**UNIT-II**

**Indian contract act help us to understand about the capacity of the parties entering agreement.**

* The parties who enter into a contract must have the capacity to do so. Capacity’ here means competence of the parties to enter into a valid contract.
* It is also essential to the creation of a contract that the parties are ad idem.
* It is also help us to know the difference between the void, voidable, illegal, unenforceable agreements.

**Section – A (Two Marks Questions)**

1. **What do you understand by “capacity to contract? (APR. 07, NOV. 08)**

Ans.: According to sec 10, an agreement becomes a contract if it is entered into between the parties who are competent to contract. Every person is competent to contract who a) is of the age of majority b) is of sound mind c) is not disqualified from contracting by any law.

1. **Who s called as minor?**

Ans.: According to sec.3 of the Indian Majority Act 1875, a minor is a person who has not completed eighteen years of age is called as minor

1. **What are necessaries?**

Ans.: The term ‘necessaries’ includes goods suitable to the condition in life of such infant or other person and to his actual requirement at the time of sale and delivery.

1. **What is consent?** (Nov. 2007, 08)

Ans.: Consent means acquiescence or act of assenting to an offer. “Two or more persons are said to consent when they agree upon the same thing in the same sense”.

1. **What is free consent?**

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

1. Coercion
2. Undue influence
3. Fraud
4. Misrepresentation
5. Mistake
6. What is flaw in consent?

Ans.: If Consent is granted by any one of the following means namely

1. Coercion
2. Undue influence
3. Fraud
4. Misrepresentation
5. Mistake

Then it is called as flaw in consent.

1. **What is Coercion?**

Ans.: When a person is compelled to enter into a contract by use of fourse by the other party or under a threat, ‘coercion’ is said to be employed. Coericion is the committing, or threatening to commit, any act forbidden by Indian Penal code, 1860 with an intention of causing any person to entre into an agreement. It also means fear, physical compulsion and menace to goods.

1. **What is Undue influence?**

Ans.: A party is compelled to enter into an agreement against his or her will, as a result of unfair persuasion by the other party is called unfair influence.

1. **What is misrepresentation?**

Ans.: A statement of fact which one party makes in the course of negotiation, with a view to inducing the other party to entre into a contract is known as representation, such representation when wrongly made either innocently or intentionally is called as misrepresentation.

1. **What is fraud?**

Ans.: Fraud exists when it is shown that

1. A false representation has been made knowingly, or without belief in its truth or recklessly, not caring whether it is true or false and the maker intended the other party to act upon it.
2. There is a concealment of a material fact.
3. **What is mistake?**

Ans.: Mistake may be defined as an erroneous belief about something. It may be a mistake of law or mistake of fact.

1. **What is wagering agreement or wager?**

Ans.: A wager is an agreement between two parties by which one promises to pay money or money’s worth on the happening of some uncertain event in consideration of the other party’s promise to pay it the event does not happen.

1. **What is restitution?**

Ans.: When a contract becomes void, the party who has received any benefits under it must restore it to the other party or must compensate the other party by the value of the benefit. This restoration of the benefit is called restitution.

1. **Who are insolvents?**

Ans.: When a debtor is adjudged as insolvent he is deprived of his power to deal in his property division among his creditors.

1. **What is mistake of law?**

Ans.: Mistake of law may be

1. Mistake of law of the country
2. Mistake of law of a foreign country

Mistake of law of the country: Such a mistake is treated as mistake of fact and the agreement in such a case is void.

1. **What is unilateral mistake?**

Ans.: When in a contract only one of the parties is mistaken regarding the subject matter or in expressing or understanding the terms or the legal effect of the agreement, the mistake is a unilateral mistake.

1. **What is the effect of co-Ericson?**

Ans.: When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. According to sec.72, a person to whom money has been paid, or anything delivered by mistake or under co-Ericson, must repay or return it.

1. **Give the consequences of misrepresentation.**

Ans.: The aggrieved party, in case of misrepresentation by the other party, can

* Avoid or rescind the contract
* Accept the contract but insist that he shall be placed in the position in which he would have been if the representation made had been true.

1. **State the exceptions to unilateral mistake.**

Ans.: Identity of the person contracted with:

* If A intends to enter into a contract with B, C cannot give himself any right in respect of the contract by accepting the offer. In such a case the contract is void.
* Nature of contract:

Were a person is made to enter into a contract through the inducement of another but through no fault of his own, there is a mistake as to the nature of the contract, and the contract is void.

1. **State the effects of illegality.**

Ans.: No action is allowed on an illegal agreement. This rule is based on the following two maxims

* No action arises from a base cause
* Where there is equal guilt, the defendant is in a better position.

1. **What is effect of wagering agreement?**

Ans.: Wagering agreement had been expressly declared to be void in India. No suit can be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide by the result of any game or other uncertain event on which any wager is made.

1. **What is uncertain agreement?**

Ans.: Agreement the meaning of which is not certain, capable of being made certain, are void.

**Section – B (Five Marks Questions)**

1. **State the requirements of misrepresentation**

Ans.: a) It must be a representation of a material fact.

b) It must be made before the conclusion of the contract with a view to inducing the other party to enter into the contract.

c) It must be made with the intention that it should be acted upon the person to whom it is addressed.

d) It must actually have been acted upon and must have induced the contract.

e) It must be wrong but thr person who made it honestly believed it to be true.

f) It must be made without any intention to deceive the other party.

