

CHAPTER	
1	The Indian Contract Act, 1872
Unit : 3	Other Essential Elements of a Valid Contract

- [1] (b) According to Section 27, of the Indian Contract Act, 1872 an agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind is to that extent void.
Hence, in this case S, a seller of imitation jewellery, sells his business to B and promises not to carry on business in imitation jewellery and real jewellery. The agreement is valid with regard to imitation jewellery and void as regards real jewellery because it results in an agreement in restraint of trade.
- [2] (d) The privy council held that Section 10 and 11 of the Indian Contract Act make the minor's agreement void. Hence, in this case S, a minor by fraudulently representing himself to be a major, induced L to lend him ₹ 4 lakh. He refused to repay it and L sued him for the money. The contract is totally void as any agreement made by a minor is void ab initio, i.e., it is without any legal effect and as a result S is not liable to repay the amount due.
However, according to Section 30 and 33 of the Specific Relief Act, 1963 in case of a fraudulent misrepresentation of his age by the minor inducing the other party to enter into a contract, the court may award compensation to the other party if the money or property could be traced.
- [3] (b) Mistake as to foreign law is treated in the same manner as mistake of fact.
- [4] (a) A contract is not discharged on the grounds of strikes, lockouts and civil disturbances unless otherwise agreed by the parties to the contract.
Hence in the case Atul is liable to Banshi for damages as Atul cannot terminate the contract on the ground of impossibility of performance.
- [5] (d) An agreement which conflicts with morals of the time and contravenes any established interest of society may be said to be opposed to public policy. In India, it has been left to court to hold any contract as unlawful on the ground of being opposed to public policy.

The following agreements have been held to be opposed to public policy:

- (a) **Agreements of Trading with Enemy:** All agreements made with an alien enemy are illegal on the ground of public policy.
- (b) **Trafficking in public offices:** An agreement to traffic in public office is opposed to public policy, as it interferes with the appointment of a person best qualified for the service of the public. Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested.
- (c) **Marriage brokerage contracts:** An agreement to negotiate marriage for reward, which is known as a marriage brokerage contract, is void, as it is opposed to public policy.

Where as contract to do imposable acts are void but they are not opposed to public policy.

[6] (d) "Consensus - ad - idem" means meeting of minds upon the same thing in same sense.

[7] (b) Parents or guardian shall not be held liable for breach of contract by minor unless those goods/services are supplied/ rendered to a minor as the agent of the parent or guardian.

[8] (c) Coercion, according to Section (15) is the committing, or threatening to commit, any act forbidden by the Indian Penal Code (45 of 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.

The concept of "Duress" under English Contract Law is similar to coercion.

[9] (c) The contract between X and Y is a valid contract because according to Section 20, of the Indian Contract Act, 1872, an erroneous opinion as to the value of the thing which forms the subject matter of the agreement is not treated as mistake relating to a matter of fact here Y will have to blame himself for ignorance of the true value of the painting.

[10] (a) According to Section 23 of the Indian Contract Act, 1872 an agreement to stifle prosecution tends to be a perversion or an abuse of justice; therefore, such an agreement is void the principal is that one should not make a trade of felony. The compromise of any public offence is generally illegal.

Hence in this case where X agrees to pay 'Y' ₹ 5000 if Y delivers a judgment in his favour in a suit 'Y' does so but X refuses to pay any money. In this context the correct legal position of the agreement is void being opposed to public policy.

[11] (c) Section 17, of the Indian Contract Act, 1872, defines fraud as follows:
'Fraud' means and induces 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 there to or his agent, or to induce him to enter into the contract.

Hence, in this case though the husband was a divorcee, he did not disclose the fact of his previous marriage to his wife and in-laws. It was held that the consent was obtained by 'fraud' because there was active concealment of a fact by the husband.

[12] (c) The jeweller cannot recover the ring from Bola Nath as he was a bona fide buyer who was unaware of the discrepancy on the part of Sohan. Hence jeweller can recover the amount from Sohan only.

[13] (a) A mortgage was executed in favour of a minor, so the minor can get a decree for the enforcement of the mortgage. Because as per Section 10 and Section 11, the contract for the benefit of a minor is valid and a minor can be a promisee.

[14] (b) By virtue of Section 23 of the Indian Contract Act, 1872, where an agreement consists of two parts one legal and other illegal, and the legal part is separable from the illegal one, such legal part is valid. But where the illegal part can not be severed, the contract is altogether void.

