

FUNDAMENTALS OF LAWS AND ETHICS

FOUNDATION

PAPER 3



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

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SYLLABUS - 2016

FUNDAMENTALS OF LAWS AND ETHICS

FOUNDATION

STUDY NOTES



The Institute of Cost Accountants of India

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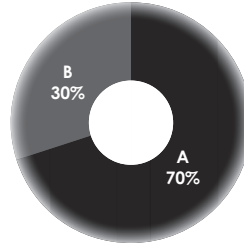
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Syllabus - 2016

PAPER 3: FUNDAMENTALS OF LAWS AND ETHICS (FLE)

Syllabus Structure

A	Fundamentals of Commercial Laws	70%
B	Fundamentals of Ethics	30%



ASSESSMENT STRATEGY

There will be written examination paper of three hours.

OBJECTIVES

To gain basic knowledge in Laws and Ethics to understand the concepts of regulatory compliance, requirements and desired ethics expected from professionals.

Learning Aims

The syllabus aims to test the student's ability to:

- Acquire adequate knowledge of the basic concepts of laws
- Understand the basic knowledge of ethics including allied regulatory compliance and requirements

Skill sets required

Level A: Requiring the skill levels of knowledge and comprehension

Note: Subjects related to applicable statutes shall be read with amendments made from time to time.

Section A : Fundamentals of Commercial Laws	
1. Indian Contracts Act, 1872	40%
2. Sale of Goods Act, 1930	20%
3. Negotiable Instruments Act, 1881	10%
Section B : Fundamentals of Ethics	
4. Ethics and Business	30%

SECTION A: FUNDAMENTALS OF COMMERCIAL LAWS [70 MARKS]

1. Laws of Contracts

- Essential elements of a contract, offer and acceptance
- Void and voidable agreements
- Consideration, legality of object and consideration
- Capacity of Parties, free consent
- Quasi Contracts, Contingent Contracts
- Performance of Contracts
- Discharge of Contracts
- Breach of Contract and Remedies for Breach of Contract

2. Sale of Goods Act, 1930

- Definition
- Transfer of ownership
- Conditions and Warranties

- (d) Performance of the Contract of Sale
- (e) Rights of Unpaid Vendor
- (f) Auction Sales

3. Negotiable Instruments Act, 1881

- (a) Negotiable Instruments – Characteristics of Negotiable Instruments
- (b) Definitions of Promissory Note, Bill of Exchange and Cheque
- (c) Differences between Promissory Note, Bill of Exchange and Cheque
- (d) Crossing – Meaning, Definition and Type of Crossing

SECTION B: FUNDAMENTALS OF ETHICS [30 MARKS]

4. Ethics and Business

- (a) Ethics – Meaning, Importance
- (b) The “Seven Principles of Public Life” – Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership
- (c) The relationship between Ethics and Law
- (d) Ethics in Business

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Section A
Fundamentals of Commercial Laws
(Syllabus - 2016)





STUDY NOTE : 1

THE INDIAN CONTRACT ACT, 1872

This Study Note includes:

- 1.1 Essential Elements of a contract, offer and acceptance
- 1.2 Void and Voidable Agreements
- 1.3 Consideration, Legality of object and consideration
- 1.4 Capacity of Parties, Free Consent
- 1.5 Quasi Contracts, Contingent Contracts
- 1.6 Performance of Contracts
- 1.7 Discharge of Contracts
- 1.8 Breach of Contract and Remedies for Breach of Contract

1.1 Essential Elements of a Contract, Offer and Acceptance

Introduction:

Before enactment of Indian Contract Act, 1872, the courts in India used to apply English Common laws as suited to Indian conditions, customs and usages. Some difficulties were noticed in using English Common laws. Accordingly later the courts started deciding cases based on Hindu Personal laws and Muslim personal laws. But the same were still not found fit to address the business complexities. Accordingly separate Indian Contract Act, 1872 was enacted. This Act is based on English Common law, which is to a large extent made up of judicial proceedings.

The law relating to contracts is contained in the Indian Contract Act, 1872. The Act as originally enacted is divided into four parts:

1. Law relating to general principles of contract. [Sec. 1 - 75]
2. **Law relating to sale of goods.** [Sec. 76 - 123] **
3. Law relating to special contracts [Sec. 124 - 238]
(Contract of Indemnity and Guarantee, Bailment, Pledge, Contract of Agency)
4. **Law relating to Partnership business** [Sec. 239 - 266] **

Note:

** These sections are repealed from the Indian Contracts Act and two new Acts were enacted for the same. They are:

1. The Sale of Goods Act, 1930
2. The Indian Partnership Act, 1932.

The Indian Contracts Act came into force on 1st September, 1872. The act is applicable to the whole of India except for the state of Jammu and Kashmir.

Definition of Contract:

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



Pollock defines contract as "Every agreement and promise enforceable at law is a contract" Another definition of Contract given by Salmond is "contract is an agreement creating and defining obligations between the parties."

From the above analysis of the definition of contract, it is clear that contract is based on enforceability of an agreement. So agreement and its enforceability are two essential component of a contract. If either of these two is missing there is no contract.

Definition of agreement:

Agreement has been defined in section 2(e) as "every promise and every set of promises forming consideration for each other"

According to Sec 2 (b), 'when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted and a proposal when accepted becomes a promise.

Summing together all the three definition we can say an accepted proposal/offer is an agreement.

When we say that an accepted proposal/offer creating legal relationship or enforceable by law is a contract in ordinary sense, it raise another point how a person will accept an offer/proposal. Answer is when he consented to it or in other words there must be consensus ad idem, meeting of mind of both the parties to the contract. The essence of agreement or in turn contract is meeting of mind of the parties. The parties to an agreement must have agreed upon the subject in the same sense and at the same time. Unless there is consensus ad idem, there cannot be any contract.

Example:

A had two motor cars Maruti Alto and Maruti 800; he intends to sell Maruti 800 to B. But B thought he is selling Maruti Alto agrees to his proposal. Since there is no meeting of mind both understood the same transaction differently, there is no consensus ad idem. Accordingly there is no consent and thus there is no contract.

Will all agreements give rise to a contract?

An agreement to become a contract must give rise to a legal obligation. Agreement can be social obligation or legal obligation.

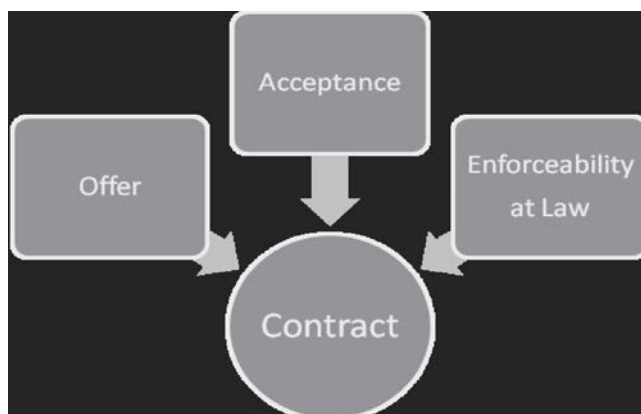
An agreement giving rise to social obligation is not a contract. That is why it is said that the term agreement is a wide term it includes both social and legal obligations but only those agreements which the parties intend to enforce legally culminates into contract.

An agreement is regarded as a contract when it is enforceable by law.

Obligations arise to make an agreement, a contract. It means that an agreement must give Legal rise to legal obligations. There must be an intention to create legal obligation. In case of agreement regulating business relation it is assumed that the parties intended legal consequences. Thus,

Agreement = Offer + Acceptance

Contract = Agreement + Enforceability by Law



Definitions u/s. 2 of the Indian Contract Act, 1872

An agreement to become a contract must give rise to a legal obligation. Agreement can be social obligation or legal obligation.

Section	Defines	As
2 (a)	Proposal/ Offer	When one person signifies to another, his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal
2 (b)	Promise	When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise
2 (c)	Promisor and Promisee	The person making the proposal is called the "promisor", and the person accepting the proposal is called the "promisee"
2 (d)	Consideration	When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.
2 (e)	Agreement	Every promise and every set of promises, forming the consideration for each other, is an agreement;
2 (f)	Reciprocal Promises	Promises which form the consideration or part of the consideration for each other are called reciprocal promises;
2 (g)	Void Agreement	An agreement not enforceable by law is said to be void;



2 (h)	Contract	An agreement enforceable by law is a contract;
2 (i)	Voidable Contract	An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract;
2 (j)	Void Contract	A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

Essential Elements of a Valid Contract:

(i) Agreement:

In order to constitute a contract, there must be an agreement in first place. An agreement in turn is composed of two elements-offer and acceptance. Thus there must be at least two parties-one making the offer and another accepting it. The terms of offer must be definite and the acceptance must be absolute and unconditional.

(ii) Free Consent:

According to Sec 14, 'Consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake. If consent is not free, then no valid contract comes into existence. This will be discussed in detail subsequently.

(iii) Lawful consideration:

The agreement must be supported by a lawful consideration. Consideration means 'something in return'. 'Something in return' may be an act or abstinence. But it must be real and lawful. This will be discussed in detail subsequently.

(iv) Parties are competent:

The parties to an agreement must be capable of entering into a contract. A person is considered competent if he is (a) eighteen years of age (b) of sound mind (c) not disqualified from contracting by any law to which he is subject. Existence of free consent implies the consent of the parties must be free and genuine i.e. not induced by coercion, undue influence, fraud or misrepresentation. This will be discussed in detail subsequently.

(v) Legality of object:

There must be legality of object and consideration failing which it will not be a valid contract. This will be discussed in detail subsequently.

(vi) Legal Relationship:

The parties must intend to create a legal relationship. Agreements of social or domestic nature do not contemplate legal relationship, so they are not contracts.

Example: A husband promising his wife to buy her a 'necklace' on occasion of her birthday is not a contract.

(vii) Agreements not expressly declared to be void:

The agreement not expressly declared void or illegal by law. This will be discussed in detail subsequently.

(ix) Certain and Capable of Performance:

The terms of agreement must be **certain** and **capable of performance**.

Example: D agrees to sell C garments. The type, quality, value etc are not discussed. The agreement cannot be enforced as terms are uncertain. Similarly, if A promises B to bring rainfall through magic. Such agreement cannot be enforced.



(x) Legal formalities: Where nature of agreement is such that it requires compliance of certain formalities, such requirements should be fulfilled. A contract may require registration in addition of being in writing. However as regards to legal effects, an oral contract has same effect as a contract in writing.

Classification of Contracts:

(A) Based on enforceability:

(i) Valid Contract: An agreement enforceable by law is a valid contract. In other words it satisfies all the requirements of a valid contract as laid down in section 10. If any of the essential requirements is missing it becomes a void contract.

(ii) Void agreement: An agreement not enforceable by law is said to be void. A void agreement has no legal consequences.

(iii) Voidable contract: An agreement which is enforceable at the option of one or more parties thereto but not at the option of other or others is a voidable contract.

(iv) Void contract: A Contract which ceases to be enforceable by law becomes void when it ceases to be enforceable. Void agreement and void contract are different. Void agreement is void ab-initio but void contract is a valid contract at the beginning but subsequently becomes void when it ceases to be enforceable.

(v) Unenforceable contracts: These are the contracts which cannot be enforced in a court of law because of some technical defects, these contracts becomes fully enforceable if the technical defects are removed.

(vi) Illegal Contracts: An illegal agreement is destitute of any legal effect from the very beginning. All illegal agreements are void agreements but all void agreements are not illegal.

(B) Based on method of formation:

(i) Formal contracts: This term is usually found in English laws. Validity of these contracts depends upon their form. They are valid even if they lack consideration. These contracts are of two types; Contract under seal and contract of Records.

Contract under seal are in writing and signed by the parties to them.

Contract of Records includes the court judgements and recognisance, obligations in such cases arise out of judgement and not under the contract.

(ii) Simple Contract: All contracts other than formal are called simple contracts or parole contracts.

(C) Based on extent of performance:

(i) Executed Contracts: An executed contract is one which has been completely completed by both the parties.

(ii) Executory contracts : It is a contract which is wholly unperformed. If one party has performed his part of obligation but the other party has not yet completed his obligation on the contract, the contract still remains executory contract.

(D) Based on Obligation:

(i) Unilateral contract : Under this type of contract, there is an obligation on the part of only one party when the contract is concluded.



(ii) **Bilateral Contract** : Here there is an obligation on both the parties to the contract.

(iii) **Multilateral Contract**: In this type of contract more than two parties are involved. These are very complex contracts and generally take international character.

(E) On the basis of mode of creation:

(i) **Express contract**: According to section 9, in so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. Therefore the contracts entered into between the parties by words spoken or written are known as express contracts.

(ii) **Implied or inferred contract**: As per section 9, in so far such proposal or acceptance is made otherwise than in words, the promise is said to be implied. Thus the contracts which are made by an act or conduct of the parties and not by words are termed as implied contract.

(iii) **E-contract**: This is a kind of contract formed in the course of E-commerce by interaction of two or more person competent to contract using electronic means, such as e-mail. This involves interaction of an individual with an electronic agent, such as computer program or interaction of at least two electronic agents that are programmed in such a way to generate contract. This contract are conceptually akin to the traditional paper contract and requires all the essential requirements of a valid contract like free consent, capacity of the parties, consideration and legality of objects and consideration.

Offer and Acceptance

Meaning and Definition of Offer:

For an agreement to come into force, there should be a definite offer by one party and unqualified acceptance by the party to whom offer is made. Thus 'An **offer** is an expression of willingness to contract on certain terms, made with the intention that it shall become binding as soon as it is accepted by the person to whom it is addressed, the "offeree".

A proposal is defined as, 'when one person signifies to another his willingness to do or abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.' [Sec 2(a)]

The term proposal used in the Indian Contract Act is like the term "offer" used in English laws. The person making proposal or offer is called the promisor or offeror and the person to whom offer is made is called the offeree and the person accepting the offer is called the promisee or acceptor. [Sec 2(c)]

Types of Offer:

(i) **Express and Implied offer:**

An offer may be made either by words or by conduct. An offer, which is made by words, is called express offer and the one, which is inferred from the conduct of a person or the circumstances of the case, is called an implied offer.

An example of implied offer is "Delhi Metro Rail running Metro Rail on different routes to carry passengers at the scheduled tariff rates. This is a case of implied offer by DMRC and once a person board in the DMRC train he is said to have accepted the offer by his act/conduct."

(ii) **Offer and Invitation to offer:**



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

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

(iii) Offer can be specific or general:

An offer is said to be **specific** when it is addressed to a definite person or persons. Such offer can be accepted only by the person or persons to whom it is made. A **general** offer on the other hand is addressed to public in large and may be accepted by anybody fulfilling the terms and conditions.

Legal Rules Regarding Offer:

An offer to be valid must comply with the following rules:

1. Offer may be expressed or implied:

An offer may be expressed or may be implied from the conduct of the parties or circumstances of the case.

Express Offer: An express offer is made by words spoken or written.

Implied Offer - An implied offer is not made by words spoken or written. It is implied from the conduct of the parties or from the circumstances.

2. Offer may be specific or general:

A **specific offer** is one which is made to a particular person. It can be accepted by the person to whom it has been made, no one else can accept such an offer.

A **general offer** is an offer made to the public at large.

3. Offer must give rise to legal obligation:

An offer to be valid must create legal relationship between the parties. The very purpose of entering into an agreement is to make it enforceable at a Court of law.

4. Terms of an offer must be definite and certain:

The terms of an offer should not be vague or indefinite.

5. Offer must be distinguished from an invitation to offer:

An offer must be distinguished from an invitation to offer. The shopkeepers generally display their goods in showcases with price tags. The shopkeeper in such cases is not making an offer so that you can accept it. He is, on the other hand, inviting you to make an offer which he may or may not accept. Thus you cannot compel a shopkeeper to sell



the goods displayed in the showcase at the marked price. However, if there is a specific law to sell goods at marked price then the seller will have to sell at marked price. For example, during National Emergency essential commodities like sugar etc. have to be sold at marked price.

6. Offer must be communicated:

An offer must be communicated to the person to whom it is made. A person can accept the offer only when he knows about it. If he does not know it, he cannot accept it.

7. Communication of Special Terms:

Special terms of a contract must be communicated. Generally, such cases arise in respect of general offers, like tickets or receipts for depositing luggage at the Railway Station or receipts for clothes given for dry cleaning etc. The rule in these cases is that parties are not bound unless conditions printed are properly communicated. The special terms must be brought to the customer's notice either

(a) by drawing his attention to them specifically or

(b) by inferring that a man of ordinary prudence could find them by exercising ordinary prudence.

However, if the special conditions forming part of the offer are contained in a document which is delivered after the contract is complete. Then the customer is not bound by them.

8. Offer must be made with a view to obtaining the consent of the other party to do or to abstain from doing the act:

The offer must be made with an intention to get the consent of the other party to do or to abstain from doing the act and not simply with a view to making known the intention of making an offer. Sometimes a person declares that he has the intention to do something and this does not amount to an offer. Such a declaration only means that the offer will be made or invited in future.

9. Offer should not impose an unnecessary obligation to communicate non acceptance:

Thus an offeror cannot say that if acceptance is not communicated by Sunday next, the offer would be considered as accepted.

Meaning and Definition of Acceptance:

Once an offer has been made, it has to be accepted to make a valid contract.

Section 2(b) defines acceptance as "When the person to whom an offer is made signifies his assent thereto the proposal is said to be accepted, A proposal when accepted becomes a promise."

An offer can be accepted by only the person or persons for whom the offer is intended. An offer made to a particular person can only be accepted by him alone, on the other hand an offer made to a class of persons can be accepted by any member of that class of persons. An offer made to the world at large can be accepted by any person whatsoever.

Essentials of a valid acceptance:

The following are the essentials of a valid acceptance. They are:

1. Acceptance must be absolute and unqualified: [Sec. 7(1)]

In order to be effective, there must be an absolute and unqualified acceptance of all the terms of the offer.



2. Acceptance must be communicated:

For an acceptance to be valid, it must not only be made by the offeree but must also be communicated by or with the authority of the offeree to the offeror. Acceptance must be communicated by the acceptor. In order to result in a contract it must be a 'matter of fact'. Silence cannot be construed as acceptance.

3. Acceptance must be in a prescribed or reasonable mode [Sec. 7(2)]

It should be in a prescribed or reasonable mode. [Sec. 7(2)] If the offer or prescribes no mode of acceptance, the acceptances must be communicated according to some usual and reasonable mode. The usual modes of communication are by words spoken or written or by conduct, it is called an implied acceptance.

4. Acceptance must be given within a reasonable time and before the offer lapses:

Acceptance must be given within the specified time limit, if any and if no time is stipulated, acceptance must be given within a reasonable time because an offer cannot be kept open indefinitely. Again the acceptance must be given before the offer is revoked or lapses by reason of offeree's knowledge of the death or insanity of the offeror.

5. Acceptance cannot precede an offer:

It cannot precede an offer. Acceptance must be given after receiving the offer. It should not precede the offer.

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

An offer can be accepted only by the person or persons to whom it is made and with whom it imports an intention to contract. It cannot be accepted by another person without the consent of the offer.

7. Rejected offer can be accepted only on renewal:

Rejected offer can be accepted only, on renewal; offer once rejected cannot be accepted again unless a fresh offer is made.

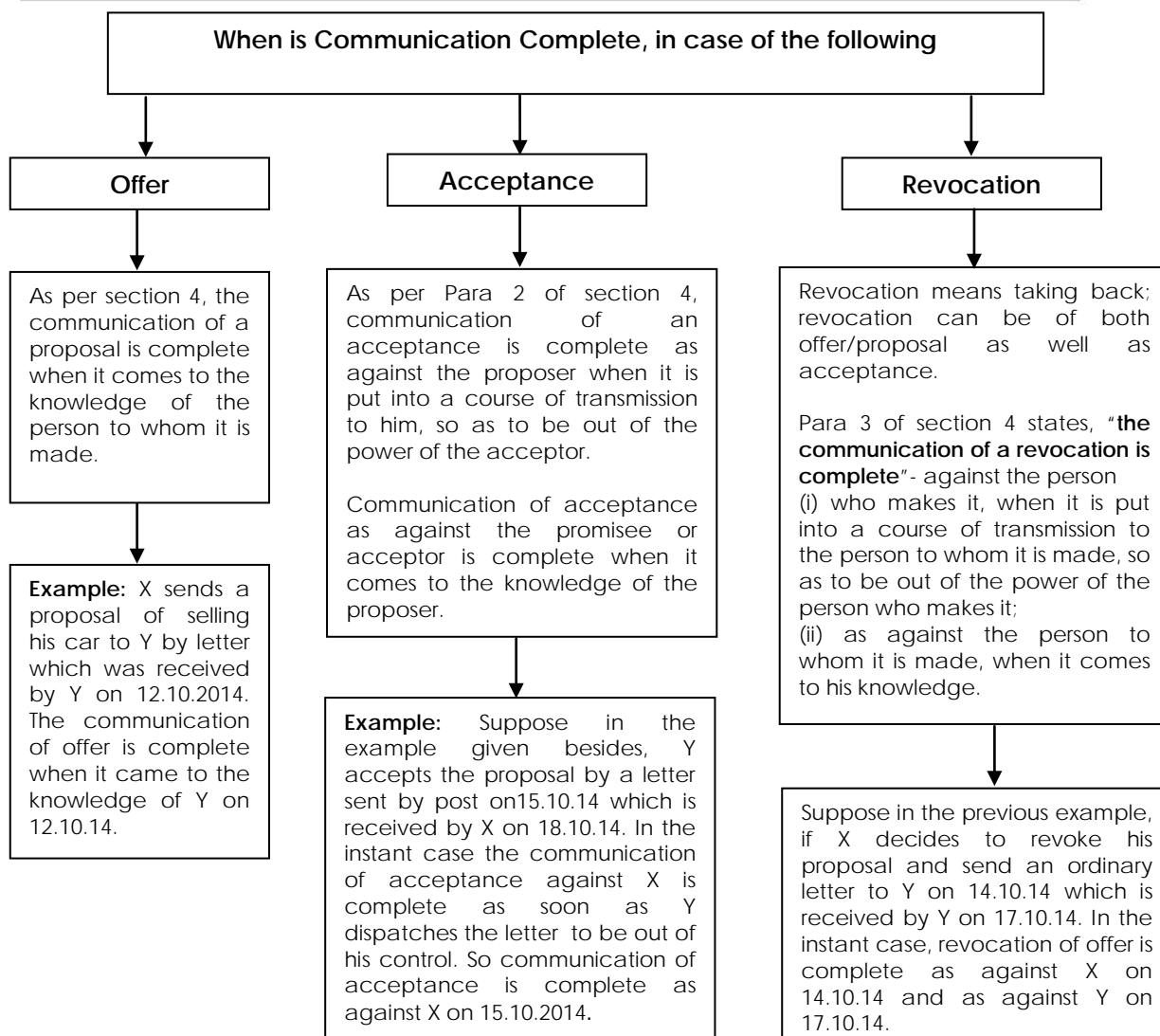
8. Revocation of acceptance:

Under English Law acceptance is revocable, whereas under Indian Law acceptance is irrevocable.

Communication, Acceptance and Revocation of Proposals

The term "communication" can be explained as, the process of sending or bringing any matter to the knowledge of the person to whom it is directed. The process of sending or bringing to the notice may be by letters, fax, telegram, telephone etc.

Communication is very important in case of contract and it can be explained as below:



Revocation of offer and acceptance: [Section 5]

Revocation means taking back or withdrawal of offer or acceptance. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance, is complete as against the acceptor, but not afterwards.

Illustrations:

A proposes, by a letter sent by post, to sell his house to B. B accepts the proposal by a letter sent by post. A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards. B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

How is Revocation made: [Section 6]

Section 6 of the Act provides the modes for revocation of an offer or acceptance.



- (i) By the communication of notice of revocation by the proposer to the other party. The offeror may revoke his proposal any time before the letter of acceptance is posted to him and not afterwards. Similarly acceptance can be revoked any time before the letter of acceptance is received by the offeror.
- (ii) By the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance; What is a reasonable time is a question of fact in each case.
- (iii) By the failure of the acceptor to fulfill a condition precedent to acceptance.
- (iv) By the death or insanity of the proposer, if the fact of the death or insanity comes to the knowledge of the acceptor before acceptance. Where an offeree writes his acceptance but dies before posting, the offer lapses and posting of the letter after his death will not create a contract.
- (v) If a counter offer is made to it. Where the offer is accepted with some modification in terms of the offer or with some other condition not forming part of the offer, such qualified acceptance amounts to a counter offer.
- (vi) If an offer not accepted according to prescribed or usual mode. However, the offeror gives notice to the offeree within the reasonable time that the acceptance is not according to the prescribed or usual mode of acceptance.
- (vii) An offer comes to an end if the law is changed so as to make the contract contemplated by the offer illegal or incapable of performance

1.2 Void and Voidable Agreements

An agreement becomes a contract when it fulfills all essential elements of a valid contract. In case one or more of the essential elements of a valid contract are missing, the contract is void, voidable, illegal or unenforceable.

Let us discuss them one by one.

A. Voidable contract: An agreement which is enforceable by law at the option of one or more parties thereto but not at the option of the other is a voidable contract.

A contract becomes voidable when it is enforceable at the option of one or more parties thereto but not the other. How does this happen? When in one of the essential elements of a valid contract, free consent is absent.

Example: A promise to sell his farm to B for ₹ 5.0 lakh. B was not prepared for this but A by force compelled B to sign the agreement. Here the consent of B was obtained by coercion. The contract is voidable at the option of B.

B. Void agreement: An agreement not enforceable by law is said to be a void agreement. A void agreement does not create any legal rights or obligations, hence is null and void ab initio.

C. Void contract: A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable by law. A void contract is initially a perfectly valid contract but subsequent developments turn it into a void contract.



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

- (i) Agreement by a minor or a person of unsound mind. [Sec(11) and Sec(12)]
- (ii) Agreement of which the consideration or object is unlawful. [Sec(23)]
- (iii) Agreement made under a bilateral mistake of fact material to the agreement. [Sec(20)]
- (iv) Agreement of which the consideration or object is unlawful in part and the illegal part cannot be separated from the legal part. [Sec(24)]
- (v) Agreement made without consideration. [Sec(25)]
- (vi) Agreement in restraint of marriage. [Sec(26)] - Every agreement in restraint of the marriage of any person, other than a minor, is void.
- (vii) Agreement in restraint of trade. [Sec(27)]- Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. The exception is an agreement not to carry on business of which goodwill is sold.
- (viii) Agreement in restraint of legal proceedings. [Sec(28)]- Every agreement —
 - (a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or
 - (b) Which extinguishes the rights of any party thereto, or discharges any party thereto from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent.
- (ix) Agreements the meaning of which is uncertain. [Sec(29)] - Agreements, the meaning of which is not certain, or capable of being made certain, are void.
- (x) Agreements by way of wager. [Sec(30)] - 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 a person to abide by the result of any game or other uncertain event on which any wager is made.
- (xi) Agreements contingent on impossible events. [Sec(36)]
- (xii) Agreements to do impossible acts. [Sec(56)] - According to section 56 an agreement to do impossible event is void. Impossibility may be at the time of entering into a contract or subsequent to the formation of the contract but before performance of the contract.
- (xiii) In case of reciprocal promises to do things legal and also other things illegal, the second set of reciprocal promises is a void agreement [Sec(57)]

1.3 Consideration, Legality of Object and Consideration

Consideration means something in return. When someone promises to do or not to do something for somebody else he also in turn needs some reciprocal gesture from other party in return which in common parlance we mean consideration. It may be either some benefit conferred on one party or some detriment suffered by other. It may be an act or abstinence or promise.

Section 25 of the Indian Contract Act provides that "An agreement made without consideration is void"



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

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

Legal Rules Regarding Consideration:

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

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

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

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

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

3. Consideration must be something of value:

One of the important thing to note about consideration is that consideration need not be adequate. So long as the consent of the parties is free inadequacy of consideration is immaterial. However inadequacy of consideration may be taken into account by the courts in determining the question whether the consent of the parties is free or not.

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

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

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

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

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

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

6. It must not be unlawful:

The consideration or object of an agreement is lawful, unless —

- It is forbidden by law;
- or is of such a nature that, if permitted, it would defeat the provisions of any law;
- or is fraudulent;
- or involves or implies injury to the person or property of another;
- or the Court regards it as immoral, or opposed to public policy



Types of Consideration

Consideration may be present, past or future.

- (i) Past consideration is something wholly done or suffered before making the agreement.
- (ii) Present consideration is basically an act, which has been done in response to a positive promise. It is also called executed consideration.
- (iii) Executory or future consideration is when consideration is to move at a future date.

NO CONSIDERATION – NO CONTRACT: [Sec. 25]

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

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

1. Promise made out of natural love and affection:

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

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

2. Promise to compensate for voluntary services:

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

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

Example:

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



3. Promise to pay time-barred debt:

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

Example:

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

4. Creation of Agency:

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

5. Completed Gifts:

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

Example:

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

6. Contract of guarantee:

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

7. Remission:

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

STRANGER TO CONTRACT / DOCTRINE OF PRIVACY OF CONTRACT:

The doctrine of privities of contract means that a contract is between the parties only and no third person can sue upon it. It means that a stranger to contract cannot sue upon it. The Supreme Court of India recognized this rule in *MC Chacko v State Bank of Travancore*. It is settled law that a person not a party to a contract cannot subject to certain well recognized exceptions, enforce the terms of the contract. Under the English Common law only a person who is party to a contract can sue upon it. In India the common law doctrine of privities of contract is applicable. In the course of time, the courts have introduced a number of exceptions to rule of privities of contract.

English Law:

According to English Law, a stranger to a contract cannot sue upon it. This principle was laid down in **Dunlop Pneumatic Tyre Company Ltd. Vs. Selfridge & Co (1915)**.



In this case, Dew & Co. were the agents of Dunlop Company for the sale of Dunlop tubes and tyres. Dew & Co. agreed not to sell tubes and tyres below the listed price and to insist similar terms while selling to sub-dealers. Later Dew & Co. entered into a contract with Selfridge & Co. where in it was stated that 5 pounds should be paid for every tyre sold below the listed price. Selfridge & Co. sold two tyres below the listed price. Dunlop & Co. sued Selfridge & Co. for breach of the contract. The court held that Dunlop & Co. was a stranger to the contract and as such was not entitled to sue.

Indian Law:

The law in India is the same as the English Law. According to the Indian Contract Act, consideration for an agreement may proceed from a third party, but the third party who is a stranger to the agreement cannot sue on the agreement. A person who is a party to the contract alone can enforce the legal rights arising there from. So a stranger to contract as a rule, cannot sue upon the contract.

Exceptions:

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

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

1. Beneficiary of a trust:

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

2. Provision in marriage settlement:

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

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

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

4. Assignee of a contract:

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

Example:

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



5. Acknowledgement of liability:

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

Example:

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

6. Agency contract:

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

1.4 Capacity of Parties and Free Consent

Capacity to Contract (Section 11)

As per Section 11 every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

From the above provisions of the section it means the following types of persons are not competent to contract:

- (a) A person who has not attained the age of majority, i.e. minor.
- (b) A person of unsound mind
- (c) A person who is disqualified from contracting by some law.

MINOR:

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

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

1. An agreement with a minor is void ab-initio.
2. The law of estoppels does not apply against a minor. It means a minor can always his plead his minority despite earlier misrepresenting to be a major. In other words he cannot be held liable on an agreement on the ground that 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.

SOUND MIND PERSON:

Sound Mind person for the Purposes of Contracting (Section 12)

A person is said to be of sound mind for the purposes of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Illustrations:

- (a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.
- (b) A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

Going by the spirit of the section it is clear that a person is of sound mind if he fulfills the following two conditions.

- (i) He/she is capable of understanding the contract.
- (ii) He/she is capable of forming a rational judgment about the effects of such contract on his interest.

A person not satisfying any of these two conditions is not treated as a person of sound mind.

OTHER DISQUALIFIED PERSONS:

Some persons may be 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:

1. **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.

2. **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.
3. **Convicts:** A convict cannot enter into a contract while he is undergoing imprisonment.
4. **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.
5. **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.

FREE CONSENT:

Consent:

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

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 Contract act consent is said to be free when it is not caused by—

- (1) Coercion (Sec 15), or
- (2) Undue influence (Sec 16), or
- (3) Fraud (Sec 17), or
- (4) Misrepresentation (Sec 18), or
- (5) Mistake, subject to provisions of Sec 20, 21 and 22.

COERCION: [Sec. 15]

The term coercion has been defined in section 15 of the Act as "Coercion" is the committing or threatening to commit, any act forbidden by the Indian Penal Code (45 of 1860), or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Explanation: It is immaterial whether the Indian Penal Code (45 of 1860) is or is not in force in the place where the coercion is employed.

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

- (i) committing or threatening to commit any act forbidden by Indian Penal Code;
- (ii) unlawful detaining or threatening to detain the property of another person.

Coercion may come from a person party to the contract or even third person not connected with the contract directly.



Unlawful detaining also amount to coercion: If a person unlawfully detains or give a threat to detain any property to the prejudice of any person whatever with the intention of causing any person to enter into an agreement amount to coercion.

Effect of coercion:

According to section 19 when the consent is caused by coercion, fraud, misrepresentation, the agreement is avoidable at the option of the party whose consent was so caused. The aggrieved party may opt to rescind the contract. If the aggrieved party seeks to rescind the contract he must restore the benefit so obtained under the contract from other party.

It should be noted that threat to commit suicide also amounts to coercion.

Some special cases which are prone to be construed cases of coercion are discussed as under;

1. Prosecution: A mere threat to prosecute a man or file suit against him does not constitute a coercion. In the case of *Andhra Sugar Lts V State of AP AIR 1968 SC 599* it was held that compulsion of law is not a coercion, fraud, misrepresentation, mistake or even undue-influence.
2. High prices and high interest Rates: Charging high interest rate, high price etc is not a coercion as the same is not prohibited under the Indian Penal code.
3. A threat to commit suicide: Consent to an agreement may at times be obtained by threatening to commit suicide. The Madras High court has held that threat to commit suicide amounts to coercion. In *Amraju v Seshamma 1917 41 Mad 33* it was argued by Oldfield J one of the judge of the Bench which decided this case, that section 15 of the Contract Act must be construed strictly and that an act which is not punishable under the Indian Penal Code cannot be said to be forbidden by it. Suicide is not punishable by the Indian Penal Code, only the attempt to suicide is punishable.

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 forgoing principle, a person is deemed to be in a position to dominate the will of another—
 - (a) Where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or
 - (b) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.
- (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.



Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872 (1 of 1872). There is presumption of undue influence in the following relationships:

- (i) Parent and child
- (ii) Guardian and ward
- (iii) Doctor and patient
- (iv) Solicitor and client
- (v) Trustee and beneficiary
- (vi) Religious advisor and disciple
- (vii) Fiancé and fiancée

There is however no presumption of undue influence in case of relationship of —

- (i) landlord and tenant
- (ii) debtor and creditor
- (iii) husband and wife.

The wife has to be pardanashin for such presumption. In these relationships undue influence has to be proved.

Going through the definition of undue influence in section 16 we find that two elements are found in undue influence:

- (i) The relationship subsisting between the parties is such that one is in a position to dominate the will of other and
- (ii) He uses that position to obtain an unfair advantage over the other. The person intending to avoid the contract on the ground of undue influence must prove both the above two elements.

Effect of undue influence: Section 19A provides that when the consent is caused by undue influence, the agreement is avoidable at the option of the party whose consent was so caused. The aggrieved party may opt to rescind the contract. If the aggrieved party seeks to rescind the contract he must restore the benefit so obtained under the contract from other party, upon such terms and conditions as to the court may seem just. The following illustrations are appended to the section.

- (a) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.
- (b) A, a moneylender, advances ₹ 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for ₹ 200 with interest at 6 per cent per month. The Court may set the bond aside; ordering B to repay ₹ 100 with such interest as may seem just.

The court has discretion to direct the aggrieved party for giving back the benefit whether in whole or in part or set aside the contract without any direction for refund of benefit.

FRAUD: [Sec. 17]

As per section 17 of the 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.

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

Does silence amount to fraud:

At times one of the party to a contract makes studied silence to some of the facts relating to the subject matter of contract. The matter on which silence is maintained by party may be material fact. Does this amount to passive fraud under the Indian Contract Act or not depends upon various factors.

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 silence. These two exceptions are provided in explanation to section 17 as under which we have already discussed above.

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

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

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

Effect of Fraud: According to section 19 when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been, if the representations made had been true.



However there is one exception to the rule of voidability of contract at the option of aggrieved party. If such consent was caused by misrepresentation, or by silence, fraudulent within the meaning of section 19 the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means to discovering the truth with ordinary diligence.

MISREPRESENTATION: [Sec. 18]

A statement of fact which one party makes in the course of negotiation with a view to inducing 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 intentionally is a misrepresentation. When it is made innocently or unintentionally it is misrepresentation and when made intentionally or willfully it is fraud.

Misrepresentation has been defined in **section 18** of the Act as under:

“Misrepresentation” means and includes—

- (1) The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
- (2) Any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of anyone claiming under him ;
- (3) Causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

From the above definition of the term Misrepresentation, the following two types of misrepresentations are noticed:

- (a) **Unwarranted statements:** When a person positively asserts, makes an absolute and explicit statement of facts, that fact is true, though he has no reliable source to form this opinion, but he believe it to be true. This is one type of misrepresentation.
- (b) **Breach of duty:** Any breach of duty which brings advantages to the person committing it by misleading the other to his prejudice is a misrepresentation.

Effect of Misrepresentation:

As per section 19 when consent to an agreement is caused by misrepresentation, the agreement is a contract avoidable at the option of the party whose consent was so caused. A party to a contract, whose consent was caused by misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been, if the representations made had been true.

Exception: If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

MISTAKE: [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
- (B) Mistake of fact

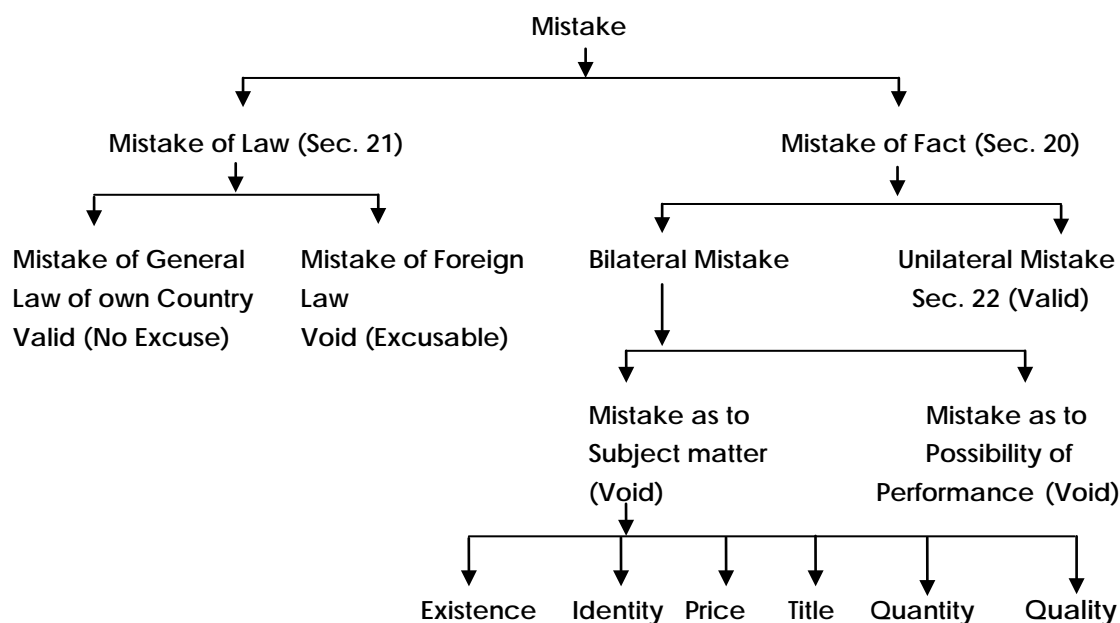
(A) Mistake of law may be:

- (i) Mistake of law of the country
- (ii) Mistake of law of a foreign country

(i) Mistake of law of the country:

When a party enters into a contract, without the knowledge of law in the country, the contract is affected by such mistake but it is not void. A contract is not voidable because it was caused by a mistake as to any law in force in India. The reason here is that ignorance of law is not an excuse at all. However if a party is induced to enter into a contract by the mistake of law then such a contract may be avoided.

(ii) Mistake of law of foreign country: Such a mistake is treated as mistake of fact and agreement in such case is void.



(B) Mistake of fact may be:

- (I) a bilateral mistake, or
- (II) unilateral mistake

(I) Bilateral mistake

Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Explanation: An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

In order to render a contract void due to bilateral mistake the following two conditions must be met.



- (a) **Mistake must be mutual:** Both the parties must misunderstand each other and should be at cross purpose.
- (b) **Mistake must relate to a matter of fact essential to the agreement:** What is essential fact of an agreement depends upon the nature of promise in each case.

The various types of mistakes falling under bilateral mistakes are as under:

(i) Mistake as to subject matter covers following cases:

- (a) Mistake as to **existence** of subject matter: If both the parties are at mutual mistake as to existence of the subject matter the agreement is void.
- (b) Mistake as to **identity** of subject matter: It usually happens when both the parties have different subject matter of contract in their mind. The contract is void due to mistake of identify of subject matter.
- (c) Mistake as to the **quality** of the subject matter: If the subject matter is something essentially different from what the parties thought to be, the agreement is void.
- (d) Mistake as to **quantity** of subject matter: Bilateral mistake as to quantity of subject matter would render the contract void.
- (e) Mistake as to **title** of subject matter: The agreement is void due to bilateral mistake as to title of the subject matter.
- (f) Mistake as to **price** of the subject matter: Mutual mistake as to price of the subject matter would render the agreement void.

(ii) Mistake as to possibility of performance of Contract. Impossibility may be:

- (a) **Physical impossibility:** A contract is void if it is identified to be non-feasible due to physical factors, like time, distance, height, etc.
- (b) **Legal impossibility:** A contract is void if it provides that something shall be done which as a matter of law cannot be done.

(II) 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 defense in avoiding a contract unless the mistakes brought about by another party's fraud or misrepresentation.

1.5 Quasi Contracts, Contingent Contracts

Under certain circumstances, the law creates and enforces legal rights and obligations although the parties have never entered into a contract. Such obligations imposed or created by law are known as "Quasi-Contracts". In other words, Contracts constituted by law are known as Quasi-Contracts.

The Indian Contract Act describes them as "certain relations resembling those created by contracts". In English law, they are referred to as "implied contracts or constructive contracts".

Quasi-contracts are based on the principles of equity and justice. The claim based on a quasi-contracts is generally for money. The remedy in quasi-contracts is only compensation and not damages.



Example: A delivers goods to B mistaking him to be C, and B consumes them. B is bound to pay compensation to A for the value of goods. Law imposes such a duty on B. This is a quasi-contract.

Features of a Quasi Contract:

The salient features of a quasi contract are as under:

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

Types of Quasi-Contracts:

The Indian Contract Act deals with the following quasi-contractual obligations. They are:

1. Claims for necessities supplied to a person incompetent to contract. (Sec 68).
2. Payment by an interested person. (Sec 69)
3. Benefits of non-gratuitous act. (Sec 70)
4. Responsibility of finder of goods. (Sec 71)
5. Money paid by mistake or under coercion. (Sec 72)

1. Claims for necessities supplied:

Where necessities are supplied to a person who is incompetent to contract, the supplier is entitled to recover the price from the property of the incompetent person under section 68 of the Indian Contract Act.

Example:

A supplies B, a minor, with necessities suitable to his condition in life. A is entitled to be reimbursed from B's property.

2. Payment by an interested person:

Section 69 provides that a person who is interested in the payment of money of which another is bound by law to pay, and who therefore, pays it, is entitled to be reimbursed by the other".

In order to apply section 69, the following conditions must be satisfied.

- a. The payment made should be bonafide for the protection of one's interest.
- b. The payment should not have been made gratuitously or voluntarily.
- c. Another person must be bound by law to pay.
- d. The payment must be made to a third party and not to himself.

3. Benefits of non-gratuitous act:

Section 70 deal with the obligation of a person enjoying benefit of a non-gratuitous act. When a person lawfully does anything for another person or delivers anything to him, not intending to do so gratuitously, such person who enjoys the benefit must reimburse the former or must restore to him the thing so delivered.



For the application of section 70, the following conditions must be fulfilled.

- a. The act must have been done lawfully.
- b. It must have been done by the person not intending to act gratuitously.
- c. The person for whom the act is done must have enjoyed the benefit of that act.

4. Responsibility of finder of goods:

A person who finds goods belonging to another and takes them into his custody is liable as a bailee. The finder of goods must try to find out the real owner of the goods and deliver the goods to him on demand. The obligations are imposed on finder of goods by Section 71 of the Indian Contract Act.

5. Money paid by mistake or under coercion:

According to section 72, a person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it.

Example: A and B jointly owe ₹ 100 to C. A alone pays the amount to C, and B, not knowing this fact, later on also pays ₹ 100 to C. C is bound to repay the amount to B.

Distinction between Quasi Contracts and Contracts:

Basis	Quasi Contracts	Contracts
Essential elements for formation of contracts.	The essential elements for formation of contracts are absent.	Essential elements for formation of contracts are present.
Obligation.	Obligation is imposed by law.	Obligation is created by consent of parties.

Contingent Contracts:

A contract may be an absolute contract or a contingent contract. An absolute contract is one where the promisor undertakes to perform the contract in all events without any conditions. Hence, it is also known as 'unconditional contract'. A contingent contract is also called 'conditional contract'. It is a contract in which the performance becomes due, only upon the happening of some event, which may or may not happen. Contracts of insurance, indemnity and guarantee are good examples of contingent contracts.

Section 31 of the Indian Contract Act, defines a contingent contract as "a contract to do or not to do something if some event, collateral to such contract, does or does not happen".

Example: A contracts to pay B ₹ 50,000 if B's house is burnt. This is a contingent contract.

Essentials of Contingent Contract:

The following are the essentials of a contingent contract. They are:

1. There must be a contract to do or not to do something.
2. The performance of the contract depends upon the happening or non-happening of some event in future.
3. The event must be uncertain.
4. The event must be collateral or incidental to the contract.



Rules regarding contingent contract:

Rules regarding contingent contracts are contained in section 32 to 36 of the Indian Contract Act. They are as follows:

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

1. Enforcement of contracts contingent on an event happening: [Sec. 32]

Contracts, contingent upon the happening of a future uncertain event cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.

Example: A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

2. Enforcement of contracts contingent on an event not happening: [Sec. 33]

Contracts contingent upon the non-happening of an uncertain future event can be enforced when the happening of that event becomes impossible.

Example: A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced after the ship sinks.

3. When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person [Sec. 34]

If the future event on which a contract is contingent is the way in which 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.

Example: A agrees to pay B a sum of money if B marries C. 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.

4. When contracts become void which are contingent on happening of specified event within fixed time [Sec. 35]

Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

When contracts may be enforced which are contingent on specified event not happening within fixed time —

Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired and



such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen.

Examples:

- (a) 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.
- (b) 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.

5. Agreements contingent on impossible events void [Sec. 36]

Contingent agreements to do or not to do anything if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Illustrations

- (a) A agrees to pay B ₹1,000 if two-straight lines should enclose a space. The agreement is void.
- (b) A agrees to pay B ₹1,000 if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

1.6 Performance of Contracts

Every Contract creates certain obligation on each of the parties involved in it. When both the parties to the Contract fulfill their obligations towards each other, the contract is said to be performed. When both the parties to the contract have performed their obligations, the contract is said to be discharged by performance.

Obligation of Parties to Contracts (Section 37)

The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisor in case of the death of such promisor before performance, unless a contrary intention appears from the contract.

Examples:

- (a) A promises to deliver goods to B on a certain day on payment of ₹ 1,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay ₹ 1,000 to A's representatives.
- (b) A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

Effect of Refusal to accept offer of performance (Section 38)

Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.



Every such offer must fulfill the following conditions :

- (i) it must be unconditional
- (ii) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do.
- (iii) if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

Example:

A contracts to deliver to B at his warehouse, on the 1st March, 2014, 100 bales of cotton of a particular quality. In order to make an offer of a performance with the effect stated in this section, A must bring the cotton to B's warehouse, on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

Effect of Refusal of Party to Perform Promise Wholly (Section 39)

When a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

Example:

A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A willfully absents herself from the theatre. B is at liberty to put an end to the contract.

Person by whom promise is to be performed (Section 40)

If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

Example:

A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

Effect of accepting performance from third person (Section 41)

When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Devolution of joint Liabilities [Sec. 42 – 45]

Devolution of Joint Liabilities (Section 42)

When two or more persons have made a joint promise then, unless a contrary intention appears by the contract, all such persons, during their joint lives, and after the death of any



of them, his representative jointly with the survivor, or survivors, and after the death of the last survivor, the representatives of all jointly, must fulfill the promise.

Any one of Joint Promisors may be compelled to perform (Section 43)

When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

Each promisor may compel contribution- Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Sharing of loss by default in contribution- If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Explanation : Nothing in this section shall prevent a surety from recovering from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

Examples:

- (a) A, B and C jointly promise to pay D ₹3,000. D may compel either A or B or C to pay him ₹3,000.
- (b) A, B and C jointly promise to pay D the sum of ₹3,000. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts, C is entitled to receive ₹500 from A's estate, and ₹1,250 from B.
- (c) A, B and C are under a joint promise to pay D ₹3,000. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive ₹1,500 from B.
- (d) A, B and C are under a joint promise to pay D ₹3,000, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

Effect to release of one Joint Promisor (Section 44)

Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.

Devolution of Joint Rights (Section 45)

When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.

Example:

A, in consideration of ₹ 5,000, lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's



representative jointly with C during C's life, and after the death of C with the representatives of B and C jointly.

Time and Place of Performance [Sec. 46 – 50]

The time and place of performance of a contract are determined by an agreement between the parties. The rules regarding time and place of performance are summarized below :

Time for Performance of Promise, where no application is to be made and no time is specified (Section 46)

Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Time and Place for Performance of Promise, where time is specified and no application to be made (Section 47)

When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Example:

A promises to deliver goods at B's warehouse on the 1st January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

Application for Performance on certain day to be at proper time and place (Section 48)

When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

Place for Performance of Promise, where no application to be made and no place fixed for performance (Section 49)

When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

Example:

A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

Performance in Manner or at time prescribed or Sanctioned by Promisee (Section 50)

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



Example: B owes A ₹ 2,000. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

Performance of Reciprocal Promises [Sec. 51 – 54 and 57]

Promisor not bound to perform unless reciprocal promisee ready and willing to perform (Section 51)

When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Example:

A and B contract that A shall deliver goods to B to be paid for by B on delivery. A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery. B need not pay for the goods, unless A is ready and willing to deliver them on payment.

Order of Performance of Reciprocal Promises (Section 52)

Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and, where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Example:

A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

Liability of party preventing event on which the contract is to take effect (Section 53)

When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

Example:

A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B; and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

Effect of default as to that promise which should be first performed, in contract consisting of Reciprocal Promises (Section 54)

When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promiser of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.



Example:

A contracts with B to execute certain builder 's work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

Reciprocal Promises to do things legal, and also other things illegal (Section 57)

Where persons reciprocally promise, firstly, to do certain things which are legal, and, secondly, underspecified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

Time is Essence of the Contract (Section 55)

When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

Effect of such failure when time is not essential — If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other than that agreed upon — If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.

Appropriation of Payments:

Application of Payment where debt to be discharged is indicated (Section 59)

Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Illustrations

- (a) A owes B, among other debts, ₹ 1,000 upon a promissory note which falls due on the first June. He owes B no other debt of that amount. On the first June A pays to B ₹ 1,000. The payment is to be applied to the discharge of the promissory note.
- (b) A owes to B, among other debts, the sum of ₹ 567. B writes to A and demands payment of this sum. A sends to B ₹ 567. This payment is to be applied to the discharge of the debt of which B had demanded payment.



Application of payment where debt to be discharged is not indicated (Section 60)

Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

Application of Payment where neither party appropriates (Section 61)

Where neither party makes any appropriation the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionately.

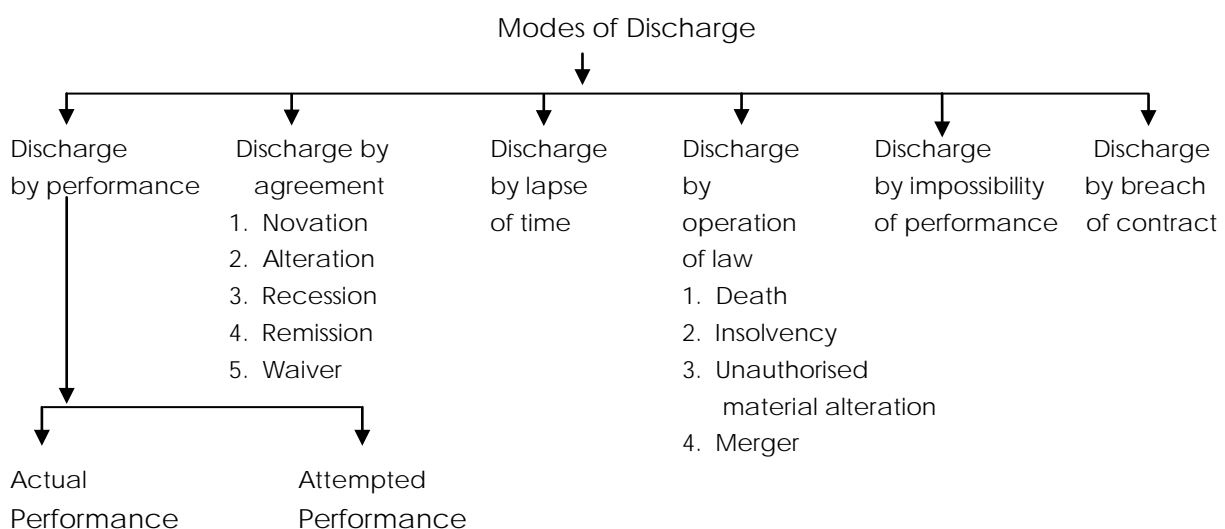
1.7 Discharge of Contract

When the rights and obligations created by a contract come to an end, the contract is said to be discharged or terminated. In other words, discharge of contract means termination of contractual relationship between the parties.

Modes of discharge:

The following are the various modes or methods by which a contract is discharged.

1. Discharge by performance
2. Discharge by agreement
3. Discharge by lapse of time
4. Discharge by operation of law
5. Discharge by impossibility of performance
6. Discharge by breach of contract



1. Discharge by performance:

Performance is the usual mode of discharge of a contract. Performance may be:

- (a) actual performance
- (b) attempted performance.



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

Offer of performance is also known as attempted performance or tender of performance. A valid tender of performance is equivalent to performance.

2. Discharge by agreement:

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

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

a. Novation:

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

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

b. Alteration:

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

c. Rescission:

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

d. Remission:

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

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

e. Waiver:

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

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

3. Discharge by lapse of time:

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



Example: If a creditor does not file a suit within three years of debt, the debt becomes time-barred. He is deprived of his legal remedy.

4. Discharge by operation of law:

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

- a. Death
- b. Insolvency
- c. Unauthorized material alteration.
- d. Merger

a. Death:

In contracts involving personal skill or ability, death terminates the contracts. In other cases, the rights and liabilities of the deceased person will pass on to his legal representatives.

b. Insolvency:

The insolvency of the promisor discharges the contract. The promisor is discharged from all liabilities incurred prior to his adjudication.

c. Unauthorized material alteration:

Material alteration in the terms of the contract without the consent of the other party discharges the contract. Change in the amount of money to be paid, date of payment, place of payment etc. are examples of material alteration.

d. Merger:

When inferior rights of a person under a contract merge with superior rights under a new contract, the contract with inferior rights will come to an end.

Examples: Where a part-time lecturer is made full-time lecturer, merger discharges the contract of part-time lecturership.

5. Discharge by breach of contract:

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

6. Discharge by impossibility of performance:

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

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

1.8 Breach of Contract and Remedies for Breach of Contract

Breach of Contract:

Parties to a contract are bound to perform their respective obligations. If any party fails to perform the obligation imposed upon him, he is said to have committed breach of contract. Thus breach means "failure or refusal of a party to perform his obligation under a contract without any lawful excuse". The breach of contract may be:

- a) Actual breach of Contract
- b) Anticipatory breach of Contract..



Actual Breach of Contract:

It is also called "Present breach". Actual breach of contract occurs:

- a. when during the performance of the contract, or
- b. at the time of performance is due, one party fails or refuses or neglects to perform his obligation under the contract.

Actual breach discharges the contract. It gives right to the aggrieved party to sue the party at fault for damages for breach of contract.

Example: A agrees to deliver to B, 5 tons of sugar on 5th July. He fails to do so on 5th July. There is a breach of contract by A.

Anticipatory breach of contract:

It is also called "constructive breach". Anticipatory breach of contract occurs:

- (a) When a party repudiates his liability under the contract before the time for performance is due, or
- (b) When a party by his own act conduct disables himself from performing the contract.

Example:

1. A agrees to marry B. Before the agreed date of marriage, he marries X. The marriage contract has been repudiated by A by his conduct before the due date of its performance. The breach here is anticipatory breach.
2. X enters into a contract to supply Y with certain articles on the 1st of June. Before 1st June, X informs Y that he will not be able to supply the articles. The breach committed by X here is anticipatory breach of contract.

Anticipatory breach of contract does not by itself discharge the contract. The contract is discharged only when the aggrieved party accepts the repudiation of the contract. If he does not accept the repudiation, the contract continues to exist and may be performed by the other party, if possible.

Remedies for breach of contract:

When there is breach of contract, the aggrieved party has one or more of the following remedies.

1. Suit for Rescission of the contract.
2. Suit for damages
3. Suit upon Quantum meruit
4. Suit for specific performance of the contract.
5. Suit for Injunction.

1. Suit for Rescission of the contract:

Rescission means the cancellation of a contract. When there is a breach of contract by one party, the other party may sue to treat the contract as rescinded. When the court grants rescission, the aggrieved party is free from all his obligations under the contract. He becomes entitled to compensation for any damage which he suffered

Example: X promises to deliver a book on 5th January and Y agrees to pay its price on receipt of the book. X fails to deliver the book for no valid reason. Y may treat the contract as repudiated and may refuse to pay the price.



2. Suit for damages:

Remedy by way of damages is the most common remedy available to the injured party. When a contract is breached, the injured party is entitled to file a suit for damages. Damages are a monetary compensation allowed to the injured party by the court for the loss or injury suffered by him. The fundamental principle underlying damages is not punishment but compensation.

3. Suit upon Quantum meruit:

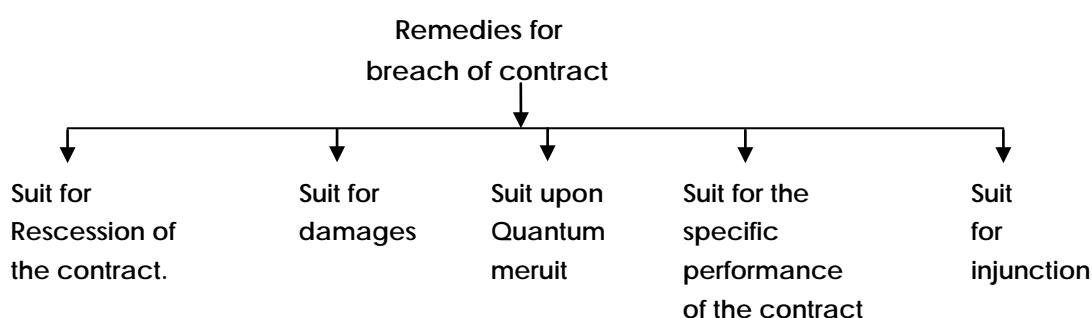
Quantum meruit means as much as is merited or as much as earned. In other words, it means payment in proportion to the amount of work done. A right to sue on a quantum meruit arises where a contract partly performed by one party has become discharged by the breach of the other party. The claim on quantum meruit arises in the following cases.

- a. where the contract is discovered to be void.
- b. When something has been done without any intention to do so gratuitously.
- c. Where one party refuses to perform the contract.

4. Suit for specific performance of the contract:

In certain special cases of breach of contract, damages are not an adequate remedy. The court may, in such cases, order specific performance of the contract. The defaulting party will be forced to perform the act promised under the contract. It is granted only in the following cases:

- a. Where compensation in money is not an adequate relief.
- b. Where there is no standard for ascertaining the actual damage caused by the non-performance.
- c. Where compensation in money cannot be obtained.



5. Suit for Injunction:

Injunction is an order of the court restraining a person from doing a particular act. The court, by issuing injunction restrains a person from doing what he has promised not to do. Injunction may be temporary or permanent. It is a preventive relief granted at the discretion of the court.



Essay Questions:

1. Define Contract and explain its essentials (or)
"All contracts are agreements but all agreements are not contracts" Explain.
2. Define Proposal. What are the requisites of a valid proposal?
3. Define the term Acceptance. What are the essentials of a valid acceptance?
4. What are various methods of revoking a proposal?
5. "No Consideration No Contract" – State the exceptions to it.
6. Define Consideration. What are the legal rules regarding consideration?
7. What is Quasi Contracts? Explain the different types of Quasi Contracts.
8. What is meant by Discharge of Contracts? Explain the different methods of discharge of contracts.
9. Explain the remedies available to the aggrieved person in case of breach of contract.
10. Explain the rules relating to contingent contracts, giving illustrations.
11. What are 'reciprocal promises? State the law relating to them.
12. State the law relating to appropriation of payments made by the debtor to the creditor.
13. What are the rules laid down in the Act as to the devolution of joint rights and liabilities.
14. What is the law as regards time, manner and place for performance of a promise in India?
15. What is Contingent Contract? Explain the rules relating to contingent contracts.

Short Answer Questions:

1. What is a Contract?
2. What is agreement?
3. Will all agreements give rise to a contract?
4. Explain the different types of Offer.
5. Revocation of Offer
6. How is revocation made?
7. When is communication of offer complete?
8. When is communication of acceptance complete?
9. What is a sound mind for the purposes of contracting?
10. Undue Influence
11. Fraud
12. Coercion
13. Explain the features of Quasi Contracts?
14. Distinction between quasi contract and contracts.
15. Anticipatory Breach of Contract
16. Actual Breach of Contract
17. Does silence amounts to fraud.

Define just in a sentence.

1. Wagering contract.
2. Contingent contract.
3. Actual Breach of contract.
4. Anticipatory breach of contract.
5. Void agreement.



6. Void contract.
7. Offer
8. Acceptance
9. Consideration
10. Nudum Pactum
11. Consensus-ad-idem
12. Ignorantia Juris non excusat

Fill in the blanks:

1. A _____ means an agreement which is enforceable by law.
2. The Indian Contract law is based on _____.
3. Section 2(b) defines, "When the person to whom the proposal is made, signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a/an _____.
4. When the consent of a party to a contract has been obtained by undue influence, fraud or misrepresentation, the contract is _____.
5. All illegal agreements are _____.
6. An agreement created by words spoken or written is called _____ agreement.
7. An agreement consists of reciprocal promises between the _____ parties.
8. Parol contracts are also known as _____ contracts.
9. An offer made by words spoken or written is called _____ offer.
10. Partial acceptance of offer result in _____ offer.
11. A tender is an _____.
12. When counter offer is given, the original offer _____.
13. For an acceptance to be valid, it must be _____
14. An agreement to agree in future upon terms to be settled afterwards between the parties is not _____
15. Acceptance once given cannot be _____
16. A tender and a bid at an auction sale are _____
17. A quotation is _____
18. A proposal when accepted becomes a _____
19. The term 'proposal' used in the Indian Contract Act is synonymous with the term _____
20. The term 'Proposal or offer' has been defined in section _____
21. When the offers made by two persons to each other containing similar terms of bargain cross each other in post, they are known as _____
22. When the proposal or acceptance is made otherwise than words, the promise is said to be _____
23. Various modes of revocation of offer have been described in _____
24. An advertisement inviting tender is _____
25. Goods displayed in a shop window with a price label will amount to _____
26. The person making the proposal is called _____
27. A mere passing utterance will not amount to a _____
28. When a proposal and its acceptance are made by words, they are known as _____
29. In cases, where a proposal and its acceptance are not made by words and are inferred from the conduct of the parties. They are known as _____ offers.



30. An offer which is allowed to remain offer for acceptance over a period of time is known as a _____
31. When the contract is perfectly valid in its substance but which cannot be enforced because of certain technical defects. This is called a _____ contract.
32. When goods are displayed in a show-window bearing price-tags, it indicates an invitation to make an _____
33. A counter offer is a rejection of the _____ offer.
34. Where a particular mode of communication of acceptance is not prescribed and the parties are not in each other's presence, the most authentic mode of communication of acceptance is the _____
35. When a person without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he makes _____
36. A notice in the newspapers inviting tenders is _____
37. The doctrine of privity of contract is laid down in the case of _____
38. If there is no consideration, then the agreement is _____
39. Consideration is defined under section _____
40. The latin term "quid pro quo" refers to _____
41. Consideration must move at the desire of _____
42. A promise to pay a time-barred debt must be _____
43. An agreement not supported by consideration is called _____
44. 'Consideration is the price for which the promise of the other is bought, and the promise thus given for the value is enforceable.' This definition of consideration is given by _____
45. When 'at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstain from doing something'- such act or abstinence or promise is called _____
46. An agreement without consideration is _____
47. When one of the parties to the contract has performed its part of the promise which constitutes the consideration for the promise by the other side, it is known as _____ consideration.
48. _____ of Indian Contract Act declares that an agreement made without consideration is void?
49. A promise not supported by consideration is called a _____
50. Capacity to contract has been defined in _____
51. A minor is a person who has not attained the age of _____
52. An agreement with a minor is _____
53. A contract for the benefit of the minor is _____
54. An agreement entered into by a minor is _____
55. A person who is not an Indian citizen is an Alien. Contracts with an alien friend, subject to certain restrictions are _____
56. A minor's agreement is void. This was held in case of _____
57. A mortgage executed by minor is _____
58. If there is no consent the agreement is _____
59. An agreement caused by unilateral mistake of fact is _____
60. Coercion is defined in section ____ of the Indian Contract Act.