1. **State the essential elements of the fraud. (NOV. 2007, 08)**

Ans.:

1. There must be a representation or assertion and it must be false.
2. The representation must relate to material fact which exists now or existed in the past.
3. The representation must have been made before the conclusion of the contract with intention of inducing the other party to act upon it.
4. The representation or statement must have been made with the knowledge of its falsity or without belief in its truth or not caring whether it is true of false.
5. The other party must have been induced to act upon the representation or assertion.
6. The other party must have relied upon the representation and must have been deceived.
7. The other party, acting on the representation or assertion, must have subsequently suffered some loss.
8. **State the effect of Undue influence.**

Ans.: When a contract to an agreement is obtained by undue influence, the agreement is a contract voidable at the option of the party whose consent was so obtained. Any such contract may be set aside either absolutely or if the party who is entitled to avoid it has received any benefits there under, upon such terms and conditions as to the court may seems just and equitable.

1. **Distinguish between Contract-Ericson and Undue influence. (APR. 2007)**

Ans.:

|  |  |  |
| --- | --- | --- |
| S.No | **Coercion** | **Undue influence** |
| 1.  2.  3.  4.  5. | The consent is given under the threat of an offence.  Coercion is mainly of a physical character.  It involves mostly use of physical or violent force.  There must be intention of causing any person to enter into an agreement.  It involves a criminal act. | The consent is given by a person who is so situated in relation to another.  Consent is given under moral influence.  Undue influence is of moral character.  It involves use of moral force or moral pressure.  Here the influencing party uses its position to obtain an unfair advantage over the other party.  No criminal act is involved. |

**5. Distinction between Fraud and Misrepresentation. (NOV. 2007)**

Ans.:

|  |  |  |
| --- | --- | --- |
| Particulars | **Fraud** | **Misrepresentation** |
| Intention  Nature  Belief  Rescission  And  damages  Damages  Discovery of truth | There is an intention to deceive the other party.  It is willful or deliberate  The person does not believe it to be true.  Remedy available to the  Aggrieved party is not  Limited to rescission.  There can be no suit for damages.  Here the aggrieved party finds any concealment, he can avoid the contract. | There is a mix-statement or concealment of a material fact essential to the contract.  It is innocent  The person making suggestion believes it to be true.  The aggrieved party can rescind the  Contract or sue for restitution.  He can also claim damages.  The aggrieved party cannot avoid the contract. |

1. **Explain the effects of misrepresentation.**

Ans.: The aggrieved party, in case of Misrepresentation by the other party can

a) Avoid or rescind the contract

b) Accept the contract but insist that he shall be placed in the position have been if the representation made had been true.

Loss of right of rescission:

The aggrieved party loses the right to recind or avoids the contract for Misrepresentation or fraud

a) If he becoming aware of the fraud or Misrepresentation

b) If restoration to the original position

c) If a third person has required rights in the subject matter of the contract in good faith and for value

1. **Give the consequences of fraud**.

Ans.: A contract induced by fraud is voidable at the option of the party defrauded. Until it is avoided, it is valid. The party defrauded has, the following remedies like

* He can rescind the contract. Rescission must be within a reasonable time.
* He can insist on the performance of the contract on the condition that he shall be put in the position in which he would have been if the representation made had been true.
* He can sue for damages.

1. **Is mere silence is a fraud-comment?**

Ans.: The general rule is that a person before entering into a contract need not disclose to the other party the material facts which he knows, but he must refrain from making active concealment(like concealing a crack on the surface of a table by filling it and republishing it). This means mere silence is not fraud.

1. **Give the essentials of wagering agreements.**

* Ans.: Promise to pay money or money’s worth: The wagering agreement must contain a promise to pay money or money’s worth.
* Uncertain event: The promise must be conditional on an event happening or not happening.
* Future event: The wager generally contemplates a future event.
* Each party must stand to win or lose: Upon the determination of the contemplated event, each party should stand to win or lose.
* No control over the event: Neither party should have control over the happening of the event one way or the other. If one of the parties has the event in his own hands, the transaction or no-happening of the event other than the sum or stake he will win or lose.

1. **Differentiate between contract of insurance and wagering agreements.**

Ans.:

|  |  |  |
| --- | --- | --- |
| S.No. | **Contract of insurance** | **Wagering agreements** |
| 1.  2  3.  4.  5. | In insurance, the assured has an insurable interest in the subject matter.  In insurance both the parties are interested in the protection of the subject matter.  A Contract of insurance, except life insurance is a contract of indemnity.  A Contract of insurance is beneficial to the public.  Contract of insurance is based on scientific and actuarial calculation of risks. | In a wagering agreement, there is no such intersect.  In a wagering agreement it is only own of the parties who is interested in its protection.  In a wagering agreement, the amount is fixed.  A wagering agreement does not serve any useful purpose.  A wagering agreement is just a gamble. |

**Section – C (Ten Marks Questions)**

1. **“An agreement with a minor is void” –comment. Or state the rules as to minor contract. (NOV.2007, APR.2009)**

Ans.: According to sec.3 of the Indian Majority Act 1875, a minor is a person who has not completed eighteen years of age is called as minor. In the following two cases, he attains majority after twenty one years of age:

1. Where a guardian of a minor’s person or property has been appointed under the Guardians and Wards Acts, 1890 or
2. Where the superintendence of a minor’s property is assumed by a Courts of Wards.

