UNIT-I

1) Define contract? State the essential elements of a valid contract?

Or

"An agreement enforced by law is a contract"- Discuss?

Or

"All agreements are not contracts, but all contracts are agreement"-Explain?

The term 'contract' is derived from the Latin word 'Contractum' which means 'drawn together'. A Contract brings (or) draws the parties together and establishes legal relationship between them. An agreement is the basis of contract. An agreement comes into existence when ever one (or) more persons promise to one (or) others, to do (or) not to do something. An agreement which can be enforced through the courts of law is called a contract.

Definitions:

Salmond defines a contract as "An agreement creating and defining obligations between the parties".

Pollock defines a contract as "Every agreement and promise enforceable by law is a contract".

Section 2(h) of the contract act defines a contract as "An agreement enforceable by law".

Sir William Anson defines a contract as "a legally binding agreement made between two (or) mare persons by which rights are acquired by one (or) more to acts (or) forbearances on the part of other (or) others.

If we observe the above definitions, we find that a contract consists of two elements.

1) An agreement and 2) Its enforceability by law.

Essential Elements of a valid contract:

The following are the essential elements of a valid contract.

i) Offer and Acceptance:

In order to create a valid contract, there must be a "lawful offer" by one party and "lawful acceptance" of the same by the other party.

ii) Intension to create legal relationship:

There must be an intension among the parties to cerate a legal relationship. Incase of social (or) domestic agreements, the usual presumption is that the parties do not intend to create legal relationship. But in commercial (or) in business agreement the usual presumption is that the parties intend to create legal relationship unless otherwise agreed upon.

Case law:

Balfour vs Balfour

Mr. Balfour was employeed in Ceylon. Mrs. Balfour owing to ill health had to stay in England and couldn't accompany him to Ceylon. Mr. Balfour promised to send 30£ per month while he was abroad. But Mr. Balfour fails to pay that amount. So Mrs. Balfour filed a suit against her husband for recovering the said amount. The court held that it was a mere domestic agreement and that the promise made by the husband in this case was not intended to be a legal obligation.

Other leading cases on this point are week's vs Tybald and Rose and Frank company vs Compton brothers.

iii) Lawful consideration:

An agreement must be supported by lawful consideration. Consideration means something in return. The consideration must be lawful.

E.g.:

'A' promises to obtain employment in public service for 'B' and 'B' promises to pay Rs 50,000/- to 'A'. The agreement is not enforceable as the consideration for it is unlawful.

iv) Capacity of Parties:

The Parties who enter into an agreement should be legally competent to do so. A Person is said to be legally competent to contract if has attained the age of majority, is of sound mind and is not disqualified from contracting by any law.

An agreement made by parties incompetent to contract, then no valid contract comes into existence because those agreements are not enforceable by law.

E.g.:

Agreements made with minors (or) unsound mind persons are not valid contracts.

v) Free Consent:

The consent of the parties to the agreement must be free and genuine. A Consent is said to be free when it is not caused by co-ercion, undue influence, fraud, misrepresentation (or) mistake.

If the consent of the parties is not free, then no valid contract comes into existence.

E.g.:

'A' who owns two cars, one Maruthi and the other Indica, offers to sell 'B' one car, 'A' intending it to be the Maruthi, 'B' accepts the offer thinking that it was the Indica, there is no free consent and hence no contract.

vi) Lawful Object:

The object of an agreement must be lawful. It must not be illegal (or) immoral (or) opposed to public policy and must not be forbidden by law.

E.g.:

Any agreement entered between parties for doing a crime (or) committing an offence is unenforceable because there is no lawful object.

vii) Certainity of Meaning:

The terms and conditions of an agreement must be précised and certain. They must not be indefinite (or) uncertain. If they are so the agreement is not enforceable.

E.g.:

'A' agrees to sell 'B' 100 tons of oil. There is nothing what ever to show what kind of oil was intended. So the agreement is not enforceable.

viii) Possibility Of Performance:

The agreement must be capable of being performed. A promise to do an impossible thing cannot be enforced.

E.g.:

Mr. 'A' agrees with 'B' to discover treasure by magic. Such agreement is not enforceable.

ix) Not Declared to be void (or) illegal:

The agreement though satisfying all the above conditions for a valid contract must not have been expressly declared void by any law in force in the country.

E.g.:

Agreement in restraint of marriage, agreement in restraint of trade etc.

x) Legal Formalities:

An oral agreement is a perfectly valid contract except in those cases where writing, registration etc is required by some provisions. In India writing is required in cases of sale, mortgage, lease, memorandum of association, articles of association of a company etc. in some cases a contract has to be attested, registered and stamped. Thus where there is a statutory requirement that a contract should be made in writing and registered, they require by legal formalities should be fulfilled with.

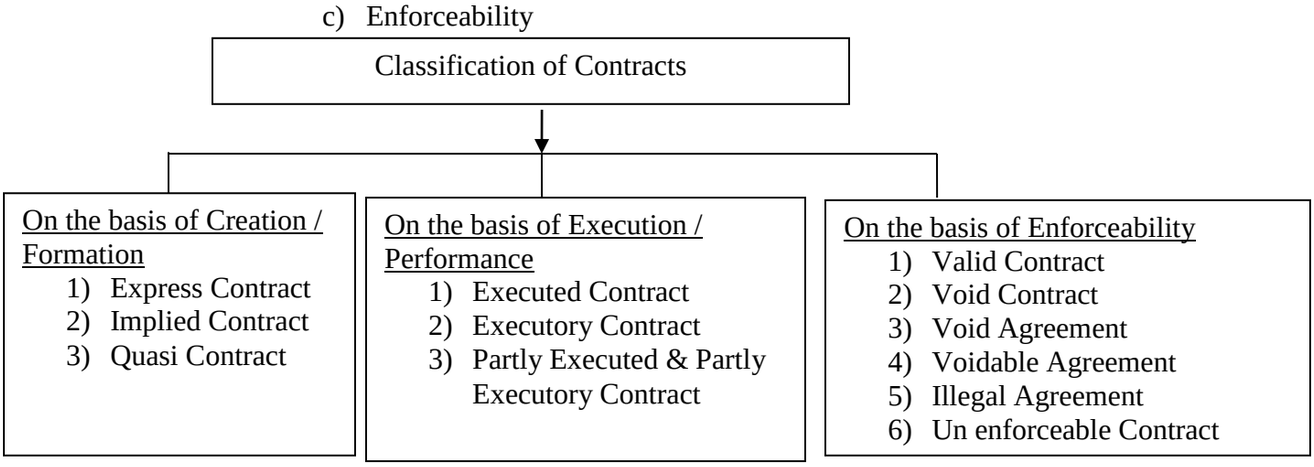
All the elements mentioned above must be present inorder to make a valid contract. If any one of them is absent, the agreement does not become a contract.

So all agreements are not contracts but all contracts are agreements.

2) Write about classification of contracts?

Contracts may be classified on the basis of their

a) Creation (or) Formation
b) Execution (or) Performance
c) Enforceability



a) On the basis of Creation (or) Formation:

On the basis of creation the contract may be classified as under.

1) Express Contract
2) Implied Contract
3) Quasi Contract

1) Express Contract:

Express contract is one which is made by words either spoken (or) written. Where the proposal and acceptance is made in words, it is an express contract.

E.g.:

'X' writes a letter to 'Y',"I offered to sell my car for Rs 100000/- to you". For that 'Y' sent a written letter to 'X',"I am ready to buy your car for Rs 100000/-." It is an express contract made in writing.

2) Implied Contract:

An implied contract is one which is made otherwise than by words spoken (or) written. It is resulted from the conduct of a person (or) the circumstances of a particular case.

E.g.:

'X' a coolie in uniform picks up the language of 'Y' to carry it from railway platform to the taxi without being asked by 'Y' to do so and 'Y' fallows it. In this case, there is an implied offer by the collie and implied acceptance by the passenger. Now there is an implied contract between the coolie and the passenger is bound to pay for the services of the coolie.

3) Quasi Contract:

It is a contract in which there is no intension on either side to make a contract but the law imposes a contract. That means if a contract has been created by law that type of contract called as quasi contract. In such a contract, rights and obligations arise not by any agreement between the parties and by operations of law.

E.g.: A finder of lost goods is under an obligation to find out the true owner and return the goods.

b) On the basis of Execution (or) Performance:

On the basis of execution the contracts may be classified as under

1) Executed contract
2) Executory contract
3) Partly executed and partly executory contract.

1)Executed contract:

It is a contract where the parties to the contract have fulfilled their respective obligations under the contract.

E.g.: 'X' offers to sell his car to 'Y' for Rs 1,00,000/-. 'Y' accepts 'X' offer. Immediately 'X' delivers the car to 'Y' and 'Y' pays Rs 1,00,000/- to 'X'. It is an executed contract because both the parties X and Y have fulfilled their obligations under the contract.

2)Executory contract:

It is a contract where both the parties to the contract have still to perform their respective obligations.

E.g.: 'X' offers to sell his car to'Y 'for Rs 1,00, 000/-. 'Y' accepts X's offer. If the car has not been delivered by 'X' and the price has not been paid by 'Y', it is an executory contract because both the parties have still to perform their respective obligations under the contract.

3)Partly Executed and Partly Executory contract:

It is a contract where one of the parties to the contract has fulfilled his obligations and the other party has still to perform his obligation.

E.g.: 'X' offers to sell his car to'Y' for Rs 1,00,000/- on a credit of one month. 'Y' accept X's offer. Immediately 'X' delivers the car to'Y'. But 'Y' will pay the amount to 'X' after one month. Here the contract is executed as to 'X' and executory as to 'Y'.

C) On the basis of Enforceability:

On the basis of enforceability the contract may be classified as under

1) Valid contract
2) Void contract
3) Void agreement
4) Voidable contract
5) Illegal agreement
6) Unenforcable contract

1) Valid contract:

An agreement enforceable by law is a valid contract. Otherwise a contract which satisfies all the conditions prescribed by law is a valid contract.

E.g.: 'X' offers to sell his car to 'Y' for Rs 1,00,000.'Y' accepts X's offer. It is a valid contract.

2) Void contract:

A void contract is a contract which was valid when entered into, but which subsequently become void due to impossibility of performance, change of law (or) some other reasons.

E.g.: 'X' offers to sell his car to 'Y' for Rs 1,00,000/-. 'Y' accepts X's offer. Later 'Y' dies. This contract was valid at the time of its formation but become void on the death of 'Y'.

3) Void agreement:

According to sec2 (G) of the Indian contract Act 1872, an agreement not enforceable by law is said to be void.

E.g.: An agreement with a minor (or) a person of unsound mind is a void agreement.

4) Voidable contract:

According to sec 2(I) of the Indian contract Act 1872, an agreement which is enforceable by law at the option of one (or) more of the parties, but not at the option of the other (or) others is a voidable contract.

E.g.: 'X' beats 'Y' and compels him to sell his car for Rs 50,000/- which was actually Rs 2,00,000/- . Here 'Y's consent has been obtained by co-ercion, is voidable at the option of 'Y'.

5) Illegal agreement:

A contract which is either prohibited by law (or) otherwise against the public policy (or) the object of which is unlawful is an illegal agreement.

E.g.: 'X' agrees to pay 'Y' Rs 1,00,000/- if 'Y' kills 'Z'. 'Y' kills 'Z' and claims Rs 1,00,000/-. 'Y' cannot recover from 'X', because the agreement between X & Y is illegal as its object is unlawful.

6) Unenforceable Contract:

It is a contract which is actually valid but cannot be enforced because of some technical defects such as not in writing, under stamped etc.

E.g.: An oral agreement for arbitration is unenforceable because the law requires that an arbitration agreement must be in writing.

3) Define the term Offer (or) Proposal. State the rules of a valid offer?

(Or)

Explain the Characteristics of a valid Offer?

(Or)

Write Essential Elements of a valid Offer?

The process of making an agreement commences with offer. An offer is also called proposal. According to Sec2 (A) of the Indian Contract Act 1872, a proposal can be defined as follows.

"When one person signifies to another his willingness to do (or) to abstain from doing anything with a view to obtain the consent of that offer to such act (or) abstinence".

A proposal thus consists of three elements

1) It must be made by one person to another. In otherwords a person cannot make an offer to himself.
2) It must be an expression of readiness (or) willingness to do (or) to abstain from doing something.
3) It must be made with a view to obtain the consent of the other party to proposed act (or) abstinence.

   The person making the proposal is called the **"Offer"** (or) **"Proposer"** (or) **"Promiser"**. The person to whom the proposal is made is called the **"Offeree"** (or) **"Proposee"** (or) **"Promisee"**.

Essentials of a valid offer / Rules regarding valid offer:

The following are the essentials of a valid offer.

1) Offer must be capable of creating legal relationship:

An offer must intend to create legal relationship. An offer must be such that when accepted it will create legal relationship among the parties. i.e. The social and domestic offers cont create legal relationship among the parties. Thus this type of offer are not valid offer.

Case Law: **Balfour vs Balfour**

2) Offer must be certain, definite and not vague (clear):

The terms of the offer must be certain, definite and not vague. If the terms of the offer are vague, no contract can be entered into, because it is not clear as to what exactly the parties intended to do.

E.g.: 'X' offers to sell 100 tons of oil to 'Y'. His offer is not certain because it is not clear that he wants to sell which type of oil. Hence this offer is not valid.

Case Law: **Taylor vs Porting Ton**

'A' agreed to take 'B's house on rent for 3 years if the house was "put into through repairs and the drawing room decorated according to the present style". It was held that the word "present style" is uncertain and the offer could not be enforced.

3) Offer must be communicated to the Oferee:

An offer must be communicated to the person to whom it is made. An offer is completed only when it is communicated to the offeree. One can accept the offer only when he knows about it. Thus an offer accepted without its knowledge does not establish any legal rights on the accepter as well as offerrer.

Case Law: **Lalman Shukla vs. Gauri Dutt**

Gauri Dutt sent his servant Lalman to trace his lost boy. When the servant had left, Gauri Dutt announced a reward of Rs 500/- to any one who traces the missing boy. Lalman found the boy and brought him home. When Lalman came to know about reward he filed a suit against Gauri Dutt to recover the reward. It was held that Lalman was not entitled the reward because he did not know about the reward when he found the missing boy.

4) A mere declaration of intention is not an offer:

The offer must be distinguished from a mere declaration of intention. Such statements (or) declaration merely indicates that an offer will be made (or) invited in future. So a mere declaration (or) statement of intention is not an offer.

Case Law: **Ferina vs Ficus**

The father-in-law casually wrote a letter to his son-in-law that his daughter might have a share in his property after his death. Son-in-law claimed a share in the property on the strength of the letter after death of his father-in-law. It was held that the letter was a mere statement of intention and not an offer.

5) An offer may be conditional:

An offer can be made subject to a condition. In that case it can be accepted only subject to that condition. A conditional offer lapses when the condition is not accepted. If the offer contains certain conditions and the proposal has done what was reasonable sufficient to give the accepter notice of the conditions, the person accepting the offer, it is presumed to have accepted it with the conditions so attached.

Case Law: **Thomson vs L.M&S Railways**

Thomson who could not read took an excursion ticket fro the railway. On the face of the ticket it was printed "For conditions see back". One of the conditions was that the railway company could not be liable for personal injuries to passengers. Thomson was injured by a railway accident. It was held that Thomson was bound by the conditions and could not recover any amount for his injuries.

Handerson vs Stevenson

In this case a passenger purchased a steamer ticket which had on its face these words 'Dublin to Whitehaven'. On the back side of the ticket, there was a term that the carrying company was not liable for losses of any kind. But there was nothing on the face of the ticket to draw the passenger's attention to terms and conditions on the back of the ticket. So a passenger not seen the back side of the ticket and lost his language due to negligence of the servants of the shipping company. It was held that the passenger was entitled to recover his loss on the ground that the shipping company had not taken reasonable steps to communicate the terms to that passenger.

6) An offer should not contain non-compliance of which could amount to acceptance:

The offer should not contain a term non-compliance of which could amount to acceptance. It means that while making the offer, the offerer should not say that if offer is not accepted before a certain date, it will be presumed to have been accepted.

E.g.: 'X' writes a letter to 'Y', "I offered to sell my car for Rs 1,00,000/-". If I do not receive your reply by next Friday, I shall assume that you have accepted the offer. Here if 'Y' does not reply, it does not mean that he has accepted the offer.

7) An invitation to offer is not an offer:

An offer must be distinguished from a invitation to offer. In the case of an invitation to offer, the aim is merely to circulate information of readiness to negotiate business with anybody who on such information comes to the person sending it. Such invitations are not offers in the eyes of the law.

The following are the some of the examples for invitations to offer but not actual offers.

a) A price list of goods for sale.
b) Quotations of lowest prices.
c) Railway time table etc.

There are a number of legal decisions by the courts of law to illustrate this principle. One of them is

Harvey vs Facie

In this case 3 telegrams were exchanged between Harvey & Facie.

i) Harvey to Facie:

"Will you sell the estate of bumper hallpen? Telegraph the lowest cash price".

ii) Facie to Harvey:

"Lowest Price of bumper hallpen is £900".

iii) Harvey to Facie:

"We agreed to buy bumper hallpen for £900 asked by you".

Facie did not send any reply to the last telegram sent by Harvey.

Hence Harvey filed a suit against facie claiming the bumper hallpen. The suit was dismissed by the court. The court held that "mere statement of price could not amount to offer". The court treated the first telegram as a mere enquiry and the second telegram as an answer to the enquiry. The third telegram was treated as an offer but was not accepted.

8) Lapse of an offer:

An offer lapses

a) If either offerer (or) oferee dies before acceptance.
b) If it is not accepted with in the specified time (or) a reasonable time if not time is specified.
c) An offer can also lapse by revocation.

4) Write about classification of offer?

We should classify an offer based on

a) How to make an offer? And
b) To whom an offer is made?

a) How to make an offer?:

An offer can be classified into two types based on how to make an offer. They are

I) Express Offer
II) Implied Offer

I) Express Offer:

An express offer is one which is made by words spoken (or) written.

E.g.: i) 'X' says to 'Y', "will you purchase my car for Rs1,00,00/-?"
ii) 'X' writes to 'Y' in a letter," I sell my house for Rs1,00,000/-?"

II) Implied Offer:

An implied offer is one which is made otherwise than in words. In other words it is resulted from the conduct of the person (or) the circumstances of the particular case.

E.g.: A transport company runs the buses on different routes to carry passengers. This is an implied offer by the transport company to carry passengers for a certain fare.

b) To whom an offer is made:

An offer can be classified into two types based on to whom an offer is made. They are

I) specific Offer
II) General Offer

I)Specific Offer:

A specific offer is one which is made to a definite person (or) particular group of persons. A specific offer can be accepted only by that definite person (or) that particular group of persons to whom offer had been made.

E.g.: 'X' offers to buy car from 'Y' for Rs1,00,000. This offer is a specific offer which has been made to a definite person 'Y'. No person other than 'Y' can accept this offer.

II) General offer:

A general offer is one which is not made to a definite person but to the world at large (or) public in general. A general offer can be accepted by any person by fulfilling the terms of the offer.

Case Law:

Carliee vs Carbolic Smoke Ball Company:

In this case the carbolic smokeball company offered by An advertisement a reward of ₤100 to any person who should attack influenza after using the smokeball 3 times daily for 2 weeks according to the printed directions. It was also added that ₤100 were deposited in the bank showing its sinciarity in the promise. The plaintiff Mrs Carlier used the smoke ball according to the directions of the company but attacked by influenza. It was held that she should recover the reward because the advertisement was a general offer.

2 Marks Questions:

1)Cross offer:

Two offers which are similar in all respects made by two parties to each other, in ignorance of each others offers are known as cross offer. Cross offers do not amount to acceptance of once offer by the other. Hence no contract is entered into on cross offers.

E.g.: 'X' of Agra sends a letter by post to 'Y' of Delhi offering to sell his car for Rs 1,00,000/-. The letter is posted on 1st January and on the same day 'Y' of Delhi sends a letter by post to 'X' of Agra offering to buy X's car for Rs 1,00,000/-. These two letters cross each other. 'X's letter is only an offer and not the acceptance of Y's letter and vice versa. Here both the parties are making offers and no party has accepted the offer. Therefore no contract have been entered into.

2)Counter offer:

A counter offer is a rejection of the original offer and making a new offer. This new offer is a counter offer. A counter offer puts an end to the original offer.

3)Standing (or) Open offer:

When large quantities of goods are required by railways (or) other bodies from time to time, it is usual to call tenders for the supply of such goods. An advertisement inviting tenders is not an offer but a mere invitation to offer. An offer for the continous supply of a certain article at a certain rate over a definite period is called a standing offer. Such offers though accepted do not give raise to contract unless an actual order is placed. The offerer can withdraw his offer at any time before an order is placed with him.

5) Define Acceptance. Explain the legal rules regarding the valid acceptance?

(Or)

What are the essentials of a valid acceptance?

When offer by itself does not create legal relationship. It is created only when the offer is accepted. Thus acceptance is necessary to create legal relationship.

Acceptance means giving consent to the offer.

Def: Section 2(B) of the Indian Contract Act, an acceptance is defined as follows. "When the person to whom the proposal is made signifies his assent there to, the proposal is said to be accepted." A proposal when accepted becomes an agreement.

How to make acceptance:

Like an offer an acceptance may also be either an express (or) implied acceptance.

a)Express Acceptance:

It is one which is made by words spoken (or) written.

b)Implied Acceptance:

It is one which is not made either in oral (or) written. But it is resulted from the conduct of the person (or) the circumstances of the particular case.

E.g.: If X' enters into the bus which is carrying passengers, the act of 'X' is an implied acceptance and he is bound to pay the fare.

Who can Accept:

It can be discussed under the following heads.

a) **Incase of specific offer:**

An offer is made to a definite person(or) a particular group of persons can be accepted only by that definite person(or) that particular group of person to whom it has been made and none else. This type of acceptance called as specific acceptance.

b) Incase of general offer:

An offer is made to the world at large (or) public in general can be accepted by any person having knowledge of the offer by fulfilling the terms of the offer.

Case Law: Carlill Vs Carbolic smokeball company.

Legal Rules for a valid acceptance:

1) Acceptance must be absolute and unconditional:

According to sec 7(I) of the Indian Contract Act 1872, "In order to convert a proposal into a promise, the acceptance must be absolute and unconditional". It means that the acceptance must be in total and without any condition. Thus an acceptance with a variation is not an acceptance. It is simply a counter offer.

Case Laws: Bhawan Vs Sadula

'X' offered to sell two flats of land to'Y' at a certain place. 'Y' accepted the offer for one flat of land. It was held that the acceptance is invalid because the acceptance was not for the whole of the offer.

2) **Nihal chand Vs Amarnath**

'X' offers to sell his house for Rs 1,00,000/- to 'Y'. 'Y' agreed to buy it for Rs 90,000/-. 'Y's act is a counter offer and not an acceptance.

2) Acceptance must be communicated to the offerer:

A valid contract arises only if the acceptance is communicated to the offerer. It may be noted that until the acceptance is communicated it does not create any legal creation.

Thus a mere mental determination to accept is not the acceptance unless it is accompanied by an external indications and if acceptance is communicated by an unauthorized person it will not give rise to legal relation.

Case Laws: Powell vs Lee

'P' applied for the post of a head master in a school. The managing committee passed a resolution approving 'P' to the post, but this decision was not communicated to 'P'. But one number of the managing committee in his individual capacity and without any authority informed to 'P' about the decision. Subsequently the managing committee cancelled its resolution and appointed some one else. 'P' filed a suit was not maintainable because there was no communication of acceptance as he was not informed about his appointment by some authorized person.

Felt house vs Bindley

'F' offered by a letter to buy his nephew's horse for $30 saying "If I hear no more from you, I shall consider the horse mine". The nephew sent no reply at all, but told his auctioneer, not to sell that horse to 'F'. The auctioneer sold the horse by mistake. It was held that 'F' will not succeed because his nephew had not communicated acceptance to him.

3) Acceptance must be made with in a reasonable time:

If the time is fixed for acceptance, the acceptance must be given by the accepter with in the fixed time limit. In case of no time is prescribed, the acceptance should be given with in a reasonable time. The term reasonable time depends upon the facts and circumstances of each case.

Case Law: Rams gate Victoria Hotel Company vs Monte Flore

In this case 'M' applied for share of 'R' company on June 8th. But shares were allotted to 'M' on 23rd November. 'M' therefore refused to take shares allotted. The court held that 'M' was entitled to refuse to take shares because there was inordinate delay in acceptance. 6 months could not be considered a reasonable period in any case.

4) Acceptance must be in the prescribed manner (or) usual (or) reasonable mode:

If the offerer prescribes the manner for communication of acceptance then the accepter must communicate through such manner only. If the offer is not accepted in the prescribed manner, then the offerer may reject the acceptance with in reasonable time. If the offerer does not reject the acceptance with in a reasonable time then he becomes bound by acceptance.

Where no mode is prescribed, acceptance must be given in some usual and reasonable manner.

Case Law: Narendranath vs Kedernath

'K' offered his house to 'N' for some consideration and instructed him to send his acceptance in writing. But 'N' sent an oral message that he was willing to buy the house. Mr. 'K' sold the house to some other person, rejecting the acceptance of Mr. 'N'. But 'N' filed a suit for specific performance. It was held that the acceptance given in a manner other than the mode prescribed by the offerer can be rejected.

5) The Accepter must be aware of the proposal at the time of the acceptance:

Acceptance follows offer. If the accepter is not aware of the existence of the offer and conveys his acceptance, no contract comes into being. There must be knowledge of the offer before anyone could consent to it. An act done in ignorance of the offer cannot be called an acceptance.

Case Law: **Lalman Shukla vs Gauri Dutt**

6) Acceptance must be given before the offer lapses (or) before the offer is revoked:

A valid contract can arise only when the acceptance is given before the offer has lapsed (or) withdrawn. An acceptance which is made after the withdrawal of the offer is invalid and does not create any legal relationship.

7) Acceptance cannot be implied from silence:

No contract is formed if the offeree remains silent. That means silence does not amount to acceptance.

6) How do and on what grounds can the offer be revoked?

(Or)

State the circumstances under which an offer can be revoked?

(Or)

State the rules regarding the termination of proposal (or) lapse of proposal?

Revocation of an offer:

Revocation means 'withdrawal' (or) 'taking back'. Revocation of an offer means its withdrawal (or) cancellation by the offerer. An offer may be revoked at any time before it is accepted by the offeree. Revocation of offer after acceptance will be ineffective. If the revocation is to be effective, it must be communicated to the offeree before the dispatch of the letter of acceptance.

Sec 5 of the Indian Contract Act lays down that, "A proposal may revoked at any time before the communication of acceptance is complete as against the proposal".

Modes of Revocation of an offer:

Sec VI of the Indian Contract Act deals with various modes of revocation of an offer. The various modes of revocation are as follows.

1) Revocation by notice:

An offer may come to end by communication of notice of revocation by the Offerer. That means an offerer can revoke is offer at any time before the acceptor conveys his acceptance.

E.g.: 'A' offers to sell his house to'B' for Rs 1,00,000/-. Before 'B' accepted the offer, 'A' withdrawn his offer informing to 'B' by notice. There will be no contract as offer has been revoked before its acceptance by 'B'.

2) Revocation by Lapse of Time:

An offer lapses if it is not accepted with in the fixed time (or) with in reasonable time if no time is prescribed in the offer.

Case Law:

Ramsgate Victoria Hotel company Vs Monteflore

3) Revocation by Non-Fulfillment of conditions:

Sometimes the offer requires that some conditions must be fulfilled before the acceptance of the offer. In such cases the offer lapses if it is accepted without fulfilling the condition.

E.g.: 'X' offered to sell his car to'Y' for Rs 1,00,000/- subjected to the condition that 'Y' should pay advance of Rs 50,000/- at the time of acceptance.'Y' accepted the offer without payment of advance of Rs 50,000/-. In this case the offer stands lapsed as the advance is not paid.

4) Revocation by Death (or) Insanity of the offerer:

An offer lapses by the death (or) insanity of the offerer, if the fact of his death (or) insanity comes to the knowledge of the acceptor before he makes his acceptance. In otherwords if the offer is accepted in ignorance of the death (or) insanity of the offerer, there will be a valid contract. It may be noted that English Law, the death of the offerer terminates the offer even if the acceptance is made in ignorance of the death.

5) Revocation by Counter offer by offerer:

An offer lapses if the counter offer is made because a counter offer amounts to rejection of the original offer. Counter offer means making a fresh offer instead of accepting the original offer.

6) Revocation by failure to accept in the mode prescribed:

Where some manner of acceptance is prescribed in the offer, then the offerer can revoke the offer if it is not accepted according to the prescribed manner.

7) Revocation by rejection of offer by offerer:

An offer lapses if it is rejected by the offeree.

8) Revocation by subsequent Illegality:

An offer lapses if it becomes illegal (or) the subject matter is destroyed before it is accepted by offeree.

E.g.: 'X' of Delhi offered to sell his car to 'Y' of Vijayawada for Rs 2, 00,000/-. Before the offer is accepted by 'Y' the car is destroyed by fire accident. Hence 'X's offer has come to an end.

7) Minor's agreements are void. Discuss?

(Or)

Discuss the law relating to the validity of contract by minors with suitable illustrations. (Or)

Under what circumstances contracts with a minor become valid & void?

A minor is a person who is not a major. According to the Indian Majority Act, 1875 "A minor is a person who has not completed 18 years of age. So a person becomes a major after the completion of 18th year of life."

In the following two cases, a person becomes major on completing the age of 21 years.

i) Where a guardian of a minor's person (or) property has been appointed under the guardian's and wards Act 1890.

ii) Where the superintendence of a minor's property is assured by a court of wards.

According to English Law, in England for all purposes a minor is a Person who is under the age of 18 years.

Need for the Protection to Minors:

A minor has an unmatured mind and cannot think what's good (or) bad to him. Minors are often exploited and their properties stolen. As such minors must be protected by law from any exploitation.

Legal Rules Regarding to Minors Agreement:

The law relating to minors agreements and effects there of can be discussed in the following points.

1) An Agreement with a minor is void:

An agreement with a minor is void from the very beginning and void absolutely. It does not create any legal rights and obligations between the concerned parties.

Case Law: Mohori Bibi Vs Dharmo das Ghose

'X', a minor borrowed Rs 20,000/- from 'Y' and as a security for the same executed his house on mortgage in his favour. He becomes a major a few months later and filed a suit for the declaration that the mortgage executed by him during his minority was void and should be cancelled. The court was held that the mortgage by a minor was void and 'Y' was not entitled for repayment of money.

2) No Rectification on attaining majority:

An agreement with minor is completely void. A minor cannot rectify the agreement even on attaining majority, because a void agreement cannot be rectified. A person who is not competent to authorize an act cannot give its validity by rectifying it.

Case Law: Arumugan Vs Durai Singa

A minor borrowed a sum of money executing a simple bond for it, and after attaining majority executed a second bond in respect of the original loan and interest. It was held that, the suit upon the second bond was not maintainable.

3) Minor can be Promisee (or) Beneficiary:

If a contract is beneficial to a minor, it can be enforced by him. Even though no provision in the Indian Contract Act, but it is based on the judicial decisions only.

Case Laws: The General Americian Insurance Company Limited

Vs

Madanlal Sonulal

'X' a minor insured his goods with an insurance company, the good were damaged. 'X' filed a suit for claim. The insurance company took the plea that the person on whose behalf the goods were insured was a minor. The court rejected the plea and allow the minor to recover the insurance money.

Raghava CharyaVs Sreenivasan

In this case a mortgage was executed infavour of minor and it was held that he could get a decree for enforcement.

