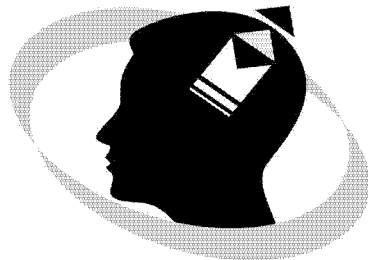


CA - IPCC COURSE MATERIAL

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**BOOK NO. 9
INDIAN CONTRACT ACT_ 37e**

(NEW EDITION THOROUGHLY REVISED & UPDATED UPTO JULY 2015.
APPLICABLE FOR MAY 2017 IPCC EXAMINATIONS. THIS MATERIAL IS
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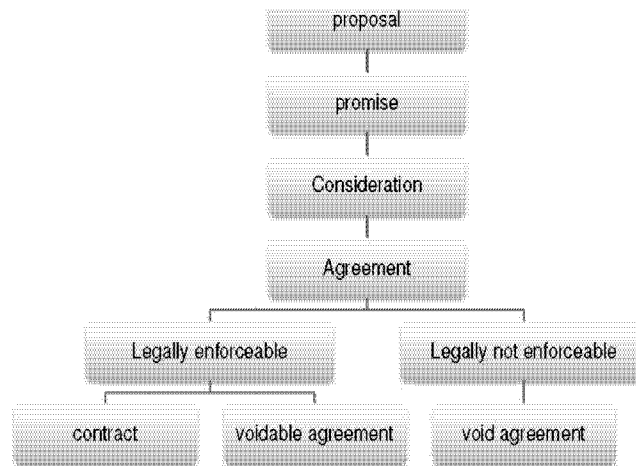
UNIT- 1: BACKGROUND

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Q.No.1. Define Contract?

(PM)

- a) An agreement which is legally enforceable alone is a contract. Agreements which are not legally enforceable are not contracts but remain as void agreements or as voidable agreements
- b) The above observation would raise a question in our minds as to what is the exact meaning of the words 'agreements' and 'contracts'.
- c) An Agreement is a promise or a commitment or set of reciprocal promises or commitments.
- d) An Agreement involves an offer or proposal by one person and acceptance of such offer or proposal by another person.
- e) If the agreement is capable of being enforced by law then it is a contract
- f) Thus "all contracts are agreements, all agreements are not contracts".
- g) **Section 2(b) Promise:**
 "When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. Proposal when accepted becomes a promise"
- h) **Section 2(e) Agreement:**
 "Every promise and every set of promises forming consideration for each other is agreement"
- i) **Section 2(h) Contract:** "An agreement enforceable by law is contract"

**SIMILAR QUESTION****Q.No.1. What is contract?**

Solution: Refer Q.No.1

Q.No.2. Explain Essential elements of valid contract?**(Section 10):**

All agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void.

Essential Elements of Contract:**a) Offer and Acceptance:**

- i. In the first place, there must be an offer and the said offer must have been accepted. Such offer and acceptance should create legal obligations between parties.
- ii. This should result in a moral duty on the person who promises or offers to do something. Similarly this should also give a right to the promisee to claim its fulfillment. Such duties and rights should be legal and not merely moral.

Balfour v. Balfour, a husband promised to pay maintenance allowance every month to his wife, so long as they remain separate. When he failed to perform this promise, she brought an action to enforce it. As it is an agreement of domestic nature, it was held that it does not contemplate to create any legal obligation.

b) Consent:

- i. 'Consent' means 'knowledge and approval' of the parties concerned. This can also be understood as identity of minds in understanding the term viz **consensus ad idem**.
- ii. Further such a **consent must be free**. Consent would be considered as free consent if it is not vitiated by coercion, undue influence, fraud, misrepresentation or mistake.
- iii. Wherever the consent of any party is not free, the contract is voidable at the option of that party.

For Example:

A threatened to shoot B if he (B) does not lend him 2000 and B agreed to it. Here the agreement is entered into under coercion and hence voidable at the option of B.

c) Capacity of the parties:

- i. Capacity or incapacity of a person could be decided only after reckoning various factors.

- ii. Section 11 of the Indian Contract Act, 1872 elaborates on the issue by providing that a person who-
- Has not attained the age of majority,
 - Is of unsound mind and
 - Is disqualified from entering into a contract by any law to which he is subject, should be considered as not competent to enter into any contract.
- iii. Therefore law prohibits (a) Minors (b) persons of unsound mind [excluding the Lucid intervals] and (c) person who are otherwise disqualified like an alien enemy, insolvents, convicts etc, from entering into any contract.

d) **Consideration:** Consideration' would generally mean 'compensation' for doing or omitting to do an act or deed.

It is also referred to as '*quid pro quo*' viz 'something in return for another thing'. Such a consideration should be a lawful consideration.

For example:-

A agrees to sell his books to B for Rs. 100, B's promise to pay Rs. 100 is the consideration for A's promise to sell his books and A's promise to sell the books is the consideration for B's promise to pay Rs. 100.

e) **Not expressly declared to be void:**

- i. The agreement entered into for this purpose must not be which the law declares to be either illegal or void.
- ii. An illegal agreement is an agreement expressly or impliedly prohibited by law.
- iii. A void agreement is one without any legal effects.

For example:

1. Threat to commit murder or making /publishing defamatory statements of entering into agreement which are opposed to public policy are illegal in nature.
2. Similarly an agreement in restraint of trade, marriage, legal proceedings etc., are classic examples of void agreement

Q.No.3. Write about different types of contract?

Types of contract based on validity:

a) **Void Contract:**

- i. Section 2(j) states "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable". Thus a void contract is one which cannot be enforced by a court of law.

For example:

Mr. X agrees to write a book with a publisher. After few days, X dies in an accident. Here the contract becomes void due to the impossibility of performance of the contract.

- ii. It may be added by way of clarification here that when a contract is void, it is not a contract at all but for the purpose of identifying it, it has to be called a [void] contract.

b) **Voidable Contract:**

- i. Section 2(i) defines that "An agreement which is enforceable by law at the option of one or more parties but not at the option of the other or others is a voidable contract".
- ii. It means where one of the parties to the agreement is in a position to avoid performing his part, then the agreement is treated as and becomes voidable.

- iii. Such a right might arise from the fact that the contract may have been brought about by one of the parties by coercion, undue influence, fraud or misrepresentation and hence the other party has a right to treat it as a voidable contract.

c) Illegal Contract:

- i. Illegal contracts are those that are forbidden by law. All illegal contracts are hence void also. Because of the illegality of their nature they cannot be enforced by any court of law.
- ii. In fact even associated contracts cannot be enforced. Contracts which are opposed to public policy or immoral are illegal.
- iii. Similarly contracts to commit crime like supari contracts are illegal contracts.
- iv. All illegal agreements are void but all void agreements need not be illegal.

d) Unenforceable Contract:

- i. Where a contract is good in substance but because of some technical defects i.e. absence in writing, barred by limitation, non-registration, insufficient stamp duty, etc., one or both the parties cannot sue upon it, it is described as an unenforceable contract.
- ii. After the technical defect is removed, these contracts become enforceable.

Types of contract based on Formation:

a) Express Contracts:

- i. A contract would be an express contract if the terms are expressed by words or in writing.
- ii. Section 9 of the Act provides that if a proposal or acceptance of any promise is made in words the promise is said to be express.

b) Implied Contracts:

- i. Implied contracts in contrast come into existence by implication. Most often the implication is or by conduct.
- ii. Section 9 of the Act contemplates such implied contracts when it lays down that in so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

For example:

'A' delivers goods by mistake at the warehouse of 'B' instead of that of 'C'. Here 'B' not being entitled to receive the goods is obliged to return the goods to 'A' although there was no such contract to that effect.

- c) Quasi contracts:** The contracts imposed by law under section 68 to 72 are called quasi contract.

- d) Tacit Contracts:** Tacit contracts are those that are inferred through the conduct of parties.

For example:

1. When cash is withdrawn by a customer of a bank from the automatic teller machine [ATM].
2. Where a contract is assumed to have been entered when a sale is given effect to at the fall of hammer in an auction sale.

Types of contract based on Performance:

- a) Executed Contract:** The consideration in a given contract could be an act or forbearance. When the act is done or executed or the forbearance is brought on record, then the contract is an executed contract.

- b) **Executory Contract:** In an executory contract the consideration is reciprocal promise or obligation. Such consideration is to be performed in future only and therefore these contracts are described as executory contracts.
- i) **Unilateral Contract:** Unilateral contract is a one sided contract in which only one party has to perform his duty or obligation.
 - ii) **Bilateral Contract:** A Bilateral contract is one where the obligation or promise is outstanding on the part of both the parties.

TYPES OF CONTRACT AS PER ENGLISH LAW: The English law classifies contracts as (i) Formal contracts and (ii) Simple contracts. Formal contracts are further classified as (a) Contract of Record and (b) Contract under Seal.

a) Contract of Record:

- i. A contract of record derives its binding force from the authority of court. The authority of court is invariably through judgment of a court or by way of recognizance.
- ii. The judgment of a court is technically not a contract as it is not based on the agreement between parties.
- iii. However the judgment is binding on all the persons who are litigants. The judgment creates certain rights on certain persons and obligation on certain other persons.
- iv. A recognizance, on the other hand is a written acknowledgement of a debt due to the state generally in the context of criminal proceedings.

b) Contract under Seal:

- i. A contract under seal is one which derives its binding force from its form alone.
- ii. It is in writing, duly signed and sealed and delivered to parties. It is also referred to as a deed or a specialty contract.
- iii. Simple contracts as against formal contracts are devoid of all the formalities referred above.

SIMILAR QUESTIONS:

Q.No.1. Though a void contract is valid when it is made, subsequently it becomes unenforceable. Why?

Solution: Refer point 'b' in types of contract based on validity.

Q.No.4. Define an Offer? Explain various types of an offer?

Introduction:

1. An offer is a proposal by one party to another to enter into a legally binding agreement with him
2. An offer is the starting point of an agreement. An offer is also called 'proposal'.
3. The person making the proposal or offer is called the 'proposer' or 'offeror', and the person to whom the offer is made is called the 'offeree' or 'proposee' and after acceptance of offer the offeror becomes 'promisor' and the person accepting the offer becomes the 'promisee' or 'acceptor'.

Definition:

- a) In terms of **Section 2(a)** of the Act "a person is said to make a proposal when he signifies to another his willingness to do or abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence".
- b) It must be appreciated that 'doing an act' and 'not doing an act' both have the same effect in the eyes of the law, though one is a positive act and the other is a negative act.

- c) Hence there are two important ingredients to an offer.
- i. *Firstly*, it must be expressions of willingness to do or to abstain from doing an act.
 - ii. *Secondly*, the willingness must be expressed with a view to obtain the assent of the other party to whom the offer is made.
- d) **For example:**
- i. Where "A" tells "B" that he desires to marry 'B' by the end of 2006, there is no offer made unless, he also asks "will you marry me?", conveying his willingness and tries to obtain the assent of 'B' in the same breadth.
 - ii. Where "A" offers to sell his car to "B" it conveys his willingness to do an act. Through this offer not only willingness is being conveyed but also an intention to obtain the assent can be seen.

Classification of Offer:

- a) **General offer:** It is an offer made to public at large with or without any time limit. In terms of Section 8 of the Act, anyone performing the conditions of the offer can be considered to have accepted the offer

Carlill v. Carbolic Smoke Ball:

Until the general offer is retracted or withdrawn, it can be accepted by anyone at any time as it is a continuing offer.

- b) **Special/specific offer:** Where an offer is made to a particular and specified person, it is a specific offer. Only that person can accept such specific offer, as it is special and exclusive to him. [*Boulton v. Jones*]

- c) **Cross offer:**

- i. When two persons make two identical offers to each other in ignorance, both of them are called cross offers.
- ii. Cross offers do not lead to formation of contract.
- iii. Any one's offer should be accepted by the other to have contractual relations.

iv. For example:

if A makes a proposal to B to sell some goods at a specified price and B, without knowing proposal of A, makes a proposal to purchase the same goods at the price specified in the proposal of A, it is not an acceptance, as B was not aware of proposal made by A. It is only cross proposal (cross offer).

When two persons make offer to each other, it cannot be treated as mutual acceptance. There is no binding contract in such a case [*Tin v. Hoffmen & Co. 1873*]

- d) **Counter offer:** Upon receipt of an offer from an offeror, if the offeree instead of accepting it straight way, imposes conditions which have the effect of modifying or varying the offer, he is said to have made a counter offer.

Counter offers amounts to rejection of original offer.

- e) **Standing or continuing or open offer:** An offer which is made to public at large and if it is kept open for public acceptance for a certain period of time, it is known as standing or continuing or open offer.

Tenders that are invited for supply of materials and goods are classic examples of standing offer.

Q.No.5. Explain the legal rules of valid offer?

Rules relating to valid and legal offer:

- a) The 'offer' must be with *intent to create a legal relationship*. Hence if it is accepted, it must result in a valid contract. An invitation to join a friend for dinner is a social activity. This does not create a legal relationship or right or obligation.

- b) The offer must be ***certain and definite***. It must not be vague. If the terms are vague, it is not capable of being accepted as the vagueness would not create any contractual relationship.

For example:

Where 'A' offers to sell 100 litres of oil, without indicating what kind of oil would be sold, it is a vague offer and hence cannot create any contractual relationship.

- c) If however there is a ***mechanism to end the vagueness***, the offer can be treated as valid.

For example:

In the above example if 'A' does not deal in any oil but only in gingilee oil and this is known to everyone, the offer cannot be treated as vague offer.

This is for the reason that the trade in which 'A' is, is a clear indicator providing a mechanism to understand the terms of offer.

- d) The offer must be ***express or implied***.
- e) The offer must be ***distinguished from an invitation to offer***.
- f) The offer may be ***either specific or general***.
- g) The offer must be ***communicated*** to the person to whom it is made. Otherwise the offeree cannot accept the offer because he is not aware of the existence of the offer. Such a situation does not create any legal obligation or right on any one.
- h) The offer must be made with a view ***to obtaining the consent of the offeree***.
- i) An offer can be ***conditional***
- j) There should be ***no term in the offer that non-compliance would amount to acceptance***.

Q.No.6. what is invitation to offer? Give some possible circumstances of invitation to offer?

- a) An offer and invitation to offer are not one and the same. The difference between the two must be appreciated.
- i. An offer is definite. It is an intention towards a contract.
 - ii. An invitation to offer is an act precedent to making an offer. It is done with intent to generally to induce and negotiate.
- b) An invitation to offer gives rise to an offer after due negotiation and it cannot be per se accepted.
- c) In an invitation to offer there is no expression of willingness by the offeror to be bound by his offer. It is only a proposal of certain terms on which he is willing to negotiate. It is not capable of being accepted as it is.
- d) In terms of Section 2[a] of the Act, it is very clear that an offer is the final expression of willingness by the offeror to be bound by the offer if it is accepted by the other party.
- e) Hence the only thing that is required is the willingness of the offeror to abide by the terms of offer
- f) The test to decide whether a statement is an 'offer' or 'invitation to offer' is to see the 'intention'.
- i. If a person who makes the statement has the intention to be bound by it as soon as the other accepts, he is making an offer.
 - ii. If he however intends to do some other act, he is making only an invitation to offer.
- g) Thus the intention to be bound is the important thing.

Harvey vs. Facie:

In this case Privy Council succinctly explained the distinction between an offer and an invitation to offer. In the given case, the plaintiffs through a telegram asked the defendants two questions namely,

- i. Will you sell us Bumper Hall Pen? And
- ii. Telegraph lowest cash price.

The defendants replied through telegram that the "lowest price for Bumper Hall Pen is £900". The plaintiffs sent another telegram stating "we agree to buy Bumper Hall Pen at £900..."

However the defendants refused to sell the property at the price. The plaintiffs sued the defendants contending that they had made an offer to sell the property at £900 and therefore they are bound by the offer.

However the Privy Council did not agree with the plaintiffs on the ground that while plaintiffs had asked two questions, the defendant replied only to the second question by quoting the price but did not answer the first question but reserved their answer with regard to their willingness to sell. Thus they made no offer at all.

The Lordships held that the mere statement of the lowest price at which the vendor would sell contained no implied contract to sell to the person who had enquired about the price.

Possible circumstance of invitation to offer:

- a) When there is **advertisement** by a person that he has a stock of books for sale, it is an invitation to offer and not an offer. This advertisement is made to receive offers and to further negotiate.

In a case **Mac Pherson vs Appanna** where the owner of the property had said that he would not accept less than Rs. 6000/- for it. This statement did not indicate any offer but indicated only an invitation to offer.

- b) when goods are **sold through auction**, the auctioneer does not contract with any one who attends the sale. The auction is only an advertisement to sell but the items are not put for sale though persons who have come to the auction may have the intention to purchase.
- c) **Prospectus issued by a company** to the public to subscribe for its shares.
- d) **Display of goods for sale** in shop windows.

SIMILAR QUESTION

Q.No.1 Define an offer. Explain the rules of an offer. How an offer is different from an invitation to offer? (PM)

Solution: Refer Q.No. 4 Q.No.5 and Q.No.6

Q.No.2. What is invitation to offer (PM)

Solution: Refer Q.No.6

Q.No.7. Define acceptance? Explain relationship between offer and acceptance?

Meaning:

1. A proposal or offer is said to have been accepted when the person to whom the proposal is made signifies his assent to the proposal to do or not to do something [Sec.2(b)].
2. Acceptance is an expression, by words or conduct, which clearly indicates that the person making it, agrees to be bound by the terms of offer.
3. An acceptance is the manifestation by the offeree of his willingness to be bound by the terms of the offer

Definition:

In terms of **Section 2(b)** of the Act, "A proposal or offer is said to have been accepted when the person to whom the proposal is made signifies his assent to the proposal to do or not to do something".

In short, act of acceptance lies in signifying one's assent to the proposal.

Relationship between offer and acceptance:

- a) According to Sir William Anson "Acceptance is to offer what a lighted match is to a train of gun powder".
- b) The effect of this observation is that what acceptance triggers cannot be recalled or undone.
- c) But there is a choice to the person who had the train to remove it before the match is applied. It in effect means that the offer can be withdrawn just before it is accepted.
- d) Acceptance converts the offer into a promise and then it is too late to revoke it. This means as soon as the train of gun powder is lighted it would explode.
- e) Gun powder [the train] itself is inert, but it is the lighted match [the acceptance] which causes the gun powder to explode.
- f) The significance of this is an offer by itself cannot create any legal relationship but it is the acceptance by the offeree which creates a legal relationship.
- g) Once an offer is accepted it becomes a promise and cannot be withdrawn or revoked.
- h) An offer remains an offer so long as it is not accepted, but becomes a contract as soon as it is accepted.

Q.No.8. Explain various legal rules for valid acceptance?

Definition: In terms of **Section 2(b)** of the Act, "A proposal or offer is said to have been accepted when the person to whom the proposal is made signifies his assent to the proposal to do or not to do something".

In short, act of acceptance lies in signifying one's assent to the proposal.

Rules governing acceptance:

- a) **Acceptance must be absolute and unqualified:** As per section 7 of the Act, acceptance is valid only when it is absolute and unqualified and is also expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it must be accepted.

If the proposal prescribes the manner in which it must be accepted, then it must be accepted accordingly.

For example:

'A' enquires from 'B', "Will you purchase my car for Rs. 2 lakhs?" If 'B' replies "I shall purchase your car for Rs. 2 lakhs, if you buy my motorcycle for Rs. 50000/-, here 'B' cannot be considered to have accepted the proposal.

If on the other hand 'B' agrees to purchase the car from 'A' as per his proposal subject to availability of valid Registration Certificate / book for the car, then the acceptance is in place though the offer contained no mention of R.C. book.

This is because expecting a valid title for the car is not a condition. Therefore the acceptance in this case is unconditional.

- b) **The acceptance must be communicated:** To conclude a contract between the parties, the acceptance must be communicated in some perceptible form.

Any conditional acceptance or acceptance with varying or too deviant conditions is no acceptance. Such conditional acceptance is a counter proposal and has to be accepted by the proposer.

If initially the original proposal is conditionally accepted, further it is accepted as it is, then the offeree must have the knowledge of the original offer made to him. If he does not have the knowledge, there can be no acceptance.

The acceptance must relate specifically to the offer made. Then only it can materialize into a contract.

For example:

- i) M offered to sell his land to N for £ 280. N replied purporting to accept the offer but enclosed a cheque for £ 80 only. He promised to pay the balance of £ 200 by monthly installments of £ 50 each. It was held that N could not enforce his acceptance because it was not an unqualified one. [*Neale vs. Merret [1930] W. N. 189*].
 - ii) A offers to sell his house to B for 1000/-. B replied that, "I can pay 800 for it". The offer of 'A' is rejected by 'B' as the acceptance is not unqualified. B however changes his mind and is prepared to pay 1000/-. This is also treated as counter offer and it is upto A whether to accept it or not. [*Union of India v. Bahul AIR 1968 Bombay 294*].
 - iii) A mere variation in the language not involving any difference in substance would not make the acceptance ineffective. [*Heyworth vs. Knight [1864] 144 ER 120*].
- c) **Acceptance must be in the prescribed mode:** Where the proposal prescribes the mode of acceptance, it must be accepted in that manner. Where the proposal does not prescribe the manner, then it must be accepted in a reasonable manner.

If the proposer does not insist on the proposal being accepted in the manner in which it has to be accepted, after it is accepted in any other manner not originally prescribed, the proposer is presumed to have consented to the acceptance.

Sometimes the acceptor may agree to a proposal but may insist on a formal agreement, in which case until a formal agreement is drawn up there is no complete acceptance.

- d) **The acceptance must be given within a reasonable time and before the offer lapses.**
- e) **Mere silence is not acceptance:** The acceptor should expressly accept the offer. Acceptance can be implied also. Acceptance must be given only by that person to whom it is made, that too only after knowing about the offer made to him.
- f) **Acceptance by conduct:** As already elaborated above, acceptance has to be signified either in writing or by word of mouth or by performance of some act. The last method, namely 'by some act' has to be understood as acceptance by conduct.

In a case like this where a person performs the act intended by the proposer as the consideration for the promise offered by him, the performance of the act constitutes acceptance. In other words, there is an acceptance by conduct.

For example:

where a tradesman receives an order from a customer, and the order is executed accordingly by the trader, there is an "acceptance by conduct" of the offer made by the customer.

The trader's subsequent act signifies acceptance.

Section 8 of the Act very clearly in this regard lays down that "the performance of the condition(s) of a proposal or the acceptance of any consideration of a reciprocal promise which may be offered with a proposal constitutes an acceptance of the proposal".

SIMILAR QUESTIONS

Q. No. 1 Explain in brief the rules relating to acceptance of an offer under the provisions of the Indian contract act. 1872.

Solution: Refer Q.No. 8

Q.No.9. when the communication of an offer and acceptance is complete?

Introduction:

- a) The communication part of it assumes importance where parties are separated by and at distance. In which case the modes of communication like, post/courier, telegram, fax, email, telephone etc., become very relevant because the method of communication would also decide the 'time' of 'offer' and 'acceptance'.
- b) The Indian Contract Act, 1872 gives a lot of importance to "time" element in deciding when the offer and acceptance is complete.

Communication of offer:

- a) In terms of **Section 4** of the Act, "the communication of offer is complete when it comes to the knowledge of the person to whom it is made". Therefore knowledge of communication is of relevance.
- b) Knowledge of the offer would materialize when the offer is given in writing or made by word of mouth or by some other conduct.

For example.

Where 'A' makes a proposal to 'B' by post to sell his house for Rs.5 lakhs and if the letter containing the offer is posted on 10th March and if that letter reaches 'B' on 12th March the offer is said to have been communicated on 12th March when B received the letter.

Thus it can be summed up that when a proposal is made by post, its communication will be complete when the letter containing the proposal reaches the person to whom it is made.

Communication of acceptance:

- a) There are two issues for discussion and understanding. They are: **what are the modes of acceptance and when is acceptance complete?**
 - i. **Modes of acceptance:** Section 3 of the Act prescribes in general terms two modes of communication intending to communicate to the other or which has the effect of communicating it to the other, namely
 - **Communication by act** would include
 - Any expression of words **in written**. It will include letters, telegrams, faxes, emails and even advertisements.
 - Any expression of words **in Oral words** will include telephone messages.
 - Again communication would include **any conduct** intended to communicate like positive acts or signs so that the other person understands what the person 'acting' or 'making signs' means to say or convey.

For example:

Delivery of goods at a price by a seller to a willing buyer will be understood as a communication by conduct to convey acceptance.

Similarly one need not explain why one boards a public bus or drop a coin in a weighing machine.

- **Communication can also be by 'omission':** Such omission is conveyed by a conduct or by forbearance on the part of one person to convey his willingness or assent. However silence would not be treated as communication by 'omission'.
- **Communication of acceptance is about the effect of act or omission or conduct:** These indirect efforts must result in effectively communicating its acceptance or non acceptance. If it has no such effect, there is no communication regardless of which the acceptor thinks about the offer within himself.

Thus a mere mental unilateral assent in one's own mind would not amount to communication.

Central Bank Yeotmal vs Vyankatesh

Where a resolution passed by a bank to sell land to 'A' remained un-communicated to 'A', it was held that there was no communication and hence no contract.

- b) **When communication of acceptance is complete.** In terms of Section 4 of the Act, it is complete,
- i. **As against the proposer:** When it is put in course of transmission to him so as to be out of the power of the acceptor to withdraw the same;
 - ii. **As against the acceptor:** When it comes to the knowledge of the proposer. Where a proposal is accepted by a letter sent by the post, the communication of acceptance will be complete as against the proposer when the letter of acceptance is posted and as against the acceptor when the letter reaches the proposer.

For example:

In the above *example*, if 'B' accepts, A's proposal and sends his acceptance by post on 14th, the communication of acceptance as against 'A' is complete on 14th, when the letter is posted. As against 'B' acceptance will be complete, when the letter reaches 'A'.

Here 'A' the proposer will be bound by B's acceptance, even if the letter of acceptance is delayed in post or lost in transit.

The golden rule is proposer becomes bound by the contract, the moment acceptor has posted the letter of acceptance.

But it is necessary the letter is correctly addressed, sufficiently stamped and duly posted. In such an event the loss of letter in transit, wrong delivery, non delivery etc., will not affect the validity of the contract.

However from the view point of acceptor, he will be bound by his acceptance only when the letter of acceptance has reached the proposer. **So it is crucial in this case that the letter reaches the proposer.**

If there is no delivery of the letter, the acceptance could be treated as having been completed from the viewpoint of proposer but not from the viewpoint of acceptor.

