

# 1A

## NATURE OF CONTRACT

### THIS CHAPTER INCLUDES

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| <ul style="list-style-type: none"><li>• What is a Contract</li><li>• Essential of a valid contract</li><li>• Types of Contract</li><li>• Proposal and Offer</li><li>• Acceptance</li></ul> | <ul style="list-style-type: none"><li>• Communication of Offer and Acceptance</li><li>• Communication of Performance</li><li>• Revocation of offer and Acceptance.</li></ul> |
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### OBJECTIVE QUESTIONS

**2007 - Nov [1] {C}** (b) (ii) Pickup the correct answer from the following :

(a) In case of void agreements, collateral transactions are

- (1) Also void
- (2) Unenforceable
- (3) Not affected
- (4) Illegal

**(1 mark)**

**Answer :**

(3) Not affected

**2008 - Nov [1] {C}** (c) Pick-up the correct answer from the following and give reasons:

(i) When a person without expressing his final willingness proposes certain terms on which he is willing to negotiate, he makes :

- (1) Counter Offer
- (2) Standing Offer
- (3) Offer
- (4) Invitation to an Offer.

**(1 mark)**

**Answer :**

- (4) **Invitation to an Offer:** The main difference between an offer and an invitation to offer is that in the case of former there should be expression of willingness to do or to abstain from doing with a view to obtaining the assent of the other party, while in the later one, the party without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, he only invites the other party to make an offer on those terms.

**2009 - May [1] {C}** (c) Pick out the correct answer from the following and give reasons:

- (i) An agreement to subscribe or contribute a plate or prize of the value of ₹ 500 or above to be awarded to the winner of a horse race is
- (1) Void
  - (2) Valid
  - (3) Illegal
  - (4) Unenforceable. **(1 mark)**

**Answer :**

- (2) **Valid:** As per Sec. 30 of Indian Contract Act, 1872, an agreement to subscribe to or contribute a plate or prize of the value of ₹ 500 or above to be awarded to the winner of horse race is valid.

**2010 - Nov [1] {C}** (b) (II) Choose the correct answer from the following and give reasons.

- (iii) Cash is withdrawn by the customer of a bank from the automatic teller machine is an example of:
- (a) express contract
  - (b) void contract
  - (c) tacit contract
  - (d) illegal contract. **(1 mark)**

**Answer :**

- (c) Tacit contract

**Reason :** Tacit Contracts are those that are inferred through the conduct of parties. Hence, this is a tacit contract.

**2011 - Nov [6]** (c) State whether the following statement is correct or incorrect :

- (i) A specific offer can be accepted only by that person to whom offer has been made. **(1 mark)**

**Answer :**

- (i) Correct

**2012 - May [6]** (c) State whether the following statement is correct or incorrect :

- (ii) 'All contracts are agreements, but all agreements may not be contracts'. **(1 mark)**

**Answer :**

- (ii) Correct

**2012 - Nov [6]** (c) State whether the following statement is correct or incorrect:

- (i) A proposal may be revoked by the proposer before the posting of the letter of acceptance by the acceptor. **(1 mark)**

**Answer:**

- (i) **Correct:** According to Sec. 5 of Indian Contract Act, 1872, an offer can be revoked any time before its acceptance. We know that for an offeror, the communication of acceptance is complete when it is put in a course of transmission so as to be out of the power of the acceptor. It means that an offer may be revoked at any time before the letter of acceptance is posted by the acceptor.

**2017 - May [6]** (c) State whether the following statement is correct or incorrect:

- (i) An agreement with alien friend is void but an agreement with alien enemy is valid. **(1 mark)**

**Answer:**

Incorrect

### DESCRIPTIVE QUESTIONS

**2012 - May [1] {C}** (a) Explain in brief the rules relating to 'acceptance' of an offer under the provisions of the Indian Contract Act, 1872. **(5 marks)**

**Answer :**

**Rules Relating to Acceptance of an offer**

1.	<b>A c c e p t a n c e m u s t   b e   g i v e n b y   t h e   p e r s o n   t o w h o m   t h e p r o p o s a l   i s m a d e</b>	An acceptance to be valid must be given only by a person to whom offer has been given. In other words, acceptance must move from the offeree and no one else. <i>Example :</i> X offered to sell his house to Y. Here only Y can accept the offer. However, acceptance can also be given by an Agent on behalf of his principal.
2.	<b>A c c e p t a n c e   c a n b e   g i v e n   o n l y w h e n   t h e a c c e p t o r   h a s   t h e k n o w l e d g e   o f t h e   o f f e r</b>	Acceptance cannot be given without the knowledge of offer. <b>Leading Case :</b> <i>Lalman Shukla Vs. Gauri Dutt.</i>
3.	<b>A c c e p t a n c e m u s t   b e a b s o l u t e   a n d u n c o n d i t i o n a l</b>	It is another important essential element of a valid acceptance. A valid contract arises only if the acceptance is absolute and unconditional. It means that the acceptance should be in total (i.e. of all the terms of the offer), and without any condition. Thus, an acceptance with a variation is no acceptance. It is simply a counter offer. A counter offer puts an end to the original offer, and it cannot be revived by subsequent acceptance. <i>Example :</i> X offered to sell his house for ₹ 1,80,000 to Y. Y wrote a letter stating that he was prepared to buy it for ₹ 1,60,000. This is a counter offer, and not acceptance. Now, if Y accepts the original offer to buy the house for ₹ 1,80,000, X will not be bound to sell the house, because Y's counter offer has put an end to the original offer. <b>Leading Case :</b> <i>Nihal Chand Vs. Amarnath, AIR 1926 Lah. 645</i> If only a part of offer is accepted, then the acceptance

		<p>is invalid and without any legal effect. If the offer is accepted with some condition then also the acceptance is invalid and without any legal effect.</p>
4.	<b>A c c e p t a n c e must be given within the time pre-scribed or within a reasonable time</b>	<p>Sometimes, the time limit is fixed within which an acceptance is to be given. In such cases, the acceptance must be given within the fixed time limit. In case, no time is prescribed, the acceptance should be given within a reasonable time. The term 'reasonable time' depends upon the facts and circumstances of each case. <i>Example</i> : X applied for shares in a company in July. The allotment (acceptance) of shares was made in late December. X refused to take shares. It was held that the allotment of shares was not within a reasonable time, therefore X was not bound by the allotment. <b>Leading Case:</b> <i>Ramsgate Victoria Hotel Co. Vs. Monteflore</i> (1866) LR I Ex. 109</p>
5.	<b>A c c e p t a n c e must be given before the lapse of offer</b>	<p>A valid contract can arise only when the acceptance is given before the offer has elapsed or withdrawn. An acceptance which is made after the withdrawal of the offer is invalid, and does not create any legal relationship. <i>Example</i> : X offered, by a letter, to sell his horse to Y for ₹ 2500. Subsequently, X withdrew his offer by a telegram which was also received by Y. After the receipt of this telegram. Y accepted the offer by a letter, and posted the same. In this case, the acceptance is invalid as it was made after the effective withdrawal of the offer.</p>
6.	<b>A c c e p t a n c e must be communicated</b>	<p>It is an important and essential element of a valid acceptance. The definition of acceptance as given in Sec. 2(b) emphasises this requirement. According to this Section, the consent to the offer should be signified</p>

2.6

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(i.e. indicated or declared). In other words, the acceptance is completed only when it has been communicated to the offeror. It may be noted that until the acceptance is communicated, it does not create any legal relations.

**Example :** X offers to buy Y's plot of land for ₹ 10 lakhs. Y discusses the proposal with Z his own lawyer, and agrees to sell the plot for ₹ 10 lakh. But Y does not communicate the acceptance to X. In this case, no contract comes into existence between X and Y.

Thus, a mere mental determination to accept is not acceptance unless it is accompanied by an external indication. The requirement is that there should be some external manifestation of acceptance.

