FOUNDATION COURSE

PAPER – 2: BUSINESS LAW

*Attempt **all** the questions.*
Wherever necessary, suitable assumptions should be made and disclosed by way of note forming part of the answer.
Working Notes should form part of the answer.

Time Allowed: 35 Minutes **Maximum Marks: 20**

Question 1:
Mr. Aseem is a learned advocate. His car was stolen from his house. He gave an advertisement in newspaper that he will give the reward of Rs.10,000 who will give the information about his car. Mr.Vikram reads the advertisement and on making some efforts got the stolen car and informed Mr.Aseem. Mr.Aseem found his car but denied giving reward of Rs.10,000 to Mr.Vikram with the words, "An advertisement in newspaper is just an invitation to make offer and not an offer. Hence, he is not liable to make the reward."

State with reasons whether under Indian Contract Act, 1872, Mr. Vikram can claim thereward of Rs.10,000. ***(3 Marks)***

Answer:
Provisions of the Act:
An invitation to offer is different from offer. Quotations, menu cards, price tags, advertisements in newspaper for sale are not offer. These are merely invitations to public to make an offer. An invitation to offer is an **act precedent to making an offer**.

Acceptance of an invitation to an offer does not result in the contract and only an offer emerges in the process of negotiation. But there is an exception to above provisions. **When advertisement in newspaper is made for reward, it is the general offer to public.**

Analysis & Conclusion:
On the basis of above provisions and facts, it can be said that as advertisement made by Mr. Aseem to find lost car is an offer, **he is liable to pay Rs.10,000 to Mr. Vikram.**

Question 2:

The general rule is that "an agreement made without consideration is void". State the exceptions of this general rule as per the Indian Contract Act, 1872. ***(6 Marks)***

Answer:

An agreement made without consideration is void (Section 25 of the Indian Contract Act, 1872):

In every valid contract, consideration is very important. **A contract may only be enforceable when consideration is there.** However, the Indian Contract Act contains certain exceptions to this rule. In the following cases, the agreement though made without consideration, will be valid and enforceable.

Exceptions:

1. Natural Love and Affection:

   Conditions to be fulfilled under section 25(1)

   (i) It must be made out of **natural love and affection** between the parties.

   (ii) Parties must stand in **near relationship** to each other.

   (iii) It must be in **writing.**

   (iv) It must also be **registered** under the law.

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

2. Compensation for past voluntary services:

   A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable under Section 25(2). In order that a **promise to pay for the past voluntary services** be binding, the following essential factors must exist:

   (i) The services should have been **rendered voluntarily.**

   (ii) The services must have been **rendered for the promisor.**

   (iii) The **promisor must be in existence** at the time when services were rendered.

   (iv) The promisor must have **intended to compensate** the promisee.

3. Promise to pay time barred debt:

   Where a **promise in writing** signed by the person making it or by his authorised agent, is made **to pay a debt barred** by limitation it is valid without consideration [Section 25(3)].

4. Agency:

   According to Section 185 of the Indian Contract Act, 1872, **no consideration is necessary to create an agency.**

5. Completed gift:
   In case of **completed gifts**, the rule no consideration no contract does not apply. Explanation (1) to Section 25 states "nothing in this section shall affect the validity as between the donor and donee, of any gift actually made." Thus, gifts do not require any consideration.

6. Bailment:
   No consideration is required to affect the **contract of bailment**. Section 148 of the Indian Contract Act, 1872, defines bailment as the delivery of goods from one person to another for some purpose. This delivery is made upon a contract that post accomplishment of the purpose, the goods will either be returned or disposed of, according to the directions of the person delivering them. No consideration is required to affect a contract of bailment.

7. Charity:
   If a promisee undertakes the liability on the promise of the person to **contribute to charity,** there the contract shall be valid. (Kadarnath v. Gorie Mohammad)

Question 3:

State with reason(s) whether the following agreements are valid or void as per the Indian contract Act, 1872:

(i) Where two courts have jurisdiction to try a suit, an agreement between the parties that the suit should be filed in one of those courts alone and not in the other.