Q.No.10. Explain the legal rules relating to communication of special conditions and standard form of contract?

COMMUNICATION OF SPECIAL CONDITIONS:

- a) Sometimes there are contracts with special conditions. These special conditions are conveyed tacitly and the acceptance of these conditions are also conveyed by the offeree again tacitly or without him even realizing it.

For example:

Where a passenger undertakes a travel, the conditions of travel are printed at the back of the tickets, then passenger is treated as having accepted the special condition the moment he bought his ticket

When someone travels from one place to another by air, it could be seen that special conditions are printed at the back of the air ticket in small letters. Sometimes these conditions are found to have been displayed at the notice board of the Air lines office, which passengers may not have cared to read. The question here is whether these conditions can be considered to have been communicated to the passengers of the Airlines and can the passengers be treated as having accepted the conditions.

The answer to the question is in the affirmative and was so held in **Mukul Datta vs. Indian Airlines** where the plaintiff had travelled from Delhi to Kolkota by air and the ticket bore conditions in fine print.

Yet another *example* is where a launderer gives his customer a receipt for clothes received for washing. The receipt carries special conditions and are to be treated as having been duly communicated to the customer and therein a tacit acceptance of these conditions is implied by the customer's acceptance of the receipt *Lily White vs. R. Muthuswami*.

- b) In the cases referred above, the respective documents have been accepted without a protest and hence amounted to tacit acceptance.

Standard forms of contracts:

- a) It is well established that a standard form of contract may be enforced on another who is subjectively unaware of the contents of the document, provided the party wanting to enforce the contract has given notice which, in the circumstances of a case, is sufficiently reasonable.
- b) But the acceptor will not incur any contractual obligation, if the document is so printed and delivered to him in such a state that it does not give reasonable notice on its face that it contains certain special conditions.

For example:

A transport carrier accepted the goods for transport without any conditions. Subsequently, he issued a circular to the owners of goods limiting his liability for the goods. In such a case, since the special conditions were not communicated prior to the date of contract for transport, these were not binding on the owners of goods *Raipur transport Co. vs. Ghanshyam*

Q.No.11. Explain the legal rules relating to communication of performance?

When communication of acceptance (Section 4): Communication of acceptance for proposal would be viewed from two angles

- i. **From the viewpoint of proposer:** Communication of acceptance is complete when the acceptance is put in to a course of transmission, and it would be out of the power of acceptor.
- ii. **From the viewpoint of acceptor himself:** Communication of acceptance would be complete when it comes to the knowledge of the proposer.

Communication of performance (Section 8):

- a) it is not enough if the offeree merely performs the act but he should also communicate his performance unless the offer includes a term that a mere performance will constitute acceptance.
- b) **Section 8** "Performance of the condition of a proposal or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal is an acceptance of the proposal".

Carlill Vs Carbolic & Smokeball Co.

In this case the defendant a sole proprietary concern manufacturing a medicine which was a carbolic ball whose smoke could be inhaled through the nose to cure influenza, cold and other connected ailments issued an advertisement for sale of this medicine.

The advertisement also included a reward of \$100 to any person who contracted influenza, after using the medicine (which was described as 'carbolic smoke ball'). Mrs. Carlill bought these smoke balls and used them as directed but contracted influenza.

It was held that Mrs Carlill was entitled to a reward of \$100 as she had performed the condition for acceptance. Further as the advertisement did not require any communication of compliance of the condition, it was not necessary to communicate the same.

The court thus in the process laid down the following three important principles:

- i. an offer, to be capable of acceptance, must contain a definite promise by the offeror or that he would be bound provided the terms specified by him are accepted;
- ii. an offer may be made either to a particular person or to the public at large, and
- iii. if an offer is made in the form of a promise in return for an act, the performance of that act, even without any communication thereof, is to be treated as an acceptance of the offer.

Q.No.11. Explain the legal rules relating to Revocation of Offer and Acceptance

- a) **Section 4**, communication of revocation (of the proposal or its acceptance) is complete.
- i. **As against the person who makes it:** when it is put into a course of transmission to the person to whom it is made so as to be out of the power of the person who makes it, and
 - ii. **As against the person to whom it is made**, when it comes to his knowledge.

For example

Revocation of proposal : If you (Offeror) revoke your proposal made to me (Offeree) by a telegram, the revocation will be complete, as far as you (Offeror) are concerned when you have dispatched the telegram.

But as far as I (Offeree) am concerned, it will be complete only when I receive the telegram.

Revocation of Acceptance

I (Offeree) can revoke my acceptance (of your offer) by a telegram. This revocation of acceptance by me (Offeree) will be complete when I dispatch the telegram and against you (Offeror), it will be complete when it reaches you.

- b) But the important question for consideration is **when a proposal can be revoked?** And **when can an acceptance be revoked?** These questions are more important than the question when the revocation (of proposal and acceptance) is complete.
- c) In terms of **Section 5** of the Act a proposal can be revoked at any time before the communication of its acceptance is complete as against the proposer.
- d) An acceptance may be revoked at any time before the communication of acceptance is complete as against the acceptor.

Q.No.12. List out the situations under which the proposal can be revoked other than by communication?

REVOCAION OF PROPOSAL OTHERWISE THAN BY COMMUNICATION:

When a proposal is made, the proposer may not wait indefinitely for its acceptance. The offer can be revoked otherwise than by communication or sometimes by lapse.

Other Situations under which the proposal can be revoked

- a) **When the acceptor fails to fulfill certain conditions precedent to acceptance:-** Where the acceptor fails to fulfill a condition precedent to acceptance the proposal gets revoked. This principle is laid down in **Section 6** of the Act.

For example:

1. The offeror may impose certain conditions such as executing a certain document or depositing certain amount as earnest money. Failure to satisfy any condition will result in lapse of the proposal.

As stated earlier 'condition precedent' to acceptance prevents an obligation from coming into existence until the condition is satisfied.

2. Where 'A' proposes to sell his house to be 'B' for Rs. 5 lakhs provided 'B' leases his land to 'A'. If 'B' refuses to lease the land, the offer of 'A' is revoked automatically.
- b) **When the proposer dies or goes insane:** Death or insanity of the proposer would result in automatic revocation of the proposal but only if the fact of death or insanity comes to the knowledge of the acceptor
- c) **When time for acceptance lapses:** The time for acceptance can lapse if the acceptance is not given within the specified time and where no time is specified, then within a reasonable time. This is for the reason that proposer should not be made to wait indefinitely. It was held in

Ramsgate Victoria Hotel Co Vs Montefiore

A person who applied for shares in June was not bound by an allotment made in November. This decision was also followed in ***India Cooperative Navigation and Trading Co Ltd Vs Padamsey Prem Ji.***

However these decisions now will have no relevance in the context of allotment of shares since The Companies Act, 2013 has several provisions specifically covering these issues.

SIMILAR QUESTIONS

Q.No.1 what are the circumstances under which an offer gets revoked or lapses? (PM)

Solution: Refer above question no 11 and 12

Q.No.13. Agreement Vs. Contract.

| DIFFERENCE | AGREEMENT | CONTRACT |
|---------------------------------------|---|--|
| Definition | Every promise and every set of promises forming consideration for each other is an agreement. | An agreement enforceable by law is a contract. |
| Creation | An agreement is created by acceptance of an offer. | Agreement and its enforceability together create a contract. |
| Legal Rights & Obligations | An agreement is created by acceptance of an offer. An agreement may not create legal rights and obligations of the parties. | A contract creates legal rights and obligations between the parties. |
| Necessary | No contract is required to make an agreement. | Valid agreement is necessary for making a contract. |
| Legally Binding | An agreement is not a concluding or legally binding contract. | A contract is a concluding or legally binding on the parties. |
| Concept | Agreement is a wider term. | Contract is a narrow term. |
| One in other | Every agreement need not necessarily be a contract. | All contracts are necessarily agreements. |

Q.No.14. Void Contract Vs. Voidable contracts.

| DIFFERENCE | VOID CONTRACT | VOIDABLE CONTRACT |
|-------------------|---|--|
| Definition | Contract ceases to be enforceable by law. | Contract is enforceable at the option of the aggrieved party. |
| Nature | Contract becomes void either because of sudden and unexpected events or of law changes, before the performance becomes due. | Contract becomes voidable when it is caused by coercion, undue influence, fraud and misrepresentation. |

| | | |
|---------------|--|---|
| Rights | Does not provide any legal remedy for the parties to the contract. | The aggrieved party gets a right to rescind the contract and to declare it void otherwise it remains valid. |
|---------------|--|---|

Q.No.15. Void Agreement Vs. Voidable Contract.

| DIFFERENCE | VOID AGREEMENT | VOIDABLE CONTRACT |
|---|--|---|
| Definition | An agreement not enforceable by law is said to be void. | A contract enforceable by law at the option of the aggrieved party, is a voidable contract. |
| Void-ab-initio | It is void from the beginning. | It is valid when made and continues to remain valid till it is repudiated by the aggrieved party. |
| Which essential element of contract is missing | Enforceability by law is missing | Free Consent of a party is missing. |
| Enforceability | It cannot be enforced by any party. | It continues to be enforceable if the aggrieved party does not repudiate the contract. |
| Right of Third Party | Third party does not acquire any rights. | A third party who purchases goods in good faith and for consideration before the contract is repudiated, acquires good title to those goods. |
| Effect of lapse of Reasonable Time | Even on the expiry of a reasonable time, it can never become a valid contract. | On the expiry of a reasonable time, it may become a valid contract if the aggrieved party does not repudiate the contract within reasonable time. |
| Damages | The question of damages does not arise. | The aggrieved party can claim damages. |

Q.No.16. Void Agreement Vs. Illegal Agreements.

According to Section 2(g) of the Indian Contract Act, an agreement not enforceable by law is void. The Act has specified various factors due to which an agreement may be considered as void agreement. One of these factors is unlawfulness of object and consideration of the contract i.e. illegality of the contract which makes it void. Despite the similarity between an illegal and a void agreement that in either case the agreement is void and cannot be enforced by law, the two differ from each other in the following two respects:

| DIFFERENCE | VOID AGREEMENT | ILLEGAL AGREEMENT |
|-----------------------------|--|--|
| Scope | A void agreement is not necessarily illegal. | An illegal agreement is always void. |
| Nature | Not forbidden under law. | Are forbidden under law. |
| Punishment | Parties are not liable for any punishment under the law. | Parties to illegal agreements are liable for punishment. |
| Collateral agreement | It's not necessary that agreements collateral to void agreements may also be void. It may be valid also. | Agreements collateral to illegal agreements are always void. |
| Similarity | Void agreement is void-ab-initio i.e., void from the beginning. | All illegal agreements are void from the very beginning. |

TRUE OR FALSE STATEMENTS

| No. | Statement | Ans |
|-----|---|-------|
| 1. | There can be a contract even without consensus ad idem. | False |
| 2. | An agreement which is enforceable by law at the option of one or more of the parties thereon but not at the option of the other or others is a valid contract. | False |
| 3. | A void agreement is one which is enforceable at the option of one party. | False |
| 4. | When a person at whose instance the contract is voidable rescinds it, the other party is not liable to compensate the person rescinding the contract. This statement is | False |
| 5. | In case of a void contract, there is no legal remedy for the parties to the contract. Even the Court will not permit performance of the contract, even if the parties desire. | True |
| 6. | law of contract is applicable only to a business community. | False |
| 7. | Is the statement true or false: "All contracts are agreements but all agreements are not contracts" (M 12 – 1) | True |
| 8. | All agreements between parties are enforceable in a Court of Law. | False |
| 9. | Agreements that do not give rise to contractual obligations are not contracts. | True |
| 10. | If a person at whose option the contract is voidable rescinds it, the other party is not liable to compensate the person rescinding the contract. | False |
| 11. | Every contract is an agreement but every agreement is not contract. This statement is | True |
| 12. | A specific offer can be accepted only by that person to whom offer has been made (N 11 – 1M) | True |
| 13. | A proposal may be revoked by the proposer before the posting of the letter of acceptance by the acceptor | True |
| 14. | An agreement with insufficiency of consideration is void ab initio; (D - 08) | False |
| 15. | A minor can be appointed as agent –comment. (J - 09) | Yes |
| 16. | Death or insanity of the proposer automatically revokes the proposal. (D - 10) | False |
| 17. | Remaining silent with respect to the known defects is fraudulent. (J - 12) | False |
| 18. | A seller may deliver goods to a carrier with a right of disposal. (J - 12) | True |
| 19. | In business agreements, the presumption is that the parties intend to create legal relationship | True |
| 20. | A contract in which the terms are stated in words by the parties are called spoken contract | False |
| 21. | A contract which is inferred from the circumstances of the case or from the conduct of the parties are implied contract | True |
| 22. | An obligation created by law , regardless of agreement is quasi contract | True |
| 23. | A contract which is wholly performed by both the parties are executory contract | False |
| 24. | A contract in which the promises of both the parties have yet to be performed are executory contract | True |
| 25. | A contract in which one party has performed his obligation, but the other party has yet to perform his obligation are partly executory contract | True |
| 26. | A contract in which only one party has yet to perform his obligation unilateral contract | True |
| 27. | A contract in which both the parties have yet to perform their obligation are bilateral contract | True |
| 28. | Law of contract is not the whole law of agreement nor is it the whole law of obligation | True |

| | | |
|-----|--|-------|
| 29. | A Contract creates right in rem | False |
| 30. | An agreement is a voidable contract when it is enforceable if certain conditions are fulfilled. | False |
| 31. | An agreement not enforceable by law is said to be void | True |
| 32. | A contract may become void subsequent to its formation | True |
| 33. | The transactions collateral to an illegal agreement are not affected in any manner | False |
| 34. | A contract is an agreement plus a legal obligation | True |
| 35. | Flaw in capacity to contract may arise from lack of consideration | False |
| 36. | A void contract is one which is void-ab-initio | False |
| 37. | In some cases, even though a contract may appear to be completed at once, its effects may continue | True |
| 38. | All void agreements are illegal | False |
| 39. | There can be a contract even without consensus ad idem | False |
| 40. | M mows L's lawn without being asked b L to do so. L watches M do the work but does not attempt to stop him. Thus M entitle to get consideration from L | True |
| 41. | A promises to pay B Rs. 500 if he (B) beats C. B beats C, B entitled to recover the amount. | False |

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UNIT- 2: CONSIDERATION

| S.No | Questions | ABC |
|------|---|-----|
| 1. | Explain the term consideration? | C |
| 2. | Whether gratuitous promise can be enforced? | B |
| 3. | What are the legal requirements of consideration? | B |
| 4. | Write about the doctrine of privity of contract? | B |
| 5. | Explain various agreements which are valid without consideration? | A |

Q.No.1. Explain the term consideration?

(PM)

Meaning:

- a) The expression 'consideration' has to be understood as a price paid for an obligation.
- b) In **Curie Vs Misa** it was held (in U K) that consideration is "some right, interest, profit or benefit accruing to one party or forbearance, detriment, loss, or responsibility given, suffered or undertaken by the other". The judgment thus refers to the position of both the promisor, and the promisee in an agreement.

Definition:

- a) **Section 2 (d)** of the Indian Contract Act, 1872 defines consideration as 'when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise'.
- b) **From the above definition it can be inferred that**
 - i. Consideration must be at the desire of the promisor.
 - ii. Consideration may move from promisee to any other person
 - iii. Consideration may be past, present or future and
 - iv. Consideration should be real though not adequate

Forms of Consideration:

- a) In most cases the promisor for doing an act or not doing an act derives **some benefit** by way of consideration. Thus consideration is identified as **quid pro quo** from the promise or performance of the promisor.
- b) But it is also possible that **there may not be any identifiable benefit** towards consideration.

For example:

'A' promises to carry 'B's goods free of charge and B allows 'A' to carry the same. Here 'B' does not offer any consideration to 'A'. Is this a valid contract?

The answer to the question is 'B' has suffered a detriment or disadvantage while allowing 'A' to carry his goods. Here there is sufficient consideration.

This illustration is given essentially to prove the point that consideration could be not necessarily a gain or advantage to the promisor but it can even be a loss or detriment to the promisee. That is why 'consideration' is referred to as a concept with 'double aspect'.

For example:

Where Y applies for a loan of Rs. 10,000/- to X, and if 'X' insists on a guarantee by 'S' and upon 'S' guaranteeing the loan, 'X' gives the loan to "Y". In this case 'S' will be the promisor and 'X' the promisee. The benefit in this transaction conferred on 'Y' by 'X' at the guarantee of 'S', is sufficient consideration for X. In other words 'X' has suffered a detriment which is the consideration for the guarantee of 'S' to repay the loan which 'X' has given to 'Y'. Detriment to one is benefit to another.

c) It can often be seen that **consideration is mutual.**

For example: if 'A' promises to sell his house to 'B' for Rs. 5 lakhs, here "A" is the promisor and "B" is the promisee. In the same transaction where 'B' agrees to buy the house for Rs. 5 lakhs, 'B' will be the promisor and 'A' will be the promisee. Here 'A' must part with the house and 'B' must part with Rs. 5 lakhs. This proves the point that consideration is mutual and has two sides.

Thus from above it can be concluded that :

- i. **Consideration** = Promise / Performance that parties exchange with each other.
- ii. **Form of consideration**= Some benefit, right or profit to one party / some detriment, loss, or forbearance to the other.

SIMILAR QUESTIONS

Q.1 what is consideration? Explain various forms of consideration?

Solution: Refer Q.No.1

Q.No.2. whether gratuitous promise can be enforced?

(PM)

Meaning:

- a) The word "gratuitous" means 'free of cost' or 'without expecting any return'.
- b) It can therefore be inferred that a gratuitous promise will not result in an agreement in the absence of consideration.

For example:

A promise to subscribe to a charitable cause cannot be enforced.

Q.No.3. What are the legal requirements of consideration?

- a) **Consideration must move at the desire of the promisor:** Consideration must move at the desire of the promisor, either from the promisee or some other third party. But consideration cannot move at the desire of a third party.

For example:

Where collector had passed an order that anyone using the market constructed by the Zamindar, for the purpose of selling his goods should pay commission to the Zamindar,

It was held that it was not a proper order as the desire to receive consideration had not emanated from the Zamindar but from a third party namely the collector **Durga Prasad Vs Baldev**

- b) **Consideration can flow either from the promisee or any other person:** The consideration for a contract can move either from the promisee or from any other person. This point is made clear even by the definition of the word "consideration", according to which at the desire of the promisor, **the promisee or any other person**, doing something is consideration.

That the consideration can legitimately move from a third party is an accepted principle of law in India though not in England.

For example:

'A' by a deed of gift made over certain property to her daughter(D) with condition that her brother(B) should be paid annuity by D. On the same day, D executed a document agreeing to pay annuity accordingly but declined to pay after sometime. B sued D. It was contended on behalf of D, that there was no consideration from B and hence there was no valid contract. This plea was rejected on the ground that the consideration did flow from B's Sister(A) to 'D' and such consideration from third party is sufficient to enforce the promise of D to pay annuity to A's brother (B) **Chinnaya Vs Ramaya**

Thus a stranger to a contract can not sue upon a contract in India and also in England, where as stranger to a consideration can sue under Indian law though not under English law.

- c) **Executed and Executory consideration:** Where consideration consists of performance, it is called “executed” consideration. Where it consists only of a promise, it is executory.

For example:

1. Where A pays Rs. 5000/- to ‘B’ requesting ‘B’ to deliver certain quantity of rice, to which B agrees, then here consideration for B is executed by ‘A’ as he has already paid Rs. 5000/- whereas ‘B’s promise is executory as he is yet to deliver the rice.
2. Insurance contracts are of the same type. When A pays a premium of Rs. 5000/- seeking insurance cover for the year, from the insurance company which the company promises in the event of fire, the consideration paid by A to the insurance company is executed but the promise of insurance company is executory or yet to be executed. A forbearance by the promisor should however be considered as an executed consideration provided the forbearance is sufficient at the time of contract.

- d) **Past consideration:** The next issue is whether past consideration can be treated as consideration at all. This is because consideration is given and accepted along with a promise concurrently.

However the Act recognizes past consideration as consideration when it uses the expression in Section 2(d) ‘**has done or abstained from doing**’.

But in the event of services being rendered in the past at the request or desire of the promisor the subsequent promise is regarded as an admission that the past consideration was not gratuitous.

The plaintiff rendered services to the defendant at his desire during his minority. He also continued to render the same services after the defendant attained majority. It was held to be good consideration for a subsequent express promise by the defendant to pay an annuity to the plaintiff but it was admitted that if the services had not been rendered at the desire of the defendant it would be hit by section 25 of the Act. **Sindia Vs Abraham**

- e) **Adequacy of Consideration:** Consideration need not necessarily be of the same value as of the promise for which it is exchanged. But it may be something which can be inadequate as well. Inadequate consideration would not invalidate an agreement but such inadequate consideration could be taken into account by the court in deciding whether the consent of the promisor was freely given.

Chijjitumal Vs. Rampal,

The Supreme Court reiterated that consideration need not be material and may be even absent. In the said case, the father had died leaving his house to two sons. They had agreed to partition the house which did not admit the division in exactly equal parts and one of the sons had agreed not to construct a door at a certain place in his portion of the house. In a dispute, the agreement was challenged on the ground that it was without adequate consideration.

The Supreme Court came to the conclusion that the motive for the said agreement at the time when it was made, was to avoid any dispute in future, and held that it was sufficient consideration.

The above view is in tune with explanation 2 to section 25 of the Act, which provides that **an agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate.**

Where there is valuable consideration, Court will not interfere and inquire into the adequacy of it but leave the matter to the parties to make their own bargain.

But inadequate consideration might raise suspicion about the free will of the promisor. Promisor could be treated as victim of some imposition but this would not render the agreement void.

- f) **Performance of what one is legally bound to perform:** The performance of an act by a person what he is legally bound to perform, the same cannot be consideration for a contract.

For example:

1. Hence, a promise to pay money to a witness is void, for it is without consideration.
2. An agreement by a client to pay to his counsel, a certain sum over and above the fee, in the event of success of the case would be void, since it is without consideration.

But where a person promises to do more than he is legally bound to do, such a promise provided it is not opposed to public policy, is a good consideration.

Classbrook Brothers vs. Glamorgan Country Council

During a civil strike, a question arose as to how best to protect a coal mine. The police authorities thought that surveillance by a mobile force would be adequate but the colliery manager desired a stationary police guard. Ultimately it was agreed that the police authorities would provide a stationary guard and the manager would pay \$2,200 for the service. It was held that the promise to pay the amount was not without consideration. The police, no doubt, were bound to afford protection, but they had discretion as to the form it should take. **The undertaking to provide more protection than what they deemed to be necessary was a consideration for the promise of reward.**

- g) **Consideration must not be unlawful, immoral, or opposed to public policy.**
- i. An agreement the consideration or object of which is immoral is void. An immoral agreement is one which regarded by the court as immoral.
 - ii. An agreement which is injurious to the public or against the interests of the society is said to be opposed to public policy.

Q.No.4. Write about the doctrine of privity of contract?

Meaning:

- a) There is a big difference between a third party to consideration and third party to a contract; while the first can sue, the second cannot sue.
- b) Thus a stranger / third Party to an Agreement lead to the doctrine of privity of contract. The doctrine says that only parties to a contract can enforce the contract. The parties stranger to a contract cannot sue and be sued.

For example: a contract by the purchaser of a mortgaged property to pay off the mortgage cannot be enforced by the mortgagee who was not a party to the contract between vendor and vendee.

Exceptions:

- a) **Beneficiary under some trust:** In the case of a *trust*, the beneficiary can sue enforcing his right though he was not a party to the contract between the trustee and the settler.

Khawja Mohammed Khan Vs Hussain Begum,

Where, the father of the bridegroom promised to pay through a contract with the father of the bride, an allowance to the bride, if she married his son, the bride sued her father-in-law after marriage for the allowance which he did not pay as per the contract. It was held by the Privy Council that though the bride was not a party to the contract between her father and father in law, she could enforce her claim in equity.

- b) **Family Settlement:** If the terms of settlement are reduced in writing, members of the family who were not a party to the settlement can (also) enforce their claim.

Shuppu Vs Subramanian,

Two brothers, on the partition of family property agreed to pay Rs.300 in equal share to their mother for maintenance. It was held that the mother can enforce this contract even though she is a stranger to this contract.

- c) **Certain Marriage Contracts:** A female member can enforce a provision for marriage expense based on a petition made by the Hindu undivided family

Sunder Raja Vs Lakshmi.

On the partition of a joint Hindu family property, an agreement was entered among its male members to make provision for the marriage expenses of a female member. It was held that the female member can sue the parties to the partition deed to enforce such provisions.

- d) **Assignment of a Contract:** The assignee can enforce the contract for various benefits that would accrue to him on account of the assignment. [**Krishanlal Sadhu Vs Primila Bala Dasij**]

- e) **Acknowledgement or Estoppel:** In case of *part performance of a contractual obligations* or where there is *acknowledgment of liability* on account of estoppel, a third party can sue for benefits.

For example:

'A' gives Rs. 25000/- to 'B' to be given to 'C' and 'B' informs 'C' that B is holding it on behalf of C, but subsequently refuses to pay 'C' then 'C' can sue and enforce his claim.

- f) **Agreement with Covenants Relating:** Where a piece of land which is sold to buyer with certain *covenants relating to land* and the buyer is kept on notice of the covenants with certain duties, there the successors to the seller can enforce these covenants.

SIMILAR QUESTIONS

Q. No 1. State the circumstances in which a stranger to the contract can sue.

Solution: Refer Q.No.4.

Q.No.5. explain various agreements which are valid without consideration?

The Indian Contract Act., 1872, contains certain **Exceptions** to the important rule "Doctrines of Consideration". As follow

- a) **On Account of Natural Love and Affection:** A written and a registered agreement made between parties out of natural love and affection does not require consideration. Such an agreement is enforceable even without consideration. It is important that parties should be of near relation like husband and wife to get this exemption (**Rajlukhee Devee Vs Bhootnath**).
- b) **Compensation Paid for Past Voluntary Services:** A promise to compensate wholly or in part for past voluntary services rendered by someone to promisor does not require consideration for being enforced.
However the past services must have been rendered voluntarily to the promisor. Further the promisor must have been in existence at that time and he must have intended to compensate.
- c) **Promise to Pay Debts Barred by Limitation:** Where there is a promise in writing to pay a debt, which was barred by limitation, is valid without consideration.
- d) **Creation of Agency:** In term of section 185 of the Act, No consideration is necessary to create an agency
- e) **In Case of Completed Gifts, No Consideration is Necessary:** This is clear from the Explanation (1) to section 25 of the Act, which provides that "nothing in this Section shall affect the validity as between donor and donee of any gift actually made.

