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CHAPTER 2 - THE INDIAN CONTRACT ACT, 1872

Unit 1: Nature of Contracts

Wisdom Blueprint

S. no	Section/Provision	Relevancy
1	Intention to create legal relation	PQ
2	Difference between <ul style="list-style-type: none"> • Void Contract vs. Voidable Contract • Void Agreement vs. Illegal Agreement • Collateral Agreement 	DQ & PQ
3	Offer - Definition & Rules	DQ
4	Invitation to offer	PQ
5	Acceptance & Rules	DQ
6	Acceptance by performance - Sec 8	PQ
7	Communication of Offer & Acceptance - Sec 4 & 5	PQ

Basic

Section 2(h) – Contract = Agreement + Enforceability by law.

Agreement (Sec 2(e)) – Every promise or set of promises forming consideration for each other.

Promise (Sec 2(b)) – Proposal when accepted becomes a promise.

- Proposal made → Assent given → Proposal accepted → Becomes promise.

Agreement formula – Offer/Proposal + Acceptance + Consideration.

Enforceability by law – Agreement must create *legal obligation*.

Legal Obligation & Scope of Contract Act

- Contractual Obligation** – Arises from agreement; enforceable by law.
Example: Sale of car for ₹2 lacs → mutual rights & obligations.
- Social Agreement** – No intention to create legal relationship → *Not a contract*.
Example: Father's promise for pocket allowance not enforceable.
- Status Obligations** – Arise from personal status or court orders; outside Contract Act.
Example: Maintenance of wife/children, court orders.

Basis	Agreement	Contract
Meaning	Promise + Consideration	Agreement + Legal enforceability
Scope	Wider – includes legal and social agreements	Narrower – only legally enforceable agreements
Legal Obligation	May not create legal rights	Always creates legal rights
Nature	All agreements are not contracts	All contracts are agreements

Question 1:

Can Mrs. Lali recover ₹50,000 from her husband under a registered written agreement made out of love and affection? **(3 Marks) [Nov 18]**

Answer:

No, she cannot recover the amount as the agreement is a social/domestic arrangement lacking intention to create legal relations, and thus is not enforceable under the Contract Act, 1872.

Registration of an agreement mainly serves as **proof of its existence and terms**, but it does **not** override the basic requirements of a valid contract under the Contract Act, 1872.

So, even if the document is registered, if it's a **purely domestic/social arrangement without legal intent**, it still won't be enforceable in court. Registration can't convert a "non-contract" into a valid contract.

Section 25(1) only addresses whether an agreement without consideration can be valid by laying down conditions (natural love and affection, near relationship, written, registered). It's not concerned with whether the agreement is a **contract** or not.

Even if Section 25(1) conditions are satisfied, it will only be a **contract** if there is an **intention to create legal relations**.

So, **valid agreement** under Section 25(1) \neq **enforceable contract** automatically. Enforceability still hinges on legal intent.

Question 2:

Can Radha sue three friends who skipped her **₹5,000 non-refundable birthday party booking**, and would it differ if it were a **contributory New Year party**? (4 Marks) [June 23]

Answer:

No, she **cannot sue** for a birthday party loss as it was a **social agreement without legal intent (Sec. 10, Contract Act, 1872)**. However, in a **contributory party**, **legal intent exists**, making the agreement **enforceable** and allowing her to **claim the loss**.

Essentials of a Valid Contract

1. **Two Parties** – Must be distinct persons/entities; one cannot contract with oneself.
 - *Example:* Seller \neq Buyer (State of Gujarat v. Ramanlal S & Co.).
2. **Intention to Create Legal Relationship** – Essential for enforceability; social/domestic agreements not contracts.
 - *Example:* Husband–wife maintenance promise \rightarrow Not enforceable.
 - *Example:* Father's reward for son's CA result \rightarrow Not enforceable.
 - *Example:* Sale of goods with payment terms \rightarrow Enforceable.
3. **Other Formalities (where required)** – Writing, registration, attestation, as per law.
 - E.g. Insurance contract (must be in writing), transfer of immovable property (registration).
4. **Certainty of Meaning** – Terms must be clear, definite.
 - *Example:* "100 tons of oil" without specification \rightarrow Void.
 - *Example:* Lease for "indefinite years" \rightarrow Void.
5. **Possibility of Performance** – Must be capable of being performed.
 - *Example:* Discover treasure by magic \rightarrow Void.
6. **Offer & Acceptance (Sec 2)** – Agreement = Offer + Acceptance + Consideration.
7. **Free Consent** – Consent must be consensus ad idem & not caused by coercion, undue influence, fraud, misrepresentation, mistake.
 - *Example:* Mistaken identity of car \rightarrow No contract.
 - *Example:* Agreement under threat \rightarrow Void.

8. Capacity to Contract (Sec 11) – Party must:

- (a) Be of majority age (18+).
- (b) Be of sound mind.
- (c) Not be disqualified by law (alien enemy, convict, foreign sovereign).

9. Consideration (Quid pro quo) – Something in return; may be benefit to one or detriment to other.

- *Example:* Sale of books for ₹100 → Mutual consideration.

10. Lawful Consideration & Object (Sec 23) – Must not be unlawful, fraudulent, injurious, immoral, or opposed to public policy.

- *Example:* Agreement to drop robbery prosecution for repayment → Void.
- *Example:* Sale in exchange for drugs → Illegal.

11. Not Expressly Declared Void – Agreement must not fall under void/illegal categories.

- *Example:* Threat to murder, defamatory acts, restraint of trade/marriage/legal proceedings → Void/Illegal.

TYPES OF CONTRACTS

Based on validity

1. Valid Contract –

- Contains all essentials of a valid contract.
- Binding & enforceable by law.
- *Example:* Sale of bike for ₹50,000 → Valid.

2. Void Contract (Sec 2(j)) –

- Initially valid but ceases to be enforceable.
- Occurs due to impossibility, illegality, or other supervening events.
- *Example:* Author dies before writing book → Void.
- *Example:* Factory fire destroys goods before supply → Void.

3. Voidable Contract (Sec 2(i)) –

- Enforceable at the option of one or more parties, but not others.
- **Situations:**
 - (i) Consent not free (coercion, undue influence, fraud, misrepresentation).
- *Example:* Sale under gunpoint → Voidable at aggrieved party's option.
 - (ii) Prevention of performance by other party.
- *Example:* Seller refuses to sell car on due date → Voidable at buyer's option.
 - (iii) Failure to perform within specified time.
- *Example:* House not completed by due date → Voidable at promisee's option.

(June 23 - 5 Marks) (RTP May 25) (MTP I May 25,6 Marks)

S. No.	Basis	Void Contract	Voidable Contract
1	Meaning	Contract ceases to be enforceable and becomes void.	Agreement enforceable at option of one or more parties but not at option of others.
2	Enforceability	Cannot be enforced at all.	Enforceable only at option of aggrieved party, not other party.

3	Cause	Becomes void due to change in law or circumstances beyond parties' contemplation.	Becomes voidable if consent of a party was not free.
4	Performance of contract	Cannot be performed.	If aggrieved party doesn't avoid in reasonable time, other party can sue for performance.
5	Rights	No legal remedy to any party.	Party with free consent right can rescind within reasonable time; rescinded = void, else valid.

4. Illegal Contract –

- Forbidden by law; void *ab initio*.
- All illegal agreements are void, but not all void agreements are illegal.
- Also renders connected collateral contracts void.
- *Example*: Agreement to purchase brown sugar (drugs) → Illegal.

Example: Collateral transactions linked to illegal agreements are void.

- Agreement to pay ₹1,00,000 for killing Z is illegal due to unlawful object.
- Y cannot recover ₹1,00,000 from X.
- Loan from W to X knowing the illegal purpose is a collateral agreement.
- Collateral agreement between X and W is also void.
- W cannot recover the loan amount from X.

Point	Void Agreement	Illegal Agreement
Legality	Not necessarily illegal	Always illegal
Law Status	Not forbidden by law	Forbidden by law
Punishment	No punishment	Punishable under law
Collateral Effect	Collateral agreements may be valid	Collateral agreements are always void

5. Unenforceable Contract –

- Valid in substance but cannot be enforced due to technical defects (e.g., lack of writing, expiry of limitation period).
- *Example*: Debt from 2018 claimed in 2022 → Barred by Limitation Act (3 years).
- E.g., transfer of immovable property must be in writing for enforceability.

Question 3:

CA Sarthak Jain contracted M/s Sherry Fine Interiors to complete office interior work by 31.01.2025, but only 20–30% was done by then. He canceled the contract, and M/s Sherry Fine Interiors filed a suit to recover the cost incurred. [RTP Sep 25]

Answer:

Under Section 2(i) of the Indian Contract Act, 1872, the contract is voidable due to delay, and Jain is not liable to pay since the incomplete work gave him no benefit and he had to appoint a new interior designer.

Question 4:

X coerced Y into selling his house for ₹1,00,000 and borrowed that amount from Z, who knew the purpose. [ACT]

Answer:

Contract X–Y is voidable (coercion, Sec. 15 & 19, Contract Act), while X–Z is valid as the loan object is lawful.

Based on formation

1. **Express Contract (Sec 9) –**
 - Terms expressed in words (spoken or written).
 - *Example:* Offer & acceptance over telephone → Express contract.
2. **Implied Contract (Sec 9) –**
 - Formed by conduct, action, or course of dealings; not in words.
 - *Example:* Coolie carrying luggage without being asked → Implied.
 - *Example:* Drinking coffee in restaurant → Implied.
3. **Tacit Contract –**
 - Inferred from conduct, silent in nature; falls under implied contracts.
 - Examples: ATM cash withdrawal, auction sale at fall of hammer.
4. **Quasi-Contract –**
 - Not actual contract; created by law in absence of agreement.
 - No offer/acceptance or consent, but legal obligations imposed.
 - *Example:* Finder of lost goods must return to owner.
 - *Example:* Goods delivered by mistake & used → Must pay.
5. **E-Contract –**
 - Formed via electronic means (email, online platforms, EDI).
 - Also called cyber contracts or mouse-click contracts.

Based on performance

1. **Executed Contract –**
 - Consideration already performed.
 - Obligations of both parties completed.
 - *Example:* Cash sale of goods (e.g., grocer sells sugar for cash).
 2. **Executory Contract –**
 - Consideration is a reciprocal promise to be performed in future.
 - Obligations remain outstanding.
 - *Example:* Tuition to start next month with monthly payment agreement.
- Types (within Executory Contracts):**
- a) **Unilateral Contract** – One party has performed; other's obligation pending.
 - *Example:* Reward for finding missing person – finder has performed; reward payment pending.
 - b) **Bilateral Contract** – Obligations pending on both sides.
 - *Example:* Part payment for plot, balance & sale deed pending.

Proposal / Offer (Sec. 2(a)) [RTP Nov 19]

1. **Definition:** Expression of willingness to do or abstain from doing something, with the intention of obtaining assent from the other party.
2. **Parties:**
 - Offeror / Promisor → makes the offer.
 - Offeree → receives the offer.
 - Acceptor / Promisee → accepts the offer.
3. **Essentials:**
 1. Must show willingness *to do or not to do* something.

2. Must be made with a view to obtain assent from the other party.
3. Can be **positive** (doing an act) or **negative** (abstinence from an act).

Types of Offers

1. **General Offer** – Made to public at large; anyone performing conditions accepts it. *Carlill v. Carbolic Smoke Ball Co.*
2. **Specific Offer** – Made to a specific person; only that person can accept. *Boulton v. Jones*
3. **Cross Offer** – Identical offers exchanged in ignorance of each other; no contract.
4. **Counter Offer** – Qualified/conditional acceptance; rejects original offer.
5. **Standing/Continuing/Open Offer** – Open for acceptance over a period; e.g., tenders.

Essentials of a Valid Offer

1. **Capable of creating legal relations** – Social invitations not binding.
2. **Certain & definite** – Vague offers invalid.
3. **Communicated to offeree** – Acceptance in ignorance not valid. *Lalman Shukla v. Gauri Dutt*
4. **Made with view to obtain assent** – Not mere disclosure of intention.
5. **May be conditional** – Must accept all terms.
6. **Cannot presume acceptance on silence** – No reply ≠ acceptance.
7. **May be specific or general.**
8. **May be express or implied** – Words or conduct.
9. **Different from:**
 - Statement of intention.
 - Statement of price.
 - Invitation to offer.
 - Prospectus, auction ads, display of goods, quotations.

Invitation to Offer

1. **Meaning** – Mere invitation to negotiate; precedes an offer; acceptance of it only results in an offer, not a contract.
2. **Test** – Intention to be bound immediately vs. intention to negotiate further.
3. **Examples** – Company prospectus, shop display, auction advertisements, price quotations.
4. **Case Law** – *Harvey v. Facey*, *Harris v. Nickerson*, *Mac Pherson v. Appanna*.

Question 5:

Can Ms. Lovely sue a shopkeeper for refusing to sell a ₹2,000 tagged dress after she offered payment? [Nov 18 - 3 Marks]

Answer:

No, she cannot, as displaying goods with a price tag is only an invitation to offer under the Indian Contract Act, 1872; her payment request was merely an offer, which the shopkeeper was free to reject.

Question 6:

Can Shambhu Dayal be compelled to sell goods selected in a self-service shop when the cashier refuses payment? [MTP March 19, 4 Marks] [MTP Nov 21-4 Marks]

Answer:

No, as **displaying goods in a self-service shop** is merely an **invitation to offer** under the **Indian Contract Act, 1872**; Smt. Prakash's act of **bringing items to the cashier** was only an **offer**, which the **shopkeeper could lawfully reject**.

Question 7:

Can Rahul **compel** a supermarket to **sell** a washing machine at a ₹15,000 **discounted price** shown on the tag when the cashier says the **discount has ended**? [MTP Oct 21-4 Marks] [MTP II Sep 24-4 Marks]

Answer:

No, under the **Indian Contract Act, 1872**, a **price tag** is merely an **invitation to offer**; Rahul's act was an **offer** the cashier could **reject**, so he cannot **enforce** the discounted price.

Question 8:

Can Mr. Vikram **claim ₹10,000 reward** from Mr. Aseem for **finding his stolen car** when Mr. Aseem **denies liability**, calling the ad an **invitation to offer**? [ACT]

Answer:

Yes, under the **Indian Contract Act, 1872**, an **advertisement for a reward** is a **general offer**; by **fulfilling the condition**, Mr. Vikram **accepted** the offer, making Mr. Aseem **liable to pay ₹10,000**.

Question 9:

Can Y **sue X** for **time and travel expenses** when X **cancels** an advertised **auction** on the scheduled date? [ACT]

Answer:

No, under the **Indian Contract Act, 1872**, the **auction advertisement** was merely an **invitation to offer**, not a **binding offer**, so X is not liable for Y's losses.

Acceptance – Section 2(b) [Back question of Module] [RTP Nov 20] [Jan 21- 7 Marks]

1. **Definition** – When the person to whom proposal is made signifies assent → proposal accepted → becomes a promise.
2. **Offer + Acceptance** → Promise
3. **Relation with offer** – Offer inert until accepted; once accepted, cannot be revoked (*lighted match to gunpowder analogy*).

Legal Rules for Valid Acceptance

1. **By proper person** –
 - Specific offer → only to person made (*Boulton v. Jones*).
 - General offer → any person with knowledge (*Carlill v. Carbolic Smoke Ball Co.*).
2. **Absolute & unqualified** –
 - Sec. 7 – Must be unconditional; conditional = counter-offer (*Neale v. Merret, Union of India v. Bahulal*).
3. **Must be communicated** –
 - No contract without communication (*Brogden v. Metropolitan Railway Co., Bhagwandas v. Girdharilal*).
 - Communication must reach offeror (*Heyworth v. Knight*).
4. **Prescribed mode** –
 - Follow prescribed mode; otherwise offeror must object promptly, else deemed accepted.
5. **Time** –
 - Within specified or reasonable time; depends on circumstances (perishable vs. non-perishable goods).

6. Mere silence ≠ acceptance –

- Unless prior conduct indicates so (*Felthouse v. Bindley*).

7. Acceptance by conduct / implied acceptance –

- Sec. 8 – Performing conditions or accepting consideration amounts to acceptance.

Question 10:

Whether Mr. Har Bhajan Lal — who, knowing of a pamphlet reward of ₹500, traced and returned the missing boy (and sent a telegram) — can claim the reward despite no prior communication of acceptance? [ACT]

Answer:

Yes. Under **Sec. 8, Indian Contract Act, 1872** and *Carlill v. Carbolic Smoke Ball Co.*, a **general offer** is a continuing offer that may be accepted by performance (so he is entitled to ₹500), **unless** the offer expressly requires communication of acceptance or states that mere performance will not constitute acceptance.

Question 11:

Can Mr. Pratham **sue the school for loss of salary** when his **job appointment** was **privately conveyed** by a committee member but not **officially communicated**? [RTP Nov 21]

Answer:

No, under the **Indian Contract Act, 1872**, **acceptance** must be **communicated** by the **offeree** or an **authorised agent**; a committee member's **private statement** is not valid acceptance, so no **binding contract** was formed.

Communication

Communication of Offer when complete? (Sec. 4)

- Complete **when it comes to knowledge** of offeree.
- Postal example – If letter posted 10 Mar, received 12 Mar, but read 15 Mar → communicated on **15 Mar**.
- Mere receipt without reading ≠ communication.

Communication of Acceptance

Modes (Sec. 3):

1. **By act** – Written (letter, email, telegram, etc.) or oral (telephone), or conduct.
 2. **By omission** – Forbearance with intent to accept (*Example: witness not attending court for consideration*).
 3. **By conduct** – Actions implying assent (boarding bus, dropping coin in machine, delivery of goods).
- **Mental assent ≠ communication** (*Central Bank Yeotmal v. Vyankatesh*).

Communication of Acceptance When Complete? (Sec. 4):

- **Against proposer** – When acceptance is put in course of transmission, out of acceptor's power. In simple, as soon as letter of acceptance is posted.
- **Against acceptor** – When it comes to proposer's knowledge (e.g., letter reaches proposer).
- **Postal rule** – Proposer bound once acceptance posted (correct address, stamped & duly posted). Acceptor bound only when it reaches proposer. **In such an event the loss of letter in transit, wrong delivery, non-delivery etc., will not affect the validity of the contract.**
- **Instantaneous communication** (phone, telex, fax, email) – Contract complete when acceptance received. However, in case of a call drops and disturbances in the line, there may not be a valid contract. (*Entores Ltd v. Miles*).

Special Conditions

- Tacit communication possible – e.g., terms printed on tickets, receipts (*Mukul Datta v. Indian Airlines, Lilly White v. Mannuswamy*).

- Conditions must be **reasonable**; otherwise unenforceable.
- Standard form contracts enforceable if reasonable notice given **before** contract is formed (*Raipur Transport Co. v. Ghanshyam*).

Question 12:

Is Ramanathan's **withdrawal of acceptance** valid if his **telegram of revocation** reaches before or along with his **posted acceptance letter**? [RTP Nov 18]

Answer:

Under **Sec. 4** of the **Indian Contract Act, 1872**, **revocation** before acceptance **reaches the proposer** is **valid**; (a) **valid if telegram arrives first**, (b) if both arrive together, validity depends on which is read first—**telegram first cancels acceptance, letter first concludes the contract**.

