

CA - CPT

MERCANTILE LAWS



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-AN ENTRY INTO LEGAL WORLD

CA - CPT

PAPER – 2 MERCANTILE LAWS



PART – A
INDIAN CONTRACT ACT, 1872 **15 MARKS**

PART – B
THE SALE OF GOODS ACT, 1930 **15 MARKS**

PART – C
THE PARTNERSHIP ACT, 1932 **10 MARKS**

TOTAL **40 MARKS**

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PART – A

INDIAN CONTRACT ACT, 1872

15

MARKS

1. NATURE OF CONTRACT
2. OFFER AND ACCEPTANCE
3. CONSIDERATION
4. CAPACITY OF THE PARTIES
5. FREE CONSENT
6. LAWFUL CONSIDERATION AND OBJECT
7. VOID AGREEMENTS
8. PERFORMANCE OF CONTRACT
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PART – B

THE SALE OF GOODS ACT, 1930

15

MARKS

1. FORMATION OF CONTRACT OF SALE
2. CONDITIONS AND WARRANTIES
3. TRANSFER OF OWNERSHIP AND DELIVERY OF GOODS
4. UNPAID SELLER

PART – C

PARTNERSHIP ACT, 1932

10

MARKS

1. GENERAL NATURE OF PARTNERSHIP
2. RELATIONS OF PARTNERS
3. REGISTRATION AND DISSOLUTION OF FIRM

TOTAL

40 MARKS

THE INDIAN CONTRACT ACT, 1872

CHAPTER-1 NATURE OF CONTRACT

CONTENTS: -

1. DEFINITIONS
2. ESSENTIAL ELEMENTS OF A VALID CONTRACT
3. TYPES OF CONTRACTS

1. DEFINITIONS	
A. CONTRACT Sec.2(h)	An agreement enforceable by law.
B. AGREEMENT Sec.2(e)	Every promise and every set of promises forming consideration for each other.
C. ENFORCEABILITY BY LAW	An agreement which creates legal obligation on the part of parties.
D. PROMISE Sec.2(b)	A proposal when accepted becomes a promise.
E. CONSIDERATION	Price paid by the one party for the promise of the other. Technical word meaning 'QUID PRO QUO' i.e. something in return

2. ESSENTIAL ELEMENTS OF A VALID CONTRACT

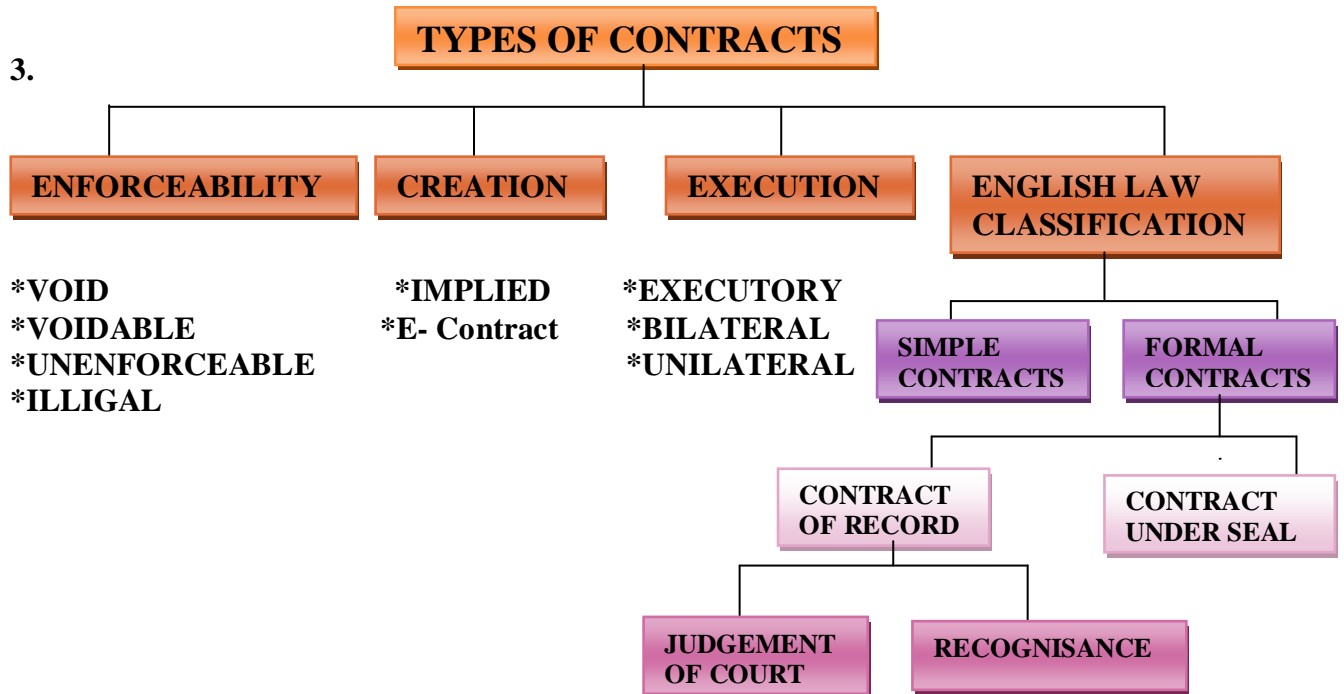
SECTION 10

- All **Agreements** are contracts
- if they are made by the **free consent**
- of the **parties competent to contract**
- for a **lawful consideration** and with a **lawful object** and
- are **not hereby expressly declared to be void.**

ESSENTIAL ELEMENTS OF A VALID CONTRACT	
1. AGREEMENT	In order to constitute a valid contract, there must be an agreement between the parties. To form an agreement, there should be proper offer by one and its proper acceptance by the other.
2. FREE CONSENT	Consent means agreed upon same thing in the same sense i.e. there should be consensus-ad-idem . A consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake. Example: - 'A' threatened to shoot 'B' if he (B) does not sell his house to him Rs. 20000 and 'B' agreed to it. Here the agreement is entered into under coercion and hence voidable at the option of 'B'.
3. COMPETENCY OF THE PARTIES	Parties must have the capacity to enter into a contract otherwise the contract is not valid.
Who is competent to contract	Who is incompetent to contract
• Major	• Minor

<ul style="list-style-type: none"> • Person of Sound mind 	<ul style="list-style-type: none"> • Person of Unsound Mind
<ul style="list-style-type: none"> • Person not disqualified by law from contracting 	<ul style="list-style-type: none"> • Person disqualified by law from contracting
4. LAWFUL CONSIDERATION	<p>Consideration must not be unlawful, immoral or opposed to the public policy.</p> <p>Examples:</p> <p>Unlawful: -A agrees to sell narcotics to B for a sum of Rs. 100000. This agreement is not valid because the consideration is unlawful.</p> <p>Immoral: - An agreement for letting a house to a prostitute for carrying on her vocation there.</p> <p>Opposed to the public policy: - Trading with enemy, Agreement in restraint of marriage, trade, legal proceedings etc.</p>
LAWFUL OBJECT	<p>Object means the purpose or design. The object of the agreement must be lawful.</p> <p>Example:- 'A' and 'B' make an agreement for smuggling out some goods from India to another country. This agreement cannot be enforced in the court because the object is unlawful.</p>
NOT EXPRESSLY DECLARED VOID	<p>An agreement should not be one which is expressly declared void by the law.</p> <p>Example:- Agreement in restraint of trade, marriage or legal proceedings are expressly declared void by the law and hence not enforceable.</p>
INTENTION TO CREATE LEGAL RELATIONSHIP	<p>Parties must have an intention of creating the legal relationship. An agreement of a purely domestic or social nature is not a contract.</p> <p>Example 1:- 'A' invites his friend 'B' to his birthday party. 'B' accepts the offer. But he fails to turn up for the party. This agreement creates social and personal relationship between 'A' and 'B'. It cannot be enforced in the court. Thus A has no legal remedy against B.</p> <p>Example 2:- 'A' borrows sum of Rs. 500 from his friend 'B' for three months. 'B' gets legal right to sue upon 'A' if he fails to return money. It is because this agreement creates legal relationship, which can be enforced in the court.</p>
BALFOUR Vs. BALFOUR (1919)	
<p>In this case a husband just makes a promise to pay his wife monthly allowance of £30 for her maintenance. Later on they separated and husband failed to pay stipulated amount to his wife. She filed suit for that allowance. But it was held by the court that such arrangements are not contracts or do not result in a contract because parties did not intend to create legal relationship and finally the suit was dismissed.</p>	
CERTAINTY OF MEANING	<p>Agreement made by the parties must be certain or capable of being made certain.</p> <p>Example: 'A' is a dealer of kerosene oil and coconut oil. 'B' makes an agreement with him for buying 10 lts of oil. Meaning of this agreement is uncertain and therefore it cannot be enforced.</p>
POSSIBILITY OF PERFORMANCE	<p>An agreement to do an act impossible in itself is void.</p> <p>Example: - An agreement to discover treasure by magic is void.</p>
LEGAL FORMALITIES	<p>Such as in writing, registration etc must be completed otherwise the contract is not enforceable at law.</p>

3.



A. ON THE BASIS OF ENFORCEABILITY

1. VALID CONTRACT	A contract which contains all the essential elements.
2. VOID CONTRACT [SEC. 2(j)]	A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.
3. VOID AGREEMENT [SEC. 2(g)]	An agreement which is not enforceable by law is said to be void. It is an agreement which cannot be enforced from the date when they were made. It is void ab initio .
4. VOIDABLE CONTRACT [SEC. 2(i)]	An agreement, which is enforceable by law at the option of one more of the parties, but not at the option of the other (s) is a voidable contract. For example: - Mr. A, at knife - point, asks B to sell his scooter for Rs. 50. Mr. B gives consent. The agreement is voidable at the option of B, whose consent is not free.
5. UNENFORCEABLE CONTRACT	An unenforceable contract is one which is good in substance but cannot be enforced by law due to some technical defects, such as under stamping, absence of writing, barred by limitation.
6. ILLEGAL CONTRACT	A contract which is forbidden by law. For example: - Agreement to commit crime.

B. CLASSIFICATION ON THE BASIS OF CREATION

1. EXPRESS CONTRACT	A contract which is created either by word spoken or written. For example: - If 'A' of Agra offers to sell his car for Rs. 150000 to 'B' of Delhi by a letter and 'B' accepts the offer by writing a letter. Thus the contract between 'A' and 'B' is said to be an express contract.
----------------------------	---

2. IMPLIED CONTRACT	The contract which is created otherwise than by words spoken or written. i.e. these contracts are:-
A. Tacit Contract	A contract which is inferred from the conduct of the parties is said to be tacit contract. For example: - (i) When we enter into a bus without asking any question from bus conductor, we enter into implied contract. (ii) Obtaining cash form ATM
B. Quasi Contracts	These are the contracts, which are created neither by word spoken, nor written, nor by the conducts of the parties, but these are created by the law. For example: - If 'A' leaves his goods at 'B's shop by mistake, then it is 'B's duty to return the goods or to compensate the price. In fact, these contracts depends upon the principle that nobody will be allowed to become rich at the expense of the others. This principle is known as <i>doctrine of unjust enrichment</i>.
3. E-CONTRACT	An e-contract is one, which is entered into between two parties via internet.

C. CLASSIFICATION ON THE BASIS OF BASIS OF EXECUTION

1. Executed Contract	An executed contract is a contract in which both the parties have performed their obligation. This is a contract which has been completed. For example:- If 'A' agrees to sell his car to 'B' for Rs. 100000. The contract is said to be executed if 'A' delivers car to 'B' and B pays the price to 'A'.
2. Executory Contract	An Executory contract is the contract which is to be performed in future.
3. Unilateral Contract	Where obligation is pending on the part of one of the parties.
4. Bilateral Contract	A Bilateral Contract is a contract in which obligation is pending on the part of both of the parties.

D. ENGLISH LAW CLASSIFICATION

1. Simple Contracts	A simple contract is the contract that is not formal. These can be made orally or in writing and must be supported by consideration.
2. Formal Contracts	A formal contract is one which is entered into the prescribed form. These contracts may be sub-divided as follows:
a. Contract of Record	(i) Judgment of Court:- It is an obligation imposed by the court upon one or more persons in favour of the other/s. (ii) Recognizance:- It is a written acknowledgement of a debt due to state. It is met in connection with criminal proceedings.
b. Contract under Seal	It is a contract which derives its binding force from its form alone. It is also known as deed or specialty contract.