The position of a minor as regards his agreements may be assumed are as follows:

1. An agreement with or by a minor is void and inoperative as into.
2. He can be a promise or a beneficiary.
3. His agreement cannot be ratified by him on attainting the age of majority.
4. If he has received any benefit under a void agreements entered into by him as they are void as initio.
5. He can always plead minority.
6. There can be no specific performance of the agreements entered into by him as they are void as into.
7. He cannot enter into a contract of partnership.
8. He cannot be adjusted insolvent.
9. He is liable for necessaries provided.
10. He can be an agent.
11. His parents/ guardians are/is not liable for the contract entered into by him.
12. A minor is liable in mistake.
13. **Name some persons other than minors, who are not competent to contract.**

**(NOV 2007, 09)**

Ans.: One of the essential conditions of competency of parties to a contract is that they should be of sound mind. Sec 12 lays down a test of soundness of mind.

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

1. Contracts of persons of unsound mind:
2. **Lunatics:** A lunatic is a person who is mentally de arranged due to a some mental strain or other personal experience. He suffers from intermittent intervals of sanity and insanity. He can enter into contracts during the period when he is of sound mind.
3. **Idiots:** An idiot is a person who has completely lost his mental powers. An agreement with an idiotic person is void abs initio.
4. **Drunken or intoxicated persons:** A drunken or intoxicated person suffers from temporary incapacity to contract.
5. **Other persons:**

Alien enemies: During the war an Indian citizen cannot enter into a contract with an alien enemy. Contracts made before the war are either suspended or dissolved.

**Foreign sovereigns and accredited representatives of a foreign state:**

They can enter into contracts and enforce these contracts in our courts. But they cannot be used in our courts without prior sanction of the central government.

**Corporations:** The contractual capacity of a statutory corporation is limited by the statue governing it. As regards a company registered under the companies act, 1956, its contractual capacity is regulated by its Memorandum of Association.

**Insolvents:** When a debtor is adjudged as insolvent he is deprived of his power to deal in his property divisible among his creditors.

**Convicts:** A convicts when undergoing imprisonment is incapable of entering to a contract.

1. **Explain about the mistake in detail.**

Ans.: Mistake may be defined as an erroneous belied about something. It may be a mistake of law or mistake of fact **(APRIL, 2009)**

**Mistake of law:**

1. Mistake of law of the country
2. Mistake of law of a foreign country

Mistake of law of the country: Ignorance of law is no excuse.

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

Mistake of fact: Mistake of fact may be

a) Bilateral mistake b) Unilateral mistake

a) Bilateral mistake:

When both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, there is a bilateral mistake. In such a case, the agreement is void.

The following 2 essential conditions to be fulfilled. They are

1. The mistake must be mutual.
2. The mistake must relate to a matter of fact essential to the agreement

The various cases which fall under bilateral mistake are as follows.

1. **Mistake as to subject matter:** When both the parties to a contract are working under a mistake relating to the subject matter, the agreement is void. Mistake as to the subject matter covers the following cases:
2. Mistake as to the existence of the subject matter
3. Mistake as to the identity of the subject matter
4. Mistake as to the quality of the subject matter
5. Mistake as to the quantity of the subject matter
6. Mistake as to the title of the subject matter
7. Mistake as to the price of the subject matter

2. **Mistake as to the possibility of performing the contract:** Consent nullified if both the parties believe that an agreement is capable of begin performed. Impossibility may be of

1. Physical impossibility
2. Legal impossibility

3. **Unilateral mistake:**

When in a contract only one of the parties is mistaken regarding the subject matter or in expressing or understanding the terms or the legal effect of the agreement, he mistake is a unilateral mistake. There are two exceptions to this rule:-

1. Identity of the person contracted with: If A intends to enter into a contract with B, C cannot give himself any right in respect of the contract by accepting the offer. In such a case the contract is void.
2. Nature of contract: When as person is made to enter into a contract through the inducement of another but through no fault of his own, there is a mistake as to the nature of the contract, and the contract is void.  **(APRIL 2011)**

4. **What is illegal agreement? State the agreements opposed to public policy.**

Ans.: Illegal agreements: An Illegal agreement is not only void as between the immediate parties but has the effects that the collateral transaction to it also becomes tainted with illegality.

The following are the agreements opposed to public policy:

An agreement is said to be opposed to public policy when it is harmful to the public welfare. They are

1. **Agreements of trading with enemy**:

An agreement made with an alien enemy in time of war is illegal on the ground of public policy. It is based on two reasons of further performance could involve commercial intercourse with the enemy or the continued existence may confer an immediate of future benefit.

1. **Agreement to commit a crime:**

When the consideration in an agreement is to commit a crime, the agreement is opposed to public policy.

1. **Agreements which interfere with administration of justice:**

It is unlawful begin opposed to public policy. It may take on any of the following forms:-

1. Interference with the course of justice.
2. Stifling prosecution.
3. Maintenance and Champertiy.
4. **Agreements in restraint of legal proceedings:**

An agreement which deals with these agreements renders void two kinds of agreements namely.

1. Agreement restricting enforcement of rights.
2. Agreements curtailing period of limitation.
3. **Trafficking in public offices and titles:**

Agreements for the sale or transfer of public offices and titles or for the procurement of a public recognition like Padma Vibhushan or Padma Veer Chakra for Monetary consideration are unlawful, begin opposed to public policy.

