

CHAPTER 1

THE INDIAN CONTRACT ACT, 1872

UNIT: 1

NATURE OF CONTRACT

CONTRACT	<p>The term contract is defined under section 2(h) of the Indian Contract Act, 1872 as-</p> <p>“an agreement enforceable by law”.</p> <p style="text-align: center;">Contract = Accepted proposal/Agreement + Enforceability by law</p>																
Agreement [Section 2(e)]	<ul style="list-style-type: none"> •Every promise and every set of promises, •forming consideration for each other, •Is an agreement. <p style="text-align: center;">Agreement = Offer/Proposal + Acceptance</p>																
ESSENTIALS OF A VALID CONTRACT	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 60%; text-align: center;">As given by Section 10 of Indian Contract Act, 1872</th> <th style="width: 35%; text-align: center;">Not given by Section 10 but are also considered essential</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1</td> <td>Agreement</td> <td>Two parties</td> </tr> <tr> <td style="text-align: center;">2</td> <td>Free consent</td> <td>Intention to create legal relationship</td> </tr> <tr> <td style="text-align: center;">3</td> <td>Competency of the parties</td> <td>Fulfilment of legal formalities</td> </tr> <tr> <td style="text-align: center;">4</td> <td>Lawful consideration</td> <td>Certainty of meaning</td> </tr> </tbody> </table>			As given by Section 10 of Indian Contract Act, 1872	Not given by Section 10 but are also considered essential	1	Agreement	Two parties	2	Free consent	Intention to create legal relationship	3	Competency of the parties	Fulfilment of legal formalities	4	Lawful consideration	Certainty of meaning
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	5	Legal object	Possibility of performance
	6	Not expressly declared to be void	

TYPES OF CONTRACT

Types of Contract

A. On the basis of the validity/enforceability

1. Valid Contract
2. Void Contract
3. Voidable Contract
4. Illegal Contract
5. Unenforceable Contract

B. On the basis of the formation

1. Express Contract
2. Implied Contract
3. Quasi Contract
4. E-Contract

C. On the basis of the performance

1. Executed Contract
2. Executory Contract
 - a. Unilateral Contract
 - b. Bilateral Contract

Promise [Section 2 (b)] When the person to whom the proposal is made, signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise.

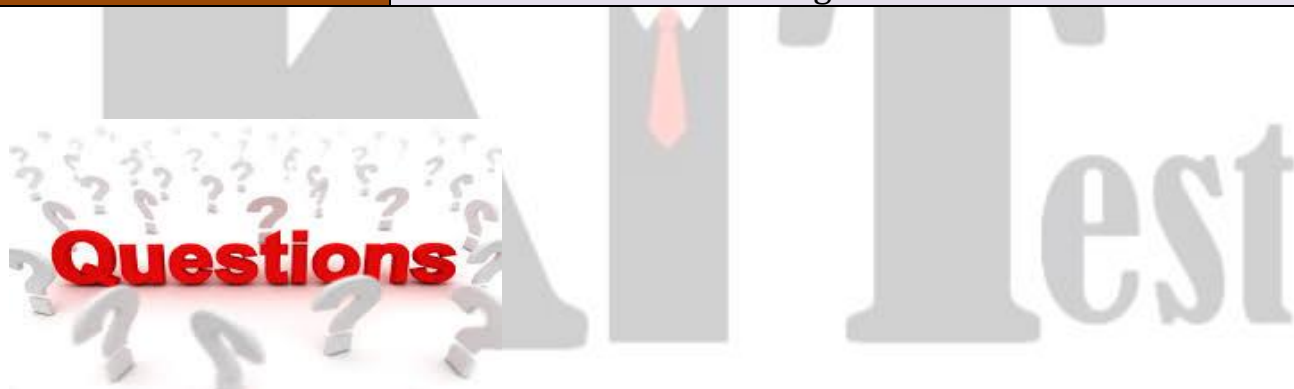
Promisor and Promisee [Section 2(c)] When the proposal is accepted-
The person making the proposal is called as ‘promisor’; and the person accepting the proposal is called as ‘promisee’.

Consideration [Section 2(d)] **When, at the desire of the promisor,**
The promisee has done or abstained from doing something; or
Does or abstains from doing something; or any other person promises to do or abstain from doing

	something, such act, abstinence or promise is called a consideration for the promise.
Void agreement [Section 2(g)]	An agreement not enforceable by law is said to be void. A void agreement is not enforceable from the very beginning, i.e. it is void ab initio.
Voidable Contract [Section 2(i)]	An agreement is a voidable contract if- it is enforceable by law at the option of one or more of the parties thereto, it is not enforceable by law at the option of the other or others
Void contract [Section 2 (j)]	A contract which ceases to be enforceable by law becomes void when it ceases to been forceable.
PROPOSAL/ OFFER	According to Section 2(a) of the Indian Contract Act, 1872 “When one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal”.
<u>CLASSIFICATION OF OFFER</u>	
General offer	It is an offer made to public cat large and hence anyone can accept and do the desired act (<i>Carlilly. Carbolic</i>

	<i>Smoke Ball Co.)</i>
Special/specific offer	When the offer is made to a specific or an ascertained person, it is known as a specific offer. Specific offer can be accepted only by that specified person to whom the offer has been made. [<i>Boultonv. Jones</i>]
Counteroffer	When the offeree offers to qualified acceptance of the offer subject to modifications and variations in the terms of original offer, he is said to have made a counter offer.
Cross offer	When two parties exchange identical offers in ignorance at the time of each other's offer, the offers are called cross offers.
Invitation to offer	An offer should be distinguished from an invitation to offer. An offer is definite and capable of converting an intention into a contract Acceptance of an invitation to an offer does not result in the contract and only an offer emerges in the process of negotiation.
ACCEPTANCE	Definition of Acceptance: In terms of Section 2(b) of the Act, 'the term acceptance' is defined as follows: "When the person to whom the proposal is made signifies his assent thereto, proposal is said to be accepted. The proposal, when accepted, becomes a promise".
COMMUNICATION OF OFFER	Communication of offer In terms of Section 4 of the Act, "the communication of offer is complete when it comes to the knowledge of the person to whom it is made".

AND ACCEPTANCE	<p>Communication of acceptance:</p> <p>Section 3 of the Act prescribes in general terms two modes of communication namely, (a) by any act and (b) by omission, intending thereby, to communicate to the other or which has the effect of communicating it to the other.</p>
REVOCAION OF OFFER AND ACCEPTANCE	<p>In term of Section 4, communication of revocation (of the proposal or its acceptance) is complete.</p> <p>(i) as against the person whom it is made when it is put into a course of transmission to the person to whom it is made so as to be out of the power of the person who makes it, and</p> <p>(ii) As against the person to whom it is made, when it comes to his knowledge.</p>



Question 1

Write a note on Quasi Contracts?

Answer:

Quasi Contracts: A Quasi contract is not a contract between two parties but a legal obligation imposed by court of law, which puts both parties in the same position as if there is a contract between them.

The concept of quasi contracts is dealt under S.68 to 72.

S.68: If a person under obligation or to person who can't enter into contract is supplied with Necessaries suited to his condition in life, the person who is furnished such supplied must be reimbursed from the property of that person.

S.9: Person who is interested in payment of money which another is bound to pay.

S.70: Obligation of person enjoying benefit of non-gratuitous act: New Model car.

S.71: Responsibility off under of goods.

Question 2

Define an offer. Explain the rules of an offer.

Answer:

Definition: The word Proposal and offer are used interchangeably and it is defined under Section 2(a) of the Indian Contract Act, 1872 as when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

- ✚ Rules: The following are important rules of an offer: -
- ✚ Must be capable of creating legal relation.
- ✚ Must be certain, definite and not vague
- ✚ May be expressed or implied.
- ✚ May be general or specific.
- ✚ Must be communicated

Question 3

How an offer is different from an invitation to offer?

Answer:

Offer and an Invitation to an offer: An offer is definite and capable of converting an intention into a contract. Whereas, an invitation to an offer is only a circulation of an offer, it is an attempt to induce offered to proceed for a definite offer. Acceptance of an invitation to an offer does not result contract and only an offer emerges in the process of negotiation.

Question 4

What are the circumstances under which an offer gets revoked or lapses?

Answer:

If the law is changed. An offer comes to an end if the law is changed so as to make the contract contemplated by the offer illegal or incapable of performance. An offer can however be revoked subject to the following rules:

- It can be revoked at any time before its acceptance is complete as against the offeror.
- Revocation takes effect only when it is communicated to the offeree.

- If the offer or has agreed to keep his offer open for a certain period, he can revoke it before the expiry of that period only-
 - a) If the offer has in the meantime not been accepted, or
 - b) If there is no consideration for keeping the offer open

Question 5

Explain in brief the rules relating to 'Acceptance' of an offer under the provisions of the Indian Contract Act, 1872

Answer:

Following are the general rules regarding acceptance under the Indian Contract Act, 1872.

- ✚ Acceptance must be absolute and unqualified. As per section 7 of the Act, acceptance is valid only when it is absolute and unqualified or unconditional.
- ✚ Acceptance must be in the prescribed manner. If the offer is not accepted in the prescribed manner, then the offeror may reject the acceptance within a reasonable time.
- ✚ Acceptance must be communicated to the offeror. If acceptance is communicated to the person, other than the offeror, it will not create any legal relationship. Thus, to conclude a contract between the parties, the acceptance must be communicated in some perceptible form.
- ✚ Acceptance must be given by the party to whom the offer is made.
- ✚ Acceptance must be given within the prescribed time or within a reasonable time.
- ✚ Acceptance cannot be given before communication of an offer
- ✚ Acceptance must be made before the offer lapses or is withdrawn.
- ✚ Acceptance must show intention to fulfill the promise.
- ✚ Acceptance cannot be presumed from silence
- ✚ Acceptance by conduct/performance of condition: Acceptance may also be by performance of some condition/act as required by the offeror.

Question 6

True and False Statements.

A proposal may be revoked by the proposer before the posting of the letter of acceptance by the acceptor.

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Answer:

Correct:

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

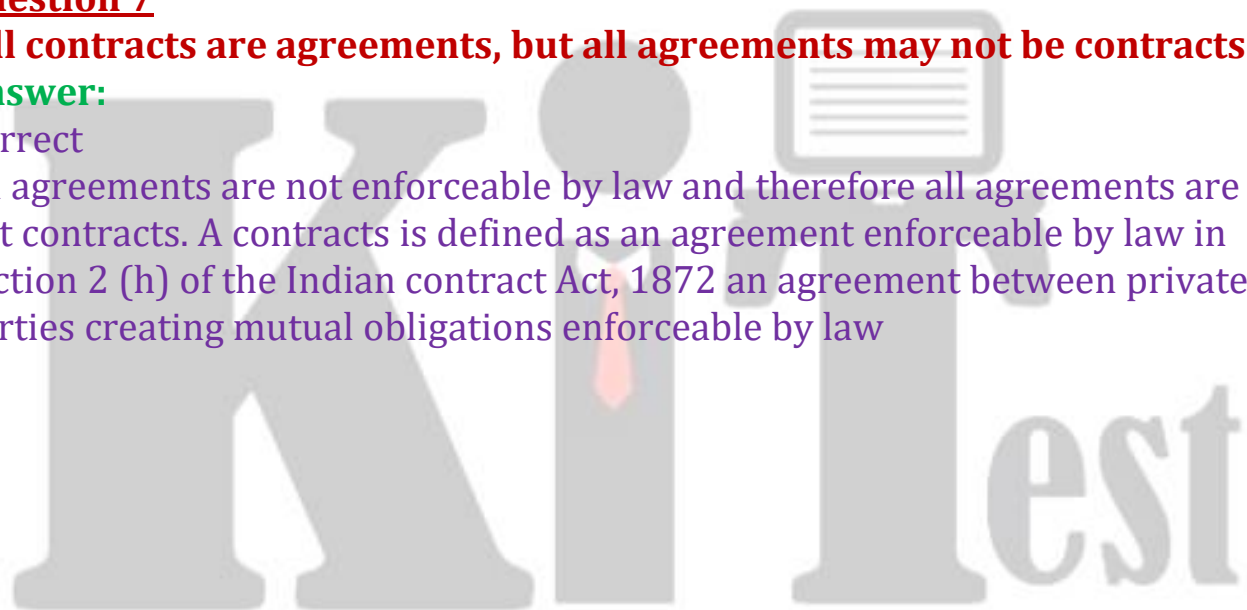
Question 7

'All contracts are agreements, but all agreements may not be contracts'.

Answer:

Correct

All agreements are not enforceable by law and therefore all agreements are not contracts. A contracts is defined as an agreement enforceable by law in section 2 (h) of the Indian contract Act, 1872 an agreement between private parties creating mutual obligations enforceable by law



CASE STUDY

Question 8

Father promised to pay his son a sum of rupee one lakh if the son passed C.A. examination in the first attempt. The son passed the examination in the first attempt, but father failed to pay the amount as promised. Son files a suit for recovery of the amount. State along with reasons whether son can recover the amount under the Indian Contract Act, 1872.

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. Agreements of a social nature or domestic nature do not contemplate legal relationship and as such are not contracts, which can be enforced. This principle has been laid down in the case of Balfour vs. Balfour (1912 2 KB. 571). Accordingly, applying the above provisions and the case decision, in this case son cannot recover the amount of ` 1 lakh from father for the reasons explained above.

Question 9

Ram invites Madhuri (a well-known film actress) to his daughter's engagement and dinner party. Madhuri accepts the invitation and promised to attend. Ram made special arrangements for Madhuri at the party but she did not turn up. Ram enraged with Madhuri's behavior, wanted to sue for the loss incurred in making special arrangements. Ram is seeking your advice.

Answer:

No. 'Ram' cannot sue 'Madhuri' for his loss. Because the agreement was a kind of social nature and lacked the intention to create legal relationship

Question10

"A contract that was between an illegal drug dealer and an illegal drug supplier to purchase a specified amount of drugs for a specified amount." Which type of contract it is and what are the consequence in the law for the same?

Answer:

This Contract is voidable Contracts – a voidable contract is a contract which may appear to be valid and has all of the necessary elements to be enforceable, but has some type of flaw which could cause one or both of the parties to void the contract. The contract is legally binding, but could become void. If there is an injured party involved, the injured party or the defrauded must take action, otherwise the contract is considered valid.

Hence, either one of the parties could void the contract since there is no lawful objective and hence missing one of the elements of a valid contract.

Question 11

Mr. D started "Self-Service," system in his shop. Mr. A entered the shop, took a basket and after taking article of his choice into the basket reached the cashier for payments. The cashier refused to accept the price. Can Mr. D be compelled by Mr. A to sell the said article? Decide

Answer:

Invitation to Offer Provision:

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

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

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

Question 12

An offer in a bilateral contract would not lead to a binding contract whereas an offer in a unilateral contract would lead to a binding contract. Explain.

Answer:

Yes it is true; a bilateral contract would not lead to a binding contract whereas an offer in a unilateral contract would lead to a binding contract. This is because a unilateral legal agreement is an agreement in where only one of the contracting parties will make a legally binding promise such as could be seen in the case between UTM and One the famous singer. Another good example of a unilateral contract is an insurance contract where only the insurers have made a promise of their future performance. Importantly, a unilateral contract is a contract where only one of the contracting parties would make an express promise, or wish to undertake a performance without its securing reciprocal agreements from the other contracting party. Legally speaking, a unilateral contract is a one-sided contract where one of the contracting parties known as the offeror would make a promise or offer in exchange for an act by another party that is known as the offeree. Indicating that if the offeree should fully acts on the offeror's offer or promise, such offer or is legally obligated by law to fulfill the contract, but notably is that an offered couldn't be forced to act or not act, this is because there is no return that has been promised to the offeror. A pure indication that shows that after such an offered could have performed, there is only one enforceable promise that exists and that is the offeror. A major difference between unilateral contract and that of a bilateral contract is that in bilateral contracts the parties will exchange mutual promises. The common business contract such as buying and selling are all under bilateral contract. Any reward contract is mostly under unilateral contracts. This is because the offer or that is offering the reward couldn't impel the offered or any other person to fulfill the reward offer. Note that under a unilateral contract an offeree has the power to sue the offeror for a breach of contract; however this is if the offeror failed to provide the promised reward after which the offered must have fulfilled the contract's requirements.

Question 13

Mr. offered to sell his house to Mr. F for 15, 00,000. Mr.X_ accepted the offer by post. On the very next day Mr. .X sent a telegram

revoking the acceptance which reached Mr. U before the letter of acceptance. Is the revocation of acceptance valid? Would it make any difference if both the letter of acceptance and the telegram of revocation of acceptance reach Mr. U at the same time?

Answer:

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

Provision:

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

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

Present Case:

Yes, the revocation of acceptance by Mr. X (the acceptor) is valid.

If Mr. U opens the telegram first and reads it, the acceptance stands revoked.

If he opens the letter first and reads it, revocation of acceptance is not possible as contract has already been concluded

Question 14

Mary bought a house from Pete using a written purchase and sale agreement. After taking possession, Mary discovers a small leak in a pipe in the crawl space of the house, but does not take any action against Pete for four years. The court decided that the contract was unenforceable. Justify

Answer:

Unenforceable Contracts - an unenforceable contract is a contract which cannot be enforced in a court of law. This could happen because the terms of the contract are ambiguous, if one party has a voidable contract or if the Statute of Limitations has expired. The statute of limitations requires that lawsuits be filed within a certain period of time following a breach. Another reason a contract might be unenforceable could be because of the Doctrine of Laches. This principle states that a court has determined a contract is unenforceable due to needless delay or neglect in filing a claim even though the statute of limitations may not have expired. So Mary's delay, even

though the Statute of Limitations had not expired. The court ruling was based on the Doctrine of Laches.

Question15

Bill bought a property from Harry through a written contract for sale. Seven years after the purchase Harry wanted to claim that the contract was unenforceable. Justify that Harry is able to challenge the contract?

Answer:

Unenforceable Contracts - an unenforceable contract is a contract which cannot be enforced in a court of law. This could happen because the terms of the contract are ambiguous, if one party has a voidable contract or if the Statute of Limitations has expired. The statute of limitations requires that lawsuits be filed within a certain period of time following a breach. Another reason a contract might be unenforceable could be because of the Doctrine of Laches. This principal states that a court has determined a contract is unenforceable due to needless delay or neglect in filing a claim even though the statute of limitations may not have expired.

Hence, the statute of limitations for written contracts in Oregon is six years and Harry would not be able to challenge the contract.

Question16

A and B are friends. B treats A during A's illness but does not accept payment from A for the treatment and A promises B's son X to pay him Rs. 1000. A being poor is unable to pay. X sues A for the money can X recover.

Answer:

The given case is under the chapter of consideration where the agreement between X and A are not in the contract in the absence of consideration. The agreement can be call it as contract if there is a consideration present in contract between 2 people. In this case B treats A during his illness but it's not a valid consideration since it is a voluntary action performed by Mr. B

Judgment: The agreement between X and A is not the contract in the absence of a consideration. In this case X father B voluntarily treat A during his 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 under section 2(D) if it is a promise to compensate a person who has voluntarily owe something from the promisor, as per the exceptions the promisor must be to compensate a person who has himself done something

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from the promisor and not to a person who has done nothing to the promisor as the son X to whom the promisor was made did nothing for A so A's promise is not enforceable even under the exception. Therefore X can't not recover the money from A

Question 17

Mr. X sees a book displayed in a shelf of a book shop with the price tag of Rs.85. Mr., X tenders Rs.85 on the counter and asked for the book the book seller refuses to sale saying that the book has already being sold to someone else and he doesn't have another copy of the book in the stock. Is the book seller bound to sale the book to X?

Answer:

The given case is under the chapter of offer and invitation to an offer which means the signification by one person to another of his willingness to enter into a contract with him on certain terms. It may be expressed or implied from the conduct of the parties. In this set case Mr. X wanted to purchase the book which is already sold to other person therefore book seller refuses the proposal and refuse to sell the book therefore x sue the book seller.

