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Concept based notes

Commercial Law

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Preface

I am glad to present this book, especially designed to serve the needs of the students. The book has been written keeping in mind the general weakness in understanding the fundamental concepts of the topics. The book is self-explanatory and adopts the “Teach Yourself” style. It is based on question-answer pattern. The language of book is quite easy and understandable based on scientific approach.

Any further improvement in the contents of the book by making corrections, omission and inclusion is keen to be achieved based on suggestions from the readers for which the author shall be obliged.

I acknowledge special thanks to Mr. Rajeev Biyani, *Chairman* & Dr. Sanjay Biyani, *Director (Acad.)* Biyani Group of Colleges, who are the backbones and main concept provider and also have been constant source of motivation throughout this Endeavour. They played an active role in coordinating the various stages of this Endeavour and spearheaded the publishing work.

I look forward to receiving valuable suggestions from professors of various educational institutions, other faculty members and students for improvement of the quality of the book. The reader may feel free to send in their comments and suggestions to the under mentioned address.

Author

Syllabus

Commercial Law

Section-A

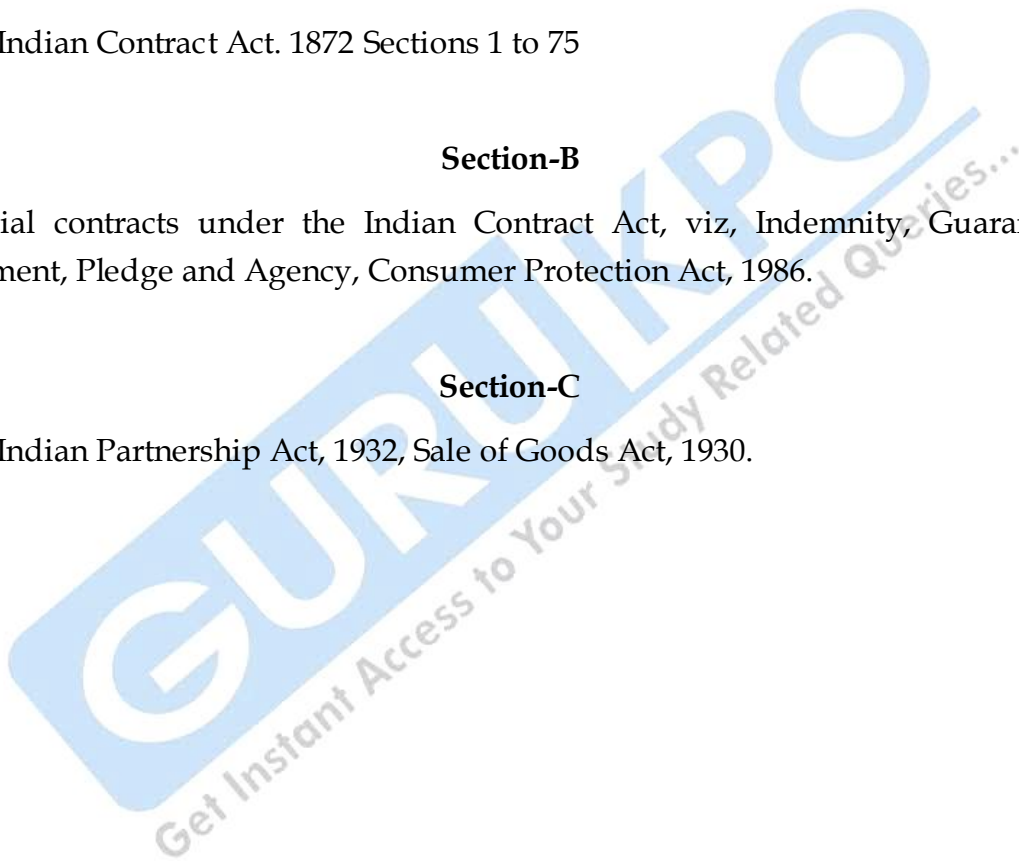
The Indian Contract Act, 1872 Sections 1 to 75

Section-B

Special contracts under the Indian Contract Act, viz, Indemnity, Guarantee, Bailment, Pledge and Agency, Consumer Protection Act, 1986.

Section-C

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



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CHAPTER-1

Some Important Short Questions

Q.1 Define Contract.

Ans.: "An agreement enforceable by Law is a Contract." (Section 2(h))

Q.2 What is implied contract?

Ans.: An agreement which is not made by written or spoken words of parties but it is evidenced from the acts or conduct of the parties or according to prevailing conditions.

Q.3 What is quasi contract?

Ans.: The contract which is not created by proposal and acceptance but imposed by law based on the principle of equity.

Q.4 Distinguish between void and voidable contract.

Ans.: A void contract is ab-initio void hence, cannot be enforced by law on the other hand enforceability of a voidable contract, depends upon the will of the aggrieved party.

Q.5 What is the difference between void Agreement and Void contract?

Ans.: Void agreement is void from beginning (ab-initio) whereas void contract becomes void when aggrieved party chooses to rescind it.

Q.6 What is general and standing offer?

Ans.: The offer made to the public in general and any one can receive, it is general offer, whereas standing offer is an offer made as tender to supply goods as and when required amounts to a standing offer.

Q.7 What is cross offer and counter offer?

Ans.: When two parties exchange identical offers in ignorance at the time of each other's offer, it is called cross offer, on the other hand when offeree offers variations in the original offer, it is called as counter offer.

Q.8 What is executed and executory contract?

Ans.: A contract in which all the parties to the contract have performed their respective obligation is known as executed contract, whereas Executory contracts is one in which all or something still remain to be fulfilled or performed by the parties.

Q.9 What is Bilateral and Unilateral contract?

Ans.: Bilateral contract is one in which both the parties exchange a promise to each other, which is to be performed in future, but still outstanding hence, it is called bilateral contract and similar to executory contract. On the other hand, Unilateral contract is one in it a promisor promises to do something. In such a contract, promisor binds himself to perform his promise but the offerer does not do so. Therefore, it is called Unilateral Contract.

Q.10 Explain capacity to contract.

Ans.: The term capacity to contract means competence to legally enter into a contract that is legally binding to the parties.

Q.11 Who is a Minor?

Ans.: A minor is a person who has not completed eighteen years of age. Who has not completed the age of 21 years in case the court has appointed guardian or superintendence of court of wards of minor's property.

Q.12 What is Consent?

Ans.: According to Section 13 "Two or more persons are said to consent when they agree upon the same thing in the same sense." It is Unison or meeting of mind or consensus ad idem.

Q.13 What is Coercion?

Ans.: According to Section 15 of Indian Contract Act, 1872, "Committing any act forbidden by Indian Penal Code or detaining or threatening to detain property of another for getting consent is coercion."

Q.14 Explain undue influence.

Ans.: When a dominating party misuses his influence to dominate the will of the weaker party to get undue or unfair advantage in a contract, then it is called undue influence (Section 16).

Q.15 What do you mean by fraud?

Ans.: According to Section 17, "The term fraud is the intentional misrepresentation or concealment of material facts of an agreement by a party to or by his agent with an intention to deceive and induce the other party to enter into an agreement"

Q.16 What do you mean by misrepresentation?

Ans.: It is defined under section 18. It means any innocent or without intentional false statement or positive assertion of fact made by one party to the other during the course of negotiation of a contract is known as misrepresentation.

Q.17 What is mistake?

Ans.: It is defined under Section 20 to 22, "It is an erroneous belief about something. When the consent of one or both the parties to a contract is

caused by misconception or erroneous belief, the contract is said to be induced by mistake. It is mistake of law and mistake of fact. The mistake of Indian Law is enforceable, not void but mistake of foreign law is void. When mistake made by a person it is unilateral mistake and mistake is made by both the parties, it is bilateral mistake.

Q.18 What is consideration.

Ans.: It is quid-pro-quo means something in return. Hence, consideration is the price paid by promise for the obligation of the promise.

Q.19 What is doctrine of privity of contract?

Ans.: A person who is not a party to the contract cannot sue upon it. Only the party to the contract can enforce the same.

Q.20 What is Ex-Nudo-Pacto Nor-Oritur actio mean?

Ans.: It means from bare promise, no right of action can arise.

Q.21 What is maintenance?

Ans.: It is simply meaning the promotion of litigation in which one had no interest.

Q.22 What is Champerty?

Ans.: It is a bargain where by one party agrees to assist the other in recovering property.

Q.23 What is wagering Agreement?

Ans.: It is an agreement involving payment of a sum of money upon the determination of an uncertain event.

Q.24 What do you mean by Agreement against public policy?

Ans.: It simply mean whenever an agreement is harmful or injurious to public interest and welfare it is said to be against public policy. It is harmful to the social, political, economic and other interest and welfare of the public is called agreement opposed to public policy.

Q.25 What is Contingent contract?

Ans.: It is a contract in which the promisor undertakes to perform the contract upon the happening or non happening of a specified future uncertain event, which is collateral to the contract (Section 32).

Q.26 What is Appropriation of payments?

