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CONTRACT - BASIC CONCEPTS

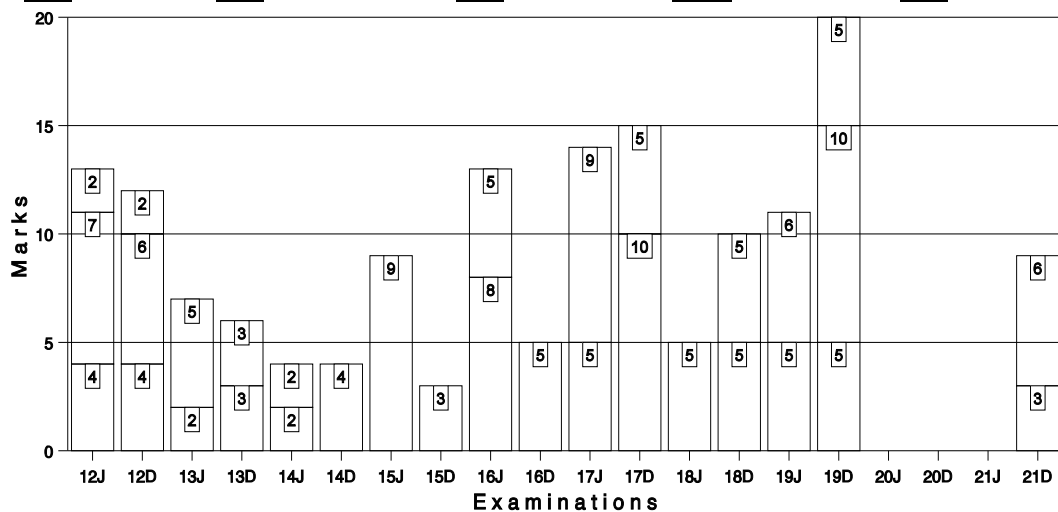
THIS CHAPTER INCLUDES

- Definitions
- Acceptance and Revocation of offer
- Capacity to Contract
- Free Consent
- Consideration
- Void and Voidable Agreements
- Discharge of Contract
- E-Contracts
- Fraud
- Undue Influence
- Coercion

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

Legend

Objective Short Notes Distinguish Descriptive Practical



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CHAPTER AT A GLANCE

1. Meaning of Contract

- ⇒ **Sec. 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 and Promise

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

3. Essential elements of a valid contract

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

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

It includes:

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

4. Offer or Proposal

- ⇒ It refers to a proposal by one party to another to enter into a legally binding agreement with him.
- ⇒ **Sec. 2(a)** of the Act defines it as-
“When one person signifies to another his 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 and 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.
- ⇒ **Sec. 2(b)** of the Contract Act , defines it as- “A proposal is said to be accepted, when the person to whom the proposal is made signifies his assent thereto.”

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 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 necessities 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) Undue influence
 - (iii) Fraud
 - (iv) Misrepresentation
 - (v) Mistake
- ⇒ In the absence of free consent, contract is usually voidable at the option of the party whose consent is not free.

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 mortgagor.
- 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 of 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 pardanashin 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 (Sec.24)**
 - ⇒ “If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.”
 - ⇒ Where the legal part of 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 (Sec. 29)**

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

agreement is valid.

(iii) **Wagering Agreement (Sec. 30)**

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

SHORT NOTES

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

(ii) Counter Offer;

(4 marks)

Answer :

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

— Space to write important points for revision —

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

(iv) Lawful consideration

(4 marks)

Answer :

Lawful consideration	<p>The consideration or object of an agreement is lawful unless:</p> <p>(a) It is forbidden by law; or</p> <p>(b) Is of such a nature that if permitted, it would defeat the provisions of any Law or any rule for the time being in force in India ; or</p> <p>(c) Is Fraudulent; or</p> <p>(d) It involves or implies injury to the person or property of another; or</p> <p>(e) The Court regards it as immoral or opposed to public policy.</p> <p>In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.</p>
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2017 - June [8] Write short note on the following:

(a) E-Contracts

(5 marks)

Answer:

E-Contracts

Electronic contracts are paperless contract. It is in electronic form. It is the change of technology and legal requirements lead the contract to be in electronic form. E-contract is a contract modeled, specified, executed and deployed by a software system. They are conceptually very similar to traditional commercial contracts. E-contract also requires the basic elements of a contract. The following are ingredients of the e-contracts:

- An offer is to be made;
- Offer is to be accepted;
- There shall be a lawful consideration;
- There shall an intention to create legal relations;
- The parties must be competent to contract;

- There must be free and genuine consent;
- The object of the contract must be lawful;
- There must be certainty and possibility of performance.