7.	<b>A c c e p t a n c e m u s t    b e c o m m u n i c a t e d t o   t h e   o f f e r o r h i m s e l f</b>	<p>A valid contract arises only if the acceptance is communicated to the offeror himself. If acceptance is communicated to the person, other than the offeror, it will not create any legal relationship. In fact, such communication is no communication at all.</p> <p><i>Example :</i> X offered to purchase Y's horse and wrote a letter saying, "If I hear no more about the horse. I shall consider the horse mine at £35". To this letter no reply was sent, but Y instructed Z an auctioneer, not to sell the horse as it was already sold to X. By mistake, Z put up the horse for auction and sold it. X filed a suit against Z on the ground that under the contract the horse had become his property and Z is liable for conversion of his property. But his action failed. In this case X in his own mind accepted the offer. But he had not communicated his acceptance to Y.</p> <p><b>Leading Case:</b> <i>Felthouse Vs. Bindley (1863) 7 LT 835</i></p> <p>However, if the offer is made by an agent on behalf of his principal, then the acceptance may be communicated, either to the principal or his agent.</p>
8.	<b>A c c e p t a n c e m u s t   b e   i n   t h e p r e s c r i b e d m a n n e r</b>	<p>It is the legal rule of the acceptance that it must be accepted in the prescribed manner. If the offer is not accepted in the prescribed manner, then the offeror may reject the acceptance within reasonable time. It may however, be noted that, if the offeror does not reject the acceptance within a reasonable time, then he becomes bound by the acceptance. [Sec. 7(2)]</p> <p><i>Example :</i> X offered through a letter, to sell his car to Y for ₹ 2,70,000. He also wrote that it should be accepted by letter only. Y instead of writing a letter, sent his authorised agent to X conveying the message that he has accepted the offer. Y's acceptance is not in the prescribed manner. X may reject it within</p>

		reasonable time. But if he does not reject within reasonable time, he shall be deemed to have accepted the acceptance, and a valid contract will arise between X and Y.
9.	<b>Acceptance must be given in some usual and reasonable manner</b>	It is another important legal rule of an acceptance that where no mode is prescribed, acceptance must be given in some usual and reasonable manner. In such cases, the mail course is considered, a very reasonable manner. <b>Leading Case:</b> <i>Dunlop Vs. Higgins</i> (1848) 1 HLC 381
10.	<b>Acceptance must show an intention that acceptor is willing to fulfil the terms of the offer</b>	A valid contract can arise only when the acceptance is given with the intention of fulfilling the terms of the contract. An acceptance which is made jokingly and without any intention of entering into a contract, is invalid and does not create any legal relationship.
11.	<b>Acceptance may be express or implied</b>	An acceptance, which is expressed by words written or spoken, is called an express acceptance. [Sec. 9] <b>Example :</b> X wrote to Y in a letter, "I want to sell my black horse for ₹ 12,000". Y replied by a letter "I am ready and willing to buy your black horse for ₹ 12,000". Here Y's acceptance is express acceptance as it is made in writing. Acceptance is implied when it is inferred from the conduct of the parties. <b>Example :</b> At an auction sale of a car, X is the highest bidder. The auctioneer accepts the bid (i.e. offer) by striking the hammer on the table. It is an implied acceptance. Here, auctioneer's conduct of striking the hammer on the table shows that the auctioneer has accepted the highest bid.



12.	<b>A c c e p t a n c e c a n n o t b e p r e s u m e d f r o m s i l e n c e . M e r e s i l e n c e i s n o t a c c e p - t a n c e</b>	<p>Sometimes, the acceptor does not convey his decision to the offeror/and keeps silent. In such a case, his silence does not amount to acceptance. Similarly, the offeror does not have the legal rights to say that if no answer is received within a certain time, the offer shall be deemed to have been accepted.</p> <p>He (the offeror) cannot impose a condition that offeree's silence will be regarded as equivalent to acceptance.</p> <p><b>Leading Case:</b> <i>Felthouse Vs. Bindley</i> (1863) 7 LT 835.</p> <p><b>Example :</b> X offered his car to Y for ₹ 95,000, and wrote that if he did not hear from him (Y) within a week, he would assume that he has accepted offer. No reply was given by Y. In this case, no valid contract is concluded between X and Y.</p>
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### PRACTICAL QUESTIONS

**2013 - May [1] {C}** (a) Mr. D started "Self-Service," system in his shop. Mr. A entered the shop, took a basket and after taking article of his choice into the basket reached the cashier for payments. The cashier refused to accept the price. Can Mr. D be compelled by Mr. A to sell the said article? Decide. **(5 marks)**

**Answer:**

**Invitation to Offer**

**Provision:**

The offer should be differentiated from an invitation to offer. An offer is the last expression of willingness by the offeror to be bound by his offer when the party decided to accept it. In case the party fails to express his last willingness and proposes certain terms on which he is ready to negotiate, in the case he does not make an offer, but invites other party to make the offer on those terms. Thus this is the difference between the two.

**Present Case :** In the above problem, the display of articles with a price in it in a

self-service shop is simply an invitation to offer. It is in no sense an offer for sale, the acceptance of which constitutes the contract. In this case, Mr. A who has selected some articles and approaches the cashier for payment, simply made an offer to buy the articles selected by him. If the cashier refuses to accept the price, the interested buyer cannot force him to sell. [*Fisher Vs Bell (1961)*]

Thus Mr. D cannot be compelled by Mr. A to sell the said article.

**2015 - Nov [3]** (a) (ii) Mr. U offered to sell his house to Mr. X for ₹ 15,00,000. Mr. X accepted the offer by post. On the very next day Mr. X sent a telegram revoking the acceptance which reached Mr. U before the letter of acceptance. Is the revocation of acceptance valid? Would it make any difference if both the letter of acceptance and the telegram of revocation of acceptance reach Mr. U at the same time? (4 marks)

**Answer:**

**This problem is related to the communication and time of acceptance and its revocation.**

**Provision:**

As per Sec. 4 of the Indian Contract Act, 1872, the communication of an acceptance is complete as against the acceptor when it comes to the knowledge of the proposer.

- Again as per Sec. 5 of the Indian Contract Act, 1872, an acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

**Present Case:**

- (i) Yes, the revocation of acceptance by Mr. X (the acceptor) is valid.
- (ii) If Mr. U opens the telegram first and reads it, the acceptance stands revoked. If he opens the letter first and read it, revocation of acceptance is not possible as contract has already been concluded.

# 1B

## CONSIDERATION

### THIS CHAPTER INCLUDES

- What is Consideration?
- Legal Rules regarding consideration
- Suit by a third party to a contract
- Validity of an agreement without consideration.

### DESCRIPTIVE QUESTIONS

**2012 - May [3]** (a) What do you understand by the term 'Consideration'? Are there any circumstances under which a contract, under the provisions of the Indian Contract Act, 1872, without consideration is valid? Explain.

**(8 marks)**

**Answer :**

<b>Meaning of Consideration</b>	Consideration is one of the essential elements of a valid contract. It means 'something in return'. When a party to an agreement promises something, he should also get 'something' in return. This 'something' is known as consideration. Thus, consideration is a price for which a promise is bought. Promises made for nothing are unenforceable under the Indian Contract Act 1872. The Act enforces only those promises which are made for consideration. Therefore, consideration is said to be the foundation of every contract. It is the sign and symbol of every contract.
<b>Example</b>	X agrees to sell his car to Y for ₹ 1,40,000. In this case, Y's promise to pay the sum of ₹ 1,40,000 is the consideration for X's promise to sell the car. And X's promise to sell the car is the consideration for Y's promise to pay the sum of ₹ 1,40,000.

<b>Definition</b>	<b>Sec. 2(d)</b> of the Indian Contract Act defines consideration as, “When, at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or abstain from doing something, such act or abstinence or promise is called a consideration for the promise”.
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**Exceptions:**

**The general rule is that an agreement made without consideration is void. Sec. 25 deals with the exception to this rule and mentions the following cases in which contract without consideration is valid, viz.**

<b>1.</b>	<b>Love and affection</b> [Sec. 25(1)]	Where an agreement is expressed in writing and registered under the law for the time being in force for the registration of the documents and is made on account of natural love and affection between the parties standing in near relation to each other. Such a contract is enforceable, even if there is no consideration.  <i>Example :</i> X, an elder brother promised to pay the debts of his younger brother Y, on account of natural love and affection. The agreement was put to writing and registered. <i>Held</i> , the agreement though without consideration was valid. ( <i>Venkatswamy Vs. Rangswamy</i> )
<b>2.</b>	<b>Compensation for voluntary services</b> [Sec. 25(2)]	A promise to compensate wholly or in part, a person who has already voluntarily done something for the promisor is enforceable, even though there would be no consideration in such a promise. In other words, a promise to pay for past voluntary services is binding.

