

CONTENTS



1.	INDIAN REGULATORY FRAMEWORK	1-4
2.	THE INDIAN CONTRACT ACT, 1872	
	• Contract of Indemnity & Guarrantee	5-10
	• Bailment and Pledge	11-18
	• Contract of Agency	19-28
	• Extra Practice Questions	29-86
3.	THE NEGOTIABLE INSTRUMENTS ACT, 1881	87-92

INDIAN REGULATORY FRAMEWORK

LAW: MEANING

Law is a set of obligations and duties imposed by the government for securing welfare and providing justice to society. India's legal framework reflects the social, political, economic, and cultural aspects of our vast and diversified country.

SOURCES OF LAW

The main sources of law in India are:

- Constitution, the statutes or laws made by Parliament and State Assemblies,
- Precedents or the Judicial Decisions of various Courts, and
- in some cases, established Customs and Usages.

PROCESS OF MAKING LAW

When a law is proposed in parliament it is called a Bill. After discussion and debate, the law is passed in Lok Sabha. Thereafter, it has to be passed in Rajya Sabha. It then has to obtain the assent of the President of India. Finally, the law will be notified by the Government in the publication called the Official Gazette of India. The law will become applicable from the date mentioned in the notification as the effective date. Once it is notified and effective, it is called an Act of Parliament.

TYPES OF LAWS IN INDIAN LEGAL SYSTEM

Criminal Law

Criminal law is concerned with laws pertaining to violations of the rule of law or public wrongs and punishment of the same. Criminal Law is governed under the Indian Penal Code, 1860, and the Code of Criminal Procedure, 1973 (Crpc). The Indian Penal Code, 1860, defines the crime, its nature, and punishments whereas the Criminal Procedure Code, 1973, defines exhaustive procedure for executing the punishments of the crimes.

Civil Law

Matters of disputes between individuals or organisations are dealt with under Civil Law. Civil courts enforce the violation of certain rights and obligations through the institution of a civil suit. Civil law primarily focuses on dispute resolution rather than punishment. The act of process and the administration of civil law are governed by the Code of Civil Procedure, 1908 (CPC). Civil law can be further classified into Law of Contract, Family Law, Property Law, and Law of Tort.

Common Law

A judicial precedent or a case law is common law. A judgment delivered by the Supreme Court will be binding upon the courts within the territory of India under Article 141 of the Indian Constitution. The doctrine of *Stare Decisis* is the principle supporting common law. It is a Latin phrase that means "to stand by that which is decided." The doctrine of *Stare Decisis* reinforces the obligation of courts to follow the same principle or judgement established by previous decisions while ruling a case where the facts are similar or "on all four legs" with the earlier decision.

Principles of Natural Justice

Natural justice, often known as *Jus Natural* deals with certain fundamental principles of justice going beyond written law. *Nemo judex in causa sua* (Literally meaning "No one should be made a judge in his own cause, and it's a Rule against Prejudice), *audi alteram partem* (Literally meaning "hear the other party

or give the other party a fair hearing), and reasoned decision are the rules of Natural Justice. A judgement can override or alter a common law, but it cannot override or change the statute.

ENFORCING THE LAW

After a law is passed in parliament it has to be enforced. Somebody should monitor whether the law is being followed. This is the job of the executive. Depending on whether a law is a Central law or a State law the Central or State Government will be the enforcing authority. For this purpose government functions are distributed to various ministries. Some of the popular Ministries are the Ministry of Finance, the Ministry of Corporate Affairs, the Ministry of Home Affairs, the Ministry of Law and Justice and so on. These Ministries are headed by a minister and run by officers of the Indian administrative and other services.

VARIOUS MINISTRIES OF THE GOVERNMENT

1. Ministry of Law and Justice

In the Government of India is a Cabinet Ministry deals with the

- management of the legal affairs, through the Legislative Department
- legislative activities through the Department of Legal Affairs
- administration of justice in India through the Department of Justice

The Department of Legal Affairs is concerned with advising the various Ministries of the Central Government while the Legislative Department is concerned with drafting of principal legislation for the Central Government.

2. Ministry of Corporate Affairs

Is an Indian Government Ministry.

Primarily concerned with administration of the Companies Act 2013, the Companies Act 1956, the Limited Liability Partnership Act, 2008, and the Insolvency and Bankruptcy Code, 2016.

responsible mainly for the regulation of Indian enterprises in the industrial and services sector.

The Ministry is mostly run by civil servants of the ICLS cadre.

These officers are elected through the Civil Services Examination conducted by Union Public Service Commission.

The highest post, Director General of Corporate Affairs (DGCoA), is fixed at Apex Scale for the ICLS.

3. Ministry of Home Affairs

Is a ministry of the Government of India. As an interior ministry of India, it is mainly responsible for the maintenance of internal security and domestic policy. The Home Ministry is headed by Union Minister of Home Affairs.

4. Securities and Exchange Board of India

Is the regulatory body for securities and commodity market in India under the ownership of Ministry of Finance within the Government of India.

It was established on 12 April, 1988 as an executive body and was given statutory powers on 30 January, 1992 through the SEBI Act, 1992.

5. Reserve Bank of India

Is India's Central Bank and regulatory body responsible for regulation of the Indian banking system.

It is under the ownership of Ministry of Finance, Government of India.

It is responsible for the control, issue and maintaining supply of the Indian rupee.

It also manages the country's main payment systems and works to promote its economic development. Bharatiya Reserve Bank Note Mudran (BRBNM) is a specialised division of RBI through which it prints and mints Indian currency notes (INR) in two of its currency printing presses located in Nashik (Western India) and Dewas (Central India).

RBI established the National Payments Corporation of India as one of its specialised division to regulate the payment and settlement systems in India.

Deposit Insurance and Credit Guarantee Corporation was established by RBI as one of its specialised division for the purpose of providing insurance of deposits and guaranteeing of credit facilities to all Indian banks.

6. Insolvency and Bankruptcy Board of India

Is the regulator for overseeing insolvency proceedings and entities like Insolvency Professional Agencies (IPA), Insolvency Professionals(IP) and Information Utilities (IU) in India.

It was established on 1 October 2016 and given statutory power through the Insolvency and Bankruptcy Code, which was passed by Lok Sabha on 5th May 2016.

It covers Individuals, Companies, Limited Liability, Partnerships and Partnership firms. The new code will speed up the resolution process for stressed assets in the country.

It attempts to simplify the process of insolvency and bankruptcy proceedings.

It handles the cases using two tribunals like NCLT (National company law tribunal) and Debt recovery tribunal.

STRUCTURE OF THE INDIAN JUDICIAL SYSTEM

When there is a dispute between citizens or between citizens and the Government, these disputes are resolved by the judiciary.

The **functions** of judiciary system of India are:

- Regulation of the interpretation of the Acts and Codes,
- Dispute Resolution,
- Promotion of fairness among the citizens of the land.

In the **hierarchy of courts**, the Supreme Court is at the top, followed by the High Courts and District Courts. Decisions of a High Court are binding in the respective state but are only persuasive in other states. Decisions of the Supreme Court are binding on all High Courts under Article 141 of the Indian Constitution. In fact, a Supreme Court decision is the final word on the matter.

Supreme Court

The Supreme Court is the apex body of the judiciary. It was established on 26th January, 1950. The Chief Justice of India is the highest authority appointed under Article 126. The principal bench of the Supreme Court consists of seven members including the Chief Justice of India. Presently, the number has increased to 34 including the Chief Justice of India due to the rise in the number of cases and workload. An individual can seek relief in the Supreme Court by filing a writ petition under Article 32.

High Court

The highest court of appeal in each state and union territory is the High Court. Article 214 of the Indian Constitution states that there must be a High Court in each state. The High Court has appellate, original jurisdiction, and Supervisory jurisdiction. However, Article 227 of the Indian Constitution limits a High Court's supervisory power. In India, there are twenty-five High Courts, one for each state and union territory, and one for each state and union territory. Six states share a single High Court. An individual can seek remedies against violation of fundamental rights in High Court by filing a writ under Article 226.

Which is the oldest High Court in India?

The oldest high court in the country is the Calcutta High Court, established on 2nd July, 1862.

District Court

Below the High Courts are the District Courts. The Courts of District Judge deal with Civil law matters i.e. contractual disputes and claims for damages etc., The Courts of Sessions dealswith Criminal matters.

Under pecuniary jurisdiction, a civil judge can try suits valuing not more than Rupees two crore.

Jurisdiction means the power to control. Courts get territorial Jurisdiction based on the areas covered by them. Cases are decided based on the local limits within which the parties reside or the property under dispute is situated.

Metropolitan courts

Metropolitan courts are established in metropolitan cities in consultation with the High Court where the population is ten lakh or more. Chief Metropolitan Magistrate has powersas Chief Judicial Magistrate and Metropolitan Magistrate has powers as the Court of a Magistrate of the first class.

CONTRACT OF INDEMNITY AND GUARANTEE

Contract of INDEMNITY

The term 'Indemnity' means to make good the loss suffered by a party.

According to provisions of sec.124 of Indian Contract Act 1872 "A contract by which one party promises to **save** the other from **loss** caused to him **by** the conduct of the promisor himself **or** by the conduct of any **other** person, is **called** a contract of indemnity. The **person** who promises to **compensate** for the loss is called the "**indemnifier**" and the person **to whom** this promise is made or whose loss is to be made good is known as "**indemnity-holder**" or "**indemnified**".

Example: 'A' contracts to indemnify 'B' against the consequences of any proceedings which 'C' may take against 'B' in respect of a certain sum of money. This is a contract of indemnity.

In a contract of indemnity, all the **essentials of a valid contract** must be present. Thus, if the object or consideration of an indemnity agreement is unlawful, it cannot be enforced.

Example

'A' asks 'B' to beat 'C' promising to indemnify him against the consequences. The promise of 'A' cannot be enforced. Suppose 'B' beats 'C' and is fined Rs.1000, 'B' cannot claim this amount from 'A' because the object of the agreement is unlawful.

Rights of Indemnity-holder

As per Section 125 of the Indian Contract Act 1872, the indemnity-holder is entitled to recover from the Promisor the following amounts:

1. All damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies.
2. **Right to recover costs of suit:** The indemnity holder is entitled to recover from the indemnifier all the costs which he is compelled to pay, in bringing or defending such suit, provided -
 - the indemnifier authorised him to bring or defend the suit; or
 - he did not contravene the orders of the indemnifier,
 - and acted as a man of ordinary prudence would have acted in his own case.
3. All sums, which he may have paid under the terms of any compromise of any, such suit provided-
 - the indemnifier authorised him to bring or defend the suit; or
 - he did not contravene the orders of the indemnifier,
 - and acted as a man of ordinary prudence would have acted in his own case.

When does the liability of an indemnifier commence?

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

CONTRACT OF GUARANTEE

SECTION 126

Contract of guarantee

FUNCTIONS	PARTIES INVOLVED
<input type="checkbox"/> Repayment of debt	<input type="checkbox"/> Creditor
<input type="checkbox"/> Payment of goods sold on credit	<input type="checkbox"/> Principal debtor
<input type="checkbox"/> Good conduct or honesty of a person or Fidelity Guarantee	<input type="checkbox"/> Surety



Contract of Guarantee

Meaning and Definition

According to Section 126 of the Indian Contract Act, 'A contract of guarantee is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the 'surety'; the person in respect of whose default the guarantee is given is called 'the principal debtor'; and the person to whom the guarantee is given is called 'the creditor'.

Example

When 'A' requests 'B' to lend Rs.10,000 to 'C' and guarantees that 'C' will repay the amount within the agreed time and that on 'C' failing to do so, he will himself pay to 'B', there is a contract of guarantee.

It will be noticed that in a contract of guarantee there are three separate contracts giving rise to a triangular relationship. These are:

- A principal contract between the creditor and the debtor, creating the debt;
- between the surety and the creditor, creating a liability of surety in case of debtor's default that results in subrogation, and
- an implied contract between the surety and the debtor that the debtor will indemnify the surety after the latter has paid the creditor on the debtor's default.

Essential Features of Guarantee

1. Existence of a debt

The purpose of a guarantee being to secure a debt, the existence of a recoverable debt is necessary. It is of the essence of a guarantee that there should be someone liable as a principal debtor and the surety undertakes to be liable on his default. If there is no valid existing debt, there can be no valid guarantee.

Example

'A' gives the guarantee to 'B' for the payment of a time-barred debt due from 'C'. This is not a valid contract of guarantee because the primary liability between 'B' and 'C' is not enforceable by law. In case 'A' pays the amount, he cannot recover it from 'C'.

2. Consideration [Section 127]

Like every other contract, a contract of guarantee should also be supported by some consideration. But there need not be direct consideration between the surety and the creditor. Section 127 clearly says that anything done, or any promise made, for the benefit of a principal debtor, may be sufficient consideration to the surety for giving the guarantee.

Examples

'B' requests 'A' to sell and deliver to him goods on credit. 'A' agrees to do so provided 'C' will guarantee the payment of the price of the goods. 'C' guarantees the payment in consideration of 'A' s promises to delicate goods. This is a sufficient consideration for 'C' s promise.

3. There should be no misrepresentation or concealment [Section 142-143]

A contract of guarantee is not a contract "uberrimae fidei" (requiring utmost good faith). Nevertheless, the suretyship relation is one of trust and confidence, and the validity of the contract depends upon good faith on the part of the creditor. A creditor must disclose all those facts, which, under the circumstances, the surety would expect not to exist. So where guarantee is given for good conduct of an employee, will discharge the surety if facts are not disclosed properly.

Example

'A' employs 'B' as clerk to collect money for him. 'B' fails to account for some of his receipts, and 'A' in consequence, calls upon him ('B') to furnish security for his duly accounting. 'C' gives the guarantee for 'B' s duly accounting. 'A' did not inform 'c' about 'B' s previous conduct. 'B', afterwards, makes default. Here the guarantee given by 'C' is invalid because it was obtained by concealment of facts by 'A'

4. Writing not necessary [Section 126]

Section 126 expressly declares that a guarantee may be either oral or written. However, in England under the provisions of Section 4 of the Statute of frauds, a guarantee is not enforceable unless it is "in writing and signed by the party to be charged".

5. Extent of Surety's Liability [Section 128]

Unless the contract provides otherwise, liability of the surety is co-extensive with that of the principal debtor. In other words, the surety is liable for all those amounts; the principal debtor is liable for.

Example

'A' guarantees to 'B' the payment of a bill of exchange by 'C', the acceptor. 'C' dishonours the bill. 'A' is liable not only for the amount of the bill but also for any interest and charges which may have become due thereon.

The liability of a surety is called as secondary or contingent, as his liability arises only on default by the principal debtor. But as soon as the principal debtor defaults, the liability of the surety will be liable for all those sums for which the principal debtor is liable. The creditor may file a suit against the surety without suing the principal debtor. Further, where the creditor holds securities from the principal debtor for his debt, the creditor need to first exhaust his remedies against the securities before suing the surety, unless the contract specifically so provides.

Rights of Surety

Right against principal debtor

Right of indemnity (sec. 145)	<ul style="list-style-type: none">▪ There is an implied promise by the principal debtor to indemnify the surety.▪ The surety is entitled to claim from the principal debtor all the sums which he has rightfully paid.▪ The surety cannot recover such sums, which he has paid wrongfully.
Right of subrogation (sec.140)	<ul style="list-style-type: none">▪ On payment of a debt, the surety shall be entitled to all the right which the creditor could claim against the principal debtor.

Right against the creditor

Right to claim securities (sec. 141)	<ul style="list-style-type: none">• The surety can claim all the securities which the creditor had at the time of giving of guarantee• It is immaterial as to whether the surety had knowledge of such securities or not.• If the securities are returned by the creditor to the principal debtor, the surety is discharged to the extent of value of the securities so returned
Right of set off	<ul style="list-style-type: none">• Any amount recoverable by the principal debtor may be claimed as deduction.

Right against co-sureties

Right to contribution (Sec. 145 and 147)	<p>General Rule Exceptions Under the contract of guarantee, the co-sureties may fix limits on their respective liabilities. Even in such a case, the co-sureties shall contribute equally, subject to maximum limit fixed by the co-sureties.</p> <p>The contract of guarantee may provide that the co-sureties shall contribute in proportion</p>
Right to share benefit of securities	If one co-surety receives any security, all the other co-sureties are entitled to share the benefit of such security.

Kinds of Guarantee

Contract of guarantee may be classified into two types:

- Specific guarantee;
- Continuing guarantee.

Specific Guarantee

When a guarantee is given in respect of a single debt or specific transaction and is to come to an end when the guaranteed debt is paid or the promise is duly performed, it is called a specific guarantee. A specific guarantee, once given, cannot be revoked. Even the death of the surety will not result in revocation of specific guarantee and the legal successor shall continue to remain liable up to the net value of the assets inherited by him.

Continuing Guarantee

A Guarantee which extends to a series of transactions is called a continuing guarantee. In other words, a guarantee relating to a series of transactions to be performed by the principal debtor is a continuing guarantee.

A contract of guarantee may, at any time, be revoked by the surety as to future transactions, by notice to the creditor.

NATURE AND EXTENT OF SURETY'S LIABILITY

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

LIABILITY OF TWO PERSONS, PRIMARILY LIABLE, NOT AFFECTED BY ARRANGEMENT BETWEEN THEM THAT ONE SHALL BE SURETY ON OTHER'S DEFAULT

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

DISCHARGE OF A SURETY

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

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

(i) By revocation of the Contract of Guarantee

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

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

(b) Revocation of continuing guarantee by surety's death (Section 131): In the absence of any contract to the contrary, the death of surety operates as a revocation of a continuing guarantee

as to the future transactions taking place after the death of surety. However, the surety's estate remains liable for the past transactions which have already taken place before the death of the surety.

- (c) **By novation [Section 62]:** The surety under original contract is discharged if a fresh contract is entered into either between the same parties or between the other parties, the consideration being the mutual discharge of the old contract.

(ii) By conduct of the creditor

- (a) **By variance in terms of contract (Section 133):** Where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.

Cases where surety not discharged

- i. **Surety not discharged when agreement made with third person to give time to principal debtor [Section 136]:** Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.
- ii. **Creditor's forbearance to sue does not discharge surety [Section 137]:** Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not in the absence of any provision in the guarantee to the contrary, discharge the surety.

- (b) **Discharge of surety by creditor's act or omission impairing surety's eventual remedy [Section 139]:** If the creditor does any act which is inconsistent with the rights of the surety or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

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

(iii) By the invalidation of the contract of guarantee

- (a) **Guarantee obtained by misrepresentation [Section 142]:** Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.
- (b) **Guarantee obtained by concealment [Section 143]:** Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.
- (c) **Guarantee on contract that creditor shall not act on it until co-surety joins (Section 144):** Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

DISTINCTION BETWEEN INDEMNITY AND GUARANTEE

Basis	Contract of indemnity	Contract guarantee
1. Meaning	A contract by which one party promises to save the other from loss caused to him is called as a contract of indemnity.	A contract of guarantee is a contract to perform the promise or discharge the liability, of a third person in case of his default.

2. Parties	There are only two parties, viz., the indemnifier and the indemnity holder.	There are three parties, viz principal debtor, creditor and guarantor.
3. Nature of liability of indemnifier or surety	The liability of the indemnifier is primary and independent	The liability of the surety is secondary and conditional.
4. Number of contract (s)	In a contract of indemnity, there is only one contract.	In the contract of guarantee, there are three contracts; first between principal debtor and creditor, second between creditor and surety, and third between surety and principal debtor.
5. Nature of contract	The contract of indemnity is for the reimbursement of the loss or save a party from incurring loss.	The contract of guarantee is for the security of the creditor.
6. Right	The indemnifier has no sue any party for recovery of any loss.	When surety discharges the liability of the principal debtor, he becomes entitled to recover from the principal debtor all sums rightfully paid by him.

BAILMENT AND PLEDGE

Definition of Bailment

According to sec 148 Bailment refers to “The **delivery** of goods by one person to another person **for some purpose**, upon a contract that they shall, **when** the purpose is **accomplished**, be **returned** or otherwise **disposed** of **according** to the **directions** of the person delivering them.” The **person delivering** the goods is called the ‘**Bailor**’, and the **person to whom** goods are **delivered** is called the ‘**Bailee**’.



Essentials of valid Contract of Bailment

For creating a relationship of bailment, the following features must be present

1. **Contract:** Contract between the bailor and bailee, may be either **express or implied**.
2. **Delivery of Goods:** The essence of bailment is delivery of goods by one person to another Delivery of goods may, however, be actual or constructive. Handing over goods to the bailee results in actual delivery. Constructive delivery may be made by doing something, which has the effect of putting the goods in the possession of the intended bailee or any person authorized to hold them on his behalf.
3. **Purpose:** In a bailment, the goods are delivered for some purpose. The purpose for which the goods are delivered is usually for the benefit of both t bailor and the bailee.
4. **Return or disposal of goods:** It is important that the goods, which form the subject matter of the bailment, should be returned to the bailor or disposed of according to the directions of bailor, after the accomplishment of purpose or after the expiry of period of bailment.

Types of bailment

1. On the basis of benefit, bailment can be classified into three types:
 - a. For the exclusive benefit of bailor:
 - b. For the exclusive benefit of bailee:
 - c. For mutual benefit of bailor and bailee:
2. On the basis of reward, bailment can be classified into two types:
 - a. **Gratuitous Bailment:** The word gratuitous means free of charge. So, a gratuitous bailment is one when the provider of service does it gratuitously i.e. free of charge. Such bailment would be either for the exclusive benefits of bailor or bailee.
 - b. **Non-Gratuitous Bailment:** Non gratuitous bailment means where both the parties get some benefit i.e. bailment for the benefit of both bailor & bailee

Gratuitous and Non-Gratuitous Bailment

- 'Gratuitous bailment' means bailment without re-ward or consideration. So, where a friend lends a book to another for reading, the bailment is gratuitous.
- 'Non-gratuitous bailment' means bailment against consideration.

Basis	Gratuitous bailment	Non gratuitous bailment
Meaning	Bailment without any charge of reward is called as gratuitous bailment.	If some charges are paid either by the bailor or by the bailee in consideration of bailment of goods, it is called as non-gratuitous bailment.

Consideration	No consideration is present in case of gratuitous bailment.	Consideration is always present in case of non-gratuitous bailment.
Liability for non disclosure of unknown faults	The bailor is liable to disclose only such faults as are known to him.	The bailor must disclose to the bailee all the faults whether known or not known to him.
Duty to pay ordinary necessary expenses	The bailor is liable to reimburse to bailee all the necessary expenses incurred by bailee.	In case of non-gratuitous bailment bailee is not entitled to recover any expenses incurred by him.
Right of pre mature termination of bailment	Bailor had the right to terminate the gratuitous bailment at any time even though the bailment was for a particular period.	Bailor has no right to terminate the non-gratuitous bailment before the expiry of period of bailment.
Effect of death of bailor or bailee	Death of bailor or bailee operates as automatic termination of gratuitous bailment.	In case of non-gratuitous bailment, the bailment is not terminated by death of bailor or bailee.