4) No Estoppel against a minor:

There is no estoppel against the minor. In other words, where a minor by misrepresenting his age has induced the other party to enter into a contract with him, he cannot be made liable on the contract. But the court may direct minor to restore property because minor has got protection but he has no liberty to cheat men.

5) No Specific performance in certain cases:

A contract entered into on his behalf by his parent (or) guardian (or) the manager of his estate can be specifically enforced by (or) against the minor, if the contract is

a) With in the scope of the authority of the parent (or) guardian (or) manager and
b) For the benefit of the minor.

6) Minors Liability for torts:

The term tort implies a civil wrong for which a suit can be filed by the affected party. A minor is always liable for crimes which he has committed. He is liable for negligently causing injury (or) damage for property that does not belong to him. So a minor was held liable for his failure to return certain instruments which he had hired and then passed on to a friend.

Case Law: Jennings Vs Rundall

In this case, a minor hired a horse for his own use, but lend the horse to his friend, who misused the horse and caused injuries to it. The minor was held liable under torts as he has no business to lend the horse to his friend when it has been hired for his own use.

7) Minor as a Insolvent:

A Minor cannot be declared as an insolvent because agreement with minor is absolutely void. More over the minor is not personally liable for any debt incurred during the period of his minority.

8) Minor as a Partner:

Partnership arises through an agreement. A minor being in-competent to enter into a contract cannot be a partner in the firm, however he may be admitted only to the benefits of the firm with the consent of all the partners according to sec 30(1) of the Indian Partnership Act 1932. His liability is limited to the extent of his share in the firm. He cannot take part in management also.

9) Minor as an Agent:

A minor can be appointed as an agent. But he will not be personally liable for any of his acts. The principal will be liable to third parties for the acts of the minor agent, which dies in the ordinary course of dealings.

10) Minor-Guardian or Parent:

A minor is not capable of binding his parent (or) guardian for his acts even for necessaries of life. The parent (or) guardian will be held liable only when the minor is acting as an agent for parent (or) guardian.

11) Joint contract by minor and major:

In case of joint contract by minor and major, the major will be liable on the contract and not the minor.

Case Law : Saindas Vs Ramchand

In this case, there was a joint purchase by two purchasers, one of them was a minor. It was held that the vendor could enforce the contract against the major purchaser and not the minor.

12) Surety for a minor:

In a contract of guarantee, when a major stands surety for a minor, then the major is liable to third party even though the minor is not liable.

13) Minor as Share holder:

A minor being in-competent to contract cannot be a share holder of the company. If by mistake, he becomes a member, the company can suspend the transaction and remove his name from register. But a minor acting through his lawful guardian becomes the share holder of the company.

14) Liability for Necessaries:

The minor's property is liable for the payment of reasonable price for necessaries supplied to the minor (or) to any one whom the minor is bound to support. There is no personal liability to the minor, but only his property is liable.

Necessaries mean those things that are essentially needed by a minor. They cannot include luxuries (or) costly (or) unnecessary articles. What is a necessary article is to be determined from the status and the social position of the minor.

Case Law: **Nash Vs Inman**

Inman, an infant under graduate in Cambridge University brought 11 fancy coats from Nash. It was held that the coats were not necessary and the price could not be recovered.

Nandan Prasad Vs Ajudhiya Prasad

In this case money was borrowed to perform marriage of the sister of a minor. The court held that it was a legal obligation of the minor and the person who gives money to a minor can recover from the property of minor.

8) Discuss the law relating to contracts by person of unsound mind?

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

a) To understand the terms of the contract

b) To form a rational judgment as its effect upon his interest".

Thus if a person is not capable of above both, he is said to have suffered from unsoundness of mind. The examples of persons having an unsound mind include Idiots, Lunatics and Drunken persons.

Idiot:

He is a person who has completely lost his mental faculties of thinking. Such a person is completely incapable of forming a rational judgement. An agreement with an idiot is completely void. His incapability is permanent and at no time, he is of sound mind. However, his property is liable for necessaries supplied to him.

Lunatic:

He is a person whose mental faculties of thinking are disordered due to some Mental strains (or) some other reasons. Such a person is some times sane (sound) and some times in sane. He suffers from intervals of insanity and sanity. Such person may enter the contract when they are of sound mind. (in sane position). Except the agreements made during lucid intervals, all agreements made by lunatics are void. However, agreements for necessaries of life are valid. But only the property of lunatic is liable for such contracts.

Drunkard (or) Intoxicated person:

A drunkard (or) intoxicated person suffers from temporary incapacity to contracts. The position of a drunkard is similar to that of a lunatic. The drunkards (or) intoxicated person, at the time when he is so drunk (or) intoxicated cannot form a rational opinion (decision) as to the effect of a contract on his interest. So an agreement made during such drunken (or) intoxicated position is void.

So an agreement with person of unsound mind is void. But the property of such person is always liable for necessaries supplied to him (or) to any one whom he is legally bound to support.

9) Discuss the law relating to contracts by persons disqualified by law?

The persons who are disqualified by law are not competent to enter into contract. That means the contracts with the persons who are disqualified by law are void. The following are the some of the persons disqualified by the law.

1) **Alien Enemy:**

Alien is a person who is a foreigner to the land. He may be either an alien friend (or) an alien enemy.

An Alien whose country is at peace with India is called as an alien friend. An alien whose country is at war with India is called an alien enemy.

During the war, an alien enemy cannot entered into a contract with Indian citizen. But he can enter into any contract be sued in Indian court only by taking license from the central government.

2) Foreign Sovereigns and Ambassadors:

Foreign sovereigns and Ambassadors can enter into contract and enforce those contracts in our courts, but they cannot be sued in our court without the sanction of the central government.

3) Insolvents:

When a persons debts exceed his assets, he is adjudged insolvent, and his property stands vested in the official receiver appointed by the court. Such person

a) Cannot enter into contract relating to his property
b) Cannot sue
c) Cannot be sued

When the insolvent is discharged, he is competent to enter into a contract.

4) Convicts:

A convict while under going imprisonment is incapable of entering into a contract. But his disability comes to an end on the expiry of the sentence.

5) Corporations and Companies:

A Corporation and company is an artificial person recognized by law. It is competent to enter into a contract through its agent. A contract entered into by a corporation will be valid only if it is with in the powers giving by the memorandum of association. An act done in excess of these powers in ultra wires and void.

10) "Parties to a contract must be competent to contract"-Explain?

(Or)

What is capacity of parties to contract? Briefly explain various aspects.

(Or)

"To constitute a valid agreement the parties must be competent"- Discuss?

Capacity of parties to contract:

Capacity of parties to contract means competence of the parties to enter into a valid contract. Competence of the parties to enter into a contract is very important to form a valid contract.

According to sec 10 of Indian Contract Act, "an agreement becomes a contract if it is entered between the parties who are competent to contract". Law has laid down certain rules as to when and who are competent to enter into a valid contract.

Sec 11 of the Indian Contract Act provides that "Every person is competent to contract who is of the age of majority according to the law and who is of sound mind and is not disqualified from contracting by any law".

Thus, the section lays down three clauses of persons incompetent from contracting. They are

1) Minor
2) Persons of unsound mind
3) Persons disqualified by law.

11) Define Consideration. What are the elements (or) essentials (or) legal rules regarding consideration? (Or)

"No Consideration, No Contract" _ Explain.

(Or)

"A contract without consideration is void"- Discuss.

The consideration is one of the essential elements of a valid contract. That means, mere promise without consideration is not enforce.

According to section 25 of the ICA, "An agreement without consideration is void". It means that an agreement is void if there is no consideration. Hence consideration is must for every contract.

Consideration means something in return. It must have some value in the eyes of law. It is also used in the sense of "quid -pro-que"' which means something in return. Consideration has been defined in many ways.

According to Pollock, "Consideration is the price for which the promise of others is brought and the promise thus given for value is enforceable.

Sec 2(D) of the Indian Contract Act defines consideration as " when at the desire of the promiser, the promisee (or) any other person has done (or) abstained from doing(or) does (or) abstain from doing (or) promises to do (or) abstain from doing something, such act (or) abstinence (or) promise is called a consideration for the promise".

Legal rules for valid consideration:

1) Consideration must move at the desire of the Promiser:

An act (or) abstinence which forms consideration for the promise must be done (or) promised to be done at the request (at the desire) of the promiser. It means that a voluntary service rendered by the promisee without any request of the promiser is not a consideration enforceable at law.

E.g.: 'A' sees B's house on fire and helps in stopping the fire voluntary. 'B' did not ask for 'A's help. 'A' cannot be deemed payment for his services.

Case Law: **Durga Prasad Vs Baldeo**

Durga Prasad, on the order of the Collector of a town developed certain shops in a bazaar at his own expenses. One of the shop which is occupied by Baldeo promised to pay certain commission to Durga Prasad on articles sold in that shop as consideration to Durga Prasad, having spent the money in constructing the shops. Later baldeo refused to pay the commission. Durga Prasad filed a suit against baldeo for commission as promised. It was held that the promise was not supported by consideration, since the market was developed at the desire of the Collector. Thus baldeo is not liable to pay the commission.

2) Consideration may move from the promise (or) any other person:

Consideration can be given (or) supplied by the promisee (or) a other person who is not a party to the contract. As long as there is consideration, it is not important who has given it. Therefore a stranger can also move the consideration at the desire of the promiser.

Case Law: Chinnayya Vs Ramayya

'X' an old lady by a deed of gift transferred certain property to her daughter 'Y' with a direction that 'Y' should pay a certain sum of money to 'Z' (sister of 'X') by way of annuity. On the same day, 'Y' executed a deed in writing infavour of 'Z' agreeing to pay the annuity. Later 'Y' refused to pay the annuity on the plea that no consideration had moved from 'Z'. 'Z' filed a suit to claim the amount of annuity. It was held that 'Z' is entitled to recover the amount because the consideration was validly furnished by 'X'.

Note: Under the English Law consideration must move from the promisee alone.

3) Consideration may be past, present (or) future:

The words used in definition for consideration "Has done (or) abstain from doing" refers to past consideration. The words "Does (or) abstain from doing" refers to the present consideration and the words "promise to do (or) abstain from doing" refers to the future consideration.

Past consideration:

The consideration which has already moved before formation of agreement, that type of consideration called as Past consideration. It means the present promise is based on the consideration already taken place.

E.g.: 'X' renders some service to 'Y' at Y's request in the month of May 2003. In July 2003, 'Y' promises to pay Rs 1,000/- to 'X' for his past services. Past services amount to past consideration. So 'X' can recover Rs 1,000/- from 'Y'.

Present consideration:

When the promiser receives consideration simultaneously with his promise, it is termed as Present consideration. Thus when the consideration and promise go together, the consideration is regarded as Present consideration.

E.g.: Cash Sales:

'X' sells computer to 'Y' for Rs 50,000/- and 'Y' in return gives Rs 50,000/- to 'X'. Money received by 'X' is the Present consideration.

Future consideration:

The consideration which is to be moved after the formation of agreement is called Future consideration.

E.g.: 'X' promises to deliver certain goods to 'Y' after 10 days and 'Y' promises to pay some amount after 10 days from the date of delivery.

Note: According to English Law, past consideration is not valid. Only present and future considerations are valid.

4) Consideration may be Positive (or) Negative:

According to sec2 (D) of the Indian Contract Act, "The consideration may be a promise to do something (or) to abstain from doing something". Thus consideration may be an act 'To do' (or) 'Not to do' something. It means that it may be positive (or) negative. It need not always be doing some act, can be not doing an act also.

5) Consideration must be Lawful:

The consideration for an agreement must be lawful. An agreement is void if it is based on unlawful consideration.

According to sec 23, the consideration is unlawful in the following cases.

a) If it is forbidden by law
b) If it is fraudulent c) If it involves injury to the person (or) property of another.
d) Court regards it as immoral (or) opposed to public policy.

E.g.: 'A' promised to pay Rs 50,000/- to 'B' if 'B' beats 'C'. The agreement is void because consideration involves injury to 'C' which is unlawful.

6) Consideration need not be Adequate:

Consideration need not be adequate to the promise but it must have some value in the eyes of law. So long as consideration exists, the courts are not concerned as to its adequacy. The adequacy of the consideration is for the parties to consider at the time of making the agreement. However the inadequacy of the consideration may be taken into account by the court in determining the question whether the consent of the promiser was freely given (or) not. This is because the inadequacy may suggest fraud, mistake (or) coercion etc.

7) Consideration must be real and not illusory:

Although consideration need not be adequate, it must be real, competent and have some value in the eyes of the law. Real consideration is one which is not physically impossible (or) legally impossible. If the consideration is physically impossible (or) legally impossible the contract cannot be enforced.

E.g.: 'A' promises to pay Rs 1, 00,000/- to 'B' if 'B' makes two parallel lines meet. In this consideration is not real so cannot enforced.

8) It must be something which the promiser is not already bound to do:

A promiser to do what one is already bound to do either by general law (or) an existing contract is not a good consideration for a new promise. It must be something more than what the promisee is already bound to do by law.

Case Law: Collins Vs Godfrey

'A' promised to pay money to a police officer to investigate into a crime. The agreement was held to be invalid because "The officer is already under the duty to do so by law".

12) Define consideration and state the exceptions to the rule that an agreement made without consideration is void?

(Or)

A contract without consideration is void? Write exceptions?

(Or)

No consideration, No contract. Write exceptions?

Refer Introduction in previous question :

Exceptions to the rule that an agreement made without consideration is void:-

1) Agreement made with natural love and affection:

An agreement in writing which is registered and is based on natural love and affection between near relatives is valid and enforceable even if there is no consideration.

The following conditions must be satisfied for the application of this exception.

a) It must be in writing and registered
b) It must be based on natural love & affection.
c) It must be between the parties who are in near relatives to each other.

Case law: Venkataswamy Vs Ramaswamy

In this case 'A' an account of natural love and affection promised to pay the debts of his younger brother 'B'. The promise was put in writing and registed. This agreement held valid and binding.

Rajluky Debee Vs Boothnath Mukharjee

'A' promised to pay his wife 'B' a fixed sum of money every month for her separate residence and maintenance. The agreement was written and registered one. In this agreement certain quarrels and disagreements were also mentioned between them. It was held that agreement was not enforceable because it was not made on account of natural love and affection. The court could find to trace of love and affection between the parties whose quarrels had compled them to separate.

2) Compensation for voluntary services rendered in past :-

A promise to pay past voluntary services is binding even though there is no consideration.

The following conditions must be satisfied for the application of this exception.

a) The services should have been rendered voluntarly.
b) The services should have been done for the promise.

E.g.:- 'X'found 'Y's purse and give's it to him. 'Y'promises to give Rs 500/- to 'X'. There is a valid contract even though the consideration did not move at the desire of the promiser 'Y'.

3) Promise to pay time barred debt :-

According to law of limitation a debt which remains unpaid (or) un claimed for a period of 3 years becomes a time barred debt which is legally not recoverable.

According to sec 25(3) of the Indian Contract Act, a promise to pay a time barred debt is enforceable if the following conditions are satisfied.

a) The debt must be a time barred debt
b) The promise to pay must be in written
c) It should be signed by the promiser (or) his agent.

4) Completed Gifts :-

The Gift's actually made is valid even though it is made without consideration.

Eg: - 'X' transferred some property to 'Y' by a duly written & registered deed as a gift. This is a valid contract even though no consideration moved.

5) Contract of Guarantee :-

No consideration is needed for a contract of Guarantee. In otherwords contract of guarantee needs no consideration.

6) Remission :-

No consideration is required for an agreement to receive less than what is due. This is called remission in the law.

7) Creation of Agency :-

A contract of agency of agency made without consideration is valid. Consideration is not required for the creation of contract of agency.

13) "A Stranger to a contract cannot sue". Are there any exceptions to this rule?

(Or)

Under what circumstances can a person who is not a party to contract enforce the contract? (Or)

Consider the "Doctrine of privity of contract"? And Give an account of the exceptions to this doctrine.

A contract is a legally binding agreement between two (or) more parties. It confers rights and imposes obligations on the contracting parties. But it cannot confer (or) impose obligations on any other person than the parties to it. Therefore a person who is stranger to the agreement cannot sue upon it. A stranger to contract is one who is not a party to the agreement. It is a general rule of law that only parties to a contract may sue and be sued on that contract. This rule is usually defined as "The Doctrine of privity of contract."

Case Law: Dunlop pneumatic Tyres Company Vs Selfridge & Co.

'X' brought tyres from Dunlop company and sold them to 'Y' a sub dealer, who agreed with 'X' not to sell below dunlops list price and to pay Rs 150/- as penalty to Dunlop company on every tyre he ('Y') undersold. 'Y' sold two tyres at less than the list price and there upon Dunlop Company sued him for the breach. It was held that the Dunlop Company should not claim the penalty of Rs 150/- from 'Y' because it (Dunlop Company) was a stranger to the contract.

Exceptions to the rule of privity of contract

1) **Beneficially in case of Trust:**

In the case of trust, the beneficiary may enforce the contract even though he is a stranger to the contract.

Case Law: M.R.Rapai Vs John

'X' transferred certain property to be held by 'Y' for the benefit of 'Z'. 'Z' enforced the agreement even though he is not a party to the agreement.

Gregory & Parker Vs Williams

'A' transferred whole of his property to 'B' and in return, 'B' promised to pay of A's creditor 'C'. Here, 'C' has allowed to recover the credit.

2) **Where a promise is made in a marriage settlement:**

Where an agreement is made in a connection with the marriage and a provision is made for the benefit of a person, he may take the advantage of that agreement although he is not a party to it.

Case Law: Rose Fernandez Vs Joseph Gonsalues

'A's father enter into an agreement with 'B' for marriage of his minor daughter. Later 'B' refused to marry and the court held that no doubt 'A' is not a party to the contract but when she could become major then she could sue 'B' for the breach of the agreement.

3) Incase of partition (or) other family arrangements:

Sometimes an agreement is made in connection with partition (or) other family arrangements and a provision is made for the benefit of some person: In such cases the person for whose benefit the provision is made in such family arrangements can enforce the agreement even if he is not a party to it.

Case Laws: **Shuppu Anmal Vs Subramanian**

Two brothers in a partition deed agreed to pay Rs 300/- in equal shares to their mother for maintenance. The brothers subsequently refused to pay the amount. On a sue, it was held that mother could enforce the agreement even though she was stranger to the contract. **Veeramma Vs Appayya**

4) Agreement creating a charge on immovable property:

Where a person makes a promise to an individual for the benefit of a third party and creates a charge on certain immovable property for the purpose, the third party can enforce the promise though he is stranger to the contract.

Case Law: **Khwaja Mohammed Vs Hussaini Begum**

The father of the bride groom enter into an agreement with the father of bride 'H', in which he agrees to pay Rs 500/- per month to 'H' if she agree to marry his son. He also created a charge on certain property for this purpose. The allowances were stopped after the celebration of marriage. At that time "H'sued her father-in-law for Rs 1500/- as arrears of allowances. It was held that 'H' could recover the money even though she was not a party to the contract.

5) Contract's Entered through an Agent:

A principal can enforce the contract which are created by the agent though he was not a party to the contract.

6) Acknowledge of Payment:

Where by the terms of a contract, a party is required to make a payment to a third person and that party acknowledges the payment to the third person (or) constitutes himself as an agent of that third person, then the third person can recover the amount from such a party.

Case Law: **Surjan vs Navat**

'X' receives Rs 1000/- from 'Y' for paying the same to 'Z'. 'X' acknowledge this receipt to 'Z'. 'Z' can recover the amount from 'X' because 'X' will be regarding as 'Z's agent.

7) Where a contract is transferred infavour of another Person:

Where a contract is transferred from one person at that time the transferee can enforce the agreement even though he is stranger to the contract.

E.g.: 'A' draws a bill on 'B' and 'B' accepted. After accepting, 'A' endorsed that bill infavour of 'C'. On the due date 'C' can recover the bill amount from 'B' even though he is a stranger to the contract.

Free Consent

Free consent of parties to a contract is one of the essential elements of a valid contract as per section 10.

1) Consent:

According to sec 13, "Two (or) more persons are said to consent when they agree upon the same thing in the same sense". It means that the parties must understand the subject matter of the contract at the same time in the same sense. i.e. Identity of minds is required for creation of a valid contract. In English Law this is called consensus-Ad-Idem. When there is no consent, there is no contract.

E.g.: 'X' have one Maruthi and one Fiat car. He wants to sell maruthi car. 'Y' does not know that 'X' have two cars. 'X' offered to sell to 'Y', Maruthi car for Rs 50,000/-. 'Y' accepts the offer thinking it to be an offer for Fiat car. Here there is no identity of mind in respect of the subject matter. Hence there is no consent at all and therefore the agreement is void.

Free consent:

According to sec 14 "consent is said to be free when it is not caused by

i) Co-ercion
ii) Undue-influence
iii) Fraud
iv) Mis-representation and
v) Mistake".

Free consent is the consent which has been obtained by the free will of the parties out of their own assent.

i) Co-ercion:

In simple words, co-ercion is threaten (or) force used by one party against another for compelling him to enter the agreement.

According to sec 15, "the consent is said to be caused by co-ercion, when it is obtained by either of the following techniques:

a) Committing (or) threatening to commit any act forbidden by the Indian Penal Code(IPC);
b) Unlawful detaining (or) threatening to detain any property".

Essential (or) Legal Rules of Co-ercion:

i) Co-ercion must be committing of any act forbidden by IPC:

When the consent of a person is obtained by committing any act which forbidden by the IPC, the consent is said to be obtained by co-ercion.

E.g.: 'X' beats 'Y' and compels him to sell his car for Rs 50,000/-. Here, Y's consent has been obtained by co-ercion beating someone is an offence under the IPC.

2) The co-ercion must be treating to commit any act forbidden by IPC:

When the consent of a person is obtained by threat of committing any act which is forbidden by the IPC, the consent is said to be obtained by co-ercion.

E.g.: 'X' threatens to kill 'Y' refuses to sell his house for Rs 1, 00,000/-. 'Y' agrees to sell his house. Here 'Y' consent has been obtained by co-ercion.

3) Unlawful detaining the property:

When the consent of the party is obtained by unlawful detaining (or) threatening to detain any property, the consent is said to be obtain by co-ercion.

E.g.: 'X' an agent refuses to hand over the account books of business of his principal 'Y' to his new agent unless 'Y' refuses him from liability in respect of his agency. In this case, 'X' is said to have used co-ercion.

4) The acts must be done with the intension of causing the other party to enter into a contract:

The acts amounting to co-ercion must be done with the intension of obtaining the consent of the party and inducing him to enter into a contract. If the act of co-ercion is done without any intention of obtaining the consent of the other party, it will not amount to co-ercion.

5) The co-ercion may be by way of threat to commit suicide:

Threat to commit suicide also amounts to co-ercion.

ii) **Undue-Influence:**

It means dominating the will of the other person to obtain an unfair advantage over the other. Sec 16 of ICA provides that a contract is said to be induced by undue influence.

a) Where the relations substituting between the parties are such that one of them is in a position to dominate the will of the other and
b) The dominant party uses that position to obtain an unfair advantage over the other.

Case Law: **Manu Singh Vs Uma Dutt**

In this case, a Hindu lady made a gift of all her property to her spiritual Guru, to secure benefits in the next world. The court held that the gift was caused by undue influence and hence voidable.

Essentials & Legal rules for under Influence:

1) One party must be in a position to dominate the will of the other:

The party said to be able to dominate the will of the other, where the parties are not in equal falting (or) there is active trust (or) confidence between the parties. In the following circumstances one party is resumed to be in a position to dominate the will of the other.

Presumptions of Domination of will:

a) Where one party holds a real authority over the other:

When a person holds authority over the other, he is definitely in a position to dominate the will of the person over whom the authority is hold.

E.g.: Police officer and accused person, income tax officer and Assessee.

When a police officer purchased a property worth Rs 2, 00,000/- for Rs 20,000/- from 'B', an accused under his custody. Here the police officer is in a position to dominate the will of 'B' and the existence of undue influence can be presumed.

b) When one party stands in a fiduciary relation to the other:

Fiduciary relation means a relation of mental trust and confidence. Such relationship exists in the following cases. Solicitor (lawyer) and Client, Father & Son, Doctor & Patient etc. If the consent is obtained by exploiting the trust (or) confidence, the consent is said to be acquired by undue influence.

Case Law: Moody Vs Cox

'X', a solicitor sold certain property to one of his clients. The client subsequently told that the property was considerable over valued and his consent was caused by undue influence. The court held that since the relationship of solicitor and client is of trust & confidence, the existence of undue influence can be presumed.

c) Where one party makes a contract with the other who is in mental distress:

Sometimes, a person makes a contract with a person whose mental capacity is temporarily (or) permanently effected by reason of age, illness etc. In such cases, he is in a position to dominate the will of such person.

Case Law: Ranee Annapurna Vs Swamynadhan

A poor Hindu widow, who was in dire need of money, was forced by a money lender to agree to pay 100% rate of interest. It was held to be a case of existing undue influence upon a person who is in mentally disorder.

2) The Dominant party must use his superior position to obtain an unfair advantage over the other party:

In case the dominant party uses his superior position and obtains an unfair advantage over the weaker party, the undue influence is said to be employed.

Difference between coercion and undue Influence

Co-ercion	Undue Influence
1) Relationship: The relationship between the parties is immaterial.	1) Some type of relationship between the parties must exist. One must be in a position to dominate the will of the other.
2) Liability: The party committing the crime may be punishable under IPC.	**2)** It does not involve any criminal liability.
3) Force: It involves physical force.	**3)** It involves moral pressure (or) mental pressure.
4) Acts: Consent is obtained by committing (or) threatening to commit any act forbidden by IPC.	**4)** The consent of a weaker party is obtained by dominating his will by taking unfair advantage.

iii) Fraud:

The term fraud includes all acts committed by a person with an intension to deceive another person. Fraud is the willful representation made by a party to a contract with the intension to deceive the other party (or) to induce such party to enter into a contract. It means a false statement made knowingly (or) without belief in its truth (or) recklessly without carrying it as truth (or) false.

Acts which constitute Fraud:

1) A false suggestion as to a fact to be false:

A false statement made with regard to a fact would amount to fraud.

E.g.: 'X' sells to 'Y' locally manufactured goods as imported goods charging a higher price, it amounts to fraud.

Case Law: Peek Vs Gurney

The prospectus issued by a company did not refer to the existence of a document disclosing liabilities. The impression there by created that the company was a prosperous one. It was held that non discloser of truth amounted to fraud and any one who purchased shares on the faith of this prospectus can avoid the contract.

2) Active concealment of fact:

If a person conceals a fact which is material to the contract and it is his duty to disclose it. It will be amount to fraud.

E.g.: 'X' a furniture manufacturer dealer conceals cracks in furniture sold by him by polishing it in such a way that the buyer even after reasonable examination cannot trace the defect, it would amount to fraud through active concealment.

3) A promise made without any intention of performing it:

If a person enters into a contract without the intention of performing it, such a promise is considered as fraud.

E.g.: 'A' purchased goods from 'B' on credit. He has no intention of paying for them. The contract is said to be included by fraud.

4) Any other act fitted to deceive:

Any other act fitted to device is also fraud if done with the intention of deceiving the other party.

E.g.: 'A' convinced his illiterate wife 'B' to sign on certain documents telling her that he was going to mortgage her two pieces of land to secure his in debitness. But actually he mortgaged 4 pieces of land belonging to her. This was held to be an act done with the intention of deceiving her. Hence it amounts to fraud.

5) Any such act (or) omission as the law specially declares to be fraudulent:

This category includes the acts (or) omissions which the law specially declared to be fraudulent.

E.g.: Transfer of property act declares that any transfer of immovable property with the intention of defaulting the creditor is taken as fraud.

Essentials (or) Legal rules for Fraud:

1) The Fraud must be committed with an intention to deceive:

The Act which constitutes fraud must be committed by a party to a contract with the intention to deceive the other party.

2) The Fraud must have actually deceived the other party:

The Fraud must have induced the other party to enter into a contract. If the party is not actually deceived, the fraud cannot be said to have been committed.

3) The Fraud must be committed with knowledge of its fact:

The Fraudulent act must have been made with the knowledge of its facts.

E.g.: 'A' says with 'B' that his horse is in a good condition although he knows that it is not true. With regards to 'A's statement' 'B' purchased the horse. The contract is voidable at the option of 'B' because it involves some fraud.

4) The Fraud must have been committed by a party to the contract (or) his agent:

The Fraud must have been committed by a party to the contract (or) with his convenience by his agent. Fraud by a stranger to contract does not affect its validity.

5) The party mislead suffer some loss:

It is a common rule of law that there is no fraud without damage (or) loss. Therefore the mislead party must suffer some loss.

IV) Misrepresentation:

Misrepresentation means a false representation of fact made innocently (or) non discloser of a material fact without any intention to deceive the other party.

Case Law: Derry Vs Peek

The prospectus of a company contained a statement that the company had been authorized by a special act of parliament to use stream for running the trains. Infact the authority to use the stream was subject to the approval of the board of trade. But this fact was not mentioned in the prospectus. The board of trade did not approve the use of stream and consequently the company was wound up. The shareholders of the company filed a suit against the directors for fraud. But the court held that they were not liable for fraud and amounts to misrepresentation, because they honestly believed that once the parliament had authorized the use of stream, the consent of the board of trade practically concluded.

Acts which constitute misrepresentation:

1) **Making a positive Assertion:**

Positive Assertion means an absolute, full and clear statement of fact. When a person obtains the consent of another to a contract by making a positive statement about his subject matter although he had no perfect knowledge about the matter, it amounts to misrepresentation. Here he should not have any intension to deceive the other party.

E.g.: 'A' believed his horse to be sound although he had no sufficient ground for his belief. 'A' while selling his horse to 'B' stated the horse to be sound. On the basis of this statement, 'B' brought the horse. Later 'B' found the horse to be unsound. In this case the positive statement made by 'A' is a misrepresentation.

2) Breach of Duty:

When a person commits a breach of duty without any intention to deceive another but gains an advantage, resulting in a loss to the other party, it also becomes a misrepresentation.

Case Law: With vs Flanagan

'A' before signing a contract with 'B' for sale of business correctly stated that the monthly sales are Rs 50,000/-. Negotiations run for 5 months and then the contract of sale was signed. During this period, the sales come down to Rs 5000/- per month. 'A' unintentionally kept quite. It was held that breach of duty was amounts to misrepresentation and 'B' was entitled to cancel the contract.

3) Inducing mistake about subject matter:

Some times a person misleads another regarding subject matter of a contract and causes him to enter into the contract under a mistake. Such act also amounts to misrepresentation provided; there was no intention of deceiving the other person.

E.g.: 'A' intending to sell his house to 'B', told that it was in a perfect condition not knowing that its foundation was very week. Mr. 'B' purchased the house and later wanted to avoid the contract on the basis of fraud with respect to mistake about subject matter. But the court of law considers it as a misrepresentation and not fraud.

Essentials and legal rules for Misrepresentation:

1) False Representation:

Misrepresentation is a false statement made without intension to deceive other. But the person making the statement should honestly believe it to be true.

2) By a party to contract (or) by his agent:

The representation must be made by a party to consent (or) by his agent. If it is made by a stranger, it does not amount to misrepresentation and can't affect the contract.

3) Object:

The representation must be made with a view to induce the other party to enter into a contract but without the intension of deceiving the other party.

4) Actually acted:

The other party must have acted on the faith of the representation.