61. A threatens to shoot B, if B does not agree to sell his property to A at a stated price. B's consent in this case has been obtained by _____
62. Section 17 of the Indian Contract Act define _____
63. If A unlawfully detains B's son in order to coerce B to enter into the agreement, the case would be covered within Section _____
64. When the consent of a party to the contract has been obtained by fraud, in such a case the contract is _____
65. When there is duty to speak, keeping silence is _____
66. When the person making a false statement believes the statement to be true and does not intend to mislead the other party to the contract it is known as _____
67. Error in causa means _____
68. Error in consensus means _____
69. The period of limitation for simple contract in India is _____ years.
70. An agreement to share the emoluments of a public office is _____
71. An agreement, the object of which is to procure a public post, is _____
72. Section ____ of Indian Contract Act, agreements of wager are void.
73. An agreement in restraint of parental rights is _____
74. An agreement in restraint of marriage is _____
75. An agreement in restraint of trade is _____
76. A wagering agreement is _____
77. A contract of insurance is a _____ contract.
78. Agreement to do an impossible act has been declared _____
79. Agreement in restraint of marriage has been defined in _____
80. Section 28 of the Indian Contract Act, speaks about _____
81. Ambiguous and uncertain agreements are defined in _____
82. If an agreement suffers from any uncertainty, it is _____
83. If the contract is impossible in itself physically or legally the agreement is _____
84. If the consideration or object of an agreement is regarded by the court to be immoral or opposed to public policy. The agreement is _____
85. A makes a contract with B to buy B's horse if A survives C. This is _____ contract.
86. If the contingent depends on the mere will of the promisor it would be _____
87. For a contingent contract the event must be _____
88. The obligation of a finder of lost goods is laid down in section _____ of the Contract Act.
89. Secs. 68 to 72 of the Indian Contract Act deal with _____
90. A finder of goods can sell the goods if the cost of finding the true owner exceeds _____ of the value of the goods.
91. The phrase "Quantum Meruit" literally means _____
92. Liability of a person getting benefit under mistake has been described in the Indian Contract Act under Section _____
93. A contract implied by law is known as _____ contract.
94. The juridical basis of quasi-contractual obligation can be explained through the theory of _____
95. An implied contract is made by _____
96. Under the Indian Contract Act some persons have the duty similar to that of a bailee under section _____



6. An agreement to create legal liability

- (a) Is not enforceable by law (b) Is a void agreement
(c) Is enforceable by law (d) None of the above

7. Obligation between parties that form contract

- (a) Are all kinds of obligations (b) Are legal obligation which spring from agreements
(c) Are not voluntary in nature (d) None of the above

8. A contract or an obligation to perform a promise could arise in the following ways

- (a) By agreement and contract (b) By standard form of contracts
(c) By promissory estoppel (d) None of the above

9. All contracts

- (a) should be in writing (b) should be oral
(c) should be registered (d) none of the above

10. A foreigner

- (a) is competent to enter into contract if he fulfills the conditions of section 11.
(b) is not competent to enter into contract
(c) can enter into contract with permission of Central Govt.
(d) can enter into contract with the permission of court

11. Voidable contract

- (a) are enforceable by law if they are not avoided
(b) are not enforceable by law
(c) can be enforced if the court directs
(d) can be enforced with prior permission of Court / Government

12. The terms of agreement

- (a) must be certain (b) must be capable of made certain
(c) un-ambiguous and clear (d) all the above

13. A contract is a contract

- (a) from the time it is made (b) from the time its performance is due
(c) at the time from its performance (d) none of the above

14. In an executed contract

- (a) both the parties have yet to fulfill their promises
(b) any one party has fulfilled the promise
(c) both the parties have fulfilled their promises (d) both b & c

15. A void agreement

- (a) is illegal (b) is not void ab-initio
(c) may or may not be illegal (d) none of the above

16. Right in rem implies:



- (a) a right available against the whole world
- (b) a right available against a particular individual
- (c) a right available against the Government
- (d) none of the above

17. A void contract

- (a) is void from the very beginning
- (b) is valid in the beginning but becomes void later on
- (c) is enforceable at the option of one of the contracting parties only
- (d) none of the above

18. A void agreement is one

- (a) which is forbidden by law
- (b) enforceable at the option of one of the parties
- (c) which is not enforceable by law
- (d) enforceable by law

19. Which of the following statements is false

- (a) Law of contract is the whole law of obligations
- (b) Certain contracts must be in writing
- (c) All contracts are agreements
- (d) All illegal agreements are void

20. Which of the following contracts are not recognized by Indian Contract Act, 1872?

- (a) Recognizance
- (b) Court Judgment
- (c) Contract under seal
- (d) All the above

21. Which of the following statements is false in respect of formal contract?

- (a) It should be in a particular form
- (b) It should be in writing and witnessed
- (c) It should have consideration
- (d) Consideration is not necessary

22. Under the English law which of the following are recognized as formal contract

- (a) Recognizance
- (b) Contract under seal
- (c) Parol contracts
- (d) Both (a) and (b)

23. Acceptance is to offer what a lighted match is to a train of gun powder. This statement indicates

- (a) Once an offer is accepted it results in binding contract
- (b) Communication of acceptance is necessary
- (c) Acceptance must be absolute & unqualified
- (d) All the above

24. An offer comes to an end by

- (a) acceptance
- (b) communication
- (c) revocation
- (d) none of the above

25. Death or insanity of the proposer will revoke the proposal



- (a) Automatically
- (b) If the fact of the death or insanity is known to the offeree
- (c) The knowledge of death or insanity is irrelevant
- (d) Only if the family members of the proposer informs the offeree

26. An offer stands revoked

- (a) If the fact of the death or insanity is known to offeree
- (b) By counter offer
- (c) By rejection of offer
- (d) All the above

27. Cross offer do not constitute a contract because

- (a) there is no acceptance
- (b) there is implied acceptance
- (c) crossing implies cancellation
- (d) it amounts to counter offer

28. A proposal can be revoked

- (a) Before posting of letter of acceptance by the acceptor
- (b) Before receiving the letter of acceptance by the offeror
- (c) After posting the letter of acceptance by the offeree
- (d) Cannot be revoked

29. Communication of acceptance is not necessary

- (a) By performance of conditions of the offer by offeree
- (b) By acceptance of consideration by the offeree
- (c) By acceptance of benefit/service by the offeree
- (d) All the above

30. A counter offer proposing different terms and conditions

- (a) Amounts to acceptance of the offer
- (b) Amount to rejection of the offer
- (c) Results in making of the provisional contract
- (d) Both (b) & (c)

31. Which of the following statements is false?

- (a) A response to invitation to treat lead to an agreement
- (b) A valid offer must be communicated
- (c) Supplying information is not an offer
- (d) A request for tenders is an invitation to treat

32. When the promisee does not accept the offer of performance, the promisor is not responsible for non- performance

- (a) True
- (b) False
- (c) Both(a)&(b)
- (d) None of the above

33. For an acceptance to be valid, it must be

- (a) Partial & qualified
- (b) Absolute & unqualified
- (c) Partial & unqualified
- (d) Absolute & qualified

34. Acceptance takes place as against the proposer, when

- (a) When the letter of acceptance is posted by the acceptor



- (b) When the letter of acceptance is received by the proposer
- (c) When the offeree, writes the letter of acceptance, but doesn't post it
- (d) All the above

35. An advertisement for sale goods by auction

- (a) Amounts to an invitation to offer
- (b) Amounts to an offer to hold such sale
- (c) Amounts to an implied offer
- (d) Amount to a general offer

36. A contract is formed when the acceptor

- (a) has done something to signify his intention
- (b) makes his mind to do so
- (c) reads the offer
- (d) all the above

37. If the offeree does not accept the offer according to the mode prescribed, then

- (a) The offeror may accept or reject such acceptance
- (b) The offer lapses automatically
- (c) It is a counter offer
- (d) Offeree commits a breach of contract

38. Communication of offer is complete when

- (a) The letter is posted to the offeree
- (b) The letter is received by the offeree
- (c) The offer is accepted by the person to whom it is made
- (d) It comes to the knowledge of the offeror that the letter has been received by the offeree

39. Acceptance takes place when and where the message is received

- (a) True
- (b) False
- (c) Incomplete information
- (d) None of the above

40. Mental acceptance is

- (a) No acceptance at all
- (b) Valid
- (c) Binding promise
- (d) None of the above

41. A bid at an auction sale is

- (a) An implied offer to buy
- (b) An express offer to buy
- (c) An Invitation to offer to buy
- (d) An invitation to come to bid

42. General offers open for world at large can be accepted by

- (a) Any person in the world
- (b) Any person within the country
- (c) Any person who complies with the conditions of the offer
- (d) Any person who reads the advertisement

43. The communication of an acceptance is complete as against the acceptor

- (a) When it is posted by him
- (b) When it is put in the course of transmission
- (c) When it comes to the knowledge of the proposer
- (d) None of these

44. If the communication is made by an unauthorised person, it does not result in a/an



- (a) Contract (b) Agreement (c) Offer (d) Consideration

45. Which section, of Indian Contract Act defines "performance of the conditions of a proposal is an acceptance of the proposal"?

- (a) Section 6 (b) Section 7 (c) Section 8 (d) Section 9

46. Which section of Law of Contract defines, "A proposal may be revoked at anytime, before the communication of its acceptance is complete as against the proposer, but not afterwards."

- (a) Section 5 (b) Section 4 (c) Section 6 (d) Section 7

47. According to Indian Contract Act, a promise is

- (a) A communication of intention to do something
(b) A proposal which has been accepted
(c) A gentleman's word to do something
(d) A statement on oath

48. When parties enter into a contract on telephone the contract becomes complete at the place where acceptance is heard by the proposer. This has been provided

- (a) In no section of Indian Contract Act but so decided by the Supreme Court
(b) In section - 2 (c) In section - 3 (d) In section - 4

49. A promisee is

- (a) A person who makes a promise
(b) A person who monitors the statement of intentions of two parties
(c) A person to whom the promise is made
(d) None of these

50. Which of the following is an invitation for offer?

- (a) A tender to supply goods at a certain time (b) A request for a loan
(c) Bids in an auction sale (d) A catalogue of goods for sale

51. Which of the following is an offer?

- (a) The mere quotation of terms by trader
(b) The quotation of the lowest price in answer to enquiry
(c) Advertisement for sale or auction of goods
(d) Bids in an auction sale

52. Acceptance in ignorance of the offer is

- (a) Valid (b) Invalid (c) Void (d) Voidable

53. An offer or its acceptance or both may be made

- (a) By words (b) By conduct (c) Either by words or by conduct
(d) None of these



- 54. Express offers and acceptances may be proved by the agreement between the parties but implied offers can be proved only by**
- (a) The words (b) The conduct
(c) Circumstantial evidence (d) Both (b)&(c)
- 55. Voidable contract is one**
- (a) Which is lawful
(b) Which is invalid
(c) Which is valid so long it is not avoided by the party entitled to do so
(d) None of these
- 56. The difference between an advertisement for sale and a proposal is**
- (a) No difference at all
(b) That a proposal becomes a promise as soon as the party to whom it is made accepts it but an advertisement does not
(c) Every case will be viewed according to the circumstances
(d) None of these
- 57. In a Book depot a catalogue of book enlisting the price of each book and specifying the place where the particular book is available is**
- (a) An invitation to offer (b) An offer
(c) An invitation to visit the book shop (d) None of these
- 58. A catalogue of the goods of a company for sale a series of offers but only an invitation for offers.**
- (a) Is (b) Is not (c) In normal cases is (d) In normal cases is not
- 59. Is the Is promise defined under clausethe same thing as an agreement which is defined under clause (e) of section 2**
- (a) (a) (b) (b) (c) (c) (d) (d)
- 60. Where the offers were invited for purchasing the trees and the offer was accepted on agreement as contemplated by Section 2 comes into existence.**
- (a) (b) (b) (c) (c) (d) (d) (d) (e)
- 61. An offer does not lapse if the**
- (a) offeror dies before acceptance
(b) The offeree dies before acceptance
(c) Acceptance is made by the offeree in ignorance of the death of the offeror
(d) Acceptance is made by the offeree with knowledge of the death of the offeror
- 62. A telephonic acceptance is complete when the offer is**
- (a) spoken into the telephone
(b) heard but not understood by the offeror
(c) heard and understood by the offeror



(d) is received, heard and understood by some person in the offeror's house

63. Which one of the following statements about a valid acceptance of an offer is NOT correct?

- (a) Acceptance should be absolute and unqualified
- (b) Acceptance should be in the prescribed manner
- (c) Acceptance should be made while the offer is subsisting
- (d) Acceptance should in all cases be through registered post

64. Consider the following statements:

1. There is no difference between the English law and Indian law with regard to acceptance through post.
2. Both under the English law and the Indian law a contract is concluded when the letter of acceptance is posted
3. Under the Indian law when the letter of acceptance is posted it is complete only as against the proposer.
4. It is complete only as against the proposer.

Which of the above statements is/are correct?

- (a) 1 and 2 (b) 2 alone (c) 3 alone (d) None

65. For binding contract both the parties to the contract must

- (a) Agree with each other
- (b) Stipulate their individual offer and consideration
- (c) Agree upon the same thing in the same sense
- (d) Put the offer and counter offers

66. The communication of acceptance through telephone is regarded as complete when

- (a) Acceptance is spoken on phone
- (b) Acceptance comes to the knowledge of party proposing
- (c) Acceptance is put in course of transmission
- (d) Acceptor has done whatever is required to be done by him

67. The term consensus ad-idem means

- (a) Formation of the contract
- (b) Reaching of agreement
- (c) Meeting of minds
- (d) General consensus

68. Which one of the following has the correct sequence?

- (a) Offer, acceptance, contract, consideration
- (b) Offer, acceptance, consideration, contract
- (c) Contract, acceptance, consideration, offer
- (d) Offer, consideration, acceptance, contract

69. When a person signifies his assent to a proposal made to him to refrain from doing something, the resultant transaction is known as

- (a) Promise (b) Agreement (c) Contract (d) Understanding



70. Which one of the following statements is true?

- (a) Offer and acceptance are revocable
- (b) Offer and acceptance are irrevocable
- (c) An offer can be revoked but acceptance cannot
- (d) An offer cannot be revoked but acceptance can be

71. Which one of the following is not the legal requirement of valid offer?

- (a) It must be communicated to the offeree
- (b) It must express offeror' final willingness
- (c) It must be made to a specific person and not to public at large
- (d) It must be made with a view to obtain offeree' assent

72. Sections 4 and 5 of the Indian Contract Act provide for communication of offer and acceptance and revocation thereof. In this relation, which one of the following is not correct?

- (a) Communication of offer is complete when it reaches the offeree
- (b) Revocation of acceptance is complete when acceptance is posted in favour of the proposer
- (c) A Proposal may by revoked any time before communication of acceptance
- (d) Acceptance may be revoked any time before communication of acceptance

73. What can a catalogue of books, listing price of each book and specifying the place where the listed books are available be termed as?

- (a) An offer
- (b) An obligation to sell book
- (c) An invitation to offer
- (d) A promise to make available the books at the listed

74. Consider the following statements:

1. General offer require the communication of acceptance.
2. All contracts are agreements
3. All agreements are contracts
4. All illegal agreements are void agreements

Which of the statements given above are correct?

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

75. Consideration is

- (a) Doing or abstaining from doing something at the desire of promisor
- (b) Essential condition of a contract
- (c) Element of exchange in a contract
- (d) All the above

76. A valid consideration includes,

- (a) Executed or executory consideration
- (b) Past consideration
- (c) Inadequate consideration
- (d) All of these



77. A valid consideration has the following essential elements :

- (a) It must move at the desire of the promisor
- (b) Consideration may be supplied by the promisee or any other person
- (c) Consideration may be past, present or future
- (d) All the above

78. Consideration contemplated under Indian law is,

- (a) Past consideration only
- (b) Present consideration only
- (c) Past, present or future consideration
- (d) Monetary consideration only

79. An agreement without consideration is void under

- (a) Sec. 25(1) of the Contract Act
- (b) Sec. 25(3) of the Contract Act
- (c) Sec. 25(2) of the Contract Act
- (d) None of the above clauses in sec. 25

80. The exceptions to the doctrine of Privity of Contract include

- (a) Family settlements
- (b) Agreements
- (c) Assignment
- (d) All of these

81. A stranger to a consideration can file a suit and such a stranger is

- (a) A person who is not a party to the contract
- (b) A person who has given consideration
- (c) A person who has not given consideration
- (d) A person who is a party to the contract but not given consideration

82. Consideration may be given by

- (a) The promisor
- (b) The promisee
- (c) Any other person
- (d) The promisee or any other person

83. Which are of the following statements is false.

- (a) Promisee or any other person may supply consideration
- (b) Past consideration is good Consideration
- (c) Consideration need not be adequate
- (d) Consideration should be adequate

84. The exceptions to the rule A stranger to a contract cannot sue are

- (a) Beneficiaries in the case of trust
- (b) Family settlement
- (c) Assignment of contract
- (d) All the above

85. A stranger to a consideration

- (a) Can file a suit
- (b) Cannot file a suit
- (c) Can file, only with consent of court
- (d) Is similar to stranger to a contract

86. A stranger to a contract

- (a) Can file a suit
- (b) Can file a suit only with permission of court
- (c) Can file a suit, if contract is in writing



(d) Cannot file a suit

87. The inadequacy of consideration may be taken into account by the court:

- (a) In determining the question whether the consent of the promisor was freely given
- (b) Always in all the cases
- (c) When the parties complain
- (d) When the promisor has not performed his promise

88. Consideration in a contract:

- (a) May be present only
- (b) May be past and present only
- (c) May be futuristic only
- (d) May be past, present and future

89. Which one of the following is the correct statement:

- (a) Stranger to consideration contract sue
- (b) Stranger to consideration can file a suit
- (c) Stranger to consideration is stranger to contract
- (d) Stranger to consideration cannot be party to the contract

90. Consider the following statements: Consideration is

- 1. A motive for any promise
- 2. A price for any promise
- 3. Only a moral obligation
- 4. Something of value in the eye of law

Of these statements

- (a) 1, 2 and 3 are correct
- (b) 1 and 4 are correct
- (c) 2 and 4 are correct
- (d) 3 alone is correct

91. Past consideration means

- (a) Money received in the past without making even a proposal
- (b) The price which is more than the promisee's expectation
- (c) A past act done before the promise is made
- (d) None of the above

92. An agreement without consideration is void except in case of compensation for

- (a) Voluntary services rendered
- (b) Voluntary services rendered at the request of the other party to the agreement
- (c) Voluntary services rendered at the request of third person
- (d) Reimbursement of expenses incurred

93. A contract without consideration is void. There are exceptions. Which one of the following exceptions is correct?

- (a) Promise to pay disputed debt
- (b) Promise to pay time-barred
- (c) Promise to pay time-barred debt which is in writing and signed
- (d) Promise to pay any debt

94. Which one of the following statements is incorrect with regard to nature of a valid consideration?



- (a) Consideration must be adequate (b) Consideration must be real
(c) Consideration may be past, present or future
(d) Consideration must move at the desire of promisor

95. Which one of the following statements about the doctrine of privity is correct?

- (a) Only a party to the contract can sue (b) Stranger to a contract cannot sue
(c) A contract is enforceable by a stranger (d) Both (a)&(b)

96. In India, a person who is stranger to the consideration

- (a) Can sue on the contract, if he is a party (b) Cannot sue the contract
(c) Depends on the parties (d) Depends on the circumstances

97. Which of the following statement regarding past consideration is incorrect

- (a) It is done before making the agreement (b) A past consideration is valid
(c) It is done with the making of the contract (d) None of the above

98. Past consideration means

- (a) Consideration and promise should move together
(b) Executed consideration
(c) Consideration is provided prior to the making of the contract
(d) Invalid consideration

99. An executed consideration is

- (a) An act of mutual exchange of promises
(b) An act done in the expectation of a proposal
(c) An act done by one party as part of his promise
(d) Past consideration

100. An executory consideration is

- (a) A consideration promised by the executive of a company
(b) A promise yet to be performed by both the parties
(c) Liability is outstanding on both the sides
(d) Both (b)&(c)

101. In Indian Law consideration must have been done at the desire of the promisor, if it is done at the instance of a third party or without the desire of the promisor, it is

- (a) Consideration (b) Not consideration (c) Offer (d) Promise

102. Where consideration is illegal or physically impossible, uncertain or ambiguous, it shall not be

- (a) Transferable by law (b) Unenforceable by law
(c) Enforceable by law (d) None of these

103. A promise to pay a time-barred debt must be

- (a) Oral (b) Written and signed (c) Registered (d) Written and registered

104. Which of the following statement is incorrect



- (a) Consideration must be real
(b) Performance of existing obligation is no consideration
(c) Forbearance to sue is good a consideration
(d) Agreements without consideration are always void
- 105. A promise to pay a time barred debt is enforceable, if some conditions are fulfilled. Which of the following conditions is not required?**
(a) It must be signed by the promisor (b) It must be definite and express
(c) It must be in writing (d) It must be registered
- 106. A man cannot acquire rights under a contract to which he is not a party. Which one of the following is not an exception to this rule**
(a) Beneficiaries under trust (b) Family settlement (c) Gift (d) Assignment of rights
- 107. Which of the following is not competent to contract?**
(a) A minor (b) A person of unsound mind
(c) A person who has been disqualified from contracting by some law
(d) All of these
- 108. Two persons have the capacity to contract**
(a) If both are not of unsound mind
(b) If none is disqualified from contracting by any law to which he is subject
(c) If both have attained the age of maturity
(d) All of the above
- 109. For necessities supplied to a minor**
(a) he is personally liable (b) his parents are liable
(c) his estate is liable (d) the contract is valid under Indian law
- 110. A married woman is under no disability as regards capacity to contract**
(a) under English law only (b) under Indian law only
(c) under both English and Indian laws (d) for luxury only
- 111. A minor enters into agreement representing himself to be a major consider the following statement:**
1. Minor commits fraud if the other party does not have personal knowledge of his age
2. Such agreement is not enforceable
3. The doctrine of estoppel does not apply in minor's case
4. Other party is entitled to get back the benefit passed to minor, if innocent about his age
Which of the statements given above are correct?
(a) 1,3 and 4 (b) 2 and 3 (c) 1,2 and 4 (d) 2 and 4
- 112. M is a minor, B, the borrower, approaches M for a loan on the basis of a mortgage of the house owned by B. Hence, M advances the money and B executed a mortgage in favour of M, a minor. In these circumstances**



- (a) The mortgage is not enforceable by M, because he is a minor
- (b) The mortgage is enforceable but only when he attains majority
- (c) The mortgage is enforceable by M even though he is minor
- (d) None of these

113. When a minor has been supplied with necessities in credit

- (a) The minor is not liable
- (b) The minor's property is liable
- (c) The minor is personally liable
- (d) The minor is liable at his option

114. A supplies B, a lunatic, with necessities suitable to his condition in life. A is:

- (a) Not entitled to be reimbursed from B's property
- (b) Entitled to be reimbursed from B's property
- (c) Personally liable
- (d) None of these

115. When a person incurred expenses of ₹ 5000 for the necessities supplied to the minor, he can recover the said amount from the

- (a) Minor personally
- (b) Property of the minor
- (c) Property of his guardian
- (d) None of these

116. The principle of Estoppel cannot be applied against a minor since

- (a) He has no sound mind
- (b) He has no privilege to cheat persons by making any representation
- (c) He may be induced by dishonest traders to declare in writing that he is a major at the time of entering into a contract
- (d) He has not attained the age of maturity

117. A convict when undergoing imprisonment

- (a) Is capable of entering into a contract
- (b) Is incapable of entering into a contract
- (c) Is capable of entering into a contract, if it is permitted by the court
- (d) None of these

118. Is a pronote executed in favour of a minor good in law?

- (a) Yes
- (b) No
- (c) Not in normal cases
- (d) Depends

119. Is purchase of property for the benefit of a minor by his maternal uncle valid?

- (a) Yes
- (b) No
- (c) Depends
- (d) None of the above

120. The test of..... is whether the person is capable of understanding the business concerned and its implications.

- (a) Incapacity to contract
- (b) Minority
- (c) Soundness of mind
- (d) Reciprocity

121.is the most extreme form of mental unsoundness?



- (a) Lunacy (b) Incapacity (c) Minority (d) Idiocy

122. The onus of proving insanity is on the

- (a) Prosecutor (b) State (c) Accused (d) On person who alleges it

123. Which of the following statement is incorrect:

- (a) A pardanashin woman can enter into contract if it is established that the contract was explained to her and she understood it
(b) A pardanashin woman is open to undue influence and therefore cannot enter into contract
(c) A pardanashin woman is of unsound mind
(d) A pardanashin woman may be married or single

124. M, a minor, misrepresenting that he is a major induces Z to enter into a contract

- (a) M is liable on the contract (b) M is not liable on the contract
(c) M is liable to pay compensation
(d) M is liable to the contract on attaining majority

125. Select the false statement

- (a) There can be no ratification of contract entered by a minor during his minority, even after becoming major
(b) Restitution of benefit is allowed in case of a minor
(c) Agreement with a minor is void ab initio
(d) The rule of estoppel cannot be applied against a minor

126. Which of the following types of persons are not disqualified from contracting?

- (a) Foreign Sovereigns (b) Alien Enemy (c) Convicts (d) None

127. Which of the following persons do not fall under the category of persons of unsound mind?

- (a) Drunkards (b) Lunatics (c) Idiots (d) Blind Person

128. Unlawfully detaining or threatening to detain any property, to the prejudice of any person making him to enter into an agreement amounts to:

- (a) Threat (b) Coercion (c) Undue influence (d) Misappropriation

129. An agreement made under mistake of fact, by both the parties, forming the essential subject matter of the agreement is:

- (a) Void (b) Voidable (c) Valid (d) Unenforceable

130. "Threatening to commit certain acts forbidden by Indian Penal Code" is associated with which one of the following?

- (a) Misrepresentation (b) Fraud (c) Coercion (d) Unenforceable

131. "Active concealment of fact" is associated with which one of the following?



- (a) Misrepresentation (b) Undue influence (c) Fraud (d) Mistake
- 132. Lending money to a borrower, at high rate of interest, when the money market is tight renders the agreement of loan:**
(a) Void (b) Valid (c) Voidable (d) Illegal
- 133. With regard to the contractual capacity of a person of unsound mind, which one of the following statements is most appropriate?**
(a) A person of unsound mind can never enter into a contract
(b) A person of unsound mind can enter into a contract
(c) A person who is usually of unsound mind can contract when he is, at the time of entering into a contract, of sound mind
(d) A person who is occasionally of unsound mind can contract although at the time of making the contract, he is of unsound mind
- 134. While obtaining the consent of the promisee, keeping silence by the promisor when he has a duty to speak about the material facts, amounts to consent obtained by:**
(a) Coercion (b) Misrepresentation (c) Mistake (d) Fraud
- 135. 'A' threatened to commit suicide if his wife did not execute a sale deed in favour of this brother. The wife executed the sale deed. This transaction is:**
(a) Voidable due to under influence (b) Voidable due to coercion
(c) Void being immoral (d) Void being forbidden by law
- 136. A contract which is vitiated by undue influence is declared as which one of the following by the Indian Contract Act?**
(a) Invalid (b) Void (c) Illegal (d) Voidable
- 137. Consider the following:**
1. Active concealment of fact.
2. Promise made without any intention of performing it.
3. Breach of duty which gains an advantage to the person committing it.
4. Inducing mistake as to subject matter. Which of the above amount to fraud?
(a) 1 and 2 (b) 2 and 3 (c) 3 and 4 (d) 1 and 4
- 138. Factors vitiating consent are:**
(a) Coercion, Undue influence (b) Fraud, Misrepresentation
(c) Mistake (d) All of these
- 139. Misrepresentation means:**
(a) Unwarranted assertion (b) Any breach of duty without an intent to deceive
(c) Innocent mistake (d) All the above
- 140. If a party stands in a fiduciary relation to the other:**
(a) He cannot dominate (b) He can dominate the will of another



- (c) The trust should be maintained (d) None of these

141. A person is deemed to be in a position to dominate the will of another if he:

- (a) Holds real or apparent authority (b) Stands in a fiduciary relationship
(c) Both (a) and (b) (d) Either (a) or (b)

142. If both the parties to a contract believe in the existence of a subject, which infact does not exist, the agreement would be

- (a) Unenforceable (b) Void (c) Voidable (d) None of these

143. For a valid contract

- (a) Both the parties should have given their consent (b) The consent should be free
(c) Both (a) and (b) (d) Either (a) or (b)

144. When both the parties to an agreement are under a mistake as to a matter of fact essential to an agreement, the agreement is:

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

145. In Indian Contract Act, the term consensus ad idem means

- (a) Parties under a mistake (b) Parties under the free consent
(c) Parties agreeing upon the same thing in same sense (d) None of these

146. To prove undue influence, the plaintiff has to prove that:

- (a) The relations, subsisting between the parties are such that the defendant was in a position to dominate the will of the plaintiff
(b) The defendant used that position to obtain an unfair advantage from the plaintiff
(c) Both (a) and (b) (d) None of these

147. The validity of contract is not affected by

- (a) Mistake of fact (b) Mistake of Indian law (c) Misrepresentation (d) Fraud

148. Unlawful agreements comprise

- (a) Illegal agreements
(b) Immoral agreements only
(c) Agreements opposed to public policy only
(d) All the agreements mentioned above

149. The exceptions to the rule that an agreement in restraint of trade is void, are contained in

- (a) The provisions of Sec. 27 of the Contract Act only
(b) Secs. 11, 36, 54 and 55 of the partnership Act only
(c) Both the above mentioned provisions of the Contract Act & Partnership Act respectively
(d) None of the above provisions



150. A contract to trade with an enemy is

- (a) an immoral agreement (b) a valid agreement
(c) an agreement opposed to public policy (d) an enforceable agreement

151. An agreement will be unlawful if:

- (a) There is no consent (b) Consent is not free
(c) There is no consideration (d) The object is forbidden by law

152. In a wagering agreement:

- (a) Both the parties win (b) Both the parties loose
(c) None of the parties wins (d) One party wins and the other loses

153. Which one of the following statements is correct?

- (a) Void agreements are always illegal (b) Illegal agreements are voidable
(c) Illegal agreement can be ratified by the parties
(d) Illegal agreements are always void

154. Which one of the following is not a wagering agreement?

- (a) A lottery
(b) An agreement to buy a ticket for a lottery
(c) Commercial transaction, the intention of which is not to deliver the goods but only to pay the difference in price
(d) A contract of insurance

155. A wagering agreement in India is declared by the Contract Act as

- (a) Illegal and void (b) Void but not illegal
(c) Voidable at the option of the aggrieved party (d) Immoral

156. Which one of the following is a void agreement?

- (a) An agreement without consideration (b) An agreement in restraint of marriage
(c) An agreement in restraint of trade (d) All of the above

157. An agreement which restricts a person's freedom to marry or to marry any person of his choice is against public policy and is

- (a) Lawful (b) Illegal (c) Void (d) None of these

158. An agreement of service under which an employee agrees that he will serve a particular employer for a certain duration and that he will not serve anybody else during that period, is

- (a) Valid agreement (b) Void agreement (c) Illegal agreement (d) None of these

159. If the seller agrees to supply all the goods produced by him to a certain buyer and to nobody else, and the buyer also, in turn undertakes to accept the whole of the quantity, the agreement is

- (a) Void agreement (b) Solus agreement (c) Illegal agreement (d) None of these



160. M, who is a dealer in mustard oil only, agrees to sell to N '500 litres of oil'. This agreement is
- (a) Valid contract (b) Void contract
(c) Voidable contract (d) Unenforceable contract
161. A and B agree that A shall pay ₹ 1000 for which B shall afterwards deliver to an either rice or smuggled opium. In this case
- (a) The first agreement is void and the second voidable
(b) The first is voidable and the second is void
(c) The first is valid and the second is void
(d) The first is void and the second is valid
162. A agrees to sell to B a 'hundred tons of oil'. There is nothing whatever to show what kind of oil was intended. The agreement is
- (a) Valid (b) Void for uncertainty (c) Voidable (d) Illegal
163. A agrees to sell to B 'my white horse for ₹500 or ₹ 1,000'. There is nothing to show which of the two prices was to be given. The agreement is
- (a) Valid (b) Void (c) Voidable (d) Unenforceable
164. Agreements between a husband and wife living in friendly environment are
- (a) Valid contracts (b) A void contracts
(c) Domestic arrangements (d) Voidable contract
165. A promised to marry none else than Miss B and in default to pay her a sum of ₹ 1,000. Subsequently A married Miss C and Miss B sued for recovery of ₹ 1,000. The contract is
- (a) Valid (b) Void (c) Voidable (d) Enforceable
166. A promises B to pay ₹ 100 if it rains on Monday, and B promises A to pay ₹ 100 if it does not rain on Monday. This agreement is
- (a) a valid agreement (b) avoidable agreement
(c) a wagering agreement (d) an illegal agreement
167. P engages B to kill C and borrows ₹ 100 from D to pay B. If D is aware of the purpose of the loan, the transaction is
- (a) Valid (b) Void (c) Illegal (d) Not enforceable
168. A leaves a firm doing a particular business in Mumbai. He agrees with the other partners of the firm not to start a similar business as that of the firm in and around Mumbai for 3 years. This agreement is
- (a) Valid (b) Immoral (c) Illegal (d) Void
169. A, while filling up the insurance application form, states his age as 25 believing it to be true. His actual age was 27. The Life Insurance Corporation issued a policy in his favour



- charging a lower premium than what it should have charged if the actual age had been given. This is a case of
(a) Fraud (b) Misrepresentation (c) Undue influence (d) Mistake of fact
170. B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Owing to A's ignorance B is enabled to buy the estate at a low- price. The contract is
(a) Valid (b) Void (c) Voidable at the option of A (d) Invalid
171. B let a cabin on hire to P a prostitute, knowing that it would be used for immoral purposes. The agreement is
(a) Enforceable (b) Valid (c) Voidable (d) Void
172. A enters into an agreement with B who has robbed A of ₹10,000 to drop prosecution against him (B) in consideration of B's returning ₹ 8,000. Afterwards B refused to pay. A can get from B
(a) ₹ 8,000 (b) ₹ 100 (c) Nothing (d) ₹ 10,000 plus damages
173. A agrees with B to discover treasure by magic for a consideration of ₹ 500. This is
(a) A void agreement (b) A void contract
(c) A valid agreement (d) An unenforceable contract
174. X, a tailor, employed Y as his assistant under an agreement that Y, on termination of his employment shall not start the business of a tailor. This restraint is
(a) Void (b) Valid (c) Illegal (d) Voidable
175. X leaves a firm doing a particular business in Delhi. He agrees with other partners of the firm not to start a similar business as that of the firm in Delhi for 2 year. This agreement is
(a) Void (b) Valid (c) Voidable at X's option (d) Invalid
176. X promises to supply Y one tola of gold brought from the sun. This is
(a) a valid contract (b) an illegal contract
(c) a void agreement (d) a voidable agreement
177. A promises B not to carry on a similar business as that of B if B pays him a certain amount. B pays the money but A continues to carry on the business. B can
(a) Do nothing (b) Compel A to stop the business
(c) Get him imprisoned for fraud (d) Sue A for damages
178. A purchases B's business of selling neckties in Delhi. A can restrain B from
(a) Doing the business of selling neckties again in his life
(b) Doing any business in Delhi
(c) Doing the business of selling neckties in Delhi for a limited period
(d) None of the above



179. A promised to marry B and none else and promised her to pay a sum of ₹5000 in addition to what he gets from the other party if he marries someone else. A marries C and gets ₹ 10,000 from C. B can get from A
- (a) ₹ 15,000 (b) ₹ 10,000 (c) Nothing (d) ₹ 15,000 plus damages
180. A promised B to obtain an employment for him in a public office. B promised to pay ₹2,000 to A for this. B gets a job through A but refuses to pay the money. A can
- (a) Challenge B's appointment on the ground of non-payment of money
(b) Sue B for ₹2,000
(c) Do nothing
(d) Do both given at (a) and (b) above
181. A, a Hindu already married with a living wife B, enters into a marriage agreement with a widow of 30 years of age. This agreement is
- (a) Void, because of being opposed to public policy
(b) Valid and can be enforced by either party
(c) Voidable, because A has obtained B's consent by exercising undue influence against her
(d) Void, because of being forbidden by law
182. Rajeev entered into a contract with Lata to marry her on a fixed date. However, before the marriage date. Rajeev went mad. With reference to the Indian Contract Act which is the valid response?
- (a) Lata can't marry till Rajeev dies
(b) The executors of Rajeev can enforce the contract against Lata
(c) The contract becomes void
(d) All the statements are correct
183. A and B agree to deal in smuggled goods and share the profits. A refuses to give B's share of profit. In this case:
- (a) B can enforce the agreement in the court. (b) B can only claim damages.
(c) B has no remedy as the contract is illegal.
(d) B can enforce the contact or claim damages
184. A and B agree that law of limitation shall not apply to them. A debt becomes time barred and A refuses to pay the amount. Can B recover the amount under the terms of the agreement?
- (a) yes, the agreement between them is valid and enforceable.
(b) yes, the agreement is not opposed to public policy.
(c) no, the agreement is a voidable agreement I and can be avoided by A.
(d) no, the agreement falls under section 23 and hence void
185. A borrows ₹ 5,000 from B to purchase a revolver to shoot C. Can B recover his loan of ₹ 5,000.
- (a) yes, the agreement between them is valid and enforceable.