Judgment: As mentioned above as per the section 2(a) says when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining assent of that other to such act or abstinence, he is said to make a proposal. Every expression of willingness of a person to enter into a contract may not be an offer in the legal sense. Therefore, an offer must be distinguished from invitation to offer. Many statements which appear to be offer are not really offers but mere invitation to offer. In this case purchaser makes the offer. Books are not offers and its already being sold to the other party hence it is not legal action to sale the particular sold copy to the other party. Therefore book seller is not bound to sale the book to X CASE

Question 18

B offers to sale his car to A for rs.95, 000. A accepts to purchase it for 94,000 B refuse to sale the car for 94,000. Subsequently A agrees to purchase the car for 95,000 but B refuses to sale. A sues for the specific performance of contract will he succeed?

Answer:

The given case is under the chapter of offer and invitation to an offer which means the signification by one person to another of his willingness to enter into a contract with him on certain terms. It may be expressed or implied from the conduct of the parties. In this set case B offers to sale his car to A at a specific cost as per B's desire. A made a counter offer and B rejected subsequently A agrees to purchase on the original offer rate but B refuses to proceed. Case: Harvey V/S Facie In this case Facie had a bumper hall pen. Harvey sent telegram to Facie asking about two questions: 1. Will you sell the bumper hall pen? 2. What is the minimum price of bumper hall pen? Facie replied the minimum price of pen is 100 pounds, after some time Harvey replied that he is willing to purchase the pen but Facie didn't replied to Harvey because it is just an invitation to an offer therefore here facie need not have to sell the pen.

Judgment: As mentioned above to enter in to the contract there should have a willingness of both the parties to agree on same. Here B showed his willingness to sell the car and even A showed the interest to purchase by making first counter offer and then agreeing on same price but because of lack of faith on partner, B may refuse to enter in to contract. Since it is a invitation of an offer and no proper contract made between two parties therefore B need not have to sell the car to A.

Question 19

Mr. Anuj is the employer and sends Ajay in search of the pet cat which was missing for 3 days. After Ajay left in search of the cat Anuj advertise in a newspaper saying that whoever finds the cat will give a reward of Rs.10, 000. Ajay find it and the reward ignored can he claim the reward. Justify your answer.

Answer:

The given case is under the chapter of offer and acceptance. Offer refers to the signification by one person to another of his willingness to enter in to a contract with him on certain terms. It may be expressed or implied from the conduct of the parties. In this set case Mr. Anuj told to Mr. Ajay to search his cat. Mr. Ajay went for the search and after Ajay left in search of cat Anuj advertise in a newspaper saying that whoever finds his cat will give a reward of 10,000. Ajay find it but Mr. Anuj refuses to give reward.

Case: Lalman V/S Gauri Dutt sent his servant Lalman in search of his missing nephew. Gauri Dutt announced a reward for information

concerning the boy. Lalman traced the boy in ignorance of any such announcement. Subsequently Lalman came to know of this reward. He claimed it. Held – Lalman was not entitled to the reward

Judgment: As mentioned above Mr. Anuj advertise the reward after Ajay went in search therefore in this case there is lack of communication. A person cannot accept an offer as long as he is unaware of its existence. Unless an offer is properly communicated there can be no acceptance of it. There can be no offer by a person to him. An acceptance of an offer in ignorance of the offer is no acceptance at all and does not create any legal rights or obligations. Therefore here in this case Mr. Anuj need not pay the reward amount to Ajay.

Question 20

Cyber Pharma was manufacturing a medicine for cure aids. They advertise in international magazine saying that whoever consumes these medicines will not suffer from aids. Mrs. Mathew read this advertisement in the magazine and purchased she claimed for the reward of 10 million pounds as a compensation as promise in the advertisement can she claim? Will she succeed?

Answer:

The given case is under the chapter of offer and acceptance. Offer refers to the signification by one person to another of his willingness to enter in to a contract with him on certain terms. It may be expressed or implied from the conduct of the parties. In this set case Cyber Pharma was manufacturing a medicine for cure aids. They advertise in international magazine saying that whoever consumes these medicines will not suffer from aids. Mrs. Mathew read this advertisement in the magazine and purchased she claimed for the reward of 10 million pounds as a compensation as promise in the advertisement. But company refuses it.

Case: Carlill V/S Carbolic Smoke Ball Co. Carbolic smoke ball co, advertise in paper – whoever consume their medicine will not suffer from influenza. In case they suffer they will give 1000 pound. This advertise read by Carlill and she consumed and used in spite of that she suffering from influenza. She went to company and asking for reward but company said she didn't communicate that she purchasing their company's product.

Judgement: As mentioned above here Mrs. Mathew read the giving Advertisement and according to the instruction she performed that means

She accepts the given order and in spite of that she suffered from Aids. The parties can enter in to contract when there is an offer and acceptance. Here both are present so it is a contract. Therefore Mrs. Mathew can claim for the compensation.

CLARIFICATION:

Question 21

State with reason whether there is any contract made in the following case as per the Indian Contract Act, 1872:

“J accepts an invitation to dinner but fails to attend”

Answer:

There is no contract in this case as the parties do not intend that the contract should be attended by legal consequences.

Question 22

Cash is withdrawn by the customer of a bank from the automatic teller machine is an example of:

- a) Express contract
- b) Void contract
- c) Tacit contract
- d) Illegal contract.

Answer: c

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

Question 23

Can anyone make a legally binding contract?

Answer:

Generally, to be legally valid, most contracts must contain two elements: All parties must agree about an offer made by one party and accepted by the other. Something of value must be exchanged for something else of value. This can include goods, cash, services, or a pledge to exchange these items.

Question 24

Explain the modes of revocation of an offer as per the Indian Contract Act, 1872.

Answer:

The modes for revocation of an offer as per the Indian Contract Act, 1872 are:

- ✚ By notice of revocation
- ✚ By lapse of time:
 - ✚ The time for acceptance can lapse the acceptance is not given within the specified time and where no time is specified, then within a reasonable time. This is for the reason that proposer should not be made to wait indefinitely.
- ✚ By non-fulfillment of 'condition precedent where the acceptor fails to fulfill a condition precedent to acceptance the proposal gets revoked. This principle is laid down in Section 6 of the Act. The offer or for instance may impose certain conditions such as executing a certain document or depositing certain amount as earnest money.
- ✚ By death or insanity
- ✚ By counteroffer
- ✚ By the non-acceptance of the offer according to the prescribed or usual mode
- ✚ By subsequent illegality.

Question 25

What is contract and types of contract?

Answer:

A contract is a written or expressed agreement between two parties to provide a product or service. There are essentially six elements of a contract that make it a legal and binding document.

In order for a contract to be enforceable, it must contain:

- An offer that specifically details exactly what will be provided
- Acceptance, which is the agreement by the other party to the offer presented
- Consideration, money or something of interest being exchanged between the parties
- Capacity of the parties in terms of age and mental ability
- The intent of both parties to carry out their promise

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- Legally enforceable terms and conditions, also called object of the contract
- In other words, a contract is enforceable when both parties agree to something, back the promise up with money or something of value, both are in sound mind and intend to carry out their promise and what they promise to do is within the law.

Most commonly, a contract is written and signed by the parties. However, there are several other types of contracts that are considered enforceable. There are even some that are not considered enforceable and serve only as a way for a court to determine the obligation on the part of either party.

Question 26

What is the classification of contract?

Answer:

Classification of contract. Contract is an agreement enforceable by law. Between two or more parties for the doing or not doing of something specified. Contracts can also be classified according to: Contracts can be classified into five broad divisions namely

- + The method of formation of a contract
- + The time of performance of contract
- + The parties of the contract
- + The method of formalities of the contract
- + The method of legality of the contract

Question 27

What is the difference between a void contract and an unenforceable contract?

Answer:

An unenforceable contract or transaction is one that is valid but one the court will not enforce. Unenforceable is usually used in contradistinction to void (or void as initio) and voidable. If the parties perform the agreement, it will be valid, but the court will not compel them if they do not.

Question 28

An offer can't be accepted after it has been terminated. Explain when an offer ceases to be capable of acceptance.

Answer:

Yes, an offer can't be accepted after it has been terminated. An offer ceases to be capable of acceptance or offer lapses or comes to an end in the following circumstances:

- a) By communication of notice of termination of offer to the offeree
- b) By lapse of the specified or reasonable time
- c) By death or insanity of the offer
- d) By counteroffer
- e) By not being accepted according to the prescribed or usual mode.
- f) By non-fulfillment of a condition precedent.

Question 29

Whether a promise to pay time barred debt is valid and if so under what conditions?

Answer:

An agreement without consideration is void. But to this rule, certain exceptions are recognized and amongst them promise to pay a time barred debt is one. It is set out u/s. 25(3) of the Indian Contract Act, 1872. The conditions to be fulfilled for its maintain ability in the court law are: for the law for the limitation of suits.

Question 30

What are essentials of a valid contract?

Answer:

Essential Elements of a Valid Contract are:

Offer and Acceptance: In order to create a valid contract, there must be an agreement between the two parties. An offer from one party to do or abstain from doing a particular act and its acceptance by the other party are two basic elements of an agreement.

Question 31

State the statement whether true or false.

An agreement with alien friend is void but an agreement with alien enemy is valid.

Answer:

Incorrect

Reason: Persons disqualified by law. Alien enemy: A person who is not an Indian citizen is called an alien. ... A contract with an alien enemy is void, but a contract with an alien friend is valid. A contract entered with an alien friend during peace, will be rendered void on the outbreak of a war with that country.

Past Examination Questions

2018 – Nov

Question1

(i) Mr. Ramesh promised to pay t 50, 000 to his wife Mrs. Lali outfits he can spend the sum on her 30th birthday. Mrs. Lali in sister d her husband to make a written agreement if he really loved her. Mr. Ramesh made a written agreement and the agreement was registered under the law. Mr. Ramesh failed to pay the specified amount to his wife Mrs. Lali. Mrs. Lali wants to file a suit against Mr. Ramesh and recover the promised amount. Referring to the applicable provisions of the Contract Act, 1872, advise whether Mrs. Lali will succeed.

(ii) A shop-keeper displayed a pair of dress in the show-room and a price tag of 2,000 was attached to the dress. Ms, Lovely, looked at the tag and rushed to the cash counter. Then she asked the shop-keeper to receive the payment and pickup the dress. The shop-keep refused to hand-over the dress to Ms. Lovely in consideration of the price stated in the price tag attached to the dress. Ms. Lovely seeks your advice whether she can sue the shop-keeper for the above cause under the Indian Contract Act, 1872.

Answer:

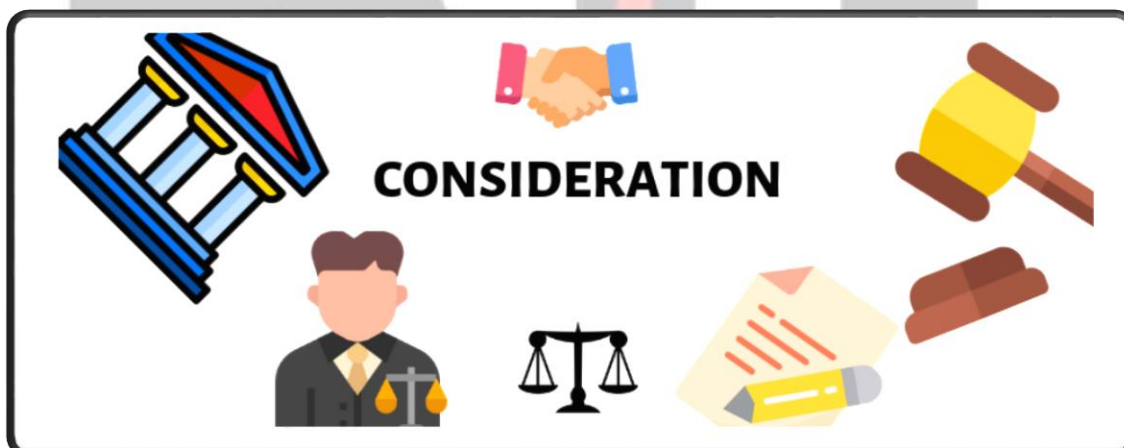
1. According to the facts of this case there appears to be a clear-cut application of the definition of a contract that is statutorily defined as an agreement enforceable by law. In this case though initially Mr. Ramesh made an agreement in the form of promise to his wife Mrs. Lali of paying Rs. 50,000, but after getting the agreement registered under the law he got the agreement converted into a contract which is legally enforceable. Hence

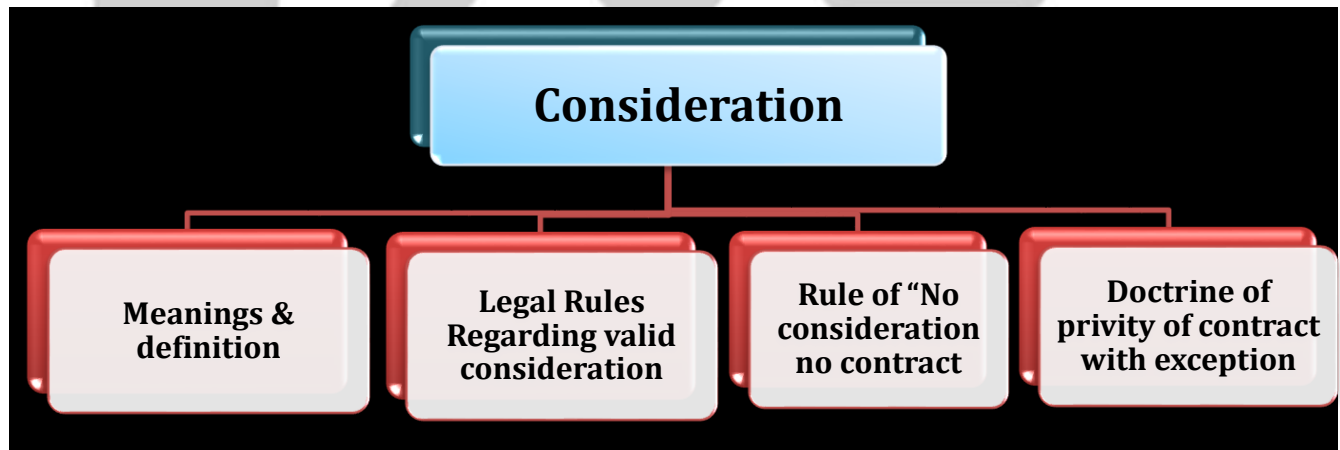
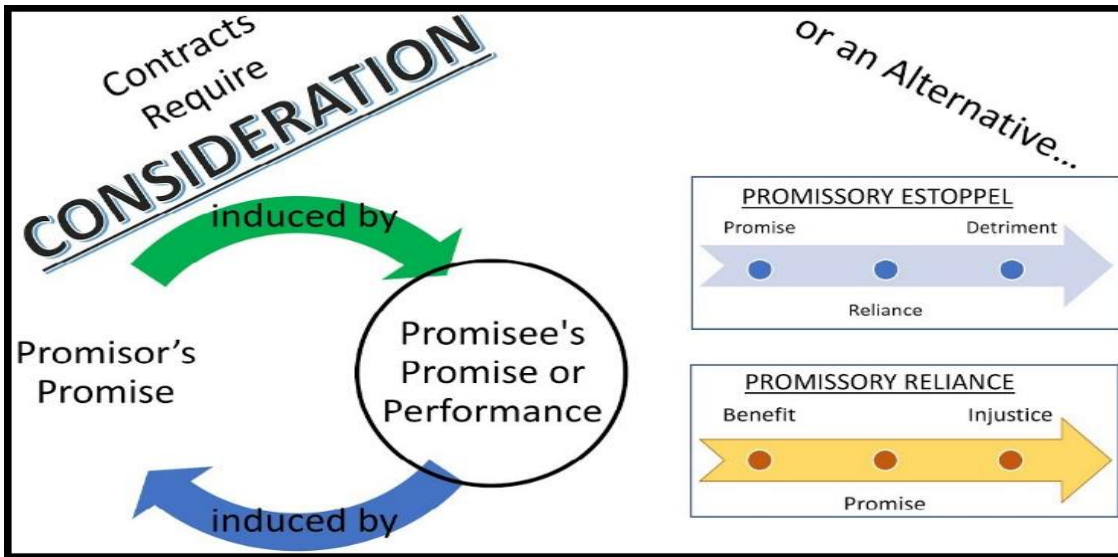
it can be concluded that Mrs. Lali will succeed and her suit to reconver 50,000 from her husband Mr. Ramesh.

2. According to the facts of the case this case qualifies as a typical example covered with in the definition of a General offer that means an offer made to public at large and hence any one can accept. In this case, Ms. Lovely had accepted the general offer by seeing the price tag and when she moved to purchase that she was refused by the shop-keeper who had himself previously made the general offer by putting the dress on display with the price tag. Hence it can be concluded that Ms. Lovely can certainly sue the shop-keeper.

UNIT: 2

CONSIDERATION





CONSIDERATION	<p>Section 2(d) defines consideration as follows:</p> <ul style="list-style-type: none"> • Consideration is a price for the promise of the other party and it may either be in the form of 'benefit' or some 'detriment' to the parties. • Consideration must move at the desire of the promisor. • It may be executed or executory. • Past consideration is valid provided it moved at the previous request of the promisor. • Inadequacy of consideration is not relevant. • Consideration must be legal.
	<p>✚ Consideration must move at the desire of the promisor</p>

<p>LEGAL RULES REGARDING CONSIDERATION</p>	<ul style="list-style-type: none"> ✚ Consideration may move from promisee or any other person: ✚ Executed and executory consideration: ✚ Consideration may be past, present or future ✚ Consideration need not be adequate ✚ Performance of what one is legally bound to perform ✚ Consideration must be real and not illusory ✚ Consideration must not be unlawful, immoral, or opposed to public policy
<p>SUIT BY A THIRD PARTY TO A CONTRACT</p>	<ol style="list-style-type: none"> 1. In the case of trust, a beneficiary can enforce his right under the trust, though he was not a party to the contract between the settler and the trustee. 2. In the case of a family settlement, if the terms of these settlement are reduced into writing, the members of family who originally had not been parties to the settlement may enforce the agreement. 3. In the case of certain marriage contracts 4. In the case of assignment of a contract / arrangements 5. Acknowledgement or estoppel 6. In the case of covenant running with the land 7. Contracts entered into through an agent
<p>VALIDITY OF AN AGREEMENT WITHOUT CONSIDERATION</p>	<ol style="list-style-type: none"> 1. Natural Love and Affection: Condition to be fulfilled under section 25(1) <ol style="list-style-type: none"> a. It must be made out of natural love and affection between the parties. b. Parties must stand in near relationship to each other. c. It must be in writing. d. It must also be registered under the law. 2. Compensation for past voluntary services: A promise to compensate, wholly or in part, a person who has already

	<p>voluntarily done something for the promisor, is enforceable under Section 25(2).</p> <ol style="list-style-type: none"> a. The services should have been rendered voluntarily. b. The services must have been rendered for the promisor. c. The promisor must be in existence at the time when services were rendered. d. The promisor must have intended to compensate the promisee. <p>3. Promise to pay time barred debt: Where a promise in writing signed by the person making it or by his authorized agent, is made to pay a debt barred by limitation it is valid without consideration [Section 25(3)].</p> <p>4. Agency: According to Section 185 of the Indian Contract Act, 1872, no consideration is necessary to create an agency.</p> <p>5. Completed gift: In case of completed gifts, the rule no consideration no contract does not apply</p> <p>6. Bailment: No consideration is required to effect the contract of bailment (Section 148).</p> <p>7. Charity: If a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid. (<i>Kadarnath v. Gorie Mohammad</i>)</p>
<p>General Theory of Consideration</p>	<p>The general rule of law is “No Consideration, No Contract” but there are a few exceptional cases where a contract, even though without consideration is valid.</p>
<p>Stranger to Contract</p>	<p>“Stranger to a contract can’t sue but in some exceptional cases the contract may be enforced by a person who is not a party to the contract.</p>



Question 1

Explain the term 'Consideration'?

Answer:

Section 2 (d) of the Indian Contract Act, 1872 defines consideration as “when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise”.

