

Topic 1 : Essential Elements of a Valid Contract and Types of Contract.

1. A invites B to a dinner. B accepts the invitation. A made elaborate arrangement but B failed to turn up. Can A sue B for the loss he has suffered?

Answer:- No. As an agreement has not been entered with a view to create legal relations.

◆To be enforceable by law and to become a contract an agreement must have been made with a view to create legal relations.

◆Here, agreement has been made with a view to create friendly relations and as a result it's not a contract and A can not sue B in the court of law.

2. M agrees to pay N ₹ 1,000 and in consideration N agrees to write for him 100 pages within five minutes. Is it a valid contract?

Answer:- No. This is an agreement to do an impossible act. An agreement to do an impossible act is void-ab-initio.

3 State whether there is any contract in the following cases:

(a)A engages B for a certain work and promises to pay such remuneration as shall be fixed by C. B does the work.

Answer:- Yes. There is a contract. Agreement must be certain or capable of being certain. As remuneration is not certain at the time of making an agreement, but it is capable of being certain as both the parties have agreed to accept remuneration determined by C as a valid consideration.

(b)A and B promise to marry each other.

Answer:- Promise to marry each other is a valid contract. If either of the parties violates this promise, court shall award exemplary damages(બીજા માટે દાખલારૂપ અને તેવું રૂમેજ જેથી કોઈ આવું પ્રોમિસ તોડવાની હિંમત ન કરે) to aggrieved party.

(c)A takes a seat in a public vehicle.

Answer:- Yes. This is an implied contract.

(d) A invites B to a card party. B accepts the invitation.

Answer:- No. This is an agreement made with an intention to create friendly relations.

4. A forced B to enter into a contract at the point of pistol. What remedy is available to B if he does not want to be bound by the contract?

Answer:- There is a contract but the same is Voidable at the option of B. Here, the consent of the offeree is obtained by way of Coercion and as a result Contract is Voidable at the option of the aggrieved party B.

5. C orally offered to pay A, an auto mechanic, Rs.50 for testing a used car which C was about to purchase from D. A agreed and tested the car. C paid A Rs.50 in cash for his services. Is the agreement between C and A

- (a) Express or implied,
- (b) Executed or executory,
- (c) Valid, void, voidable or unenforceable?

Answer:- (a) Express (b) Executed (c) Valid.

6. A promises to pay B Rs.500 if he (B) beats C. B beats C, but A refuses to pay. Can B recover the amount?

Answer:- • No. It's not a contract.

- To beat any person is prohibited under Indian Penal Code and it's a punishable offence. Hence it is an illegal act.
- So agreement between A and B is to do an illegal act and the same is Void-ab-initio.
- Hence B can not recover any amount from B.

7. Ketan Construction Limited (KCL) entered in to an Oral Contract with Government of Gujarat for construction of Road in Government Colony. As per agreement KCL constructed the road but government denied to make payment.

- A) Identify the type of contract entered in to between KCL and Government.
- B) If KCL goes to court for recovery of construction charges, will it succeed?

Answer:- A) All contract with government must be written. As KCL has made an Oral Contract with the government, contract becomes an unenforceable contract.

B) Here KCL already constructed road under and oral agreement and government has denied making payment. Now if KCL goes to court then the court shall constitute a Quasy Contract by following principle of equity and shall order government to make payment.

Topic 2 : Offer and Acceptance.

1. Harish says during a conversation to Suresh that he will gift ₹ 10,000 to the person who marries his daughter. Alok marries Harish's daughter and files a suit to recover ₹ 10,000. Will he succeed?

Answer :- No, Harish has expressed his wish only, and has never made an offer with a view to obtaining the assent of the other party.

2. X sees a book displayed in a shelf of a book shop with a price tag of ₹ 85. X tenders ₹ 85 on the counter and asks for the book. The bookseller refuses to sell saying that the book has already been sold to someone else and he does not have another copy of that book in the stock. Is the bookseller bound to sell the book to X?

Answer :- No, a display of goods with prices marked thereon is only an invitation for offer, and not an offer itself. Hence the bookseller is free to accept the offer or not.

