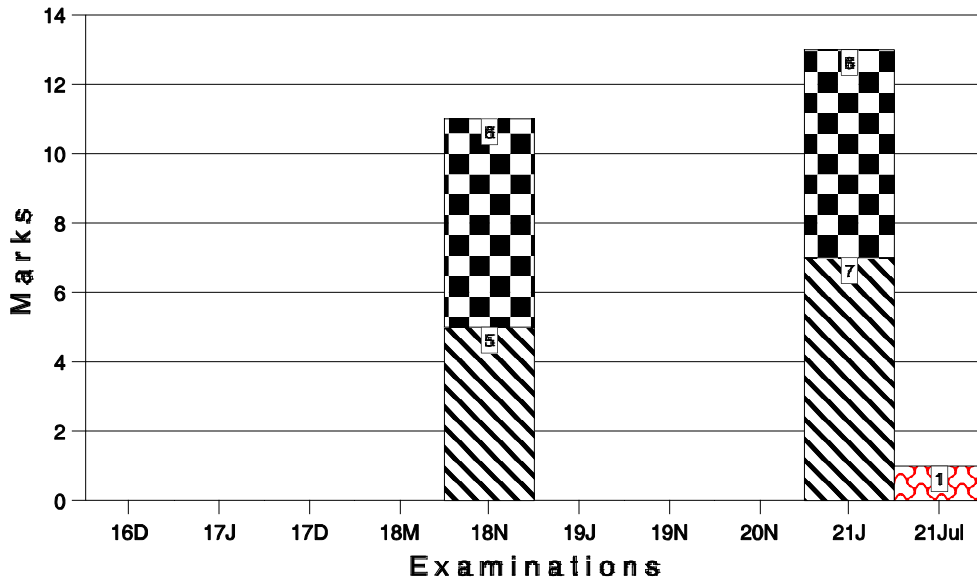
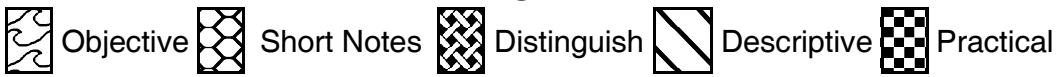


CHAPTER	<h1>The Indian Contract Act, 1872</h1>
<h1>1</h1>	
Unit: 1	Nature of Contract

Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions

Legend



For detailed analysis Login at www.scanneradda.com
 for registration and password see first page of this book.

LAW : INDIAN CONTRACT ACT, 1872

- Section 1** : Short Title
- Section 2** : Interpretation Clause
- Section 3** : Communication, acceptance and revocation of proposals
- Section 4** : A proposal is accepted from the date its acceptance is sent by the post
- Section 5** : A proposal can be revoke at any time before the communication of its acceptance
- Section 6** : Revocation how made
- Section 7** : Acceptance must be absolute
- Section 8** : Acceptance by performing conditions, or receiving consideration
- Section 9** : Promises, express or implied
- Section 10** : Defines the essential elements of a contract, Defines "Consideration"
- Section 11** : Defines requirements for competency for competency of parties to the contract
- Section 12** : What is a sound mind for the purposes of contracting.
- Section 13** : "Consent" defined
- Section 14** : "Free Consent" defined
- Section 15** : "Coercion" defined
- Section 16** : Undue influence" defined
- Section 17** : "Fraud" defined
- Section 18** : Misrepresentation" defined
- Section 19** : "Void ability of agreements without free consent"
- Section 19 A:** Power to set aside contract induced by undue influence
- Section 20** : Agreement void where both parties are under mistake of fact
- Section 21** : Effect of mistakes as to law
- Section 22** : Contract caused by mistake of one party as to matter of fact
- Section 23** : What consideration and objects are lawful, and what not
- Section 24** : Agreements void, if consideration and objects unlawful in part

- Section 25 :** Agreements without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done
- Section 26 :** Agreement in restraint of marriage void
- Section 27 :** Agreement in restraint of trade void
- Section 28 :** Agreements in restraint of legal proceedings void
- Section 29 :** Agreement void for uncertainty
- Section 30 :** Agreement by way of wager, void
- Section 31 :** "Contingent contract" defined
- Section 32 :** Enforcement of contracts contingent on an event happening.
- Section 33 :** Enforcement of contracts contingent on an event not happening
- Section 34 :** When event of which contract is contingent to be deemed impossible, if it is the future conduct of a living person
- Section 35 :** When contracts become void, which are contingent on happening of specified event within fixed time
- Section 36 :** Agreements contingent on impossible events, void
- Section 37 :** Obligation of parties to contracts
- Section 38 :** Effect of refusal to accept offer of performance
- Section 39 :** Effect of refusal of party to perform promise wholly
- Section 40 :** Person by whom promise is to be performed
- Section 41 :** Effect of accepting performance from third person
- Section 42 :** Devolution of joint liability
- Section 43 :** Any one of joint promisors may be compelled to perform
- Section 44 :** Effect of release of one joint promisor
- Section 45 :** Devolution of joint right
- Section 46 :** Time for performance of promise, where no application is to be made and no time is specified
- Section 47 :** Time and place for performance of promise, where time is specified and no application to be made
- Section 48 :** Application for performance on certain day to be at proper time and place
- Section 49 :** Place for performance of promise, where no application to be made and no place fixed for performance

- Section 50 :** Performance in manner or at time prescribed or sanctioned by promisee
- Section 51 :** Promisor not bound to perform unless reciprocal promisee ready and willing to perform
- Section 52 :** Order of performance of reciprocal promisee
- Section 53 :** Liability of party preventing event on which contract is to take effect
- Section 54 :** Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises
- Section 55 :** Effect of failure to perform at fixed time, in contract in which time is essential
- Section 56 :** Agreement to do impossible act
- Section 57 :** Reciprocal promise to do things legal and also other things illegal
- Section 58 :** Alternative promise, one breach being illegal
- Section 59 :** Application of payment where debt to be discharged is indicated
- Section 60 :** Application of payment where debt to be discharged is not indicated
- Section 61 :** Application of payment neither party appropriates
- Section 62 :** Effect of novation, rescission and alteration of contract
- Section 63 :** Promisee may dispense with or remit performance of promise
- Section 64 :** Consequence of rescission of voidable contract
- Section 65 :** Obligation of person who has received advantage under void agreement, or contract that becomes void
- Section 66 :** Mode of communicating or revoking rescission of voidable contract
- Section 67 :** Effect of neglect of promisee to afford promisor reasonable facilities for performance
- Section 68 :** Claim for necessaries supplied to person incapable of contracting, or on his account
- Section 69 :** Reimbursement of person paying money due by another, in payment of which he is interested

Section 70 : Obligation of person enjoying benefit of non - gratuitous act

Section 71 : Responsibility of finder of goods

Section 72 : Liability of person to whom money is paid, or thing delivered, by mistake or under coercion

Section 73 : Compensation for loss or damage caused by breach of contract

Section 74 : Compensation for breach of contract where penalty stipulated for

Section 75 : Party rightfully rescinding contract entitled to compensation.

SELF STUDY QUESTIONS

Q.1: What is a Contract?

Answer:

- Section 2(h) of Indian Contract Act defines contract as:
“An agreement enforceable by law.”
Contract = Agreement + Enforceability by law
- Contract is made by acceptance of one party of an offer made to him by the other party, to do or abstain from doing some act.
Contract = Agreement + Obligation
- **Agreement :** Section 2(e) of Indian Contract Act defines it as,
“Every promise or every set of promise forming the consideration for each other”.
It has two characteristics:
 - (i) Two or more persons are required to make an agreement.
 - (ii) Both parties must agree to same thing in same sense at the same time.
- Section 2(b) of Indian Contract Act defines promise as –
“A proposal (offer) when accepted becomes a promise”.
Agreement = Promise
= Accepted Proposal
= Offer + Acceptance

Q.2: Distinguish between Agreement and Contract.**Answer:**

Basis	Agreement	Contract
Definition	As per Section 2(e) "every promise and every set of promises, forming consideration for each other".	As per Section 2(h) contract is "an agreement enforceable by law".
Meaning	Offer/Proposal + Acceptance.	Accepted proposal/ Agreement + Enforceability by law.
Inter-relation	All agreement are not contracts.	All contracts are agreement.
Binding Nature	No legal obligation	It creates a legal obligation.
Scope	Is a wider term i.e. includes both legal and social agreements.	It only includes agreement enforceable by law.

Q.3: What are the Elements of a Valid Contract?**Answer:**

- Section 10 of Indian Contract Act states, "All agreements are contracts if they are made –
 - (i) by free consent of parties, competent to contract.
 - (ii) for a lawful consideration.
 - (iii) with a lawful object, and
 - (iv) not hereby expressly declared to be "void".

Elements includes:

- (a) **Two Parties:** There should be atleast two parties to make a contract. One cannot contract with himself/herself.

Case law: *Gujarat v/s Ramanlal S & Co.* Property distributed at the time of dissolution of partnership firm to its partners is not sale as one cannot be both buyer as well as seller and partner and partnership are same persons.

(b) **Intention to Create Legal Relationship:**

- Agreements relation to social matters; and
- Domestic arrangements between husband and wife, agreement between family members are not contracts due to absence of legal obligation.

Case Law: *Balfour v/s Balfour*

Facts : Mr. A promised to pay his wife ₹ 30 per month as house hold allowance, later, husband failed to pay the amount.

Decision: Held, the wife could not claim as there was no intention to create legal obligation and thus, it is not enforceable by law.

(c) **Other Formalities to be Complied with in Certain Cases:**

- It must be in writing.
- It must be registered under the law in force.

(d) **Certainty of Meaning:**

- Agreement must not be vague or indefinite.
- It must be certain.

(e) **Possibility of Performance of an Agreement :**

- Agreement which are to do any impossible act cannot be enforced.

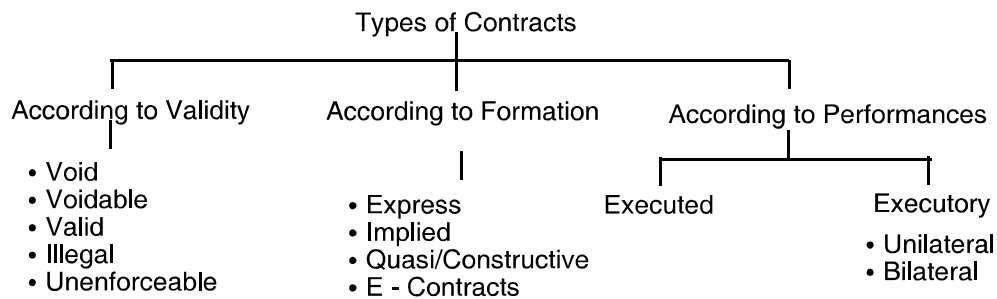
Essential elements of valid contract includes –

- (i) **Offer and Acceptance:** An agreement is the result of offer and acceptance.
- (ii) **Free Consent:** Consent must be free, i.e. it must not be obtained through coercion, undue, influence, fraud, misrepresentation or mistake.
- (iii) **Capacity of the Parties:** Persons competent to contract is who :
 - is of the age of majority i.e. 18 year or above

- is of sound mind i.e. not a lunatic, drunken
 - is not disqualified from contracting i.e. should not be foreign sovereign, alien enemy, convicted, etc.
- (iv) **Consideration:**
- It means something in return i.e. *quid pro quo*.
 - It can be either any right or interest or profit, etc.
- (v) **Lawful Consideration and Object:**
- It should not be prohibited by law i.e. it should not defeat the provisions of law in force.
- (vi) **Not Expressly Declared to be Void:**
- Void agreement are not enforceable as they are without any legal effects.
 - Agreement must not be illegal.

Q.4: What are the various Types of Contracts?

Answer:



Q.5: What is the Definition of Void Contract?

Answer:

- It is not a contract at all as it is without legal effect.
- Section 2(j) of Indian Contract Act, 1872 defines it as:
“A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable”.

Voidable Contracts:

- It is an agreement which is binding and enforceable but due to lack of one or more essentials of a valid contract, it may be repudiated.

- Section 2(i) of the Indian Contract Act, 1872 defines it as –
 “All agreements which are enforceable by law at the option of any one of the parties, and other party has no such option, are known as voidable contracts”.

Q.6: Distinguish between Void and Voidable Contracts.

Answer:

Void Contracts	Voidable Contracts
1. Section 2(j): Contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.	1. Section 2(i): It may be repudiated at the will of one or more parties but not at the will of other or others.
2. Not enforceable by any party.	2. Enforceable at the desire of the affected party.
3. It is void from beginning to end.	3. It is valid in the beginning but is subsequently declared void.
4. Agreement is void only if it is made with the person having no contractual capacity, without consideration etc.	4. Agreement is voidable when its consent is based on coercion, fraud, etc.
5. Here the contract cannot be executed due to change in circumstances or in law the agreement is void.	5. The contract can be executed if it is declared valid by the affected party.

Valid Contract = Agreement + Enforceable by law.

Q.7: What are Quasi Contracts and E-Contracts?

Answer:

Quasi Contract:

- An obligation imposed by law upon a person for the benefit of another even in the absence of a contract.
- It is based on principles of equity, justice and good conscience.

E-Contracts:

- Contracts entered into through electronic mode including e-mails.
- These contracts are also called as Cyber Contracts, mouse click contracts, electronic data interchange (EDI) contracts.

Q.8: What is the Definition of Offer/Proposal Under the Indian Contract Act, 1872 ?**Answer:****Proposal/Offer [Section 2(a) of the Indian Contract Act, 1872]:**

- It refers to a “proposal” by one party to another to enter into a legally binding agreement with him.
- Section 2(a) defines it as –
“When one party signifies to another his willingness to do or abstain from doing something, with a view to obtain the assent of that other to such act or abstinence, he is said to make a proposal”.

Q.9: Describe the Essentials of Proposal/ Offer.**Answer:**

- Person making promise is called ‘promisor’ and to whom it is made i.e. who accept the promise is called ‘acceptor’ or ‘promisee’.
- For entering a valid contract expression of willingness must be made to obtain the acceptance of the other.
- An offer can be for ‘doing’ something i.e. (positive) or ‘not doing’ some thing i.e. (negative).

Q.10: Describe the Essentials of a Valid Offer.**Answer:**

- It must be capable of creating legal relations.
- It must be certain definite and not vague.
- It must be expressed or implied.
- It must be distinguished from an invitation to offer.
- It may be specific or general.
- It must be communicated to the offeree [Case Law: *Lalman Shukla v/s Gauri Dutt*].

- It must be made with a view to obtain the consent of the offeree.
- It may be conditional.
- It should not contain such terms, the non compliance of which would amount to acceptance.
- A statement of price is not an offer.

Q.11: Distinguish between offer and invitation to make an offer.

Answer:

- Offer is made to get the consent of other party.
- Invitation to offer is made to initiate the offer according to the invitation.
- Offer is made with an object to make a contract.
- Invitation to offer does not result in any contract formation.
- **Example of invitation to offer:**
 - (i) Display of goods in a shop window with prices marked upon them.
 - (ii) Price catalogues, etc.
- Offer is different from mere statement of intention. Example - Announcement of a coming auction sales.

Relevant Case Law:

Harris v/s Nickerson

- When particular goods are advertised, for sale by auction, the auctioneer does not contract with anyone who attends the sale and is intending to purchase those goods when they are actually put up for sale.
- Offer is different from mere communication of information in the course of negotiation.

Example - Price statement considering negotiation.

Relevant Case Law:

Harvey V/s Facey

- Only a statement of lowest price at which the vendor would sell, contains no implied contract to sell at that price to the person making the inquiry.

Q.12: Define the term of Acceptance and Discuss the Legal Provisions relating to communication of Acceptance.

Answer:

- It means consent to the offer.
- Section 2(b) of the Contract Act defines it as “A proposal is said to be accepted, when the person to whom the proposal (offer) is made signifies his assent thereto”.

Relationship between Offer and Acceptance:

“Acceptance is to offer what a lighted match is to a train of gun powder”.

– Sir William Anson

- It means once acceptance is done, the same cannot be undone, i.e. it cannot be revoked.
- Offer remains offer until accepted, after acceptance it becomes a contract.

Q.13: When is the Communication of an offer and Acceptance through Post Completed.

Answer:

Communication of Offer and Acceptance:

1. Communication of offer:

- It is complete when it comes to the knowledge of the person to whom it is made.
- It may be communicated either by words spoken or written or may be inferred from conduct of parties.
- If made by post, it will be completed, when the letter containing offer reached the intended person.

2. Communication of Acceptance:

- **It is complete:**

As against the proposer: When it is put in the course of transmission to him so as to be out of power of the acceptor to withdraw the same.

As against the acceptor: When it comes to the knowledge of the proposer.

- **If sent by post, it is complete:**

As against the proposer: When the letter of acceptance is posted.

As against the acceptor: When the letter reaches the proposer.

Q.14: Write the short note of Modes of Acceptance.

Answer:

1. **By act** i.e., by any expression of words whether written or oral.
2. **By omission to do something** which is conveyed by conduct or by forbearance on part of one party to convey his/her willingness.
3. **By conduct** i.e. conveying acceptance by his/her conduct.

Example - Act of boarding a bus, etc., it must be noted that merely mental unilateral assent in one's own thoughts do not amount to communication.

Q.15: Describe the Special Condition of Communication.

Answer:

- Situation where agreement entered having special conditions which are conveyed and accepted tacitly or without even realising it.
- If a passenger receives a railway ticket with the words printed, "this ticket is issued subject to the notices, regulations and conditions in the current time tables of the railway". He is bound to accept the terms and conditions whether he has read them or not. [**Case Laws:** *Mukul Dutta v/s Indian Airlines*; *Lily white v/s R Mannuswamy*]
- If no reasonable notice on the face of document contains special conditions, then acceptor will not incur any contractual obligation. [**Case Law:** *Raipur transport co. v/s Ghanshyam*]

Q.16: Write Short Note on Communication of Performance.

Answer:

Acceptance of the proposal from view point of

- (a) **Proposer:** When acceptance is put in the course of transmission, out of the power of acceptor.

- (b) **Acceptor:** When it comes to the knowledge of the proposer.
If sent by post, it is complete
As against the proposer : When the letter of acceptance is posted.
As against the Acceptor: When the letter reaches the proposer.

Q.17: What do you understand by Revocation of offer and Acceptance? Describe the Condition of Communication of Revocation.

Answer:

Revocation of Offer:

- It means withdrawal or taking back of an offer.
- It can be revoked anytime before its acceptance.

Revocation of Acceptance:

- It means withdrawal or taking back of acceptance by the acceptor.
- It may be revoked at any time before its communication is completed as against the acceptor, but not afterwards.

Communication of Revocation:

- It is complete –
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 power of the person who makes it.
- **By Post : Communication of offer when complete :** When offer comes into the knowledge of offeree.
- **Communication of acceptance when complete:** When offeree or acceptor posts the letter of acceptance and it becomes out of power of acceptor to withdraw it.
As against the person to whom it is made: When it comes to his knowledge.

Q.18: What do you mean by Lapse of Offer and which ways there can be Lapse of Offer ?

Answer:

- It means end of an offer.
- Offer should be accepted before it lapses.
- **Offer may lapse in following ways:**
 - (a) By communication of notice of revocation
 - (b) By lapse of time [Case Law : *Ramsgate victoria Hotel v/s Montifiore*]
 - (c) By failure to accept condition precedent
 - (d) By death or insanity of the offeror
 - (e) By counter offer by the offeree
 - (f) By not accepting the offer in prescribed mode
 - (g) By rejection of offer by the offeree
 - (h) By change in law or circumstances.

SHORT PRACTICE QUESTIONS

1. What do you understand by 'contract'. Enumerate its elements.
2. Write short notes on the following:
 - (a) Voidable contract
 - (b) Implied Contract
 - (c) Cross offer
 - (d) Agreement
 - (e) Revocation to offer and acceptance.
3. Differentiate between :
 - (a) Offer and Invitation to offer
 - (b) Void and Voidable contract.

PAST YEAR QUESTIONS AND ANSWERS**OBJECTIVE QUESTIONS**

1994 - Nov [1] State with reasons whether the following statement is True or False:

- (i) A proposal may be revoked by the proposer before the posting of the letter of acceptance by the acceptor. (2 marks)

Answer:

Correct:

The proposer can withdraw the offer before the posting of the letter by the acceptor but not afterwards. Sec. 5 of the Indian Contract Act, states that a proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. Acceptance of the proposal is complete only after the letter of acceptance is put in the letter box and not before.

1995 - May [1] State with reasons whether the following statement is Correct or Incorrect:

- (i) 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.
- (iv) Counter offer to an offer does not make the original offer lapse. (2 marks each)

Answer:

(i) Correct:

As per the provisions of the Indian Contract Act, as contained in Section 8, when the performance of the conditions of a proposal takes place, or some required act is done, it shall constitute an acceptance to the proposal.

(iv) Incorrect:

In order to make a binding contract, there must be an absolute and unconditional acceptance of terms of the offer. A counter offer is a rejection of the original offer and constitute a new offer. Therefore, the original offer shall lapse on making a counter offer by the other party.

1995 - Nov [1] State with reasons whether the following statement is True or False:

- (i) Acceptance can be made even without the knowledge of the offer. (2 marks)

Answer:

Incorrect:

In order to constitute a contract, offeree must have the knowledge of the offer, and there can be no acceptance without it. (Lalman v. Gauri Dutt, 1913.)

1996 - May [1] State with reasons whether the following statement is True or False:

- (i) An agreement with intention to create legal liability is not enforceable in law. (2 marks)

Answer:

Incorrect:

Section 2(h) of the Indian Contract Act, 1872 requires an agreement to be worthy of being enforceable by law. The parties to a contract must have the intention to impose a legal duty on the promisor to fulfill the promise and bestow a legal right on the promisee to claim its fulfillment. An agreement without intention to create legal obligation is no contract.

1997 - May [1] State with reasons whether the following statement is True or False:

- (i) If the offeree does not accept the offer according to the mode prescribed by the offeror, the offer does not lapse automatically. (2 marks)

Answer:

Correct:

An offer must be accepted in the manner prescribed by the offeror. Where it is not so made, the offeror can treat it as lapsed, but he should inform the offeree about his decision. If he does not inform the offeree about his rejection, the offer does not stand lapsed. (Felthouse v. Bindley, 1862).

1998 - May [1] State with reasons whether the following statement is correct or incorrect:

- (i) All kinds of obligations created between the parties form part of the contracts.
- (iii) A contract to purchase a black horse, which was dead at the time of bargain, is voidable. (2 marks each)

Answer:

(i) Incorrect:

An agreement should give rise to a legal obligation i.e. obligation which is enforceable at law [Section 2(h)]. Agreement which give rise only to social, moral or domestic cannot be termed as contracts. [Balfour v. Balfour 1919].

(iii) Incorrect:

According the Section 20 of the Indian Contract Act, where both the parties to an agreement are under a mistake as to a matter of fact essential to agreement, the agreement is void. Since, neither party was aware of the fact that the horse was dead at the time of bargain, the contract is void, and not voidable.

1998 - Nov [1] State with reasons whether the following statement is Correct or incorrect:

- (i) Communication of an offer is complete when the letter is posted though it has not reached the person to whom the offer is made. (2 marks)

Answer:

Incorrect:

Communication of an offer is complete when it comes to the knowledge of the person to whom it is made (Section 4 of the Indian Contract Act, 1872). When the letter containing offer is posted, the offer will be complete only when the letter reaches the person to whom it is made.

1999 - May [1] State with reasons whether the following statement is Correct or Incorrect:

- (i) Where the mode of acceptance is prescribed in the proposal, it need not be accepted in that manner. (2 marks)

Answer:

Incorrect:

Where the mode of acceptance is prescribed in the proposal, it must be accepted in that manner. Section 7(2) of the Indian Contract Act, 1872 lays down that if the proposal prescribes the manner of acceptance and the acceptance is not made accordingly, the proposer may within a reasonable time, insist to follow the mode of acceptance prescribed and not otherwise.

1999 - Nov [1] State with reasons whether the following statement are correct or incorrect:

- (i) A proposal when accepted becomes a contract.
(ii) An illegal contract is fatal to the main contract, but not to collateral transactions. (2 marks each)

Answer:

(i) Incorrect:

Section 2(b) of the Indian Contract Act, 1872, which defines the term 'acceptance' state that proposal when accepted becomes a promise. Thus, acceptance creates the promise and not a contract because to create a contract, the element of enforceability is necessary.

(ii) Incorrect:

An illegal agreement is one, which has been expressly declared as the unlawful. Such an agreement is a nullity and hence cannot be enforced. When an agreement is illegal, collateral agreements to such illegal agreements are also illegal. Hence the question of their enforcement does not arise.

2000 - May [1] State with reasons in brief whether the following statement is correct or Incorrect:

- (i) Every agreement is necessarily regarded a contract. (2 marks)

Answer:

The statement is incorrect:

As per Section 10 of the Indian Contract Act, 1872, an agreement is regarded as a contract when it is enforceable by law. In other words, an agreement that the law will enforce is a contract. Hence, every agreement cannot essentially be regarded as a contract, but every contract is an agreement.

2001 - May [1] State with reasons in brief whether the following statement are correct or incorrect:

- (i) The proposal should always be communicated to the person to whom it is made.
(ii) A Tender does not amount to an offer. (2 marks each)

Answer:

(i) Correct:

The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made (Section 4 of Indian Contract Act, 1872).

(ii) Correct:

A tender is in the same category as a quotation of price. It is not an offer. It is merely an invitation to an offer. When a tender is approved, it is converted into standing offer. A contract arises only when an order is placed on the basis of a tender.

2001 - Nov [1] State with reasons in brief whether the following statement is correct or incorrect:

- (i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is void. (2 marks)

Answer:

Incorrect:

According to Section 2(i) of the Indian Contract Act, 1872, an agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract and not void.

2002 - May [1] State with reasons in brief whether the following statement is correct or incorrect:

- (i) Communication of acceptance of an offer is complete as against the acceptor the moment it comes to the knowledge of the offeror. (2 marks)

Answer:

Correct:

The communication of acceptance is complete as against the acceptor when it comes to the knowledge of the proposer since it will then be out of the power of the acceptor to revoke. (Section 4 para 2 of the Indian Contract Act, 1872.)

2002 - Nov [1] State with reasons in brief whether the following statement is correct or incorrect:

- (i) Offer may be revoked after the letter of acceptance is posted by acceptor. (2 marks)

Answer:

Incorrect:

A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards (Section 5 of the Indian Contract Act). The Communication of acceptance is complete as against the proposer when the letter of acceptance is posted (Section 4 of the Indian Contract Act). As the letter of acceptance is posted, offer cannot be revoked in this case.

2.24

■ **Solved Scanner CA Foundation Paper - 2A (New Syllabus)**

2021 - July [1] {C} (a) State with reason(s) whether the following agreements are valid or void:

- (iii) X offers to sell his Maruti Car to Y. Y believes that X has only Wagon R Car but agrees to buy it. (1 mark)

Answer:

Void: Consent is one of the essential elements of a valid contract. If there is no consent, there is no contract. TWO or more persons are said to consent when they agree upon the same thing in the same sense i.e. they are at *consensus-ad- idem*. In this case agreement is void, since, parties have not understood same thing in same sense.

SHORT NOTES

1995 - Nov [7] Write short note on the following:

- (b) Voidable Agreement. (5 marks)

Answer:

Voidable Agreement:

A contract the consent to which is caused by coercion, undue influence, fraud or misrepresentation is voidable at the option of the party whose consent was so caused (*Bishandeo Narain v. Seogero Rai AIR 1951 SC 280*).

Thus, the aggrieved party has the option either to avoid the contract or alternatively, to affirm it. The burden of proving the said elements is on the plaintiff [*Hims Enterprise v. Ishak Bin Subari (1992) 1 CLJ 132*]. He can exercise his option only once. If the contract is affirmed, it becomes enforceable and if avoided it becomes void [*East India Commercial Company v. Collector of Customs AIR 1962 SC 1893*]. It continues to be valid and enforceable till it is repudiated by the aggrieved party. The application of option by aggrieved party is subject to certain restrictions:

1. When the party, aware of his right to rescind, affirms the contract, the right of rescission is lost.
2. When a party at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor.

3. Rescission must be claimed within reasonable time.
4. The right of rescission is lost when a third party, acting in good faith, acquires right in the subject matter of the contract.
5. Rescission is subject to the condition that the party seeking rescission must be in position to restore the benefits he may have obtained under the contract.

Section 19A deals with the contracts affected by undue influence which have been declared as voidable at the option of aggrieved party. Such contracts may be set aside absolutely or partly. Court enjoys discretion.

1996 - Nov [7] Write short note on the following:

(a) Acceptance by conduct.

(5 marks)

Answer:

Acceptance by Conduct: Section 2(b) of the Indian Contract Act states that when a person to whom a promise is made, signifies his assent thereto, the proposal is said to have been accepted. The assent means that acceptance has been signified either in writing or by word of mouth or by performance of the act. Thus, acceptance may be in writing, oral or by conduct.

Thus, 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. To illustrate it, a tradesman receives an order from a customer and executes it by sending the goods, the customer's order for goods constitute the offer which has been accepted by the tradesman subsequently by sending the goods. This example is a case of acceptance by conduct.

In fact, where the offeror invites acceptance by the performance of the act, the performance of the act becomes a valid acceptance of the offer. On this account it is provided in Section 8 that the performance of the condition or conditions of a proposal or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, constitutes an acceptance of the proposal. A bus conductor shouting that the bus is going to a particular place invites passengers to board the bus. A passenger boards the bus and pays the fare. Boarding and paying the fare amounts to acceptance by conduct on the passenger.

But performance of the act without knowledge of the offer, does not amount to a valid acceptance. *Lalman Shukla v. Gourie Dutt and Crown v. Clarke* are the cases on this point.

1998 - May [7] Write short note on the following:

(a) Kinds of offer.

(2 marks)

Answer:

The kinds of offer may be discussed as follow:

- (i) **General Offer:** It is an offer made to the public at large and hence anyone can accept and do the desired act (*Carlill v. Carbolic Smoke Ball Co. 1893*). For instance, an offer to give reward to any body who finds a lost dog is a general offer. Although a general offer is made to the public at large, the contract is concluded only with that person who acts upon the terms of the offer.
- (ii) **Specific Offer:** When the offer is made to a specific or an ascertained person it is known as a specific offer. Specific offer can be accepted only by that specified person to whom the offer has been made (*Bottom v. Johns*).
- (iii) **Cross Offer:** When two parties exchange identical offers in ignorance at the time of each others offer, the offers are called Cross Offers. There is no binding contract in such a case because offer made by a person can not be treated as an acceptance of the another's offer [*Tinn v. Hoffman and Co. (1873) 29 L.T. 271*].
- (iv) **Counter Offer:** When the offeree offers to qualified acceptance at the offer subject to modifications and variations in the terms of original offer, he is said to have made a counter offer. Counter offer amounts to rejection of the original offer (*Hyde B. v. Wrench 1840*).
- (v) **Standing Open or Continuing Offer:** An offer which is allowed to remain open for acceptance over a period of time is known as a standing, open or continuing offer. Tender for the supply of goods is a kind of standing offer.

1999 - May [7] Write short note on the following:

(c) Executed and executory contracts.

(2 marks)

Answer:

Executed and Executory Contracts: On the basis of execution or performance, contracts may be classified into two groups i.e. executed and executory.

Executed contract is a contract where both the parties have fulfilled their respective terms and obligations, and where in nothing remains to be done by either party. Thus, executed is a contract which has reached to its maturity of performance and completion of contractual obligations.

On the other hand executory contract is a contract where both the parties have still to perform their respective contracted obligations. In such contracts, some act remains to be performed at a future date.

1999 - Nov [5] Write short note on the following:

(ii) Offer and invitation to offer.

(2 marks)

Answer:

Offer and Invitation to Offer: When one person signifies to another is willingness to do or to obtain from doing anything with a view to obtaining the asset of that other to such act or abstinence, he is said to make an offer or proposal [Section 2(a) Indian Contract Act, 1872]. A valid offer must meet the tests of (1) contractual intention of definiteness and (2) communication to offeree.

Offer is different from an invitation to offer. In an offeror expresses his willingness to contract in terms of his offer with such finality that the only thing to be awaited is the assent of the other party. Where a party without expressing is final willingness, proposes certain terms on which is willing to negotiate, he does not make an offer. He only invites the other party to make an offer on those terms. An invitation to traders to make tenders, an invitation by a company to the public to subscribe its shares, display of goods for sale in shop windows, auction sales, quotation of prices in reply to a query, are all examples of invitation to offer - buy or sell as the case may be.