Ans.: In case of a debtor owes several distinct debts to the same creditor, he makes payment which is insufficient to satisfy all the debts. In such a situation a question arises as to which particular debt the payment is to be appropriated.

Q.27 What is Novation?

Ans.: Novation means substitution of a new contract in place of an existing one with the consent of all the parties to the contract.

Q.28 What is Rescission?

Ans.: It is cancellation of a contract by the consent of all the parties to it or by the aggrieved party to it.

Q.29 Explain Remission.

Ans.: According to Section 63, "Remission meant acceptance of a lesser performance in discharge of a whole obligation under a contract.

Q.30 What is Waiver?

Ans.: When a party entitled to claim performance releases the other party from his obligation it is known as waiver.

Q.31 What is supervening impossibility?

Ans.: If after making agreement it becomes impossible to fulfill the promise under contract, it is supervening impossibility. The contract becomes void.

Q.32 What is liquidated damages?

Ans.: When the sum payable in the event of breach is decided by parties in advance, it is called liquidated damages.

Q.33 What are exemplary damages? When they are awarded?

Ans.: The damages which are awarded with a view to punish the defendant. These are awards in two cases i) On breach of contract of marriage and 2) wrongful dishonour of customer's cheque by the bank.

Q.34 What is the contract of Indemnity?

Ans.: A contract of indemnity means a contract by which one person promises to save the other from the loss caused to him by conduct or incident.

Q.35 What is contract of guarantee?

Ans.: According to Section 126 of contract Act "A contract of guarantee as a contract to perform the promisor discharge the liability of a third person in case of his default.

Q.36 What is bailment?

Ans.: According to section 148, "bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the

purpose is accomplished, be returned or otherwise disposed of according to the direction of the person delivering them.

Q.37 What is Lien? What are its types?

Ans.: Lien is a right to retain that which is in possession of a person and belongs to another until his demands are satisfied. There are two types of lien 1) The general lien which means to retain any property belonging to the other for any lawful payment and 2) It is relating to retain those goods, which are the subject matter of contract of particular lien.

Q.38 What is agency?

Ans.: The relationship between agent and principal created by an agreement whereby agent is authorized by his principal to represent him and establish contractual relations with third party.

Q.39 What is Agency by estoppel?

Ans.: If a person either by his conduct or words leads to another person to believe that a certain person is his agent, is called agency by estoppel.

Q.40 What is agency by ratification?

Ans.: If the principal ratifies the act of a person done without authority, it is known as 'agency by ratification'.

Q.41 What is sub-agent and substituted Agent?

Ans.: A sub agent is a person employed by and acting under the control of the original agent in the business of the agency (Section 191) on the other hand, a substituted agent is named by agent but appointed by the principal. He is liable to principal.

Q.42 What is contract of Sale. How it is different from Agreement to sell?

Ans.: A contract where seller transfers or agrees to transfer property, in goods to the buyer for a price on the other hand, a contract where seller agrees to transfer property in goods in future on fulfillment of certain conditions is called as agreement to sell.

Q.43 How sale is different from Bailment?

Ans.: The intention of parties in case of sale is to transfer property in goods immediately, but in case of bailment, the property in goods is not transferred.

Q.44 What is goods under sale of goods Act, 1930 and its types?

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

According to Section 6 (1 and 2) of the act there are three types of goods as :

- (1) Existing goods viz - Specific, ascertained or unascertained goods
- (2) Future goods and
- (3) Contingent goods

Q.45 What is condition and warranty?

Ans.: According to Section 12(2), 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, whereas warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives right to claim for damages but not to a right to reject the goods and treat the contract as repudiated (Section 12(3)).

Q.46 What is doctrine of Caveat Emptor?

Ans.: The buyer must take care when buying goods; it is not seller's duty to point out the defects in goods.

Q.47 What is the meaning of Res Prit Domine?

Ans.: It simply means risks follows ownership. It is general rule that risk prima facie passes with ownership.

Q.48 What is the meaning of Nemo dot quod non habit.?

Ans.: It means nobody can give what he himself has not or no seller can transfer a better title than he himself has.

Q.49 What is unpaid seller?

Ans.: According to Section 45 (1) the seller of goods deemed to be unpaid seller when whole price has not been paid or negotiable instrument received as payment dishonored.

Q.50 What are the rights of unpaid seller?

Ans.: He has two rights :

- (1) Right against the goods i.e. right of lien, right of stoppage of goods in transit and right of resale.
- (2) Rights against buyer personally i.e. a) suit for price, b) damages for non acceptance, repudiation of the contract before the due date and suit for interest.

Q.51 What is retracting the bid?

Ans.: The term retracting means withdraw or revoke. A bidder may retract his bid at any time before the compilation of sale. Any condition in an auction sale which forbids the bidder to retract his bid is void.

Q.52 What is damping?

Ans.: Damping is an overt act of dissuade the prospective buyer from raising the price by pointing out defects in the goods, creating confusion in the mind of intending bidder and taking away him from the place of auction.

Q.53 When knock out agreement becomes illegal?

Ans.: In the intention of the partner to knock out is to defraud a third party; such agreement is illegal.

Q.54 What is the cardinal principle of partnership?

Ans.: It is based on the principle that business must be carried on by all or any of them acting for all.

Q.55 Who is ostensible partner?

Ans.: Who is active partner who invested money into the firm actively participates in the functioning and management of the firm and shares profits.

Q.56 Who is holding out partner?

Ans.: If the person through his conduct and behavior representing himself as a partner, without being partner in the firm is called holding out partner.

Q.57 What is the difference between dissolution of firm and dissolution of partnership.

Ans.: The dissolution of partnership between all the partners of a firm is termed as dissolution of the firm contrary to it extinction of relationship between some of the partners only, it is called dissolution of partnership.

Q.58 Who is a consumer under consumer protection Act, 1986?

Ans.: Consumer is a person who buys goods or services for consideration which has been paid as promised or partly paid and partly promised or under any systems of deferred payment.

Q.59 What is Consumer Dispute?

Ans.: It refers a dispute where the person against whom a complaint had been made, denies or disputes the allegations contained in the complaint.

Q.60 What is unfair trade practice under consumer protection Act?

Ans.: It means a practice which, for the purpose of promoting the sale, use or supply of any goods or for any goods or for the provision of any service adopts any unfair ;method or defective practices.

Q.61 How many consumer protection councils are there under the Act?

Ans.: There are two types of these councils –

- (i) The Central Consumer Protection council and
- (ii) The State consumer protection council.

□ □ □

CHAPTER-2

Meaning and Essentials of Contract

Q.1. "An agreement enforceable by law is a contract" Comment and explain the essentials of a valid contract in brief.

Ans.: Generally contract means a promise or agreement made by two or more persons enforceable by law. According to Indian Contract Act 1872 Section 2(h) defined.

"An agreement enforceable by law is a contract." Hence, agreement and legal enforceability creates an agreement as contract. Section 10 defines "All Agreements are contracts if they are made by the free consent of parties, competent to contract for a lawful consideration and with a lawful object and are not hereby expressly declared void. The contract to be made in writing by law of land or in the presence of witnesses or be registered, if required"

On the basis of the above definitions and judgment given by judges, help us to mention the following essentials of a valid contract :

- (1) Atleast two parties are required to enter into a contract that is promisor and promisee.
- (2) **Agreement** : Proposal and acceptance must be absolute and unconditional. The two identical Cross-offers and successive counter offer are only offer and not agreement.
- (3) The intention should be to create legal relations not the social, domestic, political relations.

- (4) Contractual capacity among persons who is not minor, insane and disqualified by law of the land.
- (5) Consent or Consensus ad idem. The parties are said to consent when they agree upon the same thing in the same sense. (Section13).
- (6) **Free Consent** : According to Section14, the consent is said to be free when it is not caused by i) coercion, or ii) undue influence, or iii) fraud, or iv) misrepresentation or v) mistake.
- (7) **Consideration** : Except some exceptions, an agreement without consideration is void. It means quid pro-quo. It must be lawful and real and not illusory.
- (8) The lawful object and its consideration must be legal.
- (9) The agreement must have certain meaning.
- (10) An agreement to be valid must be possible to be performed.
- (11) The agreements must not be declared void by the law of the land.
- (12) Compliance of legal formalities is required.

Hence, every agreement to be enforceable by law must possess all these essential elements for a contract. If any of the element is missing in an agreement, such agreement is not enforceable by law.

□ □ □

CHAPTER-3

Proposal and Acceptance

Q.1. Define offer and acceptance. Explain rules regarding valid acceptance.

Ans.: The term offer is also called proposal. It is defined under Indian Contract Act, 1872 Section 2(a), "when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal."

Acceptance is defined under section 2(b) of Contract Act, 1872 i.e. when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise.

Rules regarding Valid Acceptance : A few important rules of acceptance are as follows in brief :

- (1) Acceptance must be absolute and unqualified {Section 7(1)}.
- (2) It must be in prescribed manner/ reasonable manner {Section 7(2)}.
- (3) Acceptance may be given by performance of condition or act required by an offeror {(Section8)}.
- (4) It may be given by acceptance of consideration (Section 8).
- (5) Acceptance may be express or implied.
- (6) It must be given within specified or reasonable period of time.
- (7) Acceptance must be given while the offer is in force.