3. B offered to sell his car to A for ₹ 95,000. A accepts to purchase it for ₹ 94,500. B refused to sell the car for ₹ 94,500. Subsequently A agrees to purchase the car for ₹ 95,000 but B refused to sell the car. A sues B for the specific performance of the contract. Will he succeed?

Answer: - No, B's offer comes to an end by the counter offer of A, and there was no offer available for acceptance subsequently.

4. P sold his business to Q without disclosing this to his customers. M, an old customer sent an order for goods to P by name. Q, the new owner, executed the order. Is M found to accept the goods?

Answer: - No, M is not bound to accept the goods because a specific offer made to P can be accepted only by P and none else (Boulton vs Jones)

5. B offered to sell his house to A for ₹ 50,000. A accepted the offer by post. On the next day A sent a telegram revoking the acceptance which reached B before the letter. Is the revocation of acceptance valid? Would it make any difference if both the letter of acceptance and the telegram of revocation of acceptance reach B at the same time?

Answer :- Yes, the revocation of acceptance is valid because the acceptor may revoke his acceptance at any time before the letter of acceptance reaches the offeror. If the letter of acceptance and the telegram of revocation of acceptance reach B at the same time, the formation of contract will depend on

the fact that which of the two is opened first by B. If B reads the telegram first, revocation is valid but if he reads the letter first, revocation is not possible.

Topic 3 : Consideration and Capacity to Contract.

Q-1. A owes B Rs. 1,000 but the debt is barred by Limitation. A gives a letter to B agreeing to pay him Rs. 500 on account of the debt. Is this a valid agreement?

Answer 1: ♦ Yes it is a valid agreement.

Promise to pay time barred debt is enforceable even if it is not supported by consideration from both the sides.

♦ Promise to pay time barred is valid if it is Written Definite and Express.

♦ Hence A will be responsible to pay Rs. 500 to B as promise given through letter is written, express and definite.

Q 2. A, being in keen need of money, sells his new car purchased two months ago at a cost of Rs. 1,72,000 for Rs.11,000. Afterwards, A seeks to set aside the contract on the ground of inadequacy of consideration. Will he succeed?

Answer 2 : ♦ A will not succeed in setting aside the contract.

♦ Consideration need not be adequate.

♦ As A has agreed to sell his car worth Rs 172000 only for Rs 11000 by giving free consent, the contract is absolutely valid and A is bound to deliver car to B.

Q-3. A husband executed a registered document in favour of his wife. After referring to quarrels and disagreement between them, he promised to pay for her separate maintenance and residence. On his failure to pay, the wife seeks your advice. Advise her

Answer: 3 ♦ Wife will not succeed in obtaining separate maintenance and residence from her husband.

♦ Agreement without consideration is void-ab-initio.

♦ As per section 25(1) Agreement without consideration is valid if it is between * near relatives * having natural love and affection * written and * registered.

♦ Here agreement is between near relatives, written and registered but natural love and affection is missing, hence the same is not enforceable. So Wife will not succeed to enforce the agreement for separate residence and maintenance.

Q-4. A executed a promote in favour of B while he was a minor. The promote was renewed by A in favour of B when he attained the age of majority. B brings a suit against A on the basis of the second promote. Will he succeed?

Answer 4 ♦ B will not succeed in enforcing the Pro Note.

♦ Any act done by minor during his minority can not be ratified even by himself on attaining majority. Because only valid act can be ratified. Void act can not be ratified.

♦ So Pro note executed by minor is void-ab-initio and can not be enforced by B through court of law.

Q-5 For a loan of Rs.15,000 to be received in three annual instalments, A (the borrower) executed a simple mortgage of his property in favour of B (the lender)—the borrower receiving Rs.5,000 towards the first instalment, at the time of executing the mortgage deed. Examine B's rights on the mortgage deed, and respecting the money paid over to A: (a) if B did not know that A was a minor. (b) If B knew that A was a minor. (c) If A fraudulently misrepresented his age. (d) If the moneys paid to A were required for advanced studies abroad.

Answer 5 ♦ In case of case (a) and (b) agreement is void ab initio and restitution is not possible. Hence Rs 5000 can not be recovered from minor A.