2001 - May [7] Write short note on the following:

(c) Void Contracts.

(5 marks)

Answer:

Void Contracts (read as void agreements): An agreement which is not enforceable by law is void. Such an agreement has some legal defect and therefore cannot be enforced in a Court of Law. Section 2(i) defines a void contract as, "a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable."

Thus, a void agreement does not have any legal affect i.e., the party not performing his part of the promise under a void contract cannot be sued in a law court, rather does not have any legal obligations.

Examples of Void Contracts:

1. A contract vitiated by mistake as to fact and both the parties are mistaken as to the identity, existence of the subject matter of the contract etc. (Section 20)
2. Where the consideration or object of the contract is unlawful (Section 23).
3. Where the contract is not supported by consideration.
4. Agreements declared expressly void by the Contract Act, such as:
 - agreement in restraint of marriage (Section 26)
 - agreement in restraint of trade (Section 27)
 - agreement in restraint of legal proceedings (Section 28)
 - agreement by way of wager (Section 30).

There may be cases of such contracts where in the beginning they are valid but later on become void due to impossibility of performance due to operation of law.

2001 - Nov [5] Write short note on the following:

(a) When is the communication of an offer and acceptance through post complete? (2 marks)

Answer:

Communication of an offer is complete through post when it comes to the knowledge of the person to whom it is made i.e., when the letter containing the offer reaches the offeree. (Section 4 Indian Contract Act, 1972).

Communication of acceptance has two aspects:

- (i) As against the proposer.
- (ii) As against the acceptor.

Against the proposer, the communication of acceptance is complete when it is put in the course of transmission to him, so as to be out of the prior of the acceptor, but it shall be complete as against the acceptor when it comes to the knowledge of the proposer. e.g. A proposer by letter to sell a house to B at a certain price. B accepts A's proposal by a letter sent by post. The communication of acceptance is complete;

- (a) As against A, when the letter is posted by B.
- (b) As against B, when the letter is received by A.

Thus, an offer can be revoked till a duly addressed letter of acceptance is put in the course of transmission and not thereafter. It is immaterial whether the letter of acceptance reaches the other party or is lost in transit. The acceptance can, however, be revoked till the letter of acceptance actually reaches the offeror and he learns of its contents.

2002 - May [2] Write short note on the following:

- (a) Executed and Executory contracts.

(2 marks)

Answer:

An executed contract is one in which both the parties have performed their respective obligations. In other words, if the consideration for the performance of obligation is paid, it is a contract for executed consideration. For example, A agrees to write an article to B for ₹ 5,000. When A writes the article and B pays the price, i.e. when both the parties have performed their obligations, the contract is called an 'Executed' Contract.

An executory contract is one in which both the parties have not yet performed their obligations. In other words, if the consideration to the performance of obligations is still to be payable, the contract is known as contract for executory consideration. Thus, in the above example the contract is executory if A has not yet written the article and B has not paid the price.

2002 - Nov [2] Write short note on the following:

(a) Rules regarding acceptance.

(5 marks)

Answer:

Rules relating to Acceptance of Offer:

The following are the Rules relating to Acceptance of Offer:

- (i) **Absolute and Unqualified:** As per Section 7 of the Indian Contract Act, 1872, an acceptance is valid when it is absolute and unqualified and is expressed in some unusual and reasonable manner, unless the proposal prescribed the manner in which it is to be accepted.
- (ii) **Communicated to Offeror:** An acceptance with a variation is no acceptance. It is simply a counter proposal, which shall have to be accepted by the original proposer before a contract can be deemed to have come into existence. A counter proposal is the offer by the offeree and can result in a contract only if the other party accepts it. It must further be remembered that an acceptance must specifically relate to the offer made. An offer made by the intended offeree without the knowledge that an offer has been made to him cannot be deemed as an acceptance thereto.
- (iii) **Mode Prescribed:** Where the mode of acceptance is prescribed in the proposal, it must be accepted in that manner. But if the proposer does not insist on the proposal being accepted in the manner prescribed after it has been accepted otherwise, i.e. not in the prescribed manner, the proposer is presumed to have consented to the acceptance.
- (iv) **Reasonable Time:** Acceptance must be given within a reasonable time and before the offer lapses.
- (v) **Mere Silence is not Acceptance:** Acceptance may be expressed or implied. Acceptance must be given after knowing the offer. Acceptance must be given by the person to whom the proposal is made.
- (vi) **By Conduct Also:** The assent mean that acceptance has been signified either in writing or by word of mouth or by performance of some act. Therefore, when, 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.

DISTINGUISH BETWEEN

1995 - Nov [4] (b) Distinguish between :

(ii) General offer and Specific offer.

(5 marks)

Answer:

General and Specific Offer: When offer is made to a definite person, it is known as specific offer and such offers can be accepted only by that specified person (*Bottom v. Johns*). On the other hand general offer is an offer made to the public in general and hence anyone can accept and do the desired act. In *Carlill v. Carbolic Smoke Ball Co.* (1893) The Court accepted that an offer could be made to the world at large.

Section 8 of the Indian Contract Act points out that performance of the conditions of a proposal is an acceptance of the proposal.

Where a general offer is of continuing nature, it will be open for acceptance to any number of persons until it is retracted.

1996 - May [4] (b) Distinguish between :

(ii) Offer and invitation to an offer.

(2 marks)

Answer:

Offer and Invitation to an Offer: An offer is the final expression of willingness by the offeror to be bound by his offer, should the other party choose to accept it. On the other hand offers made with the intention to negotiate or offers to receive offers are known as invitation to offer. Thus, where a party without expressing his final willingness proposes certain terms on which he is willing to negotiate he does not make an offer, but only invites the other party to make an offer on those terms.

In order to ascertain whether a particular statement amounts to an offer or an invitation to offer, the test would be intention with which such statement is made. The mere statement of the lowest price which the vendor would sell contains no implied contract to sell at that price to the person making the inquiry.

Examples: Quotations, Catalogues and Price lists cannot be considered as offers.

1996 - Nov [6] (b) Distinguish between :

(i) Void and Voidable Contract.

(5 marks)

Answer:

Void and Voidable Contracts: The two can be distinguished on the basis of :

1. **Definition:** A contract which ceases to be enforceable by law become void when it ceases to be enforceable. A voidable contract is an agreement which is enforceable by law at the option of one or more of the parties thereon, but not at the option of other or others.
2. **Nature:** A void contract is valid when it is made but subsequently becomes unenforceable on certain grounds such as supervening impossibility, subsequent illegality, repudiation of a voidable contract, a contingent contract depending upon happening of a uncertain event when occurrence of such event becomes impossible. A voidable contract on the other hand, is voidable at the option of the aggrieved party.
3. **Rights:** A void contract does not provide any legal remedy for the parties to the contract. They even cannot get it performed when they so desire. The aggrieved party in a voidable contract gets a right to rescind the contract. When such a party rescinds it, the contract becomes void. In case the aggrieved party does not rescind the contract, within a reasonable time, the contract remains valid.
4. In Case of void agreements, restitutions is always allowed unless the illegality on the void nature of the agreement was known to the parties at the time of making of the agreement. In voidable contracts, when they are rescinded benefit will be restored as far as possible.
5. A voidable contract does not affect the collateral transactions. But where the agreements is void on account of illegality the collateral transactions will also become void.

1997 - May [4] (b) Distinguish between :

(ii) Void agreement and an Illegal agreement.

(2 marks)

Answer:

DISTINCTION BETWEEN VOID AND ILLEGAL AGREEMENTS: According to Section 2(g) of the Indian Contract Act, 1872, an agreement not enforceable by law is void. Both the agreements are not enforceable by the law courts. The points of distinction, however, of both these agreements can be made on the following basis:

1. **Scope:** An illegal agreement is always void while a void agreement is not always illegal being void due to some other factor e.g., an agreement in which the terms of the agreement are uncertain.
2. **Effect of collateral transactions:** If an agreement is merely void and not illegal, the collateral transaction to the agreement may be enforced for execution, but collateral transactions of an illegal agreement cannot be enforced since they are also declared to be illegal.
3. **Punishment:** Illegal agreements are punishable under the Indian law, while void agreements are not.
4. **Void-ab-initio:** Illegal agreements are void from the very beginning, but sometimes void agreements are not. Sometimes a valid contract may be subsequently void e.g. doctrine of supervening impossibility may apply.

2000 - Nov [4] (b) Distinguish between :

- (i) Void and Illegal agreements.

(5 marks)

Answer:

Please refer on 1997 - May [4] (b) (ii) page no. 32

2000 - Nov [6] (b) Distinguish between :

- (i) Wagering agreements and contingent contracts.

(5 marks)

Answer:

Wagering Agreements and Contingent Contracts: The two can be distinguished below:

1. A wagering agreement is a promise to give money or moneys 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 contract does or does not happen.
2. A wagering agreement consists of reciprocal promises, while a contingent contract may not contain reciprocal promises.

2.34

■ **Solved Scanner CA Foundation Paper - 2A (New Syllabus)**

3. In a wagering agreement the uncertain event is the sole determining factor, while in a contingent contract the event is only collateral.
4. A wagering agreement is essentially of a contingent nature whereas a contingent contract may not be of a contingent nature.
5. A wagering agreement is void, while a contingent contract is valid.
6. 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 wager is a game of chance, but this is not so in case of a contingent contract.

2001 - Nov [6] (b) Distinguish between :

- (ii) Offer and an Invitation to Offer.

(5 marks)

Answer:

Offer and an Invitation to Offer: When a person communicates to another his willingness to do or abstain from doing something with a view to obtain the assent of that other person towards the act or abstinence, the person making the communication is said to be making an offer.

An invitation to offer is a mere statement of intention inviting a person to come and negotiate. Therefore, it is prelude to an offer. It is devoid of any legal effects., e.g.,

- (a) goods displayed in show window with price tags thereon.
- (b) Prospectus issued by a company inviting the public to apply for shares.
- (c) Price lists or catalogues.
- (d) Circulars sent to potential customers.
- (e) Tender notice.
- (f) Auction notice.

DESCRIPTIVE QUESTION

1994 - Nov [2] Comment on the following:

- (a) Acceptance is to a proposal what a lighted match is to a train of gun-powder. (5 marks)

Answer:

Offer is lighted match while acceptance is a train of gun powder: It is a cardinal rule as regards to acceptance that once the acceptance has been made to an offer the contract is complete. According to Sir William Anson "Acceptance is to offer what a lighted match is to a train of gun powder". The effect is that the acceptance produces something which can not be recalled or undone. But the man who led the train may remove it before the match is applied. So an offer may lapse for want of acceptance, or be revoked before acceptance. Acceptance converts the offer into a promise and then it is too late to revoke it. This means that as soon as a lighted match is brought in contact with a train of Gun Powder the gun powder explodes. Offer is compared to gun powder and acceptance to a lighted match. Gun Powder (i.e. The Offer) by itself is inert, it is the lighted match (i.e., the acceptance) which causes the gun powder to explode. The meaning is that an offer by itself cannot create legal relations between the parties, but as soon as it is accepted by the offeree, legal relationship is established between the parties. Once an offer is accepted it becomes a promise and cannot be revoked or withdrawn.

1994 - Nov [5] (b) What agreements are expressly declared void by the Indian Contract Act? (5 marks)

Answer:

Void contract, in effect, is no contract at all. Usually the word void means not binding in law. As such void contract means a contract which has no legal effect at all, it is a nullity and will not create any legal rights between the parties. A contract may be void from its very inception or it may become void subsequently. The Indian Contract Act specifically declares the followings agreements as void:

1. Agreements entered by parties incompetent to contract such as minor, lunatic, persons of unsound mind, alien enemy, sovereign States, Ambassadors and Diplomatic Couriers.
2. Agreements with an unlawful consideration and object in ful or in part (Sec. 23).

3. Agreements made under a mutual mistake of fact by both the parties to the contract (Sec. 22).
4. Agreements without consideration (Sec. 25).
5. Agreements in restraint of marriage, trade, or legal proceedings etc.
6. Agreements the meaning of which is not certain. But where the meaning thereof is capable of being made certain, the agreement shall be a valid one (Sec. 29).
7. Wagering agreements i.e., agreements involving a payment of a sum of money upon the determination of an uncertain event and where none of the parties to the agreement has a legitimate interest in the subject matter of the agreement.

1996 - May [5] (a) What are the essential elements of a valid contract?

(5 marks)

Answer:

The examination of the provisions of **Section 10 of the Indian Contract Act, 1872** disclose the following essentials of a valid contract:

1. There must be an agreement between the parties to the contract with an intention to create legal relationship. An agreement consists of offer and acceptance, which is enforceable by law.
2. There must be consideration and its object both must be lawful and not prohibited by law.
3. The parties must have capacity to make a valid contract so as to be not affected by the provisions of Section 11.
4. The consent of the parties must be free so as not to be covered by the provisions of Section 14.
5. The agreement must not be one which the law declares to be either illegal or void.
6. The agreement must be in writing and registered if so required by the law for the time being in force.

1996 - Nov [2] Comment on the following:

(a) A proposal can be revoked otherwise than by communication.

(5 marks)

Answer:

A proposal can be revoked otherwise than by communication: A proposal may be revoked not only by the communication of the notice of revocation by the proposer or by his authorised agent to the other party but also:

1. **By lapse of time fixed for acceptance or lapse of reasonable time, if not acceptance has been specified [Section 6(2)]:** A proposer is not bound to keep his proposal open indefinitely, the reason being that it would amount to a promise without consideration and such a promise is unenforceable. (*Ramsgate Victoria Hotel Co. Vs. Montefiore*).
2. **By the failure of the acceptor to fulfil a condition precedent to acceptance:** Section 6 of the Act contains the law on this subject. A proposal is also revoked by the failure of the acceptor to fulfil condition precedent to acceptance. e.g. A agrees to execute a certain document in favour of B, if B deposits ₹ 5,000/- as earnest money.
3. **By the death of insanity of the proposer:** Death or insanity of the proposer under the law operates as the revocation of the proposal, only if the fact of the death or insanity has come to the knowledge of the acceptor.

1997 - May [5] Answer in brief on the following:

(a) What is an illegal agreement? State the effects of illegality. (5 marks)

Answer:

The illegal agreements are those which involve committing of a crime or act of moral turpitude or acts opposed to public morals. An illegal agreement is not only void as between the immediate parties; but its collateral transactions are also illegal.

Effects of illegality: Generally in law, no action is allowed on an illegal agreement so that people will be discouraged from entering into an illegal agreement. Thus, no action can be taken for recovery of money paid or property transferred under an illegal agreement and for breach of illegal agreement.

2.38

■ **Solved Scanner CA Foundation Paper - 2A (New Syllabus)**

In case of equal guilt in an illegal agreement, the position of defendant is better than that of plaintiff. However, the plaintiff may sue on an illegal agreement than where he was induced to enter into an agreement by fraud or undue influence and where an essential part of the agreement has not been carried out and he is truly repentant.

1997 - Nov [2] Comment on the following:

(b) Counter offer to an offer lapses the offer.

(5 marks)

Answer:

When the offeree offers to qualified acceptance of the offer subject to modifications and variations in the terms of original offer, he is said to have made a counter offer. Counter offer amounts to rejection of the original offer. (*Hyde v. Wrench, 1840*)

The rule is based on the principle that unless the parties have consensus-ad-idem i.e. are of one mind there cannot be agreement between them. The rule is in itself obviously necessary for words of acceptance which do not correspond to the proposal actually made are not really an acceptance of anything and therefore, can amount to nothing more than a new proposal, or, as it is frequently called a counter offer. Making a counter offer amounts to a rejection of the original offer, which offer can not be thereafter accepted.

1997 - Nov [3] (a) Define the term 'Acceptance'. Discuss the legal provisions relating to communication of acceptance. (10 marks)

Answer:

According to Section 2(b), the term 'acceptance' is defined as follows:

"When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise."

An acceptance in order to be valid must be absolute, unqualified, accepted according to the mode if any prescribed within reasonable time and communicated to offeror. Acceptance can also be made by way of conduct. The legal provisions relating to communication of acceptance are contained in Section 4.

The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete:

- (a) as against the proposer, when it is put in a course of transmission to him, so as to be out of power of the acceptor;
- (b) as against the acceptor, when it comes to the knowledge of the proposer.

Illustrations: A proposes, by letter, to sell a house to B at a certain price:

- (1) The communication is complete when B receives the letter.
- (2) B accepts the proposal by a letter sent by post. The communication is complete:

as against A, when letter is posted.

As against B when the letter is received by A.

Section 3 of the Act prescribes, in general terms, two modes of communication, namely: (1) by any act or (2) by omission, intending thereby to communicate to the other or which has the effect of communicating it to the other. This first method would include any conduct and words whether written or oral. Written words would include letters, telegrams, telex messages, advertisements, etc. Oral words would include telephone messages. Any conduct would include positive acts or signs so that the other person understands what the person acting or making signs means to say or convey. Omission would exclude silence but include such conduct or forbearance on one's part that the other person takes it as his willingness or assent. These are not the only modes communication of the intention of the parties. There are other means as well, e.g., if you as the owner, deliver the goods to me as the buyer thereof at a certain price, this transaction will be understood by every one, as acceptance by act or conduct, unless there is an indication to the contrary.

The phrase appearing in Section 3 "which has the effect of communicating it", clearly refers to an act or omission or conduct which may be indirect but which results in communicating an acceptance or non-acceptance. However, a mere mental but unilateral act of assent in one's own mind does not tantamount to communication, since it cannot have the effect of communicating it to the other.

1998 - Nov [3] (a) Who is competent to accept an offer? Explain the rules relating to an offer, as provided in the Indian contract Act, 1872.

(10 marks)

Answer:

Who can accept an offer?

When an offer is made to a particular person it can be accepted by him alone. If it is accepted by any other person, there is no valid acceptance. However, in case of general offer, it can be accepted by any one, who has the knowledge of the offer. The persons who wants to accept the offer must be competent to enter into contract, as per requirements of the Indian Contract Act.

Legal Rules relating to an offer:

- (i) Offer must be such as in law is capable of being accepted and giving rise to legal relationship. A social invitation, even if it is accepted, does not create any relation because it is not so intended.
- (ii) Terms of offer must be definite, unambiguous and certain and not loose and vague.
- (iii) Offer must be distinguished from: (i) a declaration of intention and an announcement and (ii) an invitation to make an offer or do business.
- (iv) Offer must be communicated, otherwise there can be no acceptance of it. An acceptance of the offer, in ignorance of the offer, is no acceptance and does not confer any right on the acceptor.
- (v) Offer must be made with a view to obtaining the assent of the other party addressed and not merely with a view to disclosing the intention of making an offer.
- (vi) Offer should not contain a term the non-compliance of which may be assumed to amount to acceptance. Thus, a man cannot say that if acceptance is not communicated by a certain time, the offer would be considered as accepted.
- (vii) A statement of price is not an offer.

1999 - May [2] Comment on the following:

(b) Offer is lighted match while acceptance is a train of gunpowder.

(5 marks)

Answer:

It is a cardinal rule as regards to acceptance that once the acceptance has been made to an offer the contract is complete. According to “**Sir William Anson**” Acceptance is to offer what a lighted match is to a train of gunpowder”. The effect is that the acceptance produces something which cannot be recalled or undone. But the man who led the train may remove it before the match is applied. So an offer may lapse for want of acceptance, or be revoked before acceptance. Acceptance converts the offer into promise and then it is too late to revoke it. This means that as soon as a lighted match is brought in contact with a train of gunpowder, the gun powder explodes. Offer is compared to gun powder and acceptance to a lighted match. Gun powder (i.e. the offer) by itself is inert, it is the lighted match i.e. the acceptance Which causes then gunpowder to explode. The meaning is that an offer by itself cannot create legal relations between the parties, but as soon as it is accepted by the offeree, legal relationship is established between the parties, Once an offer is accepted it becomes a promise and cannot be revoked or withdrawn.

1999 - May [5] (b) When the revocation of a proposal may be made otherwise than by communication? (5 marks)

Answer:

Revocation of proposal otherwise than by communication: A proposal may be revoked not only by the communication of the notice of revocation by the proposer or by his authorised agent to the other party but also;

- (i) **By lapse of time [Section 6(2)]:** Proposer is not bound to keep his proposal open indefinitely the reason being that it would amount to a promise without consideration, and such a promise is unenforceable (*Ramsgate victoria Hotel Co. V. Montefire 1866*).
- (ii) **By non-fulfilment by the offeree of a condition precedent to acceptance [Section 6(3)]:** A proposal is also revoked by the failure of the acceptor to fulfil condition precedent to the acceptance. A condition precedent is a condition which prevents an obligation to come into existence until the condition is satisfied. An offeror may impose condition such as executing a certain document, or deposition of certain amount as earnest money. Failure to satisfy any such condition shall make a proposal lapse.

- (iii) **By the death or insanity of the proposer:** Death or insanity of the proposer, under the Indian law, operates as the revocation of the proposal, only if the fact to the death or insanity has come to the knowledge of the acceptor. If the acceptor accepts an offer in ignorance of the death or insanity of the offeror, the acceptance is valid.
- (iv) **If a counter offer is made to it:** The counter offer lapses the offer made by the offeror.
- (v) If an offer is not accepted according to the prescribed or usual mode, provided the offeror gives notice to the offeree within a reasonable time that the acceptance is not according to the prescribed or usual mode. If the offeror keeps quiet, he is deemed to have accepted the acceptance [Section 7(2)].

An offer can, however, be revoked subject to the following rules:

- (i) It can be revoked at any time before its acceptance is complete as against the offeror.
- (ii) Revocation takes effect only when it is communicated to the offeree.
- (iii) If the offeror has agreed to keep his offer open for a certain period, he can revoke it before the expiration of the period only.
 - (a) if the offer has in the meantime not been accepted or
 - (b) if there is no consideration for keeping the offer open.

2000 - May [2] Comment on the following:

- (i) An acceptance must be made before the proposal lapses. (5 marks)

Answer:

Under Section 5 of the Indian Contract Act, 1872, a proposal may be revoked at any time, before the communication of its acceptance is complete as against the proposer but not afterwards. An acceptance may be revoked at any time before the communication of acceptance is complete as against the acceptor but not afterwards. Therefore an acceptance must be made before the offer lapses or is revoked.

2000 - May [4] (i) What are implied contracts? State the various implied contracts. (10 marks)

Answer:

Under certain circumstances, a person may receive a benefit to which the law regards another person as better entitled, or for which the law considers he should pay to the other person, even though there is no contract between the parties. Such relationships are termed as “Quasi-Contracts” or Implied Contracts. A quasi contract rests on the ground of equity that a person shall not be allowed to enrich himself unjustly at the expense of another.

Sections 68 to 72 of the Indian Contract Act, 1872 have prescribed the following relationships creating quasi-contractual relationship:

1. **Supply of necessaries:** Under Section 68, if a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his conditions in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.
2. **Payment by an interested person:** It has been laid down in Section 69 of the Indian Contract Act that a person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.
3. **Obligation to pay for non-gratuitous Act:** Section 70 of the Indian Contract Act states that where a person lawfully does anything for another person or delivers anything to him not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation in respect of or to restore, the things so done or delivered.
4. **Responsibility of finder of goods:** Under Section 71 of the Act, a person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.
5. **Case where money is paid by mistake or under coercion:** Finally, Section 72 of the Indian Contract Act provides that a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it. Thus, quasi-contractual right is always

a right to money and generally, though not always to a liquidated sum of money. It does not arise from any agreement between the parties concerned, but is imposed by the law. It is a right which is not available against whole world but against a particular person or persons only. There is no contract between the parties in cases of quasi contracts, yet they are put in the same position as if there were a contract between them.

2000 - Nov [3] (a) State the rules relating to acceptance of a Contract.

(10 marks)

Answer:

Rules Relating to Acceptance of a Contract: The Indian Contract Act, 1872 specifies the following rules relating to the acceptance of a contract. It means that a valid contract can be made only by adhering to the following rules relating to the acceptance of an offer. These are:

1. **Acceptance must be absolute and unqualified:** Acceptance shall be valid only when it is absolute and unqualified and is expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted.
2. **Acceptance must be communicated to the offeror:** Acceptance must be brought to the knowledge of the offeror. Unless the offeror knows about the acceptance, he can not be bound by the acceptance given by the offeree. Mere silence is no acceptance.
3. **Acceptance must be in the mode prescribed:** Where the mode of acceptance has been prescribed in the proposal, it must be accepted in the manner prescribed, otherwise it shall not bind the offeror. However, the offeror may later on waive this condition and bound himself from the acceptance not given in the prescribed mode.
4. **Time:** Acceptance must be given within the prescribed time and where no time is prescribed, within the time which is reasonable and does not allow the offer to lapse.
5. Acceptance may be expressed i.e. words of mouth or in writing, or even implied i.e. by conduct of the party concerned.

6. **Acceptance must be made by the person to whom the offer is made:** Acceptance given by some other person or even on behalf of the person to whom the offer is made, is not valid acceptance.
7. It cannot precede an offer. If it does, it is not a valid acceptance and does not result in a contract.
8. It must show an intention on the part of the acceptor to fulfil the terms of offer.
9. It must be given before the offer lapses or before the offer is withdrawn.

2002 - May [5] (a) When does an offer come to an end? (5 marks)

Answer:

An offer may come to an end by revocation or lapse or rejection. According to Section 6 and 7 of the Indian Contract Act, 1872, an offer comes to an end in the following cases:

1. If the offerer revokes his offer before it has been accepted by the offeree, the offer comes to an end.
2. The offer comes to an end if it is not accepted within the time fixed in the offer, or within a reasonable time as the case may be. What is a reasonable time is a question of fact.
3. If there is a condition mentioned in the proposal, before the fulfilment of which the acceptor can not accept the proposal, the offer will automatically be revoked if the acceptor fails to fulfil that condition precedent.
4. If the fact of the death or insanity of the proposer comes to the knowledge of the acceptor before acceptance, the offer of proposal is revoked. (Section 6)
5. Sometimes, the mode of acceptance is specifically prescribed in the offer. In such a case, if the proposal is not accepted in the prescribed form or method, it stands revoked. [Section 7(2)]
6. An offer comes to an end as soon as it is rejected by the offeree.
7. An offer lapses if it becomes illegal before it is accepted.

2002 - Nov [2] Comment on the following:

- (a) All contracts are agreements, but all agreements are not contracts.

(5 marks)

Answer:**“All contracts are agreements, but all agreements are not contracts”:**

An agreement comes into existence when one party makes a proposal or offer to the other party and that other party gives his acceptance to it. A contract is an agreement enforceable by law. It means that to become a contract an agreement must give rise to a legal obligation i.e. duty enforceable by law. If an agreement is incapable of creating a duty enforceable by law, it is not a contract. There can be agreements which are not enforceable by law, such as social, moral or religious agreements. The agreement is a wider term than the contract. All agreements need not necessarily become but all contracts shall always be agreements.

All agreements are not contracts: When there is an agreement between the parties and they do not intend to create a legal relationship, it is not a contract. For example, A invites B to see a football match and B agrees. But A could not manage to get the tickets for the match, now B cannot enforce this promise against A i.e. no compensation can be claimed because this was a social agreement where there was no intention to create a legal relationship.

All contracts are agreements: For a contract there must be two things (a) an agreement and (b) enforceability by law. Thus existence of an agreement is a pre-requisite for existence of a contract. Therefore, it is true to say that all contracts are agreements.

Thus, we can say that there can be an agreement without it becoming a contract, but we can't have a contract without an agreement.

2018 - Nov [6] (a) Explain the modes of revocation of an offer as per the Indian Contract Act, 1872. (5 marks)

Answer:

The modes of revocation of an offer as per the Indian Contract Act, 1872 are:

- (i) By notice of revocation
- (ii) **By lapse of time :**

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.

- (iii) By non-fulfilment of condition precedent where the acceptor fails to fulfil a condition precedent to acceptance the proposal gets revoked. This principle is laid down in Section 6 of the Act. The offer or for instance may impose certain conditions such as executing a certain document or depositing certain amount as earnest money.
- (iv) By death or insanity
- (v) By counter offer
- (vi) By the non-acceptance of the offer according to the prescribed or usual mode
- (vii) By subsequent illegality.

2021 - Jan [2] (a) Define the term acceptance under the Indian Contract Act, 1872. Explain the legal rules regarding a valid acceptance. (7 marks)

Answer:

Definition of Acceptance:

In terms of Section 2(b) of the Indian Contract Act, “the term acceptance” is defined as follows:

“When the person to whom the proposal is made signifies his assent thereto, proposal is said to be accepted. The proposal, when accepted, becomes a promise”.

Analysis of the above definition

1. When the person to whom proposal is made - **for example** if A offers to sell his car to B for ₹ 2,00,000. Here, proposal is made to B.
2. The person to whom proposal is made i.e. B in the above **example** and if B signifies his consent on that proposal. , then we can say that B has signified his consent on the proposal made by A.
3. When B has signified his consent on that proposal, we can say that the proposal has been accepted.
4. Accepted proposal becomes promise.

Legal Rules regarding a valid acceptance

- (1) **Acceptance can be given only by the person to whom offer is made:** In case of a specific offer, it can be accepted only by the person to whom it is made. [*Boulton vs. Jones (1857)*] *Case Law: Boulton vs. Jones (1857)*

Facts: Boulton bought a business from Brocklehurst. Jones, who was Brocklehurst's creditor, placed an order with Brocklehurst for the supply of certain goods. Boulton supplied the goods even though the order was not in his name. Jones refused to pay Boulton for the goods because by entering into the contract with Brocklehurst, he intended to set off his debt against Brocklehurst. Held, as the offer was not made to Boulton, therefore, there was no contract between Boulton and Jones.

In case of a general offer, it can be accepted by any person who has the knowledge of the offer. [*Carlill vs. Carbolic Smoke Ball Co. (1893)*]

- (2) **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.

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 instalments 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*].

A offers to sell his house to B for ₹ 1,00,000/-. B replied that, "I can pay ₹ 80,000 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 ₹ 1,00,000/-. This is also treated as counter offer and it is upto A whether to accept it or not. [*Union of India v. Bahulal AIR 1968 Bombay 294*].

Example: "A" enquires from "B", "Will you purchase my car for ₹ 2 lakhs?" If "B" replies "I" shall purchase your car for ₹ 2 lakhs, if you buy my motorcycle for ₹ 50,000/-, 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.

- (3) **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 the original proposal has to materialize into a contract. Further when a proposal is accepted, the offeree must have the knowledge of the offer made to him. If he does not have the knowledge, there can be no acceptance. The acceptance must relate specifically to the offer made. Then only it can materialize into a contract. The above points will be clearer from the following examples: *Brogden vs. Metropolitan Railway Co. (1877)*

Facts: B a supplier, sent a draft agreement relating to the Supply of Coal to the Manager of Railway Co. viz, Metropolitan Railway for his acceptance. The manager wrote the word "Approved" on the same and put the draft agreement in the drawer of the table intending to send it to the company's solicitors for a formal contract to be drawn up. By an oversight the draft agreement remained in drawer. Held, that there was no contract as the manager had not communicated his acceptance to the supplier, B.

Where an offer made by the intended offeree without the knowledge that an offer has been made to him cannot be deemed as an acceptance thereto. (*Bhagwandas v. Girdharilal*)

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*].

Example: A proposed B to marry him. B informed A's sister that she is ready to marry him. But his sister didn't inform A about the acceptance of proposal.

There is no contract as acceptance was not communicated to A.

- (4) **Acceptance must be in the prescribed mode:** Where the mode of acceptance is prescribed in the proposal, it must be accepted in that manner. But if the proposer does not insist on the proposal being

accepted in the manner prescribed after it has been accepted otherwise, i.e., not in the prescribed manner, the proposer is presumed to have consented to the acceptance.

Example: If the offeror prescribes acceptance through messenger and offeree sends acceptance by email, there is no acceptance of the offer if the offeror informs the offeree that the acceptance is not according to the mode prescribed. But if the offeror fails to do so, it will be presumed that he has accepted the acceptance and a valid contract will arise.

- (5) **Time:** Acceptance must be given within the specified time limit, if any, and if no time is stipulated, acceptance must be given within the reasonable time and before the offer lapses. What is reasonable time is nowhere defined in the law and thus, would depend on facts and circumstances of the particular case.

Example: A offered to sell B 50 kgs of bananas at ₹ 500. B communicated the acceptance after four days. Such is not a valid contract as bananas being perishable items could not stay for a period of week. Four days is not a reasonable time in this case.

Example: A offers B to sell his house at ₹ 10,00,000. B accepted the offer and communicated to A after 4 days. Held the contract is valid as four days can be considered as reasonable time in case of sell of house.

