Business Law

Q1. What is Law

A law is a **rule of conduct** imposed and enforced by the **Government**. Law is a mechanism (system) for **regulating the human conduct** in a society.

Q2. What are the Sources of Law of Contract

➢The **Indian Contract Act, 1872** Apart from Indian Contract Act, 1872, the other sources of law of contract are:

➢**Judicial decisions or precedents** - The decisions of the Supreme Court are binding on the lower courts. The judicial decisions constitute an important source of the law of contract, especially when the Act is silent on a point or there is ambiguity (confusion).

➢**Customs/ usages** refer to a generally accepted practice or behaviour among members of a business community. A custom or usage to be legally binding must not be inconsistent with statutory law and must be widely known, certain and reasonable. For e.g. Hundi

The Indian Contract Act, 1872

The Act came into force on the first day of September 1872 and it applies to the whole of India.

Q3. List out the Essentials element of Valid contract

- Offer & Acceptance
- Mutual Consent – Consensus ad idem (Same thing in same sense)
- Legal Obligation – **Balfour v/s Balfour**
- Free consent
- Competent to contract
- Lawful consideration
- Object of agreement must be lawful
- Agreement must not be declared to be void
- Certainty
- Possibility of Performance
- Agreement must be in writing (If required), For e.g. Contract with govt. must be in writing.

Q. Define Offer

The Indian Contract Act uses the term proposal, instead of offer. However the words proposal and offer are synonymous and are used interchangeably. **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".

Essentials of a proposal/ offer

- Two person – The person making the proposal or offer is called the “Promisor” or “offeror”. The person to whom the offer is made is called the “offeree”.
- There must be an expression of willingness to do or not to do some act by the offeror. Example – A willing to sell his goods at certain price to B. A is willing to not to dance in a competition if B pays him certain sum of money.

- The willingness must be expressed with a view to obtain the assent of the other party to whom the offer is made. Example - Where 'A' tells 'B' that he desires to marry by the end of 2019, it does not constitute an offer of marriage by 'A' to 'B'. Therefore, to constitute a valid offer expression of willingness must be made to obtain the assent (acceptance) of the other. Thus, if in the above example, 'A' further adds, 'Will you marry me', it will constitute an offer.
- An offer can be positive as well as negative: Thus "doing" is a positive act and "not doing", or "abstinence" is a negative act; nonetheless both these acts have the same effect in the eyes of law.

Q5. Define Acceptance

A contract emerges from the acceptance of an offer. **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**."

Q6. Define Agreement

An agreement is defined in section 2(e)
"Every promise and every set of promises, forming the consideration for each other is an agreement".

Q7. Define Contract

According to **section 2(h)** of the Indian Contract Act; "**An Agreement enforceable by law is a contract**".

Thus a contract consists of two elements:

- An agreement
- Legal obligation i.e. a duty enforceable by law.

Q8. Indian Contract Act is not exhaustive? Comment.

It does not deal with all the branches of the law of contract. There are separate Acts which deal with contracts relating to negotiable instruments, transfer of property, sale of goods, partnership, insurance, etc. For example, if you are buying a house the law applicable will be the Transfer of Property Act ,while if you are buying a car, the governing law is the Sale of Goods Act. The Partnership Act regulates the partnership agreements. The Contract Act thus, contains the general principles of contract and does not deal with contractual relationships which are dealt under special statutes.

Scheme of the Act

The scheme of the Act may be divided into two groups:

General Principles of the law of contract (Sec. 1-75).

Specific kinds of contracts, viz.:

- Contracts of **Indemnity and Guarantee** (Sec. 124-147)
- Contracts of **Bailment and Pledge** (Sec. 148-181)
- Contracts of **Agency** (Sec. 182-238).

Note: Sections 76-123 relating to Contracts of Sale of Goods were repealed in 1930 and a separate Act called the Sale of Goods Act was enacted. Similarly, sections 239-266 relating to partnership were repealed in 1932 when the Indian Partnership Act was passed.

Q9. Is it different from other branches of law?

Yes. The law of contract **does not prescribe any precise rights or duties, which the law will enforce or protect**. It lays down the basic principles of contract and within these parameters the parties are free to frame any rules (rights/duties) in regard to the subject matter of their agreement. In this sense, the parties are makers of law for themselves. So if A enters into contract with B for purchase of property, then A and B are free to decide the terms and conditions of the contract - the price, terms of payment, date of execution of sale deed etc., these matters are to be decided by the parties themselves within the parameters set by the law of contract.

All Contracts are Agreements, but all agreements are not Contracts

An agreement is a wider term than a contract. It may be a legal agreement (i. e. enforceable by law) or a social agreement (i.e. not enforceable by law)

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

The law of contract creates 'right in personam' as against 'right in rem'

Right in personam means a **right available against a particular person**. For example, A buys TV from B for Rs. 20,000. B has a right to recover this amount. This right can be exercised only by B and only against A. This right of B is right in personam.

Right in rem means a **right available against the whole world**. If A is owner of house property, he has the right of peaceful possession and enjoyment of the property against the whole world.

Types of Contract
On the basis of Validity

A. Void Agreement – Sec. 2(g)

- An agreement **not enforceable by law** is said to be void.
- It is also called as **void ab initio**, i.e., from the very beginning. If any of the essentials of a valid contract, other than free consent, is missing, the agreement is void, i.e., it cannot be enforced at courts of law.
- **There cannot be restitution of benefit under a void agreement** and if something has been paid it cannot be recovered.

B. Void Contract – Sec. 2(j)

A contract which **ceases to be enforceable** by law becomes void when it ceases to be enforceable.

It is a contract where it **is valid in the beginning but becomes void subsequently**.

Restitution of benefit allowed when contract becomes void

C. Voidable Contract – Sec. 2(i)

An agreement which is **enforceable by law at the option of one** or more of the parties thereto, but not at the option of the other or others, is a voidable contract.

A voidable contract is enforceable at the option of one party, for ex. If X is forced to sign a contract, the contract is voidable at the option of X. X may either rescind (avoid or repudiate) the contract or elect to be bound by it.

A voidable contract **continues to be good until it is avoided by the party entitled to do so**.

The party rescinding a voidable contract shall, if he has received any benefit thereunder from another party to such contract, **restore such benefit**, so far as may be, to the person from whom it was received.

D. 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.

E. Illegal Agreement

An illegal agreement is one, which is contrary (opposite) to law. It may attract punishment and prosecution under criminal law. Money Paid under illegal agreement cannot be recovered. All illegal agreements are void but all void agreements are not necessarily illegal. An agreement which is collateral to an illegal agreement also becomes illegal.

Types of Contract
On the basis of formation

A. Express Contracts

An express contract is created by the **words** of the parties, whether **oral or written**.

B. Implied Contracts

Implied contract in contrast come into existence by implication. Most often the implication is by action or conduct of parties or course of dealings between them. Section 9 of the act contemplates such implied contracts when it lays down that in so far as such proposal or acceptance is made otherwise that in words, the promise is said to be implied.

C. E- Contracts

When a contract is entered into by two or more parties using electronic means, susch as e-mail, is known as e-commerce contract.

Types of Contract On the basis of Performance

A. Executed Contracts – Nothing remains to be done

An executed contract is one that has been performed by all parties. For e.g. A buys a TV set from B for Rs.20,000. A pays the price and B delivers the TV. It is an executed contract. **Both the parties have performed their respective obligations**.

B. Executory Contract – Something remains to be done

An executory contract is one where **one or both the parties have still to perform their respective contractual obligations**. For e.g. A agreed to sell his car to B for Rs. 5 Lakhs. Car was to be delivered by A on 15th of the next month, and the price was to be paid by B on 25th of the same month. It is an executory contract as both the parties have to perform their respective obligations. If the car is delivered by A on 15th of the month, the contract would still be executory till the price is paid by B on 25th of that month.

C. Unilateral Contracts

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. A unilateral contract is partly executed and partly executory. Such contracts are also called as contracts with executed consideration or one-sided contracts.

D. Bilateral Contract

A bilateral contract is one in which **both the parties are yet to perform their respective obligations** at the time of formation of contract. They are similar to executory contracts and are called as **contracts with executory consideration**.

Note:

Formal and Simple Contracts - This classification is made in the **English Law**.

FORMAL CONTRACT is **expressed in a particular form**. Its validity depends on form alone. It is in writing. The **signature is usually attested, i.e. witnessed**. **No consideration is necessary**. The Indian Contract Act does not recognize these contracts since consideration is a necessary element in a contract subject to certain exceptions mentioned in Sec. 25.

Formal contracts can be sub-divided into:

(a) **Contract of Record**

(b) **Contracts under seal**.

Contract of Record: A contract of record consists of **either a judgment of a court or recognizance**. They derive their binding force from the authority of the Court.

A COURT JUDGMENT on being recorded is called a contract of record. It is an **obligation imposed upon the parties by the court as a judicial authority**. It is not a contract in the real sense since it is not based on any agreement.

RECOGNIZANCE is **conditional judgment arising in criminal proceedings binding a person to be of good behaviour or to appear as a witness, subject to a money penalty if the obligation is broken**.

Contract under seal:. All the terms of such contracts are reduced to writing and then the **contract is signed, sealed and delivered**.

SIMPLE CONTRACTS: These contracts are also called as **parol contracts**. This class includes all contracts not under seal and for their enforcement they require the fulfilment of the essential elements of the contract i.e. consideration, free consent etc. **Simple contracts may be made orally or in writing**.

Q10. Define the Kinds of Offer

A. Express Offer

When the offer is made in words, it is said to be express.

B. Implied Offer

An implied offer is one which is **inferred from the act or conduct of the party or from the circumstances of the case**.