♦ In case of case (c) agreement is still void but if Rs 5000 are traceable with A, Court may order A to restore the same to B.

♦ In case (d) court may form Quasy Contract and ask A to restore Rs 5000 to B from his estate.

Q-6. A minor who wanted to become a professional billiards player entered into a contract with a famous billiards player and agreed to pay him a certain sum of money to learn the game. Is he liable to pay?

Answer 6 ♦ Yes. Minor will be responsible as Billiards Coaching falls within the category of education and the same is life necessities.

♦ Hence Court may form quasy contract and may ask minor to pay necessary fees to Billiards Player from his estates.

Topic 4 : Performance and Discharge Of Contract.

1. A, B and C jointly promise to pay D a sum of Rs. 6,000.

(a) Can D compel any of the three parties A, B and C to pay him Rs. 6,000?

(b) C is compelled to pay the whole of the amount to D. Can he recover anything from A and B when (i) both A and B were solvent, (ii) A (and not B) is insolvent and pays 50 paise in a rupee to his creditors, (iii) A is not in a position to pay anything?

Ans. (a) Yes D can compel any one of the three parties to make payment of the whole obligation of Rs. 6000.

(b) If C is compelled to pay full amount of Rs. 6000 then he can recover Rs. 2000 each from A and B if both A and B are solvent.

(c) If A is insolvent and can contribute only 50 paise a rupee i.e. Rs 1000 then C can recover Rs. 2500 from B. Deficit of A of Rs. 1000 shall be shared by A and B equally. Hence A shall recover Rs. 2000 from B as B's own contribution and Rs. 500 towards share of B in deficit of A.

(d) If A is not in a position to pay anything then C can recover Rs. 3000 from B (Rs. 2000 B's own contribution and Rs. 1000 as B's share in A's deficit).

2. A owes B two sums, one for Rs. 1,000 which is barred by limitation and another for Rs. 1,500 which is not barred. A pays B Rs. 500 on account generally without giving any instructions. Later B sues for Rs. 1,500. A pleads (i) as to Rs. 1,000 that it was time-barred; and (ii) as to Rs. 1,500 a part payment of Rs. 500 has already been made and now only Rs. 1000 remain unpaid.

Examine whether A is right or not?

Ans. A is wrong. As A sent Rs. 500 without giving any instructions B can appropriate this amount as per his own discretion. So B will surely settle the time barred debt first. Hence A now has two debts payable to B.

1. Rs. 500 Time Barred.

2. Rs 1500 regular debt.

3. A, a singer, enters into a contract with B, the manager of a theater, to sing in his theatre two nights in every week during the next two months and B agrees to pay her at the rate of Rs. 1,000 for each night. On the sixth night A wilfully absents herself. With the assent of B, A sings on the seventh night. But on the

following day, B puts an end to the contract. Can A claim damages for breach of contract? Advise A.

Ans. • Yes, A can claim damage compensation.

- When A remained wilfully absent on 6th night, contract became voidable at the option of B. But B allowed A to sing for 7th night.

- By allowing A to sing for 7th night despite of her default, B validated A's default and lost all the rights to make contract void.

- Now on 8th Day B didn't have any right to set aside the contract. But B cancelled the contract on 8th Day. This is a breach of contract and aggrieved party A has all the right to claim damage.

4. A promises to sell and deliver on the 5th of January a lorry to B. The parties have stipulated that time should be the essence of the contract. A delivers the lorry only on the 5th of February. Explain what are the rights of B against A in this case. Suppose B desires to accept the belated delivery and also to claim compensation for loss occasioned by the non-performance of promise at the time agreed. Advise B as to whether he can achieve these two objectives.

Ans. As both the parties have agreed to treat time as an essence of the contract and promisor A failed to deliver lorry in time, promisee B shall have following two options.

1. He can cancel the contract as on failure of A contract becomes Voidable at the option of B.

2. B can claim damage compensation.

But if B wants to accept delivery of Lorry from A on 5th February and simultaneously he wants to claim damage compensation then he must have given notice of his intention of claiming damage compensation to A on failure of A to perform in time.