- (6) **Mere silence is not acceptance:** The acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer, unless the offeree has in any previous conduct indicated that his silence is the evidence of acceptance.

Case Law: *Felthouse vs. Bindley (1862)*

Facts: (Uncle) offered to buy his nephew's horse for £30 saying "If I hear no more about it I shall consider the horse mine at £30." The nephew did not reply to F at all. He told his auctioneer, B to keep the particular horse out of sale of his farm stock as he intended to reserve it for his uncle. By mistake the auctioneer sold the horse. F sued him for conversion of his property. Held, F could not succeed as his nephew had not communicated the acceptance to him.

Example: “A” subscribed for the weekly magazine for one year. Even after expiry of his subscription, the magazine company continued to send him magazine for five years. And also “A” continued to use the magazine but denied to pay the bills sent to him. “A” would be liable to pay as his continued use of the magazine was his acceptance of the offer.

- (7) **Acceptance by conduct/Implied Acceptance:** Section 8 of the Act lays down that “the performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, constitutes an acceptance of the proposal. This section provides the acceptance of the proposal by conduct as against other modes of acceptance i.e. verbal or written communication. Therefore, when 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.

Example: when a tradesman receives an order from a customer and executes the order by sending the goods, the customer’s order for goods constitutes the offer, which has been accepted by the trades man subsequently by sending the goods. It is a case of acceptance by conduct.

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

PRACTICAL QUESTION

2018 - Nov [3] (b) (i) Mr. Ramesh promised to pay ₹ 50,000 to his wife Mrs. Lali so that she can spend the sum on her 30th birthday. Mrs. Lali insisted her husband to make a written agreement if he really loved her. Mr. Ramesh made a written agreement and the agreement was registered under the law. Mr. Ramesh failed to pay the specified amount to his wife Mrs. Lali. Mrs. Lali wants to file a suit against Mr. Ramesh and recover the promised amount. Referring to the applicable provisions of the Contract Act, 1872, advise whether Mrs. Lali will succeed. (3 marks)

2.52

■ **Solved Scanner CA Foundation Paper - 2A (New Syllabus)**

- (ii) A shop-keeper displayed a pair of dress in the show-room and a price tag of ₹ 2,000 was attached to the dress. Ms. Lovely, looked at the tag and rushed to the cash counter. Then she asked the shop-keeper to receive the payment and pack up the dress. The shop-keeper refused to hand-over the dress to Ms. Lovely in consideration of the price stated in the price tag attached to the dress. Ms. Lovely seeks your advice whether she can sue the shop-keeper for the above cause under the Indian Contract Act, 1872. (3 marks)

Answer:

- (i) **Parties must intend to create legal obligations:** There must be an intention on the part of the parties to create legal relationship between them. Social or domestic type of agreements are not enforceable in court of law and hence they do not result into contracts. In the given question, Mr. Ramesh promised to pay ₹ 50,000 to his wife so that she can spend the same on her birthday. However, subsequently, Mr. Ramesh failed to fulfill the promise, for which Mrs. Lali wants to file a suit against Mr. Ramesh. Here, in the given circumstance wife will not be able to recover the amount as it was a social agreement and the parties did not intend to create any legal relations.
- (ii) According to the facts of the case this case qualifies as a typical example covered within the definition of a General offer that means an offer made to public at large and hence anyone can accept and do the desired act. In this case, Ms. Lovely had accepted the general offer by seeing the price tag and when she moved to purchase that she was refused by the shop-keeper who had himself previously made the general offer by putting the dress on display with the price tag. Hence it can be concluded that Ms. Lovely can certainly sue the shop-keeper.

2021 - Jan [3] (c) Mr. B makes a proposal to Mr. S by post to sell his house for ₹ 10 lakhs and posted the letter on 10th April 2020 and the letter reaches to Mr. S on 12th April 2020. He reads the letter on 13th April 2020.

Mr. S sends his letter of acceptance on 16th April 2020 and the letter reaches Mr. B on 20th April 2020. On 17th April Mr. S changed his mind and sends a telegram withdrawing his acceptance. Telegram reaches to Mr. B on 19th April 2020.

Examine with reference to the Indian Contract Act, 1872:

- (i) On which date, the offer made by Mr. B will complete?
- (ii) Discuss the validity of acceptance
- (iii) What would be validity of acceptance if letter of revocation and letter of acceptance reached together? (6 marks)

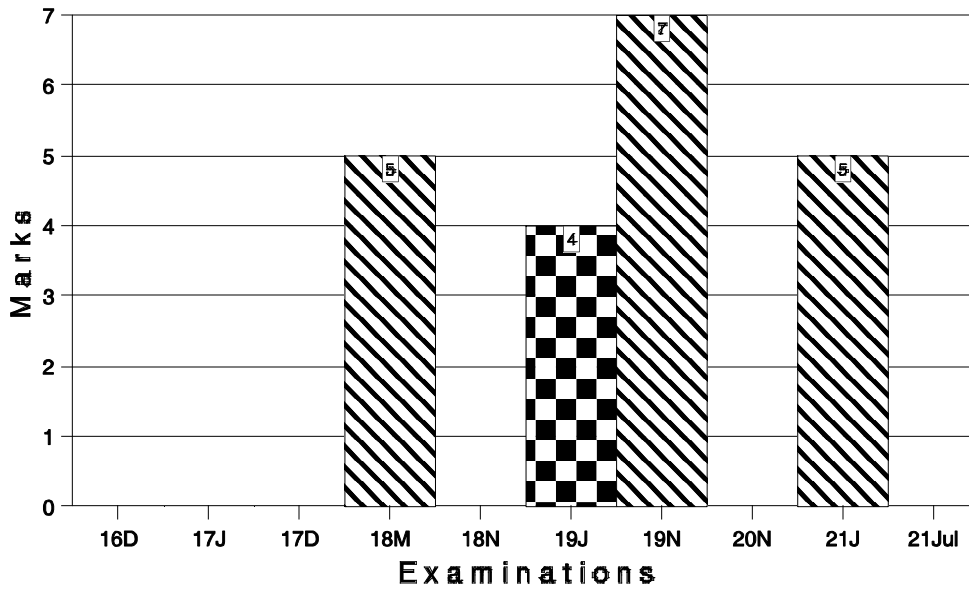
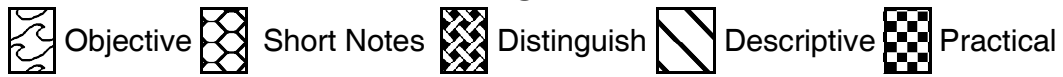
Answer:

- (i) Offer made by Mr. B will be completed on 13 April, 2020. (when it comes to the knowledge of Mr. S)
- (ii) Here, acceptance is not valid as he revoked his acceptance by telegram before letter of acceptance reaches Mr. B.
- (iii) If letter of acceptance and letter of revocation reaches together than two situation may arise.
 - (i) It will be decided on the basis of the letter which he reads first like if he reads acceptance than acceptance is valid and if revocation first than acceptance is revoked.
 - (ii) In absence of any such information revocation is absolute.

CHAPTER	<h1>The Indian Contract Act, 1872</h1>
<h1>1</h1>	
Unit: 2	Consideration

Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions

Legend



For detailed analysis Login at www.scanneradda.com
for registration and password see first page of this book.

SELF STUDY QUESTIONS**Q.1: What is consideration?****Answer:**

- Consideration should be something that is lawful.
- A mere promise is not enforceable at law.
- It means “Quid Pro Quo” i.e. “something in return”.
- As per Section 2(d), when at the desire of the promisor, the promisee or any other person
 - has done or abstain from doing, or
 - does or abstains from doing, or
 - promises to do or abstains from doing, such actor abstinence or promise is called as consideration of promise.”
- As per Section 2(e) “Every promise and every set of promises, forming the consideration for each other, is an agreement”
 - General Rule is - “NO CONSIDERATION, NO CONTRACT”
 - Consideration may move at the desire of the promisor and not at the desire of the third party.
 - There may be stranger to consideration but not stranger to a contract.
 - Under English Law, it must move from the promisee or any other person. Thus, stranger cannot sue on the contract.
 - Under Indian Law, however a stranger to consideration can file a suit.

Q.2: Describe the Legal Rules Regarding Consideration.**Answer:**

- It must move at the desire of the promisor [Case law : Durga Prasad V/s Baldeo].
- It may be done by promisee himself or by any other person.

Relevant Case Law :

Chinnayya V/s Ramayya.

Facts -

- (i) A by a gift deed transferred certain property to her daughter, given her the direction to pay annuity to A's brother.
 - (ii) On the same day, daughter executed a writing in favour of A's brother, agreeing to pay annuity.
 - (iii) She declined afterwards stating that no consideration had moved from her uncle Decision - Court held that consideration may move from any person. Thus, A's brother was entitled to file a suit.
- It may be past, present or future.
 - It must be real and not vague.
 - It must be legal.
 - It need not be adequate (But if not adequate then consent must be free).
 - It must be something more than the promisee is already bound to do for the promisor.
 - It may not be illusory.

Q.3: What do you understand Suit by a third party to a contract?

Answer:

- **Doctrine of Privity of Contract :**
 - It means that only those persons who are the parties to a contract, can sue and be sued upon the contract.
 - It is different from stranger to consideration.
 - It refers to the relationship between parties who have entered into the contracts.
 - The third party cannot sue upon it, even though, the contract may be for his benefits.
 - Thus, 'a stranger to the contract' cannot bring a valid suit under the contract'.

Relevant Case Law -

- Dunlop Pevmatic Tyre Co. V/s Selfridge Ltd.
- Tweddle V/s Atkinson

- **Stranger to contract how right to sue in the following cases :**
 - (a) Beneficiary of Trust or charge, can enforce it even if he is not a party in trust deed.
 - (b) Marriage settlement, partition and other family arrangements and other such agreements which are reduced to writing.
 - (c) Acknowledgment of liability or by past performance thereof.
 - (d) Assignment of contract, however, it must be noted nominee is not an assignee.
 - (e) Contracts entered through an agent.
 - (f) Covenant running with the land. The purchaser of immovable property is bound by several conditions created by an agreement affecting the land, even though he is not a party to the original agreement.
 - (g) Where the promisor by his own conduct is estoppel from denying his liability to perform the promise, the person who is not a party to the contract can sue upon to make the promisor liable.

Q.4: Describe the Validity of an agreement without consideration.

Answer:

- An agreement made is valid if -
 - expressed in writing and registered under law.
 - made an account of natural love and affection.
 - between parties standing in near relation to each other.
- A promise is valid if -
 - it is a promise to compensate a person wholly or in part, a person who has already done something voluntarily for the promisor.
 - Something which the promisor was legally compellable to do.
- A promise to pay, wholly or in part, a debt, which is barred by law of limitation can be enforced if -
 - it is in writing.
 - it is signed by the debtor or his authorised agent.

2.58

■ **Solved Scanner CA Foundation Paper - 2A (New Syllabus)**

Note - A debt barred by limitation cannot be recovered, a promise to pay such debt is without any consideration.

- It does not apply to completed gifts i.e. gift given and accepted.
- Consideration is not required to effect a valid bailment of goods i.e. gratuitous bailment.
- Not required to create an agency.
- If a person promised to contribute any thing to a charity and on his faith, the promisee undertakes a liability to that extent, the contract shall be valid. [Relevant case law : Kedarnath V/s Gorie Mohammed].

SHORT PRACTICE QUESTIONS

1. What do you mean by consideration ?
2. Write down legal rules regarding consideration.

PAST YEAR QUESTIONS AND ANSWERS

OBJECTIVE QUESTIONS

1995 - Nov [1] State with reason whether the following statement is Correct or Incorrect.

- (ii) A stranger to the consideration can enforce the contract. (2 marks)

Answer:

Correct: Under the Indian Law, consideration may move from the promisee or any other person, i.e. even a stranger. This rule applies in the cases of marriage settlement, partition or other family arrangements, trust, agency, assignment, etc.

1996 - May [1] State with reason whether the following statement is Correct or Incorrect.

- (ii) Inadequacy of the consideration cannot be taken into account by the court in determining whether the consent was given freely.

(2 marks)

Answer:

Incorrect : According to explanation 2 of section 25 of the Indian Contract Act, 1872, an agreement to which the consent of the promisor is freely given is not void merely because of the consideration being inadequate. But the court may take into account the inadequacy of the consideration in knowing the reality whether the consent of the promisor was given freely or not.

1997 - May [1] State with reason whether the following statement is Correct or Incorrect.

- (vii) Consideration in a contract of sale of goods can also be paid partly in money and partly in goods.

(2 marks)

Answer:

Correct: Consideration paid partly in money and partly in goods will be taken as a valid sales because price is there. It is so because price is considered must for sale.

1998 - Nov [1] State with reason whether the following statement is Correct or Incorrect.

- (ii) Consideration may move even from a person who is not a party to the contract.

(2 marks)

Answer:

Correct: According to Section 2(d) of the Indian Contract Act, 1872 consideration may move from the promisee or any other person who may not a party to the contract. In other words, there can be a stranger to the consideration.

1999 - May [1] State with reason whether the following statement is Correct or Incorrect.

- (iii) A promise to take either rice or smuggled opium for a consideration of ₹ 1,000 is wholly void.

(2 marks)

2.60

■ Solved Scanner CA Foundation Paper - 2A (New Syllabus)

Answer:

Incorrect: As per Section 58 of the Indian contract. Act, 1872, that in the case of an alternative promise, one branch of which is legal and the another branch is illegal; the branch with legal promise can only be enforced. Therefore, to take the rice is a legal promise hence it is enforceable, whereas to take smuggled opium is illegal and is enforceable by law.

2000 - May [1] State with reason whether the following statement is Correct or Incorrect.

(ii) Consideration may be present or future but not past. (2 marks)

Answer:

Incorrect : Section 2(d) of the Act states that the consideration may be past, present or future,

2000 - Nov [1] State with reason whether the following statement is Correct or Incorrect.

(vii) Consideration for sale of goods must be in terms of Money. (2 marks)

Answer:

Correct : It is one of the most important feature of the contract of sale that the price should be paid in term of money.

2002 - Nov [1] State with reason whether the following statement is Correct or Incorrect.

(ii) Consideration may be present or future, but not past. (2 marks)

Answer:

Incorrect: As per the definition of consideration contained in, Section 2(d) of Indian Contract Act, 1872 consideration may be present, past and future.

DESCRIPTIVE QUESTIONS

1994 - Nov [5] Answer the following:

(a) When is a contract valid even without consideration? (5 marks)

Answer:

The general rule is that an agreement made without consideration is void (Sec. 25). In every valid contract consideration is very important. A contract may only be enforceable when there is adequate consideration is there. However, the Indian Contract Act contains certain exceptions to this rule. In the following cases, the agreement though made without consideration, will be valid and enforceable.

1. **Natural Love and Affection:** A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g., husband and wife) to each other is enforceable even without consideration. A contract in writing, registered on account of natural love and affection between parties standing near relation to each other are the essential requirements for valid contract though it is without consideration (Rajlukhee Devee vs. Bhootnath).
2. **Compensation for past voluntary services:** A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable under (Sec. 25(2)). In order that a promise to pay for the past voluntary services is binding, the following essential factors must exist:
 - (i) The services should have been rendered voluntarily.
 - (ii) The services must have been rendered for the promisor.
 - (iii) The promisor must be in existence at the time when services were rendered.
 - (iv) The promisor must have intended to compensate the promisee.
3. **Promise to pay time barred debt:** Where a promise in writing signed by the person making it or by his authorised agent, is made to pay a debt barred by limitation it is valid without consideration (Sec. 25(3)).
4. **Agency:** According to section 185 of the Indian Contract Act, no consideration is necessary to create an agency.
5. **Completed gift:** In case of completed gifts, the rule no consideration, no contract does not apply. Explanation (1) to Section 25 states “nothing in this section shall affect the validity as between the donor and donee, of any gift actually made.” Thus, gifts do not require any consideration.

1995 - Nov [6] (a) What is Consideration? Discuss briefly the legal requirements of valid consideration. (10 marks)

Answer:

Meaning of Consideration:

Consideration is an essential element of a valid contract. It is a technical word meaning thereby *quid pro quo* i.e. something in return. A valuable consideration in the sense of the law may consist either in some right, interest profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other. Thus, consideration must result in a benefit to one party and a detriment or loss to the other party or a detriment to both.

Thus, if A agrees to sell his books to B for ₹ 100, B's promise to pay ₹ 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 ₹ 100.

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

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

For every valid contract consideration is very essential. But there are certain exceptions to this rule which have been incorporated under Section 25 of the Indian Contract Act.

Legal requirements of valid consideration may be enumerated as under:

- (i) Section 2(d) of the Indian Contract Act emphasises that consideration must move at the desire of the promisor. Any act done at the desire or request of the third party or voluntary acts would not constitute a valid consideration.
- (ii) Consideration must be lawful and should not be forbidden by law.
- (iii) Consideration must be real and not illusory. If it is physically impossible, vague or legally impossible, the contract cannot be enforced.

- (iv) Consideration must be of some value in the eyes of law. The Supreme Court has laid down consideration shall be something which not only the parties regard but the law can also regard as having some value.
- (v) The consideration must not be the performance of existing duties e.g. (i) legal obligations or (ii) contractual obligations.
- (vi) The consideration need not be adequate. In other words, an inadequate consideration does not render a contract void.
- (vii) The consideration may be furnished by the promisee or any other person. So long as there is consideration for a promise, it is immaterial who has furnished it.
- (viii) The consideration must be either positive or negative (See definition).
- (ix) Consideration may be forbearance to use.
- (x) The consideration may be past, present or future.

1996 - May [2] Comment on the following:

- (a) An agreement without consideration is void. (5 marks)

Answer:

A contract without consideration is valid under the following cases :

For an agreement to be enforceable at law must be supported by a valid consideration. An agreement without consideration is void and enforceable (General Rule). But Section 25. Specifies the cases where an agreement made without consideration is valid. The exceptional cases are as follows:

1. **Natural Love and Affection [Section 25(1)]:** An agreement made without consideration will be valid, if it is in writing and registered and is made on account of natural love and affection between the parties standing in near relation to each other. (with reference to Rajlukhee Devee Vs. Bhootnath).
2. **Compensation for services rendered [Section 25 (2)]:** An agreement will be valid without consideration if it is a promise to compensate wholly or in part a person who has already voluntarily done something for the promisor or something which the promisor was legally compellable to do for, that a promise to make payment for the past voluntary services is binding, there should be following factors:

- (i) the services should have been rendered voluntarily.
 - (ii) These should have been rendered for the promisor.
 - (iii) the promisor must exist at the time of rendering services.
 - (iv) the promisor must have intended to compensate to the promisee.
3. **Time-barred debt [Sec. 25 (3)]:** A promise to pay a time-barred debt is also enforceable, if it is in writing and signed by the promisor. The promise must be to pay whole or part-time debt.
4. **Completed gift:** An agreement in respect of a gift that has been made and accepted.
5. **Agency:** An agreement containing agency may be without consideration.

1996 - Nov [5] Answer the following:

- (a) When consideration is deemed to be unlawful? (5 marks)

Answer:

Unlawful Consideration: The legality of consideration and object thereto is provided under Section 10 of the Indian Contract Act, 1872 As per Section 23, an agreement of which the object or consideration is unlawful is void. Following are the cases in which the consideration and object of an agreement is said to be unlawful:

- 1. If it is forbidden by law.
- 2. If it is of such nature that if permitted it will defect the provision of any law.
- 3. If it implies or involves injury to the person or property of another.
- 4. If it is fraudulent.
- 5. If the court regards it as immoral.
- 6. If it is opposed to public policy.

According to Section 24, where consideration and object of an agreement is unlawful in part the whole agreement is void.

1998 - May [2] Comment on the following (Give brief answers):

- (a) "For every valid agreement there should be the consideration". (5 marks)

Answer:

Please refer 1996 - May [2] (a) on page no. 63

1999 - May [2] Comment on the following (Give brief answers):

(a) To form a valid contract consideration must be adequate. (5 marks)

Answer:

The law provides that a contract should be supported by consideration. So long as consideration exists, the Courts are not concerned as to its adequacy, provided it is of some value. The adequacy of the consideration is for the parties to consider at the time of making the agreement, not for the Court when it is sought to be enforced. (*Bolton v. Modden*). Consideration must however, be something to which the law attaches value though it need not be a equivalent in value to the promise made.

According to Explanation 2 to Section 25 of the Indian Contract Act 1872, an agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

2000 - May [7] Write short notes on the following:

(ii) Under what circumstances a contract without consideration is valid. (5 marks)

Answer:

Please refer 1996 - May [2] (a) on page no. 63

2002 - May [2] Briefly the following:

(b) "No consideration, no contract". (5 marks)

Answer:

No consideration, no contract:

All contract, contain two parts: (i) the promise, and (2) the consideration for such promise. A promise without consideration is purely gratuitous. Such promise can not create a legal obligation, no matter that it is highly sacred and morally binding (*Abdul Aziz v. Mazum Ali -AIR 1914, 36 All 268*). Thus, the rule of law is that no consideration, no contract. Section 25 of the Indian Contract Act, 1872 embodies the rule that an agreement without consideration is void. However, there are certain exceptions to the general rule:

- (1) If an agreement is expressed in writing and registered and is made on account of natural love and affection, it is a valid contract without consideration.
- (2) A promise to compensate a person for something which has already been done voluntarily for the promisor, is valid without consideration, and creates a contract.
- (3) A promise by a debtor to pay a time-barred debt is valid provided that it is made in writing and is signed by the debtor or by his authorised agent in this behalf.
- (4) The rule 'no consideration, no contract' does not apply in case of a completed gift.
- (5) No consideration is necessary to create an agency.

2002 - May [7] Explain the following (Give brief answers):

(a) Unlawful consideration

(5 marks)

Answer:

Unlawful Consideration: One of the essential element of consideration is that it must be lawful. An agreement becomes void, if it is based on unlawful consideration. The consideration of an agreement becomes unlawful when:–

1. It is forbidden by law or
2. If it is fraudulent or
3. If it defeats the provision of any law or
4. If it involves or implies injury to the person or property of another or
5. The court regards it as immoral or opposed to public policy.

2002 - Nov [5] Briefly the following:

(b) What is Consideration? Give its characteristics.

(5 marks)

Answer:

Consideration:

It is the price of the promise i.e. something in return Section 2(d) of the Indian Contract Act, 1872 defines it as when the desire of the promisor, the promises or any other person abstained has done or from doing, or does or abstains for doing, or promises to do or abstain from doing something such an act or abstinence or promise is called consideration for the promise”.

Characteristics

1. Consideration is the doing or not doing of something which the promisor desires to be done or not done.
2. Consideration must be at the desire of the promisor.
3. Consideration may move from one person to any other person.
4. Consideration may be past, present or future.
5. Consideration need not be adequate but should be real.

2018 - May [2] (a) State the exceptions to the rule “An agreement without consideration is void”. (5 marks)

Answer:

The general rule is that an agreement without consideration is void. However, there are certain exceptions to this rule. In the following cases, the agreement though made without consideration, will be valid and enforceable.

1. Natural love and affection:

A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g. husband and wife) to each other is enforceable without consideration.

- 2. Compensation for past voluntary services:** A promise to compensate wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable, although it is without any consideration today.

3. Promise to pay time barred debt:

Where a promise in writing signed by the person making it or by his authorised agent is made to pay a debt barred by limitation it is valid and binding even though without consideration.

4. Agency:

No consideration is necessary to create an agency.

5. Completed Gift:

In case of gifts the rule no consideration, no contract is not applicable.

6. Bailment:

No consideration required for this.

7. Charity:

If one promises to undertake liability to contribute to charity, the contract shall be valid even though without consideration.

2019 - Nov [2] (a) Define consideration. What are the legal rules regarding consideration under the Indian Contract Act, 1872? (7 marks)

Answer:

Section 2(d) of the Indian Contract Act, 1872 defines consideration as follows:

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

It is defined as “*quid-pro-quo*”, i.e. “something in return”. This something need not to be in terms of money, as stated, it is some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility, given suffered or undertaken by the other”.

However, it must have some value in the eyes of law and must not be vague or illusory.

Legal Rules Regarding Considerations:

1. **Consideration must none at the desire of the promisor:**
An act done at the desire of a third party is not a consideration.
2. **Consideration may move from promisee or any other person:**
There can be a stranger to consideration but not a stranger to a contract.
3. **Executed and Executory Consideration:**
When consideration consists of an act it is executed but when it consists of a promise it is executory.
4. **Consideration may be past present or future.:**
The words “has done or abstained from doing” are a recognition of the doctrine of past consideration.
5. **Consideration need not be adequate:**
It need not be of any particular value, but it must be something.
6. Performance of what one is legally bound to perform, cannot be treated as consideration.
7. Consideration must be real and not illusory.
8. Consideration must not be unlawful, immoral or opposed to public policy.

2021 - Jan [6] (a) The general rule is that an agreement without consideration is void. Discuss the cases where the agreement though made without consideration will be valid and enforceable as per Indian Contract Act, 1872. (5 marks)

Answer:

No consideration no contract:

The general rule is that an agreement made without consideration is void (Section 25 of Indian Contract Act, 1872). In every valid contract, consideration is very important.

A contract may only be enforceable when consideration is there. However, the Indian Contract Act contains certain exceptions to this rule. In the following cases, the agreement though made without consideration, will be valid and enforceable.

1. **In case of an agreement on account of natural love and affection:**

An agreement on account of natural love and affection will be valid if it:

- Written
- Registered
- Based on Natural Love affection
- Parties stand in near relation with each other (e.g. husband and wife)

Example: A husband, by a registered agreement promised to pay his earnings to his wife. Held the agreement though without consideration, was valid.

2. **Agency:** In case of contract of agency the consideration is not required.

3. **Bailment:** In case of contract of bailment the consideration is not required.

4. **Completed gift:** Completed gift means a gift actually handed over. Thus, gifts actually made by a donor and accepted by the donee are valid even without consideration.

Example: On A's birthday, B gives him a gold chain as birthday gift in this case B cannot demand back the chain on the ground that there was no consideration.

5. **Charity:** A mere promise for charity is void because it is without consideration. But if a person promises to contribute for charity and the promisee undertakes liability i.e. incur liability then the contract will be valid up to the extent of the subscription promised.

(Kadarnath V. Gorie Mohammad)

Note: In case of charity, the promisee is liable to pay the amount of incurred liability but upto promised amount.

6. **Compensation for Past Voluntary Service:** When a person has already voluntarily done something for the promisor then a promise to compensate either wholly or partly will be binding when:
- The services should have been done voluntarily (but not involuntarily)
 - The services should have been rendered for the promisor
 - The promisor must be in existence at the time when services was rendered
 - The promisor must have intended to compensate.

Example: P finds R's purse and gives it to him. R promises to give P ₹ 1,000. This is a valid contract.

7. **In case of Promise to Pay time barred debt:** Time barred debt or a debt based by limitation refers to an amount which has remained unclaimed beyond a time period of 3 years.

A promise to pay time barred debt is valid if:

- It is in writing
- &
- Signed by the person making promise or by his agent.

Example: A is indebted to C ₹ 6,000 but the debt is barred by the Limitation Act. A signs a written promise now to pay ₹ 5,000 in final settlement of the debt. This is a contract without consideration, but enforceable.

PRACTICAL QUESTIONS

2019 - June [1] (a) Mr. Sohanlal sold 10 acres of his agricultural land to Mr. Mohanlal on 25th September 2018 for ₹ 25 Lakhs. The Property papers mentioned a condition, amongst other details, that whosoever purchases the land is free to use 9 acres as per his choice but the remaining 1 acre has to be allowed to be used by Mr. Chotelal, son of the seller for carrying out farming or other activity of his choice. On 12th Oct 2018, Mr. Sohanlal died leaving behind his son and wife. On 15th Oct 2018, purchaser started construction of an auditorium on the whole 10 acres of land and denied any land to the son.

Now Mr. Chotelal wants to file a case against the purchaser and get a suitable redressed. Discuss the above in light of provisions of Indian Contract Act, 1872 and decide upon Mr. Chotelal's plan of action ? (4 marks)

Answer:

In India, consideration may proceed from the promisee or any other person who is not a party to the contract.

According to the definition of consideration as given in Section 2(d), when at the desire of the promisor, the promisee or any other person does something, such an act is consideration. In other words, there can be a stranger to a consideration but not stranger to contract. [*Chinnaya vs. Ramayya*]

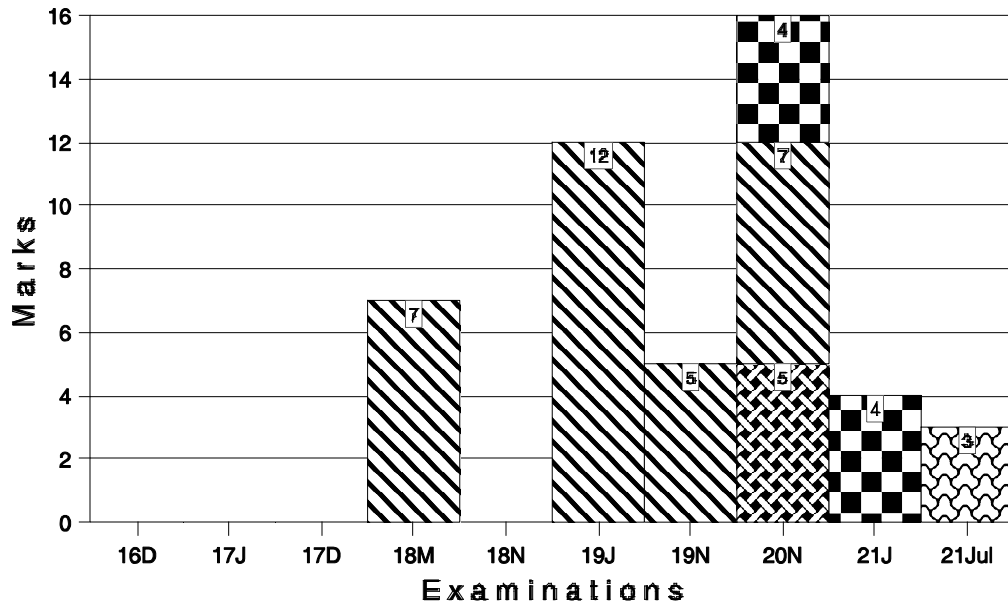
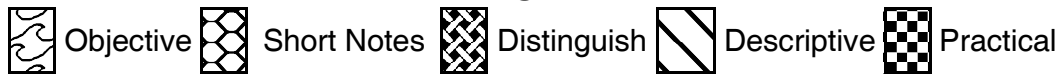
In the given case between defendant (Mr. Mohanlal) and plaintiff (Mr. Chotelal) the consideration has been furnished on behalf of the plaintiff (Mr. Chotelal) by his father (Mr. Sohanlal). Although, the plaintiff was a stranger to the consideration but since he was a party to the contract he could enforce the promise of the promisor, since under Indian law, consideration may be given by the promisee or anyone on his behalf vide Section 2(d) of Indian Contract Act.

Thus, consideration furnished by Mr. Sohanlal to Mr. Mohanlal constitutes sufficient consideration for the plaintiff (Mr. Chotelal) to sue the defendant on the promise. Held, Mr. Chotelal was entitled to a decree for the right to use that 1 acre of land.

CHAPTER	<h1>The Indian Contract Act, 1872</h1>
1	
Unit: 3	Other Essential Elements of Valid Contract

Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions

Legend



For detailed analysis Login at www.scanneradda.com
for registration and password see first page of this book.

SELF STUDY QUESTIONS**Q.1: Write Short Note on Capacity to contract.****Answer:**

- It means that parties to the agreement must have capacity to enter into a valid contract.
- Person may be either natural or artificial i.e. persons can be human beings or body corporate.
- **According to Section 11**
“Every person is competent to contract, who, according to the law to which he is subject to –
 - (i) is of the age of majority,
 - (ii) is of sound mind
 - (iii) is not disqualified by any other law to which he is subject to”
- A person is disqualified to enter into contracts if he is:
 - (i) a minor
 - (ii) a person of unsound mind
 - (iii) otherwise disqualified by the law of land to enter into contract
 - (iv) a alien enemy
 - (v) an insolvent
 - (vi) a convict undergoing imprisonment.
- In India, the age of majority is regulated by the Indian Majority Act, 1875.
- According to it, every person domiciled in India attains majority on the completion of 18 years of age.
- If any guardian has been appointed for the minors or minor is under guardianship of court of wards, he attains majority on the completion of 21 years of age.

