B-LAW NOTES

UNIT-1:- CONTRACT ACT

1Q. Define contract? Discuss the essential elements of a valid contract?

(Or)

Law of contract is not the whole of law of agreement nor whole law of obligation. Discuss enumerating the essentials of a valid contract?

(or)

The parties to a contract in a essence make the law for themselves?

(Or)

What is the nature and the object of contract?

Ans: Meaning:" A contract is an agreement made between two (or) more parties which the law will enforce."

Definition: According to section 2(h) of the Indian contract act, 1872. "An agreement enforceable by law is a contract.

According to **SALMOND**, a contract is "An agreement creating and defining obligations between the parties"

Essential elements of a valid contract:

According to 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 not here by expressly declared to be void"

In order to become a contract an agreement must have the following essential elements, they are follows:-

1) Offer and acceptance:

- To constitute a contract there must be an offer and an acceptance of that offer.
- The offer and acceptance should relate to same thing in the same sense.
- There must be two (or) more persons to an agreement because one person cannot enter into an agreement with himself.

2) Intention to create legal relationship:

- The parties must have intention to create legal relationship among them.
- Generally, the agreements of social, domestic and political nature are not a contract.
- If there is no such intention to create a legal relationship among the parties, there is no contract between them.

Example: BALFOUR (vs) BALFOUR (1919)

Facts: A husband promised to pay his wife a household allowance of L 30 (pounds) every month. Later the parties separated and the husband failed to pay the amount. The wife sued for allowance.

Judgment: Agreements such as there were outside the realm of contract altogether. Because there is no intention to create legal relationship among the parties.

3) Free and Genuine consent:

- The consent of the parties to the agreement must be free and genuine.
- Free consent is said to be absent, if the agreement is induced by a)coercion, b)undue influence, c)fraud, d)Mis-representation, e)mistake.

4) Lawful Object:

- The object of the agreement must be lawful. In other words, it means the object must not be (a) Illegal, (b) immoral, (c) opposed to public policy.
- If an agreement suffers from any legal flaw, it would not be enforceable by law.

5) Lawful Consideration:

- An agreement to be enforceable by law must be supported by consideration.
- Consideration means "an advantage or benefit" moving from one party to other. In other words "something in return".
- The agreement is enforceable only when both the parties give something and get something in return.
- The consideration must be real and lawful.

6) Capacity of parties: (Competency)

- The parties to a contract should be capable of entering into a valid contract.
- Every person is competent to contract if

  (a). He is the age of majority.

  (b). He is of sound mind and

  (c). He is not dis-qualified from contracting by any law.
- The flaw in capacity to contract may arise from minority, lunacy, idiocy, drunkenness, etc..,

7) Agreement not to be declared void:

- The agreements must not have been expressly declared to be void u/s 24 to 30 of the act.

Example: Agreements in restraint of trade, marriages, legal proceedings, etc..,

8) Certainty:

- The meaning of the agreement must be certain and not be vague (or) indefinite.
- If it is vague (or) indefinite it is not possible to ascertain its meaning.

Example:

'A' agrees to sell to 'B' a hundred tones of oil. There is nothing whatever to show what kind of a oil intended. The agreement is void for uncertainty.

9) Possibility of performance:

- The terms of an agreement should be capable of performance.
- The agreement to do an act impossible in itself is void and cannot be enforceable.

Example:

'A' agrees with 'B', to put life into B's dead wife, the agreement is void it is impossible of performance.

10) Necessary legal formalities:

- According to Indian contract Act, oral (or) written are perfectly valid.
- There is no provision for contracting being written, registered and stamped.
- But if is required by law, that it should comply with legal formalities and then it should be complied with all legal (or) necessary formalities for its enforceability.

2Q. Define offer (OR) proposal? Explain the legal rules as to a valid offer also discuss the law relating to communication of offer and revocation of offer?

Ans: Definition:

According to section 2(a) of Indian contract act, 1872, defines offer as "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 otherto, such act (or) abstinence, he his said to make a proposal".

Legal rules (OR) Essential elements of a valid offer / proposal:-

1) Offer must be capable of creating legal relations: A social invitation, even if it is accepted does not create legal relationship because it is not so intended to create legal relationship. Therefore, an offer must be such as would result in a valid contract when it is accepted.

2) Offer must be certain, definite and not vague: If the terms of the offer are vague, indefinite, and uncertain, it does not amount to a lawful offer and its acceptance cannot create any contractual relationship.

3) Offer must be communicated: An offer is effective only when it is communicated to the person whom it is made unless an offer is communicated; there is no acceptance and no contract. An acceptance of an offer, in ignorance of the offer can never treated as acceptance and does not create any right on the acceptor.

Example: LALMAN SHUKLA (VS) GAURI DATT. (1913)

Facts: 'S' sent his servant, 'L' to trace his missing nephew. He than announced that anybody would be entitled to a certain reward. 'L' traced the boy in ignorance of his announcement. Subsequently, when he came to know of his reward, he claimed it.

Judgment: He was not entitled fro the reward.

4) Offer must be distinguished from an invitation to offer: A proposer/offer must be distinguished from an invitation to offer. In the case of invitation to offer, the person sending out the invitation does not make any offer, but only invites the party to make an offer. Such invitations for offers are not offers in the eyes of law and do not become agreement by the acceptance of such offers.

Example: Pharmaceutical society of great Britain (vs) Boots cash chemists (1953).

Facts: Goods are sold in a shop under the 'self service' system. Customers select goods in the shop and take them to the cashier for payment of price.

Judgment: The contract, in this case, is made, not when a customer selects the goods, but when the cashier accepts the offer to buy and receives the price.

5) Offer may be expressed (or) implied: An offer may be made either by words (or) by conduct. An offer which is expressed by words (i.e.., spoken or written) is called an **'express offer'** and offer which is inferred from the conduct of a person (or) the circumstances of the case is called an **'implied offer'.**

6) Offer must be made between the two parties: There must be two (or) more parties to create a valid offer because one person cannot make a proposal/offer to him self.

7) Offer may be specific (or) general: An offer is said to be specific when it is made to a definite person, such an offer is accepted only by the person to whom it is made. On the other hand general offer is one which is made to a public at large and maybe accepted by anyone who fulfills the requisite conditions.

Example: Carilill (vs) Carbolic Ball company (1893).

Facts: A company advertised in several newspapers is that a reward of L 100 (pounds) would be given to any person contracted influenza after using the smoke ball according to the printed

directions. Once Mr.Carilill used the smoke balls according to the directions of the company but contracted influenza.

Judgment: she could recover the amount as by using the smoke balls she accepted the offer.

8) Offer must be made with a view to obtaining the assent: A offer to do (or) not to do something must be made with a view to obtaining the assent of the other party addressed and it should not made merly with a view to disclosing the intention of making an offer.

9) Offer must not be statement of price: A mere statement of price is not treated as an offer to sell. Therefore, an offer must not be a statement of price.

Example: HARVEY (VS) FACEY (1893):

Facts: Three telegrams were exchanged between Harvey and Facey.

(a) "Will you sell us your Bumper hall pen? Telegram lowest cash price- answer paid". [Harvey to Facey].

(b) "Lowest price fro bumper hall pen L 900 (pounds)". [Facey to Harvey]

(c) "We agree to buy Bumper hall pen for the sum of L 900 (pounds) asked by you". [Facey to Harvey]

Judgment: There was no concluded contract between Harvey and Facey. Because, a mere statement of price is not considered as an offer to sell.

10) Offer should not contain a term "the non-compliance" of which may be assumed to amount to acceptance.

COMMUNICATION OF OFFER AND REVOCATION OF OFFER: An offer, its acceptance and their revocation (withdrawal) to be complete when it must be communicated to the offeree. The following are the rules regarding communication of offer and revocation of offer:

(a) Communication of offer:

i) The communication of an offer is complete when it comes to the knowledge of the person to whom it is made.

ii) An offer may be communicated either by words spoken (or) written (or) it may be inferred from the conduct of the parties.

iii) When an offer/proposal is made by post, its communication will be complete when the letter containing the proposal reaches the person to whom it is made.

(b) Revocation of offer: A proposal/offer may be revoked at anytime before the communication of its acceptance is complete as against the proposer, but not afterwards.

3Q. When does an offer comes to an end?

OR

When an offer does may be revoked (or) lapses?

OR

Revocation of offer otherwise than by communication?

Ans: Definition:

According to section 2(a) of Indian contract act, 1872, defines offer as "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 otherto, such act (or) abstinence, he his said to make a proposal".

Revocation (or) lapses of offer: Section 16, of the Indian contract act, 1872 deals with various modes of revocation of offer. According to it, an offer is revoked/lapses (or) comes to an end under following circumstances.

1) By communication of notice: An offeror may revoke his offer at any time before the acceptance by giving a simple notice of revocation, which can be either oral (or) written.

Example: HARRIS (VS) NIKERSON (1873).

Facts: An auctioneer 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 there upon sued auctioneer for his loss of time and expenses.

Judgment: 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.

2) By lapse of reasonable time: An offer will revoke if it is not accepted with in the prescribed/reasonable time. If however, no time is prescribed it lapses by the expiry of a reasonable time.

Example: Ramsgate victoria Hotel Company (vs) Monteflore (1886)

Facts: On June 8th 'M' offered to take shares in 'R' Company. He received a letter of acceptance on November 23rd. he refused to take shares.

Judgment: 'M' was entitled to refuse his offer has lapsed as the reasonable period which it could be accepted and elapsed.

3) By non-fulfillment of some conditions: When offeror has prescribed some conditions to be fulfilled and offeree/ acceptor fails to fulfill the conditions required to acceptance. In such a case offer will be revoked.

4) By death (or) insanity of the offeror: The death of the offeror does not automatically revoke the offer. When the death (or) insanity of the offeror provided the offeree comes to know before its acceptance it will be revoked. Otherwise if he accepts an offer in ignorance of the death (or) insanity of the offeror, the acceptance is valid.

5) By a counter offer: "counter offer" means when the offeree/acceptor offers to qualified acceptance of the offer subject to modifications and variations in the terms of original offer. Therefore counter offer amounts to rejection of the original offer.

Example: Hyde (vs) Wrench (1840)

Facts: 'W' offered to sell a farm to 'H' for L 1000 (pounds). 'H' offered L 950 (pounds) 'W' refused the offer. Subsequently, 'H' offered to purchase the farm for L 1000 (pounds).

Judgment: There was no contract as 'H' by offering L 950 (ponds) had rejected the original offer. Because the counter offer to a proposal amounts to its rejection.

6) By change in law: An offer comes to an end if the law is changed so as to make the contract contemplated by the offer illegal (or) incapable of performance.

7) An offer is not accepted according to the prescribed (or) usual mode: If the offer is not accepted according to the prescribed (or) usual mode, provides offeror gives notice to the offeree with in a reasonable time that the offer is not accepted according to the prescribed/usual mode. If the offeror keeps quite, he is deemed to have accepted the offer.

8) By death (or) insanity of the offeree/acceptor.

9) By destruction of the subject matter.

4Q. "An acceptance to be effective must be communicated to the offeror". Are there any exceptions to this rule?

(OR)

Define acceptance? Explain the rules regarding a valid acceptance?

Ans: Definition:

According to section 2(b) of the Indian contract Act, 1872, defines an acceptance is "when the person to whom the proposal is made signifies is assent thereto, the proposal is said to be accepted becomes a promise".

On the acceptance of the proposal, the proposer is called the promisor/offeror and the acceptor is called the promise/offeree.

Legal rules as to acceptance: A valid acceptance must satisfies the following rules:-

1) Acceptance must be obsolute and unqualified:

- An acceptance to be valid it must be obsolute and unqualified and in accordance with the exact terms of the offer.
- An acceptance with a variation, slight, is no acceptance, and may amount to a mere counter-offer (i.e.., original may or may not accept.

2) Acceptance must be communicated to the offeror:

- For a valid acceptance, acceptance must not only be made by the offeree but it must also be communicated by the offeree to the offeror.
- Communication of the acceptance must be expressed or implied.
- A mere mental acceptance is no acceptance.

3) Acceptance must be according to the mode prescribed (or) usual and reasonable manner:

- If the offeror prescribed a mode of acceptance, acceptance must given according to the mode prescribed.
- If the offeror prescribed no mode of acceptance, acceptance must given according to some usual and reasonable mode.
- If an offer is not accepted according to the prescribed (or) usual mode. The proposer may within a reasonable time give notice to the offeree that the acceptance is not according to the mode prescribed.
- If the offeror keeps quite he is deemed to have accepted the acceptance.

4) Acceptance must be given with in a reasonable time:

- If any time limit is specified, the acceptance must be given with in that time.
- If no time limit is specified, the acceptance must be given with in a reasonable time.

Example: Ramsgate victoria Hotel Company (vs) Monteflore (1886)

Facts: On June 8th 'M' offered to take shares in 'R' Company. He received a letter of acceptance on November 23rd. he refused to take shares.

Judgment: 'M' was entitled to refuse his offer has lapsed as the reasonable period which it could be accepted and elapsed.

5) It cannot precede an offer:

- If the acceptance precedes an offer, it is not a valid acceptance and does not result in a contract.
- In other words "acceptance subject to contract" is no acceptance.

6) Acceptance must be given by the parties (or) party to whom it is made:

- An offer can be accepted only by the person (or) persons to whom it is made.
- It cannot be accepted by another person without the consent of the offeror.

Example: Boulton (vs) Jones (1857).

Facts: Boulton bought a hose-pipe business from Brocklehurst. Jones, to whom Brocklehurst owed a debt, placed an order with Brocklehurst for the supply of certain goods. Boulton supplied the goods even though the order was not addressed to him. Jones refused to pay Boulton for the goods because he, by entering into a contract with Brocklehurst, intended to set off his debt against Brocklehurst.

Judgment: The offer was made to the Brocklehurst and it was not in the power of Boulton to step in and accept. Therefore there was no contract.

7) It cannot be implied from silence:

- Silence does not amount to acceptance.
- If the offeree does not respond to offer (or) keeps quite, the offer will lapse after reasonable time.
- The offeror cannot compel the offeree to respond offer (or) to suggest that silence will be equivalent to acceptance.

8) Acceptance must be expressed (or) implied:

- An acceptance may be given either by words (or) by conduct.
- An acceptance which is expressed by words (i.e.., spoken or written) is called '**expressed acceptance**'.
- An acceptance which is inferred by conduct of the person (or) by circumstances of the case is called an **'implied or tacit acceptance'**.

Example: Carilill (vs) Carbolic Ball company (1893).

Facts: A company advertised in several newspapers is that a reward of L 100 (ponds) would be given to any person contracted influenza after using the smoke ball according to the printed directions. Once Mr.Carilill used the smoke balls according to the directions of the company but contracted influenza.

Judgment: she could recover the amount as by using the smoke balls she accepted the offer.

9) Acceptance may be given by performing some condition (or) by accepting some consideration.

10) Acceptance must be made before the offer lapses (or) before the offer is withdrawn.

5Q. Write a short notes on consensus-ad-idem.

Ans: The essence of an agreement is the meeting of the minds of the parties in full and final agreement; there must, be consensus-ad-idem. The expression "agreement" as defined in section 2 (e) is essentially and exclusively consensual in nature (i.e.., before there can be an agreement between the two parties, there must be consensus-ad-idem).

This means that the parties to the agreement must have agreed about the subject-matter of the agreement in the same sense and at the same time. Unless there is consensus-ad-idem, there can be no contract.

Example: 'A' who owns two horses named Rajhans and Hansraj. 'A' selling horse Rajhans to 'B'. 'B' thinks that he is purchasing horse Hansraj. There is no consensus-ad-idem, there can be no contract.

6Q. Cross offer.

Ans: when two (or) more identical offers exchanged between the parties in ignorance at the time of each other's offer, the offer are called as cross offers. In such a case, the courts construe one offer as the offer and the other as the acceptance. Thus a cross offer will not create any contract.

Example: 'A' offers to sell his car to 'B' for RS.15000/-. 'B' at the same time, offers by a letter to buy 'A's car for Rs.15000/-. The two letters cross each other in the post. In such a case the courts construe one offer as the offer and the other as the acceptance. Thus there was no concluded contract between 'A' and 'B'.

7Q Distinguish between void contract and voidable contract.

Ans: The following are the differences between void and voidable contract. They are follows:-

Base	Void contract	Voidable contract
Definition	According to section 2(j) a void contract as 'a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable'.	According to section 2(i) a voidable contract is 'an agreement which is enforceable by law at the option of one or more the parties but not at the option of the other or other or others'.
Nature	A void contract is valid when it is made. But binding on the parties it may subsequently become void. We may talk of such a contract as void agreements.	A voidable contract on the other hand is voidable at the option of the aggrieved party and remains valid until rescinded by him. Contract caused by coercion, undue influence, fraud, misrepresentation are voidable. But in case contract is caused by mistake it is void.
Rights	A void contract does not provide any legal remedy for the parties to the contract. It may void of into right from the beginning. In other words it is not a contract at all	The aggrieved party in a voidable contract gets a right to rescind the contract. When such party rescinds it, the contract become void. In case aggrieved party does not rescind the contract with in a reasonable time, the contract remains valid.

8Q.Counter offer.

Ans: when the offeree offers to qualified acceptance of the offer subject to modifications and variations in the terms of the original offer, he is said to have made a counter offer. Counter offer amounts to rejection of the original offer. In such a case an offer may be revoked.

Example: Hyde (vs) Wrench (1840)

Facts: 'W' offered to sell a farm to 'H' for L 1000 (pounds). 'H' offered L 950 (pounds) 'W' refused the offer. Subsequently, 'H' offered to purchase the farm for L 1000 (pounds).

Judgment: There was no contract as 'H' by offering L 950 (pounds) had rejected the original offer. Because the counter offer to a proposal amounts to its rejection.

9Q. Communication of offer:

Ans: An offer, its acceptance and their revocation (withdrawal) to be complete when it must be communicated. When the contracting parties are face to face and negotiate in person, a contract comes into existence the movement the offeree gives his absolute and unqualified acceptance to the proposal made by the offeror.

The following are the rules regarding communication of offer:

i) The communication of an offer is complete when it comes to the knowledge of the person to whom it is made.

ii) An offer may be communicated either by words spoken (or) written (or) it may be inferred from the conduct of the parties.

iii) When an offer/proposal is made by post, its communication will be complete when the letter containing the proposal reaches the person to whom it is made.

10Q. Communication of acceptance.

Ans: An offer, its acceptance and their revocation (withdrawal) to be complete when it must be communicated. When the contracting parties are face to face and negotiate in person, a contract comes into existence the movement the offeree gives his absolute and unqualified acceptance to the proposal made by the offeror.

The following are the rules regarding communication of acceptance:-

1) Communication of an acceptance is complete:-

a) As against the proposer/offeror when it is put into the certain course of transmission to him, so as to be out of the power of the acceptor.

b) As against the acceptor, when its comes to knowledge of the proposer.

2) When a proposal is accepted by a letter sent by the post the communication of acceptance will be complete:-

a) As against the proposer when the letter of acceptance is posted and

b) As against the acceptor when the letter reach the proposer.

11Q. Communication of revocation.

Ans: An offer, its acceptance and their revocation (withdrawal) to be complete when it must be communicated. When the contracting parties are face to face and negotiate in person, a contract comes into existence the movement the offeree gives his absolute and unqualified acceptance to the proposal made by the offeror.

The following are the rules regarding communication of revocation:

1) As against the person who makes it, when it put into a course of transmission.

2) As against the person to whom it is made, when its comes to his knowledge.

12Q. Invitation to make an offer. (Or)

Offer and invitation to offer.

Ans: If a person makes an invitation to make an offer/proposal, the other person makes an offer/proposal in response. The offer/proposal may or may not be accepted.

Example: - Tender notice is an invitation to make a proposal/offer. Then the response to a tender notice is an offer and can be in two ways:-

1) **A definite offer:** When a tender is submitted, in response to an invitation for supply of goods and services in specified quantities, in a specific and definite manner, it is a definite offer.

2) **A standing offer:** sometimes a tender is submitted, in response to an invitation for supply of goods and services in a continuous way over a period of time, such an offer is said to be standing (or) continuous offer.

As soon an order is made a contract is created.

13Q. Revocation of offer and acceptance.

Ans: **Revocation of offer:** A proposal/offer may be revoked at anytime before the communication of its acceptance is complete as against the proposer, but not afterwards.

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

Example: 'A' makes proposal to 'B' to sell his house at a certain price. The letter is posted on 1st of the month. 'B' accepts the proposal by a letter sent by post on 4th. The letter reaches 'A' on the 6th.

'A' may revoke his offer at any time before 'B' posts his letter of acceptance. (i.e.., on 4th, but not afterwards).

'B' may revoke his acceptance at any time before the letter of acceptance reaches 'A'. (i.e.., on 6th, but not afterwards).

14Q. Communication of offer, acceptance and revocation.

(Or)

When is communication complete?

Ans: An offer, its acceptance and their revocation (withdrawal) to be complete when it must be communicated. When the contracting parties are face to face and negotiate in person, a contract comes into existence the movement the offeree gives his absolute and unqualified acceptance to the proposal made by the offeror.

Rules regarding the communication of offer, acceptance and revocation are laid down in section 4, as follows.

Communication of offer: The following are the rules regarding communication of offer:

1) The communication of an offer is complete when it comes to the knowledge of the person to whom it is made.

2) An offer may be communicated either by words spoken (or) written (or) it may be inferred from the conduct of the parties.

3) When an offer/proposal is made by post, its communication will be complete when the letter containing the proposal reaches the person to whom it is made.

Example: 'A' makes proposal to 'B' to sell his house at a certain price. The letter is posted on 10th July. It reaches 'B' on 12th July. The communication of offer is complete when 'B' receives the letter (i.e.., on 12th July).

Communication of acceptance: The following are the rules regarding communication of acceptance:-

1) Communication of an acceptance is complete:-

a) As against the proposer/offeror when it is put into the certain course of transmission to him, so as to be out of the power of the acceptor.

b) As against the acceptor, when its comes to knowledge of the proposer.

2) When a proposal is accepted by a letter sent by the post the communication of acceptance will be complete:-

a) As against the proposer when the letter of acceptance is posted and

b) As against the acceptor when the letter reach the proposer.

Communication of revocation: The following are the rules regarding communication of revocation:

1) As against the person who makes it, when it put into a course of transmission.

2) As against the person to whom it is made, when its comes to his knowledge.

Example: 'A' proposes by a letter, to sell a house to 'B' at a certain price. The letter is posted on 15th may. It reaches 'B' on 19th may. 'A' revokes his offer by telegram on 18th may. The telegram reaches 'B' on 20th may. The revocation is complete against 'A' when the telegram is dispatched (i.e.., in 18th may). It is complete as against the 'B' when he receives it (i.e.., on 20th may).

1-ICA (consideration)-3

15Q. Define consideration? What are the rules as to consideration?

Ans: Meaning:-

Consideration is a technical term used in the sense of quid-pro-quo (i.e.., some thing in return). When a party to an agreement promises to do something, he must get something in return. This "something" is defined as consideration.

Definition:-

According to section 2(d) of the Indian contract Act, 1872, defines consideration as "when at the desire of the promisor, the promise (or) any other person has done (or) abstained from doing, (or) does (or) abstains from doing, (or) promises to do (or) to abstain from doing, something, such act (or) abstinence (or) promise is called a consideration for the promise".

Example: Abdul Aziz (vs) Masum Ali (1914)

Facts: The secretary of a mosque committee filed a suit to enforce a promise which the promisor had made to subscribe Rs.500/- for rebuilding a mosque.

Judgment: 'The promise was not enforceable because there was no consideration in the sense of benefit', as 'the person who promised gained nothing in return for the promise made', and the secretary of the committee to whom the promise was made, suffered no detriment (liability) as nothing had been done to carry out the repairs. Hence the suit was dismissed.

Essentials of a valid consideration:- The following are the essentials of a valid consideration (OR) legal rules as to consideration.

1. It may be past, present (or) future:

- The words "has done (or) abstained from doing refer to past consideration.
- The word "does (or) abstains from doing" refer to present consideration.
- Similarly the word "promises to do (or) to abstain from doing" refers to the future consideration. Thus, the consideration may be past, present (or) future.

2. It must move at the desire of the promisor:

- In order to constitute a legal consideration, the act (or) abstinence forming the consideration for the promise must move at the desire (or) request of the promisor.
- If it is done at the instance of a third party (or) without the desire of the promisor, it will not be a valid contract.

Example: Durga Prasad (vs) Baldeo (1880);

Facts: 'B' spent some money on the improvement of a market at the desire of the collector of the district. In consideration of this 'D' who was using the market promised to pay some money to 'B'.

Judgment: The agreement was void being without consideration.

3. It must not be illegal, immoral (or) not opposed to public policy:

- The consideration given for an agreement must not be unlawful, illegal, immoral and not opposed to public policy.
- Where it is unlawful, the court will not allow an action on the agreement.