5. Is the promisor absolved from performing the contract in the following cases:

(a) A music hall was agreed to be let out on certain dates but before those dates it was destroyed by fire.

ANS. YES. As Contract becomes void by supervening impossibility. Reason : Destruction of Subject Matter.

(b) An artist undertook to paint a picture for a certain price, but before he could do so, he met with an accident and lost his eye-sight.

Ans. Yes. Supervening Impossibility. Reason : Contract involves personal skills of promise and after formation but before performance promisor becomes incompetent to perform.

(c) A entered into a contract with B on 1st March for the supply of certain imported goods in the month of September of the same year. In June, by an Act of Parliament, the import of such goods was banned.

Ans. Yes. Contract becomes void because of Supervening Impossibility. Reason : Change in law after formation but before performance has made performance unlawful.

(d) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy.

Ans. No. Here A will be responsible to pay heavy damage compensation to B. Here A knew right from the beginning that he was giving promise to do such a thing which has already become impossible.

(e) A promises B, for valuable consideration, to put back the life of a dead relative of B by some supernatural powers but fails to keep up his promise.

Ans. No. As agreement is void ab initio.
Agreement to do an impossible act is void-ab-initio.

(f) A agreed to sell to B the entire crop of apples growing in his field. After the agreement was made a sudden frost destroyed the crop.

Ans. Yes. Contract becomes void because of Supervening Impossibility. Reason: Destruction of Subject Matter.

6. A owned a room in a hotel which was hired to B for watching the coronation procession of King Edward II, at £ 141 payable at the time of the contract. £ 100 were paid in cash. But before the balance was paid, the procession was cancelled. B filed a suit for the recovery of the amount he had paid. Decide.

Ans. B can recover advance of £100 already paid. Contract becomes void because of Supervening Impossibility.
Failure of object for which agreement entered in to has made contract void.

Topic 5 : Free Consent

Q.1 Answer the following questions by giving brief reasons. Each Question Carries 2 Marks. (20 Marks)

1. A sold some land to B. At the time of sale both parties believed in good faith that the area of the land sold was 10 hectares. It, however, turned out that the area was 7 hectares only. How is the contract of sale affected? Give reasons.

Ans. Agreement is affected by Bilateral Mistake of Facts and hence it is void ab initio.

2. A agreed to sell B a specific cargo of corn per S.S. Malwa supposed to be on its way from London to Mumbai. It turned out that before the day of the bargain the ship had been cast away, and the goods lost. Discuss the rights of A and B.

Ans. Unknown Initial Impossibility. Parties made an agreement to do an act which had already become impossible but parties were unaware about the fact. The moment parties know about the fact that the goods have been lost, agreement becomes void.

3. C, with the intention of inducing D to enter into a contract with him, makes a statement to D, which is in fact untrue and thereby induces D to enter into the contract. What are D's rights, if the statement is made by C—(a) knowing that it was untrue, (b) recklessly, without caring to know whether it was true or false, (c) in good faith, but negligently, (d) in good faith and without negligence?

Ans. A and B It's fraud and contract becomes voidable at the option of D and D can claim damage compensation.
Whereas in C and D it's misrepresentation so contract becomes voidable but damage cannot be claimed.

4. A applies to a banker for a loan at a time when India is passing through a period of recession. The banker agrees to make the loan only at an unusually high rate of interest. A accepts the loan on these terms. Subsequently A pleads that the contract has been procured by exercising undue influence. Will this plea succeed?

Ans. No A can not cancel the contract. There is no undue influence. Exceptional high rate of interest during stringent monetary policy is not unconscionable and it's not a reason of undue influence. Contract remains valid.

5. A tells his wife that he would commit suicide, if she did not transfer her personal assets to him. She does so under this threat. Can the wife avoid the contract?

Ans. Yes A's wife can avoid the contract
Threat to suicide amounts to coercion. Hence contract becomes voidable at the option of A's wife.

6. A is enfeebled by age and illness. B, his medical attendant, uses his personal influence over him and induces him to pay an unreasonable fee for his professional services. (a) Can A avoid the contract? (b) If so, on what plea?

Yes. A avoid the contract on the plea of undue influence.