Relevant Case Law :

- *Mohiri Bibi V/s Dharmo Das Ghose*

Facts

- (i) Dharmodas Ghose, a minor, entered into a contract for borrowing a sum of ₹ 20,000 out of which longer paid his ₹ 8,000.

- (ii) Minor executed mortgage of property in favour of lender.
- (iii) Minor sued for setting aside mortgage.
- (iv) Privacy council hard to ascertain the validity of mortgage.
- (v) U/s 7 of Transfer of Property Act, every person competent to contract is competent to mortgage.

Decision: Any money advanced to minor cannot be recovered as Section 10 and 11 makes the minor's contract absolutely void.

- As per Transfer of Property Act, a minor cannot transfer a property, but he can be a transferee.
- **Position of minor's agreement:**
 - (i) An agreement entered into by a minor is altogether void, i.e. *void-ab-initio*.
 - (ii) Minor can be a promisee or a beneficiary.
 - (iii) Minor can always plead majority.
 - (iv) Minor's agreement cannot be ratified by him.
 - (v) Contract by guardian is enforceable if:
 - (a) It is within his competence and authority,
 - (b) For the benefit of the minor.
 - (vi) Minor's property is liable for necessities.

Necessaries: "Goods suitable to the condition in life of such an infant or other person, and to his actual requirement at the time of sale and delivery."

It includes:

 - (a) Necessary goods
 - (b) Services rendered
 - (c) Loan incurred to obtain necessities.
 - (vii) Court can never direct specific performance of the contract.
 - (viii) Minor cannot be a partner in a partnership firm.
 - (ix) Minor can act as an agent and bind his principal without incurring any personal liability.
 - (x) Minor can never be adjudicated as insolvent.
 - (xi) A minor is liable in tort i.e. a civil wrong unless the tort in reality is a breach of contract.

- **Lunatics Agreement:**
- **As per Section 12 of the Indian Contract Act,**
“a person is said to be of sound mind for the purpose of making a contract, if at the time when he makes it, he is capable of undertaking it and of forming a rational judgement as to its effects upon his interests.”
- **A person of unsound mind includes:**
 - (i) Lunatics
 - (ii) Idiots
 - (iii) Drunkards
- Such agreement is void.
- Lunatics estate will be liable for any necessaries supplied to him or his family.
- A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind and he will be bound by it.
- A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.
- **Persons disqualified by law from entering into contract.**
 - (i) **Alien Enemy:** Alien enemy is a foreigner whose state is at peace with India.
 - Alien is a person who is not an India citizen.
 - He becomes alien enemy on declaration of war between India and his country.
 - He cannot enter into a contract with an Indian subject.
 - (ii) **Foreign Sovereigns and Ambassadors:**
 - They enjoy certain special privileges due to which they cannot be legally proceeded against in Indian Courts.
 - If contracts are entered into through agents, then agents becomes personally responsible for the performance of the contracts.

(iii) Convicts

- Cannot enter into a valid contract while undergoing sentence, nor he can sue.

Note: All of the above points are known as flows in capacity.

Q.2: Define Free Consent under the Indian Contract Act, 1872.**Answer:**

- As per the Indian Contract Act, “Two or more persons are said to consent when they agree upon the same thing in the same sense” (consensus-ad-idem).
- Free consent means consent given by parties out of their free will on their own without any fear, without any force, without any compulsion or threat from the other party.
- As per Section 14, consent is said to be free which is not caused by
 - (i) Coercion
 - (ii) Undue Influence
 - (iii) Fraud
 - (iv) Misrepresentation
 - (v) Mistake
- In the absence of free consent, contract is usually voidable at the option of the party whose consent is not free.

Q.3: Describe the Elements of Vitiating Free Consent.**Answer:****(i) Coercion:**

- “It is the committing, or threatening to commit, any act forbidden by the Indian Penal Code (IPC), 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.”
- **Exceptions of Coercion:**
The following threats are not coercion -
 1. Threat to file a suit.
 2. Consent given on the basis of legal obligations.

3. Threats by workers.
4. Threats to detain property by mortgager.

- It may proceed from any person and may be directed against any person or goods.

(ii) Undue Influence

- A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other-
- It has following two elements :
 - (i) a dominant position
 - (ii) the use of it to obtain an unfair advantage.
- A person is deemed to be dominate the will of another if -
 - (i) he holds a real or apparent authority over the other, or
 - (ii) he stands in a fiduciary relation to the other, or
 - (iii) he makes a contract with a person whose mental capacity is temporarily or permanently affected by reasons of age, illness or mental or body distress.
- **Relationships that are presumed to have undue influence includes :**
 - (i) Parent and child
 - (ii) Guardian and ward
 - (iii) Religious/Spiritual Guru and Discipline
 - (iv) Doctor and Patient
 - (v) Solicitor and Client
 - (vi) Trustee and Beneficiary
 - (vii) Fiancé and Fiancee
- **Relationship where dominant position is not presumed by has to be proved by the aggrieved party :**
 - (i) Creditor and Debtor
 - (ii) Landlord and Tenant
 - (iii) Husband and Wife

- **This presumption can be rebutted by showing that :**
 - (i) full disclosure of all material facts was made.
 - (ii) adequate consideration was there, and
 - (iii) weaker party was in receipt of independent legal advice.

(iii) Fraud

- Also known as wilful misrepresentation.
- 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 there to or his party, or to induce him to enter into the contract.
 1. The suggestion, as to fact, of that which is not true by one who does not believe it be true,
 2. The active concealment of a fact by one having knowledge or belief of the fact,
 3. A promise made without any intention of performing it,
 4. Any other act fitted to deceive,
 5. Any such act or omission as to law specially declared to be fraudulent.
- Mere silence as to facts likely to affect the willingness of a person to enter into a contract is no fraud.
- **But silence amounts to fraud in following cases :**
 - (i) Where it is the duty of a person to speak.
 - (ii) Where his silence is equivalent to speech.
 - (iii) When a person discloses only the half truth.
- Following are certain contracts upon which law imposes a special duty to act with utmost good faith (contracts of Uberrimafidei).
 - (a) Insurance contracts.
 - (b) Prospectus of a company.
 - (c) Contract of sale of land.
 - (d) Contract of family arrangements.
- In all of the above stated contracts, a person has to disclose all the material information.

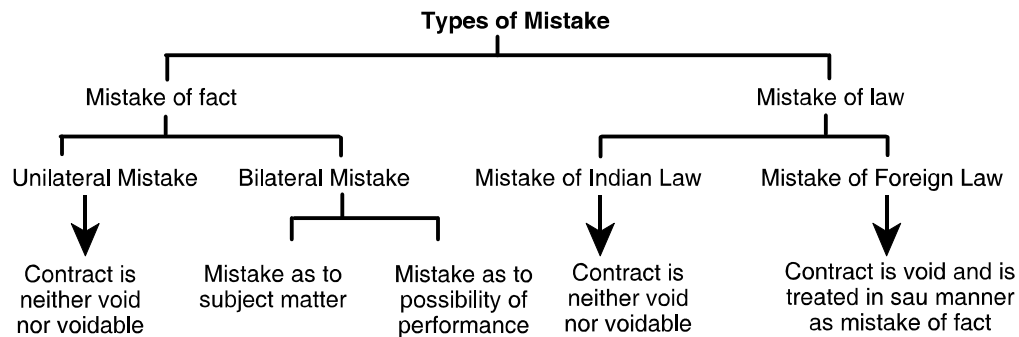
(iv) Misrepresentations

- Where a person asserts something which is not true, though he believes it to be true, his assertion amounts to misrepresentation.
- Misrepresentations made by a person may be either:
 1. Innocent, or
 2. Without any reasonable ground.
- The aggrieved party can avoid the contract, but cannot sue for damages in normal circumstances.
- Its damages can be obtained in the following cases :
 - (i) From a director or promoter making innocent misrepresentation in company's prospectus.
 - (ii) From a person who has made certain statement in the court, relying upon which a party has suffered damages, is stopped by the court from denying it.
 - (iii) From an agent committing breach of warranty of authority.
 - (iv) Negligent representation made by one person to another between whom there exist a confidential relationship.

Note: When the consent is caused by coercion, undue influence, fraud and misrepresentation, though the agreement amounts to as contract such a contract is voidable at the option of the party whose consent was so obtained.

Q.4: How Many Types of Mistakes are there?**Answer:**

- It refers to miscalculation or judgmental error by both or either of the parties.
- It must be "vital operative mistake".
- 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.



Q.5: Describe the Legality of Object and Consideration as per Indian Contract Act, 1872.

Answer:

- As per Section 23, of the Indian Contract Act, “An agreement whose object or consideration is unlawful is void.”
- Consideration or object is unlawful :
 - (i) If it is forbidden by law.
 - (ii) It would, if permitted defeat the provisions of any law or,
 - (iii) Is fraudulent or
 - (iv) involves injury to the person or property of another, or
 - (v) is immoral, or
 - (vi) opposed to public property”.

Circumstances which makes the consideration or object unlawful:

- (i) **Forbidden by Law:** It includes the acts which are punishable under any statute as well as prohibited by regulation or orders made in the exercise of the authority conferred by the legislature.
- (ii) **Defeat of the provision of law:** Agreement defeating the provisions of any statutory law is void. Law includes any legislative enactment or rule of Hindu and Muslim law or any other rule for the time being in force in India.
- (iii) **Fraudulent:** Agreement with an object to defraud others is void.
- (iv) **Injury to the person or property of another:** An agreement having such an object is void.

- (v) **Immoral:** Object of any agreement being immoral is illegal. It is also legal if its consideration is an act of sexual immorality. It covers a wide range of topics.
- (vi) Defeat any rule for the time being in force in India.
- (vii) **Opposed to Public Policy:** Freedom of contract is restricted by law only for the good for the community, some of the agreements which are held to be opposed to public policy includes:
 1. Trading with enemy.
 2. Stifling prosecution i.e. agreement to present proceedings already instituted from running their normal course using force is pervasive and abuse of justice hence void,
 3. Maintenance and champerty i.e. an agreement in which a person agrees to assist another in litigation in exchange of a promise to hand over a portion of the proceeds of the action.
 4. Traffic relating to Public Offices.
 5. Agreements tending to create monopolies.
 6. Marriage brokerage agreements.
 7. Interference with the course of justice.
 8. Interest against obligation.
 9. Consideration unlawful in part.

Q.6: Define Void Agreements and Give some Examples.

Answer:

- Certain agreements have been expressly declared as void by contract Act.
- They are *void ab initio*.
- It includes the
 - (i) **Restrain of marriage:** Any agreement restraining any person, other than minor not to marry at all or not to marry any particular person is void.
 - (ii) **Restrain of trade (Section 27):** Agreement restraining anyone from exercising a lawful profession, trade or business of any kind, is void.
 - Both total or partial restraint are covered.
 - Restrain must be reasonable.

Following agreements are not in restraint of trade:

1. Service agreement by which an employee binds himself, during the term of his agreement, not to compete with the employer.
2. Agreement by a manufacturer to sell during a certain period his entire production to a wholesale market/merchant.
3. Agreement among the sellers of a particular commodity not to sell the commodity for less than a fixed price.

(iii) Restrain to legal proceedings (Section 28): One party is restricted absolutely from enforcing his rights under a contract through a Court or which abridges the usual period from starting legal proceedings.

(iv) Agreement the meaning of which is uncertain (Section 29): An agreement, the meaning of which is not certain, is void but where the meaning there of is capable of being made certain, the agreement is valid.

(v) Wagering Agreement (Section 30):

- Wager means 'bet'.
- They are ordinary betting agreements.
- It refers to an agreement between two parties by which one promises to pay money or money's worth on the happening of some uncertain event in consideration of the other party's promise to pay if the event does not happen.
- Such agreement is void.
- If one of the parties has control over the event, agreement is not a wager.
- Though wagering contracts are void, transactions incidental to wagering transactions are not void.

Transactions similar to wager (Gambling):

- Lottery transactions.
- Crossword Puzzles and competitions.
- Speculative transactions.
- Horse Race transactions.

Transactions resembling wagering transactions but are not void:

- Chit Fund.
- Commercial transactions or share market transactions.
- Games of skill and Athletic competitions.
- Contract of Insurance.

Q.7: Distinguish between Contract of Insurance and wagering agreement?

Answer:

	Contract of Insurance	Wagering Agreement
1.	It is a contract entered to indemnity losses.	It is a promise to pay money or money's worth on the happening or non-happening of an uncertain event.
2.	It is based on scientific and actuarial calculation of risks.	These are a gamble without any scientific calculation of risk.
3.	It is valid and enforceable until becomes void.	It is void and thus unenforceable in Court.
4.	Utmost good faith is to be observed.	Good faith need not be observed.
5.	There is a consideration due to the presence of insurable interest.	No consideration by way of premium is given.
6.	They are beneficial to the society.	They are regarded as against the public welfare.

SHORT PRACTICE QUESTIONS

1. Differentiate between:
 - (a) Coercion and Undue influence.
 - (b) Contract of Insurance and Wagering Agreement.

2. Writ Short Notes on:
- (a) Coercion.
 - (b) Person competent to contract.
 - (c) Position of minor's agreement.

PAST YEAR QUESTIONS AND ANSWERS

OBJECTIVE QUESTIONS

1994 - Nov [1] State with reason whether the following statement is Correct or Incorrect:

- (iii) Rule of estoppel cannot be exercised by a minor. (2 marks)
- (iv) Consent obtained by Fraud makes the agreement void. (2 marks)

Answer:

- (iii) **Incorrect:** Although contracts entered into by minor are void but they can be enforced for the benefit of minor and in this course, this rule of estoppel may be exercised by minor against the other party, if required.
- (iv) **Incorrect:** Consent obtained by fraud does not make the contract void. But it makes the contract voidable at the option of the party whose consent has been so obtained. (Sec. 19)

1995 - May [1] State with reason whether the following statement is Correct or Incorrect:

- (iii) Social agreements are enforceable in the Courts. (2 marks)

Answer:

Incorrect: Social agreements are not enforceable in the Courts, as they do not contemplate legal relationship.

1995 - May [1] State with reason whether the following statement is Correct or Incorrect:

- (vi) A stranger to the contract cannot enforce the contract. (2 marks)

Answer:

Correct: A stranger to the contract in general can not enforce the contract, as there is no privity of contract between a stranger and the other parties to the contract.

1996 - Nov [1] State with reason whether the following statement is Correct or Incorrect:

- (i) An agreement, the meaning of which is not certain or capable of being made certain is not void. (2 marks)

Answer:

Incorrect: In the words of Section 29 of the Indian Contract Act, 1872, agreements the meaning of which is not certain or capable of being made certain are void. There should be no two meanings of what the parties want to achieve. The agreement will be void, if the meaning of an agreement is neither certain, nor capable of being made certain.

1996 - Nov [1] State with reason whether the following statement is Correct or Incorrect:

- (iii) Commercial impossibility does not make the contract void. (2 marks)

Answer:

Correct: Commercial impossibility is not covered under Section 56 of the Indian Contract Act. This section is related to doctrine of frustration. The frustration is not applicable where there is delay in the performance, or commercial difficulty or an exception of less profit.

1997 - May [1] State with reason whether the following statement is Correct or Incorrect:

- (ii) A person who is usually of unsound mind cannot enter into a contract even when he is of sound mind. (2 marks)

Answer:

Incorrect: According to Section 12, a person who is usually of unsound mind but occasionally of sound mind can enter into a contract.

1997 - Nov [1] State with reason whether the following statement is Correct or Incorrect:

- (i) According to the doctrine of “Privity of Contract”, a stranger to a contract, if he is beneficiary, can not enforce the contract. (2 marks)

Answer:

Incorrect: According to the Doctrine of ‘Privity of Contract’, a stranger to a contract cannot sue. But if he is a beneficiary (in whose favour a trust has been created), he can enforce the contract.

1997 - Nov [1] State with reason whether the following statement is Correct or Incorrect:

- (ii) Transactions incidental to wagering agreements are not void. (2 marks)

Answer:

Correct: In an ordinary sense, a wagering contract is void, but the transactions incidental to wagering agreements are not void. For example a broker in a wagering transactions can recover his, brokerage. In the same way money received by the agent on account of a wagering transaction can be taken back by the principal.

1998 - May [1] State with reason whether the following statement is Correct or Incorrect:

- (ii) A contract to take a loan by a boy of sixteen years of age from a moneylender of 50 years old, is a valid contract. (2 marks)

Answer:

Incorrect: In the words of Section 11 of the Indian Contract Act, a person should be major to be competent to contract. A person becomes a major on the attainment of 18 years of old as per Indian Majority Act, 1875. In the case given above contract will be void because of the boy being a minor.

1999 - May [1] State with reason whether the following statement is Correct or Incorrect:

- (ii) A person who is usually of sound mind, but occasionally of unsound mind is unable to make the contract. (2 marks)

Answer:

Incorrect: A person who is usually of a sound mind but occasionally of unsound mind is not considered competent to make a contract when he is of unsound mind.

1999 - Nov [1] State with reason whether the following statement is Correct or Incorrect:

- (iii) It is a mixed question of law and fact whether time was essence of the contract. (2 marks)

Answer:

Correct: According to Section 55 of the Indian Contract Act, 1872, states that time as the essence of contract means that the time is an essential factor and hence the parties concerned with it must perform their promises within the specified time.

2000 - May [1] State with reason whether the following statement is Correct or Incorrect:

- (iii) A minor cannot be appointed as an agent, as he is not competent to contract. (2 marks)

Answer:

Incorrect: A minor can be appointed as an agent. According to Section 184, of Indian contract Act, 1972 any person can become an agent, between the principal and the third person, irrespective of whether he has contractual capacity or not.

2000 - May [1] State with reason whether the following statement is Correct or Incorrect:

- (iv) A contract can be avoided if consent is caused by fraud. (2 marks)

Answer:

Correct: When consent to an agreement is caused by fraud, though the agreement amounts to a contract, such a contract is voidable at the option of the party, whose consent was so obtained.

2000 - Nov [1] State with reason whether the following statement is Correct or Incorrect:

- (i) Social agreements are enforceable in the Courts of India. (2 marks)

Answer:

Incorrect: Social agreement are not enforceable in the courts of India, as they do not contemplate legal relationship.

2000 - Nov [1] State with reason whether the following statement is Correct or Incorrect:

- (ii) A threat to commit suicide does not amount to Coercion. (2 marks)

Answer:

Incorrect: It amounts to coercion since, it is forbidden and punishable by the Indian Penal Code.

2000 - Nov [1] State with reason whether the following statement is Correct or Incorrect:

- (iii) Intentional misrepresentation is 'fraud'. (2 marks)

Answer:

Correct: It amounts to fraud because it is assumed that the party has a reasonable ground to believe his assertion and his intention to put the other party to loss.

2001 - Nov [1] State with reason whether the following statement is Correct or Incorrect:

- (ii) A minor can neither undertake a liability nor receive a benefit under a contract. (2 marks)

Answer:

Incorrect: As per the India Contract 1872, no one can prevent a minor from becoming a promises or a beneficiary, the law does not regard a minor as incapable of accepting a benefit.

2002 - May [1] State with reason whether the following statement is Correct or Incorrect:

- (ii) In order to constitute a valid contract, consideration between two parties must be adequate. (2 marks)

Answer:

Incorrect : The Court provides that as long as the contract exists it should be supported by consideration. It is not concerned with its adequacy. The adequacy of the consideration is to be concerned by the parties to the agreement.

2002 - May [1] State with reason whether the following statement is Correct or Incorrect:

- (iii) A threat to lodge criminal prosecution on a false charge amounts to coercion. (2 marks)

Answer:

Correct: According to Section 15 of the Indian Contract Act, 1872, Coercion is the committing or threatening to commit any act forbidden by the Indian Penal Code 1860. A threat to file or lodge criminal prosecution on a false charge is an offence in itself and hence prohibited. In this way threat amounts to coercion.

2021 - July [1] {C} (a) State with reason(s) whether the following agreements are valid or void:

- (i) A clause in a contract provided that no action should be brought upon in case of breach.
- (ii) Where two courts have jurisdiction to try a suit, an agreement between the parties that the suit should be filed in one of those courts alone and not in the other.
- (iv) X, a physician and surgeon, employs Y as an assistant on a salary of ₹ 75,000 per month for a term of two years and Y agrees not to practice as a surgeon and physician during these two years.

(3 marks)

Answer:

- (i) **Void:**

An agreement restraining the parties from enforcing their legal rights is absolutely void. In this case, the agreement is void. Since, the clause in the agreement restricts the parties to bring a legal action even in case of breach of contract.

(ii) **Valid:**

If two courts have jurisdiction in a matter to try the suit then an agreement between the parties to that suit should be filed in one of the courts and not in the other is valid. In this case, the agreement is thus valid. Since, parties are free to choose single court when they are having option to multiple courts to try a suit.

(iv) **Valid:**

If an employee agree with his employer not to compete with him during his employment, is a valid contract. In this case, the agreement is valid. Since y agreed not to compete with his employer during his employment period.

SHORT NOTES

1995 - Nov [7] Write short notes on the following:

(b) Voidable Agreement.

(5 marks)

Answer:

Voidable Agreement:

A contract the consent to which is caused by coercion, undue influence, fraud or misrepresentation is voidable at the option of the party whose consent was so caused. (*Bishandeo Narain v. Seogero Rai AIR 1951 SC 280*).

Thus the aggrieved party has the option either to avoid the contract or alternatively, to affirm it. The burden of proving the said elements is on the plaintiff. [*Hims Enterprise v. Ishak Bin Subari (1992) 1 CLJ 132*]. He can exercise his option only once. If the contract is affirmed, it becomes enforceable and if avoided it becomes void (*East India Commercial Company v. Collector of Customs AIR 1962 SC 1893*). It continues to be valid and enforceable till it is repudiated by the aggrieved party. The application of option by aggrieved party is subject to certain restrictions:

1. When the party, aware of his right to rescind, affirms the contract, the right of rescission is lost.

2. When a party at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor.
3. Rescission must be claimed within reasonable time.
4. The right of rescission is lost when a third party, acting in good faith, acquires right in the subject matter of the contract.
5. Rescission is subject to the condition that the party seeking rescission must be in position to restore the benefits he may have obtained under the contract.

Section 19A deals with the contracts affected by undue influence which have been declared as voidable at the option of aggrieved party. Such contracts may be set aside absolutely or partly. Court enjoys discretion.

1996 - May [7] Write short notes on the following:

(a) Agreements opposed to public policy.

(5 marks)

Answer:

Agreement Opposed to Public Policy :- If the court regards an agreement opposed to public policy it is unlawful and it cannot be enforced by either of the parties. These agreements have been declared void by the Indian Contract Act, 1872.

Following are the agreements opposed to public policy:

1. Trading with an alien enemy.
2. Agreements encouraging litigation.
3. Agreements for stifling prosecution.
4. Agreements tending to create interest against duty.
5. Traffic in public offices.
6. Marriage brokerage agreements
7. Agreements in restraint of marriages.
8. Agreements interfering with marital duties.
9. Agreements in restraint of parental rights.
10. Agreements in restraint of legal proceedings.
11. Agreements intending to create monopolies.
12. Agreements in restraint of personal freedom.
13. Agreements in restraint of trade.

A contract having tendency to injure public interest or public welfare, is opposed to public policy, The leading case on this is of *Ratan Chand Hira Chand V. Askar Nawaz Jung (1991) 3SCC67*, it was held that any agreement which tends to promote corruption or injustice or is against the interest of the public is considered to be opposed to public policy.

1997 - May [7] Write short notes on the following:

(a) Capacity of the parties to a contract. (5 marks)

Answer:

Capacity of parties to contract: Capacity means the competence of the parties to enter into a valid contract. Section 11 of the Contract deals with the competency of parties and provides that every person is competent to contract who is:

1. of the age of majority as per law to which he is subject,
2. of sound mind,
3. is not disqualified from contracting by any law to which he is subject.

The qualification stated above must be fulfilled by the person competent to contract. The first qualification refers to the age of the contracting person. A person attain majority on completing his 18 years. While in case of matters of property majority is attained after completing 21 years of age.

The second qualification requires a person to be of a sound mind at the time of making the contract. he must be capable of understanding it and of forming a rational judgement as to its effect. Following are the person who are not supposed to be of sound mind such as a lunatic, an idiot, a drunken person.

The third qualification requires that a person entering into a contract should not be disqualified by his status while entering into such contracts For example; alien enemy, insolvents, convicts, married women and corporations.

The contract will not be valid if it is entered by the persons who are not competent to contract.

1998 - Nov [7] Write short notes on the following:

(a) Free consent. (5 marks)

Answer:

Free Consent: In the words of section 10, of the Indian Contract Act, free consent is one of the essential requirement of a valid contract. The consent which is obtained by the free will of the parties on their own accord is called free consent.

Consent is said to be free when it is not caused by (Section 14):

1. Coercion, or
2. Undue Influence, or
3. Fraud, or
4. Misrepresentation, or
5. Mistake.

The contract becomes voidable, when it is obtained by coercion, fraud, undue influence or misrepresentation. But when the consent is obtain by mistake the contract becomes void.

1999 - Nov [7] Write short notes on the following:

- (i) Mere silence as to facts does not amount to fraud. (5 marks)

Answer:

Mere silence as to the facts does not amount to fraud: Mere silence of the party as to certain facts does not actually amounts to fraud. A party to the contract is owing no gratitude to disclose the whole truth to the other party. The Rule of Caveat Emptor is applicable here that is Buyer Beware principal. This principle means that the buyer should be aware of things while making the contract. In these cases there is no duty to speak and silence does not result to fraud. When both the parties are aware of the contract, there is no duty to disclose the facts.

Hence, silence does not amount to fraud. These are two exception to the rule. These are:– (i) where circumstances create a duty the part of the person keeping silence to speak and (ii) where silence in itself is equivalent to speech.

1999 - Nov [7] Write short note on the following:

- (ii) Agreements in restraint of legal proceedings. (5 marks)

Answer:

Agreements in restraint of legal proceedings: Agreements in restraint of legal proceedings comes under Section 28, of the Indian Contract Act, 1872. The section provides that every agreement by which any party thereto is restricted completely from following his rights under or in respect of any contract, by the usual legal proceeding in the ordinary tribunals or which fixes the time within which he may thus enforce his right, is void to that extent. There are some exceptions to it;

1. Arbitration shall be valid in respect of all future disputes in connection with a contract.
2. If the parties agree to refer to arbitration, any question between them. which has already arisen, or which may arise in future if it is in writing.

1999 - Nov [7] Write short note on the following:

(iv) Coercion.

(5 marks)

Answer:

Coercion: In simple terms, coercion means threat or force used by one party against the another for compelling him to enter into a contract.

Section 15 of the Contract Act. 1872, defines coercion as, "the committing or threatening to commit any act forbidden by the Indian penal Code or Unlawful detaining or threatening to detain, any property, to the prejudice of any person, with the intention of causing any person to enter into an agreement".

For example: A threatens to shoot B, a friend of C, if C does not let out his house to him. C agrees to do so. Thus, the agreement has been bought by coercion.

2000 - May [7] Write short note on the following:

(i) When is an agreement in 'restraint of Trade' valid?

(5 marks)

Answer:

An agreement in restraint of trade is void [Section 27, Indian Contract Act, 1872]: All agreements in restraint of trade, whether general or partial, qualified or unqualified are void.

However in the following cases, a contract in restraint of trade is valid:

- (a) **Sale of goodwill:** Section 27 itself gives one exception. One who sells the goodwill of a business may agree with the buyer to refrain from carrying on or similar business within specified local limits.
- (b) **Partner's agreements:** A contract between partners to provide that a partners shall not carry on any business other than that of the firm while he is a partner. [Section 11(2)].
- (c) A partner may make an agreement with his partners that on ceasing to be a partner, he will not carry on any business. Similar to that of the firm within a specified period or local limits. [Section 36(2), Indian Partnership Act, 1932].
- (d) A partner may upon or in-anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on business similar to that of the firm within a specified period or local limits such an agreement is valid provided the restrictions are reasonable. (Section 54 of the Indian Partnership Act, 1932)
- (e) A partner may upon sale of goodwill of a firm, make an agreement with the buyer of goodwill that such partner will not carry on any business similar to that of the firm, within a specified period or local limits. Such agreement is valid provided the restrictions are reasonable. [Section 55(3), Indian Partnership Act, 1932].

DISTINGUISH BETWEEN

1994 - Nov [4] (b) Distinguish Between of the following:

- (ii) Fraud and Misrepresentation.

(5 marks)

Answer:

Distinction between Fraud and Misrepresentation: Fraud means deliberate misstatement or active concealment of a material fact or any other act fitted to deceive. Misrepresentation is incorrect or false statement or breach of duty giving an advantage to the person committing it but the fallacy or failure is not due to any desire to deceive the other party.

The main points of distinction between the two are as follows:

- (a) **Intention:** In Fraud the intention of the party committing fraud is to deceive the other party, while in Misrepresentation the intention of the party is not to deceive. Misrepresentation is innocent, while fraud is deliberate or willful.
- (b) **Belief:** In fraud the person making the suggestion does not believe it to be true, while in misrepresentation, the party making such suggestion believes it to be true.
- (c) **Rescission and damages:** In misrepresentation, the aggrieved party can rescind the contract or sue for restitution (Sec. 64). But he can not file a suit for damages. In fraud, the remedy available to the aggrieved party is not limited to rescission only, but to damages also.
- (d) **Discovery of truth:** In case of misrepresentation, the aggrieved party cannot avoid the contract if it had the means to discover the truth with ordinary diligence. But in Fraud, where there is active concealment, the contract is voidable, even though the aggrieved party had the means of discovering the truth with ordinary diligence.

1995 - May [6] (b) Distinguish Between of the following:

- (i) 'Unilateral' and 'Bilateral' mistake.

(5 marks)

Answer:

Sl. No.	Basis	Unilateral Mistake	Bilateral Mistake
1.	Meaning	When only one of the party to a contract is under a mistake it is called unilateral mistake.	When both the contracting parties misunderstand each other and are at cross purpose, it is bilateral mistake.
2.	Mistake arises	In unilateral mistake, mistake arises only on the part of one of the parties.	Bilateral Mistake arises on the part of both the parties to the contract.

3.	Nature of Contract	Only one party is under a mistake, the contract is not void.	As both the parties are under mistake so the agreement is void.
-----------	---------------------------	--	---

1996 - Nov [4] (b) Distinguish Between of the following:

- (i) Fraud and Misrepresentation. (5 marks)

Answer:

Please refer 1994 - Nov [4] (b) (ii) on page no. 95

1999 - May [6] (b) Distinguish Between of the following:

- (i) Coercion and Undue influence. (5 marks)

Answer:

Distinction between Coercion and Undue Influence

Sl. No.	Basis	Coercion	Undue Influence
1.	Definition	Coercion involves threat to use physical force to obtain the consent of the other party.	In undue influence mental or moral pressure is used to get the consent of the other party.
2.	Parties	Coercion may be committed by any person against any person. Even a strange act may amount to coercion.	Undue Influence must be made by a party to the contract.
3.	Relationship	In coercion, the parties to the contract do not have any definite relationship with each other.	In undue influence the parties under fiduciary relationship.
4.	Intention	In coercion, the parties or party causing coercion has an intention to enter into an agreement.	In undue influence the influencing party uses its position to obtain an unfair advantage over the other party.

5.	Penalty	An act of coercion may be punishable under the Indian Penal Code.	The act of undue influence may not be punishable.
-----------	----------------	---	---

2001 - May [4] (b) Distinguish Between of the following:

- (i) Coercion and Undue influence. (5 marks)

Answer:

Please refer 1999 - May [6] (b) on page no. 97

2001 - Nov [4] (b) Distinguish Between of the following:

- (ii) 'Unilateral' and 'Bilateral' mistake. (5 marks)

Answer:

Please refer 1995 - May [6] (b) (i) on page no. 96

2002 - May [4] (b) Distinguish Between of the following:

- (i) Fraud and Misrepresentation. (5 marks)

Answer:

Please refer 1994 - Nov [4] (b) (ii) on page no. 95

2020 - Nov [6] (a) Enumerate the differences between 'Wagering Agreements' and 'Contract of Insurance' with reference to provision of the Indian Contract Act, 1872. (5 marks)

Answer:

	B. O. D.	Contracts of Insurance	Wagering Agreement
(a)	Meaning	It is a contract to indemnify the loss.	It is a promise to pay money or moneys worth on the happening or non happening of an uncertain event.
(b)	Consid-eration	The crux of insurance contract is the mutual consideration.	There is no consideration between the two parties. There is just gambling fee money.
(c)	Enforce-ability	It is valid and enforce-able.	It is void and unenforcable agreement.

