indian Contract Act, 1872, when is the object or consideration of the contract regarded as unlawful?

Ans. Under the provisions of Section 23 of the Indian Contract Act, 1872, in the following instances, the object or consideration of an agreement is said to be unlawful:—

(*i*) When the object or consideration of the contract is such that it is forbidden by any law or statute or under any rule or regulation made thereunder, which is for the time being in force in India.

(*ii*) When the contract is made for such an object or consideration, the consequence of which is to defeat the provisions of law *i.e.* to intend to violate the provisions of any other law in force in the country.

(*iii*) When the consideration or object under the contract is of such a nature so as to result in injury to the person or property of another.

(*iv*) Where the object is fraudulent *i.e.* it is of such a nature that is promotes fraud.

(*v*) Where the object is or consideration is such that it is regarded as immoral by court.

(*vi*) When the object or consideration under the contract is such that it is opposed to public policy *i.e.* it is against the principle of public welfare.

Q.2 What are the rules to determine the validity of contract, when consideration or object is partially unlawful?

Ans. Agreements unlawful in part

Where consideration or object of an agreement is partially unlawful, the following rules will apply.

1. Several objects with one consideration – Where there are several of an agreement with a single consideration, the agreement is void if any of the objects is unlawful. [Sec. 24].

2. Single object with several considerations – Where there is only one object of agreement but has several considerations, the agreement is void if any of the considerations is unlawful. [Sec. 24].

The above provisions can simply be put under the following two sub-heads:—

1. Where lawful part can be separated from the unlawful part – If a part of the consideration or the object which is unlawful can be separated from the other lawful part, the court will enforce that part which is lawful. [Sec. 24].

2. Where lawful and unlawful parts cannot be separated – Where the lawful and unlawful parts of consideration or object cannot be separated, the whole agreement is void. [Sec. 24].

3. Reciprocal promise to do things legal and also other things illegal – Where a person reciprocally promise, firstly to do certain things which are legal and secondary, under specified circumstances, to do certain other things. Which are illegal the first set of promises is a contract but the second is a void agreement. [Sec. 57].

4. Alternative promise, one branch being illegal – In the case of an alternative promise one branch of which is legal and the other illegal, the branch alone can be enforced. [Sec. 58].

SHORT QUESTIONS:

Q.3 Write a note on the following:—
(a) Agreements for maintenance
(b) Agreements for champerty
(c) Agreements for stifling prosecution
(d) Agreements for sale of public offices and public titles

Ans. (a) & (b) ***Agreements of maintenance & champerty :*** Maintenance & Champerty are British terms and can be described as the promotion of litigation in which one has no self interest.

When a person helps (financial or otherwise) another in litigation in which he is not himself interested and does not share in the proceeds of the action, it is called **MAINTENANCE.**

When a person helps another in litigation in exchange of a promise to hand over a portion of the fruits of the litigation, if any, it is called **CHAMPERTY.**

Ex: P files a suit against Q for the recovery of a claim of ₹ 1 lakh. X promises to advance ₹ 20,000 to P for the costs of the litigation and P promises to give to X ₹ 40,000 if he is successful in his suit. This is an agreement by way of Champerty. Had P been liable to return to X only the amount taken by him, then it would have been a mere maintenance agreement.

In India, an agreement to finance litigation in return of a portion of the results of the litigations is valid provided the litigation was instituted with a *bona fide* motive and the terms are not unfair or unjust to the helped person. If, however,

the litigation was inspired by a malicious motive or to instigate litigation or is of a gambling character, or is against public policy, the agreement is bad.

(c) Agreements for stifling (suppressing) prosecution: When an offence has been committed, the guilty party must be prosecuted and any agreement which seeks to prevent the prosecution of such a person is opposed to public policy and is void.

(d) Agreement for sale of Public Office & Public titles: An agreement made with the object of trafficking, *i.e.* sale and purchase or procure for consideration, with respect to public offices and public titles is against public policy, illegal and *void ab initio*. Thus any agreement to procure public titles like Bharat Ratna, Padam Vibhushan etc. for consideration or to procure votes in election against consideration, or induce a public officer to act corruptly and other agreements of such type are opposed to public policy, illegal and *void ab initio*.

CASE STUDIES:

Q.4 G pays ₹ 5,00,000 to A, a civil servant employed in a Government Department in consideration of A's promise that a Government contract which is at the disposal of his department will be placed with G. Before this can be done, A is transferred to another department. G now wishes to reclaim from A ₹ 5,00,000 paid to him. Will G succeed?

Ans. Hint: The agreement is opposed to public policy since it creates A's interest opposed to his duty. The agreement is illegal and *void ab initio*. G cannot recover the amount paid.

Q.5 A enter into a contract that he shall give his house to B for rent. They further agree that if B uses he house for gambling, the rent shall be charged at the rate of ₹ 50,000 per month and if the house is used for residential purpose then the rent shall be charged at the rate of ₹ 10,000 per month. Is the contract valid?

Ans. Hint: Where a contract contains reciprocal alternative promises, one part of which is legal and the other part being illegal, then if the legal branch is pursued, the contract is valid and enforceable, whereas if the illegal branch is pursued, the contract shall be treated as *void ab initio*. The contract for rent is valid if the house is used for residential purposes whereas if it is used for gambling then the same shall be treated as *void ab initio*.

Q.6 W appoints K to supervise his businesses of cloth manufacturing and trading in drugs for a salary of ₹ 1,00,000 pm. Can K recover his salary?

Ans. Hint: Where a contract is made for several objects but single consideration then the contract shall be treated as illegal and *void ab initio*, if even a single object is illegal. Thus since the legal part cannot be severed from the illegal part the contract shall be treated as illegal an *void ab initio* and K shall have no right to recover his salary from W.

Q.7 F, a father of a minor son & a daughter agreed to transfer guardianship of his children in favour of Mrs. O, an elderly lady and agreed not to revoke it for consideration. Subsequently F filed a suit against Mrs. O for the recovery of his children. Mrs. O Contends that the same should not be allowed as she had contractual right of guardianship. Comment on the validity of contention of Mrs. O in context of the Indian Contract Act, 1872.

Ans. Hint : Agreements interfering with parental rights are opposed to public policy, illegal & *void ab initio*.

Thus the above contract is *void ab initio* & F has a right to revoke his authority & get back his children.

Q.8 X and Y were running two organizations trading in wheat of 'Popular Brand' in Uttar Pradesh. X realized that the wheat business is high yielding. To expand his business X offered Y a sum of Rs.10 Lakhs on the condition that Y shall not sell "Popular Brand" Wheat in Uttar Pradesh. X failed in making the promised payment to Y. Y, filed a suit against X for non-fulfilment of the promise. Is the suit maintainable?

Ans. Hint: Agreements resulting the creation of monopoly: Such agreements are treated as opposed to public policy, illegal, and *void ab initio*. Thus in the given case the contract between X & Y is opposed to public policy & illegal, since it results in the creation of monopoly. The suit is not maintainable.

Q.9 Mr. S aged 58 years was employed in a Govt. Department. He was going to retire after two years. Mr. D made a proposal to Mr. S to apply for voluntary retirement from his post so that Mr. D can be appointed in his place. Mr. D offered a sum of ₹ 10 Lakhs as consideration to Mr. S in order to induce him to retire. Mr. S refused at first instance but when he evaluated the amount offered as consideration is just double of his cumulative remuneration to be received during the tenure of two years of employment, he agreed to receive the consideration and accepted the above agreement to receive money to retire from his office.

Whether the above agreement is valid ? Explain with reference to provision of Indian Contract Act, 1872. [Jan. 2021, 4 Marks]

Ans. According to the provisions of section 23 of the Indian Contract Act, 1872, an agreement of trafficking (*i.e.* to buy or sell or procure) in public offices or title is against public policy, and hence illegal and *void ab initio*. Further 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 in the nature of trafficking and therefore opposed to public policy, illegal and *void ab initio*.

In the given case Mr. D makes an agreement with Mr. S, working in a Government Department, to pay him (Mr. S) consideration amounting to twice his remuneration so that he can voluntarily retire from his job and Mr. D can be appointed in his place instead.

Thus applying the above stated provisions it can be concluded that, the agreement between Mr. D and Mr. S is opposed to public policy since it amounts to trafficking in public office. The agreement is illegal and *void ab initio*.

Q.10 X agrees to pay Y ₹ 1,00,000, if Y kills Z. To pay Y, X borrows ₹ 1,00,000 from W, who is also aware of the purpose of the loan. Y kills Z but X refuses to pay. X also refuses to repay the loan to W. Explain the validity of the contract.

(i) Between X and Y

(ii) Between X and W [Dec. 2022, 4 Marks]

Ans. According to the provisions of the Indian Contract Act, 1872 a contract, the object or consideration of which, is such that it is forbidden by law for the time being in force in India, is said to be illegal and *void ab initio*. Further any contract which is collateral to such an illegal agreement is also deemed to be tainted with illegality and is treated as illegal and *void ab initio*.

(*i*) In the given case, the contract between X & Y is for killing Z for consideration of ₹1 lakh. Thus the contract is being made for an object which is forbidden by law and shall therefore be regarded as illegal and *void ab initio*. Further capital/ severe punishment shall also be attracted in this case on both the contracting parties.

(*ii*) In the given case, X enters into a contract with W to borrow money to finance his contract with Y (made for killing Z) & W is also aware of the purpose of the loan. Thus it is evident that the contract between X & W is collateral to the contract made between X & Y, since it was made merely by reason of X's having entered into a contract with Y. Therefore applying the above stated provisions, it can be concluded that the contract between X & W shall also be deemed as illegal & *void ab initio* & the parties can be subjected to severe punishment as well.

CHAPTER 7

VOID AGREEMENTS

LONG ANSWER QUESTIONS:

Q.1 Explain Agreements in restraint of trade. What are the exceptions to such agreements?

Ans. ***Agreements in restraint of trade* (sec. 27)**

Agreements in restraint of trade: "Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, **is to that extent** void." - [Sec. 27]

"Public policy requires that every man shall be at liberty to work for himself and shall not be at liberty to deprive himself of the fruit of his labour skill or talent, by any contract that he enters into". The Constitution of India guarantees Freedom of Trade.

"To that extent" - It means that only that portion of agreement is void which is restrictive.

Agreement in restraint of trade is valid in the following cases:

(*a*) ***Sale of goodwill* (Sec. 27) :** The seller of the goodwill of a business can be restrained from carrying on:

(1) a similar business
(2) within specified local limits
(3) so long as the buyer or his successor in interest carries on a similar business provided
(4) the *restraint is reasonable in point of time and place.*

(*b*) ***Partners' Agreements*** (Exceptions given in the Partnership Act) :

(*i*) *Partner's competing business :* A partner of a firm may be restrained from carrying on a similar business, so long as he remains a partner - [*sec. 11(2), Partnership Act*].

(*ii*) *Rights of outgoing partner :* A partner may agree with his partners that on ceasing to be a partner he will not carry on a similar business within a specified period or within specified local limits - [*sec. 36(2), Partnership Act*].

(*iii*) *Partner's similar business on dissolution :* Partners may, in anticipation of the dissolution of the firm, agree that all or some of them shall not carry on similar business within a specified period or within specified local limits - [*sec. 54, Partnership Act*].

(*iv*) *An agreement between any partner and the buyer of the firm's goodwill :* That such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits provided the restrictions imposed are reasonable - [*sec. 55(3), Partnership Act*].

(*c*) **Trade Combinations :** An agreement, the primary object of which is to regulate business and not to restrain it, is valid. Thus, an agreement in the nature of a business combination between traders or manufacturers *e.g.*, not to sell their goods below a certain price, to pool profits or output and to divide the same in an agreed proportion does not amount to a restrain of trade and is perfectly valid. If an agreement attempts to create a monopoly, it would be void.

(*d*) **Negative stipulations in service agreements :** An agreement of service by which a person binds himself during the term of the agreement, not to take service with any else, is not in restrain of lawful profession and is valid. But an agreement of service which seeks to restrict the freedom of occupation for some period, after the termination of service is void.

(*e*) **Sole Selling Agent's Agreement :** An agreement between a manufacturer & sole selling agent in which the sole selling agent agrees not to deal with the goods of any other manufacturer, such a restraint in trade is binding.

Q.2 Define a wagering agreement. List its characteristics. **[RTP May 2020]**

Ans. ***Agreements by way of wager* (sec. 30)**

Definition: A wager is an agreement by which money is payable by one person to another on the happening or non-happening of future uncertain event.

Characteristics of wagering agreements:

1. The consideration for the promise under a wagering agreement is to pay or get money.
2. The money is payable on the happening or the non-happening of an event.
3. The agreement depends on a future and uncertain event.
4. The essence of wagering is that one party wins and the other loses.
5. In wagering agreement no party has control over the event.
6. Parties have no interest in the contract other than winning or losing.

SHORT QUESTIONS:

Q.3 What are the exceptional case where agreements similar to wagering agreements are not treated as void? [RTP May 2020]

Ans. It has been held that the following transactions are not wagers:

(i) *Shares* : Share market transactions in which there is clear intention to give and take delivery share.

(ii) *Games of skill* : Prizes and competitions which are games of skill, *e.g.* picture puzzles, athletic competitions etc. An agreement to enter into a wrestling contest, in which the winner was to be rewarded by the whole of the sale proceeds of tickets and the party failing to appear on that day would have to forfeit ₹ 500 was held not to be a wagering agreement.

(iii) *A statutory exception* : An agreement to contribute to the payment of a prize of the value of ₹ 500 or upwards to the winners of a horse race, is valid. This is statutory exception laid down in section 30 of the Contract Act.

(iv) *Contract of Insurance* : A contract of insurance is not a wagering agreement.

(v) *An agreement to purchase a lottery authorised by Government is valid:* Lottery is an agreement for the distribution of chance of prizes in money among persons purchasing tickets. The dominant motive of the participants need not be gambling. Where a wagering transaction amounts to lottery, it is illegal as per section 294A of the Indian Penal Code. However, section 294A itself states that this rule will not apply on lotteries run or authorized by a State.

(vi) *Speculative transactions :* Though wagering transactions are void, speculative transactions are generally valid. It is, however, sometimes difficult to distinguish between a speculative transaction and a wagering transaction. A speculative transaction essentially, must have two elements, namely,

(1) mutual intention of the contracting parties to acquire or deliver, as the case may be, the commodities; and

(2) the undertaking of risk arising from movement in prices. A wager, on the other hand, postulates only the incurring of risk.

Q.4 Explain agreements in restraint of legal proceeding.

Ans. *Agreements in restraint of legal proceedings* (*sec. 28*):

Section 28 declares void 3 types of agreements which restraint the parties to the contract to take recourse to legal proceedings —

(i) Agreements which oust jurisdiction of courts in trying the legal dispute & absolutely restrict a party from enforcing his legal rights.

(ii) Agreements which curtail the period of limitation and prescribe a shorter period than that prescribed by law.

(iii) Agreements which provide for forfeiture/waiver/extinguishment of the legal right itself, if no action is commenced within the period stipulated by the agreement.

Certain exceptions to the above rule may be noted:

(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 (agreement to refer present disputes to arbitration).

(ii) A clause in a contract or an agreement imposing partial restriction on the right to legal proceedings would be valid & enforceable.

Q.5 Differentiate between wagering and insurance contracts. [May 2018 2 Marks, Nov. 2020 5 Marks]

Ans. Difference between insurance contracts and wagering agreements

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

CASE STUDIES:

Q.6 X agreed to become an assistant for 2 years to Y who was a practicing chartered accountant at Jodhpur. It was also agreed that during the term of agreement X will not practice as a chartered accountant on his own account within 20 kms of the office of Y at Jodhpur. At the end of one year, X left the assistantship of Y and started practice on his own account within the said area of 20 kms. [RTP May 2018]

Ans. Hint: The restriction contained in service agreements, whereby the employee agrees not to carry on the similar service on his own or for any one else during the period of his employment is valid and not treated as in restraint of trade (exception to agreements in restraint of trade); the restriction on X not to carry on his own practice during the period of his employment with Y is valid and enforceable.

Q.7 Sarvesh sells the goodwill of his shop to Vikas for ₹ 10,00,000 and promises not to carry on such business forever and anywhere in India. [RTP May 2018]

Ans. Hint: The buyer can impose restriction of the seller of goodwill, not to carry on similar business, provided the restrictions are reasonable as regards to the duration and place of such business; (exception to restraint on trade); the restraint on carrying on similar trade placed on Sarvesh, is not valid and hence is void to that extent.

Q.8 A employed B and during the course of employment, B came to know of all the secrets of A's business. B agrees with A not to do similar business in the particular area for 5 years after leaving A's employment. Comment on the validity of agreement.

Ans. Hint: Generally any restriction imposed by service agreements on the employee is valid and not in restraint so far as relates to the period of employment. Any restriction on the employee whereby, after the termination of his service, he is prohibited from carrying on similar work on his own or for another employer, is treated as in restraint of trade and therefore void to that extent. However where such a restraint pertaining to the period after termination of services is essential to protect the trade secrets and interest of the employer, since the employee has knowledge of the same, then such restriction shall also be treated as valid and enforceable provided it is for a reasonable period of time.

The agreement between A & B is valid and enforceable since B has knowledge of A's business secrets.

Q.9 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 brief of Mr. Raman. Mr. X agrees, but at the end of the litigation, Mr. Seth refuses to pay. Decide whether Mr. X can recover the amount promised by Mr. Seth under the provisions of the Indian Contract Act, 1872. [Nov. 2020, 4 Marks]

Ans. Hint : Restraints imposed under service Agreements are valid and enforceable provided they are reasonable. A clause in a service agreement whereby an employee is prohibited from accepting any other engagement during his employment is valid and is not regarded as in restraint of trade.

In the given case Mrs. Seth has enlisted (hired) the services of Mr. X a legal expert who agrees not to take up the brief of Mr. Raman during the course of litigation.

Thus the agreement is valid & enforceable since the restriction imposed on Mr. X does not amount to restraint of trade. Mr. X can recover the amount from Mr. Seth.

Q.10 Mr. X lends ₹ 10,000 to Mr. Y, in order to enable him to bet with Mr. C as to the results of a horse race. Can Mr. X recover the amount lent by him?

Ans. Hint: Wagering agreements are generally void and their collateral agreements are treated as valid and enforceable. However in case where the wagering agreement is regarded as illegal, agreements collateral to such agreements shall also be regarded as illegal and *void ab initio*; Mr. X can recover his loan from Mr. Y since the loan given by him is in the form of an agreement collateral to the wagering agreement (betting on horse race is void) and is therefore valid and enforceable.

Q.11 A and B agree to share the proceeds of a robbery committed by them. A lends ₹ 500 to B to buy implements required for the robbery. Can A recover from B the money lent by him (A). Give reasons.

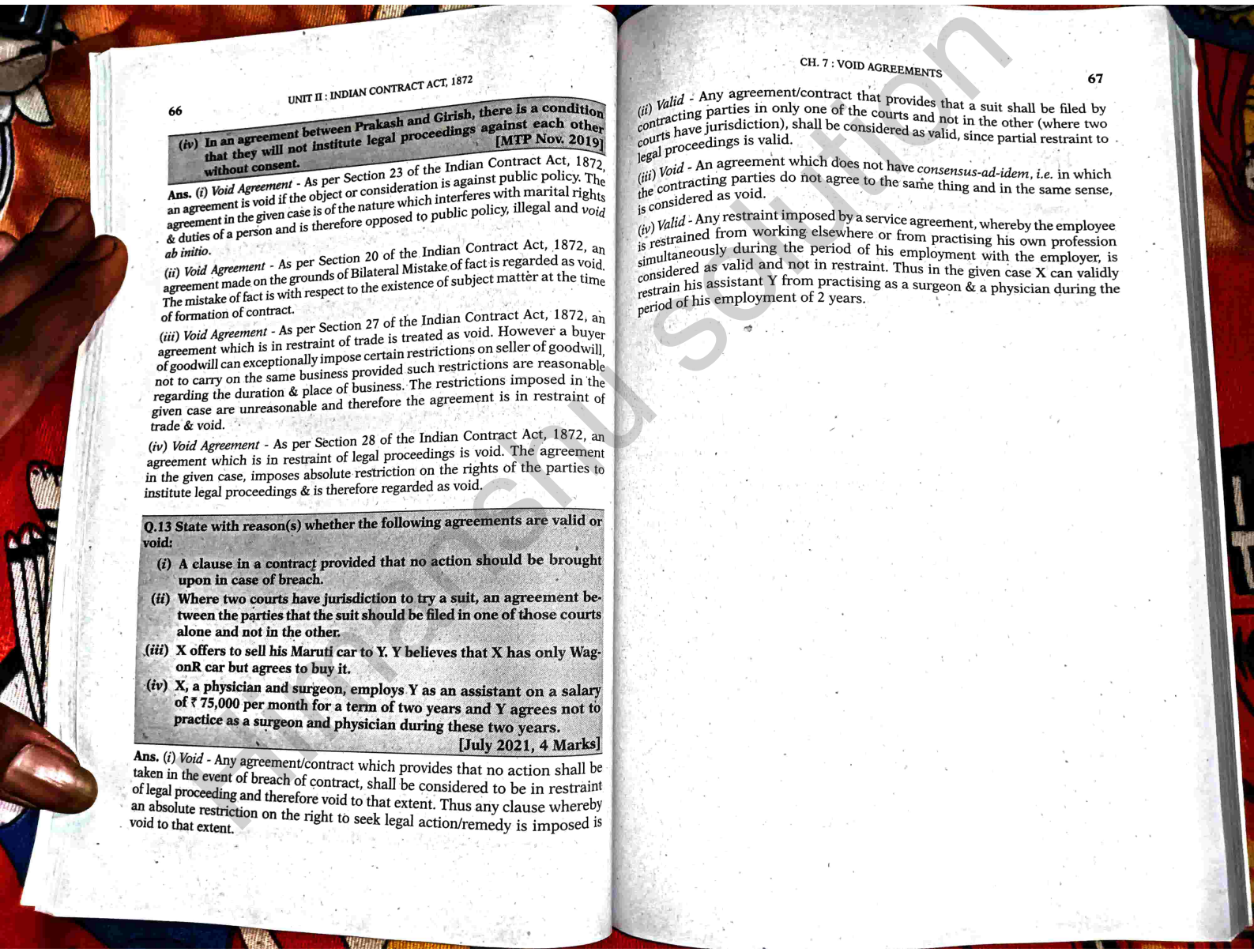
Ans. Hint : No the agreement is illegal and hence collateral transactions will also be void.

Q.12 Point out with reason whether the following agreements are valid or void:

(*i*) Riya promised Samarth to lend ₹ 5,00,000 in lieu of consideration that Samarth gets Riya's marriage dissolved and he himself marries her.

(*ii*) Aryan agrees with Mathew to sell his black horse. Unknown to both the parties, the horse was dead at the time of agreement.

(*iii*) Ravi sells the goodwill of his shop to Shyam for ₹ 4,00,000 and promises not to carry on such business forever and anywhere in India.



(iv) In an agreement between Prakash and Girish, there is a condition that they will not institute legal proceedings against each other without consent. [MTP Nov. 2019]

Ans. (*i*) *Void Agreement* - As per Section 23 of the Indian Contract Act, 1872, an agreement is void if the object or consideration is against public policy. The agreement in the given case is of the nature which interferes with marital rights & duties of a person and is therefore opposed to public policy, illegal and *void ab initio*.

(*ii*) *Void Agreement* - As per Section 20 of the Indian Contract Act, 1872, an agreement made on the grounds of Bilateral Mistake of fact is regarded as void. The mistake of fact is with respect to the existence of subject matter at the time of formation of contract.

