

CMA Inter Law – Dec 24 – Exam Oriented Marathons

1. **Starting from:** 23rd Oct 2024 (Wednesday)
2. **Platform:** Arjun Chhabra Tutorial YT Channel (Click here to land on YT Channel) (No Back up – only live stream in YT)
3. **Timing:** 04:00 PM onwards (Roughly 3 hours daily)

Features of Exam Oriented Marathons

1. Comprehensive coverage of entire syllabus of Law in least possible time.
2. Covering all Important questions of Commercial Laws, Corporate Laws, Industrial Laws and Ethics.
3. MCQ Practice from ICAI MCQ Bank – 30 Marks Coverage Click here to get MCQ Bank
4. Last attempt (June 24) 100 % paper was from ACT's Material: [Click here to watch](#)
5. Covering all Past exam paper | Model Question Paper | MTP | RTP | Postal Test Paper
6. Telegram group to stay connected with Arjun Sir: [Click here to Join Group](#)

Schedule of Exam Oriented Marathons

Date	Topic	Coverage	Link	Timing
23/10	Contract	16 Marks	YT Link	04:00 PM Onwards
24/10	Soga Partnership Nego LLP	14 Marks	YT Link	04:00 PM Onwards
25/10	Director & Constitution of India	25 Marks	YT Link	04:00 PM Onwards
26 /10	Companies Act Auditor	15 Marks	YT Link	04:00 PM Onwards
27/10	Industrial Law	15 Marks	YT Link	04:00 PM Onwards
-	MCQ Practice	30 Marks	YT Link	-
-	Ethics	15 Marks	YT Link	-

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CMA INTER LAW REVISION NOTES

Important Topics/Questions/Sections

The Indian Contract Act, 1872

Basics of contract

Question 1:

What are the essential elements of a contract? [Model Paper – Set 1 – June 23 – 10 Marks]

OR

“Contracts are legally enforceable but every agreement may not be enforceable under law” – Discuss with reason. [Model Question Paper Set 1 – June 24 – 7 Marks]

Contract [Sec.2(h)]: An Agreement enforceable by law is a Contract.

Contract: Agreement + Enforceability by law

Agreement: Promise + Consideration

Enforceability by law: Legal Obligation + All essential elements of Section 10

Legal Obligation: Intention to create legal relation at the time of Agreement

Essentials of a Valid Contract: [MQP – 10 Marks]

- (a) Agreement between two parties,
- (b) Consensus-ad-idem - meeting of minds - agreeing to the same thing in the same sense and the same time,
- (c) Intention to create legal relationship. No domestic and social nature,
- (d) Consent of parties must be free and genuine, [When the consent is caused by _____, the agreement is voidable at the option of the party whose consent was so caused. (June 19 MCQ)]
- (e) Parties should be competent to contract,
 - i. age of majority
 - ii. sound mind [Dec 22 MCQ]
 - able to understand the terms of Contract
 - capable of forming a rational judgment
 - iii. not disqualified from contracting
 - Alien Enemy
 - Foreign Sovereign and Ambassadors
 - Convicts (He can enter into contracts only when the term is completed.) [Dec 22 T&F]
 - Insolvents
 - Company or Statutory bodies:
- (f) Lawful consideration,
- (g) Lawful and legal object,
- (h) Not expressly declared void,
- (i) Meaning of agreement must be certain or capable of being made certain,
- (j) Capable of performance, and

(k) Legal formalities, wherever required.

Answer:

The Indian Contract Act was enacted in 1872 which enlists provisions that could help the adjudicating authority in deciding the rights and liabilities of the parties. Section 10 provides that all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not otherwise expressly declared to be void. The following are the requirements for a valid contract

- There shall be an offer or proposal by one party and acceptance of the proposal by the other party which results in an agreement.
- There shall be an **intention to create legal relations** or an intent to legal consequences.
- The agreement shall be supported by **lawful consideration**.
- The parties to the contract shall be **competent to contract**.
- There shall be **free consent** between the parties to the contract.
- The **object and consideration of the contract shall be legal** and the same **shall not be opposed to public policy**.
- The terms of the **consent** shall be certain.
- The agreement is **capable of being performed** and it is **not impossible** of being performed.

Examples:

A proposes, by letter, to sell a house to B at a certain price. B accepts A's proposal by a letter sent by post. The communication of the acceptance is complete, as against A when the letter is posted and as against B, when the letter is received by A.

Contracts minimize the risk of commercial transactions by a great deal. The laws relating to contract enforce clarity between parties and helps in increasing productivity.

Section 2(h) of the Act states that "an agreement enforceable by law is a contract". To constitute an agreement, it is essential that there exists an offer. Such offer when accepted, gives rise to an agreement. However, to conclude a contract the fulfilment of other pre-requisites of consideration, legality of object, competence of parties and so on, is required. Contracts are legally enforceable. However, every agreement may not be enforceable under law.

According to Section 2(g), an agreement not enforceable by law is said to be void. The following agreements are considered to be void:

- ◉ If considerations and objects are unlawful in part – Section – 24;
- ◉ Agreements without consideration – Section 25;
- ◉ Agreement in restraint of marriage – Section 26;
- ◉ Agreement in restraint of trade – Section 27;
- ◉ Agreements in restraint of legal proceedings – Section 28;
- ◉ Agreements void for uncertainty – Section 29;

⦿ Agreements by way of wager – Section 30;

Section 24 provides that if any part of a single consideration for one or more objects or any one or any part of any one of several considerations for a single object is unlawful, the agreement is void.

Example – A promises to superintend, on behalf of B, a legal manufacture of indigo and an illegal traffic in other articles, B promises to pay to A salary of Rs. 10,000 a year. The agreement is void, the object of A's promise, and the consideration for B's promise, being in part unlawful.

Question 2:

Analyse the legal provisions relating to **competence of parties to enter into a valid contract** under "The Indian Contract Act 1872" [MQP Set 2 Dec 23 - 7 Marks]

OR

Discuss the categories of persons who are disqualified from entering into Contract other than minor and a person of unsound mind, under Indian Contract Act, 1872. [MTP June 23 – Syllabus 2016 – 5 Marks]

Answer:

The persons who are disqualified from entering into contract due to certain other reasons may be from legal status, political status or corporate status. Some of such categories of persons are given below:

(i) **Alien Enemy:** An agreement with an Alien Enemy is void. But agreement with an Alien friend is perfectly valid and enforceable. When the Government of an Alien is at war with the Government of India, the alien is called Alien enemy, who cannot enter into any contract with any Indian citizen without the permission of Government of India as the same is against the public policy. Contract entered into with an alien before war is put into suspension during the duration of war.

(ii) **Foreign Sovereign and Ambassadors:** Foreign sovereigns and their representatives enjoy certain privileges and immunities in every country. They cannot enter into contract except through their agents residing in India. They can sue the Indian citizen but an Indian citizen cannot sue them.

(iii) **Convicts:** A convict cannot enter into a contract while he is undergoing imprisonment.

(iv) **Insolvents:** An insolvent person is one who is unable to discharge his liabilities and therefore has applied for being adjudged insolvent or such proceedings have been initiated by any of his creditors. An insolvent person cannot enter into any contract relating to his property.

(v) **Company or Statutory bodies:** A contract entered into by a corporate body or statutory body will be valid only to the extent it is within its Memorandum of Association.

Question 3:

Mr. Ajay is unconscious of his mind when he enters into an agreement with Mr. Vijay on 15th July 2022, in the evening, to sell his office space to him within 15th October 2022. Next day Mr. Ajay declares that he was not well and conscious last night and now he is not willing to transfer the office space to Mr. Vijay. Now, Mr. Vijay is arguing that as Mr. Ajay has already signed the agreement he will have to transfer the property in his name. Decide whether the contract is valid. [Dec 22 – 5 Marks]

OR

What is a sound mind for the purpose of contracting? Describe other disqualified persons. [MTP 2016 Jun 2020 Set1 (7)]

OR

Mr. Amal, who is so badly drunk that he cannot sit properly on his chair, enters into an agreement with Mr. Bimal on 15th July, 2023 in the evening to sell his office space to him within 15th August, 2023. Next day Mr. Amal declares that he was over drunk last night and now he is not willing to transfer the office space to Mr. Bimal. Now, Mr. Bimal is arguing that as Mr. Amal has already signed the agreement, he will have to transfer the property in his name. Decide whether the contract is valid and present your expert comment. [June 24 - 7 Marks]

Answer:

According to Section 11 of the Indian Contract Act, 1872, "Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject."

According to Section 12 of the Indian Contract Act, "A person is said to be of sound mind for the purpose of making a contract, if at the time when he makes it, is capable-

- (a) to understand the terms of the contract,
- (b) to form a rational judgment as to its effect upon his interests."

Thus, if a person is not capable of both, he is said to have suffered from unsoundness (unconscious) of mind.

In the present case, Mr. Amal was not in sound mind at the time of entering into agreement, which makes the agreement void ab initio. Therefore, the agreement is not valid.

OR

Section 12 of the Indian Contract Act, 1872 provides that a person is said to be of sound mind for the purposes of making 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 interest.

In this case Mr. Amal when he made the contract in the evening of 15th July 2023, he was not capable of understanding the agreement and of forming rational judgment as to effect upon his interest.

As per the provision of the Indian Contract Act, 1872 Mr. Amal cannot contract whilst such drunkenness lasts.

Therefore, the contract between Mr. Amal and Mr. Bimal is not a valid contract.