SIMILAR QUESTIONS

Q.No.1 State the exceptions to the doctrine of consideration

Solution: Refer Q.No.5

TRUE OR FALSE STATEMENTS

| No. | Statement | Ans |
|-----|---|-------|
| 1. | Past consideration is no consideration in India. | False |
| 2. | Is past consideration valid in India? | True |
| 3. | Consideration must be adequate. | False |
| 4. | Where the consideration has moved from the promisee but not at the request of the promisor, can the promisee enforce the promise? | No |
| 5. | Can consideration be offered by a person other than the promisee? | Yes |
| 6. | Can a promise to pay money to a witness served with a notice be enforced? | No |
| 7. | A agreed to give his house to school for its library on the condition that the library would be named after him. The management accepted the condition. Subsequently, A changed his mind. Could the management enforce the contract? | Yes |
| 8. | A promised to pay a subscription of Rs.5,000 to the Gandhi Memorial Fund. He later changed his mind. Could the amount be recovered from A ? | No |
| 9. | Forbearance to sue is recognised as a valid consideration. | True |
| 10. | A's scaffolding fell down on his neighbor, B, who was injured. B threatened to bring suit against A unless the latter paid him Rs. 500 within ten days as compensation for his injuries. A promised but later refused to pay, claiming that there was no consideration for his promise. Can B recover the amount? | Yes |
| 11. | A's car breaks down in G.T. Road. He asks B, a passing motorist, to tow the car to the nearest garage. B tows the car and in return, A promises to pay B at the garage Rs.200 as payment for this trouble. Is A bound by his promise? | Yes |
| 12. | Can the trustees recover the promised amount from X if they have incurred any liability on the faith of X's promise? | Yes |
| 13. | No consideration is necessary to create contract of agency. | True |
| 14. | B writes to A. "At the risk of your own life, you saved me from a serious motor accident. I promise to pay you Rs. 1,000." Can A recover | Yes |
| 15. | A finds B's purse and gives it to him. B promises A to give him Rs. 100. Can A recover | Yes |
| 16. | A, who is B's friend, seeks the help of a few persons in putting down a fire in B's house. B promises to give A Rs. 100 for his timely help. Can A recover | Yes |
| 17. | There can be a stranger to a consideration but not a stranger to a contract. | True |
| 18. | An agreement the object or consideration of which is unlawful, is void. | True |
| 19. | A agrees to marry C's daughter in consideration of dowry to be paid by C. Can A enforce the promise in a court ? | False |
| 20. | X, a father having two minor sons agreed to transfer their guardianship in favour of Mrs. Y and also agreed not to revoke the transfer. Subsequently, he filed a suit for the recovery of the boys and declaration that he was the rightful guardian. Can he recover? | Yes |
| 21. | Dowry provided voluntarily by the father of daughter is not unlawful. | False |
| 22. | Is restitution allowed in case of illegal agreements? | No |
| 23. | Consideration must move at the desire of the promisor. | True |
| 24. | A promise to compensate a voluntary act done in the past is valid. | True |
| 25. | Can a stranger to a contract normally sue thereon ? | No |

| | | |
|-----|--|-------|
| 26. | If the object or the consideration of an agreement is not directly forbidden by law, but it indirectly defeats the provisions of any other statutory law, the agreement is not void. | False |
| 27. | In case of illegal agreements, the collateral agreements are valid. | False |
| 28. | Where there is an express or implied trust created between settler and trustees? by beneficiary; can he sue on a contract even if he is not a party to the contract: | Yes |
| 29. | Consideration must move from the promisee | False |
| 30. | A promise to pay a time barred debt is good consideration | True |
| 31. | Every agreement of which the object or consideration is unlawful is void | True |
| 32. | Insufficiency of consideration is immaterial to the validity of the contract | True |
| 33. | An agreement to divide the gain obtained by fraud is void | True |
| 34. | Consideration may be present or future , not past | False |
| 35. | A promise to pay time barred debt is not enforceable | False |
| 36. | Consideration may move even from a person who is not a party to the contract | True |
| 37. | In case of alternative promise one branch of which is legal and the other illegal the whole contract cannot be performed (Nov 2008) | False |
| 38. | Maintenance and champerty are void in England but not in india, till they are not opposed to public policy | True |
| 39. | Compromise of dispute claims is good consideration for a contract | True |
| 40. | A promise to subscribe to charity is a void contract | False |
| 41. | Consideration must result in a benefit to both the parties to a contract | False |
| 42. | A act constituting consideration must have been done at the desire or request of the promisor or third party | False |
| 43. | Consideration must be something to which the law attaches value and it must be equivalent in value to the promise made | False |
| 44. | Forbearance to sue is a kind of abstinence which is recognised as a good consideration | True |
| 45. | A person who is not a party to a contract cannot sue upon it even if the contract is for his benefit | True |
| 46. | A stranger in whose favour a charge on some specific immovable property has been created may enforce it. | True |
| 47. | A promise to contribute to charity is supported by consideration | False |
| 48. | Promise to pay the national defence fund is enforceable | False |
| 49. | Gratuitous promise can be enforceable | False |
| 50. | A promise by philanthropist to donate a specified sum cannot be enforceable | True |
| 51. | Kamala promises Ramesh to lend rs. 50,000 in lieu of consideration that Ramesh gets kamala's marriage dissolved and he himself marries her is valid contract | False |
| 52. | Ramamurthy who is a citizen of india, enters into an agreement with an alien friend is valid contract | True |
| 53. | An agreement with an alien friend is valid but an agreement with alien enemy is void (M 12 – 1M) | True |

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THE END

UNIT- 3: OTHER ESSENTIAL ELEMENTS OF A CONTRACT

| S.No | Questions | ABC |
|------|--|-----|
| 1. | Explain the terms a) Consent b) Free Consent c) Coercion. | B |
| 2. | What is meant by Undue Influence? Explain Ingredients of Undue Influence? | C |
| 3. | What is meant by Fraud? What are the circumstances under which silence would amount to fraud? | A |
| 4. | What is meant by Misrepresentation? What are the acts that constitute misrepresentation? | C |
| 5. | What are the general consequences of Coercion, Fraud, Misrepresentation Etc., as per Section 19? | A |
| 6. | What is meant by mistake? What are the essential elements of mistake? | C |
| 7. | who is competent to contract? State the legal provision with regard to minor's agreement? | A |
| 8. | Who are persons of unsound mind? What are various forms in which unsoundness may occur? | B |
| 9. | Who is disqualified persons to enter into a contract? | C |
| 10. | write about contractual freedom and limitations of parties to enter into contract? | C |
| 11. | Define unlawful object and circumstances which would make consideration and the object are unlawful? | C |
| 12. | State some agreements that are opposed to public policy? | A |
| 13. | State the agreements that are expressly declared to be void? | A |
| 14. | Coercion Vs. Undue influence. | C |
| 15. | Fraud Vs. Misrepresentation | C |
| 16. | Contracts of insurance Vs. Wagering Agreement. | B |

Q.No.1.Explain the terms a)Consent b) Free Consent c) Coercion.

(PM)

Consent (Sec 13):

- a) As per this section two or more persons are said to have consented when they agree upon the same thing in the same manner. This is also known as "Identity of Mind" or Consensus-ad-idem"
- b) Absence of identity of minds would arise when there is an error on the part of the parties regarding
- Nature of the transaction
 - Person dealt with
 - Subject matter of agreement
- c) However cases of fundamental errors have to be distinguished from cases of mutual mistake.

For Example: Where the persons refer to a ship of a name in the contract but each of them had a different ship in mind though of same name, there is no identity of minds and hence there is no consent.

Cundy Vs Lindsay: in the case **Blenkarn** place and order for goods with **Cundy** closely imitated the address and signature of another well-known firm known as **Blenkiron & Co.** **Cundy** send the goods to **Blenkarn** but thinking that the order was from **Blenkiron & Co.**, **Blenkarn** in turn sold the goods to **Lindsay**. **Cundy** discovered his mistake, brought a suit against **Lindsay** for recovery of goods.

It was held that **Cundy** was under mistake as he thought he was dealing with **Blenkiron & Co.**, while he was in fact dealing with **Blenkarn**. Hence there was no contract at all. The agreement was declared as void in the absence of identity of minds.

Free Consent (Sec 14):

- a) As per this section consent is free when it is **not caused** by Coercion, Undue Influence, Fraud, Misrepresentation or Mistake
- b) When consent is caused by Coercion, Undue Influence, Fraud, Misrepresentation then the **contract is Voidable**
- c) When consent is caused by Mistake the **agreement is Void**

Coercion (Sec 15):

- a) "Coercion" is the committing, or threatening to commit any act forbidden by the Indian Penal Code 1860, or the unlawful detaining, or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

For Example: X says to Y "I shall not return the document of title relating to your wife's property, unless you agree to sell your house to me for Rs.5000". Y says "all right, I shall sell my house to you for Rs.5000; do not detain my wife's document of title". X has employed coercion; thus contract between X and Y is voidable.

- b) It is immaterial whether the Indian Penal Code 1860 **is or is not in force** at the place where the coercion is employed.
- c) **Amiraju Vs. Seshamma:** In this case, husband obtained a release deed from his wife and son under a threat of committing suicide, the transaction was set aside on the ground of coercion, suicide being forbidden by the Indian Penal Code.
- d) As per **section 72** of ICA 1872, A person to whom money has been paid or anything delivered under coercion, must repay or return it.

Q.No.2.What is meant by Undue Influence? Explain Ingredients of Undue Influence?

Undue Influence (Sec 16):

- a) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that **one of the parties is in a position to dominate the will of the other** and uses that position to obtain an unfair advantage of the other. A person is deemed to be in a position to dominate the will of the other, when he holds authority, real or apparent over the other, or when he stands in a fiduciary relation to other.
- b) **The essential ingredients of undue influence are:**
 - i. **Relation between the parties:** A person can be influenced by the other when near relation exists between the two.
 - ii. **Position to dominate the will:** Relation between the parties exist in such a manner that one of them is in a position (real or apparent authority) to dominate the will of other.
 - iii. **The object must be to take undue advantage:** The dominating party takes undue advantage of the relation.

c) Instances where one person can be treated as in a position to dominate the will of the other

- i. A solicitor can dominate the will of the client
- ii. A doctor can dominate the will of his patient having protracted illness
- iii. A trustee can dominate the will of the beneficiary.

In the above situation burden of proof that there is no undue influence in an agreement would be on the person who is in a position to dominate the will of the other.

Thus the stronger party must act in good faith and see that the weaker party gets independent advice.

For example:

In an agreement between father and son, the burden of proof lies on father that he had not unduly influenced his son.

d) Decisions which enable us to understand law of Undue Influence:

- i. **Allahabad high court** set aside a gift of the whole of the property by an elderly Hindu to his spiritual advisor.
- ii. **Privy Council** set aside a deed of gift executed by an old illiterate Muslim lady in favor of the manager of her estate

e) Money lending operations and undue influence:

- i. Lenders are in a position to dominate the will of the borrowers,
- ii. If it seen that borrower end up with paying very high rate of interest to the lenders,
- iii. Such agreement is treated as induced by undue influence.

Q.No.3.What is meant by Fraud? What are the circumstances under which silence would amount to fraud?

Fraud (Section 17):

a) Fraud means and includes any of the following acts committed by a party to a contract or with his connivance or by his agent with intent to deceive another party thereto or his agent or to induce him to enter into the contract.

b) Acts which constitute fraud:

- i. Giving suggestion as to a fact, of that which is not true by one who does not believe it to be true.

For Example: A director of a company issues prospectus containing misstatement knowing fully well about such mis-statement. It was held any person who had purchased shares on the faith of such misstatement can repudiate the contract on the ground of fraud.

- ii. An activity concealment of fact, by one, having knowledge or belief of the fact

For Example: B discovered an ore mine in the estate of A he conceals the mine and the information about the mine. A in ignorance agrees to sell the estate to B at a price that is grossly undervalues. The contract would be voidable of the option of A on the ground of fraud.

- iii. A promise made without any intention of performing it.

For Example: Buying goods with the intention of not paying the price is an act of fraud.

- iv. Any other act fitted to deceive others

v. Any such act or omission which law specifically declares to be fraudulent.

For Example: Not only contract act, but also other acts have specifically declared certain acts and omission as fraud. A seller of a property should disclose any material defect in the property. Concealing the information would be an act of fraud. Any other act committed to deceive is fraud.

vi. **Note:** The fraud that results in a contract alone is covered by section 17. If there is a fraud but it does not result in a contract, it would not fall within the purview of the act.

c) Mere silence would amount to fraud under certain circumstances.

- i. A mere silence as to facts which is likely to affect the willingness of a person to enter into a contract is no fraud,
- ii. Where there is a duty to speak or where his silence is equivalent to speech, then such silence amounts to fraud.

For example:

- In the case of fire insurance contract between person standing in fiduciary relationship, nondisclosure of certain information would amount to fraud as there is a duty to make special disclosure. These are also known as *uberrimae fidei* contract.
 - In the case of marine insurance policy contract, where a charterer is shipping goods of high value but fails to disclose such high value of the goods to the underwriter, there is fraud.
- iii. Similarly the insurer is not bound by the policy issued by him where he is misinformed about insurance policy previously taken by the insured.

Q.No.4. What is meant by Misrepresentation? What are the acts that constitute misrepresentation?

Misrepresentation (Section 18):

- a) Misrepresentation does not involve deception but is only an assertion of something by a person which is not true, though he believes it to be true. Misrepresentation could arise because of innocence of the person making it or because he lacks sufficient or reasonable ground to make it.
- b) A contract which is hit by misrepresentation can be avoided by the person who has been misled.

Acts that constitute Misrepresentation:

- a) **Unwarranted Statement:** An innocent false statement of material fact, not warranted by information (Trustworthy source), is considered as misrepresentation.

For example:

A makes a positive statement to B that C will be the director of a company. A makes the statement on information derived, not directly from C but from M. B applies for shares on the faith of the statement which turns out to be false. The statement amounts to misrepresentation, because the information received (second-hand) did not warrant A to make the positive statement to B

- b) **Breach of Duty:** There are certain cases where the party is under duty to disclose certain facts and he does not disclose these facts and thereby misleads the other party. Under English law it is called "Constructive fraud".

For Example:

Under a contract of insurance, the assured person had a duty to disclose his age correctly. If an assured person honestly states his age as 20 years whereas he is actually 25 and thereby induces the LIC to charge a lower premium, it will be a case of misrepresentation. If he makes this misstatement intentionally then it is fraud.

- c) **Inducing mistake about subject matter:** When one party misleads the other, however innocently regarding the nature and quality of subject matter, a misrepresentation is said to be made.

Q.No.5.What are the general consequences of Coercion, Fraud, Misrepresentation Etc., as per Section 19?

Effect and consequences of a contract hit by Coercion, Undue Influence, Fraud or Misrepresentations, (Section 19)

- a) In all these cases though the agreement amounts to a contract, it is voidable. The injured party might insist on being placed in the same position in which he might have been had the vitiating circumstances not been present.

For example:

'A' fraudulently informs 'B' that his estate is free from encumbrance, therefore 'B' buys the estate. But the estate is subject to mortgage. 'B' may avoid the contract or insist on the debt being redeemed and mortgage being released.

- b) **But**, where it is possible to discover the truth with ordinary diligence, and though the consent might have been obtained by misrepresentation or silence, then the contract cannot be avoided.

For example:

Where 'A' misrepresents to 'B' that his sugar factory can produce 500 tons of sugar and whereas it actually produced 300 tones of sugar and if 'B' had the opportunity to examine the accounts through which he could have found out the truth and if in spite of that he had entered into a contract, he can not repudiate it.

- c) Where a party to contract perpetrates fraud or misrepresentation, but the other party is not misled by such fraud or misrepresentation, then the contract cannot be avoided by the latter.

For example:

The seller of specific goods deliberately conceals a fault in order that the buyer may not discover it even if he inspects the goods, but the buyer in fact does not make any inspection at all, the buyer cannot avoid the contract as he is not deceived by the seller.

- d) Where a contract is voidable and the party entitled to avoid it decides to do so by rescinding it, he must restore any benefit which he might have received from the other party. He cannot avoid the contract and at the same time enjoy the benefit under the rescinded/avoided contract.

- e) However where a contract is sought to be rescinded on the ground of 'undue influence' the court may set aside the contract partially or fully. Where the party seeking to rescind the contract had received only benefit, the contract will be set aside by the court upon such terms and conditions deemed fit.

For Example:

A student was induced by his teacher to sell his brand new car to the latter at less than the purchase price to secure more marks in the examination. Accordingly the car was sold. However, the father of the student persuaded him to sue his teacher. In this case the student can sue his teacher on the ground of undue influence

- f) A contract brought about as a result of coercion, undue influence, fraud or misrepresentation would be voidable at the option of the person whose consent was so caused.

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Q.No.6.What is meant by mistake? What are the essential elements of mistake?

Mistake (Section 20 , 21, 22):

- a) Where parties to an agreement are under a mistake as to a matter of fact which is essential to the agreement, then the agreement is void. As we all know a void agreement cannot be enforced at all.

For Example: 'A' agrees to sell certain cargo which is supposed to be on its way in a ship from London to Bombay. But in fact, just before the bargain was struck, the ship carrying the cargo was cast away because of storm and rain and the goods were lost. Neither of the parties was aware of it. The agreement is void. [*Couturier vs Hasite 5 H.L.C.673*]

Essential Elements of Mistake:

- a) Mistake must be a **matter of fact** and not of law.

For Example: Where 'A' and 'B' enter into contract believing wrongly that a particular debt is not barred by law of limitation, then the contract is valid because there is no mistake of fact but of law only.

- b) However a question on **foreign law would become a matter of question of fact.**

- c) Similarly the **existence of a particular private right** though depends upon rules of law, is only a matter of fact.

For Example: Where a man promises to buy a property which already belongs to him without him being aware of it, then such a promise is not binding on him.

- d) However a family arrangements or a compromise of doubtful rights cannot be avoided on the ground of mistake of law.

- e) Mistake must be of an **essential fact**. Whether the fact is essential or not would again depend on how a reasonable man would regard it under given circumstances. **A mere wrong opinion as to the value is not an essential fact.**

- f) While deciding whether a contract is hit by mistake or not it must be remembered that **'Mistake' is not unilateral**. Both the parties should be under mistake. A unilateral mistake would not render the contract invalid.

For example: where 'A' agrees to purchase from 'B' 18 carat gold thinking it to be pure gold but 'B' was not instrumental for creating such an impression then contract between 'A' and 'B' should be treated as valid.

Q.No.7.who is competent to contract? State the legal provision with regard to minor's agreement?

Competent to Contract (Section 11):

As per this section "Every person is competent to contract who is of **the age of majority** according to the law to which he is subject and who is of **sound mind** and is **not disqualified from contracting by any law** to which he is subject".

Age of Majority (Section 3 of Indian Majority Act, 1875):

- a) In India, the age of majority is regulated by the Indian Majority Act (Act IX of 1875). Every person domiciled in India attains majority on the completion of 18 years of age.
- b) A person is deemed to have attained majority as under:

| | |
|---|---------------------------|
| Where a guardian of a minor's person or property is appointed under the Guardian and Wards Act, 1890. | On completion of 21 years |
|---|---------------------------|

| | |
|---|---------------------------|
| Where minor's property has passed under the superintendence of the court of wards | On completion of 21 years |
| In other cases | On completion of 18 years |

Legal Provision with Regard to Minors Agreement:

a) An agreement entered into by a minor is altogether void:

- i. An agreement entered into by a minor is void against the minor and the question of its enforceability does not arise. The Privy Council in ***Mohiri Bibee vs. Dharmodos Ghose*** decided that an agreement where minor is a party is altogether void.
- ii. In this case a minor executed a mortgage in favour of the husband of Mohiri Bibee. The question for consideration is whether the mortgage is valid.
- iii. Interpreting Sections 10 & 11 of the Indian Contract Act, 1872 Privy Council held that unless all the parties to an agreement were competent to contract, the agreement would be void.
- iv. The main reason for such a view is that a minor is incapable of performing his part of the contract imposing a legal obligation.

b) Minor can be a beneficiary:

- i. Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor.
- ii. Thus, a promissory note duly executed in favour of a minor is not void and can be sued upon by him, because he though incompetent to contract, may yet accept a benefit.
- iii. A minor cannot become partner in a partnership firm. However, he may with the consent of all the partners, be admitted to the benefits of partnership (Section 30 of the Indian Partnership Act, 1932).

c) Minor can always plead minority:

- i. Any money advanced to a minor cannot be recovered as he can plead minority and that the contract is void. Even if there had been false representation at the time of borrowing that he was a major, the amount lent to him cannot be recovered.

For Example: In ***Mohiri Bibee's*** case where money was lent to a minor with full knowledge of the borrower's infancy (Period of childhood). Hence court held that the lender cannot recover any amount lent to minor

- ii. The Calcutta High Court held that no discretion could be used even under Specific relief Act 1963 to grant any kind of relief to the lender of money. When the mortgage documents had to be cancelled at the instance of minor who mortgaged the property fraudulently,
- iii. Courts have ordered compensation under Specific Relief Act, 1963 to the other party to the instrument in some cases as ***Dattaram vs. Vinayak (1903)*** ; ***Manmatha Kumar vs. Exchange Loan Co. etc.,***
 - If a minor had obtained payment fraudulently by concealing his age, and
 - If the amount is still in minor's possession.
- iv. But he cannot be compelled for an identical sum as it would result to enforcing void contract.

d) Ratification of agreement not permitted:

- i. A minor on his attaining majority cannot validate any agreement which was entered into when he was minor, as the agreement was void.

- ii. Similarly a minor cannot sign fresh promissory notes on his attaining majority in lieu of promissory notes executed for a loan transaction when he was minor, or a fresh agreement without consideration.
- iii. **But** if in addition to the consideration already given during minority, a further advance is made, or a fresh consideration is given after majority, a promise to pay the whole amount becomes binding contract.

e) Liability for necessaries:

- i. A person, who supplied necessaries to a minor or his family, is entitled to be reimbursed from the properties of a minor, not on the basis of any contract but on the basis of an obligation resembling a contract.
- ii. Necessaries not only include food and clothing but also education and instruction. They also include 'goods' and 'services'.

f) Contract by guardian are valid:

- i. Though an agreement with minor is void, valid contract can be entered into with the guardian on behalf of the minor.
- ii. The guardian must be competent to make the contract and the contract should be for the benefit of the minor.
- iii. For *instance* a guardian can make an enforceable marriage contract on behalf of the minor. Similarly father of bride can enter the contract with the father of bridegroom for payment of certain allowance to the bride.
- iv. **But** not all contracts by guardian are valid. A guardian cannot bind a minor in a contract to purchase immovable properties. *See Sarwarjan vs. Fakharuddin* However, a court appointed guardian can bind a minor in respect of certain sale of property ordered by the court.

Q.No.8. Who are persons of unsound mind? What are various forms in which unsoundness may occur?

Sound Mind (Section 12):

- a) As per this section "A person will be considered to be of sound mind if he at the time of entering into a contract is capable of understanding it and forming a rational judgment as to its effect upon his interest."
- b) A person who is of unsound mind but occasionally of sound mind can enter into a contact when he is in sound mind though for temporary periods.

For example:

A person who is in lunatic asylum during intervals of sound mind can enter into contracts. Similarly, a person who is generally of sound mind, but occasionally of unsound mind cannot enter into a contract when he is of unsound mind.

- c) From the above it is clear that the period of lucidity would be crucial as much as the periods of lunacy.
- d) But the burden of proof of 'unsound mind' is on the person who challenges the validity of the contract.
- e) A lunatic whose estate is managed by a committee or manager is not capable of entering into a contract even during the periods of lucidity in view of special provisions of Lunacy Act.
- f) The basic test for lunacy or lucidity is to see whether the person is able to understand the implications of a contract which he enters into on his interest.

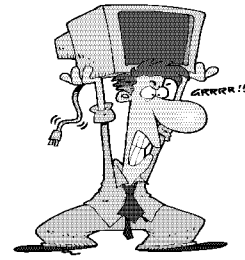
Different forms of Unsoundness:

1. **Idiot:** An idiot is a person who doesn't have mental ability of thinking. His incapacity is permanent and at any time he is unsound mind.



A property worth about Rs.25,000 was agreed to be sold by a person for Rs.7,000 only. His mother proved that he was an idiot, incapable of understanding the transaction and that he mostly wandered about. The sale was held void.

Inder Singh Vs. Parmeshwardhari Singh



2. **Lunacy or insanity:** A lunatic is a person whose mental thinking is disordered due to some mental strain or disease. However, the mental capacity of such persons may not be completely lost. He will have intervals of sanity (capable) and insanity (incapable). The period during which he is sane is called lucid intervals (i.e. capable to enter into contract). Contract entered into during lucid intervals is valid.
3. **Drunkard or intoxicant:** A drunkard or intoxicated person loses his contractual capacity when he is intoxicated so excessively that he loses reasoning power for the time being. Drunkenness is similarly treated as insanity. He can't enter into a valid contract during drunkenness.
4. **Delirious persons:** A person delirious from fever is also not capable of understanding the nature and implications of an agreement. So, he can't enter into a contract when he is delirious.
5. **Hypnotised persons:** Hypnotism produces temporary incapability till a person is under the effect of artificial induced sleep. Such a person cannot enter into a contract.
6. **Mental decay:** There may be mental decay due to old age or poor health. If such person is not capable of understanding the contract and its effects upon his interest then he can't enter into a contract.

**Necessaries supplied to a person of unsound mind (Section 68):**

As per section 68, if a person incapable of entering into a contract is supplied by another person with necessaries, the person who has furnished such supplies is entitled to be reimbursed from the property of such a person.

Q.No.9. Who is disqualified persons to enter into a contract?

Contract by disqualified persons: Apart from minors and persons of unsound mind, law specifically disqualified some persons to enter into a contract in order to protect the public from the possible negative consequences. These are the others who are not capable of entering into contract either wholly or partially. Contract by such persons are void.

Following persons are specifically disqualified under Indian contract act.