C. Specific Offer

When an offer is made to a **specific person or a group of specific persons** (for example an offer to doctors), is called a specific offer. A specific offer can be accepted by the specific person only - **Boulton v/s Jones**

D. General Offer

When the offer is **addressed to public at large**, it is called a general offer. A general offer can be accepted by **any member** of the general public, **who fulfills the terms** of the offer. – **Carlill v/s Carbolic Smoke Ball Co.**

Harbhajan lal v/s Harcharan Lal - X advertised in the newspaper that he would pay INR 5,000 to anyone who traces his missing boy. Y, who knew about the reward traced that boy and sent a telegram to x that he had found his son. It was held that Y was entitled to receive the amount of reward .

E. Cross Offer

When **two persons make an offer to each other on similar terms, without having the knowledge of the offer being made by the other** side, it is known as cross offer.

Note: There is no binding contract in cross offer as the element of acceptance is missing.

F. Counter Offer

It is necessary that the acceptance must match the offer. When the **offeree accepts the offer of the offeror subject to some modification or condition**, it is called Counter offer.

Note:

1) Counter offer amounts to rejection of original offer. – **Nihal Chand v/s Amar Nath**
2) The offer of offeree is called counter offer.

G. Standing Offer/ Open Offer/ Continuous Offer

An offer which is allowed to **remain open for acceptance over a period of time**.

Kinds of offer

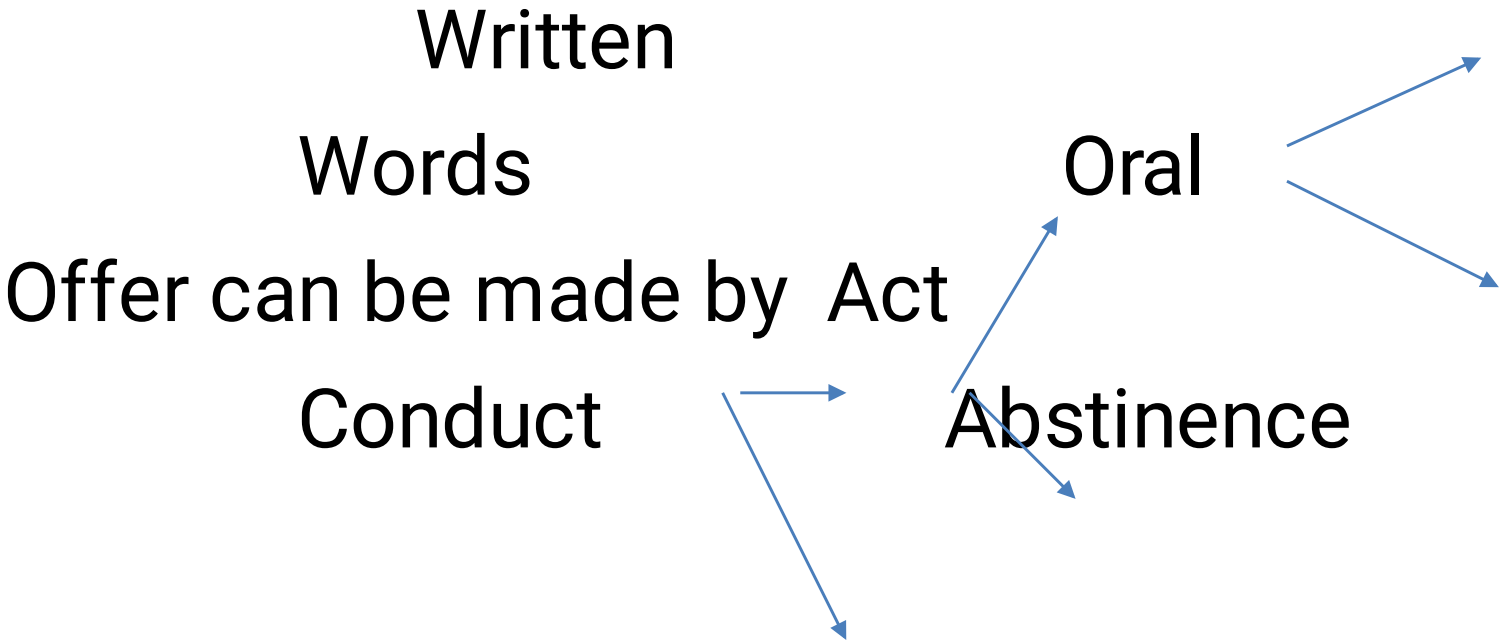
How made

Express offer Implied offer

To whom made?

General offer Specific offer

How to make an offer?



Q11. Explain the Legal Rules regarding Offer

1. An offer must be made with a view to create legal relationship. If the offer is made to create only a social or moral obligation, the obligation shall not be legally binding. Mere invitation to dinner is no offer. An offer to go to a picnic or an offer by a father to give a mobile to his son on passing C.A. foundation exams are the examples where there is no intention to create legal relationship.

Note –
In case of Social or domestic agreements, the usual presumption is that the parties do not intend to create legal relationship but in commercial or business agreements, the usual presumption is that the parties intend to create legal relationship unless otherwise agreed upon.

2. Offer must be distinguished from an invitation to offer. Invitation to offer is not an offer, it is an invitation to the other party to make an offer, however, he is not bound to accept the offer when it is made by the other party. **Invitation to offer means supply of information so that the negotiations can start** and the other person can be moved to make an offer.

Pharmaceutical Society of Great Britain v. Boots Cash Chemists Ltd.

Basis	Offer	Invitation to offer
Intention of Parties	If a person who makes the statement has the intention to be bound by it as soon as the other accepts, he is making an offer.	If a person has the intention of negotiating on terms it is called invitation to offer.
Sequence	An offer cannot be an act precedent to invitation to offer	An invitation to offer is always an act precedent to offer
Example	Will you buy my car?	Display of goods for sale in shop windows Quotation of prices sent in reply to a query regarding price

3. An offer must be communicated to the offeree. There can be no acceptance of an offer until the communication of the offer has been made to the offeree – Lalman Shukla v/s Gauri Dutt

4. An offer may be conditional. An offer may be made subject to terms and conditions. In such cases

(a) **the conditions must be clearly communicated to the offeree, before the contract is concluded and not afterwards**

(b) the **conditions must be reasonable**. For Ex: Drycleaner limits his liability to 25% of the market price of the article in case of loss, the customer will not be bound by this condition because of unreasonable condition – coz it means that the dry cleaner can purchase the garments at 25% of the market price.

Stevenson v. Handerson – Conditions were written on the back of the Steamer ticket
Parker v. S.E. Rail Co. – "see back" were printed on the receipt of cloakroom at railway station.
Olley v. Marlborough Court ltd. – Condition must be brought to the knowledge of offeree before the contract is concluded and not afterwards
Lily White Drycleaners v. R. Munnuswamy – Drcleaner would be liable only to the extent of 10 times the drycleaning charges in the event of any damage to the clothes.

5. The terms of offer must be certain. They should not be vague or ambiguous. For example, A says to B" I will give you a reasonable price if you sell the car". This is not an offer since it is vague – Gunthing v/s Lynn

6. An offer must be distinguished from a mere declaration of intention – Harris v/s Nickerson

For example – X tells Y, "I want to sell my car for INR 1 Lakh." it is a mere statement of intention and not an offer.

A father wrote his son about his wish of making him the owner of all his property is mere a statement of intention.

X, a broker of Mumbai wrote to Y a merchant of Noida stating the terms on which he is willing to do business. It was held that the letter was a mere statement of intention and not an offer – **Devidatt v. Shriram**

7. An answer to a question is not an offer – Quoting the price of a product does not constitute it as offer - Harvey v/s Facie The above decision was followed in Mac Pherson vs Appanna, where the owner of property had said that he would not accept less than $ 6000/- for it. This statement did not indicate any offer but indicated only an invitation to 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. For example. X writes to Y " I shall buy your house for Rs. 20 lacs. If you do not reply within week, I shall assume that you have accepted my offer" This is not a valid offer – Felthouse v/s Bindley

Q. Explain Legal rules regarding a valid acceptance

1. **Acceptance must be absolute and unqualified.** A conditional or a qualified acceptance is no acceptance at all. There should be 100% acceptance of the terms of the offer.

   X offered to sell two plots of land to Y at a certain price. Y accepted the offer for one plot. It was held that the acceptance was not valid because it was not for the whole of the offer – **Bhawan vs. Sadula**

2. Acceptance must be given only by the person to whom the offer is made.

Note:

a) In the case of specific offer, it can be accepted only by that person to whom it is made.

b) In the case of a general offer, it can be accepted by any one by complying with the terms of the offer.

3. Acceptance may be **expressed in words, spoken or written or may be given by conduct**.

For example – When a cobbler sits with a brush and polish, a person giving his shoes for polishing constitutes as acceptance by conduct.

4. Acceptance must be given **within a specified time limit,** if any, and **if no time is stipulated, acceptance must be given within the reasonable time and before the offer lapses** .

5. Acceptance must succeed the offer.

6. Rejected offers can be accepted only, if renewed. Once an offer is rejected, it is dead. Only when the offer is renewed, that it can be accepted.

7. Acceptance cannot be presumed from silence. The acceptance of an offer cannot be taken as implied from the silence of the offeree or his failure to answer, unless the offeree has in any previous conduct indicated that his silence is the evidence of acceptance.

For example – Rohit subscribed for weekly magazine for one year. Even after expiry of his subscription, the magazine company continued to send him magazine for five years. And also, "Rohit" continued to use the magazine but denied to pay the bills sent to him. "Rohit" would be liable to pay as his continued use of the magazine was his acceptance of the offer.

8. Acceptance must be communicated by the acceptor. Acceptance is not complete unless and until it is communicated to the offeror.