(*iii*) *Void Agreement* - As per Section 27 of the Indian Contract Act, 1872, an agreement which is in restraint of trade is treated as void. However a buyer of goodwill can exceptionally impose certain restrictions on seller of goodwill, not to carry on the same business provided such restrictions are reasonable regarding the duration & place of business. The restrictions imposed in the given case are unreasonable and therefore the agreement is in restraint of trade & void.

(*iv*) *Void Agreement* - As per Section 28 of the Indian Contract Act, 1872, an agreement which is in restraint of legal proceedings is void. The agreement in the given case, imposes absolute restriction on the rights of the parties to institute legal proceedings & is therefore regarded as void.

Q.13 State with reason(s) whether the following agreements are valid or void:

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

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

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

(iv) X, a physician and surgeon, employs Y as an assistant on a salary of ₹ 75,000 per month for a term of two years and Y agrees not to practice as a surgeon and physician during these two years. [July 2021, 4 Marks]

Ans. (*i*) *Void* - Any agreement/contract which provides that no action shall be taken in the event of breach of contract, shall be considered to be in restraint of legal proceeding and therefore void to that extent. Thus any clause whereby an absolute restriction on the right to seek legal action/remedy is imposed is void to that extent.

(*ii*) *Valid* - Any agreement/contract that provides that a suit shall be filed by contracting parties in only one of the courts and not in the other (where two courts have jurisdiction), shall be considered as valid, since partial restraint to legal proceedings is valid.

(*iii*) *Void* - An agreement which does not have *consensus-ad-idem*, *i.e.* in which the contracting parties do not agree to the same thing and in the same sense, is considered as void.

(*iv*) *Valid* - Any restraint imposed by a service agreement, whereby the employee is restrained from working elsewhere or from practising his own profession simultaneously during the period of his employment with the employer, is considered as valid and not in restraint. Thus in the given case X can validly restrain his assistant Y from practising as a surgeon & a physician during the period of his employment of 2 years.

8 CHAPTER CONTINGENT & QUASI-CONTRACTS

LONG ANSWER QUESTIONS:

Q.1 Define a contingent contract and explain its essentials.
[Nov. 2018, 7 Marks, July 2021, 3 Marks]

Ans. According to the provisions of section 31 of the Indian Contract Act, 1872, 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. Thus for a contract to be classified as a contingent contract it needs to have the following essentials:—

- The performance of the contract depends upon a contingency, *i.e.* the happening or non-happening of a future, uncertain event.
- The event must be collateral, *i.e.* it does not form a part of consideration or reciprocal promises under the contract.
- The event should not be the mere will of the promisor.

One of the examples of a contingent contract is a contract of indemnity whereby the indemnifier promises to indemnify the other party (the indemnified) for the loss sustained by him on the happening of a specific future uncertain event. Further the event, on which the performance of promise to indemnify depends, is collateral in nature as it does not form a part of the reciprocal promise or consideration under the contract.

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. Thus the event must not be a part of reciprocal promises forming 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.

Q.2 What are the rules regarding contingent contracts?
[RTP May 2019, July 2021, 4 Marks]

Ans. Sections 32 to 36 of the Contract Act contain certain rules regarding contingent contract, they are summarised below:

Sec. 32. Contracts dependent on the happening of a future uncertain event: Contracts contingent upon the happening of a future uncertain event, cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.

Illustration : Agrees to pay B a sum of money if a certain ship returns. The Contract can be enforced only where the ship returns. If the ship sinks, the contract become void.

Sec. 33. Contracts* dependent on *the non-happening of an uncertain future event: Contracts contingent upon the non-happening of an uncertain future event, can be enforced when the happening of that event becomes impossible and not before.

Illustration : 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. If the ship returns the contract becomes void.

Sec. 35(1). Contracts dependent on the happening of an event within a fixed time: Contracts contingent upon the happening of an event within a fixed time become void if, at the expiration of the fixed time, such event has not happened or if, before the time fixed, such event becomes impossible.

Illustration : 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 becomes impossible).

Sec. 35(2). Contracts dependent on the non-happening of an event within a fixed time: Contracts contingent upon the non-happening of an event within a fixed time may be enforced by law when the time fixed has expired and such event has not happened, or before the time fixed has expired, if it becomes certain that such event will not happen.

Illustration : 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.

Sec. 34 Contracts dependent on the future conduct of a person acting in a particular way : If a contract is contingent upon how a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

In other words, if a promise depends on the act of a third party, it will become void should such third party refuse to do the act or if he incapacitates himself

from doing it. For *e.g.* 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.

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

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

Q.3 What is a Quasi-Contract? What are the types of Quasi-Contracts, as provided under the Indian Contract Act, 1872? [RTP Nov. 2019]

OR

What is meant by 'Quasi-Contract'? State any three salient features of a quasi-contract as per the Indian Contract Act, 1872. [Dec. 2021, 5 Marks]

Ans. A quasi-contract is similar to a contract. 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. It is therefore, contractual in law, but not in fact.

It is an obligation which the law creates in the absence of any agreement, when the acts of the parties or others have placed in the possession of one person, money or its equivalent, under such circumstances that in equity and good conscience he ought not retain it, and which *ex aqeuqo bono* (in justice and fairness) belongs to another.

Quasi-contracts are based on principles of equity, justice and good conscience. They aim at prevention of **"unjust enrichment" i.e. no man shall be allowed to enrich himself at the cost of another.**

Types of Quasi-Contracts:—

Sections 68 to 72 of the Contract Act deals with five different types of quasi-contracts. In each of these cases there is no real contract between the parties, but due to peculiar circumstances in which they are placed, the law imposes in each of these cases a contractual liability:—

1. Claim for necessaries supplied to persons incapable of contracting (section 68):

*"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."*

2. Right to recover money paid for another person (Section 69):

A person who has paid a sum of money which another is obliged to pay, is entitled to be reimbursed by that other person provided the payment has been made by him to protect his own interest.

Conditions : The following are the conditions mentioned in section 69:

1. The payment made should be *bona fide* for the protection of one's interest.
2. The payment should not be a voluntary one.
3. The payment must be such as the other party was bound by law to pay.

3. Obligation of a person enjoying benefits of non-gratuitous act (Section 70):

"Where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered".

It thus follows that for a suit to succeed, the plaintiff must prove:

(*i*) that he had done the act or had delivered the thing lawfully,
(*ii*) that he did not do so gratuitously, and
(*iii*) that the other person enjoyed the benefit.

4. Responsibility of a finder of goods (Section 71):

"A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee".

Conditions:

1. A person who finds goods and takes possession of it is responsible as a bailee.
2. That is, he is liable —
   - to try and find out the true owner and
   - to take due care of the property (section 151).
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—
   - 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):

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

SHORT QUESTIONS:

Q.4 Differentiate between Contingent Contracts and Wagering Agreements.

Ans. Difference between contingent contract and wagering agreement:

Wagering Agreements	*Contingent Contract*
1. A wagering agreement is void.	1. A contingent contract is valid.
2. A wagering agreement consists of reciprocal promises.	2. Contingent contract may not contain reciprocal promises.
3. In a wagering agreement the parties have no interest in the subject matter of the contract.	3. In a contingent contract either party may have interest in the subject matter of the contract.
4. In a wagering agreement the future event is the sole determining factor.	4. In a contingent contract the future event is only collateral and incidental.
5. Every wagering agreement is of a contingent nature.	5. Every contingent contract is not of a wagering nature.

Q.5 What are the salient features of Quasi-contracts ? [RTP Nov. 2020]

Ans. In some circumstances, obligations similar to those arising under a contract, are imposed by law on the parties although the parties never intended to enter into a contract. Such obligations are Quasi-contracts. Quasi-contracts do not have their source in agreements. They are imposed by law to uphold the principle of equity. The following are the salient features of Quasi-contracts:—

- They do not originate from agreement between the parties but are imposed by law to prevent unjust enrichment of one party at the expense of the other.
- Duty of a legal nature and not promise (agreement) is the basis of such contract.
- Quasi-contract creates a right against a specific person *i.e. jus in personam* and not a right against the entire world.
- The right under it is always a right to money and generally to a liquidated sum of money.
- A suit for its breach may be instituted in the same manner as a suit for breach of contract.

CASE STUDIES:

Q.6 Z rent out his house situated at Mumbai to W for a rent of ₹ 10,000 per month. A sum of ₹ 5 lakh, the house tax payable by Z to the Municipal Corporation being in arrears, his house is advertised for sale by the corporation. W pays the corporation, the sum due from Z to avoid legal consequences. Referring to the provisions of the Indian Contract Act, 1872 decide whether W is entitled to get the reimbursement of the said amount from Z.

Ans. Hint: Quasi-Contract; right to recover money paid for another; W is entitled to reimbursement from Z since he is an interested party.

Q.7 A agrees to pay B ₹ 5,000 if he marries C. C dies before the marriage. Can B recover the amount?

Ans. Hint: No, agreement has become void due to death.

Q.8 A supplied necessaries of life to the wife of a lunatic. Can he get the payment? If yes, how?

Ans. Hint: Yes, out of the property of the lunatic, if any. [Claim for necessaries of life supplied to an incompetent person or his dependent.]

Q.9 A promises to pay B ₹ 1 lakh if B's ship does not return. When can this promise be enforced?

Ans. Hint: If the ship is destroyed or sunk, since the contract is contingent upon non-happening of a specific future uncertain event [*i.e.* non-returning of ship].

Q.10 Y holds agricultural land in Gujarat on a lease granted by X, the owner. The land revenue payable by X to the Government being in arrear his land is advertised for sale by the Government. Under the Revenue law, the consequence of such sale will be termination of lease. Y, in order to prevent the sale and the consequent termination of his own lease, pays the Government, the sum due from X. Referring to the provisions of the Indian Contract Act, 1872 decide whether X is liable to make good to Y, the amount so paid?

Ans. Hint: X is liable to pay to Y the amount paid by Y to the Government. [Right of an interested party.]

Q.11 X found a wallet in a restaurant. He enquired of all the customers present there but the true owner could not be found. He handed over the same to the manager of the restaurant to keep till the true owner is found. After a week he went back to the restaurant to enquire about the wallet. The manager refused to return it back to X, saying that it did not belong to him.

In the light of the Indian Contract Act, 1872, comment whether X can recover it from the Manager? [Nov. 2019, 4 Marks]

Ans. According to the provisions of section 71 of the Indian Contract Act, 1872 a finder of lost goods is entrusted with same responsibilities as a bailee. Under the provisions of Quasi-contract, a finder of lost goods is bound to take as much case of the goods found, as a man of ordinary prudence would under similar circumstances take of his own goods of the same bulk, quality & value. He must also take all reasonable measures to locate its true owner. However till the owner is found the finder is entitled to retain the goods as his own against the whole world (except the owner). Thus the finder of lost goods is not only in the position of a bailee but is also regarded as the next best owner at law.

In the given case X found a wallet in a restaurant & makes efforts to locate the owner. As a part of the efforts to locate the true owner X entrusts the manager of the restaurant with the wallet. After a week X enquires about the wallet from the manager, but the manager refuses to return the same to X.

Thus applying the above stated provisions it can be concluded that X being a finder of lost foods is in the position of bailee and also entitled to retain the goods so found as against the whole world X can recover the wallet from the manager.

Q.12 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.

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

(i) Will Mr. M succeed in filing the suit to recover money? Elaborate the related provisions?

(ii) What is the maximum amount of money that can be recovered by Mr. M?

(iii) Shall the provisions of the above act also apply to the medical treatment given to the grandmother? [Dec. 2022, 6 Marks]

Ans. According to the provisions of the Indian Contract Act, 1872, a person of unsound mind is incompetent to contract and cannot be held personally liable. Further according to the provisions of section 68, if an incompetent person, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, then the person who has furnished such necessaries is entitled to be reimbursed from the properties of such incompetent person, if any.

In the given case Mr. M has supplied necessaries of life to Mr. Y, a person of unsound mind and also to his dependent grandmother.

(i) Applying the above stated provisions to the given case, it is evident Mr. M cannot sue Mr. Y, a person of unsound mind, for the reimbursement for the supply of necessaries of life to him & his grandmother. Mr. M can only recover the money for the necessaries from the property of Mr. Y.

(ii) In the given case Mr. Y has his parents' jewellery with a maximum realizable value of ₹ 4 lakhs. Thus applying the above stated provisions it can be concluded that Mr. M can recover a maximum amount of ₹ 4 lakhs as a reimbursement for he necessaries of life supplied to Mr. Y and his grandmother.

(iii) All such goods and services supplied by a person to an incompetent person and/or his dependent shall be regarded as necessaries of life, provided, they are necessary, reasonably required to support his standard of living & are not already in his adequate possession. Items of food, clothing and expenses on medical expenses etc. are all regarded as necessaries of life.

Thus it is evident that experises incurred on medical treatment of the grandmother, who is dependent on Mr. Y shall also be regarded as necessaries and the reimbursement for the same can be claimed only from the property of the incompetent person, if any.

9 CHAPTER PERFORMANCE OF A CONTRACT

LONG ANSWER QUESTIONS:

Q.1 What is meant by tender of performance? What are the essentials of valid tender of performance? What is the effect of refusal by the promisee to accept a valid tender of performance in respect of goods and money?

Ans. *Attempted Performance or Tender :* When the promisor offers to perform his obligation under the contract, but is unable to do so because the promisee does not accept the performance, it is called "attempted performance" or "tender". Thus, "tender" is not actual performance but is only an "offer to perform" the obligation under the contract. A valid tender of performance is equivalent to performance.

ESSENTIALS OF A VALID TENDER : A valid tender or offer of performance must fulfil the following conditions: (Sec. 38)

1. It must be unconditional (a tender is conditional where it is not in accordance with the term of the contract).
2. It must be made at proper time and place.
3. It must be of the whole obligation contracted for and not only of the part.
4. If the offer/tender relates to delivery of goods, it must give a reasonable opportunity to the promisee for inspection of goods so that he may be sure that the goods tendered are of contract description.
5. It must be made by a person who is in a position and is willing to perform the promise.
6. It must be made to the proper person *i.e.*, the promisee or his duly authorised agent. Tender made to a stranger is invalid.
7. If there are several joint promisees, an offer to any one of them is a valid tender.
8. In case of tender of money, exact amount should be tendered in the legal tender money.

Effect of refusal to accept a properly made offer of performance or tender (Sec. 38) : Where the promisor has made an offer of performance to the promisee, and the offer has not been accepted, then, according to section 38, the promisor's obligations under the contract come to an end but his rights continue. He need not perform his part of the contract but may initiate action against the promisee for breach of contract.

Exception : If a debtor has properly offered to pay money, and the creditor refuses to accept payment, the debtor's liability to pay shall not come to an end. However, he will not be liable to pay interest on the due amount, from the date of rejection of the tender.

Q.2 When is time deemed to be of essence of a contract in the performance of a contract? What are the consequences when the party fails to perform the contract within the time stipulated in the contract?

Ans. The phrase "time as the essence of the contract" means that performance within time is the most vital condition of the contract. If time is the essence of the contract then the other party can avoid the contract and if it is not, the other party cannot avoid the contract.

When is the time the essence of the contract?

1. Whether time is of the essence of the contract, depends upon:
   (*i*) The intention of the parties;
   (*ii*) Nature of the transaction;
   (*iii*) The terms of the contract *i.e.* if the parties to the contract have expressly agreed that performance within a limited time was necessary;
2. It is well settled that unless a different intention appears from the terms of the contract, ordinarily in commercial contracts the time of delivery of goods is of the essence of the contract but not the time of payment of the price;
3. 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 a contract within the stipulated time. Sec. 55 deals with the subject and lays down the following rules:

1. Where *"time is of the essence of the contract"* and there is failure to perform within the fixed time, the contract (or so much of it as remains unperformed) becomes voidable at the option of the promisee. He may rescind the contract and sue for the breach.
2. Where *"time is not of the essence of the contract"*, failure to perform within the specified time does not make the contract voidable. It means that in such a case the promisee cannot rescind the contract and he will have to accept the delayed performance. But he would be entitled to claim compensation from the promisor for any loss caused to him by the delay. This rule is, however, subject to the condition that the promisor should not

delay the performance beyond a reasonable time, otherwise the contract will become voidable at the option of the promisee.

3. In case of a contract voidable on account of the promisor's failure to perform his promise within the agreed time or within a reasonable time, as the case may be, and if the promisee, instead of rescinding the contract, accepts the delayed performance, he cannot afterwards claim compensation for any loss caused by the delay, unless, at the time of accepting the delayed performance, he gives notice to the promisor of his intention to do so.

Q.3 What is meant by appropriation of payments? What are the rules for appropriation of payments to the debts owed by the debtor?

Ans. When a debtor owes multiple distinct debts to a creditor and makes a payment which is insufficient to discharge all the debts, then the manner in which the payment has to be applied to discharge a particular debt amounts to appropriation of payments. Sections 59-61 of the Indian Contract Act, 1872, lays down the rules regarding the appropriation of payments which are as follows:

1. ***Appropriation as per the express instruction of the debtor:*** If the debtor, owing multiple debts to the same creditor, at the time of making the payment, gives express instructions as to the appropriation of payment, then the payment must be appropriated towards the discharge of the particular debt as instructed by the debtor.
2. ***Appropriation as per implied circumstances*:** Sometimes a debtor owing multiple debts makes a payment to the creditor which is insufficient to discharge all his debts, without any express instruction as to the appropriation of the payment. In such a case, the appropriation must be done towards the debt, which the debtor intended to do so under the implying circumstances.
3. ***Appropriation of payment where there is no express instruction, nor implying circumstances:*** When the neither the debtor sends the payment with any express instructions, nor do the circumstances imply as to which debt the debtor intends the payment to be applied, then the appropriation may be done by the creditor at his own discretion. The creditor may apply the payment towards the discharge of any lawful debt, as per his discretion and intimate the same to the debtor. Once the manner of appropriation is communicated by the creditor to the debtor, the same shall not be changed.

   Further the creditor can even appropriate the payment to a time barred debt or to the interest due to him and then to the principal sum. However no appropriation must be made by the creditor to an unlawful or disputed debt.
4. ***Appropriation in chronological order:*** Where the debtor does not give any express instructions as to appropriation of payments, nor the creditor appropriates the payments as per his discretion, then the payment must be appropriated to discharge the debts due in order of time. When the debts are of equal standing (*i.e.* of the same due date), the payments shall be appropriated in discharge of each such debt proportionately.

Q.4 Discuss and explain the law relating to the devolution of joint rights and liabilities of the joint promisors.

Ans. Devolution of joint liabilities & joint rights (secs. 42 to 45):

(*i*) Devolution of joint liabilities (Section 42)

When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives, and, after the death of any of them, his representatives jointly with the survivor or survivors and, after death of the last survivor, the representatives of all jointly, must fulfil the promise.

(*ii*) 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.

(*iii*) *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.

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.

(*iv*) 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 promisor so released from responsibility to the other joint promisor or joint promisors.

This section gives to the promisee a right to release any one or more of the joint promisor from the liability under the joint promise. Once the release is granted, the promisee will not be able to file a suit against the released joint promisor. But, the liability of the other joint promisor shall continue unchanged. Similarly, the liability of the released joint promisor towards other joint promisors for contribution shall also continue.

(*v*) Devolution of joint rights (Section 45)

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 representatives of such deceased person jointly with the survivor or survivors, and after the death of the last survivor, with the representatives of all jointly.

Q.5 What are the rules relating to the time, place and manner of performance of the contract?

Ans. Generally where the time place and manner of performance is prescribed in the contract, then the performance must be given as prescribed. If there is no such agreement is made performance must be made in accordance with the following rules:

(*i*) **Where time is not specified and no application is required to be made:** In such a case the performance must be rendered by the promisor within a reasonable time. What shall be the reasonable time shall depend on the circumstances of each case.

(*ii*) **Where time is specified & no application is required to be made :** When the performance is to given on a prescribed day & the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual business hours on such place & on such day at which the promise ought to be performed.

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

(*iv*) **Where no application is to be made and no place for performance has been fixed:** In such a case 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.

Q.6 What are reciprocal promises? What are its types & what are the rules for performance of reciprocal promises?

Ans. Reciprocal Promises (Secs. 51 to 54 and 57)

According to section 2(*f*) promises which form the consideration or part of the consideration for each other, are called reciprocal promises. Such promises are mutual promises, *i.e.* a promise for a promise. When one party gives a promise in consideration for the other's promise, both the promises are called reciprocal promises. For example, in a transaction of sale, there are two reciprocal promises:

Kinds of reciprocal promises:

- ***Mutual and independent promises*** **:** Where one party has to perform his promise independently without waiting for the performance or willingness of the other party, the promises are mutual and independent. For example, A agrees to sell the car and deliver the same to B on 1-1-2009 while B agrees to pay the price on 15-1-2009. The promises are independent.
- ***Mutual and dependent*** **:** Where the performance of the promise by one party depends upon the prior performance of the promisor or by the other party, the promises are conditional and dependent. For example, X agrees to construct a house for Y. Y agrees to supply cement for building the house. The promises are conditional and dependent.
- ***Mutual and concurrent*** **:** Where the two promises are to be performed simultaneously, they are said to be mutual and concurrent.

Rules regarding performance of reciprocal promises : [Secs. 51 to 54]

1. When reciprocal promises have to be simultaneously performed the promisor is not bound to perform, unless the promisee is ready and willing to perform his promise. (Sec. 51)
2. The reciprocal promises must be performed in the order fixed by the contract. (Sec. 52)
3. If one party prevents the other party from performing his reciprocal promise, the contract become voidable and the party so prevented can claim compensation. (Sec. 53)
4. Where the nature of reciprocal promises is such that one cannot be performed unless the other party performs his promise in the first place, then if the latter fails to perform he cannot claim performance from the other, but must make compensation to the first party for his loss. (Sec. 54)
5. Reciprocal promise to do things legal and also things illegal - The first is a contract, but the latter is a void agreement. (Sec. 57)

SHORT QUESTIONS:

Q.7 In which circumstances performance is not required under a contract?

Ans. Sections 62 to 67 of the Contract Act are listed under the heading "Contracts which need not be performed". The relevant provisions are as follows:

1. If the parties to the contract agree to **substitute a new contract for it or to rescind or alter** it, the original contract need not be performed. (Sec. 62).

   Where the parties to a contract agree to substitute the existing contract for a new contract, that is called *novation*. In the well-known case of *Scarf* v. *Jardine* (1882) 7 App Cas-345 it was stated that novation is of two kinds, (*i*) involving change of parties; or (*ii*) involving substitution of a new contract in place of the old (see next chapter for more details).
2. If the promisee dispenses with or remits wholly or in part, the performance of promise made to him or extends the time for such performance or accepts in satisfaction for it, the contract need not be performed. (Sec. 63)
3. When a voidable contract is rescinded, the other party need not perform his promise. (Sec. 64).
4. "If the 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" (Sec. 67).

Q.8 What is meant by assignment of contract?

Ans. ***Definition:*** Assignment means transfer. The rights and liabilities of a party to a contract can be assigned under certain circumstances. Assignment may occur (*i*) by act of parties or (*ii*) by operation of law.