1. **Agreements tending to create interest opposed on duty:**

If a person enters into an agreement whereby he is bound to do something which is against his public or professional duty, the agreement is void on the ground of public policy.

1. **Agreements in restraint of parental rights:**

A father, and in his absence the mother is the legal guardian of his/her minor child.

1. **Agreements restricting of marriage:**

Agreements which unduly restricting the personal freedom of the parties other than a minnow is void.

1. **Agreements in restraint of marriage:**

Every agreement in restraint of the marriage of any person other than a minor is void.

1. **Marriage brokerage or brocade agreement:**

An agreement by which a person four a monetary consideration, promises in return to procure the marriage of another is void.

1. Agreements interfering with martial duties.
2. Agreements to defraud creditors or revenue authorities is not enforceable being opposed to public policy.
3. Agreement in restraint of trade is also unlawful being opposed to public policy.

5. **When consideration or object is unlawful?**

* If it is forbidden by law: If the object or the consideration of an agreement is the doing of an act forbidden by law, the agreement is void. An act is forbidden by law when it is punishable by the criminal law of the country or when it is prohibited by special legislation or regulations made by a competent authority under powers derived from the legislature.
* If it is of such a nature that, If permitted, it would defeat the provisions of any law. If the object or the consideration of an agreement is such that, thought not directly forbidden by law, it would defeat the provisions of any, the agreement is void.
* It is fraudulent: An agreement which is made for a fraudulent prupose is void. Thus an agreement in fraud or creditors with a view if defeating their rights is void.
* If is involves or implies injury to the person or property of another. Injury means wrong, harm, or damage. Person means one’s body. Property includes both movable and immovable property.
* If the court regards it is immoral. An agreement, the consideration or object of which is immoral, is unlawful.
* Where the court regards it as opposed to public policy…

**UNIT – III: PERFORMANCE**

* Discharge of contract gives information about the different ways of termination of the contracts that too legal or illegal ways.
* A contract gives rise to correlative rights and obligations.
* It also gives a remedy in the means given by the law for the enforcement of that right.
* It also contains the law relating to contract of agency.
* It also explains the types of agency and their performance, obligations, termination, and their remedies.

**Section – A (Two Marks Questions)**

1. **What is attempted performance or tender? (APRIL 2007)**

Ans.: The promisor offers to perform his obligation under the contract at the proper time and place but the promise does not accept the performance. This is know as “attempted performance” or” Tender”

1. **Explain Reciprocal promises.**

Ans.: Promises which form the consideration or part of the consideration for each other are called “Reciprocal promise”.

1. What is Assignment of contract?

Ans.: To ‘**assign**’ means ‘**to transfer’**. Assignment of a contract means transfer of contractual rights and liabilities under the contract to a third party with or without the concurrence of the other party to the contract.

1. **Explain Discharge of contract.**

Ans.: Discharge of contract means termination of the contractual relationship between the parties. A contract is said to be discharged when it ceases operate.

1. **What is Novation?**

Ans.: Novation takes place when

1. A new contract is substituted for an existing one between the same parties or
2. A contract between two parties is rescinded in consideration of a new contract being entered into on the same terms between one of the parties and a third party.
3. **Explain the term ‘Waiver’. (APRIL 2009)**

Ans.: Waiver takes place when the parties to a contract agree that they shall no longer be bound by the contract. This leads to mutual abandonment of rights by the parties.

1. **What is Rescission?**

Ans.: Rescission of a contract takes place when all or some of the terms of contract are cancelled.

1. **What is Remission?**

Ans.: Remission means acceptance of a lesser fulfillment of th promise made.

1. **What is Supervening impossibility? Or What is post- contractual impossibility?**

Ans.: Impossibility which means subsequent to the formation of a contact(which could be performed at the time when the contract was entered into) is called post contractual or supervening impossibility.

1. **Explain the term ‘Quantum merit’.**

Ans.: ‘Quantum merit’ literally means’ as much as earned’. A right to sue on a ‘Quantum merit’ arises where a contract, partly performed by one party, has become discharged by the breach of the contract by the othe party.

1. **What are Quasi contract? Or write a note on Quasi contract. (NOV 2007)**

Ans.: Quasi contract is created by law. Even though if there is no contract or agreement between the parties, they are put in the same position as if there were a contract between them. Such relationship is termed as Quasi contract.

1. **Who is an agent?**

Ans.: An agent is a person employed to do any act for another or to represent another in dealing with third persons. The person for whom such act is done or who is so represented is called the ‘principal’. The function of an agent is to bring his principal into contractual obligation with third persons.

1. **Who can employ an agent?**

Ans.: Any person who is of the age of majority according to the law to which he is subject and who is of sound mind, may employ an agent. The lunatic or minor or a drunken person cannot employ an agent.

1. **What is agency by ratification?**

Ans.: A person may act on behalf of another without his knowledge or consent. In such a case the principal may accept or reject the act of an agent. When an agent exceeds the authority, the principal may ratify the unauthorized act.

1. **What is meant by Revocation?**

Ans.: Revocation means putting an end to the contractual obligations.

1. Define contingent contract.

Ans.: A contingent contract is the contract to do or not to do something.

1. **State any two void agreements. (NOV. 2009)**

Ans.:

* Agreement by incompetent parties
* Agreement without consideration.

1. **Who can demand performance?**

Ans.: It is only the promise who can demand performance of the promise under a contract. It makes no difference wheather the promise is for the benefit of the promise or for the benefit of any othe person.