X offered to supply coal to a Railway Company. The manager of the company accepted the offer and put it in the drawer of his table and forgot all about it. It was held that no contract was made because acceptance was not communicated – **Brogden vs. Metropolitan Railway Co.**

P applied for the post of a headmaster in a school. The managing committee passed a resolution approving P to the post but this decision was not communicated to P. But one member of the managing committee in his individual capacity and without any authority informed P about the decision. Subsequently, the managing committee cancelled its resolution and appointed someone else. P filed a suit for breach of contract. It was held that P's suit was not maintainable because there was no communication of acceptance as he was not informed about his appointment by some authorized person – **Powell v. Lee**

9. Acceptance must be given in following manner

If the proposal does not prescribe the manner in which it is to be accepted – **reasonable manner**
If the proposal prescribes the manner in which it is to be accepted – **prescribed manner**

Q13. When communication of acceptance not necessary? (**Exceptions to the rule that acceptance must be communicated**)

- **By performance of conditions** - If the offeree merely performs the conditions of an offer, he will be taken to have accepted it.
- **By acceptance of consideration** - Sometimes offeror may send consideration with offer. If the offeree accepts the consideration, he accepts the offer.
- **By accepting a benefit or service** - Where offeree enjoys or avails the benefits of goods or services. Etc.

Acceptance is to offer what a lighted match is to a train of gunpowder?

As described by Sir William Anson – “Acceptance is to offer what a lighted match is to a train of gunpowder. It produces something which can not be recalled or undone.”

This statement primarily holds good under English law.

Here Gunpowder = offer

And lighted match = Acceptance

When a lighted match is shown to train of gunpowder, it explodes and something happens which cannot be undone. Similarly, an offer once accepted cannot be revoked. But so long a lighted match is not shown, the gunpowder remains inert and can be removed , similarly an offer can be revoked before it is accepted.

The significance of this is an offer in itself cannot create any legal relationship but it is the acceptance by the offeree which creates a legal relationship. Once an offer is accepted it becomes a promise and cannot be withdrawn or revoked. An offer remains an offer so long as it is not accepted but becomes a contract as soon as it is accepted.

Q14. Revocation - How made/ lapse of offer - Sec. 6

1. If the offeror gives notice of revocation to the other party, i.e., expressly withdraws the offer.
2. By passage of time: By passage of a stipulated time and if no time is stipulated, it lapses by the expiry of a reasonable time.
3. By death or insanity of the offeror if the fact of the death or insanity is known to acceptor.
4. By failure of the acceptor to fulfill a condition precedent to acceptance.
5. By counter offer
6. By rejection: When an offer is rejected it is dead and cannot be revived by its subsequent acceptance.
7. By Subsequent illegality or destruction of subject matter.

Communication of offer via Post - (sec.4)

The communication of **offer is complete when it comes to the knowledge of the offeree**.

For e.g. A makes proposal to B to sell his car for Rs. 2 Lakh. The letter is posted on 21st April. This letter reaches B on 23rd April. The **offer is said to be communicated on 23rd April,** When B receives the letter.

Communication of acceptance via post - (sec. 4)

The communication of acceptance has **two aspects** viz., as against the proposer and as against the acceptor. The communication of an acceptance is complete –

As AGAINST THE PROPOSER, when it is **put in a course of transmission** to him so as to be out of the power of the acceptor, and

As AGAINST THE ACCEPTOR, When it comes to the knowledge of the proposer i.e., when the **letter of acceptance is received by the proposer**.

Revocation of a proposal – (Sec. 5)

It may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. This means that offer can be revoked at **any time before the letter of acceptance is posted by the acceptor**.

Revocation of an acceptance – (Sec. 5)

It may be revoked at any time before the communication of its acceptance is complete as against the acceptor, but not afterwards. This means that an acceptance can be revoked at **any time before the letter of acceptance is actually received by the proposer.**

Note:

a) **In English law – Acceptance can not be revoked**, so that once the letter of acceptance is properly posted the contract is concluded.

b) **In Indian Law** – the acceptor can revoke his acceptance any time before the letter of acceptance reaches the offeror, **if the revocation telegram arrives before or at the same time with the letter of acceptance, the revocation is absolute**.

Consideration Intro

A promise **without consideration is called nudum pactum**. The law will not enforce a bare promise (nudum pactum) but only a bargain i.e. promise supported by consideration.

Note: Quid pro Quo means – Something in return

Q15. What is Consideration?

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

- "When, at the desire of the promisor,
- the promisee or any other person,
- has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing,
- Something, such act or abstinence or promise is called a consideration for the promise."

Q16. Explain the Essentials of valid consideration

1. **Consideration must move 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.

Ex. X spent INR 1,00,000 on the construction of shops at the request of the collector of the District. In consideration of this Y a shop keeper promised to pay some money to X. it was held that this agreement was void being without consideration because X had constructed the shops at the request of collector and not at the desire of Y – **Durga Prasad v. Baldeo**

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

Consideration may be given by the promisee or any other person on his behalf - **Chinnayya v. Ramayya**

Note: In English law, Consideration must move from promisee only.

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. If A promises to give Rs. 10,000 to B, if B stops smoking, it will be a good consideration.

4. Consideration may be past, present or future.

Note:

1) Under English Law, Past consideration is not regarded as good consideration.

2) Past voluntary services rendered by party cannot be said to be the past consideration.

Past consideration – Rish renders some service to at Puja's request in the month of May. In June, Puja promises to pay Rish INR 1000/- for his past services. Past services amount to past consideration. Rish can recover INR 1000 from Puja.

Present Consideration – Cash sales

Future consideration – Neha promises to deliver certain goods to OM after 10 days and OM promises to pay after 10 days from the date of delivery.

5. Consideration need not be adequate.

Note: However, sec. 25 (Explanation 2) provides that inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

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 for e.g. to make a dead man alive.

7. Consideration must not be illegal, immoral or opposed to public policy.

Consideration given for an agreement must be lawful one.

Ex. Fidato promises Hritik to pay 1 lac to beat Rishabh, Hritik Beats Rishabh and claims 1 lac from Fidato, Fidato refuses to pay. Hritik cannot recover because the agreement is void on ground of unlawful consideration.

8. Consideration must not be something, which a person is already bound by law to do.

Discharging of **pre-existing obligation is no consideration**.

A person may be bound to do something by law e.g. to give evidence when called by the Courts. Performance of a legal obligation is no consideration for a promise and therefore the witness cannot demand money to give evidence. – **Collins vs. Godefroy**

An advocate is already bound to render his best services under the original agreement – **Ramchandra Chintaman vs Kalu Raju**

9. Consideration may be forbearance to sue. This means that the consideration may be a promise not to file a legal suit against the person.

Q17. “No Consideration No Contract” . Comment. Are there any exceptions.

The general rule is "**an agreement made without consideration is void**” (opening words of sec. 25). In case of **Abdul Aziz vs. Mazum Ali**, a promise to donate INR 500 towards construction of a mosque was held unenforceable as it was a gratuitous promise lacking consideration.

But gratuitous promise shall be enforceable by law if the promisee on the faith of such promise suffered a liability as suffering of detriment forms a valid consideration – **Kedarnath vs. Gorie Mahomed**

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
*Made on account of **natural love and affection**,
*Between parties standing in a **near relation** to each other,
***Expressed in writing**, and
***Registered under the law**.
- **Rajlukhy Dabee v. Bhootnath Mookerjee**

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.

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 Rs 500/- this promise is enforceable.

In order that a promise to pay for the past voluntary services be binding, the following essentials factors must exist –

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

3. **Agreement to pay a time-barred debt [sec. 25(3)]**: Where there is an agreement, made in **writing, signed by the debtor,** or by his authorized agent, 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.

Note: A time barred debt is one which remains unpaid or unclaimed **for a period of 3 years**, hence it cannot be recovered under the Indian Limitation Act. But a promissory note issued in personal capacity by wife of debtor to pay his time barred debt of her husband is not enforceable – **Pestonji vs. Bai Meharbai**

4. Completed Gift (Explanation to Sec. 25).
Gift is transfer of property without consideration. In order to be valid a gift does not require consideration. As per Explanation 1 to section 25, gifts given by donor to donee are valid. **Once a gift has been actually given, the donor cannot demand it back** on the ground that there was no consideration.
Note: Promise for a donation is not a gift.

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**: No consideration is necessary in case of a gratuitous bailment.

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

Q18. Can a person who is not party to the contract sue upon it? - No

As per the **doctrine of Privity of Contract** - only a party to a contract is entitled to enforce a right created by the contract.

Q19. Right of a stranger to a contract is Different from stranger to the consideration. Comment.

A **stranger to a contract**, i.e., one who is not a party to it, **cannot file a suit to enforce it**. A contract between P and Q cannot be enforced by R. But a **stranger to the consideration can sue to enforce it provided that he is a party to the contract**. A contract between Q and R whereby P pays money to Q for delivering goods to R can be enforced by R although he did not pay any part of the consideration.

X bought tyres from Dunlop Rubber Co. and sold them to Y, a sub-dealer who agreed with X not to sell below Dunlop's list price and to pay to Dunlop Co. INR 150 as damages on every tyre he undersold. Y sold two tyres at less than the list price and thereupon, Dunlop Co. sued him for the breach. It was held that the Dunlop Co. could not maintain the suit because it was a stranger to the contract – **Dunlop P. Tyre Co. ltd. vs. Selfridge & Co. Ltd.**

Q20. Are there certain exceptions to the rule that a stranger to the contract can be sue upon it.

1. Beneficiaries in the case of trust

An agreement to create a trust can be **enforced by the beneficiary** (though he was not a party to the contract between the settler and the trustee). S agrees to transfer certain properties to T to be held by T in trust for the benefit of B. B can enforce the agreement though he was not a party to the agreement - **M.k. Rapai vs. John**

X sent an insured parcel to Y. on loss of such parcel, Y sued post office. It was held that Y was entitled to sue though he was stranger to the contract because on receipt of such article, the post office becomes a trustee for the adressee – **Amir Ullah vs. Central Govt.**

Leading case study- **Khwaja Muhammad v. Husaini Begam**

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. 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. – **Rakhmanbai vs. Govind**

4. 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**, for e.g., S sells goods to B and is entitled to receive the price. S may by giving notice to B assign his right to receive the price in favour of third party X. X, the assignee, may then sue B for the price of goods. The assignee of an insurance policy can sue even though he was not party to it.