- (b) yes, the agreement is not opposed to public policy.
- (c) no, the agreement is a voidable agreement and can be avoided by A.
- (d) no, the agreement falls under section 23 and hence void

186. A borrows from B ₹ 500 to bet with C. Can B recover the amount of his loan?

- (a) yes, the agreement between them is collateral to a wagering agreement and hence enforceable
- (b) yes, the agreement is not opposed to public policy
- (c) no, the agreement is a voidable agreement and can be avoided by A
- (d) no, the agreement is wagering agreement and falls under section 23 and hence void

187. A paid ₹500 to a Government servant to get him a contract for the canteen. The Government servant could not get the contract. Can A recover ₹500 paid by him to the Government servant?

- (a) yes, the agreement between them is valid and enforceable
- (b) yes, the agreement is not opposed to public policy
- (c) no, the agreement is a voidable agreement and can be avoided by A
- (d) no, the agreement is void

188. A person contracted to deliver a part of a specific crop of potatoes. The potatoes were destroyed by blight though no fault of the party. The contract is

- (a) Valid
- (b) Voidable
- (c) Void due to frustration of contract
- (d) Illegal

189. A contracts to sing for B at a concert for ₹ 1,000 which are paid in advance. A is too ill to sing. Which of the following options is correct?

- (a) A is bound to make compensation
- (b) A is not bound to make compensation to B for the loss of the profit which B would have made if A had been able to sing, but must refund to B ₹ 1,000 paid in advance
- (c) A is not liable to refund to B ₹ 1,000 paid in advance
- (d) A is liable for loss of profit as well as for refund

190. A contractor entered into an agreement with Government to construct a godown and received advance payments for the same. He did not complete the work and the Government terminated the contract.

- (a) The Government can claim damages
- (b) The Government under sec. 65 could recover the amount advanced to the contractor
- (c) The Government cannot claim damages
- (d) Both (a)&(b)

191. A and B agree to deal in smuggled goods and share the profits. A refuses to give B's share of profit. In this case:

- (a) B can enforce the agreement in the court
- (b) B can only claim damages



- (c) B has no remedy as the contract is illegal
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- (a) Yes, the agreement between them is valid and enforceable
- (b) No, the agreement is opposed to public policy
- (c) No, the agreement is a voidable agreement and can be avoided by A
- (d) No, the agreement falls under section 23 and hence illegal

193. A borrows ₹ 5,000 from B to purchase a revolver to shoot C. Can B recover his loan of ₹ 5,000, assuming that B knows the purpose of the loan.

- (a) yes, the agreement between them is valid and enforceable
- (b) no, the agreement is opposed to public policy
- (c) no, the agreement is a voidable agreement and can be avoided by A
- (d) no, the agreement falls under section 23 and hence illegal

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- (b) no, the agreement is opposed to public policy
- (c) no, the agreement is a voidable agreement and can be avoided by A
- (d) no, the agreement falls under section 23 and hence illegal

196. Which of the following is a contingent contract:

- (a) A promises to pay B if he repairs his scooter
- (b) A promises to pay B ₹ 10,000 if his scooter is stolen
- (c) A promises to sell his car if his wife permits
- (d) A promises to buy a car if his employer approves it

197. A contract of life insurance, the performance of which depends upon a future event falls under the category of

- (a) Contract of Indemnity
- (b) Contract of Guarantee
- (c) Contingent Contract
- (d) Special type of Contract

198. Which one of the following is not a characteristic of a contingent contract?



- (a) Performance depends upon a future event
- (b) The event must be uncertain
- (c) The event must be collateral to the contract
- (d) There must be reciprocal promises

199. Which one of the following is not an essential feature of a wagering agreement?

- (a) Insurable interest
- (b) Uncertain event
- (c) Mutual chances of gain or loss
- (d) Neither party to have control over the event

200. Which of the following types of contracts are generally termed uberrimae fidei contracts?

- 1. Insurance contracts.
- 2. Contract for purchase of car.
- 3. Partnership contracts.
- 4. Quasi-contract.

Select the correct answer using the code given below:

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

201. A makes a contract with B to buy his house for ₹ 50,000 if he is able to secure to bank loan for that amount. The contract is

- (a) Void for vagueness
- (b) Wagering contract
- (c) Contingent contract
- (d) Voidable contract

202. Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time become

- (a) Void, if before the time fixed, such event becomes impossible
- (b) Valid, if before the time fixed, such event becomes impossible
- (c) Voidable, if before the time fixed, the promisor becomes lunatic
- (d) Illegal, if before the time fixed, the promisor dies

203. Which of the following statements is true in connection with the contingent contract:

- (a) The collateral event is contingent
- (b) The collateral event may be certain or uncertain
- (c) The contingency event may be the mere will of the promisor
- (d) The main event should be contingent

204. Which of the following statement is false in connection with the contingent contract:

- (a) The event must be collateral
- (b) The event must be uncertain
- (c) The event should not be mere will of the promisor
- (d) None of the above

205. The contingent contract dependent on the happening of the future uncertain event can be enforced when such event:

- (a) Happens
- (b) Does not happen
- (c) Does not become a impossible
- (d) Both (a)&(c)

206. Contract contingent upon the happening of a future uncertain event becomes void.

- (a) If the event becomes impossible
- (b) If the event happens



- (c) If the event does not happen (d) None of the above

207. Contracts contingent upon the non-happening of the future uncertain event becomes void when such event:-

- (a) Happen (b) Does not happen
(c) The event becomes impossible (d) None of the above

208. Contract contingent upon the non-happening of the future uncertain event becomes enforce able

- (a) When the happening of that event becomes impossible and not before
(b) When the happening of that event becomes possible and not before
(c) When the event happens (d) None of the above

209. A promises to pay B a sum of money if a certain ship does not return within a year. The ship is sunk within a year. The contract is

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

210. Contingent contract to do or not to do anything, if an impossible event happens are:-

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

211. Contingent contract dependent on the non-happening of the event within a fixed time can be enforced, if the event:-

- (a) Does not happen within the fixed time
(b) Before the time fixed such event becomes impossible
(c) Both (a) & (b) (d) None of the above

212. In a contingent contract which event is contingent

- (a) Main event (b) Collateral event (c) Both(a)&(b) (d) None of the above

213. Under section 70 of the Indian Contract Act, 1872, if a person who enjoys the benefit of any other person's work, the beneficiary must pay to the benefactor for the services rendered, provided the intention of the benefactor was :

- (a) Gratuitous (b) Non-gratuitous (c) To create legal relations (d) None of these

214. A finder of goods can:

- (a) file a suit to recover his expenses (b) sell the goods if he likes
(c) can sue for a reward, if any (d) None of the above

215. Quasi-contracts or implied contracts are exceptional kinds of contracts by which:

- (a) One party is bound to pay money in consideration of something done or suffered by the other party
(b) No contractual relation exists between the parties
(c) No contract has been made by the parties
(d) All of these



216. A gives a recognizance binding him in a penalty of ₹500 to appear in the court on a certain day. He forfeits his recognizance. He is:

- (a) Liable to pay the whole penalty (b) Is not liable to pay the penalty
(c) Is liable to pay partially (d) None of these

217. Which one of the following conditions must be satisfied for making claim under 'Necessaries supplied to a person incapable of contracting?'

- (a) The articles supplied should be necessaries
(b) The articles supplied should be necessaries at the time of sale and not delivery
(c) Necessaries must have been supplied gratuitously out of mere kindness
(d) Necessaries should be supplied only to person in competent to contract

218. Who is liable for necessaries supplied to a minor?

- (a) The guardian of the minor (b) The minor (c) His property (d) None of the above

219. The term 'quasi-contracts' is:

- (a) Defined by section 68 of the Indian Contract Act
(b) Named 'implied in fact contract' by Section 69 of the Indian Contract Act
(c) Found as 'unjust' enrichment' is Section 70 only of the Indian Contract Act
(d) Conspicuous by its absence in the Indian Contract Act

220. Which of the following statement is true in connection with Quasi-contract.

- (a) It is imposed by law
(b) A Quasi-contract is a revoking contract
(c) Damages cannot be claimed for breach of Quasi-contractual right.
(d) It arises out of an agreement

221. Which of the following statements regarding Quasi-contracts is incorrect

- (a) It resembles a contract (b) It is imposed by law
(c) It is based on the doctrine of unjust enrichment (d) It is voluntarily created

222. Which of the following transactions cannot be described as Quasi-contracts

- (a) Claims of necessaries supplied to incompetent person
(b) Right to recover money paid for another person
(c) Right to claim money if given under coercion or mistake
(d) Right to claim money if given under fraud or misrepresentation

223. Quasi-contracts are:

- (a) not contracts in the real sense of the word
(b) relations which create certain obligations resembling those created by a contract
(c) implied contracts (d) unenforceable contracts

224. A finder can sell the goods if:

- (a) the goods are ascertained. (b) the goods are un- ascertained,
(c) the goods are valuable, (d) the goods are perishable



225. Mr. Kamal was levied Sales Tax on his forward transactions in bullion, which he paid. The levy of this tax was declared ultra vires. Mr. Kamal demanded refund on the amount of Sales Tax on the ground that payment was under a mistake of law. Which of the following is correct?

- (a) Mr. Kamal will not succeed as once the payment is made to government it cannot be refunded
- (b) Mr. Kamal will not succeed as his forward transaction of bullion attracted sales tax at that time
- (c) Mr. Kamal will succeed
- (d) Mr. Kamal will not succeed as mistake of law is not good defence

226. An insurance company paid money by mistake on a policy which had lapsed. Though the company was not ignorant of the fact of the lapse, this was overlooked at the time of payment. Can the company recover the amount?

- (a) The company cannot recover the amount
- (b) The company can recover the amount
- (c) The company once paid the money is estopped to demand back by virtue of 'Doctrine of Estoppel'
- (d) The company can revive the lapsed policy and thus regularize the payment

227. Where a party to a contract fails to perform at or before a specified time and it was the intention of the parties that time should be of the essence

- (a) The contract becomes voidable
- (b) The contract does not become voidable but the aggrieved party is entitled to compensation
- (c) The contract becomes void
- (d) None of these

228. Reciprocal promises include

- (a) Mutual and independent promises
- (b) Mutual and dependent promises
- (c) Mutual and concurrent promises
- (d) All of these

229. A contracts with B to construct a building for a fixed price, B supplying the necessary timber. This reciprocal promise is

- (a) Mutual and Independent
- (b) Mutual and Dependent
- (c) Mutual and Concurrent
- (d) None of the above

230. A contract of personal nature can be performed by

- (a) The promisor, (b) The agent, (c) The legal representative, (d) None of the above.

231. Liability of the joint promisor is

- (a) Joint
- (b) Several
- (c) Joint and several
- (d) None of the above

232. Where the order of performance is not fixed the contract will be performed as per

- (a) The wish of the promisor
- (b) The wish of the promisee
- (c) The wish of both the parties
- (d) The nature of transactions



233. If neither the debtor nor the creditor appropriates the payment, the payment will be appropriated:

- (a) As per the desire of the promisor, (b) As per the desire of the promisee,
(c) In order of time, (d) None of the above.

234. Agreement by way of wager are

- (a) Valid and enforceable by law (b) Void
(c) Voidable at the option of party (d) Illegal

235. Which one of the following is correct about the essentials of a valid tender?

- (a) The tender must be unconditional
(b) The tender must be made at proper time and place
(c) The promisee must be given an opportunity to ascertain that the goods are according to the contract
(d) All of the above are correct

236. A, B and C jointly promise to pay D ₹ 3,000. D may compel

- (a) A, B and C jointly to pay him ₹ 3,000 (b) A to pay him ₹ 3,000
(c) A or B or C to pay him ₹ 3,000
(d) A, B and C jointly and separately to pay ₹ 3,000

237. A contract stands discharged :

- (a) By performance of the contract (b) By breach of the contract
(c) By agreement and novation (d) All of these

238. Where by the contract, a promisor is to perform his promise without application by the promise and no time for performance is specified the engagement must be performed within a rea-sonable time. The question "What is a reason able time" is in each particular case is a :

- (a) A question of fact (b) A question of law
(c) A question of general custom (d) All of these

239. When time is not the essence of contract:

- (a) It is expected that the promisor would perform the contract within the time
(b) It must be performed within a reasonable time
(c) The promisor would perform the contract within the stipulated time
(d) None of these

240. Each party to a contract is bound to perform his part of the obligation. After the parties have made due performance of the contract comes to an end. In such a case the contract is said to be dis-charged :

- (a) By breach of contract (b) By impossibility of performance
(c) By agreement and novation (d) By performance of contract



241. A, a singer enters into a contract with B, the manager of a theatre to sing at his theatre two nights in every week during the next two months and B engages to pay her ₹100 for each night's performance. On the sixth night, A willfully absents herself from the theatre.
- (a) B is at liberty to put an end to the contract (b) B cannot put an end to the contract
(c) The contract is left at the liberty of A (d) None of these
242. If a contract is based on personal skill or confidence of parties, the death of a party in such a case:
- (a) Puts an end to the contract
(b) Does not put an end to the contract
(c) The representatives of the deceased can be made liable to perform such a contract
(d) None of these
243. Are rights under a contract assignable?
- (a) Yes (b) No (c) Depends (d) Any of the above
244. Are rights under a contract assignable unless the contract is personal in its nature?
- (a) Yes (b) No (c) Not in normal cases (d) Depends
245. Is offer of performance discharge of obligation?
- (a) Yes (b) No (c) Depends (d) Any of the above
246. In case of conflict of jurisdiction of the courts, the incidence of a contract shall be governed by the law of the place where the :
- (a) Contract is made (b) Contract is performed
(c) Acceptor resides (d) Proposer resides
247. If the performance of contract becomes impossible because the subject matter of contract has ceased to exist then :
- (a) Both the parties are liable (b) Neither party is liable
(c) Only offerer is liable (d) Only acceptor is liable
248. A, B and C jointly promise to pay ₹ 3,000 to X. In the absence of express agreement to the contrary, X can bring an action against:
- (a) Any two of them only (b) All of them together
(c) Any one of them, at this choice (d) Either (b) or (c)
249. Which of the following is not a exception to the rule that the agreement in restraint of trade is void :
- (a) A partner can be prevented for carrying on similar business
(b) An outgoing partner can be restraint on carrying similar business
(c) On dissolution of firm, partners may agree not to carry on similar business
(d) The seller of goodwill of business can be prevented for carrying any kind of business at any place



250. A doctor teaching in a medical college prevented from doing private practice, such a restriction is:
- (a) Valid (b) Partial lawful (c) Unlawful (d) Partial Unlawful
251. Agreement is restraint of trade is void. The restraint mentioned here is :
- (a) Partial (b) Total (c) (a) & (b) (d) None of these
252. A valid tender or offer of performance must be:
- (a) made at proper time (b) made at proper place
(c) made to the proper person (d) all the above
253. A contracts to sing for B for a consideration of ₹ 5,000 which amount is paid in advance. A becomes unwell and is not able to perform. B suffers a loss of ₹ 10,000. A is liable to pay B
- (a) ₹ 15,000 (b) ₹ 10,000 (c) ₹ 5,000 (d) Nothing
254. A contractor had to supply the army charpoys in certain quantities by instalments. He failed to supply the requisite number and even after that breach the instalment of charpoys was received by army authorities. Meanwhile, the work orders were however cancelled. The orders cancelling the work order were
- (a) Valid (b) Void (c) Without authority (d) Contractor could claim damages
255. By a contract B agreed to take A's son in adoption and A to give B enjoyment of certain pro-perties. A refused to give his son in adoption, he made the adoption impossible by performing the marriage of the boy.
- (a) The contract is enforceable since A did not give his son in adoption
(b) B should be given the property as per the agreement
(c) As adoption was not complete, the contract is not enforceable
(d) A's action can be considered legitimate as a parent
256. A promises to paint a picture for B by a certain day at a certain price. A dies before the promised day. Which one of the following is the correct legal position
- (a) The agreement becomes unlawful
(b) The agreement lapses for both the parties
(c) The agreement becomes voidable at the option of A's legal representative
(d) None of these
257. A promises to deliver goods at B's warehouse on the 1st January. On that day, A brings the goods to B's warehouse but after the usual hour for closing it and they are not received. Which one of the following is correct?
- (a) A has not kept his promise
(b) A kept his promise as time was not specified
(c) A performs his duty as the time is not the essence of the contract
(d) All of these



- 258. 'A' promises to paint a picture for 'B' by a certain day at a certain price. 'A' dies before that day. In this situation, the contract**
- (a) Cannot be enforced as it becomes void due to personal incapacity
 - (b) Will be performed by the legal representative of 'A', who is bound by law to perform it
 - (c) Can be performed by an agent of 'A'
 - (d) Can be performed by a third person on behalf 'A'
- 259. X, Y and Z are under a joint promise to pay ₹ 8,000 to W. Z is unable to pay anything and Y is compelled to pay the entire amount. What amount can Y successfully claim from X?**
- (a) Y can claim ₹ 8,000 from X by way of contribution
 - (b) Y can claim ₹ 4,000 from X by way of contribution
 - (c) Y can claim ₹ 6,000 from X by way of contribution
 - (d) Y cannot claim anything from X
- 260. A borrowed ₹ 1,000 from B. A dies before paying back the loan. Can B recover the amount from A's legal representative?**
- (a) No, B cannot recover
 - (b) Yes, subject to any estate left by him
 - (c) B can recover even if no estate is left
 - (d) None of the above
- 261. An anticipatory repudiation has the effect of**
- (a) Automatically putting an end to the contract
 - (b) Putting an end to the contract only on acceptance of the repudiation by the other party
 - (c) Putting an end to the contract only on failure to perform when performance is due
 - (d) Not putting an end to the contract
- 262. The law regarding Novation, i.e., where a new contract is substituted in place of the old one by means of an agreement between the parties to a contract or between them and a third party, is contained in**
- (a) Sec. 62
 - (b) Sec. 52
 - (c) Sec. 64
 - (d) Sec. 65
- 263. In case of contractual obligations where the promisor dies before performance:**
- (a) The legal representatives of the promisor must perform the promise irrespective of the promise
 - (b) The legal representatives of the promisor must perform the promise provided it is not one dependent on the personal qualifications of the promisor
 - (c) The legal representatives need not perform the promise
 - (d) The legal representative is not liable to pay damages for non-performance of the promise
- 264. Ordinary damages will be awarded in cases where**
- (a) The loss naturally flows from the breach of contract
 - (b) The loss is remotely connected with the breach of contract
 - (c) The loss is unusual and arises out of special circumstances peculiar to the contract
 - (d) None of these



265. Where the parties to a contract have agreed that a certain sum of money would be paid in case of breach of contract, the Court will ensure that

- (a) The exact amount mentioned in the contract is paid to the injured party
- (b) An amount not exceeding the stipulated amount is awarded
- (c) Reasonable compensation not exceeding the amount stipulated is awarded
- (d) A sum exceeding the amount stipulated is awarded

266. A, dealing in baby foods, sends samples by train for being exhibited at a Consumer Product's Show which fact was made known to the rail way company. The goods reached the destination after the show was over. A sued the railway company for damages. A will be entitled to

- (a) Ordinary damages
- (b) No damages
- (c) Exemplary damages
- (d) Special damages

TRUE OR FALSE STATEMENTS:

1. The Indian Contract Act, 1872 does not cover all types of contract.
2. An agreement & contract are one and same thing.
3. All contracts are agreements
4. All kinds of obligations between the parties form part of the contract.
5. Communication of offer is complete when the offeror writes the letter but does not post it.
6. Performance of conditions of a proposal is an acceptance to the proposal. Is it true or not.
7. An acceptance will be revoked at any time before the communication of acceptance is complete against the acceptor, but not afterwards. Is it true or not.
8. An offer need not be made to a ascertained person.
9. When the mode of acceptance is prescribed in the proposal then acceptance can be given in usual or reasonable mode.
10. A price list hanging outside the shop is meant for an offer by the owner of the shop.
11. A contract is said to be executed when it has been performed wholly on two sides.
12. Is telegraphing lowest price on request a mere invitation for an offer?
13. Can there be an acceptance of an offer which has not come to the knowledge of the offeree?
14. Can the mere writing on bills of medical practitioners that interest at one per cent, per mensem be charged, amount to a contract?
15. Can a mere mental resolve to make an offer unless such intention is also communicated to the other party has agreed to make such statement?
16. In the absence of any express or implied directions from the offeror to the contrary, can an offer be accepted by a letter?
17. Should both offer and acceptance be absolute, unqualified and unconditional?
18. Can a letter of acceptance to a Proposer, not correctly addressed, although posted, be said to have been "Put in a course of transaction" to him?
19. After a transaction has ripened into a contract, does it require the consent of both parties to revoke or modify it?

20. P renders some service to D at D's desire. After a month D promises to compensate P for the service rendered to him, it is a future consideration.
21. A person is competent to contract if he is a graduate.
22. If consent is not free due to coercion, undue influence, fraud, and misrepresentation then the agreement is void.
23. If the agreement is made by obtaining consent by doing an act forbidden by the Indian Penal Code, the agreement would be caused by fraud.
24. A buys an article thinking that it is worth ₹ 100 when in fact it is worth only ₹ 50. There has been no misrepresentation on the part of the seller. The contract is unenforceable.
25. Where a person is in a position to dominate the will of another person and uses that position to obtain an unfair advantage it is called undue influence.
26. When a person, who is in a dominating position, obtains the consent of the other by exercising his influence on the other, the consent is said to be obtained by undue influence.
27. An officer enters into a contract with his subordinate to sell his (subordinate's) house at a lower price than the market price. The subordinate may challenge the contract on the ground of Mistake.
28. A master asks his servant to sell his cycle to him at less than the market price. This contract can be avoided by the servant on grounds of mistake.
29. A, intending to deceive B, falsely represents that five hundred mounds of Indigo are made annually at A's factory and, thereby, induces B to buy the factory. The contract is voidable.
30. If A sells, by auction to B a horse which A knows to be unsound and A says nothing to B about the horse's unsoundness, this amounts to fraud.
31. Silence is fraud when silence is, in itself equivalent to speech.

Match the following:

1. Match the following:

	Column I		Column II
1.	Offeror	A)	Section 2 (d)
2.	Consideration	B)	Simple Contracts
3.	Consensus – ad - Idem	C)	From the very beginning it is void
4.	Agreement	D)	Identity of minds
5.	Contract	E)	The person who makes the proposal
6.	Parol Contracts	F)	Section 13
7.	Void-ab-initio	G)	General Offer
8.	Consent	H)	Section 14
		I)	Offer + Acceptance
		J)	Formal Contracts
		K)	Agreement + Enforceability at Law

2. Match the following:



	Column I		Column II
1.	Cross Offer	A)	Conduct of the parties
2.	All Contracts are	B)	Sec. 2(b)
3.	Executed Contracts	C)	Promisor
4.	Specific Offer	D)	Identical offers made in ignorance of each other.
5.	Express Contracts	E)	Sec. 10
6.	Acceptance	F)	Sec. 2(C)
7.	Promisor and Promisee	G)	Parties performs their obligations
8.	Valid contracts	H)	Revocation of offer
		I)	Agreements
		J)	Offer made to an individual or group
		K)	Enforceable at law

3. Match the following:

	Column I		Column II
1.	Agreement	A)	Identity of minds
2.	Contract	B)	Which ceases to be enforceable by law
3.	Consensus-ad-idem	C)	Offer + Acceptance
4.	Essentials of valid contract	D)	Section 2(g)
5.	Void contract	E)	An offer made to a specific person
6.	Simple contracts	F)	Agreement + Enforceability at law.
7.	Void Agreement	G)	Section 2(b)
8.	General Offer	H)	Section 10
9.	Advertisement for sale in newspaper	I)	Parol Contracts
10.	Acceptance.	J)	Invitation to offer

4. Match the following:

	Column I		Column II
1.	Revocation	A)	Unsound mind person
2.	Modes of Revocation	B)	Quid proquo
3.	Drunkard	C)	Section 71
4.	Coercion	D)	Means taking back
5.	Consideration	E)	Substitution of a new contract
6.	Quantum Meruit	F)	Section 6
7.	Finder of Lost Goods	G)	Invitation to offer
8.	Novation	H)	Threat or force
9.	Goods displayed in a shop with a price tag	I)	Open offer
10.	Standing offer	J)	As much as is earned



5. Match the following:

	Column I		Column II
1.	Promisor & Promisee	A)	Ignorance of law is no excuse.
2.	Minor	B)	Temporary incapacity
3.	Quasi Contracts	C)	Section 2(c)
4.	Remission	D)	Undue Influence
5.	Ignorantia Juris Non Excusat	E)	Mohiri Bibi V Dharmodas Gosh
6.	Mental Coercion	F)	Obligation is imposed by law
7.	Lunatic	G)	Section 2(j)
8.	Legal relationship	H)	Agreement to receive less than what is due
9.	Agreement with minor is void	I)	Balfour v Balfour
10.	Void contract	J)	Sec. 3 of Indian Majority Act, 1875

6. Match the following:

	Column I		Column II
1.	Error in Causa	A)	Absence of consent
2.	Quasi Contracts	B)	Contingent contract
3.	Guarantee Contract	C)	Void
4.	Error in Consensus	D)	Sec. 32 to 36
5.	Wagering Agreement	E)	Sec. 56
6.	Insurance Contract	F)	Absence of free consent
7.	Contingent Contracts	G)	Sec. 68-72
8.	Damages	H)	Hadley Vs. Baxendale
9.	Rule of Impossibility	I)	Three parties
10.	Law of Damages	J)	Sec. 73 of Indian Contracts Act

ANSWERS

Define Just in a sentence:

1. Wagering Contract

Ans: A wager is a contingent contract. It is an agreement to pay money or money's worth on the happening or non-happening of a specified uncertain event. A wagering contract is void. (Sec. 30)

2. Contingent Contract

Ans: Section 31 of the Indian Contract Act, defines a contingent contract as "a contract to do or not to do something if some event, collateral to such contract, does or does not happen".

3. Actual Breach of Contract

Ans: It is also called "Present breach". Actual breach of contract occurs:

(a) when during the performance of the contract, or



(b) at the time of performance is due, one party fails or refuses or neglects to perform his obligation under the contract.

Actual breach discharges the contract. It gives right to the aggrieved party to sue the party at fault for damages for breach of contract.

4. Anticipatory Breach of Contract

Ans: It is also called "constructive breach". Anticipatory breach of contract occurs:

(a) When a party repudiates his liability under the contract before the time for performance is due, or

(b) When a party by his own act conduct disables himself from performing the contract.

Anticipatory breach of contract does not by itself discharge the contract.

5. Void Agreement

Ans: An agreement not enforceable by law is said to be void. A void agreement has no legal consequences. Void Agreement is void at the time of agreement itself.

6. Void Contract

Ans: A Contract which ceases to be enforceable by law becomes void when it ceases to be enforceable. Void agreement and void contract are different. Void agreement is void ab-initio but void contract is a valid contract at the beginning but subsequently becomes void when it ceases to be enforceable.

7. Offer

Ans: A proposal is defined as, 'when one person signifies to another his willingness to do or abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.' [Sec 2(a)]

8. Acceptance

Ans: Section 2(b) defines acceptance as "When the person to whom an offer is made signifies his assent thereto the proposal is said to be accepted, A proposal when accepted becomes a promise."

9. Consideration

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

10. Nudum Pactum

Ans: It means an agreement without consideration is void according to Sec. 25 of Indian Contracts Act, 1872. It is also called as naked contract.

11. Consensus-ad-idem

Ans: It means identity of minds. The minds of both the parties to the contract must be same in the same sense on the same subject matter.



12. Ignorantia Juris non excusat

Ans: Ignorance of the law of the country is no excuse. Every citizen is expected to know the law of the country. Hence, if there is a mistake as to law of the country, the contract cannot be avoided.

Fill in the blanks:

1.	Contract	2.	English law
3.	Promise	4.	Voidable
5.	Void	6.	Express
7.	Two	8.	Simple
9.	Express	10.	Counter
11.	Offer	12.	Lapses
13.	Absolute & Unqualified	14.	Valid
15.	Revoked	16.	Offers
17.	Invitation to Offer	18.	Promise
19.	Offer	20.	2(a)
21.	Cross Offers	22.	Implied
23.	Section 6	24.	An invitation to offer
25.	Invitation to offer	26.	Promisor
27.	Proposal	28.	Express
29.	Implied	30.	Standing Offer (or) Open (or) Continuing offer
31.	Unenforceable	32.	An invitation to make an offer.
33.	Original	34.	Letter
35.	Invitation to offer	36.	Invitation to Proposal
37.	Dunlop Pneumatic Tyre Co. Ltd. Vs. Selfridge & Co.	38.	Void
39.	2(d)	40.	Something in return
41.	Promisor	42.	Written and signed
43.	Nudum Pactum	44.	Pollock
45.	Consideration	46.	Void
47.	Executed	48.	Sec. 25
49.	Nudum Pactum	50.	Section 11
51.	18 years	52.	Void
53.	Valid	54.	Void ab initio
55.	Valid	56.	Mohori Bibee Vs. Dharmodas Gosh
57.	Void	58.	Void
59.	Valid	60.	Section. 15
61.	Coercion	62.	Fraud
63.	Section 15	64.	Voidable



65.	Fraud	66.	Misrepresentation
67.	Absence of free consent	68.	Absence of consent
69.	3	70.	Void
71.	Void	72.	Section 30
73.	Void	74.	Void
75.	Void	76.	Void
77.	Contingent	78.	Void
79.	Section 26	80.	Agreement in restraint of legal proceedings
81.	Section 29	82.	Void
83.	Void ab initio	84.	Void
85.	Contingent	86.	Void
87.	Uncertain	88.	71
89.	Quasi Contracts	90.	2/3 rd
91.	As much as earned	92.	72
93.	Quasi	94.	Unjust enrichment
95.	Conduct of Parties	96.	71
97.	Of utmost good faith	98.	62 – 67
99.	Tender	100.	Discharged
101.	Void	102.	Doctrine of Frustration
103.	Remission	104.	Consensus
105.	Novation	106.	Alteration
107.	Section 73		

Multiple Choice Questions:

1.	D	2.	C	3.	B	4.	B	5.	A
6.	C	7.	B	8.	A	9.	D	10.	A
11.	A	12.	D	13.	A	14.	C	15.	C
16.	A	17.	B	18.	C	19.	A	20.	D
21.	C	22.	D	23.	A	24.	C	25.	B
26.	D	27.	A	28.	A	29.	D	30.	B
31.	A	32.	A	33.	B	34.	A	35.	A
36.	A	37.	A	38.	B	39.	A	40.	A
41.	B	42.	C	43.	C	44.	B	45.	C
46.	A	47.	B	48.	A	49.	C	50.	D
51.	D	52.	B	53.	C	54.	D	55.	C
56.	B	57.	C	58.	B	59.	B	60.	C
61.	C	62.	C	63.	D	64.	C	65.	C
66.	B	67.	C	68.	B	69.	A	70.	C
71.	C	72.	D	73.	C	74.	A	75.	D
76.	D	77.	D	78.	C	79.	D	80.	D



81.	D	82.	D	83.	D	84.	D	85.	A
86.	D	87.	A	88.	D	89.	B	90.	C
91.	C	92.	A	93.	C	94.	A	95.	D
96.	A	97.	C	98.	C	99.	A	100.	D
101.	B	102.	C	103.	B	104.	D	105.	D
106.	C	107.	D	108.	D	109.	C	110.	C
111.	B	112.	C	113.	B	114.	B	115.	B
116.	D	117.	B	118.	A	119.	A	120.	C
121.	D	122.	D	123.	C	124.	B	125.	B
126.	D	127.	D	128.	B	129.	A	130.	C
131.	C	132.	B	133.	C	134.	D	135.	B
136.	D	137.	A	138.	D	139.	D	140.	B
141.	C	142.	B	143.	C	144.	A	145.	C
146.	C	147.	B	148.	D	149.	A	150.	C
151.	D	152.	D	153.	D	154.	D	155.	B
156.	D	157.	C	158.	A	159.	D	160.	A
161.	C	162.	B	163.	B	164.	C	165.	B
166.	C	167.	C	168.	D	169.	B	170.	C
171.	D	172.	C	173.	A	174.	A	175.	B
176.	C	177.	A	178.	C	179.	C	180.	C
181.	D	182.	C	183.	C	184.	D	185.	D
186.	D	187.	D	188.	C	189.	B	190.	D
191.	C	192.	D	193.	D	194.	D	195.	D
196.	B	197.	A	198.	D	199.	A	200.	A
201.	C	202.	B	203.	A	204.	D	205.	A
206.	A	207.	A	208.	A	209.	A	210.	B
211.	C	212.	B	213.	B	214.	C	215.	D
216.	A	217.	D	218.	C	219.	D	220.	A
221.	D	222.	D	223.	B	224.	D	225.	C
226.	B	227.	A	228.	D	229.	B	230.	A
231.	C	232.	D	233.	C	234.	B	235.	D
236.	D	237.	D	238.	D	239.	B	240.	D
241.	A	242.	A	243.	A	244.	A	245.	A
246.	A	247.	B	248.	B	249.	D	250.	A
251.	C	252.	D	253.	B	254.	B	255.	C
256.	B	257.	A	258.	A	259.	B	260.	B
261.	B	262.	A	263.	D	264.	A	265.	C
266.	D								

True or False Statements:

1.	True	2.	False	3.	True	4.	False	5.	False
6.	True	7.	True	8.	False	9.	False	10.	False



11.	True	12.	True	13.	False	14.	False	15.	False
16.	True	17.	False	18.	False	19.	True	20.	False
21.	False	22.	False	23.	False	24.	False	25.	True
26.	True	27.	False	28.	False	29.	True	30.	True
31.	True								

Match the statement under Column I with the appropriate statement under Column II:

1. Match the following:

- 1) E 2) A 3) D 4) I 5) K 6) B 7) C
8) F

2. Match the following:

- 1) D 2) I 3) G 4) J 5) A 6) B 7) C
8) K

3. Match the following:

- 1) C 2) F 3) A 4) H 5) B 6) I 7) D
8) E 9) J 10) G

4. Match the following:

- 1) D 2) F 3) A 4) H 5) B 6) J 7) C
8) E 9) G 10) I

5. Match the following:

- 1) C 2) J 3) F 4) H 5) A 6) D 7) B
8) I 9) E 10) G

6. Match the following:

- 1) F 2) G 3) I 4) A 5) C 6) B 7) D
8) J 9) E 10) H



Study Note – 2

SALE OF GOODS ACT, 1930

This Study Note includes:

- 2.1 Definition of Sale
- 2.2 Transfer of Ownership
- 2.3 Conditions and Warranties
- 2.4 Performance of the Contract of Sale
- 2.5 Rights of Unpaid Vendor
- 2.6 Auction Sales

2.1 The Sale of Goods Act, 1930 - Concepts and Definitions

Introduction:

Before the enactment of The Sale of Goods Act, 1930 the relating to sale and purchase of goods were regulated by the Indian Contract Act, 1872. In 1930, Sections 76 to 123 of the Indian Contract Act, 1872 were repealed and a separate Act called "The Indian Sale of Goods Act, 1930" was passed.