[15] (d) As per the provisions of Section 14 of the Indian Contract Act, 1872 there should be free consent of the parties entering into a contract i.e. agreement should not be caused by (i) coercion, (ii) undue influence, (iii) fraud (iv) misrepresentation, or (v) mistake.

Secondly, an agreement must be supported by lawful consideration. Consideration means something in return. According to Section 23 of the Indian Contract Act, 1872, "The consideration is considered lawful unless it is forbidden by law or is fraudulent or involves or implies injury to the person or property of another or is immoral or is opposed to public policy. The agreement is valid even though the consideration is inadequate.

[16] (d) As per (Section 16) of the, Indian Contract Act, 1872 a Contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage of the other.

Hence, in this case an illiterate old woman who made a gift deed for practically her entire property to her nephew who managed her affairs. The gift can be set aside on the grounds of undue influence as she holds an authority real over her nephew.

- [17] (b) A, marriage contract is one where by one or more persons receives money or money's worth in consideration of marriage.

Therefore, in this case where a sum of money was agreed to be paid to the father in consideration of his giving his daughter in marriage. The agreement is void on grounds of being a "**marriage brokerage contract**".

- [18] (a) As a general rule a minor is incompetent to enter into any contract. Therefore, any agreement made by a minor is **void ab-initio**, i.e. it is without any legal effect.

- [19] (d) Contract opposed to public policy are these contract where the agreement conflicts with morals of the time and contravenes any established interest of society.

According to Section 29 of the Indian Contract Act, 1872, "agreements where the object is uncertain are void and unenforceable.

There must be an intention among the parties to create a legal relationship. In case of social or domestic agreement, the usual presumption is that the parties do not intend to create legal relationship but in commercial or business agreements, the usual presumption is that the parties intend to create legal relationship unless otherwise agreed upon.

Lastly contracts of at most good faith is a contract of insurance.

- [20] (b) According to Section (15) of the Indian Contract Act, 1872, "Coercion is defined as committing, or threatening to commit, any act forbidden by the Indian Penal Code (45 of 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.

Hence in this case where N threatens L's wife that their son M would be abducted if did not lease their land to him (N). This is a case of coercion.

- [21] (c) According to Section 14 of the Indian Contract Act, 1872, where there is consent but it is not free (i.e. when it is caused by fraud) the contract is usually voidable at the option of the party whose consent was so caused.

For instance, A fraudulently informs B that A's estate is free from encumbrance, B thereupon agree to buy the estate. The estate is, however, subject to mortgage. Here B may either avoid the contract or may insist on its being carried out and the mortgage debt redeemed.

- [22] (b) As per Section 10 and Section 11 of the Indian Contract Act, 1872, a minor is not competent to contract and hence minor's contract is void [leading case : *Mohiri Bibi V. Dharmodas Ghosh*].

[23] (c) As per the provisions of the Indian Contract Act, 1872, In India it has been left to Court to hold any contract as unlawful on the ground of being opposed to public policy. Every agreement in restraint of marriage of any person other than a minor is void.

[24] (c) According to Section 30 of the Indian Contract Act, 1872, an agreement between two Persons under which money or money's worth is payable, by one person to another on the happening, non happening of a future uncertain event is called a wagering event. Such agreements are chance oriented and therefore, completely uncertain.

Following are the examples of Wagering Agreements:

- (a) An agreement to settle the difference between the contract price and market price of certain goods or shares on a particular day.
- (b) A lottery.
- (c) An agreement to buy a lottery ticket.
- (d) A crossword puzzle in which prizes depend correspondence of the competitor's solution with a previously prepared Solution kept with the editor of newspapers is a lottery hence a wagering transaction.

Where as speculative transaction is one in which mutual intention of parties is to settle the transaction either by actual delivery of goods or by payment of difference in price on settlement date speculative transaction is generally valid.

[25] (d) A party to a contract who affirms the contract can never change his option afterwards if he so decides.

[26] (d) An agreement in restraint of legal proceeding is void but it does not covers an agreement which provides for a reference to arbitration instead of court of law i.e. if the parties decide among themselves that they will mutually solve the problem instead of moving to the court of law also results in a valid agreement.

[27] (d) **A minor can always plead minority:** A minor's contract being void, any money advanced to a minor on a promissory note or otherwise, cannot be recovered.

Minor an agent: A minor can act as an agent and bind principal by his acts without incurring any personal liability.