- (8) It must be given only after the communication of offer is complete.
- (9) Acceptance must be given by the person to whom offer is made.
- (10) Acceptance must be communicated, only mental determination or intention to give acceptance is not sufficient.
- (11) It must be from competent person/authorized person otherwise it will not be binding. **Powell V. Lee (1908)**
- (12) It should be communicated to the offeror himself, other than him will not create legal obligation.
- (13) Acceptance subject to contract is no acceptance. It will not create legal binding.

Note :

- (i) A rejected offer cannot be accepted.
- (ii) Counter offer does not constitute acceptance.
- (iii) Cross offer cannot be assumed as acceptance.
- (iv) Silence does not generally amount to acceptance.
- (v) Acceptance to offer means acceptance of all terms of offer.
- (vi) Sometimes grumbling acceptance is a valid acceptance.
- (vii) Enquiring/seeking clarification of offer is not to be assumed as acceptance.
- (viii) Circumstances of the acceptance must show the ability and willingness to fulfill the terms of offer.

CHAPTER-4

Capacity to Contract

Q.1. Who can make a valid contract? Discuss the validity of agreements made by a minor.

Ans.: According to Section 11, "Every person is competent to contract who is of the age of majority according to law to which he is subject and who is of sound mind and is not disqualified from contracting by any law to which he is subject." Hence, the following persons can make valid contract :

- (i) Who is major
- (ii) Who is of sound mind or sane
- (iii) Who is not disqualified from contracting by any law of the land to which he is subject.

Validity of Agreement made by a Minor :

- (i) Agreements with or by a minor is absolutely void. Ruling was given in Mohri Bibee vs. Dharmodas Ghose.
- (ii) No ratification of minor's contract.
- (iii) A minor can be a promisee or beneficiary.
- (iv) Restitution/compensation is possible in case of minor under (section 33, specific Relief Act, 1963).
- (v) The rule of estoppel does not apply for minor, he can plead his minority.
- (vi) No specific performance is possible in case of minor because contract made by him is void {(Mirsarawarjan vs. Fakhruddin 1912) 3 Col. 232}

- (vii) Contract by parents/ guardian/ manager may be made on behalf of the minor, provided they had authority and benefit to minor
- (viii) Minor may be given share in existing partnership business by the consensus of the partners.
- (ix) Minor may be appointed as Agent but principal will be personally liable for his acts.
- (x) Acts done by minor is parents will not be liable.
- (xi) Guarantee for and by the minor is valid.
- (xii) Insolvency Act does not apply on minor; hence, minor cannot be adjudicated insolvent.
- (xiii) Minor may be joint promisor under Law of contract.
- (xiv) Minor cannot apply for allotment of shares in company, but he can apply for fully paid up share on behalf of his guardian.
- (xv) Minor is allowed to make, draw and endorse negotiable instrument but he is not liable for dishonour.
- (xvi) Minor cannot enter into service agreement but he can be beneficiary if he has performed his promise.
- (xvii) Minor can enter into the contract of Apprenticeship at the age of 14 years if he is physically fit.
- (xviii) Minor can become trade union member if he has attained the age of 15 years.
- (xix) Marriage contract of minor on behalf of parents is allowed on the ground of the customs of the community.
- (xx) Minor is held responsible for torts or civil wrong committed by him
- (xxi) Liability of necessities of life supplied to him or his legal dependents. His property is liable; he is personally not liable.

CHAPTER-5

Free Consent

Q.1. Define Free consent? When does consent become free? Explain rules regarding free consent.

Ans.: According to section 10 of the Indian Contract Act, 1872, "All agreements are contract if they are made by the free consent of the parties competent to contract for a lawful consideration and lawful object and are not hereby expressly declared to be void". Therefore, free consent is the one of the essentials of valid contract. But free consent is composed of two words free + consent. The term free meant without any pressure. Consent means defined under Section 13. "Two or more persons are said to consent when they agree upon the same thing in the same sense."

Free consent is defined under section 14 i.e. consent is said to be free when issues not caused by :

- (1) Coercion, as defined in section 15, or
- (2) Undue influence, as defined in section 16, or
- (3) Fraud, as defined in section 17, or
- (4) Misrepresentation, as defined in section 18, or
- (5) Mistake subject to the provision of section 20, 21 and 22.

Therefore, consent is not free when it has been caused by coercion or undue influence or fraud or misrepresentation and mistake. But if the consent is caused by any one of the first four factors such as coercion, undue influence, fraud and misrepresentation. The agreement is a voidable at the option of the party whose consent was so caused. (Section

19 and 19A). Under such position, the aggrieved party has option to assume the agreement either valid or void. If the contract is caused by mistake of foreign law, the agreement is void under section 20 and 21. Hence, there are two situations i.e. no free consent that is earlier and no consent is as error in consensus.

The rules regarding free consent are as follows one by one.

Coercion : Coercion means and includes the use or threatening to use the physical force against a person or property to compel him to enter him into a contract. According to section 15 of the Indian contract Act, 1872.

“Coercion is the committing or threatening to commit any act forbidden by the Indian Penal Code or the lawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. “It is immaterial whether IPC is or not enforced in the place where the coercion is employed (Section 15).

Legal Rules relating to Coercion :

- (1) Committing any act forbidden by the IPC i.e. killing or beating another person and interfering in the personal freedom of another person etc.
- (2) Threatening to commit any act forbidden by the IPC.
- (3) Threats to suicide amounts to coercion.
- (4) Unlawful detaining of any property.
- (5) Unlawful threatening to detain any property
- (6) The act of coercion must have been performed with the intention of causing any person to enter into an agreement.
- (7) Coercion may proceed either from the party or from a stranger.
- (8) Coercion may be directed against the party or any person.
- (9) It is not necessary that IPC should be in force at the place where the coercion is applied.

The effect of coercion is voidable at the desire of the aggrieved party.

Undue Influence : Instead of physical force ;when mental force is used for getting the consent of the another party, when a dominant party misuses his influence to dominate the will of the weaker party, to get unfair advantage, in a contract is said to be influenced by undue influence.

It is defined under Section 16.

The legal rules relating to undue influence :

- (1) The relations subsisting between the parties to a contract are such that one of them is in a position to dominate the will of the other due to
 - (i) Real or apparent authority.
 - (ii) In case of fiduciary relation.
 - (iii) In case of persons under mental or bodily stress.
- (2) The dominating party uses his position to obtain an unfair or undue advantage over the other party.

Legal effect : Due to undue influence, the agreement becomes voidable at the option of the party whose consent was so caused. The court may set aside any such act under undue influence. A pardanashin woman is also given protection from undue influence.

Fraud : Fraud is intentional misrepresentation or concealment of material facts of an agreement by any party to or by his agent with an intention to deceive and induce the other party to enter into an agreement.

According to Section 17, "fraud means and includes any of the following acts committed to a contract or with his connivance, or by his agent, with an intention to deceive another party thereto or his agent, or to induce him to enter into contract."

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

- (v) Any such act or omission as the law specially declares to be fraudulent.

Essential Elements of Fraud :

- (1) There must be a false representation either by words or by spoken words, induce the other party to enter into contract by active concealment of material fact.
- (2) It must be done by the party or his agent.
- (3) The representation must relate to a fact, the other party has been attracted to act upon the representation leading to fraud.
- (4) The representation intentionally done to commit a fraud must have been done before the conclusion of the contract.
- (5) The other party must have been deceived by fraud.

Legal Effects :

- (1) Contract becomes voidable at the option of the party defrauded,
- (2) The defrauded party can sue for damages suffered or ask for restitution, and
- (3) The party can insist for the performance of the contract.

Misrepresentation : It is innocent and unintentional false statement of fact told by one party to the other during the course of negotiation is called misrepresentation. According to section 18 misrepresentation means and includes :

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

Essential Elements of Misrepresentation :

- (i) It must be a misrepresentation of some material fact;
- (ii) It must be made before the concerned party enters into a contract.
- (iii) It must be innocent or unintentional statement.
- (iv) Misrepresentation may be committed by any of the following ways :
 - (a) By positive statement.
 - (b) By breach of duty.
 - (c) By causing a mistake by innocent misrepresentation.

Legal Effect of Misrepresentation : An aggrieved party suffering any loss as a result of misrepresentation can either rescind or avoid the contract altogether or can accept the contract but insist that he will be placed in such position in which he should have been, if the misrepresentation made had been true (section 19).

Mistake : Mistake is one of the causes because of which the consent is said not to be free. It is a misconception or misimpression or misunderstanding or erroneous belief about something. According to Section 20, "Where both the parties to an agreement are under a mistake as to a matter of fact essential to an agreement, the agreement is void."

Mistake may be of two types viz -

- (i) Mistake of Law, and
- (ii) Mistake of Fact

Mistake of law may be two types :

- (i) Mistake of law of the land will be enforceable but mistake of foreign law is void.
- (ii) Mistake of fact: is as to material fact of the contract.