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 or estoppel

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.) Example: X gives to Y Rs. 5,000 again to be given to Z. Y informs Z that he is holding the money for him. Later on. Y refuses to pay the money. Z is entitled to recover the money from Y – **Surjan vs . Nanat**

7. Covenants (Conditions) running with the land

In such cases, the person who purchases land with notice that the owner of land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successor of the seller.

Capacity to contract

As Section 11 lays down that "Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject."

Q1. Explain the Law Relating to Minor’s Agreements.

According to section 3 of the Indian Majority Act, 1875, a person, domiciled in India, who is under 18 years of age is a minor.

Accordingly, every person who has completed the age of 18 years becomes a major. In two **exceptional cases** a minor attains majority **when he completes 21** years of his age:

- A guardian is appointed by court, for the minor to look after his person or property or both; or
- A Court of Wards has been appointed for the superintendence of minor's property.

1. An agreement with a minor is **void ab-initio** – **Mohori Bibee v. Dharmodas Ghose**

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. However under **section 33 of the Specific Relief Act, 1963** where the **minor misleads the other person into believing him to be of majority age**, **restitution shall be available** to the deceived party.

3. Any **contract, which is of some benefit to the minor** and under which he is required to bear no obligation, is **valid**

Note – The contracts entered into on behalf of a minor by his guardian or manager of his estate can be enforced by or against the minor if the contract (a) is within the scope of the authority of guardian or manager, and (b) is for the benefit of the minor.

It may also be noted that his guardian cannot enter into a valid contract for purchase of the immovable property for his/her service.

4. No ratification

A minor's agreement **cannot be ratified by the minor on attaining the age of majority.** An agreement void ab-initio cannot be made valid by subsequent ratification.

Indran Ramaswami v/s Anthappa Chettiar – A person on attaining majority, gave a promissory note in satisfaction of one executed by him for money borrowed when he was a minor. It was held that the claim under the promissory note could not be enforced because there was no consideration.

5. The rule of estoppel does not apply to a minor

Where a 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 infant is not estopped from setting up infancy.

Note: According to the rule of estoppel, if a person has, by words or conduct, led another to believe in a state of facts as true and induced him to act on that faith, such a person will be stopped by law from denying those facts later even if the facts presented earlier were untrue. This principle does not apply against a minor. So, if a minor misleads the other party to believe that he is of majority age, and then acquires some benefit from him under an agreement, he will be permitted to deny later the fact that he was of majority age. Thereby, he will have no liability towards the other party.

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**. - **Nash v/s Inman**

Note: 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.

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

7. 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**.

8. 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. Thus in appointing a minor as an agent, the principal runs a great risk.

9. 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.

Note – AoA do not prohibit so.

10. **Minor cannot be declared an insolvent** because he is not competent to contract.
11. **Minor can not be a guarantor**
12. If the **agreement made by a minor jointly with a major person are void** vis-à-vis the minor but can be enforced against the major person who has jointly promised to perform.

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

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

15. Minor 's liability in Tort – A minor may be held liable in Tort (Civil wrong). But if in the course of doing what he is entitled to do under the contract, he is found guilty of negligence, he cannot be made liable on tort if he is not liable on the contract, e.g. in **Burnard v/s haggis**, a minor hired a horse promising not to jump it. He lent the horse to his friend who used the horse against the instructions and this led to the death of the horse. The minor was held liable on Tort. But in another case a horse was hired for riding short journey. The horse was injured due to over riding. The minor could not be held liable since the injury resulted from negligence in the course of what he was entitled to do under the contract. Since he was not liable on the contract himself, he could not be held liable in tort too – **Jennings v/s. Rundall**

Note - Tort means a wrongful act committed by a person, causing injury or damages to another, thereby the injured files an action in civil court for remedies.

A tort is a civil wrong. This is basically a breach of a duty imposed by law, which gives rise to civil right of action for a remedy not exclusive to any other area of law.

The wrongful act or wrongful omission must be recognized by law. Therefore a mere social or moral wrong is not enforceable, e.g. if somebody fails to help a starving man or save a drowning child is only a moral wrong hence not liable.

Person of Sound Mind

As per Section 12 - "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."

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**.

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

Note:

1) An **idiot** is a person who is **permanently of unsound mind**. Such a person has no lucid intervals.
2) In **English law**, contract with Unsound Person is not void but voidable at the option of unsound person, when get sound.

Q2. Explain Disqualified Persons as per Indian Contract Act

The third type of incompetent persons, as per section 11, are those who are " disqualified from contracting by any law to which they are subject." These are:

- ✓Alien enemy,
- ✓Foreign Sovereigns and Ambassadors,
- ✓corporations,
- ✓Convicts,
- ✓Insolvents etc.

Alien enemies

An alien (a person of a foreign country) living in India can enter into contracts with citizens of India during peace time only, and that too subject to any restrictions imposed by the Government in that respect. **On the declaration of a war between his country and India, he becomes an alien enemy** and cannot enter into contracts. **Alien friend can contract but an alien enemy can't contract**. A contract entered into with an alien enemy before the declaration of war shall be suspended until the war is over. However, the **existing contract can be revived after the completion of war or with the approval of the Central Government**.

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**:

- Where they **voluntarily submit** themselves **to the Court**.
- 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.

Convict

A convict is one who is **found guilty and is imprisoned**. During the period of imprisonment, a convict is incompetent

(a) to enter into contracts, and

(b) to sue on contracts made before conviction.

On the expiry of the sentence / or when he is on parole, he is at liberty to institute a suit

Note - the Law of Limitation is held in abeyance during the period of his sentence.

Insolvent

When a person's debt exceed his assets, he is adjudged insolvent and his property stands vested in the Official Receiver or Official Assignee appointed by the Court. Such person –

a) Cannot enter into contracts relating to his property
b) Cannot sue
c) Cannot be sued

Note – when the insolvent is discharged, the aforesaid disqualification is removed.

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.

Any act done in excess of the power given is Ultra vires (i.e. beyond the power) and hence void.

Contingent Contract – Sec. 31

"A contingent contract is a **contract to do or not to do something**, if **some event, collateral** to such contract, **does or does not happen**"

Note: Contracts of insurance, indemnity and guarantee are examples of contingent contract.

For e.g. A makes a contract with B to buy his house for INR 500000 if he is able to secure to bank loan for that amount. The contract is contingent contract.

Collateral Event

According to **Pollock and Mulla**, collateral event means an event which is, "**neither a performance directly promised as part of the contract, nor the whole of the consideration for a promise**". **For e.g.** A contracts to pay B Rs. 1,00,000 if B's house is burnt. This is a contingent contract, because the burning of B's house is neither a performance promised as part of the contract nor it is the consideration obtained from B. The liability of A arises only on the happening of a collateral event which is an independent event but collateral to the main contract.

A agrees to transfer his property to B if her wife C dies. This is a contingent contract because property can be transferred only when C dies.

Q1. Essentials of Contingent Contracts

- The performance of such contracts **depends on a contingency** *i.e.,* on the happening or non-happening of the future event.
- The **event must be collateral**. The event is not part of the contract. The event should be neither performance promised nor a consideration for a promise. For e.g. 'A' agreed to construct a swimming pool for 'B' for INR 200000. And 'B' agreed to make the payment only on the completion of the swimming pool. It is not a contingent contract as the event (i.e. construction of the swimming pool) is directly connected with the contract.

- 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.
- The contingent event **should not be the mere 'will' of the promisor**. For e.g. 'A' promises to pay 'B' INR 1000 if 'A' left Delhi to Mumbai, it is a contingent contract, because going to Mumbai an event no doubt within 'A's will, is not merely his will.

Q2. Rules regarding Contingent Contracts

1. Contract **dependent upon happening of an uncertain future event** can be **enforced only on the happening of that event**. – **Sec. 32**

Ex. A makes a contract with B to sell a horse to B at a specific price, if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse

2. Contract dependent upon non happening of an uncertain future event can be enforced only when happening of that event becomes impossible. – Sec. 33

Ex. A agrees to buy Goods from B if certain ship does not return. This ship is sunk. The contract can be enforced when the ship sinks.

3. Contract contingent upon the future conduct of a living person – If the uncertain event is the future conduct of a living person, **such event shall be considered impossible if that such person does anything by which it becomes impossible to perform the contract within any definite time**.

Ex. 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 & that C may afterwards marry B – **Section 34**

4. Contract dependent upon happening of specified uncertain event within a fixed time – Sec. 35(1)

Such **contract will become void** on

- **Expiry of the time fixed and event has not happened**.
- **Event has become impossible before the expiry of time**.

Ex. A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within year.

5. Contract dependent upon non happening of specified uncertain event within a fixed time – Sec. 35(2)

These contracts **can be enforced**

***Time has expired and event has not happened.**

***It has become certain that event will not happen before the time fixed has expired**.

Ex. 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 the year.

6. Contingent contract 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 – Sec. 36

Ex. Rishabh agrees to pay Fidato, INR 1 lakh if Fidato will marry Salim Khan's son Salman Khan. Salman Khan was dead at the time of the agreement. The agreement is void because Fidato's marriage with Slaman Khan can never take place.

'A' agrees to pay 'B' INR 100000 if sun rises in the west next morning. This is an impossible event and hence void.

1. Quasi Contract

In quasi contract existence of contracts are presumed by law and there is no offer or acceptance. In quasi contracts obligations are imposed by law though parties have not intended to enter into an agreement. In case of quasi contract there is no contract between the parties but the parties are treated as there is a contract between them.

2. Basis of Quasi Contract

The quasi contracts are based on the maxim of '**nemo debet locuplatari ex liena justua**' i.e., **no man must grow rich out of another person's costs**. In other words, these are based on the equitable principle that a person shall not be allowed to enrich himself at the expenses of another.

The **basis** of quasi contractual relations is the **prevention of unjust enrichment at the expenses of others**.