- a) **An alien enemy:** During war an alien enemy cannot enter into a contract with an Indian subject, unless he is permitted by Central Government to do so he cannot sue in Indian Courts. This disability to an alien enemy arises on account of public policy.
- b) **Statutory corporations or Municipal bodies:** This Body Corporate cannot enter into contracts on matters which are beyond their statutory powers or ultra vires the memorandum or articles through which they are created.
- c) **An Advocate** In India an Advocate can enter into contracts with his clients for recovery of fees or payment of fees in certain manner unlike his counterpart in U.K where barristers are prohibited to enter into contracts for recovery of fees from their clients ***Nichal chand vs. Dilawar Khan.***

- d) **Contract with the Government:** Before entering into contract with the government certain procedure and formalities are required to be complied with. On default of it, such contract will be void. *Bikhraj vs. Union of India, Karamshi vs. State of Bombay*
- e) **Sovereign states, Ambassadors and Diplomatic Consuls:** These persons enjoy certain privileges with the result that they cannot be proceeded against in Indian Courts. However, they can, at their will enter into contracts which may be enforceable in India.

Q.No.10. write about contractual freedom and limitations of parties to enter into contract?

- a) All persons enjoy freedom for entering into contracts of their choice. But this contractual freedom or their right to enter into agreements is not absolute.
- b) There is a limitation on such contractual freedom as they are bound by certain general provisions of law.

For example:

Suppose 'A' agrees to pay Rs. 100/- to B on 'B' stealing 'C's' purse, then no Court can compel 'A' to pay 'B' even if he manages to steal 'C's' purse because it would amount to encouraging these things.

- c) While on the subject of 'object' and 'consideration' it must be said that in practice it is difficult to distinguish between 'object' and 'consideration' especially when consideration consists of a promise to do or, not to do something.
- d) Sometimes both 'object' and 'consideration' are seen for evaluation.

For example:

If 'A' agrees to sell goods to 'B' who is insolvent and B assigns the benefit of the contract for 100/- with a view to defrauding creditors, The consideration for the assignment viz Rs. 100/- is lawful but the object namely defrauding creditors is unlawful as it is to defeat the provision of insolvency law.

- e) Although 'object' and 'consideration' are sometimes intertwined we have to, where ever it is possible, separate them and identify whether they are lawful.

Q.No.11. Define unlawful object and circumstances which would make consideration and the object are unlawful?

Unlawful Object:

- a) In terms of section 23 of the Act 'consideration' or 'object' is unlawful if it is **forbidden by law; or it would if permitted, defeat the provisions of any law or is fraudulent or involves injury to the person or property of another or is immoral or opposed to public policy.**
- b) Every agreement where the object or consideration is unlawful is void. Thus section 23 has set out the limits to contractual freedom.

For Example: Agreement which are void because the object is unlawful.

1. Where A, B & C enter into an agreement to share equally among themselves certain gains acquired by fraud or loss acquired by fraud. The agreement is void because the object being commission of fraud is unlawful.
2. A promise to return the stolen property of 'B' if 'B' would withdraw the criminal case filed against him, the agreement is void as its object namely withdrawing the case would mean stifling prosecution.

Unlawful Consideration: It should be noted that the words “Consideration” and “Object” used in section 23 are not synonymous. The word object means “purpose or design” of the agreement. The word consideration is different from object and consideration is defined in section 2(d) of ICA 1872.

For example: Agreement which are void because the consideration is unlawful.

A Promise to obtain for B an employment in the public service and B promised to pay Rs. 1000 to A. the agreement is void as the consideration is unlawful.

Circumstances which would make consideration and the object unlawful (Section 23):

a) **Agreement forbidden by law:** Acts forbidden by law means acts that are punishable under any Statute or Rules or Regulations made under any Statute.

For example:

1. A plantation company that is commenced, for growing, felling and selling timber cannot enter into any agreement to grow and fell sandalwood trees as felling of sandalwood is prohibited by law viz the Forest Act.
2. A license to cut grass is given to ‘X’ by Forest Department under the Forest Act. The license provides for imposition of penalty in the events of ‘X’ choosing to assign his right. However, if ‘X’ assigns his right, the agreement would still be valid since there is no prohibition for such assignment as the consideration stipulating penalty is only to regulate the matter as a matter of administrative measure.

b) **Consideration defeats the provision of law:** Where an agreement is entered into with the object of defeating any provision of law then it is prohibited. “Law” here should mean any Statute, Law, regulation etc, in force.

For example:

1. Where a debtor agrees not to plead limitation vis-à-vis his creditor, it is an agreement to defeat the Limitation Act.
2. An agreement between owner of land who has to pay land revenue in arrears and a stranger that the stranger would purchase his estate for revenue’s sake and re-conveys it to the former on receipt of purchase money is void, as it would defeat the law relating to revenue, which apparently prohibits defaulting owners from purchasing back the same estate already sold due to his default.
3. An agreement by a Hindu to give his son in adoption in consideration of annual allowance to natural parents would be in violation of Hindu Law and hence is unlawful.
4. Any agreement by a Muslim with the wife before their marriage that the wife shall be at liberty to live with her parents after marriage is void as it would defeat the provisions of Muslim Law.

c) **Consideration that would defeat any rule for the time being in force:** This is a situation not very different from point (b) discussed above. The issue covered by this point can be explained as follows

For example:

1. A ‘will’ must be proved in order to be probated by a court. A mere consent of parties by way of agreement to except this requirement of proof of genuineness or proper execution of will is not lawful and therefore cannot be enforced under C.P.C.
2. A receiver is a court officer. Therefore his remuneration has to be fixed by the court. Parties to certain litigations cannot add or deviate of the power of the receiver. Similarly they cannot fix salary of a receiver without the leave of the court however unconditional it may be. Such an act would be in contravention of law.

d) **Where consideration is a fraud:** Following are *illustrations* to prove where the object or consideration of an agreement is unlawful on the ground of fraud -

For example:

1. 'A' is an agent for Zamindar, the principal. He agrees for money to lease of land for 'B' from his principal, the Zamindar. The agreement between 'A' and 'B' is void as the consideration is fraudulent
 2. 'A' & 'B' are partners in a firm. They agree to defraud a Government department by submitting a tender in the individual name and not in the firm name. This agreement is void as it is a fraud on the Government department.
- e) **Where object or consideration is unlawful because it involves or causing injury to a person or loss of property:** The term 'injury' means criminal or wrongful harm. Following are the *illustrations* where the object or consideration is unlawful as it involves injury either to person or property.

For example:

1. 'A' agrees to buy a property from 'B' although A knows 'B' had agreed previously to sell the property to 'C'. The intention of 'A' here is to cause injury to the property of 'C'
 2. 'A' agrees to print a book of 'B' which has clearly been published by "W" This agreement is void as it is not only in violation of Copyright Act but also with the intent to cause injury to the property of another.
 3. 'A' borrowed money from 'B'. He is unable to pay either the principal or interest. Therefore he agrees to render manual labour for certain period failing which he agrees to pay exorbitant interest. This agreement is void as rendering labour as consideration amounts to agreeing to be a slave. Slavery is opposed to public policy as well. In other words consideration involves 'injury' to 'A'. Hence the agreement is void.
- f) **Where consideration is immoral:** Following are *illustration* where the agreement is void because the object or consideration is unlawful being immoral.
- i. Where 'A' agrees to let his house to a prostitute on rent, where with A's knowledge she carries on her vocation. 'A' cannot collect the rent as the agreement is void, the object being void.
 - ii. Where 'P' had advanced money to 'D' a married woman to enable her to obtain a divorce from her husband. He also promised to marry her after divorce. It was held that 'P' was not entitled to recover the amount from 'D' as the agreement was against good morals.
- g) **Where consideration is opposed to public policy:** Agreement, either because of their object or consideration being opposed to public policy is void and not enforceable.

For example:

An agreement to pay money to public servant in order to induce him to retire from his office so that another person may secure the appointment is void.

Q.No.12. State some agreements that are opposed to public policy?

Public Policy:

- a) Agreement, either because of their object or consideration being opposed to public policy is void and not enforceable.
- b) Therefore the meaning of the expression 'public policy' is very important. It can be interpreted in a narrow sense or in a broad sense. If it is understood in a narrow sense, it would cut into rights of people to enter into even genuine agreements.
- c) 'Public policy' as a concept is evolved basically to develop an orderly society and for good of the community. But framing public policy itself is a difficult exercise since a too restrictive approach would stifle the rights of people and a too liberal approach would open the gate for many illegal transactions.

- d) Therefore policy on 'public policy' has to be developed with circumspection. Public policy has been described as *"an unruly horse, which if not properly bridled, may carry its rider he knows not where"*. Time immemorial following activities/ agreements have been identified as "opposed to public policy".

Agreements Opposed to Public Policy:

a) Trading with enemy:

- i. Any trading or business activity with a person who owes allegiance to a Government of a country with whom India is at war without any license from Government of India is void. This is because such a trade would be against the interest of Government of India and people of India.
- ii. Any agreement made during peace time would be suspended automatically and cannot be carried on further until hostilities come to an end.

b) Stifling prosecution:

- i. Any agreement to stifle or prevent illegally any prosecution is void as it would amount to perversion or abuse of justice. The principle is that one should not make a trade of felony.
- ii. It must be understood however that under the Code of Criminal Procedure, 1973 many offences are compoundable.
- iii. Therefore any agreement towards compounding of an offence to avoid prosecution is not void but is very much enforceable.
- iv. Thus, where 'A' agrees to sell certain land to 'B' in consideration of 'B' abstaining from taking any criminal proceeding against 'A' with respect to an offence which is compoundable, the agreement is not opposed to public policy.

c) Maintenance and Champerty:

- i. Maintenance is promotion of litigation in which the litigant has no interest. Champerty is bargain whereby one party agrees to assist the other in recovering property with a view to sharing the profit of litigation.
- ii. These agreements for maintenance and champerty are void in England but not in India. Hence these are not opposed to public policy.
- iii. But where such advances are made by way of gambling in litigation, the agreement to share the subject of litigation is certainly opposed to public policy and therefore is void.

d) Interference with course of law and justice:

- i. Any agreement with the object of inducing a judicial officer or administrative officer of the state to act corruptly or not impartially is void.
- ii. Similarly an agreement to use influence in a litigation in a underhand manner is void.

For example:

Through an agreement 'A' agrees to reward 'B' if he abstains from being a witness in a suit against 'A' is void. But an agreement to pay for to a holy man for prayers for success of a suit is valid.

- e) Marriage brokerage contract:** An agreement to negotiate a marriage for reward is void. Such marriage brokerage contracts are opposed to public policy.

- f) Interest against obligation:** The following are *examples* of agreement that are void as they tend to create an interest against obligation. The object of such agreements is opposed to public policy.

For example:

1. An agreement by an agent to receive without his principal's consent compensation from another for the performance of his agency is invalid.

2. A promise by a trustee to do something in violation of his duty is unlawful
3. A, who is the manager of a firm, agrees to pass a contract to X if X pay to A Rs. 2000 privately; the agreement is void.

g) Sale of public offices:

- i. While appointing a person to certain important and high public office, merit alone should be the criteria. Any attempt to influence or any agreement to influence anyone in this regard should be seen as an act 'opposed to public policy'.
- ii. 'Public policy' also demands that there should be no money consideration and if it is there, it could be opposed to public policy. This is for the reason presence of money consideration would convert the situation as sale of public office.

For example:

1. An agreement to pay money to public servant in order to induce him to retire from his office so that another person may secure the appointment is void.
2. An agreement to procure a public recognition like Padma Vibhushan for reward is void.
3. The sale of the office of a mutawali of wakf is opposed to public policy, because the office of mutawali is connected with matters of public interest.

h) Agreement for the creation of monopolies: Agreements having for their object the establishment of monopolies are opposed to public policy and therefore void. It is also hit by the MRTP Act.

i) Agreement in restraint of marriage (Section 26): Every agreement in restraint of marriage of any person other than a minor is void. So if a person, being a major, agrees for good consideration not to marry, the promise is not binding.

j) Agreement in restraint of trade (Section 27): Any agreement through which a person is restrained from exercising a lawful profession, trade or business of any kind is to that extent void. The object of this law is to protect trade.

The restraint, even if it is partial, will make the agreement void.

For example:

X, a shop keeper, in a particular locality agrees to pay 'Y' his rival in business certain compensation, if 'Y' close his business in that locality the agreement is void. **Exceptions:**

1. Where a person sells his business along with the goodwill to another person, agrees not to carry on same line of business in certain reasonable local limits, such an agreement is valid.
2. In terms of Section 36 of the Indian Partnership Act, 1932 an agreement through which an outgoing partner will not carry on the business of the firm for a reasonable time will be valid, though it is in restraint of trade.
3. Again in terms of Section 54 of the Partnership Act, 1932 partners among themselves may agree that upon dissolution of the firm some of them may not carry on the business of the firm. Such an agreement is valid.
4. Section 55 of the Indian Partnership Act, 1932 provides that where a full firm is sold by partners along with goodwill to a buyer, there can be an agreement that they would not carry on the business of the dissolved firm for certain period and within certain local limits and such an agreement will be valid.
5. An agreement of service through which an employee commits not to compete with his employer is not in restraint of trade. *Example:* 'B' is a Doctor and he employs 'A' a junior Doctor as his assistant. 'A' agrees not to practice as Doctor during the period of his employment with 'B' as a Doctor independently. Such an agreement will be valid.

6. An agreement between manufacturer and a wholesale merchant that the entire production during a period will be sold by the manufacturer to the wholesale merchant is not in restraint of trade.
7. An agreement among sellers not to sell a particular product below a particular price is not an agreement in restraint of trade.

k) Agreement in restraint of legal proceedings (Section 28):

- i. An agreement in restraint of legal proceedings resulting in restriction of one's right to enforce legal rights is void.
- ii. Similarly any agreement which abridges the usual period for commencing the legal proceedings is also void.
- iii. Further these agreement are also void in view of section 23 of the Indian Contract Act, 1872 as the object of the agreements are to defeat the provision of law.
- iv. Nevertheless, a clause in a fire insurance policy stipulating that if the claim is made and rejected and if no suit is instituted within three months after such a rejection, all the benefits under the policy will be forfeited, is valid.

Exceptions:

- a) A contract by which the parties agree that any dispute between them in respect of any subject shall be referred to arbitration and that only the amount awarded in such arbitration shall be recoverable is a valid contract.

For example:

In agreement between the holder of a fire insurance policy and the insurance company that no suit shall be instituted until the question of the amount of damage sustained by the assured has first been ascertained by a reference to an arbitrator is a perfectly valid agreement.

Similarly, a contract by which the parties agree to refer to arbitration any question between them which has already arisen or which may arise in future, is valid; but such a contract must be in writing.

Q.No.13. State the agreements that are expressly declared to be void?

Certain agreements are void ab initio under the Contract Act, like

- Agreements by incompetent persons [Section 11],
- Agreement with unlawful object or consideration [Section 23],
- Agreement made under mutual mistake of fact [Section 20],
- Agreement without consideration [Section 25],
- Agreement in restraint of marriage [Section 26],
- Agreement in restraint of trade [Section 27],
- Agreement in restraint of legal proceedings [Section 28],

In addition to the above, there are also other agreements which are expressly declared as void.

a) Where consideration is unlawful in part (Section 24):

"If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object is unlawful, the agreement is void".

This Section is obviously a corollary to Section 23 of the Act. Where the consideration is unlawful, the entire agreement is void as the agreement has to be looked as a whole.

The general principle of law is where the legal part of an agreement can be separated from the illegal part, then the legal part if it can be given effect by rejecting the bad part and retaining the good part, then the good part is given effect.

But where no such separation is possible, the contract is altogether void.

For example:

'A' has business interest in Indigo, as a manufacturer. He also has interest in illegal traffic of other goods. Where 'A' employs 'B' for a salary of Rs. 2000/- to act as superintendent of A's entire business, the agreement is void as the object of A's promise unlawful in part.

- b) Agreement the meaning of which is uncertain (Section 29):** Where the meaning of the terms of an agreement is uncertain or if it is not capable of being understood with certainty, then the agreement is void.

But where the meaning is capable of being made certain, then the agreement is valid.

For example:

Where 'A' enters into an agreement to supply 100 tones of oil, the agreement is not valid as the meaning of it is uncertain since what type of oil that is promised to be supplied is not clear.

But on the other hand if 'A' is a dealer of coconut oil only, then the meaning of the agreement would crystallize very easily and then the agreement would be valid.

- c) Wagering agreement:** Wagering agreement is one which involves payment of a sum of money upon the determination of an uncertain event. The essence of wagering agreement is where there are two parties, one wins, the other loses upon an uncertain event taking place in which neither of them has legitimate interest.

For example:

'A' agrees to pay Rs. 500/- to 'B' if it rains and similarly 'B' agrees to pay 'A' if it does not. This is a classic case of a wagering agreement. An agreement by way of a wager is void.

But where one of the parties has control over the event, the agreement is valid.

Definition of wagering agreement given by Anson: "A promise to give money or money's worth upon determination or ascertainment of an uncertain event".

Position with Regard to Some Transaction:

- a) Purchase of lottery ticket and horse racing (Section 30):** As per this section "An agreement [to buy lottery tickets] is one by way of wager and is void. However any subscription or contribution or agreement towards such subscription or contribution towards any plate or prize or sum of money, of the value of Rs. 500 or more to be awarded to a winner of a horse race is not unlawful.
- b) Speculative transactions:** While as clearly seen, wagering contracts are void, speculative transactions are valid. It is often difficult to distinguish between the two. There are two bare elements of a speculative transaction.
- i. Mutual intention of parties to acquire or deliver goods or commodities and
 - ii. Undertaking of risk arising from movement of prices.

In wagering contract, only the element of risk is seen.

For example:

'A' enters into a agreement with 'B' to buy 100 bales of jute at Rs. 150/- per bale for forward delivery after six months. This is a proposed transaction of purchase @ Rs. 150/- per bale. What if the price at the time of delivery goes up to Rs. 200/- 'A' has the following two options:

- i. To take delivery of 100 bales at the contracted rate of Rs. 150/- and sell it to some other buyer and make a profit of Rs. 50/- per bale or

ii. To simply collect the difference of Rs. 50/- per bale from 'B'

Similarly what if the price at the time of delivery goes down to Rs. 125/- per bale. 'A' has the following two options:

i. To take delivery of 100 bales at the contracted rate of Rs. 150/- [and perhaps sell it to some buyer and incur a loss of Rs. 25 per bale] or

ii. To pay the difference of Rs. 25/- per bale to 'B' & close the contract.

In the above *example* if the original intention of the parties was only to settle the difference in price, than it would be a wagering contract which would be void. Thus by now it would be clear that wagering postulates only incurring of risk. It is void because it is opposed to public policy.

While gambling and wagering are prohibited by law, speculation is not.

c) **Insurance policy:** An insurance policy is a valid contract. But if an insurance policy is taken by a person who has no insurable interest, then it is void.

For example: A person, who has no insurable interest in a ship, takes a policy against it being sunk, and then the contract is void.

d) **Promissory notes on a wagering contract:** While a wagering contract is void ab initio, hence automatically a promissory note given out of a wagering contract is not enforceable by way of a suit. A promissory note of this character is one without consideration and hence is null and void.

e) **Suit to recover deposit:** A winner of bet cannot recover the amount which he has won even if the amount is kept by way of deposit by the loser with the stakeholder. Such earmarking or identification of funds does not enhance the validity of the contract which is void.

But, the loser can recover the amount from stakeholder as long as the amount has not been made over by the stakeholder to the winner.

f) **Wager and collateral transactions:** The validity of a collateral transaction cannot be challenged because the main contract is a wager and void.

For example: In a wagering contract, the broker is entitled to collect his brokerage. Similarly the principal can recover the prize money from his agent received by him on account of a wagering transactions.

The acid test of validity of a collateral transaction is whether the main transaction is illegal or legal but void. If the main transaction is illegal, the collateral transaction cannot be valid.

For example: security given for regular payment of the rent of a house let out for the purpose of gambling cannot be recovered; the recovery of security being tainted with the illegality of original transaction cannot be enforced.

A promise made by the loser of a wager to pay the amount lost in consideration of the winners forbearance to sue him as defaulter can be enforced as a fresh contract, separate and distinct from original wagering contract though collateral to it.

DIFFERENCES

Q.No.14. Coercion Vs. Undue influence.

(N 05 – 6M, N 11 – 8M)

| DIFFERENCE | COERCION | UNDUE INFLUENCE |
|----------------|---|---------------------------------------|
| Meaning | It involves the physical force or threat. The aggrieved party is compelled to make the contract against his will. | It involves moral or mental pressure. |

| | | |
|---|---|--|
| Nature | It involves committing or threatening to commit an act forbidden by Indian Penal Code or detaining or threatening to detain property unlawfully | No such illegal act is committed or a threat is given. |
| Relation between parties | It is not necessary that there must be some sort of relationship between the parties. | Some sort of relationship between the parties is absolutely necessary. |
| Who can apply & on whom it can be applied? | Coercion need not proceed from the promisor nor need it be directed against the promisor. | Undue influence is always exercised between parties to the contract. |
| Effect on Contract | The contract is voidable at the option of the party whose consent has been obtained by coercion. | Where the consent is induced by undue influence, the contract is either voidable or the court may set it aside or enforce it in a modified form. |
| Restoration | In case of coercion where the contract is rescinded by the aggrieved party, as per Section 64, any benefit received has to be restored back to the other party. | The court has the discretion to direct the aggrieved party to return the benefit in whole or in part or not to give any such directions. |

Q.No.15. Fraud Vs. Misrepresentation

| DIFFERENCE | FRAUD | MISREPRESENTATION |
|------------------------------------|---|--|
| Intention | To deceive the other party by hiding the truth. | There is no such intention to deceive the other party. |
| Knowledge of truth | The person making the suggestion believes that the statement is untrue | The person making the statement believes it to be true, although it is not true. |
| Rescission of contract | The injured party can rescind the contract and can claim damages. | The injured party is entitled to repudiate the contract or sue for restitution but cannot claim damages. |
| Means to discover the Truth | The party using the fraudulent act cannot secure or protect himself by saying that the injured party had means to discover the truth. | Party can always plead that the injured party had the means to discover the truth. |

Q.No.16. Contracts of insurance Vs. Wagering Agreement.

| DISTINCTION | CONTRACTS OF INSURANCE | WAGERING AGREEMENT |
|---|---|--|
| Insurable interest | Person having an insurable interest can insure his life or property. | Parties to a wagering agreement need not have insurable interest. |
| Actual amount payable | In case of contracts of insurance except life insurance, the actual amount payable need not necessary be the full amount for which the property is insured. | In case of wagering agreement, the actual amount payable is usually fixed. |
| Beneficial / against public policy | These are regarded as beneficial to the public policy. | These can't be considered to be beneficial to the public. |
| Gamble | Such agreements do not tantamount to gambling as they involve the element of investment and protection. | Being chance oriented, these are closer to gambling. |

TRUE OR FALSE STATEMENTS

| No. | Statement | Ans |
|-----|---|-------|
| 1. | X is having two horses, a white and another black. X offers to sell his black horse to Y. Y not knowing that X has two horses, thinks of white horse and agrees to buy the horse. Is this agreement valid? | No |
| 2. | X beats Y and compels him to sell his house for Rs.1,00,000. Y agrees to sell his house to Y. Y signs the necessary documents for the sale of house and receives the payment. Later on, Y wants to avoid the contract? Will he succeed? | Yes |
| 3. | X, by a threat to commit suicide induced Y, his wife, and Z, his son, to execute a release deed in favour of his brother in respect of certain property. Are Y and Z bound by such release deed? | No |
| 4. | A falsely represents to B that 500 tons of nails are made annually at A's factory and thereby induces B to buy the factory. Is the contract voidable at the option of B ? | Yes |
| 5. | A and B, being traders enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. Is A bound to inform B? | No |
| 6. | A's son had forged B's name to a promissory note. B under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. B sues on bond. Will he succeed? | No |
| 7. | The aggrieved party can rescind the contract on account of fraud. Can he also Claim damages from the other party? | Yes |
| 8. | The aggrieved party in case of active fraud loses the right to rescind the contract if he had the means of discovering the truth by ordinary diligence. | True |
| 9. | X sells horse to Y knowing well that the horse is vicious. X does not disclose the nature of the horse to Y. Can X be made liable to Y for the transaction? | No |
| 10. | A mere attempt to deceive is fraud. | False |
| 11. | If there is no damage, there is no fraud. | True |
| 12. | In a contract of insurance, keeping silent as to material facts amounts to fraud. | True |
| 13. | A person who had the means of discovering the truth with ordinary diligence can avoid the contract on the ground of misrepresentation. This statement is | False |
| 14. | Where a party to a contract perpetrates fraud or misrepresentation, but the other party is not, in fact, misled by such fraud or misrepresentation, the contract cannot be avoided by the latter. | True |
| 15. | Where misrepresentation is intentional, deliberate and willful, with an intent to deceive the other party, such Misrepresentation = Fraud. | True |
| 16. | The aggrieved party in case of misrepresentation can rescind the contract even if he had the means of discovering the truth by ordinary diligence. | False |
| 17. | A and B make contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation. Is the contract voidable? | No |
| 18. | When the consent of a party is not free, the contract is Void. | False |
| 19. | The Indian Penal Code must be in force in place where the coercion was employed. | False |
| 20. | A contract is void if the consent of a party to an agreement is obtained by undue influence | False |
| 21. | Where in a contract one party is in a position to dominate the will of another and uses his superior position to obtain unfair advantage over the other, the contract is said to be induced by coercion | False |