Mistake of fact may be of two types :

- (1) Bilateral Mistake, and
- (2) Unilateral Mistake

- (1) **Bilateral Mistake :** Bilateral mistake is mutual mistake by both the parties to agreement and relating to
 - (i) Mistake as to subject matter, and
 - (ii) Mistake as to possibility of performance of the contract.
 - (i) Mistake as the subject matter may be as to identity of subject matter, as to existence of subject matter, quality of the subject matter, quantity of product, as to price, mistake as to title, mistake as to existence of State of affairs and (ii) mistake is to possibility of performance. It may be of two types viz Physical and Legal impossibility.
- (2) **Unilateral Mistake :** The unilateral mistake means where one of the parties to a contract is under a mistake. As to the matter of fact, it is unilateral mistake. Such contract is not voidable. But under such following conditions, contract of unilateral mistake also becomes void :
 - (i) Mistake as to the identity of the party contracted with,
 - (ii) Mistake as to identity of attributes of contracting party, and
 - (iii) Mistake as to the nature of the contract.

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CHAPTER-6

Consideration

Q.1. What is consideration? A contract without consideration is void. Explain.

Ans.: Consideration means giving something in return. Quid pro quo, i.e. something to recompense. Blackstone defined "Consideration is recompense given by the party contracting to the other."

According to Indian Contract Act, 1872, section 2(d) defined, "when at the desire of the promiser, the promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or to abstain from doing some thing, such act or abstinence or promise is called a consideration for the promise."

Therefore, consideration is the promise or performance that parties exchange with each other. It is the price that one party to a contract pays for the promise or performance of the other party. It must be at the desire of the promisor or any other person, it may be relating to doing or abstinence. May be present, past and future.

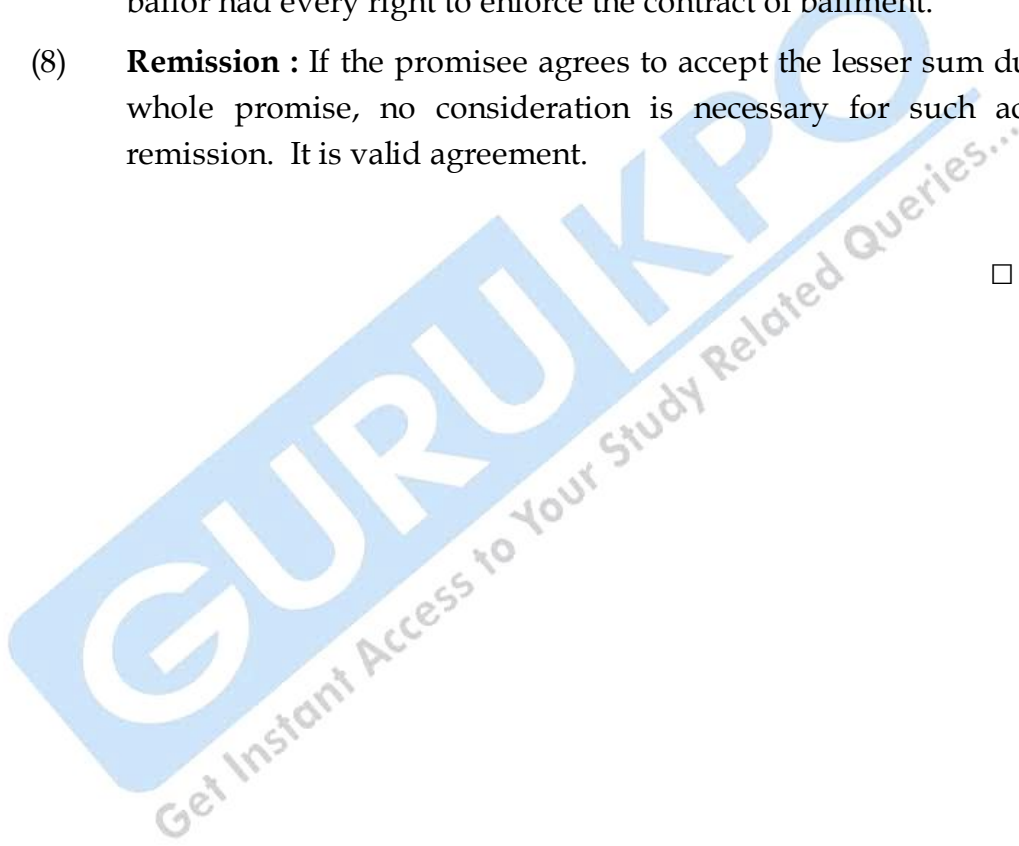
Contract without consideration is void. People believe that if no consideration no contract, because without it is nudum Pactum. It is simply a bare promise, hence, not enforceable by law. It is said that Ex Nudo Pacto Non Oritur Actio - means, out of bare promise, no action arises. It is also stated in section 25 that some exception are there, without

consideration the agreement will be valid and enforceable by law. They are as follows :

- (1) **Agreement on Account of Natural Love and Affection :** If the agreement is made on account of natural love and affection between the parties (promisor and promisee) agreement is valid even without consideration. If the following conditions are satisfied/fulfilled :
 - (i) The agreement is in written form,
 - (ii) It is registered under the law,
 - (iii) It is made only out of natural love and affection between the parties, and
 - (iv) There is close relation between the parties.
- (2) **Promise to Compensate Voluntary Service :** If a person performs an obligation for the other person wholly or in part, is valid even without consideration under following conditions :
 - (i) If the person willingly done something voluntarily for the promisor.
 - (ii) If the person has done something which the promisor was legally compelled to do so under section 25(2).
- (3) **Promise to Pay a Time Barred Debt :** If a debtor promises to pay his time barred debt in writing and under his signature or if the promise is given authorized agent to pay the time barred debt, no fresh consideration is required.
- (4) **Contract of Agency :** According to section 185 of Indian contract Act, 1872, no consideration is necessary for creating agency.
- (5) **Gift Actually Made :** Without consideration will not affect its validity of contract between the doner and donee. Gifts once given cannot be recovered on the ground of absence of consideration.

- (6) **Promise of Charities** : Only promise of charity is made without consideration, is not enforceable by law. But if promise made to pay charity and promisee started some construction and promisor did not pay, it may be recovered to the extent of the liability incurred by the promisee.
- (7) **Contract of Gratuitous Bailment** : In the context of gratuitous bailment, the bailor has not given consideration, inspite of it the bailor had every right to enforce the contract of bailment.
- (8) **Remission** : If the promisee agrees to accept the lesser sum due or whole promise, no consideration is necessary for such act of remission. It is valid agreement.

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CHAPTER-7

Void Agreement

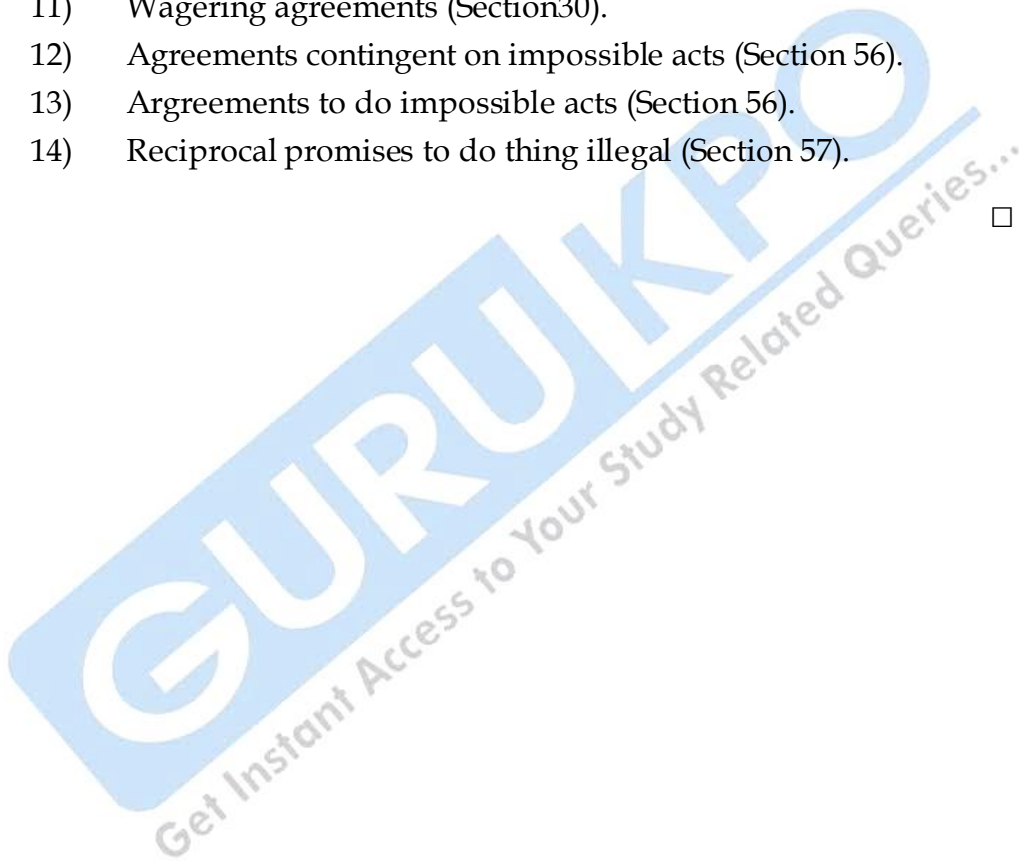
Q.1. What is void Agreement? Briefly state the various agreements that are expressly declared to be void under Indian Contract Act, 1872.

