

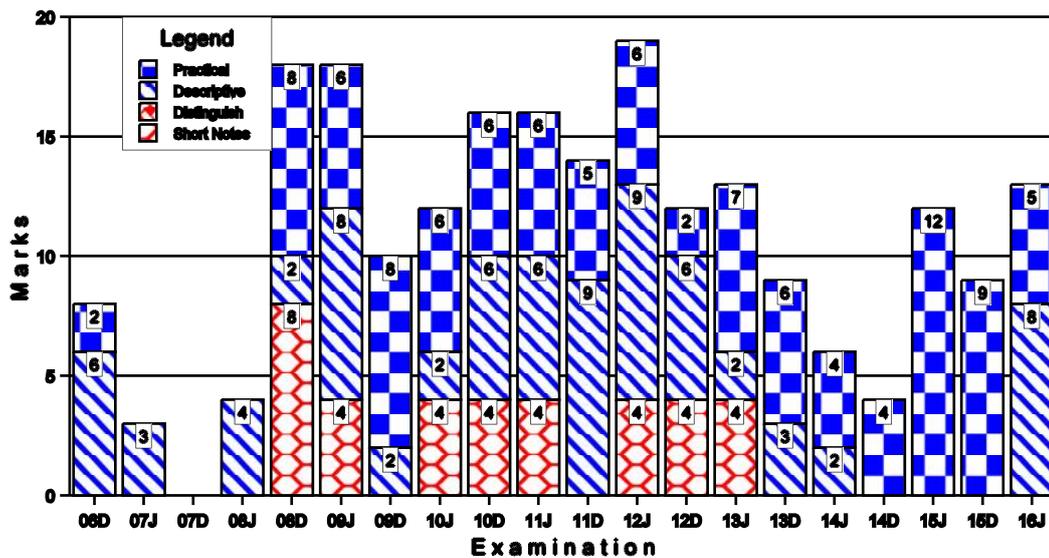
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Contract - Basic Concepts & Important Terms

This Chapter Includes

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| <ul style="list-style-type: none"> • Definitions • Communication • Acceptance & Revocation of Proposals • Capacity to Contract • Free Consent • Consideration | <ul style="list-style-type: none"> • Void Agreements • Performance of Contracts & Reciprocal Promises • Time & Place for Performance • Appropriation of Payments and Discharge of Contract |
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Marks of Short Notes, Distinguish Between, Descriptive & Practical Questions



Chapter at a Glance

Introduction:

- ⇒ It is the most important branch of the mercantile law.
- ⇒ It is not possible to carry on trade or commerce without contract.
- ⇒ It deals with general principles relating to formation of contracts.
- ⇒ It extends to whole of India, except the state of Jammu & Kashmir.
- ⇒ It came into force w.e.f. 1/9/1872.
- ⇒ It is not a complete law for all types of contracts.

Meaning of Contract:

- ⇒ **Sec 2(h)** of Indian Contract Act defines contract as:
“An agreement enforceable by law.”

Contract = Agreement + enforceability by law
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- ⇒ Contract is made by acceptance of one party of an offer made to him by the other party, to do or abstain from doing some act.

Contract = Agreement + Obligation

Meaning of Agreement & Promise:

- ⇒ **Sec 2(e)** of Indian Contract Act defines it as,
“Every’ promise or every act of promises forming consideration for each other.”
- ⇒ **It has two characteristics:**
 - (i) Two or more persons are required to make an agreement.
 - (ii) Both parties must agree to same thing in same sense.(Consensus - ad- idem).
- ⇒ **Sec 2(b)** of Indian Contract defines promise as,
“A proposal when accepted becomes a promise”.

Agreement	= Promise
	= Accepted Proposal
	= Offer + Acceptance

Meaning of Obligation:

- ⇒ It refers to the legal duty to do or abstain from doing what one has promised to do or abstain from doing.

Rights & Obligations:

- ⇒ They are created between the parties as a result of a binding contract.
- ⇒ They are correlative.

Agreements which are not contracts:

- ⇒ Agreements relating to social matters.
- ⇒ Domestic arrangements between husband and wife.

Relevant Case Law:

- Balfour Vs. Balfour

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

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

All contracts are agreements but all agreements are not contracts.

Essential elements of a valid contract:

⇒ **Sec. 10** of Indian Contract Act says, “All, agreements are contracts, if they are made-

- (i) by free consent of parties , competent to contract,
- (ii) for a lawful consideration,
- (iii) with a lawful object, and
- (iv) not hereby expressly declared to be void.

It includes:

- (i) Offer and Acceptance
- (ii) Intention to create legal relationship
- (iii) Lawful consideration
- (iv) Capacity to contract
- (v) Free consent
- (vi) Lawful object
- (vii) Agreement not expressly declared void.
- (viii) Consensus -ad- idem i.e. meeting of minds
- (ix) Certainty of meaning
- (x) Possibility of performance
- (xi) Legal formalities

1. Offer or Proposal:

- ⇒ It refers to a proposal by one party to another to enter into a legally binding agreement with him.
- ⇒ **Sec 2(a)** of the Act defines it as-
“When one person signifies to another willingness to do or abstain from doing anything, with a view to obtain the assent of that other to such act or abstinence, he is said to make a proposal.”
- ⇒ **Offeror or Promisor** - The party making an offer.

⇒ **Offeree or Promisee** - The party to whom offer is made.

Rules relating to offer

- ⇒ It must be capable of creating legal relations
- ⇒ It must be certain, definite and not vague
- ⇒ It may be expressed or implied
- ⇒ It must be distinguished from an invitation to offer
- ⇒ It may be specific or general
- ⇒ It must be communicated
- ⇒ It must be made with a view to obtain the consent of the offeree
- ⇒ It may be conditional
- ⇒ It should not contain a term non compliance of which would amount to acceptance
- ⇒ **Types of offer:** General; Specific, Cross, Counter, Open etc.

General & Specific offer:

- ⇒ Offer made to public at large with or without any time limit is general offer.
- ⇒ Offer made to a particular and specified person/ persons and that can be accepted by that specific person/ persons only is specific offer.

Relevant Case Law:

* Carlill Vs. Carbolic Smoke Ball Co.

Facts:

- (i) A co. advertised that it would give a reward of £ 100 to anyone who contracted influenza after using its smoke balls for a certain period according to printed directions.
- (ii) Mrs. Carlill purchased and used smoke balls as per the printed instructions, even then contracted influenza.
- (iii) She claimed the reward of £100.
- (iv) Co. resisted the claim on the ground that offer was not made to her and she had also not communicated her acceptance to the offer.

Decision: She could recover the reward as she had accepted the co's offer by complying with terms.

* **Similar case** Harbhajan Lal Vs. Harcharan Lal

Cross offer:

- ⇒ It occurs when two persons make identical offers to each other, in ignorance of each other's offer.
- ⇒ It leads to termination of the original offer.

Counter offer:

- ⇒ Upon receipt of an offer from an offeror, if the offeree instead of accepting it straightaway, modifies or varies the offer, he is said to make a counter offer.
- ⇒ It leads to rejection of original offer.

Standing/ Continuing / Open Offer:

- ⇒ Offer which is made to public at large and kept open for public acceptance for a certain time period.
- ⇒ It refers to a tender to supply goods as and when required.
- ⇒ Each successive order given creates a separate contract.
- ⇒ It does not binds either party unless and until such orders are given.

Relevant Case Law:

- * Percival Ltd Vs. L.C.C.

Offer and Invitation to offer:

- ⇒ Offer is made to get the consent of other party.
- ⇒ Invitation to offer is made to initiate the offer according to the invitation.
- ⇒ Offer is made with an object to make a contract.
- ⇒ Invitation to offer does not results in any contract formation.
- ⇒ E.g of invitation to offer: (i) display of goods in a shop window with prices marked upon them. (ii) price catalogues. etc.
- ⇒ Offer is different from a mere statement of intention. E.g.- announcement of a coming auction sales.

Relevant Case Law:

- * Harris Vs. Nickerson

When particular goods are advertised, for sale by auction, the auctioneer does not contracts with anyone who attends the sale and is intending to purchase those goods when they are actually put up for sale.

- ⇒ Offer is different from a mere communication of information in the course of negotiation. E.g. price statement considering negotiation.

Relevant Case Law:

- * Harvey Vs. Facey

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

Acceptance:

- ⇒ It means giving consent to the offer.
- ⇒ **Sec. 2(b)** of the Contract Act , defines it as- “A proposal is said to be

accepted, when the person to whom the proposal is made signifies his assent thereto.”

Essentials of a valid acceptance:

- ⇒ It must be absolute and unqualified.
- ⇒ It must be communicated to offeror.
- ⇒ It must be in the mode prescribed.
- ⇒ It must be given within reasonable time.
- ⇒ Mere silence is not acceptance offeror can prescribe the mode of acceptance but not the mode of rejection.

Relevant Case Law:

* Felthouse Vs. Bindley

Facts-

- (i) F offered by letter to buy his nephew's horse for £ 30 stating “If I hear no more about it, I shall consider it mine at £ 30.”
- (ii) Nephew did not reply , but told the auctioneer not to sell it as he has already sold it to his uncle.
- (iii) Auctioneer sold it by mistake.
- (iv) F sued the auctioneer.

Decision- F could not succeed as his nephew has not communicated his acceptance.

- ⇒ It must be given before the offer lapses or is revoked.
- ⇒ It must emanate from offer.
- ⇒ If the offer is one which is to be accepted by being acted upon, no communication of acceptance to the offeror is necessary, unless communication is stipulated for in the offer itself.

Relevant Case Law:

* Lalman Shukla Vs. Gouri Dutt

Facts-

- (i) S sent his servant L, to trace his missing nephew.
- (ii) Later, S offered a reward for finding out his nephew.
- (iii) L traced him ignorant of the reward.
- (iv) L claimed his reward later.

Decision- L was not entitled to the reward.

Communication of offer:

- ⇒ It is complete when it comes to the knowledge of the person to whom it is made.

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

Communication of acceptance:

- ⇒ It is complete-
 - As against the proposer-** When it is put in the course of transmission to him so as to be out of power of the acceptor to withdraw the same.
 - As against the acceptor-** When it comes to the knowledge of the proposer.
- ⇒ If sent by post, it is complete-
 - As against the proposer-** when the letter of acceptance is posted.
 - As against the acceptor-** when the letter reaches the proposer.

Revocation of offer:

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

Revocation of acceptance:

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

Communication of revocation:

- ⇒ It is complete-
 - As against the person who makes it-** When it is put into a course of transmission to the person to whom it is made so as to be out of power of the person who makes it.
- By Post -
- ⇒ Communication of offer when complete - when offer comes into the knowledge of offeree.
- ⇒ Communication of acceptance when complete - when offeree or acceptor post the letter of acceptance and it becomes out of power of acceptor to withdraw it.

As against the person to whom it is made: when it comes to his knowledge.

Lapse of offer:

- ⇒ It means end of an offer.
- ⇒ Offer should be accepted before it lapses.
- ⇒ Offer may lapse in following ways:
 - (i) By Communication of notice of revocation
 - (ii) By lapse of time
 - (iii) By failure to accept condition precedent
 - (iv) By death or insanity of the offeror

- (v) By counter - offer by the offeree
- (vi) By not accepting the offer, according to prescribed mode
- (vii) By rejection of offer by the offeree
- (viii) By change in law or circumstances.