4. <u>It need not be adequate:</u>

- Consideration need not be any particular value.
- It need not be approximately equal value with the promise for which it is exchanged. But it must be something which the law would regard as having some value.
- In other words consideration, as already explained, it means "something in return". This means something in return need not be necessarily be an equal in value to "something given".

5. <u>It must be real and not illusory:</u>

- Consideration must not be illegal, impossible (or) illusory but it must be real and of some value in the eyes of law.
- The following are not real consideration:

(a)Physical impossibility, (b)legal impossibility, (c)uncertain consideration, (d) illusory consideration.

6. <u>It must move from the promise (or) any other person:</u>

- Under English law consideration must move from the promisee itself. But, under Indian law, consideration move from the promisee (or) any other person (i.e.., even a stranger).
- This means as long as there is a consideration for a promise, it is immaterial who has furnished it. But the stranger to a consideration will be sue only if he is a party to the contact.

<u>Example:</u> <u>Chinnaya (vs) Ramayya (1882).</u>

<u>Facts:</u> An old lady, by a dead of gift, made over certain property to her daughter 'D', under the directions that she should pay her aunt, 'P' (sister of old lady), a certain sum of money annually. The same day 'D' entered into an agreement with 'P' to pay her the agreed amount later 'D' refused to pay the amount on the plea that no consideration had moved from 'P' to 'D'.

<u>Judgment:</u> 'P' was entitled to maintain suit as consideration had moved from the old lady, sister of 'P', to the daughter, 'D'.

7. <u>It must be something the promisor is not already bound to do:</u> A promise to do what one is already bound to do, either by general law (or) under an existing contract, is not a good consideration for a new promise, since it adds nothing to the pre-existing legal or contractual obligation.

8. <u>It may be an act, abstinence (or) forbearance (or) a return promise:</u> consideration may be an act, abstinence (or) forbearance (or) a return promise. Thus it may be noted that the following are good considerations for a contract.

- Forbearance to sue.
- Compromise of a disputed claim.
- Composition with creditors.

<u>EXAMPLE:</u>- A promise to perform a public duty by a public servant is not a consideration.

16Q.Define consideration? "A contract not supported by consideration is unenforceable" discuss what are it exceptions".

(Or)

"A contract without consideration is void"- Discuss its exceptions?

(Or)

"Insufficiency of consideration immaterial; but an agreement without consideration is void". Comment.

(Or)

Explain the term consideration and state the exceptions to the rule "No consideration, no contract"

Ans: <u>Meaning:</u>-

Consideration is a technical term used in the sense of quid-pro-quo (i.e.., some thing in return). When a party to an agreement promises to do something, he must get something in return. This "something" is defined as consideration.

<u>Definition:</u>-

According to section 2(d) of the Indian contract Act, 1872, defines consideration as "when at the desire of the promisor, the promise (or) any other person has done (or) abstained from doing, (or) does (or) abstains from doing, (or) promises to do (or) to abstain from doing, something, such act (or) abstinence (or) promise is called a consideration for the promise".

<u>Example:</u> <u>Abdul Aziz (vs) Masum Ali (1914)</u>

Facts: The secretary of a mosque committee filed a suit to enforce a promise which the promisor had made to subscribe Rs.500/- for rebuilding a mosque.

Judgment:'The promise was not enforceable because there was no consideration in the sense of benefit', as 'the person who promised gained nothing in return for the promise made', and the secretary of the committee to whom the promise was made, suffered no detriment (liability) as nothing had been done to carry out the repairs. Hence the suit was dismissed.

Validity of an agreement without consideration:

The general rule is that an agreement made without consideration is void. In the following cases, the agreement though made without consideration, will be valid and enforceable according to section 25 and 185 are as follows:-

1. Nature love and affection: An agreement made without consideration is valid if it is made out of love, nature and affection such agreements are enforceable if

- The agreement is made in writing and registered.
- The agreement must be made between the parties standing in near relations to each other and
- There must be nature, love and affection between the parties.

Example: Venkatswamy (vs) Rangaswamy (1903):

Facts: By a registered agreement, 'V', on account of nature, love and affection for his brother, 'R', promises to discharge debt to 'B'. If 'V' does not discharge the debt.

Judgment: 'R' may discharge it and then sue 'V' to recover the amount. Therefore it is a valid agreement.

2. Compensation for past voluntary services: A promise made without consideration is valid if, it is a person who has already done voluntarily done something for the promisor, is enforceable, even though without consideration. In simple words, a promise to pay for a past voluntary service is binding.

3. Promise to pay Time-Bared debt: An agreement to pay a time-bared debt is enforceable if the following conditions are satisfied.

- The debt is a time bared debt
- The debtor promises to pay the time barred debt.
- The promise is made in writing.
- The promise is signed by the debtor.

4. Completed gifts: The rule "No consideration – No contract" does not apply to completed gifts. According to section 1 to 25 states "nothing in section 25 shall affect the validity, as between the donor and donee, of any gift actually made"

5. Agency: According to section 185, no consideration is necessary to create an agency.

6. Charitable subscription: Where the promisee on the strength of promise makes commitments (i.e.., changes his position to his liability/detriment).

Example: Kedernath (vs) Ghouri Mohammed (1886).

Facts: 'G' had agreed to subscribe Rs.100/- towards the construction of a town hall at Howrah. The secretary, 'K', on the faith of the promise, called fro plans and entrusted the work to contractors and undertook the liability to pay them.

Judgment: The amount could be recovered, as the promise resulted in a sufficient detriment to the secretary. However, be enforceable only to the extent of the liability incurred by the secretary. In this case, the promise, even though it was gratuitous, became, enforceable because on the faith of promise the secretary had incurred a detriment.

17Q."All contracts are agreements but all agreements are not contracts" - explain.

Ans: "All contracts are agreements but all agreements are not contracts"- the statement has two parts.

(a) All contracts are agreement: As per section 2(h) of Indian contract Act, "A contract is an agreement enforceable by law". Obviously an agreement is a pre requisite (i.e.., essential elements) for formation of contract. An agreement clubbed with enforceability by law and several other features (i.e.., free consent, consideration, etc..,) will create a valid contract. Therefore, obviously all contracts will be agreements.

(b) All agreements are not contracts: As per section 2(e) of Indian contract act, "An agreement is a promise and every set of promises, forming consideration for each other". Thus, a lawful offer and a lawful acceptance create an agreement only. Therefore all agreements are not contracts.

Conclusion:

Contract = Agreement + Enforceability by law.

Agreement = Offer + Acceptance.

Thus, all agreements are contracts but all agreements are not necessarily contracts.

18Q."A stranger to a consideration can sue" – Are there any exceptions to this rule?

Ans: Introduction: There is a general rule of law is that only the parties to a contract can sue. In other words, if a person not a party to a contract, he cannot sue. This rule is known as the "Doctrine of

privity of contract". Privity of contract means relationship subsisting between the parties who have entered into contractual obligations.

There are two consequences of doctrine of privity of contract they are follows:

1) A person who is not a party to a contract cannot sue even if the contract is for his benefit and he provided consideration.

(Or)

A stranger to a contract cannot sue.

2) A contract cannot provide rights (or) impose obligations arising under it on any person other than the parties to it.

(Or)

A stranger to a contract can sue.

Example: Dunlop Pneumatic Tyre Co.Ltd (vs) Selfridge & Co.Ltd (1915).

Facts: 'S' bought tyres from the Dunlop Rubber company and sold them to 'D', a sub-dealer, who agreed with 'S' not to sell below Dunlop's list price and to pay the Dunlop company L 5 (pounds) as damages on every tyre 'D' undersold. 'D' sold two tyres at less than the list price and there upon, the Dunlop Company sued him for the breach.

Judgment: The Dunlop Company could not maintain the suit as it was a stranger to the contract.

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

1. A trust: In trust deed beneficiaries is allowed to sue the trustee for enforcement of trustee's duties even though they are not contracting party. However, the name of the beneficiary must be clearly mentioned in the contract.

Example: Gandy (vs) Gandy (1884):

Facts: A husband who was separated from his wife executed a separation deed by which he promised to pay to the trustees all expenses for the maintenance of his wife.

Judgment: This sort of agreement creates a trust in favour of the wife and can be enforced.

2. Marriage settlements, partition (or) other family arrangements: When an agreement is made in connection of marriage settlements, partitions (or) other family arrangements and a provision is made for the benefit of a person, he may sue although he is not a party to the agreement.

Example: Daropti (vs) Jaspat Rai (1905):

Facts: 'J's wife deserted him because of his ill treatment. 'J' entered into an agreement with his father-in-law to treat her properly (or) else pay her monthly maintenance. Subsequently, she was again ill-treated and also driven out.

Judgment: she was entitled to enforce the promise made by 'J' to her father.

3. Acknowledgement (or) Estoppel: The person, who becomes an agent of a third party by acknowledgement (or) Estoppel, can be sued by such third party.

4. Assignment of contract: Assignment means voluntary transfer of the rights by a person to another. In such a case an assignee becomes entitled to sue and enforce the rights which are assigned to him.

5. Contracts entered into through an agent: The principal enforce the contract entered into by his agent provided the agent act within the scope of his authority and in the name of the principal.

6. Covenants running with the land: In case of transfer of immovable property, the purchaser of land (or) the owner of the land is bound by certain conditions (or) covenants created by an agreement affecting the land.

19Q. Define contract? Explain its kinds of contracts?

Ans: Meaning: "A contract is an agreement made between two (or) more parties which the law will enforce."

Definition:

According to section 2(h) of the Indian contract act, 1872. "An agreement enforceable by law is a contract.

According to **SALMOND**, a contract is "An agreement creating and defining obligations between the parties"

Kinds of contracts: - Contracts may be classified according to their (a) validity, (b) Formation, and (c) Performance.

(a)Classification according to validity:-

1. A valid contract: A valid contract is an agreement which is binding and enforceable. An agreement becomes a contract when all the essential elements (i.e.., offer and acceptance, intention to create legal relationship etc..,) are present, in such a case the contract is said to be valid.

2. A voidable contract: An agreement which is enforceable by law at the option of one (or) more parties thereto, but not at the option of the other (or) others, is a voidable contract. This happens when the essentials elements of a free consent is missing. When the consent of a party to a contract is said to be not free, if it is caused by Coercion, Undue influence, Misrepresentation (or) fraud, etc..,

3. A void contract: A void contract is really not a contract at all. The term "void" means an agreement which is without any legal effect. In other words "an agreement not enforceable by law is said to be void".

4. Illegal contracts: Some agreements are illegal in themselves (ex:- contracts of immoral nature, opposed to public policy etc..,) Thus, All illegal contracts are void but all void contracts are not illegal (ex:- A wagering agreement, though void is not illegal).

5. An unenforceable contract: An unenforceable contract is one which cannot be enforced in a court of law because of some technical defect such as absence of writing (or) where the remedy has been barred by lapses of time.

(b) Classification according to their formation:-

1. Express contract: An express contract is one, the terms of which are stated in words, spoken (or) written at the time of the formation of the contract.

2. Implied contract: An implied contract is one in which the evidence of the agreement is shown by acts and conduct of the parties, but not by words, written (or) spoken. In other words where the offer (or) acceptance of any promise made otherwise then in words, the promise is said to be implied promise (or) implied contract.

3. Quasi-contract: In truth Quasi-contract is not a contract at all. A quasi-contract is acts which are created by law. It does not have any essential elements of a valid contract. It is not intentionally created by parties but it is imposed by law. It is founded upon the 'principles of natural justice, equity and fair play'.

(c) Classification according to their performance:

1. Executed contract: "Executed" means that which is done. An executed contract is one in which both the parties have performed their respective obligation.

2. Executory contract: "Executory" means that which remains to be carried into effect. An executory contract is one in which the parties have yet to perform their obligations.

3. Unilateral (or) one-sided contract: in this type of contract, one party to a contract has performed his part even at the time of its formation and an obligation is outstanding only against the parties.

4. <u>Bilateral contract (or) Two-sided contract:</u> It is a contract in which the obligations on the part of both the parties to the contract are outstanding at the time of the formation of the contract.

1-ICA (capacity of parties)-4

20Q.Explain the term 'MINOR'? Explain the legal rules regarding agreement by a minor?

(Or)

What is the regal effect of a minor's misrepresentation of his age while entering into an agreement?

Ans: <u>Definition:</u>

According to section 3, of the Indian majority act, 1875 'A minor is a person who has not completed "18" years of age. However, minority will continue up to "21" years in case, if Hon.court has appointed guardian for a minor's property'.

Legal rules regarding an agreement by a minor:

A minor is incompetent to contract u/s 11of the Indian contact act, 1872. Minor's incompetence is not a punishment but it is a protection given to minors by law. The law becomes the guardian of minors to protect their rights because their mental capacity is not well developed. The following are the legal rules regarding minor's agreement are as follows:-

1. An agreement by minor is absolutely void: Where a minor is charged with obligations and the other contracting party seeks to enforce these obligations against minor, in such a case the agreement is deemed as void-ab-initio.

Example: Mohiri Bibi (vs) Dharmodas Ghose (1903).

Facts: A minor mortgaged his house in favour of money-lender to secure a loan of Rs.20000/- out of which the mortgagee (Dharmodas Ghose a money lender) paid the minor a sum of Rs.8000/-. Subsequently, the minor sued for setting a side the mortgage, stating that he was underage when he executed the mortgage.

Judgment: The mortgage was void and, therefore, it was cancelled. Further the money lender's request for the repayment of the amount advanced to the minor as part of the consideration for the mortgage was also not accepted.

2. He can be a promisee (or) a Beneficiary: Any agreement which is some benefit to the minor and under which he is required to bear no obligation is valid. Thus, a minor can be a beneficiary (or) a promisee.

3. His agreement cannot be ratified by him an attaining the age of majority: An agreement by minor is void-ab-initio and therefore ratification by minor is not allowed. There is a fundamental principal in law (i.e.., an agreement Void-ab-initio cannot be validated by subsequent action).

4. If he has received any benefit under a void agreement, he cannot asked **to compensate (or) pay for it:** Under section 64 and 65 of the act, provides a minor cannot be ordered to make compensation for a benefit obtained in a void agreement. Because section 64 and 65, which deals with restitution of benefit.

5. Minor can always plead minority: A minor's contract being void, any money advanced to a minor on a promissory note cannot be recovered even though a minor procures (or) take a loan by falsely representing that he is of full age it will not stop him from pleading his minority in a suit, to recover the amount and the suit will be dismissed. "The rule of estoppel cannot be applied against a minor".

Example: Leslie (vs) Shiell (1914).

Facts: 'S', a minor, by fraudulently representing himself to be of full age, induced 'L' to lend him L 400 (pounds). He refused to repay it and 'L' sued for his money.

Judgment: The contract was void and 'S' was not liable to repay the amount.

6. There can be no specific performance of the agreement entered into by him as they are void-ab-initio: A contract entered into, on behalf of a minor by his parent/guardian (or) the manager of his estate can be expressly enforced by (or) against the minor, provide the contract is

- With in the authority of the guardian and
- For the benefit of the minor.

7. He cannot enter into a contract of partnership: A minor being incompetent to contract but be a partner of a partnership firm, but u/s 30 of the Indian partnership Act, provides he can be admitted for the 'benefits of a partnership' with the consent of all the partners.

8. He can be an agent: A minor can be an agent. It is so because the act of the agent is the act of the principal and therefore, the principal is liable to the third parties for the act of a minor agent.

9. His parents/guardian is not liable for the contracts entered into by him: The parents/guardian is not liable for the contract entered into by minor. The parents can held liable for contracts for their minor children only when they are acting as agent.

10. A minor is liable in tort (A civil wrong): Minors are liable for negligence causing injury (or) damage to the property that does not belongs to them.

11. A minor is liable for necessaries: Minor's estate is liable for necessaries supplied to minor during minority. Minor does not personally liable for the supply of necessaries. The necessaries such as food, clothing, and shelter etc.., necessaries also include 'goods' and 'services'.

21Q. Person of unsound mind

Ans: According to section 12 of the Indian contract Act, 1872 "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 his capable of understanding it and of forming a rational judgment as to its effects upon his interests".

Soundness of mind of a person depends on two facts:

1. Ability to understand the contract at the time of making.
2. Ability to form a rational judgment about the effect of the contract on his interest.

Unsoundness may arise from idiocy, lunacy, drunkenness, hypnotism, mental decay because of old age and delirium (high temperature) etc..,

A person who is usually of unsound mind and occasionally of sound mind can contract when he is of sound mind.

A person who is usually of sound mind and occasionally of unsound mind cannot contract when he is of unsound mind.

Thus, the burden of proof will be lie upon the person who claims that he was not of sound mind at the time of making a contract.

22Q.what are necessaries when he is a minor on a contract for necessaries?

(OR)

Minor's liability for necessaries?

Ans: Definition:

According to section 3, of the Indian majority act, 1875 'A minor is a person who has not completed "18" years of age. However, minority will continue up to "21" years in case, if Hon.court has appointed guardian for a minor's property'.

Thus, minor estate is liable for necessaries supplied to minor during minority. Minor does not personally liable for the supply of necessaries.

According to the section 68 of the Act, "If a person incapable of entering into a contract, (or) any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who had furnished such supplies is entitled to be reimbursed from the property of such incapable"

There are two essentials:-

1. The things supplied must be suited to his condition in life (i.e.., position and financial status of the minor).
2. The things supplied must be necessaries of life (i.e.., food, clothing, shelter, etc..,)

Necessaries also includes:-

(a) **Necessary goods:** Necessary goods are not restricted to articles which are required to maintain a bare existence, such as bread and clothes, but it also include goods which are reasonably necessary to the minor having regard to his station in life. (i.e.., watch, bicycle, etc..,)

Example: Nash (vs) Imran (1908).

Facts: 'I', a minor, bought eleven fancy waistcoats from 'N'. he was at that time adequately provided with clothes.

Judgment: The waistcoats were not necessaries, and 'I' was not liable to pay for any of them.

(b) **Services rendered:** Certain services rendered to a minor have been held to be necessaries. These include education, training for a trade, medical advice, hose given to a minor on rent for the purpose of living and continuing his studies etc.., As regards contracts which are not for the supply of necessaries but which are undoubtedly beneficial to the minor, in such a case the minor private estate is liable.

Example: Roberts (vs) Gray (1913).

Facts: 'G', a minor, entered into a contract with 'R', a noted billiards player, to pay him a certain sum of money to learn the game and play matches with him during his world tour. 'R' spent time and money in making arrangements for billiards matches.

Judgment: 'G' was liable to pay as the agreement was one for necessaries as it was in effect "for teaching, instruction, and employment and was reasonable for the benefit of the infant".

Loans incurred to obtain necessaries: A loan taken by a minor to obtain necessaries also binds him and is recoverable by the lender as if he himself had supplied the necessaries. But the minor is not personally liable. It is only his estate which is liable for loans.

23Q. Contract by disqualified person.

(Or)

Person expressly disqualified (other person).

Ans: Besides minors and persons of unsound mind, there are also other persons who are disqualified from contracting partially (or) wholly. So, the contracts by such persons are void. If, by any provisional legislation, a person is declared "**disqualified proprietor**", he is not competent to enter into any contract in respect of the property.

The following persons are disqualified from contracting;

(a) Alien enemy.
(b) Foreign sovereign states.
(c) Corporations.
(d) Insolvents.
(e) Convicts.

1-ICA (legality of object)-6

29Q.Under what circumstances is the object (or) consideration of a contract deemed unlawful? Illustrate with examples?

Ans: Meaning:-

Consideration is a technical term used in the sense of quid-pro-quo (i.e.., some thing in return). When a party to an agreement promises to do something, he must get something in return. This "something" is defined as consideration.

An agreement will not be enforceable if its objects (or) the consideration are unlawful. According to section, of the Indian contract Act, 1872. The consideration and objects are unlawful in the following cases:

1. If it is forbidden by law: If the object (or) the consideration of an agreement is forbidden by law, in such a case the agreement is deemed to be unlawful and void. An act is forbidden by law if,

- It is punishable under the criminal law of the country. (or)
- It is prohibited by special legislations and regulations made by competent authority under power derived from legislature.

Example: 'A' promises to obtain for 'B' an employment in the public service and 'B' promises to pay Rs.1000/- to 'A'. The agreement is void, as the consideration for it is unlawful.

2. If it is defeats the provision of any law: If the object (or) consideration of an agreement is of such a nature that, though not directly forbidden by law, it would defeat the provisions of the law, in such a case the agreement is deemed to be unlawful and void.

Example: An agreement between husband and wife to live separately is invalid as being opposed to Hindu law.

3. If it is fraudulent: An agreement, whose object (or) consideration is to defraud others, is unlawful and hence it becomes void.

Example: 'A', 'B', 'C' enters into an agreement for division among them of gains acquired (or) to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

4. If it involves (or) implies injury to the person (or) property of another: If the object (or) consideration of an agreement is to injure the person (or) property of another is void. In such a case object (or) the consideration is deemed to be unlawful.

Example: Ram Saroop (vs) Bansi Mandar (1915):

Facts: "B" borrowed Rs.100 from "L' and executed a bond promising to work for "L" without pay for a period of two years. In case of default, "B" was to pay interest (at a very exorbitant rate) and the principal amount at once.

Judgment: The contract was void as it involves injury to the person of "B".

5. If the court regards it as immoral: An agreement, whose consideration and object is immoral, is deemed to be illegal and void. The word immoral includes sexual immorality. Hence its object (or) consideration is unlawful.

Example: Pearce (vs) Brooks (1866):

Facts: A firm of coach-builders hired out a carriage to a prostitute, knowing that it was to be used by prostitute to attract men.

Judgment: The coach-builders could not recover the hire as the agreement was unlawful.

6. Where the court regards it as opposed to public policy: An agreement whose consideration (or) object is such a nature that opposed to public policy. Thus it becomes void and it deemed to be unlawful.

30Q.Discuss the doctrine of public policy? Give examples of agreement which are opposed to public policy?

(or)

"Agreements opposed to public policy"-Explain.

Ans: An agreement is said to be opposed to public policy when it is harmful to the public welfare. An agreement whose object (or) consideration is opposed to public policy is void. Some of those agreements which are (or) which have been held to be, opposed to public policy and are unlawful as follows:-

1. Agreements of trading with enemy: An agreement made with an alien enemy at the time of war is illegal on the ground of public policy. This agreement is based upon the two reasons:

a) Contract made during the continuance of the war, an alien enemy can neither contract with an Indian subject (nor) can he sue in an Indian court. He can do so only after he receives a license from the central government.

b) Contract made before the war may either be suspended (or) dissolved.

2. Agreement to commit a crime: An agreement is to commit a crime is opposed to public policy and it is void. In such a case the court will not enforce the agreements.

Example: W.H.Smith & sons (vs) Clinton (1908):

Facts: 'A' promises to indemnity (pay) a firm of printers and publishers of a paper against the consequences of any libel (publishing a false statement) which it might publish in its paper.

Judgment: 'A' promise could not be enforce in a law court. Where the firm was compelled to pay damages for a published libel.

3. Agreements in restraint of legal proceedings: An agreement in restraint of legal proceeding is the one by which any party thereto is restricted absolutely from enforcing his right under a contract through a court. Contracts of this nature are void because its object is to defeat the provision of the Indian Limitation act.

4. Agreements which interfere with administration of justice: Where the consideration (or) object of an agreement of which is to interfere with the administration of justice is unlawful, being opposed to public policy. It may take any of the following forms:-

a) Interference with the court of justice,

b) Stifling prosecution,

c) Maintenance,

d) Champerty.

5. Trafficking in public offices and tittles: **Trafficking in public offices** means trading in public offices to obtain some gain which other wise cannot be obtained. **Trafficking in tittle means** some such award from government in return of consideration. A contact of this nature is void and is against to public policy and also it is illegal.

Example: Parkinson (vs) College of Ambulance, Ltd (1925):

Facts: 'A' promised to obtain an employment to 'B' in a public office and 'B' promised to pay 'A' Rs.1000/-.

Judgment: The agreement was against to public policy and also illegal.

6. Agreement tending to creates interest opposed to duty: If a person enters into an agreement whereby he is bound to do something which is against to public (or) professional duty, in such a case the agreement is void on the ground of the public policy.

7. Agreements in restraint of parental rights: A father (or) mother is the legal guardian of his/her minor child. This right and duty of guardianship cannot be bartered away. Therefore, a father/mother cannot enter into an agreement inconsistent with his duties which are opposed to public policy.

8. Agreement in restraint of marriage: Every agreement in restraint of marriage of any person, other than a minor, is void and opposed to public policy. This is because the law regards marriage and marriage status as the right of every individual.

9. Agreement restricting personal liberty: Agreement which unduly restricts the personal freedom of the parties is void and against to public policy.

10. Agreement in restraint of trade: Every agreement by which any one is restrained from exercising a lawful profession (or) trade (or) business of nay kind, is to that extent void and opposed to public policy. But this rule is subject to the following exceptions:-

Exceptions:

a) Sale of goodwill.

b) Partner's agreement.

c) Trade combinations.

d) Service agreement.