— Space to write important points for revision —

2018 - June [8] Write short note on out of the following term:

(a) Undue Influence.

(5 marks)

Answer:

Undue Influence :

- When two parties enter into contract with each other and one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other party, such contract is said to be induced by 'undue influence'.
- If a person having a dominant position over another person and he enters into contract with such person then the burden of proof that the contract was not done under undue influence, is on the person holding the dominant position.

A person is said to be having a dominant position if.

- (i) He makes contract with a person who is not of sound mind because of age, illness, mental instability or bodily distress etc.
- (ii) He holds some control over the other person
- (iii) He holds some monetary obligation over the other person.

— Space to write important points for revision —

2018 - Dec [8] Write short notes on:

(a) E-Contracts

(5 marks)

Answer:

Pleaser refer 2017 - June [8] (a) on page no. 29

— Space to write important points for revision —

2019 - June [8] Write short notes on:

(a) Agreement without consideration

(5 marks)

Answer:

Agreement without consideration:

Section 25 provides that an agreement made without consideration is void unless:

- 1. It is in writing and registered:** It is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other; or unless
- 2. If is a promise to compensate for something done:** It is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless
- 3. It is a promise to pay a debt, barred by limitation law:** It is a promise, made in writing and signed by the person to be charged herewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

— Space to write important points for revision —

2019 - Dec [8] Write short note on the following term:

(a) Misrepresentation

(5 marks)

Answer:

Misrepresentation : (Section 18 of the Indian Contract Act, 1872) Where a person asserts something which is not true, though he believes it to be true, his assertion amounts to misrepresentation. Misrepresentation may be either innocent or without reasonable ground.

Misrepresentation means and includes:

1. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

2. Any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of anyone claiming under him;
3. Causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

— Space to write important points for revision —

2021 - Dec [5] Write Short Notes on Coercion

(3 marks) [Sec. C - LAQ Six]

Answer:

COERCION: The term “Coercion” has been defined in **Section 15 of the Indian Contract Act, 1872** as the committing or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Explanation: It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed.

From the above definition of coercion given in section 15, consent is said to be caused by coercion, when it is obtained by any one of the following;

- (i) Committing or threatening to commit any act forbidden by Indian Penal Code;
- (ii) Unlawful detaining or threatening to detain the property of another person. Coercion may come from a person party to the contract or even third person not connected with the contract directly.

— Space to write important points for revision —

DESCRIPTIVE QUESTIONS

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

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

(2 marks)

Answer :

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

— Space to write important points for revision —

2012 - June [3] (e) State the essentials of a valid contract.

(5 marks)

Answer :

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

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

		consideration which must be lawful i.e. it should not be fraudulent, forbidden by law, or against the public interest.
4.	Capacity of the parties	The parties entering into agreement must be capable of doing so. For example, a minor, lunatic, drunk, or idiot is not supposed to have the capacity to constitute a contract.
5.	Free consent	The consent of both the parties must be free. An agreement executed by coercion, undue influence, mistake, threat, misunderstanding, misrepresentation, or fraud is invalid.
6.	Legality of object	Illegal object makes the contract illegal as well. The purpose or objective of the agreement must be lawful i.e. it should not be fraudulent, forbidden by law, or against the public interest.
7.	Certainty	The agreement must be certain and not vague or ambiguous.
8.	Possibility of performance	Performance promised must be possible and feasible. Promise to do the impossible is not enforceable by law.
9.	Void agreements	Agreements <ul style="list-style-type: none"> (i) in restraint of marriage of any person other than a minor, (ii) in restraint of trade (iii) in restraint of legal proceedings (iv) having uncertain meanings, (v) wagering, gambling, betting, are void and not enforceable in law.
10.	Writing, registration and legal formalities	In certain cases such as gift, lease, sale or mortgage of immovable property, a written

6.36

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contract is essential.

