

# 1

## INDIAN CONTRACT ACT, 1872

### THIS CHAPTER INCLUDES

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| <ul style="list-style-type: none"><li>• Essential elements of a contract, offer and acceptance</li><li>• Void and voidable agreements</li><li>• Consideration, legality of object and consideration</li><li>• Capacity of Parties, free consent</li></ul> | <ul style="list-style-type: none"><li>• Quasi Contracts, Contingent Contracts</li><li>• Performance of contracts</li><li>• Discharge of contracts</li><li>• Breach of Contract and Remedies for Breach of Contract</li></ul> |
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### CHAPTER AT A GLANCE

#### 1. Meaning of Contract

- ⇒ **Section 2(h)** of Indian Contract Act defines contract as:  
“An agreement enforceable by law.”  
Contract = Agreement + enforceability by law
- ⇒ Contract is made by acceptance of one party of an offer made to him by the other party, to do or abstain from doing some act.  
Contract = Agreement + Obligation

#### 2. Meaning of Agreement & Promise

- ⇒ **Section 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*).

⇒ **Section 2(b)** of Indian Contract defines promise as,  
“A proposal when accepted becomes a promise”.

Agreement = Promise  
              = Accepted Proposal  
              = Offer + Acceptance

### 3. Essential elements of a valid contract

⇒ **Section 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

### 4. Offer or Proposal

⇒ It refers to a proposal by one party to another to enter into a legally binding agreement with him.

⇒ **Section 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.

#### 5. 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

#### 6. 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.

##### **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.

**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.

**7. Acceptance**

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

**8. 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.
- ⇒ It must be given before the offer lapses or is revoked.
- ⇒ It must emanate from offer.

**9. 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.

#### 10. 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.

#### 11. 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.
- ⇒ It does not apply to completed gifts i.e. gift given and accepted.
- ⇒ Consideration is not required to effect a valid bailment of goods i.e. **gratuitous bailment** .

- ⇒ Not required to create an agency.
- ⇒ If a person promised to contribute anything to a charity and on his faith, the promisee undertakes a liability to that extent, the contract shall be valid.

## 12. 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”.

## 13. 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.
  - (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.

**14. 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

**15. 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.”

**16. 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.”

**17. 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.

**18. 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.
- (vi) Minor's property is liable for necessaries.
- (vii) Court/Tribunal 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.

### 19. 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.

### 20. 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.

**21. 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.

**22. 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.

**23. 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.

⇒ 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.

**24. 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.

**25. 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.

**26. Mistake**

- ⇒ It refers to miscalculation or judgmental error by both or either of the parties.
- ⇒ It must be a “vital operative mistake.”
- ⇒ When both the parties to an agreement are under a mistake to a matter of fact essential to the agreement, the agreement is altogether void.
- ⇒ Unilateral mistake means mistake on part of only one party.
- ⇒ Unilateral Mistake is not void.

**27. 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.
- \*\* 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.

**28. 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 pardanashin women.
- ⇒ 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.

**29. 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 (Section 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 an 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 (Section 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 (Section 30)**
    - ⇒ Wager means ‘bet’.
    - ⇒ They are ordinary betting agreements.
    - ⇒ It refers to an agreement between two parties by which one promises to pay money or money’s worth on the happening of some uncertain event in consideration of the other party’s promise to pay if the event does not happen.
    - ⇒ Such 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.

**30. Quasi Contract**

- ⇒ An obligation is imposed by law upon a person for the benefit of another even in the absence of a contract. They are known as quasi contracts.
- ⇒ They are based on principles of equity, justice and good conscience.
- ⇒ They are termed as certain relations resembling those created by contracts.
- ⇒ It is also known as **Law of Restitution**.
- ⇒ It has following features:
  - (i) It does not arise from any agreement between the parties but is imposed by law.
  - (ii) It is a right only available against a particular person or persons and not against the entire world.

**31. Types of Quasi Contract****Supply of necessities (Section 68)**

- ⇒ "If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person, with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person."
- ⇒ If necessities are supplied to a minor or person of unsound mind, the supplier is entitled to claim their price from the property of such a person.
- ⇒ If there is no property, nothing will be realizable

**Reimbursement of money due (Section 69)**

- ⇒ "A person, who is interested in the payment of money and pays such money, which another is bound by law to pay, is entitled to be reimbursed by the other."
- ⇒ A person who has paid a sum of money which another is obliged to pay, is entitled to be reimbursed by that other person provided the payment has been made by him to protect his own interest.
- ⇒ Payment must be bonafide.

**Obligation to pay for benefit out of non gratuitous act (Section 70)**

⇒ “Where a person lawfully does anything for another person or delivers anything to him; not intending to do so gratuitously and such other person enjoys the benefits thereof, then he is bound to make compensation to the other in respect of or to restore the thing so done or delivered.”

**Responsibility of finder of goods (Section 71)**

- ⇒ “A person who finds goods belonging to another and takes them into custody, is subject to the same responsibility as a bailee”.
- ⇒ He should act like a man of ordinary prudence i.e.
- (a) he shall take proper care of goods
  - (b) he must take reasonable steps to trace the owner
  - (c) he should sell the goods, if they are in deteriorating condition and remit the proceeds to the owner.
- ⇒ He is entitled for the reward if any, offered by the owner.
- ⇒ He is also entitled for the refund of any expenses if incurred in protecting and preserving the property.

**Person receiving goods or money by mistake (Section 72)**

- ⇒ “A person to whom money has been paid ,or anything delivered by mistake or under coercion, must repay or return it”
- ⇒ Mistake need not be unintentional. It may be even intentional.

**32. Contingent Contract (Section 31)**

- ⇒ It refers a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.
- ⇒ E.g: Contracts of insurance, indemnity and guarantee etc.

**33. Wagering Agreements**

- (a) It is void.
- (b) It is a game of chance.
- (c) Future event is the primary factor.
- (d) Consists of reciprocal promises.
- (e) Every wager is essentially contingent in nature.

**34. Performance of Contract**

- ⇒ It is one of the modes of discharging the contract. It is the completion or fulfilment of obligations by the respective parties to a contract.
- ⇒ As per **Section 37** of the Indian Contract Act, the parties to the contract must either:
- (1) Perform their respective promises, or
  - (2) Offer to perform the same unless such performance is dispensed with or excused under the provision of any other law.
- (a) **Promisor himself: Section 40** states that “ if it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it needs to be performed by the promisor himself, such promise must be performed by the promisor. “Contracts involving the exercise of personal skill or diligence , or which are founded on the personal confidence between the parties need to be performed by promisor himself.
- (b) **Agent:** If the contract is not founded on the personal consideration, the promisor or his representative may employ a competent person to perform it.
- (c) **Representatives:** Contract involving the use of personal skill or founded on personal consideration comes to an end on the promisor’s death. In other cases, the legal representatives of the deceased partner are bound to perform it unless the contrary intention appears from the contract; but their liability is limited to the value of the property they inherit from the deceased.
- (d) **Third persons:** As per Section 41, “if the promisee accepts the performance of the promise by a third person, he cannot afterwards enforce it against the promisor.”
- (e) **Joint promisors:** In case of joint promise, promisee may compel or one more of the joint promisors in the absence of contract to the contrary. If any of them dies, his legal representatives must perform the promise jointly with the surviving promisors.



**35. Who Can Demand Performance?**

- (a) **Promisee:** Only promisee can demand the performance of the promise irrespective of the fact that it is for the benefit the promisee or any other person.
- (b) **Third party:** In some cases, like trust, marriage settlements etc. third party can enforce the promise against the promisor even though he is not a party to the contract.
- (c) **Representatives:** In case of death of the promisee his representative may ask for the performance of the promise under a contract.

**36. Types of Performance**

It is of following two types:

➤ **Actual Performance**

The promisor makes all offer of the performance of the promise and the offer to perform is accepted by the promisee. Thus, when both the parties perform their respective obligations, the contract comes to an end.

➤ **Attempted Performance (Tender) (Section 38)**

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

**37. Effect of Refusal of party to perform promise (Section 39)**

The aggrieved party can-

- (i) terminate the contract
- (ii) indicate by words or by conduct that he is interested in its continuance.

If promisee decides to continue the contract, he would not be entitled to put an end to the contract on this ground immediately.

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

**38. Joint Promise**

When, two or more person enter into a joint agreement with one or more persons, it is known as joint promise.

**39. Devolution**

It means to pass over from one person to another. In case of joint promise, two problems arises:

- (i) who is liable to perform the promise,
- (ii) who can demand such performance.

This problem is solved by devolution.

**40. Liability of Joint Promisors**

(a) **Section 42:** If two or more persons have made a joint promise, ordinarily all of them during their life time must jointly fulfil the promise.  
\*After the death of any of them, his legal representative jointly with the survivor or survivors should do so.

(b) **Section 43:**

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

(c) **Section 44:** Where one of the joint promisors is released, other joint promisors shall continue to be liable.

**41. Rights of Joint Promisees**

⇒ U/s **Section 45:**

When a person has made a promise to several persons, then unless a contrary intention appears from the contract, the right to claim performance rests between him and them during their lifetime.

- ⇒ When one of the promisees dies, the right to claim performance rests with the legal representatives jointly with the surviving promisees.
- ⇒ When all the promisees dies, the right to claim performance rests with their legal representatives jointly.

## 42. Discharge of Contracts

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

### Modes of Discharge of Contract

1. **By Performance:** It occurs when the parties to the contract fulfil their obligations arising under the contract within the time and in prescribed manner. It may be:
  - (i) Actual performance
  - (ii) Attempted performance.
2. **By Mutual Agreement:** The parties may enter into a fresh agreement which provides for the extinguishment of their rights and liabilities of original contract. Important methods of discharge by a fresh contract:
  - (i) **Novation:** It occurs when an existing contract is substituted by a new one, either between same parties or between the new ones.
  - (ii) **Recession:** It occurs when only the old contract is cancelled and no new contract comes to exist in its place.
  - (iii) **Alteration:** It occurs when the terms of contract are so changed by mutual agreement that have the effect of substituting a new contract for the old one.
  - (iv) **Remission:** It refers to acceptance of lesser fulfilment of the terms of promise.
  - (v) **Waiver:** It refers to the abandonment of the rights by the party who is entitled to claim performance of the contract.
  - (vi) **Acceptance of any other satisfaction:** It occurs when the party entitled to claim performance accepts any other satisfaction instead of the performance of the contract.
3. **By Lapse of time:** It occurs if a contract is not performed within a specified period as prescribed by the Limitation Act, 1963.

**4. By Operation of law:**

It occurs when the contract is discharged by operation of law which includes -

- (i) **Material alteration:** where it is done without the knowledge and consent of the other, contract can be avoided by other party.
- (ii) **Insolvency:** it can be done under certain particular circumstances.
- (iii) **Death of a promisor:** contracts involving personal skill or expertise of promisor. When promisor dies, it cannot be performed by anyone else and hence comes to an end.
- (iv) **Merger of rights:** if an inferior right in a contract is merged into a superior right by the party.

**5. By Impossibility of performance / frustra=tion (Section 56)**

(i) **Discharge by supervening impossi-bility** is done in following ways:

- (i) Death or personal incapacity
- (ii) Destruction of subject-matter
- (iii) Non - existence or non- occurrence of certain essential things
- (iv) Change of Law
- (v) Declaration of war

**(ii) Discharge by supervening illegality**

If after making the contract, its performance becomes impossible due to alteration of law or act of any person, it is discharged.

**(iii) Cases not covered by subsequent impossibility**

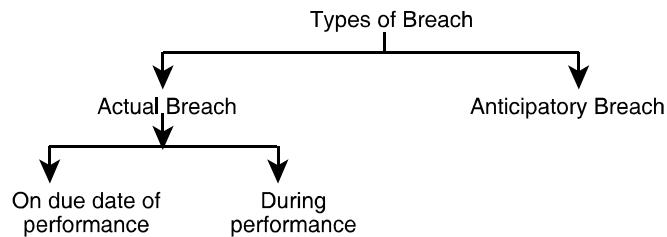
- (i) Partial impossibility
- (ii) Commercial impossibility
- (iii) Difficulty of performance
- (iv) Default of a third party.
- (v) Strikes, lockouts, etc.

**(iv) It is also known as frustration under English law.**

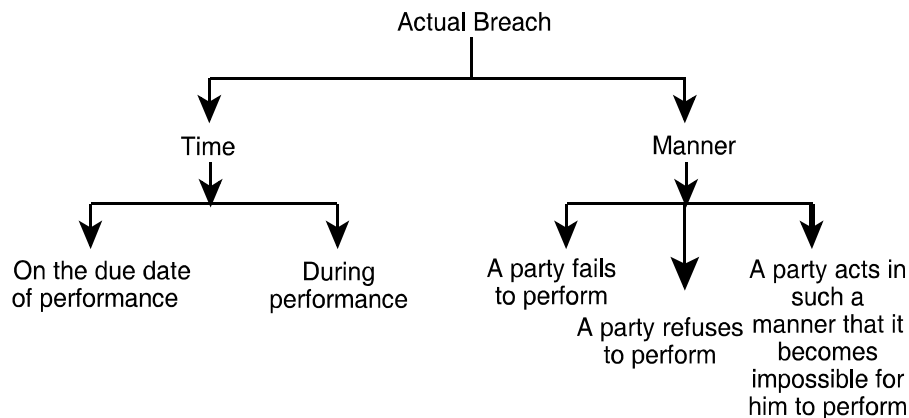
**43. Breach of Contract**

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

**44. Types of Breach**



⇒ **Actual Breach of Contract**



**45. Anticipatory Breach of Contract**

It occurs when the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived.

**It may be by:**

- (1) Express repudiation, or
- (2) Party disables himself.

**46. The aggrieved party may exercise either of following two options**

- (1) May wait till the due date i.e. it may treat the contract as operative.
- (2) May decide not to wait till the due date, but may immediately rescind the contract and bring an action for damages.

**47. Remedies available to aggrieved party**

- (i) **Rescission of contract:** It means right available to aggrieved party to terminate the contract. In this case, the aggrieved party is not required to perform his part of obligation and is entitled to claim compensation for any loss caused to him.
- (ii) **Claim for specific performances of the contract:**
  - ⇒ In certain cases, when the damages are not adequate remedy, the court may direct the party in breach for specific performance of the contract and the promise is carried out as per the terms of the contract.
  - ⇒ Usually granted in contracts connected with land.
  - ⇒ It cannot be granted where-
    - (a) Monetary compensation is an adequate relief
    - (b) Contract is of personal nature
    - (c) It is not possible for court to supervise performance of contract
    - (d) Contract is *ultra virus*.
    - (e) One of the parties is a minor.
- (iii) **Claim for injunction:** Injunction refers to an order passed by a competent court restraining a person from doing some act. Negative term of contract means doing something, which party has promised not to do.  
Thus, where a party to a contract is negating the terms of a contract, the court may by issuing an injunction order restrain him from doing what he promised not to do.

**Relevant Case Laws**

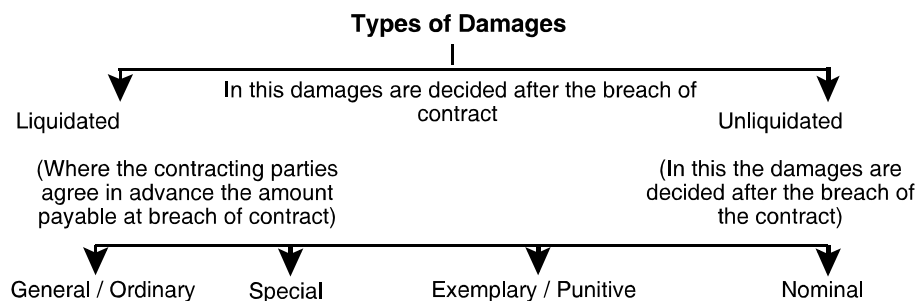
\* Lumley Vs. Wagner

**(iv) Claims for Quantum Meruit**

Quantum Meruit means "as much as is earned" or 'according to the quantity of work done'.

- ⇒ **Claim by party not at fault** - In following cases, party not at fault may claim payment:
  - (i) One party preventing the other from completion of contract.
  - (ii) Contract becoming void before its completion.
  - (iii) Agreement is discovered to be void.
- ⇒ **Claim by party at fault:** In following cases, party at fault may claim payment:
  - (i) Divisible contract partly performed
  - (ii) Indivisible contract performed completely but badly
- (v) **Claim for damages:**
  - ⇒ Damages are a monetary compensation awarded by the court to the injured party, for the loss or injury suffered by him.
  - ⇒ **As per Section 73**, when a contract is broken, the party at loss or damage from the breach is entitled to receive from the party at fault, compensation for the loss suffered by him.
  - ⇒ The loss or damage should have-
    - (a) arose naturally in the usual course of things from such breach or
    - (b) which the parties knew to be the likely result of such breach.
  - ⇒ No compensation for any remote or indirect loss.

#### 48.Types of Damages



- (i) **General/ Ordinary Damages:**
- ⇒ It helps putting the injured party in the position he would have been if the contract was performed.
  - ⇒ It refers to the estimated amount of loss actually incurred.
  - ⇒ It applies only to proximate consequences.
- (ii) **Special Damages:**
- ⇒ It includes those damages other than that arising directly from breach
  - ⇒ It must be known to parties at the time of entering into contract.
- (iii) **Exemplary / Punitive Damages:**
- ⇒ These are awarded not to compensate the aggrieved party, but as a means of punishment to the defaulting party.
  - ⇒ It is awarded in 2 cases:
    - (a) Breach of contract to marry
    - (b) Wrong dishonour of a cheque by a banker.
- (iv) **Nominal Damages:**
- These are awarded where the plaintiff has proved that there has been a breach of contract but he has not suffered any loss or damage.
- (v) **Liquidated Damages & Penalty:**
- When parties to a contract, specify a certain sum in the contract which will become payable as a result of breach, such specified sum is known as liquidated damages or penalty.
- ⇒ Under the English law,
    - (a) If the amount fixed is a genuine pre-estimate of the loss in case of breach - it is liquidated damages and is allowed.
    - (b) If the amount is fixed without any regard to probable loss, but is only to frighten the party and prevent it from committing any breach - it is a penalty and is not allowed.
  - ⇒ In Indian law, there is no difference between the two.



| <b>Differences between Ordinary and Special Damages</b>           |  |  |
|---|--|--|
|   | <b>Ordinary Damages</b>  | <b>Special Damages</b>   |
| 1.  | Damage which was naturally in the usual course of things.  | Damages which result from the breach of contract under special circumstances.  |
| 2.  | Include damages which are due to natural and probable consequences.  | Includes damages which the aggrieved party suffers due to indirect loss.   |
| <b>Differences between Liquidated Damages and Penalty Damages</b> |  |  |
|   | <b>Liquidated Damages</b>  | <b>Penalty Damages</b>   |
| 1.  | If the sum payable by the defaulting party represents a fair and genuine pre-estimate of damages such specified sum is known as liquidated damages, Thus, they are based on probable loss. | If the sum payable by the defaulting party is not based on probable loss, but are disproportionate to the damages, such specified sum is known as penalty. |
| 2.  | They are imposed by way of compensation to the aggrieved party.  | It is imposed by way of punishment, so as to prevent the aggrieved party from committing a breach.   |
| 3.  | In England, they are awarded in full.  | In England, no amount is awarded to any party.   |

**OBJECTIVE QUESTIONS**

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**QUESTIONS AND ANSWERS OF SEPTEMBER 2014**

1. In an executed contract, the obligation of \_\_\_\_\_:  
(a) both the parties have been fulfilled  
(b) both the parties are outstanding  
(c) obligation of one party is outstanding  
(d) none of these **(1 mark)**  
**Answer:** (a)
2. A contract with or by a minor is a:  
(a) valid contract  
(b) void contract  
(c) voidable contract  
(d) voidable at the option of either party **(1 mark)**  
**Answer:** (b)
3. The term consideration is defined in \_\_\_\_\_ section of the Indian Contract Act, 1872.  
(a) 2(a)  
(b) 2(d)  
(c) 3(a)  
(d) 2(h) **(1 mark)**  
**Answer:** (b)
4. An agreement by way of wager under Section 30 is:  
(a) void  
(b) voidable  
(c) valid  
(d) unenforceable **(1 mark)**  
**Answer:** (a)

5. A contingent contract:  
(a) is void  
(b) never becomes void  
(c) becomes void when the event becomes impossible  
(d) is voidable (1 mark)  
**Answer:** (c)
6. A quasi contract lacks:  
(a) agreement  
(b) consent  
(c) both  
(d) none of these (1 mark)  
**Answer:** (c)
7. An agreement & contract are one and same thing:  
(a) True  
(b) False  
(c) Depends on the situation  
(d) None of these (1 mark)  
**Answer:** (b)
8. Two persons have the capacity to contract:  
(a) If both are not of unsound mind  
(b) If none is disqualified from contracting by any law to which he is subject  
(c) If both have attained the age of maturity  
(d) All of the above (1 mark)  
**Answer:** (d)
9. A minor is a person who has not attained the age of:  
(a) 15 years  
(b) 18 years  
(c) 21 years  
(d) 25 years (1 mark)  
**Answer:** (b)
10. A contract can be performed by:  
(a) promisor himself  
(b) agent of the promisor

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- (c) legal representative of the promisor
- (d) either of these three (1 mark)

**Answer:** (d)

11. The term "*Quid Pro Quo*" is applied in connection with:

- (a) capacity of the parties
- (b) consideration
- (c) free consent
- (d) legality of object (1 mark)

**Answer:** (b)

12. In a contract not specifying the time for performance, the promisor can perform the contract:

- (a) immediately
- (b) within the shortest time
- (c) within a reasonable time
- (d) within next 21 days (1 mark)

**Answer:** (c)

### QUESTIONS AND ANSWERS OF DECEMBER 2014

1. The void agreement is one which is:

- (a) valid but not enforceable
- (b) enforceable at the option of both the parties
- (c) enforceable at the option of one party
- (d) not enforceable in a Court of law. (1 mark)

**Answer:** (d)

2. When the consent of a party is not free, the contract is:

- (a) void
- (b) voidable
- (c) valid
- (d) illegal. (1 mark)

**Answer:** (b)

3. Consideration must move at the desire of:  
(a) promisor  
(b) promisee  
(c) any other person  
(d) any of these. (1 mark)  
**Answer:** (a)
4. Ordinarily, a minor's agreement is:  
(a) *void ab initio*  
(b) voidable  
(c) valid  
(d) unlawful. (1 mark)  
**Answer:** (a)
5. In Case of Illegal agreements, the collateral agreements are:  
(a) valid  
(b) void  
(c) voidable  
(d) any of these. (1 mark)  
**Answer:** (b)
6. On the valid performance of the contractual obligations by the parties, the contract:  
(a) is discharged  
(b) becomes enforceable  
(c) becomes void  
(d) none of these. (1 mark)  
**Answer:** (a)
7. A contract is discharged by rescission which means the:  
(a) change in one or more terms of contract  
(b) acceptance of lesser performance  
(c) abandonment of rights by a party  
(d) cancellation of existing contract. (1 mark)  
**Answer:** (d)
8. In case of breach of contract, which of the following remedy is available to aggrieved party?  
(a) Suit for rescission

- (b) Suit for damages
- (c) Suit for specific performance
- (d) All of these.