In the above exceptions the court will enforce the agreements. Because only if there is any restrictions imposed on such agreements are reasonable.

Example: Shaikh Kalu (vs) Ram Saran Bhagat (1909):

Facts: Out of 30 makers of combs in the city of Patna, 29 agreed to supply with 'R' to supply him and also agreed not to supply any one else all their output. Under the agreement 'R' was free to reject the goods if he found no market for them.

Judgment: The agreement amounted to restraint of trade and thus void.

11. Marriage brokerage: As a public policy, marriage should take place with free choice of the parties and it cannot be interfered with by third party acting as broker. Agreement for brokerage for arranging marriage is void. Similarly agreement of dowry cannot be enforced.

12. Agreement to defraud creditors (or) revenue authorities: An agreement which object is to defraud the creditors (or) revenue authorities is not enforceable, being opposed to public policy.

13. Agreement interfering with marital duties: Any agreement which interferes with the performance of marital duties is void, being opposed to public policy.

31Q. Write a short note on unlawful and illegal agreements

Ans: An **unlawful agreement** is one which, like a void agreement and is not enforceable by law. It is destitute (lacking) of legal effects altogether. If affects only the immediate parties and has no further consequences.

An **illegal agreement**, on the other hand, is not only void as between the immediate parties but has this further effect that the collateral transactions to it also become tainted (infect) with illegality.

Thus, 'every illegal agreement is unlawful, but every unlawful agreement is not necessarily illegal'. It is sometimes difficult to decide as to weather an act is illegal (or) unlawful because, as many of the illegal and the unlawful acts lie on the borderline. It may, however, be observed that

illegal acts are those which are opposed to public morals and unlawful acts are those which are less rigorous in effect and involves a 'non-criminal breach of law'. These acts do not effect public morals (nor) do they results in the commission of crime.

32Q. "In cases of equal guilt, the position of the defendant is better than that of the plaintiff".- comment.

Ans: Meaning of unlawful and illegal agreements:

An unlawful agreement is one which, like a void agreement and is not enforceable by law. It is destitute (lacking) of legal effects altogether. If affects only the immediate parties and has no further consequences.

An illegal agreement, on the other hand, is not only void as between the immediate parties but has this further effect that the collateral transactions to it also become tainted (infect) with illegality. Thus, 'every illegal agreement is unlawful, but every unlawful agreement is not necessarily illegal'.

Effects of illegality: The general rule of law is that no action is allowed on an illegal and unlawful agreement. This is based on the following two maxims:-

1. No action arises from a base cause. The effect of this is that the law discourages people from entering into illegal agreements which arise from base. (*Ex-turpi causa non oritur action*).
2. In cases of equal guilt, the defendant is in a better position. (*In pari delicto, potior est condition defendentis*).

Example: 'A' promises to pay 'B' Rs.500/- if he beats 'T'. If 'B' beats 'T', he cannot recover the amount from 'A'. (Or) If 'A' has already paid the amount and 'B' does not beat 'T', 'A' cannot recover the amount.

If an agreement is illegal, the law will help neither party to the agreement. This means that, as a result of refusal of the court, to help plaintiff in recovering the amount, (i.e.., the defendant who is equally guilty stands to gain). The court is, in fact, neutral (opposite) in such cases. The court allows the defendant to have that advantage, not because it approves of his conduct, but because it is not

prepared to grant any relief on the basis of illegal agreement. As a result of the neutrality the defendant stands to gain.

The effects of illegality may now be summed up as under:

1. The collateral transactions to an illegal agreement become tainted (infect) with illegality and treated as illegal even though they would have lawful by themselves.

2. No action can be taken

   (a) For the recovery of money paid. (Or) property transferred under illegal agreement, and

   (b) For the breach of an illegal agreement.

3. In cases of equal guilt on an illegal agreement, the position of defendant is better than that of the plaintiff (i.e.., innocent party) may, however, sue to recover money paid (or) property transferred under following circumstances:

   (a) Where he is not equally guilty (in pari delicto) with the defendant.

   Example: where he has induced to enter into an agreement by fraud, undue influence (or) coercion.

   (b) Where he does not have to rely on the illegal transaction.

   (c) Where a substantial part of the illegal transaction has not been

   Carried out, and he is truly and genuinely repentant.

33Q. "An Agreement in restraint of trade is void"-Exceptions.

Ans: Meaning: An agreement which interferes with the liberty of a person to engage himself in any lawful profession, trade (or) Business of any kind is called 'An Agreement in restraint of trade'.

Example: Shaikh Kalu (vs) Ram Saran Bhagat (1909):

Facts: Out of 30 makers of combs in the city of Patna, 29 agreed to supply with 'R' to supply him and also agreed not to supply any one else all their output. Under the agreement 'R' was free to reject the goods if he found no market for them.

Judgment: The agreement amounted to restraint of trade and thus void.

Thus, every agreement by which any one is restrained from exercising a lawful profession (or) trade (or) business of any kind, is to that extent void and opposed to public policy. But this rule is subject to the following exceptions:-

Exceptions: The general principle of law is that all restraints of trade are void. But in India it is valid if it is falls with in any of the statutory exceptions. The following are the exceptions to the rule that **"An Agreement in restraint of trade is void".**

a) Sale of goodwill.
b) Partner's agreement.
c) Trade combinations.
d) Service agreements.

a) Sale of goodwill: A seller of the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, with in the specified local limits, so long as the buyer carries on a like business, provided that such limits are reasonable. In such a case an Agreement in restraint of trade is valid.

b) Partner's agreement: in case of partnership, partner may agree that:

i. A partner shall not carry on any business other than that of the firm while he is a partner.
ii. An outgoing partner may agree with his partners not to carry on a business similar to that of the firm with in a specified period (or) with in the specified local limits.
iii. Any Partners may, upon the sale of goodwill of the firm, make an agreement with the buyer that such partners will not carry on any business similar to that of the firm with in a specified period (or) with in specified local limits.

c) Trade combinations: An agreement in the nature of a business combination between traders (or) manufactures does not amount to a restraint of trade and is perfectly valid. But if an agreements attempts to create a monopoly it would be void.

Example: S.B.Fraser & Company (vs) Bombay Ice Mfg. company (1904):

Facts: An agreement between certain ice manufacturing companies not tot sell ice below a stated price and to divide the profits in a certain proportion is not void u/s 27.

Judgment: Such agreement does not amount to a restraint of trade (nor) opposed to public policy and is perfectly valid.

d) Service contracts: An agreement of service by which an employee binds himself, during the term of his agreement, not to compete with his employer is valid and does not amount to 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.

Thus, in the above exceptions the court will enforce the agreements. Because only if there is any restrictions imposed on such agreements are reasonable.

34Q. Agreement in restraint of trade.

Ans: Meaning: An agreement which interferes with the liberty of a person to engage himself in any lawful profession, trade (or) Business of any kind is called 'An Agreement in restraint of trade'.

Thus, every agreement by which any one is restrained from exercising a lawful profession (or) trade (or) business of any kind, is to that extent void and opposed to public policy. But this rule is subject to the following exceptions:-

Exceptions: The general principle of law is that all restraints of trade are void. But in India it is valid if it is falls with in any of the statutory exceptions. The following are the exceptions to the rule that **"An Agreement in restraint of trade is void".**

1. Sale of goodwill.
2. Partner's agreement.
3. Trade combinations.
4. Service agreements.

Thus, in the above exceptions the court will enforce the agreements. Because only if there is any restrictions imposed on such agreements are reasonable.

35Q. Write a short note on reciprocal promises.

Ans: According to section 2(f) of the Indian contract Act, 1872. 'Promises which form the consideration for each other are called reciprocal promises.

These promises have been classified by Lord Mansfield based on the **jones (vs) Barkley** case they are as follows:-

1. Mutual and independent: Where each party must perform his promise independently and irrespective of the fact whether the other party has performed, (or) not, the promises are mutual and independent.

Ex: - 'B' agrees to pay the price of goods on 10th. 'S' promises to supply the goods on 20th. The promises are mutual and independent.

2. Conditional and dependent: Where 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 independent.

Ex: - 'A' promises to remove certain debris (something which has destroyed) lying in front of 'B's supplies him with the cart. The promises are conditional and independent.

3. Mutual and concurrent: Where the promises of the both the parties are to be performed simultaneously, they are said to be mutual and concurrent.

Ex: - sale of goods for cash.

36Q. Immoral agreements.

Ans: The word immoral includes sexual immorality. Hence its object (or) consideration is unlawful. An agreement, whose consideration and object is immoral, is deemed to be illegal and void.

An agreement is unlawful for immorality in the following cases:

1. Where the consideration is an act of sexual immorality. (i.e.., illicit cohabitation or prostitution.

   Example: 'A' agrees to let her daughter on hire to 'B' for concubinage, the agreement is unlawful, being immoral.

2. Where the object of the agreement is the furtherance of sexual immorality. (i.e.., lending money to a prostitute to help her in his trade).

   Example: 'A' let flat to 'B', a woman whom he knew to be a prostitute. The agreement was unlawful if 'A' knew the purpose that 'B's object was to use the flat for immoral purpose.

1-ICA (void agreements)-7

37Q. Wagering agreement.

(Or)

Write a short note on 'WAGER".

Ans: <u>Definition:</u>

A wager is an agreement between two parties by which one party promises to pay money (or) money's worth an the happening of soma uncertain event, in consideration of the other parties promises to pay if the event does not happen.

<u>Example:</u> 'A' and 'B' enter into a contract that 'A' shall pay 'B' Rs.100/- if it rains on Monday, and that 'B' shall pay the same amount if it does not rain. It is a wagering agreement.

The following are the essentials of a wagering agreement:-

1. There must be promise to pay money (or) money's worth.
2. The event must be uncertain.
3. There must be two parties.
4. Each party must stand to win (or) lose.
5. No control over the event.
6. No other interest in the event except winning (or) losing.

Exceptions: The following transactions are not considered as wagering agreements.

a) Share market transactions,

b) Crossword competition,

c) Contract of insurance,

d) Horse racing,

e) Games of skill (i.e.., picture puzzles, athletic competitions, etc..,).

38Q. void agreements

Ans: According to section 2(g) of the Indian contract Act, 1872. 'A void agreement is one which is not enforceable by law'.

A void agreement does not create any legal right (or) obligation. It is void-ab-initio (i.e.., void of into right from the beginning).

The following agreements have been expressly declared to void by the contract act:-

1. Agreements by incompetent parties. (Section 11)
2. Agreements made under mutual mistake of facts. (Section 20)
3. Agreements which the consideration (or) object is unlawful. (Section 23)
4. Agreements which the consideration (or) object is unlawful in part. (Section 24)
5. Agreements made without consideration. (Section 25)
6. Agreements in restraint of marriage. (Section 26)

7. Agreements in restraint of trade. (section 27)
8. Agreements in restraint of legal proceedings. (section 28)
9. Agreement which the meaning is uncertain. (section 29)
10. Agreements by way of wager. (section 30)
11. Agreements contingent on impossible events. (section 36)
12. Agreements to do impossible Acts. (section 56)
13. In case of reciprocal promises to do things legal and also other things illegal. The second set (illegal) of reciprocal promises is a void agreement. (section 57)

39Q. Write a short note on restitution.

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

The principle of restitution is that a person who has been unjustly enriched at the expense of another is required to make restitution to that other.

In essence, restitution is not based on loss to the plaintiff but it is on benefit which is enjoyed by the defendant at the cost of the plaintiff which is unjust for the defendant to retain.

Example: 'A' pays 'B' Rs.1000/- in consideration of 'B's promise to marry 'C', 'A's daughter. 'C' is dead at the time of promise. The agreement is void but 'B' must repay 'A' Rs.1000/-.

40Q. Write a short note on void agreement and void contract.

Ans: Void agreement: According to section 2(g) of the Indian contract Act, 1872. 'A void agreement is one which is not enforceable by law'.

A void agreement does not create any legal right (or) obligation. It is void-ab-initio (i.e.., void of into right from the beginning).

Ex: - An agreement with a minor, an agreement without consideration, etc..,

Void contract: According to section 2(f) of the Indian contract Act, 1872. "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable'.

A contract, when originally entered into, may be valid and binding on the parties it may subsequently become void. We may talk of such a contract as void agreement.

Ex: - A contract to import goods from a foreign country when a war breaks out between the importing country and the exporting country.

41Q. Define wagering agreement and explain the essentials of a wagering agreement in detail?

Ans: Definition:

A wager is an agreement between two parties by which one party promises to pay money (or) money's worth an the happening of soma uncertain event, in consideration of the other parties promises to pay if the event does not happen.

Example: 'A' and 'B' enter into a contract that 'A' shall pay 'B' Rs.100/- if it rains on Monday, and that 'B' shall pay the same amount if it does not rain. It is a wagering agreement.

Essentials of a wagering agreement: The following are the essentials of a wagering agreement, they are follows:-

1. Promise to pay money (or) money's worth: The wagering agreement must be certain and there must be promise to pay money (or) money's worth between the parties.

2. Uncertain event: The promise made between the partied must be conditional and uncertain event (i.e.., happening (or) non happening). Generally a wager relates to a future event, but it may also relate to a past event provided the parties are not aware of its result (or) the time of its happening.

3. Each party must stand to win (or) lose: Each party should stand to win (or) lose upon the determination of the uncertain event. An agreement is not a wager if either of the parties may win but cannot lose (or) may lose but cannot win.

4. No control over the event: The wagering agreement is a game of chance. Therefore, no party should have control over the happening (or) non happening of an event. If on the other hand one of the parties has control over the event, then the transaction lacks an essential ingredient of a wager.

5. No other interest in the event: The parties should have no other interest in the subject matter of the agreement except winning (or) losing of the amount of the wager.

Example: In a wrestling bout, 'A' tells 'B' that wrestler no.1 will win. 'B' challenges the statement of 'A'. They bet with each other over the result of the bout. This is a wagering agreement.

6. There must be two parties.

7. The agreement must be void u/s 30.

Exceptions: - The following transactions are not considered as wagering agreements:

a) **Share market transactions:** in case of share market transactions in which delivery of stocks and shares intended to be given and taken are not considered as wagering agreements.

b) **Crossword competition:** A crossword competition involving a good measure of skill for its successful solution. But if prizes of a crossword competition depend upon the correspondence of the competitors solution with a previously prepared solution kept with the editor of a newspaper, there it is treated as lottery and wagering transaction. According to prize competition act, 1955, prize competition is game of skill are not wagers provided the amount of prize not exceed rs.1000/-.

c) **Contract of insurance:** Contract of insurance is not wagering agreements even though the payment of money by the insurer may depend up on a future uncertain event.

d) **Horse racing:** An agreement to contribute a prize of the value of above Rs.500/- to be awarded to the winner of a horse race is also one of the exceptions to the wagering agreement.

e) **Games of skill** (i.e.., picture puzzles, athletic competitions, etc..,).

UNIT 2 - DISCHARGE OF A CONTRACT

(PART – I)

1Q. Explain the meaning of contingent contract? What are the rules related to contingent contract?

Ans: DEFINITION: According to sec (31) of ICA, 1872, a contingent contract is a contract to do or not to do something, if the event, collateral to such contract, does or does not happen.

Thus it is a contract, the performance of which is dependent upon the happening or non happening of an uncertain future event, collateral to such events.

EX: 'A' promises to pay Rs 10000/-, if B's house is burnt.

ESSENTIAL CHARACTERISTICS OF A CONTINGENT CONTRACT:

1. Its performance depends upon the happening or non happening in the future of some event.
2. The event must be uncertain
3. The event must be collateral

RULES REGARDING PERFORMANCE OF A CONTINGENT CONTRACT: The following are the rules regarding performance of a contingent contract:

1. **Contingent contract upon the happening of a future uncertain event:-**

   When the happening of such event has possible it becomes enforced and if the happening of such event becomes impossible it becomes void.

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

2. **Contingent contract upon the non happening of a future uncertain event:** When the happening of such event becomes impossible it becomes enforced and when such event has possible it becomes void.

   EX: "A" agrees to sell his car to "B" if "C" dies. The contract cannot be enforced as long as "C" is alive.

3. **Contingent contract upon happening of an event within a specified time:** When such event has happened within the specified time it can be enforced and if the happening of such event becomes impossible within the specified time it becomes void.

   EX: 'A' agrees to pay 'B' a sum of money if 'B' marries 'C','C' marries 'D'. The marriage of 'B' to 'C' must be considered impossible now, although it is possible that 'D' may die and that 'C' may afterwards marry 'B'.

4. **Contingent contract upon non happening of an event within a specified time:** When the happening of such event becomes impossible within the specified time it can be enforced and if the happening of such event has happened within the specified time it becomes void.

   EX: 'A' promises to pay 'B' a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within a year, and becomes void if the ship is burnt within the year.

5. **Contingent contract upon impossible events:** Such an agreement cannot be enforced since it is void. Whether the impossibility of the event was known to the parties or not is immaterial.

   EX: 'A' agrees to pay 'B' Rs 1000/- if 'B' will marry A's daughter, 'X'. 'X' was dead at the time of the agreement. The agreement is void.

6. **Contingent contract upon future conduct of a living person:** When such person acts in the manner as desired in the contract it can be enforced and if such person does not acts in the manner as desired in the contract it becomes void.

2Q. Differences between wagering agreement and contingent contract.

Ans: The following are the differences between wagering agreement and contingent agreement:-

WAGERING AGREEMENT	CONTINGENT AGREEMENT
1. Wagering is an agreement where a person agrees to pay money to the other person upon the happening or non happening of an uncertain event.	Contingent contract is one in which promisor undertakes to perform the contract upon happening or non happening of an uncertain collateral event.
2. It is void u/s 30	It is perfectly valid u/s 31.
3. Generally it is a reciprocal promise.	There may be unilateral promises.
4. In a wager the parties are not interested in the subject matter of the agreement except winning or losing the amount.	The parties have real interest in the happening or non happening of an uncertain future event.
5. In a wager the future event is the sole determining factor.	In a contingent contract the future events is only collateral.
6. It is a game of chance.	It is not a game of chance.

3Q. what is meant by performance? And offer of performance/tender?

Ans: **<u>Performance:</u>** performance of a contract means carrying out of promises and obligations undertaken by the parties according to the terms prescribed in the contract.

OFFER OF PERFORMANCE OR TENDER: When promisor has made a valid offer of performance to the promise and offer had not been accepted by the promise, the promisor is not responsible for non performance and he does not lose any rights under the contract.

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

The following are the essentials or requisites of a valid tender:

1. It must be unconditional. It becomes conditional when it is not in accordance with the terms of the contract.

Ex: 'D' a debtor offers to pay to 'C', his creditor, the amount due to him on the condition that 'C' sells to him certain shares at cost. This is not a valid tender.

2. It must be the whole quality contracted for or of the whole obligation. A tender of an installment when the contract stipulated payment in full is not a valid tender.

3. It must be by a person who is in a position, and is willing to perform the promise.

4. It must be made at the proper time and place. A tender of goods after the business hours or of goods or money before the de date is not a valid-tender.

Ex: "D" owes "C" Rs.100/- payable on 1st of August with interest. He offers to pay on the 1st of July the amount with interest up to the 1st of July. It is not a valid tender as it not made at the appointed time.

5. It must be made to the proper person and also in proper form.

6. It may be made to one of the several joint promises. In such a case it has the same effect as a tender to all of them.

7. In case of tender of goods, it must give a reasonable opportunity to the promise for inspection of the goods. A tender of goods at such time when the other party cannot inspect the goods is not a valid tender. But in the following case, tender was held to be valid.

Ex: Startup vs. MacDonald (1843):

Facts: The plaintiffs agreed to sell 10 tons of linseed oil to the defendant to the delivered "within the last fourteen days of March". Delivery as tendered at 8.30pm on March 31, a Saturday. The defendant refused to accept the goods owing to lateness of the hour.

Judgment: Though the hour was unreasonable, the defendant could still take delivery before midnight.

8. In case of tender of money, the debtor must make a valid tender in legal tender money.

Ex: In India in rupees, us-dollars etc..,

4Q. By whom must contracts be performed?

Ans: The promise under a contract may be performed by;

a. **Promisor himself:** If there is something in the contract to show that it was the intention of the parties that the promise should be performed by the promisor himself, such promise must be performed by promisor himself. This means contracts which involve the exercise of personal skill or diligence or which are founded on personal confidence between the parties must be performed by promisor himself.

   EX: A contract to paint a picture or to sing or to marry.

b. **Agent:** Where personal consideration is not the foundation of the contract, the promisor or his representative may employ a competent person to perform it.

EX: 'A' promises to pay 'B' a sum of money; 'A' may perform the promise, either by personally paying the money to 'B' or by causing (making)it to be paid to 'B' by another.

c. **Legal Representatives:** A contract which involves the use of personal skill or is founded on personal considerations comes to an end on death of the promisor. As regards any other contract, the legal representatives of the deceased promisor are bound to perform it unless a contrary intention appears from the contract. But their liability under a contract is limited to the value of property they inherit from the deceased.

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

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

e. **Joint promisors:** When two or more persons have made a joint promise, then unless a contrary intention appears from the contract, all such persons must jointly fulfill the promise, if any of them dies, his legal representatives must jointly with the surviving promisor have to fulfill the promise. If all of them die, the legal representatives of all of them must fulfill the promise jointly.

As per section 67,"If any promisee neglects or refuses to afford reasonable facilities for performance of the promise to promisor, the promisor is excused for non performance."

5Q. Reciprocal promises:-

Ans: According to section 2(f) of the ICA, 1872, "promises which form the consideration or part of the consideration for each other are called "reciprocal promises".

These promises have been classified by lord Mansfield based on the Jones (vs) Barkley case as follows:-

i. **Mutual and independent:** Where each party must perform his promise independently and irrespective of the fact whether the other party has performed, or is willing to perform, his promise or not, the promises are mutual and independent.

EX: "B" agrees to pay the price of goods on 10th. "S" promises to supply the goods on 20th. The promises are mutual and independent.

ii. **Conditional and dependent:** Where 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 independent.

EX:"A" promises to remove certain debris(something which has to be destroyed) lying in front of B's house provided "B" supplies him with the cart. The promises are conditional and independent.

iii. **Mutual and concurrent:** where the promises of both the parties are to be performed simultaneously, they are said to be mutual and concurrent.

EX: Sale of goods for cash.

6Q.What are the rules of law relating to time and place of performance of contract?

Ans: "Performance of contract means carrying out of promises and obligations undertaken by the parties according to the terms prescribed in the contract".

A contract can be performed by the promisor himself, by the agent on behalf of the promisor, by the legal representatives on the death of the promisor, by the joint promisors or by any third person.

Time and place of performance:

Time and place of performance of a contract are matters/rules to be determined by an agreement between the parties themselves. Section 46 to 50 of the contract Act lay down the rules regarding the time and place of performance they are follows:-

i. **Where no application is to be made and no time is specified : [Sec 46]** Where a promisor has to perform his promise without application by the promisee and no time is specified for performance, the engagement or promise must be performed within a reasonable time.

"What is a reasonable time" is a question of fact in each particular case. It depends on the special circumstances of the case (contract), the usage of trade, or the intention of the parties at the time of entering into the contract.

ii. **Where time is specified and no application is to be made : [Sec 47]** When a promise is to be performed on a certain day without application by promisee, the promisor may perform the promise at any time during the usual working hours on such day.

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

iii. **Application for performance on a certain day and place : [Sec 48]** When a promise is to be performed on a certain day the promisor may undertake to perform it after the application by the promisee to that affect. In such a case it is the duty of the promisee to apply for performance at a proper place and time within usual business hours.

iv. **Application by the promisor to the promisee to appoint a place : [Sec 49]** When a promise is to be performed without application by the promisee and no place is fixed for the performance, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise and perform the promise at such place.

EX: "A" undertakes to deliver goods to "B" on a fixed day. "A" must apply to "B" to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

v. **Performance in manner or at the time prescribed or sanctioned by the promisee: - [Sec 50]** The performance of any promise may be made in any manner or at any time which the promisee prescribes or sanctions.

7Q. what is reciprocal promises? Explain the rules regarding the reciprocal promises?

Ans: According to section 2(f) of Indian Contract Act, 1872. "Promises which form the consideration or part of the consideration for each other are called "reciprocal promises".

Rules regarding performance of reciprocal promises: Section (51 to 54) of the contract Act, lay down the rules regarding the order of performance of reciprocal promises; which are as follows:-

i. **Simultaneous performance of reciprocal promises:** Where the promises are to be performed simultaneously, they are said to be "mutual and concurrent". According to section 51 such promises need not perform by the promisor unless the promise is ready and willing to perform his reciprocal promise.

EX: "A" and "B" enter into a contract that "A" shall deliver certain goods to "B" to be paid for by "B" on delivery ; and "B" need not pay for the goods unless "A" is ready and willing to deliver them on payment.

ii. **Order of performance of reciprocal promises:** According to section 52, where the order in which the reciprocal promises are to be performed is expressly fixed in the contract, they must be performed in that order. Where the order is not expressly fixed, they must be performed in that order which the nature of transaction requires.