Question 2

Are there any circumstances under which a contract, under the provisions of the Indian Contract Act 1872, without consideration is valid? Explain.

Answer:

The general rule is that an agreement made without consideration is void. Sections 25 and 185 of the Indian Contract Act, 1872, provide for exceptions to this rule where an agreement without consideration is valid. These are:

- **Love & Affection [Section 25(1)]**

Where an agreement 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 the parties standing in near relation to each other, the agreement is enforceable, even though, the consideration is absent.

- **Compensation for voluntary service [Section 25(2)]**

A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable even without consideration.

- **Promise to pay, a time-barred Debt [Section 25(3)]**
The agreement is valid provided it is made in writing and is signed by the debtor or by his agent authorized in that behalf.
- **Completed Gift - [Explanation 1 to Section 25]**
As per explanation 1 to section 25, nothing in section 25 shall affect the validity as between donor and donee, on any gift actually made.
- **Agency (Section 185)**
No consideration is necessary to create an agency.

Question 3

Comment on 'to form a valid contract, consideration must be adequate'.

Answer:

The law provides that a contract should be supported by consideration. So long as consideration exists, the Courts are not concerned to its adequacy, provided it is of some value. The adequacy of the consideration is for the parties to consider at the time of making the agreement, not for the Court when it is sought to be enforced (Bolton v. Madden). Consideration must however, be something to which the law attaches value though it need not be equivalent in value to the promise made.

According to Explanation 2 to Section 25 of the Indian Contract Act, 1872, an agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Question 4

Whether gratuitous promise can be enforced?

Answer:

The word 'gratuitous' means 'free of cost' or 'without expecting any return'. It can therefore be inferred that a gratuitous promise will not result in an agreement in the absence of consideration. For instance, a promise to subscribe to a charitable cause cannot be forced.

Question 5

Explain the legal rules regarding Consideration.

Answer:

- a. **Consideration must move at the desire of the promisor:**
Consideration must be offered by the promisee or the third party at the desire or request of the promisor. This implies “return” element of consideration. Contract of marriage in consideration of promise of settlement is enforceable.
- b. **Consideration may move from promisee or any other person:** In India, consideration may proceed from the promisee or any other person who is not a party to the contract. The definition of consideration as given in Section 2(d) makes that proposition clear. According to the definition, when at the desire of the promisor, the promisee or any other person does something such an act is consideration. In other words, there can be a stranger to a consideration but not stranger to a contract.
- c. **Executed and executory consideration:** A consideration which consists in the performance of an act is said to be executed. When it consists in a promise, it is said to be executory. The promise by one party may be the consideration for an act by some other party, and vice versa.
- d. **Consideration may be past, present or future:** The words “has done or abstained from doing” [as contained in Section 2(d)] are recognition of the doctrine of past consideration. In order to support a promise, a past consideration must move by a previous request. It is a general principle that consideration is given and accepted in exchange for the promise. The consideration, if past, may be the motive but cannot be the real consideration of a subsequent promise. But in the event of the services being rendered in the past at the request or the desire of the promisor, the subsequent promise is regarded as an admission that the past consideration was not gratuitous.
- e. **Consideration need not be adequate:** Consideration need not be of any particular value. It need not be approximately of equal value with the promise for which it is exchanged but it must be something which the law would regard as having some value. Something in return need not be equal to something given. It can be considered a bad bargain of the party.
- f. **Consideration must be real and not illusory:** Consideration must be real and must not be illusory. It must be something to

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which the law attaches some value. If it is legally or physically impossible it is not considered valid consideration.

- g. **Consideration must not be unlawful, immoral, or opposed to public policy.** Only presence of consideration is not sufficient it must be lawful. Anything which is immoral or opposed to public policy also cannot be valued as valid consideration.

CASE STUDY:

Question 6

Mr. Singh, an old man, by a registered deed of gift, granted certain land and property to A, his daughter. By the terms of the deed, it was stipulated that an annuity of ₹ 2,000 should be paid every year to B, who was the brother of Mr. Singh. On the same day A made a promise with Band executed in his favour an agreement to give effect to the stipulation A failed to pay the stipulated sum. In an action against her by B, she contended that since B had not furnished any consideration, he has no right of action.

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

Answer:

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

Provision:

Consideration is one of the essential elements of valid contracts. According to Sec 2(d), when at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing or promises to do or abstains from doing something, such act or abstinence or promise is called a consideration for the promise. As per the legal requirements of a valid consideration, consideration may move from the promisee or any other party even a stranger. It means that there must be consideration and it is immaterial as to who furnishes it. It also puts forward that, a person can sue on a contract even if the consideration for the promise is moved from a 3rd party. The leading case in this regard is the case of Chinnaya vs. Ramayya, where in it was held that the consideration can legitimately move from a 3rd party.

Present Case:

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

Question 7

Priya transferred his house to his daughter Monika by way of gift. The gift deed, executed by Priya contained a direction that Monika shall pay a sum of ` 5,000 per month to Nisha (the sister of the executor). Consequently Monika executed an instrument in favor of nisha agreeing to pay the said sum. Afterwards, Monika refused to pay the sum to Nisha saying that she is not liable to Nisha because no consideration had moved from her. Decide with reasons under the provisions of the Indian Contract Act, 1872 whether Monika is liable to pay the said sum to Nisha.

Answer:

As per Section 2 (d) of the Indian Contract Act, 1872, in India, it is not necessary that consideration must be supplied by the party; it may be supplied by any other person including a stranger to the transaction. The problem is based on a case "Chinnaya vs. Ramayya" in which the Court clearly observed that the consideration need not necessarily move from the party itself, it may move from any person. In the given problem, the same reason applies. Hence, Monika is liable to pay the said sum to Nisha and cannot deny her liability on the ground that consideration did not move from Nisha

Question 8

Mr. A Developed a shopping mall at Mumbai at the request of Mr. B who is a municipal corporate. Mr. C makes agreement to pay Rs. 2, 50,000. Mr. A accepts the proposal of Mr. C. Is this an agreement or a contract justify your answer.

Answer:

The given case is under the chapter of consideration, which means the promises executes the work at the desire or under the direction of the promisor in this set case Mr. A developed a shopping mall at Mumbai with the prior request of Mr. B who is a municipal corporate. Mr. C makes agreement to pay Rs. 2, 50,000 and Mr. A accepted the proposal of Mr. C. Case: Durgaprasad V/S Baldeo In this case Mr. Durga Prasad constructed the

market under the direction of municipal corporate. Market allotted to various person, Mr. baldeo was one of them. He made an agreement that he will pay commission to Mr. Durgaprasad for the land allotment in the market. But after this agreement Mr. Baldeo failed to pay money to Mr. Durgaprasad hence Durgaprasad filed a case against baldeo.

Judgment: As mentioned above A developed a shopping mall at Mumbai at the request of B who is a municipal corporate C agree to pay Rs.2, 50,000 to A as mentioned in the above case C is the stranger between A and B so there is no valid consideration between A and C because U/S 2 (D) anything is done voluntarily, there is no lawful consideration.

Question 9

There is a constant quarrel between Ankita and Aniket due to which there is a marital discord between two. As a part of settlement the husband agrees to pay sum of Rs. 50,000 per month as maintenance allowance of his wife. Provided she stays separately. Does the wife have a claim to get that amount?

Answer:

The given case is under the chapter of consideration, which means the promises execute the work at the desire or under the direction of the promisor. Consideration is essential for the validity of an agreement i.e. in other words an agreement made without consideration is void. However section 25 (1) that is natural love and affection; deal with the exception of this rule. In this set case there is a quarrel between Ankit and Ankita due to which there is a marital discord between two. As a part of settlement the husband agrees to pay for the maintenance allowances to his wife provided she stays separately. Case: Rajlucky V/S Bhootnath An agreement was entered into by a husband with his wife during quarrels and disagreements, whereby the husband promised to give some property to wife. But after this he refused to perform the action and here the agreement was held to be void.

Judgment: As mentioned above an agreement was entered in to by a Ankit with his wife Ankita during their quarrels, whereby the husband agrees to pay the maintenance allowances to his wife provided she stays separately. In the above case the agreement held to be void because, under the circumstances, there was no natural love and affection between parties. As per the exceptions under the consideration section 25(1) love and affection states that agreement has to be made out of natural love and affection and it

should be between the parties standing near relationship to each other. As we seen in this case nearness of relationship, however does not necessarily import love and affection. Therefore, there is no consideration made by husband hence it is only an agreement and not a contract. Therefore, it is a void agreement hence husband need not have to pay compensation for the separation.

Question 10

A and B are friends. B treats A during A's illness but does not accepts payment from A for the treatment and A Promises B's son X to pay him Rs. 1000. A being poor is unable to pay. X sues A for the money can X recover.

Answer:

The given case is under the chapter of consideration where the agreement between X and A are not in the contract in the absence of consideration. The agreement can be call it as contract if there is a consideration present in contract between 2 people. In this case B treats A during his illness but it's not a valid consideration since it is a voluntary action performed by Mr. B

Judgment: The agreement between X and A is not the contract in the absence of a consideration. In this case X father B voluntarily treat A during his 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 under section 2(D) if it is a promise to compensate a person who has voluntarily owe something from the promisor, as per the exceptions the promisor must be to compensate a person who has himself done something from the promisor and not to a person who has done nothing to the promisor as the son X to whom the promisor was made did nothing for A so A's promise is not enforceable even under the exception. Therefore, X can't not recover the money from A

Question 11

A and B are friends. B treats A during A's illness but does not accepts payment from A for the treatment and A Promises B's son X to pay him Rs. 1000. A being poor is unable to pay. X sues A for the money can X recover.

Answer:

The given case is under the chapter of consideration where the agreement between X and A are not in the contract in the absence of consideration. The agreement can be call it as contract if there is a consideration present in contract between 2 people. In this case B treats A during his illness but it's not a valid consideration since it is a voluntary action performed by Mr. B

Judgement: The agreement between X and A is not the contract in the absence of a consideration. In this case X father B voluntarily treat A during his 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 under section 2(D) if it is a promise to compensate a person who has voluntarily owe something from the promisor, as per the exceptions the promisor must be to compensate a person who has himself done something from the promisor and not to a person who has done nothing to the promisor as the son X to whom the promisor was made did nothing for A so A's promise is not enforceable even under the exception. Therefore X can't not recover the money from A

Question 12

Harish says in conversation to Suresh that he will give Rs.10, 000 to a person who so ever marry his daughter. Alok marries Harish daughter and files the suit to recover Rs.10, 000 will Alok succeed?

Answer:

The given case is under the chapter of consideration which means which means the promises executes the work at the desire or under the direction of the promisor In this set case Harish shows his wish to give away a good amount to the person who will marry his daughter. Alok marries his daughter and files a suit to recover the amount as Harish refuses to pay.

Case: Durgaprasad V/S Baldeo In this case Mr. Durgaprasad constructed the market under the direction of municipal corporate. Market allotted to various people, Mr. Baldeo was one of them. He made an agreement that he will pay commission to Mr. Durgaprasad for the land allotment in the market. But after this agreement Mr. Baldeo failed to pay money to Mr. Durgaprasad hence Durgaprasad filed a case against baldeo.

Judgment: As mentioned above Mr. Harish clears his wish to pay the amount who so ever marries his daughter. Here Mr. Harish just expressed his wish and it was a voluntarily action taken by Harish. The Indian law says as per the Section 2 (D) anything is done voluntarily, there is no lawful consideration. To have a legal consideration, consideration must move at

the desire of the promisor here there Harish just expressed his wish therefore it cannot be a consideration hence there is no contract made in this case Therefore Mr. Harish need not have to pay certain amount to Mr. Alok.

Question 13

Mr. John a principal of an engineering college promised his student who was studying in the final year engineering that if he allows his professor to complete the syllabus on time principal john would as the teacher to passing out in the final exam. The student promised but did not allow professor to complete syllabus. Professor passed the student before exams subsequently still the syllabus could not be completed. The professor filed a suit for the reversal of result can he succeed? Justify.

Answer:

The given case is under the chapter of consideration which means which means the promises executes the work at the desire or under the direction of the promisor. In this set case Mr. John a principal of an engineering college promised his student who was studying in the final year engineering that if he allows his professor to complete the syllabus on time principal john would as the teacher to passing out in the final exam. The student promised but did not allow professor to complete syllabus. Professor passed

The student before exams subsequently still the syllabus could not be completed.

Judgment: As mentioned above here Mr. John considering illusory thing. The law says that consideration to be valid must be real and valuable and must not be illusory and sham. Here the consideration is having legal impossibility and even as per section 23 considerations must not be illegal, immoral and opposed to public policy therefore here giving free marks in return of completing the syllabus is illegal and immoral act hence the consideration is illegal Therefore here professor can filed a suit for the reversal of result

Question 14

Amit and Amita were husband and wife and was always quarrelling amongst each other amit promises to pay Rs. 50,000 to Amita as monthly expenses and give her a duplex apartment in dadar, after

promising and entering in to agreement Amit failed to provide the same, Amita filed a suit against Amit will she succeed ?

Answer:

The given case is under the chapter of consideration, which means the promises execute the work at the desire or under the direction of the promisor. Consideration is essential for the validity of an agreement i.e. in other words an agreement made without consideration is void. However section 25 (1) that is natural love and affection; deal with the exception of this rule. In this set case there is a quarrel between Amit and Amita due to which there is a marital discord between two. As a part of settlement the husband agrees to pay for the maintenance allowances to his wife provided she stays separately.

Case: Rajlucky V/S Bhootnath An agreement was entered into by a husband with his wife during quarrels and disagreements, whereby the husband promised to give some property to wife. But after this he refused to perform the action and here the agreement was held to be void.

Judgment: As mentioned above an agreement was entered in to by Amit with his wife Amita during their quarrels, whereby the husband agrees to pay the maintenance allowances to his wife provided she stays separately. In the above case the agreement held to be void because, under the circumstances, there was no natural love and affection between parties. As per the exceptions under the consideration section 25(1) love and affection states that agreement has to be made out of natural love and affection and it should be between the parties standing near relationship to each other. As we seen in this case nearness of relationship, however does not necessarily import love and affection. Therefore there is no consideration made by husband hence it is only an agreement and not a contract. Therefore it is a void agreement hence husband need not have to pay compensation for the separation.

Question 15

Dora is Maisy's cleaner. She cleans for 4 hours each week and is paid Rs.25. Last week, Maisy asked Dora if she would be prepared to do extra for her as she is having a garden party on Saturday evening and all of the patio furniture needs polishing, the conservatory windows need cleaning and the decking needs to be scrubbed. Dora carried out the additional tasks which took her 6 hours. Maisy was extremely pleased with Dora's work and told her that there would be a bonus in

her pay packet. When Dora was paid at the end of the week she was surprised to see only Rs.25 in her pay packet especially due to the fact that she had worked 10 hours instead of her usual four, in cleaning the deck, windows and furniture as requested. Maisy has now refused to pay her. She says that her promise of payment came after the additional cleaning had been carried out.

Answer:

In such circumstances, Dora may be entitled to enforce Maisy's promise. If we apply the exceptions to the rule of past consideration, we can see that Dora carried out the cleaning at the promises i.e. at Maisy's request. The parties would have understood that the work would be rewarded in some way, as Dora is Maisy's employee and it is usual that if an employee works extra hours they are paid for them. Finally, it goes without saying that the payment would have been capable of legal enforcement if it had been promised beforehand. It was a simple agreement for cleaning services – which is a perfectly legitimate agreement. Faced with this question then, you would initially explain that the issue centered on the area of contract law falling under consideration. You would define consideration and explain how it is an essential ingredient of a contract. You would then hopefully identify that the issue lay in the area of past consideration. You should define past consideration and the exceptions to the rule, citing any relevant case law. You would then apply the law to the facts as they are presented and hopefully reach a fully reasoned conclusion.

Question 16

If David agrees to service, my car and then proceeds to fit new alloy wheels and a top of the range satnav totally without having agreed this with me and I being pleased with the work agree to pay him an extra £400. If I later say that I am not prepared to pay for the additional work and products, David will not be able to enforce payment. The agreement was for a car service. My promise to pay for the additional services and products came after David carried out his act (which was not in the car service agreement). This is past consideration and under the common law rule in *Stilk v Myrick*, past consideration is not good consideration.

Agreements falling within this area cannot be enforced.

Answer:

This concept in itself is not too difficult to grasp, but the waters become muddied when we acknowledge that there are exceptions to this rule. The exceptions stem from the really old case of *Lamplight v Braithwait*. The exceptions are:

1. The act must have been carried out at the promise's request
2. The parties must have understood that the act would be rewarded in some way
3. The payment must have been capable of legal enforcement had it been promised beforehand.

In the above case any claim would fall at the first hurdle, in that the additional acts were most certainly not carried out at the promise's request. The rule was applied in the later case of *Re Casey's Patents* [1892] and more recently restated in *Pao On v Lau Yiu Long*.

Question 17

While on duty, Police Officer Jones spots a stolen sports car. A few days earlier, he saw a poster offering a Rs.1000 reward to anyone who helped the owner recover the stolen car. Why is Officer Jones not allowed to accept the reward?

Answer:

While on duty, Police Officer Jones spots a stolen sports car. A few days earlier, he saw a poster offering an Rs.1000 reward to anyone who helped the owner recover the stolen car. Officer Jones not allowed to accept the reward because a party cannot promise to do something where there is already the legal obligation to do so.

Question 18

Fazya (F) owns a business which supplies carpets to shops and offices. She agrees to supply and fit carpets in George (G)'s office for an agreed price of £7,500 payable 21 days after fitting. F fits the carpet on 1 July and hands G an invoice requiring payment on 22 July. On 10 July, one of G's main clients cancels his account and this threatens to cause G significant financial problems.

Advise F on the basis of each of the following independent hypotheses G contacts F on 14 July, explaining that he is suffering from 'financial difficulties' as a result F accepts immediate payment from G of Rs. 5,000 in full and final settlement of what G may owe under the contract for the carpets.

Answer:

In this situation there has been a modification of the original contract whereby F has accepted 'less for the same', or part-payment of the sum owed by G. In order to establish whether F can recover the full amount owed by G by virtue of the original contract, it is necessary to determine whether the modified agreement is enforceable.

The first question is whether there was consideration given by the promise to the promisor, i.e. if the agreement constituted a bargain between the two parties. It was held in *Foakes v Beer* (which relied on *Pinnel's Case*) that a promise to accept the part-payment of a debt does not constitute good consideration. Therefore, F's promise to accept G's part-payment will not be good consideration and so the modification will not be enforcing able. As a result, F will be able to recover the full Rs. 7,500 by virtue of the original contract.

However, *Pinnel's Case* provided an exception to this rule, namely that there will be consideration if the promisor request varied the obligation in "some respect other than a reduction in the amount to be paid, [for example if the payment was]...on a date earlier than the due date As G promised to pay the part-payment of Rs 5,000 on 14 July rather than on 22 July which was the original payment date, the requirement of the Pinned exception is satisfied and so the consideration will be good, meaning that F can recover the full sum. This exception, however; only applies where frequented the immediate payment. Given that G contacted F and the question states that "F accepts [e d]...immediate payment it is likely that G suggested the reduced payment of £5,000 rather than F requesting the payment. As a result, there will be no consideration.

Although F will be satisfied with this outcome, It is also necessary to consider whether the doctrine of promissory estoppels applies to validate the modified agreement because this would prevent F from recovering the full sum. Promissory estoppels will apply if G relied on the agreement to his detriment and if G can prove that it would be inconsiderable or inequitable for the court to enable F to rely on her original rights 4. As F's conduct induced G to believe that they could rely on the modification of the contract and F would be incur serious financial problems if he were required to pay the full amount, Rs.7, 500 up front, it is likely that the court would apply promissory stopple. As a result, F will not be able to recover the full amount from G, who will only have to pay Rs. 5, 000.

Question 19

What can be used as Consideration?

Answer:

Consideration in a contract is the exchange of anything of value by each party. Most often, services or goods are exchanged or promised in a contract, though consideration may be whatever the parties agree to.