Question 4:

Mr. X, a businessman has been fighting a long-drawn litigation with Mr. Y, another businessman. To support his legal campaign Mr. X enlists the services of Mr. Z, a legal expert, stating that an amount of Rs. 10 lakhs would be paid, if Mr. Z does not take up the brief of Mr. Y. Mr. Z agrees, but at the end of the litigation Mr. X refuses to pay. Decide whether Mr. Z can recover the amount promised by Mr. X under the provisions of the Indian Contract Act, 1872. [5 Marks – June 18] [June 23 Syllabus 16 – 5 Marks]

Answer:

The problem as asked in the question is based on one of the essentials of a valid contract. Accordingly, one of the essential elements of a valid contract is that the agreement must not be one which the law

declares to be either illegal or void. Further Contract Act specifies that any agreements in restraint of trade, marriage, legal proceedings etc. are void agreements.

Thus Mr, Z cannot recover the amount of Rs. 10 lakhs promised by Mr. X because it is an illegal agreement and cannot be enforced by law.

Offer [Section 2 (a)]

A person is said to make a Proposal when he signifies to another, his willingness, to do or to abstain from doing anything, with a view (intention) to obtaining the assent of that other to such act or abstinence.

Rules of a Valid Offer

- (a) Creation of legal relationship.
- (b) Certain, definite and not vague. It should not contain a term the non compliance of which would amount acceptance.
- (c) Offer can be express or implied, specific or general.
- (d) Communication of offer is a must.
- (e) Offer should be made to obtain the consent of the offeree.
- (f) Offer may be conditional or non-conditional.

Lapse of offer

- (a) Revocation of offer,
- (b) Rejection of offer,
- (c) Acceptance not made within a stipulated time or reasonable time,
- (d) Non fulfillment of conditions by the acceptor,
- (e) Death or insanity of offeror or offeree before acceptance,
- (f) Acceptance not in prescribed mode,
- (g) Cross and counter offers, and
- (h) Change in law or circumstances

Basis of Distinction	Offer	Invitation to Offer
1. Meaning	Where a person shows his willingness to enter into a contract, it is called as an offer.	Where a person invites others to make an offer to him, it is called as an invitation to offer.
2. Purpose	An offer is made by a person with the purpose of entering into a contract.	The purpose of making an invitation to offer is to receive the offers or to negotiate the terms on which the person making the invitation is willing to contract.

3. Legal effect	An offer, if acted upon (i.e., accepted), results in a contract.	An invitation to offer, if acted upon, only results in making of an offer.
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Acceptance	
When the person to whom proposal is made signifies his assent thereto, the proposal is said to be accepted.	
Rules of a Valid Acceptance	
<ol style="list-style-type: none"> 1. Acceptance only by the person to whom offer is made 2. Absolute and unqualified 3. Acceptance must be communicated to Offeror 4. As per the prescribed mode 5. Within specified Time 6. Acceptance by conduct or implied acceptance 	
William Anson's saying	
Acceptance is to a proposal what a lighted matchstick is to a train of gun-powder.	
Communication of Offer and Acceptance [Section 4]	
Communication of offer	Complete when it comes to the knowledge of the person to whom it is made
Communication of acceptance	<p>As against the Offeror - when letter of acceptance is posted by the acceptor. [Dec 18 MCQ]</p> <p>As against the acceptor - When letter of acceptance comes to the knowledge of the proposer.</p>
Revocation of Offer and Acceptance [Section 5]	
Time for revocation	<p>Offer - before communication of its acceptance is complete, as against the proposer.</p> <p>Acceptance - before communication of its acceptance is complete, as against the acceptor.</p>

Question 5:

Mr. Kamal offered to sell his house to Mr. Vimal for Rs.15,00,000. Mr. Vimal accepted the offer by post. On the very next day Mr. Vimal sent a telegram revoking the acceptance which reached Mr. Kamal 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. Kamal at the same time?

[RTP Dec 2018]

Answer:

- (i) Yes, the revocation of acceptance by Mr. Vimal (the acceptor) is valid.
- (ii) If Mr. Kamal opens the telegram first (and this would be normally so in case of a rational person) and reads it, the acceptance stands revoked. If he opens the letter first and reads it, revocation of acceptance is not possible as the contract has already been concluded.

Related Question:

X offered to sell his house to Y for Rs.50,000. Y accepted the offer by E-mail. On the next day Y sent a fax revoking the acceptance which X reached X before the E-mail. Examine the validity of revocation. Inspect whether would it make any difference if both the E-mail of acceptance and the fax of revocation of acceptance reach X at the same time. **[Model Question Paper Set 1 – Dec 24 – 7 Marks]**

Answer:

The problem is related with the communication and time of acceptance and its revocation. As per Section 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.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterward. Referring to the above provisions

- (i) Yes, the revocation of acceptance by Y (the acceptor) is valid.
- (ii) If X reads the Fax first, the acceptance stands revoked. If he opens the email first and reads it, revocation of acceptance is not possible as the contract has already been concluded.

CONSIDERATION [Section 2(d)] - Something in return

- When at the **desire of the promisor**,
- the **promisee or any other person**,
- has done or abstained from doing, or **[past consideration]**
- does or abstains from doing, or **[present consideration]**
- promises to do or abstain from doing, **[future consideration]**
- something.
- Such act/ abstinence/ promise consideration.
- **No consideration No contract.**

Rules of consideration

- (a) Consideration **must move at the desire of the Promisor**.
- (b) It can be done by the promisee himself or by any other person.
- (c) Consideration may be **past, present or future**.
- (d) Consideration must be real and not illusory. Not valid if - physically impossible, legally not permissible, uncertain, fulfillment of pre existing obligation.
- (e) It must be legal.
- (f) Consideration need not be adequate.

Question 1:

Write short notes on Agreement without consideration **[5 Marks – June 19]**

OR

‘No consideration, no contract’. – state the exceptions to it. **[5 Marks – Dec 17] [June 23 Syllabus 16 – 5 Marks]**

Answer:

There are exceptional cases where a contract is enforceable even though there is no consideration. They are as follows:

- 1. Natural Love and affection:** An agreement made without consideration is valid if, —It is expressed in writing and registered and is made on account of nature love and affection between parties standing in a near relation to each other|| – [Sec.25 (1)]
- 2. Voluntary Compensation:** A promise made without consideration is valid if it is a promise to compensate wholly or in part, a person who has already voluntarily done something for the promisor or something which the promisor was legally compelled to do [Sec.25(2)]
- 3. Time Barred Debt:** A promise to pay wholly or in part, a debt which is barred by the law of limitation can be enforced if the promise is in writing and is signed by the debtor or his authorized agent. [Sec.25(3)]
4. No consideration is required to create an **agency (Sec.185)**.

5. Completed Gift: The rule "No consideration, no contract" does not apply to Completed Gifts. Thus if a person gives certain properties to another according to the provisions of the Transfer of Property Act, he cannot subsequently demand the property back on the ground that there was no consideration.

Exceptions to "no consideration no contract" [MCQ Dec 21]

- (a) Written and registered agreements arising out of love and affection between parties standing in near relation,
- (b) Past Voluntary service,
- (c) Promise to pay a time barred debt,
- (d) Completed gifts,
- (e) Bailment,
- (f) Contract of agency, and
- (g) Charity - If a person promises to contribute to charity and on this faith, the promisee undertakes a liability to the extent not exceeding the promised subscription, the contract shall be valid.

Question 2:

Anita and Sonali are friends, Sonali treats Anita during Anita's illness. Sonali does not accept payment from Anita for treatment and Anita promises Sonali's daughter Tania to pay her Rs. 75,000. Anita being in poor circumstances is unable to pay. Tania sues Anita for the money. Can Tania recover? Offer your views based on provisions of the Indian Contracts Act, 1872. **[5 Marks – Dec 19]**

Answer:

No, Tania cannot recover the money from Anita. The agreement between Tania and Anita is not a contract in the absence of consideration. In this case, Tania's mother Sonali, voluntarily treats Anita during her illness. Apparently it is not a valid consideration because it is voluntary whereas consideration to be valid must be given at the desire of the promisor-void Section 2(d).

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

"If it is a promise to compensate a person who has already voluntarily done something for the promisor"

Thus, as per the exception the promise must be to compensate a person who has himself done something for the promisor and not to a person who has done nothing for the promisor.

As Sonali's daughter, Tania to whom the promise was made, did nothing for Anita, so Anita's promise is not enforceable even under the exception.

Doctrine of Privity of Contract [5 Marks – SN Dec 22]

Only those persons, who are parties to a contract, can sue and be sued upon the contract. Third party to a contract cannot sue upon it, even though the contract may be for his benefit.

Exceptions to Doctrine of Privity of Contract

- (a) Trust,
- (b) Marriage settlement, partition and other family arrangements,
- (c) Acknowledgement of liability,
- (d) Assignment of a contract,
- (e) Contracts entered into through an Agent, and
- (f) Covenants running with land.

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Free consent

Question 1:

Write Short Notes on Coercion [3 Marks – Dec 21] [June 19 MCQ]

Coercion [Section 15]

Coercion and its effects under section 15 and 19 of The Indian Contract Act, 1872

Coercion is –

Act	Intention
(a) the committing, or threatening to commit any act forbidden by the Indian Penal Code, or [Dec 18 MCQ]	With the intention of causing any person to enter into an agreement.
(b) the unlawful detaining or threatening to detain, any property, of any person,	

Contract induced by coercion is voidable at the option of the party whose consent was so obtained.