(1 mark)

**Answer:** (d)

9. A voidable contract is one which:
- (a) can be enforced at option of aggrieved party
  - (b) can be enforced at option of both parties
  - (c) cannot be enforced in a Court/Tribunal of law
  - (d) Courts prohibit.

(1 mark)

**Answer:** (a)

10. A agrees to sell his car worth ₹ 1,00,000 to B for ₹ 20,000 only and A's consent was obtained by coercion. Here, the agreement is:

- (a) void
- (b) valid
- (c) voidable
- (d) unlawful.

(1 mark)

**Answer:** (c)

11. When the consent to an agreement is obtained by coercion, the agreement is voidable at the option of:

- (a) either party to agreement
- (b) a party whose consent was so obtained
- (c) a party who obtained consent
- (d) none of these.

(1 mark)

**Answer:** (b)

12. A agrees to pay ₹ 1,000 to B if a certain ship returns within a year. However, the Ship sinks within the year. In this case, the contract becomes:

- (a) valid
- (b) void
- (c) voidable
- (d) illegal.

(1 mark)

**Answer:** (b)

13. A party entitled to rescind the contract, loses the remedy where:

- (a) he has ratified the Contract

- (b) third party has acquired right in good faith
- (c) contract is not separable and recession is sought of party only.
- (d) all of these.

(1 mark)

**Answer:** (d)

14. Threat to commit suicide amounts to:

- 1. Coercion
- 2. Offence under the Indian Penal Code
- 3. Undue Influence
- 4. Fraud

- (a) 1 & 2
- (b) 2 & 3
- (c) 3 & 4
- (d) 1 & 4

(1 mark)

**Answer:** (a)

15. Contract caused by which of following is voidable?

- 1. Fraud
- 2. Mis-representation
- 3. Coercion
- 4. Bilateral Mistake

- (a) 1, 2, 3
- (b) 2, 3, 4
- (c) 1, 2, 4
- (d) 1, 2, 3, 4

(1 mark)

**Answer:** (a)

### QUESTIONS AND ANSWERS OF MARCH 2015

1. General offer can be accepted:

- (a) person to whom it is addressed
- (b) general public at large
- (c) anybody fulfilling the conditions attached to the offer
- (d) only senior citizen having PAN number

(1 mark)

**Answer:** (c)

2. Consideration should be something in return of promise which:
- (a) both the law and parties regard, as having some value
  - (b) only law regards a having some value
  - (c) only the parties regard some value
  - (d) only adequate value necessary **(1 mark)**
- Answer:** (a)
3. Consent is free under Section 14 if not caused by –
- (a) coercion & undue influence
  - (b) fraud and misrepresentation
  - (c) mistake subject to the provisions of Sections 20, 21 and 22
  - (d) all of the above **(1 mark)**
- Answer:** (d)
4. Where neither party makes any appropriation, the payment is to be applied in –
- (a) random manner
  - (b) Alphabetical manner
  - (c) Alpha - Numeric manner
  - (d) in the order of time **(1 mark)**
- Answer:** (d)
5. An agreement to do impossible thing is—
- (a) invalid agreement
  - (b) void
  - (c) voidable
  - (d) Illegal **(1 mark)**
- Answer:** (b)
6. Damages are –
- (a) punitive in nature
  - (b) deterrent in nature
  - (c) compensatory in nature
  - (d) all the three **(1 mark)**
- Answer:** (c)



7. A quasi contract lacks –  
(a) agreement  
(b) consent  
(c) both  
(d) none of these (1 mark)  
**Answer:** (c)
8. Wagering agreement is illegal in—  
(a) Gujarat  
(b) Kerala  
(c) Haryana  
(d) Jammu & Kashmir (1 mark)  
**Answer:** (a)
9. A contract based on the happening or non-happening of a future event under Section 31 is called—  
(a) a contingent contract  
(b) a wagering contract  
(c) a contract marked with uncertainty and hence void  
(d) voidable contract (1 mark)  
**Answer:** (a)
10. The term consideration is defined in section \_\_\_\_\_ of the Indian Contract Act, 1872 —  
(a) 2(a)  
(b) 2(d)  
(c) 2(g)  
(d) 2(h) (1 mark)  
**Answer:** (b)
11. A contract with or by a minor is a—  
(a) valid contract  
(b) void contract  
(c) voidable contract  
(d) voidable at the option of either party (1 mark)  
**Answer:** (b)

**QUESTIONS AND ANSWERS OF JUNE 2015**

1. The Indian Contract Act, 1872:
  - (a) Contains the basic principles of contract
  - (b) Is not a complete code on contract
  - (c) Does not cover all types of contract
  - (d) All of the above. **(1 mark)**

**Answer:** (d)
2. An agreement created by words spoken or written is called:
  - (a) Express agreement
  - (b) Execute agreement
  - (c) Implied agreement
  - (d) Voidable agreement **(1 mark)**

**Answer:** (a)
3. An offer stands revoked:
  - (a) If the fact of the death or insanity is known to offeree
  - (b) By counter offer
  - (c) By rejection of offer
  - (d) All of the above. **(1 mark)**

**Answer:** (d)
4. The term 'proposal' used in the Indian Contract Act is synonymous with the term.
  - (a) Contract
  - (b) Offer
  - (c) Agreement
  - (d) None of these. **(1 mark)**

**Answer:** (b)
5. A Counter offer is:
  - (a) An invitation to treat
  - (b) An acceptance of the offer
  - (c) A rejection of the original offer
  - (d) A bargain **(1 mark)**

**Answer:** (c)

6. When goods are displayed in a show-window bearing price-tags, it indicates.
- (a) Offer to sell goods at prices mentioned on the price tags
  - (b) An invitation to make an offer
  - (c) An advertisement
  - (d) An announcement
- (1 mark)**
- Answer:** (b)
7. Consideration is
- (a) Doing or abstaining from doing something at the desire of promiser
  - (b) Essential condition of a contract
  - (c) Element of exchange in a contract
  - (d) All of the above
- (1 mark)**
- Answer:** (d)
8. The exceptions to the rule a stranger to a contract cannot sue are.
- (a) Beneficiaries in case of trust
  - (b) Family settlement
  - (c) Assignment of contract
  - (d) All of the above.
- (1 mark)**
- Answer:** (d)
9. Where consideration is illegal or physically impossible, uncertain or ambiguous, it shall not be
- (a) Transferable by law
  - (b) Unenforceable by law
  - (c) Enforceable by law
  - (d) None of these.
- (1 mark)**
- Answer:** (c)
10. A person who is not an Indian citizen is an Alien. Contract with an alien friend, subject to certain restrictions are
- (a) Void
  - (b) Unenforceable
  - (c) Valid
  - (d) Invalid
- (1 mark)**
- Answer:** (c)

11. Which of the following person do not fall under the category of persons of unsound mind?  
(a) Drunkards  
(b) Lunatics  
(c) Idiots  
(d) Blind person. **(1 mark)**  
**Answer:** (d)
12. What does Section 17 of the Indian Contract Act, define?  
(a) Coercion  
(b) Undue influence  
(c) Fraud  
(d) Mistake **(1 mark)**  
**Answer:** (c)
13. In Indian Contract Act, the term consensus ad idem means  
(a) Parties under a mistake  
(b) Parties under the free consent  
(c) Parties agreeing upon the same thing in same sense  
(d) None of these **(1 mark)**  
**Answer:** (c)
14. An agreement which restricts a person's freedom to marry any person of his choice is against public policy and is.  
(a) Lawful  
(b) Illegal  
(c) Void  
(d) None of these **(1 mark)**  
**Answer:** (c)
15. P engages B to kill C and borrows ₹ 100 from D to pay B. If D is aware of the purpose of the loan, the transaction is:  
(a) Valid  
(b) Void  
(c) Illegal  
(d) Not enforceable **(1 mark)**  
**Answer:** (c)

16. An insurance contract is  
(a) Contingent contract  
(b) Wagering agreement  
(c) Unenforceable contract  
(d) Void contract (1 mark)  
**Answer:** (a)
17. The obligation of a finder of lost goods is laid down in:  
(a) Section 71 of the Contract Act  
(b) Section 65 of the Contract Act  
(c) Section 68 of the Contract Act  
(d) Section 66 of the Contract Act (1 mark)  
**Answer:** (a)
18. A contracts with B to construct a building for a fixed price, B supplying the necessary timber. This reciprocal promises is.  
(a) Mutual and independent  
(b) Mutual and dependent  
(c) Mutual and concurrent  
(d) None of the above (1 mark)  
**Answer:** (b)
19. A valid tender or offer of performance must be:  
(a) Made at proper time  
(b) Made at proper place  
(c) Made to the proper person  
(d) All of the above (1 mark)  
**Answer:** (d)
20. The law relating to damages is spelt out in \_\_\_\_\_ of the Contract Act.  
(a) Section 75  
(b) Section 73  
(c) Section 71  
(d) Section 65 (1 mark)  
**Answer:** (b)

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21. Where there is an infringement of a contractual right, but no actual loss has been suffered, the Court will award
- (a) Nominal damages
  - (b) Special damages
  - (c) Exemplary damages
  - (d) Ordinary damages
- (1 mark)**

**Answer:** (a)

22. The remedies open to a person, suffering from breach of contract are
- (a) Damages
  - (b) Injunction
  - (c) Quantum Meruit
  - (d) All of the above.
- (1 mark)**

**Answer:** (d)

### QUESTIONS AND ANSWERS OF SEPTEMBER 2015

1. The Indian Contract Act, 1872
- (a) Contains the basic principles of contract.
  - (b) Is not a complete code on contract.
  - (c) Does not cover all types of contracts.
  - (d) All of the above.
- (1 mark)**

**Answer:** (d)

2. The Indian Contract Law is based on
- (a) English Law
  - (b) Australian Law
  - (c) American Law
  - (d) French Law
- (1 mark)**

**Answer:** (a)

3. Parol contracts are also known:
- (a) Simple contract
  - (b) Format contract
  - (c) Void contract
  - (d) Conditional contract
- (1 mark)**

**Answer:** (a)

4. The Term "Proposal or offer" has been defined in Section:  
(a) Section 2(a)  
(b) Section 2(b)  
(c) Section 2(c)  
(d) Section 2(d) **(1 mark)**  
**Answer:** (a)
5. Express offers and acceptances may be proved by the agreement between the parties but implied offers can be proved only by:  
(a) The words  
(b) The conduct  
(c) Circumstantial expenses  
(d) Implied offer **(1 mark)**  
**Answer:** (d)
6. Where a particular mode of communication of acceptance is not prescribed and the parties are not in each others presence the most authentic mode of communication of acceptance is the:  
(a) Telephone  
(b) Telegraph  
(c) Wireless  
(d) Letter **(1 mark)**  
**Answer:** (d)
7. Consideration must be:  
(a) Adequate  
(b) Superficial  
(c) Unlawful  
(d) Something **(1 mark)**  
**Answer:** (d)
8. P renders some service to D at D's desire after a month D promises to compensate P for the service rendered to him, it is a.  
(a) Present consideration  
(b) Past consideration  
(c) Future consideration  
(d) None of these **(1 mark)**  
**Answer:** (b)

9. The test of \_\_\_\_\_ is whether the person is capable of understanding the business concerned and its implications:  
(a) Incapacity to contract  
(b) Minority  
(c) Soundness of mind  
(d) Reciprocity (1 mark)  
**Answer:** (c)
10. "Active concealment of fact" is associated with which one of the following?  
(a) Misrepresentation  
(b) Undue influence  
(c) Erased  
(d) Mistake (1 mark)  
**Answer:** (c)
11. If a party stands in a fiduciary relation to the other:  
(a) He cannot dominate  
(b) He can dominate the will of another  
(c) The trust should be maintained  
(d) None of these (1 mark)  
**Answer:** (b)
12. Section 28 of the Indian Contract Act, speaks about:  
(a) Agreements in restraint of legal proceedings  
(b) Agreement in restraint of trade  
(c) Agreement in restraint of marriage  
(d) None of these. (1 mark)  
**Answer:** (a)
13. A enters into an agreement with B who has robbed A of ₹ 10,000 to drop prosecution against him (B) in consideration of B's returning ₹ 8,000. Afterwards B refused to pay A can get from B.  
(a) ₹ 8,000  
(b) ₹ 100  
(c) Nothing  
(d) ₹ 10,000 (1 mark)  
**Answer:** (c)



14. A promised B to obtain an employment for him in a public office. B promised to pay ₹ 2,000 to A for this. B gets a job through A but refuse to pay the money.
- (a) Challenge B's appointment on the ground of non-payment of money.
  - (b) Due B for ₹ 2,000
  - (c) Do nothing
  - (d) Do both given at (a) and (b) above. **(1 mark)**
- Answer:** (c)
15. Under Section 70 of the Indian Contract Act, 1872 if a person who enjoys the benefit of any other person's work, the beneficiary must pay to the benefactor for the service rendered, provided the intention of the benefactor was:
- (a) Gratuitous
  - (b) Non-gratuitous
  - (c) To create legal relations
  - (d) None of these **(1 mark)**
- Answer:** (b)
16. Reciprocal promises include:
- (a) Mutual and independent promises
  - (b) Mutual and dependent promises
  - (c) Mutual and concurrent
  - (d) None of the above. **(1 mark)**
- Answer:** (d)
17. Whether or not any stipulation other than time of payment is of the essence of the contract depends on:
- (a) By agreement between the parties
  - (b) By operation of law
  - (c) Terms of the contract
  - (d) All of the above. **(1 mark)**
- Answer:** (c)

18. Agreement the meaning of which is uncertain is
- (a) Void
  - (b) Valid
  - (c) Voidable
  - (d) Illegal
- (1 mark)**
- Answer:** (d)
19. The person to whom offer is made is known as 'offer or promise' and on acceptance, he is legally known as the:
- (a) Acceptor in need
  - (b) Acceptor for honour
  - (c) Acceptor on promiser's behalf
  - (d) Acceptor
- (1 mark)**
- Answer:** (b)
20. The obligation which are created by law in situations, where a person has not entered into or broken any contract are called:
- (a) Quasi contract
  - (b) Contingent contract
  - (c) Deemed contract
  - (d) Unforeseen contract
- (1 mark)**
- Answer:** (a)
21. In the wagering agreement the \_\_\_\_\_ event is the primary factor in determining the agreement:
- (a) Past
  - (b) Present
  - (c) Future
  - (d) All of the above
- (1 mark)**
- Answer:** (c)
22. Sonia contracts with Anshul to buy a necklace; believing it is made of pearls whereas in fact it is made of imitation pearls of no value Anshul knows that Sonia is mistaken and takes no steps to correct the error. Now Sonia wants to cancel the contract on the basis of fraud, which of the following statement is correct.

- (a) Sonia can claim damages
- (b) Sonia can not cancel the contract
- (c) Sonia can cancel the contract alleging undue influence
- (d) Sonia can cancel the contract alleging fraud.

(1 mark)

**Answer:** (b)

**QUESTIONS AND ANSWERS OF DECEMBER 2015**

1. Social agreements are:

- (a) Enforceable in the Courts
- (b) Not Enforceable in the Courts
- (c) Subject to legal obligations
- (d) Made by social workers.

(1 mark)

**Answer:** (b)

2. A Contract is made where:

- (a) A buys a book from a shop
- (b) X bids at a public auction
- (c) X agrees with y to discover a treasure by magic
- (d) Z agrees to attend the birthday party of his friend.

(1 mark)

**Answer:** (a)

3. An advertisement for sale goods by auction:

- (a) Amounts to an invitation to offer
- (b) Amounts to an offer to hold such sale
- (c) Amounts to a general offer
- (d) None of these

(1 mark)

**Answer:** (a)

4. Various mode of revocation of offer have been described in:

- (a) Section 4
- (b) Section 5
- (c) Section 6
- (d) Section 2

(1 mark)

**Answer:** (c)

5. A Counter offer is:  
(a) An Invitation to treat  
(b) An acceptance of the offer  
(c) A rejection of the original offer  
(d) A bargain. **(1 mark)**  
**Answer:** (c)
6. The doctrine of privity of contract is laid down in the case of:  
(a) Carlill v. Carbolic smoke Ball & Co.  
(b) Balfour v. Balfour  
(c) Harvey v. Facey  
(d) Dunlop Pneumatic Tyre Co. Ltd v. Self-ridge & Co. **(1 mark)**  
**Answer:** (d)
7. Past consideration means:  
(a) Money received in the past without making even a proposal  
(b) The price which is more than the promises expectation  
(c) A past Act done before the promise is made  
(d) None of the above. **(1 mark)**  
**Answer:** (c)
8. A minor is a person who has not attained the age of:  
(a) 15 years  
(b) 18 years  
(c) 21 years  
(d) 25 years **(1 mark)**  
**Answer:** (c)
9. The test of ..... is whether the person is capable of understanding the business concerned and its implications:  
(a) In capacity to contract  
(b) Minority  
(c) Soundness of mind  
(d) Reciprocity **(1 mark)**  
**Answer:** (c)

10. Which of the following person do not fall under the category of persons of unsound time?

- (a) Drunk Cards
- (b) Lunatics
- (c) Idiots
- (d) Blind Person.

(1 mark)

**Answer:** (d)

11. Consider the following:

1. Active concealment of fact;
2. Promise made without any intention of performing it
3. Breach of duty which gains an advantage to the person committing it
4. Including mistake as to subject matter which of the above amount to found?