Differences between Fraud & Misrepresentation

Fraud	Misrepresentation
1) Intension: There is an intension to deceive the other party.	1) There is no such intension to deceive the other party.
2) Wrong: Fraud is an intentional (or) willful wrong. The person making the false statement does not believe it be true.	**2)** It is an innocent wrong. The person making the false statement believes it to be true.
3) Tort: It amounts to tort.	**3)** It does not amount to tort.
4) Damages: The aggrieved party has the right to claim damages in addition to his right to avoid the contract.	**4)** The aggrieved party cannot claim damages in addition to his right to avoid the contract.

V) Mistake:

A mistake is said to have accrued where the parties intending to do one thing, by error do something else. Mistake is an erroneous belief concerning something.

Types of Mistakes: Mistakes can be broadly divided into two types.

I) Mistake of Law
II) Mistake of Fact

I) Mistake of Law:

When a person enters into a contract to create legal obligations binding himself and the other party he should have the knowledge of rules of law relating to contracts. If he wants to make a contract with another Indian citizen he should know the rules of Indian Contract. The mistake of law is again divided into three types.

a) Mistake of Indian Law
b) Mistake of Foreign Law
c) Mistake as to private rights.

a) Mistake of Indian Law:

If there is a mistake of law of the country, the contract is binding because everybody is supposed to know the law of the country. The ignorance of law is no excuse is applicable and the party cannot be allowed any relief on that ignorance.

E.g.: If a contract is made with minor in ignorance of law, it cannot be allowed any relief on that ignorance.

b) Mistake of Foreign Law:

Ignorance of foreign law is excusable. If a mistake is made by one of the parties to a contract in regard to foreign law, the contract will be void.

c) Mistake as to private rights:

Where unknown to the parties the buyer is already the owner of that which the seller wants to sell him, the contract is void.

Case Law: **Cooper vs Phibbas**

'A' agreed to take a lease fish tank from 'B' unknown to both the parties the fish tanks actually belonged to 'A'. It was held that the agreement was void.

II) Mistake of Fact:

When a contract is made between two parties without properly understanding the terms and conditions of the contract, it is called a mistake of fact. Mistake of fact further divided into two types.

a) Bi-Lateral Mistake b) Uni-Lateral Mistake

a) Bi-Lateral Mistakes:

The term bi-lateral mistake means where both the parties to an agreement are under a mistake.

According to Sec 20 "where both the parties to an agreement are under mistake as a matter of fact essential to the agreement, the agreement is void".

The following conditions must be satisfied before declaring a contract as void u/s 20.

1. The mistake must be done by both the parties.
2. It must be mistake of fact and not of law.
3. It must be about a fact essential to the agreement.

Types of Bi-Lateral Mistakes:

Bi-Lateral mistake is again divided into two types.

1) Mistake about subject matter.
2) Mistake about possibility of performance.

1) Mistake about subject matter:

The Bi-Lateral mistake about the subject matter renders the agreement void. It falls under 6 heads.

a) Mistake about the existence of the subject matter:

If both the parties are under a mistake about the existence of the subject matter, the contract is void.

E.g.: 'A' agrees to buy from 'B' a certain horse while bargaining. The horse was deed a neither of the parties was not aware of the fact. The agreement is void because there is a bilateral mistake as to the existence of such mistake.

b) Mistake as to the identify of the subject matter:

Where both the parties are under mistake as to subject matter, the contract is void. i.e. one party thinks one thing and the other party thinks something else.

E.g.: 'A' had two trucks, one green and the other gray. He offered to sell his green truck to 'B'. 'B' agreed to buy the truck, but he thinks it's gray truck. In this case the agreement is void as there is no free contract.

c) Mistake about the little if the subject matter:

Where unknown to the parties the buyer is already the owner of that which the seller wants to sell him. The contract is void.

Case Law: **Cooper vs Phibbas**

d) Mistake about the price of the subject matter:

If both the parties are under a mistake about the price of the subject matter. The contract becomes void.

Case Law: **Garrad vs Frankle**

'A' agreed to let out his house to 'B' for a monthly rent of Rs 450/-. But in the written agreement the figure of rent was put as Rs 540/- by mistake which is not known to both the parties. The agreement was held to be void.

e) Mistake as to quantity of the subject matter:

If both the parties are under a mistake about the quantity of subject matter, the contract is void.

Case Law: **Cox vs Prentice**

'A' agreed to buy a silver bar from 'B' but both the parties were under a mistake about the weight of the bar. The agreement was held to be void.

f) Mistake as to quality of the subject matter:

If both the parties are under a mistake about the quality of subject matter, which makes the subject matter different from that was believed agreement will be void.

E.g.: 'A' agreed to buy a particular horse from 'B' both believe it to be a race horse but it turns to be a cot horse. The agreement is void because there is a bilateral mistake as to quality of the subject matter.

2) Mistake about Possibility of Performance:

The agreement is void where there is a bilateral mistake as to the possibility of performance. In other words, where the parties to an agreement believe that the agreement is capable of performance, while in fact it is not so, the agreement is treated as void. The possibility may either be physical (or) legal.

Case Law: **Griffith vs Braymer**

'A' hired a room from 'B' for watching the coronation procession of king Edward VIII unknown to both the parties the procession had already been cancelled. It was held to be void.

b) Unilateral Mistakes:

The term unilateral mistake means where only one party to the agreement is under a mistake.

According to sec 22 "A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to the matter of fact.

Case Law: **Higgings Ltd Vs Northampton corporation:**

'H' contracted with 'M' corporation to build a number of houses. In calculating the cost of the houses 'H' by mistake deducted a particular sum twice and submitted his estimates accordingly. The corporation agreed to the terms of which were naturally lower than the actual cost. It was held that the agreement was, binding even though it was based upon erroneous estimates.

Exceptions (or) Types:

In the following cases even if the mistake is unilateral the agreement could be void.

a) Mistake as to the identity of the person:

Mistake as to the identity of the contracting party makes the contract void. Where 'A' intends to contract with 'B' but enters into a contract with 'C' believing him to be 'B'. The contract is void. But the question of identity must be an essential element of contract.

Case Law: **Cundy Vs Lindsay**

A Fraudulent person named Blanker by imitating the signature of a respectable firm Blenk & Co, send on order for goods to Lindsay by mistake, thinking the offer had come from Blenk &Co, accepted the offer and supplied goods. These were received by Blanker and sold to cundy who took them in good faith. Lindsay filed a suit for the recovery of goods from cundy after he knows that the offer comes from a fraudulent person Blanker. It was held that cundy must return the goods to Lindsay although cundy was an innocent purchaser.

b) Mistake as to the nature of contract:-

Sometimes a deed of one character is executed under the mistaken impression that it is of a different character. In such cases it is void. Such instances are very common in case of ill literates and persons with poor eye sight due to old age and other reasons.

Case law:- **Poster Vs MacKinnon**

'A' placed a document before 'B'an illiterate old man. 'A' falsely told 'B' that it was an ordinary Guarantee and induced him to sign the document. 'B' signed the document on the belief that it was a mere guarantee. Infact, the document was a bill of exchange which was later endorsed to 'C' by 'A'. 'C' filed a suit against 'B' on the basis of bill of exchange. It was held that 'B' was not liable for the bill as he never intended to sign the bill of exchange. Hence the contract is void.

1) Under what circumstances is the object (or) consideration of a contract unlawful? Illustrate with suitable examples.

(Or)

When consideration and object of an agreement are unlawful?

According to sec 10 of ICA, "All agreements are contracts if they are made with free consent of parties, competent to contract, for a lawful consideration and with a lawful object. The consideration for a contract is different from its object. The object means the purpose for which the agreement is entered into; consideration means something in return for the promise made by the promiser. In all agreements, both the object and consideration should be lawful. Sec 23 of ICA states that the object (or) the consideration of an agreement is unlawful in the following cases.

1. **Where it is forbidden by Law:**

Sometimes, the object (or) consideration of an agreement is forbidden by law. Hence the agreement is void.

Case Law: William Vs **Bayley**

'A' promised to 'B' to drop a prosecution which he has instituted against 'B' for robbery and 'B' promised to restore the value of the thinks take. The agreement is void as its object is unlawful and forbidden by law.

2. **Where it defeats the provisions of any law:**

If the object (or) consideration of an agreement which is such nature that is permitted, if it could defeat the provisions of any law, the agreement is void.

Case Law: Rama Murthy Vs Gopayya

'A' borrowed Rs 10,000/- from 'B', 'A' enters into an agreement with 'B' and agreed that 'B' may recover the amount even after the expiry of limitation period (3 years) and 'A' will not raise any objection as to limitation. The agreement is void as it defeats the provisions of limitation act.

3. **Where it is fraudulent:**

Agreements which are entered to promote fraud (or) void.

E.g.: A, B & C entered into an agreement to carry on some fraudulent business and to divide the gains of the business in equal proportions. In this case, the agreement is void because its object is unlawful.

4. **Where it is injurious to another person (or) his property:**

Sometimes, the object (or) consideration of an agreement is to injure third patty (or) his property. In such cases the object (or) consideration is unlawful and agreement is void.

E.g.: 'A' agrees to pay Rs, 1, 00,000/- to 'B' if 'B' kills 'C'. This agreement is void because it is unlawful consideration.

5. **Where it is immoral:**

Where the consideration (or) object of an agreement is such that the court regards it as immoral, the agreement is void.

Case Law: Baibijli Vs Nansa Nagar

'A' advanced money to 'B' a married women to enable her to obtain a divorce from her husband and 'A' agreed to marry her as soon as she obtained a divorce. It was held that 'A' was not entitled to recover the amount as the agreement had for its object the divorce of 'B' from her husband. (Due to object is illegal (or) immoral)

6. Where it is apposed to public policy:

Where the consideration (or) object of an agreement is such that the court regards it as apposed to public policy, the agreement is void.

E.g.: The agreement made with align enemy for trading is void.

2) Explain the "Doctrine of Public policy". Give examples of agreements contrary to public policy? (Or)

"A contract shall not be enforced if the court regards it as apposed to public policy. Discuss?

Public policy is that principle of law which holds that no person lawfully act in such a way which has a tendency to be injurious to public (or) public welfare. It is known as doctrine of public policy. An agreement which is against the general public is said to be an agreement apposed to public policy and such an agreement is unlawful & void.

Agreements apposed to public policy:

There are certain agreements which have been considered as against public policy. The courts in India have declared the following agreements have opposed to public policy and are unlawful and void.

i) Agreements of Trading with Align Enemy:

Trading with an enemy is regarded as apposed to public policy. Thus an agreement made with an align enemy is unlawful on the ground of public policy and is void.

ii) Agreements for Stifling Prosecution:

Agreements for stifling prosecution are well known against the public policy rule. When an offence has been committed, it is necessary that the offender must be prosecuted. Any agreement seeking to prevent (or) delay prosecution is apposed to public policy and is void.

Case Law: William Vs Bayley

iii) Agreements in the nature of maintenance and Champerty:

Maintenance is the encouraging of litigation by a person who has no legal interest in it. Sometimes a stranger who has no legal interest in the suit promises to give monitory assistance (or) otherwise to another person to enable him bring (or) defend legal proceedings. In such cases the agreement between the stranger & such person is know as maintenance agreement and all these agreements are void as apposed to public policy.

E.g.: 'X' promises to pay 'Y' Rs 5000/- if 'Y' files a suit against 'Z'. The agreement made between 'X' & "Y' is a maintenance agreements and this agreement is void.

Champerty is an agreement where by one party agrees to assist another in recovering property and in return is to share in the proceeds of the action.

Case Law: Nuthahi Venkata Swamy Vs Kotta Nagi

'X' agreed to pay Rs 10,000/- to 'Y' to enable him to file a suit for the recovery of his property and 'Y' promised to give him $3/4^{th}$ share in the property if recovered. The agreement has held to be void due to apposed to public policy.

iv) Agreement for the sale, transfer of public officers & titles:

The agreement for the sale of transfer of public officers (or) to obtain public titles like 'Padma Sri' are illegal on the ground of public policy.

E.g.: The agreement for the procurement of Padma Sri Award for monitory (or) for other consideration is void.

Case Law: Venkata Ramanayya vs J.M. Lobo

'A' paid some amount to 'B' a public servant inducing him to retire from his services, thus paving (make) the way for 'A' to be appointed in his place. The agreement was held to be void due to opposed by public.

v) Agreements tending to create Monopolies:

Any agreement to create monopoly is void, which is opposed to public policy.

vi) Agreements in restraint of personal liberty:

An agreement which restricts the personal liberty to an individual is void has been apposed to public policy.

Case Law: Harwood vs Miller's Timber & Trading Company

'A' borrowed money from a money lender and agreed that he should not with out the lenders written consent leave his job, borrow money, dispose off his property (or) move from house. It was held that the contract was illegal and void on the grounds of opposed to public policy.

vii) Agreements to influence elections to public offices:

Any agreement with voters tending to influence them by improper means and agreement with third person to influence voters by indirect means are void. Similarly an agreement between rival candidates that one shall with draw in consideration of a promise by the other to appoint him to office is void.

viii) Marriage Brokerage Agreements:

An agreement to procure the marriage of a person in consideration of a sum of money is called marriage brokerage agreements. Such agreements are void on the grounds of opposed to public policy.

E.g.: 'A' pays 'B' a certain sum of money to procure a wife for him, he cannot enforce the agreement due to apposed by public.

ix) Agreement tending to create interest apposed to duty:

Doctrine of public policy demands that a person must perform his official duties honestly. So any agreement which imposes an obligation upon a public servant to do something which is in consistent with his official duties is against public policy and there fore void.

E.g.: An agreement by an editor of a news paper not to publish reports about the conduct of a particular person shall be void being apposed to public policy.

x) Agreement in restraint of parental rights:

An agreement which prevents a parent to exercise his right of guardianship is void on the grounds of apposed to public policy.

Case Law: **Giddu Narayanish vs Mrs. Annibesant**

'G' a father having two sons agreed to transfer guardianship in favour of 'A' and also agreed not to revoke the transfer during his life. Subsequently he filed a suit for the recovery of boys. It was held that he had a right to revoke his authority and get back the children.

3) "An agreement in restraint of trade is void". Explain the statement, stating exceptions if any?

According to sec 27 of the ICA 1872, "Every agreement by which anyone is restrained from exercising a lawful profession, trade (or) business of any kind; it is to that extent void. Article 19(9) of the constitution of India regards the freedom of trade and commerce of a right of every individual. Therefore no agreements can restraint a person from exercising such a right.

Case Law: **Cakes & Company vs Jackson**

'D' agreed with 'P' not to carry on the same business of dress makers on the expiry period of his service any where with in 800 miles of Chennai. This agreement was held void.

Exceptions to the rule that an agreement in restraint of trade is void:

There are two types of exceptions to this rule, they are

1) Statutory Exceptions 2) Exceptions under judicial decisions.

1) Statutory Exceptions:

The following are the statutory exceptions to the rule that agreement in restraint of trade is void.

i) Sale of Goodwill:

On the sale of goodwill of a business, the seller may agree not to carry on similar business with in specified local limits as long as the buyer carries on such business, that agreements are valid.

Case Law: **Gold Sol vs Goldman**

'X' a seller of imitation jewelers sells his business to 'Y' and promises not to carry on his business in imitation jewelers. It was held that restriction was valid.

ii) Partners agreement under Partnership Act 1932:

The Indian partnership Act 1932 tells the following agreements in restriction of trade as valid.

a) Restriction on existing partners:

An existing partner of the firm may be restricted from carrying the similar business of the partnership firm (or) other than the business of the firm. i.e. An agreement which restricted on existing partner from carrying the same business (or) any business other than the business of the firm is valid.

b) Restriction on out going partner:

An out going partner may agree with his partners that he will not carry on any business similar to that of the firm, with in a specified period (or) with in specified local limits. Such agreements shall be valid only if the restrictions are reasonable.

Case Law: **Hukum chand vs jaipur Ice & oil Mills**

An agreement between an out going partner not to carry on similar business on the land owned by him adjoining the factory of the partnership firm was regarded as reasonable and therefore binding.

c) Restrictions on partners at the time of dissolution of the firm:

Partners may upon (or) in anticipate of the dissolution of the firm make an agreement that some (or) all of them will not carry on the business similar to that of the firm with in a specified period (or) with in specified local limits. Such agreements shall be valid only if the restrictions are reasonable.

d) Restrictions in case of sale of goodwill:

A partner may upon the sale of the goodwill of a firm, makes an agreement that such partner will not carry on the business similar to that of the firm with in a specified period (or) with in specified local limits. Such agreements shall be valid only if the restrictions are reasonable.

2) Exceptions under Judicial Decisions:

i) Restrictions up on employees (service agreements):

Some times a service agreement contains some provisions which present an employee fro working else where during the period covered by the agreement. There fore during the period of agreement, the concerned employee may be restricted from taking part in any business which is indirect competition with business of his employer.

Case Law: **Charles vs Mac Donald**

'A' agreed to be assistant for 3 years to B, who was a doctor practicing at Zanzibar. It was agreed that during the term of agreement, 'A' was not to practice on his own account in Zanzibar. At the end of one year, 'A' ceased to act as B's assistant and began to practice on his own account. It was held that the agreement was valid and 'A' could be restricted by an injunction from doing so.

ii) Restriction with trade combinations:

An agreement between different firms in the nature of a trade combination in order to maintain a price level and avoid under selling is not illegal and that agreements are valid.

Similarly if such agreements tend to create monopolies, they will be against public policy and void.

iii) Sole dealing agreements:

An agreement to deal in the products of a single manufacturer (or) to sell the whole product to a single dealer are valid, if their terms are reasonable.

Case Law: **Sudha Naidu Vs Haj Badshah Sahib**

An agreement by a person to sell all the Mica produced by him to the single firm and not to any other firm and not to keep any in stock is valid.

2 Marks:

1) Uncertain Agreements:

An uncertain agreement means an agreement, the meaning of which is not certain (or) capable of being made certain. Such agreements are void.

Eg: 'X' agreed to buy a horse form 'Y' for Rs 5000/- and pay Rs 1,000/- more if the horse proved lucky. The agreement was void for its uncertainity.

2) Wagering Agreements (wager):

An agreement between two persons under which money(or) money's worth is payable by one person to another on the happening (or) non happening of a future of uncertain event is called a wagering agreement. Such agreements are void.

Eg: 'X' promises to pay 'Y' Rs 1000/- if it rains on a particular day and 'Y' promises to pay Rs 1,000/- to X if it does not rain. Such agreement is a wagering agreement and void.

UNIT-II

Q1. What is a contingent contract? State the rules regarding the enforcement of contingent Contracts?

Ans: Section 31 of the 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 doesn't happen."

In other words it is a contract, which is dependent on the happening or non-happening of some event. The performance of contingent contract becomes due only upon the happening or non-happening of some future uncertain event. In simple words it is a conditional contract.

Eg: - 'A' contracts to pay Rs 10,000 to 'B'. If his (B) house is burnt. It is a contingent contract as its performance is dependent upon on uncertain event (Burning of B's house).

Muthu Vs Secretary of state:

'A's house was put up for sale. 'B' was the highest bidder. There was a stipulation that the sale would be confirmed only on the collector's order. The collector refused to confirm the sale. Hence the contract is void.

Essential features of a contingent contract:

The following are the essential features of a contingent contract.

1. There must be a valid contract.
2. The performance 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 main contract.

Rule regarding enforcement of contingent contracts:

Rules regarding contingent contracts are contained in Section 32 to 36 of the contract Act. They are as follows.

1. **Contingent contracts dependent on the happening of future uncertain event:**

   Where the contingent contract is dependent on the happening of future uncertain event, then the contract can be enforced only when that event has happened.

   Eg: - 'A' agreed to sell his old BPL TV to 'B' for Rs. 5,000 if he gets a new Sony TV from Singapore.

   It is contingent contract and can be enforced by law only when 'A' gets a new Sony TV from Singapore.

2. **Contingent contracts dependent on the non-happening of future uncertain event:**

   Where a contingent contract is dependent on the non-happening of future uncertain event, then the contract can be enforced only when the event doesn't happen. (Because impossible).

Eg: - 'A' agrees to pay 'B' a sum of money if a certain ship doesn't return. The contract can be enforced as the return off ship becomes impossible.

3. **Contingent contract dependent on the happening of specified uncertain future event within fixed time:**

Sometimes, a contingent contract is dependent on the happening of a specified uncertain event within a fixed time. In such cases, the contract can be forced if the event happens within the fixed time.

Eg: - 'A' agrees to pay Rs. 10,000 to 'B' if a certain ship returned within a year. It can be enforced at law if the ship returns within a year.

4. **Contingent contract dependent on the non-happening of specified uncertain event within fixed time:**

A contingent contract dependent on the non-happening of a specified uncertain event within a fixed time can be enforced if the event does not happen within the fixed time.

Eg: - 'A' agrees to pay Rs.10, 000 to 'B' if a certain ship does not return within a year.

5. **Contracts contingent upon the future conduct of a living person:**

If the uncertain event in the future conducts of a living person, such event shall be considered impossible if that person does anything by which it becomes impossible to perform the contract within any definite time.

Eg: - 'A' agrees to pay 'B' a sum of money if 'B' marries 'C'. 'C' marries 'D'. The marriage of 'B' with 'C' must now be considered impossible, although it is possible that 'D' may die and 'c' may afterwards marry 'B'. This type of contingent agreement is void.

6. **Contingent contracts dependent on impossible event:**

Sometimes, a contingent is dependent on the happening of impossible events. In that case, the contract is void and cannot be enforced by law.

Eg: - 'A' agrees to pay 'B' Rs.1,00,000 if 'B' marries A's daughter 'C'. 'C' died at the time of the agreement. The agreement is void because B's marriage with 'C' can never take place.

2-Mks

Q--Write difference between wager and contingent contracts.

Wager contracts	Contingent contracts
1. It consists of mutual promises.	1. It does not consist of mutual promises.
2. These contracts are void.	2. These contracts are valid.
3. These contracts are always of a contingent nature.	3. These contracts are not of a wagering nature.

Q2. What are the Quasi Contracts? State and discuss the nature and kind or type?

Or

"A Quasi Contracts is not a contract at all, it is the obligation which the law creates." Discuss?

Ans: Under the Indian Contract Act a contract is the result of an agreement, which is enforceable by law. It comes into existence from the action of the parties. It creates legal rights and obligations. Obligations arising from contracts are called contractual obligations. But under certain special 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.

Thus, Quasi contracts are not full pledged contracts. These are contracts not in fact but in law. Mutual consent of the parties is not required in such contracts. Legal sanction is given to such contracts on the basis of equity. The Indian Contract Act describes them as "certain relations resembling those created by contracts."

These contracts are created by the circumstances where one person has done something for another or paid money on his be-half and the other person enjoyed the benefit of sale. It is kind of a contract by which one party is bound to pay money inconsideration of something done or suffered by other party. The basis of Quasi contract is to prevent unjust benefit.

Circumstances of Quasi-contractual obligations:

Flowing are the circumstances in which the Quasi-contractual obligations arise.

1. Claims for necessaries supplied (Section-68):

Sometimes a person supplies the necessaries to the person who is not competent to contract (i.e., Minors, lunatics, Idiots, etc.,). In such cases the person supplying the necessaries is entitled to recover the cost of necessaries from the property of such incompetent person. The term necessaries means the necessary items suitable to once condition in life.

Eg: - 'A' supplied to 'B', the lunatic the necessaries suitable to his condition in life. Here 'A' is entitled to be recovered from 'Bs' property.

2. Payment by an interested person:

Sometimes a person makes the payment, which is the legal duty of another person. In such cases, the person who made the payment can recover such money from the person who is legally bound to pay. Such type of cases arises usually when a person doesn't pay the legal charges due on his property and the payment is made by some interested person to protect the property from going into the hands of some third persons.

An interested person who makes the payment is entitled to recover the money from the person who was legally bound to make the payment if the following conditions are satisfied.

a. A person by law is bound to pay such money.
b. Another person must be interested in the payment of that money.
c. The other person must have paid the money to cause of such interest.

Tulsa kunwar Vs Jageshwar prasad:

'As' goods was wrongfully attached to realize the arrears of government revenue due by 'B'. 'A' paid dues to save his property. The court held that 'A' was entitled to recover the amount from 'B'.

3. Benefit of non-gratuitous acts:

Non-gratuitous act means an act, which is not intended to be done free.

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

For the application of Section 70, the following conditions must be fulfilled as per Supreme Court.

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

Damadar Mudaliar Vs Secretary of state for India:

The government carried out repairs to an irrigation tank owned by the government jointly with a zamindar and sued the zamindar for contributions in respect of expenses incurred for the repairs. It was held that Government in carrying out the repairs has acted lawfully and had not intended to carry them out gratuitously and that the zamindar who enjoyed the benefit of the repairs was liable to pay compensation.

4. Finder of goods (section 71):

A person who finds goods belonging to another and takes them into his custody is subject to the same responsibility 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. He is bound to take as such care of the goods as he will take of his own goods.

He is also entitled to the possession of the goods as against the whole world except the true owner.

Hollins Vs Fowler:

'H' picked up a diamond on the floor of 'F's shop and handed it to 'F' to keep it till the real owner appeared. In spite of wide advertisement in newspapers, none appeared to claim for it. After some time, 'H' requested 'F' to return the diamond to him. 'F' refused to do so. The court held that 'F' must return then diamond to 'H' as he was entitled to retain diamond as against everyone except the true owner.

5. Money paid by mistake or under co-ercion (Section-72):

Where a certain amount of money is paid or something is delivered to a person by mistake or under co-ercion then the person receiving the money or goods must repay or return the same to the person who had paid or delivered by a mistake or under co-ercion.

Eg: - 'A' and 'B' jointly owe Rs. 100 to 'C', 'A' alone pays the amount to 'C' and 'B' not knowing of this fact, pays Rs.100 again to 'C'. 'C' is bound to repay the amount to 'B'.

Sales tax officer, Benarus Vs Kanhaiya Lal, Mukand Lal:

A firm paid a certain amount of sales tax under the uttarpradesh sales tax law on its forward transactions. Subsequently the court ruled the levy of sales tax on such transactions to be ultra vires. The firm was allowed to recover back the tax.

Q3. What is meant by performance of a contract? By whom contracts must be performance and who can demand the performance of contract? Under what circumstances a contract needn't be performance?

Ans: Performance of a contract means the carrying out of legal obligations within time and in the manner prescribed in the contract. Section 37 of the contract act lays down that 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 any other act.

Types of performances: -

Performances are two types

a. Actual performances:

Where a promiser has made an offer of performance to the promisee and the offer has been accepted by the promisee, it is called an actual performance.

Eg: - 'X' and 'Y' enter into a contract that 'X' will sell the car to 'Y' for Rs.1, 00,000. When 'X' delivers the car and 'Y' pays Rs.1, 00,000 to 'X'. This is an actual performance.

b. Attempted performance (or) offer to perform (or) Tender:

Where a promiser has made on offer of performance to the promisee and the offer has not been accepted by the promisee, It is called an attempted performance.

Eg: - 'X' and 'Y' enter into a contract that 'X' will sell the car to 'Y' for Rs.1,00,000 when 'X' offer to deliver the car to 'Y', but 'Y' refused to pay Rs.1,00,000. This is an attempted performance.

The persons who should perform the contract:

As a matter of fact the contract should be performed by the promiser himself. However in certain cases the contract can also be performed by his representatives, agents etc. Depending upon the intention of the parties, the contract may be performed by the following persons.

1) The Promiser himself: -

If the contact involves personal skills, the promiser himself must perform. If the promiser dies such contracts comes to an end.

Eg: - 'X' promises to paint a picture for 'Y'. 'X' must perform the promises personally.
Eg: - 'X' promises to marry 'Y', 'X' must perform the promise personally.

2) By the agent: -

An agent appointed by the promiser may also perform the contracts, which don't involve any personal skill.

Eg: - 'A' contract to sell the goods may be performed the agent appointed by the seller.

3) By the legal representatives: -

Where the contract doesn't involve personal skill, the contact may be performed by the legal representatives if the promiser dies before the performance of the contract. However the liability of the legal representatives is limited to the value of the property of the deceased promiser inherited by them.

Ex: 'A' promises to deliver goods to 'B' on a certain day on payment of Rs.1000. 'A' dies before that date. A's representatives are bound to deliver the goods to 'B' and 'B' is bound to pay Rs.1000 to 'A's representatives.

4) By third persons: -

In certain cases promises may also be performed by a third party when a third Party when a promisee accepts the performance from a third person, he cannot after wards enforce it against the promiser. In such case the contract comes to an end and the promiser is discharged from further liability.

Eg: - 'A' owes 'B' a sum of Rs.1,00,000, 'C' a friend of 'A' offers 'B' a sum of Rs.95,000 with full settlement of the debt. 'B' accepts it than 'B' cannot now sue 'A' for the same or balance.

5) In case of Joint Promisers: -

In case of several promisers, all the promisers jointly responsible for performance. If any one promiser dies, the legal representative along with joint promisers performs the contract.

Who can demand the performance of a contract: -

The performance can be demanded only by a person to whom the promise is made. It means the promisee is the only person who can demand performance of the promise under a contract.

However in case of death of the promisee the legal representatives of the deceased promisee can demand performance. In certain cases a third party can also demand for performance if he is beneficiary (In case of trust etc.). In case of joint promisee's all the joint promisee's can demand for performance.

Contracts which needn't be performed: -

Section 62 to 67 of the contract act deals with contracts, which needn't be performed. The relevant provisions are as follows.

1. If the parties to a contract agree to novation, rescission or alteration, then original contract needn't be performed.
2. When a void able contract is resigned, the other party needn't perform his promise.
3. Where the failure of performance has been caused by the promisee's neglect or refusal, the promiser will be excused.
4. When the performance of the promise becomes impossible, law excuses the impossibility of performance.

Q4. Explain the term Tender? What are the essentials of a valid tender? State the effect refusal to accept tender? Or Tender is attempted performance. Discuss

Ans: If Promiser has made on offer of performance to the promisee and the offer has not been accepted by the promisee, it is called an attempted performance or tender of performance.

If a valid tender of performance s rejected by the promisee, then the promiser, then the promiser is excused from further performance. He also becomes entitled to bring an action against promisee from breach of contract. A valid tender of performance is therefore equalent to performance.

Essentials of a valid Tender: -

1. The tender must be unconditional: -

An unconditional tender is one, which is in accordance with the terms of the contract. Thus, where a tender is not accordance with the terms of the contract, the tender will be conditional therefore invalid contract.

Eg: 'X' offered to deliver 100 bales of cotton to 'Y'. If 'Y' sells his machine to 'X'. It is a conditional tender and hence invalid.

2. Proper time and place: -

The tender of performance should be made at the time and place fixed by the parties if any. If the place and time for performance is not fixed, then the tender of performance must be made at reasonable time and place.

Eg: - 'A' owes 'B' Rs 1000 payable on 1st June with interest. 'A' offered to pay on 1st May the amount with interest up to 1st May. It is not a valid tender, as it is not made at the appointed time.

3. Reasonable opportunity of inspecting goods: -

It must give a reasonable opportunity to the promisee of ascertaining that the goods offered are the same as the pro miser is bound to deliver. There is no valid tender where goods are locked in a box and other party i8s not permitted to open it.

4. The tender must be of the whole obligation: -

A valid tender of performance must be of the whole obligation. An offer to perform a promise in part is not a valid tender. More over a tender by installment is not a valid tender. More over a tender by installment is not valid unless the contract so provides.

5. The tender must be made to a proper person: -

A valid tender of performance must be made to a proper person. The proper person is the promisee or his official agent.

6. The tender must be made in the proper form: -

A valid tender of performance must be made in a proper form.

Eg: - A tender of money must be in the Indian currency and not in any foreign currency or cheque. A payment by cheque is a valid tender if the promisee accepts such payment.

7. The person making a tender must be able and willing to perform his obligation: -

A party cannot be said to be able and willing if he has either possession of goods nor Control over the goods, he had promised to deliver.