DM QUESTION BANK

CHAPTER – 1

1. The law of contract in India is contained in:

- | | |
|-------------------------------|-------------------------------|
| (a) Indian Contract Act, 1862 | (c) Indian Contract Act, 1872 |
| (b) Indian Contract Act, 1962 | (d) Indian Contract Act, 1762 |

2. An agreement enforceable by law is:

- | | |
|--------------|--------------------|
| (a) Promise | (c) obligation |
| (b) Contract | (d) lawful promise |

3. A void agreement is one which is:

- | | |
|---|--|
| (a) valid but not enforceable | (a) enforceable at the option of one party |
| (b) enforceable at the option of both the parties | (b) not enforceable in a court of law. |

4. An agreement which is enforceable by law at the option of one or more of the parties thereon but not at the option of the other or others is a:

- | | |
|--------------------|-----------------------|
| (a) valid contract | (c) voidable contract |
| (b) void contract | (d) illegal contract. |

5. In case of illegal agreements, the collateral agreements are:

- | | |
|-----------|--------------------|
| (a) valid | (c) voidable |
| (b) void | (d) none of these. |

6. Which of the following statements is true

- | | |
|---|--------------------------|
| (a) an agreement enforceable by law is a contract | (c) both (a) and (b) |
| (b) an agreement is an accepted proposal | (d) Neither (a) nor (b). |

7. A voidable contract:

- | | |
|--|---|
| (a) can be enforced at the option of aggrieved party | (c) cannot be enforced in a court of law. |
| (b) can be enforced at the option of both the parties. | |

8. A agrees to sell his car to B at a price, which B may be able to pay. This agreement is:

- | | |
|-----------|-----------------|
| (a) void | (c) voidable |
| (b) valid | (d) contingent. |

9. An agreement to do an illegal act, e.g., to share the earnings of a smuggling business, is;

- | | |
|-----------|-----------------|
| (a) valid | (c) voidable |
| (b) void | (d) contingent. |

10. Where an agreement consists of two parts one legal and other illegal, and the legal part is separable from the illegal one, such legal part is:

- | | |
|-----------|--------------|
| (a) void | (c) voidable |
| (b) valid | (d) illegal. |

11. Agreement – the meaning of which is uncertain is:

- | | |
|-----------|--------------|
| (a) valid | (c) voidable |
| (b) void | (d) illegal. |

12. Mr. 'X' invited all his close friends for a dinner. He arranged a very lavish dinner in a star hotel. On the appointed day, most of his friends could not turn up to the dinner. He was terribly disappointed. In the above situation which of the following remedies is / are available to Mr. 'X' for the loss caused to him?

- | | |
|---|---|
| (a) Mr. 'X' can file a suit against his friends for not attending to the dinner | (c) Mr. 'X' can recover the expenses incurred for the arrangements from his friends |
| (b) Mr. 'X' cannot have any remedy | (d) Mr. 'X' can file a suit for the special damages. |

13. Every contract is an agreement but every agreement is not a contract. This statement is :

- | | |
|-------------|---|
| (a) wrong | (c) correct subject to certain exceptions |
| (b) correct | (d) partially correct. |

14. Agreement is defined in Section ____ of the Indian Contract Act, 1872.

- | | |
|----------|-----------|
| (a) 2(c) | (c) 2(g) |
| (b) 2(e) | (d) 2(i). |

15. As per Section 2(e) of the Indian Contract Act, 1872, "Every promise and every set of promises forming the consideration for each other is a / an:

- | | |
|---------------|-----------------|
| (a) Contract | (c) offer |
| (b) Agreement | (d) acceptance. |

16. A contract is:

- | | |
|---|-------------------------------------|
| (a) an agreement enforceable by third parties | (c) an agreement enforceable by law |
| (b) an agreement by competent people | (d) not an agreement at all. |

17. Contract is defined in Section _____ of the Indian Contract Act, 1872.

- | | |
|----------|-----------|
| (a) 2(e) | (c) 2(h) |
| (b) 2(f) | (d) 2(i). |

18. A contract is said to be executed when it has been performed by:

- | | |
|------------------------|--------------------------|
| (a) one of the parties | (c) either (a) or (b) |
| (b) both the parties | (d) neither (a) nor (b). |

19. An agreement not enforceable by law is said to be void under Section ____ of the Indian Contract Act, 1872.

- | | |
|----------|-----------|
| (a) 2(a) | (c) 2(f) |
| (b) 2(b) | (d) 2(g). |

20. Contract, which ceases to be enforceable by law, becomes a / an:

- | | |
|--------------------------|-----------------------|
| (a) enforceable contract | (c) void contract |
| (b) void agreement | (d) voidable contract |

21. A invites B for dinners. B accepts the invitation. In this case, there is an agreement but no contract, since:

- | | |
|--|---|
| (a) there is no consideration | (c) there is no written document |
| (b) there is no intention to create legal relationship | (d) there is no formal acceptance of the offer. |

22. A invites B for diner in a restaurant and B accepts the invitation. On the appointed date, A is present there but B does not turn up. In this case:

- (a) A has no remedy against B
(b) A can sue B for not honoring his word
- (c) A has to invite B again, to perform the promise.

23. One of the clauses in an agreement states: "This agreement shall not be legally enforceable, but binding in honour only". In such case, the agreement is:

- (a) Invalid
(b) Valid
- (c) illegal.

24. In commercial and business agreements, the intention of the parties to create legal relationship is:

- (a) presumed to exist
(b) to be specifically expressed in writing
- (c) not relevant at all.

25. According to Section 2(i), an agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of one other or others, is a / an:

- (a) void agreement
(b) voidable contract
- (c) unlawful contract
(d) void contract.

26. Voidable contract is:

- (a) invalid
(b) valid as long as it is not avoided by the party entitled to do so
- (c) which is unlawful.

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

- (a) void
(b) illegal
- (c) valid
(d) voidable.

28. _____ has all the essential elements of a contract and can be enforced by law.

- (a) valid contract
(b) void contract
- (c) voidable contract
(d) unenforceable contract.

29. A contracts with B, a local goonda, to beat his business competitor. This is a / an:

- (a) valid contract
(b) illegal contract
- (c) voidable contract
(d) unenforceable contract.

30. _____ is made by words either spoken or written.

- (a) express contract
(b) implied contract
- (c) tacit contract
(d) unlawful contract.

31. Where a contract has to be inferred from the conduct of parties, it is called:

- (a) express contract
(b) implied contract
- (c) tacit contract
(d) unlawful contract.

32. _____ is a contract which is partially performed or wholly unperformed.

- (a) executed contract
(b) executory contract
- (c) void contract
(d) illegal contract.

33. _____ is contract in which only one party has to perform his promise or obligation.

- (a) void contract
(b) illegal contract
- (c) unilateral contract
(d) bilateral contract.

34. A books a ticket with Jet Airlines for travel from Mumbai to Delhi on 15th September, 2006, date of travel being 10th October, 2006, This is a / an:

- | | |
|----------------------|-------------------------|
| (a) void contract | (c) unilateral contract |
| (b) illegal contract | (d) bilateral contract. |

35. A particular type of contract is required by law to be in writing and registered. It does not comply with necessary formalities as to writing, registration and attestation. Such a contract is:

- | | |
|-----------------------|-----------------------------|
| (a) voidable contract | (c) valid contract |
| (b) illegal contract | (d) unenforceable contract. |

36. All illegal agreements are void; but all void agreement are not illegal:

- | | |
|----------|------------|
| (a) true | (b) false. |
|----------|------------|

37. The term "Promise" has been defined in Section _____ of the Indian Contract Act:

- | | |
|----------|-----------|
| (a) 2(a) | (c) 2(c) |
| (b) 2(b) | (d) 2(d). |

38. A proposal when accepted becomes a / an:

- | | |
|---------------|-------------|
| (a) Contract | (c) promise |
| (b) Agreement | (d) Offer. |

CHAPTER-2 OFFER & ACCEPTANCE

CONTENTS :-

1. PROPOSAL / OFFER. RULES AS TO OFFER
2. TYPES OF OFFER
3. LAPSE OF AN OFFER
4. ACCEPTANCE. RULES AS TO ACCEPTANCE
5. AN ACCEPTANCE IS TO OFFER WHAT A LIGHTED MATCH IS TO A TRAIN OF GUNPOWDER
6. COMMUNICATION OF OFFER & ACCEPTANCE
7. REVOCATION OF OFFER AND ACCEPTANCE

1.) PROPOSAL [Sec 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
- ✚ either to such act or abstinence,
- ✚ he is said to make a proposal.

Example :- A tells B , “I want to marry”. This does not amount to offer but it is a mere expression of willingness.

Example:- A said to B, “I want to marry, Will you marry me.” This would amounts to offer because in this case, the intention of A is to obtaining the consent of B.

Example:- D said to E, “I want to sell my bike to you.” This is an offer “to do something”.

Example:- X said to Y, “I will not file a suit against you in the court of law, if you repay the overdue amount of Rs.100000.This is an offer for “not to do something”.

- **Offeror**: - Person who makes the offer.
- **Offeree**: - Person to whom offer is made.

LEGAL RULES REGARDING OFFER

1. Offer must be capable of creating the legal relation	A social invitation, even if it is accepted, does not create legal relations because it is not so intended. (Balfour Vs. Balfour)
2. Offer must be certain, definite and not vague	The terms of the offer must be certain or capable of being made certain.
Example 1	‘A’ has two Maruti cars, one is red and other blue. He offers to sell his car to ‘B’. In this case, Which car he is offering to sell is not clear. Therefore the offer is not valid one.
Example 2	‘A’, a dealer of coconut oil, offers to sell 10 lts of oil to ‘B’ for a certain price. This offer is valid one because it is capable of being made certain.
Example 3	‘A’ offered to take a house on lease provided the house should be put into thorough repairs and should be sufficiently decorated. This offer is too vague and hence not valid.
3. Offer may be express or implied	a. Express Offer An offer which is made by words spoken or written. Example: - ‘X’ says to ‘Y’, “ Will you purchase my

white horse for Rs. 20000.

Example: - 'X' writes to 'Y' a letter, " I want to sell my car for Rs. 40000 to you."

b. Implied Offer An offer which is made otherwise than by words spoken or written.

Example:- A transport company runs buses on a particular route. This is an implied offer from the transport company to carry passengers on the route who are prepared to pay the specified fare. The acceptance of the offer is complete as soon as the passengers board the bus. A passenger who enters the bus also impliedly promises to pay the prescribed fare.

4. Offer must be distinguished from an invitation to offer An offer should be distinguished from an invitation to offer. An offer is definite and capable of converting an intention into a contract. Whereas an invitation to an offer is only a circulation of an offer, it is an attempt to induce offers and precedes a definite offer.

Examples of Invitation to Offer

1. Window display of goods by a shopkeeper.
2. Quotations, Catalogue, Price list.
3. Advertisement in a newspaper for sale of an article.

Example:- Goods are sold in a shop under 'self service' system. Customer select the goods in the shop and take them to the cashier for payment of price. Cashier refuses to accept the payment. Held that customer cannot bound the shopkeeper for delivery of goods.

(Pharmaceutical Society of Great Britain v. Boots Cash Chemists Ltd.)

5. Offer may be specific or general Specific Offer An offer made to a definite person is called Specific offer. A specific offer can be accepted only by the person to whom it is made.

General Offer An offer which is made to the public at large. Anyone having knowledge of the offer can accept this offer by complying with the terms of the offer.

Example:- A company advertised in several newspapers that a reward of € 100 would be given to any person who contracted influenza after using the smoke balls of the company according to its printed directions. Carlill used the smoke balls according to the directions of the company but contracted influenza. Held that she could recover the amount as by using the smoke balls she had accepted the offer. (**Carlill V. Carbolic Smoke Ball Co.1893**)

6. Offer must be communicated to the person to whom it is made An offer, to be complete, must be communicated to the person to whom it is made. Unless an offer is communicated to the offeree by the offeror or by his duly authorized agent, there can be no acceptance of it. An acceptance of an offer, in ignorance of the offer, is no acceptance and does not confer any right on the acceptor.