Duties of Bailee

(a) To take reasonable care of goods bailed:

In all cases of bailment, the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and values as the goods bailed.

(b) Not to make any unauthorized use of goods:

The bailee is under a duty not to use the goods in a manner inconsistent with the terms of the bailment. If he does so, the bailor can terminate the bailment; and if any loss or damage results from the use of goods for a purpose other than the one agreed upon, or in a manner opposed to the one stated, the bailee becomes responsible for such a loss, unless such a use is necessary for its preservation.

(c) Not to mix bailor's goods with his own goods:

Situation	Consequence
Goods are mixed with bailer's consent	The parties should have a proportionate interest in such mixture.
Goods are mixed without the bailor's consent but the goods are separable	The bailee shall pay the expenses of separation. The bailee shall pay damages incurred by bailor.
Goods are mixed without the bailer's consent and goods are not separable	The bailee shall compensate bailor for any loss caused to him.

(d) Not to set up adverse title

The bailee is under a duty not to do any act which is inconsistent with the title of the bailor. He should not setup his own title. He has no right to deny the bailor's title or set up against the bailor his own title or the right of a third party. He will, however, refuse to deliver goods to the bailor if there is an effective pressure of an adverse claim amounting to an actual eviction by a paramount title.

(e) To return the Goods

It is the duty of the bailee to return or deliver the goods without demand, on the expiry of the time fixed or when the purpose is accomplished. If he does not return or deliver as directed by the bailor, or tender the goods at the proper time, he becomes liable for any loss, destruction or deterioration of the goods even without negligence during the period it is detained.

(f) To return any accretion to the goods:

In the absence of any contract to the contrary, the bailee must return to the bailor any increase or profits which have accrued from the goods bailed. This usually happens in the case of animals.

Duties of Bailor

(a) To disclose known faults:

Gratuitous bailment	The bailor is liable to disclose all the faults known to him which are material and may put the bailee to extraordinary risks. In case of non-disclosure, the bailor shall be liable for damages for any loss caused to bailee.
Non gratuitous bailment	The bailor is liable to disclose all the faults whether known to him or not. In case of non-disclosure, the bailor shall be liable for any loss caused to the bailee whether or not he was aware of the faults.

(b) To reimburse expenses:

Extraordinary expenses	The bailor is liable to pay extraordinary expenses. The bailee may recover the extraordinary expenses paid by him. It is immaterial as to whether the bailment is gratuitous or non-gratuitous.
Ordinary expenses	The bailee is liable to pay ordinary expenses in case of non-gratuitous bailment. However, in case of gratuitous bailment for the benefit of bailor, the bailor is liable to pay the ordinary necessary expenses.

(c) To indemnify bailee:


The bailor is bound to indemnify the bailee for any cost or loss, which the bailee may incur because of the defective title of the bailor to the goods bailed.

(d) To indemnify the bailee for premature termination:

If the bailment is gratuitous and for specific period, then the bailor may compel the bailee to return the goods before expiry of the period of bailment but the bailor shall indemnify the bailee for any loss incurred by the bailee

RIGHTS OF A BAILOR

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

- 
- Right to terminate the bailment
 - Right to demand back the goods at any time
 - Right to file a suit against any wrong doer
 - Right to file a suit for enforcement of duties imposed upon a bailee.

(i) **Right to terminate the bailment [Section 153]:** A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.

Termination of bailment has been discussed in next pages.

(ii) Right to demand back the goods (Section 159): When the goods are lent gratuitously, the bailor can demand back the goods at any time even before the expiry of the time fixed or the achievement of the object.

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

(iii) Right to file a suit against a wrong doer [Section 180 and section 181] (discussed in next pages)

(iv) Right to sue the bailee: The bailor has a right to sue the bailee for enforcing all the liabilities and duties of him.

(v) Right to compensation: If any damage is caused to the goods bailed because of the unauthorized use of the goods or unauthorized mixing of the goods, the bailor has a right to claim compensation for the same.

RIGHTS OF A BAILEE

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

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

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

2. Right to indemnity (Section 166): Bailee is entitled to be indemnified by the bailor for any loss arising to him by reasons that the bailor was not entitled to make the bailment or to receive back the goods or to give directions in respect to them. If the bailor has no title to the goods, and the bailee in good faith, delivers them back to, or according to the directions of the bailor, the bailee shall not be responsible to the owner in respect of such delivery. Bailee can also claim all the necessary expenses incurred by him for the purpose of gratuitous bailment.

3. Right to claim compensation in case of faulty goods (Section 150): A bailee is entitled to receive compensation from the bailor or any loss caused to him due to the failure of the bailor to disclose any faults in the goods known to him. If the bailment is for hire, the bailor will be liable to compensate even though he was not aware of the existence of such faults.

4. Right to claim necessary expenses (Section 158): In case of gratuitous bailment, the bailor shall repay to the bailee the necessary expenses incurred by him and any extraordinary expenses incurred by him for the purpose of the bailment.

5. Right to Apply to Court to Decide the Title to the Goods [Section 167]: If the goods bailed are claimed by the person other than the bailor, the bailee may apply to the court to stop its delivery and to decide the title to the goods.

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

7. Right of general lien (Sec. 171): (Discussed in next pages)

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

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

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

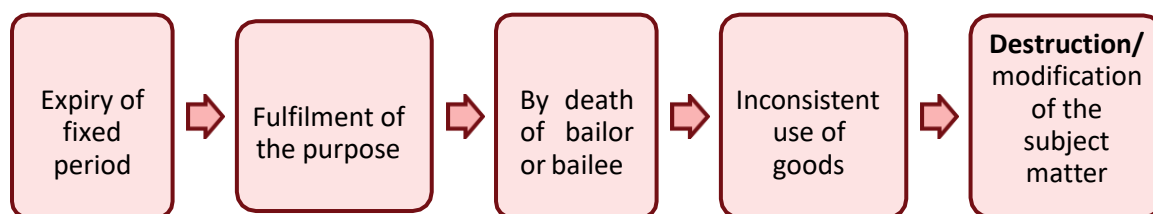
TERMINATION OF BAILMENT

A contract of bailment shall terminate in the following circumstances:

1. **On expiry of stipulated period:** If the goods were given for a stipulated period, the contract of bailment shall terminate after the expiry of such period.
2. **On fulfillment of the purpose:** If the goods were delivered for a specific purpose, a bailment shall terminate on the fulfillment of that purpose.
3. **By Notice:**
 - (a) Where the bailee acts in a manner which is inconsistent with the terms of the bailment, the bailor can always terminate the contract of bailment by giving a notice to the bailee.
 - (b) A gratuitous bailment can be terminated by the bailor at any time by giving a notice to the bailee. However, the termination should not cause loss to the bailee in excess of the benefit derived by him. In case the loss exceeds the benefit derived by the bailee, the bailor must compensate the bailee for such a loss (Sec. 159).
4. **By death:** A gratuitous bailment terminates upon the death of either the bailor or the bailee.

Destruction of the subject matter: A bailment is terminated if the subject matter of the bailment is destroyed or there is a change in the nature of goods which makes it impossible to be used for the purpose of bailment.

FINDER OF LOST GOODS



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

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

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

RIGHT OF LIEN

Lien is the right of a person

- until his claim is satisfied or
- some debt due to him is repaid.

Types of Lien: Lien may be of two types:

- a. Particular Lien
- b. General Lien

a. Particular Lien: It is a right to retain only the particular goods in respect of which the claim is due. Section 170 provides, where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

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

Under the right of general lien the goods cannot be sold but can only be retained for dues. The right of lien can be waived through a contract.

Kinds of Lien

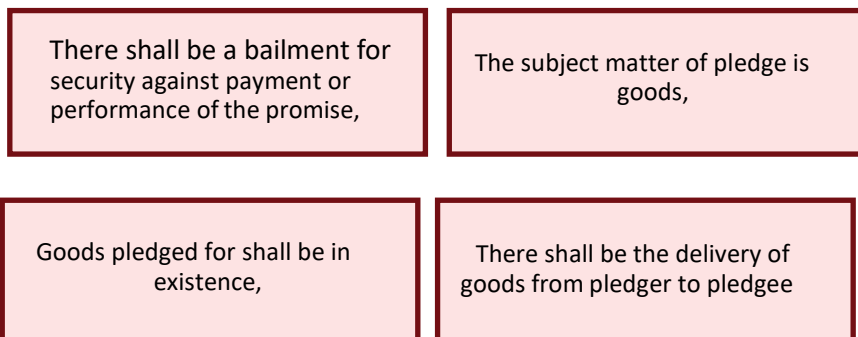
BASIS	PARTICULAR LIEN	GENERAL LIEN
Nature of right	Particular lien gives right to retain only such goods in respect of which charges due remain unpaid.	General lien gives right to retain any goods belonging to another person for any amount due from him.
Conditions for exercising lien	Particular lien can be exercised only when some labour or skill has been expended on goods, resulting in an increase in value of goods.	General lien may be exercised even though no labour or skill has been expended on the goods.
Right to whom?	Every bailee is entitled to particular lien.	General lien can be exercised by only such persons as are specified u/s171, e.g., bankers, factors, wharfingers. Attorneys of High Court, policy brokers, any other bailee may exercise general lien if there is an agreement to this effect.

Pledge

“Pledge”, “pawnor” and “pawnee” defined [Section 172]: The bailment of goods as security for payment of a debt or performance of a promise is called **“pledge”**. The bailor is in this case called the **“pawnor”**. The bailee is called the **“pawnee”**.

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

ESSENTIALS OF CONTRACT OF PLEDGE: Since pledge is a special kind of bailment, therefore all the essentials of bailment are also the essentials of the pledge. Apart from that, the other essentials of the pledge are:



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

(a) Right to retain the pledged goods [Section 173]: The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest, of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

- (b) Right to retention of subsequent debts [Section 174]:** The Pawnee can retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged. But he can exercise this right only when there is a contract to this effect. i.e. a right to retain goods for subsequent debts can be exercised only when it has been provided for in a contract to this effect.
- (c) Pawnee's right to extraordinary expenses incurred [Section 175]:** The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged. For such expenses, however, he does not have the right to retain the goods, but he can sue the pawnor for such expenses.
- (d) Pawnee's right where pawnor makes default [Section 176]:** If the pawnor makes default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee has the following rights:
- i. the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or
 - ii. he may sell the thing pledged on giving the pawnor reasonable notice of the sale.
 - iii. If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.
- (e) Rights of a pawnor**
As the bailor of goods, pawnor has all the rights of the bailor. Along with that he also has the right of redemption to the pledged goods which is enumerated under section 177 of the Act.
- (f) Right to redeem [Section 177]:** If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay, in addition, any expenses which have arisen from his default.
- Note:** Redemption means to recover back the goods by making of the payment of debt or performance of promise.
- (g) Duties of a Pawnor**
Pawnor has the following duties:
- a. The pawnor is liable to pay the debt or perform the promise as the case may be.
 - b. It is the duty of the pawnor to compensate the pawnee for any extraordinary expenses incurred by him for preserving the goods pawned.
 - c. It is the duty of the pawnor to disclose all the faults which may put the pawnee under extraordinary risks.
 - d. If loss occurs to the pawnee due to defect in pawnor's title to the goods, the pawnor must indemnify the pawnee.
 - e. If the pawnee sells the good due to default by the pawnor, the pawnor must pay the deficit.

PLEDGE BY NON-OWNERS

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

a. Pledge by mercantile agent [Section 178]:

A mercantile agent, who is in the possession of goods or document of title, with the consent of owner, can pledge them while acting in the ordinary course of business as a Mercantile Agent. Such Pledge shall be valid as if were made with the authority of the owner of goods. Provided, Pawnee acted in good faith and had no notice that Pawnor has no authority to pledge.

- b. Pledge by person in possession under voidable contract [Section 178A]:** When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A (contracts where consent has been obtained by fraud, coercion, misrepresentation, undue influence), but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.
- c. Pledge where pawnor has only a limited interest [Section 179]:** Where a person pledges goods in which he has only a limited interest i.e. pawnor is not the absolute owner of goods, the pledge is valid to the extent of that interest.
- d. Pledge by a co-owner in possession:** Where the goods are owned by many person and with the consent of other owners, the goods are left in the possession of one of the co-owners. Such a co-owner may make a valid pledge of the goods in his possession.
- e. Pledge by seller or buyer in possession:** A seller, in whose possession, the goods have been left after sale or a buyer who with the consent of the seller, obtains possession of the goods, before sale, can make a valid pledge, provided the pawnee acts in good faith and he has no knowledge of the defect in title of the pawnor.

BASIS	PLEDGE	BAILMENT
Purpose	A pledge is made for a specific purpose, i.e., security for payment of debt or performance of a promise.	A bailment can be for any purpose.
Use of goods	A pawnee does not have a right to use the goods.	The bailee may use the goods bailed as per the terms of the contract.
Lien	Lien can be exercised even for non-payment of interest.	A bailee can exercise lien on goods bailed only for his labour and skilled employed
Sale of goods	The pawnee can sell the goods after due notice to the pawnor.	The bailee has no right of sale.
Nature of interest in property	The pledge gets a special interest in the goods, the general property remains in the pawnor	A bailee obtains rights of possession of the goods bailed.

CONTRACT OF AGENCY

Contract of Agency

According to Section 182 of the Contract Act “An ‘agent’ is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the ‘principal’.” Thus, an agent is a connecting link between his principal and third parties.

Test of Agency

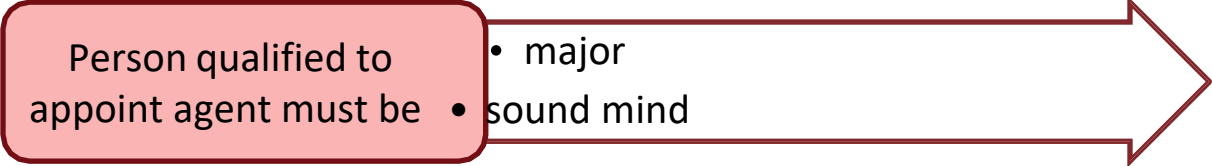
- (a) Whether the person has the capacity to bind the principal and make him answerable to the third party.
- (b) Whether he can establish privity of contract between the principal and third parties. If the answer to these questions is in affirmative (Yes), then there is a relationship of agency.

APPOINTMENT AND AUTHORITY OF AGENTS

Who may employ an agent: According to Section 183, “any person who has attained majority according to the law to which he is subject, and who is of sound mind, may employ an agent.” Thus, a minor or a person of unsound mind cannot appoint an agent.

Person qualified to appoint agent must be

- major
- sound mind



Who may be an agent:

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

Consideration not necessary: According to Section 185, no consideration is necessary to create an agency. The acceptance of the office of an agent is regarded as a sufficient consideration for the appointment.

Modes of Creation of Agency

- Express agreement,
- Implied agreement,
- Ratification

Express Agreement (Section 186 and 187). As per Section 186, a contract of agency may be express or implied. As per section 187, an authority is express when it is given by words, spoken or written. A person may be appointed agent, either by words of mouth or by writing. No particular form is required for appointing an agent. The usual form of a written contract of agency is the power of attorney on a stamped paper.

Example

‘A’ is residing in Delhi and he has a house in Kolkata. ‘A’ appoints ‘B’, by a deed called the power of attorney, as caretaker of his house. Agency is created by express agreement.

Implied Agency (Section 187). An authority is said to be implied when it is to be inferred from the circumstances of the case; and, or the ordinary course of dealings.

Implied agency includes the following:

- Agency by estoppel
- Agency by holding out, and
- Agency by necessity

a. Agency by Estoppel (Section 237). When a person has, by his conduct or statement, induced others to believe that a certain person is his agent, he is estopped from subsequently denying it, Lord Halsbury says, "Estoppel arises when you are precluded from denying the truth of anything which you have represented as fact, although it is not a fact."

Example

'P' allows 'A' telling 'C' that 'A' is 'P's agent. Later on, 'C' supplies certain goods to 'A' thinking him to be 'P' agent. 'P' shall be held liable to pay the price to 'C' By allowing 'A' to represent himself as his agent, 'P' leads 'C' to believe that 'A' is really his agent.

b. Agency by Holding Out. Though part of the law of estoppel, some affirmative conduct by the principal is necessary in creation of agency by holding out.

Example

'P' allows his servant 'A' to buy goods for him on credit from 'C' and pays for them regularly. On one occasion, 'P' pays his servant cash to purchase the goods on credit pocketing the money, 'C' can recover the price from 'P' since through previous dealings 'P' has held out his servant 'A' as his agent.

c. Agency by Necessity (Section 189). An agent has authority, in an emergency, to do all such acts, for the purpose of protecting the principal from loss, that would be done by a person of ordinary prudence, in his own case, under similar circumstances.

Example

A horse was sent by rail and at the destination it was not taken delivery of by the owner. The station master had to feed the horse. Held, the station master became the agent by necessity and hence the owner must compensate him.

To constitute a valid agency of necessity, following condition must be satisfied:

- Agent should not be in a position or have any opportunity to communicate with his principal within the time available.
- There should have been actual and definite commercial necessity for the agent to act promptly.
- The agent should have acted bonafide and for the benefit of the principal.
- The agent should have adopted the most reasonable and practicable course under the circumstances, and
- The agent must have been in possession of the goods belonging to his principal and which are the subject of contract.

Agency by Ratification (Section 196 – 200). Section 196 recognizes the creation of agency by subsequent ratification by the principal of the contracts entered into by the agent on his behalf but without his authority. Where a person acts for someone but without his knowledge or authority and the other person subsequently accepts or ratifies the act, agency by ratification arises and the ratifier is bound by the act on his behalf. Thus, agency by ratification tantamount to prior authority.

Example

The case of Bolton Partners v. Lambert is a good illustration on the point. In this case, 'L' made an offer to 'X' managing director of a company. 'X' accepted the offer though he had no authority to do so. 'L' subsequently withdrew the offer, but the company ratified 'X' s acceptance. Held, 'L' was bound. The ratification related back to the time 'X' accepted the offer, thus rendering the revocation of the offer inoperative. An offer once accepted cannot be withdrawn.

Ratification may be expressed or implied (Section 197).

Requisites of a valid ratification

- The agent must be contract as agent; he must not allow the third party to believe that he is the principal. A man cannot enter into a contract at his own and later shift it to another.
- The principal must have been in existence at the time the agent originally acted. This condition is significant in case of joint stock companies.
- The principal must not only be in existence but must also have contractual capacity at the time of the contract as well as at the time of ratification. Thus, a minor on whose behalf a contract is made cannot ratify it on attaining majority.
- Ratification must be made within a reasonable time. What is reasonable time shall vary from case to case?
- The act to be ratified must be a lawful one. There can be no ratification of an illegal act or an act, which is void - ab- initio.
- The principal should have full knowledge of the facts. Section 198 states “No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective”.
- Ratification, if made, shall be of the contract as a whole (Section 199). The principal cannot reject the burdens and accept only the benefits.
- Ratification of a contract not within the principal’s authority is ineffective. This again basically is relevant in case of companies. Acts of directors which are ultra-virus the power of a company cannot be ratified by the company.
- Ratification cannot be made so as to subject a third party to damages or terminate any right or interest of a third person (Section 200).

Agency coupled with Interest

Agency is said to be coupled with interest where the agent has himself an interest in the subject-matter of the agency (Section 202).

Where an agent is appointed to sell properties of the principal and to pay himself out of such sale proceeds the debt due to the agent.

EXTENT OF AGENT’S AUTHORITY

The agent’s authority is governed by two principles, namely (a) in normal circumstances and (b) in emergency.

(a) Agent’s authority in normal circumstances [Section 188]: An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act.

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course, of conducting such business.

(b) Agent’s authority in an emergency [Section 189]: An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

To constitute a valid agency in an emergency, following conditions must be satisfied.

- (i) Agent should not be in a position or have any opportunity to communicate with his principal within the time available.
- (ii) There should have been actual and definite commercial necessity for the agent to act promptly.
- (iii) the agent should have acted bonafide and for the benefit of the principal.
- (iv) the agent should have adopted the most reasonable and practicable course under the circumstances, and the agent must have been in possession of the goods belonging to his principal and which are the subject of contract.

Kinds of agent

Sub - Agent

- A 'sub-agent' is a person employed by, and acting under the control of, the original agent in the business of the agency. Thus, sub-agent is an agent appointed by the agent. The relationship between original agent and sub-agent is that of principal and agent. Simply speaking, sub-agent is the person to whom the agent delegates a part of his authority.
 - Where a sub-agent is properly appointed, the following consequences arise
 - The principal is liable to third parties for the acts of the sub-agent.
 - The agent is responsible to the principal for the acts of the sub-agent.
 - The sub-agent is responsible for his acts to the agent and not to the principal except in cases of fraud and willful wrong.
 - The sub-agent cannot sue the principal for remuneration.
 - Where a sub-agent is improperly appointed, the following consequence arise
 - The principal is not liable to third parties for the acts of the sub-agent.
 - The sub-agent is not responsible to the principal for anything. He is responsible only to the agent.
 - The agent is responsible to the principal as well as to third parties for the acts of the sub-agent.

Substituted Agent

- Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal (termed as substituted agent) for such part of the business as is entrusted to him.
- Thus, an agent simply names a substituted agent at the request of the principal, and thereafter drops out altogether from the scene.
- In selecting such substituted agent, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case and if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected. If the agent makes the selection of substituted agent carelessly, he becomes liable to the principal for the negligence in selection of substituted agent. However, the original agent is not required to guarantee the integrity or solvency of the substituted agent.
- There is privity of contract between the principal and the substituted agent. The substituted agent is an agent of the principal. The substituted agent is responsible to the principal for his acts.
- The substituted agent is not responsible for his acts to the agent. Similarly, the agent is not responsible to the principal for the acts of substituted agent.

Example. P directs A, the selling agent of P, to suggest the name of an advocate for the purpose of suing the debtors who have defaulted in making payments. A suggests the name of S, who is an advocate of repute. S is not a sub-agent, but is P's agent. If due to negligence of S, some loss is caused to P, A shall not be liable since A has exercised proper care in selection of S.

An agent is deemed to be held personally liable in the following cases:

- (a) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad/foreign principal;
- (b) Where the agent does not disclose the name of his principal or undisclosed principal; and
- (c) Where the principal, though disclosed, cannot be sued.

DIFFERENCE BETWEEN A SUB-AGENT AND A SUBSTITUTED AGENT

Both a sub-agent and a substituted agent are appointed by the agent. But, however, the following are the points of distinction between the two.