Ans.: According to Indian Contract Act, 1872 [Section 2(G)] defined, "An agreement not enforceable by law is said to be void." Such agreements are ab-initio void, null in the eye of law. Such agreements are expressly declared void. These agreements are void agreements. They are as under:

- (1) Agreements by incompetent parties e.g. minors, persons of unsound mind and persons disqualified by law of the country.
- (2) Agreements made under mutual mistake of material facts specially the bilateral mistake (Section 20).
- (3) Agreements of which the consideration or object is unlawful [section 23] e.g.
 - (i) If it is forbidden by law.
 - (ii) If permitted, it would defeat the provisions of any law.
 - (iii) If it is fraudulent.
 - (iv) If it involves or implies injury to the person or property of another.
 - (v) If the court regards it as immoral.
 - (vi) If the court regards it as opposed to public policy.
- (4) Agreements of which the consideration or object is unlawful in part and cannot be separated from the lawful part (Section 24).

- (5) Agreements made without any consideration (Section 25) with certain exceptions.
- (6) Agreements made in restraint of marriage (Section 26).
- (7) Agreements in restraint of trades (Section 27).
- (8) Agreements in restraint of legal proceedings (Section 28).
- (9) Agreements the meaning of which is uncertain (Section 29).
- (10) Agreements contingent on impossible acts (Section 36).
- (11) Wagering agreements (Section 30).
- (12) Agreements contingent on impossible acts (Section 56).
- (13) Agreements to do impossible acts (Section 56).
- (14) Reciprocal promises to do thing illegal (Section 57).

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CHAPTER-8

Remedies for Breach of Contract

Q.1. Discuss the remedies available to an aggrieved party in the case of breach of contract.

Ans.: When the promiser fails to perform his obligations towards promisee, the promisee (the injured party) gets some remedy against the promiser any one or more following remedies.

- (1) Suit for Rescission of the Contract
- (2) Suit for Damages
- (3) Suit for Quantum Meruit
- (4) Suit for Specific Performance
- (5) Suit for Injunction

(1) **Rescission of the Contract :** Rescission means revocation or setting aside of a contract or cancellation or putting an end to a contract. When one of the parties to a contract breaks the contract, the other party may sue and refuse further performance. The aggrieved party is also entitled to claim compensation of damages caused to him due to non fulfillment of the contract. A promise to sell a horse to B for Rs.50,000/- on 1st July. But B fails to pay the amount. Now he is a entitled to rescind the contract.

(2) **Suit for Damages :** The another remedy for breach of contract is suit for damages. Damages means monetary compensation payable by defaulting party to the aggrieved party for the loss suffered by the aggrieved party as a result of breach of contract. The aggrieved party may claim for damages. The main object is to compensate the injured party for the monetary loss naturally suffered by him to the break of contract.

The important type of damages are :

- (i) **Ordinary Damages** : These are also called natural damages, which arise in ordinary course of events from break of contract. It requires aggrieved party must have suffered damages by breach of contract and damages must be the proximate or direct consequence of the breach of contract. (Hadley v. Baxendale (1894) IEX.341)
 - (ii) **Special Damages** : Special damages are those damages if the parties had knowledge about such damages when they made the contract, to be likely to result from the breach of contract (Section 73 Para 1) (Simpson v. London North Western Railway Com (1876)]
 - (iii) **Nominal Damages** : Where the injured or aggrieved party suffered no loss or very negligible loss, the court may still award him/her nominal damages merely acknowledge that the aggrieved or injured party has proved his case and won it.
 - (iv) **Vindictive/Exemplary Damages** : Heavy damages are imposed by the court to discourage the faulty party under the two following cases :
 - (a) Breach of a contract to marry.
 - (b) wrongful dishonour of a cheque by a banker.
 - (v) **Liquidated Damages** : According to Section -74 of Indian Contract Act when the parties decide a fair and genuine pre estimated amount of damages likely to result due to breach of contract, parties are bound to pay in the event of breach of contract. Such certain amount is called liquidated damages. The aggrieved party will get such liquidated damages. The aggrieved party will get such liquidated amount.
- (3) **Suit for Quantum Meruit** : The literal meaning of quantum meruit means 'as much as' merited or as much as earned. According to this doctrine, a party is entitled to claim payment as much as a amount he had earned. This right is available only under the following circumstances.
- (i) When a contract is discharged by breach during the course of performance

- (ii) When the party does something for another not intending to do gratuitously and the other enjoy the benefit of the act.
- (4) **Suit for Specific Performance** : Sometimes award of damages are not considered to be an adequate remedy in certain cases and therefore the court of law can direct the party in case of breach of contract according to terms and conditions of the contract
 - (i) When there exists no standard for measuring the actual damage caused by the non performance of the act agreed to be done.
 - (ii) When the act agreed to be done is such that monetary compensation for non performance would not afford adequate relief.

The specific performance is not granted in the following cases :

- (i) Where damages are an adequate remedy for breach.
- (ii) Where the contract is in its nature revocable.
- (iii) Where the contract is uncertain.
- (iv) Where the contract is entered into by trustees in breach of their trust.
- (v) Where the contract is inequitable to either party.
- (vi) Where it is not possible for the court to supervise the contract.
- (vii) When a company makes any contract the powers not conferred on it by its Memorandum of Association.
- (viii) Where contract is not certain.
- (ix) Where one of the parties is a minor.
- (5) **Suit for Injunction** : It is an order of a court prohibiting a party to a contract from doing a particular thing or from doing something against the terms and conditions of the contract. If the party breaches the contract, the aggrieved party can go to court for injunction. The court has discretionary powers to grant injunction order in case of clear negative stipulation and in case of inferred negative stipulation.

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CHAPTER-9

Indemnity and Guarantee

Q.1. Distinguish between Indemnity and Guarantee. In what circumstances a surety is discharged from his liability.

Ans.: The contract of Indemnity and Guarantee are governed under section 124 to 147. To distinguish between these two, their concept is to be cleared.

Meaning of Indemnity, "In the contract of indemnity, there are two parties i.e. indemnifier and Indemnity holder. The indemnifier promises to protect the indemnified from loss caused to him by the conduct of the promiser or by the conduct of other party."

According to Section 124, "A contract of indemnity is 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".

On the other hand, contract of Guarantee defined under section 126, "A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default."

Now both can be distinguished as follows :

Distinguish between Indemnity & Guarantee Contract

S. No.	Basis of comparison	Indemnity	Guarantee
1-	Definition	One party promises to pay loss caused by the fault of himself or by the conduct of the other party. The promisor will save him is called the contract of Indemnity (Section124)	It is a contract to perform the promise or discharge his liability of a third person in case of his default (Section126).
2-	Object	It's main object is to save the promisee from loss.	It is meant to provide the assurance as to performance of promise or discharge of liability.
3-	No. of Parties	There are only two parties indemnifier and indemnity holder.	In the Contract of guarantee Principal debtor/creditor and surety are three parties.-+
4-	No. of Contracts	Only one contract between the two parties.	There are three contracts between three parties such as i) Principal debtor and creditor; ii) Creditor and surety; iii) the principal debtor and surety.
5-	Request of the Debtor	It is not necessary for the indemnifier to act on the request of the debtor.	The surety may give guarantee at the request of the debtor.
6-	Right of the	An indemnifier cannot	The guarantor, on

	Parties	sue a third party in his own name unless there is no privity of contract. He can do so only if there is an assignment in his favour.	discharging the debt due by the principal debtor can proceed against the principal debtor in his own right.
7-	Existence of Debt or Duty	The risk of any loss happening is the only contingency against which the indemnifier undertakes to indemnify.	The existing debt or duty which is guaranteed by the surety.
8-	Consideration	The consideration in an indemnity contract is direct.	But there is indirect consideration for the surety. The principal debtor's original debt is his consideration
9-	Suit against Third Party	The indemnifier cannot claim against the third party who caused the loss to the subject matter, unless this right of the indemnified has been transferred to him.	The surety can sue the principal debtor after making payment of debt to the creditor.
10-	Presence of any loan or credit	In case of indemnity contract presence of any loan or credit is not found. The consideration in an indemnity contract is direct.	It is basis of any guarantee contract.
11-	Right of Restitution	The indemnifier has no right to get back the amount once paid.	Contrary to it the surety has the right to get back the amount that was paid by him to the creditor

			from the principal debtor.
12-	Cessation of Liability	Under indemnity contract the liability ends when contract comes to the end.	In contract of guarantee, it is ended if any change is made in the conditions of the contract without the consent of the surety.
13-	Financial Interest	In addition to indemnity, the person who has given, has some financial interest in the transaction.	Here in the guarantor is entirely unconnected with the contract except by means of his promise to pay on debtor's default because he has no financial interest in the contract.
14-	Origin of Liability	The liability is originated only when a loss is happened. There is no liability when there is no loss.	The secondary liability of surety will become primary when the principal debtor commits a default.
15-	Capacity to Contract	Both the parties of indemnity contract must have the capacity to contract.	In a guarantee contract, it is not necessary for the principal debt or to be capable for entering into a valid contract, but surety's contractual capacity is a must.