— Space to write important points for revision —

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

Answer :

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

— Space to write important points for revision —

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

Answer :

Yes, it is possible. **Section 62 to 67 of the Contract Act** are listed under the heading “Contracts which need not be performed”. The relevant provisions are as follows:

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

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

- (i) Unlawful consideration and object – Sec. 23.
- (ii) Where the performance is unlawful or illegal – Sec. 56.

(iii) When performance become impossible.

— Space to write important points for revision —

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

Answer :

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

— Space to write important points for revision —

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

Answer :

- When a party to contract maintains silence over some of the facts relating to contract, such silence may or may not amount to fraud depending upon the circumstances and facts of each case.
- **Explanation to Section 17 of the Indian Contract Act, 1872**, provides that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud unless the circumstances of case are such that having regard to them it is the duty of the person keeping silence to speak or unless silence itself is equivalent to speech.
- When the circumstances of contract are such that a person should speak and he does not speak but keeps silence then such silence will be treated as fraud.

Exceptions to the General Rule:

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

(In the following cases silence will amount to fraud)

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

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

(2 marks)

Answer:

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

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2016 - June [2] Answer the question:

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

Answer :

(a)	Acceptance must be absolute and unqualified; it must conform to the offer	As per Section 7 in order to convert a proposal into a promise, the acceptance must: 1. Be absolute and unqualified: If the parties are not ad idem on all matters concerning the offer and acceptance, there is no contract. An invitation with variation is no acceptance, it is simply a counter proposal, which must be accepted by the original proposer before any contract is made. 2. Be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such a manner,
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		<p>the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance.</p> <p><i>In Surender Nath Vs Kedar Nath AIR 1936 Cal 87</i> the Calcutta High Court held that where an offeror requires that the acceptance should be sent to a particular person in writing, Section 7 was not violated when the offeree instead of writing to the particular person, sent his agent in person to communicate the acceptance.</p>
(b)	Specific offer can be accepted by the person to whom it is made	<p>Whereas general offer can be accepted by anyone competent to contract and meeting the conditions of offer. It was held in <i>Boulton Vs Jones (1857)27 LJ ex 117</i> case that a specific offer can be accepted only by the person to whom it is made. A general offer can be accepted by any one as held in case of <i>Carlill Vs Carbolic Smoke ball Co, Harbans Lal Vs Harbanslal</i>, already discussed earlier in this study note.</p>
(c)	Acceptance may be express or implied	<p>As per Section 9 in so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied. It can be inferred from the conduct of the parties. When a person boards in Metro Rail it is an implied acceptance.</p>

(d)	Acceptance should be of the whole proposal and not in part	Acceptor should accept the whole proposal in total and not in parts. Part acceptance is no acceptance binding upon the proposer.
(e)	Acceptance should be according to the mode prescribed or usual and reasonable mode	Acceptor cannot accept the proposal in a manner different from the manner prescribed in the offer. If no such mode is prescribed it should be usual and reasonable mode. Silence cannot be a mode of acceptance. <i>In Surender Nath Vs Kedar Nath, AIR 1936 cal 87, the Calcutta High Court held that where an offeror requires that the acceptance should be sent in writing to a particular person, Section 7 of the contract act is not violated when the offeree instead of writing to particular person, sent his agent in person to communicate the acceptance.</i>
(f)	Communication of acceptance is must	A mental determination to accept unaccompanied by any external indication will not be sufficient acceptance. To constitute an acceptance such acceptance must be communicated to the offeror or his authorized agent.
(g)	Acceptance must be given before its lapse	Acceptance must be given before the offer lapses by expiry of time fixed or by expiry of reasonable time if no time is so fixed or before it is withdrawn or revoked by the offeror. <i>In Ramasgate Victoria Hotel co. Vs. Montefiore (1866)LR 1 Exch 109</i> it was held that a person who applied for shares in a company in June was not bound by any allotment made in November.