		<i>Example</i> : X finds Y's necklace and gives it to her. Y promises to give X ₹ 200. This is a valid contract.
3.	<b>Promise to pay time-barred debt [Sec. 25(3)]</b>	A promise by a debtor to pay a time-barred debt is enforceable that it is made in writing and is signed by the debtor or his agent generally or specifically authorised in that behalf. The promise may be to pay whole or a part of the debt.  <i>Example</i> : X owes Y ₹ 1,00,000 but the debt is barred by Limitation Act. X signs a written promise to pay Y ₹ 95,000 on account of debt. This is a valid contract.
4.	<b>Completed gifts [Explanation 1 to Sec. 25]</b>	The rule, 'No consideration, no contract' also does not apply to gifts made and accepted (i.e., completed gifts). Gift, therefore, made without consideration is valid. Thus, consideration is not needed between donor and donee.
5.	<b>Agency [Sec. 185]</b>	No consideration is required between the principal and agent to create an agency.
6.	<b>Contract under seal</b>	Under the law, a contract made in the form of a deed under seal is valid even though it is made without consideration.

### PRACTICAL QUESTIONS

**2009 - Nov [1]** (a) Mr. Singh, an old man, by a registered deed of gift, granted certain landed property to A, his daughter. By the terms of the deed, it was stipulated that an annuity of ₹ 2,000 should be paid every year to B, who was the brother of Mr. Singh. On the same day A made a promise with B and executed in his favour an agreement to give effect to the stipulation. A failed to pay the stipulated sum. In an action

against her by B, she contended that since B had not furnished any consideration, he has no right of action.

Examining the provisions of Indian Contract Act, 1872, decide, whether the contention of A is valid ? (5 marks)

**Answer :**

**This Problem is related to Consideration and the principle of 'Privity of Consideration.'**

**Provision:**

Consideration is one of the essential elements of a valid contract. According to Sec 2(d), 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 abstains from doing something, such act or abstinence or promise is called a consideration for the promise. As per the legal requirements of a valid consideration, consideration may move from the promisee or any other party even a stranger. It means that there must be consideration and it is immaterial as to who furnishes it. It also puts forward that, a person can sue on a contract even if the consideration for the promise is moved from a 3<sup>rd</sup> party.

**The leading case in this regard** is the case of *Chinnaya Vs. Ramayya*, wherein it was held that the consideration can legitimately move from a 3<sup>rd</sup> party.

**Present Case :**

In the given problem, the contract is between Mr. Singh and his daughter A. B is stranger to consideration. Although B did not pay any consideration to A, yet A is bound to pay the stipulated amount to B as the consideration has already flowed from Mr. Singh.

# 1C

## OTHER ESSENTIAL ELEMENTS OF A CONTRACT

### THIS CHAPTER INCLUDES

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|---|--|
| <ul style="list-style-type: none"><li>● Capacity to Contract</li><li>● Free Consent</li><li>● Elements Vitiating Free Consent</li></ul> | <ul style="list-style-type: none"><li>● Legality of Object and Consideration</li><li>● Void Agreements</li></ul> |
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### OBJECTIVE QUESTIONS

**2007 - Nov [1] {C}** (b) (i) State whether the following statements are correct or incorrect:

- (a) A minor cannot be appointed as an agent. **(1 mark)**

**Answer :**

**Incorrect :** A minor can be appointed as an agent but he will not be liable to his principal for his acts.

**2009 - May [1] {C}** (b) State with reasons whether the following statements are correct or incorrect:

- (i) An agreement entered with a minor may be ratified on his attaining majority. **(1 mark)**

**Answer :**

**Incorrect :** Ratification means acceptance of a transaction already done. A minor cannot ratify the agreement on attaining the age of majority as the original agreement is *void-ab-initio*, and, therefore validity cannot be given to it later.

**2010 - May [1]** (c) Pick out the correct answer from the following and give reasons :

- (i) X sells the goodwill of his retail store to Y for ₹ 5 lac and promises not to carry on the same business forever and anywhere in India. Is the agreement.
1. valid

**2.16**

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2. void
3. voidable
4. illegal.

**(1 mark)**

**Answer :**

**2. Void :**

**Reason :** As per Sec. 27 of the Indian Contract Act, 1872 an agreement in restraint of trade is void. However, a buyer of goodwill can put such a condition on the seller of goodwill that he, will not be carry on same business. However, the conditions must be reasonable regarding the duration and the place of the business.

**2010 - Nov [1] {C}** (b) (ii) Choose the correct answer from the following and give reasons.

- (i) Where both the parties to an agreement are under mistake as to a matter of fact, which is essential to the agreement, the agreement is:
  - (a) valid
  - (b) voidable
  - (c) void
  - (d) illegal.

**(1 mark)**

**Answer :**

**(c) Void.**

**Reason :** In case of bilateral mistake as to fact-i.e. if both the parties to an agreement are under a mistake regarding a matter of fact, which is essential to the agreement, the agreement is void.

**2011 - May [1] {C}** (b) State whether the following statements are correct or incorrect :

- (i) An agreement with a minor may be ratified on his attaining majority.

**(1 mark)**

**Answer :**

*Please refer 2009 - May [1] {C} (b) (i) on page no. 20*

**2011 - May [1] {C}** (b) (ii) Choose the correct answer from the following :

- (i) Which one of the following statements is not true about minor's position in the firm :
  - (a) He can not become a partner in the firm.
  - (b) A minor and a major can enter into an agreement of partnership.



(c) He can be admitted to the benefits in the firm.

(d) He can become a partner on becoming a major.

**(1 mark)**

**Answer :**

(b) A minor and a major can enter into an agreement of partnership.

**2012 - May [6]** (c) State whether the following statements are correct or incorrect :

(i) 'An agreement with an alien friend is valid but an agreement with an alien enemy is void'. **(1 mark)**

**Answer :**

**Correct**

**2014 - May [6]** (c) State whether the following statements are correct or incorrect:

(iii) A minor on his attaining majority can validate any agreement which was entered into when he was minor and which was void. **(1 mark)**

(iv) Maintenance and Champerty are void in England but not in India, till they are not opposed to public policy. **(1 mark)**

**Answer:**

(iii) This statement is **incorrect**.

(iv) This statement is **correct**.

**2014 - Nov [6]** (c) State whether the following statements are correct or incorrect:

(iii) The agreement towards compounding of an offence to avoid prosecution is void. **(1 mark)**

**Answer:**

**Incorrect**

**2016 - Nov [6]** (c) State whether the following statement is correct or incorrect:

(iii) A collateral agreement to the void agreement is also void. **(1 mark)**

**Answer:**

**Incorrect:** Collateral agreement is not affected, hence not void.

**2.18****■ Solved Scanner CA Foundation Paper - 2A (New****DISTINGUISH BETWEEN**

**2016 - May [4]** (a) List out the points of difference between Fraud and Misrepresentation. **(4 marks)**

**Answer :**

<b>S. No.</b>	<b>Basic of Difference</b>	<b>Fraud</b>	<b>Misrepresentation</b>
1.	<b>Meaning</b>	It means a false representation of fact made willfully with a view to deceive the other party.	It means a false representation of fact made innocently or non disclosure of a material fact without any intension to deceive the other party.
2.	<b>Willfull Vs. Innocense</b>	Here false statement is made willfully with the purpose to deceive the other party.	Here a false statement is made innocently i.e. without any intension to deceive other party.
3.	<b>Belief</b>	Person so representing knows the statement is not true.	Person so representing believe it to be true.
4.	<b>Claim</b>	Right to claim damages will arise here.	No right is available to the aggrieved party to claim damages. However he can claim recession of contract.
5.	<b>Action</b>	Action against deceit.	Action for recession.
6.	<b>Defence</b>	No defence can be set up other than for fraudulent silence.	The fact that the plaintiff had means of discovering the truth by exercising ordinary diligence can be a good defence against repudiation of the contract.