Example:- S offered a reward to anyone who returned his lost dog. F bought the dog to S without having heard of the offer. Held, F was not entitled to the reward (**Fitch v. Snedaker**).

Example:- S sent his servant L to trace his missing nephew. He then announced that anybody who traced his nephew would be entitled to a

	certain reward. L traced the boy in ignorance of this announcement. Subsequently when he came to know of the reward, he claimed it. Held, he was not entitled to the reward (Lalman Shukla v. Gauri Dutt)
7. Offer must be made with a view to obtaining consent of the offeree	A mere declaration of intention does not amount to offer. Example:- An auctioneer advertised in a newspaper that a sale of office furniture would be held. A broker came from a distant place to attend that auction, but all the furniture was withdrawn. The broker thereupon sued the auctioneer for his loss of time and expenses. Held, a declaration of intention to do a thing did not create a binding contract with those who acted upon it, so that the broker could not recover (Harris v. Nickerson).
8. An offer may be conditional	While making an offer the offeror may impose conditions for the acceptance of the offer. A conditional offer is a valid offer.
9. An offer should not contain a term the non compliance of which amounts to acceptance	Offeror cannot impose any such condition the non-fulfillment of which would lead to acceptance of that offer. Example:- A offers to sell out his bike to B stating that if B does not reply with in a week, he will assume that he has accepted the offer. This is not a valid offer, because failure on the part of B to reply would result in an acceptance.
10. Communication of Special terms	Example:- P deposited his bags in the cloakroom at the railway station. On the face of receipt, the words “ See back ” were printed. One of the conditions printed on the back was “ the liability of the railway company shall be limited to € 10 for any package”. P’s bag was lost. He claimed the actual value of bag amounting to € 24. Held that P cannot recover the amount more than € 10 since the railway company had taken all the reasonable steps to ensure that conditions printed on back printed were brought to the knowledge of P. (Parker v. S.E. Rail Co.)

2. TYPES OF OFFER

A. General offer	An offer made to the public at large. Anyone can accept this offer by doing the desired act .
B. Specific offer	An offer made to a definite person or a group of persons. Such offer can be accepted only by the specified person to whom it is made.
C. Cross offers	When two parties exchange identical offers in ignorance at the time of each other’s offer, the offers are called cross offers. Two cross offers cannot become a binding contract in the absence of acceptance. Example:- A makes an offer for selling out his bike to B for Rs 20000. B, in ignorance of this offer makes a similar offer for buying A’s bike for Rs.20000. These two offers are called cross offers and none of these would constitute an acceptance.
D. Counter offer	A qualified acceptance to the offer subject to modifications and variations in the terms of original offer. Counter offer amounts to rejection of the original offer. Example:- A offers B, “ Will you purchase my car for Rs 100000. B replies, “I will purchase but I can pay only Rs 75000 for your car.” This acceptance given by B is a counter offer.
E. Standing, open or continuing offer	An offer is allowed to remain open for acceptance over a period of time. Example:- Tender for supply of goods.

3.) LAPSE (Revocation) OF AN OFFER

- ✚ On expiry of stipulated or reasonable time.
- ✚ By not accepting in mode prescribed.
- ✚ By rejection by the offeree.
- ✚ By death or insanity of the offerer or offeree before acceptance.
- ✚ By revocation by the offeror at any time before acceptance.
- ✚ Revocation of standing offer at any time by giving notice to the offeree.
- ✚ Revocation by non fulfillment of condition precedent to acceptance.
- ✚ By subsequent illegality or destruction of subject matter.

4.) ACCEPTANCE:- Sec.2(b)

- When the person to whom proposal is made
- signifies his assent thereto,
- the proposal is said to be accepted.
- A proposal when accepted becomes a promise.

LEGAL RULES AS TO VALID ACCEPTANCE	
Acceptance must be absolute and unqualified	Offeree should be assented to all terms & conditions of the offer. A qualified acceptance amounts to counter offer.
Acceptance must be communicated	Mere mental acceptance is not acceptance. Acceptance cannot be made in ignorance of the offer. Mere silence is not acceptance.
Acceptance to Whom	Acceptance must be communicated to the offeror i.e. the person who made the offer.
Mode of Acceptance	Acceptance must be in the mode prescribed in the proposal. If no mode prescribed in the proposal, the acceptance must be according to some usual and reasonable mode.
Time for Acceptance	Acceptance must be given within specified time limits given in the offer. In case no time is specified in the offer, offer must be accepted within reasonable time and before the offer lapses.
Example:- A person applied for shares in a company in June. He cannot be bound by the allotment made late in November since delay of 6 months in acceptance of application for shares was unreasonable. (Ramsgate Victoria Hotels v. Montefiore)	
Acceptance by conduct	By performance of an act intended by the proposer.
Who can accept	
Specific offer	A Specific offer can be accepted only by the person to whom it is made.
General offer	A general offer can be accepted by anyone having knowledge of the offer by complying with the terms of the offer.

5.) AN ACCEPTANCE TO OFFER IS WHAT A LIGHTED MATCH TO A TRAIN OF GUNPOWDER

According to **Sir William Anson**, “An acceptance to offer is what a lighted match to a train of gunpowder”.

✚ Offer is compared to a train of gunpowder.

✚ Acceptance is compared to a lighted match.

When a lighted match is applied to a train of gunpowder, an explosion takes place. In the same way, an acceptance is given to the offer, it would result into a contract and offer cannot be revoked thereafter.

A train may be removed before match is applied to gun powder. In the same way, an offer may be revoked before it is accepted by offeree.

6. COMMUNICATION OF OFFER & ACCEPTANCE (Section 4)

(A) Communication of Offer	The communication of offer is complete when it comes to the knowledge of the person to whom it is made.
(B) Communication of Acceptance	The communication of acceptance is complete-
(a) As against the Proposer	When it is put into the course of transmission to him so as to be out of power of the acceptor to withdraw the same .
(b) As against the Acceptor	When it comes to the knowledge of the proposer.

7. REVOCATION OF OFFER & ACCEPTANCE (Section 4)

The communication of revocation is complete-	
(a) As against the person who makes it	When it is put into the course of transmission to the person to whom it is made so as to be out of power of the person who makes it.
(b) As against the person to whom it is made	When it comes to his knowledge.

TIME FOR REVOCATION (Section 5)

Revocation of Offer	An offer can be revoked at any time before the communication of acceptance is complete as against the proposer.
Revocation of Acceptance	An acceptance can be revoked at any time before the communication of acceptance is complete as against the offeree.

DM QUESTION BANK
CHAPTER - 2

1. A proposal may consist of promise for:

- (a) doing an act (c) either (a) or (b).
(b) abstaining from doing an act

2. An offer or its acceptance or both may be made:

- (a) by words (c) either by words or by conduct.
(b) by conduct

3. Offer made through conduct of parties or inferred from circumstances of the case is called:

- (a) implied offer (c) general offer
(b) express offer (d) specific offer

4. A bid at an auction sale is:

- (a) an implied offer to buy (c) an expression of an intention to buy.
(b) an express offer to buy

5. An offer which is allowed to remain an offer for acceptance over a period of time is known as a / an:

- (a) standing offer (c) express offer
(b) specific offer (d) implied offer

6. _____ can be accepted only by the person / group to whom the offer is made:

- (a) standing offer (c) specific offer.
(b) general offer

7. An offer made to the public at large is called as:

- (a) standing offer (c) general offer
(b) specific offer (d) implied offer.

8. For a valid general offer, it is necessary for the offeree to be known to the offeror at the time of making the offer.

- (a) True (b) false.

9. Communication of a proposal is complete when:

- (a) it comes to the knowledge of the person to whom it is made (c) either (a) or (b)
(b) the letter containing the proposal reaches the offeree (d) the letter containing the proposal is posted.

10. Terms of an offer must be:

- (a) Definite (c) either (a) or (b)
(b) capable of being made definite (d) ambiguous.

11. A offers to take a house on lease for a period of 3 years @ Rs. 1 lakh p.m. if the house was “put through adequate repairs and rooms were handsomely decorated”. Offer is not valid because:

- (a) there is no legal obligation (c) the offer is conditional.
(b) the term of offer is too vague

12. Offer should not contain a term, the non-compliance of which would amount to acceptance.

- (a) True (b) false.

13. Which of the following is not necessary for a valid offer?

- (a) intention to create legal obligation (c) certainty of terms
(b) unconditional terms (d) communication to the person to whom it is made.

14. Which of the following is an offer?

- (a) quotation of terms by trader (c) advertisement for sale or auction of goods
(b) quotation of the lowest price in answer to an inquiry (d) bid in auction sale.

15. Issue of Prospectus by a company is an example of:

- (a) Proposal (c) invitation to offer
(b) intention to invite offer (d) none of the above.

16. Application filed in by person seeking purchase of shares in a company is an example of:

- (a) invitation to offer (c) either (a) or (b)
(b) offer (d) acceptance.

17. In a self-service departmental store, goods and articles are displayed along with their price tags. Such display constitutes a / an:

- (a) invitation to offer (c) acceptance
(b) offer (d) none of the above.

18. In a self-service departmental store, customer's pick-up article and take then to the cashier's desk to pay. The customer's action is a /an:

- (a) invitation to offer (c) either (a) or (b)
(b) offer (d) acceptance.

19. In a self-service departmental store, a valid contract is concluded when:

- (a) customer enter the departmental store (c) customers take the articles to the cashier's desk
(b) customer pick up the articles (d) cashier accepts the payment from the customers

20. Which of the following is an invitation to offer?

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

21. An advertisement inviting tender is:

- (a) an invitation for negotiations (c) an invitation to offer
(b) a proposal (d) a promise.

22. A tenderer can withdraw his tender before its final acceptance by a work or supply order.

- (a) True (b) false.

23. If there is a clause in the tender notice restricting the right to withdraw, the tenderer cannot withdraw the tender at all.

- (a) True (b) false.

24. A tender will be irrevocable where:

- (a) tenderer has, for some consideration, promised not to withdraw
(b) there is a statutory prohibition against withdrawal
- (a) either (a) or (b)
(b) neither (a) nor (b).

25. There is a counter-offer when:

- (a) the offeree gives conditional acceptance or introduced a fresh term in acceptance
(b) the offeror makes a fresh offer
- (c) the offeree makes some query
(d) the offeree makes an identical offer.

26. When the offers made by two persons to each other containing similar terms cross each other, they are known as:

- (a) cross offer
(b) implied offer
- (c) direct offer
(d) counter offer.

27. In case of a counter offer or cross offer, one person's offer can be taken as an offer and the other's persons offer can be taken as its acceptance.

- (a) true
(b) false

28. In case of a cross offer, the original offer comes to an end.

- (a) true
(b) false.

29. An offer lapses / comes to an end when the offeree:

- (a) fails to fulfil a condition precedent to acceptance
(b) does not accept the condition
- (c) either (a) or (b)
(d) neither (a) nor (b).

30. A proposal is revoked by death of insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor:

- (a) Before acceptance
(b) after acceptance
- (c) during acceptance
(d) any of the above.

31. Revocation of offer by letter or telegram is said to be complete as against the proposer:

- (a) when it is read by the offeree
(b) when it reaches the offeree
- (c) when it is dispatched
(d) both (b) and (c).

32. Revocation of offer by letter of telegram is said to be complete as against the offeree:

- (a) when it is read by the offeree
(b) when it reaches the offeree
- (c) when it is dispatched
(d) both (b) and (c).

33. Special terms in an offer are said to be communicated and thus binding

- (a) when the offeree has actually read them
(b) where the attention of the offeree has been drawn to such terms and conditions.
- (c) Either (a) or (b)
(d) Neither (a) nor (b).

34. On the back of the drycleaner's receipt the liability of the drycleaner in the event of loss, theft or damage is limited to 10 times the dry-cleaning charges. A customer has not cared to see the backside of the receipt. On the front of the receipt words "please see back" are written. In the even of loss, customer can claim:

- (a) actual loss
(b) amount not exceeding 10 times the dry-cleaning
- (c) actual loss plus compensation for inconvenience
(d) Special damages.

35. Under Section 2(b) of the Indian Contract Act, if the person to whom the proposal is made signifies his assent, the proposal is said to have been:

- (a) accepted
(b) provisionally agreed
- (c) tentatively accepted.
(d) none of the above.