Q1. Explain the Types of Quasi Contract

1. Claim for Necessaries – Section 68

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

In the case for claim of necessaries **only the property of the person is liable and the person is not personally liable** for necessaries.

Necessaries means necessaries suitable to the condition in the life of the person to whom such necessaries are supplied.

Note – if money has been advanced in like circumstances for the purchase of necessaries, its reimbursement can also be claimed u/s 68.

2. Right to recover money paid for another person – Section 69

A person who is **interested in the payment of money and pays such money**, which **another is bound by law to pay**, is **entitled to be reimbursed** by the other.

Abid Hussain v/s Ganga Sahai - Govt. dues paid by one person for another person

Note:

*Payment should be made for another person.

*Person making the payment should be interested in the payment. Payment should be such that another person on whose behalf payment is made should be bound by law to pay.

3. Obligation of person enjoying benefit under non Gratuitous Act – Section 70

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

4.Responsibility of Finder of Goods – Section 71

A person who **finds goods belonging to another and takes them into custody** is subject to the **same responsibility as the Bailee**.

Ex. – Fidato found a diamond ring at a birthday party of Rishabh. Fidato told Rishabh and other guests about it. She has performed her duty to find the owner. If she is not able to find the owner she can retain the ring as bailee.

Note:

1) Bailee is a person to whom goods are delivered for some purpose upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed off according to the directions of the person who has delivered the goods.

2) The finder of the goods is **bound to take as much care of the goods as a man of ordinary prudence would take of his own goods**. The finder of the goods is not responsible for the loss, destruction or deterioration of the things in his custody if he has taken reasonable care.
3) The **finder may recover reasonable charges** for the custody from the owner of the goods or person who delivers him the goods.

5. Liability for money paid or thing delivered by mistake or coercion – Section 72

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

Ex. Rishabh and Fidato jointly owe INR 1 Crore to X. Rishabh alone pays the amount to X, and Fidato, not knowing this fact, pays INR 1 Crore again to X. X is bound to repay the amount to Fidato.

A railways company refuses to deliver up certain goods to the consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charges as was illegally excessive.

6. Compensation for Failure to discharge obligation created by Quasi-Contract – Sec. 73

When an obligation created by Quasi – Contract is not discharged, the **injured party is entitled to receive the same compensation from the party in default** as if such person has contracted to discharge it and had broken his contract.

Performance

Sec.37 part1, of the Contract Act lays down that:

"The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law."

Performance may be:

(a) **Actual performance; or**

(b) **Attempted performance or Tender.**

Actual Performance

When **each party to a contract fulfils his obligation** arising under the contract within the time and in the manner prescribed, it amounts to actual performance of the contract and the **contract comes to an end or stands discharged**. Where a promisor has made an offer of performance to the promisee, and the offer has been accepted by the promisee, it is called an actual performance.

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**.

Note: Tender must be unconditional, must be made at proper time and place, must be made for whole obligation (not only of the part).

Where the promisor has made an offer of performance to the promisee, and the offer has not been accepted, then, according to Sec.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 get one relief starting from the date of rejection of the tender. He will not be liable to pay interest on the due amount from the date of rejection.

Effect of refusal of party to perform promise wholly (Sec. 39)

When a party to a contract has refused to perform, or disabled himself from performing his promise in its entirely, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence (accept or agree to something) in its continuance.

Illustrations

X, a singer enters into a contract with Y, the manager of a theatre to sing at his theatre two nights in every week during the next two months, and Y engages to pay her Rs.100 for each nights performance. On the sixth night X willfully absent herself from the theatre. Y is at liberty to put an end to the contract.

If in the above illustration, with the assent of Y, X sings on the seventh night, Y is presumed to have signified his acquiescence in the continuance of the contract and cannot put an end to it; but is entitled to compensation for the damages sustained by him through X's failure to sing on the sixth night.

Q1. By whom must a contract be performed? (Sec. 40 &41)

- **By promisor himself**: where **personal consideration is the foundation** of the contract.

For ex – X promises to marry Y. X must perform this promise personally.

X promises to paint a picture for Y. X must perform this promise personally.

- **By agent**
- **By legal representatives**: In case of death of promisor, his legal representative can perform the contract unless a contrary intention appears or the contract is of personal nature

- **Performance by third person**: When a promisee accepts a performance of the promise from a third person, he cannot afterwards enforce it against the promisor.
- **By joint promisors**: When two or more persons have made a joint promise, then unless a contrary intention appears from the contract

Performance of Joint Promises

Where two or more persons enter into joint agreement with one or more persons, the promise is known as joint promise. For e.g. A, B and C jointly borrowed a sum of Rs. 15,000 from X and Y, and jointly promised to repay the amount. It is a joint promise.

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.

The **liability of joint promisors** is **joint and several** and the **promisee may compel any one or more of the joint promisors to perform the whole promise** – **Section 43**

For e.g. A, B and C jointly promise to pay D 3, 000 rupees. D may compel either A or B or C to pay him 3,000 rupees

If a joint promisor has been compelled to perform the whole of the promise, he may **require the other joint promisors to make an equal contribution** towards the performance of the promise – **Section 43, Second part**

For e.g. A, B and C jointly promise to pay D 3,000 rupees. D filed a suit against A only and recovered the entire amount from him. In this case, A can recover Rs. 1000 each from B and C.

If any one of the Joint promisors does not make any contribution, the remaining joint promisors **should bear the loss in equal shares** – **Section 43 third part**

For e.g. A, B and C jointly promise to pay D 3, 000 rupees. A was compelled to pay the entire sum of Rs. 3000. In this case, A is entitled to recover Rs. 1000 each from B and C. If C is unable to pay anything, then A is entitled to recover Rs. 1500 from B.

Q2. Explain Effect of release of one joint promisor (Section 44)

Where a promisee releases one of the joint promisors, the **release of one promisor does not discharge the other joint promisors**. Thus, the remaining joint promisors continue to be liable to pay the amount. It may also be noted that the **released promisor remains liable to contribute to other joint promisors** – **Section 44**

Note: In English Law, the release of one joint promisor is the release of all promisors.

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**.

Q3. TIME AND PLACE FOR PERFORMANCE OF PROMISE

- **No Time Specified for performance**: - within a **reasonable time**
- **Time Specified but hour not mentioned**: - at any time during **usual business hours** on specified day.
- **No place is fixed**: - the **duty of the promisor to apply to the promisee to appoint a reasonable place for the performance** of the promise and perform it at such appointed place.

NOTE: Where **"time is the essence of the contract"** and there is failure to perform within the fixed time, the contract becomes **voidable at the option of the promisee**. He may rescind the contract and sue for the breach.

Cases where time is considered to be essence of contract –

- Where the parties have expressly agreed to treat the time as the essence of the contract.
- Where the non-performance at the specified time operates as an injury as the essence of the contract.
- Where the nature and necessity of the contract requires the performance of the contract within the specified time.

Note. If **time is not an essence** of the contract, in that case **contract cannot be avoided, but compensation can be claimed**. Contract does not become voidable.

Note. In case of sale of **immovable property, time is generally not considered to be the essence** of the contract.

An agreement to do an impossible act is void. Impossibility may be existing at the time of making contract or there can be subsequent impossibility.

Note: Impossibility existing at the time of Contract

An agreement to do an act impossible in itself is void ab initio. It is immaterial whether impossibility is known to the parties or not. If impossibility is known only to the promisor then Promisee is entitled to Compensation for loss suffered on account of non performance.

Q4. Write a short note on Supervening Impossibility

A contract to do an act which is possible of performance at the time of entering into contract, **becomes impossible or illegal by occurrence of unexpected event/change in law beyond the control of the promisor, the contract becomes void**.

Note: In English Law, it is called as Doctrine of Frustration.

OCCURRENCE OF SUPERVENING IMPOSSIBILITY

- **Death or Personal incapacity**: - Contract dependent upon **personal skill of a party**, comes to an end on death or incapacity of that party.
- **Destruction of Subject matter**: - If subject matter of the contract is destroyed without any fault of either party, the contract becomes void.
- **Change in law –** X agreed to sell his land to Y. After the formation of the contract, the Government issued a notifiction and acquired the land – **Shyam Sunder vs Durga**
- **Emergence/Declaration of war**: - A contract entered with alien enemy during war are unlawful and impossible of performance.

•**Non existence or non occurrence**: - If there is a change in the state of things on the basis of which contract is entered, the contract becomes void.
Ex. X hired a room from Y for viewing the coronation process of king Edward VII. The procession was cancelled because of king's illness. It was held that X was not liable to pay the room rent because the procession which formed the basis of the contract did not occur – **krell vs. Henry**

Note. Supervening impossibility is not deemed to exist in the following cases

1. **Commercial impossibility** – X, a furniture manufacturer, agreed to supply certain furniture to Y at an agreed rate. Afterwards, there was a sharp increase in the rates of timber and rates of wages. Since, it was no longer profitable to supply at the agreed rate, X did not supply. X will not be discharged on the ground of commercial impossibility
2. **Difficulty in performance**
3. **Strikes and lock outs**
4. **Default of third party**

Q1. How Contract is Discharge

1. Discharge by Performance

- **Actual Performance**: - When both the parties to the contract fulfill their obligations under the contract in a manner prescribed in the contract, it amounts to actual performance of the contract and the contract is discharged.
- **Attempted performance**: - When the promisor is ready and willing to perform his part under the contract, but the promisee refuses to accept performance, it is a case of attempted performance.

2. **Discharge by lapse of Time**: - A contract can be discharged by lapse of time.

3. **Discharge by Operation of law**: - A contract can be discharged by operation of law by death or insolvency of the parties. A contract of personal nature is discharged on the death of the promisor.

4. Discharge by impossibility of performance: - If a contract becomes impossible of performance, it stands discharged.

5. Discharge by Mutual Agreement : A contract can be discharged by mutual agreement between the parties. An agreement can be terminated by mutual consent by **novation, alteration, rescission, remission, merger.**

Note:

1) **NOVATION (Sec. 62)**: - Novation is **substitution of new contract** in place of the original contract during the continuance of the contract. On novation old Contract is discharged so it must not be performed. **Novation may take place between the same parties or different parties**. It can take place only with the mutual agreement between the parties.