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| 22. | The 'undue influence' is a kind of 'mental coercion' as opposed to physical coercion. | True |
| 23. | Undue influence can be exercised by a stranger to a contract. | False |
| 24. | When the consent of a party is obtained by fraud, the contract is illegal. | False |
| 25. | In case of fraud, the aggrieved party can set aside the contract but cannot recover damages. | False |
| 26. | Mere silence amounts to fraud where the person keeping silent is under a duty to speak | True |
| 27. | The party whose consent is obtained by fraud can exercise his option either to rescind the contract or to affirm (i.e., accept) it, only once. | True |
| 28. | Misrepresentation results not only from misstatement of facts but also from suppression of material facts. | True |
| 29. | Misrepresentation need not be made directly to the person involved. A wrong statement of facts made to a third person with an intent to communicate it to the party involved amounts to misrepresentation. | True |
| 30. | Ignorance of law is no excuse. | True |
| 31. | The contract will be void if both the parties are under a mistake as to foreign law. | True |
| 32. | A person is required to have knowledge of all laws in the whole world. | False |
| 33. | Contracts under unilateral mistake are voidable if such mistake is caused by the fraud or misrepresentation of the other party. | True |
| 34. | Coercion involves moral or mental pressure. | False |
| 35. | Is there any criminal liability under coercion? | Yes |
| 36. | The aggrieved party can rescind the contract on account of misrepresentation. Can he also claim damages from the other parties? | No |
| 37. | In the case of fraud, the person making the representation believes it to be true | False |
| 38. | Mere silence as to facts likely to affect the willingness of a person to enter into a contract is no fraud | True |
| 39. | A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact | True |
| 40. | When both the parties to an agreement are under a mistake of fact as to a matter essential to the agreement, the agreement is void (N 10 – 1M) | True |
| 41. | An attempt to deceive which does not deceive is not fraud | True |
| 42. | Where consent is caused by fraud or misrepresentation, the contract is voidable at the option of the aggrieved party | True |
| 43. | Merely because a contract was caused by one of the parties to it being under a mistake as to a matter of fact, it is not voidable | True |
| 44. | When a person positively asserts that a fact is true when his information does not warrant it to be so, though he believes it to be true, there is fraud | False |
| 45. | Fraud exists when it is shown that a false representation has been made unintentionally | False |
| 46. | In a contract between doctor and patient undue influence is generally presumed | True |
| 47. | If there is an error in cause the contract is voidable | True |
| 48. | If there is an error in consensus, then the agreement is void | True |
| 49. | If there is fraudulent misrepresentation as to the character of a document, the contract is void | True |
| 50. | A promise made without the intention of performing it amounts to innocent misrepresentation | False |
| 51. | The unlawful detention of any property of a person to obtain his consent to a contract amount to coercion | True |

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|-----|--|-------|
| 52. | When there is no consent, there is no contract | True |
| 53. | If a person enter into a contract by making a mistake of law through the inducement of another person, he may avoid the contract | True |
| 54. | If both the parties believe the subject-matter of a contract to be in existence, which in fact is non-existent, the contract is void | True |
| 55. | A unilateral mistake is not allowed as a defense in avoiding a contract | True |
| 56. | Misrepresentation is a false statement which the person making it honestly believes it be true | True |
| 57. | The aggrieved party loses the right to rescind the contract for fraud if a third party has acquired right in the subject matter of the contract in good faith an for value | True |
| 58. | A representation is true when it is made, but to the knowledge of the party making it, becomes untrue before the contract is entered into. If it is not corrected, the other party can correct it. | True |
| 59. | A contract induced by fraud is voidable at the option of either party to the contract | False |
| 60. | Mere silence as to facts to affect the willingness of a person to enter into a contract is not fraud | True |
| 61. | There is a presumption of undue influence in the relationship of husband and wife | False |
| 62. | A threat amounting to coercion necessarily proceed from a party to the contract | False |
| 63. | Suicide is no crime | True |
| 64. | A threat to commit suicide amounts to coercion | True |
| 65. | Sohan agrees with mohan to sell his black horse. Unknown to both the parties not to carry on such business forever and anywhere in india is a valid contract | False |
| 66. | A threatened B to shoot if he does not lend him Rs. 2000 and B agreed. Contract between A and B is Voidable (RTP M 14) | True |
| 67. | A mortgage deed was executed in favour of a minor. Can the minor get a decree for the enforcement of the Mortgage? | Yes |
| 68. | Suman, age of 17 years, enter into a contract for the sale of property but breaches the contract before performance. Can buyer file any claim in this condition? | No |
| 69. | A contract with a minor is voidable at the option of the minor | False |
| 70. | An agreement with a minor can be ratified after he attains majority (M 11 – 1M) | False |
| 71. | Can a minor, though incompetent to contract, receive a benefit arising there under? | Yes |
| 72. | A minor can be an agent and bind his principal / parents or guardian acting in the capacity of principal. | True |
| 73. | X, a guardian, on behalf of Y, a minor, entered into a contract with Z for the purchase of a movable property for the benefit of the minor. Is the contract valid? | Yes |
| 74. | Rule of estoppel can't be applied on minor. | True |
| 75. | In any case, court shall not award any compensation to the other party even in case of a fraudulent misrepresentation of his age by the minor. | True |
| 76. | Does act of restitution apply to minors? | No |
| 77. | X, on attaining majority, gave a promissory note in the satisfaction of one executed by him for money borrowed when he was a minor. Is this promissory note valid? | No |

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| 78 | A an adult, said to M, a minor: "I will not pay the commission to you for selling my magazines. You are a minor and cannot force me to pay." Is A right? | No |
| 79 | A grocer supplied monthly rations for five months to B who was aged 17 years and 5 months. B having failed to pay the bills for the supplies, the grocer decided to sue him for the realisation of his dues. Could he succeed had he done so? | Yes |
| 80 | A minor's liability for 'necessaries' supplied to him arises after he attains majority age | False |
| 81 | X, a minor entered into contract with Y to supply food and clothes to his dependents. Y supplied the same but X refused to pay for the same. Can Y recover anything? | Yes |
| 82 | A minor who wanted to become a professional billiards player entered into a contract with a famous billiards player and agreed to pay him a certain sum of money to learn the game. Is he liable to pay? | No |
| 83 | A, a minor purchased 11 fancy waist coats and other clothes while he was already having sufficient clothes to wear. Now the supplier wants to recover the price. Can he recover? | No |
| 84 | A supplies some articles of food to B, the wife of C, who is a lunatic. C has assets worth Rs.5,000. Can A proceed against the assets of C? | Yes |
| 85 | Continuing the above situation, can A proceed against C's assets, if C is not a lunatic but he is a minor? | Yes |
| 86 | A minor can act as principal. | False |
| 87 | The contracts entered into on behalf of a minor by his guardian cannot be enforced against the minor. | False |
| 88 | A person who is usually of sound mind can't enter into a contract when he is of unsound mind. | True |
| 89 | X sells the goodwill of his retail store to Y for Rs. 5 lac and promises not to carry on the same business forever and anywhere in India is a valid agreement | False |
| 90 | A minor and major can enter into an agreement of partnership | False |
| 91 | A minor can be promisee | True |
| 92 | A minor can ratify an agreement on attaining majority | False |
| 93 | A person usually of sound mind, but occasionally of unsound mind is unable to make a contract | False |
| 94 | A minor cannot be appointed as an agent. (M 07) | False |
| 95 | An agreement enter into with a minor may be ratified on his attaining majority (M 09, M 11, M 14) | False |
| 96 | A minor is personally liable for the purchase of necessaires | False |
| 97 | A contract by an idiot is void-ab-initio | True |
| 98 | The contractual capacity of company is regulated by its article of association | False |
| 99 | There is nothing which debars a minor from becoming a payee or a promisee in contract | Ture |
| 100 | If a minor has received any benefit under a void agreement, he can be asked to compensate or pay for it | False |
| 101 | An agreement of an idiot, like that of a minor, | True |
| 102 | An agreement with an alien friend is valid but an agreement with an alien enemy is void | True |

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| 103 | A contract to do a certain act which is not permitted by law is void-ab-initio. | True |
| 104 | A void agreement is one which is enforceable at the option of one party. | False |
| 105 | Kishore a Doctor practicing in Bangalore employed Hari an assistant for 3 years. Hari was restrained by the terms of the agreement from practicing on his own account during the term of the agreement. Hari left the service of Kishore after one year and started practicing on his own account in the Bangalore itself. Can Hari practice on his own account? | No |
| 106 | X sold his business including goodwill to Y for Rs.5,00,000 by an agreement. The agreement provided that X shall not engage himself in the similar business in the whole of India for the next 10 years, X started the same business in the same city after 1 month. Is the agreement between X and Y comes under restraint of trade? | Yes |
| 107 | An agreement which cuts short the period of limitation prescribed by the Law of Limitation is valid and enforceable. | False |
| 118 | An express agreement between parties to vest jurisdiction to refer any dispute to a specified Court amounts to contracting against statute and hence void | False |
| 109 | Are agreements extending the period of limitation prescribed by the limitation act u/s 23 void? | False |
| 110 | A agrees to sell B "my white horse for Rs.5,000 or Rs.10,000". Is this agreement valid? | No |
| 111 | Where there is a difficulty in interpretation, it cannot be considered as vagueness for making an agreement void u/s 29. | True |
| 112 | A promise made by the loser or wagerer to pay the amount lost in consideration of the winner's forbearance to post him as a defaulter. Is this Agreement Valid? | Yes |
| 113 | Transactions incidental to wagering agreement are not void. | True |
| 114 | In the States of Gujarat and Maharashtra, Collateral Transactions to a Wagering Agreement are also tainted with illegality. | True |
| 115 | A lends Rs.100 to B in Delhi in order to enable him to bet with C as to the result of a horse-race. Can A recover money from B? | Yes |
| 116 | Crossword competitions, Games of skill, a subscription or contribution or an agreement towards any play, a contract of insurance, share market transactions. Are these contracts exceptions to section 30? | Yes |
| 117 | In a Wagering Agreement, money deposited with a person to be paid to the party winning cannot be recovered by the winner. | True |
| 118 | A wagering agreement is essentially of a contingent nature. | True |
| 119 | A agrees to sell to B a horse for Rs.20,000 if it wins a race and for Rs.500 if it does not. The horse won the race. B refuses to buy the horse and pay Rs.20,000. B is bound to buy the horse. | False |
| 120 | A agrees to sell to B a horse for Rs.20,000 if it wins a race and for Rs.500 if it does not. The horse won the race. A refuses to sell the horse. A is not bound to sell the horse. | True |
| 121 | A agrees to sell to B a horse for Rs.20,000 if it wins a race and for Rs.500 if it does not. The horse won the race. B agreed to buy the horse for Rs.10,000. A is bound to sell the horse for that price. | False |
| 122 | A contract to purchase a horse if the horse proved lucky, is a contingent contract | False |

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| 123 | A agrees with B to discover treasure by magic. Is the agreement valid? | No |
| 124 | Contracting against statute is valid. | False |
| 125 | Quasi-Contracts are called Contracts in facts and not Contracts in law. | False |
| 126 | An 'absolute contract' is one in which the promisor binds himself to performance in any event without any conditions. | True |
| 127 | Where goods are sent on approval basis, the contract is a contingent one. | True |
| 128 | A contract of insurance is a contract of Indemnity, except Life insurance. | True |
| 129 | An agreement which does not restrain a person from marrying altogether but simply restrains him from marrying a particular person or from marrying for a fixed period is valid. | False |
| 130 | An agreement which prevents a person from marrying for a fixed period only, is valid | False |
| 131 | A agreed to sell to B 100 tonnes of oil at a price to be fixed by C. This agreement is void | False |
| 132 | In case there is vagueness or uncertainty as regards the terms of contract, the Contract itself would be void and unenforceable within the meaning of Sec. 29 of the Act. | True |
| 133 | An agreement is not a wager if either of the parties may win but cannot lose or may lose but cannot win. | True |
| 134 | The stakeholder has already paid the money to the winner. Can loser recover it from him? | No |
| 135 | Can the loser recover his deposit from the stakeholder in a wagering agreement? | Yes |
| 136 | In quasi-contracts, the promise to pay is based on express agreement. | False |
| 137 | Mr. A pays the arrears of rent of his neighbour B, just to avoid a struggle between B & his landlord. Can A recover rent from B? | No |
| 138 | Any person who voluntarily makes a payment on behalf of another, can recover it. | False |
| 139 | P left his carriage on D's premises. D's landlord seized the carriage to recover his rent. P paid the rent to obtain the release of his carriage. Can P recover anything from D? | Yes |
| 140 | A finder of lost goods can hold the goods against the whole world except the true owner. | True |
| 141 | A person to whom money has been paid, or anything delivered, by mistake or under coercion must repay or return it to the person who paid it by mistake. | True |
| 142 | Are the things necessary as per the status of the incompetent persons also included in necessities? | Yes |
| 143 | Every Contingent Contract is valid and enforceable until it becomes void. | True |
| 144 | Every Contingent Contract is necessarily a Wagering Agreement. | False |
| 145 | Contracts contingent upon the non-happening of uncertain future event cannot be enforced if the happening of that event becomes impossible. | False |
| 146 | The performance of a contingent contract must not depend upon mere will of the promisor | True |
| 147 | In a contingent contract the future event is only a collateral event. | True |
| 148 | Insurance contract are basically wagering contracts. | False |
| 149 | A Contingent agreement to do or not to do anything if an impossible event happens is void | True |

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| 150 | A quasi contract is a consensual contract duly make by the parties | False |
| 151 | A finder of lost goods is a bailee | True |
| 152 | Amount paid under mistake of law cannot be recovered | False |
| 153 | Ram sells the goodwill of his shop to Shyam for Rs. 40,000 and promises not to carry on such business forever and anywhere in india is void agreement | True |
| 154 | In an agreement between prakash and girish, there is a condition that they will not institute legal proceedings against each other without consent is a valid contract | False |
| 155 | The principle that no one shall be allowed to enrich himself at the expense of another is known as Quasi contract | True |
| 156 | In case of void agreement collateral transaction are unenforceable | False |
| 157 | A contract of insurance is a wagering agreement | False |
| 158 | When a contract becomes void, the party who has received any benefit under it must restore it to the other party | True |
| 159 | A voidable contract becomes void when the party whose consent is not free rescinds the contract | True |
| 160 | A agreed to buy a radio from B " on hire-purchase terms". The terms are not specified. It is a valid contract | False |
| 161 | A lends Rs. 100 to B in Delhi in order to enable him to bet with C as to the result of horse-race. A is entitled to recover money from B | True |
| 162 | An "absolute contract " is one in which the promisor binds himself to performance in any event without any conditions | True |
| 163 | Where goods are sent on approval, the contract is a contingent one | True |
| 164 | Contingent contract to do or not to do anything if a specified uncertain even happens within a fixed time, became void if the event happens | False |
| 165 | In a contingent contract the future event is only collateral | True |
| 166 | Supervening circumstances which render performance of promise more difficult and expensive excuse the promisor from performance of his promise | False |
| 167 | A agrees to contract a swimming pool for B for Rs. 80,000. The payment is to be made by B only on the completion of the pool. Contract between A and B is contingent one | False |

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THE END

UNIT- 4: PERFORMANCE OF CONTRACT

| S.No | Questions | ABC |
|------|---|-----|
| 1. | Write obligations of parties to contract as per sec 37 of Indian Contract Act. 1872 | B |
| 2. | Who should contract perform contract? | A |
| 3. | Write the effects, if the offeree refused to accept the offer of performance? | A |
| 4. | What are the effects of a refusal of a party to perform promise? | A |
| 5. | What are the liabilities of joint promisor and promisee? | B |
| 6. | What are the Rights of Joint promisee? | B |
| 7. | Explain the rules under the Indian contract Act, 1872 as regards to time and place for the performance of the promise? | A |
| 8. | Explain the law relating to reciprocal promise as set out in section 51 to 54 of the Indian Contract Act, 1872. | B |
| 9. | What are the effects of failure to perform at a time fixed in a contract in which time is essential? | A |
| 10. | Explain the circumstances under which contract become void due to impossibility of performance define under section 56 of ICA – 1872. | A |
| 11. | Explain what is meant by "Supervening Impossibility" as per the Indian Contract Act,1872 | A |
| 12. | Under what circumstances the doctrine of Supervening Impossibility is not applicable? | A |
| 13. | State the legal provisions relating to appropriation of payment made by debtor (As per section 59, 60 and 61)? | B |
| 14. | Under what circumstances the original contract need not be performed as stated under section 62 to 67 of the Indian Contract Act, 1872? | A |
| 15. | What is the effect of recession of contract by that person at whose option the contract is voidable? | B |
| 16. | what is the obligations of person who has received advantage under void agreement or the contract becoming void? | A |
| 17. | State in brief, the grounds on basis of which a contract is discharged under the provisions of Indian Contract Act, 1872. | A |
| 18. | What are the differences between succession and assignment? | C |

Q.No.1. What are the obligations of parties to contract as per sec 37 of Indian Contract Act. 1872

- a) A contract being an agreement enforceable by law, creates a legal obligation, which subsists until discharge
- b) Performance of promise or promises remaining to perform is the principal and most usual mode of discharge
- c) As per section 37 of the Indian contract act. The parties to a contract must either to **perform** or **offer to perform**, their respective promises, unless such performance is dispensed with or excused under the provisions of this act, or of any other law.

- i. **Actual performance:** either of the parties has fulfilled their obligations under the contract within time and in the manner prescribed.
 - ii. **Offer to perform, Attempted performance, Tender of performance:** It may happen sometime, when the performance becomes due, the promisor offer to perform his obligation but the promisee refuses to accept the performance.
- d) In the event of death of promisor, the legal representative of the deceased promisor, is bound by the promise to perform, unless a contrary intention appears from the contract.

Q.No.2. who should a contract may be perform a contract ?

The persons who should perform the contract are given below:

a) Promisor himself: As per section 40 of ICA. 1872.

- i. If it appears from the nature of the contract that promise must be performed by the promisor himself, Such promise must be performed by the promisor only.

For example: the contract of personal skills or diligence or personal confidence,

- ii. In the above stated cases, death of promisor put an end to the contract.

For Example: A promises to paint a picture for B for a certain price. A is bound to perform the promise himself. He cannot employ some other painter to paint the picture on his behalf. If 'A' dies before painting the picture, the contract cannot be enforced either by A's representative or by B.

- iii. In case of other contract, if it is expressly stated that contract should be performed by promisor himself then it should be performed by him personally and cannot be delegated.

b) Agent:

- i. Authorized agent appointed by promisor or his legal representative may perform the contract which are neither in personal nature nor expressly stated to perform by promisor himself.

- ii. In other words, where personal consideration is not the foundation of a contract, the promisor or his representative may employ a competent person to perform it.

For Example: A promises to pay Rs. 1000 on delivery of certain goods. A may perform this promise either himself or causing someone else to pay the money to B. if A dies before the time appointed for payment, his representative must pay the money or employ some other person to pay the money. If B dies before the time appointed for the delivery of goods, B's representative shall be bound to deliver the goods to A and A is bound to pay RS. 1000 to B's representative.

c) Representatives:

- i. Generally up on the death of the promisor, the legal representatives of the deceased are bound by the promise.
- ii. But, the contract which involves the use of personal skills comes to an end on the death of the promisor.
- iii. However the liability of the legal representative is limited to the value of property inherited by him from the promisor.

d) Third Person:

- i. As per section 41 of ICA. 1872. When a contract is performed by a stranger to the contract, promisee has an option either to accept or to reject it.
- ii. When the promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

iii. Such a performance, where accepted by the promisor has the effect of discharging the promisor though he has neither authorized nor ratified the act of the third party.

For Example: A delivered certain goods to B who promised to pay Rs. 5000. Later on B expresses his inability to clear the dues. C, who is known to B, Pays RS. 2000 to A on behalf of B. Before making this payment C did tell B nothing about it. Now A can sue B only for the balance and not for the whole amount.

- e) **Joint Promisors:** As per section 42 of ICA. 1872. In case of several promisors, unless a contrary intention appears, the following persons must perform the promise.
- i. If all the joint promisors are alive – all the promisors jointly
 - ii. In case of death of any of the joint promisors – representatives of the deceased promisor jointly with the surviving promisor(S)
 - iii. In case of death of all joint promisors – Representatives of all the original co - promisor(s) must fulfill the promise

Q.No.3.write the effects, if the offeree refused to accept the offer of performance?

- a) As per **Section 38 of ICA 1872**. If the promisee does not accept the valid offer of performance by the promisor then the following are the effects of such refusal
- i. The promisor is not responsible for non performance.
 - ii. In this case the promisor does not also lose his right under a contract.
- b) However the promisor should ensure that his offer to perform is valid by satisfying the following
- | | |
|---|-------------------------------------|
| i. Unconditional | vi. To proper person |
| ii. At Proper Time | vii. In legal tender money |
| iii. At Proper Place | viii. By an able and willing person |
| iv. Reasonable Opportunity of inspection to promise | ix. Proper form |
| v. For whole obligation | |
- c) **Start up Vs. Macdonald**. The law considers a party who has entered into a contract to deliver goods or pay money to another as having substantially perform it, if he has tendered the goods or money to the party to whom the delivery or payment is to be made, provided only that the tender must be valid and satisfy the above stated conditions.
- d) **Note:** in case of several joint promisees, tender of performance to any one of the several joint promisees has the same effect as an tender of performance to all of them.

Q.No.4. what are the effects of a refusal of a party to perform promise

- a) As per **section 39 of the ICA-1872** Where a party to a contract has **refused** to perform the promise he has made or had **disabled himself** from performing his promise in its entirety,
- b) Then the promisee hold the following two options
- i. To terminate the contract
 - ii. To indicate by words or conduct that he is interested in its continuance.
- c) In either case the promisee would be able to claim damages that he suffers as a result of the breach.

- d) In case the promisee decides to continue the contract, he would not be entitled to put an end to the contract on this ground immediately.
- e) In case of anticipated breach of contract further two rights available to the promisee
- i. Terminate the contract immediately on the date of anticipated breach and claim damages
 - ii. Ignore anticipated breach and indicate that he is interested in the performance of the contract. Then he would be entitled to claim damages which accrue on the date of contract is due to be performed.
- f) Case Law: **Muralidhar Chatterjee Vs. International Film Company** –
- i. When the promisee puts an end to the contract being rightly entitled to do so,
 - ii. It shall be deemed as if he has rescinded a voidable contract.
 - iii. As per section 64 of ICA 1872. In the event of rescinding a voidable contract, the promisee is bound to return all the benefits received under the contract
 - iv. And entitled to compensation for all damages sustained by him for breach of contract by the promisor

Q.No.5. what are the liabilities of joint promisor and promisee?

- a) **Liability of Joint Promisors:** As per **section 42 of ICA. 1872.** When two or more persons make a joint promise, unless a contrary intention appears, the liability of such joint promisors is joint and several; hence the following persons must perform the promise.
- i. If all the joint promisors are alive – all the promisors jointly
 - ii. In case of death of any of the joint promisors – representatives of the deceased promisor jointly with the surviving promisor(S)
 - iii. In case of death of all joint promisors – Representatives of all the original co - promisor(s) must fulfill the promise

For Example:

- i. where 'A' , 'B' and 'C' jointly borrow a sum of money from 'X' all of them jointly liable to repay the amount. Where in the above example 'A' dies, his legal representative, 'L' would be liable to repay the loan along with 'B' and 'C' the remaining joint borrowers.
 - ii. X, Y and Z jointly borrow from P, Rs.3000/- because the liability of the borrower is joint and severed, P can recover the entire amount either from X or from Y or from Z or from all of the jointly.
- b) **Right of Joint promisee to compel any one of the joint promisor to perform the whole promise:** As per **Sec 43 of ICA -1872.** When two or more persons make joint promise, the promisee can compel any one of the joint promisors to perform the whole of promise.

For Example: where A,B and C have jointly signed a promissory note for Rs.3000/- and where A is compelled to pay the entire amount of Rs.3000/-.then He (A) is entitled to recover by way of contribution of Rs.1000/- each from the other two joint promisors namely B and C unless agreed otherwise mutually.

- c) **Sharing of loss by default in contribution:** The performing promisor can enforce contribution from other joint promisors, in the absence of express agreement to the contrary.

For Example: in the above example, if one of the joint promisors namely B is unable to contribute Rs.1000, A is entitled to recover Rs. 1500 from C who is the remaining joint promisor instead of RS. 1000/-

d) **Effect of Release of one joint promisor:** As per section 44 of ICA 1872 – if the promisee discharges/releases one among several joint promisors, it does not discharge other joint promisors. In addition, the joint promisor so discharged is still liable to other joint promisors.

For example: A B and C jointly promise to pay D Rs.3000/-. And D releases A from his liability and sues B and C for payment. Here B and C are still liable to D. On the other hand A is still liable to B and C.

SIMILAR QUESTIONS

Q.1 Define the legal liability of a joint promisor, jointly promisee and other connected issues are set out in section 42, 43 and 44 of the Indian contract Act, 1872.

Answer: Refer Q.No.6.

Q.No.6. What are the Rights of Joint promisee?

- a) As per section 45 of ICA 1872 when a person has made a promise to two or more persons jointly, then unless a contrary intention appears from the contract, the right to claim performance rests as follows
- i. If all the promisees are alive – all promisees can jointly demand the performance
 - ii. In case of death of any of the joint promisees – Representatives of deceased promisee along with the surviving promisee(s)
 - iii. In case of death of all the joint promisees – Representatives of all of them can jointly demand the performance
- b) The above principle of joint promises is applicable for
- i. Partners
 - ii. Joint mortgagees
 - iii. Members of HUF
- c) Therefore in order to enforce a promise all the joint promisees should sue the promisor. If any one of the joint promisees refuses to sue the promisor he would not be a plaintiff but be treated as defendant.

For Example: X promises Y and Z jointly to repay the loan of Rs.1000 on a specified day. If Y dies before that specified day. Y's representative, jointly with Z can demand the performance from X on that specified day. If Y and Z die before that specified day, the representatives of Y and Z jointly, can demand the performance from X on such specified day.

Q.No.7. Explain the rules under the Indian contract Act, 1872 as regards to time and place for the performance of the promise? (PM)

Section 46 to 50 of the Indian Contract Act, 1872 is relevant provisions regarding the time and place for the performance of the promise which are as follows:

- a) **If no time is specified and no application is to be made by promisee:** As per section 46 of ICA 1872. In this case, the promise must be performed within a reasonable time. The expression 'reasonable' time is to be interpreted having regard to the facts and circumstances of a particular case.
- b) **If a promise is to be performed on a specified date but the hour is not mentioned and no application is to be made by promisee:** As per section 47 of ICA 1872. In this case the promisor may perform it at any time during the usual hours of business, on such day. Moreover, the delivery must be made at the usual place of business

- c) **Where no place is fixed and no application is to be made by promisee:** As per section 49 of ICA 1872 It is the duty of the promisor to ask the promisee to fix a reasonable place for the performance of the promise. In all cases the promisor must apply to the promisee; here no distinction is made between an obligation to pay money and obligation to deliver goods or discharge any other obligation
- d) **If the promise is to be performed on a specified date and if the promisor has not undertaken to perform the promise without an application made by the promisee:** As per section 48 of ICA 1872. In this case, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.
- e) **Where the manner and time for performance is prescribed by the promisee:** As per section 50 of ICA 1872. The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

SIMILAR QUESTIONS

Q.1. Write about the rules of Time and Place for performance of promise defines under section 46 to 50 of Indian Contract Act. 1872.

Answer: Refer Q.No.7

Q.No.8.Explain the law relating to reciprocal promise as set out in section 51 to 54 of the Indian Contract Act, 1872.