36. Acceptance may be:

- (a) expressed
(b) implied
- (c) neither (a) nor (b)
(d) either (a) or (b)

37. When the acceptance is made otherwise than in words (oral or written), the acceptance is said to be:

- (a) expressed
(b) implied
- (c) neither (a) nor (b)
(d) either (a) or (b)

38. A specific offer can be accepted by:

- (a) any person
(b) only the person to whom it is made
- (c) any friend or relative of offeree.
(d) none of the above.

39. A general offer can be accepted by:

- (a) any person who complies with the conditions of the offer
(b) any person who reads the advertisement.
- (c) Either (a) or (b).
(d) none of the above.

40. In cases of general offer, for a valid contract, the acceptor:

- (a) must have the knowledge of the offer before acceptance by performance
(b) need not have the knowledge of the offer.
- (c) May acquire the knowledge of the offer after the performance of the condition amounting to acceptance.
(d) none of the above.

41. Communication of acceptance is complete as against the proposer :

- (a) only when it comes to the knowledge of the proposer
(b) only when the acceptance is communicated to the proposer
- (c) only when it is put in the course of transmission to him so as to be out of power of the acceptor
(d) none of the above.

42. Communication of acceptance is complete as against the acceptor, only:

- (a) when it is put in the course of transmission
(b) when the acceptance is communicated to the proposer
- (c) when it has reached the proposer
(d) all of the above.

43. Where a letter of acceptance sent by post is lost in transit there is :

- (a) no contract as the acceptance has not come to the knowledge of the offeror
(b) is no contract as the acceptance has not been communicated to the offeror
- (c) a contract as the letter of acceptance duly addressed is put in the course of transmission
(d) all of the above.

44. An acceptance can be revoked at any time before such acceptance:

- (a) comes to the knowledge of the proposer
(b) after it comes to the knowledge of the proposer
- (c) either (a) or (b)
(d) none of the above.

45. Who said, “Acceptance is to a proposal what a lighted match-sick is to a train of gun-powder?”

(a) Sir William Anson

(c) Saymond

(b) Mulla

(d) Ricky Ponting.

46. Where contracts are entered through telex, fax or e-mail, it is the duty of the acceptor to ensure that his telex, fax or e-mail message is duly received by the offeror.

- (a) True (b) false.

47. An agreement to agree in future is:

- (a) Valid (c) illegal
(b) voidable (d) invalid.

48. Which of the following is false? An offer to be valid must:

- (a) intend to create legal relations (c) contain a term the non-compliance of which would amount to acceptance
(b) have certain and unambiguous terms (d) be communicated to the person to whom it is made.

49. Which of the following is false? An acceptance:

- (a) must be communicated (c) must be accepted by a person having authority to accept
(b) must be absolute and unconditional (d) may be presumed from silence of offeree.

50. An offer may lapse by:

- (a) Revocation (c) rejection of offer by offeree
(b) counter offer (d) all of these.

51. On the acceptance of an offer by a offeree,

- (a) only the acceptor becomes bound by accepting the offer (c) both the acceptor and offeree become bound by the contract
(b) only the offeror becomes bound (d) none of these.

52. A, by a letter dated 25th September 2006, offers to sell his house to B for Rs. 10 lakhs. The letter reaches B on 27th September, 2006, who posts his acceptance on 28th September, 20 which reaches A on 30th September, 2006. Here, the communication of offer is complete on:

- (a) 25th September, 2006 (c) 28th September, 2006
(b) 27th September, 2006 (d) 30th September, 2006.

53. In the above question, the communication of acceptance is complete as against A on 28th September, 2006, and against B on, 2006, and against B on, 2006, and against B on:

- (a) 25th September, 2006 (c) 28th September, 2006
(b) 27th September, 2006 (d) 30th September, 2006.

54. When offer is made to a definite person, it is known as:

- (a) general offer (c) counter offer
(b) cross offer (d) specific offer.

55. Standing offer means

- (a) offer allowed to remain open for acceptance over a period of time (c) when the offeree offers qualified acceptance of the offer
(b) offer made to the public in general (d) offer made to a definite person.

56. When the offeree offers qualified acceptance of the offer subject to modifications and variations he is said to have made a:

- | | |
|--|---------------------|
| (a) standing, open or continuing offer | (c) cross offer |
| (b) counter offer | (d) specific offer. |

57. Which of the following is / are the essential element(s) of a valid offer?

1. Offeror must have an intention to be bound by his offer.
2. Offer must be made to a specific person / party and not to public at large.
3. Must be definite.
4. Offer can be vague.

- | | |
|-----------|------------|
| (a) 1 & 3 | (c) 3 & 4 |
| (b) 2 & 3 | (d) 1 & 4. |

58. Which of the following offers do not constitute a valid offer?

1. An auctioneer displays a TV set before a gathering in an auction sale.
2. Ram who is in possession of three cars purchased in different years says, 'I will sell you a car'.
3. A says to B, "will you purchase my motor cycle for Rs. 20,000?"
4. Ram communicates to Shyam that he will sell his car for Rs. 1,50,000.

- | | |
|-----------|------------|
| (a) 1 & 2 | (c) 3 & 4 |
| (b) 2 & 3 | (d) 1 & 4. |

59. An auctioneer in Delhi advertised in a newspaper that a sale of office furniture would be held on September 23, 2006. 'X' came from Mumbai to attend the auction, but all the furniture was withdrawn. 'X' sued the auctioneer for loss of his time and expenses. Which of the following statement(s) is correct?

- | | |
|--|--|
| (a) 'X' can get damages from the auctioneer for loss of his time and expenses | (c) an invitation to make offer is a valid offer |
| (b) 'X' will not get damages from the auctioneer for loss of his time and expenses | (d) a declaration of intention by a person will give right of action to another. |

60. The term "Proposal" used in the Indian Contract Act is synonymous with the term:

- | | |
|--------------|--------------------|
| (a) Contract | (c) agreement |
| (b) offer | (d) none of these. |

61. The term "Proposal" has been defined in Section ____ of the Indian Contract Act:

- | | |
|----------|-----------|
| (a) 2(a) | (c) 2(c) |
| (b) 2(b) | (d) 2(d). |

62. When a 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:

- | | |
|---------------------------|-----------------------------|
| (a) enter into a contract | (c) create legal obligation |
| (b) make a proposal | (d) accept an offer |

CHAPTER-3 CONSIDERATION

CONTENTS:-

1. CONSIDERATION
2. LEGAL REQUIREMENTS REGARDING CONSIDERATION
3. A THIRD PARTY TO A CONTRACT CANNOT SUE. EXCEPTIONS.
4. AN AGREEMENT WITHOUT CONSIDERATION IS VOID. EXCEPTIONS.

1.) **CONSIDERATION:** - “QUID PRO QUO” – i.e. something in return. Consideration is the price agreed to be paid by the promisee for the obligation of the promisor.

- ✚ When, at the desire of the promisor,
- ✚ the promisee or any other person
- ✚ has done or abstained from doing or
- ✚ does or abstains from doing or
- ✚ promise to do or to abstain from doing
- ✚ something,
- ✚ such act or abstinence or promise is called consideration for the promise. [Section 2(d)]

2. LEGAL REQUIREMENTS REGARDING CONSIDERATION

<p>A. Consideration must move at the desire of the promisor</p>	<p>Consideration must move at the desire or request of the promisor. Any act done at the desire of a third party is not consideration.</p> <p>Example:- D constructed a market at the desire of the collector of the district. B, a shopkeeper of the market promised to pay commission to D on the sales effected by him. Later on B denies to pay the promised amount. D filed a suit in the court for the recovery of the amount.</p> <p>The court held that D cannot recover the amount from B because D has constructed the market at the desire of the collector , not at the desire of the promisor i.e. B. (Durga Prasad V. Baldeo)</p>				
<p>B. Consideration may move from the promisee or any other person</p>	<p>Consideration may move from the promisee or any other person who is not a party to the contract. Thus, there can be a stranger to a consideration.</p> <p>Example:- A, by a deed of gift transferred certain property to her daughter with the direction that daughter should pay an annuity to her sister .</p> <p>The daughter executed a writing in favour of her sister agreeing to pay the annuity.</p> <p>Later on, she refused to pay the amount to her sister taking a plea that no consideration is given to her in return from her sister.</p> <p>The court held that consideration need not necessarily move from the promisee. Hence, she is bound to pay the promised amount to her sister.</p> <p>(Chinnayya V. Rammayya)</p>				
<p>C. Executed and Executory consideration</p>	<p>If consideration under the contract has been given, it is said to be executed. If consideration under the contract is to be moved in future, it is called executory consideration.</p>				
<p>D. Consideration may be past, present or future</p>	<table style="width: 100%; border: none;"> <tr> <td style="width: 30%; padding: 5px;">Past consideration</td> <td style="padding: 5px;">The words “has done or abstained from doing” indicates past consideration. Past consideration is no consideration in England.</td> </tr> <tr> <td style="padding: 5px;">Present consideration</td> <td style="padding: 5px;">The words “does or abstains from doing” indicates present consideration. Consideration which moves simultaneously with the promise.</td> </tr> </table>	Past consideration	The words “ has done or abstained from doing ” indicates past consideration. Past consideration is no consideration in England.	Present consideration	The words “ does or abstains from doing ” indicates present consideration. Consideration which moves simultaneously with the promise.
Past consideration	The words “ has done or abstained from doing ” indicates past consideration. Past consideration is no consideration in England.				
Present consideration	The words “ does or abstains from doing ” indicates present consideration. Consideration which moves simultaneously with the promise.				

	Example:- Cash Sales.
Future consideration	The words “ promise to do or to abstain from doing ” indicates future consideration. Consideration which is to be performed in future. Example:- A get booked an air ticket from Delhi to Mumbai. The flight is to be take off on the next day. In this case the consideration from A is a Past consideration and consideration is pending on the part of Airlines which is to be performed in future.
E. Consideration should be real, not illusory	If consideration is an illusory one, then it is not valid.
F. Consideration need not be adequate	Though consideration is an essence of contract, adequacy of consideration is not regarded as an essence of contract. Courts do not regard the adequacy of consideration, it is at the part of promisor to consider that whether he is receiving adequate consideration or not.
G. The performance of an act what one is legally bound to perform is not consideration for the contract	Example:- Promise to pay money to a witness.
H. Consideration must not be unlawful, immoral or opposed to the public policy	

2.) A THIRD PARTY OR A STRANGER TO A CONTRACT CANNOT SUE

A stranger to a contract means a person who is not a party to the contract. There is a privity of contract between the parties. Therefore only a party to the contract can enforce its rights under the contract.

EXCEPTIONS:-

i. Trust	In case of trust, a beneficiary can sue upon the contract. Example:- H sued her father in law K to recover Rs 15000 being the arrears of allowance payable to her by K. K under an agreement made between K and H’s father, in consideration of H’s marriage to K’s son D. Held that she can recover the amount because she is a beneficiary under the contract. (Khwaja Muhammad V. Hussaini Begum)
ii. Family Settlement	In case of family settlement, if the terms of settlement are reduced into writing, members who were not originally party to the contract can also sue upon it.
iii. Marriage Contracts	A female member can enforce a provision for marriage expenses made on partition of HUF between male members.
iv. Acknowledgement of Liability	Where a person admits his liability, thereafter, if he refused, he will be estopped from denying his liability. Example:- Where A receives money from B for paying it to C and A admits C the receipt of that amount. Later on if he refuses, he will be stopped from denying his liability to pay the amount.
v. Assignment	In case of assignment of a contract, Where the benefit under the contract has been assigned, the assignee (the person to whom benefits of contract are assigned) can enforce upon the contract.
vi. Covenant running with land	The person who purchases land with notice that the owner of land is bound by certain duties affecting land, the covenant affecting the land may be enforced against the successor of the seller.

3. NO CONSIDERATION, NO CONTRACT

The general rule of law is that an agreement without consideration is void.

EXCEPTIONS

(i) Agreement on account of Natural love and Affection



Example:- A husband by a registered document after referring to quarrels and disagreements between himself and his wife, promised to pay his wife a sum of money for her maintenance and separate residence, it was held that the promise was unenforceable. (**Rajlukhy Devi V. Bhootnath**)

(ii) Compensation for past voluntary services {Section 25 (2)}

- + Services rendered voluntarily.
- + Services rendered for the promisor.
- + Promisor must be in existence at the time of rendering services.
- + Promisor must have intended to compensate the promisee.