[28] (a) A contract made by mistake about the Indian law is valid as it is a mistake of law and not a mistake of fact. The contract is not voidable because everyone is supposed to know the law of his, country.

Whereas mistake of foreign law is treated as mistake of fact, i.e. the contract is void if both the parties are under a mistake as to a foreign law because one cannot be expected to know the law of other country.

- [29] (d)** The contract of "Uberrimae fidei" means a contract of Utmost Good Faith.
- [30] (c)** It was held that though a threat to commit suicide is not punishable under the Indian Penal Code, it is deemed to be forbidden by Indian Penal Code. Hence, the threat to commit suicide amounted to coercion and the release deed was therefore, voidable.
- Undue influence involves a moral pressure where the dominating party uses that position to obtain an unfair advantage over the other.
- [31] (a)** A person who is usually of unsound mind, but occasionally of sound mind can enter into a contract when he is of sound mind.
- [32] (a)** The pre-assumption of "Undue Influence" does not exist in case of relationship of Husband and wife.
- [33] (c)** A minor's estate is liable for the necessaries supplied to him.
- [34] (d)** The agreement in restraint of trade is valid in the following cases:
- (a) Agreement with the buyer of goodwill.
 - (b) Trade combinations, to the extent they do not create monopoly or opposed to public policy.
 - (c) Agreements under Partnership Act, 1932.
- [35] (d)** Effects of Wagering Agreement:
- (a) Agreements by a way of wager are void in India.
 - (b) Agreements by way of wager have been declared illegal in the States of Maharashtra and Gujarat.
 - (c) No suit can be filed to recover the amount won on any wager.
 - (d) Transaction which are collateral to wagering agreements are not void in India except in the States of Maharashtra and Gujarat.
 - (e) Transactions which are collateral to wagering agreements are illegal in the States of Maharashtra and Gujarat.
- Hence in this case agreement between S and T is collateral to the wagering agreement which is valid in India except in the states of Maharashtra and Gujarat as stated above. But generally S cannot raise plea of wager as his transaction is collateral to main transaction which is void is not affected as stated above.
- [36] (c)** For a contract to be void on account of mistake two things must exist. Firstly the mistake must be of a fact essential to the contract and secondly both the parties must be under a mistake i.e. a bilateral mistake. Unilateral mistake does not render the contract void.
- [37] (b)** In case of every contract, the promisor voluntarily undertakes an obligation in favour of the promisee. A similar obligation may be imposed by law upon a person for the benefit or another even in the absence of a contract. Such cases are known as quasi contracts.
- Such contracts are based on the principles of equity, justice and good conscience.

- [38] (b) As per the Indian Contract Act a person should be competent to contract to make a valid contract. Certain categories of persons have been expressly disqualified by law from contracting.
An alien enemy, during war, cannot enter into a contract with an Indian subject. Any such contract will be treated as void by law.
- [39] (b) The rule is that all agreements in restraint of trade are void. This has been done to protect the public interest. Sale of goodwill by a firm is an exception to this rule. A person acquiring goodwill from a partnership firm can enter into a contract with such firm that the sellers will not practice under the same name, style or brand etc.
- [40] (c) Fraud is defined under Section 17 of the Indian Contract Act, 1872. Mere silence as to facts likely to affect the willingness of a person to enter into a contract is no fraud; but where it is the duty of a person to speak, or his silence is equivalent to speech, silence amounts to fraud.
- [41] (c) According to Section 13 "two or more persons are said to have consented when they agree upon the same thing in the same sense (consensus ad idem). A contract cannot arise in absence of consent.
- [42] (b) A person of unsound mind is, under the Indian Contract Act, incapable of entering into the contract. Although a contract by a person who is not of sound mind is void, such a person can enter into a valid contract during an interval of lucidity.
- [43] (c) "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, 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.
An agreement induced by coercion is voidable and not void. That means it can be enforced by the party coerced, but not by the party using coercion.
- [44] (a) Such a contract is void as it is an agreement opposed to public policy. It amounts to stifling with prosecution i.e. an abuse of justice. The principle is that one should not make a trade of felony.
- [45] (a) If the illegal part of a contract is inseparable from the legal part of the contract, then whole contract will become void due to such inseparability.
- [46] (c) According to **Section - 22** of the Indian Contract Act, 1872, unilateral mistake, that is to say, mistake of one party does not render the agreement void. It means that the agreement remains valid provided all the other conditions of a valid contract are satisfied.