**DESCRIPTIVE QUESTIONS**

**2011 - Nov [3]** (a) What do you understand by “coercion” and “undue influence” under the provisions of the Indian Contract Act, 1872 ? What are the differences between them ? **(8 marks)**

**Answer :**

**Coercion:** According to Sec. 15 of the Indian Contract Act, 1872, Coercion is the committing, or threatening to commit any act forbidden by the Indian Penal Code 1860, or the unlawful detaining, or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

**Undue Influence:** According to Sec. 16, of the Indian Contract Act 1872, a contract is said to be induced by "*undue influence*" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. A person is deemed to be in a position to dominate the will of the other, when he holds authority, real or apparent over the other, or when he stands in a fiduciary relation to other (Sec. 16.)

**Validity:** When the acceptance from the offeree is obtained under coercion or under undue influence, the validity of the contract is stated in Sec.19 of the Act :

1. An agreement whose consent is obtained by coercion and under influence 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 and undue influence must repay or return it (Sec. 72).

**Difference:**

<b>Distinction between Coercion and Undue Influence</b>			
<b>Sl. No.</b>	<b>Basis</b>	<b>Coercion</b>	<b>Undue Influence</b>
<b>1.</b>	<b>Definition</b>	Coercion involves threat to use physical force to obtain the consent of the	In undue influence, mental or moral pressure is used to get the consent of the other party.

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

		other party.	
<b>2.</b>	<b>Parties</b>	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.
<b>3.</b>	<b>Relationship</b>	In coercion, the parties to the contract do not have any definite relationship with each other.	In undue influence, the parties are under fiduciary relationship.
<b>4.</b>	<b>Intention</b>	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.
<b>5.</b>	<b>Penalty</b>	An act of coercion may be punishable under the Indian Penal Code.	The act of undue influence may not be punishable.
<b>6.</b>	<b>Force</b>	The force used is physical in nature.	The force used is moral in nature.

**2017 - May [3]** (a) (ii) What do you understand by “coercion”, describe its effect on the validity of a contract? **(4 marks)**

**Answer:**

**Coercion**

**Meaning:** Coercion means forcibly compelling a person to enter into a contract by use of force or under threat.

**Definition:** According to Sec. 15 of the Indian Contract Act, 1872, Coercion is the committing, or threatening to commit any act forbidden by the Indian Penal Code 1860, or the unlawful detaining, or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

**Effect of Coercion on Validity of Contract (Sec. 19):**

1. Contract is voidable at the option of the aggrieved person.
2. The burden of proof lies on the person who wants to relieve himself of the consequences of coercion.

**PRACTICAL QUESTIONS**

**2012 - Nov [1] {C}** (a) Ramesh, aged 16 years, was studying in an engineering college. On 1 March, 2011 he took a loan of ₹ 1 lakh from Suresh for the payment of his college fee and agreed to pay by 30<sup>th</sup> May, 2012. Ramesh possesses assets worth ₹10 lakhs. On due date Ramesh fails to pay back the loan to Suresh, Suresh now wants to recover the loan from Ramesh out of his assets. Whether Suresh would succeed? Decide, referring to the provisions of the Indian Contract Act, **(5 Marks)**

**Answer:**

**Provision:**

As per Sec. 68 of the Indian Contract Act, 1872, a minor is liable to pay out of his property for 'necessaries' supplied to him or to his minor dependents whom he is legally bound to support.

As per Sec. 2, Necessaries means 'Goods suitable to the condition in life of such infant or other person, and to his actual requirement at the time of a sale and delivery'.

Necessaries also include education, training for a trade medical advice etc. Any loan incurred to obtain necessaries will also make the minor's property liable i.e. a loan taken by minor to obtain necessaries also binds him and is recoverable by the lender as if he himself had supplied the necessary.

**Present Case :** In the present case, on 1<sup>st</sup> March 2011, Ramesh, a minor took a loan of ₹ 1 lakh from Suresh for payment of his college fees and agreed to pay on 30<sup>th</sup> May 2012. Since the loan is for education therefore, Ramesh's asset will be liable for repayment of loan. Thus, Suresh would succeed to recover the loan.

**2016 - Nov [3]** (a) (i) State with reasons whether the following agreements are valid or void under the provisions of the Indian Contract Act, 1872:

- (1) Vijay agrees with Saini to sell his black horse for ₹ 3,00,000. Unknown to both the parties, the horse was dead at the time of the agreement.

2.22

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- (2) Sarvesh sells the goodwill of his shop to Vikas for ₹ 10,00,000 and promises not to carry on such business forever and anywhere in India.

**(4 marks)**

**Answer:**

1. The agreement is **void**.

**Reason:** Both the parties are under mutual mistake of fact hence agreement is void as per Sec. 20 of Indian Contract Act, 1872, which states that contracts caused by mistake of fact are void.

2. The agreement is **void**.

**Reason:** The promise not to carry on such business forever and anywhere in India is void as it relates to agreement in restraint of trade as per Sec. 27 of Indian Contract Act, 1872.

# 1D

## PERFORMANCE OF CONTRACT

### THIS CHAPTER INCLUDES

- |  |  |
|--|--|
| <ul style="list-style-type: none"><li>● Obligations of parties to contracts</li><li>● By Whom a Contract may be Performed</li><li>● Distinction between Succession and Assignment</li><li>● Effect of Refusal to Accept Offer of Performance</li></ul> | <ul style="list-style-type: none"><li>● Effect of a Refusal of Party to Perform Promise</li><li>● Liability of Joint Promisor and Promisee</li><li>● Time and Place for Performance of the Promise</li><li>● Performance of Reciprocal Promise</li><li>● Appropriation of Payments</li></ul> |
|--|--|

### OBJECTIVE QUESTIONS

**2007 - Nov [1] {C}** (b) (i) State whether the following statements are correct or incorrect:

(b) Where there are co-sureties a release by the creditor of one of them does not discharge the others. **(1 mark)**

**Answer :**

**Correct :** As per Sec. 44 of the Indian Contract Act, 1872, the release of one of the joint promisors by the promisee does not release him from the responsibility to the other joint promisors.

**2008 - May [1] {C}** (b) (ii) Pick-up the correct answer from the following and give reasons :

(a) If time is the essence of the contract and there is a failure to perform the contract by the specified time, the contract :

- (1) becomes voidable at the option of the promisee
- (2) becomes unenforceable
- (3) becomes void
- (4) remains valid.

**(1 mark)**

- (c) A Promissory-note drawn jointly by X, a minor and Y, a major is :
- (1) void
  - (2) valid but not negotiable
  - (3) valid but can be enforced only against Y
  - (4) None of the above.
- (1 mark)**

**Answer :**

- (a) Option (1) : Becomes voidable at the option of the promisee.**

According to Sec. 55 of the Indian Contract Act, 1872, where time is the essence of the contract and the party bound to perform fails to perform by the specified time, then the contract becomes voidable at the option of the other party and he may put an end to the contract if he so chooses.

- (c) Option (3) : Valid but can be enforced only against Y.**

As per Sec. 26 of the Negotiable Instruments Act, 1881, every person who is competent to enter into a contract has the right to incur liability by making, drawing, endorsing, accepting, delivering and negotiating the negotiable instrument. An agreement with a minor is void, so he cannot bind himself by becoming a party to a negotiable instrument. But the instrument can be drawn or endorsed as to bind all other parties.

**2008 - Nov [1] {C}** (b) State with reasons whether the following statements are correct or incorrect:

- (i) In case of alternative promise one branch of which is legal and the other illegal, the whole contract can not be performed. **(1 mark)**

**Answer :**

**Incorrect :** According to Sec. 58 of Indian Contract Act, 1872, in case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be performed.