Rules: The rules regarding assignment of contracts are summarised below:

A. Assignment by act of the parties:

1. *Contracts involving personal skill, ability, credit, or other personal qualifications, cannot be assigned.* Examples: a contract to marry, a contract to paint a picture, a contract of personal service etc.
2. *The obligations under a contract, i.e., the burden and the liabilities under the contract cannot be transferred.*
3. *A contract may be performed through the agency of a competent person, if the contract does not contemplate performance by the promisor personally.* - Sec. 40. But in this case the original party remains responsible for the proper performance of the obligations under the contract.
4. *The rights and benefits under a contract (not involving personal skill or volition) can be assigned.*
5. *Actionable claims can be assigned but only by a written document.* Notice must be given to the debtor. An actionable claim is a claim to any debt or to any beneficial interest.

B. Assignment by operation of law:

Assignment by operation of law occurs in cases of death or insolvency. Upon the death of a party his rights and liabilities under a contract devolve upon his heirs and legal representatives (except in the case of contract involving personal qualifications). In case of insolvency, the rights and liabilities of the person concerned pass to the Official Assignee or the Official Receiver. Assignment by operation of law occurring upon the death of a party is known as succession.

Q.9 "The basic rule is that the promisor must perform, exactly what he has promised to perform". Explain stating the obligations of parties to contract. [RTP May 2020]

Ans. According to the provisions of section 37 of the Indian Contract Act, 1872 the parties to contract must either perform or offer to perform their respective promises unless such performance is dispensed with or excused under the provisions of the dispensed with or excused under the provisions of the contract Act or of any other law. A promisor must perform exactly what he had promised to do under the contract. Thus it is the primary duty of each party to a contract to either perform or offer to perform his promise. The most common way of discharging a contract is by way of performance whether actual or by making a valid offer to perform. Further the promises bind the legal representatives of

the promisor, in the event of his death prior to performance unless a contrary intention appears from the contract.

Illustration : —

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

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

Q.10 "When a party to a contract has refused to perform or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract". Explain. [MTP July, 2021]

Ans. According to the provisions of section 39, of the Indian Contract Act, 1872, when a party to contract has refused to perform or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract unless he has signified by words or conduct his acquiescence in its continuance.

Performance under a contract is deemed to be validly completed only when the promise is performed as contracted and in its entirety, Thus if the promisor refuses or disables himself from performing his promise, the contract shall become voidable at the option of promisee who is aggrieved. However in case the promisee decides to continue the contract, he would not be entitled to put an end to the contract on this ground subsequently. In either case, the promisee would be able to claim damages that he sustains as a result of breach.

DIFFERENCES:

Q.11 Differentiate between:—
(*a*) Tender of goods & Tender of money.
(*b*) Succession & Assignment.

Ans. (*a*) Tender of Goods & Tender of money:

	Tender of Goods	*Tender of Money*
1.	When the promisor offers to deliver the goods or services in a valid manner, but the promisee refuses to accept the delivery, then such an offer amounts to Tender of Goods.	When the promisor offers to pay the amount due under the contract, to the promisee validly, but the promisee refuses to accept the same, then such an offer amounts to Tender of Money.
2.	On the rejection of a valid tender of goods, the promisor stands discharged from his liability to deliver goods.	On the rejection of a valid tender of money, the promisor is not discharged from his obligation to pay the debt.

	Tender of Goods	Tender of Money
3.	Promisor can sue the promisee for the damages sustained by him on account of rejection of valid tender. Thus the promisee can be sued for damages.	Promisor shall be discharged from his obligation to pay interest from the date of rejection of valid tender of money by the promisee.

(b) Succession & Assignment:

Basis of distinction	Succession	Assignment
1. Meaning	The transfer of rights and liabilities of a deceased person to his legal representative is called as succession.	The transfer of rights by a person to another person is called as assignment.
2. Time	Succession takes place on the death of a person.	Assignment takes place during the lifetime of a person.
3. Voluntary Act	Succession is not a Voluntary Act. It takes place automatically by operation of law.	Assignment is a Voluntary Act of the parties.
4. Written document	Succession may take place even without any written document.	Assignment requires execution of an assignment deed.
5. Scope	All the rights and liabilities of a person are transferred by way of succession.	Only rights can be assigned liabilities, under a contract, cannot be assigned unless there is novation.
6. Notice	No notice of succession is required to be given to any person.	Notice of assignment must be given to the creditor.
7. Consideration	No consideration is necessary for succession.	Consideration between assignor and assignee is a must for assignment.

CASE STUDIES:

Q.12 A makes a promise to three joint promisees X, Y & Z. X & Y die before the promise is performed. Who can demand performance of the promise?

Ans. Hint : In case of joint promisees, in the event of death of one or more joint promisees, the rights and liabilities shall vest with the surviving joint promisees along with the legal representatives of the deceased joint promisees. Thus in this case performance shall be demanded by Z, the surviving joint promisee alongwith the legal representatives of X & Y.

Q.13 A owes B two sums, one for ₹ 1000 which is barred by limitation and another for ₹ 1500 which is not barred by the limitation of time. A pays B ₹ 500 on account generally. B later sues A for ₹ 1500. A pleads that the amount of debt outstanding to B is ₹ 1000 on account of settlement of ₹ 500 against the debt of ₹ 1500 and the earlier debt of ₹ 1000 now being time barred cannot be realized. Comment on the plea of A.

Ans. Hint: Rules for appropriation of payments; when the debtor has not given any express instructions for appropriation and nor any implied circumstances exit which indicate the intention of the debtor as to appropriation of payment, then the appropriation shall be done at the discretion of the creditor. The creditor may at his discretion appropriate the amount received, against any lawful debt or interest outstanding or even against a time barred debt. Thus B has validly appropriated 500 against the time barred debt of 1000. The plea of A is not sustainable.

Q.14 X enter into a contract with B to build a house for him. X builds the house according to the specifications. B tenders the payment but X refuses to accept the money claiming that it was insufficient because the job was more difficult than he had anticipated. What effect has the tender on B's obligation?

Ans. Hint: Tender of money; Rejection of valid tender of money shall not result in discharge of B from his obligation to pay the amount of money due; however he shall stand discharged from his obligation to pay interest on the amount of debt.

Q.15 X, Y and Z are partners of software business jointly promise to pay ₹ 30,000 to A. Over a period of time Y became insolvent, but his assets are sufficient to pay one-forth of his debts. Z is compelled to pay the whole. Decide whether Z is required to pay whole amount himself to A in discharging joint promise?

Ans. Hint: According to Section 43 of Indian Contract Act, 1872 when two or more persons make a joint promise, the promisee may, in absence of express agreement to the contrary, compel any one or more of such joint promisers to perform the whole of the promise. Further, 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. Therefore, in this case, Z is entitled to receive 2,500 from Y's assets and 13,750 from X.

Q.16 A agreed to sell 10 tons of wheat to B. No time of delivery has been fixed. At 11 P.M. A takes a truck of wheat to B at his house. Is it a valid tender?

Ans. Hint: Tender for performance to be valid must be given at a proper place & time; here the tender is not valid, thus B can rightfully refuse to accept the tender of performance.

Q.17 Krish, Kamya and Ketan are partners in a firm. They jointly promised to pay ₹ 6,00,000 to Dia. Kamya become insolvent and her private assets are sufficient to pay 1/5 of her share of debts. Krish is compelled to pay the whole amount to Dia. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which Krish can recover the amount from Ketan. [May 2018, 4 Marks, MTP May 2019]

Ans. Hint : The liability of joint promisors is joint & several. The promisee can sue any one of the joint promisors for the performance of the entire promise. Such a joint promisor on performance of the promise shall be entitled to claim contribution from the other joint promisors. Further in the event of insolvency of any of the joint promisors, the loss due to non-contribution shall be borne by the other joint promisors equally.

Thus in this case Dia can rightfully claim the entire amount from Krish. Since Kamya has become insolvent, ₹ 40,000 is only recoverable from her estate & ₹ 2,80,000 is recoverable from ketan.

Q.18 X received certain goods from Y & promised to pay ₹ 60,000. Later on, X expressed his inability to make payment to Z, who is known to X, pays ₹ 40,000 to Y on behalf of X. However, X was not aware of the payment. Now Y is intending to sue X for the entire amount of ₹ 60, 000. Can Y do so? Advice. [RTP May 2019]

Ans. Hint : When a promisee accepts performance of a promise from a third person, he cannot afterwards enforce it against the promisor. Thus performance of a promise by a stranger to contract, if accepted by the promisee, results in discharge of promisor to that extent, even the latter has neither authorised nor ratified the act of the third party.

Thus in the given case by accepting payment of ₹ 40,000 from Z, Y shall be now entitled to sue X only for the balance amount of ₹ 20,000. X shall be discharged upto the extent of ₹ 40,000.

Q.19 X, Y and Z jointly borrowed ₹ 1,50,000 from A. the whole amount was repaid to A by Y. Decide in the light of the Indian Contract Act, 1872 whether:

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

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

(iii) Y can recover the contribution from the assets, in case Z becomes insolvent. [RTP Nov. 2019, MTP Nov. 2020]

Ans. According to the provisions of the Indian Contract Act, 1872, joint promisors shall be jointly & severally liable to a promisee and in the event of the death of any of them, his representative jointly with the survivors and in the event of death of all joint promisors, the representatives of all must jointly fulfil the promise further a promisee is entitled to claim performance from any one of the joint promisors & in such a case the joint promisor who is held liable can subsequently claim contribution from the other joint promisors.

Thus applying the above provisions—

(i) Y can validly recover contribution from X & Z after repaying the entire amount to promisee. A X & Z will contribute ₹ 50,000 each.

(ii) In the event of X's death, his legal representative shall be liable to pay contribution to Y. However his liability shall be limited to the value of estate of X inherited by him.

(iii) Y can recover contribution from Z's assets in the event of his insolvency. The loss due to non-contribution an account of Z's insolvency will be borne equally by Y & X in such a case.

Q.20 Mr. Sonumal a wealthy individual provided a loan of ₹ 80,000 to Mr. Datumal on 26-02-2019. The borrower Mr. Datumal asked for a further loan of ₹ 1,50,000. Mr. Sonumal agreed but provided the loan in parts at different dates. He provided ₹ 1,00,000 on 28-02-2019 and remaining ₹ 50,000 on 03-03-2019.

On 10-03-2019 Mr. Datumal while paying off part ₹ 75,000 to Mr. Sonumal insisted that the lender should adjusted ₹ 50,000 towards the loan taken on 03.03.2019 and balance as against the loan on 26-02-2019.

Mr. Sonumal objected to this arrangement and asked the borrower to adjust in the order of data of borrowal of funds.

Now you decide:

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

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

(iii) What would the mode of adjustment/appropriation of such part payment in case neither Mr. Sonumal nor Mr. Datumal insist any order of adjustment in their part? [Nov. 2019, 6 Marks]

Ans. According to the provisions of the Indian Contract Act, 1872, as per the rules for appropriation of payments, when as debtor owing multiple debts to a creditor, makes a payment which is insufficient to discharge all the debts, then the payment must be appropriated as per the express instructions of the debtor. However, where the debtor has not given any express instructions.

Regarding appropriation then the appropriation must be done according to implied circumstances. In case no express instructions by debtor have been communicated and also no implied circumstances exist, then the appropriation shall be done at the discretion of the creditor and he shall intimate the same to debtor.

Further if the creditor also does not wish to appropriate the payment on the basis of his discretion, then the payment shall be appropriate in the chronological sequence of debts.

Applying the above stated provisions to the given case it can be concluded:

(i) Mr. Datumal, the debtor had given express instructions for the appropriation of payments as per the rules of appropriation under the Act, the creditor, Mr. Sonumal cannot object to the same and is bound to appropriate the payment as instructed.

(*ii*) In case the debtor/borrower does not insist on any particular order of adjustment of payments by giving any express instructions, then the payments must be appropriated as per implying circumstances, such proximity of the due date, similarity of amount of debt & sum repaid etc. Only if implying circumstances also do not exist, then the creditor can make appropriation at his discretion.

(*iii*) In the event that neither Mr. Sonumal the lender not Mr. Datumal insist any order of adjustment of payment, then the payment shall be appropriated in the chronological order of debts *i.e.* the earlier debts will be settled in priority over subsequent ones.

Q.21 Mr. S and Mr. R made contract wherein Mr. S agreed to deliver paper cup manufacture machine to Mr. R and to receive payment on delivery. On the delivery date, Mr. R didn't pay the agreed price. Decide whether Mr. S is bound to fulfil his promise at the time of delivery ?
[Nov. 2020, 2 Marks]

Ans. According to the provisions of section 51 of the Indian Contract Act, 1872, in case of a contract consisting of reciprocal promises which are mutual and dependent, the performance of both the promises is required simultaneously. Thus in case of reciprocal promises, the promisor need not perform his part of the promise unless the promisee is ready and willing to perform his part of the reciprocal promise. Hence Datumal can appropriate the amount as per his discretion since no express instruction nor implying circumstances exist.

In the given case, Mr. S & Mr. R by way of reciprocal promises, contracted to deliver paper cup manufacturing machine and pay on delivery respectively. However on date of delivery Mr. R refuses to pay the agreed price.

Thus applying the above stated provision it can be concluded that since Mr. R has refused to perform his part of the reciprocal promise, the promisor, Mr. S is also thereby discharged from giving his performance under the contract.

Q.22 X, Y and Z jointly borrowed ₹ 90,000 from L. Decide each of the following in the light of the Indian Contract Act, 1872:

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

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

(*iii*) Whether Y and Z are released from their liability to L and X is released from his liability to Y and Z for contribution, if L releases X from his liability and sues Y and Z for payment?
[July 2021, 6 Marks]

Ans. (*i*) According to the provisions of the Indian Contract Act, 1872, when two or more persons make a joint promise, the promisee may, in the absence of an express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise. Thus the liability of the joint promisors is joint and several *i.e.* they can be held jointly or individually liable for the whole of the performance by the promisee.

Thus applying the above provision in the given case, it can be concluded that, the promisee - L, can validly and legally compel one of the joint promisors - Y to pay the entire amount of loan of ₹ 90,000.

(*ii*) According to the provisions of the Indian Contract Act, 1872, when two or more persons have made a joint promise, then, unless a contrary intention appears in the terms of contract, all such persons during their joint lives and after the death of any of them, his legal representatives jointly with the surviving promisor/promisors and after the death of the last surviving promisor, the legal representatives of all the deceased promisors jointly, must fulfil the promise to the promisee.

Thus applying the above stated provisions to the given case it can be concluded that L cannot compel only Y's legal representative to pay the entire amount of ₹ 90,000 since all the joint promisors have deceased. The correct course of action should be that L should initiate legal proceeding against all the legal representatives of X, Y and Z jointly and hold them liable for performance.

(*iii*) According to the provisions of the Indian Contract Act, 1872, 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/promisors from their liability to the promisee. Further such a release also does not discharge the released joint promisor from his liability to contribute to other joint promisors.

Thus applying the above stated provisions it is evident that if L releases X from his liability then Y and Z will not be released from their liability towards L. Also the release of X from his liability by L, the promisee, shall not result in his discharge from his liability towards Y and Z for contribution.

Q.23 A, B, C and D are the four partners in a firm. They jointly promised to pay ₹ 6,00,000 to F. B and C have become insolvent. B was unable to pay any amount and C could pay only ₹ 50,000. A is compelled to pay the whole amount to F. Decide the extent to which A can recover the amount from D with reference to the provisions of the Indian Contract Act, 1872.
[Dec. 2021, 4 Marks]

Ans. According to the provisions of the Indian Contract Act, 1872, when two or more persons jointly promise to render performance to a promisee, then the promisee can, in the absence of any agreement to the contrary, compel any one or more of the joint promisors to perform the whole of the promise. Such a joint promisor can after the performance of the promise claim contribution from the other promisors. Further, in the event of any one or more of the joint promisors' failure to contribute, the other joint promisors shall bear the loss arising due to such non-contribution, equally.

In the given case, A, B, C & D are partners, who have jointly promised to pay ₹ 6,00,000 to F. Subsequently, B & C become insolvent & only ₹ 50,000 is recoverable from C. Thereafter A is compelled to pay the entire amount to F.

Thus applying the above stated provisions it is evident that A, B, C & D are joint promisors and can be held jointly & severally liable by the promisee F. F can validly recover the entire amount from A. Thereafter A can claim equal contribution from other partners amounting to ₹ 1,50,000 per partner. Since in the given case both B & C have become insolvent and only ₹ 50,000 is recoverable from C, total loss due to non-contribution amounts to ₹ 2,50,000 (B's share – 1,50,000 & C's share -1,00,000). This loss will be borne equally by A & D in addition to their respective shares in contribution. Thus D shall be liable for contribution of ₹ 2,75,000, *i.e.* ₹ 1,50,000 on account of his share in the sum promised, along with ₹ 1,25,000 on account of his share in the loss arising due to non-contribution. (A's share – 2,75,000, B's share – 0, C's share – 50,000 & D's share – 2,75,000).

Q.24 Mr. S promises Mr. M to paint a family picture for ₹ 20,000 and assures to complete his assignment by 15 March, 2023. Unfortunately, Mr. S died in a road accident on 1 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 15 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]

Ans. According to the provisions of the Indian Contract Act, 1872, the parties to contract must either perform or offer to perform their respective promises unless such performance is dispensed with or excused under the provisions of the Act or any other law. Moreover the promises bind the legal representatives of the promisor, in the event of his death prior to performance, provided the contract does not require personal performance of the promisor or a contrary intention does not appear from the contract.

Further, where the contract is of such a nature that it requires personal skill or performance of the promisor, then the death of the promisor or his incapacity shall result in discharge of the contract. In the given case Mr. S promises to paint a family picture of Mr. M, but dies before performance. Thus applying the above provisions it can be concluded that since personal performance of Mr. S was required in the performance of the contract, his death will result in discharge of contract and Mr. M cannot sue legal representative of Mr. S for the performance.

However if in the other case the contract required delivery of photographs from Mr. S and he died before performance of his promise, then the liability for performance of the promise, that is delivery of photographs, shall devolve on the legal representative of Mr. S and Mr. M can sue him, since the contract does not require personal skill or service of the promisor (Mr. S).

10 CHAPTER DISCHARGE OF A CONTRACT

LONG ANSWER QUESTIONS:

Q.1 What are the instances for discharge of contract by mutual agreement?

OR

Explain any five circumstances under which contracts need not be performed with the consent of both the parties. [Dec. 2021, 7 Marks]

Ans. Discharge by mutual agreement : By agreement of all parties, a contract may be cancelled or its terms altered or a new agreement substituted for it. Whenever any of these things happen, the old contract is terminated. *"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." Sec. 62.*

Termination by mutual agreement may occur in any one of the following ways:

- ***NOVATION :*** Novation occurs when a new contract is substituted for an existing contract either between the same parties or between different parties. The consideration for the new contract is the discharge of the old contract:
  - To effect a novation, there must be a valid enforceable new substituted contract.
  - Consent of all parties is necessary for novation.
  - Novation should take place before the breach or expiry of old contract.
- ***ALTERATION :*** Alteration of a contract means change in one or more of the terms of a contract. Alteration is valid if it is done with the consent of all the parties to the contract.

  In alteration there is change in the terms of the contract but no change of the parties to it. In novation there may be change of parties.
- ***REMISSION :*** Remission means acceptance of lesser amount, or lesser degree of performance than what was contracted for in full discharge of the contract.

According to sec. 63 a party may:

(*a*) Dispense with or remit performance wholly or in part; or

(*b*) Extend the time for performance; or

(*c*) Accept any other satisfaction instead of performance.

For such a release or promise there is no need for consideration or new agreement.

Example : A owes B ₹ 5,000. A pays to B and B accepts in full satisfaction for the whole debt ₹ 2,000. The old debt is discharged.

> A promise by the promisee to give concession to the promisor in one or the other form is binding even if without consideration. In *Gopala* v. *Venkata*, it was stated that after the remission has been communicated to the promisor and accepted by him, the promisee cannot claim the remitted (sacrificed) amount.

- ***RESCISSION :*** Rescission occurs when the parties to a contract agree to dissolve the contract. In the case of rescission only the old contract is cancelled and no new contract comes to exist in its place. The parties come out of the contract by mutual agreement.
- ***WAIVER :*** Waiver means the abandonment of a right. A party to a contract may relinquish (waive) his rights under the contract. Thereupon the other party is released from his obligations. For example, waiver of farmers bank loan by the Government. In such a case the banks gives up its claim on the loan.
- ***MERGER :*** When an existing inferior right of a party, in respect of a subject matter merges into a newly acquired superior right of the same person, in respect of the same subject matter, then the previous contract conferring the inferior right stands discharged by way of merger.

Q.2 What are the instances for discharge by operation by law?

Ans. Discharge by operation of law : A contract terminates by operation of law in case of death insolvency, and merger:

(*a*) *Death :* In contracts involving personal skill or ability, death terminates the contract. In other cases, the rights and liabilities pass on to the legal representatives of the dead man.

(*b*) *Insolvency :* When a person is adjudged insolvent, he is discharged from all liabilities incurred prior to his adjudication. Upon insolvency, the rights and liabilities of the insolvent are, with certain exceptions, transferred to an officer of the court, known as the Official Assignee/Receiver.

(*c*) *Merger :* Means coinciding and meeting of inferior and superior right in one and the same person. In such a case, inferior right available to a party under the contract will automatically vanish.

(*d*) *Lapse of time :* Contracts may be terminated by lapse of time. In civil suits the obligations and liabilities in contracts are barred by limitation. The provisions of law are stated in the Limitation Act. For example, money suits should be filed within 3 years. Otherwise they become time barred.

(*e*) *Unauthorised material alteration :* If the terms of a contract is materially altered by a party to the contract without the consent of the other parties, the contract is discharged and cannot be enforced any more.

Q.3 What is meant by supervening impossibility? When is a contract said to be discharged by virtue of supervening impossibility?
[July 2021, 5 Marks]

Ans. A contract, which at the time was entered into, was capable of being performed may subsequently become impossible to perform or unlawful. In such cases the contract becomes void. This is known as the doctrine of Supervening Impossibility. It is also known as the Doctrine of Frustration. Frustration occurs where it is established that due to subsequent change in circumstances, the contract has become *impossible to perform* or it has been *deprived of its commercial purpose.*

Supervening impossibility may occur in many ways, some of which are explained below:

(*i*) ***Destruction of the subject matter of contract:***
On the destruction of the subject matter, a contract is discharged and no party is liable to perform.

(*ii*) ***Change of Law:***
The performance of a contract may become unlawful by a subsequent change of law. In such cases, the original contract becomes void.

(*iii*) ***Non-concurrence of circumstances :***
When a contract is entered into on the basis of the continued existence of a certain state of things, the contract is discharged if the state of things change:

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

(*iv*) ***Death or incapacity for personal services :***
Where the personal qualification of a party is the basis of the contract the contract is discharged in cases of death or personal incapacity.

(*v*) ***Failure of ultimate purpose of contracts :***
Where the circumstances surrounding a contract change. Such that they result in a failure of defeat of the ultimate purpose of contract, for which it had been performed, then the contract stands discharged.

(*vi*) ***Outbreak of war :***
A contract entered into during war with an alien enemy is *void ab initio*. A contract entered into before the war commenced, between citizens of countries subsequently at war, generally becomes void.