- [47] (c) As per **Section - 16** of the Indian Contract Act, 1872, a contract is said to be induced by “undue influence” where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and he 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 the other.
From above, it is clear that undue influence can be exercised only where a fiduciary (i.e. position of trust and utmost good faith) relation exists which means that it involves moral pressure.
- [48] (a) As per **Section - 20** of the Indian Contract Act, 1872, mistake as to a law in India is not taken as a mistake of fact and so the contract remains valid. But, however, a question of foreign law is, however, treated as a question of fact. So, mistake as to law not in force in India (i.e. foreign law) renders the contract void. This provision is enacted keeping in mind that it is not possible for any one to know about the laws of other countries.
- [49] (b) Certain agreements have been expressly declared void by the Contract Act. These are void-ab-initio and do not give rise to any legal consequences. Some of them are-
- (a) Agreement by incompetent parties
 - (b) Consideration unlawful in part
 - (c) Wagering agreement
 - (d) Agreement- the meaning of which is uncertain
 - (e) Agreement made under a mutual mistake of fact, etc
- Therefore, we can conclude that except agreement to pay time barred debt, all other are expressly declared void. On the other hand agreement to pay time barred debt is valid under the exemptions to the rule- ‘No Consideration No Contract.
- [50] (c) As per **Section - 20** of the Indian Contract Act, 1872, when both the parties to an agreement are under a mistake of matter of fact essential to the agreement, the agreement is altogether void.
- [51] (b) As per **Section - 16** of the Indian Contract Act, 1872, a contract is said to be induced by “undue influence” where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage of the other.
- Essentials of Undue Influence:**
- (a) The relations between the parties must be such that one party is in a position to dominate the will of the other.

- (b) The dominant party uses that position.
- (c) The dominant party uses his dominant position, so as to obtain an unfair advantage by way of entering into the contract.
Since, in this question, all the above-mentioned essentials are fulfilled, therefore the contract is said to be obtained by undue influence.

[52] (a) As per **Section-15** of the Indian Contract Act, 1872, 'coercion' is the committing, or threatening to commit, any act forbidden by the Indian Penal Code 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.

From the above definition of the Act, it can be concluded that coercion involves use of physical pressure.

Example: A kidnapped B's son and said to B "Give me ₹ 10,00,000 or I will kill your son"

B said "Ok, I will give you ₹ 10,00,000. Please don't kill my son".

In this case, A has employed coercion involving physical pressure.

[53] (a) As per **Section-10** of the Indian Contract Act, 1872, contains the essentials of a valid contract. Two of those essentials are that the consideration and the object of the contract must be lawful.

Contract Act has mentioned various instances in which the consideration as well as the object is unlawful, like acts forbidden by law, agreement opposed to public policy, etc.

Contracts covered under these instances are void.

A Marriage Brokerage contract, i.e. an agreement to negotiate marriage for reward, is void, as it is opposed to public policy.

[54] (a) According to **Section-17** of the Indian Contract Act, 1872, "Fraud" includes the following acts :

- (i) The suggestion, as to a fact, of that which is not true by one who does not believe it to be true;
- (ii) The active concealment of a fact by one having knowledge or belief of the fact;
- (iii) A promise made without any intention of performing it;
- (iv) Any other act fitted to deceive;
- (v) Any such act or omission as the law specially declares to be fraudulent.

Therefore, from the above points it can be concluded that when parties do not intend to perform the contract they made, then it accounts to fraud.

[55] (b) As per **Section-14** of the Indian Contract Act, 1872, consent is free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake.

When consent is not free due to mistake, the agreement is void but in all other case the contract is voidable at the option of the party whose consent was not free.

Therefore, a contract caused by coercion is a voidable contract and not void i.e. it can be enforced by the party coerced, but not by the party using coercion.

[56] (a) As per **Section-27** of the Indian Contract Act, 1872, an agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. But there are certain exceptions. As per Section-36 of the Partnership Act, 1932, if an outgoing partner makes an agreement with the continuing partners that he will not carry on any business similar to that of the firm within a specified period or within specified local limits, such an agreement, though in restraint of trade will be valid, if the restrictions imposed are reasonable.

In the instant case, A and B have restricted C not to do the same business for 3 years. Since it is covered under Section-36, therefore the contract is valid.