1. **What is substituted agent?**

Ans.; Substituted agent works under the instructions of the principal. The agent is not responsible to the principal for any act or negligence of the substituted agent. There is a privity of contract.

1. **What is contract of indemnity?**

Ans.: A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of the any other person is called a ‘contract of indemnity’. The person who promises to make good the loss is called the indemnifier 9promisor) and the person whose loss is to be made good is called the indemnified or indemnity holder. A contract of indemnity is really a class of contingent contract.

1. **What is particular lien?**

Ans.: A particular lien is one which is available to the bailee against only those goods in respect of which he has rendered some service involving the exercise of labour or skill.

1. **Give the rule of agency.**

Ans.: There are two important rules of an agency. Thery are

* Whatever a person can do personally, he can do through an agent.
* He who does an act through another does it by himself. This means that the acts of an agent, subject to certain conditions, are acts of the principal. Sec.226 clearly provides that an agent’s acts and contracts will have the same legal consequences as if the contracts had been entered into and the acts done by the principal in person.

1. **Explain Damages.**

Ans.: Damages are monetary compensation awaded to the injured party by court for tha loss or injury suffered by him. The Indian contract act which deals with ‘compensation for loss or damage caused by breach of contract’ is based on the judgment.

1. **What is performance of contract?**

Ans.: Performance of contract takes place when the parties to the contract fulfill their obligations arising under the contract within the time ans in the manner prescribed.

1. **What is devolution of joints liabilities?**

Ans.: ‘Devolution’ means passing over from one person to another. When two or more persons have made a joint promise, they are known as joint promisors. If any one of them die, the legal representative of all of them must fulfill the promise jointly.

1. **Define Bailment.**

Ans.: Bailment as the delivery of goods by one person to another for some purpose, upon a contract, that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the ‘bailor’ and the person to whom they are delivered is called the ‘bailee’.

1. **Define Pledge.**

Ans.: The bailment of goods as security for payment of a debt or performance of a promise is called ‘pledge’. The bailor called as the ‘pledger’ or ‘pawnor’ and the bailed is called the ‘pledge’ or ‘Pawnee’.

1. **What is lien?**

Ans.; Lien means the right of a person to retain possession of some goods belonging to another until some debt or claim of the person is possession is satisfied.

1. **Explain pledge by non-owners.**

Ans.: The general rule is that it is the owner who can ordinarily create a valid pledge. But in the following cases, pledge even by a non-owner is valid

* Pledge by mercantile agent.
* Pledge by seller or buyer in possession after sale.
* Pledge by a person having limited interest.
* Pledge by a contract-owner in possession.
* Pledge by a person in possession under a voidable contract.

**Section – B (Five Marks Questions)**

1. **What are the pre-requisites of a valid tender? Or what are the essentials of a valid tender? (NOV.2009, APR.08,07)**

Ans.: The following are the some of the pre-requisites of a valid tender.

* It must be unconditional.
* It must be a whole quantity contracted for.
* It must be by a person who is in a position and is willing to perform the promise.
* It must be made to the proper time and place.
* It must be made to the proper person.
* It may be made to one of the several joint promises.
* It must give a reasonable opportunity to tha promise for inspection of the goods.

1. **Explain the Reciprocal promises and its types.**

Ans.: Promises which form the consideration or part of the consideration for each other are called “Reciprocal Promises’.

The following are the types of Reciprocal promises

* Mutual and independent
* Conditional and dependent
* Mutual and concurrent.

**Mutual and independent:**

When each party must perform his promise independently and irrespective of the fact whether the other party has performed or is willing to perorm, his promise or not, the promises are mutual and independent.

**Conditional and dependent:**

When the performance of the promise by one party depends, on the prior performance of the promise by the other party, the promises are conditional and dependent.

**Mutual and concurrent:**

When the promises of the both the parties are to be performed simultaneously, they are said to be mutual and concurrent.

1. **Give an account on Supervening Impossibility.**

Ans.: A contract is discharged by Supervening Impossibility in the following cases:-

1. **Destruction of subject matter of contract:**

When the subject matter of a contract, subsequent to its formation, is destroyed without any fault of the parties to the contract, the contract is discharged.

1. **Non-existence or non-occurrence of a particular state of things:**

Something, a contract is entered into between two parties on the basis of a continued existence or occurrence of a particular state of things. If there is any change in the state of things which formed the basis of the contract, or if the state of things which right to have occurred does not occur, the contract is discharged.

1. **Death or incapacity for personal service:**

When the performance of a contract depends on the personal skill or qualification of a party, the contract is discharged on the illness or incapacity or death of that party.

1. **Changes of law or stepping in of a person with statutory authority:**

When the subsequent to the formation of a contract, change of law takes or the government takes some power under some special act.

1. **Outbreak of war:**

A contract entered into with an alien enemy during the war is unlawful and therefore impossible of performance.

1. **How do you classify the agents?**

Ans.: A) A general classification of agents from the point of view of the extent of their authority is as follows:-

* Special agent
* General agent
* Universal agent

B) Another classification of agents from the point of view of the nature of work performed by them is as follows:-

* Commercial or mercantile agents
* Non mercantile agents

On the basis of the extent of their authority agency are classified as

1. **Special agent:**

A special agent is one who is appointed to perform a particular act or to represent his principal in some particular transaction like an agent appointed to sell a house or an agent employed to bid at an auction. Such an agent has a limited authority and as the act is performed his authority comes to an end.