Q.4 State the grounds upon which a contract may be discharged under the provision of the Indian Contract Act, 1872. [MTP May 2018, MTP May 2019, MTP July 2021]

Ans. Grounds for discharge of contract:—

A contract can be discharged by any of the following ways:–

1. ***Discharge by Performance :*** A contract may be discharged by Actual Performance or Attempted Performance. Actual Performance is said to have taken place when each of the contracting parties has done what he had agreed to do under the contract. When the promisor offers to give his performance under the contract, but the promisee refuses to accept the same, then it amounts to discharge by attempted performance.
2. ***Discharge by Mutual Agreement :*** The contracting parties may mutually agree to discharge the existing contract by any of the following ways:—
   (*i*) Rescission
   (*ii*) Alteration
   (*iii*) Novation
   (*iv*) Remission
   (*v*) Waiver
   (*vi*) Merger
3. ***Discharge by Operation of Law :*** A contract shall stand discharged by operation of law in the event of any of the following :—
   (*i*) Death or incapacity of promisor in case of personal services.
   (*ii*) Insolvency.
   (*iii*) Rights and Liabilities vest with the same person [Merger of Rights & Liabilities].
   (*iv*) Unauthorised Material Alteration.
   (*v*) Loss of sole evidence of contract.
4. ***Discharge by Lapse of Time :*** Where a contract is required to be performed within a specific period of time prescribed, the failure of the party to perform the same results in discharge of contract on account lapse of time.
5. ***Discharge by Supervening Impossibility :*** A contract which was valid at the time of formation may subsequently become impossible or unlawful to perform and shall thereby stand discharged. A contract becomes void due to supervening impossibility in any of the following instances :—
   (*i*) Destruction of subject matter.
   (*ii*) Change of Law.
   (*iii*) Non-concurrence of circumstances.
   (*iv*) Death or incapacity for personal services.

   (*v*) Outbreak of war.
   (*vi*) Failure of the ultimate purpose of the contract.
6. ***Discharge by Breach :*** When a contracting party refuses or fails to give performance or disables himself from giving performance or makes the performance of the contract impossible by his conduct, then the contract is said to be discharged by breach. A contract can be discharged by Actual Breach or by Anticipatory Breach. When the party commits default on the due date of performance, it amounts to Actual breach, whereas when the default is committed before the due date of performance, it amounts to Anticipatory Breach.

SHORT QUESTIONS:

Q.5 What are the exceptional cases when a contract is not discharged by supervening impossibility?

Ans. The doctrine of frustration or supervening impossibility does not apply in the following cases *i.e.* in these cases the contract is not discharged:—

1. ***Difficulty of performance:***
   Sometimes the performance of a contract becomes difficult on account of some unanticipated events such as disruption of transport services etc. Such difficulty makes the performance hard but does not result in the discharge of contract.
2. ***Commercial Impossibility:***
   Commercial Hardships make the performance of the contract unprofitable or economically unviable. Thus commercial hardship on account of increase in price of inputs (raw materials) or overhead costs shall not result in discharge of contract.
3. ***Strikes, lock-outs, civil disturbances and riots:***
   These events do not terminate contracts unless there is a clause in the contract providing that in such cases the contract is not be performed or that the time of performance is to be extended.
4. ***Failure of one of the objects:***
   When there are several purposes for which a contract is entered into, failure of one of the objects does not terminate the contract.
5. ***Impossibility due to failure of third party:***
   Where the performance of a contract by a party depends on the performance of a third party, the contract shall not be discharged by the failure or default of the third party.
6. ***Self-induced impossibility:***
   A contract is not discharged on account of self-induced impossibility by either of the party.

Q.6 What is meant by anticipatory breach of contract? State the rights of the promisee in case of such breach? [MTP Nov. 2018]

OR

"An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived." Discuss stating also the effect of anticipatory breach on contracts. [MTP May 2019, MTP July 2021]

Ans. Anticipatory breach of contract occurs :

- when a party before the time for performance is due announces that he is not going to perform the contract, or
- when a party by his own act disables himself from performing the contract.

When anticipatory breach occurs, the aggrieved party can take the following steps:

(A) May treat the contract as discharged—

(*i*) He can treat the contract as discharged, so that he is no longer bound by any obligations under the contract; &

(*ii*) He can immediately adopt the legal remedies available to him for breach of contract, *viz.*, file a suit for damages or specific performance or injunction.

(B) May not treat the contract as discharged—

Anticipatory breach, by itself, does not discharge the contract. The contract is discharged, when the aggrieved party chooses to treat it as discharged. The aggrieved party may decide not to rescind the contract but to treat the contract as alive and operative and wait for the time of performance. In such a case the consequences are as follows:

(*i*) The contract will be operative for the benefit of both the parties. The contract will continue to exist and may even be performed by the other party.

(*ii*) If the contract is not rescinded and subsequently an event happens which discharges the contract legally (*e.g.* a supervening impossibility) the aggrieved party loses his right to sue for damages.

Q.7 What are the instances when discharge of a contract by operation of law takes place?

Ans. A contract terminates by operation of law in case of death insolvency, and merger:

A. *Death*

In contracts involving personal skill or ability, death terminates the contract. In other cases, the rights and liabilities pass on to the legal representatives of the dead man.

B. *Insolvency*

When a person is adjudged insolvent, he is discharged from all liabilities incurred prior to his adjudication. Upon insolvency, the rights and liabilities of the insolvent are, with certain exceptions, transferred to an officer of the court, known as the Official Assignee/Receiver.

C. *Merger of Rights & Liabilities*

When the rights & liabilities under a contract vest with the same person then no further performance under the contract is required since it stands discharged.

D. *Lapse of time*

Contracts may be terminated by lapse of time. In civil suits the obligations and liabilities in contracts are barred by limitation. The provisions of law are stated in the Limitation Act.

E. *Unauthorised material alteration*

If the terms of a contract is materially altered by a party to the contract without the consent of the other parties, the contract is discharged and cannot be enforced any more.

F. *Loss of Evidence of contract*

In case of loss sole evidence as to existence of contract the contract stands discharged due to operation of law.

Q.8 What is meant by Suit for Specific Performance? What are the instances in which specific performance shall not be granted?

Ans. There are cases where the damage or loss suffered cannot be measured in terms of money. The court, may, in such cases where the ordinary remedy by a claim for damages is not adequate compensation, direct the defaulting party to perform the contract specifically. (Under Section12 of the Specific Relief Act, 1963). *Specific performance is an order of the Court directing the defendant to fulfil his obligations under the contract*. Specific performance is a discretionary remedy and is only available where damages are not an adequate remedy.

Some of the cases where specific performance is ordered by the court are:

(*a*) Where the act itself is such that monetary relief for its non-performance is not adequate.

(*b*) Where no standard is available to ascertain the value of the actual damage caused by non-performance.

(*c*) Where it is not probable that the compensation money will be available.

Examples: The specific performance is granted in contracts connected with land, buildings, rare articles and unique goods having special value etc. because injured party will not be able to get an exact substitute in the market.

Specific performance is not allowed in the following cases:

- Where monetary compensation is an adequate relief.

- Where the contract is of personal nature, *e.g.* a contract to marry or a contract to paint a picture, or
- Where it is not possible for the court to supervise the performance of the contract *e.g.* a building contract.
- Where one of the parties to the contract is not competent to contract like a minor.

Q.9 What is meant by Suit for Quantum Meruit? What are the instances in which quantum meruit is granted? [RTP May 2020]

Ans. Quantum Meruit means *'as much as merits'* or *'as much as deserves or earns'*. In legal sense, it means 'payment in proportion to the work done'. In other words, quantum meruit means that a person can recover compensation in proportion to the work done or service rendered by him. It is a quasi-contractual remedy.

The claim on quantum meruit arises in the following cases:—

1. ***Where there is breach of the contract:***
   Where a party performs a part of the contract, but the other party breaks it in between, then the injured party can claim compensation for the work done or the service rendered.
2. ***When an agreement is discovered to be void:***
   Where some work has been done and accepted under a contract which is subsequently discovered to be void, then the person who has performed the part of the contract is entitled to recover the amount for the work done. (Sec. 65)
3. ***When something has been done non-gratuitously:***
   When something has been done non-gratuitously: *i.e.*, has been done with the intention of getting payment. (Sec. 70)
4. ***Where work has been done by the person guilty of breaking the contract:***
   In such a case defaulting party would be liable for consequences of breach, but for the work done by him he may be entitled to get payment in the following circumstances:
   (*a*) *Where the work to be done was divisible:* A contract is divisible and a party performs a part of it and refuses to perform the remaining part, the defaulting party can claim reasonable compensation for the part performed, on the basis of quantum meruit. Thus two conditions should exist :
      (*a*) If the contract is divisible, and
      (*b*) If the party not at fault has enjoyed the benefit of part performance.

   On the other hand, if the contract is not divisible, *i.e.*, it requires complete performance as a condition for payment, the party in default cannot claim payments for work done, on the basis of quantum meruit.

5. ***When the indivisible contract is performed substantially/fully:***
   If a lump sum is to be paid for the completion of the entire work and the work has been completed in full, though badly, the person who has performed the contract can claim the lump sum; but the other party can also claim a deduction for bad work.

Q.10 What are the types of damages that can be awarded as a remedy for breach under section 73 of the Indian Contract Act, 1872? [RTP Nov. 2019]

Ans. According to Section 73 of the Indian Contract Act, 1872, damages are the monetary compensation allowed by a Court of Law to the aggrieved party for the loss/injury sustained by him on account of breach of contract by the other party. Damages are compensatory in nature and are granted in accordance with the following rules :—

1. Ordinary Damages are recoverable: The damages which are the natural and probable consequence of breach *i.e.* which naturally arise in the usual course of things from such breach can be recovered by the aggrieved party from the defaulting party.
2. Special Damages are recoverable only if the parties knew about them: These are those damages which are recoverable, in respect of losses that arise on account of existence of some special or unusual circumstances provided the existence of the said circumstances was brought to the knowledge of the defaulting party at the time of formation of contract. Thus these damages cannot be claimed as a matter of right by the plaintiff. They are not recoverable unless the special circumstances were brought to the knowledge of the defendant so that the possibility of the special loss was in the contemplation of the parties.
3. Remote or indirect damages are not recoverable since these damages are not reasonably foreseeable and are not sustained by reason of breach.
4. Nominal Damages for no loss sustained : Where the injured party has not in fact suffered any loss by reason of the breach of a contract, the damages recoverable by him are nominal. These damages are granted by the court to merely acknowledge that the plaintiff has proved his case & won.
5. Vindictive or exemplary damages allowed only in specific instances : Usually damages are awarded to compensate the aggrieved party and not with a view to punish. However in case of (*a*) Breach of a promise to marry & (*b*) Dishonour of a cheque by a banker wrongfully, the court may award exemplary damages.
6. The aggrieved party can also be granted damages for inconvenience, discomfort, mental agony etc. Further cost of suit may also be allowed as damages by the Court.

Q.11 Differentiate between liquidated damages & penalty. **[RTP July 2021]**

OR

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

Ans.

	Liquidated Damages	*Penalty*
1.	Liquidated damages are the fair & genuine pre-estimate of the probable damages that are likely to arise as a consequence of breach.	Penalty is not a genuine pre-estimate of damages. Instead it is an amount which is highly disproportionate to the actual loss that is likely to arise in the event of breach.
2.	It is estimated and stipulated in the contract, with a view to ascertain the damages to avoid the uncertainty of amount and to avoid expenses of proving damages in the court.	It is fixed and stipulated in the contract with a view to discourage a party from committing a breach of contract and secure due performance of contract.
3.	Liquidated damages are awarded by way of compensation.	Penalty is imposed by way of a punishment on the defaulting party.

Q.12 Differentiate between Novation and Alteration as per the Indian Contract Act, 1872. **[Dec. 2022, 5 Marks]**

Ans. :

Basis of Difference	Novation	Alteration
Meaning	When the parties give their consent to substitute the old contract with the new one, it amounts to discharge of the old contract by way of Novation.	When the parties to contract mutually agree to modify or revise the terms and conditions of the contract, it amounts to discharge the contract by way of Alteration.
Parties	Parties may be the same or different.	Parties always remain the same.
Terms and Conditions	There may or may not be any changes in the terms of contract.	Changes in the terms of contract are always present.
Substitution of new contract	New contract is created in place of the old contract.	It does not involve substitution of old contract.

CASE STUDIES :

Q.13 Mr. Ramaswamy of Chennai placed an order with Mr. Shah of Ahmedabad for supply of *urad dal* on 10-11-2006 at a contracted price of ₹ 40 per kg. The order was for the supply of 10 tonnes within a months' time *viz.*, before 09-12-2006. On 04-12-2006 Mr. Shah wrote a letter to Mr. Ramaswamy stating that the price of *urad dal* was sky rocketing to ₹ 50 Per. Kg. and he would not be able to supply as per original contract. The price of *urad dal* rose to ₹ 53 on 09-12-2006. Advise Mr. Ramaswamy citing the legal position.

Ans. Hint: Increase in price of urad dal does not amount to supervening impossibility (Sec. 56). Mr. Shah committed breach of contract. **If Ramaswamy waits till 09.12.2006** - Mr. Shah shall be liable to pay damages to Mr. Ramaswamy. The amount of damages shall be 10 tons @ ₹ 13 per kg (*i.e.*, difference between the contract price and price as on 09.12.2006), *i.e.*, ₹ 1,30,000. However, if some supervening impossibility arises before 09.12.2006 (*e.g.*, imposition of ban on trading in urad dal by the Government), the contract shall become void, and consequently, Mr. Shah shall not be liable to pay any damages. **If Ramaswamy repudiates the contract on 04.12.2006** Mr. Shah shall be liable to pay damages to Mr. Ramaswamy. The amount of damages shall be 10 tons @ ₹ 10 per kg (*i.e.*, difference between the contract price and price as on 04.12.2006), *i.e.*, ₹ 1,00,000.

Q.14 A contracted with B to supply him (B) 500 tons of iron-steel @ ₹ 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 @ ₹ 4,800 per ton, and at the same time told C that he did so far 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? Explain with reference to the provisions of the Indian Contract Act, 1872.

Ans. Hint: A can recover ₹ 1 lakh as special damages from C as it was within C's knowledge that breach of contract by him(C) would result in non-performance of contract between A and B resulting in loss of ₹ 1 lakh (*i.e.*, the difference between ₹ 5,000 per ton and ₹ 4,800 per ton for 500 tons) to A **(Sec. 73).**

Q.15 M Ltd. contracts with Shanti Traders to make and deliver certain machinery to them by 30-6-2004 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. 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. [May 2018, 6 Marks, MTP Nov. 2019]

Ans. Hint: Labour strike does not amount to supervening impossibility (Sec. 56). Hence, non-delivery of machinery by M Ltd. results in a breach of contract by M Ltd. M Ltd. is liable to compensate the loss incurred by Shanti Traders, *i.e.* to pay ordinary damages of ₹ 1.25 lakhs (*i.e.*, the difference between ₹ 12.75 lakhs and ₹ 11.50 lakhs) (Sec. 73). M Ltd. is not liable to pay any compensation for loss caused to Shanti Traders due to non-performance of contract entered into with Zenith Traders; since special circumstances, *viz.* contract between Shanti Traders and Zenith Traders were not brought to the knowledge of M Ltd.

Q.16 S, a singer, contracts with M, the manager of a theatre, to sing at the letter's theatre for two evenings in every week during the next two months. M engages to pay her ₹ 300 for each evening's performance. On the seventh evening, S wilfully absents herself from theatre. M, in consequence, wants to rescind the contract and claim compensation for the loss suffered by him through the non-fulfilment of the contract by S. Advise.

Ans. Hint: M shall be entitled to rescind contract and claim compensation from S because of breach of contract on the part of S. (*Sec. 75 of the Indian Contract Act*).

Q.17 X borrows ₹ 1,000 from Y and agrees to repay the amount with interest at 12% at the end of six months. The contract further provides that in case of default in repayment, the interest will be payable at the rate of 70% from the date of default. What is the nature of this stipulation, and what is the right of Y.

Ans. Hint: This stipulation is the nature of penalty. Y is entitled only to recover such compensation as the Court considers reasonable (but not exceeding 70% of interest).

Q.18 A bank wrongfully dishonoured a cheque of ₹ 1,000 belonging to Dhanna Seth (a Millionaire). He says that his credit has come down to the level of Mofat Lal (a person having only a few thousand rupees) as his cheque of *ek hazar, i.e.*, one thousand has been dishonoured wrongfully by the bank. Advice Dhanna Seth.

Ans. Hint: Dhanna Seth can claim exemplary damages from the bank for wrongful dishonour of cheque. The smaller the amount of the cheque dishonoured the greater shall be the value of damages in this case.

Q.19 A enters into a contract with B for supplying 800 tonnes of iron ore within 4 months. A fails to make the delivery in time owing to difficulty in transport. But he admitted the availability of iron ore in the market at a higher price. Can A take the plea of impossibility of performance? Give reasons.

Ans. Hint: No. Difficulty of performance should be distinguished from impossibility of performance. Section 56 of the Indian Contract Act only declares those contracts void which become impossible of execution. Thus A is not discharged on grounds of impossibility of performance.

Q.20 'X' entered into a contract with 'Y' to supply him 1,000 water bottles @ ₹ 5.00 per water bottle, to be delivered at a specified time. Thereafter, 'X' contracts with 'Z' for the purchase of 1,000 water bottles @ ₹ 4.50 per water bottle, and at the same time told 'Z' that he did so for the purpose of performing his contract entered into with 'Y'. 'Z' failed to perform his contract in due course and 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.

[MTP May 2018, MTP Nov. 2018, RTP Nov. 2020]

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

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

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 × 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 × 0.75 paise).

Q.21 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 contact 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 contacted 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. [MTP Nov. 2018]

Ans. Hint : Breach of contract, the aggrieved party has a right to rescind the contract & claim restitution & damages if any. Further where any security deposit has been made under the contract, the same shall stand forfeited in case of breach of contract.

Thus in the given case Mr. JHUTH is responsible for breach of contract. Mr. SUCH, the aggrieved party can claim damages if any sustained by him. However Mr. JHUTH is not entitled to refund of ₹ 20,000/- since the same was given as a security deposit which shall now stand forfeited on account of his failure to fulfil the contract.

However, if the car had been destroyed by an accident within 3 months agreement period, then the contract would have been discharged by supervening impossibility due to destruction of subject matter and in such a case JHUTH would have been entitled to refund of security amount, (since the security amount can be forfeited only when contract is not fulfilled on account of breach by a party.)

Q.22 Mr. X and Mr. Y entered into a contract on 1st August, 2018, by which Mr. X had to supply 50 tons of sugar to Mr. Y at a certain price strictly within a period of 10 days of the contract. Mr. Y also paid an amount of ₹ 50,000 towards advance as per the terms of the above contract. The mode of transportation available between their places is roadway only. Severe flood came on 2nd August, 2013 and the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. X offered to supply sugar on 20th August, 2018 for which Mr. Y did not agree. On 1st September, 2018, Mr. X claimed compensation of ₹ 10,000 from Mr. Y for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Y claimed for refund of ₹ 50,000, which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Y's contention. [Nov. 2018, 4 Marks, MTP July 2021]

Ans. When the performance of a contract is required within a specified period of time and the same becomes impossible by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, the contract becomes void & the contracting parties stand discharged from their obligation to perform the contract.

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

In the given case the contract between Mr. X and Mr. Y becomes void subsequently on 2nd Aug, 2018, when it becomes impossible to perform it within the stipulated time period due to floods. As a consequence both the parties are discharged.

Thus, applying the above stated provisions it can be concluded that the contract is discharged due to subsequent impossibility and Mr. X cannot claim damages from Mr. Y. However, Mr. Y is entitled to claim a refund of ₹ 50,000 which was paid as an advance. Thus only restitution of benefits to Mr. Y shall be granted.

Q.23 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 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 Indian Contract Act, 1872?

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

(*ii*) Could Mr. Rich ask Mr. K for refund of money paid in advance to his father? [May 2019, 6 Marks]

Ans. According to the provisions of section 56 of the Indian Contract Act, 1872 supervening impossibility results in the discharge of a contract. When the act required to be performed under the contract, becomes impossible subsequently without any fault of the contracting party, then the contract becomes void & the

parties stand discharged from their obligations. Contracts of a personal nature, which require exercise of personal skill or ability of a party, stand discharged on death or incapacity of the person. Similarly non-concurrence of a particular state of things which was naturally contemplated for performance, shall result in discharge of contract.

A contract discharged on the grounds of supervening impossibility becomes void & ceases to be enforceable. Further restitution shall be granted by the contracting party who has received any benefits & he shall be bound to restore the same back to the other party. Compensation shall not be granted in such a case.

Thus applying the above stated provisions to the given case it can be concluded that—

(*i*) Since the contract is of a personal nature, requiring exercise of skill of Mr. C, it shall stand discharged on grounds of supervening impossibility on account of Mr. C's incapacity. Further Mr. Rich cannot ask Mr. K to complete the artistic work in lieu of his father Mr. C since it is a contract of personal nature & hence cannot be performed by his legal representative.

(*ii*) Mr. Rich can claim the refund of money paid in advance, since the remedy of restitution is granted in the event contract becoming void & discharged on account of supervening impossibility.

Q.24 On 20th September X agreed to sell to Y of 10 tons of a particular chemical to be manufactured in his factory @ ₹ 8,000 per ton to be delivered on 20th October. Calculate the amount of damages which could be recovered by Y from X in each of alternative cases:

Case (*a*): The chemical could not be manufactured because of strike by the workers and X failed to supply the said chemical to Y on 20th October when the price of that chemical was ₹ 12,000 per ton.

Case (*b*): On 1st October, X informed Y that he was not going to supply the goods since the price of that chemical rose to ₹ 10,000 per ton on 1st October. The price of that chemical, further rose to ₹ 12,000 per ton on 20th October. Y decided to rescind the contract on 1st October.

Case (*c*): On 1st October, X informed Y that he was not going to supply the goods since the price of that chemical rose to ₹ 10,000 per ton on 1st October. The price of that chemical, further rose to ₹ 12,000 per ton on 20th October. Y decided not to rescind the contract on 1st October and to wait till 20th October. On 19th October, the entire chemical in the factory was destroyed by fire without the fault of either party.

Ans. According to the provisions of Section 56 of The Indian Contract Act, 1872, a contact stands discharged on account of supervening impossibility if after the formation of the contract but before its performance some event takes place which renders the performance of the contract impossible. In such a case both the parties stand discharged from their respective obligations and the contract becomes void subsequently.

However in certain instances, such as those following, the contract is not discharged and is treated as subsisting and if the parties fail to perform the contract it shall amount to breach:

Case (a): Usually failure to perform on account of strikes by workers, does not amount to discharge by supervening impossibility, unless a contract to the contrary is expressly made.

Thus is in the given case when X fails to supply chemical on account of strike by workers, the contract is not discharged on account of supervening impossibility. The failure to supply the chemical amounts to breach and therefore X shall be bound to pay damages of ₹ 40,000 (12,000-8,000= 4,000 × 10) to Y.

Case (b): Further, commercial hardships also do not result in discharge of contract on the grounds of supervening impossibility. Failure to perform the contract on the grounds that the contract has become less profitable or unprofitable due to changes in the prices, shall not amount to discharge by supervening impossibility. Instead failure to perform in such a case amounts to breach of contract and the defaulting party shall be bound to compensate the aggrieved party for the loss sustained by him.

Thus in the given case when X informs Y about his failure to perform on the grounds of increase in price of chemical it amounts to breach and X shall be bound to pay ₹ 20,000 (10,000-8,000=2,000 × 10) as damages to Y.

Case (c): When a contracting party, before the due date of performance, refuses to perform the contract, it amounts to anticipatory breach of contract. In such a case the contract is voidable at the option of the aggrieved party. The aggrieved party has the option to rescind the contract immediately without waiting for the due date of performance and sue for damages. Conversely the aggrieved party can choose to continue with the contract and wait for the performance up to the due date and inform of his intention of doing so the defaulting party. In such a case the contract shall be treated as subsisting between them. Now if any event takes place during the waiting time period which renders the performance impossible then the contract stands discharged on the grounds of supervening impossibility.