It came into force on 1st July, 1930. With effect from 22nd September, 1963 the word 'Indian' was also removed. Now the present Act is called 'The Sale of Goods Act, 1930. This act extends to the whole of India except the State of Jammu and Kashmir.

Basic Concepts:

Section 2 of the Act defines various terms used in the Act. They are:

1. **Buyer: [Sec. 2(1)]**
Buyer means a person who buys or agrees to buy goods.
2. **Seller: [Sec. 2(13)]**
Seller means a person who sells or agrees to sell goods.
3. **Delivery: [Sec. 2(2)]**
Delivery means voluntary transfer of possession from one person to another.
4. **Goods: [Sec. 2(7)]**
Goods means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.
5. **Document of Title to goods: [Sec. 2(4)]**
It includes bill of lading, dock warrant, warehouse keeper's certificate, wharfinger's certificate, railway receipt, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods.
6. **Future goods: [Sec. 2(6)]**
Future goods means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale.



7. Price: [Sec. 2(10)]

Price means the money consideration for a sale of goods.

8. Property: [Sec. 2(11)]

Property means the general property in goods and not merely a special property.

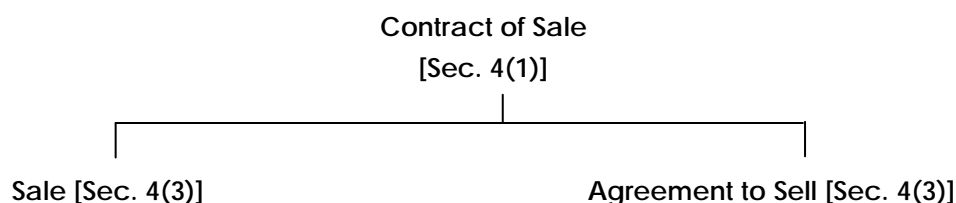
9. Specific Goods: [Sec. 2(14)]

It means goods identified and agreed upon at the time a contract of sale is made.

Definition of Contract of Sale :

“A contract of sale of goods is a contract where by the seller transfers or agrees to transfer the property in the goods to the buyer for a price” - **[Sec. 4(1)] of The Sale of Goods Act, 1930.**

Contract of Sale is a generic term which includes both sale as well as an agreement to sell:



“Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale” - **[Sec. 4(3)] of The Sale of Goods Act, 1930.**

“Where the property in the goods (legal ownership of goods) is to be transferred to the buyer at some future date or on the fulfillment of a certain conditions, the contract of sale is called an agreement to sell” - **[Sec. 4(3)] of The Sale of Goods Act, 1930.**

Agreement to sell is called as Conditional Sale.

“Where an agreement to sell provides that the ownership of the goods shall be transferred at some future date, it becomes sale when that date arrives. If the ownership is to be transferred on the fulfillment of some conditions the agreement to sell becomes a sale when those conditions are fulfilled” - **[Sec. 4(3)] of The Sale of Goods Act, 1930.**

An agreement to sell becomes a sale, when the time lapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Essential Elements of Contract of Sale:

Following are the essential elements of a valid contract of sale. They are:

1. Two parties. - Seller and Buyer
2. Subject matter. - Goods (Movable property)
3. Transfer of Property - Transfer of ownership rights i.e. absolute ownership (General Property)
4. Delivery - Immediate, Delivery in installments, Delivery at a future date.
5. Price - It means money consideration for sale of goods.
6. A contract of sale may be absolute or conditional.



7. Essential elements of a valid contract.

Differences between Sale and Agreement to Sell:

The following are the differences between Sale and Agreement to Sell:

	Sale	Agreement to Sell
1.	In case of sale the property transfers from seller to the buyer immediately.	The ownership of the goods is transferred to the buyer at some future date.
2.	It is an executed contract.	It is an executory contract.
3.	It creates right in rem.	It creates right in personam.
4.	The buyer is responsible for any loss or destruction of the goods even if the goods are in the possession of the seller.	The seller is responsible for any loss or destruction of goods even if the goods are in the possession of the buyer.
5.	The seller cannot resale the goods.	In this case, if the subsequent buyer takes in good faith and for consideration, he gets a good title. The original buyer may only sue the seller for damages.
6.	If goods are destroyed, the loss will be borne by the buyer even though they may be in possession of the seller.	The loss will be borne by the seller even though the goods may be in possession of the buyer.
7.	If the buyer becomes insolvent before payment is made, the seller has to deliver the goods to the official receiver unless he has lien on them.	Seller may refuse to deliver the goods to the official receiver.
8.	If the seller becomes insolvent after payment of price, the buyer can claim the goods from the official receiver.	The buyer cannot claim the goods. He can only claim rateable dividend for the amount paid by him.
9.	Sale is liable for sales tax.	Agreement to sell is not liable for sales tax. It is liable for sales tax when it ripens into sale.

Definition of Goods:

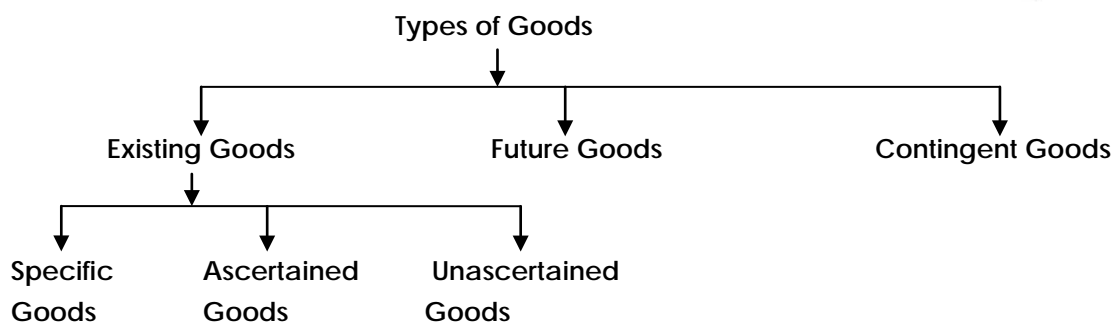
According to Section 2(7), "Goods means every kind of moveable property other than actionable claims and money; and includes stock and shares; growing crops, grass, trees and things attached to or forming part of the land which are agreed to be severed it before sale or under contract of sale".

Example: Where the trees were sold so that they were to be cut out and separated from land and taken away by the buyer. The contract was for sale of trees as moveable goods.

Types of Goods:

Goods which form the subject-matter of a contract of sale may be divided into three types namely:

1. Existing goods.
2. Future goods.
3. Contingent goods.



1. Existing goods:

Goods owned and possessed by the seller at the time of the making of the contract of sale are called existing goods. Sometimes the seller may be in possession but may not be the owner of the goods. **Example:** Mercantile Agent.

The existing goods can be further classified as under:

- (a) Specific goods.
- (b) Ascertained goods.
- (c) Unascertained goods.

(a) **Specific goods:**

"Specific goods" are those goods which are identified and agreed upon at the time of contract of sale is made. It is essential that the goods are identified and separated from the other goods.

Example: In the case of sale of one table out of 25 tables, goods shall be specific if the table is selected before the contract of sale is made.

(b) **Ascertained goods:**

Ascertained goods are identified after the contract of sale as per the terms decided.

(c) **Unascertained goods:**

When the goods are not separately identified or ascertained at the time of making a contract of sale, are known as unascertained goods. When the buyer does not select the goods for him from a lot of goods, but are defined or indicated only by description, we call them unascertained goods.

Example: Sale of 25 chairs for an office out of a lot of 200 such chairs of the same design and quality, the goods are unascertained till 25 particular chairs are selected. When the required 25 chairs are selected out of the lot, the goods are said to be ascertained goods for the contract of sale.

2. Future Goods:

It means goods to be manufactured or produced or acquired by the seller after making of the contract of sale. A contract to sell oil not yet pressed from seeds in his possession is a contract for the sale of future goods.

Example: X agrees to sell to Y all the apples which will be produced in his garden next year. This is an agreement for the sale of future goods.



3. Contingent Goods:

These are a type of future goods, the acquisition of which by the seller depends upon a contingency which may or may not happen. Goods which might be expected to come into existence, as

(a) goods to arrive (b) future crops (c) the eggs.

Such contracts give no right of action if the contingency does not happen.

Doctrine of Caveat Emptor

The term Caveat Emptor is a Latin word which means 'let buyer be aware'. This principle underlines the concept that it is for the buyer to satisfy himself that the goods which he is purchasing are of the quality required by him. It is a fundamental principle of law of sale of goods and implies that the seller is under no obligation to point out the defects in his own goods. The buyer must take care while purchasing the goods and if he makes a wrong selection he cannot blame the seller if the goods turn out to be defective or do not serve his purpose. This principle was applied in the case of Ward v Hobbs. However the doctrine of Caveat Emptor does not mean that the buyer must take a chance, it only means he must take care. However this rule is not without any exception. With the passage of time this doctrine has been considered to be too unreasonable to the buyers. Hence the law in section 16 recognized certain exception to the rule.

The doctrine is however subject to following exceptions as provided in section 16 of the Act.

- (i) Where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required and relied upon the skill and judgment of the seller and the goods are of description which it is the course of the seller's business to supply, there is an implied condition that the goods shall be reasonably fit for such purpose. Accordingly the seller cannot get any immunity on the ground of Caveat Emptor.
- (ii) Implied condition as to Merchantability where the goods are bought by description from the seller in goods of that description.
- (iii) Condition as to Wholesomeness in case of foodstuffs and other goods meant for human consumption.
- (iv) When the seller commits fraud.
- (v) When there is a usage of trade.

2.2 Transfer of Ownership

A Sale is defined as transfer of ownership of the goods from the seller to the buyer for a price. Therefore what is important in a transaction of sale is the transfer of the ownership. It is essential to determine the exact point of time at which the Property in the goods is transferred in favor of the buyer. The term Property in goods means the ownership of the goods. The term transfer of property means the transfer of ownership from seller to buyer so as to constitute the buyer the real owner of the goods. When the ownership of the goods is transferred to the buyer, he becomes the real owner of the goods and the seller ceases to be the owner from that point of time. This ultimately determines the various rights and liabilities of the buyers and sellers in respect of the goods sold. The Sections 18 to 25 of the Sale of Goods Act, determine when the property passes from the seller to the buyer.



Passing of Property

The primary rules for ascertaining when the property in goods passes from seller to buyer may be summarized as follows:

(A) Goods must be ascertained

As per section 18 in a contract for sale of unascertained goods, the property in the goods does not pass to the buyer unless and until the goods are ascertained.

Example: Under a contract B was entitled to cut teak trees of more than 12 inches girth. The stumps of trees after cutting had to be 3 inches high. It was held that property in the timber that was cut could pass to B when the trees were felled. Till the trees were felled, they were not ascertained.

(B) Intention of the parties for such transfer

As per section 19(2) in a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intended to be transferred. The intention of the parties is ascertained from the terms of the contract, the conduct of the parties and the circumstances of the case. When intention of the parties cannot be ascertained, rules contained in section 20-24 are required to be applied for ascertaining the time of transfer of property which are discussed hereunder :

(I) Specific goods

(i) Specific goods in a deliverable state

In an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed. (Sec 20). Goods are said to be in deliverable state when they are in such a state that the buyer would under the contract is bound to take delivery thereof.

Example: X selected some party wears in a retail show room. He agreed to take the delivery next day agree to pay next week. The party wears are destroyed by fire that took place same day. The property in goods has passed on to the buyer and he is liable to pay for it whether delivery is taken or not or paid or not.

(ii) Specific goods to be put into a deliverable state

Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof(sec 21).

Example: There was a contract for sale of timber from oak trees. The buyer marked out the selected parts of the tree. As per trade practice the seller was required to remove the rejected portion from the trees. But before he could do so, he was declared bankrupt. It was held that the property in goods has not passed on to the buyer so he cannot take away the timber. Until the seller had severed the rejected portion, the goods cannot be said to be in a deliverable conditions to enable transfer of property therein.

(iii) Specific goods in a deliverable state, when the seller has to do something thereto in order to ascertain price

If there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for



the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof. (sec 22)

Example : A makes a contract to sell 200 books to Q. The books are stored in racks and P has to select the titles and separate them before they can be delivered. If there is fire and books are destroyed the loss will be A's as ownership is yet to be transferred.

(II) Unascertained goods (sec 23)

Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made. In case of transfer of property from buyer to seller when the goods are unascertained, their **ascertainment** and **unconditional appropriation** to the contract are two pre-conditions. Ascertainment is the process by which the goods answering the description to the contract are identified and set apart. Ascertainment is the unilateral act of seller; appropriation involves selection of goods with the intention of using them in the performance of the contract and with the mutual consent of the seller and buyer.

Example: In a sale of 20 hogsheads of sugar out of a larger quantity, 4 were filled and taken away by the buyer. The remaining 16 hogheads were subsequently filled and the buyer was informed of the same. The buyer promised to take them away, but before he could do so, the goods were lost. Held the property had passed to the buyer at the time of the loss.

Delivery to carrier: Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer and does not reserve the right of disposal, he is deemed to have appropriated the goods for the purpose of the contract.

(III) Goods on approval or 'on sale or return' (Sec 24)

In order to push up the sales generally there is a practice of sending goods to the customer with the clear cut understanding that he has option to approve or return the goods within a given period. This type of sales is known as "approval on sale or return". In such cases the transaction does not culminate into sale until the goods are approved by the customer and the property in goods still remains with the seller.

When goods are delivered to the buyer on approval or on sale or return or other similar terms, the property therein passes to the buyer—

(a) When he signifies his approval or acceptance to the seller

Example: A sends 3 dozen of Silk Saris to B on approval on sale or return basis with an option to return the same within 21 days. B send a letter of approval of goods to A within 15 days. Sales has taken place after 15 days and the property in goods get transferred to B.

(b) When he does any other act adopting the transaction.

Example 1: A send 25 tons of cement to B on approval on sale or return basis, with the option to return the goods within 30 days receipt if not acceptable to him. B used the cement in his



project. Since B has appropriated the goods, the sale has crystallized, property in goods stands transferred to B.

Example 2: A send 20 bales of cotton to B on approval on sale or return basis. B has a choice to return the goods within 3 weeks. However, B instead of conveying his approval or rejection of the goods sold the same to C. Here also B by his act has signified his approval, the sale is complete and property in goods passes on to B.

(c) If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.

Example 1: A horse was delivered to B on the condition of sale or return within 8 days. The horse died within 8 days. It was held that the loss would fall on the seller as the property in goods has not passed on to the buyer. [Elphick v Barnes (1880)5cpd321]

Example 2: A delivered some jewellery to B on sale for cash only or return. Before B paid price, he pledged the jewellery with C. Held the pledge was not valid and A could recover jewellery from C.

Example 3: S Ltd agreed to sell a tractor to HC Municipality on the condition that if the latter was not satisfied, it could reject the tractor. The municipality used the tractor for a month and a half and then wanted to reject. Held a reasonable time to reject having elapsed, the property in the tractor had passed to the municipality and therefore it could not reject

Risk prima facie passes with property (Section 26)

Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.

Effect of Destruction of Goods [Sec 7]

Goods perishing before making of contract (Sec 7) – Where there is a contract for the sale of specific goods, the contract is void if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract.

Goods perishing before sale but after agreement to sell (Sec 8) – Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby void. Sec (7 & 8) are applicable only in case of specific goods and not uncertained/generic goods.

Example : 1 In Demby Humiltan & Co V Barden Engineering Works Ltd 1949 ALL ER 435, A contracted to purchase 30 tones of apple juice from B. Deliveries were to be made in weekly truckload. B crushed the apples and put the juice in casks for delivery. A delayed the taking of delivery as a result juice got deteriorated in quality. It was held that the property in goods has passed on to A. Accordingly the loss will be borne by A only.

Example : 2 B of Benaras writes C of Chennai to send him 50 pieces of wrist watches by post parcel. C sends the 50 pieces of wrist watches by parcel post with correct address of B.



However, the parcel was misplaced in the post and never reached B. This loss will be borne by B as the property in goods has passed on to the buyer the moment the parcel is delivered to the post office with correct address.

Example : 3 A of Delhi agreed to purchase 500 lts of Engine oil from B. As per the terms of agreement, delivery was to be made in special pouches of 500 ML supplied by A. While B was making filling 500 ml pouches for delivery to A, the store got fire as a result the entire quantity of Engine oil lying therein was lost in fire. As per section 26 the risk and property in the goods still remained with the seller and the entire loss will be borne by B the seller only.

It may further be noted that if the seller was aware of the destruction of goods and still enters into a contract. He is stopped from disputing the contract. In such case the buyer can sue him for breach of contractual obligations and claim damages.

Sale by person not the owner (or) Nemo dat qui habet

Where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by conduct precluded from denying the seller's authority to sell.

Generally the owner alone can transfer property in goods "Nemo dat qui habet" means that no one can give what he himself does not have. It means a non-owner cannot make valid transfer of property in goods. If the title of the seller is defective, the buyer's title will also be subject to same defect. If the seller has no title, the buyer does not acquire any title although he might have acted honestly and might have acquired the goods after due payment. This rule is to protect the real owner of the goods. Though this doctrine seeks to protect the interest of real owners, but in the interest of the trade and commerce there must be some safeguard available to a person who acquired such goods in good faith for value; accordingly the Act provides the **following exceptions** to this doctrine which seeks to protect the interest of bonafide buyers.

Sale by mercantile agent (Sec. 27)

Where a mercantile agent is with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorized by the owner of the goods to make the same, provided that the buyer's act is in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

Example: F the owner of a car, delivered it to H, a mercantile agent for sale at not less than ₹20,000. H sold the car for ₹ 15,000 to K who bought it in good faith and without notice of any fraud. H misappropriated the money. F sued to recover the car from K. Held as H was in possession of the Car with F's consent for the purpose of sale, K obtained a good title to the Car

Sale by one of joint owners (Sec. 28)

If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has



no authority to sell. Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are sanctioned.

Example: A B and C are three joint owner of a car which is with B with the consent of A and C. B wrongfully sold the car to D without any knowledge and authority of remaining partner. D in good faith purchased the car and paid the price there of after taking the delivery. The property in goods stand transferred to D despite that B is not the owner of the car.

Sale by person in possession under voidable contract (Sec. 29)

When the seller of goods has obtained possession thereof under a contract voidable under Section 19 or Section 19A of the Indian Contract Act, 1872, but the contract has not rescinded at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

Example: A purchased a mobile set from B by fraud. A has avoidable title to the mobile set at the option of B. Before B could rescind the contract, A sold the same to C who purchased it from A in good faith and without knowledge of fraud by A and paid for it. C had a good title to the goods.

Seller or buyer in possession after sale (Sec. 30)

Explanation (a): Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same.

Example: A sells his blackberry mobile to B. He promised to deliver the same after one week. However A instead of delivering to B sold it to C who purchased it from A in good faith and paid the price. C gets a good title to it.

Explanation (b): Where a person, having bought or agreed to buy goods, obtains with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have effect as if such lien or right did not exist.

Sale by estoppel (Sec. 27)

Where the owner by his conduct or omission, leads the buyer to believe that the seller has authority to sell, he is stopped from denying the fact afterwards. The buyer thus gets a better title than the seller.

Example: A tells B in the presence of C that A is agent of C. C maintains silence instead of denying it. Later if A sells C's goods to B, C cannot dispute B's title to the goods.

Sale by a finder of goods: Under section 169 of the Contract Act, if a finder of lost goods could not reasonably find the true owner or the true owner refuses to pay the lawful charges of the finder of lost goods, the finder of lost goods can sell the goods when the goods are



perishable in nature or when the lawful charges of the finder of lost goods amounts to 2/3rd of its value.

Sale by official receiver or assignee: In case of insolvency of any individual his official receiver or liquidator of a company can sell the goods and buyer thereof gets good title to it.

2.3 Conditions and Warranties

Definition:

- (a) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty. [Sec12 (1)]
- (b) A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to right to treat the contract as repudiated. [Sec 12(2)]
- (c) A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated. [Sec 12(3)]
- (d) Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract, a stipulation may be a condition though called warranty in a contract. [Sec 12(4)]

Distinction between a condition and a warranty

Sl. No.	Basis of Distinction	Condition	Warranty
1	Value	A Condition is a stipulation which is essential to the main purpose of the contract.	A Warranty is a stipulation which is collateral to the main purpose of the contract.
2	Rights	The aggrieved party can repudiate the contract of sale in case there is a breach of a condition	The aggrieved party can claim damages only in case of breach of a warranty.
3	Treatment	A breach of condition may be treated as a breach of a warranty. This would happen where the aggrieved party is contended with damages only.	A breach of a warranty cannot be treated as a breach of a condition.

Conditions and Warranties may be either expressed or implied:

When terms of contract expressly provide for them, they are known as express conditions or warranties. Implied conditions and warranties are incorporated in every contract of sale unless the circumstances show a different intention.

Types of Implied Conditions and Implied Warranties:

Implied Conditions: Implied conditions are those which the law incorporates into the contract unless the parties agree to the contrary. Sections 14 to 17 of the Sale of Goods Act lay down implied conditions. They are as follows:



1. Condition as to title
2. Condition as to description
3. Condition as to sample
4. Condition as to description and sample
5. Condition as to fitness or quality
6. Condition as to merchantability
7. Condition as to wholesomeness

1. Condition as to title:

In every contract of sale, there is an implied condition that the seller has the right to sell the goods. This condition is called "condition as to title". If a person sells goods without having title to it, the buyer is entitled to reject the goods and can recover the purchase price from the seller.

2. Condition as to description:

Where goods are sold by description, there is an implied condition that the goods shall correspond with the description. If they are not, the buyer may reject them or accept them and claim damages.

Example:

A wants to sell his type-writer. He says to B an intending buyer who has not seen the machine, that it is a brand new machine. B agrees to purchase it. On delivery B finds that the machine is old and repaired. B can repudiate the contract and return the machine to A and claim damages.

3. Condition as to sample:

Where goods are sold by sample, there is an implied condition:

- a) that the bulk of the goods shall correspond with the sample in quality.
- b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, and
- c) that the goods shall be free from latent defects. Defects which are not discoverable on reasonable examination.

4. Condition as to description and sample:

Where the goods are sold by sample as well as by description, there is an implied condition that the goods shall correspond both with the sample and with the description. If the goods supplied correspond only with the sample and not with the description or vice versa, the buyer is entitled to reject the goods.

Example: A seller undertakes to supply 100 tons of Java sugar warranted to be equal to the sample. The sugar when supplied corresponds to the sample but is not Java sugar. The buyer can repudiate the contract.

5. Condition as to fitness or quality:

As a general rule in a contract of sale, there is no implied condition as to quality, or fitness of the article for any particular purpose. It is the buyer's duty to select the goods of his



requirement. If subsequently the goods are found unsuitable for his purpose, the seller will not be responsible.

But there is implied condition as to quality or fitness of goods for the purpose of the buyer under the following conditions:

- (a) Where the buyer has made known to the seller the particular purpose for which he needs the goods.
- (b) The buyer should rely on the skill and judgement of the seller.
- (c) Where the consent of buyer was obtained by the seller by fraud or misrepresentation.

6. Conditions as to merchantability:

Merchantability means “acceptability in the market”. In a contract of sale, there is an implied condition that the goods purchased are of merchantable quality. A watch that will not keep time and a pen that will not write cannot be regarded as merchantable.

7. Condition as to wholesomeness:

This condition is implied only in a contract of sale of eatables and provisions. In such cases, the goods supplied must not only answer to description and be merchantable but also be wholesome. In other words, the goods must be free from any defect which makes them unfit for human consumption.

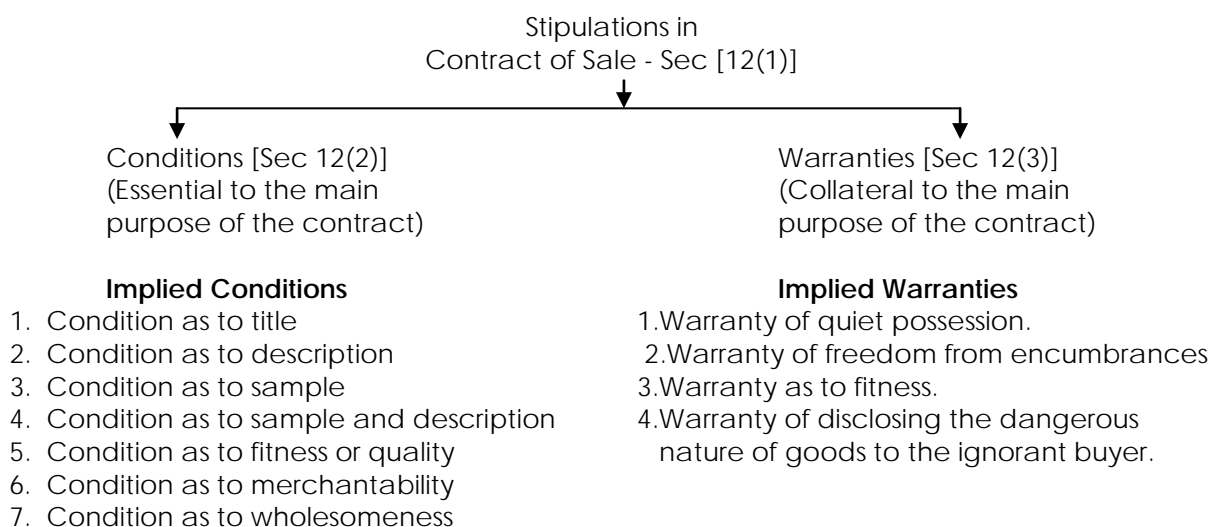


Fig : Implied Conditions and Warranties

Implied Warranties:

In the absence of a contract to the contrary, the following warranties are implied in every contract of sale. They are:

1. Warranty of quiet possession
2. Warranty of freedom from encumbrances
3. Warranty of disclosing the dangerous nature of goods to the ignorant buyer.
4. Warranty as to fitness



1. **Warranty of quiet possession:**

In a contract of sale, there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. In case the buyer is in any way disturbed, he has a right to sue the seller for damages. Such a situation arises when the seller's title to goods is defective.

2. **Warranty of freedom from encumbrances:**

There is an implied warranty on the part of the seller that goods shall be free from any charge or encumbrance in favour of any third party. Where there is a breach of this implied warranty, the remedy of the buyer is to sue for damages.

3. **Warranty as to fitness:**

An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

4. **Warranty of disclosing the dangerous nature of goods to the ignorant buyer:**

The third implied warranty on the part of the seller is that in case the goods sold are of dangerous nature, he must warn the ignorant buyer of the probable danger. If there is a breach of this warranty, the buyer is entitled to claim compensation for the injuries caused to him.

2.4 Performance of the Contract of Sale

Performance of the contract of sales means due discharge of the contractual obligations by both the parties to the contract i.e., Buyer and Seller. The obligation of the seller is to deliver the goods in accordance with the terms of the contract as to time and place and obligation of the buyer is to accept the goods and pay the price agreed upon. As per section 31 performance of a contract of sale means as regards the seller, delivery of the goods to the buyer, and as regards the buyer, acceptance of the delivery of the goods and payment for them, in accordance with the terms of sale. Delivery of goods and payment for thereof are concurrent conditions, however the parties may agree otherwise also. In order to discharge the contractual obligations the seller must be ready and willing to deliver the goods. However, unless otherwise provided in the contract, seller cannot demand payment in advance of delivery. Refusal to deliver the goods unless agreed price is paid in advance is breach of contract. But the buyer is required to apply for delivery.

Performance of a contract involves two things timely delivery on the part of the seller and payment of the price as per the terms of contract by the buyer. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

Delivery:

Delivery means "Voluntary transfer of possession of goods from one person to another".

Modes of delivery:

Delivery of goods may be in three different ways.

1. Actual delivery
2. Symbolic delivery
3. Constructive delivery

1. Actual delivery:

It is also called "Physical delivery". Where the goods are physically handed over by the seller to the buyer or his agent, the delivery is said to be actual delivery.

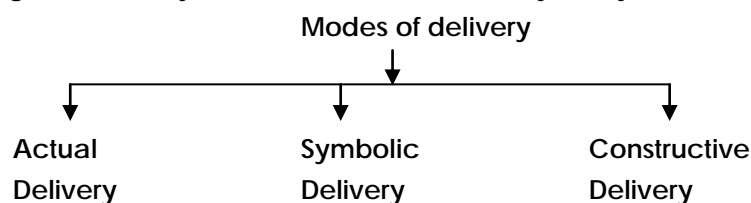
Example:

The seller of a car hands over the car to the buyer.

2. Symbolic delivery:

Where the goods are bulky and incapable of actual delivery "the means of obtaining possession" of the goods are delivered by the seller to the buyer. Such delivery is said to be "Symbolic".

Example: Handing over the key of a ware-house to the buyer is symbolic delivery.



3. Constructive delivery:

Where the third party, who is in possession of goods of the seller at the time of sale, acknowledges to the buyer that he holds goods on his behalf, the delivery is constructive delivery.

Example:

A sells to B 50 bags of wheat lying in C's godown. A gives an order to C, asking him to transfer the goods to B. C assents to such order and transfers the goods in his books to B. A then hands over the order to B. This is a constructive delivery.

Rules regarding delivery of goods:

Sections 31 to 44 provide certain rules with regard to delivery of goods. They are as follows:

1. Mode of Delivery

The mode of delivery of goods is provided in section 33 which says that, delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf. Delivery as contemplated in the Act may be actual, symbolic or constructive.

2. Delivery of goods and payment of price

Delivery of goods and payment of price are concurrent conditions unless otherwise agreed upon. In other words seller must be ready and willing to make delivery and buyer must also be willing to take delivery and willing and ready to pay the price (Sec 32).



Example: A agrees and delivers his car to B and B in turn pays price for it.

3. Effect of part delivery

As per section 34, a delivery of part of goods, in progress of the delivery of the whole has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole, but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

Example: A directed the wharfinger to deliver his goods lying at the wharf to B to whom these goods had been sold. B weighed the goods and took away a part of them. Held, the delivery of a part of the goods had taken place which has the effect as delivery of the whole.

4. Buyer to apply for delivery

Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery. **(Section 35)** It may also happen that the goods are subsequently acquired by the seller, he is to intimate the buyer and the buyer then should apply for delivery. Buyer has no cause of action against the seller if he does not apply for delivery, unless otherwise agreed upon.

Example: S agreed to sell his old car to T and T agreed to take delivery thereof on the auspicious day of Deepawali, S kept the car ready for delivery to T but T did not approach him for delivery. T has no reason to take any action against S if delivery of car did not take place on that day.

5. Place of delivery

As per section 36(1), Goods must be delivered at the place and time specified in the contract. Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, goods sold are to be delivered at the place at which they are at the time of the sale, and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell, if not then in existence, at the place at which they are manufactured or produced.

6. Time of delivery

Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time. If demand or tender of delivery is not at reasonable time tender of delivery may be treated as ineffectual.

What is a reasonable hour is a question of fact which has to be decided taking into consideration various factors. [Sec 36(2)]

7. Goods in possession of a third person

Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledge to the buyer that he holds the goods on his behalf. [Sec 36(3)]

Example: X sold 50 ton of rice to Y, the goods are lying in the godown of Z. X ask Y to take delivery from the godown of Z. Delivery shall not be treated as completed unless Z acknowledge to Y that he hold the goods on his behalf.

8. Cost of delivery

Unless otherwise agreed, the expense of and incidental to putting the goods into a deliverable state are borne by the seller. [Sec 36(5)] All the expenses incurred for putting



the goods into a deliverable state are to be borne by the seller. Similarly all the expenses relating to taking possession the goods must be borne the buyer.

Example: S agrees to sell 50 ton of Basmati Rice to B at FOR Delhi. All the expenses for delivering the goods up to Delhi will be borne by S. Subsequent expenses from Delhi Railway station to office of B will be borne by B himself.

9. Delivery of wrong quantity [Sec. 37]

(a) It is not necessary that the delivered quantity always confirm to the ordered quantity. If less than contracted quantity is supplied, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate. [Sec 37(1)]

Example: A sells to B 2000 gross of 200 yards reels of swing cotton. After taking delivery B finds that the length of the cotton per reel is less than 200 yds, the average being shortage of about 6%. B may reject the goods. If he waives the right of rejection, he is liable to pay the price of the goods at the contract price.

(b) Similarly if a quantity of goods larger than contracted to sell is delivered, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate. [Sec 37(2)]

(c) If the goods agreed to be supplied are delivered with goods mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole. [Sec 37(3)]

Example: A buyer inspected certain timber and branded by hammer marks those which he accepted. When the timber arrived, it contained a large quantity of unbranded timber. Held, the buyer could reject the whole consignment. The above provisions are subject to any usage of trade, special agreement or course of dealing between the parties.

10. Installment delivery [Sec. 38]

Buyer is not bound to accept installment unless agreed by the parties. If the contract provide for installment delivery which are to be separately paid for, and the seller makes no delivery or defective delivery in respect of one or more installments, or the buyer neglects or refuses to take delivery of or pay for one or more installments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract, or whether it is a severable breach giving rise to a claim for compensation, but not a right to treat the whole contract as repudiated.

Example: X brought from Y 25 tonnes of pepper Oct-Nov shipment. Y shipped 20 tonnes in November and 5 tonnes in December. Since the goods have not delivered as per the contractual provisions, X is not bound to accept installment delivery unless they had already agreed for it. X could reject the whole lot.

11. Delivery to carrier or wharfinger [Sec. 39]

If, in pursuance of a contract of sale, the goods are delivered to a carrier for transmission to the buyer or to a wharfinger for safe custody, delivery of goods to them is prima facie deemed to be delivery of goods to the buyer. In such a case the seller must enter into a reasonable contract with the carrier or wharfinger on behalf of the buyer for same



transmission or custody of goods. Failure to do so coupled with loss of goods in transit, buyer may reject delivery to carrier/wharfinger as delivery to himself and may hold the seller responsible for such loss. Unless otherwise agreed, if goods are sent by the seller to the buyer by a route involving sea transit, in circumstances in which it is usual to insure, the seller is required to give such notice to the buyer as may enable him to insure them during their sea transit and if the seller fails so to do, the goods are deemed to be at his risk during such sea transit.

12. Risk where goods are delivered at distant place

It is quite possible sometimes for the buyer ask the seller to deliver the goods at the place they were agreed to be delivered. If the seller agrees to deliver the goods at the risk of the buyer at place other than that where they are when sold, the buyer shall, nevertheless, unless otherwise agreed, buyer take any risk of deterioration in the goods necessarily incident to the course of transit.