Question 13:

On 10 Apr 2020, B **posted an offer** to S to **sell his house** for ₹10 lakhs. S **read it** on 13 Apr, **posted acceptance** on 16 Apr (reaching B on 20 Apr), but sent a **telegram on 17 Apr revoking acceptance** (reaching B on 19 Apr). What is the **offer completion date**, is **acceptance valid**, and what if **revocation and acceptance arrive together**? [Jan 21 – 6 Marks]

Answer:

Under **Sec. 4**, **Indian Contract Act, 1872**, the **offer completed** on 13 Apr 2020. **Revocation on 19 Apr before acceptance on 20 Apr** makes acceptance **invalid**. If both arrive together, validity depends on which is read first—**telegram first cancels acceptance; letter first forms a contract**.

Question 14:

A **building society** offered to sell property to B for £750, allowing **14 days** to accept. B **posted his acceptance** at 3:30 p.m. the next day, but the society had posted a **revocation** at 1:00 p.m., which B received at 5:30 p.m. Can the revocation stand? [ACT]

Answer:

No, under **Secs. 4–5** of the **Indian Contract Act, 1872** and **Henthorn v. Fraser**, **revocation** must **reach the offeree before acceptance is posted**; since B **posted acceptance before receiving revocation**, the offer stood **accepted** and a **binding contract** was formed.

Question 15:

A applied for shares, **revoked offer** (revocation reaching co. at 11:30 a.m., 27 Oct). Co. resolved **allotment** at 10:00 a.m. and gave **acceptance letter** to peon, but it was not posted till after revocation arrived. [ACT]

Answer:

Under **Secs. 4–5 ICA & London & Northern Bank v. Jones**, acceptance is complete for proposer only when **posted**—here, **revocation was effective**, so **no binding contract** arose.

Question 16:

A offered B **25 chairs** @ ₹1,500 each on 12.02.2024, to remain open till 15.02.2024, but sold to C on 13.02.2024; B accepted on 14.02.2024. [Sep 2024, 2 Marks]

Answer:

As per **Sec. 5 ICA**, an **offer can be revoked anytime before acceptance** is **communicated against proposer**; hence A **validly revoked**, and B cannot **claim damages**.

Question 17:

Whether Raman, who applied for **100 partly paid shares** but never received the letter of allotment sent by post, is liable to pay the balance amount?

Answer:

Yes. Under **Sec. 4, Indian Contract Act, 1872**, communication of acceptance is complete against the proposer when a properly addressed and stamped acceptance is posted, even if lost in transit; hence Raman is bound to pay for the shares.

Communication of Performance

Section 4 – Acceptance Completion:

- *From proposer's view:* Acceptance complete when it is out of acceptor's control (put in course of transmission).
- *From acceptor's view:* Acceptance complete when it reaches proposer.

Performance as Acceptance:

- If offer requires communication of performance, performance alone is insufficient—communication needed.
- If offer states that performance alone is acceptance, no communication required.

Carlill v. Carbolic Smoke Ball Co. – Principles:

1. Offer must have a definite promise binding the offeror upon specified acceptance.
2. Offer can be made to a specific person or the public at large.
3. If offer is a promise in return for an act, performing the act counts as acceptance even without communication (unless communication is required).

Revocation of Offer & Acceptance

1. Completion of Revocation (Sec. 4)

- **Against revoker** – When put into course of transmission, out of his power. In Simple, as soon as revocation is posted.
- **Against receiver** – When it comes to his knowledge.

2. When Revocation Possible (Sec. 5)

- **Proposal** – Any time before communication of acceptance is complete *against proposer* (before acceptance posted).
- **Acceptance** – Any time before communication of acceptance is complete *against acceptor* (before acceptance reaches proposer).

3. Contract Modes

- **By Post** – Follows Sec. 4 & 5 rules.
- **By Telephone/Telex** – Contract formed when acceptance received; acceptor must ensure proposer hears acceptance.

5. Modes of Revocation of Offer (Sec. 6) (5 Marks) [Nov 18] [MTP Aug 18, 7 Marks]

1. **Notice of revocation** – Communicated before acceptance.
2. **Lapse of time** – Expiry of specified or reasonable time (*Ramsgate Victoria Hotel v. Montefiore*).
3. **Non-fulfilment of condition precedent** – Condition not satisfied ⇒ offer lapses.
4. **Death/insanity of proposer** – Effective if known to acceptor before acceptance.
5. **Counter-offer** – Original offer revoked.
6. **Non-acceptance in prescribed/usual mode**
7. **Subsequent illegality** – Offer becomes void.

CHAPTER 2 - THE INDIAN CONTRACT ACT, 1872

Unit 2: Consideration - Complete Unit is Important

WHAT IS CONSIDERATION? [Nov 19 - 7 Marks] [RTP Nov, 2018] [MTP March 19, 5 Marks] [MTP II Sep 24 – 6 Marks]

1. **Case Law** → *Misa v. Currie*: May be a benefit to promisor or detriment to promisee.
2. **Forms** →
 - **Act (Doing something)** – e.g., selling goods on credit, scoring above 95% for promised job.
 - **Abstinence (Not doing something)** – e.g., not filing suit for payment, not opening shop nearby.
3. **Essentials**:
 - Must be **at the desire of the promisor**.
 - May move from **promisee or any other person**.
 - May be **past, present, or future**.
4. **Crux** → Promise/performance exchanged; benefit/right/profit to one OR detriment/loss/forbearance to other.

Legal Rules Regarding Consideration

1. **At the desire of the promisor** → Must move at promisor's request (*Durga Prasad v. Baldeo*). Voluntary acts ≠ consideration.
2. **May move from promisee or any other person** → Stranger to consideration allowed (*Chinnayya v. Ramayya*).
3. **Executed & Executory** →
 - **Executed** = act done.
 - **Executory** = promise to act.
4. **Past, Present, Future** → Past valid if at promisor's request; present = simultaneous exchange; future = promise for promise.
5. **Need not be adequate** → Must have some value; inadequate consideration is valid if consent is free (Sec. 25, Expl. 2). [Back Question of Module] [MTP Oct 19, 5 Marks] [MTP Aug 18, 5 Marks] [RTP NOV 20] [RTP May 21]
6. **Performance of existing legal duty** → Not valid unless person promises to do more that he is legally bound to do and not against public policy.
7. **Must be real, not illusory** → No legal/physical impossibilities.
8. **Must be lawful** → Not unlawful, immoral, or opposed to public policy.

Question: 1

Whether **Mr. Sawant** can claim the **annual annuity** of ₹20,000 from **Ms. Reema**, given that he furnished **no consideration**, when:

Mr. Balwant gifted land to **Ms. Reema** via a **registered deed**, stipulating **annual payment** to **Mr. Sawant**.

On the same day, **Ms. Reema** executed an **agreement** promising this payment.

Ms. Reema defaulted, claiming **lack of consideration** from **Mr. Sawant**. [RTP Nov 2018]

Answer:

Under **Sec. 2(d)** of the **Indian Contract Act, 1872**, **consideration** can move from the **promisee or any other person**; here, consideration came from **Mr. Balwant**. The **deed of gift** and **promise** were **one transaction**, providing **sufficient consideration**. Thus, although a **stranger to a contract** cannot sue, a **stranger to consideration** can enforce it. **Ms. Reema's contention** is **invalid**.

Question 2:

Whether **X** can refuse to sell his car worth ₹1,00,000 to **Y** for ₹10,000, after receiving a **better offer** of ₹20,000, on the ground that the **consideration** was **inadequate**, when the **agreement** was already made and **consent** was **freely given**. [ACT]

Answer:

Under **Sec. 25, Indian Contract Act, 1872**, an **agreement** with **free consent** is **not void** merely due to **inadequacy of consideration**. **X** is **liable** to **Y** for **damages** for **breach of contract**.

Suit by a Third Party to a Contract [RTP May 20] [7 Marks June 23] [RTP May 18]

- **Rule** → Stranger to consideration allowed, but **stranger to contract cannot sue** (*Doctrine of Privity of Contract*).
- **Exceptions** – Third party can sue in:
 1. **Trust** → Beneficiary can enforce rights.
 2. **Family settlement** → Non-party family member can enforce written settlement.
 3. **Marriage arrangements** → Beneficiary of marriage contract can sue.
 4. **Assignment** → Assignee can enforce assigned contractual benefits (non-personal skill).
 5. **Acknowledgement/Estoppel** → Promisor acknowledging third party's rights becomes bound.
 6. **Covenants running with land** → the person who purchases land with notice that the owner of land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successor of the seller.

Example: Land sold with condition “cannot be used for industrial purposes” to protect adjacent agricultural land — all future owners must comply.
 7. **Agency** → Principal can enforce contracts made by agent within authority.

Question 3:

Whether **B**, the **illegitimate son** of **A's father**, can **claim** a **certain sum of money** and a **village** from **A**—who **succeeded** to his **father's estate** and had **agreed** with his **father** to **give** them to **B** on **attaining majority**—when **A** now **refuses** after **B** has **attained majority**. [ACT]

Answer:

Under the **Doctrine of Privity of Contract**, a third party generally cannot sue; however, an exception exists where a **trust** is created. Here, a trust was created in **B's** favour for the money and the village, so **B**, as beneficiary, can enforce it against **A** and recover the promised assets.

Question 4:

Whether **Mr. Chotelal**, son of the seller, can **enforce** the **condition** in the **sale deed** dated **25-09-2018**—where **1 acre** of the **10 acres** sold for ₹25 lakhs to **Mr. Mohanlal** was **reserved** for his **use**—when, after the **seller's death** on **12-10-2018**, the **purchaser** began **constructing** an **auditorium** on the **whole land** and **denied** him **access**. [4 Marks May 2019]

Answer:

Under **Sec. 2(d)** of the **Indian Contract Act, 1872** and the **principle of privity of consideration** (as in **Chinnaya v. Ramayya**), **consideration** can move from a **third party**, making the **promise enforceable**. Additionally, in the case of a **covenant running with the land**, the **purchaser with notice** is **bound** by such **duties**. Therefore, **Mr. Chotelal**, though a **third party** to the **contract**, can **sue** to **enforce the promise** and **restrain construction** on the **1 acre reserved** for him.

Validity of Agreement Without Consideration [RTP Jan 25] [Sep 24 - 3 Marks]

1. **Natural Love & Affection [Sec. 25(1)]** → Conditions: (i) Near relationship, (ii) Natural love & affection, (iii) Written, (iv) Registered.
2. **Past Voluntary Services (Sec. 25(2))**
 - Services rendered voluntarily.
 - Rendered for the promisor.
 - Promisor must be in existence when rendered.
 - Promisor intended to compensate.
3. **Promise to Pay Time-Barred Debt (Sec. 25(3))**
 - Written & signed (by person or by his authorised agent) promise to pay debt barred by limitation.
 - **Example:** A is indebted to C for Rs.60,000 but the debt is barred by the Limitation Act. A sign a written promise now to pay Rs.50,000 in final settlement of the debt. This is a contract without consideration, but enforceable for Rs.50,000 only.
4. **Agency [Sec. 185]** → No consideration required to create agency.
5. **Completed Gift [Sec. 25 Expl. 1]** → Valid without consideration once gift is made.
6. **Bailment (Sec. 148)** → No consideration required.
7. **Charity (Kadarnath v. Gorie Mohammad)** → Promise enforceable if liability undertaken on faith of promise.

Question 5:

Whether **Y**, the **wife**, can **recover ₹1,000 per month** from **X**, her **husband**, under a **registered document** when the **promise** was

- (a) made **without any disagreement/quarrels**, or
(b) made **after disagreements/quarrels**,
under the **Indian Contract Act, 1872**. [ACT]

Answer:

- (a) **Promise** made **without quarrels** satisfies all **conditions** ⇒ **Y can recover**.
(b) **Promise** made **after quarrels** lacks **natural love and affection** ⇒ **Y cannot recover**.
(Leading case: **Rajlakhi Devi v. Bhoot Nath Mookherjee**).

Question 6:

Whether **Mr. Ram Lal Birla's married daughter** can **claim ownership** of a **house gifted** to her by her **father** through a **written** but **unregistered document**, where the **gift** was based on **natural love and affection**, but the **donor died** before **registration**. [RTP Nov 21] [RTP Nov 22] [RTP June 23] [MTP I Sep 24 - 4 Marks]

Answer:

Here, the document was written but **not registered**, hence the transfer is **unenforceable**, and the daughter **cannot get the house as a gift** under the Indian Contract Act, 1872.

Question 7:

Whether **Tania** can **recover ₹75,000** from **Anita**, when **Anita promised** to **pay Tania** for **treatment** that was **voluntarily given** by **Tania's mother, Sonali**, during **Anita's illness**, without **accepting payment**. [ACT]

Answer:

As per **Section 2(d)**, valid consideration must be given at the **desire of the promisor**, not voluntarily. **Section 25(2)** (promise to compensate a person who has voluntarily done something for the promisor) applies only if the promise

is made to the person who actually rendered the service. Since **Tania** did nothing for Anita, the promise is **not enforceable**, and Tania **cannot recover**.

Question 8:

Whether **G's** agreement to **settle** the full **₹30,00,000 time-barred debt** owed to **Y** is **enforceable** under the **Indian Contract Act, 1872**. [Dec 20, 2 Marks]

Answer:

As per **Section 25(3)**, a **promise to pay a time-barred debt** is **valid** only if it is **in writing** and **signed** by the **debtor** or his **authorised agent**. Therefore, **G's** promise is **enforceable** only if it **meets these conditions**; otherwise, it is **not enforceable**.

Question 9:

Whether the **Shri Shivay Temple Trust committee** can **recover contributions** promised by **new members**, when the **renovation cost** increased from **₹5,00,000** to **₹7,00,000** based on those **promises**, and **members** now **deny payment** claiming the **contract** was **without consideration** under the **Indian Contract Act, 1872**. [RTP May 25]

Answer:

Under **Section 25**, **agreements without consideration** are **void**, but an **exception** applies where the **promisee** **incurs liability** on the **strength of a promise to contribute to charity** (**Kedarnath v. Gorie Mahommed**). Here, the **committee** undertook **additional liability** for **renovation** based on **members' promises**, making the **promises valid** and **enforceable**. The **committee** will **succeed**, and **members** must **pay** the **promised amounts**.

Question 10:

Whether **Mr. A**, who **spent ₹1.5 lakh** on the **emergency treatment** of a **cancer-affected child** in his **orphanage** based on **Mr. S's** **promise to donate ₹2 lakh**, can **recover** the **amount** from **Mr. S** when **Mr. S** **refuses to pay**, under the **Indian Contract Act, 1872**. [Sep 24 - 2 Marks] [MTP II Jan 25 - 3 Marks]

Answer:

As per **Section 25**, **agreements without consideration** are **void**, but an **exception** applies where the **promisee** **incurs liability** relying on a **promise to contribute to charity**. Since **Mr. A** **undertook** and **incurred ₹1.5 lakh expense** based on **Mr. S's** **promise**, the **promise** is **valid** and **enforceable**, and **Mr. A** can **recover ₹1.5 lakh** from **Mr. S**.

Question 11:

Whether **trustees** can **recover ₹10,000** promised by **X** for temple repairs in two situations—
(a) when they **have not** incurred any liability on the faith of **X's** promise,
(b) when they **have** incurred liability on the faith of **X's** promise. [ACT]

Answer:

- Case (a): As per *Abdul Aziz v. Masum Ali*, without incurred liability, there is **no consideration**, so the promise is **void** and trustees **cannot recover**.
- Case (b): As per *Kedar Nath v. Gorie Mohammad*, if trustees incurred liability relying on **X's** promise, there is valid consideration (detriment to promisee) and the promise is **enforceable**, so trustees **can recover**.

Question 12:

Whether **₹50,000** given or promised by **X** to **Y** (his neighbour's wife) without consideration is valid—
(1) when given as a **completed registered gift deed** and there is **no near relation**,
(2) when it is merely a **promise to gift** the amount. [ACT]

Answer:

- Case 1: Under *Explanation 1 to Section 25*, a **completed gift** (even without near relation or consideration) is **valid**.
- Case 2: Under the same provision, a **mere promise to gift** without consideration is **void** as it is not a completed gift.

CHAPTER 2 - THE INDIAN CONTRACT ACT, 1872		
Unit 3: Other Essential Elements of a Contract		
Wisdom Blueprint		
S. no	Section/Provision	Relevancy
1	Agreement with minor	PQ
2	Free consent along with difference between	DQ + PQ
3	Opposed to public policy <ul style="list-style-type: none"> • Trafficking in Public Offices/Titles • Monopolies • Interference with Justice 	PQ
4	Consideration Unlawful in Part (Sec 24)	PQ
5	Restraint of Trade (Sec. 27)	PQ
6	Restraint of Legal Proceedings (Sec. 28)	PQ
7	Contract of Insurance Vs. Wagering Agreement	DQ
8	Rest - Reading category	

Capacity to Contract – Sec. 11, Indian Contract Act
Competent to contract – Person who: <ol style="list-style-type: none"> 1. Attained age of majority (18 years in India, Indian Majority Act, 1875). 2. Of sound mind (Sec. 12). 3. Not disqualified by law.
A. Minor (Below 18 years)
<ol style="list-style-type: none"> 1. Minor's agreement – void ab initio – <i>Mohori Bibi v. Dharmodas Ghose (1903)</i>. 2. No ratification after majority – Even fresh promise is void (no consideration). 3. Minor as beneficiary – Can take benefits (e.g., promissory note in his favour). 4. Rule of estoppel not applicable – Can always plead minority even if misrepresented age. 5. Liability for necessaries – Sec. 68: No personal liability; only property liable; two conditions – <ol style="list-style-type: none"> (i) Necessary for support in station of life. (ii) Not already sufficiently supplied. [May 2018, 2 Marks] 6. Contract by guardian – Valid only if within authority, for benefit of minor, and legally competent. <ul style="list-style-type: none"> • Guardian – No power to bind minor for purchase of immovable property. • Certified (court-appointed) guardian – With court sanction, can enter contract for sale of minor's property. • Such sale contract – Enforceable by either party. 7. No specific performance – Agreement void; cannot enforce. 8. No insolvency – Cannot be adjudged insolvent. 9. Partnership – Cannot be partner; can be admitted to benefits (Sec. 30, Partnership Act). 10. Minor as agent – Can act as agent; no personal liability. 11. Cannot bind parent/guardian – Unless authorized. 12. Joint contract with adult – Adult liable; minor not liable (<i>Sain Das v. Ram Chand</i>). 13. Surety for minor – Adult surety liable to third party. 14. Minor as shareholder – Cannot hold shares unless fully paid & through guardian. 15. Liability for torts – Liable for torts unless it amounts to breach of contract.
B. Person of Sound Mind – Sec. 12
<ul style="list-style-type: none"> • Sound mind = Capable of understanding & forming rational judgement. • Usually unsound, occasionally sound → Can contract when sound. • Usually sound, occasionally unsound → Cannot contract when unsound. • Contract by unsound mind person – Void.