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2017 - June [2] (a) Does silence amount to fraud? Explain with exceptions and types of silence amount to fraud. **(9 marks)**

Answer:

Fraud: [Sec. 17]

Explanation to **Section 17 of the Indian Contract Act** provides that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud unless the circumstances of case are such that having regard to them it is the duty of the person keeping silence to speak or unless silence itself is equivalent to speech.

Thus we can say that there is exception to the rule that mere silence does not amount to fraud. These two exceptions are provided in explanation to **Section 17** as under which we have already discussed above.

- (i) When there is a duty to speak.
- (ii) Where silence is equivalent to speech.

However, in the following two types of cases, silence amounts to fraud, as held by the courts in various cases:

- (a) Where there is change in circumstances:** A representation may be true when made but with the passage of time or changed circumstances it may become false. Accordingly this must be communicated to other party otherwise it amount to fraud.
- (b) When there is half-truth:** Thus even when a person is not bound to disclose a fact he may be held guilty of fraud if he volunteers to disclose a state of fact partly. This is so when the undisclosed part renders the disclosed part false.

2017 - Dec [2] (a) What are the position of Minor's agreement and effect thereof? **(10 marks)**

Answer:

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 estoppel does not apply against a minor. It means a minor can always 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. In India the rules of restitution by minor are similar to those found in English laws. The scope of restitution of contract by minor was examined by the Privy Council in Mohiri Bibi case when it has held that the restitution of money under section 64 of the Indian Contract Act cannot be granted under section 65 because a minor's agreement is not voidable but absolutely void *ab-initio*. Similarly no relief can be granted under section 65 as this section is applicable where the agreement is discovered to be void or the contract becomes void.
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 [2] (a) Discuss the different modes of terminating contractual relationship between the parties. **(10 marks)**

Answer:

When the rights and obligations created by a contract comes to an end, the contract is said to be discharged. Discharge of contract means termination of contractual relationship between the parties. The following are the different methods by which a contract is discharged:

1. Discharge by performance:

Performance is the usual mode of discharge of a contract. Performance may be (i) actual performance (ii) attempted performance. Actual performance is the fulfillment of the obligations arising from a contract by the parties to it, in accordance with the terms of the contract. Offer of performance is called attempted performance or tender of performance. A valid tender of performance is equivalent to performance.

2. Discharge by agreement:

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

(i) **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.

(ii) **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.

(iii) **Rescission:** Rescission means "cancellation". All or some of the terms of a contract may be cancelled. Rescission results in the discharge of the contract.

(iv) **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.

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

3. Discharge by lapse of time:

Every contract must be performed within a fixed or reasonable period. Lapse of time discharges the contract. The Indian Limitation Act has prescribed the period within which the existing rights can be enforced in courts of law.

4. Discharge by operation of law:

A contract may be discharged by operation of law in the following cases:

- (i) **Death:** In contracts involving personal skill or ability, death terminates the contracts. In other cases, the rights and liabilities of the deceased person will pass on to his legal representatives.
- (ii) **Insolvency:** The insolvency of the promisor discharges the contract. The promisor is discharged from all liabilities incurred prior to his adjudication.
- (iii) **Unauthorized material alteration:** Material alteration in the terms of the contract without the consent of the other party discharges the contract. Change in the amount of money to be paid, date of payment, place of payment etc. are examples of material alteration.
- (iv) **Merger:** When inferior rights of a person under a contract merge with superior rights under a new contract, the contract with inferior rights will come to an end.

5. Discharge by impossibility of performance:

Impossibility of performance results in the discharge of the contract. An agreement which is impossible is void, because law does not compel to do impossible things.

6. Discharge by breach:

Breach means failure of a party to perform his obligations under a contract. Breach brings an end to the obligations created by a contract.

Instance: X and Y wanted to marry each other. Before the time fixed for marriage, A goes mad. The contract becomes void.

