
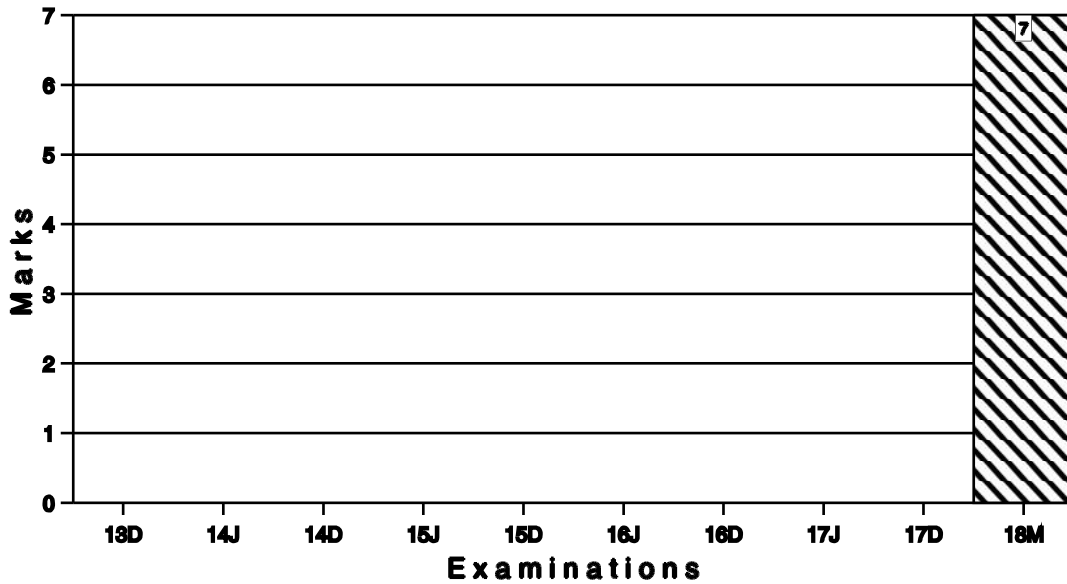


CHAPTER	<h1>The Indian Contract Act, 1872</h1>
<h1>1</h1>	
Unit: 3	Other Essential Elements of Valid Contract

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

Legend

 Objective
  Short Notes
  Distinguish
  Descriptive
  Practical



For detailed analysis Login at www.scannerclasses.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 be always plead majority.
 - (iv) Minor's agreement cannot be ratified by him.
 - (v) Contract by guardian if 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.

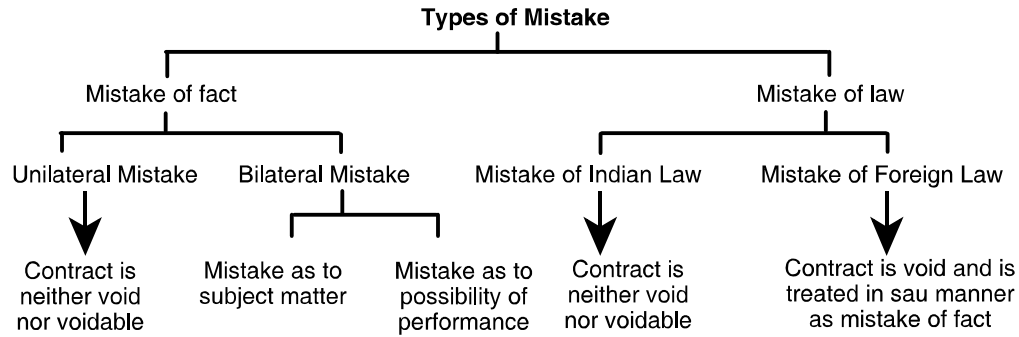
- Misrepresentations made by a person may be either.
 1. Innocent, or
 2. Without any reasonable ground
- The aggrieved party can avoid the contract, but cannot sue for damages in normal circumstances.
- Its damages can be obtained in the following cases :
 - (i) From a director or promoter making innocent 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 restrain 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 indemnify 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.

2.68

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

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:

- (iv) Consent obtained by Fraud makes the agreement void. (2 marks)

Answer:

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)

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)

Answer:

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.

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.

2.74

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

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 in tending 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 India 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.

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. 78

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

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.

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. 79

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. 80

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. 78

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 event does not happen.

Contract of Insurance also has a resemblance with wagering agreements, since the insurance companies have to pay the insured a certain sum of money after the occurrence of a certain event. But wagers and insurance contracts have a superficial resemblance. As a matter of fact, the two have differences in basic characters. The difference between 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 the 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 wagers are 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 the above explanation, it can safely be said that wagering agreements do not cover insurance contracts. However, if the insured does not have an 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 - 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 contacting 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.

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 necessaries are food, clothing and shelter but necessaries 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 - 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.

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 - 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.

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. 84

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)

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 attains 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 persons 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. 93

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. 85

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 [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 [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 [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 detain 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 [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 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.

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".

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 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.

2002 - May [5] Briefly answer the following:

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

(5 marks)

Answer:

Categories of employees who are excluded from the operation of the Payment of Bonus Act, 1965 (Section 32):

- (i) Employees employed by the Life Insurance Corporation of India.
- (ii) Employees employed by the Reserve Bank of India.
- (iii) Seamen as defined under Section 3(42) of the Merchant shipping Act, 1958.
- (iv) Employees employed through contractors on building operations.
- (v) Employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948 and employed by the registered or listed employees.
- (vi) Employees employed by Inland Water Transport establishment.
- (vii) Employees employed by an establishment in any industry carried on by or under the authority of any department of the Central Government or State Government or a local authority.
- (viii) Employees employed by:
 - (a) The Indian Red Cross society or any other institutions of a same nature.
 - (b) Universities and other educational institutions.
 - (c) Institutions (including hospitals, Chambers of Commerce, and social welfare institutions) established not for the purpose of profits.
- (ix) Employees of financial institutions like IFCI, UTI, SFC, Agriculture Refinance Corporation, IDBI or any other financial institutions as Central Government may notify in the official gazette.

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 the 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

2.100

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

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.