Examples include:

- Money
- Services
- Personal property
- Real property
- Promise to act
- Promise to refrain from acting

Question 20

Elements of Consideration

Answer:

In order for a contract to be considered valid and enforceable by the courts, three elements of consideration must be met. If one or more of these elements are missing, the contract lacks the necessary requirements, it could potentially be deemed invalid by the court. The required elements of consideration include:

- a. The contract must include a bargain for the terms of the exchange. This means there must be something that is worth bargaining over to both the parties.
- b. There must be a mutual exchange between the parties. In simple terms, all parties involved must benefit from the contract.
- c. The exchange in the contract must be something of value.
- d. In addition to the elements of consideration, a contract must contain certain other elements to be enforceable. While these requirements vary by state, generally these requirements include:
 - e. Intent by both parties to enter into the agreement
 - f. The subject matter must be legal
 - g. One party must make an offer
 - h. The other party must accept an offer

Past Examination Question

MAY - 2018

Question1

State the exceptions to the rule "An agreement without consideration is void".

Answer:

The general rule is that an agreement without consideration is void. However, there are certain exceptions to this rule. In the following cases, the agreement though made without consideration, will be valid and enforceable.

Natural love and affection:

A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g. husband and wife) to each other is enforceable without consideration.

Compensation for past voluntary services: A promise to compensate wholly or in part, a person who has already voluntarily done for the promisor, is enforceable, although it is without any con today.

Promise to pay time barred debt:

Where a promise in writing signed by the person making it or by his authorized agent is made to pay a debt barred by limitation it is valid and binding even though without consideration

Agency:

No consideration is necessary to create an agency.

Completed Gift:

In case of gifts the rule no consideration, no contract is not applicable.

Bailment:

No consideration required for this.

Charity:

If one promises to undertake liability to contribute to charity, the contract shall be valid even though without consideration

NOV - 2019

Question1

Define consideration. What are the legal rules regarding consideration

under the Indian Contract Act, 1872?

Answer:

Section 2(d) of the Indian Contract Act, 1872 defines consideration as follows: "When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise".

It is defined as "quid-pro-quo", i.e. "something in return". This something needs not to be in terms of money, as stated, it is some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility, given suffered or undertaken by the other". However, it must have some value in the eyes of law and must not be vague or illusory.

Legal Rules Regarding Considerations:

1. Consideration must Move at the desire of the promisor:

An act done at the desire of a third party is not a consideration,

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

There can be a stranger to consideration but not a stranger to a contract.

3. Executed and Executory Consideration:

When consideration consists of an act it is executed but when it consists of a promise it is executory.

4. Consideration may be past present or future.

The words "has done or abstained from doing" are recognition of the doctrine of past consideration.

5. Consideration need not be adequate:

It need not be of any particular value, but it must be something.

6. Performance of what one is legally bound to perform, cannot be treated as consideration.

7. Consideration must be real and not illusory.

8. Consideration must not be unlawful, immoral or opposed to public policy.

UNIT: 3

**OTHER ESSENTIAL ELEMENTS OF A
CONTRACT**



CAPACITY TO CONTRACT

Capacity refers to the competence of the parties to make a contract. It is one of the essential elements to form a valid contract. Every person is competent to contract who-

- A. Age of Majority:** In India, the age of majority is regulated by the Indian Majority Act, 1875.
- B. Person of sound mind:** According to section 12 of Indian Contract Act, "a person is said to be of sound mind for the purposes of making a contract if, at the time when he makes it is capable of understanding it and of forming a rational judgment as to its effect upon his interests.
- C. Contract by disqualified persons:** Besides minors and persons of unsound mind, there are also other persons who are disqualified from contracting, partially or wholly, so that the contracts by such person are void.

Two or more persons are said to consent when they agree upon the same thing in the same sense

Coercion: Coercion is the committing or

FREE CONSENT

threatening to commit any act, forbidden by the Indian Penal Code

Undue influence: When one party to a contract is able to dominate the will of the other and uses the position to obtain an unfair advantage

Fraud: Fraud exists when a false representation has been made knowingly with an intention to deceive the other party, or to induce him to enter a contract

Misrepresentation: Means a misstatement of a material fact made believing it to be true, without an intent to deceive the other party

Mistake: When both the parties are at a mistake to a matter of fact to the agreement, the agreement is altogether void.



Questions

Question 1

True and false statements.

**State whether the following statement is correct or incorrect:
A collateral agreement to the void agreement is also void.**

Answer:

Incorrect:

Collateral agreement is not affected, hence not void.

Question 2

State whether the following statements are correct or incorrect:

For Enquiry – 6262969604

6262969699

- A minor on his attaining majority can validate any agreement which was entered into when he was minor and which was void.
- Maintenance and Champerty are void in England but not in India, till they are not opposed to public policy.

Answer:

- This statement is incorrect.
- This statement is correct.

Question 3

State whether the following statements are correct or incorrect:

'An agreement with an alien friend is valid but an agreement with an alien enemy is void'.

Answer:

Correct

In India, a contract with an alien enemy is void but a contract with an alien friend is valid under the **Indian Contract Act**. ... A convicted person cannot enter into a contract while undergoing sentence. When the period of his sentence is over or he is pardoned, then his incompetency is also over.

Question 4

Choose the correct answer from the following:

Which one of the following statements is not true about minor's position in the firm?

- ✚ He cannot become a partner in the firm.
- ✚ A minor and a major can enter into an agreement of partnership.
- ✚ He can be admitted to the benefits in the firm.
- ✚ He can become a partner on becoming major.

Answer:

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

Question 5

What do you understand by "coercion", describe its effect on the validity of contract?

Answer:

Coercion

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

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

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

- ✚ Contract is voidable at the option of the aggrieved person.
- ✚ The burden of proof lies on the person who wants to relieve himself of the Consequences of coercion.

Question 6

Explain briefly the concept of free consent.

Answer:

Definition of consent.

“Two or more persons are said to consent when they agree upon the same thing in the same sense.”

Parties are said to have consented when they not only agreed upon the same thing but also agreed upon that thing in the same sense. ‘Same thing’ must be understood as the whole content of the agreement. Consequently, when parties to a contract make some fundamental error as to the nature of the transaction, or as to the person dealt with or as to the subject-matter of the agreement, it cannot be said that they have agreed upon the same thing in the same sense. And if they do not agree in the same sense, there cannot be consent. A contract cannot arise in the absence of consent.

Question 7

List out the points of difference between Fraud and Mis - representation.

Answer:

S. No.	Basic of Difference	Fraud	Misrepresentation

1.	Meaning	It means a false representation of fact made will fully with a view to deceive the other party.	It means a false representation off act made in no gently or non-disclosure of a material fact without any intention to deceive the other party.
2.	Wilful Vs. innocence	Here false statement is made wilfully with the purpose to deceive the other party.	Here a false statement is made innocently i.e. without Any intention to deceive other party.
3.	Belief	Person so representing knows the statement is not true.	Person so representing believe it to be true.
4.	Claim	Right to claim damages will arise here.	No right is available to the aggrieved party to claim damages. However he can claim recession of contract.
5.	Action	Action against deceit.	Action for recession.

Question 8**What is meant by 'Undue Influence'?****Answer:****Meaning of Undue Influence:**

Section 16 of the Indian Contract Act, 1872, states that a contract is said to be induced by undue influence where the relations subsisting between the parties are such that the parties are in a position to dominate the will of the other and used that position to obtain unfair advantage over the other.

Question 9**Distinguish between coercion and undue influence.****Answer:**

- ❖ **Nature of action:** Coercion involves physical force and sometimes only threat. Undue influence involves only moral pressure
- ❖ **Involvement of criminal action:** Coercion involves committing or threatening to commit any act prohibited or forbidden by law, or detention or threatening to detain a person or property. In undue influence there is no such illegal act involved.
- ❖ **Relationship between parties:** In coercion there need not be any relationship between parties; whereas in undue influence, there must be some kind of relationship between parties, which enables to exercise undue influence over the other.
- ❖ **Exercise by whom:** Coercion need not proceed from the promisor. It also need not be directed against the promisee. Undue influence is always exercised by one on the other, both of whom are parties to a contract.
- ❖ **Enforceability:** Where there is coercion, the contract is voidable at the option of the party whose consent has been obtained by coercion. Where there is undue influence the contract is voidable or court may stateside or enforce it in a modified form.
- ❖ **Position of benefits received:** In case of coercion, where the contract is rescinded by the aggrieved party any benefit received has to be restored back. In the case of undue influence, the court has discretion to pass orders for return of any such benefit or not to give any such directions.

Question 10

Manav sells the goodwill of his retails stores to y for 5 lacs and promises not to carry on the same business forever and anywhere in India. Is the agreement

- Valid
- Void
- Voidable
- Illegal.

Answer:

2. Void.

Reason: As per sec 27 of the Indian contract act 1872 and agreement in restraint of trade is void. However, a buyer of goodwill can put such a condition on the seller of goodwill that he will not be carry on same

business; however the conditions must be reasonable regarding the duration and the place of the business.

Question 11

Do the following statements amount to involvement of fraud?

- 1. Where the vendor of a piece of land told a prospective purchaser that, in his opinion, the land can support 2000 heads of sheep whereas, in truth, the land could support only 1500 sheep.**

Answer:

1. The problem is based on the facts of the case Bisset V/s Wilkinson (1927). In the given problem the vendor says that in his opinion the land could support 2000 heads of sheep. This statement is only an opinion and not a representation and hence cannot amount to fraud.

Question 12

Ramesh, aged 16 years, was studying in an engineering college. On 1 March, 2011 he took a loan of 1 lakh from Suresh for the payment of his college fee and agreed to pay by 30th May, 2012. Ramesh possesses assets worth 10 lakhs. On due date Ramesh fails to pay back the loan to Suresh, Suresh now wants to recover the loan from Ramesh out of his assets. Whether Suresh would succeed? Decide, referring to the provisions of the Indian Contract Act, 1872.

Answer:

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

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

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

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

Question 13

State with reasons whether the following agreements are valid or void under the provisions of the Indian Contract Act, 1872:

- a) Vijay agrees with Saini to sell his black horse for 3, 00,000. Unknown to both the parties, the horse was dead at the time of the agreement.**
- b) Sarvesh sells the goodwill of his shop to Vikas for Rs.10, 00,000 and Promises not to carry on such business forever and anywhere in India.**

Answer:

The agreement is **void**.

Reason:(1)Both the parties are under mutual mistake of fact hence agreement is void as per Sec. 20 of Indian Contract Act, 1872, which states that contracts caused by mistake of fact are void.

(2)The agreement is **void**.

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

Question 14

Explain the concept of ‘misrepresentation’ in matters of contract. Sohan induced Suraj to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, Suraj complained that there were many defects in the motorcycle. Sohan proposed to get it repaired and promised to pay 40% cost of repairs. After a few days, the motorcycle did not work at all. Now Suraj wants to rescind the contract. Decide giving reasons.

Answer:

Misrepresentation: According to Section 18 of the Indian Contract Act, 1872, mis- representation is present:

- ❖ When a person positively asserts that a fact is true when his information does not warrant it to be so, though he believes it to be true.
- ❖ When there is any breach of duty by a person, which brings an advantage to the person committing it by misleading another to his

prejudice.

- ❖ When a party causes, however, innocently, the other party to the agreement to make a mistake as to the substance of the thing which is the subject of the agreement.
- ❖ The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract [Section 19, Indian Contract Act, 1872].
- ❖ The aggrieved party loses the right to rescind the contract if he, after becoming aware of the misrepresentation, takes a benefit under the contract or in some way affirms it.

Accordingly in the given case, Suraj could not rescind the contract, as his acceptance to the offer of Sohan to bear 40% of the cost of repairs impliedly amounts to final acceptance of the sale [Long v. Lloyd, (1958)].

Question 15

M purchased a wrist watch from N, both believed that it was made with gold plaque. Hence, M paid a very high price for that. Later it was found that the wrist watch was not made so. State the validity of the contract.

Answer:

The contract is absolutely void as there is a mutual mistake of both parties. In case of bilateral mistake of essential fact, the agreement is void ab initio, as per Section 20 of the Indian Contract Act, 1872.

Question 16

X buys from Y a painting which both believe to be the work of an old master and for which X pays a high price. The painting turns out to be only a modern copy. Discuss the validity of the contract?

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.

Question 17

For Enquiry – 6262969604

6262969699

X' agreed to become an assistant for 5 years to 'Y' who was a Doctor Practicing at Ludhiana. It was also agreed that during the term of agreement 'X' will not practice on his own account in Ludhiana. At the end of one year, 'X' left the assistantship of 'Y' and began to practice on his own account. Referring to the provisions of the Indian Contract Act, 1872, decide whether 'X' could be restrained from doing so?

Answer:

An agreement in restraint of trade/business/profession is void under Section 27 of the Indian Contract Act, 1872. 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, X can be restrained by an injunction from practicing on his own account in Ludhiana.

CASE STUDY

Question 18

X in consideration of Rs. 5, 00,000 from Y agrees to murder Z while borrows the money from K who knowingly lends money to Y can K recover this amount.

Answer:

The given case is under the chapter of Fraud which means the active concealment of a fact by a person having knowledge or belief of the fact. Fraud arises when there is a false representation of a fact made with the knowledge that is false or without belief in its truth or reckless not carrying whether it be true or false. In this set case X in consideration of Rs. 5,00,000 from Y agrees to murder Z while borrows the money from K who knowingly lends money to Y can K recover this amount.

Judgment: As mentioned above in this case x in consideration of Rs. 5, 00,000 from Y agrees to murder Z while borrows the money from k knowingly lends money to Y. in this case K is not eligible to recover the amount, because according to section- 17 Fraud arises when there is a false representation of a fact made with the knowledge that is false or without belief in its truth or reckless not carrying whether it be true or false. Here, Person who takes a risk even he knows that what he does may be dangerous is comes under the fraud. K knows the fact behind lending money from him which is used for dangerous event therefore K is fraud under section- 17

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Question 19

A an infant obtains a loan from B. can B asked to repay the money to A?

Answer:

The given case is under the chapter of minor's agreement. In India according to Minor's agreement, agreement with the minor is void from the beginning because a minor has no capacity to contract. The court says minor is not supposed to have mature judgment. In this set case A an infant obtain from B. can B asked to repay the money to A.

Case: Mohori Bibi V/S Dharmod as Ghose A minor executed an agreement for Rs. 20,000 and received Rs. 8,000 as earnest money from the mortgagee, he sued for setting aside the mortgage. The mortgagee wanted to refund of Rs. 8,000 which he already paid.

Judgment: As mentioned above here A is a minor who is according to the section.3 of the Indian Majority Act, 1875 is the person who has not completed the age of 18years. Indian Majority Act as says that agreement with minor is a void agreement and it also says no restitution or compensation to minor that means if minor has received any benefit under void agreement he cannot be asked to compensate or pay for it or returning back the property as per section. 64 and 65. Therefore, because A is the minor the agreement is void Hence B cannot ask for repay

Question 20

A minor fraudulently represent to a money lender that he was the full age and obtain the loan of Rs. 5,000. Has the money lender any right of action against the minor for the money lends of for damages for fraudulent miss-representation?

Answer:

The given case is under the chapter of minor's agreement. In India according to Minor's agreement, agreement with the minor is void from the because a minor has no capacity to contract. The court says minor is not supposed to have mature judgment. In this set case A minor fraudulently represent to a money lender that he was the full age and obtain the loan of Rs. 5,000.

Case: Mohori Bibi V/S Dharmod as Ghose A minor executed an agreement for Rs. 20,000 and received Rs. 8,000 as earnest money from the mortgagee; he sued for setting aside the mortgage. The mortgagee wanted to refund of Rs.8, 000 which he already paid.

Judgment: As mentioned above here A is a minor who is according to the section.3 of the Indian Majority Act, 1875 is the person who has not completed the age of 18years. Indian Majority Act as says that agreement with minor is a void agreement and it also says minority as a defence. Indian law is defensive to the minor because law feels minor can't take the rational decision therefore any false representation by minor is defensive. Therefore here money lender cannot sue minor

Question 21

Who is sound mind for the purposes of contracting?

Answer:

- A person is said to be of sound mind for the purposes of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.
- A person, who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.
- A person, who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Question 22

The position of Minor's agreement is?

Answer:

- a) An agreement with a minor is void ab-initio.
- b) 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.
- c) Doctrine of Restitution does not apply against a minor i.e., As per section 70 Obligation of person enjoying benefit of non-gratuitous act does not apply.
- d) Ratification of agreement is not permitted: 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.

- e) 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.
- f) Minor as an agent. A minor can be appointed an agent, but he is not personally liable for any of his acts.
- g) Minor's liability for necessities: "Any person supplying necessities of life to persons who are incapable of contracting is entitled to claim the price from the other's property".

Question 23

Essentials of Valid Acceptance

Answer:

Acceptance must be given by that person only to whom the offer is made:

1. An acceptance to be valid must be given only by a person to whom offer has been given. In other words, acceptance must move from the offered and no one else.
2. Acceptance must be communicated: Offeree has to communicate his acceptance to offer.
3. The acceptance must be given within the time prescribed or within a reasonable time: Sometimes, the time limit is fixed within which an acceptance is to be given. In such cases, the acceptance must be given within the fixed time limit. In case, no time is prescribed, the acceptance should be given within a reasonable time. The term 'reasonable time' depends upon the facts and circumstances of each case.
4. Acceptance must be Un-Conditional: It is another important essential element of a valid acceptance. A valid contract arises only if the acceptance is absolute and unconditional. It means that the acceptance should be in total and without any condition.
5. Acceptance must be communicated in the method specified by offeree: When an offer is made for the same, acceptance must be communicated in the method specified by offeree.
6. The acceptance must be given before the lapse of offer: A valid contract can arise only when the acceptance is given before the offer has elapsed or withdrawn. An acceptance which is made after the withdrawal of the offer is invalid, and does not create any legal relationship

7. The acceptance must be communicated: It is an important and essential element of a valid acceptance.

Question 24

Define of Acceptance

Answer:

When the person to whom the proposal is made, signifies his ascent there to, the proposal (offer) is said to be accepted. A proposal (offer) when accepted becomes a Promise.

Past Examination Question

May - 2018

Question1

Examine with reason that the given statement is Correct or Incorrect "Minor is liable to pay for the necessaries supplied to him".

Answer:

A claim for necessaries supplied to a minor is enforceable by law, but a minor is not liable for any price that he may promise and never for more than the value of necessaries.

There is no personal liability on the minor, but only his property (estate) is liable.

Hence, the statement "minor is liable to pay for necessaries supplied to him." is incorrect.

Question2

Define Fraud. Whether "mere silence will amount to fraud" as per the Indian Contract Act, 1872?

Answer:

Fraud means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with an interest to deceive

another party there to or his agent, or to induce him to enter into the contract.

1. Then suggestion, as a fact of that which is not true, by one who does not believe it to be true.
2. Active concealment of fact by one having knowledge or belief of the fact.
3. A promise made without any intention of performing it.
4. An act fitted to deceive.
5. Any act declared as fraudulent bylaw.

Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silent to speak, unless his silence is, in itself, equivalent to speech.

A party under contract is under no obligation to disclose the to the other party. "Caveat Emptor" i.e. let the buyer beware I applicable to contracts. There is no duty to speak in such cases does not amount to fraud. Similarly, there is no duty to disclose I am within the knowledge of both the parties.

Question3

Examine with reason that the given statement is Correct or Incorrect "Minor is liable to pay for the necessaries supplied to him".

Answer:

A claim for necessaries supplied to a minor is enforceable by law, but minor is not liable for any price that he may promise and never for more than the value of necessaries.

There is no personal liability on the minor, but only his property (estate) is liable.

Hence, the statement "minor is liable to pay for necessaries supplied to him." is incorrect.

Question4

Define Fraud. Whether "mere silence wily amount to fraud" as per the Indian Contract Act, 1872?

Answer:

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another party there to or his agent, or to induce him to enter into the contract.