Note:

If a passenger receives a railway ticket with the words printed, "this ticket is issued subject to the notices, regulations and conditions contained in the current time tables of the railway." He is bound to accept the terms and conditions whether he has read them or not.

Standing Offer

- ⇒ It is an offer made to supply specific goods of specified or any quantity at a certain rate for a fixed period. E.g. Government Tenders.
- ⇒ It is a nature of continuing offer.

Relevant Case Law:

Percival Ltd. v/s L.C.C.

Facts:

- ⇒ P entered into a contract with L to supply some goods.
- ⇒ P sued L as the total amount of orders were less than his expectation.
- ⇒ Court Held that L is not bound to make order to P, but P is bound to supply goods to L if he orders them.

Modes of Contract:

- ⇒ Generally contracts are in written form agreed upon by the parties face to face. But when it is not possible for the parties to meet they can enter into the following.
- ⇒ **Contracts By Post:** When the parties are located in different cities or states and its not possible for them to meet then contract is made by sending the documents through post. This is called contract by post. It is subject to same rules as others along with certain exceptions as already stated.
- ⇒ **Contracts over telephone:**
 - (i) There is a contract as soon as the offer is accepted by the offeree.
 - (ii) Offeree has to be sure that his acceptance has reached the offeror because phone lines may go dead or generate noise during conversations.
 - (iii) Thus, offeree should dial again and communicate his acceptance in such doubt.

Relevant case Law:

* Kanhaiyalal Vs. Dineshwar Chandra

2. Intention to create legal relationship:

- ⇒ Both the parties must have an intention to go to court , if the other party does not fulfill his promise.
- ⇒ Normally, in social and domestic agreements , there is no intention to go to the court.”
- ⇒ In commercial agreements , this intention is always present.
- ⇒ The test of intention is objective i.e. it depends upon the facts of the case.
- ⇒ Court may also look into the conduct of parties, wherever necessary.

3. Lawful Consideration:

- ⇒ The consideration should be something that is lawful.
- ⇒ A mere promise is not enforceable at law.
- ⇒ It means Quid Pro quo i.e. something in return.

Relevant Case Law:

* Currie Vs. Misa

- ⇒ **As per Section 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, such act or abstinence or promise is called as consideration for the promise.”
- ⇒ **As per Section 2(e),**
“Every promise and every set of promises, forming the consideration for each other, is an agreement.”
- ⇒ General rule is-
“No consideration, no contract.”
- ⇒ Consideration may move at the desire of the promisor and not at the desire of the third party.
- ⇒ There may be stranger to consideration but not stranger to a contract
- ⇒ Under English Law, it must move from the promisee or any other person. Thus, stranger cannot sue on the contract.
- ⇒ Under India law, however a stranger to consideration can file a suit.

Relevant Case Law:

* Chinnayya Vs. Ramayya

Facts-

- (i) A by a gift deed transferred certain property to her daughter , giving her the direction to pay annuity to A's brother.
- (ii) On the same day, daughter executed a writing in favour of A's brother, agreeing to pay annuity.
- (iii) She declined afterwards stating that no consideration had moved from her uncle.

Decision- Court held that consideration may move from any person .Thus, A's brother was entitled to file a suit.

Rules of a valid consideration

- ⇒ It must move at the desire of the promisor.
- ⇒ It may be done by promisee himself or by any other person.
- ⇒ It may be past, present or future.
- ⇒ It must be real and not vague.
- ⇒ It must be legal.
- ⇒ It need not be adequate. (But if not adequate then consent must be free)
- ⇒ It must be something more than the promisee is already bound to do for the promisor.

Relevant Cast Law:

* Stilk vs. Myrick

Kinds of Consideration

- ⇒ **Past Consideration** - It refers to something wholly done, forgone or suffered before making of agreement.
- ⇒ Under English law, "Past consideration is no consideration."
- ⇒ The consideration which is completed or performed at the time of contract is called present consideration.
- ⇒ But past consideration is a consideration as per the Indian Law.
- ⇒ **Present or Executed Consideration** - It moves simultaneously with promise. The consideration which is completed or performed at the time of contract is called present consideration.
- ⇒ **Future or Executory Consideration** - It is to be moved at a future date i.e promise is to be performed in future.

Exceptions to the rules, 'No consideration, no contract':

- ⇒ An agreement made is valid if-

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

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

- ⇒ It does not apply to completed gifts i.e. gift given and accepted.
- ⇒ Consideration is not required to effect a valid bailment of goods i.e. **gratuitous bailment**.
- ⇒ Not required to create an agency.

Relevant Case Laws:

* Poonam Bibi Vs. Fyaz Buksh

Facts - A husband, by a registered agreement promised to pay his earnings to his wife.

Decision - The agreement, though without consideration, was valid.

* Raj Lakshmi Vs. Bhootnath

Facts - A Hindu husband by a registered document, after referring to quarrels and disagreements between himself and his wife, promised to pay his wife a sum of money for her maintenance and separate residence.

Decision - Promise was unenforceable as natural love and affection was missing.

- ⇒ If a person promised to contribute anything to a charity and on his faith, the promisee undertakes a liability to that extent, the contract shall be valid.

Relevant Case Law:

* Kedarnath Vs. Gorie Mohammad

Gratious Promise

- ⇒ A gratuitous contract is a contract without any consideration.
- ⇒ A gratuitous promise cannot be enforced.

- ⇒ However, where a promisor makes a promise for which some other person will be benefitted, then the promisor will be liable to the promisee.
- ⇒ E.g:- If X gives a loan to Y and Z gives the guarantee to X on behalf of Y, then Z will be liable to X if Y does not repay the loan even though Z was not benefitted by giving the guarantee.

Doctrine of Privity of Contract:

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

Relevant Case Laws:

- * Dunlop Pneumatic Tyre Co. Vs. Selfridge Ltd.
- * Tweddle Vs. Atkinson

- ⇒ Stranger to contract has a right to sue in the following cases:
 - (i) Beneficiary of Trust or Charge can enforce it even if he is not a party in Trust Deed.

Relevant Case Law:

- * Khwaja Muhammad Vs. Hussaini Begum

Facts-

- (i) H sued her father in law K to recover ₹ 15,000 on account of arrears of allowance being payable to her by K.
- (ii) This was under an agreement between K and H's father consideration being H's marriage to K's son D.
- (iii) Both H and D were minors at the time of marriage.

Decision- Promise can be made enforceable by H.

- (ii) Marriage settlement, partition and other family arrangements, and other such agreements when they are reduced to writing.
- (iii) Acknowledgment of liability or by past performance thereof.
- (iv) Assignment of a contract.

Note: Nominee is not an assignee

- (v) Contracts entered into through an agent.
- (vi) Covenants running with the land - The purchaser of immovable

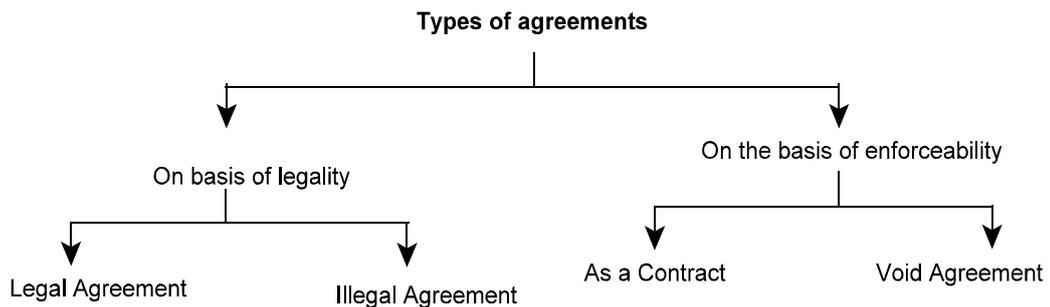
property is bound by several conditions created by an agreement affecting the land, even though he is not a party to the original agreement.

- (vii) Where the promisor by his own conduct is estopped from denying his liability to perform the promise the person who is not a party to the contract can sue upon to make the promisor liable.

Terms must be certain:

- ⇒ The meaning of an agreement must be certain and capable of being made certain.
- ⇒ Terms must not be vague.
- ⇒ If it is not so, then the agreement will not be enforceable by law.
- ⇒ “A Contract to contract is not a contract”.

Relevant Case Law:
* Loftus Vs. Roberts.



Difference between an agreement and contract

Agreement	Contract
(1) Its elements are offer and acceptance.	Its element is an agreement and its enforceability.
(2) It may or may not create legal obligation.	Creation of legal obligation is must in contracts.
(3) It may not be binding, hence may not be enforceable.	It is binding on both the parties, hence enforceable.
(4) It may not result in a contract.	It necessarily constitutes an agreement.

- ⇒ **Legal Agreement** - An agreement which can be enforced legally.
- ⇒ **Illegal Agreements-**
 - (i) It goes beyond the basic public policy, thus are not enforceable by law.

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(ii) It is not only void as between immediate parties but the collateral transactions also become illegal.

⇒ **Its consequences:**

- (i) Entirely void
- (ii) No action can be brought by or against any party.
- (iii) Money paid or property transferred under it cannot be recovered
- (iv) If its two parts legal and illegal are separable, only legal part can be enforced by the courts
- (v) Agreement collateral to it are also illegal.

Relevant Case Law:

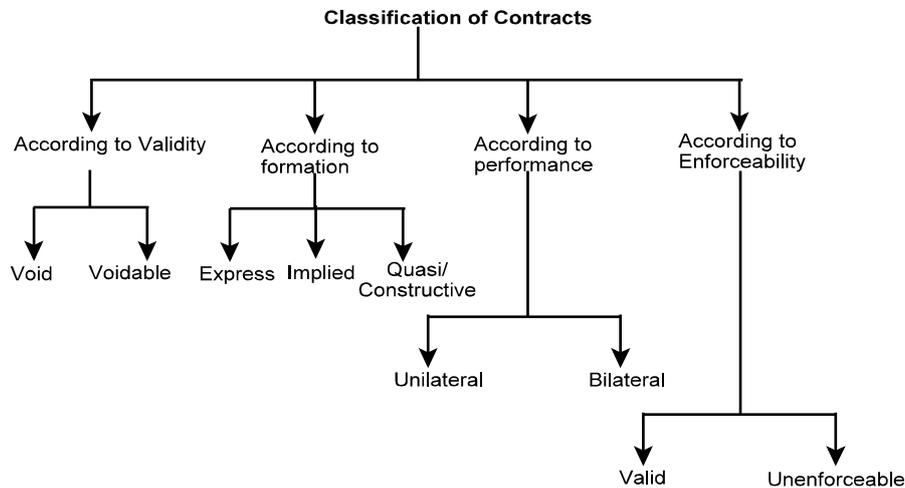
* Film Pratapchand Vs. firm kotri

- ⇒ **As a contract** - It means any agreement enforceable by law.
- ⇒ **Void Agreement-**
- ⇒ Agreements not enforceable by law are void.
- ⇒ They are not always illegal and its collateral transactions are legal.
- ⇒ It cannot give rise to any legal consequence
- ⇒ It is void -ab- initio (i.e- void from very beginning)
- ⇒ Eg minor's contract

Difference between void and illegal agreements

Void agreements	Illegal agreements
(i) All void agreements are not illegal.	(i) All illegal agreements are void.
(ii) They are not punishable.	(ii) They may be punishable with fine, imprisonment or both.
(iii) Collateral agreements are legal.	(iii) Collateral agreements are void.
(iv) Valid contracts sometimes subsequently becomes void. e.g.-agreement entered with a minor.	(iv) They are void from very beginning. e.g.- agreement to murder a person.