[57] (a) Same as Ans. 28

[58] (d) According to **Section 11** of the Indian Contract Act;—

- (i) Every person who has attained the age of majority that is 18 years is competent to contract. This is regulated by the Indian Majority Act (Act IX of 1875).
- (ii) Every person who is of sound mind that is at the time when he makes the contract is capable of understanding it and of forming a rational judgement is competent to contract. A person who is usually of unsound mind but occasionally of sound mind may make a contract during his interval of lucidity.
- (iii) Every person who is not disqualified from contracting by law is also competent to contract.

[59] (b) A person of unsound mind is, under the Indian Contract Act is incapable of entering into the contract. Although a contract by a person who is not of sound mind is void, such a person can enter into a valid contract during intervals of lucidity. Therefore X, patient in a lunatic asylum can enter into contract at the time when he is of sound mind.

- [60] (b)** According to **Section 17** of the Indian Contract Act 1872 fraud includes the following acts :
- (i) The suggestion as to a fact of that which is not true by one who does not believe it to be true.
 - (ii) The active concealment of a fact by one having knowledge or belief of the fact.
 - (iii) A promise made without any intention of performing it
 - (iv) Any other act fitted to deceive.
 - (v) Any such act or omission as the law specially declares to be fraudulent.
- In the above cases the contract becomes voidable at the option of the aggrieved party. In this case, the contract becomes, voidable at the option of Johnson as Smith obtains his consent by fraud.
- [61] (b)** Under Section 68, any person would be entitled to reimbursement out of the minors estate for necessaries supplied to him or to his family. Necessaries means, goods suitable to the condition in the life of infant as required by him at the time of sale or delivery. It includes not only food and clothing but also education and instruction.
- [62] (d)** According to **Section 27**, an agreement of service by which an employee binds himself, during the term of his agreement, not to compete with his employer is not in restraint of trade.
- Thus, this agreement is valid and further B can be restrained by an injunction if he starts independent practice during the period.
- [63] (c)** In India, according to the Indian Majority Act, every person domiciled here attains majority on the completion of 18 years of age i.e. a day after 18.
- [64] (d)** Parent and child, client and solicitor, Doctor and patient all are in fiduciary relationship as-
- (i) A parent, by a reason of his authority over the son can dominate the will of the son.
 - (ii) A solicitor can dominate the will of his client.
 - (iii) A doctor is deemed to be in a position to dominate the will of his patient enfeebled by protracted illness.
- [65] (b)** According to Section 16 of the Indian Contract Act, 1872 – a contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage 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 the other.

- [66] (a) Silence amounts to fraud where it is the duty of the person to speak or his silence is equivalent to speech. In the given case, it was the duty of A to inform B that the dog was of unsound mind. But A kept silent and hence his act is fraudulent.
- [67] (b) Section 11 of the Indian Contract Act specifies that every person is competent to contract except – a minor, a person of unsound mind, a person disqualified from contracting by any law (insolvents, convicts, under sentence etc). Therefore, a joint stock company can enter into a contract.
- [68] (a) Any person who has supplied necessaries to B, a person of an unsound mind, is entitled to re-imburement out of B's estate. Necessaries not only includes food and clothing but also education and instruction [Section – 68]
- [69] (b) Mere silence as to facts likely to affect the willingness of a person to enter into a contract is no fraud but where it is the duty of the person to speak, or his silence is equivalent to speech, silence amounts to fraud.
- [70] (b) An agreement to traffic in public office is opposed to public policy, as it interferes with the appointment of a person best qualified for the service of the public. Such agreements are void.
In the given case, A agrees to pay 10 lac to B for procuring employment for A in Income Tax Department. This agreement is opposed to public policy and hence void.
- [71] (b) A person who had the means of discovering the truth with ordinary diligence cannot avoid a contract on the ground that his consent was caused by misrepresentation or silence amounting to fraud. Hence the statement is false.
- [72] (b) As per the Indian Contract Act, the agreement having a certain meaning is only valid in the eyes of law.
- [73] (d) As per Section 13 of the Indian Contract Act, 1872, "two or more persons are said to have consented when they agree upon the same thing in the same sense (consensus-ad-idem)".
- [74] (d) As per Section 16, A contract is said to be influenced 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. Such contracts are voidable. Master-servant relationship is one of such relations. Thus, in the given case the master is using undue influence on his servant. Hence the servant can avoid the contract.
- [75] (b) When both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, it is bilateral mistake. Such agreement is void altogether.

[76] (a) In India, the age of majority is 18 years of age (As per the Indian Majority Act 1875).

As per the Indian Contract Act 1972, every person who has attained the age of majority is competent to contract.