1. **General agent:**

He is the one who has authority to do all acts connected with a particular trade, business or employment.

1. **Universal agent:**

A universal agent is one whose authority to act for the principal is unlimited. He has authority to bind his principal by any act which he does, provided that act

1. Is legal
2. Is agreeable to the law of the land

On the basis nature of work performance:

**I. Commercial or mercantile agents:**

A mercantile agent in the customary course of business as a agent, authority either to sell goods or to consign goods for the purpose of sale or to buy goods or to raise money on the security of goods.

* **Factor** :

A factor is a mercantile agent entrusted with the possession of goods for the purpose of selling them. He sells the goods in his own name. He can also sell them on credit.

* **Auctioneer**:

An auctioneer is an agent appointed by a seller to sell his goods by public auction for a reward generally in the form of a commission.

* **Broken**:

A broker is also an agent who is employed to buy or sell goods on behalf of another. He is employed to enter into contractual relation between the principal and the third parties.

* **Commission agent:**

A commission agent belongs to a indefinite class of agents. He is employed to buy or sell goods or to transact business generally for other persons receiving for his lanour and trouble a money payment called commission.

* **Delcredre agent:**

A Delcredre agent is one who in consideration of an extra commission, guarantees his principal that the persons with whom he enters into contract on behalf of the principal, shall perform their obligations. He occupies the position of both a guarantor and an agent.

* **Banker** :

The relationship between a banker and his customer is really that of debtor and creditor. But there is a super added obligation on the part of the banker to pay when called upon to do so by the draft or order of the customer. To this extent, a banker is the agent of his customer.

**II. Non mercantile agents:**

These include atomics, solicitors, insurance agents, clearing and forwarding agents etc.

1. **What are the differences between sub agent and substituted agent?**

Ans.:

|  |  |  |
| --- | --- | --- |
| **S.No** | **Sub-agent** | **Substituted agent** |
| 1.  2.  3.  4.  5. | The sub-agent does his work under the control of the agent  The agent is responsible to the principal for the acts of sub-agent.  There is no privity of contract.  The principal cannot sue the sub-agent.  Sub-agent cannot sue the principal for his remuneration. | Substituted agent works under the instructions of the principal.  The agent is not responsible to the principal for any act or negligence of the substituted agent.  There is a privity of contract.  Both can sue each other.  Both can sue each other. |

1. **What are the differences between an agent and a servant. (APR 2009)**

Ans.:

|  |  |  |
| --- | --- | --- |
| **S.No** | **Agent** | **Servant** |
| 1.  2.  3.  4. | An agent is employed to bring the principal into legal relations with third persons or to represent him.  Agent is bound to follow all the lawful instructions of the principal.  An agent may work for several principals at the same time.  A principal is liable for the wrongs of his agent done within the scope of his authority. | A servant does not create legal relations between the employers with third persons.  A servant acts under the direct control and supervision of his employer.  A servant usually serves only one master.  A master is liable for the wrongs of the a servant if they are committed in the course of his employment. |

1. **How a continuing guarantee can be revoked?**

Ans.: Revocation of continuing guarantee as to future transactions in the following ways

1. By notice: a continuing guarantee may at any time be revoked by the surely as to future transactions by notice to the creditor.
2. By death of surety: the death of the surely operates in the absence of any contracts to the contrary, as a revocation of a continuing guarantee.
3. By other modes: it is also revoked.

* Novation
* By creditors act
* By the act of principal debtor
* By variance in terms of contract
* By loss of security
* By discharge.

**8. Distinguish between a wagering agreement and a contingent contract ?**

Ans : a ) A wagering agreement contract consists of reciprocal promises where a contract may not contain reciprocal promises .

b) A wagering agreement is essentially nor a contingent nature where as a contingent contract may not be of a wagering nature.

c ) A wagering agreement is void whereas contingent contract is valid .

d ) In wagering agreement , the parties have no other interest in the subject matter of the agreement expect winning or losing of the amount of the wager . In other words a wagering agreement is a game of a chance. This is not so in case of a contingent contract.

e ) in a wagering agreement the future event is the future event is the sole determining factor while in a contingent contract the future event is only collateral .

**9 . What is contingent contract? Explain the rules as to contingent contract.**

Ans : A contingent contract is the contract to do or not to do something .

Rules as to contingent contract:

a) Contingent contract dependent on the happening of an uncertain future event . Cannot be enforced until the event has happened.

b) When a contingent contract is to be performed if a particular event doesnot happen . its performance can be enforced when the happening of that event becomes impossible .

c) if a contract is contingent upon how a person will act at an unspecified time , the event shall be considered to becomes impossible when such person does anything which renders it impossible that he should so act within any definite time , or otherwise than under further contingencies .

d) Contingent contracts to do or not to do anything . if a specified uncertain event happens within a fixed time , becomes void if the event does not happen or its happening becomes impossible before the expiry of that time.

e) Contingent agreement to do or not to do anything , if an impossible event happens are void , whether or not the fact is known to the parties .

**10. Explain the kind of guarantee.**

Ans : The function of a contract of guarantee is to enable a person to get a loan , or goods on credit or an employment . a guarantee may be therefore be given for

* The repayment of a debt.
* The payment of the price of the price of the good sold on credit .
* The good conduct or honesty of a person employed in a particular offices.