- (a) 1 & 2
- (b) 2 & 3
- (c) 3 & 4
- (d) 1 & 4

(1 mark)

**Answer:** (a)

12. A contract to trade with an enemy is:

- (a) An immoral agreement
- (b) A valid agreement
- (c) An agreement opposed to public policy
- (d) An enforceable agreement.

(1 mark)

**Answer:** (c)

13. Agreements between a husband and wife living in friendly environment are:

- (a) Valid contracts
- (b) A void contracts
- (c) Domestic arrangements
- (d) Voidable contracts.

(1 mark)

**Answer:** (c)

14. A agrees with B to discover treasure by magic for a consideration of ₹ 500 this is:
- (a) A void agreement
  - (b) A void contract
  - (c) A valid agreement
  - (d) An enforceable Contract
- (1 mark)**
- Answer:** (a)
15. A finder of goods can:
- (a) File a suit to recover his expenses
  - (b) Sell the goods if he likes
  - (c) Can sue for a reward, if any
  - (d) None of above
- (1 mark)**
- Answer:** (c)
16. Contracts which need to be performed are spell out in:
- (a) Section 60-65 of the Contract Act
  - (b) Section 61-66 of the Contract Act
  - (c) Section 62-67 of the Contract Act
  - (d) Section 68-70 of the Contract Act
- (1 mark)**
- Answer:** (c)
17. A, B and C jointly promise to pay D ₹ 3,000. D may compel:
- (a) A, B and C jointly to pay him ₹ 3,000
  - (b) A or B or C to pay him ₹ 3,000
  - (c) A to him ₹ 3,000
  - (d) A, B and C jointly and separately to pay ₹ 3,000.
- (1 mark)**
- Answer:** (d)
18. Ashish agrees to pay ₹ 10,000 to Digvijay if a certain ship returns within a year. However, the ship sinks within the year. In this case, the contract becomes:
- (a) Valid
  - (b) Void
  - (c) Voidable
  - (d) Illegal
- (1 mark)**
- Answer:** (b)

19. Standing offer means:
- (a) Offer made to a definite person
  - (b) Offer made to the public in general
  - (c) When the offeree offers to qualified acceptance the offer
  - (d) Offer allowed to remain open for acceptance over a period of time.
- (1 mark)**
- Answer:** (d)
20. When a person is restrained by the court from doing what he promised not to do, it is called:
- (a) Quantum merit
  - (b) Recession
  - (c) Specific performance
  - (d) Injunction.
- (1 mark)**
- Answer:** (d)
21. A finder of lost goods is entitled to be reimbursed for any lawful expenses incurred for:
- (a) Taking care for goods
  - (b) Taking reasonable step to trace the owner
  - (c) Selling of the goods, if the goods are in the deteriorating condition
  - (d) All of the above.
- (1 mark)**
- Answer:** (d)
22. The Term 'proposal or offer' has been defined in section:
- (a) Section 2(a)
  - (b) Section 2(b)
  - (c) Section 2(c)
  - (d) Section 2(d)
- (1 mark)**
- Answer:** (a)

**QUESTIONS AND ANSWERS OF MARCH 2016**

1. The Indian Contract Act, 1872:
- (a) Contains the basic principles of contract
  - (b) Is not a complete code on contract
  - (c) Does not cover all type of contracts
  - (d) All of the above
- (1 mark)**
- Answer:** (d)

2. The Source of the Law of contract is:  
(a) Indian Contract Act, 1872  
(b) Judicial decisions  
(c) Customs or usage of trade  
(d) All of the above (1 mark)  
**Answer:** (d)
3. The Indian Contract Act law based on:  
(a) English law  
(b) Australian law  
(c) American law  
(d) French law (1 mark)  
**Answer:** (a)
4. A Person is competent to contract of:  
(a) He has a PAN card number  
(b) He has a Ration card number  
(c) He fulfills the conditions of sec.  
(d) He is a graduate (1 mark)  
**Answer:** (c)
5. The Validity of contract is not affected by:  
(a) Mistake of Act  
(b) Mistake of Indian law  
(c) Misrepresentation  
(d) Fraud (1 mark)  
**Answer:** (b)
6. If an agreement suffers from any uncertainty it is:  
(a) Voidable  
(b) Void  
(c) Unenforceable  
(d) None of these (1 mark)  
**Answer:** (b)



7. A makes a contract with B to buy B's horse if A survives C. This is:  
(a) a Quasi-contract  
(b) a Void contract  
(c) a Contingent contract  
(d) a Conditional contract (1 mark)  
**Answer:** (c)
8. A contract implied by law is known as \_\_\_\_\_.  
(a) Contingent contract  
(b) Quasi – contract  
(c) Expressed contract  
(d) Implied contract (1 mark)  
**Answer:** (b)
9. The terms of agreement:  
(a) Must be certain  
(b) Must be capable of made certain  
(c) Un-ambiguous and clear  
(d) All of the above (1 mark)  
**Answer:** (d)
10. According to Indian Contract Act, a promise is:  
(a) A communication of intention to do something  
(b) A proposal which has been accepted  
(c) A gentleman's word to do something  
(d) A statement on oath (1 mark)  
**Answer:** (b)
11. A catalogue of the goods of a company for sale \_\_\_\_\_ a series of offers but only an invitations for offers.  
(a) Is  
(b) Is not  
(c) In normal case is  
(d) None of these (1 mark)  
**Answer:** (b)

12. A counter offer is:
- (a) An invitation to treat
  - (b) An acceptance of the offer
  - (c) A rejection of the original offer
  - (d) A bargain
- (1 mark)**
- Answer:** (c)
13. Which Section of Indian Contract Act defines consideration?
- (a) Section 2(a)
  - (b) Section 2(b)
  - (c) Section 2(c)
  - (d) Section 2(d)
- (1 mark)**
- Answer:** (d)
14. A promise not supported by consideration is called a:
- (a) Proposal
  - (b) Acceptance
  - (c) Agreement
  - (d) Nudum Pactum
- (1 mark)**
- Answer:** (d)
15. When a person incurred expenses of ₹ 5,000 for the necessaries supplied to the minor, he can recover the said amount from the:
- (a) Minor personally
  - (b) Property of the minor
  - (c) Property of his guardian
  - (d) None of these
- (1 mark)**
- Answer:** (b)
16. Which of the following is a contingent contract:
- (a) A promises to pay B if he repairs his scooter
  - (b) A promises to pay B ₹ 10,000 if his scooter is stolen
  - (c) A promises to sell his car if his wife permits
  - (d) A promises to buy a car if his employer approves it
- (1 mark)**
- Answer:** (b)

## QUESTIONS AND ANSWERS OF JUNE 2016

1. An agreement and contract are one & same thing.
  - (a) True
  - (b) False
  - (c) Depends on the situation
  - (d) None of the above

**(1 mark)**

**Answer:** (b)
2. A contract consists of:
  - (a) Mutual promises or agreement enforceable by law.
  - (b) Agreement not enforceable by law
  - (c) Involuntary obligations
  - (d) None of the above

**(1 mark)**

**Answer:** (a)
3. A contract is a contract:
  - (a) From the time it is made
  - (b) From the time its performance is due
  - (c) At the time from its performance
  - (d) None of the above

**(1 mark)**

**Answer:** (a)
4. Right in rem implies:
  - (a) A right available against the whole world
  - (b) A right available against a particular individual
  - (c) A right available against the government
  - (d) None of the above

**(1 mark)**

**Answer:** (a)
5. Parol contracts are also known as.
  - (a) Simple contract
  - (b) Format contract
  - (c) Void contract
  - (d) Conditional contract

**(1 mark)**

**Answer:** (a)

6. Which section, of Indian Contract Act defines “performance of the conditions of a proposal is an acceptance of the proposal”?
- (a) Section 6
  - (b) Section 7
  - (c) Section 8
  - (d) Section 9
- (1 mark)**
- Answer:** (c)
7. Voidable contract is one.
- (a) Which is lawful
  - (b) Which is invalid
  - (c) Which is valid, so long it is not avoided by the party entitled to do so
  - (d) None of these
- (1 mark)**
- Answer:** (c)
8. For binding contract both the parties to the contract must:
- (a) Agree with each other
  - (b) Stipulate their individual offer and consideration
  - (c) Agree upon the same thing in the same sense
  - (d) Put the offer and counter offers
- (1 mark)**
- Answer:** (c)
9. Which one of the following statements about the doctrine of privity is correct?
- (a) Only a party to the contract can sue
  - (b) Stranger to a contract cannot sue
  - (c) A contract is enforceable by a stranger
  - (d) Both (a) & (b)
- (1 mark)**
- Answer:** (d)
10. A contract for the benefit of the minor is:
- (a) Valid
  - (b) Void
  - (c) Voidable
  - (d) Illegal
- (1 mark)**
- Answer:** (a)

11. The catalogue of the goods of a company for sales \_\_\_\_\_ a series of offers but only and invitation for offers.

- (a) Is
- (b) Is not
- (c) In normal cases
- (d) None of these

(1 mark)

**Answer:** (b)

12. Consideration must be:

- (a) Adequate
- (b) Superficial
- (c) Unlawful
- (d) Something

(1 mark)

**Answer:** (d)

13. Consideration must move at the desire of:

- (a) Promisor
- (b) Promisee
- (c) Third party
- (d) Any other person

(1 mark)

**Answer:** (a)

14. An agreement without consideration is:

- (a) Void
- (b) Illegal
- (c) Voidable
- (d) Enforceable

(1 mark)

**Answer:** (a)

15. Capacity to contract has been defined in:

- (a) Section 10
- (b) Section 11
- (c) Section 12
- (d) Section 25

(1 mark)

**Answer:** (b)

16. A contract which is vitiated by undue influence is declared as which one of the following by the Indian Contract Act?
- (a) Invalid
  - (b) Void
  - (c) Illegal
  - (d) Voidable
- (1 mark)**
- Answer:** (d)
17. The period is limitation for simple contract in India is \_\_\_\_.
- (a) 2 years
  - (b) 3 years
  - (c) 6 years
  - (d) 8 years
- (1 mark)**
- Answer:** (b)
18. In a contingent contract which events is contingent:
- (a) Main event
  - (b) Collateral event
  - (c) Both (a) & (b)
  - (d) None of the above
- (1 mark)**
- Answer:** (b)
19. How many contracts are there in a contract of guarantee?
- (a) Two contracts
  - (b) Three contracts
  - (c) Four contracts
  - (d) None of these
- (1 mark)**
- Answer:** (b)
20. Coercion is defined in which section of the Indian Contract Act?
- (a) Section – 15
  - (b) Section – 16
  - (c) Section – 17
  - (d) Section – 18
- (1 mark)**
- Answer:** (a)

21. For a contingent contract the event must be:

- (a) Certain
- (b) Uncertain
- (c) Independent
- (d) Uncertain and Collateral

(1 mark)

**Answer:** (d)

**QUESTIONS AND ANSWERS OF DECEMBER 2016**

1. In **each of the cases given below**, one out of four alternatives is correct. Choose the most appropriate one from the stated options and write it down (only indicate (a) or (b) or (c) or (d) as you think correct).

(i) An agreement to do an act impossible in itself under section 56 of Indian Contract Act, 1872 is:

- (a) void
- (b) valid
- (c) voidable
- (d) illegal.

(1 mark)

(ii) A agrees to pay B ₹ 500 if a particular ship does not return to the port. The ship was sunk. The contract

- (a) can be enforced by B
- (b) cannot be enforced by B
- (c) is a wagering contract
- (d) is unlawful, illegal and against public policy.

(1 mark)

(iv) P agrees to discover treasure by magic if Q pays him ₹ 5,000. This agreement is

- (a) void
- (b) voidable
- (c) valid
- (d) unenforceable.

(1 mark)

**Answer:**

- (i) **(d)** illegal
- (ii) **(b)** cannot be enforced by B
- (iv) **(d)** unenforceable.

3.56

**Scanner CMA Foundation Paper-3A (2016 Syllabus)**

2. Fill in the blanks in the following sentences by using appropriate word(s) /phrase(s) /number (s):
- (f) An agreement in restraint of marriage is \_\_\_\_\_. **(2 marks)**
- (j) The sweetmeat sold by M/S MISTI MUKH & Co. contained germs of dyspepsia, this is a breach of \_\_\_\_\_. **(2 marks)**

**Answer:**

- (f)** Void  
**(j)** Law

4. State whether the following statement given below is TRUE or FALSE:
- (ii) Every contract is an agreement but every agreement is not a contract. **(1 mark)**

**Answer:**

True

**QUESTIONS AND ANSWERS OF JUNE 2017**

1. Choose the correct answer from the given four alternatives:
- (i) Law of contract
- (a) is the whole law of obligations.  
(b) is the whole law of agreements.  
(c) deals with only such legal obligation which arise from agreement.  
(d) deals with social agreements. **(1 mark)**
- (ii) For an acceptance to be valid, it must be
- (a) partial and qualified.  
(b) absolute and unqualified.  
(c) partial and unqualified.  
(d) absolute and qualified. **(1 mark)**
- (iii) If the communication is made by an unauthorised person, it does not result in a/an
- (a) Contract  
(b) Agreement



- (c) Offer
- (d) Consideration **(1 mark)**
- (iv) An offer does not lapse if the
  - (a) offeror dies before acceptance.
  - (b) offeree dies before acceptance.
  - (c) acceptance is made by the offeree in ignorance of the death of the offeror.
  - (d) acceptance is made by the offeree with knowledge of the death of the offeror. **(1 mark)**
- (v) An agreement without consideration is void under
  - (a) Section 25(1) of the Contract Act
  - (b) Section 25(3) of the Contract Act
  - (c) Section 25(2) of the Contract Act
  - (d) None of the above clauses in Section 25 **(1 mark)**
- (vi) An agreement without consideration is void except in case of compensation for
  - (a) voluntary services rendered.
  - (b) voluntary services rendered at the request of the other party to the agreement.
  - (c) voluntary services rendered at the request of third person.
  - (d) reimbursement of expenses incurred. **(1 mark)**
- (vii) Which of the following is not competent to contract?
  - (a) A minor
  - (b) A person of unsound mind
  - (c) A person who has been disqualified from contracting by some law
  - (d) All of the above **(1 mark)**
- (viii) 'Active concealment of fact' is associated with which one of the following?
  - (a) Misrepresentation
  - (b) Undue influence
  - (c) Fraud
  - (d) Mistake **(1 mark)**

- (ix) The validity of contract is not affected by
- (a) Mistake of fact
  - (b) Mistake of Indian law
  - (c) Misrepresentation
  - (d) Fraud **(1 mark)**
- (x) A promises B to pay ₹ 100 if it rains on Monday and B promises A to pay ₹ 100 if it does not rain on Monday. This agreement is
- (a) a valid agreement.
  - (b) avoidable agreement.
  - (c) a wagering agreement.
  - (d) an illegal agreement. **(1 mark)**
- (xi) A borrows from B ₹ 500 to bet with C. Can B recover the amount of his loan?
- (a) Yes, the agreement between them is collateral to a wagering agreement and hence enforceable.
  - (b) Yes, the agreement is not opposed to public policy.
  - (c) No, the agreement is a voidable agreement and can be avoided by A.
  - (d) No, the agreement is wagering agreement and falls under Section 23 and hence void. **(1 mark)**
- (xii) Which of the following statements is true in connection with the contingent contract?
- (a) The collateral event is contingent.
  - (b) The collateral event may be certain or uncertain.
  - (c) The contingency event may be the mere will of the promisor.
  - (d) The main event should be contingent. **(1 mark)**
- (xiii) Quasi-contracts are
- (a) not contracts in the real sense of the word.
  - (b) relations which create certain obligations resembling those created by a contract.
  - (c) implied contracts.
  - (d) unenforceable contracts. **(1 mark)**

- (xiv) If the performance of contract becomes impossible because the subject matter of contract has ceased to exist then
- (a) both the parties are liable.
  - (b) neither party is liable.
  - (c) only offerer is liable.
  - (d) only acceptor is liable.
- (1 mark)**

**Answer:**

- (i) (c) deals with only such legal obligation which arise from agreement
  - (ii) (b) absolute and unqualified
  - (iii) (b) Agreement
  - (iv) (c) acceptance is made by the offeree in ignorance of the death of the offeror.
  - (v) (d) None of the above clauses in **Section 25**
  - (vi) (a) voluntary services rendered.
  - (vii) (d) All of the above
  - (viii) (c) Fraud
  - (ix) (b) Mistake of Indian law
  - (x) (c) a wagering agreement
  - (xi) (d) No, the agreement is wagering agreement and falls under section 23 and hence void.
  - (xii) (a) The collateral event is contingent
  - (xiii) (b) relations which create certain obligations resembling those created by a contract.
  - (xiv) (b) neither party is liable.
3. State whether the following statement is True or False:
- (i) All contracts are agreements.
  - (ii) An acceptance will be revoked at any time before the communication of acceptance is complete against the acceptor, but not afterwards. Is it true or not?
  - (iii) A contract is said to be executed when it has been performed wholly on two sides.
  - (iv) Can a mere mental resolve to make an offer unless such intention is also communicated to the other party has agreed to make such statement?

**3.60**

**Scanner CMA Foundation Paper-3A (2016 Syllabus)**

- (v) After a transaction has ripened into a contract, does it require the consent of both parties to revoke or modify it?
  - (vi) If the agreement is made by obtaining consent by doing an act forbidden by the Indian Penal Code, the agreement would be caused by fraud.
  - (vii) An officer enters into a contract with his subordinate to sell his (subordinate's) house at a lower price than that of market price. The subordinate may challenge the contract on the ground of mistake.
  - (viii) Breach of condition give the aggrieved party right to repudiate the contract.
- (1 × 8 = 8 marks)**

**Answer:**

- (i) True
- (ii) True
- (iii) True
- (iv) False
- (v) True
- (vi) False
- (vii) False
- (viii) True

### **QUESTIONS AND ANSWERS OF DECEMBER 2017**

1. Choose the correct answer from the given four alternatives:
  - (i) A void agreement is one
    - (a) which is forbidden by law.
    - (b) enforceable at the option of one of the parties.
    - (c) which is not enforceable by law.
    - (d) enforceable by law.
  - (ii) A contract is formed when the acceptor
    - (a) has done something to signify his intention.
    - (b) makes his mind to do so.
    - (c) reads the offer.
    - (d) All of the above.

- (iii) Express offers and acceptances may be proved by the agreement between the parties but implied offers can be proved only by
  - (a) The words
  - (b) The conduct
  - (c) Circumstantial evidence
  - (d) Both (b) and (c)
- (iv) Sections 4 and 5 of the Indian Contract Act provide for communication of offer and acceptance and revocation thereof. In this relation, which one of the following is not correct?
  - (a) Communication of offer is complete when it reaches the offeree.
  - (b) Revocation of acceptance is complete when acceptance is posted in favour of the proposer.
  - (c) A proposal may be revoked any time before communication of acceptance.
  - (d) Acceptance may be revoked any time before communication of acceptance.
- (v) Consider the following statements: Consideration is
  - 1. A motive for any promise
  - 2. A price for any promise
  - 3. Only a moral obligation
  - 4. Something of value in the eye of law of these statements
  - (a) 1, 2 and 3 are correct.
  - (b) 1 and 4 are correct.
  - (c) 2 and 4 are correct.
  - (d) 3 alone is correct.
- (vi) Two persons have the capacity to contract
  - (a) if both are not of unsound mind.
  - (b) if none is disqualified from contracting by any law to which he is subject.
  - (c) if both have attained the age of maturity.
  - (d) All of the above.

- (vii) Which of the following types of persons are not disqualified from contracting?
- (a) Foreign Sovereigns
  - (b) Alien Enemy
  - (c) Convicts
  - (d) None of the above.
- (viii) When both the parties to an agreement are under a mistake as to a matter of fact essential to an agreement, the agreement is
- (a) Void
  - (b) Valid
  - (c) Voidable
  - (d) Illegal.
- (ix) A agrees to sell to B a 'hundred tons of oil'. There is nothing whatever to show what kind of oil was intended. The agreement is
- (a) Valid
  - (b) Void for uncertainty
  - (c) Voidable
  - (d) Illegal.
- (x) A promised B to obtain an employment for him in a public office. B promised to pay ₹ 2,000 to A for this. B gets a job through A but refuses to pay the money. A can
- (a) challenge B's appointment on the ground of non-payment of money.
  - (b) sue B for ₹ 2,000.
  - (c) do nothing.
  - (d) Both (a) and (b).
- (xi) Which one of the following is not a characteristic of a contingent contract?
- (a) Performance depends upon a future event.
  - (b) The event must be uncertain.
  - (c) The event must be collateral to the contract.
  - (d) There must be reciprocal promises.