Termination of Contract:

The proper way, in which the agreement could have been terminated by issuing of a notice to the plaintiff, calling upon to complete the transaction within a particular time, failing which the contract will be treated as cancelled.

That this is the proper way of terminating the contract is cleared from what has been observed in "Narayana Swami Pillai V. Dhanakodi Ammal", that when the contract is for the sale of immovable property the vendor must give reasonable notice requiring the performance within a certain time.

— Space to write important points for revision —

2021 - Dec [2] Discuss the remedies available to buyer against seller for breach of contract. **(6 marks) [Sec. C - LAQ One]**

Answer:

Remedies available to buyer against seller for breach of contract (Section 57 to 60).

These are as under:

1. **Suit for Damages for Non - Delivery:** When the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non - delivery.
2. **Suit for price:** Where the buyer has paid the price and the goods are not delivered to him, he can recover the amount paid.
3. **Suit for specific performance:** When the goods are specific or ascertained, a buyer may sue the seller for specific performance of the contract and compel him to deliver the same goods.
4. **Suit for Breach of Warranty:** Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat the breach of condition as breach of warranty; the buyer cannot reject the goods. The buyer may - (a) set up the breach of warranty in extinction or diminution of the price payable by him, or (b) sue the seller for the damages for breach of warranty.
5. **Repudiation of contract before the due date:** Section 60 provides that where either party to a contract of sale repudiates the contract before the date of delivery and the other may either treat the contract as subsisting or wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.
6. **Suit for Interest:** The buyer may recover such interest or special damages, as may be recoverable by law. He may also recover the money paid where the consideration for the payment of it has failed.

PRACTICAL QUESTIONS

2012 - June [3] (d) Arun seeing a watch in Barun's shop marked for sale for

INR 1,000 entered the shop, places INR 1000 on the counter and asks for the watch. Barun refused. Can Barun refuse to sell the watch? Give reasons.

(2 marks)

Answer :

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

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

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

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

Answer :

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

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

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

Answer :

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

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2013 - June [4] (a) Referring to a quarrel and disagreement between husband and wife, the husband agreed to execute and register a document in favour of his wife to transfer one of his properties to his wife. Later on husband refused. Whether wife can enforce? **(3 marks)**

Answer :

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

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2013 - Dec [2] (c) Arun, Varun and Tarun are partners of software business and jointly promise to pay INR 60,000 to Karun. Over a period of time, Varun becomes insolvent, but his assets are sufficient to pay one-fourth of his debts. Tarun is compelled to pay the whole. Decide whether Tarun is required to pay whole amount to Karun in discharging joint promise?

(3 marks)**Answer :**

According to **Section 43 of Indian Contract Act, 1872** when two or more persons make a joint promise, promisee may, in absence of express agreement to the contrary compel any one or more for such joint promisors to perform the whole of the promise. Further, if any one of two or more joint promisors makes default in such contribution, the remaining joint promisors

must bear the loss arising from such default in equal shares. Therefore, in this case, Tarun is entitled to receive INR 5000 (one fourth of Varun share of debt) from Varun's assets and balance INR 27500 from Arun.

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2014 - June [2] (a) (ii) W offered to sell his house to M for ₹ 40 lakhs. M replied purporting to accept the offer and enclosed a cheque for ₹ 20 lakhs. He also promised to pay the balance amount in twenty equal installments. Examine the validity of the contract. **(2 marks)**

Answer:

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

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

Answer :

- The problem relates to the provisions of quasi-contract. It is to be noted that minors, persons of unsound mind or lunatics and other disqualified persons are incompetent to contract.
- But, under the provisions of **Section 68 of Indian Contract Act, 1872** "if necessities are supplied to a person, who is incompetent to contract, the supplier is entitled to claim the reimbursement from the estate of such person".
- A supplier would also be entitled to recover the price of necessities supplied to wives or minor child of the incompetent person, as he is legally bound to support them.