EX: "A" and "B" entered into a contract, that "A" shall build a house for "B" at a fixed price. A's promise to build the house must be before B's promise to pay for it.

iii. **Effect of one party preventing another from performing promise:** According to section 53, when a contract contains reciprocal promises and one party to a contract prevents the other from performing his promise. In such a case the contract becomes voidable at the option of the party so prevented and is entitled to compensation from the other party for any loss which he may sustain in consequence of non performance of the contract.

EX: "A" and "B" enter into contract that "B" shall execute certain work for "A" for Rs 1000/-. "B" is ready and willing to execute the work accordingly but "A" prevents him from doing so. The contract is voidable at the option of "B" and if he elects to rescind it, he is entitled to recover from "A", compensation for any loss which he has incurred by its non performance.

iv. **Effect of default as to promise to be performed first:** According to section 54, where the performance of promise by one party depends on the prior performance of the promise by other party. In such a case one of them cannot be performed till the other party has performed his promise then if the other party fails to perform it, he cannot claim off the performance of the reciprocal promise from the first party and the other party make compensation for any loss which the first party may sustain by the non performance of the contract.

EX: "A" promises to "B" to sell him 100 bales of merchandise to be delivered next day, and "B" promises "A" to pay for them within a month. "A" does not deliver according to his promise. B's promise to pay need not be performed and A must make compensation to "B".

v. **Reciprocal promises to do things legal and also other things illegal. (Section 57).**

8Q."Time and essence of the contract."- explain.

Ans: In the performance of a contract, time is crucial element. Contracts must be performed on time. "Is time of essence?" is a question of fact and law.

Section 55, of the Indian Contract At, 1872 provides the effect of failure to perform at a time fixed in a contract in which time is essential as follows:-

a) **when time is of essence:** If the promisor fails to perform on an agreed or specified time, the contracts will become voidable at the option of the promisee.

b) **When time is not essence:** If the promisor fails to perform within the specified time, the contract will not become voidable at the option of the promisee. It means that in such a case the promisee cannot rescind the contract and he will have to accept the delayed performance. But the promisee is entitled to claim the compensation for any loss caused to him by the delay.

If promisee accepts the delayed performance and intend to sue the promisor for compensation for delayed performance, promisee must give an oral or written notice to the promisor regarding his intention.

9Q. Discuss the law relating to the rights and liabilities of joint promisors in a contract? Also explain the devolution of joint liabilities?

(OR)

Q. By whom joint promises must be performed?

Ans: MEANING: When two or more persons have made a joint promise, they are known as joint promisors. Unless a contrary intention appears from the contract, all joint promisors must jointly fulfill the promise. If any of them dies, his legal representatives must, jointly with the surviving promisors, fulfill the promise. If all of them die, the legal representative of all of them must fulfill the promise jointly.

By whom joint promises must be performed: The following are the rules as regards performance of joint promises:

1. All promisors must jointly fulfill the promise: According to section 42, when two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all joint promises must jointly fulfill the promise. If any of them dies, his legal representatives must, jointly with the surviving promisors, fulfill the promise. If all of them die, the legal representative of all of them must fulfill the promise jointly.

2. Any one of the joint promisors may be compelled to perform: {section 43, para1}: when two or more persons make a joint promise and there is in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise. This means the liability of joint promisors is joint and several.

EX: A, B, and C jointly promises to pay D Rs 3000. D may compel all or any or either A or B or C to pay him Rs 3000.

3. <u>A joint promisor compelled to perform, may claim contribution {section 43,Para 2}:</u> If one of the several joint promisors is made to perform the whole contract, he may compel the other joint promisors to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

EX: A, B, and C jointly promises to pay D Rs 3000/-. A is compelled to pay the whole amount to D. he may recovers Rs 1000/- from B and C.

4. <u>Sharing of losses arising from default:-{section 43, Para 3}:</u> if any one of the joint promisors makes a default in making contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

EX: A, B, and C jointly promises to pay D Rs 3000/-. C is unable to pay anything and A is compelled to pay the whole amount to D and entitled to receive Rs 1500/- form B.

5. <u>Release of joint promisor:{section 44}:</u>If one of joint promisor is released from his liability by the promisee, his liability to the promise ceases nut this does not discharge the other promisors from their liability. The released joint promisor also continues to be liable to the other promisors.

EX: D1, D2, and D3 jointly owe a debt to C. C releases D1 from his liability and files a suit against D2 and D3 for payment of debt. D2 and D3 are not released from their liability nor is D1 discharged from his liability to D2 and D3 for contribution.

10Q. what do you mean by assignment of contract? What conditions should be fulfilled for assignment of contract?

Ans: MEANING: The word "assign" means "transfer". Therefore "assignment of contract means transfer of contractual rights and liabilities under the contract to the third party with or without the concurrence of the other party to the contract. It may take place: -

1). Act of the parties.

2). Operation of law.

I) Act of the parties: Assignment is said to take place by an act of the parties when they themselves make the assignment.

a) Assignment of contractual obligations:

1) Contractual obligation involving personal skill or ability cannot be assigned.

EX: a contractual obligation by a film actor to act in film or a contract to marry or paint a picture cannot be assigned.

2) A promisor cannot assign his liabilities or obligations under a contract. {i.e., a promisee cannot be compelled by the promisor or a third party to accept any person other than the promisor as the person liable to him on promise}. This rule is based on sense and convenience.

EX: if D owes C Rs5000/- and is owed the same sum by D1, D cannot ask C to recover the amount from D1 unless C accepts the performance from D1.

b) Assignment of contractual rights:

1) The right and benefit under a contract may be assigned if the obligation under the contract is not of a personal nature.

EX: D owes Rs 500/- to C. C, the creditor, can transfer his right to T to recover the amount from D. if D has already paid Rs 200/- to C, T will be bound by this payment and shall be entitled to recover only Rs 300 from D.

An actionable claims can be always be assigned but the assignment to be complete and effectual must be effected by an instrument in writing. Notice of such assignment must also be given to the debtor

II) Operation of law: Assignment by operation of law takes place by intervention of law.

1) Death: upon the death of the party to a contract his rights and liabilities under the contract devolve upon his heirs and legal representatives.

2) Insolvency: in case of insolvency of a person his rights and liabilities incurred previous to adjudication pass to the official receiver or assignee.

11Q. writes a short note on "impossibility of performance."

Ans: Impossibility of performance:

Section 56, of contract act, deals with the impossibility. If an agreement contains an underwriting to perform impossibility, it is void-ab-initio. (Void). It is of two types:

1. Impossibility existing at the time of contract: "An agreement to do an act impossible in itself is void." If the parties are interested into an agreement to perform something which is obviously impossible and which may or may not be known to both the parties.

a) **If it is known to the parties:** if at the time of contract both the parties know that the performance of contract is not possible, the agreement becomes void.

b) **If it is not known to the parties:** if both the parties do not know about the impossibility, the agreement is void on the ground of mutual mistake.

c) **If it is known to the promisor only:** if the impossibility of a contract not known to the promisee and the promisor alone knows of the impossibility then such promise is bond to compensate the promisee for any loss he may suffer through the non performance of the promise.

2. Subsequent or supervening impossibility: Impossibility which arises subsequent to the formation of the contract{I.e., a contract to do an act, which after the contract is made} is called post- contractual or supervening impossibility. In such a case the contract is void. Impossibility of performance of a contract, as a general rule, is no excuse for the non performance of the contract.

12Q. Define "Doctrine of supervening impossibility." Explain the effects on the performance of the contract.

Ans: Impossibility of performance:

Section 56, of the contract act, deals with the impossibility of performance. "An agreement to do an act impossible in itself is void." It is of two types;

1. Impossibility existing at the time of contract.

2. subsequent of supervening impossibility.

Impossibility which arises subsequent to the formation of contract {i.e., a contract to do an act, which after the contract is made} is called post contractual or supervening impossibility. In such a case the contract becomes void.

Discharge by supervening Impossibility (or) cases where the "Doctrine of supervening impossibility applies:" A contract will be discharged on the ground of 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 parties to the contract, then the contract is discharged.

Example: Taylor Vs Caldwell (1863):

Facts: C agreed to let out a music hall to T on a certain dates. But before those days the hall was accidentally destroyed by fire.

Judgment: the owner was absolved from liability to let the music hall as promised. Thus the contract was void.

2. Non-existence or non occurrence of a particular state of things: Some times, 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 as the basis of contract, the contract is discharged.

Example: Krell Vs Henry (1903):

Facts: H hired a flat from K for June 26 and 27, 1902 for witnessing a coronation procession of King Edward VII. K knew of H's purpose though the contract contained no reference to this. The coronation procession was cancelled due to the illness of the king.

Judgment: H was excused from paying the rent for the flat on the ground that existence of the procession was the basis to the contract. Its cancellation discharged the contract.

3. **Death or personal incapacity of the parties:** Where the performance of a contract depends on the personal skill or qualification or the existence of a given person, the contract is discharged on the illness, incapacity, or death of that person.

EX: "A" contracts to act at a theatre for 6 months in consideration of a sum paid in advance by "B". On several occasions, A is too ill to act. The contracts to act on those occasions become void.

4. Change of law: When a sub sequent change of law takes place or the government takes some power under some special power, so that the performance of a contract becomes impossible, the contract is discharges.

EX: There was a contract of a sale of trees of a forest, subsequently by an act of legislature; the forest was acquired by the state government. The contract was discharged by impossibility created by subsequent change in law.

5. Out-break of war: All contracts entered into with an alien enemy during war is un lawful and therefore impossible of performance. Contracts entered into before the out-break of war are suspended during the war and may be received after the war is over.

Effects of supervening impossibility:

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

II. Where one person has promised to do something which he knew, or with reasonable diligence, might have known, and which the promisee did not know to be impossible or un-lawful, the promisor must make compensation to the promisee for any loss which the promisee incurred through the non-performance of a contract.

III. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage. Under such agreement or contract is bound to restore (return) it, or to make compensation to it, to the person from whom who received it.

EX: A pays B Rs. 1000 in consideration of B's promise to marry C, A's daughter. C is dead at the time of promise. The agreement is void, but B must repay A Rs.1000.

13Q. Rights of joint promisors:

OR

Devolution of joint rights:

Ans: According to section 45, when a person has made a promise to several persons jointly, these several persons are known as joint promisees. Unless a contrary intention appears from the contract, the right to claim performance rests with all the joint promisees. When one of joint promisee dies his legal representatives jointly with the surviving joint promisees, has the right to claim performance with their legal representatives jointly.

EX: B and C jointly lend Rs 5000/- to A who promises B and C jointly to repay them that sum with interest on a day specified. B dies, the right to claim performance rests with B's representatives jointly with C during C's life. After the death of C, the right to claim performance rests with the representatives of B and C jointly.

14Q. Impossibility of performance is as a rule, not an excuse for non-performance of a contract. Discuss.

ANS: Section 56, of the contract Act; deals with the impossibility of performance. "An agreement to do an act impossible in itself is void"

Impossibility of performance is, as a rule not an excuse for non-performance of a contract. In the following cases, a contract is not discharged on the ground of supervening impossibility or "Doctrine of supervening impossibility" does not apply.

1. <u>Difficulty of performance:</u> A contract is not discharged merely because that it has become more difficult of performance due to some uncontemplated events or delays.

<u>Example:</u> <u>Tsakiroglou and Co.ltd. (Vs) Noblee Throl G.M.B.H...(1962):</u>

<u>Facts:</u> A agreed to sell to B 300 tons of Sudan groundnuts c.i.f Hamburg. The usual and normal route at the date of the contract was via Suez Canal. Shipment was to be in November/December, 1956, but on November 2, 1956 the canal was closed to traffic and it was not reopened until the following April. A refused to ship the goods via the cape of good hope on the plea that the contract had been frustrated by reason of the closing of the Suez route.

Judgment: The contract was not frustrated as A could have transported the goods via the Cape of Good Hope.

2. Commercial impossibility: A contract is not discharged merely because expectation of higher profits is not realized, or the necessary raw material is available at a higher price because of the outbreak of war, or there is a sudden depreciation of currency. Thus, performance cannot be excused on the ground of commercial impossibility.

3. Default of third person: when a contract could not be performed because of the default of a third person on whole work the promisor relied in such a case impossibility of performance cannot be excused. Thus it is not discharged.

Example: Ganga Saran Vs Ram Charan (1952):

Facts: A agreed to sell to B a specified quantity of cotton goods to be manufactured by a particular mill. B agreed to deliver as and when goods might be received from the mill. A time was named for the completion for the delivery. A could not fulfill the agreement as the mill failed to produce the goods.

Judgment: B was entitled to recover damages from A.

4. Strikes, lock outs, and civil disturbances: A contract is not discharged by reason of strike by the workers, or outbreak of some civil disturbances interrupting the performance of promise. However, the parties to a contract may agree to the contrary by making an express provision in this regard.

5. Failure of one of the object: if a contract is made for fulfillment of several objects, the failure of one or more of them does not discharge the contract.

Example: Herne bay steam Boat Company (Vs) Hutton (1903):

Facts: "HB" agreed to let out a boat to "H".

a) for viewing a naval review on the occasion of the coronation of Edward VII,

b) To sail round the fleet.

Owing to the king's illness the naval review was abandoned but the fleet was assembled. The boat, therefore, could be used to sail round the fleet.

Judgment: The contract was not discharged, because failure of one of the object does not discharge the contract.

6. Self induced impossibility: if impossibility arises due to a party's own conduct or act {i.e., a deliberate act or a negligent act}, it cannot be called as supervening impossibility, and therefore the party is not received from his obligation to perform.

(PART - II)

15Q.Discharge by performance.

Ans: Performance means the doing of that which is required by a contract. Discharge by performance takes place when the parties to the contract fulfill their obligations arising under the contract within the time and in the manner prescribed. In such a case, the parties are discharged and the contract comes to an end.

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

1. **Actual performance**
2. **Attempted performance or tender of performance.**

1. <u>Actual performance:</u> When both the parties perform their promises, the contract is discharged. Performance should be complete, precise and according to the terms of the agreement. Most of the contracts are discharged by performance in this manner.

Ex: "A" contracts to sell his car to "B" for Rs.15,000/- as soon as the car delivered to "B" and "B" pays the agreed price for it. The contract comes to an end by performance.

2. <u>Attempted performanc or Tender of Performance:</u> In certain situations the promisor offers performance of his obligation under the contract at the proper time and place but the promise refuses to accept the performance. This is called as "Tender" or "Attempted Performance". Where a valid Tender is made and is not accepted by the promise, the promisor shall not be responsible for non-performance and he doest not lose his rights under the contract.

16Q.Explain in detail "Discharge of a contract by agreement (or) by consent or by mutual consent"

Ans: The general rule of law is a thing may be destroyed in the same manner in which it is constituted. This means a contractual obligation may be discharged by a agreement which may be expressed or implied.

The various cases of discharge of a contract by mutual agreement are dealt with in Section 62 and 63 and are discussed below:

1. <u>Novation (Section.62):</u> Novation takes places:

i. When substitution of a new contract for the original one either between the same parties or between same parties or

ii. The consideration for the new contract is mutually being the discharge of old contract.

iii. Novation should take place before the expiry of the time of the performance of the original contract.

Ex: "A" owes "B" Rs.10,000/-. He enters into an agreement with "B" a mortgage of his (A's) estate for Rs.5,000/- in place of the debt of Rs.10,000/-. This is a new contract extinguishes the old one.

2. <u>Recession (Section.62):</u> Recession of a contract takes place when all or some of the terms of the contract are cancelled. It may occur:

a) By mutual consent of the parties (or)

b) Where one party fails in the performance of his obligation. In such a case, the other party may resend the contract without claiming compensation for the breach of contract.

In case of recession, only the old contract is cancelled and no new contract comes to exist in its place. Both in novation and in recession, the contract is discharged by mutual agreement.

Ex: "A" and "B" enters into a contract that "A" shall deliver certain goods to be by the 15th of this month and that "B" shall pay the price on the 1st of the next month. "A" does not supply the goods. "B" may resend the contract, and need not pay the money.

3. <u>Alteration (Section.62):</u> Alteration means a change in one or more terms of a contract with mutual consent of parties. In such a case the old is discharged.

Ex: "A" enters into a contract with "B" for the supply of hundred bales of cotton at his godown No.1 by the 1st of the next month. "A" & "B" may alter the terms of the contract by mutual consent.

4. <u>Remission (Section.63):</u> Remission means acceptance of a lesser fulfillment of the promise made or acceptance of a sum lesser than what was contracted for. In such a case, Section.63 of the Contract Act allows the promise to dispense or remit the performance of the promise by the promisor, or to extend the time for the performance of to accept any other satisfaction instead of performance.

Ex: "A" owes "B" Rs.5,000/-. "A" pays to "B" and "B" accepts in the satisfaction of the whole debt Rs.2,000/- paid at the time and place which Rs.5,000/- were payable. The whole debt is to be discharged.

5. Waiver: When a contracting party fails to perform his obligation under the contract, the other party (aggrieved party) may resend the contract and may waive the promisor or release. This is called as Waiver.

6. By merger: Merger takes place when an inferior right accruing to a party under a contract merges into a superior right accruing to the same party under the same or some other contract.

Ex: "P" holds a property under a lease. He later buys the property. His rights as a lessee merge into his rights as a owner.

17Q.Discharge by Operation of Law

Ans: A contract may be discharged by operation of law which takes place:

1. **By Death**: If contracts involving personal skill or ability of the promisor, the contract is discharged / terminated on the death of the promisor.
2. **By insolvency**: When a person is adjudged insolvent, he is discharged from all liabilities incurred prior to his adjudication.
3. **By merger**: Merger takes place when an inferior right accruing to a party under a contract merges into a superior right accruing to the same party under the same or some other contract. In such a case, the contract may be discharged.
4. **By unauthorized alteration of the terms of a written agreement**: Where a party to a contract makes any material alteration in the contract without the consent of the other party, the other party can avoid the contract.
5. **By rights and liabilities becoming vested in the same person**: When the rights and liabilities under a contract vests in the same person, the other parties are discharged.

18Q. Explain "breach of contract" as a mode of discharge of contract? What do you understand by breach of contact? State the rights of the promisee in case of "anticipatory breach of contract?

Or

Discharge of breach of contract?

Ans: breach of contract means promisor fails to perform the promise or breaking of the obligations which a contract imposes. It occurs when a party to the contract without lawful excuse does not fulfill his contractual obligation or by his own act makes it impossible that he should perform his obligation under it. It confers a right of action or damages on the injured party.

Branch of contacts may be of two types:

1. Actual breath of contact.
2. Anticipatory breath of contact.

1. <u>Actual breach of contract</u>: Actual breach means promisor's failure to perform the promise on due date of performance. When a promisor fails or refuses to perform the promise upon the due date for performance then it is called actual breach of contract. In such a case the promisee is exempted and may resend the contract. Promise can sue the party at fault for damages for breach of contract.

Ex: <u>O'Neil (vs) Armstrong (1895):</u>

<u>Facts:</u> 'P', a British subject, was engaged by the captain of a war ship owned by the Japanese government to act as a fire man. Subsequently when the Japanese government declared war with china, "p" was informed that the performance of contract would bring him under the penalties o the foreign enlistment act . He consequently left the ship.

<u>Judgment:</u> He was entitled to recover the wages agreed upon.

2. <u>Anticipatory Breach of contract</u>: It occurs when a party to executory contract declares his intension of not performing the contract before the performance is due. It may take place in two ways.

a) <u>Expressly by words</u>: here a party to the contract communicates to the others party before the due date o performance, his intention not to perform it.

<u>Ex:</u> <u>Hochster (vs) de la tour (1853):</u>

<u>Facts:</u> "D" engaged "H" on 12th of April to enter into his service as courier and to accompany him upon a tour. The employment was to commence on 1st June. On 11th may "D" rote to "H" telling him that services would no longer be required."H' immediately brought an action for damages although the time for performance had not arrived.

<u>Judgment:</u> He was entitled to do so.

b) Implied by the conduct: Here a party by his own voluntary act disables himself from performing the contract.

Ex: a person contracts to sell a particular horse to another on 1st of June and before the due date he sells the horse to somebody else.

Effect/right of an anticipatory breach: In case of anticipatory breach, the promisee is excused from performance and he may choose any one of the following two options:

1. He can treat the contract as discharged so that he is absolved of the performance of his party of the promise.
2. He can immediately take a legal action for breach or wait till the time the act was to be done.

19Q.What are the rules under the Indian contract act for estimating the loss or damage arising from a breach of contract?

Or

Define damages? Explain different type of damages awarded on breach of contract?

Ans: Damages are the monetary compensation allowed to the aggrieved party for the loss or injury suffered by him by the breach of contract. The fundamentals principle underlying damages is not punishment but compensation for the pecuniary (having to do with money) loss which naturally flows from the breach. "If actual los is not proved no damages will be awarded.

Types o damages: Damages may be of different types they are as follows:

1. Ordinary or natural or general or compensatory damages: Ordinary damages are generally the difference between contract price and market price in sale of such damages which arise naturally in usual course of things from the breach of contract.

Ex: Hadley (vs) baxendale (1854):

Facts: H's mill was stopped by the break down of shaft. He delivered the shaft to 'B', a common carrier to be taken to a manufacturer to copy it and make a new one. "H" did not make known to "B" that delay would result in loss of profits by some neglect on the part of "B" the delivery of shaft was delayed in transit beyond a reasonable time (so that the mill was idle for a longer period than other wise would have been the case had there been no breach of the contract of carriage.

Judgment: "B" was not liable for loss of profits during the period of delay as the circumstances communicated to "B" did not show that a delay in the delivery of shaft would entail loss of profit to mill.

2.special damages: where a party to a contract receives a notice of a special circumstances affecting the contract, he will be liable not affecting the contract , he will be liable not only for damages arising naturally but directly from the breach and also fo4 special damages.

Ex: A, having a contracted with "B" to supply "B" 1000 tons of iron @100 a ton, to be delivered at a stated time. "A" contracts with "c" for to purchase of 1000 tons of iron 80 a ton telling "C" that he does so for the purpose of performing his contact with "B". "C" fails to perform his contract with "A" Rs.20000 /- being the profit which "A" would made by the performance of his contract with "B".

3. Nominal (or) token damages: Nominal damages are awarded where the plaintiff has proved that there has been a breach of contract but he has not in fact suffered any real damage. Now you may ask why such damages are awarded. The answer is simple. It is awarded just to establish the right to decree or the breach of contract. The amount may be even a rupee.

4.Vindictive or exemplary damages: Exemplar damages are punitive damages which are awarded by the court in some cases. It is generally given by way of compensation for loss suffered and not by way of punishment for wrong inflicted. Exemplary damages awarded only in two ways:

a) Breach o contract of marry.
b) Dishonor of a cheque by a banker when there are sufficient funds to the credit of the consumer.

5. Damages for loss of reputation: Damages for loss of reputation in case of breach o contact are generally not recoverable. But there is an exemption to this rule exists in a case o a banker who wrongly refuses to honor a customer's cheque. If the customer happens to be a trade man, he can recover damages in respect of any loss to his trade reputation by the breach of contract. And the rule o law is: the smaller the amount of damages awarded. But I the customer is not a tradesman, he can recover only nominal damages.

6. Damages or inconvenience and discomfort: Damages can be recovered for physical inconvenience and discomfort. If, how ever the inconvenience or discomfort caused by a breach is substantial, the damages can be recovered on the ground of fairness

7.Mitigation of damages: It is the duty o the injured party to take all reasonable steps to mitigate the loss caused by the breach. He cannot claim compensation or loss which is really due not to the breach but due to his own neglect.

8. Cost of decree: The aggrieved party id entitled, in addition to damages, to get the decree for damages. The cost of suit for damages is in the discretion of the court.

9. Damages agreed upon in advance in cash for breach: If a sum is named in a contract as the amount to be paid in cash of its breach, or if the contract contains any other stipulation by way of penalty for failure to perform the obligations, the aggrieved party is entitled to receive from the party who has broken the contract, a reasonable compensation not exceeding the amount so named in the contract.

10. Difficulty of assessment: The damages which are difficult to assess with inconvenience discomfort and sufficiency cannot be recovered. But the damages which are difficult to asses with certainty does not prevent the aggrieved party from recovering them. Them court will look into it and may allow monetary damages of ouch inconveniences.

20Q.What is meant by of contract of contract? Explain the remedies for or breach of contract?

Ans: Meaning: Breach of contract means promisor's failure to perform the promise or breaking of the obligation which a contract imposes. It confers a right of action or damages on the injured party. Breach of contract may be of two types:

a) **Actual breach**: promises failure to perform the promise on due date of performance than it is called actual breach of contract.
b) **Anticipatory breach**: It occurs when a party to an executory contract declares his intention of not performing the contract before the performing the contract before the performance is due.

Remedies for beach of contract: A remedy is the means given by law "for the enforcement of right". In the case of breach of contract the aggrieved/ injured party (i.e., the party who is not in breach) becomes entitled to any one or more of the following remedies against the guilty party. They are follows:

1. Rescission of the contract: when a contract is broken by one party, the other party may treat the contract as rescinded. In such case the aggrieved party's are entitled to claim for damages that he might have suffered rom the promisor.