7. A young widow was forced to adopt a boy under the threat preventing the body of her husband, who had just died, from being removed for cremation. Is this adoption valid under law?

Ans. No. This adoption is voidable at the option of widow. Here Coercion has been exercised on the widow and contract is voidable at her option.

8. A contracts with B to buy a necklace, believing it is made of pearls whereas in fact it is made of imitation pearls of no value. B knows that A is mistaken and takes no steps to correct the error. Is A bound by the contract?

Ans. Yes A is bound by contract. Seller is not supposed to reveal the truth on his own without being asked by the buyer. Buyers beware is applicable. By remaining silent seller made passive concealment and it's not fraud.

9. A purchased a typing machine on a dealer's representation that it was a new model. After paying the purchase price, he discovered that, although the machine looked new, it was actually a re-built model. What are A's legal rights?

Ans. Contract becomes voidable at the option of A because dealer initiated fraud.

10. M, a medical practitioner, truly represented to B, a prospective buyer, that his practice was worth £ 20,000 a year. Five months later when B bought the practice, it had considerably gone down on account of M's serious illness. M did not disclose this fact to B. Can B avoid the contract?

Ans. Yes. B can avoid the contract. There is a change in circumstances before conclusion of contract and seller must reveal this fact to buyer without being asked by the buyer. So by remaining silent seller committed fraud.

Topic 6 : Remedies for the Breach Of Contract.

1. A agreed to erect a plant for B by 31 st March, 2008. A further agreed to pay ₹ 500 per month as damages in case of delay beyond the agreed date. A was late by four months. B sued A for ₹ 4,500, the actual loss caused to him as a result of the delay. What damages will you award, and why?

Ans. • B is entitled to recover ₹ 2,000 only i.e. Liquidated Damage.
• Here both the parties have made fair genuine and scientific pre-estimate of damage means liquidated damage of Rs. 500 for each month of delay.
• There is a delay of 4 months. So liquidated damage amount comes to Rs. 2000.
• Actual Damage is Rs. 4500. As actual damage is more than liquidated damage, court shall award liquidated damage.

2. A employs B as manager of his factory for a term of three years at a monthly salary of ₹ 3,000. Without any lapse on the part of B, A dismisses him after two years of service. B could not get an alternate job elsewhere and files a suit for damages for breach of contract against A Will he succeed? If yes, assess the amount of damages recoverable by him.

ANS- • Yes, B will succeed. If it cannot be proved that B has failed in his duty to reduce the loss subsequent upon the breach, B will be entitled to full salary for

the whole of the unexpired period of service i.e., one year. Hence the amount of damages recoverable by B amounts to ₹ 36,000.

3. A mate was engaged for a lump sum to be paid after the completion of voyage. The mate dies when only 2/ 3 of the voyage was completed. His legal representatives claim damages on quantum meruit. Decide.

- Ans. The legal representatives of the mate cannot recover anything as the doctrine of quantum meruit is inapplicable under the circumstances
- Here the contract is indivisible and mate died before completion of the whole voyage. Hence Quantum Meruit is not applicable and legal representative of mate is not entitled to recover any amount.

4. A borrows Rs. 500 from B to purchase certain smuggled goods from C. Can B recover the amount from A if he (a) knows of A's purpose for which he borrows money, (b) does not know of A's purpose .

Ans. (a) If B knows about the purpose for which A borrowed B can not recover any amount from A. All collateral agreement to an illegal agreement are also illegal and void.

(b) If B does not know about A's purpose then B can recover amount from A.

5. A promises to pay Rs. 500 to B who is an intended witness in a suit against A in consideration of B's absconding himself at the trial. B absconds but fails to get the money. Can he recover?

Ans:-This is an example of an agreement for stifling prosecution. This is against public policy and Void. Hence B cannot recover the money.

6. P and Q have property dispute. X enters in to an agreement with Q to monetary assist Q so as to enable him to maintain his suit against P. As a consideration if Q wins the case he shall be bound to share 80 percentage of the value of property with X. Is agreement between X and Q valid?

Ans. No. Agreement between X and Q is champertious and Void. As X has demanded unfair share from Q.