Classification of Contracts:



⇒ **Void Contracts-**

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

⇒ **Voidable Contracts-**

- It is an agreement which is binding and enforceable but due to lack of one or more of the essentials of a valid contract, it may be repudiated.
- **Section 2(i) of the Indian Contract Act, 1872 defines it as-**
 “All agreements which are enforceable at the option of any one of the parties, and other party has no such option, are known as voidable contracts.”

Difference between void and voidable contracts

	Void Contracts	Voidable Contracts
1.	Section 2 (j): Contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.	Section 2(i): It may be repudiated at the will of one or more parties but not at the will of other or others.
2.	Not enforceable by any party.	Enforceable at the desire of the effected party.
3.	It is void from beginning to end.	It is valid in the beginning but is subsequently declared void.
4.	Agreement is void only if it is made with the person having no	Agreement is voidable. when its consent is based on coercion , fraud

5.	contractual capacity, without consideration etc. Here the contract cannot be executed.	etc. The contract can be executed if it is declared valid by the affected party.
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Competency/Capacity of Parties to Contract

- ⇒ It means that parties to the agreement must have capacity to enter into a valid contract.
- ⇒ Person's may be either natural or artificial.
- ⇒ Natural persons means human beings.
- ⇒ Artificial persons means corporations.
- ⇒ **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 contracts
 - (iv) an 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 Vs. Dharmo Das Ghose

Facts-

- (i) Dharmo das Ghose, a minor, entered into a contract for borrowing a sum of ₹ 20,000 out of which lender paid him ₹ 8,000.
- (ii) Minor executed mortgage of property in favour of lender.
- (iii) Minor sued for setting aside mortgage.
- (iv) Privy Council had 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 a minor cannot be recovered as Sec 10 and 11 makes the minor's contract absolutely void.

⇒ As per the Transfer of Property Act, a minor cannot transfer a property but he can be a transferee.

⇒ **Position of minor's agreement:**

- (i) An agreement entered into by a minor is altogether void i.e. void ab initio
- (ii) Minor can be a promisee or a beneficiary
- (iii) Minor can always plead minority
- (iv) Minor's agreement cannot be ratified by him
- (v) Contract by guardian, is enforceable if-
 - (a) It is within his competence and authority,
 - (b) For the benefit of the minor.

Relevant Case Laws:

* Rose Ferenandez v. Joseph Gonsalves

* Raj Rani Vs. Prem Adib

- (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:

- (i) Necessary goods
- (ii) Services rendered
- (iii) Loan incurred to obtain necessities.

- (vii) Court can never direct specific performance of the contract .

- (viii) Minor cannot be a partner in partnership firm. He can however be admitted to benefits of 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 an insolvent.

⇒ **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.

Relevant Case Law:

* Jugal Kishore Vs. Cheddu

⇒ **Persons disqualified by law from entering into contract:**

- (i) **Alien Enemy-**
 - ⇒ Alien is a person who is not an Indian 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.
- (iii) **Convicts:**
 - ⇒ Cannot enter into a valid contract while undergoing sentence, nor he can sue.

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

Free Consent:

- ⇒ 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 when it is not caused by
 - (i) Coercion
 - (ii) Under 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.

(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. Threat by workers,
4. Threat to detain property by mortgager.

Relevant Case Law:

* Ram Chandra Vs. Bank of Kolhapur

- ⇒ 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 of the other.

6.20

■ **Solved Scanner CMA Inter Gr. I Paper 6A (New)**

- ⇒ 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 reason of age, illness or mental or bodily 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 but 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.

Relevant Case Law:

* Marim Bibi Vs. Cassim Abraham

Differences between coercion and undue influence

	Coercion	Undue Influence
1.	It involves the physical force or threat.	It involves moral or mental pressure.
2.	It involves committing or threatening to commit any act forbidden by IPC.	No such illegal act is committed or a threat is given.
3.	Relationship between the parties is not necessary.	Some sort of relationship between the parties is absolutely necessary.

4.	It need not be proceeded from the promisor or directed against the promisor.	It is always exercised between the parties.
5.	If the contract is avoided, any benefit received has to be restored or refunded.	If the contract is avoided, it is at the discretion of the court to direct the aggrieved party to restore or refund the benefit received.

(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 thereto 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 the utmost good faith. (**Contracts of Uberrimae fidei**)
 - (i) Insurance contracts
 - (ii) Prospectus of a company
 - (iii) Contract for sale of land
 - (iv) Contracts of family arrangements.
- ⇒ In all of the above stated contracts, a person has to disclose all the material information.

(iv) Misrepresentation:

- ⇒ Where a person asserts something which is not true, though he

- believes it to be true, his assertion amounts to misrepresentation.
- ⇒ Misrepresentation 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 following cases:
 - (i) from a director or promoter making innocent misrepresentation in company's prospectus.
 - (ii) from an agent committing breach of warranty of authority
 - (iii) from a person who has made a certain statement in the court , relying upon which a party has suffered damages, is stopped by the court from denying it.
 - (iv) negligent representation made by one person to another between whom there exists a confidential relationship.

Differences between fraud and misrepresentation

	Fraud	Misrepresentation
1	It is made intentionally with a view to deceive.	It is made innocently.
2	The person making the wrong statement does not believe it to be true.	The person making the wrong statement believes it to be true.
3	The aggrieved party can rescind the contract and can also claim damages.	The aggrieved party can rescind the contract but cannot claim damages.
4	Where the consent is caused by active fraud, the contract is voidable even though the party defrauded had the means of discovering the truth.	The fact that the other party had the means of discovering the truth is a good plea.

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.

(v) Mistake:

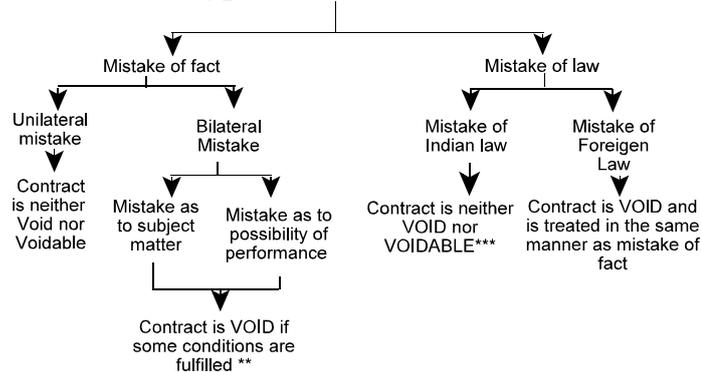
- ⇒ It refers to miscalculation or judgmental error by both or either of the parties.
- ⇒ It must be a "vital operative mistake."

Relevant Case Law:

* Leaf Vs. International Galleries

⇒ 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.

Types of Mistakes



⇒ Unilateral mistake means mistake on part of only one party.

⇒ Unilateral Mistake is not void.

* **Cases when the contract is void if there is a unilateral mistake:**

- (i) Where the mistake is done as regards the nature of the contract.
- (ii) Where the mistake is done as regards the identity of the person contracted with.

⇒ **It can be avoided, if it was either due to-**

- (i) blindness, illiteracy, or senility of a person , or
- (ii) a trick or fraudulent misrepresentation as to nature of document.

Relevant Case Law:

* Foster Vs. MacKinnon

Facts- An old illiterate man was made to sign a bill of exchange, by means of false representation that it was guarantee.

Decision - The contact was void.

⇒ **Mistake as to identity of person operates if:**

- (i) Identity is for material importance to the contracts, and
- (ii) Mistake is known to the other person.

Relevant Case Law:

* Candy Vs. Lindsays Co.

Facts -

- (i) One **Blankarn** placed an order with Lindsay & co. by imitating signatures of **Blenkiron**, knowing that **Blentiron** & Co. was a reputed customers of Lindsay & co.
- (ii) Goods were there after sold to Candy (an innocent buyer)
- (iii) Lindsay & co. filed a suit against candy for recovery of goods.

Decision - Candy must return the goods or make the payment of those goods as there was no contract. Thus, candy did not got a good title.

**** Following conditions need to be fulfilled, for mistake to be void:**

- (i) The fact is material to the agreement.
- (ii) There is mistake of fact.
- (iii) Both the parties are at mistake.

***** If mistake of Indian law is caused due to inducement by the other party, it has the same effect as that of fraud and therefore, contract may be avoided, by the party who has induced to enter into the contract.**

→ Mutual mistake may relate to the existence, identity, quantity or quality of the subject - matter:

- (i) **Existence:** At the time of making contract both parties believe that subject matter is in existence, but it is actually not.

Relevant Case Law:

* Couturier Vs. Hastie

Facts -

- (i) A agreed to sell a cargo of corn, which was supposed to be in transit
- (ii) Corn had become fermented and sold by the master of the ship.
- (iii) This was unknown to both the parties.

Decision - The agreement was void.

- (ii) **Identity** - There is no consensus ad idem.

Relevant Case Law:

* Raffles Vs. Wichelhaus

Facts -

- (i) Contract was made for purchase of bales of cotton which were to arrive by a ship named Peerless' from Bombay.
- (ii) Two ships of same name had to sail from Bombay.
- (iii) Buyer intended to buy cargo of one ship but seller intended to sell

that of another.

Decision - Contract was held to be void.

- (iii) **Quantity**- Parties were at mistake as to the quantity or extent of subject matter even if it was caused by negligence of third party.

Relevant Case Law:

* Henkel Vs. Pape

Facts -

- (i) P wrote a letter to H enquiring about price of rifles also stating that he might buy 50 rifles.
- (ii) On receiving the reply, P telegraphed, "Send three rifles"
- (iii) Message was send as "Send the rifles" due to telegraphic mistakes.
- (iv) H send 50 rifles.

Decision - There was no contract but P could be held liable to pay for three rifles.

- (iv) **Quality** - It is void only if mistake was on part of both the parties. It follows the general rule-
"A party to a contract does not owes any duty to disclose all the facts in his possession to other party during negotiations."

Transaction with pardanashin women

- ⇒ It means complete seclusion.
- ⇒ Women fixing and collecting rents from tenants and communicating business matters with men other than own family members is not a parda-nashin women.

Relevant Case Law:

* Ismail Musafar Vs. Hafiz Boo

- ⇒ It is founded on equity and good conscience.
- ⇒ Person entering into a contract with parda-nashin women has to prove that:
 - (i) no undue influence was used
 - (ii) she had free and independent advice
 - (iii) she fully understood the contents of the contract
 - (iv) she exercised her free will
- ⇒ She has been given a special cloak of protection by law

Relevant Case Law:

* Kali Baksh Vs. Ram Gopal

Legality of objects:

- ⇒ 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, or
 - (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 the property of another -**
 An agreement having such an object is void.
 - (v) **Immoral -**
 ⇒ Object of any agreement being immoral is illegal
 ⇒ It is also illegal if its consideration is an act of sexual immorally.