Example:- X finds Y's purse and gives it to him. Y promises to give X Rs 1000. This is a valid contract.

(iii) Promise to pay time barred debt {Section 25 (3)}

A promise to pay, wholly or in part a debt which is barred by law of limitation can be enforced if it is :-

- + In writing and
- + Signed by the person making it or his authorized agent.

(iv) Agency

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

(v) Completed Gifts

- + Gifts do not require any consideration. (**Explanation 1 to Section 25**)

(vi) Charity

- + A promise to contribute to charity, though gratuitous, would be enforceable, if on the faith of the promised subscription, the promisee takes definite steps in furtherance of the object and undertakes a liability, to the extent of liability incurred, not exceeding the promised amount of subscription. (**Kedarnath V. Gorie Mohammad**)

(i) Bailment

- + Consideration is not necessary to effect bailment. (**Section 148**)

DM QUESTION BANK
CHAPTER -3

1. Which of the following statements is true?

- | | |
|--|---|
| (a) consideration must result in a benefit to both parties | (c) consideration must be adequate |
| (b) past consideration is no consideration in India | (d) Consideration must be something, which a promissory is not already bound to do. |

2. Which of the following statements is false? Consideration:

- | | |
|---|----------------------------|
| (a) must move at the desire of the promisor | (c) may be illusory |
| (b) may move from any person | (d) must be of some value. |

3. Which of the following statements is false?

- | | |
|---|--|
| (a) generally a stranger to a contract cannot sue | (c) completed gifts need no consideration |
| (b) a verbal promise to pay a time barred debt is valid | (d) no consideration is necessary to create an agency. |

4. Consideration must move at the desire of

- | | |
|--------------|----------------------|
| (a) promisor | (c) any other person |
| (b) promise | (d) any of these. |

5. Which of the following statements is true?

- | | |
|--|---|
| (a) there can be a stranger to a contract | (c) there can be a stranger to a contract |
| (b) there can be a stranger to a consideration | (d) none of the above |

6. Consideration may be:

- | | |
|-------------|-----------------------|
| (a) past | (c) future |
| (b) present | (d) all of the above. |

7. Consideration in simple terms means:

- | | |
|--------------------------|------------------------|
| (a) something in return | (c) nothing in return |
| (b) everything in return | (d) none of the above. |

8. Which of the following is not an exception to the rule – no consideration, no contract?

- | | |
|---|------------------------|
| (a) compensation for involuntary services | (c) contract of Agency |
| (b) love and affection | (d) gift. |

9. As a general rule, an agreement made without consideration is:

- | | |
|-----------|---------------|
| (a) void | (c) voidable |
| (b) valid | (d) unlawful. |

10. An agreement made with free consent to which the consideration is lawful but inadequate, is:

- | | |
|-----------|---------------|
| (a) Void | (c) voidable |
| (b) Valid | (d) unlawful. |

11. What is legal terminology for the doing or not doing of something which the promisor desires to be done or not done?

- | | |
|-------------|-------------------|
| (a) desires | (c) consideration |
| (b) wishes | (d) promise. |

12. _____ consideration is no consideration in England.

- (a) Past (c) future
(b) Present (d) past and present.

13. There can be a stranger to a _____.

- (a) Contract (c) agreement
(b) Consideration (d) promise.

14. Which of the following is / are false?

1. Consideration must be real 2. Consideration can be inadequate 3. A promise to do something which one is already bound to do by law, will be treated as good
4. consideration Consideration must be adequate.

- (a) 1 & 2 (c) 3 & 4
(b) 2 & 3 (d) 1 & 4.

15. At the time of marriage between A and b, A's father promised to B's parents that he will pay five thousand rupees per month to B after her marriage with his son. On his failure to pay the amount, B wants to sue A's father for the amount promised by him at the time of her marriage with A. Which of the following statement(s) is correct?

- (a) B cannot sue A's father as the contract is void for lack of consideration (c) B can sue A's father for breach of contract.
(b) B cannot sue A's father under the doctrine of privity of contracts (d) B cannot sue A's father as the contracts made at the time of marriage are not enforceable by law.

16. Consideration is defined under Section _____ of the Indian Contract Act

- (a) 2(a) (c) 2(c)
(b) 2(b) (d) 2(d).

17. Consideration may be supplied by:

- (a) the promisee (b) the promisee or any other person.

18. M, by a gift deed transferred certain property to her daughter 'R', with a direction that 'R' should pay an annuity to M's brother, 'C' as had been done by M. On the same day, 'R' executed a deed in writing in favour of 'C', agreeing to pay annuity. Afterwards 'R' declined to fulfil her promise saying that no consideration had moved from her uncle 'C'. Which of the following statements is correct?

- (a) 'R' is not bound to pay annuity (c) 'R' is bound to pay annuity.
(b) there is no valid consideration in this contract

19. Consideration in a contract may be:

- (a) Past (c) future
(b) Present (d) any of the above.

20. An agreement made without consideration is:

- (a) valid (c) voidable
(b) illegal (d) void.

21. An agreement made without consideration is void, as per

- (a) Section 23 (c) Section 25
(b) Section 24 (d) Section 26.

22. A person verbally promised the secretary of the mosque committee to subscribe Rs. 500 for rebuilding of a mosque. Later, he declined to pay the said amount. The agreement is void due to:

- (a) lack of consideration (c) lack of object.
(b) lack of consensus ad idem

23. Agreement without consideration is valid, when made:

- (a) out of love and affection due to near relationship (c) to compensate a person who has already done something voluntarily
(b) in writing to pay a time barred debt (d) all of the above.

24. A Hindu husband by a registered document, after referring to quarrels and disagreements between himself and his wife, promised to pay his wife a sum of Rs. 2,00,000 on their next marriage anniversary. The above contract is:

- (a) void (c) valid
(b) illegal (d) voidable.

25. "No consideration, No Contract, does not apply to completed gifts, i.e., gifts given and accepted.

- (a) True (b) false.

26. Consideration is not necessary to effect a valid Gratuitous Bailment of goods

- (a) True (b) false.

27. No consideration is required to create a contract of agency

- (a) true (b) false.

28. Inadequacy of consideration does not make the contract:

- (a) void (c) neither void nor voidable.
(b) voidable

29. Inadequacy of consideration may be taken into account by the Court to determine whether the consent of promisor was freely given

- (a) True (b) false.

30. Consideration and objects are unlawful when it is:

- (a) fraudulent (c) is immoral and against the public policy
(b) forbidden by law or defeat any provision of any law (d) all of the above.

31. A person who is not a party to a contract (i.e., a stranger to the contract):

- (a) can sue (c) can sue as an agent of the party
(b) cannot sue (d) both (b) or (c).

32. In which of the following situations, a stranger to contract can file a valid suit:

- (a) beneficiary of a trust (c) acknowledgement of liability, or by past performance thereof
(b) under family settlement in written form (d) all of the above.

33. Provision of marriage expenses of female members of Joint Hindu Family, entitles the female member to sue for such expenses on a partition between male members:

- (a) true (b) false.

CHAPTER-4 CAPACITY TO CONTRACT

CONTENTS:-

1. WHO IS COMPETENT TO CONTRACT
2. POSITION OF MINOR'S AGREEMENT

1. WHO IS COMPETENT TO MAKE A CONTRACT

SECTION 11: – Every person is competent to contract who is of **age of majority** according to the law to which he is subject, who is of **sound mind** and is **not disqualified from contracting by any law** to which he is subject.

A. AGE OF MAJORITY

According to **Section 3 of Indian Majority Act, 1875** A minor is a person who has not completed **18 years** of age. Every person domiciled in India attains majority on the completion of 18 years of age.

Exceptions : - In the following cases, a person attains majority on completion of 21 years of age:-

1. Where the guardian of a minor is being appointed under Guardians and Wards Act, 1890.
2. Where the superintendence of minor's property is assumed by Court of Wards.

B. SOUND MIND PERSON (Section 12)

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

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

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

UN SOUND MIND PERSONS

Durnkard

- A contract by drunken person is altogether void.
- Partial or ordinary drunkenness is not sufficient to avoid the contract.

Idiot

- An idiot is a person who is permanently of unsound mind.
- Such a person has no lucid intervals.

Lunatic

- A lunatic is a person who is mentally deranged due to some mental strain or other personal experience. However, he has some intervals of sound mind.
- A patient in lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

C. PERSONS DISQUALIFIED BY LAW

Alien enemy	An Alien enemy is a person who is a citizen of a foreign country which is at war with India.
Contracts during the war	An alien enemy cannot enter into contract during the period of war except a license from the central government.
Contracts entered before war	Contracts entered before war are either dissolved or merely suspended for the period of war and revived after the war is over.
Statutory Corporation	A statutory corporation cannot enter into contracts which are ultra virus its memorandum.
Municipal Bodies	Municipal bodies cannot enter into acts which are beyond their statutory powers.
Sovereign States, Ambassadors & Diplomatic Couriers	These persons enjoy certain special privileges. They cannot be sued in the Indian courts. However, they can enter into contracts and enforce those contracts in Indian Courts.
Convict	A convict cannot enter into contract during the period of imprisonment.
Insolvent	When the person is adjudged insolvent, his property stands vested in the official receiver or official assignee appointed by the court. He cannot enter into contracts in relation to property which is vested to the official assignee or receiver.

A contract with a party incompetent to contract is void ab initio.

2. POSITION OF MINOR'S AGREEMENT

i. An agreement entered into by or with a minor is void ab initio	A minor is not competent to contract. A minor's contract being void, any money advanced to a minor cannot be recovered. { Mohiri Bibi V. Dharmodas Ghose (1903) }
ii. Minor can be beneficiary	Even if a minor is incapable of contracting, still no law prevents him from taking the benefit under a contract. A promissory note executed in favour of a minor is valid and can be enforced by the minor. A minor can be payee of a cheque or other negotiable instrument.
Minor as a partner	A Minor cannot become a partner in a firm but he can be admitted to the benefits of the partnership with the consent of all partners.(Section 30 of Indian Partnership Act, 1932)
Minor can always plead minority	If a minor by fraudulently representing his age enters into contract, still minor can take the shelter of minority. Example:- A, a minor by fraudulently representing himself to be a major, induce B to lend him Rs.2000. He refused to repay it and B sued him for the money. Held that the contract was void and A was not liable to repay the amount due.

KHAN GUL V. LAKHA SINGH

Lahore High Court held that where the contract is set aside the *status quo ante* should be restored and the court may direct the minor, on equitable grounds, to restore the money or property to the other party. Thus, in such cases, if money could be traced, the court would, on equitable grounds,

ask the minor for restitution.

Sections 30 and 33 of the Specific Relief Act, 1963 provide that in case of a fraudulent misrepresentation of his age by the minor, inducing the other party to enter into a contract, the Court may award compensation to the other party.

Ratification an A minor cannot ratify the agreement on attaining the age of majority as
attaining majority is the original agreement is void-ab-initio and therefore, validity cannot
not allowed is be given to it later on.

Example: 'A', a minor makes a promissory note in favour of 'B'. On attaining majority, he makes out a fresh promissory note in lieu of old one. Neither the original, nor the fresh promissory note is valid.

Contract by minor's A contract may be entered into on behalf of a minor by his guardian or
guardian manager of his estate. In such a case the contract can be enforced by or
against the minor provided that the contract

(a) is within the scope of the authority of the guardian or manager, and
(b) is for the benefit of the minor.

Liability for No personal liability of minor but minor's property is liable.
necessaries In order to entitled a supplier to be reimbursed from the minor's estate,
following conditions must be satisfied:-

- A. Goods must be necessaries for that particular minor having regard to his condition in life.
- B. The minor must be in need of those goods both at the time of sale and delivery. { **Nash v. Inman(1908)** }
- C. The minor's estate is not liable only for necessary goods but also for necessary services rendered to him.

Minor as an Agent Minor can be an agent but cannot be held personally liable for
negligence or breach of duty.

Minor as an Insolvent A minor cannot be adjudicated as insolvent because he is incapable of
contracting.