Ex. Rish owes money to Fidato under a contract. It is agreed between Rish Fidato and Chuimui that Fidato shall henceforth accept Chuimui as her debtor, instead of Rish. The old debt of Rish and Fidato no longer exists and a new debt from Chuimui to Fidato has been contracted.

2) RESCISSION (Sec. 62) - Rescission means termination of the Contract. In rescission **old Contract is cancelled and no new Contract comes into existence**.

3) ALTERATION (Sec. 62)- Alteration means **change in one or more of the terms of the contract with the consent of all the parties**. In case of alteration old contract as per the altered terms should be performed. **Parties to the contract must remain same** in the case of alteration.

Ex. – X promises to sell and deliver 100 bales of cotton on 1st October and Y promises to pay ford goods on 1st November. Afterwards, X and Y mutually decide that the goods shall be delivered in five equal installment.

4) REMISSION – it means acceptance by the promisee of lesser fulfillment of the promise made. As per **Sec. 63** Promisee may -

a) **dispense with or remit, wholly or in part, performance of the promise** made to him, or
b) **may extend the time for such performance or**
c) **may accept any other consideration than agreed to in the contract instead of it any satisfaction which he thinks fit.**

Ex. – Puja owes Neha INR 5,000. Rohit pays to neha INR 1,000 and Neha accepts them in satisfaction of his claim on Puja. This payment is a discharge of the whole claim.

5) Merger: - When a **superior right and an inferior right coincide** and meet in one and the same person, the inferior right vanish into superior right.

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

6. Discharge by breach of Contract: - Breach of contract means **neglect/ breaking of an obligation which one is bound to do**. Breach of contract by one of the parties to the contract result in discharge of the contract. Breach can be **actual breach or anticipatory breach**.

Note:

Actual Breach: - One party fails to perform or refuses to perform his part of promise on the due date of performance or during the course of performance

Note:

Anticipatory Breach: - If a party refuses to perform his part of promise **before the date of performance has arrived or party to the contract declares his intention of his unwillingness to the other party before the date on which performance is due**

Note:

In the case of anticipatory breach the aggrieved party **can put an end to the contract and treat anticipatory breach as actual breach** of contract and sue the party in fault for damages without waiting until the due date of performance, **or elect to keep the contract alive till the date of performance**. If **during the time the contract remains open an event happens which discharges the contract, promisee will not have any right of action against the promisor**.

If contract is ended on the date of anticipatory breach, then the

Damages = Difference between price on the date of refusal and contract Price

If the Promisee keep the contract alive till the date of performance, then the

Damages = Difference between price prevailing on Scheduled date of performance and contract Price.

APPROPRIATION OF PAYMENTS

1. Where a debtor owing several distinct debts to one person, makes a payment to him either with express intimation or under circumstances implying that payment is to be applied to the discharge of some particular debt, the payment if accepted must be applied accordingly. (Section 59)

2. If debtor has not intimated at the time of payment as to which debt payment is to be applied the creditor is entitled to appropriate same at his discretion to any lawful debt whether time barred or not. (Section 60)

3.If neither party makes an appropriation the payment shall be applied in discharge of debts in order of time whether they are barred by law as to the limitation of suits or not. If debts are of equal standing, payment shall be applied in discharge of each proportionately. (Section 61)

Contracts, which need not be performed – with the consent of both the parties

Novation, rescission and alteration – sec. 62

Promisee may waive or remit performance of promise – sec. 63

Restoration of benefits under a voidable contract – sec. 64 – When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor. The party rescinding a voidable contract shall, if he has received any benefit thereunder from another party to such contract, restore such benefits, so far as may be, to the person from whom it was received.

Obligation of person who has received advantage under void agreement or contract that becomes void – sec. 65 – When an agreement is discovered to be void or when a contract becomes void, any person who has received any advantages under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

Effect of neglect of promisee to afford promisor reasonable facility for performance – sec. 67 – the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Q1. Explain briefly the following damages:

1. Ordinary Damages

Ordinary damages are those which **naturally arise in the usual course of things** from such breach. These damages can be recovered if the following two conditions are fulfilled –

- The aggrieved party must suffer by breach of contract, and
- The damages must be direct consequence of the breach of contract and not the indirect consequence.

2. Special Damages

Special damages are damages other than ordinary damages if such damages were in **knowledge of both the parties at the time of making** contract.

Hadley vs. Baxendale – H's mill was stopped due to the breakdown of a shaft. He delivered the shaft to B, a common carrier, to be taken to manufacturer to copy it and make a new one. H had not made it known to B that delay would result in a loss of profits. By some neglect on the part of B, the delivery of the shaft was delayed in transit beyond a reasonable time. Held, B was not liable for loss of profits during the period of delay as the circumstances communicated to B did not show that a delay in the delivery of shaft would entail loss of profit to the mill.

3. Vindictive Damages/Exemplary Damages

Vindictive or exemplary damages are granted for **breach of promise to marry and wrongful dishonour by a Banker of Customer's Cheque**. These damages depend upon injury caused. In case of breach of promise to marry **damages would depend on feeling's hurt/mental injury sustained and reputation lost and in case of wrongful dishonour of cheque damages will depend upon the reputation of the person whose cheque is dishonoured**.

Note: As a general rule, such **damages are not awarded** as they are **punitive in nature**.

4. Nominal Damages

These **damages are awarded** where there is only a technical violation of a legal right but the aggrieved party has not in fact suffered any loss because of breach of contract. It may, however be noted that party cannot claim these damages as a matter of right. It is always **at the discretion of the court** whether or not to award the nominal damage. Where a party has suffers no loss, the court may allow nominal damages simply to establish that the party has proved his case and won.

5. LIQUIDATED DAMAGES

Liquidated damages are a **sum fixed by the parties to the contract in advance**, being a **fair and genuine estimate of the loss** that is likely to result from the breach of contract.

Note – Liquidated and penalty damages are called as pre- fixed damages

6. PENALTY

Penalty is the sum mentioned in the contract at the time of making it and it is **disproportionate to the loss** that is likely to result from the breach of contract.

Note: The party complaining of the breach is entitled to receive from the other party who has broken the contract, reasonable compensation **not exceeding the amount** named in the contract.

Forfeiture of Security deposits (or Earnest money) – A clause in a contract which provides for forfeiture of security deposits in the event of failure to perform is in the nature of a penalty. In such cases, the court may award reasonable compensation only.

7. Damages for deterioration caused by delay

In the case of deterioration caused to goods by delay, damages can be **recovered from the carrier** even without notice. The word ‘deterioration’ not only implies physical damages to the goods but it may also mean loss of special opportunity for sale.

Q. If there is a breach of contract, aggrieved party has any remedy. comment

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

1. Rescission of Contract

When one party has broken a contract, other party can treat the contract as rescinded. If the contract is rescinded then the party rescinding the contract is relieved from all his obligations under the contract and he can also claim compensation for any loss caused to him due to non fulfillment of contract.

Note - Party rightfully rescinding the contract, entitled to compensation – Sec. 75 - A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through non-fulfilment of the contract.

2. Suit for QUANTUM MERUIT

Quantum Meruit means as much as the party doing the service has deserved or **as much as earned**.

Where a person has done some work under the Contract and other party terminates the contract or further performance of the contract has become impossible then party performing the work can claim for the work done.

Note: Claim can be made by a party who is not in default.

Cases in which the claim of Quantum Meruit Arise –

1) In case of Void Agreement or contract that becomes void - Section 65 –Ex. A contract to sing for B for INR 1,000 which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which B would have made if A had been able to sing, but must refund to B INR 1,000 paid in advance
2) In case of Non- gratuitous Act – Section 70 – read Quasi contract

3) In case of Act preventing the completion of contract – if the party does not complete the contract or prevents the other party to complete the contract, the aggrieved party can sue on quantum meruit. Ex. C an owner of a magazine engaged P to write a book to be published, the publication of the magazine was stopped. It was held that P could claim payment on quantum meruit for the part already published – **Planche Vs. Calburn**

4) In case of divisible contract – the party at default may sue on a quantum meruit if the party not at default has enjoyed benefits of the part performance. Ex. 1 A Contracts with B to deliver to him 200 tons of wheat before the 1st of June. A delivers 120 tons only before that day, and none after. B retains the 120 tons after the first of June.

5) In case of indivisible Contract Performed Completely but badly – the party at default may claim the lumpsum less deduction for the bad work.

3. Suit for Specific Performance

Specific performance means demanding the court's direction to the defaulting party to carry out the promise according to the terms of the contract. If **damages not an adequate remedy** or it is **not possible to ascertain the damages**, the court may direct the party to carry out promise according to the terms of the contract.

Note: If monetary compensation is an adequate relief, where contract is of personal nature, where one of the parties to a contract is not competent to contract, specific performance will not be allowed.

4. Suit for Injunction

Suit for injunction means demanding court's stay order. Injunction means an order of the court which prohibits a person to do a particular act. Where a party to the contract has promised not to do something and if he engages in that activity, aggrieved party can sought injunction from the court and the court can direct the other party not to do something which he has promised not to do.

For example – Kapil Sharma agreed to act only for sony for next one year. During the year he contracted to act for star plus. Held, he could be restrained by an injunction.

What is Reciprocal Promises ?

As per sec. 2(f) – Promises which form consideration or part of consideration for each other are called reciprocal promises.

Q1. Explain the Types of Reciprocal promise

- **Mutual & Independent** – Where one party has to perform his promise are independent without waiting for the performance or willingness of the other party. For e.g. We will give you coaching from 1st April 2017 & you have to pay Rs. 20,000 till 5th April 2017 otherwise 5% Int. levied.
- **Mutual & dependent** – Where the performance of the promise by one party depends upon the prior performance of the promisor or by third party. For .e. g. X ready to construct the house for Y. Y agrees to supply cement for building the house.
- **Mutual & Concurrent** – Where the two promises are to be performed simultaneously. For e.g. Cash sales

Note If **one party prevents** the other party from performing his reciprocal promise, the **contract become voidable** and the party so prevented can claim compensation.