C. Disqualified Persons

- **Foreign Sovereigns & Ambassadors.**
- **Alien enemy.**
- **Corporations** (beyond powers).
- **Convicts.**
- **Insolvents.**

Question 1:

Whether **Vishal** can recover **₹2 lakhs loan** (taken on **1 Mar 2016**, repayable by **30 May 2017**) from **assets** worth **₹15 lakhs** of **Ishaan**, a **16-year-old engineering student**, under the **Indian Contract Act, 1872**. [MTP March 18, 4 Marks] [RTP May 2020] [MTP Oct 20- 6 Marks] [RTP Sep 24]

Answer:

As per **Sec. 11**, a **minor (below 18 years)** is **incompetent to contract** and any **agreement** with him is **void** [**Mohori Bibi v. Dharmo Das Ghose (1903)**], but the **loan amount** given for paying **college fees** can be **recovered** from the **minor's property**.

Question 2:

Whether a **lender** can recover **₹50,000** borrowed by **X** at **age 16** for **personal purposes**, after **X attains majority** and fails to repay, under the **Indian Contract Act, 1872**. [Dec 21 3 Marks]

Answer:

As per **Sec. 11** and **Mohori Bibi v. Dharmo Das Ghose (1903)**, a **contract with a minor** is **void**; **personal loans** for **non-necessaries** are not enforceable, and only the **minor's estate** (for **necessaries**) can be made liable—hence the **lender** cannot recover the amount from **X**.

Question 3:

Whether **Mobile Sales Centre** can recover **₹25,000** for a **mobile** bought on **credit** by **17-year-old Rohan** (for **online classes**), when **Rohan** has **₹15,000 cash** and his **father** has sufficient funds, under the **Indian Contract Act, 1872**. [RTP Sep 25]

Answer:

As per **Sec. 11**, a **contract with a minor** is **void-ab-initio**; **parents** aren't liable for a **minor's contracts**. For **necessaries**, liability is limited to the **minor's assets**—thus, **Mobile Sales Centre** can recover only **₹15,000** from **Rohan's property**, not from him personally or his parents.

Question 4:

Whether a **shopkeeper** can recover **₹40,000 loan** given to **Rahul**, a **minor** who **misrepresented his age**, gave an **expensive watch** as **security**, bought a **₹30,000 laptop**, and spent the rest on a **trip**, under the **Indian Contract Act, 1872**. [RTP Nov 21]

Answer:

As per **Sec. 11**, a **minor's agreement** is **void-ab-initio**; **no recovery of the loan** is possible. However, under the **equitable doctrine of restitution**, **property** or **goods obtained** (e.g., the **laptop**) can be ordered to be returned, but **Rahul** cannot be compelled to repay **₹40,000**.

Question 5:

Whether **Mr. Gupta**, an **authorised laptop dealer**, can recover **₹60,000** (plus **16% p.a. interest**) for a **laptop** sold on **credit** to **Srishti**, a **minor** who **falsely represented her age** and promised that her **father** would pay if she defaulted, by (i) **suing Srishti during minority**, (ii) **suing her father**, or (iii) **suing Srishti after she attains majority**, under the **Indian Contract Act, 1872**. [May 22 - 6 Marks] [RTP Dec 23] [RTP Jan 25]

Answer:

As per **Sec. 11**, a **minor's contract** is **void-ab-initio**; she **cannot be sued during minority**, her **father is not liable** without **express/implied authority**, and the **agreement cannot be ratified after majority**—hence **Mr. Gupta cannot recover** the amount in any of the three ways.

Consent - Section 13

- **Sec. 13 Definition** – Consent = *Two or more persons agree upon the same thing in the same sense (consensus ad idem)*.
- **Example** – Each party thinks of different person/ship due to same name → No contract.

Definition of 'Free Consent' (Section 14)

Sec. 14 – Free Consent = Consent **not caused by**:

1. **Coercion** (Sec. 15)
2. **Undue influence** (Sec. 16)
3. **Fraud** (Sec. 17)
4. **Misrepresentation** (Sec. 18)
5. **Mistake** (Secs. 20–22)

Effect:

- Consent caused by coercion, fraud, misrepresentation, undue influence → **Contract voidable** at option of aggrieved party.
- Consent vitiated by mistake → **Contract void**.

Coercion (Section 15) [Nov 19, 5 Marks] [RTP May 18] [MTP Oct 21, 5 Marks]

Sec. 15 – Coercion =

- Committing/threatening to commit **any act forbidden by IPC**, or
- **Unlawful detaining/threatening to detain** any property,
- With intent to cause a person to enter into an agreement.

Source/Target – Need **not** come from contracting party; can be against **any person**.

Effects (Sec. 19 & 72):

1. Contract **voidable** at option of aggrieved party.
2. Money/property received under coercion → **Must be returned**.

Threat to commit suicide = Coercion (*forbidden by IPC*). [Sep 2024, 2 Marks] [May 25 - 2 Marks]

Examples:

- Husband threatens suicide to get release deed from wife & son → Coercion.
- Agent unlawfully detains books until released from liability → Coercion.

Undue influence (Section 16) [May 2019, 5 Marks] [Jan 25 – 6 Marks] [RTP May 20]

Sec. 16 – Undue Influence

- **Definition** – One party in position to **dominate the will** of the other and uses that position to obtain **unfair advantage**.
- **Essentials:**
 1. **Relation between parties** – Near relationship enabling influence.
 2. **Position to dominate will** – Exists when:
 - a) **Real/apparent authority** – e.g., master–servant, doctor–patient.
 - b) **Fiduciary relationship** – e.g., parent–child, solicitor–client, guru–disciple.
 - c) **Mental distress** – illness, age, bodily distress.

d) **Unconscionable bargains** – unfair terms; presumption of undue influence (esp. in money-lending/gifts).

3. **Object** – To take **undue advantage** of influence.

4. **Burden of proof** – Party avoiding contract must prove:

- Other party in position to dominate will,
- Used that position to obtain consent,
- Transaction unfair/unconscionable.

- **Exceptions** – Ordinary course of business transactions (e.g., market loan at high interest during scarcity) not undue influence.

Effect – Sec. 19A

1. Contract **voidable** at option of aggrieved party.
2. Court may set aside **absolutely** or on **just terms** if benefit received.

Question 6:

Whether a **contract** can be **avoided** when **consent** is obtained by **undue influence**—examples include (i) a **teacher** inducing a **student** to sell a **car** below **purchase price** for more **exam marks**, (ii) a **doctor** making a **patient** sign a **₹5,000 promissory note** during **illness** for a **₹300 consultation**, and (iii) an **employer** inducing an **employee** to sell a **flat** below **market value** for a **promotion**—under the **Indian Contract Act, 1872**. [RTP May 18] [RTP Nov 19] [RTP Nov 22] [RTP May 22] (2 Marks – June 23)

Answer:

As per **Sec. 16**, **undue influence** arises when one party, in a **position to dominate the will** of the other, uses that **position for unfair advantage**; such **contracts** are **voidable** at the **option of the influenced party (Sec. 19A)**. In all these cases, the **aggrieved party** can **rescind the contract**; the **wrongdoer** can only claim **reasonable consideration** (e.g., **actual consultation fee**) if any **benefit** was conferred.

Fraud (Section 17) [May, 2018, 5 Marks] [MTP April 19, 5 Marks]

Definition – Fraud = Any of the following acts by a party/agent/with connivance, **with intent to deceive or induce**:

1. Suggestion as fact of what is not true, without belief in truth.
2. Active concealment of fact by one knowing it.
3. Promise without intention to perform.
4. Any act fitted to deceive.
5. Any act/omission law declares fraudulent.

Essentials:

1. False representation/assertion (may include silence if duty to speak or silence = speech).
 - **Duty to speak** → e.g., fiduciary relation.
 - **Silence = speech** → e.g., “If you don’t deny, I assume...” and party stays silent.
2. Representation related to a **fact** (not mere opinion).
3. Made **before contract** to induce other party.
4. Made **knowingly false**, without belief in truth, or recklessly.
5. Other party **induced** to act upon it.
6. Other party **relied** and was **deceived**.
7. Loss suffered as a result.

Effects:

- Contract **voidable** at option of defrauded party.
- Remedies:

1. **Rescind** contract within reasonable time.
2. **Sue for damages.**
3. Insist on **performance** with compensation to be in position as if statement were true

Exceptions (No voidability):

1. Consent caused by **silence** amounting to fraud, but party had means to discover truth with ordinary diligence.
2. Fraud did not cause consent.

Question 7:

Whether **sale by auction** of an **unsound horse** by **P** (who **knows the defect**) to **Q** is **valid** when (a) **P says nothing**, (b) **P says nothing** to **Q** who is his **newly adult daughter**, and (c) **P remains silent** when **Q says silence will mean the horse is sound**, under **Sec. 17** of the **Indian Contract Act, 1872**. [RTP May 19] [MTP I Sep 24 – 3 Marks]

Answer:

As per **Sec. 17**, **mere silence** is **not fraud** unless there is a **duty to speak** or **silence equals speech**—thus, (a) **valid contract (no duty to disclose)**, (b) **not valid (fiduciary relation makes silence fraud)**, (c) **not valid (silence amounts to speech, hence fraud)**.

Question 8:

Whether **Karan**, after paying **₹20,000** for a **wooden table** examined before purchase but with a **broken leg** concealed by **Mr. X** using **pasted wood**, can **return the table** and **claim refund** under the **Indian Contract Act, 1872**. [RTP Nov 22]

Answer:

As per **Sec. 17(2)**, **intentional concealment of a material defect** is **fraud**, giving the **aggrieved party** the **right to rescind the contract** and **claim compensation** under **Sec. 19**—thus **Karan** can **return the table** and **recover his loss** from **Mr. X**.

Question 9:

Whether a **salesman's silence** when **Kapil** mistakenly picks an **aluminium pan** instead of a **steel pan**, after being told the **section contains both types**, amounts to **fraud** under **Sec. 17** of the **Indian Contract Act, 1872**. [RTP May 22 - 6 Marks]

Answer:

As per **Sec. 17**, **mere silence** is **not fraud** unless there is a **duty to speak** or **silence equals speech**—here, the **salesman** had **no duty** to correct **Kapil's mistake**, hence **no fraud** and **Kapil cannot file a suit**.

Misrepresentation (Section 18)

Meaning:

False statement made innocently, without intent to deceive, inducing the other party to contract.

Instances (Sec. 18):

1. **False statement of fact** → Maker believes it to be true, but belief not justified by available information.
2. **Breach of duty** → Without intent to deceive, but gaining advantage.
3. **Innocent inducement to mistake** → Causing other party to be mistaken about subject matter.

Examples:

- Second-hand info given as fact.
- Belief without verification (motorcycle engine).
- Genuine but baseless belief (mare).
- Mere mistake of buyer's own valuation ≠ misrepresentation.

Effect on Contract:

- **Voidable** at the option of aggrieved party.
- Remedy: Rescind contract.
- **No damages** unless fraud is proved.

Question 10:

Whether **Suraj** can **rescind the contract** when **Sohan** induced him to buy a **motorcycle** by saying it was in **good condition**, **defects** were later found, **Sohan** agreed to bear **40% repair cost**, but after **repairs** the **motorcycle stopped working again** — examining the concept of **misrepresentation** under **contract law**. [RTP May 19] [RTP May 20]

Answer:

As per **Section 19, Indian Contract Act, 1872**, **misrepresentation** allows the **aggrieved party** to **rescind the contract**; however, the **right is lost** if, after knowing of the **misrepresentation**, the party **affirms the contract** or **takes benefits** under it. **Suraj**, by accepting **Sohan's offer** to bear **40% repair cost**, **affirmed the sale** and therefore **cannot rescind the contract**.

Question 11:

Whether **Akshay**, who purchased a **pre-owned car** from **Sahil** (a dealer) on the condition it should be **accident-free**, but later discovered it was **accidental**—when **Sahil** himself had unknowingly bought it from **Raju** by **fraud**—can **avoid the contract** and also **claim damages** under the **Indian Contract Act, 1872**. [RTP May 25]

Answer:

As per **Section 18** and **Section 19**, the case involves **misrepresentation (Sahil's innocent erroneous belief)**, making the **contract voidable** at **Akshay's option**; **Akshay** can **rescind the contract** but **cannot claim damages**, since **damages** are allowed only in **fraud**, not **misrepresentation**.

Question 12:

Whether **Mr. Chhotu**, who bought a **motor car** from **Mr. Samant** for **₹3,00,000** after being told it **runs 30 km per litre**—when both **fuel** and **speed meters** were working perfectly—can **rescind the contract** on the ground of **misrepresentation** under the **Indian Contract Act, 1872**. [MTP Aug 18, 6 Marks] [RTP NOV 20] [RTP May 21]

Answer:

As per **Section 19** and its **exception**, since the **meters were functioning** and **Mr. Chhotu** had the **means of discovering the truth** with **ordinary diligence**, the **contract is not voidable**; hence, he **cannot rescind it**.

Question 13:

Whether **X**, who purchased **shares** based on a **prospectus** containing a **false statement** that **Z** was a **director**—when **X** had never heard of **Z** and the **statement was immaterial**—can **claim damages for fraud**. [ACT]

Answer:

Since the **false statement** did **not induce X** to buy the **shares**, as per **Smith v. Chadwick**, **X cannot claim damages**.

Question 14:

Whether a **vendor's statement** that, in his **opinion**, **land** could support **2000 sheep**—when in reality it could support only **1500**—amounts to **fraud**. [ACT]

Answer:

As per **Bisset v. Wilkinson**, the **statement** was merely an **opinion**, not a **factual representation**, and therefore does **not amount to fraud**.

Basis of Difference	Coercion	Undue Influence
Nature of Action	Physical force or threat; compels party against will	Moral or mental pressure
Criminal Action	Involves act forbidden by IPC or unlawful detaining of property	No illegal act or threat
Relationship	No relationship required	Relationship is necessary
Exercised by Whom	Can be by promisor or even stranger	Always between parties to contract
Enforceability	Voidable at option of coerced party	Voidable or modifiable by court
Benefits Received	Must restore benefits (Sec. 64) if rescinded	Court may order return (whole/part) or none

Basis	Fraud [Dec 20 - 7 Marks]	Misrepresentation [Dec 20 - 7 Marks]
Intention	Intend to deceive by hiding truth	No intention to deceive
Knowledge of Truth	Knows statement is false	Believes statement is true
Remedy	Rescind + claim damages	Rescind / restitution, no damages
Means to Discover Truth	Cannot plead victim had means to discover truth	Can plead victim had means to discover truth

Mistake (Section 20, 21 & 22)

Mistake – Definition: Innocent/erroneous belief leading to misunderstanding. Two types – *Mistake of Law* & *Mistake of Fact*.

Type	Sub-type	Key Points
Mistake of Law	Indian Law	No relief for ignorance of law; contract not voidable (e.g., debt barred by limitation).
	Foreign Law	Treated as mistake of fact → agreement void.
Mistake of Fact	Bilateral (Sec. 20)	Both parties mistaken on essential fact → agreement void.
		Cases: quality, existence, identity, title, price, quantity of subject-matter.
	Unilateral (Sec. 22)	Mistake by one party → contract not voidable.

LEGALITY OF OBJECT AND CONSIDERATION - SECTION 23

Consideration/Object unlawful if:

- Forbidden by law** – punishable under statute or prohibited by regulations/orders.
Eg.: Child marriage & dowry → void.
- Defeats provisions of law** – indirectly nullifies legislative intent.
Eg.: Purchase by defaulter through benami → void.
- Fraudulent** – promotes or involves fraud.
Eg.: Agreement to divide gains from fraud → void.
- Involves injury** – criminal/wrongful harm to person/property.
Eg.:
 - Printing book violating copyright → void.

- Slavery-like manual labour clause → void.
- 5. **Immoral** – against good morals.
Eg.:
 - Money for enabling divorce & marriage → void.
 - Payment for arranging girl for marriage → void.
- 6. **Opposed to public policy** – restricts contractual freedom for community welfare.

Agreements Opposed to Public Policy [Jan 25 – 6 Marks]

1. **Trading with Enemy** – Trade with enemy during war without govt. licence → void.
Pre-war contracts → suspended/dissolved.
2. **Stifling Prosecution** – Preventing prosecution of offences → void.
Exception: Compoundable offences (with/without court permission) → valid.
3. **Maintenance** – Funding litigation without interest in it → void if unreasonable/malicious.
4. **Champerty** – Funding litigation for share in proceeds → void if unreasonable/malicious.
5. **Trafficking in Public Offices/Titles** – Money consideration for public jobs/titles → void. **(Dec 23 - 7 Marks)**
6. **Monopolies** – Agreements to create monopolies → void.
7. **Marriage Brokerage** – Negotiating marriage for reward → void.
(Marriage bureaus giving info only → not covered)
8. **Interference with Justice** – Influencing judges/witnesses or corrupt legislative influence → void.
9. **Interest Against Obligation** – Agent/manager taking secret payments against duty → void.
10. **Consideration Unlawful in Part (Sec. 24)** – If part of consideration is unlawful & inseverable → whole contract void.
If severable → legal part may stand.

Question 15:

Whether an **agreement** promising ₹10 lakhs to a **judicial officer** for **not representing the opposite party**—amounting to **interference with justice** and **restraint of legal proceedings**—is **enforceable** under the **Indian Contract Act, 1872** [Dec 20 4 Marks] [RTP Dec 23]

Answer:

As per **Sections 10, 23, and 28**, the **agreement** has an **unlawful object**, is **opposed to public policy**, and is **expressly void** as a **restraint of legal proceedings**; hence **Mr. C cannot recover the promised amount**.

Question 16:

Whether an **agreement** to pay a **public servant** ₹10 lakhs to **retire early** so another person can be appointed is **valid** under the **Indian Contract Act, 1872**. [Jan 21 – 4 Marks] [RTP May 21] [Dec 23] [RTP Sep 24]

Answer:

As per **Section 23**, **trafficking in public offices** is **opposed to public policy**. The **agreement** is **void**, and such **consideration** is **unlawful**; hence it **cannot be enforced**.

Question 17:

Whether **A** can claim ₹50,000 from **B** under an agreement where **A sold his house** for ₹10,00,000 to **B** and also agreed that if **B used the house for gambling**, **B would pay ₹50,000**, when **B later started gambling** there. [RTP May 22]

Answer:

As per **Section 24**, **Indian Contract Act, 1872**, sale of the house is a **valid and enforceable agreement**, but the **clause to pay ₹50,000 for gambling use** is **unlawful and void**; the **lawful and unlawful parts** are **severable**, so **A cannot claim ₹50,000**.