Q.2. In what circumstances a surety is discharged from his liability?

Ans.: Under the following ways in varying circumstances a surety is discharged from his liability :

(1) **By Revocation**

- (i) By notice of revocation by surety (Section 130)
- (ii) Death of surety (Section 131)

- (iii) Novation (Section 62)
- (2) **By Conduct of the Creditor** – under these conditions
 - (i) Variation of terms without consent of surety (Section 133)
 - (ii) Release or discharge of Principal debt or without the consent of surety (Section 134)
 - (iii) Compounding by creditor with principal debtor without the consent of surety (Section 135)
 - (iv) Creditor's act or omission impiring surety's eventual remedy (Section 139)
 - (v) Loss of security (section 141)
- (3) **By Invalidation** – under following circumstances :
 - (i) Guarantee obtained by fraud or misrepresentation (Section 142)
 - (ii) Guarantee obtained by silence (Section 143)
 - (iii) Failure of consideration
 - (iv) Failure of co-surety to join the suretyship (Section 144)

Q.3. What is doctrine of Ratification? Explain the conditions and rules of Ratification.

Ans.: The doctrine of Ratification applies where one person does something for another without the knowledge and authority. The person on behalf of the act is done should opt either to reject it or adopt it. In case decides to adopt it, the agency relationship is created but not other wise.

According to Section 196 of the Act, "where acts are done by one person on behalf of another but without his knowledge or authority, he may elect to ratify or to disown such act. If he ratifies them, the same effects will follow as if they had been performed by his previous authority."

Example : A without authority lends B's money to C from whom B accepts the interest on the money to C. From B's conduct implies a ratification of the loan.

Conditions and Rules of Ratification are as follows :

- (i) The act must have been done for or on account of the Principal.

- (ii) The existence of Principal is a must at the time when the agent acted.
- (iii) The principal must have contractual capacity at the time of contract of agency and at the time of ratification.
- (iv) The acts to be rectified must be lawful and not void or ultra vires.
- (v) Ratification must be expressed or implied.
- (vi) It must be made with full knowledge of all the material facts.
- (vii) The ratification must be related to the whole act and not to a part of it.
- (viii) Ratification cannot be to give damages to a third party or terminating any right of third party.
- (ix) Ratification must be made within the time fixed for otherwise it will not be valid.
- (x) Ratification must be within reasonable time if fixed time is not decided.
- (xi) Ratification must be communicated to the agent by principal within proper time.
- (xii) Ratification can be of acts which principal had the power to do.
- (xiii) Ratification may be applied retrospectively.
- (xiv) Ratification does not mean for such past ratified act for future also.
- (xv) If ratification is made by agent for past acts, he will become able to receive remuneration from the principal.

Q.4. "No one can give a better title to the goods than what he himself has" Comment on this statement and also discuss the exceptions to this rule as per Sales of Goods Act.

Ans.: According to Sale of Goods Act, 1930, Section 27 states that when a seller who is not the owner of the goods but sells the same without the consent of the true owner the goods or without proper authority, the buyer also cannot acquire better title to the goods than what the seller had, unless the owner is precluded by his conduct from denying the seller's authority to

sell. Hence, a person who is not the owner of the goods cannot make a third person owner of the goods. He can make the third person owner of the goods only if he sells them under authority of the owner or with the consent of the owner. Similarly, if a person purchases stolen property, the true owner can recover from him. For example - A finds a necklace of B and sells it to a third party (say C) who purchases it for the value and in good faith. The true owner i.e. B can recover the necklace from C, since A had no title to the necklace (*Faruquharson v. King*) 1902 A.C. 325.

Exceptions to the Principle : In the interest of trade, commerce and industry, some exceptions to the rule of *Nemo dat quod Non habit* which means no one can give something which he does possess have been recognized. Contrasted with the above maxim is the principle that a person who buys the goods in good faith for value and without notice should get a title the law relating to transfer of title seeks to balance these two conflicting principle of title to meet the interest of Business in modern times. They are as follows :

- (i) **Title by Estoppel :** According to Section 27, where the true 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 the goods, and induces him to buy goods, he shall be estopped from denying the fact and in such case, the buyer gets a better title that of the seller.
- (ii) **Sale by a Mercantile Agent :** Suppose A buys goods and get good title from a mercantile agent who has no authority to sell if :
 - (a) The mercantile agent possesses the goods or documents of title to goods with the consent of the owner.
 - (b) The agent sales the goods while acting as an agent.
 - (c) Buyer acts in good faith; and
 - (d) The buyer had no knowledge of the defect title of the seller of the goods at the time when he entered into the contract.
- (iii) **Sale by Co-owner :** According to (Section 28) if any buyer in goods faith, for valuable consideration and assuming the seller as the real owner, buys goods ;from one of the joint owners, he gets good title to goods he bought.

- (iv) **Sale by a Person in Possession under Voidable Contract (Section 29)** : If the seller sells the goods acquired under voidable contract but the contract of sale has not been rescinded at the time of sale and the buyer purchases them in good faith without the notice of seller's defective title, such buyer acquires a goods title to the goods.
- (v) **Sale by Seller in Possession of Goods after Sale** : According to Section 30(i) of the act provides that where a seller, after having sold the goods, is in possession of goods sold or the documents of title to the goods, and again sells them or pledges the same either by himself or through a mercantile agent to a new buyer, who acts in good faith and without the notice of prior sale, he will get a good title to the goods, but the possession of seller must be as seller and not as hirer or bailee. The hirer or the bailee cannot sell the goods so as to give a good title to the transferee.
- (vi) **Sale by Buyer in Possession of Goods** : According to Section 30(2) when a buyer, having bought or agreed to buy goods, obtains with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent for him, of goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of title goods, shall have effect as if such lien or right did not exist.
- (vii) **Sale by Unpaid Seller [(Section 54(3))]** : When an unpaid seller who has used his right of lien or stoppage of goods in transit, resale the goods, the buyer acquires a good title to the goods as against the original buyer.
- (viii) **Exceptions in Other Acts** : In all the cases described below, if the seller sells the goods, even though he is not the owner of the goods, the buyer gets a good title to the goods.
 - (a) **Sale by an official assignee** or liquidator of a company.
 - (b) **Sale by a person** who finds the lost goods under certain circumstances (Section 169 of the contract Act 1972)

- (c) **Sale by pawnee** of pledge under certain conditions (Section 176 of contract Act).
- (d) **Sale in a Market Overt** : It is under British or English law where buyer acquires a good title to the goods in good faith and the goods have been sold according to the custom of the market. The buyer buys goods in good faith for valuable consideration and without knowing the defective title of the seller.



CHAPTER-10

Disputes Redressal Agencies : The District Forum

Q.1. Briefly describe the consumer disputes Redressal machinery given in the Consumer Protection Act, 1986.

Ans.: To provide prompt, simple and cheap redressal of consumer disputes, a three-tier quasi-judiciary machinery has been set up. It includes the following bodies under Section 9 of Consumers Disputes Act 1986.

- (1) The District Forum
- (2) The State Commission
- (3) The Central/National Commission

(1) **The District Forum :**

- (i) Section 9(a) empowers the State Govt. to establish a district forum at each district or more if deems fit.
- (ii) It will be composed of one person as President, two other members, one of whom shall be a woman (Section 10(1)).
- (iii) **Qualification :** President shall be a person who is or has been or is qualified District Judge. Other members shall be not less than 35 years of age, bachelor degree holder of any University and ten years experience relating to solution of problems of economics, commerce, law, accountancy, industry and public affairs or administration (Section 10(1) maximum age is 65 years.

- (iv) **Disqualification** : A member if convicted, charged of moral turpitude, undischarged insolvent, insane, dismissed Govt. Employee on financial ground.
- (v) **Jurisdiction of District Forum** : Claims upto Rs. 20 lakh comes in the jurisdiction of D.F. The Geographic or territorial jurisdiction is also considered.
- (vi) The Complaint redressal procedure may be in two major heads :
 - (A) Procedure for complaints relating to goods.
 - (B) Procedure for complaints relating to service.
- (A) **Complaints relating to Goods** :
 - (i) The D.F. after admission of a complaint refer a copy of the complaint directing him to give his version of a case within a period of thirty days or not extending fifteen days as may be granted by District Forum [Section 13(1)C].
 - (ii) Settlement of disputes in case the opposite parties denies or fails to represent his case : If within time given by DF fails to represents, the DF shall proceed to settle the consumers disputes in under mentioned manner [(Section 13(1)C)].
 - (iii) D.F obtains a sample of goods from complainant, it will be sealed and authenticated in a prescribed manner [(Section 13(1)C)].
 - (iv) The sample will be referred for testing or analysis the finding report will be submitted within 45 days.
 - (v) The required fee of testing will be given by complainant to the DF.