In the last case, the guarantee is a called a ‘fidelity guarantee‘ .

A guarantee may be in respect of a single transaction.

Specific guarantee: When a guarantee extends to a single transaction or debt . it is called a specific simple guarantee .

Continuing guarantee: When a guarantee extends to a single of transaction , it is called a continuing guarantee.

**11.Write the differences between particular lien and general lien ?**

|  |  |
| --- | --- |
| **Particular lien**   * This is a right available to the   bailee against only those goods in respect of which skill and labour have been expended by him .   * This is a right to retain the good only for a charge for labour employed or expenses incurred upon the goods. | **General lien**   * This is a right to retain any property belonging to the other party in respect of any payment lawfully due is in the possession of the person exercising the right. * This is a right to retain any property belonging to the other party for a general balance of account. |

**12 . Give the rights of finder of goods?**

Ans : The following are the rights of finder of goods :-

* A right of lien the finder of goods has a right of lien over the goods for his expenses.
* Rights to sue for reward: The finder of goods can sue for any specific reward which the owner has offered for the return of the goods.
* Rights of sale: A finder of goods may sell the goods found.
* If the owner cannot with reasonable diligence be found
* If found, he refuses to pay the lawful charges of the finder or .
* If the goods are in the danger of perishing or of losing the greater part of their value.
* If the lawful charges of the finder in respect of the goods found amount to 2/3rds of their value.

**13. What is irrevocable agency?**

Ans : When an agency cannot be put an end to be an irrecoverable agency . an agency is irrevocable where

* It is copied with interest:
* An agency is said to be copied with interest when it is created for securing some benefits to the agent over and above his remuneration as agent.

The agent has incurred a personal liability: When an agent incurs a personal liability the becomes irrecoverable, the principal cannot, in such a case, revoke the agency exposed to the risk or liability he has already incurred.

The agent has party exercised the authority:

The principal cannot revoke the authority given to his agent after the authority has been party exercised, so far as regards such acts and obligations as arises from acts already done in the agency.

**14 . What is contract of agency? Explain its essentials.**

Ans : A person who has capacity to contract may enter into a contract with anther

* Either by himself or.
* Through another person. The function of an agent is to bring his principal into contractual relations with third parties. This means that an agent is merely a connecting link between the principal and third persons.
* Essentials of contract of agency :
* Agreement between the principal and agent: Agency depends on agreement but not necessarily on contract. As between the principal and third personas any person may become an agent. As such even a minor or a person of unsound mind may be an agent. The principal is liable for the acts of an agent.
* Intension of the agent to act on behalf of the principal: When a person does intend to act on behalf of another. Agency may arise although the contract between the parties provides that there is no such relationship.

**15. Give the characteristics of the contingent contract.**

ANS: There are 3 essential characteristics of a contingent contract. They are

* Its performance depends upon the happening or non happening in future of some event. It is dependence on a future event which distinguishes a contingent contract from other contracts.
* The event must be uncertain. If the event is bound to happen, and the contract has got to be performed in any case it is not a contingent contract.
* The event must be collateral i.e., incidental to the contract.

**19 . Write short notes on liquated damages and penalty .**

Ans : liquidated damages and penalty :

Liquated damages represent a sum fixed or ascertained by the parties in the contract which is a fair and genuine pre – estimate of the probable loss that might ensure as a result of the breach ‘

Penalty;

Penalty is a sum named in the contract at the time of its formation which is dis -proportional to the damages likely to accrue as a result of the breach.

**20 . Write a note on responsibility of finder of goods.**

Ans: a person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee . He must also take necessary measures to trace its owner. Till the owner is found out , the property in goods will vest in the finder and he can retain the goods as his own against the whole world ( expect the owner )

The finder can sell the goods in the following cases

When the thing found in danger of perishing.

When the owner cannot, with reasonable diligences found out.

When the owner is found out , but he refuses to pay the lawful charges of the finder and

When the lawful charges of the finder in respect of the thing found, amount to 2/3 rds of the value of the thing found.

**21. Write about the requistes of a valid ratification**

Ans : Requisites of valid ratification :

The agent must purport to act as Agent for a principal who is in contemplation and is identification at the time of contract .

The principal must be in existences at the time of contract .

The principal must have contractual capacity both at the time of the contract and the time of ratification .

Ratification must be with full knowledge of facts .

Ratification must be done with a reasonable time of the act purported to be ratified .

The acts to be ratified must be lawful and not void or illegal or ultar vires in case of a company .

The whole transaction can be ratified

Ratification must be communicated to the principal had the power to do

Ratification should not put a third party to damages

Ratification relates back to the date of the act of the agent .

**22 . Impossibility of performance is not an excuses “ comment .**

Ans : Difficult of performance :

A contract is not discharged by the mere fact that it has become a more diffcult of {performance due to some un – contemplated events or delays .

Commercial impossibility:

A contract is not discharges merely because expected of higher profits is not realized or the necessary raw materials is availed at a higher price because of the out break of war or there is a sudden depression of currency.

Impossibility due to failure of a third person :

Failure of a third person on whose work the promisor relied, it is not discharged

Strikes, lock outs and civil disturbances:

Events such as these do not discharge a contract unless the parties have specially agreed in this regard at the time of formation of the contract.