Question 2:

Write short notes on Undue Influence [5 Marks – June 18]

Undue Influence [Section 16]

A Contract is said to be induced by undue influence where the relations subsisting between the parties are such that -

- (a) one of the parties is in a position to dominate the will of the other and
- (b) uses that position to obtain an unfair advantage over the other.

Deemed dominating position

1. Real or apparent authority
2. Fiduciary relation
3. Mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress

Consequences [Section 19A]

(a) The Contract is Voidable at the option of the party whose consent was so obtained.

(b) Any such Contract may be set aside

- either absolutely, or
- if the party has received any benefit under the Contract, upon such terms and conditions as the Court may deem fit.

Representation is a statement of fact which one party makes in the course of negotiations with a view to inducing the other party to enter into a Contract.

Misrepresentation is a representation wrongly made, either innocently or intentionally. [Dec 21 MCQ]



Innocent and Unintentional.

Intentional, Deliberate and Wilful.

Believes the representation to be true.

With an intent to deceive the other party.

No intention to deceive or defraud the other party.	Then, Misrepresentation = Fraud.
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Fraud [Section 17]

Definition [Sec. 17]: Fraud means and includes -

Commission of the following acts -	Committed by -	Intention
(a) Suggestion as a Fact, of something which is not true , by a person who does not believe it to be true, (b) Active concealment of a Fact by one having knowledge or belief of the fact, (c) Promise made without any intention of performing it, [June 19 MCQ] (d) Any other act fitted to deceive , (e) Any such act or omission as specifically declared by law to be fraudulent .	(a) A party to the Contract, or (b) By any person with the connivance of the party to the Contract, or (c) An agent of the party to the Contract.	To deceive another party to the contract, or his Agent, OR To induce another party to enter into the contract.

Silence Not Fraud [June 2017 – 9 Marks]

- (a) Mere silence as to facts, likely to affect the willingness of a person to enter into a Contract is not Fraud.
- (b) Exceptions i.e., Silence Fraud, in the following circumstances –
- if it is the duty of the person (keeping silence) to speak,
 - Silence by itself is equivalent to Speech.

Question 3:

Write short notes on Misrepresentation [5 Marks – Dec 19] | Question 16

Define Misrepresentation under the Indian Contract Act, 1872 [3 Marks – Dec 17]

Misrepresentation [Section 18]

- Positive false statement** made without any basis for info
- a breach of duty** which brings advantage to person committing it
- inducement of mistake** about subject matter

Question 4:

P induced Q to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, Q complained that there were many defects in the motorcycle. P proposed to get it repaired and promised to pay 40% cost of repairs. After few days, the motorcycle did not work at all. Now Q wants to rescind the contract. Decide giving reasons. [Dec 17 - 6 Marks (12)]

Answer:

According to Section 18 of the Indian Contract Act, 1872, misrepresentation is there:

1. 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.
2. 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.
3. 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 Q could not rescind the contract, as his acceptance to the offer of P to bear 40% of the cost of repairs impliedly amount to final acceptance of the sale [Long v. Lloyd].

Voidability of agreements without free consent [Section 19]

The Contract is Voidable at the option of the party whose consent was so obtained.

Mistake

1. Mistake of Fact
 - (a) Unilateral - cannot avoid contract. [Section 22]
 - (b) Bilateral – Void [Section 20]
2. Mistake of law - Law of land - will not affect validity of contract. [Section 21]
Foreign Law - Treated as mistake of fact = void.
3. Types of Mistake:
 - Mistake as to existence of subject matter
 - Mistake as to identity of subject matter
 - Mistake as to the quality of the subject matter
 - Mistake as to quantity of subject matter
 - Mistake as to title of subject matter
 - Mistake as to price of the subject matter

Question 5:

“Two or more persons are said to be consent when they agree upon the same thing in the same sense” – Discuss with reason the consequences of the absent of consent and free consent. [Model Question Paper Set 1 – Dec 24 – 7 Marks]

Answer:

“Two or more persons are said to consent when they agree upon the same thing in the same sense.” - [Sec 13].

There will be flaw in consent if it is not free consent. If the parties have not agreed upon the same thing in the same sense, there is no real consent and hence no contract is formed.

As per **section 14** of the Indian Contract Act, 1872 consent is said to be free when it is not caused by:

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

II) Undue influence (Sec 16): Section 16 of the Indian Contract Act defines undue influence as under:

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

ii) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another —

- Where he holds a **real or apparent authority** over the other, or where he stands in a **fiduciary relation** to the other; or
- Where he makes a contract with a person whose **mental capacity** is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

iii) Where a person, who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

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III) Fraud (Sec 17): As per **section 17** of the Indian Contract Act:

“Fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

- i) The suggestion, as a fact, of that which is not true by one who does not believe it to be true;
- ii) The active concealment of a fact by one having knowledge or belief of the fact;
- iii) A promise made without any intention of performing it;
- iv) Any other act fitted to deceive;
- v) Any such act or omission as the law specially declares to be fraudulent.

IV) Misrepresentation (Sec 18):

A statement of fact which one party makes in the course of negotiation with a view to induce the other party to enter into a contract is known as misrepresentation. It must relate to some fact which is material to the contract. It may be expressed by words spoken or written or implied from the acts and conduct of the parties.

A representation when wrongly made either innocently or unintentionally is a misrepresentation. When it is made innocently or unintentionally, it is misrepresentation and when made intentionally or wilfully it is fraud.

V) Mistake, subject to the provisions of Sec 20, 21 and 22:

Mistake means an erroneous belief about something. It has not been defined in the Indian Contract Act. Mistake can be –

A) Mistake of law, or (Section 21)

1. mistake of law of the country
2. mistake of law of a foreign country

B) Mistake of fact (Section 20)

1. Bilateral mistake, or
2. Unilateral mistake

Effect of absence of free consent

1. If consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the contract is **voidable at the option of the party whose consent was not free**.
2. If **both the parties to an agreement are under a mistake** as to a matter of fact essential to the agreement. (i.e., mistake of Indian law) (section 21), then the **agreement is void**.
3. A **contract is not voidable** merely because one of the parties was at mistake (i.e., unilateral mistake) (section 22).

Question 6:

Does silence amount to fraud? Explain with exceptions and types of silence amount to fraud. **[June 17 - 9 Marks (22)]**

Answer:

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

Thus, we can say that there is exception to the rule that mere silence does not amount to fraud. The two exceptions as provided in explanation to section 17 are as under:

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

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

(i) Where there is change in circumstances - A representation may be true when made but with the passage of time or changed circumstances it may become false. Accordingly this must be communicated to other party otherwise it amount to fraud.

(ii) When there is half-truth- Thus even when a person is not bound to disclose a fact he may be held guilty of fraud if he volunteers to disclose a state of fact partly. This is so when the undisclosed part renders the disclosed part false.

Agreements expressly declared void by the Indian Contract Act

Question 7:

Under what circumstances the agreement becomes void? [10 Marks] [MTP Dec 23 – Set 1]

1. Agreement to enter into an agreement in future.
2. Agreement that gives rise to social obligations.
3. Sec.11: Agreements entered into by incompetent parties.
4. Sec.20: Agreements entered into through a mutual mistake of fact between the parties.
5. Sec.23: Agreements, the object or consideration of which is unlawful.
6. Sec.24: Agreements, part of the consideration or object of which is unlawful and the unlawful object, cannot be separated from the lawful objects.
7. Sec.25: Agreements, made without consideration.
8. Sec.26: Agreements in restraint of marriage.
9. Sec.27: Agreements in restraint of trade.
10. Sec.28: Agreements in restraint of legal proceedings.
11. Sec.29: Uncertain Agreements.
12. Sec.30: Wagering Agreements. [Dec 18 MCQ]
13. Sec.36: Agreements contingent upon impossible events.
14. Sec.56: Agreements to do impossible acts. [June 2019 MCQ]
15. Sec.57: Agreements to do reciprocal promises, one set of which is legal, and the other set is illegal.

Question 8:

Discuss the position of minor's agreement and effect thereof under the Indian Contracts Act, 1872. [June 23 – 22 Syllabus – 10 Marks] [MTP June 23 – Syllabus 16 – 10 Marks] [Dec 17 - 10 Marks (16)]

Answer:

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

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

1. An agreement with a minor is void ab-initio.
2. The law of estoppel does not apply against a minor. It means a minor can always plead his minority despite earlier misrepresenting to be a major. In other words, he cannot be held liable on an agreement on the ground that since earlier he had asserted that he had attained majority.
3. Doctrine of Restitution does not apply against a minor. In India, the rules of restitution by minor are similar to those found in English laws. The scope of restitution of contract by minor was examined by the Privy Council in Mohiri Bibi case when it has held that the restitution of money under section 64 of the Indian Contract Act cannot be granted under section 65 because a minor's agreement is not voidable but absolutely void ab-initio. Similarly no relief can be granted under section 65 as this section is applicable where the agreement is discovered to be void or the contract becomes void.
4. No Ratification on Attaining Majority - Ratification means approval or confirmation. A minor cannot confirm an agreement made by him during minority on attaining majority. If he wants to ratify the agreement, a fresh agreement and fresh consideration for the new agreement is required.
5. Contract beneficial to Minor - A minor is entitled to enforce a contract which is of some benefit to him. Minority is a personal privilege and a minor can take advantage of it and bind other parties.
6. Minor as an agent - A minor can be appointed an agent, but he is not personally liable for any of his acts
7. Minor's liability for necessities - If somebody has supplied a minor or his dependents with necessities, minor's property is liable but a minor cannot be held personally liable.
8. A minor cannot be adjudged insolvent as he is incapable of entering into a contract.