General Observation:

- A contract may consist of (i) an act and a promise or (ii) two promises one being the consideration for the other. The second type of contract which involves two promises, one promise from each to the other party comes under “**Reciprocal Promises**”
- When A promise to sell 500 quintals of rice to B and B promises to pay the price on delivery, the contract would consist of two promises one by A to B and another by B to A. these promises are reciprocal promises. Here the promise of A is the consideration for the promise of B and vice versa. Continuing the same example. If B’ promises to pay the price after a month, and ‘A’ sold rice. The contract would have two parts one is the act of A and the second is promise of B. this is **Not a Reciprocal Promise**.

a) **Simultaneously performance of reciprocal promise:**

- i. As per section 51 of ICA 1872. In this case promises have to be performed simultaneously. The conditions and performances are concurrent. Here both the parties must be willing and ready to perform their accepted part. If one party does not perform his promise, the other also need not perform his promise.
- ii. **For Example:** A promises to deliver rice and B promises to pay the price on delivery, both have to be performed simultaneously. Here both A and B must be willing and ready to perform their accepted promise.

b) **Performance of reciprocal promise where the order is expressly fixed:**

- i. As per section 52 of ICA 1872. Where the order of performance is expressly fixed, the promise must be performed in that order only.
- ii. **For Example:** Where A promises to build a house for B and B promises to pay after construction, here A must perform his promise before he can call upon B to fulfill his promise of payment of money. A’s performance of the promise is a condition precedent to B performing his part of the promise. Any breach of promise by A would enable B to avoid the contract.

c) **Performance of reciprocal promise by implication:**

- i. As per section 52 of ICA 1872. Where the performance of promise is not fixed expressly, sometimes the order is understood by implication.

- ii. **For example:** where A agree to make over certain stock in trade to B and B agrees to provide certain security for the value of stock in trade, then A need not make over the stock until B provides the security.
- iii. As by implications B is required to perform his part first; otherwise A in the absence of any security will not make over the stock to B.

d) Effect of one party preventing another from performing promise:

- i. As per **Section 53 of ICA 1872**. When in a contract consisting of reciprocal promises one party prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented.
- ii. The person so prevented is entitled to get compensation for any loss he may have sustained for the non-performance.

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

Case Law "Nell Vs. Armstrong: An English man was engaged by the captain of a Japanese ship to act as fireman on a voyage from England to Japan. During the course of the voyage Japan declared war against China.

The English man had leave service because had he continued in service he would have incurred penalties under Foreign Enlistment Act

It is held that the captain of Japanese ship could not have brought a case against the English man for non-performance as the Japanese themselves were responsible for preventing the English man from performing his part of the contract.

- iii. Sometime the parties would be prevented from discharging a part of the contract but not the entire contract. In such a case the party so prevented need not avoid the full contract.

e) Effect of default as to promise to be performed first:

- i. As per **section 54 of ICA – 1872**. Where the performance of one party depends on the prior performance of the other party and
- ii. The party, who is liable to perform first, fails to perform it then such party cannot claim the performance from the other party and must pay compensation to the other party for any loss which the other party may incur by the non-performance of the contract.

For Example: Where B a ship owner agrees to convey A's cargo from Calcutta to Mauritius for a freight. Here the beginning part of the transaction is on 'A' as he has to provide the cargo to 'B' to enable 'B' to perform his promise. Thus until cargo is handed over by 'A', 'A' cannot expect 'B' to perform his promise.

f) Position of legal and illegal parts of Reciprocal Promises: As per **section 57 of ICA 1872**. If the reciprocal promises have two parts, the first part being legal and second part being illegal, the legal part is a valid contract and illegal part is void.

For Example: Where 'A' agrees to sell his house to 'B' for Rs.50,000/- and further 'A' insists and it is agreed that if the house is used as a gambling house, then 'B' would pay another Rs.75000/-. In this case the first part is valid as it is legal, the second part is void as it is illegal.

g) Alternative promise one branch being illegal: As per section 58 of ICA 1872. In the case of alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.

For example: A agreed to pay Rs.1000 to B. B agreed to deliver either rice or opium. The contract related to delivery of rice is valid and agreement related to delivery of opium is void.

Q.No.9. what are the effects of failure to perform at a time fixed in a contract in which time is essential.

- a) As per **section 55 of ICA 1872**. Where it is understood between parties that **time is an essential element** and where one party is unable to perform his part of the promise either in full or in part within the time specified, then the **contract is voidable** at the option of promisee either in full or in part to the extent of non-performance of the contract within the time
- b) If promisee chooses to rescind the voidable contract, the contract comes to an end and he can sue for damages.
- c) If he chooses to waive his right to rescind the contract and signify his acceptance for delayed performance, there may be further two possible alternatives.
- i. He can **accept the performance without any objection**. In such a case he cannot claim compensation for any loss caused to him by such non-performance in time.
 - ii. He can **accept the performance with prior notice** that he is going to claim compensation for the damages. In this case he can claim compensation for the loss caused to him by such non-performance in time.
- d) Where there is delay in performing promise on executing a contract, where **time is not essential element** the contract is not voidable but, the promisee is entitled for compensation of loss if any suffered on account of such failure. However in such cases promises must be performed with in a reasonable time other-wise it becomes voidable at the option of the promisee.
- e) Ordinarily from a plain examination of a contract it would be difficult to ascertain whether time is essence of the contract or not.
- f) Whether time is the **essence** of a contract or **not the essence** of a contract is depends on the following facts
- i. Terms and conditions of the contract
 - ii. The intention of the parties which is gathered from (a) surrounding circumstances (b) nature and subject matter of the contract (c) construction of the contract
 - iii. The object of entering into the contract.
- g) Some of the general principles relating to stipulation of time in a contract are as follows
- i. In mercantile contracts, as business world is ruled by 'time' and 'money' any stipulation as to 'time' and 'money' is an essential condition
 - ii. In transaction on sale of gold, silver, blue chip shares, time of delivery is of essence. Here time will be treated as essence of contract
 - iii. In transaction involving sale of land, redemption of mortgages, though certain time-frame is fixed, any delay is not valued seriously provided justice can be done to parties. Of-course even in sale of land, time can be made as an essence of contract by express words.

Q.No.10.Explain the circumstances under which contract become void due to impossibility of performance define under section 56 of ICA – 1872.

INITIAL IMPOSSIBILITY: As per **Section 56 ICA 1872**. An agreement to do an act impossible in itself is void-a-initio. the impossibility of performance at the beginning may be as fallows

- a) **If the impossibility is known to the parties:** This is also known as absolute impossibility. Such agreement is void – ab – initio.

For Example: 'B' promises to pay 'A' sum of Rs.5,000 if he is able to swim across the Indian Ocean from Bombay to Aden within a week. In this case, there is no real agreement, since both the parties are quite certain in their mind that the act is impossible of achievement. Therefore, the agreement, being impossible in itself, is void.

- b) **If unknown to the parties:** Where both the promisor and the promisee are ignorant of the impossibility of performance, the contract is void.
- c) **If known to the promisor only:** Where the promisor alone knows about the impossibility of performance, or even if he does not know though he should have known it with reasonable diligence, the promisee is entitled to claim compensation for any loss he suffered on account of non-performance.

SUPERVENING IMPOSSIBILITY: when performance of a promise becomes impossible on account of subsequent developments of events or changes in circumstances, which are beyond the contemplation of parties, the contract becomes void. Supervening impossibility can arise due to a variety of circumstances as stated below

- a) **Accidental destruction of the subject matter of the contract:** After the formation of the contract if the subject matter is destroyed, the contract is discharged due to impossibility of performance

For Example: 'A' had agreed with 'B' to hire for rent his music hall for holiday concerts on certain specified dates. The music hall was destroyed before the specified dates and hence it became impossible to hold stage concerts. It was held that as the music hall ceased to exist; it is a case of supervening impossibility and both the parties were excused from the performance of the contract [*Taylor vs. Caldwell*]

- b) **Non-existence or non-occurrence of a particular state of things:** where the ultimate purpose for which the contract is entered into fails, the contract becomes void. This kind of failure of the object of a contract is often called as frustration of the contract.

For Example: It was agreed to by the defendant through a contract to have from the plaintiff a flat for specified days for witnessing the coronation procession of King Edward VII. The said procession was cancelled and it did not take place. Therefore the defendant refused to pay the balance rent. It was held that the foundation of the contract had totally failed and here the balance of rent amount cannot be recovered from the defendant. [*Krell vs. Henry*]

- c) **Incapacity to perform a contract of personal services:** In case of contract of personal service, disability or incapacity to perform, caused by an Act of God e.g. illness, constitutes lawful excuse for non-performance of the contract [*Robinson vs. Davison*], discharge of contract take place.

For Example: An artist undertook to sing at a theatre on a particular day. But the artist being too ill and could not sing on the day fixed for performance. It was held that the contract was discharged due to personal incapacity of the artist. Thus he was not liable to pay damages for non-performance.

- d) **Change in law:** Performance of a contract may also become impossible due to change in law subsequently. The law passed subsequently may prohibit the act which may form part as basis of contract. Here the parties are discharged from their obligations.

For example: 'A' and 'B' may agree to start a business for sale of lottery and contribute capital for the business. If the business of sale of lottery ticket is banned by a subsequent law, parties need not keep up their legal obligations.

- e) **Outbreak of war:** Outbreak of war may affect the enforceability of contracts in many ways like

- i. Emergency legislations controlling prices
- ii. Relaxation of trade restrictions and
- iii. Prohibiting or restraining transaction with alien enemy.

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Q.No.11. Explain what is meant by "Supervening Impossibility" as per the Indian Contract Act, 1872 (PM)

Supervening Impossibility

- a) The idea of "supervening impossibility" is referred to as 'doctrine of frustration' in U.K.
- b) In order to decide whether a contract has been frustrated, it is necessary to consider the "intention of parties as are implied from the terms of contract".
- c) However in India the 'doctrine of frustration' is not applicable. Impossibility of performance must be considered only in term of section 56 of the Act.
- d) Section 56 covers only 'supervening impossibility and not implied terms'.
- e) This view was upheld by Supreme Court *in* Satyabrata Ghose vs. Mugneeram Bangur
- f) Doctrine of frustration applies in the case of supervening impossibility, where the performance of the contract has become impossible and where the object of the contract has failed.
- g) This doctrine does not apply – where the performance simply becomes difficult / commercially impossible / impossibility induced by the act or the conduct of any person etc.

SIMILAR QUESTION

Q.1. What is Doctrine of Frustration, is it applicable in India?

Solution: Refer Q.No.12.

Q.No.12. Under what circumstances the doctrine of Supervening Impossibility is not applicable? (PM)

Non - Application of Doctrine of Supervening Impossibility: Some Events may make the performance of the contract impossible subsequent to formation of the contract it is known as supervening or subsequent impossibility. The effect of such impossibility is that it makes the contract void and the parties are discharged from further performance of the contract and thereby contract is discharged, (Section 56, Indian Contract Act, 1872). There are certain exceptions.

The doctrine of supervening impossibility does not apply in the following cases:

- a) **Performance becoming difficult:** A contract is not discharged merely because its performance turns out to be difficult or burdensome. The parties will not be released from their obligations on account of rise or fall of price, depreciation or appreciation of currency obstacle to the execution of the contract or becoming more expensive or less profitable.

For Example:

- i. A promised to B that he would arrange for B's marriage with his daughter. A could not persuade his daughter to marry B. B sued A who pleaded on the ground of impossibility that he is not liable for any damages. But it was held that there was no ground of impossibility. It was held that A should not have promised what he could not have accomplished. Further A had chosen to answer for voluntary act of his daughter and hence he was liable.
- ii. The plaintiff had agreed to purchase immediately after outbreak of war a plot of land. This plot of land was part of a scheme undertaken by the defendant who had agreed to sell after completing construction of drains, roads etc., however the said plot of land was requisitioned for war purpose. The defendant thereupon wrote to plaintiff asking him to take back the earnest money deposit, thinking that the contract cannot be performed as it has become impossible of being performed. The plaintiff brought a suit against the defendant that he was entitled for conveyance of the plot of land under condition specified in the contract. It was held that the requisition order did not make the performance impossible.

b) **Commercial impossibility:** Performance cannot be excused on the ground of commercial impossibility. A contract is not discharged merely because the necessary raw material is available at a very high rate or the expectation of higher profit will not be realized or the performance of contract has become costlier or the necessary transport is available at exorbitant rates or the contract has become costlier in terms of money or labour.

c) **Default of third person:** If the contract cannot be performed because of the default of a third person on whose work or conduct the promisor relied, the promisor is not discharged on the ground of frustration.

For Example: A agreed to sell certain goods to B which is to be procured from C, a manufacturer of these goods. C did not manufacture the goods and A' failed to supply the goods to B. In this case, A could not be discharged from his liability to perform and he was held liable for damages to B.

d) **Strikes, lockouts, riots or civil disturbances:** A contract is not discharged automatically on the ground of supervening impossibility due to a strike by the workers or lock-out by the owners or outbreak of riots or outbreak of some civil disturbance coming in the way of performance of the contract. However, the parties to the contract may agree to the contrary by making a clear provision in this regard.

For Example: A dock strike would not necessarily relieve a laborer from his obligation of unloading the ship within specified time.

e) **Partial impossibility:** If a contract is made for the fulfillment of several objects, the failure of one or more of them does not discharge the contract.

f) **Self-Induced frustration:** If frustration is imposed by the conduct of the party himself, or by the conduct of those for whom he is responsible, or by party's deliberate or negligent act or choice, the contract is not discharged.

SIMILAR QUESTIONS:

Q.1. What are the circumstances which do not constitute grounds of impossibility of performance?

Solution: Refer Q.No.13

Q.2. Explain what is meant by "Supervening Impossibility" as per the Indian Contract Act, 1872 and also state the situations which would not constitute grounds of impossibility.

Solution: Refer Q.No. 12 and 13

Q.No.13.State the legal provisions relating to appropriation of payment made by debtor? As per section 59, 60 and 61

Where a person [Debtor] owes a number of debts to another person [Creditor], and when he releases certain payments, then the question arises as to how to adjust the receipt against so many dues.

This issue is considered and answered in **Sections 59, 60 and 61** of the Act under the heading 'Appropriation of payments'.

a) **Where debtor, expressly or under implying circumstance indicates the debts to be discharged (Sec 59):** As per Sec 59 of the act "Where a debtor, owing several distinct debts to one person, makes a payment to him **either with express intimation or under circumstances implying** that the payment is to be applied to the discharge of some particular debt, the payment, if accepted must be applied accordingly

The law is set out in Latin Maxim of "**Quicquid sovitur, sovit sectionundum modum solventis**"

It means "**Whatever is paid, is paid according to the intention or manner of the party paying**" such right of debtor is also known as rule in "**Clayton's case**"

Thus where a debtor owes a number of debts and he pays an amount which is insufficient to discharge all the debts in this case

- i. If the debtor expressly appropriate to the debt then the creditor is bound by such appropriation if he accept the payment
- ii. If the debtor not expressly appropriate to the debt then the creditor is to go by the circumstances if any

b) Where the debt to be discharge is not indicated and circumstances are not indicative (Sec 60): Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied,

the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

In other words, the creditor enjoys the right to appropriate even to a debt which is barred by limitation.

Cory Bros & Co. Vs. Owner of the Mecca: in this case law it was held that, if the debtor does not make any appropriation, at the time of payment, the right devolves on the creditor. And the creditor has a right to decide till the very last moment.

Vinkatadri Appa Rao Vs. Parthasarathi Appa Rao: in this case law it was held that creditor can decide at his discretion on the appropriation of payment towards any lawful debt even if barred by limitation.

Further if any debt carrying interest and if there are no express or implied instructions the amount paid should be appropriated towards payment of interest and then to capital

c) Where neither Debtor nor Creditor appropriates the debt (Sec 61): In this case the payment shall be applied in discharge of debts in order of time and if the debts are of equal standing, the payment shall be applied in discharge of each proportionately.

The above appropriation takes place whether or not the debt is barred by limitation.

For example: where there are two debts one Rs. 500 and another Rs. 700 falling due on the same day and if the debtor pays Rs.600 the appropriation shall be prorata of Rs. 250 and Rs.350 for the two debts.

Q.No.14.Under what circumstances the original contract need not be performed as stated under section 62 to 67 of the Indian Contract Act, 1872? (N15 - 4M)

The circumstances which spelt out in section 62 to 67 where the contract would not require performing are as follows

- a) Novation b) Rescission c) Alteration d) Remission

Sec 62: it provides that, If the parties to a contract agree to

- a) Substitute a new contract for original contract. (**Novation**)
- b) Rescind the original contract (**Rescission**)
- c) Alter the original contract (**Alteration**)

The original contract need not be performed.

Sec 63: provides that the promisee can waive either in full or in part the obligation of the promisor or extend the time for performance. (**Remission**)

- a) **Effect of Novation:** Novation means substitution, when a given contract is substituted by a new contract it is called novation. In case of novation the original contract ceases and need not be performed. It results in discharge of original contract.

Novation can take place by substitution of new contract between the same parties or between different parties with mutual consent.

For example: A owes money to B under a contract. It is agreed between A, B and C that B shall accept C as his debtor, instead of A. as a result the old debt of A to B is at an end, and a new debt from C to B has been contracted.

- b) **Effect of Rescission:** In case of rescission, the old contract is cancelled and no new contract came in its place. Thus the contract is discharge by rescission.

Rescission may occur in any of the following manner:

- i. When parties may enter into an agreement to rescind the previous contract.
- ii. The contract is rescinded by implication
- iii. Due to non-performance for a long time without each other complaining about it.

- c) **Effect of Alteration:** Where the contract is altered, the original contract (with old terms) is rescinded, thus the original contract (with New terms) to be performed in place of the original contract (with old terms).

Alteration involves both rescission and novation. The line of difference between alteration and novation is very thin. In case of alteration the terms can be altered in very minor but not material.

- d) **Effect of Remission:** Remission means waiver

Remission may occur in any of the following manner: Every promisee

- i. May dispense with or remit wholly or in part, the performance of the promise made to him

For example: A owes B a sum of Rs. 1lakh, B may accept a part of it in full and final settlement of the due and waive his entire claim.

- ii. May extend the time for such performance for the benefit of promisor

For example: A promises B that he would deliver certain goods by a certain date, B extend the time but he cannot take advantage to charge interest on the extended time.

- iii. May accept instead of original performance any satisfaction performance which it thinks fit.

For Example: A promises to sell his horse for a consideration of Rs.5000 to B. A may instead of cash consideration of Rs.5000 may accept jewellery worth of Rs. 5000 in full satisfaction of the consideration unequivocally.

- iv. **Shyamnagar tin Factory Vs. Snow White Food Product:** In this case law it is held that if a promisor tenders something in full satisfaction but the promisee does not accept it or accept in part performance, such satisfaction in not remission and will fall outside the ambit of section 63

- e) It should be noted that novation, rescission, or alteration cannot take place without consideration but in case of part or complete remission no consideration is required. Thus the promisee can dispense with performance without consideration and without a new agreement.

Q.No.15.What is the effect of recession of contract by that person at whose option the contract is voidable?

Concept of voidable contract is discussed in **section 19, 19A, 39, 51, 54 and 55.**

Effects of recession of voidable contract (Sec 64):

As per this section when the voidable contract is avoided by the party at whose option it is avoided. Then

- a) The other party need not perform the promise
- b) Any benefit received by the person rescinding it must restore it to the person from whom it was received.

For example: when an insurance company has rescinded the policy because the policy holder could not disclose material information, it should refund the premium after making necessary adjustments for expenses already incurred.

Murlidhar Vs. International Film Co.: in the case the plaintiff wrongfully repudiated the contract, the defendants rescinded it. Then the plaintiff brought a suit to recover Rs. 4000/- the amount which is paid to the defendant. It is held that defendant was bound to restore the amount but after setting off any damages occurred.

Q.No.16.what is the obligations of person who has received advantage under void agreement or the contract becoming void.

Obligations of person who has received advantage under void agreement or the contract becoming void (Sec 65):

As per this section where an agreement is discovered to be void or a contract becomes void. Then any person who received an advantage must

- a) Restore the benefit which has been received under the contract or
 - i. **Exception:** Any benefit received which is ancillary to main contract need not be returned

For example: The deposit paid for a transaction of sale of house between parties, need not be returned just because the sale transaction could not take place. Because the deposit is a security only but not part of main contract.

- b) Pay compensation for damages in order to put the position prior to contract.

Dhuramsey Vs. Ahgmedhai: The plaintiff hired a godown from the defendant for 12 months and paid the advance in full. After about seven months the godown was destroyed by fire, without any fault on the part of plaintiff. And plaintiff claimed refund of the advance. It was upheld that he was entitled the rent for the unexpired term.

Q.No.17. State in brief, the grounds on basis of which a contract is discharged under the provisions of Indian Contract Act, 1872. (PM)

A contract is discharged in eight ways as discuss hereunder.

Discharge of Contract: A contract under the provisions of Indian Contract Act, 1872, may be discharged in any of the following ways:

- a) **Discharge by performance:** Discharge by performance will take place when there is:
 - i. Actual performance (parties fulfilling obligations within time and in the manner prescribed); or
 - ii. Attempted performance (promisor offers to perform but promisee refuses to accept it). This is also known as tender.
- b) **Discharge by mutual agreement:** Discharge also takes place where there is substitution [novation], rescission, alteration and remission. In all these cases old contract need not be performed.
- c) **Discharge by impossibility of performance:** A situation of impossibility may have existed at the time of entering into the contract or it may have transpired subsequently (also known as supervening impossibility). Situations are destruction of the subject-matter, incapacity, declaration of war etc.

- d) **Discharge by lapse of time:** Performance of contract has to be done within certain prescribed time. In other words it should be performed before it is barred by law of limitation. In such a case there is no remedy for the promisee. For example where the debt is barred by law of limitation.
- e) **Discharge by operation of law:** Where the promisor dies or goes insolvent there is a discharge of contract by operation of law.
- f) **Discharge by breach of contract:** Where there is a default by one party from performing his part of contract on due date then there is breach of contract. Breach of contract can be actual breach or anticipatory breach. Where a person repudiates a contract before the stipulated due date, it is anticipatory breach.
- g) **Discharge by remission or satisfaction:** A promisee may remit the performance of the promise by the promisor. Here is a discharge. Similarly the promisee may accept some other satisfaction. Then again there is a discharge on the ground of accord and satisfaction.
- h) **Under the provisions of the Indian Contract Act, 1872 as contained in (Sec 67):** when a promisee neglects or refuses to afford the promisor reasonable facilities or opportunities for performance, promisor is excused by such neglect or refusal.

DIFFERENCES

Q.No.18.what are the distinction between succession and assignment?

- a) **Succession:** When the benefits of a contract are succeeded by a process of law, both the burden and the benefit would sometimes devolve on the legal heir.

For Example:

- i. B is the son of A, upon A's death B will inherit all the assets and liabilities of A.
- ii. Thus B is liable to all the liabilities of A, but if the liabilities inherited are more than the value of the assets inherited it will be possible to pay only to the extent of assets inherited.