In the given case, the boy is 21 years old, hence, he is a major and competent to contract. So, the contract with B for the property is valid. The presence of guardian will not invalidate the agreement.

Another view of the question can be also taken. Since the guardian is appointed hence it can be assumed that the boy is of unsound mind and hence not competent to enter into a contract although he is major.

But in the absence of any information we will go for the first view.

[77] (d) A contract entered into by a minor is altogether void. Moreover, a minor can always plead minority. If he enters into a contract by making false representations of his full age, then also he can plead minority and the suit filed against him will be dismissed.

[78] (a) One of the essential elements of a contract is consent and there cannot be a contract without consent.

[79] (a) As per Section 17 of the Indian Contract Act 1872, a person is said to have committed fraud if he performs any act with an intention to deceive another party.

Whereas in case of misrepresentation, a person misleads another person without any intention to deceive him. Therefore, an intentional misrepresentation amounts to fraud.

[80] (a) As per Sec 15, "Coercion is the committing, or threatening to commit, any act forbidden by the Indian penal code, 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."

[81] (a) As per Section 16 of the Indian Contract Act, 1872, "A contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage of the other".

In the given case, the educational guru is in the dominating position and is taking an undue advantage of his position. Thus, the student is under an undue influence.

[82] (c) In case of misrepresentation, if recession is claimed, it is only required to prove that there was misrepresentation. However, in case of fraud, in order to sustain an action for deceit, there must be proof of fraud which can be done only by showing that a false statement has been made knowingly or without believing it to be true, or carelessly.

- [83] (a) As per Section 18 of the Indian Contract Act, 1872:
“Where a person asserts something which is not true, though he believes it to be true, his assertion amounts to misrepresentation”.
It can be either innocent or without any reasonable ground. In the present case, y who has sold goods to x has believed the goods to be of superior quality while actually they are of inferior quality. This has resulted in misrepresentation.
- [84] (d) As per **Section 11**, the persons who have attained the age of majority are competent to contract. In case of minor’s agreement:
(i) An agreement entered into by a minor is altogether void (void ab initio)
(ii) Minor can be a beneficiary
(iii) Minor can always plead minority
(iv) Ratification on attaining majority is not allowed.
- [85] (a) As per Section 15 of the Indian Contract Act, 1872,
“Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, 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.”
In the given case, y has entered into the contract by being threatened by x which has resulted into coercion.
- [86] (a) According to Section 20 of the Indian Contract Act, 1872, “when both the parties to an agreement are under a mistake to a matter of fact essential to the agreement the agreement is altogether void”.
Thus, the contract is void-ab-initio i.e. void from the very beginning.
- [87] (c) As per Section - 15 of the Indian Contract Act, 1872 ‘coercion’ is the committing, or threatening to commit, any act forbidden by the Indian Penal Code 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.
From the above definition of the Act, it can be concluded that **coercion involves use of physical pressure.**
- [88] (d) As per Section 17 of Indian Contract Act, “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.
Thus, according to this definition, answer is all of the above.
- [89] (b) As per Section 27 of Indian Contract Act, an agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent **void**.

[90] (c) An agreement to traffic in public office is **opposed to public policy** since it interferes with the appointment of a person who is best qualified for the service of the public, thus **void**.

E.g. – An agreement to pay money to a public servant in order to induce him to retire from his office for appointment of another person is void.

In the given case also, X promises to procure employment for Y in return of money. Thus, the given agreement is void.

[91] (a) As per Section 17 of the Indian Contract Act, 1872, a person is said to have committed fraud if he performs any act with an intention to deceive party. Whereas in case of misrepresentation a person misleads another person without any intention to deceive him. Therefore, an intentional misrepresentation amounts to **fraud**.

[92] (b) According to Section 16 of the Indian Contract Act, 1872 a contract is said to be induced by “**undue influence**” where the relations subsisting between the parties are such that the one of the parties is in a position to dominate the will of the other and uses that position to obtain a 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 the other.

[93] (a) Under Section 68, any person would be entitled to reimbursement out of minor’s estate, for necessaries supplied to him or to his family. Necessaries means goods suitable to the condition in the life of infant as required by him at the time of sale of delivery.

Thus, in the given case the claim of doctor who had treated the injured leg of minor is **valid** under the Indian Contract Act.

[94] (c) Execution of bond requiring employees leaving the organisation before the expiry of the term of service to pay compensation to employer is a **valid agreement** since this agreement is not in restraint of trade. The agreement is for a particular period and is thus, valid.