*Leading Case: Mahadeo Prasad Singh Vs Mathura 132. L.C. 321A*

**2009 - May [1] {C}** (c) Pick out the correct answer from the following and give reasons:

- (ii) Substitution of new contract for an existing contract between the same parties is known as:
- (1) Remission
  - (2) Alteration
  - (3) Rescission
  - (4) Novation.
- (1 mark)**



**Answer :**

**Novation :** As per Sec. 62 of Indian Contract Act, 1872, a substitution of new contract for an existing contract between the same parties is known as novation.

**2009 - Nov [1]** (c) Pick out the correct answer from the following and give reasons :

- (ii) A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract
- (1) can be enforced by A's representative
  - (2) can be enforced by B
  - (3) can be enforced either by A's representative or by B
  - (4) can not be enforced either by A's representative or by B
- (1 mark)**

**Answer :**

**(4)** *'Cannot be enforced either by A's representative or by B'*: To paint a picture requires personal skill. As per para 1 of Sec. 40. promises depending upon the personal skill or diligence or upon personal consideration between the parties, must be performed by the promisor himself.

**2016 - Nov [6]** (c) State whether the following statement is correct or incorrect:

- (iv) If one party fails to perform his obligation within the stipulated time, where time is not the essence of the contract, the other party can always rescind the contract on this ground.
- (1 mark)**

**Answer:**

**Incorrect:** Promisee is entitled for compensation and not recession.

### DESCRIPTIVE QUESTIONS

**2011 - Nov [1] {C}** (a) State, in brief, the grounds on the basis of which a contract is discharged under the provisions of the Indian Contract Act, 1872. **(5 marks)**

**Answer :**

- 1. Discharge by Performance :** It is the most usual way of performance of a contract. When the parties to a contract fulfil their obligations arising out of the contract within the time and in the manner prescribed, the contract is said to have been discharged by performance. If only one party performs his obligation,

he alone is discharged, though he gets the right of action against the other party, who is guilty of breach. The performance may either be (i) Actual, or (ii) Attempted :

- (i) **Actual Performance** : When both the parties carry out their promises under the contract in the manner and within the time, it is called actual performance. It makes an end of the contract.
  - (ii) **Attempted Performance or Tender** : It is not the actual performance, but an offer to perform the obligation under the contract. When the promisor offers to perform the obligation , but other party refuses, it amounts to attempted performance except in the case of tender of money.
2. **Discharge by Impossibility of Performance** : A contract to do an act, which after the contract is made becomes impossible or unlawful by reason of some event beyond the control of the promisor, becomes void when it becomes impossible or unlawful.

**The 'Rule of Impossibility' is based on the following maxims, viz:**

- (i) *Lex on cogit ad impossibilia*. It means, "the law does not recognise what is impossible", and
- (ii) *Impossibilium nulla obligation est*. It means, "What is impossible does not create an obligation."

Therefore, when a person has promised to do something, which he knows or has the reasons with reasonable diligence to know that it is impossible or unlawful, while the promisee does not know about the impossibility or unlawfulness of the promise, such promisor is supposed to compensate to such promisee for any loss caused to him because of the non-performance of the promise.

3. **Discharge by Operation of Law** : In the following circumstances, the contract is discharge by operation of law i.e. the law regards the contract as discharged.
- (i) By Material - alteration of the particulars of a contract by one party without the consent of other party.
  - (ii) By insolvency of one party.
  - (iii) By death of a promisor, in case the contract involves personal skill of promisor.
  - (iv) By merger of rights.

4. **Discharge by Lapse of Time :** As a matter of fact, the contracts must be performed within the period of limitation. i.e., the period specified by the Limitation Act. The Limitation Act lays down different limitation periods for different kinds of contracts. If the contract is not performed and the aggrieved party does not enforce his rights within the limitation period, then he is debarred from enforcing the contract. In other words, after the expiry of limitation period the courts will not enforce the contract. And thus, the contract is discharged as the parties cannot enforce their respective obligation through the Courts of Law.
5. **Discharge by Agreement :** A contract may be discharged by mutual agreement of the concerned parties. The parties may enter into a fresh agreement which provides for the extinguishment of their rights and obligations created by the original contract. In such cases, the original contract is discharged as the parties are not required to perform the original contract due to the fresh agreement.
6. **Discharge by Breach of contract :** Where a party to the contract breaks the obligation which he has undertaken under the contract, the contract stands discharged by breach of contract. The breach of contract may either be (i) Actual, or (ii) Anticipatory
  - (i) **Actual Breach of Contract. It may occur :**
    - (a) **At the time when performance is due :** Actual breach of contract occurs at the time when performance is due, when one party fails or refuses to perform his obligation under the contract.
    - (b) **During the performance of the contract:** It occurs when a party fails or refuses to perform the obligation under the contract during the performance of the contract. It may either be express or implied repudiation.
  - (ii) **Anticipatory Breach of Contract:** It occurs when a party repudiates his obligation under the contract before the time for performance arrives :  
It may either be (a) express, or (b) implied anticipatory breach, viz.:
    - (a) **Express Repudiation or Renunciation:** It takes place when one party renounces his liability under the contract expressly, before the performance becomes due.
    - (b) **Implied Repudiation or By creating impossibility:** A promisor may before the time of performance arrives, by doing some act, make the performance of the contract impossible. It also discharges the contract.

**2013 - Nov [3]** (a) When a contract may be discharged under the provisions of Indian Contract Act, 1872. Explain in detail. **(8 marks)**

**Answer:**

*Please refer 2011 - Nov [1] {C} (a) on page no. 30*

**2014 - Nov [3]** (a) Explain what is meant by “Supervening Impossibility” as per the Indian Contract Act, 1872 and also state the situations which would not constitute grounds of impossibility. **(8 marks)**

**Answer:**

**Supervening Impossibility:** As per the Contract Act, 1972. Supervening Impossibility means if no Impossibility existed at the time of formation of the contract but the impossibility arises subsequent to the formation of the contract and the impossibility is of such a nature that it makes the performance of the contract impossible or illegal then it is called as supervening impossibility.

**Situation which would not constitute grounds of Supervening Impossibility:**

<b>1. Commercial Impossibilities</b>	When performance becomes difficult or burdensome e.g. rise or fall in prices, depreciation or appreciation of currency, obstructs to the execution of the contract, execution of contract becoming more expensive or less profitable, availability of transport at exorbitant rates etc.
<b>2. Default by third Party</b>	Default by a third party on whose work or conduct the promisor relied does not amount to supervening impossibility.
<b>3. Strikes, riots or civil disturbances</b>	Strike by workers or outbreak of riots or some civil disturbances interrupting the performance of promise do not amount to supervening impossibility.
<b>4. Self induced impossibility</b>	Impossibility arising due to a party's own conduct or act is not supervening impossibility.

<p><b>5. Partial Failure of object or partial Impossibility</b></p>	<p>If a contract is made for fulfillment of several objects, the failure of one or more of them does not amount to supervening possibility. <i>H. B. Steam boat Co. V. Hulton.</i></p>
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**2015 - Nov [3]** (a) (i) Under what circumstances the original contract need not be performed as stated under section 62 to 67 of the Indian Contract Act, 1872 (2 marks)

**Answer:**

**Contracts which need not be performed as per Sec. 62 to 67 of Indian Contract Act, 1872:**

- If the parties to a contract agree to substitute a new contract for it or rescind or alter it, the original contract need not be performed.
- **It is done by following:**

1	<b>Novation</b>	Novation means substitution. Novation results in discharge of old contract. It can take place between the same persons or between different parties with mutual consent.
2	<b>Rescission</b>	Rescission means cancellation. Old contract is cancelled and no new contract comes in its place.
3	<b>Alteration</b>	It involves a change in some of terms and conditions of original agreement between the same parties by mutual consent. It has the effect of terminating the original contract.
4	<b>Remission or waiver</b>	<p>Promisee may –</p> <ul style="list-style-type: none"> <li>• Dispense with either wholly or in part the performance of the promise made to him or</li> <li>• Extend the time for such performance or</li> <li>• Accept any satisfaction instead of the performance.</li> </ul>

**PRACTICAL QUESTIONS**

**2007 - Nov [1] {C}** (a) A, B and C are partners in a firm. They jointly promise to pay ₹ 1,50,000 to P. C became insolvent and his private assets are sufficient to pay only

2.30

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1/5 of his share of debts. A is compelled to pay the whole amount to P. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which A can recover the amount from B.