**23 . State the effects of a supervening impossibility**

When one person has promised to do something which he knew, or with reasonable diligence might have known and which the promise did not know impossible or unlawful, the promise must make compensation to the promise for any loss which the promisor sustains though the non- performance of promise

When any agreement is discovered to be void, or when a contract is bound to restore it to make compensation for it to the person from whom he received it.

When the performance of a contract becomes impossible or unlawful subsequent to its formation, the contract becomes void.

**24 . State the rules as to payment of interest.**

Ans : payment of interest in case of default

A stipulation for payment of interest in case of default is not in the nature of a penalty, if the interest is reasonable.

Payment of interest at higher rate:-

From the date of the bond : A stipulation for increased interest from the date of the bond , and not from the date of default , is always in the A

From the date of default ‘; a stipulation for increased interest from the date of default may be stipulation by way of penalty

Payment of compound interest on default:-

At the same rate as simple interest : A stipulation in a bond for payment of compound interest on failure to pay simple interest at the same rate as payable upon the principal is not a penalty ‘

At the rate higher than simple interest : a stipulation in a bond for the payment of compound interest at a higher than that of simple interest is a penalty and would be relived against .

Payment of interest at a lower rate ‘ if interest paid on due date :

When a bond provides for payment of interest say at 24/. p.a with a provision that if the debtors pay interest correctly at the lend of every year ,

The creditor would accept interest at a lower rate say 18 \. P.a the creditor would accept is entitled on failure of payment of interest on the due date to interest at the higher rate of 24.5 \. P .A. Such a clauses is not in the nature of a penalty

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**25 . Give the rights of indemnifier and indemnity – holder.**

Ans : rights of indemnity – holder

All damages which he may be complied to pay in any suit in respect of any matter to which the promises to indemnity applies .

All costs which he may be complied to pay in brining or defending such suit

All sums which he may have paid under the terms of any compromises of any such suit.

**26 . Explain the termination of bailment.**

Ans : A contract of bailment is terminated in the following cases :-

On the expiry of the period: when the bailment is for a specific period it terminates on the expiry of that period.

On the achievement of the object: when the bailment is for a specific purpose is achieved.

Inconsistent use of goods when the bailee uses the goods in a manner inconsistent with the terms of the contract the bailment terminates

Destruction of the subject matter : a bailment is terminated when the subject matter of the bailment

Is destroyed

By reason of a change in its nature becomes incapable of use for the purposes of the bailment .

Gratuitous bailment : it can be terminated any time subject to condition laid down .

Death of the bailor or bailee : a gratuitous bailment is terminated by the agent death either of the bailor or of the bailee.

**27. Draft the parties of principal and agent in a relation to third parties .**

Ans : The position of a principal and his agent as regards contracts made by the

agent with third parties may be as follows:-

**Named principal:** when the agent contracts as agent for a named

Principal , the principals is

Liable for the acts of the agent with third persons provided

The acts are done within the scope of his authority and in

Course of his employment as an agent

Liable for the misrepresentation made or frauds committed by the agent in the course of employment

Bound by the notice given to or information obtained by the agent in the course of the business of the principal and for admissions made by the agent

Unammed principal: The principal is liable for the contracts of the agent, unless there is a trade custom or a term, express or implied, to the effects which makes the agent personally liable.the legal position is the same as where the principal is named.

Undisclosed principal: The agent is bound by the contract. He may be used be sued on it and he has the right to sue the third party.the principal too has the right to intervene and assert his position as an undisclosed party to the contract

**Section –c (Ten marks questions)**

**1. Explain the various mode of termination of the contract.**

Ans:-A contract is said to be terminated when the obligation created by it come to

An end the various ways of discharge of contracts are as follows:

a) Discharge by performance

b) Discharge by agreement or consent

c) Discharge by impossibility

d) Discharge by lapse of time

e) Discharge by operation of law

f) Discharge by breach of contract

**A. Discharge by performance:**

Discharge of an contract by performance take place when the parties to the contract fulfill their obligation arising under the contract within the time ant the manner prescribed . The performance may be

1. Actual performance

2. Attempted performance

**1.Actual performance:**

When both the parties perform their promises, the contracts discharged . performance should be complete, precise and according to the terms of the agreement. Most of the contracts are discharged by performance.

**2.Attempted performance:**

When the promisor offers to perform his obligation , but the promise refuse to accept the performance , tender is equivalent to actual performance.

B. Discharge by agreement or consent:

a) A contract rests on the agreement of the parties, As it is agreement which binds

them, so by their agreement or consent. They may be discharged.

b) The discharged by consent may be express or implied.

C) Express consent may be through mutual agreement by the parties.

d) Implied consent must be inferred from the behavior of the parties.

e) Discharge by implied consent takes place by

* **Novation** : When a new contract is subtitled for an existing one, either between the same parties or between one of the parties and a thirds party.
* **Alteration** : When one or more of the term of the contract are altered by the mutual consent of the parties to the contract.
* **Rescission** : When all or same of the terms of the contract are cancelled.
* **Waiver** : Waiver means intentional relinquishment or giving up of aright by a party entitled threats under a contract.
* **Remission** : Acceptance of a lesser fulfillment of the promise made
* Merger : When an inferior right accuring to a party under a contract merges into a superior right accuring to the same party under a new contract.

**C. Discharge by impossibility:**

Impossibility of performance may be

a) Initial impossibility

b) Supervencing Impossibility

**A. Initial Impossibility:**

An agreement to do act Impossible in itself is void.

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