- (xii) A gives a recognizance binding him in a penalty of ₹ 500 to appear in the court on a certain day. He forfeits his recognizance. He is
- (a) liable to pay the whole penalty.
  - (b) not liable to pay the penalty.
  - (c) liable to pay partially.
  - (d) None of the above.
- (xiii) Agreement by way of wager are
- (a) Valid and enforceable by law
  - (b) Void
  - (c) Voidable at the option of party
  - (d) Illegal.
- (xiv) A valid tender or offer of performance must be
- (a) made at proper time.
  - (b) made at proper place.
  - (c) made to the proper person.
  - (d) All of the above.
- (xv) A, dealing in baby foods, sends samples by train for being exhibited at a Consumer Product's Show which fact was made known to the railway company. The goods reached the destination after the show was over. A sued the railway company for damages. A will be entitled to
- (a) Ordinary damages
  - (b) No damages
  - (c) Exemplary damages
  - (d) Special damages.

(1 × 15 = 15 marks)

**Answer:**

- (i) (c) which is not enforceable by law.
- (ii) (a) has done something to signify his intention.
- (iii) (d) Both (b) and (c).
- (iv) (d) Acceptance may be revoked any time before communication of acceptance.
- (v) (c) 2 and 4 are correct.
- (vi) (d) All of the above.
- (vii) (d) None of the above.
- (viii) (a) Void.

- (ix) (b) Void for uncertainty.
  - (x) (c) do nothing.
  - (xi) (d) There must be reciprocal promises.
  - (xii) (a) liable to pay the whole penalty.
  - (xiii) (b) Void.
  - (xiv) (d) All of the above.
  - (xv) (d) Special damages.
3. State whether the following statements are True or False:
- (ii) Appointment of agent for the creation of an agency without any consideration is valid under Section 185 of the Contract Act.
  - (vi) Void contracts do not provide any legal remedy for the parties to the contract.
  - (vii) Remaining silent with respect to the known defects fraudulent.
  - (viii) A mows B's lawn without asked by B to do so. B watches A do the work but does not attempt to stop him. Thus, A is entitled to get consideration from B.
  - (ix) A invites B to dinner in a top class restaurant. B accepts the invitation but fails to turn up. A incurred certain expenses on this account. Under the Contract Act, A can sue B for own damage.
  - (x) In a voidable contract, if a third party who purchased goods in good faith and for consideration before the contract is repudiated, acquires good title to those goods.
  - (xi) If in certain special cases of breach of contract, if the court is of opinion that there is no standard for ascertaining the actual damage caused by the non-performance, the court may in such cases, order specific performance of the contract. **(1 × 7 = 7 marks)**

**Answer:**

- (ii) True
- (vi) True
- (vii) True
- (viii) False
- (ix) True
- (x) False
- (xi) True.



**QUESTIONS AND ANSWERS OF JUNE 2018**

1. Answer all the questions:  
Choose the correct answer from the given four alternatives:
- (i) Asim unlawfully detains Anil to obtain his vacant flat at Safdarjang enclave (valuing ₹ 50,00,000) at ₹ 40,00,000. This is a case of
    - (a) Undue influence
    - (b) Coercion
    - (c) Fraud
    - (d) By Force
  - (ii) A contract which ceases to be enforceable by law becomes
    - (a) Voidable contract.
    - (b) Void agreement.
    - (c) Void contract.
    - (d) Valid contract.
  - (iii) Mr. A promises to Mr. B without any intention of performing it. This is a case of
    - (a) Cheating
    - (b) Fraud
    - (c) Valid case
    - (d) None of the above
  - (iv) An advertisement for sale of goods by auction. This is a case of
    - (a) General offer
    - (b) An offer to hold such sale
    - (c) An invitation to offer
    - (d) Implied offer
  - (v) An offer comes to an end by
    - (a) Revocation
    - (b) Acceptance
    - (c) Communication
    - (d) None of the above

- (vi) A stranger to a contract can file
  - (a) A suit
  - (b) A suit only with the permission of Court
  - (c) A suit if Contract is in writing
  - (d) Can not file a suit
- (vii) Of the following who is competent to enter into a contract?
  - (a) Minor
  - (b) Unsound mind
  - (c) Lunatic
  - (d) Sound mind
- (viii) A minor can be appointed as agent.
  - (a) False
  - (b) Valid
  - (c) Voidable
  - (d) Not valid
- (ix) Mr. A delivers a basket of mango to Mr. B mistaking him to be Mr. C and Mr. B consumes those mangos. Hence
  - (a) Mr. B is bound to pay compensation to Mr. A for the value of Mango.
  - (b) Mr. B is not bound to pay any compensation as there was no agreement and it is 'A's fault.
  - (c) Mr. B is bound to pay compensation for value of mango and damages.
  - (d) None of the above.
- (x) Agreement of which the consideration is inadequate is
  - (a) Void
  - (b) Voidable
  - (c) Valid
  - (d) None of the above
- (xi) Mr. A promises in writing to pay time barred debt to Mr. B. This is
  - (a) Not enforceable
  - (b) Enforceable
  - (c) Voidable
  - (d) None of the above

- (xii) When both the parties to an agreement are under a mistake as to matter of fact essential to an agreement, the agreement is
- (a) Valid
  - (b) Illegal
  - (c) Voidable
  - (d) Void
- (xiii) Mr. Ajit threatened to commit suicide if his wife did not execute sale deed in favour of his sister. Wife executed the sale deed. This is
- (a) Void
  - (b) Voidable
  - (c) Enforceable
  - (d) None of the above
- (xiv) Under Section 2 (b) of the Indian Contract Act, 1872 if the person to whom the proposal is made signifies his assent thereto the proposal is said to have been
- (a) Accepted
  - (b) Agreed
  - (c) Provisionally agreed
  - (d) Tentatively accepted

(1 × 14 = 14 marks)

**Answer:**

- (i) (b)
- (ii) (c)
- (iii) (b)
- (iv) (c)
- (v) (a)
- (vi) (d)
- (vii) (d)
- (viii) (b)
- (ix) (a)
- (x) (c)
- (xi) (b)
- (xii) (d)
- (xiii) (b)
- (xiv) (a)

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**Scanner CMA Foundation Paper-3A (2016 Syllabus)**

3. State whether the following statements are True or False:
- (i) Quasi contract is not a contract.
  - (ii) An agreement in restraint of legal proceedings are void.
  - (iii) Amount paid under mistake of law can not be recovered back.
  - (iv) If consent is not free due to coercion, undue influence the agreement is void.
  - (v) Silence is fraud when silence is, in itself equivalent to speech.
  - (vi) When there is breach of contract, the aggrieved party has no remedy.
  - (vii) When a person who is in a position to dominate the will of other and uses that position to obtain unfair advantage over the other. This is a case of coercion. **(1 × 7 = 7 marks)**

**Answer:**

- (i) False
- (ii) True
- (iii) False
- (iv) False
- (v) True
- (vi) False
- (vii) False.

### **QUESTIONS AND ANSWERS OF DECEMBER 2018**

1. Answer all the questions:  
Choose the correct answer from the given four alternatives:
- (i) Right in rem implies:
    - (a) A right available against the whole world
    - (b) A right available against a particular individual
    - (c) A right available against the Government
    - (d) None of the above

- (iii) Communication of acceptance is not necessary
  - (a) by performance of conditions of the offer by offeree.
  - (b) by acceptance of consideration by the offeree.
  - (c) by acceptance of benefit/service by the offeree.
  - (d) All of the above
- (v) According to Indian Contract Act, a promise is
  - (a) a communication of intention to do something.
  - (b) a proposal which has been accepted.
  - (c) a gentleman's word to do something.
  - (d) a statement on oath.
- (vi) Contracts contingent upon the non-happening of the future uncertain event becomes void when such event:
  - (a) Happen
  - (b) Does not happen
  - (c) The event becomes impossible
  - (d) None of the above
- (vii) A telephonic acceptance is complete when the offer is
  - (a) spoken into the telephone.
  - (b) heard but not understood by the offeror.
  - (c) heard and understood by the offeror.
  - (d) received, heard and understood by some person in the offeror's house.
- (ix) What can a catalogue of books, listing price of each book and specifying the place where the listed books are available be termed as?
  - (a) An offer
  - (b) An obligation to sell book
  - (c) An invitation to offer
  - (d) A promise to make available the books at the listed
- (xi) The inadequacy of consideration may be taken into account by the court
  - (a) in determining the question whether the consent of the promisor was freely given.

- (b) always in all cases.
- (c) when the parties complain.
- (d) when the promisor has not performed his promise.
- (xiii) Where consideration is illegal or physically impossible, uncertain or ambiguous. It shall not be
  - (a) transferable by law.
  - (b) unenforceable by law.
  - (c) enforceable by law.
  - (d) None of the above
- (xiv) The principle of Estoppel cannot be applied against a minor since
  - (a) he has no sound mind.
  - (b) he has no privilege to cheat persons by making any representation.
  - (c) he may be induced by dishonest traders to declare in writing that he is a major at the time of entering into a contract.
  - (d) he has not attained the age of maturity.
- (xv) Lending money to a borrower, at high rate of interest, when the money market is tight renders the agreement of loan:
  - (a) Void
  - (b) Valid
  - (c) Voidable
  - (d) Illegal
- (xvi) Where by the contract, a promisor is to perform his promise without application by the promisee and no time for performance is specified, the engagement must be performed within a reasonable time. The question "What is a reasonable time" is in each particular case is
  - (a) a question of fact
  - (b) a question of law
  - (c) a question of general custom
  - (d) All of the above
- (xvii) Unlawful agreements comprise
  - (a) Illegal agreements
  - (b) Immoral agreements only
  - (c) Agreements opposed to public policy only
  - (d) All the agreements mentioned above

- (xxi) A and B agree that A shall pay ₹ 1000 for which B shall afterwards deliver to either rice or smuggled opium. In this case
- (a) the first agreement is void and the second voidable.
  - (b) the first is voidable and the second is void.
  - (c) the first is valid and the second is void.
  - (d) the first is void and the second is valid.
- (xxiii) A purchases B's business of selling neckties in Delhi. A can restrain B from
- (a) doing the business of selling neckties again in his life.
  - (b) doing any business in Delhi.
  - (c) doing the business of selling neckties in Delhi for a limited period.
  - (d) None of the above
- (xxiv) In case of contractual obligations where the promisor dies before performance.
- (a) the legal representatives of the promisor must perform the promise irrespective of the promise.
  - (b) the legal representatives of the promisor must perform the promise provided it is not one dependent on the personal qualifications of the promisor.
  - (c) the legal representatives need not perform the promise.
  - (d) the legal representative is not liable to pay damages for non-performance of the promise.
- (xxv) A borrows from B ₹ 500 to bet with C. Can B recover the amount of his loan?
- (a) Yes, the agreement between them is collateral to a wagering agreement and hence enforceable.
  - (b) No, the agreement is opposed to public policy.
  - (c) No, the agreement is a voidable agreement and can be avoided by A.
  - (d) No, the agreement falls under Section 23 and hence illegal.

(1 × 16 = 16 marks)

**Answer:**

- (i) (c)
- (iii) (a)
- (v) (b)
- (vi) (a)
- (vii) (c)
- (ix) (c)
- (xi) (a)
- (xiii) (c)
- (xv) (d)
- (xvii) (b)
- (xviii) (d)
- (xix) (d)
- (xxi) (c)
- (xxiii) (c)
- (xxiv) (d)
- (xxv) (d)

**3. State whether the following statement is True or *False*:**

- (ii) All kinds of obligations between the parties form part of the contract.
- (iii) A master asks his servant to sell his cycle to him at less than the market price. This contract can be avoided by the servant on grounds of mistake.
- (iv) An offer need not be made to an ascertained person.
- (vi) A price list hanging outside the shop is meant for an offer by the owner of the shop.
- (vii) A person is competent to contract if he is a graduate.
- (viii) In the absence of any express or implied directions from the offeror to the contrary, can an offer be accepted by a letter?
- (ix) A pawnee may under certain circumstances sell the goods pledged to him on giving the pawnor reasonable notice of the sale.



- (x) P renders some service to D at D' desire. After a month D promises to compensate P for the service rendered to him, it is a future consideration.
- (xii) A buys an article thinking that it is worth ₹ 100 when in fact it is worth only ₹ 50. There has been no misrepresentation on the part of the seller. The contract is unenforceable. **(1 × 9 = 9 marks)**

**Answer:**

- (ii) False
- (iii) False
- (iv) False
- (vi) False
- (vii) False
- (viii) True
- (ix) True
- (x) False
- (xii) False.

**QUESTIONS AND ANSWERS OF JUNE 2019**

1. Answer *all* questions:  
Choose the correct answer from the given four alternatives:
  - (i) A foreigner
    - (a) is competent to enter into contract if he fulfills the conditions of Section 11.
    - (b) is not competent to enter into contract.
    - (c) can enter into contract with permission of Central Govt.
    - (d) can enter into contract with the permission of court.
  - (iii) Cross offer does not constitute a contract because
    - (a) there is no acceptance.
    - (b) there is implied acceptance.
    - (c) crossing implies cancellation.
    - (d) it amounts to counter offer.

- (v) The communication of an acceptance is complete as against the acceptor
  - (a) when it is posted by him.
  - (b) when it is put in the course of transmission.
  - (c) when it comes to the knowledge of the proposer.
  - (d) None of the above
- (vi) A contractor had to supply the army charpoys in certain quantities by instalments. he failed to supply the requisite number and even after that breach the instalment of charpoys was received by army authorities. Meanwhile, the work orders were however cancelled. The orders cancelling the work order were
  - (a) valid
  - (b) void
  - (c) without authority
  - (d) contractor could claim damages
- (vii) In a Book depot a catalogue of book enlisting the price of each book and specifying the place where the particular book is available is
  - (a) an invitation to offer.
  - (b) an offer.
  - (c) an invitation to visit the book shop.
  - (d) None of the above
- (ix) A valid consideration includes,
  - (a) executed or executory consideration.
  - (b) past consideration.
  - (c) inadequate consideration.
  - (d) All of the above
- (xi) In India, a person who is stranger to the consideration
  - (a) can sue on the contract, if he is a party.
  - (b) cannot sue the contract.
  - (c) depends on the parties.
  - (d) depends on the circumstances.

- (xiii) M is minor, B, the borrower, approaches M for a loan on the basis of a mortgage of the house owned by B. Hence, M advances the money and B executed a mortgage in favour of M, a minor. In these circumstances
- (a) the mortgage is not enforceable by M, because he is a minor.
  - (b) the mortgage is enforceable but only when he attains majority.
  - (c) the mortgage is enforceable by M even though he is minor.
  - (d) None of the above
- (xiv) "Threatening to commit certain acts forbidden by Indian Penal Code" is associated with which one of the following?
- (a) Misrepresentation
  - (b) Fraud
  - (c) Coercion
  - (d) Unenforceable
- (xv) A contract to trade with an enemy is
- (a) an immoral agreement.
  - (b) a valid agreement.
  - (c) an agreement opposed to public policy.
  - (d) an enforceable agreement.
- (xvii) A, while filling up the insurance application form, states his age as 25 believing it to be true. His actual age was 27. The Life Insurance Corporation issued a policy in his favour charging a lower premium than what it should have charged if the actual age had been given. This is a case of
- (a) Fraud
  - (b) Misrepresentation
  - (c) Undue influence
  - (d) Mistake of fact
- (xix) R entered into a contract with L to marry her on a fixed date. However, before the marriage date, R went mad. With reference to the Indian Contract Act which is the valid response?
- (a) L can't marry till R dies.
  - (b) The executors of R can enforce the contract against L.
  - (c) The contract becomes void.
  - (d) All the statements are correct

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- (xxi) A makes a contract with B to buy his house for ₹ 50,000 if he is able to secure to bank loan for that amount. The contract is
- (a) void for vagueness.
  - (b) wagering contract.
  - (c) contingent contract.
  - (d) voidable contract.
- (xxii) Ordinary damages will be awarded in cases where
- (a) the loss naturally flows from the breach of contract.
  - (b) the loss is remotely connected with the breach of contract.
  - (c) the loss is unusual and arises out of special circumstances peculiar to the contract.
  - (d) None of the above
- (xxiii) Which of the following statement is true in connection with Quasi-contract?
- (a) It is imposed by law.
  - (b) A Quasi-contract is a revoking contract.
  - (c) Damages cannot be claimed for breach of Quasi-contractual right.
  - (d) It arises out of an agreement.
- (xxv) Each party to a contract is bound to perform his part of the obligation. After the parties have made due performance, the contract comes to an end. In such a case the contract is said to be discharged
- (a) by breach of contract
  - (b) by impossibility of performance.
  - (c) by agreement and novation.
  - (d) by performance of contract.

(1 × 16 = 16 marks)

**Answer:**

- (i) (a)
- (iii) (a)
- (v) (c)
- (vi) (b)
- (vii) (c)
- (ix) (d)

- (xi) (a)
- (xiii) (c)
- (xiv) (c)
- (xv) (c)
- (xvii) (b)
- (xix) (c)
- (xxi) (c)
- (xxii) (a)
- (xxiii) (a)
- (xxv) (d)

3. State whether the following statements are True or False:

- (i) According to Indian Law, 'Consideration' may be past, present or future which the promisor is already bound to deliver.
- (ii) Under Indian Law, 'acceptance' is revocable.
- (iii) In case of a 'Void Contract' there is no legal remedy for the parties to the contract. Even the court will not permit performance of the contract, even if the parties desire.
- (iv) Remaining silent with respect to the known defect is fraudulent.
- (v) A threatens to shoot B, if B does not agree to sell his property to A at a stated price. If B gives his consent on A's threat, it could be said that his consent has been obtained by 'Undue Influence'.
- (vi) An agreement with insufficiency of consideration is *void ab initio*.

**(1 × 6 = 6 marks)**

**Answer:**

- (i) False
- (ii) False
- (iii) True
- (iv) True
- (v) False
- (vi) False

**QUESTIONS AND ANSWERS OF DECEMBER 2019**

1. Choose the correct answer from the given four alternatives:
  - (i) A void contract
    - (a) is void from the very beginning.
    - (b) is valid in the beginning but becomes void later on.
    - (c) is enforceable at the option of one of the contracting parties only.
    - (d) None of the above
  - (ii) Acceptance takes place as against the proposer,
    - (a) when the letter of acceptance is posted by the acceptor.
    - (b) when the letter of acceptance is received by the proposer.
    - (c) when the offeree, writes the letter of acceptance, but doesn't post it.
    - (d) All of the above
  - (iii) Which of the following is an offer?
    - (a) The mere quotation of terms by trader
    - (b) The quotation of the lowest price in answer to enquiry
    - (c) Advertisement for sale or auction of goods
    - (d) Bids in an auction sale
  - (iv) Which one of the following has the correct sequence?
    - (a) Offer, acceptance, contract, consideration
    - (b) Offer, acceptance, consideration, contract
    - (c) Contract, acceptance, consideration, offer
    - (d) Offer, consideration, acceptance, contract
  - (v) The exceptions to the rule A stranger to a contract cannot sue are
    - (a) Beneficiaries in the case of trust.
    - (b) Family settlement.
    - (c) Assignment of contract.
    - (d) All of the above
  - (vi) In Indian Law consideration must have been done at the desire of the promisor, if it is done at the instance of a third party or without the desire of the promisor, it is

- (a) Consideration
  - (b) Not consideration
  - (c) Offer
  - (d) Promise
- (xi) Is a promise executed in favour of a minor good in law?
- (a) Yes
  - (b) No
  - (c) Not in normal cases
  - (d) Depends
- (xiii) 'A' threatened to commit suicide if his wife did not execute a sale deed in favour of his brother. The wife executed the sale deed. This transaction is
- (a) voidable due to under influence.
  - (b) voidable due to coercion.
  - (c) void being immoral.
  - (d) void being forbidden by law.
- (xiv) Which one of the following statements is correct?
- (a) Void agreements are always illegal.
  - (b) Illegal agreements are voidable.
  - (c) Illegal agreement can be ratified by the parties.
  - (d) Illegal agreements are always void.
- (xvi) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Owing to A's ignorance B is enabled to buy the estate at a low-price. The contract is
- (a) Valid
  - (b) Void
  - (c) Voidable at the option of A
  - (d) Invalid
- (xvii) A paid ₹500 to a Government servant to get him a contract for the canteen. The Government servant could not get the contract. Can A recover ₹500 paid by him to the Government servant?
- (a) Yes, the agreement between them is valid and enforceable.
  - (b) Yes, the agreement is not opposed to public policy.