(d)	Public welfare	They are beneficial to the society.	They are regarded as against the public welfare.
(e)	Premium	Calculation of premium is based on scientific and actuarial calculation of risks.	No such logical calculations are required in the case of wagering agreement.

DESCRIPTIVE QUESTIONS

1994 - Nov [2] Comment on the following:

(b) Wagering agreements do not cover insurance contracts. (5 marks)

Answer:

Wagering agreements do not cover insurance contracts: Sec. 30 of the Indian Contract Act defines a wager as an agreement between two parties by which one promises to pay money or money's worth on the happening of some uncertain event in consideration of the other party's promise to pay if the even does not happen.

Contract of Insurance also have a resemblance with wagering agreements, since the insurance companies have to pay the insured a certain sum of money after the occurrence of certain event. But wager and insurance contracts have a superficial resemblance. As a matter of fact, the two have difference in basic characters. The difference of the two lies in the following:

In Insurance contracts, the insured has an insurable interest in the subject-matter of the insurance, such an interest is not there in the wagering agreements. Further in insurance contracts, the insured as well as the insurer both, are interested in safety of the subject-matter, but in wagering agreements, only one party may be interested in the safety of the subject-matter, if any and not both. Moreover in wagering agreements the sum payable is ascertained at the time of making the agreement, but in insurance contracts the insured is indemnified only and is not allowed to take a benefit out of the contract. Further, insurance is beneficial to the public at large, but

2.100

■ Solved Scanner CA Foundation Paper - 2A (New Syllabus)

wager is not. Last but not the least, the amount of premium (consideration) payable by the insured to the insurance company is based on scientific calculations, which is not the case in wagers. On the basis of above explanation, it can safely be said that wagering agreements do not cover insurance contracts. However, if the insured does not have insurable interest in the subject-matter insured, then, in such cases such insurance contracts shall have no distinction with wagering agreements.

1995 - May [2] Comment on the following:

(a) An agreement entered into by a minor cannot be enforced at law.

(5 marks)

Answer:

An agreement entered into by a minor cannot be enforced at law:

Section 11 of the Indian Contract Act provides that “every person is competent to contract who is of the age of majority”. This clearly means that a minor is not capable of making a valid contract as he is incompetent to contract. An agreement made with a minor is *void ab initio* (*Mohri bibi vs. Dharma Dass Ghose 1903*) and can not be ratified subsequently but this proposition does not apply to the case in which a contract is entered into by persons of full age on behalf of a minor in a joint family, or when it is entered into by his *de facto* guardian for the benefit or necessity of a minor (*Jwala Parsad vs. Raghubir*). So when a contract is entered into by the guardian of a minor on behalf of and for the benefit of the minor, the minor is liable to be sued on the contract. But the price for these necessities can be recovered from the estate of the minor as he is not liable personally. A contract by a manager or guardian can be specifically enforced by or against the minor if they are competent to make it and it is for the benefit of the minor (*Gopal Krishna vs. Tukaram 1956*). However, the manager or guardian is not competent to enter into a contract for the purchase of immovable property on behalf of the minor (*Hari charan vs. Kanti Rai*). Moreover, a contract for personal service by minor is void under the Indian law. Under the partnership Act, a minor cannot be a partner in a firm, although he may be admitted to the benefits of partnership.

1995 - May [5] Answer the following:

(a) When is the 'Consent' said to be not free?

(5 marks)

Answer:

When consent is not freely given: Section 13 of the Indian Contract Act, 1872, defines the term 'consent' as, "two or more persons are said to consent when they agree upon the same thing in the same sense". It means that the contracting parties must have identity of minds i.e. *consensus - ad idem*. Section 10 of the Act says that 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. It means that not only there should be consent, but the consent of the parties must also be free. The consent is said to be not free when it is vitiated by coercion, undue influence, fraud, misrepresentation or mistake. In such a case the contract becomes voidable at the option of the party whose consent is not free. Various factors which may affect free consent are discussed below:

Coercion: 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. (Section 15).

Undue Influence: 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 another.

Fraud: "Fraud" exists when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, not caring whether it is true or false and (iv) the maker intended the other party to act upon it. It also exists when there is a concealment of a material fact (Section 17).

Misrepresentation: Misrepresentation is a misstatement of a material fact made innocently with an honest belief as to its truth or non-disclosure of a material fact, without any intent to deceive the other party (Section 18).

Mistake: Mistake is a misconception or error. A mistake means that parties intending to do one thing, by error do something else. When an agreement is made under a mistake, it may be a mistake of fact or law.

1995 - Nov [2] Comment on the following:

(b) All agreements in restraint of trade are void. (5 marks)

Answer:

Agreements in Restraint of Trade: All agreements in restraint of trade are void. Section 27 of the Indian Contract Act lays down that every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. However, the following restraints which are exceptions to the aforesaid general rule are considered as valid in the agreement of trade and do not affect the validity of an agreement.

- (i) **Exception under Section 27 of the Indian Contract Act:** One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein; provided that such limits appear to the court reasonable, regard being had to the nature of business.
- (ii) **Exceptions under Partnership Act, 1932:**
 - (a) Agreement requiring a partner not to carry on any business other than that of the firm while he is a partner [Section 11(2)].
 - (b) Restraining an outgoing partner from carrying on a similar business as of the firm [Section 36(2)].
 - (c) Partners may, upon or in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a business similar to that of the firm within a specified period or within specified local limits if the restrictions imposed are reasonable (Section 54).
 - (d) Any partner may, upon the sale of goodwill of a firm, make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within a specified period or local limits, if the restrictions imposed are reasonable [Section 55(3)].
- (iii) Exceptions under judicial decisions e.g. restraining an employee not to serve elsewhere during his employment or agreement entering into trade combination.

1995 - Nov [2] Comment on the following:

(c) Mere silence is not a fraud.

(5 marks)

Answer:

Silence is not a Fraud: It is a rule of law that mere silence does not amount to fraud. A contracting party is not duty bound to disclose the whole truth to the other party or to give him the whole information in his possession affecting the subject matter of the contract.

The rule is contained in explanation to Section 17 of the Indian Contract Act which clearly states the position that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud.

To this rule the following two exceptions are provided:

- (i) Where the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak. Duty to speak arises when one contracting party reposes trust and confidence in the other or where one party has to depend upon the good sense of the other (e.g. Insurance Contract).
- (ii) Where the silence is in itself, equivalent to speech.

1995 - Nov [5] Answer the following:

(b) When may a person be treated as of unsound mind to form a contract?

(5 marks)

Answer:

Person of unsound mind:

A person is said to be of unsound mind for the purpose of making a contract, if at the time when he makes it, he is not capable of understanding it, and of forming a rational judgement as to its effect upon his interests.

According to Section 12 of the Indian Contract Act a person may be treated as of unsound mind to form a contract if he is:

- (i) Idiot, who has completely lost his mental faculties of thinking.
- (ii) Lunatic, a person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. But during his lunacy he is incapable to form a contract.
- (iii) Drunken or intoxicated person when he is under drunkenness or intoxication.

1997 - May [2] Comment on the following:

(a) "A minor is liable to pay for the necessities of life supplied to him".

(5 marks)

Answer:

Section 68 of the Contract Act, deals with the cases of necessities of life supplied to a minor. The Act provides that "if a person incapable of entering into a contract or anyone, when he is legally bound to support is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be recovered from the property of such incapable person."

Thus, a minor is not personally liable for the payment of necessities supplied to him, the payment for such necessities can be recovered only out of the property of the minor. The supplier will lose the price of necessities, if the minor does not possess any property. What constitutes necessities shall be determined with reference to the status and the circumstances of a particular minor.

Simple example of necessities are food, clothing and shelter but necessities will also include minor's medical expenses, cost of defending a minor's civil or criminal proceedings, provisions for education etc. Loan taken by minor to obtain necessities also bind a minor.

The point to be noted is that the parent or guardian of a minor cannot be made responsible for any good supplied to a minor unless these goods are supplied to a minor as the agent of the parent or guardian.

1997 - May [3] (a) Explain the term 'Fraud' as per the Indian Contract Act. What are its effects upon the validity of a contract? (10 marks)

Answer:

When a wilful representation is made by a party to a contract with the intention to deceive the other party or to induce such party to enter into a contract is called Fraud.

According to Section 17, fraud means and includes any of the following acts:

1. a false suggestion as to fact known to be false or not believed to be true;
or

2. the active concealment of a fact with knowledge or belief of the fact; or
3. a promise made without any intention of performing it; or
4. doing any other act fitted to deceive; or
5. doing any such act or making any such omission as the law specially declares to be fraudulent.

Essential elements of the fraud:

The essential elements of the fraud are as follows:

1. There must be representation or assertion and it must be false.
2. The representation or assertion must be of a fact.
3. The party acting on the representation must have suffered some loss.
4. Active concealment of the facts also results into fraud.
5. The statement must have been made with a knowledge of its falsity or without belief in its truth or recklessly.
6. The fraud must have actually deceived the other party.

Effect of fraud:

A contract becomes voidable at the option of the party whose consent to an agreement is caused by fraud.

The remedies available to the aggrieved party are as follows:

1. he may cancel the contract, or
2. he can insist the other party to perform the contract, so that he shall put in the position in which he would have been if the representation made has been true.
3. he can sue for damages.

1997 - Nov [2] Comment on the following:

(c) A minor can always plead minority.

(5 marks)

Answer:

A minor can always plead minority: A minor's agreement being void, so no money can be recovered from him on any type of advance made. A minor cannot be stopped from pleading his minority, even when he procures loan by falsely representing that he is a major, in a suit to recover the amount. In such a case the suit will stand to be dismissed.

A minor's agreement being void, it cannot be specifically enforced against the minor under the Specific Relief Act, The fact that the minor misrepresented his age or by fraud, induced the other party to enter into a contract with him, cannot be used of to make him liable on his contract. Rule of estoppel cannot be pleaded against the minor.

1997 - Nov [5] Answer the following:

- (a) What is coercion? What are the consequences of coercion upon the validity of the contract? (5 marks)

Answer:

Coercion: According to Section 15, "Coercion is the committing or threatening to commit any act forbidden by the Indian Penal Code, or the unlawful detaining or threatening to detains any property, to the prejudice of any person whatever, with the intention of causing any force in the place where the coercion is employed." Following are the essential elements of coercion:

1. There should be clear utterance of threat.
2. The threat must be to commit an act forbidden by the Indian Penal Code.
3. The act must be done with the intention of causing other person to enter into agreement.

Effect of Coercion:

Effect of coercion is given under section 19 of the Act and they are as follows:

1. An agreement whose consent is obtained by coercion is voidable at the option of the party whose consent is so obtained.
2. A person to whom the money has been paid or anything delivered under coercion must repay or return it (Section 72).

1998 - May [2] Comment on the following:

- (c) "An agreement by way of wager is not illegal". (5 marks)

Answer:

Liability of wagering agreement:

1. Wagering Agreement are void as per section 30 of the Indian Contract Act.

2. Though the agreement are void and unenforced it is not forbidden by law.
3. In other words it can be said that wagering agreement are void but not illegal.
4. But in the States of Gujarat and Maharashtra, wagering agreements are declared to be illegal.
5. Thus, a broker can recover his brokerage in a wagering transaction.

1998 - May [5] Answer the following:

- (a) Who are disqualified persons to do the contract? (5 marks)

Answer:

Disqualified Persons: Following are the person who are not complements to contract as per Section 11 of the Indian Contract act, 1872:

1. Minor.
2. Person of unsound mind.
3. Person disqualified by law such as:
 - an alien enemy.
 - foreign sovereigns and ambassador.
 - Insolvents.
 - Convicts.
 - Corporation.
 - Married Women.
 - Professional person.
4. Under Article 299 of the constitution of India, the President of India, the governor of the state and their agents are not personally liable for the contracts made under the concerned government.
5. If a public body or person is empowered by legislation with certain powers and duties, those person or bodies are not in a position to enter into any contract.

1998 - May [6] (a) What is meant by agreement in restraint of trade? Describe in brief the various exceptions thereto. (10 marks)

Answer:

According to Section 27 of the Indian Contract Act, 1872 an agreement seeking to hold a person from exercising a lawful profession, trade or business of any kind is void to that extent. Public policy wants that every person be at freedom to work for himself and should not be at liberty to prevent himself or the state of his labour, skill or talent by any contract that he enters to. This will avoid competition and will have a monopolistic tendency which is not in the favour of public and society both.

But there are certain exception to this rule; The exception are divided in two broad heads:

(1) Statutory Exception

(2) Common Law exceptions.

(1) **Statutory Exception are the exception created by statutes:**

- (i) **Sale of goodwill:** If a person purchases the business of another person and pays for its goodwill, then such purchaser can have reasonable restriction on the trade of the seller of the goodwill (Section 27).
- (ii) **Partners competing business:** As long as a person remains a partner of a firm, he is restrained from carrying on a similar business (Section 11(2) of the Partnership Act).
- (iii) **Rights of outgoing partner:** A partner may agree with his partners that on leaving the firm, he will not carry on a similar business within a specified period or within specified local limits. (Section 36(2) of the Partnership Act).
- (iv) **Partner's similar business on dissolution:** According to 54 of the Partnership Act. partners may in anticipation of the dissolution of the firm, agree that all as some of them shall not carry on a business similar to that of firm within specified local limits.
- (v) **Agreement in restraint of trade:** Any partner on the sale of the goodwill of a firm makes an agreement with the buyer that such partners. will not carry on any business similar to that of the firm within a specified period or within local limits (Section 55 (3) of the partnership Act).

(2) **Exception under the common law arises from the judicial interpretation:**

- (i) **Service agreement:** An agreement of service, by which a person binds himself during the term of agreement to not to take up service with any one else. Or not to compete with his employer is valid.
- (ii) **Trade combination:** Trade combination with the object of regulating business are desirable in public interest.

1998 - Nov [2] Comment on the following:

- (a) Mere silence as to facts does not amount to fraud. (5 marks)

Answer:

Mere silence as to the facts does not amount to fraud :- Mere silence of the party as to certain facts does not actually amounts to fraud. A party to the contract is owing no gratitude to disclose the whole truth to the other party. The Rule of Caveat Emptor is applicable here that is Buyer Beware principal. This principle means that the buyer should be aware of things while making the contract. In these cases there is no duty to speak and silence does not result to fraud. When both the parties are aware of the contract, there is no duty to disclose the facts.

Hence, silence does not amount to fraud. These are two exception to the rule. These are:- (i) where circumstances create a duty the part of the person keeping silence to speak and (ii) where silence in itself is equivalent to speech.

1999 - Nov [3] (i) State the exceptions to the rule that "a stranger to a contract cannot sue". (10 marks)

Answer:

Stranger to a Contract: It is a general rule of contract that a person who is not a party to the contract can not sue on it. This specifies that unless there is a privity of contract a party cannot sue on a contract. Privity of contract means the relationship subsisting between the parties to a contract. It means that no one but the parties to a contract can be bound by it or be entitled under it.

A stranger to a contract cannot sue except in the following cases:

1. In case of trust, the beneficiary of the trust is in a position to enforce the contract even though he is a stranger to it.
2. In case the contract is entered into by an agent, it can be enforced by the principal.
3. Where an arrangement is made in connection with marriage, partition or other family arrangements and a provision is made for the benefit of the person, he can sue although he is not a party to the agreement.
4. Where the promisor himself has created privity of contract by his conduct he is in a position to sue.
5. A stranger to a contract can sue for the money made payable to him by it where the money is charged on immovable property.

1999 - Nov [5] Explain the following:

- (i) Mistakes of fact.

(5 marks)

Answer:

Mistake of fact: Mistake of fact may be divided into two groups that is:

1. Bilateral Mistake
 2. Unilateral Mistake
1. **Bilateral mistake:** According to Section 20 of the Act, Bilateral mistake is a mistake, "Where both the parties to an agreement are under a mistake, as to a matter of fact essential to the agreement, the agreement is void."
Bilateral mistake may relate to the existence, identity, title, quantity and price of the subject matter, However, an erroneous opinion as to the value of a thing which forms the subject matter of the agreement is not to be deemed a mistake as to matter of fact (Explanation to section 20).
2. **Unilateral Mistake of fact:** Section 22 of the Act deals with unilateral mistake, "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".

2000 - May [2] Comment on the following:

- (iii) All illegal agreements are void but all void agreements are not illegal.

(5 marks)

Answer:**All illegal agreement are void but all void agreements are not illegal:**

The agreement which has no legal effect is a void agreement. In the case of the illegal contract, there is no legal effect in between the parties but the transaction collateral to such a contract is further effected.

A contract which is termed illegal and is void ab initio, is treated by law as if it had not been made at all. Thus, parties to an illegal contract cannot get the help from court of law. For example, in the case of an illegal contract for the sale of goods, the buyer though has paid the price, cannot sue for non delivery. The price cannot be recovered by the seller who has to make the delivery. No suit can be filed in respect of an illegal contract.

2000 - Nov [2] Comment on the following:

(a) A minor can always plead minority. (5 marks)

Answer:

Please refer 1997 - Nov [2] (c) on page no. 105

2000 - Nov [5] Comment on the following:

(a) When does the mistake of the parties invalidate a contract? (5 marks)

Answer:

'Mistake' has not been defined anywhere in the Indian Contract Act, 1872. But Section 20 of the act provides the effect of the term 'mistake' which is "when both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is declared void."

Following conditions must be fulfilled before a contract can be avoided on the ground of mistake:

1. There must be a mistake as to the formation of contract.
2. The mistake must relate as to the matter of fact and not of law.
3. The mistake must be of both the parties i.e. bilateral.
4. The matter of fact must be essential to the agreement.

2000 - Nov [7] Comment on the following:

(a) Capacity to contract. (5 marks)

2.112

■ Solved Scanner CA Foundation Paper - 2A (New Syllabus)

Answer:

Capacity of parties to contract: Capacity means the competence of the parties to enter into a valid contract. Section 11 of the Contract deals with the competency of parties and provides that every person is competent to contract who is:—

1. of the age of majority as per law to which he is subject,
2. of sound mind,
3. is not disqualified from contracting by any law to which he is subject.

The qualification stated above must be fulfilled by the person competent to contract. The first qualification refers to the age of the contracting person. A person attain majority on completing his 18 years. While in case of matters of property majority is attained after completing 21 years of age.

The second qualification requires a person to be of a sound mind at the time of making the contract. He must be capable of understanding it and of forming a rational judgement as to its effect. Following are the person who are not supposed to be of sound mind such as a lunatic, an idiot, a drunken person.

The third qualification requires that a person entering into a contract should not be disqualified by his status while entering into such contracts For example; alien enemy, insolvents, convicts, married women and corporations.

The contract will not be valid if it is entered by the persons who are not competent to contract.

2001 - Nov [2] Comment on the following:

- (a) A Stranger cannot sue the parties to a contract. (5 marks)

Answer:

Please refer 1999 - Nov [3] (i) on page no. 109

2001 - Nov [2] Comment on the following:

- (b) Mere silence, as to fact, of a party to the contract, amounts to fraud. (5 marks)

Answer:

Please refer 1998 - Nov [2] (a) on page no. 109

2001 - Nov [7] Write brief answers the following:

(a) Contract by a person of unsound mind. (5 marks)

Answer:

Contract by person of unsound mind: A person is said to be of sound mind, when he is capable of understanding the terms of the contract and is able to make a rational decision as to its effect upon his interest.

Thus, the person is of unsound mind when:

- (a) he is not in a position to make a contract or understand it.
- (b) he cannot form a proper and reasonable judgement as to how the contract will affect his interest.

Generally, it is assumed that every person is of a sound mind unless it is proved otherwise. A person who is usually of sound mind but occasionally of unsound mind cannot make a contract, when he is of unsound mind. Thus, a drunkard is not competent to contract when he is drunk.

Hence, the person of unsound mind are not competent to contract.

2002 - May [2] Briefly answer the following:

(c) An agreement in restraint of trade is void. (5 marks)

Answer:

According to Section 27 of the Indian Contract Act, 1872 an agreement seeking to hold a person from exercising a lawful profession, trade or business of any kind is void to that extent. Public policy wants that every person be at freedom to work for himself and should not be at liberty to prevent himself or the state of his labour, skill or talent by any contract that he enters to. This will avoid competition and will have a monopolistic tendency which is not in the favour of public and society both.

But there are certain exception to this rule; The exception are divided in two broad heads:

- (1) Statutory Exception
- (2) Common Law exceptions.

(1) **Statutory Exception are the exception created by statutes:**

- (i) **Sale of goodwill:** If a person purchases the business of another person and pays for its goodwill, then such purchaser can have reasonable restriction on the trade of the seller of the goodwill (Section 27).

- (ii) **Partners competing business:** As long as a person remains a partner of a firm, he is restrained from carrying on a similar business (Section 11(2) of the Partnership Act)
 - (iii) **Rights of outgoing partner:** A partner may agree with his partners that on leaving the firm, he will not carry on a similar business within a specified period or within specified local limits. (Section 36(2) of the Partnership Act).
 - (iv) **Partner's similar business on dissolution:** According to 54 of the Partnership Act. partners may in anticipation of the dissolution of the firm, agree that all as some of them shall not carry on a business similar to that of firm within specified local limits.
 - (v) **Agreement in restraint of trade:** Any partner on the sale of the goodwill of a firm makes an agreement with the buyer that such partners. will not carry on any business similar to that of the firm within a specified period or within local limits (Section 55 (3) of the Partnership Act).
- (2) **Exception under the common law arises from the judicial interpretation:**
- (i) **Service agreement:** An agreement of service, by which a person binds himself during the term of agreement to not to table up service with any one else. Or not to compete with his employer is valid.
 - (ii) **Trade combination:** Trade combination with the object of regulating business are desirable in public interest.

2002 - May [5] Briefly answer the following:

(b) Who are disqualified by law from entering into a valid contract?

(5 marks)

Answer:

Essential element to form a valid contract, as per **Section 11** is stated as "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".

Analysis of Section-11

This section deals with personal capacity of three types of individuals only. Every person is competent to contract who:

- (a) has attained the age of majority,
- (b) is of sound mind and
- (c) is not disqualified from contracting by any law to which he is subject.

2002 - Nov [2] Briefly answer the following:

- (b) Law relating to minor's contracts. (5 marks)

Answer:

Law relating to minor's contract:

- (i) An agreement entered into by a minor is altogether void.
- (ii) **Minor can be a beneficiary:** Though a minor is not competent to contract, there is nothing in the Indian Contract Act, 1872, which prevents him from making the other party bound to be minor.
- (iii) Minor can always plead minority.
- (iv) **Ratification on attaining a majority is not allowed:** As a minor's agreement is void, he cannot validate it by ratification on attaining majority.
- (v) Though a minor's agreement is void, his guardian can under certain circumstances enter into a valid contract as minor's behalf.
- (vi) Under section 68 (Indian contract Act, 1872), any person would be entitled to reimbursement out of minor's estate, for necessities supplied to him or to his family.

2002 - Nov [7] Briefly answer the following:

- (b) Explain Coercion and undue influence in a contract. (5 marks)

Answer:

Coercion and Undue influence may be distinguished in the following manner:

- (a) Coercion involves the physical force or threat. The aggrieved party is competent to make the contract against its will. While undue influence involves moral or mental pressure. The aggrieved party believes that he or she would make the contract.
- (b) Coercion involves committing or threatening of to commit any act forbidden by Indian Penal Code, detaining or threatening to detain property of another person. But no such illegal act is committed or a threat is given in case of undue influence.

- (c) It is not necessary that in case of coercion that there must be some sort of relationship between the parties. But some sort of relationship between the parties is absolutely necessary in the case of undue influence.
- (d) 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.
- (e) The contract is voidable at the option of the party where 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 endorse it in a modified form.
- (f) 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. But in case of the undue influence 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.

2018 - May [2] (c) (ii) Examine with reason that the given statement is correct or incorrect "Minor is liable to pay for the necessaries supplied to him". (2 marks)

Answer:

A claim for necessaries supplied to a minor is enforceable by law, but a minor is not liable for any price that he may promise and never for more than the value of necessaries.

There is no personal liability on the minor, but only his property (estate) is liable.

Hence, the statement "minor is liable to pay for necessaries supplied to him.", is incorrect.

2018 - May [6] (a) Define Fraud. Whether "mere silence will amount to fraud" as per the Indian Contract Act, 1872? (5 marks)

Answer:

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 an interest to deceive another party thereto or his agent, or to induce him to enter into the contract.

1. The suggestion, as a fact of that which is not true, by one who does not believe it to be true.
2. Active concealment of fact by one having knowledge or belief of the fact.
3. A promise made without any intention of performing it.
4. An act fitted to deceive.
5. Any act declared as fraudulent by law.

Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silent to speak, unless his silence is, in itself, equivalent to speech.

A party under contract is under no obligation to disclose the whole truth to the other party. "Caveat Emptor" i.e. let the buyer beware is the rule applicable to contracts. There is no duty to speak in such cases and silence does not amount to fraud. Similarly, there is no duty to disclose facts which are within the knowledge of both the parties.

2019 - June [2] (a) "Mere silence is not fraud" but there are some circumstances where the "silence is fraud". Explain the circumstances as per the provision of Indian Contract Act 1872? (7 marks)

Answer:

Mere silence is not fraud:

Mere silence as to the facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, is equivalent to speech.

A party to the contract is under no obligation to disclose the whole truth to the other party. 'Caveat Emptor' i.e. let the buyer beware is the rule applicable to contracts. There is no duty to speak in such cases and silence does not amount to fraud.

Similarly, there is no duty to disclose facts which are within the knowledge of both the parties.

Silence is fraud:

1. Duty of Person to Speak:

Where the circumstances of the case are such that it is the duty of the person observing silence to speak.

Following contracts come in this category:

- (a) **Fiduciary relationship:** Here, the person in whom confidence is reposed is under a duty to act with utmost good faith and make full disclosure of all material facts, known to him.
- (b) **Contracts of Insurance:** In such contracts, there is an implied condition that full disclosure of all material facts shall be made, else contract is avoidable.
- (c) **Contracts of Marriage:** Every material fact must be disclosed by the parties to a contract of marriage.
- (d) **Contracts of family settlement:** These contracts also require full disclosure of material facts within the knowledge of the parties.
- (e) **Share Allotment Contracts:** Person issuing “prospectus” at the time of public issue of shares/debentures, have to disclose all material facts within their knowledge.

2. Where silence itself is equivalent to speech:

For **Example**, A says to B. “If you do not deny it, I shall assume that the horse is sound.” B says nothing his silence amounts to speech. In case of fraudulent silence, contract is not voidable if the party whose consent was so obtained had means of discovering the truth with ordinary diligence.

2019 - June [6] (a) Discuss the essentials of Undue Influence as per the Indian Contract Act, 1872. (5 marks)

Answer:

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 over the other.

The essential ingredients of undue influence under the Indian Contract Act, 1872 are:

- (i) **Relation between the parties:** A person can be influenced by the other when a near relation between the two exists.

- (ii) **Position to dominate the will:** The relation between the parties are such that one of them is in a position to dominate the will of the other.
- (iii) **The object must be to take undue advantage:** Where the person is in a position to influence the will of the other in getting consent, must have the object to take advantage of the other.
- (iv) **Burden of proof:** The burden of proving the absence of the use of the dominant position to obtain the unfair advantage will lie on the party who is in a position to dominate the will of the other.

2019 - Nov [6] (a) Explain the term 'Coercion' and what are the effects of coercion under Indian Contract Act, 1872. (5 marks)

Answer:

"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"

Effects of coercion under Section 19 of Indian Contract Act, 1872:-

- (i) Contract induced by coercion is voidable at the option of the party whose consent was so obtained.
- (ii) The party receiving any benefit under the voidable contract must restore such benefit so far as may be to the person from whom it was received.
- (iii) A person to whom money has been paid or delivered under coercion must repay or return it.

2020 - Nov [2] (a) Define Misrepresentation and Fraud. Explain the difference between Fraud and Misrepresentation as per the Indian Contract Act, 1872. (7 marks)

Answer:

According to Section (17) of the Indian Contract Act, 1872:

"Fraud means and includes any of the following acts committed by a party to a contract or with his connivance or by his agent, which an intention to deceive another party there to or his agent, or to induce him to enters into a contract.

Following are some acts:

- (a) The active concealment of the fact by one having knowledge or brief of the fact.
- (b) A promise made without any intention of performing it.
- (c) any other act filled to deceive.
- (d) any such act which law declares to be fraudulent. etc.

Eg: A sells by auction to B, a house which A knows to be unsound, A says nothing to B. This is not fraud by A.

Silence may sometimes be fraud or will not all depend upon facts and circumstances of case.

Misrepresentation:

According to Section (18) of the Indian Contract Act, 1872. Misrepresentation means misstatement of material facts made believing it to be true without any intention of delivering the other party.

Ex: A makes a statement to B that C will be made 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 amount to misrepresentation.

Difference of fraud and misrepresentation is as follows:

Fraud	Misrepresentation
(1) Intentional misstatement of facts.	Innocent misstatement of facts.
(2) Intention to deceive is present.	Intention to deceive is not present.
(3) Aggrieved party can avoid the contract and claim damages as well.	Aggrieved party can avoid the contract but no damages can be claimed.

PRACTICAL QUESTIONS

2020 - Nov [1] {C} (a) Mr. X a businessman has been fighting a long drawn litigation with Mr. Y an industrialist. To support his legal campaign he enlists the services of Mr. C a Judicial officer stating that the amount of ₹ 10 lakhs would be paid to him if he does not take up the brief of Mr. Y.

Mr. C agrees but, at the end of the litigation Mr. X refuses to pay to Mr. C. Decide whether Mr. C can recover the amount promised by Mr. X under the provisions of the Indian Contract Act, 1872? (4 marks)

Answer:

Provision: According to Indian Contract Act, 1872. All Agreements in restraint of any trade or which are opposed to public policy are void and are such which are expressly declared by law to be a void agreement.

Analysis: In the given case, Mr. X has been fighting a long drawn litigation with Mr. Y To support his legal campaign he enlists the services of Mr. C who is a judicial officer stating that the amount of ₹ 10 lakhs would be paid to him if he does not take up the brief of Mr. Y.

As this agreement is an agreement which is void and opposed to public policy hence, it cannot be enforced.

Concession: As at the end X refuses to pay Mr. C the decided amount Mr. C cannot recover the amount promised by Mr. X under the provision of Indian Contract Act, 1872 as it is a void agreement b/w the two.

2021 - Jan [1] {C} (a) Mr. S aged 58 years was employed in a Govt. Department. He was going to retire after two years. Mr. D made a proposal to Mr. S to apply for voluntary retirement from his post so that Mr. D can be appointed in his place. Mr. D offered a sum of ₹ 10 Lakhs as consideration to Mr. S in order to induce him to retire.

Mr. S refused at first instance but when he evaluated the amount offered as consideration is just double of his cumulative remuneration to be received during the tenure of two years of employment, he agreed to receive the consideration and accepted the above agreement to receive money to retire from his office.

Whether the above agreement is valid? Explain with reference to provision of Indian Contract Act, 1872. (4 marks)

Answer:**According to the Provisions of Indian Contract Act, 1872**

An agreement to trafficking 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. The following are the examples of agreements that are void; since they are tantamount to sale of public offices.



- (1) An agreement to pay money to a 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. In the given case, Mr. D offered ₹ 10 lakh to Mr. S as consideration in order to induce him to retire so that Mr. D can be appointed in his place.

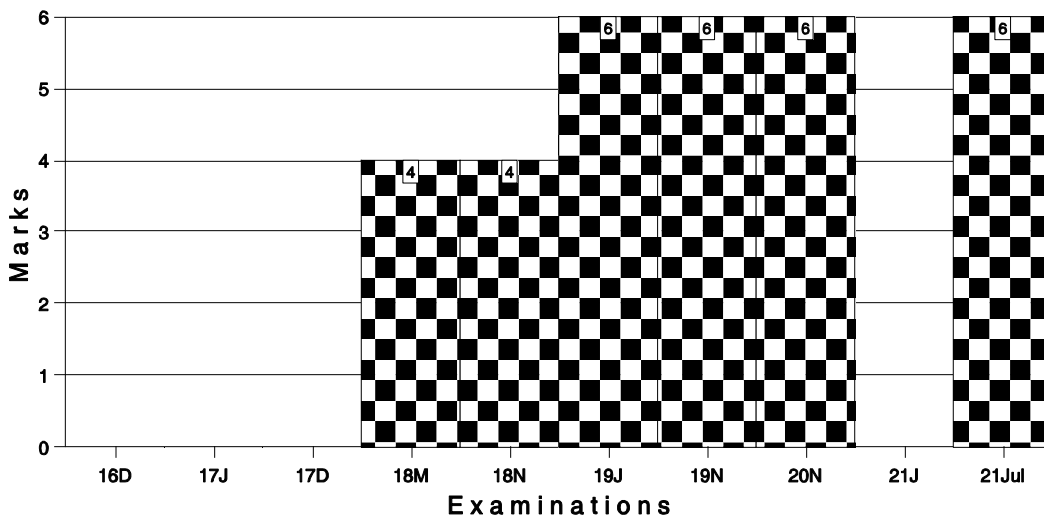
The above agreement is opposed to public policy therefore void.