9. Where a minor and an adult jointly enter into an agreement with another person, the minor is not liable and the contract can be enforced against the major person.

Question 9:

A agreed to become an assistant for five years to B who was a doctor practicing at Chennai. It was also agreed that during the term of agreement A will not practice on his own account in Chennai. At the end of one year, A left the assistantship of B and began to practice on his own account. Referring to the provisions of the Indian Contract Act, 1872, decide whether A could be restrained from doing so. [Dec 17 – 5 Marks]

Answer:

According to the provisions of the Indian Contract Act, 1872, as contained - Section 27 any agreement through which a person is restrained from exercising a lawful profession or trade/business is void. But an agreement of service by which a person binds himself during the term of the agreement not to take service with anyone else directly or indirectly to promote any business in direct competition with that of his employer is not in restraint of trade. Therefore, 'A' cannot be restrained by an injunction from doing so.

Question 10:

Mr. P and Mr. Q bet as to whether there would be rain on a particular day of December. Mr. P promises to pay Rs. 5,000 to Mr. Q if there is rain on that day and Mr. Q promises an equal amount to Mr. P if there is no rain on the day. Suppose, there is no rain on that specific day of December and Mr. Q filed a suit for recovery of Rs. 5,000 from Mr. P. Can Mr. Q recover the amount under Indian Contract Act, 1872? [June 17 – 6 Marks]

Answer:

In this case Mr. P bet with Mr. Q on the possibility of having rain on a specific day of December. Section 30 provides that agreement by way of wager are void and no suit shall be brought for recovering anything alleged to be won on any wager or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made. Therefore, the agreement between Mr. P and Mr. Q is of wagering nature and hence void. Thus, despite of no rain on specific day of December, Mr. Q cannot recover the amount of Rs. 5,000 from Mr. P for the reason of entering into an agreement of a wagering nature.

Necessaries supplied to minor

1. The case of necessities supplied to a minor or to any other person whom such minor is legally bound to support is governed by section 68 of the Indian Contract Act, 1872.
2. A claim for necessities supplied to a minor is enforceable by law, only against minor's estate, if he possesses.
3. But a minor is not liable for any price that he may promise and never for more than the value of the necessities. There is no personal liability of the minor, but only his property is liable.

Question 11:

Sunil, aged 16 years, was studying in a Medical College. On 1st March, 2017 he took a loan of Rs. 3 lakhs from Anil for the payment of his college fee and agreed to pay by 31st May, 2018. Sunil possesses assets worth Rs. 15 lakhs. On due date Sunil fails to pay back the loan to Anil. Anil now wants to recover the loan from Sunil out of his assets. Whether Anil would succeed? Decide, referring to the provisions of the Indian Contract Act, 1872. [6 Marks – June 19]

Answer:

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

Section 68 of the Indian Contract Act, 1872 however, prescribes the liability of a minor for the supply of the things which are the necessities of life to him. It says that though minor is not personally liable to pay the price of necessities supplied to him or money lent for the purpose, the supplier or lender will be entitled to claim the money/price of goods or services which are necessities suited to his condition of life provided that the minor has a property. The liability of minor is only to the extent of the minor's property. This type of contract is called a Quasi-contract and the right of the supplier/lender is based on the principle of equity. Thus, according to the above provision, Anil will be entitled to recover the amount of loan given to Sunil for payment of the college fees from the property of the minor.

Question 12:

Inspect, whether an agreement by way of wager is a voidable contract or not.

Answer:

Section 30 provides that agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

Exception in favour of certain prizes for horse-racing – This section shall not be deemed to render unlawful a subscription, or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize, or sum of money, of the value or amount of Rs. 500 or upwards, to be awarded to the winner or winners of any horse-race.

Section 294A of the Indian Penal Code not affected – Nothing in this section shall be deemed to legalize any transaction connected with horse-racing to which the provisions of Section 294A of the Indian Penal Code, apply.

Example: Mr. X had an agreement with Mr. Y regarding the outcome of India Pakistan match. If Pakistan won, he would pay to Mr. Y Rs. 1 Crore. These kinds of agreements are wafering agreements and not enforceable in India.

Discharge of contract

Question 13:

Discuss the different modes of terminating contractual relationship between the parties. [10 Marks – Dec 19] [MQP Dec 23 Set 1 – 7 Marks]

Under what circumstances the original contract need not be performed as stated under section 62 to 67 of the Indian Contract Act, 1872? [RTP Dec 2018]

Describe the different ways under which a contract may be discharged? [10 Marks – Dec 22]

Answer:

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

i. Discharge by performance: Performance is the usual way of discharging a contract. Performance may be

a. Actual performance – It is the fulfillment of the obligations arising from a contract by the parties to it in accordance with the terms of the contract.

b. Attempted performance – it is offer of performance. A valid tender of performance is equivalent to performance

ii. Discharge by agreement: Parties may agree to terminate the existence of the contract by different ways viz. novation, alteration, rescission, remission and waiver.

a. Novation: Substitution of a new contract in place of the existing contract is known as "Novation of Contract". It discharges the original contract. The new contract may be between the same parties or between different parties. Novation can take place only with the consent of all the parties. Example: A owes money to B under a contract. It is agreed between A, B and C that B should accept C as his debtor, instead of A. The old debt of A and B is at an end and a new debt from C to B has been contracted. There is novation involving change of parties.

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

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

Example: A promises to deliver certain goods to B at a certain date. Before the date of performance A and B mutually agree that the contract need not be performed. The contract stands discharged by rescission.

d. Remission: Remission means acceptance of a lesser performance than what is actually due under the contract. There is no need of any consideration for remission. Example: A has borrowed ₹ 500 from B. A agrees to accept Rs. 250 from B in satisfaction of the whole debt. The whole debt is discharged.

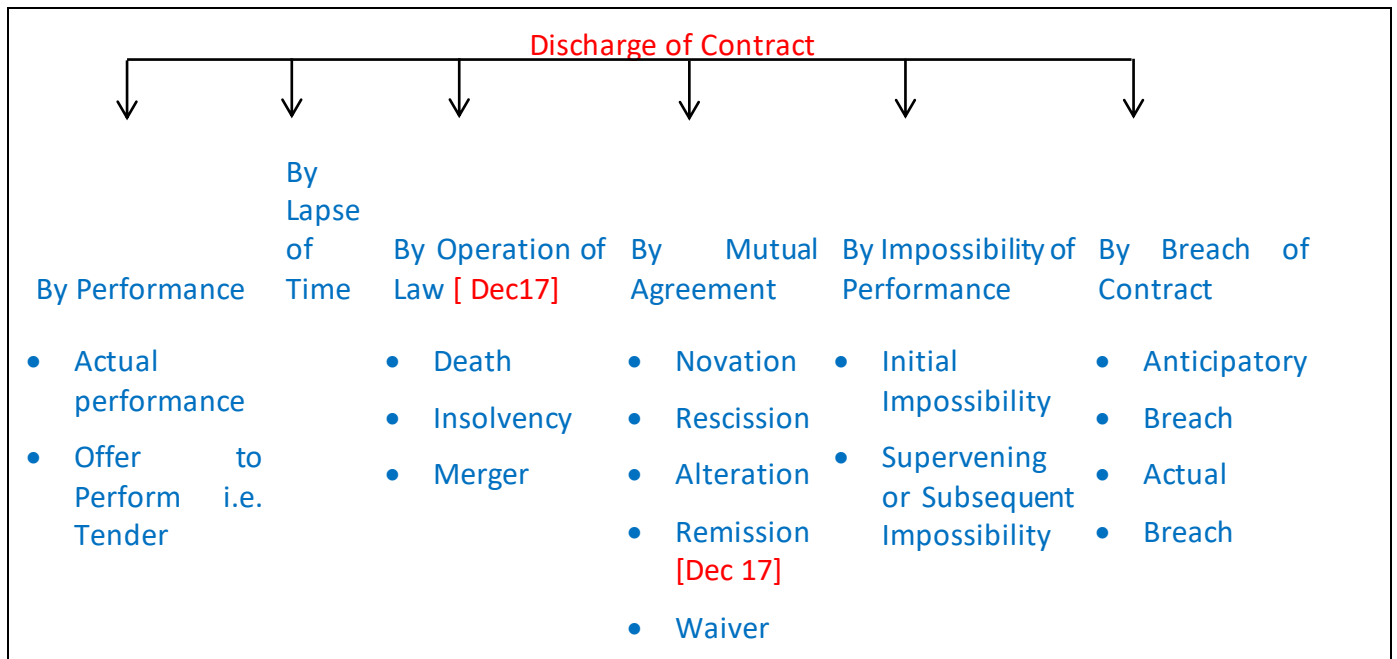
e. Waiver: Waiver means giving up or foregoing certain rights. When a party agrees to give up its rights, the contract is discharged. Example: A promises to paint a picture of B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

iii. Discharge by lapse of time: Every contract must be performed within a fixed period. Lapse of time discharges the contract.

iv. Discharge by operation of law: A contract may be discharged by operation of law in the cases of death, insolvency, unauthorized material alteration and merger. In a contract involving personal skill or ability, death terminates the contract and in other cases the rights and liabilities of the deceased person will pass on to his legal representatives. The insolvency of the promisor discharges the contract. Material alteration in the terms of the contract without the consent of the other party discharges the contract. When inferior rights of a person under a contract merge with the superior rights under a new contract, the contract with inferior rights will come to an end.

v. Discharge by impossibility of performance: When performance of a contract becomes impossible, it results in discharge of the contract. An agreement which is impossible is void, because law does not compel to do impossible.

vi. Discharge by breach: When a party fails to perform his obligations under a contract, it is known as breach. It brings an end to the obligations created by a contract. (In case if students mention only heading (name of point) then half mark each point is to be awarded.)