2. Suit for damages: damages are the monetary compensation allowed to the aggrieved party for the loss or injury suffered by him by the breach of contract. The fundamental principle underlying damages is not punishment but compensation or the pecuniary loss which naturally flows from the breach. "If actual loss is not proved no damages will be awarded."

3. <u>Suit for "Quantum-meruit</u>: The phrase Quantum meruit literally Means "as much as is earned" or "as much as merited" or In proportion to the work is done". The general rule of law is that unless a person has performed his obligation in full, he cannot claim performance fro the other. But in certain cases, when a person has done some work under a contract, and the other party discharged the contract, or some event happens which makes the further performance of the contract impossible, then the party ho has performed the work can claim remuneration for the work he has already done.

4. <u>suit for specific performance</u>: where damages are not an adequate remedy, the court may direct the party to carry out his promise according to the terms of the contract. This is called "specific performance" of the contract.

Specific performance will not be granted in the following cases where:

i. Damages are an adequate remedy.

ii. Where the contract is not certain or is inequitable to either party.

i. The contract is in it nature recoverable.

ii. Where the contract is of specific nature.

iii. Where the contract is made by trustees in breach of their trust.

iv. Where the contract is made by a company in excess of its powers as laid down in its Memorandum of Association.

v. Where the contract cannot supervise its carrying out.

5. <u>Suit for injunction</u>: Where a party is in breach of a negative term of the contract (i.e., where he is doing something which he promised not to do), in such a case, the Court may, by issuing an order, restrain him from doing what he promised not to do. Such an order of the court is known as "Injunction".

21Q. What do you understand by "Quantum meruit". When does claim on Quantum meruit arise?
OR

Write a short note on "Quantum Meruit"

Ans: This phrase "Quantum Meruit" means "As much as earned or as much as merited. The general rule of law is that unless a person has performed his obligation in full, he cannot claim performance from the others. But in certain cases, when a person has done some work under a contract, and the other party discharged the contract or some event happens which makes the further performance of the contract impossible, then the party who had performed the work can claim remuneration for the work he has already done.

The claim for quantum meruit arises only when the original contract is discharged and it could be brought by the party who is not in default. The claim on "Quantum Meruit" arises in the following cases:

1. <u>When an agreement is discovered to be void:</u> When an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such contract is bound to restore it or to make compensation for it.

2. <u>When something is done without any intention to do so gratuitously:</u> When a thing is unlawfully done or goods are supplied by a person without any intention to do so gratuitously to another person and such other person enjoys the benefit there of, he is bound to make compensation to the former.

3. Where there is express or implied contract to render services but there is no agreement as to remuneration. In such a case, the court decides the reasonable remuneration.

4. When the completion of the contract has been prevented by the Act, of the other party to the contract, they could recover the Quantum Meruit.

5. <u>When a contract is divisible:</u> When a contract is divisible and the party is not in default, has enjoyed the benefit of the part performance, the party in default may sue on quantum meruit. But if the contract is not divisible, the party in default cannot claim remuneration on the ground of quantum meruit.

6. <u>When an indivisible contract is completely performed but badly:</u> When an indivisible contract for a lump sum is completely performed, but badly, the person who had performed the contract can claim the lump sum but the other party can make a deduction for bad work.

22Q. Write a short note on "Injunction".

Ans: When a party is in breach of negative term of the contract (i.e., where he is doing something which he promised not to do), in such a case the court may by issuing an order restrain him from doing what he promised not to do, such an order of the court is known as "Injunction".

The grant of an Injunction by the court is normally discretionary, but there seems no reason why the court should refuse the grant of an Injunction to restrain the breach of contract.

a) Whereby a promisor undertakes not to do something.
b) Which is negative in substance though not in form

Ex: "N", a Film Actress agreed to act exclusively for "W" for a year and for no one else. During the year, she contracted to act for "Z". She could be restrained by Injunction from doing so.

23Q.Define "Quasi Contract". Explain the types of "Quasi Contract".

Ans: **Meaning:** Under certain special circumstances, a person may receive a benefit to which the law regards another person as better entitled or for which the law considers he should pay it to the other person, even though there is no contract between the parties these relationships are terms as "Quasi Contract" or constructive contracts under the English Law and "Certain relationships resembling those created by contracts" under the Indian Law.

Quasi contract is not made by a process of proposal and acceptance or by free consent. It is a trust upon us by law.

A Quasi-contract rests upon the equitable, which declares that a person shall not be allowed to enrich himself unjustly at the expense of another.

Silent features of Quasi-contract:

i. It is a right which is available not against a particular person or persons and so, that in this respect it resembles a contractual right.
ii. It does not arise from any agreement of the parties concerned it is imposed by law.
iii. Such Quasi-contractual right is always a right to money, and generally, though not always, to a liquidated sum of money.

TYPES OF QUASI-CONTRACTS: The following are of Quasi-contracts are discussed below.

1. Supply of necessaries (sec68): according to section 68, if a person incapable of entering into a contract or any one whom he as legally bound to support is supplied by another with necessaries suited to his condition in life the person who has furnished such supplies I entitled to be reimbursed from the property of such incapable person.

Ex: 'A', supplies "B" a lunatic with necessaries suitable to his condition in life. "A" is entitled to reimburse from B's property.

2. Payment by an interested person (Section.69) A person, who is interested in payment of money which another is bound by law to pay and who therefore pays it, is entitled to be reimbursed by other.

The essential requirements of Section.69 as follows:

a) The payment mode should be bonafide for the protection of one's interest.
b) The payment should not be a voluntary one.
c) The payment must be such as the other party was bound by law to pay.

Ex: "B" holds land Bengal on a lease granted by the Zamindar. The revenue payable by "A" to the Government being in arrears his land is advertised for sale by the Government under the Revenue Law. The sale will be annulment of "B's lease. 'B' to prevent the sale and the consequent of annulment of his own lease pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

3. Obligation to pay for non-gratuitous acts (Section.70): When a person lawfully does anything for another person or delivers anything to him not intending to do so, gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make the compensation to the former in respect of or restore, the things do done or delivered.

Ex: "A", a tradesman lease goods at "B" house by mistake. B treats the goods as his own. He is bound to pay for them to A.

4. Responsibility of finder of goods (Section.71): A person who finds goods belonging to another and takes them into his custody is subject to the same responsibility as Bailee. He is bound to take as much care o the goods as a man of ordinary prudence would under similar circumstances take of his own goods of the same bulk, quality and value. He must also take all necessary measures to trace its owner. If he does not, he will be guilty of wrongful conservation of the property 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 (except the owner).

Ex: "F" picks up a diamond on the floor of 'S's shop. He hands it over to 'S' to keep it till the real owner is found out. No one appears to claim it for quite some week's inspite of wide advertisement in the news papers. 'F' claims the diamond from 'S' who refuses to return. 'S' is bound to return the Diamond to 'F' who is entitled to retain the diamond against the whole world except the true owner.

5. <u>Mistake or coercion (Section.72):</u> A person to whom money has been paid, or anything delivered by mistake or under coercion, must repay or return it to the person who paid it by mistake or under coercion.

Ex: "A" & "B" jointly owe Rs.100/- to "C". A alone pays the amount to C and B not knowing this fact pays Rs.100/- over again to "C". C is bound to pay the amount to B.

24Q.Write a short note on "Finder of lost goods or "Responsibility of finder of goods"

Ans: A person, who finds goods belonging to another and then takes into his custody, is subject to the same responsibility as a bailee. He is bound to take as much care of the goods as a man of ordinary prudence would under similar circumstances take of his own goods of the same bulk, quantity and value. He must also take all necessary measures to trace its owner. If he does not, he will be guilty of wrongful conversion of the property 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 (except the owner).

<u>The finder can sell the goods in the following cases:</u>

1. When the thing found is in danger of perishing.
2. When the owner cannot with reasonable diligence, be found out.
3. When the owner is found out, but he refuses to pay the lawful charges of the finder and
4. When the lawful charges of the finder, in respect of the thing found, amounts to 2/3rd of the value of the things found.

3-UNIT SALE OF GOODS ACT

(PART - I)

1Q.Explain the nature of a contract of sale of goods and bring out clearly the distinction between sale and an agreement to sell?

ANS: Contract of sale of Goods:

It is a contract where by the seller transfers (OR) agrees to transfer the property in goods to the buyer for a price.

Sale and Agreement to sell:

In sale of goods, the property in the goods is transferred from the seller to the buyer immediately then the contract is called **sale**, but where the transfer of property in the goods passes only after the seller has fulfilled certain conditions subsequently is called an **agreement to sell**.

Essentials of a contract of sale: The following are the Essential elements are necessary for contract of sale:

1) There must be at least two parties: there must be two distinct parties (i.e.., seller and Buyer) to effect a contract of sale and they must be competent to contract. Section 2(1) defines 'A person who buys (or) agrees to buy goods is called a **Buyer**' and Section 2(13) defines 'A person who sells (or) agrees to sell is called **seller**'.

2) Subject matter must be 'Goods': There must be some goods, the property in which is (or) is to be transferred from the seller to the buyer. The goods which form the subject matter must be movable.

3) Consideration is price: The consideration for the contract of sale, called price, it must be money. Where there is no consideration, it would be a gift, there is no contract of sale. Similarly, where goods are sold for a price, which is to be paid partly in cash and partly in goods then it is considered as contract of sale.

4) Transfer of general property: There must be a transfer of general property from the buyer to the seller.

5) Absolute (OR) Qualified: A contract of sale may be absolute or conditional.

6) Essential elements of a valid contract: All the essentials of a valid contract must be present in the contract of sale.

The following are the differences between the sale and Agreement to sell are as follows:

DIFFERENCE	SALE	AGREEMENT TO SELL
1.Transfer of property	The transfer of ownership passes from seller to buyer immediately.	The transfer of ownership passes from seller to buyer subsequent to the formation of agreement to sell.
2.Nature of contract	It is an executed contract.	It is an executor contract.
3. Type of goods.	Sale can be only in specific or existing goods.	An agreement to sell is mostly in case of future or contingent goods
4. Risk of loss.	If the goods are destroyed, the loss falls on the buyer even though the goods are in the procession of seller.	If the goods are destroyed, the loss falls on the seller even though the goods are in procession of buyer.
5. Remedies for breach by seller.	In case of breach by seller, the buyer has the legal right to obtain the possession of the goods.	In case of breach by seller, the buyer's remedy is to claim damages for non-performance of the contract.
6. Remedies for breach by buyer.	In case of breach by buyer, the seller has the legal right to sue the buyer for recovery of price of goods.	In case of breach by buyer, the seller cannot sue the buyer for recovery of price of goods. His right is limited to claim damages.
7.Right of resale	In case of sell, the seller has no right to resell the goods.	In case of agreement to sell, the seller can resell the goods to any other person.
8. Insolvency of buyer.	If the buyer becomes insolvent, the official assignee/ official receiver shall have a right over the goods.	If the buyer becomes insolvent, the official assignee/ official receiver shall have no right over the goods.
9. Insolvency of seller.	If the seller becomes insolvent, the official assignee/ official receiver shall have no right over the goods.	If the seller becomes insolvent, the official assignee/ official receiver shall have a right over the goods.
10. General & particular property	A sale is a contract plus conveyance, and creates jus in rem i.e., gives a right to the buyer to enjoy the goods	An agreement to sell is merely a contract, pure and simple, and creates *jus in person-am* i.e., gives a right

	as against the world at large including the seller.	to the buyer against to sue for damages.

(PART – II)

2Q. Explain the conditions and warranties of the sale of goods act, 1930?

Ans: According to section 12(1) of sales of goods act, 1930. 'A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition (or) a warranty.

Condition and Warranties:

Condition: According to section 12(2) a '**Condition**' is a stipulation essential to the main purpose of the contract, the breach of which gives raise to a right to treat the contract as repudiated.

Warranty: According to the section 12(3) a '**Warranty**' is stipulation collateral to the main purpose of the contract, the breach of which gives raise to a claim for damages but not to the right to reject the goods and treat the contract as repudiated.

Whether a stipulation in a contract of sale is a condition (or) warranty depends in each case of the construction of the contract. A stipulation may be a condition, through called a warranty in a contract.

Implied Conditions: The Act prescribes some of the implied conditions in a contract. Buyer can repudiate contract for breach of any of these conditions:-

1. Condition as to tittle: Section 14(a) In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is an implied condition on the part of the seller, that,

a) In case of a sale, he has the right to sell the goods and
b) In case of an agreement to sell; he will have a right to sell the goods at the time when the property is to pass.

Thus, if seller sells stolen goods, the buyer can repudiate the contract and claim damages also, as the seller had no right to sale the goods.

2. Sale by description: (section 15) where there is a contract for the sale of goods by description, there is an implied condition that that the goods shall correspond with the description. 'Sale of goods by description' includes the following:

a) Where the buyer has not seen the goods and relies on their description given by the seller.
b) Where the buyer has seen the goods but he relies not on what he has seen but what was stated to him and deviation of the goods from the description is not apparent.
c) Packing of goods may sometimes be a part of description.

3. Condition as to quantity (or) fitness: (section 16(1)) where the buyer, expressly (or) by implication, makes known to the seller the particular purpose for which he requires the goods, so as to show that the buyer relies on the seller's skill (or) judgment, and the goods are of a description which is in the course of the seller's business to supply, there is an implied condition that the goods shall be reasonable fit for the purpose. This will not apply where specific goods are sold under their patient (or) trademark. Thus, the four conditions must be fulfilled:

a) The **purpose** must have been **disclosed** (expressed or implied) by the buyer.

b) The buyer must have **relied** on the seller's skill (or) judgment.

c) The **seller's business** must be to sell those goods.

d) The goods should not have been sold **under a patient (or) trademark**.

4. Conditions as to merchantability: (Section 16(2)) where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quantity; provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

5. Condition implied by custom: (section 16(3)) An implied condition as to quantity (or) fitness for a particular purpose may be annexed by the usage of trade. The purpose for which the goods are required may be ascertained from the acts and conducts of the parties and from the nature of the description of the article purchased.

Example: Priest (vs) last (1903):

Facts: 'P' asked for a hot water bottle of 'L', a retail chemist. He was supplied one which burst after a few days use and injured 'P's wife.

Judgment: 'L' was liable for breach of implied condition because 'P' had sufficiently made known the use for which he required the bottle.

6. Sale by sample: (Section 17) In a sale by sample the following are the implied conditions

a) The bulk shall correspond with the sample in quantity.

b) That the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

c) That the goods shall be free from any defects rendering them un-merchantable, which would not be apparent on reasonable examination of the sample.

Example: Frost (vs) Aylesbury Dairy Co.Ltd (1905):

Facts: 'F' brought milk from 'A'. the milk contained germs of typhoid fever. 'F's wife took the milk and got infection as a result of which she died.

Judgment: 'F' could recover damages.

7. Condition as to wholesomeness: In the case of eatables and provisions, in addition to the implied condition as to merchantability there is another implied condition that the goods shall be wholesome.

Implied Warranties: The implied conditions in a contract of sale are as follows:-

1. Warranty of quiet possession: (section 14(b)) In a contract of sale, unless contrary intention appears, it is implied that the buyer shall have and enjoy quiet possession of the goods. If the buyer is in any way disturbed in the enjoyment of the goods in consequence of the seller's defective tittle to sell, then the buyer is entitled to sue the select for damages.

2. Warranty of freedom from encumbrances: (section 14 (C)) means that the goods are free from any charge (or) encumbrances in favour of any third party, not declared to (or) known to the buyer. in such a case he shall have a right to claim damages for breach of this warranty.

3. Warranty as to quantity (or) fitness by usage of trade:(Section 16(4)) An implied warranty as to quantity (or) fitness for a particular purpose may be annexed by the usage of trade.

4. Warranty as to disclose dangerous nature of goods: Where a person sells goods knowing that the goods are inherently dangerous (or) they are likely to be dangerous to the buyer and that the buyer is ignorant of the danger. In such a case the seller warn the buyer otherwise he would be held liable.

3Q. State the doctrine of 'Caveat Emptor' and state the exceptions to it.

Ans: Meaning: Caveat Emptor is a fundamental principal governing the law of sale of goods; it means "Let the buyer beware". In other words, it is no part of the seller's duty in a contract of sale of goods to give the buyer an article suitable for some particular purpose, (or) of particular quantity, unless the quantity (or) fitness is made an express terms of the contract. The person who buys goods must keep his eye open, his mind active and should be conscious while buying the goods. If he makes a bad choice, he must suffer the consequences of lack of skill and judgment in the absence of any misrepresentation (or) guarantee by the seller.

Exceptions to principal of Caveat Emptor: The doctrine of Caveat Emptor has certain important exceptions they are follows:-

1. Fitness for buyer's purpose: Where the buyer expressly (or) by implication, makes known to the seller the particular purpose for which he needs the goods and depends on the skill and judgment of the seller whose business is to supply goods of that description, in such a case there is an implied condition that the seller must supply the goods shall be reasonably fit for that purpose.

2. Sale under a patient (or) trade name: If the buyer purchases an Article under its patient (or) other trade name and relies on seller skills and judgment which he make known to him, in such a case there is no implied condition that the goods shall be reasonably fit for any particular purpose.

3. Merchantable Quality: Where the goods are brought from a seller who deals in goods of that description weather he is the manufacturer (or) producer (or) not, there is an implied condition that the goods are of merchantable quantity.

4. Usage of trade: An implied condition as to quality (or) fitness for a particular purpose may be annexed by the usage of trade.

5. Consent by fraud: Where the consent of the buyer, in a contract of sale, is obtained by the seller by fraud (or) where the seller knowingly conceals a defect which could not be discovered on a reasonable examination. In such a case the doctrine of caveat emptor does not apply.

6. In case of eatables and provisions in addition to the implied condition of merchantability, there is an implied condition that the goods shall be wholesome.

4Q. State briefly the rules as to the passing of property from the seller to the buyer in a contract, for the sale of goods.

(OR)

What is meant by transfer of property in goods and when does property pass from the seller to the buyer?

Ans: **Meaning of property in goods:** It means ownership of the goods. It is different from possession of the goods. Possession refers to custody of the goods. There may be situations where a person may be the owner of certain goods but not in possession of the same (or) vice-versa.

Transfer of property (or) passing of property: where the intention of the parties as to the time when the property in goods passes to the buyer cannot be ascertained from the contract, the rules contained in section 20 to 24 apply. These rules are as follows:-

(A) Specific (or) ascertained goods:(section 20 to 22)

(i). Passing of property at the time of contract: where there is an unconditional contract of sale of specific goods in a deliverable state, the property in the goods passes to the buyer when contract is made. The fact is that the postponement of time of payment (or) delivery (or) both, will not affect the passing of property.

Thus, goods are said to be in deliverable state when they are in such a state that the buyer would under the contract be bound to take delivery of them.

(ii). Passing of property delayed beyond the date of the contract:

(a) Specific Goods not in a deliverable state: In case of specific goods to which something has to be done by the seller to put them in to a deliverable state, but the fact is that the property passes only when such thing is done and the buyer has notice thereof.

(b) When the price of the goods is to be ascertained by weighting, etc: where there is a contract of sale of specific goods in the deliverable state, but the seller is bound to weight, measure, test (or) do some other thing with respect to them, for ascertaining the price, but the fact is that the property does bot pass until such act is done and the buyer has notice of it.

(B) Unascertained (or) future goods: In case of unascertained goods, the property in the goods is not transferred to the buyer unless and until the goods are (i) Ascertained and (ii) unconditional appropriated.

(i) Ascertained goods: Ascertainment is the process by which the goods answering to the description (or) quality stated in the contract, identified and set a part. Ascertained can be a unilateral act of the seller i.e., he alone may set apart the goods.

Example: Rhode (vs) Thwaites (1827):

Facts: In a sale of 20 hog heads of sugar out of larger quantity, 4 were filled and taken away by the buyer. The remaining 16 hog heads were subsequently filled and the buyer was informed of the same. The buyer promised to take them away, but before he could do so, the goods were lost.

Judgment: The property had passed to the buyer at the time of loss.

(ii) Unconditional appropriation: It is unconditional when the seller does not reserve to himself the right of disposal of the goods. The appropriation may be done either by the seller with the assent of the buyer (or) by the buyer with the assent of the seller. Such assent may be expressed (or) implied, and may be given either before (or) after the appropriation is made.

If the contract is silent as to the party who is to appropriate the goods, the party who under the contract is first to act is the one who appropriates.

Example: 'A' sells by description 10 sheep to 'B'. if 'A' is to send sheep to 'B', it is 'A' who appropriate the sheep, it is 'B' who appropriate the sheep, if the buyer tells the seller to send the goods by rail (or) some other mode of carriage, he is deemed to have given his assent in advance to the subsequent appropriation by the seller of the goods.

(C) Goods sent on approval (or) on sale (or) return basis: When goods are delivered to the buyer on approval (or) on sale (or) return in such a case the ownership pass to the buyer as follows:

(i) Acceptance of goods: When he signifies his approval (or) acceptance to the seller.

(ii) Adoption of the transaction: When he does any other act adopting the transaction.

(iii) Failure to return the goods: The ownership shall pass to the buyer, if the buyer fails to return the goods to the seller:-

a) With in specified time- if certain time is fixed for return of goods.

b) Within a reasonable time- if no time has been fixed for return of goods.

5Q Differences between Right of Lien and Right of stoppage in transit.

Ans: The following are the differences between the right of lien and right of stoppage in transit they are follows:-

Right of lien	Right of stoppage in transit

1. The essence of right of lien is to retain possession.	1. The essence of right of stoppage in transit is right to regain possession.
2. Seller should be in possession of goods under lien	2. in case of stoppage in transit;- **(a)** Seller should have parted with the possession **(b)** possession should be with a carrier and **(C)** buyer was not acquired the possession.
3. It can be exercised even when the buyer is not insolvent.	3. It cannot be exercised even when the buyer is not insolvent.
4. Right of stoppage in transit begins when the right of lien ends.	4. The end of the right of lien is the starting point of stoppage in transit.

6Q. State the exceptions to the rule 'Nemo dat qui non habet'.

(Or)

Sale by non-owners. (Or) Transfer of tittle other than the owner.

Ans: The general is that only the owner of the goods can transfer a goods title. No one can give a better title than what he himself has. This is expressed in Latin word **'Nemo dat qui non habet'.** Subject to provisions of this act and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority (or) with the consent of the owner, the buyer acquires no better title to the goods than the seller had.

Exceptions to the above rule:- For example, a thief cannot pass on better title to purchaser of the stolen goods. This is very important principle. However, strict implementation of this principle will create some difficulties. Some exceptions are provided, as discussed below.

1. Sale by a person not the owner (or) tittle by estoppel: (section 27) where the true owner by his conduct, act (or) omission leads the buyer to believe that the seller has the authority to sell and

induces the buyer to buy the goods, he shall be estopped from denying the fact of want of authority of the seller. The buyer in such a case get better tittle than that of the seller.

2. <u>Sale by mercantile agent</u>: (section 27) A sale by mercantile agent shall pass a valid title to the buyer even though such sale is not made as per the directions of the seller, if the following conditions are satisfied.

a) The sale is made by a mercantile agent in the capacity of mercantile agent.
b) The goods came into his possession with the consent of the seller.
c) The sale is made by the mercantile agent acting in the ordinary course of business
d) The buyer buys the goods in goods faith and for consideration.

3. <u>Sale by one of several joint owners:</u> (Section 28) A sale by one of the joint owners shall pass a valid title to the buyer even though such sale is not made with the consent of the other joint owners, if the following conditions are satisfied:-

a) The goods are in the sole possession of the joint owner.
b) The goods came into his possession with the consent other joint owners.
c) The buyer buys the goods in good faith and for consideration.

4. <u>Sale by a person in possession under a voidable contract:</u> (section 29) A re-sale of goods by a buyer shall pass a valid title to the new buyer, if the following conditions are satisfied:-

a) A person buys the goods under a voidable contract.
b) Such buyer resells the goods to a new buyer.
c) At the time of re-sale, the voidable contract has not been rescinded by the original seller.
d) The new buyer buys the goods in good faith of want of authority of the seller. The buyer in such a case shall get better title than that of the seller.

5. <u>Sale by a seller in possession of goods after the sale:</u> (section 30(1)) A seller, who has the possession of the goods already sold by him, may re-sell such goods to the new buyer, and the new buyer shall have a valid title to such goods, if the following conditions are satisfied:-

a) The ownership of goods has been passed to the buyer.
b) The seller continues to be in possession of goods, even after their sale.
c) The seller re-sells the goods to the new buyer.
d) The new buyer buys the goods in good faith (i.e.., the new buyer had no knowledge of the fact that the goods being sold by the seller have already been sold to some other buyer) and consideration.