[95] (d) Person is said to stand in a fiduciary relation to other if he can dominate the will of the other and uses the position to obtain an unfair advantage of the other. **Example**

(1) A father, by reason of his authority over the son can dominate the will of the son.

(2) A solicitor can dominate the will of his client.

(3) Doctor is deemed to be in a position to dominate the will of his patient enfeebled by protracted illness. Hence, in **all of the above cases**, it can be said that the parties stands in the fiduciary relationship as per Indian Contract Act, 1872.

- [96] (d) An agreement is void because of unlawful consideration. In the question G paid ₹ 10,000 to H to influence the head of a Government Organisation in order to provide an employment to him. The consideration, being opposed to public policy, is unlawful. Hence, he cannot **recover any amount**.
- [97] (b) The consent is said to have been obtained by **Undue Influence** where is the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of another and uses his position to obtain an unfair advantage of the other.
- [98] (a) Following is the position of minor's agreement :
- (i) An agreement entered into by a minor is altogether void.
 - (ii) Minor can be a beneficiary
 - (iii) Minor can always plead minority
 - (iv) Ratification on attaining majority is not allowed.
- Thus, agreement by or with a minor is not voidable, hence **option (a)** is the right answer.
- [99] (c) According to Section 20, when both the parties to an agreement are under a mistake to a matter of fact essential to the agreement, the agreement is altogether void.
- A unilateral mistake, that is to say, mistake of one party, does not render the agreement void
- Thus, **option (c)** is the correct answer.
- [100](d) According to Section 23 "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".
- In the given case, the object i.e. destroying the property of Swaminathan is unlawful as it is for the injury to the person or property of any person.
- Moreover, the consideration i.e. 1 kg. of opium is also unlawful as it is forbidden by law.
- Thus, **consideration and its object both are unlawful**
- [101](b) As per Section 68 of Indian Contract Act, 1872, any person would be entitled to reimbursement out of the minor's estate, for necessaries supplied to him or his family. In other words, it can be said that minor's liability for 'necessaries' supplied to him **is against minor's property only**.
- [102](b) By virtue of Section 23 of the Indian Contract Act, 1872, where an agreement consists of two parts, one legal and other illegal, and the legal part is separable from the illegal one, such legal part is **valid**. But where the illegal part cannot be severed, the contract is altogether void.

[103](a) Consideration is an essential element of a contract without which no single promise will be enforceable. It is term used in the sense of **quid pro quo, i.e. something in return.**

It has a double aspect of a benefit to the promisor and a detriment to the promisee.

Hence, **the maxim “quid pro quo” does not mean lawful consideration** rather it means something in return.

[104](a) Fraud includes any of the following acts committed by a party with intent to deceive another party:

- (i) Suggestion as to a fact which is not true
- (ii) active concealment of a fact
- (iii) promise made without any intention of performing it
- (iv) any other act fitted to deceive
- (v) any act specially declared as fraudulent by law.

Hence, **concealment of a fact in good faith** is not fraud but misrepresentation.

[105](d) A minor is not competent to contract and any agreement with or by a minor is void from the very beginning. In the leading case of *Moheri Bibi vs. Dharmodas Ghose* it was held that **minor’s contracts are absolutely void.**

[106](c) S promises to obtain for Q an employment in the public service and Q paid a sum of ₹ 2,00,000 to S. This agreement is void, as the consideration thereof is unlawful. Here S’s promise to procure for Q an employment in the public services is the consideration for Q’s promise to pay ₹ 2,00,000. The consideration, being opposed to public policy, is unlawful.

[107](b) An agreement by which a person is restrained from exercising a lawful profession, trade or business is void. But there are some exceptions, like where a person sells the goodwill of a business and agrees with the buyer to refrain from carrying on similar business within specified local limits, then such an agreement is valid.

The restraint imposed should be reasonable only then contract will be valid else it will be void.

[108](c) In case a person supplies necessities of life to a minor (which includes a medical treatment), then the minor personally or his guardians cannot be held liable for the payment. It is only the personal estate of minor (if any) that can be held liable.

[109](c) Marriage brokerage contracts:

An agreement to negotiate marriage for reward which is known as marriage brokerage contract, is void, as it is opposed to public policy. For e.g.: an agreement to pay money to a person hired to procure a wife is opposed to public policy and therefore void.

[110](b) Mistake is treated as a mistake only if it is a bilateral mistake of facts i.e. a mistake on the part of both the parties to the contract.