- (vi) The DF will remit the fee to the laboratory for testing.
- (vii) The DF after receipt of the laboratory report sends to the opposite party alongwith remarks.
- (viii) On receipt of laboratory report, the opposite party has to submit in writing his objections in regard to the report to DF.
- (ix) DF provides a reasonable opportunity to the complainant and opposite party of being heard, as to the correctness of the laboratory report, or the objection made in relation thereto.
- (x) After hearing of the both party, DF shall issue order in accordance with provisions of Section 14.

(B) Procedure for Complaints relating to Service :

- (i) The DF on admission of complaint sends a copy to the opposite party to reply within a period of thirty days or extended fifteen days as granted by DF.
- (ii) Proceeding in case the opposite party denies allegations or fails to represent the case within the time given by the District Forum. It will proceed to settle the consumer disputes.
- (iii) If the opposite party denies the allegations or fails to represent his case, the DF shall proceed to settle the case. The opposite party denies the case within the time given by the DF and fails to appear of hearing before DF, then DF may either dismiss the complaint for default or decides on its merits (Sec. 13(2)©..

Order of District Forum : It shall issue an order to the opposite party directing him to do one or more of the following manner :

- (i) To remove the Defect pointed out by the appropriate Laboratory from goods under the dispute.
- (ii) To replace the goods with new goods similar to the disputed one.
- (iii) To return the complainant the price or as case may be, the charges paid by the complainant.
- (iv) Compensation to be given for any loss or injury suffered by the consumer due to negligence of the other party.
- (v) Punitive damages may be ordered to pay.
- (vi) To remove any deficiency or defects etc.
- (vii) To provide adequate costs to the parties [(Section 14(1)].

Appeal against the Order : Any person aggrieved by an order of DF may appeal to the State Commission within 30 day or State Commission may extend the appeal for 30 days more. The appellatant will have to deposit of that amount or Rs.25000, whichever is less.

- (2) **The State Commission :** The State Govt. is empowered to establish by gazette notification for providing justice to entertain complaints of goods and services, the claims may exceed Rs. 20 lakhs but less than one crore. To entertain appeals against the orders of any District Forum within the State.

State Commission will be comprised of one person as its President and atleast two others out of them one woman would be necessary. The President shall be judge of High court, existing or retired. The two other shall be not less than 35 years of age and must be Bachelor degree holder from any recognized University and experience of commerce, Accounting, Law, Economics and industry. The maximum age of President is 67 years.

The procedure of redressal of grievances of the State Commission is the same as in the case of DF. If any aggrieved party is dissatisfied by the judgment, he may appeal to the National Commission.

- (3) **The National Commission :** According to section 9(C), the Central Government by notification can establish a National Consumer Dispute Redressal Commission. This Commission shall consist of a President and atleast four members shall be elected, one of them will be woman. The President who is or has been a judge of the Supreme Court. The other members shall not be below 35 years. They should be at least graduate relating to Economics, Law, Commerce, and Accountancy, industry, public affairs or Administration. Their term of office maybe of five years or upto the age of 70 years, whichever is earlier [Section 20(2)].

The jurisdiction of the National Commission is, if any claim exceeds Rs. one crore. To entertain appeals against the orders of any State Commission which is pending and unsatisfying to the consumer. The manner is the same as explained in the District Court.

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CHAPTER-11

Introduction to Partnership

Q.1. Sharing of profits is the Prima Facie evidence of partnership and not the conclusive evidence. Explain this Statement.

Ans.: The sharing of profit is not a conclusive proof or evidence of partnership. It is only the prima facie evidence of partnership. Actually, the real relations of partner as a mutual agency is the existence of partnership. The genesis of partnership is by agreement not by status. Though section 6 of the Act describes no partnership without sharing of profits. A sharing of profit is not conclusive evidence of test that partnership exists. Explanation II to Section 6 makes it clear that the receipt by the person of a share of profit of a business or payment contingent upon the earning of profits or carrying with the profits earned by a business does not of itself make him a partner with the person carrying on the business. The following specific persons who may receive a share of profits and yet to be no partner. Such persons may be :

- (i) Money under sharing profits in lieu of interest or in addition to an interest. Such money lender does not become a partner of a firm.
- (ii) Servant or agent receiving share in profits as his remuneration, salaries and bonus etc.
- (iii) Widow or child of deceased partner receiving annuity does not make her partner.

- (iv) Seller or previous owner of the business as consideration for sale of goodwill or its share thereof.

Under Section 6(2) the following persons are not treated as partners though they get share in profits.

- (a) Member of Hindu undivided family who carry on business ;and share profits among them amongst partner.
- (b) Business by Buddhist couple though conducted and share in profits but they are not treated as partners.



CHAPTER-12

Dissolution of Firm

Q.1. Distinguish between the dissolution of partnership and dissolution of firm. State the various ways of dissolution of a firm.

Ans.: Dissolution of firm and partnership are different from each other. According to Section 39, "The dissolution of partnership between all partners of a firm is called the dissolution of the firm. The dissolution in partnership involves a change in relationship of partners when another partner run the business but some may leave the firm. But in dissolution of partnership, there is complete break down or extinction of the relationship between all the partners of the partnership firm. But wherein a firm two partners ;form into a partnership business and any of them leaves the partnership, dissolution of firm takes place. In cases where more than two partners formed into a partnership business and any of them leaves the partnership or dies or adjudicated as insolvent, the remaining two partners can reconstitute the partnership firm and can save ;the firm from dissolution.

The various ways of dissolution of a partnership firm are as follows :

- (1) Dissolution by voluntary act of partners which comprises following ways :
 - (i) Dissolution by consent
 - (ii) Dissolution by agreement
 - (iii) Dissolution by notice
- (2) Dissolution by operation of law i.e.

- (A) Compulsory Dissolution :
 - (i) Insolvency of partners.
 - (ii) Certain events making the business of partnership unlawful.
- (B) Dissolution of a partnership firm on happening of a certain contingencies which may be as follows :
 - (i) By expiry of term.
 - (ii) By death of partner.
 - (iii) By completion of undertaking or ventures.
- (3) Dissolution by the order of the court at the suit of a partner on any of the under mentioned grounds :
 - (i) Insanity of a partner.
 - (ii) Misconduct of a partner.
 - (iii) Permanent incapacity of a partner.
 - (iv) Willful or repeated or persistent breach of agreement by a partner.
 - (v) Transfer of interest by a partner.
 - (vi) Business carried on at a loss.
 - (vii) Any other just and equitable ground.

□ □ □

B. Com (Part-I) Examination, 2011
(10+2+3 Patterns) (Faculty of Commerce)
(BUSINESS ADMINISTRATION)
First Paper: Commercial Law

Time: One Hour

Max. Marks: 40

OBJECTIVES PART- I
Attempt all questions

1. Answer each of the following questions in not more than 20 words. Each question carries two marks.
 - (i) When is a communication of proposal complete?
 - (ii) What do you mean by competency to contract?
 - (iii) What is quasi contract?
 - (iv) What do you understand by Pledge?
 - (v) What is partnership at will?
 - (vi) Who can be President of the State Commission?
 - (vii) What is lien?
 - (viii) What is meant by transfer of title?
 - (ix) What is Agency contract?
 - (x) Define contract of Guarantee.

2. Answer each of the following questions in not more than 50 words each questions carries four marks.
 - (i) Distinguish between coercion and undue influence.
 - (ii) Distinguish between Sale and Agreement to Sale.
 - (iii) Explain the consequences of non-registration of a firm.
 - (iv) "Agreements without consideration are void."
 - (v) What are the rights of the consumer under Consumer Protection Act?
Mention any four rights.

DESCRIPTIVE PART-II

Time Allowed: 2 Hours

Max. Marks: 60

Attempt three questions in all, Selection at least one question from each Section. All questions carry equal marks of 20 each. Each question has internal choice in the form of either/or.

Section A

3. “All contracts are agreements but all agreements are not contracts.” Discuss.
or

Discuss the various methods in which contract may be discharged.

Section-B

4. Define bailment and state the duties of a bailor and a bailee.
or

What is District Consumer Forum? Explain the procedure adopted by the District Forum in settling consumer disputes.

Section-C

5. Define Partnership. Discuss the main features of a Partnership?
or

“No seller can give to the buyer of goods a better title than he himself has.”
Comment. Are there any exception to this rule? M

B. Com (Part-I) Examination, 2010
(BUSINESS ADMINISTRATION)
First Paper: Commercial Law

Time: One Hour

Max. Marks: 40

OBJECTIVES PART- I
Attempt all questions

1. Answer each of the following questions in not more than 20 words. Each question carries two marks.
 - (i) What is counter-offer?
 - (ii) When can an offer be revoked?
 - (iii) When is consent said to be free?
 - (iv) What is contingent contract?
 - (v) What is 'Gratuitous Bailment'?
 - (vi) What is District Consumer Forum?
 - (vii) What do you mean by undisclosed principle?
 - (viii) What do you mean by "Unascertained Goods"?
 - (ix) What is meant by "unpaid Seller"?
 - (x) Is the registration of partnership firm compulsory in India?