6. <u>Sale by the buyer in possession of goods:</u> (section 30(2)) Where a person having bought (or) agreed to buy goods, obtains, with the consent of the seller, possession of the goods (or) document of title to the goods, the delivery (or) transfer by such person (or) a mercantile agent acting for such person, of the goods (or) documents, will be valid and effective, provided the person receiving the same, acted bonafide and without notice of the seller's lien, if any.

7. <u>Sale by an unpaid seller:</u> (Section 54 (3) where an unpaid seller who ha exercised his right of lien (or) stoppage in transit re-sells the goods, the buyer acquires a good title to the goods as against the original buyer.

8. <u>Exceptions under other Acts:</u>-

a) Sale by a finder of lost goods.
b) Sale by a Pawnee (or) pledge.
c) Sale by an official receiver (or) assignee (or) liquidator of companies.
d) Sale by Bank/ FI under Securitization Act, 2002.
e) Holder in due course under Negotiable instruments Act, 1887.

7Q. Right of re-sale.

Ans: <u>Right of re-sale:</u> (Section 46(1)(C) and 54) The unpaid seller can resell the goods if:-

1) The seller has exercised the right of lien (or) stoppage of goods in transit.
2) Where the goods are of perishable nature (or)
3) When the seller has given a notice to the buyer of his intention to resell the goods. However the notice by the seller is not required if the goods are perishable.
4) The buyer fails to pay the price within a reasonable time.

If on resale after proper notice, there is a loss to the seller (i.e.., difference between the contract price and the market price), he can claim it from the buyer. If there is any surplus on re-sale, the seller is not bound to hand it over to the buyer because the buyer cannot be allowed to take advantage of his own wrong. In case notice is not given, the unpaid seller:-

- Is not entitled to recover any loss on the re-sale of the goods.
- Is not bound to retain any surplus arising on the re-sale of the goods. The buyer is entitled to claim such surplus, if any, accruing on re-sale.

- Where the seller expressly reserves a right of re-sale in case the buyer could make default.

8Q. Who is "Unpaid Seller"? Explain the rights of an unpaid seller?

Ans: Meaning: According to section 45(a) The seller of goods is deemed to be an unpaid seller if:-

1) The whole of the price has not been paid (or) tendered and the seller had an immediate right of action for the price.
2) When a bill of exchange (or) other negotiable instrument was given as payment, but the same has been dishonored, unless and until this payment was an absolute, and not a conditional payment.

Any person who is in a position of a seller, is also a seller, and may exercise the rights conferred upon an 'Unpaid seller' in the above said circumstances.

Rights of an unpaid seller: An unpaid seller has been expressly given the right against the goods as well as the buyer personally which as been discussed below:-

Rights of unpaid seller may broadly classified under two heads (1) rights against the goods. (2) Right against the buyer personally.

(1) Rights against the goods: Again it was classified in to two types:-

(i) Where the property in the goods has passed:

(ii) Where the property in the goods has not passed

(i) Where the property in the goods has passed: Again it has classified in to three types (a) Right of Lien. (b) Right of stoppage in transit and (C) Right of re-sale.

(a) Right of Lien : (Section 46(1)(a) and 47 to 49) The word 'Lien' means a right to retain possession. An unpaid seller, who is in possession of the goods, is entitled to remain them until payment (or) tender of the price in the following cases:-

- Where the goods have been sold without any stipulation as to credit (or)
- Where the goods have been sold on credit but the terms of credit has expired (or)
- Where the buyer becomes insolvent.

(b) Right of stoppage in transit: (section 46(1)(b) and 50 to 52) The unpaid seller has the right of stopping the goods in transit after he has parted with their possession to a carrier, in case of insolvency of the buyer. The right is exercisable by the seller only if the following conditions are fulfilled:-

1. The seller must be unpaid.
2. He must have parted with the possession of goods.
3. The goods must be in transit.
4. The buyer must have become insolvent.
5. The right is subject to provisions of the act.

(C) <u>Right of re-sale:</u> (Section 46(1)(C) and 54) The unpaid seller can resell the goods if:-

5) The seller has exercised the right of lien (or) stoppage of goods in transit.
6) Where the goods are of perishable nature (or)
7) When the seller has given a notice to the buyer of his intention to resell the goods. However the notice by the seller is not required if the goods are perishable.
8) The buyer fails to pay the price within a reasonable time.

(ii) <u>where the property in the goods has not passed:</u> (section 46(2)) Where the property in goods has not passed to the buyer, an unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

2. <u>Rights against the buyer personally:</u> An unpaid seller can enforce certain rights against the goods as well as the buyer personally. The rights which an unpaid seller may enforce against the buyer personally is called the *rights in personam* as against the *right in rem* (i.e.., rights against the goods), and are in addition to his rights against the goods. The *rights in personam* are as follows:-

(a) <u>Suit for price:</u> (Section 55)

(a) Where under a contract of sale the property in the goods has passed to the buyer, and the buyer wrongfully neglects (or) refuses to pay the price, the seller can sue the buyer for the price of the goods. (Section 55(1).

(b) Where property has not passed under the contract of sale and the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects (or) refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract. (Section 55(2).

(b) <u>Suit for damages for non-acceptance:</u> (section 56) An unpaid seller has the right to sue the buyer for recovery of damages if the seller is ready and willing to deliver the goods to the buyer as per the terms of the contract; but the buyer wrongfully neglects (or) refuses to accept the goods. As regards measure of damages, section 73 of the Indian contract Act, 1872, applies.

(C) <u>Suit for damages for repudiation of contract:</u> (section 60) Where the buyer repudiates the contract before the date of delivery, the seller may either:-

1) Treat the contract as subsisting and wait till the date of delivery.

2) He may treat the contract as rescinded and sue fro damages for the breach. This rule is known as 'Rule of anticipatory breach of contract'.

(d) <u>suit for interest:</u> (section 61(2)(a)) In case of breach of contract on the part of the buyer, while filing a suit for the price, the seller may sue the buyer for interest from the date of the tender of the goods (or) from the date on which the price was payable.

9Q Right of Lien

Ans: <u>Right of Lien</u>: (Section 46(1)(a) and 47 to 49) The word 'Lien' means a right to retain possession. An unpaid seller, who is in possession of the goods, is entitled to remain them until payment (or) tender of the price in the following cases:-

- Where the goods have been sold without any stipulation as to credit (or)
- Where the goods have been sold on credit but the terms of credit has expired (or)
- Where the buyer becomes insolvent.

<u>Rules regarding lien:</u>

1. Lien can be exercised for the non-payment of the price, and not for the other charges due against the buyer.
2. The unpaid seller can exercise his lien notwithstanding that he is in possession of the goods (or) bailee for the buyer.
3. Where the part delivery has been made, he may still exercise his right of lien on the reminder of goods unless he has waived the lien.
4. It is a personal right, which can be exercised only by him and not by assignees (or) creditors.

Termination of lien: The unpaid seller of goods loses his lien on the goods when

1. When the seller delivers the goods to a carrier (or) other bailee for the purpose of transmission to the buyer, without reserving the right of disposal of the goods to himself.
2. By waiving his right of lien.
3. Where the buyer (or) his agent lawfully obtains possession of the goods.
4. Where he assents to a sub-sale by the buyer.
5. Where he takes a security from the buyer for the payment of the price in place of his lien.

10Q Right of stoppage in transit.

Ans: Right of stoppage in transit: (section 46(1)(b) and 50 to 52) The unpaid seller has the right of stopping the goods in transit after he has parted with their possession to a carrier, in case of insolvency of the buyer. The right is exercisable by the seller only if the following conditions are fulfilled:-

6. The seller must be unpaid.
7. He must have parted with the possession of goods.
8. The goods must be in transit.
9. The buyer must have become insolvent.
10. The right is subject to provisions of the act.

The above right prevents the goods from being delivered to the buyer, and reassuming (or) regaining possession while in transit, retaining them till the price is paid. This right is earned only when the right of lien is lost and is available only when the buyer has become insolvent.

The unpaid seller may exercise his right of stoppage in transit by either:-

(a) By taking actual possession of the goods, (or)

(b) By giving notice of his claim to the carrier (or) other bailee in whose possession the goods are.

Duration of transit:- Goods are deemed to be in transit from the time are delivered to the carrier for transmission to the buyer until the buyer takes delivery of them. The goods are still in transit if they are rejected by the buyer, the transit comes to an end in the following cases:-

1) If the buyer obtains delivery before the arrival of the goods at their destination.

2) If, after the arrival of the goods at their destination, the carrier (or) the other bailee acknowledges to the buyer (or) his agent that he holds on his behalf, even if a further destination of the goods is indicated by the buyer.

3) If the carrier wrongfully refuses to deliver the goods to the buyer.

11Q.What is meant by transfer of property in goods? Explain its significance?

Ans: Meaning of property in goods: It means ownership of the goods. It is different from possession of the goods. Possession refers to custody of the goods. There may be situations where a person may be the owner of certain goods but not in possession of the same (or) vice-versa.

Significance of passing of property: The time of transfer of ownership of goods decides various rights and liabilities of the seller and the buyer:-

a) It is the owner who has to bear the risk and not the person who merly has the possession.

b) It is the owner who can take action against the third party and not the person who merly has the possession.

c) The seller can sue for the price only if the ownership of goods has been transferred to the buyer.

d) In case of insolvency of the buyer, the official receiver (or) assignee can take the possession of goods from seller only if the owner ship of goods has been transferred to the buyer.

e) In case of insolvency of the seller, the official receiver (or) assignee can take the possession of goods from buyer only if the ownership of goods has not been transferred to the buyer.

4-UNIT:-CONSUMER PROTECTION ACT, 1986. &ESSENTIAL COMMODITIES ACT, 1955

1Q. What are the Objects of consumer protection Act, 1986?

Ans: The law relating to consumer protection is contained in the consumer protection Act, 1986. The act applies to all goods and services. The central government however by notification published in the Official Gazette exempts any goods (or) Services.

Objects of the Act: The following are the objectives of Consumer Protection Act, 1986. They are follows:-

1. Better Protection of Consumers: The act seeks to provide for the better protection of the interest of consumers and for that purpose, makes a provision for the establishment of consumer councils and other authorities for settlement of consumer disputes and for matters connected therewith.

2. Protection of rights of consumers: The Act, seeks to promote and protect the rights of consumers such as:-

a) The consumer has the right to be protected against marketing of goods and services which are hazardous to life and property.

b) They have the right to be informed about the quality, quantity, potency, purity, standard and price of goods (or) services so as to protect the consumers against the unfair trade practices.

c) The consumers also have the right to seek redressal against the unfair trade practices (or) restrictive trade practices of exploitation of the consumers. And

d) The consumer has Right of education.

3. Consumer protection Councils: The objectives of Consumer protection Act, 1986, are sought to be promoted and protected by the Consumer Protection Councils established at the central and State levels.

4. Quasi-Judicial machinery for speedy redressal of consumer disputes: The Act also seeks to provide speedy and simple redressal to consumer disputes. For this purpose, there has been set up a quasi-judicial machinery at the district, state and central levels. These quasi-judicial bodies are supposed to give reliefs of a specific nature, and also provide compensation to consumers whenever appropriate.

2Q. Write a short note on Consumer Disputes Redressal Agencies?

Ans: Establishment of Consumer Disputes Redressal Agencies: (Section 9)

Consumer Disputes Redressal Agencies have been established according to the section 9-27 under chapter III, of the consumer protection Act, 1986. According to section 9, they have been established for the purpose of providing justice to the consumers. It can be established as agencies, they are follows:-

1. **Consumer Disputes Redressal Forum:** A consumer disputes redressal forum is also called as 'District Forum' established by the state government in each district of the state by notification. The state Government may, if it deems fit, establish more then one District forum in a district. It has jurisdiction to entertain complaints where the value of the goods (or) services and the compensations claimed does not exceed Rs. 5 lakh.

2. **Consumer Disputes Redressal Commission:** Consumer Disputes Redressal Commission it is also known as the 'State commission' established by the state government in the state by notification. It has jurisdiction to entertain complaints where the value of the goods (or) services and compensation claimed exceeds 5 lakhs but does not exceed Rs. 20 lakhs.

3. **National Consumer Dispute Redressal Commission:** National Consumer Dispute Redressal Commission it is also called 'National Commission' established by the central government by notification. It has jurisdiction to entertain complaints where the value of the goods (or) services and compensation claimed exceeds 20 lakhs.

3Q. What is jurisdiction of a consumer Disputes Redressal Forum (the district forum)? In what manner is a complaint filed before it? What procedure is followed by it after receiving a complaint?

Ans: The 'District Forum' (or) consumer Disputes Redressal Forum is one of the Consumer Disputes Redressal agency dealt under section 10 to 15.

Each District forum consists of;-

a) A person who is, or has been, or is qualified to be a district judge, who shall be its president.

b) 2 other members who shall be persons of ability, integrity and standing, and have the adequate knowledge (or) experience of, (or) have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs (or) administration, one of who shall be a women.

However, every appointment shall be made by the state government on the recommendation of a selection committee consisting of:-

1. The president of the state commission (i.e.., chairman),
2. Secretary, Law department of the state (i.e.., member),
3. Secretary in charge of the Department with consumer affairs in the state (i.e., member)

Every member of the District forum shall hold office for a term of 5 years (or) up to the age of 65 years, whichever is earlier. He shall not be eligible for re-appointment.

Jurisdiction: According to the section 11, The District Forum shall have jurisdiction to entertain complaints where the value of the goods (or) services and the compensation, if any, claimed does not exceed Rs. 5 lakhs. This is however subject to other provisions of the Act. A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction;-

a) The opposite parties where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides (or) carries on business (or) has a branch office, (or) personally works for gain, (or)

b) Any of the opposite parties, where there are more then one, at the time of the institution of the complaint, actually and voluntary resides (or) carries on business (or) has a branch office, (or) personally works for gain. But in such a case either the permission of the District Forum is given, (or) the opposite parties who do not reside, (or) carry on business (or) have a branch office, (or) personally works for gain, as the case may be, must acquiesce in such institution; (or)

c) The cause of auction, wholly (or) part, arises.

Manner: According to section 12, a complaint, in relation to any goods sold (or) delivered (or) agreed to be sold (or) delivered (or) any service provided (or) agreed to be provided, may be filed with a District forum by:-

a) The consumer to whom such goods sold (or) delivered (or) agreed to be sold (or) delivered (or) such service provided (or) agreed to be provided.

a) Any recognized consumer association, whether the consumer to whom such goods sold (or) delivered (or) agreed to be sold (or) delivered (or) such service provided (or) agreed to be provided is a member of such association (or) not; (or)

b) The central (or) the state governments.

Procedure: The procedure on complaint of goods may be of two types: (a) Complaint relating to goods. (b) Complaint relating to services.

(a) Complaint relating to goods: The District forum shall, on receipt of a complaint, if it relates to any goods, refer a copy of complaint to the opposite party mentioned in the complaint. Further it shall direct the opposite party to give his version of the case with in a period of 30 days. This period may be extended by a further period not exceeding 15 days as may be granted by the District Forum.

Where the opposite party on receipt of a complaint referred to him denies (or) disputes the allegations contained in the complaint, (or) omits (or) fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute in the following manner:-

1. The district forum shall obtain a sample of goods from the complainant, seal it and refer the sample so sealed to the laboratory for test. The test be made with a view to finding out weather such goods from any defect alleged in the complaint (or) suffer from any other defect. The report will be given to the district forum with in 45 days of the receipt of the reference.

2. Before any sample of the goods referred to any appropriate laboratory for test, the District forum may require the complainant to deposit to the credit of the forum for carrying out the necessary analysis (or) test in relation to the goods and such fees as may be specified by the District Forum.

3. The District Forum shall remit the amount of fee deposited to its credit to the appropriate laboratory for to carry out the test. On receipt of a report from the laboratory, the District Forum shall forward a copy of the report along with such remarks as the District forum may fell appropriate to the opposite party.

4. If any parties of disputes the correctness of the findings of the appropriate laboratory, (or) disputes the correctness of the methods of analysis (or) test adopted by the appropriate laboratory, the District forum shall require the opposite party (or) the complainant to submit in writing his objections in regard to report made by the appropriate laboratory.

5. The District Forum shall give a reasonable opportunity to the complainant as well as opposite party of being heard as to the correctness (or) otherwise of the report made by the appropriate laboratory and also as to the report made in relation thereto. Thereafter, it shall issue an appropriate order under section 14.

(b) Complaint relating to services: If the complaint received by the District forum relating to the services, then the District forum shall refer a copy of such complaint to the opposite party directing to give his version of the case with in a period of 30 days (or) such extended period not exceeding 15 days as may be granted by the District Forum.

Where the opposite party on receipt of a complaint referred to him denies (or) disputes the allegations contained in the complaint, (or) omits (or) fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute in the following manner:-

1. On the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party disputes the allegations contained in the complaint. (or)

2. On the basis of evidence brought to its notice by the complainant where the opposite party omits (or) fails to take any action to represent his case within the time given by the District Forum.

The proceedings complying with the procedure laid down above cannot be called in question in any court on the ground that the principles of nature justice have not been complied with.

4Q. Write a short note on consumer Disputes Redressal commission (the State Commission) as to its composition, Jurisdiction and procedure is to be followed by it.

Ans: The 'State Commission' (or) consumer Disputes Redressal Commission is one of the Consumer Disputes Redressal agency dealt under section 16 to 19.

Each State Commission consists of;-

a) A person who is, or has been a judge of High Court, appointed by the state government, who shall be its president.

b) 2 other members who shall be persons of ability, integrity and standing, and have the adequate knowledge (or) experience of, (or) have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs (or) administration, one of who shall be a women.

However, every appointment shall be made by the state government on the recommendation of a selection committee consisting of:-

1. The president of the state commission (i.e.., chairman),
2. Secretary, Law department of the state (i.e.., member),
3. Secretary in charge of the Department with consumer affairs in the state (i.e., member)

Every member of the District forum shall hold office for a term of 5 years (or) up to the age of 67 years, whichever is earlier. He shall not be eligible for re-appointment.

Jurisdiction: According to the section 17, The State Commission shall have jurisdiction:-

a) To entertain complaints where the value of the goods (or) services and the compensation, if any, claimed does not exceed Rs. 5 lakhs but does not exceed Rs. 20 lakhs ; and

b) Appeal against the orders of any district forum within the state.

c) To call for records and pass appropriate orders in any consumer dispute which is pending before (or) has been decided by any district forum which the state where it appears to the state commission that such district forum has exercised a jurisdiction not vested in it by law (or) has failed to exercise its jurisdiction so vested (or) has acted in exercise of its jurisdiction illegally (or) with material irregularity.

d) The jurisdiction of the state commission shall be subject to other provisions of the Act.

Procedure: According to the section 18, the provisions of the section 12, 13, & 14 the rules made there under for the disposal of complaints by the district forum with such modifications as may be necessary be applicable to the disposal of the disputes by the state commission.

Appeal: According to section 19, any person aggrieved by an order made by the state commission may prefer and appeal against such orders to the national Commission with in a period of 30 days from the date of order. The national commission may entertain and appeal after the expiry of this period of 30 days if it is satisfied that there was sufficient cause for not filling the appeal within that period.

5Q.What is the composition of the National Consumer Disputes Redressal Commission (the national Commission)? What is the jurisdiction and what is the procedure applicable to it?

Ans: The 'National Commission' (or) National consumer Disputes Redressal Commission is one of the Consumer Disputes Redressal agency dealt under section 16 to 19.

Each National Commission consists of;-

a) A person who is, or has been a judge of Supreme Court, appointed by the Central government, who shall be its president.

b) 4 other members who shall be persons of ability, integrity and standing, and have the adequate knowledge (or) experience of, (or) have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs (or) administration, one of who shall be a women.

However, every appointment shall be made by the Central government on the recommendation of a selection committee consisting of:-

1. A person who is a judge of the supreme court, to be nominated by the chief justice of India (i.e.., chairman),
2. Secretary, Law department of the state (i.e.., member),
3. Secretary in charge of the Department with consumer affairs in the state (i.e., member)

Every member of the District forum shall hold office for a term of 5 years (or) up to the age of 70 years, whichever is earlier. He shall not be eligible for re-appointment.

Jurisdiction: According to the section 21, The National Commission shall have jurisdiction:-

a) To entertain complaints where the value of the goods (or) services and the compensation, if any, claimed does not exceed Rs. 20 lakhs ; and

b) Appeal against the orders of any State Commission.

c) To call for records and pass appropriate orders in any consumer dispute which is pending before (or) has been decided by any state Commission where it appears to the National commission that such State Commission. Had exercised a jurisdiction not vested in it by law (or) has failed to exercise its jurisdiction so vested (or) has acted in exercise of its jurisdiction illegally (or) with material irregularity.

Procedure: According to Section 22, the National Commission shall, in the disposal of any complaints (or) any proceedings before it, have

1. The power of civil court as specified in section 13.

2. The power to issue an order to the opposite party directing him to do any (or) more of the things referred to in section 14

The national commission shall follow such procedure as may be prescribed by the Central Government.

Appeal: According to section 23, any person aggrieved by an order made by the National commission in exercise of its powers, may prefer and appeal against such orders to the Supreme Court with in a period of 30 days from the date of order. The Supreme Court may entertain and appeal after the expiry of this period of 30 days if it is satisfied that there was sufficient cause for not filling the appeal within that period.

6Q. Unfair Trade Practices.

Ans: According to section 2(1)(r), it means a trade practice which a trader, for the purpose of promoting the sales (or) supply (or) use of any goods (or) for the provision of nay service, adopts any unfair method (or) unfair (or) deceptive practice. It includes any of the following practices.

1. The practice of making any statement whether orally (or) in writing (or) by visible representation which:-

   a) Falsely represents that the goods are of a particular standard, quantity, quality (or) grade composition, style (or) model.

   b) Falsely represents that the services are of a particular standard, quality (or) grade.

   c) Falsely represents any re-build, second hand, renovated, reconditioned (or) old goods as new goods.

   d) Represent that the goods (or) services have sponsorship, approval, performance, characteristics, accessories, uses (or) benefits which such goods (or) services do not have;

   e) Represents that the seller (or) the supplier has a sponsorship (or) approval (or) affiliation of which such seller of supplier does not have.

   f) Makes a false (or) misleading representation concerning the need for (or) the usefulness of any goods (or) services.

   g) Gives to the public any warranty (or) guarantee of the performance, efficacy (or) length of life of a product (or) of any goods that is not based on an adequate of proper test thereof.

   h) Makes to the public a representation in a form that purports to be a warranty (or) guarantee of a product (or) any goods (or) services (or) a promise to replace, maintain (or) repair an article (or) any part thereof (or) to repeat (or) continue a service until it has achieved a specific result, if such purported warranty (or) guarantee (or) promise is materially mis-leading (or) if there is no reasonable prospect that such warranty (or) guarantee (or) promise will be carried out.

   i) Materially mis-leading the public concerning the price at which a product (or) goods (or) services, have been (or) ordinarily sold (or) provided.

j) Gives false statement (or) mis-leading facts disparaging the goods, services (or) trade of another person.

2. permits the publication of any advertisement whether in any newspaper (or) otherwise, for the sale (or) supply at a bargain price, of goods (or) services that are not intended to be offerer for sale (or) supply at the bargain price, (or) for a period that is, and in quantities that are reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business of the advertisement.

Essential commodities Act, 1955

7Q What is the object of the essential commodities act 1955? Indemnify the commodities which have been specified as essential commodities under the essential commodities act?

Ans: Introduction: India started facing severe shortages of many commodities particularly before and during the Second World War. The government of India therefore made a certain rules to control production, supply and distribution of certain items under defense of India act. These rules continued to apply up to 1946 when essential supplies (temporary power) Act, 1946 was passed. This act was of temporary nature which lasted up to 26th January 1953.

Since shortages continued, it was felt that a permanent measure for the control of essential commodities is necessary. Hence, the essentials commodities act, 1955 was passed which came into force on 1st, April 1955.

Objective of essential commodities Act, 1955: The object of the act is to provide, in the interest of the general public, for the control of production, supply and distribution of, and trade and commerce in certain commodities which specified in the act to be essential commodities. Another object of the act is to check the inflationary trends in prices to ensure equitable distribution of essential commodities.

Section 2(a) states the following are essential commodities, they are follows:-

1. Cattle fodder introducing oil cakes and other concentrates.
2. Coal, including coke and other derivatives.
3. Components parts and accessories of automobiles.
4. Cotton and wooden textiles.
5. Drugs.
6. Food stuffs including edible oil seeds and oils.
7. Iron and steel, including manufactured products of iron and steel.
8. Paper including newsprint, paper board and straw board.
9. Petroleum and petroleum products.
10. Raw cotton, whether ginned (or) unginned and cotton seeds.
11. Raw jute.
12. Any other class of commodities which the central government may by notified order declares to be an essential commodity.

8Q Confiscation of Essential commodities Act, 1955.

Ans: According to section 6(a), an essential commodities may be seized in pursuance of an order made under section 3, where any such seizure takes place, a report of such seizure shall without un-reasonable delay he made to the collector of the district (or) the presidency to run, in which such essential commodities is seized. The collector districts, the essential commodities, so seized to be produced for inspection before him, for that if the collector is satisfied their has been contravention of the order. Therefore he may order for confiscation of

1. The essential commodities so seized.
2. Any package covering in which such essential commodity is found.
3. Any animal, vehicle (or) other conveyance used in carrying such essential commodities.