Consent - Section 13

Two or more persons are said to consent when they **agree upon the same thing in the same sense**.

Consent involves a union of the wills and an accord in the minds of the parties.

When the parties agree upon the same thing in the same sense, they have **consensus ad idem**

Note. The cases of complete absence of consent are described by Salmond as **error in consensus** , and **no valid contract** results in such cases. And the cases of 'no free consent' i.e. when the consent is there but the same is not free, are described by Salmond as **error in causa**, and in such cases the contract is **voidable**.

Free Consent - Section 14

It lays down that consent is not free if it is caused by (1) coercion, (2) undue influence, (3) fraud, (4) misrepresentation, or (5) mistake.

Q1. Write a short note on Coercion.

Section 15 - Coercion is:

*committing or threatening to commit any act forbidden by the Indian Penal Code or

*unlawfully detaining or threatening to detain any property to the prejudice of any person whatever,

*With the intention of causing any person to enter in an agreement.

Q2. Whether threat to commit suicide amounts to coercion?

Yes, In case of **Chikham Ammiraju v. Seshamma** held by majority that threat to commit suicide amounts to coercion.

Note: The Court observed that though suicide was not punishable by IPC, yet it was one forbidden by the IPC, since an **attempt to commit suicide is punishable**.

Against whom / by whom Coercion may be exercised

Coercion may proceed from any person, and may be directed against any person, even a stranger.

Effect of Threat to file a Suit

A threat to file a suit **does not amount to coercion unless the suit is on false charge**. Threat to file a suit on false charge is an act forbidden by the Indian Penal Code and thus will amount to an act of coercion.

Duress v/s Coercion

The English law uses the term “Duress” for coercion. However, the two are different in the following way –

- Duress doesn’t include detaining of property or threat to detain property.
- Duress can be employed only by a party to the contract or his agent.

Burden or Onus of Proof

The burden of proving that consent was obtained by coercion and the aggrieved party would not have entered into contract had coercion been employed, **lies on the party intending to avoid the contract**.

Q3. Define Undue Influence – Sec. 16(1)

A contract is said to be induced by undue influence where

(i) 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

(ii) Dominant party uses the position to obtain an **unfair advantage** over the other.

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

- Where he holds a **real or apparent authority** over the other (For ex - master & servant, ITO & Assessee, Principal and temporary teacher)
- 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; guru and chela; trustee and beneficiary etc.
- 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.

Note: There is **no presumption** of existence of a power to dominate the will of another in the following cases: (a) Landlord and tenant, (b) Creditor and debtor, (c) Husband and wife (other than pardanashin). It has been held by judicial decisions that in all these cases, the party **alleging undue influence must prove that undue influence** existed.

Note: Burden of Proof - Section 16(3)

The burden of proving that such contract was not induced by undue influence shall be **upon the person in a position to dominate the will of the other** that **undue influence was not employed**.

Note: **Pardanashin woman** is one who, by virtue of the custom of her community, is required to live behind a veil and is totally secluded from ordinary social interaction. **Any contract made by such a women is under the presumption of undue influence**.

Q4. Difference between Coercion and Undue influence?

Coercion	Undue influence
Type of force: Coercion involves use of physical force.	Undue influence involves use of moral pressure.
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.
Consent is given under the threat of an offence; it involves a criminal act.	Consent is obtained by dominating the will, no offence is committed.

Coercion	Undue influence
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.
Presumption: The Court cannot draw the presumption of coercion.	The Court may draw the presumption of undue influence if the circumstances so warrant it.

Mistake (20-22)

Mistake may be defined as an **erroneous belief** concerning something. It may be of two kinds:

- Mistake of Law.
- Mistake of Fact.

MISTAKE OF LAW

Mistake of general law of country: Everyone is deemed to be familiar with the law of his country, and hence the maxim **"ignorance of law is no excuse."** As per **section 21 -** a contract is **not voidable** because it was caused by a mistake as to any law in force in India.

Mistake of Foreign Law: Mistake of foreign law is treated as **'mistake of fact'**.

Q5.Explain the types of MISTAKE OF FACT?

Mistake of fact may be of two types:

Bilateral Mistake

Unilateral Mistake

Bilateral Mistake

In case of bilateral mistake of essential fact, the agreement is void ab-initio.

Section 20 provides that "Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement is void'

Note: On the basis of judicial decisions, the **bilateral mistakes** which may be covered under this condition may broadly be put into the following heads:

1. Mistake as to the existence of the subject-matter of the contract. Ex.: A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

2. Mistake as to the title of the subject-matter. Ex.: A believed that she had inherited rights over a fishery from her father. B, her cousin brother, also believed in A's rights. B agreed to take the fishery on lease from A. Actually the fishery belonged to B. The agreement, caused by mistake as to title, was held to be void

3. Mistake as to the quantity of the subject-matter. Ex.: P wrote to H inquiring the price of rifles and suggested that he might buy as many as 50. On receipt of the information, he telegraphed "Send three rifles." But because of the mistake of the telegraph authorities, the message transmitted was "Send the rifles." H dispatched 50 rifles. Held: There was no contract between the parties. However, P could be held liable to pay for three rifles on the basis of an implied contract (**Henkel v Pape**)

4. Mistake as to the quality of the subject-matter. Ex.: X agreed to sell to Y an antique item believed by X to be of the 18th century. What X possessed was actually of the 20th century. So the bilateral mistake about quality of the subject-matter makes it a void agreement.

5. Mistake as to the identity of the subject-matter. Ex.: X who owns four Maruti 800 cars, offers to sell his "White car" for INR 80,000. Y accepts the offer thinking X is selling his "Black Car ".

Unilateral Mistake

Where only one of the contracting parties is mistaken as to a matter of fact, the mistake is a unilateral mistake. Regarding the effect of unilateral mistake, on the validity of a contract, **sec.22** provides that "A contract is **not voidable** merely because it was caused by one of the parties to it being under a mistake as to a matter of fact".

If a man due to his own negligence or lack of reasonable care does not ascertain what he is contracting about, he must bear the consequence.

But, In the following **two cases**, where the consent is given by a party under a mistake which is so fundamental as goes to the root of the agreement and has the effect of nullifying consent, no contract will arise even though there is a unilateral mistake only.

Mistake as to the identity of person contracted with, where such identity is important. If A intends to contract with B only, but enters into contract with C believing him to be B, the contract is void - **Cundy v. Lindsay & Co.**

In case of **Said v Butt**, S Knew that on account of his criticism of the plays in the past, he would not be allowed entry at the performance of a play at the theatre. The Managing director of the theatre, gave instructions that a ticket should not be sold to S. S, however, obtained a ticket through one of his friends. On being refused admission to the theatre, he sued for damages for breach of contract. It was held that there was no contract with S as the theatre company never intended to contract with S.

Mistake as to the nature and character of a written document. The rule of law is that where the mind of the signatory did not accompany the signature
In case of **Foster v. Mackinnon** - an old illiterate man was made to sign a bill of exchange, by means of a false representation that it was a guarantee. Held: The contract was void.
Note – the plea of mistake will be available only when it relates to the nature of the contract, and not to the terms of contract.

Q6. Define Fraud

The term Fraud is a **false statement or willful concealment** of a material fact with an intent to deceive another party

Section 17 of the Contract Act states that " Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him, to enter into the contract:

1. False Statement

“The suggestion as to a fact, of that which is not true by one who does not believe it to be true", A false statement intentionally made is fraud.

Example: X while selling his car to Y says that it is of the latest model and brand-new knowing fully well that it is a used car of old model. His representation or statement amounts to fraud.

2. Active Concealment

Mere non-disclosure is not fraud where the party is not under any duty to disclose all facts. **But active concealment is fraud** i.e. where steps are taken by seller concealing some material facts so that the buyer even after a reasonable examination cannot trace the defects, it will amount to fraud.

Example: X, a scooter dealer, showed a scooter to Y, X knew that its handle and body are cracked which he had repaired in such a way as to defy (refuse) detection. The defect was subsequently discovered by Y, Hence he refused to buy the scooter. Here, the contract could be avoided by Y as his consent was obtained by fraud.

3. Intentional non-performance

"A promise made without any intention of performing it".

Example - purchase of goods without any intention of paying for them.

4. Deception

"Any other act fitted to deceive".
It covers those acts which deceive but are not covered under any other clause.
Example: X, with an intention to deceive Y, makes a false statement to him that the sales from his shop are to the tune of Rs. 2,000 per day, although X is aware that they amount of Rs. 1,000 per day only. Y is induced to buy the shop. Here, the statement of X amounts to fraud.

5. Fraudulent act or omission

"Any such act or omission as the law specially declares to be fraudulent".

Example: Thus, under **section 55 of the Transfer of Property Act the seller of immovable property is bound to disclose to the buyer all material defects**. Failure to do so amounts to fraud.

Essential elements of fraud

By a party to a contract – The fraud must be committed by a party to a contract or by anyone with his connivance or by his agent. Thus, the fraud by a stranger to the contract does not affect the validity of the contract.

False representation – There must be false representation and it must be made with the knowledge of its falsehood. Where the representation was true at the time when it was made but becomes untrue before the contract is entered into and this fact is known to the party who made the representation, it must be corrected. If it is not so corrected, it will amount to a fraud.

Representation as to fact – The representation must relate to a fact. In other words, a mere opinion, a statement of expression or intention does not amount to fraud.

Actually deceived – The fraud must have actually deceived the other party who has acted on the basis of such representation. In other words, A **deceit which does not deceive is no fraud**. This means that if the promisee is not deceived or did not rely on the representation then there is no fraud.

Suffered loss – The party acting on the representation must have suffered some loss.