Question 14:

Miss Chitra, a singer, enters into a contract with the manager of Bangalore Gate Club, to sing in the Club for two concerts every week during the next two months and the club agrees to pay her at the rate & 15000 for each concert. On the seventh concert Miss Chitra wilfully absents herself. With the assent of the manager of the club, Miss Chitra sings for eighth concert. But on the following day, the club, puts an end to contract. Can Miss. Chitra claim damages for breach of contract? Advise **[Model Question Paper Set 2 – Dec 23 – 7 Marks]**

Answer:

As per Section 75, party rightfully rescinding contract is entitled to compensation:

A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

For example, A, a waiter, contracts with B, the manager of a hotel, to work at his hotel for two nights in every week during the next two months, and B engages to pay him & 100 for each night. On the sixth night, A wilfully absents himself from the hotel, and B, in consequence, rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

Question 15:

Discuss the concept of impossibility of performance of contracts with suitable examples and reference to the related legal provisions. **[MQP June 23 – 10 Marks]**

Answer:

Impossibility of performance of Contracts

i) **Physical impossibility:** An agreement is void, if it is identified to be non feasible due to physical factors, like time, distance, height, etc.

ii) **Legal impossibility:** An agreement is void, if it provides that something shall be done which as a matter of law cannot be done.

Examples:

- a) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of these facts. The agreement is void.
- b) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of bargain, though neither party was aware of the fact. The agreement is void.
- c) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

Unilateral Mistake as to fact

As per section 22, a contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact. A unilateral mistake is not allowed as a defence in avoiding a contract unless brought about by another party's fraud or misrepresentation.

Question 16:

Anil and Sunil entered into the contract where Anil promised to deliver 100 labourers for building his house. At the time of making the contract they included the clause "Force Majeure." But Anil could not deliver the labourers to Sunil due to Covid-19 lockdown. Under this situation Anil is under no obligation to perform the contract - Justify. **[Postal Test Paper]**

Answer:

Force Majeure clause is a ground for avoiding obligations emanating out of a contract due to circumstances that are out of control of either of the parties. The pandemic was one such instance when most contracts could not be completed due to the sudden lockdown leading to the invoking of the force majeure clause.

The lockdown was pursuant to the directions by the Government. However, many events take place that cannot be controlled that in turn may lead to the impossibility of performance of a contract.

Thus, under Section 56 of the Indian Contract Act, 1872, it becomes now impossible for either party to perform its obligations thereby making it void.

A force majeure clause is decided beforehand by parties before the execution of the contract, whereby the parties identify the events, which would attract the applicability of the Force majeure clause. However, the term 'Force majeure' is not defined anywhere in The Indian Contract Act, 1872.

Quasi Contracts

Question 17:

Explain the meaning of 'Quasi-Contracts'. State the circumstances which are identified as quasi-contracts by the Indian Contract Act, 1872. [10 Marks – Dec 18] [8 Marks – Dec 17] [RTP Dec 2018] [June 23 Syllabus 16 – 10 Marks]

Discuss the different types of quasi contract. [Dec 23 - 7 Marks (22)]

Answer:

Even in the absence of a contract, certain social relationships give rise to certain specific obligations to be performed by certain persons. **These are known as – quasi contracts** as they create some obligations as in the case of regular contracts. Quasi-contracts are based on the principles of equity, justice and good conscience. The salient features of quasi-contracts are: **Firstly**, such a right is always a right to money and generally, though not always, to a liquidated sum of money; **Secondly**, it does not arise from any agreement between the parties concerned but the obligation is imposed by law and; **Thirdly**, the rights available are not against all the world but against a particular person or persons only, so in this respect it resembles to a contractual right.

Quasi contracts are so called because the obligations associated with such transactions could neither be referred as tortuous nor contractual but still recognized by law as enforceable like other contracts. A quasi contract is a fictitious contract created under legal obligations, similar to a valid contract. These contracts are also known as implied-in-law contracts. What makes this different is that the parties involved do not intend to create a contract. A quasi contract is created by the Court. For the same reason, there is no actual offer or acceptance or an agreement between the parties.

Types of Quasi Contracts:

Sections 68 to 72 of The Indian Contract Act, 1872 deals with five kinds of quasi contracts. These are as under:

- 1) **Section 68 - Claim for necessities supplied to person incapable of contracting, or on his account** – This section provides that if a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person;
- 2) **Section 69 - Reimbursement of person paying money due by another in payment of which he is interested**- This section 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.
- 3) **Section 70 – Obligation of person enjoying benefit of non-gratuitous act** - This section provides that where a person lawfully does anything for another person or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the later is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered – it is otherwise called as quantum meruit;
- 4) **Section 71 – Responsibility of finder of goods** - This section provides that a person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee;

5) Section 72 - Liability of person to whom money is paid or thing delivered by mistake or under coercion
- This section provides that a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

Question 18:

Sanjay holds agricultural land in Bihar on a lease granted by Palash, the owner. The land revenue payable by Palash 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 Sanjay's lease. Sanjay, in order to prevent the sale and the consequent termination of his own lease, pays the Government, the sum due from Palash. Referring to the provisions of the Indian Contract Act, 1872 decide whether Palash is liable to make good to Sanjay, the amount so paid?

Answer

Yes, Palash is bound to make good to Sanjay 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 Sanjay has made the payment of lawful dues of Palash in which Sanjay had an interest. Therefore, Sanjay is entitled to get the reimbursement from Palash.

Contingent Contract [Dec 2017 SN – 5 Marks]

Contract to do or not to do something if some event, collateral to such contract, does or does not happen.

Essentials –

1. Happening or non happening of event,
2. Collateral event and
3. Uncertain event.

Happening of Uncertain Future Event [Sec. 32]	Non-Happening of Uncertain Future Event [Sec. 33]	Future Conduct of a living person [Sec. 34]	Happening of Specified Uncertain Event within Fixed Time [Sec. 35]	Non-Happening of Specified Uncertain Event within Fixed Time [Sec. 35]	Impossible Events [Sec. 36]
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Question 19:

Mr. Ahmed agrees to pay Mr. Doshi a sum of money if Mr. Doshi marries Ms. Priya. Ms. Priya however marries Mr. Farroque, who died subsequently. After the death of Mr. Farroque, Ms Priya marries Mr. Doshi. Whether Mr. Ahmed is legally bound to pay the agreed sum of money to Mr. Doshi? Comment.
[RTP Dec 18]

Answer:

If a contract is contingent upon how a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies (Sec. 34).

In the instant case, future event on which the contract is contingent in the future conduct of a living person. Therefore the marriage of Mr. Doshi with Ms. Priya must be considered impossible at the time Ms. Priya marries Mr. Farroque. Although it is possible that Mr. Farroque dies and Ms. Priya afterwards marries Mr. Doshi. Therefore at that point of time of Ms. Priya's marriage with Mr. Farroque, the contract becomes void on the ground of impossibility of the future event taking place. In view of this Mr. Ahmed is not legally bound to pay the agreed sum to Mr. Doshi.

Question 20:

Explain enforcement of contingent contract with examples. **[June 24 - 7 Marks (22)]**

Answer:

These rules are explained below

Contingency	Enforcement	Example
Happening of an Uncertain Future Event [Sec.32]	<ul style="list-style-type: none"> Cannot be enforced by law unless and until such an event has happened. Where the event becomes impossible, such contracts become void. 	<ul style="list-style-type: none"> A makes a contract with B to buy B's horse if A survives C. This cannot be enforced by law unless and until C dies in A's life-time. A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse had been earlier offered, refuses to buy. Contract cannot be enforced by law, unless & until C refuses to buy the horse. A contracts to pay B a sum of money when B marries C. C dies without being married to B. Contract becomes void.
Non-Happening of an Uncertain Future Event [Sec.33]	Can be enforced when the happening of that event becomes impossible, and not before.	A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. Contract can be enforced when the ship sinks.
Happening of a Specified Uncertain Event within a fixed time [Sec.35]	Becomes void if - <ul style="list-style-type: none"> at the expiry of time fixed, such event has not happened, or before the time fixed, such event becomes impossible. 	A promises to pay B a sum of money if a certain ship returns within a year. The Contract may be enforced if the ship returns within the year, and becomes void, if the ship is burnt within the year.

Non- happening of a Specified Uncertain Event within a fixed time [Sec.35]	<p>Can be enforced by law -</p> <ul style="list-style-type: none">• when time fixed has expired and such event has not happened, or• before expiry of the time fixed, it becomes certain that such event will not happen.	<p>A promises to pay B a sum of money if a certain ship does not return within a year. The Contract may be enforced if the ship does not return within the year, or is burnt within the year.</p>
Behaviour of a person at an unspecified time of future [Sec.34]	<p>Event shall be considered to become impossible when such person does anything, which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.</p>	<p>A agrees to pay B a sum of money if B marries C. But C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B.</p>
Impossible Event [Sec.36]	<p>Void, irrespective of whether or not the parties know of the impossibility of the event, at the time of entering into the agreement.</p>	<ul style="list-style-type: none">• A agrees to pay B ₹ 1,000 if two parallel straight lines should enclose a space. Agreement is void.• A agrees to pay B ₹ 1,000 if B will marry A's daughter C and C was dead at the time of the agreement. Agreement is void.