But according to section 6(a) no food grains (or) edible oils seized in pursuance of an order made under section 3, shall be confiscated on receiving a report of seizure (or) an inspection of any essential commodities is subject to speedy and natural decay, in such case he may:-

1. Order the essential commodities to be sold at the controlled price.

2. Where no such price is fined order the same to be sold by public auction.

If the retail sale price of any essential commodity has been fined by the central government (or) a state government under this act, (or) under any other act, for the time being in force. The collector may for its equitable distribution and availability at fair price order the same to be sold to fair price shops at the price so fined.

Where any essential commodities is sold, the sale proceeds after the deduction of the expenses of any such sale (or) auction (or) other owner (or) the person from whom it is seized the refund shall be made where no order of confiscation is passed by the collector where an order an appeal. So, requires where in prosecution instituted for the contravention of the order shall be paid to the owner.

Any person aggrieved by order of confiscation under section 6(a) within one month from the date of an order of confiscation appeared to the state government. So, concerned the state government after giving an opportunity to the applicant to be heard pass such order which it may think fit. The award of any confiscation shall not prevent the inspection of any punishment to which the person effects their by is liable under the act.

The power jurisdiction is available to the collector (or) the state government not with standing anything to the contrary contain in any other law for the time being enforce and any court, tribunal (or) other authority shall not have such power.

5-UNIT: - COMPANY LAW

(PART - I)

1Q. Define a company. Explain the characteristics features of a company?

Ans: According to section 3(1)(i) of the companies Act, 1956, 'A company means formed and registered under this Act, (or) an existing company'.

Definition: 'A company is a voluntary association of persons registered under the companies Act,1956 formed for some common purpose, with capital divisible into parts, known as shares, and with a limited liability'. It is a creation of law and it sometimes known as artificial person with a perpectual succession and a common seal.

LINDLEY'S DEFINITION:

According to **LINDLEY.L.J** a company is defined as "an association of many persons who contribute money (or) money's worth to a common stock, and employ it in some common trade (or) business (i.e., for a common purpose), and who share the profit and loss arising therefrom. The common stock so contributed is denoted in money and is the capital of money. The persons who contribute it, (or) to whom it belongs, are members. The proportion of capital to which each member is entitled is his share. Shares are always transferable although the right to transfer them is often more (or) less restricted".

On incorporation a company becomes a body corporate (or) a corporation with a perpectual succession and a common seal. It also acquires a personality distinct from its members.

Characteristic features of a company:

1. Separate legal entity: A company is regarded as a separate legal entity from its members. In other words, it has an independent existence. The members of a company are not liable for the acts of the company even if he holds virtually the entire share capital. The company's money and property belong to the company and not to the share holders.

Example: Salomon (vs) Salomon & Co.Ltd (1897):

Facts: 'S' sold his boot business to a newly formed company for L 30000 (pounds). His wife, one daughter and four sons took up one share of L 1 (pound) each. 'S' took 23000 shares of L 1 (pound) each and debentures of L 10000 (pounds) in the company. The debentures gave 'S' a charge over the assets of the company as the consideration for the transfer of the business. Subsequently when a company was wound up, its assets were found to be worth L 6000 (pounds) and its liabilities amounted to L 17000 (pounds) of which L 10000 (pounds) were due to 'S' (secured by debentures) and L 7000 (pounds) due to unsecured creditors. The unsecured creditors claimed that 'S' and the company were one and the same person and that the company was a mere agent for 'S' and hence they should be paid in priority, to 'S'.

Judgment: It was held by the court that the company was duly incorporated it became, in the eyes of law, a separate person independent from 'S' and was his agent. Although 'S' was virtually the holder of all the shares in the company yet he was also a creditor secured by it debentures and was therefore entitled to repayment in priority to the unsecured creditors.

2. Limited liability: A company may be a limited by shares (or) limited by guarantee. If a company limited by shares, the liability of members is limited to the unpaid value of shares. If a company limited by guarantee, the liability of members is limited to such amount as the members may undertake to contribute to the assets of the company in the event of the winding up.

3. Perpectual succession: A company is a juristic person and its life does not depend on the life of its members. It is created by a process of law and law alone can dissolve it. Thus, 'members may come and members may go, but the company goes on for ever'. Also, changes in the name of the company (or) conversion of the companies will not affect the legal status (or) life of the company.

4. Common seal: Every company must have its own common seal with its name engraved on it. As the company has no physical existence, it must act through its agents and all such contracts entered into by its agents must under the seal of the company. It acts as the official signature of the company.

5. Transferability of shares: The capital of a company divided into parts, called shares. There shares are movable property and can be transferred from one person to another in the manner provided in the articles.

6. Separate property: A company is a legal person distinct from its members. It is, therefore, capable of owing, enjoying and disposing of property in its own name. Thus, the company is a real person in which all its property is vested and by which it is controlled, managed and disposed of.

7. Capacity to sue: A company can sue and be sued in its corporate name. it may also inflict (or) suffer wrongs.

8. Share capital: The share capital of a company is always divided into certain number of shares, each having specified nominal value. The concept of share capital enables the investor to participate in the ownership of the company. Thus, the share capital enables the company to mobilize huge capital outlay from lakhs of investors, which would not be possible in any other from of business.

9. Voluntary association: The object of a company could be for business (or) even for non-business purpose. Thus, association not for profit can also be registered as a company under section 25 of the companies Act, 1956. The word 'person' includes both natural person and legal person.

2Q. What is a corporate veil? When it is pierced?

Ans: A company is a legal person distinct from its members and enjoys the privileges of limited liability, perpectual succession, corporate personality etc.., however in certain circumstances, this

corporate veil has been pierced to look behind the corporate entity and take action, as if the company and members are one and the same.

It would amount to piercing of corporate veil in any one of the following circumstances:-

1. When the liability of the members of a limited company are made unlimited.
2. When the directors of the company are made personally liable for the acts done by them on behalf of the company.
3. When the legal entity concept is discharged removing the separate existence of the company from that of its members.

Thus, lifting of corporate veil could be statutory (or) judicial.

Exceptions: - The following are the various cases in which corporate veil has been lifted are as follows:

1. Protection of revenue: The courts may ignore the corporate entity of a company where it is used for tax evasion (or) to circumvent tax obligation.

Example: Sir DinShaw Maneckjee Petit (1927):

Facts: 'D', an assesses. Who was receiving huge dividend and interest income, transferred his investments to 4 private companies formed for the purpose of reducing his tax liability. These companies transferred the income to 'D' as a pretended loan.

Judgment: These companies are formed by 'D' purely and simply as a means of avoiding tax obligation and the companies were nothing more than the assesse himself. They dis no business but were created simply as legal entities to ostensibly receive the dividends and interest and to handover them to 'D' as pretended loans.

2. Avoidance of welfare legislation: If the purpose of formation of the company was to avoid welfare legislation it means to protect the interest of the workers. In such a case it is the duty of the court to get behind the smoke screen and discover the true state of affairs.

3. Prevention of fraud (or) improper conduct (or) Commission of fraud: The legal personality of a company may also be discharged in the interest of justice where the machinery of incorporation has been used for some fraudulent purpose like defrauding creditors (or) defeating (or) circumventing law in such a case the court lifted the veil to took into the realities of the situation.

Example: Jones (vs) Lipman (1962):

Facts: 'L' agreed to sell a certain land to 'J' for L 5250 (pounds). He subsequently changed his mind and to avoid the specific performance of the contract, he sold it to a company which was formed specifically for the purpose. The company has 'L' and a clerk of his solicitors as the only members. 'J' brought on action for the specific performance against 'L' and the company.

Judgment: The court looked to the reality of the situation and held that 'L' must complete the contract of sale, disregarding the legal entity of the company.

4. Determination of a character of a company whether it is enemy: A company may assume an enemy character when persons in de-facto (in actual fact, real) control of its affairs are residents in an enemy country. In such a case the court may examine the character of persons in real control of the company, and declare the company to be an enemy company.

Example: Daimler Co.Ltd (vs) Continental tyre & rubber Co.Ltd (1916):

Facts: A company was incorporated England for the purpose of selling in England Tyres made in Germany by a Germany company which held the bulk of shares in the English company. The remaining shareholders, except one, and all the directors were German residents. During the First World War the English company commenced an action for recovery of a trade debt.

Judgment: The Company was a alien company and the payment of debt to it would amount to trading with the enemy, and therefore the company was not allowed to proceed with the action.

5. Company avoiding legal obligation: Where the use of an incorporated company is being made to avoid legal obligation, the court will disregards the legal personality of the company.

6. Where the company is a sham: The court also lifts the veil where a company is a mere cloak (or) sham.

Example: Gilford Motor Co.Ltd (vs) Horne (1933):

Facts: home, a former employee of a company, was subject to a covenant not to solicit its customers. He forms a company to carry on a business which, if he had done so personally, would have been a breach of the agreement.

Judgment: An injunction was granted against both him and the company to restrain them from carrying on the business. The company was described in this judgment as 'a device, a stratagem' and as 'a mere cloak (or) sham for the purpose of enabling the defendant to commit a breach of his covenant against solicitation.

7. Company acting as an agent of the shareholders: Where a company is acting as an agent (or) trustee of the shareholders, the shareholders will be liable for the acts of the company.

8. Protecting public policy: Where the doctrine of corporate veil conflicts with the public policy, the court lift the corporate veil for protecting the public policy.

3Q. Explain the differences between a company and partnership?

Ans: The principle differences between a company and a partnership are as follows:-

Difference	Company	Partnership
Regulation Act	It is regulated by companies Act, 1956.	It is regulated by the Indian partnership Act, 1932.
Mode of creation.	It comes into existence after registration under the companies Act, 1956.	Registration is not compulsory in case of partnership.
Legal status:	A company is a separate legal entity distinct from its members. (Ex: Salmon vs salmon Co.Ltd).	A partnership firm has no existence apart from its members.
Ownership	The property of a company belongs to the company and not to its individual members.	The property of a partnership firm is the joint property of the partners who are collectively entitled to it.

Liability of members	Liability of a member of limited company is limited to unpaid value on shares held (or) the amount of guarantee as mentioned in the memorandum of association.	Liability of a partner is unlimited, (i.e.., even his own personal assets are liable for the debts of the firm).
Management	The affairs of the company are managed by its directors, (or) managing directors (or) managers, and its members have no right to take part in the management.	Every member of a partnership firm may take part in its management unless the partnership agreement provides otherwise.
Transferability of shares	A shareholder, subject to restrictions contained in the Articles, can freely transfer his share.	A partner cannot transfer his interest without the consent of all other partners.
Authority of members.	A share holder is not an agent of the company and has no power to bind the company by hid acts.	Each partner is an agent of the partnership firm to make contract and to incur liabilities.
Powers	A company powers are limited to those allowed by the objects clause in its memorandum of association.	Each partnership firm can do any thing which the partners agreed to do and there is no limit to its activities.
Restriction on powers.	Articles of association of company are effective as against the public, as it is a public document and can be inspected by any one.	Restrictions on the power of the particular partner contained in the partnership agreement will not avail against outsiders.
Insolvency of the firm	A company enjoys a perpectual succession. Death (or) retirement (or) insolvency of a member does not affect the existence of the company.	Unless there is a contract to the contrary, death, retirement (or) insolvency of a partner results in the dissolution of the partnership firm.
Debts	If a company owes a debt to any of its members he can claim payment out of its assets when it is wound up.	A partner who is owed money by his firm cannot prove against the firm's assets in compensation with its other creditors.

Minimum membership.	The minimum number required to form a company is 2 in case if private companies and 7 in case of public company respectively.	The minimum number of persons required to form a partnership firm is two.
Maximum membership.	There is no limit to the number of members in case of a public limited company. However, a private company cannot have more then 50 members.	A partnership cannot be formed with persons exceeding 20, the number is limited to 10 in case of banking companies.
Audit.	The audit of the accounts of a company is obligatory, (i.e.., a legal necessity).	The audit of the accounts of a firm is not compulsory.

(PART -II)

4Q. Who is promoter? Discuss his legal position in relation to a company which he promotes?

Ans: The promoter has not been defined any where under the Companies Act, 1956. The Act, only states that a promoter of the company shall also liable for mis-statement in the prospectus.

Therefore, from the functional point of view, a promoter can be defined as a person who does the necessary preliminary work identical to the formation of the company. The first persons who control a company's affairs are its promoters.

Functions of promoter: The following are the functions of a promoter they are follows:

(a) Who conceives the idea of business.

(b) Originates the scheme for formation of the company.

(c) Takes necessary steps to incorporate the company

(d) Provides initial capital or loan funds.

(e) Ensures that the memorandum and articles are prepared, executed and registered.

(f) Decides the first director of the company.

(g) Makes agreements for the preparation, advertisements and circulation of prospectus.

(h) Finds the bankers, brokers and legal advisor.

Thus, in fact promoter is one who brings the company in to existence.

Legal status/position of a promoter:

- The statutory provisions are silent regarding the legal status of a promoter.
- A promoter cannot be an agent or trustee for the proposed company (or) company under incorporation.
- However, the law imposes certain duties, functions, responsibilities and liabilities on a promoter which are "like that of an agent or trustee" of a proposed/under incorporation company.
- This position of the promoter "like that of an agent or trustee" is called the "fiduciary duties or fiduciary role or fiduciary position" of a promoter.

Fiduciary position of the promoter: The promoter stands in a fiduciary relation to the company which he promotes. They are follows:-

(1)Not to make any profit at the expense of the company: The promoter cannot make any profit of the company he promotes either directly (or) indirectly without knowledge and the consent of the company. Similarly he is not allowed to drive any profit from the sale of his own property to the company unless all material facts are disclosed. If any such secrete profits is violated to this rule, the company may compel him to account for and surrender for such profits.

(2) To give benefit of negotiations to the company: The promoter must give benefit to the company of any contracts (or) negotiations enter into by him in respect of the company. Thus where he purchases some property for the company and he cannot rightfully sell that property to the company, he may sell at a higher price than he gave for it. If he does do, the company may on discovering the fact, the company may have the following remedies against such promoter:-

a) Rescind the contract and recover the money if any already paid on the transaction (or)

b) Retain the property, pay the promoter only the cost value and deprive him the profit,(or)

c) Where the above remedies are inappropriate, the company may sue for misfeasance (i.e.., breach of duty to disclose)

Example: Erlanger (vs) New Sombrero Phosphates Co., (1878):

Facts: A Syndicate, of which 'E' was the head, purchased an island with valuable minerals. 'E', as promoter, sold the island to a newly formed company for the purpose of buying it. A contact was entered into between 'X', a nominee of the Syndicate, and the company for purchase at double the price actually paid by 'E'.

Judgment: It was held by the court that as there had been no disclosure by the promoters of the profit that were making, the company was entitled to rescind the contract and to recover the purchase money from 'E' and the other members of the syndicate.

(3) To make full disclosure of interest and profits: if the promoter fails to disclose the relevant facts, the company may sue him for damages for breach of his fiduciary duty and recover them from him any secrete profit. It is important to note that profit is permissible, if full disclosure of the facts is given to the independent Board of director (or) shareholders.

(4) Not to make unfair use of the position: The promoter must not make an unfair (or) reasonable use of his position and must take care to avoid anything which has the appearance of undue influence (or) fraud.

5Q. What do you understand by preliminary contracts? Explain the position of the promoters as regards to the pre-incorporation contracts?

Ans: Meaning: The promoters of a company usually enter into contracts to acquire some property (or) right for the company which is yet to be incorporated. Such contracts are called per-incorporation (or) preliminary contracts.

In other words, Preliminary contracts are those contracts made by the promoters on behalf of the company before its incorporation.

Position of the promoter as regards preliminary contracts: The promoters generally enter into preliminary contracts as agents for the company which is yet to be formed, but actually a promoter cannot act as an agent to a company which is not at all in existence. Hence the company is not liable for the acts of the promoters done before its incorporation.

(1) Company not bound by preliminary contract: A company, when it comes into existence, is not bound by a preliminary contract even if the contract was entered on behalf of the company, for the purpose of the company and for the benefit of the company, such contracts will not bind the company.

Example: English & colonial produce co., Ltd (1906):

Facts: A solicitor prepared the Memorandum and Articles of Association of the company and paid the necessary registration fees and other incidental expenses to obtain the registration of the company. He did this on the instruction of certain persons who later became directors of the company.

Judgment: The Company was not liable to pay the Solicitors costs, although it has taken the benefits of his work.

(2) Company cannot enforce pre-incorporation contract: Even after incorporation of the company, it cannot enforce the contracts made (i.e.., preliminary contracts) before its incorporation.

Example: Natal Land Colonization Co.Ltd (vs) Pauline Colliery Syndicate Ltd.., (1904):

Facts: The 'N' Company agreed with an agent of the 'P' Syndicate Ltd.., before its formation to grant a mining lease to the Syndicate. The syndicate was registered and discovered a seam of coal. The company refused to grant the lease.

Judgment: There was no binding contract between the 'N' company and the Syndicate.

(3)Promoters personally liable: The promoters remain personally liable on the contract made on behalf of a company before its incorporation. Thus, the promoters alone shall be personally liable for the preliminary contracts (i.e.., before its incorporation) entered on behalf of the company.

Example: Kelner (vs) Baxter (1866):

Facts: A hotel company was about to be formed and persons responsible for the new company signed an agreement on 27th January, 1866, for the purpose of stock on behalf of the proposed company, payment to be made on 28th January, 1866. The company was incorporated on 20th February, 1886. The goods were consumed in the business and the company went into liquidation before the debt was paid. The persons signing the agreement were sued on the contract.

Judgment: The persons signing were promoters and personally liable on their signature.

6Q. What is a private company? When does it become deemed to become a public company?

Ans: A private company is normally what the Americans call a 'Close corporation'. According to section 3(1)(iii) of the companies Act, 1956, 'a private company means a company with a minimum paid-up capital of 1,00,000 and which its by articles;-

a) Restricts the right to transfer its shares, if any:

b) Limits the number of its members to 50 not including the employee members:

c) Prohibits any invitation (or) acceptance of deposits from persons other than its members, directors (or) their relatives:

d) Prohibits any invitation to the public to subscribe for any shares in, (or) debentures of the company.

The above 4 restrictive clauses must be specified in the articles of the private company. Thus, every private company must have registered articles. There should be atleast two subscribers to form a private company. Also it should have atleast two directors. The word 'private limited' must be added at the end of the name of a private company.

The number of debenture-holder may exceed 50 as there is no restriction on their number in the definition. A private company must also have its own Articles of Association which contains all the conditions mentioned in the definition.

Privileges of a private company: A private company also is bestowed with certain privileges such as:-

1) A private company may have only 2 members.

2) It can allot shares before the minimum subscription for (or) paid.

3) Prospectus (or) a statement in lieu of prospectus is not required to allot shares (or) to issue a prospectus to the public.

4) It need not have more then 2 directors.

5) Holding of statutory meeting (or) filling of statutory report is not required.

6) A private company may start its business immediately on its incorporation.

7) It may issue any kind of shares and allow disproportionate voting rights.

8) The directors can vote on a contract which they are interested.

9) The rules regarding directors are less stringent.

10) Directors need not retire by rotation.

11) The special notice of 14 days, for the appointment of a new director is not required.

12) The restrictions placed on a public company vide section 293, of the Act; do not apply to the public company.

13) A limit of managerial remuneration does not apply.

Procedure for conversion of a private company into public company:

1. Conversion by default :(Section 43) Under section 43, of the companies Act, if a private company fails to comply with any of the four restrictions provided under section 3(1)(iii) and applicable to private

company, the company ceases to be a private company from the date of default. In such a case the following would be the consequences:-

a) The company will lose all the privileges and exemption conferred on it, by the Act as a private company.

b) The officers in default shall be punishable with prescribed fine.

If infringement were accidental, and if the company Law Board is satisfied that it is just and equitable to grant relief, it may relieve the company on such terms and conditions as seem to the company Law Board just, an application from the company (or) any other person.

(2) <u>Conversion by operation of law (deemed public company):</u> (Section 43-A) Private companies are exempted from the operation of several sections of the Act, under section 43-A, a private company becomes a public company, known as a deemed public company. (Known as deemed [public company):-

a) Where at least 25% of the paid-up share capital of the private company is held by one (or) more body corporate. For the purposes of section 43-A(1), 'body-corporate' means public company (or) private companies which had become public companies by virtue of section 43-A.

b) Where the average annual turnover of private company during the relevant period is Rs.10 crores (or) more. Relevant period means 3 consecutive financial years.

c) Where the private company holds not less than 25% of the paid-up share capital of a public company, having a share capital.

d) Where a private company invites, accepts (or) renews deposits from the public, such private companies becomes a deemed public company from the date on which such invitation, acceptance (or) renewal as the case may be,

With in 3 months from the date on which a private company becomes a public company, it shall inform the Registrar that it has become a public company. There upon the Registrar shall delete the word private before the word Limited in the name of the company. It shall also make the necessary alternations in the certificate of incorporation issued to the company and it's Memorandum of Association.

(3) <u>Conversion by Choice (or) Violation:</u> (section 44)

a) A private company can be converted into a public company by amending the articles of association to delete the four restrictive clauses in its articles.

b) Convene the board meetings to discuss the proposed conversion and also convene the E.G.M

c) At the E.G.M., pass the following special resolutions:-

(i) Deleting the four restrictive clauses pertaining to a private company.

(ii) Amending all those articles which are inconsistent with that of a public company.

d) File from no.23 with the R.O.C., with in 30 days of passing the special resolution.

e) A prospectus as per Schedule II (or) statement in lieu of prospectus as per Schedule IV should be files with R.O.C., with in 30 days of passing the special resolution.

f) If the number of members below 7 steps should be taken to increase the members to at least 7 either by allotment of shares (or) registration of transfer done in a board meetings. Similarly the number of directors should be increased to at least 3, if there are only 2 directors, by appointing an additional director in the board meeting. Also the paid-up capital of the company should be increased by 5 lakhs,

g) Obtain a fresh certificate of incorporation from R.O.C., consequent to conversion of the company into public limited.

h) Alter the regulations contained in the articles which are inconsistent with those of a public company.

i) The company becomes a public limited from the date of passing the special resolution. However the change of name by deleting the word private will take effect only on issue of such fresh certificate by R.O.C.,

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7Q Write a short note on Peel's Case.

Ans: <u>Certificate of incorporation:</u> (section 35) A certificate of incorporation given by the Registrar in respect of a company (i.e.., R.O.C) is conclusive evidence that all the requirements of a companies Act have been compiled with in respect of registration and nothing can be inquired into as to the regularity of the prior proceedings and the certificate cannot be disputed on any grounds whatsoever. This is known as 'Rule in Peal's case'.

A private company may commence business immediately after incorporation once it has received the certificate of incorporation. On the other hand, a public company can commence business (or) exercise borrowing powers only after getting another certificate called certificate of commencement of business.

'When once the Memorandum is registered and the company holds out to the world as a company undertaking business, willing to receive shareholders and ready to contract engagements, then, it

would be of the most disastrous consequences if after all that has been done, any person was allowed to go back and enter into an examination of the circumstances attending the original registration and the regularity of the execution of the documents'

Example: Jubilee Cotton Mills Limited (vs) Lewis (1924):

Facts: On January 6th, the necessary documents were delivered to the Registrar for registration. Two days after, he issued the certificate of incorporation but dated it 6th January instead of 8th, (i.e.., the day on which the certificate was issued. On 6th January some shares were allotted to 'L', (i.e.., before the certificate of incorporation was issued). The question arose whether the allotment was void.

Judgment: the certificate of incorporation is conclusive evidence of all that it contains. Therefore, in law the company was formed on 6th January and, therefore, the allotment was valid.

The certificate of incorporation has been held to be conclusive on the following points:-

1) That requirement of the Act in respect of registration of matters precedent and incidental thereto have to complied with. If after the receipt of certificate of incorporation by a company it is discovered that there were certain irregularities with regard to its registration, these will not affect the validity of the company.

2) That the association is a company authorized to be registered under the Act, and has been duly registered.

3) That the date borne by the certificate of incorporation is the date of birth of the company. (i.e., the date on which company comes into existence.

However a certificate of incorporation will not legalize any illegal object mentioned in the Memorandum. The certificate is only conclusive for the purpose of incorporation. Thus, the validity of the certificate of incorporation cannot be questioned after the issue of such certificate. But the position is firmly established that if a company is born, the only method to put an end to it is by winding up.

8Q. Discuss the doctrine of ultra virus of a company, the directors and the Articles? What is the legal effects of ultra virus Acts?

Ans: Meaning: A company has a power to do all things as are:-

1. authorized to be done by the companies Act, 1956.
2. essential to attainment of its objects specified in the memorandum:
3. reasonably and fairly incidental to its objects.