Thus in the given case when Y decides to wait for the performance up to 20th October and the entire chemical in the factory is destroyed on 19th October, then the contract stands discharged on the grounds of supervening impossibility and Y now loses his right to claim any damages from X.

Q.25 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 ? [Nov. 2020, 2 Marks]

Ans. According to the provisions of the Indian Contract Act, 1872, in the event of breach of a contract, where the amount of damages sustained by the aggrieved

party cannot be determined or where the amount of damages are not adequate, then the court may award specific performance as a remedy for breach. An order for specific performance implies that the defaulting party shall have to perform the contract in accordance with the stipulated terms. One of the instances where Specific performance of a contract is awarded as remedy, at the discretion of the court, is when the goods contracted for are unique or rare in nature.

In the given case A refused to supply a unique item to B which is not available in alternatively in the market.

Applying the above provisions it can be concluded that since B cannot be adequately compensated for the breach, thus the court may as a remedy for breach to B, order A for specific performance in accordance with the terms of the contract.

Q.26 What will be rights with the promisor in following cases ? Explain with reasons :

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

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

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

(d) Abhishek entered into contract of import of toys from China. But due to disturbance in the relation of both the countries, the imports from China were banned. [RTP July, 2021]

Ans. Hint: (*a*) The contract is *void ab initio* an account of initial impossibility of performance. No rights of either X or Y arise in this case.

(*b*) Generally, difficulty in performance due to civil disturbances riots etc., does not result in discharge of contract. However, if time is of essence, failure to perform the contract within the time specified shall discharge the contract. Time of essence or not is determined by the terms of contract, circumstances of the case, nature of goods etc. thus in the given case, if time is of essence then failure to perform within the specified time shall discharge the contract between A & B.

(*c*) A contract becomes void due to change in circumstances, which render performance subsequently impossible. In the given case, the contract is of a personal nature and shall stand discharged since performance has become physically impossible.

(*d*) Change in law after formation of contract which renders performance of the contract impossible, shall result in discharge of contract. In the given case the contract is discharge by supervening impossibility arising due to ban imposed on import of goods. It has become legally impossible to perform the contract.

Q.27 J contracts to take in cargo for K at a foreign port. J's government afterwards declares war against the country in which the port is situated and therefore the contract could not be fulfilled. K wants to file a suit against J. Examine the validity of the Contract as per Indian Contract Act, 1872. [Dec. 2021, 3 Marks]

Ans. The contract has become void. According to the provisions of the Indian Contract Act, 1872, outbreak of war between the countries of contracting parties after the formation of contract, results in discharge of contract by supervening impossibility and the contract is void subsequently.

In the given case war breaks out after the formation of contract between, J & K as a consequence of which K fails to give performance.

Thus the contract becomes void & stands discharged on account of supervening impossibility due to outbreak of war & therefore K cannot sue J.

Q.28 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? [June 2022, 4 Marks]

Ans. According to the provisions of the Indian Contract Act, 1872,when a party to contract has refused to perform or disabled himself from performing his promise in entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance. Further if any party has performed a part of the contract and then refuses or fails to perform the remaining part of the contract, then it amounts to actual breach of contract during the course of performance of contract. In such a case the aggrieved party can sue for rescission of contract as well as for damages sustained by him on account of breach. However, if the aggrieved party chooses to continue with the performance of contract, then intimation to that effect must be sent to the other party of his intention to do so. Once the aggrieved party chooses to continue with the performance of the contract, then he shall lose his right to subsequently rescind the contract.

In the given case, Sheena has contracted with Shital Vidya Mandir to give 60 dance performances, a dance performance every weekend, for which she will

be paid ₹ 10,000 per performance. However, after a month she abstains from giving performance due to personal reasons:

(*i*) Applying the above stated provisions to the given case it is evident that, Sheena has committed an actual breach of contract by failure to perform. Shital Vidya Mandir, the aggrieved party under the contract, has a right to rescind the contract.

(*ii*) Since the contract, in the given case, becomes voidable subsequently due to actual breach in the course of performance, the management of Shital Vidya Mandir has an option to rescind or to continue with the contract. If the aggrieved party *i.e.*, Shital Vidya Mandir, wishes to continue with the contract, it must inform the other party *i.e.*, Sheena of its intention to do so. However, once the aggrieved party exercises its option to continue the performance of such a contract, it cannot subsequently rescind the contract. Thus, in this case the management of Shital Vidya Mandir, cannot rescind the contract after 1 month of continuing the contract, with Sheena.

(*iii*) In the event of breach of contract, the aggrieved party, is entitled to file a suit for damages for the loss sustained by him. Thus, Shital Vidya Mandir is entitled to claim damages from Sheena.

11 CHAPTER INDEMNITY AND GUARANTEE

LONG ANSWER QUESTIONS:

Q.1 What is meant by Contract of Indemnity? What are the rights of the indemnity holder & indemnifier?

Ans. A contract, by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person, is called a contract of indemnity [Sec.124].

A contract of indemnity is a type of contingent contract where the performance of the indemnifier is dependent on the happening of loss to the indemnity-holder.

It covers only the loss caused due to human acts only. It does not cover the contracts to indemnify the loss caused by non-human agency.

Rights of Indemnity-holder: According to the provisions of section 125 of the Act, the indemnity-holder may recover from the indemnifier (promisor), the following amounts, provided that he acts within the scope of his authority:

(*i*) He is entitled to recover all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applied.

(*ii*) He is entitled to recover from the indemnifier all costs which he had paid in bringing or defending any suit in respect of contract of indemnity.

(*iii*) He is entitled to recover from the indemnifier, all the amounts which he had paid under the terms of the compromise of such suit.

To exercise these rights, it is essential that the indemnity-holder has not contravened the orders of the indemnifier and he must have acted in the same way as a prudent man would have acted under similar circumstances in his own case.

(*iv*) Further, if the indemnity holder has incurred an absolute liability, he becomes entitled to call upon the indemnifier to indemnify.

Rights of Indemnifier:

(*i*) **Rights of subrogation:** Once the indemnifier makes the payment of indemnity, he is subrogated to all the rights of the indemnity holder. Thus, if the promise of indemnity relates to the loss caused by a third party,

the indemnifier shall be entitled to file a suit to recover damages from defaulting party, after payment of indemnity to the indemnity-holder.

(*ii*) **Rights to refuse indemnity:** If the event resulting in loss falls outside the scope of contract of indemnity, the indemnifier has the right to refuse the indemnity.

Q.2 Differentiate between Contract of Indemnity and Guarantee

Ans. Differences-

Basis of Distinction	Contract of Indemnity	Contract of Guarantee
Meaning	A contract, by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person, is called a contract of indemnity.	A contract of guarantee is a contract whereby one person undertakes to perform the promise or discharge the liability of a third person in case of his default.
Number of parties	Only two parties are present – the indemnifier, who makes the promise to indemnify and the indemnity-holder, who receives the promise for indemnification.	It is a tripartite contract consisting of three parties- the principal debtor, the creditor and the surety.
Nature of Liability of Parties	The liability of indemnifier is primary and absolute.	The liability of the principal debtor is of primary nature, whereas the liability of the surety is secondary and conditional.
Time of Liability	The liability of the indemnifier arises only on the happening of the contingency, which falls within the scope of the contract of indemnity.	The liability of the surety arises only in the event of non-performance of the principal debtor's promise or non-payment of the debt to the creditor.
Number of contracts	There is only a single contract of indemnity present.	The arrangement between the principal debtor, creditor and the surety, results in the creation of three contracts - the primary one between the debtor & the creditor, the secondary contract between the surety and the creditor and the implied contract between the surety and the principal debtor.
Time to Act	The indemnifier need not act at the request of the indemnity- holder.	The surety, acts at the request of the principal debtor.

Basis of Distinction	Contract of Indemnity	Contract of Guarantee
Right to sue the 3rd party	Indemnifier cannot sue in his own name, the third defaulting party who has caused loss to the indemnity holder. Such a right will accrue only in the event of an assignment being executed by the indemnity-holder in favor of the indemnifier.	The surety can sue the principal debtor in his own name, on account of an implied contract existing between them.
Object/Purpose of contract	The contract of indemnity is executed by the indemnifier with the object of compensating/reimbursing the indemnity-holder for the loss sustained by him.	The contract of guarantee is executed with the object of providing the security to the creditor for the repayment of debt or performance of promise made by the principal debtor.
Competence to contract	All the parties in a contract of indemnity must be competent to contract.	In the case of contract of guarantee, the contract shall be regarded as valid even if the principal debtor is a minor, provided no contract to the contrary is made.

Q.3 What are the rights of the surety as against-
(1) The principal debtor, (2) Co-sureties, and (3) Creditor

Ans. Rights against the Principal Debtor:

1. **Right of subrogation (Sec. 140).** In case the surety has paid the guaranteed debt, on its becoming due or has performed the guaranteed duty, on the default of the principal debtor, he is subrogated to (*i.e.* invested with)all the rights which the creditor had against the debtor. Thus, if the surety pays the guaranteed debt, then he will be subrogated to the securities, if any held by the creditor, against the principal debtor.
2. **Right to be indemnified (Sec.141).** The surety has the right to recover from the principal debtor all the amounts which he has rightfully paid under the contract of guarantee to the creditor. The surety can, in fact, recover from the debtor not only the actual amount he has paid to the creditor, but also interest thereon. The surety can neither claim more than what he has actually paid to the creditor nor can he claim the amount paid by him wrongfully or due to his own negligence. Further he can claim reimbursement only if actual payment has been made by him and not where he has merely executed a promissory note.

Rights against Co-sureties

1. **Right of contribution:** Where a debt has been guaranteed by more than one person, these guarantors are called as co-sureties. Section 146 pro-

vides for a right of contribution between them. When a surety has paid more than his share of the debt or a decree has been passed against him for more than his share, he has a right of contribution from the other sureties who are equally bound to pay with him. Unless otherwise agreed, each of the co-sureties is liable to contribute equally for the debt/part of the debt unpaid by the debtor.

Further, if one of the sureties becomes insolvent, the solvent co-sureties shall have to contribute the whole amount equally.

According to the provisions of section 147, where the co-sureties have guaranteed different sums, they are bound to contribute equally, subject to the limit fixed by their guarantee, and not proportionately to the liability undertaken.

Rights against the Creditor :

1. **Right to claim securities:** On payment of the debt to the creditor, the surety becomes entitled to claim the securities which the creditor has against the principal debtor. Further, in the event of loss of securities by the creditor, the surety shall stand discharged to the extent of the value of securities lost.
2. **Right of set-off:** The surety is entitled to claim such set-off or a counter claim/deduction from the amount of debt, which the principal debtor might possess against the creditor in respect of the same transaction. Surety cannot claim set off in respect of personal rights against the creditor.

Q.4 In what cases is a surety discharged from his liability?

Ans. The liability of a surety, comes to an end under any one of the following circumstances:

1. **By notice of revocation (Sec. 130):** The Indian Contract Act, 1872 provides that a continuing guarantee may be revoked in respect of future transactions, at any time by the surety, by serving a notice to the creditor. However, the surety shall continue to be liable for the past transactions.
2. **By death of surety (Sec.131):** The death of the surety operates, in the absence of any contract, as a revocation of a continuing guarantee, with regard to future transactions. The estate will be liable for past transactions provided contract to the contrary is not made.
3. **By variance in terms of contract (Sec.133):** If any variance is made in the terms of the contract between the principal debtor and the creditor without the surety's consent, it results in discharge of the surety, in respect of transactions subsequent to the variance.
4. **By release or discharge of principal debtor (Sec.134).** 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.

Notes:

- *Death of Principal debtor shall not discharge a surety. (Discharge of principal debtor by operation of law will not discharge a surety)*
- *Insolvency of the Principal debtor shall not discharge the surety.*
- *Omission/Failure of the creditor to sue the principal debtor within the period of limitation does not discharge the surety.*
- *Release of one of the co-sureties does not discharge the others from their liability under guarantee.*

5. **By compounding with, or giving time to, or agreeing not to sue, principal debtor (Sections 135, 136, 137 & 138).**
   - A contract between the creditor and the debtor by which the creditor makes a composition with the debtor, without the assent of the surety, will result in discharge of the surety, since composition inevitably results in the variation of the original contract.
   - A contract between the creditor and the debtor, whereby the creditor promises to give time to the debtor for the payment of the guaranteed debt, without the consent of the surety, shall result in the discharge of the surety, since it is one of the duties of the creditor towards the surety not to allow more time for payment to the debtor. However, when the contract to give time to the principal debtor is made by the creditor with a third person and not the principal debtor, then the surety is not discharged.
   - A contract between the creditor and debtor, whereby the creditor promises not to sue the debtor, without the consent of the surety, shall result in the discharge of the surety, since the surety in entitled to require the creditor to call upon the debtor to pay off the debt when it is due.

     However, a mere forbearance on the part of the creditor to sue the debtor shall not result in the discharge of the surety.
6. **By Creditor's act or omission impairing surety's eventual remedy (Sec.139).** If the creditor does any act which is inconsistent with the right of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy to surety himself against the principal debtor is thereby impaired, the surety is discharged.
7. **Loss of security (Sec.141).** If the creditor loses or parts with any security given to him by the principal debtor at the time the contract of guarantee was made, the surety is discharged to the extent of the value of the security, unless the surety consented to the release of such security.

SHORT ANSWER QUESTIONS:

Q.5 A contract of indemnity is a contingent contract? Comment.

Ans. ***A contract of indemnity is a contingent contract:*** The statement is correct in the sense that a contract of indemnity is one by which one party

promises to save the other from the loss caused to him by the conduct of the promisor himself or by the conduct of any other person. 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. From the above descriptions, it can be seen that both contracts are conditional contracts. Their performance depends upon some contingency which is uncertain.

Q.6 What is contract of Guarantee? What are different types of guarantees?

Ans. A *contract of guarantee* is defined under sec.126 as a contract to perform the promise or discharge the liability of a third person in case of his default. The person who gives the guarantee is called the 'Surety'; the person for whom the guarantee is given is called the 'Principal Debtor' and the person to whom the guarantee is given is called the 'Creditor'.

Thus, a contract of guarantee is a tripartite agreement between the principal debtor, creditor and the surety. There are, in effect three contracts –

- A primary/principal contract between the principal debtor and the creditor,
- A secondary contract between the creditor and the surety and
- An implied contract between the surety and the principal debtor, whereby the principal debtor is bound to compensate the surety, provided he fulfills his obligation to the creditor under the contract of guarantee.

Guarantees may be of two types:

1. *Specific guarantee:* A guarantee given in respect of a single/specific transaction is called specific guarantee. It is irrevocable.
2. *Continuing Guarantee:* A guarantee which extends over a series of transactions is known as continuing guarantee. It continues until it is revoked. Fidelity guarantee, given for the conduct of a person is also in the nature of continuing guarantee.

Q.7 What is the consideration for contract of guarantee?

Ans. A contract of guarantee must also be supported by lawful consideration. Section 127 of the Indian Contract Act, 1872 states that, "anything done, or any promise made for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee." However, it is not necessary that something must have been done for the benefit of the guarantor. Anything done for the benefit of the principal debtor is a sufficient consideration to support the promise of the guarantor.

Q.8 How is a surety discharged by revocation of continuing guarantee?

Ans. A continuing guarantee may be revoked in two ways:

(*i*) **Express Revocation (Sec. 130).** A continuing guarantee may be revoked, at any time by the surety, in respect of the future transactions, by service of a notice to this effect to the creditor. However, the surety shall continue to be liable for all the past transactions.

(*ii*) **Death of Surety (Sec. 131).** The death of the surety operates, in the absence of a contract to the contrary, as a revocation of a continuing guarantee, as regards future transactions. However, the estate of the surety shall be liable for all transactions entered into between the creditor and the principal debtor prior to the death of the surety, unless contract to the contrary was made.

Q.9 What is the nature and extent of liability of the surety?

Ans. Section 128 of the Indian Contract Act, 1872, provides that unless the contract provides otherwise, the liability of the surety is co-extensive with that of the principal debtor. It implies that the surety will be liable for all those sums for which the principal debtor is liable. Thus, the surety will be liable for not only the principal amount but also interest due thereon as well as cost of suit for recovery of the amount, etc. Co-extensiveness also means that the creditor may file a suit against the surety without suing the principal debtor. Further, where the creditor holds securities from the principal debtor for his debt, the creditor need not exhaust his remedies against the securities before suing the surety, unless the contract specifically so provides.

Q.10 "The liability of two debtors is not affected by mutual arrangements." Comment.

Ans. According to the provisions of section 132 of the Contract Act, where 2 persons contract with a third person to undertake a liability and also contract with each other that one of them shall be liable only on default of the other, 3rd person not being a party to such a contract, the liability of such 2 persons to the 3rd under the first contract remains unaffected even though the 3rd person has a knowledge of the 2nd contract.

Q.11 Under what circumstances a guarantee may be treated invalid?

Ans. ***Under what circumstances a guarantee is invalid*:** Sections 142,143 and 144 prescribe the conditions under which a guarantee is void which are explained as under:

1. When the guarantee has been obtained by means of misrepresentation made directly or by the creditor or made with his knowledge and assent concerning a material part of the transaction. **(Section 142).**
2. Where the creditor has obtained any guarantee by means of keeping silence as to material circumstances **(Section 143).**
3. When a contract of guarantee is entered into on the condition that the creditors will not act upon it until another person has joined in it as co-surety and that other party fails to join as such **(Section 144).**

CASE STUDY:

Q.12 Mr. Chetan was appointed as Site Manager of ABC Constructions Company on a 2 years contract at a monthly salary of ₹ 50,000. Mr. Pawan gave a surety in respect of Mr. Chetan's conduct. After 6 months the company was not in position to pay ₹ 50,000 to Mr. Chetan because of financial constraints. Chetan agreed for a lower salary of ₹ 30,000 from the company.

This was not communicated to Mr. Pawan. Three months afterwards it was discovered that Chetan had been doing fraud since the time of his appointment. What is the liability of Mr. Pawan during the whole duration for fraud since the time of chetan's appointment?

Ans. Discharge of surety by variance in terms of contract:

As per section133 of the Indian Contract Act, 1872, where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent, it results in the discharge of the surety, in respect of all the future transactions taking place subsequent to such variance. However the surety shall continue to be liable for past transactions prior to variance.

In the given situation, Mr. Pawan has given fidelity guarantee for the conduct of Mr. Chetan, to ABC Constructions Co. Ltd., which is in the nature of continuing guarantee. Subsequently the terms of appointment with regard to salary of Mr. Chetan are varied without the consent of Mr. Pawan, the surety.

Thus applying the above stated provisions, variation in the terms of the contract (as to the reduction of salary) without consent of Mr. Pawan, will discharge Mr. Pawan from all the liabilities in respect of the acts of the Mr. Chetan subsequent to such variation. However, Mr. Pawan, will be liable as a surety for the acts of Mr. Chetan before the variation in the terms of the contract i.e., the first six months.

Q.13 Manoj gives guarantee for Ranjan, a retail textile merchant, for an amount of ₹ 1,00,000, for which Sharma, the supplier may from time to time supply goods on credit basis to Ranjan during the next 3 months. After 1 month, Manoj revokes the guarantee, when Sharma had supplied goods on credit for ₹ 40,000. Referring to the provisions of the Indian Contract Act, 1872, decide whether Manoj is discharged from all the liabilities to Sharma for any subsequent credit supply. What would be your answer in case Ranjan makes default in paying back Sharma for the goods already supplied on credit i.e.₹ 40,000?

Ans. Discharge of Surety by Revocation: According to section 130 of the Indian Contract Act, 1872, 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 all the past transactions entered into prior to revocation.

In the given case, Manoj the surety, revokes his continuing guarantee given to Sharma, the creditor, for goods supplied to Ranjan (the debtor), when goods worth ₹ 40,000 had already been supplied.

As per the above provisions, liability of Manoj, the surety, is discharged with relation to all subsequent credit supplies made by Sharma to Ranjan, after revocation of guarantee. However, Manoj shall be liable for payment of ₹ 40,000 to Sharma because the transaction was already entered into before revocation of guarantee.

Q.14 'A' gives to 'M' a continuing guarantee to the extent of ₹ 8,000 for the fruits to be supplied by 'M' to 'S' from time to time on credit. Afterwards 'S' became embarrassed and without the knowledge of 'A', 'M' and 'S' contract that 'M' shall continue to supply 'S' with fruits for ready money and that payments shall be applied to the then existing debts between 'S' and 'M'. Examining the provision of the Indian Contract Act, 1872, decide whether 'A' is liable on his guarantee given to M.

Ans. Discharge of Surety by variance in terms of contract: According to section 133 of the Indian Contract Act, 1872, where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent, it would result in discharge of surety in respect of all transactions taking place subsequent to such variance. However, in respect of transactions, prior to variance the surety shall continue to be liable.

In the given situation, 'M', the creditor and 'S' the debtor, agreed to vary the terms of contract in respect of supply of fruits on credit to supply on cash, without knowledge of the Surety 'A'.

Thus in this case 'A', the surety shall not be liable on his guarantee for the fruits supplied to 'S' the debtor by 'M' the creditor, after the variation in terms of contract. However, 'A' shall continue to be liable for the transactions prior to such variation.

Q.15(*i*) Mr. CB was invited to give guarantee for an employee Mr. BD who was previously dismissed for dishonesty by the same employer. This fact was not told to Mr. CB. Later on, the employee embezzled funds. Whether CB is liable for the financial loss as surety under provisions of the Indian Contract Act, 1872?

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

Ans. (*i*) Invalid Guarantee:

According to section 143 of the Indian Contract Act, 1872, any guarantee which the creditor has obtained by means of keeping silence as to material circumstances, is invalid.

In the given situation, Mr. CB was invited to give guarantee of an employee Mr. BD to the same employer which previously dismissed Mr. BD for dishonesty. This fact was not communicated to Mr. CB before obtaining the guarantee.

Applying the above stated provisions, keeping silence as to previous dismissal of Mr. BD for dishonesty amounts to concealment of a material fact. Mr. BD later embezzled the funds of the employer, Mr. CB will not be held liable for the financial loss as surety since such a contract of guarantee entered is invalid.

***(ii)* Discharge of surety by variance in terms of contract:**

Hint: As per Section 133 of the Indian Contract Act, 1872, any variance, made without the surety's consent, in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance.

Thus in the given case as the variance in terms of contract has been made without A's consent, Mr. A is not liable as a surety in case Y failed to repay the loan.

Q.16 Rahul is the owner of electronics shop. Priyanka reached the shop to purchase an air conditioner hose compressor which should be of copper. As Priyanka wanted to purchase the air conditioner on credit, Rahul demands a guarantor for such transaction. Mr. Arvind (a friend of Priyanka) came forward and gave the guarantee for payment of air conditioner. Rahul sold the air conditioner of a particular brand, misrepresenting that it is made of copper while it is made of aluminum. Neither Priyanka nor Mr. Arvind had the knowledge of fact that it is made of aluminum. On being aware of the facts, Priyanka denied for payment of price. Rahul filed the suit against Mr. Arvind.

Explain with reference to the Indian Contract Act, 1872, whether Mr. Arvind is liable to pay the price of air conditioner?

Ans. According to Sec. 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 released or by any by act omission of the creditor, the legal consequence of which is the discharge of the principal debtor. Further as per section 142 of the Indian Contract Act, 1872, where the guarantee has been obtained by means of misrepresentation made by the creditor concerning a material part of transaction, the surety will be discharged.