Contract Of Indemnity [Sec. 124]

- A **contract** is called as a 'contract of indemnity'
- if one party promises
- to save the other
- from loss
- caused to him
- by the conduct of the promisor himself, or
- by the conduct of any other person.
- May be Expressed or Implied

Rights Of Indemnity Holder [Sec. 125]

- Right to recover damages
- Right to recover costs of suit
- Right to recover sums paid as a compromise of the suit

Question 1:

Discuss the contract at indemnity at the right of indemnity holder when it sued. **[Model Question Paper Set 1 – Dec 24 – 7 Marks]**

Answer:

Section 124 of the Act defines the expression 'contract of indemnity' as a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person.

Example: A contracts to indemnify B against the consequences of the proceedings which C may take against B in respect of a certain sum of ₹2 lakhs. This is a contract of indemnity.

This contract includes indemnifier and indemnity holder.

A person who promises to indemnify from losses is called as indemnifier and the person whose loss is made good is called as indemnity holder. To indemnify does not merely means to reimburse in respect of moneys paid, but to save from loss in respect of the liability for which the indemnity has been given.

Rights of indemnity holder when sued: -

Section 125 provides the rights of indemnity holder when sued. This section provides that the promise, in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor-

- all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;
- all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit;
- all the sums which he was not contrary to the orders of the promisor, and was one which it would have been prudent for the promise to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit.

- This section is not exhaustive and does not set out all the reliefs which an indemnity holder who has been sued may get. It leaves untouched certain equitable reliefs which he may get. The rights of the indemnity holder are not confined to those mentioned in this section. Even before damage is incurred, it is open to him to sue for the specific performance of the contract of indemnity, provided that it is shown, that an absolute liability has been incurred by him and that the contract of indemnity covers the said liability.

In '**Pepin V. Chandra Seekur**' it was held that in the case of contract of indemnity, the liability of the party indemnified to a third person is not only contemplated at the time of indemnity, but is the very moving cause of that contract and in case of such a nature, the costs reasonably incurred in resisting or reducing or ascertaining the claim may be recovered.

Contract of Guarantee [Section 126]	
Meaning of "contract of guarantee"	A 'contract of guarantee' is a contract to - <ul style="list-style-type: none"> perform the promise; or discharge the liability, of a third person in case of his default.
Essentials And Legal Rules For A Valid Contract Of Guarantee	
Must have all the essentials of a valid contract	Consideration received by the principal debtor is a sufficient consideration to the surety for giving the guarantee (Sec. 127).
Primary liability of some person	➤ The principal debtor is primarily liable. However, even if the principal debtor is incompetent to contract, the guarantee is valid, although the principal debtor is not liable at all.
The contract must be conditional	<ul style="list-style-type: none"> ➤ The liability of surety is secondary and conditional. ➤ The liability of surety arises only if the principal debtor makes a default.
No misrepresentation or concealment – Invalid Guarantee	<ul style="list-style-type: none"> ➤ Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid (Sec. 142). ➤ Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances, is invalid (Sec. 143).
Form of contract	➤ Either oral or written
Joining of other co sureties	<ul style="list-style-type: none"> ➤ Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join. Simply speaking, the guarantee by a surety is not valid if - <ul style="list-style-type: none"> ➤ a condition is imposed by a surety that some other person must also join as a co-surety; but ➤ such other person does not join as a co-surety.

Continuing Guarantee	
Meaning (Section 129)	A guarantee which extends to a series of transactions is called as continuing guarantee. [June 2017 MCQ]
Revocation (Sec. 130)	Continuing guarantee may be revoked, at any time, by the surety by giving a notice to the creditor. However, revocation shall be effective only in respect of future transactions (i.e., the liability of the surety with regard to previous transactions remains unaffected).
Death of Surety (Sec. 131)	Death of the surety operates as a revocation of a continuing guarantee as to future transactions.

<p>Question 2:</p> <p>Ayush stands surety for Binod for any amount which Chintu may lend to 'Binod' from time to time during the next three months subject to a maximum amount of Rs. 1,00,000. One month later 'Ayush' revokes the surety, when Chintu had already lent to Binod Rs.10,000. Referring to the provisions of the Indian Contract Act, 1872. Decide:</p> <p>(i) Whether 'Ayush' is discharged from all the liabilities to 'Chintu' for any subsequent loan given to 'Binod'?</p> <p>(ii) What would be your answer in case 'Binod' makes a default in paying back to 'Chintu' the already borrowed amount of Rs.10,000? [RTP Dec 2018] [June 2017 – 4 Marks]</p>	<p>Answer:</p> <p>(i) Thus, applying the above provisions in the given case, Ayush is discharged from all the liabilities to Chintu for any subsequent loan.</p> <p>(ii) Answer in the second case would differ i.e. Ayush is liable to Chintu for Rs.10,000 on default of Binod since the loan was taken before the notice of revocation was given to Chintu.</p>
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<p>Question 3:</p> <p>Distinction between Indemnity and Guarantee [MTP Dec 23 Set 1 Syllabus 16 – 5 Marks] [Dec 23 - 7 Marks (22)] PTP 16 Set 1</p> <p>Answer:</p>	
Contract of Indemnity	Contract of Guarantee
In this contract there are two parties – the indemnifies and the indemnified	In this contract three parties are involved – principal debtors, surety and creditor
The primary liability is on the indemnifier	The principal liability is on the principal debtors. Secondary liability is on the surety
The indemnifier is not acting at the request of the debtor.	The surety gives contract at the request of the principal debtor.
The possibility of any loss happening is the only contingency against which the indemnifier undertakes to indemnify.	There is an existing debt for which the surety gives guarantee to the creditor on behalf of the principal debtor.

The indemnifier cannot sue the third party in his own, unless there is an assignment.	The surety is entitled to proceed against the principal debtor when he is obliged to perform the guarantee
The contract is between the indemnifier and indemnified.	The contract is between the principal debtor creditor; surety creditor; principal debtor- surety
Defined under section 124 of the Indian Contract Act, 1872	Defined under section 126 of the Indian Contract Act, 1872

Discharge of Surety

1. Notice of revocation by surety (Sec. 130)
2. Death of surety (Sec. 131)
3. Variance in terms (Sec. 133) without the consent of surety
4. Release or discharge of principal debtor (Sec. 134 and 138)
5. Composition with principal debtor (Sec. 135)
6. Not to sue the principal debtor (Sec. 135)
7. Creditor's act or omission impairing surety's eventual remedy (Sec. 139)

Question 4:

A stands surety for B for any amount which C may lend to B from time to time during the next three months subject to a maximum of Rs.50,000. One month later A revokes the guarantee, when C had lent to B Rs.5,000. Referring to the provisions of the Indian Contract Act, 1872, decide whether A is discharged from all the liabilities to C for any subsequent loan. What would be your answer in case B makes a default in paying back to C the money already borrowed i.e. Rs.5,000? **[June 17 - 4 Marks (12)]**

Answer:

The problem as asked in the question is based on the provisions of the Indian Contract Act 1872, as contained in Section 130 relating to the revocation of a continuing guarantee as to future transactions which can be done mainly in the following two ways:

1. **By Notice:** A continuing guarantee may at any time be revoked by the surety as to future transactions, by notice to the creditor.
2. **By death of surety:** The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions. (Section 131). The liability of the surety for previous transactions however remains.

Thus, applying the above provisions in the given case, A is discharged from all the liabilities to C for any subsequent loan.

Answer in the second case would differ i.e. A is liable to C for Rs. 5,000 on default of B since the loan was taken before the notice of revocation was given to C.

Question 5:

Mr. Sudarshan, is employed as a cashier on a monthly salary of Rs.10,000 by fruit bank for a period of three years. Rajeev gave surety for Sudarshan's good conduct. After nine months, the financial position of the bank deteriorates. Then Sudarshan agrees to accept a lower salary of Rs.5,000 per month from Bank. Two months later, it was found that Sudarshan has misappropriated cash since the time of his appointment. What is the liability of Rajeev? Decide your answer in reference to the provisions of the Contract Act, 1872? [RTP Dec 2018]

Answer:

According to section 133 of the Indian Contract Act, 1872, where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.

Thus, if the creditor makes any variance (i.e. change in terms) without the consent of the surety, then surety is discharged as to the transactions subsequent to the change. In the instant case Rajeev is liable as a surety for the loss suffered by the bank due to misappropriation of cash by Sudarshan during the first nine months but not for misappropriations committed after the reduction in salary.

Question 6:

'A' contracts with 'B' for a fixed price to construct a house for 'B' within stipulated time. 'B' would supply the necessary material to be used in the construction. 'C' guarantees A's performance of the contract. 'B' does not supply the material as per the agreement. Is 'C' discharged from his liability. Analyse the situation and discuss. [MQP Set 1 Dec 23 – 7 Marks]

Answer:

By release or discharge of principal debtor (Section 134): The surety is discharged if the creditor:
i. enters a fresh/ new contract with principal debtor; by which the principal debtor is released, or
ii. does any act or omission, the legal consequence of which is the discharge of the principal debtor.

Question 7:

Examine the circumstances under which a surety in a contract of guarantee stands discharged from the liability, by the conduct of the creditor and also by invalidation of contract. [MQP Set 2 Dec 23 - 7 Marks]

A. By conduct of creditor -

By Variance in terms of contract (Section 133) - Any variance, made without surety's consent, in the terms of the contract between the principal (debtor) and the creditor, discharges the surety as to transactions subsequent to the variance.