Example: S sold 50 ton of sugar to T, T requested him to deliver the same to him at his risk at China instead of Delhi. S agreed to deliver the same at China at the risk and cost of T. During transit 5 ton of sugar was lost due to transit leakage and another 5 ton got moisturized. The loss in transit and deterioration in quality will be borne by T instead of S.

13. Buyer's right of examination of the goods

Section 41 gives the buyer right to examine the goods which are delivered to him which he has not previously examined. He is not deemed to have accepted them unless and until he has a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

2.5 Rights of Unpaid Vendor

Unpaid Seller:

The seller who has not received the whole of the price of the goods sold is called an "unpaid seller". According to Section 45, the seller of goods is deemed to be an unpaid seller:

- (a) When the whole of the price has not been paid, or
- (b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the same has been dishonoured.

A seller who has been partly paid is also an unpaid seller.

Rights of an unpaid seller:

According to the Sale of Goods Act the unpaid seller has the following rights. They are:

- A. Rights against the goods
- B. Rights against the buyer

A. Rights against the goods:

An unpaid seller has some rights against the goods sold when the property in the goods has passed to the buyer. They are as follows:

1. Right of Lien
2. Right of stoppage of goods in transit
3. Right of Re-sale
4. Right of withholding delivery



1. Right of Lien: [Sec. 47]

Lien is a right to retain possession of goods until payment of price. According to section 47(1) an unpaid seller can exercise the right of lien in the following cases:

- i. Where the goods have been sold without any stipulation as to credit.
- ii. Where the goods have been sold on credit, but the period of credit has expired.
- iii. Where the buyer becomes insolvent.

Conditions for the exercise of lien:

The following are the conditions precedent to the exercise of the lien.

1. The ownership must have passed to the buyer.
2. The goods must be in the possession of the seller.
3. The whole or part of the price must remain unpaid.

2. Right of stoppage of goods in transit: [Sec. 50]

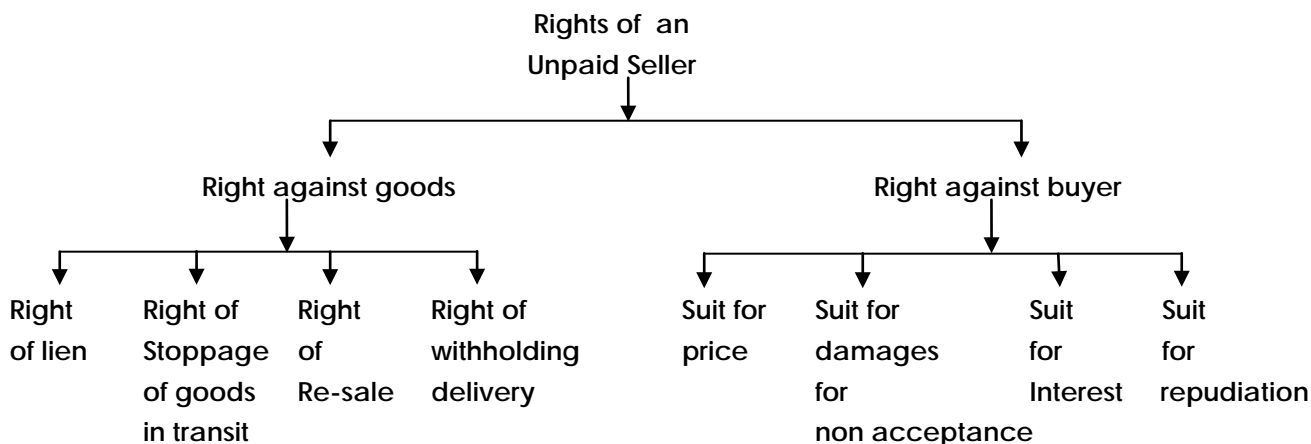
The right of stoppage in transit is a right of stopping the goods, while they are in transit and retaining the possession until payment of the price. This right is conferred on the seller by Section 50 of the Act. This right can be exercised under the following cases:

- i. the seller must be an unpaid seller.
- ii. the goods must be in-transit
- iii. the buyer must have become insolvent.
- iv. the property in the goods must have passed from the seller to the buyer.

3. Right of Re-sale: [Sec. 54]

An unpaid seller who has exercised either the right of lien or the right of stoppage-in-transit can resell such goods. The right to resell the goods is called 'right of resale'. This right is conferred by section 54. An unpaid seller can exercise the right of resale in the following cases:

- i. where the goods are of a perishable nature,
- ii. where the seller expressly reserves the right of resale in case the buyer makes a default in the payment of price.
- iii. where the seller has exercised his right of lien or stoppage in transit, and gives notice to the buyer of his intention to resell the goods.





B. Rights against the buyer personally:

An unpaid seller in addition to his rights against the goods, has the following rights against the buyer personally.

1. Suit for price: [Sec. 55]

Where the property in goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay the price, the seller can sue the buyer for price.

2. Suit for damages for non-acceptance: [Sec. 56]

Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller can sue him for damages for non-acceptance of the goods.

3. Suit for repudiation:

Where the buyer repudiates the contract before the date of delivery, the seller may wait till the date of delivery or may treat the contract as cancelled and sue for damages for breach.

4. Suit for interest: [Sec. 61]

Where there is specific agreement between the seller and the buyer regarding interest on the price of goods, the seller may claim it from the date when payment becomes due. If there is no specific agreement, the interest is payable from the date notified by the seller to the buyer.

2.6 Auction Sales

Auction sale is a model of selling property by inviting bids publicly and the property is sold to the highest bidder.

In an Auction sale, the auctioneer warrants the following:

- (a) The auctioneer warrants his authority to sell.
- (b) He warrants that he has no knowledge of any defect in his principal's title.
- (c) He warrants to give quiet possession of the goods to the buyer against payment of price.

Rules regarding an auction. (Sec. 64)

In the case of sale by auction-

- (a) Where goods are put up for sale in lots, each lot is prima facie deemed to be the subject of a separate contract of sale. [Sec 64(1)]
- (b) The sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner, and, until such announcement is made, any bidder may retract his bid. [Sec 64(2)]
- (c) A right to bid may be reserved expressly by or on behalf of the seller and, where such rights is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bid at the auction, [Sec 64(3)]
- (d) Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person, and any such person, and any sale contravening this rule may be treated as fraudulent by the buyer. [Sec 64(4)]
- (e) The sale may be notified to be subject to a reserved or upset price.



- (f) If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Important Terms used in Auction:

The following are some of the important terms used in Auction Sale;

- A. Knockout Agreement:** It is sort of tacit understanding/agreement among the intending bidders to stifle competition by not bidding against each other in an auction sale. Such agreements are illegal and the seller can protect his interest against such agreement by reserving his right to bid at the auction or by fixing a reserve price.
- B. Damping:** Damping is an act to dissuade the intending buyer from bidding or from raising the price by pointing out defects in the goods or by doing some other acts which prevent persons from forming a fair estimate of the price of the goods. Damping is illegal and the auctioneer can withdraw the goods from auction.
- C. Puffers:** Puffer is a person who is employed by the seller to raise the price by fictitious bids.
- D. Pretended bidding:** A bid once made can be withdrawn before the fall of hammer even if expressly prohibit. The seller can bid at an auction sale if the bidders are informed of the fact (Pretended bidding). If the seller makes use of the pretended bidding to raise the price, the sale is voidable at the option of the buyer. The bid is said to be pretended when it is made by the seller or someone on his behalf.

Essay Questions:

1. Define Sale. Explain the essential elements of Contract of Sale.
2. Explain the difference between Sale and Agreement to Sell.
3. Define Goods. Explain the classification of goods under the Sale of Goods Act, 1930.
4. Define Condition and Warranty. What are the implied conditions and warranties under the Sale of Goods Act, 1930
5. "Nemo dat qui habet" – State the exceptions to it.
6. Who is an Unpaid Seller? What are the rights of an unpaid seller?
7. What is meant by Delivery of Goods. Explain the rules relating to delivery of goods under the Sale of Goods Act, 1930.
8. What are the legal rules relating Auction Sales?
9. What is meant by Doctrine of Caveat Emptor? State the exceptions to it.

Short Answer Questions:

1. Define Sale and Agreement to Sell
2. Explain the types of delivery of goods under the sale of goods Act, 1930.
3. Explain the effect of destruction of goods under the sale of goods Act, 1930.
4. Explain the difference between Condition and Warranty.

Define just in a sentence.

1. Knockout Agreement.
2. Damping



3. Puffer
4. Auction Sale
5. Unpaid Seller
6. Actual Delivery
7. Symbolic Delivery
8. Constructive Delivery
9. Doctrine of Caveat Emptor
10. Condition
11. Warranty
12. Define Goods
13. Define Sale
14. Define Agreement to Sell

Fill in the blanks:

1. The Sale of Goods Act, 1930 is not applicable _____
2. The term 'delivery', under the Sale of Goods Act, 1930, has been defined under Section _____
3. 'Delivery' within the meaning of section 2(1) of the Sale of Goods Act, 1930, can be _____
4. 'The documents of title to goods' in the Sale of Goods Act, 1930 have been described, under _____
5. The term Price has been defined in section _____ of the Sale of Goods Act.
6. The term 'goods' has been defined in the Sale of Goods Act, 1930, under Section _____
7. The term Actionable claim is defined in _____
8. Specific goods become ascertained goods _____ formation of a contract of Sales.
9. Under section _____ it is the duty of the seller to deliver the goods and of the buyer to accept and pay for them.
10. In case of a sale if the seller is declared insolvent, the buyer is entitled to recover the goods from _____
11. The Sale of Goods Act, 1930 was a part of the _____
12. Sale of Goods Act, 1930 is applicable to whole of India except the State of _____
13. Sale of Goods Act is applicable to movable goods other than _____
14. Contract of Sale of Goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a _____.
15. Only _____ goods are subject matter of Sale of Goods Act.
16. Property means general property in goods and not merely _____ in goods.
17. Goods identified and agreed upon at the time of making contract of sale are called _____ goods.
18. Goods not identified and agreed upon at the time of making contract of sale are called _____ goods.
19. Goods which are to be manufactured/produced or acquired by the seller after making the contract of sale are called _____ goods.
20. In case of _____ goods, their acquisition is contingent upon a contingency which may or may not happen.
21. Contract of Sale creates right in _____



22. Agreement to sell creates right in _____
23. A sale in an executed contract whereas an agreement to sell is an _____ contract.
24. Stipulations as to time of payment are not essence of the _____.
25. Condition refers to those Stipulations which are _____ to the very nature of the contract.

Multiple Choice Questions:

1. **The code governing sale of goods was earlier contained in**
 - (a) the Indian Contract Act
 - (b) the Transfer of Property Act
 - (c) the Hire Purchase Act
 - (d) None of the above
2. **The Sale of Goods Act, 1930 governs the transfer of property in**
 - (a) movable property
 - (b) immovable property
 - (c) both movable and immovable property
 - (d) all type of properties
3. **"Goods" means**
 - (a) every kind of movable property other than actionable claims and money
 - (b) some kinds of immovable property only
 - (c) every kind of movable property including actionable claims and money
 - (d) Both 'a' and 'b'
4. **Which one of the following does not connote 'goods' as defined in the Sale of Goods Act.**
 - (a) money
 - (b) animals
 - (c) debt
 - (d) both 'a' and 'c'
5. **Which of the following is/are not included in the meaning of 'goods' as defined in the Sale of Goods Act.**
 - (a) stocks and shares
 - (b) actionable claims
 - (c) legal tender money
 - (d) both 'b' and 'c'
6. **A valid contract of sale**
 - (a) includes 'an agreement to sell'
 - (b) does not include 'an agreement to sell'
 - (c) includes hire purchase contract
 - (d) includes contract a work and labour
7. **An agreement to sell is**
 - (a) an executory contract
 - (b) an executed contract
 - (c) neither 'a' or 'b'
 - (d) sometime 'a' or 'b'
8. **'Goods' as defined in Sale of Goods Act will include**
 - (a) rare coins, goodwill and money
 - (b) growing crops agreed to be severed before sale, old coins, and copyrights
 - (c) goodwill, copyright, patent and foreign currency
 - (d) both 'b' and 'c'
9. **'Future goods'**



- (a) can be the subject matter of sale
- (b) cannot be subject matter of sale
- (c) sometimes may be the subject matter of sale
- (d) depends on circumstances

10. The Sale of Goods Act, 1930 extends to the whole of India, except the state of—

- (a) Maharashtra
- (b) Jammu and Kashmir
- (c) Tamilnadu
- (d) Uttar Pradesh

11. The Sale of Goods Act, 1930 came into force on —

- (a) 1st day of July 1930
- (b) 1st day of September 1930
- (c) 1st day of January 1930
- (d) 31st day of December 1930

12. Conditions are stipulations

- (a) essential to the main purpose of the contract
- (b) collateral to the main purpose of the contract
- (c) either 'a' or 'b'
- (d) neither 'a' nor 'b'

13. A warranty is stipulation

- (a) essential to the main purpose of the contract
- (b) collateral to the main purpose of the contract
- (c) very important to the seller
- (d) very important to the buyer

14. Whether a stipulation is a condition or a warranty depends on

- (a) the construction of the contract
- (b) the conduct of the parties
- (c) the trade custom
- (d) the local law

15. Where a contract of sale is subject to any condition to be fulfilled by the seller and the seller commits a breach of that condition

- (a) the buyer has to compulsorily treat the breach of condition as breach of warranty only
- (b) the buyer may voluntarily waive the condition
- (c) the buyer may do nothing
- (d) the buyer may contact another seller

16. In a sale by sample and description, there is an implied condition

- (a) that bulk of the goods correspond with the sample
- (b) that bulk of goods must correspond to the description as well as the sample thereof
- (c) the bulk of goods must correspond either to the description or to the sample
- (d) the bulk of goods must correspond to the description only

17. The doctrine of Caveat emptor is not applicable

- (a) in case of sale under a patent name
- (b) in case of sale under a trade name



- (c) where the seller is guilty of fraud
- (d) where the buyer relies on the skill and judgment of the seller

18. Merchantable quality of goods means

- (a) that the goods are commercially saleable
- (b) they are fit for the purpose for which they are generally used
- (c) both 'a' and 'b'
- (d) the quality should be of high standard

19. Property in the goods 'in the Sale of Goods Act means'

- (a) ownership of goods
- (b) possession of goods
- (c) asset in the goods
- (d) custody of goods

20. It is necessary to determine the precise moment of time at which the ownership of goods passes from seller to the buyer because

- (a) risk passes with property
- (b) action can be taken only by the owner
- (c) suit for price by the seller does not lie unless the property has passed to the buyer
- (d) all the above

21. In case of appropriation of goods, which are the essential requirements:

- (a) The goods should confirm to the description and quality stated in the contract.
- (b) The goods must be in a deliverable state.
- (c) The appropriation must be by the seller with the assent of the buyer.
- (d) All the above

22. Appropriation of goods means

- (a) separating the goods sold from other goods
- (b) putting the quantity of goods sold in suitable receptacles
- (c) delivering the goods to the carrier or other bailee for the purpose of transmission to the buyer with reserving the right of disposal
- (d) all the above

23. The general rule of Sale of Goods Act is, risk prima facie passes with

- (a) Ownership
- (b) Possession
- (c) Delivery
- (d) Custody

24. "Nemo dat quad non habet", means:

- (a) no one is greater than god
- (b) none can give who does not himself possess
- (c) every one can give everything he has
- (d) everyone is bound by his habit

25. Transfer of documents of title to the goods sold to the buyer, amounts to

- (a) actual delivery
- (b) symbolic delivery
- (c) constructive delivery
- (d) none of these

26. Under Sec.2(4) of the Sale of Goods Act, a delivery order enabling a person to obtain delivery on payment of price is



- (a) Deemed as a Document of Title (b) Not a Document of Title
(c) Document enabling title to Goods (d) Not a valid document at all

27. A Share Certificate is a —

- (a) Document of Title to Goods (b) Bill of Exchange
(c) Document Showing Title to Goods (d) Instrument of Transfer

28. A Bill of Lading is a —

- (a) Bill of Exchange (b) Promissory Note
(c) Cheque (d) Document of Title to Goods

29. Section 19 of the Sale of Goods Act, deals with passing of property of.....goods.

- (a) Unascertained Goods (b) Future Goods
(c) Specific or Ascertained Goods (d) Contingent Goods

30. Voluntary transfer of possession from one person to another is called as

- (a) Ownership (b) Delivery (c) Gift (d) License

31. Which of the statement is incorrect in connection with duties of seller and buyer:

- (a) It is the duty of the seller to deliver the goods
(b) It is the duty of the buyer to accept and pay for them
(c) It is not the duty of the seller to deliver the goods
(d) It is the duty of the buyer to take delivery of goods

32. Delivery of goods means-

- (a) Voluntary transfer of possession (b) Compulsory transfer of possession
(c) Exchange of goods (d) Voluntary transfer of ownership

33. For a valid contract of sale, delivery may be:

- (a) Actual delivery (b) Symbolic delivery
(c) Constructive delivery (d) All of these

34. Delivery of the keys of a godown where goods are kept amounts to:

- (a) Actual delivery (b) Symbolic delivery
(c) Constructive delivery (d) All of these

35. There are.....modes of delivery

- (a) Three (b) Two (c) Four (d) Five

36. The term "Unpaid Seller" includes —

- (a) Agent of the Buyer (b) Agent of the Seller
(c) Agent of the Carrier/Transporter (d) All of the above

37. The term "Unpaid Seller" includes —

- (a) Buyer's agent to whom the Bill of Lading is endorsed



- (b) Buyer's agent to whom the goods have been delivered
- (c) Seller's agent to whom the Bill of Lading is endorsed
- (d) Seller's agent to whom the goods have been delivered

38. Unpaid Seller can exercise his right of lien —

- (a) even when property in goods has passed to the Buyer
- (b) only when property in goods has not passed to the Buyer
- (c) either (a) or (b)
- (d) neither (a) nor (b)

39. Unpaid Seller can exercise his right of re-sale of goods—

- (a) even when property in goods has passed to the Buyer
- (b) only when property in goods has not passed to the Buyer
- (c) either (a) or (b)
- (d) neither (a) nor (b)

40. Unpaid Seller can exercise his right of withholding delivery of goods —

- (a) even when property in goods has passed to the Buyer
- (b) only when property in goods has not passed to the Buyer
- (c) either (a) or (b)
- (d) neither (a) nor (b)

41. Right of Stoppage in transit can be exercised by the Unpaid Seller, where he —

- (a) has lost his right of lien
- (b) still enjoys his right of lien
- (c) either (a) or (b)
- (d) neither (a) nor (b)

42. Right of Stoppage in transit can be exercised by the Unpaid Seller, where the Buyer—

- (a) is solvent
- (b) becomes insolvent
- (c) acts fraudulently
- (d) acts smartly

43. Sub-sale by the buyer with Seller's consent leads to loss of right of stoppage in transit.

- (a) True
- (b) Right not affected
- (c) False
- (d) None of the above

44. S sells certain goods to B of Bombay. The goods are handed over to the railways for transmission to B. In the mean time B sells the goods to a third party T for consideration without the consent of S. B. becomes insolvent. In this case —

- (a) S has the right of stoppage in transit
- (b) S has lost his right of stoppage in transit
- (c) Station Master has the right of stoppage in transit
- (d) None of the above

45. Right of Stoppage in Transit may be exercised by the Unpaid Seller, by —

- (a) taking actual possession of Goods
- (b) giving notice of his claim to the Carrier/ Bailee who holds the Goods.
- (c) either (a) or (b)



- (d) Both (a) and (b)
- 46. In an auction sale of goods, the seller makes use of pretended bidding to raise the price, the sale is —**
- (a) valid (b) void
(c) voidable at the instance of the buyer (d) unenforceable
- 47. An auction sale is complete on the -**
- (a) delivery of goods (b) payment of price
(c) fall of hammer (d) None of the above
- 48. Where the sale is not notified to be subject to a right to bid on behalf of seller, it shall not be lawful for the seller—**
- (a) to bid for himself (b) to employ any person to bid at such sale
(c) either (a) or (b) (d) neither (a) nor (b)
- 49. Where the sale is not notified to be subject to a right to bid on behalf of seller, and the Auctioneer knowingly takes any bid from the Seller or any such person, the sale shall be treated as.....by the buyer.**
- (a) unlawful (b) illegal (c) immoral (d) fraudulent
- 50. An act by which an intending bidder is discouraged or dissuaded from bidding in the auction sale is called**
- (a) Puffer (b) Damping (c) Dumping (d) Knockout
- 51.is a form of combination of buyers to prevent competition among themselves at an auction sale.**
- (a) Knock-out agreement (b) monopoly agreement
(c) oligopoly agreement (d) puffing agreement
- 52. In pretended bidding, sale is**
- (a) voidable at the option of the seller (b) valid
(c) voidable at the option of the buyer (d) illegal
- 53. In an auction sale, the property shall be sold to be**
- (a) Lowest bidder (b) Highest bidder
(c) Any bidder (d) All bidders
- 54. On auctioneer will be liable for damages:**
- (a) If the auctioneer had no authority to sell the goods.
(b) If there is a defect in principal's title.
(c) If the buyer's possession is disturbed by auctioneer principal or auctioneer himself.
(d) All the above
- 55. Unless excluded by an agreement to the contrary, where after a contract has been made but before it has been performed, excise duty is increased**



- (a) The buyer would have to pay increased price
- (b) The seller cannot charge increased price
- (c) The seller can charge increased price
- (d) Both 'a' and 'c'

TRUE OR FALSE STATEMENTS:

1. Breach of condition give the aggrieved party right to repudiate the contract.
2. Warranty is a stipulation essential to the main purpose of the contract, the breach of which gives right to claim damages but not to repudiate the contract.
3. Conditions and warranties can be implied or expressed.
4. Condition as to title, condition as to description, condition in a sale by sample, condition as to wholesomeness and condition as to merchantability etc are express conditions.
5. Quiet possession, freedom from encumbrance, disclosing dangerous nature of goods etc are implied conditions.
6. Caveat emptor means buyer be aware.
7. Under the Caveat Emptor buyer is expected to take utmost care and diligence while purchasing the goods and the seller is not bound to disclose defects in the goods.
8. Risk is associated with possession of goods.
9. Seller can sue for price only when property in goods has passed on to the buyer.
10. Appropriation means selection, setting apart, weighing, measuring or counting or other acts with the intention of using the same for performance of the Contract.
11. Generally the owner or any other person can transfer the property in goods.
12. Nemo dat quod habet means that no one can give what he himself does not have.
13. The doctrine of Nemo dat quod habet seeks to protect the interest of buyer.
14. Voluntary transfer of possession of goods from one person to another is called delivery of goods.
15. Delivery of goods can be actual and constructive.
16. When goods are physically handed over by the seller to the buyer it is called symbolic delivery.
17. Symbolic delivery occurs by doing some act, which has the effect of putting the goods in the possession of the buyer. Delivery of the keys to a godown or warehouse is symbolic delivery.
18. Change in possession of goods without any change in their actual and visible custody, which has the effect of delivery, is called Constructive delivery.
19. A person to whom the whole of the price has not been paid or when a bill of exchange or other instrument has been receive but which has been dishonored is called an unpaid seller.
20. Unpaid seller has right of lien, stoppage of goods in transit, resale, sue for price, sue for specific damages, sue for interest etc.
21. Right of stoppage of goods in transit can be exercised subject to fulfillment of some conditions.
22. If a finder of lost goods could not trace the owner or the owner refuses to pay the lawful charges of the finder, the finder can resell the goods when the thing is perishable or when his lawful charges for finding the owner amount to 1/3rd of value of goods.



23. A pawnee may under certain circumstances sell the goods pledged to him on giving the pawnor reasonable notice of the sale.

Match the statement under Column I with the appropriate statement under Column II:

1. Match the following:

	Column I		Column II
1.	Sale of Goods Act, 1930	A)	Essential to the main purpose of the contract.
2.	Condition	B)	Sec. 45 of the Sale of Goods Act, 1930
3.	Warranty	C)	Sec. 64 of the Sale of Goods Act, 1930
4.	Unpaid Seller	D)	Collateral to the main purpose of the contract.
5.	Auction Seller	E)	1 st July, 1930

2. Match the following:

	Column I		Column II
1.	Delivery	A)	Stock and Shares
2.	Document of Title to goods	B)	Voluntary transfer of possession of goods
3.	Goods	C)	General Property in goods
4.	Price	D)	Dock-Warrants
5.	Property	E)	Money Consideration

3. Match the following:

	Column I		Column II
1.	Agreement to Sell	A)	Executory Contract
2.	Goods	B)	Goods which are yet to be manufactured
3.	Existing Goods	C)	Executed Contract
4.	Future Goods	D)	Sec. 2(7) of the Sale of Goods Act, 1930
5.	Sale	E)	Sec. 6 of the Sale of Goods Act, 1930

4. Match the following:

	Column I		Column II
1.	Price	A)	Section 27 of the Sale of Goods Act
2.	Document of Title to Goods	B)	Sec. 9 and 10 of Sale of Goods Act, 1930
3.	Passing of Property	C)	Sec. 12(2) of Sale of Goods Act, 1930
4.	Nemo dat qui non habet	D)	Sec. 2(4) of Sale of Goods Act, 1930
5.	Condition	E)	Sec. 18 to 25 of Sale of Goods Act, 1930

5. Match the following:

	Column I		Column II
1.	Warranty	A)	Sec. 14(a) of Sale of Goods Act, 1930



2.	Condition as to Title	B)	Sec. 15 of Sale of Goods Act, 1930
3.	Sale by description	C)	Sec. 12(3) of Sale of Goods Act, 1930
4.	Condition as to quality or fitness	D)	Let the buyer be aware
5.	Doctrine of Caveat Emptor	E)	Sec. 16 of Sale of Goods Act, 1930

6. Match the following:

	Column I		Column II
1.	Condition as to Merchantability	A)	Sec. 14 (b) of the Sale of Goods Act
2.	Warranty of quiet possession	B)	Sec. 47 of the Sale of Goods Act
3.	Warranty of freedom from encumbrances.	C)	Sec. 14 (C) of the Sale of Goods Act
4.	Constructive Delivery	D)	Delivery by attornment
5.	Right of Lien	E)	Acceptability in the market

Answers

Define just in a sentence

1. Knockout Agreement

Ans: It is sort of tacit understanding/agreement among the intending bidders to stifle competition by not bidding against each other in an auction sale. Such agreements are illegal and the seller can protect his interest against such agreement by reserving his right to bid at the auction or by fixing a reserve price.

2. Damping

Ans: Damping is an act to dissuade the intending buyer from bidding or from raising the price by pointing out defects in the goods or by doing some other acts which prevent persons from forming a fair estimate of the price of the goods. Damping is illegal and the auctioneer can withdraw the goods from auction.

3. Puffer

Ans: Puffer is a person who is employed by the seller to raise the price by fictitious bids.

4. Auction Sale

Ans: Auction sale is a model of selling property by inviting bids publicly and the property is sold to the highest bidder.

In an Auction sale, the auctioneer warrants the following:

- (a) The auctioneer warrants his authority to sell.
- (b) He warrants that he has no knowledge of any defect in his principal's title.
- (c) He warrants to give quiet possession of the goods to the buyer against payment of price.

5. Unpaid Seller

Ans: The seller who has not received the whole of the price of the goods sold is called an "unpaid seller". According to Section 45, the seller of goods is deemed to be an unpaid seller:



- (a) When the whole of the price has not been paid, or
- (b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the same has been dishonoured.

A seller who has been partly paid is also an unpaid seller.

6. Actual Delivery

Ans: It is also called "Physical delivery". Where the goods are physically handed over by the seller to the buyer or his agent, the delivery is said to be actual delivery.

Example:

The seller of a car hands over the car to the buyer.

7. Symbolic Delivery

Ans: Where the goods are bulky and incapable of actual delivery "the means of obtaining possession" of the goods are delivered by the seller to the buyer. Such delivery is said to be "Symbolic".

Example: Handing over the key of a ware-house to the buyer is symbolic delivery.

8. Constructive Delivery

Ans: Where the third party, who is in possession of goods of the seller at the time of sale, acknowledges to the buyer that he holds goods on his behalf, the delivery is constructive delivery.

Example:

A sells to B 50 bags of wheat lying in C's godown. A gives an order to C, asking him to transfer the goods to B. C assents to such order and transfers the goods in his books to B. A then hands over the order to B. This is a constructive delivery.

9. Doctrine of Caveat Emptor

Ans: The term Caveat Emptor is a Latin word which means 'let buyer be aware'. This principle underlines the concept that it is for the buyer to satisfy himself that the goods which he is purchasing are of the quality required by him. This principle was applied in the case of Ward v Hobbs.

10. Condition

Ans: A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to right to treat the contract as repudiated. [Sec 12(2)]

11. Warranty

Ans: A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated. [Sec 12(3)]

12. Define Goods

Ans: Goods means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or



forming part of the land which are agreed to be severed before sale or under the contract of sale. [Sec. 2(7)]

13. Define Sale

Ans: "Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale" [Sec. 4(3)]

14. Agreement to Sell

Ans: "Where the property in the goods (legal ownership of goods) is to be transferred to the buyer at some future date or on the fulfillment of a certain conditions, the contract of sale is called an agreement to sell" [Sec. 4(3)]

Fill in the blanks

- | | |
|-------------------------------------|------------------------------|
| 1. Jammu and Kashmir | 14. Price |
| 2. Sec. 2(2) | 15. Movable |
| 3. Actual, Symbolic or Constructive | 16. Special Property |
| 4. Sec. 2 (4) | 17. Specific |
| 5. Sec. 2(10) | 18. Generic or Unascertained |
| 6. Sec. 2(7) | 19. Future |
| 7. Transfer of Property Act, 1882 | 20. Contingent |
| 8. Subsequent to | 21. Rem |
| 9. Sec. 31 | 22. Personam |
| 10. Official Receiver or Assignee | 23. Executory |
| 11. Indian Contracts Act, 1872 | 24. Contract of sale |
| 12. Jammu and Kashmir | 25. Essential |
| 13. Actionable Claims and Money | |

Multiple Choice Questions:

1.	A	2.	A	3.	A	4.	D	5.	D
6.	A	7.	A	8.	B	9.	A	10.	B
11.	A	12.	A	13.	B	14.	A	15.	B
16.	B	17.	C	18.	C	19.	A	20.	D
21.	D	22.	D	23.	A	24.	B	25.	B
26.	A	27.	C	28.	D	29.	C	30.	B
31.	C	32.	A	33.	D	34.	B	35.	A
36.	B	37.	C	38.	A	39.	A	40.	A
41.	B	42.	A	43.	A	44.	C	45.	C
46.	C	47.	C	48.	C	49.	C	50.	B
51.	A	52.	C	53.	B	54.	D	55.	D

TRUE OR FALSE STATEMENTS:

1. True 2. False 3. True 4. False 5. False 6. True



-
7. True 8. True 9. True 10. True 11. False 12. True
13. False 14. True 15. False 16. False 17. True 18. True
19. True 20. True 21. True 22. False 23. True

Match the statement under Column I with the appropriate statement under Column II:

1. Match the following:

- 1) E 2) A 3) D 4) B 5) C

2. Match the following:

- 1) B 2) D 3) A 4) E 5) C

3. Match the following:

- 1) A 2) D 3) E 4) B 5) C

4. Match the following:

- 1) B 2) D 3) E 4) A 5) C

5. Match the following:

- 1) C 2) A 3) B 4) D 5) E

6. Match the following:

- 1) E 2) A 3) C 4) D 5) B



Study Note – 3

NEGOTIABLE INSTRUMENTS ACT, 1881

This Study Note includes:

- 3.1 Negotiable Instruments – Characteristics of Negotiable Instruments
- 3.2 Definitions of Promissory Note, Bill of Exchange and Cheque
- 3.3 Differences between Promissory Note, Bill of Exchange and Cheque
- 3.4 Crossing – Meaning, Definition and Types of Crossing

3.1 Negotiable Instruments – Characteristics of Negotiable Instruments

INTRODUCTION

Negotiable Instrument Act, 1881 primarily contains the law relating to negotiable instruments. The term 'negotiable' means transferable and the term 'instrument' means 'any written document creating a right in favour of some person.' Thus by negotiable instrument we mean a written document by which a right is given to a person and which is transferable in accordance with provisions of Negotiable Instrument Act, 1881. The Act came into force from 1st March, 1882 and extends to the whole of India.

What is Negotiable Instrument?

In common parlance a negotiable instrument can be understood as a piece of paper which entitles to a sum of money and which is transferable from one person to another merely by delivery or by endorsement and delivery. The person to whom it is so transferred becomes entitled to the sum mentioned therein and also to the right to further transfer it. Though there is a general principle that no one can become owner of any property unless the person who sold the property to him is the true owner of the said property, yet this rule is not applicable in the case of Negotiable instrument. Now let us refer to the Act how the term Negotiable instrument is defined in the section.

Sec. 13 of the Act defines a negotiable instrument as 'a promissory note, bill of exchange or cheque payable either to order or to bearer.'

Thus, a Negotiable Instrument means an instrument, the property in which is acquired by anyone who takes a bona fide and for value, notwithstanding any defect in the title of the Transferor. It need not necessarily be a promissory note, bill of exchange or a cheque.

Explanation:

- (i) A promissory note, bill of exchange or cheque is payable to the order, to which it is expressed to be payable or which is expressed to be payable to a particular person, and does not contain words, prohibiting transfer or indicating an intention that it shall not be transferable.



- (ii) A promissory note, bill of exchange or a cheque either originally which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank.
- (iii) Where a promissory note, bill of exchange or cheque, either originally or by endorsement, is expressed to be payable to the order of a specified person and not to him or his order, it is nevertheless payable to him or his order at his option.

A negotiable instrument may be payable to two or more persons jointly or it may be made payable in the alternative to one of two or one or some of several payees.

Characteristics of a Negotiable Instrument

The term negotiability may also be extended to other instruments like Bill of Lading; Hundies, etc. provided it satisfies the following characteristics -

(a) Free and innumerable Transfers:

- A Negotiable Instrument may be transferred by - (i) Delivery, or (ii) by Endorsement and Delivery.
- Negotiable Instruments can be transferred ad infinitum, i.e. transferred any number of times till its satisfaction.

(b) **Free from defects:** The Holder in due course obtains the good title to the instrument, notwithstanding any defect in a previous holder's title. A Holder in due course is one who receives the instrument -

- For Consideration,
- Before maturity, and
- Without any notice as to the defect in title of the Transferor.

(c) **Holder to sue in his own name:** The Holder in due course of a Negotiable Instrument can sue on the instrument in his own name.