VOID AGREEMENTS

1. **Restraint of Marriage (Sec. 26)** – Agreement restraining marriage of major → void.
 - **Badu v. Badarnessa (1919)**: Agreement allowing first wife to divorce if husband marries again → **Not void**, as it does not restrain marriage, only imposes a penalty.
 - **Co-widows agreement**: If either remarried → forfeiture of share in deceased husband's property → **Not void**, no restraint on remarriage, only consequence specified.
 - **Widow's maintenance agreement**: Loss of maintenance rights on remarriage → **Not void** for same reason.
2. **Restraint of Trade (Sec. 27)** – Agreement restraining lawful profession/trade/business → void.
Exceptions:
 - Sale of goodwill with reasonable limits.
 - Outgoing partner's non-compete (Sec. 36 Partnership Act).
 - Partner's non-compete during partnership (Sec. 11 Partnership Act).
 - Employee non-compete *during* employment → valid.
 - Exclusive dealing agreements / price maintenance agreements → valid.
3. **Restraint of Legal Proceedings (Sec. 28)** – Agreement restricting legal enforcement or shortening limitation period → void.
Exceptions: Written agreement to refer disputes (present/future) to arbitration → valid.
4. **Uncertainty (Sec. 29)** – Agreement with uncertain meaning → void unless capable of being made certain.
5. **Wagering Agreements (Sec. 30)** – Betting on uncertain events with mutual win/lose chance → void.
Essentials: [June 24 - 6 Marks] [MTP I Jan 25 – 6 Marks]
 - Promise to pay money/money's worth.
 - Conditional on uncertain event.
 - Mutual win/lose.
 - No genuine interest in event except stake.

Transactions similar to wagers (void)

- **Lotteries** – Government sanction removes penalty but remains void.
- **Crossword/picture competitions of chance** – void.
- **Speculative transactions** (settling differences without delivery) – void.
- **Horse race bets** (< ₹500 prize) – void.

Transactions not wagers (valid)

- **Chit funds**.
- **Commercial/share transactions with delivery**.
- **Games of skill** (Prize money ≤ ₹1,000 under Prize Competition Act).
- **Insurance contracts** (contingent contracts).

Question 18:

Validity of restraint on trade after sale of goodwill — Rohan sells grocery business with goodwill worth ₹1,00,000 to Rohit for ₹5,00,000, agrees not to open similar store anywhere in India for 10 years, but opens one in same city after 2 months. [MTP Oct 21 - 6 Marks] [RTP June 23]

Answer:

As per Sec. 27, restraint after sale of goodwill is valid only if reasonable in time and area; restriction over whole of India for 10 years is unreasonable, so agreement is void and Rohit cannot take legal action.

Question 19:

Scope of restraint after sale of goodwill — Kashish sells artificial jewellery business to Naman, agrees not to carry on artificial or real diamond jewellery in same area for 1 year, but opens real diamond jewellery showroom after 2 months. [MTP I May 25 - 4 Marks]

Answer:

As per **Sec. 27** exception, restraint applies only to similar business; real diamond jewellery is not similar to artificial jewellery, so Kashish can continue real diamond business.

Question 20:

Validity of agreement restraining trade— X pays Y ₹10 lakhs to stop selling “Popular Brand” wheat in Uttar Pradesh; X doesn’t pay, Y sues. [ACT]

Answer:

As per **Sec. 27**, restraint of trade agreements are void unless under statutory exceptions; here, the restraint creates monopoly and is against public policy, so the suit is not maintainable.

Question 21:

Agreement where ‘X’ works as assistant to ‘Y’ (CA, Jodhpur) for 2 years with condition not to practice within 20 km during term; X leaves after 1 year and starts own practice in restricted area. Advise [RTP May 18]

Answer:

Restriction is reasonable and valid under service agreement exception to Sec. 27; X can be restrained by injunction from practicing within 20 km for remaining 1 year.

Note: A, a businessman sold the goodwill of his trade to B. Both of them agreed that A will not practice the same trade for 3 years, and also that A will not carry on any business competing in any way with the business of B. Here, the agreement being divisible, the first part was held to be valid as necessary to protect the interest of the purchaser of goodwill. The second part was held to be void as it prevented A from carrying on any business.

Question 22:

Whether a clause in a life insurance policy restricting a suit to one year from the date of death of the assured is valid, when X’s legal representatives filed a suit after 2½ years. [ACT]

Answer:

The suit is maintainable; the clause is void as an agreement in restraint of legal proceedings under Section 28, since it curtails the prescribed limitation period of 3 years under the Limitation Act.

Question 23:

Validity of agreements: (I) a contract clause restricting action on breach, (II) an agreement limiting filing suit to one of two courts, (III) X offers to sell his Maruti car to Y, but Y believes X has only a Wagon R and agrees to buy it, (IV) a service agreement restraining an assistant from practicing as a physician for two years. [July 21- 1 Mark each] [RTP Dec 23] [RTP Jan 25]

Answer:

(I) Void as agreement in restraint of legal proceedings (Sec. 28); (II) Valid, partial restriction is allowed (Sec. 28); (III) Valid, mistake of fact by one party does not void contract (Sec. 22); (IV) Valid, service agreement restraint of trade is an exception to Sec. 27.

Contract of Insurance Vs. Wagering Agreement [Dec 20 – 5 Marks]

Basis	Contract of Insurance	Wagering Agreement
Meaning	Contract to indemnify loss	Promise to pay on happening/non-happening of uncertain event
Consideration	Mutual (premium & compensation)	No real consideration; gambling
Insurable Interest	Required in life/property insured	None; betting on life/property
Indemnity	Indemnifies (except life insurance)	Loser pays fixed amount on uncertain event
Enforceability	Valid & enforceable	Void & unenforceable
Premium	Based on scientific/actuarial risk calculation	No logical calculation
Public Welfare	Beneficial to society	Against public welfare

CHAPTER 2 - THE INDIAN CONTRACT ACT, 1872

Unit 4: Performance of Contract

Wisdom Blueprint

S. no	Section/Provision	Relevancy
1	Obligation of parties to contracts (Sec 37)	PQ
2	Effect Of Refusal of Party to Perform Promise Wholly (Sec 39)	PQ
3	By Whom a Contract May Be Performed (Section 40, 41 And 42)	PQ
4	Liability Of Joint Promisors & Promisees (Section 43 And 44)	PQ
5	Time for performance (Sec 55)	PQ
6	Appropriation of Payments (Secs. 59–61)	PQ
7	CONTRACTS WHICH NEED NOT BE PERFORMED (SECS. 62–67) - Special Focus on Sec. 65	PQ
8	Discharge Of a Contract	DQ

PERFORMANCE OF CONTRACT (SEC. 37)

- **Meaning:** Fulfilment of contractual obligations.
- **Requirement:** Parties must perform or offer to perform unless excused/dispensed by law.
- On death of promisor → **representatives bound**, unless contract shows contrary intention.
- **Types:**
 1. **Actual Performance** – Promisor fully performs obligations as agreed.
 - *Example:* X repays loan on due date.
 2. **Attempted Performance / Tender of Performance** – Promisor offers to perform, but promisee refuses to accept. The promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract. [Sec 38]
 - *Example:* A delivers goods at agreed place & time; B refuses to accept.

Conditions for Valid Tender / Attempted Performance

- **Unconditional** – Must include full obligation without conditions.
- **Proper Time & Place** – Must be made at agreed or reasonable time/place.
- **Reasonable Opportunity to Examine** – Promisee must be able to verify goods/quality/quantity.
- **Whole Obligation** – Must cover the entire contractual obligation, not part.

EFFECT OF REFUSAL OF PARTY TO PERFORM PROMISE WHOLLY (SEC 39)

1. **Refusal / Inability** – Promisor refuses or disables himself from performing the contract **wholly**.
2. **Right of Promisee** – Promisee may **terminate (rescind) the contract and claim damages**.
3. **Exception** – If promisee, by words or conduct, **accepts continuance**, he cannot rescind later but can claim damages.

Question 1:

Nitesh Gupta contracted with **M/s Baba Brick House** to **supply 10,000 bricks** on **12-08-2023**; they delivered only **5,000 bricks** that day due to one **lorry** being **out of order**, promising to supply the **rest next day**; **Nitesh** sought to **cancel the contract**, **supplier** pleaded **no fault**. (MTP 1 June 24 - 4 Marks)

Answer:

Under **Sec. 37**, **performance** must be **complete** unless **excused**; **part performance** is **not valid performance**; plea of **supplier** not acceptable — **Nitesh** can **validly avoid the contract**.

Question 2:

Rahul, a **manufacturer of jute bags**, contracted with **Sonia** to **supply raw jute** by **25.06.2024** for **quality verification** before **production start** on **27.06.2024**; **Sonia** supplied on **27.06.2024** citing **unavoidable reasons**, assuring **no compromise in quality**; **Rahul** sought to **avoid the contract** as he had **no opportunity to examine goods**. [RTP May 25]

Answer:

Under **Sec. 37**, **performance** must be for **whole obligations** as agreed; **late supply** depriving buyer of agreed **verification time** is **not valid performance**; **Rahul** can **validly avoid the contract**.

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

1. **Promisor Himself** – Required when contract involves personal skill, diligence, or confidence. (**Sec. 40**)
2. **Agent** – Allowed if contract is not based on personal considerations. (**Sec. 40**)
3. **Legal Representatives** – (**Sec. 40**)
 - Personal skill contracts → end on promisor's death.
 - Other contracts → representatives bound up to inherited property value.
4. **Third Person (Sec. 41)** – If promisee accepts performance from third party, promisor is discharged. Promisee cannot afterwards enforce it against the promisor.
5. **Joint Promisors (Sec. 42)** – All must jointly perform; on death, legal representatives join survivors; if all die, all representatives perform jointly. **Applies unless contract shows contrary intention.** [May 25- 4 Marks]

Question 3:

X received **goods** from Y and promised to **pay ₹60,000**; later expressed **inability to pay**; Z (known to X) paid **₹40,000** to Y on behalf of X **without X's knowledge**; Y now intends to **sue X** for **₹60,000**. [RTP May 19] [RTP May 18]

Answer:

Under **Sec. 41**, **acceptance of performance from a third person** discharges the **promisor** to that extent; Y can sue X only for the **balance ₹20,000**, not the whole amount.

Question 4:

Mr. Singhania contracted with **Mr. Sonu** to **sing in his hotel** for **six weeks** on **Saturdays & Sundays** for **₹20,000 per performance**; **Sonu** performed for **two weeks**, missed **third week** due to **illness**; **Singhania** terminated the contract; scenarios include **Sonu performing in fourth week with Singhania's silent consent**, and **Mika (third person) singing in third week with Singhania's silent consent**. [RTP May 22]

Answer:

(a) Under **Sec. 39**, **Singhania** can **terminate** the contract for **non-performance**; (b) silent acceptance in **fourth week** implies **assent to continue**, termination not allowed, though **damages claimable**; (c) under **Sec. 41**, accepting **third-party performance** bars termination and **damages**.

DISTINCTION: SUCCESSION VS. ASSIGNMENT

- **Succession** – By operation of law; benefits and sometimes burdens pass to legal heirs. Liability limited to value of estate inherited.
- **Assignment** – Only benefits of a contract can be assigned, not liabilities.
 - Debtor cannot transfer his repayment obligation.
 - Creditor can assign right to receive payment, unless benefit is tied to liability or personal consideration.

Effect:

- The assignee can directly sue the debtor to recover the assigned debt or benefit.
- The assignor drops out from that benefit once transferred.

Example:

- A agrees to supply B 500 kg of rice at ₹30/kg and also transport it to B's shop.
- The "benefit" (payment from B) is tied to A's "liability" (supplying and transporting rice).
- A cannot assign this contract to C without B's consent, because C would also have to fulfil the delivery obligation.

LIABILITY OF JOINT PROMISORS & PROMISEES (SECTION 43 AND 44) [May 25- 4 Marks]

1. **Any One May Be Compelled to Perform (Sec. 43)**
 - Promisee can compel any one or more joint promisors to perform whole promise.
2. **Right to Contribution**
 - Performing promisor can demand equal contribution from co-promisors (unless contract says otherwise).
3. **Default in Contribution**
 - Loss due to one promisor's default shared equally by others.
4. **Surety Exception**
 - Surety can recover from principal debtor; principal cannot recover from surety for payment made by principal.
5. **Nature of Liability**
 - Joint *and* several — promisee can sue any one or more promisors for the full amount.
6. **Effect of Release of One Joint Promisor (Sec. 44)**
 - Releasing one joint promisor **does not** discharge the others from liability to the promisee.
 - Released promisor is still liable to contribute to co-promisors.
 - Other joint promisors remain liable for the **whole** promise.

Question 5:

X, Y & Z jointly borrowed ₹60,000 from L; issues:

- (i) can L compel **only Y** to pay ₹60,000;
- (ii) if X, Y, Z die, can L compel **only X's legal representatives**;
- (iii) if Y repays the **whole ₹60,000**, how much from X & Z;
- (iv) if Y repays all and Z is **insolvent** with assets **only 1/5 of his share of debts**, recovery from X & Z;
- (v) same as (iv) plus X died and W inherited ₹17,000, recovery from X & Z;
- (vi) effect if L releases X and sues Y & Z. [ACT]

Answer:

- (i) **Yes**—L may compel any one joint promisor for the **whole** (Sec. 43);
- (ii) **No**—legal reps of **all** jointly liable (Sec. 42);
- (iii) Y recovers ₹20,000 each from X and Z (Sec. 43);
- (iv) Y recovers ₹28,000 from X (20,000 + 50 % of 16,000) and ₹4000 from Z (1/5th of ₹20,000) (Sec. 43)
- (v) Y recovers ₹17,000 from X's estate and ₹4000 from Z (1/5th of ₹20,000)
- (vi) releasing X does **not** discharge Y & Z, nor free X from **contribution** to them (Sec. 44).

RIGHTS OF JOINT PROMISEES (SEC. 45)

- Promise to joint promisees → right to claim performance belongs to all jointly during their lifetime.
- On death of one → right passes to legal representative jointly with survivors.
- On death of last survivor → right passes to legal representatives of all jointly.

TIME AND PLACE FOR PERFORMANCE OF THE PROMISE (SECTION 46 to 50)

1. **Sec. 46** – *No application & no time fixed*: Perform within **reasonable time** (depends on case facts).
2. **Sec. 47** – *Time fixed (Date Fixed) & no application*: Perform on specified day, during **usual business hours** & at **proper place (Usual Place of Business)**.
3. **Sec. 48** – *Time fixed (Date Fixed) & application needed*: Promisee must apply at proper place & within business hours.
4. **Sec. 49** – *No place fixed & no application (Date Fixed)*: Promisor must ask promisee to appoint a **reasonable place** and perform there.
5. **Sec. 50** – Performance can be in **manner or time prescribed/sanctioned by promisee**.

PERFORMANCE OF RECIPROCAL PROMISES (SECS. 51–58)

- **Sec. 51 – Simultaneous performance:**
 - No promisor bound to perform unless promisee is **ready & willing** to perform reciprocal promise.
- **Sec. 52 – Order of performance:**
 - If order fixed → follow it.
 - If not fixed → follow order required by nature of transaction.
- **Sec. 53 – Prevention of performance:**
 - If one party prevents other from performing → contract becomes **voidable** at option of prevented party + claim compensation for loss.
- **Sec. 54 – Dependent promises:**
 - If first-performing party fails → cannot demand performance from other + liable for compensation.
- **Sec. 55 – Time for performance:**
 - If **time essential** & promisor fails → contract voidable at promisee's option.
A contracts to deliver wedding clothes to B on **5th Feb** for B's marriage on **6th Feb**. A delivers on **8th Feb**. B can cancel the contract and refuse payment.
 - If **time not essential** → promisee can claim compensation, but contract not voidable.
A contracts to deliver 500 bags of rice to B on **1st March**. A delivers on **5th March**. B must accept delivery but can claim compensation for loss due to delay.
 - If performance accepted late without notice → no claim for delay compensation.
If B accepts rice delivered late **without telling A** he'll claim damages for delay → B loses right to claim
- **Sec. 56 – Impossibility of performance:**
 - **Initial impossibility** → Agreement void (whether known or unknown).
 - If known only to promisor → liable for compensation.
A contracts to sell B a cargo of wheat supposed to be on a ship from England, but the ship had already sunk before the agreement (A knew, B didn't).
 - **Subsequent impossibility** → contract becomes void; parties discharged.
- **Sec. 57 – Mixed legal & illegal reciprocal promises:**
 - Legal part valid; illegal part void.
- **Sec. 58 – Alternative promises (legal + illegal):**
 - Legal branch enforceable; illegal branch void.

Question 6:

Woollen Garments Limited contracted in **July 2023** with a **group of women** to supply **woollen clothes** (sweaters, monkey caps, mufflers, coats, gloves etc.) **before commencement of winter** i.e. by **October 2023**; due to **strike**, supply was made in **March 2024** when **winter was over**; questions — (A) whether company can **reject supply**, (B) whether company can **accept on request** of women group. [Sep 24 - 3 Marks]

Answer:

Under **Section 55**, since **time was of essence**, the **company can reject the supply**. However, the **company may accept delayed supply** if it **elects to do so**, but in such case it **cannot claim compensation for delay** unless notice of intention is given at time of acceptance.

APPROPRIATION OF PAYMENTS (SECS. 59–61)

1. **Sec. 59 – Debtor indicates debt**
 - Debtor owes several distinct debts.
 - Debtor **expressly or impliedly specifies** which debt payment is for.
 - Creditor **must** apply payment to that debt.
2. **Sec. 60 – Debtor silent**
 - No indication from debtor & no circumstances to infer.
 - Creditor may apply payment **at his discretion** to any lawful debt (due & payable), even if recovery is time-barred.
 - Cannot apply to **disputed debt**.