8. The tender may be made to any one of the joint promisees: -

Sometimes there are several promisees in such case it is not necessary for the Promiser to offer performance to every one of them. A tender may be made to any one of the joint promisees.

Q5. State briefly the provisions of the Contract Act relating to the time and place of the performance of a contract? Is time the essence of a contract?

Ans: A contract imposes obligations on the parties to performance their respective promises. The parties to the contract must either actually perform or offer to perform the promise, which they have made. The time and place for the performance of the contract is to be determined by the parties to a contract.

The following rules are applied with regard to time and place of performance of a contract.

1. Where no time is specified and no application is to be made: -

Where a contract doesn't specify any time for performance and the promisee is not supposed to ask for performance, the promiser must perform it within a reasonable time. It may depend upon the circumstances of the case.

Eg: - 'A' promised to discharge a debt due to 'B'. 'A' didn't discharge the debt for three years, held it was a breach of contract.

2. Where time is specified but no application is to be made: -

Sometimes the day for the performance is fixed and the promiser has undertaken to perform it without being asked to do so by the promisee. In such cases the promiser may perform it at any time during usual hours of business on such day and at the place where the promise ought to be performed.

Eg: - 'A' promises to deliver goods at 'B's godown on 1st January on that day 'A' brings the goods to 'B's godown after the usual working hours. Hence, goods were not received at the godown. In this case 'A' has not performed his promise.

3. Where the time is specified and also the application is to be made: -

Sometimes the day for performance is specified in the contract and the promiser has undertaken to perform it without application by the promisee. In some cases, it is the duty of the promisee to apply for performance. Such demand should be made at a proper place and within usual hours of business.

Eg: - 'A' promised to deliver 100 bags of cement to 'B' on a fixed day. The terms of contract requires 'B' to specify the place later on where delivery was to be made. In this case it is the duty of 'B' to apply for performance and inform 'A' about the place of performance.

4. Where no place is specified and also no application is to be made; -

Where the place for performance is not specified in a contract and the promise is to be performed without being asked to do so by the promisee, then the promiser must apply to the performance and to appoint reasonable place for the performance and to perform the promise at such place.

Eg: - 'A' undertakes to deliver 100 tons of wheat to 'B' on a fixed day. 'A' must inform to 'B' to fix a reasonable place for performing the contract and must deliver it to him at such place.

5. Manner and time of performance prescribed by the promisee: -

If the promisee prescribes the manner and time for performance, the performance of the promise should be made in the manner and the time prescribed by the promisee.

Eg: - 'A' desires 'B' who owes him Rs.100, to send him a note for Rs.100 by post. The debt is discharged as soon as 'B' puts into the post a letter containing the note duly addressed to 'A'.

Time as the essence of a contract:

Time as essence of a contract means that it is essential for the parties to a contract to perform their respective promises within the specified time.

Section 55 of the contract act deals with this subject.

a. When time is of the essence of the contract:

When time is of the essence of a contract and a party who is bound to perform his promise within the time fixed fail to do so, the contract becomes voidable at the option of the other party.

Eg: - 'A' agreed to sell and deliver 10 bales of jute to 'B' on 1st June. But he fails to deliver the jute by that time. The contract was voidable at the option of 'B'.

Dominion of India Vs Gaya Prasad

There was an agreement with the railway administration for the transportation of oranges. The agreement provided that the goods are to be carried by a special type of train, with in the stipulated period. It was held that the railway which is faster than the ordinary goods train. The railways failed to deliver the goods was liable as time was of the essence of the contract.

Time is generally considered to be of the essence of the contract in the following cases.

1. Where the parties have so expressly provided.
2. Where delay operates involves as a injury.
3. Where the nature and necessity of contract requires it is be so constituted.

b. When time is not of the essence of the contract:

When times is not of the essence of the contract, and the promiser fails to perform it within the specified time, the promisee is not entitled to avoid the contract. But the promisee could be entitled to compensation from the promiser for any loss occasioned to him by such failure.

c. Acceptance of performance out of time:

Where the promisee accepts performance of a promise at anytime other than that Agreed, he can't claim compensation for any loss occasioned for the non-performance of the promise at the agreed time.

Q6. What are the rules laid down in the Act as to the devolution of joint rights and liabilities?

Ans: Two or more persons may enter into a joint agreement with one or more persons. For example 'A' and 'B' jointly promise to pay Rs.500 to 'X' and 'Y'. In such case the question arises as to who is liable to perform and who can demand performance? The rights and liabilities of joint promisers and joint promisee's are discussed in Section 42 to 48 of the Indian Contract Act.

Devolution of joint liabilities: -

Devolution means passing over from one person to another. Devolution of joint liabilities means passing of liability of joint promise from one to another.

1. The joint promisers or their representatives must jointly perform the promise: -

Sometimes two or more persons make a joint promise. In such cases the joint Promisers must jointly fulfill the promise during their joint lifetime and if any one of them dies, his legal representatives must jointly fulfill the promise along with surviving promisers. On the death of all the promisers the representatives of all of them must jointly fulfill the promise when there is no contract to the contrary.

2. The promisee may compel any one of the joint promisers to perform the promise:

When a joint promise is made, the promisee may compel any one or more of the joint promisers to perform the whole of the promise because the liability of the joint promisers is joint and several.

Eg: 'A', 'B' and 'C' jointly promised to pay Rs.30,000 to 'D'. In this case 'D' may compel either 'A' or 'B' or 'C' to pay him the entire sum of Rs.30,000.

3. Rights and liabilities of joint promisers among themselves: -

a. Joint promisers are liable to contribute equally:

Sometimes a joint promiser has been compelled to perform the whole of the promise. In such cases he may require the other joint promisers to make an equal contribution towards the performance of the promise.

Eg: - 'A','B','C' jointly promised to pay Rs.30,000 to 'D'. 'D' filed a suit against 'A' only and recovered the entire amount from him. In such cases 'A' can recover Rs.10,000 each from 'B' and 'C'.

b. Joint promisers are liable to share losses equally:

Sometimes any one of the joint promisers doesn't make any contribution. In such cases the remaining joint promisers should bear the loss in equal shares.

Eg: 'A','B' & 'C' jointly promised to pay Rs.30,000 to 'D'. 'A' was compelled to pay the entire sum of Rs.30,000. In this case 'A' is entitled to recover Rs.10,000 each from 'B' and 'C'. But 'C' is unable to pay anything at that time 'A' is entitled to recover Rs.15,000 from 'B'.

4. The promisee may release one of the joint promisers:

Sometimes a promisee may release one of the joint promisers. In such cases the release of one promisers doesn't discharge the other joint promiser or promisers. Thus, the remaining joint promisers continue to be liable to pay the amount and the released promiser remain liable to contribute to the other joint promisers.

Eg: 'A', 'B', 'C' jointly owes Rs.9000 to 'D'. 'D' releases 'A' from payment and files a suit against 'B' and 'C' for the payment Rs.9000. 'B' and 'C' liable to pay to 'D' but 'A' remain liable to pay to 'B' and 'C'.

5. Devolution of joint rights:

When a person makes a promise to two or more persons jointly, the persons are called joint promisees. In such cases all the promisees jointly claim performance so long as all are alive. If one of them dies his legal representative claim performance jointly with the surviving promisee's. On the death of all of them the legal representative of all them can jointly claim for performance.

Eg: 'A' and 'B' jointly give debt to 'C' of Rs.5000. 'C' promises 'A' and 'B' jointly to repay the sum with interest after one year. 'B' dies. The right to claim performance rests with 'B's representatives jointly with 'A'. If both 'A' and 'B' dies the right to claim performance rests with the representatives of both of them.

Q7. Define reciprocal promises. State the law relating to them?

Ans: Sometimes a party gives promise in consideration of other party's promise. In such cases both the promises are called as the reciprocal promises.

According to Section 2(f) "promises which for the consideration or part of consideration for each other are called reciprocal promises".

Eg: - 'A' and 'B' promised to marry each other, these are reciprocal promises. In this case 'As' promise is the consideration for 'Bs' promise and 'Bs' promise is the consideration for 'As' promise.

Legal rules for the performance of reciprocal promises: -

1. Mutual and concurrent (Section 51):

These promises are to be performed simultaneously that means the promiser needn't perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Eg: 'X' promise to pay Rs.10,000 to 'Y' on 1st April. On same date 'Y' agrees to deliver a motorcycle. In this case 'X' needn't pay the amount unless 'Y' is ready to deliver the motorcycle.

2. Conditional and dependent (Section 54):

Where the performance of one party depends upon the prior performance of the other party and the party who is liable to perform first fails to perform it, then such party cannot claim the performance from the other party.

Eg: 'X' promises to paint the house of 'Y'. If he (Y) supplies pain and brush. There are conditional and dependent reciprocal promises. 'X' needn't perform his obligation unless 'Y' supplies paint and brush.

3. Mutual and Independent:

These promises are to be performed by each party independently without waiting for the other party to perform his promise and if either party fails to perform his promise. The other party proceeds against him for the damages.

Eg: 'X' promises to deposit an advance of Rs.1000 with 'B' on 1st March towards a scooter promised by 'Y' to be delivered on 1st April. These are the mutual and independent reciprocal promises.

4. Order of performance of reciprocal promises: (Section 52):

Where the contract parties expressly fix the order of performance of reciprocal promises, they must be performed in that order. And where the order of performance is not so fixed, they should be performing in order, which the nature of the contract requires.

Eg: 'A' and 'B' contracted that 'A' shall construct a house for 'B' at a fixed price. In this case the nature of the contract requires that 'As' promise to construct the house must

be performed before 'Bs' promise to pay for it. Thus, 'A' must first construct the house then only he can claim the price from 'B'.

5. Effects of preventing the performance of reciprocal promises: (Section 53)

If one party prevents the other party from performing his reciprocal promise, the contract becomes viodable at the option of the party so prevented. And thus he may cancel the contract and can claim damages also from the party who so prevents.

Eg: 'A' and 'B' contracted that 'B' shall execute certain work for 'A' for Rs.10,000 and 'B' was ready and willing to execute the work accordingly. But 'A' prevented him form doing so. In this case contract becomes voidable at the option of 'B'.

6. Reciprocal promises one legal and the other illegal (Section 57):

When a contract consists of two parties, one part legal and the other illegal and the legal part are separable from the illegal one, then the contract will enforce the legal part. However if the legal part is inseparable from the illegal part the whole contract is void.

Eg: 'A' and 'B' agrees that 'A' shall sell his house for Rs.5,00,000 to 'B', if 'B' uses it for gambling house he(B) shall pay Rs.6,00,000 for it.

Here the first part to sell the house for 5,00,000 is valid. The second part is void agreement, because the object is unlawful.

7. Effects of alternative promise being illegal (Section 58):

Where one part of an alternative promise is legal and the other illegal then the legal part alone can be enforced. And the illegal part is void and can't be enforced.

Eg: 'A' and 'B' agrees that 'A' shall pay to 'B' Rs.10,000 for which 'B' shall afterwards deliver to 'A' either rice or smuggled opium. In this case to deliver rice is valid contract and to deliver opium is void agreement.

Q8. State the law relating to appropriation of payments made by the debtor to the creditor?

Ans: Appropriate of payment means application of payment to a particular debt, where there are several debts owing by one person to another and a certain payment is made by the debtor which is insufficient to satisfy all the debts, a question arises as to which of the debts is the payment to be appropriated. The creditor could like to appropriate the payment towards a debt, which he is no likely to recover. Appropriation is a right given to the debtor for his benefit.

Rules relating to appropriation of payment: -

1. Appropriation by debtor (Section 59):

Where a debtor owes more than one debt to his creditor and pays him a sum of money, which is insufficient to discharge the entire debt, the debtor has a right to appropriate it either expressly or by implication towards any debt due to his creditor. According to Section 59 where the debtor has stated that the payment made by him

should be adjusted against a particular debt, the creditor must do so if he accepts the payment.

Eg: 'A' owes 'B' Rs.1000, Rs.3000 and Rs.5000. 'A' pays Rs.500 and informs the creditor that the amount should be applied towards the payment of second debt. 'B' accepts the payment. In such case 'B' must apply the amount according to the directions of 'A'.

2. Appropriation by creditor:

Sometimes the debtor doesn't expressly intimate anything about the appropriation of the payment, and the creditor is at liberty to apply it any legal and lawful debt actually due and payable to him. The creditor may even apply the payment to a debt, which is time barred but he cannot apply to a disputed debt.

Eg: 'A' owed several debts to 'B'. Among this one debt of 4000 is time barred. 'A' paid Rs.10,000 to 'B' without indicating against which debt the amount is to be adjusted. 'B' may adjust Rs.4000 against the time barred debts and balance against any other debt, which he likes.

3. Appropriation by law (Section 61):

Sometimes the debtors don't expressly intimate anything about the appropriation of the payment and the creditor also fails to make any apportion. In such cases the payment shall be adjusted in discharging the earlier debts in order of time. If there are several debts on the same date, the payment shall be adjusted against each debt proportionately.

Eg: 'A' owes two debts of Rs.2000 each which are time barred and another debt of Rs.4000 to 'B'. 'A' sends Rs.2000. Both the parties fail to make an appropriation. According to law Rs.2000 should be appropriated proportionately against the two debts of Rs.2000 each, which are time, barred that means Rs.1000 should be appropriated against each time barred debt.

4. Appropriation towards interest:

Sometimes the debtor makes part payment without stating whether it is towards interest or principle. In such cases the general rule is that the payment must first be adjusted towards interest and the balance towards the principle payment.

2-marks

Write the rules regarding assignment of contract?

Assignment means transfer of contract. Assignment of contract means transfer of contractual rights and liabilities to third parties.

Modes of assignment of contract:

Assignment of a contract may take place in the following ways.

a. Assignment by act of parties.
b. Assignment by operation of law.

Rules regarding assignment of contract:

1. Contracts involving personal skills cannot be transferred.
Eg: A contract to marry (or) a contract to paint a picture.

2. The obligation or liabilities under a contract cannot be assigned except with the consent of the promisee.
Eg: A debtor cannot assign his liability without the consent of the creditor.

3. The rights and benefits under a contract are assignable unless the contract is personal in nature.
Eg: Endorsement of bill.

4. Assignment by operation of law takes place in case of death or insolvency. Upon death of a party to the contract his rights and liabilities devolve upon his legal representatives.

DIS-CHARGE OF CONTRACT

V.Imp

Q8. What do you mean by "Dis-charge" of contract? State the various ways in which a contract may be said to be discharged?

(or)

State the circumstances under which a contract is said to be discharged?

Ans: Discharge of contract means termination of the contractual relations between the parties to a contract. A contract is said to be discharged when the rights and obligations of the parties come to end under the contract.

Modes of discharge of a contract: -

Following are the various modes in which a contract may be discharged.

1. By performance.
2. By agreement or consent.
3. By lapse of time.
4. By operation of law.
5. By impossibility of performance.
6. By breach.

1. Discharge by performance:

After the formation of a valid contract the next step is the fulfillment of the object that the parties had agreed to do. For the fulfillment of the object the parties become liable to perform their respective obligations. When the parties performance their respective obligations the object is fulfilled and the liability of the parties come to end. After the performance the contract is said to be discharged. Performance may be actual performance or attempted performance.

2. Discharge by agreement:

A contract may be discharged by mutual agreement of the concerned parties. The rights and obligations created by an agreement can be discharged without their performance by means of another agreement between the parties, which provide for the extinguishments of the earlier rights and obligations. The parties may agree to terminate the existence of the contract by any one of the following ways.

**2-mks

a. Novation:

Novations means new contract. Substitution of a new contract for the existing contract is called novatin. The new contract may be either between the same parties or between different parties. The consideration for the new contract is the discharge of the old contract. Novation should take place with the consent of all parties. It must take place before the breach of the original contract.

Eg: 'A' owes 'B' a certain sum of money 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' to 'B' is discharged and a new debt from 'C' to 'B' is contracted.

b. Alteration:

Alteration means a change in one or more terms of the contract. The alteration is valid when it is made with the consent of all the parties. And the valid alteration discharges the original contract and the parties become bound by the new contract.

Eg: 'A' enters into a contract with 'B' for the supply of 1000 bales of cotton at his warehouse on 1st July 2003. Later both 'A' and 'B' agreed to postpone the date of delivery to 1st September 2003. This change amount to alteration of the contract.

c. Rescission:

The term 'Rescission' means the cancellation of the contract. The contract may be rescinded by the agreement between the parties at any time before it is discharged by the performance or in some other way. If the parties agree to rescind a contract, the contract needn't be performed. Rescission of the contract requires mutual consent.

Eg: 'A' promises to deliver certain goods to 'B' on a certain date. Before that date, they mutually agreed that the contract will not be performed.

d. Remission:

Remission means acceptance of lesser amount or lesser degree of performance than what was actually due under the contract.

Eg: 'A' owes 'B' Rs.5000. 'A' pays to 'B' Rs.4000 and 'B' accepts it as the repayment of the whole debt. The whole debt is discharged.

c. Waiver:

Waiver means the abandonment of a right. A party to a contract may waive his rights under the contract. There upon the other party is released from his obligations. Neither an agreement nor a consideration is required to constitute a wavier.

Eg: 'X' promises to paint a picture for 'Y'. Later 'Y' forbids 'X' to paint a picture. 'X' is no longer bound to perform the promise.

3. Discharge by lapse of time:

Every contract must be performed with in a fixed or reasonable period that is the period specified by the limitations act. The limitations Act lays down different limitations periods for different kinds of contract. If the contract is not performed and the agrrived party doesn't enforce his rights with in the limitation period, then he is debarred from enforcing the contract. In other words after the expiry of limitation period, the courts will not enforce the contract. And thus, the contract is discharged, as the parties cannot enforce their respective obligations through the court's of law.

4. Discharge by operation of law:

Under the following circumstance the contract is discharged by the operation of law.

a. Material Alteration:

In cases where contracts are contained in a written document and makes any material alteration, without the consent of the other party, the contract is discharged. Change in the amount to be paid, date of payment, place of payment etc are examples of material alteration.

Eg: 'A' entered into a contract with to sell his house to 'B' for Rs.5,00,000. The sale deed before registration was lying with 'A'. He made alteration in the amount and made it Rs.5, 50,000. 'B' is not bound to purchase the house.

b. Insolvency:

Where a person is declared insolvent by the court of law, in such case he is discharged from all liabilities and debts incase prior to the court orders.

c. Death of a promiser:

Where the contract involves personal skill or qualification of the promiser himself then the contract is discharged on the death of the promiser.

d. Merger:

When a superior right and an inferior right coincide and meet in one and the same person, the inferior right vanishes (disappear) into the superior right.

5. Discharge by impossibility of performance:

Contracts must be capable of being performed. An agreement to do an act impossible in itself is void. Impossibility is one of the valid grounds under which a contract would be discharged. Impossibility may appear on the face of the contract or may exist unknown to the parties at the time of making the contract or may arise subsequently after the contract is made. A contract at the time when it was entered into was impossible to perform is void and creates no rights and obligations. A contracts which at the time it was entered into was capable of being performed, may subsequently become impossible to perform or unlawful. Such impossibility is known as subsequent impossibility or supervening impossibility. Supervening impossibility of performance renders the contract void and the contract is discharged.

6. Discharge by breach of contract:

Every contract imposes obligations on both the parties to it. When one of them fails or refuses to perform the obligations imposed upon him by the contract, this is known as "Breach of contract". In other words breach means failure or refusal of a party to perform his obligations under the contract. Breach may be actual breach or anticipatory breach. The actual breach of contract takes place at the time when the performance is due or while actually performing the contract. Actual breach discharges the contract. A breach of contract occurring before the due date of performance is known as "Anticipatory breach". Anticipatory breach of contract doesn't necessarily discharge the contract. The contract gets discharged only when then aggrieved party so chooses.

Q9. What do you understand by the Doctrine of supervening impossibility? When does it apply? Discuss the effect of supervening impossibility?

Or

What are excusable impossibilities and what are non-excusable impossibilities? (Or) The law doesn't compel the impossible comment?

Ans: Where the performance of a contract is impossible, in such cases the contract is discharged because the parties cannot perform their respective obligations. This is base on the principle that the law doesn't recognize what is impossible and doesn't create any obligation.

As per Section 56 "The agreement to do an act impossible I itself is void". The impossibility of performance may be either **a. Initial impossibility or b. Subsequent impossibility.**

a. Initial impossibility:

According to Section 56 Para I of Indian Contract Act, on agreement to do an impossible act or acts is void. If the impossibility exists at the time of formation of a contract itself then the contract becomes void from the very beginning. Hence the parties are discharged, as void agreement doesn't create any rights and obligations on the contracting parties.

Eg: 'A' agreed with 'B' to meet two parallel lines and 'B' agreed to pay Rs.5000 to 'A'. It is void due to initial impossibility.

b. Subsequent (or) Supervening (or) Frustration impossibility:

In some cases it may so happen that the performance of a contract may become impossible subsequent to then formations of a contract. This is called subsequent or supervening impossibility of performance. In such cases the parties are discharged from further performances. In simple words a subsequent impossibility of performance renders the contract void and the contract is discharged.

Eg: 'A' and 'B' contracted to marry each other. Before the time fixed for the promise 'A' became mad. In this case the contract became void due to subsequent impossibility and thus discharged.

It may however be noted that the contract becomes void on the ground of subsequent impossibility only if the following conditions are satisfied.

1. The act should have become impossible:
2. The impossibility should have been caused by circumstances beyond the control of the parties.
3. The impossibility should not be the result of the act of the parties.

Cases covered under supervening impossibility:

The doctrine of supervening impossibility of performance is applicable to a variety of situations. A contract is discharged by supervening impossibility in some cases only. Supervening impossibility is an excuse for the non-performance of a contract in the following cases.

1. Destruction of the subject matter:

If the subject matter of the contract is destroyed after the formation of the contract without the fault of either of the parties. The agreement becomes void. In such cases the contract is discharged and the parties are no more liable to perform their respective obligations.

Tylor Vs Coldwell:

In this case a music hall was agreed to be let our on certain dates, but before those dates it was destroyed by fire. The contract will become void and thus discharged.

2. Non-occurrence of state of things necessary for performance:

Sometimes the performance of a contract remains possible but due to the non-occurrence of an event, the object of the contract is defeated. In such cases the contract becomes void. But the contact is discharged only when the happening of the event was the basis of the contract.

Krell Vs Henry:

'X' hired a room from 'Y' for viewing the coronation process of King Edward VII. The procession was cancelled because of kings' illness. It was held that 'X' was not liable to pay the room rent because the procession, which formed the basis of the contact, didn't occur.

3. Death or Incapacity of a promiser:

Where the nature of contract requires personal performance by party, his death are incapacity puts an end to the contract and it is discharged.

Robinson Vs Devison:

An artist undertook to sing at a theater on a particular day. But the artist being too ill couldn't sing on the day fixed for performance. It was held that the artist was not liable to pay for damages.

4. Change of law or Government policy:

The contract is discharged by impossibility of performance by subsequent change in the law. A subsequent change in law may render the contract void and in such cases the contract is deemed discharged. Impossibility created by law is a valid excuse for non-performance.

Shyam sundhar Vs Durga:

'A' agreed to sell his land to 'B'. Subsequently the government acquired that land and 'A' couldn't execute the sale deed as he ceased to be the owner by operation of law. It was held that the contract was discharge as its performance had become impossible.

5. Declaration of war:

A contract entered into before the commencement of war remains suspended during the war. How ever such a contract may be revived and enforced at the end of war. If the performance of the contract goes to help the enemy, it becomes void.

Eg: Mr.X an Indian citizen enters into a contract within Mr.Y a Pakistan citizen for the supply of goods. Later war was declared between India and Pakistan. Thus, that contract became void.

Cases not covered by supervening impossibility (or) non-excusable events (or) non-applicability of the Doctrine of supervening impossibility:

In the following circumstances the doctrine of supervening impossibility is not applicable. And the contract is not discharged on the ground of impossibility of performance.

1. Difficulty in performance:

A contract is not discharged by reason of the fact that the performance is more difficult, more expensive or burdensome or less profitable than the parties anticipated.

Keshavlal Vs Dewancahand:

'D' agreed to supply coal within certain time. Due to government restrictions on the transport of coal from collieries, there was a failure of delivery in time. But since coal was available in the open market from where 'D' could have obtained it, it was not a case of impossibility of performance.

2. Commercial impossibility:

A party to a contract cannot be discharged from performing it simply on the ground that it is unprofitable to him perform the contract.

Karl Ettlinger Vs Chagandas:

'A' promised to send certain goods from Bombay to Antwerp in September. Before the goods were sent, war broke out and those were a sharp increase in the shipping rates. It was held the contract was not discharged.

3. Impossibility due to the failure of a third person:

Sometimes, the performance of a contract depends upon the behaviour of a third person. In such cases, the contract is not discharged if the performance becomes impossible due to the conduct of the third person. In other words, the parties remain bound to perform their respective obligations.

Phul Chand Vs Prag Das:

'D' agreed to sell goods to 'P' as and when he gets the same from the mills with whom he had placed orders. The mills failed to supply. There is no impossibility of performance.

4. Self-induced impossibility:

Sometimes, the performance of the contract becomes impossible due to the act or omission of the contract party. In such cases, the contract is not discharged on the ground of impossibility. That means the contract is not discharged in case of self-induced impossibility.

Eg: A person is not discharged from a contract when his failure to performance is caused by his arrest and conviction for a crime.

5. Failure of one of the several objects:

When a contract is entered into fro several objects, failure of one of the objects does not terminate the contract.

6. Strikes, lockouts and civil disturbance:

Strikes, lockouts and civil disturbance do not discharge the contract unless the parties had specifically agreed in this regard at the time of entering into a contract.

Jacob Vs Credit Iyonnais:

'A' agreed to supply certain goods to 'B', which were to be procured from Algeria. Due to riots and civil disturbance in Algeria, the goods could not be procured. It was held that there was no excuse for the non-performance of the contract.

Q 10. What remedies are available to an aggrieved party in case of breach of contract?

(Or)

State then remedies allowed to the aggrieved person in case of breach of contract?

Ans: If a party refuses to perform this respective obligation, the breach of contract takes place and the other party (aggrieved party) can enforce his rights in the courts of law. The process of enforcing the rights is known as remedies for breach of contract. The right can be enforced in various ways.

Types of remedies or 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 Recission.
2. Suit for specific performance.
3. Suit for injunction.
4. Suit for damages.
5. Suit for restitution
6. Suit for quantum meruit.

1. Suit for Recission:

Recession means the cancellation of a contract. When one of the parties to a contract commits breach, the other party may treat the contract as cancelled and refuses to perform his part of the contract.

Eg: 'A' promises to deliver 100 tons of sugar to 'B' on a certain date and 'B' promises to pay the price on receipt of the goods. 'A' did not deliver the goods on the appointed date. 'B' can treat the contract as rescinded and need not pay the price.

2. Suit for specific performance:

It may be defined as the actual carrying out the respective obligations of both the parties. Under certain circumstances, a person aggrieved by the breach of the contract can file a suit for specific performance. That means, for an order, by the court upon the party who commit breach of contract directing him to perform what he promised to do.

Some of the cases in which specific performance of the contract may be enforced are as follow:

a. Where monetary consideration is not an adequate remedy for the breach of a contract.
b. When there exists no standard for ascertaining the actual damages caused by the non-performance of the act.

Eg: sale and purchase of Art paintings, old furniture etc.

In the following cases, however, specific performance shall not be granted.

a. Where the contract is of a personal nature.
b. Where damages have an adequate remedy.
c. Where the compensation in terms of money is an adequate relief for the non-performance of the contract.

3. Suit for injunction:

It may be defined as an order of the courts restraining a person from doing something, which he promised not to do. It is also at the discretion of the court. It is usually issued incases where the compensation in terms of money is not an adequate relief. Where a party to a contract does something, which he had promised not to do, In such cases the aggrieved party may file a suit for injunction.

Warner brothers Vs Nelson:

'N' a firm actress agreed to act exclusively for Warner bros for one year. During the year she contracted to act for 'X'. It was held that she could be restrained by injunction from acting for 'X'.

4. Suit for damage:

It is the monetary compensation payable by the defaulting party to the aggrieved party for the loss suffered by him. The aggrieved party may therefore bring an action for damages against the party who is the guilty of the breach of the contract. And the party guilty of breach is liable to pay damages to the aggrieved party. It may be noted that the damages are given by way of compensation for the purpose of punishing the defaulting party.

5. Suit for restitution:

It means return of the benefit received by one party to the contract from the other party under a void contract. When a contract becomes void either party needn't perform it. Section 65 provides that when an agreement is discovered to be void or when a contract becomes void, any person who had received any advantage under such agreement is bound to restore it or to make compensation for it to the person from whom he received it.

Eg: 'A' pays 'B' Rs.10, 000 inconsideration of 'Bs' promising to marry 'C' (As daughter). 'C' died at the time of performance. The agreement is void. So 'B' must repay to 'A' Rs.10, 000.

6. Suit for quantum meruit:

According to this doctrine, a person ca recovers compensation in proportion to the work done. The general rule in this connection is that where a party to contract hasn't fully performed what the contract demands, he can bring no action for payment that which he has done. However in certain circumstances when a person has done something under a contract but couldn't complete it due to any reason such as impossibility by the other party is allowed to claim remuneration for the work already done. This right is available to a person under the quasi-contractual obligation but not under contract act.

Q 11. Explain different kinds of damages allowed for breach of contract?

Ans: Whenever there is a breach of contract the injured or the aggrieved party is entitled to claim damages under the contract. They are awarded by the court in terms of money. So, damages can be defined as a monitory compensation allowed to the injured party by the court for the loss or injury suffered by him as a result of the breach of the contract.

Types of damages:

Damages are of four types. They are

1. Ordinary damages / General damages.
2. Special damages.
3. Windicitve or exemplary damages.
4. Nominal damages.

1. Ordinary damages:

Ordinary damages are those, which naturally arise, in the usual course of things from breach of contract. These damages can be recovered if the following two conditions are fulfilled.

1. The aggrieved party must suffer by breach of contract and
2. The damage must be direct consequence of the breach of contract and not the indirect consequence.

In a contract for the sale of goods the measure or ordinary damages is the difference between the contract price and market price of such goods on the date of breach.

Eg: 'A' contracts to sell and deliver 50 bags of wheat at 400 per bad to 'B'. The price to be paid at the time of delivery. The price of wheat rises to Rs.450 per bag and 'A' refuses to sell the wheat. 'B' can claim damages at the rate of Rs.50 per bag.

2. Special damages:

These are the damages which are payable for the loss arising due to some special or unusual circumstances. These are the damage, which the parties know when they made the contract as likely to arise from the breach of contract. The notice of special circumstances involved in a contract must be known to the party against whom special damages are claimed for breach of a contract. If he had no knowledge he isn't answerable. Knowledge of the special circumstances must be on the date of the contract.

Eg: loss of profits on account default by the other party to the contract can be claimed only when an advance notice of such damages has been given before.

3. Windictive damages:

These damages are awarded with the intension of punishing the defaulting party. These damages are awarded by way of punishment to the wrong doer. The purpose of windictive damages is to prevent the parties from committing breach. These damages needn't be in proportion to the loss caused to the injured party. The damages aren't generally awarded for breach of contract but there are two exceptional circumstances when they are usually given.

a. Breach of contract to marry.
b. Wrongful dishonour of a cheque by bank.
   In the case of wrongful dishonour of a cheque, damages are awarded taking into account the loss of prestige and goodwill of the customer. In case of breach of contract to marry, damages will include compensation for the loss to the feelings and repetition of the aggrieved party.

Prenna Vs Ahmed:

In this case windicitve damages were awarded for breach of promise.