CHAPTER	<h1>The Indian Contract Act, 1872</h1>
1	
Unit: 4	Performance of Contract

Marks of Short Notes, Distinguish Between, Descriptive & Practical Questions

Legend

 Objective
  Short Notes
  Distinguish
  Descriptive
  Practical



For detailed analysis Login at www.scanneradda.com
 for registration and password see first page of this book.

SELF STUDY QUESTIONS

Q.1: Describe the Obligations of parties to contract Under Indian Contract Act,1872.

Answer:

Performance of Contract: It is one of the modes of discharging the contract. It is the completion or fulfilment of obligations by the respective parties to a contract.

As per Section 37 of the Indian Contract Act, the parties to the contract must either—

1. Perform their respective promises, or
2. Offer to perform the same unless such performance is dispensed with or excused under the provisions of any other law.

Q.2: By Whom a contract may be performed.

Answer:

- **Promisor himself:** Section 40 states that “if it appears from the nature of the case that it was the intention of the parties to a contract that any promise contained in it needs to be performed by the promisor himself, such promise must be performed by the promisor himself.” Contracts involving the exercise of personal skill or diligence, or which are formed on the personal confidence between the parties need to be performed by promisor himself.
- **Agent:** If the contract is not found on the personal consideration, the promisor or his representative may employ a competent person to perform it.
- **Representatives:** Contract involving the use of personal skill or found to be on personal consideration comes to an end on the promisor’s death. In other cases, the legal representatives of the deceased partner are bound to perform it unless the contrary intention appears from the contract; but their liability is limited to the value of the property they inherit from the deceased.

- **Third person:** As per Section 41, “if the promisee accepts the performance of the promise by a third person, he cannot afterwards enforce it against the promisor”.
- **Joint promisors:** In case of joint promise, promisee may compel one or more of the joint promisors in the absence of contract to contrary. If any of them dies, his legal representatives must perform the promise jointly with the surviving promisors.

Q.3: Distinguish between Succession and Assignment.

Answer:

Succession	Assignment
1. Transfer of rights and liabilities of a deceased person to his legal representative is called succession.	Transfer of rights by a person to another person is called assignment.
2. It takes place on death of a person.	It takes place during the life time of a person.
3. It is not a voluntary act.	It is a voluntary act.
4. It may take place even without a written document.	It requires execution of assignment deed.
5. All rights and liabilities of a person are transferred.	Only rights of a person are transferred.
6. No notice is required to be given to any person.	Notice must be given to the creditor.
7. No consideration is required.	Consideration is required.

Q.4: Briefly explain the Effects of refusal to accept an offer of performance.

Answer:

The promisor makes an offer of performance to the promisee, but the offer to perform is not accepted by the promisee.

Q.5: How many types of tender are there and Describe the Cements of Tender?

Answer:

- **Tender of goods:** attempted performance to promise to do something.
- **Tender of money:** attempted performance of promise to pay something.

Essentials of valid tender:

- Must be unconditional.
- Must be for the whole obligation.
- Must be given at proper time.
- Must be given at proper place.
- Must give a reasonable opportunity of inspection.
- Party giving tender must be willing to perform his obligation.
- Must be paid to the proper person.
- Must be made for the exact amount of money.

Q.6: Describe the Effects of Refusal of party to perform promise.

Answer:

The aggrieved party can:

- (i) Terminate the contract.
- (ii) Indicate by words or by conduct that he is interested in its continuance. If promisee decides to continue the contract, he would not be entitled to put an end to the contract on this ground immediately.

In both the cases, promisee would be entitled to claim damages that he suffered as a result of breach.

Q.7: What is the Liabilities of Joint Promisor and Promisee ?

Answer:

- **Section 42:**

If two or more persons have made a joint promise, ordinarily all of them during their life time must jointly fulfill the promise. After the death of any of them, his legal representative jointly with the survivor or survivors should do so.

- **Section 43:**
 1. All the joint promisors are jointly and severally liable. However, the contract between joint promisor may provide otherwise.
 2. A joint promisor may claim contribution from other joint promisors, if he is compelled to perform the whole promise.
 3. A joint promisor may claim contribution from other joint promisors, if any other joint promisor makes a default in performance of his promise.
- **Section 44:**

Where one of the joint promisor is released, other joint promisors shall continue to be liable.

Q.8: What are the Rights of joint promisees?

Answer:

- U/s 45, when a person has made a promise to several persons, then unless a contrary intention appears from the contract, the right to claim performance rests between him and them during their lifetime.
- When one of the promisees dies, the right to claim performance rests with the legal representative jointly with the surviving promisees.
- When all the promisees dies, the right to claim performance rests with their legal representatives jointly.

Q.9: Describe the Time and place of performance of the promise.

Answer:

Time of Performance:

- **Section 46:** Where no time is specified for the performance of the contracts, the performance must be done within a reasonable time.

Day, Hour and Place of Performance:

- **Section 47:** Where the promisor undertaken to perform a promise on a certain day, he may perform it at any time during the usual hours of business, on that particular day and place as decided by the contract.
- **Section 48:** If a promisee is made to perform on a certain day and the promisor has undertaken to perform it without the application by the promisee, it's the duty of promisee to apply for performance at a proper place and within the usual business hours.

- **Section 49:** If no specific place of performance is fixed by contract, it is the duty of promisor to apply to the promisee to appoint a reasonable place for performance.

Manner/Mode of Performance:

- **Section 50:** Performance should be made in manner or at time prescribed or sanctioned by the promisee.

Q.10: What do you understand by Reciprocal Promise and Performance of Reciprocal Promise ?

Answer:

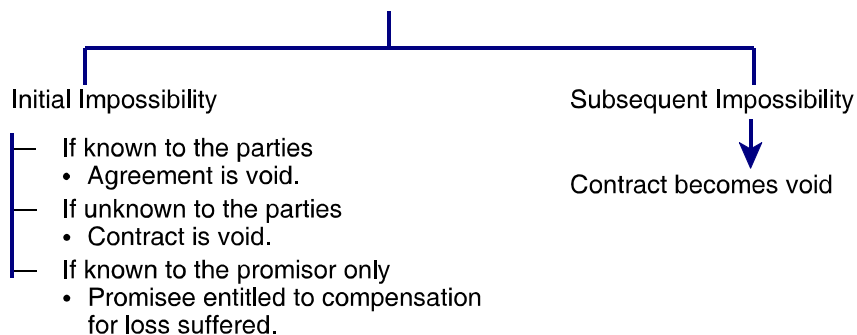
- If the contract consists of reciprocal promises, performance is not necessary unless the second party is willing to perform is reciprocal promise.
- Reciprocal promises constitute concurrent conditions and the performance of one of the promise is conditional on the performance of other, hence both the promises should be performed simultaneously.
- The order of performance may sometimes be indicated not expressly, but by nature of the transaction, where it is not expressly fixed by contract, they shall be performed in that order which the nature required.
- If the contract contains reciprocal promises, the contract becomes voidable if one party to the contract prevents the other from performing his promise and he is entitled for compensation for any loss suffered due to non-performance.
- If contract of reciprocal promises cannot be performed till the other promise is performed, promisor fails to perform his part, such promisor cannot claim compensation but has to pay compensation for any loss suffered by other party.
- **Section 55:** Where a party to a contract promises to do a certain thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of promisee, if the intention of parties was that the time should be the essence of the contract.
- If the time was not the essence of the contract and if contract is not performed at or before the specified time, then contract does not become voidable but promisee is entitled to compensation for any loss suffered.

- If due to failure of performance of contract at the agreed time, the contract became voidable, but promisee accepts performance at any other time, then he is not entitled to any compensation for loss unless he gives prior notice to the promisor of his intention to do so.
- Contract cannot be avoided where time is not essential, promisee there is only entitled to compensation for delay.
- Even where time was essential, promisee may waive his right to repudiate the contract and if promisor fails to perform the promise within stipulated time, promisee may accept performance at some other time and is not entitled to any compensation for delay unless he gives prior notice to the promisor of his intention to do so.
- If contract containing reciprocal promise, first to do certain thing which are legal and secondly, under specified circumstances, to do certain things which are illegal, first set of promise is valid while the second being illegal is void agreement.

Q.11: How Many Types of Impossibilities are there ?

Answer:

Section 56: An agreement to do an impossible act is void. Impossibility can be of two types:



Q.12: Describe the Appropriation of payments.

Answer:

- (i) If debt to be discharged is indicated while making payment, then payment is to be applied according to instruction.

2.130

■ **Solved Scanner CA Foundation Paper - 2A (New Syllabus)**

- (ii) If debt to be discharged is not indicated while making payment, creditor may apply payment at his discretion to any lawful debt actually due and payable to him from debtor whose recovery is not time barred.
- (iii) If no appropriation regarding payment is made by both the parties, FIFO basis will apply on the basis of time.

Q.13: Which is a Contract which need not be performed — with the consent of both the parties?

Answer:

- **Section 62:** If the parties to the contract agrees to
 - (i) substitute a new contract for it, or
 - (ii) rescind it, or
 - (iii) alter it.
- **Section 63:** If the promisee
 - (i) dispenses with or remits, wholly or in part, the performance of the promise made to him.
 - (ii) extend the time for such performance.
 - (iii) accepts any satisfaction for it.
- **Section 64:** If the person at whose option it is voidable rescinds the contract.
- **Section 65:** If the agreement contract is discovered to be void, the person who has received an advantage under such agreement or contract is required to restore the same or make compensation for it from whom he received it.
- **Section 66:** A rescission must be communicated to other party in the manner similar to communication of proposal.
- **Section 67:** If the promisee neglects or refuses to afford the promisor reasonable facilities for the performance of the promisee, contract need not be performed.

Q.14: How Many Modes of Discharge of Contract are there?

Answer:

It means termination of contractual relations between the parties to a contract.

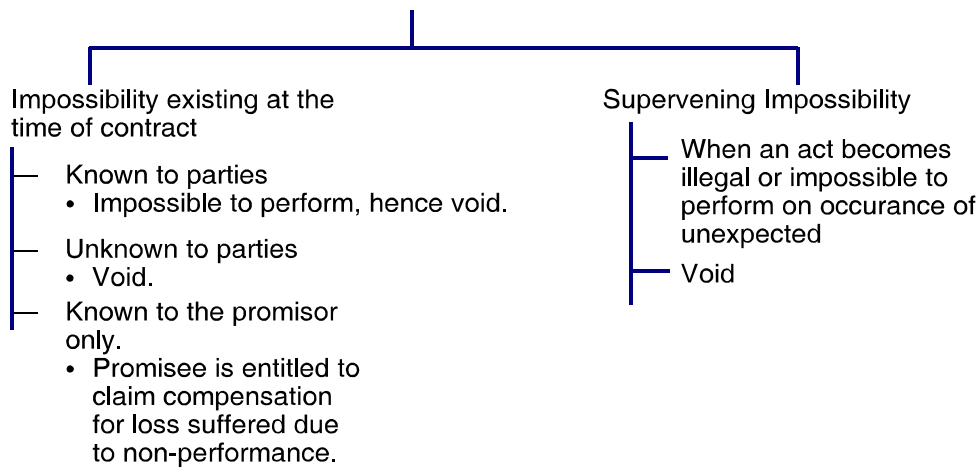
Modes of Discharge of Contract:

1. **By performance:** It occurs when the parties to the contract fulfill their obligations arising under the contract within the time and in prescribed manner. It may be:
 - (a) Actual performance
 - (b) Attempted performance
2. **By mutual agreement:** The parties may enter into a fresh agreement which provides for the extinguishment of their rights and liabilities of original contract. Important methods of discharge by fresh contract.
 - (a) **Novation:** It occurs when an existing contract is substituted by a new one, either between same parties or between the new ones.
 - (b) **Rescission:** It occurs when only the old contract is cancelled and no new contract comes to exist in its place.
 - (c) **Alteration:** It occurs when the terms of contract are so changed by mutual agreement that have the effect of substituting a new contract for the old one.
 - (d) **Remission:** It refers to acceptance of less fulfilment of the terms of promise.
 - (e) **Waiver:** It refers to the abandonment of the rights by the party who is entitled to claim performance of the contract.
 - (f) **Acceptance:** Of any other satisfaction it occurs when the party entitled to claim performance accepts any other satisfaction instead of the performance of the contract.
3. **By Lapse of time:** It occurs if a contract is not performed within a specified period as prescribed by the Limitation Act, 1963.
4. **By operation of law:** It occurs when the contract is discharged by operation of law which includes—
 - (i) **Material Alteration:** Where it is done without the knowledge and consent of the other, contract can be avoided by other party.
 - (ii) **Insolvency:** It can be done under certain particular circumstances.
 - (iii) **Death of a promisor:** Contract involving personal skill or expertise of promisor. When promisor dies, it cannot be performed by anyone else and hence comes to an end.
 - (iv) **Merger of rights:** If an inferior right in a contract is merged into a superior right by the party.

Q.15: How Many Types of Impossibilities of Performance/Frustration are there Describe them ?

Answer:

(i) By impossibility of performance /frustration



(ii) Discharge by supervening impossible is done in following ways:

- (a) Death or personal incapacity
- (b) Destruction of subject – Manner
- (c) Non-existence or non-occurrence or certain essential things
- (d) Change of law
- (e) Declaration of war

(iii) Discharge by supervening illegality: If after making the contract, its performance becomes impossible due to alteration of law or act of any person, it is discharged.

(iv) Cases not covered by subsequent impossibility:

- (a) Partial impossibility
- (b) Commercial impossibility
- (c) Difficulty of performance
- (d) Default of a third party
- (e) Strikes, Lockouts, etc.

Q.16: Describe the Types of breach of contract.

Answer:

There are Two Types of Breach of Contract:

- (a) Actual Breach:** If one party defaults in performing his part of the contract on due date.
- (b) Anticipatory Breach:** When a person repudiates the contract before the stipulated time for its performance has arrived.

SHORT PRACTICE QUESTIONS

1. Write short notes on:
 - (a) Novation
 - (b) Rescission
2. Distinguish between succession & Assignment.
3. When can a contract be said as discharge.

PAST YEAR QUESTIONS AND ANSWERS

OBJECTIVE QUESTIONS

1994 - Nov [1] State with reasons whether the following statement is Correct or Incorrect:

- (ii) A stranger to the contract can enforce the contract. (2 marks)

Answer:

Incorrect: Stranger can not enforce the contract, since there is no privity of contract between him and the contracting parties. [**Dunlop Pneumatic Tyre Co. vs. Selfridge Co. (1915)**].

1995 - Nov [1] State with reasons whether the following statement is Correct or Incorrect:

- (vi) Performance of the contract may be made only by the parties to the contract. (2 marks)

Answer:

Incorrect: Except specifically required, a contract may be performed by the promisor's representative or any other person employed by the promisor. Contracts involving the exercise of personal skill, taste or credit or otherwise founded on special personal confidence between the parties cannot be performed by a deputy (Section 40).

1996 - May [1] State with reasons whether the following statements are Correct or Incorrect:

- (iii) A promise under a contract can be performed only by the promisor himself. (2 marks)
- (v) When persons reciprocally promise, first to do certain legal acts and secondly to do certain illegal acts, the whole agreement is void. (2 marks)

Answer:

- (iii) **Incorrect :** Where the promise under a contract is not founded upon a personal consideration, it may be performed as the circumstances may permit, by the promisor himself, or by his agent or his legal representative.
- (v) **Incorrect:** According to Section 57 of the Indian Contract Act, 1872, where persons reciprocally promise, firstly, to do certain things which are legal, and, secondly, under specified circumstances to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

1996 - Nov [1] State with reasons whether the following statement is Correct or Incorrect:

- (ii) When the promisee does not accept the offer of performance, the promisor is not responsible for non-performance. (2 marks)

Answer:

Correct: The rule under section 38 of the Indian Contract Act is the “where a promisor has made an offer of performance, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his right under the contract. However, such offer is required to fulfill certain conditions prescribed in the said section.

1997 - May [1] State with reasons whether the following statements are Correct or Incorrect:

- (iii) Payments made by a debtor are always appropriated in a chronological order. (2 marks)
- (iv) Cancellation of a contract by mutual consent of the parties is called waiver. (2 marks)

Answer:

(iii) **Incorrect:** Payments made by a debtor to the creditor are to be appropriated as per the provisions stated under section 59 to 61 of the Indian Contract Act.

(iv) **Incorrect:** It is not a waiver but it is called Rescission.

1998 - May [1] State with reasons whether the following statement is Correct or Incorrect:

- (iv) In discharge of the whole claim a party to the contract agrees to accept a lesser amount than due, from the other party is a valid contract inspite of inadequate consideration. (2 marks)

Answer:

Correct : According to Section 63 of the Indian Contact Act, 1872, a party may dispense with or remit wholly or in part, the performance of the promise made to him. Thus, a promise to accept a lesser amount than due, from the other party is a valid contract inspite of the inadequate consideration

1998 - Nov [1] State with reasons whether the following statement is Correct or Incorrect:

- (vi) If the promisees are joint, the right to claim performance is joint and not joint and several. (2 marks)

2.136

■ Solved Scanner CA Foundation Paper - 2A (New Syllabus)

Answer:

Correct: Section 45 of the Contract Act lays down that when a person has made a promise to two or more persons jointly, then unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and after the death of any of them with the representatives of such deceased person jointly with the survivor or survivors, and after the death of the last survivor, with representatives of all jointly. This rule is applicable subject to contrary intention being shown by the contract. Accordingly, all the joint promisees should sue the promisor jointly and not joint and several.

1999 - Nov [1] State with reasons whether the following statement is Correct or Incorrect:

- (iv) A promise to pay a time barred debt is not enforceable. (2 marks)

Answer:

Incorrect : A promise to pay a time barred debt is enforceable, if it is in writing and signed by the promisor or by his agent authorised to do so. The promise may be to pay the whole or any part of the debt [Section 25(3) Indian Contract Act, 1872].

2001 - May [1] State with reasons whether the following statement is Correct or Incorrect:

- (iv) Reciprocal promises to do certain things legal and other illegal, make such promises void. (2 marks)

Answer:

Corrects: Where persons reciprocally promises to do certain things legal and to do certain things illegal, the set to do the things legal is a contract, but to do the things illegal is void agreement (Section 57 of Indian Contract Act, 1872).

2001 - Nov [1] State with reasons whether the following statement is Correct or Incorrect:

- (iii) The original contract between the parties must be performed even when the parties agree to substitute it with a new contract. (2 marks)

Answer:

Incorrect: According to Section 62 of the Indian Contract Act, 1872, if the parties to a contract agree to substitute a new contract for the old contract, or to rescind or alter it, the original old contract is not required to be performed since substitution means rescinding the old contract or altering the terms in the old contract. The discharge of old contract is a consideration for the new one.

SHORT NOTES

1995 - May [7] (b) Write short note on:

Appropriation of payment.

(5 marks)

Answer:

Appropriation of Payments: Sections 59 to 61 of the Contract Act, 1872 enact the rules of appropriation of payment of English Law is laid down in Clayton's case with certain modifications, which may be reproduced below:

- (i) **Application of Payment where debt to be discharged is indicated (Section 59):** 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.
- (ii) **Application of payment where debt to be discharged is not indicated (Section 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.

- (iii) **Application of payment where neither party appropriates (Section 61):** Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payments shall be applied in discharge of each proportionately.
- (iv) **Appropriation towards interest:** When the debtor makes a part payment without indicating the appropriation (whether towards principal or interest) in such cases, the payment must first be adjusted towards interest and the balance towards the principal amount.

1997 - Nov [7] (c) Write short note on:

Appropriation of payment.

(5 marks)

Answer:

Please refer 1995 - May [7] (b) on page no. 137

1998 - Nov [7] (b) Write short note on:

Rescission

(5 marks)

Answer:

Rescission: Rescission is the electing to avoid a contract and treat as not binding when it is void or voidable or terminable by a party. It means when a contract is broken by one party, the other party may treat the contract as rescinded. In such a case is absolved of all his obligations under the contract as rescinded. In such a case is absolved of all his obligations under the contract and is entitled to compensation for any damages that he might have suffered.

Rescission may occur:

- (i) By mutual consent of the parties, or
- (ii) Where a party fails in the performance of his obligation, the other party may rescind the contract without prejudice to his right to claim compensation for the breach of contract, or
- (iii) By the party whose consent has not been given freely.

Rescission may be total or partial. Total rescission is the discharge of the entire contract. Partial rescission is the variation of the original contract by (a) rescinding some of the terms of the contract or (b) substituting new terms for the ones which are rescinded, or adding new terms without rescinding any of the terms of the original contract.

2000 - Nov [2] (b) Write short note on:

Appropriation is a right primarily of the debtor and for his benefit.

(5 marks)

Answer:

When a debtor who owes several debts to the same creditor makes a payment which is insufficient to satisfy the whole indebtedness, a problem arises as to how to appropriate the given payment. Sections 59 to 61 of i.e. Indian Contract Act, 1872 lay down the following rules:

1. if the debtor expressly states that the payment made by him is to be applied to the discharge of some particular debt, the creditor must act accordingly.
2. if there no express instructions, then the debtor's implied intention should be gathered from the circumstances adhering the payment and the appropriation must be done accordingly.
3. if there is no express or implied directions of the debtor then the creditor had an option to apply the payment to any debt lawfully due from the debtor including times observed debt (Clayton's case).
4. where the debtor as well as the creditor had not made the appropriation. Then the payment is to be applied in discharge of the debts in order of time, whether or not they are time barred. If the debts are of equal standing, the payment shall be applied in discharge of each proportionately.
5. if payment has been made without expressly stating whether it is interest or principal, payment is to be applied towards interest first and then the balance to principal.

Thus, it is quite clear from the above that it is always not the case where appropriation is a right primarily of the debtor and for his benefit. It depends upon circumstances of a particular case.

2001 - May [2] (b) Write short note on:

Reciprocal promises are to be performed simultaneously. (5 marks)

Answer:

According to Section 51 of the Indian Contract Act, 1872 “when a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise”.

When the parties agree that the performance of the contract by each part is to be simultaneous, it is necessary that in exchange for the performance of the contract by one party the other party should also be in a position to give simultaneous performance, i.e. he should be ready and willing to perform his reciprocal promise. In a contract of sale of goods, unless otherwise agreed, the delivery of the goods and the payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer shall be ready to pay the price in exchange for possession of the goods. Readiness and willingness to perform the contract does not mean that the buyer should have the hard cash in his person, or the seller should always continue to have a ready stock of the goods after the making of the contract. It is enough that the buyer, has made arrangement to make the payment, which can be done without undue delay, and the seller on his part arranged for the goods which can be delivered soon after the payment is made. It is of course, necessary that the person should have the ability to perform the contract. If a person is merely mentally prepared or willing to perform the contract but does not have the ability to do so, the other party need not perform the contract. Thus a person who becomes insolvent does not have means of payment in exchange for the goods, he is deemed to be not ready and willing to perform the contract.

2001 - May [6] Write short notes on the following:

(a) State the rules of appropriation of payments, when :

- (i) the order of discharge of debts is indicated;
- (ii) the order is not indicated.

(10 marks)

Answer:

(a) As a normal rule, the debtor while making payment of debts should indicate to the creditor the order of payment or appropriation. This is needed in case several debts are payable by a debtor to his creditor. However, the debtor might not indicate the order or payment for one reason or the other. In such cases, the rules laid down in the Indian Contract Act, 1872 apply.

Section 59, lays down, "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 or applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly." Thus in the instance case, the debtor has indicated the order of discharge of debts, the creditor has no other alternative except to appropriate the amount received by him according to the order indicated by the debtor.

In the second case i.e. where the debtor does not indicate or has not indicated the order of discharges of debts, Section 60 of the Act, makes the position clear. According to this Section 60, "Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to applied, the creditor may apply the money received 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."

Thus it is clear that in the second case, provisions of Section 60 shall apply and the creditor shall be within his rights to appropriate the money against the debts if any barred by law of limitation.

However, if there are several debts due on the same date and the debtor has not indicated the order of payment, the creditor shall have to apply the money proportionately in discharge of these debts.

2.142

■ Solved Scanner CA Foundation Paper - 2A (New Syllabus)

2002 - May [7] (c) Write short note on:

Doctrine of Frustration

(5 marks)

Answer:

Doctrine of Frustration: Part 2 of Section 56 of the Indian Contract Act, 1872 lays down that if the performance of a contract becomes impossible or unlawful after its making due to some event which is beyond the control of the parties, such contract becomes void when such event has accrued. This is known as doctrine of frustration. The performance may become impossible legally or physically.

Following are the causes of frustration:

1. Destruction of subject matter of contract.
2. Death or personal incapacity of the party.
3. Cancellation of an expected event.
4. Subsequent legal changes.
5. Declaration of war.

DISTINGUISH BETWEEN

1996 - May [4] (b) (i) Briefly explain the distinguish between Succession and Assignment. (5 marks)

Answer:

Distinguish between Succession and Assignment: When the benefits of a contract are succeeded to be process of law, then both burden and benefits attaching to the contract, may sometimes devolve on the legal heir. Suppose, a son succeeds to the estate of his father after his death, he will be liable to pay the debts and liabilities of his father owed during his life time. But if the debts owed by his father exceed the value of the estate inherited by the son then he would not be called upon to pay the excess. The liability of the son will be limited to the extent of the property inherited by him. In the matter of assignment, however, the benefit of a contract can only be assigned but not the liabilities thereunder. This is because then the liability is assigned, a third party gets involved therein.

On the other hand if a creditor assigns the benefits of a promise, he thereby entitles the assignee to realise the debts from the debtor but where the benefits is coupled with a liability or when a personal consideration has entered into the making of the contract then the benefit cannot be assigned.

1996 - May [6] (b) (ii) Briefly explain the distinguish between Novation and Alteration. (5 marks)

Answer:

Novation and Alteration: The law pertaining to novation and alteration is contained in Sections 62 to 67 of the Indian Contract Act, 1872. In both these cases the original contract need not be performed. Still there is a difference between these two:

1. Novation means substitution of an existing contract with a new one. Novation may be made by changing in the terms of the contract or there may be a change in the contracting parties. But in case of alteration the terms of the contract may be altered by mutual agreements by the contracting parties but the parties to the contract will remain the same.
2. In case of novation there is altogether, a substitution of new contract in place of the old contract. But in case of alteration it is not essential to substitute a new contract in place of the old contract. In alteration there may be a change in some of the terms and conditions of the original agreement.

1999 - May [4] (b) (i) Briefly explain the distinguish between Succession and Assignment. (5 marks)

Answer:

Please refer 1996 - May [4] (b) (i) on page no. 142

2001 - May [6] (b) (ii) Briefly explain the distinguish between Innovation and Alteration. (5 marks)

Answer:

Please refer 1996 - May [6] (b) (ii) on page no. 143

2002 - May [6] (b) (i) Briefly explain the distinguish between Recession and Alteration. (5 marks)

2.144

■ Solved Scanner CA Foundation Paper - 2A (New Syllabus)

Answer:

Rescission and Alteration: Rescission means cancellation of the contract. If by mutual agreement the parties agree to cancel all or some of the terms of the existing contract, it is called rescission of the contract, and then the contract is discharged. A contract can be rescinded before its performance becomes due. Non-performance of a contract by both the parties for a long period, without any complaint, amounts to implied rescission. Rescission may be total or partial. When all the terms of the contract are cancelled, it is total rescission which results in the discharge of the entire contract. When some of the terms are cancelled and some new terms are added, it is partial rescission. Partial rescission results in the variation of the original contract. Section 62 of the Indian Contract Act, 1872 lays down that if the parties to a contract agree to rescind it, the original contract need not be performed. Alteration, other hand, means making a change in the terms of a contract with the consent of all the parties. Alteration discharges the old terms which have been changed and the parties become bound by the original contract with altered terms. Rescission of the contract may be total or partial but alteration is always partial and the original contract can not be altered wholly. The effect of alteration is the same as laid down in Section 62 of the Indian Contract Act, 1872 i.e. the original contract need not be performed.

DESCRIPTIVE QUESTIONS

1997 - May [5] (b) What is "Supervening Impossibility"? What are its effects upon the contract? (5 marks)

Answer:

An impossibility which makes the performance of a contract impossible or illegal, by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, is called Supervening Impossibility.

It may arise on account of more than one reasons, which may be enumerated as below:

- (a) Accidental destruction of the subject-matter of the contract, such as loss of property by the occurrence of accidental fire, death of an artist or incapacity of an artist by long illness.
- (b) Non-existence or non-occurrence of a particular state of things, e.g. postponement of the music concert for which the hall was rented out.
- (c) Incapacity to perform a contract of personal services-long illness.
- (d) Change in law, e.g. acquisition of the property by the government.
- (e) Outbreak of war, making the contracting parties as citizens of enemy countries.

Effects: Supervening Impossibility makes the contract void and the parties are released out of their obligations. They need not perform their part of the promises which have not accrued till the date of the impossibility.

1998 - May [3] (a) State in brief the grounds upon which a contract may be discharged. (10 marks)

Answer:

Discharge of contracts: A contract is discharged when the obligation created by it come to an end. A contract may be discharged in any one of the following ways:

- (i) **Discharge by performance:** It takes place when the parties to the contract fulfil their obligations arising under the contract within the time and in the manner prescribed. Discharge by performance may be (a) actual performance or (b) attempted performance. Actual performance is said to have taken place; when each of the parties has done what he has agreed to do under the a agreement. When the promisor offers to perform his obligation, but the promisee refuses to accept the performance, it amounts to attempted performance or tender of performance.
- (ii) **Discharge by mutual agreement:** Section 62 of the Indian Contract Act provides if the parties to a contract agree to substitute a new contract for it, or to refund or remit or alter it, the original contract need not be performed. These principles come in the heads of novation, rescission, alteration remission, accord and satisfaction, owing to the occurrence of an event and waiver.

- (iii) **By impossibility of performance:** The impossibility may exist from its initial stage. In that case, it would be impossibility an initio. Alternatively, there may be supervening impossibility which may take place owing to (a) an unforeseen change in law; (b) the destruction of the subject matter essential to that performance; (c) the non-existence or non-occurrence of particular state of things, which was naturally contemplated for performing the contract, as a result of some personal incapacity like dangerous malady; (e) the declaration of war (Section 56).
- (iv) **Discharge by lapse of time:** A contract should be performed within a specified period as prescribed by the Limitation Act, 1963. If it is not performed and if no action is taken within the specified period of limitation, the party is deprived of remedy at law. For example, if a creditor does not file a suit against the buyer for recovery of the price within three years, the debt becomes time barred and hence not recoverable.
- (v) **Discharge by operation of law:** A contract may be discharged by operation of law which includes by death of the promisor, merger of inferior right in the superior right by which the inferior right vanishes, by complete loss of evidence, by insolvency etc.
- (vi) **Discharge by breach of contract:** Breach of contract may be actual breach of contract or anticipatory breach of contract. If one party defaults in performing his part of the contract on the due date, he is said to have committed a breach thereof. When on the other hand, a person repudiates a contract before the stipulate time for its performance has arrived, he is deemed to have committed anticipatory breach. If one of the parties to a contract breaks the promise the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract. (Section 64).
- (vii) **Remission accord and satisfaction:** A promise may dispense with or remit the performance of the promise made to him or may accept any satisfaction of thinks fit. In the first case, the contract will be discharged by remission and in the second by accord and satisfaction.

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

1998 - May [5] (b) Is it required that parties to the contract must perform the contract personally? (5 marks)

Answer:

Who must perform the contract: Except the contracts which require personal skill and labour, the promise under a contract may be performed by the following persons:

1. **Promisor himself:** If it appears from the nature of the case that it was the intention of the parties to any contract, that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. Contracts involving personal skill or those depending upon personal trust and confidence must be performed by the promisor himself (Sec. 40).
2. **Agent:** Where personal consideration is not the foundation of a contract, the promisor or his representatives may employ a competent person to perform it (Section 40).
3. **The Legal Representatives:** Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract. On the death, of the promisor, the promisee can compel his legal representatives to perform the promise unless it involves the personal skill of the promisor. However, the liability of the legal representative will not be personal but shall be limited only to the extent of the value of the estate of the deceased promisor inherited by him. (Section 37).
4. **Third Persons:** When the promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is, performance by a stranger, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorised nor ratified the act of the third party (Section 41).