<p>3. Sec. 61 – Neither party appropriates</p> <ul style="list-style-type: none"> • Apply in order of time (oldest debt first), even if time-barred. • If debts are of equal standing → apply proportionately.
<p>Question 7: Mr. Murari owed three bills to Mr. Girdhari: ₹12,120 (due May 2016), ₹5,650 (due Aug 2018), ₹9,680 (due May 2019); on 01.04.2020 paid via cheque ₹9,680 and cheque ₹15,000 without specifying appropriation. [MTP Nov 21 – 6 Marks] [Module Back Question] [RTP June 23]</p>
<p>Answer: ₹9,680 cheque appropriated to May 2019 bill (exact amount match); ₹15,000 cheque can be appropriated by creditor to ₹12,120 May 2016 debt (even if time-barred) and balance ₹2,880 to Aug 2018 debt.</p>
<p>Question 8: When T owes multiple debts to G, including time-barred debts (₹5,000 & ₹3,000 – barred on 1 July 2023), and current debts (₹12,500 due 1 April 2022, ₹10,000 due 15 July 2023, ₹7,500 due 25 Nov 2023). On 1 April 2023, T makes two payments – ₹12,500 (cheque) and ₹4,000 – without specifying appropriation; G also does not indicate appropriation. (Dec 23 - 4 Marks)</p>
<p>Answer: As per Sec. 59, ₹12,500 cheque exactly matching the debt due on 1 April 2022 will be appropriated to that debt. As per Sec. 61, ₹4,000 will be appropriated in order of time, including time-barred debts, proportionately between ₹5,000 and ₹3,000 in the ratio 5:3, i.e., ₹2,500 and ₹1,500 respectively.</p>
<p>Question 9: <i>Appropriation of payments</i> under Sec. 60, where Albert owes the Bank two loans — ₹3,00,000 (guaranteed by Robert) and ₹4,00,000 (not guaranteed). Albert pays ₹2,00,000 without specifying appropriation; the Bank applies it entirely to the ₹4,00,000 loan; Robert objects, claiming it should first go to the guaranteed loan. [MTPI May 25, 3 Marks] [RTP Sep 25]</p>
<p>Answer: Under Sec. 60, when the debtor gives no intimation, the creditor may appropriate payment at their discretion to any lawful debt due, including one not guaranteed. Hence, the Bank's decision was valid.</p>

CONTRACTS WHICH NEED NOT BE PERFORMED (SECS. 62–67) [Dec 21 7 Marks] [RTP Sep 24]

- Sec. 62 – Novation, Rescission, Alteration**
 - **Novation:** New contract replaces old one (may change parties or terms).
 - **Rescission:** Cancel old contract without replacing it.
 - **Alteration:** Change terms, parties remain same.
- Sec. 63 – Remission**
 - Promisee may waive, reduce, extend time, or accept other satisfaction instead of promised performance.
- Sec. 64 – Voidable contract rescinded**
 - If party rescinds, other need not perform.
 - Any benefit received must be restored.
 - **Example:** An insurance company may rescind a policy on the ground that material fact has not been disclosed. When it does so, the premium collected by it in respect of the policy reduced by the amount of expenses incurred by it in this connection must be repaid to the policy holder.
- Sec. 65 – Agreement discovered void / contract becomes void**
 - Any advantage received must be restored or compensated.
- Sec. 66 – Communication of rescission**
 - Rescission must be communicated like a proposal; can also be revoked like a proposal.
- Sec. 67 – Neglect of promisee**
 - If promisee refuses/neglects to give facilities for performance, promisor is excused for non-performance caused thereby.

Question 10:

Whether **Mr. Rich** can (i) **compel Mr. K** to complete an **oil painting self-portrait** contract entered with **Mr. C**, who became **paralyzed** midway (after **5 sittings out of 10** over 3 months) and (ii) **claim refund** of **₹50,000 advance**, in light of of the **Indian Contract Act, 1872**. [May 19, 6 marks]

Answer:

- (i) Since the contract was based on **personal artistic skill** of **Mr. C**, performance became **impossible** due to **paralysis**, hence **Mr. K cannot be compelled** to perform. (Sec. 40)
- (ii) The contract became **void due to supervening impossibility**, and under **Sec. 65**, **Mr. Rich** can **claim refund** from **Mr. K**, limited to **property inherited** from **Mr. C**.

Question 11:

Whether **legal representatives** of **Mr. S**, who died before performance, can be **bound** to (i) **complete a family painting** promised for ₹20,000 (personal skill contract) and (ii) **deliver photographs** promised for ₹10,000, under **Sec. 37** (*binding effect on legal representatives*) and **Sec. 40** (*personal performance requirement*) of the **Indian Contract Act, 1872**. (4 Marks June 23)

Answer:

- (i) **Painting** requires **personal artistic skill**; under **Sec. 40**, the promise must be performed **personally** by **Mr. S**, hence **legal representatives are not bound**.
- (ii) **Delivery of photographs** does not require **personal skill**; under **Sec. 37**, **legal representatives are bound** to deliver.

Question 12:

Whether **Mr. X** can claim ₹10,000 damages and refuse refund of **₹50,000 advance** when a contract dated **1 Aug 2018** for supply of **50 tons sugar within 10 days** became impossible to perform due to **flood on 2 Aug 2018** damaging the **only road route**, making delivery within time impossible, under **Indian Contract Act, 1872**. [Nov 18, 4 Marks] [MTP March 19, 6 Marks] [MTP II Sep 24 - 4 Marks]

Answer:

Performance became **impossible** due to **supervening impossibility** (contract void); under **Sec. 65**, **₹50,000 advance** must be **refunded** to **Mr. Y**; **Mr. X's claim** for ₹10,000 is **not sustainable**.

Question 13:

Mr. JHUTH agreed to buy **Mr. SUCH's motor car** for ₹5,00,000 within **3 months**, paid ₹20,000 as **security**; did not respond even after **another 3 months**; after **6 more months refused to buy** and **demanding refund**. Alternate situation — **car destroyed** in accident within the **3-month agreement period**. [MTP Aug 18, 4 Marks]

Answer:

First case — Contract not void, **buyer's negligence**; security is ancillary, not refundable (Sec. 65 inapplicable).
Second case — **Car's destruction** makes **contract void**; security must be refunded under Sec. 65.

DISCHARGE OF A CONTRACT [MTP I Sep 24 - 6 Marks]

1. By Performance

- Obligations fulfilled within time & manner prescribed.
- **Actual performance** – both parties perform.
- **Attempted performance (tender)** – promisor offers, promisee refuses.

2. By Mutual Agreement (Sec. 62)

- **Novation** – substitute new contract.
- **Rescission/Alteration/Remission** – cancel or change terms.

3. By Impossibility of Performance (Sec. 56)

- **Initial impossibility** – void from start.
- **Supervening impossibility** – due to law change, destruction, incapacity, war.

4. By Lapse of Time

- Not performed within limitation period → remedy lost.

5. **By Operation of Law**
 - Death, insolvency, etc.
6. **By Breach**
 - **Actual breach** – on due date.
 - **Anticipatory breach** – before due date.
7. **By Waiver/Remission (Sec. 63)**
 - Promisee forgives, reduces, extends, or accepts other satisfaction.
8. **By Neglect of Promisee (Sec. 67)**
 - If promisee fails to give facilities, promisor excused.
9. **By Merger of Rights**
 - Inferior right merges into superior right in same person → old contract ends.

CHAPTER 2 - THE INDIAN CONTRACT ACT, 1872

Unit 5: Breach of Contract and its Remedies

Wisdom Blueprint

S. no	Section/Provision	Relevancy
1	Suit For Damages (Section 73)	PQ
2	Rest all - Reading Category	

ANTICIPATORY BREACH OF CONTRACT [JUNE 24 - 6 MARKS]

- **Meaning:** Breach **before the due date of performance**; promisor refuses/ disables himself from performance.
- **Ways:**
 - (a) **Express** – by words spoken/written.
 - (b) **Implied** – by conduct.
- **Examples:**
 1. **Express:** A informs B before due date that goods won't be supplied.
 2. **Implied:** A sells horse to C before due date despite contract with B.
- **Section 39, ICA:** If a party refuses or disables himself from performing, promisee may end the contract (unless he agrees to continue).
- **Effect:**
 1. Promisee excused from performance/further performance.
 2. Options available:
 - **Rescind contract** immediately + sue for damages.
 - **Keep contract alive** till due date → wait for actual breach.
 - But then guilty party may still perform.
 - Guilty party can also claim benefit of **supervening impossibility** if arises.

ACTUAL BREACH OF CONTRACT

- **Meaning:** Refusal/failure to perform promise **on the due date** of performance.
- **Effect:** Gives the aggrieved party the right of action against the defaulting party.
- **Modes of Actual Breach:**
 - (a) **At the time performance is due** – party fails/refuses to perform at scheduled date.
 - (b) **During performance** – party fails/refuses to perform while carrying out the contract (expressly or impliedly).
- **Example:** A agrees to deliver 100 bags of sugar on 1 Feb 2022 but fails → breach on due date.

SUIT FOR DAMAGES (Section 73)

- **Meaning:** On breach, aggrieved party entitled to compensation from the party who broke the contract.
- **Compensation claimable for:**
 1. **Ordinary damages** – Loss/damage naturally arising in the usual course of events.
 2. **Special damages** – Loss/damage which parties knew at the time of contract (requires prior notice).
- **Duty of Injured Party:** Must take **reasonable steps to minimize loss** (mitigation of damages).
- **Not claimable:** No compensation for **remote or indirect loss**.

Question 1:

M Ltd. contracted with *Shanti Traders* to deliver machinery by **30.6.2017** for **Rs. 11.50 lakhs**, but due to **labour strike** failed; *Shanti Traders* bought from another manufacturer for **Rs. 12.75 lakhs** and also had to pay **compensation to Zenith Traders** for breach of their contract. Advise. **[May 18, 6 Marks]** **[MTP Aug 18 Direct Question 5 marks]** **[RTP May 18]** **[MTP Oct 19, 6 Marks]**

Answer:

Under **Sec. 73**, *M Ltd.* is liable to pay **Rs. 1.25 lakh (12.75 – 11.50)** as **direct loss**, and will also be liable for the **compensation paid to Zenith Traders** only if it was within the **knowledge of both parties** at the time of contract; otherwise, such **remote loss** is not recoverable.

Question 2:

X contracted with Y to supply **1,000 water bottles @ Rs. 5 each**; to fulfill this, X purchased from Z at **Rs. 4.50 each** and informed Z that it was for Y's contract; Z defaulted, and the **market price rose to Rs. 5.25 each**; Y rescinded the contract. Advise. [MTP Oct 2018, 6 Marks - Based on Bottles] [MTP March 18, 6 Marks- Based on Bottles] [MTP April 19] [MTP April 19, 6 marks] [RTP Nov 20]

Answer:

Since Z had **knowledge of special circumstances**, X can recover **Rs. 500 (1000 × 0.50)** being the **profit lost (Rs. 5 – Rs. 4.50)**. If Z had **no knowledge of Y's contract**, then damages are limited to **Rs. 750 (1000 × 0.75)**, i.e., the **difference between market price (Rs. 5.25) and contract price (Rs. 4.50)**.

Question 3:

Seema (running a boutique in **New Delhi**) sent **sewing machine and cloth by railways** to *Kiran's exhibition in Mumbai*, expected to earn **exceptional profit**, but did **not inform railway authorities**; goods delivered **after exhibition ended**. Advise. [RTP May 22] [MTP Nov 22 – 6 Marks] [RTP Sep 24]

Answer:

Since **special circumstances (exceptional profit at exhibition)** were **not communicated**, Seema can recover only **ordinary damages** (loss arising naturally in the usual course of business), but **cannot claim loss of profits**.

Question 4:

Mr. Murti and his wife were travelling by **Himalya Travels Pvt. Ltd. bus**, which stopped midway at night due to a **technical defect**; passengers advised to walk **1 km to nearest hotel**; wife caught cold and fell ill; suit filed for **personal inconvenience, hotel charges, and wife's medical treatment**. Advise. [MTP May 22 - 4 Marks] [MTP I Sep 24 – 4 Marks]

Answer:

Under **Sec. 73**, Mr. Murti can recover **damages for personal inconvenience and hotel charges (direct loss)** but **not medical expenses** for his wife, as they are **remote/indirect loss**.

Types of Damages [Sep 24 - 3 Marks] [MTP I Jan 25 - 3 Marks]

(i) Ordinary Damages (Sec. 73, ICA – Rule in Hadley v. Baxendale)

- Compensation for loss/damage **naturally arising** in the usual course of things, or known at contract formation.
- Not allowed for **remote/indirect loss**.
- **Case law:** *Hadley v. Baxendale*.
- **Example:** Rise in rice price – difference in market price recoverable.

(ii) Special Damages

- Arise due to **special circumstances** communicated at time of contract.
- Claimable only if notice of such circumstances given.
- **Example:** Delay in delivering machine → mill profits lost (recoverable). Loss of Govt. contract (not recoverable as not informed).

(iii) Vindictive / Exemplary Damages

- Awarded only in 2 cases:
 - (a) Breach of promise to marry.
 - (b) Wrongful dishonour of cheque by banker.
- Trader gets heavy damages due to loss of reputation (*Gibbons v. Westminster Bank*).

(iv) Nominal Damages

- Awarded where breach proven but **no real loss** sustained.

- Purpose: recognition of legal right.
- Amount: very small (token).

(v) Damages for Deterioration by Delay

- If goods deteriorate due to **delay by carrier**, damages recoverable even without notice.
- “Deterioration” = physical damage + loss of special opportunity of sale.

(vi) Pre-fixed Damages (Sec. 74)

- Parties may stipulate damages at contract formation.
- May be:
 - **Liquidated damages:** reasonable pre-estimate.
 - **Penalty:** arbitrary/fixed higher amount.
- Court awards **reasonable compensation not exceeding stipulated sum**.
- **Examples:**
 - Penalty 1,00,000, actual loss 70,000 → only 70,000 recoverable.
 - If loss 1,50,000 → only 1,00,000 recoverable.
 - Promise to pay charity, reliance loss incurred → actual reliance loss recoverable.

Basis	Liquidated Damages [May 22 – 6 Marks]	Penalty [May 22 – 6 Marks]
1. Meaning	Fair & genuine estimate of probable loss due to breach.	Disproportionate, very high sum fixed to ensure performance.
2. Intention	Recovery of damages that might arise due to breach.	To ensure performance; acts as deterrent.
3. Basis for Classification	Pre-estimate of loss made conscientiously by parties.	No attempt to estimate loss; coercive sum, not proportional to loss.
4. Example	<i>A contracts with B to deliver possession of house within 6 months, else pay monthly rent = liquidated damages.</i>	<i>P contracts with Q to deliver 50 petrol engines, else pay ₹5 lakhs (disproportionate) = penalty.</i>

Remedies for Breach of Contract (besides damages)

(i) Rescission of Contract (Sec. 75)

- Aggrieved party may treat contract as **rescinded**.
- He is absolved of obligations & entitled to compensation for damages suffered.
- **Example:** A fails to deliver cement → B discharged from liability to pay.

(ii) Quantum Meruit (“as much as earned”) [RTP Sep 25]

- Compensation for value of work done/services rendered.
- **Conditions:**
 1. Contract must be discharged.
 2. Claim must be by party **not in default**.
- **Nature:** Restitutory (reasonable compensation), not compensatory.
- **Cases where it arises:**
 - a) Agreement discovered void/contract becomes void.
Example: A contracts to sing at B’s theatre for 6 months for ₹10,000 per month. After 2 months, the theatre is destroyed by fire (contract becomes void).
A can claim payment for 2 months’ performance (work already done).
 - b) Service done without intent to be gratuitous.
Example: A, a tradesman, leaves goods at B’s house by mistake. B uses the goods.
B must pay a **reasonable price** for the goods (since they were not meant to be free).

c) Service contract exists, but no remuneration fixed.

Example: A, a lawyer, renders legal services to B under an agreement, but no fee is mentioned. A can claim **reasonable remuneration** for his services.

d) One party abandons/refuses to perform.

Example: A is employed to construct a house for B for ₹5,00,000. After completing half the work, A abandons the project.

A can claim **reasonable compensation for the work done**, but not for the uncompleted portion.

e) Divisible contract → part performance enjoyed.

Example: A contracts to deliver 100 bales of cotton to B at ₹1,000 each, in two instalments of 50. A delivers the first 50, but fails to deliver the second.

B must pay for the 50 bales actually received.

f) Indivisible contract performed badly → lump sum payable, but deduction for bad work.

Example: A contracts to paint B's house for ₹1,00,000. A completes the work but does it badly. A can claim the lump sum, but B can **deduct an amount** for the bad quality work.

• **Examples:**

- Ex. 12: Agent's authority wrongfully revoked → can recover for work done.
- Ex. 13: Partial delivery of cotton bales → payment for part supplied.

(iii) Suit for Specific Performance [Dec 20, 2 Marks]

- Court may direct party in breach to **perform the promise** as per contract.
- Granted when **damages are not adequate remedy**.

(iv) Suit for Injunction

- Court restrains party from **doing something contrary** to contract.

(v) Compensation on Rightful Rescission (Sec. 75)

- A party who rightfully rescinds contract is entitled to compensation for loss sustained.
- **Example:** Singer wilfully absent, manager rescinds → manager entitled to compensation.

CHAPTER 2 - THE INDIAN CONTRACT ACT, 1872

Unit 6: Contingent and Quasi Contracts - Complete Unit is Important

CONTINGENT CONTRACT - Section 31 [Nov 18, 7 Marks] [MTP I Sep 24 - 6 Marks]

Definition: A contract to do/not do something if some event, **collateral to such contract**, happens/does not happen.

Essentials of a Contingent Contract

- 1. Dependence on Event** – Performance depends on happening/non-happening of an event (condition precedent/subsequent).
 - Eg: A pays B ₹50,000 if it rains on 1st of next month.
- 2. Collateral Event** – Event must be collateral (neither performance promised nor consideration).
 - Conditional contracts ≠ Contingent contracts.
 - Eg: Payment on completion of swimming pool = conditional, not contingent.
- 3. Not Mere Will of Promisor** – Event must not be merely promisor's will.
 - Eg: A to pay B if he chooses → not contingent.
 - A to pay B if it rains and A travels → contingent (rain not in A's will).
- 4. Uncertainty of Event** – Event must be uncertain.
 - If event is bound to happen (e.g., collector's routine permission), → not contingent.

Rules for Enforcement of Contingent Contracts [July 21 – 7 Marks] [RTP May 22 – 7 Marks]

Sec. 32 – Enforcement contingent on happening of an event

Rule: Contract enforceable only if uncertain event happens. If event impossible → void.

✦ Example:

A contracts to sell his car to B **if India wins the ICC World Cup 2027**.

- If India wins → contract enforceable.
- If tournament cancelled / India eliminated → contract void.

Sec. 33 – Enforcement contingent on non-happening of an event

Rule: Contract enforceable only when the happening of event becomes impossible.

✦ Example:

X promises to pay Y ₹5,00,000 **if a particular plane does not return from its international flight**.

- If plane crashes mid-air (cannot return) → contract enforceable.
- If plane returns safely → contract void.

Sec. 34 – Event contingent on conduct of a living person

Rule: If contingent on act of living person, becomes impossible when that person does something making it impossible.

✦ Example:

P promises to transfer property to Q **if Q's daughter marries R**.

Later, **R marries another woman** → Q's daughter cannot marry R (unless divorce happens).
→ Event impossible, contract void.

Sec. 35(i) – Event happening within a fixed time

Rule: Contract void if event doesn't happen within time or becomes impossible before time.

✦ Example:

M promises to pay N ₹2,00,000 **if a ship carrying goods from London reaches Mumbai within 3 months**.

- Ship arrives in 2 months → enforceable.
- Ship sinks before reaching → contract void.

- Ship does not arrive within 3 months → contract void.

Sec. 35(ii) – Event not happening within a fixed time

Rule: Contract enforceable if event does not happen within fixed time, or becomes certain it won't happen before time.

✦ Example:

R promises to pay S ₹1,00,000 **if a cargo ship does not arrive in Chennai within 6 months.**

- If ship does not arrive within 6 months → contract enforceable.
- If ship sinks in 2nd month → contract enforceable immediately.

Sec. 36 – Contingent agreement on impossible event

Rule: Always void, whether impossibility known or unknown.

✦ Examples:

1. A agrees to pay B ₹10 lakh **if the sun rises in the west** → void.
2. X agrees to pay Y ₹1 lakh **if Y discovers treasure under Red Fort by magic** → void.

Question 1:

PQR hospital (Delhi) recruits Dr. A on 3-month contract, promising to pay Rs. 1,00,000 if Dr. A tests Covid-19 positive during this period. **Identify the type of contract. [RTP Nov 21]**

Answer:

It is a **contingent contract** u/s 31, governed by s. 35, and if Dr. A does not contract Covid-19 within 3 months, the contract becomes void.