Relevant Case Law:

* Pearce Vs. Brookes

- ⇒ It covers a wide range of topics.
 ⇒ It is a branch of common law and governed by the precedents.

Relevant Case law:

* Gheru Lal Parakh Vs. Mahadeodas Maiya

- ⇒ No new Lead can be invented and added by any Court.

Relevant Case Law:

* Lord Hulsbury, Janson Vs. Driefontien Consolidated Mines

- ⇒ It includes the following type of agreement:

- (i) Restraint of parental duties
- (ii) Restraint of Marriage
- (iii) Marriage brokerage or brocage contract
- (iv) Restraint of personal liberty
- (v) Restraint of trade.

Negative stipulation in service agreement - An agreement of service by which a person bind himself during the term of the agreement not to take services with anyone else is not in restraint of lawful profession and it is valid.

Restraint of personal duties:

- ⇒ Parents are natural guardians
- ⇒ Any agreement against such right or by which a party deprives himself of the custody of his child is void .

Restraint of Marriage:

- ⇒ Any agreement restraining any person, other than minor not to marry at all or not to marry any particular person is void.

Marriage Brokerage or Brocage contract:

- ⇒ An agreement to negotiate marriage for reward is void.
- ⇒ If marriage is performed but the money is not paid , it cannot be recovered in the Court.

Restrict of personal liberty:

- ⇒ Agreement unduly restricting the personal freedom of a person are void and illegal.

Restraint of Trade (Sec 27):

- ⇒ Agreement restraining anyone from exercising a lawful profession, trade or business of any kind, is void.
- ⇒ Both total or partial restraint are covered.
- ⇒ Restraint must be reasonable

Relevant Case Law:

- * Nordenfelt Vs. Maxim Nordenfelt Guns Co.

- ⇒ Indian Courts are not consistent that whether the reasonable restraints are permitted or not.

Relevant Case Law:

- * Madhub Chunder Vs. Racoomer
- * Mackenzie Vs. Sitarmiah

- ⇒ In an agreement having two parts which can be separated, only those

covenants which are in restraint of trade would be void.

Relevant Case Law:

* Brahmputra Tea Co. Ltd Vs. Carth

⇒ Restriction imposed is reasonable depending upon the facts and circumstances of the case.

Relevant Case Law:

* Superintendence Company of India Ltd Vs. Krishna Nurgai

⇒ Following agreements are not in restraint of trade:

1. Service agreement by which an employee binds himself, during the term of his agreement, not to compete with his employer.

Relevant Case Law:

* Niranjan Shanker Golikari Vs. The Century Spinning and Manufacturing Co. Ltd.

2. Agreement by a manufacturer to sell during a certain period his entire production to a wholesale merchant.
3. Agreement among the sellers of a particular commodity not to sell the commodity for less than a fixed price.

Relevant Case Law:

* Fraster Co Vs. Laxmi Narain

⇒ This rule is subject to following exceptions:

1. If a person sells the goodwill of a business and agree with the buyer to refrain from carrying any similar business, within specific reasonable local limits, it is a valid agreement.
2. If an outgoing partner makes an agreement with the continuing partners for not to carry on any similar business within a specified period or within specific local limits, is a valid agreement provided reasonable restrictions are imposed.
3. Contracts between partners not requiring any partner to carry on any business other than that of the firm while he is a partner.

Trade combinations: An agreement, the object of which is to regulate business and not to restrain it is valid. Thus, an agreement is the nature of business combination between trader or manufactures like not to sell their goods below as certain price is perfectly valid.

Negative stipulations in service agreement: It refers to an agreement of service by which a person binds himself during the term of the agreement not to take service with anyone else such an agreement is valid.

Agreement Expressly Declared Void

⇒ Certain agreements have been expressly declared as void by Contract Act.

⇒ They are void ab initio.

⇒ It includes:

(i) Consideration unlawful in part

(ii) Agreement- meaning of which is uncertain

(iii) Wagering Agreement

(i) Consideration unlawful in part (sec 24)

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

⇒ Where the legal part of a contract can be severed from the illegal part, the bad part may be rejected and the good one can be retained”

⇒ Where the illegal part cannot be severed, the contract is altogether void.

(ii) Agreement the meaning of which is uncertain (sec 29)

An agreement, the meaning of which is not certain, is void but where the meaning thereof is capable of being made certain, the agreement is valid.

(iii) Wagering Agreement (sec 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.

Relevant Case law:

* Thacker Vs. Hardy

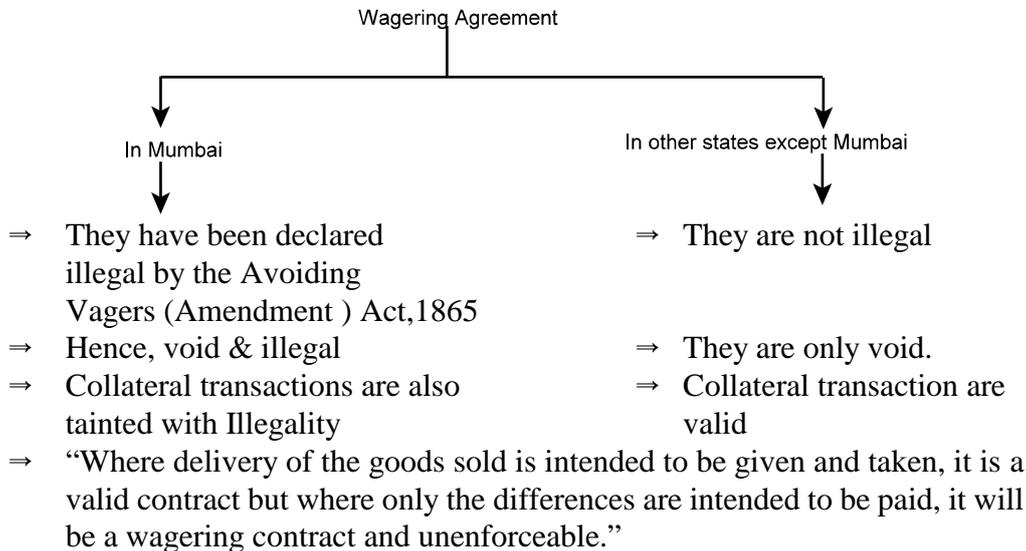
⇒ Such an agreement is void.

⇒ 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.

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Note: Lottery, being a game of chance, is a Wagering Agreement.

* It is void and illegal thus, collateral transactions are also tainted with illegality.

Speculative transactions- It appears to be similar to that of wagering agreement, but has essentially two main features:

1. Mutual intention of the contracting parties to acquire or deliver the commodities, and
2. Undertaking of risk arising from movement in prices.
3. They are generally valid.

Restitution (Sec. 65)

- ⇒ Under a void contract , if any party has received any benefit from the other party, he must restore it or make compensation for it to the other party.
- ⇒ There is no restitution where the parties are incompetent to contract e.g minor.

Relevant Case Law:

* Mohiri Bibi Vs. Dharmodas Ghosh

SHORT NOTES

2008 - Dec [4] (a) Write explanatory notes on :

- (i) Time is the essence of contract;

(4 marks)

(iv) Misrepresentation. (4 marks)

Answer :

(i) The time is an essence of contract according to **Section 55 of the Indian Contract Act, 1872** which provides that :

When time is of essence : If the promisor fails to perform his obligation within the time limit set in the contract, the contract becomes voidable at the option of the promisee. The promisee can decide whether to continue with the contract or to discontinue it. If he decides to continue with the contract in spite of delay, he will not have any claim on compensation for the delay. But if he decides to continue with claims for damages for delay in performance, he should give a notice in this regard to the promisor at the time of giving his acceptance for continuance of the contract.

(iv) **Misrepresentation : (Section 18 of Indian Contract Act, 1872)**

Where a person asserts something which is not true, though he believes it to be true, his assertion amounts to misrepresentation. Misrepresentation may be either innocent or without reasonable ground.

Misrepresentation means and includes :

1. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
2. Any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of anyone claiming under him;
3. Causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

2009 - June [4] (a) Write explanatory note on :

(i) Effects of 'coercion' on a contract. (4 marks)

Answer :

Effects of Coercion

Coercion (compulsion, force) : Coercion is the committing or threatening to commit any act forbidden by the Indian Penal Code with the intention of causing any person to enter into an agreement. It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed.

Following are the effects of coercion :

- (i) The aggrieved party whose consent was obtained by coercion may cancel the contract or may continue with the contract at its option. Worded differently Contract induced (to induce means to make, to bring, to persuade, to convince) by coercion is voidable at the option of aggrieved party whose consent was obtained by coercion. **(Section 19)**
- (ii) The aggrieved party can change or cancel the consent given by it under coercion and may continue with the contract.
- (iii) If the aggrieved party decides to cancel the contract, it can claim for compensation for any damage or loss suffered because the contract was not fulfilled.
- (iv) If the aggrieved party decides to rescind (means to cancel) the contract, it will have to return all the benefits received by it from such contract. **(Section 64)**
- (v) The aggrieved party can insist that contract be performed.

2010 - June [3] (a) Write short note on :

- (i) Undue influence (4 marks)

Answer :

Undue Influence : When two parties enter into contract with each other and 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 party, such contract is said to be induced by 'undue influence'. If a person having a dominant position over another person and he enters into contract with such person then the burden of proof that the contract was not done under undue influence, is on the person holding the dominant position.

A person is said to be having a dominant position if (i) he makes contract with a person who is not of sound mind because of age, illness, mental instability or bodily distress etc. (ii) he holds some control over the other person (iii) he holds some monetary obligation over the other person.

2010 - Dec [3] (a) Write short note on :

- (i) Effects of 'coercion' on a contract. (4 marks)

Answer :

Please refer 2009 - June [4] (a) (i) on page no. 55

2011 - June [4] (a) Write short note on :

- (i) Anticipatory Breach of contract (4 marks)

Answer :

Anticipatory Breach of Contract : When one party fails to perform its part of

promise in any contract, anticipatory breach of contract occurs. In such cases, it is natural that the suffering party may claim damages from the other party who has refused to continue with the contract. The anticipatory breach of contract occurs before the expiry of stipulated time of contract.

2012 - June [4] (a) Write short note on:

(ii) Counter Offer;

(4 marks)

Answer :

Counter offer is a new offer which is made in response to offer made earlier. Suppose A offers to sell his house to B for INR 10.0 lacs and B offers to buy it in say 9.0 lacs, the offer of B would be called Counter offer. In general the terms and conditions of Offer are same for Counter Offer as well.

2012 - Dec [4] (a) Write short notes.

(iv) Lawful consideration

(4 marks)

Answer :

Lawful consideration : The consideration or object of an agreement is lawful unless:

- (a) It is forbidden by law; or
- (b) Is of such a nature that if permitted, it would defeat the provisions of any Law or any rule for the time being in force in India ; or
- (c) Is Fraudulent; or
- (d) It involves or implies injury to the person or property of another; or
- (e) The court regards it as immoral or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

2013 - June [3] (a) Write short notes on:

(v) Discharge of contract

(4 marks)

Answer :

Please refer 2007 - June [5] (b) on page no. 58

DESCRIPTIVE QUESTIONS

2006 - Dec [4] (a) When an offer lapses?