The word 'Ultra' means 'Beyond' and the word 'Vires' means 'Powers'. Thus, "Ultra Vires" means the doing of an act 'beyond the legal powers and the authority of the company'. The memorandum

of a company defines its powers. Any activity of a company beyond its memorandum is, therefore, ultra-vires the company. The purpose of these restrictions is to protect:-

1. Investors in the company so that they may know the objects to which their money is to be employed.

2. Creditors by ensuring that the companies fund are not wasted in unauthorized activities.

If an act is ultra virus the company, it does not create any legal relationship. Such an act is absolutely void and even the whole body of shareholders cannot ratify it and make it binding on the company. But intra-vires can be ratified by the shareholders by passing a resolution in the general meeting. It is not necessary that an act to be considered ultra vires must be illegal; it may (or) may not be.

Example: Ashbury Railway Carriage and Iron company Limited (vs) Riche (1875):

Facts: A company was incorporated with the following objects:-

a) To make, sell (or) lend on hire, railway carriages and wagons;

b) To carry on the business as 'Mechanical Engineers and General contractors'.

c) To purchase, lease, work and sell mines, minerals, land and buildings.

The directors of the company entered into an agreement with Riche for financing the construction of a railway in Belgium. The question raised was weather that contract was covered within the meaning of general contracts.

Judgment: The court held that the contract was ultra-vires the company and void. Since the memorandum in place of specifying the particular kind of business would virtually point to carrying on the business of any kind whatsoever and would be unmeaning. Therefore, the company could not finance the construction of railway line by alleging that such a business falls under the business of general contractors.

Effects of Ultra-Vires transactions:-

1. Void and unenforceable: A contract of a company which is ultra-vires the company is Void-ab-initio and it has no legal effect.

2. No ratification: An Ultra-vires transaction cannot be ratified even by the whole body of shareholders.

3. Injunction: Members of a company are entitled to hold a company to its registered objects because, whenever a company does (or) proposes to do something beyond the scope of its activities (or) objects are laid down in the memorandum, any of its members can get an injunction from the court for restraining the company from proceedings with ultra-vires Act.

4. Personal liability of Directors: Any member of a company can maintain an action against the directors of the company to compel them to restore to the company the funds of the company that have been employed by them in ultra-vires transactions.

5. Breach of warranty of authority: When an agent exceeds his authority, he his personally liable for the breach of warranty of authority in a suit by the third party.

6. Ultra-Vires acquired property: Although ultra-Vires transactions are void, yet if a company has acquired some property under an ultra-Vires transaction it has the right to hold that the property and protect it against damage by other persons.

Example: National Telephone Company Limited (vs) St. Peter Port Constables (1900):

Facts: A telephone company put up telephone wires in a certain area. The company had no power in the memorandum to put up wires there. The defendants cut them down.

Judgment: The Company could sue for damage to the wires.

Ultra-Vires the directors: If an act (or) transactions is ultra-Vires the directors, (i.e.., beyond the powers of the company), the shareholders can ratify it by a resolution in the general meeting (or) even by acquiescence provided they have knowledge of the facts relating to the transaction to be ratified. If an act is within the powers of the company, any irregularities may be cured by the consent of the shareholders.

Ultra-Vires the Articles: If an act (or) transaction is Ultra-Vires the Articles, the company can ratify it by altering the Articles by a special resolution. Again if the act is done irregularly, it can be validated by the consent of the shareholders provided it is within the powers of the company.

(PART -Iil)

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12Q. Define doctrine of constructive notice. Discuss the scope of the doctrine of indoor management. To what extent has the doctrine been incorporated in the companies Act, 1956?

Ans: Meaning: Once registered with the memorandum and articles it become public document and can be inspected by any person on payment of nominal fees. Therefore, every person dealing with the company is presumed to have read the memorandum and articles. Further it is presumed that he has understood the provisions of memorandum and articles correctly, not only the exact powers of the

company but also the extent to which the powers have been delegated to the directors and limitations on such powers. This is known as Constructive notice of memorandum and articles.

Limitation: This doctrine of constructive notice prevents any person dealings with the company from alleging that he did not know the provisions contained in the memorandum and articles of the company. Thus, every outsider dealing with the company should ensure that the company follows its internal procedures strictly in accordance with the memorandum and articles. If any contract is entered with the company in contravention of these provisions, such a contract is enforced against the company.

Thus, this doctrine protects the company against the outsiders. The limitation of doctrine of constructive notice is proved too inconvenient for business transactions and hindered the smooth floe of business. It was replaced with the Doctrine of indoor management in 1856 in the Royal British Bank (vs) Turquand Case. There fore it is also called as rule in Royal British Bank (vs) Turquand.

Example: ROYAL BRITISH BANK Vs. TURQUAND: (1856):

Facts: The directors of a bank had issued bonds to 'T'. They had the power under the Articles to issue such bonds provided, they were authorized by a resolution passed by the shareholders at a general meeting of the company. No such required resolution was passed by the company.

Judgment: 'T' could recover the amount of the bonds from the company on the ground that he was entitled to assume that the resolution had been passed.

According to the Doctrine of indoor management 'any persons dealing with the companies limited liability are not bound to inquire into the regularity of the internal proceedings and will not be affected by irregularities of which they had no notice. It is based on public convenience and justice. Thus, this doctrine of indoor management protects the outsiders against the company and ensures smooth flow of transactions.

Exceptions to the Doctrine of indoor management: The Doctrine of indoor management will not protect outsider in the dealings with the company and the company will not be liable in the following circumstances:-

1. Knowledge of irregularity: Where a person dealing with a company has actual or constructive notice of the irregularity and want of authority as regards internal management, in such a case he cannot claim the benefit under the rule of indoor management.

Example: T.R. Pratt Ltd. vs. E.D.Sassoon & co. Ltd. (1936):

Facts: Company 'A' lent money to Company 'B' on a mortgage of its assets. The procedure laid down in the Articles for such transactions was not complied with. The directors of the two companies were the same.

Judgment: The lender had notice of the irregularities and hence the mortgage was not binding.

2. Negligence: Where the outsider fails to make the irregularity and proper inquiries to satisfy himself as to the officer's authority, in such a case he cannot claim the benefit of the rule of indoor management.

Example: B.Anand Bihari Lal vs. DinShaw & Company (Bankers) (1942):

Facts: An accountant of a company transferred some property of a company in favour of Anand Bihari. On an auction brought by him for the breach of contract.

Judgment: The transfer was void as such a transaction was apparently beyond the scope of the accountant's authority. The plaintiff should have seen the power of attorney executed in favour of the accountant by the company.

3. Forgery: The rule in Turquand case does not apply where an outsider relies (or) cheated upon a forged document, the company can never be held bound for forgeries committed by its officers.

Example: Ruben vs. Great Fingall consolidated Co. (1906):

Facts: The secretary of a company issued a share certificate under the company's seal with his own signature and the signature of a director forged by him.

Judgment: The share certificate was not binding on the company. The person who advanced money on the strength of this certificate was not entitled to be registered as holder of the shares.

4. Acts outside the scope of apparent authority: If an officer of a company enters into a contract with a third party and if the act of the officer is beyond the scope of his authority, the company is not bound.

Example: Kreditbank Cassel vs. Schenkers Ltd. (1927):

Facts: A branch manager of a company drew and indorsed bills of exchange on behalf of the company. He had no authority from the company to do so.

Judgment: The Company was not bound.

5. The rule will not apply to transactions, which are illegal (or) Void-ad-initio.

6. Where the outsider has not consulted the memorandum and articles and if the dealing with the company are contrary to the provisions of these documents. In such a case the company will not bound.

13Q. What are the provisions of the companies Act, for the prevention of oppression of the minority shareholders and Mismanagement of a company?

Ans: The Oppression of minority or Mismanagement of a company by Majority calls for some remedial action. In such a case, the minority shareholders may apply to

- The tribunal for the winding up of the company on the ground that it is just and equitable to do so.
- The tribunal for appropriate relief.
- The Central Government for appropriate relief.

Prevention of Oppression: Sec 397 provides that a requisite number of members of a company who complain that the affairs of the company are being conducted in a manner prejudicial to the public interest or in a manner oppressive, to any member or members, may apply to the Tribunal for appropriate relief.

Oppression must be of such a nature as well make it just and equitable for the Tribunal to wind up the company. The Tribunal may also give relief if it is of the opinion that:-

I. The company's affairs are being conducted in a manner prejudicial to public interest in a manner oppressive to any member or members.

II. The facts justify the compulsory winding up order on the ground that it is just and equitable that the company should be wound up.

On being satisfied about the above requirement, the Tribunal may pass such order as it thinks fit with a view to bringing an end to the matters complained of.

Prevention of mis-management: Section 398 provides for relief against mismanagement. A requisite number of members of a company may apply to the Tribunal for appropriate relief on the ground of mismanagement of the company. The Tribunal may give relief if it is of opinion:-

- That the affairs of the company are being conducted in a manner prejudicial to the public interest.
- That by reason of a material change in the management or control of the company.

14Q. "The will of majority must prevail" Is the principle of the company management. Are there any exceptions.

Ans: The management of a company is based on the majority rule. This principle that the will of the majority should prevail and bind the majority is known as the principle of majority rule. It is also called as the "Rule in Foss vs. Harbottle".

Example: "Foss vs. Harbottle" (1843):

Facts: Two minority shareholders in a company alleged that its directors were guilty of the buying their own land for the company's use and paying themselves a price greater than its value. This act of the directors resulted in a loss to the company. The Minority shareholders decided to take an action for damages against the directors. The shareholders in general meeting by majority resolved not to take any action against the directors alleging that they were not responsible for the loss which had been incurred.

Judgment: The court dismissed the suit on the ground that the acts of directors were capable of confirmation by the majority of members and held that the proper plaintiff for wrongs done to the company is the company itself and not the minority shareholders. It further held that the company can act only through its majority shareholders.

According to the principle a company is a separate legal entity from the members who compose it. As such if any wrong is done to the company it is the company which can bring an action.

Advantages of rule in Foss vs. Harbottle:

1) Recognition of the separate legal personality of company of a company suffers injury, the company itself can seek redress.
2) This principle needs to preserve right of majority to decide how the affairs of the company shall be conducted.
3) Multiplicities of the futile suits are also avoided.
4) Litigation at the suit of a minority is futile if majority do not wish it.

Exception: The following are the exceptions to the rule Foss vs. Harbottle:-

I. Where the acts done is illegal or ultra vires of the company -- Every shareholder has aright to restrain the company from doing any acts which are ultra vires the company or are illegal.

II. Where the majority are perpetrating a fraud on the minority - where the majority of a company's members use their power to defraud of oppress the minority.

III. Where the company is doing an act which is inconsistent with the Articles-- The minority shareholders can bring an action to restrain the alteration of the articles which is not made bonafide for the benefit of the company as a whole.

IV. Where an act can only be done by a special resolution, but in fact has been done by a simple majority by passing only an ordinary resolution.

V. Every shareholder has rights against the company. If any such right is in question, a single shareholder can defy a majority consisting of all other shareholders.

VI. The minority shareholders may bring an action against the company where there is a breach of duty by the directors and majority shareholders to the detriment of the company.

VII. Where there is oppression of minority or mismanagement of the affairs of the company the minority can apply to the Tribunal or central Govt. for relief.

15Q. Write a Note on the Borrowing powers of a company.

Ans: A company needs money to finance its activities from time to time. Apart from issue of shares it has to resort to borrowings. Every trading company, unless prohibited by its Memorandum or Articles, has implied power to borrow money for the purposes of its business. When a company has express or implied power to borrow, it can borrow subject to the limits set by the Memorandum or the Articles.

Borrowing by a company may be:-

1. A borrowing which is ultra vires the Company
2. A borrowing which is intra vires the company but ultra vires the directors.

1. <u>Borrowing which is ultra vires the company</u>: If a company borrows money beyond its express on implied powers, the borrowing is ultra vires the company and is void. The lender of money also has no legal or equitable debts against the company. As such he can have no rights against the company for the recovery of the loan. The lender has the following rights:-

a) **Injunction:** If the money lent to the company has not been spent, the lender may get injunction from the court to restrain the company from parting the money and has a right to recover it.
b) **Subrogation:** If the money borrowed is used by the company in paying off its lawful debts, the lender will rank as a creditor up to the amount so use and can recover it from the company.
c) **Identification and tracing:** If the lender can identify his money or any property purchased with it he can claim the money or the property purchased with the money borrowed provided he can trace and identify the money or property purchased with it.
d) **Recovery of Damages:** The lender under a transaction ultra vires the directors may recover damages from the directors for breach of their warranty of authority.

2. Borrowing which is intra vires the company but ultra vires the directors: If the borrowing is in excess merely of the powers of the directors but not of the company, it can be ratified and rendered valid by the company. In such a case the loan binds both the lender and company as if it had been made with the company's authority in the first place. If the company refuses to ratify the director's act, the normal principles of agency apply. The third party who deals with an agent knowing that the agent is exceeding his authority has no right of action against the principal.

16Q. Define Prospectus. What do you understand by the 'rule of golden legacy'?

Ans: According to section 2(36) defines a prospectus as "any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of shares or debentures of, a body corporate."

A prospectus must be in writing. An oral invitation to the public to subscribe for the shares or debentures of a company is not a prospectus. According to section55 a prospectus issued by an intended company must be dated and that date is the date of publication of the prospectus. The prospectus must also be signed by the proposed directors of the company.

According to the section 60 a prospectus can be issued by the company only when it has been delivered to the registrar for registration. The prospectus must be issued within 90 days of the date on which a copy is delivered for registration.

If a prospectus is issued without being delivered to the registrar for the registration, or without necessary documents or the consent of the experts the company and every person who is party knowingly to the issue of the prospectus, shall be punishable with a fine which may extend to Rs.50,000/.

The objects of registration of a prospectus are:

1. To keep an authenticated record of the terms and conditions of issue of shares or debentures, and

2. To pinpoint the responsibility of the persons issuing the prospectus for statements made by them in the prospectus.

Prospectus is the window through which an investor can look into the soundness of a company's venture. The important contents of prospectus are as follows:

Part I of schedule II

1. General information about the issue.
2. Capital structure of the company
3. Terms of the present issue
4. Particulars of the issue
5. Company, management and project
6. Particulars about the past share issues of the company and other listed companies under the same management, made in previous for 3 years.
7. Details about outstanding litigations, criminal prosecutions and defaults in statutory and other dues.
8. Management perception of risk factors such as difficulty in availability of raw materials or in marketing of products, etc.

Part II of Schedule II

(A). General Information related to the consent of directors, experts, auditors, company secretary, etc..,

(B1). Financial information about report by the auditors about profit & loss account, assets, liabilities of last five years, financial information about subsidiaries (if any).

(B2). If the proceeds of issue are for purchase of business (or) acquiring controlling shares in other company so that it becomes subsidiary, the details of such business (or) such other company.

(B3). Principal terms of loans and assets charged as security.

(C1). Statutory information about issue like minimum subscription, expenses of issue, underwriting etc..,

(C2). Details about property proposed to be purchased, directors and their remuneration, material contracts etc..,

Part-III: This part gives classifications about requirements of parts I & II, it clarifies:-

1. If company is working for less then 5 years, then details about years in which it has worked should be given.

2. The accounting details should be certified by Chartered Accountant.

3. The profit & loss account, copies of material contracts and other documents specified in prospectus should be open for inspection and time and place when these will be available for inspection must be specified in prospectus.

4. A declaration that relevant provisions of Companies Act, and guidelines issued by Government have been complied with.

The Golden Rule:

1. The golden rule (or) golden legacy was laid down in the New Brunswick (vs) Muggeridge case.

2. The principle is that Directors and Other persons who are responsible for the issue of the prospectus indirectly hold out to the public that great advantage are likely to accrue to those members of the public who would take up shares in the company. This 'holding out' casts onerous duty on them, (i.e.., they must state the facts honestly and faithfully). They must not only abstain something as a fact when it is not actually so, but also must not omit a fact which they know.

3. The public takes the shares on the faith of representation contained in the prospectus. The public is at a mercy of the promoters and will stands to lose everything if there is mis-statement in prospectus.

4. Therefore it is the duty of those who issue prospectus to be truthful in all respects. Thus, a prospectus must tell the truth, the whole truth and nothing but the truth. Nothing should be stated as a fact which is not so and no fact should be omitted. Therefore everything must be stated with strict and scrupulous accuracy.

5. Similarly half-truth is no better than down right falsehood. A statement that the company has paid dividend consistently for certain number of years is a mis-leading statement particularly when it has not disclosed the fact that the dividend was paid out of revaluation reserves.

(PART -IV)

17Q. Define director? Explain the Powers and duties of directors?

Ans: Introduction: A company being an artificial person cannot act by itself. It has neither a mind nor a body of its own. It must act through some human agency. In other words, its business should be carried on by some persons on its behalf such person termed as directors. The directors are the persons elected by the shareholders to direct, manage (or) supervise the affairs of the company.

In other words, 'The Board of directors are the brain and the only brain of the company which is the body, and the company can does act only through them'. It is only 'when the brain functions that the corporation is said to be function'.

Definition: According to section 2(13) of the companies Act, 1956, defines 'Director' "as any person occupying the position of director, by whatever name called. If he performs the function of director, he would be termed a director in the eyes of law even though he may be named differently. A director may, therefore, be defined as a person having control over the direction, conduct, management (or) superintendence of the affairs of the company".

Number of directors: According to the section 252(1) every public company have atleast 3 directors and according to section 252(2) every other company (i.e.., a private company is deemed to be a

public company) at least 2 directors. According to section 258, the number so fixed may be increased (or) decreased within the limits prescribed by the Articles by an ordinary resolution of the company in general meeting. But According to section 259, where the increase in the number does not make the total number of directors more then 12, it cannot approved by the central government. It is the maximum limit permitted by the Articles for its approval by the Central government.

Powers of Board of Directors:

1. General Powers: (Section 291) The Board of directors of a company is entitled to exercise all powers and to do all acts and things which the company is authorized to do. The powers may be subject to two conditions, they are:-

a) Firstly, the Board shall not do any act which is to be done by the company in general meeting.

b) Secondly, the Board shall exercise its powers subject to the provisions contained in that behalf in the companies Act, (or) in the memorandum (or) the Articles of the company (or) in any regulations made by the company in general meeting.

2. Powers to be exercised only at meeting: (Section 292) The Board of directors of a company (public as well as private) must exercise the following powers on behalf of the company by means of resolutions passed at the meetings of the Board:-

a) Make calls on shares, **b)** Issue Debentures, **c)** Borrow moneys otherwise than on debentures (i.e.., public Deposits), **d)** Invest the funds of the company, and **e)** Make loans.

There are certain other powers which must be exercised only at the Board. Those powers are:-

1. To fulfill vacancies in the Board. (Section 262).
2. To sanction (or) give consent for certain contracts in which particular directors, their relatives and firms are interested. (Section 297).
3. To receive notice of disclosure of shareholders of directors. (Section 308).
4. To appoint as managing director (or) manager a person who is already managing director (or) manager of another company. (Section 316 & 386).
5. To make investments in companies in the same group. (Section 372).

Restrictions on powers: (section 293) The Board of Directors of a public (or) private company which is subsidiary of a public company, shall exercise following powers only with the consent of the shareholders in the general meetings:-

1. To sell (or) lease (or) otherwise dispose of the whole, (or) substantially the whole, of the under taking of the company.

2. To remit (or) give time for repayment of nay debt due to the company by any director.

3. To invest the amount of compensation received by the company in respect of compulsory acquisition of any undertaking (or) property of the company.

4. To borrow moneys where the moneys to be borrowed, together with the moneys already borrowed by the company will exceed the aggregate of the paid-up capital of the company and its free reserves.

5. To contribute to charitable and other funds not directly relating to the business of the company (or) welfare of its employees, amounts exceeding in any financial year Rs.50000 (or) 5% of the average net profits of the 3 proceeding financial years, whichever is greater.

Duties of Board of Directors: Directors occupy a key position in the management and administration of the company. Their duties are usually regulated by the Articles of the company. The general duties of the directors of the company may be classified as:-

1. Fiduciary Duties,
2. Duties of care, skill and diligence,

1. Fiduciary Duties: The fiduciary duties of directors are basically identical with those to any person in a fiduciary position. They must exercise their powers;-

a) Honestly: and

b) In the interest of the company and share holders.

As a fiduciary they must not place them self in a position in which their conflict their duties to their company and their personal interests. These fiduciary duties are owed to the company and not to the individual shareholders and they must not make a secrete profits out of their position.

2. Duties of care, skill and diligence: Directors should carry out their duties with such care, skill and diligence as is reasonably expected from persons of their knowledge and status. The standard of care, skill and diligence depending up on;-

a) The type and nature of work;

b) The division of power between directors and other officers;

c) The general usage and customs of that type of business' and

d) Whether directors work gratuitously (or) remuneratively.

Example: City Equitable Fire Insurance Company Limited. (1925):

Facts: The directors of an insurance company left the management of the company's affairs almost entirely in the hands of 'B', the managing director. Owing to 'B's fraud, a large amount of the company's assets disappeared. 'B' and the firm in which he was a partner had taken a huge loan from the company, and the cash at blank (or) in hand included L 7300 in the hands of the company's stockbrokers, in which 'B' was a partner. The directors never enquired as to how these items were made up.

Judgment: The directors were negligent. (However, the Articles protected the directors from liability as there was no willful neglect (or) default and consequently they were not held liable.

Other Duties: The other Duties of a director are:-

a) To attend Board meetings.

b) Not to delegate his functions except to the extent authorized by the Act (or) the constitution of the company; and

c) To disclose his interest.

18Q. Briefly state the provisions of the companies Act, 1956, regarding the mode Appointment of Directors of a company?

Ans: Introduction: A company being an artificial person cannot act by itself. It has neither a mind nor a body of its own. It must act through some human agency. In other words, its business should be carried on by some persons on its behalf such person termed as directors. The directors are the persons elected by the shareholders to direct, manage (or) supervise the affairs of the company.

In other words, 'The Board of directors are the brain and the only brain of the company which is the body, and the company can does act only through them'. It is only 'when the brain functions that the corporation is said to be function'.

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Appointment of Directors:

1. First Directors: (Section 254 of clause 64 of table 'A')

a) The articles of a company usually name the first directors by their respective names (or) prescribe the method of appointing them.

b) If the first directors are not named in the articles, the number of directors and the names of the directors shall be determined by in writing by the subscribers of the memorandum (or) a majority of them.

c) If the first directors are not appointed in the above manner, the subscribers of the memorandum who are individuals become directors of the company. They shall hold office until directors are duly appointed in the first annual general meeting.

2. Appointment of Directors by the company: (Section 255 to 257) According to the section 255 except first director the subsequent directors are appointed by share holders in general meeting. Such directors are liable to retire by rotation. In the case of public (or) private company which is a subsidiary of a public company, at least 2/3rd of the total number of directors shall be liable to retire by rotation. This means not more than 1/3rd of the total directors may be appointed on a permanent basis, of the directors liable to retire by rotation. Those who are retiring are however eligible for re-appointment.

3. Appointment of Directors by Board: (Section 260, 262, & 313) The Board of Directors may appoint Directors under various sections in different cases:-

a) As Additional Directors: (Section 260) The Board of directors may appoint additional directors from time-to-time. If so, authorized by its articles without consulting the shareholders. Additional Director holds office up to the next annual general meeting. The number of directors including the additional director should not exceed the maximum number of directors as determined by the articles of the company.

b) **<u>In a casual Vacancy:</u> (Section 262)** A casual Vacancy may arise by death, resignation, retirement, insolvency (or) disqualification of a director. The board of directors may fill this vacancy subject to regulations in the articles. The casual directors shall hold office only up to the date of original director's tenure.

c) **<u>As alternate director:</u> (Section 313)** The board may appoint alternative director in the place of original director if the articles authorizes. He his appointed to act as a director in place of the original director during the absent of original director remains for more then 3 months from the state in which the meetings of the Board are ordinarily held. Such alternative director shall hold office only till the original director returns.

<u>4. Appointment of directors by third parties:</u> (Section 255) The Articles may authorize third parties to appoint nominees to the board of the company. The number of such nominees should not exist 1/3rd of total number of directors, such directors are not liable to retire by rotation. The third party means it may be debenture holders, banking company (or) financial institution etc..,

<u>5.Appointment by proportional representative:</u> (Section 265) The Articles of a company may provide for the appointment of director by proportional representation. But it should not less then 2/3rd of the total number of directors of a public company (or) private company which is a subsidiary of a public company according to the principle of proportional representation.

<u>6.Appointment of director by the central government:</u> (section 408) The central government has the power under section 408, to appoint directors as on order passed by the company law Board for to efficiency safeguard the interest of the company (or) its share holders (or) the public interest for to prevent mis-management. Such directors can hold office for a period of not exceeding 3 years on any one occasion. The power can be exercised by the company law board either on a reference made by the central government;-

a) Not less then 100 members of the company.

b) Members of the company not holding less than 1/10th of the voting powers.

A director appoint by the central government is not required to hold qualification shares is to retire by rotation.