Basis	Contingent Contract	Wagering Contract
Meaning	To do/not do something on a collateral event happening/not happening.	Promise to pay money/money's worth on uncertain event happening/not happening.
Reciprocal Promises	May not contain reciprocal promises.	Always consists of reciprocal promises.
Uncertain Event	Event is collateral.	Event is the core factor.
Nature of Contract	May not be wagering in nature.	Essentially contingent in nature.
Interest of Parties	Parties have real interest in subject matter.	Parties have no real interest in subject matter.
Mutuality of Gain/Loss	Not based on mutual gain/loss.	Purely based on mutual gain/loss (like a bet).
Effect of Contract	Valid.	Void.

QUASI CONTRACTS [May 25 – 3 Marks]

Essence

- No offer, acceptance, consent or consideration.
- Imposed by **law** (equity, justice, good conscience).
- Principle → *No man must grow rich at another's expense*.
- Always → right to money (liquidated sum).
- Resembles contractual obligation but without agreement.

Difference between Quasi-Contracts and Contracts

Basis	Quasi-Contract	Contract
Essentials of Valid Contract	Absent	Present
Obligation	Imposed by law	Created by consent of parties

Salient features of Quasi-Contracts

1. **Right to Money** – Always a right to money, generally to a liquidated sum.
2. **No Agreement** – Does not arise from agreement; imposed by law.
3. **Right Against Specific Person(s)** – Enforceable only against particular person(s), not against the whole world → resembles contractual right.

Circumstances under which Quasi-Contract arises [May 25 - 3 Marks]

1. **Sec. 68 – Necessaries supplied to incapable persons**
 - Supplier entitled to reimbursement from property of incapable person (minor, lunatic).
 - Eg: Supplying food/clothes to a minor.
2. **Sec. 69 – Payment by interested person**
 - Person who pays money which another is bound by law to pay → entitled to reimbursement.
 - Eg: Tenant pays landlord's arrears to prevent property sale.
3. **Sec. 70 – Non-gratuitous acts**
 - If person lawfully does something/delivers goods to another, not intending it to be gratuitous, and other enjoys benefit → compensation payable.
 - Conditions: (i) Act lawful, (ii) Not gratuitous, (iii) Benefit enjoyed.
4. **Sec. 71 – Finder of goods**
 - Finder has responsibility of a bailee.
 - Duties: (i) Take reasonable care, (ii) No appropriation, (iii) Return when owner found.
 - Eg: Diamond found in shop → finder has rights against all except true owner.
5. **Sec. 72 – Money paid or goods delivered by mistake or coercion**
 - Must be repaid/restored.
 - Covers → mistake of fact/law, payment under coercion/extortion.
 - Eg: Excess municipal tax paid by mistake is recoverable.

Question 2:

Mr. Y, aged **21**, lost his **mental balance** after his **parents' death** and lived with his **85-year-old grandmother** (**incapable of walking** and **dependent** on him) in his **parents' house**; neighbour **Mr. M** supplied **food** and **necessaries** for **4 years** and also gave **Rs. 7 Lakhs** for grandmother's **emergency medical treatment**, later demanding **Rs. 15 Lakhs**, while **Y pleaded** he could only adjust **jewellery worth Rs. 4 Lakhs**, which **M refused**, threatening a **legal suit**. [Nov 22 - 6 Marks]

Answer:

As per **Section 68, Indian Contract Act, 1872**, **Mr. M** will succeed in recovering **Rs. 15 Lakhs** as **necessaries** supplied to an **incapable person** can be **reimbursed from their property (jewellery + house)**, and the **provision** also covers **grandmother's medical treatment** since **Y was legally bound to support her**.

Question 3:

Mr. L let out his house to **Mr. M** for ₹50,000 p.m. (1 year) with rent agreement requiring **L** to pay electricity bills, but **L** defaulted for 5 months; on notice of disconnection, **M** paid ₹50,000 (with penalty), which **L** later refused to reimburse saying payment was voluntary. [Sep 24 – 3 Marks] [MTP II Jan 25 – 4 Marks]

Answer:

As per **Section 69, Indian Contract Act, 1872**, **M** is entitled to reimbursement of ₹50,000 since he paid money which **L** was contractually bound to pay.

Question 4:

X found a wallet in a restaurant, enquired for the owner but could not find him, and handed it to the manager for safekeeping; after a week, when **X** asked for it back, the manager refused, saying it did not belong to **X**. [Nov 19, 4 Marks] [RTP Dec 23] [RTP Jan 25]

Answer:

As per **Section 71, Indian Contract Act, 1872**, **X** as finder of goods has rights similar to a bailee and can retain the wallet against all except the true owner; hence the manager must return the wallet to **X**.

Question 5:

A, a gold dealer, regularly paid sales tax, but after the government lowered the tax rate, he unknowingly continued paying at the higher rate and later claimed the excess payment back. [ACT]

Answer:

As per **Section 72, Indian Contract Act, 1872** (money paid by mistake or under coercion), **A** can recover the excess payment from the government.

Question 6:

A insured goods against fire, but they were stolen from the godown; the insurance company mistakenly paid thinking loss was by fire, and on realizing theft was not covered, it sought a refund from **A**. [ACT]

Answer:

As per **Section 72, Indian Contract Act, 1872** (money paid by mistake or under coercion), the insurance company can recover the money from **A**.

Question 7:

Akhil ordered 100 Kgs wheat from **M/s Sahil Kirana Store** for evening delivery, but the hawker mistakenly delivered it to **Akhil's neighbor**, who accepted the goods. [RTP Sep 25]

Answer:

As per **Section 72, Indian Contract Act, 1872** and **Shivprasad v. Sirish Chandra**, mistaken delivery creates a quasi-contract, making the neighbor liable to pay the price of wheat.

CHAPTER 2 - THE INDIAN CONTRACT ACT, 1872

Unit 7: Contract of Indemnity and Guarantee - Complete Unit is Important

Contract of Indemnity (Sec 124)

- **Meaning:** Security against loss / Compensation for loss.
- **Definition (Sec 124):** Contract where one party promises to save the other from loss caused by:
 1. Conduct of promisor himself, or
 2. Conduct of any other person.
- **Parties:**
 - **Indemnifier** → Promisor.
 - **Indemnified / Indemnity-holder** → Promisee.
- **Scope (as per ICA):** Limited to loss due to human conduct.
- **Scope (as per English Law):** Covers all losses – including negligence, accidents, natural calamities. (*Gajanan Moreshwar v. Moreshwar Madan, 1942*)
- **Mode:**
 1. **Express Indemnity** – Clear promise to compensate.
 2. **Implied Indemnity** – Arises from conduct or circumstances.
- **Essentials:** Must satisfy all essentials of valid contract.
- **Unlawful Object:** Indemnity for illegal acts not valid.
- **Insurance Contracts:**
 - Fire & Marine Insurance = Contracts of Indemnity.
 - Life Insurance ≠ Contract of Indemnity.

Rights of Indemnity-holder (Sec 125) [Sep 24, 2 Marks] [MTP II Jan 25 -2 Marks]

Indemnity-holder (promisee), acting within authority, can recover from indemnifier:

1. **Damages** → All damages he is compelled to pay in any suit.
2. **Costs** → All costs incurred in bringing/defending suit.
3. **Compromise Sums** → All sums paid under terms of compromise.

Commencement of Liability of Indemnifier

- **Act Silent:** ICA, 1872 doesn't specify when liability begins.
- **Judicial Principle:** Liability arises **when indemnity-holder's liability becomes absolute & certain** (not contingent).
- **Example:** If court orders indemnity-holder to pay damages → he can immediately claim reimbursement from indemnifier.

Contract of Guarantee (Sec 126)

- **Definition (Sec 126):**

A contract to perform promise or discharge liability of a third person in case of his default.
- **Parties:**
 1. **Surety** → Person who gives guarantee.
 2. **Principal Debtor** → Person whose default is guaranteed.
 3. **Creditor** → Person to whom guarantee is given.
- **Nature:** Tripartite Agreement (**3 contracts in one**):
 1. Principal Debtor ↔ Creditor (main contract).
 2. Creditor ↔ Surety (secondary contract).
 3. Surety ↔ Principal Debtor (implied indemnity contract).

- **Right of Surety:** Not affected if creditor:
 - refuses to sue principal debtor, or
 - does not demand payment from principal debtor.

Essentials of a Valid Contract of Guarantee

1. **Purpose** → Must secure repayment of debt / performance of duty. No principal debt = No valid guarantee.
2. **Consideration (Sec 127)**
 - Consideration received by principal debtor = sufficient for surety.
 - Past consideration = not valid.
 - Surety must be competent; principal debtor may be incompetent.
3. **Existence of Liability** → Liability must be:
 - Existing or future promise,
 - Legally enforceable,
 - Not time-barred.
4. **No Misrepresentation or Concealment**
 - **Sec 142:** Guarantee obtained by misrepresentation = Invalid.
 - **Sec 143:** Guarantee obtained by concealment = Invalid.
5. **Form** → May be **oral or written** (Sec 126).
6. **Joining of Co-sureties (Sec 144)** → If guarantee is conditional on another person joining as co-surety, but he doesn't join → Guarantee is invalid.

Question 1:

Validity of a **contract of guarantee** where **Manish, a minor**, receives groceries from **Mr. Sohel** based on a **guarantee by Mr. Ganesh (major)**, and the surety later contests it on grounds of **lack of consideration** and **minority of principal debtor**. [ACT]

Answer:

The contention of **Mr. Ganesh is not tenable** because **consideration** for the surety exists under **Section 127** (benefit to principal debtor suffices) and the **minority of principal debtor does not invalidate the guarantee**; however, if **both principal debtor and surety are minors**, the **guarantee is void** from inception.

Nature & Extent of Surety's Liability (Sec 128) [May 25- 6 Marks]

1. **Co-extensive Liability (Sec 128):** Surety's liability = same as principal debtor's liability, unless otherwise agreed.
2. **Secondary Nature:** Surety liable only on **default of principal debtor**.
3. **Defect in Document:** If debtor not liable due to defect in document → Surety also not liable.
4. **Creditor's Choice:** Creditor may proceed **against surety first** (no need to exhaust remedies against debtor), unless contract provides otherwise.
5. **Extent:** Liability covers **principal amount + interest + charges** (if any).

Question 2:

Liability of a **surety (Mr. Raman)** under a **guarantee for payment by Mr. Salil** when part payment (Rs. 20,000) is made by **father of principal debtor** before surety pays the full debt to **Mr. Pooran**. [ACT]

Answer:

As per **Section 128** of the **Indian Contract Act, 1872**, the **surety's liability is co-extensive with the principal debtor**; since **Rs. 20,000 was already paid**, **Mr. Raman can claim refund of Rs. 20,000 from Mr. Pooran**.

Liability of Two Persons Primarily Liable (Sec 132)

1. When **two persons contract with a third person** to undertake liability → both are **primarily liable** to the third person.
2. If they agree between themselves that one will act as surety for the other → this private arrangement does **not affect liability** towards the third person.
3. Even if the third person knows about such internal arrangement, his right to proceed against either remains unaffected.
4. **Example:** A & B execute joint promissory note to C. A signs as surety for B (C knows). Still, C can sue A directly.

Types of Guarantees

1. **Specific Guarantee**
 - Extends to **single debt / specific transaction** only.
 - Liability of surety ends once that debt is repaid or promise performed.
 - Example → A guarantees payment for 5 bags of rice; once paid, liability ends. (*Kay v. Groves*).
2. **Continuing Guarantee (Sec 129)**
 - Extends to a **series of transactions**.
 - Surety liable for all transactions until guarantee is **revoked**.
 - Liability applies to unpaid balance within the guaranteed limit.
 - Example → A guarantees C's rent collection duties (continuing).
 - Example → A guarantees up to ₹10,000 for tea supplies; liable for defaults within ₹10,000 limit.

DISCHARGE OF A SURETY

1. **By Revocation of Contract of Guarantee [MTP I May 25, 6 Marks]**
 - **Notice (Sec.130):** Surety can revoke continuing guarantee for future transactions (liable for past).
 - **Death (Sec.131):** Revocation for future transactions; estate liable for past.
 - **Novation (Sec.62):** New contract substituted → old guarantee discharged.
2. **By Conduct of Creditor**
 - **Variance in contract (Sec.133):** Any change without surety's consent discharges surety.
 - **Release/Discharge of principal debtor (Sec.134): Surety discharged if creditor:**
 - **Enters into a fresh/new contract** with principal debtor → releasing debtor.
 - **Does any act/omission** → legal effect = discharge of principal debtor.
 - **Composition / Time / Not to sue (Sec.135):** Creditor's agreement **with debtor** to:
 - i) Compromise, or
 - ii) Give extra time, or
 - iii) Not sue → Surety discharged (unless consent).
 - **Exceptions (Surety NOT discharged):**
 - Agreement **with 3rd person** to give time (**Sec.136**).
 - Forbearance to sue by creditor (**Sec.137**).
 - Discharge of one co-surety **does not discharge others**; others remain liable. (**Sec.138**).

- **Creditor's act/omission impairing surety's remedy (Sec.139):** Surety discharged.
- 3. By Invalidation of Contract of Guarantee [May 25- 6 Marks]**
- **Misrepresentation (Sec.142):** If the creditor misrepresents a **material fact** or knowingly allows misrepresentation, the guarantee is **invalid**.
 - **Example:** Surety 'S' guarantees AC sold as copper but actually aluminum → S **not liable**.
 - **Concealment (Sec.143):** If the creditor **conceals material circumstances**, the guarantee is **invalid**.
 - **Examples:** Surety 'C' not informed of clerk 'B's previous defaults → C **not liable**.
 - **Hidden agreement altering payment terms** → Surety **A not liable**.
 - **Conditional on co-surety joining (Sec.144):** If co-surety doesn't join → guarantee invalid.

Question 3:

Liability of a surety (Abhishek) under a continuing guarantee in a hire-purchase agreement for a bike worth Rs. 96,000 payable in 24 monthly instalments, where Ashok paid 12 instalments but defaulted, and the surety either revokes guarantee after paying 13th and 14th instalments or dies after 15 months. [ACT]

Answer:

As per Sections 130 and 131 of the Indian Contract Act, 1872, Abhishek can revoke a continuing guarantee for future instalments by notice and is liable only for past instalments paid (13th and 14th); similarly, death of the surety revokes future liability, but the estate remains liable for past instalments (up to 15th month).

Question 4:

Liability of legal heirs of a surety (Sooraj) under a continuing guarantee where Vikas supplied goods worth ₹30,000 (01.03.2023) and ₹20,000 (03.03.2023) before Sooraj's death on 05.03.2023, and a further supply of ₹40,000 on 10.03.2023 was made without knowledge of death, followed by default by Nikhil. [RTP Sep 24]

Answer:

As per Section 131 of the Indian Contract Act, 1872, the estate of Sooraj is liable only for transactions before death (₹50,000), not for the supply made after death (₹40,000), and if the estate is worth only ₹45,000, the legal heirs' liability is restricted to ₹45,000.

Question 5:

Liability of a surety (X) where Y advanced a loan of ₹10,000 to Z at 10% interest, later reduced interest to 7% and extended time for repayment without X's consent, and Z became insolvent. [RTP Sep 25]

Answer:

As per Sections 133 and 135 of the Indian Contract Act, 1872, any variance in contract terms or grant of time to debtor without surety's consent discharges the surety; hence, Y cannot sue X for recovery.

Question 6:

Liability of a surety (Mr. Janak) for the good conduct guarantee of Mr. Ram, an employee of Swaraj Ltd. drawing ₹45,000 salary, whose salary was later reduced to ₹35,000 without surety's consent, and who was found manipulating funds either since appointment or after the salary reduction. [ACT]

Answer:

As per Section 133 of the Indian Contract Act, 1872, if manipulation existed since appointment, the surety (Janak) is liable for company's loss during entire 3 years; but if manipulation began after the salary reduction (a variance without surety's consent), the surety is discharged for subsequent losses.

Question 7:

Liability of a surety (C) where A contracts with B to build a house for a fixed price using materials supplied by B, and C guarantees A's performance, but B fails to supply the materials. [ACT]

Answer:

As per **Section 134 of the Indian Contract Act, 1872**, since **B's omission (not supplying materials)** discharges **A (principal debtor)**, the surety **(C)** is also discharged from liability.

Question 8:

Liability of surety **(Mr. Pramod)** where **Mr. Sanjeev** supplies timber on credit to **Mr. Amit (principal debtor)** guaranteed by **Pramod**, but later **Amit** assigns his property to creditors (including **Sanjeev**) in exchange for release from debts, and **Sanjeev** sues the surety for payment. **[ACT]**

Answer:

As per **Section 134 of the Indian Contract Act, 1872**, since **Amit (principal debtor)** was released from liability by creditors' arrangement, the surety **(Pramod)** is also discharged, and therefore **Sanjeev** cannot recover payment from **Pramod**.

Question 9:

Whether surety **(A)** is discharged when **C (creditor)** holding an overdue bill of exchange drawn by **A** as surety for **B (principal debtor)** and accepted by **B**, contracts with **X (a third person)** to give time to **B**. **[ACT]**

Answer:

As per **Section 136 of the Indian Contract Act, 1872**, since the agreement to give time was with **X (a third person)** and not with **B (principal debtor)**, the surety **(A)** is not discharged.

RIGHTS OF A SURETY (June 24 - 6 Marks) (RTP May 25) [RTP Sep 25]

1. Rights against the Principal Debtor

(a) Right of Subrogation [Sec 140]

- After paying the guaranteed debt, surety steps into the creditor's shoes.
- Can enforce creditor's rights against principal debtor.

(b) Implied Promise to Indemnify [Sec 145]

- Principal debtor must **indemnify surety** for amounts rightly paid.
- Surety can recover **principal + reasonable costs**, but not wrongful payments.

2. Rights against the Creditor

(a) Benefit of Creditor's Securities [Sec 141]

- Surety benefits from **all existing securities** of creditor.
- If creditor **loses or parts with security without consent**, surety discharged to extent of loss.

(b) Right to Set-off

- Surety can use **principal debtor's claims against creditor** to reduce liability.

(c) Right to Share Reduction

- If principal debtor **partially insolvent**, surety's liability reduces proportionately.

3. Rights against Co-Sureties

(a) Equal Contribution [Sec 146]

- Co-sureties contribute equally unless **otherwise agreed**.

(b) Co-Sureties Bound in Different Sums [Sec 147]

- Liability shared **up to the maximum limit** fixed in each surety's bond.
- Contribution proportional if sums differ; full bond payable if default exceeds total sum.

Question 10:

Liability of surety (A) where C advances ₹2,00,000 to B on A's guarantee, also takes mortgage of B's furniture worth ₹2,00,000 (without A's knowledge), later cancels the mortgage, B becomes insolvent, and C sues A; market value of furniture is ₹80,000. [ACT]

Answer:

As per Section 141 of the Indian Contract Act, 1872, since the creditor (C) lost the security without A's consent, the surety (A) is discharged to the extent of ₹80,000 (value of furniture), and remains liable for balance ₹1,20,000.