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Question5

**Examine with reason that the given statement is correct or Incorrect
`Minor is liable to pay for the necessaries supplied to him`.**

Answer:

A claim for necessaries supplied to a minor is enforceable by law but minor is not liable for any price that he may promise and never for more than the value of necessaries. There is no personal liability on the minor, but only his property (estate) is liable. Hence, the statement `minor is liable to pay for necessaries supplied to him.` Is incorrect.

Question6

Define Fraud. Whether `mere silence wily amount to fraud` as per the Indian contract Act, 1872?

Answer:

Fraud means and includes any of the following acts committed by a party to a

contract or with his connivance, or by his agent, with an interest to deceive another party there to or his agent or to induce him to entire into the contract.

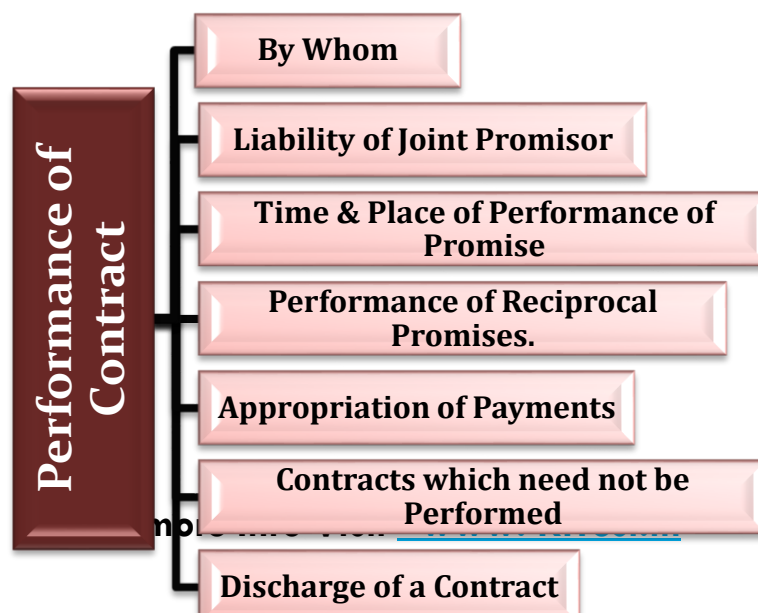
1. The suggestion as a fact of that which is not true by one who does not believe it to be true.
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UNIT: 4

PERFORMANCE OF CONTRACT



OBLIGATIONS OF PARTIES TO CONTRACTS- (SECTION 37)	<p>The parties to a contract must either perform, or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of the Contract Act or of any other law.</p>
BY WHOM A CONTRACT MAYBE PERFORMED (SECTION 40, 41 AND 42)	<ul style="list-style-type: none"> • Promisor himself: If there is something in the contract to show that it was the intention of the parties that the promise should be performed by the promisor himself, such promise must be performed by the promisor. • Agent: Where personal consideration is not the foundation of a contract, the promisor or his representative may employ a competent person to perform it. • Legal Representatives: A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death of the promisor. • Third persons: When a promise accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor That is, performance by a stranger. • Joint promisors: (Section 42): When two or more persons have made a joint promise, the unless a contrary intention appears by the contract, all such persons must jointly fulfill the promise.
TIME AND PLACE FOR PERFORMANCE	<ol style="list-style-type: none"> 1. Time for performance of promise, where no application is to be made and no time is specified – Section 46 2. Time and place for performance of promise, where time is specified and no application to be made – Section 47 3. Application for performance on certain day to be at

OF THE PROMISE	<p>proper time and place – Section 48</p> <ol style="list-style-type: none"> 4. Place for the performance of promise, where no application to be made and no place fixed for performance - Section 49 5. Performance in manner or at time prescribed or sanctioned by promise - Section 50
PERFORMANCE OF RECIPROCAL PROMISE	<ol style="list-style-type: none"> 1. Promisor not bound to perform, unless reciprocal promise ready and willing to perform- Section 51 2. Order of performance of reciprocal promises- Section 52 3. Liability of party preventing event on which the contract is to take effect – Section 53 4. Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises (Section 54) 5. Effects of Failure to Perform at a Time Fixed in a Contract in which Time is Essential (Section 55)
CONTRACTS, WHICH NEED NOT BE PERFORMED – WITH THE CONSENT OF BOTH THE PARTIES	<ul style="list-style-type: none"> ❖ Effect of novation, rescission, and alteration of contract (Section 62): “If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed” <ul style="list-style-type: none"> a) Effect of novation: The parties to a contract may substitute a new contract for the old. b) Effect of rescission: A contract is also discharged by rescission. When the parties to a contract agree to rescind it, the contract need not be performed. c) Effect of alteration of contract: As in the case of novation and rescission, so also in a case where the parties to a contract agree to alter it, the original contract is rescinded, with the result that it need not be performed. ❖ Promise may waive or remit performance of promise: Section 63 - “Every promisee may dispense with or remit, wholly or in part, the performance of

	<p>the promise made to him, or may extend the time for such performance or may accept instead of it any satisfaction which he thinks fit</p> <ul style="list-style-type: none"> ❖ Restoration of Benefit under a Voidable Contract (Section64): The law on the subject is “When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor. ❖ Obligations of Person who has Received Advantage under Void ❖ Agreement or contract that becomes void (Section65)
<p>DISCHARGE OF A CONTRACT</p>	<ul style="list-style-type: none"> • Discharge by performance: It takes place when the parties to the contract fulfil their obligations arising under the contract within the time and in the manner prescribed. Discharge by performance may be <ol style="list-style-type: none"> a. Actual performance; or b. Attempted performance. • Discharge by mutual agreement: Section 62 of the Indian Contract Act provides if the parties to a contract agree to substitute a new contract for it, or to rescind or remit or alter it, the original contract need not be performed. • Discharge by impossibility of performance: The impossibility may exist from the very start. In that case, it would be impossibility abinitio. • Discharge by lapse of time: A contract should be performed within a specified period as prescribed by the Limitation Act, 1963. • Discharge by operation of law: A contract may be discharged by operation of law which includes by death of the promisor, by insolvency etc. • Merger of rights: Sometimes, the inferior rights and the superior rights coincide and meet in one and the

same person.

- **Discharge by breach of contract:** Breach of contract may be actual breach of contract or anticipatory breach of contract.

Question 1

Pick out the correct answer from the following and give reasons: Substitution of new contract for an existing contract between the same Parties are known as:

- a) Remission
- b) Alteration
- c) Rescission
- d) Novation.

Answer:

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

Question 2

State whether the following statements are correct or incorrect: Where there are co-sureties a release by the creditor of one of them does not discharge the others.

Answer:

Correct As per Sec.4 of the Indian Contract Act, 1872, the release of one of the Joint promisor by the promisee does not release him from the responsibility to the other joint promisor.

Question 3

State with reasons whether the following statements are correct or incorrect:

In case of alternative promise one branch of which is legal and the other illegal, the whole contract cannot be performed.

Answer:

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

Question 4

Pick out the correct answer from the following and give reason:

A Promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract:

- 1. can be enforced by A 'representative**
- 2. can be enforced by B**
- 3. can been forced either by A' representative or by B**
- 4. cannot been forced either by A' representative or by B**

Answer:

Correct answer is option (4):

The Contract cannot be enforced either by A's representative or by B. To paint a picture is a personal contract and may be performed only personally. A personal contract cannot be performed by anybody other than the promise. Hence, if A dies, the contract cannot be forced.

Question 5

State, in brief, the grounds on the basis of Which a contract is discharged under the provisions of the Indian Contract Act, 1872.

Answer:

- i. Discharge of Contract:** A contract under the provisions of Indian Contract Act, 1872, may be discharged in any of the following ways:
- ii. Discharge by performance:** Discharge by performance will take place when there is:
 - Actual performance (parties fulfilling obligations within time and in the manner prescribed); or
 - Attempted performance (promisor offers to perform but promisee refuses to accept it). This is also known as tender
- iii. Discharge by mutual agreement:** Discharge also takes place where there is substitution [Novation], rescission, alteration and remission. In these entire cases old contract need not be performed.
- iv. Discharge by impossibility of performance:** A situation of impossibility may have existed at the time of entering into the contract or it may have transpired subsequently (also known as supervening impossibility). Situations are destruction of the subject-matter, incapacity, declaration of war etc.
- v. Discharge by lapse of time:** Performance of contract has to be done within certain prescribed time. In other words, it should be performed

before it is barred by law of limitation. In such a case there is no remedy for the promise. For example, where the debt is barred by law of limitation.

- vi. Discharge by operation of law: Where the promisor dies or goes insolvent there is a discharge of contract by operation of law.
- vii. **Discharge by breach of contract:** Where there is a default by one party from performing his part of contract on due date then there is breach of contract. Breach of contract can be actual breach or anticipatory breach. Where a person repudiates a contract before the stipulated due date, it is anticipatory breach.
- viii. **Discharge by remission or satisfaction:** A promise may remit the performance of the promise by the promisor. Here there is a discharge. Similarly, the promisee may accept some other satisfaction. Then again there is a discharge on the ground of accord and satisfaction.

Question 6

Under what circumstances the original contract need not be performed as stated under section 62 to 67 of the Indian Contract Act, 1872?

Answer:

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

If the parties to a contract agree to substitute a new contract for it or rescind or alter it, the original contract need not be performed.

It is done by following:

1	Novation	Novation means substitution. Novation results in discharge of old contract. It can take place between the same persons or between different parties with mutual consent.
2	Rescission	Rescission means cancellation. Old contract is cancelled and no new contract comes in its place.

3	Alteration	It involves a change in some of terms and conditions of original agreement between the same parties by mutual consent. It has the effect of terminating the
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		original contract.
4	Remission or waiver	Promisee may - <ul style="list-style-type: none"> • Dispense with either wholly or in part the performance of the promise made to him or • Extend the time for such performance or • Accept any satisfaction instead of the performance.

Question 7

Explain the rules under the Indian Contract Act, 1872 as regards to time and place for the performance of the promise?

Answer:

Section 46 to 50 of the Indian Contract Act, 1872 are relevant provisions regarding the time and place for the performance of the promise which are as follows:

(i) If no time is specified, the promise must be performed within a reasonable time. The expression 'reasonable' time is to be interpreted having regard to the facts and circumstances of a particular case (Section 46).

(ii) If a promise is to be performed on a specified date but the hour is not mentioned, the promisor may perform it at any time during the usual hours of business, on such day. Moreover, the delivery must be made at the usual place of business (Section 47).

(iii) Where no place is fixed, it is the duty of the promisor to ask the promisee to fix a suitable place for the performance of the promise. In all cases the promisor must apply to the promisee; here no distinction is made between an obligation to pay money and obligation to deliver goods or discharge any other obligation [Section 40].

The above rules regarding the time and place for the performance of promise apply, only when the promisor undertakes to perform the promise without an application being made by the promisee.

(iv) Where the promisor has not undertaken to perform the promise without an application by the promisee, and the promise is to be performed on a certain day it is the duty of the promisee to apply for performance at proper place and within the usual hour so

business (Section 48).

Generally, the performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

Question 8

Distinction between succession and assignment?

Answer:

Distinction between two legal concepts, viz., succession and assignment may be noted carefully. When the benefits of a contract are succeeded to by process of law, then both burden and benefits attaching to the contract, may sometimes devolve on the legal heir. Suppose, a son succeeds to the estate of his father after his death, he will be liable to pay the debts and liabilities of his father owed during his life-time. But if the debts owed by his father exceed the value of the estate inherited by the son then he would not be called upon to pay the excess. In other words, the liability of the son will be limited to the extent of the property inherited by him.

CASE STUDY

Question 9

M owes money to N under a contract. It is agreed between M, N and O that N shall henceforth accept O as his debtor instead of M. Referring to the provisions of the Indian Contract Act, 1872, state whether N can claim payment from O?

Answer:

Yes, a contract need not be performed when the parties to it agree to substitute a new contract for it or to rescind or alter it. (Section 62, Indian Contract Act, 1872). Here, in the given problem, Novation has taken place as one of the parties has been replaced with a third party. Therefore, N can claim the money from O.

Question 10

Explain the liability of joint promisor in a sufficient to pay only M. 1/5th of his share of debt.' A 'recovers the whole amount from 'D' through a legal action.

Decide, under the provisions of the Indian Contract Act, 1872 the extent to which 'D' can recover the amount from 'E'.

Answer:

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

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

Present Case:

In the given case each partner is liable to pay 50,000 (1, 50,000+ 3). Since F becomes insolvent and his private assets are sufficient to pay only 1/5th of his share, 'F' is liable to pay only 10,000 (1/5 of 50,000). The remaining amount is 1, 40,000 (1, 50,000 - 10,000) which is to be shared equally between D & E. i.e. 70,000 each i.e. (1, 40,000 + 2). Since D pays the entire amount to A, D can recover Rs10, 000 from F and Rs 70,000 from E.

Question 11

Explain the law relating to liability of joint promises?

Answer:

The rules relating to devolution of Joint liabilities are as follows:

- When one or more persons have made a joint promise, all such persons must fulfill the promise unless a contrary intention appears by the contract. (Sec. 42)
- Upon the death of one of the joint promisor, his legal representatives are jointly liable to perform the contract with the surviving parties. If all the parties die, the liability devolves upon their legal representatives jointly. (Sec.42)
- Any one of the joint promisor may be compelled to perform the contract. When two or more persons make a joint promise, the promise may, in the absence of express agreement to the contrary, compel any one or more of such joint promisor to perform the whole promise. Thus, it can be concluded that the liability of joint promisor is joint and several under Para 1 of Sec.43.

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- As per para 2 of Sec. 43, each promisor may compel contribution. Each of the two or more joint promisor may compel every other promisor to contribute equally with himself to the performance of the promise unless a contrary intention appears from the contract.
- Under para 3 of Sec. 43, if any one of the two or more promisor makes default in contribution, the remaining joint promisor be ad he loses a rising from such default in equal shares.

Question 12

Akhilesh entered into an agreement with Shekhar to deliver him (Shekhar) 5,000 bags to be manufactured in his factory. The bags could not be manufactured because of strike by the workers and Akhilesh failed to supply the sand bags to Shekhar. Decide whether Akhilesh can be exempted from liability under the provisions of the Indian Contract Act, 1872.

Answer:

Delivery of Bags: According to Section 56 (Para 2) of the Indian Contract Act, 1872 when the performance of a contract becomes impossible or unlawful subsequent to its formation, the contract becomes void, this is termed as 'supervening impossibility' (i.e. impossibility which does not exist at the time of making the contract, but which arises subsequent).

But impossibility of performance is, as a rule, not an excuse from performance. It means that when a person has promised to do something, he must perform his promise unless the performance becomes absolutely impossible. Whether a promise becomes absolutely impossible depends upon the facts of each case.

The performance does not become absolutely impossible on account of strikes, lockout and civil disturbances and the contract in such a case is not discharged unless otherwise agreed by the parties to the contract (Budget V Bennington; Jacobs Vs Credit Lyonnais).

In this case Mr. Akhilesh could not deliver the bags as promised because of strike by the workers. This difficulty in performance cannot be considered as impossible of performance attracting Section 56 (Para 2) and hence Mr. Akhilesh is liable to Mr. Shekhar for non-performance of contract

Question 13

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X, Y and Z jointly borrowed ` 50,000 from A. The whole amount was repaid to A by Y. Decide in the light of the Indian Contract Act, 1872 whether:

- + Y can recover the contribution from X and Z,**
- + Legal representatives of X are liable in case of death of X,**
- + Y can recover the contribution from the assets, in case Z becomes insolvent.**

Answer:

Section 42 of the Indian Contract Act, 1872 requires that when two or more persons have made a joint promise, then, unless a contrary intention appears from the contract, all such persons jointly must fulfill the promise. In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promisors, the representatives of all jointly must fulfill the promise.

Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but "joint and several". Section 43 provides that in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisor stopper form the whole of the promise.

Section 43 deals with the contribution among joint promissor. The promissor, may compel every joint promisor to contribute equally to the performance of the promise (unless a contrary intention appears from the contract). If any one of the joint promissor makes default in such contribution the remaining joint promissor must bear the loss arising from such default in equal shares.

As per the provisions of above sections,

- + Y can recover the contribution from X and Z because XYZ are joint promissor.**
- + Legal representative of X is liable to pay the contribution to Y. However, a legal representative is liable only to the extent of property of the deceased receive d by him.**
- + 'Y' also can recover the contribution from Z's assets.**

Question 14

X agreed to become an assistant for 5 years to Y who was a doctor practicing at Chennai. It was also agreed that during the term of agreement X will not practice on his own account in Chennai. At the end of one year, X left the assistantship of Y and began to practice on his own account. Referring to the provisions of the Indian Contract Act, 1872, decide Whether X could be restrained from doing so?

Answer:

Provisions:

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

Exceptions to the Rule:

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

- Sale of Goodwill
- Partnership Agreement
- Trade Combination
- Service contracts

Present Case:

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

Question 15

A received certain goods from B promising to pay ` 10,000/-. Later on, A expressed his inability to make payment. C, who is known to A, pays ` 6,000/- to B on behalf of A. However, A was not aware of the payment. Now B is intending to sue A for the amount of ` 10000/-. Can B do so?

Advice.

Answer:

As per section 41 of the Indian Contract Act, 1872, when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is, performance by a stranger,

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accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorized nor ratified the act of the third party.

Therefore, B can sue A only for ₹ 4000.

Question 16

Ajay, Vijay and Sanjay are partners of software business and jointly promise to pay ₹60,000 to Kartik. Over a period of time Vijay became insolvent, but his assets are sufficient to pay one-fourth of his debts. Sanjay is compelled to pay the whole. Decide whether Sanjay is required to pay whole amount himself to Kartik in discharging joint promise.

Answer:

According to Section 43 of the Indian Contract Act, 1872 when two or more persons make a joint promise, the promisee may, in absence of express agreement to the contrary, compel any one or more of such joint promisor to perform the whole of the promise. Further, if any one of two or more joint promisor makes default in such contribution, the remaining joint promisor must bear the loss arising from such default in equal shares. Therefore, in this case, Sanjay is entitled to receive 5,000 from Vijay's assets and 27,500 from Ajay.

Question 17

Contracts to sell his car to B on the agreed price. As soon as the car is delivered to B and B pays the agreed price for it, the contract comes to an end by performance. Identify the contract

Answer:

Discharge by performance: It takes place when the parties to the contract fulfill their obligations arising under the contract within the time and in the manner prescribed. Discharge by performance may be-

- (1) Actual performance; or
- (2) Attempted performance.

Actual performance is said to have taken place, when each of the parties has done what he had agreed to do under the agreement. When the promisor offers to perform his obligation, but the promisee refuses to accept the performance, it amounts to attempted performance or tender.

Question 18

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X borrows `5, 00,000 from Y with a promise to be paid after 1 month. X repays the amount on the due date. This is actual performance

Answer:

Offer to perform or attempted performance or tender of performance: It may happen sometimes, when the performance becomes due, the promisor offers to perform his obligation but the promisee refuses to accept the performance.

Question 19

Discuss the effect of accepting performance from third person.

Answer:

When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is, performance by a stranger, if accepted by the promisee, these results in discharging the promisor, although the latter has neither authorized nor ratified the act of the third party

Question 20

A received certain goods from B promising to pay ` 100,000/-. Later on, A expressed his inability to make payment. C, who is known to A, pays ` 60,000/- to B on behalf of A. However, A was not aware of the payment. Now B is intending to sue A for the amount of ` 100,000/- whether he can do so? Advice.

Answer:

As per Section 41 of the Indian Contract Act, 1872, when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is, performance by a stranger, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorized nor ratified the act of the third party. Therefore, in the present instance, B can sue only for the balance amount i.e., ` 40,000/- and not for the whole amount.

Question 21

“When a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract”. Explain

Answer:

Effect of a Refusal of Party to Perform Promise: According to Section 39, when a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

Question 22

A, singer, enters into a contract with B, the Manager of a theatre, to sing at his theatre two nights in every week during next two months, and B engages to pay her `10000 for each night's performance. On the sixth night, A willfully absents herself from the theater. B is at liberty to put an end to the contract.