(d) **Presumptions:** A Negotiable Instrument is subject to certain presumptions listed u/s 118 and 119 as to consideration, date, time of acceptance and transfer, endorsements, etc.

Note: Share Certificates with Blank Transfer Deeds, Deposit Receipts and Mate's Receipts are not Negotiable Instrument's.

Special Presumptions:

Presumptions: Until the contrary is provide, the following aspects are presumed in respect of Negotiable Instruments -

Presumption as to..	Description
Consideration	<ul style="list-style-type: none">• Every Negotiable Instruments was made or drawn for consideration, and• Such Negotiable Instrument was accepted, Endorsed, negotiated or transferred for consideration.
Date	Every Negotiable Instrument bearing a date was made or drawn on that date.
Time of Acceptance	Every Bill of Exchange was accepted within a reasonable time after the date mentioned therein but before the date of its maturity.



Time of Transfer	Every transfer of a Negotiable Instrument was made before its maturity.
Order of Endorsements	Endorsements appearing on a Negotiable Instrument were made in the order in which they appear thereon.
Stamp	That a lost Promissory Note, Bill of Exchange or Cheque was duly stamped.
Holder in due course	That the holder of a Negotiable Instruments is a holder in due course.
Fact of Dishonour [Sec.119]	In a suit for the dishonour of a Negotiable Instrument, the Court shall, on proof of protest, presume the fact of dishonour, unless and until it is disproved.

Note:

(a) Where the Negotiable Instruments has been obtained from its lawful owner/custodian by means of an offence/fraud or for unlawful consideration, the burden of proving that a Holder is a Holder in due course, lies upon him.

(b) The NI Act will not affect Sec. 21 of the Indian Paper Currency Act, 1871, or any local usage relating to any instrument in a local language. [Sec. 1].

Types of Negotiable Instrument

Negotiable Instruments are of two types:

- (i) **Negotiable by statute** – Section 13 of the Act, provides that a negotiable Instrument include promissory note, bill of exchange and cheque, whether payable to bearer or order.
- (ii) **Negotiable by custom or usage** – Though the Act speaks of only three types of Negotiable Instrument, but it does not bar other kinds of instruments from being treated as a negotiable instrument provided they possess the characteristics of a negotiable instruments. Accordingly certain other instruments take the character of negotiable instruments by custom or usage. Dividend warrant, circular notes, bearer debentures are some of them though they are not specifically mentioned in the Act.

Classification of Negotiable Instruments

1. Bearer and order instruments

A negotiable instrument is said to be payable to bearer when

- (i) It is expressed to be so payable
- (ii) Only or last endorsement is a blank endorsement.

A negotiable instrument is said to be payable to order when

- (i) It is expressed to be so payable
- (ii) Expressed to be payable to a particular person with restricting its transferability.

2. Inland and foreign instruments

A bill, promissory note or cheque if both drawn and payable in India or drawn on a person resident in India is said to be an inland bill.

A bill which is not an inland bill is deemed to be a foreign bill. Foreign bill must be protested for dishonor if such protest is required by the law of the place where it was



drawn, this is not case with Inland bills where protest for nonpayment is optional as per section 104 of the Act.

3. Demand and time instruments

An instrument is payable on demand when it is expressed to be so payable or when no time is specified on it. A cheque is always payable on demand.

A note or bill if payable after a specified period or happening of a specified event which is certain, it is a time instrument. If a promissory note or bill of exchange bears the expression "at sight" and "on presentation" means on demand (section 21). The words "on demand" are usually found in a promissory note, where the words "at sight" are found in a bill of exchange.

4. Genuine, accommodation and fictitious bill

When a bill is drawn, accepted, or endorsed for consideration it is a genuine bill. When it is drawn, accepted, or endorsed without consideration it is accommodation bill. When drawer or payee or both are fictitious the bill is called fictitious bill. If both drawer and payee of a bill are fictitious person, the acceptor is liable to a holder in due course, if the holder in due course can show that the signature of the supposed drawer and that of first payee are in the same handwriting.

5. Clean and documentary bill

When no documents relating to goods are annexed to the bill, it is clean bill. When documents of title or other documents relating to goods are attached, it is documentary bill.

6. Ambiguous instrument

When an instrument due to faulty drafting may be interpreted either as bill or note, it is an ambiguous instrument. It is for holder to decide how he wants the bill to be treated. Ambiguity may also arise when the amount is stated differently in words and figures. In such case the amount stated in words will be taken into account.

7. Inchoate instrument

An instrument incomplete in some respect is known as inchoate instrument. When a person signs and delivers to another a blank or incomplete stamped paper, he authorizes the other person to make or complete upon it a negotiable instrument for any amount not exceeding the amount covered by the stamp. The effect of such signing is that the person signing the instrument is liable upon such instrument in the capacity in which he signed it to holder in due course of the instrument.

8. Escrow Instrument

When an instrument is drawn conditionally or for a special purpose as a collateral security and not for the purpose of transferring property therein, it is called Escrow instrument. The liability to pay in case of an Escrow instrument does not arise if the conditions agreed upon are not fulfilled or the purpose for which the instrument was delivered is not achieved.



Parties to a Negotiable Instrument:

Parties	Meaning / Definition
Drawer	The Maker of a Promissory Note, Bill of Exchange or Cheque.
Drawee	The person on whom the instrument is drawn and thereby directed to pay.
Drawee in case of need	<ul style="list-style-type: none">• Meaning: The person whose name is given in the bill or on any Endorsement thereof, in addition to the name of the Drawee, who should be resorted to in case of need.• Where a Drawee in case of need is named in a B/E or any endorsement thereon, the B/E is not dishonoured, unless it has been dishonoured by such Drawee. [Sec.115]• A Drawee in case of need may accept and pay the B/E, without previous protest. [Sec.116]
Acceptor	When the Drawee signs his assent upon the Bill, and delivers the same to the holder or some other person on his behalf, he becomes the "Acceptor".
Acceptor for honour	<ul style="list-style-type: none">• Meaning: Person accepting a B/E (which has been noted or protested for non acceptance or for better security) supra protest for honour of the Drawer or of any one of endorsers.• Acceptor for Honour must specify as to whose honour he is accepting the B/E. Otherwise, it shall be deemed to be made for the honour of the Drawer.
Payee	Payee is the person to whom the amount is payable, which may be the Drawer himself or any other person.
Holder	<ul style="list-style-type: none">• Meaning: Any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.• Where the instrument is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction. [Sec.8]
Holder in due course	A Holder in due course is a person who becomes the possessor of the instrument (a) for consideration, (b) before maturity, and (c) without any notice as to the defect in title of the Transferor. [Sec.9]
Endorser	Endorser is the person who endorses a Bill.
Endorsee	Endorsee is the person to whom the Bill is negotiated by endorsement.

Capacity to become a party to a Negotiable Instrument

A person competent to contract can become a party to a negotiable instrument. If a party who makes, draws, endorses, or negotiates a negotiable instrument is incompetent to do so, the agreement is void as against him. But the contract is still valid against the other parties competent to contract. The manner or conditions under which certain categories of person



like a Minor, Corporate body, Agent and Legal representatives can be a party to a negotiable instrument are as under :

(a) Minor

A minor person is not competent to contract; therefore he cannot bind himself by becoming a party to a negotiable instrument. But mere presence of a minor as one of the party in a negotiable instrument does not make it invalid. A minor can draw, indorse, deliver and negotiate an instrument so as to bind all parties except himself.

Example: A, B and C, a minor executed a promissory note in favor of P. Held, C's immunity from liability did not absolve A and B, other joint promisors, from liability.

A minor is not personally liable on a bill or note given by him for necessities supplied to him. It is only his estate which is liable for such a bill or note.

(b) Corporation

Corporation can be a party to a negotiable instrument if authorized by its Article of Association, otherwise it is ultra vires.

(c) Agent

As per section 27 an agent can bind his principal by acting on his behalf only in the manner in which he is duly authorized to be become a party to a negotiable instrument. The agent is required to make it clear that he is acting in representative capacity which must be evidenced by the manner he sign such document. The form of signature must show that he does not intend to incur personal liability. Otherwise he becomes personally liable.

Example 1:

A manger of ABC Ltd accepted a bill of exchange and signed A as manager. It was held that A was personally liable.

Example 2:

A manger of ABC Ltd accepted a bill of exchange and signed as for ABC Ltd. It was held that A was not personally liable.

(d) Legal Representative

As per section 30 a legal representative of a deceased person who signs his name to a negotiable instrument incurs personal liability unless by clear words he limits his liability to the extent of the assets of the deceased received by him as legal representative.

3.2 Definitions of Promissory Note, Bill of Exchange and Cheque

Promissory Note:

Section 4 of the Negotiable Instruments act, 1881 defines "Promissory Note":

"A Promissory note is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument".

Parties:

- 1. Maker.
- 2. Payee.



1. Maker:

The person who makes the promissory note and promises to pay is called the maker.

2. Payee:

The person to whom the payment is to be made is called the payee.

Requisites of a Promissory Note:

1. The promissory note must be in writing.
2. It must contain an undertaking to pay. There must be an express promise to pay.
3. The promise to pay should be unconditional.
4. The promissory note must be signed by the maker.
5. The sum payable must be certain.
6. The instrument must contain a promise to pay money and money only.
7. The maker and payee must be certain.
8. Stamping of Promissory Note is essential under The Indian Stamp Act, 1899. An unstamped promissory note is not admissible in evidence and no suit can be maintained.
9. It must contain date.
10. The limitation period for a promissory note to file a suit is three years from the date of execution or from the date of acknowledgement.

Illustrations:

A signs instruments in the following terms:

- (a) "I promise to pay B or order ₹ 500/-".
- (b) "I acknowledge myself to be indebted to B in ₹ 1,000/- to be paid on demand, for value, received".
- (c) "Mr. B. I.O.U ₹ 1,000/-"
- (d) "I promise to pay B ₹ 500 and all other sums which shall be due to him"
- (e) "I promise to pay B ₹ 500 first deducting thereout any money, which he may owe me".
- (f) "I promise to pay B ₹ 500 seven days after my marriage with C".
- (g) "I promise to pay B ₹ 500, on D's death, provided D leaves me enough to pay that sum".
- (h) "I promise to pay B ₹ 500 and to deliver to him by white horse on 1st January next".

The instruments respectively marked **(a) and (b)** are **Promissory Notes**. The instruments respectively marked **(c), (d), (e), (f), (g) and (h)** are **not Promissory Notes**.

Bills of Exchange:

Section 5 of the Negotiable Instruments act, 1881 defines "Bill of Exchange":

"A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument".

Parties:

There are three parties to bill of exchange:

1. The drawer.
2. The drawee.
3. The payee.



1. The drawer:

The person who gives the order to pay or who makes the bill is called the drawer.

2. The drawee:

The person who is directed to pay is called the drawee. When the drawee accepts the bill, he is called the acceptor.

3. The Payee:

The person to whom the payment is to be made is called the payee.

Requisites of a Bill of Exchange:

- (1) A bill of Exchange must be drawn unconditionally, though the acceptor, or the indorser may make his liability conditional, direction of payment by the drawer must not be made to depend upon a contingency. Therefore, it is the essence of a bill of exchange that it should be payable at all events and it must appear so on its face.
- (2) The consideration of a bill of exchange should be paid only by way of money only.
- (3) The amount to be paid should be certain.
- (4) The time of payment must be indicated in the bill with certainty.
- (5) Order to pay. Order in this section does not mean a command, but a request or a direction.
- (6) It is essential that a bill of exchange should point out with certainty the party who enters into the contract imported by its terms. Thus, the signature of the drawer is necessary and there cannot be a bill, even if the instrument is accepted without the signature of the drawer.
- (7) It must indicate a drawee who should be called on to accept or pay it. The drawee must be named or otherwise indicated in the bill with reasonable certainty.
- (8) It should specifically mention the date and place the payment or the place where it is drawn.
- (9) Every Bill of Exchange must be stamped according to the provisions of The Indian Stamp Act, 1899.

Cheque:

Section 6 of the Negotiable Instruments act, 1881 defines "Cheque":

"A cheque is a bill of exchange drawn upon a specified banker and payable on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form".

A cheque in the electronic form means "cheque which contains the exact mirror image of a proper cheque, and is generated, written and signed in a secure system ensuring the minimum safety standards with the use of digital signature and asymmetric crypto system.

A truncated cheque means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.



'Clearing house' means the clearing house managed by the Reserve Bank of India or a clearing house recognized as such by the Reserve Bank of India [Sec. 6 as substituted by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002].

A cheque is a species of a bill of exchange; but it has the following two additional qualifications:

1. It is always drawn on a specified banker, and
2. It is always payable on demand.

Parties:

There are three parties to bill of exchange:

1. The drawer.
2. The drawee.
3. The payee.

1. The drawer:

The customer who signs the cheque is called "drawer".

2. The drawee:

The bank on whom the cheque is drawn is called "drawee".

3. The Payee:

The person to whom the payment is to be made is called the payee.

Requisites of a Cheque:

- (1) A cheque must be an order in writing.
- (2) It must contain an unconditional order.
- (3) A cheque must be signed by the maker.
- (4) The amount must be specifically mentioned in figures and words.
- (5) A cheque may be drawn payable to order or bearer. There are two kinds of cheques prevailing now a days. They are:
 - a. it may be a bearer or order cheque; and
 - b. it may be a self cheque.
- (6) The cheque must contain the date.
- (7) Payee to be certain.

Due Date of a Bill or Note

Every instrument payable, otherwise, than on demand is entitled to three days of grace.

Instruments not entitled to 'period of grace' are:

- (i) a cheque
- (ii) a bill or note payable on demand,
- (iii) a bill or note in which no time is mentioned.

Instruments entitled to 'period of grace' are:

- (i) a bill or note payable on a specified day,
- (ii) a bill or note payable 'after sight',
- (iii) a bill or note payable at a certain period on happening of a certain event.

So in case of time bill or note, it becomes due on the last day of grace period. Where an instrument is payable by installments, each installment is due three days after the date fixed



for payment of the installment. If the due date falls on a public holiday, the bill becomes due on immediate preceding business day. If the month in which the period is to terminate has no corresponding day, the period will terminate on the last day of the month.

Examples:

- (i) A bill dated 6th February, 2016 is made payable 90 days after date. It's due date is 9th May, 2016.
- (iii) A bill dated 1st January, 2016 is made payable one month after date. It falls due on 3rd March, 2016.
- (iv) A bill falls due on 9th May, 2016 which happens to be a Sunday. Then due date becomes 8th May, 2016.

Payment in Due course

Payment in due course means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof. The payment to the person in possession of the instrument must be under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount mentioned in the instrument.

Payment in due course results in discharge of the instrument. A payment is said to be 'payment in due course' if it satisfies the following conditions:

- (i) It is in accordance with apparent tenor of the instrument. A payment before the maturity date is not a payment according to the apparent tenor of the instrument.
- (ii) It is made on behalf of drawee or acceptor. It must be made in money term only which includes cheque and currency notes. The holder of a negotiable instrument cannot be forced to accept payment in any other mode except with his consent.
- (iii) It is made to the person in possession of the instrument and also entitled to payment.
- (iv) It is made in good faith, without negligence and under bonafide circumstances. If a cheque bears forged signature of the drawer, the payment will not be payment in due course if the banker fails to exercise the necessary care.
- (v) There is no ground for believing that possessor is not entitled to receive payment.

3.3 Differences between Promissory Note, Bill of Exchange and Cheque

Point of Difference	Promissory Note	Bill of Exchange	Cheque
Parties	2 Parties - maker & payee	3 parties - drawer, drawee and Payee	3 parties - drawer, banker and payee
Nature	Contains an unconditional promise by maker to pay the payee	Contains an unconditional order to the drawee to pay the payee	Drawn on specified banker to pay on demand.
Acceptance	Not necessary	Necessary if the bill is payable after sight.	Not necessary.



Liability	Liability of maker is primary and absolute.	Liability of drawer is conditional and secondary upon nonpayment by drawee.	Liability of drawer is conditional and secondary upon non-payment by banker
Notice of dishonor	Not necessary	Necessary	Not necessary
Payable	On demand or after a specified time. Cannot be made payable to bearer on demand or even after certain period.	On demand or after a specified time. Cannot be made payable to bearer on demand.	On demand even to bearer if so made.
Crossing	Not possible	Not possible	Can be crossed.
Noting and protesting in case of dishonour	Not required	Required to establish the fact of dishonour.	Not required
Grace period	Available if payable after specified time	Available if payable after specified time (usance bill)	Not available.
Other features	Number, date, place not essential. Must be stamped.	Number, date, place not essential. Must be stamped.	Number, date, place, essential. Need not be stamped.

3.4 Crossing – Meaning, Definition and Types of Crossing

Section 123 to 131-A of the Negotiable Instruments act, 1881 explain about “Crossing”:

A cheque may be a ‘open cheque’ or a ‘crossed cheque’. The former may be presented across, the counter for payment; the later will have to be presented through another banker. While, in the case of an open cheque, payment may be obtained in cash, in the case of a crossed cheque, the amount will be credited to the account of the customer of a bank.

Meaning of Crossing:

The act of drawing two diagonal or transverse parallel lines on the face of a cheque is called “crossing of the cheque”. In other words, a crossed cheque is one which has two transverse parallel lines. Crossing is a direction to the banker not to pay the money across the counter. It means the banker should pay the money only through banker.

Object of Crossing:

The main object of crossing is to give protection and safeguard to the owner of the cheque. The crossed cheque cannot be paid across the counter but it should be paid only through an account with a bank, who may be either the drawee banker or a different one. If it is misutilised, it can be traced very easily and the fraudulent person can easily be detected.

Kinds of Crossing:

There are different kinds of crossing:

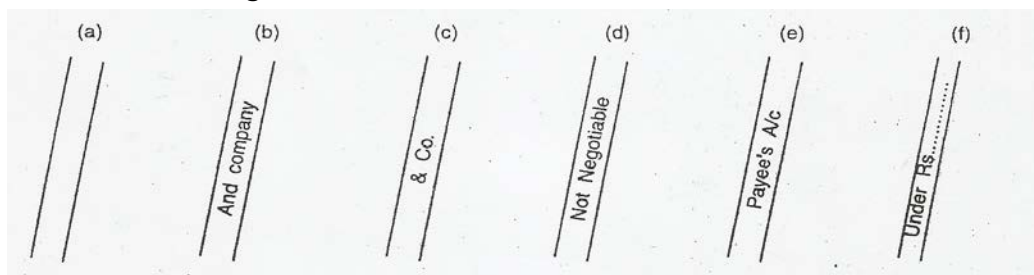
1. General crossing.
2. Special crossing.

1. General Crossing: [Sec. 123]

Where a cheque bears across its face an addition of the words “**and company**” or any **abbreviation** thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words “**Not negotiable**” that addition shall be deemed a crossing, and the cheque shall be deemed to be **crossed generally**.

- (a) Two transverse lines are the essentials of general crossing.
- (b) The lines should not occupy printed letters or numbers or any such written matters.
- (c) The lines are generally drawn on the left hand side.
- (d) The words ‘**and company**’ / ‘**& co.**’ may be written between transverse lines. But these words are not compulsory. The crossing itself sufficient. However, it is the practice of the people to write those words.
- (e) The words ‘**Not negotiable**’ may be added to a crossing. But they themselves do not constitute crossing.

Forms of General Crossing



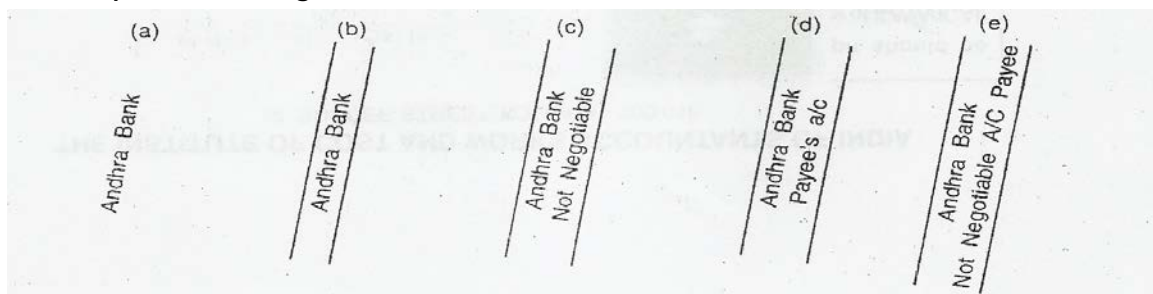
Effect of General Crossing:

- It gives a direction to the paying banker.
- Sec. 126 of the NI Act, 1881 lays down that when a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker. Therefore, this type of cheque cannot be paid at counter. The payment should be made through an account only. Thus the General crossing gives protection and avoids fraudulent withdrawals.
- It is the liability of the paying banker to verify proper payment in proper account. The payment does not constitute “Payment in due course”. The banker is answerable to his customer, if he pays the money to a third person without the direction of his customer. He should not make any contract with third party concerning the cheque generally crossed.

2. Special Crossing: [Sec. 124]

Where a cheque bears across its face an addition of the name of a banker, either with or without the words “**Not Negotiable**”, that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially and to be crossed to that banker.

Forms of Special Crossing



- Two parallel transverse lines are not essential.
- The name of the bank should be mentioned with or without crossing. The name of the bank itself constitutes special crossing.
- The name of the bank should be written on the left side of cheque.
- The name of the bank and the words "Not Negotiable" or "A/c Payee" or "Not Negotiable" or "A/c Payee Only", may also be mentioned.

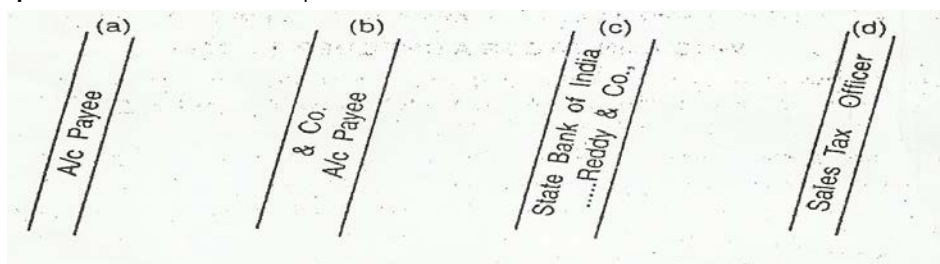
Effect of Special Crossing:

- It prevents the fraudulent transactions and misappropriation.
- It is direction to the paying banker to pay the amount to the account holder of that bank, but not to others.
- If a cheque specially crossed on a particular bank, and if such cheque is presented in another bank, the paying bank should refuse the payment.
- Special crossing gives more protection than general crossing. In the case of special crossing, the banker's name and payee's name are mentioned, and the banker is well acquainted with the payee's name and signature. If there is any forgery he can easily detect it.

Other type of crossing which is not defined in the Act but present in usage is Restrictive Crossing or Account Payee Crossing.

Account Payee Crossing:

In the present day transactions, we find the terms "A/c Payee", "Account Payee", "Account Payee Only", on the cheques. It has developed in the trade and in common to use these terms on the left side of the cheque between the two transverse lines. But there is no law mentioned about this type of crossing either in "The Bills of Exchange Act" of Great Britain or in "The Negotiable Instruments Act, 1881" of India. The terms mean that the amount should not be paid at counter, but should be credited into the account of the payee only. However, the meaning of other crossings is also the same. This type of crossing only gives **additional protection** to the cheque.





Effect of Account Payee crossing:

- It is merely in the form of direction to the receiving bank that the drawer desires to pay the particular cheque into bank which keeps the account of the payee.
- A/c Payee crossing cheque can also be transferable like other cheques.
- It gives further protection to the payee. The collecting banker should credit the cheque only to the mentioned account of the payee.
- If the banker credits the cheque to another's account and not to the account of the payee, the banker shall be held responsible for his negligence, and shall be held liable to pay the compensation.
- The safest method is to cross the cheque with the terms of 'Not Negotiable' and 'A/c Payee only'.

Not Negotiable Crossing: [Sec. 130]

Sections 123 and 124 of the Act permit the use of the words "**Not Negotiable**" in the crossing. Section 130 of the Act clarifies the position.

Section 130: A person taking a cheque crossed generally or specially, bearing in either case the words not negotiable shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

The words "**Not Negotiable**" do not mean "**not transferable**". If it is so, the very meaning and purpose of the cheque and its character of "**Bill of Exchange**" will die. "**Transferability**" is a narrower term than the word '**negotiability**'. The cheque "**not transferable**" crossed can also be transferred like any other cheque. But it gives more protection than General Crossing and Special Crossing. It is a **warning** upon the paying and collecting bankers. Both of them should be very careful in the transaction of this type of cheques.

Object:

The true owner is protected by this type of crossing more perfectly. If it is stolen, the finder cannot cash it so easily. The good title cannot be passed to him. He will be compelled to return it to the true owner. The owner's right is preserved safely against any subsequent holder.

Effect of Not Negotiable crossing:

- It gives more protection and safe to the holder of the cheque.
- A third person cannot cash it so easily.
- It can be transferred like any other cheque.
- If the banker is negligent and transfers the amount of that cheque to another account, he will be held responsible and he will be liable to make the compensation to the sufferer.

Double Crossing/Second Special Crossing: [Sec. 125]

"Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent for collection" is called Double Crossing.

There a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker his agent, for collection.

This is the only case where a second special crossing is allowed by the Act, and that can be done only for the purpose of collection and that too by a banker. Therefore, it is called “Double Crossing” or “Second Special Crossing”. The private parties are not allowed to utilize double crossing.



Effect of Double Crossing:

- Double crossing is not permitted to general public. It is practiced only in case of transactions between the bankers. Others are not allowed to use double crossing.
- It is in practice to cross on the face of the cheque at left side. But in case of Double crossing it is the regular practice to cross at the back side of the cheque, where sufficient space is available.
- Sec. 127 lays down that where a cheque is crossed specially to more than one banker except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.
- According to Sec. 127, it means that it is necessary, in all cases, to specify in the second special crossing that the banker in whose favour it is made is an agent of the first banker for collection.

Who can cross a Cheque:

As we have discussed, by crossing the cheque the drawer instruct the banker to not to pay it over the counter but only credit to the account of the person named therein. It adds to the security and thus ensures payment to the payee or to his order. A cheque may be crossed by any of the following persons;—

- (a) The drawer of a cheque.
- (b) The holder of a cheque. Where a cheque is issued uncrossed it may be crossed by the holder generally or specially.
- (c) The banker in whose favour the cheque has been crossed specially may again cross it specially in favour of another banker. The later bank in such a case acts as the agent of the former.

Sec. 125 states about crossing after issue. According to Sec. 125 where a cheque is uncrossed, the holder may cross it generally or specially.

- Where a cheque is crossed generally, the holder may cross it specially.
- Where a cheque is crossed generally or specially, the holder may add the words “not negotiable”.
- Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.



Essay Questions:

1. Define Negotiable Instrument. Explain the characteristics of a Negotiable Instrument.
2. Explain the differences between Promissory Note, Bill of Exchange and Cheque.
3. What is meant by Crossing of Cheques? Explain the different types of Crossing of Cheque.
4. Explain the different types of Negotiable Instruments.
5. Define Promissory Note. Explain the characteristics of a Promissory Note.
6. Define Bill of Exchange. Explain the characteristics of a Bill of Exchange
7. Define Cheque. Explain the characteristics of a Cheque.

Short Answer Questions:

1. Who can cross a cheque?
2. What are the characteristics of a Negotiable Instruments?
3. Explain the characteristics of a Promissory Note.
4. Explain the characteristics of a Bill of Exchange.
5. Explain the characteristics of a cheque.
6. What is meant by Payment in due course?

Define just in a sentence.

- | | |
|--------------------------|----------------------------------|
| 1. Negotiable Instrument | 6. Holder in due course |
| 2. Cheque | 7. Double Crossing |
| 3. Promissory Note | 8. Due Date of a Bill or Note |
| 4. Bill of Exchange | 9. Negotiable by Statute |
| 5. Holder | 10. Negotiable by usage or trade |

Fill in the Blanks:

1. The Negotiable Instrument Act is applicable to _____
2. The Negotiable Instruments Act, 1881 came into force on _____
3. The term Negotiable instrument is defined in section _____ of the Negotiable Instrument Act, 1881.
4. The undertaking contained in a promissory note, to pay a certain sum of money is _____
5. An instrument incomplete in one way or other is called _____
6. A bill of exchange contains a/an _____ order.
7. The grace period for payment of a negotiable instrument other than payable on demand is _____ days/months.
8. The term "a cheque in the electronic form" is defined in the Negotiable Instruments Act, 1881 under section _____
9. A bearer instrument is negotiated by _____
10. _____ parties are involved in a Bill of exchange.
11. _____ parties are involved in a Promissory note.
12. _____ parties are involved in a Cheque.
13. When a cheque is payable across the counter of a bank it is called _____
14. _____ days grace period is allowed for payment of a cheque.
15. A cheque is always payable on _____



Multiple Choice Questions:

1. **The undertaking contained in a promissory note, to pay a certain sum of money is**
(a) Conditional (b) Unconditional
(c) may be conditional or unconditional depending upon the circumstances
(d) none of the above
2. **A bill of exchange contains a/an**
(a) unconditional undertaking (b) unconditional order
(c) conditional undertaking (d) conditional order
3. **Cheque is a**
(a) promissory note (b) bill of exchange
(c) both (a) and (b) above (d) None of the above
4. **The term 'Negotiable instrument' is defined in the Negotiable Instruments Act, 1881, under section**
(a) 12 (b) 13 (c) 13A (d) 2(d)
5. **The term 'negotiation' in section 14 of the Negotiable Instruments Act, 1881 refers to**
(a) the transfer of a bill of exchange, promissory note or cheque to any person, so as to constitute the person the holder thereof
(b) the payment by a bank on a negotiable instrument after due verification of the instrument
(c) the bargaining between the parties to a negotiable instrument
(d) all of the above
6. **If an instrument may be construed either as a promissory note or bill of exchange, it is**
(a) a valid instrument (b) an ambiguous instrument
(c) a returnable instrument (d) none of the above
7. **If a minor draws, endorses, delivers or negotiates an instrument, such instrument binds**
(a) all parties to the instrument including the minor
(b) only the minor and not other parties to the instrument
(c) all parties to the instrument except the minor
(d) none of the above
8. **In a promissory note, the amount of money payable**
(a) must be certain (b) may be certain or uncertain
(c) is usually uncertain (d) none of the above
9. **A cheque is crossed when it bears across its face an addition of the name of a banker, either with or without the words "not negotiable".**
(a) Specially (b) General
(c) Restrictive (d) None of the above



10. Under section 118 of the Negotiable Instruments Act, 1881, it is presumed, until the contrary is proved, that every transfer of a negotiable instrument was made
- (a) after its maturity (b) before its maturity
(c) at its maturity (d) none of the above
11. Who among the following cannot cross a cheque?
- (a) Drawer (b) Holder (c) Banker (d) Foreigner
12. The presumption as to the date of a negotiable instrument under section 118 is that, every negotiable instrument bearing a date was made or drawn
- (a) prior to that date (b) on such date
(c) may be on or prior to that date (d) none of the above
13. Where a cheque is crossed generally the banker on whom it is drawn
- (a) shall not pay it otherwise than to a banker
(b) shall not pay it otherwise than to the holder
(c) shall not pay it to a banker
(d) none of the above
14. The Negotiable Instrument Act is applicable to—
- (a) Whole of India (b) Whole of India except JK state
(c) Whole of India except J&Kashmir city (d) None of the above
15. The Negotiable Instruments Act, 1881 came into force on
- (a) 9th December, 1881 (b) 19th December, 1881
(c) 1st March, 1882 (d) None of the above.
16. The term Negotiable instrument is defined in section---of the Negotiable Instrument Act, 1881
- (a) 2 (b) 13 (c) 12 (d) 10
17. The undertaking contained in a promissory note, to pay a certain sum of money is----
- (a) Conditional (b) Unconditional
(c) May be conditional or unconditional depending upon the circumstances
(d) None of the above.
18. Which of these is not a negotiable instrument as per the Negotiable Instrument Act, 1881
- (a) Bill of exchange (b) Delivery note
(c) Bearer Cheque (d) Share certificate
19. ---- is not a negotiable instrument as per customs and usage
- (a) Delivery note (b) Railway Receipt
(c) Cheque (d) Government promissory note
20. An instrument incomplete in one way or other is called---
- (a) Inchoate instrument (b) Ambiguous instrument



(c) Foreign Instrument

(d) Dishonored Instrument

21. A bill of exchange contains a/an--

(a) unconditional undertaking

(b) unconditional order

(c) conditional undertaking

(d) conditional order.

22. Cheque is a---

(a) promissory note

(b) bill of exchange

(c) both (a) and (b) above

(d) None of the above.

23. A Corporation can be party to a Negotiable Instrument if---

(a) authorized by its article of association

(b) if special permission of Board of Directors taken

(c) if special resolution by Share holders is passed

(d) absolutely without any restrictions

24. The grace period for payment of a negotiable instrument other than payable on demand is-----days/months

(a) 7days

(b) 3 days

(c) 1 month

(d) 15 days

25. The term "a cheque in the electronic form" is defined in the Negotiable Instruments Act, 1881 - under

(a) Section 6(a)

(b) Section 6(1)(a)

(c) Explanation 1(a) of Section 6

(d) Section 6A.

26. If a minor draws, indorses, deliver or negotiates an instrument, such instrument binds-

(a) All parties to the instrument including the minor

(b) Only the minor and not other parties to the instrument

(c) All parties to the instrument except the minor

(d) None of the above.

27. How many parties are involved in a Bill of Exchange

(a) 2

(b) 3

(c) 4

(d) 1

28. A promissory note, bill of exchange or cheque drawn or made in India and made payable in, or drawn upon any person resident in, India is treated as a/an -

(a) Inland instrument

(b) Local instrument

(c) Foreign instrument

(d) Indigenous instrument

29. If an instrument may be construed either as a promissory note or bill of exchange, it is---

(a) a valid instrument

(b) unambiguous instrument

(c) a returnable instrument

(d) none of the above.

30. If the words "not negotiable" are used with special crossing in a cheque, the cheque is---

(a) not transferable

(b) transferable

(c) negotiable under certain circumstances

(d) none of the above.



31. Crossing of a cheque effects the--

- (a) negotiability of the cheque (b) mode of payment on the cheque
(c) both (a) and (b) (d) none of the above.

32. When a promise note, bill of exchange or cheque is transferred to any person, so as to continue the person the holder thereof, the instrument is said -

- (a) to be valid (b) to be honored
(c) to be transferred (d) to be negotiated.