- b) **Assignment:** Unlike succession, the assignor can assign only the assets to the assignee and not the liabilities. Because when a liability is assigned, a third party gets involved in it. The debtor cannot through assignment relieve himself of his liability to creditor.

| S. No | Difference | Succession | Assignment |
|-------|-------------------------|--|---|
| 1. | Meaning | The transfer of rights and liabilities of a deceased person to his legal representative is called succession | The transfer of rights by a person to another person is called assignment |
| 2. | Time | It takes place on the death of a person | It take place during the lifetime of a person |
| 3. | Voluntary act | It is not a voluntary act. It takes place automatically by operation of law | It is a voluntary act of the parties |
| 4. | Written document | It may take place even without written document | It requires execution of an assignment deed |
| 5. | Scope | All the rights and liabilities of a person are transferred by way of succession. Succession includes assignment. | Only rights can be assigned. Liabilities under a contract. Cannot be assigned unless there is novation. Assignment does not include succession. |

| | | | |
|----|----------------------|---|--|
| 6. | Notice | No notice of succession is required to be given to any person | Notice of assignment must be given to the debtor |
| 7. | Consideration | No consideration is necessary for succession | Consideration between assignor and assignee is must for assignment |
| 8. | Governing law | Succession is governed by the succession law | Assignment is governed by the law governing the benefit or interest to be assigned |
| 9. | Persons | Only successors succeed who are natural persons. | Assignment can be made to any person natural or artificial person. |

TRUE OR FALSE STATEMENTS

| No. | Statement | Ans |
|-----|--|-------|
| 1. | A hires B's ship to take in and convey from Calcutta to Mauritius a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. Can A be compelled to re-compensate B for any loss arising out of non-performance? | Yes |
| 2. | Tender of money discharges the debtor from his liability to pay the debt | False |
| 3. | Is tender of performance equivalent to actual performance? | No |
| 4. | Conditional offer of performance is a valid tender | False |
| 5. | A promises B to pay C a sum of Rs.2,000, If A does not pay the amount to C, Can C take action against A? | No |
| 6. | Where a promisee accepts the performance from a third person, even then he can compel the promisor to perform the promise again | False |
| 7. | The time of delivery of goods has been fixed by the parties to the contract. But the delivery thereof has not been made at the scheduled date. Is time essence of the contract? | Yes |
| 8. | In a mortgage bond, a time has been fixed for the repayment of the mortgage money. Is time essence of the contract? | No |
| 9. | In a contract of sale of land, there is clause which stipulates a time for the completion of the sale. Is time essence of the contract? | No |
| 10. | A singer agreed to perform at a theatre and to be present at least six days before this engagement. But he reported only two days before. The theatre owner wanted to put an end to the contract. Can the theatre owner cancel the contract? | No |
| 11. | According to Clayton's case, in the absence of any contract to the contrary, an item of receipt side must be appropriated against the items of payment side in the order of date. | True |
| 12. | The creditor may also alter the appropriation, until he has declared the appropriation to the debtor. | True |
| 13. | The creditor has always discretion to apply the payment made by a debtor towards any debt. | False |
| 14. | A, B and C are under a joint promise to pay D Rs.3,000. C is unable to pay anything and A is compelled to pay the whole. Is A entitled to receive Rs.1,500 from B? | Yes |
| 15. | A and B contract that B shall execute certain work for A for Rs.1,000. B is ready and willing to execute the work accordingly. But A prevents him from doing so. Is the contract voidable? | Yes |
| 16. | A owes B Rs.1,000 under a contract, B owes C Rs.1,000. B orders A to credit C with Rs.1,000 in his books, but C does not assent to the arrangement. Does B still owe C Rs.1,000? | Yes |

| | | |
|-----|---|-------|
| 17. | Assignment by operation of law takes place only in case of death of any party. | False |
| 18. | The assignee takes assignment subject to all equities between the original parties. | True |
| 19. | "If a promisee accepts performance of the promise from a third party can he afterwards enforce it against the promisor" | False |
| 20. | Several joint promisors made a promise with single promisee. Does it amount to joint promise? | Yes |
| 21. | When a single promisor makes a promise with several joint promisees, is it a joint promise? | Yes |
| 22. | When several joint promisors make a promise with several joint promisees, is it a joint promise? | Yes |
| 23. | In case of several joint promisors, the promisee can demand the performance from anyone or more of joint promisors. | True |
| 24. | Generally, representatives of the promisor are bound to perform the promise, if promisor dies before the performance | True |
| 25. | Where Promisee terminates the contract due to non-performance or part-performance by the Promisor, the Promisee has to return the benefits, if any; he has received from part performance of the promise. | True |
| 26. | In case promisee prescribes the manner and time of performance of promise, the performance need not be in the manner and time prescribed. | False |
| 27. | Where no place for performance is specified and the promise is to be performed without demand by the promisee, the promisor must apply for the performance. | True |
| 28. | Where the parties have a current account between them, appropriation impliedly takes place in the order in which the receipts and payments take place and are carried into the account. | True |
| 29. | A, B and C jointly promise to pay D Rs.3,000. Can D compel either A or B or C to pay him Rs.3,000 ? | Yes |
| 30. | Unless otherwise agreed, if anyone of the joint promisor makes default in making the payment, the other joint promisor must share the loss arising from such default equally. | True |
| 31. | A partner of the firm is a Joint Promisor with other partners. He is entitled to claim contribution from other partners when he pays debts of the firm. | True |
| 32. | In case of several joint promisees, the performance of the contract may be demanded by any one of them. | False |
| 33. | Under the English Law, the release of one of the joint promisors, is the release of all other promisors. | True |
| 34. | In mutual and independent promises, one party must perform his promise before the other party fulfills his promise. | False |
| 35. | A and B contract that A shall build a house for B at a fixed price. Should A's promise be performed before B's promise to pay for it? | Yes |
| 36. | Where one party to a reciprocal promise prevents the other from performing his promise, the contract becomes void. | False |
| 37. | Can contracts involving personal skill or taste be assigned? | No |
| 38. | Assignment by operation of law takes place by the death of a party to a contract. | True |
| 39. | Assignment by operation of law takes place in case of death or insolvency. | True |
| 40. | An actionable claim can always be assigned. | True |
| 41. | Can the obligations (i.e. liabilities) be assigned? | No |
| 42. | Where there are co-sureties a release by the creditor of one of them does not discharge the others. | True |

(N 07 – 1M)

| | | |
|-----|--|-------|
| 43. | In case of alternative promise one branch of which is legal and the other illegal, the whole contract cannot be performed. (N 08 – 1M) | False |
| 44. | In the case of joint promise, any one of the joint promisors may be compelled to perform the whole promise | True |
| 45. | If the promise is joint, the right to claim performance is “joint” and “not joint and several” | True |
| 46. | In case of joint promise, the liability to pay the promise will devolve on any one or more promisors, (M 07 – 1M) | True |
| 47. | A tender of an instalment when the contract stipulates payment in full is valid tender | False |
| 48. | A contract need not be performed if the promisee refuses to afford the promisor reasonable facilities for the performance of his promise. | True |
| 49. | If any one of the joint promisors makes default in the contribution, the remaining joint promisors must bear the loss arising from such default in equal shares | True |
| 50. | A promisor undertakes to perform a promise on a certain day, after the application by the promisee to the effect. It is the duty of the promisee to apply for performance at proper place and within the usual hours of business | True |
| 51. | Promises which form the consideration or part of the consideration form each other are called contingent promises | False |
| 52. | A debtor expressly intimates at the time of payment that the payment should be applied towards the discharge of a particular debt. The creditor is not bound to do so. | False |
| 53. | Contractual obligations involving personal skill cannot be assigned | True |
| 54. | A promisee can be compelled by the promisor or a third party to accept any person other than the promisor as the person liable to him on the promise | False |
| 55. | The mere fact that a certain time specified in a contract for the performance of a promise does not necessarily make time as the essence of the contract | True |
| 56. | In non-commercial contract, the presumption is that time is the essence of the contract. | False |
| 57. | Where a debtor makes a valid tender of money, but the creditor refuses to accept it, the debtor is discharged from making the payment | False |
| 58. | When two or more persons make a joint promise and there is no express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise | True |
| 59. | A release by the promisee of any one of the joint promisors does not discharge the other joint promisors from liability | True |
| 60. | Where the debtor does not intimate, the creditor has the right to appropriate payment to a time barred debt. | True |
| 61. | A servant is employed for one year on a monthly salary of Rs 800, the whole salary to be paid at the end of the year. The servant wrongfully leaves the service after six months. He is entitled to salary as per agreement. | False |

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THE END

UNIT- 5: BREACH OF CONTRACT

| S.No | Questions | ABC |
|------|---|-----|
| 1. | What is meant by Anticipatory Breach of Contract? | A |
| 2. | Explain different types of compensatory damages/Losses? | A |
| 3. | What are the liabilities of promisor in case of breach of contract? | A |
| 4. | How the damages can be calculated on the breach of contract | B |
| 5. | How liquidated damages and penalty are impose? | B |
| 6. | Explain the difference between LIQUIDATE DAMAGES and PENALTY | C |
| 7. | What are the remedies (Other than damages) available to promisee in case of breach of contract? | B |
| 8. | What is meant by Actual Breach of Contract? | C |
| 9. | Ordinary Damages Vs. Liquidated Damages | C |

Q.No.1. what is meant by Actual Breach of Contract?

Meaning:-

1. Where one of the parties breaches the contract by refusing to perform the promise on due date, it is known as actual breach of contract
2. In such a case the other party to contract obtains a right of action against the one who breached the contract

Situation of Actual Breach of Contract:-

1. At the time when the performance of contract is due
2. During the performance of the contract

Effects of Actual Breach:-

1. When time is the essence of contract, the aggrieved party can rescind the contract and can sue for damages
2. When time is not the essence of contract, the aggrieved party cannot rescind the contract, but he can claim damages caused by delayed performance.

(IMMEDIATELY REFER PRACTICAL QUESTIONS. 11)

Q.No.2.What is meant by Anticipatory Breach of Contract?

(PM)

- a) **Meaning:** Anticipatory breach of contract occurs when the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived.
- b) **Hochester vs. De La Tour:** In this case defendant had engaged the services of plaintiff as his attendant for a tour of the continent from June 1st on a fee of £10 per month for three months. However defendant changed his mind before June 1st and informed the plaintiff that his services are not required. This is thus a case of anticipatory breach of contract. It was held in this case that plaintiff could put an end to the contract even before the due date viz 1st June and he need not wait for the date meant for performance of the promise.
- c) **Frost vs. Knight:** In this case the principle of anticipatory breach was well summed up and it was held that promisee could wait till the due date of performance also before he puts an end to the contract. In such a case the amount of damages will vary depending on the circumstances.

For Example:- 'X' agrees to sell 'Y' certain quantity of wheat at a certain price. viz @ Rs. 100/- per quintal by 3rd March. However on 2nd February X gives notice of his unwillingness to sell the given goods. Price of wheat on that date is Rs. 110/- per quintal. 'Y' has a right to repudiate the contract on the same day instead of waiting for the date of performance. On that day 2nd February, he is entitled to recover damages of Rs. 10/- per quintal this being the difference between market price and contracted price. If on the other hand, he chooses to wait till 3rd March and the price on that date is Rs. 125/-, he can recover damages @ Rs. 25/- per quintal. The third possibility is that if between 2nd February and 3rd March, Government prohibits sale of wheat, then the contract becomes void and Y will not be able to recover any damage whatsoever.

SIMILAR QUESTION

1. Explain the options available to promisee in case of Anticipatory Breach of Contract? Or explain the rights of plaintiff in case of anticipatory breach of contract?

Solution: - Same as Question No 1

2. "Promisee must rescind the contract immediately without waiting till the date of performance to repudiate the contract" comment?

Solution: Refer point (d) of Q.No.1

(IMMEDIATE REFER PRACTICAL QUESTIONS. 1, 2, 3)

Q.No.3. Explain different types of compensatory damages/Losses?

In cases where there is a breach of contract, the promisor who breaches is liable to pay compensation for loss or damages suffered by the promisee.

The Compensation can be classified as:

- a) **Compensation for General Losses:** Loss or damages that usually arise in the event of breach of contract
- b) **Compensation for Special Losses:** Loss or damages which parties may anticipate at the time of entering into the contract are called special damages. This kind of special damages cannot be claimed until a previous notice is given to the promisor.

Hadley Vs. Baxendale: This case law enunciated the rules relating to compensation. In this case, the mill of the plaintiff had to be stopped because of a broken crank shaft. The plaintiff sent the crank shaft as a pattern for manufacturing a new one. Till the arrival of the new crank shaft, the mill could not be resumed.

Hence mill incurred losses. However this position was not properly conveyed to the defendant, the carrier. There was some delay on the part of the defendant in delivering the crank shaft to the manufacturer which in turn delayed the reopening of the mill. As a result of this, there were losses to the mill. The defendant claimed compensation for loss in profit of the mill.

However this was not accepted by court on the ground the plaintiff did not explain to defendant that delay in delivering the crank shaft would delay resumption of the mill and this would result in losses to the plaintiff.

- c) **Compensation for Remote or Indirect Losses:** No compensation is payable for any remote or any indirect loss.

Note:

1. While assessing the loss or damage the inconvenience caused to the aggrieved party on account of non-performance should be assessed carefully
2. The party entitled for compensation, has a duty to take steps to minimize the loss.

Similar Questions:

1. "Promisor is liable to compensate all type of losses to the promisee in the event of breach of Contract" Comment?

Solution: Refer Q.No.2

2. Q.3. What is the law relating to determination of compensation, on breach of contract, contained in Section 73 of the Indian Contract Act, 1872?

Solution : Refer Q.No.2

Q.No.4. what are the liabilities of promisor in case of breach of contract?

Liabilities of promisor in case of breach of contract are as follows

a) Liability for special damages:

- i) Where it is understood between parties that in the event of breach of contract, there would be special damages also in addition to normal damages, then special damages would be conditionally payable.
- ii) In other words where a party to a contract receives a notice of special circumstances affecting the contract, he will be liable not only for damages arising naturally and directly from the breach but also for special damages.
- iii) If the special circumstances were already known to the other party then it is not necessary to communicate.

For example: Madras High Court in *Madras Railway Company vs. Govind Ram, Mad.* upheld the same principle as above. In that case a tailor had given his sewing machine to railways to be delivered at a station as a consignment. He did not mention that any delay in delivering the sewing machine would result in damages for the business of the tailor as he had planned to do good business at the place proposed where a festival was to be held. The sewing machine was delivered after the festival was over. Held Railways were not responsible for the damages as the Railway authorities were not informed of the specific purpose of delivery of the sewing machine namely business during a festival.

b) Liability for exemplary damages: These situations may arise mainly in two cases

- i) **Breach of Promise to Marry:** In this case the damages are awarded taking into account the injury or humiliation which the aggrieved person would have suffered

- ii) **Wrongful Dishonour of Cheques of Customer by Bank:**

- In this case the damages would depend upon the loss of credit and reputation suffered by the customer
- The damages could be very heavy if loss had been suffered by a businessman, when compared to a non-businessman customer.

For example: Mrs. G, a non-trader paid a cheque for Rs. 9,016 rupees drawn on SBI bank to her landlord for rent, the cheque was dishonored by the bank. But she was awarded damages of only Rs. 40 only as nominal damages. *Gibbons vs. Westminster Bank*

- Similarly where the value of cheque is small the damages could be very heavy in comparison to a situation where the value of cheque is heavy. This is on the theory that dishonour of a small value of cheque would cause more damages to the honors of the customer.

- c) **Liability to pay nominal damages:** Nominal damages are awarded in those cases of breach of contract where no damage has been suffered. Such damages are awarded only to establish the right to decree for breach of contract. Such damages are for nominal amounts like ten rupees or even ten paise.

d) Damages for deterioration caused by delay:

- i) Compensation can be recovered even without notice for damages or 'deterioration' caused to goods on account of delay by carriers amounting to breach of contract.
- ii) Here the word "deterioration" means not only physical damages but also loss of opportunity. In *Wilson vs. Lancashire and Yorkshire Railway Company*, the plaintiff bought velvet with a view to making it into caps for sale during spring. But due to delay in transit, he was unable to use the velvet for making caps for sale during season. It was held that the fall in value of sale of cloth in consequence of the same having arrived after the season amounted to deterioration. It was here held that the plaintiff is entitled for compensation without notice.

Similar Questions:

1. In case of breach of promise to marry the damages are awarded under what type of measurement of damage and what will be taken into account to give damage? (PM)

Solution: Refer Point no (ii) of Q.3.

2. Liability of exemplary damages are same like as general damages" Comment?

Solution: Refer Point no (ii) of Q.3.

3. Explain the liabilities of the promisor in case of breach of contract?

Solution for Q.3 and Q.4: Refer Q. 3

4. "Compensation can be recovered only if there is a notice of damages for deterioration caused by delay" Comment?

Solution for Q.3 and Q.4: Refer Q. 3

5. Under what circumstances promisor is liable to compensate special damages?

Solution: Refer Point no (b) of Q.No.3

(IMMEDIATELY REFER PRACTICAL QUESTIONS. 4, 5, 6, 7, 9, 10)

| |
|---|
| Q.No.5. How the damages can be calculated on the breach of contract? |
|---|

In case of a contract for sale of good-

- a) Where if the **buyer breaks the contract**, the damages would be the difference between contract price and market price as on the date of breach.
- b) Where if the **seller breaks the contract**, the buyer can recover the difference between market price and contract price as on date of breach.
- c) Where if the **seller retains the goods after the contract has been broken by the buyer**-there
 - i) The seller cannot recover from the buyer any further loss even if the market falls.
 - ii) Again he (seller) is not liable to have the damages reduced if the market rises.
- d) In *Jamal vs. Mulla Dawood* the defendant agreed to purchase from the plaintiff, certain shares on December 30, but wrongfully rejected them when tendered on date. The difference between the contract price and market price amounted to Rs. 1,09,218; the plaintiff recovered a part of the loss by selling those shares in a rising market and the actual loss amounted to Rs. 79,882. The plaintiff, however, sued the defendant claiming Rs. 1,09,218 as damages and the Privy Council allowed the claim in full.

Duty to mitigate loss: The person who suffers losses on account of breach of contract by the other party must take all reasonable steps to mitigate the loss.

(IMMEDIATELY REFER PRACTICAL QUESTION. 5)

Q.No.6. How liquidated damages and penalty are imposed?

- a) At the time of entering into the contract itself, parties may agree to pay certain sum of money, in case of breach by either party.
- b) Such agreed sum of money may be either in the form of liquidate damages or in the form of penalty

Liquidated damage

- i) It is a genuine pre-estimate of compensation for damages for certain anticipated breach of contract.
- ii) This estimate is agreed between parties to avoid at a later date detailed calculations and the necessity to convince outside parties.
- iii) The purpose of the liquidate damage is to compensate the injured party.

Penalty

- i) On the other hand, penalty means “an excessive amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties”.
- ii) In terms of Section 74 of the Act “where a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach, can claim whether or not actual damages or loss is proved to have been caused thereby, from the other party”
- iii) Court allows only reasonable compensation not exceeding the specified sum.
- iv) A stipulation for payment of interest in case of default is not in the nature of a penalty, if the interest is reasonable. If the court finds that the rate of interest is exorbitant and is penal in nature, it may grant relief.
- **Payment of interest at higher rate**
 - A stipulation for higher rate of interest from the date of the bond and not from the date of default is always in the nature of a penalty
 - A stipulation for higher rate of interest from the date of default may be in the nature of penalty depends on the terms of the contract and circumstances of each case.
 - **Payment of Compound interest on default**
 - A stipulation for payment of compound interest on failure to pay simple interest at the same rate as payable upon the principal is not a penalty
 - A stipulation for payment of compound interest at a rate higher than that of simple interest is a penalty
- v) A stipulation for payment of interest say at 24% p.a with a provision that if the debtor pays interest punctually at the end of every year, the creditor would accept interest at a lower rate say 18% p.a. such a clause is not in the nature of penalty
- vi) In terms of Section 74, courts are empowered to reduce the sum payable on breach whether it is ‘penalty’ or “liquidated damages” provided the sum appears to be unreasonably high.
- vii) Supreme Court in Sri Chunni Lal vs. Mehta & Sons Ltd. laid down the ratio that the aggrieved party should not be allowed to claim a sum greater than what is specific in the written agreement. But even there the court has powers to reduce the amount if it considers it reasonable to reduce.

Similar Questions

1. How liquidated damages and penalty are imposed?

(PM)

Solution: Refer Q. No 6

Q.No.7.What are the other remedies (Other than damages) available to promisee in case of breach of contract?

Apart from claiming damages for breach of contract, the following other remedies are also available to promisee

- a) **Rescission of contract:** Where one party breaches the contract, the other party can treat it as rescinded. In this case the other party is absolved of his obligation and is entitled to compensation for damages which he suffered.
- b) **Suit upon quantum meruit:** The phrase 'quantum meruit' literally means "as much as earned" or "according to the quantity of work done".

For Example: A person, who has begun a civil contract work and has to stop the work later because the other party has made the performance impossible, is entitled to receive compensation on the principle of 'Quantum Meruit'.

Following are instances where 'quantum meruit' may arise:

- i. Where the contract is subsequently discovered to be void.
 - ii. Where a person does some act or delivers something to another person with the intention of receiving payment,
 - iii. Where the contract is divisible and where a party performs a part of the contract and refuses to perform the remaining part
- c) **Suit for specific performance:** Where damages are not an adequate remedy in the case of breach of contract, the court may in its discretion on a suit for specific performance direct the party in breach, to carry out his promise according to the terms of the contract.

Specific performance is not allowed in the following cases

- i. When money compensation is adequate
- ii. In case of personal contract
- iii. Performance of contract requires constant supervision of court
- iv. Contract is not equitable (i.e. not fair and just) to either party
- v. Where one party is incompetent to contract (e.g. minor)

(IMMEDIATELY REFER PRACTICAL QUESTIONS. 8)

Q.No.8. Explain the difference between LIQUIDATE DAMAGES and PENALTY

Liquidated damages and penalty: Following are the important differences between liquidated damages and penalty.

| Basis of distinction | Liquidated Damages | Penalty |
|----------------------|--|--|
| 1. Meaning | It represents a sum fixed or ascertained by the parties to the Contract, being a fair and genuine estimate of the probable loss that may arise due to breach. | It is the sum mentioned in the contract at the time of its making, being disproportionate to, i.e. very high than the loss that might arise as a result of breach. It is usually a very high sum, to ensure performance of the contract. |
| 2. Intention | The intention for liquidated damages is the recovery of damages that might arise due to breach. | The intention for the penalty is to ensure performance of a Contract. Performance is better than paying penalty. It acts as a deterrent to avoid performance. |

| | | |
|-------------------|---|--|
| 3. Example | A contracts with B to deliver possession of a house under construction within a period of 6 months, failing which he would pay the monthly rental of B. The monthly rental payable by B for A partakes the character of liquidated damages. | P contracts to deliver 50 Units of a Petrol Engine to Q on a stipulated day, failing which he shall pay Rs.5 Lakhs. Neither the price of Engine nor loss on failure of delivery would amount to Rs.5 Lakhs. Hence it is a penalty. |
|-------------------|---|--|

Q.No.9. Ordinary Damages Vs. Liquidated Damages

| Basis of distinction | Ordinary Damages | Liquidated Damages |
|-------------------------------|---|---|
| 1. Meaning | Ordinary damages means the damages which are fairly and reasonably considered as arising naturally from breach of a contract. | Liquidated damages are the amount of fair and genuine pre-estimate of probable damages which are likely to result from breach of a contract |
| 2. Nature of loss | Ordinary damages arise only on actual breach of contract . | Liquidated damages are the amount of probable loss in the opinion of the parties that may result from the breach of contract . |
| 3. Time of calculation | These are calculated only when actual damages are suffered . | It is calculated before actual damages are suffered . |
| 4. Amount | These are actual amount of damages which injured party is entitled to claim . | These are estimated maximum amount of damages with in which actual damages may be claimed. |

TRUE OR FALSE STATEMENTS

| No. | Statement | Ans |
|-----|--|-------|
| 1. | Damages are also applicable in respect of failure to discharge a quasi-contract, in the same manner as in respect of breach of contracts. | True |
| 2. | Where the contract is such that damages cannot be ascertained; then if the parties pre-estimated the damages and the same appears reasonable, that amount of compensation shall be considered proper and shall be sanctioned by the Court. | True |
| 3. | The damages which are awarded in case of breach of contract where by no loss is caused, are called "punitive damages". | False |
| 4. | In case of wrongful dishonour of a cheque, the rule is smaller the amount, smaller will be the amount of damages and vice versa. | False |
| 5. | A contracts to buy from B, at a stated price, 50 maunds of rice, no time being fixed for delivery. Afterwards A informs B that he will not accept the rice if tendered to him. B receive compensation from A. | True |
| 6. | "By awarding damages, court aims to put the injured party into the position in which he would have been, had there been performance and not breach. The objective of awarding damages is not to punish the party at default. | True |
| 7. | Special damages can be claimed whether the special circumstances were communicated to the promisor or not. | False |

| | | |
|-----|---|-------|
| 8. | A contract to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting business. A breaks his promise, and B having no cotton, is obliged to close his mill. A responsible to B for the loss caused to B by closing of the mill. | False |
| 9. | Penalty is not enforceable in India. | False |
| 10. | Penalty payable by the party, who is guilty of breach, can't be decided at the time of formation of contract. | False |
| 11. | The aggrieved party can claim the highest of amount of penalty and actual loss as damages | False |
| 12. | When a single lump-sum amount is made payable on the occurrence of one or more of several events, some of which may occur serious and other trifling damage. There a presumption that the sum is a penalty. | True |
| 13. | Exemplary or vindictive damages are punitive in nature and as a rule these are not awarded by the courts. | False |
| 14. | Specific performance can be granted in case of contract to marry. | False |
| 15. | In all cases, the aggrieved party has a right to refuse the monetary compensation and insist on specific performance of the contract by the promisor. | False |
| 16. | Suit for specific performance can be filed where a party does something which he promised not to do. | False |
| 17. | To file a suit under Quantum Meruit, the original contract must have been discharged by breach of a party by non-performance. | True |
| 18. | A was engaged by B to write some material to be published in installments in a weekly magazine of B. After a few issues of the magazine, it was discontinued by B. In this case, A can recover compensation from B for the work done. | True |
| 19. | Suit upon quantum meruit can be filed in case of incomplete and indivisible contracts. | False |
| 20. | Compensation shall not be given for any remote and indirect loss sustained by reason of breach | True |
| 21. | In the case of a breach, the aggrieved party can claim the amount of liquidated damages pre fixed and stated in the contract irrespective of the actual loss | False |
| 22. | In case of breach of contract, the court awards remote damages to the aggrieved party (N 11 – 1M) | False |
| 23. | Where there is a right, there is a remedy | True |
| 24. | Damages other than those arising from the breach of contract may be recovered if such damages are in the contemplation of the aggrieved party as the probable result of the breach | True |
| 25. | Damages for loss of reputation are not generally recoverable. An exception to this rule exists in the case of a banker who wrongfully refuses to honour a customer's cheque. | True |
| 26. | Specific performance of a contract may, in the discretion of the court, be granted where damages are an adequate remedy | False |
| 27. | When through a mutual mistake of the parties, a contract does not express their real intention, either party may institute a suit to have the instrument rectified | True |

| | | |
|-----|--|-------|
| 28. | Nominal damages are awarded if there is no breach of contract. | False |
| 29. | If special damages are to be claimed, the attendant circumstances must be brought to the notice of the other party. | True |
| 30. | The essence of a penalty is the payment of money stipulated as in terrarium of the offending party | True |
| 31. | In case of breach of a contract, the injured party is not bound to take all reasonable steps to mitigate the loss caused by the breach. | False |
| 32. | Damages for breach of contract are given by way of punishment for wrong inflicted | False |
| 33. | A agree to print a book for B not knowing that it contains libelous matter. After printing a part he discovers that it contains libelous matter. In this case A is entitled to refuse to print the rest of the book and sue for the work done on quantum meruit. | True |

PRACTICAL QUESTIONS

Most repeated Provisions:

Sec 39: When a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the, unless he has signified, by words or conduct, his acquiescence in its continuance

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

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation: In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by non-performance of the contract must be taken into account.

Sec 74: When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damages or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation 1: A stipulation for increased interest from the date of default may be a stipulation by way of penalty

Explanation 2:

- a) When any person enters into any bail bond, recognizance or other instrument of the same nature, or
- b) Under the provision of any law, or
- c) Under the order of the central government or of any state government,

- d) Gives any bond for the performance of any public duty or act in which the public are interested,
- e) He shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation 3: The person who enters into a contract with the government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

Q.No.1. Mr. Dubious textile enter into a contract with Retail Garments Show Room for supply of 1000 pieces of Cotton Shirts at Rs. 300 per shirt to be supplied on or before 31st December, 2004. However, on 1st November, 2004 Dubious Textiles informs the Retail Garments show Room that he is not willing to supply the goods as the price of Cotton shirts in the meantime has gone Upto Rs. 350 per shirt. Examine the rights of the retail Garments Show Room in this regard (PM)

Facts of the case: Dubious Textiles has indicated its unwillingness to supply the cotton shirts on 1st November 2004 itself when it has time Upto 31st December 2004 for performance of the contract of supply of goods. It is therefore called anticipatory breach of contract. Thus Retail Garments show room can claim damages from Dubious Textiles

Provision: Refer Section 39 and Sec 73 of Indian contract act 1872

Analysis:

- a) The retail garment show room can claim damages from dubious Textiles immediately after 1st November, 2004, without waiting upto 31st December 2004.
- b) The damages will be calculated at the rate of Rs. 50 per shirt i.e. the difference between Rs. 350/- (the price reviling on 1s1 November) and Rs. 300/- the contracted price.