S.no	Sub Agent	Substituted Agent
1.	A sub-agent does his work under the control and directions of agent.	A substituted agent works under the instructions of the principal.
2.	The agent not only appoints a sub-agent but also delegates to him a part of his own duties.	The agent does not delegate any part of his task to a substituted agent.
3.	There is no privity of contract between the principal and the sub-agent.	Privity of contract is established between a principal and a substituted agent.
4.	The sub-agent is responsible to the agent alone and is not generally responsible to the principal.	A substituted agent is responsible to the principal and not to the original agent who appointed him.
5.	The agent is responsible to the principal for the acts of the sub-agent.	The agent is not responsible to the principal for the acts of the substituted agent.
6.	The sub-agent has no right of action against the principal for remuneration due to him.	The substituted agent can sue the principal for remuneration due to him.
7.	Sub-agents appointed may be improperly	Substituted agents can never be improperly appointed.
8.	The agent remains liable for the acts of the sub-agent as long as the sub-agency continues.	The agent's duty ends once he has named the substituted agent.

DUTIES AND OBLIGATIONS OF AN AGENT

- (i) **Duty to follow instructions or customs:** According to Section 211 an agent is bound to conduct the business of his principal according to the direction given by the principal, or, in the absence of any such directions, according to the customs which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise and any loss is sustained by the Principal, he must indemnify him, and, if any profit accrues, he must account for it.
- (ii) **Duty of reasonable care and skill:** According to section 212, an agent is bound to conduct the business of the principal with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill.
The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss of damage which are indirectly or remotely caused by such neglect, want of skill or misconduct.
- (iii) **Duty to render proper accounts [Section 213]:** An agent is bound to render proper accounts to his principal on demand. Rendering accounts does not mean showing the accounts but the accounts supported by vouchers. (*Anandprasad vs. Dwarkanath*)
- (iv) **Agent's duty to communicate with principal [Section 214]:** It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.
- (v) **Duty not to deal on his own account:** Agent should not deal on his own account without first obtaining the consent of the principal, otherwise the principal may—
- repudiate the transaction, (Section 215)
 - claim from the agent any benefit which may have resulted to him from the transaction. (Section 216)

- (vi) Duty not to make secret profits:** It is the duty of an agent not to make any secret profit in the business of agency. His relationship with the principal is of fiduciary nature and this requires absolute good faith in the conduct of agency.
- (vii) Secret Profit** means any advantage obtained by the agent over and above his agreed remuneration and which he would not have been able to make but for his position as agent.
- (viii) Duty not to delegate:** According to section 190, an agent cannot lawfully employ to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of agency, a sub-agent, must be employed.
- (ix) Agent's duty to pay sums received for principal [Section 218]:** Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.
- (x) Duty not to use any confidential information received in the course of agency against the principal.**

RIGHTS OF AN AGENT

- (i) Right of retain out of sums received on principal's account [Section 217]:** This section empowers the agent to retain, out of any sums received on account of the principal in the business of the agency for the following payments:
 - (a) all moneys due to himself in respect of advances made
 - (b) in respect of expenses properly incurred by him in conducting such business
 - (c) such remuneration as may be payable to him for acting as agent.

The right can be exercised on any sums received on account of the principal in the business of agency.

- (ii) Right to remuneration [Section 219]:** The agent in the normal course is entitled for remuneration as per the contract. In the absence of any agreed amount of remuneration, he is entitled for usual remuneration which is customary in the business. However, an agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business which he has misconducted [Section 220].

- (iii) Agent's lien on principal's property [Section 221]:** In the absence of any contract to the contrary, an agent is entitled to retain the goods, papers and other property, whether movable or immovable, of the principal received by him, until the amount due to himself for commission, disbursement and services in respect of the same has been paid or accounted for him.

The conditions of this right are:

- a. The agent should be lawfully entitled to receive from the principal a sum of money by way of commission earned or disbursement made or services rendered in the proper execution of the business of agency.
- b. The property over which the lien is to be exercised should belong to the principal and it should have been received by the agent in his capacity and during the course of his ordinary duties as an agent. If the agent obtains possession of the property by unlawful means, he cannot exercise particular lien.

The agent's right to lien is lost in the following cases:

- (a) When the possession of the property is lost.
- (b) When the agent waives his right. Waiver may arise out of agreement express or implied.
- (c) The agent's lien is subject to a contract to the contrary.

- (iv) Right to indemnity:**

- (a) **Right of indemnification for lawful acts [Section 222]:** The principal is bound to indemnify the agent against all consequences of lawful acts done in exercise of his authority.

(b) **Right of indemnification against acts done in good faith [Section 223]:** Where the agent acts in good faith on the instruction of principal, agent is entitled for indemnification of any loss or damage from the principal.

However, the agent cannot claim any reimbursement or indemnification for any loss etc. arising out of acts done by him in violation of any penal laws of the country.

(c) **Non-liability of employer of agent to do a criminal act:** According to section 224, where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

(v) **Right to compensation for injury caused by principal's neglect [Section 225]:** Section 225 provides that the principal must compensate his agent in respect of injury caused to such agent due to principal's neglect or want of skill. Thus, every principal owes to his agent the duty of care, and not to expose him to unreasonable risks.

PRINCIPAL'S LIABILITY TO THIRD PARTIES

An agent does all acts on behalf of the principal but incurs no personal liability. The liability remains that of the principal unless there is a contract to the contrary. This is because there is no privity of contract and passing of consideration between the agent and third party. An agent also cannot personally enforce contracts entered into by him on behalf of the principal.

(i) **Principal's liability for the Acts of the Agent [Section 226]:** Principal liable for the acts of agents which are within the scope of his authority.

Principal's liability when agent exceeds authority [Section 227]: When an agent does more than he is authorised to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so

much only of what he does as is within his authority is binding as between him and his principal.

Principal not bound when excess of agent's authority is not separable [Section 228]: Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

Exception: Liability of principal inducing belief that agent's unauthorized acts were authorized [Section 237]: When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations, if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

(ii) **Consequences of notice given to agent [Section 229]:** Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

(iii) **Principal's liability for the agent's fraud, misrepresentation or torts [Section 238]:**

Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made, or committed, by the principals; but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals.

PERSONAL LIABILITY OF AGENT TO THIRD PARTIES

Agent cannot personally enforce, nor be bound by, contracts on behalf of principal [Section 230]: In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them. He can neither sue nor be sued on contracts made by him on his principal's behalf.

EXCEPTIONS: In the following exceptional cases, the agent is presumed to have agreed to be personally bound:

- (1) Where the contract is made by an agent for the sale or purchase of goods for a **merchant resident abroad/foreign principal**: – When an agent has entered into a contract for the sale or purchase of goods on behalf of a principal resident abroad, the presumption is that the agent undertakes to be personally liable for the performances of such contract.
- (2) Where the agent **does not disclose the name of his principal or undisclosed principal**; (Principal unnamed): when the agent does not disclose the name of the principal then there arises a presumption that he himself undertakes to be personally liable.
- (3) **Non-existent or incompetent principal**: Where the principal, though disclosed, cannot be sued, the agent is presumed to be personally liable.
- (4) **Pretended agent** – if the agent pretends but is not an actual agent, and the principal does not rectify the act but disowns it, the pretended agent will be himself liable (Section 235).
- (5) **When agent exceeds authority**- When the agent exceeds his authority, misleads the third person in believing that the agent he has the requisite authority in doing the act, then the agent can be made liable personally for the breach of warranty of authority.

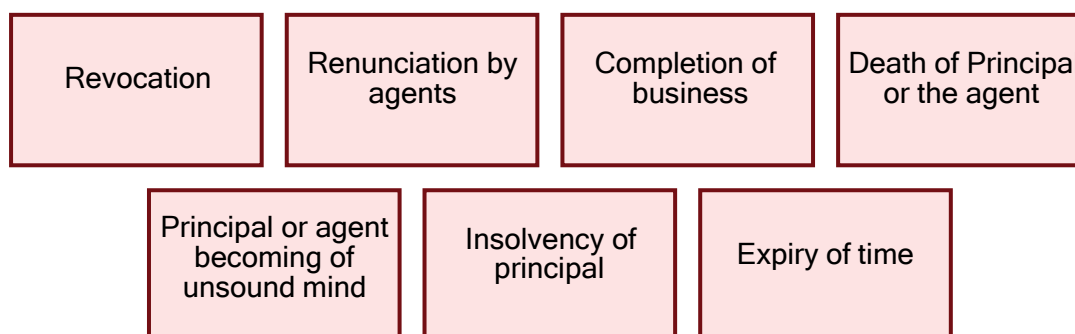
RIGHTS OF THIRD PARTIES

- i. **Rights of parties to a contract made by undisclosed agent [Section 231]**: If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same right as he would have had as against the agent if the agent had been the principal. If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfill the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.
- ii. **Performance of contract with agent supposed to be principal [Section 232]**: When agent does not disclose that he is acting as an agent and the principal requires the performance of the contract then the principal can obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.
- iii. **Option to Third Person- sue the Agent or the Principal**:
 - (a) **Right of person dealing with agent personally liable [Section 233]**: In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.
 - (b) **Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable [Section 234]**: When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

REVOCAION OF AUTHORITY

Termination of agency [Section 201]

Termination of agency means putting an end to the legal relationship between principal and agent. Section 201 provides for the following modes of termination:



- (a) **Revocation:** An agency may be terminated by the principal revoking the authority of the agent. Principal may revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal [Section 203]. However, the principal cannot revoke the authority given to his agent after the authority has been partly exercised so far as regards such acts and obligations as arise for acts already done in the agency. [Section 204]

Compensation for revocation by principal [Section 205]: If there is premature revocation of agency without sufficient cause, the principal must compensate the agent, for such revocation.

Notice of revocation [Section 206]: When the principal, having justification to do so, revokes the authority, he must give reasonable notice of such revocation to the agent, otherwise, he can be liable to pay compensation for any damage caused to the agent (Section 206).

Revocation and renunciation may be expressed or implied [Section 207]:

Revocation of agency may be expressed or implied in the conduct of the principal.

- (b) **Renunciation by agent [Section 206]:** An agent may renounce the business of agency in the same manner in which the principal has the right of revocation. In the first place, if the agency is for a fixed period, the agent would have to compensate the principal for any premature renunciation without sufficient cause. [Section 205] Secondly, a reasonable notice of renunciation is necessary. Length of notice (time period of notice) is to be determined by the same principles which apply to revocation by the principal. If the agent renounces without proper notice, he shall have to make good any damage thereby resulting to the principal. [Section 206]
- (c) **Completion of business:** An agency is automatically and by operation of law terminated when its business is completed. Thus, for example, the authority of an agent appointed to sell goods ceases to be exercisable when the sale is completed.
- (d) **Death or insanity:** An agency is determined automatically on the death or insanity of the principal or the agent. Winding up of a company or dissolution of partnership has the same effect. Act done by agent before death would remain binding.
- (e) **Principal's insolvency:** An agency ends on the principal being adjudicated insolvent.
- (f) **On expiry of time:** Where an agent has been appointed for a fixed term, the expiration of the term puts an end to the agency, whether the purpose of agency has been accomplished or not. An agency comes to an automatic end on expiry of its term.

When the agency is irrevocable?

When the agent is personally interested in the subject matter of agency the agency becomes irrevocable. Section 202 states that "where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest."

Effects of Termination [Section 208]

When termination of agent's authority takes effect as to agent, and as to third persons [Section 208]: The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

Agent's duty on termination of agency by principal's death or insanity [Section 209]:When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

Termination of sub-agent's authority [Section 210]

The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

EXTRA PRACTICE QUESTIONS OF INDIAN CONTRACT ACT

Question 1:

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

Answer:

Agreement the meaning of which is uncertain (Section 29): An agreement, the meaning of which is not certain, is void, but where the meaning thereof is capable of being made certain, the agreement is valid. For example, A agrees to sell B "a hundred tons of oil". There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty. But the agreement would be valid if A was dealer only in coconut oil; because in such a case its meaning would be capable of being made certain.

Question 2:

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

Answer:

Misrepresentation: According to Section 18 of the Indian Contract Act, 1872, misrepresentation is:

1. When a person positively asserts that a fact is true when his information does not warrant it to be so, though he believes it to be true.
2. When there is any breach of duty by a person, which brings an advantage to the person committing it by misleading another to his prejudice.
3. When a party causes, however, innocently, the other party to the agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract [Section 19, Indian Contract Act, 1872]. The aggrieved party loses the right to rescind the contract if he, after becoming aware of the misrepresentation, takes a benefit under the contract or in some way affirms it.

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

Question 3:

Mr. SAMANT owned a motor car. He approached Mr. CHHOTU and offered to sell his motor car for 3,00,000. Mr. SAMANT told Mr. CHHOTU that the motor car is running at the rate of 30 KMs per litre of petrol. Both the fuel meter and the speed meter of the car were working perfectly. Mr. CHHOTU agreed with the proposal of Mr. SAMANT and took delivery of the car by paying 3,00,000/- to Mr. SAMANT. After 10 days, Mr. CHHOTU came back with the car and stated that the claim made by Mr. SAMANT regarding fuel efficiency was not correct and therefore there was a case of misrepresentation. Referring to the provisions of the Indian Contract Act, 1872, decide and write whether Mr. CHHOTU can rescind the contract in the above ground.

Answer:

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

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

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

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

Question 4:

Mr. Murari owes payment of 3 bills to Mr. Girdhari as on 31st March, 2020.

(i) 12,120 which was due in May 2016. (ii) 5,650 which was due in August 2018 (iii) 9,680 which was due in May 2019.

Mr. Murari made payment on 1st April 2020 as below without any notice of how to appropriate them:

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

Answer:

If the performance consists of payment of money and there are several debts to be paid, the payment shall be appropriated as per provisions of Sections 59, 60 and 61. The debtor has, at the time of payment, the right of appropriating the payment. In default of debtor, the creditor has option of election and in default of either the law will allow appropriation of debts in order of time.

In the present case, Mr. Murari had made two payments by way of two cheques. One cheque was exactly the amount of the bill drawn. It would be understood even though not specifically appropriated by Mr. Murari that it will be against the bill of exact amount. Hence cheque of 9,680 will be appropriated against the bill of 9,680 which was due in May 2019. Cheque of 15000 can be appropriated against any lawful debt which is due even though the same is time-barred.

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

Question 5:

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

- (a) Mr. X promised to bring back Mr. Y to life again.
- (b) A agreed to sell 50 kgs of apple to B. The loaded truck left for delivery on 15th March but due to riots in between reached A on 19th March.
- (a) An artist promised to paint on the fixed date for a fixed amount of remuneration but met with an accident and lost his both hands.
- (b) Abhishek entered into contract of import of toys from China. But due to disturbance in the relation of both the countries, the import from China were banned.

Answer:

- (a) The contract is void because of its initial impossibility of performance.
- (b) Time is essence of this contract. As by the time apples reached B they were already rotten. The contract is discharged due to destruction of subject matter of contract
- (c) Such contract is of personal nature and hence cannot be performed due to occurrence of an event resulting in impossibility of performance of contract
- (d) Such contract is discharged without performance because of subsequent illegality nature of the contract.

Question 6:

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

Answer:

An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived. When the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived. It is called Anticipatory Breach. The law in this regard has very well summed up in **Frost v. Knight and Hochster v. DelaTour:**

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

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

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

Question 7:

Explain the term ‘Quasi Contracts’ and state their characteristics.

Answer:

Quasi Contracts: Under certain special circumstances, obligation resembling those created by a contract are imposed by law although the parties have never entered into a contract. Such obligations imposed by law are referred to as 'Quasi-contracts. Such a contract resembles with a contract so far as result or effect is concerned but it has little or no affinity with a contract in respect of mode of creation. These contracts are based on the doctrine that a person shall not be allowed to enrich himself unjustly at the expense of another.

The salient features of a quasi-contract are:

1. It does not arise from any agreement of the parties concerned but is imposed by law.
2. Duty and not promise is the basis of such contract.
3. The right under it is always a right to money and generally though not always to a liquidated sum of money.
4. Such a right is available against specific person(s) and not against the whole world.
5. A suit for its breach may be filed in the same way as in case of a complete contract

Question 8:

Explain briefly the essentials of a valid contract.

Answer:

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

Offer and acceptance:

There must be a “lawful offer” and a “lawful acceptance” of the offer, thus resulting in an agreement. Intention to create legal relations:

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

Lawful consideration:

Consideration means “something in return”. An agreement is enforceable when each of the parties to it gives something and gets something in return. The payment of money is a common form of consideration. But it may also consist of an act, forbearance, and a promise to do or not to do something. Consideration must be real, valuable and lawful.

The capacity of parties:

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

Free consent:

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

Lawful object:

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

Agreement not expressly declared void:

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

Certainty:

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

Possibility of performance:

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

Writing and registration:

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

Question 9:

"The law of contracts is not the whole law of agreements nor is it the whole law of obligations." – Comment.

Answer:

Obligations may arise from different sources. The law of contract deals only with such legal obligations which arise from agreements. Obligations that are not contractual in nature are outside the purview of the law of contract. For example, the obligation to observe traffic rules does not fall within the scope of the Contract Act.

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

Question 10:

Write Short Notes on:

- (a) Unenforceable Contracts
- (b) Quasi Contracts
- (c) Unilateral Contracts

Answer:

- (a) **Unenforceable contract.** An unenforceable contract is one, which suffers from some technical defect. It is valid in itself but is not capable of being enforced in a court of law because of non-observance of some technical formalities such as insufficiency of the stamp, want of registration, attestation etc. In some cases such contracts can be enforced if their technical defects are removed, for example, the defect of under stamping can be removed by affixing the right value of stamps.
- (b) **Quasi-Contract.** Quasi-contract is a contract in which there is no intention on the part of either party to make a contract but the law imposes a contract upon parties. These are not actual contracts but they resemble a contract that is created by law under certain circumstances. Here, the law creates legal rights and obligations when there is no real contract. For example; obligation of Under of lost goods to return them or liability of person whom money is paid by mistake to repay it back.
- (c) In the 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 the contract or before. If A buys a railway ticket for his journey from Nagpur to Bombay. A has performed his duty under the contract by paying the fare but the railways are yet to perform their promise i.e. of carrying him from Nagpur to Bombay. Such contracts are also called contracts with executed consideration or one-sided contracts.

Question 11:

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

Answer:

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

Question 12.

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

Answer:

Yes [implied contract: implied offer & implied acceptance (silence as a manifestation of acceptance)]

Question 13:

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

1. Riya promised Samarth to lend Rs. 500,000 in lieu of consideration that Samarth gets Riya's marriage dissolved and he himself marries her.
2. Aryan agrees with Mathew to sell his black horse. Unknown to both the parties, the horse was dead at the time of agreement.
3. Ravi sells the goodwill of his shop to Shyam for Rs. 4,00,000 and promises not to carry on such business forever and anywhere in India.
4. In an agreement between Prakash and Girish, there is a condition that they will not institute legal proceedings against each other without consent.

Answer:

1. **Void Agreement** – As per Section 23 of the Indian Contract Act, 1872, an agreement is void if the object or consideration is against public policy. The agreement in the given case is of the nature which interferes with marital rights & duties of a person and is therefore opposed to public policy, illegal and void ab initio.
2. **Void Agreement** – As per Section 20 of the Indian Contract Act, 1872, an agreement made on the grounds of a Bilateral Mistake of fact is regarded as void. The mistake of fact is with respect to the existence of subject matter at the time of formation of the contract.
3. **Void Agreement** – As per Section 27 of the Indian Contract Act, 1872, an agreement that is in restraint of trade is treated as void. However, a buyer of goodwill can exceptionally impose certain restrictions on the seller of goodwill, not to carry on the same business provided such restrictions are reasonable regarding the duration & place of business. The restrictions imposed in the given case are unreasonable and therefore the agreement is in restraint of trade & void.
4. **Void Agreement** – As per Section 28 of the Indian Contract Act, 1872, an agreement that is in restraint of legal proceedings is void. The agreement in the given case imposes an absolute restriction on the rights of the parties to institute legal proceedings & is therefore regarded as void.

Question 14:

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

Answer:

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

Question 15:

State whether a contract is created in the following cases:-

1. Mr. R promises to supply 4 teakwood chairs to Mr. S for a price which shall be fixed by Mr. F.
2. Mr. P promises to pay Rs. 10 Lacs to Mr. T, if he brings back to life Mr. P's dead wife.
3. A mother promises to give Rs. 500 to her son, if he accompanies her for shopping.
4. Mr. P promises to pay Rs. 10 Crores to Mr. N if he resigns from his party and joins Mr. P's political party.

Answer:

Hint:

1. A valid contract is created – the terms of the contract should be certain or capable of being made certain.
2. No contract is created – the impossibility of performance – void ab initio.
3. No contract is created – domestic agreements are mere agreements and not contracts.
4. No contract is created – political agreements are mere agreements and not enforceable.

Question 16:

What is an offer? List the essentials of a valid offer.

Answer:

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

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

The person who makes the offer is called the ‘offeror’ or ‘promisor’ and the person to whom the offer is made is called the ‘offeree or ‘promisee

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

Question 17:

Define acceptance. What are the essentials of a valid acceptance?

Answer:

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

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

Acceptance must be expressed in the prescribed manner or when nothing is prescribed then in some usual and reasonable manner.

1. Acceptance must be communicated by the acceptor.
2. Acceptance must be given within a reasonable time and before the offer lapses and or is revoked.
3. Acceptance must succeed the offer.
4. Rejected offers can be accepted only if renewed.
5. Generally, acceptance cannot be presumed from silence.

Question 18:

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

Answer:

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

1. **By notice:** An offer may be revoked by communication of notice to the offeree by the offeror or before the communication of acceptance is completed as against him.
2. **By Lapse of time:** Proposal stands revoked by the lapse of time prescribed for its acceptance if the communication of acceptance is not made.
3. **By failure to fulfill condition:** Precedent sometimes the offer may impose certain conditions, such as executing a certain document or depositing a certain sum of money (earnest money), which are required to be complied with prior to acceptance. If the acceptor fails to fulfill the conditions precedent to acceptance, the offer is treated as revoked.
4. **By death or insanity of offeror:** Offer stands revoked if the offeror dies or becomes of unsound mind before acceptance and the fact of his death or insanity comes to the knowledge of the offeree.
5. **By counter offer:** When acceptance is given by the offeree on terms & conditions different from the original offer then the offer stands revoked.
6. **By death or insanity of the offeree:** If the offer is specific the offer stands revoked when the offeree dies or becomes of unsound mind, before the acceptance of the offer.

7. **By the destruction of subject matter:** When, the subject matter of the offer is destroyed prior to acceptance, then the offer stands revoked.
8. **By change in the law:** When the offer becomes impossible due to a change in law prior to acceptance, thereby making it unlawful then the offer stands revoked.
9. **By non-acceptance of the offer as per the prescribed mode:** When the offeree sends acceptance in a mode other than the mode prescribed by the offeror, the offer may be treated as revoked.