33. The maturity of a promissory note or bill of exchange is the date -

- (a) at which it falls due. (b) of its presentation
(c) of its acceptance (d) none of these

34. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the—

- (a) Preceding day (b) next preceding business day
(c) same day of next week (d) 3rd day following the date holiday

35. A bearer instrument is negotiated by---

- (a) delivery only (b) delivery and endorsement
(c) endorsement (d) stamping and attestation

36. A bill of Exchange must be---

- (a) in writing (b) unconditional
(c) properly stamped (d) all the three

37. A Promissory note must be---

- (a) in writing (b) unconditional
(c) signed by the maker (d) all the three

38. -----parties are involved in a Bill of exchange.

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

39. -----parties are involved in a Promissory note.

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

40. -----parties are involved in a Cheque.

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

41. A bill of exchange does not require—

- (a) crossing (b) acceptance (c) both (d) either a or b

42. When an Instrument is drawn conditionally or for a special purpose as a collateral security and not for the purpose of transferring property therein it is called a—

- (a) Escrow Instrument (b) Inchoate Instrument
(c) Ambiguous Instrument (d) None of these



43. When a cheque is payable across the counter of a bank it is called—

- (a) OTC Cheque (b) Open cheque
(c) Crossed cheque (d) Restricted cheque

44. ----days grace period is allowed for payment of a cheque.

- (a) 0 (b) 3 (c) 2 (d) 7

45. A cheque is always payable on—

- (a) the date mentioned therein (b) on demand
(c) 3 days after presentation (d) within 24 hrs of presentation

Match the following:

1. Match the following:

	Column I		Column II
1.	Negotiable Instrument	A)	Sec. 4 of NI Act, 1881
2.	Promissory Note	B)	Sec. 6 of NI Act, 1881
3.	Bill of Exchange	C)	Sec. 5 of NI Act, 1881
4.	Cheque	D)	Sec. 13 of NI Act, 1881
5.	Holder	E)	Sec. 8 of NI Act, 1881

2. Match the following:

	Column I		Column II
1.	Grace days	A)	Sec. 9 of NI Act, 1881
2.	Promissory Note	B)	Three days
3.	Bill of Exchange	C)	Incomplete Instrument
4.	Holder in due course	D)	Unconditional undertaking
5.	Inchoate Instrument	E)	Unconditional order

3. Match the following:

	Column I		Column II
1.	Cheque in electronic form	A)	Always payable on demand
2.	Bearer Instrument	B)	Endorsement and Delivery
3.	Cheque	C)	Does not require crossing
4.	Bill of Exchange	D)	Mere delivery
5.	Order Instrument	E)	Exp. 1(a) to Sec. 6

TRUE OR FALSE STATEMENTS:

1. Negotiable Instruments can be transferred ad infinitum.
2. A Negotiable Instrument may be transferred by delivery.
3. The Holder in due course of a Negotiable Instrument can sue on the instrument in his own name.
4. A Negotiable Instrument is subject to certain presumptions listed u/s 119 and 120 as to consideration, date, time of acceptance and transfer, endorsements, etc.



5. Share Certificates with Blank Transfer Deeds, Deposit Receipts and Mate's Receipts are Negotiable Instrument's.
6. A bill which is not an inland bill is deemed to be a foreign bill.
7. When a bill is drawn, accepted, or endorsed for consideration it is a fictitious bill.
8. An instrument incomplete in some respect is known as inchoate instrument.
9. A cheque is a bill of exchange drawn on a specified banker payable on demand.
10. Negotiable instrument we mean a written document by which a right is given to a person and which is transferable in accordance with provisions of Negotiable Instrument Act, 1881.

ANSWERS

Define just in a sentence:

1. Negotiable Instrument

Ans: Sec. 13 of the Act defines a negotiable instrument as 'a promissory note, bill of exchange or cheque payable either to order or to bearer.'

2. Cheque

Ans: "A cheque is a bill of exchange drawn upon a specified banker and payable on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form". [Sec. 6]

3. Promissory Note

Ans: "A Promissory note is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument". [Sec. 4]

4. Bill of Exchange

Ans: "A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument".

5. Holder

Ans: Any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. Where the instrument is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction. [Sec.8]

6. Holder in due course

Ans: A Holder in due course is a person who becomes the possessor of the instrument

- (a) for consideration,
- (b) before maturity, and
- (c) without any notice as to the defect in title of the Transferor. [Sec.9]



7. Double Crossing

Ans: "Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent for collection" is called Double Crossing.

8. Due Date of a Bill or Note

Ans: Every instrument payable, otherwise, than on demand is entitled to three days of grace. Instruments not entitled to 'period of grace' are:

- (i) a cheque
- (ii) a bill or note payable on demand,
- (iii) a bill or note in which no time is mentioned.

9. Negotiable by Statute

Ans: Section 13 of the Act, provides that a negotiable Instrument include promissory note, bill of exchange and cheque, whether payable to bearer or order.

10. Negotiable by Usage or trade

Ans: Though the Act speaks of only three types of Negotiable Instrument, but it does not bar other kinds of instruments from being treated as a negotiable instrument provided they possess the characteristics of a negotiable instruments. Accordingly certain other instruments take the character of negotiable instruments by custom or usage. Dividend warrant, circular notes, bearer debentures are some of them though they are not specifically mentioned in the Act.

Fill in the Blanks:

- | | | |
|--------------------------------|------------------|-----------------|
| 1. Whole of India | 6. Unconditional | 12. Three |
| 2. 1 st March, 1882 | 7. 3 days | 13. Open Cheque |
| 3. Sec. 13 | 8. Sec. 6 | 14. Zero |
| 4. Unconditional | 9. Endorsement | 15. Demand |
| 5. Inchoate Instrument | 10. Three | |
| | 11. Two | |

Multiple Choice Questions:

1.	B	2.	B	3.	B	4.	B	5.	A
6.	B	7.	C	8.	A	9.	A	10.	B
11.	D	12.	B	13.	A	14.	A	15.	C
16.	B	17.	B	18.	D	19.	C	20.	A
21.	B	22.	B	23.	A	24.	B	25.	C
26.	C	27.	B	28.	A	29.	B	30.	A
31.	C	32.	D	33.	A	34.	B	35.	A
36.	D	37.	D	38.	B	39.	A	40.	B
41.	C	42.	A	43.	B	44.	A	45.	B



TRUE OR FALSE STATEMENTS:

- | | | | | |
|----------|----------|----------|----------|----------|
| 1. True | 3. True | 5. False | 7. False | 9. True |
| 2. False | 4. False | 6. True | 8. True | 10. True |

Match the following

1. Match the following:

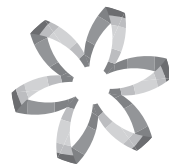
- | | | | | |
|------|------|------|------|------|
| 1. d | 2. a | 3. c | 4. b | 5. e |
|------|------|------|------|------|

2. Match the following:

- | | | | | |
|------|------|------|------|------|
| 1. b | 2. d | 3. e | 4. a | 5. c |
|------|------|------|------|------|

3. Match the following:

- | | | | | |
|------|------|------|------|------|
| 1. e | 2. a | 3. c | 4. b | 5. e |
|------|------|------|------|------|



Section B
Fundamentals of Ethics
(Syllabus - 2016)



Study Note – 4

ETHICS AND BUSINESS

This Study Note includes:

- 4.1 Ethics – Meaning, Importance
- 4.2 The “Seven Principles of Public Life” – Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.
- 4.3 The relationship between Ethics and Law
- 4.4 Ethics in Business

4.1 Ethics – Meaning, Importance

INTRODUCTION:

The study of ethics is a systematic science. Its scope encompasses all human relationships in a society. Ethics also known as moral philosophy is a branch of philosophy that involves systematizing, defending and recommending concepts of right and wrong conduct. The study of ethics can be divided into four operational areas namely – meta ethics, normative ethics, descriptive ethics and applied ethics.

Ethics fundamentally comprises of two elements:

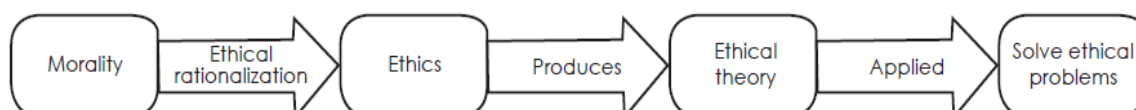
- a) Firstly, ethics refers to well founded standards of right and wrong that describe what humans ought to do in terms of rights, obligations, benefits to society, etc.
- b) Secondly, ethics refers to the study and development of one’s ethical standards.

So, it is necessary to constantly examine one’s standards to ensure that they are reasonable and well founded.

Let us first try to analyse the key terms ‘ethics’ and ‘morals’. Note the linguistic use of the terms they seem as if they are in the plural form, just as ‘economics’ or ‘politics’, but we treat them as singular. Generally, ethics and morals are used as synonyms. There is nothing wrong in such a usage, for after all, the meanings of all words depend on their common usage. However, in formal study, we need to understand the meaning of the terms in a qualified way so as to make our subject of study precise and well defined.

Ethics vs Morals:

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Difference between Ethics and Morals

	Ethics	Morals
1.	Root word in Greek is 'ethikos' which means 'Character'.	Root word in Greek is 'mos' which means 'custom'.
2.	Deals with right and wrong conduct.	Deals with principles of right and wrong.
3.	Deals with individual character.	Deals with customs set by groups.
4.	Character is personal attribute.	Customs are determined by groups or some authority like religion or culture.
5.	Ethics is the response of an individual to a specific situation. E.g. whether in that situation, it is ethical to state the truth.	Morals are general principles, e.g. "You should speak truth."

EVOLUTION OF ETHICS

Social conduct has evolved along with the evolution of society over hundreds of years. The codes of conduct have been passed down from generation to generation, and there is a pattern to the evolution of such codes. Acceptable behaviour is promoted and elevated as a social value, and unacceptable behaviour is rejected and condemned. In ancient India, there was no moral problem with the custom of sati-immolating the wife on the funeral pyre or the deceased husband. But society has evolved humanely and has condemned the act as unacceptable and morally reprehensible.

The laws of a country are based on the customs or moral codes of its society. Penalties are prescribed for bad actions - actions that contradict the established laws. The laws are a measure against those people who cross the limits of the code of social conduct, and ensure that good citizens are protected from the negative consequences of the law-breakers.

The object of the social codes of conduct is to maintain, promote, and elevate harmonious relationships. 'Honour your parents' is one such code. It maintains a peaceful relationship between parents and children and promotes respect for each other in the family. It is because of its salutary effects, it is considered as one of the fundamental values to be cultivated.

APPLICATION

The relevance of ethics is in its application. Just as when we study the theory of relativity in physics, we ensure that the laws or principles of relativity are applied to the factors and elements being considered, so too in our study of ethics, the universal principles have to be applied to individual contexts and situations. We have to abandon the absolutism of universal principles. For instance, killing a man is wrong. But we approve the killing of the enemy in a war and the government honours the act with medals for bravery. This is due to the fact that such an act has served a higher principle, that is, the protection of countrymen. Ethics, in the practical sense, is also known as moral action and is an applied discipline that deals with a particular human action and also assesses to what extent it is compatible with the general principles.



4.2 Seven Principles of Public Life

Value-free Ethics

It would seem that business is an ethically neutral or value-free activity. In other words, the only value business is concerned with is the monetary value. It is not in the interest of business to mix ethical values. An ancient Arabic wisdom states, 'Live together like brothers and do business like strangers.' Business should be kept free from other social relationships and obligations. The only successful relationship that exists in business is that of a vendor and a customer.

It is also said that 'for the merchant, even honesty is a financial speculation.' Indeed, for a businessman every factor in the business is measured in terms of money. The volatility that we see in the stock market is a clear example of the speculative nature of business, which is directly proportional to the prevailing attitude of the people.

Concept of Value-free Ethics

The concept of 'value-free' business ethics appears to be quite appealing to businessmen. It is as though it may be pursued devoid of all rules within a social vacuum. The concept of value-free ethics found application in economics in a rather ironical fashion. Ludwig von Mises, known as the father of the Austrian School of Economics, proposed the pure theory of economics, stating that economic concepts are a priori, that is, they are not dependent on experience, but are purely virtual concepts. The concept of choice, for instance, is a pure concept. It is immaterial whether one chooses water or wine, but the concept in itself is free of such particular elements. Hence, choice is value-free (wertfrei). Applied to ethics, it would mean that we should be able to study the principles of this discipline, such as goodness, truth, justice, honour, etc. in their pure form.

It is obvious that such value-free ethics, when understood in the right sense, leads us to study metaethics or the fundamental principles of ethics as a pure science. However, if we are to apply an ethical standard to such a study, it would be called a pure study of values, not value-free ethics.

Ethics as a Principle

We have established that social evolution has developed definite principles of civic behaviour, which have attained the status of principles. By principle, we understand that something proceeds and depends on it for its cause. For instance, when one kicks a football, force is the principle that propels it into motion and the ball remains in motion till the force lasts. In other words, the physical world functions strictly according to the laws of physics. It is expected that people also submit their behaviour, both in thoughts and in actions, to these principles. An action is valid as long as it reflects the principle, just as the speed of the moving ball depends on the force it receives.

All moral actions are directed towards their object, the good, which is the principle of all happiness. This is not only the sole purpose of our existence but our co-existence with others as well. We cannot be happy alone; we can only be happy together. The universal idea of the good is applied to individual instances. Individuals are good in their own particular way, and are good in so far as they share the essence of goodness. The universal good is a pure or



general idea. It is formed through a process of abstraction of the essence from individuals or particulars.

Business Ethics as Professional Code

Business ethics is not a pure science but a professional practice, and society expects businessmen to abide by the principles of a civil society, just as it expects professionals from other areas such as medicine, bureaucracy, politics and sports to do so. Thus, instead of a value-free business ethics, we have a value loaded or value-based business practice.

The Seven Principles of Public Life

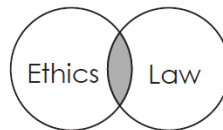
1.	Selflessness	Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.
2.	Integrity	Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance of their official duties.
3.	Objectivity	In carrying out public business including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
4.	Accountability	Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
5.	Openness	Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
6.	Honesty	Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
7.	Leadership	Holders of public office should promote and support these principles by sound leadership and prove to be an example in whatever they perform.

[Extracted from the "First Report of the Committee on Standards of Public Life" UK May 1995]

4.3 The relationship between Ethics and Law

Ethics and Law - The Interface

Law is essentially an institutionalisation or codification of ethics into specific social rules, regulations and prescriptions. Perhaps the best way of visualizing ethics and law is in terms of two intersecting domains as depicted in the following figure:



Thus, in one sense, business ethics can be said to begin where law ends. Business ethics is primarily concerned with those issues not completely covered by law, or where there is no definite consensus on whether something is right or wrong. Hence, it is often remarked, that business ethics is about the “grey areas” of business where values are in conflict.

4.4 Ethics in Business

According to Andrew Crane “ Business ethics is the study of business situations, activities and decisions where issues of right and wrong are addressed”

Raymond C. Baumhart contend – “The ethics of business is the ethics of responsibility. The businessman must promise that he will not harm knowingly”.

Thus, Business Ethics (also called corporate ethics) is a form of applied ethics or professional ethics that examines ethical principles and moral or ethical problems that arise in a business environment. It applies to all aspects of business conduct, and is relevant to the conduct of individuals and the entire organizations.

Business ethics concerns itself with adhering to the social principles of the situations in which business takes place.

Business for Profit

It would seem that business ethics does not come within the confines of ethics. As Adam Smith (1779), the father of modern economics says: ‘People of the same trade seldom come together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.’ People find mechanisms to generate the highest possible returns when conducting business. No one holds it against a worker for demanding higher wages, or a landlord for increasing the rent. Their actions are not considered illegal or unethical. Profits are the just wages for invested capital and entrepreneurship. Hence, these should not be resented and should be left alone outside the boundaries of ethics. Business is for profit; the just reward for doing business lies in the excess returns received on the investment.

Business and Ethics

No matter how hard one tries, it is impossible to separate life from business. For a businessman, business is life. Mahatma Gandhi (1948) said, ‘It is difficult but not impossible to conduct strictly honest business. What is true is that honesty is incompatible with amassing of large fortune.’ The business world is an important part of society, as it is concerned with the livelihoods of people. Business activity too is subjected to the code of conduct without any exception. Therefore, there is no separate business ethics for businessmen, as ethics applies

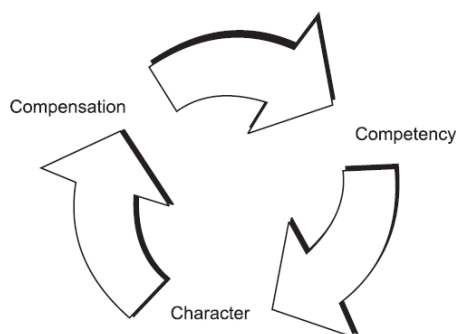
to all the activities of people. Consequently, we have to keep business within the bounds of ethics.

Character of Business

'There are two fools in every market: one asks too little, one asks too much,' so says a Russian proverb. Is there a concept called balanced profit? The business in a society reflects its character. Transparency International, in its corruption perception index, gives Finland, Denmark, and New Zealand the first place with 9.4 points. India is way down at 72, with just 3.5 points on a scale of 10. We may gloat over our cultural heritage and religious and ethical glories of the past, but we stand exposed before the world as a corrupt society. Corruption prevails in all walks of life, whether political, social, or economic. If we have to improve our business, we have to improve our business behaviour.

Professional Ethics

The aforementioned discussion may be understood through the following distinctions: ethics and business ethics. We have studied the distinction between normative and practical ethics and have established that business ethics comes under practical ethics and is applied to a particular activity. Just as a society functions on the social codes of conduct and a country is governed by its constitution, a business is run on corporate codes. In other words, there is a professional code of conduct for any business. These codes keep evolving as other things around evolve and develop. Therefore, not only should business be defined within the confines of ethics, but it should be practised strictly under its own professional code of conduct. This distinction helps to orient the general principles of ethics and business to a particular activity. The principles, however, do not change. For instance, there is a manager who is doing very well in his career because he is both efficient and honest. To his neighbours and friends, he is not only a very successful businessman, but also a very good family man. To a question asked by a journalist on how he divided his time between his family and business despite his busy schedule, he replied, 'Efficiently.' 'What is the secret of your success?' asked the journalist. He replied 'Honesty.' The journalist looked inquiringly as if to say, 'Look, business and family are separate.' The businessman said, 'Both efficiency and honesty work equally well at work and at home.' The character of a true professional remains undivided, whether at work or at home. Our roles may change from time to time and from place to place but the integrity of our character should be maintained.





Business ethics, thus, professionally adheres to a code of conduct that is in accordance with the normative principles further, it may be concretely stated that professionals bear the following marked characteristics:

- (i) competency of educational qualification,
- (ii) professional skills, and
- (iii) compensation (salary/remuneration, etc.).

NEED FOR BUSINESS ETHICS

Business ethics is currently a very prominent business topic, and the debates and dilemmas surrounding business ethics have attracted enormous amount of attention from different quarters of organizations and society. Hence, it has emerged as an increasingly important area of study. Some of the major reasons why a good understanding of business ethics is important can be stated as follows:-

1. **Stop business malpractices** : Some unscrupulous businessmen do business malpractices by indulging in unfair trade practices like black-marketing, artificial high pricing, adulteration, cheating in weights and measures, selling of duplicate and harmful products, hoarding, false claims or representations about their products etc. These business malpractices are harmful to the consumers. Business ethics help to stop these business malpractices.
2. **Improve customers' confidence** : Business ethics are needed to improve the customers' confidence about the quality, quantity, price, etc. of the products. The customers have more trust and confidence in the businessmen who follow ethical rules. They feel that such businessmen will not cheat them.
3. **Survival of business** : Business ethics are mandatory for the survival of business. The businessmen who do not follow it will have short-term success, but they will fail in the long run. This is because they can cheat a consumer only once. After that, the consumer will not buy goods from that businessman. He will also tell others not to buy from that businessman. So this will defame his image and provoke a negative publicity. This will result in failure of the business. Therefore, if the businessmen do not follow ethical rules, he will fail in the market. So, it is always better to follow appropriate code of conduct to survive in the market.
4. **Safeguarding consumers' rights** : Consumer sovereignty cannot be either ruled out or denied. Business can survive so long it enjoys the patronage of consumer. The consumer has many rights such as right to health and safety, right to be informed, right to choose, right to be heard, right to redress, etc. But many businessmen do not respect and protect these rights. Business ethics are must to safeguard these rights of the consumers.
5. **Protecting employees and shareholders** : Business ethics are required to protect the interest of employees, shareholders, competitors, dealers, suppliers, etc. It protects them from exploitation through unfair trade practices.
6. **Develops good relations** : Business ethics are important to develop good and friendly relations between business and society. This will result in a regular supply of good quality goods and services at low prices to the society. It will also result in profits for the businesses thereby resulting in growth of economy.



7. **Creates good image** : Business ethics create a good image for the business and businessmen. If the businessmen follow all ethical rules, then they will be fully accepted and not criticised by the society. The society will always support those businessmen who follow this necessary code of conduct.
8. **Smooth functioning** : If the business follows all the business ethics, then the employees, shareholders, consumers, dealers and suppliers will all be happy. So they will give full cooperation to the business. This will result in smooth functioning of the business. So, the business will grow, expand and diversify easily and quickly. It will have more sales and more profits.
9. **Consumer movement** : Business ethics are gaining importance because of the growth of the consumer movement. Gone are the days when the consumer can be taken for ride by the unscrupulous business by their false propoganda and false claims, unfair trade practices. Today, the consumers are aware of their rights and well informed as well as well organised. Now they are more organised and hence cannot be cheated easily. They take actions against those businessmen who indulge in bad business practices. They boycott poor quality, harmful, high-priced and counterfeit (duplicate) goods. Therefore, the only way to survive in business is to be honest and fair. Consumer forums and Consumer Associations are more active and vocal now.
10. **Consumer satisfaction** : Today, the consumer is the king of the market. Any business simply cannot survive without the consumers. Therefore, the main aim or objective of business is consumer satisfaction. If the consumer is not satisfied, then there will be no sales and thus no profits too. Consumer will be satisfied only if the business follows all the business ethics, and hence are highly needed.
11. **Importance of labour**: Labour, i.e. employees or workers play a very crucial role in the success of a business. Therefore, business must use business ethics while dealing with the employees. The business must give them proper wages and salaries and provide them with better working conditions. There must be good relations between employer and employees. The employees must also be given proper welfare facilities.
12. **Healthy competition** : The business must use business ethics while dealing with the competitors. They must have healthy competition with the competitors. Healthy competition brings about efficiency, break complacency and leads to optimal utilisation of scarce resources, hence is always welcome. They must not do cut-throat competition. Similarly, they must give equal opportunities to small-scale business. They must avoid monopoly. This is because a monopoly is harmful to the consumers.

Essay Questions

1. Explain the seven principles of public life.
2. Write about the need for Business Ethics.
3. Explain the difference between ethics and morals.
4. What is Value free ethics. Explain the concept of value free ethics.

Short Answer Questions

1. Explain the interface between Ethics and Law.
2. Explain Ethics as a principle.
3. Write about Professional Ethics.



4. Explain about the evolution of Ethics.
5. Application of Ethics.

Define, in just a sentence, the following:

1. Meaning of Ethics.
2. Meaning of Morals
3. Value free ethics
4. Professional Ethics
5. Three C's of Business Ethics
6. Define Business Ethics

Fill in the blanks:

1. The study of Ethics is divided into ____ operational areas.
2. The word ethics is derived from ____
3. Ethics has evolved with evolution of ____
4. The relevance of ethics is in its ____
5. "It is difficult but not impossible to conduct strictly honest business" is famous quote by _____
6. Law is ____ of ethics.
7. The study of ethics is a ____ science.
8. Ethics is also known as ____ philosophy.
9. ____ is the study of business situations, activities and decisions where issues of right and wrong are addressed.
10. Business ethics is also called as _____

Multiple Choice Questions:

1. The study of Ethics is divided into _____ operational areas.
(a) Six (b) Four (c) Five (d) Nine
2. The word ethics is derived from:
(a) Latin word 'ethike' (b) Greek word 'ethik'
(c) Greek word 'ethike' (d) Latin word 'ethik'
3. Ethics has evolved with evolution of:
(a) Culture (b) Value (c) Moral (d) Society
4. The relevance of ethics is in its:
(a) Context (b) Principles (c) Application (d) Understanding
5. 'It is difficult but not impossible to conduct strictly honest business' is famous quote by:
(a) Mahatma Gandhi (b) Adam Smith
(c) George Bernaud Shaw (d) Peter Drucker
6. Law is _____ of ethics
(a) No connection (b) Decodification
(c) Codification (d) Visualisation



7. This is not of the 7 principles of Public Life

- (a) Integrity (b) Honesty (c) Content (d) Accountability

8. Business malpractice does not include:

- (a) Black marketing (b) Adulteration
(c) Advertising (d) Duplication

9. Business ethics calls for avoidance of:

- (a) Competition (b) Publicity (c) Monopoly (d) Self Interest

10. Following is not a professional characteristics:

- (a) Competition (Undercutting) (b) Competency
(c) Character (d) Compensation

11. The term 'business ethics' came into common use in year

- (a) 1950 (b) 1960 (c) 1970 (d) 1980

12. Ethics refers to athat guides an individual while dealing with others.

- (a) Code (b) Conduct (c) Code of conduct (d) Rules of conduct

13. The society for Business Ethics was started in

- (a) 1950 (b) 1960 (c) 1970 (d) 1980

14. Ethics is a set of.....of human conduct that govern the behaviour of individuals or organizations.

- (a) Principles (b) Standards
(c) Principles or standards (d) None of the above

15.is a set of principles and expectations that are considered binding on any person who is member of a particular group.

- (a) Code of conduct (b) Code of ethics
(c) Code of practice (d) Any of the above

16. made it important for businesses to have an ethics code, something in writing about what one ought to do, and what to strive for.

- (a) The Ethics & Code Conduct Act, 2000
(b) The Sarbanes-Ethics of Code Conduct Act, 2001
(c) The Sarbanes-Oxley Act, 2002
(d) None of above

17. Business Ethics is a code of conduct which society should follow while conducting their social activities.

- (a) True (b) False (c) Partly true (d) None of above

18. Business ethics has a.....application.

- (a) Natural (b) Practical (c) Universal (d) None of the above

19.is about obeying and adhering to rule and authority.

- (a) Ethics (b) Code (c) Conduct (d) Compliance



- 20. Ethical executives abide by relating to their business activities.**
(a) Laws (b) Rules (c) Laws, rules and regulations (d) None of above
- 21. Ethics in compliance means.....**
(a) It is about obeying and adhering to rules and authority
(b) It deals with the moral principles behind the operation and regulation of marketing
(c) It deals with the duties of a company to ensure that products and production processes do not cause harm
(d) None of the above
- 22. Which functional area in business ethics is about obeying and adhering to rules and authority?**
(a) Ethics in compliance (b) Ethics in finance
(c) Ethics in production (d) None of the above
- 23. Which of the following is an unethical business practice?**
(a) Collusion (b) False Communication
(c) Insider Trading (d) All the above
- 24. Which of the following is not a 'code of conduct'?**
(a) Code of ethics (b) Code of practices
(c) Code of behaviour (d) Code of management
- 25. Administrative corruption includes "gifts" to the**
(a) Factory inspector (b) Boiler inspector
(c) Pollution control board inspectors (d) All of the above
- 26. Compliance is about obeying and adhering to**
(a) Rules an authority (b) Discipline
(c) Laws (d) All of the above
- 27. Business Ethics is a code of conduct which businessmen should follow while conducting their**
(a) Normal activities (b) Special activities
(c) Specific activities (d) None of the above
- 28. The idea of business ethics caught the attention of academics, media and business firms by the end of the.....**
(a) First world war (b) Second world war
(c) Cold war (d) None of the above
- 29. Business ethics is based on well accepted**
(a) Moral and social values (b) Social values only
(c) Moral values only (d) None of the above
- 30. An expert who is confidentially available to solve the ethical dilemmas is known as.....**
(a) Ethic coach (b) Ethics trainer
(c) Ethics guide (d) None of the above



31. A set of principles and expectations that are considered binding on any person who is member of a particular group is known as -
(a) Code of ethics (b) Values (c) Ethics (d) None of the above
32. Business ethics has a application
(a) Universal (b) Natural (c) Practical (d) None of the above
33. The term 'business ethics' came into common use in year.....
(a) 1680 (b) 1780 (c) 1980 (d) 1970
34. The crucial step in understanding business ethics is
(a) Establishing codes of ethics (b) Learning to recognize ethical issues
(c) Having efficient operations (d) Implementing a strategic plan
35. Business ethics relates to
(a) Society's decisions (b) An individual's or work group's decisions
(c) Customers decisions (d) Government decisions
36. Which of the following statements about business ethics is true?
(a) It concerns the impact of a business activities on society
(b) It refers to principles and standards that determine acceptable behavior in the world of business
(c) It relates to an individual's values and moral standards and the resulting business decisions he or she makes
(d) What is ethical is determined by the public, government regulators, interest groups, competitors and individual's personal moral values
37. Ethical and unethical behaviors are determined by
(a) The individual (b) The culture
(c) Both the individual and the culture (d) Neither the individual nor the culture
38. Top managers demonstrate commitment to ethical business practices with
(a) The adoption of written codes of ethics (b) Employee empowerment
(c) Decentralized decision making practices (d) Collusion with other companies
39. Feature that is NOT present in business ethics are
(a) It has universal application (b) It is Absolute in nature
(c) It Depends from business to business (d) It Cannot be enforced by law
40. Corporate codes of ethics:
(a) Are always externally audited (b) Create guidelines for employees to work by
(c) Are always compliance based (d) Are always integrity based
41. In business ethics, the stakeholder theory of business ethics maintains that managers have an ethical responsibility to manage a firm for the benefit of all its stockholders, and for people who have a claim on a company.
(a) True (b) False (c) Partially true (d) Partially false
42. are beliefs about what is right and wrong or good or bad.



- (a) Mores (b) Motivators (c) Cultures (d) Ethics

43. In setting ethical standards, perhaps the most effective step that a company can take is to

- (a) Adopt a code of ethics
 (b) Demonstrate top management support of ethical standards
 (c) Engage employees in ethics training
 (d) Take an accommodative stance

44. Ethics has become important because of

- (a) Globalization (b) Communication explosion
 (c) Both a & b (d) None of the above

45. Business Ethics isin nature

- (a) Absolute (b) Not absolute
 (c) Permanent (d) None of the above

TRUE OR FALSE STATEMENTS:

- Morals refers to well founded standards of right and wrong that describe what humans ought to do in terms of rights, obligations, benefits to society.
- Ethics refers to the study and development of one's ethical standards.
- Holders of public office are not accountable for their decisions and actions to the public.
- Holders of public office should take decisions solely in terms of the public interest.
- Business ethics is not a pure science but a professional practice, and society expects businessmen to abide by the principles of a civil society.

Match the statement under Column I with the appropriate statement under Column II:

1. Match the following:

	Column I		Column II
1.	Ethics	A)	Live together like brothers and do business like strangers.
2.	Adam Smith	B)	Ludwig von Mises
3.	Business Ethics	C)	Well founded standards of right and wrong.
4.	Arabic Wisdom	D)	First Report of the Committee on Standards of Public Life
5.	Value-free	E)	Taking decisions solely in terms of Public Interest.
6.	Father of Austrian School of Economics	F)	Father of Economics
7.	Seven Principles of Public Life	G)	wertfrei
8.	Selflessness	H)	Corporate Ethics

2. Match the following:

	Column I		Column II
1.	Honesty	A)	Character
2.	Mos	B)	One asks too little, One asks too much
3.	Morals	C)	Not placing under any financial obligations.



4.	Character	D)	Declaring private interest relating to their public duties.
5.	Russian Proverb	E)	Appointment, awarding contracts on merit.
6.	Ethikos	F)	Custom
7.	Integrity	G)	General Principles
8.	Objectivity	H)	Personal Attribute

ANSWERS

Define, in just a sentence, the following:

1. Meaning of Ethics.

Ans: Ethics also known as moral philosophy is a branch of philosophy that involves systematizing, defending and recommending concepts of right and wrong conduct.

2. Meaning of Morals

Ans: Concerned with the principles of right and wrong behavior.

3. Value free ethics

Ans: It would seem that business is an ethically neutral or value-free activity. In other words, the only value business is concerned with is the monetary value. It is not in the interest of business to mix ethical values. An ancient Arabic wisdom states, 'Live together like brothers and do business like strangers.' Business should be kept free from other social relationships and obligations. The only successful relationship that exists in business is that of a vendor and a customer.

4. Professional Ethics

Ans: Just as a society functions on the social codes of conduct and a country is governed by its constitution, a business is run on corporate codes. In other words, there is a professional code of conduct for any business. These codes keep evolving as other things around evolve and develop. Therefore, not only should business be defined within the confines of ethics, but it should be practised strictly under its own professional code of conduct. This distinction helps to orient the general principles of ethics and business to a particular activity.

5. Three C's of Business Ethics

Ans: Compensation, Competency and Character are the Three C's of Business Ethics.

6. Define Business Ethics

Ans: According to Andrew Crane " Business ethics is the study of business situations, activities and decisions where issues of right and wrong are addressed"

Fill in the Blanks

- Four
- Greek word
- Society
- Application
- Mahatma Gandhi
- Codification



7. Systematic Science

9. Business Ethics

8. Moral

10. Corporate Ethics

Multiple Choice Questions:

1.	B	2.	C	3.	D	4.	C	5.	A
6.	C	7.	C	8.	C	9.	C	10.	A
11.	C	12.	C	13.	D	14.	C	15.	A
16.	C	17.	A	18.	C	19.	D	20.	C
21.	A	22.	A	23.	D	24.	D	25.	D
26.	A	27.	A	28.	C	29.	A	30.	A
31.	A	32.	A	33.	D	34.	B	35.	B
36.	B	37.	C	38.	A	39.	B	40.	B
41.	B	42.	D	43.	B	44.	C	45.	B

TRUE OR FALSE STATEMENTS:

1. False

2. True

3. False

4. True

5. True

Match the following:

1. Match the following

1) C

2) F

3) H

4) A

5) G

6) B

7) D

8) E

2. Match the following

1) D

2) F

3) G

4) H

5) B

6) A

7) C

8) E



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Website: www.icmai.in

E-mail: studies@icmai.in / bos@icmai.in

Toll Free: 1800 345 0092 / 1800 110 910

Follow us on   

HEADQUARTERS

CMA Bhawan
12 Sudder Street, Kolkata-700 016, India
Tel: +91-33-2252 1031/1034/1035/1492/1602/1619/7373/7143
Fax: +91-33-2252 7993/1026/1723

DELHI OFFICE

CMA Bhawan
3, Institutional Area, Lodhi Road, New Delhi - 110 003
Tel: +91-11-24622156/57/58, 24618645
Fax: +91-11-43583642