Answer:

Analysis of Section 39: From language of Section 39 it is clear that in the case under consideration, the following two rights accrue to the aggrieved party, namely,

- (a) To terminate the contract
- (b) To indicate by words or by conduct that he is interested in its continuance.

In case the promisee decides to continue the contract, he would not be entitled to put an end to the contract on this ground subsequently. In either case, the promisee would be able to claim damages that he suffers as a result on the breach.

Question 23

By whom a contract may be performed?

Answer:

Person by whom promise is to be Performed-Section 40: 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 should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

Question 24

“The basic rule is that the promisor must perform exactly what he has promised to perform.” Explain stating the obligation of parties to contracts.

Answer:

1. Obligations of parties to contracts (Section 37): The parties to a contract must either perform, or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of the Contract Act or of any other law. Promises bind the representatives of the promisor in case of death of such promisor before performance, unless a contrary intention appears from the contract.

2. Analysis of Section 37: A contract being an agreement enforceable by law creates a legal obligation, which subsists until discharged. Performance of the promise or promises remaining to be performed is the principal and most usual mode of discharge. The basic rule is that the promisor must perform exactly what he has promised to perform. The obligation to perform is absolute. Thus, it may be noted that it is necessary for a party who wants to enforce the promise made to him, to perform his promise for himself or offer to perform his promise. Only after that he can ask the other party to carry out his promise. This is the principle which is enshrined in Section 37.

Thus, it is the primary duty of each party to a contract to either perform or offer to perform his promise. He is absolved from such a responsibility only when under a provision of law or an act of the other party to the contract, the performance can be dispensed with or excused.

Thus, from above it can be drawn that performance

UNIT: 5

BREACH OF CONTRACT AND ITS

REMEDIES

<p>BREACH OF CONTRACT</p>	<p>Breach means failure of a party to perform his or her obligation under a contract. Breach of contract may arise in two ways:</p> <ul style="list-style-type: none"> • Actual breach of contract • Anticipatory breach of contract
<p>ANTICIPATORY BREACH OF CONTRACT</p>	<p>An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived. When the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived, it is called Anticipatory Breach.</p> <p>Anticipatory breach of a contract may take either of the following two ways:</p> <ul style="list-style-type: none"> • Expressly by words spoken or written, and • Impliedly by the conduct of one of the parties.
<p>ACTUAL BREACH OF CONTRACT</p>	<p>The parties to a lawful contract are bound to perform their respective promises. But when one of the parties breaks the contract by refusing to perform his promise, he is said to have committed a breach.</p> <p>Actual breach of contract may be committed-</p> <ul style="list-style-type: none"> • At the time when the performance of the contract is due. • During the performance of the contract
<p>REMEDIES FOR BREACH OF CONTRACT</p>	<ul style="list-style-type: none"> • Suit for Damages • Rescission of Contract • Suit for specific performance • Suit for Injunction • Suit upon quantum meruit

SUIT FOR DAMAGES	<ul style="list-style-type: none"> • Compensation for loss or damage caused by breach of contract (Section 73) • Compensation for failure to discharge obligation resembling those created by contract.
PENALTY AND LIQUIDATED DAMAGES (SECTION 74)	<p>English Law: According to English law, the sum so fixed in the contract may be interpreted either as liquidated damages or as a penalty</p> <p>Indian Law: Indian law makes no distinction between 'penalty' and liquidated damages'. The Courts in India award only a reasonable compensation not exceeding the sum so mentioned in the contract. Section 74 of the Contract Act lays down if the parties have fixed what the damages will be, the courts will never allow more. But the court may allow less.</p>
Rescission of contract	When a contract is broken by one party, the other party may treat the contract as rescinded.
Quantum Meruit	Where one person has rendered service to another in circumstances which indicate an understanding between them that it is to be paid for although no particular remuneration has been fixed the law will in for a promise to pay.
Suit for specific performance	Where damages are not an adequate remedy in the case of breach of contract, the court may in its discretion on a suit for specific performance direct party in breach, to carry out his promise according to the terms of the contract.
	Where a party to a contract is negating the terms of a contract, the court may by issuing an 'injunction

Suit for injunction

orders', restrain him from doing what he promised not to do.

Question 1

State whether the following statement is/ are correct or incorrect:

In case of breach of contract, the Court awards remote damages to the aggrieved party.

Answer:

Incorrect

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

- + Those for damages that usually arise in the event of breach of contract and
- + Those for damages which parties know and anticipated at the time of entering into the contract called special damages. These kinds of special damages can be claimed only on previous notice.

However, no compensation is payable for any remote or any indirect loss. The rules relation to compensation was enunciated in *Hadley vs. Baxendale*.

Question 2

PM Ltd., contracts with Gupta Traders to make and deliver certain machinery to them by 30.6.2014 for 21.50 lakhs. Due to labour strike, PM Ltd. could not manufacture and deliver the machinery to Gupta Traders. Later Gupta Traders procured the machinery from another manufacturer for 22.75 lakhs. Gupta Traers was also prevented from performing a contract which it had made with Zenith Traders at the: time of their contract with PM Ltd. and were compelled to pay compensation for breach of contract. Advise Gupta Traders the amount of compensation which it can claim from PM Ltd., referring to the legal provisions of the Indian Contract Act, 1872.

Answer:

Provision:

Determination of Amount of Compensation:

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

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

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

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

Present Case:

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

1. Ordinary Damage:

PM Ltd. shall compensate for the loss of 22.75 lakhs - 21.50 lakhs = 1.25 lakhs.

This is the loss which had naturally arisen due to default in performing the contract by the specified date.

2. Special Damage:

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

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

Question 3

X agreed to sell to Y 100 bags of price @ `500 per bag, the entire price to be paid at the time of delivery. Before it is delivered, the price of rice per bag goes up by ` 50 per bag, X refuses to deliver unless and

until Y agrees to the increased price. Y sues X for damages for the breach of contract. What Y can claim as damages?

Answer:

In a Contract of sale of Goods, the damages for the breach of contract are measured by the difference in contract price and market price of the goods on the date of breach. In this problem Y can claim ` 50 per bag (550-500) as ordinary damages.

Question 4

What is the law relating to determination of compensation, on breach of contract, contained in Sec. 73 of the Indian Contract Act, 1872?

Answer:

Compensation on Breach of Contract:

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

Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach. The explanation to the section further provides that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account

Question 5

Explain the meaning of "Suit for Injunction" as per the provisions of the Indian Contract Act, 1872.

Answer:

Injunction means an order of the Court restraining party from carrying out a particular act. As per the Indian Contract Act, 1872, a suit for injunction is remedy provided to the aggrieved party on the breach of contract. The term injunction may be defined as an order of the courts restraining a person from doing something which he promised not to do. In general, injunction is a court order by which an individual is required to perform, or is restrained from performing, a particular act. In relation

to the law of contract the injunction is a useful weapon for the purpose of encouraging performance of a contract involving personal services.

Question 6

How the damages can be calculated on the breach of contract?

Answer:

In case of a contract for sale of goods, where the buyer breaks the contract, the damages would be the difference between contract price and market price as on the date of breach. Similarly where the seller breaks the contract, the buyer can recover the difference between market price and contract price as on date of breach.

If the seller retains the goods after the contract has been broken by the buyer he cannot recover from the buyer any further loss even if the market falls. Again he is not liable to have the damages reduced if the market rises.

Question 7

Gives a basic view on types of Breach.

Answer:

Types of breach

Anticipatory breach	Actual breach
Anticipatory breach occurs when the party declares his intention of non performing the contract before the performance is due	Actual breach may take place when <ul style="list-style-type: none">•The party to the contract refuses or fails to perform his part at the time fixed for performance•Party has performed a part of contract and then refuses or fails to perform the remaining part of contract.

Question 8

M Ltd., contracts with Shanti Traders to make and deliver certain machinery to them by 30.6.2004 for ` 11.50 lakhs. Due to labour strike, M Ltd. could not manufacture and deliver the machinery to Shanti Traders. Later, Shanti Traders procured the machinery from another

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manufacturer for ` 12.75 lakhs. Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation which it can claim from M Ltd., referring to the legal provisions of the Indian Contract Act, 1872.

Answer:

Section 73 of the Indian Contract Act, 1872 provides for consequences of breach of contract. According to it, when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract, to be likely to result from the breach of it. Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach. It is further provided in the explanation to the section that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Applying the above principle of law to the given case, M Ltd is obliged to compensate for the loss of ` 1.25 lakhs (i.e. ` 12.75 minus ` 11.50 = ` 1.25 lakhs) which had naturally arisen due to default in performing the contract by the specified date.

Regarding the amount of compensation which Shanti Traders were compelled to make to Zenith Traders, it depends upon the fact whether M Ltd., knew about the contract of Shanti Traders for supply of the contracted machinery to Zenith Traders on the specified date. If so, M Ltd is also obliged to reimburse the compensation which Shanti Traders had to pay to Zenith Traders for breach of contract. Otherwise M Ltd is not liable

Question 9

Mr. Ramaswamy of Chennai placed an order with Mr. Shah of Ahmedabad for supply of UridDhall on 10.11.2006 at a contracted price of ` 40 per kg. The order was for the supply of 10 tones within a month's time viz. before 09.12.2006. On 04.12.2006 Mr. Shah wrote a letter to Mr. Ramaswamy stating that the price of UridDhall was sky rocketing to ` 50 Per. Kg. and he

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would not be able to supply as per original contract. The price of Urid Dhall rose to `53 on 09.12.06 Advise Mr. Ramaswamy citing the legal position.

Answer:

The stated problem falls under the head 'anticipatory breach of contract' defined in Section 39 of the Indian Contract Act, 1872.

The case law applicable here is *Frost vs. Knight*. As per details in the problem, price as contracted `40 per kg on 10.11. 2006 rose to ` 50 per kg as on 4.12.2006 and finally to 53 per kg, on 09.12.2006.

The answer to the problem is that

- Mr. Ramaswamy can repudiate the contract on 04.12.2006 and can claim damages of 10 per kg viz.
- He could wait till 09.12.2006 and claim ` 1, 30,000 i.e. ` 13 per kg.
- If the Government, in the interim period i.e. between 04.12.2006 and 09.12. 2006 imposes a ban on the movement of the commodity to arrest rise of prices, the contract becomes void and Mr. Ramaswamy will not be able to recover any damages what's over.

Question 10

What Remedies are Available for a Breached Contract?

Answer:

There are several remedies for breach of contract:

Compensatory Damages: The most common legal remedy, compensatory damages are a monetary award to compensate the aggrieved party. A court can order the person who breached the contract to pay the aggrieved party enough money to get what they were promised by the terms of the contract.

Restitution: Court orders restitution if they order the breaching party to pay back the other person the amount the aggrieved party paid initially to make the aggrieved party "whole" again.

Punitive Damages: If the breach of contract is especially heinous, a court may order punitive damages, meant to punish the breaching party for breaking the terms of the contract.

Specific Performance: A court can force the breaching party to perform the service or deliver the goods that were promised in a contract.

Question 11

What are the Different Types of Breaches?

Answer:

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The following are different types of contract breaches:

Minor Breach: a minor breach occurs when one party “substantially performs,” or meets the essential obligations of the contract, but does not meet a condition that is minor and does not affect the contract terms. This is also known as a partial breach.

Material Breach: A material breach is a substantial breach in contract terms usually excusing the non-breaching party from performing and giving her the right to sue for damages.

For example, in a home purchase contract, a seller refusing to give the buyer the keys to the home after the buyer has completed all contract terms is a material breach.

Fundamental Breach: This occurs when one party violates the contract terms so egregiously that the other party may terminate the contract (as well as seek damages).

Anticipatory Breach: Contracts generally have set dates on which “performance,” or fulfillment of the contract’s obligations, are required. If one of the parties commits a breach prior to that time, then they have committed an anticipatory repudiation, or anticipatory breach. If this occurs, the non-breaching party may immediately consider the contract breached, and take legal action.

Question 12

Distinction between liquidated damages and penalty.

Answer:

Penalty and liquidated damages have one thing in common that both are payable on the occurrence of a breach of contract. It is very difficult to draw a clear line of distinction between the two but certain principles as laid down below may be helpful.

1. If the sum payable is so large as to be far in excess of the probable damage on breach, it is certainly a penalty.
2. Where a sum is expressed to be payable on a certain date and a further sum in the event of default being made, the latter sum is a penalty because mere delay in payment is unlikely to cause damage.
3. The expression used by the parties is not final. The court must find out whether the sum fixed in the contract is in truth a penalty or liquidated damages. If the sum fixed is extravagant or exorbitant, the

court will regard it as a penalty even if, it is termed as liquidated damages in the contract.

4. The essence of a penalty is payment of money stipulated as a terrorism of the offending party. The essence of liquidated damages is a genuine pre-estimate of the damage.
5. English law makes a distinction between liquidated damages and penalty, but no such distinction is followed in India. The courts in India must ascertain the actual loss and award the same which amount must not, however exceeds the sum so fixed in the contract. The courts have not to bother about the distinction but to award reasonable compensation not exceeding the sum so fixed.

Question 13

What Damages Can Be Awarded in a Breach of Contract?

Answer:

Compensatory Damages: This is the most common remedy for breach of contract. Usually, when compensatory damages are ordered, the breaching party must pay the other party what was promised elsewhere in the contract.

Restitution: When restitution is ordered, the breaching party is required to pay the other party back.

Liquidated Damages: Agreed-upon damages that the parties say they will pay in the event of a contract breach.

Nominal Damages: Awarded when no party suffered harm after a breach of contract.

Quantum Meruit: Awarded to a party as payment for any performance prior to the other party's breach of contract. For instance, if a house cleaner cleaned part of a person's house, and that person decided she didn't want him to finish cleaning the rest of the house, the court could order the homeowner to pay for the work completed.

Remedies in Equity: A remedy in equity is when the court orders a party to do something, also known as injunctive relief. This could be in the form of a cancellation of the contract, which releases the parties from the agreement. It could also be in the form of a specific performance, which forces the breaching party to deliver the goods or perform the service they promised in the contract.

Punitive Damages: Reserved for cases in which a party acted in a morally reprehensible way, punitive damages are intended to punish the offending party.

Question 14

How do you prove breach of contract?

Answer:

In order to succeed in a breach of contract claim, for instance, you, with the assistance of your business lawyer, will have to prove the existence of four things: an enforceable contract, your performance of the contract, the defendant's breach of the contract, and the actual damages of that breach.

Question 15

What happens if there is a breach of contract?

Answer:

When a breach of contract occurs or is alleged, one or both of the parties may wish to have the contract enforced on its terms, or may try to recover for any financial harm caused by the alleged breach. If a dispute over a contract arises and informal attempts at resolution fail, the most common next step is a lawsuit

Question 16

What are the remedies for breach of contract?

Answer:

The five basic remedies for breach of contract include the following: money damages, restitution, rescission, reformation, and specific performance. A money damage award includes a sum of money that is given as compensation for financial losses caused by a breach of contract. Parties injured by a breach are entitled to the benefit of the bargain they entered, or the net gain that would have accrued but for the breach. The type of breach governs the extent of damages that may be recovered.

If the breach is a total breach, a plaintiff can recover damages in an amount equal to the sum or value the plaintiff would have received had the contract been fully performed by the defendant, including lost profits. If the breach is only partial, the plaintiff may normally seek damages in an amount equal to the cost of hiring someone else to complete the performance contemplated by the contract. However, if the cost of completion is prohibitive and the portion of the unperformed contract is small, many courts will only award

damages in an amount equal to the difference between the diminished value of the contract as performed and the full value contemplated by the contract.

Question 17

What elements must a breach of contract claim?

Answer:

The elements of a breach of contract claim are:

- 1) Existence of a valid contract
- 2) Performance or tendered performance by the plaintiff;
- 3) Material breach by the defendant; and
- 4) Damages sustained by the plaintiff as a result of that breach.

Question 18

Claims for unpaid notice or unpaid pay in lieu of notice

Answer:

A claim for unpaid notice or pay in lieu of notice should be made as a breach of contract claim rather than a claim for unlawful deduction from wages. If you have not been paid for your notice period or have not been given a payment in lieu of (instead of) being given notice, these claims are called **wrongful dismissal**. You can claim compensation equal to the amount of notice pay that you should have received, with tax and national insurance deducted.

These claims can be made to an employment tribunal, unless you are claiming more than the set limit or if you have missed the time limit to make a claim to a tribunal. In these cases, you will have to make your claim to a court. If the tribunal agrees with your claim, they can award compensation for your financial loss up to a maximum of 25,000.

Compensation for breach of contract will be in addition to any compensation you can also claim for unfair dismissal or discrimination.

Your employer should always follow a proper dismissal procedure before dismissing you. Otherwise, the dismissal may be unfair.

Question 19

How a court can settle a breach of contract?

Answer:

The courts will enforce the settlement: if it is breached, the party in default could be sued for breach of that contract. ... The settlement of the lawsuit defines legal requirements of the parties, and is often put in force by an order of the court after a joint stipulation by the parties.

Question 20

Does breach of contract void the contract?

Answer:

When a party breaches a contract in a material way, the non-breaching party generally has two choices. He/she/it can either rescind the contract, meaning that neither party would have any ongoing obligation, or continue to with the contract but sue for damages incurred due to the breach.

Question 21

Can a written contract be broken?

Answer:

So in many situations agreements are being broken all the time, but the way in which they are being broken is not fundamental to the operation of the contract. ... If an agreement is illegal, then it is not enforceable and you can break it without legal sanctions.

Question 22

What are the elements of a valid contract?

Answer:

Elements of a contract. The requisite elements that must be established to demonstrate the formation of a legally binding contract are

- (1) **Offer;**
- (2) **Acceptance;**
- (3) **Consideration;**
- (4) **Mutuality of obligation;**
- (5) **Competency and capacity;** and, in certain circumstances,
- (6) **A written instrument.**

Question 23

What are the possible defenses to a breach of contract

Answer:

The law also affords defendants several other defenses in breach of contract actions. They include:

(1) Un conscionability: Unconscionable contracts are those that violate public policy by being so unjust as to offend the court's sense of fairness. Sometimes called "contracts against public policy," unconscionable contracts usually result from a gross disparity in the parties' bargaining power, as can happen when one party is a business person and the other party is elderly, illiterate, or not fluent in English. But a mere disparity in bargaining power will not to overturn an otherwise valid contract, unless a court finds that the resulting contract is one that no mentally competent person would enter and that no fair and honest person would accept.

(2) Mistake: Ordinarily, to constitute a valid defence in an action for breach of contract the mistake must be a mutual one made by all of the parties to the contract. However, when the mistake is obvious from the face of the contract, knowledge of the mistake will be imputed to each party. Thus, a contract that by its terms designates a horse as the subject matter will be enforced unless both parties agree that a different subject matter was intended. On the other hand, if the same contract designates a pig as the subject matter in 99 paragraphs of the agreement, but mentions a horse in only one paragraph, a court will not force the defendant to sell his horse if it is obvious that the one paragraph contains an error.

(3) Fraud: Fraud occurs when one party intentionally deceives another party as to the nature and consequences of a contract, and the deceived party is injured as a result. In most cases, fraud requires an affirmative act, such as a willful misrepresentation or concealment of a material fact. In a few cases where a special relationship exists between the parties, such as between attorney and client, simple nondisclosure of a material fact may amount to fraud. Regardless of the underlying relationship between the parties, however, a court will not void a contract due to fraud unless the defendant demonstrates that he or she was induced to enter the contract by fraudulent conduct and not merely that the plaintiff made a false statement at some point in time.

(4) Undue influence: Undue influence occurs when one party exercises such control over a second party as to overcome the independent judgment and free will of the second party. In reviewing claims of undue influence, courts look to see whether the plaintiff preyed on and exploited a known psychological or physical weakness when securing the defendant's assent to a contract. However, evidence that the plaintiff merely used aggressive and unsavory tactics in securing the defendant's assent will not suffice to overturn a contract on grounds of undue influence, unless those tactics had

the effect of substituting the plaintiff's will and judgment for the defendant's.