Question 19:

Write a short note on:

1. Cross offer
2. Counter Offer
3. Invitation to Make an Offer

Answer:

1. **Cross Offer :**When two persons make identical offers to each other, without having knowledge of each other's offer, then such offers are known as cross offers. These offers are independent & identical and do not constitute a contract until acceptance is given to any one of them.
2. **Counter Offer:-** When an offer is accepted on terms or conditions different than those set out in the original offer then it amounts to a counter offer. A counter offer results in rejection of the original offer and the creation of a new offer. Once a counteroffer is made by the original offeree, he cannot subsequently accept the original offer, since the original offer stands revoked. It is only if acceptance is given to the new offer that a contract shall be created.
3. **Invitation to offer or invitation to treat** means supply of information so that the negotiations can start and the other person can be moved to make an offer. It is an indication that the inviter is willing to enter into negotiations but is not yet prepared to be bound. Response to an invitation to treat does not lead to an agreement. In fact, it generates an offer. An invitation to offer is a statement made by a person with a view to elicit a response and negotiate a deal, without expressing final willingness to contract. An invitation to offer, when responded generates an offer.

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

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

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

Question 20:

What are the exceptional cases when silence may be regarded as an acceptance of an offer?

Answer:

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

- (i) Where the offeree having a reasonable opportunity to reject the offered goods/services, enjoys or avails the benefits of them, then his silence will be regarded as acceptance.
- (ii) Similarly, where the previous dealings show that the offeree has given the offeror a reason to believe that the silence of the offeree was a manifestation of his acceptance and the offeror understands so, then silence will be regarded as acceptance of the offer.

Question 21:

What are the rules for completion of communication of offer & acceptance by post?

Answer:

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

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

- (i) As against the offeror. The communication of acceptance completes as against the offeror when the letter of acceptance is put into a course of transmission by the offeree to the offeror, so as to be beyond the reach & power of the offeree. After such communication, the offeror is bound by the acceptance.
- (ii) As against the offeree:- The communication of acceptance is complete as against the offeree. When it comes to the knowledge of the offeror. After such communication, the offeror has a right to bind the offeree by his acceptance.

Question 22:

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

Answer:

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

Question 23:

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

Answer:

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

Question 24:

State when the communication will be complete in the following cases:

1. D proposes, by a letter, to sell his printing machine to E for ₹ 50,000.
2. E accepts D's proposal.
3. D revokes his proposal by a telegram.
4. E revokes his acceptance by telegram

Answer:

1. When E receives the letter
2. Against D, where E posts letter; Against E, when the letter is received by D
3. Against D, when he sends the telegram; Against E, when he received the telegram
4. Against E, when he sends the telegram; Against E, when he receives the telegram.

Question 25:

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

Answer:

Hint: Miss Rakhi can claim the reward since the advertisement here is in the form of a general offer.

Question 26:

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

1. The telegram of revocation of acceptance was received by Ramaswami before the letter of acceptance.
2. The telegram of revocation and letter of acceptance both reached together.

Answer:

Hint:

1. Revocation is valid and there is no contract as it has reached before the letter of acceptance.
2. Revocation is valid and there is no contract if Ramaswami opens the telegram about revocation first and reads it.
3. Revocation is not valid and the contract is formed – if Ramaswami opens the letter of acceptance first and reads it.

Question 27:

A shopkeeper displayed a pair of dresses in the showroom and a price tag of ₹ 2,000 was attached to the dress. Ms. Lovely looked at the tag and rushed to the cash counter. Then she asked the shopkeeper to receive the payment and pack up the dress. The shopkeeper refused to hand over the dress to Ms. Lovely in consideration of the price stated in the price tag attached to the dress. Ms. Lovely seeks your advice on whether she can sue the shopkeeper for the above cause under the Indian Contract Act, 1872.

Answer:

An offer must be distinguished from an invitation to make an offer. An offer is the final expression of willingness by the offeror to be bound by the offer if the offeree chooses to accept it. On the other hand, an invitation to make an offer is made with the intention to negotiate business on the terms specified broadly in the invitation, with any person who comes forward with an offer. Thus the offer is made with the intention of procuring acceptance whereas an invitation to make an offer is made to procure offers. The acceptance of an invitation to an offer does not result in the formation of a contract and only an offer emerges in the process of negotiation. A price tag attached to an article displayed for sale does not constitute an offer. It is merely an invitation to offer. In the given case the dress displayed in the showroom with the price tag constitutes an invitation to make an offer. The act of Ms. Lovely of picking up the dress and producing it at the cash counter for payment at the price mentioned in the price tag amounts to an offer. The shopkeeper is not bound to accept the offer. Thus the shopkeeper is not bound to sell the dress as no contract exists between Ms. Lovely and the shopkeeper and hence she cannot sue the shopkeeper.

Question 28:

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

Answer:

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

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

Question 29:

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

Answer:

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

Question 30:

X purchased a steamer ticket for traveling from Dublin to White haven. Terms & Conditions were printed on the back of the ticket. One of the conditions prescribed in that the shipping company shall not be liable in the event of loss, injury, or delay to the passengers or their luggage. X did not see the back of the ticket and there was no instruction on the face of the ticket to see the back for the terms & conditions. During the journey X’s luggage is

lost due to negligence of the staff on board. X claims loss from the shipping company which denies its liability on the grounds that the company has expressly excluded its liability at the time of formation of contract comment whether the shipping company's stand is tenable in the context of provisions of the Indian Contract Act, 1872.

Answer:

Hint: Essentials of a valid offer; the special terms & conditions must also be communicated along with the offer so as to bind the offeree. If the special terms & conditions are not communicated the same shall not be binding on the offeree. Further, the party prescribing such special terms must make reasonable efforts to bring such special terms to the knowledge of the other party at the time of formation of the contract. Thus in this case X shall be entitled to compensation for his loss from the shipping company, despite the special term exempting the company from its liability since there was no indication on the face of the ticket to draw X's attention to the special terms printed on the back of the ticket. The company has failed to make reasonable efforts to communicate the special terms at the time of formation of contract as a consequence of which X is not bound by such term and company's contention is not tenable.

Question 31:

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

Answer:

Hint: Silence, generally, does not amount to acceptance. The acceptance to an offer cannot be implied from the silence of the offeree or his failure to answer or respond to the offer unless the offeree has by his previous conduct indicated that his silence implies acceptance. Further, under the provisions of the Indian Contract Act, 1872, an offer shall be regarded as invalid if it binds the other party to reply or if it contains any terms, the non-compliance of which may be assumed to amount to acceptance. Thus the offer is invalid & A's proposition is incorrect & B's silence would not amount to acceptance. If B communicates acceptance after 1 week then also no contract shall be created since the offer is invalid.

Question 32:

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

Answer:

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

In the case of written communication merely writing the word 'accepted' or 'approved' on a draft agreement would not amount to acceptance for the purpose of creation of contract unless efforts are taken to bring such acceptance into the knowledge of the offeror. Thus in the given case, no contract comes into existence even when the manager writes 'approved' on the draft agreement since no steps were taken to communicate the same.

Question 33:

What is the law relating to minor's agreements?

OR

Explain the minor's position in an agreement.

Answer:

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

1. **An agreement with a minor is void ab initio:** An agreement with a minor is absolutely void and inoperative.
2. **No restitution:** Restitution means 'restoring' (i.e. giving back) of something to its proper owner. A minor cannot be directed to return benefit obtained under a void agreement (because sections 64 & 65 which deal with restitution do not apply to a minor). However, according to the doctrine of equitable restitution, the goods, and property that are still in possession of the minor can be recovered from him, if so required with the condition that it does not involve any personal liability of the minor.

3. **Minor can be a beneficiary:** The Court protects the rights of minors. Accordingly, any contract, which is of some benefit to the minor and under which he is required to bear no obligation, is valid. In other words, a minor can be a beneficiary e.g., a payee, an endorsee, or a promisee under a contract. Thus, money advanced by a minor can be recovered by him by a suit because he can take benefit under a contract.
4. **No ratification:** A minor's agreement being a nullity and void ab initio has no existence in the eye of law. It cannot be ratified by the minor on attaining the age of majority, for, an agreement void ab initio cannot be made valid by subsequent ratification.
5. **The rule of estoppel does not apply to a minor:** I.e., a minor is not estopped from pleading his minority in order to avoid a contract, even if he has entered into an agreement by falsely representing that he was of full age. In other words, where 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 minor is not estopped from setting up the minority.
6. **Minor's liability for necessaries:** A minor is not personally liable for the necessaries supplied to him but his property is liable for payment to the other person. Necessaries would include such items as food, clothing, accommodation, expenses on education, medical treatment, etc., and not items of comfort or luxury. It would depend on the socio-cultural status of the minor.
7. **Specific performance:** Since an agreement by a minor is absolutely void, the court will never direct the 'specific performance' of such an agreement by him.
8. **Minor Partner:** A minor being incompetent to contract cannot be a partner in a partnership firm, but under Section 30 of the Indian Partnership Act, he can be admitted to the 'benefits of partnership' by an agreement executed by his guardian on his behalf, with the consent of all the partners.
9. **Minor Agent:** A minor can be an agent (Sec. 184). He shall bind the principal by his acts done in the course of such an agency, but he cannot be held personally liable for negligence or breach of duty.
10. **Minor and insolvency:** A minor cannot be adjudicated insolvent, as he is incapable of contracting debts. Even for necessaries supplied to him, he is not personally liable, only his property is liable (Sec. 68).
11. **Minor as a shareholder:** A minor can become a shareholder of fully paid shares through transfer if he applies for registration of transfer through his guardian. However, if a minor makes an application for shares, the company will refuse to allow him shares because being incompetent, he will have no liability to pay the amounts due on the shares.
12. **No liability of parents or guardians:** The parents or guardians of the minor are not liable for the contracts entered into by the minor. However, in certain cases the parents or guardians of the minor may enter into contracts on behalf of the minor for his benefit. In such cases, the parents or guardians shall be liable to the contracting party.
13. **Liability for torts:** A minor is liable for a tort (civil wrong), provided the tort is independent of a contract.

Question 34:

Write Short Notes on the following:

1. Minor's liability with respect to necessaries of life
2. Alien Enemies
3. Foreign Sovereigns & Diplomats
4. The company as a person incompetent to contract

Answer:

1. According to the provisions of Section 68 of the Indian Contract Act, 1872, in the event of necessaries of life supplied to an incompetent person or to his dependent by another person, that other person is entitled to claim reimbursement from the properties of the incompetent person, if any. Thus in case necessaries of life are supplied by a person to a minor, then person providing the same can recover the reimbursement for his expenses from the properties of the minor if any. Minor shall not incur any personal liability for the expenses, since he cannot be held personally liable. Further, the estate of the minor shall be held liable for the necessaries supplied, provided the goods and services supplied by the person to the minor should be regarded as 'necessaries' ie. reasonably required to support his standard of living and the minor must not already be inadequate possession of the same.
2. A contract with an alien friend is valid subject to the law of our country. However when an alien friend is declared as an alien enemy, due to the declaration of war between his country and the Republic of India, then he is disqualified from entering into a contract with any national of India so long as the war or the declaration continues.

Any contract with an alien enemy is not only void ab initio on account of the incompetence of the contracting party, but it is also treated as illegal. Further, any contract formed prior to the declaration of war in respect of which performance is still outstanding becomes void subsequently due to change in circumstances.

3. Foreign sovereigns and ambassadors: One has to be cautious while entering into contracts with foreign sovereigns and ambassadors, because whereas they can sue others to enforce the contracts, they cannot be sued in the Indian Courts, except in the following two cases :
 - (a) Where they voluntarily submit themselves to the Court.
 - (b) Where the person intending to sue them obtains the approval of the Central Government.Thus they are in a privileged position and are ordinarily considered incompetent to contract.
4. 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) cannot enter into contracts of a strictly personal nature e.g., marriage. Question 3.

Question 35:

“A person who is usually of unsound mind but occasionally of sound mind may enter into a valid contract when he is of sound mind”, explain.

Answer:

As per section 11 of the Contract Act, for a valid contract, it is necessary that each party to the contract must have a ‘sound mind’. What is a ‘sound mind’? Section 12 of the Contract Act defines the term ‘sound minds follows. “A person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effects upon his interest.”

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

Section 12 further states that:

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

Question 36:

“Though minor is not competent to contract nothing in the contract act prevents him from making the other party bound to the minor”. Discuss.

Answer:

According to the provisions of section 11 of the Indian Contract Act, 1872, a minor is incompetent to contract and any contract made with a minor is void ab initio. A minor can never be held personally liable for the contracts entered into by him. Thus no person can enforce any contract against a minor and cannot claim any restoration of benefits or compensation against the minor. However, the courts, with an intention to protect the interest and the rights of the minor, allow minors to enforce contracts where he is a party as a beneficiary and no personal obligation is to be borne by him. Thus in respect of contracts where the minor is entitled to benefits, rights, and interest (without any subsisting legal obligations), the enforcement of such contracts shall be permitted to the minor. Therefore in cases where the minor is a payee, endorsee, or promise to a contract or a negotiable instrument, he can seek its enforcement in the court of law.

Question 37:

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

Answer:

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

Question 38:

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

Answer:

Hint: Contracts with minor are void ab initio; no personal liability of the minor; rule of estoppel does not apply against a minor and he can plead minority in his defense. The mortgage deed is void ab initio and the moneylender has no right of action against the minor.

Question 39:

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

Answer:

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

Question 40:

Define consideration. What are the legal rules/essentials regarding consideration? (C.A. Foundation MTP May 2019)

Answer:

Section 2(d) of the Contract Act defines consideration as follows:

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

1. Consideration must move at the desire of the promisor

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

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

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

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

3. Consideration may be an act or abstinence

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

4. Consideration may be past, present or future

When the consideration of one party was given before the date of the promise, it is said to be passed. Past consideration means the consideration for a promise given by a party before the promise is made. Such a consideration given by a party must be at the desire of the promisor. The consideration which moves simultaneously with the promise is called present or executed consideration. When the consideration is to move at a future date, it is called future or executory consideration.

5. Consideration need not be adequate

Consideration need not be adequate nor equivalent to promise.

6. Consideration must be real and not illusory

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

7. Consideration must be lawful

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

8. Consideration must not be a pre-existing obligation or duty.

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

Question 41:

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

OR

What are the exceptions to the rule “No consideration no contract”?

OR

“No consideration No contract”. Discuss

Answer:

The general rule is “an agreement made without consideration is void” However, sec. 25 also mentions some exceptions to the general rule. These exceptions are given below:

1. Agreement made on account of natural love and affection

An agreement made without consideration is enforceable if it is

1. made on account of natural love and affection,
2. between parties standing in a near relation to each other,
3. expressed in writing, and
4. registered under the law.

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

A promise made without consideration is also valid, if it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or done something which the promisor was legally compellable to do. The following two situations are covered by this section:

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

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

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

Where there is an agreement,

- made in writing and
- signed by the debtor, or by his authorised 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.

4. Completed Gift

A gift is the transfer of property without consideration. In order to be valid, a gift does not require consideration. Promise for a donation is not a gift. As such a promise for a donation is invalid for want of consideration.

5. Contract of Agency

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

6. Bailment

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

7. Remission.

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

8. Guarantee

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

9. Charity

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

Question 42:

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

OR

A stranger to a contract cannot sue. However, in certain cases, a stranger to a contract may even enforce a claim. Explain. (C.A. Foundation RTP May 2018)

Answer:

The doctrine of Privity of Contract: According to the doctrine of privity of contract only a party to a contract is

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

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

1. Beneficiaries in the case of a trust

An agreement to create a trust can be enforced by the beneficiary even though he was not a party to the contract between the settlor and the trustee.

2. Family settlement

When family disputes are settled by mutual agreement and the terms of the settlement are written down in a document it is called a Family Settlement. Such agreements can be enforced by members of the family who were not originally parties to the settlement.

3. Assignee of contract

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

4. Provision for marriage or maintenance.

At the time of partition of the 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 a party to the arrangement. But, they have been held entitled to enforce the agreement for their benefit.

5. Contracts entered into through an agent

The principal can enforce the contracts entered into by his agent provided the agent acts within the scope of his authority and in the name of the principal.

6. Acknowledgement

The person who becomes an agent of a third party by acknowledgement or otherwise can be sued by such a third party. If the promisor acknowledges his liability to the third person, then such a third person can file a suit to recover the benefit.

7. Covenants attached with the land

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

Question 43:

“A stranger to contract cannot sue but a stranger to consideration can sue”. Comment.

Answer:

According to the doctrine of privity of contract, a contract is a private matter only between the contracting parties and therefore only the parties to contract can sue each other to enforce their respective rights under the contract. Thus generally only contracting parties can sue & enforce the contract & a stranger to the contract cannot sue. Under the Law of Contracts, consideration can be furnished by the promisee or any other person, provided it is at the desire of the promisor. Thus a person who has not furnished consideration himself, under a contract, can also sue on the contract & enforce his rights provided he is a party to contract. Therefore a stranger to consideration can sue provided he is a contracting party.

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

Question 44:

X transferred his house to his daughter M by way of gift. The gift deed, executed by X, contained a direction that M shall pay a sum of ₹ 5,000 per month to N (the sister of the executant). Consequently, M executed an instrument in favour of N agreeing to pay the said sum. Afterwards, M refused to pay the sum to N saying that she is not liable to N because no consideration had moved from her. Decide with reasons under the provisions of the Indian Contract Act, 1872 whether M is liable to pay the said sum to N.

Answer:

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

Question 45:

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

Answer:

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

Question 46:

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

Answer:

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

Question 47:

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

Answer:

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

Question 48:

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

Answer:

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

Question 49:

Mr. Ramesh promised to pay ₹ 50,000 to his wife Mrs. Lali so that she can spend the sum on her 30th birthday. Mrs. Lali insisted her husband to make a written agreement if he really loved her. Mr. Ramesh made a written agreement and the agreement was registered under the law. Mr. Ramesh failed to pay the specified amount to his wife Mrs. Lali, Mrs. Lali wants to file a suit against Mr. Ramesh and recover the promised amount. Referring to the applicable provisions of the Indian Contract Act, 1872, advise whether Mrs. Lali will succeed. (C.A. Foundation Nov. 18)

Answer:

Generally, an agreement made without consideration is void. A contract is enforceable only when consideration is present. However, the Indian Contract

Act, 1872 provides for certain exceptions to this rule. One of the exceptional cases where a contract/agreement though made without consideration is valid and enforceable is when an agreement is made out of natural love and affection. The Act expressly provides that an agreement without consideration shall be legally enforceable provided the following conditions duly comply. The agreement must be made on grounds of natural love and affection.

1. Parties must be standing in near relation to each other
2. It must be in writing &
3. It must be registered under the Law.

Thus a written and registered agreement based on natural love and affection between the parties standing in near relation (e.g. husband & wife) to each other, shall be enforceable even without consideration. In the given case, a written agreement is executed and registered by Mr. Ramesh, the husband, in favour of Mrs. Lali, the wife. Since all the above mentioned conditions comply, the agreement is legally enforceable even without consideration. Thus Mrs. Lali can successfully enforce the said agreement against Mr. Ramesh.

Question 50:

Mr. Sohanlal sold 10 acres of his agricultural land to Mr. Mohanlal on 25th September 2018 for 25 Lakhs. The property papers mentioned a condition, amongst other details, that whosoever purchases the land is free to use 9 acres as per his choice but the remaining 1 acre has to be allowed to be used by Mr. Chotelal, son of the seller for carrying out farming or other activity of his choice. On 12th Oct. 2018, Mr. Sohanlal died leaving behind his son and wife. On 15th Oct. 2018 purchaser started construction of an auditorium on the whole 10 acres of land and denied any land to the son. Now Mr. Chotelal wants to file a case against the purchaser and get a suitable redressal. Discuss the above in light of the provision of the Indian Contract Act, 1872 and decide upon Mr. Chotelal's plan of action?

Answer:

According to the Doctrine of Privity of Contract under the provisions of the Indian Contract Act, 1872, a contract is a private matter between the contracting parties and can be enforced only by them against each other. However, in certain exceptional cases, the law permits the enforcement of a contract even by a stranger. Where a contract creates a trust or charge on a specific property in favour of a beneficiary, then the same can be enforced by him under the contract even though he is not a party to the contract. However the beneficiary must be clearly mentioned in the agreement and the charge must be created on a specific property in his favour.

In the given case Sohanlal sold his agricultural land to Mohanlal under a contract, which specified that 1 acre of the land was to be left out of the total area of 10 acres for the purpose of commercial activity by Chotelal, son of the seller. Mohanlal subsequently denies the right to any land to the son, after the death of Sohanlal. Thus applying the above stated provisions, it can be concluded that Chotelal being a beneficiary under the contract can sue Mohanlal for his right to use of the land of 1 acre.

Question 51:

Define Fraud. What are the essential elements of Fraud?

Answer:

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

- the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- the active concealment of a fact by one having knowledge or belief of the fact;
- a promise made without the intention of performing it;
- any other act fitted to deceive;
- any such act or omission as the law specifically declares to be fraudulent.

The following are the essential elements of the fraud:

1. There must be a representation or assertion and it must be false. Active concealment may also amount to fraud.
2. The representation must be regarding a material fact of a contract.
3. The representation must be made before the conclusion of the contract.
4. The representation or assertion or concealment must be done with the positive knowledge of falsehood or recklessly not caring whether it is true or false.
5. The misrepresentation or concealment of fact must be done with the intention to deceive the other party and to cause him to enter into a contract.

6. The other party must have relied on the misrepresentation or assertion.
7. The other party relying on the misrepresentation must have suffered loss consequently.

Question 52:

Discuss the law relating to the effect of mistakes on contracts.

Answer:

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

The mistake can either be:

1) Mistake of Law: If a contract is created under a mistake of Law of the Land, the contract shall be treated as valid and enforceable since ignorance of the law of own country cannot be excusable to any party (ignorant Juris nonexcusat).

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

(2) Mistake of fact: It can be of two types:

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

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

1. identity of the contracting party
2. the nature of the contract
3. the quality of promise, then the same shall be regarded as void.

Question 53:

1. Define Coercion. What are its elements?
2. What are the effects of coercion on the validity of a contract?

Answer:

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

The following are the elements of coercion:

- Committing or threatening to commit any act forbidden by the Indian Penal Code
- Unlawful Detention of any property or threatening to detain any property
- Any of the above acts are done with the intention of causing that person to enter into an agreement
- Coercion may proceed either from the party or from a stranger
- Coercion may be directed against a party or stranger to contract
- Threat to commit suicide may also amount to coercion
- The place of coercion is immaterial

(2) Effects of coercion are as follows:

- A contract created by coercion is voidable at the option of the aggrieved party.
- When the aggrieved party exercises its option to rescind the contract, restitution of the benefits shall be done by the party who has received any benefit under the contract to the party who had provided the same.
- Further, in the event of any damage having been sustained by the aggrieved party, he shall be entitled to claim compensation from the defaulting party

Question 54:

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

Answer:

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

1. If the aggrieved party had means available of discovering the truth, with ordinary diligence, then the contract shall not be voidable at his option.
2. A fraud, which does not cause the consent of the party to enter into a contract, does not render the contract voidable. When the aggrieved party after becoming aware of the fraud, affirms or ratifies the contract, then he loses his right to subsequently rescind or avoid the contract.
3. The right of rescission can be claimed by the aggrieved party within a reasonable time of discovery of fraud. Thus on the lapse of a reasonable time after the discovery of fraud the contract shall not be treated as avoidable.
4. The right of rescission of contract is lost, when a third party acquires rights in the subject matter of the contract created by fraud, in good faith, and for value, provided such acquisition of rights by the third party takes place before the aggrieved party rescinds the contract created by fraud.
5. When the contracting parties cannot be restored to the same position in which they were before the formation of the contract, then the contract created by fraud, shall not be treated as avoidable.