- Also necessities would mean 'goods suitable to the condition in the life of such person' and not luxuries.
- Again person liability is not accrued for minors and lunatics; it is only their estate that would be liable. If there is no property nothing would be realizable.
- To establish his claim the supplier must prove not only that the goods were supplied to the person who was a minor or a lunatic, but also that they were suitable to his requirement at the time of sale and delivery.
- It is also to be noted that a person of unsound mind, who has intervals of sound mind can enter into a contract during such period.
- Thus the burden to prove that H is lunatic and he was of unsound mind when entered into the contract lies on the seller.
- In the given problem, the jeweler would not be entitled for the claim, as a diamond set worth ₹10 lakhs for the wife of H, is not a necessity and is surely a luxury.

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2015 - June [2] Answer the questions:

- (b) (i) Abhay, UG degree student was induced by his lecturer to sell his brand new car to the later at less the purchase price to secure more marks in the University examination. Accordingly the car was sold. However, the father of Abhay persuaded him to sue his lecturer. State whether Abhay can sue against the lecturer? **(3 marks)**
- (d) (i) Anita and Binita are friends, Binita treats Anita during Anita's illness. Binita does not accept payment from Anita for treatment and Anita promises Binita's son Sunit to pay him ₹ 12,000. Anita being in poor circumstances is unable to pay. Sunit sues Anita for the money. Can Sunit recover? **(3 marks)**
- (e) (i) Arvinda took a bet of ₹ 20,000 with Bannerjee that a certain horse would win the race. Arvinda and Bannerjee both residents of Kolkata. Arvinda borrowed ₹ 20,000 from his friend Chatterjee for this purpose. Arvinda lost the bet and paid ₹ 20,000 to Bannerjee. Can Chatterjee recover the loan amount from Arvinda? Give reasons. What would have been the difference had the transaction took place in

6.50

Scanner CMA Inter Gr. I Paper 6A (2016 Syllabus)

Ahmedabad between the parties residing there? (3 marks)

Answer:

- (b) (i) • Yes, Abhay can sue against his lecturer on the ground of influence under the provisions of the Indian Contract Act, 1872.
- A contract brought as a result of coercion, undue influence, fraud, misrepresentation would be voidable at the option of the person whose consent was caused.
 - As per Sec. 19-A when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.
 - Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit there-under, upon such terms and conditions as the Court may seem just.
- (d) (i) • No, Sunit cannot recover the money from Anita. The agreement between Sunit and Anita is not a contract in the absence of consideration. In this case, Sunit's mother, Binita, voluntarily treats Anita during her illness.
- Apparently it is not a valid consideration because it is voluntary whereas consideration to be valid must be given at the desire of the promisor-void **Section 2(d)**.
 - The question now is whether this case is covered by the exception given in **Section 25(2)** which *inter-alia* provides.
 - "If it is a promise to compensate a person who has already voluntarily done something for the promisor"
 - Thus as per the exception the promise must be to compensate a person who has himself done something for the promisor and not to a person who has done nothing for the promisor.
 - As Binita's son, Sunit to whom the promise was made, did nothing for Anita, So Anita's promise is not enforceable even under the exception.

- (e) (i)
- Yes, Chatterjee can recover the loan amount from Arvinda.
 - The transaction between Arvinda and Chatterjee is a collateral transaction which is valid, though the main transaction between Arvinda and Bannerjee is void, being a wager.
 - Had the transaction took place in Ahmedabad, Chatterjee could not have recovered the loan as in Ahmedabad the wager transactions are illegal and a transaction collateral to it is also void on the ground of illegality.

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

Answer:

An agreement is made in connection with marriage, partition or other family arrangements, and a provision is made for the benefit of some person.

In such cases, a person, for whose benefit the provision is made in such family arrangements, can enforce the agreement even if he is not a party to it.

It may, however, be noted that provision must be made for the benefit of the person who wants to enforce such marriage arrangements.

No, Vishal's consent is not valid.

The marriage agreement or other family arrangements where a provision is made for the benefit of some person can be enforced by the beneficiary even if he is not a party to the same.