4. Nominal damages:

Nominal damages are neither compensatory nor punitve. These are awarded for a technical violation of legal rights, although the aggrieved party might have not suffered any substantial loss as a result of the breach. Nominal damages are usually awarded if the contract price and the market price are same at the time of breach of contract and the aggrieved party has not suffered any substantial loss.

Short answers: 2-mks

Liquidated damages:

Where the amount of compensation is fixed is fair and genuine for the breach of contract at the time of formation of contract it is known as liquidated damages.

Penalty damages:

Where the amount of compensation is fixed is not fair and genuine for the breach of contract at the time of formation of contract it is known as penalty damages.

Q 12. Describe the rules for determination of compensation payable incase of breach of contract?

(Or)

What are the rules generally followed to assess damages for a breach of contract?

Ans: Whenever there is a breach of contract, the aggrieved party is entitled to claim damages under the contract. Damages are awarded by the court in terms of money. Damages can be defined as "A monitory compensations allowed to the aggrieved party by the court for the loss or injury suffered by him as a result of the breach of contract.

Rules regarding damages:

The rules regarding damages have been very well explained in the English case Hardely Vs Baxendale Section 73 of the Indian Contract act dealing with the principles regarding the measure of damages is based on the decision given in the Hardely Vs Baxendale case. Section 73 of the contract act provides that in cases of breach of contract, the injured party is entitled which arise naturally compensation for any loss or damage which arise naturally from the breach or which the parties known to be likely to arise from the breach.

Rules regards to damages:

1. Restitution:

The injured party is entitled to be placed in the same position as if the contract had been performed.

2. General damages:

A party who suffers from breach of contract is entitled to only such damages, which arise naturally in the usual course of things as a result of such breach. Such compensation is not being given for any indirect loss or damages sustained by reason of the breach.

3. Special damages:

Where a party claims special damage for any loss sustained he must prove that the other party know at the time of the making of the contract, that special loss was likely to result from the breach contract.

Dominion of India Vs All India Report Limited:

The consigner sent a parcel of books to himself as the consignee. In transit through the railways three volumes were lost. That render the whole set of reports useless. The consignor failed a suit for the recovery of the price of the whole set. Has the railway had absolutely no notice that loss of three volumes could render the whole set useless. The railways where held to be liable only for the loss of three volumes.

4. Windicitive damages:

Windictive damages are not usually awarded for breach of contract except in case of breach of contract of marriage or wrongful refusal by the bank to honour the customer's cheque. Such damages are awarded by way of punishment to the wrong doer.

5. Mitigation of loss:

The aggrieved party must take all reasonable steps to minimize the loss caused by the breach.

6. Damages in Quasi contracts:

Compensation for the breach of quasi contract could be the same as the compensation for breach of contract.

7. Performance of obligation:

A person who claims damages for a breach of contract should have performed are was ever really to perform his part of the obligations arising under the contract. Otherwise he cannot claim damages for breach of a contract.

8. Difficulty of assessment:

Difficulty of calculating damages is no ground for refusing damages. The court must make on assessment of loss and pass a decree for it.

9. Cost of decree:

The aggrieved party is entitled to get the cost of getting the decree for damages in addition to damages. It is the discretion of the court.

10. Where the parties agree about the damages for breach of contract, no more than the agreed amount can be awarded.

UNIT-III

Q1. Define a contract of Indemnity? What are the essentials and legal rules for a valid contract of Indemnity and state the rights of Indemnifier and Indemnified?

Ans: The term indemnity may be defined as an act to compensate or protect against loss. In other words to make good the loss and a contract to indemnify or compensate a person from loss is known as contract of indemnity.

"A contract by which one party promises to save the other from loss caused to him by the conduct of the promiser himself or by the conduct of any other person is called a contract of indemnity".

The person who promises to compensate for the loss is known as "Indemnifier". The party for whose protection the indemnity is given is known as Indemnity holder or indemnified.

Eg: 'A' contracts to indemnify 'B' against the consequences of any proceeding which 'C' may take against 'B' in respect of a certain sum of Rs.500. This is a contract of indemnity. In this example 'A' is indemnifier & 'B' is indemnity holder.

Essentials of Indemnity contract:-

A valid contract of indemnity should fulfill the following conditions.

1. There must be two parties namely the indemnifier and the indemnified.
2. Requirements of a valid contract:
   It is a special kind of contract. As much it must have all the essential elements of a valid contract as consideration, free consent, competent of parties etc.
3. There must be a promise to save the other party from some loss.
4. The loss may be due to the promiser himself or any other person. But the general definition of the contract of indemnity is much wider and it also covers the losses caused by the acts other than human beings i.e. losses arising from accidental, fire, perils of sea etc.

<u>Rights of the Indemnity holders:</u>

According to Section 125 of the contract act the indemnity holder is entitled to recover from the indemnifier with the following.

1. Right to recover damages:

All damages which the indemnity holder was compelled to pay in any such suit irrespective of any matter to which the promise to indemnity applies.

2. Right to recover costs:

The indemnified is entitled to recover from the indemnifier all costs, which he is compelled to pay either in failing a suit or defending a suit.

3. Right to recover sums paid under compromise:

The indemnity holders is entitled to recover from the indemnifier all costs or sums which he paid under a terms of a compromised suit. The said indemnity holder shouldn't be adverse to the interest and benefit of the indemnifier.

Rights of Indemnifier:

There is no provision in the contract act about indemnifier's rights. Rights of the indemnifier refer to terms and conditions of the contract under which he has agreed to indemnify. The rights of the indemnifier are virtually the same as those of the surety in a contract of guarantee.

Q 2. What do you mean by a contract of guarantee? State its essential features?

A. Sec.256 of the contract act defines a contract of guarantee as a contract to perform the promise or discharge the liability of a third person in case of his default. It is entered into with the object of enabling a person to get a loan or goods on credit or an employment.

A contract of guarantee involves three parties, the creditor, and the surety and principal debtor.

Creditor: The party to whom the guarantee is given is known as creditor.

Surety: The party who gives the guarantee is known as surety.

Principal debtor: The party on who's behalf the guarantee is known as a principal debtor.

Eg: 'A' advances loan of Rs.10,000 to 'B' and 'C' promises to 'A' that if 'B' doesn't repay the loan, I (C) will do so. This is a contract of guarantee.

It is a tripartite agreement between the surety, principal debtor and the creditor in which the surety promises to pay the amount of debt to the creditor if the principal debtor fails to pay.

Essentials Of A Valid Guarantee: -

The following are the essentials of a valid contract.

1. **Existence of a principal debt:**
   A contract of guarantee presupposes the existence of a liability enforceable at law. If no such liability exists there can be no contract of guarantee. Thus, where the debt which guarantee is given, is already time beared or void, the surety is not liable.

   Eg: 'X' took a loan of Rs.10, 000 from 'Y' on 1st January, 2000 and paid nothing on account of interest and principal. On 2nd January 2003 'Z' gave the guarantee to 'Y' for the payment of Rs.10, 000 due from 'X'. This is not a valid contract of guarantee because the primary liability between 'X' & 'Y' is 'A' time beared debt which is not enforceable by law.

2. **It must be supported by consideration:**
   Like every other contract, a contract of guarantee must be supported by consideration. However law presumes that consideration received by the principal debtor is sufficient consideration for surety. There needn't be direct consideration between surety and the creditor.

3. **Competent to contract:**

The parties to a contract of guarantee must also be competent to contract. However the incapacity of the principal debtor doesn't effect the validity of a contract of guarantee. That means where the principal debtor is a minor then the surety is regarded as principal debtor and he is personally liable to pay debt.

4. **There should be no mis-representation or concealment:**

The contract of guarantee is a contract of absolute good faith. So, the guarantee obtained by means of misrepresentation or concealment of material facts by the creditor is invalid.

5. **Oral or written:**

A contract of guarantee may be oral or in writing.

6. **Requirements of a valid contract:**

The essentials of a valid contract like competence of parties, free consent; lawful object etc must be present to make the contract of guarantee enforceable by law.

Q3. Write the differences between a contract of indemnity and a contract of guarantee?

A.

	Contract of Indemnity	**Contract of Guarantee**
1. Parties	There are two parties only i.e., indemnifier and indemnified.	There are three parties i.e., the principal debtor, creditor and the surety.
2. No. of Contracts	There is only one contract between indemnifier and indemnified.	There are three contracts i.e., one between principal debtor and creditor, the other between surety and creditor and the third between surety and principal debtor.
3. Nature of liability	The nature of liability of indemnified is primary.	The nature of liability of the surety is secondary. The primary liability is of the principal debtor.
4. Purpose of contract	The purpose of contract of indemnity is to provide for security against loss.	The contract of guarantee is made to provide security to creditor against default by principal debtor.
5. Request	It is not necessary for the indemnifier to act at the request of the indemnified.	The surety should give guarantee at the request of the principal debtor only.
6. Existing liability	There is no existing debtor liability. It is only contingency.	There is always some existing liability or duty. The guarantee is given for the payment of such liability only.

7. Right to sue third parties	The indemnifier cannot sue third party for loss in his own name. He can sue in the name of the indemnified.	The surety can sue principal debtor in his own name after discharging debtors' liability.
8.Competent parties	All parties in a contract of indemnity must be competent to contract.	As a special case where the principal debtor is minor, the contract of guarantee is still valid.

Q4. What are the various kinds or types of guarantee? How continuing guarantee is revoked?

Ans. The following are the different kinds of Guarantee.

1. Specific or simple guarantee.
2. Retrospective and prospective guarantee.
3. Fidelity guarantee.
4. Absolute and conditional guarantee.
5. Continuing guarantee.

1. **Specific or simple guarantee:**
   It is a guarantee, which is given for a specific transaction. In other words, a guarantee, which extends to a single transaction or debt, is known as a specific guarantee. Such guarantee comes to an end as soon as a specific transaction is duly performed or the debt is duly discharged.
2. **Retrospective and prospective guarantee:**
   A guarantee given for an existing debt or liability is called retrospective guarantee. A guarantee given for future debt or obligation is called a prospective guarantee.
3. **Fidelity guarantee:**
   A guarantee given for the good conduct or honesty of a person employed in a particular office.
4. **Absolute and conditional guarantee:**
   A guarantee where the surety unconditionally promises to pay incase of default of the principal debtor is known as absolute guarantee.
   A conditional guarantee means a guarantee where surety promises to pay incase some event inadditional the default of the principal debtor happens.
5. **Continuing guarantee:**
   It is a guarantee, which is given for a series of transactions of continuing nature.
   Eg: 'P' guarantees payments to 'B', a tea dealer, to the amount of Rs.1000 for any tea he may from time to time supply to 'C'. 'B' supplies 'C' with tea to the value of Rs. 1000 and 'C' pays 'B' for it. After words, 'B' supplies 'C' with tea to the value of Rs.2000. 'C' fails to pay. The guarantee given by 'P' was a continuing guarantee and he is accordingly liable to 'B' to the extent of Rs.1000.

Revocation of a continuing guarantee:

It means the cancellation of the guarantee. A continuing guarantee may be revoked in any of the following ways:

1. **By notice of revocation:**

   A surety may revoke the continuing guarantee at any time by giving a notice of revocation to the creditor. However a continuing guarantee can be revoked in respect of the future transactions only. The surely remains liable for the transactions already entered into before the revocation.

   Eg: 'X' gives guarantee to the extent of Rs.50,000 for the loans given from time to time by 'Y' to 'Z'. 'Y' gives a loan of Rs.20,000 to 'Z'. After words 'X' gives notice of revocation. 'X' is discharged from all liability to 'Y' for any loan granted after the revocation of guarantee but he is liable to 'Y' for Rs.20, 000 on default of 'Z'.

2. **By death of surety:**

   In the absence of any contract to the contrary, the death of surety operates as a revocation of a continuing guarantee as to the future transactions taking place after the death of surety. However the surety's estate remains liable for the past transactions, which have already taken place before the death of surety.

   Eg: 'X' gives guarantee to the extent of Rs.50, 000 for the loans given from time to time by 'Y' to 'Z'. 'Y' gives a loan of Rs.20, 000 to 'Z'. After this 'Z' dies, after the death of 'X', 'Y' again gave loan to 'Z' of Rs.10, 000. 'X's representative is liable to pay only Rs.20, 000 to 'Y' on default to 'Z'.

3. **By other modes:**

   A continuing guarantee is also revoked in the same manner in which the surety is discharged such as:

   a. Novation
   b. Variance in the terms of contract
   c. Release or discharge of principal debtor.
   d. By creditors act or omission impairing surety's eventual remedy.
   e. Loss of security.

Q5. What are the rights of surety against the creditor, the principal debtor and co-sureties?

Ans. In a contract of guarantee, surety is a person who has guaranteed the due discharge of a debt or the performance of a promise of a third person in case of his default. The rights of surety are discharged under the following three heads:

1. Against the principal debtor
2. Against the creditor
3. Against the co-sureties

1. Rights against the principal debtor:

The surety can exercise the following the rights against the principal debtor.

A. Right of subrogation (sec 140):

Soon after making a payment and discharging liability of the principal debtor, the surety acquires all the rights which the creditor had against the principal debtor i.e. the surety steps into the shoes of creditor. Thus, if the creditor has the right to stop goods in transit or has a seller's lien, the surety on payment of all to is liable for, would be entitled to exercise there rights but it I only on payment of the debtor.

Ex: 'A' mortgages a house to 'B' 'C'offers himself as surety for 'B'. 'A' fails to pay. 'B' recovered the amount from the 'C'. 'C' can get into the shoes of the creditor 'B' and enforce the mortgage itself against 'A'.

B. Right of indemnity (section 145):

Under section 145 when the surety has rightfully paid the loan or discharged the obligations of the principal debtor, he becomes entitled to recover from the principal debtor whatever the amount he has paid under the guarantee (including interest and costs). However the amount wrongfully paid cannot be recovered.

Eg: 'A' borrowed Rs.10000 from 'B' and 'C' gave a guarantee to 'B' for the repayment of the loan. On the due date 'A' refused to repay the loan. 'B' demanded the payment from 'C' who also refused to pay the money. 'B' failed a suit against 'C' fro recovery. 'C' defended the suit having reasonable grounds for doing. So, however 'C' was compelled to pay the amount of the debt with interest and costs. In this case, 'C' recover from 'A' the amount of the principal debt along with interest and costs paid by him.

2. Rights against the creditor:

The following are the main rights of the surety against the creditor.

A. Rights to claim securities (sec 141):

On payment of the debt to the creditor, the surety becomes entitled to claim the securities, which the creditors had at the time of guarantee. This right is available to the surety, whether or not he knows the existence of such securities.

If the creditor gives up or returns the securities to the principal debtor without the consent of the surety, then the surety is discharged from liability toe the extent of the value of such securities.

Eg: 'A' obtained a loan of Rs.2000 from 'B' and delivered some furniture to him as security for the repayment of the loan. 'C' gave the guarantee for the repayment of the same debt. After wards, 'B' without consent of surety (C), return the furniture to 'A'. After sometime 'A' become insolvent and 'B' sued 'C' on the basis of the guarantee given by him. In this case, 'C' is discharged from liability to the extent of the value of the furniture.

B. Right of set off:

Set-off implies a counter-claim or deduction from the loan. The surety can demand the creditors to give credit (deduction) in respect of all amounts paid by the principal debtor. This is known as the surety's right to set-off. This right to set-off is also extended in respect of counter-claims made by the debtor as against the creditor.

Eg: 'A' borrowed Rs.5000 from 'B' and 'C' gave a guarantee for the repayment of the loan. 'A' also had a claim of Rs.1000 against 'B' on some earlier transaction. On due date, 'A' failed to repay the amount of loan and 'B' filed a suit against the surety (C) for the recovery of the loan. In this case 'C' is entitled to deduct Rs.1000, which 'B' owned to 'A'. And this 'C's liability is only for Rs.4000.

C. Right to require the creditor to terminate debtor's services:

In case of fidelity guarantee, the surety can ask the creditor (employer) to terminate the principal debtor from services in case he (principal debtor or employee) is proved dishonest or committed any act of dishonesty.

D. Right to require the creditors to sue the principal debtor:

The surety has a right, any time before the guarantee debt has become due and before he is called upon to pay, to require the creditor to sue the principal debtor. However, the surety will have to indemnity the creditor for any expenses or loss resulting their form.

3. Rights against the co-sureties:

When two or more person's give a surety for the same debt, they are termed as co-sureties they have certain rights against each other:

A) Right of equal contribution:

On the payment of the guaranteed debt by one surety, he becomes entitled to claim contribution form other co-sureties. And the co-sureties are liable to contribute equally, because their liability is joint and several. It is immaterial whether the fact is known to other sureties or not. But this rule is subject to any contract to the contrary.

Eg: 'A', 'B' and 'C' are sureties to 'D' for the sum of Rs.3000, lent to 'E'. 'E' makes default in payment. A, B and C are liable as between themselves to pay Rs.1000 each.

B) Co-sureties bound in different sums:

Where the co-sureties have agreed to guarantee different sums of one single debt to the principal debtor, even they are liable to contribute equally subject to the maximum limit fixed by them. Thus, within the maximum limit fixed by the co-sureties, they are liable to contribute on equal amount. They are not liable in proportion to the amount guaranteed by him.

Eg: 'A' borrowed Rs.60, 000 from B. C, D and E gave a joint guarantee for the repayment of the loan. However, 'C' undertakes to be liable up to Rs.10, 000, 'D' up to Rs.20, 000 and 'E' up to Rs.30, 000. On the due date 'A' made default to the extent of 30,0000. In this case, C, D and E are liable to pay Rs.10, 000 each.

Suppose 'A' had made default to the extent of Rs.45, 000. In this case 'C' is liable to contribute only Rs.10, 000 (up to maximum limit) and the remaining amount of Rs.35, 000 will be contribute by 'D' and 'E' in equal shares i.e. Rs.17, 500 each.

C) Right to share benefits of securities:

Sometimes at the time of guarantee, one of the co-sureties receives security from the principal debtor, or on payment of the debt, he receives security from the creditor. In such cases, the co-securities are entitled to share the benefits of the securities.

Eg: If 'A', 'B' 'C' are sureties of 'X' for the loan of Rs.1,00,000 advanced to 'Y'. However, 'A' has received a security of 'Ys' house. 'Y' defaults in payment and 'X' recovers the amount from 'A', 'B' and 'C'. Later on if 'A' obtains an order from the court for the sale of house, 'B' and 'C' are entitled to share proceeds of house realized by 'A'.

Q6. Discuss the nature of and extent of the liability of the surety (or) "The liability of the surety is secondary. It is co-extensive with that of the principal debtor"-Discuss.

Ans: Surety is a person who has guaranteed the performance of the promise or discharge of liability of a third person in case of his default. Section 128 of the contract Act defines the nature and extent of the surety's liability. The liability of the surety may be studied under the following heads.

1. Liability co-extensive:

Section 128 of the contract Act declares "the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract". The expression co-extensive refers to the maximum extent of surety's liability. The amount of liability of the surety is the same as that of the principal debtor. He is liable for the whole of the amount for which the principal debtor is liable and no more.

Eg: 'A' guarantees to 'B' the payment of a bill of exchange by 'C', the acceptor. The bill is dishonored by 'C". 'A' is liable not only for the amount of the bill but also for any interest and charges, which may have become due on it.

2. Surety's liability may also be limited:

The surety may limit his liability to a fixed amount by special agreement. In such cases, the surety's liability will not be more than the amount fixed by him.

Eg: 'A' gives a loan of Rs.5000 to 'B' and 'C' agrees to stand as a surety for repayment to the extent of Rs.2000.

3. Surety's liability arises immediately on default of the principal debtor (secondary liability):

The surety's liability arises immediately on default by the principal debtor. Surety cannot be called upon to pay unless the principal debtor has committed the default. The means, the liability of surety is secondary.

4. Surety's liability where the original contract between creditor and principal debtor is void or voidable:

Where the contract between the creditors and the principal debtor is voidable, (where the principal debtor is minor) the surety will remain liable as if he is the principal debtor.

Q7. State the circumstances under which a surety is discharged?

Ans: In a contract of guarantee, surety is a person who has guaranteed the due discharge of a debt or performance of a promise of the principal debtor in case of his default. A surety is said to be discharged from liability when his liability comes to an end. The liability of surety comes to an end under the following circumstances:

a. By revocation of contract of guarantee.
b. By conduct of the creditor.
c. By invalidation of contract.

A. By revocation of contract of guarantee:

The revocation of a guarantee contract takes place in any one of the following circumstances.

1. Revocation by notice:

A surety may revoke the guarantee at any time by giving a notice of revocation to the creditor in case of continuing guarantee. On the revocation to the guarantee the liability of the surety comes an end. This revocation applies for future transactions only and not for past transactions, which have already taken place.

2. Revocation by death of surety:

The death of the surety puts an end to surety's liability under the guarantee. However, the death of the surety operates as a revocation of the guarantee only in case of continuing guarantee. The revocation by death is effective only in respect of future transactions.

3. By Novation:

A contract of guarantee is said to be discharged by novation when a fresh contract is entered into either between the same parties or between other parties.

B. By conduct of creditor:

A surety is discharged by the improper conduct of the creditor in the following cases:

1. By variation in the terms of contract:

Any variance made without the surety's consent, in the terms of the contact between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance.

Eg: 'A', an owner of a house let out to 'B' at a monthly rent of Rs.1000. 'C' gave a guarantee for the payment of the rent by 'B'. Afterwards without 'Cs' knowledge or consent, 'A' & 'B' entered into another contract by which the rent was increased to Rs.1500 per month. In this case, the surety (C) was held to be discharged from his liability.

2. By release or discharge of principal debtor:

The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released or by the act or omissions of the creditor, the legal consequences of which is the discharge of the principal debtor.

Eg: A contract to build a house for 'B' and 'C' stands guarantee to 'B' for the due performance of the contract by 'A'. Thereafter if 'B' releases 'A' from the performance of the contract, the liability of 'C' as a surety shall come to and end.

3. By composition with the principal debtor:

Composition means amicable settlement of the accounts, sometimes, the creditor enters into a composition agreement with the principal debtor without the consent of the surety. In such cases, the surety is discharged from his liability.

Eg: 'A' owes certain sum of money to 'B', which is guaranteed by 'C'. 'A' is unable to repay the loan and enters into an agreement with 'B' in which he agrees to give his car to 'B' in full settlement, 'B' accepts it. 'C' is discharged from liability.

4. By giving more time to the principal debtor:

If the creditor gives more time to the principal debtor for the repayment of the amount of loan or for the performance of the obligation without the consent the surety, then the surety is discharged from liability. If the surety givers his consent, then he is not discharged.

5. By promise not to sue the principal debtor:

If the creditor enters into another agreement with the principal debtor and promises not to file a suit against him without the consent of the surety, then the surety discharged from liability.

Eg: 'A' owed sum of Rs.20000 to 'B', which was guaranteed by 'C'. The debt became payable. But 'B' entered into on agreement with 'A' and promised not to file a suit against him (A) for the recovery of the debt. In this case, 'C' is discharged from his liability under the contract.

6. By losing the security by the creditor:

If the creditor has any security against the principal debtor and if the creditor loses or parts with such security without the consent of the surety, the surety is discharged to the extent of the value of the security.

Eg: 'A' advanced to 'B' Rs.2000 on the guarantee of 'C'. 'A' has also further security for Rs.2000 by way of mortgage of 'B's furniture. 'A' cancels the mortgage and 'B' becomes insolvent. 'C' is discharged from liability to the amount of value of the furniture.

C. By invalidation of the contract:

A surety is discharged from liability when the contract of guarantee is invalid or unenforceable. A contract of guarantee is invalid in the following cases:

1. Guarantee obtained by misrepresentation:

Any guarantee, which the creditor has obtained by means of misrepresentaition, is invalid. Surety, in such a case, will be discharged from liability.

2. Guarantee obtained by concealment:

Any guarantee, which the creditor has obtained by concealment of material fact, is invalid. Surety in such a case will be discharged.

3. Guarantee obtained without any consideration:

A surety will be discharged on the failure of consideration. If the contract between the creditor and the principal debtor fails for want of consideration, the surety is discharged.

4. Co-surety not joining:

If a co-surety fails to join according to the term of the contract, the surety is discharged.

Q8. "A surety is a favoured debtor"-Discuss

(Or)

"Surety is an object of favour both at law and equity"-Discuss.

Ans: Meaning of surety:

The following provisions contained in the law of indemnity and guarantees bring out the fact that a surety is a favoured debtor.

1. Surety's liability is secondary.
2. Co-extensive.
3. Variation in the terms of contract without consent of surety.
4. Right of set-off.
5. Right to claim securities.
6. Right to indemnity.
7. Contribution from co-sureties.
8. Right to require the creditor to terminate the debtor.
9. Right to require the creditor to sue the debtor.

BAILMENT AND PLEDGE

Q10. Define 'Bailment' and state its characteristic features or essentials and write types of bailment?

Ans: The word 'Bailment' is derived form a French word 'bailer', which means 'to deliver'.

Section 148 of Indian Contract Act defines bailment as "the delivery of goods by one person to another for some purpose, upon a contract that they shall when the purpose is accomplished be returned or otherwise disposed off according to the directions of the person delivering them. The person who delivers the goods is called the 'bailor' and the person to whom they are delivered is called 'bailee'

In other words, the delivery of good by one person to another on some specific purpose and re-deliver the goods when that specific purpose is over called as bailment.

Eg: 1. X gave his TV to Y, a mechanic for repair.
2. X deposited his luggage in a clock room at the railway station.

Essentials and legal rules for a valid bailment:

The following are the main features of a bailment.

1. Delivery of goods:

The possession of goods must be delivered from one person to another. Delivery involves change of possession from one person to another and not a change of ownership. Here, custody without possession does not creates bailment. Thus, a servant having custody of the goods of his master or a guest using the goods of his host is not a bailee. The goods must be handed over to the bailee for whatever is the purpose of bailment.

Case law: Kalipenumal Vs Visalakshi

A, lady employed a goldsmith of making new ornaments out of old jewellery. Every evening, she received the unfinished jewellery and put into a box, kept at the goldsmith's shop. She kept the key of that box with herself. One night, the jewellery was stolen from the box. It was held that there was no bailment. The court observed that the delivery of possession is necessary to constitute bailment. The delivery of possession to the goldsmith came to an end as soon as A was put in possession of the gold.

2. Delivery of goods must be for some purpose:

The goods should be delivered for some specific purpose. The purpose may be lending, giving or depositing the goods for (a) Safe custody (b) for repairs or (c) for conversion of form, etc.

Eg: Delivery of some gold to goldsmith for the purpose of making ornaments.

3. Contract:

The delivery of the goods to the bailee should be made on the basis of some contract. The bailment is always created by a contract between the bailor and the bailee. It may be either express or implied. Example for implied is bailment between finder of goods and the owner of goods.

4. Relates to only movable property:

The bailment relate to only movable property. But money is not included in movable property.

5. Return of goods:

When the purpose for which the goods are delivered is accomplished, the goods are to be returned or disposed off according to the directions of the bailor. Goods may be returned either in original form or altered form.

TYPES OF BAILMENT:

Bailment may be classified

(a) On the basis of reward.
(b) On the basis of benefit.

(A) ON THE BASIS OF REWARD:

On the basis of reward, the bailment may be of two types

(I) Gratuitous bailment:

It is a bailment in which either the bailor or bailee is not entitled to receive any remuneration.

Eg: Lending a book to a friend.

(II) Non-gratuitous bailment:

It is a bailment in which either the bailor or bailee is entitled to receive some remuneration.

(B) ON THE BASIS OF BENEFIT:

On the basis of benefit, the bailment may be of three types

(I) Bailment for the benefit of bailor only:

It is a bailment in which the goods are delivered for the benefit of bailor only.

Eg: Delivery of some valuable to a neighbour for safe custody without charge.

(II) Bailment for the benefit of bailee only:

It is a bailment in which the goods are delivered for the benefit of bailee only.

Eg: X who lends his scooter to his friend Y for temporary use without any remuneration.

(III) Bailment for mutual benefit of both bailor and bailee:

It is a bailment in which the goods are delivered for the mutual benefits of both of them.

Eg: Hiring of motorcar or giving watch for repairs, etc.

Q11. Write the rights and duties of bailer?

Ans: Bailer:

Bailer is a person who delivers the goods to another person for a specific purpose under a contract of bailment.

Duties of the bailer:

The duties of a bailor are laid down in sections 150,158,159 and 184 of the Indian Contract Act, they are as follows.

1. Duty to disclose known defects (section 150):

It can be discussed under two heads.

(a) In case of Gratuitous Bailment:

It is the bailment in which the goods are delivered to the bailee without any remuneration. The balior is bound to disclose the faults, which are known to him at the time of the bailment of goods. If he does not disclose such faults, he is liable to pay for damages to the bailee.

Eg: 'A' lends a horse, which knew that it was vicious to 'B' without any charge. He does not disclose the fact that the horse is vicious. The horse runs away. 'B' is thrown and injured. 'A' is responsible to 'B' for damages.

(b) In case of Non-gratuitous Bailment:

Here, the duty of bailor is more than that of gratuitous bailment. It is the duty to see that the goods, which he delivers, are reasonably safe for the purpose of bailment. In case of faults in the goods he will be liable for damages whether or not he was aware of the existence of the faults. If the goods are of dangerous nature, (explosives), the bailor is required to disclose the nature of goods.

Eg: 'A' hires a carriage from 'B'. The carriage is unsafe though 'B' is not aware of it, and 'A' in injured. 'B' is responsible to 'A' for the injury.

2. Duty to bear extraordinary expenses:

It is the duty of the bailor to bear the extraordinary expenses incurred by the bailee for the purpose of bailment. However, ordinary and reasonable expenses are to be done by the bailee in case of non-gratuitous bailment. But in case of gratuitous bailment, the bailor should also repay the necessary expenses incurred by the bailee for the purpose of bailment.

3. Duty to indemnity the bailee:

The bailor is bound to compensate the loss suffered by the bailee due to defective ownership rights of bailor against the bailed goods.

Eg: 'A' gives 'B' a motorcycle of 'C' (owner) without knowledge of 'C'. 'C' sues 'B' and receives compensation. 'B' is entitled to recover his losses from 'A'.

4. Duty to receive back the goods:

The bailor is under a duty to receive back the goods when the bailee returns them on the expiry of the term of bailment or on fulfillment of the purpose of bailment. If the bailor refuses to receive back the goods then he becomes liable to pay the compensation to the necessary expenses of custody.

Right of a bailer:

The duties of the bailee are then rights of the bailor. The following are the main rights of a bailor.

1. Right of termination:

Bailer has the right to terminate the contract and claim damages if any, if bailee does not follow the conditions of bailment. That means, where the bailee uses the bailed goods for other than which are written according to bailment, the bailment contract becomes voidable at the option of bailor.

Eg: 'X' lends his tractor to 'B' for transportation of goods. But 'B' used the tractor for the transportation of persons. The bailment contract becomes voidable at the option of 'X'.

2. Right to demand back the bailed goods:

Incase of gratuitous bailment, the bailor is entitled to demand back the bailed goods even before the expiry of the fixed time or the achievement of the purpose. However, the bailee can claim compensation from bailer in case of return of goods before the expiry of the agreed time.

Eg: 'X' delivered his car to his friend 'Y' for 10 days for the benefit of 'Y', 'Y' got the petrol tank filled. The next day, 'X' demanded back the car from 'Y'. In this case 'Y' may get the compensation from 'X' for the price of the petrol.

3. Right to file a suit against any wrongdoer for compensation:

If a third party does some wrongful act and deprives the bailee from the use of goods bailed or does some injury to the goods bailed, the bailor has a right to file a suit against the wrong-doers and claim compensation from him.