2. Answer each of the following questions in not more than 50 words each questions carries four marks.
 - (i) Distinguish between void Agreement and void contract.
 - (ii) Distinguish between 'Fraud' and 'Misrepresentation'.
 - (iii) Distinguish between sub agent and substituted agent.
 - (iv) Distinguish between general lien and particular lien.
 - (v) Explain the positions of minor partner in a firm.

DESCRIPTIVE PART-II

Time Allowed: 2 Hours

Max. Marks: 60

Attempt three questions in all, Selection at least one question from each Section. All questions carry equal marks of 20 each. Each question has internal choice in the form of either/or.

Section A

3. What do you mean by 'capacity to contract'? Describe the rules relating to the contract made by the minors.

or

Write short notes on the following :

- (a) Appropriation of payment.
- (b) Remedies available to the aggrieved party in case of breach of contract.

Section-B

4. Distinguish between a contract of indemnity and a contract of guarantee. In what circumstances a surety is discharged his liability?

or

Distinguish between a sub-agent and a substituted agent. When is an agent personally bound by contract into by him on behalf of his principal.

Section-C

5. Distinguish between condition and warranty. What are the implied conditions in a contract of sale of goods according to the Sale of Goods Act?

or

Distinguish between dissolution of partnership and dissolution of a firm. State the various ways of dissolution of a firm.

B. Com (Part-I) Examination, 2009
(BUSINESS ADMINISTRATION)
First Paper: Commercial Law

Time: One Hour

Max. Marks: 40

OBJECTIVES PART- I
Attempt all questions

1. Answer each of the following questions in not more than 20 words. Each question carries two marks
 - (i) What do you mean by an illegal agreement?
 - (ii) What is specific offer?
 - (iii) Who is minor?
 - (iv) What is mistake?
 - (v) "Insurance contract are contingent contracts", comments.
 - (vi) What is contract of Indemnity?
 - (vii) What do you mean by Substituted agent?
 - (viii) What do you mean by Substituted agent?
 - (ix) What is existing goods?
 - (x) What is constructive delivery of goods?

2. Answer each of the following questions in not more than 50 words each questions carries four marks.
 - (i) Distinguish between Valid Agreement and Violable contract.
 - (ii) Write a short note on 'Acceptance by conduct'
 - (iii) "Mere silence is not a fraud" comment.
 - (iv) "The liability of surety is co-extensive with that of the principal.
 - (v) Distinguish between condition and warranty.

DESCRIPTIVE PART-II

Time Allowed: 2 Hours

Max. Marks: 60

Attempt three questions in all, Selection at least one question from each Section. All questions carry equal marks of 20 each. Each question has internal choice in the form of either/or.

Section-A

3. "An agreement enforceable by law is a contract." Comment and discuss the essentials of a valid contract.

or

Define consideration. State the characteristics of valid consideration.

Section-B

4. Define bailment and state the duties of a bailer and a bailee.

or

Define Agency. How is it created and terminated?

Section-C

5. "No one can give a better title to the goods than what he himself has". Comment on this statement and also discuss the exceptions to this rule.

or

Define partnership. Discuss the main features of a partnership.

B. Com (Part-I) Examination, 2008
(BUSINESS ADMINISTRATION)
First Paper: Commercial Law

Time: One Hour

Max. Marks: 40

OBJECTIVES PART- I
Attempt all questions

1. Answer each of the following questions in not more than 20 words. Each question carries two marks.
 - (i) What is counter-offer?
 - (ii) When can an offer be revoked?
 - (iii) When is consent said to be free?
 - (iv) what is contingent contract?
 - (v) what is "Gratuitous Bailment"?
 - (vi) What is District Consumer Forum?
 - (vii) What do you mean by undisclosed principal?
 - (viii) What do you mean by "Unascertained Goods"?
 - (ix) What is meant by "unpaid Seller"?
 - (x) Is the registration of partnership firm compulsory in India?

2. Answer each of the following questions in not more than 50 words. Each question carries four marks.
 - (i) Distinguish between void agreement and void 'Misrepresentation'
 - (ii) Distinguish between 'Fraud' and 'Misrepresentation'?
 - (iii) Distinguish between sub-agent and substituted agent.
 - (iv) Distinguish between general lien and particular lien.
 - (v) Explain the position of minor partner in a firm.

DESCRIPTIVE PART- II

Time: Two Hours

Max. Marks: 60

Attempt three questions in all, Selection at least one question from each Section. All questions carry equal marks of 20 each. Each question has internal choice in the form of either/or.

Section A

3. What do you mean by 'capacity of contract'? Describe the rules relating to the contracts made by the minors.

or

Write short notes on the following:

- (i) Appropriation of payment
- (ii) Remedies available to the aggrieved party in case of breach of contract.

Section-B

4. Distinguish between a contract of indemnity and a contract of guarantee. In what circumstances a surety is discharged from his liability?

or

State the composition and jurisdiction of the National Commission explain in brief, the procedure adopted by this commission for the redressal of consumer complaints under the consumer Protection Act.

Section-C

5. Distinguish between condition and warranty. What are the implied condition in a contract of sale of goods according to the Sale of Goods Act.

or

Distinguish between dissolution of partnership and dissolution of a firm. State the various ways of dissolution of a firm.

**B. Com (Part-I) Examination, 2007
(BUSINESS ADMINISTRATION)
First Paper: Commercial Law**

Time: One Hour

Max. Marks: 40

**OBJECTIVES PART- I
Attempt all questions**

1. Answer each of the following questions in not more than 20 words. Each question carries two marks.
 - (i) When is a communication of proposal complete?
 - (ii) What do you mean by 'competency to contest'?
 - (iii) What is injunction?
 - (iv) What is quasi contract?
 - (v) What do you understand by appropriation of payment?
 - (vi) What do you understand by contract of indemnity?
 - (vii) What is continuing guarantee?
 - (viii) What do you mean by sub-agent?
 - (ix) What is ratification?
 - (x) What do you mean by 'Partner by estoppels'?

2. Answer each of the following questions in not more than 50 words. Each question carries four marks.
 - (i) Distinguish between coercion and undue influence.
 - (ii) Distinguish between contingent contract and waging agreement.
 - (iii) Explain the methods of revocation of proposal.
 - (iv) Distinguish between sale and agreement to sell.
 - (v) Explain the rights of a surety.

DESCRIPTIVE PART- II

Time: Two Hours

Max. Marks: 60

Attempt three questions in all, Selection at least one question from each Section. All questions carry equal marks of 20 each. Each question has internal choice in the form of either/or.

Section-A

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

or

What is void agreement? Briefly state the various agreements that are expressly declared to be void under the Indian contract Act.

Section-B

4. What is bailment? State the duties and rights of bailee.

or

What is District Consumer Forum? Explain the procedure adopted by the District forum in settling consumer disputes.

Section-C

5. What is meant by unpaid seller? Explain the rights of an unpaid seller.

or

Discuss the right and duties of partners.

B. Com (Part-I) Examination, 2006
(BUSINESS ADMINISTRATION)
First Paper: Commercial Law

Time: One Hour

Max. Marks: 40

OBJECTIVES PART- I
Attempt all questions

1. Answer each of the following questions in not more than 20 words. Each question carries two marks.
 - (i) What is voidable contract?
 - (ii) What is meant by acceptance?
 - (iii) What is alternation of contract?
 - (iv) What do you understand by pledge?
 - (v) What is irrevocable agency?
 - (vi) What is gratuitous bailment?
 - (vii) Define reciprocal promises.
 - (viii) What is delivery?
 - (ix) Who is an unpaid seller?
 - (x) What is partnership at will?

2. Answer each of the following questions in not more than 50 words. Each question carries four marks.
 - (i) When is the communication of proposal and acceptance complete?
 - (ii) Explain in brief the exceptions to the rule that agreements in restraint of trade are void.
 - (iii) Distinguish between sub-agent and substituted agent.
 - (iv) Distinguish between condition and warranty.
 - (v) Explain the consequences of non-registration of a firm.

DESCRIPTIVE PART- II

Time: Two Hours

Max. Marks: 60

Attempt three questions in all, Selection at least one question from each Section. All questions carry equal marks of 20 each. Each question has internal choice in the form of either/or.

Section-A

3. What do you understand by competency of contract? Discuss the positions of a minor in this connection.

or

Discuss the various methods in which contract may be discharged.

Section-B

4. Distinguish between a contract of indemnity and a contract of guarantee. In what circumstances a surety is discharged from his liability?

or

Describe the composition, jurisdiction and procedure of disposal complaints by National commission.

Section-C

5. No seller can give to the buyer of goods a better title than he himself has. Comment. Are there any exception to this rule?

or

Distinguish between Dissolution of Partnership and Dissolution of a firm. How can a firm be dissolved?