In the given case, Priyanka wants to purchase air conditioner whose compressor should be of copper, on credit from Rahul. Mr. Arvind has given the guarantee from payment of price. Rahul sold the air conditioner of a particular brand misrepresenting that it is made of copper while it is made of aluminum of which both Priyanka and Mr. Arvind were unaware. After being aware of the facts, Priyanka denied for payment of price. Rahul filed the suit against Mr. Arvind for payment of price.

Thus applying the above stated provisions to facts of the case, it is evident that Rahul as the seller omitted to disclose the fact that the air conditioner was made of aluminum instead of copper as a consequence of which Priyanka is not liable for payment. Further the guarantee has been evidently obtained by misrepresentation from Mr. Arvind. Therefore it can be concluded that Mr. Arvind will not be liable as guarantee was obtained by Rahul by misrepresentation of the facts. Arvind will be discharged from liability.

Q.17 A Farmer contracted to sell grains to the merchant to be grown on his land. S guarantees performance by farmer. The merchant later diverts the stream of water necessary for irrigation of farmer's land. As a result the crop could not be grown. Is S liable for the guarantee?

Ans. 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 by act omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

Thus in this case S is not liable for the guarantee as the omission by the merchant from his duty towards the farmer results in the discharge of the farmer and as a consequence the surety, S, also stands discharged.

Q.18 Anand recommends and guarantees the appointment of Dayanand as an employee with Sadanand. Dayanand is appointed as a cashier, and Anand agrees to stand as surety only if Sadanand sees Dayanand make up cash, once a month. However Sadanand omits to check cash every month and Dayanand embezzles. Comment on the liability of Anand as a surety in this case.

Ans. According to section 139 of the Indian Contract Act, 1872, if the creditor does any act which is inconsistent with the right of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy to surety himself against the principal debtor is thereby impaired, the surety is discharged.

In the given case the employer, Sadanand was under a duty (under the fidelity guarantee) towards the surety, Anand,to see Dayanand, the employee, make up cash every month. However, Sadanand omits to perform his duty towards the surety, Anand, as a consequence of which Dayanand embezzles and this in turn impairs Anand's (surety's) eventual remedy against Dayanand (principal debtor/employee),

Thus applying the above stated provisions it is evident that Anand shall stand discharged from his liability as a surety.

Q.19 Aman, Baman and Chaman give guarantee to Raman for the loan of ₹ 70,000 given to Daman. However the sureties agree to guarantee individually different sums which are as follows:

Aman – ₹ 10000, Baman – ₹ 20,000 & Chaman – ₹ 40,000. Comment on their liability in the event of defaults by Daman of the following nature:
(i) Default of ₹ 30,000
(ii) Default of ₹ 60,000

Ans. According to the provisions of section 146 of the Indian Contract Act, 1872 unless otherwise agreed, each of the co-sureties is liable to contribute equally for the debt/part of the debt unpaid by the debtor. Further, according to the provisions of section 147, where the co-sureties have guaranteed different sums, they are bound to contribute equally, subject to the limit fixed by their guarantee, and not proportionately to the liability undertaken.

Thus applying the above stated provisions of the given case the following can be concluded:

(i) In case of default of ₹ 30,000 by Daman, all the three co-sureties shall be liable to contribute equally- *i.e.* Aman, Baman and Chaman shall each contribute ₹ 10,000.

(ii) In case of default of ₹ 60,000 by Daman, all the three co-sureties shall be liable to contribute equally subject to the individual limit guaranteed by them. Thus Aman shall contribute – ₹ 10,000, Baman – ₹ 20,000 and Chaman shall be bound to contribute ₹ 30,000.

CHAPTER 12

BAILMENT AND PLEDGE

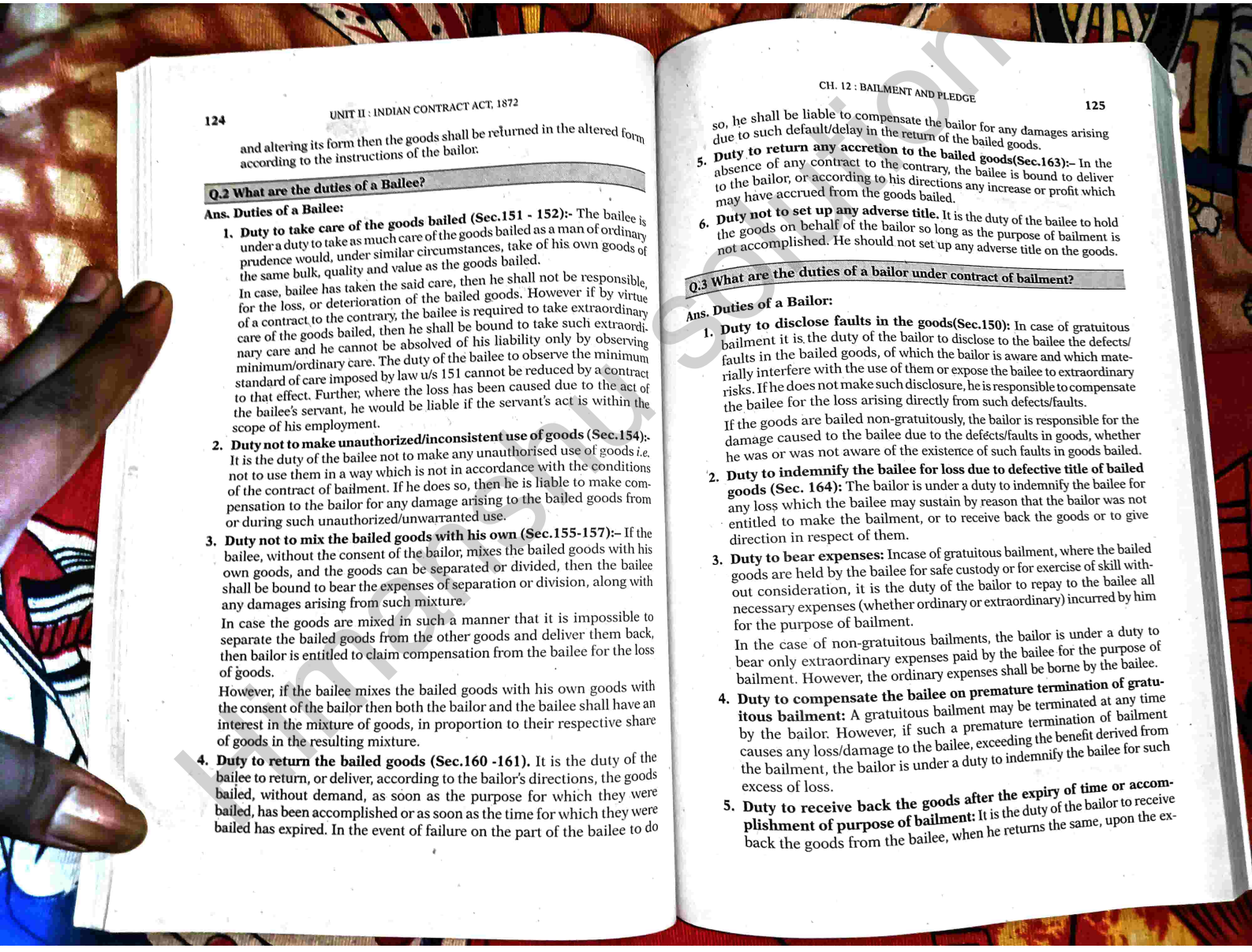
LONG ANSWER QUESTIONS:

Q.1 What is Bailment? What are the essential elements of Bailment?

Ans. Definition of Bailment: According to provisions of section 148 of the Indian Contract Act, 1872, bailment is defined as the delivery of goods by one to another person for some purpose upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the 'bailor' and the person to whom the goods are delivered is called the 'bailee.'

Essentials of Bailment:–

1. **Presence of Contract:** Bailment arises out of a contract. The contract may be express, implied or quasi contract.
2. **Goods:** Bailment can be effected only in respect of goods. Goods means as defined under the Sale of Goods Act, 1930 *i.e.* movable property other than money and actionable claims. Thus bailment can never be effected in respect of immovable properties.
3. **Delivery of Goods:** For creation of rights under bailment, delivery of goods by one person to another is essentially required. The delivery of goods does not merely imply the transfer of physical custody but rather means the transfer of right of possession and control of goods. Thus when goods are transferred so as to confer the transferee with the possession and the right to exercise control over the goods but not the ownership, then delivery is said to have taken place. Delivery may be either actual, symbolic or constructive.
4. **Purpose:** Under the contract of bailment good are usually delivered for the accomplishment of a specific purpose. The purpose may either be safe custody, transportation, exercise of skill or use etc.
5. **Return of goods:** Bailee is under a duty to return the very specific goods delivered to him under bailment, when the purpose is accomplished. However, if the bailment was done for the purpose of exercise of skill



and altering its form then the goods shall be returned in the altered form according to the instructions of the bailor.

Q.2 What are the duties of a Bailee?

Ans. Duties of a Bailee:

1. **Duty to take care of the goods bailed (Sec.151 - 152):-** The bailee is under a duty to take as much care of the goods bailed 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.

   In case, bailee has taken the said care, then he shall not be responsible, for the loss, or deterioration of the bailed goods. However if by virtue of a contract to the contrary, the bailee is required to take extraordinary care of the goods bailed, then he shall be bound to take such extraordinary care and he cannot be absolved of his liability only by observing minimum/ordinary care. The duty of the bailee to observe the minimum standard of care imposed by law u/s 151 cannot be reduced by a contract to that effect. Further, where the loss has been caused due to the act of the bailee's servant, he would be liable if the servant's act is within the scope of his employment.

2. **Duty not to make unauthorized/inconsistent use of goods (Sec.154):-** It is the duty of the bailee not to make any unauthorised use of goods *i.e.* not to use them in a way which is not in accordance with the conditions of the contract of bailment. If he does so, then he is liable to make compensation to the bailor for any damage arising to the bailed goods from or during such unauthorized/unwarranted use.

3. **Duty not to mix the bailed goods with his own (Sec.155-157):–** If the bailee, without the consent of the bailor, mixes the bailed goods with his own goods, and the goods can be separated or divided, then the bailee shall be bound to bear the expenses of separation or division, along with any damages arising from such mixture.

   In case the goods are mixed in such a manner that it is impossible to separate the bailed goods from the other goods and deliver them back, then bailor is entitled to claim compensation from the bailee for the loss of goods.

   However, if the bailee mixes the bailed goods with his own goods with the consent of the bailor then both the bailor and the bailee shall have an interest in the mixture of goods, in proportion to their respective share of goods in the resulting mixture.

4. **Duty to return the bailed goods (Sec.160 -161).** It is the duty of the bailee to return, or deliver, according to the bailor's directions, the goods bailed, without demand, as soon as the purpose for which they were bailed, has been accomplished or as soon as the time for which they were bailed has expired. In the event of failure on the part of the bailee to do so, he shall be liable to compensate the bailor for any damages arising due to such default/delay in the return of the bailed goods.

5. **Duty to return any accretion to the bailed goods(Sec.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.

6. **Duty not to set up any adverse title.** It is the duty of the bailee to hold the goods on behalf of the bailor so long as the purpose of bailment is not accomplished. He should not set up any adverse title on the goods.

Q.3 What are the duties of a bailor under contract of bailment?

Ans. Duties of a Bailor:

1. **Duty to disclose faults in the goods(Sec.150):** In case of gratuitous bailment it is the duty of the bailor to disclose to the bailee the defects/faults in the bailed goods, of which the bailor is aware and which materially interfere with the use of them or expose the bailee to extraordinary risks. If he does not make such disclosure, he is responsible to compensate the bailee for the loss arising directly from such defects/faults.

   If the goods are bailed non-gratuitously, the bailor is responsible for the damage caused to the bailee due to the defects/faults in goods, whether he was or was not aware of the existence of such faults in goods bailed.

2. **Duty to indemnify the bailee for loss due to defective title of bailed goods (Sec. 164):** The bailor is under a duty to indemnify the bailee 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 direction in respect of them.

3. **Duty to bear expenses:** Incase of gratuitous bailment, where the bailed goods are held by the bailee for safe custody or for exercise of skill without consideration, it is the duty of the bailor to repay to the bailee all necessary expenses (whether ordinary or extraordinary) incurred by him for the purpose of bailment.

   In the case of non-gratuitous bailments, the bailor is under a duty to bear only extraordinary expenses paid by the bailee for the purpose of bailment. However, the ordinary expenses shall be borne by the bailee.

4. **Duty to compensate the bailee on premature termination of gratuitous bailment:** A gratuitous bailment may be terminated at any time by the bailor. However, if such a premature termination of bailment causes any loss/damage to the bailee, exceeding the benefit derived from the bailment, the bailor is under a duty to indemnify the bailee for such excess of loss.

5. **Duty to receive back the goods after the expiry of time or accomplishment of purpose of bailment:** It is the duty of the bailor to receive back the goods from the bailee, when he returns the same, upon the ex-

piry of the time period of bailment or upon the accomplishment of the purpose of bailment. In the event of bailor's refusal to do so, he will be liable to compensate the bailee for the necessary expenses incurred for safe custody until the actual return of the goods.

Q.4 Distinguish between 'Gratuitous' and 'Non Gratuitous' Bailment.

Ans.

Basis	Gratuitous Bailment	Non–Gratuitous Bailment
1.Meaning	It is bailment for goods without consideration or remuneration.	It is bailment of goods for consideration/reward.
2.Benefit	It is for the benefit of the bailor or the bailee.	It is for the benefit of both the bailor and the bailee.
3.Bailor's duty to bear expenses	In case of gratuitous bailment the bailor is under a duty to bear all the expenses necessary for the purpose of bailment and repay the same to the bailee if he has incurred the same.	In case of non-gratuitous bailment the bailor is under a duty only to bear the extraordinary expenses necessary for the purpose of the bailment and only repay the same, if incurred by the bailee. The ordinary expenses are to be borne by the bailee.
4. Bailor's duty to disclose the defects in goods	In this case it is the duty of the bailor to only disclose the know defects in bailed goods and he shall be liable to compensate the bailee for the loss arising due to non - disclosure of such known defects only.	In case of non-gratuitous bailment it is bailor's absolute liability to compensate the bailee for any loss arising due to non-disclosure of defects in bailed goods whether the defects were know or unknown to the bailor.
5.Termination of bailment	Gratuitous bailment can be terminated at any time by the bailor even before the accomplishment of the purpose or before the expiry of time period of bailment.	Non-gratuitous bailment cannot be terminated at any time at the mere wish of the bailor. If he does so, it shall amount to breach of contract and he shall be liable to compensate the bailee.
6. Effect of death of bailor/bailee	Gratuitous bailment is terminated on the death of the bailor or the bailee.	Death of the bailor or the bailee shall not result in termination of non-gratuitous bailment.

Q.5 What are the rights of a Bailee?

Ans. Rights of a bailee are as follows:

1. **Right to deliver the goods to any one of the joint bailors (Sec. 165):** In case of bailment by several joint owners, the bailee has a right to deliver the bailed goods to any one of the joint owners upon the expiry of the time or upon accomplishment of the purpose of bailment unless there is a specific stipulation in the contract to the contrary.
2. **Right to indemnity for loss due to defect/absence of title to goods (Sec. 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 bailed goods or to give directions in respect of them. If the bailor has no title to the bailed goods, and the bailee delivers them back to, or according to the directions of the bailor, then the bailee shall not be responsible to the owner in respect of such delivery, provided the bailee acted in good faith without knowledge of the absence or defect in title of the bailor.
3. **Right to claim compensation in case of defective goods (Sec. 150):** In case of gratuitous bailment , the bailee is entitled to claim compensation from the bailor for any loss sustained by him due to the failure on the part of the bailor to disclose any known defects/faults in the bailed goods. However, if the bailment is for consideration, *i.e.* non-gratuitous, the bailor will be liable to the bailee for any loss sustained by him due to the defect in bailed goods irrespective of whether the bailor was aware or not aware of the existence of such defects in bailed goods.
4. **Right to claim expenses (Sec.158):** In case of gratuitous bailment, the bailee shall have the right to claim from the bailor all the necessary expenses (including extraordinary expenses) incurred by him for the purpose of the bailment. However, in case of non-gratuitous bailment the bailee only has the right to claim from the bailor, the extraordinary expenses incurred by him, for the purpose of bailment.
5. **Right to apply to Court to decide the title to the goods (Sec. 167):** If the bailed goods are claimed by any person other than the bailor, the bailee may apply to the court to stop its delivery and to decide the title to the goods.
6. **Right of lien (Sec. 170-171):** Bailee has a right of lien in respect of the bailed goods for the recovery of his lawful charges or consideration under contract of bailment. Lien is a right in one person to retain that which is in his possession, belonging to another, until some debt or claim is paid. Bailee's lien usually in the nature of particular lien but may also be general lien in some cases.

Q.6 What is a pledge? What are the essentials of a valid pledge?

Ans. As per section 172, the bailment of goods as a security for payment of a debt or performance of a promise is called 'Pledge'. The person who delivers the goods as security is called the 'pledgor' and the person to whom the goods are so delivered is called the 'pledgee'.

Essentials of Pledge:

1. **Bailment of goods:** Since pledge is a special kind of bailment, of goods as security, a pledge is created only when the goods are delivered by the borrower to the lender or to someone on his behalf with the intention of their being treated as security against the advance. Delivery of goods may, however, be actual or constructive.
   Where the goods continue to remain in the borrower's (pledgor's) possession but are agreed to be held by him as a 'bailee' on behalf of the pledgee and subject to the pledgee's order, it amounts to constructive delivery and therefore a valid pledge. Thus a constructive pledge comes into existence as soon as the pledgor without actually delivering the goods, promises to deliver them unconditionally to the pledgee on demand.
2. **Security:** In case of pledge, the goods are delivered as a security for payment of debt or for performance of a promise. Thus it is a bailment where the only purpose of bailment is that the goods are held as security.
3. **Goods:** Only goods (existing) can be pledged. Goods include shares, documents or valuable things. But money (currency notes, etc.) cannot be pledged.
4. **Delivery of goods under a contract:** Pledge involves delivery of goods as a security under a contract. Thus presence of contract is essential for creation of valid pledge.
5. **Transfer of interest:** In a contract of pledge absolute ownership/property in goods is not transferred. An interest of a special nature (qualified interest), in the goods pledged, is transferred to the pledgee and is not lost with the mere loss of custody of pledged goods.
6. **Priority of Claim:** The purpose of pledge is to secure the payment of debt or performance of a promise. Thus the pledgee is in the position of a secured creditor and enjoys a priority of claim of such a nature which is not lost even with the loss of possession of goods.

Q.7 What are the exceptional cases when a valid pledge can be made by a non-owner ?

Ans.

(*i*) **Pledge by mercantile agent (Sec.178):** A mercantile agent may make a valid pledge of the goods provided:

- he is in possession of the goods or documents of title to goods belonging to his principal;
- he has such possession of the goods or documents of title to goods with the consent of the owner/principal;
- he makes a pledge of the said goods/documents of title in the ordinary course of business of agency as a mercantile agent; and
- the pledgee acts in good faith and without any knowledge that the pledger, *i.e.*, the mercantile agent, has no authority to pledge.

(*ii*) **Pledge by person in possession under voidable contract (Sec.178A):** Where goods are pledged by a person who has obtained possession of goods under a voidable contract, the pledge is valid, provided that the contract has not been rescinded at the time of the pledge was made and the pledgee acted in good faith and without notice of the pledgor's defect of title.

(*iii*) **Pledge by person having limited interest (Sec.179):** Where the pledger is not the owner of goods but has limited interest in the goods which he pledges, *e.g.*, where he is a pledgee or has lien with respect to those goods, the pledge will be valid to the extent of his interest. His interest is the amount for which the goods have been given to him as a security. If he pledges for a larger amount, the original pledger will still be entitled to his goods on paying the amount for which he himself pledged the goods.

(*iv*) **Pledge by co-owner in possession:** When one of the joint owners is in sole possession of the goods with the consent of the other joint owners, then the pledge of such goods created by him shall be valid, provided the pledgee has acted in good faith (*bona fide* manner) without any knowledge that the pledgor (one of the joint owners in possession of goods) had no authority to pledge.

(*v*) **Pledge by a buyer in possession before sale or by a seller in possession after sale:** When a buyer who is in possession of goods before sale, or a seller who is in possession of goods after sale, pledges the goods with a third person, then the pledge so created will be treated as a valid pledge, provided the pledgee has acted in good faith and has no knowledge that the pledgor (buyer or seller, as the case may be) had no actual authority to pledge.

Q.8 What are the rights of a Pledgee/Pawnee?

Ans. Rights of a Pledgee:

A pledgee has the following rights:

1. **Right to retain the pledged goods (Sec. 173):** A pledgee has the right to retain the goods pledged not only for payment of the debt or the performance of the promise, but for the interest on the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.
2. **Right to retain the pledged goods for subsequent advances (Sec. 174):** In the absence of a contract to the contrary the pledgee cannot retain the pledged goods, for any debt or promise other than the debt or promise for which they are delivered under contract of pledge. However, in the case the contract expressly provides then, the pledgee has a right to retain goods pledged earlier, in regard to subsequent advances made by him to the pledger.

3. **Right to extraordinary expenses incurred (Sec. 175):** The pledgee is entitled to recover from the pledger, any extraordinary expenses incurred by him for the preservation of the goods pledged.
4. **Pledgee's rights where pledger makes default (Sec. 176):** In case the pledger make a default in repayment of his debt or in performance of obligation at the stipulated time, the pledgee has the right to:
   (*a*) bring a suit against the pledger for the recovery of debt or performance of promise and has a right to retain the possession of the pledged goods as a collateral security; or
   (*b*) he may sell the pledged goods, on giving the pledger, a reasonable notice of sale.

   If on sale, the pledged goods, do not fully meet the amount of the debt/loss due to non-performance of promise, pledgee can proceed to sue the pledger for the balance. If, on the other hand, there is any surplus resulting from such sale, then the same has to be accounted for to the pledger.
5. **Right to receive damages due to non-disclosure of defects in goods:** It is the duty of the pledger to disclose any known defects or faults in the goods pledged. In case the pledger fails to inform such faults or defects, then he shall be bound to compensate the pledgee for any damage that may result because of such non-disclosure.

   Similarly, a pledgee has a right to claim damages suffered by him because of any defect in the title to the pledged goods of the pledgor.
6. **Right in case of wrongful deprivation of goods by a third party:** In the event of wrongful deprivation of the pledged goods or injury to the pledged goods, caused by a third party, the pledgee would have all such remedies that the owner (pledger) of the goods would have had against such a third party. However, the amount recovered by the pledgee over and above his interest must be held by him in trust for the pledgor.

SHORT ANSWER QUESTIONS:

Q.9. Write a short note on "Kinds of Bailment."

Ans. Bailments may be classified on the basis of (*a*) benefit, and (*b*) reward.

(*a*) On the basis of benefit, the classification may be:

- **(*i*)** Bailment which is made for the exclusive benefit of bailor;
- **(*ii*)** Bailment for the exclusive benefit of bailee only; or
- **(*iii*)** Bailment for the mutual benefit of bailor as well as bailee.

(*b*) On the basis of reward:

- **(*i*) Gratuitous bailment:** It is a type of bailment where neither the bailor nor the bailee get any remuneration *i.e.* it is a bailment without consideration.
- **(*ii*) Non-gratuitous bailment:** It is a type of bailment where the bailor or the bailee get remuneration/consideration.

Q.10 What are the rights of the bailor under contract of bailment?