Question 55:

When is a party said to be in a position to influence the will of the other so as to cause him to enter into a contract?

Answer:

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

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

Question 56:

Discuss the essentials of undue influence as per the Indian Contract Act, 1872.

Answer:

The following are the essential elements of undue influence, under section 16 of the Indian Contract Act, 1872-

1. **The relation between the parties** – Undue influence can be exerted only where a prior relationship is subsisting between the parties at the time of formation of the contract.
2. **Position of dominating the will** – The relation subsisting between the parties must be such that one of the parties is in a superior position i.e. in a position to dominate the will of the other party. A party is deemed to be in a dominant position where –
 - he holds real/ apparent authority or
 - he stands in a fiduciary relationship with the other party or
 - he makes a contract with a person whose mental capacity is affected by reason of age or mental/bodily stress.
3. **Use of dominant position to obtain unfair advantage** – Consent is said to be caused by undue influence only when the dominant party uses his position to influence the free will of the weaker party, with a view to obtaining an unfair advantage over the other (weaker party) in the contract. Thus a contract is said to be induced by Undue Influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other in a contract.

Question 57:

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

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

Answer:

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

Question 58:

'A' is in dire need of ₹ 1,00,000 but was unable to get any loan from banks as he had no security to offer. 'A' approached his friend 'B' who knew the helpless position of 'A' and lent money at a very high rate of interest, saying that he himself had borrowed money from 'C'. The contract is:

- (a) Vitiating by the undue influence that 'B' had exercised over 'A' due to his close friendship
- (b) Void as the rate of interest being very high was unconscionable
- (c) Not valid as 'B' had wrongly misled 'A' that he had borrowed money from 'C'
- (d) Valid as a friend could not be supposed to have wielded undue influence only because the money lent carried a higher rate of interest

Answer:

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

Question 59:

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

Answer:

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

Question 60:

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

Answer:

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

Question 61:

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

Answer:

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

Question 62:

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

Answer:

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

Question 63:

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

Answer:

Hint: The contract is voidable on the grounds of misrepresentation since an untrue statement was made by A, in honest ignorance of its falsehood and therefore the only remedy available to B is to rescind the contract; no damages shall be granted. However, if A, knew that the watch was actually made in India, it will amount to fraud and the contract shall be not only voidable at the option of B but damages shall also be awarded to him for his loss.

Question 64:

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

Answer:

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

Question 65:

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

Answer:

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

- When the object or consideration of the contract is such that it is forbidden by any law or statute or under any rule or regulation made thereunder, which is for the time being in force in India.
- When the contract is made for such an object or consideration, the consequence of which is to defeat the provisions of law to intend to violate the provisions of any other law in force in the country.
- When the consideration or object under the contract is of such a nature so as to result in injury to the person or property of another.
- Where the object is fraudulent i.e. it is of such a nature that it promotes fraud.
- Where the object is or consideration is such that it is regarded as immoral by the court.
- When the object or consideration under the contract is such that it is opposed to public policy i.e. it is against the principle of public welfare.

Question 66:

Write a note on the following:

1. Agreements for maintenance
2. Agreements for champerty
3. Agreements for stalling prosecution
4. Agreements for the sale of public offices and public titles

Answer:

(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 for a promise to hand over a portion of the fruits of the litigation if any, it is called Champerty.

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

In India, an agreement to finance litigation in return for a portion of the results of the litigations is valid provided the litigation was instituted with a bona fide motive and the terms are not unfair or unjust to the helped person. If, however, the litigation was inspired by a malicious motive or to instigate litigation or is of a gambling character, or is against public policy, the agreement is bad.

- (2) **Agreements for stifling (suppressing) prosecution:** When an offense has been committed, the guilty party must be prosecuted and any agreement which seeks to prevent the prosecution of such a person is opposed to public policy and is void.
- (3) **Agreement for sale of Public Office & Public titles:** An agreement made with the object of trafficking, i.e. sale and purchase or procure for consideration, with respect to public offices and public titles, is against public policy, illegal, and void ab initio. Thus any agreement to procure public titles like Bharat Ratna, Padam Vibhushan, etc. for consideration or to procure votes in the election against consideration, or induce a public officer to act corruptly and other agreements of such type is opposed to public policy, illegal and void ab initio.

Question 67:

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

Answer:

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

Question 68:

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

Answer:

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

Question 69:

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

Answer:

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

Question 70:

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

Answer:

Hint: Agreements interfering with parental rights are opposed to public policy, illegal & void ab initio. Thus the above contract is void ab initio & F has a right to revoke his authority & get back his children.

Question 71:

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

Answer:

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

Question 72:

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

Answer:**Agreements in restraint of trade (sec. 27)**

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

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

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

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

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. Partners' Agreements (Exceptions given in the Partnership Act):
 - Partner's competing business. A partner of a firm may be restrained from carrying on a similar business, so long as he remains a partner – [sec. 11(2), Partnership Act.]
 - Rights of outgoing partner: A partner may agree with his partners that on ceasing to be a partner he will not carry on a similar business within a specified period or within specified local limits – [sec. 36(2), Partnership Act],
 - Partner's similar business on dissolution: Partners may, in anticipation of the dissolution of the firm, agree that all or some of them shall not carry on a similar business within a specified period or within specified local limits – [sec. 54, Partnership Act.]
 - An agreement between any partner and the buyer of the firm's goodwill: That such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits provided the restrictions imposed are reasonable – [sec. 55(3), Partnership Act].
3. 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 restraint of trade and is perfectly valid. If an agreement attempts to create a monopoly, it would be void.
4. 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 restraint of the lawful profession and is valid. But an agreement of service which seeks to restrict the freedom of occupation for some period, after the termination of service is void.
5. 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 restraint in trade is binding.

Question 73:

Define a wagering agreement. List its characteristics.

Answer:**Agreements by way of the wager (sec. 30)**

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

Characteristics of wagering agreements:

The consideration for the promise under a wagering agreement is to pay or get money.

1. The money is payable on the happening or the non-happening of an event.
2. The agreement depends on a future and uncertain event.
3. The essence of wagering is that one party wins and the other loses.

4. In a wagering agreement, no party has control over the event.
5. Parties have no interest in the contract other than winning or losing.

Question 74:

What is the exceptional case where agreements similar to wagering agreements are not treated as void?

Answer:

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

1. Shares: Share market transactions in which there is a clear intention to give and take delivery share.
2. Games of skill: Prizes and competitions which are games of skill, e.g. picture puzzles, athletic competitions, etc. An agreement to enter into a wrestling contest, in which the winner was to be rewarded by the whole of the sale proceeds of tickets and the party failing to appear on that day would have to forfeit ₹ 500 was held not to be a wagering agreement.
3. A statutory exception: An agreement to contribute to the payment of a prize of the value of ₹ 500 or upwards to the winners of a horse race, is valid. This is a statutory exception laid down in a sec. 30 of the Contract Act.
4. Contract of Insurance: A contract of insurance is not a wagering agreement.
5. An agreement to purchase a lottery authorized by Government is valid: A lottery is an agreement for the distribution of chances of prizes in money among persons purchasing tickets. The dominant motive of the participants need not be gambling. Where a wagering transaction amounts to the lottery, it is illegal as per section 294A of the Indian Penal Code. However, section 294A itself states that this rule will not apply to lotteries run or authorized by a State.
6. Speculative transactions .’Though wagering transactions are void, speculative transactions are generally valid. It is, however, sometimes difficult to distinguish between a speculative transaction and a wagering transaction.
A speculative transaction essentially must have two elements, namely,
 - mutual intention of the contracting parties to acquire or deliver, as the case may be, the commodities; and
 - the undertaking of risk arising from movement in prices. A wager, on the other hand, postulates only the incurring of risk.

Question 75:

Explain agreements in restraint of legal proceedings.

Answer:

Agreements in restraint of legal proceedings (sec. 28).

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

- Agreements that lie outside the jurisdiction of courts in trying the legal dispute & absolutely restrict a party from enforcing his legal rights.
- Agreements that curtail the period of limitation and prescribe a shorter period than that prescribed by law.
- Agreements that provide for forfeiture/waiver/extinguishment of the legal right itself, if no action is commenced within the period stipulated by the agreement.

Certain exceptions to the above rule may be noted:

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

Question 76:

X agreed to become an assistant for 2 years to Y who was a practicing chartered accountant at Jodhpur. It was also agreed that during the term of agreement X will not practice as a chartered accountant on his own account within 20 kms of the office of Y at Jodhpur. At the end of one year, X left the 1 assistantship of Y and started practice on his own account within the said area of 20 kms. Referring to the provisions of the Indian Contract Act, 1872, decide whether X could be restrained from doing so?

Answer:

Hint: The restriction contained in service agreements, whereby the employee agrees not to carry on the similar service on his own or for anyone : else during the period of his employment is valid and not treated as in restraint

of trade (an exception to agreements in restraint of trade); the restriction on X not to carry on his own practice during the period of his employment with Y is valid and enforceable.

Question 77:

Sarah sells the goodwill of her shop to Vikas for ₹ 10,00,000 and promises not to carry on such business forever and anywhere in India.

Answer:

Hint: The buyer can impose restriction on the seller of goodwill, not to carry on similar business, provided the restrictions are reasonable as regards to the duration and place of such business; (an exception to restraint on trade section 27); the restraint on carrying on similar trade placed on Sarah, is not valid and hence is void to that extent.

Question 78:

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

Answer:

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

Question 79:

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

Answer:

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

Question 80:

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

Answer:

Hint: No, the agreement is illegal and hence collateral transactions will also be void. Hence, A cannot recover money from B.

Question 81:

Define a contingent contract and explain its essentials.

Answer:

"A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen" – [Section 31]. Contracts of insurance, indemnity and guarantee are examples of contingent contracts. For this purpose 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".

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 or condition.
- The event must be collateral i.e., incidental to the contract. Thus the event must not be a part of reciprocal promises forming the contract.
- 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 a mere will of the promisor.

Question 82:

What are the rules regarding contingent contracts?

Answer:

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

- Sec.32. Contracts dependent on the happening of a future uncertain event: Contracts contingent upon the happening of a future uncertain event, cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.
Example: A agrees to pay B a sum of money if a certain ship returns. The Contract can be enforced only where the ship returns. If the ship sinks, the contract becomes void.
- Sec. 33. Contracts dependent on the non-happening of an uncertain future event: Contracts contingent upon the non-happening of an uncertain future event, can be enforced when the happening of that event becomes impossible and not before
Illustration: 1 A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks. If the ship returns the contract becomes void.
- Sec. 35(1) Contracts dependent on the happening of an event within a fixed time: Contracts contingent upon the happening of an event within a fixed time become void if, at the expiration of the fixed time, such event has not happened or if, before the time fixed, such event becomes impossible.
Illustration: 1 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 a year, and becomes void if the ship is burnt within a year (since the event becomes impossible).
- Sec. 35(2). Contracts dependent on the non-happening of an event within a fixed time: Contracts contingent upon the non-happening of an event within a fixed time may be enforced by law when the time fixed has expired and such event has not happened, or before the time fixed has expired, if it becomes certain that such event will not happen.
Illustration: 1 A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within a year.
- Sec. 34 Contracts dependent on the future conduct of a person acting in a particular way: If a contract is contingent upon how a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.
In other words, if a promise depends on the act of a third party, it will become void when such a third party refuse to do the act or if he incapacitates himself from doing it.
For e.g. S sells goods to B and B promises to pay the price after C has fixed it. If C refuses to fix the price or if he dies before fixing it, the agreement becomes void.
- Sec. 36 Contracts dependent on an impossible event: Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.
Illustration: 1 A agrees to pay B a sum of money if B marries C. C marries D. The marriage of B to C must now be considered impossible although it is possible that D may die and that C may afterward marry B.

Question 83:

What is a Quasi Contract? What are the types of Quasi Contracts, as provided under the Indian Contract Act, 1872?

Answer:

A quasi-contract is similar to a contract. Just like a contract it also creates legal obligations. But the legal obligations created by quasi-contract do not rest on any agreement but are imposed by law. It is, therefore, contractual in law,

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

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

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

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

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

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

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

Conditions: The following are the conditions mentioned in sec. 69:

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

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

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

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

- that he had done the act or had delivered the thing lawfully,
- that he did not do so gratuitously, and
- that the other person enjoyed the benefit.

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

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

Conditions:

1. A person who finds goods and takes possession of it is responsible as a bailee.
2. That is, he is liable –
 - to try and find out the true owner and
 - to take due care of the property (section 151)
3. Finder is entitled to a lien until paid compensation, but cannot file a suit to recover such compensation.
4. Finder is entitled to possession against all except the true owner.
5. When the owner declares reward, the finder can sue for reward.
6. Right of re-sale: If the owner is not found or if he refuses to pay lawful charges, the finder may sell-
 - When the thing is in danger of perishing or losing the greater part of its value.
 - When the lawful charges amount to two-thirds of its value.

5. Liability for money paid or things delivered by mistake or under coercion (Section 72):

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

Question 84:

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

Answer:

Hint: Quasi Contract; right to recover money paid for another; W is entitled to reimbursement from Z since he is an interested party. (Section 69)

Question 85:

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

Answer:

Hint: No, the agreement has become void due to death. (Section 32 of the Indian Contract Act, 1872)

Question 86:

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

Answer:

Hint: Yes, out of the property of the lunatic, if any. Claim for necessaries of life supplied to an incompetent person or his dependent. (Section 68 of the Indian Contract Act, 1872)

Question 87:

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

Answer:

Hint: If the ship is destroyed or sunk, since the contract is contingent upon non-happening of a specific future uncertain event. [ie. non-returning of ship] (Section 33 of the Indian Contract Act, 1872)

Question 88:

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

Answer:

Hint: X is liable to pay to Y the amount paid by Y to the Government. (Section 69 of the Indian Contract Act, 1872)

Question 89:

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

Answer:

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

ESSENTIALS OF A VALID TENDER:

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

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

Effect of refusal to accept a properly made offer of performance or tender (Sec. 38) :

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

Question 90:

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

Answer:

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

When is the time the essence of the contract?

1. Whether time is of the essence of the contract, depends upon
 - The intention of the parties
 - Nature of the transaction and facts and circumstances in each case.
 - The terms of the contract if the parties to the contract have expressly agreed that performance within a limited time was necessary;
2. It is well settled that unless a different intention appears from the terms of the contract, ordinarily in commercial contracts the time of delivery of goods is of the essence of the contract but not the time of payment of the price;
3. In contracts for the purchase of land, usually time is not of the essence of the contract because land values do not frequently fluctuate.

Effects of failure to perform a contract within the stipulated time. Sec. 55 deals with the subject and lays down the following rules:

1. Where "time is of the essence of the contract" and there is failure to perform within the fixed time, the contract (or so much of it as remains unperformed) becomes voidable at the option of the promisee. He may rescind the contract and sue for the breach.
2. Where "time is not of the essence of the contract", failure to perform within the specified time does not make the contract voidable. It means that in such a case the promisee cannot rescind the contract and he will have to accept the delayed performance. But he would be entitled to claim compensation from the promisor for any loss caused to him by the delay. This rule is, however, subject to the condition that the promisor should not delay the performance beyond a reasonable time, otherwise the contract will become voidable at the option of the promisee.
3. In case of a contract voidable on account of the promisor's failure to perform his promise within the agreed time or within a reasonable time, as the case may be, and if the promisee, instead of rescinding the contract, accept the delayed performance, he cannot afterwards claim compensation for any loss caused by the delay, unless, at the time of accepting the delayed performance, he gives notice to the promisor of his intention to do so.

Question 91:

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

Answer:

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

1. Appropriation as per the express instruction of the debtor: If the debtor, owing to multiple debts to the same creditor, at the time of making the payment, gives express instructions as to the appropriation of payment, then the payment must be appropriated towards the discharge of the particular debt as instructed by the debtor.
2. Appropriation as per implied circumstances: Sometimes a debtor owing multiple debts makes a payment to the creditor which is insufficient to discharge all his debts, without any express instruction as to the appropriation of the payment. In such a case, the appropriation must be done towards the debt, which the debtor intended to do so under the implying circumstances.

3. Appropriation of payment where there is no express instruction, nor implying circumstances: When neither the debtor sends the payment with any express instructions, nor do the circumstances imply as to which debt the debtor intends the payment to be applied, then the appropriation may be done by the creditor at his own discretion. The creditor may apply the payment towards the discharge of any lawful debt, as per his discretion and intimate the same to the debtor. Once the manner of appropriation is communicated by the creditor to the debtor, the same shall not be changed.

Further, the creditor can even appropriate the payment to a time-barred debt or to the interest due to him and then to the principal sum. However, no appropriation must be made by the creditor to an unlawful or disputed debt.

4. Appropriation in chronological order: Where the debtor does not give any express instructions as to the appropriation of payments, nor the creditor appropriates the payments as per his discretion, then the payment must be appropriated to discharge the debts due in order of time. When the debts are of equal standing (ie. of the same due date), the payments shall be appropriated in the discharge of each such debt proportionately.

Question 92:

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

Answer:

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

(1) 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 legal representatives jointly with the survivor or survivors and, after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

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

When two or more persons make a joint promise, the promisee may, in the absence of an express agreement to the contrary, compel any (one or more) of such joint promisors to perform the whole of the promise.

(3) Each promisor may compel contribution.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise unless a contrary intention appears from the contract. Sharing of loss by default in contribution. If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

(4) Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.

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

(5) 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 during their joint lives, and, after the death of any of them, with the legal representatives of such deceased person jointly with the survivor or survivors, and after the death of the last survivor, with the legal representatives of all jointly.

Question 93:

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

Answer:

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

(1) Where time is not specified and no application is required to be made:

In such a case the performance must be rendered by the promisor within a reasonable time. What shall be a reasonable time shall depend on the circumstances of each case.

(2) Where time is specified & no application is required to be made: When the performance is to be given on a prescribed day & the promisor has undertaken to perform it without application by the promisee, the

promisor may perform it at any time during the usual business hours on such place & on such day at which the promise ought to be performed.

- 3) Application for performance on a certain day has to be made: When the promise to be performed on a certain day and the promisor has not undertaken to perform it without the application by the promisee, it is the duty of the promisee to apply for performance at the proper place and within the usual hours of business.
- (4) Where no application is to be made and no place for performance has been fixed: In such a case it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise and to perform it at such a place.

Question 94:

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

Answer:

Reciprocal Promises (Secs. 51 to 54 and 57)

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

Kinds of reciprocal promises: Mutual and independent promises: Where one party has to perform his promise independently without waiting for the performance or willingness of the other party, the promises are mutual and independent. For example, A agrees to sell the car and deliver the same to B on 1.1.2009 while B agrees to pay the price on 15.1.2009. The promises are independent.

- Mutual and dependent: Where the performance of the promise by one party depends upon the prior performance of the promisor or by the other party, the promises are conditional and dependent. For example, X agrees to construct a house for Y. Y agrees to supply cement for building the house. The promises are conditional and dependent.
- Mutual and concurrent: Where the two promises are to be performed simultaneously, they are said to be mutual and concurrent.

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

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

Question 95:

In which circumstances performance is not required under a contract?

Answer:

Sections 62 to 67 of the Indian Contract Act are listed under the heading "Contracts which need not be performed".

The relevant provisions are as follows:

1. If the parties to the contract agree to substitute a new contract for it or to rescind or alter it, the original contract need not be performed. (Sec. 62).
Where the parties to a contract agree to substitute the existing contract for a new contract, that is called novation. In the well-known case of Scarf v. Jardine (1882) it was stated that novation is of two kinds, (i) involving a change of parties; or (ii) involving the substitution of a new contract in place of the old.
2. If the promisee dispenses with or remits wholly or in part, the performance of the promise made to him or extends the time for such performance or accepts in satisfaction for it, the contract need not be performed. (Sec. 63)
3. When a voidable contract is rescinded, the other party need not perform his promise. (Sec. 64).

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

Question 96:

What is meant by assignment of contract?

Answer:

Definition: Assignment means transfer. The rights and liabilities of a party to a contract can be assigned under certain circumstances. The assignment may occur

- by an act of parties or
- by operation of law.

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

A. Assignment by an act of the parties:

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

B. Assignment by operation of law:

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

Question 97:

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

Answer:

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

Question 98:

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

Answer:

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

Question 99:

X enters into a contract with B to build a house for him. X builds the house according to the specifications. B tenders the payment but X refuses to accept the money claiming that it was insufficient because the job was more

difficult than he had anticipated. What effect has the tender had on B's obligation?

Answer:

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

Question 100:

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

Answer:

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

Question 101:

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

Answer:

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

Question 102.

Krish, Kamyā and Ketan are partners in a firm. They jointly promised to pay ₹ 6,00,000 to Dia. Kamyā becomes insolvent and her private assets are sufficient to pay 1 / 5 of her share of debts. Krish is compelled to pay the whole amount to Dia. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which Krish can recover the amount from Ketan

Answer:

Hint: The liability of joint promisors is joint & several. The promisee can sue any one of the joint promisors for the performance of the entire promise. Such a joint promisor on the performance of the promise shall be entitled to claim contribution from the other joint promisors. Further, in the event of insolvency of any of the joint promisors, the loss due to non-contribution shall be borne by the other joint promisors equally. Thus in this case Dia can rightfully claim the entire amount from Krish. Since Kamyā has become insolvent, ₹ 40,000 is only recoverable from her estate & ₹ 2,80,000 is recoverable from Ketan. Krish is entitled to receive RS. 40,000 from Kamyā's estate and Rs. 2,80,000 from Ketan.

Question 103:

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

Answer:

Hint: When a promisee accepts the performance of a promise from a third person, he cannot afterwards enforce it against the promisor. Thus the performance of a promise by a stranger to contract, if accepted by the promisee, results in the discharge of promisor to that extent, even the latter has neither authorised nor ratified the act of the third party. Thus in the given case by accepting payment of ₹ 40,000 from Z, Y shall be now entitled to sue X only for the balance amount of ₹ 20,000. X shall be discharged up to the extent of ₹ 40,000.

Question 104:

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

Answer:

Discharge by mutual agreement: By agreement of all parties, a contract may be canceled or its terms altered or a new agreement substituted for it. Whenever any of these things happen, the old contract is terminated. "If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed." Sec. 62.

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

NOVATION: Novation occurs when a new contract is substituted for an existing contract either between the same parties or between different parties. The consideration for the new contract is the discharge of the old contract.

- To effect a novation, there must be a valid enforceable new substituted contract.
- Consent of all parties is necessary for novation.
- Novation should take place before the breach or expiry of the old contract.

ALTERATION: Alteration of a contract means a change in one or more of the terms of a contract. Alteration is valid if it is done with the consent of all the parties to the contract.