(5 marks)

**Answer :**

**Provision:**

**According to Sec. 43 of the Indian Contract Act, 1872,** the liability of joint promisors is joint and several.

Where one of several joint promisors has performed the promise, he is entitled in the absence of a contract to the contrary to claim equal contribution from the other joint promisors. If a joint promisor makes default in such contribution the remaining joint promisors must share the loss equally.

**Present Case :** In the given case, each partner is liable to pay ₹ 50,000 ( $1,50,000 \div 3$ ). Since C becomes insolvent and his private assets are sufficient to pay only 1/5th of his share, 'C' is liable to pay only ₹ 10,000 ( $1/5$  of 50,000). The remaining amount is ₹ 1,40,000 ( $1,50,000 - 10,000$ ) which is to be shared equally between A & B. i.e. ₹ 70,000 each i.e. ( $1,40,000 \div 2$ )

Thus A can recover ₹ 10,000 from C and ₹ 70,000 from B.

**2013 - Nov [1] {C}** (a) X agreed to become an assistant for 5 years to Y who was a doctor practicing at Chennai. It was also agreed that during the term of agreement X will not practice on his own account in Chennai. At the end of one year, X left the assistantship of Y and began to practice on his own account. Referring to the provisions of the Indian Contract Act, 1872, decide whether X could be restrained from doing so? (5 marks)

**Answer:**

**Provisions:**

**Agreements in restraint of trade (Sec. 27):** Law has assigned freedom of contract and freedom of trade to every person. Therefore, any agreement depriving a person of this freedom is unlawful and void. Thus, an agreement in restraint of trade of any person is opposed to public policy and void as per Sec. 27.

**Exceptions to the Rule.** Following are the exceptions to the rule, "All agreements in restraint of trade are void."

- (i) Sale of Goodwill
- (ii) Partnership Agreement

(iii) Trade Combination

(iv) Service contracts

**Service contracts:** Sometimes the service conditions of an employee may restrain him from accepting any other engagement during his employment. It will be a valid agreement as an employer may bind his employees by any lawful terms and conditions. But a similar condition to restrain an employee from any other engagement after his retirement will be void, e.g., not allowing private practice to doctors working in hospitals is a valid condition and does not come within the scope of restraints under Sec. 27.

**Present Case:** X agreed to become an assistant for 5 years to Y who was a doctor practicing at Chennai. It was also agreed that during the term of agreement X will not practice on his own account in Chennai. At the end of one year, X left the assistantship of Y and began to practice on his own account. As per Sec. 27, X could be restrained under service contracts.

**2014 - May [3]** (a) Explain the law relating to liability of joint promisors in a contract. 'D', 'E' and 'F' who are partners in a firm, jointly promised to pay ₹1,50,000/- to 'A'. Later on 'F' became insolvent and his private assets are sufficient to pay only 1/5<sup>th</sup> of his share of debt. 'A' recovers the whole amount from 'D' through a legal action. Decide, under the provisions of the Indian Contract Act, 1872 the extent to which 'D' can recover the amount from 'E'. **(8 marks)**

**Answer:**

**Law relating to liability of Joint Promisors**

**Performance of Joint Promises:** In the words of Sec. 45 of the Indian Contract Act, 1872, "When a person has made a promise to two or more persons jointly then unless a contrary intention appears from the contract, the right to claim performance rests between him and them with them during their joint lives and after the death, with any of the representatives of such deceased persons jointly with the survivors and after the death of last survivor, with the representative of all jointly."

**The rules relating to devolution of joint liabilities are as follows:**

1. When one or more persons have made a joint promise, all such persons must fulfil the promise unless a contrary intention appears by the contract. (Sec. 42)
2. Upon the death of one of the joint promisors, his legal representatives are jointly liable to perform the contract with the surviving parties. If all the parties die, the liability devolves upon their legal representatives jointly. (Sec. 42)

3. Any one of the joint promisors may be compelled to perform the contract. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole promise. Thus, it can be concluded that the liability of joint promisors is joint and several under para 1 of Sec. 43.
4. As per para 2 of Sec. 43, each promisor may compel contribution. Each of the two or more joint promisors may compel every other promisor to contribute equally with himself to the performance of the promise unless a contrary intention appears from the contract.
5. Under para 3 of Sec. 43, if any one of the two or more promisors, makes default in contribution, the remaining joint promisors bear the loss arising from such default in equal shares.
6. Identical provision [as in para 3 of Sec. 43] applies in the case of a recovery of loan by a creditor from the heirs who by operation of law become joint promisors after the death of the single promisor.
7. Sec. 44 states that where two or more persons have made a joint promise, a release of one of such promisors by the promisee does not discharge the other joint promisor or promisors from responsibility to the other joint promisors.

**According to Sec. 43 of the Indian Contract Act, 1872, the liability of joint promisors is joint and several.**

Where one of several joint promisors has performed the promise, he is entitled in the absence of a contract to the contrary to claim equal contribution from the other joint promisors. If a joint promisor makes default in such contribution the remaining joint promisors must share the loss equally.

**Present Case :**

In the given case each partner is liable to pay ₹ 50,000 ( $1,50,000 \div 3$ ). Since F becomes insolvent and his private assets are sufficient to pay only 1/5th of his share, 'F' is liable to pay only ₹ 10,000 ( $1/5$  of 50,000). The remaining amount is ₹ 1,40,000 ( $1,50,000 - 10,000$ ) which is to be shared equally between D & E. i.e. ₹ 70,000 each i.e. ( $1,40,000 \div 2$ ).

Since D pays the entire amount to A, D can recover ₹ 10,000 from F and ₹ 70,000 from E.



**2016 - May [2]** (a) 'X' agreed to become an assistant for 2 years to 'Y' who was practicing chartered accountant at Jodhpur. It was also agreed that during the term of agreement 'X' will not practice as a chartered accountant on his own account within 20 kms. of the office of 'Y' at Jodhpur. At the end of one year, 'X' left the assistantship of 'Y' and started practice on his own account within the said area of 20 kms.

Referring to the provisions of the Indian Contract Act, 1872, decide whether 'X' could be restrained from doing so? **(4 marks)**

**Answer :**

**Provision:**

**Agreements in restraint of trade (Sec. 27):** Law has assigned freedom of contract and freedom of trade to every person. Therefore, any agreement depriving a person of this freedom is unlawful and void. Thus, an agreement in restraint of trade of any person is opposed to public policy and void as per Sec. 27.

**Exceptions to the Rule:** Following are the exceptions to the rule, "All agreements in restraint of trade are void."

- (i) Sale of Goodwill
- (ii) Partnership Agreement
- (iii) Trade Combination
- (iv) Service Contracts

**Service Contracts:** Sometimes the service conditions of an employee may restrain him from accepting any other engagement during his employment. It will be a valid agreement as an employer may bind his employees by any lawful terms and conditions. But a similar condition to restrain an employee from any other engagement after his retirement will be void, e.g., not allowing private practice to doctors working in hospitals is a valid condition and does not come within the scope of restraints under Sec. 27.

**Present Case:** As per Sec. 27, X could be restrained under service contracts by an injunction from practicing on his own account within the said area of 20 Kms.

**2016 - Nov [1] {C}** (a) 'N' an industrialist has been fighting a long drawn litigation with 'S' another industrialist. To support his legal campaign 'N' enlists the services of 'R' a legal expert stating that an amount of ₹ 5 lakhs would be paid, if 'R' does not take up the brief of 'S'. 'R' agrees, but at the end of the litigation 'N' refuses to pay.

2.34

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Decide whether 'R' can recover the amount promised by 'N' under the provisions of the Indian Contract Act, 1872. **(5 marks)**

**Answer:**

**Agreement in Restraint of Trade**

**Provision:**

**As per Sec. 27 of Indian Contract Act, 1872**, any agreement through which a person is restrained from exercising a lawful profession, trade or business of any kind is to that extent void.