Ans. Rights of the Bailor: The rights of the bailor are:

1. **Right to terminate the bailment (Sec. 153):** A contract of bailment is voidable at the option of the bailor, if the bailee does any act in respect of the bailed goods which is inconsistent with the terms and conditions of the bailment.
2. **Right to demand back the goods (Sec. 159):** In case of gratuitous bailment, the bailor can demand back the goods at any time even before the expiry of the time period of bailment or before the accomplishment of purpose of bailment. However, if the bailee suffers any loss, due to premature termination of bailment, which exceeds the benefit derived by him from the use of the bailed goods, the bailor has to compensate the bailee for such excess of loss suffered.
3. **Right to sue the bailee:** The bailor has a right to sue the bailee for enforcing all his liabilities and duties under the contract of bailment.
4. **Right to compensation:** Bailor has right to sue the bailee for any compensation resulting from any damage caused to the bailed goods on account of unauthorized use of the goods or unauthorized mixing of the goods.

Q.11 Distinguish between General and Particular Lien.

Ans.

1. **General Lien:** It is the right to retain 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 contract to the contrary). As per the provisions of section 171 certain categories of bailees - bankers, factors, wharfingers, attorneys of law and policy brokers, are empowered to exercise general lien. These bailees can retain all goods of the bailor so long as anything is due to them, unless there is a contract to the contrary.
2. **Particular Lien:** Particular lien means the right to retain only the particular goods in respect of which the claim is due. A bailee is granted a right to exercise particular lien under the provisions of section 170. The section states that 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 service he has rendered in respect in respect of them.

Q.12 What is the right of the bailor and bailee against third party on wrongful deprivation of or injury to bailed goods?

Ans. Right of bailor and bailee against the third party on wrongful depreviation of or injury to bailed goods (Sections 180-181): If a third person wrongfully deprives the bailee of the use or possession of the goods

bailed, or causes 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 (Sec. 180).

Further, 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 (Sec. 181).

Q.13 What are the instances for termination of bailment?

Ans. A contract of bailment terminates in the following circumstances:

1. **On the expiry of the stipulated period:** Where bailment is for specific time period, it comes to an end on the expiry of such stipulated time period.
2. **On the accomplishment of specified purpose:** In case bailment is made for a specific purpose, it shall terminate on the accomplishment of the specified purpose.
3. **By Notice:**
   (*a*) Where the bailee acts in a manner which is inconsistent with the terms & conditions of 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, if such termination causes loss to the bailee in excess of the benefit derived by him from bailment, the bailor is bound compensate the bailee for such a loss.
4. **By death:** Death of the bailor or bailee results in termination of gratuitous bailment.
5. **Destruction of the bailed goods:** If the subject matter of the bailment i.e. bailed goods are destroyed or there is a change in the nature of bailed goods such that it makes it impossible for the goods to be used for the purpose of bailment, then the bailment stands terminated.

Q.14 What is the position of the finder of lost goods under the provisions of the Indian Contract Act?

Ans. A finder of lost goods is treated as the bailee of the goods found by him and is therefore, not only charged with the duties of a bailee, but also has the duty to exercise reasonable efforts in finding the real owner of those goods. The following are the duties of the finder of lost goods:

1. **Duty to find the true owner:** It is the duty of the finder of lost goods to exercise reasonable efforts in finding the true owner of the goods found by him. What is reasonable shall be determined by the facts and circumstances of the case.

2. **Duties of bailee:** Since the finder of lost goods is regarded at law as a bailee (under quasi contract), it is his duty to care reasonable care of such goods as a man of ordinary prudence would take under similar circumstances, of his own goods, of same bulk, quality and value. Further finder will also be under a duty not to make any unauthorised use of goods, not to mix the goods and to return the same promptly once the true owner is found.

The following are the rights of a finder of lost goods:

1. **Right to retain the goods (Sec.168):** A finder of lost goods has a right to exercise lien i.e. retain the goods until he receives the compensation for the amount of money spent by him in preserving the goods and/or in finding the true owner. A finder, however, has no right to sue the true owner for such compensation. But, if the true owner has offered a specific reward for the return of lost goods, the finder may sue for such reward, and may retain the goods until he receives the same.
2. **Right to sell the goods (Sec. 169):** When a thing which is commonly the subject of sale is 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:
   (*a*) When the thing is in danger of perishing or of losing the greater part of its value or
   (*b*) When the lawful charges of the finder in respect of the thing found, amount to 2/3 of its value.

Q.15 Distinguish between 'Bailment' and 'Pledge'.

Ans.

1. Pledge is defined as per section 172, and is a special kind of bailment under which goods are delivered as a security for payment of debt or performance of a promise. Bailment is defined under section 148 and is evidently a broader expression than pledge.
2. In the event of default, pledgee has a right to not only exercise lien over the pledged goods and sue for his dues, but he also has a right to effect the sale of goods after giving a reasonable notice of sale to the pledger. Bailee has no right to effect the sale of bailed goods for recovery of his dues. Bailee can only exercise his right of lien in respect of the bailed goods and may file suit for recovery of his dues.
3. A pledgee has a right to make a further pledge of the pledged goods upto the value of his interest therein. Bailee does not have a right to pledge the bailed goods.
4. A pledgee has no right to make use of the goods pledged. However, in case of bailment, where it has been made for the purpose of use of goods by the bailee i.e. for the benefit of the bailee, then he may use it as per the terms of contract of bailment.

5. Pledge is always made for consideration. However bailment may be gratuitous i.e. without consideration or non-gratituous i.e. with consideration.

Q.16 What are the rights of a Pledgor?

Ans.

1. **To get back the goods:** The pledgor has a right to receive back the goods on repayment of debt or performance of promise. He also has a duty to pay interest and necessary expenses before claiming back the goods.
2. **To redeem the goods:** In case the pledgor makes a default in paying the debt or performing the promise at the stipulated time, he may still redeem the goods pledged at any subsequent time before their sale is effected, by paying the dues and lawful charges.
3. **To request pledgee to take care of pledged goods:** Pledgor has a right to require the pledgee to take all reasonable steps for enforcing proper care and preservation of goods pledged.
4. **To receive back the increase in goods:** The pledgor has a right to receive back any increase or increment (accretion) in the goods pledged.
5. **To exercise the rights of a debtor:** The pledgor is entitled to exercise all the rights of a debtor as allowed under the Law of Limitations.

CASE STUDY:

Q.17 Mrs. A delivered her old silver jewellery to Mr. Y a Goldsmith, for the purpose of making a new 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 Shops. She kept the key of the box with herself. One night, the silver bowl was stolen from that box. Was there a contract of bailment? Whether the possession of the goods (actual or constructive) delivered, constitute contract of bailment or not?

Ans. Contract of Bailment:

Section 148 of the 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.

As per 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.

Thus, mere keeping of the box at 'Y's shop, when Mrs. A herself took away the key cannot amount to delivery. 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 her self.

Q.18 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?

Ans. Duties of a Bailee:

As per 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 back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

In the given question, Srijith's employee mixed high quality sugar bailed by Amar and then packaged it for sale. The sugars when mixed cannot be separated.

Thus, as Srijith's employee has mixed the two kinds of sugar, he (Srijith) must compensate Amar for the loss of his sugar.

Q.19 Mr. Dhannaseth delivers a rough blue sapphire to a jeweller, to be cut and polished. The jeweller carried out the job accordingly. However, now Mr. Dhannaseth refuses to make the payment and wants his blue sapphire back. The jeweller denies the delivery of goods without payment. Examine whether the jeweller can hold blue sapphire. Give your answer as per the provisions of the Indian Contract Act, 1872.

Ans. Right of particular lien for payment of services:

As per section 170 of the Indian Contract Act, 1872, where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in the respect of the goods bailed, he has , in the absence of a contract to the contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Thus, in accordance with the purpose of bailment if the bailee by his skill or labour improves the goods bailed, he is entitled for remuneration for such services. Towards such remuneration, the bailee can retain the goods bailed if the bailor refuses to pay the remuneration. Such a right to retain the goods bailed is the right of particular lien. He however does not have the right to sue.

Where the bailee delivers the goods without receiving his remuneration, he has a right to sue the bailor. In such a case the particular lien may be waived. The particular lien is also lost if the bailee does not complete the work within the time agreed.

Thus, the jeweller is entitled to retain the stone till he is paid for the services he has rendered.

Q.20 Radheshyam borrowed a sum of ₹ 50,000 from a Bank on the security of gold on 1.07.2021 under an agreement which contains a clause that the bank shall have a right of particular lien on the gold pledged with it. Radheshyam thereafter took an unsecured loan of ₹ 20,000 from the same bank on 1.08.2021 for three months. On 30.09.2021 he repaid entire secured loan of ₹ 50,000 and requested the bank for release of the gold pledged with it. The bank decided to continue the lien on the gold until the unsecured loan is fully repaid by Radheshyam. Decide whether the decision of the Bank is valid within the provisions of the Indian Contract Act, 1872?

Ans. Hint: As per section 171 of the Indian Contract Act, 1872, bankers, factors, wharfingers, attorneys of a High Court and policy brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance goods bailed to them.

Section 171 empowers the bankers with right of general lien whereby it is entitled to retain the goods belonging to another party, until all the dues are discharged provided no express contract to the contrary is made.

Here, in the first instance, the banker under an agreement has a right of particular lien on the gold pledged with it against the first secured loan of ₹ 50,000, which has already been fully repaid by Radheshyam. Accordingly, Bank's decision to continue the lien on the gold until the unsecured loan of ₹ 20,000 (which is the second loan) is not valid, since the contract contained an express clause providing only for exercise of particular lien.

Q.21 Ragini gives her calculator to Manjulika, to be used for 4 days during her CA Intermediate Examinations. Manjulika keeps the calculator for 14 days. While going to Ragini's house to return the calculator, Manjulika accidently slips and the calculator is badly damaged. Who shall bear the loss and why?

Ans. It is the duty of the bailee to return, or deliver, according to the bailor's directions, the goods bailed, without demand, as soon as the purpose for which they were bailed, has been accomplished or as soon as the time for which they were bailed has expired. In the event of failure on the part of the bailee to do so, he shall be liable to compensate the bailor for any damages arising due to such default/delay in the return of the bailed goods.

In the given case, Manjulika (the bailee) has retained the bailed goods i.e. the calculator, well beyond the time stipulated for accomplishment of the purpose of bailment, which amounts to breach of her duty to return the goods to Ragini (the bailor), promptly without demand.

Thus, applying the above stated provision to the given case it can be concluded that Manjulika shall be liable to compensate Ragini for the loss, destruction or deterioration of the bailed goods i.e. the calculator, arising during the period of such delay in returning the goods, notwithstanding the exercise of reasonable care on her part.

Q.22 Tony sent a consignment of laptops worth ₹ 6,00,000 to Peter and obtained a railway receipt therefor. Later Peter borrowed a loan of ₹ 5,50,000 from Stark Bank and endorsed the railway receipt in favour of the bank as a security. The consignment of laptops is eventually lost in transit. Stark Bank files a suit against the railways for a claim of ₹ 6,00,000, the value of the entire consignment. The railways contended that the bank is entitled to claim only ₹ 5,50,000 that is the amount of the loan only. Examining the provisions of the Indian Contract Act, 1872, comment whether the contention of the railways is valid.

Ans. According to the provisions of the Indian Contract Act, 1872, in the event of wrongful deprivation of the pledged goods or injury to the pledged goods, caused by a third party, the pledgee would have all such remedies that the owner (pledger) of the goods would have had against such a third party and his right to sue the third party shall not be limited up to the value of his interest. However, the amount recovered by the pledgee over and above his interest must be held by him in trust for the pledger. Further delivery of goods is essential to create pledge and such a delivery can even be effected symbolically by delivery & endorsement of documents of title such as a railways receipt in favour of the pledgee.

In the given case a valid pledge has been created by Peter by endorsing the railway receipt in favour of Stark Bank, the pledgee. Later the pledged goods are lost in transit, and the bank files a suit against the railways, the third party for the recovery of the entire value of goods.

Thus, applying the above stated provisions to the given case it is evident that Stark Bank has a valid right to sue railways as their default has resulted in loss of the pledged goods and the right of the bank shall not be restricted to the bank's interest but it can rather sue the railways for the entire value and retain the amount recovered over and above it's interest in trust for the pledger – Peter.

13 CHAPTER AGENCY

LONG ANSWER QUESTIONS:

Q.1 What is Agency and what are the essentials of Contract of Agency?

Ans. An agent is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done or who is so represented is the principal under the contract of agency. When a person appoints an agent for himself, it is a presumption that the acts of an agent are the acts of the principal himself and hence he is liable for such acts. Thus, the acts of the agent are binding upon the principal and they will have the same effect as if they have been done by the principal himself.

Essentials of Agency: - The essentials of contract of Agency are as follows:

(*i*) **Basis of the agreement:** The essential characteristic of the relationship of agency is that the agent can bind the principal and make the principal answerable to a third party. Thus, an agent is a person employed to do any act for another or to represent another in dealings with third person. He either represents his principal in some transactions or dealings with a third person, or performs some act for the principal.

(*ii*) **Consideration not necessary:** According to section 185, unlike other forms of contract, agency does not require the presence of consideration for its validity. Thus, a contract of agency constitutes an exception to the general rule "no consideration no contract".

(*iii*) **Capacity to employ an agent:** As per section 183 any person, who has contractual capacity, can lawfully employ an agent. Any person who is of the age of majority and who is of sound mind may employ an agent.

(*iv*) **Capacity to be employed as an agent:** As per section 184, as between the principal and the third person, any person can become an agent, irrespective of whether he has contractual capacity or not. But a person, who is incompetent *i.e.* he is not of the age of majority / of sound mind, cannot be agent so as to be responsible to his principal.Thus an incompetent person on being appointed as an agent can bind the principal to the third parties by his acts, but cannot be held liable by the principal for his acts.

Q.2 What are the various modes by which an agency may be created?

Ans. A contract of agency may be of the following two types: (1) Express agency or (2) implied agency.

1. **Express Agency [Sec.187]:** When a principal appoints a certain person as his agent, either by word of mouth or by writing it results in creation of express agency.
2. **Implied agency [Sec.187]:** Implied agency is created when the authority of a person as an agent of another (Principal) is inferred from the conduct of the parties, circumstances of the case or the course of dealings of the parties. Implied agency, therefore, includes agency by estoppel, agency of necessity, agency by operation of law and agency by ratification.

(*a*) **Agency by estoppel [Sec.237]:** When a person has, by his conduct or statements, induced others to believe that a certain person is his agent, he is estopped from subsequently denying it. Thus agency by estoppel is created when a principal through an express or implied representation, or through his affirmative conduct leads another person to believe that a certain person is his agent whereas he has no real authority as such and that other person contracts on the faith of such representation/ conduct of the principal.

(*b*) **Agency of necessity [Sec.189]:** Agency of necessity arises in the following cases:

(*i*) **A person is not appointed as an agent:** Agency of necessity arises when there is no express or implied appointment of a person as agent for another, but he acts as such (takes up responsibility as an agent) to save the Principal from loss in some emergent circumstance.

(*ii*) **Agent who exceeds authority in emergency:**Agency of necessity also extends to cases where an agent exceeds his authority provided:

(*a*) It was not reasonably possible to get the principal's instructions;

(*b*) There existed an actual commercial necessity for the agent to act promptly;

(*c*) The agent had taken all reasonable and necessary steps to protect the interest of the principal; and

(*d*) The agent acted *bona fide* in the interest of the principal.

(*c*) **Agency by ratification [Sec.196]**

Whenever an agent does an act for his principal but without knowledge of authority or where he exceeds the given authority, then the principal is not bound by the transaction. However, Section 196 of the Indian Contract Act provides that in case an agent acts on behalf of the principal either without authority or in excess of

authority then the principal, if he so desires, can ratify/approve the acts of the agent. In case, the principal so elects, it will have the effect as if the act was originally done with his authority. In other words, the agency is deemed to have come into existence from the moment the agent first acted and not from the date of principal's ratification. Ratification may be express or implied by the conduct of the principal.

(*d*) **Agency by operation of law or by legal presumption:** Such agency is deemed to be created when law treats one person as an agent of the other. Such as in case of partnership, where one partner is treated as an agent of the other partners.
Similarly, in case of husband and wife who are cohabiting, wife can be regarded as the agent of the husband and has an implied authority to pledge her husband's credit in respect of the necessaries of life purchased by her except where:

- the husband has expressly forbidden the wife from buying goods on credit
- the goods bought do not constitute necessaries of life
- husband has given to the wife sufficient cash to buy goods and the said fact is in the seller's knowledge
- the creditor had been expressly forbidden by the husband not to give credit to the wife.

Further where the wife lives apart from husband without her fault, she shall have an implied authority to pledge the husband's credit provided the husband has not provided any maintenance to the wife.

Q.3 What is Agency by Ratification? What are the requisites of a valid Ratification?

Ans. Whenever an agent does an act for his principal but without knowledge of authority or where he exceeds the given authority, then the principal is not bound by the transaction. However, section 196 of the Indian Contract Act provides that in case an agent acts on behalf of the principal either without authority or in excess of authority then the principal if he so desires can ratify/approve the acts of the agent. In case, the principal so elects, it will have the effect as if the act was originally done with his authority. In other words, the agency is deemed to have come into existence from the moment the agent first acted and not from the date of principal's ratification. Ratification may be express or implied by the conduct of the principal.

Requisites of a valid ratification

Ratification must fulfill the following conditions to be regarded as valid:

1. The agent must contract as agent. A person cannot enter into a contract in his own personal capacity and later shift it on to another. Thus, only those transactions can be ratified which have been entered into by the agent on behalf of the principal.
2. The principal must have been in existence at the time the agent originally acted. This condition is significant in case of companies as pre-incorporation contracts entered into by the promoters cannot be ratified by companies after being incorporated.They can only be novated or adopted.
3. The principal must also have contractual capacity at the time of the contract as well as at the time of ratification. This is relevant in case of a minor, who cannot ratify the contracts made, on his behalf during minority, after attaining majority.
4. Ratification to be valid must be made within a reasonable time. What is reasonable time depends on the facts and circumstances of each case.
5. The act which is sought to be ratified must be a lawful one. No ratification of an illegal act or act which is void *ab initio*, can be done.
6. The principal should have full knowledge of the facts of the transaction sought to be ratified. No valid ratification can be made by a person whose knowledge of the fact of the case is materially defective.
7. Ratification must be of the act of the agent as a whole. The principal cannot reject the liabilities and accept only the benefits arising out of the transaction.
8. Ratification of acts which are not within the principal's authority, is ineffective. For instance, in the case of companies, the acts of directors, which are *ultra vires* the company, cannot be ratified by the company.
9. Ratification which results in injury of interests/rights of a third party shall not be effective. Ratification cannot be made so as to subject a third party to damages or terminate any right or interest of the third person.

Q.4 Who is a sub-agent? When can a sub-agent be appointed and what are the effects of appointing a sub-agent?

Ans. Sub-Agent [Sec. 191]: Generally, an agent cannot delegate and he should execute his duties personally in the business of agency. However, according to section 191 of the Indian Contract Act, 1872 a sub-agent is a person employed by and acting under the control of the original agent in the business of the agency. The relation of the sub-agent to the original agent as between themselves is that of the agent and principal. Since a sub-agent is appointed by the agent to act under the control of the agent, there is no privity of contract between the sub-agent and the principal. Therefore, sub-agent cannot sue the principal and similarly, the principal cannot sue the sub-agent for any amount due from him. Each of them can proceed only against his immediate contracting party, *i.e.* the agent. However, in case of fraud, the principal has a right to proceed against the agent and the sub-agent simultaneously.

An agent may appoint a sub-agent properly in the following circumstances:

1. Where expressly permitted by the principal in terms of contract with the original agent or where the principal is aware of the intention of the agent to appoint a sub-agent but does not object to the same.
2. Where the ordinary custom of the trade permits delegation of authority by agent to the sub-agent.
3. Where the nature of agency is such that it cannot be accomplished without the appointment of a sub-agent.
4. Where in the course of agency, an unforeseen emergency arises then appointment of sub-agent may be necessary.

(i) *If the sub-agent is properly appointed:*

- A sub-agent, who is properly appointed, can, represent the principal and bind him to the third parties, in respect of his acts, as if he were originally appointed by the principal.
- In the event of any loss caused by the sub-agent to the principal in course of business of agency, the principal can hold the original agent liable.
- The principal cannot hold the sub-agent liable, except in case of fraud committed by him.
- Further the sub-agent has a right of action only against the original agent for the recovery of his remuneration.

(ii) *If the sub-agent is improperly appointed:*

- Where the original agent without having the authority to do so, appoints a sub-agent then such a sub-agent is improperly appointed.
- The Principal is not represented by nor bound by the acts of such an improperly appointed sub-agent and is therefore not liable to the third parties.
- The original agent shall be liable to the principal as well as the third parties for the acts of the sub-agent.
- The sub-agent shall have a right of action only against the original agent for the recovery of his remuneration.

Q.5 What are the duties of an agent to his principal?

Ans. Duties of an agent:

1. **Duty to conduct the business of agency according to the principal's instructions (Sec. 211):** The agent is under a duty to comply with the instructions of the principal. The instructions of the principal must be literally complied with, *i.e.*, the agent is not supposed to deviate from the directions of the principal even for the principal's benefit. Further, in the absence of instructions from the principal, the agent should follow the custom of the business at the place where it is conducted. When the agent acts otherwise, any loss occasioned thereby shall have to be borne by the agent, whereas, any surplus must be accounted for to the principal.