In alteration, there is a change in the terms of the contract but no change of the parties to it. In novation, there may be a change of parties.

REMISSION: Remission means acceptance of a lesser amount or lesser degree of performance than what was contracted for in full discharge of the contract.

According to sec. 63 a party may:

- (a) Dispense with or remit performance wholly or in part; or
- (b) Extend the time for performance; or
- (c) Accept any other consideration instead of performance

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

Example: A owes B Rs. 5,000. A pays to B and B accepts in full satisfaction for the whole debt Rs. 2,000. The old debt is discharged. A promise by the promisee to give concession to the promisor in one or the other form is binding even if without consideration. In *Gopala v. Venkata*, it was stated that after the remission has been communicated to the promisor and accepted by him, the promisee cannot claim the remitted (sacrificed) amount.

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

Question 105:

What are the instances for discharge by operation by law?

Answer:

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

- (1) **Death:** In contracts involving personal skill or ability, death terminates the contract. In other cases, the rights and liabilities pass on to the legal representatives of the dead man.
- (2) **Insolvency:** When a person is adjudged insolvent, he is discharged from all liabilities incurred prior to his adjudication. Upon insolvency, the rights and liabilities of the insolvent are, with certain exceptions, transferred to an officer of the court, known as the Official Assignee/Receiver.
- (3) **Merger:** Means coinciding and meeting of inferior and superior rights in one and the same person. In such a case, the inferior right available to a party under the contract will automatically vanish.
- (4) **Unauthorised material alteration:** If the terms of a contract are materially altered by a party to the contract without the consent of the other parties, the contract is discharged and cannot be enforced anymore.

Question 106:

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

Answer:

Grounds for discharge of contract:-

A contract can be discharged in any of the following ways:-

- 1. Discharge by Performance** A contract may be discharged by Actual Performance or Attempted Performance. Actual Performance is said to have taken place when each of the contracting parties has done what he had agreed to do under the contract. When the promisor offers to give his performance under the contract, but the promisee refuses to accept the same, then it amounts to discharge by attempted performance.
- 2. Discharge by Mutual Agreement:-** The contracting parties may mutually agree to discharge the existing contract in any of the following ways:-
 - Rescission, Alteration
 - Novation
 - Remission
 - Waiver
 - Merger
- 3. Discharge by Operation of Law** A contract shall stand discharged by operation of law in the event of any of the following:
 - Death or incapacity of the promisor in case of personal services
 - Insolvency
 - Rights and Liabilities rest with the same person [Merger of Rights & Liabilities]
 - Unauthorized Material Alteration.
- 4. Discharge by Lapse of Time:** Where a contract is required to be performed within a specific period of time prescribed, the failure of the party to perform the same results in the discharge of contract on account of lapse of time.
- 5. Discharge by Supervening Impossibility:** A contract which was valid at the time of formation may subsequently become impossible or unlawful to perform and shall thereby stand discharged. A contract becomes void due to supervening impossibility in any of the following instances
 - Destruction of subject matter
 - Change of Law
 - Non-concurrence of circumstances
 - Death or incapacity for personal services
 - Outbreak of war
 - Failure of the ultimate purpose of the contract.
- 6. Discharge by Breach:** When a contracting party refuses or fails to give a performance or disables himself from giving a performance or makes the performance of the contract impossible by his conduct, then the contract is said to be discharged by the breach. A contract can be discharged by Actual Breach or by Anticipatory Breach. When the party commits default on the due date of performance, it amounts to an Actual breach, whereas when the default is committed before the due date of performance, it amounts to Anticipatory Breach.

Question 107:

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

Answer:

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

1. Difficulty of performance

Sometimes the performance of a contract becomes difficult on account of some unanticipated events such as disruption of transport services etc. Such difficulty makes the performance hard but does not result in the discharge of the contract.

2. Commercial Impossibility

Commercial Hardships make the performance of the contract unprofitable or economically unviable. Thus commercial hardship on account of an increase in the price of inputs (raw materials) or overhead costs shall not result in the discharge of the contract.

3. Strikes, lock-outs, civil disturbances, and riots

These events do not terminate contracts unless there is a clause in the ' contract providing that in such cases the contract is not be performed or that the time of performance is to be extended.

4. Failure of one of the objects

When there are several purposes for which a contract is entered into, failure of one of the objects does not terminate the contract.

5. Impossibility due to failure of the third party

Where the performance of a contract by a party depends on the performance of a third party, the contract shall not be discharged by the failure or default of the third party.

6. Self-induced impossibility

A contract is not discharged on account of self-induced impossibility by either of the party.

Question 108:

What is meant by anticipatory breach of contract? State the rights of the promisee in case of such breach?

OR

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

Answer:

Anticipatory breach of contract occurs :

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

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

(A) May treat the contract as discharged-

- He can treat the contract as discharged so that he is no longer bound by any obligations under the contract;
- He can immediately adopt the legal remedies available to him for breach of contract, viz, file a suit for damages or specific performance or injunction.

(B) May not treat the contract as discharged-

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

- The contract will be operative for the benefit of both parties. The contract will continue to exist and may even be performed by the other party.
- If the contract is not rescinded and subsequently an event happens which discharges the contract legally (e.g. a supervening impossibility) the aggrieved party loses his right to sue for damages.

Question 109:

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

Answer:

There are cases where the damage or loss suffered cannot be measured in terms of money. The court, may, in such cases where the ordinary remedy by a claim for damages is not adequate compensation, direct the defaulting party to perform the contract specifically. (Under Sec. 12 of the Specific Relief Act, 1-963). Specific performance is an order of the Court directing the defendant to fulfill his obligations under the contract. Specific performance is a discretionary remedy and is only available where damages are not an adequate remedy.

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

- Where the act itself is such that monetary relief for its non-performance is not adequate.
- Where no standard is available to ascertain the value of the actual damage caused by non-performance.
- Where it is not probable that the compensation money will be available.

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

Specific performance is not allowed in the following cases:

- Where monetary compensation is an adequate relief.
- Where the contract is of personal nature, e.g. a contract to marry or a contract to paint a picture, or

- Where it is not possible for the court to supervise the performance of the contract e.g. a building contract.
- Where one of the parties to the contract is not competent to contract like a minor.

Question 110:

What is meant by Suit for Quantum Meruit? What are the instances in which quantum meruit is granted?

Answer:

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

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

1. Where there is a breach of the contract

Where a party performs a part of the contract, but the other party breaks it in between, then the injured party can claim compensation for the work done or the service rendered.

2. When an agreement is discovered to be void

Where some work has been done and accepted under a contract that is subsequently discovered to be void, then the person who has performed the part of the contract is entitled to recover the amount for the work done. (Sec. 65)

3. When something has been done non-gratuitously

When something has been done non-gratuitously: Tue., has been done with the intention of getting payment. (Sec. 70)

4. Where work has been done by the person guilty of breaking the contract

In such a case defaulting party would be liable for consequences of breach, but for the work done by him he may be entitled to get payment in the following circumstances:

5. Where the work to be done was divisible

A contract is divisible and a party performs a part of it and refuses to perform the remaining part, the defaulting party can claim reasonable compensation for the part performed, on the basis of quantum meruit.

Thus two conditions should exist:

(a) If the contract is divisible, and

(b) If the party not at fault has enjoyed the benefit of part performance.

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

6. When the indivisible contract is performed substantially/fully

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

Question 111:

What are the types of damages that can be awarded as a remedy for breach under section 73 of the Indian Contract Act, 1872?

Answer:

According to Section 73 of the Indian Contract Act, 1872, damages are the monetary compensation allowed by a Court of Law to the aggrieved party for the loss/injury sustained by him on account of breach of contract by the other party.

Damages are compensatory in nature and are granted in accordance with the following rules

- 1. Ordinary Damages are recoverable** – The damages which are the natural and probable consequence of breach i.e. which naturally arise in the usual course of things from such breach can be recovered by the aggrieved party from the defaulting party.
- 2. Special Damages are recoverable only if the parties knew about them:** These are those damages which are recoverable, in respect of losses that arise on account of the existence of some special or unusual circumstances provided the existence of the said circumstances was brought to the knowledge of the defaulting party at the time of formation of the contract. Thus these damages cannot be claimed as a matter of right by the plaintiff. They are not recoverable unless the special circumstances were brought to the knowledge of the defendant so that the possibility of the special loss was in the contemplation of the parties.

3. Remote or indirect damages are not recoverable since these damages are not reasonably foreseeable and are not sustained by reason of the breach.
4. **Nominal Damages for no loss sustained:** Where the injured party has not in fact suffered any loss by reason of the breach of a contract, the damages recoverable by him are nominal. These damages are granted by the court to merely acknowledge that the plaintiff has proved his case & won.
5. Vindictive or exemplary damages are allowed only in specific instances Usually damages are awarded to compensate the aggrieved party and not with a view to punishing. However, in case of (a) Breach of a promise to marry & (b) Dishonour of a cheque by a banker wrongfully, the court may award exemplary damages.
6. The aggrieved party can also be granted damages for inconvenience, discomfort, mental agony etc. A further cost of the suit may also be allowed as damages by the Court.
7. Liquidated damages and Penalty.

Question 112:

A contracted with B to supply him (B) 500 tons of iron steel @ ₹ 5,000 per ton, to be delivered at a specified time. Thereafter, A contracts with C for the purchase of 500 tons of iron-steel @ ₹ 4,800 per ton, and at the same time told C that he did so far the purpose of performing his contract entered into with B. C failed to perform his contract in due course, consequently, A could not procure any iron-steel and B rescinded the contract. What would be the number of damages which A could claim from C in the circumstances? Explain with reference to the provisions of the Indian Contract Act, 1872.

Answer:

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

Question 113:

M Ltd. contracts with Shanti Traders to make and deliver certain machinery to them by 30.6.2004 for ₹ 11.50 lakhs. Due to a labor strike, M Ltd. could not manufacture and deliver the machinery to Shanti Traders. Later, Shanti Traders procured the machinery from another manufacturer for ₹ 12.75 lakhs. Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation which it can claim from M Ltd. referring to the legal provisions of the Indian Contract Act.

Answer:

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

Question 114:

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

Answer:

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

Question 115:

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

Answer:

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

Question 116:

A bank wrongfully dishonored a cheque of ₹ 1,000 belonging to Dhanna Seth (a Millionaire). He says that his credit has come down to the level of Moffat Lai (a person having only a few thousand rupees) as his cheque of Rs. 1000, i.e., one thousand has been dishonored wrongfully by the bank. Advise Dhanna Seth.

Answer:

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

Question 117:

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

Answer:

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

Question 118:

Mr. JHUTH entered into an agreement with Mr. SUCH to purchase his (Mr. SUCH's) motor car for ₹ 5,00,000/- within a period of three months. A security amount of ₹ 20,000/- was also paid by Mr. JHUTH to Mr. SUCH in terms of the agreement. After completion of three months of entering into the agreement, Mr. SUCH tried to contact Mr. JHUTH to purchase the car in terms of the agreement. Even after lapse of another three month period, Mr. JHUTH neither responded to Mr. SUCH, nor to his phone calls. After lapse of another period of six months. Mr. JHUTH contacted Mr. SUCH and denied purchasing the motor car. He also demanded back the security amount of ₹ 20,000/- from Mr. SUCH. Referring to the provisions of the Indian Contract Act, 1872, state whether Mr. SUCH is required to refund the security amount to Mr. JHUTH. Also examine the validity of the claim made by Mr. JHUTH, if the motor car would have been destroyed by an accident within the three-month's agreement period.

Answer:

Hint: Breach of contract, the aggrieved party has a right to rescind the contract & claim restitution & damages if any. Further where any security deposit has been made under the contract, the same shall stand forfeited in case of breach of contract. Thus in the given case, Mr. JHUTH is responsible for breach of contract. Mr. SUCH, the aggrieved party can claim damages if any sustained by him. However, Mr. JHUTH is not entitled to a refund of ₹ 20,000/- since the same was given as a security deposit which shall now stand forfeited on account of his failure to fulfill the contract. However, if the car had been destroyed by an accident within 3 months agreement period, then the contract would have been discharged by supervening impossibility due to destruction of subject matter and in such a case JHUTH would have been entitled to refund of security amount, (since the security amount can be forfeited only when a contract is not fulfilled on account of breach by a party.)

Question 119:

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

Answer:

When the performance of a contract is required within a specified period of time and the same becomes impossible by the occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, the contract becomes void & the contracting parties stand discharged from their obligation to perform the contract. Further when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it or to make compensation for it

to the person from whom he received it. In the given case the contract between Mr. X and Mr. Y becomes void subsequently on 2nd Aug. 2018, when it becomes impossible to perform it within the stipulated time period due to floods. As a consequence both the parties are discharged. Thus, applying the above-stated provisions it can be concluded that the contract is discharged due to subsequent impossibility and Mr. X cannot claim damages from Mr. Y. However, Mr. Y is entitled to claim a refund of ₹ 50000/- which was paid as an advance. Thus only restitution of benefits to Mr. Y shall be granted.

Question 120:

On 20th September X agreed to sell to Y of 10 tons of a particular chemical to be manufactured in his factory @ Rs. 8,000 per ton to be delivered on 20th October. Calculate the number of damages that could be recovered by Y from X in each of the alternative cases:

Case (a): The chemical could not be manufactured because of a strike by the workers and X failed to supply the said chemical to Y on 20th October when the price of that chemical was Rs. 12,000 per ton.

Case (b) On 1st October, X informed Y that he was not going to supply the goods since the price of that chemical rose to Rs. 10,000 per ton on 1st October. The price of that chemical further rose to Rs. 12,000 per ton on 20th October.

Y decided to rescind the contract on 1st October.

Case (c) On 1st October, X informed Y that he was not going to supply the goods since the price of that chemical rose to Rs. 10,000 per ton on 1st October. The price of that chemical further rose to Rs.12,000 per ton on 20th October. Y decided not to rescind the contract on 1st October and to wait till 20th October. On 19th October, the entire chemical in the factory was destroyed by fire without the fault of either party.

Answer:

According to the provisions of Section 56 of The Indian Contract Act, 1872, a contract stands discharged on account of supervening impossibility if after the formation of the contract but before its performance, some event takes place which renders the performance of the contract impossible. In such a case both the parties stand discharged from their respective obligations and the contract becomes void subsequently. However in certain instances, such as those following, the contract is not discharged and is treated as subsisting and if the parties fail to perform the contract it shall amount to breach:

Case (a) Usually failure to perform on account of strikes by workers, does not amount to discharge by supervening impossibility unless a contract to the contrary is expressly made. Thus in the given case when X fails to supply chemicals on account of a strike by workers, the contract is not discharged on account of supervening impossibility. The failure to supply the chemical amounts to breach and therefore X shall be bound to pay damages of Rs. 40,000 ($12,000-8,000= 4,000 \times 10$) to Y

Case (b) Further, commercial hardships also do not result in the discharge of the contract on the grounds of supervening impossibility. Failure to perform the contract on the grounds that the contract has become less profitable or unprofitable due to changes in the prices, shall not amount to discharge by supervening impossibility. Instead, failure to perform in such a case amounts to a breach of contract and the defaulting party shall be bound to compensate the aggrieved party for the loss sustained by him.

Thus in the given case when X informs Y about his failure to perform on the grounds of an increase in the price of the chemical it amounts to a breach and X shall be bound to pay Rs. 20,000 ($10,000-8,000=2,000 \times 10$) as damages to Y

Case (c) When a contracting party, before the due date of performance, refuses to perform the contract, it amounts to an anticipatory breach of contract. In such a case the contract is voidable at the option of the aggrieved party. The aggrieved party has the option to rescind the contract immediately without waiting for the due date of performance and sue for damages. Conversely, the aggrieved party can choose to continue with the contract and wait for the performance up to the due date and inform of his intention of doing so the defaulting party. In such a case the contract shall be treated as subsisting between them. Now if any event takes place during the waiting time period which renders the performance impossible then the contract stands discharged on the grounds of supervening impossibility.

Thus in the given case when Y decides to wait for the performance up to 20th October and the entire chemical in the factory is destroyed on 19th October, then the contract stands discharged on the grounds of supervening impossibility and Y now loses his right to claim any damages from X.

Question 121:

Examine what is the legal position, as to the following:

Mr. A offered to sell his house to Mr. B for ₹ 15, 00,000. Mr. B accepted the offer by post. On the very next day Mr. B sent a telegram revoking the acceptance which reached Mr. A before the letter of acceptance. Is the revocation of

acceptance valid? Would it make any difference if both the letter of acceptance and the telegram of revocation of acceptance reach Mr. A at the same time?

Answer:

Communication and revocation of acceptance when complete: The problem is related with the communication and time of acceptance and its revocation. As per Section 4 of the Indian Contract Act, 1872, the communication of an acceptance is complete as against the acceptor when it comes to the knowledge of the proposer.

Whereas section 5 of the Indian Contract Act, 1872 says that an acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Referring to the above provisions

- (1) Yes, the revocation of acceptance by Mr. B (the acceptor) is valid.
- (2) If Mr. A opens the telegram first (and this would be normally so in case of a rational person) and reads it, the acceptance stands revoked. If he opens the letter first and reads it, revocation of acceptance is not possible as the contract has already been concluded.

Question 122:

(a) Examine what is the legal position, as to the following:

- (i) Mohit offered to sell his land to Neha for ₹ 12,80,000/-. Neha replied purporting to accept the offer and enclosed a cheque for ₹ 80,000/-. She also promised to pay the balance of ₹ 12,00,000/- in monthly installments of 50,000/- each.
- (ii) Aditya offered to sell his house to Babban for ₹ 10,00,000/-. Babban replied that he can accept the house for only ₹ 8,00,000/-. Aditya rejected Babban's counter offer to buy the house for ₹8,00,000/-. Babban later changed his mind and is now willing to buy the house for ₹10,00,000/-

Answer:

To conclude a contract between the parties, the acceptance must be communicated in some perceptible form. Any conditional acceptance or acceptance with varying or too deviant conditions is not acceptance. Such conditional acceptance is a counter proposal and has to be accepted by the proposer, if the original proposal has to materialize into a contract. Further when a proposal is accepted, the offeree must have the knowledge of the offer made to him. If he does not have the knowledge, there can be no acceptance. The acceptance must relate specifically to the offer made. Then only it can materialize into a contract. With the above rules in mind, we may note that the following is the solution to the given problems:

- (i) It is not a valid acceptance and no contract can come into being. Here, Mohit offered to sell his land to Neha for ₹ 12,80,000/-. Neha replied purporting to accept the offer but enclosed a cheque for ₹ 80,000/- only. She promised to pay the balance of ₹ 12,00,000 by monthly installments of ₹ 50,000. The facts of the given situation are similar to the case of Neale vs. Merret. Thus, applying the above judgement to the given situation, Neha cannot enforce her acceptance because it was not an unqualified one.
- (ii) In the given situation Aditya offered to sell his house to Babban for 10,00,000/-, to which Babban replied that he can pay ₹ 8,00,000 for it.

Consequently, the offer of Aditya is rejected by Babban as the acceptance is not unqualified. But when Babban later changes his mind and is prepared to pay ₹ 10,00,000/-, it becomes a counter offer and it is up to Aditya whether to accept it or not.

In the light of decided case law, in the given situation, when Babban later changes his mind and is prepared to pay ₹ 10,00,000/-, it becomes a counter offer and it is up to Aditya whether to accept it or not.

Question 123:

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

Answer:

Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 10. According to the provisions, there should be an intention to create legal relationship between the parties. *Agreements of a social nature or domestic nature do not contemplate legal relationship and as such are not contracts, which can be enforced.* This principle has been laid down in the case of Balfour vs. Balfour (1912 2 KB. 571). Accordingly, applying the above provisions and the case decision, son cannot recover the amount of ₹1 lakh from father for the reasons explained above.

Question 124:

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

Answer:

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

The display of articles with a price in a self-service shop is merely an invitation to offer. It is in no sense an offer for sale, the acceptance of which constitutes a contract. In this case, Smt. Prakash by selecting some articles and approaching the cashier for payment simply made an offer to buy the articles selected by her. If the cashier does not accept the price, the interested buyer cannot compel him to sell.

[Fisher V. Bell (1961) Q.B. 394, Pharmaceutical society of Great Britain V. Boots Cash Chemists].

Question 125:

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

- (i) Vijay agrees with Saini to sell his black horse for 3,00,000. Unknown to both the Parties, the horse was dead at the time of the agreement.
- (ii) Sarvesh sells the goodwill of his shop to Vikas for ₹ 10,00,000 and promises not to carry on such business forever and anywhere in India.
- (iii) Mr. X agrees to write a book with a publisher. After few days, X dies in an accident.

Answer:

- (i) As per Section 20 of the Indian Contract Act, 1872, an agreement under by mistake of fact are void. In this case, there is mistake of fact as to the existence of the subject - matter, i.e., with respect to the selling of horse which was dead at the time of the agreement. It is unknown to both the parties. Therefore, it is a void agreement.
- (ii) As per Section 27 of the Indian Contract Act, 1872, an agreement in restraint of trade is void. However, a buyer can put such a condition on the seller of goodwill, not to carry on same business, provided that the conditions must be reasonable regarding the duration and place of the business. Since in the given case, restraint to carry on business was forever and anywhere in India, so the agreement in question is void.
- (iii) As per Section 2(j) of the Contract Act, “A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable”. In the present case, Mr. X agrees to write a book with a publisher. After few days, X dies in an accident. Here the contract becomes void due to the impossibility of performance of the contract.

Question 126:

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

Answer:

Acceptance to an offer cannot be implied merely from the silence of the offeree, even if it is expressly stated in the offer itself. Unless the offeree has by his previous conduct indicated that his silence amount to acceptance, it cannot be taken as valid acceptance. *So in the given problem, if B remains silent, it does not amount to acceptance. The acceptance must be made within the time limit prescribed by the offer. The acceptance of an offer after the time prescribed by the offeror has elapsed will not avail to turn the offer into a contract.*

Question 127:

“Fair Girl” skin cream company advertised that it would give a reward of Rs. 1,00,000 to anyone who developed skin disease after using their cream for a certain period according to the printed directions. Miss Sakshi purchased the advertised “Fair Girl” and developed skin disease in spite of using it according to the printed instructions. She staked her claim for Rs. 1,00,000 reward. The company refused the reward to Miss Sakshi on the ground that the

offer was not made to her and that in any case she had not communicated her acceptance of the offer. Decide whether Miss Sakshi can claim the reward or not. Refer the relevant case law, if any.

Answer:

Yes. Miss Sakshi, by following the terms of the general offer, would be considered to have accepted the offer of the company. No specific communication of acceptance is required in case of a general offer. Hence, Miss Sakshi is entitled to the reward. See *Carlill vs Carbolic Smoke Ball Co.*

Question 128:

A company issued a prospectus for subscription to its shares by the members of the public. Mr. Patel fills up the form and deposits it with the bank along with the application money. The company rejects his application for allotment of shares. Mr. Patel insists that the offer made by company was a general offer which he accepted by filing the application form and depositing the required money and therefore he needs to be given shares. Is he right?