By release or discharge of principal debtor (Section 134) - The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

When creditor compounds with, gives time to, or agrees not to sue, principal debtor (Section 135) - A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such -contract.

Discharge of Surety by Creditor's Act or Omission Imparting Surety's Eventual Remedy (Section 139) - If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

B. By invalidation of contract: Guarantee Obtained by Misrepresentation Invalid (Section 142) – Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid and thus discharge the surety to that extent.

Guarantee Obtained by Concealment Invalid (Section 143) - Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid and thus discharge the surety to that extent.

Guarantee on Contract that Creditor shall not Act on it until Co-Surety joins (Section 144) - Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

If there is failure of consideration between creditor and principal debtor.

Surety not discharged

Question 8:

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with X to give time to B. Is A discharged from his liability?

Answer:

A is not discharged from his liability since, where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged (Sec. 136).

Also, Surety is not discharged: mere forbearance on the part of the creditor to sue the principal debtor does not discharge the Surety.

Question 9:

Sidhartha guarantees to Ajay payment for iron to be supplied by him to Piyu to the amount of 3,000 tons. Piyu and Ajay have privately agreed that Piyu would pay 5 rupees per ton beyond the market price, such excess to be applied to the liquidation of an old debt. This agreement is concealed from Sidhartha. [RTP June 18]

Answer:

Section 143 states that, any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid. Sidhartha is not liable as a surety since Ajay (the creditor) has obtained the guarantee from Sidhartha by means of keeping silence as to material circumstances (i.e. Piyu paying an excess of 5 rupees per ton to be applied in liquidation of an old debt).

Rights Of Surety Against Principal Debtor
1. Right of indemnity (Sec. 145) 2. Right of subrogation (Sec. 140)
Rights Of Surety Against The Creditor
1. Right to claim securities (Sec. 141) which the creditor had at the time of giving of guarantee 2. Right of set off
Rights Against Co-Sureties
1. Right to contribution (Sec. 146 and 147) 2. Right to share benefit of securities

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2. Right to share benefit of securities

Contract of Bailment [Section 148]

Question 10:

What do you mean by bailment? Mention the duties of a bailor in this respect. [6 Marks – Dec 21]

OR

State the essential elements of a contract of bailment. Distinguish between the contract of bailment and contract of pledge. [6 Marks – June 19]

OR

Short Note on 'Bailment'. [5 Marks – MTP June 20]

OR

Enumerate the duties of bailor and care to be taken by bailee in context of bailment. [June 24 - 7 Marks (22)]

Answer:

Section 148 of the Indian Contract Act A 'bailment' is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

Contract	<ul style="list-style-type: none"> There must be a contract. The contract may be expressed or implied.
Goods	Bailment can be made of goods only.
Delivery	There must be delivery of goods by one person to another person.
Purpose of delivery	<ul style="list-style-type: none"> The goods must be delivered for some purpose. The purpose may be expressed or implied.
Return or disposal of goods	<ul style="list-style-type: none"> The delivery of goods must be conditional. The condition shall be that the goods shall be - - returned (either in original form or in any altered form); or disposed of according to the directions of the bailor, when the purpose is accomplished.

DUTIES OF A BAILOR

- Duty to disclose faults in the goods which may put the bailee to extraordinary risks (Gratuitous Bailment)
- The bailor shall be liable for damages for any loss caused to the bailee **whether or not he was aware of the faults.**
- Duty to reimburse extraordinary expenses
- Indemnify the bailee for defective title
- Indemnify the bailee for premature termination
- Receive back the goods

Bailor's duty in context of Bailment:

Section 150 lays down three duties, namely-

- 1 It is the duty of the bailor to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks;
- 2 If the bailor does not make such disclosure and some loss or damage results, he is responsible for so much of it as arises to the bailee directly from such faults;
- 3 If the goods are bailed for hire, the bailor is responsible for damage arising to the bailee directly from such faults, whether he was or was not aware of the existence of such faults in the goods bailed.

Examples:

- I. A lends a horse, which he knows vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damages sustained.
- II. A hires a carriage of B. the carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

Care to be taken by Bailee:

Section 151 provides that in all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

In 'Nagalinga Chettiyar V. Kayarohana Chettiyar' - it was held that where the standard of care prescribed by Section 151 is not observed the bailee cannot be exonerated from his liability simply because the bailee's goods were also lost along with the goods bailed.

In 'Sirmour Truck Operations Union V. National Insurance Co. Limited' it was held that the carrier cannot be exempted from its own negligence or negligence by his agent where goods carried at 'owner's risk' and cannot escape from the liability to make good loss.

Essential elements of a contract of bailment:

1. **CONTRACT** – The first condition is that there must be a contract between the two parties for the delivery of goods. Such contract may be express or implied written or oral.
2. **DELIVERY OF GOODS** – This contract is for the delivery of some movable goods from one person (bailor) to another person (bailee) or to his authorized agent. If the goods are immovable the contract will not be a contract of bailment.
3. **CHANGE OF POSSESSION** – The possession of goods must be affected by such contract. Mere custody without possession is not a contract of bailment.
4. **PURPOSE OF DELIVERY** – The delivery of the goods is for temporary purposes. It may be for safe-custody, repair, carriage or for gratuitous use by the bailee.
5. **NUMBER OF PARTIES** – There are two parties to such contract e.g., the bailor and bailee. The person delivering the goods is called the bailor and the person to whom the goods are bailed is called the bailee.
6. **RIGHT OF OWNERSHIP** – In a contract of bailment, the right of ownership remains with an owner (bailor) and is not changed. If the ownership is transferred, the contract will be a contract of sale and is not of bailment.

- 7. CHANGE OF FORM** – If the goods bailed are altered in form by the bailee, such as cloth is converted into a shirt still, the contract is one of bailment.
- 8. GOODS IN POSSESSION OF BAILEE** – The delivery of the goods is not essential if the goods are already in the possession of the person who enters into the contract as bailee.
- 9. REDELIVERY OF GOODS** – Under such contract, the goods are redelivered to the bailor or according to his directions upon the fulfillment of the purpose by the bailee.
- 10. RIGHT OF REWARD** – In a contract of bailment, both the parties bailor and the bailee can get a reward but it depends on the nature of the transaction.
- (b) Difference between contract of bailment and contract of pledge: -**
- 1. Right of sale** - In case of pledge, the pawnee (pledgee) can sell the goods and recover his debt, if pawnor (pledger) does not pay while in bailment the bailee can retain the goods and sue for damages, but he has no authority to sell the goods.
 - 2. Purpose** - Pledge is specifically for securing a debt, while bailment may be for any purpose e.g. for repairs, safe custody etc.,
 - 3. Right to use the goods** - In case of pledge, pawnee cannot use the goods pledged but bailee can use the bailed goods if contract so provides.

Duties Of A Bailee

1. Take reasonable care
2. Not to make inconsistent use of goods
 - the bailment becomes voidable at the option of the bailor: and
 - the bailee shall be liable for any loss or damage even if such loss is caused due to an act of God or other unavoidable reasons
3. Not to mix goods
4. Return the goods
5. Return accretion to goods

Question 11:

Rishi leaves a cow in the custody of Sushil to be taken care of. The cow has a calf. Explain the provisions of restorations of goods bailed, in light of the above statement. [RTP Dec 2018]

Answer:

Section 163 provides that in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

Hence in the given case Rishi leaves a cow in the custody of Sushil to be taken care of. The cow has a calf. Sushil is bound to deliver the calf as well as the cow to Rishi.

Not to mix goods (Sec. 155, 156 and 157)

Goods are mixed with bailor's consent (Sec. 155): Parties shall have a proportionate interest.

Goods are mixed without bailor's consent, but the goods are separable (Sec. 156): Bailee shall

- pay the expenses of separation
- be liable to pay damages

Goods are mixed without bailor's consent, and goods are not separable (Sec. 157): Bailee shall be liable to pay damages to the bailor for any loss caused to him.

Question 12:

Mr. X bails 100 bales of cotton marked with particular mark to Mr. Y. After receiving the cotton Mr. Y, without Mr. X's consent, mixes the 100 bales with other bales of his own, bearing a different mark. Two days later, Mr. X requests to Mr. Y to return at least 50 bales of cotton marked with particular mark, on urgent basis. But, Mr. Y refuses to do so and informed Mr. X that he has mixed all cotton bales with other bales kept in the warehouse. So, Mr. Y will have to separate the cotton bales received from Mr. X by deploying additional labourers and then only it will be possible to send back the 50 bales of cotton for which Mr. X will have to pay the labour charges for the purpose. Mr. X is not willing to pay the labour charges and asks Mr. Y to return at least 50 bales of cotton. Decide the case and present your expert opinion. **[Dec 23 - 7 Marks (22)]**

Answer:

Section 156 of the Indian Contract Act, 1872 provides that if the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods and the goods can be separated or divided, the property in the goods remains in the parties, respectively, but the bailee is bound to bear the expenses of separation or division, and any damage arising from the mixture.

In the present case it is observed that Mr. Y, bailee, mixed all 100 bales of cotton marked with particular mark with other bales of his own, bearing a different mark. Now, the bailor, Mr. X, demands for the return of at least 50 bales of cotton. But Mr. Y demands labour charges from Mr. X for separating the cotton bales which were mixed in the warehouse.

As per the provision of the Indian Contract Act, 1872, Mr. X is entitled to have all his 100 bales returned, and Mr. Y is bound to bear all the expenses incurred in the separation of the cotton bales and also any other incidental damage.