2016 - June [2] Answer the question:

- (e) (i) X Father promised to pay his son Y a sum of ₹ One lakh if Y (son of X) passed CMA examination in the first attempt. Y passed the CMA examination in his first attempt, but X failed to pay the amount as promised. Y files a suit for recovery of the said amount. State along

with reasons whether Y can recover the amount under the Indian Contract Act, 1872. **(5 marks)**

Answer :

- Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in **Section 10**.
- According to the provisions there should be an intention to create legal relationship between the parties.
- Agreement of a social nature or domestic nature do not contemplate legal relationship and as such are not contracts, which can be enforced.
- This principal has been laid down in the case of **Balfour Vs. Balfour**.
- Accordingly, applying the provisions and the ease decision, in the case Y cannot recover the amount of Rupees one lakh from X for the reasons explained above.

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2016 - Dec [2] Answer the question:

- (c) (i) A, aged 16 years, was studying in an engineering college. On 1 June, 2015 he took a loan of ₹ 2 Lakhs from B for the payment of his college fee and agreed to pay by 31st July 2016. A possesses assets worth ₹ 20 Lakhs. On due date, A fails to pay back the loan to B. B now wants to recover the loan from A out of his assets. Whether B would succeed? Decide, referring to the provisions of the Indian Contract Act, 1872. **(5 marks)**

Answer:

The problem in question is covered under the exceptions. As per **Section 68 of the Indian Contract Act, 1872** though a minor is not personally liable to pay the price of necessaries supplied to him or money lent for the purpose, this supplier or lender will be entitled to claim the money/price of goods or services which are necessaries suited to his condition of life provided that the minor has a property. The liability of minor is only to the extent of the minor's property. This type of contract is called a Quasi-contract and the right of the supplier/tender is based on the principle of equity.

Hence, in the given case B will be entitled to recover the amount of loan given to A for payment of college fees from the property of A, the minor.

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2017 - Dec [2] (b) A agreed to become an assistant for five years to B who was a doctor practicing at Chennai. It was also agreed that during the term of agreement A will not practice on his own account in Chennai. At the end of one year, A left the assistantship of B and began to practice on his own account. Referring to the provisions of the Indian Contract Act, 1872, decide whether A could be restrained from doing so. **(5 marks)**

Answer:

According to the provisions of the Indian Contract Act, 1872, as contained - Section 27 any agreement through which a person is restrained from exercising a lawful profession or trade/business is void.

But an agreement of service by which a person binds himself during the term of the agreement not to take service with anyone else directly or indirectly to promote any business in direct competition with that of his employer is not in restraint of trade.

Therefore, 'A' cannot be restrained by an injunction from doing so.

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2018 - Dec [2] (b) C is the wife of A. She purchased some sarees on credit from B. B demanded the amount from A. A refused. B filed a suit against A for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether B would succeed. **(5 marks)**

Answer:

Agency may be created by a legal presumption; in a case of cohabitation by a married woman (i.e. wife is considered as an implied married agent, of her husband).

If wife lives with her husband, there is a legal presumption that a wife has authority to pledge her husband's credit for necessaries.

But the legal presumption can be rebutted in the following cases:

- (i) Where the goods purchased on credit are not necessaries.
- (ii) Where the wife is given sufficient money for purchasing necessaries.
- (iii) Where the wife is forbidden from purchasing anything on credit or contracting debts.
- (iv) Where the trader has been expressly warned not to give credit to his wife.

If the wife lives apart for no fault on her part, wife has authority to pledge her husband's credit for necessaries. This legal presumption can be rebutted only in cases (iii) and (iv).

In the Present Case: 'B' will succeed. He can recover the said amount from 'A' if sarees purchased by 'C' are necessaries for her.