CHAPTER-5 FREE CONSENT

CONTENTS:-

1. CONSENT
2. FREE CONSENT
3. ELEMENTS VITIATING FREE CONSENT

1. CONSENT (Section 13)

Two or more persons are said to have consented when they agree upon something in the same sense (**consensus-ad-idem**).

Example:- A offers B that he want sell his Maruti 800 to him for Rs. 50000. B replies that I can pay only Rs40000 for your car. Since there is no consent between the parties, no contract will can be formed.

2.) FREE CONSENT (Section 14)

A consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake.

3.) ELEMENTS VITIATING FREE CONSENT

(a) Coercion (Section 15)	<p>Coercion is committing or threatening to commit any act forbidden by Indian Penal Code, or the unlawful detaining or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.</p>
	<ul style="list-style-type: none">✚ Threat to commit suicide amounts to coercion.✚ The agreement induced by coercion is voidable.✚ A person to whom money has been paid or anything delivered under coercion, must repay or return it.
(b) Undue Influence (Section 16):	<p>A contract is said to be induced by undue influence when the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage of the other.</p>
	<p>A person is deemed to be in a position to dominate the will of the other, when he holds authority real or apparent over the other, or when he stands in a fiduciary relation to the other.</p> <p>Example: - (a) Father and son (b) Solicitor and Client (c) Trustee and Beneficiary (d) Doctor and Patient, etc.</p> <p>A contract which is induced by undue influence is voidable.</p>
(c) Fraud (Section 17)	<p>Fraud means and includes any of the following acts committed by a party to a contract or with his connivance or by his agent with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:</p> <ul style="list-style-type: none">✚ the suggestion as to fact of that which is not true by one who does not believe it to be true.✚ the active concealment of a fact by one having knowledge or belief of the fact.✚ a promise made without any intention of performing it.✚ any other act fitted to deceive.✚ any such act or omission as to law specially declared to be fraudulent. <p>❖ A contract induced by fraud is voidable.</p>

Q- Is mere silence amounts to fraud ?

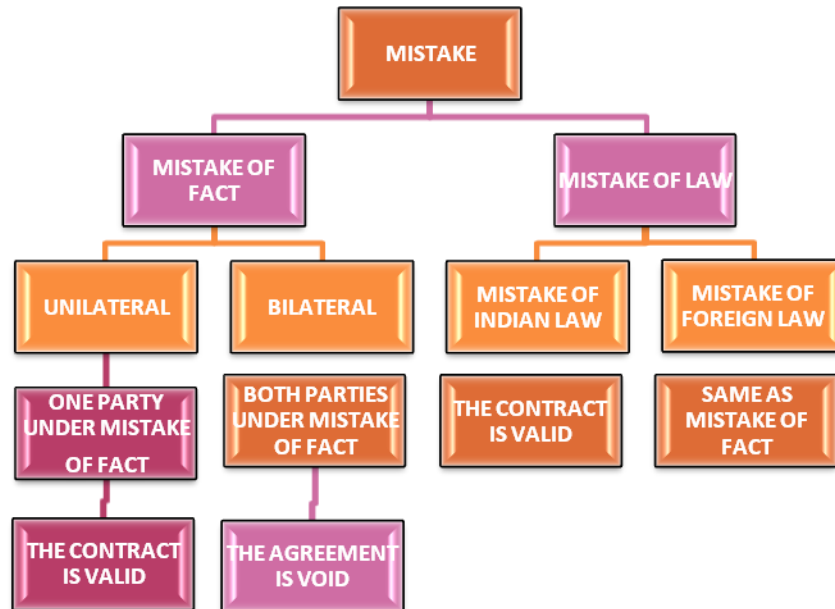
Ans: - No, Mere silence as to facts likely to affect the willingness of a person to enter into a contract is no fraud.

Exceptions:-1.) Where it is duty of the person to speak.

2.) Where silence itself equivalent to speech.

(d) Misrepresentation | where a person asserts something which is not true though he believes it to be true, his assertion amounts to misrepresentation.

(e)



DM QUESTION BANK
CHAPTER – 5

1. When the consent of a party is not free, the contract is:

- | | |
|--------------|-------------|
| (a) void | (c) valid |
| (b) voidable | (d) illegal |

2. Consent is not said to be free when it is caused by:

- | | |
|---------------------|-------------------|
| (a) coercion | (c) fraud |
| (b) undue influence | (d) all of these. |

3. When the consent of a party is obtained by fraud, the contract is:

- | | |
|--------------|--------------|
| (a) void | (c) valid |
| (b) voidable | (d) illegal. |

4. The threat to commit suicide amounts to:

- | | |
|---------------------|-----------------------|
| (a) coercion | (c) misrepresentation |
| (b) undue influence | (d) fraud. |

5. Moral pressure is involved in the case of:

- | | |
|---------------------|-----------------------|
| (a) coercion | (c) misrepresentation |
| (b) undue influence | (d) fraud. |

6. A wrong representation when made without any intention to deceive the other party amounts to:

- | | |
|---------------------|-----------------------|
| (a) coercion | (c) misrepresentation |
| (b) undue influence | (d) fraud. |

7. Which of the following statements is true?

- | | |
|--|--------------------------------------|
| (a) a threat to commit suicide does not amount to coercion | (c) ignorance of law is no excuse |
| (b) undue influence involves use of physical pressure | (d) silence always amounts to fraud. |

8. A agrees to sell his car worth Rs. 1,00,000 to B for Rs. 20,000 only, and A's consent was obtained by coercion. Here, the agreement is:

- | | |
|-----------|---------------|
| (a) void | (c) voidable |
| (b) valid | (d) unlawful. |

9. Which of the following elements does not affect the free consent of the parties?

- | | |
|--------------|----------------------|
| (a) coercion | (c) in-competency |
| (b) fraud | (d) undue influence. |

10. When the consent of a party is obtained by, coercion, undue influence, fraud or misrepresentation, the contract is:

- | | |
|--------------|--------------|
| (a) void | (c) valid |
| (b) voidable | (d) illegal. |

11. A threatens to kill B if he does not agree to sell his scooter to him for Rs. 1000 only. Here B's consent is obtained by:

- | | |
|---------------------|--------------------|
| (a) undue influence | (c) coercion |
| (b) fraud | (d) none of these. |

12. When the consent to an agreement is obtained by coercion, the agreement is voidable at the option of:

- | | |
|---|--|
| (a) either party to the agreement | (c) the party who obtained the consent |
| (b) the party whose consent was so obtained | (d) none of these. |

13. Where one party is in a position to dominate the will of another and uses his position to obtain the consent of the other party, the consent is said to be obtained by:

- | | |
|---------------------|------------------------|
| (a) coercion | (c) fraud |
| (b) undue influence | (d) misrepresentation. |

14. Which of the following acts does not fall under the categories of fraud?

- | | |
|--|--|
| (a) intentional false statement of facts | (c) innocent false statement |
| (b) active concealment of facts | (d) promise made without intention to perform. |

15. Where the consent of a party is obtained by misrepresentation, the contract is:

- | | |
|-----------|--------------|
| (a) valid | (c) voidable |
| (b) void | (d) illegal. |

16. Which of the following statements is false?

- | | |
|---|--|
| (a) a contract is not voidable if fraud of misrepresentation does not induce the other party to enter into a contract | (c) in case of fraud or misrepresentation, aggrieved party can either rescind or affirm the contract |
| (b) a party cannot complain of fraudulent silence or misrepresentation if he had the means of discovering the truth with ordinary means | (d) a party who affirms the contract, can also change his option afterwards if he so decides. |

17. Where the consent of both the parties is given by mistake, the contract is:

- | | |
|-----------|--------------|
| (a) void | (c) voidable |
| (b) valid | (d) illegal. |

18. As per Section 20, the contract is void on account of bilateral mistake of fact, But as per Section 22, if there is mistake of only one party, then the contract is:

- | | |
|-----------|--------------|
| (a) void | (c) voidable |
| (b) valid | (d) illegal. |

19. A contract made by mistake about the Indian Law, is:

- | | |
|-----------|--------------|
| (a) void | (c) voidable |
| (b) valid | (d) illegal. |

20. A contract made by mistake about some foreign law, is:

- | | |
|-----------|--------------|
| (a) void | (c) voidable |
| (b) valid | (d) illegal. |

21. A mistake as to a law not in force in India has the same affect as:

- | | |
|---------------------------|------------------------|
| (a) mistake of fact | (c) fraud |
| (b) mistake of Indian law | (d) Misrepresentation. |

22. A believes that a particular kind of rice is being sold in the market at Rs. 3,000 /- per quintal and, therefore, sells rice of that kind to B at Rs. 3,000 per quintal. But, in fact, the market price was Rs. 4,000. The contract is:

- (a) valid (c) voidable
(b) void (d) illegal.

23. Threat to commit suicide amounts to:

1. Coercion 2. offence under the Indian Penal Code 3. undue influence
2. Fraud

- (a) 1 & 2 (c) 3 & 4
(b) 2 & 3 (d) 1 & 4.

25. Contract caused by which of the following is voidable:

1. Fraud 2. Misrepresentation 3. Coercion 4. Bilateral Mistake

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

26. Which of the following is a requirement for misrepresentation to exist?

1. Misrepresentation should relate to a material fact.
2. The person making a misrepresentation should believe it to be true
3. It must be made with an intention to deceive the other party
4. The person making a misrepresentation should not believe it to be true

- (a) 1 & 2 (c) 3 & 4
(b) 2 & 3 (d) 1 & 4.

27. A contracts with B to buy a necklace, believing it is made of pearls whereas in fact it is made of imitation pearls. B knows that A is mistaken and takes no steps to correct the error. Now A wants to cancel the contract on the basis of fraud. Which of the following statements is correct?

- (a) A can cancel the contract alleging fraud (c) A can cancel the contract alleging
(b) A cannot cancel the contract undue influence
(d) A can claim damages.

28. A purchased a used computer from B thinking it as a computer imported from USA, B failed to disclose the fact to A. On knowing the fact A wants to repudiate the contract. Which of the following statement(s) is correct?

- (a) A can repudiate the contract on the ground of fraud (c) A cannot repudiate the contract
(b) A can repudiate the contract on the ground of misrepresentation (d) A can repudiate the contract on the ground of mistake.

29. Under Section 13 of the Indian Contract Act "Consent" means agreeing:

- (a) on the same thing (c) at the same time
(b) in the same sense (d) all of the above.

30. "*Consensus-ad-idem*" means:

- (a) general consensus (b) meeting of minds upon the same thing
in the same sense.

32. Consent is not free if affected by:

- (a) Mistake (c) both (a) and (b)
(b) misrepresentation

33. A threatens to shoot B, if B does not agree to sell his property to A at a very low price. B's consent in this case has been obtained by:

- (a) undue influence (c) fraud.
(b) coercion

34. A kidnaps B's son in order to make B enter into an agreement, the agreement is affected by:

- (a) undue influence (c) coercion
(b) fraud.

35. A chartered accountant holds back the books of accounts and other papers of his client and refuses to deliver them until and unless fees. The chartered accountant has applied:

- (a) undue influence (c) coercion
(b) fraud (d) misrepresentation.

36. A contract caused by coercion is:

- (a) valid (c) voidable
(b) void (d) illegal.

37. To make a contract voidable coercion must have been exercised against:

- (a) only the promisor (c) either (a) or (b).
(b) any other person

38. To avoid a contract under “Coercion”, the Indian Penal Code should be in force where the coercion is employed.

- (a) true (b) false.

39. A contract is said to be induced by undue influence where the relations subsisting between the parties are such that:

- (a) one of the parties is in a position to dominate the will of the other. (c) either (a) or (b)
(b) the dominant party uses that position to obtain an unfair advantage over the other. (d) both (a) and (b).

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

- (a) he holds a real or apparent authority over the other (c) he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress
(b) he stands in a fiduciary relation to the other (d) all of the above.

41. When the consent is caused by undue influence, the contract is:

- (a) valid (c) voidable
(b) void (d) illegal.

42. If a disciple agrees to gift to his Spiritual Guru, his entire property in return for attainment of salvation, the agreement can be set aside on grounds of:

- (a) coercion (c) fraud
(b) undue influence (d) misrepresentation.