5. **Joint Promisors:** When two or more persons have made a joint promise, then unless a contrary intention appears from the contract, all such persons must jointly fulfil the promise. If any of them dies, his legal representatives must, jointly with the surviving promisors, fulfil the promise. If all of them die, the legal representatives of all of them must fulfil the promise jointly (Section 42).

1999 - May [5] (a) Explain the rules under the law of contract as regards to time and place for the performance of the promise. (5 marks)

Answer:

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

1. If no time is specified, 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 (Section 46).
2. If a promise is to be performed on a specified date but hour is not mentioned, 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 (Section 47).
3. Where no place is fixed, 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 to the promisee; here no distinction is made between an obligation to pay money and obligation to deliver goods or discharge any other obligation [Section 49].

The foregoing rules regarding the time and place for the performance of promise apply, only when the promisor undertakes to perform the promise without an application being made by the promisee.

4. Where the promisor has not undertaken to perform the promise without an application by the promisee, and the promise is to be performed on a certain day it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business (Section 48).

Generally, the performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

2000 - May [5] (b) (ii) State the circumstances under which an agreement may be void, since it is impossible to carry it out. (5 marks)

Answer:

Impossibility of Performance [Section 56 of the Indian Contract Act, 1872] : An agreement may be void since it is impossible to carry it out. A contract to do an act, which after the contract is made, becomes impossible, or, by reason of some event which are promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful under the following cases:

- (a) Impossibility existing at the time of contract:
 - (i) if known to the parties.
 - (ii) if unknown to the parties.
 - (iii) if known to the promisor only.
- (b) Supervening impossibility (arising subsequent to the formation of a contract) like destruction of subject matters, non-existence or non-occurrence of a particular state of things or incapacity to perform a contract of personal services or change of law, or outbreak of law or failure of the ultimate purpose.

2001 - May [3] (a) What is meant by Performance of a Contract? By whom the contract can be performed? (10 marks)

Answer:

Performance of contract consists in doing or causing to be done, that which the promisor has promised shall be done. Performance of contract is the completion of legal obligation which arises out of the contract. Every party to the contract is obliged to perform the contract accordingly, unless it is discharged or exempted from the performance.

The parties to a contract must either perform or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of the law of contract or any other law (Section 37 Indian Contract Act, 1872). In order that a party could enforce the promises made to him, he should perform his promise or offer to perform then he can ask to the other party to perform his promise unless a contrary intention appears from the contract. Either performance or readiness and willingness to perform the contract is the basic requirement of this section.

By whom contract must be performed?

The promise under a contract may be performed, as the circumstances may permit, by the promisor himself, or by his agent or his legal representative.

- (i) **Promisor himself:** If there is something in the contract to show that there was an intention of the parties, that the performance should be made personally, such promise must be performed by the promisor (Section 40). Such contracts involve personal skill or diligence.
- (ii) **Agent:** Where personal consideration is not required, the promisor or his representative may employ a competent person to perform (Section 40).
- (iii) **Representatives:** Except the contract which involve personal skill and diligence all contracts may be performed by the legal representatives of the deceased promisors unless a contrary intention appears from the contract (Section 37). But their liability under a contract is limited to the value of the property they inherit from the deceased. Where personal skill and diligence is the foundation of the performance such contracts come to an end on the death of the promisor.
- (iv) **Third Persons:** When a promisee accepts performance from a third person, he can not afterwards enforce it against the promisor (Section 41).
- (v) **Joint Promisors:** When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract all such persons, during their joint lives, and after the death of any of them, his representatives jointly with the survivor or survivors, and after the death of lost survivor, the representatives of all jointly must fulfil the promise (Section 42 of the Indian Contract Act).

2001 - May [5] (b) When a contract may be discharged by Operation of Law?
(5 marks)

Answer:

A contract may be discharged by the operation of law in the following manner:

- (i) **By death:** In contract involving personal skill and/or ability, the contract is terminated on the death of the promisor. In other contracts the rights and liabilities of a deceased person pass on to the legal representatives of the deceased person.

- (ii) **By merger:** Merger takes place when an inferior right accruing to a party under a contract merges into a superior right accruing to the same party under the same or some other contract.
- (iii) **By insolvency:** When a person is adjudged insolvent he is discharged from all liabilities incurred prior to his adjudication.
- (iv) **By unauthorised alteration of the terms of a written agreement:** Where a party to a contract makes any material alteration in the contract without the consent of the other party, the other party can avoid the contract. A material alteration is one which changes, in a significant manner, the legal identity or character of the contract or the rights and liabilities of the parties to the contract.
- (v) **By rights and liabilities becoming vested in the same person:** Where the liabilities and rights under a contract vest in the same person, for example, when a bill gets into the hands of the acceptor, the other parties are discharged.

2001 - May [6] (a) State the rules of appropriation of payments, when:

- (i) the order of discharge of debts is indicated;
- (ii) the order is not indicated. (10 marks)

Answer:

As a normal rule, the debtor while making payment of debts should indicate to the creditor the order of payment or appropriation. This is needed in case several debts are payable by a debtor to his creditor. However, the debtor might not indicate the order of payment for one reason or the other. In such cases, the rules laid down in the Indian Contract Act, 1872 apply.

Section 59, lays down, "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 or applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly."

Thus in the instance case, the debtor has indicated the order of discharge of debts, the creditor has no other alternative except to appropriate the amount received by him according to the order indicated by the debtor.

In the second case i.e. where the debtor does not indicate or has not indicated the order of discharges of debts, Section 60 of the Act, makes the position clear. According to this Section 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 the money received 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."

Thus it is clear that in the second case, provisions of Section 60 shall apply and the creditor shall be within his rights to appropriate the money against the debts if any barred by law of limitation.

However, if there are several debts due on the same date and the debtor has not indicated the order of payment, the creditor shall have to apply the money proportionately in discharge of these debts.

2001 - Nov [3] (a) State and explain the various modes whereby a contract may come to an end. (10 marks)

Answer:

Various modes whereby a Contract comes to an end: A contract may be discharged either by an act of the parties or by an operation of law as stated below:

- 1. Discharge by performance:** When the parties to the contract fulfil their part of the promise, the contract comes to an end.
- 2. Discharge by mutual agreement:** When the parties to the contract agree not to perform the contract on the basis of the principles of rescission, or novation or alteration or remission, the original contract comes to an end.
- 3. Discharge by impossibility of performance:** When the performance of the contract becomes impossible owing to (1) an unforeseen change in law or (2) the destruction of the subject matter essential to the performance of the contract, or (3) the non-existence or non-occurrence of particular state of things such as personal incapacity like illness or meeting with an accident or (4) outbreak of war and the party being declared as an alien enemy.

4. **Discharge of lapse of time:** Where a contract is to be performed within a special time and it is not performed within that time or period, the law of limitation applies and the contract comes to an end e.g. creditor not taking any action against the debtor for the recovery of the debt within a period of 3 years.
5. **Discharge by operation of law:** Where law operates in the non-performance of a contract say death of the promisor or insolvency or merger etc.
6. **Discharge by breach of a contract:** Where the party to the contract makes a default in the performance of the contract.
7. Discharge by waiver on the part of either party.
8. Discharge by not providing reasonable facilities for performance by the party to the contract.

2002 - Nov [4] (a) Explain with examples the principles of Novation, Rescission, Alteration and Remission where contracts need not be performed. (10 marks)

Answer:

Novation, Rescission, Alteration and Remission:

(a) Novation (Section 62): Novation means the substitution of a new contract for the original contract. Such a new contract may be either between the same parties or between different parties. The consideration for the new contract is the discharge of the original contract.

Example: A Owns B ₹ 10,000/-. A enters into an agreement with B. and gives B a mortgage or his (A's) estate for ₹ 5,000/- in place of the debts of ₹ 10,000/-. This is a new contract and extinguishes the old.

(b) Rescission (Section 62): Rescission means cancellation of the contract by any party or all the parties to a contract.

Examples: X promises Y to sell and deliver 100 Bales of cotton on 1st October at his godown and Y promises to pay for goods on 1st November. X does not supply the goods. Y may rescind the contract.

(c) **Alteration (Section 62):** Alteration means a change in the terms of a contract with mutual consent of the parties. Alteration discharges the original contract and creates a new contract. However, parties to the new contract must not change contract.

Example: X promises to sell and deliver 100 bales of cotton on 1st October and Y Promises to pay for goods on 1st November. Afterwards X and Y mutually decide that the goods shall be delivered in five equal instalments at Z's godown. Here, original contract has been discharged and a new contract has come into effect.

(d) **Remission (Section 63):** Remission means acceptance by the promisee of a lesser fulfillment of the promise made. Accordingly to Section 63, "Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept; instead of it any satisfaction which he thinks fit".

Example 1: A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer to perform the promise.

Example 2: A owes B ₹ 5,000/- A pays to B, and B accepts, in satisfaction of the whole debts, ₹ 2,000/- paid at the time and place at which ₹ 5,000/- were payable. The whole debt is charged.

Example 3: A owes B, under a contract a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B, and B, in satisfaction thereof, accepts the sum of ₹ 2,000/-. This is a discharge of whole debt, whatever may be its amount.

PRACTICAL QUESTIONS

2018 - May [1] (a) X, Y and Z are partners in a firm. They jointly promised to pay ₹ 3,00,000 to D. Y become insolvent and his private assets are sufficient to pay 1/5 of his share of debts. X is compelled to pay the whole amount to D. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which X can recover the amount from Z. (4 marks)

Answer:

According to Section 43 of Indian Contract Act, 1872, when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel anyone or more of such joint promisor to perform the whole of the promise.

Also, each of two or more joint promisor may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appear from the contract.

In other words, if one of the joint promisor is made to perform the whole contract, he can call for a contribution from others.

It also say that if any one of two or more joint promisor makes default in such contribution, the remaining joint promisor must bear the loss arising from such default in equal shares.

In the given case X, Y and Z jointly promised to pay ₹ 3,00,000 to D. Y could pay only ₹ 20,000 (i.e. 1/5 of ₹ 1,00,000), hence loss due to his default i.e. ₹ 80,000 will be borne equally by X & Z. Now, since X is compelled to pay entire amount, he can call for contribution from Z of his share i.e. ₹ 1,00,000.

Thus, the extent to which X can recover the amount from Z is ₹ 1,40,000.

2018 - Nov [1] {C} (a) Mr. X and Mr. Y entered into a contract on 1st August, 2018, by which Mr. X had to supply 50 tons of sugar to Mr. Y at a certain price strictly within a period of 10 days of the contract. Mr. Y also paid an amount of ₹ 50,000 towards advance as per the terms of the above contract. The mode of transportation available between their places is roadway only. Severe flood came on 2nd August, 2018 and the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. X offered to supply sugar on 20th August, 2018 for which Mr. Y did not agree. On 1st September, 2018, Mr. X claimed compensation of ₹ 10,000 from Mr. Y for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Y claimed for refund of ₹ 50,000, which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Y's contention. (4 marks)

Answer:

According to the facts of the case it can be clearly observed that the contract entered into by the parties Mr. X and Mr. Y demonstrates a case under the applicability of the provisions of Section 56 of Indian Contract Act, 1872 that States - "A contract to do an act which after the contract is made becomes impossible by reason of some event which the promisor could not prevent becomes void."

In this case Mr. X has promised to supply 50 tons of sugar to Mr. Y for which Mr. Y has paid an amount of ₹ 50,000 in advance according to the terms of the contract. But due to severe flood the only mode of transportation available between their places is damaged which clearly makes the execution of delivery of 50 tons of sugar to Mr. Y impossible within the stipulated time. Now Mr. X claims compensation of ₹ 10,000 from Mr. Y for non-acceptance of delivery after expiry of the stipulated time - period but since the contract has already gone void due to impossibility of performance within the stipulated time - period there remains no legal room for demanding compensation. But at the same time the contention of Mr. Y for refund of his previously advanced sum of ₹ 50,000 stands valid as under the provisions of Indian Contract Act, 1872 if a contract turns void due to any specific reason then all previously advanced sums have to be refunded.

2019 - June [3] (c) Mr. Rich aspired to get a self- portrait made by an artist. He went to the workshop of Mr. C an artist and asked whether he could sketch the former's portrait on oil painting canvass. Mr. C agreed to the offer and asked for ₹ 50,000 as full advance payment for the above creative work. Mr. C clarified that the painting shall be completed in 10 sittings and shall take 3 months.

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

Discuss in light of Indian Contract Act 1872?

- (i) Can Mr. Rich ask Mr. K to complete the artistic work in lieu of his father ?
 - (ii) Could Mr. Rich ask Mr. K for refund of money paid in advance to his father?
- (6 marks)

Answer:

A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death/inability of the promisor. As regards any other contract the legal representatives of the promisor are bound to perform unless contrary intention appears from the contract.

A contract is discharged by impossibility of performance. Impossibility may be created due to several factors, one of which may be as a result of some personal incapacity like dangerous malady.

In the given case, the promisor (Mr. C) got paralyzed during the performance of contract, due to which further performance of the contract becomes impossible and the contract becomes void.

- (i) Mr. Rich, cannot ask Mr. K to complete the artistic work in lieu of his father Mr. C as legal representative is not responsible to perform in case, of contracts involving personal skill.
- (ii) Mr. Rich cannot ask Mr. K to refund the amount as the contract becomes void and unenforceable due to impossibility of performance.

2019 - Nov [3] (c) Mr. Sonumal a wealthy individual provided a loan of ₹ 80,000 to Mr. Datumal on 26.02.2019. The borrower Mr. Datumal asked for a further loan of ₹ 1,50,000. Mr. Sonumal agreed but provided the loan in parts at different dates. He provided ₹ 1,00,000 on 28.02.2019 and remaining ₹ 50,000 on 03.03.2019.

On 10.03.2019 Mr. Datumal while paying off part ₹ 75,000 to Mr. Sonumal insisted that the lender should adjust ₹ 50,000 towards the loan taken on 03.03.2019 and balance as against the loan on 26.02.2019.

Mr. Sonumal objected to this arrangement and asked the borrower to adjust in the order of date of borrowal of funds,

Now you decide:

- (i) Whether the contention of Mr. Datumal correct or otherwise as per the provisions of the Indian Contract Act, 1872?
- (ii) What would be the answer in case the borrower does not insist on such order of adjustment of repayment?
- (iii) What would the mode of adjustment/appropriation of such part payment in case neither Mr. Sonumal nor Mr. Datumal insist any order of adjustment on their part? (6 marks)

Answer:

Sometimes, a debtor owes several to the same creditor and makes payment which is not sufficient to discharge all the debts. In such cases, the payment is appropriated as per provisions of Section 59 to 61 of the Indian Contract Act.

- (i) **Application of Payment where debt to be discharged is indicated:**
Where a debtor, owing several distinct debts to one person, makes a payment to him either with express intimation or that the payment is to be applied in discharge of some particular debt, the payment, if accepted, must be applied accordingly.
- (ii) **Application of Payment where debt to be discharged is not indicated:**
Where the debtor has omitted to intimate that payment is to be applied in discharge of which debt, then creditor may apply it at his discretion to any lawful debt actually due to him from the debtor (even where it is barred by law).
- (iii) **Application of Payment where neither party appropriates:**
Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether or not they are barred by limitation. If the debts are of equal standing, the payment shall be applied in discharge of each proportionately.

In the given case the debtor while making the part payment has indicated the debt in which the adjustment is to be made accordingly:

- (i) Contention of Mr. Dattal is correct as per provisions of the Act, to indicate the debt to be adjusted.
- (ii) If the borrower does not insist on any order of adjustment of repayment, then lender at his discretion may adjust in any debt he wants.
- (iii) In case neither of them appropriates, then repayment will be adjusted to the debt first in time.

2020 - Nov [3] (c) In light of provisions of the Indian Contract Act, 1872 answer the following:

- (i) Mr. S and Mr. R made contract wherein Mr. S agreed to deliver paper cup manufacture machine to Mr. R and to receive payment on

delivery. On the delivery date Mr. R didn't pay the agreed price. Decide whether Mr. S is bound to fulfil his promise at the time of delivery?

- (ii) Mr. Y given loan to Mr. G of INR 30,00,000. Mr. G defaulted the loan on due date and debt became time barred. After the time barred debt, Mr. G agreed to settle the full amount to Mr. Y. Whether acceptance of time barred debt Contract is enforceable in law?
- (iii) A & B entered into a contract to supply unique item, alternate of which is not available in the market. A refused to supply the agreed unique item to B. What directions could be given by the court for breach of such contract? (6 marks)

Answer:**(i) According to Indian Contract Act, 1872**

In the given case Mr. S and Mr. R made contract wherein Mr. S agreed to deliver paper cup manufacturing machine to Mr. R and give payment on delivery. On the delivery date, Mr. R didn't pay the agreed price.

Thus Mr. S is free from his obligation and he is not bound to deliver the manufacturing machine to Mr. R.

- (ii) In this case Mr. Y given loan to Mr. G of INR 30,00,000. Mr. G defaulted the loan on the due date and debt became time barred. After time barred debt, Mr. G agreed to settle the full amount to Mr. Y. Thus acceptance of a time barred debt is enforceable under section(25) of the Indian Contract Act, 1872.

Which states that this agreement to pay a time barred debt is enforceable even without consideration.

- (iii) A & B entered into a contract to supply unique item the alternate of which is not available in the market. A refused to supply the agreed unique item to B. Thus court can order A for specific performance and can order him to make the good available it to B as it is a unique item only available to him.

2.160

■ **Solved Scanner CA Foundation Paper - 2A (New Syllabus)**

2021 - July [3] (b) X, Y and Z jointly borrowed ₹ 90,000 from L. Decide each of the following in the light of The Indian Contract Act, 1872 :

- (i) Whether L can compel only Y to pay the entire loan of ₹ 90,000?
- (ii) Whether L can compel only the legal representatives of Y to pay the loan of ₹ 90,000, if Z, Y and Z died?
- (iii) Whether Y and Z are released from their liability to L and X is released from his liability to Y and Z for contribution, if L releases X from his liability and sues Y and Z for payment? (6 marks)

Answer:

- (i) If a promise is made by two or more persons (called joint promisors) then promisee may compel anyone or more of the joint promisors to perform the whole contract. Liability under a joint promise is both joint as well as several.

Thus, in this case L can compel only Y also to pay the whole amount of ₹ 90,000/-

- (ii) If a promise is made by two or more persons (called joint promisor) and all of them die then their liability will be borne by the legal representatives and all the legal heirs will be jointly and severally liable for the same. Thus, in this case L can compel only Y to pay the entire loan of ₹ 90,000.

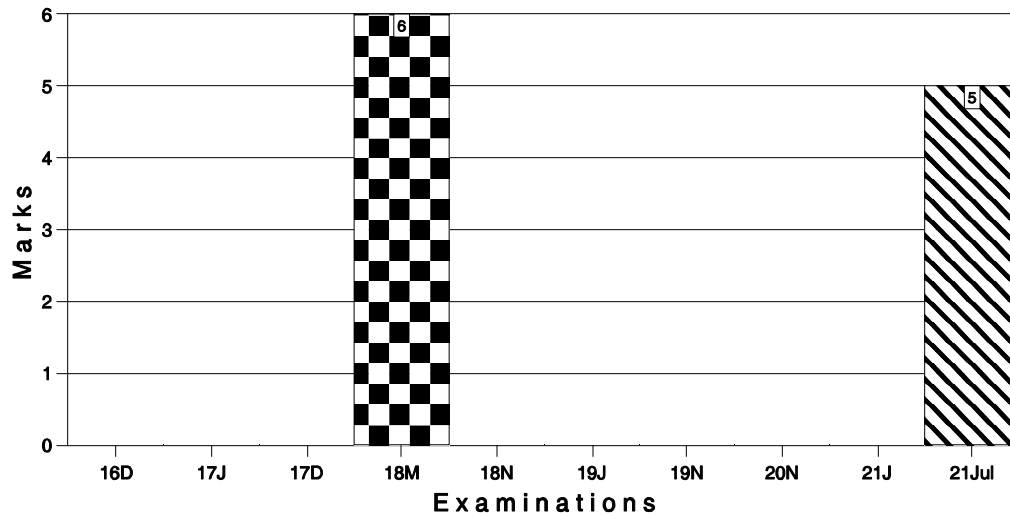
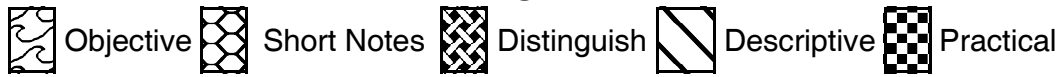
- (iii) If a promisee discharges/releases one of the several joint promisors, it does not discharge other joint promisors and the joint promisor so discharged remains liable to the other joint promisor.

Thus, in this case, X will not be released from his liability towards Y and Z even though he is released by L from making contribution.

CHAPTER	<h1>The Indian Contract Act, 1872</h1>
<h1>1</h1>	
Unit: 5	Breach of Contract and its Remedies

Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions

Legend



For detailed analysis Login at www.scanneradda.com
for registration and password see first page of this book.

SELF STUDY QUESTIONS

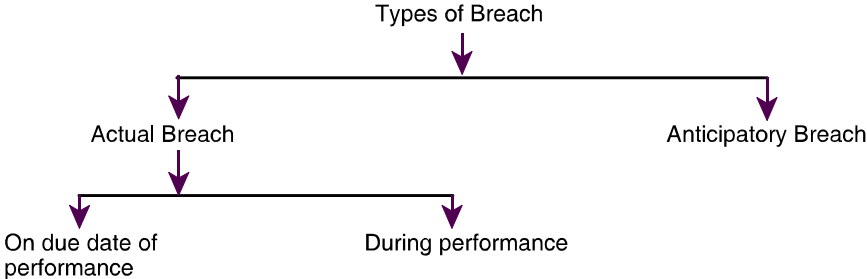
Q.1: What is Breach of Contract ?

Answer:

- Breach of contract means failure of a party to perform his obligations.
- **Consequences of Breach:**
 - (i) It discharges the aggrieved party from performing his obligations.
 - (ii) The aggrieved party is entitled to proceed against the party at fault.

Q.2: How Many Types of Breach of Contracts are there ?

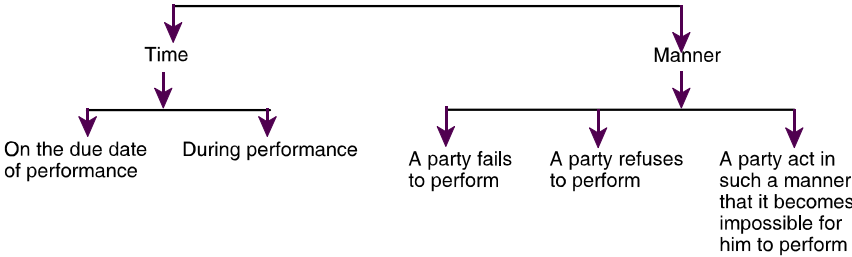
Answer:



Q.3: How Many Types of Actual Breach of Contracts are there ?

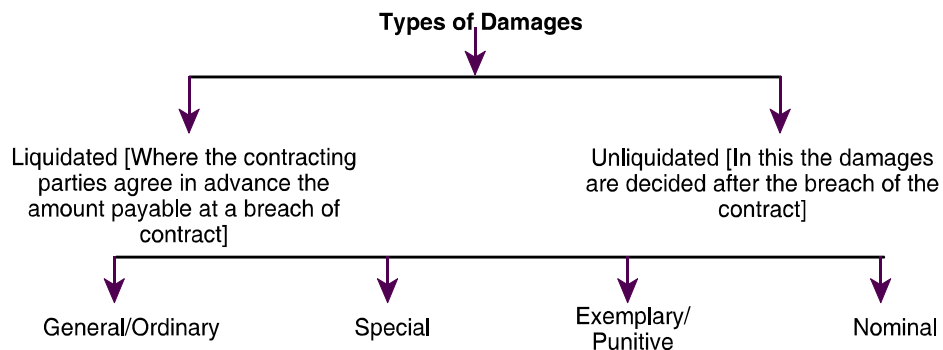
Answer:

Actual Breach of contract:



Q.4: Describe the Suit for Damages.**Answer:****Suit for damages:**

- As per Section 73, when a contract is broken, the party at loss or damage from the breach is entitled to receive from the party at fault, compensation for the loss suffered by him.
- The loss or damage should have –
 - (a) arose naturally in the usual course of things from such breach or
 - (b) which the parties know to be the likely result of such breach.
- No compensation for any remote or indirect loss.

Q.5: What Kind of Damages may be Awarded in Case of Breach of Contract ?**Answer:****(i) General/Ordinary Damages:**

- It helps putting the injured party in the position that he would have been if the contract was performed.
- It refers to the estimated amount of loss actually incurred.
- It applies only to proximate consequences of the breach of contract.

(ii) Special Damages:

- It includes those damages other than that arising directly from breach.
- It must be known to parties at the time of entering into contract.

(iii) Exemplary/Punitive Damages:

- These are awarded not to compensate the aggrieved party, but as a means of punishment to the defaulting party.
- It is awarded in 2 cases.
 - (a) Breach of contract to marry or promise to marry.
 - (b) Wrong dishonour of a customer's cheque by a banker.

(iv) Nominal Damages:

- These are awarded where the plaintiff has proved that there has been a breach of contract but he has not suffered any loss or damage.

(v) Damages for deterioration caused by delay**(vi) Pre-fixed damages:**

- These damages are fixed at the time of formation of the contract.

Relevant Case Law:

Hadley V/s Barendale.

Facts:

- (i) X's mill was stopped due to break down of shaft.
- (ii) He delivered the shaft to Y, a common carrier, to be taken to a manufacturer to copy it and make a new one.
- (iii) X did not inform Y that delay would result in loss of profits.
- (iv) Due to Y's neglect, delivery was delayed beyond a reasonable time.

Decision: Y was not liable for loss of profits during the delayed period.

Q.6: What do you understand by Penalty and Liquidated Damages ?**Answer:**

- When parties to a contract, specify a certain sum in the contract which will become payable as a result of breach, such specified sum is known as liquidated damages or penalty.
- Under the English Law,
 - (a) If the amount fixed is a genuine pre-estimate of the loss in case of breach it is liquidated damages and is allowed.

- (b) If the amount is fixed without any regard to probable loss, but is only to frighten the party and prevent it from committing any breach, it is a penalty and not allowed.
- In Indian law, there is no difference between the two.
Relevant Case Law: Union of India V/s Raman Iron Foundry.

Q.7: When a Claim for Rescission of contract arises ?

Answer:

- It means right available to aggrieved party to terminate the contract. In this case, the aggrieved party is not required to perform his part of obligation and is entitled to claim compensation for any loss caused to him.

Q.8: When a Claim for specific performance of the contract arises ?

Answer:

- In certain cases, when the damages are not adequate remedy, the court may direct the party in breach for specific performance of the contract and the promise is carried out as per the terms of the contract.
- Usually granted in contracts connected with land.
- It cannot be granted where -
 - (a) Monetary compensation is an adequate relief.
 - (b) Contract is of personal nature.
 - (c) It is not possible for court to supervise performance of contract.
 - (d) Contract is ultra virus.
 - (e) One of the parties is a minor.

Q.9: When a Claim for Injunction arises ?

Answer:

- Injunction refers to an order passed by a competent court restraining a person from doing a particular act. Negative term of contract means doing something, which party has promised not to do or reasonable remuneration.
- Thus, where a party to a contract is negotiating the terms of a contract, the court may in its discretion issuing an order to the defendant restrain him from doing what he promised not to do.

2.166

■ Solved Scanner CA Foundation Paper - 2A (New Syllabus)

SHORT PRACTICE QUESTIONS

1. What do you mean by anticipatory Breach of Contract? How does it differ from Actual Breach of contract?
2. What is damages explain in brief kinds of damages?
3. Differentiate between liquidated damages and penalty.
4. Write Short notes on:
 - (a) Quantum Merit
 - (b) Suit for specific performance
 - (c) Vindictive Damages
 - (d) Suit for injunction.

PAST YEAR QUESTIONS AND ANSWERS

OBJECTIVE QUESTIONS

2000 - May [1] State with reasons whether the following statement is True or False:

- (vi) Breach of condition gives rise to a right to repudiate the contract of sale. (2 marks)

Answer:

Correct: Breach of a condition gives the right to the aggrieved party to repudiate the contract. A condition is a stipulation essential to the main purpose of the contract.

SHORT NOTES

1994 - Nov [7] Write short note on the following:

- (b) Anticipatory Breach of a Contact. (5 marks)

Answer:

Anticipatory breach: When a party to a contract refuses to perform his part of the contract, before the due date of performance, It is known as anticipatory or constructive breach of contract. This may happen in the following two ways :

- (i) **By express renunciation:** Here a party to a contract expressly renounces his obligation under the contract, before the due date of performance. For example, A agrees to deliver a particular horse to B on 1st May. Before 1st May, (say on 20th April), A informs B that he shall not deliver the horse on 1st May. This is an express repudiation of the contract.
- (ii) **Implied repudiation:** Here a party by his own act disables himself from performing the contract i.e. he acts in such a manner that it becomes impossible for him to perform his promise. In the example given above, if A sells that very horse to C on 20th April, he breaks the contract by his conduct.

Rights of the promisee: In case of anticipatory breach of contract, the promisee has the following rights :

- (i) He may treat the contract as repudiated and sue the other party for damages for the breach of contract without waiting until the due date of performance. In this case the promisee will be absolved from further performance of his promise.
- (ii) He may decide to wait till the due date of performance and then hold the defaulting party liable for consequences of the breach. If the promisee decides to wait till the due date of performance, the contract remains alive for the benefit of both the parties and he runs the following risks :
 1. The party who has previously expressed his intention not to perform the contract may change his mind and perform the contract on the due date of performance. The promisee will be bound to accept this performance.
 2. The party who has previously expressed his intention not to perform the contract may take the advantage of any supervening circumstances which would justify him in declining to complete it.

1996 - May [7] Write short note on the following:

(c) Liquidated damages.

(5 marks)

Answer:

Liquidated damages: Sometimes the parties to a contract, at the time of making the contract agree to the amount of compensation payable in the event of the breach of the contract. The amount of compensation payable, which has been agreed may be either liquidated damages or penalty. A liquidated damage is a fair and genuine covenanted pre-estimate of probable damage for an anticipated breach of contract. If it appears at the time of entering into a contract, the amount of damage likely to follow from a breach was uncertain and the parties, to avoid uncertainty and the expense of proving damages in a court, agreed at the particular amount, that sum would be described as liquidated damages.

Liquidated damages differ from penalty and the difference is maintained in English Law but in India the courts do not observe such distinction and it is left to the courts to decide. This will be evident from Section 74 of the Indian Contract Act, 1872.

1997 - May [7] Write short note on the following:

(c) Quantum Meruit:

(5 marks)

Answer:

Quantum Meruit: The phrase 'quantum meruit' literally means "as much as is earned" or according to the quantity of work done." 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. He may also recover the value of the work done where the further performance of the contract becomes impossible. The claim on quantum meruit must be brought by a party who is not in default. However, in certain cases, the party in default may also sue for the work done if the contract is divisible. Following are the cases in which a claim on quantum meruit may arise:

- (i) Where the work has been done and accepted under a contract which is subsequently discovered to be void, in such a case, the person who has performed the part of the contract is entitled to recover the amount for the work done and the party, who receives and accepts the benefit under such contract, must make compensation to the other party (Section 65).
- (ii) Where, a person does some act or delivers something to another person with the intention of receiving payments for the same (i.e. non-gratuitous act), in such a case, the other person is bound to make payment if he accepts such services or goods, or enjoys their benefit (Section 70).
- (iii) The compensation for the work done may be recovered on the basis of quantum meruit. Where the contract is divisible and a party performs part of the contract and refuses to perform the remaining part, in such a case, the party in default may sue the other party who has enjoyed the benefits of the part performance.

1998 - Nov [7] Write short note on the following:

(c) Anticipatory breach of contract

(5 marks)

Answer:

Anticipatory breach of contract: Section 39 of the Indian Contract Act, 1972 deals with what is known in English Law as anticipatory breach of contract. A breach of contract may take place before the time fixed after performance of the contract has arrived. Thus, if a promisor by his own act disables himself from performing his promise or refuses to perform his part of the contract, the other party is entitled to treat the contract as at an end and to sue him for damages for breach of contract without waiting until the time fixed for performance and without further performing his part of the contract. Where party to contract refuses to perform his part of the contract before the actual time arrives, the law gives the promisee an option whereby he may either-

- (a) elect to rescind and may then although the time for the performance has not yet received, treat the contract as at an end and at once sue for the damages, or

2.170

■ **Solved Scanner CA Foundation Paper - 2A (New Syllabus)**

- (b) he may elect not to rescind but to treat the contracts still operative and wait for the time of performance and then hold the other party responsible for all the consequences of non-performance.