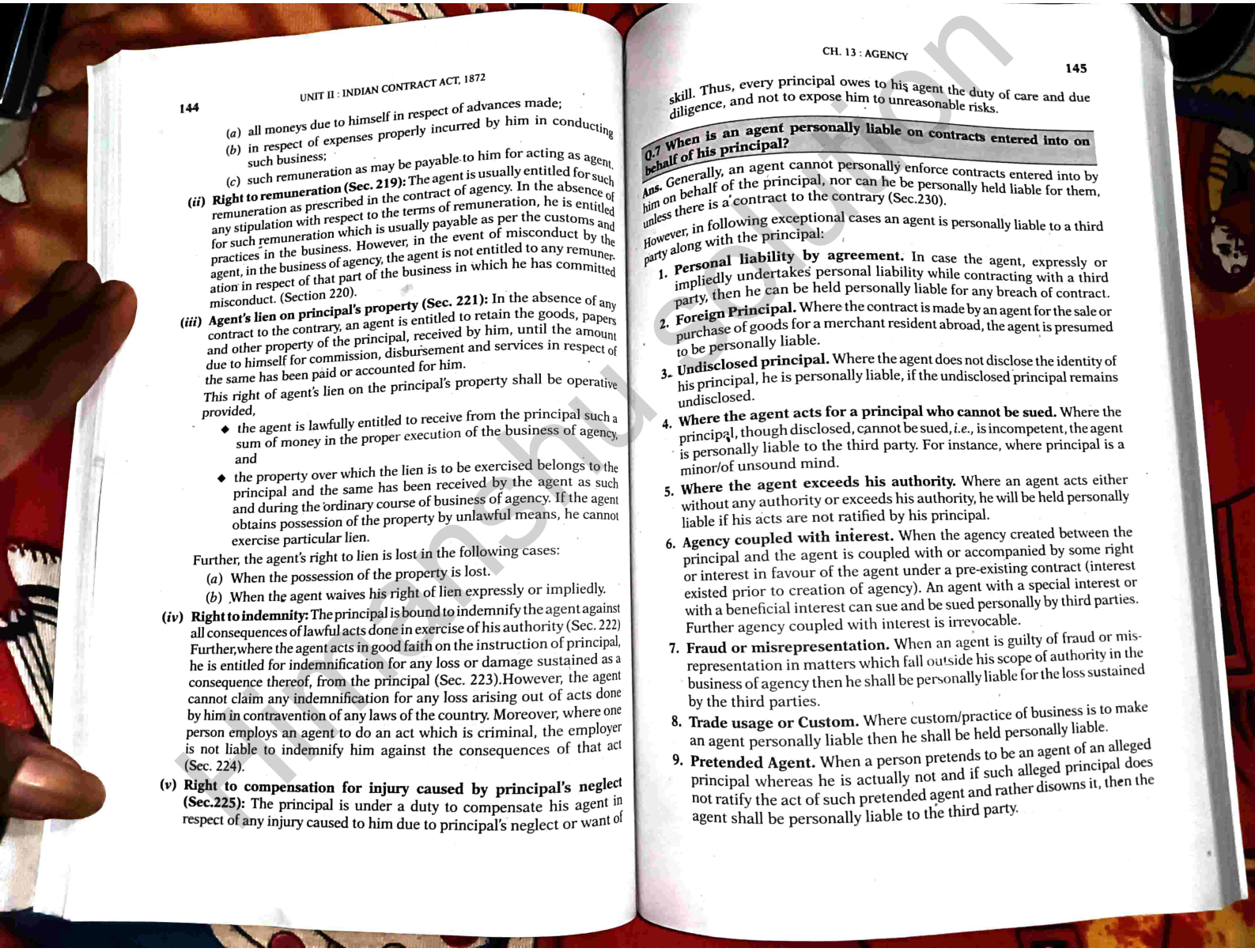
2. **Duty to act with reasonable care and skill (Sec. 212):** An agent is under a duty to conduct the business with the skill and diligence that is generally possessed by persons engaged in similar business, except where the principal knows that the agent is wanting in skill (Sec. 212).
3. **To render proper accounts (Sec. 213):** An agent is bound to render proper accounts to his principal on demand and to pay overall sums received on principal's behalf subject to any lawful deductions for remuneration or expenses incurred by him. Rendering accounts, however, does not mean showing the accounts but the accounts supported by vouchers.
4. **Agent's duty to communicate with the principal (Sec. 214):** It is the duty of an agent, in case of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions. In case of emergency, however, the agent can do all that a reasonable man would, under similar circumstances, do with regard to his own goods. He becomes an agent by necessity.
5. **Duty not to deal on his own account (Sec. 215):** An agent should not to deal on his own account, as no agent is permitted to put himself in the position where his interest conflicts with his duty. If an agent deals on his own account without the consent of the principal, the principal may repudiate the contract or can claim from the agent any benefit which he might have obtained. Further, in case an agent deals on his own account, he shall cease to be entitled to his remuneration.

   Further, if an agent desires to deal on his own account, he must make a full and frank disclosure of all the material circumstances within his knowledge and obtain the consent of the principal.
6. **Duty not to make any secret profits (Sec. 216):** Agent is under a duty not to make any secret profits in the business of agency. Since the relationship of principal and agent is based on mutual confidence agent should not make any secret profits.
7. **Duty not to disclose confidential information:** An agent should not disclose any confidential information supplied authorised to him by the principal.
8. **Duty to exercise his authority personally:** An agent must not delegate his duty unless he is expressly or impliedly to delegate or he delegates under section 190 of the Indian Contract Act.

Q.6 What are the rights of an agent under the provisions of the Indian Contract Act, 1872?

Ans. The following are the rights of an agent under the provisions of the Indian Contract Act, 1872:

(i) **Right to retain out of sums received on principal's account (Sec. 217):** The agent has a right to retain the following sums out of the proceeds received by him on account of the principal in the business of the agency:



(*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.

(*ii*) Right to remuneration (Sec. 219): The agent is usually entitled for such remuneration as prescribed in the contract of agency. In the absence of any stipulation with respect to the terms of remuneration, he is entitled for such remuneration which is usually payable as per the customs and practices in the business. However, in the event of misconduct by the agent, in the business of agency, the agent is not entitled to any remuneration in respect of that part of the business in which he has committed misconduct. (Section 220).

(*iii*) Agent's lien on principal's property (Sec. 221): In the absence of any contract to the contrary, an agent is entitled to retain the goods, papers and other property 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.

This right of agent's lien on the principal's property shall be operative provided,

- the agent is lawfully entitled to receive from the principal such a sum of money in the proper execution of the business of agency, and
- the property over which the lien is to be exercised belongs to the principal and the same has been received by the agent as such and during the ordinary course of business of agency. If the agent obtains possession of the property by unlawful means, he cannot exercise particular lien.

Further, 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 of lien expressly or impliedly.

(*iv*) Right to indemnity: The principal is bound to indemnify the agent against all consequences of lawful acts done in exercise of his authority (Sec. 222) Further, where the agent acts in good faith on the instruction of principal, he is entitled for indemnification for any loss or damage sustained as a consequence thereof, from the principal (Sec. 223). However, the agent cannot claim any indemnification for any loss arising out of acts done by him in contravention of any laws of the country. Moreover, where one person employs an agent to do an act which is criminal, the employer is not liable to indemnify him against the consequences of that act (Sec. 224).

(*v*) Right to compensation for injury caused by principal's neglect (Sec.225): The principal is under a duty to compensate his agent in respect of any injury caused to him due to principal's neglect or want of

skill. Thus, every principal owes to his agent the duty of care and due diligence, and not to expose him to unreasonable risks.

Q.7 When is an agent personally liable on contracts entered into on behalf of his principal?

Ans. Generally, an agent cannot personally enforce contracts entered into by him on behalf of the principal, nor can he be personally held liable for them, unless there is a contract to the contrary (Sec.230).

However, in following exceptional cases an agent is personally liable to a third party along with the principal:

1. **Personal liability by agreement.** In case the agent, expressly or impliedly undertakes personal liability while contracting with a third party, then he can be held personally liable for any breach of contract.
2. **Foreign Principal.** Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad, the agent is presumed to be personally liable.
3. **Undisclosed principal.** Where the agent does not disclose the identity of his principal, he is personally liable, if the undisclosed principal remains undisclosed.
4. **Where the agent acts for a principal who cannot be sued.** Where the principal, though disclosed, cannot be sued, *i.e.*, is incompetent, the agent is personally liable to the third party. For instance, where principal is a minor/of unsound mind.
5. **Where the agent exceeds his authority.** Where an agent acts either without any authority or exceeds his authority, he will be held personally liable if his acts are not ratified by his principal.
6. **Agency coupled with interest.** When the agency created between the principal and the agent is coupled with or accompanied by some right or interest in favour of the agent under a pre-existing contract (interest existed prior to creation of agency). An agent with a special interest or with a beneficial interest can sue and be sued personally by third parties. Further agency coupled with interest is irrevocable.
7. **Fraud or misrepresentation.** When an agent is guilty of fraud or misrepresentation in matters which fall outside his scope of authority in the business of agency then he shall be personally liable for the loss sustained by the third parties.
8. **Trade usage or Custom.** Where custom/practice of business is to make an agent personally liable then he shall be held personally liable.
9. **Pretended Agent.** When a person pretends to be an agent of an alleged principal whereas he is actually not and if such alleged principal does not ratify the act of such pretended agent and rather disowns it, then the agent shall be personally liable to the third party.

Q.8 How is an agency terminated? When does the termination of Agency take effect?

Ans. Termination of agency: It implies putting an end to the relationship between the principal and the agent and results in the termination of the agent's authority. Section 201 provides for the termination of agent's authority by the any of the following modes:

(*i*) **By Agreement:** The relation of the principal and the agent is generally founded on mutual consent and may be terminated at any time by mutual agreement between them.

(*ii*) **Revocation by the principal:** The principal may, by express notice, or by implied conduct, revoke the authority of the agent at any time before the authority has been exercised so as to bind the principal. Where revocation of agency, which is for fixed time period, is done prematurely without sufficient cause, principal shall be liable to compensate the agent (Sec. 205).

Further, before revoking the authority of the agent, reasonable notice must be given of such revocation to the agent. If reasonable notice is not given, the principal will be liable to compensate the agent for consequential damages to the agent (Sec. 206).

The agency is, however, irrevocable in the following cases:

(1) Where the authority of the agent is one coupled with interest, *i.e.*, the agent has an interest in the subject matter of the contract (Sec. 202).

(2) 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 from acts already done in the agency (Sec. 208).

(3) Where an agent, in exercise of his authority, has incurred personal liability.

(*iii*) **Renunciation by the agent:** An agent may, after giving reasonable notice to the principal, renounce the business of agency. However, where, an agency is for a fixed period and the agency is renounced prematurely without sufficient cause, the agent is liable to compensate the principal. The agent is under a duty to serve a reasonable notice of renunciation to the principal.

(*iv*) **Termination on completion of business:** Where an agent is appointed to perform a particular transaction, the agency terminates either upon the performance of that transaction or when the performance becomes impossible.

(*v*) **On expiry of time:** When the agency is for a fixed period of time, then it terminates automatically on the expiry of that specified time.

(*vi*) **Death /Insanity of principal or agent:** An agency is automatically terminated on the death/insanity of principal or the agent. Winding up of the company dissolution of partnership has an effect similar to death of a principal and consequently the authority of the director/partners comes to an end.

(*vii*) **Insolvency of the principal.** An agency is also terminated by the adjudication of the principal as an insolvent.

(*viii*) **Destruction of the subject-matter.** In the event of destruction of the subject-matter in respect of which the agency was created, the agency shall stand terminated.

When termination of Agency Takes Effect:

As between the principal and the agent, termination of agency is effective only when it comes to the knowledge of the agent. However, so far as the third parties are concerned, termination of agency takes effect when it comes to their knowledge. Thus, if the principal revokes the authority of the agent, the agency comes to an end as between the principal and the agent when the agent receives notice of revocation. After the receipt of notice of revocation, the agent's authority ends, but he still binds the principal towards third party, if the third party is unaware of the fact of termination of agency.

Further, in the event of the death/ insanity/ of the principal, the agent's authority shall continue as long as the fact of death/insanity of the principal is not known to the agent.

Duty of Agent on Termination of Agency by Principal's Death or Insanity:

As per section 209, when agency is terminated by the principal dying or becoming of unsound mind, 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.

SHORT ANSWER QUESTIONS:

Q.9 Distinguish between "Special Agent and General Agent."

Ans. Special Agent and General Agent:-

(1) A special agent is appointed to perform a special act or represent the principal in some particular transaction, while the general agent is the one who is appointed to do all acts connected with a particular trade, business or employment.

(2) A special agent has limited authority and he cannot bind the principal in any matter other than that for which he is employed. A general agent has authority to bind his principal by all acts connected with the trade, business or employment.

(3) The authority of the special agent comes to an end as soon as the act for which he is appointed to perform is completed, while the authority of the general agent is continued until it is put to an end.

Q.10 What is the extent of the Agent's Authority under contract of Agency?

Ans. The authority of an agent to bind the principal is discussed under two cases:

(*i*) **Under Normal Circumstances (Sec 188):** An agent's authority which may be expressed or implied, depends upon the nature of the act he is appointed to do, the things which are incidental to such an act, and the usual practices of the trade. Further when an agent is employed to carry out a particular business, he has authority to do all such acts as are necessary or incidental to such business.

If the third parties contract on the assumption of presence of authority, then the principal is bound by the acts of the agent, done within the scope of the ostensible authority, provided the third party acted in good faith.

(*ii*) **Authority in emergency (Sec 189):** The Indian Contract Act, 1872, provides that an agent has authority in an emergency to do all such acts for protecting his principal from loss as would be done by a person of ordinary prudence in his own case under similar circumstances. However, to constitute a valid agency in emergency the following conditions should be complied with:.

(*a*) It was not reasonably possible to get the principal's instructions;

(*b*) There existed an actual commercial necessity for the agent to act promptly;

(*c*) The agent had taken all reasonable and necessary steps to protect the interest of the principal; and

(*d*) The agent acted *bona fide* in the interest of the principal.

Q.11 Who is a Substituted agent?

Ans. Where an agent holding express or implied authority to name another person to act for the principal, in the business of agency, has named another person accordingly, such person is not a sub-agent but an agent of the principal for such part of the agency as is entrusted to him.Thus a privity of contract exists between the Principal and the Substituted agent.

Therefore, a substituted agent:

- is appointed by/ named by the agent under the control of the Principal
- he is responsible to the Principal *i.e.* he can be held liable by the Principal
- original agent is not liable for the conduct of the substituted agent if the original agent has taken due care in his appointment
- he can hold the Principal liable for remuneration

Q.12 Who is an Undisclosed principal? What are the mutual rights and liabilities of the principal, agent and third parties in such a case?

Ans. Undisclosed principal: Where an agent, having authority to contract on behalf of another, makes the contract in his own name, concealing not only the name of his principal but also the fact that there is a principal, his principal is called undisclosed principal. In such cases:

- neither the existence nor the name (identity) of the principal is disclosed;

- the agent contracts in his own name and gives an impression to the third party as if he himself is the contracting party although the agent has authority in fact and is contracting on behalf of another;

In such a case, the mutual rights and liabilities of the principal, agent and the third party are as under:

1. Since the agent has contracted in his own name, he is personally liable to the third party.
2. If the third party comes to know about the existence of the principal before obtaining judgment against the agent, he may sue either the principal or the agent or both.
3. The third party is entitled to be placed in the same situation as if the agent had been the contracting party. Thus, the third party is not put to any disadvantage by principal's intervention.
4. If the principal discloses himself before the contract is completed, the third party may refuse to fulfill the contract, if he can show that had he knew the true position, he would not have entered into the contract. (Where Principal's identity is material)

Q.13 What is the nature of the Principal's liability for the acts of the agent to the third parties?

Ans. The principal's liability to the third parties for the acts of the agent done by him in the course of his employment as an agent is as follows:

(*i*) **Principal's liability for the Acts of the Agent [Sec. 226]:** Principal is liable for all the acts of agent which are performed by him within the scope of his authority, in the business of agency.

(*ii*) **Principal's liability when agent exceeds authority [Sec. 227-228]:** When an agent exceeds his authority and the part of what he does as is within his authority, can be separated from the part which is beyond his authority, then so much only of what he does as is within his authority, shall be binding as between him and his principal and the principal shall be bound by only such part of his acts to the third party (Sec 227).When an agent does more than he is authorised to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound by the transaction (Sec.228).

(*iii*) **Liability of principal inducing belief that agent's unauthorized acts were authorized [Sec. 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/obligations of the agent, 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 (*i.e.* ostensible authority).

(*iv*) **Consequences of notice given to agent [Sec. 229]:** Any notice given to or information obtained by the agent, given or obtained in the course of

plied with, i.e., the agent is not supposed to deviate from the directions of the principal even for the principal's benefit. Further, in the absence of instructions from the principal, the agent should follow the custom of the business at the place where it is conducted. When the agent acts otherwise, any loss occasioned thereby shall have to be borne by the agent, whereas, any surplus must be accounted for to the principal.

In the given case Mr. Pikachu, the agent of Excellent Ltd., sells goods on credit to Supreme Ltd. which is contrary to the implied instructions/customs of Excellent Ltd.

Thus, applying the above stated provisions, it is evident that Mr. Pikachu shall be liable to compensate Excellent Ltd. for its loss.

Q.18 Mrs. Singhania purchased sarees on credit of her husband from Lalityam Sarees. The shopkeeper later demanded the amount from her husband Mr. Singhania. He refused to pay then same alleging that the clothes were bought for the wife's use. Laltiyam Sarees filed a suit against Mr. Singhania for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether Lalityam Sarees would succeed.

Ans. Hint: In case of husband and wife who are cohabiting, wife can be regarded as the agent of the husband and has an implied authority to pledge her husband's credit in respect of the necessaries of life purchased by her provided:

- the husband has not expressly forbidden the wife from buying goods on credit
- the goods bought do not constitute necessaries of life
- husband has given to the wife sufficient cash to buy goods & the said fact is in the seller's knowledge
- the creditor had been expressly forbidden by the husband not to give credit to the wife.

In the given case since none of the above conditions is being met, Mrs. Singhania has the right to pledge her husband's credit for the purchases made by her and therefore Lalityam Sarees can rightfully recover the amount from Mr. Singhania

Q.19 Balu of Delhi sends his servant Dutta to buy certain goods for him, on credit from Jadhav. Later he pays for the goods. On another occasion Balu again sends Dutta to buy goods and gives him sufficient amount for the purpose. Dutta, however, buys goods on credit instead and runs away. Is Balu bound to pay for the goods to Jadhav? Decide giving the provisions of the Indian Contract Act is this regard.

Ans. When a person has, by his conduct or statements, induced others to believe that a certain person is his agent, he is estopped from subsequently denying it. Thus, agency by estoppel is created when a principal through an express or implied representation, or through his affirmative conduct leads another person to believe that a certain person is his agent whereas he has no real authority

as such and that other person contracts on the faith of such representation/ conduct of the principal.

In the given case, Balu sends his servant Dutta to buy goods on credit for which he pays later. On another occasion he sends Dutta to buy goods for cash but instead he buys the same on credit and absconds.

Thus applying the above provisions to the given case it is evident that Balu, has through his past affirmative conduct of paying for the credit purchases made by Dutta on his behalf, led Jadhav to believe that Dutta is his agent and hence agency by estoppel has been created and therefore Balu shall be liable to make the payment to Jadhav.

Q.20 Anuj of New Delhi consigns certain goods to Dharma of Bombay, for the purpose of sale by auction. Dharma, on receipt of goods, engaged an auctioneer of repute – Nishank, for the purpose and informs Anuj. Dharma also authorises Nishank, the auctioneer to receive the proceeds of the sale. The goods were auctioned and the sale proceeds recovered from the bidder. Nishank, before accounting for the proceeds and remitting the same to Anuj, becomes insolvent. Anuj claims the sale proceeds from Dharma. Comment on the validity of actions of Anuj in the context of the provisions of the Indian Contract Act, 1872.

Ans. Where an agent holding express or implied authority to name another person to act for the principal, in the business of agency, has named another person accordingly, such person is not a sub-agent but an agent of the principal for such part of the agency as is entrusted to him. Thus, a privity of contract exists between the Principal and the Substituted agent.

Therefore, a substituted agent:

- is appointed by/ named by the agent under the control of the principal
- he is responsible to the principal *i.e.* he can be held liable by the Principal
- original agent is not liable for the conduct of the substituted agent if the original agent has taken due care in his appointment
- he can hold the principal liable for remuneration

Further incase where a person holding certain expertise is appointed or named by the original agent to act for the principal in the business of agency then such a person is generally appointed in the capacity of a substituted agent.

In the given case the original agent Dharma appoints Nishank, an auctioneer of repute to conduct sale of goods by auction for Anuj, his principal. Nishank receives the proceeds of auction sale but becomes insolvent before remitting the same.

Thus, applying the above stated provisions it is evident that Nishank has been appointed in capacity of a substituted agent and Dharma the original agent has exercised due care and diligence in his appointment as he has appointed a person of repute to conduct the auction. Therefore, Dharma cannot be held liable by Anuj. Anuj can only sue Nishank for the proceeds.

the business of agency, 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.

(v) Principal's liability for the agent's fraud or misrepresentation [Sec. 238]: Any misrepresentation or fraud by agent, while acting in the course of business of agency, shall have the same effect as if such misrepresentation or fraud had been made, or committed, by the principal himself and the principal shall incur liability for the same to the third party. However, any misrepresentation or fraud by the agent, in matters which fall outside the scope of his authority, shall not affect the principal and shall not make the principal liable to the third party.

CASE STUDY:

Q.14 Arun, a transporter was given the duty of transporting apples from a rural village in Kashmir to Delhi by Santosh. Due to heavy rains, Arun was stranded for more than 5 days and fearing that the apples might perish, he sold the apples below the prevalent market rate in the nearby market. Can Santosh recover the loss from Arun on the ground that Arun had acted beyond his authority?

Ans. Agent's authority in an emergency (Section 189 of the Indian Contract Act, 1872): An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances and such acts shall be binding on the principal provided following conditions are complied with:

(*a*) It was not reasonably possible to get the principal's instructions;

(*b*) There existed an actual commercial necessity for the agent to act promptly;

(*c*) The agent had taken all reasonable and necessary steps to protect the interest of the principal; and

(*d*) The agent acted *bona fide* in the interest of the principal.

In the given case, Arun, the agent, was transporting apples – perishable goods for his principal, Santosh. Due to heavy rains, he was stranded for more than 5 days which created a commercial necessity for him to act promptly, with the intention of protecting Santosh from losses.

Thus, applying the above stated provisions, it is evident that Arun acts in an emergency as a man of ordinary prudence, in a *bona fide* manner to protect Santosh from loss which results in creation of agency by necessity and hence Santosh will not succeed against him for recovering the loss provided all the above conditions are complied with.

Q.15 Mr. Malhotra appointed Mr. Sharma as his agent to buy a bungalow for him in the Andheri. Mr. Sharma bought a bungalow for 20 crores in the name of a nominee and then purchased it himself for 25 crores. He then sold the same bungalow to Mr. Malhotra for 30 crores. Mr. Malhotra later comes to know the mischief of Mr. Sharma and tries to recover the excess amount paid to Mr. Sharma. Comment on the rights of Mr. Malhotra under the provisions of the Indian Contract Act, 1872.

Ans. Duty not to deal on his own account: An agent should not to deal on his own account, as no agent is permitted to put himself in the position where his interest conflicts with his duty. If an agent deals on his own account without the consent of the principal, the principal may repudiate the contract or can claim from the agent any benefit which he might have obtained. Further, in case an agent deals on his own account, he shall cease to be entitled to his remuneration. Further, if an agent desires to deal on his own account, he must make a full and frank disclosure of all the material circumstances within his knowledge and obtain the consent of the principal.

In the given case the agent Mr. Sharma, instead of buying the bungalow for his principal Mr. Malhotra, buys the same in the name of his nominee and deals on his own account and earns a profit of 10 crores.

Thus, applying the above stated provisions to the given case, it can be concluded that Mr. Sharma, the agent, has violated his duty and dealt on his own account. Mr. Malhotra can choose to either repudiate the contract or claim damages of ₹ 10 crores from Mr. Sharma.

Q.16 Anand appoints Monu, a minor, as his agent to sell the goods in his shop for not less than ₹ 5000. Monu sells it to Sonu for ₹ 1000. Is the sale valid? Explain the legal position of Monu and Sonu, referring to the provisions of the Indian Contract Act, 1872.

Ans. Hint: 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, an incompetent person on being appointed as an agent can bind the principal to the third parties by his acts, but cannot be held liable by the principal for his acts.

Thus, in the given case, Sonu gets a good title to the goods. Monu is not liable to Anand for his negligence in the performance of his duties.

Q.17 Excellent Ltd. sells its products through agents and it is not customary for them to sell the products on credit. Mr. Pikachu, one of the agents sold goods of Excellent Ltd. to Supreme Pvt. Ltd. on credit, which subsequently became insolvent before payment of price for the said sale. Excellent Ltd. sued Mr. Pikachu for damages on such sale to Supreme Pvt. Ltd. Comment in the light of the provisions of the Indian Contract Act, 1872, whether Excellent Ltd. will succeed in its claim?

Ans. Duty to conduct the business of agency according to the principal's instructions [Sec. 211]: The agent is under a duty to comply with the instructions of the principal. The instructions of the principal must be literally com-