Eg: 'A' delivered 100 bags of sugar to 'B', a godown keeper for safe custody. 'C' by fraud, prepared a fake delivery order for 10 bags of sugar and claimed the delivery from 'B', which he delivered to him in good faith. 'A' may file a suit for the recovery of damages on "C"..

4. Right to claim damages incase of negligence:

If the bailee has not taken reasonable care, the bailor ha a right to claim damages for the loss of the goods bailed.

5. Right to claim compensation in case of unauthorized use:

If the bailee does not use the good bailed according to the condition of the bailment, the bailor has a right to claim compensation from bailee for any damage arising to the goods from or during such use of them.

6. Right to claim the separation of goods in case of unauthorized mixture:

If the bailee, without the consent of the bailor mixes bailors goods with his own goods, the bailor can claim the separation of bailed goods from bailee's goods.

7. Right to claim compensation in case of unauthorized mixture of goods, which cannot be separated:

If the bailee, without the consent of the bailor mixes bailor's goods with his own goods and the goods cannot be separated, the bailor has a right to claim compensation from bailee for the loss of the goods.

8. Right to demand accretion of goods:

In the absence of contract to the contrary, the bailor has a right to demand any increase or profit, which may have accrued from the goods bailed.

Q12. Who is a 'bailee'? What are the rights and duties of a bailee?

ANS: Bailee is a person to whom the good or article are delivered for some temporary purpose under the contract of bailment.

<u>Duties of bailee:</u>

The following are the main duties of bailee:

1. Duty of reasonable care: (section 151&152):

The bailee is required to take reasonable care of the goods bailed to him. He must take as much care, as an ordinary man would take under the similar circumstances in respect of his own goods of the same type. However if he has taken the required degree of care then he is not liable for any loss or destruction of good bailed. The measure of care depends upon the

nature, quality, quantity and value of the goods bailed. If the bailee is negligent in taking the care of the gods bailed then he is liable to pay damages for loss or destruction of the goods.

Martin vs London country council:

'X' plaintiff was join as a patient in a hospital. On entry she handed over two pieces of jewellery and a cigarette case to the hospital authorities. A thief stole these. The hospital authorities were held liable as bailee as they had failed to take as much care as the nature of article required.

However the bailee is not liable for damages if the good are damaged or destroyed due to natural calamities such as war, heavy flouds, fire etc.

2. Duty not to make unauthorized use of goods:

The bailee must use goods strictly for the purpose for which they have been bailed to him. If the bailee makes any unauthorized use of the goods bailed to him, the bailee is liable to the bailor for any loss or damage caused to the goods due to the unauthorized use of the goods.

Eg: 'X' lends a horse to 'B' for his own riding only. 'B' allows 'C', a member of his family to ride the horse. 'C' rides with care but the horse accidentally falls and is injured. 'B' is liable to 'X' for that injury.

3. Duty not to mix bailer's goods with his own goods:

It is the duty of the bailee not to mix the bailor's goods with his own goods. If he mixes the bailed goods with his own goods, the following rules shall apply.

a. Section 155:

If the bailee mixes the bailor's goods with his own goods with the consent of the bailor, then the bailor and bailee have a proportionate interest in such mixture.

b. Section 156:

Where the goods are mixed without the consent of the bailor and if the goods can be separated or divided, the property in the goods will remain in the parties respectively. The bailee is bound to bear the expenses of separation or division. He is also liable to pay damages also.

c. Section 157:

Where the bailee mixes the bailor's goods with his own goods without the consent of the bailor and the goods cannot be separated from each other then the bailee is bound to compensate the bailor for the loss of goods.

4. Duty to return the goods: (section 160,161):

Where the goods are delivered for some specific purpose for a specified period, then the bailee should return the goods after the purpose is served or after the expiry of the specified period as per the terms and conditions of the bailment contract. If he fails to do so the will keep the goods at his own risk and will be liable for the loss or destruction of the goods, if any.

5. Duty to return any accretion to the goods:(section 163):

In the absence of any contract to the contrary the bailee is bound to deliver to the bailor any increases or profit, which may have accrued, form the good bailed.

Eg: 'A' leaves a cow in the custody of 'B' to be taken care of. Later the cow has a calf. 'B' is bound to deliver the calf as well as the cow to 'A'.

6. Duty not to set up any adverse title against the bailer:

Adverse title means denial of title. It is the duty of the bailee not to setup an adverse title against the bailor at any time, i.e. a bailee cannot say that the bailor has no authority to bail the goods at the time of bailment.

Even if the goods belong to a third person the bailee will not be liable to the true owner if he delivers the goods to bailor in good faith.

Rights of bailee:

The bailee has the following rights.

1. Right to compensation (section 164):

Where the bailee suffers any loss due to defective title of bailor against the bailed gods, the bailee is entitled to receive compensation from the bailor.

2. Bailment by several joint owners:

Where several joint owners bail their goods to one bailee, then the bailee may have right to return the goods to any one of the joint bailors unless there is an agreement to the contrary.

3. Right to file a suit against wrongdoer:

Bailee can sue any person who has wrongfully deprived him of the use or possession of the goods bailed or has done them an injury. His remedies against the wrong doers are the same as those of the owner.

4. Right to interplead:

If any person other then the bailor claims the goods, the bailee may apply to the court to stop the delivery of goods to bailor and to decide the title to the goods.

5. Right to lien:

The bailee can exercise lien right till the bailor pays the lawful charges of the bailee towards bailed goods.

Q 13. What are the circumstances, when the contract of bailment stands terminated?

ANS:

Termination of bailment:

A contract of bailment is terminated under the following circumstances.

1. On the expiry of the period:

Where the contract of bailment is made for a specified period, then the bailment terminates automatically on the expiry of the specified period.

2. Achievement of the object or purpose:

Where the contract of bailment is made for a specific purpose, then the bailment also terminates as soon as the purpose of bailment is achieved.

3. Death of bailer or bailee:

A gratuitous bailment is terminated by the death of either bailor or bailee.

4. Inconsistent use of goods:

Where the bailee does not act as per the terms and conditions of the bailment contract in respect of bailed goods the contract becomes voidable at the option of bailor, then he can terminate it if he so likes.

5. Termination by a bailer:

A gratuitous bailment may be terminates by the bailor at any time.

Q 14. Explain the nature of the bailee's particular lien. How does it differs from the general lien (or) explain the rights of bailee in respect of lien?

ANS: Lien is the right of a person to retain the possession of any property of some other person, until the charge due to the person in possession are paid. It may be noted that the possession of goods must be lawful and continuous.

Eg: 'X' delivered a watch to 'Y' for repairs. 'Y' repaired the watch. In this case 'Y' can retain the watch until the charges for repairs are paid.

Kinds of lien:

Liens are of two kinds a. particular lien and b. general lien.

a. Particular lien (section 170):

It is a right to retain only those goods in respect of which some charges are due. Generally the bailee is entitled to this lien only. But this right is available only when there is no contract to the contrary. Moreover, if the bailee does not complete the work with-in the agreed time or reasonable time, he will not be entitled to any lien.

Eg: 'X' delivered his car to 'Y' a mechanic, for repairs. 'Y' repaired the car. In this case 'Y' can retain the car until the charges for repair are paid.

Legal Rules:

The above said right is available only if the following conditions are fulfilled.

a. The bailee must have rendered some service involving the exercise of labour or skill in respect of the goods bailed.
b. The bailee must have rendered the service in accordance with the purpose of the bailment.
c. The goods must be in possession of the bailee.
d. There must not exist any contract for payment of price in future

e. The labour and skill must have been used so as to confer an additional value on the article.
f. This right can be exercised only if the complete services have been rendered in respect of the goods bailed.

b. General Lien:

A general lien is a right to retain all the goods as a security for the general balance of account until the full satisfaction of the claims due whether in respect of those goods or other goods.

Eg: If two loans are taken against two securities from a banker, and the borrower pays one of these loans, the banker may retain both securities until his other loan is paid.

Kunhan vs bank of madras:

'K' deposited certain jewels with the Bank of Madras to secure certain debt. After payment of this debt, he demanded the return of these jewels from the bank. He was still indebted to the bank for certain other debts. On bank's refused to return the jewels, it was held that 'K' was not entitled to recover unless he proved he has not indebted any amount to the bank.

In the absence of a contract to the contrary, general lien is available to the Bankers, factors etc.

Q 15. Differences between particular lien and general lien?

	Particular Lien	General Lien
1. Meaning	It is available against those goods in respect of which some charges are due.	It is available against all the goods whether in respect of which claims are due or not.
2. Purpose	It is available only for non-payment of remuneration for the service involving or skill.	It is available for the payment of any amount due to the bailee.
3. Limited Persons	It is available to all the bailees who exercise some labour or skill in respect of the gods bailed to them.	It is available only to bankers, factors, attorney's of high court etc.

Q 16. What are the rights and obligations of a finder of goods? What is the nature of lien he has over the goods? Or who is a "finder of goods"? What are his rights and obligations in law?

ANS: A person who finds the goods belonging to some other person and take them in his possession is know as a finder of goods. Once he takes the possession of such lost goods he becomes bailee of such goods i.e. law imposes a contract of bailment between the finder of goods and the true owner of goods.

Duties of a Finder of Goods:

The following are the duties of a finder of goods.

1. Duty to take reasonable care:

The finder of goods must take reasonable care of the goods found.

2. Duty not to use for personal purpose:

The finder of goods must not use the goods found for personal purpose.

3. Duty not to mix with his own goods:

The finder of goods must not mix the goods found with his own goods.

4. Duty to find the owner:

The finder of goods must make effort to trace out the real owner of goods.

5. Duty to return the goods:

Finder of goods must return the goods to the real owner.

6. Duty to return any increase in goods:

Finder of goods must return by increase in the goods to found to the real owner.

Rights of the finder of goods (section 169):

The following are the rights of the finder of goods.

1. Right of possession:

The finder of goods is entitled to retain possession of goods against everyone except the true owner.

2. Right of lien:

He has a right of particular lien. He may incur certain expenses in preserving the goods and finding out the true owner. He can exercise lien right against the goods until he receives the compensation for such expenses. But he has no right to file a suit against the true owner for such compensation.

3. Right to file a suit for reward:

Where the owner has offered a specific reward for return of the goods lost, the finder may sue for such reward and may retain the goods until he receives the rewards.

4. Right of sale:

A finder of goods has a right to sell the goods found under the following circumstances.

a. If the owner cannot with reasonable diligence be found.
b. If the owner when found refuses to pay the lawful charges of the finder.
c. If the goods are in danger of perishing or of losing the greater part of their value.
d. If the lawful charges of the finder in respect of goods found amount to two-third (2/3 rd) of its value.

PLEDGE

Pledge: A pledge is a special kind of bailment. In this goods are delivered as a security for a loan or for the fulfillment of an obligation.

Definition: **"**The bailment of goods are security for payment of a debt or for performance of a promise is called pledge**"**. The bailor in this case is **"pledger"** or **"pawner"**. The bailee is called the **"pledgee"** or **"pawnee"**.

Eg: 'X' borrows Rs.100000 from Citi Bank and keeps his shares as a security for payment of a debt. It is a contract of pledge.

Essentials or legal rules for a valid pledge:

1. Delivery of possession:

The pawner must deliver the possession of the goods to the Pawnee. Here only the possession is transferred but the ownership remains with the pawner. If the possession is not delivered then there cannot be a valid pledge.

2. Delivery should be upon a contract:

The delivery of possession should be made under a contract of pledge. The delivery may be made either before or after the advance is made. It depends upon the terms and conditions of the contract of pledge.

3. Delivery should be for the purpose of security:

The pawner should deliver the goods to the Pawnee as a security for the payment of loan or if fulfillment of an obligation.

4. Delivery should be upon a condition to return:

The goods should be delivered to the Pawnee as a security for some loan or for the fulfillment of the promise, when such loan is repaid or promise is fulfilled, the security should be returned to the person.

CONTRACT OF AGENCY

Q 1. Define agent and principal? Write essentials or legal rules with regards to agency?
Ans: Due to vast expansion of the modern business, it is not possible for person to carry on all the business transactions himself. He has to depend upon the services of another persons to run his day-to-day business affairs. The person who acts on behalf of some other person is known as the agent. The contract, which creates the relationship of an agent with principal, is known as "Agency".

Agent: -

According to section 182, "An agent is a person employed to do an act for another or to represent another in dealing with third persons".

Principal: -

"The person for whom such act is done or who is so represented is called the principal".

Agency: -

The relationship between the agent and the principal is called Agency.

Essential Or Legal Rules: -

1. **An agreement: -**
   Agency must be created by an agreement between the principal and the agent. The agreement may be either expressed or implied.

2. **Representative capacity: -**
   The agent must be act in the representative capacity and has the power to bind his principal for his acts to third parties.

3. **Competency of principal: -**
   The principal must be competent to enter the contract i.e. a minor or person of unsound mind cannot appoint an agent on his behalf. An appointment of an agent made by an incompetent person is void.

4. **Competency of agent: -**
   Any person may become an agent and to need not be competent to contract. Even a minor can be appointed as an agent and the principal shall be bound by the acts of such an agent.

5. **Consideration not necessary: -**
   An agency is valid even without consideration. Thus no consideration requires for the creation of a valid agency relationship.

Q2. Explain briefly the various modes by which any agency may be created or what are the various ways in which the relation of agency arises?

Ans: Agency is the relationship, which exists between an agent and his principal, to bring the principal into legal relationship with third parties. In simple words, the relationship between the agent and the principal is called "agency".

Eg: 'A' employs 'B' to buy 100 bags of cement on his behalf. 'A' is the principal and 'B' is the agent. The relationship between 'A' and 'B' is called agency.

Creation of agency:

The agency may be created in any of the following ways.

1. Express agreement sec 186:

An agency may be created either by an agreement in writing or by words of mouth. The usual form of a written agreement is the 'power of attorney' executed on a stamped paper in favour of the agent.
Eg: 'X' executed a power of attorney in favour of 'Y' authorizing him to sell his car for a particular amount.

2. By implied agreement sec 187:

An agency may be created by an implied agreement. An implied agreement is one, which rises from the conduct, situation or relationship of the parties.

The agency by an implied agreement includes the following agencies

a. Agency by estoppel (SEC 237):
Agency by estoppel is based on the 'Doctrine of estoppel'. Where the principal by his conduct or statement willfully induces another person to believe that a certain personas as his agent, he is subsequently estoppel or prevented from denying the fact of agency. Thus, this form of agency arises not from express agreement but from the conduct of the principal agency by estoppel may also arises in cases where an agent is terminated and no public notice is given to that effect.

Eg: 'A' tells 'B' in the presence of 'C', that he is 'Cs' agent. 'C' does not object to this statement. Later on, 'B' supplies certain goods to 'A', taking him as an agent of 'C'. 'C' is liable to pay the price to 'B'. Here, agency is said to be created by estoppel.

b. Agency by holding out:
It is almost similar to agency by estoppel. However it is something more than estoppel. In this case there is some prior positive or affirmative conduct of the principal, which indicted that a certain person was already his agent.

Eg: 'A' allowed his servant 'B' to purchase some goods on credit from 'C'. 'B' usually purchased goods from 'C' on credit and 'A' used to pay on one occasion 'A' gave 'B' cash to purchase goods but 'B' misappropriated the money and purchased goods on credit in 'As' name. 'A' is bound to pay to 'C'. In this case 'As' bound by his prior conduct in holding out that 'B' was his agent.

c. Agency by necessity:
An agency may also be created by the necessity of a particular case. Some times extra ordinary circumstances may arise in which a person may be compelled to act as an agent of some person without requiring the consent or authority of the same person. Such an agency is called an agency by necessity. However to constitute a valid agency by necessity the following conditions must be satisfied.

1. There must be real emergency and necessity to act on behalf of the principal.
2. The agent must not be in a position to communicate with the principal or to obtain his instructions.
3. The agent must act honestly and in the interest of the principal.
4. The agent must adopt reasonable and practicable course under the circumstances of the case.

3. Agency by operation of law:
An agency may also come into existence by operation of law. In certain circumstances the law treats on person as an agent of another. According to Partnership Act 1932 every partner of the partnership firm is an agent of the firm for the purpose of the business of the firm. Moreover he is also an agent of the other partners of the firm.

4. Agency by ratification: (sec 196&197)
It means the confirmation of the acts already done. It is also known as 'Ex-post facto agency' i.e. agency arising after the event. Thus when a person accepts or confirms the unauthorized acts done on his behalf, an agency by ratification is created. On ratification the principal is bound by the acts already done on his behalf. The ratification may be express or implied from the conduct if the person on whose the acts are done.

Q3. What is meant by "agency by ratification"? State the conditions that must be fulfilled before the doctrine can apply to an act of the agent?

Or

Define 'ratification'. Examine the elements necessary for valid ratification?

Ans: Agency by Ratification:

Introduction:

<u>Williams vs worth china insurance company:</u>

In this case, an agent insured the goods the principal without authority later the principal ratified his agent's act of Insurance. The parties were bound by the contract.

Conditions (essentials) of a valid ratification:

A valid ratification has to fulfill the following conditions.

1. **Agent must act on behalf of a principal:**
   The agent must have done some act on behalf of the ratifier (principal). Moreover he must act in such a way that his conduct shows that he is doing the act on behalf of his principal. If a person acts in his own name, which does not indicate any agency relationship, his act cannot be ratified.

Keignely vs Durant:

'X' without 'Y's authority or knowledge buys 100 bales of cotton on behalf of 'Y' and buys 50 bales of cotton in his personal name from 'Z' on different dates. Subsequently the prices of cotton go up. 'Y' wants to ratify the purchase of 150 bales of cotton. He can ratify only the purchase of 100 bales made on his behalf and not the purchase of 50 bales.

2. **The principal must be competent to contract:**
   The principal must have competent capacity both at the time of contract and at the time of ratification because ratification is effective from the back date when the agent did the act. Thus an agent done on behalf of a minor without his authority cannot ratify by him on his attaining majority.

3. **Existence of principal:**
   The principal must be in existence at the time when the act was done. Thus a company cannot ratify a contract made on its name before the company came into existence.

Kelner vs Baxter

The promoters of a company enter into contract for a company before incorporation. The company after incorporation cannot ratify such contracts because the company was not in existence at the time when the contract was entered into.

4. **Full knowledge:**
   The ratification must be made with full knowledge of all the material facts. If the ratifier does not have the full knowledge of the facts of the case, the ratification shall be ineffective and will not bind the parties to the contract.

Damodharan vs sheoram

'X' tells 'Y' to arrange a house on a reasonable rent in Bombay. 'Y' lets out his own house at a rent, which is much higher than the prevailing rentals in that area. 'X' started living in the house. Later on 'X' came to know that the house belonged to 'Y'. 'X's ratification is not binding upon himself.

5. **Whole transaction:**
   The ratification must be made for the whole of the transaction done by the agent. A person cannot ratify a part of the transaction, which is beneficial to him and rejected the rest. When a person ratifies the part of the transaction is to be treated as the ratification of the whole transaction.

6. **No damage to third party:**
   Ratification is not valid if it causes some damage to a third person. In other words the acts, which would become injurious to others by ratification cannot be ratified.

   Eg: 'A' was holding lease from 'B'. The lease was terminable on three months notice. 'C'an unauthorized person gave notice of termination of lease to 'A'. In this case the notice cannot be ratified by 'B', so as to be binding (injuring) on 'A'.

7. **Reasonable time:**
   The ratification becomes valid only if it is made within a reasonable time after the original contract is made. If any time is fixed for the performance of a contract, the ratification must be made before the expiry of that time.

8. **Lawful acts:**
   The ratification can be made only of valid and lawful acts. Thus an act which is void from the very beginning or which constitutes a criminal offence cannot be ratified. However a voidable contract may be ratified because it is not void from the very beginning.

9. **Ratification may be express or implied:**

   Ratification may be express or implied by the conduct of the person on whose behalf the acts are done.

   Eg: 'A' without 'B's authority lends 'B's money to 'C'. Afterwards 'B' accepts interest on the money from 'C'. 'B's conduct implies a ratification of the loan.

10. **Subsisting transaction:**

    Before any act can be ratified, it must exist at the date of ratification. To constitute valid ratification the approval of a transaction must occur before the other party had withdrawn from it and before the agreement has been terminated or discharged.

    Eg: 'A' enters into a contract with 'B' representing himself as the agent of 'C', without 'C's authority but before 'C' ratifies it 'B' rescinds (withdraws) the contract. 'C' cannot ratify it after such withdrawals.

11. **Unconditional:**

    The principal must accept the act of the agent unconditionally. Where the acceptance is qualified or conditional ratification is invalid.

12. **Ratification must be communicated:**

    There can be no valid ratification of an act unless it is communicated to the other party.

Q4. Write about classification (kinds) of agent?

Ans: Agent: introduction

Kinds of agents: -

On the basis of nature of work broadly are classified as

1. Mercantile or Commercial Agents.
2. Non-Mercantile or Non-Commercial agents.

1. <u>Mercantile agents:</u>

He is an agent who deals in the buying and selling of the goods. Following are some of the important mercantile agents.

A. Factor:

He is an agent to whom the possession of the goods is given for the purpose of selling the same. Usually he sells the goods in his own name. He has wide discretion regarding the selling of goods in his possession. He may sell the goods on credit and empowered to receive the amounts by giving valid a receipts. He has a general lien on the goods of his principal for all charges and expenses due from the principal.

B. Broker:

He is an agent appointed by a person to buy or sell goods on his behalf. But a broker is not given the possession of the goods. He is employed primarily to bring a contractual relationship between his principal and third parties. He makes contracts in the name of principal and has no right of lien. He is a mere negotiator whose business is to find purchases for those who wish to sell and sellers for those who wish to buy. He gets his remuneration by way of brokerage.

C. Auctioneer:

He is an agent who is appointed to sell the goods at a public auction to the highest bidder. He has the authority to receive the auctioned price and can sue for the same in his own name. However an auctioneer has only a particular lien over the goods of his principal and not a general lien.

D. Commission agent:

He is similar to broker. He is an agent who buys and sells the goods on behalf of his principal and receives commission for his charge. His only interest in the transaction is the commission, which he receives from his principal.

E. Delcrfedere agent:

A factor or a commission agent who sells goods of his principal on credit to the customers known to him and takes up the responsibility of collecting the debts is called the delcredere agents. He charges (delcredere commission) for collecting debts. If he fails to collect any debt he bears the loss of bad debts arising there from.

F. Banker:

Banker acts as an agent of the customer when he collects cheque or drafts or bills or buys and sells securities on behalf of his customers. He has a general lien in respect of the general balance of account.

2. Non-mercantile agents: -

He is an agent who does not usually deal in the buying or selling of the goods. Non-mercantile agents include solicitor, guardian, promoter, wife, receiver etc.

Classification on the basis of extent of authority: -

The agents may be classified as under, on the basis of extent of the authority given by their respective principals.

1. Special agent:

He is an agent who has authority to do a particular act in a particular transaction.

Eg: An agent employed to sell a piece of land or to buy a house. The authority of an agent is limited to that particular act only and his authority comes to an end as soon as the special act is performed.

2. General agent:

He is an agent who is appointed to perform all acts relating to a particular trade or business for which he is appointed. He can do all legal acts for the purpose of carrying on that trade or business on behalf of his principal. The authority of a general agent is continuous until terminated.

3. Universal agent:

He is an agent who is appointed to do all the various trades or business of his principal. In order words, he is an agent who is authorized to do all the acts, which his principal can lawfully do under the provisions of the law.

Distinction between agent and servant

Agent	Servant
1. Contractual relations: He has the authority to create contractual relationship between principal & third parties.	He has no such authority. Generally this term is used for domestic servants.
2. Remuneration: He receives remuneration in the shape of commission.	Generally he gets remuneration buy way of salary or wages.
3. Work of several person: He may work as an agent for several principals at the same time.	He usually works only for one master at the same time.

Distinction between agent and bailee

Agent	Bailee
1. Contractual relations: He has the authority to create contractual relationship between principal & third parties.	He has no such authority to create such relationship between the bailer and third parties.
2. Possession of goods: He is not required to have the possession of his principal's goods.	He must have the possession of the goods belonging to the bailor.

Differences between agent and independent contractor

Agent	Contractor
1. Contractual relations: He has the authority to create contractual relationship between principal & third parties.	He has no authority to create such relation between his master and third parties.
2. Control: He works under the control and supervision of his principal	He is not under the control and supervision of his employer (master).
3. Remuneration: Generally he gets his remuneration is the shape of commission.	Usually he gets the remuneration of fixed contractual amount.

Q4. Discuss the duties and rights of an agent?

Ans. Agent: Introduction (who is agent)

Duties of an agent:

The duties of an agent mainly depend upon the terms and conditions of the contract of agency. The following are the main duties of an agent.

1. Duty to follow principal's instructions (sec.211): -

The agent should perform the work of agency strictly in accordance with the instruction given by the principal. In the absence of such instruction he should act according to the trade custom prevailing in such business. Otherwise he will become liable to compensate his principal for any loss sustained (resulted) by him.

Lilly vs Doubleday: -

An agent was instructed to keep the goods in a particular warehouse. He put them in another equally safe place, where the goods were lost in an accidental fire. The agent was held liable.

2. Duty of care, skill and deligence:

The agent is always bound to act with reasonable care and diligence use, such skill, as he possess. If the principal suffers any loss due to agents neglect use of skill or misconduct, then the agent must compensate his principal for such loss.

3. Duty to render accounts: (sec.213)

It is the duty of an agent to keep true and current account of all transactions and to explain the same to the principal whenever he asks for the same.

4. Duty to communicate with principal: (sec.214)

Whenever the agent faces any difficulty in the performance of the business of agency he should use reasonable care and caution. Moreover he should try to communicate with his principal for obtaining his directions.

5. Duty not to deal on his own accounts: (saec.215)

An agent cannot deal on his own account in the business of the agency without obtaining the consent of the principal and without disclosing the later with all material facts with his knowledge. If he does so the principal may repudiate (cancel or reject) the transaction.

Eg: 'A' employed 'B' a stockbroker to purchase some shares for him. 'B' sold his own shares to 'A' without disclosing that the shares belonged to him. It was held that 'A' could put an end to the contract and reject the shares.

6. Duty not to make secret profits: (sec.216)

It is the duty of an agent not to get any advantage over and above his agreed remuneration or commission while doing his agency business on behalf of principal. If the agent gets any such secret profit without the knowledge of his principal then the principal can claim from the agent.

7. Duty to pay the sums received: (sec.217, 218)

It is the duty of an agent to pay to his principal all money received on his behalf. However the agent is entitled to deduct his lawful charges from the money received on account of his principal.

8. Duty not to setup adverse title:

When the agent has obtained the goods belonging to his principal then he should not say that the goods belong to him or some third person. i.e., he should not dispute the ownership of the principal.

9. Duty to maintain secrecy of trade:

It is the duty of an agent to maintain secrecy of trade, which belongs to his principal.

10. Duty to protect the interest of principal incase of his death or insanity: (sec.209)

Whenever principal dies or becomes insane the agency comes to end. In such cases it becomes the duty of the agent to take all reasonable steps to protect the interest assigned to him by his late principal.

11. Duty not to delegate authority:

The agent must do personally the work delegated to him by his principal. It is his duty not to further delegate the work, which has been delegated to him by his principal.

Rights Of An Agent: -

Various provisions of the Indian Contract Act contain the rights of an agent. The following are some of his important rights.

1. Right to receive remuneration: (sec.219, 220)

The agent has the right to receive the agreed remuneration from his principal. If no remuneration is fixed, the agent is entitled to receive reasonable remuneration.

2. Right to retain money due to himself: (sec.17)

The agent has a right to retain his principal's money until his claims in respect of his remuneration or advances made or expenses properly incurred in conducting the business of agency are paid. But he can exercise his right to lien only when he is possession of the principal's money. Once he losses the possession, he loses the lien right.

3. Right of lien: (sec.221)

The agent can retain the goods of his principal until his remuneration is paid. The agent can only retain the goods but he has no power to sell them.

4. Right to be indemnified: (sec.222, 223)

The agent has a right to be indemnified against the consequences of all lawful acts done by him in exercise of the authority conferred upon him. This right of indemnity however, does not extend to criminal acts of the agent, event though they are authorized by the principal.

Eg: 'A' employee 'B' to beat 'C' and agrees to indemnify him against consequences of the act. 'B' there upon beats 'C' and has to pay damages to 'C' for so doing. 'A' is not liable to indemnify 'B' for those damages.

5. Right to compensation: (sec.225)

The principal is liable to make compensation to the agent for any loss or injury caused to him due to principal's neglect or want of skill.

Eg: 'P' employed 'A' as the driver of the truck, which was repaired and maintained by 'P' himself. Due to a negligence of 'P' the brake of the truck failed and 'A' was injured. 'P' should compensate 'A' for the injury.

Q5. Write the rights and duties of the principal's?

Ans: Principal introduction (who is principal)

<u>Rights of the principal:</u>

The principal has the following rights against the agent.

1. To see that the agency business is conducted according to his instructions.
2. To be entitled to compensation in respect of the direct consequences of agent's negligence, want of skill or misconduct.
3. To get proper accounts when demanded by him.
4. To repudiate (cancel) the transaction, if a material fact is cancelled by the agent while dealing on his own account.
5. To claim any benefit gained by the agent while dealing on his own account in business of agency.
6. To receive all moneys due to him on his account subject to deductions in respect of expenses incurred by agent and his remuneration.

Duties of the principal:

The following are the important duties of a principal to an agent.

1. To indemnify the agent against the consequences of all lawful acts.
2. To indemnify the agent against the consequences of acts done in good faith.
3. To indemnify the agent for injury caused by principals neglect.
4. To pay the agent his commission or other remuneration agreed for this services.

Q6. State the rules relating to personal liability of the agent for a contract entered by him on behalf of the principal? (Or)

When is an agent personally liable for a contract brought about by him, against the third parties?

Ans. An agent is not personally liable for the contracts entered by him on behalf of his principal. But sometimes an agent becomes liable personally in the following circumstances.

1. Where the agent acts for a foreign principal:

When a contract is made by an agent for the sale or purchase of goods for a principal residing abroad then the agent is personally liable for such contracts. But he can exclude his personal liability by express provision to this effect in the contract.

2. Where the agent acts for an undisclosed principal:

When the agent acts in his own name, without disclosing the identity of the principal he is personally liable to third parties. But where the agent discloses his representative character or the third party knows that he is acting as an agent of another, then the agent is not personally liable.

3. Where the agent acts for an incompetent principal:

Where the agent contracts for a principal who is not competent to contract, then the agent is personally liable on such contracts even though he has disclosed the name of his principal an agent is personally liable.

4. Where the agent acts for non-existing principal:

Where the agent contracts for a principal who is non-existent, then the agent is personally liable on the contracts.

Eg: The promoters, contracting on behalf of the company, which is yet to be incorporated, are personally liable.

5. Where the agents of authority is coupled with interest:

Where an agent has an interest in the subject matter of the contract, then the agent is liable personally to the extent of his interest in the contract. He can also enforce the contract the extent of his own interest.

6. When the agent receives or pays money by mistake or fraud:

Where an agent receives some money from a third party by mistake or fraud then he is personally liable. Similarly where an agent pays some money under a mistake or fraud, he has

the right to recover it back from the persons to whom it has been paid and he is liable for that amount if not collected.

7. Personal liability by agreement:

Sometimes, at the time of entering contract with a third party, it is expressly agreed that the agent shall be personally liable for the contract. In such cases, the agent incurs personal liability.

8. Where the agent exceeds his authority:

Where the agent contracts without having any authority or by exceeding his authority, then the agent is liable to the third party for any loss caused to him by reason of acting on false representation.