43. Which of the following relationships raise presumption of undue influence?

- (a) parent and child (c) religious / Spiritual Guru and Disciple
(b) guardian and ward (d) all of the above.

44. Which of the following relations raise presumption of undue influence?

- (a) landlord and tenant (c) doctor and patient
(b) husband and wife (d) creditor and debtor.

45. Which of these does not constitute fraud?

- (a) suggestion as a fact, of something which is not true, by a person who does not believe it to be true (c) innocent misstatement, honestly believing the same to be true
(d) promise made without any intention of

(b) active concealment of a fact by one performing it.
having knowledge of belief of the fact

46. An attempt to deceive:

- (a) is not fraud unless the other party is actually deceived (c) amounts to misrepresentation
(b) is fraud whether the other party has been deceived or not (d) amounts to coercion.

47. Mere silence as to facts, likely to affect the willingness of a person to enter into a contract is not fraud

- (a) true (b) false.

48. Where A says to B, "If you do not deny it, I shall assume that the horse is sound". If the horse is unsound and A says nothing, there is:

- (a) misrepresentation (c) fraud
(b) no fraud (d) undue influence.

49. A sells by auction to B his car which A knows to be having serious defects. B is A's daughter and has just come of age. A is guilty of:

- (a) fraud (c) misrepresentation
(b) undue influence (d) mistake.

50. A contract affected by fraud is:

- (a) void (c) valid
(b) voidable (d) illegal.

51. When the person making a false statement believes the statement to be true and does not intend to mislead the other party to the contract it is known as:

- (a) coercion (c) fraud
(b) misrepresentation (d) mistake.

52. Where consent is caused by misrepresentation, the contract is:

- (a) voidable (c) illegal
(b) void (d) not affected in any manner.

53. Where consent is obtained by misrepresentation, the aggrieved party has the following remedies:

- (a) he can rescind the contract within a reasonable time (c) both (a) and (b)
(b) he can insist on the performance of the contract upon a condition that he shall be put in the position in which he would have been if the representations made had been true (d) neither (a) nor (b).

54. Where consent of the party was caused by misrepresentation but the party had the means to discover the truth with ordinary diligence, the contract is:

- (a) void-ab-initio (c) voidable
(b) valid (d) unenforceable.

55. One Blenkarn, knowing that Blenkiron & Co. Were reputed customers of Lindsay & Co. Placed an order with Lindsay & Co. By introducing himself as Blenkiron, the proprietor of Blenkiron & Co. Goods were then sold to Cundy, an innocent buyer. Lindsay & Co. sued Cundy for recovery of goods. In this case:

- (a) Cundy has good title to goods and can (c) Both (a) and (b)

retain them
(b) Sale made by Blenkarn to Cundy is valid
(d) Lindsay never intended to contract with Blenkarn, these was no contract. So, Cundy's title is defective.

56. Unilateral mistake as to a matter of fact renders a contract:

(a) void
(b) voidable at the option of party under mistake
(c) does not affect validity of the contract.

57. If there is an unilateral mistake as regards identity, caused by fraud of the other party, the contract is:

(a) void
(b) voidable
(c) valid
(d) illegal.

58. An old illiterate man with a feeble eye-sight was made to sign a bill of exchange, by means of a false representation that it was a guarantee bond. The bill of exchange constitutes a / an:

(a) valid contract
(b) void-ab-initio agreement
(c) contract voidable at the option of the old man
(d) illegal agreement.

59. 'A' held an auction for the sale of some lots of tow. 'B' thinking that hemp was being sold, bid for a lot of tow for an amount which was out of proportion to it but was a fair price for hemp. The contract is:

(a) void
(b) valid
(c) voidable
(d) illegal.

60. An agreement is void when there is:

(a) mistake of fact by one party
(b) mistake of fact by both the parties
(c) mistake of foreign law
(d) all the above.

61. P wrote to H inquiring price of rifles suggesting that he might buy as many as 50. On receipt of information, he telegraphed, "Send three rifles". Due to telegraphic mistake, message was transmitted as "End the rifles". H dispatched 50 rifles. The agreement is void on account of:

(a) unilateral mistake as to quantity
(b) bilateral mistake as to quantity of the subject matter
(c) bilateral mistake as to quality of the subject matter
(d) (b) and (c).

62. The validity of contract is not affected by:

(a) bilateral mistake o fact
(b) mistake of Indian law
(c) misrepresentation
(d) fraud.

63. Mistake as to Foreign Law is treated in the same manner as:

(a) Mistake of Indian law
(b) Mistake of fact
(c) Misrepresentation
(d) fraud.

CHAPTER-6 LAWFUL CONSIDERATION & OBJECT

CONTENTS:-

1. LAWFUL CONSIDERATION & OBJECT

1. LAWFUL CONSIDERATION OR OBJECT [Section 23]

Consideration or object is **unlawful** if it is: -

- A. Forbidden by law Acts forbidden by law are those which are punishable under any statute as well as those prohibited by regulation or orders made in exercise of the authority conferred by the legislature.
- Example:-** A promises to drop prosecution which he has instituted against B for robbery and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.
- Example:-** A loan granted to the guardian of a minor to enable him to celebrate the minor's marriage in contravention of the Child Marriage Restraint Act is illegal and cannot be recovered back.
- Example:-** A license to cut the grass is given to X by forest department under Forest Act. The license provides for imposition of penalty in the event of X choosing to assign his right. However if X assigns his right, the agreement would still be valid since there is no prohibition for such assignment as the consideration stipulating penalty is only to regulate the matter of administrative measure.
- B. Defeat the provisions of any law The term '**Law**' includes any legislative enactment or rule of the Hindu and Muslim Laws or any other rule for the time being in force in India.
- Example:-** Agreement in restraint of parental rights is in violation of Hindu Law.
- C. Fraudulent Where object or consideration is unlawful on ground of fraud.
- Example:-** A, B and C enter into agreement for the division among them of gains acquired or to be acquired, by them for fraud. The agreement is void as its object is unlawful.
- D. Injury to the person or property of another The general term "**injury**" means criminal or wrongful harm. Where the object of an agreement is to cause injury to the person or property of another.
- Example:-** An agreement to print a book in violation of another's copyright is void.
- Example:-** A borrowed Rs. 1000 from B. A executed a bond promising to work for B without pay for 2 years and in case of default agreed to pay interest at a very exorbitant rate and the principal amount at once. Held, the contract was void (**Ram Swaroop v. Bansi**)
- E. Immoral or opposed to the public policy **Example: -** Letting house to a prostitute knowingly.

Partial Illegality :- (Section 24) If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Example:- A promises to survive the business on behalf of B, a licensed manufacturer of some permissible chemicals and some contraband items. B promises to pay A a salary of Rs. 100000

per month. The agreement is void, the object of A's promise and the consideration for B's promise being in part unlawful.

DM QUESTION BANK

CHAPTER - 6

1. An agreement the object or consideration of which is unlawful, is:

- | | |
|-----------|-----------------|
| (a) Void | (c) voidable |
| (b) Valid | (d) contingent. |

2. The consideration or object of an agreement is considered unlawful, if it is:

- | | |
|----------------------|-------------------|
| (a) forbidden by law | (c) immoral |
| (b) fraudulent | (d) all of these. |

3. A agrees to pay Rs. 5 lakhs to B, if he (b) procures an employment for A in Income Tax Department. This agreement is:

- | | |
|-----------|-----------------|
| (a) Void | (c) voidable |
| (b) Valid | (d) contingent. |

4. A agrees to pay Rs. 50,000 to B if he kills C. The agreement is:

- | | |
|-----------|--------------|
| (a) void | (c) voidable |
| (b) valid | (d) illegal. |

5. An agreement the object or consideration of which is unlawful, is;

- | | |
|-----------|-----------------|
| (a) valid | (c) voidable |
| (b) void | (d) contingent. |

5. The consideration of an agreement is considered unlawful, if it is:

1. forbidden by law 2. Fraudulent 3. Immoral 4. very expensive

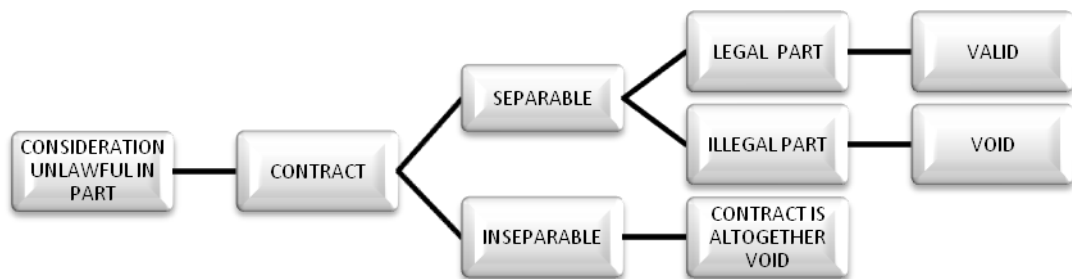
- | | |
|-------------|-----------------|
| (a) 1, 2, 3 | (c) 1, 2, 4 |
| (b) 2, 3, 4 | (d) 1, 2, 3, 4. |

CHAPTER-7 VOID AGREEMENTS

CONTENTS :-

1. AGREEMENTS EXPRESSLY DECLARED VOID

1. AGREEMENTS EXPRESSLY DECLARED VOID
Agreements by incompetent parties (Sec. 11)
Agreements with unlawful object or consideration (Sec. 23)
Agreement made under mutual mistake of fact (Sec. 20)
Agreements without consideration (Sec. 25)
Agreements in restraint of marriage, trade or legal proceedings etc.
Agreements to do impossible Acts (Sec. 56)
Example:- An agreement to discover treasure by magic is void.



❖ **Uncertain meaning** – An agreement the meaning of which is not certain is void but where the meaning thereof is capable of being made certain, the agreement is valid. **(Sec. 29)**

Example:- A agrees to sell 100 tons of oil @ Rs. 2000 per ton to B. The agreement is void on ground of uncertainty because in which type of oil they are dealing is not clear.

❖ **Wagering agreement** – It is an agreement involving payment of a sum of money upon the determination of an uncertain event. An agreement by way of wager is void.

- ✚ No party have control over the event.
- ✚ Collateral transactions are valid.

➔ **Speculative transactions are generally valid**

Elements:-

- Mutual intention of contracting parties to acquire or deliver the commodities.
- The undertaking or risk arising from movement in prices.

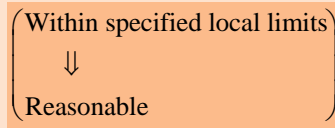
AGREEMENTS OPPOSED TO THE PUBLIC POLICY
These are the agreements which are against the moral laws of the society and contravenes any established interest of society. Following agreements are opposed to the public policy:-
(a) Trading with enemy Any trade with person owing allegiance to a Government at war with India without the license of the Government of India is void, as the object is opposed to public policy.

(b) Stifling prosecution	<p>An agreement to stifle prosecution tends to be a preservation or an abuse of justice; therefore, such an agreement is void. The principle is that one should not make a trade of felony (crime). One should not convert a crime into a source of profit.</p> <ul style="list-style-type: none"> ✚ Compromise of public offence is illegal. ✚ To drop uncompoundable offence without permission of court. <p>Example:- A knew that B has committed a crime. He obtains a promise from B to pay him Rs. 20000 in consideration of not exposing B. This is a case of stifling prosecution & therefore illegal & void.</p>	
(c) Champerty & maintenance	Maintenance	<p>It is the promotion of litigation in which one had no interest.</p> <p>Example:- A promises to pay B a sum of Rs. 10000 if B filed a suit against C in the court. This agreement is in the nature of maintenance and hence void.</p>
	Champerty	<p>It is bargain whereby one party agrees to assist the other in recovering property, with a view to sharing the profits of litigation.</p> <p>Example:- An agreement to give assistance (monetary or otherwise) to another person to recover the property by legal action and to share the proceeds of litigation is a champertous agreement.</p>
(d) Interference with the course of justice	<p>An agreement whose object is to induce any judicial officer of the state to act partially or corruptly is void.</p>	
(e) Marriage brokerage contracts	<p>An agreement to negotiate marriage for reward, which is known as a marriage brokerage contract, is void, as it is opposed to public policy.</p> <p>For Example:- An agreement to pay money to a person hired to procure a wife is opposed to public policy and therefore void.</p>	
(f) Interest (benefit) against obligation	<p>Taking a benefit against the obligation.</p> <p>Example:- A, who is the manager of a firm, agrees to pass a contract to X if X pays to A Rs. 20000 privately; the agreement is void.</p>	
(g) Sale of public office	<ul style="list-style-type: none"> ✚ Bribe for appointment in a public office as it interferes with the appointment of a person best qualified for the service of public. ✚ An agreement to pay money to a public servant in order to induce him to retire from his office so that another person may secure the appointment is void. ✚ An agreement to procure a public recognition like Padma Vibhushan for reward is void. 	
(h) Agreements for creation of monopolies void	<p>Agreements having their object the establishment of monopolies are opposed to the public policy and hence void. It is also hit by MRTP Act.</p> <p>Example:- A local body granted a monopoly to A to sell vegetables in a particular locality. Held that the agreement was void.</p>	
(i) Agreement in restraint of marriage	<p>Every agreement in restraint of marriage of any person, other than a minor, is void (Sec. 26).</p> <p>Example:- A promised to marry no one else except Miss B and in default pay her a sum of Rs. 100000. A married some one else and B sued A for recovery of the sum. Held, the contract was in restraint of marriage, and as such void.</p>	

(j) Agreement in restraint of trade An agreement by which any person is restraint from exercising a lawful profession, trade or business of any kind, is to that extent void.