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2019 - June [2] (a) Sunil, aged 16 years, was studying in a Medical College. On 1st March, 2017 he took a loan of ₹ 3 lakhs from Anil for the payment of his college fee and agreed to pay by 31st May, 2018. Sunil possesses assets worth ₹ 15 lakhs. On due date Sunil fails to pay back the loan to Anil. Anil now wants to recover the loan from Sunil out of his assets. Whether Anil would succeed? Decide, referring to the provisions of the Indian Contract Act, 1872. **(6 marks)**

Answer:

- (a) • According to **Section 11 of the Indian Contract Act, 1872**, a person who is of the age of majority to the law to which he is subject is competent to enter into any contract. A person who has completed the age of 18 years is a major and otherwise he will be treated as minor.
- Thus, Sunil who is a minor is incompetent to contract and any agreement with him is void [*Mohori Bibi Vs Dharmodas Ghose 1903, 30 Cal, 539 (PC)*]. **Section 68 of the Indian Contract Act, 1872** however, prescribes the liability of a minor for the supply of the things which are the necessaries of life to him.

- It says that though minor is not personally liable to pay the price of necessaries supplied to him or money lent for the purpose, the supplier or lender will be entitled to claim the money/price of goods or services which are necessaries suited to his condition of life provided that the minor has a property.
- The liability of minor is only to the extent of the minor's property. This type of contract is called a Quasi-contract and the right of the supplier/lender is based on the principle of equity.
- Hence, according to the above provision, Anil will be entitled to recover the amount of loan given to Sunil for payment of the college fees from the property of the minor.

(b) Essential elements of a contract of bailment:

1. **Contract:** The first condition is that there must be a contract between the two parties for the delivery of goods. Such contract may be express or implied written or oral.
2. **Delivery of Goods:** This contract is for the delivery of some movable goods from one person (bailor) to another person (bailee) or to his authorized agent. If the goods are immovable the contract will not be a contract of bailment.
3. **Change of Possession:** The possession of goods must be affected by such contract. Mere custody without possession is not a contract of bailment.
4. **Purpose of Delivery:** The delivery of the goods is for temporary purposes. It may be for safe-custody, repair, carriage or for gratuitous use by the bailee.
5. **Number of Parties:** There is two parties tender such contract e.g., the bailor and bailee. The person delivering the goods is called the bailor and the person to whom the goods are bailed is called the bailee.
6. **Right of Ownership:** In a contract of bailment, the right of ownership remains with an owner (bailor) and is not changed. If the ownership is transferred, the contract will be a contract of sale and is not of bailment.

7. **Change of Form:** If the goods bailed are altered in form by the bailee, such as cloth is converted into a shirt still, the contract is one of bailment.
8. **Goods in Possession of Bailee:** The delivery of the goods is not essential if the goods are already in the possession of the person who enters into the contract as bailee.
9. **Redelivery of Goods:** Under such contract, the goods are redelivered to the bailor or according to his directions upon the fulfillment of the purpose by the bailee.
10. **Right of Reward:** In a contract of bailment, both the parties bailor and the bailee can get a reward but it depends on the nature of the transaction.

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2019 - Dec [2] (b) Anita and Sonali are friends, Sonali treats Anita during Anita's illness.

Sonali does not accept payment from Anita for treatment and Anita promises Sonali's daughter Tania to pay her ₹75,000. Anita being in poor circumstances is unable to pay.

Tania sues Anita for the money. Can Tania recover?

Offer your views based on provisions of the Indian Contracts Act, 1872.

(5 marks)

Answer:

No, Tania cannot recover the money from Anita. The agreement between Tania and Anita is not a contract in the absence of consideration.

In this case, Tania's mother Sonali, voluntarily treats Anita during her illness.

Apparently it is not a valid consideration because it is voluntary whereas consideration to be valid must be given at the desire of the promisor-void Section 2(d).

- The question now is whether this case is covered by the exception given in Section 25(2) which *inter-alia* provides.

- “If it is a promise to compensate a person who has already voluntarily done something for the promisor....”
- Hence as per the exception the promise must be to compensate a person who has himself done something for the promisor and not to a person who has done nothing for the promisor.
- As Sonali’s daughter, Tania to whom the promise was made, did nothing for Anita, therefore Anita’s promise is not enforceable even under the exception.

———— Space to write important points for revision —————

Repeatedly Asked Questions		
No.	Question	Frequency
1.	Write short notes on out of the following term: E-Contracts 17 - June [8] (a), 18 - Dec [8] (a)	2 Times