(4 marks)

Answer :

Happening of following events will lead to offer lapses :

1. When a proposal is once refused, it is assumed to be dead. It can not

- be renewed by a subsequent acceptance.
2. The offer is withdrawn by the offerer and gives notice to the offeree of such effect.
 3. Time limit set for acceptance is crossed.
 4. When the acceptor fails to fulfil the conditions as stipulated in the offer.
 5. By death or insanity of the offerer.

2006 - Dec [5] (d) All Agreements are not Contracts but all Contracts are Agreements. (2 marks)

Answer :

Section 2(e) defines Agreement as every promise and every set of promises forming the consideration for each other. An agreement consists of an offer by the offerer and the acceptance of offer by the offeree. The equation is Agreement = offer + acceptance.

Section 2(h) of the Indian Contract Act states that an agreement enforceable by law is contract. As all the agreements are not enforceable by law, all agreements cannot be termed as contract. Agreement to go picnic or to play cards is not enforceable by law and it will not qualify for being contract although they may be termed as agreements. For an agreement to qualify for contract it must fulfil the basic conditions of being a contract. Legal relationship is imperative component of agreement. There are certain conditions and ingredients which make an agreement enforceable by law and make this a valid contract as per the Law of Contract. These elements are :

1. Offer and acceptance
2. Intention to create legal relationships
3. Lawful consideration
4. Void agreements
5. Free consent
6. Legality of object
7. Certainty
8. Possibility of performance
9. Capacity of the parties

Thus the statement is true that 'All agreements are not contracts but all contracts are agreements.'

2007 - June [5] (b) Under what circumstances, a Contract can be discharged ? (3 marks)

Answer :

Discharge of Contracts: A contract can be discharged or terminated by any of

the following eight ways :

1. **By performance or by Completion :** The contract is completed on terms and conditions as stipulated in the agreement and it comes to an end after successful execution of all the items of contract. This is also called discharge by performance.
2. **By Mutual Consent :** When the parties to the contract mutually agree to (a) by novation i.e. to substitute a new contract or (b) to withdraw and cancel it or (c) to alter or modify it (d) by remission i.e. reduction in performance required.
3. **By Doctrine of Frustration :** When a contract becomes impossible to be performed at a future date after the agreement, it is called supervening impossibility or Doctrine of Frustration.
If the impossibility existed at the time of agreement, it falls under the category of impossibility of performance and the contract is void ab-initio. Subsequent to agreement, the impossibility of performance may be due to the following reasons :
 - (a) Non existence or non occurrence of a particular state of things;
 - (b) Breaking out of war;
 - (c) Illegality of performance at a subsequent date; e.g. insolvency etc
 - (d) By death or disablement of parties.
 - (e) Destruction of subject matter e.g. A house is to be let out as per agreement and that house is destroyed in fire or earthquake.
4. **By breach of contract:** When there is a default on the part of one party regarding its performance in the contract, there is a breach of contract. It can be actual breach or anticipatory breach. When one party leaves the contract before its due date of completion, it is called anticipatory breach. The suffering party is entitled to compensation for damage.
5. **By lapse of time:** Contract should be completed before the application of Law of limitation which states that the contract should be performed before the expiry time limit set for it. In other words the contract should be performed before it is barred by law of limitation. In such a case there is no remedy is left for the contractor (promisee).
6. **By operation of law:** When the client dies or goes insolvent, there is discharge by operation of law.
7. **On the ground of accord and satisfaction:** Any party is satisfied in any manner by the other party, in lieu of contract, this is called discharge by accord and satisfaction.
8. **By non-cooperation of client:** If the client does not provide reasonable facilities or opportunities for performance to the contractor, the contract is

assumed to be discharged.

2008 - June [5] (a) Certain agreements are expressly declared to be void/unlawful. Answer with Rule position. (4 marks)

Answer :

Any agreement which is not enforceable by law is void as per the Indian Contract Act. The illustrations follow :

- (a) An agreement made by a minor;
- (b) Agreement without consideration (with certain exceptions);
- (c) Agreement against public policy are examples of agreement void ab initio i.e. from the beginning;
- (d) A legal agreement may become void because of impossibility of performance;
- (e) Change in law etc;

The following agreements have been expressly declared as void as per Indian Contract Act;

- (i) Agreement to restraint of marriage;
- (ii) Agreement restraining any one from exercising a lawful profession or business;
- (iii) Agreements with unlawful consideration;
- (iv) Agreements with uncertain meaning;
- (v) Agreements affecting personal law of individuals; and
- (vi) Agreements for impossible performance.

2008 - Dec [1] {C} Comment on the following statements based on legal provisions :

- (a) An agreement with insufficiency of consideration is void ab initio; (2 marks)

Answer :

False : It is neither void nor voidable agreement. The consideration should be of some value in the eyes of law. Even the smallest consideration is sufficient provided it has some value. The law simply provides that a contract should be supported with consideration subject to certain exceptions.

2009 - June [1] {C} Comment on the following statements based on legal provisions:

- (d) Every person is competent to contract. (2 marks)
- (g) 'A' saved life of 'B', who was drowning. Later 'A' demanded remuneration from 'B' for saving him since saving of life was valid consideration, 'A' would succeed. (2 marks)

Answer :

(d) Section 11 of the Contract Act reads “Every person is competent to contract who attains age of majority according to the law to which he is subject and who is of sound mind and is not disqualified from contracting by any Law to which he is subject.”

(g) Consideration should be at the desire of promisor. 'A' cannot demand payment for his service to save 'B's life because (1) it was voluntary gratuitous act and (2) not at the desire of 'B'.

Where, however, a 'Person' lawfully does anything for “another person” not intending to do so gratuitously and such other person enjoys the benefit thereof, the “another person” is bound to make compensation to the “person” in respect of the thing so done.

2009 - June [3] (i) What is fraud under Indian Contract Act. 1872?

(2 marks)

Answer :

As per **Section 17 of Indian Contract Act**, Fraud means and includes any of the following acts committed by a party to contract or with his connivance (means support or responsibility), or by his agent with intent to deceive another party there to or his agent or to induce him to enter into a contract.

1. The suggestion as a fact, or that which is not true by one who does not believe it to be true.
2. 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 the law specially declares to be fraudulent.

2009 - June [3] (b) A minor can be appointed as agent. —Comment.

(2 marks)

Answer :

False : Any person may become an agent between the principal and third party. An agent is supposed to be responsible to the principal hence no person who is not major and of sound mind can become an agent.

2009 - Dec [4] (f) In a contract with employer an employee agrees not to institute any legal proceeding against his employer. Can the agreement be enforced by the employer?

(2 marks)

Answer :

The employer will not be in position to enforce the contract because an agreement restricting the right of legal proceedings is null and void ab-initio as per **Section 28** of Indian Contract Act.

2010 - June [2] (b) A contract without adequate consideration is not a contract-offer your views. (2 marks)

Answer :

It is nowhere laid down that consideration should be adequate to the promise. Adequacy is for the parties to decide at the time of making the agreement. Inadequacy of consideration is no ground for refusing the performance of the promise, unless it is evidence of fraud. The consideration should be of some value in the eyes of law. Even the smallest consideration is sufficient provided it has some value. If a person gets what was promised to him at the time of making contract, the court will not inquire whether it was equivalent to the promise which he gave in return. Where one party alleges that his consent was not free while determining consideration, the court will take the inadequacy of consideration as evidence in support of allegation.

2010 - Dec [1] {C} Comment on the following based on legal provisions (No marks for wrong reasons/justification)

- (e) A counter offer constitutes an acceptance of an offer. (2 marks)
(f) Death or insanity of the proposer automatically revokes the proposal. (2 marks)

Answer :

- (e) **Wrong.** A counter offer is distinct and different from the original offer. Original offer must be accepted unconditionally and without any modification. Hence, a counter offer is not deemed as acceptance of original offer.
(f) **No.** The revocation of offer takes place only when the acceptor comes to know about the death of person making the offer. If the acceptor accepts the offer and then he comes to know that person making the offer is dead, his acceptance would be valid acceptance in the eyes of law.

2010 - Dec [2] (d) Performance of a contract may be made only by the parties to the contract—Comment. (2 marks)

Answer :

The statement is partly true. The contract can be performed by the promisor or any of his representative or agent. When some expertise is necessary and that expertise is with the contractor, the contract must be performed by him only.

2011 - June [2] (f) What is 'fraud'? (4 marks)

Answer :

Please refer 2009 - June [3] (i) on page no. 61

2011 - June [3] (e) All consideration or objects of an agreement are not lawful-justify. (2 marks)

Answer :

The consideration of an agreement is treated as lawful, unless :

1. It is forbidden by law;
2. It is of such nature that if permitted it would defeat the provisions of any law;
3. It is fraudulent;
4. It involves injuries to the person or property of another;
5. It is regarded as immoral, or opposed to public policy.

2011 - Dec [1] {C} Comment on the following based on legal Provisions:

(f) A minor can neither undertake liabilities nor receive benefit under the contract.— Comment. (2 marks)

Answer :

Although a minor cannot be a party to a contract, but he can receive all the benefits from any contract. He can be beneficiary of any contract.

2011 - Dec [2] (b) An illegal agreement is void but void agreement is not necessarily illegal. - Explain. (3 marks)

Answer :

Illegal agreements are those agreements which are against the law. All illegal agreements are against the law and hence they all are invalid and void.

A void agreement may not be against the law hence it may be valid. An agreement with uncertain parameters is void but is not illegal.

When an agreement is illegal, all agreements made on the basis of illegal agreement, are also illegal and void. If the basic agreement is void but not illegal, further agreements made on the basis of this agreement, may be valid.

2011 - Dec [3] (a) "Void Agreement" and "Void Contract" are same. Offer your views based on Rule Provision. (4 marks)

Answer :

Void agreement and void contract are not the same. The points of difference are as follows:

Void Agreement	Void Contract
1. It is void in the beginning.	1. It is valid in the beginning.

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2. It remains void throughout its life.	2. It becomes void due to circumstances.
3. It is not enforceable by law from the very beginning.	3. It is enforceable by law at the beginning but becomes unenforceable due to certain reasons.

A contract becomes void due to (i) impossibility of performance (ii) change of law or (iii) due to any other reason. A promised B to marry. Later B died. A valid contract becomes void due to death of B.

2012 - June [1] {C} Comment on the following based on legal provisions:

(b) Remaining silent with respect to the known defects is fraudulent. (2 marks)

Answer :

The statement is false. Silence is not fraud. Silence may be treated as fraud if it leads to breach of trust between the two parties.

2012 - June [3] (b) A seller may deliver goods to a carrier with a right of disposal. Comment. (2 marks)

(e) State the essentials of a valid contract. (5 marks)

Answer :

(b) Yes, the seller may do so. In such case, he does not lose the right of lien **u/s 46(1)(a) of The Sale of Goods Act, 1930**, even though the seller has parted with the possession of goods.