Question 11:

Liability of surety (S) where R sells a water purifier worth ₹54,000 on 9 instalments to P (with S as guarantor), P pays 4 instalments (₹24,000) and becomes insolvent; further, in an alternate case, R misrepresents purifier as having copper filter (while it had normal filter), unknown to both P and S. (June 24 - 7 Marks) (RTP Jan 25) [MTP I Jan 25 – 7 Marks]

Answer:

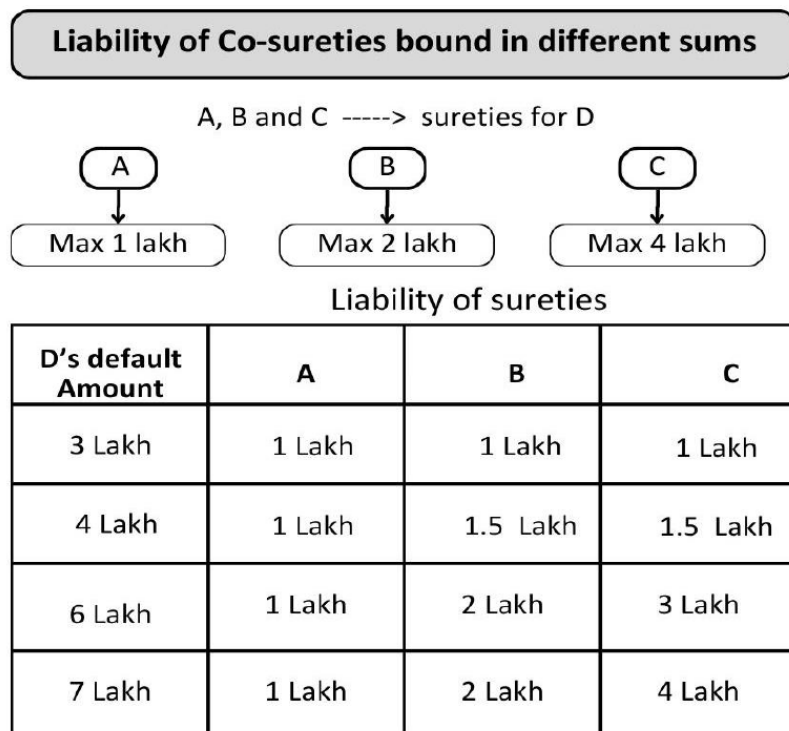
As per Sections 126 & 128 of the Indian Contract Act, 1872, the surety's liability is co-extensive with the principal debtor's, so S must pay balance ₹30,000 (₹54,000 – ₹24,000) to R. However, in the misrepresentation case, under Sections 142 & 143, the guarantee is invalid, hence S is not liable.

Question 12:

Liability of co-sureties (X, Y, Z) with varying penalty limits (₹10,000, ₹20,000, ₹40,000) for a loan default of ₹42,000 by D, and effect of no contractual arrangement among sureties. [MTP I Jan 25 – 4 Marks]

Answer:

As per Sections 146 & 147 of the Indian Contract Act, 1872, liability is by equal contribution subject to maximum limits, so X pays ₹10,000, Y pays ₹16,000, Z pays ₹16,000. If no contractual arrangement exists, all contribute equally, i.e., ₹14,000 each.



CHAPTER 2 - THE INDIAN CONTRACT ACT, 1872

Unit 8: Bailment and Pledge

WHAT IS BAILMENT? - SEC 148

Definition: Delivery of goods by one person to another for a purpose, under a contract, to return or dispose as per bailor's directions.

Parties:

- **Bailor** – Person delivering goods.
- **Bailee** – Person receiving goods.

Essential Elements (MTP 1 June 24 - 6 Marks)

1. **Contract** – Express or implied, no consideration required.
2. **Delivery of Goods** – Only *movable goods*, not money/immovable property.
 - **Actual Delivery:** Physical handover (car to workshop).
 - **Constructive Delivery:** Anything giving control (handing over keys).
3. **Purpose** – Goods delivered for specific purpose (express/implied).
4. **Possession** – Possession changes, ownership remains with bailor.
 - Custody ≠ Possession (e.g., servant, bank locker).
5. **Return of Goods** – Must return same goods, in same/alterd form as agreed.
 - Exchange/substitution not allowed.
 - Deposit of money in bank ≠ Bailment.

Types of Bailment

A. On basis of Benefit

1. For bailor's benefit (valuables kept with neighbour).
2. For bailee's benefit (lending cycle free).
3. For mutual benefit (watch given for repair).

B. On basis of Reward

1. **Gratuitous Bailment** – Free of charge (exclusive benefit of bailor/bailee).
2. **Non-Gratuitous Bailment** – For consideration, mutual benefit.

Question 1:

Whether there was a **contract of bailment** when **Mrs. Shriya delivered old silver jewellery to Mr. Yash (Goldsmith) to make a silver bowl**, but every evening she kept the **unfinished bowl in a box at Yash's shop retaining the key with herself**, and later it was **stolen**.

Answer:

As per **Section 148 & 149, Indian Contract Act, 1872**, **delivery of possession** (actual or constructive) is necessary for **bailment**; since **Mrs. Shriya retained the key**, there was **no delivery of possession** and hence **no contract of bailment**.

Question 2:

Whether there is a **contract of bailment** when **Vikas parks his car at a parking lot, locks it, and keeps the keys with himself**.

Answer:

As per **Section 148, Indian Contract Act, 1872**, **mere custody without transfer of possession** does not constitute bailment; since **Vikas retained the keys**, there was **no delivery of possession** and hence **no bailment**.

Question 3:

Whether there was a **bailment for hire** when X leased a Honda City to Y for 10 days @ ₹50,000 (petrol/toll by Y), during which the engine choked (₹10,000 repair by Y), brakes failed causing an accident (₹50,000 hospital bill), and Y claimed ₹60,000 damages which X denied on ground of ignorance of defects; further, whether Y can withhold ₹50,000 hire charges. [May 25 - 7 Marks]

Answer:

As per **Section 150, Indian Contract Act, 1872**, in **bailment for hire**, the **bailor is liable for defects whether known or unknown**; hence **X is liable to compensate Y ₹60,000 (₹10,000 repair + ₹50,000 hospital)**, and **Y can withhold/set-off the ₹50,000 hire charges** against damages.

DUTIES OF BAILOR

1. Duty to Disclose Faults [Sec. 150]

- **Gratuitous Bailment** → Disclose known defects; liable if not disclosed.
- **Non-Gratuitous Bailment** → Liable for defects whether known or unknown.
- If goods are dangerous → must disclose nature.

2. Duty to Pay Expenses [Sec. 158]

- **Gratuitous** → Bailor to pay necessary + extraordinary expenses.
Example: X delivers his horse to Y, his friend, to take care of it without any charge.
Y incurs **necessary expenses** like feeding, grooming, and providing shelter.
Later, the horse falls sick and Y spends money on **medical treatment (extraordinary expenses)**.
X (Bailor) must reimburse Y for both ordinary and extraordinary expenses.
- **Non-Gratuitous** → Bailor to pay extraordinary expenses only.
Example: A hires a taxi from B to travel from Delhi to Jaipur.
Petrol, toll tax, and driver's food = **ordinary expenses** → to be borne by A (Bailee).
Midway, a major engine breakdown occurs and repair costs ₹10,000 = **extraordinary expenses**.
Here, B (Bailor) must bear the extraordinary repair charges.

3. Duty to Indemnify for Premature Termination [Sec. 159]

- If bailment is gratuitous and ended before time/purpose → Bailor must compensate bailee for loss beyond benefit received.
- **Example:** P lends his car **gratuitously** to Q for one month. Q spends ₹5,000 on fuel, servicing, and arrangements for a planned trip.
After 10 days, P asks for the car back (premature termination).
Q derived benefit worth only ₹2,000 from use of the car.
P (Bailor) must **indemnify Q** for the **loss exceeding benefit**, i.e., ₹5,000 – ₹2,000 = **₹3,000**.

4. Responsibility towards Bailee [Sec. 164]

- Indemnify for loss due to defective title or lack of authority to bail.
- Must accept goods back when bailment ends; if refuses, compensate bailee for custody expenses.

DUTIES OF BAILEE

1. Take Reasonable Care (Sec. 151–152)

- Same care as a man of ordinary prudence for his own goods.
- Not liable if reasonable care taken & still goods lost/destroyed.

2. Not to Make Inconsistent Use (Sec. 153–154)

- Use goods only as per terms of bailment.

- Misuse → liable for loss + bailment becomes voidable at bailor's option.
- 3. Not to Mix Goods (Sec. 155–157)**
 - With bailor's consent → share in proportion.
 - Without consent (separable) → bailor gets goods back; bailee bears expense/damage.
 - Without consent (inseparable) → bailee compensates bailor for loss.
- 4. Return Goods (Sec. 160–161)**
 - Return without demand when time/purpose ends.
 - Delay/default → liable for subsequent loss/destruction.
- 5. Return Accretion (Sec. 163)**
 - Deliver to bailor any natural increase/profit from goods bailed.
- 6. Not to Set Up Adverse Title**
 - Cannot deny bailor's ownership or claim adverse rights over goods.

Question 4:

Whether there was a breach of **bailee's duty of care** when **Ashley bailed his jewelry with Barn on condition to keep it in a bank's safe locker**, but **Barn instead kept it in his home locker (where he kept his own jewelry)**, and **later all jewelry was lost in a religious riot, leading Ashley to sue Barn for recovery.**

Answer:

As per **Sections 151 & 152, Indian Contract Act, 1872**, a **bailee must take reasonable care and follow agreed terms**; since **Barn deviated from the contract by keeping jewelry at home instead of bank locker**, he is **liable to compensate Ashley for the loss.**

Question 5:

Whether there is a **bailee's liability** when **Mr. A bailed 1,000 bottles of energy drinks (marked with five star) to Mr. B, who without consent mixed them with his own differently marked bottles**, and on demand of 500 bottles **Mr. B refused immediate return, asking Mr. A to pay labour charges for separation. [ACT]**

Answer:

As per **Section 156, Indian Contract Act, 1872**, if a **bailee mixes bailor's goods without consent but they can be separated**, the **bailee must bear expenses of separation and damages**; hence **Mr. B must return 500 bottles (and all 1,000 later) at his own cost, and cannot demand labour charges from Mr. A.**

Question 6:

Whether **Manoj (bailee)** is liable when **Raj bailed his umbrella for 2 days during exams**, but **Manoj kept it for a week and while returning slipped, causing the umbrella to be badly damaged.**

Answer:

As per **Sections 160 & 161, Indian Contract Act, 1872**, the **bailee must return goods on time**, and if delayed, he is **liable for any loss/damage after expiry of bailment period**, even if due to accident; hence **Manoj must bear the loss.**

Question 7:

Whether a **pawnee's duty** includes returning **increase/profits** when **Mr. Flemming pledged his poultry farm to Mr. Stefen for ₹25 lakhs (with 1,00,000 live birds + 10,000 eggs)**, and after 1 year the stock became **1,09,000 birds + 15,000 eggs**, but **Mr. Stefen agreed to return only the original 1,00,000 birds and 10,000 eggs. [RTP Sep 24]**

Answer:

As per **Section 163, Indian Contract Act, 1872**, in the absence of any contract to the contrary, the **pawnee must deliver to the pawnor any increase/profit from pledged goods**; hence **Mr. Stefen must return all 1,09,000 live birds and 15,000 eggs**, and **Mr. Flemming is entitled to recover the additional 9,000 birds and 5,000 eggs.**

RIGHTS OF A BAILOR

1. **Right to Terminate Bailment (Sec. 153)** – Bailor may end bailment if bailee acts inconsistently with terms.
2. **Right to Demand Back Goods (Sec. 159)** – In gratuitous bailment, goods can be demanded anytime, even before expiry/purpose; bailor must compensate bailee for loss > benefit derived.
3. **Right to Sue Wrongdoer (Sec. 180–181)** – Bailor can sue third parties who cause damage to goods bailed.
4. **Right to Sue Bailee** – For enforcement of bailee's duties and liabilities.
5. **Right to Compensation** – For unauthorized use/mixing or damage to goods by bailee.

Question 8:

Whether **M/s Kushwah Travels (bailor)** can demand premature return of a **car hired to Rahul for 15 days**, when after **5 days** they asked for the car back (offering compensation for loss), but **Rahul refused** and bailor sued for recovery. [RTP Sep 25]

Answer:

As per **Section 159, Indian Contract Act, 1872**, the right to **premature recovery exists only in gratuitous bailment**; in **bailment for hire**, the bailor **cannot recover goods before the agreed time**, even if willing to compensate. Hence, **M/s Kushwah Travels cannot recover the car before 15 days**.

RIGHTS OF A BAILEE

1. **Right to Deliver to Any Joint Bailor (Sec. 165)** – Can return goods to any one joint owner unless contract to contrary.
2. **Right to Indemnity (Sec. 166)** – Indemnity for loss if bailor had no title/authority; not liable if goods returned in good faith as per bailor's directions.
3. **Right to Compensation for Faulty Goods (Sec. 150)** – Compensation if bailor fails to disclose defects (known in gratuitous, known/unknown in non-gratuitous).
4. **Right to Claim Expenses (Sec. 158)** – In gratuitous bailment, entitled to necessary + extraordinary expenses.
5. **Right to Apply to Court (Sec. 167)** – If ownership/title of goods is disputed, bailee may apply to court for decision.
6. **Right of Particular Lien (Sec. 170)** – Retain goods for charges related to services rendered.
7. **Right of General Lien (Sec. 171)** – Certain bailees (bankers, factors, attorneys of High Court, policy brokers, wharfingers) may retain goods for general balance of account.

RIGHTS OF BAILOR AND BAILEE AGAINST ANY WRONG DOER (THIRD PARTY) [Sep 24 - 6 Marks]

1. **Right to Sue (Sec. 180)**
 - If a third person wrongfully deprives bailee of goods or causes injury →
 - Bailee can sue as if he were the owner.
 - Bailor or bailee may bring suit against third party.
2. **Apportionment of Relief (Sec. 181)**
 - Compensation/relief obtained → shared between bailor & bailee **as per their respective interests** in goods.

Termination of Bailment [MTP II May 25, 6 Marks]

1. **Expiry of Period** – Bailment ends when stipulated time lapses.
2. **Fulfillment of Purpose** – Ends when specific purpose is accomplished.
3. **By Notice**
 - If bailee acts inconsistently → Bailor may terminate by notice.
 - **Gratuitous bailment** → Bailor may terminate anytime with notice, but must compensate bailee if loss > benefit derived (**Sec. 159**).
4. **By Death** – Gratuitous bailment ends on death of bailor or bailee.
5. **Destruction of Subject Matter** – Bailment ends if goods are destroyed or become unusable for intended purpose.

Finder of Lost Goods (Sec. 168–169, ICA 1872)

Definition – A person who finds goods belonging to another. Duty → take care, find true owner, return goods.

Rights of Finder

1. **Right to Retain Goods (Sec. 168)** – Until compensated for trouble/expenses in preserving goods.
2. **Right to Reward (Sec. 168)** – May sue for specific reward (if announced) & retain goods until paid.
3. **Right to Sell Goods (Sec. 169)** – Finder may sell if:
 - Owner cannot be found with reasonable diligence, **OR** refuses to pay lawful charges, **AND**
 - (i) Goods are perishable/likely to lose major value, **OR**
 - (ii) Finder's lawful charges $\geq 2/3$ of value of goods.

Question 9:

Whether Raghav, who found a gold & diamond studded wristwatch worth ₹1,00,000 and incurred ₹20,000 expenses in searching the true owner (Madhav), later gifted it to his son Mahesh, warned Madhav of suing for expenses, retained possession, and threatened to sell the watch, can lawfully do so under the Indian Contract Act, 1872. [Sep 24 - 4 Marks]

Answer:

As per Sections 71, 168 & 169, a finder is treated as a bailee—he cannot gift/appropriate (unlawful), cannot sue for expenses (unlawful), but may retain goods till reimbursed (valid); however, he cannot sell since the watch is not perishable and expenses of ₹20,000 are far below two-thirds of its value ₹1,00,000.

RIGHT OF LIEN (Sec. 170–171, ICA 1872)

Meaning – Right to retain goods of another until claim/debt is satisfied.

Types of Lien

1. **Particular Lien (Sec. 170)**
 - Right to retain *only those goods* in respect of which claim arises.
 - Condition → Service involving labour/skill performed as per purpose of bailment.
 - Retain goods till remuneration paid.
 - Eg: Tailor retaining coat until paid.
2. **General Lien (Sec. 171)**
 - Right to retain goods *for general balance of account (in the absence of a contract to the contrary)*, not confined to particular goods.
 - Available to → Bankers, Factors, Wharfingers, Policy Brokers, Attorneys of law.
 - Eg: Bank can retain security for other unpaid debts.
 - Limitation → Goods can only be **retained**, not sold.
 - Can be waived by contract.

Question 10:

Whether a bank can retain **gold pledged** for a **₹50,000** secured loan (taken on **1.07.2019**) under an agreement **which contains a clause that the bank shall have a right of particular lien**, after granting an additional **unsecured ₹20,000** loan on **1.08.2019**, when the **secured ₹50,000** was **fully repaid on 30.09.2019**, by continuing lien on the gold until the unsecured loan is cleared. [ACT]

Answer:

Under **Section 171, Indian Contract Act, 1872**, bankers have **general lien** “in the absence of any contract to the contrary”; here the contract expressly gave only a **particular lien** for the **₹50,000** loan, so once that loan was repaid, the lien **extinguished**—the bank **cannot retain the gold** for the **₹20,000** unsecured loan; the bank’s decision is **invalid**.

General Lien V Particular Lien

Basis	General Lien	Particular Lien
Section	Sec. 171, Indian Contract Act, 1872	Sec. 170, Indian Contract Act, 1872
Meaning	Right to retain goods for general balance of account	Right to retain specific goods for non-payment
Nature	Not automatic – requires agreement/recognition	Automatic
Labour/Skill	Can be exercised without labour/skill	Applicable only when labour/skill increases value of goods
Persons entitled	Bankers, factors, wharfingers, policy brokers, attorneys (as per Sec. 171)	Bailee, finder of goods, pledgee, unpaid seller, agent, partner, etc.

PLEDGE

- **Definition (Sec. 172):** Bailment of goods as security for payment of debt/performance of promise.
- **Parties:**
 - Bailor → Pawnor / Pledger
 - Bailee → Pawnee / Pledgee
- **Example:** A lends money to B, B deposits jewellery → pledge.
- **Essentials:**
 1. Bailment **must be for security** (debt/payment of promise).
 2. **Subject matter = Goods.**
 3. Goods pledged must be **in existence**.
 4. **Delivery of goods** by pledger to pledgee is necessary.

Rights of Pawnee / Pledgee (Sections 173–176)

1. **Right to retain pledged goods [Sec. 173]**
 - Retain goods for debt, interest, and necessary expenses of preservation.
2. **Right to retain goods for subsequent debts [Sec. 174]**
 - Can retain for debts other than the original one **only if there is a contract to that effect**.