9. Where according to customs or trade usage:

Sometimes, the customs or usage of a particular trade provides that the agent shall also be personally liable for his acts. In such cases the agent incurs a personal liability.

10. Pretendent agent: (sec.235)

He is a person who is falsely representing himself to be an authorized agent of another person. If the pretended agent induces third person to enter the contract with him as such an agent, then he is personally liable to the third person for the loss or damage incurred due to sale dealing.

Venkata charyulu vs Ramakrishna rao

'A' borrowed money from 'B' as agent of 'D'. 'B' believed him to be so. But this was not true. It was held that 'A' was liable to 'B'.

Q7. Write about the principals liability for the acts of the agent?

Ans: The rights and liabilities of a principal in relation to third parties under contracts made by agent depend upon whether

a. An agent contracts for a named principal.
b. An agent contracts for an unnamed principal.
c. An agent contracts for an undisclosed principal.

A. Agent acting for a named principal:

Where the agent acts with the third parties after disclosing the name an d existence of his principal then the following are the liabilities of a principal for his acts.

1. Where the agent acts within his authority: (sec.226)

The principal is bound by the acts of his agent, which are done in the scope of his authority provided the act is lawful.

2. When the agent exceeds his authority: (sec.227 & 228)

Generally the principal is not liable for the acts of an agent, which are done by him beyond his authority. It can be discussed in the following way.

a. Where the work is separable (sec.227)

Where the agent does some work beyond authority which is separable from the unauthorized work then the principal is bound by the authorized work only.

Eg: An agent is authorized to insure a ship. He insures the ship as well as the goods under separate policies. The principal is bound only by the policy on the ship.

b. Where the work is not separable: (sec.228)

Where the agent does some work beyond his authority, which is not separable from the authorized work, then the principal is not bound by the whole of the work.

c. Misrepresentation or fraud by an agent: (sec.228)

The principal is liable for the misrepresentation or fraud committed by his agent while acting in the course of his business.

d. Principal bound by notice given to agent: (sec.229)

The principal is bound by the notice given to his agent within the course of agency business. This means that the knowledge of the agent is the knowledge of the principal.

B. Where the principal is unnamed:

Where the agent contracts with third parties after disclosing the fact that he is an agent but without disclosing the name of his principal then the principal is bound for the contracts made on his behalf.

C. Where the principal is undisclosed:

Where the agent contracts with a third party without disclosing the name and existence of the principal then the position of principal, agent and the third party may be discussed as under.

a. Where the agent has contracted in his own name, he is bound by the contract and is personally liable to the third party.

b. Sometimes the third party discovers that there is a principal. In such cases the third party may file a suit either against the principal or his agent or both.

Vvv.imp

Q8. What are the various circumstances under which the relationship of principal and agent comes to an end? (Or)

Discuss the different modes in which agency may terminate?

Ans: The term "termination of agency" may be defied as the end of the relationship of a principal and his agent. It may be discussed under the following two heads.

I. Termination of agency by act of the parties.

II. Termination of agency by operation of law.

I. Termination of agency by act of the parties:

Following are the case in which an agency is terminated by the act of the parties.

a. By mutual agreement:

The agency may be terminated by the mutual agreement between the principal and his agent at any time and at any state (place). It is at their liberty to put an end to it.

b. By revocation of agent's authority by principal:

The principal can revoke the authority of the agent at any time when the agent is appointed to deal single act, the authority can be revoked any time before the act is begun. In the case of a continuous agency, notice of revocation should be given to the agent. If reasonable notice is not given, the principal will be liable to compensate the agent and be bound by the acts of the agent with respect to their parties. Principal, however cannot revoke the agency when it is said to be coupled with interest of agent.

c. By renunciation of agency by agent:

The agent may terminate the agency by expressly renouncing it in the same manner in which the principal has the right of revocation. Renunciation puts an end to the agency relationship. It may be either express or implied.

II. Termination of agency by operation of law:

The following are the cases in which an agency is terminated by the operation of law.

a. By the completion of agency business:

When the business of the agency is completed, agency comes to an end. In the case of agency for a fixed period, the agency terminates on the expiry of the period even though the business of agency may not have been completed.

b. By death or insanity of the principal or agent:

Death or insanity of the agent or principal terminates the agency. On the death of either the agent or the principal, the agency is automatically terminated because a person cannot act on behalf of non-existent person.

c. By insolvency of the principal:

The agency is terminated when the principal is declared as an insolvent because the insolvent person is disqualified from entering the contract in respect of his property.

d. By expiry of time:

Where the agency is created for a fixed period, then the agency is terminated on the expiry of that period, whether the purpose of agency is fulfilled or not.

e. By the destruction of the subject matter:

The agency is also terminated, when the subject matter of the contract of agency is destroyed.

f. By dissolution of a company:

Where a company is principal or agent, its dissolution would terminate the agency.

g. By subsequent event rendering the agency un-lawful:

Sometimes the agency is valid when it is created. But it becomes unlawful by the happening of some subsequent event.

Eg: Where the agent and the principal reside in different countries and a war is declared between these two countries. The agency may also be declare as unlawful.

Irrevocable agency: (exceptions to the termination of agency)

The agency is irrevocable in the following:

1. Where the agency is coupled with interest:

It is an agency, which is created for the purpose of securing some benefit to the agent. In such cases the principal cannot revoke the agency unless there is a contract to the contrary. Agency is irrevocable during the subsistence of such an interest even on the death or insanity of the principal.

Eg: 'A' consigned 100 bales of cotton to 'B' who had already made some advances to 'A' on such cotton 'A' authorized 'B' to sell the cotton and adjust the amount of his own advances out of the sale proceeds of the cotton. It is an agency coupled with interest and 'A' cannot revoke 'B's authority even on the death of the principal (A).

2. Where the agent has party exercised his authority:

When the agent has already exercised some authority, the principal cannot revoke the agent's authority for the acts already done. And the principal is bound by the acts already done on his behalf.

Thus, in a sale of auction the vendor (principal) cannot revoke the authority of the auctioneer after the lot has been knocked down (auctioned).

Q9. Discuss the extent to which an agent can delegate his authority. What are the consequences or effects of such delegation? Or
"Delegators non-protest delegate"-discuss?

Ans: Generally the agent is expected to perform his duties personally. It means he cannot delegate the work to some body, which has been entrusted to him by the principal. This base on the rate delegator's non-protest delegare; which means that a delegate cannot further delegate. In other words an agent cannot pass on his power to another person because principal has much confidence, faith towards such agent on the basis of agent's skill and qualification.

However under the following exceptional circumstances an agent may pass on his power to another person as his sub-agent.

Sub-agent (sec 191):

He is a person appointed under the control of original agent and by the original agent to act in the business of agency. In such cases, the relationship between the original agent and

the sub-agent is that of principal and agent. He acts under the control of original agent. "A sub-agent is a person employed by and acting under the control of the original agent in the business of the agency.

Sub-agent may be appointed in the following exceptional circumstances.

a. Where the custom of the trade permits delegation.

Eg: Article clerks employed by a Chartered Accountant.

b. Where the nature of the agency requires delegation.
c. Where the principal permit delegation.
d. Where the principal knows that the agent intends to delegate but does not object to it.
e. Where an emergency requires delegation.
f. Where the agency work does not require any personal or professional skill.

Relationship between principal and sub-agent:

It may be discussed under two heads namely

a. Where the sub-agent is properly appointed (Sec 192).
b. Where the sub-agent is improperly appointed (Sec 193).

a. Properly appointed sub-agent (sec 192):

The sub-agent who is appointed in the above said exceptional circumstances is known as properly appointed sub-agent.

Following are the effects:

1. The principal is liable for the acts of sub-agent to third parties.
2. The original agent is responsible to the principal for the acts of the sub-agent.
3. The sub-agent is responsible for his acts to the original agent but not to the principal except in cases of fraud or willful wrong.

c. Improperly appointed sub-agent (sec 193):

He is one who is not appointed in the above said exceptional circumstances is known as improperly appointed sub-agent. It is improper and invalid.

Effects of improper appointment:

1. Principal is not liable for his acts to third parties.
2. The original agent is liable to the principal as well as third parties for his acts.
3. The sub-agent is not responsible to the principal for any of his acts.

Q10. Define substituted agent and write difference between sub-agent and substituted agent?

Ans: substituted agent (sec 194):

He is a person appointed by the original agent to act for the business of the agency with the knowledge and consent of the principal. A substituted agent is deemed to the consent of the principal. A substituted agent is deemed to be the agent of the principal and not his original agent. He acts under the control of the principal and not under the control of the original agent.

Eg: 'A' directs 'B' his solicitor to sell his estate by auction and to employ an auctioneer for this purpose. 'B' names 'C' an auctioneer to conduct the sale. 'C' is not a sub-agent but he is a substitute agent.

Differences between sub-agent and substitute agent.

Sub-agent	Substituted agent
1. Control: He works under the control of original agent.	He works under the control of principal
2.Responsibility of original agent: Original agent is responsible for the acts of sub-agent to the principal.	Original agent is not responsible for the acts of substituted agent to the principal.
3.Responsibility of sub-agent/substituted: The agent is not responsible to the principal except for fraud or willful wrong.	He is responsible for his acts to the principal.
4.Direct contract: There is no direct contract between sub-agent and principal.	There is a direct contract between substituted agent and principal.

Law of Sale of Goods

1. Define the term 'contract of sale'. State the essentials of a valid Contract of sale?

Ans: contract of sale is a contract by which the ownership of goods is transferred from the seller to the buyer.

Sec 4 (1) of the Indian sale of goods Act,1930 defines a contract of sale as "is a contract where by the seller transfers or agrees to transfer the property in the goods to the buyer for a price".

Thus contract of sale includes both a sale as well as an agreement to sell.

Essentials for a valid Contract of Sale:

The following are the essential elements of a contract of sale.

1.Legal Requirements:

The contract of sale must fulfill all the requirements of a valid contract such as free consent, consideration, lawful object etc.

2.Two Parties:

There must be two parties one the seller and the other buyer. The seller and the buyer must be two different persons i.e. a person cannot be seller as well as a buyer as a person cannot buy his own goods.

3.Goods must be the subject matter:

The subject matter of the contract of sale must be the goods, the property in which is to be transferred from the seller to the buyer. Goods of any kind except immovable goods may be transferred.

4.Transfer of Property:

The term in the goods means the ownership of the goods. In every contract of sale the ownership of the goods must be transferred by the seller to the buyer or there should be an agreement by the seller to transfer the ownership to the buyer. However the physical delivery of the goods is not essential.

5.Price:

There must be a price, here price means the money consideration for a sale of goods, when the consideration is only goods, it amounts to a 'barter' system and not sale. However the consideration may be partly in money and partly in goods because the law does not prohibit as such.

VVImp

2. Define 'Sale' and 'Agreement to sell' and distinguish between the two?

Ans:

Contract of sale –Introduction.

Thus a contract of sale includes 'sale' as well as an 'agreement to sell'.

Sale or Absolute sale:

According to sec4 (3) of the sale of goods Act, " where under a contract of sale the property in the goods is immediately transferred from the seller to the buyer, the contract is called a sale".

Thus the sale has the immediate effects of transferring the ownership of goods.

E.g.: 'A' agrees to sell certain goods to 'B' on 1st December, for Rs 2000. 'B' agrees to pay the price after one week. It is a sale.

Agreement to sell or conditional sale:

According to sec4 (3) of the sale of goods Act, "where the property in the goods (legal ownership of goods) is transferred to the buyer at some future date or on the fulfillment of a certain condition, the contract of sale is called an 'agreement to sell'.

E.g.: 'A' on 1st Jan, agrees to sell certain goods to 'B' for Rs 20,000 after one week. 'B' agrees to pay for the goods on delivery. It is an agreement to sale.

An agreement to sell becomes a sale when the time lapses or the conditions in the agreement are fulfilled.

Distinction between Sale and Agreement to Sell

Sale	Agreement to Sell
1.Transfer of Ownership: Transfer of ownership of goods takes place immediately.	The owner ship of the goods is transferred to the buyer at some future date.
2.Nature of contract: It is an executed contract because nothing remains to be done.	It is an executory contract because something remains to be done.
3.Risk of Loss: 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.
4.Breach of seller: If the seller refuses to deliver the goods the buyer may recover the goods from the seller by filing a suit in the court of law.	If the seller refuses to deliver the goods the buyer cannot recover the goods from the seller but he can claim damages from the seller.
5.Breach of Buyer: If the buyer refuses to pay the price the seller may recover it by filing a suit in the court of law.	If the buyer refuses to pay the price the seller cannot recover it. He can claim only damages from the buyer by filing a suit.
6.Right of resale: The seller cannot resale the goods. If after the sale, the seller disposes the goods, the buyer has double remedy suit for damages against the seller and recovery of goods from the third party.	If after agreement to sell, the seller disposes the goods, the buyer can sue only for damages. The goods are still the property of the seller and he can dispose them of as he likes.
7.Insolvency of buyer: if the buyer becomes insolvent, the seller is bound to deliver the goods to the official receiver or assignee in the absence of a lien over the goods. The seller is entitled ratable dividend for the price of the goods.	When the buyer becomes insolvent before he pays for the goods, the seller need not deliver the goods to the official receiver or assignee.
8.Insolvency of seller: If the seller becomes insolvent the buyer	If the seller becomes insolvent and buyer

will be entitled to recover the goods from the official receiver. This is because the buyer is the owner of the goods.	has paid the price, he can claim only proportionate dividend from the official receiver. This is because the buyer is not owner of goods.
9.Rights: It gives right to the buyer to enjoy the goods as against the world at large including the seller.	It gives rights to the buyer and seller against each other.
10.Liability for sales tax: Sale is liable for sales tax.	Agreement to sell is not liable for sales tax until it actually become as a sale.

Differences between Sale and Bailment

Sale	Bailment
1.Ownership Rights: The property in the goods is transferred from the seller to the buyer.	Only transfer of possession of goods takes place from the bailer to the bailee.
2.Return of goods: Goods once sold normally cannot be returned unless there is a break of condition.	The bailee must return the goods to the bailer or the fulfillment of the purpose for which the bailment was made.
3.Consideration: Presence of consideration is required for sale.	Presence of consideration need not be required for bailment.
4.Act to be applied: It is governed by sale of goods Act, 1930.	It is governed by the Indian Contract Act, 1872.

Differences between Sale and Gift

Sale	Gift
1.Consideration: The presence of consideration is must for sale to transfer the ownership rights.	Consideration is not required to transfer the ownership rights.
2.Act to be applied: It is governed by the sale of Goods Act, 1930.	It is governed by the transfer of Property Act, 1882.

3.State the differences between Sale and Hire –Purchase Agreements?

Ans. Sale: Introduction

Hire-purchase:

It is an agreement under which the owner delivers his goods on hire basis to a person called hire purchase for his use. And the hirer has the option to purchase the goods by paying the agreed amount in specified instalments. A hire purchase agreement gives the hirer the possession of goods only. Till the payment of the last instalment, the instalments are treated as hire charges for goods and it is only on payment of the last instalment that the property in goods passes to the buyer. Up to last installment paid the property in goods remains with the seller. If the hire purchaser makes default in paying any instalment the seller can recover the goods and the instalment already paid will be treated as hire charges, and not recoverable from the seller by buyer.

E.g.: 'A' takes a T.V. set from 'B' on hire purchase system. It is agreed that 'A' will pay Rs.1000 per month for 20 months and if he pays regularly. After making payment of 10 instalments, 'A' commits default. In this case 'B' has a right to repossess the goods and 'A' will not be entitled to recover any thing from 'B'. The amounts of 10 instalments paid are to be considered as hire charges.

Sale	Hire purchase agreement
1.Oral/Written: It may be made either orally or in written.	It must be in written.
2.Ownership rights: The properly in the goods is transferred immediately from the seller to the buyer.	The properly in the goods is transferred from seller to the buyer only after the payment of last instalment.
3.Termination of the Contract: The buyer in this case cannot terminate the contract and as such is bound to pay the price of the goods.	The hirer has an option to terminate the agreement at any time. He may or may not buy the goods.
4.Right of Resale: The buyer has a right of resale the goods.	The hirer has no such right because; he becomes the owner only when all the instalments are paid.
5.Treatment of Instalment amount: In case of payment of price in instalments, each instalment is treated as payment of the price.	The instalment is treated as hire charges for the use of goods, if the hirer defaulted in payment any instalment.
6.Act to be applied: It is governed by the sale of Goods Act, 1930	It is governed by the hire purchase Act, 1972.
7.Implied conditions and warranties: The benefits of implied conditions and warranties are available.	Such benefits are not available.
8.Possession of goods: Possession need not necessarily be	Possession of goods is necessarily

transferred immediately.	transferred immediately.

4. Define 'goods' and write about classification of goods or distinguish between specific, ascertained and unascertained goods?

Ans. According to Sec2 (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 served before sale or under the contract of sale".

In other words goods means every kind of movable property and it includes.

a. Stock and shares.
b. Growing crops, grass
c. The things attached to or forming a part of the land, which can be served from the land.

E.g.: Stock, shares, debentures, patents, trademarks, copyrights, water, gas etc.

Classification of goods: -

The goods forming subject matter of the contract of sale may be 1. Existing goods 2. Future goods. 3. Contingent goods.

1.Existing goods:-

Goods which are in actual existence at the time of contract of sale, are called existing goods only existing goods can be the subject matter of sale. Generally, the seller is the owner of such goods.

The existing goods may be of the following three types.

a. Specific goods b. unascertained goods. c Ascertained goods.

a. Specific goods: -

The goods which have been actually identified and agreed by the parties at the time of contact of sale are called specific goods.

E.g.: 'A' had five cars of different make. He agreed to sell his first car to 'B' and 'B' agreed to purchase the same car. In this case the specified first car is the specific good.

b. Unascertained goods: -

The goods which are not specifically identified at the time of contract of sale are called unascertained goods. They are defined by description only and may form part of a lot.

c. Ascertained goods: -

The goods which are identified only after the formation of the contract of sale are called ascertained goods.

E.g.: If there is a sale of 25 chairs for an office out of a lot of 100 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 be to ascertained goods for the contract of sale.

2. Future Goods: -

The goods, which are not in existence at the time of contract of sale, are called future goods. The seller acquires such goods after the making of the contract of sale. i.e., goods which are to be acquired or produced by the seller after the contract of sale is made. It only operates as an agreement to sell and not sale.

E.g.: 'A' manufacturer of table fans contracted to sell 100 fans to 'B' at the rate of Rs.500/- per fan. 'B' agreed to purchase the fans. The fans are yet to be manufactured. This is an agreement to sell and not sale.

3.Contingent goods: -

Goods, the acquisition of which by the seller depends upon an uncertain contingency, which may or may not happen, are called 'Contingent goods'. A contract for sale of contingent goods is enforceable only when the event on the happening of which the performance of the contract depends has happened. If the event does not happen, the contract becomes void. Contigent goods come within the class of future goods.

E.g.: 'A' agrees to sell to 'B' certain goods, which are to arrive by a ship from London. In this case, the availability of goods depends upon a contingency. So this goods are called contingent goods.

5. Define conditions and write about types of conditions (or) Explain and illustrate the implied conditions in a contract of sale as provided in the sale of Goods Act?

Ans:

A condition is a stipulation essential to the main purpose of the Contract, the breach of which gives rise to a right to treat the contract as repudiated.

In other words, a condition is an important representation by the seller, which is essential to the main purpose of the contract, and if it proves to be false, the buyer has the right to terminate the contract and to claim the amount of price paid by him.

Types of Condition: -

Conditions are two types: (A) Express Conditions (B) Implied Conditions.

(A) Express Conditions: -

It is a condition, which has been expressly agreed to upon by both the parties at the time of the contract of sale.

(B) Implied Conditions: -

Conditions, which the law incorporates into a Contract of sale unless a contrary intention appears from the terms of the contract. Both the parties are bound by the implied conditions unless they are excluded by the express agreement of the parties.

Following are the implied conditions, which are contained in the sale of goods act.

1.Condition as to title (sec14):

According to this condition, it is presumed that the seller has a valid title to the goods i.e., he has to right to sell the goods. If later on, the buyer comes to know that the seller had no valid right to sell the goods, then he may reject the goods and claim the refund of the price.

Case law: Rowland Vs Divall:

'A' bought a second hand car from 'B', a car dealer. After a few months, the police took the car, as it was a stolen one. 'A' was forced to return the car to the true owner. It was held that A could recover the full price from B. In this case, these were a breach of condition as to title as 'B' has no right to sell the car.

2.Condition in sale by description (Sec.15): -

Where the goods are sold by description, then there is an implied condition that the goods shall correspond with the description. The main idea is that the goods supplied must be same as were described by the seller. Sale of goods by description includes many stipulations as under.

(a) Where the buyer has never seen the goods and buys them only on the basis of description given by the seller.

Case Law Varley Vs Whipp:

X bought a reaping machine from Y who described it to be one year old and used only to cut 50 to 60 acres but X found that the machine extremely old. X was entitled to reject the machine because machine did not correspond with the description given by the seller.

(b) Where the buyer has seen the goods but he buys them only on the basis of description given by the seller.

Case Law Nicholson and Venn Vs Smith Marriott:

The buyer bought after seeing certain goods, which were described by the seller as dating from 17th century, but he found them of 18th Century. The buyer was entitled to reject the goods because goods did not correspond with the description given by the seller.

(c) Where the method of packing has been described.

Case Law Moore & Co., Vs London & Co.:

X purchased from Y 5000 tins of canned fruit to be packed in cases each containing 50 tins but Y supplied cases containing 25 tins. X was entitled to reject the goods because the goods were not pocked according to the description.

3. Condition as to sample (Sec.17): -

Where the seller sells the goods by showing samples of goods to the buyer and the buyer buys basing on that sample, then there is an implied condition that the goods shall correspond with the sample in quality. The following are the three implied conditions.

(a) The goods must correspond with the sample in quality.

(b) The buyer must have a reasonable opportunity of comparing the bulk with the sample.

(c) The goods must be free from latent defect, which renders them unmerchantable.

Case law: James Drummond & Sons Vs E.H. Vaningen & Co:

There was a sale by sample of worsted coating (cloth which issued to make coats) to be equal in quality and weight to the samples. Owing to a latent defect the goods would not stand ordinary wear when made up into coats and were therefore unmerchantable. The same defect appeared in the samples but could not be detected on a reasonable examination. The buyer could recover damages.

4. Condition as to sample as well as to description (Sec.15): -

If the sale is by sample as well as by description, the goods must correspond with the sample as well as the description.

Case law: Nichol Vs Godts:

N agreed to sell to G some oil described as ‘foreign refined rape oil, warranted only equal to sample’. N delivered oil equal to the quality of samples, but which was not “foreign refined rape oil”. It was held G could refuse to accept it.

5. Condition as to quality or fitness for buyers purpose (Sec.16): -

There is no implied condition as to the quality or fitness or any particular purpose of goods supplied under a contact of sale. In other words, the buyer must satisfy himself about the quality as well as the suitability of the goods.

But in certain circumstances, the seller is required to supply the goods, which will be fit for the buyer’s purpose. In other words if buyer makes his purpose clear to the seller and buys the goods

'relying upon his skill and judgment' then there is an implied condition that the goods shall be fit for the buyers specific purpose subject to the fulfillment of following conditions.

a. The buyer requires, the goods for a particular purpose.
b. The buyer should make known to the seller about that particular purpose.
c. The buyer should rely on the sellers skill or judgment.
d. The sellers business is to supply such goods whether he is the manufacturer or producer or not.

Case law; Barelto Vs T.R. Pruce:

'A' bought a set of false teeth from 'B', a dentist. But the set was not fit for A's mouth. 'A' rejected the set of teeth and claimed the refund of price. It was held that 'A' was entitled to do so as the only purpose for which he wanted the set of teeth was not fulfilled.

6.Condition as to merchantability sec16 (2):

Where the goods are bought by description from a seller, who deals in goods of that description, there is an implied condition that the goods shall be of merchantable quality. The following requirements must be satisfied for merchantability of goods.

a. If the goods are purchased for resale, then they should be immediately resalable in the market under their description.

E.g.: The cement turned into stone by water is not merchantable.

b. If the goods are purchased for self-use then they should be reasonably fit for the purpose for which they are generally used.

E.g.: A watch that will not keep proper time, a pen that will not right are not merchantable.

7. Condition as to whole someness:

In case of eatable or provisions or foodstuffs, there is an implied condition as to wholesome ness. Condition as to wholesomeness means that the goods shall be fit for human consumptions.

6. What does warranty mean? Write about types of warranty?

Ans: warranty is a representation made by the seller, which is not of that important as condition. It is only collateral to the main purpose of the contract. If it proves to be un true, the buyer can't cancel the contract but he can claim only damages from the seller.

Types of warranties:

The warranties may be express or implied.

a. Express warranties:

It is a warranty, which has been expressly agreed upon by both the parties at the time of contract of sale. It may be noted that it is open to both the parties to include in their contract any number of express warranties.

b. Implied warranties:

Implied warranties are those, which the law presumes to have been incorporated in the contract of sale inspite of the fact that the parties have not expressly included them in a contract of sale subject to the contract to the contrary. The following are the implied warranties in a contract of sale.

1.Warranty as to quiet possession sec 14(b):

According to this warranty it is presumed that the buyer shall have and enjoy the quiet possession of the goods. This means that where the buyer has obtained the possession of goods, he has a right to enjoy them in a way he likes that is, no one should interfear with the quiet enjoyment of buyer. If buyer's right of possession and enjoyment is distributed by any one having a superior title to the goods, then buyer can recover damages from seller through court of law.

Case Law: Mason vs Burmingham:

'A' purchased a second hand typewriter from 'B'. 'A' used it for some time and also spent some money on its repairs. The typewriter turned out to be stolen one and as such 'A' had to return it to true owner. It was held that 'A' could recover the damages from'B' amounting to the price paid and cost of repair.

2.Warranty as to free from encumbrance sec 14(c):

According to this warranty it is presumed that the goods shall be free from any charge or encumbrance infavour of any third person. If the possession of the buyer is disturbed due to such charge infavour of third party he can claim damages from the seller.

E.g.: 'X' borrowed Rs 500 from 'Y' and hypothecated his radio with 'Y' as security. Later on 'X' sold this radio to 'Z' who bought in good faith. Here 'Z' can claim damages from 'X' because his possession is distributed by having a charge.

3.Warranty to disclose dangerous nature of goods:

In case of goods of dangerous nature the seller must disclose or warn the buyer of the probable danger. If the seller fails to do so the buyer may make him liable for breach of implied warranty.

4.Implied warranty annexed by usage of trade:

A warranty as to fitness for a particular purpose may be annexed to a contract of sale by a custom or usage of trade.

7.Distinguish between condition and warranties under what circumstances can a breach of condition be treated as a breach of warranty. Or Under what circumstances can a condition be treated as warranty?

Ans: Introduction about condition and warranty,

Differences between condition and warranty: -

Condition	Warranties
1.Importance: - It is a stipulation which is essential to the main purpose of the contract.	It is a stipulation which is collateral (additional) to the main purpose of the contract.
2.Breach: - In case of breach of condition, the buyer can terminate the contract.	In case of breach of warranty, the buyer cannot terminate the contract, but he can claim damages only.
3.Conversion: - A breach of condition may be treated as a breach of warranty.	A breach of warranty cannot be treated as a breach of condition.

When condition to be treated as warranty: -

A buyer can treat the breach of condition as a breach of warranty. This option has been given to him under sec 13(1) of the sale of goods Act. According to this section, a breach of condition would be treated as a breach of warranty in the following circumstances.

a. **Voluntary circumstances: -**
   The express or implied conditions are for the benefit of the buyer. He may at his option treat them as warranties. The buyer may exercise his option in either of the following two ways.

1.Waiver of condition:-

The buyer waive off the condition i.e., if certain condition is not fulfilled the buyer may give up the condition and accept the goods. The waiver may be express or implied.

2.Option to treat the condition as a warranty: -

The buyer may also at his option treat the breach of condition as a breach of warranty. Thus if certain condition is not fulfilled, the buyer may not cancel the contract by rejecting the goods. He may accept the goods and recover damages from the seller for breach of warranty.

b. **Compulsory circumstances: -**
   Sometimes the buyer is bound to treat the breach of condition as breach of warranty. If the contract is not divisible and buyer accepts all the goods or their part, than he cannot reject the goods on the ground that certain condition is not fulfilled. In such cases he can only claim damages from the seller.

8. What is meant by 'caveat emptor'? State the circumstances where the doctrine does not apply?

Ans: The term 'caveat emptor' is a Latin word which means 'let the buyer beware' i.e.,
It is the buyer's duty to select goods of his requirement. He must take care while purchasing goods and the seller is not bound to supply the goods, which shall be fit for any particular purpose of the buyer. If the buyer makes a wrong choice of the goods, he cannot blame the seller if the goods are not useful for his (buyer) purpose.

Exceptions to the doctrine of caveat emptor:

These exceptions may be discussed under the following heads.

1.Implied condition as quality or fitness.
2.condition as to merchantability.
3.condition as to wholesomeness.

4.Consent by fraud:

Where the consent of the buyer is obtained by fraud by the seller or where the seller knowingly conceals a defect so that it could not be discovered on a reasonable examination (there is a latent defects) the doctrine of caveat emptor does not apply.

9. What do you mean by 'Property'. Explain with examples the rules regarding transfer of property or ownership from seller to buyer?

Or

State the legal rules relating to passing of property in case of

a. **Sale of specific goods.**
b. **Sale of unascertain goods and**
c. **Sale on approval or on sale or return basis.**

Ans: There are three stages in the performance of a contract of sale.

a. The transfer of property in goods.

b. The transfer of possession of goods.
c. Passing of the risk.

Transfer of Property:

Property means the right of ownership. Transfer of property implies 'transfer of ownership'. Incase of sale of goods ownership in goods may be transferred with or without possession.

Legal rules for the transfer of property (ownership) sec 18-24:

These rules determine the time at which the ownership of the goods is transferred from the seller to the buyer. However the general rule is that the "transfer of ownership depends upon the intention of both the parties". But sometimes the intention of the parties is not clear from the contract itself. In such cases their intention is ascertained in accordance with the rules laid down in section 18 to 24 of sale of goods act. These rules may be discussed under the following heads.

A. Incase of sale of specific or ascertained goods.
B. Incase of sale of unascertained or general goods.
C. Incase of sale on approval

A. Sale of specific goods (sec 20 –22):

These rules may be discussed under the following subheads.

1. Passing of property at the time of contract:

The analysis of this section reveals that the ownership is transferred at the time of the contract only if all the following conditions are fulfilled.

a. The sale must be of specific goods:

Specific goods means goods identified and agreed upon at the time of sale. This means their identity must have been established at the time of sale.

b. Goods must be in a deliverable state:

Goods are said to be in a deliverable state when they are acceptable to the buyer to take its delivery immediately.

c. The contract of sale must be unconditional:

It means the contract in which no condition is imposed regarding the transfer of ownership of the goods.

On the fulfillment of all the above three conditions the ownership of the goods is transferred from the seller to the buyer.

E.g.: 'A' offers to sell his car to 'B' for Rs 2,50,000, the car is to be delivered on a stated day and the price to be paid on another stated day. 'B' accepts the offer. The car becomes B's property as soon as the offer is accepted.

2. The ownership may also be transferred at some other time:

It can be discussed under the following sub-heads.

a. Where the goods are to be put in a deliverable state by the seller:

Sometimes the goods are not in a deliverable state at the time of contract and the seller has to do some act to put them in a deliverable state. In such cases the owner ship is transferred as soon as the seller has put the goods in a deliverable state and the buyer comes to know this act of the seller.

The seller may be required to do certain acts to put the goods into a deliverable state.