**Exception:**

An agreement of service through which an employee commits not to compete with his employer is not in restraint of trade.

**Present Case:**

N enlists the services of R and R agrees not to take up the brief of S. Here the agreement between N and R falls under the category of exception to an agreement in restraint of trade as it is a Service Agreement.

**Hence** the agreement between N and R is valid. Thus 'R' can recover the amount from N.

# 1E

## BREACH OF CONTRACT AND ITS REMEDIES

### THIS CHAPTER INCLUDES

- |   |   |
|---|---|
| <ul style="list-style-type: none"><li>● Anticipatory Breach of Contract</li><li>● Actual Breach of Contract</li></ul> | <ul style="list-style-type: none"><li>● Suit for Damages</li><li>● Penalty and Liquidated Damages</li></ul> |
|---|---|

### OBJECTIVE QUESTIONS

**2011 - Nov [6]** (c) State whether the following statement is correct or incorrect :

- (ii) In case of breach of contract, the Court awards remote damages to the aggrieved party. **(1 mark)**

**Answer :**

**Incorrect:** In cases where there is a breach of contract, the promisor who breaches is liable to pay compensation for damages suffered by the promisee. The compensation can be classified as:

- (i) those for damages that usually arise in the event of breach of contract and  
(ii) those for damages which parties know and anticipated at the time of entering into the contract called special damages. This kind of special damages can be claimed only on previous notice.

However, no compensation is payable for any remote or any indirect loss.

The rules relation to compensation were enunciated in *Hadley vs. Baxendale*.

### DESCRIPTIVE QUESTIONS

**2011 - May [1] {C}** (a) What is the law relating to determination of compensation, on breach of contract, contained in Sec. 73 of the Indian Contract Act, 1872 **(5 marks)**

**Answer :**

The rules for determining compensation for loss or damages in case of breach of contract as contained in Sec. 73 of the Indian Contract Act, 1872 are based on the decision given in *Hadley vs. Baxendale*.

**The rules state that when a contract has been breached, the injured party is entitled to:–**

1. Such damages which naturally arose in the usual course of things from such breach. (This relates to *Ordinary Damages* arising in the usual course of things);
2. Such damages which the parties knew, when they made the contract, to be likely to result from the breach. (This relates to *Special Damages*.)

But such compensation is not to be given for any remote or indirect loss or damage sustained by reason of the breach; and such compensation for damages arising from breach of quasi-contract shall be the same as in any other contract.

**Estimation of Damages :** In estimating the loss or damages arisen from a breach of contract the means which existed for remedying the inconvenience caused by the non-performance of the contract, must be taken into account. The object of awarding damages for the breach of contract is to put the injured party into the position in which he would have been, had there been performance of that contract.

**Sec. 73 to 75** of the Act deal with the rules regarding the loss or damage arisen from a breach of contract.

**The rules state that :**

1. Damages are paid as compensation and restitution and not as punishment. In fact through damages efforts are made to put the party back into the same position as if the contract had been performed.

[*Hadley Vs. Baxendale*]

2. Compensation is paid for proximate losses as may naturally, fairly and reasonably arise in the usual course of events.
3. No compensation can be paid for any remote or indirect losses as provided under **Sec. 73**.
4. Compensation can be paid for any loss or damage, which the party knew when he entered into the contract.
5. Subsequent circumstances causing increase or decrease in the quantum of damages are not taken into consideration.
6. Claim for damages must be fair and reasonable.

**2016 - Nov [3]** (a) (ii) Explain the meaning of “Suit for Injunction” as per the provisions of the Indian Contract Act, 1872. **(4 marks)**

Answer:

**Suit for Injunction**

<p><b>Meaning</b></p>	<p>Injunction means an order of the Court restraining a party from carrying out a particular act. As per the Indian Contract Act, 1872, a suit for injunction is a remedy provided to the aggrieved party on the breach of contract. The term injunction may be defined as an order of the courts restraining a person from doing something which he promised not to do. In general, injunction is a court order by which an individual is required to perform, or is restrained from performing, a particular act. In relation to the law of contract, the injunction is a useful weapon for the purpose of encouraging performance of a contract involving personal services.</p>
<p><b>When is this remedy available?</b></p>	<p>The Court has the discretion whether or not to grant injunction. However the Courts generally grant injunctions in the following cases:</p> <ul style="list-style-type: none"> <li>(i) <b>In case of clear negative stipulation:</b> Sometimes there is clear negative stipulation in the contract that a party will not do a particular thing. In such cases if that party undertakes to do the same thing and makes a breach of contract, the Court may grant an injunction on the request of the aggrieved party.</li> <li>(ii) <b>In case of inferred negative stipulation:</b> Where in the contract there is no clear negative stipulation but it can be inferred from it that there existed a negative stipulation, the court may also grant an injunction. But the Courts generally go by the distinct negative stipulation.</li> </ul>

**PRACTICAL QUESTIONS**

2015 - May [1] {C} Answer the following question:

- (a) 'X' entered into a contract with 'Y' to supply him 1,000 water bottles @ ₹ 5.00 per water bottle, to be delivered at a specified time. Thereafter, 'X' contracts with 'Z' for the purchase of 1,000 water bottles @ ₹ 4.50 per water bottle, and at the same time told 'Z' that he did so for the purpose of performing his contract entered into with 'Y'. 'Z' failed to perform his contract in due course and market price of each water bottle on that day was ₹ 5.25 per water bottle. Consequently, 'X' could not procure any water bottle and 'Y' rescinded the contract. What would be the amount of damages which 'X' could claim from 'Z' in the circumstances? What would be your answer if 'Z' had not informed about the 'Y's contract? Explain with reference to the provisions of the Indian Contract Act, 1872. (5 marks)

**Answer :**

**Provision:**

As per the provision of the Indian Contract Act, 1872, an agreement entered by promisor with promisee, the promise should be performed by the promisor within the specified given time period as decided between them while entering into the contract. The promise should be reasonable and achievable by the promisor so as accepted by him. If the promisor fails to perform such promise, the promisee is entitled to claim the damage from promisor. The damage should be given by promisor.

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

**Present Case:** 'X' entered into a contract with 'Y' to supply him 1000 water bottles @ ₹ 5 per bottle, to be delivered at a specified time. There- after, 'X' contracts with 'Z' for purchase of 1000 water bottles @ 4.50 per water bottle, and at the same time told 'Z' that he did so for the purpose of performing his contract entered into with 'Y'. Z failed to perform his contract in due course and market price of each water bottle on that day was ₹ 5.25 per water bottle. 'X' could not procure any water bottle and 'Y' rescinded the contract. In such situation as per provision of the Act, 'X' can claim the damages from 'Z'. The claim of damages should be based on the market value of per bottle which is ₹ 5.25 per water bottle, or otherwise agreed between the parties. So 'X' can claim damages from 'Z' of ₹ 5,250 which is based on market price.

If in the situation when 'Z' had been informed about 'Y's contract then also X can claim damages if Z cannot deliver the same within reasonable time period, but here Z failed to deliver the bottle at all. So the contract entered with 'Y' and knowledge of such contract to 'Z' becomes irrelevant.

**Hence,** 'X' can claim the damages from 'Z'.

**2017 - May [1] {C}** (a) PM Ltd., contracts with Gupta Traders to make and deliver certain machinery to them by 30.6.2014 for ₹ 21.50 lakhs. Due to labour strike, PM Ltd. could not manufacture and deliver the machinery to Gupta Traders. Later Gupta Traders procured the machinery from another manufacturer for ₹ 22.75 lakhs. Gupta Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with PM Ltd. and were compelled to pay compensation for breach of contract. Advise Gupta Traders the amount of compensation which it can claim from PM Ltd., referring to the legal provisions of the Indian Contract Act, 1872. **(5 marks)**

**Answer:**

**Provision:**

**Determination of Amount of Compensation:**

The rules for determining compensation for loss or damages in case of breach of contract as contained in Sec. 73 of the Indian Contract Act, 1872 are based on the decision given in *Hadley vs. Baxendale*.