Exceptions

(i) Sale of goodwill



(ii) An agreement among the sellers of a particular commodity not to sell the commodity for less than a fixed price is not an agreement in restraint of trade.

(iii) An agreement between partners not to carry on competing business during the continuance of partnership is valid. (**Section 11 of Indian Partnership Act, 1932**)

(iv) Agreement with outgoing partner not to carry on competing business for a reasonable time will be valid.(**Section 36 of Indian Partnership Act, 1932**)

(v) An agreement of service by which an employee binds himself, during the term of his agreement, not to complete with his employer is not in restraint of trade.

Example:- B, a physician and surgeon, employs A as an assistant for a term of three years and A agrees not to practice as a surgeon and physician during these three years. The agreement is valid and A can be restrained by an injunction if he starts independent practice during this period.

(vi) An agreement by a manufacturer to sell during a certain period his entire production to a wholesale merchant is not in restraint of trade.

(k) Agreement in restraint of legal proceedings It is one by which any party thereto is restricted absolutely from enforcing his rights under a contract through a court or which abridges the usual period for starting legal proceedings. It is void.

➤ **Exceptions –**

- ◆ Settlement of dispute through arbitration.
- ◆ Question already arisen or which may arise in future refer to arbitration
→ such a contract must be in writing.

DM QUESTION BANK
CHAPTER – 7

1. An agreement is void if it is opposed to public policy. Which of the following is not covered by heads of public policy?

- | | |
|-----------------------------------|--------------------------------------|
| (a) trading with an enemy | (c) marriage brokerage contracts |
| (b) trafficking in public offices | (d) contracts to do impossible acts. |

2. An agreement in restraint of marriage, i.e., which prevents a person from marrying, is:

- | | |
|--------------|-----------------|
| (a) valid | (c) void |
| (b) voidable | (d) contingent. |

3. An agreement in restraint of marriage is valid in case of following persons:

- | | |
|--------------|--------------------|
| (a) minors. | (c) Handicapped |
| (b) Educated | (d) none of these. |

4. An agreement, which prevents a person from carrying a lawful business, is:

- | | |
|-----------|-----------------|
| (a) Valid | (c) Voidable |
| (b) Void | (d) contingent. |

5. An agreement in restraint of legal proceeding is void. It does not cover an agreement which:

- | | |
|--|--|
| (a) restricts absolutely the parties from enforcing their legal rights | (c) discharges a party from liability or extinguishes the right of a party |
| (b) cuts short the period of limitation | (d) provides for a reference to arbitration instead of court of law. |

6. An agreement to pay money or money's worth on the happening or non-happening of a specified uncertain event, is a:

- | | |
|--------------------------|--------------------------|
| (a) wagering agreement | (c) quasi contract |
| (b) contingent agreement | (d) uncertain agreement. |

7. A sells the goodwill of his business to B and agrees with him to refrain from carrying on a similar business within specified local limits. This contract is:

- | | |
|-----------|--------------|
| (a) Valid | (c) voidable |
| (b) void | (d) illegal. |

8. R, an optical surgeon, employs S as the assistant for a term of three years and S agrees not to practice as a surgeon during this period. This contract is:

- | | |
|-----------|--------------|
| (a) Valid | (c) voidable |
| (b) void | (d) illegal. |

9. A agrees to pay Rs. 500 to B if it rains, and B promises to pay a like amount to A if it does not rain, this agreement is called:

- | | |
|-------------------------|------------------------|
| (a) quasi contract | (c) wagering agreement |
| (b) contingent contract | (d) voidable contract. |

10. Which of the following are covered under the heads Agreements Opposed to Public Policy?

1. Trading with enemy 2. Trafficking in Public Offices 3. Marriage Brokerage Contracts
2. Contracts to do impossible acts

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

11. G paid Rs. 1,00,000 to H to influence the head of the Government Organization in order to provide him some employment. On his failure to provide the job, G sued H for recovery of the amount. Which of the following is correct?

- | | |
|---|---|
| (a) the contract is valid and G can recover the amount from H | (c) G can recover the amount with interest |
| (b) the contract is void as it is opposed to public policy and G cannot recover | (d) G can recover the amount of Rs. 1,00,000 and damages. |

12. 'A' promises to drop prosecution which he has instituted against 'B' for robbery. 'B' promises to restore value of things taken. The agreement is:

- | | |
|----------------|--------------|
| (a) contingent | (c) voidable |
| (b) valid | (d) void. |

13. 'A' estate is sold for arrears of revenue. As per the Income Tax, the defaulter is prohibited from purchasing it. 'B' agrees with 'A' to purchase the estate and convey it back to 'A' for the price which 'B' may pay. The agreement is:

- | | |
|-----------|--------------|
| (a) legal | (c) voidable |
| (b) valid | (d) void. |

14. A, B and C enter into an agreement for sharing the gains acquired by fraud. This agreement is

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|----------------|---------------|
| (a) Contingent | (c) void |
| (b) valid | (d) voidable. |

15. 'A' gave a loan to the guardian of a minor to enable him to celebrate the minor's marriage in contravention of Child Marriage Restraint Act. The agreement between 'A' and 'Guardian of Minor' is:

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|-----------|---------------|
| (a) Valid | (c) voidable. |
| (b) Void | |

16. If illegal part of a contract can be severed from legal part, the contract is:

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|--|-----------------|
| (a) void in respect of illegal part only | (c) fully void. |
| (b) altogether void | |

17. Agreement, part of the consideration or object of which is unlawful and the unlawful objects cannot be separated from the lawful objects, is:

- | | |
|-----------|--------------|
| (a) Legal | (c) voidable |
| (b) Void | (d) valid. |

18. An agreement in restraint of trade is:

- | | |
|-----------|---------------|
| (a) Void | (c) illegal |
| (b) Valid | (d) voidable. |

19. Section ____ of the Indian Contract Act deals with "Agreements in restraint of trade":

- | | |
|--------|---------|
| (a) 26 | (c) 28 |
| (b) 27 | (d) 29. |

20. In Patna, 29 out of 30 manufacturers of combs agreed with R to supply combs only to him and not to any one else. Under the agreement R was free to reject the goods if he found no market for them. The agreement is:

- | | |
|-----------|---------------|
| (a) Valid | (c) illegal |
| (b) Void | (d) voidable. |

21. K, an employee of a Chennai based company, agreed not to employ himself in a similar business within a distance of 800 miles from Chennai after leaving the company's service. The agreement is void on ground of being:

- | | |
|--|--|
| (a) an agreement without consideration | (c) an agreement in restraint of trade |
| (b) an uncertain agreement | (d) all of the above. |

22. In which of the following agreements, Restraint of Trade is valid?

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|---|--|
| (a) agreement with Buyer of Goodwill | (c) Agreements under the Partnership Act, 1932 |
| (b) trade combinations, to the extent they do not create monopoly of opposed to public policy | (d) All of the above. |

23. S, a seller of imitation jewellery, sells his business to B and promises, not to carry on business in imitation jewellery and real jewellery. The agreement is:

- | | |
|--|------------------|
| (a) valid with regard to imitation jewellery; and void as regards real jewellery | (c) wholly void |
| (b) void with regard to imitation jewellery; and valid as regards real jewellery | (d) fully valid. |

24. Doctors may be paid non practicing allowances to avoid practicing when they are employed in a hospital. Such agreement is:

- | | |
|-----------|-------------------|
| (a) valid | (c) unenforceable |
| (b) void | (d) voidable. |

25. Where an employee enters into an agreement with his employer not to engage in similar work after the termination of his service, the agreement is:

- | | |
|-----------|-----------------|
| (a) valid | (c) enforceable |
| (b) void | (d) voidable. |

26. Which of the following agreements in restraint of trade is valid?

- | | |
|--|---|
| (a) partner not to carry on any business other than that of the firm while he is a partner | (c) not to carry on similar business within specified periods or local limits, upon or in anticipation of dissolution of firm |
| (b) outgoing Partner not to carry on any business similar to Firm's within specified periods or local limits | (d) all of the above. |

27. Section 28 of the Indian Contract Act deals with:

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|---|--|
| (a) agreement in restraint of legal proceedings | (c) agreement in restraint of marriage |
| (b) agreement in restraint of trade | (d) agreement to agree in future. |

28. Any agreement which limits the time within which any party thereto may enforce his rights by way of legal proceedings in the Ordinary Tribunals / Courts is:

- | | |
|-----------------|------------|
| (a) voidable | (c) void |
| (b) enforceable | (d) valid. |

29. Two or more parties may agree that:

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|---|--------------------------|
| (a) any dispute which may arise between them as regards any subject(s) shall be referred to arbitration | (c) both (a) and (b) |
| | (d) neither (a) nor (b). |

(b) the parties will not question the award of the arbitrator

30. An agreement to refer the dispute to the arbitrator is valid in respect of disputes:

- (a) already arisen (c) neither (a) nor (b)
(b) which may arise in future (d) both (a) and (b).

31. A promise to give money or money's worth upon the determination or ascertainment of an uncertain event is called:

- (a) wagering agreement (c) illegal agreement
(b) unlawful agreement (d) voidable agreement

32. In a wagering agreement, there is a promise to perform an act based on a / an:

- (a) certain event (c) either (a) or (b)
(b) uncertain event (d) both (a) and (b).

33. In a wagering agreement, uncertainty may be due to:

- (a) the event is yet to take place (c) either (a) or (b)
(b) the event might have already happened (d) both (a) and (b).
but the parties are not aware of its results

34. In a wagering agreement, each party should stand to win or lose.

- (a) True (b) false.

35. If either of the parties may win but cannot lose, or both may lose and cannot win, it is:

- (a) a wagering agreement (c) a voidable agreement
(b) not a wagering agreement (d) an illegal agreement.

36. To constitute wager, the promise should be to pay money or money's worth only.

- (a) True (b) false.

37. An agreement by way of wager is:

- (a) valid and enforceable by law (c) voidable
(b) void (d) immoral.

38. A 'wagering agreement' is void under Section ___ of the Indian Contract Act, 1872.

- (a) 28 (c) 30
(b) 29 (d) 31

39. Wagering agreements have been declared illegal in:

- (a) Gujarat (c) both (a) and (b)
(b) Maharashtra (d) neither (a) nor (b).

40. In India, unauthorized lottery is:

- (a) Illegal (c) both (a) and (b)
(b) Void (d) neither (a) nor (b).

41. A, in Mumbai, bets with B and loses. A applies to C for a loan in order to pay B. C gives the loan to A knowing the purpose. In this case:

- (a) C can recover the amount of loan from A (c) C can recover the amount from B
(b) C cannot recover the amount of loan from A (d) C can recover the amount from A or B

42. Prize competitions, insurance contracts, etc. are not wagering agreements.

- (a) True (b) false.

43. Transactions for sale and purchase of stocks and shares or for sale and delivery of goods with a clear intention only to settle the price difference are:

(a) wagering agreements

(c) contingent contract

(b) not wagering agreements

(d) voidable agreements.