Q7. Can Silence be fraudulent?

The general rule is that **mere silence is not fraud**.
Example - H sold to W some pigs which were to his knowledge suffering from fever. The pigs were sold 'with all faults' and H did not disclose the fact of fever to W. Held there was no fraud. [Word vs. Hobbs. (1878)].

Note: Silence is fraudulent,

1. "If the circumstances of the case are such that, regard being had to them, it is the **duty of the person keeping silence to speak**". The duty to speak, i.e. disclose all facts exists where there is a **fiduciary relationship** between the parties (which are contracts based on good faith [**contracts of uberimae fidei**]).

Following contracts come within this category:

Fiduciary Relationship: Here, the person in whom confidence is reposed is under a duty to act with utmost good faith and make full disclosure of all material facts concerning the agreement, known to him. **Example -** A broker was asked to buy shares for client. He sold his own shares without disclosing this fact. The client was entitled to avoid the contract or affirm it with a right to claim secret profit made by broker on the transaction since the relationship between the broker and the client was relationship of utmost good faith. **(Regier V. Campbell Staurt)**

Contracts of Insurance: In contracts of marine, fire and life insurance, there is an implied condition that full disclosure of material facts shall be made, otherwise the insurer is entitled to avoid the contract.

Contracts of marriage: Every material fact must be disclosed by the parties to a contract of marriage.

Contracts of family settlement: These contracts also require full disclosure of material facts within the knowledge of the parties.

Share Allotment contracts: Persons issuing 'Prospectus' at the time of public issue of shares/ debentures by a joint stock company have to disclose all material facts within their knowledge.

2. Silence is fraudulent where "**Silence is in itself equivalent to speech**". Example: B says to A - "If you do not deny it, I shall assume that the horse is sound." A says nothing. Here A's silence is equivalent to speech.

Q8. Define Consequences of Fraud

A party who has been induced to enter into an agreement by fraud has the following remedies open to him - Sec. 19.

- He can avoid the performance of the contract.
- He can insist that the contract shall be performed and that he shall be put in the position in which he would have been if the representation made had been true.
- The aggrieved party can sue for damages.

Exceptions i.e. where the contract is neither voidable nor can suit for damages be filed –

- When the party whose consent was caused by silence amounting to fraud and had the means of discovering the truth with ordinary diligence.
- Where a party, after becoming aware of the misrepresentation or fraud, takes a benefit under the contract or in some other way affirms it.

Q9. Define Misrepresentation – Sec. 18

Misrepresentation arises when the **representation made is untrue but the person making it believes it to be true**.
There is no intention to deceive.
Misrepresentation is misstatement of facts by one, which misleads the other.

1. Unwarranted Assertion (Unauthorized or unjustified Statement)

When a person makes a positive statement of material facts honestly believing it to be true though it is false, such act amounts to misrepresentation.

2. Breach of duty

"Any breach of duty, without an intent to deceive, which brings an advantage to the person committing it, by misleading another to his prejudice amounts to misrepresentation". Under this heading would fall cases where a party is under a duty to disclose certain facts and does not do so and thereby misleads the other party. Such a duty exist between the insurer and the insured; banker and customer; landlord and tenant; seller and buyer; and all contracts of utmost good faith.

Example – In a life policy, the assured does not disclose the fact that he had previously suffered from some serious ailments. The non-disclosure, however, innocent it may be, would entitle the insurer to avoid.

3. Innocent Mistake

The subject matter of every agreement must clearly be understood by the concerned parties. If one, leads the other, even innocently, to commit a mistake regarding the nature or quality of the subject matter, it is considered as misrepresentation. Section 18(3) says, when the party causes the other, however, innocently, to make a mistake as to the nature or substance of the agreement, it is considered misrepresentation.

Q1. Define Assignment and Succession?

Assignment means transfer of rights arising from the contract by party to the contract to the other person, who is not a party to the contract. In the case of assignment **only rights can be assigned and not the liabilities**. Assignment can take place either by the act of parties or by operation of law.

Succession: When **on the death of the person, his rights and liabilities arising from the contract entered into by him are devolved on his legal heir under the process of law**. In succession **liability of the successor will be limited to the value of property** inherited by him.

Q2. Define Wagering Agreement – Sec. 30

The law has not defined a wagering agreement, but has declared it **void-ab-initio**. A wager is an agreement **to pay money or money's worth upon happening or non-happening of an future uncertain event**.

Characteristics of wagering agreements

- The consideration for the promise under a wagering agreement is to **pay or get money**.
- The money is payable on the happening or the non-happening of an event.
- The agreement depends on a **future and uncertain** event.
- The essence of gaming and wagering is that one party is to **win and the other loose**.
- In wagering agreement no party has control over the event.
- Neither party should have interest in the happening or non – happening of the event other than the sum or stake he will win or lose.

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

The effects of a wagering agreement

An agreement by way *of* wager is void. It will not be enforced by the courts of law. In the State of Maharashtra and of Gujarat wagering agreement are, by a local stature, not only void but also illegal. Though wagering agreements and void, collateral transactions to it would be valid. Thus a broker in a wagering transaction can recover his brokerage. Similarly a principal can recover from his agent, the prize money received by him on account of wagering transaction. Thus wagering agreements are void but not illegal.

Note - EXCEPTIONS: It has been held that the following transactions are not wagers:

•**Shares**. Share market transactions in which there is clear intention to give and take delivery share.
•**Games of skill Prizes and competitions which are games of skill, eg. picture puzzles, athletic competitions etc**. (Not exceeding 1000) 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 Rs. 500 was held not to be a wagering agreement.
•**A statutory exception**. An agreement to contribute to the payment of a prize of the **value of Rs. 500 or upwards** to the winners of a horse race, is valid – **Sec. 30**
•**Contract of Insurance**. A contract of insurance is not a wagering agreement.

Example - A cricket match is to be held between India and Pakistan. Pujashree agrees to pay INR 100000 to Neha if India wins the match and agrees to deposit the money with OM (the most trusted man on earth), a third person of confidence for this purpose. Pujashree borrows INR 100000 from Rohit (a millionaire). The implications of this case are summarized as under –

- If India wins the match and OM (a stakeholder) pays the money to Neha (a winner), Pujashree (A loser) cannot recover it from OM. (Bridger vs Savage)
- The agreement between Pujashree and Rohit which is a collateral to wagering agreement, is valid in India except in the States of Maharashtra and Gujrat. Thus, Rohit can recover the money from Pujashree if the agreement between Pujashree and Neha is entered into in India except in the State of Maharashtra and Gujrat but Rohit cannot recover the money from Pujashree if the agreement between Pujashree and Neha is entered into in the State of Maharashtra or Gujrat.

- The agreement between Pujashree and Neha is a wagering agreement because the performance of an agreement depends upon the happening or non-happening of a future uncertain event and each party stands to win or loose.
- If India wins the match, Neha (a winner) cannot recover the amount but Pujashree (a loser) can recover if the amount has not been paid to Neha. Thus, a winner cannot recover the amount but a loser can if the amount has not been paid to the winner.

Q1. What is Unlawful Agreements

Ans. According to **Sec.23**, the consideration or the object of an agreement is unlawful in following cases:

1. If it is forbidden by law. A promises to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

2. If it is of such a nature that, if permitted, it would defeat the provisions of any law. X borrowed INR 1000 from Y and agreed not to raise any objection as to the limitation and that Y cannot recover the amount even after the expiry of 2 year. The agreement is void as it defeats the provisions of the law of limitation act.

3. If it is fraudulent. A scheme of fraud among partners in a firm to cheat income tax authorities or among directors of a company to cheat the investors is void.
A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment by A, on his principal.

4. If it involves or implies injury to the person or property of other. A borrowed Rs. 100 from B. He (A) executed a bond promising to work for B without pay for 2 years and in case of default agreed to pay interest at 90% rate and the principal amount at once.

5. If the court regards it as immoral. A let a flat on hire to B, a prostitute, knowing that it would be used for immoral purposes.

A agrees to let her daughter to hire to B for concubinage. The agreement is void because it is immoral, though the letting may not be punishable under the IPC Act.

J gave INR 100000 to Chuimui a married woman to obtain a divorce from her husband. Chuimui agreed to marry him as soon as she obtained a divorce. It was held that Chuimui could not recover back the amount because the agreement was void as its object was immoral.

6. If the court regards it as opposed to public policy. A promises to obtain for B an employment in the public service and B promises to pay A Rs. 1,000. This is an unlawful agreement.

Q2. Explain the Agreements opposed to public policy?

1. Agreements of champerty and maintenance.

Champerty and Maintenance 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.

Note: 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 bonafide 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.

2. Agreements interfering with the course of justice. Any agreement whose purpose or effect is to use improper influence of any kind with judges or officers of justice is void.
3. Agreements for marriage brokerage.
4. Agreements tending to create monopolies.
5. Agreements restraining personal liberty.
6. Agreements in restraint of parental rights.
7. Agreements to influence public servants to act opposed to their duty.

8. Agreements in restraint of marriage (sec. 26)

Every agreement in restraint of marriage of any person other than a minor, is void, so if a person, being a major, agrees for good consideration not to marry, the promise is not binding.

9. Agreements in restraint of trade (sec.27) "

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

Exception to “An agreement in restraint of trade is void”

1. Sale of goodwill (Sec. 27)

The seller of the goodwill of a business can be restrained from carrying

*on a similar business

*within specified local limits

*so long as the buyer or his successor in interest carries on a similar business provided

*the restraint is reasonable in point of time and place

2. 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.

3. 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.

4. 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.

Agreements in restraint of legal proceedings (sec.28)

A clause in a contract provided that no action should be brought upon it in case of breach. Such a clause is void because it restricts both the parties from enforcing their legal right.

Note: 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) Similarly, a contract by which the parties agree to **refer to arbitration** any question between them which has already arisen or which may arise in future, is valid; but such a contract **must be in writing**, (agreement to refer past & future disputes to arbitration)