- (c) No, the agreement is a voidable agreement and can be avoided by A.
- (d) No, the agreement is void.
- (xix) Which of the following statement is false in connection with the contingent contract?
- (a) The event must be collateral.
- (b) The event must be uncertain.
- (c) The event should not be mere will of the promisor.
- (d) None of the above
- (xx) Who is liable for necessities supplied to a minor?
- (a) The guardian of the minor
- (b) The minor
- (c) His property
- (d) None of the above
- (xxii) A contract stands discharged
- (a) by performance of the contract.
- (b) by breach of the contract.
- (c) by agreement and novation.
- (d) All of the above.
- (xxiv) Where the parties to a contact have agreed that a certain sum of money would be paid in case of breach of contract, the Court will ensure that
- (a) the exact amount mentioned in the contract is paid to the injured party.
- (b) an amount not exceeding the stipulated amount is awarded.
- (c) reasonable compensation not exceeding the amount stipulated is awarded.
- (d) a sum exceeding the amount stipulated is awarded.

**(1×15=15 marks)**

**Answer:**

- (i) (b)
- (iii) (a)
- (v) (d)
- (vii) (b)



- (viii) (d)
- (x) (b)
- (xi) (a)
- (xiii) (b)
- (xiv) (d)
- (xvi) (c)
- (xvii) (d)
- (xix) (d)
- (xx) (c)
- (xxii) (d)
- (xxiv) (c)

3. State whether the following statement is True or False:

- (i) Communication of offer is complete when the offerer writes the letter but does not post it.
- (iii) When the mode of acceptance is prescribed in the proposal then acceptance can be given in usual or reasonable mode.
- (v) Can the mere writing on bills of medical practitioners that interest at one per cent, per men-sum be charged, amounts to a contract?
- (vii) Where a person is in a position to dominate the will of another person and uses that position to obtain an unfair advantage over the other, it is called undue influence.
- (ix) Can a letter of acceptance to a Proposer, not correctly addressed, although posted, be said to have been "Put in a course of transmission" to him?
- (xi) Can there be an acceptance of an offer which has not come to the knowledge of the offeree? **(1×6=6 marks)**

**Answer:**

- (i) false
- (iii) false
- (v) true
- (vii) true
- (ix) false
- (xi) false

## SHORT NOTES

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**2009 - June [1]** (b) Write notes of the following :

- (ii) Persons disqualified from entering into a valid contract **(5 marks)**

**Answer :**

Capacity to contract means competence of persons to enter into a valid contract. The general rule is that all natural persons have full capacity to make binding contracts.

According to Section 11 of the Indian Contract Act, 1872, every person is competent to contract who has attained the age of majority according to the law and who is of sound mind and is not disqualified from contracting by any law for the time being in force. Thus, the following are persons who are incompetent to enter into a contract :

- (a) minors,  
 (b) lunatics, and  
 (c) person disqualified by law to which they are subject.
- (a) According to Indian Contract Act, no person is competent to enter into a contract who is not the age of majority. And, as per Indian Majority Act, 1875 a minor is a person who has not completed the age of 18 years. A minor's contract is *void-ab-initio* and it can not be ratified on attaining the age of majority.
- (b) According to Section 12 of the Contract Act, 1872, a person is said to be of unsound mind if at the time of contract he is incapable of understanding it and forming rational judgements as to its effect upon his interest. A person of unsound mind is a lunatic. A lunatic agreement is therefore, void. But for the necessities supplied to a lunatic or his family member, he will be personally liable.
- (c) Certain persons are disqualified from entering into a contract by law. They are :

|            |                      |  |
|------------|----------------------|--|
| <b>(i)</b> | <b>Alien enemies</b> | A person who is not an Indian citizen is known as an alien. An alien may be friend or a foreigner whose state is at peace with India. On the declaration of war between the country and India, he becomes as |
|------------|----------------------|--|

|       |   |   |
|-------|---|---|
|       |   | alien enemy. Thus, the contract entered into stand suspended and can not be performed during the course of war, being against public policy.  |
| (ii)  | <b>Foreign sovereigns and ambassadors</b> | Foreign sovereign and ambassador enjoy a special privilege and they cannot be sued in Indian Courts. They can enter into contracts through agents residing in India and their agents becomes personally responsible for the performance of the contracts.   |
| (iii) | <b>Professional persons</b>               | In England, barristers-at-law are prohibited by the etiquette of their profession from suing for their fees. But in India, there is no such disability and he has a right to act and plead and to sue for his fees.   |
| (iv)  | <b>Married women</b>                      | In India married women are competent to enter into contracts with respect to their separate properties provided they are major and of sound mind. They can not enter into contracts with respect to husbands properties but act as an agent of her husband. |
| (v)   | <b>Corporation</b>                        | A corporation, if properly incorporated, can enter into contracts within the limits of its charter or memorandum of association. Any contract beyond its memorandum is ultra-virus and void.  |

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|      |                  |   |
|------|------------------|---|
| (vi) | <b>Insolvent</b> | An adjudged insolvent (before an order of discharge) is competent to enter into contracts of certain type like he can incur debts, purchase certain property. But after the order of discharge, he is just like an ordinary citizen of India. |
|------|------------------|---|

**DISTINGUISH BETWEEN**

**2009 - June [2]** (a) Explain the difference between 'fraud' and 'misrepresentation' under the Indian Contract Act, 1872. **(5 marks)**

**Answer :**

| <b>Fraud</b>  | <b>Misrepresentation</b>  |
|---|---|
| 1. Fraud is deliberate or wilful. There is clear intention to deceive the other party.  | 1. It is an innocent wrong, without any intention to deceive  |
| 2. The person making the false statement does not believe it to be true.  | 2. The person making the statement believes it to be true or does not know that it is false.                      |
| 3. It is a civil wrong which entitles the aggrieved party to claim damages in addition to the right of rescinding the contract.                       | 3. It only gives a right to avoid the contract without any claim for damages.                                     |
| 4. In certain cases, it may lead to prosecution for an offence of cheating under the Indian Penal Code.   | 4. It is not a criminal act, and hence not punishable.  |
| 5. The contract is voidable, except fraud by silence, even though the party defrauded had the means of discovering the truth with ordinary diligence. | 5. The contract is not voidable if the aggrieved party had the means of discovering the truth with due diligence. |

**2009 - Dec [2]** Distinguish between the following :

- (i) 'Fraud' and 'innocent misrepresentation'.

**(5 marks)**

**Answer :**

**Please refer 2009 - June [2] (a) on page no. 86**

**2010 - June [2]** Distinguish between the following :

- (i) 'Void agreement' and 'illegal agreement'.

**(5 marks)**

**Answer :**

According to Indian Contract Act, 1872, an agreement which has no legal effect is void. An illegal contract too has no legal effect. But it can be said that all illegal agreements are void but all void agreements are not necessarily illegal for example some agreements are void because they are opposed to public policy or immoral though they may not be punishable under any law-in-force, However, the two differ from each other on following points :

- (a) An illegal agreement is always void in law but not necessarily void agreement are always illegal.
- (b) Parties to an illegal agreement cannot get any help from a Court of Law. The rule is in case of 'equal guilt, the position of the defendant is better than that of the plaintiff.'
- (c) Illegal agreement are *void ab-initio*. But sometimes valid contracts may subsequently become void.
- (d) Illegal agreement has the further effect that the other transactions which are collateral or incidental to it are also affected with illegality and are not enforceable at law but collateral transactions to void agreement may be enforced.

**2010 - Dec [2]** Distinguish between the following :

- (i) 'Coercion' and 'undue influence'.

**(5 marks)**

**Answer :**

| <b>Coercion</b>  | <b>Undue Influence</b>  |
|--|---|
| <b>(i)</b> In coercion the consent of the aggrieved party is obtained by committing or threatening to commit any act forbidden by Indian Penal Code. | <b>(i)</b> The consent of the aggrieved party is affected by dominating the position to obtain an unfair advantage. |

|   |  |
|---|--|
| (ii) It mainly involves the use of physical or violent force.   | (ii) It mainly involves moral force or mental pressure on the person.  |
| (iii) The burden of proof that coercion was used lies on the party whose consent was so caused.                                       | (iii) There is no need of proving the use of undue influence by the party whose consent was so caused.   |
| (iv) In case of recession of such a contract, any benefit derived by a party has to be restored under Section 64 of the Contract Act. | (iv) In case of recession of such a contract, the court has discretion to direct the aggrieved party for restoring the benefit, in whole or in part, as per Section 19-A of the Act. |
| (v) Coercion attracts criminal liability under the Indian Penal Code.   | (v) There is no criminal liability in case of undue influence.   |

**2011 - Dec [2]** Distinguish between the following :

- (ii) 'Void agreement' and 'illegal agreement'. **(5 marks)**  
 (iii) 'Offer' and 'an invitation to offer'. **(5 marks)**

**Answer:**

**(ii) Please refer 2010 - June [2] (i) on page no. 87**

**(iii) Distinction between 'Offer' and 'an invitation to offer'**

In the case of an 'offer' a person expresses his willingness to enter into a contract, whereas in the case of an 'invitation to offer' a person simply proposes certain terms and invites the other party to make an offer on those proposed terms. Such 'invitation to offer' is not an offer in the eyes of law and it does not become agreement by its acceptance. For example, an auctioneers request for bids (which are offered by the bidders), the display of goods in a shop window with prices marked upon them, or the display of priced goods in a self-service store or a shopkeepers catalogue of prices are 'invitations to an offer' and not 'offer'.

In case of an 'offer', the intention of the offerer is to enter into contract if terms and conditions contained in the 'offer' are absolutely acceptable to the acceptor, whereas, in the case of an 'invitation to offer', the person who invites offer would like to give himself one more chance to decide to enter into contract or not.

An 'offer' if acted upon results into a contract, whereas an 'invitation to offer', if acted upon only results in making an offer.

## DESCRIPTIVE QUESTIONS

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**2009 - June [3]** (b) Avdesh contracts to sell a piece of silk to Bupesh. Bupesh thinks it is Chinese silk. Avdesh knows that Bupesh thinks so, but Avdesh knows that it is English silk. Avdesh does not correct Bupesh's impression. Subsequently, Bupesh discovers that it is not Chinese silk. Can he repudiate the contract ? Discuss. **(5 marks)**

**Answer :**

No, Bhupesh cannot repudiate the contract. The Rule of 'Caveat Emptor' applies when the purchaser buys the goods.

No. A will not succeed. According to Section 16 of the Sale of Goods Act, 1930, the principle of 'Caveat emptor' applies when the purchaser buys the goods. It is not the sellers duty to give the buyer the goods which are fit for a suitable purpose of buyer, infact, the buyer must satisfy himself that they are fit for that purpose.

*In the given case, A himself has made the selection without depending upon the skills and judgement of the seller, he himself is responsible despite the fact that B remained silent. Therefore, A cannot avoid the contract.*

**2009 - Dec [3]** Attempt the following :

(i) What is *quantum meruit* ?

**(5 marks)**

**Answer :**

*Quantum Meruit* literally means "as much as earned" or reasonable remuneration. It is used where a person claims reasonable remuneration for the services rendered by him when there was no express promise to pay the

definite remuneration. Hence, the law implies reasonable compensation for the services rendered by a party if there are circumstances showing that they are to be paid for.

- The general rule is that where a party to a contract has not fully performed what the contract demands as a condition of payment, he cannot sue for that which he has done.
- But where one party who has performed part of his contract is prevented by the other from completing it, he may sue on *quantum meruit*, for the value of what he has done.
- The claim on a *quantum meruit* arises when one party abandons the contract, or accepts the work done by another under a void contract.
- The party in default may also sue on a *quantum meruit* for what he has done if the contract is divisible and the other party has had the benefit of the part which has been performed.
- However, if the contract is not divisible, the party at fault cannot claim the value of what he has done.

**2009 - Dec [4]** Attempt the following :

- (i) "Without consideration a contract is void". Discuss. Briefly state its exceptions. **(5 marks)**

**Answer :**

- Consideration is one of the essential elements of a valid contract.
- According to Section 2 (d) of the Indian Contract Act, 1872, when at the desire of the promisor, the promisee or any other person does or abstains from doing, has done or abstained from doing or promises to do or abstain from doing something, such act or abstinence is called a consideration for the promise.
- According to Pollock, consideration is the price for which the promise of the other is brought.
- A contract without consideration is generally void.
- However, Section 25 of the Act, lays down certain exceptions which make a promise without consideration valid and binding.



These are :

- (i) if it is made in writing and registered between the parties who are in near relation to each other out of natural love and affection, or
- (ii) if it is made to compensate a person who has already done something voluntarily, or
- (iii) if it is made in writing and signed by person to pay a time barred debt.
- (iv) if it is for agency - relation.
- (v) if it is in a nature of gift.

**2010 - June [4]** Attempt of the following :

- (ii) What is the concept of *quantum meruit*?

**(5 marks)**

**Answer :**

- It means as much as is earned or in proportion to the work done. This remedy is available only where part performance of contract is done and subsequently there is a breach of contract or the contract becomes void.
- This remedy may be availed either without claiming damages i.e. claiming reasonable compensation only for the work done or in addition to claiming damages i.e. claiming reasonable compensation for part performance and damages for unperformed part.

**In the following cases, the aggrieved party may file a suit upon quantum meruit:**

- (i) Where the work has been done according to the contract but has been discharged by the default of the defendant.
- (ii) Where work has been done in pursuance of a contract which is discovered void or becomes void, provided the contract is divisible.
- (iii) Where any person enjoys non-gratuitous act when there was no express agreement, the other party must compensate the former or restore the benefit.
- (iv) A party who is guilty of breach may also sue on quantum merit provided the contract is divisible and the other party has enjoyed the benefit although he had an option of declining it.

3.90

Scanner CMA Foundation Paper-3A (2016 Syllabus)

**2010 - Dec [1]** (c) Define the term 'consideration' as per the Indian Contract Act, 1872. Can a stranger to consideration sue upon the contract?

**(5 marks)**

**Answer :**

- Consideration is one of the essential elements of a valid contract. Consideration may be an act of abstinence or promise.
- It need not be adequate but must have some value in a contract. It may move at the desire of the promisor and may move from the promisee or any other person.
- Consideration, as per Section 2 (d) of the Indian Contract Act, 1872, as when at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing, promises to do or to abstain from doing something, such act or abstinence or promise is called a consideration for the promise.
- This means even a stranger to the consideration can sue on a contract, provided he is a party to the contract.
- This generally, known as 'doctrine of constructive consideration.'

*In a leading case of Chinnaya Vs. Ramaya, a lady by a gift deed made certain property to her daughter directing her to pay an annuity to the donor's brother as had been done by herself before she gifted the property. Her daughter agreed in writing to pay the said annuity. Later, the donee (daughter) refused to fulfill her promise saying that no consideration had moved from him. The court held that the uncle could sue even though no consideration moved from him. The consideration from her mother was sufficient consideration.*

**2011 - June [3]** Attempt the following :

(iv) What is *quantum meruit* ?

**(5 marks)**

**Answer :**

**Please refer 2010 June [4] (ii) on page no. 91**

**2011 - Dec [3]** Attempt the following :

(iv) State the essential elements of a valid contract.

**(5 marks)**

**Answer:**

**Essential elements of a valid contract**

Section 10 of the Indian Contract Act, 1872 provides that “all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void”.

The essential elements of a valid contract are:

- (i) An offer or proposal by one party and acceptance of that offer by another party resulting in an agreement *consensus-ad-idem*.
- (ii) An intention to create legal relations or an intent to have legal consequences.
- (iii) The agreement is supported by a lawful consideration.
- (iv) The parties to the contract are legally capable of contracting.
- (v) Genuine consent between the parties.
- (vi) The object and consideration of the contract is legal and is not opposed to public policy.
- (vii) The terms of the contract are certain.
- (viii) The agreements is capable of being performed i.e., it is not impossible of being performed.

Therefore, to form a valid contract there must be (1) an agreement, (2) based on the genuine consent of the parties, (3) supported by a lawful consideration, (4) made for a lawful object, and (5) between the competent parties.

**2016 - Dec [5]** Define the following:

(a) Void-Contract

**(3 marks)**

**Answer:**

**Void contract:**

A contract which ceases to be unenforceable by law becomes void when it ceases to be enforceable by law. Void contract is initially a perfectly valid contract but subsequent development turns it into a void contract.

The following agreements have been expressly declared to be void by the Indian Contract Act:

- (i) Agreement by a minor or a person of unsound mind. [Section (11) and Section (12)]

- (ii) Agreement of which the consideration or object is unlawful. [Section (23)]
- (iii) Agreement made under a bilateral mistake of fact material to the agreement. [Section (20)]
- (iv) Agreement of which the consideration or object is unlawful in part and the illegal part cannot be separated from the legal part. [Section (24)]
- (v) Agreement made without consideration. [Section (25)]
- (vi) Agreement in restraint of marriage. [Section (26)] - Every agreement in restraint of the marriage of any person, other than a minor, is void.
- (vii) Agreement in restraint of trade. [Section (27)]- Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. The exception is an agreement not to carry on business of which goodwill is sold.

**2016 - Dec [6]** Answer the following question:

- (a) Explain what are the exceptions to general rule “No Consideration, No Contract”. **(10 marks)**

**Answer:**

**NO CONSIDERATION – NO CONTRACT: [Section 25]**

The general rule is *ex-nudo pacto non oritur action* i.e. an agreement made without consideration is void. For example if A promises to pay B ₹ 1,000 without any obligation from B. This is a void agreement for want of consideration. However, the Act itself provides exceptions to this rule in Section 25 itself.