**The rules state that when a contract has been breached, the injured party is entitled to:-**

1. Such damages which naturally arose in the usual course of things from such breach. (This relates to *Ordinary Damages* arising in the usual course of things);
2. Such damages which the parties knew, when they made the contract, to be likely to result from the breach. (This relates to *Special Damages*.)

But such compensation is not to be given for any remote or indirect loss or damage sustained by reason of the breach; and such compensation for damages arising from breach of quasi-contract shall be the same as in any other contract.

**Present Case:**

Amount of compensation which Gupta Traders can claim from PM Ltd. is as follows:

1. **Ordinary Damage:**

2.40

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PM Ltd. shall compensate for the loss of ₹ 22.75 lakhs - ₹ 21.50 lakhs = ₹ 1.25 lakhs. This is the loss which had naturally arisen due to default in performing the contract by the specified date.

**2. Special Damage:**

PM Ltd. shall compensate for the loss of the amount paid by Gupta Traders to Zenith Traders for breach of contract by Gupta Traders.

**However,** PM Ltd. shall pay this Special Damage only if it knew about the contract between Gupta Traders and Zenith Traders.



# 1F

## CONTINGENT AND QUASI CONTRACTS

### THIS CHAPTER INCLUDES

- |  |  |
|--|--|
| <ul style="list-style-type: none"><li>● Contingent Contracts</li><li>● Rules Relating to Enforcement</li><li>● Quasi Contracts</li></ul> | <ul style="list-style-type: none"><li>● Difference between Quasi Contracts and Contracts</li></ul> |
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### OBJECTIVE QUESTIONS

**2007 - Nov [1] {C}** (b) (ii) Pick-up the correct answer from the following:

- (b) A contract of insurance is
- (1) Contingent contract
  - (2) Wagering agreement
  - (3) Contract of guarantee
  - (4) Unilateral agreement

**(1 mark)**

**Answer:**

Contingent contract

**2008 - May [1] {C}** (b) (ii) Pick-up the correct answer from the following and give reasons:

- (b) A contingent contract is:
- (1) valid
  - (2) void
  - (3) voidable
  - (4) illegal

**(1 mark)**

**Answer:**

**Option (1): Valid** - As per Sec. 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. Thus it is a conditional contract.

**2.42****■ Solved Scanner CA Foundation Paper - 2A (New****DISTINGUISH BETWEEN****2016 - May [7]** Answer the following:

(a) Distinguish between a Wagering Contract and a Contingent Contract.

**(4 marks)****Answer :**

<b>Difference between Wagering Agreement and Contingent Contract</b>			
<b>S. No.</b>	<b>Basis</b>	<b>Wagering Agreement</b>	<b>Contingent Contract</b>
<b>1.</b>	<b>Meaning</b>	A wagering agreement is a promise to give money or money's worth upon the determination or circumstances 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.
<b>2.</b>	<b>Reciprocal promises</b>	A wagering agreement consists of reciprocal promises.	A contingent contract may not contain reciprocal promise.
<b>3.</b>	<b>Event</b>	In a wagering agreement the uncertain event is the sole determining factor.	In a contingent contract the event is only collateral.
<b>4.</b>	<b>Nature</b>	A wagering agreement is essentially of a contingent nature.	A contingent contract may not be of a wagering nature.
<b>5.</b>	<b>Type of contract</b>	A wagering agreement is void.	A contingent contract is valid.

6.	<b>Subject Matter</b>	In a wagering agreement the parties have no other interest in the subject matter of the agreement except in winning or losing of the amount of the wager. A wager is a game of chance.	It is not so in the case of contingent contract.
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**DESCRIPTIVE QUESTIONS**

2013 - May [4] (b) What do you understand by ‘Quasi-Contract’? Discuss.

(4 marks)

Answer :

<b>Quasi Contract</b>	
<b>Meaning</b>	A quasi-contract is a type of contract in which one party is bound to pay money in consideration of something done or suffered by the other party. Thus, no contractual relation exists between the parties, but law makes out a contract for them and such a contract is called a quasi- contract. The main objective of the quasi contract is to prevent unjust enrichment or unjust benefit that is no man should grow rich out of another person’s loss. This theory was originally propounded by Lord Manifold in the case <b>Moses Vs Macferlan</b> .
<b>Example</b>	X supplies certain goods to Y. Y receives and consumes the goods supplied. Y is bound to pay the price. Y’s acceptance of goods constitutes an implied promise to pay.

<b>Definition</b>	Though the Indian Contract Act, 1872 does not define quasi-contracts, it calls them relations resembling those of contracts. However, a quasi-contract may be defined as “ <i>a transaction in which there is no contract between the parties; the law creates certain rights and obligations between them which are similar to those created by a contract.</i> ”
<b>Features</b>	<ol style="list-style-type: none"> <li>1. The quasi contract is imposed by law as it does not arise from any formal agreement. It is a relation created by law between two persons and this relation is similar to the relation created by contract.</li> <li>2. The basis of the quasi contracts are the principles of justice, equity and good conscience.</li> <li>3. The quasi contract grants a right on one person and imposes the liability on the other person in relation with the advantage that he has already received.</li> <li>4. The right granted by a quasi-contract is available against a particular person or persons only and not against the whole world.</li> <li>5. When an agreement is created under quasi contract and is not discharged, the aggrieved party is entitled to receive the compensation from the party who is in default, as if the person has contracted to discharge it and has breached the contract.</li> </ol>

**Types of Quasi Contract :** Sec. 68 to 72 of the Indian Contract Act, 1872 deal with the following types of quasi-contract :

1	<b>Claim for necessities supplied to person incapable of contracting (Sec. 68)</b>	<p>If a person is incapable of entering into a contract, or anyone whom he is legally bound to support is provided by another person with necessities suited to his condition in life, the supplier is entitled to recover the price from the property of such incapable person.</p> <p><b>Example:</b> X supplies the wife and children of Y, a</p>
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		lunatic with necessaries suitable to their conditions in life. X is entitled to be reimbursed from Y's property.
2	<b>Payment by an interested person (Sec. 69)</b>	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. <b>Example :</b> The consignee suffered loss due to fire in the wagon during transit. The insurer made good the loss. The claim was allowed as per Sec. 69.
3	<b>Obligation to pay for non-gratuitous act (Sec. 70)</b>	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 exchange of or to restore the thing so done or delivered. <b>Example :</b> X, a trade man, leaves goods at Y's house by mistake, Y treats the goods as his own. He is bound to pay X for them.
4	<b>Responsibility of finder of goods (Sec. 71)</b>	Under Sec. 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	<b>Liability for money paid or things delivered by mistake or under coercion (Sec. 72)</b>	At last Sec. 72 of the Indian Contract Act, 1872 provides that a person to whom money has been paid, or anything delivered by mistake or under coercion must repay or return it. <b>Example:</b> A railway company refuses to deliver certain goods to the consignee, except upon the payment of illegal charge for carriage. The consignee pays the sum charged to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

2015 - May [2] (a) Explain the meaning of 'Quasi-Contracts'. State the circumstances which are identified as quasi contracts by the Indian Contract Act,

2.46

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1872.

(8 marks)

**Answer :**

*Please refer 2013 - May [4] (b) on page no. 49*

### PRACTICAL QUESTIONS

**2010 - May [1]** (a) Z rent out his house situated at Mumbai to W for a rent of ₹ 10,000 per month. A sum of ₹ 5 lac, the house tax payable by Z to the Municipal Corporation being in arrears, his house is advertised for sale by the corporation. W pays the corporation, the sum due from Z to avoid legal consequences. Referring to the provisions of the Indian Contract Act, 1872 decide whether W is entitled to get the reimbursement of the said amount from Z. (5 marks)

**Answer :**

**Provision:**

According to Sec. 69 of the Indian Contract Act, 1872, "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."

**Present Case:** W has made the payment of lawful dues of Z in which W had an interest. Therefore, W is entitled to get the reimbursement from Z. [*Abid Hussain vs Ganga Sahai*]