(5) Duress: Duress consists of any wrongful act that coerces another person to enter a contract that he or she would not have entered voluntarily. Blackmail, physical violence, a show of force, and threats to institute legal proceedings in an abusive manner may all constitute sufficient duress to void a contract. However, a defendant claiming duress must demonstrate that sufficient harm was threatened or inflicted to justify finding that the defendant had no reasonable choice but to enter the contract on the terms dictated by the plaintiff.

Question 24

Comment: When a claim for Quantum Meruit -arises?

Answer:

A claim for quantum Meruit shall arise under the following circumstances:

1. When the contract is discovered to be force 1(Section65, Indian Contract Act, 1872) i.e. when the agreement is discovered to be void or becomes void, any person receiving benefit under such an agreement or contract is bound to restore it.
2. When one party abandons or refuses to perform the contract. Where there is a breach of contract, the aggrieved party is entitled to claim reasonable compensation for what he has done under the contract.
3. When a contact is divisible, and the party in default, has enjoyed the part performance, the party in default may sue on quantum Meruit.
4. When an indivisible contract for lump sum is performed but badly, the person who has performed can claim the lump sum less deduction for bad workmanship.

Question 25

Correct or complete the sentence and rewrite it.

- I. The breach of contact occurs when a party accept to perform his obligations on due date**
- II. In case of breach of a contract for the sale of goods, the measure of damages is the difference between the contract price and market price on the date of Enforcement of contract**

Answer:

- I. Here the sentence is incorrect and incomplete. “The breach of contract occurs when a party fails to perform his obligations on due date and not to perform his obligation on due date”.
- II. Here the sentence is incorrect “In case of breach of a contract for the sale of goods, the measure of damages is the difference between the contract price and market price on the date of breach”.

Question 26

1. “The claim on quantum Meruit can always be filed by a party who is not at fault.” The statement is true or false?
2. The 'earnest money' is a part of purchase price and in advance and is liable to be forfeited. Whereas, the security deposit is refundable and not liable to be forfeited. The statement is true or false?

Answer:

1. False, as the defaulting may also use on quantum Meruit for work done if contract is divisible and the other party has accepted work done.
2. True, as it is the legal position

Question 27

Choose the correct option:

Generally, which of the following damages are not recoverable?

1. Ordinary damages
2. Special damages
3. Remote damages
4. Nominal damages

Answer: c

Remote damage: Any damage occurring from a defendant's act that cannot reasonably be anticipated by the defendant, or that is not the natural and ordinary result of such act. A defendant will typically not be held liable for remote damages to a plaintiff's person or property.

The damages to be payable are determined keeping in view the loss suffered on the date of

1. Making the contract
2. Breach
3. Enforcement of right
4. None of these

Answer: b

A breach can occur if a party fails to perform within the time frame specified in the contract, does not perform in accordance with the terms of the agreement, or fails to perform whatsoever. If one party fails to perform while the other party fulfills her duties under the contract, the performing party is entitled to legal remedies for breach of contract

Question 28

The 'earnest money' is a part of purchase price and in advance and is liable to be forfeited. Whereas, the security deposit is refundable and not liable to be forfeited. The statement is true or false?

Answer:

True, as it is the legal position

Question 29

“Nominal damages are very small in amount and are awarded”. Justify

Answer:

Nominal damages are very small in amount and are awarded to simply to establish party's right to claim damages.

Question 30

Answer the following statement:

- I. When a party rightfully rescind (i.e., cancel) the contract, he is?**
- II. A contracted to supply 100 bags of rice to B on 30.12.06. Before the due date of performance (i.e., 30th December, 2006), A informed B that he will not supply any rice to B as contracted. In this case.**
- III. A court order for restraining a person from doing something which he promised not to do. Can be obtained by filing a suit for**
- IV. An amount of compensation fixed for breach, which is disproportionate to the damages which may result on breach, is known as**
- V. The court may grant rescission where the contract is.**

Answer:

- I. Discharged from all obligations under the contract and entitled to receive compensation, from the defaulting party, for damages due to non-performance**

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- II. There is anticipatory breach of contract. and hence B may immediately treat the contract cancelled
- III. A court order for restraining a person from doing something which he promised not to do. Can be obtained by filing a suit for injunction.
- IV. An amount of compensation fixed for breach, which is disproportionate to the damages which may result on breach, is known as penalty.

The court may grant rescission where the contract is voidable at the option of plaintiff.

Past Examination Question

2018 - MAY

Question1

M Ltd., contract with Shanti Traders to make and deliver certain machinery to them by 30.6.2017 for Rs. 11.50 lakhs. Due to labour strike, M Ltd. could not manufacture and deliver the machinery Traders. Later, Shanti Traders procured the machinery from manufacturer for Rs.12.75 lakhs. Due to these Shanti Traders was also prevented from performing a contract which it had made with Zenith traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation which it can claim from M Ltd., referring to the legal provision of the Indian Contract Act, 1872.

Answer:

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

Such compensation is not to be given for any remote or indirect loss or damage sustained by reasons of the breach.

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In the given case, Shanti Traders suffered also sRs.1.25 lakhs (12.75-11.50) due to breach of contract by M Ltd. This naturally arose in the usual course of things. Shanti Traders also had to pay penalty to Z enith Traders for breach of contract, which should be considered as in direct loss or remote loss for which M Ltd. cannot be held responsible.

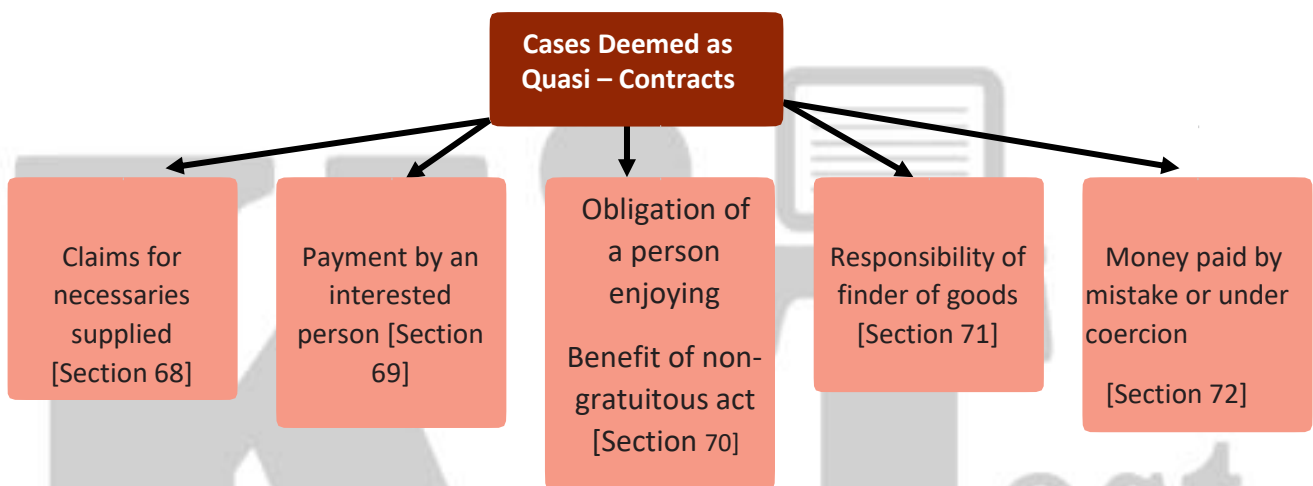
Therefore, Shanti Traders can claim an amount of Rs.1.25 lakh from M Ltd. and nothing beyond.

UNIT: 6

CONTINGENT AND

<p>CONTINGENT CONTRACTS</p>	<p>“A contract to do or not to do something, if some event, collateral to such contract, does or does not happen”.</p>
<p>RULES FOR ENFORCEMENT</p>	<ul style="list-style-type: none"> ▪ If it is contingent on the happening of a future event, it is enforceable when the event happens. ▪ If it is contingent on a future event not happening. It can be enforced when happening of that event becomes impossible or it does not happen at the expiry of time fixed for non-happening of the event. ▪ If the future event is the act of a living person any conduct of that person which prevents the event happening within a definite time renders the even time possible.

	<ul style="list-style-type: none"> If the future event is impossible at the time of the contract is made, the contract is <i>void abinitio</i>.
QUASI CONTRACTS	A quasi or constructive contract rests upon the maxims, “No man must grow rich out of another person’s loss”.

**Question 1**

Pick-up the correct answer from the following:

A contract of insurances

- Contingent contract
- Wagering agreement
- Contract of guarantee
- Unilateral agreement

Answer:

Contingent contract

Question 2

Pick-up the correct answer from the following and give reasons:

Contingent Contract is a

- Void
- Valid
- Voidable
- Illegal

Answer:

Option (1): Valid - As per Sec. 31 of the Indian Contract Act, 1872 a contingent contract is a contract to do or not to do something, if some event collateral to such contract does or does not happen. Thus it is a conditional contract.

Question 3

Distinguish between a Wagering Contract and a Contingent Contract.

Answer:

Difference between Wagering Agreement and Contingent Contract

S. No.	Basis	Wagering Agreement	Contingent Contract
1.	Meaning	A wagering agreement is a promise to give money or money's worth up on the determination or circumstances of an uncertain event.	A contingent contract on the other hand is a contract to do or not to do something if some event, collateral to contract does or does not happen.
2.	Reciprocal promises	A wagering agreement consists of reciprocal promises.	A contingent contract may not contain reciprocal promise.
3.	Event	In a wagering agreement the uncertain event is the sole determining factor.	In a contingent contract the event is only collateral.
4.	Nature	A wagering agreement is essentially of a contingent nature.	A contingent contract may not be of a wagering nature.
5.	Type of contract	A wagering agreement is void.	A contingent contract is valid.

Question 4

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What do you understand by 'Quasi-Contract'? Discuss.

Answer:

A quasi-contract is a type of contract in which one party is bound to pay money in consideration of something done or suffered by the other party. Thus, no contractual relation exists between the parties, but law makes out a contract for them and such a contract is called a quasi-contract. The main objective of the quasi-contract is to prevent unjust enrichment or unjust benefit that is no man should grow rich out of another person's loss. This theory was originally propounded by Lord Mansfield in the case *Moses Vs Macferlan*.

Question 5

Define Quasi Contract states features of it?

Answer:

A quasi-contract may be defined as "a transaction in which there is no contract between the parties; the law creates certain rights and obligations between them which are similar to those created by a contract."

Features

- ✦ The quasi-contract is imposed by law as it does not arise from any formal agreement. It is a relation created by law between two persons and this relation is similar to the relation created by contract.
- ✦ The basis of the quasi-contracts is the principles of justice, equity and good conscience.
- ✦ The quasi-contract grants a right on one person and imposes the liability on the other person in relation with the advantage that he has already received.
- ✦ The right granted by a quasi-contract is available against a particular person or persons only and not against the whole world.

When an agreement is created under quasi-contract and is not discharged, the aggrieved party is entitled to receive the compensation from the party who is in default, as if the person has contracted to discharge it and has breached the contract.

Question 6

Supplies to B, a lunatic, the necessaries suitable to his conditions in life. In this case:

Answer:

Supplies to B, a lunatic, the necessaries suitable to his conditions in life. In this case. B's property is liable.

Question 7

Is quasi contract a valid contract?

Answer:

Because a quasi contract is not a true contract, mutual assent is not necessary, and a court may impose an obligation without regard to the intent of the parties. When a party sues for damages under a quasi-contract, the remedy is typically restitution or recovery under a theory of quantum meruit.

Question 8

What are the elements of a quasi-contract?

Answer:

Quasi Contract Elements. There are three inherent principles to a quasi-contract. The plaintiff must show evidence of the goods or services they should have been compensated for. The defendant must have accepted those goods or services and receive some type of benefit from them.

Question 9

Is a quasi-contract the same as an implied contract?

Answer:

An implied-in-fact contract is formed by non-verbal conduct or actions between two parties. ... An implied-in-law contract is a quasi-contract which is imposed by the law on both parties, even though neither party had any intention of entering into a contractual agreement.

Question 10

Complete the sentence and rewrite it:

- 1. A contract to do or not to do something if some event, collateral to such contract, does or does not happen is legally known as-**
- 2. A contingent contract is _____.**

Answer:

- 1. Wagering agreement:** A contract to do or not to do something if some event collateral to such contract does not happen. A void agreement is

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on agreement without any legal effect and cannot be enforced in a court of law. The following are instance of void agreements. A agrees to pay a sum of money to B if a certain ship doesn't return

- 2. Valid:** A contingent contract will be valid only if it is a contract to do or not to do something. For instance, if a person A contracts to pay B, another person, a sum of 10,000 if B's house is burnt, it is a valid contingent contract.

Question 11

The performance of a contingent contract becomes due only upon the happening of present uncertain event. State the statement is true or false.

Answer:

The statement is False.” The performance of a contingent contract becomes due only upon the happening or non-happening of future uncertain event”.

Question12

What are the Similarities between Quasi Contracts and Contracts?

Answer:

The result of contract and quasi contract are similar to that of contracts. So far as the claim for damages are concerned they are very similar to that of contracts because section 73 of the Indian Contract Act, 1872 provides remedies for the breach of quasi contracts as provided for the breach of express contracts in various sections of the Indian Contract Act, 1872. Remedies are available under quasi contract under Indian contract act, 1872

Question 13

Explain briefly: The duties and liabilities of a finder of goods are treated at par with bailee.

Answer:

Duties and Liabilities of finder of goods: The duties and liabilities of a finder of goods are treated at par with bailee. A person who finds goods belonging to another and takes the custody, is subject to the same responsibility as availed e. (Section 71 of the Indian Contract Act, 1872). He is bound to take as much care of the goods as a men of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk quality and value. He must also take all necessary measures to trace its true owner. If he

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does not take, he will be guilty of wrongful conversion of the property. Till the owner is found out, the property in the goods will vest in the finder and he can retain the goods as his own against the whole world except the real owner. He can sell the goods in the following cases:

Where the owner cannot with reasonable diligence be found; or
When found, he refuses to pay heavy full charges of the finder; or
If the thing is in danger of perishing losing greater part fits value.
If the law full charges amount to $\frac{2}{3}$ of the value of the thing.

Question 14
(Kinds of Quasi Contract)?

Answer:

- Supply of necessities to persons who are incompetent to contract (Section68).
- Payment by the interested person (Sec.69).
- Non-gratuitous acts (Section70).
- Finder of Goods (Section71).
- Payment of money or deliver of goods by mistake or under coercion (Section72).

Question15
Essentials of Contingent Contracts

Answer:

1. Depends on happening or non-happening of a certain event
2. The contract is contingent on the happening or the non-happening of a certain event. These said events can be precedent or subsequent, this will not matter.
3. The event is collateral to the contract
4. It is important that the event is not a part of the contract. It cannot be the performance promised or a consideration for a promise.
5. The event should not be a mere will of the promisor
6. The event cannot be a wish of the promisor.
7. The event should be uncertain
8. The event is sure to happen, and then the contract is due to be performed. This is not a contingent contract. The event should be uncertain.

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Question 16

A's property was wrongly advertise for sale for recovery of government revenue due from B. In order to save B's property, A paid the government dues. In this case, A is entitled to recover the amount or not?

Answer:

On the basis of quasi contract, A is entitled to recover the amount of dues paid by him from B.

Question17

A, a tradesman left certain goods at B's house by mistake, who treats the goods as his own. In this case:

Answer:

B is bound to pay as A's act is non gratuitous and quasi contract arises between them under section 70.

Question18

Enumerate the rights of the finder of lost goods.

Answer:

Finding is not keeping. The finder must make reasonable efforts to locate the real owner and may also spend reasonable money in taking care of the goods found. However, he earns certain rights also as against the goods found as well as the owner of those goods. His rights are:

1. He has a right of lien over the goods for his expenses. But he has no right to sue the owner for any such compensation (Section168).
2. He can sue for any specific reward, which the owner has offered for the return of goods (Section168).
3. He can even sell the goods under the following circumstances:
 - a) If the owner cannot with reasonable diligence be found;
 - b) If found, he refuses to pay the lawful charges of the finder;
 - c) Ifthegoodsareinthedangerofperishingoroflosingthegreaterpartoftheirv alue
 - d) If the lawful charges of the finder, in respect of the goods found, amount to more than two thirds of their value (Section169).

Question 19

is used in the Indian Contract Act in the part dealing with quasi contract?

Answer:

Certain relations resembling those created by contract.

Question 20

Distinction between Quasi Contracts and Contracts

Answer:

CONTRACTS	QUASI CONTRACTS
A contract is a contract between two parties. In contract, always there is an agreement between the parties.	A quasi-contract is not a real contract. Quasi contracts are also known as “constructive contracts” or “certain relations resembling those created by contracts”.
In contract, always there is an agreement between the parties.	Where as in quasi-contract, there is no agreement between the parties.
In contract, the parties must give their consent to it	In quasi-contract, the parties do not consent.
In contract, the liability exists between the parties by the terms of the parties	In quasi-contract, the liability exists independent of the agreement and rests upon equity, justice and good conscience.
It is created by the operation of the contract.	It is imposed by law. It is not created by the operation of the contract.
It is right in ram, and also right in person is.	It is right in person am. I.e. strictly available against a person and is not available against the entire world.
2(h) of the Indian contract act, 1872, defines contract: “an agreement enforceable	Salmond defines quasi contracts: “there are certain obligations which are not in truth contractual in the sense of resting on

by law is a contract”	agreement, but which the law treats as if they were”.
Essentials: Free consent; The parties must be competent; There must be lawful consideration and lawful object; The agreement must not expressly be declared to be void; and If the law in force requires, it must be registered.	Essentials: It is imposed by law. It is not created by contract; It is a right in person am; The person who incurs expenses is entitled to receive money (unjust enrichment); and It is raised by a legal fiction.

CASE STUDY:**Question 21**

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

Answer:**Provision:**

According to Sec. 69 of the Indian Contract Act (1872), "A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other." ·

Present Case: W has made the payment of lawful dues of Z in which W had an interest. Therefore, was entitled to get the reimbursement from

Question 22

X, a minor was studying M.Com. In a college. On 1st July, 2005 he took a loan of 10,000 from B for payment of his college fees and to purchase books and agreed to repay by 31st December, 2005. X possesses assets worth 2 lakhs. On due date X fails to pay back the loan to B. B now wants to recover the loan from X out of his (X's) assets. Referring to the provisions of the Indian Contract Act, 1872 decide whether B would succeed.

Answer:

Yes, B can proceed against the assets of X. According to section 68 of the Indian Contract Act, 1872 “If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.” Since the loan given to X is for the necessaries suited to the conditions in life of the minor, his assets can be sued to reimburse B.

Question 23

Y holds agricultural land in Gujarat on a lease granted by X, the owner. The land revenue payable by X to the Government being in arrear, his land is advertised for sale by the Government. Under the Revenue law, the consequence of such sale will be termination of Y's lease. Y, in order to prevent the sale and the consequent termination of his own lease, pays the Government, the sum due from X. Referring to the provisions of the Indian Contract Act, 1872 decide whether X is liable to make good to Y, the amounts so paid?

Answer:

Yes, X is bound to make good to Y the amount so paid. Section 69 of the Indian Contract Act, 1872, provides that “A person, who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other. In the given case Y has made the payment of lawful dues of X in which Y had an interest. Therefore, Y is entitled to get her reimbursement from X.

Past Examination Questions

Nov - 2018

Question 1

What is Contingent Contract? Discuss the essentials of Contingent Contract as per the Indian Contract Act, 1872.

Answer:

A Contingent Contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen. Contracts of insurance, indemnity and guarantee fall under this category.

The essential constituents of a contingent contract are:

- a) The performance of a contingent contract would depend upon the happening or non-happening of some event. Or condition.

Example:

Promises to pay {Rs. 50,000 to B if it rains on first of the next month.

- b) The event referred to is collateral to the contract. The event is not part of the contract. The event should be neither performance promised nor any consideration for a promise.
- c) The contingent *event* should not be a mere will of the promisor. The event should be contingent in addition to being the will of the promisor.
- d) The event must be uncertain. Where the event is certain or bound to happen, the contract is due to be performed, then it is not a contingent contract.