Answer:

No. A prospectus issued by a company for subscription to its shares by the members of the public is only an invitation to offer. When a person fills up the form and deposits it with the bank along with the application money, he is making an offer to buy shares. The company has the right to accept or reject the offer to buy

Question 129:

Amrita purchased an airline ticket for travelling from New Delhi to London. On the back of the ticket, certain conditions were printed in very small font, one of which excluded the liability of the airline company for any loss, injury or delay to the passenger or his luggage. However, there was nothing on the ticket to draw the traveller's attention to these terms and conditions, and Amrita never looked at the back of the ticket. Her luggage got lost in the transit. Will she be entitled to claim compensation for the loss of her luggage?

Answer:

Yes. Amrita will be entitled to claim compensation for this loss of her luggage in spite of the exemption clause in 'terms and conditions' because there was no indication on the face of the ticket to draw her attention to the special terms printed on the back of the ticket.

Question 130:

State with reason whether there is any contract made in the following case as per the Indian Contract Act, 1872.

- i. J takes a seat in public bus
- ii. J tells M that N has expressed his willingness to marry her (M)
- iii. J bids at a public auction
- iv. J puts 3 one rupee coins in the slot of a platform ticket vending machine at the Railway station

Answer:

- (i) Yes, implied offer by bus company and implied acceptance by J on boarding the bus
- (ii) No, only an expression of interest and not an acceptance by other party
- (iii) No, a bid at an auction is only an offer which turns into a contract on the acceptance by auctioneer (generally by fall of hammer)
- (iv) Yes, implied offer by machine vendor and implied acceptance by J by putting coin therein.

Question 131:

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

Mr. S sends his letter of acceptance on 16th April 2020 and the letter reaches Mr. B on 20th April 2020.

On 17th April Mr. S changed his mind and sends a telegram withdrawing his acceptance. Telegram reaches to Mr. B on 19th April 2020.

Examine with reference to the Indian Contract Act, 1872:

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

Answer:

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

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

In the given question, Mr. B makes a proposal by post to Mr. S to sell his house.

The letter was posted on 10th April 2020 and the letter reaches to Mr. S on 12th April 2020 but he reads the letter on 13th April 2020.

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

- (ii) When communication of acceptance is complete: Where a proposal is accepted by a letter sent by the post, in terms of Section 4 of the Act, the communication of acceptance will be complete as against the proposer when the letter of acceptance is posted and as against the acceptor when the letter reaches the proposer.

Revocation of Acceptance:

The acceptor can revoke his acceptance any time before the letter of acceptance reaches the offeror, if the revocation telegram arrives before or at the same time with the letter of acceptance, the revocation is absolute. In the given question, when Mr. S accepts Mr. B's proposal and sends his acceptance by post on 16th April 2020, the communication of acceptance as against Mr. B is complete on 16th April 2020, when the letter is posted. As against Mr. S acceptance will be complete, when the letter reaches Mr. B i.e. 20th April 2020.

Whereas, acceptor, will be bound by his acceptance only when the letter of acceptance has reached the proposer.

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

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

Question 132:

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

- (i) X promise to sell his scooter to Y for ₹1 Lac. However, the consent of X has been procured by Y at a gun point.
(ii) A bought goods from B in 2015. But no payment was made till 2019.
(iii) G agrees to give tuitions to H, a pre-engineering student, from the next month and H in consideration promises to pay G ₹ 5,000 per month.

Answer:

- (i) In the instant case, X is an aggrieved party and the contract is voidable at his option but not at the option of Y. It means if X accepts the contract, the contract becomes a valid contract then Y has no option of rescinding the contract.
(ii) B cannot sue A for the payment in 2019 as it has crossed three years and barred by Limitation Act. A good debt becomes unenforceable after the period of three years as barred by Limitation Act.
(iii) Where, G agrees to give tuitions to H, a pre-engineering student, from the next month and H in consideration promises to pay G ₹ 5,000 per month, the contract is executory because it is yet to be carried out.

Question 133:

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

- (i) A coolie in uniform picks up the luggage of A to be carried out of the railway station without being asked by A and A allows him to do so.
(ii) Obligation of finder of lost goods to return them to the true owner
(iii) A contracts with B (owner of the factory) for the supply of 10 tons of sugar, but before the supply is effected, the fire caught in the factory and everything was destroyed.

Answer:

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

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

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

These are said to be quasi- contracts.

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

(iii) The above contract is a void contract.

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

Question 134:

Mr. Rich aspired to get a self-portrait made by an artist.

He went to the workshop of Mr. C an artist and asked whether he could sketch the former's portrait on oil painting canvas. Mr. C agreed to the offer and asked for ₹ 50,000 as full advance payment for the above creative work.

Mr. C clarified that the painting shall be completed in 10 sittings and shall take 3 months. On reaching to the workshop for the 6th sitting, Mr. Rich was informed that Mr. C became paralyzed and would not be able to paint for near future. Mr. C had a son Mr. K who was still pursuing his studies and had not taken up his father's profession yet?

Discuss in light of the Indian Contract Act, 1872?

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

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

Answer:

- A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death of the promisor.
- As regards any other contract the legal representatives of the deceased promisor are bound to perform it unless a contrary intention appears from the contract (Section 37 of the Indian Contract Act, 1872).
- But their liability under a contract is limited to the value of the property they inherit from the deceased.
- In the instant case, since painting involves the use of personal skill and on becoming Mr. C paralyzed, Mr. Rich cannot ask Mr. K to complete the artistic work in lieu of his father Mr. C.
- According to section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it. Hence, in the instant case, the agreement between Mr. Rich and Mr. C has become void because of paralysis to Mr. C. So, Mr. Rich can ask Mr. K for refund of money paid in advance to his father, Mr. C.

Question 135:

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

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

Answer:

- As per Section 51 of the Indian Contract Act, 1872, when a contract consists of reciprocal promises to be simultaneously performed, no promisor needs to perform his promise unless the promisee is ready and willing to perform his reciprocal promise.
- Such promises constitute concurrent conditions and the performance of one of the promise is conditional on the performance of the other.
- If one of the promises is not performed, the other too need not be performed.
- Referring to the above provisions, in the given case, Mr. S is not bound to deliver goods to Mr. R since payment was not made by him at the time of delivery of goods.

Question 136:

Krish, Kamyā and Ketan are partners in a firm. They jointly promised to pay ₹6,00,000 to Dia. Kamyā became insolvent and her private assets are sufficient to pay 1/5 of her share of debts. Krish is compelled to pay the whole amount to Dia. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which Krish can recover the amount from Ketan.

Answer:

- As per section 43 of the Indian Contract Act, 1872, when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.
- Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.
If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.
- In the instant case, Krish, Kamyā and Ketan jointly promised to pay Rs. 6,00,000 to Dia. Kamyā became insolvent and her private assets are sufficient to pay 1/5 of her share of debts. Krish is compelled to pay the whole amount. Krish is entitled to receive Rs. 40,000 from Kamyā's estate, and ₹2,80,000 from Ketan.

Question 137:

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

Answer:**Compensation on Breach of Contract:**

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

Question 138:

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

Answer:

Breach of contract- damages:

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

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

The problem asked in this question is based on the provisions of Section 73 of the Indian Contract Act, 1872. In the instant case 'X' had intimated to 'Z' that he was purchasing water bottles from him for the purpose of performing his contract with 'Y'. Thus, 'Z' had the knowledge of the special circumstances. Therefore, 'X' is entitled to claim from 'Z' ₹500/- at the rate of 0.50 paise i.e. 1000 water bottles x 0.50 paise (difference between the procuring price

of water bottles and contracted selling price to 'Y') being the amount of profit 'X' would have made by the performance of his contract with 'Y'.

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

Question 139:

PM Ltd., contracts with Gupta Traders to make and deliver certain machinery to them by 30th June 2017 for ₹ 21.50 Lakhs. Due to labour strike, PM Ltd. could not manufacture and deliver the machinery to Gupta Traders. Later Gupta Traders procured the machinery from another manufacturer for ₹ 22.75 lakhs. Gupta Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with PM Ltd. and were compelled to pay compensation for breach of contract. Calculate the amount of compensation which Gupta Traders can claim from PM Ltd., referring to the legal provisions of the Indian Contract Act, 1872.

Answer:

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

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach. It is further provided in the explanation to the section that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Applying the above principle of law to the given case, PM Ltd. is obliged to compensate for the loss of ₹ 1.25 lakhs (i.e.

₹ 22.75 lakhs – ₹ 21.50 lakhs) which had naturally arisen due to default in performing the contract by the specified date. Regarding the amount of compensation which Gupta Traders were compelled to make to Zenith Traders, it depends upon the fact whether PM Ltd. knew about the contract of Gupta Traders for supply of the contracted machinery to Zenith Traders on the specified date. If so, PM Ltd. is also obliged to reimburse the compensation which Gupta Traders had to pay to Zenith Traders for breach of contract. Otherwise PM Ltd. is not liable for that.

Question 140:

Mr. Dubious textile enters into a contract with Retail Garments Show Room for supply of 1,000 pieces of Cotton Shirts at ₹ 300 per shirt to be supplied on or before 31st December, 2004. However, on 1 November, 2004 Dubious Textiles informs the Retail Garments Show Room that he is not willing to supply the goods as the price of Cotton shirts in the mean time has gone upto ₹ 350 per shirt. Examine the rights of the Retail Garments Show Room in this regard.

Answer:

In the given problem Dubious Textiles has indicated its unwillingness to supply the cotton shirts on 1st November 2004 itself when it has time upto 31st December 2004 for performance of the contract of supply of goods.

- It is therefore called anticipatory breach of contract.
- Thus Retail Garments show room can claim damages from Dubious Textiles immediately after 1st November, 2004, without waiting up to 31st December 2004.
- The damages will be calculated at the rate of ₹ 50 per shirt i.e. the difference between ₹ 350/- (the price prevailing on 1st November) and ₹ 300/- the contracted price.

Question 141:

X agreed to sell to Y 100 bags of rice @ ₹ 500 per bag, the entire price to be paid at the time of delivery. Before it is delivered, the price of rice per bag goes up by ₹ 50 per bag, X refuses to deliver unless and until Y agrees to the increased price. Y sues X for damages for the breach of contract. What Y can claim as damages?

Answer:

In a Contract of sale of Goods, the damages for the breach of contract is measured by the difference in contract price and market price of the goods on the date of breach. In this problem Y can claim ₹ 50 per bag (₹ 550-500) as ordinary damages.

Question 142:

Mr. Ramaswamy of Chennai placed an order with Mr. Shah of Ahmedabad for supply of Urid Daal on 10.11.2006 at a contracted price of ₹ 40 per kg. The order was for the supply of 10 tonnes within a month's time viz. before 09.12.2006. On 04.12.2006 Mr. Shah wrote a letter to Mr. Ramaswamy stating that the price of Urid Daal was sky rocketing to ₹ 50 Per. Kg. and he would not be able to supply as per original contract. The price of Urid Daal rose to ₹ 53 on 09.12.06 Advise Mr. Ramaswamy citing the legal position.

Answer:

The stated problem falls under the head 'anticipatory breach of contract' defined in Section 39 of the Indian Contract Act, 1872.

The case law applicable here is *Frost vs. Knight*. As per details in the problem, price as contracted ₹ 40 per kg on 10.11.2006 rose to ₹ 50 per kg as on 4.12.2006 and finally to 53 per kg, on 09.12.2006.

The answer to the problem is that

1. Mr. Ramaswamy can repudiate the contract on 04.12.2006 and can claim damages of 10 per kg viz. ₹1,00,000.
2. He could wait till 09.12.2006 and claim ₹ 1,30,000 i.e. ₹ 13 per kg.

If the Government, in the interim period i.e. between 04.12.2006 and 09.12.2006 imposes a ban on the movement of the commodity to arrest rise of prices, the contract becomes void and Mr. Rama Swamy will not be able to recover any damages whatsoever.

Question 143:

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

Answer:

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

Question 144 :

Mr. Y is a devotee and wants to donate an elephant to the temple as a core part of ritual worship. He contacted Mr. X who wanted to sell his elephant. Mr. X contracted with Mr. Y to sell his elephant for Rs. 20 Lakhs. Both were unaware that the elephant was dead a day before the agreement. Referring to the provisions of the Indian Contract Act, 1872, explain whether it is a void, voidable or a valid contract.

Answer :

As per Section 2(j) of the Indian Contract Act, 1872 a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable. The fact of impossibility may be known or unknown to the promisor or promisee. It may be added by clarification here that the term "contract" shall be understood as an "agreement". Thus, when the parties agree on doing something which is obviously impossible in itself the agreement would be void. In this case, Mr. X and Mr. Y were ignorant of the fact that the elephant was dead and therefore the performance of the contract was impossible from the very start (impossibility void ab initio). Hence, this contract is void being not enforceable by law.

Question 145 :

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

- (i) A student was induced by his teacher to sell his brand-new bike to the latter at a price less than the purchase price to secure more marks in the examination. Accordingly, the bike was sold. However, the father of the student persuaded him to sue his teacher. Whether the student can sue the teacher? If yes, on what grounds?
- (ii) Give the circumstances as to when "Vindictive or Exemplary Damages" may be awarded for breach of a contract.

Answer :

(i) A contract brought as a result of coercion, undue influence, fraud or misrepresentation would be voidable at the option of the person whose consent was caused. The relation of teacher and student is as such that the teacher

is in a position to dominate the will of the student. As a result, the consent of the student is caused by an undue influence. Hence, the contract between them is voidable at the option of the student, and therefore, he can sue the teacher.

(ii) Vindicative or Exemplary damages

These damages may be awarded only in two cases:

(a) for breach of promise to marry because it causes injury to his or her feelings; and

(b) for wrongful dishonour by a banker of his customer's cheque because in this case the injury due to wrongful dishonour to the drawer of cheque is so heavy that it causes loss of credit and reputation to him.

A business man whose credit has suffered will get exemplary damages even if he has sustained no pecuniary loss. But a non-trader cannot get heavy damages in the like circumstances, unless the damages are alleged and proved as special damages. (Gibbons v West Minister Bank).

Question 146 :

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

Answer :

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

Question 147 :

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

Answer :

According to Section 24 of the Indian Contract Act, 1872, in an agreement, where some part of the object is legal and the other part is illegal, the question arises about the validity and enforceability of such agreements. Where the legal and illegal part can be severed and divided, and separated, lawful part of object is enforceable, and the unlawful part of the object is void. In the given case, A sells the house to B, is a valid transaction as the sale of house and consideration paid for the same i.e. Rs.10,00,000 is valid and enforceable. However, the agreement to pay Rs. 50,000 for gambling done in the house is illegal and thus void.

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

Question 148 :

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

Answer :

As per Section 73 to 75 of Indian Contract Act, 1872, Damage means a sum of money claimed or awarded in compensation for a loss or an injury. Whenever a party commits a breach, the aggrieved party can claim the compensation for the loss so suffered by him. General damages are those which arise naturally in the usual course of things from the breach itself. (Hadley Vs Baxendale). Therefore, when breach is committed by a party, the

defendant shall be held liable for all such losses that naturally arise in the usual course of business. Such damages are called ordinary damages. However, special damages are those which arise in unusual circumstances affecting the aggrieved party and such damages are recoverable only when the special circumstances were brought to the knowledge of the defendant. If no special notice is given, then the aggrieved party can only claim the ordinary damages. In the given case, Seema was to earn an exceptional profit out of the sales made at the exhibition, however she never informed about it to the railway authorities. Since the goods were delivered after the conclusion of the exhibition, therefore Seema can recover only the losses arising in the ordinary course of business. Since no notice about special circumstances was given to railways authorities, she could not recover the loss of profits.

Question 149 :

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

Answer :

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

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

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

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

Question 150 :

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

State with reasons whether under Indian Contract Act, 1872, Mr. Vikram can claim the reward of Rs. 10,000.

Answer :

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

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

Question 151 :

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

State in the light of provisions of the Indian Contract Act, 1872:-

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

- (b) What would be your answer in case Mr. Sonu turns up in fourth week and Mr. Singhanian allows him to perform without saying anything?
- (c) What would be your answer in case Mr. Sonu sends Mr. Mika on his place in third week and Mr. Singhanian allows him to perform without saying anything?

Answer :

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

Therefore, in the instant case,

- (a) As Mr. Sonu could not perform as per the contract, Mr. Singhanian can repudiate the contract.
- (b) In the second situation, as Mr. Singhanian allowed Mr. Sonu to perform in the fourth week without saying anything, by conduct, Mr. Singhanian had given his assent to continue the contract. Mr. Singhanian cannot terminate the contract however he can claim damages from Mr. Sonu.
- (c) In case Mr. Singhanian allows Mr. Mika to perform in the third week without saying anything, by conduct, Mr. Singhanian had given his assent for performance by third party. Now Mr. Singhanian cannot terminate the contract nor can claim any damages from Mr. Sonu.

Question 152 :

Mr. Pratham applied for a job as principal of a school. The school management decided to appoint him. One member of the school management committee privately informed Mr. Pratham that he was appointed but official communication was not given from the school. Later, the management of the school decided to appoint someone else as a principal.

Mr. Pratham filed a suit against the school for cancellation of his appointment and claimed damages for loss of salary. State with reasons, will Mr. Pratham be successful in suit filed against school under the Indian Contract Act, 1872?

Answer :

As per the rules of acceptance, the acceptance should be communicated to offeror by offeree himself or his authorized agent. Communication of acceptance by third person cannot be concluded in valid acceptance. In the instant case, Mr. Pratham applied for a job as principal of a school and one member of the school management committee privately informed Mr. Pratham that he was appointed. Later, the management of the school appointed someone else as a principal. On the basis of above provisions and facts, communication of appointment of Mr. Pratham should be made by school management committee or any authorised agent. The communication by third person cannot be termed as communication of acceptance. Therefore, no valid contract was formed between Mr. Pratham and school and Mr. Pratham cannot file a suit against the school for cancellation of his appointment.

Question 153:

Rahul, a minor, falsely representing his age, enters into an agreement with a shopkeeper for a loan amount for purchasing a laptop. He gave his expensive watch as a security and took a loan of Rs. 40,000. He was very happy to get Rs. 40,000 and quickly went to the market and purchased a laptop worth Rs. 30,000. He happily spent the rest of the amount with his friends on a pleasure trip. Later on, Rahul realized that his watch was an expensive watch and he should not have given like this to the shopkeeper. So, he went back to the shopkeeper and asked for his watch back. Also, he refused to repay the loan amount. The shopkeeper disagrees to this and files a case against minor for recovery of the loan amount. Can the shopkeeper succeed in recovering the loan amount under the Indian Contract Act, 1872?

Answer:

As per Section 11 of Indian Contract Act, 1872, a minor is not competent to enter into any contract. Any agreement with minor is void-ab-initio means void from the very beginning. When a person forms an agreement with minor, such an agreement is devoid of any legal consequences for the person because minor cannot be enforced by law to perform his part of performance in an agreement. However, if minor obtains any property by fraudulently misrepresenting his age, he can be ordered to restore the property or goods thus obtained. Although no action can be taken against the minor, but if has any property (of other party) in his possession, court can order him to return the same. Hence, in the present case, Rahul is not liable to repay Rs. 40,000 that he has borrowed from the

shopkeeper, but he can be ordered by the court to return the laptop (which was in his possession) to the shopkeeper.

Question 154:

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

- (i) Does the hotel have the right to end the contract?
- (ii) If the hotel sends out a mail to X that they are interested to continue the contract and X accepts, can the hotel rescind the contract after a month on this ground subsequently?
- (iii) In which of the cases – (termination of contract or continuance of contract) can the hotel claim damages that it has suffered as a result of this breach?

Answer :

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

- (a) To terminate the contract
- (b) To indicate by words or by conduct that he is interested in its continuance.

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

- (i) Yes, the hotel has the right to end the contract with Mr. X, the DJ.
- (ii) The hotel has the right to continue the contract with X. But once this right is exercised, they cannot subsequently rescind the contract on this ground subsequently.
- (iii) In both the cases, the hotel (promisee) is entitled to claim damages that has been suffered as a result of breach.

Question 155:

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

Answer :

Section 25 of Indian Contract Act, 1872 provides that an agreement made without consideration is valid if it is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other. In the instant case, the transfer of house made by Mr. Ram Lal Birla on account of natural love and affection between the parties standing in near relation to each other is written but not registered. Hence, this transfer is not enforceable and his daughter cannot get the house as gift under the Indian Contract Act, 1872.

Question 156:

PQR, a hospital in Delhi, recruits Dr. A, on contract basis for a period of 3 months. The hospital management promises to pay Dr. A, a lumpsum amount of Rs. 1,00,000 if Dr. A test positive for noval corona virus (Covid 19) during the contract period of 3 months. Identify the type of contract and highlight the rule of enforcement. Also, what will happen if Dr. A does not contract Covid 19.

Answer :

Section 31 of the Indian Contract Act, 1872 provides that "A contract to do or not to do something, if some event, collateral to such contract, does or does not happen" is a Contingent Contract.

Section 35 says that Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, becomes void if, at the expiration of time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible. In the instant case, the contract between PQR hospital & Dr. A is a Contingent Contract because the promisor, PQR hospital need to perform his obligation of paying Dr. A, the lumpsum amount of Rs. 1,00,000, only if he contracts with Covid 19 within a span of 3 months.

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

Question 157 :

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

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

Answer :

Section 39 provides that when a party to a contract has refused to perform or disabled himself from performing his promise in its entirety the promisee may put an end to the contract unless he had signified, by words or conduct his acquiescence in its continuance. Further, in term of Section 40, the promisee shall be required to perform personally, if there is such an apparent intention of the parties. Also, as per Section 75 of the Act, a person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through non-fulfilment of the contract.

Therefore, in the instant case,

- (i) Since, Sheena could not perform as per the terms of contract, Shital Vidya Mandir can terminate the contract.
- (ii) In the second situation, the management of Shital Vidya Mandir informed Sheena about the continuance of the contract. Hence, the management cannot now rescind the contract after a month on this ground subsequently.
- (iii) As per Section 75, Shital Vidya Mandir can claim damages that it has suffered because of this breach in part (i).

Question 158:

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

Answer :

Joint promisors (Section 42 of the Indian Contract Act, 1872) When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons must jointly fulfil the promise. Any one of joint promisors may be compelled to perform (Section 43) As per Section 43 of the Indian Contract Act, 1872, when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise. If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares. In the instant case, A, B, C and D have jointly promised to pay Rs. 6,00,000 to F. B and C become insolvent. B was unable to pay any amount and C could pay only Rs. 50,000. A is compelled to pay the whole amount to F. Hence, A is entitled to receive Rs. 50,000 from C and Rs. 2,75,000 from D, as worked out below:

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

Rs. 1,00,000). From D Rs. 2,75,000 = (D's Liability Rs. 1,50,000 + 1/2 of liability of B (Loss) (1,50,000 * 1/2) i.e.