(e) Legal relationship is imperative (means important, basic, essential) component of agreement. There are certain conditions and ingredients which make an agreement enforceable by law and make this a valid contract as per the Law of Contract. These elements are described below :

- 1. Offer and acceptance :** Parties entering into agreement must have lawful offer and lawful acceptance. Mere mental acceptance is no acceptance.
- 2. Intention to create legal relationships :** There must be intention of the parties concerned towards making agreement and the agreement should result in legal relationship. An agreement to play cards or to go to picnic does not create legal relationship among the parties and hence not enforceable in law.
- 3. Lawful consideration :** Subject to certain exceptions, there must be lawful considerations by one party to the other party in a contract. An agreement to do something for nothing is not

enforceable in law. The something given or obtained is termed as consideration which must be lawful i.e. it should not be fraudulent, forbidden by law, or against the public interest.

4. **Capacity of the parties** : The parties entering into agreement must be capable of doing so. For example, a minor, lunatic, drunk, or idiot is not supposed to have the capacity to constitute a contract.
5. **Free consent** : The consent of both the parties must be free. An agreement executed by coercion, undue influence, mistake, threat, misunderstanding, misrepresentation, or fraud is invalid.
6. **Legality of object** : Illegal object makes the contract illegal as well. The purpose or objective of the agreement must be lawful i.e. it should not be fraudulent, forbidden by law, or against the public interest.
7. **Certainty** : The agreement must be certain and not vague or ambiguous.
8. **Possibility of performance** : Performance promised must be possible and feasible. Promise to do the impossible is not enforceable by law.
9. **Void agreements** : Agreements
 - (i) in restraint of marriage of any person other than a minor,
 - (ii) in restraint of trade
 - (iii) in restraint of legal proceedings
 - (iv) having uncertain meanings,
 - (v) wagering, gambling, betting, are void and not enforceable in law.
10. **Writing, registration and legal formalities** : In certain cases such as gift, lease, sale or mortgage of immovable property, a written contract is essential.

2012 - Dec [2] (e) A deceit which does not deceive is not fraud. Comment (2 marks)

Answer :

Fraud should actually exist for taking action against it. If no one is deceived, there is no case of fraud. An attempt to fraud is not a fraud unless the party is actually deceived.

2012 - Dec [3] (b) While discussing, Rajib told his friends that Contracts need not be performed under certain circumstances. Deepak objected to it. State the correct position. (4 marks)

Answer :

Yes, it is possible. **Section 62 to 67 of the Contract Act** are listed under the

heading “Contracts which need not be performed”. The relevant provisions are as follows:

- (i) If by mutual agreement there is Novation, Rescission or Alteration, the original contract need not be performed (Sec. 62).
- (ii) Where the promisee waives or remits the performance of promise made to him, wholly or in part or extends the time of performance or accepts any other satisfaction for it (Sec. 63).
- (iii) When a voidable contract is rescinded, the other party need not to perform his promise (Sec. 64).
- (iv) If the promisee neglects or refuses to afford the promisor reasonable facilities of the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby (Sec. 67).

Under the Law of Contract, the following agreements need not be performed.

- (I) Unlawful consideration and object – Sec. 23.
- (ii) Where the performance is unlawful or illegal – Sec. 56.
- (iii) When performance become impossible.

2013 - June [2] (a) A patient in a lunatic asylum can also enter into a valid contract. State the position based on legal provision. (2 marks)

Answer :

A person having a sound mind can enter into a valid contract. If a person is usually of unsound mind, who is at intervals of sound mind, may contract during those intervals when he is of sound mind.

2013 - Dec [2] (a) (i) Does silence amount to fraud? (3 marks)

Answer :

When a party to contract maintains silence over some of the facts relating to contract, such silence may or may not amount to fraud depending upon the circumstances and facts of each case.

Explanation to Section 17 of the Indian Contract Act, 1872, provides that 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 case are such that having regard to them it is the duty of the person keeping silence to speak or unless silence itself is equivalent to speech. When the circumstances of contract are such that a person should speak and he does not speak but keeps silence then such silence will be treated as fraud.

Exceptions to the General Rule:

The general rule that silence does not amount to fraud has the following

exceptions:

(In the following cases silence will amount to fraud)

- (i) When the parties stand in fiduciary relationship (i.e., relationship of faith and trust, parent and child, etc.)
- (ii) Where silence is equivalent to speech.
- (iii) Half Truth – It is worse than a blatant lie. Partial truthful disclosures may easily deceive the other party.

2014 - June [3] (a) (ii) X buys from Y a painting which both believe to be work of an old masterpiece and for which X pays a high price. The painting turns out to be only a modern copy. Discuss the validity of the contract.

(2 marks)

Answer :

The Contract is absolutely void as there is a mutual mistake of both the parties as to the substance or quality of the subject-matter going to be the very root of the contract. In case of bilateral mistake of essential fact, the agreement is void ab-initio, as per **Section 20 of the Indian Contract Act, 1872.**

2016 - June [2] Answer the question:

(a) (i) What are essential elements of a valid acceptance? (8 marks)

PRACTICAL QUESTIONS

2006 - Dec [1] {C} (a) Comment on the following statement :

(viii) Mr. X coerces Mr. Y to enter into a contract to sell Y's house worth ₹ 50 lakhs to X for ₹ 20 lakhs. (2 marks)

Answer :

The contract does not satisfy the basic element of free consent, as the consent of Mr. Y was obtained by coercion. It is a case of voidable contract at the option of Mr. Y. Mr. Y however, can enforce the contract on Mr. X but Mr. X cannot enforce the contract.

If Mr. Y does not exercise his option to leave behind the contract within reasonable time and if in the meantime, a third party in good faith acquires a right for consideration, such contract can not be avoided.

2008 - Dec [1] {C} Comment on the following statements based on legal provisions :

(c) Mr. X offers to sell his Maruti car to Mr. Y for an intended sum of

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₹ 90,000/- but by mistake he makes an offer in writing for ₹ 70,000/- instead of ₹ 90,000. Mr. X can plead mistake as defence. (2 marks)

- (d) Mr. X delivered 1000 mt. steel pipes to Mr. Y. 100 mt. were not as per specification, hence Mr. Y refused to accept and informed Mr. X to take back at his cost and risk. Mr. X rejected Mr. Y's request and demanded to return to Mr. X freight paid. State the correct position.

Answer :

- (c) As the offer is accepted, he cannot plead defence. He has offered ₹ 70,000 and the offer was accepted. According to Sec. 22 of Contract Act, a contract is not voidable merely because it was caused by one of the parties under a mistake as to a fact mentioned in the agreement.
- (d) The buyer is required to inform the seller regarding inferior quality of goods within reasonable time. Unless otherwise stated in the agreement, the buyer is not bound to return goods to seller, it is duty of the seller to lift the poor quality goods at his own cost and risk.

2008 - Dec [2] (a) Mr. Ramesh promised to pay ₹ 10,000/- on 30.10.08 jointly to Mr. Bhabesh and Mr. Naresh for some consideration. Mr. Bhabesh died on 1.9.08. On 30.10.08 Mr. Naresh demanded payment of whole amount of ₹ 10,000/-. Whether Mr. Naresh is justified? (2 marks)

- (g) Mr. Ramesh direct his agent to sell his Maruti car. Agent buys the car for himself but in the name of his friend at ₹ 50,000/- against market price of ₹ 70,000/- without the consent of Mr. Ramesh. What action Mr. Ramesh can take ? (2 marks)

Answer :

- (a) No, Naresh is not justified. The nature of promise made by Ramesh to pay ₹ 10,000 jointly to Bhabesh and Naresh does not undergo any change after the expiry of Bhabesh as Bhabesh's representative or legal heir will take his place. Thus Naresh has no right to claim the whole amount and payment of ₹ 10,000 will be jointly paid to Naresh and legal heirs of Bhabesh.
- (g) The principal has all the rights to reject and repudiate the actions of agent if the agent deals on his own account without the knowledge of the principal. In this case, the action of agent has been detrimental to the interests of principal and he should repudiate the action taken by the agent.

2009 - June [3] (f) As per sales order, A is to supply 20 MT of sugar to B. A however supplied 22 MT and billed for accordingly. B paid cost of 20 MT which was ordered by B. Can A take any action against B? (2 marks)

- (h) A Railway company refuses to deliver certain goods to the consignee except upon payment of ₹ 2,000 being excess/illegal charge. The consignee paid the said amount in order to obtain the goods. Is there any remedy? (2 marks)

Answer :

- (f) As B has accepted all the quantity supplied by A hence "B" is to pay in full. As per Sale of Goods Act, B may accept quantity of 2 MT or he may reject the whole lot. Since "B" has accepted 22 MT, he is liable to pay the value of 22 MT.
- (h) The consignee is entitled to recover the amount as was illegally excessive because a person to whom money has been paid or anything delivered, by mistake or under coercion must repay or return it.

2009 - June [4] (b) Mr. B (a broker) by the orders of Mr. A purchases 10 Drums of oil for A from Mr. C. Afterwards Mr. A refuses to receive oil. Mr. C sues Mr. B who informs Mr. A but Mr. A repudiates the contract. Although Mr. B defends but failed. Mr. B has to pay cost, damages and incurs expense. Can B recover any amount from A. (2 marks)

Answer :

In this case "A" is liable to "B" for such damages, costs and expenses because the employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authorities conferred upon him. B acted on the instruction of A which makes A liable to take responsibility of all lawful acts done by B on his behalf.

2009 - Dec [2] (d) 'B' offered to sell his car to 'A' for ₹ 75,000. 'A' accepts to purchase at ₹ 74,950. 'B' refuses. Subsequently 'A' agrees to purchase at ₹ 75,000 but 'B' refused. 'A' sued 'B' for specific performance of the contract. State legal position. (2 marks)

- (h) Mr. A approached Union Bank for loan of ₹ 1,00,000 which was not available from others due to tight money market. Bank agreed but at a high rate of interest. Mr. A accepted. Can he repudiate on the ground of undue influence? (2 marks)

Answer :

- (d) No, A cannot sue B for specific performance of contract. B's initial offer is already rejected by A and there is no offer available for acceptance subsequently.
- (h) A agreed to the terms and conditions of the loan on his own and his consent was free, and there was no pressure or undue influence from

the bank. Bank has not forced its terms on A. A can not deny the terms and conditions subsequently. Undue Influence : When two parties enter into contract with each other and one of the parties is in position to dominate the will of the other and uses that position to obtain an unfair advantage over the other party, such contract is said to be induced by 'undue influence.'

2009 - Dec [4] (c) On 30.11.09 Mr. Sham agrees to sell a painting to Mr. Ram for ₹ 5,000/- but Mr. Sham died on 8.12.09. Mr. Sham's son claimed ₹ 10,000/-. Can Mr. Ram obtain the painting at ₹ 5,000/- which was agreed to by Mr. Sham? (2 marks)

(d) Mr. Sham informs Mr. Ram that Mr. Sham's estate is free from encumbrances. Mr. Ram buys the property fully relying on Mr. Sham. Subsequently it revealed that the estate was mortgaged. What will be the position of Mr. Ram? (2 marks)

Answer :

(c) The validity period of contract is not mentioned in the question. If Sham dies after the validity of contract period, no question of painting to Mr. Ram because the contract was already over during Sham's life time. Assuming that the contract was alive at the time of death of Sham, Mr. Ram can force the legal heirs of Sham to respect the contract and sell the painting at ₹ 5,000 as agreed to by Mr. Sham.