Nov - 2019

Question 1

X found a wallet in a restaurant. He enquired of all the customers present there but the true owner could not be found. He handed over the same to the manager of the restaurant to keep till the true owner is found. After a week he went back to the restaurant to enquire about the wallet. The

manager refused to return it back to X, saying that it did not belong to him. In the light of the Indian Contract Act, 1872, can X recover it from the Manager?

Answer:

The finder of goods has no right to sue the owner for compensation for trouble and Expense Voluntarily incurred by him to presume the goods and to find the true owner, but he may retain the goods against the owner until he receives such compensation, until then the finder may retain the goods with him.

In the given case X finds a wallet in a restaurant and hands it over to the manager as the true owner could not be traced. After a week demands the wallet back from the manager, which he refuses to give, saying it did not belong to X.

Held, the manager must return the wallet to 'X' as he being the finder of lost goods was entitled to retain the goods found against everybody except the true owner.

Thus, X can recover the wallet from the manager.

DEC – 2020

Answer any four questions from the remaining five questions (Marks 4)

Question 1

(a) Mr. X a businessman has been fighting a long drawn litigation with Mr. Y an industrialist. To support his legal campaign, he enlists the services of Mr. C a judicial officer starting that the amount of Rs. 10 lakhs would be paid to him if he does not take up the brief of Mr. Y.

Mr. C agrees but, at the end of the litigation Mr. X refuses to pay to Mr. C Decide whether Mr. C can recover the amount promised by Mr. X under the provision of the Indian Contract Act, 1872?

Answer :

(a) Provision: As per Sec. 28 of Indian Contract Act, 1872 an agreement in restraint of legal proceeding is the one by which any party thereto is restricted absolutely from enforcing his rights under a contract through a court or which abridges the usual period for starting legal proceeding. A contract of this nature

is void. So problem asked in question is based upon Sec. 28 which is one of the essential of valid contract. Thus any agreement in restraint of legal proceeding is void and one without legal effect.

Conclusion: Thus Mr. C cannot recover amounts of Rs. 10 lakh from Mr. X as it is illegal agreement hence void and cannot be enforced by law.

Question 2

(a) Define Misrepresentation and Fraud. Explain the Difference between Fraud and Misrepresentation as per the Indian Contract Act, 1872.

Answer:

(a) Misrepresentation (Section 18):-

In case of misrepresentation a party innocently makes wrong statement.

In case of misrepresentation the intention of a party is not to deceive another party.

In case of misrepresentation a person represents something which is not actually true but he believes it to be true.

Note: - In case of misrepresentation the aggrieved party can avoid the contract.

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 any one 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.

Fraud (Section 17):

In case of fraud one party or his agent (with the consent of the another party) try to induce another party to enter into a contract with an intention to deceive another party. Following thing are considered as fraud :

- (i) Suggestion or representation of the fact to another party which is actually not true and the represent or himself does not believe it to be true.

Example: A sells by auction his horse to B which A knows to be Unsound. A says to B that the horse is absolutely sounds, but later came to know by B that the horse is unsound. This is a fraud.

(ii) Active concealment of a fact which represents or has knowledge.

(iii) A promise made without intention to perform it.

(iv) Any act done or fitted to deceive another party.

(v) Any act or omission which is specifically declared as fraudulent.

Note:- only those frauds are covered under Indian contract act which results in a contract i.e. due to which a party enter into a contract & those frauds are not caused under this act which does not lead the other party to enter into a contract.

Distinction between fraud and misrepresentation:

Basis of difference	Fraud	Misrepresentation
Section	Section 17	Section 18
Intention	To deceive the other party by hiding the truth.	There is no such intention to deceive the other party.
Knowledge of truth	The person making the suggestion believes that the statement as untrue	The person making the Statement believes it to be true, although it is not true.
Recession of the contract and claim for damages	The injured party can repudiate the contract and claim damages.	The injured party is entitled to repudiate the contract or sue for restitution but cannot claim the damages.

Means to discover the truth	The party using the fraudulent act cannot secure or protect himself by saying that the injured party had means to cover the truth.	Party can always plead that the injured party had the means to discover the truth.
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(c) In light of provisions of the Indian Contract Act, 1872 answer the following:

(i) Mr. S and Mr. R made contract wherein Mr. S agreed to deliver paper cup manufacture machine to Mr. R and to receive payment on delivery. On the delivery date, Mr. R didn't pay the agreed price. Decide whether Mr. S is bound to fulfill his promise at the time of delivery?

Answer:

(c) (i) Provision : According to section 51 of Indian Contract Act, 1872. When a Contract consists of Reciprocal Promises to be simultaneously performed, no promisor needs to perform his promise unless the promise is ready & willing to perform his reciprocal promise. Such promises constitute concurrent conditions & the performance of one of the promises is conditional on the performance of the other. If one of the promises is not performed the other too need not to be performed.

Facts of case & conclusion: In the given case R did not pay the agreed price on the delivery date therefore R will be guilty of breach of promise & the breach would relive S of the obligation to perform his promise & would enable S to treat the contract as at an end.

(ii) Mr. Y given loan to Mr. G of INR 30, 00,000. Mr. G defaulted the loan on due date and debt became time barred. After the time barred debt, Mr. G agreed to settle the full amount to Mr. Y. whether acceptance of time barred debt contract is enforceable in law?

Answer:

(ii) Provision: According to Section 25(3) of Indian Contract Act, 1872 where a promise in writing signed by the person making it or by his authorized agent, is made to pay a debt barred by limitation is valid without consideration.

Facts of case & conclusion: In the given case G agreed to settle the full amount to Mr. Y of time barred debt. If such promise is in writing & signed by G or by his authorised agent then acceptance of such time barred debt is enforceable otherwise not enforceable.

(iii) A & B entered into a contract to supply unique item, alternate of which is not available in the market. A refused to supply the agreed unique item to B. What directions could be given by the court for breach of such contract?

Answer:

(iii) Provision: As per the provisions of Indian Contract Act, 1872 where damages are not an adequate remedy in the case of breach of contract, the court may in its discretion on a suit for specific performance direct party in breach, to carry out his promises according to the terms of the contract.

Facts of case & conclusion: In the given case A refused to supply the agreed unique item to B the alternate of which is not available in the market. Therefore, adequate remedies are not available to B hence court can direct for specific performance of the contract i.e. according to the terms of the contract.

Question 6

(a) Enumerate the differences between 'Wagering Agreements' and 'Contract of Insurance' with the reference to provision of the Indian Contract Act, 1872.

Answer:

(a) Distinction between Contract of Insurance and Wagering Agreement

Basis	Contracts of Insurance	Wagering Agreement
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1	Meaning	It is a contract to indemnify the loss.	It is a promise to pay money or money's worth on the happening or non happening of an uncertain event.
2	Consideration	The crux of insurance contract is the mutual consideration (premium and compensation amount).	There is no consideration between the two parties. There is just gambling for money.
3	Insurable Interest	Insured party has insurable interest in the life or property sought to be insured.	There is no property in case of wagering agreement. There is betting on other's life and properties.
4	Contract of Indemnity	Except life insurance, the contract of insurance indemnifies the insured person against loss.	Loser has to pay the fixed amount on the happening of uncertain event.
5	Enforceability	It is valid and enforceable	It is void and unenforceable agreement.
6	Premium	Calculation of premium is based on scientific and actuarial calculation of risks.	No such logical calculations are required in case of wagering agreement.
7	Public Welfare	They are beneficial to the society	They have been regarded as against the public welfare.

JAN- 2021**Question 1**

(a) Mr. S aged 58 years was employed in a Govt. Department. He was going to retire after two years. Mr. D made a proposal to Mr. S to apply for voluntary retirement from his post so that Mr. D can be appointed in his place. Mr. D offered a sum of Rs. 10 Lakhs as consideration to Mr. S in order induce him to retire

Mr. S refused at first instance but when he valued the amount offered as consideration is just double of his cumulative remuneration to be received during the tenure of two years of employment, he agreed to receive the consideration and accepted the above agreement to receive money to retire from his office.

Whether the above agreement is valid? Explain with reference to provision of Indian Contract Act, 1872.

Answer:

Provision: According to the provision of the Indian contract Act, 1877, Public policy requires that money should not be involved in the appointment of an office in which public is interested. An agreement to pay money to a public servant in order to induce him to retire from his office so that another person may secure the appointment is considered as opposed to public policy

Conclusion: By applying above provision to the given case, we can conclude that the between Mr. D and Mr. S is void as it is in the nature of opposed to public policy.

(a) Define the term acceptance under the Indian Contract Act, 1872. Explain the legal rules regarding a valid acceptance.

Answer:

1. Definition [Sec.2(b)]: When the person to whom
 - The proposal is made
 - Signification his assent thereto:
 - The proposal, when accept becomes a promise
 2. The proposal when acceptance become a promise
- Following Are the essential elements of valid acceptance: Acceptance can be

given only by the person to whom the offer is made

- I. As per section 7 of the Act, acceptance is valid only when it is absolute and unqualified
 - II. Acceptance must be communicated: To conclude a contract between the parties acceptance must be communicated in some visible form mere mental acceptance is not a valid acceptance
3. Acceptance must be made with the knowledge of the offer Otherwise such acceptance is invalid and will not create any right to the acceptor
4. Mode of Acceptance
- a) Acceptance must be expressed in some usual and reasonable manner unless the proposal prescribes the manner in which offer has to be accepted
 - b) If the proposal prescribes the manner in which offer to be accepted it must be accepted in that manner only
5. Acceptance must be given within fixed time or reasonable time:
- a) If offer has prescribed time limit then prescribed shall be given within that time
 - b) If no time is prescribed then it shall be within reasonable time
6. Mere silence is not an acceptance:
- a) Acceptance cannot be implied the silence of the offeree / failure to answer
 - b) However it will be implied when offeree, through his previous conduct indicated that his silence amounts acceptance
7. Acceptance can be Express or implied:
- a) If acceptance is made through words spoken or written then it is known as express acceptance
 - b) If acceptance is made through any of the following ways, then it is known as implied acceptance or acceptance by conduct.
 - By conduct of the offeree
 - By performing the condition mentioned in the offer
 - By performing some act required by the offeror
 - By acceptance of the benefit / services

Mr. B makes a proposal to Mr. S by post to sell his house for Rs. 10 lakhs and posted the letter on 10th April 2020 and the letter reaches to Mr. S on 12th April 2020. He reads the letter on 13th April 2020. Mr. S sends his letter of acceptance on 16th April 2020 and the letter reaches Mr. B on 20th

April 2020. On 17th April Mr. S changed his reaches to Mr. B on 19 the April 2020.

Examine with reference to the Indian Contract Act, 1872:

- i. On which date, the offer made by Mr. B will complete?**
- ii. Discuss the validity of acceptance.**
- iii. What would be validity of acceptance if letter of revocation and letter of acceptance reached together?**

Answer:

PROVISION: According to the Indian contract act 1872. Communication of offer gets complete, when it comes the knowledge of the offeree. In other words when the letter of offer is received by the offeree mere receiving of the letters is not sufficient. Offeree must read the message contained in the letter.

The provision relating to communication of acceptance and its revocation through post are as follows:

- 1) An acceptance can be revoked before acceptance letter reaches offeror.
- 2) Acceptor shall choose a faster medium of communication to communicate his revocation of acceptance than the, medium chosen to communicate his acceptance.
- 3) When acceptor sent his acceptance through post and revocation of acceptance through telegram then following rules will apply.
 - If telegram reaches first then acceptance will be invalid.
 - If letter reaches first then acceptance will be valid.
 - If both reaches at same time then acceptance will be invalid as it is human nature to open telegram first rather than letter.

CONCLUSION: By applying above provisions to the given case, we can conclude that,

CASE A: The offer letter made by MR. B is completed on 13th April 2020.

CASE B: Since telegram contains revocation reaches first to the offeror acceptance will be contained as invalid.

CASE C: The revocation of acceptance by MR. S is valid and acceptance is invalid.

(b) Explain Doctrine of 'Indoor Management' under the companies Act, 2013.

Also state the circumstances where the outsider cannot claim relief on the ground of 'Indoor Management'.

Answer:

DOCTRINE OF INDOOR MANAGEMENT:

- 1) As per this doctrine, a person dealing with the company not presumed to have the knowledge of internal proceeding of the company. The details of internal procedure are not open to public inspection.
- 2) Thus, every person dealing with the company is entitled to assume that everything has been done regularly so far as the internal proceedings of the company are concerned.
- 3) Thus every person dealing with the company is entitled to assume that everything has been done according to the provisions and procedures laid down in MOA and AOA.

This doctrine seeks to protect the outsiders against the company

FOLLOWING ARE THE EXEPTIONS TO THIS RULE:

- 1) Actual or constructive knowledge of irregularity: The protection under the Doctrine of indoor management cannot be claimed by a person who has the knowledge of irregularity of constructive notice of irregularity.
- 2) Suspicion of Irregularity Negligence: Where the circumstances are of a suspicious nature which invites further inquiry and the person has failed to enquire into it, he shall not be entitled to protection under this rule similarly, where the transaction is of an unusual nature, the outsider must make detailed inquires.
- 3) Forgery: The protection under this doctrine shall not be available where the outsiders have relied upon a forged document, because nothing can validate forgery. A company is not liable for forgeries committed by its officer.

[NOTE: But a company may be held liable for fraudulent acts of its officers under their ostensible authority on its behalf.]

JULY - 2021

Question 1

State with reasons whether the following agreement are valid or void:

- I. A clause in a contract that no action should be brought upon in case of breach.**

- II. Where two courts have jurisdiction to try a suit an agreement between the parties that the suit should be field in one of those courts alone and not in the other.
- III. X offers to sell his Maruti car to Y. Y believes that X has only wagon R car but agrees to buy it.
- IV. X, a physician and surgeon employees y as an assistant on a salary of Rs. 75,000 per month for a term of two years and Y agrees not to practice as a surgeon and physician during these two.

Answer:

- I. An agreement which restricts the parties from enforcing their legal absolutely is void to that extent.
In this case the agreement is void since there is a clause in the agreement which restrict a party from a bringing legal action even in case of breach of contract (i.e., absolute restriction of legal rights).
- II. When two courts have jurisdiction to try suit, an agreement between the parties that the suit should be field in one of those court alone is valid.
In this case the agreement is valid. Since parties are free to choose single court when they are having multiple courts to try suit
- III. Consent is one of the essential elements of a valid contract, if there is no consent there is no contract. Two or more persons are said to consent when they agree upon the same thing in the same sense.
ALTERNATIVE ANSWER: to create a valid contract the terms of the agreement must be certain of capable of being made certain if the term are uncertain then the agreement would be void.
In this case the agreement is void. Since there is uncertainty regarding brand of the car.
- IV. An agreement of service by which an employee binds himself during the term of his agreement not to complete with his employer is valid.
In the case the agreement is void since parties had not agreed about the brand of the car in same sense.

Question 2

Explain the term contingent contract with reference to the Indian contract Act, 1872 with the help of an example. Also discuss the rules relating to enforcement of a contingent contract.

Answer:

a) **CONTINGENT CONTRACT:**

Contingent contract is a contract

- To do or not do some
- If some event collateral to such contract
- Does or does not happen.

Illustration: A advances Rs. 10,000 to B based on the promise made by s (surely) to repay the amount if B fails to repay it within a month.

- I. Here there is a contract to do something (i.e., to pay Rs. 10,000)
- II. The performance of this contract depends on non-happening of an event. (i.e., if B fails to repay Rs. 10,000 then A will pay that Amount)
- III. Those event is collateral to main contract
- IV. Thus, it is a contingent contract.
Other example: Contract of insurance, Indemnity etc.

RULES RELAIING TO ENFORCEMENT OF A CONTINGENT CONTRACT:

I. Enforcement of contracts contingent on `happening' if an event (Sec.32):

- If the event happens then the contract becomes valid.
- If the event does not happen or becomes impossible, then the contract becomes void.

II. Enforcement of contracts contingent on `not - happening' of an event (Sec.33):

- If the event happens then the contract becomes void.
- If the event does not happen or becomes impossible, then the contract becomes void.

III. A contract Contingent upon future conduct of a living person (Sec .34):

- If the future conduct of the person fulfils the condition, then the contract becomes enforceable.
- If the future conduct of that person renders the happening of such event impossible, then contract becomes void.

IV. Contingent on happening of specified event within the fixed time (Sec. 35):

- If the event happens within fixed time, then the contract becomes enforceable.
- If the event does not happen or becomes impossible within fixed time, the contract becomes void.

V. Contingent on specified event non - happening within fixed time (Sec. 35):

- If the event happens within fixed time, then the control becomes void.
- If the event does not happen or becomes impossible within that fixed

time, then the contract becomes void.

VI. Contingent on an impossible event (Sec. 36):

- If the performance of a contract depends upon the happening of an impossible event, then agreement is void.
- It is irrelevant whether the impossibility of the event is known or unknown to the parties, at the time of entering into such agreement.

Question 3

X, Y and Z jointly borrowed Rs. 90,000 from L Decide each of the following in the light of The Indian Contract Act, 1872.

- I. Whether L can compel only to pay the entire loan of Rs 90,000?**
- II. Whether L can compel only the legal representatives of Y to pay the loan of Rs. 90,000 if X, Y and Z died**
- III. Whether Y and Z are released from their liability to L and X is released from his liability to Y and Z for contribution If L releases X from his liability and sues Y and Z for payment?**

Answer:

- I. If a promise is made by two or more person (called joint promisor), then promises may compel anyone or more of the joint promisors to perform the whole contract. Since the liability under the joint and several
In this case L can compel only Y to pay the entire loan of Rs. 90,000.
- II. If a promise is made by two or more person (called joint promisors) and all of them are expired, then their positions will be replaced by their legal representation all the legal heirs are jointly and severally liable to promise
In this case L can compel only Y's legal representatives to pay the entire loan of Rs. 90,000.
- III. If the Promisee discharge/releases one among several joint promisors, it does not discharge other joint promisors, in addition the joint promisor or discharge is still to other joint promises.
In this case X will be realized from his liability towards Y and Z even though he is released by L to make contribution.

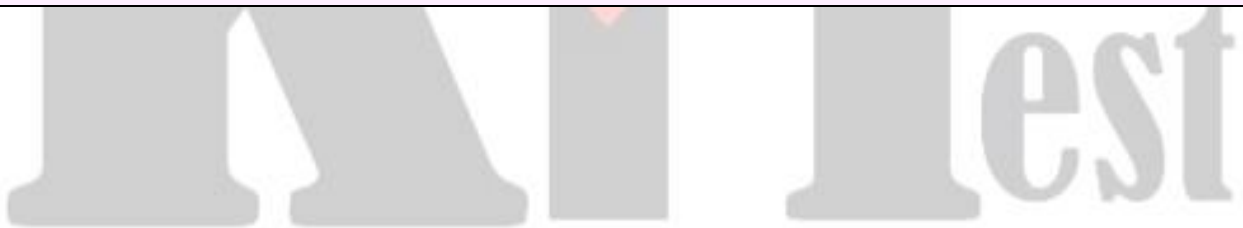
Question 4

Explain what is meant by 'supervening Impossibility' as per The Indian Contract Act, 1872 with the help of an example what is the effect of such impossibility.

Answer:

SUBSEQUIT / SUPERVING / POST – CONTRACTUAL IMPOSSIBILITY:

- I. Subsequent or post – contractual impossibility is one which arises after the formation of a contract.
- II. A contract becomes void on account of subsequent impossibility and stands discharged.
- III. Both parties must restore the benefits that are received under the contract.
Illustration: A sold B a cargo of cotton seed to be shipped by a particular ship B paid Rs. 1 lakh as purchase consideration. Before the time for shipping is arrived the ship was damaged by stranding so as to render the loading of the cargo impossible according to the contract.
 - I. Here there is contract between A and B.
 - II. The performance of this contract becomes impossible after its creation.
 - III. Therefore, the impossibility happened here can be referred as supervening impossibility
 - IV. Due to supervening impossibility the aforesaid contract becomes void and parties (A & B) will be discharged from that contract.
 - V. A has to refund Rs. 1 lakh was taken from B under this contract.



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