1999 - May [7] Write short note on the following:

- (a) Quantum Meruit (5 marks)

Answer:

Please Refer 1997 - May [7] (c) on page no. 168

2002 - May [7] Write short note on the following:

- (b) Vindictive and Nominal damages (5 marks)

Answer:

Damages for the breach of a contract are given by way of compensation for loss suffered, and not by way of punishment for wrong inflicted. Vindictive damages have no place in the law of contract because they are punitive by nature. But in case of (a) breach of a promise to marry, and (b) dishonour of a cheque by a banker wrongfully when he possesses sufficient funds to the credit of the customer, the court may award vindictive damages.

Whereas is nominal damages where the injured party has not in fact suffered any loss by reasons of the breach of a contract, the damages recoverable by him are nominal. These damages merely acknowledge that the plaintiff has proved his case and won.

2002 - Nov [2] Write short note on the following:

- (c) Remedies available to an aggrieved party on the breach of contract. (5 marks)

Answer:

Following are the remedies available to an aggrieved party on breach of contract.

- (i) Suit for damages.
- (ii) **Recession of contract by the other party:** 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.

- (iii) **Suit upon Quantum Meruit:** The phrase 'quantum meruit' literally means "as much as is, earned" or "according to the quantity of work done". 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. He may also recover the value of the work done where further performance of the contract becomes impossible. The claim of quantum meruit must be brought by a party who is not in default.
- (iv) **Suit for specific performance:** Where damages are not an adequate remedy in the case of breach of contract, the court may be at its discretion on a suit for specific performance direct a party in breach, to carry out his promise according to the terms of the contract.
- (v) **Suit for injunction:** Where a party to a contract is negotiating the terms of a contract, the court may be issuing an 'injunction order' restrain him from doing what he promised not to do.

2002 - Nov [7] Write short note on the following:

(c) Anticipatory breach of contract

(5 marks)

Answer:

Please Refer 1998 - Nov [7] (c) on page no. 169

DISTINGUISH BETWEEN

1995 - May [4] (b) Distinguish between:

(ii) 'Liquidated damages' and 'Penalty'.

(5 marks)

Answer:

Liquidated damages and penalty: Liquidated damages and penalty are applicable to determine the extent of damages in case of breach of contract both in England and in India. Still there exist some difference between these two which are as follows:

2.172

■ **Solved Scanner CA Foundation Paper - 2A (New Syllabus)**

- (i) Liquidated damages are the amount assessed on the basis of actual or probable loss by both the parties payable in the event of breach. While in case of penalty it is not based on actual or probable loss. Penalty is provided to prevent a party from committing a breach.
- (ii) Liquidated damage is imposed by way of compensation but penalty is imposed by way of punishment.
- (iii) Courts in England usually allow 'liquidated damages' without any regard to the actual loss sustained and treat penalty clause as invalid. But Section 74 of the Contract Act, 1872 in India does not recognise any difference between these two terms. Here the courts are required to allow reasonable compensation so as to cover the actual loss sustained, not exceeding the amount so mentioned in the contract.

1998 - Nov [6] (b) Distinguish between:

- (i) 'Liquidated damages' and 'Penalty'. (5 marks)

Answer:

Please Refer 1995 - May [4] (b) (ii) on page no. 171

2000 - Nov [4] (b) Distinguish between:

- (ii) 'Liquidated damages' and 'Penalty'. (5 marks)

Answer:

Please Refer 1995 - May [4] (b) (ii) on page no. 171

DESCRIPTIVE QUESTIONS

1996 - Nov [5] Comment the following:

- (b) What is an anticipatory Breach of Contract? (5 marks)

Answer:

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

Anticipatory breach of a contract may take either of the following two ways:

- (a) Expressly by words spoken or written, and
- (b) Impliedly by the conduct of one of the parties.

When A contracts with B on 15th July, 1995 to supply 10 bales of cotton for a specified sum on 14th August, 1995 and on 30th July informs B, that he will not be able to supply the said cotton on 14th August, 1995, there is an express rejection of the contract. Where A agrees to sell his white horse to B for ₹ 5,000/- on 10th August, 1995, but he sell this horse to C on 1st of August, 1995, the anticipatory breach has occurred by the conduct of the promisor.

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

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

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

1997 - Nov [6] Comment the following:

- (a) What kinds of damages may be awarded in case of breach of the contract under the law of contract? (10 marks)

Answer:

Damages: Remedy by way of damages is the most common remedy available to the injured party. This entitles the injured party to recover compensation for the loss suffered by it due to the breach of contract, from the party who causes the breach. Sections 73 to 75 of the Contract Act incorporate the provisions in this regard. The damages which may be awarded to the injured party may be of the following kinds:

- (i) **Ordinary damages:** 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. [Section 73 of the Contract Act and the rule in *Hadley vs. Baxendale* (1854) 1 Ex. 341].

- (ii) **Special damages:** 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) **Vindictive or exemplary damages:** These damages may be awarded only in two cases:

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

(b) for wrongful dishonour by a banker of his customer's cheque because in this case the injury due to wrongful dishonour to the drawer of cheque is so heavy that it causes loss of credit and reputation to him. A business man whose credit has suffered will get exemplary damages even if he has sustained no pecuniary loss. But a non-trader can not get heavy damages in the like circumstances, unless the damages are alleged and proved as special damages. [*Gibbons vs. West Minister Bank* (1939) 2 K.B. 882].

- (iv) **Nominal damages:** Nominal damages are awarded where the plaintiff has proved that there has been a breach of contract but he has not in fact suffered any real damage and the injury is nominal.

1999 - May [2] Comment the following:

- (c) Remote and indirect losses are not recoverable. (5 marks)

Answer:

Section 73 of the Indian Contract Act, (1872 deals with the compensation for loss or damages caused by breach of contract: In this relation, the basic rule is that damages must not be too remote. The remote damages and indirect losses are those which are either far away in time or widely separated from usual course of things of contract. They are in the nature of distant indirect losses. They are not reasonably foreseeable by a normally reasonable man. The Supreme Court has ruled that remote or indirect loss or damages sustained by reason of the breach will not entitle the party to any compensation (*Karsands (v) Saran Engineering Co., AIR 1965 SC 1981*). Thus, the person who has committed the breach is liable for reasonably foreseeable losses, those that a normally prudent person would have had reason to foresee as probable consequences of future breach. A defaulting person is not liable for those damages which are not reasonably foreseeable. Thus remote damages are not recoverable. Non fulfilment of emotional expectations due to non-performance of a contract is a kind of remote damage being widely separated from the usual things of the contract.

1999 - Nov [2] Explain briefly of the following:

- (i) What remedies are available to an aggrieved party on the breach of contract? (5 marks)

Answer:

Remedies for breach of contracts: When a contract is broken, the injured party becomes entitled to any one or more of the following reliefs:

- (a) **Rescission of the contract:** with the result that the injured party is freed from all his obligations under the contract.
- (b) **Suit for damages:** Damages are monetary compensation awarded to the injured party by Court for loss or injury suffered by him. Section 73 of the Indian Contract Act, 1872 has laid down the rules as to how the

amount of compensation is to be determined. Damages may be nominal or ordinary or special or exemplary damages or damages for deterioration caused by delay.

- (c) **Suit upon Quantum Meruit:** A right to sue on a quantum meruit (as much as earned) arises when a contract performed by one party, has become discharged by the breach of contract by the other party. It is based on implied promise arising from acceptance of benefit by the party.
- (d) **Suit for specific performance contract:** 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,
- (e) **Suit for an injunction:** Where a party to a contract is negotiating the terms of a contract, the court may by issuing an 'injunction order' restrain him from doing what he promised not to do.

2000 - May [2] Comment the following:

- (ii) Damages are "Compensatory" and "Not Penal". (5 marks)

Answer:

Damages (ordinary or special) are given by way of compensation for loss suffered and not by way of punishment for wrong inflicted. The fundamental basis of awarding damages is compensation for pecuniary loss which naturally flows from the breach of contract. The object is to put the injured party in the same position, so far as money can do it, as if he had not been injured.

Hence, vindictive or exemplary or exemplary damages have no place in the law of contract because they are punitive by nature. But in case of breach of a promise to marry and dishonour of a cheque by a banker wrongfully even when sufficient funds are there to the credit of customers account, the court may award exemplary damages.

2000 - May [5] Comment the following:

- (iii) What is meant by Anticipatory Breach of a contract? (5 marks)

Answer:

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

Anticipatory breach of a contract may take either of the following two ways:

- (a) Expressly by words spoken or written, and
- (b) Impliedly by the conduct of one of the parties.

Where A contracts with B on 15th July, 1999 to supply 10 bales of cotton for a specified sum on 14th August, 1999 and on 30th July informs B, that he will not be able to supply the said cotton on 14th August, 1999, there is an express rejection of the contract.

Where A agrees to sell his white horse to B for ₹ 5,000/- on 10th August, 1995, but he sells this horse to C on 1st August, 1995, the anticipatory breach has occurred by the conduct of the promisor.

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

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

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

2.178

■ **Solved Scanner CA Foundation Paper - 2A (New Syllabus)**

2001 - Nov [5] Comment the following:

(b) When a claim for Quantum Meruit arises? (5 marks)

Answer:

A claim for quantum meruit shall arise under the following circumstances:

1. When the contract is discovered to be unenforceable (Section 65, Indian Contract Act, 1872) i.e. when the agreement is discovered to be void or becomes void, any person receiving benefit under such an agreement or contract is bound to restore it.
2. When one party abandons or refuses to perform the contract. Where there is a breach of contract, the aggrieved party is entitled to claim reasonable compensation for what he has done under the contract.
3. When a contract is divisible, and the party in default, has enjoyed the part performance, the party in default may sue on quantum meruit.
4. When an indivisible contract for lump sum is performed but badly, the person who has performed can claim the lump sum less deduction for bad workmanship.

2021 - July [6] (a) Explain what is meant by 'Supervening Impossibility' as per The Indian Contract Act, 1872 with the help of an example. What is the effect of such impossibility? (5 marks)

Answer:

Subsequent or Supervening or Post:

Contractual Impossibility:

- (i) **Subsequent or post:** Contractual impossibility is one which arises after the formation of contract has taken place.
- (ii) Due to supervening impossibility, the contract becomes void and stands discharged.
- (iii) If any benefit has accrued to any of the parties, then it must be restored

Illustration:

A sold to B a cargo of oil to be shipped by a particular ship. B paid ₹ 5 lakhs as purchase consideration. Before the time for shipping arrived the ship was damaged by wreck and loading of cargo was impossible now.

- (a) Here the contract between A & B becomes impossible of being performed and thus the event can be called as Supervening Impossibility. Due to this the contract becomes void and both parties are discharged from their liability. A has to refund ₹ 5 lakhs which was taken from B under the contract.

PRACTICAL QUESTIONS

2018 - May [3] (c) M Ltd., contract with Shanti Traders to make and deliver certain machinery to them by 30.6.2017 for ₹ 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 ₹ 12.75 lakhs. Due to this 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. (6 marks)

Answer:

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 parties know, 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 or indirect loss or damage sustained by reasons of the breach.

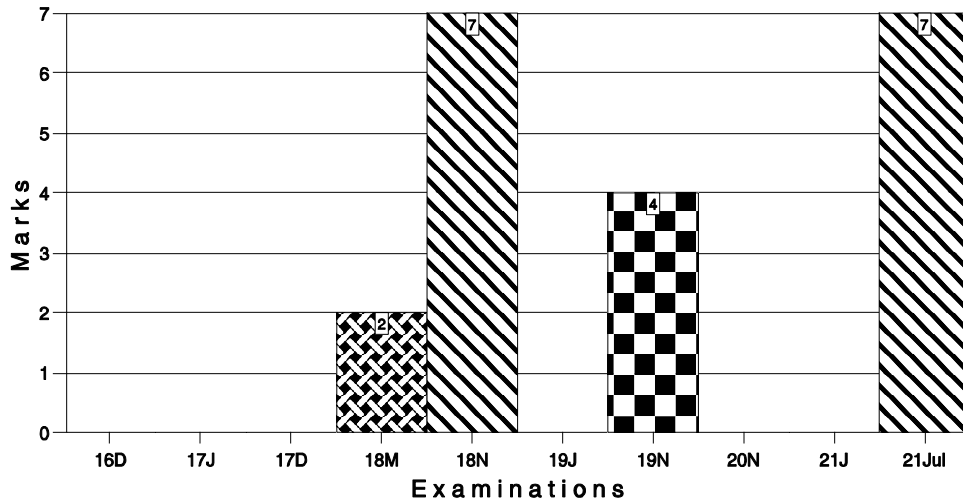
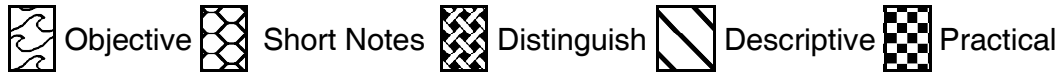
In the given case, Shanti Traders suffered a loss ₹ 1.25 lakhs (12.75 – 11.50) due to breach of contract by M Ltd. This naturally arose in the usual course of things. Shanti Traders also had to pay penalty to Zenith Trader for breach of contract, which should be considered as indirect loss or remote loss for which M Ltd. cannot be held responsible.

Therefore, Shanti Traders can claim an amount of ₹ 1.25 lakh from M Ltd. and nothing beyond.

CHAPTER	<h1>The Indian Contract Act, 1872</h1>
<h1>1</h1>	
Unit: 6	Contingent and Quasi Contracts

Marks of Short Notes, Distinguish Between, Descriptive & Practical Questions

Legend



For detailed analysis Login at www.scanneradda.com
 for registration and password see first page of this book.

SELF STUDY QUESTIONS

Q.1: Described the Rules Relating to Enforcement Under the Indian Contract Act, 1872.

Answer:

Sr. No.	Rules	Enforcement
1.	Happening of future uncertain event	Cannot be enforced by law unless and until that event happens. Contract becomes void if event becomes impossible.
2.	Non-happening of an uncertain future event	Can be enforced when the happening of that event becomes impossible and not before.
3.	Behaviour of a person at an unspecified time in future	Event is considered impossible when that person does anything' which renders it impossible that he should so act within any definite time or otherwise than under further contingencies.
4.	Happening of a specified uncertain event within a fixed time	Becomes void if: (a) at the expiration of the time, such event has not happen, or (b) before the time fixed, such event becomes impossible.
5.	Non-happening of a specified uncertain event within a fixed time	Can be enforced by law: (a) When the time fixed has expired and such event has not happened, or (b) Before the time fixed has expired, it becomes certain that such event will not happen.

6.	Impossible Event	Are void, whether the impossibility of the event is known or not known to th parties at the time of making the agreement.
----	------------------	---

Q.2: State Briefly the Law Relating to Quasi Contracts.

Answer:

Quasi Contracts

- A obligation is imposed by law upon a person for the benefit of another even in the absence of a contract. They are known as quasi contracts.
- They are based on principles of equity, justice and good conscience.
- They are termed as certain relations resembling those created by contracts.
- It is also known as Law of Restitution.
- **It has following features:**
 - (i) It does not arises from any agreement between the parties but is imposed by law.
 - (ii) It is a right only available against a particular person or persons and not against the entire world.
- **They are of following types:**
 - (i) Supply of necessaries
 - (ii) Reimbursement of money due
 - (iii) Obligation to pay for benefit out of non-gratuitous act
 - (iv) Responsibility of finder of goods
 - (v) Persons receiving goods or money by mistake
 - (vi) Quantum merit (as much as earned or reasonable remuneration)

Supply of necessaries (Section 68)

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

- If necessaries are supplied to a minor or person of unsound mind, the supplier is entitled to claim their price from the property of such a person.
- If there is no property, nothing will be realizable.

Reimbursement of money due (Section 69)

- “A person, who is interested in the payment of money and pays such money, which another is bound by law to pay, is entitled to be reimbursed by the other.”
- 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 by him protect this own interest.
- Payment must be bonafide.

Obligation to pay for benefit out of non-gratuitous act (Section 70)

- “Where a person lawfully does something for another person or delivers anything to him, not intending to do so gratuitously and the other person accepts and enjoy the benefits thereof, then he is bound to make compensation to the other in respect of or to rectory the thing so done or delivered”.

Q.3: Explain the Liabilities of Person receiving goods or money by mistake.

Answer:

Person receiving goods or money by mistake

- “A person to whom money has been paid, or anything delivered by mistake or under coercion, must repay or return it”
- Mistake, need not be unintentional, it may be even intentional.

SHORT PRACTICE QUESTIONS

1. Write Short note on Contingent Contract.
2. Define Quasi Contracts.
3. Differentiate between Wagering Agreement and Contingent Contract.

PAST YEAR QUESTIONS AND ANSWERS**OBJECTIVE QUESTIONS**

1995 - May [1] State with reason whether the following statement is true or false:

- (ii) A contract of indemnity is not a contingent contract. (2 marks)

Answer:

Incorrect: A contract of indemnity is a class of contingent contracts. Because in such a contract, the performance depends upon the happening or non-happening of certain event i.e. occurrence of loss caused by the conduct of the promisor or any other person.

1995 - Nov [1] State with reason whether the following statement is true or false:

- (ii) A stranger to the consideration can enforce the contract. (2 marks)

Answer:

Correct: Under the Indian Law, consideration may move from the promisee or any other person, i.e. even a stranger. This rule applies in the cases of marriage settlement, partition or other family arrangements, trust, agency, assignment, etc.

1996 - Nov [1] State with reason whether the following statement is true or false:

- (iv) Insurance contracts are covered under contracts of indemnity. (2 marks)

Answer:

Correct: According to Section 124 contract of indemnity is a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person. In the insurance contract if insured suffers any loss, the same is made good by the insurer i.e. the insurance companies. Such contracts are covered under the above definition. However, a life insurance is a contingent contract and not a contract of indemnity.

1997 - Nov [1] State with reason whether the following statement is true or false:

- (iii) In Quasi contracts, the promise to pay is always an implication of law and not of facts. (2 marks)

Answer:

Correct: Though quasi-contracts are not contracts in the strict sense (as there is no offer, acceptance, consensus-ad-idem etc), yet the law from the circumstances of the case, conduct and relationship of parties, implies by fiction an obligation on the one party and confirming a right to a money payment in favour of the other.

2002 - May [1] State with reason whether the following statement is true or false:

- (v) A 'Contract of indemnity' is not a 'Contingent contract'. (2 marks)

Answer:

Incorrect: Indemnity is an act to compensate or protect somebody against loss or to make good the loss suffered (Section 124 of Indian Contract Act, 1872). The contingency upon such the whole contract of indemnity depends upon the event of suffering loss by the other party. Thus, a contract of indemnity is a type of contingent contract.

SHORT NOTES

1995 - Nov [7] Write short notes on the following:

- (a) Contingent Contract.

(5 marks)

Answer:

Contingent Contract:

A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen (Section 31 of the Indian Contract Act). It is a contract in which the performance becomes due only upon the happening of some event which may or may not happen. For example, A contracts to pay B ₹ 10,000 if B's house to burnt. This is a contingent contract. The following characteristics of contingent contracts can be printed out:

1. The performance of a contingent contract depends upon the happening or non-happening of some uncertain future event.
2. Contingent contracts may be subject to a condition precedent or subsequent.
3. The event on which the performance is made to depend upon is an event collateral to the contract. The event should neither be a performance promised, nor the consideration for the promise.
4. The contingent event should not be the mere will of the promisor.
5. The happening of the event is uncertain.

Rules:

Section 32: Contingent contract cannot be enforced until the relevant event has happened.

Section 33: It can be enforced on non-happening of such event, if it becomes impossible.

Section 34: The event is considered impossible when a person does some act so as to make it impossible.

Section 35: If time fixed for an event to occur expires, it becomes impossible.

Section 36: Contingent agreement based on happening of impossible events are void.

DISTINGUISH BETWEEN

1998 - May [6] (b) Distinguish Between of the following:

- (i) Wagering agreement and Contingent contract. (5 marks)

Answer:

Wagering agreement and Contingent contract: Agreement by way of wager are void, according to Section 30. In a wagering agreement, two parties have opposite views regarding an uncertain event, and they stipulate that upon the determination of the event in a certain way the parties shall win or lose from each other, a certain sum of money and the parties have no other interest in the event except winning or losing a bet.

According to Section 31 of the Indian Contract Act, 1872 a contingent contract is a contract to do or not to do something, if some event collateral to such contract, does or does not happen. Contracts of Indemnity or of insurance are of this type. But however, there is difference between the wagering agreements and contingent contract which may be enumerated as follows:

- (i) A wagering agreement consists of reciprocal promises whereas a contingent, contract may not contain reciprocal promises.
- (ii) In a wagering agreement the uncertain event is the sole determining factor, while in a contingent contract the event is only collateral.
- (iii) A wagering agreement is essentially of a contingent nature whereas a contingent contract may not be of a wagering nature.
- (iv) A wagering agreement is void whereas a contingent contract is valid.
- (v) In a wagering agreement, the parties have no other interest in the subject matter of the agreement except the winning of 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.

2018 - May [2] (c) (i) Distinguish between wagering agreement and contract of insurance. (2 marks)

Answer:

Difference between a Contingent Contract/Contract of Insurance and a Wagering Contract:

Contract of Insurance:

S. No.	Contingent Contracts	Wagering Contracts
1.	It is a contract to do or not to do something if an event collateral to main contract happens or does not happen.	It is a promise to give money or money's worth on an uncertain event happening or not happening.
2.	It may not be wagering in nature.	It is essentially contingent in nature.
3.	It is valid.	It is void.
4.	It may not contain reciprocal promises.	It does consists of reciprocal promise.

DESCRIPTIVE QUESTIONS

1994 - Nov [3] (a) Explain the term 'Quasi Contracts' and state their characteristics. Illustrate your answer by giving examples. (10 marks)

Answer:

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

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

Section 68 to 72 of [the Indian Contract Act deals with the following types of quasi-contracts]:

1. **Claim for necessaries supplied to a person incapable of contracting (Sec. 68).** If a person incapable of entering into a contract or anyone whom he is legally bound to support, is supplied with necessaries suited to his condition in life by another person the supplier is entitled to recover the price from the property of the incapable person.

Example: (a) A supplies B, a lunatic, or a minor, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

2. **Reimbursement of person paying money due by another, in payment of which he is interested.** A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other (Sec. 69).
Example: B holds land in Bengal, on a lease granted by A, the zamindar. The revenue payable by A to the government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent sale and the consequent annulment of his own lease, pays to the government the sum due from A. A is bound to make good to B the amount so paid.
3. **Obligation of person enjoying benefit of non-gratuitous 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 make compensation to the former in respect of, or to restore, the thing so done or delivered (Sec. 70).
Example: A, a tradesman, leaves goods at B's house by mistake, B treats the goods as his own. He is bound to pay A for them.
4. **Responsibility of finder of goods.** A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee (Sect. 71).
5. **Liability of persons to whom money is paid, or thing delivered by mistake or under coercion.** A person to whom money has been paid, or anything delivered by mistake or under coercion, must repay or return it (Sec. 72).
Example: A and B jointly owe 100 rupees to C. A alone pays the amount to C and B, not knowing this fact, pays 100 rupees over and above to C. C is bound to repay the amount to B.
6. **Quantum meruit.** In addition to the above types of quasi contracts expressly provided in the Act, a claim can also be made on the basis of quantum meruit. Where a person has rendered some service to another under the circumstances which indicate that it is to be paid for though no remuneration was fixed, the law implies a promise to pay for the amount of the work actually done. It means payment in proportion to the amount of work done.

1996 - May [2] Comment on the following:

(c) A contract of indemnity is a contingent contract. (5 marks)

Answer:

A contract of indemnity is a contingent contract: The statement is correct in the sense that a contract of indemnity is one by which one party promises to save the other from the loss caused to him by the conduct of the promisor himself or by the conduct of any other person. A contingent contract is a contract to do or not to something if some event collateral to such contract does or does not happen. From the above definitions, it can be seen that both contracts are conditional contracts. Their performance depends upon some contingency which is uncertain. A contract of indemnity is really a part of the general class of contingent contracts. It is entered into with the object of protecting the promisee against any anticipated loss. The contingency upon which the whole contract of indemnity depends is the happening of loss.

1996 - Nov [3] (a) State briefly the law relating to 'Quasi contract'.

(10 marks)

Answer:

Quasi contracts: Under certain circumstances, a person may receive a benefit to which the law regards another person as better entitled, or for which the law considers he should pay to the other person, even though there is no contract between the parties. Such relationships are termed as "Quasi-Contracts". A quasi contract rests on the ground of equity that a person shall not be allowed to enrich himself unjustly at the expense of another.

Sections 68 to 72 of the Indian Contract Act has prescribed the following relationships creating quasi-contractual relations:

1. **Supply of necessaries:** Under Section 68, if a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his conditions in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

2. **Payment by an interested person:** It has been laid down in Section 69 of the Indian Contract Act that a person who is interested in the payment of money which another is bound by law to pay and who therefore, pays it, is entitled to be reimbursed by the other.
3. **Obligation to pay for non-gratuitous Act:** Section 70 of the Indian Contract Act states that where a person lawfully does anything for another person or delivers anything to him not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation in respect of or to restore, the thing so done or deliver.
4. **Responsibility of finder of goods:** Under Section 7 of the Act, a person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee.
5. **Case where money is paid by mistake or under coercion:** Finally, Section 72 of the Indian Contract Act provides that a person to whom money has been paid, or anything delivered by mistake or under coercion, must repay or return it. Thus, quasi contractual right is always a right to money and generally though not always to a liquidated sum of money. It does not arise from any agreement of the parties concerned, but is imposed by the law. It is a right which is not available against all the world but against a particular person or persons only. There is no contract between the parties in cases of quasi contracts, yet they are put in the same position as if there were a contract between them.

1997 - May [6] (a) Explain the meaning of 'Contingent Contracts' and state the rules relating to such contracts. (10 marks)

Answer:

Essential characteristics of a contingent contract: A contract may be absolute or contingent. A contract is said to be absolute when the promisor undertakes to perform the contract in all events. 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" (Section 31). It is a contract in which the performance becomes due only upon the happening of some event which may or may not happen. For example, A contracts to pay

2.192

■ **Solved Scanner CA Foundation Paper - 2A (New Syllabus)**

B ₹ 10,000, if he is elected President of a particular association. This is a contingent contract. The essential characteristics of a contingent contract may be listed as follows:

- (i) There must be a contract to do or not to do something.
- (ii) The performance of the contract must depend upon the happening or non-happening of some event.
- (iii) The happening of the event is uncertain.
- (iv) The event on which the performance is made to depend upon is an event collateral to the contract i.e. it does not form part of the reciprocal promises which constitute the contract. The event should neither be a performance promised, nor the consideration for the promise.
- (v) The contingent event should not be the mere will of the promisor. However, where the event is within the promisor's will, but not merely his will, it may be a contingent contract.

The rules regarding the contingent contract are as follows:

- (1) Contingent contract dependent on the happening of an uncertain future event cannot be enforced until the event has happened. If the event becomes impossible, such contracts become void. (Section 32).
- (2) Where a contingent contract is to be performed if a particular event does not happen, its performance can be enforced only when happening of that event becomes impossible. (Section 33).
- (3) If a contract is contingent upon, how a person will act at an unspecified time the event shall be considered to become impossible, when such person does anything which renders it impossible that he should so act within any definite time or otherwise than under further contingencies. (Section 34, 35).
- (4) The contingent contracts to do or not to do anything if an impossible event happens, are void whether or not the fact is known to the parties. (Section 36)

1999 - May [3] (a) What is meant by Quasi-contract? Explain the types of Quasi-contracts which have been described in the Indian Contract Act, 1872. (10 marks)

Answer:

Please refer 1996 - Nov [3] (a) on page no. 190

1999 - Nov [2] Explain briefly the following:

- (iii) The duties and liabilities of a finder of goods are treated at par with bailee. (5 marks)

Answer:

Duties and Liabilities of finder of goods: The duties and liabilities of a finder of goods are treated at par with bailee. A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee. (Section 71 of the Indian Contract Act, 1872). He is bound to take as much care of the goods as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk quality and value. He must also take all necessary measures to trace its true owner. If he does not take, he will be guilty of wrongful conversion of the property. Till the owner is found out, the property in the goods will vest in the finder and he can retain the goods as his own against the whole world except the real owner. He can sell the goods in the following cases:

- (a) where the owner cannot with reasonable diligence be found; or
- (b) when found, he refuses to pay the lawful charges of the finder; or
- (c) if the thing is in danger of perishing or losing greater part of its value.
- (d) if the lawful charges amount to $\frac{2}{3}$ of the value of the thing.

2001 - May [5] Briefly answer of the following:

- (a) What is a contingent contract and what are its essentials? (5 marks)

Answer:

Please refer 1997 - May [6] (a) on page no. 191

2002 - May [5] (c) Briefly answer the following:

What are the salient features of a quasi contract? (5 marks)

Answer:

Please refer 1996 - Nov [3] (a) on page no. 190

2018 - Nov [2] (a) What is Contingent Contract? Discuss the essentials of Contingent Contract as per the Indian Contract Act, 1872. (7 marks)

Answer:

A Contingent Contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen. Contracts of insurance, indemnity and guarantee fall under this category.

The essential constituents of a contingent contract are:

(a) The performance of a contingent contract would depend upon the happening or non-happening of some event or condition.

Example :

A promises to pay ₹ 50,000 to B if it rains on first of the next month.

- (b) 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.
- (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.
- (d) The event must be uncertain. Where the event is certain or bound to happen, the contract is due to be performed, then it is not a contingent contract.

2021 - July [2] (a) Explain the term Contingent Contract with reference to The Indian Contract Act, 1872 with the help of an example. Also discuss the rules relating to enforcement of a contingent contract. (7 marks)

Answer:

Contingent Contract:

Contingent contract is a contract:

- (i) to do or not to do something
- (ii) if some event, collateral to such contract,
- (iii) does or does not happen.

e.g. contracts of Insurance, indemnity and guarantee fall under this category.

Illustration: X advances ₹ 25,000 to B based on promise made by S (Surety) to repay the amount if X fails to repay it within a month.

Rules relating to enforcement of a contingent contract:

- (i) **Enforcement of contracts contingent on 'happening' of an event:**
 - If the event happens, then the contract becomes valid.
 - If the event does not happen or becomes impossible, then contract becomes void.

- (ii) **Enforcement of contracts contingent on Not-happening of an event:**
- If the event happens, then the contract becomes void.
 - If the event does not happen or becomes impossible, then contract becomes valid.
- (iii) **A contract contingent upon future conduct of a living person:**
If the future conduct of the living person fulfills that condition then contract becomes enforceable if the future conduct renders the happening of such event impossible then contract becomes void.
- (iv) **Contingent on happening of specified event within the fixed time:**
If the event happens within fixed time, the contract becomes enforceable else become void.
- (v) **Contingent on specified event not happening within specified time:**
If the event happens within specified time come out becomes void else valid and enforceable.
- (vi) **Contingent on an impossible event :**
If performance is based on an impossible event then contract is void. Whether impossibility is known to the parties or not.

PRACTICAL QUESTIONS

2019 - Nov [1] {C} (a) X found a wallet in a restaurant. He enquired of all the customers present there but the true owner could not be found. He handed over the same to the manager of the restaurant to keep till the true owner is found. After a week he went back to the restaurant to enquire about the wallet. The manager refused to return it back to X, saying that it did not belong to him.

In the light of the Indian Contract Act, 1872, can X recover it from the Manager? (4 marks)

2.196

■ Solved Scanner CA Foundation Paper - 2A (New Syllabus)

Answer:

The finder of goods has no right to sue the owner for compensation for trouble and Expense Voluntarily incurred by him to presume the goods and to find the true owner, but he may retain the goods against the owner until he receives such compensation, until then the finder may retain the goods with him.

In the given case X finds a wallet in a restaurant and hands it over to the manager as the true owner could not be traced. After a week a demands the wallet back from the manager, which he refuses to give, saying it did not belong to X.

Held, the manager must return the wallet to 'X' as he being the finder of lost goods was entitled to retain the goods found against everybody except the true owner.

Thus, 'X' can recover the wallet from the manager.