E.g.: packing, filling the goods in containers etc.

b. Where the goods are to be weighted or measured by the seller to ascertain the Price:

Sometimes the seller has to do some act (E.g.: to measure the weight of the goods) for the purpose of ascertaining their price. In such cases the ownership is transferred to the buyer as soon as the seller has done such act and the buyer comes to know about this act of the seller.

B. Sale of unascertained goods:

Unascertained goods are the goods, which are not specifically identified at the time of making the contract of sale. Incase of sale of unascertained goods, the ownership is transferred to the buyer as soon as the goods are identified and set apart for the purpose of delivering to the buyer.

Sec 18 and 23:

The analysis of these two sections reveals that of the ownership is transferred to the buyer on the fulfillment of the following conditions.

2. When the goods are ascertained.
3. When the goods are appropriated to the contract.
4. Delivery to carries.

1. Ascertainment of goods:

The term ascertainment may be defined as the process by which the goods to be delivered under the contract are identified and set apart. It is a unilateral act of the seller alone to identify and set apart the goods. It may be noted that the ownership is not transferred merely by the ascertainment of the goods. After ascertaining the goods these must also be appropriated to the contract.

2. Appropriation of goods to the contract:

It is the process by which the goods to be delivered under the contract are identified and set apart with the mutual consent of the seller as well as buyer. It is a bilateral act of the seller and the buyer to identify and set apart the goods. Once the goods are appropriated with the mutual consent of the parties, they become the property of the buyer.

3. Delivery to carrier:

When the seller delivers the goods to a carrier for being taken to the buyer, there is unconditional appropriation on his part and the property passes to the buyer.

C. Sale of goods on approval (sec 24):

A sale on approval is one in which the buyer may return the goods within a reasonable time if they do not serve his purpose. This sale is a conditional sale.

The property in goods under a contract of sale of goods on approval passes to the buyer.

1. When the buyer signifies his approval or acceptance to the seller or
2. When the buyer does any other act adopting the transaction or (resale or pledges to goods etc).
3. When the buyer retains the goods, without giving notice of rejection beyond the time fixed for the return of goods, or if no time is fixed, beyond a reasonable time.

E.g.: 'A' has sent some books to 'B' on approval. 'B' does not return them or ask the seller to take them back for six months. 'B' is deemed to have the sale and must pay the price.

Kirk ham vs Atten borough

'K' delivered jewellery to 'W' on sale or return. 'W' pledged the jewellery with 'A', held, the pledge was an act by 'W' adopting the transaction, and therefore, the property in the jewellery passed to him. Hence 'K' couldn't recover the jewellery from 'A'.

10. "Risk follows Ownership". Explain and state the exceptions to this rule.

Or

‘Risk prima-facie passes with Ownership” Comment?

Ans: The general rule in the contract of sale is that the risk prima-facie passes with the ownership i.e. the risk and the ownership of the goods always go together. In other words the goods are at the risk of the party who has ownership of the goods. This means that in case of loss of the goods, the loss shall be borne by the party who has the ownership of the goods at the time of loss. Thus the actual delivery of goods is immaterial for the passing of the risk. It is only the ownership, which is relevant for this purpose. The analysis of this section reveals the following two rules.

1.The goods are at the risk of the seller, the ownership has not transferred to the buyer. If any loss arises the seller has to bear.

2. The goods are at the risk of the buyer if the ownership has been transferred to the buyer. Incase of loss of the goods he shall bear the loss.

Exceptions:

The rule “risk follows ownership” subject to the following exceptions.

1.Agreement between the parties:

The risk and the ownership may be separated by an agreement between the seller and the buyer i.e. the terms of the agreement between the parties may provide as to when the ownership shall be transferred and who shall suffer the loss.

Case Law: Consolidation coffee ltd vs Coffee board

One of the terms adopted by the coffee board for auction if coffee was that property in the coffee knocked down to a bidder would not pass until the payment of price and, in the mean time the goods would remain with the seller but at the risk of the buyer. In cases risk and property passed on at different stages.

2. Delay in delivery:

Where delivery of goods has been delayed by the fault of either buyer or seller, the party at fault has to bear the risk of loss. Thus the goods are at the risk of the party who is responsible for delay in delivery.

Case Law: Demby Hamilton & co vs Braden

‘A’ contracted to purchase 30tons of apple juice from ‘B’. Delivery was to be made in weekly truck loads. ‘B’ crushed the apples and put the juice in tins for delivery. ‘A’ delayed to take the delivery. As a result, juice deteriorated. It was held that loss was to be borne by buyer.

3. Custom in a particular trade:

If there is a custom in a particular trade that risk does pass with property; the risk will pass as per the custom.

Case Law: Bevington vs Dale

In this case, certain ‘furs’ where delivered to a buyer ‘on approval’. It was a custom in the trade that the goods were at the risk of the person ordering them on approval. They were stolen before the time of approval expired. The loss fell upon the buyer in this case although property had not passed to him.

11. ‘A seller cannot convey a better title to the buyer then he himself has’-discuss their rule and paid out the exception to it?

Or

“Nemo dat quad non hebet”. Explain the maxim and state the exceptions to the rule. (Or)

“A vendor cannot pass a title in the goods better than he himself has”. Explain their rule of law and point out the exceptions to the rule? (Or)

What are the circumstances in which a non-owner of goods can convey a good title to the goods?

Ans: The general rule is expressed by the Latin maxim 'Nemo dat quad non habet', which means that no one can transfer a better title what he has. Thus the buyer cannot get a better title than that of the seller, If the seller's own title is defective, the buyer's title will also be defective.
E.g.: where a thief sells the goods the buyer from such a thief gets no title to the goods i.e. the sale by a non-owner does not make the buyer an absolute owner of the goods.

Case Law: Leo vs Byes

'X' stole a T.V and delivered it to 'Y' an auctioneer. 'Y' sold the T.V to 'Z' at auction. It was held that 'Z' obtains no title to the T.V because 'X' had no title to it.

Exceptions to the general rule:

1.Title by Estoppel:

Under certain circumstances the true owner may be prevented by his conduct from denying the seller's authority to sell. Thus where the owner by his words or conduct causes the buyer to believe that the seller was the owner of the goods or had the owner's authority to sell them and induced him to buy them in that belief, afterwards he cannot deny the truth of that fact.
E.g.: 'X' told 'Y' a buyer in the presence of 'Z' that he (X) is the owner of the T.V. But 'Z' remained silent though the T.V belongs to him. 'Y' bought the T.V from 'X'. Here 'Y' will get a valid title to the T.V even though 'X' had no title to the T.V because 'Z' by his own conduct is prevented from denying X's authority to sell the T.V.

2. Sale by a Mercantile Agent:

Where a mercantile agent sells goods in the ordinary course of his business, the buyer gets a valid title to the goods even if he (mercantile agent) is not the owner of goods. However the buyer get a valid title only in the following conditions are satisfied.

a. The agent must be in possession of the goods of documents of title to the goods.
b. He must obtain the possession of the goods with the consent of the owner.
c. He must sell the goods in his capacity as such agent.
d. He must sell the goods while acting in the ordinary course of business of such an agent.
e. The buyer must act in good faith.

3. Sale by a joint owner:

Joint owners are persons who owns the goods jointly. Sale by one of several joint-owners is valid if

a. He has sole possession of the goods with the permission of his co-owners.
b. The buyer should purchase the goods for value and in good faith.
c. The buyer has no notice at the time of the contract of sale that the seller has no authority to sell.

4. Sale by a person in possession under a voidable contract:

Sometimes a person obtains the possession of the goods by co-ercion, undue influence, fraud. In such cases the contract is a voidable at the option of the true owner. It provides that a person in possession of goods under a voidable contract can transfer a good title to the buyer who buys the goods in good faith. However the following conditions are to be satisfied.

a. The goods must be in possession of the buyer.
b. The seller must be in possession of the goods under a voidable contract.
c. The contract must not have been rescinded at the time of sale by the true owner.
d. The buyer must buy in good faith and without notice of the seller's defect of title.

E.g.: 'A' by misrepresentation induces 'B' to sell a horse. 'A' sells the same horse to 'C' before 'B' has rescinded to contract. The property in the horse is transferred to 'C'.

5. Sale by a seller in possession after sale:

Where a person has sold but continues in possession of them, he may sell them to a third person and if such person obtains delivery there of in good faith and without notice of the previous sale, he gets a good title to them. However the following conditions to be satisfied.

a. The seller should be in possession after sale.
b. The second buyer must act in good faith.

E.g.: 'A' sold certain goods to 'B' but continued to remain in possession there of with the consent of the buyer. 'A' subsequently resold the goods to another person. It was held that the second buyer had acquired a good title.

6. Sale by buyer in possession after sale:

In some cases, the buyer obtains possession of the goods before the property in them has passed to him under an agreement to sale. Such buyer can sell, pledge or otherwise dispose of the goods to a third person. If such person takes the delivery in good faith and without notice of any lien or other right of the original seller in respect of the goods he will get a good title to them. However the following conditions to be satisfied.

a. The first buyer must have the possession of the goods or documents with the consent of the seller.
b. The second buyer must act in good faith without notice of any lien or other right of the original seller.

Case Law: Lee vs Butler

'A' purchased furniture under hire-purchase system, the ownership of the furniture was to pass to him on the payment of the last installment. 'A' sold the furniture to 'B' before paying the last installment. 'B' purchased the furniture in good faith. Held, 'B' having bought in good faith, had obtained a good title to the furniture even though the hirer has no title.

7.Sale by an unpaid seller:

An unpaid seller of goods under certain circumstances resells the goods. The purchaser of such goods gets a valid title to the goods.

8. Sale by a finder of goods:

If a finder cannot trace the owner, or if owner refuses to pay the lawful charges of the finder, or when the thing (goods) is perishable or when his lawful charges for finding the owner amounted to 2/3rds of value of goods, the finder of goods can sell them and at that time the buyer can get valid title.

9. Sale by a Pawnee or Pledgee:

If the pawner or pledger makes default in the payment of the amount of loan borrowed from the pawnee or pledgee, then the pawnee may sell the goods after giving a reasonable notice to the pawner. The buyer gets a valid title to the goods from such pawnee or pledgee.

10. Sale by official receiver or assignee:

In case of insolvency of an individual his official receiver is empowered to take the possession of the goods and sell the same though he is not the owner of the goods, if any person buys these goods from such a person he gets a valid title.

11. Sale in market overt:

'Market Overt' means 'Open Market'. Sometimes, even stolen goods and are sold by those merchant. In India these markets are dealing in second hand goods. Any goods bought from the markets are considered to convey title to the buyer, irrespective of the facts that such goods might have been stolen goods.

12.Define the term 'Delivery'. State the rules relating to delivery in the sale of goods act. Or

Discuss different kinds of delivery of goods?

Ans: - Delivery of goods:-

Delivery means 'voluntary transfer of possession from one person to another'. The essence of delivery is voluntary transfer of possession from one to another. If 'B' steals goods from 'A', there is no delivery from 'A' to 'B' though possession is transferred.

Kinds or Modes of delivery: -

Delivery of goods may be mode in any of the following ways.

1.Physical or Actual delivery: -

When seller physically hands over the goods to the buyer or his agent, it is called actual delivery or physical delivery. This is the most common mode of delivery.

Eg: - 'A' purchased a scooter from 'B' and takes possession from 'B's showroom and goes on the scooter. It will be actual delivery of goods.

2.Symbolic delivery: -

A delivery is said to be symbolic where some symbol of real possession or control over the goods is handed over to buyer.

Eg: - Delivery of the keys of the godown in which goods are lying, the transfer of documents of title to the goods like railway receipts, carries receipt etc are the instances of symbolic delivery. Such type of delivery is made when the goods are bulky or incapable of actual delivery.

3. Constructive delivery: -

A delivery is said to be construction where a person who is in possession of the goods, acknowledges to hold the goods on behalf of the buyer.

Eg: - 'X' sells to 'Y' 100 bags of wheat lying in 'Z's warehouse. 'X' order 'Z' to delivery the wheat to 'Y'. 'Z' agrees to hold the 100 bags of wheat on behalf of 'Y' and makes the necessary entry in his books.

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 (Sec 33): -

The delivery of the goods may be either actual, symbolic or constructive. The delivery of the goods should be such that which enables the buyer to exercise his controls over the goods.

2.Delivery and payment are concurrent conditions: -

Delivery of goods and payment of the price must be according to the terms of the contract. Unless otherwise agreed, the delivery of goods and payment of price are concurrent conditions. In other words, delivery of goods and payments of price must take place simultaneously.

Eg: - 'A' contracts to sell to 'B' 10 bags of sugar for Rs. 5000,'A' need not deliver the goods unless 'B' is ready and willing to pay for the goods on delivery, and 'B' need not pay for the goods unless' A' is ready and willing to deliver them on payment.

3.Effect of part delivery: -

Some times during the process of delivering the whole lot of goods, the seller makes a part of the delivery. This generally done when a huge (large) quantity of goods is to be delivered. In such cases the part delivery is treated as a delivery of the whole lot.

4.Buyer to apply for delivery: -

In the absence of an express contract, the seller is under no obligation to delivery the goods unless the buyer applies for delivery. It is the duty of the buyer to demand delivery. As such, if no demand is made by the buyer, he cannot hold the seller liable in damages for his failure to deliver.

5. Place of delivery:

Generally it depends upon the intention of the parties. But where nothing is said about it in the contract, the rule laid down is sec 36 (1) is

a. That the goods sold are to be delivered at the place at which they are at the time of the sale and

b. Goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell or
c. If the goods are not in existence at the time of the agreement to sell i.e. future goods, they are to be delivered at the place at which they are to be manufactured or produced.

6. Time of delivery:

Where under a 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 with in a reasonable time. If the time is fixed seller is bound to deliver the goods in time. If the contract states that goods shall be delivered as and when required, a request for delivery is a precondition to seller's obligation to delivery.

7. Goods in Possession of a third party:

Sometimes, at the time of sale, the goods are in the possession of a third person. In such cases the effective delivery takes place when such a person acknowledge to the buyer, that he holds the goods on his (buyer) behalf.

8. Expenses of delivery:

Unless otherwise agreed, the expenses of putting the goods into a deliverable state are borne by the seller and the expenses of receiving the goods are borne by the buyer.

9. Installment deliveries:

In the absence of an agreement to the contrary, the buyer is not bound to accept delivery by installments. The performance of an entire contract cannot be split up without mutual consent.

Case Law: Reuter vs Salc

There was a sale of 25 tons of paper to be shipped in November. The seller shipped 20 tons in November and 5 tons in December. The buyer was entitled to reject the whole 25 tons.

10. Delivery to carrier:

Delivery of goods to a carrier for the purpose of transmission to the buyer is prima-facie deemed to be a delivery of goods to the buyer.

11. Goods delivered at a distance place:

If the seller agrees to deliver the goods at the place prescribed by the buyer at his own cost of delivery, the buyer should bear the cost of deterioration of goods in such transit.

12. Examining the goods on delivery:

The buyer should be given a reasonable opportunity to examine the goods before accepting delivery. If the buyer is not provided with such opportunity, he cannot be deemed to have accepted the delivery of goods.

13. Delivery of wrong quantity:

The term wrong quantity may include short delivery or excess delivery of goods than the agreed quantify. It also includes the delivery of agreed quality goods mixed with another quality. It can be discussed under the following heads.

a. Short delivery:

When the seller delivered to the buyer a quantity less than he contract to sell, the buyer may reject them.

b. Excess delivery:

Where the seller delivers a large quantity of goods than he contracted to sell the buyer may accept or reject the whole quantity. In case of the excess delivery the buyer is free to exercise any of the following options.

1. He may accept the contracted quantity and reject the excess.
2. He may accept the whole of the goods. If he does so then he shall have to pay for all goods at the contracted rate.
3. He may reject the whole quantity of goods.

c. Mixed delivery:

Where the seller delivers to the buyer the goods he contracted to sell mixed with the goods of a different description not include in the contract, the buyer may either

1 Accept the goods, which are in accordance with the contract and reject the rest.
2 Reject the whole.

14. Liability of buyer for refusing delivery:

If the buyer neglects or refuses to take delivery within a reasonable time, he is liable to the seller for loss and charges for the care and custody of the goods.

3.who is an 'unpaid' seller? What are his rights against the goods and the buyer (or) who is unpaid seller of goods and what are his rights against the goods? Has he a remedy against the buyer personally?

Ans: Unpaid Seller:

Seller means a person who sells or agrees to sell the goods. When the buyer does not pay the entire price of the goods, the seller is deemed to be unpaid. According to sec 45 of the sale of goods Act the seller of goods is deemed to be an unpaid seller.

a. When the whole of the price has not been paid.
b. When a bill of exchange or other negotiable instrument has been received as conditional payment and the some has been dishonoured.

Rights of a unpaid seller: The sale of goods act has expressly given two kinds of right to an unpaid seller. They are I. Rights against the goods. II. Rights against the buyer.

I. Right against the goods:

These can be further divided under two heads.

a. Rights when ownership is transferred. B.Rights when ownership is not transferred.

a. Rights when ownership is transferred:

An unpaid seller has the following rights even if the property in goods has been transferred to the buyer.

1.Right of Lien:

The term 'lien' means a right to retain possession of goods until the payment of the price. The unpaid seller has the right to retain the possession of goods until he receives their price. An unpaid seller can exercise lien only in the following cases

a. Where the goods have been sold without any stipulation as to credit.
b. Where the goods have been sold on credit, but the period or time of credit has expired.
c. Where the buyer becomes insolvent.

Conditions for the exercise of lien:

The following are the conditions to be satisfied to the exercise of lien.

a. The ownership in goods must have passed to the buyer.
b. The goods must be in the possession of the seller.
c. The entire or part of the price must remain unpaid.

It is a personal lien and can be expressed either by him or by his agent. It is indivisible in nature. So, the buyer is not entitled to claim delivery of a portion of the goods on payment of a proportionate price. The right of lien is available only for the price of goods and not other charges like warehouse charges.

Termination of lien:

Lien depends on physical possession of goods. Once the possession is lost, the lien is also lost. Unpaid seller loses his right of lien in the following cases.

a. When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal.
b. When the buyer or his agent lawfully obtains possession of the goods.
c. When the seller expressly or by implication waives his right of lien.

2. Right of stoppage in transit:

The right of stopping the goods while they are in the possession of a carrier and resuming possession is known as the 'right of stoppage in transit'. Transit does not mean that the goods should be actually moving. Right of stoppage of goods in transit is just an extension of the right of lien. It arises when the seller has lost the opportunity of exercising the right of lien. The right of stoppage in transit can be exercised under the following cases.

a. The seller must be unpaid. B.The buyer must be insolvent.
c.The seller must have parted with the possession of goods. D.The goods must be in transit.
e.The buyer must have not acquired the goods. Goods should be in transit.

The unpaid seller or vendor may exercise the right of stoppage in transit either.

i. By taking actual possession of the goods or
ii. By giving notice of his claim to the carrier in whose possession the goods are

The carrier on receipt of notice must redeliver the goods to the seller. The expenses of such redelivery are to be borne by the seller.

When transit comes to an end:

In the following circumstances the transit comes to an end and the seller loses the right to stop the goods in transit.

a. When goods are delivered to the buyer or his agent.
b. When the carrier holds the goods as the agent of the buyer.
c. When the carrier wrongfully refuses to deliver the goods to the buyer or his agent.

3. Right of re-sale:

A contract of sale is not rescinded when the seller exercises his right of lien or stoppage in transit. The contract still remains in force and the buyer can claim delivery of goods by paying price. But the seller cannot be expected to wait indefinitely. He has, therefore, been given a limited right to resell the goods. The unpaid seller can resell the goods.

a. Where the goods are of a perishable nature. (Or)
b. Where the seller expressly reserves the right of resale incase the buyer makes a default in the payment of price or
c. Where the unpaid seller has exercised the right of lien or stoppage in transit and gives notice to the buyer or his intention to sell the goods.

The seller is bound to give reasonable notice to the buyer stating that he is going to resell the goods. If the buyer fails to pay the price of goods within reasonable time after receiving the notice, the seller may resell the goods. If on resale, there is loss, the seller can recover from the buyer. If there is profit on resale, the seller is not bound to pay it to the buyer. Resale of perishable goods, however, do not require any such notice.

b. Rights when ownership is not transferred:

Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding property. The seller has a right to with hold delivery of the goods until the price is paid even though the sale was on credit. This right is similar to and co-extensive with his right of lien and stoppage in transit where the property has passed to the buyer.

II Rights against the buyer: An unpaid seller in addition to the rights, which he has against the goods, has the following rights or remedies against the buyer. These rights are called 'rights in personam' as these are available against the buyer personally.

1. Suit for price: When the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods, the seller can sue the buyer for the price of the goods. Where under a contract of sale, the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for such price, although the property in the goods has not passed.

2. Suit for damages for non-acceptance of the goods:

Where the buyer wrongfully neglects or refuses to accept the goods and pay for them, the seller may sue him for damages for non-acceptance.

3.Suit for damages for repudiation of contract before due date:

Where the buyer repudiates the contract before the due date of delivery of goods, the seller may treat the contract as cancelled and sue for damages.

4. Suit for interest and special damages:

The seller may recover interest or special damages in any case where by law, interest or special damages may be recoverable.

14. What are the remedies available to the seller in case of a contract of sale by the buyer?

Ans:

Seller's remedies against the buyer:

(In the above question)

Rights against the buyer:

i. Suit for price
ii. Suit for damages etc

15. What are the remedies available to the buyer incase of breach of a contract of sale by the seller?

Ans. 'Buyer' means a person who buys or agrees to buy goods. If the seller is default, the buyer has the following remedies against the seller.

1. Suit for damages for non-delivery of goods:

Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery. The wrongful neglect or refusal to deliver the goods may arise in the following cases.

a. Where the buyer has prepaid the price partly or wholly and the goods are not delivered or
b. Where the seller has unreasonably delayed the delivery of goods.

2. Suit for special performance:

Where there is a contract for the sale of specific or ascertained goods and seller refuses to deliver them, the buyer may file a suit for the specific performance of the contract. But this remedy is allowed by the court subject to certain conditions. Specific performance may be ordered by the court where damages would not be an adequate remedy.

3. Suit for breach of warranty:

Incase of breach of warranty, the buyer has the following remedies.

a. If the price has not been paid by the buyer, he may deduct from the price, the loss suffered by him and pay the balance or
b. If the loss suffered is more than the price, the buyer may file a suit for damages.

4. Repudiation of the contract before the due date:

Where the seller repudiates the contract before the date of delivery, the buyer can

a. Treat the contract as rescinded and bring an action for damages or
b. Wait till the actual date of delivery.

If the buyer chooses the first remedy, damages shall be assessed on the basic of price prevailing on that date and contract price. Incase of second alternative, the contract remain open for the benefit of both the parties

5. Suit for interest:

If the buyer has already paid the price, but the seller fails to deliver the goods, then the buyer may file a suit for the refund of the price as well as interest.

16. State the rules regarding Auction sales?

Ans. Auction sale means a public sale. Normally in an auction sale, the goods are sold on behalf of the owner by an auctioneer. The auctioneer gives wide publicity for the sale of goods by an auction and fixes the time and place for it. The intending buyers, known as bidders can inspect the goods during time fixed by an auctioneer before or at the time of sale. In an auction, sale the goods are sold to the highest bidder. It may be noted that an advertisement to sell the goods by auction is simply an invitation to the public to make offers and not an offer to sell. That is why the intending buyers have no right to sue the auctioneer if auctioneer cancels or postpones the sale by auction.

Legal rules:

The following are the legal rules with regards to the auction sale.

1. Completion of auction sale:

The sale by auction is complete as soon as the auctioneer announces its completion by the fall of the hammer or in any other customary manners.

Eg: By shouting one, two, three.

2. Goods put up for sale in lots:

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.

3. Retraction of bid:

Before the sale is completed by the fall of the hammer, any bidder may withdraw his bid i.e., he has to say that he is not ready and willing to purchase the goods. This is based on the principle that a bid is an offer and it can be revoked before it is accepted by the fall of the hammer.

4. Transfer of ownership:

On the completion of the sale by the fall of the hammer, the ownership of the goods is immediately transferred to the buyer (highest bidder). Thus once the hammer falls, the bidder becomes the owner of the goods and he can deal with the goods in a way he likes.

5. Right of the seller to bid:

A seller or any person on his behalf may bid at the auction if the seller's right to bid is expressly reserved. It may however be noted that the seller can appoint only one bidder to bid on his behalf.

6. Fraudulent sale:

Where the seller's right to bid at the auction is not notified, the buyer may treat the sale as fraudulent if the seller or any person on his behalf bids at the auction. The buyer may refuses to take the goods sold to him. In such cases the sale is also fraudulent if the auctioneer knowingly takes any bid from the seller or any person on his behalf.

7. Auction sale with 'Reserve or upset' price:

Reserve price means the minimum price below which the auctioneer will not sell the goods put up for auction sale. Normally the reserve price is fixed by the seller to protect himself from knockout agreement, unless the bid reaches the minimum price, the auctioneer could cancel or postpone the auction sale or the bid below the reserve price may be conditionally accepted subject to confirmation by the seller.

2 Marks Questions:

1. Knockout agreement:

It is an agreement between the bidders not to bid against each other at an auction sale. Such agreements are made by the bidders with a view to prevent competition among themselves. Such agreements are perfectly valid and not illegal.

2. Puffers:

'Puffer' is a person employed by the seller to raise the price by fictitious bids'. Such a person has no intention to purchase the goods. Such persons are also known as **'by bidders'** or **'decoy ducks'**.

3. Damping:

It is an unlawful act by which an intending purchaser is prevented from bidding or raising the price at an auction sale. It is illegal and the auctioneer can withdraw the goods from the auction.

ESSENTIAL COMMODITIES ACT-1995

1.Define the term essential commodities and explain the objects of essential commodities Act-1995?

Ans:Inroduction: -

The essential commodities Act was passed by the parliament in 1955. It came into force on 1st April 1955. The Act extended to the whole of India including the state of Jammu & Kashmir. It was amended in 1987 and 1992.

Definition of essential commodity Sec2 (A): -

An inclusive definition is given under section2 (A) of the Act. But secretly speaking cannot call it as definition but it can call it as list of commodities recognized by section 2(A) as essential commodities. The list was as under:

1.Cattle fodder, including oil and other concentrate.
2.Coal including coke and other derivatives.
3.Component parts and accessories of automobiles.
4.Cotton and woolen textiles.
5.Drugs.
6.Foodstuff including edible oil seeds.
7.Iron and steel including manufacturing products of Iron and steel.
8.Paper including news, paperboard and straw board.
9.Petroleum and its products.
10.Raw cotton and cottonseeds.
11.Raw jute.
12.cement-added in 1992.
13.Any other class of commodities, which the central Govt. may notify order declared to be an essential commodity for the purpose of this Act.

Object of the Act:-

The main objective of this act to ensure the common man set the supply of essential commodities without any abstraction. The Act seeks to achieve the following objectives.

a) To control the production, supply and distribution of essential commodities.
b) To check the inflationary trends in prices.
c) To ensure equitable distribution of essential commodities.

2. What are the various powers of central Govt. under essential commodities Act?

Ans: Power of central Govt. under Sec 3 to Sec 6 of the essential commodities Act:-

- Power to issue order.
- Power to fixing prices.
- Power to appoint authorized controllers.
- Power to receive certain amounts as arrears of land revenue Sec 7(A).

Power to issue order:

Under Sec 3(1) of ECA the central Govt. can issue orders for regulating or prohibiting the production, supply and distribution of any essential commodity and trade and commerce there in. It can issue these orders in the following circumstances.

a) For maintaining or increasing the supply of any essential commodities.
b) For securing the equitable distribution and availability at fair prices.
c) For securing any essential commodities for the defence of India or for the efficient conduct of military operation.

The order may contain issues like regulation of license and permit, bringing the waste land into cultivation, controlling the prices of EC, prohibition of hoarding collection of information and statistics, inspection of books and accounts of a trader dealing in EC, entry into the premises of confess.

Power of fixing price:

The Govt. is given the power for the fixes of prices of EC by the act. It can exercise the power in the following way.

a) Fixing the prices of EC being sold to Govt. Sec 3(3): -

Govt. means the central Govt., state Govt. or the agent or any person according to sec 3(3) of the act. The price to be paid to seller of EC fixed by the Govt. as fallows.

- Agreed price, if it is in consistent with the controlled price.
- Controlled price if no agreement is reached or necessary.
- If there is no agreed price or controlled price, market price is fixed.

b) Fixing the price of EC for the sale to the general public according to sec3 (3(A)):

Where in a particular location the prices of any food stuffs raising sharply due to holding and artificial scarcity. The Govt. may fix the average price for this purpose. The central Govt. appoints an officer fixation average price is final.

c) Fixing prices of food grains and edible oils sec3(3(B):-

Where a person is require to sell food grains and edible oil to central Govt. or to state Govt. or any agent acting for Govt. he must be paid a fixed price as procurement price. It is fixed by taking the following consideration.

- Controlled price of that particular item.
- General crop prospectus.
- The head of vulnerable section of consumers.
- Recommendation of agriculture commission.

d) Fixation of fair price of sugars for the producers: -

The price of the sugar to be paid to producers or sellers when he sells it to the central Govt. or to the agent. It is determined according to the provision of Sec3 (3(C)) of the act.

Power to appoint authorized controllers: -

The central Govt. has power to appoint any personal controller. He may be appointed to make any investigation into a business engaged in production, supply and distribution of EC. He shall exercise his function in accordance with insertion given by Govt. and submit the investigation report to the Govt.

Power to recover certain amounts as arrears of land revenue sec7 (A): -

Sec 7(A) was inserted in the act in the year 1984. By this section the central Govt. has the power to recover certain amount as arrears of land revenue. The recovery will be as under.

a) If any person is liable to pay the amount in pursuance of any order issue under sec3 of the act.
b) If any person is liable to deposit any amount under section3.
c) If default is made by a person in above two cases the Govt. may charge the interest @ 15% per annum from the date of default.

3. What is confiscation? Explain the steps involved in confiscation of EC?

Ans: -

The term confiscation literally means appropriation of seized goods. If any person acts in contravention of order issued by Govt. under sec3 of the act. The authorized person may seize that EC which he possesses. After seizure such authorized person report the same to the district collector. The collector on the receipt of report may at his discretion, required seized commodities before him for inspection. If he satisfies he may order for confiscation of goods. So the process of seizure and appropriation of EC is called confiscation sec6-A,B,C of the act deal with confiscation of goods.

Procedure or Steps: -

Issue of show-cause notice: -

Section 6(B) lays down procedure to adopt by the collector before passing the order of confiscation. This procedure detailed as under.

a) He has to give a notice in writing to the owner of EC in question how they are seized. Informing to him of the grounds on which it is proposed to confiscate.
b) The owner of commodities or the person from whom they are seized is given an opportunity of making representation in writing against the grounds of confiscation.
c) The owner of commodity or the person from they are seized is given an opportunity of being heard in the matter.
d) After observing the above three steps if the collector satisfies that there has been contravention of any order made under sec3 of act, he may order for confiscation of EC so seized.

Appeal against confiscation under sec6(C): -

Any person agreed by an order of confiscation with in one month from the date of confiscation order, appeal to any judicial authority appointed by the Govt. The judicial authority shall give an opportunity to the applicant to be heard, pass such orders as it may think fit to confirming, modifying or annulling the order applied against.

Where the confiscation order has been annulled or modified in an appeal or the person has been acquitted, the seized commodity may be returned. If it is not possible to return the commodity the concerned person shall be paid the price therefore as it the commodity has been sold to the Govt. along with reasonable interest from the date of seizure.