(d) Mr. Ram can file suit against Mr. Sham for misinformation, fraud and cheating. He can obtain mortgage free estate from Mr. Sham. It is also questionable how could original registry be available with Mr. Sham because the authority keeps the original registry with him at the time of mortgage. Mr. Ram should have taken due care and diligence before relying on Sham's statement.

2010 - June [1] {C} Comment on the following statements based on legal provisions: (c) Mr. Roy sells by auction, to Mr. Paul a cow which Mr. Roy knows to be unsound. Mr. Roy says nothing to Mr. Paul about the cow's unsoundness. This is a clear case of fraud by Mr. Roy. (2 marks)

Answer :

Mere silence over a fact does not amount to fraud as per the Indian Contract Act. Mr. Paul has all the opportunities to examine the cow. Mr. Roy is not supposed to bring to light the unsoundness of cow.

2010 - June [2] (a) Mr. 'A' agrees that Mr. A shall sell Mr. B a house for ₹ 1,00,000 but if Mr. B uses the house for 'Gambling House' then Mr. B shall pay ₹ 1,50,000 for the same. Explain the legality. (2 marks)

Answer :

The contract is valid if the purpose is lawful and is void if the purpose is unlawful. First part is a valid contract while the second part is void as using the house as 'gambling house' is unlawful. Consideration does not matter in deciding the lawfulness of the purpose.

2010 - June [4] (b) A saved life of 'B', when 'B' was drowning. Later 'A' sued 'B' for remuneration/reward because saving life was the consideration received by 'B'. State based on Rules whether 'A' would succeed?

(2 marks)

Answer :

There was no contract or agreement between A and B in this respect. As there was no contract at the first place, the question of any consideration does not arise whatsoever. It was a voluntary act on part of A, hence, A will not succeed.

2010 - Dec [2] (c) Mr. X buys a ring from Mr. Y at a low price employing 'undue influence' and sells the ring to Mr. Z who purchased against consideration and without knowing of Mr. X's 'undue influence'. Can Mr. Y recover the ring from Z?

(2 marks)

Answer :

No, Y cannot get the ring from Z. Mr. Z paid the amount to Mr. X in good faith. However, Mr. Y can file a suit against Mr. X regarding the 'undue influence' placed by X on Y but He (Y) can not claim the ring from Z as Z is not concerned about Y.

2010 - Dec [4] (a) (ii) A. Das entered into contract to sing for B. Roy at a concert for ₹10,000/- which was received in advance. A. Das being too ill could not sing. B. Roy demanded compensation for loss of profit which he would have made if A. Das had been able to sing. State B. Roy's right.

(2 marks)

(b) (i) Ramen sold 50 Kg. of rice to Khagen who paid by cheque and Ramen gave the delivery order to Khagen. Khagen resold such rice to Bhaben who purchased on good faith and for consideration. Khagen's cheque was dishonoured. Ramen refused to deliver rice to Bhaben on the plea of non-payment. Advise Bhaben.

(2 marks)

Answer :

(a) (ii) This is doctrine of frustration also known as doctrine of supervening impossibility. At the time of contract, Das was able to sing but later it

became impossible for him to sing because of illness. Hence, Das is not bound to pay any damages to B, however, Das should refund the amount of advance to B.

- (b) (i) According to the Sale of Goods Act, It is implied condition of sale that only owner can sell the goods. It is expressed in the Latin phrase as 'Nemo dat quod qui non habet.' which means that "none can give who does not himself possess." Bhaben cannot claim delivery of goods because Khagen cannot sell what he does not have. Khagen right on rice is invalid because his cheque was dishonoured and he was not owner of rice when he sold the rice to Bhaben.

2011 - June [1] {C} Comment on the following based on legal provisions:

- (b) Mr. Sadhu offers to sell his house to Mr. Sarkar at ₹ 221 lakh but by mistake makes the offer in writing for ₹ 212 lakh which was accepted by Mr. Sarkar. Can Mr. Sadhu plead the mistake as defence ? (2 marks)

Answer :

The offer was made in writing for ₹ 212 lacs and it was duly accepted by Sarkar. Sadhu cannot deny the offer of ₹ 212 as it was made by him in writing. He can not take any defense regarding this amount.

2011 - June [2] (d) Mr. Adarsh was due to perform on 20th February but on 17th February 2011 repudiated his obligation. On 25th February the Contract become illegal through a change in Law. Mr. Vasant the other Party requested you to give advice on action against Mr. Adarsh. (2 marks)

- (e) Mr. Bose directs Mr. Roy to sell wheat for which Mr. Bose agreed to pay 10% commission on the price fetched by the Goods. Mr. Bose afterwards by a letter revokes Mr. Roy's Authority. But before receiving that revocation letter Mr. Roy sold wheat for ₹ 10,000/-. Mr. Bose refused to pay commission to Mr. Roy. Offer your views. (2 marks)

Answer :

- (d) Adarsh was due to perform on 20th Feb but he failed to fulfil his promise. This is a breach of contract. The repudiation on 17th February, 2011 amounts to breach of contract and Vasant is entitled to claim damages. But Vasant is not entitled to claim 'specific performance' as the contract has become illegal.
- (e) Roy sold the goods before receiving the revocation (cancellation) letter, hence sale is binding on Bose and Roy is entitled to claim commission of ₹ 1,000/-. The agency is supposed to be terminated when the termination comes to the knowledge of the agent.

2011 - Dec [1] {C} Comment on the following based on legal Provisions:

- (e) Mr. Ray made a contract with Mr. Basu to grow vegetables on Mr. Ray's land and to deliver to Mr. Basu at a fixed rate. Mr. Karmakar guarantees Mr. Ray's performance of this contract. Mr. Basu diverts stream of water which is necessary for production thereby prevented Mr. Ray to grow vegetables. Mr. Ray fails to supply as per contract. Hence Mr. Basu sues Mr. Karmakar (guarantor), for non-performance. — Advise. (2 marks)

Answer :

As per **Section 67 of the Indian Contract Act, 1872**, contracts need not be performed when promisee neglects or refuses to afford the promisor reasonable facilities for performance of promise. Mr. Karmakar is no longer liable on his guarantee as Mr. Basu violated the contract by not supplying stream of water to Mr. Ray.

2011 - Dec [2] (a) Mr. Ardhendu and Mr. Barun entered into a contract to build a house for a specified consideration. Clause 14 of contract provides that in case of disputes, neither party may move to Court of Law but must accept the decision of an Arbitrator named in the contract. Does this clause violate the provisions of law ? (3 marks)

Answer :

No this does not violate any provision of law. When both the parties agree to settle their dispute on the decision of an arbitrator, such provision is in consistency with the law.

According to **Section 28** of Indian Contract Act if any party to a contract stops any party to go to court, such condition is invalid in the eyes of law. The exception is in this case when all the parties agree to settle their disputes with the guidance of an arbitrator.

2012 - June [1] {C} Comment on the following based on legal provisions:

- (a) Mr. A. Bose contracts with Mr. B. Ghosh to deliver to him 300 kgs. Rice before 31.05.2012. Mr. Bose delivered 200 kgs. by 31.05.2012. Mr. Ghosh refused to pay due to non-performance. (2 marks)

Answer :

As per **Sale of Goods Act, 1930**, if a seller gives less quantity than the contracted quantity, it is upto the buyer to accept or reject the delivered quantity. If the buyer accepts any quantity delivered by the seller, the buyer is bound to make the payment at the contracted rate of the quantity accepted by him.

2012 - June [2] (d) Arun entered into a contract with Barun to let out the house under construction and received advance of INR 2 lakhs. The

house was, however, requisitioned by Government and, therefore, Arun failed to honour the contract. Can Barun recover damages for breach of contract? Advise. (2 marks)

Answer :

Mr. Barun can not recover damages for breach of contract. According to **Section 56 of The Indian Contract Act, 1872**, a contract becomes void in the event of supervening/ subsequent impossibility as to its performance. As the house is requisitioned by the Government, Arun shall be excused of his obligations. The contract becomes void **u/s 56, of the Indian Contract Act, 1872.**

2012 - June [3] (d) Arun seeing a watch in Barun's shop marked for sale for INR 1,000 entered the shop, places INR 1000 on the counter and asks for the watch. Barun refused. Can Barun refuse to sell the watch? Give reasons. (2 marks)

Answer :

No, Barun is not bound to sell the watch. Price label on article only amount to an invitation to offer and not an offer.

Placing of ₹ 1,000 by Arun amounts to an offer which may or may not be accepted by Barun. [Ref. Pharmaceutical Society of Great Britain-Vs-Boots Cash Chemists Ltd, (1953) 1 Q. B. 401].

2012 - Dec [1] {C} Comment on the following based on legal provisions:

(a) Mr. Menon offered on 1st December, 2012 to sell his house to Mr. Polson at INR Thirty Five Lakhs. Mr. Polson accepted by email on 2nd December, 2012 at 8 A.M. At 10 A.M. Mr. Polson sent a Fax revoking the acceptance. Both email (i.e. acceptance) and Fax (i.e. revocation) reached Menon at the same time. Hence this was valid. (2 marks)

Answer :

When the letter of acceptance and letter of revocation of acceptance reach the person at the same time, the effective letter will be that letter which the receiver opens first. In the given case, if Menon opens the letter of acceptance first, the contract would be treated as accepted. If Menon opens the letter of revocation (cancellation) first the contract would be treated as revoked (cancelled).

2013 - June [1] {C} Comment on the following based on legal provisions:

(a) Mr. A offers to buy Mr. B's house on certain terms. Acceptance was to be sent by 'B' within 6 (six) weeks. B within one week sent a letter accepting the offer with an alteration of one term. A then withdrew his offer. B writes again within three weeks accepting the terms originally proposed by 'A'. Hence this is a valid contract. (2 marks)

Answer :

The original proposal of A was altered by B. This amounts to death of original proposal. B's proposal is a counter offer which is to be treated as a fresh proposal. This is not a valid contract even if B agrees to accept the original terms because the original contract was dead when its terms were first altered.

2013 - June [2] (b) Mr. Ashoke obtains two loans from Mr. Natobar. First loan INR 3000 guaranteed by Mr. Roy and second loan INR 5000. Ashoke sends a cheque of INR 2000 to Mr. Natobar without indicating how this amount is to be appropriated. Mr. Natobar appropriated against loan of INR 5000 which was unsecured. Whether this apportionment was lawful?

(2 marks)

Answer :

Appropriation (means adjustment) of payment: When there are several debts and the debtor has made some payment, the question arises that this payment should be adjusted against which debt. If the debtor has clearly mentioned a particular debt, then there is no confusion but when he has not mentioned any particular debt, it has to be decided by the receiver to adjust the payment against which debt. If neither the debtor and nor the creditor are able to adjust the payment, it would be adjusted in order of time. Debt given first would be adjusted first.

2013 - June [4] (a) Referring to a quarrel and disagreement between husband and wife, the husband agreed to execute and register a document in favour of his wife to transfer one of his properties to his wife. Later on husband refused. Whether wife can enforce?

(3 marks)

Answer :

The wife will not succeed because the contract is without consideration. If the transfer is without consideration but there is an existence of mutual love and affection, such transfer is valid in the eyes of law. In the present case the transfer is due to quarrel and arguments and is without consideration, this does not fulfil the essentials of a valid contract.