**As per Section 25, an agreement made without consideration is not void in the following circumstances:**

|           |  |  |
|-----------|--|--|
| <b>1.</b> | <b>Promise made on account of natural love and affection</b> | An agreement made without consideration is valid if it is in writing and registered and is made on account of natural love and affection between parties standing in a near relation to each other. Thus, an agreement without consideration will be valid provided.<br>(a) It is expressed in writing.<br>(b) It is registered under the law. |
|-----------|--|--|

|    |   |   |
|----|---|---|
|    |   | <p>(c) It is made on account of natural love and affection.</p> <p>(d) It is between parties standing in near relation to each other.</p>   |
| 2. | <b>Promise to compensate for voluntary services</b> | <p>Voluntary service means service done without any request. An agreement made without consideration is valid if it is a promise to compensate a person who has already voluntarily done something for the promisor. To apply this rule the following essentials must exist.</p> <p>(a) The service should have been done voluntarily.</p> <p>(b) The service should have been done for the promisor.</p> <p>(c) The promisor must have been in existence at the time when the service was done.</p> <p>(d) The intention of promisor must have been to compensate the promisee.</p> <p>(e) The service rendered must also be legal.</p> <p><b>Example:</b> A finds B's purse and gives it to him. B promises to give A ₹ 50. This is a contract.</p> |
| 3. | <b>Promise to pay time-barred debt</b>              | <p>A promise by a debtor to pay a time-barred debt is also enforceable. But the promise must be in writing. It must be signed by the promisor or his authorised agent. The promise may be to pay the whole or part of the debt.</p> <p><b>Example:</b> A owes B ₹ 1,000 but the debt is barred by the Limitation Act. A signs a written promise to pay ₹ 500 on account of the debt. The promise will be valid and binding without any fresh consideration.</p>   |

|    |                              |  |
|----|------------------------------|--|
| 4. | <b>Creation of Agency</b>    | According to Section 185 of the Contract Act, no consideration is necessary to create an agency. Thus when a person is appointed as an agent, his appointment is valid even if there is no consideration.  |
| 5. | <b>Completed Gifts</b>       | Gifts once made cannot be recovered on the ground of absence of consideration. Absence of consideration will not affect the validity of any gift already made. Thus if a person gives certain properties as gift to another according to the provisions of the Transfer of Property Act, he cannot subsequently demand the property back on the ground there was no consideration.<br><b>Example:</b> A gave a watch as a gift to B on his birthday. Later on A cannot demand the watch back on the ground there was no consideration. |
| 6. | <b>Contract of guarantee</b> | Under section 127, no consideration is needed for a contract of guarantee. In other words, contract of guarantee needs no consideration.   |
| 7. | <b>Remission</b>             | Remission means lesser performance of the contract than what is actually to be performed.  |

**2017 - June [4]** Answer the following questions:

- (i) Under what conditions promise to compensate for voluntary services is valid?
- (ii) State the Rules regarding contingent contract.
- (iii) List out remedies for breach of contract. **(7 marks each)**

**Answer:**

- (i) The general rule is *ex-nudopacto non oritur action* i.e. an agreement made without consideration is void. For example if A promises to pay B ₹ 1000 without any obligation from B. This is a void agreement for want of consideration. However, the Act itself provides exceptions to this rule in Section 25 itself. As per Section 25, an agreement made without consideration is not void in the following circumstances:

1. Promise made on account of natural love and affection. **[Section 25(1)]**
2. Promise to compensate for voluntary services. **[Section 25(2)]**
3. Promise made to pay a time barred debt. **[Section 25(3)]**
4. Completed Gifts [Explanation 1 to **Section 25**]
5. Creation of agency **[Section 185]**
6. Contract of Guarantee **[Section 127]**
7. Remission **[Section 63]**

|           |   |  |
|-----------|---|--|
| <b>1.</b> | <b>Promise made out of natural love and affection</b> | <p>An agreement made without consideration is valid if it is in writing and registered and is made on account of natural love and affection between parties standing in a near relation to each other. Thus, an agreement without consideration will be valid provided.</p> <ol style="list-style-type: none"> <li>a. It is expressed in writing.</li> <li>b. It is registered under the law.</li> <li>c. It is made on account of natural love and affection.</li> <li>d. It is between parties standing in near relation to each other.</li> </ol> |
| <b>2.</b> | <b>Promise to compensate for voluntary services</b>   | <p>Voluntary service means service done without any request. An agreement made without consideration is valid if it is a promise to compensate a person who has already voluntarily done something for the promisor. To apply this rule the following essentials must exist.</p> <ol style="list-style-type: none"> <li>a. The service should have been done voluntarily.</li> <li>b. The service should have been done for the promisor.</li> <li>c. The promisor must have been in existence at the time when the service was done.</li> </ol>     |

|    |  |  |
|----|--|--|
|    |  | d. The intention of promisor must have been to compensate the promisee.<br>e. The service rendered must also be legal.   |
| 3. | <b>Promise to pay time-barred debt</b> | A promise by a debtor to pay a time-barred debt is also enforceable. But the promise must be in writing. It must be signed by the promisor or his authorised agent. The promise may be to pay the whole or part of the debt.   |
| 4. | <b>Creation of Agency</b>              | According to Section 185 of the Contract Act, no consideration is necessary to create an agency. Thus when a person is appointed as an agent, his appointment is valid even if there is no consideration.  |
| 5. | <b>Completed Gifts</b>                 | Gifts once made cannot be recovered on the ground of absence of consideration. Absence of consideration will not affect the validity of any gift already made. Thus if a person gives certain properties as gift to another according to the provisions of the Transfer of Property Act, he cannot subsequently demand the property back on the ground there was no consideration. |
| 6. | <b>Contract of guarantee</b>           | Under Section 127, no consideration is needed for a contract of guarantee. In other words, contract of guarantee needs no consideration.   |
| 7. | <b>Remission</b>                       | Remission means lesser performance of the contract than what is actually to be performed.  |

(ii) **Rules regarding contingent contract:**

Rules regarding contingent contracts are contained in **Section 32 to 36 of the Indian Contract Act.**



They are as follows:

1. Enforcement of contracts contingent on an event happening **[Section 32]**
2. Enforcement of contracts contingent on an event not happening **[Section 33]**
3. When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person **[Section 34]**
4. When contracts become void which are contingent on happening of specified event within fixed time **[Section 35]**
5. Agreements contingent on impossible events void **[Section 36]**

**(iii) Remedies for Breach of Contract :**

|    |  |  |
|----|--|--|
| 1. | <b>Suit for Rescission of the contract</b> | Rescission means the cancellation of a contract. When there is a breach of contract by one party, the other party may sue to treat the contract as rescinded. When the court grants rescission, the aggrieved party is free from all his obligations under the contract. He becomes entitled to compensation for any damage which he suffered                                    |
| 2. | <b>Suit for damages</b>                    | Remedy by way of damages is the most common remedy available to the injured party. When a contract is breached, the injured party is entitled to file a suit for damages. Damages are a monetary compensation allowed to the injured party by the court for the loss or injury suffered by him. The fundamental principle underlying damages is not punishment but compensation. |
| 3. | <b>Suit upon Quantum meruit</b>            | Quantum meruit means as much as is merited or as much as earned. In other words, it means payment in proportion to the amount of work done. A right to sue on a quantum meruit arises where a contract partly performed by one party has become discharged by the breach of the other party. The claim on quantum meruit arises in the following cases.                          |

|    |  |  |
|----|--|--|
|    |  | <p>(a) Where the contract is discovered to be void.</p> <p>(b) When something has been done without any intention to do so gratuitously.</p> <p>(c) Where one party refuses to perform the contract.</p>   |
| 4. | <b>Suit for specific performance of the contract</b> | <p>In certain special cases of breach of contract, damages are not an adequate remedy. The court may, in such cases, order specific performance of the contract. The defaulting party will be forced to perform the act promised under the contract.</p> <p>(a) Where compensation in money is not an adequate relief.</p> <p>(b) Where there is no standard for ascertaining the actual damage caused by the nonperformance.</p> <p>(c) Where compensation in money cannot be obtained.</p> |
| 5. | <b>Suit for Injunction</b>                           | <p>Injunction is an order of the court restraining a person from doing a particular act. The court, by issuing injunction restrains a person from doing what he has promised not to do. Injunction may be temporary or permanent. It is a preventive relief granted at the discretion of the court.</p>  |

**2017 - Dec [4]** Answer the following questions:

- (i) General rule is *ex-nudopacto* non oritur action i.e. an agreement made without consideration is void but there some exception to “no consideration. No contract”, state such exceptions.
- (ii) What are the exceptions to the Rule that a stranger to a contract can not sue?
- (iii) What are the features of a Quasi contract? **(7 marks each)**

**Answer:**

**(i) No Consideration – No Contract: [Section 25]**

The general rule is *ex-nudopacto* non oritur action i.e. an agreement made without consideration is void. **For example**, if A promises to pay B ₹ 1,000 without any obligation from B. This is a void agreement for want of consideration. However, the Act itself provides exceptions to this rule in **Section 25** itself. As per **Section 25**, an agreement made without consideration is not void in the following circumstances:

1. Promise made on account of natural love and affection. **[Section 25(1)]**
2. Promise to compensate for voluntary services. **[Section 25(2)]**
3. Promise made to pay a time barred debt. **[Section 25(3)]**
4. Completed Gifts **[Explanation 1 to Section 25]**
5. Creation of Agency **[Section 185]**
6. Contract of Guarantee **[Section 127]**
7. Remission **[Section 63]**

**1. Promise made out of natural love and affection:**

An agreement made without consideration is valid if it is in writing and registered and is made on account of natural love and affection between parties standing in a near relation to each other. Thus, an agreement without consideration will be valid provided.

- (a) It is expressed in writing.
- (b) It is registered under the law.
- (c) It is made on account of natural love and affection.
- (d) It is between parties standing in near relation to each other.

**2. Promise to compensate for voluntary services:**

Voluntary service means service done without any request. An agreement made without consideration is valid if it is a promise to compensate a person who has already voluntarily done something for the promisor. To apply this rule the following essentials must exist.

- (a) The service should have been done voluntarily.
- (b) The service should have been done for the promisor.

- (c) The promisor must have been in existence at the time when the service was done.
- (d) The intention of promisor must have been to compensate the promisee.
- (e) The service rendered must also be legal.

**Example:**

A finds B's purse and gives it to him. B promises to give A ₹ 50. This is a contract.

**3. Promise to pay time-barred debt:**

A promise by a debtor to pay a time-barred debt is also enforceable. But the promise must be in writing. It must be signed by the Promisor or his authorised Agent. The promise may be to pay the whole or part of the debt.

**Example:**

A owes B ₹ 1,000 but the debt is barred by the Limitation Act. A signs a written promise to pay ₹ 500 on account of the debt. The promise will be valid and binding without any fresh consideration.

**4. Creation of Agency:**

According to Section 185 of the Contract Act, no consideration is necessary to create an agency. Thus, when a person is appointed as an agent, his appointment is valid even if there is no consideration.

**5. Completed Gifts:**

Gifts once made cannot be recovered on the ground of absence of consideration. Absence of consideration will not affect the validity of any gift already made. Thus, if a person gives certain properties as gift to another according to the provisions of the Transfer of Property Act, he cannot subsequently demand the property back on the ground there was no consideration.

**Example:**

A gave a watch as a gift to B on his birthday. Later on A cannot demand the watch back on the ground there was no consideration.

**6. Contract of guarantee:**

Under Section 127, no consideration is needed for a contract of guarantee. In other words, contract of guarantee needs no consideration.

**7. Remission:**

Remission means lesser performance of the contract than what is actually to be performed.

**(ii) Exceptions:**

**The following are the exceptions to the rule that a stranger to a contract cannot sue:**

1. Beneficiary of a trust.
2. Provision in marriage settlement.
3. Provision for maintenance or marriage expenses of female members under a family arrangement.
4. Assignee of a contract.
5. Acknowledgment of liability.
6. Agency contract.

**1. Beneficiary of a trust:**

A trust is created for the benefit of a beneficiary. Hence, the beneficiary can enforce the provisions of the trust even though he is a stranger to the contract.

**2. Provision in marriage settlement:**

A stranger to the contract can sue on the contract where a provision is made for him in marriage settlement.

**3. Provision for maintenance or marriage expenses of female members under a family arrangement:**

In case a provision is made for the marriage or maintenance of a female member of the family on the partition of a Hindu Undivided Family, the female member can enforce the promise though she may be a stranger to a contract.

**4. Assignee of a contract:**

The benefits of a contract may be assigned. The assignee of a contract can enforce the benefits of a contract though he is not a party to it.

**Example:**

'A' assigns his insurance policy in favour of his wife. The wife can enforce it although she is not a party to it.

**5. Acknowledgment of liability:**

Where the promisor either by his conduct or acknowledgment or by part payment or by estoppel creates privity of contract between himself and the stranger, the stranger can sue.

**Example:**

A pays B ₹ 500 to be given to C, B acknowledges to C that he holds that amount for him. C can recover the amount from B.

**6. Agency contract:**

Contracts which are entered into by the agent on behalf of the principal can be enforced by the principal even though he is not a party to the contract.

**(iii) Features of a Quasi Contract:**

The salient features of a quasi contract are as under:

1. It is imposed by law and does not arise by agreement.
2. The duty of a party and not the promise of any party is the basis of such contract.
3. The right under it is always a right to money and though not always to a liquidated sum of money.
4. The right is available against specific persons and not the whole world.
5. A suit for breach may be filed in the same way as in case of a complete contract.

**2018 - June [4]** Answer any *third* of the following questions:

- (i) Explain the 'undue influence'.
  - (ii) What are the benefits of non gratuitous act?
  - (iii) Under what circumstances contract be discharged by operation of law?
- (7 × 3 = 21 marks)**

**Answer:**

- (i) A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. 1[16. 'Undue

influence' defined.— (1) A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the "other." In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

- (a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or
- (b) where 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. Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall be upon the person in a position to dominate the will of the other.

- (ii) Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such another person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

A bare perusal of the above referred Section would show that three conditions need to be fulfilled before benefit of this provision can be invoked by a person. The first condition is that the claimant should either lawfully do something for another person or deliver something to him. The second condition is that while doing or delivering something, the claimant must not be acting gratuitously and thirdly, the person for whom something is done or to whom something is delivered must enjoy the thing done for or delivered to him as the case may be.

- (iii) Contract is discharged when the agreement is terminated. The most desirable case is when a contract terminates because it has been completely performed with all its terms carried out. A contract may be terminated for other reasons, such as a party's breach or default.

The various modes by which a contract can be discharged are by performance, by impossibility, by operation of law, by agreement, by bar of limitation and by breach.

Where the supervening circumstances have so changed by the time of performance of the terms of a contract, by which the parties are compelled to perform the promise under conditions which have been changed, would require them to do something alternatively, which they had never agreed to do otherwise. Such a performance is called frustration of contract. This doctrine arises from the coming into existence of facts not within the contemplation of the parties but beyond the control of **parties** .

Firstly, a contract is discharged when its performance becomes impossible on account of a change of statutory law of the land. Parties generally contract on the basis of the law existing at the time of the contract. Secondly, the commercial frustration of adventure by delay means the happening of some unforeseen delay without the fault of either party to a contract. Contract is discharged by frustration. Thirdly, a contract is discharged by frustration if a specific thing that is essential to the performance of the contract is destroyed. Finally, non-existence of a state of things that form the basis of the contract, frustrates the contract itself. Death of the party to contract is like non-existence or non-occurrence of the event. Interference by the government may frustrate the contract.

**2018 - Dec [4]** Answer the following questions:

- (ii) Define a Contract. List the essential constituents of a valid Contract. **(2+ 5 = 7 marks)**
- (iii) What is an invitation to offer? **(7 marks)**
- (iv) State whether Void Agreement and Void Contract are same. **(7 marks)**

**Answer:**

**(ii) Definition of Contract:**

Section 2(h) of the Act defines the term contract as “an agreement between two or more parties enforceable by law”.



Pollock defines contract as “Every agreement and promise enforceable at law is a contract”

Another definition of Contract given by Salmond is “contract is an agreement creating and defining obligations between the parties.”

- (iii) In the case of invitation to offer the person sending out invitation does not make an offer but only invites the other parties to make an offer. An advertisement for sale of goods by auction, quotations, catalogues of prices or display of goods at show room with price tag etc is invitation of offer rather than offer.

The main difference between an offer and an invitation to offer is that in the case of former there should be expression of willingness to do or to abstain from doing with a view to obtaining the assent of the other party, while in the later one, the party without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, he only invites the other party to make an offer on those terms. The person who responds to the invitation to offer makes the offer which may or may not be accepted by the person inviting the offer. Invitation to offer also occurs for instance when tenders are invited, Advertisement for tender is merely an invitation to offer. The tender constitutes the offer which can be accepted or rejected. Simply putting goods up for auction, catalogue of goods, a prospectus of a company, invitation for jobs, invitation for public subscription etc are merely invitation to treat and not an offer.

- (iv) **Void agreement:** An agreement not enforceable by law is said to be a void agreement. A void agreement does not create any legal rights or obligation, hence is null and *void ab initio*.

**Void contract:** A contract which ceases to be unenforceable by law becomes void when it ceases to be enforceable by law. Void contract is initially a perfectly valid contract but subsequent development turns it into a void contract.

**The following agreements have been expressly declared to be void by the Indian Contract Act:**

- (i) Agreement by a minor or a person of unsound mind. **[Sections 11 and 12]**
- (ii) Agreement of which the consideration or object is unlawful. **[Section 23]**
- (iii) Agreement made under a bilateral mistake of fact material to the agreement. **[Section 20]**
- (iv) Agreement of which the consideration or object is unlawful in part and the illegal part cannot be separated from the legal part. **[Section 24]**
- (v) Agreement made without consideration. **[Section 25]**
- (vi) Agreement in restraint of marriage. **[Section 26]** - Every agreement in restraint of the marriage of any person, other than a minor, is void.
- (vii) Agreement in restraint of trade. **[Section 27]**- Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. The exception is an agreement not to carry on business of which goodwill is sold.
- (viii) Agreement in restraint of legal proceedings. **[Section 28]**- Every agreement —
  - (a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or
  - (b) Which extinguishes the rights of any party thereto, or discharges any party thereto from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent.
- (ix) Agreements the meaning of which is uncertain. **[Section 29]** - Agreements, the meaning of which is not certain, or capable of being made certain, are void.

**2019 - June [4]** Answer the following questions:

- (i) Mention five ways of 'Discharging a Contract by Agreement' with a brief description of each. **(7 marks)**
- (ii) Define Consideration. What are the legal rules regarding a valid consideration? **(2 + 5 = 7 marks)**
- (iii) Discuss the nature of minor's agreement and its legal effects. **(7 marks)**

**Answer:**

**(i) Discharge by agreement:**

The parties may agree to terminate the existence of the contract by any of the following ways:

- (a) Novation (Sec. 62)
- (b) Alteration (Sec. 62)
- (c) Rescission (Sec. 62)
- (d) Remission (Sec. 63)
- (e) Waiver (Sec. 63)

**(a) Novation:**

Substitution of a new contract in place of the existing contract is known as "Novation of Contract". It discharges the original contract. The new contract may be between the same parties or between different parties. Novation can take place only with the consent of all the parties.

**Example:** A owes money to B under a contract. It is agreed between A, B and C that B should accept C as his debtor, instead of A. The old debt of A and B is at an end and a new debt from C to B has been contracted. There is novation involving change of parties.

**(b) Alteration:**

Alteration means change in one or more of the terms of the contract. In case of novation there may be a change of the parties, while in the case of alteration, the parties remain the same. But there is a change in the terms of the contract.

**(c) Rescission:**

Rescission means “cancellation”. All or some of the terms of a contract may be cancelled. Rescission results in the discharge of the contract.

**(d) Remission:**

Remission means acceptance of a lesser performance than what is actually due under the contract. There is no need of any consideration for remission.

**Example:** A has borrowed ₹ 500 from B. A agrees to accept ₹ 250 from B in satisfaction of the whole debt. The whole debt is discharged.

**(e) Waiver:**

Waiver means giving up or foregoing certain rights. When a party agrees to give up its rights, the contract is discharged.

**Example:** A promises to paint a picture of B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

- (ii)** Sec.2(d) defines consideration as, ‘When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.’

An agreement without consideration is not enforceable and therefore is void. The reason why law enforces only those promises which are made for consideration is that gratuitous or voluntary promises are often made rashly and without due deliberation. To prevent the parties seeking legal recourse for dispute arising due to non fulfillment of such rash contractual obligations which lack consideration, it is essential to put consideration as one of the essential elements in order to be construed as a binding contract.

**Legal Rules Regarding Consideration:****1. Consideration must move at the desire of the promisor:**

It must move at the desire of the promisor. Any act or abstinence at the desire of third party is not consideration.

**Example:** X agrees to sell his horse to Y for ₹ 50,000. Here consideration for X selling horse to Y is consideration of ₹ 50,000 from Y and consideration for Y paying ₹ 50,000 to X, is X selling his horse. Here considerations had come at the desire of promisor. X is a promisor for Y and similarly Y is a promisor for X.

**2. Consideration may move from the promisee or any other person:**

Consideration may be furnished even by a stranger under Indian Law. Consideration can be from any direction, even a stranger to contract can offer consideration. Under English Law consideration must move from promisee and no one else.

**3. Consideration must be something of value:**

One of the important thing to note about consideration is that consideration need not be adequate. So long as the consent of the parties is free inadequacy of consideration is immaterial.

However inadequacy of consideration may be taken into account by the courts in determining the question whether the consent of the parties is free or not.

**4. It may be an act, abstinence or forbearance or a return promise:**

Promise to not to smoke is a negative act (abstinence).

Promise to not to refer the matter to court (abstinence).

Promise to perform at the wedding anniversary or birthday party (promise to do).

**5. It may be past, present or future which the promisor is already not bound to do:**

According to Indian Law Consideration may be past, present or future. But under English Law Consideration may be present or future. Past consideration is no consideration according to English Law.

**6. It must not be unlawful:**

**The consideration or object of an agreement is lawful, unless:**

- It is forbidden by law;
- or is of such a nature that, if permitted, it would defeat the provisions of any law;

- or is fraudulent;
- or involves or implies injury to the person or property of another;
- or the Court regards it as immoral, or opposed to public policy.

(iii) **MINOR:**

As per Section 3 of the Indian Majority Act of 1875, every person in India is a minor if he has not attained the age of 18 years of age. However in case of a minor of whose person or property or both a guardian has been appointed under the Guardian and Wards Act, 1890 or whose property is under the superintendence of any court of wards before he attains 18 years of age is 21 years.