Conclusion: Retail Garment Show Room can claim (1000 pieces * Rs.50) Rs.50,000 as damages from Mr.Dubious Textiles

Q.No.2. Mr. Ramaswamy of Chennai Placed an order with Mr. Shah of Ahmadabad for supply of Urid-Dall on 10.11.2006 at a contract price of Rs. 40 per kg. The order was for the supply of 10 tones within a month's time viz before 9.12.2006. On 4.12.2006 Mr. Shah wrote a letter to Mr. Ramaswamy stating that the price of Urid-Dhall was sky rocketing to 50 per kg and he would not be able to supply as per original contract. The price of Urid-Dhall rose to 53 on 9-12-06 advice Mr. Ramaswamy citing the legal position (PM)

Facts of the Case:

- a) The stated problem falls under the head 'anticipatory breach of contract
- b) Mr. Shah of Ahmadabad refuses to fulfill his contractual obligation before date of performance due to rise in price.

Provision: Section 39 and Sec 73 of Indian contract act 1872. The case law is *Frost vs. Knight*.

Analysis: As per details in the problem, price as contracted Rs. 40 per kg on 10.11. 2006 rose to Rs. 50 per kg as on 4.12.2006 and finally to Rs. 53 per kg, on 09.12.2006.

Conclusion:

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

- d) If the Government, in the interim period i.e. between 04.12.2006 and 09.12. 2006 imposes a ban on the movement of the commodity to arrest rise of prices, the contract becomes void and Mr. Ramaswamy will not be able to recover any damages whatsoever.

Q.No.3. A appointed B to accompany him on a tour for three months from 1st July at a certain salary. Before the 1st July, A told B that B was no more required by him. Can B sue A? (PM)

Facts of the Case

- a) 'A' appointed B to accompany him on a tour for three months from 1st July at a certain salary
 b) Later on, before 1st July, 'A' expressly breach the contract

Provision: Refer Section 39 and Section 73 of Indian Contract Act. 1872.

Analysis: As per the provision of sec 39, when a party to a contract refused to perform his promise, the promisee may put an end to the contract and sue the party in default by claiming damages.

Conclusion: B can sue A on the basis of anticipatory breach of contract.

Q.No.4. M Ltd., contracts with Shanti Traders to make and deliver certain machinery to them by 30.6.2004 for Rs. 11.50 lakhs. Due to labour strike, M Ltd. could not manufacture and deliver the machinery to Shanti Traders. Later, Shanti Traders procured the machinery from another manufacturer for Rs. 12.75 lakhs. Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation which it can claim from M Ltd., referring to the legal provisions of the Indian Contract Act, 1872. (PM)

Facts of the Case:

- a) M Ltd contracts with Shanti Traders to make and deliver certain machinery to them by 30.6.2004 for Rs. 11.50 lakhs.
 b) Due to labour strike, M. Ltd. could not deliver the machinery to Shanti Traders
 c) Shanti Traders procured from the machinery from another manufacturer for Rs. 12.75 lakhs
 d) Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders and were compelled to pay compensation for breach of contract.

Provision: Section 73 of the Indian Contract Act, 1872

Analysis:

- a) Applying the above principle of law to the given case, M Ltd is obliged to compensate for the loss of Rs. 1.25 lakhs (i.e. Rs. 12.75 minus Rs. 11.50 = Rs. 1.25 lakhs) which had naturally arisen due to default in performing the contract by the specified date.
 b) Regarding the amount of compensation which Shanti Traders were compelled to make to Zenith Traders, it depends upon the fact whether M Ltd., knew about the contract of Shanti Traders for supply of the contracted machinery to Zenith Traders on the specified date. If so, M Ltd is also obliged to reimburse the compensation which Shanti Traders had to pay to Zenith Traders for breach of contract. Otherwise M Ltd is not liable.

Conclusion: Shanti Traders entitle to recover 1.25 Lakhs from M. Ltd.

Q.No.5. X contracted to sell 100 kg of Sugar to Y at Rs.15 per kg on a certain date. In anticipation X contracted to purchase from Z the same quantity at Rs. 8 per kg. Z does not deliver the sugar to X. X suffers the loss of Rs. 7 per kg. Can he recover this loss from Z? (PM)

Facts of the Case:

- a) X contract to sell 100 lkg of sugar to Y at 15 per kg on a certain date
- b) In anticipation X contracted to purchase from Z the sam quantity at Rs. 8 per kg.\
- c) Z fail to perform his obligation as a result X also fail.
- d) X loses the profit (Special Loss) of Rs. 7 per kg

Provision: Section 73 of the Indian Contract Act, 1872

Analysis: As per the provision of sec 73, special losses can be recovered only if the parties to the contract shall knew when they made the contract, about such special loss to be likely to result from the breach of it.

Conclusion: Z know nothing about the contract of X and Y. he (Z) is not liable to pay any special losses.

Q.No.6. A contracted with B to supply him (B) 500 tons of iron-steel @ 5,000 per ton, to be delivered at a specified time. Thereafter, A contracts with C for the purchase of 500 tons of iron-steel @ 4,800 per ton, and at the same time told 'C' that he did so for the purpose of performing his contract entered into with B. C failed to perform his contract in due course. Consequently, A could not procure any iron-steel and B rescinded the contract. What would be the amount of damages which A could claim from C in the circumstances? Explain with reference to the provisions of the Indian Contract Act, 1872. (PM)

Facts of the Case:

- a) A contract to B to supply 500 tons of iron-steel @5000 per ton, to be delivered at a specified time.
- b) Thereafter, A Contracts with C for purchase of 500 tons of iron-steel @ 4800 per ton, and at the same time told 'C' that he did so for the purpose of performing his contract entered into with B.
- c) C failed to perform his contract in due course. Consequently, A also fail to perform his contract with B. and B rescinded the contract

Provision: Section 73 of the Indian Contract Act, 1872. The leading case on this point is ***Hadley vs Baxendale.***

Analysis:

- a) In "***Hadley vs. Baxendale***" it was decided that if the special circumstances under which the contract was actually made were communicated by the plaintiffs to the defendants, and thus known to both parties, the damages resulting from the breach of such a contract which they would reasonably contemplate, would be the amount of injury which would ordinarily follow from a breach of contract under these special circumstances so known and communicated.
- b) In the instant case 'A' had intimated to 'C' that he was procuring iron steel from him for the purpose of performing his contract with 'B'. Thus, C had the knowledge of the special circumstance. Therefore, 'A' is entitled to claim from 'C' Rs. 1,00,000 (difference between the procuring price of iron steel and contracted selling price to 'B') being the amount of profit 'A' would have made by the performance of his contract with 'B'.
- c) If A had not told C of B's contract then the amount of damages would have been the difference between the contract price and the market price on the day of default.

Conclusion: A is entitled to claim Rs. 1,00,000 (500 tones * 200) form C

Q.No.7. X agreed to sell to Y 100 bags of rice @ Rs. 500 per bag, the entire price to be paid at the time of delivery. Before it is delivered, the price of rice per bag goes up by 50 per bag, X refuses to deliver unless and until Y agrees to the increased price. Y sues X for damages for the breach of contract. What Y can claim as damages? (PM)

Facts of the Case:

- a) X agreed to sell to Y 100 bags of rice @ 500 per bag, the entire price to be paid at the time of delivery.
- b) Before it is delivered, the price of rice per bag goes up by 50 per bag, and X refuses to deliver unless and until Y agree to the increased price

Provision: Refer Section 73 of Indian Contract Act. Leading case law *Jamal vs. Mulla Dawood*

Analysis:

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

Conclusion: Y is entitled to recover Rs.5000 (100*50) as ordinary damages from X

Q.No.8. A was appointed as a managing director by a company. Later on it was found that appointment was invalid because the director appointed him was not eligible. Can 'A' claim salary for the time he worked? (PM)

Facts of the Case: A was dismissed from job after appointment, due to the director appointed him was not eligible

Provision: "Doctrine of Quantum meruit" when a person has begun the work and before he could complete it, the other party terminates the contract or does something which make it impossible for the other party to complete the contract, he can claim for the work done under the contract

Analysis: Initially A was appointed as managing director by a company

Latter on 'A' was terminated from the job due to the appointment was made by an invalid director

Conclusion: Applying above principle Mr. A is entitled to remuneration for the services rendered on quantum meruit basis

Q.no.9. Mr. Anand contracts with Mr. Birendra that, if he (Anand) practices as a surgeon within Calcutta, he will pay Birendra Rs. 5000. Later, Anand starts practising as a surgeon in Calcutta. Discuss the right available to Birendra with reference to the provisions of the Indian Contract Act, 1872. (RTP M 15, MTP M 15 - 5M, Nov 13 - 5M)

Facts of the Case:

Mr. Anand contracts with Mr. Birendra that, if he (Anand) practices as a surgeon within Calcutta, he will pay Birendra Rs.5000

Later, Anand start practicing as a surgeon in Calcutta.

Provision: Refer section 74 of the Indian contract Act, 1872,

Analysis:

- a) In the given case, Mr. Anand contracts with Mr. Birendra that, if he practices as a surgeon within Calcutta, he will pay Birendra Rs. 5000. Anand starts practising as a surgeon in Calcutta.

- b) According to the provisions, party complaining of the breach, can claim whether or not actual damages or loss is proved to have been caused thereby, from the other party, a reasonable compensation not exceeding the amount so named in the contract.

Conclusion: Accordingly, Birendra is entitled to such compensation, not exceeding Rs. 5,000 as the courts considers reasonable.

Q.No.10. X entered into a contract with Y to supply him 1,000 water bottles @ Rs.5.00 per water bottle, to be delivered at a specified time. Thereafter, X contract with Z for the purchase of 1,000 water bottles @ Rs. 4.50 per water bottle, and at the same time told Z that he did so for the purpose of performing his contract entered into with Y. Z failed to perform his contract in due course and market price of each water bottle on that day was Rs. 5.25 What would be the amount of damages which X could claim from Z in the circumstances? What would be your answer if Z had not informed about the Y's contract? Explain with reference to the provision of the Indian contract act, 1872.

(M 15 - 5M)

Facts of the Case:

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

Provision: Refer Sec 74 of Indian Contract Act, 1872.

Analysis:

- In the given case, Z fail to perform his contract as a result, X also fail to deliver the specified quantity of water bottle to Y. and Y rescind the contract.
- X bear a loss of profit of $(0.5 \times 1000 = 500)$
- Further market price of the water bottle is rose to 5.25 on the date of breach.
- Hence Z is liable to compensate losses which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Conclusion:

- If X made an intimation to Z about his contract with Y, then X can recover from Z rupees 750 $(1000 \text{ water bottles} \times (5.25 - 4.5))$ this type of damages are called special damages.
- This can be recover only if special circumstances are intimates to other party at the time of making contract.
- If X fails to intimate to Z, X can recover from Z rupees 250 $((5.25 - 5.00) \times 1000 \text{ water bottles})$ i.e difference between contract price and market price.

Q.No.11. X contracts to repair Y's house in a certain manner and receives payment in advance. X repairs the house but not according to the contract. Y incurs Rs.1000 to rectify the defect. Can Y recover Rs.1000 from X. (FOR STUDENT SELF STUDY)

Facts of the case: X enters into a contract of work with Y with certain specifications. After completion of contract Y found some defects in the work, and Y incurs Rs. 1000 to rectify the defect.

Provision: Refer Sec.73 of ICA - 1872

Analysis: In case of breach of contract the party who suffers a loss or damage is entitled to receive compensation from the party breaching the contract.

Conclusion: In the present case, Y can recover loss of Rs.1000 from X.

Q.No.12. X sells certain merchandise to Y warranting it to be of a particular quality, and Y in reliance upon this warranty, sells to Z with a similar warranty. The goods proved to be not according to the warranty, and Y becomes liable to pay Z Rs.1,000 by way of compensation. Can Y recover Rs.1,000 from X? (FOR STUDENT SELF STUDY)

Facts of the case:

- i. X sells certain merchandise to Y by giving warranty that it is of particular quality.
- ii. Based upon the reliance of X, Y sells it to Z by giving the same warranty.
- iii. Later it was approved that goods are not according to the warranty.

Law/provision: Refer section 73 of ICA 1872

Analysis:

- a) Breach of warranty is equal to breach of contract
- b) The measure of damages is the difference between what the goods are worth and what they would have been if there is of no breach of warranty/Contract.
- c) Where there is market value, the actual contract price or the price for which goods have been resold will be the damage.

Conclusion: Y can recover the difference in contract price and market price as loss/damages from X.

Q.No.13. A, a ship owner, contracts with B to convey him from Calcutta to Sydney in A's ship, sailing on the first of January, and B pays to A, by way of deposit, one – half of his passage – money. The ship does not sail on the first of January, and B, after being, in consequence, detained in Calcutta, for some time, and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. Is A liable to pay anything to B? (FOR STUDENT SELF STUDY)

Facts of the case:

- a) A enters into a contract with B that, he will convey B in his ship from Calcutta to Sydney starts at the first of January.
- b) B pays one – half of his passage money. Later the ship doesn't starts from Calcutta on the first January.
- c) In the mean while B detained in Calcutta, for some time and met some expenses, later he proceed to Sydney in another vessel.
- d) Due to the consequences of arriving too late B loses a sum of money.

Law / Provision: Refer section 73 of ICA 1872.

Analysis:

- a) Notice of the special circumstances will make the defendant liable for the unusual loss of those special circumstances;
- b) In the illustration given above, A has to defend B's action on the contract, and it seems to be assumed that A does not know B's particular reason for wanting to be at Sydney by a certain date.

Conclusion:

- a) A is liable to repay to B his deposit, with interest, and expenses to which he is put by his detention in Calcutta, and the excess, if any, of the money paid for the second ship over the agreed upon the first,
- b) but A is not liable for any special losses bear by B in consequences of arriving too late to Sydney.

**Q.No.14. X' contract with Y to pay Rs.1,000 if he fails to pay Y Rs.500 on a specified day. X fails to pay Rs.500 on that specified day. Can Y recover Rs.1000 from X
(FOR STUDENT SELF STUDY ONLY)**

Facts of the case:

X contracts with Y, if he fails to pay Rs.500 in a stipulated time, then he will pay Rs.1000 to Y.

Law / provision: Refer section 74 of ICA 1872.

Analysis:

- a) Where compensation is by the agreement of the parties predetermined or there is a stipulation as to penalty.
- b) It merely declares the law that notwithstanding anything contained in the contract for determining the damages or providing for forfeiture of any property by way of penalty,
- c) The court will award to the party aggrieved only reasonable compensation not exceeding the amount named or penalty stipulated for.

Conclusion: Therefore, B is entitled to recover such compensation, not exceeding Rs.1000, as the court consider reasonable.

**Q.No.15. X borrows Rs.100 from Y and gives him a bond for Rs.200 payable by five yearly installments of Rs.40 with a stipulation that in default of payment of any instalment, the whole sum shall become due. Discuss the legal position.
(QUESTION OF SELF STUDY)**

Facts of the case: X borrows a sum of Rs.100 and gives him a bond that he will pay Rs.200 by five yearly installments amounts to Rs.40 with a stipulation that, if he fails to pay any of the instalments, the whole amount become due.

Law / provision: Refer section 74 of ICA 1872

Analysis:

- a) Stipulation to pay the whole sum become due, in case of default of payment of one instalment is in the nature of penalty
- b) Further payment of Rs.200 for the borrowed amount of 100 in 5 yearly instalment is unreasonable.
- c) The court will award to the party aggrieved only reasonable compensation not exceeding the amount named or penalty stipulated for.

Conclusion: There is a stipulation by way of penalty. Therefore, Y is entitled to get compensation as the court considers reasonable.

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THE END

UNIT- 6: CONTINGENT AND SPECIAL CONTRACT

| S. No | Questions | ABC |
|-------|---|-----|
| 1. | What is contingent contract? Explain the essentials of contingent contract? | B |
| 2. | What is the rules relating to enforcement of contingent contract? | A |
| 3. | What is quasi contract? Explain the salient features of quasi contract | A |
| 4. | Which circumstances are identified by the Act as quasi contract | A |
| 5. | Contracts of insurance Vs. Wagering Agreement. | C |
| 6. | Wagering Agreement Vs. Contingent Contract | C |

Q.No.1.What is contingent contract? Explain the essentials of contingent contract?

Contingent Contract (Section 31): In terms of Section 31 of the Act contingent contract is a contract to do or not to do something, if some event collateral to such contract does or does not happen. Contracts of indemnity and contracts of insurance fall under this category.

For example:

If 'A' contracts to pay 'B' Rs. 100000/- if B's house is destroyed by fire then it is a contingent contract.

Essentials of a contingent contract:

- The performance of a contingent contract would depend upon the happening or non-happening of some event or condition. The condition may be precedent or subsequent
- The event referred to is collateral to the contract. The event is not part of the contract. The event should be neither performance promised nor a consideration for a promise.

For example:

- 'A' agrees to deliver 100 bags of wheat and 'B' agrees to pay after delivery, this is not a contingent contract.
 - 'A' promises to pay 'B' 10000/- if he marries 'C' is a contingent contract.
- c) The contingent event should not be a mere 'will' of the promisor. The event should be contingent in addition to being the will of the promisor.

For example

If 'A' promises to pay 'B' Rs. 10000/- if 'A' left for Delhi from Mumbai on a particular day, it is a contingent contract because though 'A's leaving for Delhi is his own will, it cannot happen only at his will.

SIMILAR QUESTIONS

Q.No.1. What are contingent contract? Explain the rules for enforcement. How does it differ from wagering agreement? (PM)

Solution: Refer the above Q.No.1 and Q.No.6

Q.No.2.What is the rules relating to enforcement of contingent contract?

The rules relating to enforcement of a contingent contract are laid down in sections 32, 33, 34 and 36 of the ICA Act 1872.

- Contingency is the "happening of an event":** Where a contract identifies happening of a future contingent event, the contract cannot be enforced until and unless the event 'happens'. If the happening of the event becomes impossible, then the contingent contract is void.

For example:

'X' enters into a contract to buy 'Y's car provided 'Y' survives 'A'. Here 'Y' surviving 'A' or 'A' dying before 'Y' is the event on which the contract is contingent and they cannot be enforced until 'A' dies.

- b) Contingency is the non-happening of an event:** Where a contingent contract is made contingent on a non-happening of an event, it can be enforced only when its happening becomes impossible.

For example:

Where 'P' agrees to pay 'Q' a sum of money if a particular ship does not return, the contract becomes enforceable only if the ship sinks so that it cannot return.

- c) Contingent on the future conduct of a living person:** A contract would cease to be enforceable if it is contingent upon the conduct of a living person when that living person does something to make the 'event' or 'conduct' as impossible of happening.

For example

Where 'A' agrees to pay 'B' a sum of money if 'A' marries 'C'. 'C' marries 'D'. This act of 'C' has rendered the event of 'A' marrying 'C' as impossible; it is though possible if there is divorce between 'C' and 'D'.

- d) Contingent on an impossible event:** A contingent agreement to do a thing or not to do a thing if an impossible event happens is void and hence is not obviously enforceable. The situation would not change even if the parties to the agreement are not aware of such impossibility.

For example:

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

Q.No.3.What is quasi contract? Explain the salient features of quasi contract?

Meaning:

- Even in the absence of a contract, certain social relationships give rise to certain specific obligations to be performed by certain persons.
- These are known as quasi contracts as they create same obligations as in the case of regular contract.
- Quasi contracts are based on principles of equity, justice and good conscience.

Salient features of quasi contracts are:

- In the first place, such a right is always a right to money and generally, though not always, to a liquidated sum of money.
- Secondly, it does not arise from any agreement of the parties concerned, but it imposed by the law; and
- Thirdly, it is a right which is available not against all the world, but against a particular person or persons only, so that in this respect it resembles a contractual right.

Q.No.4.Which circumstances are identified by the Act as quasi contract.

Following are the circumstances in which the law presumes the existence of contract even though no agreement was made between the parties

a) Claim for necessaries supplied to persons incapable of contracting:

- Any person supplying necessaries to persons who are incapable of contracting is entitled to claim the price from the other person's property.

- ii. Similarly where money is paid to such persons for purchase of necessaries, reimbursement can be claimed.

For example:

if 'A' supplies necessaries to 'B' a lunatic or to his wife or child whom 'B' is liable to protect and maintain, then 'A' can claim the price from the property of 'B'.

For such claim to be valid 'A' should prove the supplies were to the actual requirements of 'B' and his dependents. No claim for supplies of luxury articles can be made. If 'B' has no property 'A' obviously cannot make his claim.

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

Here the person who makes the payment must honestly believe that his own interest demands payment.

[Muni Bibi vs. Trilokinath].

In a case the plaintiff agreed to purchase certain mills and to save it from being sold to outsiders paid certain arrears of municipal dues. Here the payment made by the plaintiff was held to be recoverable as he had interest in the property as prospective buyer.

- c) **Obligation of person enjoying benefits of non-gratuitous act:** In term of section 70 of the Act "where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered".

Shyam Lal vs. State of U.P.

The above can be illustrated by a case ^{law} where 'K' a government servant was compulsorily retired by the government. He filed a writ petition and obtained an injunction against the order. He was reinstated and was paid salary but was given no work and in the mean time government went on appeal. The appeal was decided in favour of the government and 'K' was directed to return the salary paid to him during the period of reinstatement.

- d) **Responsibility of finder of goods:** In terms of section 71 'A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee'.

Thus a finder of lost goods has:

- i. To take proper care of the property as men of ordinary prudence would take
- ii. No right to appropriate the goods and
- iii. To restore the goods if the owner is found.

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For example:

Where 'P' a customer in 'D's shop puts down a brooch worn on her coat and forgets to pick it up and one of 'D's assistants finds it and puts it in a drawer over the week end. On Monday, it was discovered to be missing. 'D' was held to be liable in the absence of ordinary care which a prudent man would have taken.

- e) **Liability for money paid or thing delivered by mistake or by coercion:**

- i. In terms of Section 72 of the Act, "a person to whom money has been paid or any thing delivered by mistake or under coercion, must repay or return it."
- ii. **Shivprasad vs Sirish Chandra**

Every kind of payment of money or delivery of goods for every type of 'mistake' is recoverable.

iii. Sales tax officer vs. Kanhaiyalal

A payment of municipal tax made under mistaken belief or because of misunderstanding of the terms of lease can be recovered from municipal authorities.

iv. Seth Khanjelek vs National Bank of India

Similarly any money paid by coercion is also recoverable. The word coercion is not necessarily governed by section 15 of the Act. The word is interpreted to mean and include oppression, extortion, or such other means.

v. Trikamdass vs. Bombay Municipal Corporation

In a case where 'T' was traveling without ticket in a tram car and on checking he was asked to pay Rs. 5/- as penalty to compound transaction. T filed a suit against the corporation for recovery on the ground that it was extorted from him. The suit was decreed in his favour.

vi. In all the above cases the contractual liability arose without any agreement between the parties.

DIFFERENCES**Q.No.5. Contracts of insurance Vs. Wagering Agreement.**

| DISTINCTION | CONTRACTS OF INSURANCE | WAGERING AGREEMENT |
|---|---|--|
| Insurable interest | Person having an insurable interest can insure his life or property. | Parties to a wagering agreement need not have insurable interest. |
| Actual amount payable | In case of contracts of insurance except life insurance, the actual amount payable need not necessarily be the full amount for which the property is insured. | In case of wagering agreement, the actual amount payable is usually fixed. |
| Beneficial / against public policy | These are regarded as beneficial to the public policy. | These can't be considered to be beneficial to the public. |
| Gamble | Such agreements do not tantamount to gambling as they involve the element of investment and protection. | Being chance oriented, these are closer to gambling. |

Q.No.6. Wagering Agreement Vs. Contingent Contract**The points of distinction between the two may be noted as follows:**

1. A wagering agreement is a promise to give money or money's worth upon the determination or ascertainment of an uncertain event.
A contingent contract, on the other hand, is a contract to do or not to do something if some event, collateral to such contract does or does not happen.
2. In a wagering agreement, the uncertain event is the sole determining factor, while in a contingent contract the event is only collateral.
3. A wagering agreement is essentially of a contingent nature whereas a contingent contract may not be of a wagering nature.
4. A wagering agreement is void whereas a contingent contract is valid.
5. In a wagering agreement, the parties have no other interest in the subject matter of the agreement except the winning or losing of the amount of the wager. In other words, a wagering agreement is a game of chance. This is not so in case of a contingent contract.

TRUE OR FALSE STATEMENTS

| | | |
|-----|--|-------|
| 1. | An agreement is not a wager if either of the parties may win but cannot lose or may lose but cannot win. | True |
| 2. | The stakeholder has already paid the money to the winner. Can loser recover it from him? | No |
| 3. | Can the loser recover his deposit from the stakeholder in a wagering agreement? | Yes |
| 4. | In quasi-contracts, the promise to pay is based on express agreement. | False |
| 5. | Mr. A pays the arrears of rent of his neighbour B, just to avoid a struggle between B & his landlord. Can A recover rent from B? | No |
| 6. | Any person who voluntarily makes a payment on behalf of another, can recover it. | False |
| 7. | P left his carriage on D's premises. D's landlord seized the carriage to recover his rent. P paid the rent to obtain the release of his carriage. Can P recover anything from D? | True |
| 8. | A finder of lost goods can hold the goods against the whole world except the true owner. | True |
| 9. | A person to whom money has been paid, or anything delivered, by mistake or under coercion must repay or return it to the person who paid it by mistake. | True |
| 10. | Are the things necessary as per the status of the incompetent persons also included in necessaries? | True |
| 11. | Every Contingent Contract is valid and enforceable until it becomes void. | True |
| 12. | Every Contingent Contract is necessarily a Wagering Agreement. | False |
| 13. | Contracts contingent upon the non-happening of uncertain future event cannot be enforced if the happening of that event becomes impossible. | False |
| 14. | The performance of a contingent contract must not depend upon mere will of the promisor | True |
| 15. | In a contingent contract the future event is only a collateral event. | True |
| 16. | Insurance contract are basically wagering contracts. | False |
| 17. | A Contingent agreement to do or not to do anything if an impossible event happens is void | True |
| 18. | A quasi contract is a consensual contract duly make by the parties | False |
| 19. | A finder of lost goods is a bailee | True |
| 20. | An "absolute contract " is one in which the promisor binds himself to performance in any event without any conditions. | True |
| 21. | Where goods are sent on approval, the contract is a contingent one | True |
| 22. | Contingent contract to do or not to do anything if a specified uncertain even happens within a fixed time, becomes void if the event happens | False |
| 23. | In a contingent contract the future event is only collateral | True |
| 24. | Supervening circumstances which render performance of promise more difficult and expensive excuse the promisor from performance of his promise | False |
| 25. | A agrees to contract a swimming pool for B for Rs. 80,000. The payment is to be made by B only on the completion of the pool. Contract between A and B is contingent one | False |

Verified by: Srinivasan Sir, Vasu Sir, Praveen Sir

Executed By: Ammenudin Sir

THE END