(ii) X offers to sell his Maruti car to Y. Y believes that X has only Wagon R Car but agrees to buy it.

(iii) X, a physician and surgeon, employs Y as an assistant on a salary of Rs.75,000 per month for a term of two years and Y agrees not to practice as a surgeon and physician during these two years. ***(3 Marks)***

Answer:

(i) The given agreement is valid.

Reason:

An **agreement in restraint of legal proceeding** is the one by which any party thereto is restricted absolutely from enforcing his rights under a contract through a Court (Section 28 of the Indian Contract Act, 1872). A contract of this nature is **void**. However, in the given statement, **no absolute restriction** is marked on parties on filing of suit. As per the agreement, suit may be filed in one of the courts having jurisdiction.

(ii) The said agreement is void.

Reason:

This agreement is void as the two parties are thinking about different subject matters so that there is **no real consent**, and the agreement may be treated as void because of **mistake of fact** as well as **absence of consensus.**

(iii) The said agreement is valid.

Reason:

An agreement by which any person is **restrained from exercising a lawful profession, trade or business** of any kind, is to that extent void (Section 27). But, as an exception, **agreement of service** by which an employee binds himself, during the term of his agreement, **not to compete with his employer** is not in restraint of trade.

Question 4:

Explain what is meant by 'Supervening Impossibility' as per the Indian Contract Act, 1872 with the help of an example. What is the effect of such impossibility? ***(4 Marks)***

Answer:

According to Section 56 of the Indian Contract Act, 1872, the **impossibility of performance** may be of the two types, namely

(a) initial impossibility, and
(b) subsequent impossibility.

Subsequent impossibility is also known as **Supervening impossibility** i.e. becomes impossible after entering into contract.

When performance of promise become **impossible or illegal by occurrence of an unexpected event** or a change of circumstances beyond the contemplation of parties, the contract becomes **void** e.g. change in law etc. In other words, sometimes, the performance of a contract is quite possible when it is made. But subsequently, some event happens which renders the performance impossible or unlawful. Such impossibility is called the subsequent or supervening. It is also called the **post-contractual impossibility.**

Question 5:

Seema was running a boutique in New Delhi. She has to deliver some cloth to her friend Kiran who was putting up an exhibition at Mumbai. Seema delivered the sewing machine and some cloth to a railway company to be delivered at a place where the exhibition was to be held. Seema expected to earn an exceptional profit from the sales made at this exhibition however she did not bring this fact to the notice of the railway's authorities. The goods were delivered at the place after the conclusion of the exhibition. On account of such breach of contract by railways authorities, can Seema recover the loss of profits under the Indian Contract Act, 1872? ***(4 Marks)***

Answer:

<u>Provisions of the Act:</u>

As per Section 73 to 75 of Indian Contract Act, 1872, Damage means a **sum of money claimed or awarded in compensation for a loss or an injury**. Whenever a party commits a breach, the **aggrieved party can claim the compensation** for the loss so suffered by him.

General damages are those which **arise naturally in the usual course of things from the breach itself.** (Hadley Vs Baxendale). Therefore, when breach is committed by a party, the defendant shall be held liable for all such losses that naturally arise in the usual course of business. Such damages are called **ordinary damages**.

However, special damages are those which **arise in unusual circumstances affecting the aggrieved party** and such damages are **recoverable only when the special circumstances were brought to the knowledge of the defendant**. If no special notice is given, then the aggrieved party can only claim the ordinary damages.

<u>Facts of the case:</u>

In the given case, Seema was to earn an exceptional profit out of the sales made at the exhibition, however she never informed about it to the railway authorities.

<u>Analysis & Conclusion:</u>

Since the goods were delivered after the conclusion of the exhibition, therefore Seema can **recover only the losses arising in the ordinary course of business.** Since no notice about special circumstances was given to railways authorities, **she could not recover the loss of profits.**