Example (Sec. 174):
A pledges gold to B for ₹50,000 loan. Later, A takes another loan of ₹20,000 from B. If there is a contract allowing retention for future loans, B can retain the gold for both loans.
3. **Right to recover extraordinary expenses [Sec. 175]**
 - Pawnee can recover extraordinary expenses for preserving goods.
 - No right to retain goods for these; must sue for recovery.

Example (Sec. 175):

A pledges machinery with B. To prevent damage during heavy rains, B spends ₹5,000 on special covering. B can recover this from A but cannot retain the machinery for it.

4. Right in case of default by pawnor [Sec. 176]

- Can sue for debt & retain goods as collateral security, OR
- Can sell goods after giving reasonable notice.
- If sale proceeds < debt → pawnor liable for balance.
- If sale proceeds > debt → pawnee must return surplus.

Rights & Duties

Rights of Pawnor

1. **All rights of bailor** (since pledge = bailment).
2. **Right of redemption [Sec. 177]** → Pawnor can redeem goods **anytime before actual sale** by pawnee (must pay debt + expenses from default).

Duties of Pawnee [Sep 24 - 6 Marks]

- a. Take reasonable care of goods.
- b. No unauthorized use.
- c. Return goods after repayment/performance.
- d. Not to mix goods with own.
- e. Not to act inconsistently with pledge terms.
- f. Return any **accretions** (e.g., increase/offspring).

Duties of Pawnor

- a. Pay debt / perform promise.
- b. Compensate pawnee for extraordinary preservation expenses.
- c. Disclose faults in goods (to avoid extraordinary risk).
- d. Indemnify pawnee if title is defective.
- e. Pay deficit if pawnee sells goods on default.

PLEDGE BY NON-OWNERS

General Rule

Only **owner/authorized person** can pledge goods.
Exceptions allowed for **bonafide mercantile transactions**.

Exceptions (Valid Pledge by Non-Owners)

1. **Pledge by Mercantile Agent [Sec. 178] [May 25 – 6 Marks]**
 - Must have possession of goods or document of title with **owner's consent**.
 - Pledge in **ordinary course of business**.
 - Pawnee → good faith + no notice of defect.
2. **Pledge by Person in Possession under Voidable Contract [Sec. 178A] [May 25 – 6 Marks]**
 - Possession obtained by fraud, coercion, misrepresentation, undue influence.
 - Contract not rescinded when pledge made.
 - Pawnee → good faith + no notice.
3. **Pledge by Person with Limited Interest [Sec. 179]**
 - Pledge valid **only up to extent of interest**.
 - Eg. Finder/repairer/lien-holder can pledge for repair charges.
4. **Pledge by Co-owner in Possession**
 - One co-owner in possession (with consent of others) may validly pledge.

5. Pledge by Seller or Buyer in Possession

- **Seller:** After sale but retains possession → can pledge.
- **Buyer:** Before sale but with consent obtains possession → can pledge.
- Pawnee must act in **good faith + without notice** of defect.

Basis	Bailment	Pledge
Meaning	Transfer of goods for a specific purpose.	Transfer of goods as security for debt/promise.
Parties	Bailor (delivers), Bailee (receives).	Pawnor (delivers as security), Pawnee (receives as security).
Purpose	Any purpose – safe custody, repairs, processing, etc.	Only for securing payment of debt/performance of promise.
Consideration	May be with or without consideration.	Always for consideration.
Right to Sell Goods	Bailee → No right to sell; only lien or suit for charges.	Pawnee → Right to sell if pawnor defaults.
Right to Use Goods	Bailee can use only for agreed purpose.	Pawnee cannot use pledged goods.

CHAPTER 2 - THE INDIAN CONTRACT ACT, 1872

Unit 9: Agency

WHAT IS AGENCY?

- **No definition of Agency** in Indian Contract Act, 1872.
- **Section 182** defines:
 - **Agent** → person employed to do an act or represent another in dealings with third parties.
 - **Principal** → person for whom such act is done or who is represented.
- **Test of Agency:**
 1. Can the person bind the principal and make him liable to third parties?
 2. Can he establish privity of contract between principal and third parties?
- If **Yes** → relationship of agency exists.
- **Meaning:** Agency = relationship where one person brings another into legal relations with third parties.
- **Legal Maxim:** "*Qui facit per alium, facit per se*" → He who acts through another, acts himself.

APPOINTMENT AND AUTHORITY OF AGENTS

- **Who may employ an agent (Sec. 183):**
 - Person of **majority** age & **sound mind**.
 - **Minor/unsound mind** → cannot appoint agent.
- **Who may be an agent (Sec. 184):**
 - **Any person** (even minor/unsound mind).
 - **Principal is bound** by acts of such agent.
 - **Caution:** Minor/unsound mind agent is **incompetent to contract**, so principal cannot claim compensation for misconduct/negligence.
 - **Example:** Minor agent sells below instructed price → Principal bound, but cannot claim damages from minor.
- **Consideration not necessary (Sec. 185):**
 - **No consideration required** to create agency.
 - **Acceptance of agency = sufficient consideration.**

CREATION OF AGENCY

- **Section 186:** Authority may be **express** or **implied**.
 1. **Express Authority (Sec. 187):**
 - Given by **words (spoken/written)**.
 2. **Implied Authority (Sec. 187):**
 - Inferred from **circumstances, conduct, or ordinary dealings**.
 - Examples:
 - Person collecting rent for landlord.
 - Shop manager ordering goods in name of owner with knowledge & funds of owner.

Implied Agency – Types & Essentials

1. Agency by Estoppel [Sec. 237]

- Principal induces 3rd party to believe another is his agent.
- Essentials:
 1. Representation by principal (express/implied).
 2. Representation shows agent has authority (though actually not).
 3. Inducement of 3rd party.
 4. 3rd party believes representation.

5. Contract made on that belief.

- Effect → Principal bound, cannot deny agency.

2. Agency by Necessity

- Arises in **emergency situations**.
- Agent acquires **extraordinary authority** to protect principal's interest.
- Principal liable for expenses incurred by agent of necessity.

3. Agency by Operation of Law

- Agency arises automatically under law.
- Example: Partner = agent of firm for business purposes.

4. Agency by Ratification [Sec. 196]

- Acts done **without authority** may be ratified later by principal.
- Ratification = express or implied.
- Effect → Act becomes binding as if authorised originally.

EXTENT OF AGENT'S AUTHORITY

(a) Normal Circumstances – Sec. 188

- Agent has authority to do:
 - Every **lawful thing necessary** to perform the act.
 - Every **lawful thing usually done** in the course of that business.
- **Examples:**
 - Agent to recover debt → can use legal process & give valid discharge.
 - Shipbuilding agent → can buy timber, materials & hire workmen.

(b) Emergency – Sec. 189 - [Jan 25 – 6 Marks]

- Agent has authority to act as a **person of ordinary prudence** to protect principal from loss.
- **Conditions for valid emergency authority:**
 1. No opportunity to communicate with principal.
 2. Actual & definite commercial necessity to act promptly.
 3. Acted **bonafide** for principal's benefit.
 4. Adopted most **reasonable & practicable** course.
 5. Agent had **possession of principal's goods** (subject of contract).
- **Examples:**
 - Repairing goods before sale if necessary.
 - Selling perishable goods if they start decaying before reaching destination.

Question 1:

Mr. Yadav (cargo owner) who chartered a vessel to carry wheat from a foreign port to Chennai; the vessel got stranded on a reef 300 miles from the destination; the ship's managing agents signed a salvage agreement; since wheat was perishable, the salvors stored it at their own expense and intimated the cargo owner; Mr. Yadav refused to reimburse salvors, arguing that the ship owner, being bailee, was liable until contract termination.

Answer:

As per **Section 189, Indian Contract Act 1872**, the salvors acted as **agents of necessity** with **implied authority** to protect the cargo, hence **Mr. Yadav (cargo owner) is liable** to reimburse them (they have **lien on goods**) and **not the ship owner**.

SUB-AGENTS

General Rule (Sec. 190)

- **Agent cannot delegate** acts he undertook personally.
- **Exceptions:**
 1. By **custom of trade**.

2. By nature of agency (necessity of sub-agent).

Definition (Sec. 191)

- **Sub-agent** = Person employed by & under control of original agent in business of agency.
- **Principle:** *Delegatus non potest delegare* → Delegate cannot further delegate.

Exceptions: Valid Appointment of Sub-agent

1. Terms of appointment **contemplate delegation**.
2. **Custom of trade** allows delegation.
3. **Unforeseen emergency** makes delegation necessary.

Effects of Proper Appointment (Sec. 192)

1. **Principal liable** to 3rd parties for acts of sub-agent.
2. **Agent responsible** to principal for acts of sub-agent.
3. **Sub-agent responsible** to agent (not to principal, except in case of fraud/wilful wrong).

Effects of Improper Appointment (Sec. 193)

1. **Agent liable** to both principal & 3rd parties for acts of sub-agent.
 2. **Principal not liable** for acts of sub-agent.
 3. **Sub-agent not liable** to principal (answerable only to agent).
- **Example:** Carrier A delegates work to B without authority → Goods damaged → A liable.

SUBSTITUTED AGENT

Meaning

- **Substituted Agent** = Person appointed by the agent **with knowledge & consent of principal** to act for principal.
- He is **not a sub-agent** → but **direct agent of the principal**.

Section 194 – Relation with Principal

- If agent has **authority to name another**, the person so named becomes **principal's agent** (not sub-agent).
- **Examples:**
 - Solicitor appointing auctioneer → Auctioneer = principal's agent.
 - Merchant appointing solicitor to sue debtor → Solicitor = principal's agent.

Section 195 – Duty of Agent in Selecting

- Agent must use **ordinary prudence** in selecting substituted agent.
- If done prudently → Agent **not responsible** for substituted agent's acts/negligence.
- **Examples:**
 - Ship surveyor selected prudently but negligent → Surveyor liable, not agent.
 - Auctioneer of good credit appointed but becomes insolvent → Agent not liable.

SUB-AGENTS Vs SUBSTITUTED AGENT [Jan 25- 6 Marks]

S. No	Sub-Agent	Substituted Agent
1	Works under control & directions of agent	Works under instructions of principal
2	Agent delegates part of his duty	Agent does not delegate duty
3	No privity of contract with principal	Privity exists with principal
4	Responsible to agent only	Responsible to principal , not agent

5	Agent responsible to principal for sub-agent's acts	Agent not responsible for substituted agent's acts
6	No right to sue principal for remuneration	Can sue principal for remuneration
7	May be improperly appointed	Cannot be improperly appointed
8	Agent remains liable for acts of sub-agent	Agent's duty ends after naming substituted agent

RATIFICATION

Ratification (Sec. 196)

- Meaning → Approval of an act done **without authority**.
- Situation → One person acts on behalf of another **without knowledge/authority**.
- Choice of Principal →
 1. **Ratify** → Act becomes valid **as if authorized from the beginning**.
 2. **Disown** → Act has **no effect** on principal.
- **Form (Sec. 197)**: Ratification may be **express or implied** (by conduct).
- **Knowledge (Sec. 198)**: Must be with **full knowledge of material facts** → otherwise invalid.
- **Whole transaction (Sec. 199)**: Must be ratified **entirely or rejected entirely** (cannot ratify in part).
- **Third party rights (Sec. 200)**: Ratification cannot **injure third persons** or defeat their rights.
- **Time**: Ratification must be made within a **reasonable time**.
- **Communication**: Ratification must be **communicated** to the other party.
- **Validity**: Act must be **lawful & valid** (not void/illegal e.g., forgery, crime, dividend out of capital).

TERMINATION OF AGENCY

Ends when: [Sec. 201]

- Principal revokes authority.
- Agent renounces agency.
- Business is completed.
- Principal/Agent dies or becomes of **unsound mind**.
- Principal is **insolvent**.

By Revocation

- Principal may revoke authority [Sec. 201].
- If agent has **interest in property** → cannot be terminated without express contract [Sec. 202].
- Revocation possible **before authority exercised** [Sec. 203].
- After authority partly exercised → cannot revoke for obligations already done [Sec. 204].
- **Fixed period agency** → premature revocation without sufficient cause = compensation [Sec. 205].
- **Not fixed period** → reasonable notice, else compensation [Sec. 206].
- Revocation may be **express/implied** [Sec. 207].
- Termination takes effect **when known** to agent/third party [Sec. 208].
- Termination of agent → also terminates **sub-agent's authority** [Sec. 210].

By Agent Renouncing Business [Sec. 201]

- Agent may renounce by **express/implied** conduct [Sec. 201].
- **Fixed period agency** → premature renunciation without sufficient cause = compensation to principal [Sec. 205].
- **Not fixed period** → reasonable notice, else compensation [Sec. 206].

Question 2:

Whether **agency shall be terminated** in two cases: (i) A gives authority to B to sell A's land and pay himself debts due from A; afterwards A becomes insane. (ii) A appoints B as agent to sell land; B appoints C as his agent; afterwards A revokes B's authority but not of C. (MTP 1 June 24 - 6 Marks)

Answer:

Under **Section 202**, since **B has interest in the subject matter**, the **agency is irrevocable** and not terminated by **A's insanity**; under **Sections 191 & 210**, since **C is a sub-agent of B**, **revocation of B's authority by A terminates C's authority** also.

DUTIES OF AN AGENT [MTP II May 25 – 6 Marks] [MTP I Sep 24 – 6 Marks]

1. **On Death/Unsoundness of Principal** – Take reasonable steps to protect interests of principal's representatives. [Sec. 209]
2. **Conduct Business as per Directions** – Follow principal's instructions/customs; otherwise, agent must bear losses/profits. [Sec. 211]
3. **Work with Reasonable Diligence** – Use skill & care; compensate principal for loss due to neglect/misconduct. [Sec. 212]
4. **Render Proper Accounts** – On demand. [Sec. 213]
5. **Communicate in Case of Difficulty** – Seek principal's instructions with diligence. [Sec. 214]
6. **Not Deal on Own Account** – Without disclosing facts & consent; else principal may:
 - Repudiate transaction [Sec. 215]
 - Claim benefits from agent [Sec. 216]
7. **No Secret Profits** – Beyond agreed remuneration. [Sec. 216]
8. **Remit All Sums to Principal** – After deducting due expenses/advances. [Sec. 218]

RIGHTS OF AN AGENT

Sec. 217 – Right to **retain money** (for **advances, expenses, remuneration**).

Sec. 219 – **Remuneration** due only on **completion of act** (unless **special contract**).

Agent can **keep money** from **sold goods** even if **sale incomplete**.

Sec. 220 – Agent **guilty of misconduct** → **no remuneration** for that part.

Sec. 221 – Right of **lien** on **principal's goods, papers, property** till **paid**.

Sec. 222 – Right to be **indemnified** for all **lawful acts**.

Sec. 223 – Right to be **indemnified** for acts done in **good faith** (even if **third party injured**).

Sec. 224 – **No indemnity** for consequences of **criminal acts**.

Sec. 225 – Right to **claim compensation** for **injury** due to **principal's neglect/lack of skill**.

LIABILITY OF PRINCIPAL TO THIRD PARTIES FOR THE ACTS OF AGENT (SEC. 226 TO 228 AND 238)

- **Sec. 226** – Principal liable for all lawful acts of agent within authority.
- **Sec. 230** – Agent not personally liable on contracts made for principal.
- **Sec. 227** – If agent exceeds authority → only authorized part binding (separable).
- **Sec. 228** – If authority exceeded & inseparable → principal not bound.
- **Sec. 229** – Notice given to agent = notice to principal.
- **Sec. 238** – **Principal's liability for agent's fraud/misrepresentation**
 - Fraud/misrepresentation within scope of authority = binds principal.
 - If beyond authority → principal not bound.
- **Sec. 231 - Rights When Agent's Principal Is Not Disclosed**
 - If an agent makes a contract without revealing he's an agent, the principal can enforce the contract.
 - The other party has the same rights against the principal as against the agent.
 - If the principal reveals himself before the contract is completed, the other party can refuse to fulfill the contract if they can show they wouldn't have entered into it knowing the true principal.

Example:

- A, an agent, makes a contract with B without revealing he's acting for principal C.
- C can enforce the contract.

- B has the same rights against C as he would against A.
- If C reveals himself before the contract is completed and B can prove he wouldn't have agreed knowing C was the principal, B can refuse to fulfill the contract.
- **Sec. 232 - Performance of Contract with Undisclosed Agent**
If a person contracts with another, not knowing they are an agent, the principal can enforce the contract but must respect the existing rights and obligations between the agent and the other party.
Example:
 - A, owing B 500 rupees, sells 1,000 rupees worth of rice to B.
 - A acts as C's agent, but B doesn't know this.
 - C cannot force B to buy the rice without letting B offset A's 500-rupee debt.
- **Sec. 233 - Right of Person Dealing with Personally Liable Agent**
If an agent is personally liable, the person dealing with him can hold the agent, the principal, or both liable.
- **Sec. 234 - Consequence of Inducing Belief of Exclusive Liability**
If a person makes an agent or principal believe that only the other will be held liable, they cannot afterwards hold liable the agent or principal respectively.
- **Sec. 235 - Liability of Pretended Agent**
A person falsely claiming to be an authorized agent, causing another to deal with him, must compensate for any loss if the alleged principal does not ratify his acts.
- **Sec. 236 - Person Falsely Contracting as Agent**
A person who falsely claims to be an agent when contracting cannot demand performance if he was actually acting on his own behalf.

Question 3:

ABC Infrastructure Ltd., through its **Purchase Manager (P)**, authorised **Agent (Q)** to buy **Mazboot Brand Cement** only at **₹2,000–2,500 per ton**. Q instead purchased **1,000 tons @ ₹3,500 per ton** from **Vendor R** without disclosing that he was acting for the company. **P refused payment**, rejecting goods for **exceeding authority**, and **R suffered loss**. [May 25 – 7 Marks]

Answer:

As per **Sec. 226 & 228**, **Principal (P)** is **not bound** since **Q exceeded inseparable authority** (purchase beyond limit).
As per **Sec. 230 Exception**, since **Q did not disclose Principal's name**, **Q is personally liable**. Hence, **R can sue Q** for compensation.

PERSONAL LIABILITY OF AGENT TO THIRD PARTIES [Sep 24, 4 Marks] [MTP II Jan 25 - 4 Marks]

General Rule (Sec. 230)

- Agent **cannot personally enforce** contracts made on behalf of principal.
- Agent is **not personally bound**, cannot sue or be sued.

Exceptions – Agent Personally Liable

1. **Foreign Principal** – Contract for sale/purchase of goods for a merchant resident abroad.
2. **Undisclosed Principal** – Agent does not disclose the principal's name.
3. **Non-existent/Incompetent Principal** – Principal cannot be sued (e.g., minor, unsound mind).
 - Example: Agent contracts for a minor → agent personally liable.
4. **Pretended Agent (Sec. 235)** – Claims to act as agent but has no authority, and principal disowns the act.
5. **Exceeding Authority** – Agent misleads 3rd party into believing he has authority → personally liable (breach of warranty of authority).