**The Position of Minor's agreement and effect thereof is as under:**

1. An agreement with a minor is *void ab-initio*.
2. The law of estoppels does not apply against a minor. It means a minor can always his plead his minority despite earlier misrepresenting to be a major. In other words he cannot be held liable on an agreement on the ground that since earlier he had asserted that he had attained majority.
3. Doctrine of Restitution does not apply against a minor and no relief can be granted.
4. No Ratification on Attaining Majority. Ratification means approval or confirmation. A minor cannot confirm an agreement made by him during minority on attaining majority. If he wants to ratify the agreement, a fresh agreement and fresh consideration for the new agreement is required.
5. **Contract beneficial to Minor:** A minor is entitled to enforce a contract which is of some benefit to him. Minority is a personal privilege and a minor can take advantage of it and bind other parties.
6. **Minor as an agent:** A minor can be appointed an agent, but he is not personally liable for any of his acts.
7. **Minor's liability for necessities:** If somebody has supplied a minor or his dependents with necessities, minor's property is liable but a minor cannot be held personally liable.

8. A minor cannot be adjudged insolvent as he is incapable of entering into a contract.
9. Where a minor and an adult jointly enter into an agreement with another person the minor is not liable and the contract can be enforced against the major person.

**2019 - Dec [4]** Answer the following questions:

- (i) What is 'Fraud'? What are the acts under Section 17 of the Indian Contract Act that amounts to 'Fraud'? **(7 marks)**
- (iii) (a) Mention the effects of 'Undue Influence' as per the provisions of Indian Contract Act. **(4 marks)**  
(b) Who are declared as incompetent to make contracts under Indian Contract Act? **(3 marks)**

**Answer:**

- (i) **Section 17 in The Indian Contract Act, 1872** 'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:—  
—'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:
  1. the suggestion, as a fact, of that which is not true, by one who does not believe it to 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 the law specially declares to be fraudulent. **Explanation** — Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence, is, in itself, equivalent to speech.

- (iii) (a) Influence is said to be “undue” when a person, who is in the dominant position, uses that position to attain unfair benefit for himself at the cost of the person relying upon his authority or assistance. **Section 16(1)** of the Contracts Act defines undue influence –
1. A contract is said to be induced by “undue influence” where the relations subsisting between the parties is such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. This definition states that when one of the parties of the contract is dominated over by the other, and does a particular thing under their influence, that influence is said to be undue influence.
  2. In particular and without prejudice to the generality of the force going principle, a person is deemed to be in a position to dominate the will of another –
    - (a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or
    - (b) where 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.
  3. Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

The effect of undue influence is that such a contract is treated as voidable in the eyes of law. Thus can be declared void at the option of the party whose consent was not free and was obtained using the fiduciary position as stated above.
- (b) **Section 11 of The Indian Contract Act, 1872** states that every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject. From **Section 11** of the act, it becomes clear that



every person is competent to contract who is major, and who is of sound mind and is not disqualified by law, if we examine the **section 11**, so we can see that only three types of persons are not competent to contract i.e. minors; Persons of unsound mind  
Persons Disqualified from contracting by any law.

## PRACTICAL QUESTIONS

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**2009 - June [4]** (a) Amrit's wife Barkha paid ₹ 5,000 to Chandan to be given as a bribe to a jailor for procuring the release of her husband from jail. The jailor failed to procure the release. Can Barkha recover the amount? Give reasons. **(5 marks)**

**Answer :**

No. Barkha cannot recover the amount as the agreement is void being to public policy.

No. The agreement is not enforceable at law. As per Section 23 of the Indian Contract Act, 1872 an agreement of which the consideration is unlawful or against the public policy is void.

*In the above case, an agreement to procure marriage for reward is void as it is opposed to public policy.*

**2010 - Dec [4]** Attempt the following :

- (i) Raman purchases a pastry from Standard Pastry Shop. It contained a piece of stone which broke one of Raman's teeth. What remedy has Raman against the shop-keeper? Give reasons. **(5 marks)**

**Answer :**

Raman can sue for damages against the pastry shop. According to Section 16 of the Sale of Goods Act, 1930, there is an implied condition as to wholesomeness. This means the goods supplied must not only as per description but they must also be wholesome or sound.

*In the given case, Raman purchased a pastry from the shop which contained a stone resulting in damage of his tooth; amounts to breach of implied condition on the part of the seller and must be held liable.*

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**2011 - June [1] {C}** (c) Mohan, a singer agrees to sing at Twinkle's theatre for a certain period. He further agrees that during the prescribed period, he will not sing at any other theatre. Afterwards, Mohan makes a contract with Sohan to sing at his theatre during that period and refuses to sing at Twinkle's theatre. What remedies Twinkle has against Mohan? Give reasons. **(5 marks)**

**Answer :**

- Twinkle can file a suit against Mohan claiming injunction from the court.
- That is, an order restraining a person from doing a particular act what he promised not to do.
- The court in its discretion enforce negative term of the contract. As decided in case of **Leemley V. Wagner**, specific relief cannot be granted to plaintiff but wrongful commission can be prevented.

**2011 - June [4]** Attempt the following :

- (ii) Sandeep is a jeweller. He deals in artificial jewellery. Sandeep sells his business to Kuldeep and also charges for the goodwill. Sandeep further agrees with Kuldeep that he will not do the business in artificial jewellery as well as in real jewellery within local limits and for a certain period of time. Is this a valid contract ? Give reasons. **(5 marks)**

**Answer :**

- According to Section 27 of Indian Contract Act, 1872, every agreement by which one is restrained from exercising a lawful profession business or trade of any kind, to that extent, is void.
- But exceptions to this rule provides that where seller of the goodwill of a business undertakes not to compete with the buyer is enforceable when the restraint appears to be reasonable as to territorial limits and length of time.

*In the given problem, the contract is valid only for the part which is concerned for artificial jewellery but that will not be valid for not dealing in real jewellery as the restraint for trading in real jewellery was unreasonable regarding the nature of business. The same decision was given in the case of Goldsoll v. Goldman.*

**2011 - Dec [4]** Attempt the following :

- (ii) Ram wrote to Shyam to sell him apples at the rate of ₹ 150 per kg. On the same day, Shyam wrote to Ram to buy apples at the rate of ₹ 150 per kg. Their letters cross in the post. Shyam now requires Ram to sell him apples as there was an enforceable contract between them. Will Shyam succeed? Give reasons. **(5 marks)**

**Answer:**

No, Shyam will not succeed. In the given problem, Ram and Shyam make identical offers to each other, in ignorance of each other's offer. Such offers are called as 'cross offers'. 'Cross-offers' do not constitute acceptance of one's offer by the other and as such there is no completed agreement. There is no binding contract between Ram and Shyam because the offers were simultaneous, each being made in ignorance of the other, and there is no acceptance of each other's offer.

**2019 - Dec [4]** Answer the following questions:

- (ii) (a) A threatens to kill B if he (B) does not sell his house to A for ₹20 lakh. B agrees. A borrows ₹20 lakh from C who is also aware of the purpose of the loan. State what is the nature of these two agreements between A and B, and A and C. **(1+2= 3 marks)**
- (b) L sent his servant to trace his lost grandson. When his servant had left, L announced a reward of ₹10,000 to anyone who traces his missing grandson. His servant found the boy and brought him home. When he came to know about the reward later, he filed a suit against his master (L) to recover the reward. State whether the Indian Contract Act supports the servant's claim. **(4 marks)**

**Answer:**

- (a) 'Coercion' is the committing, or threatening to commit, any act forbidden by the Indian Penal Code (45 of 1860) or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. —'Coercion' is the committing, or threatening to commit, any act forbidden by the Indian Penal Code (45 of 1860) or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement."

When the object of a contract or the consideration of a contract is prohibited by law, then they are not lawful consideration or object anymore. They then become void in nature. And so such a contract cannot be valid anymore.

In the given case, A threatened B to sell his house to A for 20 lakh rupees. Further A borrowed 20 lakh rupees from C, who knew the purpose of A taking loan from B.

In the light of the above mentioned provisions the contract between A and B is voidable and can be declared void on instance of B proving that A used coercion to make B enter into contract. Further the contract between A and C is void as the purpose of the contract which was illegal was known to both the parties yet they entered into the contract.

- (b) According to **section 71** of Indian Contract Act, a person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee. Since the position of the finder of the goods is that of a bailee he is supposed to take the same amount of care with regard to the goods as is expected of a bailee **under section 151**. He is also subject to all the duties of a bailee, including a duty to return the goods after the true owner is found. If he refuses to return, he could be made liable for conversion. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner, but he may retain the goods against the owner until he receives such compensation, and where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it. However if he comes to know about the reward after he has returned the goods to the true owner, then he cannot demand the reward or sue for it.

In the given case, L sends his servant to trace his lost grandson. After the servant leaves he announces a reward of 10,000 rupees to the person who brings back his lost grandson. Servant brings back the lost grandson but comes to know about the reward later and she his master for the reward money.

In the light of the above mentioned provisions the servants claim is not tenable as he comes to know about the reward money later i.e after bringing back both the grand son to the master, hence, he is not entitled to sue for compensation.

**TOPIC NOT YET ASKED BUT EQUALLY IMPORTANT FOR EXAMINATION**

**SHORT NOTES**

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**Q1.** Write notes on the following:

- (i) Fraud.

**Answer :**

**Fraud :** According to Section 17 of the Indian Contract Act, 1872, fraud means and includes any of the followings acts committed by a party to a contract with the intention to deceive the other party or inducing to enter into the contract :

- (i) Representation of any fact by one who does not believe it to be true.
- (ii) Active concealment of a fact who has knowledge or belief of the fact.
- (iii) Any promise made without any intention of performing it.
- (iv) Any act or omission which the law specifically declared to be fraudulent.
- (v) Any other act(s) fitted to deceive.

Explanation of Section 17 also deals, with cases where silence is fraud or called as constructive fraud'. Silence is fraud where :

- (i) the case are such that it is the duty of the person keeping silence to speak and.
- (ii) silence, itself, equivalent to speech.

The part defrauded has a right to avoid the contract and also claim damages for the loss suffered by him.

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**Q2.** Write notes on the following:

(i) Contingent contract.

**Answer:**

**Contingent contract:**

- According to Section 31 of the Contract Act, 1872, a contingent contract is one if its performance depends upon the happening or non -happening of an uncertain event, collateral to such contract.
- If it depends upon the happening of an event, it can be enforced only when that event happens.
- If it is based upon non - happening of an event, it can be enforced when the happening of that event becomes impossible.
- Any agreement to do or not to do any impossible event happens to be void, whether the impossibility of the event is known or not known to the parties to the agreement the time when it is made.

*For example, A agrees to pay B if two straight lines should enclose a space, is void.*

**Q3.** Write notes on the following :

(i) Contracts uberrimae fidei

**Answer:**

**Contracts Uberrimae fidei :** There are contracts which require the utmost good faith. There is a special duty to disclose all the material facts and the failure to disclose such information give a right to rescind the contract at the option of the other party. The following contracts are contracts uberrimae fidei:

|     |  |   |
|-----|--|---|
| (a) | <b>Contracts of insurance of all kinds</b> | It is the duty of the assured person to disclose all the material information or fact to the insurance company, affecting the risk covered. A concealment of a material fact will render the contract void. |
|-----|--|---|

|     |   |   |
|-----|---|---|
| (b) | <b>Company prospectus</b>               | It is the duty on the part of every company to disclose each and every material information in the prospectus. When it invites public to subscribe for its shares in or debentures of. The contract to buy shares or debentures is voidable at the option of purchaser where there is a false statement or non- disclosure in the prospectus. |
| (c) | <b>Contracts of family arrangements</b> | It is the duty of every member of the family to make full disclosure of every material fact within his knowledge. Such a contract is not binding if either party has been misled by any concealment of material facts.  |
| (d) | <b>Contract for sale of land</b>        | It is the duty of vendor to show good title to the land that he has contracted to sell to the purchaser.  |

**Q4.** Write a short note on the following:

- (i) Exemplary damages.

**Answer :**

Exemplary damages are awarded with a view to punish the guilty party for the breach of the contract and not by way of compensation for the loss suffered by the aggrieved party. The object is to restrain the guilty party from the similar wrong in future. The court may award such damages mainly in two following cases:

|     |                                   |  |
|-----|-----------------------------------|--|
| (a) | <b>Breach of promise to marry</b> | In such case, the amount of the damages will depend upon the extent of injury or loss to the party's feelings. |
|-----|-----------------------------------|--|

|     |  |   |
|-----|--|---|
| (b) | <b>Dishonor of a customers cheque by the banker when there are sufficient funds available to the credit of his account</b> | In this case, smaller the amount of cheque dishonored, larger will be the damages and <i>vice - versa</i> . |
|-----|--|---|

**Q5.** Write notes on the following :

- (i) Supervening impossibility.

**Answer :**

**Supervening impossibility:** An agreement to do an act impossible is *void ab-initio*. (Section 56) It means something which is impossible inherently or by its very nature and not known by the parties at the time when the contract was entered into.

Section 56 provides where an event which could not reasonably have been in the contemplation of the parties at the time of contract, renders performance impossible or unlawful and the contract becomes void. This is known as the doctrine of supervening impossibility. But, if the impossibility is not obvious and the promisor alone knows of the impossibility or might have known as such after using reasonable diligence, such promisor have to compensate the promisee for the loss suffered though the agreement being *void-ab-initio*. (Section 56, para 3)

**A contract will be discharged by subsequent or supervening impossibility in the following ways:**

- (a) Where the subject matter is discharged without the fault of any party.
- (b) Where the contract is entered into on the basis of the existence of certain state of affairs, the contract is discharged if the state of things changes or ceases to exist.
- (c) Where the contract requires personal qualifications of a party. The contract is discharged by the death or incapacity of that party.
- (d) Where subsequent change in law renders the contract illegal.
- (e) Contracts entered into with alien enemies during the outbreak of war are illegal and void.



**However, in the following cases, contracts are not discharged on the grounds of supervening impossibility:**

- (a) Where the contract becomes difficult or expensive, the parties does not discharge the duty to perform.
- (b) Where the expectations of higher profits is not realised, the contract can not be discharged.
- (c) Strikes, lock-outs and any civil disturbance do not terminate the contract.
- (d) When a contract is entered into for several objects, the failure of any one does not discharge the contract.

**Q6.** Write notes the following :

- (i) Liquidated damages and penalty

**Answer :**

**Liquidated damages and penalty :**

- Liquidated damages means a sum fixed up in advance which is fair and an estimate of the probable loss which results from the breach.
- Penalty is something which is fixed without having regard to probable loss but is intended to frighten the party to prevent him from committing breach.
- According to Section 74 of the Indian Contract Act, 1872, there is no distinction between liquidated damages and penalty.
- The section says the courts are required to allow reasonable compensation so as to cover the actual loss not exceeding the amount so mentioned in the contract.
- Thus, the mentioned or pre determined amount, regardless whether it is a penalty or not, determines only the maximum limit of liability in case of breach of contract.
- The Court will award only reasonable compensation not exceeding the amount named or penalty stipulated in the contract. [*Union of India V. Raman Iron Foundry*]

## DISTINGUISH BETWEEN

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**Q1.** Distinguish between 'ordinary damages' and 'special damages'.

**Answer :**

- Ordinary damages are those damages which naturally and directly arise in the usual course of things from the breach of contract itself.
- Damages are ordinarily measured on the difference between the contract price and the market price at the date of breach.
- Special damages are those which arise on account of special circumstances.
- They are, such losses, which are remote and are not natural and probable consequences of the breach.
- It is very important that such damages must be in contemplation of the parties when the contract was entered into.
- Subsequent knowledge of unusual circumstances will not create any special liability on the other party.

## DESCRIPTIVE QUESTIONS

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**Q1.** Examine the legal position of (i) a minor promisor; (ii) a minor promisee; and

(i) a minor as an agent.

**Answer :**

- According to Indian Contract Act, 1872, a minor's position as a promisor is very privileged.
- Accordingly, where a minor is charged with certain obligations and the other party seeking to enforce those obligations, the agreement is deemed as *void -ab-initio*.
- He cannot be held personally liable for any of his wrong. (*Mohari Bibi V. Dharmodas Ghosh*).

- A minor can be a promisor or a beneficiary. Any agreement which is for the benefits of a minor and under which he is required to bear no obligations, is valid.
- As in case of *Shorافت Ali v. Noor Mohd.*, a promissory note executed in favour of a minor is valid and can be enforced in a court of law.
- A minor can also be an agent. Because as per the agency relations, agent is not at all responsible.
- Principal is liable to third parties for the acts of his agent.
- Thus, a minor shall bind the principal by his acts but he cannot be held personally liable for negligence or breach of duty.

**Q2.** State the exceptions to the doctrine that a stranger to a contract cannot maintain a suit.

**Answer :**

- A stranger to a contract cannot sue both under English Law & Indian law for the want of privity of contract.
- The leading case of *Tweddle v Atkinson* the father of a boy and father of a girl who was to be married to the boy, agreed to pay certain sum of money to the boy to take up new responsibilities of life after marriage.
- After the demise of contracting parties, the boy sued the executors of his father -in law upon the agreement between his father and father-in-law.
- The court held that the suit was not maintainable as the boy was not a party to the contract.
- But, there are certain exceptions to this rule of privacy. In the following cases, a person who is not a party to a contract can enforce the contract:
  1. In case of trust, the beneficiary can sue in his own right to enforce his rights, even though he was not a party to the contract. (*In Khawaja Muhammad v. Husaini Begum*).
  2. In case of family arrangements between male members of a Hindu family which provide for the maintenance or marriages of female members, such members, though not parties to the agreement, can sue on the footing of the arrangement.
  3. In case of assignments, the assignee can enforce the benefits of the contract. But a mere nominee cannot sue on the policy because the nominee is not an assignee.

4. Where a person acknowledges that he holds some interest for the benefit of a certain party that party can sue him to recover the same.
5. Where a charge is created on some specific immovable property in favour of certain person, such charge is enforceable at the option of the beneficiary, though he is not a party at all.

**Q3.** (a) What do you mean by 'acceptance of an offer'? Describe the general rules regarding acceptance.

(b) Explain the legal position regarding transactions with 'pardanashin women'.

**Answer :**

(a) According to Section 2 (b) of the Contract Act, 1872 when a person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. Thus, it is the manifestation by the offeree of his assent to the terms of the offer. To be legally effective, an acceptance must be in conformity with the following rules:

|    |  |  |
|----|--|--|
| 1. | <b>Acceptance may be expressed or implied</b>            | When acceptance is given by words, spoken or written, it is called express acceptance, When it is implied from the conduct of the parties, it is called implied acceptance.  |
| 2. | <b>Acceptance must be absolute</b>                       | Acceptance must be an absolute and unqualified of all the terms of the offer. A counter offer puts an end to the original offer.   |
| 3. | <b>Acceptance must be in the prescribed manner</b>       | If the offerer prescribes certain mode of acceptance, it must be communicated according to that manner. If the offerer prescribes no mode of acceptance, the acceptance must be given in some usual and reasonable manner. |
| 4. | <b>Acceptance must be given within a reasonable time</b> | To be legally effective, acceptance must be given within the specified time, and if no time limit is stipulated, acceptance  |

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|    |   | must be given within a reasonable time because an offer cannot be kept open for indefinite period.   |
| 5. | <b>Acceptance must be Communicated to the offeree</b>   | It must be communicated to the offeror only. Where the offeror only pretends to accept but does not communicate his intention to the offeror, there is no valid contract.  |
| 6. | <b>Acceptance must succeed the offer</b>                | Acceptance must be given after receiving the offer. If it precedes the offer, it is not a valid acceptance and does not become enforceable. In <i>Lalman Shukla v. Gauri Dutt</i> , where a servant brought the boy without knowledge of the reward, he was held not entitled to reward because he did not know about the offer. |
| 7. | <b>Rejected offers can be accepted only, if renewed</b> | Offer once rejected cannot be accepted unless a fresh offer is made. ( <i>Hyde v. Wrench</i> )   |

(b) Pardanashin woman is a lady who is totally isolated from the ordinary social intercourse. She can avoid any contract entered by her on the plea of undue influence and it is for the other party to prove that no undue influence was used on her. The other party must prove that:

- (i) the nature of contract was fully explained to her,
- (ii) she had free and independent advice and
- (iii) she exercised her free will. The law throws special cloak of protection around her (*In Kali Baksh v. Ram Gopal*).