2013 - Dec [2] (a) (ii) Arvind hires a carriage of Govind and agrees to pay INR 500 as hire charges. The carriage is unsafe though Govind is unaware of it. Arvind is injured and claims compensation for injuries suffered by him. Govind refuses to pay. Discuss the liability of Govind.

(3 marks)

(c) Arun, Varun and Tarun are partners of software business and jointly promise to pay INR 60,000 to Karun. Over a period of time, Varun becomes insolvent, but his assets are sufficient to pay one-fourth of his debts. Tarun

is compelled to pay the whole. Decide whether Tarun is required to pay whole amount to Karun in discharging joint promise?

(3 marks)

Answer :

- (a) Problem asked in the question is based on the provisions of the **Indian Contract Act, 1872, as contained in the Section of 150**. The section provides that if the goods are bailed for hire, the bailer is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed. Accordingly, applying above provisions in the given case Govind is responsible to compensate Arvind for the Injuries sustained even if he was not aware of the defects in the carriage.
- (c) According to **Section 43 of Indian Contract Act, 1872** when two or more persons make a joint promise, promisee may, in absence of express agreement to the contrary compel any one or more for such joint promisors to perform the whole of the promise. Further, if any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares. Therefore, in this case, Tarun is entitled to receive INR 5000 (one fourth of Varun share of debt) from Varun's assets and balance INR 27500 from Arun.

2014 - June [2] (a) (i) 'A' contracts with 'B' for a fixed price to construct a house for 'B' with stipulated time. 'B' would supply the necessary material to be used in the construction. 'C' guarantees A's performance of the contract. 'B' does not supply the material as per the agreement. Is 'C' discharged from his liability?

- (ii) W offered to sell his house to M for ₹ 40 lakhs. M replied purporting to accept the offer and enclosed a cheque for ₹ 20 lakhs. He also promised to pay the balance amount in twenty equal installments. Examine the validity of the contract. (2 marks)

Answer:

- (i) In this case C is surety for A's performance. Performance of A depends on the supply of material by B. B does not supply the required material which makes A unable to perform his part of contract. According to the **Section 134 of the Indian Contract Act, 1872**, the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. In the given case, B omits to supply the necessary material. Hence, C is discharged from his liability.

- (ii) Conditional acceptance is no acceptance at all. Acceptance of an offer must be absolute and unqualified i.e., it must conform to the offer. An acceptance, in order to be binding, must be absolute and unqualified **[Sec. 7(1)]** in respect of all terms of the offer, whether material or immaterial, major or minor. In the case provided, the acceptance is a qualified acceptance; hence it would not result in a valid contract.

2014 - Dec [2] (b) (i) W, the wife of H, who is lunatic, purchases a diamond set of ₹ 10 lacs from a jeweller on credit. Referring to the provisions of the Indian Contract Act, 1872, decide whether the jeweller is entitled to claim the above amount from the property of H. (4 marks)

Answer :

The problem relates to the provisions of quasi-contract.

It is to be noted that minors, persons of unsound mind or lunatics and other disqualified persons are incompetent to contract. But, under the provisions of Section 68 of Indian Contract Act, 1872 "if necessities are supplied to a person, who is incompetent to contract, the supplier is entitled to claim the reimbursement from the estate of such person". A supplier would also be entitled to recover the price of necessities supplied to wives or minor child of the incompetent person, as he is legally bound to support them. Also necessities would mean 'goods suitable to the condition in the life of such person' and not luxuries. Again person liability is not accrued for minors and lunatics; it is only their estate that would be liable. If there is no property nothing would be realizable.

To establish his claim the supplier must prove not only that the goods were supplied to the person who was a minor or a lunatic, but also that they were suitable to his requirement at the time of sale and delivery. It is also to be noted that a person of unsound mind, who has intervals of sound mind can enter into a contract during such period. Thus the burden to prove that H is lunatic and he was of unsound mind when entered into the contract lies on the seller. In the given problem, the jeweler would not be entitled for the claim, as a diamond set worth ₹10 lakhs for the wife of H, is not a necessity and is surely a luxury.

2015 - June [2] Answer the questions:

- (b) (i) Abhay, UG degree student was induced by his lecturer to sell his brand new car to the later at less the purchase price to secure more marks in the University examination. Accordingly the car was sold. However, the father of Abhay persuaded him to sue his lecturer. State whether Abhay can sue against the lecturer. (4 marks)

- (ii) Angel agrees to sell to Peter his two Mercedes cars on the terms that the price was to be fixed by David. Peter takes the delivery of one car immediately. David refuses to oblige Angel and Peter and fixes no price. Angel asks for the return of the car already delivered whereas Peter insisted on the delivery of the second car to him for a reasonable price of both the cars. Decide the case. (3 marks)
- (d) (i) Anita and Binita are friends, Binita treats Anita during Anita's illness. Binita does not accept payment from Anita for treatment and Anita promises Binita's son Sunit to pay him ₹ 12,000. Anita being in poor circumstances is unable to pay. Sunit sues Anita for the money. Can Sunit recover? (3 marks)
- (e) (i) Arvinda took a bet of ₹ 20,000 with Bannerjee that a certain horse would win the race. Arvinda and Bannerjee both residents of Kolkata. Arvinda borrowed ₹ 20,000 from his friend Chatterjee for this purpose. Arvinda lost the bet and paid ₹ 20,000 to Bannerjee. Can Chatterjee recover the loan amount from Arvinda? Give reasons. What would have been the difference had the transaction took place in Ahmedabad between the parties residing there? (3 marks)

Answer:

- (b) (i) Yes, Abhay can sue against his lecturer on the ground of influence under the provisions of the Indian Contract Act, 1872. A contract brought as a result of coercion, undue influence, fraud, misrepresentation would be voidable at the option of the person whose consent was caused. As per Sec. 19-A when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit there-under, upon such terms and conditions as the court may seem just.
- (ii) As per Section 10 of the Sale of Goods Act, the parties to the contract of sales may agree to the valuation done by the third party which have no interest in the contract except making a fair valuation of the subject matter of sales. It is quite possible that the third party may not do the valuation due to his own inability or due to fault of either of the parties to the contract. If the third party did not make any valuation for the reasons not attributable to any party, the contract is void. If non valuation of the goods by the third party is attributed to any fault on the part of any party to the

contract, the aggrieved party i.e., party not at fault may sue the party at fault for breach of contract and even demand damages from him.

This case is governed by Section 10 which provides that if the third party refuses to fix the price, the contract becomes void except as to part of goods delivered and accepted pay as regards which the buyer must pay a reasonable price. Thus as regards the car already delivered, Angel cannot ask for its return and must accept a reasonable price for that. As regards the second car, Peter cannot insist on its delivery to him since the contract has become void.

- (d) (i) No, Sunit cannot recover the money from Anita. The agreement between Sunit and Anita is not a contract in the absence of consideration. In this case, Sunit's mother, Binita, voluntarily treats Anita during her illness. Apparently it is not a valid consideration because it is voluntary whereas consideration to be valid must be given at the desire of the promisor-void Section 2(d). The question now is whether this case is covered by the exception given in Section 25(2) which *inter-alia* provides. "If it is a promise to compensate a person who has already voluntarily done something for the promisor" Thus as per the exception the promise must be to compensate a person who has himself done something for the promisor and not to a person who has done nothing for the promisor. As Binita's son, Sunit to whom the promise was made, did nothing for Anita, So Anita's promise is not enforceable even under the exception.
- (e) (i) Yes, Chatterjee can recover the loan amount from Arvinda. The transaction between Arvinda and Chatterjee is a collateral transaction which is valid, though the main transaction between Arvinda and Bannerjee is void, being a wager. Had the transaction took place in Ahmedabad, Chatterjee could not have recovered the loan as in Ahmedabad the wager transactions are illegal and a transaction collateral to it is also void on the ground of illegality.

2015 - Dec [2] Answer question:

- (b) (i) Bimal at Durgapur under instruction from Amal of Kolkata contracts with Kamal to deliver electric oven to him. Amal does not send the oven to Bimal and Kamal sues Bimal for breach of contract. Bimal informs Amal of the suit and as per Amal's advise

Bimal defend the suit. Bimal compelled to pay damages, costs and incurs expenses Amal refuse. Advise Bimal. (3 marks)

Answer:

As per Section 222 of the Indian Contract Act, 1872, the principal is bound to indemnify an Agent against the consequences of all Lawful acts done by the agent in exercise of authority conferred upon him. Sec. 223 further provides where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it causes an injury to the rights of third persons. In view of above, Amal is liable to Bimal for such damage, cost & expenses.

2015 - Dec [2] (d) (i) Abir agreed to sell his cow to Bashir for ₹ 50,000 on 1st December, 2014. But before this date, Abir repudiated the contract by informing Bashir that he would not sell his cow at all. However, Bashir did not accept the refusal and kept the contract alive till 1st December, 2014. The cow died before this date, but on 1st December, 2014, Bashir filed a suit against Abir for damages for breach of contract. Will he succeed? Give reasons. Would your answer change had the cow died on 5th December, 2014? (3 marks)

Answer:

No, Bashir will not succeed in his action. In this case, since Bashir kept the contract alive, the contract would be treated as discharged by death of cow on the ground of impossibility of performance. However, in case, the cow dying on 5th December, 2014, Bashir would be entitled to recover from Abir, the damages for breach of contract. In that event, Abir would be guilty of breach and the plea of impossibility of performance would not be available to him as the cow had died after the due date of performance.

2015 - Dec [2] (e) (i) The father of a minor girl, Anu, entered into an agreement for her marriage with Vishal. Afterwards, Vishal refused to marry Anu. On attaining majority, Anu filed a suit against Vishal for damages for breach of promises to marry. Vishal contended that Anu cannot enforce the contract as she was not a party to the agreement between him and Anu's father. Is Vishal's contention valid? (3 marks)

Answer:

An agreement is made in connection with marriage, partition or other family arrangements, and a provision is made for the benefit of some person. In such cases, a person, for whose benefit the provision is made in such family arrangements, can enforce the agreement even if he is not

a party to it. It may, however, be noted that provision must be made for the benefit of the person who wants to enforce such marriage arrangements. No, Vishal's consent is not valid. The marriage agreement or other family arrangements where a provision is made for the benefit of some person can be enforced by the beneficiary even if he is not a party to the same.

2016 - June [2] Answer the question:

- (e) (i) X Father promised to pay his son Y a sum of ₹ One lakh if Y (son of X) passed CMA examination in the first attempt. Y passed the CMA examination in his first attempt, but X failed to pay the amount as promised. Y files a suit for recovery of the said amount. State along with reasons whether Y can recover the amount under the Indian Contract Act, 1872. (5 marks)

Repeatedly Asked Questions		
No.	Question	Frequency
1	Write short notes on Effects of 'coercion' on a contract. 09 - June [4] (a) (i), 10 - Dec [3] (a) (i)	2 Times

Table Showing Marks of Compulsory Questions										
Year	11 D	12 J	12 D	13 J	13 D	14 J	14 D	15 J	15 D	16 J
Descriptive	2	2								
Practical	2	2	2	2						
Total	4	4	2	2						