In the given case neither is it a bilateral mistake nor of facts. Mistake as to price is not treated as mistake of facts and hence, the contract is valid.

[111](a) Z cannot cancel the contract on the basis of fraud as it is a case of unilateral mistake of fact and this is not treated as mistake at all.

Mistake is mistake only when it is bilateral mistake of fact and not otherwise.

[112](d) The term 'consent' means parties to a contract must agree upon the same thing in the same sense i.e. there should be consensus – ad – idem. It has also been observed that the agreement must import an intention to create legal relationship between the parties, and that agreements relating to social matters are not enforceable by law.**[113](a)** A minor is not competent to contract and any agreement with or by a minor is void from the very beginning. In the leading case of *Mohori Bibi vs. Dharmodas Ghose* held that a in minor's contract are absolutely **void**.**[114](a)** The above agreement is void as the consideration of it is unlawful. The consideration, being opposed to public policy, is unlawful.

Hence, Y cannot get the money back.

[115](c) In case a minor inherits certain shares **he will be treated as member of a company having no voting rights** because he though incompetent to contract, may yet accept a benefit.

As for example: A minor cannot become partner in a partnership firm but he may with the consent of all the partners, be admitted to the benefits of partnership.

[116](c) A wagering contract amounting to lottery is not only void but illegal. A lottery is a game of chance. Therefore an agreement to buy a ticket to lottery is a wagering agreement and all transactions in connection with a lottery remain illegal even if the government has authorized the holding of lottery.

- [117](c) An agreement by way of wager is void. It is an agreement involving payment of a sum of money upon the determination of an **uncertain** event. The essence of a wager is that each side should stand to win or lose, depending on the way an uncertain event takes place.
- [118](a) Two or more person are said to consent when they agree upon the same thing in the same sense. Consent is free when it is not caused by mistake, misrepresentation, undue influence, fraud or coercion. Thus, when both the parties are at a mistake to a matter of fact to the agreement, the agreement is altogether void.
- [119](b) Where a person asserts something which is not true, though he believes it to be true, his assertion amounts to misrepresentation. The remedy left with parties is to **rescind** the contract or sue for restitution but cannot claim the damages.
- [120](d) Agreement in restraint of marriage (Section 26) is an example of **agreement opposed to public policy**. 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.
- [121](b) When both the parties to an agreement are under a mistake to a matter of fact essential to the agreement, there such an agreement is altogether void. A unilateral mistake of fact, that is to say, mistake of one party, does not render the agreement void and the contract remains a valid contract. Thus, in the given case Ms. Ranjani, is mistaken as to the quality of diamond and the jewellers have not been instrumental in creation of such an impression.
Hence, she cannot cancel the contract.
- [122](d) When a person asserts something which is not true, though he believes it to be true, his assertion amounts to misrepresentation. Mis-representation may either be innocent or without any reasonable ground. It is mis-statement of facts by one, which misleads the other who, consequently, can avoid the contract.
- [123](c) Fraud coercion and undue influence affects the free consent of the parties, whereas in competency of the parties does not.
- [124](a) **Rescission of Contract:** When a contract is broken by one party, the other party may treat the contract as rescinded. In such a case he is absolved of all his obligations under the contract and is entitled to compensation for any damages that he might have suffered.
Thus, cancellation of the old contract falls under rescission of the contract.

- [125](b) **Wagering agreement:** An agreement by way of a wager is void. It is an agreement involving payment of a sum of money upon the determination of an uncertain event. The essence of a wager is that each side should stand to win or lose, depending on the way an uncertain event takes place in reference to which the chance is taken and in the occurrence of which neither of the parties has legitimate interest. Thus, option (b) is correct.
- [126](c) Consensus ad-idem means that parties have agreed about the subject matter of the contract at the same time and in the same sense, as evidenced by offer and acceptance.
- [127](b) Persons of unsound mind are idiots, lunatics and drunkerds who cannot enter into a contract, but a lunatic can enter into a valid contract when he is in a sound state of mind.
Thus, option (b) is correct.
- [128](b) Coercion involves the physical force or threat. Hence, threats to commit suicide amounts to coercion.
- [129](b) Where both the parties to the contract are under a mistake i.e. it is a bilateral mistake and as to a matter of fact i.e. something which is essential to the contract, the agreement is void.
- [130](b) Silence as to a matter of fact which is likely to affect the desire of other party is fraud if it deceits the other party.