Therefore, Mr. Y will have to return 50 bales of cotton at his own cost for separating the cotton bales.

Right of lien (Sec. 170)

Bailee's particular lien (Sec. 170):

- Where the bailee has, in accordance with the purpose of the bailment,
- rendered any service involving the exercise of labour or skill in respect of the goods baile
- he has in the absence of a contract to the contrary,
- a right to retain such goods
- until he receives due remuneration
- for the services he has rendered in respect of them.

Right of finder of goods (Sec. 71, 168 and 169)

Question 13:

What are the rights of the finder of goods? [5] MTP 2016 Dec 2023 Set1

Section 168 provides that the finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.

Section 169 provides that when a thing which is commonly the subject of sale is lost, if the owner cannot, with reasonable diligence, be found or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it-

- when the thing is in danger of perishing by or of losing the greater part of its value; or
- when the lawful charges of the finder, in respect of the thing found, amount to two thirds of its value.

In 'MJR Steels (P) Limited V. Chrisomar Corporation' – it was held that it is not always necessary that sale should be by owner himself; sale by agent or anyone with the consent of owner is valid. Finder of asset can also sale and give good title. There can also sale by estoppels.

Right to recover expenses (Sec. 168): The finder of goods has the right to recover the expenses voluntarily incurred by him for -

- (a) finding the true owner; and
- (b) preserving the goods.

- (a) Right of particular lien.
- (b) **No right to sue** the true owner.

Right to recover the reward (Sec. 168): He has a right to recover the reward declared by true owner for finding the goods.

- (a) Right of particular lien.
- (b) **Right to sue** the true owner.

Right of sale of goods (Sec. 169):

- (a) The true owner cannot, with reasonable diligence, be found;

OR

- (b) If the true owner is found, but he refuses to pay the lawful expenses incurred by the finder of goods.

AND

- (a) The goods are in danger of-

- perishing; or
- losing a greater part of their value;

OR

- (b) The lawful charges of the finder, in respect of the goods found, amounts to 2/3rd of value of goods.

Contract of Pledge (Sec. 172)

The bailment of goods as security for payment of a debt or performance of a promise is called 'pledge.'

Parties: Pawnor and pawnee.

Pledge By Mercantile Agent (Sec. 178)

Pledge By Person In Possession (Sec. 178A) Under Voidable Contract

Contract of Agency [Section 182]

An 'agent' is a person employed to -

- do any act for another; or
- represent another in dealings with third persons. [2018 MCQ]

Modes Of Creation Of Agency

1. Express agreement: by words spoken or written
2. Implied agreement: an agency which is to be understood from the conduct and behaviour of the parties is called as implied agency
3. Agency by necessity (Agent's authority in emergency)
 - (i) There was an actual and definite necessity for acting on behalf of the principal.
 - (ii) The agent was not in a position to communicate with the principal.
 - (iii) The act was done for the purpose of protecting the interest of his principal.
 - (iv) The agent has exercised such reasonable care as a man of ordinary prudence would have exercised in his own case.
 - (v) The act was done bonafide.
4. Agency by ratification
 - 'ratification' means approving a previous act or transaction (Sec. 196).
 - Ratification may be expressed or implied by the conduct of the person on whose behalf the acts are done

Question 14:

C is the wife of A. She purchased some sarees on credit from B. B demanded the amount from A. A refused. B filed a suit against A for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether B would succeed. [5 Marks – Dec 18]

Answer:

Problem as asked in the question is based on the provisions related with the modes of creation of agency relationship under the Indian Contract Act, 1872. Agency may be created by a legal presumption; in a case of cohabitation by a married woman (i.e. wife is considered as an implied married agent, of her

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

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

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

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

Applying the above conditions in the given case 'B' will succeed. He can recover the said amount from 'A' if sarees purchased by 'C' are necessities for her.

Sub agent

1. **Definition of sub-agent (Sec. 191):** A 'sub-agent' is a person employed by, and acting under the control of, the original agent in the business of the agency.
2. **Position where sub-agent is properly appointed (Sec. 192):**
 - (a) Principal is bound to the third parties for the acts of sub-agent.
 - (b) The agent is responsible to the principal for the acts of sub-agent.
 - (c) The sub-agent is responsible to the agent for the acts done by him.
 - (d) The sub-agent is not responsible to the principal, except in case of fraud or wilful wrong.
3. **Position where sub-agent is not properly appointed (Sec. 193):**
 - (a) Principal is not bound to the third parties for the acts of sub-agent.
 - (b) The agent is responsible to the principal and third parties for the acts of sub-agent.
 - (c) The sub-agent is responsible to the agent for the acts done by him.
 - (d) Sub-agent is not responsible to the principal.

Question 15:

Mr. Bright instructs Ujjwal, a merchant, to buy a ship for him. Ujjwal employs a ship surveyor of good reputation to choose a ship for Mr. Bright. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. Now, Mr. Bright holds Ujjwal responsible for the same. Examine as per the provisions of the Contract Act, 1872, whether Ujjwal is responsible to Mr. Bright? [RTP Dec 18]

Answer:

According to section 194 of the Indian Contract Act, 1872, where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Further, as per section 195, in selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Thus, in the present case, Ujjwal is not, but the surveyor is, responsible to Mr. Bright.

Question 16:

State the circumstances when an agent is personally liable for the contracts entered into by him on behalf of the principal? [Dec 23 - 10 Marks (16)] [June 18 - 5 Marks (16)] [Model Question Paper Set 1 – Dec 23 – 7 Marks] MTP 2016 Jun 2020 Set2 – 10M MTP 2016 Jun2023 Set1 – 5M

Answer:

Circumstances when an agent is personally liable

The general rule of the Indian Contracts Act, 1872 states that:

- (i) Only the principal can enforce and can be held liable on a contract entered into by an agent.
 - (ii) The agent is not personally liable on a contract entered into by him on behalf of the principal.
1. **Foreign Principal:** When agent acts for sale or purchase of goods for a principal resident abroad i.e., foreign principal.
 2. **Personal liability by agreement:** Where it is expressly provided in the contract that the agent shall be personally liable.
 3. **Undisclosed principal:** Where agent does not disclose the name/identity of the principal.
 4. **Principal cannot be sued:** Where the principal is disclosed but cannot be sued, e.g., foreign sovereigns, ambassadors etc.
 5. **Non-existence of Principal:** When the principal is not in existence at the time when the act was done, i.e., the agent acted for a non-existent principal.
 6. **Agent's liability:** When the agent exceeds his authority or commits a breach of warranty of authority.
 7. **Pretended Agent:** When he acts as a pretended agent.
 8. **Mistake or Fraud:** When he receives or pays money by mistake or fraud.
 9. **Agent sign an agreement without mentioning that he is an agent:** Where an agent signs a negotiable instrument without mentioning that he is signing as an agent.
 10. **Trade or customs:** Where the usage of trade or custom makes an agent personally liable.

Question 17:

Mr. X instructed Mr. Y to sale a property under his possession at Rs. 5 Lacs. Mr. Y does not have the right to dispose the said property and he docs not know this and he sold the property for Rs. 5 Lacs and handed over the sale proceeds to Mr. X. Later Mr. Z, real owner of the property, sued Mr. Y to recover the value of the property and costs. Now, you advice Mr. Y what he is to do? **[Dec 23 - 5 Marks (16)]**

Answer:

Section 223 of the Indian Contract Act, 1872 provides that: where one person employs another person to do an act and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act.

In this case Mr. X instructed to Mr. Y to sale a property under his possession at ₹5 lacs and Mr. Y sold the said property at the same price in good faith. The employer i.e. Mr. X is liable to indemnify the agent Mr. Y against the consequences of the sale though it causes an injury to the rights of third person i.e. Mr. Z. Thus, Mr. X is liable to Mr. Y for such damages, costs etc.

Accordingly, Mr. Y may recover the sum of sale proceeds and other relevant costs and expenses, if any.

Question 18:

How the agency can be terminated? **[5 Marks – June 20] MTP 2016 Jun 2020 Set2 – 105**

Termination Of Agency

1. By agreement

2. By revocation

- When the agency is coupled with interest, the principal cannot revoke the agency to the prejudice of such interest
- Where the agent has incurred personal liability, the agency is irrevocable.
- When agency is for fixed period, the principal must make compensation to the agent, for premature revocation of agency without sufficient cause
- Where agency is not for any fixed period, reasonable notice must be given of revocation, otherwise the principal must make compensation to the agent
- Revocation may be expressed or implied from the conduct of the principal

3. By the agent renouncing the business of agency

- When agency is for fixed period, the agent must make compensation to the principal, for premature renunciation of agency without sufficient cause

- Where agency is not for any fixed period, reasonable notice must be given of renunciation, otherwise the agent must make compensation to the principal

Question 19:

Write short notes on E-Contracts [5 Marks – Dec 18] [5 Marks – June 17]

Answer:

E-Contracts: E-contracts are **paperless contracts**. It is in **electronic form**. They are conceptually very similar to traditional contracts. E-contract also require basis of contract. The following are ingredients of the e-contracts –

- An offer is to be made; Offer is to be accepted;
- There shall be a lawful consideration;
- There shall an intention to create legal relations; The parties must be competent to contract; There must be free and genuine consent;
- The object of the contract must be lawful;
- The main feature of this type of contract is speed, accuracy and reliability. [June 18 MCQ]
- The parties to the contract have to obtain digital certificate from competent authority. **The Information Technology Act, 2000 regulates such contracts. Contract is signed through E-Mail is valid & enforceable.**