The protection granted also extended to illiterate and ignorant ladies, who are equally exposed to such danger and risks. (*Sonia Parshini V. S.M. Baksha*).

**Q4.** "While all agreements are not contracts, all contracts are necessarily agreements." Explain.

**Answer :**

Section 10 of the Indian Contract Act, 1872 provides that all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared by any Act to be void.

Therefore, a contract is an agreement which is enforceable at law.

Sometimes, an agreement is entered into with no idea of bargain and no intention to create legal relations, they are not contracts. They are, thus, not enforceable at law. Agreements relating to social matters or any domestic arrangements between husband and wife with no intention to create legal relations, are not at all contracts.

Hence, it is correct to say that all agreement are not contracts but all contracts are necessarily agreements.

**Q5.** (a) "Acceptance is to offer what a lighted match is to a trail of gunpowder". Discuss.

(b) What do you understand by 'unlawful consideration' and what would be its impact on an agreement?

**Answer :**

(a) Under Indian Contract Act, 1872, an offer once accepted, creates legal obligations upon the parties. When the parties negotiate over telephone or written or any other manner, it cannot be revoked once acceptance is given at one and the same time. An offer when accepted, explodes into a contract and cannot be revoked later. According to *Sir Ansan*, Acceptance is to an offer what a lighted match is to a trail of gunpowder. It produces something which can not be recalled or undone.

(b) According to Indian Contract Act, 1872, for a valid contract, consideration must be lawful. Though consideration need not be adequate but it must be real and competent. An agreement of which the consideration is unlawful is void. According to Section 23 of the Indian Contract Act, 1872, consideration is unlawful if:

- (i) it is forbidden by law, or
- (ii) it is of nature that if permitted, it would defeat the provisions of any law, or

- (iii) it is fraudulent or
- (iv) it involves or implies injury to the person or property or
- (v) the law regards it as immoral or against public policy.

**Q6.** "Gratuitous promises are not enforceable by law." Explain the statement.

**Answer:**

A promise to contribute to charity or any other such cause, though gratuitous, would be enforceable, if on the faith of the promise, the promisee is put to some detriment and the promiser as he was aware of the fact, is under obligation to incur the liability to the extent of the promised amount of subscription. (*In. Kedar Nath v. Gorie Mohan*).

Consideration, therefore, is some detriment to the promise or some benefit to the promise or. Thus, consideration need not always be something in return. It may even in the form of risk, loss or responsibility suffered by one party. (*Currie v. Misa.*)

**Q7.** State the various remedies available to the aggrieved party in case of breach of a contract.

**Answer :**

In case of a breach of contract, followings remedies are available to the aggrieved party:

|     |                                   |   |
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| (a) | <b>Rescission of the contract</b> | Rescission means putting an end to the contract .When there is a breach of contract, the aggrieved party has an option to rescind the contract and need not perform his part of obligations and he is entitled to a compensation for any damages which he has sustained through non fulfilment of the contract.             |
| (b) | <b>Suit for damages</b>           | Damages are a monetary compensation allowed to the injured party for the loss suffered by him on account of the breach of contract. It is not a punishment but only a compensation which put the aggrieved party into a position in which he would have been, had there been performance of the contract and not breach. If |

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|     |                                 | actual loss is not proved, no damages will be awarded. Section 73 of the Indian Contract Act, 1872, provides for 4 kinds of damages, namely ordinary damages, special damages, exemplary or punitive damages and nominal damages.   |
| (c) | <b>Suit upon quantum meruit</b> | <p>It means as much as is earned or in proportion to the work done. This remedy is available only where part performance of contract is done and subsequently there is a breach of contract or the contract becomes void.</p> <p>This remedy may be availed either without claiming damages i.e. claiming reasonable compensation only for the work done or in addition to claiming damages i.e. claiming reasonable compensation for part performance and damages for unperformed part.</p> <p><b>In the following cases, the aggrieved party may file a suit upon quantum meruit:</b></p> <ul style="list-style-type: none"> <li>(i) Where the work has been done according to the contract but has been discharged by the default of the defendant.</li> <li>(ii) Where work has been done in pursuance of a contract which is discovered void or becomes void, provided the contract is divisible.</li> <li>(iii) Where any person enjoys non-gratuitous act when there was no express agreement, the other party must compensate the former or restore the benefit.</li> </ul> |



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|     |                                      | (iv) A party who is guilty of breach may also sue on quantum meruit provided the contract is divisible and the other party has enjoyed the benefit although he had an option of declining it.  |
| (d) | <b>Suit for specific performance</b> | Under certain circumstances, an aggrieved party may file a suit for specific relief i.e. for a decree by the court directing the other party to actually perform the promise that he has made. It is only where the legal remedy is inadequate or defective, the court may in their discretion, issue a decree for specific performance of the contract. But, in the following cases, specific performance will not be granted:<br>(i) Where monetary compensation is an adequate relief.<br>(ii) Where the court cannot supervise the actual execution of the contract, and<br>(iii) Where the contract is for personal services. |
| (e) | <b>Suit for an injunction</b>        | An injunction is a preventive relief where a court restrains a person from doing a particular act. It is a mode of securing the specific performance of the negative terms of the contract. Thus, the court restrains the other party from doing what he promised not to do.   |

**Q8.** State the various methods of termination of contracts.

**Answer :**

A contract is said to be discharged when the rights and obligations arising out of a contract are extinguished.

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**A contract may be discharged or terminated by any of the following methods:**

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| (i)   | <b>By performance of the contract</b> | Section 37 provides that the parties must either perform or offer to perform their promises it amounts to performance of the contract and the contract stands discharged.  |
| (ii)  | <b>By mutual consent or agreement</b> | The rights and obligations are extinguished without their performance by means of another agreement which discharges the parties or by waiver or release by the party entitled to performance. The parties may agree to terminate the existence of the contract by :<br>(a) Novation<br>(b) Alteration<br>(c) Recession<br>(d) Remission<br>(e) Waiver<br>(f) accord and satisfaction. |
| (iii) | <b>By lapse of time</b>               | In certain cases, lapse of time may also discharge the contract. If the contract is not performed at fixed/specified time, the contract comes to an end and the aggrieved party need not to perform his obligations but may sue the other party for damages.   |
| (iv)  | <b>By operation of law</b>            | A contract terminates in the following cases:<br>(a) <b>Death:</b> Where the contract is of personal nature, the death of the promisor discharges the contract and other cases, legal representatives steps in the shoes of deceased person.<br>(b) <b>Insolvency:</b> The court discharges, the insolvent by passing an 'order of   |

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|      |  | <p>discharge' exonerating the insolvent from liabilities incurred prior to his adjudication.</p> <p>(c) <b>Merger:</b> Where an inferior contract merges into a superior contract, the former stands discharged automatically.</p> <p>(d) <b>Alteration:</b> Where one party makes unauthorised material alteration, the contract can be avoided by the other party.</p>   |
| (v)  | <b>By impossibility of performance</b> | <p>A contract which is impossible to perform is void. Impossibility may exist unknown to the parties at the time of the contract or may arise subsequently the contract is made. In case of impossibility of performance of the contract, the contract automatically discharges the parties because the law does not compel the impossible.</p>  |
| (vi) | <b>By Breach of Contract</b>           | <p>'Breach' also beings to an end the obligations and rights created by a contract on the part of each of the parties. The breach may be actual or anticipatory. Actual breach occurs when a party fails to preform his obligations upon the date fixed for the performance of the contract. Anticipatory breach is a breach of contract occurring before the time fixed for the performance has arrived. It may be expressed or implied by conduct of one of the parties.</p> |

**Q9.** Under what circumstances can an aggrieved party institute a suit for 'injunction' and for 'specific performance' of a contract? Explain with examples.

**Answer :**

- Injunction is actually a preventive relief. It is an order of a court restraining a person from doing a particular act.
- Where a party is in breach of negative term, the court may issue an injunction restraining him from doing an act what he promised not to do.
- For example, A agreed to sing at B's theatre for 3 months and not to sing anywhere else.
- The court may grant injunction restraining A from singing elsewhere.
- Specific performance means the actual carrying out of the contract as agreed upon.
- The court grants a decree for specific performance where it is just and equitable i.e. where the legal remedy is inadequate or defective.
- Such a suit for specific performance may be filed by the aggrieved party either instead of or in addition to a suit for damages.
- Specific performance will not be granted:
  - (a) where monetary compensation is an adequate remedy ;
  - (b) where the court cannot supervise the execution of the contract
  - (c) where the contract is for personal services and
  - (d) where one of the parties is a minor.

*For example, where A agreed to sing at B's theater but later contracted to sing at C's theatre in contravention of the previous agreement. On a suit by B, the court refused to order specific performance to sing at B's theatre but granted an injunction restraining A from singing anywhere else, and awarded damages to B to compensate him for the loss caused by A's refusal.*

**PRACTICAL QUESTIONS**

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**Q1.** Fire breaks out in A's building. B, a passerby, brings some buckets of water and saves A's property from fire, intending to do so gratuitously. Later on, B claims compensation from A on the ground that A has enjoyed the benefit of his services. Will B succeed? Give reasons.

**Answer :**

No, B will not succeed. As per Section 70 of the Indian Contract Act, 1872, where any person lawfully does anything but not gratuitously and that person enjoys the benefit, the latter asked to make compensation to the former for the act done.

In this case also, B has saved A's property without any intention of charging for his services. He cannot claim compensation.

**Q2.** State, with reasons in brief, whether any contract is made in the following cases :

- (i) You have invited X to your residence for lunch and X has accepted your invitation.
- (ii) When you eat meals at a restaurant.
- (iii) When you board a public bus.
- (iv) When you call a taxi on telephone.
- (v) When you put an appropriate coin in the slot of a weighing machine.

**Answer :**

- (i) No. For any agreement to be enforceable at law, the parties must have intention to create legal relationally between themselves.  
In this case, X, a friend is being invited without any obligations and not, with a view to create any legal relationship.
- (ii) Yes. It is an invitation of offer by the restaurant offering meals at a particular price and you accept it by making order for that.
- (iii) Yes. It is also a implied offer to the prospective passengers. When you board a public bus, bus authorities are agreeing to take you for a particular destination on your buying the ticket. There is a valid contract.
- (iv) Yes. When the communication is properly conveyed by any acceptable source, even if telephone conversation, it can be a valid contract.
- (v) Yes. By putting a coin in the slot of a weighing machine, the machine owner impliedly agrees to ascertain the weight and prints out the same. It is an enforceable agreement.

**Q3.** Arun promises to pay ₹ 5,000 to Barun, who is named as a witness in a suit against Arun, in consideration of Barun's promise to abstain from the trial. Barun abstains, but Arun declines to make the payment. Can Barun recover the money?

**Answer :**

No. According to Section 10 of the Indian Contract Act, 1872 one of the essential element is that the object and consideration is legal and is not opposed to public policy.

In this case, consideration for refraining any person from the trial of a suit is considered to be as opposed to public policy and the whole agreement is unlawful and void.

**Q4.** A agrees to construct a swimming pool for B for ₹ 2,00,000. The payment is to be made by B only on the completion of the swimming pool. Is this a contingent contract?

**Answer :**

No. As per Section 31 of the Indian Contract Act, 1872 a contingent contract is for doing or not doing something, if some event collateral to such contract does or does not happen.

*So, in the given case this is not contingent contract as the work completion is the subject matter of the contract and not something collateral to it.*

**Q5.** B requests A to sell and deliver to him certain goods on credit. A agrees to do so provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. Is this sufficient consideration for C's promise?

**Answer :**

Yes. According to 'Kedar Nath v. Gorie Mohan,' a gratuitous promise cannot be enforced. But if the promisee is put to some loss as a result of his acting on the faith of the promisor and the promisor knew the purpose, the promisor would be bound by promise.

*In the said case, it is not necessary that the promisor should benefit by the consideration. It is sufficient, if the promisee does any act on the faith of the promisor which he would not have done but for the promise of the promisor.*

**Q6.** Teji, a minor, broke his right leg in a football match. He engaged Cure well, a doctor, to set it. Does the doctor have a valid claim for his services? Give reasons.

**Answer :**

Yes. As per Section 68 of the Indian Contract Act, 1872, the estates are liable to reimburse the person who supplies necessaries of life to minors or persons of unsound mind. In this case, the doctor can claim for his services provided to a minor from his/her estate.

**Q7.** Ajay gifted whole of his property to his daughter on the condition that she should pay ₹ 200 per month to her uncle (father's brother). Later, she refused to pay her uncle on the ground that she did not receive any consideration from her uncle. Is she justified?

**Answer :**

No.

- According of Section 2 (d) of the Indian Contract Act, 1872, it is not necessary that the consideration must be from promisee.
- It is immaterial who has furnished it, whether promisee, or any other person.
- This is something called as 'constructive consideration'.  
In a leading case of *Chinnaya v. Ramaya*, it was held that even a stranger to the consideration can sue on a contract, provided he is a party to the contract.

*In the given case, consideration is moving from Ajay's part. Therefore, his daughter is not justified.*

**Q8.** Ravi found a purse in a computer education centre. He deposited the purse with proprietor of the centre so that the real owner can claim it. However, no one claimed the purse. Ravi wants the purse back. Can he succeed?

**Answer :**

Yes. As per Section 160 of the Contract Act, 1872, it is one of the duties of the bailee to return the goods even without demand on the expiry of some specified period or when the purpose of bailment is accomplished.

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*In the given case, it is the duty of the Computer Education Center to return the purse to Ravi because the purpose i.e. the real owner could not be accomplished .*

**Q9.** An auctioneer advertised in the newspaper that a sale of office furniture will be held at Bangalore. Ajay, a broker of Mumbai, reached Bangalore on the appointed date and time. But the auctioneer withdrew all the office furniture from the auction sale. The broker sued for his loss of time and expenses. Will he succeed?

**Answer :**

No. According to Indian Contract Act, 1872, such an auction is not an offer, it is only an invitation to offer. In a decided case of *Harris v. Nickerison* an advertisement for an auction sale does not even bind the auctioneer to hold the auction and the prospective bidders have no legal right to complaint for loss of time and money in coming to the advertised place of the sale.

*In the given problem also, Ajay will not succeed in getting compensation from the auctioneer.*

**Q10.** Arun has two cars - one of white colour and another of red colour. He offers to sell one of the cars to Basu thinking that he is selling the car which has white colour. Basu agrees to buy the car thinking that Arun is selling the car which has red colour. Will this agreement become a valid contract? Give reasons.

**Answer :**

No. According to Indian Contract Act, 1872, one of the essential element is that there must be mutual consent between the parties i.e. they must agree upon the same subject matter at the same time and in the same manner. Thus, there must be consensus-ad-idem.

*In the given problem, the agreement between Arun and Basu will not become a valid contract because there is no consensus-ad-idem.*



**Q11.** Ajay agrees to sell his old car to Bijoy for ₹ 1 lakh or ₹ 80,000. Is it a valid contract ? Give reasons.

**Answer :**

No. According to Section 29 of the Indian Contract Act, 1872 provides that agreement the meaning of which is not certain or capable of being certain, are void.

*In this case, there is nothing to show which of the two prices is to be taken into consideration. Hence, the agreement is void.*

**Q12.** Kirti, who is trying to sell an unsound horse, forges a veterinary surgeon's certificate stating the horse to be sound, and pins it to the stable door. Prem comes to examine the horse, but the certificate gets unnoticed by him. He buys the horse and later on finds the horse to be unsound. He wants to avoid the agreement on the ground that he has been defrauded. Will he succeed ?

**Answer :**

No. Prem will not succeed because he brought the horse after his self examination and not on the basis of the forged certificate. He is not actually deceived by the certificate and therefore, there is no fraud.

*Thus, there must be actual deceit by fraudulent statement. A mere statement which does not deceive gives no ground for action.*

**Q13.** Ajeet, owner of an apple orchard, believes that all the apple trees in his orchard are fruit-bearing trees. However, he has no sufficient ground for his belief. Even then, Ajeet states to Baljeet that his orchard has all fruit-bearing trees. Induced by this statement, Baljeet purchases the orchard. Later on, it is found that only 50% trees are fruit-bearing. Now Baljeet files a suit for the repudiation of the contract. Will Baljeet succeed ? Give reasons.

**Answer :**

Yes, according to Section 18 of the Indian Contract Act, 1872, in order to avoid the contract on the ground as one, it is necessary to prove that there was a false assertion of the fact and that assertion induced the aggrieved party to enter into the contract.

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*In the given problem, Baljeet will succeed because the contract is voidable as Ajeet induced him to purchase the orchard on the basis of false representation.*

**Q14.** Roshan purchases a desktop computer from Harish on Harish's plea that though the said computer is used, it is in an excellent condition. Later on, Roshan finds that the computer does not work at all. Can he reject the purchase of the said computer and recover his money? Give reasons.

**Answer :**

Yes, Roshan can reject the computer and recover his money from Harish. As per section 15 of the Sale of Goods Act, 1930, where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description.

*In the given law, Harish described the computer to be in an excellent condition whereas it was not. Harish must compensate Roshan for the goods because this is a contract of sale by description and goods do not correspond with that description.*

**Q15.** Rohit agreed to erect a plant for Roshan by 31<sup>st</sup> December, 2000. Rohit further agreed to pay ₹ 1,000 per month as damages in case of delay beyond the agreed date. Roshan sued Rohit for ₹ 6,000 being the actual loss caused to him as a result of delay of four months. What damages will you award and why?

**Answer :**

According to Section 74 of the Indian Contract Act, 1872 there is no distinction between damages and penalty, It provides for reasonable compensation upto the stipulated amount whether it is by way of liquidated damages or penalty is to be awarded to the aggrieved party.

*In this case also, Roshan cannot recover the actual loss of ₹ 6,000. He can only recover a maximum of ₹ 4,000 since there is a delay of 4 months beyond the agreed date. (Union of India. V. Raman Iron Foundry)*

**Q16.** Ram sells by auction a horse to Rahim without disclosing that the horse was unsound. Can Rahim cancel the contract? Answer with reasons.

**Answer :**

No. Ram cannot cancel the contract, as there has no condition or warranty, that the horse was sound. It was buyer's duty to see whether the horse was sound or not.

It is fundamental rule laid in the maxim Caveat Emptor i.e. 'let the buyer beware. In other words, it is no duty of seller to disclose each and every thing about the good unless the purpose is made known to the seller. The buyer must take care while purchasing the goods and if he chooses wrong, he cannot blame the seller for the wrong selection.

**Q17.** Arun is a shopkeeper. He enters into a contract with Bhanu, the wholesaler, for supply of crackers worth ₹ 1 lakh on the condition that the delivery must be made atleast 7 days before Diwali. Arun also makes known to Bhanu that if he fails to deliver the crackers in time, Arun is likely to suffer a loss of profit of ₹ 25,000 which he expected to earn from the sale of crackers during Diwali season. But Bhanu supplies crackers 3 days after Diwali. Now Arun sues Bhanu for the loss of profit. Will Arun succeed? Give reasons.

**Answer :**

Yes. Arun will succeed. According to Section 73 of the Indian contract Act, 1872, when a contract has been broken, the aggrieved party is entitled to receive compensation for the loss caused to him, which naturally arose in the ordinary course of things or which the parties knew at the time of contract to be likely to result from the breach of it.

*In this case also Arun has made known to Bhanu about the loss of profit caused by the delayed delivery of crackers. Hence, Arun is entitled to claim special damages.*

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| <b>Repeatedly Asked Questions</b> |  |                  |
|-----------------------------------|--|------------------|
| <b>No.</b>                        | <b>Question</b>  | <b>Frequency</b> |
| <b>1.</b>                         | 'Fraud' and 'innocent misrepresentation'<br>09 - June [2] (a), 09 - Dec [2] (i)          | <b>2 Times</b>   |
| <b>2.</b>                         | 'Void agreement' and 'illegal agreement'<br>10 - June [2] (i), 11 - Dec [2] (ii)         | <b>2 Times</b>   |
| <b>3.</b>                         | Explain the concept of <i>quantum meruit</i> .<br>10 - June [4] (ii), 11 - June [3] (iv) | <b>2 Times</b>   |