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

Thus, total amount A can receive from C and D comes to Rs. 3,25,000 (50,000 + 2,75,000)

Question 159 :

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

Answer :

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

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

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

- (ii) **Rescission:** A contract is also discharged by rescission. When the parties to a contract agree to rescind it, the contract need not be performed. (Section 62)
- (iii) **Alteration:** Where the parties to a contract agree to alter it, the original contract is rescinded, with the result that it need not be performed. In other words, a contract is also discharged by alteration. (Section 62)
- (iv) **Remission:** Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance or may accept instead of it any satisfaction which he thinks fit. In other words, a contract is discharged by remission. (Section 63)
- (v) **Rescinds voidable contract:** When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor.
- (vi) **Neglect of promisee:** If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby. (Section 67)

Question 160 :

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

- (i) X aged 16 years borrowed a loan of Rs. 50,000 for his personal purposes. Few months later he had become major and could not pay back the amount borrowed, on due date. The lender wants to file a suit against X.
- (ii) J contracts to take in cargo for K at a foreign port. J's government afterwards declares war against the country in which the port is situated and therefore the contract could not be fulfilled. K wants to file a suit against J.

Answer:

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

According to Section 68 of the Act, a claim for necessities supplied to a minor is enforceable by law. Necessaries mean those things that are essentially needed by a minor. They cannot include luxuries or costly or unnecessary articles.

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

- (ii) As per Section 56 of the Indian Contract Act, 1872 the subsequent or supervening impossibility renders the contract void. Supervening impossibility may take place owing to various circumstances as contemplated under that section, one of which is the declaration of war subsequent to the contract made. In the instant case the contract when made between J and K was valid but afterwards J's government declares war against the country in which the port is situated as a result of which the contract becomes void. Hence, K cannot file a suit against J for performance of the contract.

Question 161 :

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

- (i) A clause in a contract provided that no action should be brought upon in case of breach.
- (ii) Where two courts have jurisdiction to try a suit, an agreement between the parties that the suit should be filed in one of those courts alone and not in the other.
- (iii) X offers to sell his Maruti car to Y. Y believes that X has only Wagon R Car but agrees to buy it.
- (iv) X, a physician and surgeon, employs Y as an assistant on a salary of Rs. 75,000 per month for a term of two years and Y agrees not to practice as a surgeon and physician during these two years.

Answer :

- (i) The given agreement is void.

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

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

(ii) The given agreement is valid.

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

(iii) The said agreement is void.

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

(iv) The said agreement is valid.

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

Question 162:

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

- (i) Whether L can compel only Y to pay the entire loan of Rs. 90,000?
- (ii) Whether L can compel only the legal representatives of Y to pay the loan of Rs. 90,000, if X, Y and Z died?
- (iii) Whether Y and Z are released from their liability to L and X is released from his liability to Y and Z for contribution, if L releases X from his liability and sues Y and Z for payment?

Answer :

- (i) Yes, L can compel only Y to pay Rs. 90,000/- since as per Section 43 of the Indian Contract Act, 1872, in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise.
- (ii) As per Section 42, when two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives and after the death of any of them, his representative jointly with the survivor or survivors and after the death of last survivor, the representatives of all jointly must fulfill the promise. In the instant case, if X, Y and Z died then the legal representatives of all (i.e. X, Y and Z) shall be liable to pay the loan jointly. L cannot compel only the legal representatives of Y to pay the loan of Rs. 90,000.
- (iii) According to Section 44, where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors, neither does it free the joint promisors so released from responsibility to the other joint promisor or promisors. In this case, the release of X does not discharge Y and Z from their liability. Y and Z remain liable to pay the entire amount of Rs. 90,000 to L. And though X is not liable to pay to L, but he remains liable to pay to Y and Z i.e. he is liable to make the contribution to the other joint promisors.

Question 163:

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

Explain, whether Mr. Murti would get compensation for which he filed the suit?

Answer :

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

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

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

Question 164:

Kapil went to a departmental store to purchase a steel pan. He asked the salesman about the area in departmental store where steel pans are kept. The salesman indicated him the area with instructions that with steel pans, other metal's pans were also kept. Kapil wrongfully picked an aluminium pan in place of steel pan. The salesman watched but said nothing to Kapil. Kapil reached his house and found that pan was not a steel pan but actually an aluminium pan. Kapil filed a suit against departmental store for fraud. Discuss, whether Kapil was eligible to file suit for fraud against departmental store under Indian Contract Act, 1872?

Answer:

Section 17 of Indian Contract Act, 1872 defines 'Fraud'. According to section, "Fraud" means and includes any of the following acts committed by a party to a contract or by his agent with intent to deceive or to induce a person to enter into the contract:

- (i) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (ii) the active concealment of a fact by one having knowledge or belief of the fact;
- (iii) a promise made without any intention of performing it;
- (iv) any other act fitted to deceive;
- (v) any such act or omission as the law specially declares to be fraudulent.

It was also explained that mere silence is not fraud. Silence amounts to fraud where

- (a) there is a duty to speak
- (b) where silence is equivalent to speech. On the basis of provisions of Section 17 and the facts given above, it was not the duty of salesman to inform Mr. Kapil about his mistake. Hence, there was no fraud and Kapil was not eligible to file suit for fraud against departmental store under Indian Contract Act, 1872.

Question 165:

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

Answer:

Section 10 of Indian Contract Act, 1872 laid down the essential elements of a valid contract. One of the essential elements of valid contract is free consent. Consent is an express willingness or giving voluntary permission or agreeing to something. Section 13 further clarify "two or more persons are said to consent when they agree upon the same thing in the same sense "In the present case, both the parties have given a free consent but they are not consenting for the same thing in the same sense. Mr. Joy wants to sell flat no. 101 and Mr. Roy has agreed the contract thinking that it's flat no. 102. Hence, the agreement would be invalidated at the inception (beginning) stage itself because both the parties did not agree about a thing (sale of flat) in the same sense. Hence, both the parties did not have mutual consent for the contract; therefore it is not a valid contract.

Question 166:

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

Answer :

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

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

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

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

Question 167:

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

- (i) Between X and Y.
- (ii) Between X and W

Answer:

Illegal Agreement: It is an agreement which the law forbids to be made. As an essential condition, the lawful consideration and object is must to make the agreement valid. (Section 10). As per Section 23 of the Indian Contract Act, 1872, an agreement is illegal and void, if the consideration and object is unlawful / contrary to law i.e. if forbidden by law. Such an agreement is void and is not enforceable by law. Even the connected agreements or collateral transactions to illegal agreements are also void.

In the present case,

- (i) X agrees to give Rs. 1,00,000 to Y if Y kills Z. Thus, the agreement between X and Y is void agreement being illegal in nature.
- (ii) X borrows Rs. 1,00,000 from W and W is also aware of the purpose of the loan. Thus, the agreement between X and W is void as the connected agreements of an illegal agreements are also void.

Question 168:

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

- (i) "Agreements made out of love and affection are valid agreements."
- (ii) "Promise to pay a time barred debt cannot be enforced."

Answer:

(I) **Agreements made out of love and affection are valid agreements:** A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g., husband and wife) to each other is enforceable even without consideration. The various conditions to be fulfilled as per Section 25(1) of the Indian Contract Act, 1872:

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

Hence, the agreements made out of love and affection, without consideration, shall be valid, if the above conditions are fulfilled.

(II) **Promise to pay a time barred debt cannot be enforced:** According to Section 25(3) of the Indian Contract Act, 1872, where a promise in writing signed by the person making it or by his authorised agent, is made to pay a debt barred by limitation is valid without consideration.

Hence, this statement is not correct.

Note: The above statement can be correct also on the basis of the "Discharge of Contract by Lapse of time" as per Limitation Act, 1963, and accordingly it can be mentioned that contract should be performed within a specified period as prescribed by the Limitation Act, 1963 and if no action is taken by the promisee within the specified period of limitation, he is deprived of remedy at law.

Question 169:

Mr. Y aged 21 years, lost his mental balance after the death of his parents in an accident. He was left with his grandmother aged 85 years, incapable of walking and dependent upon him. Mr. M their neighbour, out of pity, started supplying food and other necessities to both of them. Mr. Y and his grandmother used to live in the house built by his parents. Mr. M also provided grandmother some financial assistance for her emergency medical treatment. After supplying necessities

to Mr. Y for four years, Mr. M approached the former asking him to payback Rs. 15 Lakhs inclusive of Rs. 7 Lakhs incurred for the medical treatment of the lady (grandmother). Mr. Y pleaded that he has got his parent's jewellery to sell to a maximum value of Rs. 4 Lakhs, which may be adjusted against the dues. Mr. M refused and threatened Mr. Y of legal suit to be brought against for recovering the money.

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

- (i) Will Mr. M succeed in filing the suit to recover money? Elaborate the related provisions?
- (ii) What is the maximum amount of money that can be recovered by Mr. M?
- (iii) Shall the provisions of the above act also apply to the medical treatment given to the grandmother?

Answer:

- (i) Claim for necessaries supplied to persons incapable of contracting (Section 68 of the Indian Contract Act, 1872):
If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.
In the instant case, Mr. M supplied the food and other necessaries to Mr. Y (who lost his mental balance) and Mr. Y's grandmother (incapable of walking and dependent upon Mr. Y), hence, Mr. M will succeed in filing the suit to recover money.
- (ii) Supplier is entitled to be reimbursed from the property of such incapable person. Hence, the maximum amount of money that can be recovered by Mr. M is Rs.15 Lakhs and this amount can be recovered from Mr. Y's parent's jewellery amounting to Rs.4 Lakhs and rest from the house of Y's Parents. (Assumption: Y has inherited the house property on the death of his parents)
- (iii) Necessaries will include the emergency medical treatment. Hence, the above provisions will also apply to the medical treatment given to the grandmother as Y is legally bound to support his grandmother.

Question 170:

Differentiate between Novation and Alteration as per the Indian Contract Act, 1872.

Answer:

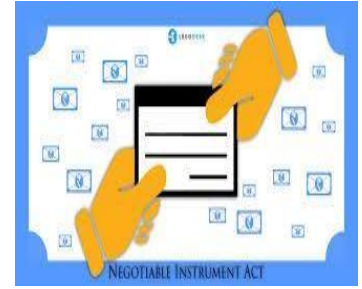
Novation and Alteration: The law pertaining to novation and alteration is contained in Sections 62 to 67 of the Indian Contract Act, 1872. In both these cases, the original contract need not be performed. Still there is a difference between these two.

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

NEGOTIABLE INSTRUMENTS Act, 1881

MEANING AND DEFINITION OF NEGOTIABLE INSTRUMENT

The word 'Negotiable' means transferable from one person to another in return for consideration and 'instrument' means 'a written document by which a right is created in favour of some person. Thus, a negotiable instrument is a document which entitles a person to a sum of money and which is transferable from one person to another by mere delivery or by endorsement and delivery.



The term 'negotiable instrument' as such is not defined in the Negotiable Instruments Act, 1881. Section 13, however, provides that a negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer.

Mode of Transfer of negotiable instrument:

A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank.

CHARACTERISTICS OF A NEGOTIABLE INSTRUMENT

1. **Freely Transferable** The property in a negotiable instrument passes from one person to another by delivery, if the instrument is payable to bearer, and by endorsement and delivery, if it is payable to order.
2. **Title of holder free from all defects** A person taking an instrument bona fide and for value gets the instrument free from all defects in the title of the transferor. He is not in any way affected by any defect in the title of the transferor or of any prior party.
3. **Presumptions** It is presumed by law that every negotiable instrument is made or drawn for a consideration. But it is not an irrebuttable presumption. It must be rebutted by proof that the instrument had been obtained from its lawful owner by means of fraud, undue influence or for an unlawful consideration. The onus of proof is on the person who challenges the existence of consideration.
4. **Recovery** A person taking an instrument bona fide and for value can sue upon a negotiable instrument in his own name for the recovery of the amount.

PROMISSORY NOTE (section 4)

A '**promissory note**' is an instrument, in writing, containing unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to order of, a certain person, or to the bearer of instrument.

The person who makes the promissory note and promises to pay is called the maker. The person to whom the payment is to be made is called the payee.

A diagram titled 'Promissory Note Format' showing a sample note. The note is dated 30th Nov, 2017, and is for ₹ 50,000. The promisor is Raj Kumar, residing at 123, Mall Road, Bhatinda. The promisee is Mr. Rahul Soni, residing at 321, Hisar Road, Sirsa. The note states: 'Six months after date, I promise to pay Mr. Rahul Soni or their order a sum of Rupees Fifty Thousand, for value received.' The note is signed by Raj Kumar. The website www.allbankingalerts.com is mentioned at the bottom right.

For an instrument to become a 'promissory note', it must have the following essential elements:

- The instrument must be in **writing**.
- The instrument must contain an **express promise to pay**. A mere acknowledgement of indebtedness is not sufficient.
- The promise to pay must be **definite and unconditional**.
- The instrument must be **signed by the maker**, otherwise it is incomplete and has no effect.
- The instrument must point out with certainty as to who the maker is and who the payee is. Where the maker and the payee cannot be identified with certainty from the instrument itself, the instrument, even if it contains an unconditional promise to pay, is not a promissory note.
- The sum payable must be certain and must not be capable of **contingent additions or subtractions**.

Examples

A signs instruments in the following terms

- (a) "I promise to Pay B or order ` 500".
 - (b) "I acknowledge myself to be indebted to B in ` 1,000, to be paid on demand, for value received."
 - (c) "Mr. B I.O.U ` 1,000."
 - (d) "I promise to pay B ` 500 and all other sums which shall be due to him."
 - (e) "I promise to pay B ` 500 first deducting there out any money which he may owe me."
 - (f) I promise to pay B ` 500 seven days after my marriage with C.
 - (g) I promise to pay B ` 500 on D's death, provided D leaves me enough to pay that sum.
- The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) are not promissory notes.

BILL OF EXCHANGE (section 5)

A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

The person who gives the order to pay or who makes the bill is called the drawer. The person who is directed to pay is called the drawee. The person to whom the payment is to be made is called the payee.

For an instrument to become a 'bill of exchange', it must have the following essential elements:

- It must be in writing.
- It must contain an unconditional order to pay.
- It requires three parties i.e., the drawer, drawee and the payee.
- The parties must be certain
- It must be signed by the drawer.
- The sum payable must be certain.

Sample Format - Bill of Exchange

Amount - 2,00,000	Place, Date
Stamp	60 days after the date, pay Mr. ABC a sum of 2,00,000, for value received.
Accepted (Signed)	Drawer (Signed)
Drawee's Name	Drawer's Address
Drawee's Address	



CHEQUE (section 6)

A cheque is a bill of exchange drawn upon a specified banker and payable on demand and it further includes an electronic image of a

HDFC BANK PAYABLE AT PAR THROUGH CLEARING/TRANSFER AT ALL BRANCHES OF HDFC BANK LTD.
 PAY TO THE ORDER OF / भुक्तान के नाम पर / भुक्तान के नाम पर / भुक्तान के नाम पर
 Amount in words / शब्दों में / शब्दों में / शब्दों में
 Amount in figures / अंकों में / अंकों में / अंकों में
 A/C No. / अ/c नं. / अ/c नं. / अ/c नं.
 ₹ 24,000/- 6952400024 045046 34

truncated cheque and a cheque in electronic form. A cheque is a species of bill of exchange, but it has the following two additional qualifications, namely:

- It is always drawn on a specified banker; and
- It is always payable on demand.

All cheques are bills of exchange, but all bills of exchange are not cheques.

Acceptance (section 7) Acceptance is ordinarily made by the drawee by signing his name across the face of the bill and by delivery. Acceptance, therefore, means the signification of assent to the order of the drawer by delivery notification thereof.

The essentials of a valid acceptance are as follows:

- Acceptance must be written.
- Acceptance must be signed.
- Acceptance must be on the bill.
- Acceptance must be completed by delivery.
- Acceptance may be either general or qualified.
- By a general acceptance, the acceptor assents without qualification to the order of the drawer. The acceptance of a bill is said to be qualified, when the drawee does not accept it according to the apparent tenor of the bill, but attaches some conditions or qualifications which have the effect of either reducing his liability or acceptance of the liability subject to certain conditions.



PROMISSORY NOTE AND BILL OF EXCHANGE

1. In a note, there are two parties i.e., the maker and the payee. In a bill, there are three parties i.e., the drawer, the drawee and the payee.
2. A note contains an unconditional promise to pay. A bill contains an unconditional order to pay.
3. The maker of a note is the debtor and he himself undertakes to pay. The drawer of a bill is the creditor who directs the drawee (his debtor) to pay.
4. The liability of the maker of a note is primary and absolute, whereas the liability of the drawer of a bill is secondary and conditional.
5. a note cannot be made payable to the maker himself; whereas in a bill, the drawer and the payee may be one and the same person.

BILL OF EXCHANGE AND CHEQUE

1. A bill of exchange may be drawn on any person, including a banker, but a cheque is always drawn on a banker.
2. A bill must be accepted before the drawee can be called upon to make payment upon it. A cheque requires no acceptance.
3. A bill, which is not expressed to be payable on demand, is entitled to 3 days of grace. A cheque is not entitled to any days of grace.
4. A cheque may be crossed but not a bill.

INLAND and FOREIGN INSTRUMENT

An **Inland instrument** is one, which is either:

- drawn or made in India and made payable in India; or
- drawn in India upon some persons resident therein, even though it is made payable in foreign country.

It may be noted that a promissory note is not drawn on any person. Thus, a promissory note can

become an inland promissory note only on the basis of first criteria, as second criteria is not applicable. Hence, an inland promissory note is one which is made and payable in India.

Foreign Instruments (section 12) An instrument, which is not an inland instrument, is deemed to be a foreign instrument.

Hence, following types of instruments can be considered as foreign instruments:

- It is drawn outside India and made payable outside or inside India; or
- It is drawn in India and made payable outside India and drawn on a person resident outside India.

Ambiguous Instruments (section 17) When an instrument, owing to its faulty drafting, may be interpreted either as a promissory note or a bill of exchange, it is called an ambiguous instrument. Its holder has to elect once for all whether he wants to treat it as a promissory note or a bill of exchange. Once he does so, he must abide by his election.

For instance, a bill drawn by A, an agent, acting within the scope of his authority, upon his principle, P. The holder may, at his option, treat it as a note or a bill because the drawer (A) and the drawee (P) are the same person.

Inchoate Instrument (section 20): An inchoate instrument is an incomplete instrument in some respect. When a person signs and delivers to another a blank or incomplete stamped paper, he authorizes the other person to make or complete upon it a negotiable instrument for any amount not exceeding the amount covered by the stamp. The person so signing is liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount. But a person other than a holder in due course cannot recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

For example, A owes B Rs.1,000. He gives B a blank acceptance on a bill, which is sufficiently stamped to cover any amount up to Rs.2,000. B endorses the bill to H, a holder in due course. H, who fills up the amount as Rs.2,000 can recover the amount.

HOLDER AND HOLDER IN DUE COURSE

Definition and Meaning of Holder: The holder of a promissory note, bill of exchange or cheque means any person, who satisfies, the following two conditions:

- He is entitled in his own name to the possession of negotiable instrument; and
- He is entitled in his own name to receive or recover the amount due thereon from the parties thereto.

Where the note, bill of exchange or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

In order to be entitled to the instrument in his own name, the holder must be named therein as the payee or the endorsee, in case the instrument is payable to order, or he must be the bearer thereof, in case the instrument is payable to bearer.

A person, who has obtained possession of an instrument by theft or under a forged endorsement, is not a holder, as he is not entitled to recover the instrument. Here, holder implies de jure holder (holder in law) and not de facto holder (holder in fact). An agent holding an instrument for his principle is not a holder, although he may receive its payment.

Definition and Meaning of Holder in due course: The Holder in due course of a negotiable instrument means any person, who satisfies the following conditions:

- **He became:**
 1. The possessor of the negotiable instrument, if payable to bearer; or
 2. The payee or endorsee thereof, if payable to order for consideration.
- **He became the holder of the instrument before its maturity;** and
- **He became the holder of the instrument in good faith i.e., without sufficient cause to believe that any infirmity in the instrument or defect existed in the title of the person from whom he derived it.**

Difference between holder and Holder in due course

BASIS	HOLDER	HOLDER IN DUE COURSE
CONSIDERATION	A holder may become the possessor or payee of an instrument even without consideration	A holder in due course is one who acquires possession for consideration.
BEFORE MATURITY	A person becomes a holder if he obtains the negotiable instrument after the maturity of the negotiable instrument.	A person becomes a HDC only if he obtains the negotiable instrument in good faith.
GOOD FAITH	A person becomes a holder, even if he does not obtain the negotiable instrument in good faith.	For being a HDC, a person must obtain the negotiable instrument in good faith.
RIGHT TO SUE	A holder cannot sue all prior parties.	a HDC can sue all prior parties.

DEMAND AND TIME INSTRUMENTS

Demand Instruments: A promissory note or bill of exchange is payable on demand in the following cases:

- When it is expressed to be payable ‘on demand’ or ‘at sight’ or ‘on presentment’
- When no time for payment is specified in it.

It may be noted that a cheque is always payable on demand.

Such a bill or note may be presented for payment at any time at the option of the holder, but it must be presented within a reasonable time.

Time Instruments: A bill or note is a time instrument, if it is stated to be so payable:

- at a fixed period after its date; or
- at a fixed period after sight; or
- on or at a fixed period after an event which is certain to happen.

When a promissory note or bill of exchange is payable after specified period, the date on which it falls due, known as date of maturity, has to be calculated. Every instrument payable otherwise than on demand, is entitled to **3 days of grace.**

DISHONOUR OF CHEQUE [SECTION 138]

A drawer of a dishonoured cheque shall be deemed to have committed an offence. For this offence, he shall, without prejudice to any other provisions of the Negotiable Instruments Act, 1881, be punished with imprisonment for a term, which **may extend to two years** or with a fine, which **may extend to twice the amount of the cheque or with both.**

The foregoing provision is subject to the following conditions:

1. The cheque has been dishonoured due to insufficiency of funds in the account maintained by him with a banker for payment of any amount of money to another person from out of that account.
2. The payment for which the cheque was issued, should have been in discharge of a legally enforceable debt or liability in whole or part of it.
3. The cheque should have been presented by the payee or the holder in due course **within a period of three months** from the date on which it is drawn or within the period of its validity, whichever is earlier.
4. The payee or the holder in due course of the cheque should have given notice demanding payment **within 30 days** to the drawer, on receipt of information of dishonour of cheque from bank.
5. The drawer is liable only, if he fails to make the payment **within 15 days of such notice period.**
6. The payee or holder in due course of the cheque dishonoured should have made a complaint within one month of the arising of cause of action.

The payee/holder must make a complaint with the court

Following points are worth noting in this regard;

- The complaint must be in writing.
- The complaint must be made within 1 month from the date when cause of action arose, i.e., within 1 month from the last date on which drawer was liable to pay money to payee/holder.
- The complaint shall be made with a Court not inferior to that of Metropolitan Magistrate or a Judicial Magistrate of the first class.

Offences By Companies

If the person committing an offence u/s 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed within his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.